START

Title: FEDERAL REGISTER.

Volume: 59

Issues: 180-192
PAGES: 47779-50812

Date: SEPTEMBER 19 - OCTOBER 5, 1994

UMI No: 2575.00

Note:
Includes:
LSA (MAY-JULY)

REEL: 5 OF 10

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9-19-94
Vol. 59 No. 180

federal register

Monday
September 19, 1994

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SECOND CLASS NEWSPAPER
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(ISSN 0097-6326)

9-19-94
Vol. 59 No. 180

Monday
September 19, 1994

VOL
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ISS
180
SE
19
1994
UMI

9–19–94
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Pages 47779–48164

Federal Register

Monday
September 19, 1994

Briefing on How To Use the Federal Register
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VOL
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ISS
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1994
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Presidential Documents

Title 3—

The President

Proclamation 6719 of September 14, 1994

National Hispanic Heritage Month, 1994

By the President of the United States of America

A Proclamation

As children across the country return to school this year, it is easy to see the vast diversity that defines America reflected in the sea of young faces filling our classrooms. Our ancestors came from all corners of the globe, bringing the myriad cultures, knowledge, and beliefs that shape our Nation today. For every one of us, the community that shares our ethnic heritage can provide an important source of strength and continuity in today's rapidly changing international marketplace. If our Nation is to succeed in that global arena, we must embrace the energy and creativity of all of our people, relying on the strength of community more than ever.

Young Hispanic Americans are future leaders, educators, and workers of our Nation. For their sake and for the generations of young people to come, we must strive to advance the great traditions of family and community that have enabled Hispanic Americans to make invaluable contributions to our country since its beginnings. These traditions, fortified by new opportunity, can uplift our people and help to build a brighter future for all of our children.

On February 22, 1994, I joined Hispanic Americans in taking an important step toward setting a new standard for educational excellence. Designed to better prepare our people to meet the challenges we face, Executive Order No. 12900, which I signed that day, seeks to improve educational opportunities for Hispanic Americans throughout the Nation. It establishes a commission of leaders from the Hispanic American community that will focus on Hispanic children and youth and recommend methods to improve their academic performance. Drawing on the high standards set by our Goals 2000: Educate America Act, the commission will look for ways to encourage government and the private sector to work as a team to inspire Hispanic students to achieve those goals. And an interagency working group will strive to ensure that the obstacles still confronting too many of our people—barriers from language to unemployment to crime—are more easily overcome.

To recognize the accomplishments of Hispanic citizens and to focus national attention on their extraordinary contributions and culture, the Congress, by Public Law 100–402, has authorized and requested the President to issue annually a proclamation designating September 15 through October 15 as "National Hispanic Heritage Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 15 through October 15, 1994, as National Hispanic Heritage Month. I call upon the people of the United States, government officials, educators, and volunteers, to observe this month with appropriate programs, ceremonies, and activities.

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IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94-23270
Filed 9-15-94; 3:14 pm]
Billing code 3195-01-P

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Presidential Documents

Title 3—

The President

Executive Order 12927 of September 15, 1994

Ordering the Selected Reserve of the Armed Forces to Active Duty

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 673b of title 10 of the United States Code, I hereby determine that it is necessary to augment the active armed forces of the United States for the effective conduct of operational missions to restore the civilian government in Haiti. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, to order to active duty any units, and any individual members not assigned to a unit organized to serve as a unit, of the Selected Reserve.

This order is intended only to improve the internal management of the executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

This order is effective immediately and shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
September 15, 1994.

[FR Doc. 94-23273
Filed 9-15-94; 3:11 pm]
Billing code 3195-01-P

Editorial note: For the President's letter to congressional leaders on ordering the Selected Reserve of the armed forces to active duty and his address to the Nation on Haiti, see issue 37 of the *Weekly Compilation of Presidential Documents*.

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

General Administrative Regulations; Actual Production History (APH) Coverage Program

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby issues regulations to provide a method for determining insurance coverage based on Actual Production History (APH). An approved APH yield, when multiplied by a percentage of an elected coverage level and price per commodity unit, results in a dollar amount of insurance coverage per acre. This rule is being promulgated in accordance with the requirements of the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: October 19, 1994.

FOR FURTHER INFORMATION CONTACT: Mari Dunleavy, Regulatory Specialist, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Executive Order 12866, and Departmental Regulation No. 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is September 1, 1999.

This rule has been determined to be not-significant for purposes of Executive Order 12866, and therefore, exempt from OMB review and has not been reviewed by the Office of Management and Budget (OMB).

This action does not have a significant effect on a substantial number of small entities. It imposes no added burden on the insured farmer or on the private insurance company serving as the delivery agent. APH has been the basis for computing insurance guarantees under the Federal Crop Insurance Program, on an *ad hoc* basis for over eight years and has its genesis in the Individual Yield Coverage Plan (7 CFR 400.15–400.21). This rule codifies procedure which is already effective. Therefore, this action is exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

The program is listed in the Catalog of Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment or an Environmental Impact Statement is needed.

The collection requirement for this regulation is form number FCI–19A (APH Production Reporting Form) and has been previously approved by the OMB under the provisions of 44 U.S.C. 3501 *et seq.*, the Paperwork Reduction Act of 1980. The control number for the APH Production Reporting Form is OMB #0563–0029. See 7 CFR part 400, subpart H.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule are not retroactive and will preempt State and local laws to the extent such State and local laws are inconsistent. The administrative appeal provisions, located at 7 CFR part 400, subpart J, must be exhausted before judicial action may be brought for actions taken under these proceedings.

Background

The Federal Crop Insurance Act, as amended by the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), requires the establishment of a plan and the publication of regulations for the use of the producer's actual production history to determine yield coverage. FCIC has used such a plan on an *ad hoc* basis for a number of years.

An approved actual production history (APH) yield, multiplied by a percentage of an elected coverage level and price per commodity unit, provides the dollar amount of insurance coverage per acre. If the insured does not submit production records for insurance purposes, 65 percent of an FCIC estimated yield (transitional or determined yield) is the default approved APH yield. The FCIC estimated yield, after applicable adjustment, is used in conjunction with actual production records to compute the approved APH yield when less than four years of actual production records are available.

On October 14, 1993, the FCIC published in the **Federal Register** at 58 FR 53150 proposed regulations outlining the provisions for the APH plan. The FCIC requested and received comments from the public regarding the proposal.

The comments and their responses are grouped according to subject, area of concern, and by subpart of the proposed regulation.

1. General Comments, Differences Compared to 1994 APH Program

Comments: Several comments pointed out that the new producer, crop year, and base period definitions differ from FCIC approved procedures implemented for the 1994 crop year. The comments requested that the regulation be changed to agree with those APH procedures if it is to be effective for the 1994 crop year. They indicated that these changes will drastically affect computer programming, computer edits, FCIC data reporting requirements, etc. If the regulation is not changed and is to be effective for the 1994 crop year, they

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requested that the comment peripd be reopened to provide an opportunity to review the impact of these changes.

Response: There are differences between the regulation published for comment and the APH procedures used for the 1994 crop year. The differences are minor but, if implemented for the 1994 crop year, the regulation would have major impacts on the current program. Fall and spring seeded crop policies have been sold, production reports filed, and approved APH yields calculated, processed, and submitted to FCIC based on procedures implemented in July 1993.

For these reasons, the regulation, with minor changes, will be implemented effective for the 1995 crop year.

2. Coverage and Participation

Comment: Twenty comments stated that the APH program will reduce insurance protection to many farmers, decrease farmer participation, and increase future demand for free disaster payments. The comments suggested that FCIC encourage participation by offering higher levels of protection to producers.

Comment: One comment noted that 65 percent of the transitional yield will be used when a producer does not furnish any previous yield data. The comment suggested that FCIC change this percentage to 80 percent.

Comment: Section 400.54(b)—the proposed reduction of transitional or determined yields by the stated 80 percent for maintaining one year of actual records and 90 percent for maintaining two years of actual records is inadequate to serve as an incentive for insureds to report all four years of actual production in relationship to the 65 percent reduction for no records. Also, there does not appear to be a penalty for maintaining only three years of actual records. A greater penalty is needed for not maintaining less than four years of records.

Comment: One comment suggested that if a producer applying for Federal crop insurance coverage has no previous production records (an example of this would be production of the alternative crop Kenaf, where very little production history exists), that individual should be able to receive crop insurance coverage for the entire crop. The only way to accomplish this is to raise the transfer yield to 100 percent, as opposed to 65 percent. The comment also recommended that an option be provided to allow producers to purchase additional coverage for crops having no previous production records.

Comment: One comment urged FCIC to exclude those losses resulting from catastrophic events in the loss ratio determination.

Response: The Federal Crop Insurance Act, as amended, requires FCIC to take actions as necessary to improve actuarial soundness of the multiple peril crop insurance program. FCIC is mandated to achieve an overall loss ratio, within certain parameters, of not greater than 1.10 by October 1, 1995. FCIC's research using existing insureds' APH data indicates insureds with no records of production (or one or two years of records) are paid disproportionate losses compared to insureds who have provided three or more years of production records. Further analyses by FCIC using modified APH procedures and existing insureds' APH data, indicates that 65 percent of the transitional or determined yield (hereafter referred to as T-Yield in FCIC's responses) is an appropriate percentage to attain the required loss ratio for persons who have not submitted records. Independent analyses from a private insurance association support these findings.

Insureds who have provided three or four years of records have lower loss costs and do not require the use of reduced T-Yields. Modifications to APH are not intended to reduce insurance protection to farmers, rather the intent is to base yields more fully on actual yields and to rely less on T-Yields. APH procedures allow ample opportunity for producers who have not raised insurable crops (and therefore have not had the opportunity to establish records) to qualify for APH yields greater than 65 percent of the T-Yield through use of new producer, added land, and new practice procedures.

Producers are encouraged to provide as many years of actual yields as possible. Above average yields will reduce the impact of low yields. If actual yields reported are higher than the T-Yield, modified APH procedures allow a better opportunity for increased insurance yields as compared to previous APH procedures.

FCIC is not able to provide APH yields higher than the insured's average yields without adversely affecting FCIC loss ratio and financial accountability. FCIC has researched options that provide coverage based on yields higher than the insured's APH yield or the yield history available for the crop on a county basis. This analysis indicates that a significant increase in premium rates is required to make such a program actuarially sound. FCIC will retain the APH structure as proposed.

3. Section 400.50 Availability of APH Program

Comment: The last sentence of § 400.50 states, "Except when in conflict with this subpart, all provisions of the applicable crop insurance contract for these crops apply." Concern was expressed that this regulation may override the terms and conditions in current crop filings. The commentor indicated that policy language should not be superseded by any other published regulations since policyholders receive copies of policy provisions but do not receive Federal regulations.

Response: Federal regulations have the force and effect of law and all have constructive notice of the provisions. As a practical matter we are not aware of any provision of the published policies in conflict with these regulations. As crop insurance policies which base production guarantees on APH yields are revised, those provisions relating to APH will be changed in accordance with the final APH regulation. Reinsured companies furnish policyholder's letters that describe changes to each crop insurance contract. These letters also suggested that insureds contact their agents for a full explanation of the changes and once so advised, insureds then can make informed crop insurance decisions. Copies of these letters should be provided by the insurer to all affected policyholders.

4. Added Land (Purchased or Leased)

Comment: One comment stated concern that, under the proposed regulation, the producer is not eligible to transfer his or her skill and history to new land purchased or leased. It was suggested that a producer's history be taken into account when calculating coverage under a crop insurance policy

Response: The regulation provides general rules while allowing flexibility for program details to be provided in procedures. Added land procedures for APH yield determinations are available that provide insureds the opportunity to establish approved APH yields higher than 65 percent of the T-Yield when new land is purchased or leased. FCIC has added a new paragraph to § 400.54(b) consistent with those procedures which allow yields for added land that are more comparable to approved APH yields determined from acreage with records.

5. Databases Used To Calculate the APH Yield

Comment: One comment noted that a four year history does not provide a balanced history in which an agent can accurately calculate a producer's coverage. A one or two year drought would severely affect a producer's history. A ten year history would provide more stability.

Comment: One comment suggested that the base period be a minimum of five years. Four years are not sufficient. Approved yields may fluctuate tremendously from year to year. The schedule for the percentage of the T-Yield used, based upon the years records provided, should be as follows: zero years—80 percent; one year—85 percent; two years—90 percent; three years—95 percent; four years—100 percent; and five or more years the T-Yield is not used.

Comment: One comment noted that in § 400.54(h), "FCIC may use any production reports available under the provisions of any crop insurance contract, whether continuous or not (emphasis added), which involve the interests of the insured person in determining the approved APH yield." Current APH procedures allow new insureds (including insureds with a break in continuity of insurance coverage of at least one year) to certify one or more crop years to establish the APH yield. Since processing has already begun, implementation of yields that are not continuous will impose major difficulties. In accordance with the proposed definition of crop year, this could require companies to maintain yield history indefinitely (for example, a farmer may have had a policy five years ago with production history going back 30 or 40 years to accumulate 10 crop years).

Response: The level at which the reduced T-Yield has been set for zero, one, or two years of records was established to offset disproportionate losses as compared to insureds who have provided more years of actual records. Using higher levels of T-Yields is contrary to that objective. The modified APH program encourages the insured to provide actual records by using reduced T-Yields if the insured provides less than four years of actual yields.

The proposed regulation does not limit insureds to providing only four years of actual yield. In fact, continuous records up to ten years must be used if available. The more years of records used, the less the effect fewer actual yields have. Insureds may submit one to ten years of continuous crop years of actual yields to be used in the APH yield calculation.

With data automation and reporting changes, actual yields will be retained until the database contains ten crop years of actual yields. There is no need to expand the database to include calendar years that are not used to calculate the APH yield. Data processing changes can be accomplished for the 1995 crop year.

6. Why a Federal Regulation?

Comment: One comment requested justification as to FCIC publishing in the **Federal Register** a program (APH) that has already been implemented by FCIC approved procedures. The comment went on to state that, as introduced in the mid 1980's the APH program did not have its procedures published in the **Federal Register.** By implementing the program as a regulation, the comment stated that FCIC is limiting its ability to administer the APH program as changes can no longer be handled administratively. Any changes will be required to be published in the **Federal Register** prior to implementation.

Response: The regulation provides a foundation on which the APH program and procedures will be based. The regulation will strengthen FCIC's and reinsured companies' ability to defend the procedures used to determine APH yields if reconsideration, appeal, or litigation proceedings relating to APH are pursued by insureds. The previous unpublished procedures were not effective unless the insureds received actual notice of program changes prior to the contract change date.

7. Base Period Section 440.51(g) and Crop Year Section 400.51(i)

Comment: § 400.51(g), (i)—Three objections to the definition of crop year and base period were stated. The base period is defined at 10 consecutive crop years. Crop year is defined as any year in which the crop is planted. Under the regulation, the base period is no longer 10 consecutive crop years beginning with the most recent year, but would vary from each crop and policy, and possibly from each database within a policy. It is conceivable that a database may contain land planted to the insured crop every other year, in such case, the base period could stretch back 20 *calendar* years to obtain 10 *crop* years.

Response: Crop year as defined, benefits producers who rotate different crops, rotate the same crop on different units, or who only occasionally plant the insured crop. For example, if an insured has three consecutive crop years of actual records on a unit: 1984, 1988, and 1993, by using crop year as defined in the regulation, all three actual yields will be retained in the database for the 1995 crop year. If the crop is not planted in 1994, 100 percent of the T-Yield will be used as the fourth yield when calculating the APH yield. The more years of experience in the database, the more reliable a yield determination can be made. Requiring only 10 consecutive calendar years of records may result in a yield determination which does not adequately reflect the farm history.

Comment: A comment was received recommending deleting the last sentence of § 400.51 (i) which states, "If the insured is prevented from planting all of his acreage in the county due to flood and does not plant for harvest any other crop, FCIC will assign a yield for that year."

Response: FCIC agrees with this comment and has deleted the last sentence accordingly.

8. Section 400.51(m) New Producer Definition

Comment: Several comments noted that the definition of new producer is different in the rule than the definition implemented by the *od hoc* procedures for 1994 fall crop year. The definition in the procedures defines a new producer as a "person who has not been actively engaged in farming for a share of the insured crop's production in the county for more than two years." The rule defines the new producer as "a person who has not been actively engaged in farming for a share of a crop for more than two years." The rule deals with individuals who are new to farming while procedures deal with individuals who are new to producing the crop they wish to insure. If the proposed definition of a "new producer" goes into effect, very few producers will qualify as a new producer.

Response: FCIC agrees that this definition may be too restrictive. For example, a producer who has never raised corn would NOT be considered a "new producer" for corn if he or she has raised another crop (wheat for example) for more than two crop years. Under the proposed regulation this producer's insurance yield for corn would be restricted to 65 percent of the T-Yield because records are not available for corn. A producer who has no farming experience at all would fare much better, because as a "new producer" he or she will qualify for an insurance yield based on 100 percent of the T-Yield (for all insured crops). After further evaluation, FCIC agrees that the "new producer" provisions should apply to new producers of an insured crop regardless of their production of other crops.

9. Section 400.51 Definitions

Comment: Several comments recommended technical corrections of definitions as follows:

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1. *Actual Yield and Production Report*—reference is made to "insurable acres for perennial crops" instead of "planted acres."

2. *Approved APH Yield*—the database may not always contain four consecutive crop years (actual yields). The definition needs clarity that the total of the yields is divided by the *number of years with yields.* (Also see comments to definition of "Crop Year.")

3. *Assigned Yield*—suggest changing "considered" to "handled in the same manner as."

4. *Master Yield*—indicate its availability is limited to certain crops and counties designated by FCIC.

5. *Production Report*—remove "by us" in the first sentence. Rewrite to include the possibility that production may be reported for more than the one (most recent) crop year.

Response: FCIC agrees with these comments and has revised the definitions accordingly.

10. Section 400.52 Reporting and Record Requirements

Comment: One comment suggested that the language in § 400.52(b)(1), regarding inaccurate reporting or failure to retain acceptable records, be changed from "may result" or "may be" to "shall be" to eliminate any implicit option. The penalty for not having or retaining acceptable records should be the combining of farm units and the recalculation of the APH yield.

Response: Basic farm units must be provided irrespective of APH records. Optional farm units are a further subdivision of basic units and must meet separate record requirements stated in the crop policy to qualify as separate optional units. Recalculation of the APH yield will not always result in a lower APH yield. However, if inaccurately reported or acceptable records are not retained for either basic or optional units, APH yields will be recalculated. FCIC has made changes to the regulation to address this concern that are consistent with the crop insurance policies.

Comment: Section 400.52(b)(4)—This provision states that the policy may be canceled and subject to false claims penalties if the production history is not accurate. Section 400.52 (a)(3) indicates it is acceptable not to provide complete production reports since assigned yields are an acceptable means to maintain continuity of yield data on file. A comment suggested that § 400.52 (a)(3) and (b)(4) are in conflict with § 400.52(b)(1).

Response: FCIC does not agree that a conflict exists. However, FCIC has clarified these provisions to more accurately reflect their intent. Section 400.52(a)(3) allows FCIC to use previously reported production history to calculate APH yields, if the insured does not file annual production reports as required by the policy. Section 400.52(b)(1) specifies that inaccurate reporting or failure to maintain acceptable supporting records will result in the combining of optional units and recalculation of the APH yield. Section 400.52(b)(4) is a separate action that may be taken if an insured misrepresents or fraudulently reports APH information.

11. Section 400.53 Submission and Accuracy of Production Reports

Comment: One comment suggested deleting § 400.53(e) since it essentially duplicates the provisions of § 400.53(a).

Response: FCIC agrees with this comment and has changed the provision accordingly.

12. Section 400.54 Qualification for Actual Production History Coverage Program

Comment: Section 400.54(a)—One comment suggested that the first sentence be revised because production reports for the four most recent crop years are not required to qualify for APH. The comment also suggested revising the last sentence because of the possibility of zero planted years. The comment suggested employing ". . . will occur in the database when there are less than four actual/assigned yields in the database."

Response: FCIC agrees with these suggestions and has made the appropriate changes.

Comment: One comment noted that in § 400.54(a) the term "will be updated" suggests that production reports are mandatory each subsequent crop year. The comment suggested that the regulation address the possibility that coverage may be based on 65 percent of the T/D yield without yearly production reports.

A comment also stated that records are not mandatory, as indicated in § 400.54(b), and that insureds may have approved APH yields based on 65 percent of the T/D-Yield if acceptable records are not available or not provided. The comment also stated that yields from claims will not be used (as indicated in § 400.51(n)), if an insured elects not to provide records and have the APH yield based on 65 percent of the T/D Yield (also applies to § 400.54(d)).

Response: FCIC implemented procedures for modified APH for the 1994 crop year intending to allow producers the option of basing production guarantees on 65 percent of the T-Yield without requiring records. Not requiring records in subsequent crop years had been criticized because the use of loss records is perceived to be mandatory for APH purposes. It is also viewed as not encouraging insureds to provide records.

FCIC agrees that use of loss records should be required for APH purposes. Actual yields determined from claims for indemnities will be used when calculating APH yields for the 1995 and succeeding crop years. Calculation of APH yields based on 65 percent of the T-Yield without records will be allowed only for the initial crop year of insurance. Records will be required for subsequent crop years.

Comment: Section 400.54(d)—One comment suggested deleting the phrase "to compute an approved APH yield" because it is not required to have an actual yield for the most recent crop year to calculate an approved APH yield. The comment also suggested deleting the phrase "at discretion of FCIC."

Response: FCIC does not agree with the suggestion to delete "to compute an approved APH yield" because the phrase relates to providing actual yields (production records) in order to qualify for optional units. However, the language has been clarified to reflect this intent.

FCIC does not agree that "at discretion of FCIC" should be removed. This provision allows FCIC a degree of flexibility concerning the impact of loss records (e.g., FCIC may need to lessen the impact a loss record has on APH yields for a catastrophic year).

Comment: Secion 400.54(e)—One comment suggested deleting provisions (1), (2), and (3), because the provisions are more applicable to procedures. If not deleted, the comment suggested inclusion of the definition "FCIC RSO Determined Yield" and clarification that provisions (1), (2), and (3) apply only to category C perennial crops, not just item (3). The comment further suggested deleting any reference to T-yield tables in (1).

Response: FCIC does not agree that § 400.54(e) (1), (2), and (3) of the rule should be deleted. These provisions allow additional flexibility for those situations listed. For example, T-Yields are not published for all crops or for all counties. Therefore, the rule must allow an alternative method to calculate approved APH yields when T-Yields are not available. For this reason, the reference to T-Yields should not be deleted. These provisions allow FCIC to continue APH procedures implemented for the 1994 crop year that are consistent with procedures used in previous crop years. The term "FCIC RSO Determined Yield" is not used in the rule, so consequently, the term need not be defined.

Comment: Section 400.54(g)—One comment suggested the following rewrite of the last sentence to improve clarity: "Master Yields are based on production history from all acreage of the crop in which the insured has an interest in the county." Another comment noted that the rule consistently requires that the producer provide four years of records in order to qualify for a Master Yield. This requirement has hampered new sales of crop insurance which use the Master Yield concept. Master Yields may vary drastically between landlord and tenant on the same piece of ground due to the fact that a producer's yield is calculated using records from all farms. The comment suggested that FCIC work with the industry to resolve these problems.

Response: FCIC agrees with these comments and has made the necessary changes. Regarding the concerns about Master Yields, FCIC will not change the four-year record requirement because APH is also available on Master Yield crops. FCIC also will base Master Yields on the operator's records. By calculating Master Yields from the operator's records, the same APH yield will be provided for both the landlord and tenant. FCIC has implemented the Master Yield changes for the 1994 crop year.

Comment: Section 400.54(h)—One comment suggested that the phrase "whether continuous or not" was misleading, considering the previous emphasis on maintaining continuity of production reports. The comment further made the following observations. If entering a yield is intended to allow use of history prior to the break in continuity of production reports, it should be so clarified. If intended to allow prior history regardless of a break in continuity of insurance, entering a yield will impose major difficulties. In conjunction with the revision in crop year definition, this could require companies to maintain yield history indefinitely. For example, a farmer many have had a policy five years ago but production history may have to go back 30 or 40 calendar years to accumulate 10 crop years of actual yields.

Response: This provision does not affect the continuity requirements applicable to annual production reports provided by the insured. However, it does allow FCIC to use production history on file prior to a break in continuity of insurance coverage. FCIC reserves the latitude of implementing this provision by issuing procedures outlining records identification (tracking) methods to correctly assign such production. FCIC recently implemented a policyholder tracking system based on social security/employee identification numbers and may implement this provision in the future. Use of this procedure keeps an insured who may have had a low APH yield from canceling insurance for one year in order to achieve a fresh start, and thus, gain a higher yield.

List of Subjects in 7 CFR Part 400

Actual Production History Coverage Plan, Crop Insurance.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended by the Omnibus Budget Reconciliation Act of 1993, the Federal Crop Insurance Corporation hereby amends 7 CFR part 400 by adding a new subpart to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart G—Actual Production History

Sec.

400.51 Availability of actual production history program.
400.52 Definitions.
400.53 Yield certification and acceptability.
400.54 Submission and accuracy of production reports.
400.55 Qualifications for actual production history coverage program.
400.56 Administrative appeal exhaustion.
400.57 OMB control numbers.

Subpart G—Actual Production History

Authority: 7 U.S.C. 1506, 1516.

§ 400.51 Availability of actual production history program.

An Actual Production History (APH) Coverage Program is offered under the provisions contained in the following regulations:

7 CFR 401.110—Almond Endorsement
7 CFR part 405—Apple Crop Insurance
7 CFR 401.118—Canning and Processing Bean Endorsement
7 CFR part 409—Arizona-California Citrus Crop Insurance
7 CFR 401.127—Cranberry Endorsement
7 CFR part 433—Dry Beans Crop Insurance
7 CFR 401.116—Flaxseed Endorsement
7 CFR part 415—Forage Production Corp Insurance
7 CFR 401.130—Grape Endorsement
7 CFR part 455—Macadamia Nut Crop Insurance
7 CFR 401.126—Onion Endorsement
7 CFR part 447—Popcorn Crop Insurance
7 CFR part 403—Peach Crop Insurance
7 CFR 401.140—Pear Endorsement
7 CFR part 416—Pea Crop Insurance
7 CFR 401.146—Fresh Plum Endorsement
7 CFR part 422—Potato Crop Insurance
7 CFR part 450—Prune Crop Insurance
7 CFR 401.123—Safflower Seed Endorsement
7 CFR 401.133—Sugarcane Endorsement
7 CFR part 430—Sugar Beet Crop Insurance
7 CFR 401.124—Sunflower Seed Endorsement
7 CFR part 437—Sweet Corn Crop Insurance
7 CFR part 441—Table Grape Crop Insurance
7 CFR 401.129—Guaranteed Tobacco Endorsement
7 CFR 401.114—Canning and Processing Tomato Endorsement
7 CFR part 454—Guaranteed Production Plan of Fresh Market Tomato
7 CFR part 446—Walnut Crop Insurance
7 CFR part 457—Common Crop Insurance Regulations; and all special provisions thereto unless specifically excluded by the special provisions.

The APH program operates within limits prescribed by, and in accordance with, the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), only on those crops identified in this section in those areas where the Actuarial Table provides coverage. Except when in conflict with this subpart, all provisions of the applicable crop insurance contract for these crops apply.

§ 400.52 Definitions.

In addition to the definitions contained in the crop insurance contract, the following definitions apply for the purposes of the APH Coverage Program:

(a) *APH*—Actual Production History.

(b) *Actual yield*—The yield per acre for a crop year calculated from the production records or claims for indemnities. The actual yield is determined by dividing total production (which includes harvested and appraised production) by planted acres for annual crops or by insurable acres for perennial crops.

(c) *Adjusted yield*—The transitional or determined yield reduced by the applicable percentage for lack of records. The adjusted yield will equal 65 percent of the transitional or determined yield, if no producer records are submitted; 80 percent, if records for one year are submitted; and 90 percent, if two years of records are submitted.

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(d) *Appraised production*—Production determined by the Agricultural Stabilization and Conservation Service (ASCS), the FCIC, or a company reinsured by the FCIC, that was unharvested but which reflected the crop's yield potential at the time of the appraisal. For the purpose of APH "appraised production" specifically excludes production lost due to uninsurable causes.

(e) *Approved APH yield*—A yield, calculated and approved by the verifier, used to determine the production guarantee and determined by the sum of the yearly actual, assigned, and adjusted or unadjusted transitional or determined yields divided by the number of yields contained in the database. The database may contain up to 10 consecutive crop years of actual and or assigned yields. At least four yields will always exist in the database.

(f) *Assigned yield*—A yield assigned by FCIC in accordance with the crop insurance contract, if the insured does not file production reports as required by the crop insurance contract. Assigned yields are used in the same manner as actual yields when calculating APH yields except for purposes of the Nonstandard Classification System (NCS).

(g) *Base period*—Ten consecutive crop years (except peaches, which have a five-year base period) immediately preceding the crop year defined in the insurance contract for which the approved APH yield is being established (except for sugarcane, which begins the calendar year preceding the immediate previous crop year defined in the insurance contract).

(h) *Continuous production reports*—Reports submitted by a producer for each crop year that the unit was planted to the crop and for the most recent crop year in the base period.

(i) *Crop year*—Defined in the crop insurance contract, however, for APH purposes the term does not include any year when the crop was not planted or when the crop was prevented from being planted by an insurable cause. For example, if an insured plants acreage in a county to wheat one year, that year is a crop year in accordance with the policy definition. If the land is summerfallowed the next calendar year, that calendar year is not a crop year for the purpose of APH.

(j) *Database*—A minimum of four years up to a maximum of ten crop years of production data used to calculate the approved APH yield.

(k) *Determined yield (D-yield)*—An estimated year for certain crops, which can be determined by multiplying an average yield for the crop (attained by using data available from The National Agricultural Statistics Service (NASS) or comparable sources) by a percentage established by the FCIC for each county.

(l) *Master yields*—Approved APH yields, for certain crops and counties as initially designated by the FCIC, based on a minimum of four crop years of production records for a crop within a county.

(m) *New producer*—A person who has not been actively engaged in farming for a share of the production of the insured crop for more than two crop years.

(n) *Production report*—A written record showing the insured crop's annual production and used to determine the insured's yield for insurance purposes. The report contains yield history by unit, if applicable, including planted acreage for annual crops, insurable acreage for perennial crops, and harvested and appraised production for the previous crop years. This report must be supported by written verifiable records, measurement of farm stored production, or by other records of production approved by FCIC on an individual basis. Information contained in a claim for indemnity is considered a production report for the crop year for which the claim was filed.

(o) *Production Reporting Date (PRD)*—The PRD is contained in the crop insurance contract and is the last date production reports will be accepted for inclusion in the database for the current crop year.

(p) *Transitional yield (T-Yield)*—An estimated yield, for certain crops, generally determined by multiplying the ASCS program yield by a percentage determined by the FCIC for each county and provided on the actuarial table to be used in the APH yield calculation process when less than four consecutive crop years of actual or assigned yields are available.

(q) *Verifiable records*—Contemporaneous records of acreage and production provided by the insured, which may be verified by FCIC through an independent source, and which are used to substantiate the acreage and production that have been reported on the production report.

(r) *Verifier*—A person authorized by the FCIC to calculate approved APH yields.

(s) *Yield variance tables*—Tables for certain crops that indicate unacceptable yield variations and yield trends which will require determination of the APH yield by the FCIC.

§ 400.53 Yield certification and acceptability.

(a) Production reports must be provided to the crop insurance agent no later than the production reporting date for the crop insured.

(1) Production reports must provide an accurate account of planted acreage for annual crops or insurable acres for perennial crops, as well as harvested and appraised production by unit.

(2) The insured must certify the accuracy of the information.

(3) Production reported for more than one crop year must be continuous. A year in which no acreage was planted to the crop on a unit or no acreage was planted to a practice, type, or variety requiring an APH yield will not be considered a break in continuity. Assigned yields, at the discretion of the FCIC, may be used to maintain continuity of yield data of file. Production on uninsured (for those years a crop insurance policy under the Federal Crop Insurance Act is in effect) or uninsurable acreage (for other years of the period) will not be used to determine APH yield unless production from such acreage is commingled with production from insured or insurable acreage.

(b) Production reports and supporting records are subject to audit or review to verify the accuracy of the information certified. Production and supporting records may be reviewed and verified if a claim for indemnity is submitted on the insured crop. The reported yield is subject to revision, if needed, so that the claim conforms to the records submitted at that time.

(1) Inaccurate production reports or failure to retain acceptable records shall result in the verifier combining optional farm units and recomputing the approved APH yield. These actions shall be taken at any time after reporting or record discrepancies are identified and may result in reduction of the approved APH yield for any calendar year.

(2) Records must be provided by the insured at the time of an audit, review, or as otherwise requested, to verify that the acreage and production certified are accurate. Records of any other person having shares in the insured crop, which are used by the insured to establish the approved APH yield, must also be provided upon request.

(3) In the event acreage or production data certified by two or more persons sharing in the crop on the same acreage is different, the verifier shall, at the verifier's discretion, determine which acreage and production data, if any, will be used to determine the approved APH yield. If the correct acreage and production cannot be determined, the data submitted will be considered unacceptable by the verifier for APH purposes.

(4) Failure of the producer to report acreage and production completely and accurately may result in voidance of the crop insurance contract, as well as criminal or civil false claims penalties pursuant to applicable Federal criminal or civil statutes.

§ 400.54 Submission and accuracy of production reports.

(a) The insured is solely responsible for the timely submission and certification of accurate, complete production reports to the agent. Production reports must be provided for all planted units.

(b) Records may be requested by the FCIC, or an insurance company reinsured by the FCIC, or by anyone acting on behalf of the FCIC or the insurance company. The insured must provide such records upon request.

(c) The agent will explain the APH Program to insureds and prospective insureds. When necessary, the agent will assist the insured in preparation of production reports. The agent will determine the adjusted or unadjusted transitional or determined yields in accordance with § 400.54(b). The agent will review the production reports and forward them to the verifier, along with any requested and required supporting records for determination of an approved APH yield.

(d) The verifier will determine if the certified production reports are acceptable and calculate the approved APH yield.

§ 400.55 Qualification for actual production history coverage program.

(a) The approved APH yield is calculated from a database containing a minimum of four yields and will be updated each subsequent crop year. The database may contain a maximum of the 10 most recent crop years and may include actual, assigned, and adjusted or unadjusted T or D-Yields. T or D-Yields, adjusted or unadjusted, will only occur in the database when there are less than four years of actual and/or assigned yields.

(b) The insured may be required to provide production records to determine the approved APH yield, if production records for the most recent crop year are available. If acceptable records of actual production are provided, the records must be continuous and contain at least the most recent crop year's actual yield.

(1) If no acceptable production records are available, the approved APH yield is the adjusted T or D-Yield (65 percent of T or D-Yield).

(2) If acceptable production records containing information for only the most recent crop year are provided, the three T or D-Yields adjusted by 80 percent will be used to complete the minimum database and calculate the approved APH yield.

(3) If acceptable production records containing information for only the two most recent crop years are provided, the two T or D-Yields adjusted by 90 percent and the two actual yields will be used to complete the database and calculate the approved APH yield.

(4) If acceptable production records containing information for only the three most recent crop years are provided, the three actual yields and one unadjusted T or D-Yield are used to complete the database and calculate the approved APH yield.

(5) When the database contains four or more (up to ten) continuous actual yields, the approved APH yield is a simple average of the actual yields.

(6) New producers may have their approved APH yields based on unadjusted T or D-Yields or a combination of actual and unadjusted T or D-Yields.

(7) Producers who add land or new practice, types and varieties to their farming operations and who do not have available records for the added land, practice, types or varieties may have approved APH yields for the added land, practice, types or varieties that are based on adjusted or unadjusted T or D-Yields as determined by FCIC.

(8) If the producer's crop is destroyed or if it produces a low actual yield due to insured causes of loss, the resulting average yield may qualify for catastrophic yield adjustment according to FCIC guidelines. APH yields qualifying for catastrophic yield adjustment may be adjusted to mitigate the effect of catastrophic years. Premium rates for approved APH yields, which are adjusted for catastrophic years, may be based on the producer's APH average yield prior to the catastrophic adjustment or such other basis as determined appropriate by FCIC.

(c) If *no insurable acreage of the insured crop is planted* for a year, a production report indicating zero planted acreage will maintain the continuity of production reports for APH record purposes and that calendar year will not be included in the APH yield calculations.

(d) Actual yields calculated from the claim for indemnity will be entered in the database. The resulting average yield will be used to determine the premium rate and approved APH yield, at the discretion of FCIC.

(e) Optional units are not available to an insured who does not provide acceptable production reports for at least the most recent crop year with which to calculate an approved APH yield.

(f) FCIC may determine approved APH yields for designated crops in the following situations:

(1) If less than four years of yield history is certified and T or D-Yields are not provided in the actuarial documents,

(2) If actual yield exceed tolerances specified in yield variance tables, and

(3) For perennial crops:

(i) If significant upward or downward yield trends are indicated;

(ii) If tree or vine damage, or cultural practices will reduce the production level;

(iii) if more than two percent of the trees or vines have been removed within the last two years; or

(iv) If yield trends are evident and yields greater than the average yield are requested by the insured.

(g) APH yields will not be approved the first insurance year on perennial crops until an inspection acceptable to FCIC has been performed and the acreage is accepted for insurance purposes in accordance with the crop insurance contract.

(h) APH Master Yields may be established whenever crop rotation requirements and land leasing practices limit the yield history available. FCIC will establish crops and locations for which Master Yields are available. To qualify, the producer must have at least four recent continuous crop years' annual production reports and must certify the authenticity of the production reports of the insured crop. Master Yields are based on acreage and production history from all acreage of the insured crop in the county in which the operator has shared in the crop's production.

(i) FCIC may use any production report available under the provisions of any crop insurance contract, whether continuous or not, involving the interests of the person's insured crops in determining the approved APH yield.

§ 400.56 Administrative appeal exhaustion.

The insured may appeal the approved APH yield in accordance with the procedures contained in 7 CFR part 400, subpart J. Administrative remedies through the appeal process must be exhausted prior to any action for judicial review. The approved APH yield determined as a result of the appeal process will be the yield applicable to the crop year.

§ 400.57 OMB control numbers.

OMB control numbers are contained in 7 CFR part 400, subpart H.

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Done in Washington, D.C., on September 8, 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94-23035 Filed 9-16-94; 8:45 am]

BILLING CODE 3410-08-M

RESOLUTION TRUST CORPORATION

12 CFR Part 1640

RIN 3205-AA25

Marketing and Selling Real Property on an Individual Basis and Disposition of Real Estate-Related Assets

AGENCY: Resolution Trust Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: The Resolution Trust Corporation (RTC) is hereby adopting an interim rule with request for comments to implement the marketing provisions contained in subsections (w)(2) and (3) of section 21A of the Federal Home Loan Bank Act (FHLBA), recently added by section 3(a) of the Resolution Trust Corporation Completion Act. This rule provides policies and procedures required under subsections (w)(2) and (3) for the marketing of real estate owned (REO) assets on an individual basis and for the disposition of REO assets with a book value of more than $400,000 and non-performing real estate loans with a book value of more than $1 million.

This rule supersedes the marketing policy for real estate owned, entitled "Individual REO Sales," adopted by the RTC on April 15, 1993.

The RTC is seeking comments on all aspects of the interim rule.

DATES: This rule is effective September 19, 1994. Comments must be submitted on or before October 19, 1994.

ADDRESSES: Written comments regarding the interim rule should be addressed to John M. Buckley, Jr., Secretary, Resolution Trust Corporation, 801 17th Street, N.W., Washington, D.C. 20434-0001. Comments may be hand delivered to room 321 on business days between the hours of 9:00 a.m. and 5:00 p.m. Comments may also be inspected in the Public Reading Room, 801 17th Street, N.W., during the same business hours. Phone number: (202) 416-6940; FAX number: (202) 416-4753.

FOR FURTHER INFORMATION CONTACT: William I. Jones, Counsel, RTC Legal Division, (202) 736-3106; Anne P. Depenbrock, Senior Attorney, (202) 736-0198; Kymberly Copa, Senior Attorney, (202) 736-3087; Steve A. Galloway, Small Investor Program Contact, (202) 416-4210; James R. Wigand, Director, Office of Asset and SAMDA Program Management, (202) 416-7133; Henry W. Abbot, Senior Asset Specialist, (202) 416-7132; Joseph W. Schantz, Asset Specialist, (202) 416-7302.

SUPPLEMENTARY INFORMATION:

Background

In August 1989, Congress enacted section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, (FIRREA), adding section 21A to the FHLBA (12 U.S.C. 1441a), and establishing the RTC. Pursuant to section 21A(b) of the FHLBA, the RTC has the duty to manage and resolve failed savings associations for which it is appointed conservator or receiver and to conduct its operations in a manner which maximizes the return from the sale of institutions or their assets, makes efficient use of funds, and minimizes losses in the resolution of institutions. In addition, the RTC is required to resolve all failed thrifts by the "least costly" method. See section 13(c)(4) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1823(c)(4)), applicable to the RTC pursuant to section 21A(b)(4) of the FHLBA (12 U.S.C. 1441a(b)(4)).

The Resolution Trust Corporation Completion Act

The RTC Completion Act was signed by the President and took effect on December 17, 1993 (Pub. L. 103-204). Section 3(a) of the RTC Completion Act amended section 21A of the FHLBA by adding subsection (w), a list of 21 managment reforms for the RTC. Implementation of two of these reforms is the subject of this interim rule.

Subsection (w)(2)—Individual Marketing Period

Subsection (w)(2) of section 21A of the FHLBA requires the RTC to market real property on an individual basis for at least 120 days before making the property available on a portfolio basis or in a multi-asset sales initiative. Subsection (w)(2), unlike subsection (w)(3) discussed below, applies only to REO and not to loans or any other types of assets. This provision applies to REO in which a thrift under the RTC's jurisdiction holds, directly or indirectly, an undivided or controlling interest. By including property held indirectly by a thrift, this provision applies to subsidiary property as well.

The provision excepts real property transferred in connection with a resolution in which the acquirer purchases a significant portion of a failed institution's assets and assumes either a significant portion of the failed institution's liabilities or acts as agent for the RTC in paying the claims of insured depositors. In other words, this exception is designed to extend not only to the standard purchase and assumption transaction, but also to an insured deposit transfer where the acquiring institution does not actually assume the deposit liabilities. Another exception exempts the transfer of real property by the original pass-through receiver to a de novo institution organized by the RTC pursuant to section 11(d)(2)(F) of the FDIA or section 21A(b)(10)(A)(iv) of the FHLBA.

Subsection (w)(2) requires the RTC to promulgate: (1) Regulations which require the RTC to justify in writing the sale of any real property asset on a portfolio basis or in a multi-asset initiative after the 120-day individual marketing period, and (2) regulations to carry out other requirements of the individual marketing provision.

Subsection (w)(3)—Marketing Procedures for Certain Assets

With respect to non-performing real estate loans with a book value of more than $1 million and real property with a book value of more than $400,000, subsection (w)(3) establishes several marketing procedures for the RTC. Subsection (w)(3)(A) prohibits the RTC from selling such assets unless:

(1) the RTC has assigned the management and disposition of such asset to a qualified person or entity to:

(a) analyze each asset and consider alternative disposition strategies;

(b) develop a written management and disposition plan; and

(c) implement that plan for a reasonable period of time; or

(2) the RTC determines in writing that a bulk transfer of the asset would maximize the net recovery, while providing opportunity for broad participation by qualified bidders, including minority- and women-owned businesses.

Subsection (w)(3) permits the RTC to define "asset" to include properties or loans which, although legally discrete, have sufficiently common characteristics that they may logically be treated as a single asset. Such a definition permits the RTC to provide a single asset management and disposition plan for several assets. The statute also expressly allows the RTC to define "qualified person" to include employees assigned to the RTC and Thrift Depositor Protection Oversight Board (TDPOB) employees. Implementation of these definitions requires the RTC to promulgate regulations.

In addition to the exceptions created by the $400,000 and $1 million thresholds for real estate and non-performing real estate loans, respectively, subsection (w)(3) establishes two exceptions to the requirements of subsection (w)(3)(A). First, as under subsection (w)(2), subsection (w)(3)(C) exempts assets transferred in connection with a standard purchase and assumption agreement or an insured deposit transfer agreement where a significant portion of the failed institution's assets are transferred, as well as assets transferred to a de novo institution organized by the RTC under section 11(d)(2)(F) of the FDIA or section 21A(b)(10)(A)(iv) of the FHLBA. Second, subsection, (w)(3)(C) permits the RTC to dispose of assets with book values above the threshold, without complying with the requirements of (w)(3)(A), whenever the RTC determines, in writing, that such a disposition will bring a greater return.

Relationship to the Small Investor Program

Congress considered the needs of smaller investors in framing the provisions contained in sections 21A(w)(2) and (3) of the FHLBA. The needs of small investors were addressed by a) an emphasis on individual marketing and sales of significant assets, and b) the structuring of bulk transactions in a fashion which increases the participation by bidders with moderate levels of capital.

These new statutory provisions in many ways reflect the programs begun by the RTC in the spring of 1993 to enhance opportunities for individual and small investors. On April 13, 1993, the RTC announced the establishment of the Small Investor Program on an interim basis to ensure that RTC's assets are available for sale individually to small investors with moderate levels of capital. By memorandum dated April 15, 1993, entitled "Individual REO Sales," the RTC adopted a marketing policy for REO similar to the procedure outlined in section 21A(w)(2) of the FHLBA. That policy required the active marketing of most REO for 120 days prior to its inclusion in any multi-asset sales initiative. The procedures adopted in this interim rule replace the previous policy.

Small Investor Program Offices have been established in the RTC's Washington, D.C. headquarters and in each of the RTC's six Field Offices with staff dedicated to addressing the needs of small investors. The Small Investor Program targets individual investors and small investor groups, including Minority and Women-Owned Businesses (MWOB) with the capacity to purchase: (i) REO assets and portfolios valued up to $5 million, (ii) loan pools up to $10 million, (iii) subsidiaries valued from $5 thousand to $30 million, and (iv) equity investments from $4 million to $9 million in joint venture transactions.

The Small Investor Program was instrumental in the implementation of two "Equity Partnership" Programs designed to increase opportunities for the small investor: the Judgments, Deficiencies, and Charge-Offs (JDCs) Program and the "S-Series" Program. These loan disposition initiatives have encouraged greater participation from small investors by reducing asset pool sizes and lowering equity requirements and other fees.

The RTC frequently conducts non-performing loan auctions to achieve broad market exposure and obtain the best price through the competitive bidding process. However, the average size of portfolios has been decreased and are more geographically limited to allow small investors a greater opportunity to compete for these assets. In addition, the overall required bidding deposit has been reduced from $100,000 to $50,000 to increase the participation of small investors.

Loan portfolio offerings available through the Small Investor Program have become smaller, more geographically segmented, and the pools of assets are structured by specific asset type to appeal to small investors. For each loan offering, a comprehensive and specifically targeted marketing campaign is implemented to promote the offering and attract a sufficient number of potential purchasers to the sale.

Localized real estate auctions are held more frequently and are more geographically focused to increase opportunities for small investors to purchase assets.

Sealed Bid offerings are available through the Small Investor Program which allow investors to value independently an individual asset or package of assets and submit a confidential bid along with other interested parties. Comprehensive sales brochures are available which provide detailed property and bidding information.

Seminars are conducted frequently to inform potential small investors of the goals of the Small Investor Program and the opportunities available to purchase assets of the Resolution Trust Corporation.

Initiatives such as these fulfill the new legislation's goal of providing opportunities to a broad range of qualified bidders and will be continued throughout the remaining life of the RTC. In addition, these initiatives undertaken by the Small Investor Program are consistent with the original duties mandated by section 21A(b)(3) of the FHLBA, (i.e., to dispose of assets from failed savings associations, obtain the maximum value for those assets, and minimize the cost of resolutions to taxpayers.)

Description and Explanation of the Interim Rule

Subpart A—Marketing and Selling Real Property on an Individual Basis for 120 Days

Section 1640.1 describes the purposes and scope of Subpart A of the interim rule, implementing section 21A(w)(2) of the FHLBA.

This Subpart requires the RTC to comply with new individual marketing and sales requirements for real property assets held by the RTC on or after December 17, 1993, unless they were the subject of a contract to sell or other disposition contract on that date. The RTC is relying on the effective date of the RTC Completion Act to determine the property affected by this new provision; nothing in the legislation suggests that such contracts should be abrogated.

Section 1640.2 contains the definitions of significant terms used in this Subpart. Consistent with the requirement that the RTC has an undivided or controlling interest in the asset subject to this provision, the definition of "real property" expressly excludes a time share interest, a space lease, or a security interest in property, including a mortgage or deed of trust.

When read together, subsections (w)(2) and (w)(3) of section 21A of the FHLBA indicate that Congress intended the concept of a single asset to include two or more legally discrete assets which are so interconnected as to constitute a single economic unit. On that basis, the RTC has defined "single real property asset" to allow for the inclusion of more than one asset in which the RTC holds an undivided or controlling interest, if such assets may logically be treated as a common asset because they have at least two common characteristics. Some examples of such characteristics are contiguity, economic integration, shared utility systems, former common ownership or operation, common infrastructure improvements, and common recreational facilities.

Subsection (c) of section 1640.2 defines the term "market" as providing notice to the public of the availability of the property for sale. This definition

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encompasses a variety of marketing techniques, thereby permitting the RTC the discretion to choose the technique which best suits a particular asset. Marketing of an asset involves exposure to a target market through a variety of methods. These methods may include, without limitation, advertising in local, regional or national newspapers or other publications, advertising in trade journals for specialized properties such as hotels, distributing of professional marketing materials, or listing of the property with a broker or other contractor with the expertise to expose the property extensively in its target market.

Section 1640.3(a) of the interim rule requires the RTC to market and sell real property assets solely on an individual basis for 120 days or until an asset is sold under subsection (b) of the same section. During the initial 120-day marketing period, however, the RTC may promote the sale of more than a single real property asset in a single promotional medium. In addition, during that marketing period, that the RTC may sell or otherwise dispose of, a single real property asset in an open or sealed-bid auction, or other multi-asset marketing program, so long as bids are received and accepted only for individual properties.

Section 1640.4 provides that upon the expiration of the 120-day period, any single real property asset which remains unsold may be disposed of in connection with a portfolio sale or a multi-asset sales initiative under section 1640.4, only if the RTC determines in writing that such a disposition would likely maximize the net recovery to the RTC. As used in this rule, a portfolio sale or multi-asset sales initiative refers to the method of asset disposition of two or more assets (without sufficiently common characteristics to be treated as a single asset) where the RTC permits the sale of two or more assets for one indivisible price.

Section 1640.5 sets forth the exceptions to the individual marketing and sales requirement. The provisions of section 21A(w)(2) of the FHLBA, as implemented by the interim rule, do not apply to real property transferred as part of so-called "purchase-and-assumption" agreements, i.e., where assets are sold simultaneously with a resolution in which a buyer (i.e., an acquiring financial institution) purchases a significant proportion of the assets and either assumes a significant proportion of the liabilities or acts as agent of the RTC for purposes of paying insured deposits. The RTC has interpreted this exemption to apply to any single real property asset for which the RTC has granted the acquiring financial institution an option to purchase the asset, although, if the option expires and the asset remains the property of the RTC, then section 21A(w)(2) of the FHLBA and these implementing regulations would then apply to the property. Also exempted from the individual marketing and sales requirement are single real property assets which are transferred to de novo institutions, organized by the RTC pursuant to section 11(d)(2)(F) of the FDIA or section 21A(b)(10)(A)(iv) of the FHLBA.

Subpart B—Disposition of Real Estate-Related Assets

Section 1640.11 of the interim rule describes the purpose and scope of this Subpart, i.e., to establish the methods by which the RTC intends to comply with the disposition provisions of section 21A(w)(3) of the FHLBA applicable to real estate-related assets held by the RTC on or after December 17, 1993, which are not subject to a contract to sell or other disposition contract as of that date. Subsection (c) of section 1640.11 recognizes that the RTC may have taken actions, prior to the effective date of this Subpart, to satisfy the new statutory requirements, which should be used to determine the RTC's compliance with those requirements.

The requirements of Subpart B apply only to a single real property asset or non-performing single real estate-related loan, which are considered "real estate-related assets" for these purposes. Under section 1640.12, the RTC defines relevant terms for purposes of Subpart B, such as real property, single real property asset, real estate-related asset, and non-performing single real estate-related loan. A "single real property asset" is defined as a real property asset with a book value of more than $400,000 as determined by the RTC, in which the RTC has an undivided or controlling interest. As under Subpart A, two or more separate real property assets, each with a value of more than $4,000, may be logically treated as a single real property asset if they have at least two common characteristics, as described above. A "non-performing single real estate-related loan" is a loan or group of loans with sufficiently common characteristics, each with a book value of more than $1 million as determined by the RTC, in which the RTC holds an undivided or controlling interest, secured by real property, which is more than 90 days delinquent.

The definition of "non-performing single real estate-related loan" includes a participation loan whenever the RTC in fact controls the management and disposition of that loan, and the book value of the entire loan, not just the RTC's share, is greater than $1 million However, the definition does not include a participation loan which the RTC does not control, no matter how large the RTC's ownership interest is in the loan.

Section 1640.13 requires the RTC to assign the responsibility for the management and disposition of a real estate-related asset to a qualified person or entity prior to disposition of the asset, unless the RTC makes a written determination that a bulk sale would likely maximize net recovery to the RTC and provide broad participation by qualified bidders, including minority- and women-owned businesses. Under section 1640.12, a "qualified person or entity" for a real estate-related asset is defined as an employee of the RTC or the TDPOB or an asset management contractor of the RTC who meets the minimum qualifications established by the RTC for managing and analyzing assets of the same type. The qualified person or entity assigned to the property must analyze each individual asset, consider alternative disposition strategies, recommend a disposition strategy to maximize net recovery to the RTC, develop a written management and disposition plan, and implement that plan for a reasonable period of time.

Alternative disposition strategies for REO may include, at a minimum, sale on an individual basis via broker and sale on an individual basis via auction or sealed bid. For non-performing real estate loans, disposition strategies usually include modification, foreclosure or other legal action, compromise and settlement, and individual sale via auction or sealed bid.

Like Subpart A, Subpart B does not apply to real estate-related assets sold simultaneously with a purchase-and-assumption agreement (including option agreements during the duration of the option) or transferred by the RTC to a de novo institution (discussed more fully above under Subpart A). Subpart B, by its terms, does not apply to individual real estate assets with a book value of $400,000 or less or individual non-performing real estate loans with a book value of $1 million or less. In addition, Subpart B does not apply to assets meeting these thresholds, if the RTC determines that a disposition not in conformity with Subpart B and section 21A(w)(3) of the FHLBA would bring a greater return.

Finally, subsection (w)(3)(D) provides that no provision in (w)(3) shall supersede the requirements of subsection (w)(2). Section 1640.15 reiterates this principle of implementation by providing that nothing contained in Subpart B supersedes the requirements of (w)(2) or Subpart A. Consequently, all real property with a book value of more than $400,000 must be marketed on an individual basis for a minimum of 120 days in conformity with subsection (w)(2) and Subpart A of these regulations.

Administrative Procedure Act

The RTC is adopting this rule as an interim rule. It will be effective immediately upon publication in the Federal Register without the usual notice and comment period or delayed effective date generally provided for in the Administrative Procedure Act, 5 U.S.C. 553. For the most part, this rule implements the express language of section 21A(w) (2) and (3) of the FHLBA, as recently added by the RTC Completion Act. Promulgation of the rule on an expedited basis is necessary to permit the immediate implementation of these new provisions in order to avoid any additional losses that could occur due to a delay in the sales of assets in connection with the resolution of failed thrifts pending the usual delayed effective date. Thus, the RTC finds that the benefits to the public in adopting the interim rule outweigh any possible harm resulting from not seeking comment on the proposed rule in advance of its effective date. The RTC actively solicits comments on this interim rule and will consider those comments in the adoption of the rule as final.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., the following initial regulatory flexibility analysis is provided:

1. Reasons, objectives, and legal bases underlying the interim rule. These elements have been discussed above in the Supplementary Information section.

2. Small entities to which the rule would apply. This rule applies only to procedures for the RTC's marketing and disposition of certain types of assets.

3. Impact of the interim rule on small businesses. This rule imposes no burden on small businesses. Rather, as part of the RTC's Small Investor Program, it is intended to offer small businesses greater opportunities to acquire certain types of assets from the RTC.

4. Overlapping or conflicting federal rules. There are no known federal rules that overlap, duplicate, or conflict with the interim rule.

5. Alternatives to the interim rule. The RTC has not identified alternatives that would be less burdensome to small businesses and yet effectively accomplish the objectives of the interim rule because it imposes no burden on small businesses.

Request for Public Comment

The RTC is issuing this interim rule to implement immediately statutory direction to market and sell real property on an individual basis for 120 days and to provide procedures favoring the individual management and disposition of larger real estate-related assets, unless a bulk transaction would likely maximize the net recovery to the RTC. Nonetheless, the RTC is hereby requesting comment on all aspects of this interim rule during a 30-day comment period.

List of Subjects in 12 CFR Part 1640

Savings associations.

For the reasons set out in the preamble, the RTC hereby adds Part 1640 to title 12, chapter XVI of the Code of Federal Regulations, to read as follows:

PART 1640—MARKETING AND SALE OF REAL ESTATE AND REAL ESTATE-RELATED ASSETS

Subpart A—Marketing and Selling Real Property on an Individual Basis for 120 Days

Sec.
1640.1 Purpose and scope.
1640.2 Definitions.
1640.3 Procedure during initial 120-day marketing period.
1640.4 Procedure after initial 120-day marketing period.
1640.5 Exceptions.

Subpart B—Disposition of Real Estate-Related Assets

1640.11 Purpose and scope.
1640.12 Definitions.
1640.13 Procedure for disposition of real estate-related assets.
1640.14 Exceptions.
1640.15 Coordination with subpart A of this part and section 21A(w)(2) of the Federal Home Loan Bank Act.

Authority: 12 U.S.C. 1441a (w)(2) and (w)(3).

Subpart A—Marketing and Selling Real Property on an Individual Basis for 120 Days

§ 1640.1 Purpose and scope.

(a) This subpart provides the implementing regulations required by section 21A(w)(2) of the Federal Home Loan Bank Act, which requires the Resolution Trust Corporation (RTC) to market and sell real property assets solely on an individual basis for an initial 120-day marketing period and which, after such initial 120-day marketing period, further requires the RTC to justify in writing the disposition of real property assets on a portfolio basis or as part of a multi-asset sales initiative.

(b) This subpart applies with respect to all single real property assets held by the RTC on or after December 17, 1993; provided, however, that this subpart shall not apply with respect to any such assets which were the subject of a contract to sell or other disposition contract on December 17, 1993.

§ 1640.2 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Controlling interest*, with respect to a single real property asset, shall mean an ownership interest which gives the RTC the ability to direct and control the disposition of such asset;

(b) *Initial 120-day marketing period*, with respect to a single real property asset, shall mean the 120-day period beginning on the date on which the RTC first markets such asset on an individual basis;

(c) *Insured depository institution* shall have the meaning given such term in section 3(c) of the Federal Deposit Insurance Act;

(d) *Market* shall mean to provide notice to the public of the availability of a single real property asset for sale through methods calculated to reach persons who can reasonably be expected to have an interest in acquiring such asset. Examples of methods which the RTC may employ for initiating marketing include, but are not limited to, the following:

(1) Listing of such an asset with a real estate broker, multiple listing service or contractor qualified to market the asset; and

(2) Advertising the availability of such an asset in a general interest publication, such as a local, regional or national newspaper, or in a specialized publication, such as a business or trade publication or marketing brochure;

(e) *Portfolio sale* or *multi-asset sales initiative* shall mean a method of asset disposition in which the RTC permits the purchase, or other disposition, of two or more single real property assets for one indivisible price;

(f) *Real property* shall mean improved or unimproved property held in fee simple or pursuant to a ground lease, a leasehold in connection with shares in a cooperative corporation or similar entity and any other property constituting real property within the meaning of the law of the State (as defined in section 3 of the Federal Deposit Insurance Act) in which the property is situated. The term shall not

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mean a time share interest, a space lease or a security interest in property, including a mortgage or deed of trust;

(g) *RTC* or *Resolution Trust Corporation* shall mean the Resolution Trust Corporation, established in section 21A of the Federal Home Loan Bank Act, in its corporate capacity, its capacity as conservator, its capacity as receiver, or its capacity as the owner of a subsidiary of a depository institution under conservatorship or receivership, or in any combination thereof;

(h) *Single real property asset* shall mean—

(1) A legally separate and distinct real property asset, in which the RTC holds an undivided or controlling interest; or

(2) Two or more legally separate and distinct real property assets, in which the RTC holds an undivided or controlling interest, which may be logically treated as a single asset because the assets have at least two common characteristics, including contiguity, economic integration, shared utility systems, former common ownership, former common operation, common infrastructure improvements, common recreational facilities and other similar characteristics;

(i) *Undivided interest*, with respect to a single real property asset, shall mean an interest which gives the RTC complete ownership and control of the disposition of such asset; and

(j) *Sale* shall mean a disposition by sale or otherwise, whereby the RTC transfers its interest in a single real property asset to another person or entity.

§ 1640.3 Procedure during initial 120-day marketing period.

(a) *Marketing.* (1) The RTC shall market a single real property asset on an individual basis for 120 days or until such asset is sold in accordance with paragraph (b) of this section during the initial 120-day marketing period. Provided, however, nothing contained in this paragraph shall be construed to prohibit the RTC from promoting the sale on an individual basis, in accordance with paragraph (b), of this section, of more than one single real property asset in the same marketing materials.

(2) Any actions, which otherwise satisfy the standards of this subpart, undertaken by the RTC to market a single real property asset prior to September 19, 1994 shall be used to determine compliance with this subpart.

(b) *Disposition.* During the initial 120-day marketing period for a single real property asset, the RTC shall only sell or otherwise dispose of, such asset solely on an individual basis, and the RTC shall not dispose of such asset in connection with a portfolio sale or a multi-asset sales initiative. Provided, however, nothing contained in this paragraph shall be construed to prohibit the RTC from selling, or otherwise disposing of, a single real property asset during such period in an open or sealed-bid auction, or other multi-asset marketing program, in which bids are received and accepted only on an individual basis.

§ 1640.4 Procedure after initial 120-day marketing period.

With respect to a single real property asset which remains unsold after the initial 120-day marketing period for such asset, the RTC may only dispose of such asset in connection with a portfolio sale or a multi-asset sales initiative if the RTC determines in writing that such disposition of the asset would maximize the net recovery to the RTC.

§ 1640.5 Exceptions.

The provisions of this subpart and section 21A(w)(2) of the Federal Home Loan Bank Act shall not apply:

(a) To single real property assets which are sold simultaneously with a resolution in which a buyer purchases a significant proportion of the assets and either assumes a significant proportion of the liabilities or acts as agent of the RTC for purposes of paying insured deposits of an institution described in section 21A(b)(3)(A) of the Federal Home Loan Bank Act. (This exemption applies to any single real property asset for which the RTC has granted the buyer an option to purchase; provided, however, if at the expiration of such option the asset remains the property of the RTC, then the provisions of this subpart and section 21A(w)(2) of the Federal Home Loan Bank Act shall then apply to such asset.); or

(b) To single real property assets which are transferred by the RTC to a new insured depository institution organized by the RTC pursuant to section 11(d)(2)(F) of the Federal Deposit Insurance Act or section 21A(b)(10)(A)(iv) of the Federal Home Loan Bank Act.

Subpart B—Disposition of Real Estate-Related Assets

§ 1640.11 Purpose and scope.

(a) This subpart establishes the methods of implementing section 21A(w)(3) of the Federal Home Loan Bank Act, which establishes requirements regarding the disposition of real property with a book value of more than $400,000 and non-performing real estate-related loans with a book value of more than $1,000,000.

(b) This subpart applies with respect to all real estate-related assets held by the RTC on or after December 17, 1993; provided, however, this subpart shall not apply with respect to any such assets which were the subject of a contract to sell or other disposition contract on December 17, 1993.

(c) Any actions of the RTC, which otherwise satisfy the standards of section 21A(w)(3) of the Federal Home Loan Bank Act and this subpart, undertaken prior to September 19, 1994 shall be used to determine compliance with section 21A(w)(3) of the Federal Home Loan Bank Act and this subpart.

§ 1640.12 Definitions.

For purposes of this subpart and section 21A(w)(3) of the Federal Home Loan Bank Act, the following definitions apply:

(a) *Bulk transaction* shall—(1) With respect to a single real property asset, have the same meaning as given the terms *portfolio sale* and *multi-asset sales initiative* in 12 CFR 1640.2(e); and

(2) With respect to a single non-performing real estate-related loan, mean a sale or other disposition in which the RTC permits the purchase, or other disposition, of two or more such loans for one indivisible price;

(b) *Controlling interest*, with respect to a real estate-related asset, shall mean an ownership interest which gives the RTC the ability to direct and control the disposition of such asset;

(c) *Employee of the RTC* shall mean an employee of the Federal Deposit Insurance Corporation or other agency assigned to the RTC under section 21A(b)(8) of the Federal Home Loan Bank Act, or an employee of a depository institution for which the RTC has been appointed conservator or receiver, or an employee of a subsidiary of such an institution;

(d) *Qualified person or entity*, with respect to a real estate-related asset, shall mean an employee or an asset management contractor of the RTC or of the Thrift Depositor Protection Oversight Board who meets the minimum qualifications established by the RTC for managing and analyzing assets of the same type as such real estate-related asset;

(e) *Real estate-related asset* shall mean a single real property asset or a single non-performing real estate-related loan;

(f) *Real property* shall mean improved or unimproved property held in fee simple or pursuant to a ground lease, a leasehold in connection with shares in a cooperative corporation or similar entity and any other property constituting real property within the meaning of the law of the State (as defined in section 3 of the Federal Deposit Insurance Act) in which the property is situated. The term shall not mean a time share interest, a space lease or a security interest in property, including a mortgage or deed of trust;

(g) *RTC* or *Resolution Trust Corporation* shall mean the Resolution Trust Corporation, established in section 21A of the Federal Home Loan Bank Act, in its corporate capacity, its capacity as conservator, its capacity as receiver, or its capacity as the owner of a subsidiary of a depository institution under conservatorship or receivership, or in any combination thereof;

(h) *Single non-performing real estate-related loan* shall mean—

(1) A loan, in which the RTC holds an undivided or controlling interest, secured by real property, with a book value of more than $1,000,000, as determined by the RTC, which is more than 90 days delinquent; or

(2) A group of loans, in which the RTC holds an undivided or controlling interest, secured by real property, each of which has a book value of more than $1,000,000 and is more than 90 days delinquent, which may be logically treated as a single asset because the loans have at least one common characteristic, including cross default provisions, cross-collateralization and other similar characteristics;

(i) *Single real property asset* shall mean—

(1) A legally separate and distinct real property asset, with a book value of more than $400,000, as determined by the RTC, in which the RTC holds an undivided or controlling interest; or

(2) Two or more legally separate and distinct real property assets, each with a book value of more than $400,000, as determined by the RTC, in which the RTC holds an undivided or controlling interest, which may be logically treated as a single asset because the assets have at least two common characteristics, including contiguity, economic integration, shared utility systems, former common ownership, former common operation, common infrastructure improvements, common recreational facilities and other similar characteristics; and

(j) *Undivided interest*, with respect to a real estate-related asset, shall mean an interest which gives the RTC complete ownership and control of the disposition of such asset.

§ 1640.13 Procedure for disposition of real estate-related assets.

The RTC shall not sell or otherwise dispose of a real estate-related asset unless:

(a) The RTC has assigned the responsibility for the management and disposition of the asset to a qualified person or entity to:

(1) Analyze such asset on an asset-by-asset basis and consider alternative disposition strategies for such asset;

(2) Develop a written management and disposition plan; and

(3) Implement that plan for a reasonable period of time; or

(b) The RTC has made a determination in writing that a bulk transaction would maximize net recovery to the RTC, while providing broad participation by qualified bidders, including minority- and women-owned businesses.

§ 1640.14 Exceptions.

This subpart shall not apply to:

(a) Real estate-related assets that are:

(1) Sold simultaneously with a resolution in which a buyer purchases a significant proportion of the assets and either assumes a significant proportion of the liabilities or acts as agent of the RTC for purposes of paying insured deposits of an institution described in section 21A(b)(3)(A) of the Federal Home Loan Bank Act. (This exemption applies to any real estate-related asset for which the RTC has granted the buyer an option to purchase; provided, however, if at the expiration of such option the asset remains the property of the RTC, then the provisions of this subpart and section 21A(w)(3) of the Federal Home Loan Bank Act shall then apply to such asset.); or

(2) Transferred by the RTC to a new insured depository institution organized by the RTC pursuant to section 11(d)(2)(F) of the Federal Deposit Insurance Act or section 21A(b)(10)(A)(iv) of the Federal Home Loan Bank Act;

(b) Any assets which are not real estate-related assets, as defined in this subpart;

(c) Any real estate-related asset for which the RTC determines in writing that a disposition not in conformity with this subpart and section 21A(w)(3)(A) of the Federal Home Loan Bank Act will bring a greater return to the RTC.

§ 1640.15 Coordination with subpart A of this part and section 21A(w)(2) of the Federal Home Loan Bank Act.

Nothing contained in this subpart B shall supersede the requirements of subpart A of this part or section 21A(w)(2) of the Federal Home Loan Bank Act.

By order of the Deputy and Acting Chief Executive Officer.

Dated at Washington, D.C., this 14th day of September, 1994.

Resolution Trust Corporation

John M. Buckley, Jr.,

Secretary.

[FR Doc. 94-23125 Filed 9-16-94; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-63-AD; Amendment 39-9024; AD 91-25-08 R1]

Airworthiness Directives; Cessna Aircraft Company Models 421C and 425 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 91-25-08, which currently requires repetitively inspecting both wing front spar upper caps for cracks on certain Cessna Aircraft Company (Cessna) Models 421C and 425 airplanes, and repairing cracks that exceed certain limits. This action provides the option of incorporating a certain wing spar upper cap service kit as either terminating action or as an extension to the repetitive inspections currently required. Wing front spar upper cap cracks at the main landing gear actuating cylinder attachment fitting on three of the affected airplanes prompted this action. The actions specified by this AD are intended to prevent wing failure caused by excessive wing spar cracking.

DATES: Effective November 4, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 4, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from the Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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FOR FURTHER INFORMATION CONTACT: Mr. Larry Abbott, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946–4123; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna Models 421C and 425 airplanes was published in the Federal Register on April 20, 1994 (59 FR 18768). The action proposed to revise AD 91–25–08 by maintaining the wing front spar upper cap repetitive inspection and possible crack repair requirement, and adding the option of incorporating the applicable Cessna service kits to either eliminate or extend the inspection time interval (depending on whether cracks are found) of the repetitive inspections. The proposed inspections would be accomplished in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of ATTACHMENT TO SERVICE BULLETIN (SB) to Cessna SB CQB91–8R1, or the ACCOMPLISHMENT INSTRUCTIONS attachment to Cessna SB MEB91–7R1, as applicable. The proposed inspection-extending or inspection-terminating modifications (optional) would be accomplished in accordance with the instructions to the applicable service kits that are included as an attachment to the above-referenced service bulletins.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter states that, although the proposal does not apply to the serial number airplanes that the commenter owns, all 16 hi-lock pins of each aft main landing gear support (part number 5122724–1 and 5122724–2) were found loose during an annual inspection. The commenter believes that the above-referenced main landing gear supports are located in the same general area as the area referenced in the proposal, and that these areas share the same structural loads. For these reasons, the commenter proposes expanding the rule to include an inspection of these main landing gear supports as well as the wing front spar upper caps. The FAA concurs that the referenced main landing gear supports are in the same general area as the wing front spar upper caps (between the main landing gear actuating cylinder attachment and the front spar wing attach fittings); however, the two do not share the same structural loads. The main landing gear supports incur loads from the landing gear while the upper spar caps incur loads from the gear retraction cylinder. This AD is written only to detect and correct wing front spar upper cap cracking because the FAA identified this as an unsafe condition that needed AD corrective action. The FAA will evaluate service difficulty reports on the main landing gear supports, and, if found necessary, will initiate applicable rulemaking at that time. The AD is unchanged as a result of this comment.

After careful review of all available information including the comment referenced above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 551 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 3 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $90,915. This figure does not take into account the cost of repetitive inspections nor the cost of the optional inspection-extending or inspection-terminating service kit installations. The FAA has no way of determining how many repetitive inspections each operator would incur over the lifetime of the airplane.

In addition, the FAA estimates 52 workhours to install service kits on the spar caps at an average labor rate of approximately $55 an hour, and $1,050 cost per airplane for service kit parts. Based on these figures, the cost for the optional service kit installations on U.S. operators would be $2,154,410 or $3,910 per airplane. After incorporation of these kits, the repetitive inspections would be terminated or the number of repetitive inspections would be reduced depending on whether the spar was cracked.

The Cessna Aircraft Company has informed the FAA that 67 SK421–142 (–1 or –2) or SK425–44 (–1 or –2) service kits have been sold, thus reducing or terminating the inspections for the particular airplane wing front spar upper cap that the kit is installed on. Repetitive inspections are no longer required on the airplane if both wing front spar upper caps have service kits incorporated, and these kits are incorporated without cracks present. The FAA has no reasonably available means of finding out how many inspection reductions (kit incorporated with cracks) and how many inspection terminations (kit incorporated without cracks) are involved, or how many airplanes incorporated a left wing kit (–1) and a right wing kit (–2). With this in mind, the FAA does not know exactly how much this reduces the cost of the inspections and optional modification portion of this AD on U.S. operators; however, the FAA would estimate this cost reduction at around $125,000, thus reducing the optional modification portion of this AD from a fleetwide cost impact of $2,154,410 to $2,029,410. This estimate is based on taking the average workhour per wing of 26 workhours (2 wings = 52 workhours) times the average labor rate of $55 per hour plus the average cost of the different kits.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 91–25–08, Amendment 39–8109 (56 FR 60056, November 27, 1991), and by adding a new airworthiness directive to read as follows:

91–25–08 R1 Cessna Aircraft Company: Amendment 39–9024; Docket No. 91–CE–83–AD; Revises AD 91–25–08, Amendment 39–8109.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial Nos.
421C	421C0801 through 421C1807.
425	425–0002 through 425–0236.

Compliance: Required initially upon the accumulation of 3,000 hours time-in-service (TIS) or within the next 50 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished within the last 300 hours TIS, and thereafter as indicated in the body of this AD.

Note 1: The compliance times specified in this AD take precedence over those referenced in the applicable service information.

To prevent wing failure caused by excessive wing spar cracking, accomplish the following:

(a) Fluorescent penetrant inspect both the left and right wing front spar upper caps for cracks between the main landing gear actuating cylinder attachment and the front spar wing attach fittings in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of ATTACHMENT TO SERVICE BULLETIN (SB) to Cessna SB CQB91–8R1, or the ACCOMPLISHMENT INSTRUCTIONS attachment to Cessna SB MEB91–7R1, as applicable.

(b) If any crack is found that is parallel (inboard—outboard) to the top of the spar cap, install the applicable SK421–142 or SK425–44 service kit (–1 for left spar cap and –2 for right spar cap) in accordance with instructions to the applicable service kit (included with the service bulletins referenced in paragraph (a) of this AD) at the times that correspond with the following crack lengths, and reinspect (as applicable) as specified in paragraph (d) of this AD:

(1) If equal to or less than 2.0 inches in length, within the next 200 hours TIS;

(2) If more than 2.0 inches and less than 2.5 inches in length, within the next 50 hours TIS; or

(3) If 2.5 or more inches in length, prior to further flight.

(c) If any crack (regardless of length) is found that is not parallel (inboard - outboard) to the top of the spar cap, prior to further flight, obtain a repair scheme from the manufacturer through the Wichita Aircraft Certification Office (ACO), incorporate this repair scheme, and reinspect as specified in paragraph (d) of this AD.

(d) Reinspect (fluorescent penetrant) the left and right wing front spar upper caps for cracks in accordance with those procedures specified in paragraph (a) of this AD at intervals presented within the applicable criteria below:

(1) With cracks less than or equal to 2.0 inches in length that are parallel (inboard—outboard) to the top of the spar cap, at 50-hour TIS intervals until the applicable service kit is installed in accordance with paragraph (b) of this AD, and then reinspect thereafter at intervals not to exceed 600 hours TIS.

(2) With cracks found and the applicable SK421–142 or SK425–44 service kit (–1 for left spar cap and –2 for right spar cap) incorporated, at 600-hour TIS intervals.

(3) With no cracks found and the applicable SK421–142 or SK425–44 service kit (–1 for left spar cap and –2 for right spar cap) not incorporated, at 300-hour TIS intervals; or

(4) With no cracks found and the applicable SK421–142 or SK425–44 service kit (–1 for left spar cap and –2 for right spar cap) incorporated, no repetitive inspections required.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(g) The inspections and modifications required by this AD shall be done in accordance with ATTACHMENT TO SERVICE BULLETIN to Cessna Service Bulletin CQB91–8R1, or the ACCOMPLISHMENT INSTRUCTIONS attachment to Cessna Service Bulletin MEB91–7R1, as applicable. The modification required by this AD shall be accomplished in accordance with Cessna SERVICE KIT SK421–142, dated July 3, 1993, or Cessna SERVICE KIT SK425–44, dated November 6, 1992, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39–9024) revises AD 91–25–08, Amendment 39–8109.

(i) This amendment (39–9024) becomes effective on November 4, 1994.

Issued in Kansas City, Missouri, on September 12, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–23078 Filed 9–16–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 940960–4260]

RIN 0694–AB03

Transfer of the International Space Station From the USML to the CCL (ECCN 9A04A)

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export controls. This final rule amends Export Control Classification Number (ECCN) 9A04A to include the international space station and all components, parts, accessories, attachments and associated equipment specially designed, modified or configured therefor. The international space station is being built under the supervision of the U.S. National Aeronautics and Space Administration (NASA), and NASA's international partners: the space agencies of Japan, Canada and Russia, and the European Space Agency. The Department of State will publish a separate rule that removes the space station from the United States Munitions List (USML).

EFFECTIVE DATE: September 19, 1994.

FOR FURTHER INFORMATION CONTACT: Jerald Beiter, Office of Technology and Policy Analysis, Telephone: (202) 482–3351.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1990, President Bush signed Executive Order 12735 on Chemical and Biological Weapons and directed various other export control measures. The measures directed by the President included the removal from the USML (see 22 CFR part 121) of all items contained on the COCOM dual-use list (i.e, the International Industrial List), unless U.S. national security interests would be jeopardized. To implement this part of the directive, the Space

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Technical Working Group (STWG), was established. The group consists of representatives from the Departments of State, Commerce, and Defense, as well as other U.S. Government agencies. The STWG recommended movement of certain non-military spacecraft, including the international space station, from the USML to the CCL. Further, on March 10, 1994, an interagency Space Station Export Controls Steering Committee recommended several steps in the area of U.S. export controls that are necessary for NASA to advance its international space station program; one of those steps involved the movement of the international space station itself from export control under the USML to control under the CCL, as well as all components, parts, accessories, attachments and associated equipment specially designed, modified or configured for the international space station.

In addition to the removal of international space station commodities from the USML, the State Department is removing from the USML certain software and technology related to the international space station, which software and technology are not captured under Category XV(f) of the USML. Such software and technology not captured under Category XV(f) of the USML are currently captured on the CCL at ECCNs 9D96G and 9E96G and will remain under those ECCNs.

Although the Export Administration Act of 1979 (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and determined that, to the extent permitted by law, the provisions of the EAA, as amended, shall be carried out under Executive Order 12924 of August 19, 1994, so as to continue in full force and effect and amend, as necessary, the export control system heretofore maintained by the Export Administration Regulations issued under the EAA.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0010, 0694–0013, and 0694–0073.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Hillary Hess, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 799 of the Export Administration Regulations (15 CFR Parts 730–799) is amended as follows:

1. The authority citation for 15 CFR Part 799 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; Pub. L. 264, 59 Stat. 619 (22 U.S.C. 287c), as amended; Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 et seq.), as amended; Pub. L. 102–484, 106 Stat. 2575 (22 U.S.C. 6004); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976), E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993); E.O. 12918 of May 26, 1994 (59 FR 28205, May 31, 1994); and E.O. 12924 of August 19, 1994 (59 FR 43437, August 23, 1994).

PART 799—[AMENDED]

2. In Supplement No. 1 to Section 799.1 (the Commerce Control List), Category 9 (Propulsion Systems and Transportation Equipment), ECCN 9A04A is revised to read as follows:

9A04A "Spacecraft" (not including their payloads) as follows, and specially designed components therefor:

Note 1: (For the control status of products contained in "spacecraft" payloads, see the appropriate Categories.)

Note 2: Exporters requesting a validated license from the Department of Commerce for items other than those specified in 9A04 must provide a statement from the Department of State, Office of Defense Trade Controls, verifying that the item intended for export is under the licensing jurisdiction of the Department of Commerce.

Requirements

Validated License Required: QSTVWYZ
Unit: Equipment in number; Parts and accessories in $ Value
Reason for Control: NS
GLV: $0
GCT: No
GFW: No

List of Items Controlled

a. Commercial Communication Satellites, except those with the following characteristic:

a.1. Anti-jam capability: Antennas and/or antenna systems with the ability to respond to incoming interference by adaptively reducing antenna gain in the direction of the interference;

a.2. Antennas:

a.2.a. With aperture (overall) dimensions of the radiating portion(s) of the antennas) greater than 30 feet; or

a.2.b. With all sidelobes less than or equal to −35db; or

a.2.c. Designed, modified or configured to provide coverage area on the surface of the earth less than 200 nm in diameter, where "coverage area" is defined as that area on the surface of the earth that is illuminated by the main beam width of the antenna (which is the angular distance between half power points of the beam);

a.3. Designed, modified or configured for intersatellite data relay links that do not involve a ground relay terminal ("cross-links");

a.4. Spaceborne baseband processing equipment that uses any technique other than frequency translation which can be changed on a channel by channel basis among previously assigned fixed frequencies several times a day;

a.5. Employing any of the cryptographic items controlled under Category XIII(b) of the U.S. Munitions List (USML);

a.6. Employing radiation-hardened devices controlled elsewhere in § 121.1 of the ITAR (22 CFR 121.1) that are not "embedded" in the satellite in such a way as to deny physical access. (For purposes of this subparagraph "embedded" means that the device cannot feasibly either be removed from the satellite or used for other purposes.);

a.7. Having propulsion systems that permit acceleration of the satellite on-orbit (i.e. after mission orbit injection) at rates greater than 0.1 g;

a.8. Having attitude control and determination systems designed to provide spacecraft pointing determination and control better than 0.02 degrees per axis; or

a.9. Having orbit transfer engines ("kick-motors") that remain permanently with the spacecraft and are capable of being restarted after achievement of mission orbit and providing acceleration greater than 1 g. (Orbit transfer engines that are not designed, built, and shipped as an integral part of the satellite are controlled under Category IV of the USML).

b. [Reserved]

c. Other "spacecraft", not controlled under Category XV of the USML.

Note: 9A04.c includes the international space station being developed, launched and operated under the supervision of the U.S. National Aeronautics and Space Administration.

Note 1: Transferring registration or operational control to any foreign person of any satellite controlled by this entry must be authorized by an individual validated license. This requirement applies whether the satellite is physically located in the United States or abroad.

Note 2: All communication satellites identified in paragraphs a.1. through a.9. of this ECCN, and specially designed components, parts, accessories, attachments, associated equipment, and ground support equipment thereof, require a license from the Department of State, Office of Defense Trade Controls (see Category XV of the USML).

Dated: September 14, 1994.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 94–23088 Filed 9–16–94; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Counterfeit Drugs Enforcement Activities

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to enforcement activities. The amendment designates FDA officers or employees who have been issued official credential FDA–200D to administer oaths and affirmations for use in any prosecution or proceeding under or in the enforcement of any law enforced by FDA.

EFFECTIVE DATE: September 19, 1994.

FOR FURTHER INFORMATION CONTACT: John L. Paolino, Jr., Office of Criminal Investigations (HFC–300), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–294–4030, or Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: FDA is amending the regulations for delegations of authority for § 5.35 *Enforcement activities* (21 CFR 5.35) by designating FDA officers and employees who have been issued official credential FDA–200D, Special Authority for Criminal Investigators, the authority to administer oaths and affirmations for use in any prosecution or proceeding under or in the enforcement of any law enforced by FDA. This authority is the same as that delegated to holders of FDA–200A and FDA–200B credentials. This authority may not be redelegated.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. Section 5.35 is amended by adding new paragraph (b)(3) to read as follows:

§ 5.35 Enforcement activities.

* * * * *

(b)(3) To administer oaths and affirmations under section 1 of the act of January 31, 1925 (Ch. 124, 43 Stat. 803); sections 12 to 15 of Reorganization Plan No. IV, effective June 30, 1940; and Reorganization Plan No. 1 of 1953, effective April 11, 1953.

* * * * *

Dated: September 9, 1994.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 94–23036 Filed 9–16–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

22 CFR Part 121

[Public Notice 2056]

Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations implementing section 38 of the Arms Export Control Act, which governs the export of defense articles and defense services. Specifically, this rule moves from the controls of Category XV of the USML to those of entry 9A04 of the Commerce Control List (CCL) the international space station being built under the supervision of the National Aeronautics and Space Administration (NASA) and NASA's international partners: the space agencies of Japan, Canada, the European Space Agency, and Russia. This movement applies to the space station itself, as well as all components, parts, accessories, attachments and associated equipment specifically designed, modified or

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configured for the space station, and all directly related technical data, software and services for those items, except for such data, software and services which are controlled under Category XV (f) of the U.S. Munitions List (USML). This rule reduces the burden on exporters by removing both the above-cited hardware and software and technical data from the controls of the International Traffic in Arms Regulations (ITAR).

The Department of Commerce is publishing separately a final rule under the provisions of the Export Administration Regulations, to amend the relevant Export Commodity Control Number (ECCN) category, i.e., 9A04, to add the international space station and all its specifically designed, modified, or configured components, parts, accessories, attachments and associated equipment, software, and technical data and services not captured under Category XV (f) of the USML, which items are being moved as a result of this rule.

EFFECTIVE DATE: This rule will take effect upon September 19, 1994.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Peoples, Office of Defense Trade Controls, Department of State, telephone number 703–875–6619, fax 703–875–6647.

SUPPLEMENTARY INFORMATION: On November 16, 1990, President Bush directed that the United States Government "remove from the USML all items contained on the COCOM dual use list unless significant U.S. national security interests would be jeopardized." (Vol. 26, No. 46, Weekly Compilation of Presidential Documents p. 1839.) To implement this directive, the Department of State established several inter-agency working groups to identify where overlaps of items on the USML and the COCOM dual use list existed and whether removal of these items from the USML would significantly jeopardize U.S. national security.

One of these inter-agency groups, the Space Technical Working Group (STWG), identified non-military spacecraft as an item involving such an overlap and recommended movement of all non-military spacecraft from the USML to the Commerce Control List (CCL), except where such movement would "significantly jeopardize U.S. national security." Among those spacecraft identified as constituting an overlap and recommended for movement to the CCL was the international space station being built by NASA and its international partners.

On September 5, 1991, the Department published in the **Federal Register** an advance notice of proposed rule-making, establishing a new Category XV on the USML for spacecraft and related systems (56 FR 43894) and advising that a series of proposed rules would follow. A final rule formally creating category XV for Spacecraft Systems and Associated Equipment was published in the **Federal Register** on April 27, 1992 (57 FR 15227).

In late 1993, President Clinton directed NASA to add the Russian Space Agency as a partner to its international space station program and instructed other U.S. Government agencies to provide the necessary assistance to NASA to enable it to continue to carry out that program. An inter-agency Space Station Export Control Steering Committee met on March 10, 1994, and recommended several steps in the area of U.S. export controls which will be necessary for NASA to advance its international space station program. One of the recommended steps is the movement of the international space station itself from export control under the USML to the control of the CCL.

The Department agrees with the recommendation of the interagency committee; accordingly, the Department is removing from the USML and the Department of Commerce is placing under the control of Export Control Classification Number (ECCN) 9A04 of the CCL the following items: the international space station and all components, parts, accessories, attachments, and associated equipment specifically designed, modified or configured for the international space station, as well as all directly related technical data, software and services for those items, except for that data, software and services which is controlled under Category XV (f) of the USML.

For purposes of clarification, this rule makes two additional minor changes, which have been requested by U.S. industry, to the language of Category XV of the USML for purposes of clarification. In paragraph (c)(2)(ii), the word "all" has been inserted to indicate that all sidelobes on the relevant satellite must be less than or equal to −35dB in order for that parameter to control the satellite under the USML. Several U.S. companies have indicated to the STWG that virtually all satellites have one or more sidelobes which are less than or equal to −35dB; the parameter is intended to capture only those few commercial communications satellites in which all sidelobes fall under the cited parameter.

In Category XV, paragraph (f), involving technical data and defense services, the first sentence has been corrected to show coverage of paragraph (f) over preceding paragraphs (a) through (e), instead of (a) through (f). In addition, the wording of the final two sentences of the paragraph has been amended to clarify the fact that those two sentences are directed only at the spacecraft which have been moved off the USML to the CCL.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of the Administrative Procedure Act (5 U.S.C. 553 and 554).

List of Subjects in 22 CFR Part 121

Arms and Munitions, Exports.

Accordingly, for the reasons set forth in the preamble, 22 CFR subchapter M, part 121 is amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for Part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 C.F.R. 1977 Comp. p. 79; 22 U.S.C. 2658.

2. In § 121.1, Category XV is amended by revising paragraphs (c) introductory text, (c)(2)(ii), and (f), and adding a NOTE reading as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category XV—Spacecraft Systems and Associated Equipment

* * * * *

(c) Communications satellites (excluding ground stations and their associated equipment and technical data not enumerated elsewhere in § 121.1 of this subchapter; for controls on such ground stations, see the Commerce Control List) with any of the following characteristics:

* * * * *

(2) * * *

(ii) With all sidelobes less than or equal to − 35dB; or

* * * * *

(f) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles in paragraphs (a) through (e) of this category. (See § 125.4 for exceptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME. In addition, detailed design, development, production or manufacturing data for all spacecraft systems and for specifically designed or modified components for all spacecraft systems, regardless of which U.S. Government agency has jurisdiction for export of the spacecraft. (See § 125.4 for exceptions.) This coverage by the U.S. Munitions List of detailed design, development, manufacturing or production information directly related to satellites which are not otherwise under the control of this section does not include that level of technical data (including marketing data) necessary and reasonable for a purchaser to have assurance that a U.S.-built item intended to operate in space has been designed, manufactured, and tested in conformance with specified contract requirements (e.g., operational performance, reliability, lifetime, product quality, or delivery expectations), as well as data necessary to evaluate in-orbit anomalies and to operate and maintain associated ground equipment.

Note: The international space station, being developed, launched and operated under the supervision of the National Aeronautics and Space Administration, is controlled for export purposes under the Export Administration Regulations.

Dated: July 30, 1994.

Lynn E. Davis,

Under Secretary of State for Arms Control and International Security Affairs.

[FR Doc. 94–20988 Filed 9–16–94; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF EDUCATION

34 CFR Part 600

Institutional Eligibility Under the Higher Education Act of 1965, as Amended

AGENCY: Department of Education.

ACTION: Final regulations, correction, compliance with information collection requirements.

SUMMARY: The Secretary amends the regulations governing Institutional Eligibility Under the Higher Education Act of 1965, as Amended to add the Office of Management and Budget (OMB) control numbers to certain sections of the regulations. Those sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved, and therefore affected parties must comply with them. The Secretary also corrects an error in the preamble to these regulations published in the **Federal Register** on April 29, 1994.

EFFECTIVE DATE: September 19, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Leibovitz, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4318, ROB–3, Washington, DC 20202. Telephone (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m., and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On April 29, 1994, final regulations were published in the **Federal Register** governing Institutional Eligibility Under the Higher Education Act of 1965, as Amended (59 FR 22324). Compliance with information collection requirements in 34 CFR 600.5, 600.7, 600.10, 600.20, 600.30, and 600.31 was delayed until those requirements were approved by OMB under the Paperwork Reduction Act of 1980. On July 25, 1994 OMB approved those information collection requirements under that Act; therefore affected parties must now comply with those requirements.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B) that proposed rulemaking is unnecessary and contrary to the public interest and that a delayed effective date is not required under 5 U.S.C. 553(d)(3).

List of Subjects in 34 CFR Part 600

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping, Student aid.

Dated: September 12, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance Number does not apply.)

The Secretary amends Part 600 of Title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for Part 600 continues to read as follows:

Authority: 20 U.S.C. 1088, 1091, 1094, 1099b, 1099c, and 1141, unless otherwise noted.

2. Sections 600.5, 600.7, 600.10, 600.20, 600.30, and 600.31 are amended by adding an OMB control number at the end of these sections to read as follows: "(Approved by the Office of Management and Budget under control number 1840–0098)"

3. The following correction is made in FR Doc. 94–10139, published in the **Federal Register** of April 29, 1994, (59 FR 22324):

On page 22324, column 1, the first sentence after the heading "EFFECTIVE DATE" is corrected to read as follows: These regulations take effect on July 1, 1994. However, affected parties do not have to comply with information collection requirements contained in §§ 600.5, 600.7, 600.10, 600.20, 600.30 and 600.31 until the information collection requirements contained in these sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

[FR Doc. 94–23097 Filed 9–16–94; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ID 6–1–6300a; FRL–5056–5]

Approval and Promulgation of Small Business Assistance Program: State of Idaho

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves the State Implementation Plan (SIP) revision submitted by the State of Idaho for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The implementation plan was submitted by the State to satisfy the Federal mandate, found in section 507 of the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information

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necessary to comply with the CAA. The rationale for the approval is set forth in this document; additional information is available at the address indicated below.

DATES: This final rule will be effective on November 18, 1994 unless adverse or critical comments are received by October 19, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air and Radiation Branch (AT–082), EPA, 1200 Sixth Avenue, Seattle, WA, 98101.Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460. Copies of the State's submittal and EPA's technical support document are available for inspection during normal business hours at the following locations: EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, and Idaho Division of Environmental Quality, 1410 North Hilton, Boise, ID, 83706.

FOR FURTHER INFORMATION CONTACT: David J. Dellarco, Air and Radiation Branch (AT–082), EPA, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–4978.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the CAA, as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the federally approved SIP. In addition, the CAA directs EPA to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA. In January 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

The State of Idaho has submitted a SIP revision to EPA in order to satisfy the requirements of section 507. In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel to determine and report on the overall effectiveness of the SBAP.

II. Analysis

1. *Small Business Assistance Program*

Section 507(a) sets forth six requirements [1] that the State must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Act. The State has met this requirement by first conducting pilot programs to evaluate the best methods for organizing and providing technical assistance to small businesses. In addition, the State of Idaho plans to use both proactive and reactive elements to provide information to small businesses. Proactive elements include publications, news releases, public presentations, and outreach performed by the Idaho Small Business Development Center, Idaho Small Business Institute, and the States' five Regional Economic Development and Planning Agencies. Reactive elements include a hotline to respond to small business inquiries.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The State has met this requirement through its plans to integrate the States' pollution prevention and waste reduction programs' technical assistance capabilities into its small business program. In addition, Idaho will utilize the services of program staff to directly assist small businesses in the areas of accidental release detection and prevention.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner. The State has met this requirement by providing assistance to small businesses through the use of trained staff. The availability of compliance assistance will be publicized and small business stationary sources will be encouraged to seek assistance. Program staff will identify alternative methods and technologies for compliance with each specific regulation.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the Act. The State has met this requirement by establishing a policy to provide as much notice of small business rights under the CAA as is reasonable and practicable. Information on small business rights will be included in information materials and other outreach activities. Program staff will ensure that both small business rights and obligations are provided to small business stationary sources in advance of applicable regulations taking effect.

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act. The State has met this requirement by developing a program for qualified auditors to provide small business stationary sources, upon request, with an on-site determination of compliance with applicable air quality regulations.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance; or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance

[1] A seventh requirement of section 507(a), establishment of an Ombudsman office, is discussed in the next section.

date, based on the technological and financial capability of any such small business stationary source. The State has met this requirement by developing standardized criteria and administrative procedures for considering requests of the nature identified above, including provisions to ensure that granting such requests will not effect the status of the federally-approved SIP and is consistent with the applicable requirements of the CAA.

2. *Ombudsman*

Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources. The State has met this requirement by appointing an Ombudsman, which Idaho calls its Small Business Advocate.

3. *Compliance Advisory Panel*

Section 507(e) requires the State to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The State has met this requirement by establishing a CAP, which Idaho calls its Small Business Assistance Advisory Board.

In addition to establishing the minimum membership of the CAP the CAA delineates four responsibilities of the Panel: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act [2]; (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The State has met these requirements through its authorization of the Small Business Assistance Advisory Board.

[2] Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

4. *Eligibility*

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals;

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

The State of Idaho has established a mechanism for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the CAA. The State of Idaho has provided for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1)(C), (D), and (E) of the CAA but do not emit more than 100 tpy of all regulated pollutants.

The State of Idaho has provided for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the CAA.

III. This Action

In today's action, EPA approves the SIP revision submitted by the State of Idaho. The State of Idaho has submitted a SIP revision implementing each of the PROGRAM elements required by section 507 of the CAA. At this time, the SBAP, the Ombudsman (Small Business Advocate), and the CAP (Small Business Advisory Board) are all in place and functioning. EPA is therefore approving this submittal.

IV. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 18, 1994 unless, by October 19, 1994, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 18, 1994.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro,

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Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Small business assistance program.

Note: Incorporation by reference of the Implementation Plan for the State of Idaho was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: August 15, 1994.

Jane S. Moore,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart N—Idaho

2. Section 52.670 is amended by adding paragraph (c) (30) to read as follows:

§ 52.670 Identification of plan.

* * * * *

(c) * * *

(30) On January 7, 1994, the Administrator for the Idaho Department of Health and Welfare, Division of Environmental Quality, submitted the State PROGRAM as a revision to the Idaho SIP.

(i) Incorporation by reference.

(A) The January 3, 1994 letter from the Administrator of the Idaho Department of Health and Welfare, Division of Environmental Quality, submitting the PROGRAM to EPA.

(B) The State Implementation Plan Revision to Establish a State Small Business Stationary Source Technical and Environmental Compliance Assistance Program (which includes the text of Idaho Code 39–118E, Small Business Assistance, signed into law Senate bill 1236 by Idaho Governor, Cecil D. Andrus, on March 29, 1993), dated December 29, 1993, and adopted on January 3, 1994.

[FR Doc. 94–23105 Filed 9–16–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[IN 12–3–5958a; FRL 5071–7]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is approving an April 18, 1994 State request for a site-specific revision to the Indiana sulfur dioxide State Implementation Plan (SO_2 SIP). This revision sets forth a schedule of SO_2 emission limitations applicable to Public Service Indiana's Gibson Generating Station (PSI Gibson) if the facility installs SO_2 emission controls. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address the comments received in response to this final rule in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**.

DATES: This final rule will be effective November 18, 1994 unless an adverse comment is received by October 19, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following location: Air and Radiation Division, Regulation Development Section, Regulation Development Branch, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois.

A copy of the SIP revision is located at the following address: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Mary Onischak, Regulation Development Branch, Regulation Development Section, (AR–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–5954.

SUPPLEMENTARY INFORMATION:

I. Introduction

At the request of PSI Gibson, Indiana has revised the facility's SO_2 emission limits, which are codified by the State at 326 Indiana Administrative Code (326 IAC) 7–4–12.1 (Gibson County Sulfur Dioxide Emission Limitations), and submitted this rule to USEPA as a site-specific SO_2 SIP revision. The revision provides the facility with two options for implementing SO_2 emission reduction measures that will ensure protection of the SO_2 National Ambient Air Quality Standards (NAAQS). The first emission reduction option in 326 IAC 7–4–12.1 was approved as 326 IAC 7–1–19 by USEPA on January 19, 1989 (54 FR 2112). This rulemaking action is based on USEPA's review of the emission limits in the second option.

II. Background

Indiana's SO_2 SIP for Gibson County, which is part of Title 326 of the Indiana Administrative Code (326 IAC), specifically 326 IAC 7–1–19, was approved by USEPA for incorporation into the SIP on January 19, 1989 (54 FR 2112). It set forth a schedule of emission limitations for PSI Gibson whereby the facility's SO_2 emissions would decrease to protect the primary SO_2 NAAQS by December 31, 1991, and then over several years would decrease further to protect the secondary SO_2 standard. The facility was to comply with these emission limits by burning low sulfur coal in Units 1–4. The rule allowed PSI Gibson to consider alternate compliance strategies and request a set of alternate emission limits, if necessary. PSI Gibson was required to submit a plan to Indiana by December 31, 1988, detailing the compliance path it intended to follow.

In 1988, PSI Gibson submitted a compliance plan to Indiana which requested an alternate emission limitation schedule. In this approach, PSI Gibson would install and operate a flue gas desulfurization system on Unit 4 to control SO_2 emissions. This alternate schedule would allow PSI Gibson to emit much less SO_2 from Unit 4 but slightly more SO_2 from Units 1–3 than is allowed under the existing SIP approved rule. On August 7, 1990, Indiana adopted a new SO_2 rule for Gibson County to incorporate PSI Gibson's compliance plan. Since PSI Gibson needed additional time to consider the cost-effectiveness of both compliance paths, Indiana's revision to 326 IAC 7–4–12.1 included both the previously approved emission reduction schedule and the new plan's schedule, and provided that PSI Gibson must make a final choice of a compliance path by a specified date. PSI Gibson has chosen to comply with the emission limits in the second scenario.

326 IAC 7–4–12.1 was originally submitted to USEPA as a site-specific SIP revision on July 22, 1991. Upon the State's June 29, 1993 request, USEPA deferred rulemaking on the July 22, 1991 submittal. On April 18, 1994, Indiana submitted to USEPA supplemental information pertaining to the modeled attainment demonstration and reactivated the SIP revision request.

III. Emission Limitations

The emission reduction schedules for PSI Gibson Units 1–5, which are set forth in 326 IAC 7–4–12.1(b), are summarized below. All emission limits are in units of pounds SO_2 per million British Thermal Units (lb/MMBTU). The emission reduction schedule in 326 IAC 7–4–12.1(b)(1), shown in the first column below, contains the same limits and deadlines as those set forth in 326 IAC 7–1–19 and approved by USEPA on January 19, 1989 (54 FR 2112). PSI Gibson would use low sulfur coal in Units 1–4 to comply with the limits in this scenario. The second column below presents the new emission limits in the April 18, 1994 site-specific SIP submission. These limits are codified in Indiana's rules as 326 IAC 7–4–12.1(b)(2). PSI Gibson must install a flue gas desulfurization (FGD) system on Unit 4 and use low sulfur coal in Units 1–3 to comply under this scenario.

The limits in the first column have already been approved by USEPA. The emission limitation schedule in the second column does not automatically replace the existing schedule; rather, the two scenarios currently reside in Indiana's rules as a choice of compliance procedures for PSI Gibson. Note that the two emission reduction schedules are identical except for the emission limits PSI Gibson's Units 1–4 must meet by December 31, 1995.

EMISSION LIMITATIONS (LB/MMBTU) UNDER 326 IAC 7–4–12.1 (B)(1) AND (B)(2)

	(1) Low sulfur coal only	(2) FGD on unit 4
Units 1, 2, and 3:		
Beginning January 1, 1992	3.57	3.57
No later than December 31, 1993	3.13	3.13
No later than December 31, 1995	2.7	3.19
Unit 4:		
Beginning January 1, 1992	3.57	3.57
No later than December 31, 1993	3.13	3.13
No later than December 31, 1995	2.7	0.60
Unit 5:		
Beginning January 1, 1992	1.2	1.2
24-hour average (New Source Performance Standard)	1.10	1.10
No later than December 31, 1995	1.10	1.10

USEPA also notes that the rule is a SIP-strengthening measure, since the new emission limits in the April 18, 1994 submittal represent a decrease in total SO_2 emissions from what is required under the current SIP.

IV. Modeling Issues

The State is required to submit a modeled attainment demonstration to show that the emission limits set forth in 326 IAC 7–4–12.1(b)(2) will provide for attainment and maintenance of the NAAQS. The dispersion modeling information within the original July 22, 1991 submittal contained issues of some initial concern to USEPA in that the modeler for the PSI Gibson SIP revision may not have used the most current version of the Industrial Source Complex (ISC) model to demonstrate that the new Gibson County limits would protect the NAAQS. USEPA evaluated supplementary information submitted on April 18, 1994, and determined that PSI Gibson's modeling results indicated that an appropriate refined dispersion model was used. Because PSI Gibson's modeling was performed according to USEPA guidance which has since been revised, USEPA is accepting the modeled attainment demonstration for the April 18, 1994 submittal under its grandfathering policy.[1]

[1] USEPA's grandfathering guidance is described in a June 27, 1986, memorandum from the Director of the Office of Air Quality Planning and Standards to the Regional Air Division Directors.

Grandfathering is neither mandatory nor automatic, and USEPA wishes to make clear that its acceptance of the modeling analysis in the April 18, 1994 submittal will not apply to any other analysis of Gibson County to support any future regulatory action. Future SIP revision requests submitted to USEPA must demonstrate attainment of the NAAQS through modeling performed in accordance with current USEPA modeling guidance.

This SIP revision currently complies with USEPA's 1985 stack height regulations. It should be noted, however, that on January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit remanded to USEPA the exemptions for boilers originally designed to vent from common stacks. If USEPA's response on the remand modifies the applicable provision, then USEPA will notify the State of the need to reexamine the Gibson County SO_2 emission limits for consistency with the modified provision.

V. Rulemaking Action and Solicitation of Public Comment

For the reasons discussed above, USEPA is approving 326 IAC 7–4–12.1 (Gibson County Sulfur Dioxide Emission Limitations). This rule affects only the PSI Gibson facility. It sets forth two emission reduction schedules to limit the facility's SO_2 emissions. PSI Gibson has chosen to comply with the second emission schedule, which requires the use of an additional flue gas desulfurization system and will result in lower total SO_2 emissions than would the first reduction schedule. The emission limits in 326 IAC 7–4–12.1 have been shown to protect the SO_2 NAAQS.

The USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the USEPA is proposing to approve the requested SIP revision should adverse or critical comments be filed. This action will be effective on November 18, 1994 unless adverse or critical comments are received by October 19, 1994.

If the USEPA receives such comments, this action will be withdrawn before the effective date by the publication of a subsequent rule that withdraws this final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The USEPA will not institute a second comment period on this action. Any parties interested in

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commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 18, 1994.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-State relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 2, 1994.

David A. Ullrich,

Acting Regional Administrator.

Part 52, chapter I, subpart P, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(89) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(89) On July 22, 1991, as supplemented on April 18, 1994, the State submitted regulations adopted by the Indiana Air Pollution Control Board as part of Title 326 of the Indiana Administrative Code for incorporation into the Indiana sulfur dioxide State Implementation Plan.

(i) Incorporation by reference.

(A) 326 Indiana Administrative Code 7–4–12.1: Gibson County sulfur dioxide emission limitations; effective December 5, 1990. Published in the *Indiana Register*, Volume 14, Number 3, December 1, 1990.

[FR Doc. 94–23107 Filed 9–16–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MN15–2–6363; FRL–5072–6]

Approval of the 1990 Base Year Carbon Monoxide Emission Inventory for Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA is approving the 1990 base year carbon monoxide (CO) emission inventory submitted by the State of Minnesota as meeting the Clean Air Act requirements for emission inventories for CO. The inventory was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment area CO State Implementation Plan (SIP) for the Duluth and Minneapolis-St. Paul areas in Minnesota.

USEPA's action is based upon a base year emission inventory which was submitted by the State of Minnesota to satisfy the requirements of section 187(a)(1) of the Clean Air Act.

EFFECTIVE DATE: This final rulemaking becomes effective on October 19, 1994.

ADDRESSES: Copies of the base year emission inventory and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Maggie J. Greene before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE–17J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Maggie J. Greene, Air Enforcement Branch, Regulation Development Section (AE–17J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On November 9, 1992 and November 10, 1992, the Minnesota Pollution Control Agency submitted to USEPA 1990 base year CO emission inventories for the Duluth and Minneapolis-St. Paul areas in Minnesota. The inventories were were submitted to USEPA as a revision to the State of Minnesota SIP. The State held public hearings on October 26, 1992, and November 6, 1992, to entertain public comments on the 1990 base year emission inventory for Duluth. The public hearing for the Minneapolis-St. Paul metropolitan area was held on June 22, 1994. The USEPA issued a completeness letter to the State on March 8, 1993. The notice of proposed rulemaking was published in the February 25, 1994 (59 FR 9155) **Federal Register**.

II. Public Comment/USEPA Response

A thirty-day public comment period was provided to allow interested parties the opportunity to comment on USEPA's proposed action. There were no public comments received on this action by the Agency. Additionally, USEPA redesignated the Duluth area to attainment on April 14, 1994 (59 FR 17706) in a separate rulemaking action.

III. Rulemaking Action

USEPA is approving the base year emission inventory that was submitted by the State of Minnesota. The State submitted a complete inventory containing point, area, and mobile off-road and on-road source data, and documentation. The inventory is complete and approvable for the Duluth and Minneapolis-St. Paul areas according to all criteria set out in the June 24, 1993, memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Air Directors. Although Minnesota had not provided opportunity for public comment on the Minneapolis-St. Paul area inventory at the time of USEPA's proposed rulemaking, Minnesota provided such public comment period for 30 days ending June 17, 1994, and held a public hearing on June 22, 1994. With this action, the Minneapolis-St. Paul area inventory is now also complete and approvable. As a result, USEPA is approving the SIP carbon monoxide emission inventory submitted by the State of Minnesota.

The emissions inventories of carbon monoxide emissions for a typical winter day in Duluth and in the Minneapolis-St. Paul areas are indicated in tables 1 and 2 below.

TABLE 1.—CARBON MONOXIDE EMISSIONS FOR THE DULUTH AREA

Emissions source	1990 emissions rate (lbs/winter day)
On-road Mobile	114,718
Off-road Mobile	13,624
Point Source	4,270
Area Source	85,614
Total Emissions	218,226

TABLE 2.—CARBON MONOXIDE EMISSIONS FOR THE MINNEAPOLIS-ST. PAUL AREA

Emissions source	1990 emissions rate (lbs/winter day)
On-road Mobile	2,790,595
Off-road Mobile	345,702
Point Source	559,898
Area Source	566,285
Total Emissions	4,262,480

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

USEPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator reclassified this action from Table 2 to a Table 3 action under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for 2 years. The USEPA submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB agreed to continue the temporary waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993. OMB has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids USEPA to base its actions concerning SIPS on such grounds. *Union Electric Co.* v. *U.S. E.P.A.* 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Under Section 307(b)(1) of the CAA, petitions for judicial review of this action must be filled in the United States Court of Appeals for the appropriate circuit by November 18, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be changed later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and record keeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 31, 1994

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q

Subpart Y—Minnesota

2. Section 52.1237 is added to read as follows:

§ 52.1237 Control strategy: Carbon monoxide.

(a) The base year carbon monoxide emission inventory requirement of section 187(a)(1) of the Clean Air Act, as amended in 1990, has been satisfied for the following areas: Duluth Metropolitan Area and Minneapolis-St. Paul Metropolitan Area.

[FR Doc. 94–23037 Filed 9–16–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[CO29–1–6611, CO29–1–6619, & CO36–5–6598; FRL–5068–4]

Clean Air Act Approval and Promulgation of PM_{10} Implementation Plan for Colorado; Designation of Areas for Air Quality Planning Purposes; Telluride

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA partially approves the State implementation plan (SIP) submitted by the State of Colorado to achieve attainment of the National Ambient Air Quality Standards

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(NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}), including: control measures, technical analyses, and other Clean Air Act SIP requirements, with the exception of the quantitative milestones element. The SIP was submitted by the Governor of Colorado in a letter dated March 17, 1993 to satisfy certain federal requirements for an approvable SIP for the Telluride, Colorado moderate PM_{10} nonattainment area. EPA conditionally approves the quantitative milestone element because the SIP does not demonstrate maintenance of the PM_{10} NAAQS through 1997. However, the State has committed to adopt control measures necessary to provide for maintenance.

In addition, EPA approves the SIP revision submitted by the Governor with a letter dated December 9, 1993 to address contingency measure requirements for the Telluride moderate PM_{10} nonattainment area.

Finally, EPA amends the boundary for the Telluride nonattainment area to clarify the original description.

EFFECTIVE DATE: This rule will become effective on October 19, 1994.

ADDRESSES: Copies of the State's submittals and other information are available for inspection during normal business hours at the following locations:

Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405

Colorado Department of Health, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530

The Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Environmental Protection Agency, Region VIII, (303) 293–1769.

SUPPLEMENTARY INFORMATION:

I. Background

The Telluride, Colorado area was designated nonattainment for PM_{10} and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (Nov. 6, 1991), 40 CFR 81.306 (Telluride). The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of part D, title I of the Act.[2]

The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM_{10} nonattainment area SIP requirements (see generally 57 FR 13498, April 16, 1992 and 57 FR 18070, April 28, 1992). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this proposal and the supporting rationale.

Those States containing initial moderate PM_{10} nonattainment areas (those areas designated under section 107(d)(4)(B) of the Act) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) [including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)] shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modelling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions were due at a later date. States with initial moderate PM_{10} nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM_{10} by June 30, 1992 (see section 189(a)). The State has submitted such a permit program, and EPA will address that submittal in a separate action. Such States also were required to submit contingency measures by November 15, 1993 which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve reasonable further progress or to attain the PM_{10} NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543–13544). The State of Colorado has submitted contingency measures for Telluride and EPA is addressing those measures in this action.

On June 23, 1994, EPA announced its proposed action on the Telluride, Colorado moderate nonattainment area PM_{10} SIP and contingency measures (59 FR 32397–32405). In that proposed rulemaking and related Technical Support Document (TSD), EPA described its interpretations of title I and its rationale for the proposed rulemaking taking into consideration the specific factual issues presented.

EPA requested public comments on all aspects of the proposal (please reference 59 FR 32404). No comments were received. This final action on the Telluride moderate nonattainment area PM_{10} SIP is unchanged from the June 23, 1994 proposed action.

The discussion herein provides only a broad overview of the proposed action EPA is now finalizing. The public is referred to the June 23, 1994 proposed rule for a more in depth discussion of the action now being finalized.

II. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). The Governor of Colorado submitted the Telluride PM_{10} SIP in a letter dated March 17, 1993, and the Telluride PM_{10} contingency measures in a letter dated December 9, 1993. As described in EPA's proposed action on this SIP (59 FR 32397–32405), the Telluride moderate nonattainment area plan includes, among other things, technical analyses, control measures to satisfy the RACM requirement, a demonstration (including air quality modelling) that attainment of the PM_{10} NAAQS will be achieved by December 31, 1994, and enforceability documentation. Further, EPA proposed to determine that major sources of precursors of PM_{10} do not contribute significantly to PM_{10} levels in excess of the NAAQS in Telluride.[3]

In this final rulemaking, EPA announces its partial approval of those elements (excluding the quantitative milestone element) of the Telluride PM_{10} SIP, which were due on November 15, 1991 and submitted on March 17, 1993. Further, section 110(k)(4) of the Act authorizes EPA to approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than one year after the date of approval of the plan revision. Hence, EPA announces its conditional approval of the quantitative milestones element of the Telluride PM_{10} SIP based on the State's commitment, dated April 21, 1994, to adopt control measures for Telluride by November 30, 1994 that are necessary to demonstrate maintenance of the PM_{10} NAAQS. Section 110(k)(4) provides that any such conditional approval shall be treated as a disapproval if the state fails to comply with such commitment.[4]

The quantitative milestone element of the Telluride SIP is deficient in that it does not demonstrate that the second quantitative milestone—continued maintenance from 1994 through 1997—will be achieved. EPA conditionally approves this element of the SIP in light of the State's commitment to adopt additional control measures necessary to provide for continued maintenance.

The State has indicated that it intends to address the maintenance issue by proposing for adoption additional control measures to maintain the PM_{10} NAAQS through 1997. In an April 21, 1994 letter from Thomas Getz, Colorado Air Pollution Control Division (APCD), to Douglas M. Skie, EPA, the State made the following commitments: (1) maintenance control measures and any related SIP revision will be proposed to the Colorado Air Quality Control Commission (AQCC) by July 21, 1994; (2) a public hearing on such regulations and SIP revision will be held by October 20, 1994; and (3) the adopted regulations and SIP revision will be submitted to EPA by November 30, 1994. The effective date of such measures must be November 1, 1995, but could be as early as December 1, 1994.

Upon adoption and submittal to EPA, these additional control measures for maintenance will be evaluated for their adequacy in allowing the area to demonstrate maintenance through 1997.

On August 16, 1994, EPA only partially approved the State's nonattainment new source review (NSR) permitting regulations for the Telluride moderate PM_{10} nonattainment area (among others) because the State did not submit NSR permitting regulations for sources of PM_{10} precursors in Telluride and because EPA had not yet found that such sources did not contribute significantly in Telluride (see 59 FR 33213). In this final rulemaking, EPA is now finalizing its finding that major stationary sources of precursors of PM_{10} do not contribute significantly to PM_{10} levels in excess of the NAAQS in Telluride. The consequence of this finding is to exclude major stationary sources of PM_{10} precursors in Telluride from the applicability of PM_{10} nonattainment area control requirements, including nonattainment NSR permitting requirements. Thus, the State's nonattainment NSR regulations for Telluride area now considered fully approved.

In this final rulemaking action EPA also announces its full approval of the PM_{10} contingency measures that were due on November 15, 1993 and submitted by the State on December 9, 1993. In addition, EPA amends the nonattainment area boundary description for Telluride in order to clarify the original description.

Please refer to EPA's proposed rulemaking (59 FR 32397) and the TSD for that action for a detailed discussion of these elements of the Telluride plan.

EPA finds that the State of Colorado's PM_{10} SIP for the Telluride moderate nonattainment area meets the Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), requirement. Colorado's SIP revision for Telluride contains control measures for sources of wood and coal burning. The State has demonstrated that by applying control measures to this area source, Telluride will be in attainment by December 31, 1994, and it does not appear that apply further control measures to these sources would expedite attainment.

Therefore, EPA views the following measure as reasonable, enforceable, and responsible for significant PM_{10} emissions reductions in Telluride: Colorado regulation entitled "State Implementation Plan—Specific Regulations for Local Elements, II. Telluride Nonattainment Area," which requires continued implementation of local programs to control solid fuel burning devices, eliminate coal burning, and prohibit installation of additional solid fuel burning devices. The RACM (including RACT) provisions in the SIP are described further in the TSD associated with EPA's June 23, 1994 proposed rulemaking on this SIP.

A more detailed discussion of the individual source contributions, their associated control measures (including available control technology) and an explanation of why certain available control measures were not implemented, can be found in the TSD accompanying EPA's proposed rulemaking for the Telluride moderate PM_{10} nonattainment area SIP (59 FR 32397). EPA has reviewed the state's documentation and concluded that it adequate justifies the control measure to be implemented. The implementation of Colorado's PM_{10} nonattainment plan for Telluride will result in attainment of the PM_{10} NAAQS by December 31, 1994. EPA is approving the Telluride PM_{10} plan's control strategy as satisfying the RACM (including RACT) requirement.

EPA also finds that the State of Colorado's December 9, 1993 submittal of PM_{10} contingency measures for the Telluride moderate PM_{10} nonattainment area meets the requirements of section 172(c)(9) of the Act. Specifically, section II.B. of the State regulation entitled "State Implementation Plan-Specific Regulations for Local Elements" provides that, upon the determination that the area has failed to attain the PM_{10} NAAQS or make reasonable further progress (RFP), the following will be implemented: (1) 0.30 miles of dirt roads within the Town of Telluride will be chip-seal paved, and (2) either 2.0 miles of unpaved San Miguel County gravel roads at the Ski Ranches Subdivision or 0.75 miles of private dirt roads at the Hillside/Gold King Subdivision (each within the Telluride nonattainment area) will be chip-seal paved. EPA has reviewed the State's documentation and regulation and concluded that they adequately meet the requirements of section 172(c)(9) of the Act. By this action, EPA is approving the PM_{10} contingency measures for the Telluride moderate PM_{10} nonattainment area.

Finally, EPA announces a clarification to the Telluride moderate PM_{10}

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and Subpart 4 contains provisions specifically applicable to PM_{10} nonattainment areas. At times, Subpart 1 and Subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

[3] The consequences of this finding are to exclude these sources from the applicability of PM_{10} nonattainment area control requirements. Note that EPA's finding is based on the current character of the area including for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area.

[4] If the State fails to comply with its commitment, this conditional approval of the quantitative milestones element will become a disapproval upon EPA notification of the State by letter. EPA subsequently will publish a notice in the "Notices Section" of the **Federal Register** announcing such action and explaining its implications. If this conditional approval is converted to a disapproval, the sanctions clock under section 179(a) of the Act will begin. This clock will begin at the time EPA issues a final disapproval or at the time EPA notifies the State by letter that a conditional approval has been converted to a disapproval.

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nonattainment area boundary, which is based on a legal description of the map outline of the area, as follows.

The Telluride nonattainment area begins at the intersection of Colorado State Highway 145 and the Telluride service area boundary, as it existed in 1991. The western edge of the nonattainment area until it meets Remine Creek is defined as follows:

A tract of land located in a portion of the west one-half of Section 28 and the east one-half of Section 29, Township 43 North, Range 9 west, of the New Mexico Principal Meridian, County of San Miguel, State of Colorado, described as follows:

Beginning at the southwest corner of the said Section 28;
Thence N 89°36'00" W. 292.70 Feet;
Thence S 04°05'12" W. 538.63 Feet,
Thence N 03°29'42" W. 780.19 Feet;
Thence N 22°15'00" E. 3,344.16 Feet;
Thence S 51°51'49" E. 570.44 Feet;
Thence S 03°15'36" E. 1,106.22 Feet;
Thence S 45°24'42" E. 546.96 Feet;
Thence S 28°41'12" W. 549.62 Feet;
Thence S 29°40'09" E. 169.68 Feet;
Thence S 44°30'03" W. 649.51 Feet;
Thence S 85°54'00" E. 660.00 Feet;
Thence S 04°06'00" W. 660.00 Feet,
Thence N 89°56'00" E. 1,318.68 Feet; to the true point of beginning containing 11.249 acres as described above.

Then, at Remine Creek, the nonattainment boundary follows the service area boundary for 9.65 miles to the eastern edge of the area, continuing to follow the 9,200 foot contour line. The boundary then intersects Bear Creek. Here the nonattainment boundary diverges from the service area boundary (9,200 foot contour line). The nonattainment boundary continues in a west, southwest direction for 0.92 miles from the intersection of the 9,200 foot contour line and Bear Creek to the top of ski lift number 9 in the Telluride Ski Area at an elevation of about 11,900 feet. The boundary then shifts and runs in a north-westerly direction for 0.83 miles from the top of lift 9 to the top of lift 7, which is located at an elevation of 10,490 feet. From the top of lift 7, the nonattainment boundary continues in a north-westerly direction for 0.5 miles to the intersection of lift 3 with the 10,000 foot control line. The nonattainment boundary follows the 10,000 foot contour line in a south, south-west direction for 3.2 miles, until it intersects Skunk Creek. Here the boundary diverges from the 10,000 foot contour line and follows Skunk Creek in a northerly direction for 2.25 miles. At the intersection of Skunk Creek and Colorado State Highway 145, the nonattainment boundary leaves the creek and follows Highway 145 in a northerly direction until it meets the service area boundary as it existed prior to changes adopted in 1991.

EPA is replacing the boundary description currently in 40 CFR 81.306 with this revised description to more clearly define the nonattainment area. Note that this description is merely a more detailed explanation of the boundary and not a change in the boundary itself.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for a revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

III. Final Action

This document announces EPA's final action on the rulemaking proposed at 59 FR 32397 on June 23, 1994. As noted elsewhere in this action, EPA received no comments on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 2 to Table 3 under the processing procedures established at 54 FR 2214, January 19, 1989.

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Approvals and conditional approvals of SIP submittals under sections 110 and 301, and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

The Office of Management and Budget (OMB) has exempted these actions from review under Executive Order 12866.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and record keeping requirements, Sulfur dioxide, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: August 31, 1994.

Jack W. McGraw,

Acting, Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.320 is amended by adding paragraph (c)(68) to read as follows:

§ 52.320 Identification of plan.

* * * * * *

(c) * * *

(68) The Governor of Colorado submitted a portion of the requirements for the moderate nonattainment area PM_{10} State Implementation Plan (SIP) for Telluride, Colorado with a letter dated March 17, 1993. The submittal was made to satisfy those moderate PM_{10} nonattainment area SIP requirements due for Telluride on November 15, 1991; however, the submittal did not contain quantitative milestones to provide for maintenance of the PM_{10} National Ambient Air Quality Standards through December 1997. The Governor of Colorado submitted moderate PM_{10} nonattainment area contingency measures for Telluride with a letter dated December 9, 1993. This submittal was intended to satisfy the requirements of section 172(c)(9) of the Clean Air Act due on November 15, 1993.

(i) Incorporation by reference.

(A) Colorado Air Quality Control Commission Nonattainment Areas regulation, Section II., Telluride Nonattainment Area, adopted January 21, 1993 and effective on March 2, 1993, with revisions adopted November 12, 1993 and effective December 30, 1993.

(ii) Additional material.

(A) The commitment and schedule for the adoption and implementation of PM_{10} control measures that are necessary to demonstrate maintenance of the 24-hour PM_{10} standard in Telluride, which were submitted in an April 21, 1994 letter from Thomas Getz, Air Pollution Control Division, to Douglas M. Skie, EPA.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.306 the table for Colorado-PM_{10} Nonattainment Areas is amended under San Miguel County by revising the entry for "Telluride" to read as follows:

§ 81.306 Colorado

* * * * *

COLORADO.—PM–10 NONATTAINMENT AREAS

Designated Area	Designation		Classification	
	Date	Type	Date	Type
San Miguel County				
Telluride	11/15/90	Nonattainment	11/15/90	Moderate
The Telluride nonattainment area begins at the intersection of Colorado State Highway 145 and the Telluride service area boundary, as it existed in 1991. The western edge of the nonattainment area until it meets Remine Creek is defined as follows: A tract of land located in a portion of the west one-half of Section 28 and the east one-half of Section 29, Township 43 North, Range 9 west, of the New Mexico Principal Meridian, County of San Miguel, State of Colorado, described as follows: Beginning at the southwest corner of the said Section 28; Thence N 89°36'00" W. 292.70 Feet; Thence S 04°05'12" W. 538.63 Feet; Thence N 03°29'42" W. 780.19 Feet; Thence N 22°15'00"E. 3344.16 Feet; Thence S 51°51'49" E. 570.44 Feet; Thence S 03°15'36" E. 1106.22 Feet; Thence S 45°24'42" E. 546.96 Feet; Thence S 28°41'12" W. 549.62 Feet; Thence S 29°40'09" E. 169.68 Feet; Thence S 44°30'03" W. 649.51 Feet; Thence S 85°54'00" E. 660.00 Feet; Thence S 04°06'00" W. 660.00 Feet; Thence N 89°56 00" E. 1318.68 Feet; to the true point of beginning containing 11249 acres as described above.				

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COLORADO.—PM–10 NONATTAINMENT AREAS—Continued

Designated Area	Designation		Classification	
	Date	Type	Date	Type
Then, at Remine Creek, the nonattainment boundary follows the service area boundary for 9.65 miles to the 9,200 foot contour line. The boundary then intersects Bear Creek. Here the nonattainment boundary diverges from the service area boundary (9,200 foot contour line). The nonatttainment boundary continues in a west, southwest direction for 0.92 miles from the intersection of the 9,200 foot contour line and Bear Creek to the top of ski lift number 9 in the Telluride Ski Area at an elevation of about 11,900 feet. The boundary then shifts and runs in a north-westerly direction for 0.83 miles from the top of lift 9 to the top of lift 7, which is located at an elevation of 10,490 feet. From the top of lift 7, the nonattainment boundary continues in a north-westerly direction for 0.5 miles to the intersection of lift 3 with the 10,000 foot control line. The nonattainment boundary follows the 10,000 foot contour line in a south, south-west direction for 3.2 miles, until it intersects Skunk Creek. Here the boundary diverges from the 10,000 foot contour line and follows Skunk Creek in a northerly direction for 2.25 miles. At the intersection of Skunk Creek and Colorado State Highway 145, the nonattainment boundary leaves the creek and follows Highway 145 in a northerly direction until it meets the service area boundary as it existed prior to changes adopted in 1991				

. . . . .

[FR Doc. 94–22527 Filed 9–16–94; 8:45 am]
BILLING CODE 6560–P–M

40 CFR Part 261

[SW–FRL–5075–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Amendment

AGENCY: Environmental Protection Agency.

ACTION: Final amendment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final amendment to an exclusion from the lists of hazardous wastes previously granted for certain solid wastes generated by POP Fasteners (POP) in Shelton, Connecticut. This action is taken in response to a petition for amendment submitted by POP to increase the maximum annual waste volume covered in its exclusion. The exclusion was granted under regulations that allow generators to petition EPA to remove their wastes from hazardous waste control by excluding such wastes from the hazardous waste lists.

EFFECTIVE DATE: September 19, 1994.

ADDRESSES: The public docket for this final amendment is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing (room M2616) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260–9327 for appointments. The reference number for this docket is "F–94–DLPE–FFFFF". The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For technical information concerning this notice, contact Shen-yi Yang, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–1436.

SUPPLEMENTARY INFORMATION:

I. Background

On March 5, 1990, POP Fasteners (POP), a division of Black and Decker Corporation, of Shelton, Connecticut petitioned the Agency under §§ 260.20 and 260.22, to exclude from hazardous waste control its F006 metal hydroxide filter cake resulting from the treatment of wastewater originating from its electroplating operation. After evaluating the petition, EPA published its final decision in the **Federal Register** (57 FR 57673, December 7, 1992) to exclude POP's waste from the lists of hazardous waste contained at §§ 261.31 and 261.32. POP's final exclusion only applied to the process and waste volume (a maximum of 300 cubic yards generated annually) covered by its original petition. Any waste generated in excess of 300 cubic yards per year must be handled as hazardous unless an amendment to POP's final exclusion is granted.

On May 10, 1993, POP petitioned the Agency for an amendment to its 1992 final exclusion for an increase of its annual maximum waste generation from 300 cubic yards to 1,000 cubic yards. After its evaluation of POP's request and supporting information, EPA proposed, on April 11, 1994, to amend POP's December 7, 1992 exclusion to reflect a waste volume increase (see 59 FR 17080).

Today's rulemaking finalizes the proposed amendment to amend POP's existing exclusion.

II. Disposition of Petition for Amendment

POP Fasteners, Shelton, Connecticut.

A. Proposed Amendment

As a result of its business growth, POP petitioned the Agency on May 10, 1993 for an amendment to its 1992 final exclusion for an increase of its annual maximum waste generation from 300 cubic yards to 1,000 cubic yards.

POP stated in an April 19, 1993 letter that: (1) the increase in the filter cake generation was attributable to an increase in rivet production since the petition was filed; (2) there have been no changes in the manufacturing process, feed materials, or waste water treatment process; and (3) the hours of POP's operation have increased.

To confirm that the waste characteristics have not changed, POP submitted results from the analyses of one filter cake composite for all Toxicity Characteristic (TC) constituents listed in 40 CFR 261.24 and nickel using the Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311). POP also submitted a signed certification dated May 10, 1993 stating that all submitted information is true, accurate, and complete.

The Agency reviewed its previous decision to grant POP's original delisting petition (57 FR 37921, 57 FR 57673 and the administrative record in the RCRA public docket) and the analytical results provided by POP in support of its request for an amendment to its existing exclusion. The analytical results submitted to support this amendment show that the constituents detected in the waste sample, as well as their respective leachate concentration levels, are consistent with the waste data in POP's original petition. Furthermore, POP has certified that there have been no changes in process or feed materials. Therefore, the Agency believes that the waste characteristics have not changed.

The Agency evaluated the potential impact of POP's petitioned waste on human health and the environment, at the increased annual maximum waste volume, following the same approach it used in evaluating POP's original petition. Specifically, the Agency evaluated the waste using the requested annual maximum waste volume estimate of 1,000 cubic yards and the maximum reported leachate concentration of POP's waste using the same ground-water model described in the Agency's original decision (see 57 FR 37921, August 21, 1992 and the RCRA public docket "F–92–PEEP–FFFFF" to that rule). The Agency notes that the modeling results are the same for 300 and 1,000 cubic yards, and the increased waste volume has no significant impact. Thus, the Agency believes that the constituents in POP's waste would not leach and migrate at concentrations above the Agency's health-based levels used in delisting decision-making.

EPA also considered the impact of the increased waste volume on potential risks posed by other exposure routes (i.e., air emission, surface water). Since the total concentration levels of hazardous constituents of concern in the petitioned waste and the active landfill area remain unchanged, the Agency believes that no significant exposure to contaminants potentially released via air emission and surface runoff from POP's petitioned waste is likely. See 57 FR 37921 (August 21, 1992), 57 FR 57673 (December 7, 1992), and the RCRA public dockets for these notices for a detailed description of the evaluation.

B. Response to Public Comments

The Agency did not receive any comments on the proposed amendment

C. Final Agency Decision

For the reasons stated in the proposed amendment and in today's notice, the Agency believes that POP's waste is non-hazardous at the maximum generation rate of 1,000 cubic yards per year, and should be excluded from hazardous waste control. The Agency, therefore, is granting the amendment to POP Fastener's exclusion to reflect a

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waste volume increase for waste generated at its Shelton, Connecticut facility. This amendment only applies to the process covered by POP's original petition, and allows a maximum annual waste volume of 1,000 cubic yards. All other conditions listed in POP's exclusion remain unchanged. Waste generated in excess of 1,000 cubic yards per year or from changed processes must be handled as hazardous until a new exclusion is granted.

III. Effective Date

This amendment is effective immediately upon final publication in the **Federal Register**. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this amendment reduces the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this amendment should be effective immediately upon final publication. These reasons also provide a basis for making this amendment effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. This amendment is not significant, since its effect reduces the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding an additional amount of waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional economic impact due to today's rule. Therefore, this rule is not a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have an impact on any small entities.

This amendment will not have any adverse economic impact on small entities because its effect will be to reduce the overall costs of EPA's hazardous waste regulations and will be limited to one facility. Accordingly, I hereby certify that this amendment will not have a significant economic impact on a substantial number of small entities. This amendment therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final amendment have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling, Reporting and recordkeeping requirements.

Dated: September 7, 1994.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

Appendix IX—[Amended]

2. In Table 1 of Appendix IX of Part 261, the entry for "POP Fasteners, Shelton, Connecticut" is revised to read as follows:

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
.	.	. . . . .
POP Fasteners	Shelton, Connecticut.	Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations (at a maximum annual rate of 1,000 cubic yards) after [insert date of publication]. In order to confirm that the characteristics of the waste do not change significantly, the facility must, on an annual basis, analyze a representative composite sample for the constituents listed in §261.24 using the method specified therein. The annual analytical results, including quality control information, must be compiled, certified according to §260.22(i)(12), maintained on site for a minimum of five years, and made available for inspection upon request by any employee or representative of EPA or the State of Connecticut. Failure to maintain the required records on site will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA.
.	.	. . . . .

[FR Doc. 94–23114 Filed 9–16–94; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3720, 3730, 3800, 3810, 3820, 3830, and 3850

[WO–660–4191–02–24 1A; Circular No. 2657]

RIN 1004–AC17

Mining Claims; Maintenance and Location Fees; Lands Open to Location, National Parks, King Range National Conservation Area, Indian Reservations, Surface Management; Removal of Obsolete or Expired Regulations, Consolidation of Remaining Sections; Final Rule; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule implementing provisions of the Omnibus Budget Reconciliation Act of 1993 that require a $25 location fee and a $100 annual maintenance fee for each mining claim and site located and held under the general mining laws. The rule was published Tuesday, August 30, 1994 (59 FR 44846).

EFFECTIVE DATE: August 30, 1994.

FOR FURTHER INFORMATION CONTACT: Frank Bruno (202) 452–0350 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Need For Correction

As published, the final rule contains an error which may prove to be misleading and, therefore, needs clarification.

Correction of Publication

Accordingly, the publication on August 30, 1994, of the final rule (WO–660–4191–02–24 1A; Circular No. 2657), which was the subject of FR Doc. 94–21388, is corrected as follows:

On page 44862, in the first column, in §3833.1–7, paragraph (e)(1), line 12, the cross-referenced paragraph "3833.0–5(y)" is corrected to read "3833.0–5(x)".

Nancy K. Hayes,

Acting Assistant Secretary of the Interior.

[FR Doc. 94–23133 Filed 9–16–94; 8:45 am]
BILLING CODE 4310–84–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 940951–4251; I.D. 081694B]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Framework Adjustment 6 to the Northeast Multispecies Fishery Management Plan (FMP). The intent of this rule is to reduce the catch of juvenile silver hake in the Cultivator Shoal whiting (silver hake) fishery by increasing the minimum mesh size from 2½ inches (6.35 cm) to 3 inches (7.62 cm).

EFFECTIVE DATE: October 19, 1994.

ADDRESSES: Copies of Amendment 5 to the FMP, its regulatory impact review (RIR) and the initial regulatory flexibility analysis contained within the RIR, its final supplemental environmental impact statement, and Framework Adjustment 6 are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, NMFS, Fishery Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION:

Background

Amendment 4 to the FMP, published May 31, 1991 (56 FR 24724), established the Cultivator Shoal whiting fishery, a specified area within the Gulf of Maine/Georges Bank Regulated Mesh Area. For 3 years preceding Amendment 4, NMFS had conducted an experimental fishery program in the Cultivator Shoal area using NMFS sea samplers to collect data about the silver hake fishery and particularly about the regulated species bycatch. The data collected by sea samplers led to the conclusion that the Cultivator Shoal whiting fishery had minimal impact on regulated species.

Under the terms of Amendment 5 to the FMP (59 FR 9872, March 1, 1994), vessels may fish for silver hake in the Cultivator Shoal area from June 15 through October 31, unless otherwise specified, if the vessel: (1) Has onboard a letter of authorization issued by the Director, Northeast Region, NMFS (Regional Director); (2) has a minimum mesh size of 2½ inches (6.35 cm) applied to the first 160 meshes counted from the terminus of the net; and (3) does not exceed the possession limit of regulated species as specified in 50 CFR 651.27(a).

Fishing industry members recently asked the New England Fishery Management Council (Council) to adopt more restrictive regulations to conserve the silver hake stocks and protect this resource from a potential increase in fishing effort directed at the juvenile component of the stocks. Their concerns are based on at least two recent developments in the industry that directly affect the silver hake fisheries, as well as on the assessment scientists' uncertainty about the stock status and the impact of those recent changes.

First, as restrictive management plans are implemented in other fisheries in the region, a significant amount of potential fishing effort is being displaced. Fishers anticipate that some portion of that displaced fishing effort will be directed on silver hake, since this fishery is relatively unregulated and the stocks are comparatively stable. The effect of a sudden increase in fishing effort on silver hake stocks and markets is uncertain, but potentially detrimental to both. The most recent advisory report from the Stock Assessment Workshop (SAW) in February 1994, which was SAW #17, states that, although there are uncertainties regarding the exploitation pattern in the silver hake fishery, it is recommended that any increase in effort on these stocks be avoided.

Second, in the past year, an export market for juvenile silver hake has emerged. The potential demand from this new market and its impact on the stocks are unknown. Assessment scientists, while acknowledging that natural mortality rates of juvenile silver hake are high and that discards of juveniles in the traditional silver hake fisheries are excessive, caution against any increase in fishing effort directed at the juvenile sector. If juvenile mortality increases, the spawning stock biomass will decline and the catch of large silver hake in traditional fisheries will also decline.

Generally, increasing the mesh size will delay the age at which fish become susceptible to the gear, thereby reducing juvenile mortality. Increasing the mesh size from 2½ inches (6.35 cm) to 3 inches (7.62 cm), is intended to prevent a shift in the exploitation pattern to younger fish in order to supply the juvenile export market.

With so many uncertainties and the need for caution surrounding the impacts of the emerging juvenile fishery and the displacement of effort from

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other fisheries, the Council has started preparing an FMP amendment to regulate fishing for silver hake. Except for the Cultivator Shoal program, fishing for silver hake is currently unregulated and an FMP amendment is required in order to establish a management regime for the entire fishery. However, because of the length of time required for the FMP amendment process, and due to the concerns stated by industry members, as noted above, the Council initiated this framework action for the purpose of implementing conservation measures as quickly as possible for the ongoing Cultivator Shoal fishery.

Framework Adjustment 3 to the FMP limited the amount of regulated species onboard vessels using small mesh to either 500 lb (226.8 kg) or 10 percent of the weight of non-regulated species, whichever is less. In this rule, NMFS is adding language to the possession limit section with the intent of clarifying how this adjustment pertains to the Cultivator Shoal whiting fishery.

NMFS is amending the multispecies regulations following the procedure for framework adjustments established by Amendment 5 and codified in 50 CFR 651, subpart C. The Council followed this procedure when making adjustments to the FMP, by developing and analyzing the actions over the span of a minimum of two Council meetings, on May 12 and June 29, 1994. The Council provided the public with advance notice of both the proposal and the analysis, and opportunity to comment on them prior to and at the June 29 Council meeting. Upon review of the analysis and public comment, the Council recommended to the Regional Director that the measures contained in Framework Adjustment 6 be published as a final rule. The Regional Director has further determined that the measures in Framework Adjustment 6 are appropriate to publish as a final rule.

Comments and Responses

In addition to the general public notification, the Council sent a letter to each person who applied for authorization to fish in the Cultivator Shoal Whiting Fishery Program informing him or her of the Council's intent to take action, describing the proposals under consideration, advising them of the availability of relevant documents and analysis, and inviting comment. During the comment period spanning the two required Council meetings, several members of the public commented in favor of the 3-inch (7.62-cm) mesh proposal, and one fisher opposed it on the grounds that it would reduce flexibility in using different mesh sizes. NMFS believes that an increase in mesh size is warranted to protect the juvenile component of the whiting stocks, and hence the long-term viability of the fishery. One individual questioned the scientific basis for the mesh-size increase. Generally, an increase in mesh size correlates with fewer small fish being caught, increasing the potential yield from the fishery by reducing the revenues lost due to discarding or industrial use of the catch. The traditionally preferred market size for silver hake has been 10 inches (25.4 cm) or greater. According to silver hake selection curves, approximately 22 percent of 10-inch (25.4-cm) fish would be caught by 3-inch (7.62-cm) mesh, as opposed to approximately 32 percent with a 2½-inch (6.35-cm) mesh. With the increased selectivity of the larger mesh, discards that are predominantly of fish under 10 inches (25.4 cm) may be reduced significantly. Other comments focused on the minimum fish size and tolerance provision that the Council removed from its proposal. These comments were taken into account by the Council and NMFS in developing and approving these measures.

Classification

This final rule is exempt from review under E.O. 12866.

The Assistant Administrator for Fisheries, NOAA, finds there is good cause to waive prior notice and opportunity for comment under 5 U.S.C. 553(b)(B). The provision of advance notice as described in this rule and public meetings held by the Council to discuss the management measures implemented by this rule provided adequate prior notice and opportunity for public comment to be considered. Thus, additional opportunity for public comment is unnecessary. Because no proposed rule was required, this action is exempt from the procedures of the Regulatory Flexibility Act.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 13, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 651.20 is amended by revising paragraph (a)(4)(i)(B) to read as follows:

§ 651.20 Regulated mesh areas and restrictions on gear and methods of fishing.

(a) * * *

(4) * * *

(i) * * *

(B) A minimum mesh size of 3 inches (7.62 cm) applied to the first 160 meshes counted from the terminus of the net;

* * * * * *

3. Section 651.27 is amended by revising paragraph (a)(1)(ii)(A) to read as follows:

§ 651.27 Possession limits.

(a) * * *

(1) * * *

(ii) * * *

(A) Any vessel lawfully fishing with or possessing onboard nets of mesh smaller than the regulated minimum size as specified in § 651.20(a)(2) while fishing in the small-mesh exemption area or Cultivator Shoal whiting fishery exemption area as described under and in accordance with § 651.20(a)(3) and § 651.20(a)(4), respectively, or any vessel fishing with nets of mesh smaller than the regulated minimum size as specified in § 651.20(c) and (d), is prohibited from possessing onboard at any time during a trip, or landing per trip, regulated species in excess of 10 percent, by weight, of all other species on board, or 500 lb (226.8 kg), whichever is less.

* * * * * *

[FR Doc. 94-23045 Filed 9-16-94; 8:45 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 59, No. 180

Monday, September 19, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AF04

Steam Generator Tube Integrity for Operating Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission is considering amending its regulations regarding steam generator tube surveillance and maintenance at operating nuclear power plants. The advanced notice of proposed rulemaking (ANPRM) considers regulatory approaches that would maintain adequate assurance of steam generator tube integrity while allowing a more appropriate approach to steam generator surveillance and maintenance activities at nuclear power plants. The NRC is issuing this ANPRM to invite comments, advice, and recommendations from interested parties on the proposed steam generator rule.

DATES: The comment period expires December 5, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays. Examine copies of comments received at: The NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: T.A. Reed, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-2795.

SUPPLEMENTARY INFORMATION:

Background

Steam generator tube degradation at nuclear power plants continues to be a problem for the nuclear industry. Industry actions have been effective in controlling many of the forms of degradation experienced in late 1970s and early 1980s; however, new degradation mechanisms continue to occur. State-of-the-art nondestructive inspection and tube repair methods have improved significantly in recent years. Changes in types of degradation being experienced and improvements in inspection and tube repair technology have made the NRC's existing regulatory requirements and guidance out-of-date and in some cases overly conservative or impractical. In addition, the NRC staff has determined that factors other than the material tube degradation should be considered when assessing tube integrity.

The objective of the proposed rule would be to maintain steam generator tube integrity such that there is an extremely low probability of steam generator tube leakage that could result in core damage or otherwise exceed allowable off-site doses while allowing a reasonable approach to steam generator surveillance and maintenance activities (i.e., degradation-specific management). A performance-based rule with quantitative criteria would achieve the desired goals without being prescriptive in nature. A flexible rule would accommodate changes in operating experience and technology while giving incentives for the industry to continue to improve the state-of-the art tube inspection and repair methods. Incorporation of an integrated approach considers the overall factors of safety and risk, including systems and radiological assessments.

The NRC staff's rulemaking effort would establish a flexible framework that allows steam generator tube integrity to be addressed using a degradation-specific management approach. This approach involves establishing and implementing preventive measures such as inspection, evaluation, and repair criteria that are applicable to distinct steam generator degradation mechanisms, and default criteria for the remaining forms of steam generator tube degradation where experience does not enable a degradation-specific approach. The NRC staff's rulemaking effort would also address issues relevant to containment bypass probability and severe accidents associated with bypass of containment. The NRC staff would consider application of more realistic analytical assumptions, as well as defense-in-depth measures that could be implemented to further ensure safety. The proposed rule would acknowledge new degradation mechanisms and technological advances in inspection techniques to improve characterization of these mechanisms.

Recognizing that the steam generator rule would contain broad criteria while an associated regulatory guide would contain more detailed guidance, a proposed outline of the NRC staff's perception of the necessary elements of a steam generator rule follows:

(a) Applicability
(b) Definitions
(c) Requirements
(1) Licensee Surveillance and Maintenance Program
  (i) Preservice and Inservice Inspection Program
  (ii) Water Chemistry Program
  (iii) Tube Integrity
  (iv) Repair Criteria
  (v) Repair Methods
  (vi) Nondestructive Examination Considerations
  (vii) Normal Operating Primary-to-Secondary Leakage Monitoring/ Limits
(2) Accident Mitigation
  (i) Accident Condition Primary-to-Secondary Leakage Monitoring
  (ii) Procedures
  (iii) Operator Training
(3) Radiological Consequences
(d) Severe Accident Considerations
(e) Implementation

Specific Considerations

Comments, advice and recommendations on a proposed rule reflecting the aforementioned features and any other pertinent points are invited from all interested persons. Particularly, comments and supporting reasons are requested on the following questions:

1. What are appropriate performance based criteria that should be included in the steam generator proposed rule to address steam generator inspection

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scope and frequency, nondestructive examination (NDE) equipment capabilities, NDE data analyst capabilities, performance demonstration and qualification of NDE systems, steam generator water chemistry requirements, flaw acceptance criteria, and steam generator tube repair methods?

2. What are the appropriate performance based criteria that should be incorporated into the proposed rule to define adequate tube integrity (vis-a-vis 10 CFR 50 Appendix A GDC 14)?

3. What information should be part of the steam generator proposed rule, and what information should be addressed in a Regulatory Guide?

4. How should the proposed rule be structured to assure that licensees make use of available operational experience and data applicable to steam generator integrity, and that licensees can establish and readily update steam generator programs?

5. How should the proposed rule address new or replacement steam generators versus degraded steam generators?

6. Should the Regulatory Guide be prescriptive in terms of the methods to be used to ensure that the proposed rule's performance criteria are achieved?

7. Should the proposed rule require licensees to submit their programs to NRC for review and approval before implementation?

8. What requirements should be instituted to provide improved or additional monitoring of primary-to-secondary leakage as a means to enhance defense-in-depth relative to steam generator tube degradation?

9. What changes should be made in the NUREG–0800 radiological calculation guidance used to address the safety significance of steam generator tube leakage and rupture?

10. What beyond design basis considerations related to steam generator tube integrity should be addressed during the rulemaking process (e.g., the potential for containment bypass)?

11. How should tube failure prevention and mitigation measures be balanced in the proposed rule?

12. What interim measures are appropriate to allow continued operation of a unit in which new degradation modes are discovered?

13. Is the proposed rulemaking action considered a necessary or preferred course of action for addressing steam generator maintenance and surveillance issues, or are there other alternative regulatory mechanisms that are equally effective for addressing these issues? If alternatives to rulemaking are preferred, describe the preferred alternatives, including the pros and cons of pursuing the alternative course of action.

14. How should the steam generator rule or associated Regulatory Guide address the following technical issues: (1) Calculation of tube leakage following postulated events such as the main steam line break and the potential for this leakage to exceed the make-up capacity of the refueling water storage tank (supply source for the emergency core cooling system), (2) application of eddy current parameters such as voltage that are indirect measures of tube structural or leakage integrity (as compared to more direct measures such as crack depth or crack length), and (3) calculation of radiologically significant isotope concentrations in released materials (I–131 equivalent) following postulated events such as the main steam line break with steam generator tube leakage where there is a paucity of data on fission product iodine release rates.

The preliminary views expressed in this notice may change in light of comments received. In any case, there will be an opportunity later for additional public comment in connection with any proposed rule that may be developed by the NRC.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and record keeping requirements.

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Public Law 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Public Law 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Public Law 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Public Law 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

Dated at Rockville, Maryland, this 8th day of September 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94–23136 Filed 9–16–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–CE–06–AD]

Airworthiness Directives; Cessna Aircraft Company Models T303, 402C, 404, 414A, and 421C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede AD 93–05–03, which currently requires repetitively inspecting each fuel inlet float valve in accordance with certain test procedures on Cessna Aircraft Company (Cessna) Models T303, 402C, 404, 414A, and 421C airplanes, and replacing any valve that does not pass this test. The manufacturer has developed fuel inlet float valves of improved design, and the Federal Aviation Administration (FAA) has determined that the improved valves should be installed to reduce the number of repetitive tests currently required by AD 93–05–03. The proposed action would require installing these fuel inlet float valves of improved design. The actions specified by the proposed AD are intended to prevent possible loss of engine power caused by failure of a fuel inlet float valve.

DATES: Comments must be received on or before November 28, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–06–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Charles D. Riddle, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946–4144; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–CE–06–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–06–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

On March 4, 1993, the FAA issued AD 93–05–03, Amendment 39–8508 (58 FR 13406, March 11, 1993), in order to require a certain fuel inlet float valve test on Cessna Models T303, 402C, 404, 414A, and 421C airplanes, and replacement of any valve that does not pass this test. An accident involving a Model 402C airplane where the fuel inlet valve failed in the open position prompted that action.

Since AD 93–05–03 became effective, Cessna has developed fuel inlet float valves of improved design, and the FAA has determined that installation of these improved valves serves as a basis for reducing the number of repetitive tests currently required by AD 93–05–03.

In addition, Cessna has issued Service Bulletin (SB) MEB93–10, dated December 3, 1993, which specifies procedures for replacing fuel inlet float valves; and (2) accomplishing an installation test.

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service information, the FAA has determined that the fuel inlet float valves of improved design should be incorporated on the referenced airplanes to prevent possible loss of engine power caused by failure of a fuel inlet float valve.

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna Models T303, 402C, 404, 414A, and 421C airplanes of the same type design, the proposed AD would supersede AD 93–05–03 with a new AD that would require replacing the fuel inlet float valves with parts of improved design or modifying the existing part and periodically accomplishing functional tests to assure proper operation. The proposed actions would be accomplished in accordance with the ACCOMPLISHMENT INSTRUCTIONS supplement to Cessna SB MEB93–10, dated December 3, 1993.

The replacement compliance time is presented in calendar time instead of hours time-in-service (TIS). Operators in commuter service can put up to 200 hours TIS in one calendar month while a general aviation operator may not utilize the airplane 200 hours TIS in one calendar year. The calendar time compliance will allow commuter operators the option of accomplishing the actions to coincide with regularly scheduled maintenance.

The FAA estimates that 1,641 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 22 workhours (15 workhours for replacement and 7 workhours for installation) per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $3,144 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,144,914. This figure is based on the assumption that no affected airplane owner/operator has accomplished the proposed valve installation.

Cessna has informed the FAA that enough improved fuel valves have been sold to equip approximately 1,040 of the affected airplanes. Assuming that these valves are installed on Cessna Models T303, 402C, 404, 414A, and 421C airplanes, the proposed cost impact upon U.S. operators would be reduced from $7,144,914 to $2,616,754.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by removing AD 93–05–03, Amendment 39–8508 (58 FR 13406, March 11, 1993), and by adding a new airworthiness directive to read as follows:

The Cessna Aircraft Company: Docket No. 94–CE–06–AD; Supersedes AD 93–05–03, Amendment 39–8508.

Applicability: The following model and serial number airplanes, certificated in any category:

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Model	Serial Nos.
T303	T30300001 through T30300315.
402C	402C0001 through 402C1020.
404	404–0001 through 404–0859.
414A	414A0001 through 414A1212.
421C	421C0001 through 421C1807.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent possible loss of engine power caused by failure of a fuel inlet float valve, accomplish the following:

(a) For airplanes equipped with fuel inlet float valve part numbers (P/N) 9910242–1, 9910242–4, 9910242–5, 9910242–6, 9910242–7, 9910242–8, 9910242–205, 9910242–206, 9910242–207, and 9910242–208, accomplish the following:

(1) Within the next 200 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 93–05–03), perform the appropriate valve test in accordance with paragraph 2. Functional Test Procedure or paragraph 3. Installation Test Procedure in the ACCOMPLISHMENT INSTRUCTIONS supplement to Cessna Service Bulletin (SB) MEB93–10, dated December 3, 1993. Accomplish these tests thereafter at intervals not to exceed 200 hours TIS until the fuel inlet float valves are replaced with a P/N 9910242–11 or P/N 9910242–12 valve, and then accomplish the appropriate valve test at intervals not to exceed 600 hours TIS.

(2) Within 12 calendar months after accumulating 1,800 hours TIS on a fuel inlet float valve or within the next 12 calendar months after the effective date of this AD, whichever occurs later, replace the valve with a P/N 9910242–11 or P/N 9910242–12 fuel inlet float valve In accordance with paragraph 4. Valve Replacement in the ACCOMPLISHMENT INSTRUCTIONS supplement to Cessna SB MEB93–10, dated December 3, 1993. Thereafter, accomplish either the functional or installation test required by paragraph (a)(1) of this AD at intervals not to exceed 600 hours.

Note 1: If the number of hours TIS accumulated on a fuel inlet float valve is unknown, airplane hours TIS may be used

(b) For airplanes equipped with fuel inlet float valve P/N 9910242–9 or P/N 9910242–10, accomplish the following:

(1) Within the next 200 hours TIS after the effective date of this AD, unless already accomplished (compliance with AD 93–05–03), perform the appropriate valve test in accordance with paragraph 2. Functional Test Procedure or paragraph 3. Installation Test Procedure in the ACCOMPLISHMENT INSTRUCTIONS supplement to Cessna SB MEB93–10, dated December 3, 1993. Accomplish the appropriate valve test thereafter at intervals not to exceed 200 hours TIS until the fuel inlet float valves are modified as specified in paragraph (b)(2) of this AD, and then accomplish the appropriate valve test at intervals not to exceed 600 hours TIS.

(2) Within 12 calendar months after the effective date of this AD, install the K74D retainer kit in accordance with PROCEDURE No. P74D, which is included with the ACCOMPLISHMENT INSTRUCTIONS supplement to Cessna SB MEB93–10, dated December 3, 1993. Thereafter, accomplish the functional and installation tests required by paragraph (b)(1) of this AD at intervals not to exceed 600 hours.

Note 2: Installation of the K74D retainer kit modifies the P/N 9910242–9 or P/N 9910242–10 fuel inlet float valves to the P/N 9910242–11 or P/N 9910242–12 configuration.

(c) For valves failing any repetitive installation or functional test required by paragraph (a)(1), (a)(2), (b)(1), and (b)(2) of this AD, prior to further flight, accomplish the following (unless parts are not available and then comply with the requirements of paragraph (d) of this AD):

(1) Replace the fuel inlet float valve with a P/N 9910242–11 or P/N 9910242–12 valve in accordance with paragraph 4. Valve Replacement in the ACCOMPLISHMENT INSTRUCTIONS supplement to Cessna SB MEB93–10, dated December 3, 1993.

(2) Accomplish the installation test contained in paragraph 3. Installation Test Procedure in the ACCOMPLISHMENT INSTRUCTIONS supplement to Cessna SB MEB93–10, dated December 3, 1993. Accomplish the appropriate valve test thereafter at intervals not to exceed 600 hours TIS.

(d) If any fuel valve replacement is necessary and the replacement parts are not available, accomplish the following provided the parts have been ordered from the manufacturer and are installed within 25 hours TIS after availability:

(1) Incorporate the following into the Limitations Section of the Pilots Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM):

(i) For the Model T303 airplanes: UNUSABLE FUEL: Indicated fuel quantity below 36 pounds (6 gallons) in each main tank is unusable.

(ii) For the Models 402C, 404, 414A, and 421C airplanes: UNUSABLE FUEL: Indicated fuel quantity below 90 pounds (15 gallons) in each main tank is unusable.

(iii) For the Model 404 airplanes. FUEL QUANTITY: Minimum indicated fuel quantity for takeoff is 228 pounds (38 gallons) in each main tank.

(iv) For the Models 402C, 414A, and 421C airplanes: FUEL QUANTITY: Minimum indicated fuel quantity for takeoff is 210 pounds (35 gallons) in each main tank.

(2) Fabricate placards, as applicable, with the following words in letters at least 0.10-inch in height and install these placards within the pilot's clear view on the instrument panel in close proximity to the fuel quantity gage:

(i) For Models 402C, 404, 414A, and 421C airplanes: "UNUSABLE FUEL-INDICATED FUEL QUANTITY BELOW 90 POUNDS (15 GALLONS) IN EACH MAIN TANK IS UNUSABLE".

(ii) For Model T303 airplanes: "UNUSABLE FUEL-INDICATED FUEL QUANTITY BELOW 36 POUNDS (6 GALLONS) IN EACH MAIN TANK IS UNUSABLE".

(3) For the Model 404 airplanes, fabricate four placards with the following in letters at least 0.10-inch In height: "157 GAL". Install these placards covering the four existing "172 GAL" markings on the existing placard around the engine fuel selector handles.

(4) For the Models 402C, 414A, and 421C airplanes, fabricate four placards with the following in letters at least 0.10-inch in height: "88 GAL". Install these placards covering the four existing "103 GAL" markings on the existing placard around the engine fuel selector handles.

(5) For the Model T303 airplanes, fabricate the following placards in letters at least 0.10-inch in height:

(i) "423 LBS" (2 placards). Install these placards covering the two existing "459 LBS" markings on the existing placard around the engine fuel selector handles.

(ii) "363 LBS" (1 placard). Install this placard covering the existing "399 LBS" marking on the existing placard around the engine fuel selector handles.

(6) For all affected Model airplanes, fabricate a placard with the following words in letters at least 0.10-inch In height and install this placard within the pilot's clear view on the instrument panel: "ROLLING, TURNING TAKEOFFS ARE PROHIBITED."

Note 3: The placard requirements may already be accomplished in accordance with either superseded AD 92–27–20 or AD 93–05–03 (superseded by this action). These placard requirements are eliminated upon installation of the improved fuel valves as required by this AD.

Note 4: The repetitive functional or installation test is not required if parts are not available and the requirements of paragraph (d) of this AD (including all subparagraphs) are complied with.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Manager, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager Wichita ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(g) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment supersedes AD 93–05–03, Amendment 39–8508.

Issued in Kansas City, Missouri, on September 12, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircroft Certification Service.

[FR Doc. 94–23079 Filed 9–16–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–CE–54–AD]

Airworthiness Directives; Cessna Aircraft Company Engine Oil Filter Adapters, Part Numbers 0450404–1, 0450404–3, 0556004–1, 0556010–1, 1250403–6, 1250922–1, and 1250922–2, Installed on Aircraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Cessna Aircraft Company (Cessna) engine oil filter adapters, part numbers 0450404–1, 0450404–3, 0556004–1, 0556010–1, 1250403–6, 1250922–1, and 1250922–2, installed on aircraft. The proposed action would require applying torque paint between the engine filter adapter assembly, nut, and oil pump housing; inspecting the oil filter and adapter assembly for oil leakage and proper installation of the adapter retaining nut and fretting of associated threads (security), and replacing any oil filter and adapter assembly with oil leakage or security problems; and repetitively inspecting the torque paint for cracks or misalignment, and reinspecting the oil filter and adapter assembly if torque paint cracks or misalignment is found. Reports of loose or separated engine oil filter adapters on several airplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent loss of engine oil caused by loose or separated oil filter adapters, which could result in engine stoppage while in flight and loss of control of the airplane.

DATES: Comments must be received on or before November 28, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–54–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946–4143; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–54–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–54–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received 10 reports of loose or separated engine oil filter adapters on in-service airplanes. The affected adapters are Cessna engine oil filter adapters, part numbers 0450404–1, 0450404–3, 0556004–1, 0556010–1, 1250403–6, 1250922–1, and 1250922–2. Three of the incidents resulted in an airplane accident, one serious. These engine oil filter adapters are installed on, but not limited to the following:

(1) The following Cessna model and series airplanes with an affected adapter installed at manufacture:

Model or series	Serial Nos.
150	17001 through 17999, 59001 through 59018, and 15059019 through 15079405.
A150	A1500001 through A1500734.
F150	F150–0001 through F150–0529 and F15000530 through F15001428.
FA150	FA1500001 through FA1500120.
FRA150	FRA1500121 through FRA1500336.
172	28000 through 47746 and 17247747 through 17256512.
F172	F172–0001 through F172–0654 and F17200655 through F17200804.
FR172	FR172–0001 through FR17200559 and FR17200561.
180	30000 through 50911 and 18050912 through 18053203.
182	33000 through 53007 and 18253008 through 18268293.
A182	A182–0057 through A182–0148.
F182	F18200001 through F182000169.
185	185–0001 through 185–1599 and 18501600 through 18504410.
188	188–0001 through 188–0572, 18800573 through 18803945, 18800967T through 18803968T, and T18803307T through T18803968T.
205	205–0001 through 205–577.
206	206–0001 through 206–0275.
P206/TP206	P206–0001 through P206–0603 and P20600604 through P20600647.
U206/TU206	U206–0276 through U206–1444 and U20601445 through U20606459.
207/T207	20700001 through 20700734.
210	57001 through 57575 and 21057576 through 21064780.
P210	P21000001 through P21000811.
T210	T210–0001 through T210–0454.

(2) Airplanes that have an affected full flow engine oil adapter installed by field approval, including, but not limited to the following model or series airplanes:

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Manufacturer	Series/Models
Twin Commander.	Models 200D, 500A, 500C, 500D, and 685.
Beech	33, 35, 36, 55, 58, and 95 Series.
Piper	PA46 Series.
Navion	Rangemaster.
Ryan Navion	Model L–17.
Wren	Model 460.
Bellanca	Models 260 and 300.

(3) Airplanes equipped with one of the following Teledyne Continental Motors model or model series engines:

O–470	IO–470	TSIO–470
O–520	IO–520	TSIO–520
GTSIO–520	IO–550	TSIO–550

Cessna has issued Service Bulletin (SB) SEB93–1, dated January 29, 1993, which specifies procedures for inspecting the engine oil filter and adapter assembly. Oil filter and assembly installation procedures and torque values are included in the applicable Cessna maintenance manual.

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service instructions, the FAA has determined that AD action should be taken to prevent loss of engine oil caused by loose or separated oil filter adapters, which could result in engine stoppage while in flight and loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other airplanes utilizing a Cessna engine oil filter adapter, part number 0450404–1, 0450404–3, 0556004–1, 0556010–1, 1250403–6, 1250922–1, or 1250922–2, of the same type design, the proposed AD would require (1) applying torque paint between the engine filter adapter assembly, nut, and oil pump housing; (2) inspecting the oil filter and adapter assembly for oil leakage and proper installation of the adapter retaining nut and fretting of associated threads (security), and replacing any oil filter and adapter assembly with oil leakage or security problems; and (3) repetitively inspecting the torque paint for cracks or misalignment, and reinspecting the oil filter and adapter assembly if torque paint cracks or misalignment is found.

The FAA estimates that 70,000 airplanes in the U.S. registry incorporate this engine oil filter and assembly and would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed initial inspection and torque paint application, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,850,000. This cost is based on the assumption that no operator has accomplished the initial inspection, and does not take into account the cost for repetitive inspections. The FAA has no way of determining how many repetitive inspections each individual operator would incur.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding a new AD to read as follows:

Cessna Aircraft Company: Docket No. 93–CE–54–AD.

Applicability: Engine Oil Filter Adapters, part numbers 0450404–1, 0450404–3, 0556004–1, 0556010–1, 1250403–6, 1250922–1, and 1250922–2, installed on, but not limited to the following:

(1) The following Cessna model and series airplanes with an affected adapter installed at manufacture:

Model or series	Serial Nos.
150	17001 through 17999, 59001 through 59018, and 15059019 through 15079405.
A150	A1500001 through A1500734.
F150	F150–0001 through F150–0529 and F15000530 through F15001428.
FA150	FA1500001 through FA1500120.
FRA150	FRA1500121 through FRA1500336.
172	28000 through 47746 and 17247747 through 17256512.
F172	F172–0001 through F172–0654 and F17200655 through F17200804.
FR172	FR172–0001 through FR17200559 and FR17200561.
180	30000 through 50911 and 18050912 through 18053203.
182	33000 through 53007 and 18253008 through 18268293.
A182	A182–0057 through A182–0148.
F182	F18200001 through F182000169.
185	185–0001 through 185–1599 and 18501600 through 18504410.
188	188–0001 through 188–0572, 18800573 through 18803945, 18800967T through 18803968T, and T18803307T through T18803968T.
205	205–0001 through 205–577.
206	206–0001 through 206–0275.
P206/TP206	P206–0001 through P206–0603 and P20600604 through P20600647.
U206/TU206	U206–0276 through U206–1444 and U20601445 through U20606459.
207/T207	20700001 through 20700734.
210	57001 through 57575 and 21057576 through 21064780.
P210	P21000001 through P21000811.
T210	T210–0001 through T210–0454.

(2) Airplanes that have an affected full flow engine oil adapter installed by field approval, including, but not limited to the following model or series airplanes:

Manufacturer	Series/Models
Twin Commander.	Models 200D, 500A, 500C, 500D, and 685.
Beech	33, 35, 36, and 55 Series.
Piper	PA46 Series.
Navion	Rangemaster.
Ryan Navion	Model L–17.
Wren	Model 460.
Bellanca	Models 260 and 300.

(3) Airplanes equipped with one of the following Teledyne Continental Motors model or model series engines:

O–470	IO–470	TSIO–470
O–520	IO–520	TSIO–520
GTSIO–520	IO–550	TSIO–550

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent loss of engine oil caused by loose or separated oil filter adapters, which could result in engine stoppage while in flight and loss of control of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service or upon removal of the engine oil filter, whichever occurs first, disassemble the engine oil filter assembly in accordance with the applicable maintenance manual, and accomplish the following:

(1) Inspect the oil filter and adapter assembly for oil leakage and proper installation of the adapter retaining nut and fretting of the associated threads (security) in accordance with Cessna Service Bulletin SEB93–1, dated January 29, 1993.

(2) Prior to further flight, replace any oil filter and adapter assembly with oil leakage or security problems.

(3) Apply torque paint between the engine filter adapter assembly, nut, and oil pump housing.

(4) Reassemble the engine oil filter assembly.

(5) The disassembly, replacement (if necessary), and assembly required by the paragraphs above shall be accomplished in accordance with the applicable Cessna maintenance manual.

Note 1: If the airplane has one of the applicable engine oil filter assemblies installed by field approval, it is the responsibility of the airplane owner/operator to obtain the applicable Cessna maintenance manual information, which includes torque values.

(b) Within 100 hours TIS after the inspection required by paragraph (a) of this AD, and thereafter at intervals not to exceed 100 hours TIS or upon removal of the engine oil filter, whichever occurs first, accomplish the following:

(1) Inspect the torque paint for cracks or misalignment.

(2) If any torque paint cracks or misalignment is found, prior to further flight, accomplish the requirements specified in paragraph (a) of this AD, including all subparagraphs.

(c) Replacing the engine oil filter assembly does not eliminate the repetitive inspection requirement of this AD.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 12, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Office.

[FR Doc. 94–23080 Filed 9–16–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 94–NM–88–AD]

Airworthiness Directives; Lockheed Model 382 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Lockheed Model 382 series airplanes. This proposal would require inspection of a kingpin riser on the lower surface of the outer wing to determine fastener placement. The proposed AD also would require repetitive inspections for fatigue cracks in the kingpin riser if the fasteners are positioned outside certain limits, and repair, if necessary. This proposal is prompted by reports of insufficient distance between the center of the outermost fastener on the kingpin riser and the edge of the riser, which can adversely affect the fatigue resistance of the outer wing assembly. The actions specified by the proposed AD are intended to prevent structural failure of the lower surface of the outer wing due to fatigue cracks in the kingpin riser.

DATES: Comments must be received by November 10, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–88–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Department 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Certification Office, Suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE–160A, FAA, Small Airplane Directorate, FAA, Atlanta Certification Office, Suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991–3915; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped

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postcard on which the following statement is made: "Comments to Docket Number 94–NM–88–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–88–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports that certain outer wing assemblies on Lockheed Model 382 series airplanes were manufactured with insufficient distance between the center of the outermost fastener on the kingpin riser and the edge of the riser (between outer wing stations 29.0 and 36.0). Insufficient distance between the fastener and the riser edge adversely affects the fatigue resistance of the outer wing assembly due to fatigue cracks in the kingpin riser. Such fatigue cracking, if not corrected, could result in structural failure of the lower surface of the outer wing assembly.

The FAA has reviewed and approved Hercules Service Bulletin 382–57–74 (82–688), dated January 31, 1994, which describes procedures for an ultrasonic inspection of kingpin riser number 18 on the lower surface of the outer wing to determine the distance between the center of the outermost fastener on the kingpin riser and the edge of the riser. In addition, for fasteners positioned outside certain limits described in the service bulletin, the service bulletin describes repetitive ultrasonic inspections to detect cracks in the kingpin riser, and repair, if necessary.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require an inspection of a kingpin riser on the lower surface of the outer wing to determine fastener placement; and repetitive inspections for fatigue cracks in the kingpin riser if the fasteners are positioned outside certain limits, and repair, if necessary. The inspections would be required to be accomplished in accordance with the service bulletin described previously. The repair would be required to be accomplished in accordance with a method approved by the FAA.

There are approximately 20 Lockheed Model 382 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 20 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,400, or $220 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Lockheed Aeronautical Systems Company: Docket 94–NM–88–AD.

Applicability: Model 382, 382B, 382E, 382F, and 382G series airplanes, as listed in Hercules Service Bulletin 382–57–74 (82–688), dated January 31, 1994; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the outer wing assembly, accomplish the following:

(a) Within 30 days after the effective date of this AD, or prior to the accumulation of 18,000 total flight hours, whichever occurs later, perform an ultrasonic inspection to determine the distance between the edge of each of the six most outboard fasteners on kingpin riser number 18 and the edge of the riser, in accordance with Appendix A of Hercules Service Bulletin 382–57–74 (82–688), dated January 31, 1994.

(1) If all six of these fasteners are positioned 0.31 inch or more from the kingpin riser edge: No further action is required by this AD.

(2) If any of the six most outboard fasteners is positioned less than 0.31 inch from the edge of the kingpin riser: Prior to the applicable threshold specified in Table 1 of Hercules Service Bulletin 382–57–74 (82–688), or prior to further flight if that threshold has been exceeded as of the effective date of this AD, perform an ultrasonic inspection to detect cracks in the kingpin riser, in accordance with Inspection Procedure SP–265 (Appendix B) of the service bulletin.

Note 1: For airplanes on which an outerwing replacement is installed, the total flight hours threshold is counted from the time of outer wing replacement.

(i) If no crack is found, repeat this inspection, thereafter, at intervals not to exceed 7,400 flight hours.

(ii) If any cracked kingpin riser is found, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Repeat this inspection, thereafter, at intervals not to exceed 7,400 flight hours.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO, FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 13, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–23099 Filed 9–16–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–79–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes. This proposal would require inspections to detect cracking of H–11 attach bolts of the upper vertical stabilizer and replacement of these bolts and associated nuts with Inconel bolts and nuts. This proposal is prompted by reports of failure of the attach bolts of the upper vertical stabilizer due to stress corrosion. The actions specified by the proposed AD are intended to prevent undetected cracked or failed attach bolts that may lead to reduced structural integrity of the vertical stabilizer.

DATES: Comments must be received by November 10, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–79–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; telephone (310) 988–5238; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–79–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–79–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 25, 1993, the FAA issued AD 93–17–09, Amendment 39–8680 (58 FR 54949, October 25, 1993), which is applicable to McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes. That AD requires the implementation of a Structural Inspection Document (SID) program of structural inspections to detect fatigue cracking, and repair or replacement, as necessary, to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. AD 93–17–09 requires inspection of the attach bolts of the upper vertical stabilizer [designated Principal Structural Element (PSE) 55.10.001/002 in McDonnell Douglas Report Number L26–012, "DC–10 Supplemental Inspection Document," which is referenced in that AD as the appropriate source of service information] under the fleet leader operator sampling criteria. The fatigue life for these attach bolts is (N_{th}) 119,334 flight hours. The sampling period for this PSE started in September 1989, and will end in June 2001. Sampling inspections are to be accomplished within that interval for airplanes in the candidate fleet that have accumulated more than 59,667 total flight hours (N_{th}/2).

The inspection threshold for the SID program was based upon a fatigue analysis conducted by the manufacturer. The FAA is not aware of any operator having, as yet, accomplished the inspection of these bolts for the purpose of complying with the requirements of AD 93–17–09. McDonnell Douglas has advised the FAA that the planning data contained in Volume III of the SID will be revised to indicate that H–11 bolts have been replaced with new Inconel bolts.

Since the issuance of that AD, operators of Model DC–10 series airplanes have recently reported that the attach bolts of the upper vertical stabilizer had failed on several in-service airplanes. These failures had occurred on airplanes that had accumulated between 40,000 total flight hours and 67,000 total flight hours. The attach bolts and associated nuts on these airplanes were made of H–11 material, which is susceptible to failure due to stress corrosion. The FAA has determined that replacement of the H–11 bolts and associated nuts with Inconel bolts and associated nuts will eliminate the possibility of failure due to stress corrosion. Failure of the attach bolts in the upper vertical stabilizer, if not corrected, could compromise the structural integrity of the vertical stabilizer.

The FAA has reviewed and approved Revision 1, dated March 8, 1991, and Revision 2, dated August 4, 1994, of McDonnell Douglas DC–10 Service Bulletin 55–20, which describe procedures for repetitive ultrasonic inspections at 12-month intervals to detect cracking in H–11 attach bolts of the upper vertical stabilizer, and replacement of H–11 attach bolts and associated nuts with Inconel attach bolts and associated nuts.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would

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require ultrasonic inspections at 18-month intervals to detect cracking in H–11 attach bolts of the upper vertical stabilizer, and replacement of H–11 attach bolts and associated nuts with Inconel attach bolts and associated nuts. The actions would be required to be accomplished in accordance with the procedures specified in the service bulletins described previously.

Although the referenced service bulletins recommend that these inspections be performed at 12-month intervals, the FAA has determined that 18-month intervals will not adversely affect safety and will allow these repetitive inspections to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available.

There are approximately 426 McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 269 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the proposed inspections at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $29,590, or $110 per airplane, per inspection cycle.

It would take approximately 8 work hours per airplane to accomplish the proposed replacements at an average labor rate of $55 per work hour. Required parts would cost approximately $9,009 per airplane. Based on these figures, the total cost impact of the replacements proposed by this AD on U.S. operators is estimated to be $2,541,781, or $9,449 per airplane.

Based on the above figures, the total cost impact of the inspections and replacements proposed by this AD on U.S. operators is estimated to be $2,571,371, or $9,559 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, most prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the proposed actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this proposed AD would be redundant and unnecessary.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 94–NM–79–AD.

Applicability: All Model DC–10–10, –10F, –15, –30, –30F, –40, and –40F series airplanes, and KC–10A (military) airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent undetected cracked or failed attach bolts that may lead to reduced structural integrity of the vertical stabilizer, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform an ultrasonic inspection to detect cracking in the attach bolts of the upper vertical stabilizer, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–20, Revision 2, dated August 4, 1994, unless accomplished within the last 18 months prior to the effective date of this AD in accordance with McDonnell Douglas DC–10 Service Bulletin 55–20, Revision 1, dated March 8, 1991, or Revision 2, dated August 4, 1994.

(1) If no cracking is detected in any bolt, repeat the inspection of the uncracked bolt thereafter at intervals not to exceed 18 months, until the requirements of paragraph (c) of this AD are accomplished.

(2) If cracking is detected in any bolt, prior to further flight, replace the cracked bolt and associated nut with a new Inconel attach bolt and associated nut, in accordance with the service bulletin. No further action is required by this AD for the new Inconel bolts and associated nuts.

(b) Compliance with the inspections required by paragraph (a) of this AD constitutes compliance with the inspections and reports required by paragraph (b) of AD 93–17–09, Amendment 39–8680, for Principal Structural Element (PSE) 55.10.001/002. However, after installation of new Inconel bolts and associated nuts, in accordance with the requirements of paragraphs (a) and (c) of this AD, PSE 55.10.001/002 must continue to be inspected in accordance with AD 93–17–09.

(c) Within 5 years after the effective date of this AD, replace all H–11 attach bolts and associated nuts of the upper vertical stabilizer with new Inconel attach bolts and associated nuts, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–20, Revision 1, dated March 8, 1991; or Revision 2, dated August 4, 1994. Such replacement constitutes terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 13, 1994

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–23100 Filed 9–16–94; 8:45 am]

BILLING CODE 4910–13–U

POSTAL SERVICE

39 CFR Part 111

Revisions to Standards for Palletization

AGENCY: Postal Service.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Postal Service published in the **Federal Register** on August 18, 1994, a proposal to amend Domestic Mail Manual (DMM) standards concerning the preparation of mail on pallets, 59 FR 42536–42540. The proposed revisions are intended to establish consistent standards for all classes of mail prepared on pallets. Such standards should result in the lowest combined costs of handling palletized mail for the Postal Service and its customers while facilitating consistent service for palletized mailings.

The Postal Service requested comments by September 19, 1994. Owing to the needs of the mailing public, from whom several requests for additional time were received, the Postal Service is extending the comment period to November 3, 1994.

DATES: Comments must be received on or before November 3, 1994.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Business Mail Acceptance, U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW., Room 8430, Washington, DC 20260–6808. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: Cheryl Beller, (202) 268–5166

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–23038 Filed 9–16–94; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ID 6–1–6300b; FRL–5056–6]

Approval and Promulgation of State Small Business Assistance Program: State of Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Idaho for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: Comments on this proposed rule must be received in writing by October 19, 1994.

ADDRESSES: Written comments should be addressed to MontelLivingston, Environmental Protection Specialist (AT–082), Air Programs Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 10, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101.

The Idaho Department of Health and Welfare, Division of Environmental Quality, 1410 No. Hilton, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: Dave Dellarco, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101 (206/553–4978).

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action which is located in the rules section of this **Federal Register**.

Dated: August 15, 1994.

Jane S. Moore,

Acting Regional Administrator.

[FR Doc. 94–23106 Filed 9–16–94; 8:45 am]

BILLING CODE 6560–60–F

40 CFR Part 52

[IN 12–3–5958B; FRL–5071–8]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) proposes to approve an April 18, 1994 State request for a site-specific revision to the Indiana sulfur dioxide State Implementation Plan (SO_2 SIP). This revision sets forth a schedule of SO_2 emission limitations applicable to Public Service Indiana's Gibson Generating Station (PSI Gibson) if the facility installs SO2 emission controls. In the final rules section of this **Federal Register**, the USEPA is approving the State's SIP revision as a direct final rule without prior proposal because USEPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be

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addressed in a subsequent final rule based on the proposed rule. USEPA will not institute a second comment period on this notice. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed rule must be received on or before October 19, 1994.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Air and Radiation Division, Regulation Development Section, Regulation Development Branch, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT: Mary Onischak, Environmental Engineer, Regulation Development Branch, (AR-18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353-5954.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: September 2, 1994.

David A. Ullrich,

Acting Regional Administrator

[FR Doc. 94-23108 Filed 9-16-94, 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 70

[AR001; FRL-5073-8]

Clean Air Act Proposed Interim Approval Operating Permits Program; the State of Arkansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the operating permits program submitted by the Arkansas Department of Pollution Control and Ecology (ADPCE) through the Governor of Arkansas for the purpose of complying with Federal requirements which mandate that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, with the exception of sources on Indian Lands.

DATES: Comments on this proposed action must be received in writing by October 19, 1994.

ADDRESSES: Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, New Source Review Section, at the EPA Region 6 Office listed. Copies of the State's submittal and other supporting information used in developing the proposed rule are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before visiting day.

Environmental Protection Agency, Region 6, Air Programs Branch (6T-AN), 1445 Ross Avenue, suite 700, Dallas, Texas 75202-2733.

Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72219-8913.

FOR FURTHER INFORMATION CONTACT: Wm. Nicholas Stone, New Source Review Section (6T-AN), Environmental Protection Agency, Region 6, 1445 Ross Avenue, suite 700, Dallas, Texas 75202-2733, telephone (214) 655-7226.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act as amended in 1990 ("the Act"), the EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to the EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources, with the exception of sources on Indian Lands.

The Act requires that States develop and submit these programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of 40 CFR part 70, the EPA may grant the program interim approval for a period of up to two years. If the EPA has not fully approved a program by two years after the November 15, 1993, date, or by the end of an interim program, it must establish and implement a Federal program.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

Pursuant to section 502(d) of the Act, the Governor of each State is required to develop and submit to the Administrator an operating permit program under State or local law or under an interstate compact meeting the requirements of title V of the Act. The Arkansas submittal was made under the signature of Governor Jim Guy Tucker in a letter to Acting Regional Administrator, Joe Winkle, EPA, Regior 6, dated October 29, 1993. The program will be implemented in all areas of the State of Arkansas.

The State provided a general overview under Tab 1 of the submittal. This overview meets the requirements of 40 CFR 70.4(b)(1) by describing the State program in general terms.

Pursuant to 40 CFR 70.4(b)(3), the Governor is required to submit a legal opinion from the attorney general (or the attorney for the State air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of a title V operating permit program. The Attorney General's (AG) Opinion appears under Tab 3 of the submittal. The Opinion is signed by the Chief of the Legal Division, ADPCE, certifying full authority to represent the State in all matters relating to the Department's environmental programs. This opinion adequately addresses the thirteen provisions listed at 40 CFR 70.4(b)(3)(i)-(xiii).

40 CFR 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit forms and relevant guidance to assist in the State's implementation of its permit program. The State provides relevant program documentation under Tab 4 of the submittal. This documentation includes a complete application form, permit form, and a guidance document. The submittal did not contain a model reporting form for the permitted facilities to report emissions to the regulatory authority. However, Arkansas Regulation 26.7(a) references the Federal reporting requirements at 40 CFR 70.6(a)(3). These provisions must be included or formally incorporated by reference. All sources subject to monitoring requirements must submit monitoring reports every six months

and must promptly report any deviation from permit requirements.

In the ADPCE operating permits program submittal, the ADPCE does not assert jurisdiction over Indian Lands or reservations. To date, no Indian Lands have been identified in the State of Arkansas. Title V sources located on *Indian Lands in Arkansas will be* subject to the Federal operating permits program, to be promulgated at 40 CFR part 71, or subject to the operating permits program of any Tribe delegated authority for treatment as a State under regulations being developed pursuant to section 301(d) of the Act.

2. Regulations and Program Implementation

The State submitted under Tab 2, Regulation 26, "Regulations of the Arkansas Operating Permit Program," as required at 40 CFR 70.4(b)(2). Regulation 26 follows the rule at 40 CFR part 70 very closely. Supporting documentation of procedurally correct adoption and copies of all applicable State statutes and regulations which authorize the part 70 program, including those governing State administrative procedures, were submitted with the State's program. Regulation 26 received written comments from March 25 through April 24, 1993, and a public hearing was held April 14, 1993. The response to comments was made by ADPCE on July 28, 1993. Sufficient evidence of their procedurally correct adoption was submitted and meets the requirements of 40 CFR 70.4(b)(2).

The following requirements, set out in the EPA's part 70 regulation are addressed in the State's submittal: (a) Provisions to determine applicability (40 CFR 70.3(a)), Regulation 26.3; (b) provisions to determine complete applications (40 CFR 70.5(a)(2)), Regulation 26.4; (c) public participation (40 CFR 70.7(h)), Regulation 26.6; (d) provisions for minor permit modifications (40 CFR 70.7(e)(2)), Regulation 26.10(b); (e) provisions for permit content (40 CFR 70.6(a)), Regulation 26.7; (f) provisions for operational flexibility (40 CFR 70.4(b)(12)), Regulation 26.8; (g) enforcement provisions (40 CFR 70.4(b)(5) and 70.4(b)(4)(ii)), the AG Opinion and Tab 5 of the submittal, Compliance Tracking and Enforcement.

Following is a discussion of certain specific provisions in the State's submission as they relate to requirements of 40 CFR part 70:

(a) Applicability criteria, including any criteria used to determine insignificant activities or emissions levels (40 CFR 70.4(b)(2) and 70.3(a)): Applicability criteria are defined at Regulation 26.3. Regulation 26.3(a)(3) specifies that new construction or modification at a part 70 source requires a new or modified part 70 permit before construction begins. However, the State regulation does not require that a source must first undergo a preconstruction permit review as outlined in Section 108, prevention of significant deterioration (PSD) supplement to the Arkansas SIP. The SIP has been submitted for recodification, with the PSD provisions at Regulation 19.9, and has not yet been acted on by the EPA. Regulation 26.3 must be amended to incorporate by reference the applicable PSD requirements.

Insignificant activities are addressed at Regulation 26.3(d) which refers to the SIP at Regulation 19.4(c). The SIP lists the following emissions for which a permit is not required: 1) comfort heating, cooling, and ventilation equipment; 2) portable internal combustion engines used in conjunction with temporary construction operations, or emergency standby generators; or 3) natural gas and oil exploration and production site equipment. An exemption may be obtained for these activities provided that operation of the equipment does not affect any provision of the Federal Clean Air Act and does not contribute to an exceedance of a National Ambient Air Quality Standard (NAAQS). No other federally regulated emissions are allowed an exemption under Regulation 26.

(b) Provisions to determine complete applications are listed at Regulation 26.4. The State references the required provisions for a complete application listed at 40 CFR 70.5(c). In order to receive full approval, the State must formally incorporate these provisions by reference or list them specifically in the regulation. Recommended language for formal incorporation by reference would read: "The Department hereby adopts and incorporates by reference those provisions of 40 CFR 70.5(c), as in effect on July 21, 1992."

Complete application forms, model permit, and instructions are located under Tab 4 of the submittal. These application forms may be amended without rulemaking to facilitate changes required by new applicable requirements. These provisions meet the requirements of 40 CFR 70.5(a)(2).

(c) Provisions for adequate public participation are found at Regulation 26.6. The State regulation provides for adequate public participation and notice to affected States for permit issuance, renewals, and reopenings. These provisions meet the requirements of 40 CFR 70.7(h).

(d) The rule at 40 CFR 70.7(e)(2) specifies criteria for minor permit modifications that are incorporated in the State regulations at Regulation 26.10(b). The rule at 40 CFR 70.7(e)(2)(i)(A)(5) and Regulation 26.10(b)(7) prohibits changes which constitute modifications under any provision of title I of the Act from being processed as a minor modification. "Title I modifications" in Arkansas, are determined by the permitting procedures federally approved into the Arkansas Plan of Implementation for Air Pollution Control (SIP). The SIP, Regulation 19.2, defines any increase in emissions as a modification. The State incorporates an additional criteria, Regulation 26.10(b)(1), that allows the minor permit modification process to be used for permit modifications that involve emission increases.

The additional criteria at Regulation 26.10(b)(1) allows the minor permit modification process to be used for permit modifications that involve emission increases not over 20% of the applicable definition of major source, or 15 tons/year of PM-10, or 0.6 tons/year of lead, whichever is less, based on potential to emit. 40 CFR 70.7(e)(3)(i) allows group processing of minor modifications that collectively meet this emission threshold, or a total of 5 tons per year (tpy) whichever is less, provided the minor modification criteria at 40 CFR 70.7(e)(2)(i)(A) are also met. However, the criteria for minor modifications at 40 CFR 70.7(e)(2)(i)(A), which applies to individual as well as group processing of minor modifications does not contain this allowance.

Therefore, Regulation 26.10(b)(1) is inconsistent with the rule at 40 CFR 70.7(e)(2)(i)(A)(5), as well as Regulation 26.10(b)(7). In order for Regulation 26 to provide minor modification procedures consistent with 40 CFR part 70, and as a condition of full approval, the ADPCE must revise Regulation 26.10(b)(1) or delete the allowance from the minor modification procedure.

(e) Provisions for permit content are found at Regulation 26.7. The State regulations require inclusion of the enumerated elements at 40 CFR 70.6(a), (b), and (c). In order to receive full approval, the State must formally incorporate these provisions by reference or list them specifically in the regulation. Recommended language for formal incorporation by reference would read: "The Department hereby adopts and incorporates by reference those provisions of 40 CFR 70.6(a), (b), and (c) as in effect on July 21, 1992."

Additional provisions are found to provide for adequate permit duration, allow a permit shield, provide for

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general permits, and provide for temporary sources and emergency situations.

Part 70 of the operating permits regulations requires prompt reporting of deviations from the permit requirements. The rule at 40 CFR 70.6(a)(3)(iii)(B) requires the permitting authority to define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. The State of Arkansas has not defined "prompt" in Regulation 26, and must do so in order to achieve full approval. With formal incorporation by reference and defining "prompt" with regard to reporting deviations, the provisions at Regulation 26.7 meet the requirements of 40 CFR 70.6.

(f) Provisions for operational flexibility and alternative scenarios are listed at Regulation 26.8. This section meets the requirements of 40 CFR 70.4(b)(12) by closely tracking the language of part 70.

(g) Enforcement provisions are discussed under Tab 5 of the submittal, Compliance Tracking and Enforcement Program. This section contains copies of the Enforcement Memorandum of Understanding, signed May 3, 1993. The AG Opinion discussed in section 1 above, outlines the State's authority to enforce all aspects of the program. Under Tab 9 of the submittal, the State provides a commitment to submit annual information concerning the State's enforcement activities. These submission elements meet the requirements of 40 CFR 70.4(b)(4)(ii) and (5).

The State of Arkansas has the authority to issue a variance from requirements imposed by State law under Arkansas Code, Annotated (A.C.A.) 8–4–313. The EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently is proposing to take no action on this provision of State law. The EPA has no authority to approve provisions of State law, such as the variance provision referred to, which are inconsistent with the CAA. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through the procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based." The State provides a legal position on variances in the AG Opinion, Section XXIII, page 9. Historically, Arkansas has not granted a variance without approval from EPA. Counsel for the ADPCE commits to assure that variances are not granted to part 70 sources.

The Arkansas operating permits program is contained in Regulation 26, but several applicable requirements are found in Regulation 19 (e.g. PSD requirements at 19.9). The State of Arkansas has submitted a revision to Regulation 19 and the EPA is currently undertaking a review of the revision. The EPA will continue to work closely with the State to ensure consistency between the SIP permits system and operating permits systems in Arkansas. The EPA reserves comment on the SIP revision until such time as review is completed. A subsequent notice will be published in the Federal Register when the review is complete.

3. Permit Fee Demonstration

The State provided a detailed workload analysis and permit fee demonstration to justify the fee of $16 per ton per year. Federal guidance recommends a presumptive minimum fee of $25 per ton per year, based on 1989 dollars and adjusted annually by the Consumer Price Index (CPI). The fee will be applied to the allowable emissions at each part 70 source. Approximately $4.16 million dollars per year is expected to be generated by the Arkansas fee. This figure is based on the emissions inventory and does not include hazardous air pollutant (HAP) emission sources. Program costs are expected to run approximately $3.6 million dollars per year. The State utilized historical information concerning permitting costs and the emissions inventory to estimate the revenue required to fund the program. The EPA noted that the fee demonstration does not estimate resource needs for section 112 programs that will be promulgated in the near future. Expansion of the State program is anticipated to facilitate incorporation of these new requirements. The ADPCE has the authority to adjust the fee as necessary using the State administrative procedures as new applicable requirements are promulgated. The fee demonstration submitted by Arkansas meets the requirements at 40 CFR 70.4(b)(7) and (8).

4. Provisions Implementing the Requirements of Other Titles of the Act

The State of Arkansas acknowledges that its request for approval of a part 70 program is also a request for approval of a program for delegation of unchanged section 112 standards under the authority of section 112(l) as they apply to part 70 sources. Upon receiving approval under section 112(l), the State may receive delegation of any new authority required by section 112 of the Act through the delegation process.

The State also has the option at any time to request, under section 112(l) of the Act, delegation of section 112 requirements in the form of State regulations which the State demonstrates are equivalent to the corresponding section 112 provisions promulgated by the EPA. At this time, the State plans to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 requirements into its regulations.

The radionuclide NESHAP is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of "major" for radionuclide sources. Therefore, until a major source definition for radionuclides is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

Section 112(g) of the Act requires that, after the effective date of a permits program under title V, no person may construct, reconstruct or modify any major source of HAPs unless the State determines that the maximum achievable control technology emission limitation under section 112(g) will be met. Such determination must be made on a case-by-case basis where no applicable limitations have been established by the Administrator. During the period from the title V effective date to the date the State has taken appropriate action to implement the final section 112(g) rule (either adoption of the unchanged Federal rule or approval of an existing State rule under 112(l)), Arkansas intends to implement section 112(g) of the Act through the State's preconstruction process.

The State of Arkansas commits to appropriately implementing and enforcing the existing and future requirements of sections 111, 112 and 129 of the Act, and all maximum achievable control technology (MACT) standards promulgated in the future, in a timely manner.

The submittal was amended with a letter from J.B. Jones, Chief of the Air Division, ADPCE, to Gerald Fontenot, Chief of the Air Programs Branch, EPA, dated January 13, 1994. This letter commits the ADPCE to meet the January 1, 1995, deadline for incorporation and submittal of the Federal acid rain program into the State regulations.

5. Enforcement Provisions

The Arkansas operating permits program submittal addressed the enforcement requirements under Tab 5 of the submittal. This section contains, as required at 40 CFR 70.4(b)(4)(ii) and 70.4 (b)(5), the Enforcement Memorandum of Understanding, signed by the State and the EPA on May 3, 1993. This information serves to describe the current processes in place to track air permits and conduct enforcement actions. The State has committed to use the AIRS computer tracking system in the operating permits program. Under Tab 9 of the submittal, the State committed to annual submission of information concerning the State's enforcement activities. This submission, as required at 40 CFR 70.4(b)(9), includes the number of enforcement actions either commenced or concluded; the penalties, fines, and sentences obtained in those actions; and the number of administrative orders issued. The AG's Opinion under Tab 3 of the submittal clearly documents the State's authority to issue, inspect, and enforce operating permits in both civil and criminal actions. This statement of authority is required at 40 CFR 70.4(b)(3)(vii).

6. Technical Support Document

The results of this review will be shown in a document entitled "Technical Support Document," which will be available in the docket at the locations noted above. The technical support documentation shows that all operating permits program requirements of 40 CFR part 70 and relevant guidance were met by the submittal with the exception of those requirements described below.

7. Summary

The State of Arkansas submitted to the EPA, under a cover letter from the Governor, the State's operating permits program on November 9, 1993. The submittal has adequately addressed all sixteen elements required for full approval as discussed in part 70 with the exception of the issues described in section B below. The State of Arkansas addressed appropriately all requirements necessary to receive interim approval of the State operating permits program pursuant to title V of the Act, 1990 Amendments and 40 CFR part 70. The EPA is proposing interim approval for the operating permits program submittal for the State of Arkansas.

B. Options for Approval/Disapproval and Implications

The EPA is proposing to grant interim approval to the operating permits program submitted by the State of Arkansas on November 9, 1993. Interim approvals under section 502(g) of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. If promulgated, the State must make the following changes to receive full approval:

(1) *PSD Applicability.* As discussed in section A.2.a above, the provisions at Regulation 26.3(a)(3) should incorporate by reference the PSD requirements in the State regulations applicable to new construction and modification.

(2) *Incorporation by Reference.* As discussed in section A.2.b and A.2.e above, the State must formally incorporate the part 70 provisions referenced in Regulation 26 regarding complete application requirements and permit content requirements.

(3) *Minor Modification Procedures.* As discussed in section A.2.d above, the State must remove or revise the language at Regulation 26.10(b)(1).

(4) *Definition of "prompt".* As discussed in section A.2.e above, the State must define "prompt" with regard to reporting deviations in order to be consistent with the rule at 40 CFR 70.6(a)(3)(iii)(B).

(5) *Submission of Regulation 19.* As discussed in section A.2 above, The State of Arkansas must ensure consistency between the operating permits program, Regulation 26, and the SIP, Regulation 19.

Evidence of these regulatory revisions and their procedurally correct adoption must be submitted to EPA within 18 months of EPA's approval of the Arkansas operating permits program. This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, the State is protected from sanctions for failure to have a program, and the EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to 40 CFR part 70, and the one year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three year time period for processing the initial permit applications.

If the interim approval is converted to a disapproval, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the EPA's disapproval of the submittal does not impose a new Federal requirement. Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) approval requirements for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under 40 CFR part 70.

III. Proposed Rulemaking Action

In this action, EPA is proposing interim approval of the operating permits program submitted by the State of Arkansas. The program was submitted by the State to EPA for the purpose of complying with Federal requirements found at the 1990 Amendments, title V and at part 70, which mandates that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and certain other sources, with the exception of Indian Lands. Therefore, the EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

EPA has reviewed this submittal of the Arkansas operating permits program and is proposing interim approval. Certain defects in the State's regulations preclude EPA from granting full approval of the State's operating permits program at this time. EPA is proposing to grant interim approval, subject to the State obtaining the needed regulatory revisions within 18 months after the Administrator's approval of the Arkansas title V program pursuant to 40 CFR 70.4.

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IV. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed rule. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, the EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and

(2) To serve as the record in case of judicial review.

The EPA will consider any comments received by October 19, 1994.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysisassessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Operating permits program approvals under section 502 of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal operating permits program approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions concerning operating permits programs on such grounds. (*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct 1976); 42 U.S.C. 7410(a)(2)).

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits.

Authority: 42 U.S.C. 7401–7671q.

Date: September 7, 1994.

Joe D. Winkle,

Acting Regional Administrator (6A).

[FR Doc. 94–23117 Filed 9–16–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 745

[OPPTS–62134B; FRL–4906–9]

Rin 2070–AC21

Lead Fishing Sinkers; Notice of Informal Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; informal hearing.

SUMMARY: On March 9, 1994, at 59 FR 11122, EPA published a proposed rule to prohibit the manufacturing, processing, and distribution in commerce in the United States of certain smaller fishing sinkers containing lead and zinc, alone or mixed with other substances, including those made of brass. In that notice, the Agency stated that it would hold an Informal hearing if persons requested time for oral comment. EPA has received requests for a hearing on the proposed rule and will hold a 2–day public hearing.

DATES: The hearing will take place on November 30 and December 1, 1994, from 10 a.m. until 4 p.m. Written requests to participate in the hearing, including written requests for a waiver to participate, must be received no later than November 9, 1994. Reply comments must be received on or before December 15, 1994.

ADDRESSES: The hearing will be held at the Omni Shoreham Hotel, 2500 Calvert St., NW., Washington, DC. Three copies of any request to participate in the informal hearing, identified with docket number OPPTS–62134B must be submitted to: TSCA Docket Receipt (7407), Office of Pollution Prevention and Toxics, Rm. E–G99, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Requests for a waiver to participate in the informal hearing by those organizations that did not file main comments must be sent to EPA Headquarters Hearing Clerk, Mail Code 1900, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–G99, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: The procedures for rulemaking under section 6 of the Toxic Substances Control Act (TSCA) are identified in 40 CFR part 750, subpart A. The following summarizes the procedures and logistics associated with this informal hearing pursuant to 40 CFR part 750. Participants and/or commenters are advised to see 40 CFR part 750 for greater detail.

Each person or organization desiring to participate in the informal hearing shall file a written request to participate with the OPPT Document Control Officer, TSCA Docket Receipts, Office of Pollution Prevention and Toxics, Rm. E–G99, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. The request must be received by the Agency no later than November 9, 1994. The request shall include: (1) A brief statement of the interest of the person or organization in the proceeding; (2) a brief outline of the points to be addressed; (3) an estimate of the time required; and (4) if the request comes from an organization, a non-binding list of the persons to take part in the presentation. Organizations are requested to bring with them, to the extent possible, employees with individual expertise in and responsibility for each of the areas to be addressed. An organization that has not filed main comments on the rulemaking will not be allowed to participate in the hearing, unless a waiver of this requirement is granted in writing by the Record and Hearing Clerk or the organization is appearing at the request of EPA or under subpoena (40 CFR 750.6(a)).

A panel of EPA employees shall preside at the hearing, and one panel member will chair the proceedings. The panel may question any individual or group participating in the hearing on any subject relating to the rulemaking. Opening statements should be brief and restricted to points that could not have been made in main comments, or to emphasize points which are made in main comments, but which the participant believes can be more forcefully urged in the hearing context. Persons in the hearing audience may submit questions in writing for the hearing panel to ask the participants, and the hearing panel may, at their discretion, ask these questions (40 CFR 750.7(a) and (b)). See 40 CFR 750.7(c) for the rule governing the submission of additional material by the hearing participants.

After the close of the hearing, any participant in the hearing may submit a written request for cross-examination. The request shall be received by EPA no later than 1 week after a full transcript of the hearing becomes available (to determine when the transcript is available, interested persons should call the number listed under **FOR FURTHER INFORMATION CONTACT**). See 40 CFR 750.8(a) for a description of the information that shall be included in such a request.

Interested persons may file reply comments. Reply comments shall be received on or before December 15, 1994, and shall be restricted to comments on: (1) Other comments; (2) material in the hearing record; and (3) material which was not available to the commenting party within a sufficient amount of time before main comments were due on July 8, 1994 (40 CFR 750.4(b)). Extensions of time for filing reply comments may be granted pursuant to 40 CFR 750.4(c). Reply comments and a transcript of the hearing will be placed in the TSCA Nonconfidential Information Center as part of the rulemaking record for the proposed rule (docket number OPPTS-62134) and will be available for inspection and copying (see TSCA Docket Receipt Office listed under ADDRESSES). Any information claimed as Confidential Business Information (CBI) that is part of the record for this rulemaking is not available for public review. A public version of the record, from which information claimed as CBI has been excluded, is available for inspection.

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead, Recordkeeping and notification requirements.

Dated: September 12, 1994.

Mark Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–23116 Filed 9–16–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 940953–4253; I.D. 081594A]

RIN 0648–AE52

Snapper-Grouper Fishery Off the Southern Atlantic States

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 7 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This rule would change the minimum size limits of certain species, require charter vessels/headboats and dealers to obtain Federal permits, clarify one of the earned income requirements for a vessel permit, restrict the sale/purchase of snapper-grouper species, modify the criteria for determining when a vessel is operating as a headboat, modify the requirements for possessing multi-day bag limits, specify allowable gear, authorize permits for experimental fishing, and modify the management unit for scup. In addition, NMFS proposes changes to correct and clarify certain regulations, or conform them to current standards. The intended effects of this rule are to conserve snapper-grouper species and enhance effective management of the snapper-grouper fishery.

DATES: Written comments must be received on or before October 31, 1994.

ADDRESSES: Comments on the proposed rule must be sent to Peter J. Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702.

Requests for copies of Amendment 7, which includes a regulatory impact review and an environmental assessment, should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; FAX 803–769–4520.

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–570–5305.

SUPPLEMENTARY INFORMATION: Snapper-grouper species off the southern Atlantic states are managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council), and is implemented through regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Background

Recent scientific stock assessments and public testimony have identified a number of snapper-grouper species as being overfished. The management measures in Amendment 7 are designed to prevent this overfishing, rebuild the overfished species, and manage the fishery in a more orderly manner.

Size Limits for Hogfish and Mutton Snapper

Amendment 7 would establish a minimum size limit of 12 inches (30.5 cm), fork length, for hogfish and increase the minimum size limit for mutton snapper from 12 inches (30.5 cm) to 16 inches (40.6 cm), total length. The proposed 12-inch (30.5-cm) minimum size limit for hogfish is based on the minimum size/age at which hogfish transform from female to male. The proposed 16-inch (40.6-cm) minimum size limit for mutton snapper corresponds to the size/age of sexual maturity. Sex transformation of hogfish and sexual maturity for mutton snapper are essential to prevent overfishing and maintain the productivity of these species. In addition, the proposed minimum size limits would increase yield-per-recruit for each species.

Annual Charter Vessel and Headboat Permits

Amendment 7 would require a vessel that operates as a charter vessel or headboat in the snapper-grouper fishery in the exclusive economic zone (EEZ), or that possesses fish in the snapper-grouper fishery in or from the EEZ while so operating, to have on board a charter vessel/headboat permit for such fishery. Charter vessels and headboats catch substantial quantities of snapper-grouper species, and it is essential that these landings be documented for assessment purposes. A permit system would provide a census for this sector of the fishery.

Annual Dealer Permits

Amendment 7 would require a dealer to obtain a permit in order to receive snapper-grouper species, excluding wreckfish, that are harvested in the EEZ.

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Currently, a permit is required for a dealer to receive wreckfish. To be eligible for a dealer permit for snapper-grouper, excluding wreckfish, an applicant would have to have a valid state wholesaler's license in the state where he or she operates and a physical facility for the receipt of fish at a fixed location in that state. Dealer permits for snapper-grouper, excluding wreckfish, would (1) Improve quota monitoring by providing a census of snapper-grouper dealers, (2) enhance the enforceability of commercial trip limits for snowy grouper and golden tilefish, and (3) aid in verifying required fishing vessel logbook submissions.

Earned Income Requirement for Commercial Permits

Amendment 7 proposes to clarify the gross-sales-of-fish alternative requirement for a vessel permit for snapper-grouper, excluding wreckfish. Currently, an applicant may show gross sales of fish exceeding $20,000 during 1 of the 3 years preceding the application. Under Amendment 7, such sales would have to be of fish harvested by the applicant for the permit. The Council is concerned that some vessel owners may have obtained permits through the artifice of purchasing and reselling fish harvested by others. Such practice does not meet the Council's intent for qualifying for a permit. In FMP Amendment 4, the Council clearly stated that the income and gross sales requirements are intended to allow those who are committed to commercial fishing, in terms of capital investment or earned income, to continue making their livelihood from fishing. Specifically, the Council intends that the commercial fishing permits be for those vessels whose owners or operators have a history of income from harvesting and selling fish.

Restrictions on Sale/Purchase of Snapper-Grouper

Amendment 7 proposes requirements that snapper-grouper species, excluding wreckfish, harvested in the EEZ (1) Be sold only to a dealer with a valid permit for snapper-grouper, excluding wreckfish; and (2) be purchased only from a vessel that has a valid permit for snapper-grouper, excluding wreckfish, or from a person with a valid state commercial license to sell fish. In addition, sale/purchase of such fish would be limited to the bag limit amounts unless sale/purchase involved snapper-grouper harvested by a vessel with a valid permit for snapper-grouper, excluding wreckfish. These measures would improve fishery statistics that will be used in assessments of the biological condition of snapper-grouper species. The improved data base will also allow scientists to estimate more accurately the social and economic value of various fishing sectors. Economic and social analyses based on fishery statistics allow managers to evaluate the effectiveness of management measures.

Headboat Crew Specification

The current regulations specify that, if a headboat has a vessel permit for snapper-grouper, excluding wreckfish, it is considered to be operating as a headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew. When operating as a headboat, the bag limits apply. Amendment 7 proposes to remove the specification of three persons aboard and, in its place, allow the number of persons aboard to be up to the number of crew specified in the vessel's Certificate of Inspection. This measure would, in some cases, allow a permitted headboat to be exempt from the bag limits when it has more than three persons aboard. The Council believes that the number of crew specified on the Certificate of Inspection would allow safer operation of the vessel when fishing and, to the extent that the number of crew allowed exceeds three, should improve the economic efficiency of affected headboats if they operate as commercial fishing vessels.

Possession Limits

A current criterion for the possession aboard a charter vessel or headboat of multi-day bag limits is that the vessel have two licensed operators aboard. Amendment 7 would delete this criterion. The Council believes the two-licensed operators aboard criterion has no reasonable biological or management correlation with multi-day bag limits. NMFS believes that this action should have little impact on the fishery, notwithstanding the Council's indication in Amendment 7 that this measure possibly may decrease income to operators/owners of charter vessels and headboats.

Gear Limitations

Under Amendment 7, the only gear authorized in a directed fishery for snapper-grouper species would be vertical hook-and-line gear, including hand-held rods and rods attached to a vessel (bandit gear), in either case, with manual, electric, or hydraulic reels; spearfishing gear; bottom longlines; and sea bass pots. All other gear would be prohibited. Limits would be imposed on the possession and transfer of snapper-grouper species by vessels with unauthorized gear aboard. An exception to the possession limits would apply in the case of a permitted vessel that fishes in the EEZ off North Carolina with a sink net aboard.

In addition, the use of bottom longlines to fish for snapper-grouper species in the EEZ south of St. Lucie Inlet, FL, would be prohibited; the use of powerheads to harvest snapper-grouper species in the EEZ off South Carolina would be prohibited; and the use of rebreathers to harvest snapper-grouper species with spearfishing gear in the EEZ off the southern Atlantic states would be prohibited.

The concept of allowable gear allows managers to regulate the fishery more efficiently by enabling managers to test gear before it becomes widespread. This concept would enhance law enforcement by establishing standard gear. Environmental damage to the habitat would be minimized because gear would have to be evaluated before it could be used. Testing of experimental gear would minimize the possibility that very efficient gear could cause recruitment failure of the snapper grouper resource if it were allowed to be used throughout the fishery.

The exception applicable to the use of sink nets off North Carolina would allow fishermen in that area to operate with multiple gears on a trip, that is, it would allow retention of snapper-grouper harvested with sea bass pots and/or vertical hook-and-line gear and fish harvested with a sink net. A sink net has virtually no bycatch of snapper-grouper species and is continuously tended, which minimizes the possibility of lost gear and ghost fishing. Therefore, the Council believes that sink nets, as used off North Carolina, do not pose the problems to the snapper-grouper fishery normally associated with entanglement nets. This exception would improve the economic efficiency of fishermen in North Carolina who are accustomed to using sink nets and authorized gear on a trip.

The Council is proposing to ban the use of bottom longlines to fish for snapper-grouper species south of St. Lucie, FL, to increase the standing stock of tilefish in that area. The Council believes that the prohibition of bottom longlines will decrease fishing mortality on tilefish; hence, it should aid in the prevention of growth and recruitment overfishing. Also, the Council believes that banning bottom longline gear will reduce competition among traditional bandit gear commercial fishermen, recreational anglers, and longline fishermen and will result in reduced habitat damage. The Council noted that

the continental shelf edge is quite narrow south of St. Lucie Inlet, and does not want a bottom longline fishery to develop that would lead to conflict among the competing user groups in that area.

South Carolina prohibits the use of powerheads in its waters, and powerheads cannot be used in the special management zones in the EEZ off South Carolina. The Council's proposed ban on the use of powerheads in the entire EEZ off South Carolina is intended to enhance enforceability of the prohibition of powerheads in State waters. This measure would result in consistent State and Federal regulations off South Carolina. The Council also believes that the ban on use of powerheads in the EEZ would reduce conflict between recreational and commercial divers that appears to be a particular problem in the EEZ off South Carolina.

The Council believes that the use of rebreathers significantly increases the efficiency of divers using spearfishing gear. The use of rebreathers eliminates bubbles, thus allowing divers to stalk fish more easily. The Council is concerned about the status of gag, which are particularly vulnerable to divers when they aggregate to spawn. The prohibition of rebreathers would lessen fishing mortality on the spawning aggregations, which will assist in prevention of recruitment overfishing. Amberjack are also targeted by divers during spawning periods, and this measure would also reduce fishing mortality on that species and lessen the chance of recruitment overfishing.

Experimental Fishing

Under Amendment 7, the Director, Southeast Region, NMFS, (Regional Director,) would be authorized to issue permits for experimental fishing, provided that, as a condition of such permits, data on the gear used and fish caught in such experimental fishing must be maintained and provided to the Science and Research Director. Experimental fishing would provide an opportunity to test new gear for possible authorization for use in the snapper-grouper fishery.

Management Unit for Scup

Amendment 7 proposes to modify the management unit for scup, *Stenotomus chrysops*, so that management under the FMP would apply only south of Cape Hatteras. Scup are found from the North/South Carolina border to the U.S.-Canada border with a division of stocks at Cape Hatteras. The northern stock of scup is overfished and the Mid-Atlantic Fishery Management Council is considering measures to rebuild that stock. The proposed modification of the management unit would allow the Mid-Atlantic Council to manage the northern stock of scup throughout its range. This is a conservation measure that would result in more efficient management of this resource.

Comments Requested

While NMFS is inviting comments on all of the measures in Amendment 7, comments are specifically invited on the following concerns about provisions of the allowable gear measure. (1) What are the effects of prohibiting the use of bottom longlines south of St. Lucie Inlet, FL ? (2) What are the effects of prohibiting the use of powerheads in the EEZ off South Carolina?

Additional Measures in Amendment 7

In addition to the measures in this rule, discussed above, Amendment 7 would add localized depletion to the FMP's list of problems in the snapper-grouper fishery. It would add FMP objectives to evaluate and minimize localized depletion and modify the framework procedure for implementing or adjusting certain management measures to allow the Council to react more quickly to changing resource conditions. The proposed change to the framework procedure would allow the Council to initiate and implement necessary changes at any time during the fishing year instead of only prior to each fishing year. Revision of 50 CFR part 646 is not required to effect these changes.

Background and rationale for the additional measures in Amendment 7, and for the measures in this rule, discussed above, are contained in Amendment 7, the availability of which was announced in the Federal Register (59 FR 42570, August 18, 1994).

Additional Measures Proposed by NMFS

NMFS proposes to change the title of part 646 to "Snapper-Grouper Fishery Off the Southern Atlantic States," with concomitant changes of the language in the codified text, to more correctly indicate the geographical scope of the regulations.

The address in the definition of "Regional Director" would be changed to reflect a recent move.

The requirement that an applicant for a dealer permit for wreckfish must have a physical facility at a fixed location would be changed to clarify that such facility must be for the receipt of fish, rather than merely a mailing address.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a Council within 15 days of receipt of the amendment and regulations. At this time, NMFS has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities because neither gross revenues nor compliance costs would be significantly changed. All participants in the fishery are small entities. As a result, a regulatory flexibility analysis was not prepared.

This rule contains three collection-of-information requirements subject to the Paperwork Reduction Act—namely, applications for charter vessel/headboat permits, applications for dealer permits, and applications for experimental fishing permits. These requirements have been submitted to the Office of Management and Budget (OMB) for approval. The public reporting burdens for these collections of information are estimated to average 20 minutes, 5 minutes, and 1 hour per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding these reporting burden estimates or any other aspect of these collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see ADDRESSES).

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 13, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 646 is proposed to be amended as follows:

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PART 646—SNAPPER-GROUPER FISHERY OFF THE SOUTHERN ATLANTIC STATES

1. The authority citation for part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

PART 646—[AMENDED]

2. The title of part 646 is revised to read "Snapper-Grouper Fishery Off the Southern Atlantic States".

3. In § 646.1, in paragraph (a) add the word "Region" after the phrase "Snapper-Grouper Fishery of the South Atlantic"; paragraph (b) is revised; and new paragraph (c) is added to read as follows:

§ 646.1 Purpose and scope.

* * * * *

(b) This part governs conservation and management of fish in the snapper-grouper fishery in or from the EEZ off the southern Atlantic states, except that—

(1) Sections 646.5 and 646.24 also apply to such fish in or from adjoining state waters; and

(2) This part does not apply to scup north of 35°15.3′ N. lat., the lat. of Cape Hatteras Light, NC.

(c) EEZ in this part 646 refers to the EEZ off the southern Atlantic states, unless the context clearly indicates otherwise.

4. In § 646.2, the definition of "South Atlantic" is removed; the definitions of "Charter vessel," "Headboat," and "Regional Director" are revised; and new definitions of "Off North Carolina," "Off South Carolina," and "Off the southern Atlantic states" are added, in alphabetical order, to read as follows:

§ 646.2 Definitions.

* * * * *

Charter vessel means a vessel less than 100 gross tons (90.8 metric tons) that meets the requirements of the Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

* * * * *

Headboat means a vessel that holds a valid Certificate of Inspection issued by the Coast Guard to carry passengers for hire. A headboat is considered to be operating as a headboat when it carries a passenger who pays a fee or when there are more persons aboard than the number of crew specified in the vessel's Certificate of Inspection.

Off North Carolina means the waters off the east coast from 36°34′55″ N. lat. (extension of the boundary between Virginia and North Carolina) to a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 78°32′32.6″ W. long.

Off South Carolina means the waters off the east coast from a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 78°32′32.6″ W. long. to a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary.

Off the southern Atlantic states means the waters off the east coast from 36°34′55″ N. lat. (extension of the boundary between Virginia and North Carolina) to the boundary between the Atlantic Ocean and the Gulf of Mexico, as specified in § 601.11(c) of this chapter.

* * * * *

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702, telephone 813–570–5301; or a designee.

* * * * *

5. In § 646.4, paragraphs (e) through (m) are redesignated as paragraphs (f) through (n), respectively; paragraphs (a)(3), (b)(2)(vii)(B), (b)(2)(vii)(C), (d), the first sentences of newly designated paragraphs (f), (g)(1), (i)(1), and (i)(2), newly designated paragraph (j), and the first sentence of newly redesignated paragraph (n) are revised; and new paragraphs (e)(4), (a)(5), and (e) are added to read as follows:

§ 646.4 Permits and fees.

(a) * * *

(3) *Annual charter vessel/headboat permits for snapper-grouper.* A vessel that is operating as a charter vessel or headboat that fishes for fish in the snapper-grouper fishery in the EEZ, or possesses fish in the snapper-grouper fishery in or from the EEZ, must have on board a charter vessel/headboat permit for the snapper-grouper fishery.

(4) *Annual dealer permits for snapper-grouper, excluding wreckfish.* A dealer who receives fish in the snapper-grouper fishery, excluding wreckfish, that were harvested in the EEZ must obtain an annual dealer permit for snapper-grouper, excluding wreckfish. To be eligible for such permit, an applicant must have a valid state wholesaler's license in the state where he or she operates and must have a physical facility for the receipt of fish at a fixed location in that state.

(5) *Annual dealer permits for wreckfish.* A dealer who receives a wreckfish must obtain an annual dealer permit for wreckfish. To be eligible for such permit, an applicant must have a valid state wholesaler's license in the state where he or she operates and must have a physical facility for the receipt of fish at a fixed location in that state.

(b) * * *

(2) * * *

(vii) * * *

(B) Gross sales of fish harvested by his or her vessels were more than $20,000; or

(C) For a vessel owned by a corporation or partnership, the gross sales of fish harvested by the corporation's or partnership's vessels were more than $20,000;

* * * * *

(d) *Application for a charter vessel/headboat permit for snapper-grouper.* (1) An application for a charter vessel/headboat permit for fish in the snapper-grouper fishery must be submitted and signed by the owner (in the case of a corporation, a qualifying officer or shareholder; in the case of a partnership, a qualifying general partner) or operator of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate.

(ii) The vessel's name and official number.

(iii) Name, mailing address, including zip code, and telephone number of the owner of the vessel.

(iv) Name, mailing address, including zip code, and telephone number of the applicant, if other than the owner.

(v) Social security number and date of birth of the applicant and the owner (if the owner is a corporation/partnership, the employer identification number, if one has been assigned by the Internal Revenue Service, and the date the corporation/partnership was formed).

(vi) Any other information concerning vessel, gear characteristics, principal fisheries engaged in, or fishing areas requested by the Regional Director and included on the application form.

(vii) Any other information that may be necessary for the issuance or administration of the permit, as requested by the Regional Director and included on the application form.

(e) *Application for an annual dealer permit.* (1) An application for a dealer permit for snapper-grouper, excluding wreckfish, or for a dealer permit for wreckfish must be submitted and signed by the dealer or an officer of a corporation acting as a dealer. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of each state wholesaler's license held by the dealer.

(ii) Business name; mailing address including zip code, of the principal office of the business; telephone number; employer identification number, if one has been assigned by the Internal Revenue Service; and date the business was formed.

(iii) The address of each physical facility at a fixed location where the business receives fish.

(iv) Applicant's name; official capacity in the business, address, including zip code; telephone number; social security number; and date of birth.

(v) Any other information that may be necessary for the issuance or administration of the permit, as requested by the Regional Director and included on the application form.

(f) * * * A fee is charged for each permit application submitted pursuant to this section and for each sea bass pot identification tag required under § 646.6(d). * * *

(g) * * *

(1) The Regional Director will issue a permit at any time to an applicant if the application is complete and the specific requirements for the requested permit have been met. * * *

* * * * *

(i) * * *

(1) A vessel permit issued pursuant to this section is not transferable or assignable. * * *

(2) A dealer permit issued pursuant to this section may be transferred upon sale of the dealer's business. * * *

(j) *Display.* A vessel permit issued pursuant to this section must be carried on board the vessel and such vessel must be identified as provided for in § 646.6. A dealer permit issued pursuant to this section must be available on the dealer's premises. The operator of a vessel or a dealer must present the permit for inspection upon request of an authorized officer.

* * * * *

(n) * * * The owner or operator of a vessel with a permit for snapper-grouper, excluding wreckfish; the wreckfish shareholder of a vessel with a permit for wreckfish; the owner or operator of a vessel with a charter vessel/headboat permit for snapper-grouper; or a dealer with a permit issued pursuant to this section must notify the Regional Director within 15 days after any change in the application information required by paragraph (b), (c), (d), or (e) of this section. * * *

§ 646.5 [Amended]

6. In § 646.5, in paragraphs (b) and (c)(1), the phrase "off the South Atlantic states" is removed.

7. In § 646.7, paragraph (dd) is removed; paragraphs (g) through (cc) are redesignated as paragraphs (h) through (ddd), respectively; paragraphs (ii) through (ss) are redesignated as paragraphs (pp) through (ww), respectively; paragraphs (jj) and (kk) are redesignated as paragraphs (kk) and (ll), respectively; in newly designated paragraph (pp), the reference to "§ 646.26" is revised to read "§ 646.27"; in newly designated paragraph (qq), the reference to "§ 646.26" is revised to read "§ 646.27"; paragraphs (c) through (f) and (ee) through (ii) are revised; and new paragraphs (g), (jj), and (mm) through (oo) are added to read as follows:

§ 646.7 Prohibitions.

* * * * *

(c) Own or operate a vessel that operates as a charter vessel or headboat that fishes for snapper-grouper species in the EEZ, or possesses snapper-grouper species in or from the EEZ, without a charter vessel/headboat permit on board, as specified in § 646.4(a)(3).

(d) As a dealer, receive fish in the snapper-grouper fishery without a dealer permit, as specified in § 646.4(a)(4) or (e)(5).

(e) Falsify information specified in § 646.4(b)(2) (vi)(2), (vii)(2), (e)(2) on an application for a permit.

(f) Fail to display a permit, as specified in § 646.4(j).

(g) Falsify or fail to maintain, submit, or provide information required to be maintained, submitted, or provided, as specified in § 646.5 (a) through (d), or as may be required by § 646.29.

* * * * *

(ee) Use a longline to fish for fish in the snapper-grouper fishery in the EEZ south of 27°10′ N. lat., in the EEZ north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), or without a vessel permit for snapper-grouper, excluding wreckfish, on board; or, aboard a vessel with a longline on board that fishes on a trip in the EEZ south of 27°10′ N. lat., in the EEZ north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), or without such vessel permit on board, possess fish in the snapper-grouper fishery exceeding the limits, as specified in § 646.22(d)(1)(ii).

(ff) Fish for wreckfish with a bottom longline, or possess a wreckfish aboard a vessel that has a longline aboard, as specified in § 646.22(d)(2).

(gg) In the EEZ off South Carolina, harvest fish in the snapper-grouper fishery with a powerhead, as specified in § 646.22(e).

(hh) Harvest fish in the snapper-grouper fishery with spearfishing gear while using a rebreather, as specified in § 646.22(f).

(ii) Use unauthorized gear in a directed fishery for snapper-grouper or exceed the possession limits for snapper-grouper species when unauthorized gear is aboard, as specified in § 646.22(g)(2) (i) and (ii).

(jj) Transfer at sea any fish in the snapper-grouper fishery from a vessel with unauthorized gear aboard to another vessel, or receive at sea any such fish, as specified in § 646.22(g)(2) (iii) and (iv).

* * * * *

(mm) Sell, trade, or barter or attempt to sell, trade, or barter snapper-grouper species, excluding wreckfish, harvested in the EEZ to a dealer who does not have a permit, as specified in § 646.26(a).

(nn) Purchase, trade, or barter or attempt to purchase, trade, or barter snapper-grouper species, excluding wreckfish, harvested in the EEZ unless the harvesting vessel has a permit for snapper-grouper, excluding wreckfish, or the seller has a commercial quantity of such fish, as specified in § 646.26(b).

(oo) Except for snapper-grouper species harvested by a vessel for which a permit for snapper-grouper, excluding wreckfish, has been issued, sell, purchase, trade, or barter or attempt to sell, purchase, trade, or barter snapper-grouper species, excluding wreckfish harvested in the EEZ in excess of the bag limits, as specified in § 646.26(c).

* * * * *

8. In § 646.21, paragraphs (a)(1)(iv), (a)(1)(v), and (a)(1)(vi) are redesignated as paragraphs (a)(1)(v), (a)(1)(vii), and (a)(1)(viii), respectively, paragraph (a)(1)(iii) is revised; and new paragraphs (a)(1)(iv) and (a)(1)(vi) are added to read as follows:

§ 646.21 Harvest limitations.

(a) * * *

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(1) * * *

(iii) Blackfin, cubera, dog, gray, mahogany, queen, schoolmaster, silk, and yellowtail snappers; and red porgy—12 inches (30.5 cm), total length.

(iv) Hogfish—12 inches (30.5 cm), fork length.

* * * * *

(vi) Mutton snapper—16 inches (40.6 cm), total length.

* * * * *

9. In § 646.22, paragraphs (d), (e), and (f) are removed; paragraph (g) is redesignated as paragraph (d); in newly designated paragraph (d)(1)(iii), the reference to "paragraph (g)(1)" is revised to read "paragraph (d)(1)(ii)"; newly designated paragraphs (d)(1)(i) and (d)(1)(ii) introductory text are revised; and new paragraphs (e), (f), (g), and (h) are added to read as follows:

§ 646.22 Gear restrictions.

* * * * *

(d) * * *

(1) * * *

(i) A longline may not be used to fish for fish in the snapper-grouper fishery in the EEZ—

(A) South of 27°10′ N. lat. (due east of the entrance to St. Lucie Inlet, FL);

(B) North of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), as shown on the latest edition of the largest scale NOAA chart of the location; or

(C) Without a permit for snapper-grouper, excluding wreckfish, on board.

(ii) A person aboard a vessel with a longline on board that fishes on a trip in the EEZ south of 27°10′ N. lat., north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), or without a permit for snapper-grouper, excluding wreckfish, on board, is limited on that trip to:

* * * * *

(e) *Powerheads off South Carolina.* In the EEZ off South Carolina, a powerhead may not be used to harvest fish in the snapper-grouper fishery. The possession of a mutilated fish in the snapper-grouper fishery in or from the EEZ off South Carolina and a powerhead is *prima facie* evidence that such fish was harvested by a powerhead.

(f) *Rebreathers and spearfishing gear.* In the EEZ, a person using a rebreather may not harvest fish in the snapper-grouper fishery with spearfishing gear. The possession of a fish in the snapper-grouper fishery while in the water with a rebreather is *prima facie* evidence that such fish was harvested with spearfishing gear while using a rebreather.

(g) *Authorized and unauthorized gear.*—(1) *Authorized gear.* Subject to the specific gear limitations in paragraphs (a) through (f) of this section and in § 646.26, the following are the only gear types authorized in a directed fishery for snapper-grouper in the EEZ:

(i) Vertical hook-and-line gear, including hand-held rods and rods attached to a vessel ("bandit" gear), in either case, with manual, electric, or hydraulic reels;

(ii) Spearfishing gear;

iii) Bottom longlines; and

(iv) Sea bass pots.

(2) *Unauthorized gear.* All gear types other than those listed in paragraph (g)(1) of this section are unauthorized gear and the following possession and transfer limitations apply:

(i) A vessel with trawl gear aboard that fishes in the EEZ on a trip may possess no more than 200 lb (90.7 kg) of fish in the snapper-grouper fishery, excluding wreckfish, in or from the EEZ on that trip. It is a rebuttable presumption that a vessel with more than 200 lb (90.7 kg) of fish in the snapper-grouper fishery, excluding wreckfish, aboard harvested such fish in the EEZ.

(ii) Except as specified in paragraph (h) of this section, a person aboard a vessel with unauthorized gear aboard, other than trawl gear, that fishes in the EEZ on a trip is limited on that trip to:

(A) Species for which a bag limit is specified in § 646.23(b)—the bag limit; and

(B) All other species in the snapper-grouper fishery—zero.

(iii) A vessel with unauthorized gear aboard may not transfer at sea any fish in the snapper-grouper fishery—

(A) Taken in the EEZ, regardless of where the transfer takes place; or

(B) In the EEZ, regardless of where such fish were taken.

(iv) No vessel may receive at sea any fish in the snapper-grouper fishery from a vessel with unauthorized gear aboard, as specified in paragraph (g)(2)(iii) of this section.

(h) *Use of sink nets off North Carolina.* A vessel that has on board a permit for snapper-grouper, excluding wreckfish, that fishes in the EEZ off North Carolina on a trip with a sink net aboard, may retain otherwise legal fish in the snapper-grouper fishery taken on that trip with vertical hook-and-line gear or sea bass pots. For the purpose of this paragraph (h), a sink net—

(i) Is a flat net, designed to be suspended vertically in the water to entangle the head or body parts of fish that attempt to pass through the meshes;

(ii) Has stretched mesh measurements of 3 to 4¼ inches (7.6 to 12.1 cm); and

(iii) Is attached to the vessel when deployed.

10. In § 646.23, paragraphs (a)(2) and (a)(3) are removed; paragraph (a)(4) is redesignated as paragraph (a)(3); new paragraph (a)(2) is added; and paragraph (c)(2) introductory text is revised to read as follows:

§ 646.23 Bag and possession limits.

(a) * * *

(2) Special limitations on possession and transfer of fish in the snapper-grouper fishery apply to a person fishing with unauthorized gear in the EEZ. See § 646.22(g)(2).

* * * * *

(c) * * *

(2) Provided each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the duration of the trip—

* * * * *

§§ 646.26, 646.27, and 646.28 [Redesignated as §§ 646.27 through 646.29]

11. Sections 646.26, 646.27, and 646.28 are redesignated as §§ 646.27, 646.28, and 646.29, respectively.

12. In subpart B, new § 646.26 is added to read as follows:

§ 646.26 Restrictions on sale/purchase.

Subject to the restrictions regarding sale/purchase of fish in the snapper-grouper fishery in § 646.21(a)(2), (g), and (j)(3), and § 646.25(f)—

(a) A person may sell, trade, or barter or attempt to sell, trade, or barter fish in the snapper-grouper fishery, excluding wreckfish, harvested in the EEZ, only to a dealer who has a valid permit for snapper-grouper, excluding wreckfish;

(b) A person may purchase, trade, or barter or attempt to purchase, trade, or barter fish in the snapper-grouper fishery, excluding wreckfish, harvested in the EEZ, only from a vessel for which a valid permit for snapper-grouper, excluding wreckfish, has been issued or from a person who has a valid commercial license to sell fish in the state where the purchase, trade, or barter or attempted purchase, trade, or barter occurs.

(c) Except for the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of fish in the snapper-grouper fishery, excluding wreckfish, harvested in the EEZ by a vessel for which a valid permit for snapper-grouper, excluding wreckfish, has been issued, the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of such fish is limited to the bag limits specified in § 646.23(b).

§ 646.28 [Amended]

13. In newly designated § 646.28, add the word Region" after the words "South Atlantic" and before the comma.

14. Newly designated § 646.29 is revised to read as follows:

§ 646.29 Specifically authorized activities.

The Regional Director may authorize, for the acquisition of information and data, activities that are otherwise prohibited by this part. In addition, the Regional Director may issue a permit for experimental fishing, provided that, as a condition of such permit, data on the gear used and fish caught in such experimental fishing must be maintained and provided to the Science and Research Director.

[FR Doc. 94–23111 Filed 9–15–94; 9:04 am]
BILLING CODE 3510–22–P

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Notices

Federal Register
Vol. 59, No. 180
Monday, September 19, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of two meetings of the Committee on Governmental Processes of the Administrative Conference of the United States.

DATES: Friday, September 30, 1994, at 1:30 p.m. and Tuesday, October 25, 1994, at 2:00 p.m.

LOCATION: Office of the Chairman, Administrative Conference of the United States, suite 500, 2120 L Street, NW., Washington, DC. (Library, 5th Floor).

FOR FURTHER INFORMATION: Deborah S. Laufer, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Committee will meet to begin consideration of when federal government lawyers may participate in pro bono activities. There are possible restrictions in the Code of Professional Responsibility, in agency regulations governing outside activities, and in government-wide rules concerning use of government instrumentalities. The committee will start its discussion by reviewing a 1991 report on the subject written by consultant Professor Lisa Lerman of Catholic University School of Law.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should call the Office of the Chairman of the Administrative Conference at least one day before the meeting. The committee chair, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available upon request.

Dated: September 14, 1994

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 94–23194 Filed 9–16–94; 8:45 am]

BILLING CODE 6110–01–W

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94–090–1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service during the month of July 1994. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245. For a copy of this month's list, or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month, the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of July 1994. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 13th day of September 1994.

Terry E. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–23118 Filed 9–16–94; 8:45 am]

BILLING CODE 3410–34–P

Soil Conservation Service

Waimea-Paauilo Watershed, County of Hawaii, Hawaii; Intent To Prepare an Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Waimea-Paauilo Watershed, Hawaii County, Hawaii.

FOR FURTHER INFORMATION CONTACT: Kenneth Kaneshiro, State Conservationist, Soil Conservation Service, Room 4316, 300 Ala Moana Blvd, Honolulu, HI 96850, telephone (808) 541–2600.

SUPPLEMENTARY INFORMATION: An environmental evaluation of this federally assisted action indicates that the project may cause significant impacts on the environment. As a result, Kenneth Kaneshiro, State Conservationist has determined that the preparation and review of an environmental impact statement is needed for this project.

The purpose of this watershed project is agricultural water management (irrigation and livestock water). The project will include the installation of transmission pipelines from the Upper Hamakua Ditch, a storage reservoir, irrigation water pipeline, and livestock water pipelines.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A scoping meeting will be held at Kuhio Hale (mile marker 55 on Mamalahoa Highway) in Kamuela on September 21, 1994, at 6:30 PM. Further information on the proposed action or the scoping meeting may be obtained from Kenneth Kaneshiro, State Conservationist, at the above address, or from Gary Kam, District Conservationist, Soil Conservation Service, P.O. Box 1089, Kamuela, HI 96743–1089, telephone (808) 885–6602.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: September 13, 1994.

Kenneth Kaneshiro,

State Conservationist.

[FR Doc. 94–23193 Filed 9–16–94; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southeast Region Logbook Family of Forms.

Agency Form Number: 88–186.

OMB Approval Number: 0648–0016.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 19,273 hours.

Number of Respondents: 4,482 (approximately 22 responses per respondent).

Avg Hours Per Response: Varies by form — between 8 and 13 minutes per form.

Needs and Uses: Under the authority of the Magnuson Fishery Conservation and Management Act, Regional Fishery Management Councils develop fishery management plans to conserve and manage marine resources. One of the management measures taken to oversee regulated fisheries is to require fishermen to maintain logbooks on their catch. This request covers nine logbook programs.

Affected Public: Businesses or other for–profit institutions, small businesses or organizations.

Frequency: After every set or trip.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration.

Title: Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities.

Agency Form Number: None.

OMB Approval Number: 0648–0151.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 3,975 hours.

Number of Respondents: 33 (2 responses per respondent).

Avg Hours Per Response: Varies depending on the requirement but the general range is from 3 to 483 hours.

Needs and Uses: The Marine Mammal Protection Act imposed, with certain exceptions, a moratorium on the taking of marine mammals. The Secretary is authorized through the Act to make exceptions to the taking of a small number of marine mammals incidental to nonfishing operations. This request is for the application and other required reports.

Affected Public: Individuals, state or local governments, businesses or other for–profit institutions, and federal agencies.

Frequency: On occasion, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle. (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA)

Title: Northeast Region Federal Fisheries Permits.

Agency Form Number: None assigned

OMB Approval Number: 0648–0202.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 38,125 hours.

Number of Respondents: 43,402 (2 or more responses per respondent).

Avg Hours Per Response: Varies by requirement but ranges between 5 minutes and 5 hours.

Needs and Uses: Participants in the marine fishing industry, including vessel owners, operators and fish dealers, who wish to participate in controlled Northeast regional fisheries must apply for, and obtain, permits.

Affected Public: Individuals, state or local governments, businesses or other for–profit institutions, non–profit institutions, small businesses or organizations.

Frequency: On occasion, weekly, monthly, and annually.

Respondent's Obligation: Mandatory

OMB Desk Officer: Don Arbuckle. (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

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Dated: September 9, 1994

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94-23065 Filed 9-16-94; 8:45 am]

BILLING CODE 3510-CW-F

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviewers of Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products and Certain Cut-To-Length Carbon Steel Plate from Various Countries

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amendment to notice of initiation.

SUMMARY: A company's request for an administrative review was inadvertently omitted from the notice published in the **Federal Register** on September 8, 1994, entitled "Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews of Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products and Certain Cut-To-Length Carbon Steel Plate from Various Countries." The Department of Commerce (the Department) is amending the notice published on September 8, 1994.

EFFECTIVE DATE: September 19, 1994.

FOR FURTHER INFORMATION CONTACT: Maureen Price, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482-2104.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 C.F.R. 353.22(a) and 355.22(a) (1994), for administrative reviews of the antidumping duty orders on roll-rolled and corrosion resistant carbon steel flat products and certain cut-to-length carbon steel plate from various countries. The Department's notice initiating those reviews inadvertently omitted the request of one producer in Australia. Therefore, we are amending the Notice of Initiation of September 8, 1994.

Initiation of Reviews

In accordance with sections 19 C.F.R. 353.22(c) and 355.22(c), we are initiating the administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products for the company listed below, thereby amending the Notice of Initiation published on September 8, 1994.

Antidumping duty proceedings		Period to be reviewed
Australia (A-602-803) *Certain Corrosion-Resistant Carbon Steel Flat Products:*		
Broken Hill Proprietary Company, Ltd.	A-602-803	2/4/93-7/31/94

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 C.F.R. 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 C.F.R. 353.22(c)(1) and 355.22(c)(1).

Dated: September 14, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94-23250 Filed 9-16-94; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

Inventions, Government-Owned; Availability for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Government-owned inventions available for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Marcia Salkeld, National Institute of Standards and Technology, Office of Technology Commercialization, Physics Building, Room B-256, Gaithersburg, MD 20899; Fax 301-869-2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

NIST Docket No. 90-030

Title: Improved Monomers for Double Ring-Opening Polymerization with Expansion

Description: NIST researchers have created a new class of monomers that undergo double ring-opening polymerization with an expansion in volume. When used in resinous compositions the result is a volume neutral curing process at ambient temperature, and a final product that exhibits high adhesive strength.

NIST Docket No. 91-008D

Title: Planar Epitaxial Films of Sn02

Description: This invention provides smooth, high quality planar epitaxial films of tin oxide. The films are valuable for use in chemical sensors, optics and electronics; and the low cost fabrication method is well suited to large scale production.

NIST Docket No. 92-016

Title: A Chemically Assisted Process for the Machining of Ceramics

Description: A new NIST process makes the matching of ceramic materials more practical and cost-effective. The process uses halogenated hydrocarbons to machine ceramic materials. This increases the rate of material removal by 40-100 percent and reduces the surface roughness by 40-60 percent.

NIST Docket No. 92-056

Title: Serial/Parallel Correlator for Words and Phrases

Description: A novel computer method allows for more efficient identification of misspelled words contained in large databases. The method is readily applicable for improving the reliability of "mechanical eyes" used, for example, for sorting mail or reading Census Bureau forms.

NIST Docket No. 93-001

Title: Intermetallic Titanium-Aluminum-Niobium-Chromium Alloys

Description: NIST researchers have developed new alloys that possess superior combinations of room and high temperature mechanical properties. These low density titanium-aluminum-niobium-chromium alloys could find use in a new generation of jet turbines, in aircraft bodies, or as metal-matrix composites.

NIST Docket No. 93-004D

Title: Method for the Production of Predetermined Concentration Graded Alloys

Description: NIST researchers have designed a new process for tailoring extremely thin metal layers within an alloy. The process allows strength, conductivity, thermal expansion and other properties to be optimized at various levels below a material surface.

NIST Docket No. 93-026

Title: Method of Obtaining High Green Density Ceramics From Powders

Description: This invention is a novel method of preparing slurries of fine ceramic powders in which the ceramic particles are dispersed more effectively. The resulting ceramic products have higher green densities which makes them useful in many applications, including high temperature components.

Dated: September 12, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94-23039 Filed 9-16-94; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

[I.D. 083194D]

Western Pacific Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of change of public meeting location.

SUMMARY: Due to construction, the meeting location of the subcommittee of the Western Pacific Fishery Management Council's Scientific and Statistical Committee to be held on September 19, 1994, from 8:30 a.m. until 5:00 p.m. as published September 8, 1994 (59 FR 46398), has been changed from the conference room of the NMFS Honolulu Laboratory, 2570 Dole Street, Honolulu, HI.

The new location will be Conference Room 407, State Office Tower, Leiopapa A Kamehameha Building, 235 S. Beretania Street, Honolulu, HI.

All other information as printed in the previous publication remains unchanged.

Dated: September 13, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-23046 Filed 9-16-94; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act 44 U.S.C. Chapter 35).

Title: Evaluation of the DoD Student Testing Program

Type of Request: Expedited processing—approval date requested 30 days after publication in the **Federal Register.**

Number of Respondents: 1,828

Responses per Respondent: 1.62

Annual Responses: 2,968

Average Burden per Response: .27 hours

Annual Burden Hours: 815.1

Needs and Uses: Data will be collected from high school students and guidance staff to permit an evaluation of the DoD Student Testing Program (also Known as Career Exploration Program) and recommendations for improvements. About 1,000,000 students participate in this program each year. Additionally, expert counselors will review the program and input will be solicited from other involved stakeholders

Affected Public: Individuals or households; State or local Governments

Frequency: On Occasion

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Dated: September 14, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94-23104 Filed 9-16-94; 8:45 am]

BILLING CODE 5000-04-M

Department of the Army

Privacy Act of 1974; Notice to Add Systems of Records

AGENCY: Department of the Army, DoD

ACTION: Notice to add systems of records.

SUMMARY: The Department of the Army proposes to add two record systems to its inventory of systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on October 19, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Information Requirements Division, ASOP-MP, Department of the Army, Fort Huachuca, AZ 85613-5000.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Turner at (602) 538-6856 or DSN 879-6856.

SUPPLEMENTARY INFORMATION: The complete inventory of the Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the above address

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on September 8, 1994, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 25, 1994 (59 FR 37906, July 25, 1994)

Dated: September 13, 1994

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0027-40CE

SYSTEM NAME:

Corps of Engineers Case Management Information Files.

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SYSTEM LOCATION:

U.S. Army Engineer Division, South Atlantic, CESAD-IM-SO-S, 77 Forsyth Street, SW, Atlanta, GA 30335–6801, with input and access locations at all Corps of Engineers' Counsel Offices. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in litigation, contract claims and appeals, procurement fraud, potentially responsible party negotiations under the Comprehensive Environmental Response Compensation and Liability Act, and patents and technology transfer with the Corps of Engineers, including parties to the action, attorneys, forum officials, contracting officers, project managers, inventors, witnesses, Corps of Engineers' attorneys and other Federal agency attorneys.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to litigation, contract claims and appeals, procurement fraud, potentially responsible party negotiations under the Comprehensive Environmental Response Compensation and Liability Act and patents and technology transfer, involving the Corps of Engineers; including names, addresses and phone numbers of individuals, case name, the forum, status of the action, summaries of the action, action number, project name and location, remedies or relief requested, milestones and suspense dates, title of invention and royalty information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 2301 et seq.; 15 U.S.C. 1 et seq.; 15 U.S.C. 3701 et seq.; 31 U.S.C. 3729 et seq; and 42 U.S.C. 9601 et seq; and E.O. 9397.

PURPOSE(S):

To allow the Corps of Engineers legal offices to monitor, and to contact individuals involved in, litigation, contract claims and appeals, procurement fraud, potentially responsible party negotiations under the Comprehensive Environmental Response Compensation and Liability Act, and patents and technology transfer, involving the Corps of Engineers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Litigation, contract and appeal records are disclosed to Department of Justice and U.S. Attorney's offices involved in a particular case, for use in the litigation. Most of this information is filed in the courts and is therefore a public record.

Procurement fraud records may be disclosed to Department of Justice and U.S. Attorney's offices for use in litigation.

Names of individuals and companies involved in potentially responsible party negotiations may be disclosed to the Environmental Protection Agency, Department of Justice and the involved parties for the purpose of facilitating potentially responsible party negotiations.

Patent records may be disclosed to the U.S. Patent and Trademark Office, Department of Commerce; appropriate authorities in foreign countries, for foreign patent filings; parties to a licensing arrangement for specific files involved; and contractors and government agencies, to conduct patent investigations and evaluations.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes/disks and printouts.

RETRIEVABILITY:

By individual's name, address and telephone number; in conjunction with the forum name; docket or contract number; office symbol; action name; file number; type of action; category of action; disposition of action; date of action and amount of award.

SAFEGUARDS:

Access is restricted to authorized users in Corps of Engineers' legal offices. Computer records are maintained in a building protected by security guards. Access or update of information in automated media is by a system of passwords. Printed records are kept in locked offices. Access to procurement fraud information is further restricted to those having a need therefore in the performance of official duties.

RETENTION AND DISPOSAL:

Records relating to Civil Works litigation, contract claims and appeals and potentially responsible party negotiations are retained for 30 years or indefinitely depending on the specific case.

Records for cases and contract claims not involving litigation are retained for 10 years.

Records relating to procurement fraud matters are retained for 1 year after the close of the case.

Records relating to government patent applications are retained for 25 years.

Records relating to technology transfer matters are retained until superseded or obsolete.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Chief Counsel, ATTN: CECC-ZB, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

Individual must provide full name, current address and telephone number, category of record (litigation, contract claims and appeals, procurement fraud, potentially responsible party negotiations, patents or technology transfer) and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Chief Counsel, U.S. Army Corps of Engineers, ATTN: CECC-ZB, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

Individual must provide full name, current address and telephone number, category of record (litigation, contract claims and appeals, procurement fraud, potentially responsible party negotiations, patents or technology transfer) and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From documents provided by the individual, his/her attorney, court records, Army records, investigation reports, other Federal agencies and state and local agencies, the Patent and Trademark Office.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1130–2–442CE

SYSTEM NAME:

Corps of Engineers Civilian Uniform Record Files.

SYSTEM LOCATION:

U.S. Army Corps of Engineers District Commands, Water Resources Development Projects and uniform contractors. Segments of this system are also maintained at Engineer Divisions and Corps of Engineers Headquarters. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices, or may be obtained from the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Corps of Engineers' personnel required to wear uniforms, including Natural Resources Management, Lock and Dam and Floating Plant personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to personal clothing; name, account number, sex, project location, weight, height, clothing measurements, length of employment and type of uniform (ENG Form 4891–R and uniform contractor's order forms).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5901–5903; Engineer Regulations 1130–2–442, 670–2–2, and 670–2–3; and E.O. 9397.

PURPOSE(S):

To facilitate ordering, and to reflect accountability for civilian uniforms issued to the Corps of Engineers' Natural Resources Management, Lock and Dam and Floating Plant personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices, apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tapes/discs.

RETRIEVABILITY:

By name and account number in conjunction with, project location, length of employment and type of uniform.

SAFEGUARDS:

Records are maintained in locked buildings, offices and files. Most buildings are also protected by security guards. Access to the system is limited to authorized Corps of Engineers personnel and uniform contractors who have a need therefor in the performance of their official duties.

RETENTION AND DISPOSAL:

Files are destroyed one year after separation of employee.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Engineers, Headquarters U.S Army Corps of Engineers, ATTN: CECW-OD, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief of Engineers, ATTN: CECW-OD, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

Individual must provide full name, current address and telephone number, account number (last four digits of their Social Security Number), project location and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief of Engineers, U.S. Army Corps of Engineers, ATTN: CECW-OD, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

Individual must provide full name, current address and telephone number, account number (last four digits of their Social Security Number), project location and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–23040 Filed 9–16–94; 8:45 am]

BILLING CODE 5000–04–F

Defense Logistics Agency

Privacy Act of 1974; Alteration of a Record System

AGENCY: Defense Logistics Agency, DoD

ACTION: Alteration of a record system.

SUMMARY: The Defense Logistics Agency proposes to alter an existing system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration adds the Department of Labor as a routine user to comply with regulatory requirements to report serious accidents (29 CFR 1960.70).

DATES: The alteration will be effective without further notice on October 19, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Privacy Act Officer, Programs and Analysis Division, Office of Planning and Resource Management, Defense Logistics Agency Administrative Support Center, Room 5A120, Cameron Station, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Ms Susan Salus at (703) 617–7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and may be obtained from the address above.

An altered system report, as required by 5 U.S.C. 552a(5) of the Privacy Act was submitted on September 8, 1994, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c.(1) Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994). The specific changes to the record system are set forth below followed by the system notice as altered in its entirety.

Dated: September 13, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense

S370.20 DLA-WH

SYSTEM NAME:

Individual Accident Case Files *(February 22, 1993, 58 FR 10891)*

CHANGES:

* * * * *

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SYSTEM IDENTIFIER:

Delete entry and replace with 'S600.30 CAAE.'

SYSTEM NAME:

Delete entry and replace with 'Safety and Health Accident Case Files.'

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100, and the DLA Primary Level Field Activity Safety and Health offices. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All individuals who are injured, made ill, or suffer property damage resulting from DLA operations.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Name, Social Security Number, age, home address and telephone number, accident reports, witness statements, photographs, and proposed or actual corrective action, where appropriate.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete and replace with '10 U.S.C. 136, Assistant Secretaries of Defense; 29 U.S.C. 651 et seq., The Occupational Safety and Health Act of 1970 (OSHA); E.O. 9397 (SSN); E.O. 12196, Occupational Safety and Health Programs for Federal Employees; 29 CFR part 1960, subpart I, Recordkeeping and Reporting Requirements for Federal Occupational Safety and Health Programs.'

PURPOSE(S):

Delete entry and replace with 'Information is maintained to comply with regulatory reporting requirements; to identify cause of accident; to formulate accident prevention programs; to identify individuals involved in repeated accidents; and to prepare statistical reports as required.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add as a second paragraph after 'as follows:' 'To the Department of Labor to comply with the requirement to report Federal civilian employee on-the-job accidents.'

STORAGE:

Delete entry and replace with 'Records are stored in paper and electronic formats.'

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by name, Social Security Number, or mishap report number.'

SAFEGUARDS:

Delete entry and replace with 'Access is limited to record custodian or persons responsible for servicing the record in performance of their official duties. Paper records are stored in locked cabinets or rooms controlled by personnel screening. Access to electronic records is restricted by the use of passwords which are changed periodically.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Cases involving reportable mishaps are destroyed five years after case is closed. Cases involving non-reportable mishaps are destroyed three years after case is closed.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Staff Director, Environmental and Safety Policy, Headquarters, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100; and the Safety and Health Offices of the Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the system manager of the particular Defense Logistics Agency activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to records about themselves contained in this system of records should address inquiries to the system manager of the particular Defense Logistics Agency activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Information is obtained from the record subject, supervisors, medical units, DLA protective service, civilian police, fire departments, investigating officers, or witnesses to accident.'

* * * * *

S600.30 CAAE

SYSTEM NAME:

Safety and Health Accident Case Files.

SYSTEM LOCATION:

Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100, and the DLA Primary Level Field Activity Safety and Health offices. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who are injured, made ill, or suffer property damage resulting from DLA operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, age, home address and telephone number, accident reports, witness statements, photographs, and proposed or actual corrective action, where appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Assistant Secretaries of Defense; 29 U.S.C. 651 et seq., The Occupational Safety and Health Act of 1970 (OSHA); E.O. 9397 (SSN); E.O. 12196, Occupational Safety and Health Programs for Federal Employees; 29 CFR part 1960, subpart I, Recordkeeping and Reporting Requirements for Federal Occupational Safety and Health Programs.

PURPOSE(S):

Information is maintained to comply with regulatory reporting requirements; to identify cause of accident; to formulate accident prevention programs; to identify individuals involved in repeated accidents; and to prepare statistical reports as required.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Labor to comply with the requirement to report Federal civilian employee on-the-job accidents (29 CFR 1960).

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and electronic formats.

RETRIEVABILITY:

Retrieved by name, Social Security Number, or mishap report number.

SAFEGUARDS:

Access is limited to record custodian or persons responsible for servicing the record in performance of their official duties. Paper records are stored in locked cabinets or rooms controlled by personnel screening. Access to electronic records is restricted by the use of passwords which are changed periodically.

RETENTION AND DISPOSAL:

Cases involving reportable mishaps are destroyed five years after case is closed. Cases involving non-reportable mishaps are destroyed three years after case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Environmental and Safety Policy, Headquarters, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100; and the Safety and Health Offices of the Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the system manager of the particular Defense Logistics Agency activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the system manager of the particular Defense Logistics Agency activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the record subject, supervisors, medical units, DLA protective service, civilian police, fire departments, investigating officers, or witnesses to accident.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–23041 Filed 9–16–94; 8:45 am]

BILLING CODE 5000–04–F

Privacy Act of 1974; Alteration of a Record System

AGENCY: Defense Logistics Agency, DoD.

ACTION: Alteration of a record system.

SUMMARY: The Defense Logistics Agency proposes to alter an existing system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The Defense Logistics Agency proposes to add an additional routine use for the system as follows: To the Department of Health and Human Services for the purpose of conducting studies concerned with the health and well being of the active duty and veteran population.

DATES: The alteration will be effective without further notice on October 19, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Privacy Act Officer, Programs and Analysis Division, Office of Planning and Resource Management, Defense Logistics Agency Administrative Support Center, Room 5A120, Cameron Station, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 617–7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and may be obtained from the address above.

An altered system report, as required by 5 U.S.C. 552a(5) of the Privacy Act was submitted on September 8, 1994, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994). The specific changes to the record system are set forth below followed by the system notice as altered in its entirety.

Dated: September 13, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base *(February 22, 1993, 58 FR 10872).*

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a sixth paragraph under the purposes for the Department of Health and Human Services as follows: '6. To the Center for Disease Control, DHHS, for the purpose of conducting studies concerned with the health and well being of the active duty and veteran population.'

* * * * *

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base *(February 22, 1993, 58 FR 10872).*

SYSTEM LOCATION:

Primary location—W.R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000.

Back-up files maintained in a bank vault in Hermann Hall, Naval Postgraduate School, Monterey, CA 93943–5000.

Decentralized segments—Portions of this file may be maintained by the military and non-appropriated fund personnel and finance centers of the military services, selected civilian contractors with research contracts in manpower area, and other Federal agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All uniformed services officers and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired military personnel; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

DOD civilian employees since January 1, 1972. All veterans who have used the GI Bill education and training employment services office since

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January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute and all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969.

Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services National Longitudinal Survey. Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veteran Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors; individuals identified in Service child and spouse abuse registries as sponsors, offenders or victims.

Individuals receiving disability compensation from the Department of Veteran Affairs or who are covered by a Department of Veteran Affairs' insurance or benefit program; dependents of active duty military retirees, selective service registrants

Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation. Former military and civilian personnel who are employed by DOD contractors and are subject to the provisions of 10 U.S.C. 2397.

All U.S. Postal Service employees.

All Federal Civil Service employees.

All non-appropriated funded individuals who are employed by the Department of Defense.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information, civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training programs; military hospitalization records; home and work addresses; and identities of individuals involved in incidents of child and spouse abuse, and information about the nature of the abuse and services provided.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax I.D. of providers or potential providers of care.

Selective Service System registration data.

Department of Veteran Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

U.S. Postal Service employment/personnel records containing Social Security Number, name, salary, home and work address. U.S. Postal Service records will be maintained on a temporary basis for approved computer matching between the U.S. Postal Service and DOD.

Office of Personnel Management (OPM) Central-Personnel Data File (CPDF), an extract from OPM/GOVT–1, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. Extract from OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home address. These records provided by OPM for approved computer matching.

Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Assistant Secretaries of Defense; Appointment Powers and Duties; 10 U.S.C. 2358; Research Projects; 5 U.S.C. App. 3 (Pub. L. 95–452, as amended (Inspector General Act of 1978)); and E.O. 9397.

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel functions, to perform longitudinal statistical analyses, identify current and former DOD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, to register current and former DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are qualified, and to collect debts owed to the United States Government and state and local governments.

All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veteran Affairs (DVA) to provide military personnel and pay data for present and former military personnel for the purpose of evaluating use of veterans benefits, validating benefit eligibility and maintaining the health and well being of veterans.

To the Department of Veteran Affairs (DVA) to provide identifying military personnel data to the DVA and its contractor, the Prudential Insurance Company, for the purpose of notifying members of the Individual Ready Reserve (IRR) of their right to apply for Veteran's Group Life Insurance coverage.

To the Department of Veterans Affairs (DVA) to register eligible veterans and their dependents for DVA programs.

To the Department of Veterans Affairs (DVA) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

1. Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program (38 U.S.C. 3104(c), 3006–3008). The information is used to determine

continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment.

2. Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 106 – Selected Reserve and Title 38 U.S.C., Chapter 30 – Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

3. Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 684) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

4. Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law (38 U.S.C. 3104(c)) requires recoupment of severance payments before DVA disability compensation can be paid.

5. Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 3104(c), 3006–3008). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

To the Office of Personnel Management (OPM) consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub. L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

To the Office of Personnel Management (OPM) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

1. Exchanging personnel and financial information on certain military retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

2. Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DOD to insure that annuities of DOD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

3. Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the 'guaranteed minimum' disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DOD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

4. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of DOD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

To the Department of Health and Human Services (DHHS):

1. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DOD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program.

2. To the Office of Child Support Enforcement, DHHS, pursuant to 42 U.S.C. 653 and Pub. L. 94–505, to assist state child support offices in locating absent parents in order to establish and/or enforce child support obligations.

3. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns or residents are counted for HCFA reimbursement to hospitals.

4. To the Social Security Administration (SSA), Office of Research and Statistics, DHHS for the purpose of conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings.

5. To the Bureau of Supplemental Security Income, SSA, DHHS to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of verifying information provided to the SSA by applicants and recipients who are retired military members or their survivors for Supplemental Security Income (SSI) benefits. By law (42 U.S.C. 1383) the SSA is required to verify eligibility factors and other relevant information provided by the SSI applicant from independent or collateral sources and obtain additional information as necessary before making SSI determinations of eligibility, payment amounts or adjustments thereto.

6. To HHS for the purpose of conducting studies concerned with the health and well being of the active duty and veteran population.

To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration

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regulations (50 U.S.C. App. 451 and E.O. 11623).

To DOD Civilian Contractors for the purpose of performing research on manpower problems for statistical analyses.

To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DOD civilian employees and military members by the states. To the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment.–

To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

To the Department of Housing and Urban Development (HUD) to provide data contained in this record system that includes the name, Social Security Number, salary and retirement pay for the purpose of verifying continuing eligibility in HUD's assisted housing programs maintained by the Public Housing Authorities (PHAs) and subsidized multi-family project owners or management agents. Data furnished will be reviewed by HUD or the PHAs with the technical assistance from the HUD Office of the Inspector General (OIG) to determine whether the income reported by tenants to the PHA or subsidized multi-family project owner or management agent is correct and complies with HUD and PHA requirements.

To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. To assist in the return of unclaimed property or assets escheated to states of civilian employees and military member and to provide members and former members with information and assistance regarding various benefit entitlements, such as state bonuses for veterans, etc. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements. To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DOD personnel.

To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

To Defense contractors to monitor the employment of former DOD employees and members subject to the provisions of 10 U.S.C. 2397.

To financial depository institutions to assist in locating individuals with dormant accounts in danger of reverting to state ownership by escheatment for accounts of DOD civilian employees and military members.

To any Federal, state or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the Unites States Government under the Debt Collection Act of 1982 (Pub. L. 97–365).

To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

1. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

2. Exchanging personnel and financial information on certain military retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

The 'Blanket Routine Uses' set forth at the beginning of the DLA compilation of record system notices also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

W.R. Church Computer Center - Tapes are stored in a locked cage in a controlled access area; tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

Back-up location - Tapes are stored in a bank-type vault; buildings are locked after hours and only properly cleared and authorized personnel have access.

RETENTION AND DISPOSAL:

Files constitute a historical data base and are permanent.

U.S. Postal Service records are temporary and are destroyed after the computer matching program results are verified.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

CONTESTING RECORD PROCEDURES:

DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, Personal Privacy and Rights of Individuals Regarding Their Personal Records; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The military services, the Department of Veteran Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, Federal and Quasi-Federal agencies, Selective Service System, and the U.S. Postal Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–23042 Filed 9–16–94; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by October 1, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: September 13, 1994.

Ingrid Kolb,

Acting Director, Information Resources Management Service.

Office of Special Education and Rehabilitative Services

Type of Review: EXPEDITED

Title: Performance Report—Training Personnel for the Education of Individuals with Disabilities

Abstract: These data collection forms will be sent to all grantees and contractors engaged in the development and implementation of quality training programs. The Department will use the information to report to Congress.

Additional Information: Clearance for this information collection is requested for October 1, 1994. An expedited review is requested because of the legal requirement that grantees must submit their data prior to November 30.

Frequency: Annually

Affected Public: State or local governments; businesses or other for-profit; non-profit institutions; small businesses or organizations

Reporting Burden:
Responses: 902
Burden Hours: 1,202

Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0.

[FR Doc. 94–23098 Filed 9–16–94; 8:45 am]

BILLING CODE 4000–01–M

National Committee on Foreign Medical Education and Accreditation; Meeting

AGENCY: National Committee on Foreign Medical Education and Accreditation, Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a partially closed meeting of the National Committee on Foreign Medical Education and Accreditation. This notice also describes the functions of the Committee.

DATES AND TIMES: September 22, 1994—9 a.m. until 5 p.m.; September 23, 1994—9 a.m. until 12 noon.

ADDRESSES: U.S. Department of Education, 7th and D Streets SW., Room 7511, Regional Office Building # 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Carol F. Sperry, Executive Director, National Committee on Foreign Medical Education and Accreditation, 600 Independence Avenue SW., Room 3036 ROB # 3, Washington, DC 20202–7563. Telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The National Committee on Foreign Medical Education and Accreditation is established under section 481 of the

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Higher Education Act of 1965, as amended (20 U.S.C. 1088). This Committee does not have advisory functions but rather carries out operational activities of the U.S. Department of Education. The Committee evaluates the standards of accreditation applied to applicant foreign medical schools and determines the comparability of those standards to standards for accreditation applied to United States medical schools. The morning portion of the September 22, 1994, meeting, from 9:00 a.m. to 12:00 noon, will be closed to the general public to hold an orientation session for the Committee members. The afternoon session, from 1:00 p.m. until 5:00 p.m., will be open to the public. It will begin with a general discussion of the Committee's role and responsibilities and will continue with a discussion of criteria against which comparability will be determined. This discussion will be continued on September 23, 1994, from 9:00 a.m. until 12:00 noon. This session also will be open to the public. A reasonable amount of time for public comment, as determined by the Chairman, will be allowed at the sessions that are open to the public.

A record will be made of the proceedings of the public portions of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 7th and D Streets SW., Room 3036, ROB #3, Washington, DC 20202 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Dated: September 13, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education

[FR Doc. 94-23089 Filed 9-16-94; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Wednesday, October 5, 1994: 5:30 p.m.-10 p.m.

ADDRESSES: Holiday Inn Crowne Plaza, 4255 South Paradise Road, Las Vegas, NV.

FOR FURTHER INFORMATION CONTACT: Don Beck, Public Participation Program Manager, Office of Public Accountability, EM-5, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-7633.

SUPPLEMENTARY INFORMATION: Purpose of the committee: The EM SSAB provides input and recommendations to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

Wednesday, October 5, 1994
5:30 p.m.
- Call to Order
- Review Agenda
- Minutes Acceptance
- Financial Report
- Correspondence
- Reports from Committees, Delegates and Representatives
- Unfinished Business
- New Business
- Evaluation of Board and Environmental Restoration and Waste Management Program
- Announcements

10:00 p.m.
- Adjournment

If needed, time will be allotted after public comments for old business, new business, items added to the agenda, and administrative details.

A final agenda will be available at the meeting Wednesday, October 5, 1994.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Don Beck's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays.

Issued at Washington, DC on September 14, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94-23122 Filed 9-16-94; 8:45 am]

BILLING CODE 6450-01-M

Environmental Management Site Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Savannah River Site.

DATES:
- Friday, September 30, 1994: 7:00 p.m.-10:00 p.m.
- Saturday, October 1, 1994: 8:30 a.m. to 9:00 p.m.
- Sunday, October 2, 1994: 9:00 a.m.-12:00 noon

ADDRESSES: All meetings will be held at: Holiday Inn, One Center Street, Folly Beach, South Carolina.

FOR FURTHER INFORMATION CONTACT: Tom Hennan, Manager, Environmental Restoration and Solid Waste, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803)725-8074.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Friday, September 30, 1994
- 7:00 p.m.—Team Building and Consensus Building Training, 1994

Saturday, October 1, 1994
- 8:30 a.m.—An Overview of the Savannah River Site and Briefing on Worker Safety Risk Management and Radiation
- 9:00 p.m.—Adjourn

Sunday, October 2, 1994
- 9:00 a.m.—Briefings and Discussion on Risk Management
- 11:30 a.m.—Public Comment Period (5-minute rule)
- 12:00 p.m.—Adjourn

A final agenda will be available at the meeting Friday, September 30, 1994.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Hennan's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 120585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Tom Hennan, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling him at (803)-725-8074.

Issued at Washington, DC on September 14, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94-23123 Filed 9-16-94; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER94-589-000, et al.]

Southern California Edison Company, et al.; Electric Rate and Corporate Regulation Filings

September 12, 1994.

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Company

[Docket No. ER94-589-000]

Take notice that on August 30, 1994, Southern California Edison Company tendered for filing an amendment in the above-referenced docket.

Comment date: September 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Great Bay Power Corporation

[Docket No. ER94-1589-000]

Take notice that on September 7, 1984, Great Bay Power Corporation (Great Bay) tendered for filing a fully executed service agreement between Louis Dreyfus Electric Power Inc. and Great Bay for service under Great Bay's Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on November 11, 1993, in Docket No. ER93-924-000. The service agreement is proposed to be effective August 1, 1994.

Comment date: September 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of New Hampshire

[Docket No. ER94-1616-000]

Take notice that on September 1, 1994, Public Service Company of New Hampshire (PSNH) tendered for filing an Amendment (the "Amendment") to the Total Requirements Resale Service Agreement between PSNH and Citizens Utilities Company (Citizens). PSNH has requested an effective date for the Amendment of November 1, 1994.

PSNH states that the Amendment would implement an additional charge under the Requirements Agreement to permit PSNH to recover from Citizens the increased costs to PSNH resulting from PSNH's implementation of the Statement of Financial Accounting Standards No. 106 which concerns the accounting for post-retirement benefits other than pensions.

PSNH states that copies of the filing were served on the Vermont Public Service Board, which is the only State Commission within whose jurisdiction the Municipal Customers distribute and sell electric energy at retail.

Comment date: September 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Company (Minnesota)

[Docket No. ER94-1622-000]

Take notice that on September 2, 1994, Northern States Power Company (Minnesota) [NSP-MN] tendered for filing an Interconnection and Interchange Agreement dated September 17, 1993, between NSP-MN, Northern States Power Company (Wisconsin) [NSP-WI], and Upper Peninsula Power Company [UPP]. NSP-MN files this agreement on behalf of NSP-WI, UP, and itself.

The Interconnection and Interchange Agreement provides for the interchange of electrical power and energy between the parties as well as the possible future interconnected electrical operation between the parties' systems. The Commission has been requested to accept the agreement for filing effective November 1, 1994.

Comment date: September 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Orange and Rockland Utilities, Inc

[Docket No. ER94-1631-000]

Take notice that on September 6, 1994, Orange and Rockland Utilities, Inc. tendered for a Notice of Cancellation of the contract with Orange Development Corporation.

Comment date: September 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-23132 Filed 9-16-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. RP94-396-000]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 13, 1994.

Take notice that on September 6, 1994, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet:

Second Revised Sheet No. 4A

Alabama-Tennessee proposes that this tariff sheet be made effective October 1, 1994. In this regard, Alabama-Tennessee requests that the Commission grant a waiver of Section 154.22 of its Regulations so that this tariff sheet might be made effective on less than thirty days notice.

Alabama-Tennessee states that the purpose of this filing is to adjust the take-or-pay charges applicable to each of its jurisdictional sales and transportation customers pursuant to

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the reconciliation procedures established under Article I, Section A.3 of the settlement approved by the Commission on October 17, 1991. Alabama-Tennessee states that this reconciliation has resulted in an increase in the Direct Billed Obligation and a reduction in the Volumetric Surcharge (as those terms are defined under the settlement) that Alabama-Tennessee is authorized to collect from its jurisdictional sales and transportation customers.

In addition to the waiver of Section 154.22, Alabama-Tennessee requests such other waivers of the Commission's Regulations as will be necessary to permit the tariff sheet to become effective as proposed in its filing.

Alabama-Tennessee states that copies of its filing were served upon its customers and interested public bodies, and all persons on the Commission's official service list in the captioned docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23051 Filed 9–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–99–004]

Colorado Interstate Gas Co.; Filing of Tariff Sheets

September 13, 1994.

On September 8, 1994, Colorado Interstate Gas Company (CIG) filed the tariff sheets identified below:

First Revised Volume No. 1
- Third Revised Sheet No. 7
- Third Revised Sheet No. 8
- Third Revised Sheet No. 9
- Fourth Revised Sheet No. 10
- Third Revised Sheet No. 12
- Second Revised Sheet No. 358

Original Volume No. 2
- Twelfth Revised Sheet No. 187
- Eleventh Revised Sheet No. 463

CIG states that the instant tariff sheets implement the rates reflected in the Stipulation and Agreement filed August 16, 1994, by CIG as an offer of settlement in this Docket. CIG states that the instant sheets will implement the settlement rates for a period beginning October 1, 1994, pending approval of the August 16 settlement offer.

CIG requests that the Commission grant CIG whatever waivers are necessary under its regulations (including the 30-day notice period) in order to allow the instant tariff sheets to become effective on October 1, 1994.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23052 Filed 9–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–113–003]

Columbia Gas Transmission Corp. Proposed Changes in FERC Gas Tariff

September 13, 1994.

Take notice that on September 9, 1994, Columbia Gas Transmission Corporation (Columbia) tendered for filing the following proposed changes to its FERC Gas Tariffs, Second Revised Volume No. 1 and Original Volume No. 2, to be effective June 30, 1994:

Second Revised Volume No. 1
- Second Revised Sheet No. 8
- First Revised Sheet No. 9
- Second Revised Sheet No. 11

Original Volume No. 2
- Eighteenth Revised Sheet No. 4B
- Fifteenth Revised Sheet No. 4C
- Twelfth Revised Sheet No. 4E
- First Revised Sheet No. 764
- First Revised Sheet No. 931
- First Revised Sheet No. 1372

Columbia states that the purpose of this filing is to cancel its Rate Schedules which embody gas exchange agreements as follows: Rate Schedule X–78 dated January 24, 1978 between Columbia, Columbia Gulf Transmission Company and Tennessee Gas Pipeline Company (Tennessee); Rate Schedule X–90 dated December 29, 1978 between Columbia, Tennessee and Northern Natural Gas Company; and, Rate Schedule X–119 dated December 8, 1982 between Columbia and Tennessee. These agreements, which were authorized by the Federal Energy Regulatory Commission's (Commission) aforementioned orders, are being cancelled pursuant to the Commission's order issued June 30, 1994, in Docket No. RP94–113–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426 in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23053 Filed 9–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–7–4–000]

Granite State Gas Transmission Inc.; Proposed Changes in FERC Gas Tariff

September 13, 1994.

Take notice that on September 9, 1994, Granite State Gas Transmission, Inc. (Granite State), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 Second Revised Sheet No. 24, containing changes in rates for effectiveness on September 1 1994.

According to Granite State, the revised rates on Second Revised Sheet No. 24 are applicable to its Rate Schedule LMS (Load Management Service) which provides for swings in excess of the daily variance tolerance above or below scheduled nominations for deliveries to its firm transportation customers under its Rate Schedule FT–NN. It is further stated that Granite State's Rate Schedule LMS service relies on a parallel daily swing service provided by Tennessee Gas Pipeline Company (Tennessee) under its Rate Schedule LMS–MA. Granite State further states that the rates for its Rate Schedule LMS service are identical with

and track the rates for Tennessee's underlying service.

Granite State also states that Tennessee filed revised tariff sheets in its FERC Gas Tariff, Fifth Revised Volume No. 1, on July 15, 1994, in compliance with a Stipulation and Agreement approved by the Commission in Docket Nos. RP91–203, et al., which included a revision in its rates for its Rate Schedule LMS–MA service, effective September 1, 1993. Granite State proposes in its filing to track the change in the Tennessee rate effective September 1, 1994, rather than retroactively.

According to Granite State, copies of its filing were served on its Rate Schedule LMS customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23054 Filed 9–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–23–000]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff

September 13, 1994.

Take notice that on September 8, 1994, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

- First Revised Sheet No. 28
- First Revised Sheet No. 64
- First Revised Sheet No. 65
- First Revised Sheet No. 66
- First Revised Sheet No. 67

Great Lakes states that the above tariff sheets reflect changes to its Transportation Services Request Form and other changes brought about by the Commission's Order No. 566 issued on June 17, 1994, in Docket No. RM94–6–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23055 Filed 9–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–1–65–000]

Jupiter Energy Corporation; Proposed Changes in FERC Gas Tariff

September 13, 1994.

Take notice that Jupiter Energy Corporation (Jupiter Energy) on August 31, 1994, tendered for filing the following sheets of its FERC Gas Tariff, Original Volume No. 1:

- Eighth Revised Sheet No. 4A
- Eighth Revised Sheet No. 5A
- Eighth Revised Sheet No. 6A

Jupiter Energy states that the filed tariff reflects revision, pursuant to Section 154.38(d)(6) of the Commission's regulations, of Jupiter Energy's Annual Charge Adjustment (ACA) surcharge. The new surcharge rate is $0.24 per Mcf.

Jupiter Energy proposes an effective date of October 1, 1994.

Jupiter Energy states that copies of the filing have been served on the Company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Jupiter Energy's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23056 Filed 9–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–1–25–000]

Mississippi River Transmission Corporation; Proposed Change in FERC Gas Tariff

September 13, 1994.

Take notice that on August 31, 1994, Mississippi River Transmission Corporation (MRT) tendered for filing Sixth Revised Sheet No. 10 and First Revised Sheet No. 232 to its FERC Gas Tariff Third Revised Volume No. 1.

MRT states that the purpose of the instant filing is to adjust the currently effective ACA charge in its rates to the new FERC approved surcharge of $.0023 per MMBtu effective October 1, 1994, in accordance with Section 23 of its FERC Gas Tariff.

MRT states that a copy of the filing is being mailed to each of MRT's customers and the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 20, 1994 Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23057 Filed 9–16–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. TM95-2-16-001]

National Fuel Gas Supply Corporation; Tariff Filing

September 13, 1994.

Take notice that on September 6, 1994, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Sixth Revised Sheet No. 5 and Substitute Fifth Revised Sheet No. 6, with a proposed effective date of October 1, 1994.

National states that these tariff sheets are submitted to adjust the Current Rate to reflect the $ 0002 decrease in the Annual Charge Adjustment unit surcharge authorized by the Commission for Fiscal 1995.

National states that a copy of this filing was posted pursuant to Section 154.16 of the Commission's Regulations, and that copies of this filing were served upon the company's jurisdictional customers and upon the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C., 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protest should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-23058 Filed 9-16-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-353-001]

Southern Natural Gas Company; Proposed Changes in FERC Gas Tariff

September 13, 1994

Take notice that on September 9, 1994, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheet to be effective September 1, 1994.

First Substitute Original Sheet No. 403g

Southern states that the purpose of this filing is to make a minor clarification to this form of pipeline balancing agreement in compliance with the Letter Order issued in this proceeding on September 2, 1994. Southern has requested all waivers necessary to make this sheet effective September 1, 1994.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211. All such protests should be filed on or before September 20, 1994. Protests will not be considered by the Commission in determining the parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-23059 Filed 9-16-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM95-1-115-000]

Sumas International Pipeline Inc.; Proposed Changes In FERC Gas Tariff

September 13, 1994.

Take notice that on September 1, 1994, Sumas International Pipeline Inc., (SIPI) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets, with an effective date of October 1, 1994:

Third Revised Sheet No. 4

SIPI states that the above tariff sheet reflects the new ACA unit surcharge rate of $ 0024 per Mcf which is equivalent to $ 0023 per MMBtu on SIPI's system.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-23060 Filed 9-16-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-395-000]

Tennessee Gas Pipeline Company; Rate Filing

September 13, 1994

Take notice that on September 9, 1994, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, First Revised Sheet No 25, First Revised Sheet No. 159, and First Revised Sheet No. 159A.

Tennessee states that the purpose of this filing is to comply with the Commission's Fifth Order on Compliance Filing and Fourth Order on Rehearing in Tennessee's restructuring proceeding. 68 FERC 61,001 at 61,002 (1994). Tennessee requests an effective date for the above-referenced sheets of October 1, 1994.

Tennessee states that in the Fifth Tennessee Restructuring Order, the Commission denied Tennessee's request for rehearing regarding the crediting of revenues from Extended Receipt and Delivery Services because it felt that the services were essentially interruptible in nature. However, the Commission invited Tennessee to make a limited Section 4 filing to alter its Extended Receipt and Delivery Services in order to make them true firm services. The instant filing would require that shippers desiring Extended Receipt or Delivery Service reserve and pay for such capacity for at least three days. Thus Tennessee states that the proposed sheets comply with the Commission's holdings in *Panhandle Eastern Pipeline Co.* 65 FERC 61,130 (1993) and *ANR Pipeline Co.* 64 FERC 61,140 (1993) as required by the Fifth Restructuring Order.

Tennessee requests a waiver of the Commission's 30 day prior notice requirements in order that the proposed tariff sheets may go into effect on October 1, 1994. Implementation at this time will allow Tennessee to gain experience in scheduling the new Extended Receipt and Delivery Service prior to increased system demands that will result from colder weather. While Tennessee does not believe any additional waivers are necessary, Tennessee respectfully requests that the Commission grant any waivers it deems necessary for acceptance of this filing

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commission.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-23061 Filed 9-16-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-375-001]

Texas Gas Transmission Corporation; Filing

September 13, 1994.

Take notice that on September 7, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing supporting schedules and working papers in Docket No. RP94-375, et al. Texas Gas states that this filing is being made to supplement a filing made on August 30, 1994, and noticed as Docket No. RP94-375-000. That filing described Schedules 1 through 10, which were supposed to be attached in support of Account No. 191 costs to be direct billed by Texas Gas. Therefore, Texas Gas is submitting Schedules 1 through 10 to correct the inadvertent error caused by not attaching the schedules to its filing made on August 30, 1994.

Texas Gas states that copies of the letter of transmittal and attachments are being mailed to all those receiving the August 30, 1994, filing, which included Texas Gas's affected former jurisdictional sales customers and interested state commissions, as well as to all parties on the service list in Docket No. RP94-125.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., in accordance with Rule 211 of the Commission's Rules and Regulations. All such protests should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-23062 Filed 9-16-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM95-1-29-000]

Transcontinental Gas Pipe Line Corporation; Tariff Filing

September 13, 1994.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing on August 31, 1994, Tenth Revised Sheet No. 60 to its FERC Gas Tariff, Third Revised Volume No. 1. Such tariff sheet is proposed to be effective October 1, 1994.

The purpose of the filing is to reflect a decrease in the Annual Charge Adjustment (ACA) Charge in the commodity portion of TGPL's transportation rates. Pursuant to Order No. 472, the Commission has assessed TGPL its ACA unit rate of $0.0024/Mcf ($0.0023/dt on TGPL's system) for the annual period commencing October 1, 1994.

TGPL states that copies of the filing are being mailed to affected customers and interested State Commissions.

In accordance with the provisions of Section 154.16 of the Commission's Regulations, copies of the filing are available for public inspection, during regular business hours, in a convenient form and place at TGPL's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-23063 Filed 9-16-94; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $52,092.73, plus accrued interest, in refined petroleum overcharges obtained by the DOE under the terms of a Remedial Order issued to Sunset Boulevard Car Wash (Sunset) Case No. LEF-0112. The OHA has determined that the funds will be distributed in accordance with the provisions of 10 CFR Part 205, Subpart V and 15 U.S.C. 4501, the Petroleum Overcharge Distribution and Restitution Act (PODRA).

DATES AND ADDRESSES: Applications for Refund must be filed in duplicate, addressed to Sunset Boulevard Car Wash Special Refund Proceeding and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications must reference Case Number LEF-0112 and be postmarked on or before June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director Kim L. Hargrove, Staff Attorney Office of Hearings and Appeals 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-2390

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the procedures that the DOE has formulated to distribute to eligible claimants $52,092.73, plus accrued interest, obtained by the DOE under the terms of a Remedial Order that the DOE issued to Sunset Boulevard Car Wash (Sunset) on October 22, 1980. Under the Remedial Order, Sunset was found to have violated the Federal petroleum price and allocation regulations involving the sale of refined petroleum products between August 1, 1979 and January 27, 1980 (the Audit period).

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The OHA will distribute the Remedial Order funds in a two stage refund proceeding. Purchasers of Sunset motor gasoline will have an opportunity to submit refund applications in the first stage. Refunds will be granted to applicants who satisfactorily demonstrate they were injured by the pricing violations and who document the volume of gasoline they purchased from Sunset during the audit period. In the event that money remains after all first stage claims have been disposed of, the remaining funds will be disbursed in accordance with the provisions of 15 U.S.C. 4501, the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA).

Applications for Refund must be postmarked on or before June 1, 1995. Instructions for the completion of refund applications have been set forth in Section IV of the Decision immediately following this notice. Refund applications should be mailed to the address listed at the beginning of this notice.

Unless labelled as "confidential", all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Date: September 12, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Sunset Boulevard Car Wash

Date of Filing: July 20, 1993

Case Number: LEF–0112

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund proceedings. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

In this Decision and Order, we consider a Petition for Implementation of Special Refund Procedures filed by ERA on July 20, 1993. In that Petition, ERA specifically requests that we formulate refund procedures to disburse funds that had been remitted to DOE by Sunset Boulevard Car Wash (Sunset). The funds at issue in that Petition were obtained through a Remedial Order (the Order) issued by our Office on October 22, 1980.

Under the terms of the Order, Sunset remitted $52,092.73 to the DOE to remedy pricing violations which Sunset committed between August 1, 1979 and January 27, 1980.[1] These funds are being held in an escrow account established with the Treasury pending a determination of their proper distribution. The present Decision and Order sets forth final procedures for the distribution of those funds to qualified purchasers of Sunset's refined products.

I. Jurisdiction and Authority

The general guidelines that govern OHA's ability to formulate and implement a plan to distribute refunds are set forth at 10 CFR part 205, subpart V. These procedures apply in situations where DOE cannot readily identify the persons who were injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

II. Background

The facts alleged in the Order were undisputed. Sunset was a "retailer" of motor gasoline as that term has been defined at 10 CFR 212.31 and was therefore subject to the provisions of 10 CFR part 210 and 10 CFR part 212, subpart F. The Order states that from August 1, 1979 to January 27, 1980 (the audit period), Sunset charged prices higher than those permitted by 10 CFR 212.93(a)(2); levied a cents-per-gallon fee for services associated with the sale of motor gasoline in violation of 10 CFR 210.62(d)(1) and refused to make its records available for inspection in violation of 10 CFR 210.92(b).

Sunset was ordered to reduce its prices for motor gasoline by specified amounts until a sufficient volume of gasoline had been sold at reduced prices to remedy the violations.[2] After decontrol, the Order was modified to require direct monetary restitution to the Treasury instead. See *Sunset Boulevard Car Wash*, 20 FERC ¶ 62,319 at 63,537 (*Sunset*) (1982). Under the terms of the modified Order (the MO), Sunset was required to disgorge and remit to DOE the violation amount and the profits it had acquired as a result of its violation of the aforementioned provisions of the pricing regulations.

Sunset objected to the remedial provisions of the MO at every available tier of administrative and judicial review. As a result, the Federal Energy Regulatory Commission (FERC) affirmed the MO on August 12, 1982. When Sunset renewed its objections in proceedings before the United States District Court for the Central District of California, the District Court affirmed the MO. Finally, on March 9, 1993, the Temporary Emergency Court of Appeals definitively disposed of Sunset's objections. *Bush v. U.S.*, 989 F.2d 509 (Em. App. 1993).

III. The Proposed Decision and Order

On November 24, 1993, we issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the funds that Sunset had remitted to DOE pursuant to the MO. We proposed implementing a two stage refund proceeding and we stated that purchasers of Sunset motor gasoline would be provided an opportunity to submit refund applications in the first stage. In the event funds remained after all first stage claims had been considered, we stated that the remaining funds would be disbursed in the second stage in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (15 U.S.C. 4501) (PODRA).

We provided a 30 day period for the submission of comments concerning the proposed procedures. However, we have received no comments since the PDO was published in the **Federal Register** more than 30 days ago. The proposed procedures will therefore be adopted in the same form in which they were originally outlined. Set forth below are the specific considerations that will guide our evaluation of refund applications during the first stage, as well as, the provisions governing distribution of any remaining funds in the second stage proceeding.

IV. First Stage Refund Procedures

Refund applications submitted in the Sunset special refund proceeding will be evaluated in exactly the same manner as applications submitted in other refined product proceedings. In those proceedings, we often adopt rebuttable presumptions which relate to pricing violations and injury. Such a policy reflects our belief that adoption of these presumptions permits applicants to participate in refund proceedings in larger numbers by avoiding the need to incur inordinate expense; and facilitates our consideration of first stage refund applications. 10 CFR 205.282(e). For those reasons, we have adopted similar presumptions in the present proceeding.

(1) Calculating the Refund

We have presumed that the pricing violations were dispersed equally throughout Sunset's motor gasoline sales during the audit period. We therefore proposed that each applicant's potential refund should be calculated on a volumetric basis. Under the volumetric approach, refunds are calculated by multiplying the gallons of refined product each applicant purchased by the per gallon refund amount (volumetric) established for this proceeding, plus accrued interest. Applicants believing they were disproportionately overcharged by the pricing violations may present documentation which supports that claim. Those who succeed in showing they were disproportionately overcharged by Sunset will be eligible to receive refunds calculated at a higher volumetric.

The volumetric for this proceeding has been set at $.0868 per gallon. This figure was obtained by dividing the remedial order funds available for distribution by the volume of gasoline Sunset is believed to have sold during the audit period.[3]

(2) Eligibility for a Refund

In order to be eligible to receive a refund in this proceeding, each applicant must (1) document the volume of motor gasoline it purchased during the audit period; and (2) demonstrate that it was injured by Sunset's overcharges. The threshold requirement for any applicant is documenting the volume of product it purchased. This requirement is typically satisfied when the applicant successfully demonstrates ownership of the business for which the refund is sought and submits documentation which supports the volume claimed in its refund application.

The injury showing, however, is a potentially more difficult requirement for applicants to satisfy, especially those seeking smaller refund amounts. This is true because an applicant must demonstrate that it was forced to absorb Sunset's overcharges. Our cases have often stated that an applicant accomplishes this by demonstrating that it maintained a "bank" of unrecovered product costs and showing that market conditions would not permit the applicant to pass through those increased costs. See, *Quintana Energy Corp.*, 21 DOE ¶ 85,032 at 88,117 (1991).

Unless simplified application procedures were provided, we recognized that the cost to the applicant of gathering evidence of injury to support a relatively small refund claim could exceed the expected refund and thereby cause some injured parties to be denied an opportunity to obtain a refund. Moreover, simplified procedures were needed to minimize the burden that would be placed on this Office if we found it necessary to analyze a detailed injury showing for large numbers of small refund applications. In view of these difficulties, we proposed adopting a number of injury presumptions which simplify and streamline the refund process.

(3) Presumptions of Injury

Each presumption of injury turns on the category of applicant. Set forth below is the presumption of injury that has been adopted for each class of applicant likely to submit a refund application in this proceeding.

Small-claim Presumption. We have adopted a small claim presumption of injury for resellers, retailers and refiners whose claim is $10,000 or less, exclusive of interest. A small claim threshold of $10,000 has been adopted, even though we established a lower threshold amount of $5,000 in many prior proceedings. See, e.g., *Gulf Oil Corporation*, 16 DOE ¶ 85,381 (1987)(establishing a $5,000 threshold). The $10,000 threshold is more appropriate here because the volumetric for this proceeding is significantly higher than the volumetric set in Gulf and in most other proceedings. *Id.* If we were to adopt a lower threshold amount for this proceeding, then the high volumetric would increase substantially the number of very small firms that would be burdened with the requirement to make a detailed injury showing before they become eligible to receive their full allocable share.

The small claim presumption of injury for this proceeding, exempts applicants whose claims are $10,000 or less, exclusive of interest, from the requirement to prove injury. Such an applicant need only document the volume of motor gasoline he or she purchased from Sunset during the audit period in order to be eligible to receive a full refund. See *Enron Corporation*, 21 DOE ¶ 85,323 at 88,957 (1991).

Mid-range Presumption. Mid-range applicants; that is, applicants seeking refunds in excess of $10,000 but less than $50,000, excluding interest, are eligible to receive 40 percent of their allocable share without proving injury. Like small-claim applicants, these applicants will only be required to document the volume of Sunset gasoline they purchased during the audit period to be eligible to receive refunds. See *Shell*, 17 DOE at 88,406.

End-user Presumption. We have presumed that end-users of petroleum products whose businesses were unrelated to the petroleum industry and were not subject to the regulations promulgated under the Emergency Petroleum Price and Allocation Act of 1973 (EPAA), 15 U.S.C. §§ 751–760h, were injured by Sunset's pricing violations. Unlike regulated firms, end-users were not subject to price controls during the audit period. Moreover, these firms were not required to keep records that justified selling price increases by reference to cost increases. An analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services is beyond the scope of a special refund proceeding. See *American Pacific International, Inc.*, 14 DOE ¶ 85,158 at 88,294 (1986). End-users seeking refunds in this proceeding will therefore be presumed to have been injured by Sunset's pricing violations. In order to receive a refund, end-user applicants need only document the volume of Sunset product they purchased during the audit period. Meritorious applicants are eligible to receive their full allocable share. See *Shell*, 17 DOE at 88,406.

Refunds in Excess of $50,000 and Other Applicants. Applicants seeking refunds in excess of $50,000, excluding interest, will be required to submit detailed evidence of injury. These applicants must show that the overcharges were absorbed, not passed through to their customers. They will therefore be unable to rely upon injury presumptions utilized in many refined product refund cases. *Id.*

We do not anticipate that other categories of applicants, such as, regulated firms, cooperatives, indirect purchasers or spot purchasers, would have obtained products from Sunset. Such applicants may nonetheless submit refund applications if they purchased motor gasoline from Sunset during the audit period. Any such applicants must demonstrate that they purchased products from Sunset during the audit period and show they were injured as a result of their purchases to

[1] Sunset remitted a total of $52,092.73. The PDO inadvertently stated that Sunset remitted $52,093.73.

[2] The Order imposed no sanctions upon Sunset as a result of its failure to make its records available in accordance with 10 CFR 210.92(b). See Remedial Order at 1 and 7.

[3] In the absence of precise figures indicating the amount of motor gasoline Sunset sold during the audit period, we estimated Sunset's total sales using the best available data. Based on sales of 200,000 gallons per month for 6 months, we believe Sunset sold 1,200,000 gallons of gasoline during the audit period. This figure will be used to calculate the volumetric refund amount unless the refund applications submitted pursuant to this Decision and Order indicate that our estimate is inaccurate. In the event the estimate proves to be inaccurate, it may be necessary to reestimate the volumetric.

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be eligible to receive a refund in this proceeding. Regulated firms and cooperatives are exempt from the requirement to show injury. They must, however, show that they will pass through to their customers any refunds they receive.

(4) How to Apply for a Refund

To apply for a refund from the Sunset settlement fund, an applicant must submit an Application for Refund containing all of the following information:

(1) The Applicant's name, the current name and address of the business for which the refund is sought; the name and address during the refund period of the business for which the refund is sought; the taxpayer identification number; a statement specifying whether the applicant is an individual, corporation, partnership, sole proprietorship or other business entity; the name, title, and telephone number of a person to contact for additional information; and the name and address of the person who should receive any refund check.[4] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify those names.

(2) The applicant should specify the source of its gallonage information. In calculating its purchase volumes, an applicant should use actual records from the settlement period, if available. If these records are not available, the applicant may submit estimates of its gasoline purchases, but the estimation methodology must be reasonable and must be explained.

(3) A statement indicating whether the applicant or a related firm has filed, or has been authorized to file on its behalf, any other application in this refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted.

(4) If the applicant is or was in any way affiliated with the consenting firm, in this case Sunset Boulevard Car Wash, the applicant should explain this affiliation, including the time period in which it was affiliated. If not, a statement that the applicant was not affiliated with the consenting firm.

(5) The statement listed below, provided it has been signed by the applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the Federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and should clearly refer to the appropriate proceeding name (Sunset Boulevard Car Wash) and case number (LEF–0112). Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish this information to be publicly disclosed, the applicant must submit an original application, clearly designated "confidential", containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than June 1, 1995, and sent to: Sunset Boulevard Car Wash, LEF–0112, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

(5) Minimal Amount Requirement

Only claims for at least $15 in principal will be processed. This minimum has been adopted in refined product refund proceedings because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those instances. See *Mobil Oil Corporation*, 13 DOE ¶ 85,339 (1985). Using the volumetric methodology, an applicant must have purchased at least 173 gallons of Sunset motor gasoline in order for its claim to be considered in this proceeding.

(6) Additional Information

OHA reserves the authority to require additional information before granting any refund in these proceedings. Applications lacking the required information may be dismissed or denied.

(7) Refund Applications Filed by Representatives

OHA reiterates its policy to closely scrutinize applications filed by filing services. Applications submitted by a filing service should contain all of the information indicated in this final Decision and Order. Strict compliance with the filing requirement as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant, will be required.

(8) Filing Deadline

The deadline for filing an Application for Refund is June 1, 1995.

V. Second Stage Refund Procedures

Any funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of PODRA, 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to OHA, and any funds that OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

Applications for Refund from the funds remitted to the Department of Energy by Sunset Boulevard Car Wash, pursuant to the Remedial Order finalized on October 22, 1980, may now be filed.

Dated: September 12, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–23127 Filed 9–16–94; 8:45 am]

BILLING CODE 6450–01–P

[4] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant who does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications. It is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 CFR part 205, Subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

Southwestern Power Administration

[Rate Order No. SWPA–29]

Integrated System Power Rates; Order Approving an Extension of Power Rates on an Interim Basis

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of an Extension of Power Rates—Integrated System.

SUMMARY: The Deputy Secretary of Energy, acting under Amendment No. 3 to Delegation Order No. 0204–108, dated November 10, 1993, 58 FR 59717, and pursuant to the implementation authorities in 10 CFR 903.22(h) and 903.23(a), has approved Rate Order No. SWPA–29 which extends the existing power rates for the Integrated System. This is an interim rate action effective October 1, 1994, and extending for a period of one year through September 30, 1995.

FOR FURTHER INFORMATION CONTACT: George C. Grisaffe, Assistant Administrator, Office of Administration and Rates, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101 (918) 581–7419.

SUPPLEMENTARY INFORMATION: The existing rate schedules for the Integrated System were approved on a final basis by the Federal Energy Regulatory Commission on September 18, 1991, for the period ending September 30, 1994. On June 14, 1994, the Southwestern Power Administration (Southwestern) published notice in the **Federal Register**, 59 FR 30583, of its intention to seek a one-year extension of the existing power rate for the Integrated System and provided for a 15-day comment period. No comments were received. 10 CFR 903.22(h) and 903.23(a) provide implementation authority for such interim extension to the Deputy Secretary.

Following review of Southwestern's proposal within the Department of Energy, I approved, Rate Order No. SWPA–29, on August 29, 1994 which extends the existing Integrated System rates for one year beginning October 1, 1994.

Issued at Washington, D.C., this 29th day of August 1994.

William H. White,

Deputy Secretary.

Order Approving Extension of Power Rates on an Interim Basis

August 29, 1994.

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983, 48 FR 55664, the Secretary of Energy delegated to the Deputy Secretary of Energy on a non-exclusive basis the authority to confirm, approve and place into effect on an interim basis power and transmission rates, and delegated to the Federal Energy Regulatory Commission (FERC) on an exclusive basis the authority to confirm, approve and place in effect on a final basis, or to disapprove power and transmission rates. Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744, revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates by delegating such authority to the Under Secretary of Energy rather than the Deputy Secretary of Energy. This delegation was reassigned to the Deputy Secretary of Energy by Department of Energy (DOE) Notice 1110.29, dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89, dated August 3, 1989, and subsequent revisions. By Amendment No. 2 to Delegation Order No. 0204–108, effective August 23, 1991, 56 FR 41835, the Secretary of the Department of Energy revised Delegation Order No. 0204–108 to delegate to the Assistant Secretary, Conservation and Renewable Energy, the authority which was previously delegated to the Deputy Secretary in that Delegation Order. By Amendment No. 3 to Delegation Order No. 0204–108, effective November 10, 1993, the Secretary of Energy redelegated to the Deputy Secretary of Energy, the authority to confirm, approve and place into effect on an interim basis power and transmission rates of the Power Marketing Administrations. This rate order is issued by the Deputy Secretary pursuant to said Amendment to Delegation Order No. 0204–108.

This is an interim rate extension. It is made pursuant to the authorities as implemented in 10 CFR 903.22(h) and 903.23(a).

Background

Southwestern Power Administration (Southwestern) currently has marketing responsibility for 2.2 million kilowatts of power from 24 multiple-purpose reservoir projects, with power facilities constructed and operated by the U.S. Army Corps of Engineers, generally in all or portions of the states of Arkansas, Kansas, Louisiana, Missouri, Oklahoma and Texas. The Integrated System, composed of 22 of the projects, is interconnected through a transmission system presently consisting of 138- and 161-kV high-voltage transmission lines, 69-kV transmission lines, and numerous bulk power substations and switching stations. In addition, contractual transmission arrangements provide for integration of other projects into the system.

The remaining two projects, Sam Rayburn Dam and Robert Douglas Willis, are isolated hydraulically and electrically from the Southwestern transmission system, and their power is marketed under separate contracts through which the customer purchases the entire power output of the project at the dam. A separate Power Repayment Study (PRS) is prepared for each isolated project, and each has a special rate which is not a part of this study. The existing rate schedules for the Integrated System were confirmed and approved on a final basis by the FERC on September 18, 1991 for the period October 1, 1990 through September 30, 1994. The FY 1994 Integrated System PRSs indicate the need for a minor rate adjustment of $726,051 annually, or 0.8 percent.

Pursuant to implementing authority in 10 CFR 903(h) and 903.23(a), the Deputy Secretary of Energy may extend a FERC-approved rate on an interim basis. The Administrator, Southwestern, published notice in the **Federal Register** on June 14, 1994, 59 FR 30583, announcing a 15-day period for public review and comment concerning the proposed interim rate extension. In addition, informal meetings were held with customer representatives on January 12, 1994; April 4, 1994; and May 6, 1994. Written comments were accepted through June 29, 1994. No comments on the proposed interim extension were received.

Discussion

The existing Integrated System rates are based on the FY 1990 PRS. PRSs have been completed on the Integrated System each year since approval of the existing rates. Rate changes indicated by the PRSs during that period indicated the need for a minor rate increase or decrease. Since the revenue changes reflected by the PRSs were within the plus-or-minus two percent Rate Adjustment Threshold established by Southwestern's Administrator on June 23, 1987, these rate adjustments were deferred in the best interest of the government and provided for the next year's PRS to determine the appropriate level of revenues needed for the next rate period.

The FY 1994 PRS indicates the need for a minor rate increase of 0.8 percent. As has been the case since the existing rates were approved, the FY 1994 rate adjustment needed falls within Southwestern's plus-or-minus two percent Rate Adjustment Threshold and would normally be deferred. However, the existing rates expire on September 30, 1994. Consequently, Southwestern proposes to extend the existing rates for a one-year period ending September 30, 1995, on an interim basis under the implementation authorities noted in 10 CFR 903.22(h) and 903.23(a).

Southwestern continues to make significant progress toward repayment of the Federal investment in the Integrated System. Through FY 1993, status of repayment for the Integrated System was $288,259,891, which

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represents approximately 30 percent of the $971,634,103 Federal investment for the Integrated System. The status has increased almost 47 percent since the existing rates were placed in effect.

Information regarding this rate extension, including studies and other supporting material, is available for public review and comment in the offices of Southwestern Power Administration, One West Third Street, Tulsa, Oklahoma 74101.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby extend on an interim basis, for the period of one year, effective October 1, 1994, the current FERC-approved Integrated System Rates for the sale of power and energy.

Issued at Washington, DC, August 29, 1994.

William H. White,

Deputy Secretary.

[FR Doc. 94-23124 Filed 9-16-94; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[NPDES No. FLG830000; FRL-5073-3]

Reissuance of the National Pollutant Discharge Elimination System (NPDES) General Permit for Petroleum Fuel Contaminated Ground/Storm Waters in the State of Florida

AGENCY: Environmental Protection Agency.

ACTION: Notice of Reissuance of a NPDES General Permit to the State of Florida.

SUMMARY: The Regional Administrator, EPA, Region IV intends to reissue the National Pollutant Discharge Elimination System (NPDES) General Permit No. FLG830000 to facilities within the political boundary of the State of Florida. This proposed reissued NPDES general permit proposes effluent limitations, prohibitions, reporting requirements and other conditions on facilities which discharge uncontaminated groundwater associated with dewatering or treated groundwater and/or storm water incidental to the groundwater cleanup operation which have been contaminated by automotive gasoline, aviation and/or diesel fuels. This permit authorizes discharges from facilities currently located in and discharging to surface waters within the political boundary of the State of Florida, and any new treatment facilities placed in operation during the term of this permit.

Except for facilities meeting the conditions of Part I.3, written notice of intent to be covered by the reissued NPDES general permit shall be provided to the Permit Issuing Authority prior to initiation of any discharge to waters of the United States. For facilities that must submit a Notice of Intent (NOI), coverage by this NPDES general permit is authorized upon receipt of written notification of coverage from the Permit Issuing Authority. The proposed reissued permit contains limitations on the amounts of pollutants allowed to be discharged and was drafted in accordance with the provisions of the Clean Water Act (33 U.S.C. 1251 *et seq.*) and other lawful standards and regulations. The pollutant limitations and other permit conditions are tentative and open to comment from the public.

ADDRESSES: Persons wishing to comment upon or object to any aspects of a specific permit reissuance or wishing to request a public hearing, are invited to submit same in writing within thirty (30) days of this notice to the Office of Public Affairs, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, Attention: Ms. Lena Scott, Public Notice Coordinator. Pursuant to 40 CFR 124.13, any person who believes that any permit condition is inappropriate must raise all reasonably ascertainable issues and position, by the close of the comment period. The public notice number and NPDES number should be included in the first page of comments. All comments received within the 30-day period will be considered in the formulation of a final determination regarding the reissuance of this NPDES general permit. Also, within the 30-day period any interested person may request a public hearing. Where there is a significant degree of public interest in the proposed general permit reissuance, the EPA Regional Administrator will schedule and hold a public hearing which would be formally announced in accordance with 40 CFR 124.10 and 124.12.

After consideration of all written comments and the requirements and policies in the Act and appropriate regulations, the EPA Regional Administrator will make a determination regarding the reissuance of this NPDES general permit. If the determination is substantially unchanged from that announced by this notice, the EPA Regional Administrator will so notify all persons submitting written comments. If the determination is substantially changed, the EPA Regional Administrator will issue a public notice indicating the revised determination. A formal hearing is available to challenge any NPDES permit issued under 40 CFR 124.14 except for a general permit. Persons affected by a general permit may not challenge the conditions of a general permit as a right in further agency proceedings.

They may instead either challenge the general permit in court, or apply for an individual permit under 40 CFR 122.21 as authorized at 40 CFR 122.28 and then request a formal hearing on the issuance or denial of an individual permit. The administrative record, including draft NPDES general permit, fact sheet, state certification, comments received, and additional information are available by writing the EPA, Region IV, or for review and copying at 345 Courtland St., NE., Atlanta, Georgia 30365, between the hours of 8:15 a.m. and 4:30 p.m., Monday through Friday. Copies will be provided at a nominal charge per page. Additional information concerning the permit may be obtained at the address and during the hours noted above: Ms. Lena Scott, Public Notice Coordinator, 404/347-3004.

FOR FURTHER INFORMATION CONTACT: Larry Cole, Environmental Engineer, Water Permits and Enforcement Branch, Water Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 347-3012 ext. 2948.

SUPPLEMENTARY INFORMATION:

I. Introduction

On Thursday, August 25, 1988 (53 FR 32442), EPA, Region IV proposed the issuance of the draft NPDES General Permit. During the 30-day comment period, a request for an extension of the comment period was received, and on Tuesday, October 25, 1988 (53 FR 43035), the comment period was extended to November 15, 1988. On Monday, July 17, 1989 (54 FR 29986), EPA, Region IV issued the Final NPDES General Permit for Petroleum Fuel Contaminated Ground/Storm Waters in the State of Florida.

On Friday, February 22, 1991 (56 FR 7379), EPA, Region IV published a notice of the proposed modification to the NPDES General Permit for Petroleum Fuel Contaminated Ground/Storm Waters in the State of Florida (56 FR 7379). On Thursday, August 29, 1991 (56 FR 42736), the final modification was issued.

Patrick M. Tobin,

Deputy Regional Administrator.

General Permit to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*; the "Act").

Discharges of uncontaminated groundwater from dewatering activities, treated groundwater and incidental storm water, which are contaminated with gasoline or aviation fuel, are authorized to discharge to waters of the United States within the State of Florida in accordance with effluent limitations, monitoring requirements and other conditions set forth herein. This draft permit consists of Part I, Part II, Part III, Part IV, and Part V. This is immediately followed by a fact sheet which goes into detail concerning the reissuance of this permit. This permit shall become effective on _____. This permit and the authorization to discharge shall expire at midnight, Eastern Daylight Savings Time, on _____, 19_____.

Allan E. Antley,

Associate Division Director, Water Management Division.

Part I

A. Effluent Limitations and Monitoring Requirements

Existing Sources and New Dischargers.

1. During the period beginning on the effective date of the permit and lasting through the term of this permit, the permittee is authorized to discharge treated groundwater and storm water that has been contaminated by Automotive Gasoline. It is anticipated that these contaminated waters will be treated by air stripping, followed by activated carbon adsorption, if necessary, or equivalent treatment to meet the following effluent limitations

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent characteristic	Discharge limitations		Monitoring requirements	
	Daily avg	Daily Max	Measurement frequency	Sample type
Flow, MGD	Report	Report	Continuous	Flowmeter.
Benzene, µg/l		1.0	1/month	Grab.
*Total lead, µg/l		30.0	1/month	Grab.
pH, standard units		See below		
Acute whole effluent toxicity			See part V	Grab.

Monitoring for this parameter is required only when contamination results from leaded fuel.

An LC_{50} of 100% or less in a test of 96 hours duration or less will constitute a violation of Florida Administrative Code (FAC) (July 11, 1993) § 17-4.244(3)(a) and the terms of this permit. The testing for this requirement must conform with Part V of this permit.

For fresh waters and coastal waters, the pH of the effluent shall not be lowered to less than 6.0 units for fresh waters, or less than 6.5 units for marine waters, or raised above 8.5 units, unless the permittee submits natural background data in the NOI request confirming a natural background pH outside of this range. If natural background of the receiving water, as revealed by sampling data from the permittee in the NOI request, is determined to be less than 6.0 units for fresh waters, or less than 6.5 units in marine waters, the pH shall not vary below natural background or vary more than one (1) unit above natural background for fresh and coastal waters. If natural background of the receiving water, as revealed by sampling data from the permittee in the NOI request, is determined to be higher than 8.5 units, the pH shall not vary above natural background or vary more than one (1) unit below natural background of fresh and coastal waters. The acceptable pH range will be included in the letter granting permit coverage and on the DMR. The pH shall be monitored once every month by grab sample, or continuously with a recorder. (See item I.B.4).

In accordance with FAC § 17-302.500(1)(a-c)(4-25-93), the discharge shall at all times be free from floating solids, visible foam, turbidity, or visible oil in such amounts as to form nuisances on surface waters.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): Nearest accessible point after final treatment but prior to actual discharge or mixing with the receiving waters.

A. Effluent Limitations and Monitoring Requirements

Existing Sources and New Dischargers.

2. During the period beginning on the effective date of the permit and lasting through the term of this permit, the permittee is authorized to discharge treated groundwater and storm water that has been contaminated by Aviation Gasoline, Jet Fuel or Diesel.

It is anticipated that these contaminated waters will be treated by air stripping, followed by activated carbon adsorption, if necessary, or equivalent treatment to meet the following effluent limitations. Such discharges shall be limited and monitored by the permittee as specified below:

Effluent characteristic	Discharge limitations		Monitoring requirements	
	Daily average	Daily maximum	Measurement frequency	Sample type
Flow, MGD	Report	Report	Continuous	Flowmeter.
Benzene, µg/l		1.0	1/month	Grab.
Naphthalene, µg/l		100.0	1/month	Grab.
Total lead, µg/l [1]		30.0	1/month	Grab.
pH, standard units (SUs)		(2)	(2)	

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Effluent characteristic	Discharge limitations		Monitoring requirements	
	Daily average	Daily maximum	Measurement frequency	Sample type
Acute whole effluent toxicity		(3)	(3)	Grab.

[1] Monitoring for this parameter is required only when contamination results from leaded fuel.
[2] See Part I.A.1.
[3] See Part V.

An LC_{50} of 100% or less in a test of 96 hours duration or less will constitute a violation of FAC (July 11, 1993) § 17–4.244(3)(e) and the terms of this permit. The testing for this requirement must conform with Part V of this permit.

The permittee shall comply with the same pH requirements for this Part I.A.2 as in Part I.A.1.

The pH shall be monitored once every month by grab sample, or continuously with a recorder. (See item I.B.4)

In accordance with FAC § 17–302.500(1)(a–c), the discharge shall at all times be free from floating solids, visible foam, turbidity, or visible oil in such amounts as to form nuisances on surface waters.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): Nearest accessible point after final treatment but prior to actual discharge or mixing with the receiving waters.

A. Effluent Limitations and Monitoring Requirements

3. During the period beginning on the effective date of the permit and lasting through the term of this permit, the permittee is authorized to discharge produced groundwater from any noncontaminated site activity which discharges by a point source to waters of the United States, only if the specified values for the parameters listed below do not exceed any of the screening values below. Before discharge of produced groundwater can occur, such site analytical tests on samples of the proposed discharge water shall be performed to determine if contamination exists from other sources.

Minimum reporting requirements for all produced groundwater dischargers.

The effluent shall be sampled at the final effluent before the commencement of discharge and once every six months for the life of the project to maintain continued coverage under this general permit. The effluent shall be sampled for the parameters listed below and the analytical results obtained shall be submitted to EPA at the address given in Part III.A.

Parameter	Daily maximum
Total organic carbon	Report, mg/l.
pH	Report, standard units.
Total recoverable mercury	Report, µg/l.
Total recoverable cadmium	Report, µg/l.
Total recoverable copper	Report, µg/l.
Total recoverable lead	Report µg/l.
Total recoverable zinc	Report, µg/l.
Total recoverable chromium (Hex)	Report, µg/l
Benzene	Report, µg/l.
Naphthalene	Report, µg/l.

Reported analytical test results for the parameters listed above exceeding any of the screening values listed below shall be considered an indication of contamination from sources other than petroleum fuels:

Parameter	Indicator if discharge is into—	
	Fresh waters	Marine waters
Total organic carbon	10.0 mg/l	10.0 mg/l
pH, SU's	6.0—8.5	6.5—8.5
Total recoverable mercury	0.012 µg/l	0.025 µg/l
Total recoverable cadmium	9.3 µg/l	9.3 µg/l
Total recoverable copper	2.9 µg/l	2.9 µg/l
Total recoverable lead	0.03 mg/l	5.6 µg/l
Total recoverable zinc	86.0 µg/l	86.0 µg/l
Total recoverable chromium (Hexavalent)	11.0 µg/l	50.0 µg/l
Benzene	1.0 µg/l	1.0 µg/l
Naphthalene	100.0 µg/l	100.0 µg/l

If any of the analytical test results exceed the above screening values, discharge is not authorized by this permit. See paragraph I.A.3.b for further guidance.

In accordance with FAC 17–302.500(1)(a–c), the discharge shall at all times be free from floating solids, visible foam, turbidity, or visible oil in such amounts as to form nuisances on surface waters.

All discharges must comply with the following permit requirements:

(a) If analytical tests of Part I.A.3 reveal excessive benzene and naphthalene concentrations indicative of contamination from petroleum fuels, and the discharge will occur for thirty (30) days or less, the permittee shall comply only with the applicable effluent limitations and monitoring requirements in Part I.A.1 or I.A.2 for benzene, pH, and/or naphthalene and total lead. The commencement of the Part V biomonitoring program and Part I.B.3 EPA method 624 and 625 (one time analysis) is not required for this short-term activity. One (1) grab sample shall be analyzed per seven (7) days during the discharge period, and the total volume discharged shall be recorded. For discharges contaminated by petroleum fuels that last for less than a week, daily monitoring will be required for the applicable parameters. Upon receipt of written EPA notification of coverage that the NOI request is complete, these short-term discharges may commence. Discharge Monitoring Reports shall be submitted to EPA within thirty (30) days after termination of the discharge.

(b) If contamination from sources other than petroleum contamination does exist, as indicated by the results of the analytical tests required by Part I.A.3 above, the discharge is not covered by this general permit. The operator shall apply for an individual NPDES permit at least ninety (120) days prior to the date a discharge to waters of the United States is expected. No discharge is permissible without an effective NPDES permit.

(c) If analytical tests reveal no contamination exists from petroleum fuels or sources other than petroleum contamination as a result of the required analytical screening tests required in Part I, A.3, the permittee can commence discharge immediately and is covered by this permit without having to submit an NOI request for coverage to EPA, Region IV. A short summary of the proposed activity and copy of these analytical tests shall be sent to the same address specified in Part III.A at least (1) one week before discharge begins. These analytical tests shall be kept on site during discharge and made available to EPA, if requested. Additionally, no Discharge Monitoring Report (DMR) forms are required to be submitted to EPA, Region IV.

B. Other Requirements

1. Any more frequent effluent discharge monitoring required by the Florida Department of Environmental Protection (FDEP) for the parameters limited in this permit, or different parameters, shall be reported to the Permit Issuing Authority in accordance with the requirements of Part III of this permit.

2. Effluent limitations for combining contaminated groundwater pumped to above-ground storage tanks with contaminated groundwater from the site's recovery wells: The permittee shall notify FDEP of any intent to combine contaminated groundwater pumped to above-ground storage tanks with contaminated groundwater from the recovery well. Approval of this combined effluent discharge by FDEP will constitute approval to apply for coverage under this permit.

3. Within sixty (60) days of the effective date of this permit or startup of discharge the permittee shall also submit the results of the following analyses. These analyses shall be performed on a representative sample of the groundwater effluent discharge, taken after final treatment.

Required analyses (one time only):

a. EPA Method 625—Acid and base/neutral extractable organics
b. EPA Method 624—Purgeable Organics

If such analyses required in Part B.3 above reveal toxic pollutants other than those regulated in Part I.A. or subsequent Whole Effluent Toxicity (WET) tests reveal an LC_{50} of 100% or less in a test of 96 hours duration or less, coverage under this general permit will be reviewed for termination by EPA Region IV Enforcement Section.

4. If the pH is monitored continuously, the pH values shall not deviate outside the required range more than 1% of the time in any calendar month; and no individual excursion shall exceed 60 minutes. An "excursion" is an unintentional and temporary incident in which the pH value of discharge wastewater exceeds the range set forth in this permit.

C. Test Procedures

1. In performing the analysis for the dissolved constituents in the surface water and groundwater, the permittee shall use the guidelines recommended and described in FAC Sections 17–770.600(8)[a–d] of the Petroleum Contamination Cleanup Criteria (PCCC), amended February 20, 1990, or the most current edition.

2. If the petroleum contamination is from a petroleum fuel in which the source of contamination has not been identified, the groundwater shall be analyzed (using the recommended methods) for the following parameters as described in FAC Section 17.770.600(8)(c)1, of the PCCC, amended February 20, 1990, or the most current edition:

a. Lead	(EPA Method 239.2 or Standard Method 304).
b. Priority Pollutant Volatile Organics.	(EPA Method 624).
c. Priority Pollutant Extractable Organics.	(EPA Method 625).
d. Non-Priority Pollutant Organics (with GC/MS Peaks greater than 10 ppb).	(EPA Methods 624 and 625).

D. Schedule of Compliance

1. The permittee shall achieve compliance with the effluent limitations specified for discharges in accordance with the following schedule:

Permittees with Revoked Individual Permits:
Operational level attained—Upon Receipt of Notification of Coverage
New Dischargers:
Operational level attained—Upon Commencement of Discharge

2. No later than fourteen (14) calendar days after any date identified in the above schedule of compliance the permittee shall submit either a report of progress or, in the case of specific actions being required by identified dates, a written notice of compliance or noncompliance. In the latter case, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

Part II

Standard Conditions for NPDES Permits

Section A. General Conditions

1. Duty To Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions

Any person who violates a permit condition is subject to a civil penalty not to exceed $25,000 per day of such violation. Any person who willfully or negligently violates permit conditions is subject to a fine of up to $50,000 per day of violation, or by imprisonment for not more than 1 year, or both. Any person who knowingly violates permit conditions is subject to criminal penalties of $5,000 to 50,000 per day of violation, or imprisonment for not more than 3 years, or both. Also, any person who violates a permit condition may be assessed an administrative penalty not to exceed $10,000 per violation with the maximum not to exceed $125,000. [Ref: CFR 122.41(a)].

3. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Duty To Reapply

Where EPA is the Permit Issuing Authority (PIA), the terms and conditions of this permit are automatically continued in accordance with 40 CFR 122.6, only where the permittee has submitted a timely and complete Notice of Intent 180 days prior to expiration of this permit, and the PIA is unable through no fault of the permittee to issue a new permit before the expiration date.

5. Permit Modification

After notice and opportunity for a hearing, this permit may be modified, terminated, or revoked for cause (as described in 40 CFR 122.62 et seq.) including, but not limited to, the following:

a. Violation of any terms or conditions of this permit;

b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;

c. A change in any conditions that requires either temporary interruption or elimination of the permitted discharge; or

d. Information newly acquired by the Agency indicating the discharge poses a threat to human health or welfare.

If the permittee believes that any past or planned activity would be cause for modification or revocation and reissuance under 40 CFR 122.62, the permittee must report such information to the Permit Issuing Authority. The submittal of a new application may be required of the permittee. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

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6. Toxic Pollutants

Notwithstanding Paragraph A–4, above, if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition and the permittee so notified

7. Civil and Criminal Liability

Except as provided in permit conditions on "Bypassing" Section B, Paragraph B–3, nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

8. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

9. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Act.

10. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

11. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

12. Duty to Provide Information

The permittee shall furnish to the Permit Issuing Authority, within a reasonable time, any information which the Permit Issuing Authority may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Permit Issuing Authority upon request, copies of records required to be kept by this permit.

Section B. Operation and Maintenance of Pollution Controls

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need to Halt or Reduce not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the condition of this permit.

3. Bypass of Treatment Facilities

a. Definitions

(1) *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility, which is not a designed or established operating mode for the facility.

(2) *Severe property damage* means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Bypass not exceeding limitations.

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Paragraphs c. and d. of this section.

c. Notice

(1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass; including an evaluation of the anticipated quality and effect of the bypass.

(2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Section D, Paragraph D–4 (24-hour notice).

d. Prohibition of bypass.

(1) Bypass is prohibited and the Permit Issuing Authority may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe and extensive property damage;

(b) There were no feasible alternatives to the bypass, such as maintenance of sufficient reserve holding capacity, the use of auxiliary treatment facilities, retention of untreated wastes, waste hauling, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c) The permittee submitted notices as required under Paragraph c. of this section.

(2) The Permit Issuing Authority may, within its authority, approve an anticipated bypass, after considering its adverse effects, if the Permit Issuing Authority determines that it will meet the three conditions listed above in Paragraph d.(1) of this section.

4. Upsets

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit limitation if the requirements of 40 CFR 122.41(n)(3) are met. (Note that this provision does not apply to water quality requirements.)

5. Removed Substances

This permit does not authorize discharge of solids, sludge, filter backwash, or other pollutants removed in the course of treatment or control of

wastewaters to waters of the United States unless specifically limited in Part 1.

Section C. Monitoring and Records

1. Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring points specified in this permit and, unless otherwise specified, before the effluent joins or is diluted by any other wastestream, body of water, or substance. Monitoring points shall not be changed without notification to and the approval of the Permit Issuing Authority.

2. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to insure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated and maintained to insure that the accuracy of the measurements are consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than ± 10% from the true discharge rates throughout the range of expected discharge volumes. Guidance in selection, installation, calibration and operation of acceptable flow measurement devices can be obtained from the following references:

(1) "A Guide of Methods and Standards for the Measurement of Water Flow", U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 421, May 1975, 97 pp. (Available from the U.S. Government Printing Office, Washington, D.C. 20402. Order by SD catalog No. C13.10:421.)

(2) "Water Measurement Manual", U.S. Department of Interior, Bureau of Reclamation, Second Edition, Revised Reprint, 1974, 327 pp. (Available from the U.S. Government Printing Office, Washington, D.C. 20402. Order by catalog No. 127.19/2:W29/2, Stock No. S/N 24003–0027.)

(3) "Flow Measurement in Open Channels and Closed Conduits", U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 484, October 1977, 982 pp. (Available in paper copy or microfiche from National Technical Information Service (NTIS), Springfield, VA 22151. Order by NTIS No. PB–273 535/5ST.)

(4) "NPDES Compliance Flow Measurement Manual", U.S. Environmental Protection Agency, Office of Water Enforcement, Publication MCD–77, September 1981, 135 pp. (Available from the General Services Administration (8BRC), Centralized Mailing Lists Services, Building 41, Denver Federal Center, Denver, CO 80225.)

3. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

4. Penalties for Tampering

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 2 years per violation, or by both.

5. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by the Permit Issuing Authority at any time.

6. Record Contents

Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

7. Inspection and Entry

The permittee shall allow the Permit Issuing Authority, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable time any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

Section D. Reporting Requirements

1. Change in Discharge

The permittee shall give notice to the Permit Issuing Authority as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source; or

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Section D, Paragraph D–10(a).

2. Anticipated Noncompliance

The permittee shall give advance notice to the Permit Issuing Authority of any planned change in the permitted facility or activity which may result in noncompliance with permit requirements. Any maintenance or facilities, which might necessitate unavoidable interruption of operation and degradation of effluent quality, shall be scheduled during noncritical water quality periods and carried out in a manner approved by the Permit Issuing Authority.

3. Transfer of Ownership or Control

A permit may be automatically transferred to another party if:

a. The permittee notifies the Permit Issuing Authority of the proposed transfer at least 30 days in advance of the proposed transfer date;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The Permit Issuing Authority does not notify the existing permittee of his or her intent to modify or revoke and reissue the permit. If this notice is not

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received, the transfer is effective on the date specified in the agreement mentioned in paragraph b.

4. Monitoring Reports

See Part III of this permit

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased frequency shall also be indicated.

6. Averaging of Measurements

Calculations for limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Permit Issuing Authority in the permit.

7. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

8. Twenty-Four Hour Reporting

The permittee shall orally report any noncompliance which may endanger health or the environment, within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times; and if the noncompliance has not been corrected, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Permit Issuing Authority may verbally waive the written report, on a case-by-case basis, when the oral report is made. The following violations shall be included in the 24 hour report when they might endanger health or the environment:

a. An unanticipated bypass which exceeds any effluent limitation in the permit.

b. Any upset which exceeds any effluent limitation in the permit.

9. Other Noncompliance

The permittee shall report in narrative form, all instances of noncompliance not previously reported under Section D, Paragraphs D–2, D–4, D–7, and D–8 at the time monitoring reports are submitted. The reports shall contain the information listed in Paragraph D–8.

10. Changes in Discharges of Toxic Substances

The permittee shall notify the Permit Issuing Authority as soon as it knows or has reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic substance(s) (listed at 40 CFR 122, Appendix D, Table II and III) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) One hundred micrograms per liter (100 µg/l); or

(2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2, 4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony.

b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant (listed at 40 CFR 122, Appendix D. Table II and III) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) Five hundred micrograms per liter (500 µg/l); or

(2) One milligram per liter (1 mg/l) for antimony.

11. Signatory Requirements

All applications, reports, or information submitted to the Permit Issuing Authority shall be signed and certified.

a. All permit applications shall be signed as follows:

(1) For a corporation: by a responsible corporate officer.

For the purpose of this Section, a responsible corporate officer means:

(1) A president, secretary, treasurer or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy—or decision-making functions for the corporation, or (2) the manager of one or more manufacturing production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

b. All reports required by the permit and other information requested by the Permit Issuing Authority shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

(3) The written authorization is submitted to the Permit Issuing Authority.

c. Certification. Any person signing a document under paragraphs (a) or (b) of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under the direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

12. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Permit Issuing Authority. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

13. Penalties for Falsification of Reports

The Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 2 years per violation, or by both.

Section E. Definitions

1. Permit Issuing Authority

The Regional Administrator of EPA Region IV or his designee, unless at some time in the future the State receives the authority to administer the NPDES program and assumes jurisdiction over the permit; at which time, the Director of the State program receiving authorization becomes the issuing authority.

2. Act

Act means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act) Public Law 92–500, as amended by Public Laws 95–217, 95–576, 96–483,97–117, and Public Law 100–4, 33 U.S.C. 1251 et seq.

3. Concentration Measurements

a. The "average monthly concentration", is the sum of the concentrations of all daily discharges sampled and/or measured during a calendar month on which daily discharges are sampled and measured, divided by the number of daily discharges sampled and/or measured during such month (arithmetic mean of the daily concentration values). The daily concentration value is equal to the concentration of a composite sample or in the case of grab samples is the arithmetic mean (weighted by flow value) of all the samples collected during the calendar day.

b. The "maximum daily concentration", is the concentration of a pollutant discharge during a calendar day. It is identified as "Daily Maximum" under "Other Limits" in Part I of the permit and the highest such value recorded during the reporting period is reported under the "Maximum" column under "Quality" on the DMR.

4. Other Measurements

a. The effluent flow expressed as MGD is the 24 hour average flow averaged monthly. It is the arithmetic mean of the total daily flows recorded during the calendar month. Where monitoring requirements for flow are specified in Part I of the permit the flow rate values are reported in the "Average" column under "Quantity" on the DMR.

b. An "instantaneous flow measurement" is a measure of flow taken at the time of sampling, when both the sample and flow will be representative of the total discharge.

c. Where monitoring requirements for pH or dissolved oxygen are specified in Part I of the permit, the values are generally reported in the "Quality or Concentration" column on the DMR.

5. Types of Samples

a. Grab Sample: A "grab sample" is a single influent or effluent portion which is not a composite sample. The sample(s) shall be collected at the period(s) most representative of the total discharge.

6. Calendar Day

A calendar day is defined as the period from midnight of one day until midnight of the next day. However, for purposes of this permit, any consecutive 24-hour period that reasonably represents the calendar day may be used for sampling.

7. Hazardous Substance

A hazardous substance means any substance designated under 40 CFR Part 116 pursuant to Section 311 of the Clean Water Act.

8. Toxic Pollutant

A toxic pollutant is any pollutant listed as toxic under Section 307(a)(1) of the Clean Water Act.

Section F. Application Requirements

a. For expired individual NPDES permits, dischargers desiring coverage under this general permit are required to submit a notice of intent (NOI) to the Permit Issuing Authority. The NOI shall include (1) The name and address of the person that the permit will be issued to (2) the name, and address of the operation, including county location, (3) the applicable individual NPDES number(s), (4) the identification of any new discharge location not contained in the expired permit, (5) evidence that the operation has obtained approval of a Remedial Action Plan (RAP) Order from the FDEP, (6) a map showing the facility and discharge location (including latitude and longitude), and (7) the name of the receiving water. Operators having several individual permits are encouraged to consolidate requests for coverage into one NOI for all individual permits. The previous submission of the proper forms in the renewal application does not relieve the permittee desiring coverage under the general permit of the requirement to file a NOI.

b. Dischargers with current individual NPDES permits that desire coverage under this general permit are required to file an NOI to the Permit Issuing Authority at least thirty (30) days prior to expiration of their current permit(s). The NOI shall contain the same information specified in paragraph a above. Permittees desiring to renew their individual permit are required to submit the appropriate application forms at least 180 days before expiration of their individual permit.

c. Dischargers who have not previously obtained an individual NPDES permit are required to submit to EPA the FDEP approval order letter approving the site RAP. The RAP approval order shall be attached to an NOI to be covered by the general permit and shall contain the same information specified in paragraph a above. The application for coverage under the general permit must be made at least forty-five (45) days before the discharge is to commence.

d. Dischargers seeking coverage under Part I A.3.a. will be required to submit to EPA the date the discharge is expected to cease, results of analytical data and the same information in paragraph a above, except items (3), (4) and (5). Notification of coverage to discharge will be upon receipt of EPA's short-term coverage letter.

e. Notification of coverage will be given by the Permit Issuing Authority by certified mail to the permittee, for dischargers seeking coverage under Part I Sections A.1 and A.2, with the issuance date for each facility being the effective date of coverage by the Permit Issuing Authority.

f. Dischargers meeting the conditions set forth in Part I A.3.c. are not required to submit an detailed NOI as outlined above, but must submit a copy of the analytical tests and a summary of the proposed activity at least one (1) week before discharge begins. These dischargers are covered upon receipt of the data, unless notified otherwise by EPA.

g. The coverage of the permit shall expire on _____, five (5) years from the effective date of the permit.

h. In accordance with 40 CFR 122.28(a)(2) permittees who are covered by this general permit who seek to be continued under this general permit, shall submit an complete NOI in accordance with paragraph a, to EPA 180 days before the expiration of this permit.

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Section G. Additional General Permit Conditions

1. The Permit Issuing Authority may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

a. The discharge(s) is a significant contributor of pollution;

b. The discharger is not in compliance with the conditions of this permit;

c. A change has occurred in the availability of the demonstrated technology of practices for the control or abatement of pollutants applicable to the point sources;

d. Effluent limitation guidelines are promulgated for point sources covered by this permit;

e. A Water Quality Management Plan containing requirements applicable to such point source is approved; or

f. The point source(s) covered by this permit no longer:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require the same or similar monitoring; and

(5) In the opinion of the RA, are more appropriately controlled under an individual permit than under a general permit.

The Regional Administrator (RA) may require any operator authorized by this permit to apply for an individual NPDES permit only if the operator has been notified in writing that a permit application is required.

2. Any operator authorized to discharge by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The operator shall submit an application together with the reasons supporting the request to the RA.

3. When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to the owner or operator is automatically terminated on the effective date of the individual permit.

4. A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit, this general permit shall apply to the source.

5. A petroleum contamination recovery operation may be excluded from this general permit if it proposes discharges to receiving waters that are classified as "Special Protection, Outstanding Florida Waters, Outstanding National Resource Waters" as set forth by FAC 17-302.700, dated April 25, 1993.

6. The permittee shall notify the Permit Issuing Authority within 30 days after the permanent termination of discharge from their facility. This letter shall include the necessary *Site Rehabilitation Completion Order* (SRCO) from Florida Bureau of Waste Cleanup which constitutes final action on the State level for completion of cleanup activities at the affected site. After review of the SRCO, EPA will inactivate coverage of the general NPDES permit for the facility. Dischargers covered under this general permit without RAP approval shall submit a *No Discharge Certification Form* to EPA, within 30 days after ceasing discharge.

Part III

Other Requirements

A. Reporting of Monitoring Results

Monitoring results obtained for each calendar month shall be summarized and reported on a DMR Form (EPA No. 3320-1), one DMR for each month. Unless otherwise required in Part V, these forms shall be submitted after each calendar quarter and postmarked no later than the 28th day of the month following the completed calendar quarter. (For example, data for January-March shall be submitted by April 28.) Calendar quarters are January-March, April-June, July-September and October-December. Signed copies of these and all other reports required by Section D of Part II, Reporting Requirements, and Part V shall be submitted to the Permit Issuing Authority at the following address: U.S. Environmental Protection Agency, Region IV, Enforcement Section, Water Permits and Enforcement Branch, 345 Courtland Street, N.E., Atlanta, GA 30365.

If no discharge occurs during the reporting period, sampling requirements of this permit do not apply. The statement "No Discharge" shall be written on the DMR form. If, during the term of this permit, the facility ceases discharge to surface waters, the Permit Issuing Authority shall be notified immediately upon cessation of discharge.

B. Reopener Clause

This permit shall be modified, or alternatively revoked and reissued to comply with any applicable effluent standard or limitation issued or approved under Sections 301(b)(2) (C), and (D), 304(b)(2), and 307(a)(2) of the Clean Water Act (the Act), if the effluent standard or limitation so issued or approved—

1. Contains different conditions or is otherwise more stringent than any condition in this permit; or

2. Controls any pollutant not limited in the permit. The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

Part IV

Best Management Practices and Pollution Prevention Conditions

Section A. General Conditions

1. BMP Plan

Preparation of a Best Management Practices (BMP) Plan shall be prepared in conjunction with development of the Remedial Action Plan required by Florida Department of Environmental Protection (See Part II.F.c.). The permittee shall maintain the BMP plan at the facility and shall make the plan available to the permit issuing authority upon request. The "NPDES Guidance Document" can be used as a reference which contains technical information on BMPs and the elements of the BMP program. The permittee shall develop and implement a BMP plan which prevents, or minimizes the potential for, the release of pollutants from ancillary activities, including material storage areas; plant site runoff; in-plant transfer, process and material handling areas; loading and unloading operations, and sludge and waste disposal areas, to the waters of the United States through plant site runoff; spillage or leaks; sludge or waste disposal; or drainage from raw material storage. The term pollutants refers to any substance listed as toxic under Section 307(a)(1) of the Clean Water Act, oil, as defined in Section 311(a)(1) of the Act, and substance listed as hazardous under Section 311 of the Act. Copies of the "NPDES Guidance Document" may be obtained by submitting written requests to: Director, Water Management Division, U.S. EPA Region IV, 345 Courtland St. N.E., Atlanta, Georgia 30365.

2. Pollution Prevention Plan

New permittees with long term treatment systems expected to discharge one (1) year or more shall develop a *Pollution Prevention Plan* for the site and submit it with the NOI. It shall contain the following information:

(a) A Narrative of What Caused the Groundwater Contamination.

(b) Methods currently being deployed at the site to *prevent* groundwater contamination from reoccurring.

(c) Other alternative treatment options which were considered in *reducing* the groundwater contamination.

(d) Explanation of why long term treatment of discharge to Surface Waters of the United States was chosen as opposed to:

(1) *Reduction-Monitor Phase I*—Using a combination of techniques to significantly reduce groundwater contamination that could be achieved in three (3) months or less, with the objective of reaching a *monitor-only* status.

(2) *Reduction-Monitor Phase II*—Using a combination of techniques to significantly reduce groundwater contamination that could be achieved in six (6) months or less, with the objective of reaching a *monitor-only* status.

In an effort to promote pollution prevention, the Permit Issuing Authority may issue permits which include or require pollution prevention activities.

Part V

Whole Effluent Toxicity Testing Program Acute Freshwater Language

As required by Part I of the permit, within 30-days after commencement of discharge, permittees discharging to fresh waters, which are surface waters in which the chloride concentration at the surface is less than 1500 milligrams per liter, shall initiate the series of tests described below to evaluate whole effluent toxicity of the discharge from the outfall. If more than one (1) outfall exists, separate tests will be performed on each outfall. All test species, procedures and quality assurance criteria used shall be in accordance with *Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms*, EPA/600/4-90/027F, or the most current edition. The dilution/control water used will be moderately hard water as described in EPA/600/4-90/027F, Section 7, or the most current edition. A standard reference toxicant quality assurance test shall be conducted concurrently with each species used in the toxicity tests and the results submitted with the discharge monitoring report (DMR). Alternatively, if monthly QA/QC reference toxicant tests are conducted, these results must be submitted with the DMR.

1. a. The permittee shall conduct 96-hour acute static-renewal multi-concentration toxicity tests using the daphnid (*Ceriodaphnia dubia*) and the fathead minnow (*Pimephales promelas*). All tests shall be conducted on one grab sample of 100% final effluent. All tests shall be conducted on a control (0%) and the following dilution concentrations at a minimum: 100.0%, 50.0%, 25.0%, 12.5%, and 6.25%.

b. If control mortality exceeds 10% for either species in any test, the test(s) for that species (including the control) shall be repeated. A test will be considered valid only if control mortality does not exceed 10% for either species.

2. The toxicity tests specified above shall be conducted once every month until three (3) valid monthly tests have been completed, and once every year thereafter for the duration of the permit, unless notified otherwise by the permit issuing authority. These tests are referred to as "routine" tests.

3. a. If unacceptable acute toxicity (an LC_{50} of 100% or less occurs in either test species in any of the above-described tests within the specified time) is found in a "routine" test, the permittee shall conduct two additional acute toxicity tests in the same manner as the "routine" test on the specie(s) indicating unacceptable acute toxicity. For each additional test, the sample collection requirements and test acceptability criteria specified in Section 1 above must be met for the test to be considered valid. The first test shall begin within two weeks of the end of the "routine" tests, and shall be conducted weekly thereafter until two additional, valid tests are completed. The additional tests will be used to determine if the toxicity found in the "routine" test is still present.

b. Results from additional tests, required due to unacceptable acute toxicity in the "routine" test(s), must be *reported* on the Discharge Monitoring Report (DMR) Form for the month in which the test was begun. Such test results must be *submitted* within 45 days of completion of the second additional, valid test.

As required by Part I of this permit, within 30-days after commencement of discharge, permittees discharging to marine waters, which are surface waters in which the chloride concentration at the surface is greater than or equal to 1500 milligrams per liter, shall initiate the series of tests described below to evaluate whole effluent toxicity of the discharge from the outfall. If more than one (1) outfall exists, separate tests will be performed on each outfall. All test species, procedures and quality assurance criteria used shall be in accordance with *Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms*, EPA/600/4-90/027F, or the most current edition. The dilution/control water and effluent used will be adjusted to a salinity of 20 parts per thousand using artificial sea salts as described in EPA/600/4-90/027F, Section 7 (or the most current edition). A standard reference toxicant quality assurance test shall be conducted concurrently with each species used in the toxicity tests and the results submitted with the discharge monitoring report (DMR). Alternatively, if monthly QA/QC reference toxicant tests are conducted, these results must be submitted with the DMR.

1. a. The permittee shall conduct 96-hour acute static-renewal multi-concentration toxicity tests using the mysid shrimp (*Mysidopsis bahia*) and the inland silverside (*Menidia beryllina*). All tests shall be conducted on one grab sample of 100% final effluent. All tests shall be conducted on a control (0%) and the following dilution concentrations at a minimum: 100.0%, 50.0%, 25.0%, 12.5%, and 6.25%.

b. If control mortality exceeds 10% for either species in any test, the test(s) for that species (including the control) shall be repeated. A test will be considered valid only if control mortality does not exceed 10% for either species.

2. The toxicity tests specified above shall be conducted once every month until three (3) valid monthly tests have been completed, and once every year thereafter for the duration of the permit, unless notified otherwise by the permit issuing authority. These tests are referred to as "routine" tests.

3. a. If unacceptable acute toxicity (an LC50 of 100% or less occurs in either test species in any of the above-described tests within the specified time) is found in a "routine" test, the permittee shall conduct two additional acute toxicity tests in the same manner as the "routine" test on the specie(s) indicating unacceptable toxicity. For each additional test, the sample collection requirements and test acceptability criteria specified in Section 1 above must be met for the test to be considered valid. The first test shall begin within two weeks of the end of the "routine" tests, and shall be conducted weekly thereafter until two additional, valid tests are completed. The additional tests will be used to determine if the toxicity found in the "routine" test is still present.

b. Results from additional tests, required due to unacceptable acute toxicity in the "routine" test(s), must be reported on the Discharge Monitoring Report (DMR) Form for the month in which the test was begun. Such test results must be submitted within 45 days of completion of the second additional, valid test.

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Fact Sheet for National Pollutant Discharge Elimination System General Permit to Discharge Treated Wastewater to U.S. Waters in the State of Florida

NPDES Permit No. FLG830000

1. Synopsis of Application

a. Name and Address of Applicant

Applicants within the political boundary of the State of Florida.

b. Type of Facilities

Systems for treatment of petroleum fuel contaminated ground water and stormwater and general dewatering activity associated with non-contaminated sites.

c. Design Capacity of Facility

To be based on a case by case analyses of the contaminated site.

d. Applicant's Receiving Waters

Waters of the U.S. in the State of Florida.

e. Description of Wastewater Treatment Facilities

Air stripping, aeration, carbon adsorption, when necessary, or other water treatment technologies which can effectively treat contaminated waters to the levels required by the general permit.

f. Description of Discharges (as Reported by Applicant)

Reviewing the effluent data submitted by eight (8) individual applicants, the following information was obtained:

Effluent characteristics	No. of facilities reporting	Reported concentration highest
Benzene	8	1.0 µg/l
Naphthalene	2	10.0 µg/l
Do	1	20.0 µg/l
Do	1	1.0 µg/l
Do	4	No data reported.
Lead	1	20 µg/l
Do	1	7 µg/l
Do	1	100 µg/l
Do	5	No data reported.

2. Proposed Effluent Limits for This General Permit

a. Discharges contaminated with *automotive gasoline*:

Effluent characteristic	Daily maximum
Benzene	1.0 µg/l
*Total Lead	30.0 µg/l
pH	See Part I.A.1

b. Discharges contaminated with *aviation fuels and diesel*:

Effluent characteristic	Daily maximum
Benzene	1.0 µg/l
Naphthalene	100 µg/l
*Total Lead	30 µg/l
pH	See Part I.A.1

*Required only when contamination results from leaded fuel.

3. Background

The adoption of the State Underground Petroleum Environmental Response (SUPER) Act of 1986 set standard procedures for the State of Florida's Department of Environmental Protection (FDEP) and their Division of Waste Management's Bureau of Waste Cleanup to regulate during cleanup processes undertaken at all petroleum contamination sites. The SUPER Act was amended on February 20, 1990, and is currently referred to as Chapter 17–770, Petroleum Contamination Cleanup Criteria.

Chapter 17–770 gives the FDEP authority over cleanup operations for areas which have been contaminated by fuels from petroleum storage systems. Chapter 17–770 also provides guidance for permittees in preparing initial remedial actions (IRA's), contamination assessment reports (CAR's), and remedial action plans (RAP's) while assessing and delineating areas where suspected petroleum contamination has occurred. In order to facilitate the authorization process for the potentially large number of permittees who would be required to discharge treated groundwater to surface waters of Florida, the FDEP requested that an NPDES general permit be issued to cover these facilities in Florida. The U.S. Environmental Protection Agency (EPA), after proposing a draft permit on August 25, 1988 (53 FR 32442), issued a final NPDES general permit on July 17, 1989 (54 FR 29986), to cover the facilities and similar types of discharges associated with them. This NPDES General Permit was modified on August 29, 1991 (56 FR 42736), to address general dewatering for uncontaminated discharges of produced groundwater and short term discharges from facilities with treated groundwater. This modification also changed the number of the permit from FLG040001 to FLG830000.

As of June, 1994, EPA has authorized over 350 facilities to discharge under the general permit, and the FDEP estimates that there are over 20,000 facilities that have reported suspected petroleum leaks throughout the State of Florida. The current permit FLG83000 expired on July 16, 1994, and numerous facilities are either discharging under this permit or submitting Notices of Intent for coverage under this general permit. Therefore, EPA Region IV is proposing to reissue the NPDES General Permit No. FLG830000 to facilities in the State of Florida to assist in permitting these types of activities. The requirements for those facilities that were covered by the current NPDES General Permit before July 16, 1994, will be continued in force until reissuance of this general permit occurs. However, once reissuance occurs, all facilities covered by this permit will be required to submit a NOI requesting continued coverage under the reissued general permit within sixty (60) days after reissuance of the general permit. Permittees submitting NOI's after July 17, 1994, will not be provided with a notification of coverage under the general permit. These facilities will not be allowed to discharge until the date which the reissued NPDES General Permit, FLG830000, becomes effective, or until an individual permit is issued to the facility.

4. General Information for This Florida General Permit

This general permit places limitations on discharges from treatment systems which are used to treat common contaminants found in petroleum fuels and allows the permittee to expedite startup of a hydrocarbon recovery system once a leak has been detected and groundwater has been contaminated. The general permit also allows general dewatering for uncontaminated sites. Normally, such a recovery system consists of monitoring wells that are used for sampling and delineating plume movement. Recovery wells, which may be vertical or horizontal, are used to recover contaminated groundwater in the impacted area. The placement of recovery wells is generally determined after consideration of geologic conditions and groundwater movement in order to maximize recovery of petroleum hydrocarbons. The rate of movement by the contaminants is affected by the varying permeability and adsorptive characteristics of the water-filled pore spaces and depth of the water table. After the contamination reaches the water table, the free-floating contaminant is usually pumped from the recovery wells to an above ground storage tank. Additionally, vapor recovery systems are often used to remove volatiles from the soil. The dissolved organics in the contaminated water are pumped to an air stripper and treated using packed-tower aeration and, when necessary, carbon adsorption. Both of these treatment processes have proven effective in removing up to 99% of the volatile compounds before discharge into surface waters.

The Florida FDEP and EPA Region IV estimates that of the sites for which a RAP is prepared in any given year, a maximum of 100 facilities may propose discharge to surface water under this general permit. In order to allow hydrocarbon recovery operations to be performed without processing individual applications for permit issuance, EPA proposes to reissue this general permit to sources identified within the political boundaries of the State of Florida.

This general permit may be used to authorize discharges of treated groundwater and storm water incidental to groundwater cleanup operations. Long term cleanups, over thirty (30) days, must have an approved remedial action plan (RAP) before submitting a NOI to discharge under this NPDES General permit. The RAP Approval Order must be submitted with the applicant's NOI and is required before authorizing cleanups over thirty (30) days. This permit is not limited to cleanup operations funded by the State of Florida, but may cover all such cleanup operations if the NOI requirements are satisfied.

5. Basis for Final Effluent Limits and Permit Conditions

The effluent limits for the general permit are based on treatment technology data obtained from previous individual application requests. The general permit has been written to require an effluent limit on three (3) chemicals, i.e., benzene, naphthalene and lead.

Benzene is a potential carcinogen according to EPA 440/5–80–0180 and Florida has adopted a WQS for this parameter. However, the previous technology-based effluent limit of 1.0 µg/l is more stringent than Florida's water quality standard of 71.28 µg/l at (FAC 17–302.530(9)), dated April 25, 1993; therefore, the more stringent technology based limit, which is also protective of water quality, will be included in the reissued permit. Based on the "Ambient Water Quality Document for Benzene," this maximum contaminant level for benzene is well below the 10^{-6} risk factor of 40 µg/l for consumption of contaminated aquatic organisms. This limit of 1.0 µg/l is also between the 10^{-5} risk factor of 6.6 µg/l and 10^{-6} risk factor of .66 µg/l for consumption of contaminated water and aquatic organisms.

Most facilities have been able to meet the technology based effluent limit for lead of 30 µg/l, which is required since older gasoline sites may have marketed fuels with leaded compounds added in the form of tetraethyllead. Based on the "Ambient Water Quality Document for Lead," this limit is well below the current human health standard of 50 µg/l, which is protective of human health against the ingestion of contaminated water and contaminated aquatic organisms (EPA 440/5–80–057).

The naphthalene limit of 100 µg/l was developed based on FDEP petroleum contamination site cleanup criteria (17–770.730(5)(a)2e), amended February 20, 1990. According to the "Ambient Water Quality Document for Naphthalene," acute and chronic toxicity to freshwater aquatic life occurs at concentrations as low as 2300 µg/l for the Rainbow Trout and 620 µg/l for the Fathead Minnow and would occur at lower concentrations among species that are more sensitive than those tested. Also, according to the "Handbook of Environmental Data and Organic Chemicals," tainting of fish flesh occurs for naphthalene near 1000 µg/l. The petroleum site criteria limit of 100 µg/l for naphthalene is more stringent than EPA's water quality document for this parameter and should provide adequate protection for more sensitive aquatic organisms.

The pH requirements were established based on water quality criteria at Florida Administrative Code (FAC) 17–303.530(52)(c), dated April 25, 1993. For fresh waters and coastal waters, the pH of the effluent shall not be lowered to less than 6.0 units for fresh waters, or less than 6.5 units for marine waters, or raised above 8.5 units, unless the permittee submits data during the NOI request confirming a natural background pH outside of this range. If the natural background of the receiving water, as revealed by sampling data from the permittee in the NOI request, is determined to be less than 6.0 standard units for fresh waters, or less than 6.5 standard units in marine waters, the pH shall not vary below natural background or vary more than one (1) unit above natural background. If natural background of the receiving water, as revealed by sampling data from the permittee in the NOI request, is determined to be higher than 8.5 units, the pH shall not vary above natural background or vary more than one (1) unit below natural background. The continuous monitoring for pH is an option granted to the permittee and is based on § 401.17 of the Clean Water Act.

The permittee may request an individual permit to seek less stringent end-of-pipe effluent limitations for benzene, total lead, and naphthalene dependent upon resulting instream concentrations during critical low flows of the receiving stream.

The groundwater reporting requirements for the parameters: TOC, pH, the Total Recoverable Metals which include Mercury, Cadmium, Copper, Lead, Zinc, Chromium (Hexavalent), Benzene and Naphthalene, to determine if contamination exists from other sources are based on Section 308(a) of the Clean Water Act. The screening values for TOC, Benzene, and Naphthalene are based on the final August 29, 1991, modification (56 FR 42739) and the standards for total recoverable metals are based on the most current Florida Water Quality Standards for total recoverable metals at FAC Section 17–302.530 [4–25–93]. As with any petroleum fuel, other aromatic compounds will be present once testing has occurred. Other volatiles will be present in untreated groundwater in greater concentrations than benzene. Past experience in treatment design has shown that these organics can be effectively treated before discharging to surface waters. According to the "Toxicant Profile for the ALKYL BENZENES," (Ethylbenzene, Isopropylbenzene, Toluene, Xylene) prepared for Florida's DEP by the Center of Biomedical and Toxicological Research at Florida State University, levels for these ALKYL BENZENES of 100–200 µg/l were recommended for the protection of aquatic organisms and human health. These recommendations are below EPA's "Ambient Water Quality Criteria" documents recommendation for human health which suggest levels of 1400 µg/l to 14300 µg/l for Ethylbenzene and Toluene.

The recommended treatment technology of air stripping and, when necessary, carbon adsorption, will reduce the benzene concentration to below 1.0 µg/l. Therefore, EPA will not impose specific limits on the other pollutants which may occur since meeting the limits set in this permit should reduce the other pollutants well below those levels allowable based on Florida's water quality standards. Also, the effluent shall not be lethal to more than 50% of appropriate fish or invertebrate test organism in a 96-hour static renewal test. Whole Effluent Toxicity (WET) monitoring tests performed by six (6) facilities between May 8, 1991 thru March, 1994 indicated that these effluents were toxic and, therefore, have the reasonable potential

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to violate Florida's water quality standards at FAC Section 17–4.244(3)(a). Because previous 48-hour static WET monitoring tests have revealed that these effluents have the potential of being toxic, toxicity testing requirements as authorized and required by 40 CFR Section 122.44(d)(1)(iv), and contained in Part I, A.1 and A.2 and in Part V have been included to ensure that the effluent from these facilities conforms with the FAC. An LC_{50} of 100% or less in a test of 96 hours duration or less will constitute a violation of FAC (February 2, 1994) Section 17–4.244(3)(a) and the terms of this permit.

Since the recovery wells in most instances are placed in areas of highest contamination, it is reasonable to conclude that the greatest potential for toxicity should occur during the initial startup stages of operation. Therefore, an initial frequency of once every month for three (3) months is included in these requirements to indicate toxicity and determine treatment performance of these facilities immediately after commencement of discharge. If no toxicity is confirmed, the frequency is then reduced to yearly since the permittee will be required to meet effluent limitations and the potential for toxicity is at a minimum. Failure to demonstrate compliance with the acute toxicity requirement will constitute a violation of the terms of the permit.

The sample type for all biomonitoring is "Grab" in accordance with Part V of this general permit.

The permittee is required to develop and implement a Best Management Practices (BMPs) plan in conjunction with development of the Remedial Action Plan required by FDEP. BMPs are actions or procedures to prevent or minimize the potential for the release of toxic pollutants or hazardous substances in significant amounts to surface waters. Additionally, for long term cleanups, the permittee shall develop a Pollution Prevention Plan which considers alternatives for preventing and reducing impacts to surface waters in accordance with Part IV. A.2 of this permit.

6. Treatment Technology

According to EPA's publication entitled "Treatment of Volatile Organic Compounds in Drinking Water," a drinking water research experiment was conducted on spiked water using one organic volatile and then by combining two volatiles. The experiment used aeration as the treatment process. It was discovered that no difference was observed in treatment efficiency when applying aeration to one organic chemical or a combination of volatiles. In this particular experiment an overall efficiency of 92% was obtained. Most petroleum fuels consist of a combination of volatiles and aromatics, each different, based on additives included during refining of the fuel. In case studies revealed in the Environmental Science and Engineering's document ESE No. 84–912–0300, packed tower aeration utilizing different packing materials, varying flow paths and air-to-water ratios have been proven effective in removing over 99% of the volatiles. Some particular compounds are not as easily air-stripped as others which would necessitate the need for a combination treatment design used in conjunction with aeration. Carbon adsorption has been proven effective in removing organics from water until the influent concentration is in equilibrium with the effluent and the organics no longer adhere to the carbon surface. Adsorption has been used successfully in removing less volatile compounds of higher molecular weight. Other remediation techniques currently being deployed include vapor recovery systems and bioremediation which enhances biological activity.

According to (EPA 570/9–84–005) entitled "Adsorption Techniques in Drinking Water Treatment" the efficiency of carbon adsorption was proven effective during a case study in Hialeah, Florida at the Preston water treatment plant. In this study, groundwater from a drinking water aquifer was spiked with higher molecular weight extractables before treating the water with granular activated carbon. It was found that more than 90% removal of the spiked compounds was obtained. The combination of air-stripping with adsorption usually extends the adsorptive life of the activated carbon and leads to more efficient treatment, but is not always required or recommended in every situation.

7. Other Legal Requirements

A. Executive Order 12291

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to Section 8[b] of that order.

B. Regulatory Flexibility Act

After review of the facts presented in this document, I hereby certify, pursuant to the provisions of 5 U.S.C. § 605(b), that this NPDES general permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

C. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this draft general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq. The information collection requirements of this permit have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

8. Requested Variances or Alternatives to Required Standards

None.

9. Effective Date of Proposed Effluent Limits

The proposed effluent limits will be effective immediately upon receipt of written notification of coverage from the Permit Issuing Authority.

10. State Certification Requirements

Section 301(b)(1)(c) of the Act requires that NPDES permits contain conditions which ensure compliance with applicable State water quality standards or limitations. Section 401 of the Act requires that States certify that Federally issued permits are in compliance with State law. This permit is for operations within waters within the State of Florida.

EPA will request State officials to review and provide appropriate certification of this draft general permit pursuant to 40 CFR 124.53.

11. EPA Contact

Additional information concerning the permit may be obtained at the address and during the hours noted in Item 12 from: Ms. Lena Scott, Public Notice Coordinator, 404/347–3004.

12. The Administrative Record

Including application, draft permit, fact sheet, public notice (after release). State Certification (after receipt), comments received, and additional information is available by writing the EPA, Region IV, or for review and copying at 345 Courtland Street, NE., Atlanta, Georgia 30365, between the hours of 8:15 a.m. and 4:30 p.m., Monday through Friday. Copies will be provided at a minimal charge per page.

13. Proposed Schedule for Permit Issuance

Draft Permit FDEP Bureau of Waste Cleanup—May 20, 1994
Draft Permit to EPA Headquarters—August 29, 1994
Draft to State for Certification—August 30, 1994
Draft Permit to Federal Register for Public Notice—September 7, 1994
Close Comment Period—October 7, 1994

[FR Doc. 94–23115 Filed 9–16–94; 8:45 am]
BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

[FCC 94–227]

International Call-Back Services

AGENCY: Federal Communications Commission.

ACTION: Notice of solicitation of public comments.

SUMMARY: The Federal Communications Commission has expanded the scope of the issues to be reconsidered in its grant of three applications for authority to resell international switched services of other carriers using a "call-back" configuration. The comments supporting an AT&T petition for reconsideration in this proceeding raised issues involving complex questions of international law, international comity and the law of foreign countries, including the allegation that call-back services employing an uncompleted call signaling configuration violate international law. Therefore, the Commission is seeking additional comments from the parties and members of the public on all of the issues raised in the comments supporting AT&T's petition. The Commission also is seeking the advice of the Department of State regarding the issues of international law, international comity, and the laws of foreign countries. Further, in order to augment the record with respect to AT&T's assertion that uncompleted call signalling violates the Federal wire fraud statute, the Commission will seek the advice of the Department of Justice on this issue.

DATES: Comments are due October 14, 1994 and Reply Comments November 14, 1994.

FOR FURTHER INFORMATION CONTACT: Troy F. Tanner, Attorney, Common Carrier Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION:

In the matter of: VIA USA, Ltd. Telegroup, Inc.; Applications for Authority Under Section 214 of the Communications Act of 1934, as amended, to operate as International Resale Carriers.

[File Nos. I–T–C–93–031 I–T–C–93–050]

Discount Call International Co.; Application for Authority Under Section 214 of the Communications Act, as amended.

[File No. I–T–C–93–054]

Order

Adopted: September 2, 1994.
Released: September 12, 1994.

By the Commission:

1. On May 11, 1994, the Commission granted the above-referenced Section 214 applications of VIA USA, Ltd., Telegroup, Inc., and Discount Call International Co. to resell international switched services of other carriers using a "call-back" configuration.[1] This service allows a customer in a foreign country to use foreign facilities to dial a telephone number in the United States and receive dial tone at a switch at the reseller's U.S. location, which the customer can then use to place a call via an outbound switched service of a U.S. carrier. The calls originating at U.S. locations are billed at U.S.-tariffed rates.

2. AT&T petitioned to deny these applications alleging that this service constitutes an unreasonable practice under Section 201 of the Communications Act ("the Act") and may constitute wire fraud. We denied AT&T's petition.[2] On June 16, 1994, AT&T filed a petition for reconsideration asking us to find that uncompleted call signalling is an unreasonable practice under Section 201(b) of the Act, is contrary to the public interest standard of Section 214 of the Act, violates Section 202(a) of the Act, and violates the Federal wire fraud statute, 18 U.S.C. 1343.[3]

3. We received comments in support of AT&T's petition from MCI Telecommunications Corporation (MCI), Sprint Communication Company L.P. (Sprint), and The Regional Technical Commission on Telecommunications of Central America (COMTELCA) and the National Telecommunications Institute of Panama (INTEL) (collectively referred to as COMTELCA/INTEL). Oppositions to AT&T's petition were filed by VIA USA, Ltd. (VIA USA), Telegroup, Inc. (Telegroup) and the Telecommunication Resellers Association (TRA).

4. Both VIA USA and Telegroup filed motions to strike the comments filed by MCI, Sprint and COMTELCA/INTEL. AT&T, MCI, Sprint and COMTELCA/INTEL opposed the motions to strike the supporting comments. VIA USA and Telegroup argue in their motions that the comments supporting AT&T's petition are untimely, procedurally defective requests for the Commission to reconsider its initial grant of Section 214 authority to the above-captioned applicants. In particular, VIA USA and Telegroup state that Section 1.106(g) of the Commission's Rules only contemplates the filing of "oppositions" to petitions for reconsideration, not comments in support of such petitions. Further, they state that, in addition to repeating and expounding upon AT&T's arguments in its petition, the COMTELCA/INTEL comments raise new issues relating to the legality of call-back services under international law and the law of foreign countries. Alternatively, VIA USA and Telegroup contend that, if we do not grant their motions to strike, we should extend the reply period several months because COMTELCA/INTEL have raised new arguments not previously raised by any party, which significantly expand the scope of the proceeding.

5. The comments supporting AT&T's petition raise issues involving complex questions of international law, international comity and the law of foreign countries. In particular, COMTELCA/INTEL raise the argument that call-back services employing an uncompleted call signaling configuration violate international law, *i.e.* Article 1.5 and 3.3 of the International Telecommunications Union (ITU) Regulations.[4] In addition, COMTELCA/INTEL's comments also claim that the applicants may not offer uncompleted call signalling services except pursuant to appropriate operating agreements with foreign telecommunications administrations. Moreover, COMTELCA/INTEL have submitted evidence as to the effect that our authorization of this service may have on international comity.[5]

[1] *VIA USA, Ltd et al.*, 9 FCC Rcd 2288 (1994).

[2] *See id.*

[3] In order to develop a complete record on the issues raised by AT&T's petition, we extended on our own motion for 30 days the time for the filing of comments. "Pleading Cycle Extended for Comments on AT&T's Petition for Reconsideration of Commission Order Authorizing Three International Resale Carriers Proposing to Provide 'Call-Back' Services," FCC Report No. I–6991 (released June 22, 1994) (hereinafter referred to as "June 22 Public Notice").

[4] In the initial proceeding, the record did not address the argument that the proposed call-back services violated international law. *See VIA USA, Ltd. et al.*, 9 FCC Rcd at 2292, n. 37.

[5] COMTELCA/INTEL further contend that there are other forms of call-back services that raise similar issues under international law and the law of foreign countries which the Commission did not address in its initial decision. For instance, COMTELCA/INTEL reference the "hot line" method whereby a U.S. reseller continuously places calls to the telephone of a subscriber located outside the United States. The called party's telephone has a disconnected ringer. When the called party wants to access a U.S. dial tone to place an international call to a U.S. location or elsewhere, he or she simply picks up the receiver and "answers" one of several thousand continuous calls

Continued

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6. We conclude that the issues raised in the comments supporting AT&T's petition merit examination. Therefore, we will, on our own motion, seek additional comment from the parties and members of the public on all of the issues raised in the comments supporting AT&T's petition.

7. Because we have decided on our own motion to expand the scope of this reconsideration proceeding, we find that the motions to strike the supporting comments of MCI, Sprint and COMTELCA/INTEL are moot. These supporting comments address the issues which we will be examining, and therefore will be made part of the record. We will, however, grant VIA USA's and Telegroup's alternative request that we further extend the period for filing comments. In addition, we will seek the advice of the Department of State regarding the issues of international law, international comity, and the laws of foreign countries. Further, in order to augment the record with respect to AT&T's assertion that uncompleted call signalling violates the federal wire fraud statute, we also will seek the advice of the Department of Justice on this issue. Finally, as noted above, because of the general importance of the issues in this case, we will entertain additional comments from all interested members of the public as well as from the parties to this proceeding.

8. This Section 214 proceeding will continue to be conducted as a non-restricted proceeding in which written and oral *ex parte* contacts are permitted, but subject to disclosure. *See* 47 CFR Part 1206.

9. Accordingly, it is ordered that the comments of MCI, Sprint and COMTELCA/INTEL are accepted into the record of this proceeding, and Telegroup's and VIA USA's motions to strike the comments are dismissed as moot.

10. It is further ordered that this proceeding is opened to the general public and interested persons are invited to file comments on any of the issues raised in AT&T's petition or the supporting comments by October 14, 1994, and reply comments by November 14, 1994.

11. It is further ordered that the Secretary shall serve a copy of this Order on each party to this proceeding by certified mail.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 94-23102 Filed 9-16-94; 8:45 am]

BILLING CODE 6712-01-M

made to that particular phone during the day and receives a dial tone at the reseller's U.S. location. COMTELCA/INTEL assert that the international law and public interest issues raised by this practice should be addressed in this proceeding, or, alternatively, should be addressed in a rulemaking proceeding that covers the full range of issues raised by the proliferation of call-back methods used to provide U.S. dial tone to foreign parties.

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Revision of a currently approved collection.
Title: Dispute Resolution Neutrals Questionnaire.
Form Numbers: FDIC 8000/01.
OMB Number: 3064-0107.
Expiration Date of OMB Clearance: November 30, 1994.
Respondents: Parties wishing to be considered for inclusion on the FDIC's Roster of Dispute Resolution Neutrals.
Frequency of Response: On occasion.
Number of Respondents: 100.
Number of Responses Per Respondent: 1.
Total Annual Responses: 100.
Average Number of Hours Per Response: 0.5.
Total Annual Burden Hours: 50.
OMB Reviewer: Milo Sunderhauf, (202) 395-7340, Office of Management and Budget, Paperwork Reduction Project 3064-0107, Washington, DC 20503.
FDIC Contact: Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, Room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
Comments: Comments on this collection of information are welcome and should be submitted before November 18, 1994.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC has developed a Roster of Dispute Resolution Neutrals as part of its Alternative Dispute Resolution (ADR) program. Parties wishing to be considered for inclusion on the Roster must submit a completed questionnaire containing biographical and demographic data. The information obtained from respondents is used to evaluate the candidates' qualifications to serve as neutrals in cases involving ADR.

Dated: September 13, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94-23044 Filed 9-16-94; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

First of America Bank Corporation; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94-21973) published on page 46253 of the issue for Wednesday, September 7, 1994.

Under the Federal Reserve System heading, the entry for First of America Bank Corporation, is revised to read as follows:

1.First of America Bank Corporation, Kalamazoo, Michigan. In addition to the activities listed in the Notice of August 31, 1994, Applicant proposes that Company execute trades for which Applicant's subsidiary banks act as introducing broker.

Comments on this application must be received by October 3, 1994.

Board of Governors of the Federal Reserve System, September 15, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-23253 Filed 9-16-94; 8:45 am]

BILLING CODE 6210-01-F

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer (DLC) will hold its Fall 1994 meeting on Monday, October 24, 1994, through Wednesday, October 26, 1994, in Clackamas, Oregon. The meeting sessions will take place from 8:30 a.m. until 5 p.m. on Monday and Tuesday and from 8:30 a.m. until 12 noon on Wednesday. The sessions will be held at the Monarch Hotel & Conference Center, 12566 Southeast 93rd Avenue, Clackamas, Oregon 97015, on the outskirts of Portland. The purpose of this meeting is to discuss the Federal Depository Library Program. The meeting is open to the public.

A limited number of hotel rooms have been reserved at the Monarch for anyone needing hotel accommodations. Telephone (800) 492-8700 or (503) 652-1515; fax: (503) 652-7509. Please specify the Depository Library Council when you contact the hotel. Room cost per night is $55.

James N. Joyner,

Deputy Public Printer.

[FR Doc. 94-23145 Filed 9-16-94; 8:45 am]

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Solicitation of Nominations for Membership on the U.S. Advisory Board on Child Abuse and Neglect

Purpose

Pursuant to the terms of the Child Abuse Prevention and Treatment Act (the Act), the Department of Health and Human Services is soliciting nominations for three vacancies (seats) on the U.S. Advisory Board on Child Abuse and Neglect (the Board).

Membership

The Board consists of 15 members appointed by the Secretary of Health and Human Services (the Secretary). Thirteen are appointed from the general public and two from the Federal Government. In making all 15 appointments, the Secretary is required by the Act to ensure that ethnic and racial minorities and diverse geographic areas are represented.

All 15 persons appointed must possess general knowledge about child maltreatment (i.e., policy; prevention; intervention; treatment; and research). In addition, among the 13 members from the general public, 11 must represent one of the following areas:

- the legal aspects of child maltreatment;
- the psychological aspects;
- the social services aspects;
- the medical aspects;
- the role of State and local government in the prevention and treatment of child abuse and neglect;
- the role of organizations providing services to disabled persons;
- the role of organizations providing services to adolescents;
- the role of elementary and secondary school teaching;
- the role of parent self-help organizations;
- the role of parents' groups; and
- the role of voluntary groups.

In order to qualify for selection as such a representative, each individual must possess specific knowledge in the area which he/she represents.

Responsibilities and Duties

Among the responsibilities the Act requires the Board to perform is the preparation of an annual report to the Secretary of Health and Human Services, appropriate committees of the Congress, and the Director of the National Center on Child Abuse and Neglect. In addition, the Board holds hearings, conducts symposia, and issues position papers.

In its annual reports, the Board is charged with evaluating the nation's efforts to accomplish the purposes of CAPTA and developing recommendations about ways that those efforts can be improved. The 1990 report of the Board is entitled, Child Abuse and Neglect: Critical First Steps in Response to a National Emergency; the 1991 report, Creating Caring Communities: Blueprint for an Effective Federal Policy on Child Abuse and Neglect; the 1992 report, The Continuing Child Protection Emergency: A Challenge to the Nation; and the 1993 report, Neighbors Helping Neighbors: A New National Strategy for the Protection of Children.

The Board usually meets three times a year, and, occasionally, four times a year. Meetings last three to four days. Between meetings, much of its work is accomplished by conference call. Service on the Board is extremely demanding of both time and effort.

Duties of Board members are:

- to serve as the Board authority in one or more areas of expertise, keeping current on developments in those areas;
- to be conversant with the extensive array of background information provided to members prior to meetings and conference calls;
- to attend meetings;
- to participate in conference calls;
- to suggest materials to staff for distribution as background information;
- to author portions of Board publications;
- to edit Board publications; and
- to avoid all possible conflicts of interest between Board membership and non-Board activities.

Terms of Office

The length of the terms to which persons from the general public are appointed is four years. Once appointed, a person from the general public may be reappointed to one additional term at the discretion of the Secretary.

Nomination

The Department is soliciting nominations for the three seats to be occupied by members possessing specific expertise in:

- the social services aspects of child maltreatment;
- the role of elementary and secondary school teaching; and
- an at-large seat.

The terms of the three seats will expire on May 29, 1999.

Nominations may be made for one's self or for someone else. The same individual may be nominated for a seat in more than one category. Nominations should be made in the form of a letter which indicates the seat or seats for which the nominee is being nominated and provides information about the qualifications for office of the nominee. A current curriculum vita for the nominee should be attached to the letter. (If the nominee is not the person submitting the nomination, a letter from the nominee indicating a willingness to serve should be attached). All nominations will be evaluated. To assist in that evaluation, persons submitting nominations may wish to provide the following kinds of information about the nominee's qualifications:

- What general knowledge about child maltreatment (i.e., policy; prevention; intervention; treatment; and research) does the nominee possess and how has he/she gained that knowledge?
- What specific knowledge does the nominee possess about the aspect of child maltreatment which he/she is being nominated to represent on the Board and how has he/she gained that knowledge? (If the individual is being nominated for more than one seat, separate answers should be provided setting forth the individual's specific knowledge in connection with each seat).
- What materials has the nominee authored, what presentations has he/she made, what meetings has he/she planned, et cetera, which shed light on both the general and/or specific knowledge of the nominee?
- What skills does the nominee possess which will allow him/her to contribute substantially to the conduct of Board business and what highlights and achievements in the nominee's career shed light on such skills?

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• Does the nominee possess other abilities which are relevant to his/her appointment to the Board?

• Will the nominee's schedule permit him/her to devote a significant segment of time to Board activities?

• Is the nominee's ethnic or racial background that of an American Indian or Alaskan Native, Asian or Pacific Islander, African-American, or Hispanic?

Each letter of nomination should be accompanied by at least one but no more than three letters of reference attesting to the nominee's qualifications for office. Authors of reference letters may include but are not limited to: elected officials (Federal, State, or local); persons in the field of child maltreatment; and persons in the subject area of the seat being sought.

The Secretary will select the three persons to be named to the Board from among those individuals either who are nominated in response to this announcement or who are otherwise qualified to serve. After the Secretary reaches a decision, those persons selected to serve will receive a letter of invitation. Service will begin on May 29, 1995, or the first Board meeting thereafter.

Nomination packages (letter of nomination; attachment(s); and accompanying letter(s) of reference) must be postmarked no later than October 31, 1994. Packages received with a postmark later than October 31, 1994 will not be considered.

Nominations should be sent to the: U.S. Advisory Board on Child Abuse and Neglect, Room 303–D, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

CONTACT PERSON FOR MORE INFORMATION: Marilyn J. Gosdeck, Program Analyst, U.S. Advisory Board on Child Abuse and Neglect, Room 303–D, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 Telephone: (202) 690–8604.

Dated: September 13, 1994

Preston Bruce,

Executive Director, U.S. Advisory Board on Child Abuse and Neglect

[FR Doc. 94–23143 Filed 9–16–94; 8:45 am]

BILLING CODE 4184–01–P

Notice of the Third Meeting of the Advisory Committee on Services for Families With Infants and Toddlers

AGENCY: Administration on Children, Youth and Families, ACF, HHS.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to Public Law 92–463, that the Advisory Committee on Services for Families with Infants and Toddlers will hold a meeting on Thursday and Friday, September 22 and 23, 1994, from 9 a.m. to 5 p.m. The meeting will be held at the Rosslyn West Park Hotel, 1900 N. Fort Meyer Drive, Arlington, Virginia.

The meeting of the Committee shall be open to the public. The proposed agenda includes the development of the formative activities for the operation of the Committee.

Records shall be kept of all Committee proceedings and shall be available for public inspection at 330 C Street, SW., Room 2026, Washington, DC 20201.

If a sign language interpreter is needed, contact David Siegel at the address and telephone number below:

FOR FURTHER INFORMATION CONTACT: David Siegel, 370 L'Enfant Promenade, SW., 7th floor, Aerospace Building, Washington, DC 20047 (202) 401–9215.

Dated: September 14, 1994

Mary Jo Bane,

Assistant Secretary for Children and Families

[FR Doc. 94–23144 Filed 9–16–94; 8:45 am]

BILLING CODE 4184–01–M

Administration on Aging

White House Conference on Aging

AGENCY: White House Conference on Aging, AoA, HHS.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to Title II of the Older Americans Act Amendments of 1987, Public Law 100–175 as amended by Public Law 102–375 and Public Law 103–171, that the 1995 White House Conference on Aging Policy Committee will hold a meeting on Wednesday, October 5, 1994, from 1 p.m. to 4 p.m. The meeting will be held in Room 216, Hart Senate Office Building, Constitution and Delaware Avenues NE, Washington, DC 20510.

The meeting of the Committee shall be open to the public. The proposed agenda includes discussion and voting on the themes and the proposed agenda for publication in the **Federal Register.**

Records shall be kept of all Committee proceedings and shall be available for public inspection at 501 School Street, SW, 8th floor, Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: Marilyn Huddell, White House Conference on Aging, 501 School Street SW., 8th Floor, Washington, DC 20024, 202–245–7845.

Fernando M. Torres Gil,

Assistant Secretary for Aging.

[FR Doc. 94–23129 Filed 9–16–94; 8:45 am]

BILLING CODE 4130–02–M

Agency for Toxic Substances and Disease Registry

[ATSDR–85]

Quarterly Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice contains a list of sites for which ATSDR has completed a public health assessment, or issued an addendum to a previously completed public health assessment, during the period April-June 1994. This list includes sites that are on, or proposed for inclusion on, the National Priorities List (NPL), and non-NPL sites for which ATSDR has prepared public health assessments in response to requests from the public (petitioned sites).

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 639–0610.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments, public health assessments with addenda, and petitioned public health assessments which were accepted by ATSDR during January-March 1994, was published in the **Federal Register** on June 28, 1994 [59 FR 33296]. The quarterly announcement is the responsibility of ATSDR under the regulation, Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended [42 U.S.C. 9604(i)].

Availability

The completed public health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487–4650. There is a charge determined by NTIS for these public health assessments. The NTIS order numbers are listed in parentheses after the site name.

Public Health Assessments or Addenda Completed or Issued

Between April 1, 1994, and June 30, 1994, public health assessments or addenda to public health assessments were issued for the sites listed below:

NPL Sites

Kentucky

National Southwire Aluminum Company—Hawesville—(PB94–178811)

Massachusetts

Nyanza Chemical Waste Dump—Ashland—(PB94–194446)
Sullivan's Ledge—New Bedford—(PB94–178027)

Minnesota

Lake Elmo Airport Groundwater Plume—(a/k/a Baytown Township Groundwater Contamination)—Baytown Township (PB94–165453)
New Brighton/Arden Hills (a/k/a U.S. Army Twin Cities Ammunition Plant)—Arden Hills—(PB94–180775)

New York

Hooker-102nd Street—Niagara Falls—(PB94–165172)
Hooker Chemical/Ruco Polymer—Hicksville—(PB94–173788)
North Sea Municipal Landfill—North Sea—(PB94–178993)
Robintech, Incorporated/National Pipe—Vestal—(PB94–183241)
Sinclair Refinery—Wellsville—(PB94–184017)
Syosset Landfill—Oyster Bay—(PB94–165461)

Ohio

Allied Chemical and Ironton Coke—Ironton—(PB94–178936)
Sanitary Landfill—(a/k/a Cardington Road Landfill)—Dayton—(PB94–178902)

Pennsylvania

Foote Mineral Company—Frazer—(PB94–164217)
Palmerton Zinc Pile—Palmerton—(PB94–161692)
Rodale Manufacturing Company, Incorporated—Emmaus—(PB94–178035)

Texas

Sikes Disposal Pits—Crosby—(PB94–187325)

Wisconsin

Fadrowski Drum Disposal—Franklin—(PB94–183308)
Hagen Farm—Stoughton—(PB94–187671)
Spickler Landfill—Spencer—(PB94–168176)

Petitioned Sites (Non-NPL)

New York

Diarsenol Company (a/k/a Kingsley Park)—Buffalo—(PB94–173770)

Virginia

Bluefield Sites—Bluefield—(PB94–187044)

West Virginia

Bluefield Sites—Bluefield—(PB94–187044).

Dated: September 12, 1994.

David Satcher, M.D., Ph.D.,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94–23075 Filed 9–16–94; 8:45 am]

BILLING CODE 4163–70–P

[ATSDR–84]

Notice of Availability of Administrative Reports of Health Effects Studies

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the availability of Administrative Reports of six ATSDR health effects studies.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Lybarger, M.D., M.S., Director, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–31, Atlanta, Georgia 30333, telephone (404) 639–6200.

SUPPLEMENTARY INFORMATION: Sections 104(i)(7) and (9) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended [42 U.S.C. 9604(i)(7) and (9)], provide the Administrator of ATSDR with the authority to conduct pilot studies, epidemiologic and other health studies, and to initiate health surveillance programs to determine the relationship between human exposure to hazardous substances in the environment and adverse health outcomes.

On February 13, 1990, ATSDR published in the **Federal Register** [55 FR 5136] a final rule entitled, "Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities." The primary purpose of that rule, which created a new regulation at 42 CFR Part 90, was to set forth general procedures that ATSDR will follow relating to certain agency activities, including the conduct of health effects studies. Section 90.11 of the regulation, which concerns the reporting of results of health assessments and health effects studies, provides that reports of health effects studies conducted under section 104(i) of the CERCLA shall be available to the general public upon request.

Availability

The reports of the health effects studies listed below are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22151, telephone: 1–800–553–6847. There is a charge for these items as determined by NTIS.

Health effects study	NTIS document No.
Priority Health Conditions: An Integrated Strategy to Evaluate the Relationship Between Illness and Exposure to Hazardous Substances. ATSDR/HS–93/30.	PB93–203529
Health Study to Assess Methylmercury Exposure Among Members of the Fond Du Lac Band of Chippewa Indians in Northern Minnesota. ATSDR/HS–94/31.	PB94–134798
The Globeville Childhood Metals Study: An Exposure Study, Denver Colorado. ATSDR/HS–94/32	PB94–136694
Clear Creek/Central City Mine Waste Exposure Study—Part II: Clear Creek/Central City Mine Sites. ATSDR/HS–94/33	PB94–136702
Site-Specific Surveillance Project at the Koppers Co. Inc. National Priorities List Site, Texarkana, Texas. ATSDR/HS–94/34	PB94–154051
Biologic Indicators of Exposure to Cadmium and Lead, Palmerton, Pennsylvania—Part I ATSDR/HS–94/35	PB94–176955

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In accordance with 42 CFR 90.11, copies of these final reports have been distributed to the Environmental Protection Agency, the appropriate State and local government agencies, and the affected local communities.

ATSDR previously announced the availability of 29 final reports of health effect studies and a software package for the analysis of disease clusters [55 FR 31445, August 12, 1990; 57 FR 29091, June 30, 1992; 58 FR 29413, May 20, 1993; and 58 FR 63378, December 1, 1993]. Additional final reports will be announced semiannually in the Federal Register as they become available.

Dated: September 12, 1994.

David Satcher, M.D., Ph.D.,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94-23074 Filed 9-16-94; 8:45 am]

BILLING CODE 4163-70-P

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee)

Date, time, and place. October 4, 1994, 9 a.m., Hubert H. Humphrey Bldg., Stonehenge Room, suite 615–F, 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open committee discussion, 9 a.m. to 1:30 p.m.; open public hearing, 1:30 p.m. to 2:30 p.m., unless public participation does not last that long; open committee discussion, 2:30 p.m. to 4 p.m.; Ronald F. Coene, National Center for Toxicological Research (HFT–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3155.

General function of the committee. The committee shall advise the Secretary and the Assistant Secretary for Health concerning its oversight of the conduct of the Ranch Hand Study by the Air Force and other studies in which the Secretary or the Assistant Secretary for Health believes involvement by the advisory committee is desirable.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 23, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will initiate the review of the report analyzing the 1992 health examination of participants in the Air Force Health study entitled "An Epidemiologic Investigation of Health Effects in Air Force Personnel Following Exposure to Herbicides." This review will include the chapters dealing with General Health, Dermatology, Renal Function, and Pulmonary Function. Criteria for release of data sets from previous health examinations conducted for the Air Force Health study will also be discussed. Representatives from the Department of Veterans Affairs will present an outline of their plan for conduct of a health study of Army veterans assigned to Chemical Corps units in Vietnam.

Dental Drug Products Panel Plaque Subcommittee (Nonprescription Drugs) of the Medical Devices Advisory Committee

Date, time, and place. October 11 and 12, 1994, 9 a.m., Holiday Inn—Silver Spring, International Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open committee discussion, October 11, 1994, 9 a.m. to 12 m.; open public hearing, 12 m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 5 p.m.; open committee discussion, October 12, 1994, 9 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 4 p.m.; Jeanne L. Rippere or Stephanie A. Mason, Center for Drug Evaluation and Research (HFD–813), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–1003.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

The Dental Products Panel of the Medical Devices Advisory Committee functions at times as a nonprescription drug advisory panel. As such, the panel reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of various currently marketed nonprescription drug products for human use, the adequacy of their labeling, and advises the Commissioner of Food and Drugs on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on the general issues pending before the subcommittee. Those desiring to make formal presentations should notify the contact person before September 30, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The subcommittee will continue with its discussions held during the June 28 and 29, 1994, meeting as follows: (1) The possible relationship of alcohol-containing mouthwashes to the development of oral and pharyngeal cancers, and (2) work on developing general guidelines for determining the safety and effectiveness of antiplaque and antiplaque-related drug products. The subcommittee will also work on a draft document to be presented to the Dental Products Panel at a future meeting.

Dental Device Ingredient Labeling Subcommittee of the Dental Products Panel of the Medical Devices Advisory Committee

Date, time, and place. October 12, 1994, 9 a.m., Gaithersburg Hilton Hotel, Salon C, 620 Perry Pkwy., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the Gaithersburg Hilton Hotel. Attendees requiring overnight accommodations may contact the hotel at 301–977–8900 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Carolyn A. Tylenda, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD, 301–594–3090.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 1, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss dental device ingredient labeling.

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. October 13 and 14, 1994, 9 a.m., National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, October 13, 1994, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, October 14, 1994, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419–259–6211 or Valerie M. Mealy, Advisors and Consultants Staff, 301–443–4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 1, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 13, 1994, the committee will discuss drug interactions and antianginal guidelines. On October 14, 1994, the committee will discuss the new drug application (NDA) 20–377 for Cordarone®, I.V. amiodarone HCl, Wyeth-Ayerst Laboratories, to be indicated for life-threatening arrhythmias.

Dental Products Panel of the Medical Devices Advisory Committee

Date, time, and place. October 13 and 14, 1994, 9 a.m., Gaithersburg Hilton Hotel, Salon C, 620 Perry Pkwy., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the Gaithersburg Hilton Hotel. Attendees requiring overnight accommodations may contact the hotel at 301–977–8900 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, October 13, 1994, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open public hearing, October 14, 1994, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 3 p.m., Carolyn A. Tylenda, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD, 301–594–3090.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 1, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 13 and 14, 1994, the committee will discuss: (1) Classification of muscle monitor devices; (2) reclassification of dental mercury; (3) bone filling and augmentation materials; (4) dental device ingredient labeling; and (5) draft guidance documents for dental endosseous implants and temporomandibular joint implants. Copies of the draft guidance documents are available from the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 800–638–2041 or 301–443–6597.

Blood Products Advisory Committee

Date, time, and place. October 20 and 21, 1994, 8 a.m., Holiday Inn—Silver Spring, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open committee discussion, October 20, 1994, 8 a.m. to 9:20 a.m.; open public hearing, 9:20 a.m. to 9:40 a.m., unless public participation does not last that long; open committee discussion, 9:40 a.m. to 11:40 a.m.; open public hearing, 11:40 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 2:30 p.m.; open public hearing, 2:30 p.m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 5 p.m.; open committee discussion, October 21, 1994, 8 a.m. to 9:30 a.m.; open public hearing, 9:30 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 12:30 p.m.; Linda A. Smallwood, Office of Blood Research and Review (HFM–300), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–594–6700.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 10, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 20, 1994, the committee will

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discuss and provide recommendations for: (1) Revised donor testing and suitability criteria related to the use of treponemal screening tests for syphilis, (2) issues related to the dating period for irradiated red blood cells, and (3) issues concerning donor suitability. On October 21, 1994, the committee will discuss public health issues related to the use of gloves by phlebotomists in blood establishments.

Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. October 21, 1994, 10 a.m., Holiday Inn—Gaithersburg, Walker and Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the Holiday Inn—Gaithersburg. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, 10 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 4 p.m., Djuana Blagmon, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–2096.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 14, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the classification of immunohistochemical devices.

Science Board to the Food and Drug Administration

Date, time, and place. October 21, 1994, 8:30 a.m., Bethesda Ramada Hotel and Conference Center, Ambassador Ballrooms I and II, 8400 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open committee discussion, 8:30 a.m. to 2:30 p.m.; open public hearing, 2:30 p.m. to 3:30 p.m., unless public participation does not last that long; open committee discussion, 3:30 p.m. to 6 p.m.; Neil L. Wilcox, Office of the Senior Advisor for Science (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5839.

General function of the board. The board shall provide advice primarily to the agency's Senior Science Advisor and, as needed, to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science; on formulating an appropriate research agenda; and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency sponsored intramural and extramural scientific research programs.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the board. Those desiring to make formal presentations must notify the contact person before October 7, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants. Each presenter will be limited in time and not all requests to speak may be able to be accommodated. All written statements submitted in a timely fashion will be provided to the board.

Open committee discussion. The board will continue to discuss issues related to the test strategy for toxicity and carcinogenicity of substances regulated by FDA. The primary agenda item will consist of short presentations followed by general discussion on the development and validation of alternatives to the 2-year rodent carcinogenicity assay.

National Task Force on AIDS Drug Development

Date, time, and place. October 27, 1994, 9:30 a.m., October 28, 1994, 8:30 a.m., The Hyatt Regency—Crystal City, Regency Rooms C and D, 2799 Jefferson Davis Hwy., Arlington, VA.

Type of meeting and contact person. Open task force discussion, October 27, 1994, 9:30 a.m. to 4:30 p.m.; open public hearing, 4:30 p.m. to 5:30 p.m., unless public participation does not last that long; open task force discussion, October 28, 1994, 8:30 a.m. to 11:30 a.m.; Jean H. McKay or Kimberley M. Miles, Office of AIDS and Special Health Issues (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0104.

General function of the task force. The Task Force on AIDS Drug Development shall identify any barriers and provide creative options for the rapid development and evaluation of treatments for human immunodeficiency virus (HIV) infection and its sequelae. It also advises on issues related to such barriers, and provides options for the elimination of these barriers.

Open task force discussion. The task force will present, hear, and discuss issues on the barriers to acquired immune deficiency syndrome (AIDS) drug development from the perspective of task force members, members of the Federal government, and the public. The task force will determine how to proceed with overcoming the barriers to AIDS drug development.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the task force. Those desiring to make formal presentations should notify the contact person before October 19, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: September 13, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–23151 Filed 9–16–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Final Program Requirements and Review Criteria for Cooperative Agreements for Centers for Medical Education Research for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces the final program requirements and review criteria for fiscal year (FY) 1994 Cooperative Agreements for Centers for Medical Education Research. These cooperative agreements are funded under the authority of section 781, title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992.

Section 781 authorizes research on certain health professions issues. For this cooperative agreement program, research focuses on the medical education aspects of this legislation and "medical education" is defined as education provided to individuals working toward the M.D. or D.O. degree, or as post-graduate M.D./D.O. education in an accredited residency or fellowship program.

Purpose

The purpose of the Cooperative Agreements for Centers for Medical Education Research is to support research in medical education, especially regarding existing or proposed federal policies and programs and regarding the impact of Federal initiatives aimed at improving the training of health professionals and at meeting national workforce goals.

Section 781 of the Public Health Service Act authorizes the Secretary to award cooperative agreements for the purpose of:

(a) conducting research on the extent to which the debt incurred by medical students for attendance at educational institutions has had a detrimental effect on the decisions made by the students on entering primary care specialties;

(b) conducting research on the effects that federally-funded educational programs or policies for minority or disadvantaged individuals have on:

(A) the number of such individuals attending health professions schools;

(B) the number of such individuals completing the programs of education involved; and

(C) the decisions made by such individuals on which of the health professions specialties to enter;

(c) conducting research on the effectiveness of the States in protecting the public health through:

(1) identifying health care providers with respect to whom investigations of professional qualifications are warranted;

(2) conducting such investigations; and

(3) taking disciplinary actions against health care providers determined through such investigations to have engaged in conduct inconsistent with protecting the public health;

(d) conducting research:

(A) to determine the extent to which Federal programs and related financial incentives influence the percentage of medical school graduates selecting a primary care career;

(B) to determine the extent to which Federal programs and related financial incentives adequately support the training of mid-level primary care providers relative to other health professions education receiving Federal assistance;

(C) to assess the impact that direct and indirect payments for graduate medical education (including the appropriateness of payments for independent, ambulatory training sites) have on increasing the percentage of physicians graduating from medical school who enter primary care careers;

(D) to assess the impact of medical school admissions policies on specialty selection and recommend ways admission policies can better facilitate and promote the selection of primary care as a medical career;

(E) to assess the impact of Federal funding for biomedical research on the design of medical school curriculum and the availability of primary care educational opportunities;

(F) to assess the impact of medical school curriculum, including the availability of clinical training in ambulatory care settings, on the percentage of physicians selecting primary care residencies and selecting primary care as a medical career; and

(G) to assess the extent to which current physician payment policies under resource based relative value scale are sufficient to encourage physicians graduating from medical school to enter and remain in primary care careers.

In conducting research relative to effect of programs for minority and disadvantaged individuals, the

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applicant will make findings specific to the following categories of health professions schools:

(A) Health professions schools of historically black colleges and universities.

(B) Other health professions schools attended by a substantial number of minority individuals.

(C) Health professions schools generally.

Eligibility

Eligible applicants include public and non-profit private entities.

This program was announced in the **Federal Register** at 59 FR 32444, dated June 23, 1994. The program requirements and review criteria were proposed for public comment. No comments were received during the 30 day comment period. Therefore, the program requirements and review criteria remain as proposed.

Final Program Requirements

The award recipient shall participate in the cost of the program as follows: For each year funds are awarded under this program, the matching contribution shall be at least one-third of the amount of the Federal award for that year. Up to 50% of the recipient's matching contribution may be in the form of in-kind donations of faculty time, staff time, use of computers or other shared resources.

In addition, each applicant shall evidence that training related to medical education research is occurring or is planned by the organization.

Final Review Criteria

The review of applications will take into consideration the following criteria:

(1) The qualifications and achievements of the proposed center's principal investigator and senior researchers, including level of productivity and quality of research in medical education;

(2) Demonstration of an understanding of the particular subject areas of medical education research that are relevant to Federal policies and evidence of ability to manage research in such areas;

(3) The appropriateness of the time commitments of the principal investigator and senior researchers;

(4) The strength of the applicant's plan to actively promote dissemination of research findings to all health professionals involved in education and training—including those whom are primarily practitioners, and to relevant policy makers;

(5) The appropriateness of the proposed budget;

(6) The planned level of commitment to the center from the applicant institution, as evidenced by specific plans for the type of financial support that will be offered, and for support of the organizational structure of the center. Evidence of a prior institutional commitment to generalizable research in medical education will also be sought;

(7) The past success and future potential of the proposed center's researchers in receiving funding from other sources; and

(8) The likely effectiveness of the organizational and management arrangements to operate the proposed center.

Additional Information:

If additional programmatic information is needed, please contact: Dr. Brian Goldstein, Office of Health Professions Analysis and Research, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–47, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6936, FAX: (301) 443–0463.

This program, Cooperative Agreements for Centers for Medical Education Research, is listed at 93.222 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: September 13, 1994.

James A. Walsh,

Acting Administrator.

[FR Doc. 94–23094 Filed 9–16–94; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

Notice Regarding Section 602 of the Veterans Health Care Act of 1992 Outpatient Hospital Facilities

AGENCY: Public Health Service, HHS.

ACTION: Final notice.

SUMMARY: Section 602 of Public Law 102–585, the "Veterans Health Care Act of 1992" (the "Act"), enacted section 340B of the Public Health Service Act ("PHS Act"), "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement (the "Agreement") with the Secretary, Department of Health and Human Services, in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed the amount determined under a statutory formula.

The purpose of this notice is to inform interested parties of final program guidelines concerning the inclusion of outpatient disproportionate share hospital (DSH) facilities in the PHS drug discount program.

FOR FURTHER INFORMATION CONTACT: Marsha Alvarez, R. Ph., Director, Office of Drug Pricing, Bureau of Primary Health Care, 4350 East West Highway, West Tower, 10th Floor, Bethesda, MD 20814, tel: (301) 594–4353.

EFFECTIVE DATE: October 19, 1994.

SUPPLEMENTARY INFORMATION:

(A) Background

Proposed guidelines were announced in the **Federal Register** at 59 FR 29300 on June 6, 1994. A period of 30 days was established to allow interested parties to submit comments. The Office of Drug Pricing received 8 letters with comments concerning legal authority for developing the proposed guidelines, responsibility for determining eligibility, the inclusion of non-traditional outpatient facilities, the need for a definition of eligible hospital facility, ambiguity in the policies of the Health Care Financing Administration (HCFA) regarding the Medicare cost report, possible exceptions for unique circumstances, a retroactive effective date, and general comments concerning the definition of "patient" and a contracted pharmacy service mechanism.

The following section presents a summary of all major comments, grouped by subject, and a response to each comment. All comments were considered, and the guideline is adopted as proposed, with minor changes to increase clarity.

(B) Comments and Responses

Comment: Manufacturers should not be required to provide discounts to outpatient facilities that are included on the Medicare cost reports of eligible DSHs until the PHS Office of Drug Pricing includes the names of the eligible outpatient facilities on the master list of eligible covered entities.

Response: When an eligible DSH submits the list of all outpatient facilities (on-site and off-site) included on its Medicare cost report and Medicaid billing status information to the Office of Drug Pricing and the Office adds these facilities to the master list of eligible and participating entities during regular quarterly updates, the facilities will then be able to access PHS discount pricing. This information will be posted on the Electronic Data Retrieval System (EDRS), maintained by the Office of Drug Pricing. To access this information call (301) 594–4992.

Comment: The proposed guidelines have created a new definition of "DSH" which appears to be within the realm of legislating as opposed to rulemaking.

Response: Section 340B(a)(4) of the PHS Act lists the various groups of entities eligible to receive PHS discount pricing. Section 340B(a)(4)(L) describes a subset of "hospitals" as defined in section 1886(d)(1)(B) of the Social Security Act as eligible to participate in the program. Because section 1886 addresses Medicare payment for hospital inpatient services only, the scope of the term "hospital" has been limited to the hospital inpatient services. However, section 340B deals exclusively with outpatient drugs. Although Congress clearly intends this narrow definition be used to identify the Medicare disproportionate share hospitals which are eligible for section 340B outpatient drugs can be used. Some disproportionate share hospitals offer outpatient services in off-site or satellite outpatient facilities. Further, the movement of nonprofit hospitals in recent years has been to reorganize and offer a variety of services, other than traditional inpatient hospital services, through separate divisions, lines of business, or entities. Therefore, for purposes of section 340B drug discounts, a further interpretation of "hospital" is needed.

Comment: In some instances, the Medicare cost report does not include all of the clinics and services which should be eligible for the PHS discount pricing. For example, hospitals refer patients for specific types of treatments to other hospitals, such as large teaching hospitals which have specialized equipment and medical personnel. Further, hospitals are establishing separate primary care services in different areas of the community. These facilities are often free-standing and not included on the DSH Medicare cost report, but generally are customers of the hospitals and have limited financial resources.

Response: Although it is understandable that the DSH would desire to obtain PHS pricing for these various facilities, the statute clearly states that it is only the DSH that qualifies for discount pricing. We have attempted to define DSH in a manner consistent with HCFA policy guidelines (Provider Certification, State Operation Manual, section 2024). Only outpatient facilities which are an integral component of the DSH will be included on the DSH Medicare cost report, and only these facilities will be eligible for PHS discount pricing.

Comment: The proposed guidelines would permit any health care entity, by means of its business relations with other health care entities, to make itself eligible for PHS pricing. Any clinic, facility, or community hospital affiliated with a DSH could consolidate its cost reporting requirements and use the Medicare provider number of the DSH to make itself eligible for PHS pricing. This is not consistent with Congress's intent in precisely defining a list of entities eligible for the PHS discount pricing.

Response: Congress referred to section 1886 of the Social Security Act (Medicare inpatient hospital payment) for the definition of DSH; therefore, it is reasonable to utilize existing Medicare rules to determine eligibility for PHS discount pricing. The proposed Medicare cost report test was developed by Medicare officials and used, in part, to determine whether a facility is a component of a hospital. If an outpatient facility does not share in the hospital cost report, it is properly viewed as an independent, free-standing facility.

When a DSH attempts to certify multiple components as a single hospital for purposes of Medicare certification, it must follow guidelines developed by HCFA. These guidelines (Provider Certification, State Operation Manual, section 2024) establish tests to determine whether an additional hospital facility, geographically separated but in the same metropolitan area, is a separate facility from or a component of a single hospital. These tests include: (a) all components subject to the control and direction of one common owner (i.e., governing body) which is responsible for the operational decisions of the entire hospital enterprise; (b) one chief medical officer who reports directly to the governing body and who is responsible for all medical staff activities of all components; (c) integration of the organized medical staff (e.g., all medical staff members having privileges at all components); and (d) one chief executive officer through whom all administrative authority flows and who exercises control and surveillance over all administrative activities of all components. This does not preclude the establishment of a deputy or assistant executive officer position.

If the off-site clinic meets these tests, it would be included in the DSH Medicare cost report. This test clearly determines whether a facility is an integral part of a DSH hospital, and is an appropriate standard to determine eligibility. It incorporates Medicare criteria that are not ambiguous and forms an independent and objective basis on which to determine eligibility.

Comment: The proposed guidelines should be applied uniformly to all DSH outpatient facilities, regardless of whether they fit the common perception of a traditional hospital outpatient clinic (e.g., include facilities that serve prison inmates, HMOs, home infusion and home health patients). Anything short of this would be extremely difficult to administer since separating traditional from non-traditional facilities would be a highly subjective and time-consuming exercise. Further, PHS should include in the final notice a specific definition for eligible "outpatient facility."

Response: Section 340B(b) of the PHS Act refers to section 1927(k) of the Social Security Act for the definition of "covered outpatient drug." This definition does not include any limitations on outpatient settings, and there is no requirement that the covered drug be used in a "traditional" outpatient setting. Any outpatient facility included on an eligible DSH's Medicare cost report can access PHS pricing if it is included on the master list of eligible entities.

Comment: There are certain circumstances which might prevent an otherwise eligible outpatient facility from billing under the DSH's provider number (e.g., State or local laws requiring a facility or pharmacy to bill all third party payers directly). In these instances, the facility should be permitted to access PHS discount pricing if the eligible DSH facility can demonstrate that the pharmacy would meet the proposed Medicare test but for the unique circumstances.

Response: The test used to determine the eligibility of hospital outpatient facilities must incorporate criteria that form an independent and objective basis. This will provide fair and easy administration. To include a "but for" test would create a difficult standard to administer. If an outpatient facility is not included on the eligible DSH's Medicare cost report, it will not meet the requirements for eligibility.

Comment: The effective date of this notice should be made retroactive to December 1, 1992. Further, the June 13 deadline for requesting retroactive rebates or credits should be extended.

Response: In a **Federal Register** notice, dated May 13, 1994, a deadline was announced for requesting retroactive discounts. Eligible and

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potentially eligible covered entities could request these discounts until June 13, 1994. *See* 59 FR 25112. The notice permits an off-site outpatient DSH facility to receive retroactive discounts if it meets the following requirements: (1) is included on an eligible DSH's Medicare cost report, (2) has not participated in a group purchasing arrangement for covered outpatient drugs, (3) has not billed Medicaid for the covered outpatient drugs for which retroactive discounts are being requested, and (4) has preserved its right to such discounts by sending manufacturers a letter requesting such refunds and providing adequate documentation of drug purchases by June 13, 1994. After this date, the right to retroactive discounts ceased. *See* 59 FR 25112. ("Any DSH outpatient clinic which is or will be eligible for retroactive discounts may preserve its right by sending manufacturers a letter requesting such refunds and providing adequate documentation of purchases.")

Comment: There is no definition of the term "patient," thereby permitting a DSH to distribute discounted drugs to virtually anyone it can argue is a patient without running afoul of the drug resale prohibition of section 340B(a)(5)(B) of the PHS Act.

Response: PHS will address this issue in a future **Federal Register** notice which will request public comment. All comments concerning the definition of "patient" will be addressed at that time.

Comment: PHS has approved a contracted pharmacy service model without public notice and an opportunity to comment.

Response: PHS will discuss the contracted pharmacy service model in a future **Federal Register** notice which will invite public comment. All comments concerning this issue will be addressed at that time.

(C) DSH Outpatient Facility Guidelines

Set forth below are the final guidelines regarding the inclusion of DSH outpatient facilities: The outpatient facility is considered an integral part of the "hospital" and therefore eligible for section 340B drug discounts if it is a reimbursable facility included on the hospital's Medicare cost report. For example, if a hospital with one Medicare provider number meets the disproportionate share criteria and this hospital has associated outpatient clinics whose costs are included in the Medicare cost report, these clinics would also be eligible for section 340B drug discounts. However, free-standing clinics of the hospital that submit their own cost reports using different Medicare numbers (not under the single hospital Medicare provider number) would not be eligible for this benefit.

A DSH, eligible for PHS pricing, must first request that the Office of Drug Pricing include in the PHS drug discount program the outpatient facilities that are included in its Medicare cost report. A list of these outpatient facilities along with Medicaid billing status information must be included with the request. Second, an appropriate official of the DSH must sign a statement that he/she is familiar with HCFA guidelines concerning Medicare certification of hospital components as one cost center, has examined the list of outpatient facilities, and certifies that the facilities are correctly included on the DSH's Medicare cost report. When these facilities are added to the master list of eligible and participating covered entities, the off-site facilities will be able to access PHS discount pricing. On-site clinics that are not included on the Medicare cost report will not be eligible for PHS discount pricing. This information will be posted on the Electronic Data Retrieval System (EDRS), maintained by the Office of Drug Pricing, on a quarterly basis. To access this information, call (301) 594–4992.

DSHs which have questions concerning this process, or manufacturers which have questions concerning the eligibility of certain DSH outpatient clinics, should contact Elizabeth Hickey (301–594–4353), at the Office of Drug Pricing.

Dated: September 13, 1994.

James A. Walsh,

Acting Administrator, Health Resources and Services Administration.

[FR Doc. 94–23095 Filed 9–16–94; 8:45 am]

BILLING CODE 4160–15–P

Social Security Administration

Privacy Act of 1974; Computer Matching Programs (SSA/Bureau of Prisons)

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Computer Matching Program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget. The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–5138 or writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program and Integrity Reviews as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503) amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements.

(3) Furnish detailed reports about matching programs to Congress and the Office of Management and Budget;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: September 9, 1994.

Shirley S. Chater,

Commissioner of Social Security.

Notice of Computer Matching Program, Bureau of Prisons (BOP) Inmate Central Records System With the Social Security Administration (SSA)

A. Participating Agencies

SSA and BOP.

B. Purpose of the Matching Program

Section 202(x)(1) of the Social Security Act (the Act) requires SSA to suspend old-age, survivors and disability insurance benefits of certain prisoners. Section 1611(e)(1)(A) of the Act provides, with some exceptions, that inmates in public institutions are not eligible for payments under the supplemental security income program.

The purpose of this matching program is to assist SSA in enforcing these provisions.

C. Authority for Conducting the Matching Program

Sections 202(x)(1), 1611(e)(1)(A), 202(x)(3) and 1631(f) of the Act.

D. Categories of Records and Individuals Covered by the Matching Program

BOP will submit names and other identifying information of prisoners from its Inmate Central Records System. The SSA master files of Social Security number (SSN) holders contain the SSNs and identifying information for all SSN holders. The SSA master beneficiary record and supplemental security income record contain beneficiary and payment information.

E. Inclusive Dates of the Match

The matching program shall become effective 40 days after a copy of the agreement, as approved by the Data Integrity Boards, is sent to Congress and the Office of Management and Budget (OMB) (or later if OMB objects to some or all of the agreement), or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR DOC. 94–23147 Filed 9–16–94; 8:45am]

BILLING CODE 4190–29–P

Process Reengineering Program; Disability Reengineering Project Plan

AGENCY: Social Security Administration, HHS.

ACTION: Announcement of the plan for a new disability claim process.

SUMMARY: The Social Security Administration (SSA) announces a plan to redesign the claim process for Social Security Disability Insurance and Supplemental Security Income (SSI) disability benefits. This notice contains the plan, as well as background information. The aim of the plan is to achieve dramatic improvements in service to claimants filing for disability benefits and restore public confidence in SSA's disability programs.

FOR ADDITIONAL COPIES CONTACT: Social Security Administration, PO Box 17052, Baltimore, MD 21235, (410) 966–8255. The plan is available in alternative formats for visually impaired individuals. Please use this same telephone number to request a copy of the plan in an alternative format.

SUPPLEMENTARY INFORMATION:

Background—What is the Process Reengineering Program?

SSA began an Agency-wide program of Process Reengineering in the summer of 1993. The Process Reengineering Program is one way that SSA is seeking to improve its overall delivery of service to the public.

The Process Reengineering Program essentially asks the question, "If SSA had the opportunity today to design its processes, what would they look like?" In other words, "how would we design a process if we were starting over?" The Programs objective is to fundamentally rethink and radically redesign SSA's processes to achieve dramatic improvements in critical measures of performance such as quality of service, speed and efficiency. The ultimate goal is to achieve dramatically improved levels of service from the customer's perspective while enriching and improving the work lives of employees.

The Process Reengineering Program is the culmination of an investigation by SSA of the reengineering efforts conducted by private companies, public organizations, academic institutions, and consulting firms with "hands on" experience. The positive findings from that investigation, combined with concerns about the impact of current and projected workloads, led SSA to conclude that a disability claims process reengineering effort was critical to its objectives of providing world-class service to the public and restoring public confidence in its disability programs.

Based on analysis of what has worked best in other organizations, SSA developed a customized reengineering methodology. This methodology used a team approach (composed of SSA and State Disability Determination Service (DDS) employees) and combined a strong customer focus with classic management analysis techniques to intensely review a single business process. While the reengineering team was comprised of employees who were knowledgeable about the current disability process, the methodology focused heavily on obtaining the views of a broad segment of individuals, groups and organizations involved both internally and externally to the process.

What Does the Disability Reengineering Project Address?

Despite the outstanding efforts of SSA and State DDS employees throughout the country, the Agency continues to have difficulty providing a satisfactory level of service to claimants filing for disability benefits. The steps in the current disability process have not changed in any important way since the beginning of the Disability Insurance program in the 1950s. Yet, case loads, types of disabilities, and the demographic characteristics of individuals with disabilities who are potentially eligible for benefits have changed radically.

The State DDSs make the initial decisions about whether an applicant for Disability Insurance or SSI benefits is disabled. In Fiscal Year (FY) 1995, it is estimated that SSA will forward 2.9 million initial disability claims to the DDSs for disability determinations—a 69 percent increase over FY 1990 levels. Similarly, the number of requests for an administrative law judge hearing on denied claims is expected to increase to 542,000, a 75 percent increase over FY 1990 levels. Recent management initiatives to improve service through resource reallocations and productivity enhancements have not been sufficient to deal successfully with the workload demands and it is expected that disability processing times and backlogs will continue to grow under the present process.

The result is that many claimants have to wait much too long at each stage of the process. SSA and State DDS employees are working longer and harder, while becoming increasingly frustrated about their inability to provide the type of service the public deserves.

For these reasons, the first SSA reengineering project focused on the process of filing for benefits—beginning with the initial claim and continuing through the payment of benefits or the final administrative appeal—under both the Disability Insurance program and

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the disability portion of the SSI program.

The parameters set for this first project restricted the team from proposing any changes to the statutory definition of disability or the amount of benefits for which individuals are eligible. The project also did not address vocational rehabilitation, work incentives or continuing disability reviews as these issues are being addressed by SSA in other ways.

How Was the Disability Process Reengineering Project Accomplished?

The Disability Process Reengineering Project began in October 1993 when a team of 18 Federal and State employees came together for the purpose of reengineering the initial and administrative appeals system for determining an individual's entitlement to Disability Insurance and SSI disability payments. After completing their initial tasks of analyzing the current process, obtaining process improvement recommendations from over 3,600 individuals and groups internal and external to the disability claim process, benchmarking with public and private sector organizations to identify "best practices," and modeling theoretical processes via computer, the team presented an initial proposal on March 31, 1994. (A copy of this proposal was published in the **Federal Register**, Vol. 59, No. 73, on Friday, April 15, 1994.) The team distributed the proposal widely throughout SSA, the State DDSs, and to interested public and private individuals and organizations and asked the audience for reactions to the proposal, items of concern, and additional ideas for improvement.

During the comment period that began on April 1, 1994, and ended on June 14, 1994, the team received over 6,000 written responses from SSA and DDS employees, employee unions, professional associations, members of the public, claimant representatives, physicians, State governors, claimant advocacy groups, Federal entities, and other interested parties. Members of the team read and analyzed every one of the comments so that no idea, reaction or nuance would be overlooked. Group employee feedback discussions were held in over 80 sites across the country to facilitate dialogue with almost 2,000 SSA and DDS employees. In addition, team members conducted briefings and spoke with more than 3,000 individuals about their reactions to the proposal during this period. A public forum was also held in Washington, D.C. A summary of the comments received is provided in Appendix III of the attached plan.

After considering all comments, the team reviewed the breadth of the initial proposal to determine concepts that needed to be revised, language that needed to be clarified, and details that needed to be added. On June 30, 1994, the team submitted its revised proposal to the Commissioner of Social Security. Subsequently, after careful consideration, on September 7, 1994, the Commissioner released SSA's Plan for a New Disability Claim Process. Accepting all of the concepts contained in the team's June 30 revised proposal as SSA's plan, the Commissioner released the redesign plan with the understanding that certain concepts (primarily aspects of the simplified disability methodology) would require extensive research and testing before determining how quickly they could be implemented.

What Service Improvements Does the Plan for a New Disability Claim Process Offer?

The Commissioner established five primary objectives against which SSA will measure the success of a redesigned disability claim process:

— The process is user friendly for claimants and those who assist them;
— The right decision is made the first time;
— Decisions are made and effectuated quickly;
— The process is efficient; and
— Employees find the work satisfying.

By focusing on these objectives, the redesigned process replaces an existing process that is slow, labor-intensive, and paper reliant with a seamless claim process that makes better use of technology, eliminates fragmentation and duplication, promotes more flexible use of resources, and results in dramatic improvements in public service. With the redesign plan, SSA has embarked on an era of change that will revitalize and streamline the way it delivers disability claim service to the public to achieve greater quality, speed and efficiency.

Specific customer focused improvements that the plan will offer include a process that will:

- Be a user-friendly, more accessible and customer focused process, that ensures benefits are paid to all eligible individuals as quickly as possible. Case processing times will be cut in half once the new process is fully implemented;
- Provide complete and accurate consumer-oriented information to applicants throughout the process and allow individuals who are able to be full partners in the processing of their claim;
- Utilize modern technology and highly skilled and trained employees to deliver high-quality service in an accountable, cost-efficient manner;
- Implement a comprehensive quality assurance program that continually strives to improve operational excellence and the level of service that disability applicants receive; and
- Use education and training opportunities to enrich employees jobs, increase their job satisfaction and quality of work life.

A detailed description of the redesigned disability claim process is included in the attached plan.

What Happens Next?

SSA will move quickly to begin implementing the redesigned disability claim process. Some new process features, involving research and changes to regulations and computer systems, necessitate a phased-in approach. Other new process features can be implemented in the near-term and, when combined with special short-term initiatives to address case backlogs, will result in better service for individuals currently filing for disability benefits. The goal is to make near-term, visible improvements while at the same time building for long-term results.

SSA will make an unprecedented effort to conduct a full and open dialogue with both SSA and non-SSA audiences as the Agency moves through the implementation phase. The Agency will use all appropriate modes of communication to ensure that necessary information about implementation activities is regularly and widely disseminated and will develop appropriate feedback channels to permit the meaningful exchange of information.

Dated: September 7, 1994.

Rhoda M. G. Davis,

Director, Process Reengineering Program.

Message From the Commissioner

Social Security Administration's Plan for a New Disability Claim Process

It was 10 months ago that I challenged this Agency to restore public confidence in its programs, provide world-class service to its customers, and ensure a nurturing environment for its employees. While there is much left to be done to meet these goals, I am proud to say that with the release of this document we have reached a major milestone toward meeting the challenges I set forth.

This document lays the foundation for the new disability claim process. It is a solid foundation upon which to build—it provides a broad description of the new process, with the detailed elements of the process to be developed.

The new design gives us the opportunity to develop relationships with the public and our employees that are based on open communication, partnership, and the belief that our customers need to be provided as much information as possible about the process and the program. I believe this new design holds the potential to provide the world-class service I pledged to furnish the American people—it will be user-friendly, it will ensure the right decision is made the first time, it will allow decisions to be made and effectuated quickly, and it will be an efficient process. Just as importantly, the new design will also provide our employees with a nurturing environment through empowerment, education, challenge, career opportunity, and professionalism.

As the discussions about our reengineering effort and the future of the disability claim process evolved, I listened to the issues and opinions and the hopes and fears that have been expressed. I heard from SSA and State employees, the public, members of Congress, representatives of other Federal agencies, State officials, union representatives, and various experts in the disability field. I believe that everyone wants something better for the American people. I am convinced that we must be bold in our efforts. Therefore, I have chosen to accept the recommendations of the Agency's Disability Process Reengineering Team which were presented to me on June 30, 1994, with the full understanding that certain aspects of the decisional methodology will require extensive research and testing to determine whether they can be implemented. Because those aspects of decisional methodology that deal with functional assessment, baseline of work, and the evaluation of age require much study and deliberation with experts and consumers, we are making no conclusions about their ultimate place in the disability process. Our implementation plans include the research needed to begin in this area. As more is known, we will reevaluate our planning assumptions. Until then, the concept of a single person as the disability claim manager for all cases cannot be fully implemented. Instead, we will seek ways of working in teams to provide claimants with the level of service they seek.

The cost of redesigning our disability claim process will not be inexpensive; however, the tangible savings will be worth the investment. The workyear savings will allow us to use current staff to accomplish other pressing workloads and activities of the Agency while avoiding new hiring to replace all those who retire or otherwise leave on their own accord. Thus, we will be able to do our part to reduce the Federal workforce overall. Additionally, with these savings will come such intangibles as improved customer service, an empowered and better trained workforce, and increased public confidence in the process.

It is now time for us to move forward with concrete actions to begin the actual redesign of the way we do business in our disability programs. On July 12, 1994, I announced that Charles A. (Chuck) Jones, the Director of the Michigan Disability Determination Service, had accepted the challenge of managing the implementation of SSA's plan to reengineer the disability process. In that role, he will be responsible for the overall leadership and coordination of the redesign implementation. He will establish timelines and priorities and will provide direction to component efforts as well as to task management teams. As Implementation Manager, Chuck will report directly to me and the Principal Deputy Commissioner.

During the discussions of the Team's proposal, I heard several consistent underlying themes about how our new design should be implemented: we must unify the process; we need enabling information technology; we need to ensure the safety of employees; we must continuously deliver effective training; we must retain the existing Federal/State relationship; and we must develop a simpler methodology for making disability decisions. I am absolutely committed to turning these needs into realities as we move ahead. Some will not be easy, and all will take time and money; however, all will need to be addressed if we are to achieve the successful outcome of the redesign.

As implementation plans are developed and task teams are brought together, we will continue to assess all related activities against the five primary objectives of our redesigned process:

—making the process "user friendly" for claimants and those who assist them;
—making the right decision the first time;
—making the decision as quickly as possible;
—making the process efficient; and
—making the work satisfying for employees.

However, this work will not be done in isolation— internally, we will continue to seek advice on these issues from our Advisory Group, comprised of SSA and DDS executives and union and association leaders. Externally, we will continue to publicly inform all who are interested and create opportunities for dialogue and consultation.

Special thanks are extended to the Disability Process Reengineering Team whose recommendations are the result of an unprecedented endeavor for this Agency, and I dare say for most Federal agencies. The Team's thousands of hours of interviews, research, analysis, computer modeling, feedback sessions, and revisions have created a daring image for us of what can be if we truly seek to provide world-class service. We must accept their challenge and begin the arduous task of bringing to reality what is now only a concept.

The next few years will be challenging for all of us as we build our redesigned process, but that will not be a new experience for those of you who are employees of SSA and the State DDSs. You have been called upon in the past to rise to the occasion and have always more than met the challenge; your flexibility, resourcefulness, professionalism, and just plain hard work are legendary. Now more than ever, I will need you to be bold and help build a better future for those who seek our services.

Shirley S. Chater,

Commissioner of Social Security.

Case for Action

Overview

SSA and the State Disability Determination Services (DDSs) have always striven to provide high-quality, responsive service to the public. In recent years, the disability insurance (DI) and Supplemental Security Income (SSI) claims workload has been the Agency's most challenging problem. SSA has been faced with unprecedented workload increases in both the DI and SSI programs which have severely strained its resources. Despite improvements in productivity by employees in field offices, DDSs, hearing offices, the Appeals Council and the processing centers over the last several years, SSA has had difficulty providing a satisfactory level of service to claimants for disability benefits. SSA recognizes that, in an era of spending limitations and competing social spending priorities, placing more and more resources into the current process is not a viable alternative.

Additionally, demographic changes in the general population and in the SSA claimant population present challenges as well as opportunities as SSA strives to provide world-class service to its customers. Despite the workload and demographic changes, however, the

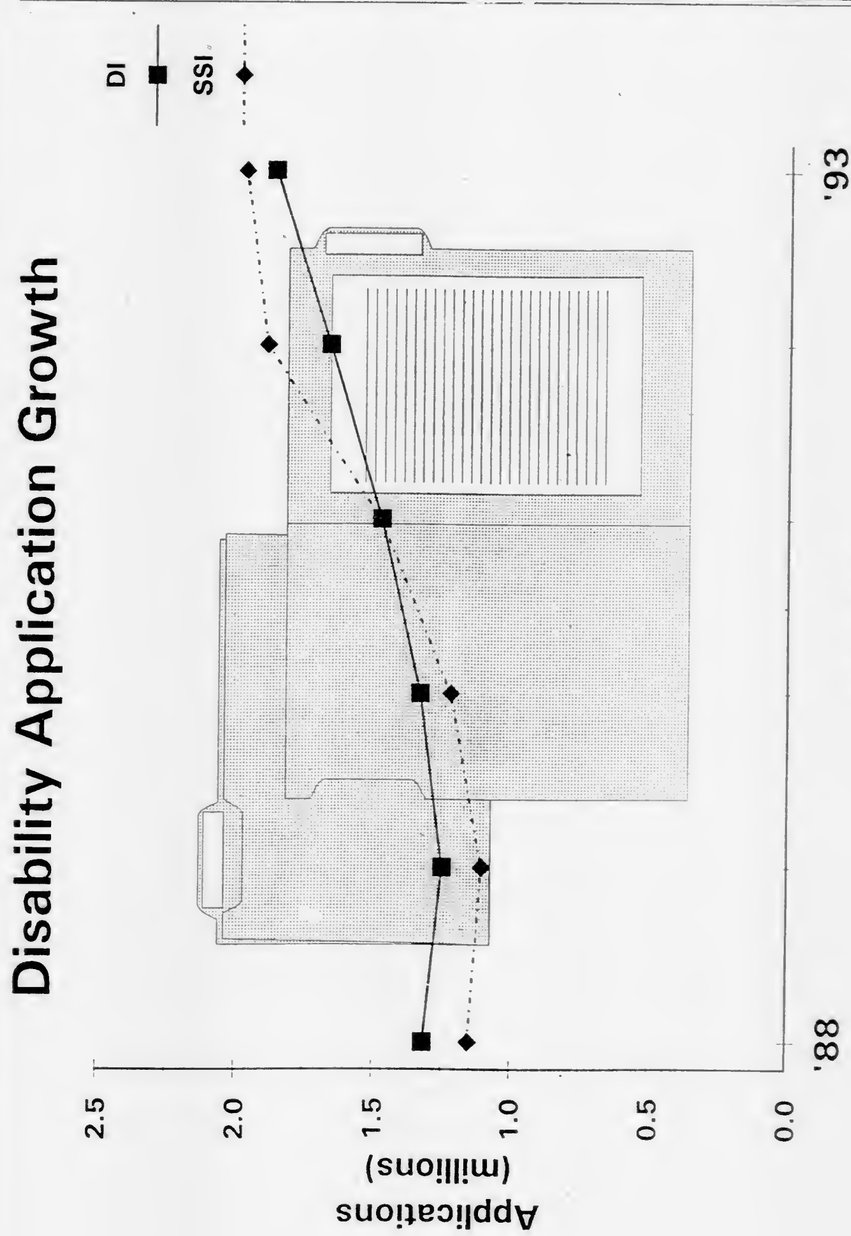
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procedures for processing disability claims have not changed in any important way since the beginning of the DI program in the 1950's and many of the Agency's current practices are based, in large part, on procedures begun 40 years ago. Disability process changes that have evolved over time tend to reflect small, incremental improvements designed to address various pieces of the overall process. It has become increasingly clear that incremental improvements are no longer sufficient to achieve the level of service that will make a substantial difference to disability claimants. Thus, SSA needs a longer-term strategy for addressing service delivery problems in the disability claim process.

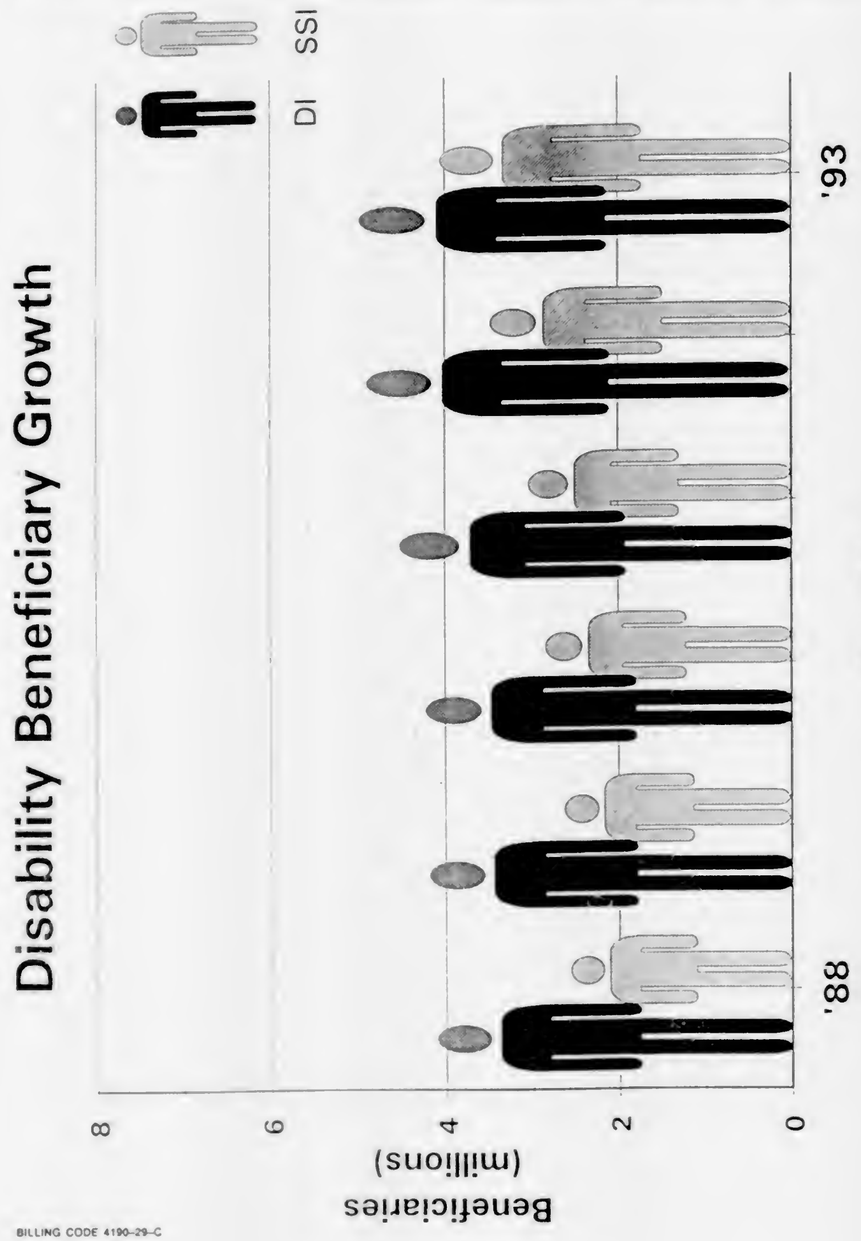
Workload and Operations Trends

Over the last several years, as workloads have increased dramatically, the disability process has been placed under increasing stress. The upward trend in the number of claims and the number of beneficiaries awarded is reflected as follows:

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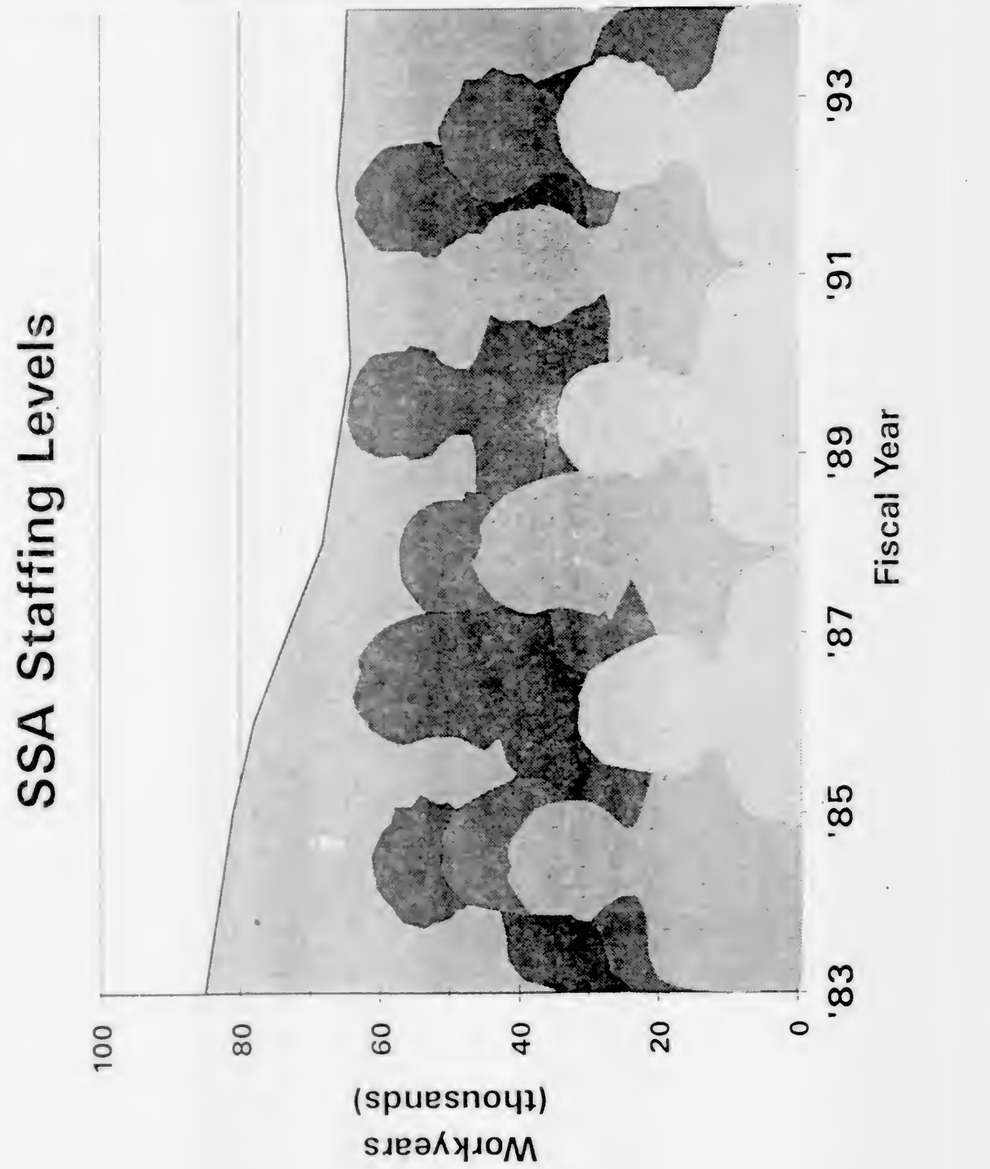


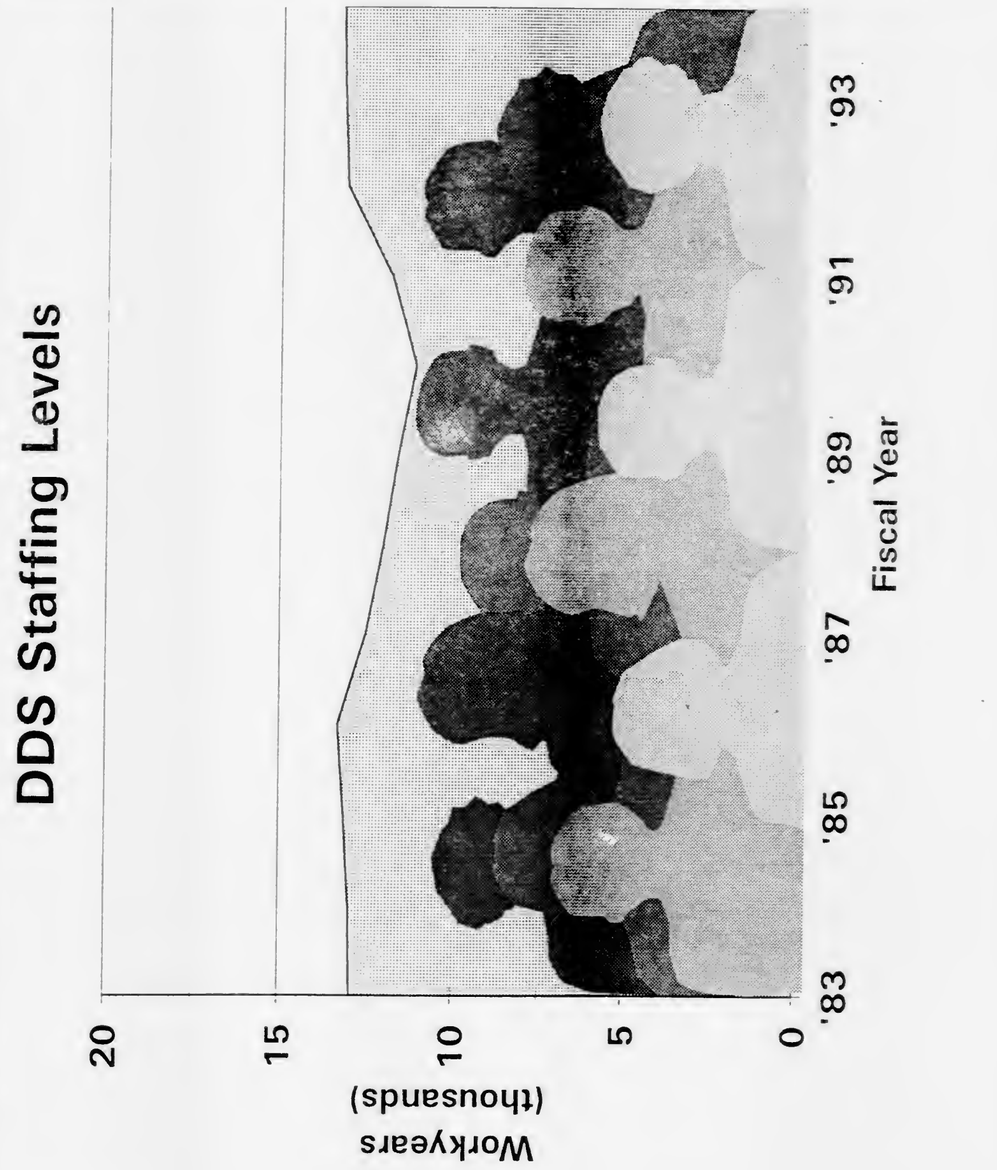
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The increase in workload has occurred concurrently with significant downsizing activity in SSA and staffing fluctuations in the State DDSs

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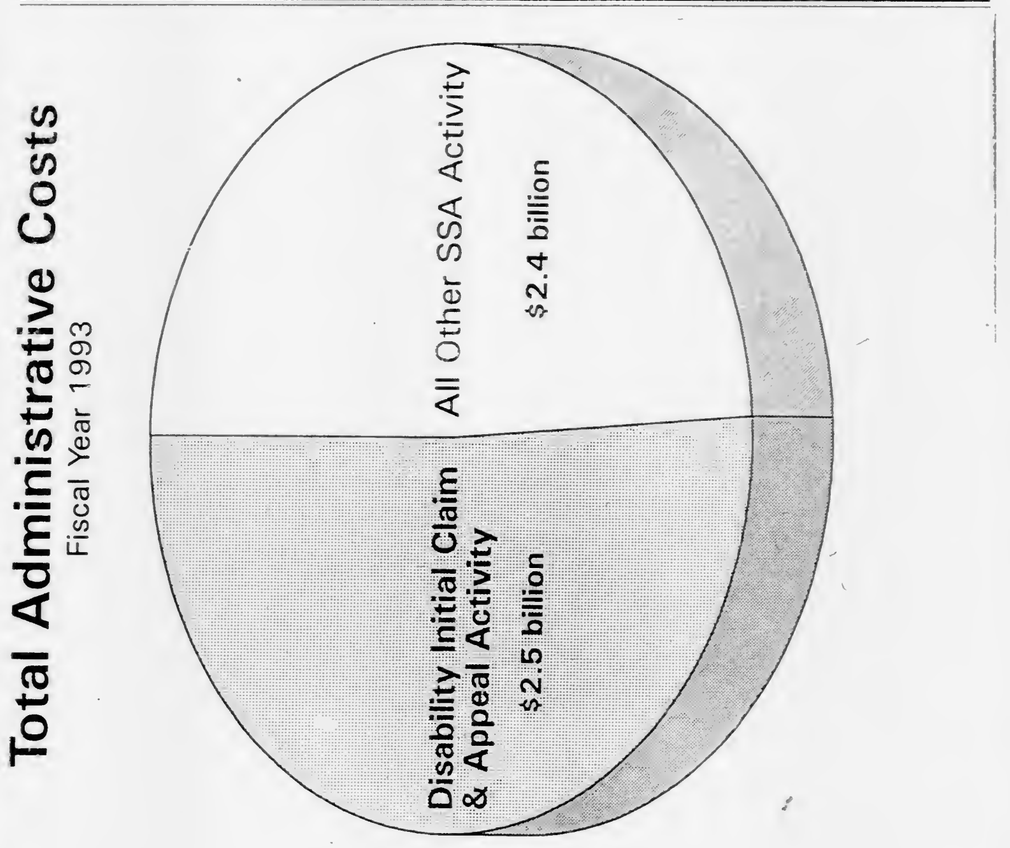


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Even with the downsizing, the total costs for processing initial disability and appeals determinations (excluding the costs for processing the *Sullivan* v. *Zebley* court case) remain enormous—more than half of the total administrative costs (including DDS costs) for SSA in Fiscal Year (FY) 1993 were devoted to this task.

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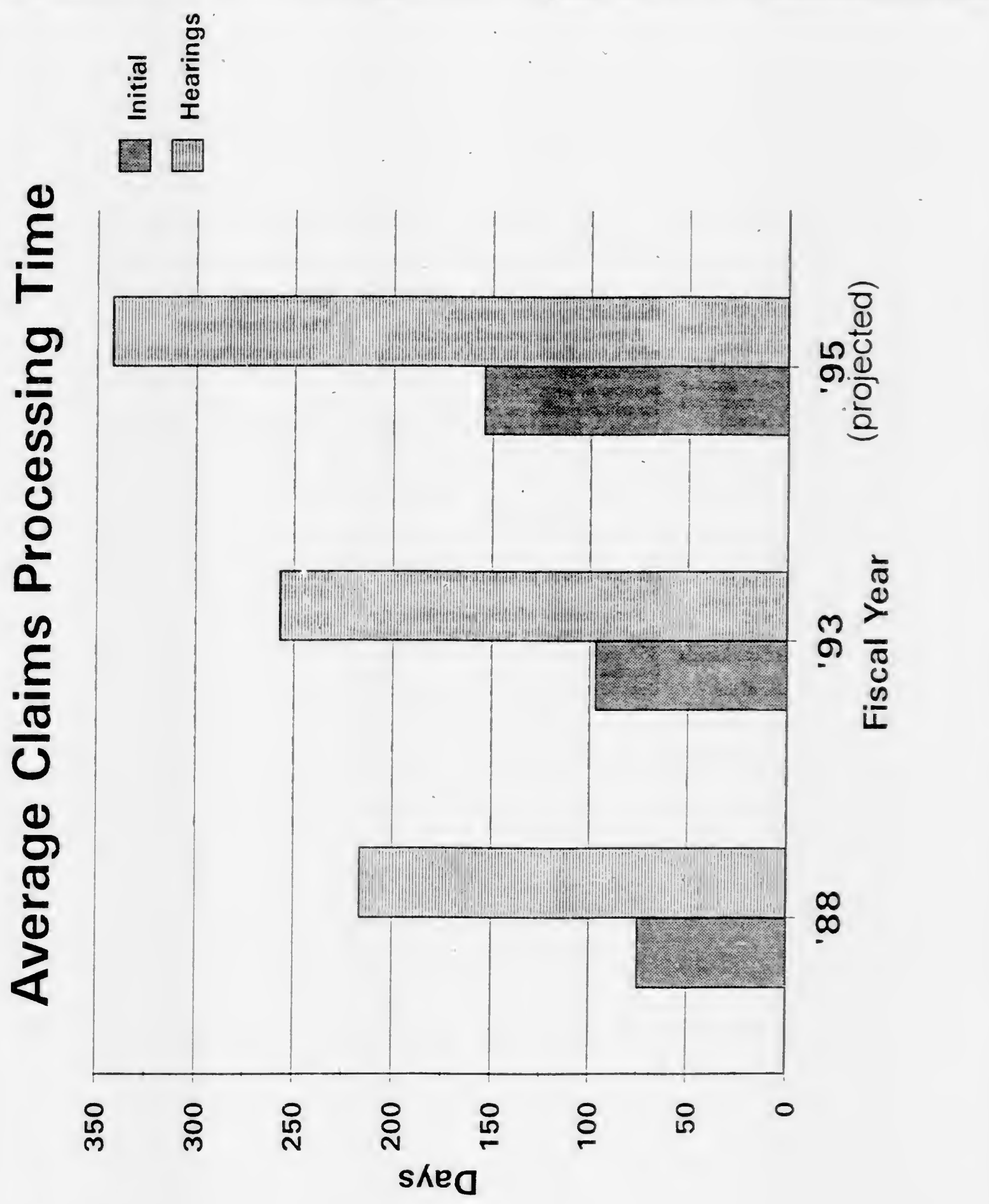


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Despite these funds, and despite directing a larger percentage of the SSA resources toward disability initial claims and appeals processing in recent years, average processing times for initial claims, as well as appeals, have escalated dramatically since 1988

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The high workload level is expected to continue and will adversely affect SSA's ability to timely process initial disability claims and appeals. Recent management initiatives to improve service through resource reallocations and productivity enhancements have not been sufficient to deal successfully with the workload demands and it is expected that disability processing times and backlogs will continue to grow under the present process. In FY 1995, it is estimated that 2.9 million initial disability claims will be forwarded to DDSs for disability determinations—a 69 percent increase over FY 1990 levels. Similarly, in FY 1995, annual requests for administrative law judge (ALJ) hearings will rise to 542,000, a 75 percent increase over FY 1990 levels. The average time to process an initial disability claim (the combined average for both DI and SSI claims) is expected to rise to 154 days in FY 1995; the average time from ALJ hearing request to decision is expected to rise to 342 days in the same period.

Demographic Trends

American society has changed dramatically since the DI program began in the 1950s. This is reflected in an increased demand for SSA's services, changes in the characteristics of claimants seeking benefits, and new complexities in claim-related workloads and processes.

The demographic character of the SSA disability claimant population has changed as well. The enactment of the SSI program in the 1970's added individuals who have limited or no work histories, increased the number of individuals filing based on disabilities such as mental impairments, and provided for eligibility of disabled children. Additionally, the requirements of the SSI program added complex and time consuming development of non-disability eligibility factors such as income, resources and living arrangements. The 1990 U.S. Supreme Court decision, *Sullivan v. Zebley*, resulted in increased claims for children; children comprised 21 percent of all SSI claims in 1992, up from 11 percent in 1988. Homeless individuals and others with special needs have strained the delivery system. These claimants require significant intervention and assistance to navigate the disability claim process.

A trend in the general population which is reflected in SSA's disability claimant population is the increased number of people in the United States for whom English is not the native language. Recent national Census data indicate that 1 in 7 people speak a language other than English in the home; this is an increase of almost 38 percent in the last 10 years. SSA will need to accommodate the special communication needs of these claimants in its ongoing claimant contacts and in public information vehicles.

Forty percent of claimants filing for disability benefits and polled in a recent SSA survey had filed for or received benefits from Aid to Families with Dependent Children, welfare or social services within the past year. Approximately three-fourths of them were granted this assistance and three-fourths of those grantees were still receiving assistance when they applied for disability benefits. SSA has the opportunity to develop productive relationships with these social service entities to improve the processing of disability claims for mutual customers.

Technological advances such as personal computers, facsimile machines, electronic mail, and videoconferencing are increasingly available to our claimants, their representatives, medical providers and other third parties involved in the disability process. SSA can take advantage of these capabilities to offer expanded service options and to modernize the ways it interacts with providers of claims-related information and evidence.

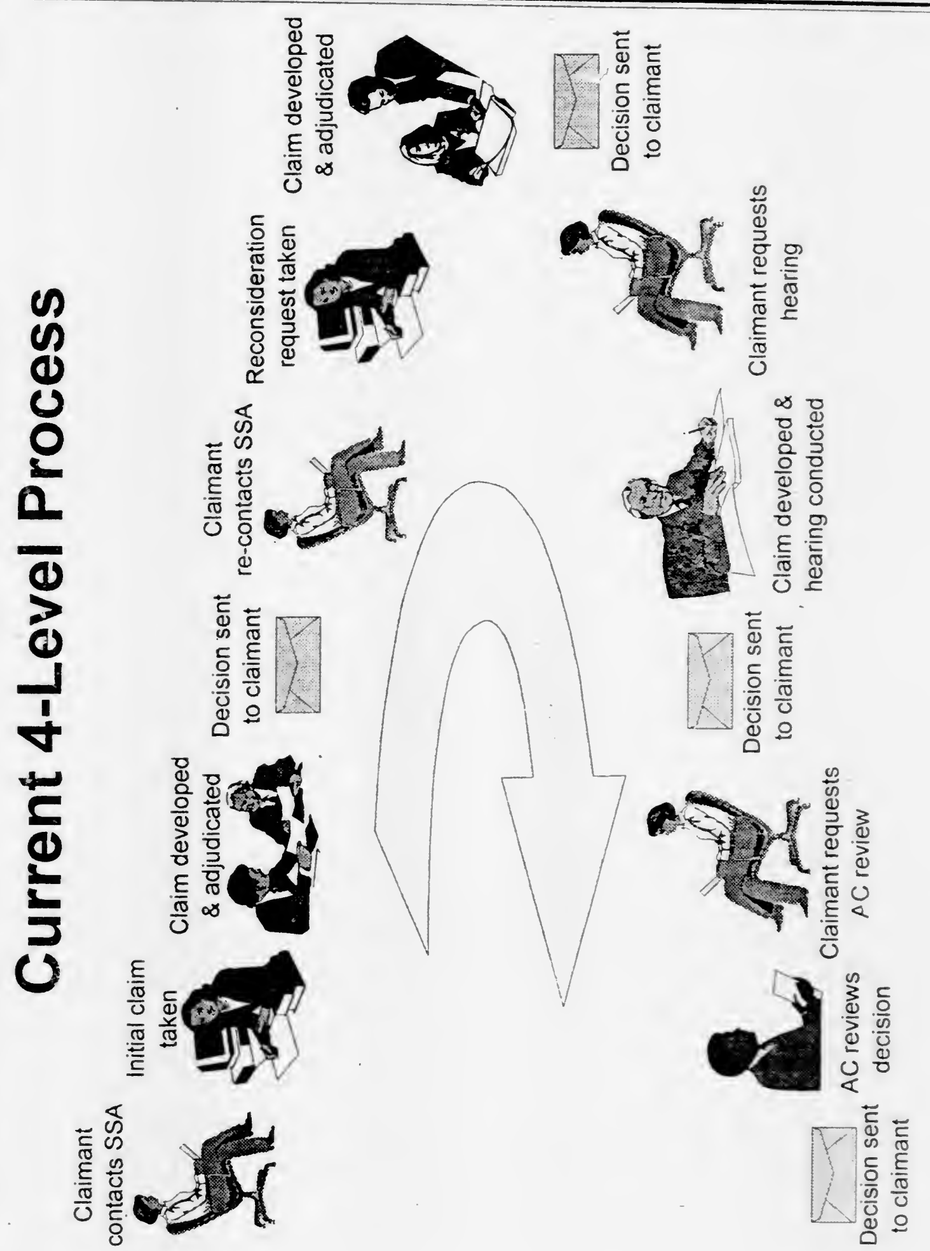
The Current Process

The procedures in the current process have not changed in any significant way since the DI program began in the 1950s, a time when caseloads, demographic characteristics of claimants, types of disabilities, and available technology were radically different. In the 1970s, Congress federalized State programs of cash assistance to the aged, blind and disabled into the SSI program and added this to the responsibilities of SSA. SSA adopted the DI disability determination procedures for SSI blind and disabled claims.

Slow, Manual Process

In the current process, a disability claim passes through from 1 to 4 decisional paths to receive a favorable decision. The initial claim, reconsideration, ALJ hearing and Appeals Council review levels all involve multi-step uniform procedures for evidence collection, review, and decisionmaking.

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The process starts at the initial level when an individual first applies for DI and/or SSI benefits on the basis of a disabling physical or mental condition. An individual calls the national toll-free telephone number and is referred to a local SSA field office or visits or calls one of 1,300 local field offices to apply for benefits. Field office personnel assist with application completion, obtain detailed medical and vocational history and screen nonmedical eligibility factors. Field office personnel forward the claim to 1 of 54 State DDSs where medical evidence is developed and a final decision is made regarding the existence of a medically determinable impairment which meets the definition of disability. The decision is made by an adjudicative team consisting of a disability specialist and a program physician.

After possible quality assurance review in the DDS or in the SSA regional Disability Quality Branch, the claim is returned to the field office; denials are retained pending possible appeal. In FY 1993, 39 percent of initial claims were allowed and sent to 1 of 7 processing centers (which include the Office of Disability and International Operations and the 6 Program Service Centers) for final processing and storage, as well as adjudication of claims for dependents. Allowed SSI claims remain in the field office for payment effectuation and folder retention. A sample of these are reviewed after payment for nondisability quality assurance. According to SSA's computer-based processing time measurements, an initial claim currently takes an average of about 100 days to process from the time of filing until a decision is made. However, from the claimant's perspective, a better understanding of how long the process takes comes from a 1993 study conducted by SSAs Office of Workforce Analysis, which showed that an average claimant waits up to 155 days from the initial contact with SSA until receiving an initial claim decision notice. During this period, 16 to 26 employees will handle the claim.

The claimant may request reconsideration of the initial decision within 60 days of receiving the denial notice. In FY 1993, claimants requested reconsideration in 48 percent of denied claims. Local field office personnel receive the reconsideration request, update necessary information, and forward the claim file to the DDS for review, possible medical development, and a medical decision. The reconsideration decision is made by a different adjudicative team than the one that made the initial determination.

After possible quality assurance review in the DDS or in the regional Disability Quality Branch, about 14 percent of these claims are returned to the field office for payment and forwarding to a processing center; the remaining denials are forwarded to the field office for retention, pending possible further appeal. According to SSAs computer-based processing time reports, the average reconsideration takes about 50 days—however, according to the Office of Workforce Analysis study, a claimant has now been involved with the disability process for roughly 8 months from the initial contact with SSA, and up to 36 different employees could have handled the claim.

A claimant can request a hearing before an ALJ within 60 days of receiving an unfavorable reconsideration decision. In FY 1993, claimants requested an ALJ hearing in about 75 percent of all reconsideration denials. By this time, a claimant has usually retained an attorney or other representative to assist in pursuing the claim for benefits. About 75 percent of all claimants retain a representative at the hearing level. Local field office personnel receive the request for hearing and forward it with the claim file to one of 132 local SSA hearings offices. Hearing office personnel review the file for possible additional development, conduct a hearing, and render a decision.

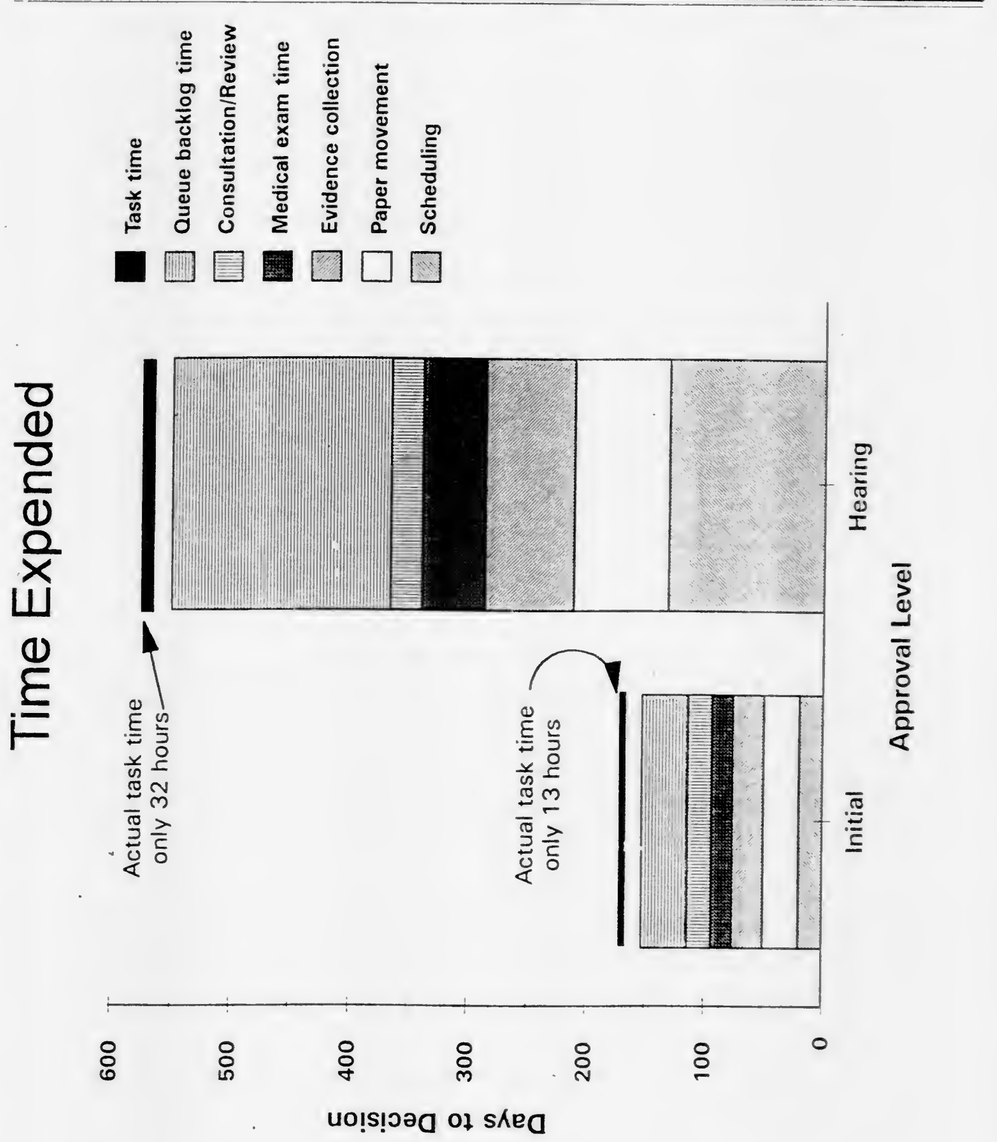
DI claims allowed at the hearing level are sent to a processing center for payment effectuation and adjudication of claims for dependents, and storage. Allowed SSI claims are returned to the local field office for income and resource development, and payment. Denied claims are forwarded to the Appeals Council for retention pending a possible request for review. According to computer-based reports, the hearing process takes about 265 days. However, according to the Office of Workforce Analysis study, a claimant has been dealing with SSA for over a year and a half at this point in the process.

If dissatisfied with the hearing decision, a claimant (or representative) may request Appeals Council review within 60 days of receiving the ALJ decision. In FY 1993, about 23 percent of hearing decisions were unfavorable. The Appeals Council considers about 18 percent of all ALJ dispositions, including cases it reviews on its own motion. Requests for Appeals Council review are typically received directly from the claimant's representative. The Appeals Council may deny or dismiss a request for review, issue a decision, or remand the claim to an ALJ. The Appeals Council remands claims to the ALJ level about 27 percent of the time for subsequent development and decision. Denied claims, representing about 70 percent of the Appeals Council dispositions, are held in the Appeals Council for possible appeal to Federal District court. Allowed claims are sent to a processing center or field office for further action as in hearing cases. According to processing time reports, this part of the process takes on average about 100 days; however, according to the Office of Workforce Analysis study, a claimant has spent almost 2 years dealing with SSA since initially contacting the Agency.

At least part of the processing time results from the time added as the claim moves from one employee or facility to another (handoffs), and waits at each employee's workstation to be handled (queues). As workloads increase, the amount of time a claim waits at each processing point grows.

"Task time" is the time employees actually devote to working directly on a claim, rather than the total amount of time it takes for a claimant to receive a final decision. Based on the Office of Workforce Analysis study, a claimant can wait as long as 155 days from the first contact with SSA until receiving an initial claim decision notice—of which only 13 hours of this is actual task time. The same study reveals a claimant can wait as long as 550 days from that initial contact through receipt of the hearing decision notice—of which only 32 hours is actual task time.

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Complex, Confusing Process

Many applicants enter the SSA disability process uninformed about the process itself and the definition of disability. They are unaware of the criteria for establishing disability and the evidence they will be required to submit. Even third parties and advocate organizations, often more knowledgeable than the general public about SSA procedures, experience difficulty obtaining meaningful information about the status of their clients claims, finding that they often are transferred from one employee to another.

Disability claimants face a "one size fits all" approach to the intake and processing of their claim, finding themselves answering questions they believe are intrusive and irrelevant to their claim. Front-line employees currently devote hours to completing forms and obtaining information which may not be necessary for a finding of disability. Claimants often do not understand what happens to the claim after initial contact with SSA and view multiple requests for medical information with annoyance. Often claimants do not understand how the decision was made and, therefore, believe that it was reached arbitrarily. If the claim is approved, whether at the initial or appellate level, claimants and their representatives, as well as front-line employees, are concerned about the complicated procedures and length of time it takes to effectuate payment and entitle eligible dependents.

SSA employees, claimants, and other interested parties all agree that the current process takes too long to provide applicants a decision, and leaves them confused about who has responsibility for their claim, and puzzled about the status of their claim during various points in the process. Additionally, nearly all believe that many claimants can and should assume more responsibility for submitting evidence and pursuing their claim.

Most view the reconsideration step as little more than a rubber stamp of the initial determination, creating additional work for employees and yet another bureaucratic obstacle for claimants and their representatives. Some believe a face-to-face interview with the decisionmaker is vital to reaching a fair, accurate determination; others believe just as strongly that the decision should be reached on the basis of a paper review, and that a face-to-face interview can lead to subjective decisions that are not based on objective criteria. Quality reviews and Appeals Council reviews are often mentioned as areas where opportunities exist for streamlining and improving the current process.

Claimants and their representatives have learned their chances for a favorable decision improve if they appeal their claim to an ALJ. The public, in particular, believes that it is necessary to hire an attorney to maneuver through the appeals process, and voices resentment at having to do so. Higher allowance rates at the ALJ level lead to the perception that different adjudicative standards apply at the initial and appeals levels. A variety of factors may be contributing to this. The facts of many cases change over time as a claimants condition changes. ALJs often have access to information not considered at lower levels in the process because earlier decisionmakers are not as likely to have face-to-face interaction with the claimant.

Contributors to Complexity

The collection of medical evidence presents problems as the case is developed, accounting for a considerable portion of the total time involved in disability claim processing. Health care providers who are a claimants treating source often do not understand the requirements for establishing disability, and find medical evidence request forms confusing and repetitive. They believe that evidence requests burden them with far too much paperwork and offer far too little in the way of compensation for the time invested. Adjudicators often find that evidence is primarily treatment-oriented and fails to provide either the highly specialized clinical findings or the functional information that is required by the regulations. To compensate for poor or missing medical evidence, DDSs purchase consultative examinations, devoting substantial resources to scheduling, purchasing, and processing these examinations.

Once the medical evidence has been collected, the methodology used by disability decisionmakers is complex and controversial. The current sequential evaluation process, which was originally designed to identify and evaluate cases in a simple, rapid and consistent fashion has grown increasingly complex as the result of court decisions and changes in medical technology. This complexity has, in turn, contributed to the increasing difficulty and fragmentation in other portions of the disability process, including intake, evidence collection, and appeals.

For example, the Listings of Impairments was originally designed to highlight readily identifiable disabling impairments. Many of the Listings have since evolved into complex and highly detailed diagnostic requirements, demanding specialized medical evidence that may not be readily available from treating sources. Some, but not all, of the Listings consider the functional consequences of an impairment; however functional considerations vary significantly among the Listings. Additionally, in assessing an individuals functional abilities at the later steps in the sequential evaluation, adjudicators collect and analyze evidence from a multitude of different, and often conflicting, sources including: objective clinical and laboratory findings; treating source opinions and other third-party statements considered to be consistent with the objective evidence; and the individuals description of his or her limitations. The development of extensive medical evidence in every case impedes timely and efficient decisionmaking. The varying approaches to assessing a claimants functional ability that are required at different steps in the sequential evaluation, along with the nature and types of evidence that adjudicators may rely on to assess function often lead to different interpretations of the same evidence by different adjudicators. Vocational rules originally designed to provide a structured approach to decisionmaking have grown increasingly complex, leading to varying interpretations and inconsistent decisions.

Fragmented Process

The fragmented nature of the disability process is driven by and exacerbated by the fragmentation in SSA's policy making and policy issuance mechanisms. Policy making authority rests in several organizations with few effective tools for ensuring consistent guidance to all disability decisionmakers. Different vehicles exist for conveying policy and procedural guidance to decisionmakers at different levels in the process. While the standards for disability decisionmaking are uniform, they are expressed in different wording in the various policy vehicles.

Training on disability is not delivered in a consistent manner, nor is it provided simultaneously to disability decisionmakers across or among levels in the process. Mechanisms for reviewing application of policy among levels of the process are fragmented and inconsistent. Review of DDS decisions is heavily weighted toward allowances; no systematic quality assurance program is in place for hearing decisions although the opportunity for feedback from the Appeals Council or from the courts is heavily weighted toward denials.

The organizational fragmentation of the disability process creates the perception that no one is in charge of it. SSA measures the process from the perspective of the component organizations involved, rather than the perspective of the claimant. Multiple organizations (field offices, DDSs, hearings offices, Appeals Council operations, and processing centers) have jurisdiction over the claim at various points in time, with each line of authority managing toward its own goals without responsibility to the overall outcome of the process. Additionally, the impact of one components work product on other components is not measured, further contributing to the fragmentation of the process. Each component's narrow responsibilities reinforce a lack of understanding among component employees of the roles and responsibilities of other employees in different components.

The Need for a Redesigned Disability Claim Process

Concerns about the Agency's business processes generally, and the quality of service in the disability claim process in particular, led SSA leadership to the conclusion that a disability process reengineering effort was critical to the SSA goal of providing world-class service to its customers. The National Performance Review, headed by the Vice President, directed improvement of the SSA disability process as a key service initiative for the Federal government.

Leading private sector organizations have used process reengineering to identify and quickly put in place dramatic improvements in their operations. The objective of a reengineering review is to fundamentally rethink and radically redesign a business process from start to finish, so that it becomes many times more efficient and, as a result, significantly improves service to the organization's customers. By focusing on the disability claim process as a single business process, SSA hoped to cut across the organizational lines and multiple components that handle the many pieces of the disability process.

Redesign Technique

A project team composed of 18 Federal and State employees, under the direction of an SSA senior executive, assembled at SSA Headquarters in October 1993 to conduct the disability claim process reengineering review. With the guidance of an Executive Steering Committee the Team was challenged to fundamentally rethink the way SSA processes disability claims. The Team's initial findings and proposal, issued in March 1994, for a redesigned disability claim process were widely shared during a 60-day public comment period. Based on the comments received, the Team presented a revised proposal to the Commissioner of Social Security on June 30, 1994. After extensive consultation with individuals and organizations in the internal and external disability community, the Commissioner accepted the Team's recommendations for a redesigned disability process. A summary of the methodology used to redesign the disability claim process is included in Appendix I.

New Process Goals and Expectations

The Commissioner established five primary objectives against which SSA will measure the success of a redesigned disability claim process:

—The process is user friendly for claimants and those who assist them;
—The right decision is made the first time;
—Decisions are made and effectuated quickly;
—The process is efficient; and
—Employees find the work satisfying.

By focusing on these objectives, the redesigned process replaces an existing process that is slow, labor-intensive, and paper reliant with a seamless claim process that makes better use of technology, eliminates fragmentation and duplication, promotes more flexible use of resources, and results in dramatic improvements in public service. With the redesigned process, SSA has embarked on an era of change that will revitalize and streamline the way it delivers disability claim services to the public to achieve greater quality, accuracy, speed and efficiency. A detailed description of the redesigned disability claim process is presented in the following section.

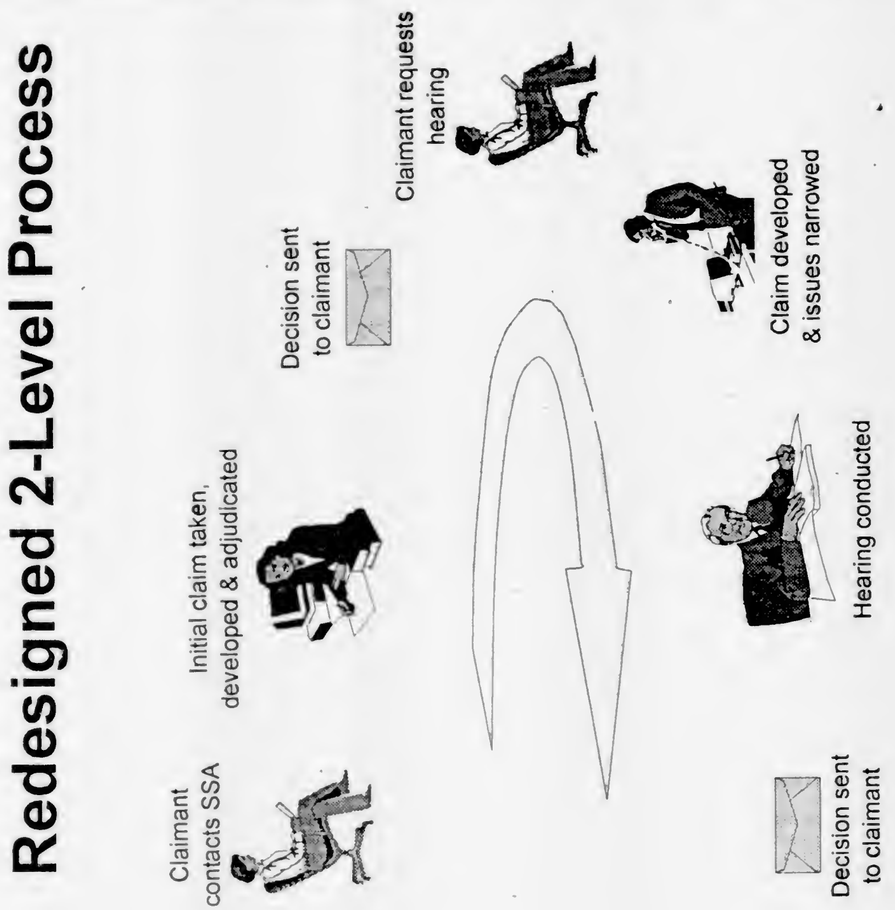
Description of the New Process

Overview

Claimants for disability benefits under the new process will be provided a full explanation of SSA's programs and processes at the initial contact with SSA. Claimants will be offered a range of options for filing a claim and conferring with decisionmakers, using various modes of technology to interact with SSA. Claimants, who are able to do so, along with third parties and representatives who act on their behalf, will assist in the development of their claims, deal with a single contact point in the Agency, and have the right to a personal interview with decisionmakers at each level of the process. The number of steps will be consolidated and the issues on appeal will be focused. If the claim is approved, the effectuation of payment to the claimant, eligible dependents and the representative will be streamlined.

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The new process will result in correct decisions at the earliest possible point in the process. A correct disability decision is one that appropriately considers whether an individual does or does not meet the factors of entitlement for disability as defined by SSA's statute, regulations, rulings and policies. Correct decisions in the new process depend on: a simplified decision methodology that provides a common frame of reference for deciding disability at all levels of the process; consistent direction and training to all adjudicators; enhanced and targeted collection and development of medical evidence; an automated and integrated claim processing system that will assist adjudicators in evidence gathering, analysis and decisionmaking; and a single, comprehensive quality review process across all levels. The goal of the new process is to guide all adjudicators at all levels of the process, who will be using the same standards for decisionmaking, to making correct decisions in an easier, faster, and more cost-effective manner.

A disability claim manager will handle most aspects of the disability claim at the initial level, thus eliminating many steps caused by numerous employees handling discrete parts of the claim (handoffs) and the time lost as the claim waits at each employee's workstation to be handled (queues). This will reduce the time needed to rework files and redevelop information from the same evidentiary sources. Levels of appeal will be combined and improved, reducing the need to redevelop nonmedical eligibility factors after a favorable decision because less time will have elapsed since initial filing.

The new process will enable the current work force to handle an increased number of claims, freeing the most highly specialized staff (physicians and ALJs) to work on those cases and tasks that make the best use of their talents, and targeting expenditures for medical evidence to those areas most useful in determining disability.

Employees will perform a wider range of functions, using their skills to their full potential, enabling them to meet the needs of claimants and minimize unnecessary rework. The new process will facilitate employees' ability to do the total job by providing technology and the training and support to use that technology. [*For ease of reference, references in this plan to "SSA" or "employees" include both Federal and State employees who participate in the disability process.*]

Process Entry and Intake

Customized Intake and Entry

The disability claim entry and intake processes will reflect the SSA commitment to providing world-class service to the public. The hallmarks of the process will be accessible, personal service that ensures timely and accurate decisions. SSA will work to make potential claimants better informed about the disability process and fully prepare them to participate in it. Every effort will be made to provide services to meet the needs of culturally diverse, non-English speaking claimants. SSA will also be flexible in providing modes of access to the claim process that best meet the needs of claimants and the third parties and representatives who act on their behalf. SSA will provide claimants with a single point of contact for all disability claim-related business. Finally, SSA will ensure that the disability decisionmaking process promotes timely and accurate decisions.

Making Program Information Available

SSA will make available to the general public comprehensive information packets about the DI and SSI disability programs. [*For ease of reference, references in this plan to the SSI Disability Program include the Program for those who are blind.*] The packets will include information about the purpose of the disability programs; the definition of disability; the basic requirements of the programs; a description of the adjudication process; the types of evidence needed to establish disability; and the claimant's role in pursuing a claim. The packets may be customized locally to include referral information about other programs and resources for legal representation. The goal is to target the information to likely beneficiaries and to ensure that potential claimants and other groups involved in the disability process have a better understanding of SSA disability programs, their medical and nonmedical requirements, and the nature of the decisionmaking process. This should result in reduction of general inquiries from members of the public unfamiliar with SSA disability programs and increase the number of claimants who enter the disability process knowledgeable and prepared to assume responsibility for pursuing their claims.

SSA will make disability information packets commonly available in the community, both at facilities frequented by the general public (libraries, neighborhood resource centers, post offices, the Department of Veterans Affairs offices, and other Federal government installations) and at facilities frequented by potential claimants (hospitals, clinics, other health care providers, schools, employer personnel offices, State public assistance offices, insurance companies, and advocacy groups or third-party organizations that assist individuals in pursuing disability claims). SSA studies have shown that claimants frequently rely on advice from their physicians and from State public assistance personnel in deciding whether to file a claim for disability benefits. Therefore, SSA will make a special effort to target its public information activities at these and other known sources of referrals for claims. SSA will also make the disability information packets available electronically.

In addition to comprehensive program information, the packets will describe the types of information that a claimant will need to have readily available when the individual files a claim. It will also contain two basic forms: The first, designed for completion by the claimant, will include general identifying information and will serve as the claimant's starter application for benefits; the second, designed for completion by the treating source(s), will request specific medical information about a claimant's alleged impairments. SSA will encourage claimants who are able to do so to review the information in the packet and have the basic forms completed prior to telephoning or visiting an SSA office to apply for disability benefits. Claimants will be encouraged to immediately submit starter applications to protect the filing dates for benefits. The starter application will serve as a claim for both programs, but it will include a disclaimer should the claimant want to preclude filing for benefits based on need (i.e., SSI).

Claimants Will Choose Mode of Entry

The disability claim entry process will be multi-faceted, allowing claimants and third parties and representatives who assist them the maximum flexibility in deciding how they will participate in the process. Claimants may choose to enter the disability claim process by telephoning the SSA toll-free number, electronically, by mail, or by telephoning or visiting a local office. Claimants may also rely on third parties to provide them assistance in dealing with SSA. Finally, claimants may formally appoint representatives to act on their behalf in dealing with SSA. SSA field managers will also have the flexibility to tailor the various service options to their local conditions, considering the needs of client

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populations, individual claimants, and the availability of third parties who are capable of contributing to the application process.

If an individual submits a starter application by mail or electronically, SSA will contact the claimant to schedule an appointment for a claim intake interview or, at the claimant's option, conduct an immediate intake interview by telephone.

If an individual telephones SSA to inquire about disability benefits, the SSA contact will explain the requirements of the disability program, including the SSA definition of disability, and provide a general explanation of evidence requirements. The SSA contact will determine whether the individual has the disability information packet, and mail it or advise the claimant regarding possible means of electronic access. If an individual indicates a desire to file a claim at that time, the SSA contact will complete the starter application available on-line as part of the automated claim processing system to protect the claimant's filing date and schedule an appointment for a claim intake interview. The interview may be in person or by telephone at the claimant's option. If the individual has no medical treating sources, the SSA contact will annotate this information within the on-line claim record.

If a claimant visits an SSA office, the SSA contact will refer the claimant for an immediate claim intake interview or, at the claimant's option, complete the starter application and schedule a future appointment for an intake interview.

In all cases, appointments for claim intake interviews will be made available within a reasonable time period, generally 3 to 5 working days, but no later than two weeks.

Local management will determine how to best accommodate claimants' needs in learning about the disability process and completing a claim intake interview. Depending on an individual's circumstances, such accommodation may involve: Referral to the nearest location for obtaining a disability information packet which can then be mailed in; an immediate telephone or in-person interview; arranging for an on-site visit from an SSA representative; or referral to appropriate third parties who can provide assistance. Additionally, depending on the nature of the individual's disability, SSA may encourage the individual to file in person when it appears that a face-to-face interview will assist in the proper claim intake and development; however, face- to-face interviews will not be required in every claim. Face-to-face interviews, when considered necessary by either the claimant or SSA, can also be accomplished via videoconferencing. In any case, SSA will make every reasonable effort to meet the needs of the claimant in completing the application process. Every effort will be made to provide services to members of the public who have limited knowledge of English.

Similarly, local managers will modify the claim entry and intake process to provide maximum flexibility for representatives who act on behalf of claimants or third parties who can assist claimants in completing the application process. Such accommodations may include, but are not limited to: (1) Using automated means to interact with SSA to protect a claimant's date of filing (e.g., telephone, fax, or E-mail); (2) providing appointment slots for third parties to accompany claimants to interviews or to provide assistance during telephone claims on a claimant's behalf; (3) out-stationing SSA personnel at a third-party location to obtain applications and/or medical evidence, when appropriate; and (4) providing "open appointment" scheduling to permit claimants to contact SSA within a flexible band of time. Interested third parties will be encouraged to participate in the development of claims.

Local managers will also conduct outreach efforts that are designed to meet the needs of hard-to-reach populations or assist those individuals unable to access the SSA claim process without considerable intervention. As appropriate, outreach efforts may be facilitated through videoconferencing, teleconferencing or other electronic methods of obtaining and processing claim information to provide timely service despite claimants' geographic or social isolation.

Disability Claim Manager

A disability claim manager will have responsibility for the complete processing of an initial disability claim. The disability claim manager will be a highly-trained individual who is well-versed in both the medical and nonmedical aspects of the disability programs and has the necessary knowledge, skills, and abilities to conduct personal interviews, develop evidentiary records, and adjudicate disability claims to payment. However, the disability claim manager will also be able to call on other SSA resources, including medical and technical support personnel, to provide advice and assistance in the claim process.

Disability claim managers will rely on an automated claim processing system that will permit them to: Gather and store claim information; develop both medical and nonmedical evidence; share necessary facts in a claim with medical consultants and specialists in nonmedical or technical issues; analyze evidence and prepare well-rationalized decisions on both medical and nonmedical issues; and produce clear and understandable notices that accurately convey all necessary information to claimants. In making decisions, disability claim managers will use a simplified decision methodology that effectively streamlines evidence collection, and will rely on standards for decisionmaking that are used at all levels of the process.

The disability claim manager will be the focal point for claimant contacts throughout the claim intake and adjudication process. The disability claim manager will explain the disability programs to the claimant, including the definition of disability and how SSA determines if a claimant meets disability requirements. The disability claim manager will also convey what the claimant will be asked to do throughout the process; what the claimant may expect from SSA during this process, including anticipated timeframes for decision; and how the claimant can interact with the disability claim manager to obtain more information or assistance. The disability claim manager will advise the claimant regarding the right to representation and provide the appropriate referral sources for representation. The disability claim manager will also advise the claimant regarding community resources, including the names of organizations that could help the claimant pursue the claim. The goal will be to give the claimant access to the decisionmaker and allow for ongoing, meaningful dialogue between the claimant and the disability claim manager.

Scope of Duties

The broad scope of the disability claim manager's duties and responsibilities, as outlined above and discussed in more detail in the following sections, presupposes a well-trained, skilled, and highly motivated workforce that has the program tools and technological support to issue quality decisions. Although disability claim managers will work exclusively within the disability programs, they will perform multiple tasks instead of singular activities, enabling them to experience the direct relationship between their actions and the final product. Varying levels of job complexity provide the opportunity for personal development, growth, and learning.

In carrying out their duties and responsibilities, disability claim managers will work in a team environment with internal medical and nonmedical experts, who provide advice and assistance for complex case adjudication, as well as technical and other clerical personnel who may handle more routine aspects of case development and payment effectuation. Where disability team members cannot be physically co-located, they can share information via the automated claim processing system and remain in communication using telephones or videoconferencing. Each disability team member will have at least a basic familiarity with all the steps in the process and an understanding of how he or she complements another's efforts; team members will be able to draw upon each other's expertise on complex issues.

In this team environment, and with the proper training, program tools (a simplified decision methodology and one set of standards for decisionmaking) and technological support, one individual should be able to handle the duties and responsibilities of the disability claim manager. An individual employee as the disability claim manager is basic to the objective of a single point of Agency contact for claimants.

However, in the near term, it may be necessary to consider whether the duties of a disability claim manager may be more appropriately carried out by more than one individual and, therefore, whether it is necessary to expand the "disability team" described above to include additional employees. Claim complexity, customer service needs, and service area location may dictate a need for flexibility in delineating the specific duties of the individuals who comprise the members of the disability team. In the near term, apprentice positions will be developed in which employees perform one or more duties of the disability claim manager while gaining experience and qualifying for greater responsibility. As the program tools and technological support, which are the underpinnings of the new process, are fully implemented, it is envisioned that team duties and positions will be modified and consolidated as necessary to fully realize the goal of an individual employee as disability claim manager.

Process Flexibility

The disability claim manager will conduct a thorough screening of the claimant's medical and nonmedical eligibility factors. If the claimant appears ineligible for either disability program based on the claimant's allegations and evidence presented or available at the time of the claim intake interview, the disability claim manager will explain this to the claimant. However, the decision regarding whether to file an application will be the claimant's alone and the disability claim manager will not discourage a claimant from filing an application. If the claimant decides not to file a claim, the disability claim manager will follow existing procedures for closing out an oral inquiry.

If the claimant decides to file, the disability claim manager will complete appropriate application screens from the automated and fully integrated (DI and SSI) claim processing and decision support system. Impairment-specific questions will assist the disability claim manager in obtaining information that is relevant and necessary to a disability decision. Based on the claimant's statements and the evidence that is available at the interview, the disability claim manager will determine the most effective way to process the claim. If the evidence is sufficient to decide the claim, the disability claim manager will take necessary action to issue a decision and, if necessary, effectuate payment. The disability claim manager will determine what additional evidence is required to adjudicate the claim and will take steps to obtain that evidence. Such steps may include asking the claimant to obtain further medical or nonmedical evidence if the claimant is able to do so, requesting medical evidence directly from treating sources, or ordering further medical evaluations. As in the current process, SSA will pay for the reasonable cost of providing existing medical evidence. If the claimant has a formal representative, the representative will have the responsibility to develop medical and nonmedical evidence.

The disability claim manager will decide whether to defer nonmedical development (e.g., requesting SSI income and resource information, or developing DI dependents' claims) or do it simultaneously with development of the medical aspects of the claim. In making this decision, the disability claim manager will take into account the type of disability alleged, evidence and other information presented by the claimant, and other relevant circumstances, e.g., terminal illness, homelessness or difficulty in recontacting the claimant. Because the disability claim manager maintains ownership of the claim throughout the initial decision-making process, the disability claim manager will be in the best position to choose the most efficient and effective manner of providing claimants with timely and accurate decisions while meeting claimants' individual service needs.

Although the disability claim manager will be responsible for the adjudication of an initial claim, the disability claim manager will call in other staff resources, as necessary. With respect to disability decisionmaking, the disability claim manager will, in appropriate circumstances, refer claims to medical consultants to obtain expert advice and opinion. SSA will develop guidelines to assist the disability claim manager in determining when expert medical advice is appropriate. Similarly, other staff resources will be called upon for technical support in terms of certain claimant contacts and status reports; development of nondisability issues including auxiliary claims or representative payee issues; and payment effectuation. However, the disability claim manager will make final decisions on both the medical and nonmedical aspects of the disability claim.

Claimant Partnership

Throughout the disability claim process, SSA will encourage claimants to be full partners in the processing of their claims. Many claimants are able to obtain the documentation necessary to develop their record, either on their own or with the assistance of a third party. Others have substantial difficulty doing so, and may have no third party to assist them. Given the range of claimant capabilities, SSA will retain ultimate responsibility for development of claims when claimants are not formally represented.

To the extent that they are able, claimants and their families and other personal support networks will actively participate in the development of evidence to substantiate their claim for disability benefits. SSA will provide assistance and/or engage third-party resources, when necessary and appropriate. SSA will keep claimants informed of the status of their claims, advise claimants regarding what additional evidence may be necessary, and inform claimants what, if anything, they can do to facilitate the process.

At the completion of the claim intake interview, the disability claim manager will issue a receipt to the claimant that will identify what to expect from SSA and the anticipated timeframes. It will also identify what further evidence or information the claimant has agreed to obtain. Finally, it will provide the name and telephone number of the disability claim manager for any questions or comments which the claimant may have, including any difficulty in

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obtaining the information the claimant agreed to obtain.

Third Parties

Certain third-party organizations may be willing to provide a complete disability application package to SSA. Based on local managements assessment of service area needs and the availability of qualified organizations, SSA will recognize third-party organizations who are capable of providing a complete application package, including appropriate application forms and medical evidence necessary to adjudicate a disability claim. In such claims, SSA will permit the third party to identify potential claimants, screen for medical and nonmedical criteria, and contact SSA to protect the filing date. The third party will interview the claimant; complete all applications and related forms; obtain completed treating source statements; and obtain additional medical evaluations, when appropriate. Using procedures agreed on with local management, the third party will submit claims for adjudication by a disability claim manager. SSA will monitor such third parties to ensure that quality service is provided to claimants and to prevent fraud. SSA may establish rules, standards, and procedures for third-party interaction with claimants and SSA. Third parties may be required to undergo periodic program, procedural or software training, and may be required to meet standards for staffing and automation support. In individual cases, disability claim managers may elect to contact the claimant for the purpose of verifying identity or other claim-related issues, as appropriate. SSA will also perform ongoing document verification on a sample basis to assure the integrity of claims submitted by third parties. The automated claim processing system will facilitate effective monitoring of the claim-taking and evidence submission practices of third parties by permitting random and/or targeted selection of claim files involving specific third parties or specific types of evidence.

Personal Interview With Claimant

When the evidence does not support an allowance, the disability claim manager will issue a predecision notice advising the claimant of what evidence has been considered and providing the opportunity to submit further evidence, if any, and/or the opportunity for a personal interview within 10 calendar days. The predecision notice will further advise the claimant that if he or she does not submit evidence or request a personal interview within the 10 days, the claim will be decided based on the evidence of record. If the claimant requests a personal interview, the disability claim manager will conduct the interview in person, by videoconference, or by telephone, as the disability claim manager determines is appropriate under the circumstances. In appropriate circumstances, this predecision interview may be held concurrently with the initial intake interview. If the claimant identifies further available evidence, the disability claim manager will advise the claimant to obtain the evidence if the claimant is able to do so or, as necessary, assist the claimant in obtaining it. The claimant will be advised of the specified timeframes for submitting additional evidence.

In preparing the predecision notice, the disability claim manager will rely on existing information available on-line as part of the automated claim processing and decision support system. As part of the evidence gathering process, the disability claim manager will have previously analyzed all the medical and non-medical information gathered, and entered the pertinent data into the electronic claim record. The decision support system will use the accumulated data in the electronic record to assist the disability claim manager in producing the predecision notice.

"Statement of the Claim"

The initial disability determination will use a statement of the claim" approach. The statement of the claim will set forth the issues in the claim, the relevant facts, the evidence considered, including any evidence or information obtained as a result of the predecision notice, and the rationale in support of the determination. The statement of the claim not only reflects SSAs commitment to fully explaining the basis for its action but also recognizes that claimants need clear information about the basis for the determination to make an informed decision regarding further appeal.

As with the predecision notice, much of the information that will provide the basis for the statement of the claim will be available on-line as part of the automated claim processing and decision support system. Adjudicators will create the statement of the claim and whatever supplementary information is necessary for a legally sufficient notice to the claimant based on the information in the decision support system. For allowance decisions, the statement of the claim will be more abbreviated than for denial decisions; however, it will contain sufficient information to facilitate quality assurance reviews and/or continuing disability reviews. The statement of the claim will be part of the on-line claim record and will be available to other adjudicators as the basis and rationale for the Agencys action, if the claimant seeks further administrative review.

In making initial disability determinations, disability claim managers will rely on standards for decisionmaking that are used at all levels of the process. SSA will develop a single presentation of all substantive policies used in the determination of eligibility for benefits and all decisionmakers will be bound by these same policies. These policies will be published in accordance with the Administrative Procedure Act. Expert systems will be developed to facilitate the development and delivery of disability policy as an integrated part of the automated claim processing system.

Disability Decision Methodology

Promoting Consistent, Equitable, and Timely Decisions

SSA must have a structured approach to disability decisionmaking that takes into consideration the large number of claims (2.7 million initial disability decisions in FY 1994) and still provides a basis for consistent, equitable decisionmaking by adjudicators at each level. The approach must be simple to administer, facilitate consistent application of the rules at each level, and provide accurate results. It must also be perceived by the public as straightforward, understandable and fair. Finally, the approach must facilitate the issuance of timely decisions.

As described further below, the goal of the new decisionmaking approach is to focus decisionmaking on the functional consequences of an individual's medically determinable impairment(s). The new process will assess an individual's functional ability, assess it once in the process, do it directly rather than indirectly, and rely on standardized functional assessment instruments to do so. By focusing on function, the new approach will permit both providers of medical evidence and adjudicators at all levels of the process to use a consistent frame of reference for deciding disability, regardless of the diagnosis. It will also facilitate evidence collection by lessening the need for voluminous medical records and, instead, look at the consequences of medical findings, i.e., function. Ultimately, adjudicators will make correct decisions in an easier, faster, and more cost-effective manner.

The cornerstone of the new approach is, of course, the statutory definition of disability. Under the statute, disability (for adults) means the:

". . .inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. . .An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy. . ." (§ 223(d) of the Social Security Act).

Four-Step Evaluation Process for Adults

The new decisionmaking approach is the foundation on which SSA will base the claim intake process and evidence collection. The focus will be, first, to document the medical basis for concluding that an individual has a medically determinable physical or mental impairment. Second, once the evidence establishes a medically determinable impairment(s), decisionmakers will, in most cases, use additional medical findings to determine the link between the disease or impairment and the loss of function.

The disability decision methodology will consist of four steps that flow from the statutory definition of disability. They are:

Step 1—Is the individual engaging in substantial gainful activity?

If yes, deny.

If no, continue to Step 2.

Step 2—Does the individual have a medically determinable physical or mental impairment?

If no, deny.

If yes, continue to Step 3.*

Step 3—Does the individual have an impairment included in the Index of Disabling Impairments i.e., an impairment that clearly restricts functional ability to a degree that the individual is unable to engage in substantial gainful activity without measuring the individual's functional ability?

If yes, allow.*

If no, continue to Step 4.

Step 4—Does the individual have the functional ability to perform substantial gainful activity?

If yes, deny.

If no, allow.*

**An impairment must meet the duration requirement of the statute; a denial is appropriate for any impairment that will not be disabling for 12 months.*

Step 1—Engaging in Substantial Gainful Activity

Any individual who is engaging in substantial gainful activity will not be found disabled regardless of the severity of the individual's physical or mental impairments. Under the new approach, SSA will simplify the monetary guidelines for determining whether an individual who is an employee (except those filing for benefits based on blindness) is engaging in substantial gainful activity. In making this determination, SSA will evaluate the work activity based on the earnings level that is comparable to the upper earnings limit in the current process (i.e., $500). A single earnings level will simplify the evidentiary development necessary to evaluate work activity and establish the appropriate onset date of disability. Additionally, SSA will continue to exclude impairment-related work expenses in evaluating whether an individual's earnings constitute substantial gainful activity. SSA will continue to evaluate whether work activity is done under special conditions and/or is subsidized. Finally, SSA will continue to use separate earnings criteria to evaluate the work activity of blind individuals in the DI program as in the current process.

Step 2—Medically Determinable Impairment

Because the statute requires that disability be the result of a medically determinable physical or mental impairment, the absence of a medically determinable impairment will justify a finding that the individual is not disabled. Under the new approach, decisionmakers will consider whether an individual has a medically determinable impairment or combination of impairments, but will no longer impose a threshold "severity" requirement. Rather, the threshold inquiry will be whether the individual has a medically determinable physical or mental impairment or combination of impairments. To establish the presence of a medically determinable impairment, evidence must show an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

Decisionmakers will continue to evaluate the existence of a medically determinable impairment based on a weighing of all evidence that is collected, recognizing that neither symptoms nor opinions of treating physicians alone will support a finding that the individual has a medically determinable impairment or combination of impairments. There must be medical signs and findings established by medically acceptable clinical or laboratory diagnostic techniques which show the existence of a physical or mental impairment or combination of impairments. Depending on the nature of an individual's alleged impairment(s), SSA will consider the extent to which medical personnel other than physicians can provide evidence of a medically determinable impairment.

There will be an exception to the requirement that evidence include medically acceptable clinical and/or laboratory diagnostic techniques. This will occur when, even if SSA accepted all of the individual's allegations as true, SSA still could not establish a period of disability; under these circumstances, SSA will not require evidence to establish the existence of a medically determinable impairment. For instance, if an individual describes a condition as one that will clearly not meet the 12-month duration requirement, (e.g., a simple fracture), SSA will deny the claim on the basis that even if the allegations were medically documented, SSA could not establish a period of disability.

Step 3—Index of Disabling Impairments

If an individual has a medically determinable physical or mental impairment documented by medically acceptable clinical and laboratory techniques, and the impairment will meet the duration requirement, the decisionmaker will compare the individual's impairment(s) against an index of severely disabling impairments. The index will describe impairments so severely debilitating that, when documented, can be presumed to equal a loss of functional ability to perform substantial gainful activity without assessing the individual's functional ability. The index will be consistent with the statutory definition of disability by limiting the presumption of inability to perform substantial gainful activity, without considering age, education and previous work, to a relatively small number of claims with the most severe disabilities. Individual functional ability will be assessed in all other cases in a consistent manner at Step 4 in the process.

Because the index will permit severely disabling impairments to be identified quickly and easily, it will only consist of descriptions of specific impairments and the medical findings that are used to substantiate the existence and severity of the particular

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disease entity. The medical findings in the index will be as nontechnical as possible and will exclude such things as calibration or standardization requirements for specific tests and/or detailed test results (e.g., pulmonary function studies or electrocardiogram tracings) The index will be easy to understand and simple enough so that laypersons will be able to understand what is required to demonstrate a disabling impairment in the index. Additionally, SSA will draw no conclusions about the effect of an individual's impairments on his or her ability to function merely because an individual's impairment(s) does not meet the criteria in the index. Finally, SSA will no longer need the concept of "medical equivalence" in relation to the index. Because impairments included in the index are presumed to limit functional ability so as to preclude substantial gainful activity without reference to an individual's age, education and previous work, a combination of impairments, or an impairment closely related to one that is in the index, would be found disabling when an individual's functional ability is assessed. Therefore, rules for determining equivalence for impairments in the index will not be necessary.

Step 4—Ability to Engage in Any Substantial Gainful Activity

The majority of disability claims will be evaluated using a standardized approach to measuring functional ability to perform substantial gainful activity. This standardized approach will realistically measure an individual's functional ability to do the principal dimensions of work and task performance. The approach will be known and accepted in the medical community. It will be universally used by public and private disability programs in which benefits are based on the ability to perform work-related duties. Standardizing the approach to assessing individual functional ability will facilitate consistent decisions regardless of the professional training of the decisionmakers in the disability process.

In using a standardized approach to measuring functional ability, SSA will be assessing the individual's physical and mental abilities to perform work-related activities. Individualized assessments of functional ability will also consider the effects of the individual's education. Once the individualized assessment of functional ability is made, the individual's age will determine whether his or her functional ability is compared against the demands of the individual's previous work or against a "baseline" of occupational demands. The baseline will describe a range of work-related functions that represent work that exists in significant numbers in the national economy that does not require prior skills or formal job training.

Standardized Measure of Functional Ability

SSA will develop, with the assistance of the medical and advocacy community and other outside experts from public and private disability programs, standardized instruments or protocols which can be used to measure an individual's functional ability. These standardized measures of functional ability will be linked to clinical and laboratory findings to the extent that SSA needs to document the existence of a medically determinable impairment or combination of impairments. However, extensive development of all available clinical and laboratory findings will not always be necessary in evaluating an individual's functional ability to perform basic work activities.

Functional assessment instruments will be designed to measure, as objectively as possible, an individuals abilities to perform a baseline of occupational demands that includes the principal dimensions of work and task performance, including primary physical, psychological, and cognitive processes. Examples of task performance include, but are not limited to: physical capabilities, such as sitting, standing, walking, lifting, pushing, pulling; mental capabilities, such as understanding, carrying out, and remembering simple instructions; using judgment; responding appropriately to supervisors and co-workers in usual work situations; and responding appropriately to changes in the routine work setting; and postural and environmental limitations. To the extent that current regulations already set forth guidelines for evaluating an individual's ability to perform certain of these tasks, they will be utilized in the new process.

Functional assessment instruments will be designed to realistically assess an individuals abilities to perform a baseline of occupational demands. To the extent possible, objective measures of function will be developed. However, a realistic and individualized assessment of function may require, in addition to objective measures of function, a standardized means or standardized tools for collecting information regarding an individuals perceptions of his or her functioning, the effect of symptoms, including pain, and the individuals activities of daily living. Functional assessment instruments may also require impairment-specific measures to account for the episodic nature of certain impairments or to meet a more general need for longitudinal information.

SSA will be primarily responsible for documenting functional ability using the standardized functional assessments. In the near term, SSA will solicit information on which to base a functional assessment from treating medical sources, other nonmedical sources, and from claimants in a manner that is similar to the current process. In the future, the standardized functional assessments will be widely available and accepted so that functional assessments may be performed by a variety of medical sources, including treating sources. The SSA goal will be to develop functional assessment instruments that are standardized, that accurately measure an individuals functional abilities and that are universally accepted by the public, the advocacy community, and health care professionals. Ultimately, documenting functional ability will become the routine practice of physicians and other health care professionals, such that a functional assessment with history and descriptive medical findings will become an accepted component of a standard medical report.

Disability insurance payers have incentives to participate in the research necessary to develop standardized functional assessments and some private insurers have already expressed interest in working with SSA in this effort. Standardized functional assessments will not only provide SSA with the functional information necessary to make disability decisions; functional measurements will also assist in developing provider reimbursement levels relating to rehabilitation and in assuring quality in rehabilitation programs by permitting assessment of the relationship between rehabilitative interventions and outcomes. Ultimately, the use of the same functional assessment measurements by both SSA and medical insurance payers will facilitate the cooperation and participation of the medical community in developing, refining, and implementing them.

Baseline Occupational Demands

SSA will use the results of the standardized functional assessment in conjunction with a new standard that SSA will develop to describe basic physical and mental demands of a baseline of work that represents substantial gainful activity and that exists in significant numbers in the national economy.

To develop the new approach, SSA will conduct research and will work in conjunction with outside experts and consumers to specifically identify the activities that comprise a baseline of occupational demands needed to perform substantial gainful activity. The baseline will describe a range of work-related functions that represent work that exists in significant numbers in the national economy. In establishing the work-related functions that comprise an appropriate baseline of occupational demands, SSA will ensure that: 1) the functional activities are a realistic reflection of the demands of occupations that exist in significant numbers in the national economy; and 2) the occupations are those that can be performed in the absence of prior skills or formal job training.

The Department of Labors Advisory Panel for the Dictionary of Occupational Titles (DOT) has made recommendations for developing a new DOT by 1996 which will be a data base system that collects, produces, and maintains accurate, reliable, and valid information on all occupations in the national economy. This new system will provide comprehensive occupational data that includes, but is not limited to: physical demands of work; sensory/perceptual requirements; cognitive job demands; physical working conditions; and job characteristics such as pace or intensity of work, and the scope of interactions with others. The development of a national data base with detailed occupational information should assist SSA in conducting the initial research necessary to identify a baseline of occupational demands that represents work existing in significant numbers in the national economy. It should also provide a mechanism to ensure that the baseline of occupational demands remains current and reflects changes in the national economy over time.

Effect of Education

The statute recognizes that education may play a role in an individual's ability to perform substantial gainful activity. Experience demonstrates that educational level alone, i.e., the numerical grade level that an individual has attained, may not be a good indicator of ability to function. For example, completion of a certain educational level in the remote past, without any practical application of that education in recent work activity, has no positive effect on an individual's ability to perform substantial gainful activity. Similarly, completion of a certain grade level does not necessarily represent mastery of the subject matter.

In relying on standardized functional assessments, SSA will be measuring an individual's ability to perform the principal dimensions of work and task performance, including primary physical, psychological, and cognitive processes, and the positive effects of education will be appropriately reflected in the assessment of an individual's cognitive abilities. Thus, evaluation of a claimant's educational level will be done as an integral part of establishing the functional ability of that individual. The baseline of occupational demands will not reference prior skills or significant formal job training.

The issue of whether literacy and/or specific communication or language skills will be a factor in disability evaluation depends on the extent to which such skills are occupational demands of work existing in significant numbers in the national economy. In conducting the necessary research to identify the occupational demands of baseline work that represents work existing in significant numbers in the national economy, SSA will need to consider whether literacy or specific communication and language skills are required as occupational demands.

Effect of Age

The effect of aging on the ability to perform substantial gainful work is very difficult to measure, especially in the context of today's world when individuals are living longer than preceding generations. Despite this change, the demographic characteristics of those preceding generations continue to provide the framework for disability decisionmaking because SSA's approach for deciding disability has changed little since the inception of the DI program.

The statute recognizes that age should be considered in assessing disability on the assumption that the ability to make a vocational adjustment to work other than work an individual has previously done may become more difficult with age. In determining the impact of age, recognition should be given to the changes that occur with each succeeding generation. Accordingly, in the new process, SSA will establish an age criterion in relation to the full retirement age. The full retirement age will gradually increase over time, based on the recognition that succeeding generations can expect to remain in the workforce for longer periods than the preceding generation.

In applying age criterion under the new process, an individual who falls within the prescribed number of years preceding the full retirement age will be considered as nearing full retirement age." In establishing what the prescribed number of years should be, SSA will conduct research and consult with outside experts on the relationship between age and an individual's ability to make vocational adjustments to work other than work the individual has done in the recent past.

SSA will rely on the age of the individual in relation to the full retirement age to decide which of two decision paths to follow as described in the next two sections.

Individuals Not Nearing Full Retirement Age

For an individual who is not nearing full retirement age, SSA will compare the individual's functional abilities against the functional demands of the baseline work. The ability to perform the baseline work will represent a realistic opportunity to perform substantial gainful activity that exists in significant numbers in the national economy and a finding of disability will not be appropriate.

However, anyone who cannot perform the baseline work will be considered unable to engage in substantial gainful activity, and a finding of disability will be justified. The range of work represented by less than the baseline will be considered so narrow that despite any other favorable factors, such as young age or higher education or training, an individual would not be expected to have a realistic opportunity to perform substantial gainful work in the national economy.

For individuals who are not nearing full retirement age, the ability or inability to perform previous work is not a significant factor. These individuals should be capable of making a vocational adjustment to other work, as long as they are functionally capable of performing the baseline work.

Individuals Nearing Full Retirement Age

For individuals who are nearing full retirement age, SSA will compare the individuals functional abilities against the functional demands of the individuals previous work. Individuals nearing full retirement age can not be expected to make a vocational adjustment to work other than work they have performed in the recent past. However, consistent with the statute, if an individual, even one nearing full retirement age, is capable of performing his or her previous work, SSA will find that the individual is not disabled.

For those individuals who have no previous work, SSA will compare the individuals functional ability to the

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range of work-related functions that represent work that exists in significant numbers in the national economy, i.e., baseline work, and a finding of not disabled will be appropriate if the individual is capable of performing the baseline work. In such claims, when the fact that the individual has no previous work is not related to the existence of his or her impairment(s), a finding of disability will not be appropriate if the individual retains the functional ability to perform a range of work-related functions that represent work that exists in significant numbers in the national economy. In contrast, those individuals who have significant functional limitations caused by a medically determinable impairment and lack of education would not be able to perform a range of work-related functions that represent work existing in significant numbers in the economy. Such individuals would be found disabled, as they are today.

Medical Consultant Expertise

SSA will continue to rely on medical consultants to provide expert advice and opinion regarding medical questions and issues that will arise in deciding disability claims. Disability adjudicators at all levels of the administrative review process will call on the services of medical consultants to interpret medical evidence, analyze specific medical questions, and provide expert opinions on existence, severity and functional consequences of medically determinable impairments. Additionally, on a national basis, SSA may identify specific types of issues that may require a medical opinion. If a medical consultant is called on to offer expert advice and opinion, the medical consultant will provide a written analysis of the issues and rationale in support of his or her opinion. The written analysis will be included in the record and will be considered with the other medical evidence of record by disability adjudicators at all levels of administrative review. Additionally, medical consultants will assist in the training of other consultants and disability adjudicators; contact other health care professionals to resolve medical questions on specific claims; carry out public relations and training with the medical community; and participate in the quality assurance program.

Childhood Disability Methodology

As with adults, SSA must have a structured approach to disability decisionmaking in childhood claims that takes into consideration the relatively large number of claims and still provides a basis for consistent, equitable decisionmaking by adjudicators at all levels of administrative review. The approach for childhood claims must also derive from the statute. Under the statute, "an individual will be considered to be disabled for purposes of this title if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months *(or in the case of a child under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity)*." § 1614(a)(3)(A) of the Social Security Act)

Of course, any decision approach for childhood claims must be consistent with the Supreme Courts interpretation of this statutory language in *Sullivan v. Zebley*, 493 U.S. 521 (1990).

Four-Step Evaluation Process for Children

The disability decision methodology for childhood claims will consist of four steps that are based on the statutory definition of disability. As with adults, the approach is one that provides accurate decisions that can be achieved efficiently and cost-effectively, primarily by ensuring that documentation requirements are directed toward the ultimate finding of disability. To the extent possible, the approach for childhood claims should mirror the adult approach. The four steps are:

Step 1—Is the child engaging in substantial gainful activity?

If yes, deny.

If no, continue to Step 2.

Step 2—Does the child have a medically determinable physical or mental impairment?

If no, deny.

If yes, continue to Step 3.*

Step 3—Does the child have an impairment that is included in the Index of Disabling Impairments?

If yes, allow.*

If no, continue to Step 4.

Step 4—Does the child have an impairment(s) of comparable severity to an impairment(s) that would prevent an adult from engaging in substantial gainful activity?

If yes, allow.*

If no, deny.

**An impairment must meet the duration requirement of the statute; a denial is appropriate for any impairment that will not be disabling for 12 months.*

Step 1—Engaging in Substantial Gainful Activity

Any child who is engaging in substantial gainful activity will not be found disabled regardless of the severity of his or her physical or mental impairments. The guidelines for determining whether a child is engaging in substantial gainful activity will be identical to the guidelines for adults. Although the issue of work activity will arise infrequently in childhood claims, the step is warranted for two reasons: 1) the approach for adults and children should be as similar as possible; and 2) as a child approaches age 18, it is increasingly likely that work activity may be an issue.

Step 2—Medically Determinable Impairment

Because the statute requires that disability be the result of a medically determinable physical or mental impairment or combination of impairments, the absence of a medically determinable impairment will justify a finding that a child is not disabled. To establish the presence of a medically determinable impairment or combination of impairments, evidence must show an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

The same guidelines and rules that apply for adults will apply equally for children. SSA will continue to evaluate the existence of a medically determinable impairment based on a weighing of all evidence that is collected, recognizing that neither symptoms nor opinions of treating physicians alone will support a finding of disability.

SSA will use the same exception for evidence collection in childhood claims that will be applied in adult claims. If a child has a medically determinable physical or mental impairment that is not an exception to further development, SSA will then evaluate whether the impairment(s) is included in the index of disabling impairments.

Step 3—Index of Disabling Impairments

If a child has a medically determinable physical or mental impairment or combination of impairments documented by medically acceptable clinical and laboratory techniques and the impairment(s) will meet the duration requirement, SSA will compare the child's impairment(s) against an index of disabling impairments.

As with adults, the index for childhood claims will function to quickly identify severely disabling impairments. The index will describe impairments so severely debilitating that the impairment is of comparable severity to an impairment that would prevent an adult from engaging in substantial gainful activity without assessing the child's functional ability. As with adults, individual functional ability in childhood claims will be assessed in a consistent manner at Step 4 in the process.

The index for childhood claims will consist of descriptions of specific impairments and the medical findings that are used to substantiate the existence and severity of the particular disease entity. The medical findings in the index will be as nontechnical as possible and will be simple enough so that laypersons will be able to understand what is required to substantiate a disabling impairment in the index. As with adults, SSA will draw no conclusions about the effect of a child's impairments on his or her ability to function merely because a child's impairment(s) is not included in the index. Additionally, SSA will no longer use the concept of "medical equivalence" or functional equivalence in relation to the childhood index.

Step 4—Comparable Severity to an Impairment(s) That Would Prevent an Adult From Engaging in Substantial Gainful Activity

Consistent with the approach for adult claims, SSA will develop, with the assistance of the medical community and educational experts, standardized instruments which can be used to measure a child's functional ability. These standardized measures of functional ability will be linked to clinical and laboratory findings to the extent that SSA needs to document the existence of a medically determinable impairment or combination of impairments. The functional assessment instruments will be designed to measure, as objectively as possible, a child's ability to function independently, appropriately, and effectively in an age-appropriate manner. Ultimately, the course of documenting and developing for functional abilities in childhood claims will, to the extent possible, mirror the adult approach. However, SSA will consider whether it is appropriate to defer the development of standardized functional assessment instruments for use in childhood claims until it gains experience in the development, refinement and use of such instruments for adults.

SSA will use the results of the standardized functional assessments to determine whether a child has impairment(s) of comparable severity to an impairment(s) that would prevent an adult from engaging in substantial gainful activity, as in the current process.

Medical Evidence Development

Timely and Accurate Decisions

SSA's ability to provide timely and accurate disability decisions depends to a significant degree on the quality of medical evidence it can obtain and the speed with which it can obtain it. The medical evidence collection process accounts for a considerable portion of the total time involved in processing disability claims.

The new process will eliminate multiple, repetitive requests for information from health care providers. Health care providers will be relieved of requests for information that burden them with far too much paperwork and will be compensated for the time invested in providing information.

Core Diagnostic and Functional Information Focus

The goals of the evidence collection process will be to focus requests for evidence on the critical diagnostic and functional assessment information necessary for a disability decision and to form a new partnership with the sources of this information so that it can be obtained in the most efficient, cost-effective manner. Medical evidence development will be driven by the four-step approach used to decide disability. Two of the core elements of that approach are: (1) identifying an individual's medically determinable impairments (including those that meet the Index of Disabling Impairments criteria); and (2) assessing the functional consequences of those impairments. The decisionmaker will develop medical evidence that is sufficient to satisfy the core elements but target evidentiary development to obtain only the evidence necessary to reach an accurate decision on the ultimate question of disability.

Treating Source Preference

SSA will give primary emphasis to obtaining medical information from treating sources that provides brief, but specific, diagnostic information regarding an individual's medically determinable impairments and the functional consequences of those impairments. Treating source statements will include diagnostic information about a claimant's impairments, the clinical and laboratory findings which provide the basis for the diagnosis, onset and duration, response to treatment, and the functional limitations that can reasonably be linked to the clinical and laboratory findings. Depending on the nature and extent of an individual's impairments and treating sources, statements from multiple medical sources may be appropriate. Once the standardized measurement criteria described earlier are widely available, a standardized functional assessment available from a treating source will be accepted as probative evidence. Treating sources or another examining source may perform the standardized functional assessment at SSA's expense.

Standardized Request Form

SSA will develop a standardized form which effectively tailors a request for evidence to the specific diagnostic and functional assessment information necessary to make a disability decision. Such information includes but is not limited to diagnostic information about a claimant's impairments, the clinical and laboratory findings which provide the basis for the diagnosis, onset and duration, response to treatment, and the functional limitations that can reasonably be linked to the clinical and laboratory findings. Treating sources will be encouraged to submit such information electronically. Standardizing requests for evidence in this manner will facilitate the participation of claimants, representatives and third parties in the evidence collection process.

The form will permit treating sources to provide necessary diagnostic and functional assessment information in summary form on a single document. In appropriate circumstances, SSA will accept a treating source's statements on the standardized form as to history and diagnosis, the clinical and laboratory findings which provide the basis for the diagnosis, onset and duration, response to treatment, and the functional limitations that can reasonably be linked to the clinical and laboratory findings, without resorting to the traditional, wholesale procurement of actual medical records. In completing standardized forms, treating sources will certify that they have in their possession the medical documentation referred to in the statement and that said documentation will be promptly submitted at the request of SSA. The certification approach does not relieve treating sources from providing objective evidence in support of their diagnoses and opinions; rather it is designed to streamline the collection of

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necessary evidence. The approach is also consistent with evidence collection methods used by private disability insurance carriers, which request specific medical records in individual claims, when necessary and appropriate to the individual circumstances, or at random as part of a quality assurance program.

Treating source completion of the standardized forms will be monitored to prevent fraud. Decisionmakers will verify treating source statements by obtaining underlying medical records when appropriate. The automated claim processing system will facilitate effective monitoring of the evidence submission practices of individual treating sources by permitting random and/or targeted selection of claim files involving that treating source for quality assurance and program integrity reviews.

Treating Source Incentives

As in the current process, SSA will pay for the reasonable cost of providing existing medical evidence. SSA will acknowledge the value of treating source information by establishing a national fee reimbursement schedule for medical evidence. The fee reimbursement schedule will utilize a sliding-scale mechanism to reward the early submission of medical information; additionally, the sliding scale will be adjusted to reflect the quality of the evidence received. A national, sliding-scale fee schedule will provide incentives for treating sources to cooperate in the evidentiary development process and invest quality time to provide medical certifications on behalf of their patients.

SSA will provide resources to focus professional educational efforts and medical relations outreach at the local and/or regional level to ensure that treating sources are given up-to-date information on program requirements and made aware of specific evidentiary needs or problems as they arise in the adjudication process. SSA will conduct educational outreach on the national level on an ongoing basis with the medical community to provide a better understanding of the SSA disability programs, the medical and functional requirements for eligibility, and the best ways to provide medical information needed for decisionmaking.

Consultative Examination

If a claimant has no treating source, or a treating source is unable or unwilling to provide the necessary evidence, or there is conflict in the evidence that can not be resolved through evidence from treating sources, the decisionmaker will refer the claimant for an appropriate consultative examination. Because the standardized measurement criteria for assessing function will be widely available, consulting sources will be able to perform functional assessments that, in the absence of adequate treating source information or where there are unresolved conflicts in the evidence, will be considered probative evidence. Depending on the service area, SSA will consider contracting with large health care providers to furnish consultative examinations for a specified geographic location.

As part of an ongoing training and medical relations program, SSA will ensure that providers of consultative examinations are provided adequate training on disability requirements. Those medical providers who conduct consultative examinations for SSA will also need ongoing training regarding changes in the disability program. SSA will prepare training programs for this audience which will utilize written, audiotape, videotape, and computerized training methods.

Administrative Appeals Process

Simple, Accessible Process

To eliminate the public perception that multiple, mandatory appeal steps are obstacles to receiving timely, fair, and accurate decisions, SSA will reduce the number of mandatory appeals steps in the administrative process. Streamlining the appeals process will not only promote more timely decisions but also ensure that claimants do not inappropriately withdraw from the claim process based on a perception that it is too difficult or time-consuming to pursue their appeal rights.

Claimants will be able to fully participate in the administrative appeals process with or without a representative. SSA will ensure that claimants are fully advised of their right to representation and SSA will routinely provide the appropriate referral sources for representation. SSA will also encourage the early participation of a representative when the claimant has appointed one and will give the representative responsibility for developing evidence necessary to decide a claim. However, the decision whether to appoint a representative must remain with the claimant and SSA will neither encourage nor discourage claimants in seeking representation.

The administrative appeals process will instill public confidence in the integrity of the system. To instill such confidence, SSA will provide an initial decisionmaking process that is thorough and results in fully developed records with fair and accurate decisions. Additionally, the claimant will be given the basis of a decision in clear and understandable language. Finally, SSA will ensure that its policies have been consistently applied at all levels of administrative review.

As noted previously, the initial disability determination will use a "statement of the claim" approach which will set forth the issues in the claim, the relevant facts, the evidence considered, including any evidence or information obtained as a result of the predecision notice, and the rationale in support of the determination. The statement of the claim will be part of the on-line claim record and will stand as the basis and rationale for the Agency's action, if the claimant seeks further administrative review. SSA will standardize claim file preparation and assembly, including the use of appropriate electronic records, at all levels of administrative process until such time as the claims record is fully electronic.

First Appeal Level

Because the initial determination will be the result of a process that ensures fully developed evidentiary records and ample opportunity for the claimant to personally present additional evidence prior to an adverse determination, there will be no need for any intermediate appeal (e.g., reconsideration) prior to the ALJ hearing. If the claimant disagrees with the initial determination, the claimant may, within 60 days of receiving notice, request an ALJ hearing.

Adjudication Officer

When a claimant requests an ALJ hearing, an adjudication officer will conduct an interview in person, by telephone, or by videoconference, and become the primary point of contact for the claimant. The adjudication officer will have the same knowledge, skills and abilities as the adjudicators who decide claims initially. The adjudication officer will also have specialized knowledge regarding hearings procedures. The adjudication officer will be the focal point for all prehearing activities but will work closely with the ALJ, medical consultants and the disability claim manager, when appropriate.

The adjudication officer will provide the claimant an in-depth understanding of the hearing process, with particular focus on the right to representation. To prevent delays caused by a lack of understanding of this right, the adjudication officer will again provide the appropriate referral sources for representation; give the claimant, where appropriate, copies of necessary claim file documents to facilitate the appointment of a representative; and encourage the claimant to decide about the need for and choice of a representative as soon as is practical. The adjudication officer will be available to answer the claimant's questions and concerns regarding the hearing process.

The adjudication officer will also identify the issues in dispute and whether there is a need for additional evidence. If the claimant has a representative, the representative will have the responsibility to develop evidence. If the claimant has a representative, the adjudication officer will also conduct informal conferences with the representative, in person or by telephone, to identify the issues in dispute and prepare written stipulations as to those issues not in dispute. If the claimant submits additional evidence, the adjudication officer may refer the claim for further medical consultation and opinion, as appropriate.

The adjudication officer will have full authority to issue a revised favorable decision if the evidence so warrants. This will ensure that allowance decisions are expedited and not delayed until a formal hearing before an ALJ. If the adjudication officer issues a favorable decision, the adjudication officer will refer the claim to a disability claim manager to effectuate payment.

The adjudication officer will consult with the ALJ during the course of prehearing activities, as necessary and appropriate to the circumstances in the claim. As a preliminary matter, the adjudication officer will also routinely schedule a date for the hearing that is a standard number of days after the hearing request. Standardizing the hearing date process will facilitate claimant understanding and reduce the possibility of non-appearance at the hearing. It will also enable representatives to plan their schedules when taking on a case. The adjudication officer may exercise discretion in establishing an earlier or later hearing date depending on the individual circumstances and the ALJ's calendar. Electronic access to ALJs' calendars, as established by individual ALJs, will facilitate timely and appropriate scheduling of hearings. The adjudication officer will refer the prepared record to an ALJ only after all evidentiary development is complete and the claimant or a representative agrees that the claim is ready to be heard.

The ALJ will retain the authority and ability to develop the record. However, use of an adjudication officer realigns most, if not all, prehearing activities so that the burden of ensuring their completion rests with other members of the adjudicative team. With completely developed claims before them, ALJs will be able to concentrate their efforts on conducting more hearings and rendering decisions faster.

Hearing Proceedings

The ALJ hearing will be a *de novo* proceeding in which the ALJ considers and weighs the evidence and reaches a new decision. A *de novo* hearing is consistent with the role of an ALJ envisioned under the Administrative Procedure Act. Under that scheme, the ALJ is an independent decisionmaker who must apply an agency's governing statute, regulations and policies, but who is not subject to advance direction and control by the agency with respect to the decisional outcome in any individual claim. ALJs are independent triers of fact who perform their evidentiary factfinding function free from agency influence. At the same time, the Administrative Procedure Act ensures that an ALJ's decision is subject to later review by the agency, thus giving the agency full authority over policy. Policy responsibility remains exclusively with the agency while the public has assurance that the facts are found by an official who is not subject to agency influence.

A hearing before an ALJ will remain an informal adjudicatory proceeding as it is under the current process. The claimant will have the right to be represented by an attorney or a non-attorney with the decision regarding representation made by the claimant alone. An informal, nonadversarial proceeding is consistent with the public's strong preference for a simple, accessible hearing process that permits, but does not require, a representative. An informal process facilitates the earlier and faster resolution of the issues in dispute, thus promoting more timely decisions.

As an independent factfinder in a nonadversarial proceeding, the ALJ will still have a role in protecting both SSA interests and the claimants interests, particularly when the claimant is unrepresented. However, an improved initial determination process with its focus on early and comprehensive evidentiary development, predecision notices and opportunity for personal interviews, fully rationalized initial decisions, and prehearing analysis of contested issues should ensure that the Agency position is fully explored and presented to the ALJ. Moreover, the primary burden of compiling an evidentiary record will be shifted to the representative—if one is appointed—or to the claimant (when able to do so), with assistance (when necessary) from SSA personnel. This will permit the ALJ, in most circumstances, to close the record at the conclusion of the oral hearing, deliberate on the issues, and render prompt decisions.

In making disability decisions, ALJs will rely on the same standards for decisionmaking that are used by the disability claim managers and adjudication officers. Adjudication officers and other decision writers will assist ALJs in preparing hearing decisions, using the same decision support system that supports the preparation of initial disability determinations. A simplified disability decisional methodology, in conjunction with the use of prehearing stipulations that frame the issues in dispute, will result in shorter, more focused hearing decisions. If the ALJ issues a favorable decision, he or she will refer the claim to a disability claim manager to effectuate payment.

Final Decision of the Secretary

Under the new process, if a claimant is dissatisfied with the ALJ's decision, the claimant's next level of appeal will be to Federal district court. A claimant's request for Appeals Council review will no longer be a prerequisite to seeking judicial review.

As under the current process, the Appeals Council will continue to have a role in ensuring that claims subject to judicial review have properly prepared records and that the Federal courts only consider claims where appellate review is warranted. Accordingly, the Appeals Council, working with Agency counsel, will evaluate all claims in which a civil action has been filed and decide, within a fixed time limit whether it wishes to defend the ALJ's decision as the final decision of the Secretary. If the Appeals Council reviews a claim on its own motion, it will seek voluntary remand from the court for the purpose of affirming, reversing or remanding the ALJ's decision. The Secretary's authority for seeking voluntary remand prior to the Secretary's filing of an answer to the civil action is currently provided for in § 205(g) of the Act. Favorable Appeals Council decisions will be returned to the disability claim manager to effectuate payment. The number of civil actions requiring substantive action by the Appeals Council will be relatively small because, in the new process, ALJ decisions will be the result of a fully developed evidentiary record where the factual and legal issues have been focused for final resolution.

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Additionally, the Appeals Council will have a role in a comprehensive quality assurance system. As part of the in-line review component of this system, which is described in greater detail below, the Appeals Council will conduct its own motion reviews of ALJ decisions (both allowances and denials) and dismissals prior to effectuation. If the Appeals Council decides to review a claim on its own motion, the Appeals Council may affirm, reverse or remand the ALJ's decision, or vacate the dismissal. The Appeals Council's review will be limited to the record that was before the ALJ.

The Agency will establish appropriate mechanisms to respond to claimant allegations of ALJ misconduct or bias. To the extent that the allegations of ALJ misconduct may affect the final decision in a claim, the Agency will consider whether an appropriate mechanism includes some form of final Agency review at the claimant's request.

Quality Assurance

System of Agency Accountability

SSA will be accountable to the public, the ultimate judge of the quality of SSA service, and will strive to consistently meet or exceed the public's expectations. SSA will have a comprehensive quality assurance program that defines its quality standards, continually communicates them to employees in a clear and consistent manner, and provides employees with the means to achieve them.

The quality assurance program will have three primary components: 1) substantial resources to ensure that the right decision is made the first time; 2) comprehensive and systematic reviews of the quality of the decisionmaking process at all levels; and 3) measures of customer satisfaction against the SSA standards for service.

Investment in Employees

SSA's ability to ensure that the right decision is made the first time depends on a well-trained, skilled, and highly motivated workforce that has the program tools and technological support to issue quality decisions.

SSA will make an investment in comprehensive employee training to ensure that all employees have the necessary knowledge and skills to perform the duties of their positions. SSA will develop national training programs for initial job training and orientation as well as continuing education to maintain job knowledge and skills. Such training will include general communication skills and how to deal effectively with the public generally, and disability claimants in particular. National training programs will also address changes to program policy. Consistent program policy training will be provided to disability decisionmakers at all levels of the process.

In addition to initial program training, continuing education opportunities will be made available to employees to enhance current performance or career development. These opportunities may be in the form of self-help instruction packages, videotapes, satellite broadcasts, or non-SSA training or educational opportunities. SSA will ensure that employees are given sufficient time and opportunity to complete the required continuing education. Employee feedback on the value of these continuing education opportunities, including the quality of training materials, methods, and instructors, will be used to continually improve training programs.

In addition to formal program training, SSA will rely on a targeted system of in-line quality reviews and monitoring of adjudicative practices for all employees. The elements include a mentoring process for new employees, peer review for experienced employees and management oversight at key points in the adjudicative process. SSA will create mechanisms that facilitate peer discussions of difficult claims or issues. Quality reviewers and policy makers will participate in these types of discussions. Peer reviews and mentoring will not only promote timely and accurate development of disability claims, but will also foster a spirit of teamwork. They will also promote earlier identification and resolution of problems with policy or procedures. Managers will be expected to oversee the adjudication process. They will conduct spot checks at key points in the adjudication process or perform special reviews based on profiles of error-prone claims. The goal of these reviews is to provide immediate, constructive feedback on identified errors to reduce or eliminate their possible recurrence. Payment errors on claims detected during in-line reviews will be corrected before a claimant is notified of the decision.

As noted previously, under the Administrative Procedure Act, the ALJ is an independent decisionmaker who must apply an agency's governing statute, regulations and policies, but who is not subject to advance direction and control by the agency with respect to the decisional outcome in any individual claim. Accordingly, a system of peer review, mentoring and management oversight in advance of the ALJ's decisionmaking is inappropriate. However, the ALJ decision may be subject to final agency review. Therefore, as part of the in-line quality assurance process, ALJ decisions (both allowances and denials) and dismissals will be subject to review by the Appeals Council on its own motion prior to effectuation of the ALJ's decision or dismissal.

Several key features previously described in this plan are critical to ensuring that adjudicators have the necessary program tools to issue accurate decisions. A single presentation of all substantive policies used in determining eligibility for benefits must be in place. Additionally, an automated and integrated claim processing system will provide the necessary technological support for adjudicators at all levels of the administrative process. Expert systems will be developed to integrate disability policy into the claim processing system. Among other things, the claim processing system will facilitate claims taking, evidence development, and the preparation of accurate notices and decisions by providing on-line editing capacity to identify errors in advance and decision support software to assist in analysis and decisionmaking. The processing system will help to identify errors of both procedure and substance, and also support routine analysis to aid in avoiding future similar errors. An on-line technical review will occur each time information is added to the electronic record.

Comprehensive employee education and an in-line review system will build quality into the system of adjudication with the goal of error prevention. SSA must monitor that quality on a systematic, national basis. Accordingly, all employees (including ALJs) will be subject to and receive continuous feedback from comprehensive end-of-line reviews as described in the following section.

End-of-Line Reviews

A second necessary component of quality assurance is an integrated system of national postadjudicative monitoring to ensure the integrity of the administrative process and to promote national uniformity in the adjudication of disability claims at all levels of the process. This system of quality measurement will include comprehensive reviews of the whole adjudicatory process. At a minimum, a comprehensive end-of-line quality measurement system must: be statistically valid; review both allowances and denials in equal proportion; review the entire disability claim process, both the medical and nonmedical aspects; and review claims decided at all levels of the adjudicatory process.

These end-of-line reviews will focus on whether correct decisions were made at the earliest possible point in the process. This type of review will not be aimed at correcting errors in individual claims but, rather, will be the means to oversee, monitor and provide feedback on the application of Agency policies at all levels of decisionmaking. However, erroneous decisions detected during end-of-line reviews will be subject to existing reopening regulations. Reliance on an integrated claim processing system will facilitate the selection of a statistically valid sample of claims at all levels of the process for this review.

An integrated claim processing system will permit the selection of other postadjudicative samples of claims as SSA deems necessary to effectively test new operational procedures or monitor specific procedures in the administrative process; oversee the implementation of new program policy regulations and initiatives; and monitor both internal and external claims development practices to prevent fraud.

SSA will use the results from these end-of-line reviews to identify areas for improvement in policies, processes or employee education and training. SSA will also use the results to profile error-prone claims with the goal of preventing errors at the front end.

Customer Satisfaction Surveys

A final component of quality assurance is measuring customer satisfaction. To measure whether SSA has met or exceeded the public's service expectations, SSA must measure the public's level of satisfaction with the level of service SSA provides. Customer surveys (including feedback cards) and periodic focus groups will be the most frequently used methods of determining the public's views on the quality of SSA service. SSA will also survey representatives and third parties who provide assistance or act on claimants' behalf in dealing with SSA. Survey results will be communicated to staff on a timely basis, both as Agency feedback and individual feedback, along with any plans to address identified problems.

SSA will also seek employee feedback on how well SSA has met their expectations. Employee feedback will be sought on a wide array of issues including Agency goals and performance indicators, training and mentoring needs, and the quality of operating instructions. Although formal mechanisms will be used to obtain feedback periodically, each employee will be encouraged to provide continuous feedback on how to make improvements in the process.

Measurements and Management Information

Service Perspective

SSA's measures of performances will be revised to assess the performance of the Agency as a whole in providing service to claimants for disability benefits. Management information regarding the contributions at each step in the process to the final product, as well as to the work product passed on to other steps will be available. For example, current component processing time measures will be replaced by a measure of time from the first point of contact with SSA until final claimant notification. Meaningful, timely management information will be facilitated by a seamless claim processing system with a common database that is used by all individuals who contribute to each step in the process.

Other measures, such as cost, productivity, pending workload, and accuracy will be developed or revised to assess the performance of the Agency as a whole and the participants in the process who contribute to this performance. Measurements for public awareness, as well as claimant and employee satisfaction, will add to this assessment.

Management information will be current and accessible from an intelligent workstation. In addition to routine, published national reports generated from the management information system, other reports needed by national or local entities, or individual employees will be preformatted and system-generated on demand. Managers and employees will have the flexibility to change parameters and to access the full data base, permitting comparisons of performance and trends analysis. The management information system will also permit customized, ad hoc reports for special studies or immediate special purpose activities with access to the full data base. Tools including user-friendly report generator software and statistical forecasting and modeling applications will be available on the intelligent workstation to assist users in the data analysis.

New Process Enablers

Reengineering is dependent on a number of key factors that provide the framework for the new process design. Each of these "enablers" is an essential element in the new disability process.

Process Unification

Under the Social Security Act, the Secretary is granted broad authority to promulgate regulations to govern the disability determination process. In addition to regulations, SSA publishes: 1) Social Security Rulings, which are precedential court decisions and policy statements or interpretations that SSA has adopted as binding policy, and 2) Acquiescence Rulings, which explain how a decision by a U.S. Court of Appeals will be applied when the court's holding is at variance with the Agency's interpretation of a provision of the statute or regulations. ALJs and the Appeals Council rely on the regulations and rulings in making disability decisions. However, guidance for decisionmakers at the initial and reconsideration levels is provided in a series of administrative publications, including: 1) the Program Operations Manual System instructions which provide the substance of the statute, regulations, and rulings in a structured format and 2) other administrative issuances which clarify or elaborate specific policy issues. The use of different source documents by adjudicators fosters the perception that different policy standards are being applied at different levels of decisionmaking in the disability claim process.

To ensure that SSA provides consistent direction to all adjudicators regarding the standards for decisionmaking, SSA will develop a single presentation of all substantive policies used in the determination of eligibility for benefits. These policies will be published in accordance with the Administrative Procedures Act and all decisionmakers will be bound by these same policies.

Public and Professional Education

Public and professional education is essential to ensure that individuals and other groups involved in the disability process have a proper understanding of SSA disability programs, their medical and nonmedical requirements, and the nature of the decisionmaking process.

SSA will make information widely available for the general population with the goal of reducing general inquiries from members of the public unfamiliar with SSA disability programs and increasing the number of claimants who enter the disability process knowledgeable and prepared to assume responsibility for pursuing their claims. Pamphlets, factsheets, posters, videos, information on diskettes and on

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computer bulletin board systems will be developed and presented in a simple, straightforward and understandable manner. Information will be available in many languages and dialects and will accommodate vision and hearing impaired individuals.

SSA will work with national and local groups involved in the disability programs to develop direct lines of communications. These efforts will be aimed not only at providing information but also at creating ongoing organizational relationships to maintain a dialogue about the disability process.

SSA will also conduct educational outreach with the medical community to provide them with a better understanding of the SSA disability programs, the medical and functional requirements for eligibility, and the best ways to provide medical information needed for decisionmaking. In addition to the use of printed materials, SSA will arrange briefings and training sessions in association with medical organizations and societies at the local, State and national levels, as well as through hospital staff meetings. Those medical providers who conduct consultative examinations for SSA will need ongoing training regarding changes in the disability program. SSA will prepare training programs for this audience which will utilize written, audiotape, videotape, and computerized training methods.

SSA will conduct outreach efforts with the legal community, to ensure that information about the disability programs is widely available to the organized bar and the Federal judiciary. Policy documents, regularly updated electronically, and rules of representation will be available at forums sponsored by the organized bar and in initial orientation and continuing legal education programs designed for Federal judges.

Claimant Partnership

SSA's interaction with claimants will focus on enabling their participation in the process. SSA will also work with third parties, such as family members and community-based organizations, to provide additional claimant support.

Understandable public information materials and comprehensive information packets will be widely available. Explanations of the programs, the decisionmaking process, and claimant responsibilities will be widely available and furnished at the point individuals first make contact with SSA. Claimants, who are able to do so, will be asked to do more to facilitate development of supporting information, particularly with respect to medical evidence. To encourage the release of evidence by treating medical sources, SSA will network with the treating source community to overcome the lack of understanding and possible resistance to providing patient information. SSA will encourage private insurers and public agencies that refer claimants to SSA as a condition of receiving other benefits to provide medical evidence for these individuals.

SSA will develop ongoing relationships with community organizations to ensure that competent third-party resources are available to assist the claimants. Examples of resources that SSA will help develop include: transportation and escort services for indigent claimants and those who experience difficulty in getting to consultative examinations; enhancement of medical provider capacity to identify potentially eligible patients, secure claims and provide medical evidence; and software with compatible format design which will allow direct input of claim-related information to SSA. SSA will have an ongoing demonstration program that provides funds for truly innovative projects that test models for national implementation.

In order to expedite the referral of potentially eligible individuals, SSA will develop productive working relationships with Federal, State and local programs that serve individuals with disabilities. Other programs will be able to use SSA-developed decisional support systems to evaluate potentially eligible persons prior to referral and to transfer information to SSA through compatible databases. Local managers will be encouraged to develop and maintain appropriate working relationships with local Federal, State and third-party resources.

Active participation by claimants, supported by SSA's efforts and the contributions of third parties will result in a fundamental shift in claimant expectations and satisfaction with the SSA disability process. From the SSA perspective, the results will be better service to customers through timely, fully supported decisions rendered at all decisional levels; better use of SSA resources focused on helping those who need assistance; and greater public confidence in the disability adjudication process.

Workforce Maximization

Teamwork and workforce empowerment are fundamental ingredients in the new process. In carrying out their duties and responsibilities, adjudicators will work in a team environment with internal medical and nonmedical experts, who provide advice and assistance for complex case adjudication, as well as with technical and other clerical personnel who may handle more routine aspects of case development and payment effectuation. The disability claim manager will be the focal point at the initial claim level, assisted by technical and medical support staff. The adjudication officer will be the focal point at the prehearing level, relying on technical and medical support staff, as well as interacting with the disability claim manager and the ALJ, as necessary. The ALJ will be the focal point at the hearing level, receiving support from technical and medical support staff, and also interacting with the adjudication officer and disability claim manager, as necessary.

Each team member will have at least a basic familiarity with all the steps in the process and an understanding of how he/she complements another's efforts. Team members will be knowledgeable but will also be able to draw upon each other's expertise on complex issues. Communication among team members will encourage consistent application of disability policy. Improved automated systems will enable members of the team to work together using a shared data base even when they are not co-located. Handoffs, rework, and non-value steps will be significantly reduced and fewer employees will be involved in shepherding each claim through the process.

Employees will perform multiple tasks instead of singular activities, thus their roles will expand to encompass more of the "whole" job. This will enable employees to experience the direct relationship between their actions and the final product. Adequate resources and sufficient training and mentoring will allow employees to acquire the skills they need to process claims from intake through adjudication. Employees will feel more of a sense of ownership for the services they perform as a member of a team focused on serving claimants.

The new process will rely heavily on increased employee empowerment, applying information technology and using professional judgment to complete tasks more effectively and efficiently without constant checking, direction and micro-management. Recognition and reward processes will be revised to emphasize contributions to team outcomes and acquisition of knowledge bases. Continuous quality improvement activities will foster ongoing incremental process change.

Representatives: New Rules and Standards of Conduct

The Social Security Act and regulations have long recognized the representational rights of claimants and have provided an administrative framework designed to ensure that claimants will have access to the legal community and others in the pursuit of their claims. Representatives currently have the option for authorization of fees through two procedures: 1) the fee petition method, whereby the representative presents an itemization of services rendered and time expended, and SSA determines a reasonable fee; and 2) the fee agreement method, whereby the claimant and representative agree to a fee of 25 percent of the retroactive benefits due or $4,000, whichever is less.

Focus groups of claimants and the general public have indicated that the disability program is too complex to understand and the process too fragmented and difficult for them to navigate alone. While many claimants resent having to pay a representative to establish entitlement to government-sponsored benefits, they feel that they have no choice if they want to be successful in this pursuit. Although the current regulations provide protection for claimants from fee abuses, these rules fall short of assuring claimants that the representatives they retain are qualified and will adequately represent their interests.

In the new process, SSA will continue to have a responsibility for monitoring representational activity and for safeguarding the interests of claimants. The new process will establish rules of representation and standards of conduct to ensure that representatives fulfill their responsibilities and serve the needs of the claimants they represent. These new rules will, among other things, ensure that claimants receive competent representation; establish a code of professional conduct for representatives in all matters before SSA; and provide sanctions against representatives, including suspension and disqualification from appearing before the Agency in a representative capacity, for violating the rules of representation and standards of conduct. Without disturbing the statutory intent of facilitating claimant access to representatives, the simplified and user-friendly new process may well result in more claimants pursuing their claims without representation. However, the issue of representation will remain a matter of a claimant's personal choice. The new rules and standards of conduct provide the framework for assuring that representatives claimants retain will be qualified, will have the obligation to fully develop the record on their behalf, will adequately represent their interests, and will be accountable for misconduct or dereliction of duty.

SSA will also conduct outreach efforts with the legal community, to ensure that information about the disability programs is widely available to the organized bar and the Federal judiciary. Policy documents, regularly updated electronically, and rules of representation will be available at forums sponsored by the organized bar and in initial orientation and continuing legal education programs designed for Federal judges.

Information Technology

Information technology will be a vital element in the new disability claim process. To the fullest extent possible, SSA will take advantage of the "Information Highway" and those technological advances that can improve the disability process and help provide world-class service. The new process will rely on seamless, electronic processing of disability claims from the first contact with the claimant to the final decision, including all levels of administrative appeal. Existing Agency design plans for Intelligent Workstation/Local Area Network (IWS/LAN) and a Modernized Disability System will provide an integrated system and the electronic connectivity necessary to support the new disability process.

In a seamless electronic environment, all employees will use the same hardware, the same claim assignment and scheduling software, the same decision support software, the same case control system, the same fiscal and accounting software, the same integrated quality assurance functionality, and the same management information system throughout all stages of the process. In this environment, data will need to be input and validated once and multiple employees may access a single claim record simultaneously.

Information technology will be applied to enhance access to services by claimants, their representatives, and other third parties. Claimants will be able to conduct business with SSA via telephone, self-help workstations, kiosks, videoconferencing, and electronic data transfer at SSA facilities and other satellite locations. SSA will conduct forums and produce video and computer-based training materials for third parties who wish to participate in assisting claimants to file applications and gather medical evidence. Wherever possible, physicians and health care organizations, advocates, community counseling services, and other professionals who regularly provide assistance to SSA claimants will be supplied with SSA software to electronically complete Agency forms. Data will be transferred to SSA using agreed upon methods. SSA will allow authorized representatives appropriate access to electronic claim folders. Paper versions of treating source forms will be designed so that the data can be read by scanning equipment into SSA claim processing systems. A single vendor payment system will be used to pay certain evidence providers for information which they provide SSA. To further paperless processing, SSA will adopt a "signature on file" policy for the claimant's evidence release authorization to eliminate routing of paper medical release forms.

The ability of decisionmakers to conduct thorough interviews and evidence evaluation, and timely and accurate claim adjudication is predicated on the implementation of the functionality provided by the IWS/LAN hardware and software components, and the decision support features of the Modernized Disability System. Expert system software will be included in SSA claim processing systems to assist disability decisionmakers in the analysis and evaluation of complex eligibility factors, and to ensure that the correct procedures for disability evaluation are followed. While conducting interviews, disability decisionmakers will rely on decision support features that ask impairment-specific questions. The decision support system will use the accumulated data of the electronic record to assist in the preparation of the predecision notice, the statement of the claim, and decisions rendered on appeal. Where disability decision team members cannot be physically co-located, they can remain in communication by using two-way TV and other videoconferencing technologies. Disability policy will be developed and stored in a format that can be integrated into computer systems as the source of context-sensitive help screens and decision-support messages.

Quality assurance features fully supported by the Modernized Disability System will be integrated throughout the new process. For example, the national end-of-line quality review sample will be electronically selected and automatically routed to appropriate staff. In-line programmatic quality assurance, enhanced by the use of decision support systems, will be programmed into the computer

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applications and will help to identify errors of both oversight and substance, and also support routine analysis to aid in avoiding future similar errors. An on-line technical review will occur each time information is added to the electronic record.

Quality assurance and productivity measures will be incorporated in a new, total-process management information system. Meaningful, timely management information for the disability process is dependent on a seamless data processing system used by all components which affords a common case control system and a common data base. SSA's claim processing systems integrated on an Agency-wide IWS/LAN platform will provide this seamless environment.

Cost and Benefits

Introduction

SSA's strategy of coming to closure on an ideal, high-level disability process design before undertaking detailed operational and implementation planning has been consistent from the beginning of the reengineering project. Although this project management approach served SSA well, it has made the very necessary task of cost/benefit projections unusually challenging. The following cost/benefit forecasts will need to evolve as implementation details are developed. The administrative cost numbers presented here cannot be applied to SSA's administrative budget without further analysis.

SSA will move forward on all aspects of the process redesign plan; however, because of the extensive research and development required for implementation of the simplified disability determination methodology, we have not considered the effect of this redesign feature in our cost/benefit planning. In addition, because the ability of a single employee to master the disability claim manager position is dependent on full adoption of a simplified disability determination methodology, the impact from that process redesign feature has also been separated out from our cost/benefit planning at this time.

Service Improvements

Service to the public, as defined by average processing time, would improve dramatically—from around 150 days to pay an initial disability claim today to 60 days after implementation of the new process. Hearing processing time would also improve from about 550 days to 225 days. These figures were derived from running a computer simulation model of the new process.

Program Costs

Under the supposition that SSA's current initial claim and administrative appeal process leads to correct disability determinations within the proper universe of people today, and because SSA is not proposing any changes in the statutory definition of disability, the redesigned process in and of itself would have no long-term effect on program outlays.

Administrative Costs and Savings

The project life period for implementing disability reengineering is from October 1, 1994 to September 30, 2000. However, the full benefits from the redesigned process will not be realized until September 30, 2001.

Cumulative administrative costs during the life of the project are estimated at $148 million. The largest percentage of these costs will be directed to special workforce training on the new process—a critical enabler if the redesign plan is to work. The redesign will not require additional investments in information technology spending over current SSA plans.

Cumulative administrative savings through FY 2001 are estimated at $852 million. The bulk of these savings will come from more efficient use of Federal and State workyears to process the anticipated disability initial claim and appeal workloads during the project life period. This savings estimate does not factor in Agency resource needs for working existing backlogged disability cases.

Subtracting cumulative administrative costs of $148 million from cumulative savings of $852 million will result in a pay back to the government of $704 million through FY 2001.

Ongoing administrative cost savings will be over $305 million annually, beginning in FY 2001. This figure includes spending increases for enhanced employee education, better office security, and expanded claimant services.

The administrative cost savings associated with this project—$704 million during the implementation period, and $305 million annually, thereafter—will allow the Agency to reallocate existing resources to give more attention to other important workloads.

SSA's workforce profile, with respect to disability process workloads, would include at least the same number of professional positions currently employed at the federal and state level. However, the overall design, if fully implemented with all the process enablers—especially enhanced automation—would require fewer clerical and support positions to handle projected workloads.

Conclusion

SSA is committed to implementing a new disability determination process that will deliver significantly improved service to the public, remain neutral with respect to program dollar outlays, and will be more efficient to administer.

Administrative cost savings from the process will allow the Agency to reallocate resources to give increased attention to other important workloads.

However, the redesigned process cannot be implemented without the full funding, development, and installation of a new case processing computer system. In addition, unless SSA invests substantially more funds for research and development of the simplified disability determination methodology, the full benefits of the redesigned process—including better public service and the potential for even greater long-term administrative efficiencies—will not be possible.

Implementation Strategy

Overview

The disability process redesign is a high-level process description that provides a broad vision of how a new process would work but leaves operational, organizational, and other details for later development and implementation. SSA must now begin to transition from the high-level analysis into this latter phase. As SSA implements the new process, the five objectives of the redesign effort must continually be kept in the forefront of implementation planning, execution and assessment: the process will be user-friendly for claimants and those who assist them; the right decision will be made the first time; decisions will be made and effectuated quickly; the process will be efficient; and the new process will provide employees with a satisfying work environment. The success of the new process must be measured against these objectives and emphasis must continually be on overall measurement from the customer's perspective, and not individual component results. Implementing a process of the magnitude of the new disability claim process will require a strategy that is comprehensive, creative, and inclusive. The following provides a general framework for how implementation activity will proceed.

Implementation Framework

Planning for the implementation of the new process vision requires a comprehensive approach that moves forward on multiple fronts simultaneously. Although the new process will not be fully implemented until FY 2001, SSA must start on October 1, 1994 (the beginning of FY 1995), to initiate activities, changes and improvements that will establish the plan and pace for the long-term full implementation of the new process. The goal is to make near-term, visible improvements while at the same time building for long-term results.

Multiple Track Approach

Immediate or near-term implementation activities are those that can begin in FY 1995 and will be fully implemented nationwide by the end of FY 1996, or for which the research and development or site testing can be initiated within the next two fiscal years. These activities include streamlining and simplification initiatives or other procedural elements of the new process that can be implemented using existing administrative or regulatory discretion. They also include client-service activities associated with improving the claimant's access and entry into the disability claim process; the development and site testing of options for streamlining parts of the administrative appeals process; the provision of consistent training and direction to disability decisionmakers; and the establishment of new measures and the testing of new quality assurance mechanisms. Additionally, because the decision methodology associated with the new process depends on significant amounts of research, consultation, development and refinement, SSA must identify the specific research needs, develop the appropriate scope of work and award research contracts as near-term activities.

Long-range implementation items are those requiring extensive research and development that could not be tested fully before FY 1999 or could not be fully implemented nationwide before FY 2001. These activities are those associated with the full development, testing and refinement of a new decision methodology. They also include the implementation of advanced technology enhancements that provide a single, fully-integrated disability claim processing system which supports paperless claim processing and provides interactive capabilities for claimants and those who assist them, and for providers of evidentiary information.

The remaining mid-term items or activities are those elements of the new process that can be developed and tested in FYs 1997 and 1998 and/or fully implemented nationwide by FY 1998. Mid-term activities would include such items as the phased testing and implementation of new service options; full development, testing and implementation of a streamlined appeals process; the testing of more advanced technology enhancements; and the activities associated with developing the decision methodology based on the results of research efforts completed by the end of the near term.

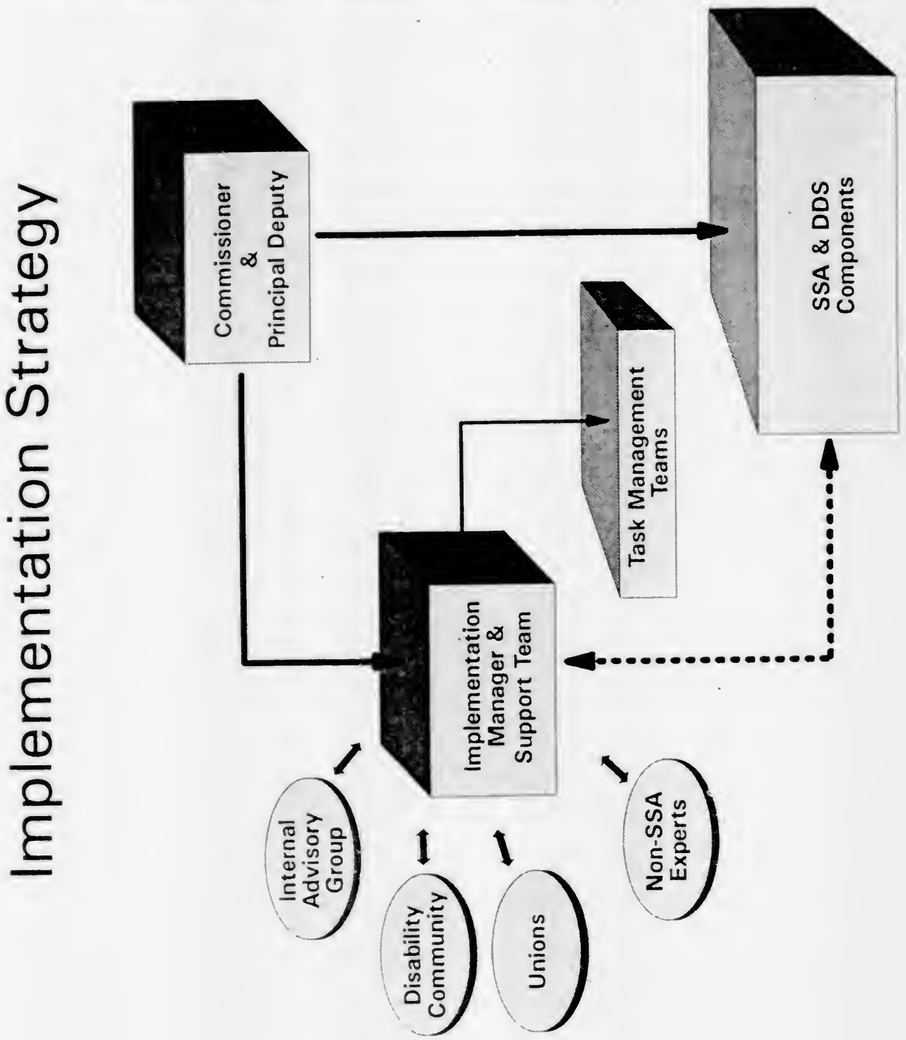
Flexibility and Testing

SSA recognizes that full implementation of the new process vision is an iterative process that requires development, testing, additional information gathering and possible modification of process changes as they are implemented. Although SSA is committed to moving forward quickly to begin implementing the new process, SSA has embraced an equally strong commitment to rigorous testing and refinement of process changes before they are fully or permanently implemented. Testing may include, but is not limited to, geographic or time-limited site testing, using "laboratory" settings, or relying on specific case studies. Formalized testing is most appropriate for process changes that depend on longer-term research and development, phased implementation or major organizational change. In selecting sites for initial implementation activity, SSA will take advantage of the interest and capability of different offices, states, or regions to demonstrate the viability of immediate improvements or identify early successes in improved service or efficiency. Implementation sites will, of course, be provided with the necessary resources to support their efforts.

Even with extensive testing, the nature of public policy formulation, as well as sound management principles, dictate that SSA remain flexible in developing, refining and implementing the specific elements of the new process vision. Ultimately, if the results of the iterative process necessitate modifications to the process vision, SSA is prepared to make those modifications. SSA is committed to change, not for its own sake, but because it is necessary to meet present and future challenges as it strives to provide high-quality, responsive, world-class service to its customers.

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Employees Will Make Change Happen

Overall leadership, control, and coordination of all implementation activities are vested in the Implementation Manager, who will report to the Commissioner and Principal Deputy Commissioner. As part of these responsibilities, the Implementation Manager, with the assistance of a support team, will establish implementation priorities, develop specific timelines, and provide oversight to ensure that implementation decisions are consistent with the new process visions and the five process objectives.

Although the Implementation Manager will be the focal point for all implementation activities, it is the employees and organizational components in the SSA and DDS communities who will make the new disability claim process a reality. Front-line employees will be asked to directly participate in the development, testing and implementation of process changes. They will also provide feedback on the effectiveness of the these changes. Task management teams will be chartered to address specific implementation issues and their duration will depend on the nature of their issue. For example, task teams that might be expected to require a longer-term existence are those dealing with decision methodology or organizational readiness and change management. The task teams will bring together staff from the affected SSA and DDS components to provide the necessary guidance for actual implementation action by organizational components. Central office components, working with their Regional office counterparts, will be responsible for ensuring that necessary implementation actions are effectuated.

SSA will rely on an internal Advisory Group, comprised of SSA executives and union and association leaders to provide advice and guidance on implementation activities and facilitate communication about implementation plans.

Non-SSA Experts and Interested Parties

SSA will use an inclusive process that seeks input from a variety of non-SSA communities including, but not limited to, disability advocates, physicians, other health care and rehabilitation providers, and the private disability and health insurers. The goal of this inclusive process is to foster creative relationships with non-SSA experts so that SSA can have access to specialized expertise and advice as implementation activities progress.

Open Lines of Communication

SSA's unprecedented effort to establish new and beneficial communication channels during the various phases of the disability claim process redesign lays the groundwork for continued communication during implementation. The internal and external contacts and the avenues of communication established during the public dialogue period will continue and will be an integral part of the implementation process. SSA will continue open lines of communication about implementation of the new process with individuals and organizations who have a stake in the disability process, including front-line employees, representatives from Federal and State employee unions and associations, other Federal agencies, the Congress, the judiciary, and disability advocates. SSA will use all appropriate avenues of communication, including written materials, telecommunications, and personal briefings, to ensure that necessary information about implementation activities is regularly and widely disseminated and to develop appropriate feedback channels. Additionally, SSA will explore new opportunities and means of communicating with both internal and external audiences to permit meaningful exchanges of information.

Appendix I: Methodology

Business Process Reengineering

The Process Reengineering Program is the culmination of a rigorous SSA investigation of the reengineering efforts and methodologies of those companies, public organizations, academic institutions, and consulting firms with the most "hands on" experience in this field. The positive findings from this detailed review, combined with concerns about existing business processes within SSA and the quality of SSA service to the public, led management to the conclusion that a process reengineering effort was critical to the SSA objective of providing "world-class" administration and service.

Based largely on analysis of what has worked best in the private and public sectors, a customized reengineering methodology was developed within SSA. It uses a reengineering team approach that combines a strong "customer" focus with classic management analysis techniques, and computer modeling and simulation, to intensely review a single business process. The objective is not to make small, incremental improvements in the various pieces of the process, but to redesign it as a whole, from start to finish, so that it becomes many times more efficient and, in so doing, significantly improves SSA service to the public.

A senior SSA manager was selected to serve as Director of the Process Reengineering Program. The Director leads all SSA process reengineering efforts, is the primary liaison with the Commissioner and Executive Staff, nominates topics for examination, chairs project steering committees, and directs a small professional staff and revolving group of managers/consultants.

SSA uses special, multi-disciplinary teams of individuals to conduct reengineering analyses and identify the best ways to redesign and significantly improve processes. Teams are comprised of outstanding employees, all of whom are subject matter experts in operational, programmatic, policy, systems, administrative, and other areas relevant to the business process.

Reengineering teams focus on identifying those procedural and policy changes to the process that will: make it more claimant and service oriented; greatly increase productivity and process speed; take advantage of opportunities offered by new technology; and improve the empowerment and professional enrichment of the employees who are part of the process. Although teams follow the same basic reengineering protocol, continual customization is both expected and encouraged.

Disability Process Reengineering Project

An Executive Steering Committee was formed to meet on a regular basis to provide advice to the Commissioner on development of the disability reengineering process change proposal, and to ensure that support occurred at the highest levels of the Agency. The Executive Steering Committee established the following parameters and expectations for the project which are driven by targets set forth in the Agency Strategic Plan and based on percentages of service and/or productivity:

Parameters and Expectations for Reengineering the Disability Determination Process (9/15/93)

Definition of Process

The "process" to be reengineered is the initial and administrative appeals system for determining an individual's entitlement to Social Security and Supplemental Security Income disability payments. It includes all actions from an individual's initial

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contact with SSA through payment effectuation or final administrative denial. The system for determining whether an individual continues to be entitled to receive disability payments is not part of this "process."

Rationale: The process to be reengineered must be defined broadly to increase the opportunity for improvement. The continuing disability review system is not included because it is conceptually and practically distinct from the initial disability determination process.

Parameters

Every aspect of the process except the statutory definition of disability, individual benefit amounts, the use of an administrative law judge as the presiding officer for administrative hearings, and vocational rehabilitation for beneficiaries, is within the scope of this reengineering effort. However, analysis and ideas for change should proceed and be presented on two tracks: improvements achievable without changes in statute or regulations and innovations that may require such change.

Rationale: The timing of legislative or regulatory change is beyond SSA's control. Such change could not reasonably be expected to be implemented in less than 2 years. However, limiting the reengineering effort to aspects of the process not requiring change in statute or regulations was rejected as limiting too greatly the possibility of major improvement/innovation in the process. The two-track approach provides for both shorter term incremental improvements and longer term, more radical change.

Expectations

1. Unless otherwise specified here, the recommendations for change should be consistent with the goals and objectives set forth in the Agency Strategic Plan.

2. Recommendations for change, taken as a whole, should not cause changes in benefit outlays unless as a necessary result of improvements in service, such as more timely processing and payment of claims.

3. Process changes should improve service and/or productivity, on a combined basis, by at least 25 percent by the end of FY 1997 over levels projected in the FY 1994 budget (it would require about an additional $500 million currently to realize such improvement) and decisional accuracy should not decrease. By FY 2000 additional actions, including any necessary statutory and regulatory changes, should provide a further 25 percent improvement.

The Executive Steering Committee facilitated ongoing communications between components and the Team, and communicated the need and reason for reengineering the disability process. They were familiar with the current process problems and were kept apprised of research completed by the Team. In February, the Executive Steering Committee was expanded to include the Presidents of the American Federation of Government Employees, the National Federation of Federal Employees, and the National Treasury Employees Union locals, councils and chapters representing SSA employees; and the Presidents of the SSA and State Disability Determination Services (DDS) professional and management associations recognized by SSA as having an interest in disability issues. A list of Executive Steering Committee members appears at the end of this appendix.

The 18 members of the Disability Reengineering Team, all of whom are SSA or State DDS employees, have varied and extensive backgrounds in all aspects of the disability program. A list of Team members appears at the end of this chapter. Team members attended a high quality, intensive 3-day SSA reengineering methodology training session, and completed extensive reading assignments on reengineering. Some Team members visited organizations who had reengineered their business processes to learn about successes as well as opportunities for improvement. The Team used the following methods to obtain the information necessary to develop a redesigned disability process.

Briefings

Members of the Team received extensive briefings from staff in all SSA components that work with any aspect of the disability process including experts in SSA policy, quality assurance, management information, operational, and appellate processes. Dr. Frank S. Bloch, Professor of Law and Director of the Clinical Education Center at Vanderbilt, briefed the Team on the results of his study comparing disability programs and processes of the United States, Canada, and Western Europe. His work encompasses eligibility requirements and program goals, benefit award structure and short-term benefits, administrative organization, and procedures for claim processing and appeals.

Scan Visits

The Team's conducted extensive fact-finding visits and interviews with members of the disability community. Team members visited 421 locations in 33 States and conducted over 3,600 interviews. Almost 2,900 of these involved front-line employees, managers and executives. The Team conducted an additional 111 interviews by telephone. The Team also interviewed over 750 parties external to SSA for their views. They also publicized surface/electronic mail addresses and fax and voice telephone numbers for those who were not contacted or had additional information to provide.

Individuals and groups both internal and external to the process were interviewed for ideas about a new process. The Team solicited a wide spectrum of opinions about problems with the current disability process and directions for redesign. In addition to individuals in the SSA and DDS communities, the team talked to a wide variety of externals including physicians, health maintenance organizations and hospital officials, disability advocates, attorneys, professional association groups, Federal judges, other Federal agencies, and Congressional staffs.

Prior to site visits and contacts, Team members provided individuals and organizations with general information about the reengineering effort, key research areas, and some unconventional ideas about the disability process so that the interviewees would have an opportunity to think about process issues. The Team encouraged interviewees to provide open and honest opinions, suggestions, and ideas. The interviews provided useful insights into the problems confronting the disability program and recommendations for solving these problems.

Focus Groups

A series of 12 focus groups were held throughout the country to obtain input from members of our claimant population and the general public regarding their experiences with and expectations of the SSA disability process. The focus groups provided the Team valuable information about claimants' expectations and preferences, as well as concerns about the current process. The following is a list of the focus group sites and composition.

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SITE	DATE	GROUP COMPOSITION
Philadelphia, PA	11/30/93	DI Reconsideration SSI Initial Awards
Atlanta, GA	12/01/93	SSI Reconsideration DI Initial Awards
Denver, CO	12/02/93	SSI Claimants General Public
Bridgeport, CT	12/07/93	SSI Hearing DI Claimants
Chicago, IL	12/08/93	Spanish-Speaking Initial Awards General Public
San Jose, CA	12/09/93	DI Hearing Vietnamese-Speaking Applicants and Initial Awards

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Benchmarking

"Internal benchmarking" refers to the identification and understanding of site-specific best practices that currently exist within the Agency and is focused on the improvement and standardization of internal operations. The Team completed this phase of benchmarking by reviewing lists of sites engaging in "best practices" which were submitted by various SSA components, and visiting or telephoning as many of these SSA and DDS offices as possible.

"External benchmarking" is essentially the same, except the search for best practices and proven process innovations is expanded to comparable companies and organizations outside of SSA. It is focused outside the organization and is concerned with the relative performance of one specific function or process. The table below identifies the companies/organizations the Team used as benchmarking partners.

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ORGANIZATION	LOCATION
Health & Welfare Canada Income Security Programs	Ottawa, Canada
Anne Arundel Medical Center, Pathways Program	Annapolis, MD
Mayo Clinic Disability Program	Rochester, MN
Minneapolis Children's Hospital	Minneapolis, MN
Blue Cross of California	Los Angeles, CA
Liberty Mutual Insurance	Boston, MA
Standard Insurance Company	Portland, OR
UNUM Corporation	Portland, ME
Department of Labor and Industries, Workers' Compensation	Olympia, WA
Immigration and Naturalization Service, Board of Immigration Appeals	Arlington, VA
Veterans Administration, Regional Office	New York City, New York
Federal Express Corporation	Columbia, MD
Southwest Airlines	Dallas, TX
Texas Instruments	Plano, TX

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Process Analysis

The Team utilized a document prepared by the SSA Office of Workforce Analysis in April 1993 which outlines the "as-is" disability claim and appeal processes of SSA. The document contains a description of claim processing tasks performed by line-employees in the seven operational components that deal with the disability claim process. Team members also collected, reviewed, and researched an extensive amount of existing procedural guides, laws/regulations, studies conducted by internal and external components, processing time and quality management information, workflows, cost data, etc.

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Computer Modeling

Computer models are close representations of work processes that, if properly constructed, allow for better understanding, testing or forecasting, and study. Team members worked with modeling professionals in SSA to build the models used to predict the operation of a redesigned process. A model was built to represent both the current and proposed processes. The model helped the Team assess the best features and performance of the new disability process; to better judge the magnitude of change from one process to another; and to do some "what-if-nothing-changes" analysis to get a feel for the impact of inactivity. A summary of the model assumption and results appears in Appendix II.

Release of Initial Team Proposal

The product of the Team's effort was a redesign proposal that was presented to the Commissioner and Executive Steering Committee on March 31, 1994. The proposal provided the Team's view of the best process improvement and process innovation ideas. The proposal is a high-level concept that provides a broad understanding of how a redesigned process would work but leaves operational, organizational, and other details for later development.

The Team distributed the proposal as widely as possible throughout SSA, the State DDSs, and to interested public and private individuals and organizations with the goal of seeking reactions, items of concern and additional ideas for improvement. Copies of a shorter 25-page version of the Proposal were distributed to all SSA and DDS employees in early April 1994. Copies of the complete 132-page Proposal and Background Report were also distributed to each SSA DDS facility in sufficient numbers to make it easily available to staff. A 30-minute videotape containing remarks by Commissioner Chater and a presentation of the proposal by members of the Reengineering Team was distributed for use in all SSA and DDS facilities. Group feedback discussions with SSA and DDS employees were held in all ten regions and in SSA headquarters components. A survey was distributed to each SSA and DDS employee to assist employees in providing comments.

The Proposal and Background Report was published in the **Federal Register** on April 15, 1994 (59 FR 18188). A 60-day comment period was established to invite public comment on the proposal. A public hearing on the proposal was held in Washington, DC on May 16, 1994. Team members conducted extensive briefings on the proposal with interested parties, including employee unions, professional association groups, disability advocates, the legal community, other Federal agencies, and Congressional staffs.

During the comment period that ended on June 14, 1994, the Team received over 6,000 written responses from all interested parties. The Team reviewed and analyzed each comment received. A summary of the comments is included in Appendix III. In response to reactions received during the comment period, the Team made changes to the original proposal and submitted a revised proposal to the Commissioner and the Executive Steering Committee on June 30, 1994.

After extensive consultation with the members of the Executive Steering Committee, SSA senior staff, representatives from employee unions and associations, disability advocates and others, the Commissioner accepted the Team's recommendations for a redesigned disability process.

Reengineering Design Partners

Director, SSA Process Reengineering Program

Rhoda Davis—Office of the Commissioner, Baltimore, MD

Disability Process Reengineering Team

William Anderson—Office of Disability, Baltimore, MD
Mary Ann Bennett—Office of Budget, Baltimore, MD
Bryant Chase—Office of the Deputy Commissioner for Systems, Baltimore, MD
Kayla Clark—Office of Hearings and Appeals, Seattle, WA
Judith Cohen—Office of Supplemental Security Income, Baltimore, MD
Judge Alfred Costanzo, Jr.—Office of Hearings and Appeals, Pittsburgh, PA
Kelly Croft—Office of Workforce Analysis, Baltimore, MD
Mary Fischer Doyle—Office of Hearings and Appeals, Falls Church, VA
Virginia Lighthizer—Chicago Region, Detroit Conner Branch Office, Detroit, MI
Rebecca Manship—Disability Determination Service, Sacramento, CA
Mary Meiss—Office of Hearings and Appeals, Philadelphia, PA
Michael Moynihan—Office of Disability and International Operations, Baltimore, MD
Donna Mukogawa—Office of the Regional Commissioner, Chicago, IL
William Newton, Jr.—Office of Disability and International Operations, Baltimore, MD
Ralph Perez—Atlanta Region, Miami South District Office, Miami, FL
Dr. Nancie Schweikert—Disability Determination Section, Nashville, TN
Ronald Sribnik—Office of Regulations, Baltimore, MD
Sharon Withers—Philadelphia Region, Welch District Office, Welch, WV

Process Reengineering Program Executive Steering Committee

Shirley Chater—Commissioner, SSA
Lawrence Thompson—Principal Deputy Commissioner, SSA
Rhoda Davis—Director, Process Reengineering Program, SSA
Dennis Brown—Moderator, Association of OHA Analysts
Bruce Bucklinger—President, OHA Managers' Association
Robert Burgess—President, National Association of Disability Examiners
Mary Chatel—President, National Council of Social Security Management Associations, Inc.
Herbert Collender—President, SSA/AFGE National Council of Payment Center Locals (Council 109)
Renato DiPentima—Deputy Commissioner for Systems, SSA John Dyer—Deputy Commissioner for Finance, Assessment and Management, SSA
Richard Eisinger—Senior Executive Officer, SSA
George Failla—Director, Office of Information Resources Management, SSA
Gilbert Fisher—Assistant Deputy Commissioner for Programs, SSA
Howard Foard—Assistant Deputy Commissioner for Policy and External Affairs, SSA
Hilton Friend—Acting Associate Commissioner for Disability, SSA
John Gage—President, SSA/AFGE SSA Headquarters (Local 1923)
Randolph Gaines—Acting Associate General Counsel, SSA
Robert Green—SSA Regional Commissioner, Boston
Joseph Gribbin—Associate Commissioner for Program and Integrity Reviews, SSA
James Hill—President, National Treasury Employees Union (Chapter 224)
Arthur Johnson—Chief Spokesperson, SSA/AFGE General Committee
Charles Jones—Director, Michigan Disability Determination Services
David Knoll—President, SSA National Federation of Federal Employees Council of Consolidated Locals
Demos Kuchulis—President, National Association of Senior Social Security Attorneys
Antonia Lenane—Chief Policy Officer, SSA

Huldah Lieberman—Assistant Deputy Commissioner for Operations, SSA
Rose Lucas—President, SSA/AFGE National Council of Data Operations Centers (Council 221)
James Marshall—President, SSA/AFGE National Council of SSA/OHA Locals (Council 215)
Larry Massanari—SSA Regional Commissioner, Philadelphia
Francis O'Byrne—President, Association of Administrative Law Judges, Inc.
Ruth Pierce—Deputy Commissioner for Human Resources, SSA
Daniel Skoler—Associate Commissioner for Hearings and Appeals, SSA
Witold Skwierczynski—President, SSA/AFGE National Council of SSA Field Operations Locals (Council 220)
Earl Tucker—President, SSA/AFGE National Council of Social Security Regional Offices, Program Integrity Review (Council 224)
Janice Warden—Deputy Commissioner for Operations, SSA
Andrew Young—Deputy Commissioner for Programs, SSA

Additional Support from:

Dominic Fulgieri—Implementation Planning Staff, Baltimore, MD
Rosanne Hanratty—Implementation Planning Staff, Baltimore, MD
Kathleen Jones—Implementation Planning Staff, Baltimore, MD
Linda Kaboolian—Kennedy School of Government, Harvard University, Cambridge, MA
Miriam Kahn—Process Reengineering Staff, Baltimore, MD
Becky Klepper—Implementation Planning Staff, Baltimore, MD
Kenneth Nibali—Process Reengineering Staff, Baltimore, MD
Leonard Ross—Office of Workforce Analysis, Baltimore, MD
John Shaddix—Office of Telecommunications, Baltimore, MD
Carolyn Shearin-Jones—Implementation Planning Staff, Baltimore, MD
Sandi Sweeney—Process Reengineering Staff, Baltimore, MD
Wendy Tayback—Implementation Planning Staff, Baltimore, MD
Latesha Taylor—Process Reengineering Staff, Baltimore, MD
Linda Thibodeaux—Process Reengineering Staff, Baltimore, MD

Appendix II: Model Results

Summary Information

The Team worked with modeling professionals in the SSA Office of Workforce Analysis (OWA) to build computer representations of both the current and the redesigned disability processes. The computer model was built using FORTRAN programming language. Data based on assumptions, task times and lapse times were input into the model. In making assumptions, the team relied on historical data to the extent that such information was available. The Team also relied on an April 1993 OWA study that outlines the current disability claim process, including all administrative appeals, and describes the tasks performed by line-employees in the seven operational components that are involved with the disability claim process.

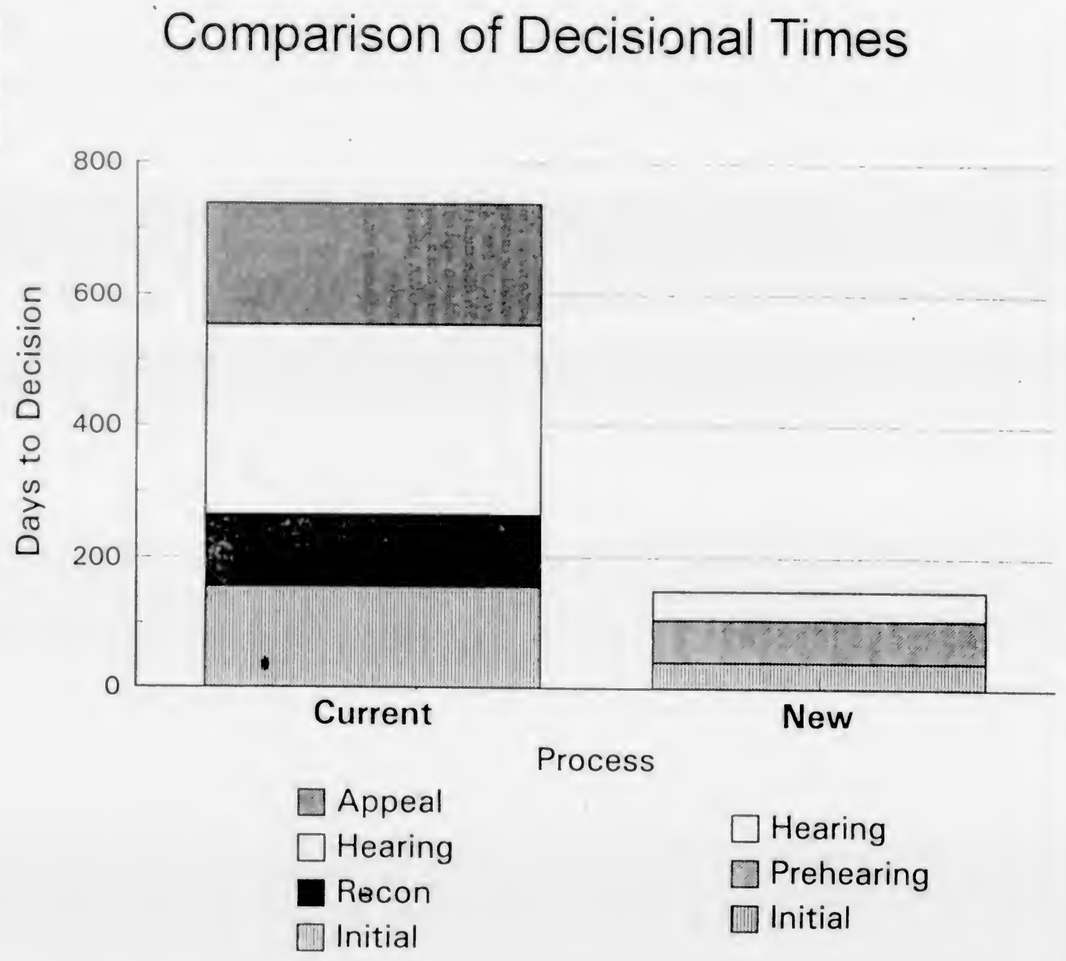
Using a computer model allowed the Team to assess the impact of changing from one process to another. Although the model did not generate an actual visual simulation of either the current or the redesigned process, the model did generate comparative data about the relative impact of specific features and expected performance. The sections that follow provide key comparative information regarding overall processing times and employee work investment based on the model results.

Overall Processing Times

Under the redesigned process, the time from a claimant's first contact with SSA until issuance of a final initial decision will be reduced from an average of 155 days (as cited in the OWA study) to less than 40 days. Available employees will be able to process a greater number of claims and devote more time to each claimant, thus providing more personalized service. The time from a claimant's first contact with SSA until issuance of a hearing decision will be reduced from an average of a year and a half (as cited in the OWA study) to approximately 5 months.

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Employee Work Investment

The table below provides a comparison of the number of different employees that are likely to make some work investment in a claim at each decisional level in the current and redesigned processes. The following abbreviations were used in describing the types of employees involved at each level.

AAJ—Administrative Appeals Judge
AC—Appeals Council
ALJ—Administrative Law Judge
AO—Adjudication Officer
CA—Claims Authorizer
CR—Claims Representative
DCM—Disability Claim Manager
DDS—Disability Determination Service
DE—Disability Examiner
DW—Decision Writer
FO—Field Office
HAA—Hearing and Appeals Analyst
HO—Hearing Office
MC—Medical Consultant
MG—Management
OPIR—Office of Program & Integrity Reviews
PSC—Program Service Center
QA—Quality Analyst
SA—Staff Attorney
Sup—Support Staff
TA—Technical Assistant
TECH—FO Technician
TSC—Teleservice Center
TSR—TCS Representative

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LEVEL	CURRENT PROCESS	REDESIGNED PROCESS
INITIAL DENIAL	**16**: TSR, TSC Sup, TSC TA, FO Sup, CR, FO Sup, FO MG, DDS Sup, DDS Sup, DE, DDS Sup, DDS MG, DDS Sup, DDS Sup, MC, DDS TA	**7**: TSR, TSC Sup, TECH, DCM, FO Sup, MC, QA
INITIAL TITLE 2 ALLOWANCE	**26**: Initial Denial (16) plus OPIR Sup, OPIR QA, OPIR MC, 7 PSC Sup employees	**8**: Initial Denial (7) plus: TECH
INITIAL TITLE 16 ALLOWANCE	**19**: Initial Denial (16) plus OPIR Sup, OPIR QA, OPIR MC,	**8**: Initial Denial (7) plus: TECH
RECONSIDERATION DENIAL	**26**: Initial Denial (16) plus TSR, TSC TA, FO Sup, CR, FO Sup, DDS Sup, DDS Sup, DE, MC, DDS TA	Not Applicable
RECONSIDERATION TITLE 2 ALLOWANCE	**36**: Recon Denial (26) plus OPIR Sup, OPIR QA, OPIR MC, 7 PSC Sup employees	Not Applicable
RECONSIDERATION TITLE 16 ALLOWANCE	**29**: Recon Denial (26) plus OPIR Sup, OPIR QA, OPIR MC	Not Applicable
PREHEARING TITLE 2 ALLOWANCE	Not Applicable	**11**: Initial Denial (7) plus TSR, AO, MC, TECH
PREHEARING TITLE 16 ALLOWANCE	Not Applicable	**11**: Initial Denial (7) plus TSR, AO, MC, TECH
HEARING DENIAL	**35**: Recon Denial (26) plus TSR, TSC TA, CR, HO Sup, HO Sup, HO Sup, ALJ, SA, HO Sup	**15**: Initial Denial (7) plus TSR, AO, MC, Hearing Sup, ALJ, DW, MC
HEARING TITLE 2 ALLOWANCE	**47**: Hearing Denial (35) plus 10 PSC Sup employees, CA, PSC MG	**16**: Hearing Denial (15) plus TECH
HEARING TITLE 16 ALLOWANCE	**35**: Same as Hearing Denial (35)	**16**: Hearing Denial (15) plus TECH
APPEALS COUNCIL DENIAL	**44**: Hearing Denial (35) plus AC Sup, AC Sup, AC MG, HAA, AC Sup, AC TA, AC Sup, AAJ, AC Sup	**18**: Hearing Denial (15) plus AC Sup, HAA, AAJ **19**: Hearing Allowance (16) plus AC Sup, HAA, AAJ

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Assumptions, Task Times and Lapse Times

Listed below are key assumptions, task times and lapse times that the Team used to model the redesigned process. The task times are shown in minutes and represent the estimated time it will take an employee to complete the described task. For each task time entry, three task time numbers are shown. The middle number represents the most common task time, while the first and last number represent the low and high extremes for that task. The lapse times are shown in work days, rather than calendar days, and represent the number of days between actions or tasks.

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INITIAL LEVEL

- Electronic files will be used in the process redesign.
- Electronic files will eliminate mail time and allow simultaneous reviews of claim files.
- Disability information packets will be widely available. The goal is to target the information to likely applicants and ensure they have a better understanding of the program(s), the requirements and the decisionmaking methodology when they enter the process. Increased public information will enhance claimant involvement in the process and ultimately decrease processing times.
- 50% of all disability interviews will be by appointment. Of these, 75% will be by telephone and 25% will be face-to-face interviews.
- 50% of all appointments will be scheduled via the 1-800 number and the remaining 50% by field components.
- 35% of all disability interviews will be unscheduled walk-ins.
- 10% of all disability applications will be submitted by third parties.
- 5% of all disability applications will be submitted electronically.
- When filed, a hearing appeals request must be made within 60 calendar days of the issuance of the initial denial notice.
- Preliminary initial inquiry interview time: 14-23-35 minutes
- Lapse time between initial inquiry interview and scheduled appointment: 3-4-5 days
- Initial application interview time: 30-45-75 minutes
- Impairment specific questions will assist in obtaining information that is necessary and relevant to the decision and personalize and streamline the interviewing process.
- 3% of telephone interviews will result in abandoned claims.
- Receipt of application/evidence time: 5-10-15 minutes
- Preliminary nonmedical development and review time: 20-40-60 minutes
- 8.5% of all claims will be technically denied.
- 4.5% of all Title 16 claims adopt Title 2 decisions.
- SSA will encourage claimants, who are able to do so, to have the basic forms in the disability information packet completed prior to filing.
- 20% of all claimants will submit sufficient evidence to make a decision at the time of the interview or receipt of the application.

- 80% of all claimants will not submit evidence sufficient to make a decision at the time of the interview or receipt of the application.
- Medical evidence of record (MER) will be requested in 75% of all claims requiring evidence. Assuming that MER will generally include complete functional assessment (FA) information, in 25% of these claims, a separate FA will be needed.
- Consultative examinations (CEs) will be requested in 25% of all claims requiring evidence. CEs will contain FA information.
- CEs will generally be requested for claimants that have no treating source, or their treating source is unable or unwilling to provide the necessary evidence, or there is a conflict in the evidence that can not be resolved through treating source evidence.
- Medical evidence request time:
  - MER: 10-15-20 minutes
  - CEs: 10-15-20 minutes
  - FAs: 10-15-20 minutes
- Lapse time between request and receipt of medical evidence:
  - MER: 4-10-20 days
  - CEs: 6-10-14 days
  - FAs: 6-10-14 days
- The use of standardized forms to request medical evidence will streamline the collection of necessary evidence.
- A national fee reimbursement schedule will utilize a sliding mechanism to reward early submission of medical evidence, as well as, the quality of evidence received.
- The process of requesting medical evidence will be fully automated. Follow up letters for medical evidence will also be automatically generated by the claim processing system.
- The procurement and payment process for medical evidence will be fully automated.
- On average, number of pieces of MER requested or submitted: 1-2-3 pieces
- Evidence receipt, case association, record update time: 3-7-15 minutes
- Medical evidence review and analysis time:
  - MER: 10-15-20 minutes
  - CEs: 10-15-20 minutes
  - FAs: 20-25-30 minutes
- Field components will have established local contracts with area hospitals/medical centers/etc. to provide CEs and FAs within specified timeframes.
- Automation will, where possible, allow direct contact between the field component and the CE and/or FA source for scheduling purposes.

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- 40% of all cases will require medical consultation.
- Medical consultation time: 25-30-45 minutes
- Initial level medical adjudication time: 10-15-30 minutes
- Approximate percent of cases allowed at the initial level prior to issuance of predecision notice: 45%
- Approximate percent of cases allowed at the initial level after issuance of the predecision notice and additional review: 4%
- Predecision notice preparation time: 5-10-20 minutes
- Lapse time to submit evidence or request personal interview after issuance of predecision notice: 10 days
- 50% of the cases receiving predecision notices will request personal interviews.
- 50% of the cases not requesting a personal interview will submit (or require) additional evidence.
- 50% of the cases requesting a personal conference will also submit (or require) additional evidence.
- On average, the number of new pieces of evidence requested or submitted: 2 pieces
- Personal interviews will be conducted in person, by videoconference, by telephone, or by whatever means the field component determines is appropriate under the circumstances.
- Personal interview time: 30-45-60 minutes
- Evidence receipt, case association, record update time: 3-7-15 minutes
- Predecision analysis and review time: 10-30-45 minutes
- 40% of all predecision notice cases will require medical consultation.
- Medical consultation time: 25-30-45 minutes
- 73% of allowances are Title 16 or concurrent claims. 47% are Title 2 or concurrent claims.
- Lapse time between claimant contact and effectuation interview: 3-4-5 days
- 75% of effectuation interviews are face-to-face and 25% are completed by telephone.
- 90% of effectuation interviews will require that additional evidence be submitted after the interview.

- Lapse time between effectuation interview and submission of evidence: 2-10-18 days
- Receipt of effectuation application/evidence time: 5-10-15 minutes
- Title 16 effectuation interview and review/analysis of evidence: 50-100-145 minutes
- Average technical effectuation assistance time: 10-20-35 minutes
- Preparation of "statement of claim" time: 20-30-40 minutes
- Notices at both levels of the process will be prepared using the automated claim processing and the decision support system.

HEARING LEVEL

- Percentage of initial denials filing a hearing request (H/R): 45%
- Representation level at the hearing stage will drop to 50%
- 50% of all appeal interviews will be by appointment. Of these, 75% will be by telephone and 25% will be face-to-face interviews.
- 50% of all appeal appointments will be scheduled via the 1-800 number and the remaining 50% by field components.
- Preliminary appeal interview time: 14-23-35 minutes
- H/R interview time: 20-25-30 minutes

ADJUDICATION OFFICER

- Initial review of H/R and file time: 10-15-30 minutes
- Preliminary telephone/letter contact with claimant and/or representative time: 20-30-45 minutes
- A hearing will be scheduled using the automated claim processing system approximately 45 days after the R/H has been filed. Numerous factors (i.e., leave, training, etc.) will be considered when creating the hearing dockets.
- 50% of the R/Hs will request a personal conference.
- Lapse time between preliminary contact and personal conference: 5-10-15 days
- Percentage of cases requiring time for submission of additional evidence after personal conference: 30%
- On average, number of pieces of evidence requested or submitted: 2 pieces

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- Lapse time between personal conference and receipt of evidence: 10-20-30 days
- Evidence receipt, case association, record update time: 3-7-15 minutes
- Analysis and review of evidence time: 10-20-30 minutes
- 25% of all personal conference cases will require medical consultation.
- Medical consultation time: 25-30-45 minutes
- Allowance decision preparation time: 30-45-60 minutes
- Stipulation preparation time: 45-60-75 minutes
- Approximate percent of R/H cases allowed prior to ALJ hearing: 25%
- Approximate percent of R/H cases referred to an ALJ for hearing: 75%

ADMINISTRATIVE LAW JUDGE

- ALJ prehearing review and analysis time: 20-40-60 minutes
- Length of hearing time: 20-40-60 minutes
- 25% of all hearing cases will require medical consultation.
- Medical consultation time: 25-30-45 minutes
- 10% of all hearing cases will submit (or require) additional evidence after the hearing.
- Lapse time between hearing and receipt of evidence: 10-20-30 days
- Request and evidence receipt time: 10-15-30 minutes
- Analysis and instruction preparation time: 10-15-20 minutes
- Preparation of allowance decision time: 30-45-60 minutes
- Preparation of denial decision time: 60-90-120 minutes
- Final editing and preparation of decision time: 5-10-15 minutes
- Final review and sign off time: 10-15-20 minutes
- Approximate percent of cases allowed at ALJ level: 20%
- Approximate percent of cases denied at ALJ level: 80%

APPEALS COUNCIL OWN-MOTION PREEFFECTUATION REVIEW

- Minimum percent of ALJ cases selected for own motion preeffectuation review: 5%
- Lapse time for own motion preeffectuation review: 8-12-20 days
- Routing and case control function time: 13-15-17 minutes
- Analysis and recommendation time: 105-150-180 minutes
- Final review and approval time: 15-30-60 minutes
- Results of preeffectuation own motion review:
  - Affirmed: 90%
  - Reversed: 2%
  - Remanded: 8%

MISCELLANEOUS

- Minimum percent of cases filing civil actions: 5%
- Percent of cases filing a civil action will decrease as overall claimant satisfaction increases and overall processing times decrease.
- The court affirmation rate will rise and the remand rate will decrease as the quality of SSA decisions is enhanced as the Agency implements the various component pieces of the process redesign. This result will also affect (decrease) the percent of cases filing a civil action.

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Appendix III: Summary of Comments on Reengineering Proposal

Overview

During the comment period that began on April 1, 1994 and ended on June 14, 1994, the Team received over 6,000 written responses from SSA and DDS employees, employee unions, professional associations, members of the public, claimant representatives, physicians, State governors, claimant advocate groups, Federal components, and other interested parties. Fifty-three percent of the written responses came from SSA employees, 21% came from DDS employees, and 26% came from individuals and organizations external to the SSA/DDS community. Members of the Team read, analyzed, and collated every one of those 6,210 comments so that no idea, reaction, or nuance would be overlooked.

For the commenters who presented written reactions to the overall proposal, 52% were favorable to the overall concept, 39% were unfavorable, and 9% were neutral. Approximately 10% of these commenters believed no reengineering was needed. Beyond the request for written comments, additional means of gauging reaction to the proposal were also employed: group employee feedback discussions were held in over 80 sites across the country with almost 2,000 SSA and DDS employees participating; a public meeting was held in Washington, D.C.; and Team members conducted briefings and spoke with more than 3,000 individuals and organizations about the proposal during the comment period.

There was a very mixed reaction to the proposal. Very few verbal or written responses were totally favorable or unfavorable toward the proposal—those liking it had concerns about some elements while those generally disliking it found portions which they believed would be improvements over the current process. Many commenters, regardless of expressing praise or concern, addressed very limited aspects of the proposal without providing a reaction to the overall proposal.

Profile

The comments expressed can be categorized as follows:

—SSA received widespread praise for taking on the task of redesigning the disability claim process. The prevalent belief was that dramatic improvements are needed to provide better service and handle workloads more effectively. Whether fully supporting the proposal or not, most commenters expressed concern that the system is broken and that only radical redesign will solve the problems that currently exist.

—The most popular concepts were (*listed from most to least frequently mentioned*):

- Elimination of the reconsideration step;
- The disability claim manager as single Agency point of contact in the initial claim;
- A single presentation of substantive policies for all decision makers;
- Encouragement of the claimant to be a partner in the development of the claim;
- Elimination of the mandatory Appeals Council review step;
- Increased reliance on the use of information technology;
- Increased public awareness and education about program requirements;
- Evidence development tailored to claimant circumstances;
- Disability claim managers empowered with full decisionmaking authority; and
- The general aspects of the proposed disability methodology.

—The greatest concerns centered around (*listed from most to least frequently mentioned*):

- Personal safety of disability claim managers;
- Ability of one person to fulfill the disability claim manager role;
- Pre-denial personal interview with disability claim manager;
- The general aspects of the proposed disability methodology;
- Encouragement of the claimant to be a partner in the development of the claim;
- The disability claim manager as single Agency point of contact in the initial claim;
- Development and use of an Index of Disabling Impairments;
- Use of standardized forms to request evidence from treating sources;
- Reliance on treating source certification of existing evidence; and
- Potential bias of disability claim managers.

—Many of the responses centered around how the proposal would be implemented and what organizational changes would be needed to make the new process work.

—There were concerns about whether the proposal would meet the objective of not increasing or decreasing program costs with fairly divided opinions about whether the new disability methodology would allow or deny more claims than the current methodology. Reliance on treating sources as preferred sources of medical evidence and personal bias resulting from disability claim manager face-to-face meetings with claimants were often cited as the reason for the belief that there will be an overall increase in allowed claims. The new four-step evaluation process was cited as the most common reason for the belief that there will be an overall increase in denied claims.

[FR Doc. 94–22491 Filed 9–16–94; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a Residential Development called Bal Harbour subdivision, in Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Gen Real Estate and Management Company (Applicant), is seeking an incidental take permit from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973, (Act) as amended. The permit would authorize the take of the Florida scrub jay, Aphelocoma coerulescens coerulescens, a threatened species, in Brevard County, Florida, for a period of 5 years. The proposed taking is incidental to construction of ±60 single family homes including the necessary infrastructure on approximately 15.1 acres (Project), all of which contains occupied Florida scrub jay habitat to be permanently altered. The Project is called Bal Harbour, and is located along State Road A1A south of the city of Melbourne, in the Coconut Point area of Brevard County, Florida.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making a request to the Regional Office address below. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA and HCP should be received on or before October 19, 1994.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, or the Jacksonville, Florida, Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–794539 in such comments:

Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7081).

Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0912, (telephone 904/232–2580, fax 904/232–2404).

FOR FURTHER INFORMATION CONTACT: Dawn Zattau at the Jacksonville, Florida, Field Office, or Rick G. Gooch at the Atlanta, Georgia, Regional Office.

SUPPLEMENTARY INFORMATION: *Aphelocoma coerulescens coerulescens* is geographically isolated from other subspecies of scrub jays found in Mexico and the Western United States. The scrub jay is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the scrub jay population has been reduced by at least half in the last 100 years.

The scrub jay survey provided by the Applicant indicates that two families currently use the suitable habitats within the Project. The Applicant proposes to impact the territories of both families. Initial construction of roads and utilities and subsequent development of individual homesites may therefore result in death of, or injury to, scrub jays incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development may reduce the availability of feeding, shelter, and nesting habitat. To minimize the mitigate the impacts of the loss of 15.1 acres of scrub jay habitat, the Applicant will purchase 30.63 acres of scrub habitat known to support the scrub jay, deed the property to Brevard County, and provide a management endowment of $30,630 to ensure management of the site in perpetuity. Other measures proposed by the Applicant include control of invasive plant species from the Project, and protection of active nests, if discovered, during the nesting season.

The EA considers the environmental consequences of three alternatives, including acceptance of the HCP as submitted, consideration of management of surrounding publicly-owned lands as mitigation in lieu of offsite purchase, and no action.

(Notice: Availability of an Environmental Assessment and Receipt of an Application for a Section 10(a)(1)(B) Incidental Take Permit of the Endangered Species Act)

Dated: September 12, 1994.

Richard G. Gooch,

Acting Chief, Division of Endangered Species.

[FR Doc. 94–23076 Filed 9–16–94; 8:45 am]
BILLING CODE 4310–55–P

Bureau of Land Management

[AZ–020–04–4333–01]

Notice of Availability of the Draft Cyprus Tohono Corporation Proposed Mine Expansion Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Draft Cyprus Tohono Corporation Proposed Mine Expansion Draft Environmental Impact Statement, Phoenix District.

SUMMARY: In compliance with the Federal Land Policy and Management Act of 1976, section 102(2)(c) of the National Environmental Policy Act of 1969, and The United States Department of the Interior Secretarial Order No. 3087, Section 5, Amendment No. 1, The Bureau of Land Management (BLM) has prepared an Environmental Impact Statement for the Cyprus Tohono Corporation's proposed mine expansion on the Tohono O'odham Nation, Papago Indian Reservation. The proposed action (Alternate A) consists of the conversion from in situ to open pit mining operations at Cyprus, the creation of a new overburden storage site, and a new copper oxide ore heap leach pad. Cyprus proposes production of approximately one billion pounds of copper during the thirteen year life of the proposal. A description of existing facilities and a detailed proposed plan of operations is presented in the Mine Plan of Operations for Expanded Open Pit and Heap Leach Operations (Cyprus Casa Grande Corporation 1993). The project was developed in response to three underlying needs: mining lease compliance, continued industrial economic support for the Nation, and copper production.

Implementation of Alternative A would result in the disturbance of a total of approximately 1,660 acres, or approximately 0.06 percent of total Nation lands. Alternative A involves the development, operation, performance and maintenance of the following major project components: open pit mine expansion, overburden disposal area, heap leach pads and ponds, stormwater collection and recycling, processing facilities, access and service roads, support facilities, utilities, spill prevention, health and safety plans, and reclamation and closure. There would be increases in royalties and employment. Scholarships would be established. Each of the major project components re described in the main body of the Draft EIS.

Alternative B was developed to minimize potential impacts to biological and visual resources. Alternative B includes the same basic project components as Alternative A, however, some of the components would be moved south of an existing access road. Movement of the proposed project elements south of the existing mine access road serves to limit disturbance of natural drainages, reduce potential disturbance to bat colonies north of the site, and to provide a visual screen of existing mine plant site structures. Alternative B would disturb a total of approximately 1,850 acres.

DATES: The protest period will begin upon publication of this notice in the Federal Register and will run for 60 days after which public comments will be incorporated into a Final Document. These procedures can be found in the Code of Federal Regulations (43 CFR 1610.5–2).

SUPPLEMENTARY INFORMATION: A limited number of copies of the EIS are available upon request to the: Phoenix District Manager, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027. There are also copies available for review at the above location.

Public meetings will be held to receive comments on the Draft Environmental Impact Statement. Location, dates, and times of these meetings will be announced in the local media.

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FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Attn: Paul J. Buff, 2015 West Deer Valley Road, Phoenix, Arizona 85027 (602) 780–8090.

Dated: September 9, 1994.

G.L. Cheniae,

District Manager.

[FR Doc. 94–23077 Filed 9–16–94; 8:45 am]

BILLING CODE 4310–32–M

National Park Service

General Management Plan; National Park of American Samoa; Intent To Prepare an Environmental Impact Statement

SUMMARY: The National Park Service will prepare a General Management Plan/Environmental Impact Statement (GMP/EIS) for the National Park of American Samoa, Islands of Tutuila, Ta'u, and Ofu, Territory of American Samoa, and initiate the scoping process for this document. This notice is in accordance with 40 CFR 1501.7 and 40 CFR 1508.22, of the regulations of the President's Council on Environmental Quality for the National Environmental Policy Act of 1969, Public Law 91–190.

BACKGROUND: Authorized in October, 1988, the National Park of American Samoa is to be established when the Governor, acting on behalf of the village landowners, and the National Park Service have entered into a lease agreement. With the signing of the lease in September, 1993, the National Park Service is authorized to begin management and operation of the park. The general management plan will provide long-term guidance for preserving and protecting park resources, maintaining traditional Samoan customs and uses, providing access, developing appropriate visitor facilities, and dealing with other important issues.

Persons wishing to provide scoping comments on the plan and environmental statement or needing additional information should address such comments or questions to the Superintendent, National Park of American Samoa, Pago Pago, American Samoa 96799, or to the Park Planner, Pacific Area Office, National Park Service, 300 Ala Moana Blvd., Box 50165, Honolulu, HI 96850. Comments should be received no later than 60 days from the date of publication of this notice.

The responsible official is Stanley T. Albright, Regional Director, Western Region, National Park Service. The draft GMP/EIS is expected to be available for public review by the end of December, 1995, and the final GMP/EIS and Record of Decision completed by January, 1997.

Dated: August 25, 1994.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 94–23066 Filed 9–16–94; 8:45 am]

BILLING CODE 4310–70–P

Sudbury, Assabet and Concord Rivers Wild and Scenic Study; Massachusetts; Sudbury, Assabet and Concord Rivers Study Committee; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1 § 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, October 6, 1994.

The Committee was established pursuant to Public Law 101–628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in Section 5(a)(110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System.

The meeting will be held at 7:30 p.m., Thursday, October 6, 1994, at the Concord Room, Concord Town House, Concord, MA. Directions: Concord Town House is located in the town center, opposite the small green and rotary at the intersection of Lexington Rd., Monument St., Lowell Rd., and Main St. From the east, take Rte. 2 west to the Cambridge Turnpike turn-off.

The Town House is 1.6 miles ahead on the right. From the south, take Rte. 126 north to Main St. Turn right and then follow rotary to the left. Town House is on the right, before Monument St. and the Colonial Inn.

The agenda is as follows:

1. Welcome and introductions, approval of minutes from 09/08/94 meeting
2. Brief questions and comments from public
3. Subcommittees Updates
   A. Water Resources Subcommittee
   B. Public Involvement Subcommittee
   C. River Conservation Subcommittee
4. Issues of local concern
5. Opportunity for public questions and comments
6. Other business—Next meeting dates and locations
7. Adjournment

Interested persons may make oral/written presentations to the Committee during the business meeting or file written statements. Further information concerning the meeting may be obtained from Cassie Thomas, Planner, National Park Service, 15 State Street, Boston, MA 02109 or call (617) 223–5014.

Dated: September 9, 1994.

John Guthrie,

Acting Regional Director.

[FR Doc. 94–23067 9–16–94; 8:45 am]

BILLING CODE 4310–70–M

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the South Dakota State Archaeological Research Center.

AGENCY: National Park Service

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of an inventory of human remains and associated funerary objects in the possession of the South Dakota State Archaeological Research Center, Rapid City South Dakota.

The detailed inventory and assessment of the human remains and associated funerary objects has been made by the State Archaeological Research Center (SARC) curatorial staff, contracted specialists in physical anthropology and archaeology, and representatives of the Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, Crow Creek Sioux Tribe, and Standing Rock Sioux Tribe.

The remains of an adult and a child were recovered in 1953 from the Cottonwood Site (39HU43), in Hughes County, South Dakota. Excavation data suggests the site was occupied by Dakota Sioux between A.D. 1867–1900. The Cottonwood Site is located adjacent to the Lower Brule Sioux Reservation. Based on the above mentioned information, officials of the SARC have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and the Lower Brule Sioux Tribe.

The remains of two individuals were recovered in 1961 from Sitting Crow Mounds (39BF225), a Woodland and Historic site in Buffalo County, South Dakota. Objects associated with the adult female and child—including rings, fragments of fabric and metal, shoes, buttons, a toy revolver, and the remnants of coffins—help date the two burials to the Historic Period (post 1750). Craniometric measurements are consistent with those of Sioux populations. Sitting Crow Mounds are located adjacent to the Crow Creek (Sioux) Reservation. Based on the above mentioned information, officials of the SARC have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and the Crow Creek Sioux Tribe.

The remains of two individuals were recovered between 1966–1968 at Fort Manuel (39CO5), in Corson County, South Dakota. The site is multicomponent, representing Extended Coalescent, historic trading post, and historic Sioux occupations. The remains of an adult male appear to have been buried in a pit in the cellar following the 1813 abandonment of the fort. The weathered condition of these remains is indicative of a scaffold burial with secondary interment, a practice common among the Sioux. Osteological information indicates the child is associated with the Extended Coalescent component of the site. However, wood fragments associated with these remains may represent remnants of a historic period coffin. Fort Manuel is located adjacent to the Standing Rock Sioux Reservation. Based on the above mentioned information, officials of the SARC have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and the Standing Rock Sioux Tribe.

The remains of one individual were recovered in 1979 from the Three Horse Site (39DW35) in Dewey County, South Dakota. The site is multicomponent, representing Archaic and historic period occupations. The remains of the adult male were recovered from a disturbed area along a cutbank. Evaluation of the cranial morphology by K. Richard McWilliams suggests an Archaic or earlier temporal association for the human remains. Physical anthropologists from the University of Tennessee suggest the human remains are from a Sioux population. The Three Horse Site is located within the exterior boundary of the Cheyenne River (Sioux) Reservation. Based on the above mentioned information, officials of the SARC have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and the Cheyenne River Sioux Tribe.

On May 20, 1994, the above mentioned human remains and associated funerary objects were repatriated to Mr. Sebastian LeBeau on behalf of the Lower Brule Sioux Tribe, Crow Creek Sioux Tribe, Standing Rock Sioux Tribe, and Cheyenne River Sioux Tribe. Questions or concerns related to the repatriation of the human remains and associated funerary objects listed in this notice can be directed to Sebastian (Bronco) LeBeau, Cultural Preservation Officer, Cheyenne River Sioux Tribe, P.O. Box 590, Eagle Butte, South Dakota 57625, (605) 964–4155; Michael Jandreau, Chairman, Lower Brule Sioux Tribe, P.O. Box 187, Lower Brule, South Dakota 57548, (605)473–5561; Duane Big Eagle, Chairman, Crow Creek Sioux Tribe, P.O. Box 658 Fort Thompson, South Dakota 57339, (605) 245–2221; or Charles W. Murphy, Chairman, Standing Rock Sioux Tribe, Ft Yates, North Dakota 58538, (701) 854–7231.

Dated: September 6, 1994

Francis P. McManamon

Departmental Consulting Archeologist

Chief, Archeological Assistance Division

[FR Doc. 94–23068 Filed 9–16–94; 8:45 am]

BILLING CODE 4310–70–F

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167 (Sub-No. 1136X)]

Consolidated Rail Corporation—Abandonment Exemption—Chester County, PA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Consolidated Rail Corporation of Chester Valley Running Track, an approximately 1.7-mile rail line in Chester County, PA, between milepost 17.5±, near Exton, and milepost 19.2±, near Ackworth, subject to trail use, public use, and standard labor protection conditions.

DATES: The exemption will be effective October 19, 1994 unless stayed or a statement of intent to file an offer of financial assistance (OFA) is filed. Statements of intent to file an OFA under 49 CFR 1152.27(c)(2) and requests for a notice of interim trail use/rail banking under 49 CFR 1152.29 must be filed by September 29, 1994, petitions to stay must be filed by October 4, 1994, requests for a public use condition under 49 CFR 1152.28 must be filed by October 11, 1994, and petitions to reopen must be filed by October 14, 1994.

ADDRESSES: An original and 10 copies of all pleadings, referring to Docket No. AB–167 (Sub-No. 1136X), must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. In addition, a copy of all pleadings must be served on Robert S. Natalini, Consolidated Rail Corporation, 2001 Market Street, 16A, Philadelphia, PA 19101.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the decision, write to, call, or pick up in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing-impaired is available through TDD services at: (202) 927–5721.]

Decided: September 8, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons and Morgan.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–23086 Filed 9–16–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–55 (Sub-No. 380X)]

CSX Transportation, Inc.—Abandonment Exemption—in Allegheny County, PA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by CSX Transportation, Inc., of 1.47 miles of rail line extending between milepost 0.85 and milepost 2.32 in Pittsburgh, Allegheny County, PA, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 19, 1994. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by September 29, 1994; petitions to

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

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stay must be filed by October 4, 1994; requests for a public use condition must be filed by October 11, 1994; and petitions to reopen must be filed by October 14, 1994.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 380X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Charles M. Rosenberger, Counsel for CSXT, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: September 7, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons and Morgan.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–23087 Filed 9–16–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32570]

The Denver and Rio Grande Western Railroad Company—Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant approximately 64.94 miles of overhead trackage rights to The Denver and Rio Grande Western Railroad Company (DRGW). The trackage rights extend from former Chicago, Rock Island and Pacific Railroad Company milepost 88.84 in Topeka, KS, to UP milepost 3.3 in Kansas City, KS.[1] The trackage rights became effective on September 5, 1994.[2]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, The Denver and Rio Grande Western Railroad Company, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: September 12, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–23213 Filed 9–16–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–8 (Sub-No. 29X)]

The Denver and Rio Grande Western Railroad Company—Discontinuance of Trackage Rights Exemption—in Dickinson, Morris, Lyon, Osage, Franklin, Miami and Johnson Counties, KS, and Jackson County, MO

The Denver and Rio Grande Western Railroad Company (DRGW) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuance of Trackage Rights* to discontinue its trackage rights over 173.25 miles of rail line owned by the Missouri Pacific Railroad Company (MP) [1] between milepost 278.39 at or near Kansas City, MO and milepost 451.64 at or near Herington, KS, in Dickinson, Morris, Lyon, Osage, Franklin, Miami and Johnson Counties, KS, and Jackson County, MO (The Line).[2]

DRGW's discontinuance of trackage rights will allow MP, owner of the The Line, to consummate abandonment of the portion of The Line pursuant to its filing in Docket No. AB–3 (Sub-No. 111X), *Missouri Pac. R. Co.—Aban.—Osage & Morris Count., KS*, 9 I.C.C.2d 1228 (1993).

MP has also sought to abandon another portion of The Line in *Missouri Pacific Railroad Company—Abandonment—in Miami, Franklin and Osage Counties, KS*, Docket No. AB–3 (Sub-No. 115X), (ICC served Aug. 11, 1994), instituting an investigation under the modified procedure.

DRGW has certified with respect to the trackage rights involved here that:

(1) No local traffic has moved over the line for at least 2 years;

(2) any overhead traffic on the line can be rerouted;

(3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and

(4) the requirements at 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[3]

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 19, 1994, unless stayed pending reconsideration. Petitions to stay must be filed by September 29, 1994. Petitions to reopen must be filed by October 11, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.[4]

A copy of any petition filed with the Commission should be sent to applicant's representative: Gary A. Laakso, General Attorney, Southern Pacific Lines, Southern Pacific Building, One Market Plaza, room 846, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

[1] DRGW plans to add the trackage rights to a future grant of trackage rights between Herington and Topeka, KS, to be obtained from its affiliate, the St. Louis Southwestern Railway Company. The combined new trackage rights will replace trackage rights DRGW is seeking to discontinue over a Missouri Pacific Railroad Company line between Herington and Kansas City, MO, in *The Denver and Rio Grande Western Railroad Company—Discontinuance of Service—In Dickinson, Morris, Lyon, Osage, Franklin, Miami, and Johnson Counties, KS and Jackson County, MO*, Docket No. AB–8 (Sub-No. 29X), filed August 30, 1994.

[2] The parties plan to consummate this transaction to correspond with the discontinuance effective date in Docket No. AB–8 (Sub-No. 29X).

[1] The trackage rights were granted in an agreement between MP and DRGW in 1982.

[2] Under 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicant, in its verified notice, indicated a proposed consummation date of October 18, 1994. Because the verified notice was not filed until August 30, 1994, consummation should not have been proposed to take place prior to October 19, 1994. Applicant's representative has confirmed that the correct consummation date is on or after October 19, 1994.

[3] No environmental or historical documentation is required here under 49 CFR 1105.6(b)(3).

[4] Because this is a discontinuance proceeding only, the routine provisions for trail use/rail banking or public use conditions provided for in abandonment proceedings are not appropriate here.

Decided: September 12, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–23214 Filed 9–16–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32572]

Great Western Railway Company of Iowa—Trackage Rights Exemption—CBEC Railway, Inc.

CBEC Railway, Inc. (CBEC), has agreed to grant local trackage rights to Great Western Railway Company of Iowa, L.L.C. (GWRI), extending from the eastern terminus of the line and yards of the Union Pacific Railroad Company, Inc., in Council Bluffs, IA, from a point at or near milepost 485.5 to a point at or near milepost 407.7, a distance of approximately 5 miles in Pottawattamie County, IA. The parties expected to consummate the transaction on or after September 6, 1994.[1]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Karl Morell, 1101 Pennsylvania Ave., NW., suite 1035, Washington, DC 20004.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: September 9, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–23215 Filed 9–16–94; 8:45 am]

BILLING CODE 7035–01–P

[1] CBEC had filed a notice of exemption under 49 CFR 1150.31 for the acquisition of this segment of rail line. *See CBEC Railway, Inc.—Acquisition and Operation Exemption—Great Western Railway Company of Iowa, Inc.*, Finance Docket No. 32453 (ICC served Mar. 18, 1994). GWRI states that the Trackage Rights Agreement was entered into on April 29, 1994, but it was only recently that CBEC acquired the involved line from GWRI. It states that as a condition of the Purchase Agreement, CBEC agreed to grant GWRI trackage rights over the line once the sale was consummated.

[Finance Docket No. 32420]

The Indiana & Ohio Rail Corp.—Continuance in Control Exemption—The Cincinnati Terminal Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343, et seq., the Indiana & Ohio Rail Corp.'s (IORC) [1] continuance in control of The Cincinnati Terminal Railway Co. (CTER), through ownership of all of CTER's capital stock. CTER is a class III common carrier that operates a 16.25-mile line of railroad and associated branch and connecting tracks known as the Oasis Line, located in Cincinnati, Fairfax, and Evendale, OH.

DATES: This exemption is effective on October 19, 1994. Petitions to stay must be filed by September 29, 1994 and petitions to reopen must be filed by October 11, 1994.

ADDRESSES: Send pleadings referring to Finance Docket No. 32420 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representative: Robert L. Calhoun, Sullivan & Worcester, Suite 1000, 1025 Connecticut Avenue, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Near its northern end, CTER's Oasis Line connects with the Indiana & Ohio Railway Company (IORY), a wholly owned subsidiary of IORC, and, at its northern end, with Conrail. From its northern end, the line runs in a loop south and west through Cincinnati, OH, where it connects with a line of the Norfolk & Western Railway Company (N&W). CTER entered into a track lease agreement with N&W.[2] As a result, CTER connects with another carrier, the Central Railroad Company of Indiana (CIND). The Indiana and Ohio Railroad Company (INOH), also controlled by IORC, has trackage rights over CIND.[3] Control of CTER by IORC will permit the coordination of the operations and services of INOH, IORY, and CTER. The combined INOH-CTER-IORY operation will provide a through connection to Conrail that will eliminate the need to rely on an intermediate switch.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

Decided: September 7, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons and Morgan.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–23085 Filed 9–16–94; 8:45 am]

BILLING CODE 7035–01–P

[1] IORC is a non-carrier that controls, with the Commission's approval, four other railroads.

[2] The Cincinnati Terminal Railway Co.—Lease Exemption—Norfolk & Western Railway Company, Finance Docket No. 32519 (ICC served Aug. 31, 1994).

[3] See The Indiana and Ohio Railroad Company, Inc.—Trackage Rights Exemption—The Central Railroad Company of Indiana, Finance Docket No. 32350 (ICC served Nov. 10, 1993).

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 94–67; Exemption Application No. D–9646, et al.]

Grant of Individual Exemptions; The Bally Manufacturing Corporation, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of

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the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

The Bally Manufacturing Corporation, Bally's Employee Savings Trust for Administrative Employees, et al. (the Plans), Located in Chicago, IL

[Prohibited Transaction Exemption 94–67; Application Nos. D–9646 and D–9647]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) the advance of funds (the Advances) to the master trust which was established to hold the assets of the Plans (the Master Trust) by Bally Manufacturing Corporation (the Employer), a party in interest with respect to the Plans and the Master Trust, and (2) the Master Trust's potential repayment of the Advances upon the receipt by the Master Trust of payments under two guaranteed investment contracts (the GICs) issued by Executive Life Insurance Company (Executive Life); provided the following conditions are satisfied:

(A) No interest or expenses are paid by the Plans in connection with the transaction;

(B) The Advances will be repaid only out of amounts paid to the Master Trust by Executive Life, its successors, or any other responsible third party; and

(C) Repayment of the Advances is waived with respect to the amount by which the Advances exceed GIC proceeds.

Comments

In the Notice of Proposed Exemption, the Department invited all interested persons to submit written comments and requests for a hearing on the exemption. All comments and requests for hearing were due by September 10, 1994. The Department received two written comments and there were no requests for a hearing. Both commentators were in favor of the exemption and urged the Department to allow the Employer to make the Advances so that participants could receive distribution of their Plan benefits.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 27, 1994 at 59 FR 38209.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Profit Sharing Plan for Employees of Lewis-Gale Clinic, Inc. (the Plan), Located in Salem, Virginia

[Prohibited Transaction Exemption 94–68; Exemption Application No. D–9654]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of certain shares of stock (the Shares) from certain individually-directed accounts in the Plan (the Accounts) to Lewis-Gale Clinic, Inc. (the Clinic), a party in interest with respect to the Plan.

This exemption is conditioned on the following requirements: (1) the terms and conditions of the Sale are at least as favorable to the Accounts as those obtainable in an arm's length transaction with an unrelated party; (2) the Sale is a one-time cash transaction; (3) the Accounts are not required to pay any commissions, costs or other expenses in connection with the Sale; (4) the Sales price for the Shares is based upon their fair market value as determined by a qualified, independent appraiser; and (5) within ninety days of the publication in the **Federal Register** of the grant of this exemption, the Clinic files Forms 5330 with the Internal Revenue Service and pays all applicable excise taxes due with respect to past prohibited transactions.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 27, 1994, at 59 FR 38206.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 14th day of September, 1994.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–23120 Filed 9–16–94; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–9178, et al.]

Proposed Exemptions; Banque Paribas (the Bank) and Paribas Asset Management, Inc. (the Manager; collectively the Applicants)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESS: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Banque Paribas (the Bank) and Paribas Asset Management, Inc., (the Manager; collectively, the Applicants), Located, respectively, in Paris, France and New York, New York

[Application Nos. D-9178 and D-9179]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the proposed guarantee by the Bank to an employee benefit plan that retains the Manager as investment manager for such plan (the Plan) of the value of the Plan's principal investment with the Manager, provided that each of the following conditions is satisfied: (1) the fiduciaries of the Plan who are responsible for the selection and retention of the Manager as investment manager for the Plan, and for the selection of the guarantee from the Bank, are independent of the Manager, the Bank, and their affiliates; (2) no separate fee or remuneration is payable by the Plan or any other person to the Manager, the Bank, or any of their affiliates for the guarantee; (3) the Plan is entitled to cancel the investment management agreement with the Manager, and/or the guarantee provided by the Bank, at any time upon reasonable notice; (4) the Agreement between each Plan and the Manager and the Bank will be amended to provide that, for purposes of enforcing the Bank's guarantee, the determination of the value of a Plan's assets under the Manager's investment management at any relevant time shall be made pursuant to objective standards determined jointly by the Manager and the Plan's custodian, which is the bank or other entity holding the assets of the Plan or other Plan fiduciary responsible for causing the Plan to enter into the Agreement; (5) however, if the Manager and the Plan's custodian are unable to agree as to the value of the Plan's account, they will jointly select a qualified appraiser to make this determination; if they are unable to agree on an appraiser, the Manager and the Plan's custodian will each select a qualified appraiser and the value will be determined by mutual agreement of such appraisers or, if they cannot agree, by a third qualified appraiser designated by the two appraisers, and all such appraisers will be independent of the Manager; and (6) the investment management agreement between each Plan and the Manager and the Bank will provide (a) that income from any lending from a Plan's account will be credited to the Plan's account and not to the Manager's account, and (b) that no lending of this type will occur under circumstances where the borrower is a party in interest or disqualified person with respect to the Plan unless the conditions of Prohibited Transaction Exemptions 81-6 (52 FR 18754, May 19, 1987) and 82-63 (47 FR 14084, April 6, 1982, as corrected by 47 FR 16437, April 16, 1982)] are satisfied.

For purposes of this proposed exemption, the term "affiliate" of another person means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person, provided that the

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Manager shall not be deemed an affiliate of another person solely because the Manager has investment management authority or discretion over the assets of the other person. For purposes of the foregoing, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual. Further, for purposes of this proposed exemption, a Plan fiduciary shall be deemed "independent" of a person only if: (1) the fiduciary is not an affiliate, as defined above, of such person; and (2) the fiduciary has no other relationship to or interest in such persons that might affect the exercise of such fiduciary's best judgment as a fiduciary.

Summary of Facts and Representations

1. The Bank is a bank organized under the laws of the Republic of France and is a subsidiary of Compagnie Financiere de Paribas, represented to be one of the world's leading banking and financial groups. The Bank, through its subsidiaries, branches and offices, operates in over 60 countries, including the United States, spanning the whole range of banking activities. The Bank's operations are structured in four principal groups: corporate banking, capital markets, corporate advisory services, and investment management As of December 31, 1990, the Bank's consolidated assets totalled approximately FF 568 billion (US $111 billion), with consumer loans totalling approximately FF 176 billion (US $34 billion) and customer deposits totalling approximately FF 228 billion (US $44 billion).

2. The Manager, a corporation organized under the laws of the State of Delaware and an indirect wholly owned subsidiary of the Bank, is responsible for defining the Bank's overall investment objectives and managing its pooled investment products (including specialized country or regional funds, diversified growth and income funds, and fixed income funds). Worldwide, the Manager and the Bank's institutional management team had total assets under management of almost FF 55 billion (US $11 billion) at the 1990 year end. The Manager is a registered investment adviser under the Investment Advisers Act of 1940 (the Advisers Act) and, according to the Applicants, qualifies as an investment manager under section 3(38) of the Act.[1] The Manager's principal business activity in the United States is the provision of investment management services for various clients, including the trustees or other fiduciaries of plans governed by the Act. The Manager currently serves in such capacity with respect to five U.S.-based clients, including three Plans, involving approximately US $190 million in assets under management (including approximately US $85 million of Plan assets). The investment media in which the Manager will invest a Plan's assets is generally subject to specific investment guidelines and restrictions prescribed by the Plan fiduciaries, but may include fixed income instruments (such as bonds, mortgage-backed securities, Treasury bills, and commercial paper), options on fixed income securities, forward rate agreements, floating rate notes, and currency hedging instruments. According to the applicant fixed income related instruments are intended to be used as a hedge or as an alternative to bonds.

3. The Manager and the Bank have entered into investment management agreements with certain non-Plan clients which provide that the Bank will guarantee the value of the client's initial principal investment, if the client does not cancel the agreement before the first anniversary of its effective date and not over 50 percent of such investment has been withdrawn by that date. Mechanically, the Bank would contribute its own funds to the client's account with the Manager, for distribution to the client, in the event the client elected to cancel the agreement or to withdraw funds from the account at a time when the value of such account was less than the amount of the client's principal investment therein. Such agreements terminate after one year, subject to renewal by written agreement of the parties thereto.

4. The Manager and the Bank would like to offer a similar guarantee to the Manager's Plan clients. The parties to the investment management agreement (the Agreement) would be the Bank, the Manager, and the Plan client. Section 6.1 of the prototype Agreement provides that the Bank unconditionally guarantees the return to the client at the termination of the Agreement of an amount equal to the amount invested by the client (the Qualifying Deposit) under the Agreement (either initially or after the date of any renewal of the Agreement). Qualifying Deposit means any amount invested by the client not more than half of which is withdrawn before the first anniversary of the date of the Agreement (or, in the case of a renewal of the Agreement, not more than half of which is withdrawn before the first anniversary of the date of such renewal). However, pursuant to section 6.2 of the Agreement, the above mentioned guarantee (the Guarantee) does not apply if the client terminates the Agreement before such first anniversary. The Guarantee does apply, however, to any principal withdrawn by the client if (and after): (i) the credit rating assigned to the Bank's unsecured unsubordinated debt securities by either Standard and Poor's Corporation or Moody's Investors Service, Inc. is reduced below AA- or Aa3, respectively; or (ii) the Manager or the Bank notifies the client that the Agreement will terminate prior to its agreed upon term. There is no time period limiting the application of the Guarantee with respect to the circumstances described in (i) and (ii), above.

The applicant states that if a client were to deposit additional amounts under the Agreement after the date of the initial Qualifying Deposit but before the first anniversary of the date of the Agreement (or before the first anniversary of any renewal of the Agreement), such additional deposits would also be guaranteed by the Bank, but such additional deposits would be subject to the same one-year holding period requirement (measured from the date of such additional deposit) for the Guarantee to apply.

Section 6.1 of the Agreement further provides that if, at the termination of the Agreement, the client has not received an amount equal to its Qualifying Deposit, the Bank shall, upon written demand by the client, pay to the client the entire unpaid principal balance of such Qualifying Deposit. This section permits the client to withdraw up to half of the Qualifying Deposit at any time subject to two weeks advance written notice. However, if at the time of such partial withdrawal the net asset value of the portfolio is lower than the Qualifying Deposit, section 6.1 of the Agreement provides that the Guarantee shall be reduced by a proportion equal to the amount of such withdrawal divided by the net asset value of the portfolio at that time. If at the time of the withdrawal the net asset value of the portfolio is higher than the Qualifying Deposit, the Guarantee shall be reduced by a proportion equal to the amount of such withdrawal divided by the Qualifying Deposit.

The applicant has provided three examples illustrating how the Guarantee operates in the case of partial withdrawals when the net asset value of the portfolio has (1) decreased, (2) not changed, and (3) increased. All three examples assume a Qualifying Deposit of $20 million and a withdrawal of $10 million after the one-year period

[1] The Department expresses no opinion herein as to whether or not the Manager qualifies as an investment manager under section 3(38) of the Act.

mentioned above. In the first example, the net asset value of the Qualifying Deposit had fallen to $15 million at the withdrawal date, leaving only $5 million (in net asset value) after the withdrawal. In this example, the Guarantee would be reduced by 67% (i.e., $10 million withdrawn divided by $15 million pre-withdrawal net asset value at time of withdrawal). Therefore, although $5 million would be the total net asset value remaining in the client's account under the Agreement after the $10 million withdrawal, the Guarantee would apply to $6,666,667 of the Qualifying Deposit (i.e., 33% of the $20 million Qualifying Deposit).

In the second example, the net asset value of the Qualifying Deposit remained at $20 million at the withdrawal date, leaving $10 million (in net asset value) after the withdrawal. In this example, the Guarantee would be reduced by 50% (i.e., $10 million withdrawn divided by $20 million pre-withdrawal net asset value at time of withdrawal). Therefore, $10 million would be the total net asset value remaining in the client's account under the Agreement after the $10 million withdrawal, and the Guarantee would apply to $10 million of the Qualifying Deposit (i.e., 50% of the $20 million Qualifying Deposit).

In the third example, the net asset value of the Qualifying Deposit had risen to $25 million at the withdrawal date, leaving $15 million (in net asset value) after the withdrawal. In this example, the Guarantee would be reduced by 50% (i.e., $10 million withdrawn divided by the $20 million Qualifying Deposit). Thus, although $15 million would be the total net asset value remaining in the client's account under the Agreement after the $10 million withdrawal, the Guarantee would apply to $10 million of the Qualifying Deposit.

Income on the account would not be currently distributed to the client. Rather, income would be held in the account until termination of the Agreement and may become part of a new Qualifying Deposit upon renewal of the Agreement. As discussed above, it is anticipated most Agreements would have a renewable term of one year.

5. The applicant states that the investment management fee negotiated by the Manager with each of its clients does not change by reason of the Bank's Guarantee. The applicant represents that the Manager offers the client two management fees: a combined arrangement or a base fee only. The combined arrangement includes (a) a fixed fee of 0.30% per annum of the net asset value of the client's portfolio, payable quarterly in arrears based on the net asset value of the client's portfolio as of the end of the quarter (adjusted for additional withdrawals) and (b) a performance schedule fee equal to 25% of an amount equal to the aggregate net realized and unrealized appreciation in the value of the assets in the client's portfolio (including net investment income) in excess of a benchmark (the Benchmark) equal to the U.S. 3-month Treasury bill rate plus 100 basis points.[2]

The performance schedule fee is assessed and billed on the one-year anniversary of the date of the Agreement and at the end of each calendar quarter thereafter during the term of the Agreement, which may be renewed by written agreement of the parties. Each assessment of the performance fee is based on the performance of the client's portfolio over the 12 months ending on the last day of the period for which the fee is being paid. If the Agreement terminates at a time other than at the end of a calendar quarter, the performance fee for such quarter is payable upon termination, based on the performance of the client's portfolio over the 12 months ending on the termination date.

The Benchmark is calculated using the average of the U.S. 3-month Treasury bill rate on the first and last day of each quarter within the 12-month period in question. In calculating the performance fee, the basis for determining the amount of appreciation is the starting value of the assets in the client's portfolio at the beginning of the 12-month period. Every time a performance fee is paid out, the basis for assessing the performance is adjusted to reflect the net asset value after such fee payment. According to section 4.4 of the Agreement, any underperformance in a given quarter must be made up before any new performance fees are payable.

[2] The applicant represents that the performance schedule fee component of the combined arrangement will be substantially the same in all material respects as the performance fee arrangement described in advisory opinion letter 86-21A issued by the Department on August 29, 1986. That letter concerns the payment of incentive compensation to Batterymarch Financial Management by employee benefit plans.

The Department expressed its view that, based on the representations contained in the Batterymarch submissions, the payment of an incentive fee to Batterymarch pursuant to the arrangement described therein would not, in itself, constitute violations of sections 406(b)(1) or 406(b)(2) of the Act. The Department noted, however, that, because violations of sections 406(b)(1) and 406(b)(2) could occur in the course of the provision of services by Batterymarch, the Department was not prepared to rule that the described arrangement, in operation, would not violate those sections. In any event, the relief provided by this exemption does not extend to the receipt of fees by the Manager pursuant to the above performance schedule.

Section 4.4 of the Agreements currently in effect with non-Plan clients states that the valuation of the performance of the account will be provided by the Manager; however, the applicant represents that this section will be amended to provide that the valuation of the performance of the account will be jointly determined by the Manager and the Plan's custodian, which is the bank or other entity holding the assets of the Plan or other Plan fiduciary responsible for causing the Plan to enter into the Agreement. The applicant further represents that, if the Manager and the Plan's custodian are unable to agree as to the value of the Plan's account, they will jointly select a qualified appraiser to make this determination. If they are unable to agree on an appraiser, the Manager and the Plan's custodian will each select a qualified appraiser and the value will be determined by mutual agreement of such appraisers or, if they cannot agree, by a third qualified appraiser designated by the two appraisers. All such appraisers will be independent of the Manager.

Under the alternative arrangement, the client pays only a fixed fee equal to 0.40% per annum of the net asset value of the portfolio, payable quarterly in arrears based on the net asset value of the portfolio as of the end of the quarter, adjusted for additional withdrawals.

The applicant represents that the fees are disclosed in information materials furnished to the client, including the presentation flip book and the distributors' product overview letter. The applicant represents that the Manager's fees under the Agreement are competitive with the fees charged by competitors offering no guarantee.

6. As stated, the Manager and the Bank would like to offer the same Guarantee to the Manager's Plan clients which are not investing in pooled funds. The Plan fiduciaries would not be required to select the Guarantee, or if selected such fiduciaries would still retain the right to cancel the investment management agreement or the Guarantee feature at any time upon reasonable prior notice. A Plan will be permitted to cancel the investment management agreement with the Manager on 30 days' prior notice. In addition, a Plan will be permitted to cancel the Guarantee immediately upon notice of cancellation being given; that is, no period of advance notice will be required for cancellation of the Guarantee. No separate fee or remuneration would be paid by the Plan or any other person to the Manager, the Bank, or any of their affiliates for the Guarantee. The same negotiated

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investment management fees would be charged by the Manager whether or not the Plan fiduciaries accept the Bank's Guarantee.

For purposes of determining when the Guarantee would be enforced, and in what amount, records will be kept by both the Manager and the Plan's custodian. The applicant represents that the Plan's custodian has no relationship to the Bank, the Manager, and its affiliates. The records of these two parties will be reconciled monthly. The applicant represents that in determining the value of the Plan's account, the value of a security will initially be determined by the Plan's custodian. The value will then be checked by the Manager using the following sources depending on the sector and the markets in which the security is trading: the closing price shown on the Reuters and/or Bloomberg screens; or if the security is not so displayed, mid-market prices obtained from at least two brokers with these prices then being averaged. If the value as so determined by the Manager is not significantly different from the value determined by the Plan's custodian, the latter value will be used. If there is a significant difference, the Manager will consult with the Plan's custodian in order to reach a mutually agreeable valuation. Thus, the final value of the Plan's account is determined jointly by the Manager and the Plan's custodian. However, it is represented that, if the Manager and the Plan's custodian are unable to agree as to the value of the Plan's account, they will jointly select a qualified appraiser to make this determination. If they are unable to agree on an appraiser, the Manager and the Plan's custodian will each select a qualified appraiser and the value will be determined by mutual agreement of such appraisers or, if they cannot agree, by a third qualified appraiser designated by the two appraisers. All such appraisers will be independent of the Manager.

7. Section 7 of the Agreement currently in effect with non-Plan clients permits the Manager to lend the securities held in the portfolio and to receive income from this process for its own account. However, this section also provides that any such lending by the Manager shall be entirely at the Manager's own risk and that the Manager shall indemnify the client for any loss sustained by the portfolio as a result of such activities. The applicant represents that this section of the Agreement will be amended to provide (a) that income from any such lending from a Plan's account will be credited to the Plan's account and not to the Manager's account, and (b) that no lending of this type will occur under circumstances where the borrower is a party in interest or disqualified person with respect to the Plan unless the conditions of Prohibited Transaction Exemptions 81–6 (52 FR 18754, May 19, 1987) and 82–63 (47 FR 14084, April 6, 1982, as corrected by 47 FR 16437, April 16, 1982) are satisfied.

8. The Applicants assert that by entering into an arrangement with the Manager and the Bank containing the proposed Guarantee, a Plan would receive protection against the risk of any loss in the value of its investment, provided by the proposed Guarantee, while also enjoying the benefit of potential income and gains realized by the Manager's individually tailored, active management of the Plan assets covered by the investment management agreement. They represent that these advantages are substantially similar to the benefits that may be achieved by so-called "managed guaranteed investment contracts" and similar investment products currently offered by certain insurance companies and banks. The Applicants state that since the terms and conditions of the investment management services provided by the Manager to its clients are subject to regulation by the Securities and Exchange Commission under the Advisers Act, and since the Bank must account for the Guarantee on its books and records in the same manner as any other Guarantee issued in the course of its banking business subject to the regulation of the French banking authorities (as well as the regulation of banking authorities in other countries, including the United States, in which the Bank maintains banking operations through its subsidiaries, branches, and offices), substantial regulatory oversight exists to ensure protection of the rights of Plans and their participants and beneficiaries with respect to the Guarantee.

By letter dated March 23, 1992, Jean-Pierre Mattout, Head of the Bank's Legal Department, stated his opinion that the Guarantee constitutes a valid and legally binding obligation of the Bank. The applicant points out that as the Bank has a branch doing business in the United States, the Bank is subject to the jurisdiction of the courts of the United States and a Plan could bring an action against the Bank in the courts of the United States to enforce the Guarantee. By letter dated September 15, 1993, the attorney representing the applicant with respect to the exemption application, explains that the Guarantee, a contract right created pursuant to the Agreement, would be a client Plan asset. He states that the Bank is subject to the jurisdiction of the courts of the United States and that a plan could bring an action against the Bank in the district courts of the United States to enforce the Guarantee. He expresses the opinion that for these reasons, the indicia of ownership of this contract right (the Guarantee) would be maintained within the jurisdiction of the district courts of the United States, consistent with the requirements of 29 CFR 2550.404b–1.[3]

9. Although the Applicants anticipate that the proposed Guarantee would be provided principally to plans sponsored by major corporations, generally with assets of at least US $200 million for each such plan, the Bank and the Manager wish to be able to offer the proposed Guarantee to any plan investing its assets with the Manager (but not investing in pooled funds) pursuant to an investment management agreement providing for such Guarantee, but only if the plan fiduciaries responsible for making the decisions (1) to select and retain the Manager as investment Manager, and (2) to select the Guarantee, are independent of the Bank, the Manager, and their affiliates. The Applicants represent that they do not presently know the identity of any plan that may select the Manager as investment manager and thereby may receive the Guarantee from the Bank under the applicable investment management agreement. The Applicants will bear all costs in connection with the filing of this exemption application.

10. In summary, the Applicants represent that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) the proposed transaction will enable a Plan to receive protection against the risk of any loss in the value of its investment in the Portfolio while also enjoying the benefit of potential income and gains realized by the Manager's individually tailored, active management of the Plan assets covered by the Agreement; (b) fiduciaries of the Plan who are independent of the Manager, the Bank, and their affiliates are responsible for the selection and retention of the Manager as investment manager for the Plan, and for the decision to acquire the Guarantee from the Bank; (c) no separate fee or remuneration is payable by the Plan or any other person to the Manager, the Bank, or any of their affiliates for the Guarantee; (d) the Plan is entitled to cancel the investment management agreement with the Manager, and/or the Guarantee provided by the Bank, at any time upon reasonable notice; and (e) the determination of the value of a Plan's assets under the Manager's investment management at any relevant time shall be made pursuant to objective standards jointly by the Manager and the Plan's custodian; however, if the Manager and the Plan's custodian are unable to agree as to the value of the Plan's account, they will jointly select a qualified appraiser to make this determination; if they are unable to agree on an appraiser, the Manager and the Plan's custodian will each select a qualified appraiser and the value will be determined by mutual agreement of such appraisers or, if they cannot agree, by a third qualified appraiser designated by the two appraisers, and all such appraisers will be independent of the Manager.

NOTICE TO INTERESTED PERSONS: Since the identities of Plans that might select the Manager as investment manager, and thereby receive the proposed Guarantee pursuant to the Agreement, are presently unknown, the only practicable means of notifying potential interested persons is the publication of this notice of proposed exemption in the **Federal Register** and presentation of the notice to plan fiduciaries who enter into the investment management agreement. However, the Manager represents that notice of the proposed exemption will be furnished by first class mail to all known prospective plan clients.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

L.H. Chapman Investment Company, Pension Plan (the Plan), Located in Columbus, Ohio

[Exemption Application No. D–9676]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the purchase (the Purchase) by Margaret Chapman, Loyal Chapman, and Lou Chapman Koester's individually-directed accounts (the Accounts) in the Plan from Indianapolis Life Insurance Company and Columbus Mutual Life Insurance Company of certain undivided interests (the Interests) in certain promissory notes (the Notes) of which the obligor is L.H. Chapman Investment Company, a party in interest with respect to the Plan.

This proposed exemption is conditioned on the following requirements: (1) the terms of the Purchase are at least as favorable to the Accounts as those obtainable in an arm's-length transaction with an unrelated party; (2) the Purchase price is equal to the Accounts' pro rata share of the aggregate outstanding principal balances of the Notes on the day of the Purchase; (3) the Purchase occurs only if such outstanding principal balances are not greater than the fair market values of the Interests on the day of the Purchase as determined by a qualified, independent appraiser; (4) the Purchase does not involve more than twenty-five percent of the assets in each of the Accounts; and (5) the Accounts are not required to pay any fees, commissions or expenses in connection with the Purchase.

Summary of Facts and Representations

1. The Plan is a money purchase pension plan with three participants and total assets of $1,647,147 as of August 31, 1993 The Plan permits each participant to direct the investments of his or her account. The three participants had the following account balances as of August 31, 1993:

Account	Balance
Margaret Chapman (Mrs. Chapman)	$1,024,482
Loyal Chapman (Mr. Chapman)	502,225
Lou Chapman Koester (Mrs. Koester)	120,440
Total	1,647,147

The trustee of the Plan is Loyal Chapman, who is also the president of L.H. Chapman Investment Company (the Employer) and its sole shareholder. The sponsor of the Plan is the Employer which is an Ohio corporation engaged in the jewelry business.

2. The Interests are undivided interests in two promissory notes (the Notes) which consist of a $400,000 promissory note made payable to Indianapolis Life Insurance Company (the Indianapolis Note) and an $850,000 promissory note made payable to Columbus Mutual Life Insurance Company (the Columbus Note). The Notes ultimately resulted from the Employer's acquisition in 1974 of 5.7 acres of real property in Washington Court House, Ohio and the subsequent construction of a shopping center on the property (the Shopping Center).

3. The Notes, dated January 10, 1974, are twenty-five year promissory notes with interest accruing at a rate of 8-7/8 percent per annum. The Notes are secured by a first deed of trust on the Shopping Center which was valued at $2,200,000 as of March 1, 1994. The terms of the Notes provide that the Employer has the right to prepay the entire indebtedness in full with a prepayment premium required only if the prepayment of the Notes is made in years eleven through twenty of the twenty-five year term. The Employer represents that, as of February 1, 1994, the Notes were twenty-one years old and, therefore, can be purchased by the Employer, without paying a premium, for their outstanding principal balances. As of March 29, 1994, the outstanding principal balance of the Indianapolis Note was $152,238 and the outstanding principal balance of the Columbus Note was $323,515. Prior to the Purchase, the Employer proposes to make a $63,966 payment towards the Indianapolis Note, thereby reducing its outstanding principal balance to $88,272 and the total outstanding principal balances of the Notes to $411,787.

Mrs. and Mr. Chapman and Mrs. Koester (the Applicants) propose to have the Employer, acting as agent for the Accounts, purchase the Interests for the Accounts for their outstanding principal balances on the date of the Purchase provided that the outstanding principal balances of the Notes are not greater than the aggregate fair market values of the Interests. The Accounts will purchase the Interests based upon the proportion of their respective accounts relative to the total assets in the Plan. Accordingly, the Accounts will purchase the Notes in the following proportions:

Account	Indianapolis note (percent)	Columbia note (percent)
Mrs. Chapman	62.20	62.20
Mr. Chapman	30.49	30.49
Mrs. Koester	7.31	7.31
Total	100	100

Accordingly, the Applicants request an administrative exemption from the Department to permit the Purchase under the terms and conditions described herein.

4. The Employer obtained an appraisal of the Interests dated March 29, 1994 from John R. Garvin, MAI-GKE

[3] 29 CFR 2550.404b–1 provides, in pertinent part that no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States, unless specified conditions are satisfied. The Department is expressing no opinion herein as to whether or not the Agreement complies with the requirements of this section of the regulations.

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of Continental Appraisal Company of Columbus, Ohio. Mr. Garvin represents that both he and Continental Appraisal are independent of and unrelated to the Applicants and the Employer, although he has provided some consulting services for Mr. Chapman. Mr. Garvin states that, on average in the past five years, he has derived less than one percent of his annual income from the Employer and Mr. Chapman.

Mr. Garvin placed the fair market value of the Notes at $419,948. Such amount takes into consideration the $63,966 payment that will be made on the Indianapolis Note by the Employer. In assigning fair market values to the Interests based upon the value of the Notes, Mr. Garvin discounted the two minority interests (Mr. Chapman and Mrs. Koester's interests) by five percent to reflect their lack of liquidity. Mr. Garvin represents that because the majority interest (Mrs. Chapman's interest) could liquidate the investment at any time without the consent of the minority interests, there is no basis for any such discount with respect to the majority interest. The fair market values of the Interests, as of March 29, 1994, are as follows:

	FMV of interest	FMV after discount	Percent	Amount of outstanding balance
Mrs. Chapman	$261,197	$261,197	62.20%	$256,132
Mr. Chapman	128,045	121,643	30.49	125,553
Mrs. Koester	30,706	29,171	7.31	30,102
Totals	419,948	412,011	100.00	411,787

Accordingly, because the outstanding balance of the Notes are less than the fair market values of the Interests, the Accounts will purchase the Interests for their pro rata share of the outstanding balance.

5. The Applicants represent that the Purchase is in the best interests of the participants because it offers the Accounts the opportunity to purchase the Interests at less than their fair market values. Also, the Purchase will allow the Accounts to enhance their current rate of return without additional risk. The Applicants represent that the Purchase will not involve more than twenty-five percent of the assets in each of the Accounts. The Accounts are not required to pay any fees, commissions or expenses in connection with the Purchase.

6. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) the terms of the Purchase will be at least as favorable to the Accounts as those obtainable in an arm's-length transaction with an unrelated party; (b) the Purchase price will be equal to the outstanding principal balances of the Notes on the day of the Purchase; (c) the Purchase will occur only if such outstanding principal balances are not greater than the aggregate fair market values of the Interests on the day of the Purchase as determined by a qualified, independent appraiser; (d) the Purchase will not involve more than twenty-five percent of the assets in each of the Accounts; and (e) the Accounts will not be required to pay any fees, commissions or expenses in connection with the Purchase.

Notice to Interested Persons

Because the only Plan assets involved in the proposed transaction are those in Mrs. Chapman, Mr. Chapman & Mrs. Koester's Accounts and they are the only participants affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due thirty days after the date of publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219-8971. (This is not a toll-free number.)

AT&T Corporation (AT&T), and AT&T Investment Corporation (ATTIMCO), Located in New York, New York

[Application Nos. D–9716 and D–9717]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 F.R. 32836, 32847, August 10, 1990).

Part I—Exemption for Payment of Certain Fees to Asset Managers

The restrictions of section 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of Performance Fees by an AT&T Investment Fund to an Asset Manager in exchange for real estate management or advisory services rendered pursuant to an Agreement, provided that the conditions set forth in Parts II and III are satisfied.

Part II—General Conditions

(a) The Asset Manager is not an affiliate of AT&T and the terms of any Performance Fee are approved in writing by AT&T.

(b) The terms of any Performance Fee shall be at least as favorable to the AT&T Investment Fund as those obtainable in arm's-length transactions between unrelated parties.

(c) No AT&T Trust shall allocate, in the aggregate, more than twenty percent of its total assets to Arrangements which are the subject of this exemption, determined at the time any such Arrangement is established and at the time of any subsequent allocation of additional assets (including the reinvestment of assets) to such an Arrangement. The foregoing limitation shall not apply to an AT&T Plan Assets Entity. However, that percentage of the Assets of an AT&T Plan Assets Entity which is deemed to be "plan assets" of an AT&T Trust invested therein shall be treated as assets of such AT&T Trust for the purpose of applying the foregoing limitation to the AT&T Trust.

(d) AT&T shall receive the following written information with respect to assets subject to this exemption (Assets):

(1) annual audited financial statements prepared by independent certified public accountants approved by AT&T;

(2) quarterly and annual reports prepared by the Asset Manager relating to the overall financial position of the Assets (Each such report shall include a statement regarding the amount of fees paid to the Asset Manager during the period covered by such report); and

(3) annual reports indicating the fair market value of the Assets determined on the basis of the most recently available Independent Valuations.

(e) The total fees paid to an Asset Manager shall constitute no more than reasonable compensation.

(f) The Performance Fee shall be payable after Net Proceeds with respect to the Assets exceed the Threshold Amount. The Threshold Amount and the amount of the Performance Fee, expressed as a percentage (or percentages) of the Net Proceeds in excess of the Threshold Amount (or Threshold Amounts), shall be established by the Agreement. The Threshold Amount for any Performance Fee shall include at least a minimum rate of return to the AT&T Investment Fund, as described in Part III, Section (q).

(g) The provisions of this paragraph (g) shall apply only where an Asset Manager has discretion to sell Assets without prior approval of AT&T. For any sale of an Asset which gives rise to the payment of a Performance Fee to an Asset Manager prior to the Termination Date, the sales price of the Asset shall be at least equal to a Target Amount in order for the Asset Manager to sell the Asset and receive its Performance Fee without further approval. If the proposed sales price of the Asset is less than the applicable Target Amount, the proposed sale shall be disclosed to and subject to the approval of AT&T, in which event the Asset Manager shall be entitled to sell the Asset and receive its Performance Fee. If the proposed sales price is less than the applicable Target Amount and AT&T's approval is not obtained, the Asset Manager shall retain the authority to sell the Asset, provided that the Performance Fee that would have been payable to the Asset Manager by reason of the sale of the Asset shall be paid only at the termination of the Arrangement.

(h) In the event of termination of the Arrangement upon its Termination Date, the Asset Manager shall be entitled to receive a Performance Fee payable on the Termination Date. The amount of the Performance Fee upon termination shall be determined by assuming a sale for cash of the remaining Assets at their fair market value (determined on the basis of Independent Valuations) and no reinvestment of such cash in Assets subject to the Arrangement.

(i) In the event of the removal or resignation of an Asset Manager prior to the Termination Date, the Asset Manager shall be entitled to receive a Performance Fee payable on the Termination Date pursuant to this paragraph (i). The Performance Fee shall be calculated on a preliminary basis at the time of such removal or resignation by assuming a sale for cash of the remaining Assets at their fair market value (determined on the basis of Independent Valuations) and no reinvestment of such cash in Assets subject to the Arrangements. As of the Termination Date, the amount so determined on a preliminary basis shall be multiplied by a fraction, the numerator of which is the sum of (1) the actual sales prices received by the AT&T Investment Fund on disposition of all Assets sold after the date of the Asset Manager's removal or resignation and prior to the Termination Date, and (2) in the case of Assets which have not been sold prior to the Termination Date, the value of the Assets as of the Termination Date (determined on the basis of Independent Valuations), and the denominator of which is the aggregate value of the Assets which was used in connection with the preliminary determination of the Performance Fee at the time of removal or resignation, provided that this fraction shall never exceed 1.0. The resulting amount shall be the Performance Fee payable to the Asset Manager upon the Termination Date.

(j) AT&T shall maintain or cause to be maintained with respect to the Assets, for a period of six years, the records necessary to enable the persons described in paragraph (k) of this Part II to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of AT&T, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest, other than AT&T, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or are not available for examination as required by Part III, Section (k) below.

(k) Notwithstanding any provisions of Section 504(a)(2) and 504(b) of the Act, the records referred to in Section (j) of this Part II shall be unconditionally available at their customary location for examination during normal business hours by:

(1) any duly authorized employee or representative of the Department or the Internal Revenue Service;

(2) any contributing employer to any employee benefit plan the assets of which are held in the AT&T Investment Fund which has entered into the Arrangement or any duly authorized employee or representative of such employer;

(3) any participant or beneficiary of any employee benefit plan the assets of which are held in the AT&T Investment Fund or any duly authorized representative of such participant or beneficiary; and

(4) nothing in this paragraph (k) shall authorize any of the persons described in subsections (2) and (3) to examine any trade secrets of AT&T or information which is privileged or confidential.

Part III—Definitions

(a) An "affiliate" of a person means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "Agreement" means the investment management, trust or other agreement entered into between an Asset Manager and AT&T for the provision of real estate management or advisory services.

(c) The term "Arrangement" means a fee arrangement entered into between AT&T and an Asset Manager pursuant to an Agreement providing for the payment of Performance Fees to the Asset Manager by an AT&T Investment Fund in exchange for real estate management or advisory services.

(d) The term "Asset Manager" means any person or entity providing real estate management or advisory services to an AT&T Investment Fund.

(e) The term "Assets" means assets of an AT&T Investment Fund which are the subject of an Arrangement with an Asset Manager.

(f) The term "AT&T" means AT&T Corporation, AT&T Investment Management Corporation and/or any Subsidiary.

(g) The term "AT&T Investment Fund" means an AT&T Trust or an AT&T Plan Assets Entity.

(h) The term "AT&T Plan Assets Entity" means any group trust, partnership or other entity (including without limitation the Telephone Real Estate Equity Trust), the assets of which are deemed to be "plan assets" by reason of the application of 29 CFR 2510.3–101, but only if (1) fifty percent or more of the interests in such entity are held by one or more AT&T Trusts, and (2) AT&T is the named fiduciary or manager of the assets of such entity.

(i) The term "AT&T Trust" means the AT&T Master Pension Trust or any other trust (other than an AT&T Plan Assets

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Entity), one hundred percent of the assets of which are assets of employee benefit plans maintained by AT&T.

(j) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(k) The term "Independent Valuations" means valuations based on independent and objective third party sources acceptable to AT&T (including without limitation NASDAQ, newspapers, or other general publications, or brokers which are independent of the Asset Manager and its affiliates), or, if such sources are not available with respect to a particular asset or at the option of AT&T, valuations conducted by an appraiser independent of the Asset Manager and its affiliates which has been approved by AT&T; provided, however, that, solely for purposes of the reports described in Part II, Section (d)(3) above, no such appraisal will be required with respect to any Asset if AT&T determines, in its sole discretion, that such an appraisal is unnecessary.

(l) The term "Net Proceeds" means, with respect to an Arrangement, the aggregate amount of cash and other assets (valued at fair market value as determined on the basis of Independent Valuations) which cease to be Assets which are subject to such Arrangement, in accordance with the terms of the Agreement establishing such Arrangement.

(m) The term "Performance Fee" means a fee which equals a pre-specified percentage (or several pre-specified percentages) of all Net Proceeds in excess of the Threshold Amount (or several Threshold Amounts), subject to such limitations, if any, as AT&T may approve or impose.

(n) The term "Subsidiary" means a corporation, partnership, or other entity of which (or in which) fifty percent or more of

(1) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of such corporation,

(2) the capital interest or profits interest of such partnership, or

(3) the beneficial interest of such other entity,

is owned directly or indirectly by AT&T Corporation or AT&T Investment Management Corporation.

(o) The term "Target Amount" means a value assigned to each Asset either (1) at the time the Asset becomes subject to the Arrangement, by mutual agreement between the Asset Manager and AT&T, or (2) pursuant to an objective formula approved by the Asset Manager and AT&T at the time the Arrangement is established. However, in no event will the value be less than the value of the Asset at the time the Asset becomes subject to the Arrangement.

(p) The term "Termination Date" means the date, established in the Agreement, on which the Arrangement will terminate by reason of the passage of time, as the same may be amended from time to time with the approval of AT&T.

(q) The term "Threshold Amount" means with respect to any Arrangement an amount which equals one hundred percent of the AT&T Investment Fund's capital invested in the Assets plus a pre-specified annual compounded cumulative rate or rates of return, each of which is at least a minimum rate of return determined as follows:

(1) A non-fixed rate which is a least equal to the rate of change in the consumer price index (CPI) during the period from the time the Assets become subject to the Arrangement until Net Proceeds equal or exceed the applicable Threshold Amount; or

(2) a fixed rate which is at least equal to the average rate of change in the CPI over some period of time specified in the Agreement, which shall not exceed ten years.

EFFECTIVE DATE: This exemption, if granted, will be effective as of the date this notice of proposed exemption is published in the **Federal Register**.

Summary of Facts and Representations

1. AT&T is a New York corporation which provides a wide variety of national and international telecommunications services. ATTIMCO is a wholly-owned subsidiary of AT&T which performs investment management functions. ATTIMCO is a registered investment adviser under the Investment Advisers Act of 1940, as amended. AT&T is the sponsor of the AT&T Master Pension Trust (AT&T MPT), a qualified trust holding assets of certain employee benefit plans maintained by AT&T. The bulk of the real estate assets of the AT&T MPT is held through the Telephone Real Estate Equity Trust (TREET), a group trust established in connection with AT&T's divestiture in 1984 of the regional telephone holding companies, including BellSouth Corporation (BellSouth). The beneficial interests in TREET currently are held by the AT&T MPT and the BellSouth Master Pension Trust, a qualified trust holding the assets of employee benefit plans maintained by BellSouth. As of January 1, 1994, the Assets of the AT&T MPT (including its interest in TREET) exceeded $38 billion.

2. AT&T is the named fiduciary of both the AT&T MPT and TREET with the power to manage and control the assets of such trusts and to appoint investment managers of such assets. In order to facilitate investment of these and other such funds in potentially beneficial transactions and to encourage asset managers to maximize the value of assets under management, AT&T seeks the flexibility to enter into arrangements described below (the Arrangements) involving the payment of performance fees to independent asset managers, pursuant to formal agreements with current and future asset managers (the Agreements). AT&T is requesting an exemption to permit its payment of performance fees to asset managers for services rendered to the funds pursuant to Arrangements established by the Agreements, subject to the conditions in the proposed exemption, as described herein.

3. The proposed exemption will be available for Arrangements involving any AT&T Investment Fund (collectively, the Funds), a term which is defined as (1) the AT&T MPT or any other trust of which one hundred percent of the assets are assets of employee benefit plans maintained by AT&T, and (2) any group trust, partnership or other entity (including without limitation the Telephone Real Estate Equity Trust), the assets of which are deemed to be "plan assets" by reason of the application of 29 C.F.R. 2510.3–101, but only if (1) fifty percent or more of the interests in such entity are held by one or more AT&T Trusts, and (2) AT&T is the named fiduciary or manager of the assets of such entity. Under the Arrangements proposed, an asset manager would provide, or continue to provide, real estate management or advisory services to one or more Funds. Depending on the terms of the particular Agreement, an asset manager may have complete discretion with respect to assets of the Fund allocated to its account, including discretion to identify appropriate investments, make investment decisions, and manage and dispose of investments, or may be limited to making investment recommendations subject to the ultimate approval of AT&T. Alternatively, the asset manager may be given limited discretion with respect to some, but not all, aspects of the management of the assets allocated to its account. For example, the asset manager may have discretion with respect to all aspects of managing such assets except for specific major decisions such as acquisition and disposition.

4. The applicants represent that under the Agreements, assets of the Funds will be managed with the investment objective of obtaining current income and/or capital appreciation, primarily through investment directly or indirectly, in real estate and interests in real estate, including without limitation fee simple interests, interests in partnerships and joint ventures having an interest in real property, mortgages, options to purchase real estate, leaseholds, leasebacks, and investments in real estate funds, real estate investment trusts or other entities with assets which are invested, directly or indirectly, primarily in real estate. Assets potentially to be subject to the Arrangements include the following: (a) investments selected or recommended by an asset manager after an Agreement is executed, in accordance with investment guidelines established by the Agreement; (b) pre-identified investments which are particular properties which have been identified by the asset manager for investment (or recommended for investment) prior to the execution of the Agreement; (c) pre-existing assets which are already held by a Fund prior to the execution of the Agreement; and (d) combinations of the foregoing.

5. As proposed by the applicant, the performance fee payable to an asset manager under an Agreement (the Performance Fee) is a fee payable after net proceeds (Net Proceeds) from the assets under management pursuant to the Agreement exceed a certain amount (the Threshold Amount).[4] Net Proceeds, with respect to an Arrangement, are the aggregate amount of cash and other assets (valued at fair market value on the basis of independent valuations[5]) which cease to be assets subject to the Arrangement. Each Agreement establishing an Arrangement will specifically identify the assets to be subject to the Arrangement, and the basis upon which income and earnings on such assets will cease, or continue, to be subject to the Arrangement. For example, the applicant represents that an Agreement might provide that the assets initially allocated to the Arrangement plus all earnings and proceeds thereon will be reinvested and remain subject to the Arrangement until the Termination Date, whereupon all such assets will cease to be subject to the Arrangement. In such case, there will be no Net Proceeds during the term of the Arrangement, and therefore no Performance Fee would be payable until the Termination Date. Alternatively, the applicant represents that an Agreement might provide that all net income and other proceeds generated by the assets initially allocated to the Arrangement will cease to be subject to the Arrangement and will thereby constitute Net Proceeds. In such case, Net Proceeds will be generated as and when the initial assets generate net income or other proceeds, and a Performance Fee would be payable once the amount of these Net Proceeds exceed the Threshold Amount. The Threshold Amount is defined as an amount equal to one hundred percent of the Fund's capital investment plus a pre-specified annual compounded cumulative rate or rates of return each of which is at least a minimum rate of return as determined by a formula based on the consumer price index, as required in Part III, Sections (q) (1) and (2) of the proposed exemption. The proposed exemption provides that the Performance Fee is payable (a) after Net Proceeds exceed the Threshold Amount, and/or (b) on the Agreement's termination date (the Termination Date, defined as the date on which the Arrangement will terminate by reason of the passage of time, as the same may be amended from time to time with the approval of AT&T), either upon termination of the Arrangement or in the event of the prior removal or resignation of an asset manager. The Performance Fee will be equal to a pre-specified percentage, or several pre-specified percentages, of all Net Proceeds in excess of the Threshold Amount, or Threshold Amounts, subject to such limitations as AT&T may impose. In this regard, AT&T represents that there is a possibility that several Threshold Amounts may be established with different percentages being utilized to determine the Performance Fee, depending upon which Threshold Amount has been exceeded. AT&T states that this structure will allow AT&T to negotiate an arrangement on behalf of a Fund pursuant to which the amount of the Performance Fee will increase as the level of investment performance increases. AT&T states that, as an example, AT&T could negotiate a Performance Fee whereby an asset manager would receive ten percent of all Net Proceeds in excess of an initial Threshold Amount (e.g., all invested capital plus an eight percent annual return), and twenty percent of all Net Proceeds once a second Threshold Amount (e.g., all invested capital plus a twelve percent annual return) has been achieved. Both the annual rate(s) of return used in determining the Threshold Amount(s) and the percentage(s) used to determine the amount of the Performance Fee will be negotiated between AT&T and the asset manager prior to the application of any Arrangement to assets under management of the asset manager.

With respect to the determination of the Threshold Amount, each of the pre-specified rates of return will be at least equal to a minimum rate of return as specified in Part III, Section (q) of the proposed exemption. In determining the Threshold Amount, different assets or different groups of assets may be subject to different annual rates of return, with the rate of return applicable to any particular asset being established by the Agreement.[6] Net Proceeds in excess of the Funds invested capital plus the minimum return must actually be achieved (or deemed achieved upon the Termination Date or the removal of the asset manager) in order for the Threshold Amount to be reached. The Performance Fee payable to an asset manager may be reduced by all or a portion of any fees previously paid to the asset manager with respect to the assets under any prior fee arrangement if and to the extent such a reduction is called for by the Agreement and shall be subject to such other limitations as AT&T may impose.

6. As a specific provision of any Agreement which gives an asset manager complete discretion over the acquisition and disposition of assets, AT&T will require that for any sale of an asset which causes the payment of a Performance Fee and which occurs prior to the Termination Date, the sales price for the asset must be at least equal to a

[4] The Department herein is proposing an exemption only for the payment by AT&T Investment Funds of Performance Fees for services rendered to the Funds pursuant to the Agreements, and is not proposing any exemption for any other prohibited transactions or any violations of Title I, Part 4 of the Act which may arise from any other elements of the fee structure established under an Agreement.

[5] Under the proposed exemption, the term "independent valuations" means valuations based on independent and objective third party sources acceptable to AT&T (including without limitation NASDAQ, newspapers, or other general publications, or brokers which are independent of the Asset Menager and its affiliates). AT&T represents that the assets of AT&T Investment Funds to be subject to the Arrangements will consist primarily of real estate or interests in real estate which will be valued, as a general matter, by independent appraisers. However, a portion of an AT&T Investment Fund's assets subject to an Arrangement may consist of real estate-related securities, such as shares in real estate investment trusts, that may be valued using independent sources other than appraisers, such as NASDAQ and the other sources described in the definition of "independent valuations".

[6] AT&T represents that under the Agreements, asset managers will not have discretion to shift assets within the Arrangement from one class to another, and that AT&T will be responsible for determining whether assets may be shifted from one class to another during the term of the Arrangement.

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certain amount (the Target Amount) in order for the asset manager to sell the asset and receive the Performance Fee without further approvals. The Target Amount for each asset will be assigned either at the time the asset becomes subject to the Arrangement, as agreed between AT&T and the asset manager, or pursuant to an objective formula approved by AT&T and the asset manager at the time the Arrangement is established. If the proposed sales price of the asset is less than the applicable Target Amount, the proposed sale must be disclosed to AT&T for approval in order for the asset manager to receive its Performance Fee as a result of the sale. If the proposed sales price is less than the applicable Target Amount and AT&T's approval is not obtained, the asset manager will continue to have authority to sell the asset but the Performance Fee which would have been payable to the asset manager by reason of the asset sale will be paid only at the Termination Date. Under each Arrangement subject to the proposed exemption, all realized income on, and proceeds from the sale of, the assets, net of expenses and reasonable reserves, will either (a) be reinvested in assets subject to the Arrangement, if the Agreement so provides or if AT&T so determines pursuant to the Agreement, or (b) cease to be subject to the Arrangement and thereby become Net Proceeds.

AT&T represents that the Target Amount concept provides protection for the AT&T Investment Fund to assure that an asset manager will not sell any assets at unduly low prices to trigger immediate payment of the related performance fee. AT&T states that this concept is intended to provide a floor on the price at which an asset can be sold and the performance fee paid immediately without having to obtain AT&T's approval. For newly-acquired assets, the minimum floor is deemed to be the cost of the asset; for previously acquired assets, the minimum floor amount is the value of the asset at the time the asset becomes subject to the Arrangement, an approach which AT&T represents to be the most logical to establish the minimum Target Amount for previously acquired assets. AT&T notes that it has the flexibility to negotiate a higher Target Amount in any case where it believes the minimum Target Amount permitted by the proposed exemption would be inadequate.

7. AT&T offers four hypothetical examples to illustrate the operation of the proposed exemption with respect to the Target Amount concept. In each example, it is assumed that the asset manager has discretion to sell the relevant asset without the prior approval of AT&T[7] and that its performance fee is equal to ten percent of all Net Proceeds in excess of the Threshold Amount. In each example, the Threshold Amount at the time the relevant asset is sold is $110:

Example 1: AT&T and an asset manager enter into an Arrangement whereby the asset manager agrees to manage a portion of the real estate investment of an AT&T Investment Fund, including Parcel X, a real estate investment to be acquired by the AT&T Investment Funds at the time the Arrangement is entered into. The cost of Parcel X is $100 cash. At the time the Arrangement is entered into, the asset manager and AT&T agree that the Target Amount shall be $100. Two years later, the asset manager sells Parcel X for $150 without the prior approval of AT&T. Having exceeded the Threshold Amount for the Arrangement, the asset manager is entitled to a performance fee of $4.00 (i.e., [$150 − $110] × .10). Since the asset manager exceeded the Target Amount for Parcel X, this performance fee is payable at the time of the sale of Parcel X.

Example 2: Assume the same facts as in Example 1 except that Parcel X was acquired by the AT&T Investment Fund three years prior to the date the Arrangement was entered, that the initial cost of Parcel X was $50, and that its value at the time it becomes subject to the Arrangement is $100. AT&T and the asset manager agree that the Target Amount is $100, the value of Parcel X at the time it becomes subject to the Arrangement. Upon the sale of Parcel X for $150, the asset manager is entitled to a Performance Fee of $4.00, calculated and payable in the same manner as described in Example 1.

Example 3: Assume the same facts as Example 2 except that the original acquisition price of Parcel X three years prior to the Arrangement was $120. AT&T and the asset manager agree that the Target Amount is $100, the value of Parcel X at the time it becomes subject to the Arrangement. Upon the sale of Parcel X, the asset manager is entitled to a performance fee equal to $4.00, calculated and payable in the same manner as described in Example 1.

Example 4: Assume the same facts as Example 3 except that the asset manager and AT&T agree that the Target Amount for Parcel X is $130 and that the asset manager sells Parcel X for $125 without the prior approval of AT&T. Upon the sale of Parcel X, the asset manager becomes entitled to a performance fee of $1.50 (i.e., [$125 − $110] × .10). However, because AT&T did not approve the sale at a price below the Target Amount, payment of the performance fee is deferred until the Termination Date of the Arrangement. Had AT&T approved the sale at the price below the Target Amount, the performance fee of $1.50 would have been payable upon the sale.

8. An Arrangement will terminate upon the Termination Date set forth in the Agreement, which may be changed with the approval of AT&T. Upon termination of an Arrangement, the assets under management will be either sold or retained by the Fund, and the asset manager will be entitled to a Performance Fee or an additional Performance Fee if the Threshold Amount has been reached at or before such time. In the case of any assets which are not sold upon termination of the Arrangement, the Performance Fee will be calculated using the fair market value of such assets as determined on the basis of independent valuations.

9. Each Arrangement will provide that the asset manager may be removed by AT&T at any time, without cause, upon AT&T's delivery of a notice of removal to the asset manager. An asset manager may resign at any time, without cause, upon written notice to AT&T. Upon removal or resignation of an asset manager, the asset manager will be entitled to receive a Performance Fee if, at the time of the asset manager's removal or resignation, Net Proceeds with respect to the assets under management would exceed an amount equal to the Threshold Amount. However, each Agreement will provide that such a Performance Fee will not be payable until the Termination Date and shall be subject to a reduction as determined under Part II, Section (i) of the proposed exemption. Accordingly, even if the aggregate value of the assets under management declines after an asset manager's removal or resignation, the asset manager will still receive a Performance Fee for the period of time that it provided services under an Arrangement if Net Proceeds, based on an assumed sale of the assets at their fair market value, exceed an amount equal to the Threshold Amount at the time of the asset manager's removal or resignation, subject to the calculation required under Part II, Section (i) of the proposed exemption. The applicant represents that this provision ensures that an appropriate reduction in the Performance Fee will be made if the aggregate value of the assets declines after the asset manager resigns or is removed.

10. No AT&T Trust will be permitted to allocate, in the aggregate, more than twenty percent of its total assets to Arrangements which are the subject of the proposed exemption, determined at the time any such Arrangement is established and at the time of any subsequent allocation of additional assets, including the reinvestment of assets, to such Arrangement. The foregoing limitation does not apply to an AT&T Plan Assets Entity, which is defined as any group trust, partnership or other entity, the assets of which are deemed to be "plan assets" by reason of the application of 29 C.F.R. 2510.3–101, but only if (a) fifty percent or more of the interests in such entity are held by one or more AT&T Trusts and (b) AT&T is the named fiduciary or manager of the assets of such entity. An AT&T Plan Assets Entity may allocate up to one hundred percent of its asset to Arrangements subject to the proposed exemption. However, solely for determining if an AT&T Trust satisfies the twenty percent limitation, the assets of any AT&T Plan Assets Entity in which such AT&T Trust has an interest will be deemed to be the asset of such AT&T Trust only to the extent of such AT&& Trust's interest in the AT&T Plan Assets Entity. As an example, the applicant explains a hypothetical situation in which an AT&T Trust has total assets of $100 million: This AT&T Trust may allocate up to $20 million to Arrangements. In the hypothetical example, $15 million of the AT&T Trust's assets are invested in an AT&T Plan Assets Entity which has total assets of $30 million, fifty percent of which are allocated to Arrangements. For the purpose of determining if the AT&T Trust satisfies the twenty percent allocation limit, $15 million of the assets of the AT&T Plan Assets Entity, representing the AT&T Trust's investment therein, are deemed to be assets of the AT&T Trust. Because fifty percent of the AT&T Plan Assets Entity's overall assets are allocated to Arrangements, fifty percent (or $7.5 million) of this $15 million is deemed to be allocated to Arrangements. Thus, by virtue of its investment in the AT&T Plan Assets Entity, the AT&T Trust is treated as having allocated $7.5 million to Arrangements. Accordingly, in this hypothetical example, the AT&T Trust may allocate up to $12.5 million of its remaining assets to Arrangements.

11. Throughout the term of an Arrangement, AT&T will receive quarterly and annual reports prepared by the asset manager relating to the overall financial position of the assets under management, including a statement regarding the amount of all fees paid to the asset manager during the period covered by the report, and annual reports indicating the current fair market value of all assets as determined on the basis of the most recently available independent valuations, as defined in Part III, Section (k) of the proposed exemption. AT&T will also receive annual audited financial statements prepared by independent certified public accountants approved by AT&T, generally within ninety days of the end of the twelve month period covered by the statement.

12. The proposed exemption requires AT&T to provide for the maintenance, for six years, of records necessary to enable determinations of whether the conditions of the proposed exemption are satisfied. Such records must be unconditionally available at their customary location for examination during normal business by any duly authorized representative of the Department or the Internal Revenue Service, any contributing employer (or its representative) with respect to an employee benefit plan with assets held in a Fund which has entered into an Arrangement, and any participant or beneficiary (or his/her representative) of such a plan.

13. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (a) Each Arrangement is authorized in writing by AT&T as named fiduciary or manager of the relevant Fund; (b) No AT&T Trust may invest, in the aggregate, more than twenty percent of its total assets in Arrangements which are the subject of the proposed exemption; (c) AT&T will receive written reports with respect to the condition of assets and payment of fees under the Arrangements, and will maintain accessible records to enable determinations of whether the terms of the proposed exemption are satisfied; (d) The fees paid to an asset manager under any Arrangement will constitute no more than reasonable compensation; (e) The timing and formula for determining fees under the Arrangements will be established and approved by AT&T prior to a Fund's entering into an Arrangement, and will be based on pre-specified percentages of Net Proceeds after the Fund has recovered its invested capital plus a minimum pre-specified rate of return; (f) The terms of any Performance Fee will be at least as favorable to the Fund as those obtainable in arm's-length transactions with unrelated parties; and (g) AT&T may remove an asset manager under an Arrangement at any time.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[7] AT&T represents that under the typical Arrangements contemplated, it intends to retain this discretion, in which event the Target Amount concept will not apply.

Union Electric Savings Investment Plan (the Plan), Located in St. Louis, Missouri

[Application No. D–9782]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the proposed extension of credit to the Plan by Boatmen's Trust Company (BTC), a party in interest with respect to the Plan, in the form of a payment (the Advance) with respect to group annuity contract CG01285B3A (the GIC) issued by Executive Life Insurance Company (ELIC); and (2) the Plan's potential repayment of the Advance (the Repayments), provided: (a) all terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party; (b) no interest and/or expenses are paid by the Plan; (c) the Advance is made with respect to amounts invested by the Plan in the GIC; (d) the Repayments are restricted to the amounts, if any, paid to the Plan after August 2, 1994, by ELIC or other responsible third parties with respect to the GIC (the GIC Proceeds); (e) the Repayments do not exceed the total amount of the Advance; and (f) the Repayments are waived to the extent the Advance exceeds the GIC Proceeds.

Summary of Facts and Representations

1. The Plan is a profit sharing plan which had 6,938 participants as of March 31, 1994. The approximate aggregate fair market value of the Plan's assets as of that date was $313 million. BTC is the trustee of the Plan.

2. On February 12, 1988, $763,683.21 of the Plan's assets were invested in the GIC, yielding 8.5% compound interest with a March 1, 1993 maturity date. As of March 31, 1991, the book value of the GIC totalled $987,902.02.

3. On April 11, 1991, a California court appointed the Insurance

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Commissioner of the State of California as conservator of ELIC. Pursuant to this action, payouts on ELIC's GICs were suspended.[8] Subsequently, the California Insurance Commissioner approved a Rehabilitation Plan for ELIC (the Rehab Plan), which involved, among other things, Aurora National Life Assurance Company (Aurora) assuming most of the insurance policy and GIC obligations of ELIC, in some cases at discounted values.[9] The Rehab Plan also involved liquidation of certain assets of ELIC, including real estate and so-called "junk bonds", to fund various aspects of the Rehab Plan. For holders of ELIC GICs, the terms of the Rehab Plan included an election either to:

(a) Opt into the Rehab Plan, and receive a replacement GIC from Aurora at a discounted value; or

(b) Opt out of the Rehab Plan, in return for a discounted account value (DAV) payable partly in cash now and partly in the form of future contingent cash payments from certain ELIC liquidating trusts.

4. In its capacity as trustee of the Plan, BTC ultimately selected the opt out option for the Plan. Under the terms of the Rehab Plan and the opt out election, a substantial portion of the DAV ($569,100.82) has already been received from ELIC in cash. The balance of the DAV ($260,801.20) represents the California Insurance Commissioner's estimate of the future contingent payments to be received by the Plan from the ELIC liquidating trust. It is expected that the remaining asset liquidations will take several years. The precise timing and amount of future payments is subject to uncertainty.

5. BTC is willing to make the proposed Advance in order to protect plan participants from any loss with respect to their initial principal investment in the GIC. The proposed amount of the Advance, $194,582.39, represents the difference between the Plan's initial investment in the GIC ($763,683.21) and the cash payments which have been received to date from ELIC pursuant to the Rehab Plan ($569,100.82). Without the Advance, the applicant represents that it is possible that the Plan might be unable to meet in timely fashion its obligations to pay benefits and make distributions and to accommodate participant-directed investment reallocations. BTC proposes the Advance as an alternative to being forced to "freeze" that portion of the Plan invested in the GIC. Moreover, BTC represents that the Advance will protect the Plan participants and their beneficiaries from the risk of loss and possible reduction of benefits attendant to the investment in the GIC.

6. The applicant represents that the Advance will be made in a single payment of $194,582.39. As a result of the transaction, participants will receive at least the original principal amount invested in the GIC. The proposed Advance will be made to the Plan on an interest-free, unsecured basis. The Plan will incur no expenses in connection with the proposed Advance. The proposed Advance may be repaid only out of the GIC Proceeds. If the amounts so received are less than the amount of the Advance, BTC will bear the loss, having no recourse against any other of the Plan's assets. In the event that the GIC Proceeds exceed the amount necessary to repay the Advance, the excess will be distributed to the Plan for the benefit of participants and their beneficiaries. BTC represents that it will maintain records of the proposed Advance for a period of seven years, and such records will be open for inspection at all times by the Department or any Plan participant.

7. In summary, the applicant represents that the proposed transactions will satisfy the criteria contained in section 408(a) of the Act because: (a) all terms of the transactions will be no less favorable to the Plans than those which the Plans could obtain in an arm's-length transaction with an unrelated party; (b) no interest and/or expenses will be paid by the plans; (c) the Advance will be made with respect to amounts invested by the Plan in the GIC; (d) the Repayments are restricted to the GIC Proceeds; (e) the Repayments will not exceed the total amount of the Advance; and (f) the Repayments are waived to the extent the Advance exceeds the GIC Proceeds.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 14th day of September, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94-23121 Filed 9-16-94; 8:45 am]

BILLING CODE 4510-29-P

[8] In this proposed exemption, the Department expresses no opinion as to whether the acquisition and holding of the GIC violated any provisions of Part 4 of Title I of the Act.

[9] The Department notes that the exemption proposed herein is not intended to affect any cause of action by any participant of the Plan or the Department with respect to the GIC.

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Joint Subcommittee Meeting on Individual Plant Examinations and Probabilistic Risk Assessment

The ARCS Subcommittees on Individual Plant Examinations and Probabilistic Risk Assessment will hold a joint meeting on September 27, 1994, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, September 27, 1994—8:30 a.m. until the conclusion of business.

The Subcommittees will discuss the IPE Insights Program, PRA Policy Statement and Implementation Plan, and diesel generator problems at H.B. Robinson. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairmen; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairmen's ruling or requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. M. Dean Houston (telephone 301/415-6899) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: September 13, 1994

Paul Boehnert,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 94-23137 Filed 9-16-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 03016055]

Advanced Medical Systems, Inc. (Byproduct License No. 34-19089-01); Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that the U.S. Nuclear Regulatory Commission Staff has received a Petition dated August 19, 1994, filed by William B. Schatz, on behalf of the Northeast Ohio Regional Sewer District ("Petitioner" or "NEORSD"). The Petition requests, pursuant to 10 CFR 2.206, that the NRC take action with regard to Advanced Medical Systems, Inc. (AMS), to amend AMS's License No. 34-19089-01 to require AMS to install, maintain, and operate a radiation alarm system on all drains at 1020 London Road, Cleveland, Ohio (AMS Facility) that lead to either sanitary or storm sewers.

Petitioner asserts as the bases for this request that it views the quantity of cobalt-60 waste in the basement of the AMS facility as a major threat; that the NRC admits that the existing contamination at the AMS Facility continues to pose a risk; that the contamination that exists at the AMS Facility is estimated to be 393 curies of loose, "talcum-like" cobalt scattered upon the floor of the waste hold-up room in the basement; that cobalt-60 contamination was found in the sewer line connecting the AMS Facility to the public sewer and was found in the public sewer directly under the AMS discharge; that the NEORSD has already incurred costs of nearly $2 million addressing loose cobalt-60 contamination at its Easterly and Southerly Wastewater treatment plants; that the NRC has been unable or unwilling to explain the source of the cobalt-60 on the NEORSD property and unable to identify any likely sources for the cobalt-60 other than the AMS Facility; that the quantity of cobalt-60 at the Southerly Plant exceeds that which the AMS records show was released by AMS into the sewer system; and that License Amendment No. 10 to the original license for this site, issued to Picker in 1962, contained a requirement for an alarm system to detect unmonitored discharges. The Petitioner states that such an alarm system was not a condition of the subsequent AMS license despite a recommendation from Oak Ridge Associated Universities that such an alarm system be installed along with control valves to shut off flow to the sewer if the alarm sounds.

The Petition has been referred to the Office of Nuclear Material Safety and Safeguards pursuant to 10 CFR 2.206. As provided by Section 2.206, appropriate action will be taken with regard to the specific issue raised by the Petition in a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2110 L Street, N.W., Washington, D.C. 20555, and at the Local Public Document Room, Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 7th day of September 1994.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94-23138 Filed 9-16-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-458-OLA; ASLBP No. 93-680-04-OLA]

Atomic Safety and Licensing Board; Hearing

September 13, 1994.

In the Matter of: Gulf States Utilities Co., *et al.* River Bend Station, Unit 1.

Before Administrative Judges:

B. Paul Cotter, Jr., Chairman
Dr. Richard F. Cole
Dr. Peter S. Lam

This proceeding concerns two license amendments for the River Bend Station, a nuclear facility located in Feliciana Parish, Louisiana. The amendments: (1) Authorize Gulf States Utilities Company to become a wholly owned subsidiary of Entergy Corporation; and (2) designate Entergy Operations, Inc. as a new licensee to operate, manage, and maintain River Bend.

In response to a Notice of Opportunity for Hearing, 58 FR 36,423, 36,435-36 (1993), Cajun Electric Cooperative, Inc. (Cajun) petitioned to intervene in this proceeding. On December 16, 1993, the NRC Staff issued the license amendments requested, and on January 27, 1994 an NRC Licensing Board admitted Cajun as an intervener (LBP-94-3, 39 NRC 3). The decision to admit Cajun was subsequently affirmed by the Commission on August 24, 1994 (CLI-94-10, 39 NRC ____).

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Please take notice that a hearing will be conducted in this proceeding. Matters currently at issue are Cajun's contention that the proposed license amendments may result in a reduction in the margin of safety at River Bend caused by underfunding of the facility.

During the course of the proceeding, the Board may hold prehearing conferences, pursuant to 10 CFR 2.752, as well as evidentiary hearing sessions, at times and places to be announced hereafter, through notices published in the **Federal Register** and made available at the Public Document Rooms noted below.

In accordance with 10 CFR 2.715(a), any person, not a party to the proceeding, will be permitted to submit a written limited appearance statement setting forth his or her position on the issues. These statements, which may be submitted at any time during the proceeding, do not constitute testimony or evidence but may assist the Board and the parties in defining the issues to be considered. Persons desiring to submit a limited appearance statement should transmit any such statement to the Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of such statements should also be served on the Chairman of this Licensing Board. At a later date, the Board will consider whether or not to hold a session in which to hear oral limited appearance statements.

Documents related to this proceeding are available for public inspection at the NRC Document Room, 2120 L Street, N.W., Washington, D.C. 20555, and at the local public document room, Louisiana State University, Troy H. Middleton Library, Government Documents Department, Baton Rogue, Louisiana 70803.

For The Atomic Safety And Licensing Board.

Rockville, Maryland, September 13, 1994.

B. Paul Cotter, Jr.,

Chairman, Administrative Judge.

[FR Doc. 94–23139 Filed 9–16–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–423]

Northeast Nuclear Energy Company; Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49, issued to Northeast Nuclear Energy Company (NNECO/the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 3, located in New London County, Connecticut.

The proposed amendment would revise the Technical Specifications (TS) to modify surveillance requirements by increasing the acceptance criterion for the closure of the main steam isolation valves (MSIVs) from 5 seconds to 10 seconds.

The proposed change would permit Millstone Unit 3 to resume plant operation. To resume plant operations Millstone Unit 3 must meet the operability requirements of the Technical Specifications for the MSIVs. On September 8, 1994, during monthly testing of the "C" MSIV, it was determined that the MSIV was inoperable because its closure time was determined to be greater than 5 seconds. Subsequent efforts to meet the required closure time have been unsuccessful.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

• • • The proposed change does not involve an SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

NNECO's proposal to modify Surveillance Requirement 4.7.1.5.1 of the Millstone Unit No. 3 Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously analyzed.

The increase in the MSIV stroke time from 5 seconds to 10 seconds has no adverse impact on the FSAR [Final Safety Analysis Report] analyses for the feedwater line break and the main steam line break. The applicable acceptance criteria (e.g., DNBR [departure from nucleate boiling ratio] and pressure) for both 3-loop and 4-loop operation continue to be met with an increase in the MSIV closure time from 5 to 10 seconds. No other accident analyses discussed in Chapter 15 of the FSAR are affected by the proposed increase in the MSIV closure time.

Additionally, evaluations have determined that the proposal does not affect the environmental qualification program for either the main steam valve building or the containment, does not impact the design basis accident radiological consequence calculations, does not negatively impact fluid transient evaluations, has a negligible impact on the long term cooling capacity of the steam generators, and does not change pipe rupture mechanistic effects.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change does not introduce any new failure modes. It simply modifies an acceptance criterion for a surveillance requirement. As such, increasing the MSIV stroke time from 5 seconds to 10 seconds affects only the FSAR analyses for the feedwater line break and the main stream line break. No other accident analyses discussed in Chapter 15 of the FSAR are affected by the proposed increase in the MSIV closure time. The applicable acceptance criteria (e.g., DNBR and pressure) for both 3-loop and 4-loop operation continue to be met with an increase in the MSIV closure time from 5 to 10 seconds.

Additionally, evaluations have determined that the proposal does not affect the environmental qualification program for either the main steam valve building or the containment, does not impact the design basis accident radiological consequence calculations, does not negatively impact fluid transient evaluations, has a negligible impact on the long term cooling capacity of the steam generators, and does not change pipe rupture mechanistic effects.

Thus, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

The increase in the MSIV stroke time from 5 seconds to 10 seconds has no adverse impact on the FSAR analyses for the feedwater line break and the main steam line break. The applicable acceptance criteria (e.g., DNBR and pressure) for both 3-loop and 4-loop operation continue to be met with an increase in the MSIV closure time from 5 to 10 seconds. No other accident analyses discussed in Chapter 15 of the FSAR are affected by the proposed increase in the MSIV closure time. Additionally, the proposed change does not impact the consequences of an accident previously analyzed.

Based on the above, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 19, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich Connecticut 06360. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later then 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in providing the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the

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Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 9, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 13th day of September 1994.

For the Nuclear Regulatory Commission.

Guy S. Vissing,

Senior Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–23140 Filed 9–16–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–327 and 50–328]

Sequoyah Nuclear Plant Units 1 and 2; Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–77 and DPR–79 issued to the Tennessee Valley Authority (the licensee) for operation of the Sequoyah Nuclear Plant, Units 1 and 2, located in Soddy Daisy, Tennessee.

The proposed amendments, submitted by the licensee's letter dated September 8, 1994, would incorporate a clarification to separate the portion of the steam generator tubing from the end of the tube up to the start of the tube-to-tubesheet weld from the remainder of the tube for the purposes of sample selection and repair when defects are found in this section of a steam generator tube.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This change will clarify the requirements for indications found in the region of the steam generator (S/G) tube, which protrudes below the tubesheet. This region of the tube does not affect the structural integrity of the reactor coolant system (RCS) pressure boundary, since it is not part of the pressure boundary. This revision will exempt this portion of the tube from being considered under the result and action required sections of Table 4.4–2 in SQN's TS. Therefore, indications in this region will not require repairs and will not be used for the purpose of expanding the sample of tubes to be inspected under the requirements of the TS.

The condition described in this evaluation results in tube integrity considerations commensurate with Regulatory Guide 1.121 criteria both analytically and empirically. If the indications are hypothetically considered as cracks, the Row 1 tube end indications neither adversely affect S/G tube integrity or any other component, nor does the presence of the indications alter the function of the S/G or any other component. Continuing the hypothetical scenario, even if the crack propagated beyond the weld, the only consequence of an accident that could be caused by plant operation or by the occurrence of a faulted condition event with the tube end indications, would be negligible leakage from the primary to secondary system. Such leakage is expected to be insignificant at both normal and faulted conditions. Therefore, plant operation with the tube end indications present in the Row 1 tubes does not increase the probability of an analyzed accident such as a S/G tube rupture event,

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Any hypothetical accident as a result of plant operation with the Row 1 tube end indications would be bounded by the consequences of a postulated S/G tube rupture. Therefore, this change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The locations of the axial indications observed are below the tube-to-tubesheet weld. Consequently, it is concluded that the axial indications do not affect the structural and leakage integrity of the primary pressure boundary. Should the indications be single or multiple axial cracks on the tube ends, the effect of crack propagation was evaluated. Tube burst is precluded for cracks within the tubesheet by the constraint provided by the tubesheet. Therefore, crack lengths do not need to be limited by burst considerations and operating leakage limits are not required to detect crack lengths associated with the tube burst. However, primary to secondary leakage must be shown to remain within acceptable limits during all plant conditions. Leak-rate testing shows that such leakage would be negligible during all plant conditions. Since the pressure boundary integrity, acceptable leak rate, and function of the S/G are not affected by the presence of the tube end indications, the margin of safety is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public

and State comments required. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 19, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mr. Frederick J. Hebdon: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to General Council, Tennessee Valley Authority, ET 11H, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 8, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room

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located at the Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 13th day of September 1994.

David E. LaBarge, Sr.

Project Manager, Project Directorate II–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–23141 Filed 9–16–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Company; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 27 and 13 to Facility Operating License Nos. NPF–87 and NPF–89 issued to Texas Utilities Electric Company which consisted of changes to the technical specifications related to the operation of the Comanche Peak Steam Electric Station, Units 1 and 2, located in Somervell County, Texas.

The amendments are effective as of the date of issuance.

The amendments revised Technical Specification 5.3.1 to permit the use of fuel with maximum enrichments of 5.0 weight percent Uranium 235.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** to August 1, 1994 (59 FR 38991). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of these amendments will not have a significant effect on the quality of the human environment.

For further details with respect to the action, see (1) the application for amendments dated April 22, 1994, (2) Amendment No. 27 to License No. NPF–87, Amendment No. 13 to License No. NPF–89, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III/IV.

Dated at Rockville, Maryland this 13th day of September 1994.

For the Nuclear Regulatory Commission.

Thomas A. Bergman,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–23142 Filed 9–16–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34654; File No. SR–CSE–94–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Cincinnati Stock Exchange, Inc. Relating to Exchange Membership Application Fees

September 12, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 16, 1994, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE hereby proposed to amend the membership application fees imposed by the Exchange as follows:

Item	Current fee	Proposed fee
Yearly Membership Dues: (Quarterly Charge $625)	$2,500	[1] $2,500
New Member Application Fee	100	1,000
Transfers:		
Responsible Party Change	75	350
Firm Registration/ Name Change	75	350
CBOE Exercise Application	75	350

[1] No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Purposed Rule Change

1. Purpose

The Exchange has determined to increase the fees associated with applications for membership to more accurately reflect the costs associated with the processing of applications and to place them more in line with the fees existing on other markets. The increases apply to the initial application fee as well as the fee to exercise a Chicago Board Options Exchange ("CBOE") membership. The exercise process is part of the agreement for access between the two markets.[1] Additionally, intra-firm transfers of individuals assigned to a membership are being raised to reflect the cost of processing the transfers.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is not designed to permit unfair discrimination between customers, issuers, brokers or dealers, and in general is designed to protect investors and the public interest.

[1] Pursuant to an agreement signed in November 1986, a CBOE member may be eligible to become a proprietary member of the CSE without having to purchase and own a certificate of proprietary membership (*i.e.*, a seat on the Exchange), provided that the CBOE member meets all of the other requirements of eligibility set forth in the CSE's By-Laws. *See* Article II, Section 5.2 of the CSE's Code of Regulations (By-Laws).

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CSE. All submissions should refer to File No. SR–CSE–94–08 and should be submitted by October 11, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23047 Filed 9–16–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Incorporated

September 13, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Evans Withycombe Residential, Inc.
Common Stock, $.01 Par Value (File No. 7–12905)
Ampal American Israel Corp.
Warrants (File No. 7–12906)
Essex Property Trust, Inc.
Common Stock, $.0001 Par Value (File No. 7–12907)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 4, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–23130 Filed 9–16–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–34653; File No. SR–NASD–94–32]

Self-Regulatory Organizations; Order Approving Proposed Rule Change Amending the Prompt Receipt and Delivery of Securities Interpretation Relating to Short Sales

September 12, 1994.

On July 28, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change [1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder.[3] The rule change amends the Prompt Receipt and Delivery of Securities Interpretation ("Interpretation") issued by the NASD Board of Governors under Article III, Section 1 of the NASD Rules of Fair Practice.[4]

The NASD proposes to amend the Interpretation to require members or persons associated with members, to annotate the affirmative determination made prior to effecting a short sale. The affirmative determination requirement already appears in the Interpretation and requires, among other things, that members or associated persons assure that the securities involved in a sale will be available by settlement date. For long sales, the affirmative determination is required to be noted on the order ticket at the time the order is placed. The Interpretation as it currently reads, however, does not require that such determination be evidenced in any specific manner with respect to short sales.

Under the Interpretation as amended, members or associated persons will be required to annotate, on the trade ticket or on some other record maintained for that purpose by the member, the following information in order to comply with the affirmative determination requirement for short sales:

1. Where a customer assures delivery, the member or associated person must annotate that conversation noting the present location of the securities; whether the securities are in good deliverable form; and whether the securities will be delivered to the firm within time for settlement; or

[1] The NASD amended the proposed rule change subsequent to the original filing on May 26, 1994. Amendment No. 1 was filed in order to clarify that the proposal applies to both NASD members and persons associated with NASD members.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *NASD Manual*, Rules of Fair Practice, Art. III, Sec. 1, [CCH] ¶2151.04.

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2. Where the member or associated person locates the stock, an annotation must be made that identifies not only the number of shares needed to cover the short sale but also the individual and firm contacted that offered assurance that the shares would be delivered or were available for borrowing by settlement date.[5]

In its proposed amendment to the Interpretation, the NASD has not specified the manner in which a member or person associated with a member must annotate compliance with the affirmative determination requirement applicable to short sales. It is clear, however, that the affirmative determination requirement contained in the amendment to the Interpretation applies to each and every transaction; a "blanket" or standing assurance that securities are available for borrowing is not acceptable to satisfy the requirement as is evidenced by the duty to annotate.

Notice of the proposed rule change, as amended, together with its terms of substance was provided by issuance of a Commission release[6] and by publication in the **Federal Register**.[7] No comments were received in response to the Notice. This order approves the proposed rule change.

As the NASD indicated in its filing, requiring annotations will enhance member compliance with the affirmative determination requirement already imposed by the Interpretation and will enable the NASD to examine member compliance with the rule more effectively. The NASD also noted that the amendment will make clear the NASD's longstanding policy that firms may not rely on daily facsimile sheets of "borrowable stocks" to satisfy their obligations under the Interpretation. The addition of the annotation requirement will preclude this practice as members or their associated persons will have to annotate the name of the person contacted, the name of the firm contacted and the number of shares for each short sale.

The Commission has determined to approve the NASD's proposal. The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Section 15A(b)(6) of the Act.[8] Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The proposal will enable the NASD to more effectively enforce an already existing provision of the Prompt Receipt and Delivery Interpretation requiring members of their associated persons to affirmatively determine that shares relating to a short sale are available for delivery to a purchaser.

Requiring annotation of affirmative determinations will also enhance the NASD's ability to examine for member compliance with various other NASD short sale rules including those found in Article III, Section 21 of the Rules of Fair Practice (record keeping)[9] and in the Uniform Practice Code, Section 71 (mandatory close-outs).[10] Further, the annotation requirement will assist the NASD in examining for member compliance with the short sale rule or "bid test," recently granted temporary 18 month approval by the SEC.[11]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-94-32 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-23048 Filed 9-16-94; 8:45 am]

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[5] Pursuant to Rule 440C, The New York Stock Exchange ("NYSE") also requires NYSE members to make affirmative determinations prior to effecting short sales and to annotate such determinations. NYSE Information Memo 91-41 (October 18, 1991).

[6] Securities Exchange Act Rel. No. 34487 (August 4, 1994).

[7] 59 FR 40931 (August 10, 1994).

[8] 15 U.S.C. 78o-3(b)(6).

[9] *NASD Manual*, Rules of Fair Practice, Article III, Sec. 21, (CCH) ¶2171.

[10] *NASD Manual*, Uniform Practice Code, Sec. 71, (CCH) ¶3571.

[11] Securities Exchange Act Rel. No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994).

[12] 17 CFR 200.30-3(a)(12).

[Release No. 34-34655; File No. SR-NYSE-94-28]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Real Estate Investment Trusts Market Index Target-Term Securities

September 12, 1994.

I. Introduction

On July 15, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to list and trade Market Index Target-Term Securities ("MITTS"),[3] the return on which is based upon a portfolio of securities ("REIT Portfolio") of U.S. real estate investment trusts ("REITs"). Notice of the proposal appeared in the **Federal Register** on August 11, 1994.[4] The Exchange filed Amendment No. 1 to the proposed rule change on August 25, 1994.[5] No comment letters were received on the proposed rule change. This order approves the proposal, as amended.

II. Description of the Proposal

Under Section 703.19 of the Exchange's Listed Company Manual ("Manual"), the NYSE may approve for listing securities which can not be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, and warrants.[6] The NYSE is now proposing

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1992).

[3] "MITTS" is a registered service mark and "Market Index Target-Term Securities" is a service mark of Merrill Lynch & Co., Inc. ("Merrill Lynch").

[4] See Securities Exchange Act Release No. 34492 (August 5, 1994), 59 FR 60227 (August 11, 1994).

[5] In Amendment No. 1, the Exchange propnses to: (1) Provide that dividends paid on a component security will be included in calculating both the daily values of the REIT Portfolio and the Total Return Portfolio Value (as defined herein), regardless of any subsequent corporate event (such as insolvency) that would effect the value of the common stock of that component REIT; and (2) amend the formula for determining the weightings of the portfolio components in the Original Portfolio Value (as defined herein) to provide that no component may represent more than 10 percent of the Original Portfolio Value. See Letter from James Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated August 25, 1994 ("Amendment No. 1").

[6] See Securities Exchange Act Release Nos. 29229 (May 23, 1991), 56 FR 24852 (May 31, 1991); and 28217 (July 18, 1990), 55 FR 30056 (July 24, 1990") ("Hybrid Approval Orders").

under Section 703.19 of the Manual to list for trading MITTS based on the REIT Portfolio ("REIT Portfolio MITTS").[7]

As with other MITTS products, the REIT Portfolio MITTS will conform to the listing guidelines under Section 703.19 of the Manual, which provides that: (1) Issues must have a minimum public distribution of one million securities; (2) a minimum of 400 shareholders; (3) a minimum duration of one year; (4) a market value of at least $4 million; and (5) otherwise comply with the NYSE's initial listing criteria.[8] In addition, the Exchange will monitor the REIT Portfolio MITTS to verify compliance with the Exchange's continued listing criteria.[9] MITTS are non-callable senior hybrid debt securities of Merrill Lynch that provide for a single payment at maturity, and will bear no periodic payments of interest. At maturity, holders of REIT Portfolio MITTS will be entitled to receive an amount in cash based upon the "Total Return Portfolio Value;" provided, however, that the amount payable at maturity will not be less than $9 for each $10 principal amount of the REIT Portfolio MITTS. The "Total Return Portfolio Value" will be an amount based upon the change in the "Original Portfolio Value" and the value of the REIT Portfolio at maturity, plus the aggregate dollar amount of dividends paid on the components of the REIT Portfolio during the term of the REIT Portfolio MITTS. The "Original Portfolio Value" will equal $10, *i.e.*, the value of the REIT Portfolio on the date the REIT Portfolio MITTS are priced by the issuer for initial offering to the public. The value of the REIT Portfolio at maturity will be based on the average of the closing prices of the components of the REIT Portfolio for a specified number of days immediately prior to the maturity date of the REIT Portfolio MITTS.[10] REIT Portfolio MITTS are cash-settled in that they do not give the holder any right to receive a portfolio security or any other ownership right or interest in the portfolio securities, although the return on the investment is based, in part, on the aggregate portfolio value of the REIT Portfolio securities.

According to the NYSE, REIT Portfolio MITTS will allow investors to combine the protection of a portion of the principal amount of the MITTS with potential additional payments based upon the performance of a portfolio of securities representing 20 highly capitalized REITs. In particular, the proposed REIT Portfolio MITTS will provide 90% principal protection of the original issue price at maturity with the opportunity to participate in the dividend stream related to the REIT Portfolio components plus any upside appreciation of the underlying REIT Portfolio. REIT Portfolio MITTS will mature in August 2000.

As of June 6, 1994, the REIT Portfolio consisted of the common stock of 20 REITs that have significantly different levels of market capitalization, ranging from a high of approximately $2.3 billion (Simon Property Group, Inc.) to a low of approximately $216 million (Excel Realty Trust, Inc.). Also as of June 6, 1994, the exchange market prices of the components of the REIT Portfolio ranged from a high of $40.25 to a low of $11.25. The average daily trading volume for the components of the REIT Portfolio for the period from January 16, 1994, through July 14, 1994, ranged from a high of approximately 145,318 shares to a low of approximately 22,030 shares.

The common stocks of 19 of the 20 component REITs are listed on the Exchange and the common stock of the other component REIT is traded on the American Stock Exchange ("Amex"). The initial weightings of the components of the REIT Portfolio will be based upon each stock's relative liquidity (*i.e.*, relative trading volume in dollars) in the Untied States; provided, however, that no component may represent more than 10% of the Original Portfolio Value.[11]

To determine relative liquidity, Merrill Lynch will compare the average daily consolidated dollar volume of a stock over the 90-day period immediately preceding the date on which the REIT Portfolio MITTS are priced for issuance to the average daily consolidated dollar volume for all of the stocks in the REIT Portfolio for that 90-day period. As of June 6, 1994, the highest weighting for any stock in the REIT Portfolio was 10.00%[12] and the weighting for the five components with the highest relative liquidity was 42.50%. Also as of that date, the lowest weighting for any stock in the REIT Portfolio was 1.58% and the weighting for the five components with the lowest relative liquidity was 10.24%. For the six-month period from January 16, 1994, through July 14, 1994, the average dollar daily trading volume of the components ranged from a high of $2,468,375 (Simon Property Group, Inc.) to a low of $345,618 (Western Investment Real Estate Trust).

Except for certain multiplier adjustments discussed below, once the initial weightings have been determined, the multipliers will remain constant throughout the term of the REIT Portfolio MITTS. The value of the REIT Portfolio MITTS at any point in time will equal the aggregate for the components of the price of each component times the multiplier for that component plus the cumulative dividends paid on each component since the issue date for the REIT Portfolio MITTS. The multipliers assigned to the component REITs will

[7] The Commission has previously approved the listing and trading on the Exchange of a MITTS based upon a global portfolio of securities representing telecommunications companies and one based on a portfolio of securities representing European companies. See Securities Exchange Act Release Nos. 32840 (September 2, 1993), 58 FR 47485 (September 9, 1993), and 33368 (December 22, 1993), 58 FR 68975 (December 29, 1993)) (collectively, "MITTS Approval Orders").

[8] The hybrid listing standards in Section 703.19 of the Manual are intended to accommodate listed companies in good standing, their subsidiaries and affiliates, and non-listed equities which meet the Exchange's original listing standards. Domestic issuers must also meet the earnings and net tangible assets criteria set forth in Sections 102.01 and 102.02 of the Manual. Specifically, the minimum original listing criteria requires that issuers have: (1) 2,000 holders holding 100 shares or more or have 2,200 holders with an average monthly trading volume of 100,000 shares; (2) a public float of 1.1 million shares; (3) an aggregate public market value of $18 million or total net tangible assets of $18 million; and (4) earnings before taxes of $2.5 million in the latest fiscal year and earnings before taxes of $2 million in each of the preceding two fiscal years, or earnings before taxes of $6.5 million in the aggregate for the last three fiscal years with a $4.5 million minimum in the most recent fiscal year (all three years are required to be profitable).

[9] The Continued listing criteria for capital or common stock requires that: (1) the number of holders of 100 shares or more is equal to or greater than 1,200; (2) the number of publicly-held shares is equal to or greater than 600,000; (3) the aggregate market value of publicly-held shares is equal to or greater than $5 million; (4) the aggregate market value of shares outstanding (excluding treasury stock) is equal to or greater than $8 million and average net income after taxes for the past three years is equal to or greater than $600,000; and (5) net tangible assets available to common stock are equal to or greater than $8 million and average net income after taxes for the past three years is equal to or greater than $600,000. In addition, the continued listing standards for bonds require that outstanding publicly-held bonds have an aggregate market value or principal amount equal to or greater than $1 million. See Section 802 of the Manual.

[10] In particular, the Total Return Portfolio Value will be based on the average closing prices of the REIT Portfolio component securities for the first 45 NYSE trading days of the "Calculation Period." The Calculation Period is defined as the period from and including the 90th scheduled NYSE trading day prior to the maturity date to and including the fourth scheduled NYSE trading date prior to the maturity date.

[11] See Amendment No. 1, supra note 5. For purposes of this calculation, the weight of any component that would otherwise exceed 10% of the Original Portfolio Value will be reduced to 10%. The remainder of the Original Portfolio Value will then be allocated among the remaining components of the REIT Portfolio based on relative liquidity.

[12] The weight of this component (Simon Property Group, Inc.) was reduced from 10.22% to 10% as a result of the modified weighting system described herein. *Id.*

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be adjusted for certain events such as stock splits, reverse stock splits, or stock dividends, and the value of the common stock of the component REITs will also be adjusted for certain events including a liquidation, bankruptcy, insolvency, merger, or consolidation involving the issuer of the underlying shares. For example, if the issuer of the shares underlying a component REIT has been subject to a merger or a consolidation and is not the surviving entity, then the value for such common stock will be determined at the time such issuer is merged or consolidated and will equal the last available exchange market price for such common stock plus the cumulative dividends paid on that stock from the date of issuance of the REIT Portfolio MITTS through that date.[13] That value will then be constant for the remaining term of the REIT Portfolio MITTS. In addition, no adjustments of any multiplier of a portfolio security will be made unless such adjustment would require a change of at least 1% in the multiplier then in effect.

If the issuer of a portfolio security is in the process of liquidation or subject to a bankruptcy proceeding, insolvency, or other similar adjudication, such security will continue to be included in the REIT Portfolio so long as an exchange market price for such security is available. If an exchange market price is no longer available for a portfolio security, including, but not limited to, liquidation, bankruptcy, insolvency, or any other similar proceeding, then the value of that portfolio security used in calculating both the daily value of the REIT Portfolio and the Total Return Portfolio Value, will be equal to the cumulative dividends paid on that stock from the date of issuance of the REIT Portfolio MITTS through that date.[14] This value will be used as long as no exchange market price exists for that security.[15]

Based upon the exchange reported prices of the common stock of the component REITs, an independent third party will calculate and disseminate the value of the REIT Portfolio no less frequently than once every minute during the trading day.[16]

Like the other MITTS products that are listed on the NYSE, REIT Portfolio MITTS may not be redeemed prior to maturity and are not callable by the issuer. Holders of REIT Portfolio MITTS will be able to cash-out of their investment by selling the security on the NYSE. The Exchange anticipates that the trading value of the security in this secondary trading market will depend in large part on the value of the securities comprising the REIT Portfolio and also on such other factors as the level of interest rates, the volatility of the value of the REIT Portfolio, the time remaining to maturity, dividend rates, and the creditworthiness of the issuer, Merrill Lynch.[17]

Because REIT Portfolio MITTS are linked to a portfolio of equity securities, the NYSE's existing equity floor trading rules will apply to the trading of REIT Portfolio MITTS. First, pursuant to NYSE Rule 405, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading REIT Portfolio MITTS.[18] Second, consistent with NYSE Rule 405, the Exchange will further require that a member or member firm specifically approve a customer's account for trading REIT Portfolio MITTS prior to, or promptly after, the completion of the transaction. Third, REIT Portfolio MITTS will be subject to the equity margin rules of the Exchange. Fourth, in accordance with the NYSE's Hybrid Approval Orders, the Exchange will, prior to trading REIT Portfolio MITTS, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in REIT Portfolio MITTS and highlighting the special risks and characteristics of the REIT Portfolio MITTS.[19]

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).

Specifically, the Commission believes that providing for exchange-trading of REIT Portfolio MITTS will offer a new and innovative means of participating in the market for REITs. In particular, the Commission believes that REIT Portfolio MITTS will permit investors to gain equity exposure to REITs, while at the same time, limiting the downside risk of the original investment. For the reasons discussed in the MITTS Approval Orders, the Commission finds that the listing and trading of REIT Portfolio MITTS is in the public interest.[20]

As with the other MITTS products approved by the Commission, REIT Portfolio MITTS are not leveraged instruments; however, their price will still be derived and based upon the underlying linked securities. Accordingly, the level of risk involved in the purchase or sale of REIT Portfolio MITTS is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, as with the other MITTS products, the Commission has several specific concerns regarding the trading of this type of product.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to REIT Portfolio MITTS. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of REIT Portfolio MITTS. Moreover, the Exchange will distribute a circular to its membership calling attention to the specific risks associated with REIT Portfolio MITTS.

The Commission realized that REIT Portfolio MITTS are dependent upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the Exchange's continued listing standards which require issuers to maintain an aggregate market value of $5 million for its publicly-held shares.[21] In addition, the Exchange's hybrid listing standards further require that REIT Portfolio MITTS have at least $4 million in market value. In any event, financial information regarding Merrill Lynch, in addition to the information regarding Merrill Lynch, in addition to the information on the issuers of the underlying securities comprising the REIT Portfolio, will be publicly available.[22]

The Commission also has a systemic concern, however, that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. As discussed in the MITTS Approval Orders, the Commission believes this concern is minimal given the size of REIT Portfolio MITTS issuance in relation to the net worth of Merrill Lynch.[23]

The Commission believes that the listing and trading of REIT Portfolio MITTS should not unduly impact the market for the individual securities contained in the REIT Portfolio. First, as discussed above, the components of the REIT Portfolio are highly capitalized, liquid stocks. Second, as discussed above, because of the restriction that no component may account for more than 10% of the initial weight of the REIT Portfolio, no single component or group of components dominates the REIT Portfolio. Third, the issuers of the securities contained in the REIT Portfolio are subject to reporting requirements under the Act, and all of the portfolio securities are listed and traded on U.S. securities exchanges. Finally, the Intermarket Surveillance Group Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of REIT Portfolio MITTS and of the underlying component securities.[24] This, in addition to the NYSE's surveillance procedures, will serve to deter as well as detect any potential manipulation.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to allow the Exchange to list without delay REIT Portfolio MITTS as described herein. Specifically, in Amendment No. 1 to the proposal, the Exchange proposes to provide that all dividends paid on any component REIT after the date of issuance of the REIT Portfolio MITTS and prior to a corporate event which would effect the value of that component security shall be used in calculating both the daily values of the REIT Portfolio and the Total Return Portfolio Value. The Commission believes this is appropriate because it is consistent with the risks involved in the direct ownership of the individual component securities, *i.e.*, the owner of a security generally will not be required to return dividends paid by the issuer prior to the insolvency of the issuer.

The Exchange also proposes a modified weighting system in Amendment No. 1 whereby no component of the REIT Portfolio may account for more than 10% of the Original Portfolio Value. The effect of the weighting method in this case is merely to reduce the weight of one component from 10.22% to 10.00% and to raise the initial weights of the remaining components only marginally.[25] Additionally, for the full six-year term of the MITTS, the weights of the component REITS may move freely above the 10% level based on subsequent price changes among the components. As a result, the Commission believes that this weighting method has an immaterial effect on the valuation of the REIT Portfolio during the term of the MITTS and on the amount that holders of the REIT Portfolio MITTS will ultimately receive upon maturity of the MITTS.

For the reasons stated above, the Commission believes that good cause exists for approving Amendment No. 1 to the proposed rule change on an accelerated basis.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (File No. SR–NYSE–94–28), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23049 Filed 9–16–94; 8:45 am]

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[13] *Id.*

[14] *Id.*

[15] Merrill Lynch will not attempt to find a replacement stock or to compensate for the extinction of a security due to bankruptcy or a similar event.

[16] If for any reason during the term of the REIT Portfolio MITTS the issuer is unable to obtain an independent third party to calculate the value of the REIT Portfolio, the issuer and the Exchange shall immediately notify the Commission to discuss the implementation of adequate procedures to protect investors and minimize any potential for manipulation.

[17] Merrill Lynch will deposit registered global securities representing REIT Portfolio MITTS with its depository, The Depository Trust Company ("DTC"), so as to permit book-entry settlement of transactions by participants in DTC.

[18] NYSE Rule 405 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

[19] See Hybrid Approval Orders, *supra* note 6.

[20] See MITTS Approval Orders, *supra* note 7.

[21] See *supra* note 9.

[22] All of the securities contained in the REIT Portfolio have been issued by companies that are subject to reporting requirements under the Act.

[23] See MITTS Approval Orders, *supra* note 6.

[24] The Intermarket Surveillance Group ("ISG") was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the NYSE; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (e.g., the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[25] See *supra* note 12 and accompanying text.

[26] 15 U.S.C. 78s(b)(2) (1988).

[27] 17 CFR 200.30–3(a)(12) (1992).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

September 13, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Storage Equities, Inc. Cum. Pfd Stock, Series D (File No. 7–12908)
Signal Technology Corporation Common Stock, $.01 Par Value (File No. 7–12909)
Enron Capital Resources, L.P. Pc. Cum. Pfd Securities Series A (File No. 7–12910)
Niagara Mohawk Power Corporation Pfd Stock 9.50 Pc. Series, $25 Par Value (File No. 7–12911)
CALI Realty Corporation Common Stock, $.01 Par Value (File No. 7–12912)
LSB Industries, Inc. Common Stock, $.10 Par Value (File No. 7–12913)
America West Airlines, Inc. Class B Common Stock, $.01 Par Value (File No. 7–12914)
America West Airlines, Inc. Warrants Expiring 8/25/99 (File No. 7–12915)
Harold's Stores, Inc. Common Stock, $.01 Par Value (File No. 7–12916)
Cardinal Health, Inc. Common Shares, No. Par Value (File No. 7–12917)
Air Cure Environmental, Inc. Common Stock, $.001 Par Value (File No. 7–12918)
Grupo Industrial Durango S.A. de C.V. American Depository Shares Each Representing 2 ordinary Participation Certificates (File No. 7–12919)
Evans Withycombe Residential, Inc. Common Stock, $.01 Par Value (File No. 7–12920)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 4, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94-23131 Filed 9-16-94; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20545; 812-9176]

United Financial Group, Inc.; Notice of Application

September 12, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: United Financial Group, Inc. (the "Company").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 6(e) of the Act granting a conditional exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant seeks an order that would conditionally exempt it from all provisions of the Act until December 30, 1995. The requested relief would extend an exemption originally granted until December 30, 1990, and extended by subsequent orders until December 30, 1991, December 30, 1992, December 30, 1993, and December 30, 1994.

FILING DATE: The application was filed on August 18, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 6, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 5847 San Felipe, Suite 2600, Houston, Texas 77057.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Senior Attorney, at (202) 942-0565, or C. David Messman, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Company was a savings and loan holding company whose primary asset and source of income was the United Savings Association of Texas ("USAT"). As a result of the recession in Texas beginning in 1986, USAT's financial condition deteriorated, and on December 30, 1988 it was placed into receivership. The assets of USAT were sold to an unaffiliated third party and the Company received no consideration for the loss of its primary subsidiary, thereby generating a substantial tax loss. In light of this tax loss, the Company determined not to liquidate, but instead to acquire an operating business.

2. The Company's efforts to acquire an operating business have been substantially hindered due to claims asserted against it by the Federal Savings and Loan Insurance Corporation (the "FSLIC") and its successor, the Federal Deposit Insurance Corporation (the "FDIC"), which term as used herein includes the FSLIC. The FDIC asserted an approximately $534 million claim against the Company in January 1989 for failure to maintain the net worth of USAT (the "Net Worth Claim") and an approximately $14 million claim concerning certain tax refunds alleged to have been received by the Company (together with the Net Worth Claim, the "FDIC Claims"). In addition, the FDIC has asserted the existence of possible other claims (the "Indemnified Claims") against the Company and certain former officers and directors of the Company and USAT. The Company may have indemnification obligations to these former officers and directors. The FDIC has not alleged a dollar amount for any Indemnified Claims. Although the Company disputes the FDIC Claims and the Indemnified Claims, their existence constitutes a large contingent liability against the Company's assets, thus making it difficult for the Company to acquire an operating business.

3. During 1989 and 1990, the Company was in continuous negotiations with the FDIC in an attempt to reach a resolution of the FDIC Claims and in early 1990 the Company reached a tentative agreement. However, in December 1990 the FDIC rejected the Company's settlement offer and informed the Company that no counter proposal would be offered. In mid-1991, the Company again contacted the FDIC to determine whether a settlement could be reached on the FDIC Claims. Beginning in July 1991, the Company and the FDIC's representatives again began negotiations and in August 1991, the Company offered a proposed settlement. Although the FDIC has not responded to the Company's settlement proposal, in December 1991 the FDIC requested, and the Company provided, an agreement to toll the statute of limitations for the period expiring July 31, 1992. This would give the FDIC adequate time to review any possible claims against the Company that might reflect on a global settlement. This tolling agreement was subsequently extended eleven times, initially through September 30, 1992, then eventually through December 30, 1994. During this tolling period, the Company has engaged in continuous discussions with the FDIC staff and as part of that process has furnished the FDIC with documents and financial records for their review.

4. On June 30, 1994, the Company held assets of approximately $11.94 million, comprised of approximately $.27 million in cash and cash equivalents, $9.92 million in short-term investments, $1.23 million in loans and notes receivable, and $.52 million in other assets. The Company's common stock currently is traded sporadically in the over-the-counter market. The Company does not employ any full-time employees. The Company's administrative operations are handled by contract bookkeepers, accountants, and attorneys.

5. Rule 3a-2 under the Act provides a one-year safe harbor to issuers that meet the definition of an investment company but intend to maintain that status only transiently. The Company relied on the safe harbor provided by this rule from December 30, 1988 until December 30, 1989. The expiration of the safe harbor period necessitated the filing of an application for exemption. In 1990, the Company was granted conditional relief from all provisions of the Act until December 30, 1990 (the "1990 Order"). The SEC extended this exemptive relief by four subsequent orders, most recently until December 30, 1994.[1]

6. As described in detail in the applications for the Prior Orders, during a portion of the period in which the requested exemption will be effective, it is possible that the Company will be

[1] Investment Company Act Release Nos. 17941 (Jan. 9, 1991) (notice) and 17989 (Feb. 7, 1991) (order); Investment Company Act Release Nos. 18430 (Dec. 5, 1991) (notice) and 18466 (Dec. 31, 1991) (order); Investment Company Act Release Nos. 19128 (Nov. 25, 1992) (notice) and 19175 (Dec. 22, 1992) (order); and Investment Company Act Release Nos. 19839 (Nov. 5, 1993) (notice) and 19916 (Dec. 1, 1993) (order) (together with the 1990 Order, the "Prior Orders").

subject to the jurisdiction of the federal bankruptcy courts. In this regard, the Company has formulated a plan of reorganization (the "Reorganization Plan") to be implemented under Chapter 11 of the Bankruptcy Code once the FDIC approves a settlement of the FDIC Claims. The Reorganization Plan would settle the outstanding claims against the Company and provide a structure for the possible acquisition of a new operating business or businesses. Because the bankruptcy court is charged with protecting the interests of the Company's creditors and equity interest holders, the Company believes that it is not necessary for it to comply with section 17(a) or section 17(d) with respect to transactions approved by the bankruptcy court.

Applicant's Legal Analysis

1. Section 3(a)(3) of the Act defines an investment company as an issuer engaged in the business of investing, reinvesting, owning, holding, or trading in securities, and owning investment securities having a value exceeding 40% of the value of such issuers' total assets (exclusive of government securities and cash items). The Company acknowledges that, based on its current mix of assets, it may be deemed to be an investment company under section 3(a)(3).

2. The Company requests, pursuant to sections 6(c) and 6(e) of the Act, that the SEC issue an order exempting the Company from all provisions of the Act, subject to certain exceptions, until December 30, 1995. The requested order would extend the exemption granted by the Prior Orders.

3. In determining whether to grant exemptive relief for a transient investment company, the SEC considers such factors as: (a) Whether the failure of the company to become primarily engaged in a non-investment business or excepted business or liquidate within one year was due to factors beyond its control; (b) whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment business or excepted business or to cause the liquidation of the company; and (c) whether the company invested in securities solely to preserve the value of its assets. The Company asserts that it meets these criteria.

4. The Company asserts that its failure to become primarily engaged in a non-investment business by December 30, 1994 is a result of factors beyond its control. The existence of the FDIC Claims has precluded the Company from investing its assets in a non-investment company business. Although the Company's executive officers reviewed numerous possible asset or business acquisitions, the magnitude of the FDIC Claims and the potential threat that the FDIC would seek to enjoin any utilization of the Company's assets has prevented the Company from investing its assets in a non-investment company business.

5. Pending the settlement of the FDIC Claims, the Company has limited its investments to high quality marketable securities, cash or cash equivalents. Thus, the Company asserts that it primarily invests in securities solely to preserve the value of its assets.

6. Although the Company has made substantial efforts to formulate alternative methods by which it can acquire an operating business and utilize its tax loss, the pending settlement negotiations of the FDIC Claims make it necessary for the Company to seek relief extending the relief granted by the Prior Orders. This would allow the Company to seek an FDIC settlement and, if successful, to formulate and implement new plans for becoming an operating business and utilizing the Tax Loss.

7. The Company believes that the issuance of an order exempting it from all provisions of the Act, subject to certain exceptions, until December 30, 1995 would be in the public interest and consistent with the protection of investors and the purposes of the Act.

Applicant's Conditions

The Company agrees that the requested exemption will be subject to the following conditions, each of which will apply to the Company until it acquires an operating business or otherwise falls outside the definition of an investment company:

1. During the period of time the Company is exempted from registration under the Act, it will not purchase or otherwise acquire any securities other than securities with a remaining maturity of 397 days or less and that are rated in one of the two highest rating categories by a nationally recognized statistical rating organization, as that term is defined in rule 2a-7(a)(10) under the Act.

2. The Company will continue to comply with section 9, 17(e) and 36 of the Act.

3. The Company will continue to comply with sections 17(a) and17(d), subject to the following exceptions:

(a) if the Company becomes subject to the jurisdiction of the bankruptcy court, the Company need not comply with section 17(a) or section 17(d) with respect to any transaction, including without limitation the Reorganization Plan, that is approved by the bankruptcy court; and

(b) the Company would not be required to comply with section 17(a) or section 17(d) with respect to any transaction or series of transactions that result in its ceasing to fall within the definition of an "investment company" provided that (i) no cash payments are made to an "affiliated person" (as defined in the Act) of the Company as part of such transaction or series of transactions, and (ii) no debt securities are issued to an affiliated person of the Company as part of such transaction or series of transactions unless such debt securities are expressly subordinated upon liquidation to claim of the holders of the Company's 9% Debentures.

4. The Company will continue to comply with section 17(f) of the Act as provided in rule 17f-2.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-23050 Filed 9-16-94; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 2080]

Defense Trade Advisory Group Partially Closed Meeting

The Defense Trade Advisory Group (DTAG) will meet from 10:00-4:45 P.M. on Thursday, October 6, 1994 in the Loy Henderson Conference Room, U.S. Department of State, 2201 C Street, N.W., Washington, D.C. 20520. This advisory committee consists of private sector defense trade specialists who advise the Department on policies, regulations, and technical issues affecting defense trade.

The Federal Register notice of June 30, 1994 announced that the October 6 DTAG meeting would be an open meeting. After setting the agenda, State Department officials and the DTAG officers found it necessary to close the afternoon portions of the meeting.

The open session, which will be made up of all sessions preceding the lunch break, will include speakers from the Bureau of Political-Military Affairs and reports on DTAG Working Group progress, accomplishments, and future projects. Members of the public may attend the open session as seating capacity allows, and will be permitted to participate in the discussion in accordance with the Chairman's instructions.

As access to the Department of State is controlled, persons wishing to attend

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the meeting must notify the DTAG Executive Secretariat by Friday, September 30, 1994. Each person should provide his or her name, company or organizational affiliation, date of birth, and social security number to the DTAG Secretariat at telephone number (202) 647–4231 of fax number (202) 647–4232 (Attention: Eva Chesteen). Attendees must carry a valid photo ID with them. They should enter the building through the C-Street diplomatic entrance (21st and C Streets, NW.), where Department personnel will direct them to the Loy Henderson auditorium.

Following the open portion of the meeting, briefings which the Department of State will arrange for DTAG members will involve discussions of classified information pursuant to Executive Order 12356. The disclosure of classified and/or proprietary information essential to formulating U.S. defense trade policies would substantially undermine U.S. defense trade relations with foreign competitors. Therefore, these segments of the meeting will be closed to the public, pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. 552b(c)(1) and 5 U.S.C. 552b(c)(9)(B).

For further information, contact Linda Lum of the DTAG Secretariat, U.S. Department of State, Office of Export Control Policy (PM/EXP), Room 2422 Main State, Washington, DC 20520–2422. She may be reached at telephone number (202) 647–4231 or fax number (202) 647–4232.

Dated: September 13, 1994.

William Pope,

Acting Deputy Assistant, Secretary for Export Controls, Bureau of Political-Military Affairs.

[FR Doc. 94–23126 Filed 9–16–94; 8:45 am]

BILLING CODE 4710–25–M

[Public Notice 2078]

Shipping Coordinating Committee Subcommittee on Ship Design and Equipment and Associated Bodies; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 am on Friday, October 7, 1994, in Room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the Thirty-eighth session of the Subcommittee on Ship Design and Equipment (DE 38) and associated bodies of the International Maritime Organization (IMO) which is scheduled for January 23–27, 1995, at the IMO Headquarters in London. The purpose of the meeting is to discuss the papers received and the draft U.S. positions for DE 38.

Among other things, the items of particular interest are:

a. Safety of passenger submersible craft;
b. Development of safety standards for combined pusher tug-barges;
c. Guidelines for safe ocean towing;
d. Guidelines for the design and operation of passenger ships to the needs of elderly and disabled persons;
e. Use of compressed air systems for buoyancy;
f. Ventilation of vehicle decks during loading and unloading;
g. matters related to the prevention of oil pollution;
h. And matters relating to ship structures, including hull stress monitoring devices, corrosion protection for ballast tanks, and access to tank and ballast space structures;
i. Structural aspects of the on-board use of composite materials;
j. Requirements for ships intended for polar waters;
k. Revision of the Code of safety for diving systems;
l. Review of existing ships' safety standards; and
m. Guidelines on standard calculation methods for anchor positioning systems for MODUs.

The IMO Subcommittees work to develop international agreements, guidelines, and standards for the marine industry. In most cases, these international agreements, guidelines, and standards form the basis for national standards/regulations and class society rules. The U.S. Safety of Life at Sea (SOLAS) Working Group supports the U.S. Representative to the IMO Subcommittee in developing the U.S. position on those issues raised at the IMO Subcommittee meetings. Because of the impact on domestic regulations through development of these international guidelines, standards, and regulations, the U.S. SOLAS Working Group serves as an excellent forum for the U.S. maritime industry to express their ideas. All shipping companies, shipyards, design firms, naval architects, marine engineers, and consultants are encouraged to send representatives to participate in the development of U.S. positions on those issues affecting your maritime industry and remain abreast of all activities ongoing within the IMO.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: CDR Jim Stamm, U.S. Coast Guard Headquarters, Commandant (G–MTH), Room 1218, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling: (202) 267–2206.

Dated: September 8, 1994.

Marie Murray,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 94–23103 Filed 9–16–94; 8:45 am]

BILLING CODE 4710–7–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended September 9, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49757
Date filed: September 7, 1994
Parties: Members of the International Air Transport Association
Subject: Comp Telex Mail Vote 707; Cancel Cargo Rate Increases from Scandinavia.
Proposed Effective Date: October 1, 1994.

Docket Number: 49758
Date filed: September 7, 1994
Parties: Members of the International Air Transport Association
Subject: Comp Reso/P 0982 dated August 12, 1994; Composite Reso 300.
Proposed Effective Date: January 1, 1995.

Docket Number: 49759
Date filed: September 7, 1994
Parties: Members of the International Air Transport Association
Subject: Comp Reso/P 0981 dated August 12, 1994; Composite Resolutions—r-1 to r-24; Comp Reso/P 0983 dated August 12, 1994; Baggage Piece System—r-25 to r-27; Comp Reso/P 0984 dated August 12, 1994; Baggage Allowance Piece System (Japan-US)—r-28.
Proposed Effective Date: January 1, 1994.

Docket Number: 49761
Date filed: September 9, 1994
Parties: Members of the International Air Transport Association
Subject: TC1 Telex Mail Vote 708; excursion fares within South America.
Proposed Effective Date: January 1, 1995.

Docket Number: 49762
Date filed: September 9, 1994
Parties: Members of the International Air Transport Association
Subject: Comp Reso/C 0600 dated June 3, 1994; TC1 and TC31 Cargo Resos—r-1 to r-2; Comp Reso/C 0603 dated July 12, 1994; TC12 and TC13 Cargo Resos—r-3 to r-11; Comp Reso/C 0605 dated July 26, 1994; TC3 and TC23/123 Cargo Resos—r-12 to r-13; Airline Justifications.
Proposed Effective Date: September 1, 1994.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–23090 Filed 9–16–94; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 9, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49753
Date filed: September 6, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 4, 1994
Description: Application of Polar Air Cargo, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, applies for an amendment to its certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of property and mail between the U.S. on the one hand and the countries listed on the other.

Docket Number: 49763
Date filed: September 9, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 7, 1994
Description: Application of Royal Air Lines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, 14 C.F.R. Section 302.1701, for a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property and mail.

Docket Number: 49764
Date filed: September 9, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 7, 1994
Description: Application of Trans America Express Inc. d/b/a Advance Air Charters, pursuant to 49 U.S.C. Section 41302 and Subpart Q of the Regulations, applies for a foreign air carrier permit authorizing it to engage in: (1) charter foreign air transportation of persons, property and mail between points in Canada and points in the United States pursuant to the 1974 Nonscheduled Air Service Agreement between Canada and the United States; and (2) fifth-freedom, charter foreign air transportation of persons, property and mail between the United States and third countries upon Department approval.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–23091 Filed 9–16–94; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

Petition for Modification of a Previously Approved Antitheft Device; BMW

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition for modification of a previously approved antitheft device.

SUMMARY: In 1986, this agency granted BMW of North America, Inc.'s (BMW) petition for exemption from the parts marking requirements of the vehicle theft prevention standard for the BMW 7 Car line. This notice grants BMW's petition for a modification of the previously approved antitheft device. The agency grants this petition because it has determined, based on substantial evidence, that the modified antitheft device described in BMW's petition to be placed on the car line as standard equipment, is likely to be as effective in reducing and deterring motor vehicle theft as compliance with parts marking requirements.

DATES: The exemption granted by this notice is effective at the beginning of the 1995 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION: In October 1986, NHTSA published in the Federal Register a notice granting the petition from BMW of North America, Inc. (BMW) for an exemption from the parts marking requirements of the vehicle theft prevention standard for the model year (MY) 1988 BMW 7 Car line. [See 51 FR 36333, October 9, 1986). The agency determined that the antitheft device which BMW intended to install on the 7 Car line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts marking requirements of the theft prevention standard.

On February 17, 1994, BMW submitted a letter to the agency stating that the MY 1995 7 Car line would include modifications to the antitheft system that is installed as standard equipment. In a letter dated August 12, 1994, the agency informed BMW that the modification to the antitheft system on the 7 Car line appeared to be subject to NHTSA approval pursuant to 49 CFR section 543.9, *Terminating or modifying an exemption.* The agency had determined that the changes to the previously approved antitheft system were not *de minimis,* based on BMW's discussions of proposed changes to radio and glove box monitoring, and the addition of a glass breakage sensor.

On August 26, 1994, BMW submitted its petition for modification. The petition incorporated by reference certain information, dated May 29, 1986, that BMW already provided to NHTSA in its petition for exemption for the MY 1988 7 Car line. Together, the above information submitted by BMW constitutes a complete petition, as required by 49 CFR section 543.9(d), in that it meets the general requirements contained in section 543.5 and the specific content requirements of section 543.6.

In its petition for MY 1988, BMW included a detailed description of the identity, design and location of the components of the antitheft device, including diagrams of components and their location in the vehicle. BMW stated that the system consists of three lines of defense designed to prevent entry, disable the car, and scare away potential thieves. BMW described the antitheft device that was installed as standard equipment as passively activated.

BMW stated that, for MY 1995, the antitheft system will be modified in three ways:

(1) A remote control device will be added. BMW describes the remote

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control device as "an integral component within the vehicle key," used to lock/unlock the door(s) and actuate the alarm system. BMW stated that the remote control device is identical to that provided for the antitheft device on the BMW 8 Car line. In a letter to BMW dated October 4, 1993, NHTSA determined that the addition of the remote on the 8 Car line is a *de minimis* change to the antitheft device.

(2) Monitoring circuits for the radio and glove box are removed. In their place, the antitheft device will monitor glass breakage. As under the original exemption, the antitheft device monitors door opening. BMW asserts that the combination of the door and glass monitoring make the occupant compartment impenetrable. If the glass is broken in order to unlock and open a door, the device sounds. Likewise, if a door is opened by a means other than breaking the glass, e.g., through the use of a slim jim, the device sounds when a door is opened.

(3) The alarm siren's decibel level is raised from 104 decibels to 112 decibels.

BMW stated that, for MY 1995, the antitheft device features a comprehensive security alarm system and an ignition/fuel system disabling device that is activated by locking the door (either driver or passenger) with the metal key. The key can be turned in the front door locks in three positions: off; 45 degrees; and 90 degrees. If the driver holds the key a little past the 90 degree position, any open windows and the sunroof close. When the key is turned 45 degrees and removed, the doors, trunk, and fuel filler door are locked and the alarm system is armed. Additionally, when the key is removed from the driver's or passenger's door lock after having been turned 45 degrees, the ignition and fuel injection systems are deactivated, immobilizing the car.

When the key is turned 90 degrees and removed, the car's alarm is armed and the doors are "double locked." The alarm monitors the doors, hood, trunk, side window glazing and ignition switch. If the key is not first turned in the driver's or passenger's door lock, the alarm will sound if someone tampers with the doors, hood, or trunk, or turns the ignition switch. When this happens, the horn will sound, and the hazard warning lamps and high beam headlights will flash.

After 30 seconds, the alarm will automatically shut off and then rearm itself within 5 seconds. The alarm system has its own separate fuse, so removal of any of the fuses in the fuse box of the engine compartment will not disarm the system. The hood has an inside lock release located underneath the dashboard, and is also tied into the alarm system. BMW stated that the electronic control unit for the system is hidden within the vehicle. Cutting, disconnecting, or manipulating system wiring will trigger the alarm. Therefore, if a thief did manage to penetrate to the battery circuit and interrupt it, the alarm systems' memory will trigger the alarm when the circuit is again completed.

The steering/ignition lock is hardened against the grip of a screw, and the housing is reinforced to prevent removal of the lock. When the key is removed, the steering lock has a mechanism that causes the lock to instantly engage, preventing steering wheel movement without any additional action. BMW states that the steering lock cannot be broken by forcing the steering wheel because a clutch in the steering drive is designed to slip long before torque sufficient to break the lock can be administered.

BMW states that the inside locking mechanism operates by means of a vertical plunger on each door, and that the plunger on the driver's door overrides the other plunger. In the event of an accident, an inertia switch will unlock all doors. The same key operates door locks and the ignition/steering lock, and can be inserted in a keyhole in either direction. To prevent locking the keys in the car upon exiting, the driver's door can only be locked with a key after it is closed.

BMW describes the key for the 7 Car line as being unique in that it has the equivalent of four rows of teeth. BMW asserts that the unique design makes the locks almost impossible to pick and the keys impossible to duplicate on the open market. Special key blanks, key cutting machines, and codes will be closely controlled and new keys will only be issued to authorized persons. Additionally, the first gate in the door lock keyway is hardened to resist the grip of a screw to prevent use of a slampuller.

BMW states that an LED warning lamp on the center console which is visible from outside of the vehicle informs the driver of the arming status of the alarm/no-start systems. Upon return to the operator's vehicle, the warning lamp informs the operator if a theft attempt has been made, or if a door, hood or trunk is not completely closed. It also indicates if there are any problems with the system. Additionally, BMW states that the vehicle's diagnostic umbilical contains extra circuits which, when plugged into the vehicle diagnostic machine at the dealership, identifies problems with the antitheft system.

As a complementary feature to the passive system, the operator may manually arm another alarm system and deactivate the vehicle's ignition/fuel systems so that a thief would not be able to start the engine and steal the vehicle. This active system is armed by the driver keying in a 4-digit code into the computer built into the dashboard.

BMW addressed the reliability and durability of its antitheft device by providing a list of American and international standards for which the antitheft system has been tested and found in compliance. This list includes various environmental tests and a Swedish regulation that requires door and ignition locks to be able to resist commonly available tools for a minimum period of 5 minutes in attempted forced entries. BMW uses the proposed system's conformance to these standards as support for the likely effectiveness of the system in reducing and deterring theft.

BMW noted that NHTSA's February 1986 Report to Congress indicates that the first year's theft rate for new introductions are generally lower because the demand for replacement parts is relatively small. BMW believes that this finding applies to its 7 Car line and that theft rates will generally be lower because of the limited total sales of these vehicles. Additionally, BMW believes that most of this car line will be stolen for the value of the whole car, not its parts. BMW stated that since parts marking seeks to deter thefts of automobiles for their parts, while antitheft devices deter all thefts, BMW believes that its antitheft system "should be considerably more effective" in reducing and deterring theft than parts marking.

BMW compares its MY 1995 antitheft system to similar systems which have previously been granted exemptions by the agency. It compared its proposed system to systems installed in the Saab 9000, Mazda 929, Infiniti M30, and Lexus LS. BMW believes that its analysis reveals that its system is equivalent to, or has more extensive features than, all of the compared systems previously granted an exemption by the agency. The agency believes that the BMW antitheft device is comparable to the systems on the cited car lines.

The 1983/84 median theft rate was 3.2712 thefts per thousand vehicles produced. (See 50 FR 46666, November 12, 1985). Based on data from the FBI's National Crime Information Center, NHTSA's official source of theft data, BMW showed that for MYs 1989 through 1992, the theft rates of the Saab 9000, Mazda 929, Infiniti M30, and Lexus LS fell mostly below 3.2712. For 1989, the Saab 9000 had a theft rate of 2.3691 (per thousand vehicles manufactured), and the Mazda 929 had a theft rate of 3.3610. No theft data were available for the Infiniti M30 or Lexus LS for 1989. For 1990/91, the Saab 9000 had a theft rate of 0.5125, the Mazda 929 had a theft rate of 2.7178, the Infiniti M30 had a theft rate of 2.7496, and the Lexus LS had a theft rate of 1.8977. For 1992, preliminary data show that the Saab 9000 had a theft rate of 0.4695, the Mazda 929 had a theft rate of 2.6477, the Infiniti M30 had a theft rate of 2.7117, and the Lexus LS had a theft rate of 2.4390.

For these reasons, BMW believes that the antitheft system proposed for installation on its 7 Car line is likely to be as effective in reducing thefts as compliance with the parts marking requirements of part 541.

NHTSA believes that there is substantial evidence indicating that the modified antitheft system installed as standard equipment on the MY 1995 BMW 7 Car line will likely be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of the theft prevention standard (49 CFR part 541). This determination is based on the information that BMW submitted with its petition and on other available information. The agency believes that the modified device will continue to provide the types of performance listed in section 543.6(a)(3): promoting activation; attracting attention to unauthorized entries; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 CFR section 543.6(a)(4), the agency also finds that BMW has provided adequate reasons for its belief that the modified antitheft device will reduce and deter theft. This conclusion is based on the information BMW provided on its device. This information included a description of reliability and functional tests conducted by BMW for the antitheft device and its components.

49 CFR section 543.9(h)(2)(ii) permits the agency to establish an effective date for the modification of the antitheft device earlier than "the model year following the model year in which NHTSA issued the modification decision" upon a showing of good cause by the manufacturer that an earlier effective date for modifying its exemption is consistent with the public interest and purposes of 49 U.S.C. section 33106. In its petition, BMW stated that making the modification of its antitheft system effective beginning with MY 1995 is in the public interest since it would permit expeditious manufacture and sale of vehicles with the modified antitheft system as standard equipment. BMW stated the 1989 theft data published by NHTSA in the **Federal Register** (56 FR 7444, February 22, 1991) show that the BMW 7 Car line had a theft rate of 3.9505 per thousand vehicles stolen, somewhat above the 1983/84 median theft rate of 3.2712. BMW stated its belief that the antitheft device proposed for the MY 1995 7 Car line, with improvements that enhance the effectiveness of the antitheft system, will lower the 7 Car line's theft rate. NHTSA has reviewed this showing of "good cause" and finds that making the modification of BMW's petition effective beginning with the 1995 model year is consistent with the public interest and 49 U.S.C. section 33106.

For the foregoing reasons, the agency hereby exempts the BMW 7 Car line that is the subject of this notice, in whole, from the requirements of 49 CFR part 541.

If, in the future, BMW decides not to use the exemption for the car line that is the subject of this notice, it should formally notify the agency. If such a decision is made, the car line must be fully marked according to the requirements under 49 CFR section 541.5 and section 541.6 (marking of major component parts and replacement parts).

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs continue to make it difficult to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly invites such a comparison, which the agency has made on the basis of the limited data available. With implementation of the requirements of the "Anti Car Theft Act of 1992," NHTSA anticipates more probative data upon which comparisons may be made.

NHTSA notes that if BMW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, section 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which section 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: September 13, 1994.

Ricardo Martinez,

Administrator

[FR Doc. 94-23093 Filed 9-16-94; 8:45 am]

BILLING CODE 4910-59-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Investment and Services Policy Advisory Committee

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of closed meeting. The September 14, 1994 meeting of the Investment and Services Policy Advisory Committee will be closed to the public.

SUMMARY: The meeting will include a review and discussion of current issues which influences U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

DATES: The meeting is scheduled for September 14, 1994, unless otherwise notified.

ADDRESSES: The meeting will be held at the United States Trade Representative from 10 am to 12 noon unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: MICHAELLE BURSTIN, DIRECTOR OF PUBLIC LIAISON, OFFICE OF THE UNITED STATES

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TRADE REPRESENTATIVE, EXECUTIVE OFFICE OF THE PRESIDENT AT (202) 395–6120.

Michael Kantor,

United States Trade Representative.

[FR Doc. 94–23064 Filed 9–16–94; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 180

Monday, September 19, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: September 12, 1994, 59 FR 46884.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: September 14, 1994, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added on the Agenda scheduled for September 14, 1994:

Item No., Docket No., and Company

CAG–7

RP94–87–000 *et al.*, Natural Gas Pipeline Company of America

CAG–14

RP94–309–000, Tennessee Gas Pipeline Company

Lois D. Cashell,

Secretary.

[FR Doc. 94–23182 Filed 9–15–94; 9:05 am]

BILLING CODE 6717–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 19, 1994.

A closed meeting will be held on Thursday, September 22, 1994, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, September 22, 1994, at 10:00 a.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: September 14, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–23178 Filed 9–15–94; 9:05 am]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1469)

TIME AND DATE: 10 a.m., September 21, 1994.

PLACE: TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on August 17, 1994.

Discussion Item

1. Final Rate Review.

Action Items

New Business

A—Budget and Financing

A1. Approval of Short-Term Borrowing from the Treasury.

A2. Approval of Fiscal Year 1995 Operating Budget and Power System Capital Budget.

C—Energy

C1. Installation of Noncondensing Turbine Generator at Johnsonville Fossil Plant.

C2. Proposed Increases in Prices Under Dispersed Power Price Schedule—CSPP.

E—Real Property

E1. Easement Exchange Request by River Plantation, Inc. (RPI), to Abandon A Certain Transmission Line Easement Affecting Approximately 10 Acres of TVA's Waterville-Arlington Transmission Line Right-of-Way in Sevier County, Tennessee.

E2. Sale of Permanent Easement and Temporary Construction Easement to the City of Tupelo, Mississippi, for a Sewer Line Extension Project Affecting Approximately 0.14 Acres and 0.42 Acres in Lee County, Mississippi.

E3. Public Auction Sale of Approximately 2.10 Acres of the Tiftonia, Tennessee, Microwave Reflector Station Site in Hamilton County, Tennessee.

E4. Public Auction Sale of Approximately 1.69 Acres of Land of the former Jackson, Tennessee, Area Operating Headquarters Property in Madison County, Tennessee.

E5. Deed Modification Affecting Approximately 1.46 Acres of Private Land on Norris Lake in Campbell County, Tennessee.

F—Unclassified

F1. Filing of Condemnation Cases.

F2. Supplement to Contract 91NMB–80847D with Stone and Webster Engineering Corporation for Browns Ferry Nuclear Plant, subject to final negotiations and review prior to execution.

F3. Supplement to Contract TV–91099V with Sigma Science Engineering & Technology Applications Corporation for Engineering Support Services at Browns Ferry Nuclear Plant, subject to final negotiations and review prior to execution.

F4. Supplement to Contract 93N7B–79294A with Chem-Nuclear Systems, Inc., for Radwaste Services at TVA Nuclear Facilities.

F5. Supplement No. 2 to Personal Services Contract No. TV–90476V with P&A Consultants, Corp.

F6. Interchange Agreement with Entergy Power, Inc.

F7. Delegation of Authority to the Vice President, Fossil Fuels, to Extend for One Year the Rail Contract with CSX for Transportation Services to Widows Creek Fossil Plant.

F8. TVA Contribution to Retirement System For Fiscal Year 1995.

Information Items

1. Abandonment of Flowage Easement Rights Affecting 0.83 Acre of Private Land on Fort Loudon Lake in Knox County, Tennessee.

2. Supplement to Contract 91NNP–449706 with Ebasco Constructors.

3. Supplement to Contract No. TV–63720A with Bicentennial Volunteers.

4. TVA Line of Succession in Emergencies.

5. Agreement Between TVA and the TVA Retirement System To Provide Additional Credit for Age and Service in the System for Persons Who Voluntarily Resign from TVA

6. Amendment to the Rules and Regulations of the TVA Retirement System for Members Who Voluntarily Resign during the Period of August 15, 1994, through October 3, 1994.

7. Grant of Easement Affecting 63.7 Acres of Land on Muscle Shoals Reservation and Pickwick Lake in Colbert and Lauderdale Counties, Alabama.

CONTACT PERSON FOR MORE INFORMATION: Ron Loving, Vice President,

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Governmental Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: September 14, 1994.
Edward S. Christenbury,
General Counsel.
[FR Doc. 94–23192 Filed 9–15–94; 10:24 am]
BILLING CODE 8120–08–M

Federal Register

Monday
September 19, 1994

Part II

Environmental Protection Agency

40 CFR Part 268
Hazardous Waste Management System; Testing and Monitoring Activities, Land Disposal Restrictions Correction; Final Rule

40 CFR Parts 148, et al.
Land Disposal Restrictions Phase II—Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–5070–2]

Hazardous Waste Management System; Testing and Monitoring Activities, Land Disposal Restrictions Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: This action corrects the final regulations which were published Tuesday, August 31, 1993 ("Hazardous Waste Management System; Testing and Monitoring Activities; Final Rule", 58 FR 46040). This action corrects the unintended removal of text from 40 CFR 268.7(a), which sets out the generator waste analysis and recordkeeping requirements of the land disposal restrictions under Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended.

EFFECTIVE DATE: This action is effective as of August 31, 1993.

FOR FURTHER INFORMATION CONTACT: For further information about this correction contact Kim Kirkland at (202) 260–4761, Office of Solid Waste (Mailcode 5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. For information about 40 CFR 268.7(a) requirements, contact the RCRA Hotline on (800) 424–9346 (toll-free) or, in the Washington, DC metropolitan area, (703) 412–9810.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction (August 31, 1993, 58 FR 46040) amended the hazardous waste regulations for testing and monitoring activities by replacing the Second Edition, Updates I and II, of the EPA approved test methods manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, by incorporating by reference the Third Edition of SW–846 and its Update I into § 260.11(a) of the RCRA regulations. In addition, the final rule also made a technical amendment to § 268.7(a) (concerning waste analysis and recordkeeping requirements) whereby the reference to the appendix IX of Part 268 was revised to reference SW–846 Methods 1311 and 1310. The Agency intended to revise only the introductory text of § 268.7(a) and to retain without change all of the subparagraphs following the introductory text. However, due to an inadvertent administrative error in incorporating the August 31, 1993 rule into the 1994 edition of the Code of Federal Regulations (CFR), the subparagraphs following the introductory text were unintentionally removed. This action clarifies that subparagraphs 40 CFR 268.7(a)(1)–268.7(a)(10), as set forth in this action, remain in effect, and are regarded by EPA to have been in effect continuously in the form published in the Code of Federal Regulations revised as of July 1, 1993.

It should be noted that 40 CFR 268.7(a) as published in this action, as well as other regulations implementing the land disposal restriction (LDR) program, have been amended in a final rule that is published elsewhere in today's **Federal Register**. The regulatory text set forth in this action does not include the amendments to § 268.7(a) made by that LDR final rule. The purpose of this action is to make clear that the August 31, 1993 rule was intended only to modify the introductory text of § 268.7(a), and was not intended to delete paragraphs (a)(1)–(a)(10). Therefore, the complete version of § 268.7(a) as it *should have appeared* since the August 31, 1994 **Federal Register** is set forth in this action. Readers are urged to refer to the LDR final rule, published elsewhere in today's **Federal Register**, for the full and current text of § 268.7(a).

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: August 30, 1994.

Peter Robertson,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

Therefore, for the reasons set forth in the preamble, 40 CFR part 268 is corrected by making the following correcting amendments:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. Section 268.7(a) is revised to read as follows:

§ 268.7 Waste analysis and recordkeeping.

(a) Except as specified in § 268.32, if a generator's waste is listed in 40 CFR part 261, subpart D, the generator must test his waste, or test an extract using the Toxicity Characteristic Leaching Procedure, Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this part. Except as specified in § 268.32 of this part, if a generator's waste exhibits one or more of the characteristics set out at 40 CFR part 261, subpart C, the generator must test an extract using the Extraction Procedure Toxicity Test, Method 1310 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this Part. If the generator determines that his waste displays the characteristic of ignitability (D001) (and is not in the High TOC Ignitable Liquids Subcategory or is not treated by INCIN, FSUBS, or RORGS of § 268.42, Table 1), or the characteristic of corrosivity (D002), and is prohibited under § 268.37 of this Part, the generator must determine what underlying hazardous constituents (as defined in § 268.2), are reasonably expected to be present in the D001 or D002 waste.

(1) If a generator determines that he is managing a restricted waste under this part and the waste does not meet the applicable treatment standards set forth in Subpart D of this part or exceeds the applicable prohibition levels set forth in § 268.32 or RCRA section 3004(d), with each shipment of waste the generator must notify the treatment or storage facility in writing of the appropriate treatment standards set forth in Subpart D of this part and any applicable prohibition levels set forth in § 268.32 or RCRA section 3004(d). The notice must include the following information.

(i) EPA Hazardous Waste Number;

(ii) The corresponding treatment standards for wastes F001–F005, F039, wastes prohibited pursuant to § 268.32 or RCRA section 3004(d), and for underlying hazardous constituents (as defined in § 268.2), in D001 and D002 wastes if those wastes are prohibited under § 268.37. Treatment standards for all other restricted wastes must either be included, or be referenced by including on the notification the applicable wastewater (as defined in § 268.2(f)) or nonwastewater (as defined in § 268.2(d)) category, the applicable subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanides), and the CFR section(s) and paragraph(s) where the applicable treatment standard appears. Where the applicable treatment standards are expressed as specified technologies in § 268.42, the applicable five-letter treatment code found in Table 1 of § 268.42 (e.g., INCIN, WETOX) also must be listed on the notification;

(iii) The manifest number associated with the shipment of waste;

(iv) For hazardous debris, the contaminants subject to treatment as provided by § 268.45(b) and the following statement: "This hazardous debris is subject to the alternative treatment standards of 40 CFR 268.45"; and

(v) Waste analysis data, where available.

(2) If a generator determines that he is managing a restricted waste under this Part, and determines that the waste can be land disposed without further treatment, with each shipment of waste he must submit, to the treatment, storage, or land disposal facility, a notice and a certification stating that the waste meets the applicable treatment standards set forth in subpart D of this part and the applicable prohibition levels set forth in § 268.32 or RCRA section 3004(d). Generators of hazardous debris that is excluded from the definition of hazardous waste under § 261.3(e)(2) of this chapter (i.e., debris that the Director has determined does not contain hazardous waste), however, are not subject to these notification and certification requirements.

(i) The notice must include the following information:

(A) EPA Hazardous Waste Number;

(B) The corresponding treatment standards for wastes F001–F005, F039, and wastes prohibited pursuant to § 268.32 or RCRA section 3004(d). Treatment standards for all other restricted wastes must either be included, or be referenced by including on the notification the applicable wastewater (as defined in § 268.2(f)) or nonwastewater (as defined in § 268.2(d)) category, the applicable subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanides), and the CFR section(s) and paragraph(s) where the applicable treatment standard appears. Where the applicable treatment standards are expressed as specified technologies in § 268.42, the applicable five-letter treatment code found in Table 1 of § 268.42 (e.g., INCIN, WETOX) also must be listed on the notification.

(C) The manifest number associated with the shipment of waste;

(D) Waste analysis data, where available.

(ii) The certification must be signed by an authorized representative and must state the following:

"I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in 40 CFR Part 268, Subpart D and all applicable prohibitions set forth in 40 CFR 268.32 or RCRA section 3004(d). I believe that the information I submitted is true, accurate and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment.

(3) If a generator's waste is subject to an exemption from a prohibition on the type of land disposal method utilized for the waste (such as, but not limited to, a case-by-case extension under § 268.5, an exemption under § 268.6, or a nationwide capacity variance under subpart C of this part), with each shipment of waste he must submit a notice to the facility receiving his waste stating that the waste is not prohibited from land disposal. The notice must include the following information:

(i) EPA Hazardous Waste Number;

(ii) The corresponding treatment standards for wastes F001–F005, F039, and wastes prohibited pursuant to § 268.32 or RCRA section 3004(d). Treatment standards for all other restricted wastes must either be included, or be referenced by including on the notification the applicable wastewater (as defined in § 268.2(f)) or nonwastewater (as defined in § 268.2(d)) category, the applicable subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanides), and the CFR section(s) and paragraph(s) where the applicable treatment standard appears. Where the applicable treatment standards are expressed as specified technologies in § 268.42, the applicable five-letter treatment code found in Table 1 of § 268.42 (e.g., INCIN, WETOX) also must be listed on the notification;

(iii) The manifest number associated with the shipment of waste;

(iv) Waste analysis data, where available;

(v) For hazardous debris, the contaminants subject to treatment as provided by § 268.45(b) and the following statement: "This hazardous debris is subject to the alternative treatment standards of 40 CFR 268.45"; and

(vi) The date the waste is subject to the prohibitions.

(4) If a generator is managing prohibited waste in tanks, containers, or containment buildings regulated under 40 CFR 262.34, and is treating such waste in such tanks, containers, or containment buildings to meet applicable treatment standards under subpart D of this part, the generator must develop and follow a written waste analysis plan which describes the procedures the generator will carry out to comply with the treatment standards. (Generators treating hazardous debris under the alternative treatment standards of Table 1, § 268.45, however, are not subject to these waste analysis requirements.) The plan must be kept on site in the generator's records, and the following requirements must be met:

(i) The waste analysis plan must be based on a detailed chemical and physical analysis of a representative sample of the prohibited waste(s) being treated, and contain all information necessary to treat the waste(s) in accordance with the requirements of this Part, including the selected testing frequency.

(ii) Such plan must be filed with the EPA Regional Administrator (or his designated representative) or State authorized to implement Part 268 requirements a minimum of 30 days prior to the treatment activity, with delivery verified.

(iii) Wastes shipped off-site pursuant to this paragraph must comply with the notification requirements of § 268.7(a)(2).

(5) If a generator determines whether the waste is restricted based solely on his knowledge of the waste, all supporting data used to make this determination must be retained on-site in the generator's files. If a generator determines whether the waste is restricted based on testing this waste or an extract developed using the test method described in Appendix I of this part, all waste analysis data must be retained on-site in the generator's files.

(6) If a generator determines that he is managing a restricted waste that is excluded from the definition of hazardous or solid waste or exempt from Subtitle C regulation, under 40 CFR 261.2 through 261.6 subsequent to the point of generation, he must place a one-time notice stating such generation, subsequent exclusion from the definition of hazardous or solid waste or exemption from RCRA, Subtitle C regulation, and the disposition of the waste, in the facility's file.

(7) Generators must retain on-site a copy of all notices, certifications, demonstrations, waste analysis data, and other documentation produced pursuant to this section for at least five years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal. The five year record retention period is automatically extended during the course of any unresolved enforcement

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action regarding the regulated activity or as requested by the Administrator. The requirements of this paragraph apply to solid wastes even when the hazardous characteristic is removed prior to disposal, or when the waste is excluded from the definition of hazardous or solid waste under 40 CFR 261.2–261.6, or exempted from Subtitle C regulation, subsequent to the point of generation.

(8) If a generator is managing a lab pack that contains wastes identified in Appendix IV of this part and wishes to use the alternative treatment standard under § 268.42, with each shipment of waste the generator must submit a notice to the treatment facility in accordance with paragraph (a)(1) of this section. The generator must also comply with the requirements in paragraphs (a)(5) and (a)(6) of this section, and must submit the following certification, which must be signed by an authorized representative:

I certify under penalty of law that I personally have examined and am familiar with the waste and that the lab pack contains only the wastes specified in appendix IV to part 268 or solid wastes not subject to regulation under 40 CFR part 261. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.

(9) If a generator is managing a lab pack that contains organic wastes specified in Appendix V of this Part and wishes to use the alternate treatment standards under § 268.42, with each shipment of waste the generator must submit a notice to the treatment facility in accordance with paragraph (a)(1) of this section. The generator also must comply with the requirements in paragraphs (a)(5) and (a)(6) of this section, and must submit the following certification which must be signed by an authorized representative: I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste and that the lab pack contains only organic waste specified in Appendix V to Part 268 or solid wastes not subject to regulation under 40 CFR Part 261. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.

(10) Small quantity generators with tolling agreements pursuant to 40 CFR 262.20(e) must comply with the applicable notification and certification requirements of paragraph (a) of this section for the initial shipment of the waste subject to the agreement. Such generators must retain on-site a copy of the notification and certification, together with the tolling agreement, for at least three years after termination or expiration of the agreement. The three-year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

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[FR Doc. 94–22492 Filed 9–16–94; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Parts 148, 260, 261, 264, 265, 266, 268 and 271

[FRL–5028–9]

RIN 2050–AD89

Land Disposal Restrictions Phase II—Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: As part of the Agency's Land Disposal Restrictions (LDR) program, EPA is today promulgating treatment standards for the newly identified organic toxicity characteristic (TC) wastes (except those managed in Clean Water Act (CWA) systems, CWA-equivalent systems, or Class I Safe Drinking Water Act (SDWA) injection wells), and for all newly listed coke by-product and chlorotoluene production wastes. The required treatment standards for these wastes must be met before they are land disposed. EPA is also requiring ignitable characteristic wastes with a high total organic carbon (TOC) content and toxic characteristic pesticide wastes, that are being disposed in Class I nonhazardous waste injection wells, to either be injected into a well that is subject to a no-migration determination, or be treated by the designated LDR treatment method. Promulgation of these treatment standards for the newly identified and listed wastes and promulgation of the dilution prohibitions for high TOC ignitables and pesticides fulfills requirements of a proposed consent decree between EPA and the Environmental Defense Fund, and a settlement agreement between EPA, the Hazardous Waste Treatment Council, and a number of environmental groups including the Natural Resources Defense Council.

EPA is also making a major improvement in the Land Disposal Restrictions program in order to simplify and provide consistency in the requirements. EPA is establishing a single set of requirements, referred to as universal treatment standards, that apply to most hazardous wastes. EPA is also simplifying the Land Disposal Restrictions program by reducing paperwork for the regulated community, and improving guidance to make compliance easier. EPA is also publishing clarifying guidance regarding treatability variances, which largely restates previous Agency statements. Finally, EPA is modifying the hazardous waste recycling regulations which will allow streamlined regulatory decisions to be made regarding the regulation of certain types of recycling activities.

DATES: *Effective date:* The final rule is effective on December 19, 1994. Section 266.100 and Appendix VIII are effective September 19, 1994.

Applicability dates: For high TOC D001 (40 CFR 148.17) and halogenated pesticides wastes (40 CFR 148.17) disposed in Class I nonhazardous injection deep wells, the compliance date is September 19, 1995. For radioactive waste mixed with the newly listed or identified wastes, or soil and debris contaminated with such mixed wastes (40 CFR 268.38), the compliance date is September 19, 1996. Although the effective date of today's rule is December 19, 1994, facilities will be in compliance if they meet the universal treatment standards (UTS) before the 90-day period ends.

ADDRESSES: The official record for this rulemaking is identified as Docket Number F–94–CS2F–FFFFF, and is located in the EPA RCRA Docket, U.S. Environmental Protection Agency, Room 2616, 401 M Street, SW., Washington, DC 20460. The RCRA Docket is open from 9 am to 4 pm Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $.15 per page. The mailing address is EPA RCRA Docket (5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 (toll-free) or (703) 412–9810 locally. For technical information about mercury and radioactive mixed waste, contact Shaun McGarvey on (703) 308–8603; for technical information about lab packs and metal Universal Treatment Standards, contact Anita Cummings on (703) 308–8303; for technical information about organic Universal Treatment Standards, contact Lisa Jones on (703) 308–8451; for technical information about Toxicity Characteristic wastes, contact Mary Cunningham on (703) 308–8453; for technical information about petroleum refining wastes, contact Jose Labiosa on (703) 308–8464; for other information, contact Richard Kinch on (703) 308–8414; of the Waste Treatment Branch, Office of Solid Waste (5302W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, phone (703) 308–8434. For technical information on capacity analyses, contact Bengie Carroll of the Capacity Programs Branch, Office of Solid Waste (5302W), phone (703) 308–8440. For technical information on Hazardous Waste Recycling, contact Mitch Kidwell of the Regulation Development Branch, Office of Solid Waste (5304), phone (202) 260–8551.

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I. Background

A. Summary of the Statutory Requirements of the 1984 Hazardous and Solid Waste Amendments, and Requirements of the 1993 Settlement Agreement With the Environmental Defense Fund

The Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), enacted on November 8, 1984, largely prohibit the land disposal of untreated hazardous wastes. Once a hazardous waste is prohibited from land disposal, the statute provides only two options for legal land disposal: meet the treatment standard for the waste prior to land disposal, or dispose of the waste in a land disposal unit that has been found to satisfy the statutory no-migration test. A no-migration unit is one from which there will be no migration of hazardous constituents for as long as the waste remains hazardous. RCRA sections 3004 (d), (e), (g)(5).

The treatment standards may be expressed as either constituent concentration levels or as specific methods of treatment. These standards must substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized. RCRA section 3004(m)(1). For purposes of the restrictions, land disposal includes any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave. RCRA section 3004(k).

The land disposal restrictions are effective upon promulgation. RCRA section 3004(h)(1). However, the Administrator may grant a national capacity variance from the immediate effective date and establish a later effective date (not to exceed two years) based on the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available. RCRA section 3004(h)(2). The Administrator may also grant a case-by-case extension of the effective date for up to one year, renewable once for up to one additional year, when an applicant successfully makes certain demonstrations. RCRA section 3004(h)(3). See 55 FR 22526 (June 1, 1990) for a more detailed discussion on national capacity variances and case-by-case extensions.

In addition, Congress prohibited the storage of any waste which is prohibited from land disposal unless such storage is to allow for the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal. RCRA section 3004(j). For storage up to one year, EPA has taken the position that the agency bears the burden of proving that such storage was not solely for the purpose of accumulation of quantities necessary to facilitate proper recovery, treatment or disposal. 40 CFR 268.50(b). For storage beyond one year, however, the burden of proof shifts to the generator or owner/operator of a treatment, storage or disposal facility to demonstrate that such storage was solely for the purpose of accumulation of quantities necessary to facilitate proper recovery, treatment or disposal. 40 CFR 268.50(c). The provision applies, of course, only to storage which is not also defined in section 3004(k) as land disposal.

EPA was required to promulgate land disposal prohibitions and treatment standards by May 8, 1990 for all wastes that were either listed or identified as hazardous at the time of the 1984 amendments, RCRA sections 3004 (d), (e), and (g), a task EPA completed within the statutory timeframes. EPA was also required to promulgate prohibitions and treatment standards for wastes identified or listed as hazardous after the date of the 1984 amendments within six months after the listing or identification takes effect. RCRA section 3004(g)(4).

The Agency did not meet this latter statutory deadline for all of the wastes identified or listed after the 1984 amendments. As a result, a suit was filed by the Environmental Defense Fund (EDF). EPA and EDF signed a consent decree (lodged with but not entered by the District Court) that establishes a schedule for adopting prohibitions and treatment standards for newly identified and listed wastes. (*EDF v. Reilly*, Civ. No. 89–0598, D.D.C.) This proposed consent decree was recently modified as a result of the court decision on the Third Third final rule (*Chemical Waste Management v. EPA*, 976 F.2d 2 (D.C. Cir. 1992), cert. denied 113 S. Ct. 1961 (1993) (*CWM v. EPA*)). Today's rule fulfills several provisions of the proposed consent decree. The rule establishes treatment standards for newly listed coke by-product and chlorotoluene production wastes, and for the D018–D043 TC wastes (TC wastes identified as hazardous because of the presence of organic hazardous constituents) when these wastes are managed in systems other than those wastewater treatment systems whose discharge is regulated under the Clean Water Act (CWA), by zero-dischargers that do not engage in CWA-equivalent treatment prior to land disposal, and by injection into other than underground injection control (UIC) Class I deep injection wells regulated under the Safe Drinking Water Act (SDWA). Soils contaminated with these newly identified and listed wastes are also covered by this rule.

Finally, this rule prohibits injection into deep wells of high Total Organic Carbon ignitable wastes (D001) and Toxic Characteristic organic pesticides (D012–D017) unless they are treated to meet applicable treatment standards, or the deep well has received a no-migration variance. This last prohibition is in partial fulfillment of the settlement agreement following the D.C. Circuit's decision in *CWM v. EPA*.

EPA is also modifying a number of the existing land disposal restrictions rules. Although not required by the settlements discussed above, these changes reflect EPA's updated technical knowledge, simplify implementation of the program, and provide greater programmatic consistency. In today's notice, EPA is establishing a set of treatment standards (called universal treatment standards) that apply to most hazardous wastes, changing requirements for land disposal of lab packs containing prohibited hazardous wastes, and simplifying paperwork requirements.

B. Pollution Prevention Benefits

EPA's progress over the years in improving environmental quality through its media-specific pollution

control programs has been substantial. Over the past two decades, standards for pollution control concentrated to a large extent on "end-of-pipe" treatment or land disposal of hazardous and nonhazardous wastes. Although none of the treatment standards in today's rule require waste minimization or recovery, these are viable options for facilities to choose to use to comply with universal treatment standards. For example, facilities may choose to reduce the generation of wastes and/or treat certain metal-containing wastes by using high temperature metal recovery (HTMR), which has been shown to be effective for treating many metal bearing wastes.

C. Relationship of Best Demonstrated Available Technology (BDAT) Treatment Standards to Initiatives To Strengthen Federal Controls Governing Hazardous Waste Combustion Devices

On May 18, 1993, EPA Administrator Browner announced additional steps that would be pursued to protect public health and the environment by further encouraging reduction in the amount of hazardous wastes generated in this country and strengthening federal controls governing hazardous waste incinerators and other combustion devices. With the announcement, the Draft Hazardous Waste Minimization and Combustion Strategy (also referred to as the Draft Strategy) was released, upon which the Agency has sought broad national dialogue. Among other things, the Draft Strategy called for a national review of the relative roles of hazardous waste combustion and source reduction in hazardous waste management.

Since release of the Draft Strategy, the Agency has pursued a wide variety of activities. For example, EPA released in May 1994 a draft technical report entitled "Combustion Emissions Technical Resource Document". This report provides EPA's preliminary technical analysis of best operating practices and achievable emission levels with regards to emissions of dioxin and particulate matter from existing hazardous waste incinerators, and boilers and industrial furnaces (BIFs) burning hazardous wastes, based on data already submitted to EPA. The report was also released to provide for early pre-proposal dialogue on the types of additional controls and emission limits that should be adopted for hazardous waste combustion units. In another action, the Agency announced its proposed permitting and public participation rule. This rule would amend EPA's RCRA regulations to provide earlier and more effective opportunities for public participation in the RCRA permitting process. The rule also proposes tighter standards for the interim period immediately after a facility trial burn is completed but before a final permit determination is made.

Today's rule provides the Agency with another opportunity to address the objectives of the Draft Strategy. In particular, this rule specifies a series of new treatment standards that must be met before hazardous wastes are land disposed. As in previous LDR rules, the standards for hazardous organic constituents are, in many cases, based on the performance of combustion technology. In the proposed rule, the Agency solicited comments and data on whether other treatment technologies, especially recycling technologies, can achieve these or comparable treatment levels. EPA also solicited comment on whether the levels should be modified so as to allow and encourage the use of non-combustion treatment technologies.

It remains EPA's primary objective in hazardous waste management to reduce the amount of hazardous waste that is generated so as to minimize the need to treat and dispose of hazardous waste. A wide range of waste minimization activities are underway, including development of the National Plan for Hazardous Waste Minimization released in draft on May 23, 1994 as part of the Draft Strategy. However, for those hazardous wastes that are still produced and are disposed, the waste must be treated (see RCRA section 3004(m)).

While the Agency has concerns with combustion devices that are not properly designed and operated, particularly if they do not fully control toxic metals and organics (including products of incomplete combustion (PICs)), the Agency also believes that combustion technologies, if properly designed and operated, do minimize threats to human health and the environment for many waste streams. Several commenters agree with the Agency on this point. In fact, these commenters (including environmental groups) argue that relaxing the treatment standards to reduce the amount of treatment otherwise achieved via combustion could actually increase threats to human health and the environment, and thus violate EPA's statutory requirements under 3004(m). In addition, it has also been argued that loosening the treatment standards will not necessarily result in less combustion because the regulated community may still choose to rely on combustion to meet the standards. Commenters also suggested that loosening the treatment standards will actually act as a disincentive to seek pollution prevention alternatives. This latter point seems to have merit in that based on some preliminary analysis of the land disposal restrictions program by the Agency, the existing treatment standards have raised the cost of hazardous waste management substantially and have been a factor in reducing the amount of hazardous waste generated.

To address those combustion facilities that are not operated properly, the Agency will continue its aggressive inspection and enforcement program to bring the facilities back into compliance with all requirements and to impose penalties. In addition, the Agency is actively engaged with all interested parties in discussions on upgrading combustion regulations. EPA is considering, as part of this upcoming rulemaking, revising the controls on dioxin and furan emissions, particulate matter, and toxic metals. In the course of the rulemaking, the public will have the opportunity to comment on the Agency's proposals. As noted earlier, EPA is already seeking public comment on its preparatory work for this rulemaking to upgrade combustion regulations through release of the Combustion Emissions Technical Resource Document, this past May.

Several commenters indicated that the LDR treatment standards should not be based on combustion performance because this will encourage combustion over other treatment alternatives. Although the Agency is willing to look at alternative technologies, such technologies must still achieve levels of performance that satisfy the dictates of RCRA section 3004(m). Also, we must have some assurance that any alternative treatment method is done safely. No information or data was provided by these commenters on the issues of the effectiveness or safety of the alternative treatment technologies or limits, or that such alternatives would be equally or more protective of human health and the environment. (As EPA has stated many times, the Agency specifies concentration levels as the treatment standards rather than mandated methods of treatment because this provides maximum flexibility in the selection of treatment technology that may be used.)

Several commenters also asserted that only combustion technologies can achieve the levels specified as treatment standards for organics. However, no treatability data were provided to support their general assertions. On the other hand, limited data were provided on specific alternative treatment technologies that can also achieve the treatment standards in today's rule.

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Therefore, the Agency is not convinced that the treatment standards for organics in today's rule require modification to be achievable by technologies other than combustion, and such other technologies may be used to meet these standards.

D. Relationship of LDR Treatment Standards to Risk-based Treatment Standards

The principal objection to the proposed UTS was that the values do not reflect risk, that is, the standards are based on performance of a treatment technology rather than on assessment of risks to human health and the environment posed by the waste. The debate over technology- versus risk-based treatment standards has continued throughout the development of the land disposal restrictions. EPA's ultimate policy preference is to establish risk-based levels that truly minimize threats to both human health and the environment. 55 FR at 6641 (Feb. 26, 1990). Such standards would cap the extent of hazardous waste treatment. RCRA section 3004(m)(1). The difficulties involved in this task, however, are formidable and very controversial. The technical issues include assessing exposure pathways other than migration to groundwater, taking environmental risk into account, and developing adequate toxicological information for the hazardous constituents controlled by the hazardous waste program.

The Agency is currently working on a rulemaking that will define hazardous constituent concentration levels below which a waste is no longer designated under RCRA subtitle C as "hazardous." Discussions concerning these levels are taking place in the Federal Advisory Committee on the Hazardous Waste Identification Rule (HWIR). The HWIR Committee is discussing issues and providing recommendations for two rulemakings: as-generated waste and contaminated media.

The HWIR Committee is made up of industry, environmentalists, treaters and disposers, and state implementing officials. The HWIR Committee has begun discussions by focusing on concentrations below which waste mixtures and treatment residuals would no longer be subject to the hazardous waste regulations ("exit criteria"), while also discussing whether there is a regulatory approach to bring under regulation clearly hazardous waste not now controlled by the hazardous waste regulations (an "entry" rule). In addition, EPA is working with the Committee to consider whether risk-based exit criteria or other risk-based values based on the same exposure modeling could also serve as minimize threat levels to potentially cap treatment standards for the land disposal restrictions.

In *Hazardous Waste Treatment Council* v. *EPA*, 886 F. 2d 355 (D.C. Cir. 1989), cert. denied 111 S. Ct 139 (1990), the court held that the statute can be read to allow either technology-based or risk-based standards, and further held that technology-based standards are permissible so long as they are not established "beyond the point at which there is no 'threat' to human health or the environment." *Id.* at 362. The court further held that the particular technology-based standards at issue were not established below this "minimize threat" level, notwithstanding that (in some cases) the standards were below Maximum Contaminant Levels used for drinking water under the Safe Drinking Water Act, and were below the RCRA characteristic level. *Id.* at 361–62. In the court's view, the RCRA section 3004(m) minimize threat standard was more stringent than that used to establish either drinking water standards or characteristic levels. EPA finds, for purposes of this rule, that none of the treatment standards are established below levels at which threats to human health and the environment are minimized. This finding stems from the Agency's inability at the present time, as explained above, to establish concentration levels for hazardous constituents which represent levels at which threats to human health and the environment are minimized. Unless the Agency determines risk-based concentration levels that achieve the "minimized threat" requirement for a particular wastestream, the Agency believes that BDAT treatment (as reflected by the UTS levels) fulfills the statutory charge.

E. Treatment Standards for Hazardous Soil

As stated in the September 14, 1993 proposal (58 FR 48124), EPA recognizes that the treatment standards promulgated for as-generated hazardous waste may not always be achievable or appropriate for soil contaminated with that waste. EPA therefore proposed less stringent alternative treatment standards that would specifically apply to hazardous soils. In addition, EPA proposed to codify the "contained-in" policy for contaminated media (see 58 FR 48127). Subsequent to the proposal, the Agency received a number of comments from the varied constituencies (industry, environmental, waste treatment and state) involved in the Hazardous Waste Identification Rule (HWIR) effort for addressing contaminated media, urging the Agency to await the results of that effort before developing soil-specific treatment standards. Thus, EPA has decided not to promulgate alternative treatment standards for hazardous soil and the codification of the contained-in policy as part of this rulemaking, but rather will address it as part of the HWIR effort for contaminated media. EPA announced this decision on November 12, 1993 (see 58 FR 59976) and again on March 8, 1994 (see 59 FR 10778).

The Hazardous Waste Identification Rule for Contaminated Media, which is being developed by EPA in concert with the States and with affected stakeholders, is intended to create a comprehensive regulatory framework within RCRA Subtitle C that will apply to the management of contaminated media that are managed as part of remediation activities. Through the public dialogue process, a conceptual framework has been developed for HWIR for media. As currently envisioned, the HWIR media rule will establish mandatory treatment requirements for soils (and possibly other media) that are highly contaminated, while less contaminated soils would be subject to management requirements of the overseeing regulatory agency. The HWIR media rule is expected to encourage national consistency in the management of higher risk media, while providing management flexibility for a significant volume of lower risk contaminated media, thereby facilitating more timely and less costly cleanups.

Although the HWIR rule for contaminated media is being developed on a different schedule than the LDR rules, EPA believes (and is supported by many commenters) that it is appropriate to address the issue of setting treatment standards for soils within the broader framework of the HWIR rule, since such treatment requirements are expected to be an integral part of that rule. In addition, EPA believes that the contained-in policy is one of the key issues that must be addressed in the development of a comprehensive regulatory framework for management of contaminated media.

In the meantime, hazardous soils are generally subject to the LDR treatment standards that apply to the hazardous wastes with which the soils are contaminated, including those addressed in today's rule.

The Agency has stated a presumption, however, that the treatment standards for as-generated wastes are generally inappropriate or unachievable for soils

contaminated with hazardous wastes, within the meaning of 40 CFR 268.44(a) (see 55 FR 8759–60, March 8, 1990). It has been the Agency's experience that contaminated soils are significantly different in their treatability characteristics from the wastes that have been evaluated in establishing the BDAT standards, and thus, will generally qualify for a treatability variance under 40 CFR 268.44. For guidance on treatability variances for soils, see the EPA Fact Sheet entitled "Regional Guide: Issuing Site-Specific Treatability Variances for Contaminated Soils and Debris from Land Disposal Restrictions (OSWER Publication 9839.3–08FS). For RCRA actions, the Regional Administrator was delegated the authority to deny or grant these variances in a non-rulemaking procedure under 40 CFR 268.44(h) on April 22, 1991. These variances may be granted by State agencies in States authorized for § 268.44. Variance authority for CERCLA actions is discussed in LDR Guides 6A (revised Sept. 1990) and 6B (OSWER 9347.3–06FS and 9347.3–06BFS).

As previously noted, EPA chose not to develop separate treatment standards for soils in this rulemaking, and currently plans to address treatment standards for contaminated soils in the context of the Hazardous Waste Identification Rule (HWIR) for contaminated media, which is currently under development. If, however, the HWIR Contaminated Media rule does not sufficiently address treatment standards for contaminated soils in a timely manner, the Agency may promulgate such standards in a separate rulemaking. Information on the HWIR Contaminated Media rule may be obtained by contacting Carolyn Loomis, at (703) 308–8626.

Until LDR standards specific to soils are promulgated, EPA believes that treatability variances will generally be appropriate when hazardous soils are managed as part of site remediation activities. The Agency recognizes, however, that in some cases obtaining a treatability variance as provided under § 268.44 could cause delays in implementing remedial actions. The Agency is currently considering whether changes to the existing variance or authorization procedures should be made as a means of expediting cleanup actions that are conducted under RCRA or other Federal or State authorities, or other cleanups initiated by responsible parties. Such changes, if necessary, will be addressed in a future rulemaking.

II. Summary of Rule

A. Treatment Standards for Newly Identified Organic Toxicity Characteristic (TC) Wastes

On March 29, 1990, EPA promulgated a rule that identified organic constituents (in addition to existing EP metals and pesticide constituents) and levels at which a waste is considered hazardous based on the characteristic of toxicity (55 FR 11798). Because these wastes were identified as hazardous after the enactment date of HSWA in 1984, they are "newly identified wastes" for purposes of the LDR program. Included are wastes identified with the codes D018 through D043 based on the toxicity characteristic leaching procedure (TCLP), i.e., TC wastes. EPA is establishing treatment standards for each of these constituents if they are managed in systems other than those regulated under the Clean Water Act (CWA), those engaging in CWA-equivalent treatment prior to land disposal, and those injected into Class I deep injection wells regulated under the Safe Drinking Water Act (SDWA). (For an explanation of these qualifications, see the May 24, 1993 Interim Final Rule (58 FR 29860).) In addition, because wastes exhibiting the toxicity characteristic (TC) can contain treatable levels of other hazardous constituents, EPA is establishing treatment standards for the underlying hazardous constituents, as defined in 268.2(i). These rules are consistent with the court's opinion in *Chemical Waste Management* v. *EPA*, 976 F.2d 2, 17–8 (D.C. Cir. 1992), cert. denied 113 U.S. 1961 (1993), which held that all hazardous constituents in characteristic wastes must meet the levels of performance satisfying the requirements in RCRA 3004(m) before land disposal, and that treatment standards cannot be achieved by dilution (provided, of course, that treatment standards are not established below the level at which threats to human health and the environment are minimized).

B. Prohibition of Dilution of High TOC Ignitable and of TC Pesticide Wastes Injected into Class I Deep Wells

In its ruling on the Third Third LDR Rule, the D.C. Circuit Court of Appeals remanded the portion of the Agency's rule allowing treatment standards for characteristic wastes to be achieved by dilution. The Agency is continuing to develop a regulatory response to implement the court's ruling. As part of that response, EPA is today requiring that hazardous constituents in two types of characteristic wastes, high total organic carbon (TOC) ignitable liquids (D001), and halogenated pesticide wastes that exhibit the toxicity characteristic (D012–D017), be fully treated before those wastes are disposed unless the wastes are disposed in an injection well that has a no-migration variance.

The Agency believes that treatment of these particular wastestreams is warranted. (See Section VIII—Deep Well Injection Issues for further discussion.) The D001 wastes are ignitable with potentially high concentrations of hazardous constituents, and the pesticide wastes contain particularly toxic constituents. Further, the organics in D001 high TOC liquids can be recovered, destroyed, or used as a fuel and occur in only small volumes so that segregation and treatment should not prove difficult.

C. Treatment Standards for Newly Listed Wastes

EPA has promulgated a number of hazardous waste listings since the enactment of HSWA in 1984, referred to as "newly listed wastes" under the LDR program. This rule describes the treatment technologies (recycling is a type of treatment) identified as BDAT for several of these newly listed wastes, and establishes treatment standards based on these BDATs. Newly listed wastes included in today's rule are K141–K145, K147–K148, and K149–K151 (coke by-product production wastes and chlorotoluene wastes) (see 40 CFR 261.32 for a description of these wastes).

D. Universal Treatment Standards

Today's rule promulgates universal treatment standards (UTS) for organic, metal, and cyanide constituents—one set for wastewaters and a different set for nonwastewaters—that replace existing treatment standards for hazardous wastes. ("Replace" is something of a misnomer, as explained more fully below, since many of the standards actually remain at current levels, and the rule does not require treatment of hazardous constituents not already regulated under current standards.) Currently, facilities managing hazardous wastes must meet LDR treatment standards established for many different listed and characteristic hazardous waste codes before the waste may be land disposed. In some cases, a constituent regulated under the treatment standard for one waste was also regulated in another waste at different concentration levels. Today's rulemaking eliminates these differences in concentration limits for the same constituent to provide a better assessment of treatability, reduce

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confusion, and ease compliance and enforcement. Promulgation of UTS does *not* change the constituents of concern regulated in listed wastes—that is, if only cadmium, lead and chromium have been regulated in a listed waste, only cadmium, lead and chromium are subject to regulation now that UTS are promulgated. However, the concentration levels for cadmium, lead and chromium now are numerically identical with UTS for those constituents.

E. Modifications to Hazardous Waste Recycling Regulations

The Agency is modifying the regulatory framework to the definition of solid waste to allow environmentally beneficial recycling operations to continue without the regulatory impediments imposed by full RCRA Subtitle C requirements. In turn, this will allow EPA and the states to streamline their efforts and better focus on operations that are part of the nation's waste disposal problem, rather than on those that are not, while the Agency continues to look at the overall definition.

These modifications will broaden the 40 CFR 261.2(e)(1)(iii) "closed-loop" recycling exclusion from the definition of solid waste such that the residues of a secondary process are excluded from being a solid waste if they are reinserted into the process without prior reclamation (and also similarly broaden the related 40 CFR 260.30(b) variance for materials that are reclaimed prior to reinsertion). These provisions will put secondary recovery operations that recycle residues which they generated on the same regulatory footing as primary recovery operations. The modifications are based, in part, on two Court opinions (*American Petroleum Institute* v. *EPA*, 906 F.2d 726 (D.C. Cir. 1990) (*API*) and *American Mining Congress* v. *EPA*, 907 F. 2d 1179 (D.C. Cir. 1990) (*AMC II*)) which indicate that the Agency has some discretion to consider the manner in which a secondary material is managed in determining RCRA jurisdiction (i.e., RCRA jurisdiction may be determined, at least in part, by consideration of whether the material is part of the waste management problem, as indicated by the potential for the material to pose a hazard to human health and the environment when recycled).

III. Improvements to the Existing Land Disposal Restrictions Program

A. Background

"Our goal is to make the entire federal government both less expensive and more efficient . . . we intend to redesign, to reinvent, to reinvigorate the entire national government."

President Bill Clinton Remarks Announcing the National Performance Review, March 3, 1993

"We are searching for ways to change—to work better and smarter so that the Agency can deliver high quality results at a reduced cost. Our aim is to treat citizens as customers, improve the service and delivery of our programs, and eliminate waste and inefficiency."

From "Creating A U.S. Environmental Protection Agency that Works Better And Costs Less" (EPA's National Performance Review Phase I Report)

In the past several years, the EPA has embarked on major efforts to improve the quality of its work in protecting human health and the environment. Coincident with this emphasis on improvement in the way its work is done, the Agency is striving to help reinvent government, in part by streamlining its organization and its work in order to be more efficient and save public resources. In that spirit, a major part of today's rule is designed to improve the quality and efficiency in the Land Disposal Restrictions Program. The measures promulgated today to improve the Program received widespread support from commenters when they were proposed.

The universal treatment standards, described in detail in the next section, greatly simplify both compliance and enforcement with the LDRs, without sacrificing protection of the environment or human health. In particular, the rule replaces the myriad constituent concentration levels in the LDR treatment standards for most hazardous wastes with a uniform set of constituent levels. Thus, the treatment standard concentration for a constituent in waste A will be the same concentration as for that constituent in waste B. As a result, hazardous waste generators and treaters should be able to save money and effort in treating hazardous wastes. These facilities will be able to operate more efficiently by consolidating treatment activities. One facility, for example, estimated an annual savings of $750,000 from not having to campaign treat their wastes with varying limits. The consistency provided by universal treatment standards will make it easier to comply with the LDRs. Likewise, the universal treatment standards will make the job of enforcement easier for state governments. With universal treatment standards in place, it will also be easier and quicker for EPA to set standards for hazardous wastes identified in the future (assuming those standards are feasible and appropriate for newly identified and listed wastes). The end result for the regulated community, states, and the EPA will be to save resources for other pressing tasks.

While establishment of universal treatment standards is the primary improvement, other improvements are also included in today's rule. In particular, the Agency is:

- Consolidating three separate tables containing treatment standards into a single consolidated table;
- Reducing the information required on notification forms;
- Simplifying the regulations for treatment of lab packs;
- Providing easy-to-read flowcharts and a simple guide to paperwork requirements in order to make the rule's requirements clearer and easier to implement.

Although today's rule takes significant steps in improving the Land Disposal Restrictions program, the Agency recognizes that further, in fact continuing, improvement is necessary. Some of the universal treatment standards (such as cyanide) will need to be reassessed upon completion of Agency efforts to improve the analytic test method. HWIR will need to be integrated into the Land Disposal Restrictions. The Agency is also on a firm track of pursuing other avenues for continuous quality improvement in the program. Ideas and suggestions for improvements have, and will, come from: (1) Advance Notices of Proposed Rulemaking published by EPA in order to acquire as much information as possible from the public about treatment options; (2) communications between EPA and its customers representing environmental groups, generators, and treaters; and, (3) the LDR Program evaluation that is currently being conducted, which was initiated by a public roundtable discussion with a large number of customers. Consequently, the Agency will continue to take advantage of opportunities to streamline and improve the LDR program.

B. Universal Treatment Standards

The EPA is promulgating a single universal treatment standard (UTS) for each constituent in nonwastewater form and a single UTS for each constituent in wastewater form, regardless of the hazardous waste containing the constituent.

1. Identification of Wastes to Which Universal Treatment Standards Apply

The universal treatment standards apply to all listed and characteristic wastes for which treatment standards have been promulgated, with two exceptions. The first exception is the TC metal wastes (D004–D011). These metal wastes will be addressed in the future Phase IV LDR rule. (It should be noted that the mineral processing wastes which were formerly excluded from RCRA Subtitle C regulation under the Bevill Amendment are considered to be newly identified and will also be addressed in Phase IV.) The second exception is those for which the treatment standard is a specified method of treatment. Most of these wastes must continue to be treated using those required technologies. For a small number of wastes with previously specified methods of treatment, the universal standards are an alternative, i.e. either use of the specified method or the universal standard will satisfy the LDR requirement. For those few situations where a mixture of wastes may be subject to different standards for the same constituent, the more stringent standard continues to apply. See § 268.41(b).

Although the proposed rule excluded F024 from the UTS, EPA is applying UTS to F024 in today's rule. The existing standards, which were unique among standards set for F- or K-listed wastes, incorporated numerical treatment standards and also mandated a specific technology—incineration. The original F024 numerical standards for metals were also exceptionally low, reflecting the fact that F024 contains only low levels of metals.

However, comments from Dow Freeport indicated that the low F024 metal limit needlessly prevented them from co-treating wastes, a process that could save the facility $750,000/year, and that application of UTS solved this problem without diminishing the extent of treatment. EPA agrees, and is applying UTS to F024 in this rule while continuing to require incineration.

UTS apply to underlying hazardous constituents in characteristic wastes that are subject to LDRs. Apparent confusion in several comments leads the Agency to clarify that UTS will apply to the F039 waste code, the code for multi-source leachate. EPA used the F039 levels in the May 1993 Interim Final Rule as treatment standards for underlying hazardous constituents in certain decharacterized D001 and D002 wastes (58 FR 29885). Consequently, UTS levels and F039 standards are identical, with the exception of those few constituents regulated in F039 but not in UTS. This means that the Interim Final Rule requirement that underlying hazardous constituents in certain D001 and D002 wastes meet F039 levels is now one and the same thing with the requirement that underlying hazardous constituents meet UTS. (The term "underlying hazardous constituents" is defined at 268.2(i)).

2. Differences in Universal Treatment Standards and Previous Treatment Standards

In most cases (59%), UTS are the same as the previous treatment standards. Thirty three percent of the standards went up or down within a factor of ten of the original standard, while 8% underwent larger changes (3% of the total number of UTS becoming significantly more stringent). The following table lists the differences between the UTS and previous standards.

TABLE 3.—COMPARISON OF UNIVERSAL TREATMENT STANDARDS TO PREVIOUSLY PROMULGATED TREATMENT STANDARDS

Parameter	Wastewater forms	Nonwastewater forms
Total Number of Constituent/Waste Code Combinations	938	924
Number of Combinations Unchanged by the Universal Treatment Standards	677	416
Number of Combinations for which the Universal Treatment Standards are Slightly Less Stringent[1]	138	209
Number of Combinations for which the Universal Treatment Standards are Slightly More Stringent[1]	76	199
Number of Combinations for which the Universal Treatment Standards are Significantly Less Stringent[2] ..	17	80
Number of Combinations for which the Universal Treatment Standards are Significantly More Stringent[2] ..	30	20

[1] The change is less than a factor of ten greater or less than the previously promulgated standard.

[2] The change is a factor of ten or more greater or less than the previously promulgated standard.

This numerical comparison somewhat exaggerates the degree of change. The changes in numerical values for many of the organic constituents reflect adjustments in the limits of analytic detection. Actual treatment will consequently likely continue to destroy or remove organics to nondetectable levels. It also is important to note that even in those cases where numerical limits have changed, the technology basis has not. Treatment technology used to comply with the previous standards should also be able to comply with UTS. Again, because most treatment technologies cannot be so precisely calibrated as to achieve, for instance, 3.5 ppm rather than 2.7 ppm, the likely result is that the same amount of treatment will occur. The main impact of UTS will be in simplifying compliance.

EPA also notes that very few of the commenters who complained about treatment standards being unachievable provided data to support their claims. Because most of the wastes subject to UTS are already subject to LDR treatment requirements, there should be data documenting treatment performance of these wastes that commenters could have submitted. EPA believes, therefore, that the absence of substantiating data cannot be attributable to commenters' inability to generate treatment data. (The situation differs from the state of affairs at the beginning of the land disposal restrictions program when there was little existing treatment data to draw upon, because many hazardous wastes were being disposed untreated, and there was little time to generate such data.)

For discussion of comparison between the UTS and previous standards for

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nonwastewater metal constituents, see section III.B.5.a. of this preamble.

3. Universal Treatment Standards for Organic Hazardous Constituents

EPA is today promulgating UTS for nonwastewater and wastewater forms of organic hazardous constituents, as found in the two tables in this section.

a. Analyte Combinations

Motivated by concern for analytical feasibility, EPA proposed that several groups or pairs of analytically similar organic compounds be regulated as the sum of their concentrations rather than as individual analytes. Commenters supported these proposals as a simplification of analytical procedures, particularly the proposed total PCB standards for arochlors. Thus, today's rule regulates each of these groups or pairs collectively by setting wastewater and nonwastewater numbers representing their sums rather than individual concentrations. Specific analytes to be regulated with one wastewater and nonwastewater number are PCBs (arochlors), xylenes, benzo(b)fluoranthene/ benzo(k)fluoranthene and diphenylamine/diphenylnitrosamine.

PCBs: Today's approach for PCBs is consistent with the regulations of other EPA offices, such as those promulgated pursuant to the Toxic Substance Control Act (TSCA). This approach will also eliminate analytical difficulties in quantifying each of the individual arochlors.

The "Total PCB" standards include seven arochlors that represent hundreds of isomers of polychlorinated biphenyls. Earlier LDR regulations addressed individual arochlors and required recognition of a gas chromatograph pattern which is often difficult to differentiate. Furthermore, regulation of individual arochlors may be difficult for wastes subject to degradation or treatment. EPA recommends SW–846 methods 8080 or 8081 (which use a gas chromatograph/electron capture detector) for measurement of total PCBs.

Xylenes: Similarly, today's rule regulates the sum of several xylene isomer analytes in both wastewaters and nonwastewaters. The three xylenes included on the BDAT list of hazardous constituents are ortho-, meta-, and para-xylene. Meta- and para-isomers co-elute in gas chromatograph analysis. Two methods exist in SW–846 for the measurement of total xylenes: 8020 and 8240. Method 8020 detects xylenes using a photoionization detector and 8240 uses a mass spectrometer. Total xylenes concentration is determined from the addition of the ortho-xylene concentration and the meta-/para-xylene concentration.

Benzo(b)fluoranthene/ Benzo(k)fluoranthene and Diphenylamine/ Diphenylnitrosamine: EPA is also regulating two pairs of analytically problematic constituents, benzo(b)fluoranthene/ benzo(k)fluoranthene and diphenylamine/diphenylnitrosamine with a single wastewater and nonwastewater number for each pair.

b. Organics—Nonwastewaters

i. The Universal Treatment Standards Promulgated in Today's Rule

EPA is promulgating UTS for organics in nonwastewaters as proposed with the exception of the standards for m- and p-cresols. These are the only organic constituents for which commenters provided data supporting changes to the proposed UTS. Although organic nonwastewater UTS differ in some cases from the previously promulgated standards, the same technology basis, combustion, can meet the limits. In the previous standards as well as the UTS, the organic standards are based on a detection level in a combustion residue (adjusted upward by a variability factor accounting for analytic and process variability). Differences between UTS and previous standards reflect a more consistent assessment of achievable detection levels for various constituents in combustion residues, and continue to be achievable using BDAT, combustion. Because the essential technical issue at the heart of these adjustments is the value of the detection limit, most of these changes reflect analytical artifacts rather than absolute differences in the quantities of toxics available for release following land disposal.

ii. Modifications to Universol Treatment Standards Made in Response to Comments

A petroleum refiner involved in building a biological treatment system submitted data on organic nonwastewaters, and indicated their concern about the lower treatment standards for certain organic constituents that were proposed as UTS. The Agency evaluated the commenter's data and found, in some cases, the commenter was requesting that UTS levels be set at levels higher than the maximum levels in their untreated wastes. Furthermore, the commenter's data did not represent proper monitoring. The Agency was able to determine from their data, however, that one limit, the proposed m- and p-cresol limit, should he raised from 3.2 mg/kg to 5.6 mg/kg. This adjustment is based on other factors described below.

The proposed UTS for m- and p-cresol was 3.2 mg/kg, which differed from the proposed UTS for o-cresol, which was 5.6 mg/kg. Today's rule promulgates 5.6 mg/kg for both o-cresol and m- and p-cresol. The proposed limits for cresols were based on a detection limit of 2 mg/kg for o-cresol and 1 mg/kg for m- and p-cresol from an incinerator ash study used to develop nonwastewater standards in the Third Third rulemaking. The differences in detection limits occurred because EPA used different treatment tests to set the limits for o- versus m- and p-cresol. Examination of the same test runs revealed that where o-cresol had a detection level of 2 mg/kg, the detection level for m- and p-cresol was also 2 mg/kg. In addition, where the detection level for m- and p-cresol was 1 mg/kg, the detection level for o-cresol was also 1 mg/kg. Upon further review of other data, the Agency observed that within a test, o-cresol and m- and p-cresols had the same detection levels. The numbers for o-cresol and m- plus p-cresol promulgated in today's rule were calculated with the same detection limit, as justified by the data review, and the same recovery factor. The resulting identical treatment standards reflect the fact that incineration treats both of these isomer groups to the same level, within the existing analytical constraints.

iii. Use of Alternative Treatment Technologies to Combustion

In establishing numerical treatment standards, the Agency allows the use of any technology (other than impermissible dilution) to comply with the limits. Some previous standards, namely those for petroleum refining wastes, were based on combustion as well as thermal desorption and solvent extraction. Under UTS, organic nonwastewater standards are based on and achievable by combustion. As for other technologies, EPA assessed whether the changes in limits disrupted commitments made to use these other technologies. With regard to thermal desorption, EPA examined comments on the proposed levels by three 'vendors of thermal desorption units (Seaview Thermal Systems (STS), Separation and Recovery Systems, Inc. (SRS), and Ecova (formerly Waste Tech Services)), BDAT Background Development Documents for treatment standards applicable to petroleum wastes, the Marathon delisting petition, and other available literature.

These data demonstrate the achievability of UTS by thermal desorption for petroleum refining wastes. This was an expected result, given the comments on the Phase I LDR rule which addressed F037 and F038 petroleum refining wastes. In these comments, a thermal desorption company called for limits lower than today's UTS limits (these data reflected lower detection levels, not necessarily better treatment than today's UTS). Also important in the use of thermal desorption are the operating conditions: raising the temperature, and/or the detention time increases the amount of hazardous organic constituents desorbed.

As for solvent extraction, the data used for development of the K048–K052 treatment standards achieved UTS levels for about half of the demonstration runs. Operating conditions, such as solvent selection, solvent to waste ratios, detention time, and number of treatment passes significantly affect treatment results, and the agency believes these parameters can be adjusted to comply with the UTS. There may, however, be other factors which result in this technology not being selected, and based on information available to the Agency, no petroleum refining facilities are utilizing solvent extraction.

EPA requested comments on the achievability of the proposed UTS for petroleum refining wastes when treated via noncombustion technologies. (See 58 FR 48106–48107.) EPA also requested comments on whether the industry has invested in non-combustion technologies, including those designated as BDAT in previous rules that cannot meet the UTS. In particular, EPA requested information on the type of treatment, performance data, and an explanation of why existing treatment could not be adjusted and operated more efficiently to comply with the UTS. EPA also pointed out it was willing to revise the proposed UTS, if data indicated that appropriate noncombustion technologies could achieve slightly higher levels than those proposed for UTS.

Only one commenter, Valero, Inc., submitted comments with regard to a contractual agreement for the construction of a full scale bioslurry reactor and data from a bench scale treatability study. None of the other petroleum refining commenters indicated they had invested in noncombustion technologies. Valero, Inc., and two remediation companies, Retec Technologies and OHM Corporation, submitted data on biotreatment of organic constituents. They reported treatment efficiencies from 40 to 60 percent for some PNAs and questioned whether the proposed treatment standards can be routinely achieved by biotreatment technologies. EPA does not generally consider such treatment efficiencies adequate for organic constituents. As indicated previously, facilities can use any technology other than impermissible dilution to comply with the treatment standards. If design and operating conditions can be adjusted to meet the limits, this could be full compliance. If not, the technology may still be appropriate for remediation wastes, for which standards are currently being revised in the development of HWIR.

UNIVERSAL TREATMENT STANDARDS FOR ORGANIC HAZARDOUS CONSTITUENTS

Regulated constituent—common name	CAS[1] No.	Nonwastewater standard; concentration in mg/kg[2] unless noted as "mg/l TCLP"
Acenaphthylene	208–96–8	3.4
Acenaphthene	83–32–9	3.4
Acetone	67–64–1	160
Acetonitrile	75–05–8	1.8
Acetophenone	96–86–2	9.7
2-Acetylaminofluorene	53–96–3	140
Acrolein	107–02–8	NA
Acrylamide	79–06–1	23
Acrylonitrile	107–13–1	84
Aldrin	309–00–2	0.066
4-Aminobiphenyl	92–67–1	NA
Aniline	62–53–3	14
Anthracene	120–12–7	3.4
Aramite	140–57–8	NA
alpha-BHC	319–84–6	0.066
beta-BHC	319–85–7	0.066
delta-BHC	319–86–8	0.066
gamma-BHC	58–89–9	0.066
Benzene	71–43–2	10
Benz(a)anthracene	56–55–3	3.4
Benzal chloride	98–87–3	6.0
Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205–99–2	6.8
Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207–08–9	6.8
Benzo(g,h,i)perylene	191–24–2	1.8
Benzo(a)pyrene	50–32–8	3.4
Bromodichloromethane	75–27–4	15
Methyl bromide (Bromomethane)	74–83–9	15
4-Bromophenyl phenyl ether	101–55–3	15
n-Butyl alcohol	71–36–3	2.6
Butyl benzyl phthalate	85–68–7	28
2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	88–85–7	2.5
Carbon disulfide	75–15–0	[3]
Carbon tetrachloride	56–23–5	6.0
Chlordane (alpha and gamma isomers)	57–74–9	0.26
p-Chloroaniline	106–47–8	16
Chlorobenzene	108–90–7	6.0

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UNIVERSAL TREATMENT STANDARDS FOR ORGANIC HAZARDOUS CONSTITUENTS—Continued

Regulated constituent—common name	CAS[1] No.	Nonwastewater standard; concentration in mg/kg[2] unless noted as "mg/l TCLP"
Chlorobenzilate	510–15–6	NA
2-Chloro-1,3-butadiene	126–99–8	0.28
Chlorodibromomethane	124–48–1	15
Chloroethane	75–00–3	6.0
bis(2-Chloroethoxy)methane	111–91–1	7.2
bis(2-Chloroethyl)ether	111–44–4	6.0
Chloroform	67–66–3	6.0
bis(2-Chloroisopropyl)ether	108–60–1	7.2
p-Chloro-m-cresol	59–50–7	14
2-Chloroethyl vinyl ether	110–75–8	NA
Chloromethane (Methyl chloride)	74–87–3	30
2-Chloronaphthalene	91–8–7	5.6
2-Chlorophenol	95–57–8	5.7
3-Chloropropylene	107–05–1	30
Chrysene	218–01–9	3.4
o-Cresol	95–48–7	5.6
m-Cresol (difficult to distinguish from p-cresol)	108–39–4	5.6
p-Cresol (difficult to distinguish from m-cresol)	106–44–5	5.6
Cyclohexanone	108–94–1	(4)
1,2–Dibromo-3-chloropropane	96–12–8	15
Ethylene dibromide (1,2-Dibromoethane)	106–93–4	15
Dibromomethane	74–95–3	15
2,4-D (2,4-Dichlorophenoxyacetic acid)	94–75–7	10
o,p'-DDD	53–19–0	0.087
p,p'-DDD	72–54–8	0.087
o,p'-DDE	3424–82–6	0.087
p,p'-DDE	72–55–9	0.087
o,p'-DDT	789–02–6	0.087
p,p'-DDT	50–29–3	0.087
Dibenz (a,h) anthracene	53–70–3	8.2
Dibenz (a,e) pyrene	192–65–4	NA
m-Dichlorobenzene	541–73–1	6.0
o-Dichlorobenzene	95–50–1	6.0
p-Dichlorobenzene	106–46–7	6.0
Dichlorodifluoromethane	75–71–8	7.2
1,1-Dichloroethane	75–34–3	6.0
1,2-Dichloroethane	107–06–2	6.0
1,1-Dichloroethylene	75–35–4	6.0
trans-1,2-Dichloroethylene	156–60–5	30
2,4-Dichlorophenol	120–83–2	14
2,6-Dichlorophenol	87–65–0	14
1,2-Dichloropropane	78–87–5	18
cis-1,3-Dichloropropylene	10061–01–5	18
trans-1,3-Dichloropropylene	10061–02–6	18
Dieldrin	60–57–1	0.13
Diethyl phthalate	84–66–2	28
2-4-Dimethyl phenol	105–67–9	14
Dimethyl phthalate	131–11–3	28
Di-n-butyl phthalate	84–74–2	28
1,4-Dinitrobenzene	100–25–4	2.3
4,6-Dinitro-o-cresol	534–52–1	160
2,4-Dinitrophenol	51–28–5	160
2,4-Dinitrotoluene	121–14–2	140
2,6-Dinitrotoluene	606–20–2	28
Di-n-octyl phthalate	117–84–0	28
p-Dimethylaminoazobenzene	60–11–7	NA
Di-n-propylnitrosamine	621–64–7	14
1,4-Dioxane	123–91–1	170
Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122–39–4	13
Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86–30–6	13
1,2-Diphenylhydrazine	122–66–7	NA
Disulfoton	298–04–4	6.2
Endosulfan I	939–98–8	0.066
Endosulfan II	33213–6–5	0.13
Endosulfan sulfate	1–31–07–8	0.13
Endrin	72–20–8	0.13
Endrin aldehyde	7421–93–4	0.13
Ethyl acetate	141–78–6	33

UNIVERSAL TREATMENT STANDARDS FOR ORGANIC HAZARDOUS CONSTITUENTS—Continued

Regulated constituent—common name	CAS[1] No.	Nonwastewater standard; concentration in mg/kg[2] unless noted as "mg/l TCLP"
Ethyl cyanide (Propanenitrile)	107–12–0	360
Ethyl benzene	100–41–4	10
Ethyl ether	60–29–7	160
bis (2-Ethylhexyl) phthalate	117–81–7	28
Ethyl methacrylate	97–63–2	160
Ethylene oxide	75–21–8	NA
Famphur	52–85–7	15
Fluoranthene	206–44–0	3.4
Fluorene	86–73–7	3.4
Heptachlor	76–44–8	0.066
Heptachlor epoxide	1024–57–3	0.066
Hexachlorobenzene	118–74–1	10
Hexachlorobutadiene	87–68–3	5.6
Hexachlorocyclopentadiene	77–47–4	2.4
HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.001
HxCDFs (All Hexachlorodibenzofurans)	NA	0.001
Hexachloroethane	67–72–1	30
Hexachloropropylene	1888–71–7	30
Indeno(1,2,3-c,d)pyrene	193–39–5	3.4
Iodomethane	74–88–4	65
Isobutyl alcohol	78–83–1	170
Isodrin	465–73–6	0.066
Isosafrole	120–58–1	2.6
Kepone	143–50–8	0.13
Methacrylonitrile	126–98–7	84
Methanol	67–56–1	(5)
Methapyrilene	91–80–5	1.5
Methoxychlor	72–43–5	0.18
3-Methylcholanthrene	56–49–5	15
4,4-Methylene bis(2-chloroaniline)	101–14–4	30
Methylene chloride	75–09–2	30
Methyl ethyl ketone	78–93–3	36
Methyl isobutyl ketone	108–10–1	33
Methyl methacrylate	80–62–6	160
Methyl methansulfonate	66–27–3	NA
Methyl parathion	298–00–0	4.6
Naphthalene	91–20–3	5.6
2-Naphthylamine	91–59–8	NA
o-Nitroaniline	88–74–4	14
p-Nitroaniline	100–01–6	28
Nitrobenzene	98–95–3	14
5-Nitro-o-toluidine	99–55–8	28
o-Nitrophenol	88–75–5	13
p-Nitrophenol	100–02–7	29
N-Nitrosodiethylamine	55–18–5	28
N-Nitrosodimethylamine	62–75–9	2.3
N-Nitroso-di-n-butylamine	924–16–3	17
N-Nitrosomethylethylamine	10595–95–6	2.3
N-Nitrosomorpholine	59–89–2	2.3
N-Nitrosopiperidine	100–75–4	35
N-Nitrosopyrrolidine	930–55–2	35
Parathion	56–38–2	4.6
Total PCBs (sum of all PCB isomers, or all Arochlors)	1336–36–3	10
Pentachlorobenzene	608–93–5	10
PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.001
PeCDFs (All Pentachlorodibenzofurans)	NA	0.001
Pentachloroethane	76–01–7	6.0
Pentachloronitrobenzene	82–68–8	4.8
Pentachlorophenol	87–86–5	7.4
Phenacetin	62–44–2	16
Phenanthrene	85–01–8	5.6
Phenol	108–95–2	6.2
Phorate	298–02–2	4.6
Phthalic acid	100–21–0	28
Phthalic anhydride	85–44–9	28
Pronamide	23950–58–5	1.5
Pyrene	129–00–0	8.2
Pyridine	110–86–1	16

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UNIVERSAL TREATMENT STANDARDS FOR ORGANIC HAZARDOUS CONSTITUENTS—Continued

Regulated constituent—common name	CAS[1] No.	Nonwastewater standard; concentration in mg/kg[2] unless noted as "mg/l TCLP"
Safrole	94–59–7	22
Silvex(2,4,5-TP)	93–72–1	7.9
2,4,5-T(2,4,5-Trichlorophenoxyacetic acid)	93–76–5	7.9
1,2,4,5-Tetrachlorobenzene	95–94–3	14
TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.001
TCDFs (All Tetrachlorodibenzofurans)	NA	0.001
1,1,1,2-Tetrachloroethane	630–20–6	6.0
1,1,2,2-Tetrachloroethane	79–34–6	6.0
Tetrachloroethylene	127–18–4	6.0
2,3,4,6-Tetrachlorophenol	58–90–2	7.4
Toluene	108–88–3	10
Toxaphene	8001–35–2	2.6
Bormoform (Tribromomethane)	75–25–2	15
1,2,4-Trichlorobenzene	120–82–1	19
1,1,1-Trichloroethane	71–55–6	6.0
1,1,2-Trichloroethane	79–00–5	6.0
Trichloroethylene	79–01–6	6.0
Trichloromonofluoromethane	75–69–4	30
2,4,5-Trichlorophenol	95–95–4	7.4
2,4,6-Trichlorophenol	88–06–2	7.4
1,2,3-Trichloropropane	96–18–4	30
1,1,2-Trichloro-1,2,2,-trifluoroethane	76–13–1	30
tris-(2,3-Dibromopropyl) phosphate	126–72–7	0.10
Vinyl chloride	75–01–4	6.0
Xylenes-mixed isomers (sum of o-, m-, p-xylene concentrations)	1330–20–7	30

[1] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with it's salts and/or esters, the CAS number is given for the parent compound only.
[2] All concentration standards for nonwastewaters are based on analysis of grab samples.
[3] 4.8 mg/l TCLP.
[4] 0.75 mg/l TCLP.
[5] 0.75 mg/l TCLP.
Note: NA means not applicable.

c. Organics—Wastewaters

i. The Universol Treatment Standards Promulgated in Today's Rule

The set of wastewater UTS proposed in September 1993 was virtually identical to the F039 wastewater standards promulgated in the Third Third Rule. Applying UTS to F- and K-listed wastes changes organic constituent wastewater standards in a handful of codes (F024, K001, K011/13/14, K015, K040, K038, K036, K037, K060, K099, K103/104, and U051). Commenters raised specific concerns with three of the organic wastewater treatment standards, and EPA is revising the proposed standards for two of the three constituents: the wastewater standard proposed for carbon disulfide will change from 0.014 mg/l to 3.8 mg/l, and the proposed wastewater universal treatment standard for 1,4-dioxane has been withdrawn. Changes to the treatment standards for these two constituents is explained in the following section. The third constituent was acetonitrile. Monsanto, Dupont, Cytec and other acrylonitrile producers, together with the Chemical Manufacturing Association's Acrylonitrile Group, objected to EPA extending the UTS to acrylonitrile production wastes K011, K013 and K014. Their comments stated that the acetonitrile wastewater UTS was unachievably low in acrylonitrile wastes. The Agency is promulgating an acetonitrile UTS of 5.6 based on steam stripping performance data. This level also appears achievable by WAO (wet air oxidation) followed by PACT@ (a combination of powdered activated carbon treatment and activated sludge).

ii. Treatment Standard Modification Made in Response to Comments

Carbon Disulfide. In response to data submitted by the Chemical Manufacturer's Association's Carbon Disulfide Task Force, EPA is promulgating a treatment standard of 3.8 mg/l based on data submitted by several facilities which generate high concentrations of carbon disulfide in wastewaters. The proposed wastewater treatment standard (0.014 mg/l) was based on one data point for biological treatment. After receiving substantially more treatment data representative of more significant influent concentrations, EPA is promulgating a carbon disulfide wastewater number of 3.8 mg/l, based on the performance of activated sludge at one of the facilities generating carbon disulfide.

1,4-Dioxane. Eastman Chemical reported that serious analytical problems, namely wide variation in detection limits, precluded reliable and accurate quantification of 1,4-dioxane. After reviewing detection limit data, EPA decided to withdraw the wastewater treatment standard for 1,4-dioxane pending technical resolution in a later rule. This decision changes the treatment standard for U108 (1,4-dioxane) wastewaters. Formerly the wastewater treatment standard was 0.12 mg/l; today's rule promulgates a method of treatment as a standard for U108 wastewaters, namely wet air oxidation or chemical oxidation followed by carbon adsorption or incineration.

UNIVERSAL TREATMENT STANDARDS FOR ORGANICS

Regulated constituent—Common name	CAS[1] No.	Wastewater standard Concentration in mg/l[2]
Acenaphthylene	208–96–8	0.059
Acenaphthene	83–32–9	0.059
Acetone	67–64–1	0.28
Acetonitrile	75–05–8	5.6
Acetophenone	96–86–2	0.010
2-Acetylaminofluorene	53–96–3	0.059
Acrolein	107–02–8	0.29
Acrylamide	79–06–1	19
Acrylonitrile	107–13–1	0.24
Aldrin	309–00–2	0.021
4-Aminobiphenyl	92–67–1	0.13
Aniline	62–53–3	0.81
Anthracene	120–12–7	0.059
Aramite	140–57–8	0.36
alpha-BHC	319–84–6	0.00014
beta-BHC	319–85–7	0.00014
delta-BHC	319–86–8	0.023
gamma-BHC	58–89–9	0.0017
Benzene	71–43–2	0.14
Benz(a)anthracene	56–55–3	0.059
Benzal chloride	98–87–3	0.055
Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205–99–2	0.11
Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207–08–9	0.11
Benzo(g,h,i)perylene	191–24–2	0.0055
Benzo(a)pyrene	50–32–8	0.061
Bromodichloromethane	75–27–4	0.35
Methyl bromide (Bromomethane)	74–83–9	0.11
4-Bromophenyl phenyl ether	101–55–3	0.055
n-Butyl alcohol	71–36–3	5.6
Butyl benzyl phthalate	85–68–7	0.017
2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	88–85–7	0.066
Carbon disulfide	75–15	03.8
Carbon tetrachloride	56–23–5	0.057
Chlordane (alpha and gamma isomers)	57–74–9	0.0033
p-Chloroaniline	106–47–8	0.46
Chlorobenzene	108–90–7	0.057
Chlorobenzilate	510–15–6	0.10
2-Chloro-1,3-butadiene	126–99–8	0.057
Chlorodibromomethane	124–48–1	0.057
Chloroethane	75–00–3	0.27
bis(2-Chloroethoxy)methane	111–91–1	0.036
bis(2-Chloroethyl)ether	111–44–4	0.033
Chloroform	67–66–3	0.046
bis(2-Chloroisopropyl)ether	108–60–1	0.055
p-Chloro-m-cresol	59–50–7	0.018
2-Chloroethyl vinyl ether	110–75–8	0.062
Chloromethane (Methyl chloride)	74–87–3	0.19
2-Chloronaphthalene	91–8–7	0.055
2-Chlorophenol	95–57–8	0.044
3-Chloropropylene	107–05–1	0.036
Chrysene	218–01–9	0.059
o-Cresol	95–48–7	0.11
m-Cresol (difficult to distinguish from p-cresol)	108–39–4	0.77
p-Cresol (difficult to distinguish from m-cresol)	106–44–5	0.77
Cyclohexanone	108–94–1	0.36
1,2-Dibromo-3-chloropropane	96–12–8	0.11
Ethylene dibromide (1,2-Dibromoethane)	106–93–4	0.028
Dibromomethane	74–95–3	0.11
2,4-D (2,4-Dichlorophenoxyacetic acid)	94–75–7	0.72
o,p'-DDD	53–19–0	0.023
p,p'-DDD	72–54–8	0.023
o,p'-DDE	3424–82–6	0.031
p,p'-DDE	72–55–9	0.031
o,p'-DDT	789–02–6	0.0039
p,p'-DDT	50–29–3	0.0039
Dibenz(a,h)anthracene	53–70–3	0.055
Dibenz(a,e)pyrene	192–65–4	0.061
m-Dichlorobenzene	541–73–1	0.036
o-Dichlorobenzene	95–50–1	0.088
p-Dichlorobenzene	106–46–7	0.090

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UNIVERSAL TREATMENT STANDARDS FOR ORGANICS—Continued

Regulated constituent—Common name	CAS [1] No.	Wastewater standard Concentration in mg/l [2]
Dichlorodifluoromethane	75–71–8	0.23
1,1-Dichloroethane	75–34–3	0.059
1,2-Dichloroethane	107–06–2	0.21
1,1-Dichloroethylene	75–35–4	0.025
trans-1,2-Dichloroethylene	156–60–5	0.054
2,4-Dichlorophenol	120–83–2	0.044
2,6-Dichlorophenol	87–65–0	0.044
1,2-Dichloropropane	78–87–5	0.85
cis-1,3-Dichloropropylene	10061–01–5	0.036
trans-1,3-Dichloropropylene	10061–02–6	0.036
Dieldrin	60–57–1	0.017
Diethyl phthalate	84–66–2	0.20
2-4-Dimethyl phenol	105–67–9	0.036
Dimethyl phthalate	131–11–3	0.047
Di-n-butyl phthalate	84–74–2	0.057
1,4-Dinitrobenzene	100–25–4	0.32
4,6-Dinitro-o-cresol	534–52–1	0.28
2,4-Dinitrophenol	51–28–5	0.12
2,4-Dinitrotoluene	121–14–2	0.32
2,6-Dinitrotoluene	606–20–2	0.55
Di-n-octyl phthalate	117–84–0	0.017
p-Dimethylaminoazobenzene	60–11–7	0.13
Di-n-propylnitrosamine	621–64–7	0.40
Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122–39–4	0.92
Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86–30–6	0.92
1,2-Diphenylhydrazine	122–66–7	0.087
Disulfoton	298–04–4	0.017
Endosulfan I	939–98–8	0.023
Endosulfan II	33213–6–5	0.029
Endosulfan sulfate	1–31–07–8	0.029
Endrin	72–20–8	0.0028
Endrin aldehyde	7421–93–4	0.025
Ethyl acetate	141–78–6	0.34
Ethyl cyanide (Propanenitrile)	107–12–0	0.24
Ethyl benzene	100–41–4	0.057
Ethyl ether	60–29–7	0.12
bis(2-Ethylhexyl) phthalate	117–81–7	0.28
Ethyl methacrylate	97–63–2	0.14
Ethylene oxide	75–21–8	0.12
Famphur	52–85–7	0.017
Fluoranthene	206–44–0	0.068
Fluorene	86–73–7	0.059
Heptachlor	76–44–8	0.0012
Heptachlor epoxide	1024–57–3	0.016
Hexachlorobenzene	118–74–1	0.055
Hexachlorobutadiene	87–68–3	0.055
Hexachlorocyclopentadiene	77–47–4	0.057
HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063
HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063
Hexachloroethane	67–72–1	0.055
Hexachloropropylene	1888–71–7	0.035
Indeno (1,2,3-c,d) pyrene	193–39–5	0.0055
Iodomethane	74–88–4	0.19
Isobutyl alcohol	78–83–1	5.6
Isodrin	465–73–6	0.021
Isosafrole	120–58–1	0.081
Kepone	143–50–8	0.0011
Methacrylonitrile	126–98–7	0.24
Methanol	67–56	15.6
Methapyrilene	91–80–5	0.081
Methoxychlor	72–43–5	0.25
3-Methylcholanthrene	56–49–5	0.0055
4,4-Methylene bis(2-chloroaniline)	101–14–4	0.50
Methylene chloride	75–09–2	0.089
Methyl ethyl ketone	78–93–3	0.28
Methyl isobutyl ketone	108–10–1	0.14
Methyl methacrylate	80–62–6	0.14
Methyl methansulfonate	66–27–3	0.018
Methyl parathion	298–00–0	0.014
Naphthalene	91–20–3	0.059

UNIVERSAL TREATMENT STANDARDS FOR ORGANICS—Continued

Regulated constituent—Common name	CAS [1] No.	Wastewater standard Concentration in mg/l [2]
2-Naphthylamine	91–59–8	0.52
o-Nitroaniline	88–74–4	0.27
p-Nitroaniline	100–01–6	0.028
Nitrobenzene	98–95–3	0.068
5-Nitro-o-toluidine	99–55–8	0.32
o-Nitrophenol	88–75–5	0.028
p-Nitrophenol	100–02–7	0.12
N-Nitrosodiethylamine	55–18–5	0.40
N-Nitrosodimethylamine	62–75–9	0.40
N-Nitroso-di-n-butylamine	924–16–3	0.40
N-Nitrosomethylethylamine	10595–95–6	0.40
N-Nitrosomorpholine	59–89–2	0.40
N-Nitrosopiperidine	100–75–4	0.013
N-Nitrosopyrrolidine	930–55–2	0.013
Parathion	56–38–2	0.014
Total PCBs (sum of all PCB isomers, or all Arochlors)	1336–36–3	0.10
Pentachlorobenzene	608–93–5	0.055
PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063
PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035
Pentachloroethane	76–01–7	0.055
Pentachloronitrobenzene	82–68–8	0.055
Pentachlorophenol	87–86–5	0.089
Phenacetin	62–44–2	0.081
Phenanthrene	85–01–8	0.059
Phenol	108–95–2	0.039
Phorate	298–02–2	0.021
Phthalic acid	100–21–0	0.055
Phthalic anhydride	85–44–9	0.055
Pronamide	23950–58–5	0.093
Pyrene	129–00–0	0.067
Pyridine	110–86–1	0.014
Safrole	94–59–7	0.081
Silvex (2,4,5-TP)	93–72–1	0.72
2,4,5-T (2,4,5-Trichlorophenoxyacetic acid)	93–76–5	0.72
1,2,4,5-Tetrachlorobenzene	95–94–3	0.055
TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063
TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063
1,1,1,2-Tetrachloroethane	630–20–6	0.057
1,1,2,2-Tetrachloroethane	79–34–6	0.057
Tetrachloroethylene	127–18–4	0.056
2,3,4,6-Tetrachlorophenol	58–90–2	0.030
Toluene	108–88–3	0.080
Toxaphene	8001–35–2	0.0095
Bromoform (Tribromomethane)	75–25–2	0.63
1,2,4-Trichlorobenzene	120–82–1	0.055
1,1,1-Trichloroethane	71–55–6	0.054
1,1,2-Trichloroethane	79–00–5	0.054
Trichloroethylene	79–01–6	0.054
Trichloromonofluoromethane	75–69–4	0.020
2,4,5-Trichlorophenol	95–95–4	0.18
2,4,6-Trichlorophenol	88–06–2	0.035
1,2,3-Trichloropropane	96–18–4	0.85
1,1,2-Trichloro-1,2,2-trifluoroethane	76–13–1	0.057
tris-(2,3-Dibromopropyl) phosphate	126–72–7	0.11
Vinyl chloride	75–01–4	0.27
Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330–20–7	0.32

[1] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.
[2] Concentration standards for wastewaters are expressed in mg/l are based on analysis of composite samples.
Note: NA means not applicable.

5. Universal Treatment Standards for Metal Hazardous Constituents

EPA is promulgating UTS for both the nonwastewater and wastewater forms of each of the 14 BDAT list metal constituents. The standards are found in the table "Universal Treatment Standards for Metal Constituents" at the end of this preamble section. These UTS will replace the existing metal constituent treatment standards for all listed wastes, and will constitute applicable levels for underlying hazardous metal constituents in ignitable, corrosive and TC organic wastes. They do not apply to wastes exhibiting the toxicity characteristic due to metal constituents, i.e., waste codes

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D004–D012, nor do they replace the treatment standards promulgated in the Third Third rule for EP metals. Wastecodes D004–D012 will be addressed in an upcoming rulemaking.

n. Nonwastewaters

The nonwastewater UTS for 12 of the 14 metal constituents are based on the performance of high temperature metal recovery (HTMR) or stabilization. The remaining two metals are arsenic for which the standard is based on vitrification, and mercury, which standard requires recovery by roasting or retorting for certain highly concentrated mercury wastes. As always, when the Agency develops concentration-based treatment standards, the use of other technologies to achieve those standards is allowed.

The following table presents a comparison of the previously promulgated standards with the UTS.

COMPARISON OF UTS NONWASTEWATER TCLP CONCENTRATIONS VERSUS PREVIOUS STANDARDS FOR METALS

	Final UTS NWW standards (TCLP)	Previous standards being replaced	
		Old level	Waste codes
Antimony	2.1	2.1	K061
		0.23	K021, F039
Arsenic	5.0	5.6	K031, K084, K101, K102, P010, P011, P036, P038, U136
		5.0	F039
		0.055	K061
Barium	7.6	52	F039, P013
		7.6	K061
Beryllium	0.014	0.014	K061
Cadmium	0.19	0.19	K061
		0.14	K069
		0.066	F006, F007, F008, F009, F011, F012, F039, K100
Chromium	0.86	5.2	F006, F007, F008, F009, F011, F012, F019, F039, K006 (hydrated), K061, K100
		1.7	K015, K048, K049, K050, K051, K052
		0.33	K061
		0.094	K002, K003, K004, K005, K006, K007, K008, K062, K086, U032
		0.073	K028
Lead	0.37	0.51	F006, F007, F008, F009, F011, F012, F039, K001, K087, K100, U051, U144, U145, U146, P110
		0.37	K002, K003, K004, K005, K006, K007, K008, K061, K062, K086
		0.24	K069
		0.18	K046
		0.021	K028
Mercury	0.20 for retort residues 0.025 for other residues.	0.20	K106, U151, P065, P092 (for RMERC residues)
		0.025	K071, K106, U151, P065, P092 (low mercury wastes), F039
		0.009	K061
Nickel	5.0	5.0	K061
		0.32	F006, F007, F008, F009, F011, F012, F039, K115, K061 (stabilization)
		0.2	K015, K048, K049, K050, K051, K052
		0.088	K028, K083
Selenium	0.16	5.7	F039, P103, P114, U204, U205
		0.16	K061
Silver	0.30	0.30	K061
		0.072	F006, F007, F008, F009, F011, F012, P099, P104
Thallium	0.078	0.078	K061
Vanadium	0.23	0.23	K061
Zinc	5.3	5.3	K061

Note: Constituents are actually regulated only if the treatment standard specifically requires it (for listed wastes, or constituents are reasonably expected to be present (underlying hazardous constituents in characteristic wastes).

Commenters objected to the proposed levels and provided treatment data for only two metal limits, chromium and mercury. The Agency revised the proposed treatment standards for chromium and mercury as described later in this section. For the other UTS metal constituents the Agency promulgated standards as proposed.

For four of these metals beryllium, thallium, vanadium and zinc, the previous standards limited the metal at one level, which was proposed and promulgated for UTS.

For four other metals, antimony, cadmium, nickel and silver, the Agency proposed and promulgated the UTS level at the highest of the previous standards. This occurred based on the best data for the most difficult to treat wastes. Commenters did not submit new data supporting lower limits for these constituents. While the limits for some waste codes are raised, EPA considered the following factors:

(1) A broader assessment of the treatment data;

(2) Some of the low/previous metal standards simply reflected low levels in the untreated wastes;

(3) Regulation of other metals for a waste code, namely those that are present in significantly high concentrations, will control design and operations of the treatment technology.

For the remaining four metals, arsenic, barium, lead and selenium, the Agency did not propose or promulgate the UTS at the highest previous standard. Commenters did not submit data on these metals. The justification

for rejecting lower levels are the same as those presented for antimony, cadmium, nickel and silver in the preceeding discussion. For these metals, EPA did not choose the highest previous standard; rather, the standard for the most difficult to treat waste was selected and it achieved a lower standard than the highest previous standard.

In addition to the above consideration, the Agency considered matrix effects. In setting the nonwastewater metal limits, EPA has examined the most difficult to treat wastes; therefore, if a matrix relationship exists, other wastes should more easily meet the limits. If there exists a waste that can not meet the limits, the Agency has a treatability variance process to address those instances. It appears that HTMR is matrix independent, consistently achieving the same level of treatment performance as measured in the residuals, regardless of the influent matrix composition. With regard to matrix effects on stabilization, adjustments to the type and quantity of stabilizing agents can greatly compensate for matrix effects.

The UTS standard for chromium (Total) was proposed to be 0.33 mg/l in the TCLP extract based upon the K061–HTMR treatment standard data. One commenter (Occidental Chemical), objected to the proposed limits and supplied stabilization data for chromium. They indicated through 85 data points that they could achieve a level of 0.58 mg/kg. The Agency evaluated treatability data from various sources, including Occidental Chemical and previously promulgated waste codes. These evaluations compared analyses of performance data between untreated and treated concentrations of metal waste. From this treatability data the Agency selected the most difficult to treat waste. It was determined that the waste criteria selected was submitted by Cyanokem for F006 during the promulgation of the Third Third rule (June 1, 1990). This waste was a composition of stripping liquids, plating operations, pelletizing operations, and clean out wastes from plating tanks. The data sets involving the most difficult to treat waste were used to calculate the limit of 0.86 mg/l TCLP. The other data sets, including those from the comments, generally achieved the 0.86 mg/l TCLP. The treatment results that did not meet the levels may be due to treatment being designed to only meet the characteristic levels. It is the Agency's belief that with the use of a more effective stabilization process, a lower level could be achieved, as demonstrated by the fact that a more difficult to treat waste attained the level of 0.86 mg/l TCLP. Therefore, the Agency is promulgating the treatment standard of 0.86 mg/l TCLP.

EPA proposed UTS for low mercury subcategory nonwastewaters (containing less than 260 mg/kg total mercury) at 0.009 mg/l TCLP. Many commenters expressed concern over this standard. EPA has reconsidered the proposed UTS for mercury and is promulgating standards as follows: 0.200 mg/l TCLP for low subcategory retort residues, and 0.025 mg/l TCLP for other low subcategory nonwastewaters. (The existing treatment standard for high subcategory mercury nonwastewaters (concentration greater than 260 mg/kg) is already RMERC, i.e., recovery of mercury by retorting or roasting. This treatment standard is unaffected by today's rule.) Comments and EPA's responses are summarized below.

Several commenters expressed the belief that the current treatment standards for K106, D009, and K071 wastes should remain in effect. These commenters submitted data from the analysis of retorted mercury waste to support the claim that the proposed UTS for mercury is not achievable by retorting, the recognized BDAT for K106 and D009 wastes. These data consisted of total and TCLP analyses of 109 residue samples from retorted K106 and D009 wastes. Although 23 of these samples contained greater than 260 mg/kg total mercury and would therefore require further retorting, of the remaining 86 samples, 18 contained greater than 0.009 mg/l mercury by TCLP, the proposed UTS for mercury nonwastewaters. All 86 samples contained less than 0.15 mg/l mercury by TCLP. These data support the commenters' position that the proposed UTS for mercury is not achievable by properly operated BDAT treatment technology (e.g., RMERC).

Further examination of available data has convinced the Agency that the proposed nonwastewater standard was too low. The basis for the proposed UTS for metal nonwastewaters, which was data from the treatment of K061 by high temperature metal recovery (HTMR), is not appropriate for mercury wastes. K061 waste does not typically contain large quantities of mercury and HTMR facilities do not accept wastes containing high concentrations of mercury. EPA has therefore decided not to promulgate the proposed nonwastewater standards, and instead to apply the existing treatment standards for K071, K106, P065, P092, and U151 as the UTS for mercury nonwastewaters. This is appropriate, since mercury is the most significant constituent in these wastes, and BDAT for these wastes is particularly directed to treating mercury. The Agency continues to believe that the revised limits for mercury and 12 other metal constituents in K061 provide adequate assurance that BDAT will occur for K061. Thus, the universal treatment standards for low subcategory mercury wastes will be 0.20 mg/l mercury by TCLP for retort residue nonwastewaters, and 0.025 mg/l mercury by TCLP for other low subcategory nonwastewaters.

The following table is a compilation of the final metal universal standards for nonwastewaters.

UNIVERSAL TREATMENT STANDARDS FOR METAL[1] HAZARDOUS CONSTITUENTS

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample TCLP (mg/l)
Antimony	2.1
Arsenic	5.0
Barium	7.6
Beryllium	0.014
Cadmium	0.19
Chromium (Total)	0.86
Lead	0.37
Mercury—retort residues	0.20
Mercury—not retort residues	0.025
Nickel	5.0
Selenium	0.16
Silver	0.30
Thallium	0.078
Vanadium	0.23
Zinc	5.3

[1] Treatment standards for cyanide wastes are discussed in the next preamble section.

b. Wastewaters

The metal UTS for wastewaters are based on chemical precipitation as BDAT. Depending on the initial concentration of metal constituents in the wastewater, operating conditions such as retention time, flocculating agents, reagent concentrations such as iron to affect solubility of other metals, and mixing may need to be adjusted to comply with the standards.

The following table presents the UTS metal wastewater limits, and the previous limits. Changes to the proposed metal standards occurred in two areas: use of Office of Water Metal Finishing limits, and an adjustment of the proposed vanadium limit. These changes are explained following the table.

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COMPARISON OF UTS WASTEWATER CONCENTRATIONS VERSUS PREVIOUS STANDARDS FOR METALS

	Final UTS	Previous standards	
		Old level	Waste codes
Antimony	1.9	.....	K061
		0.60	K021
		1.9	F039
Arsenic	1.4	0.79	K031, K084, K101, K102, P010, P011, P012, P036, P038, U136
		1.4	F039
			K061
Barium	1.2	1.2	F039, P013
			K061
Beryllium	0.82	0.82	F039, K061
Cadmium	0.69	6.4	K028
		0.20	F039
		0.24	K101, K102
		1.6	F006, K061, K069, K100
Chromium	2.77	0.32	F006, F007, F008, F009, F011, F012, F019, K015, K061, K062, K086, K100, U032
		0.2	F037, F038, K048, K049, K050, K051, K052
		0.37	F039
		0.9	K002, K003, K004, K005, K006, K007, K008
		0.35	F024, K022, K028
Lead	0.69	0.040	F006, F007, F008, F009, F011, F012, K062, U144, U145, U146, P110
		3.4	K002, K003, K004, K005, K006, K007, K008
		0.17	K101, K102
		0.28	F039
		0.51	K061, K069, K100
		0.037	K001, F037, F038, K028, K046, K048, K049, K050, K051, K052, K086, K087, U051
Mercury	0.15	0.030	K071, K106, P065, P092, U151
		0.082	K101, K102
		0.15	F039
Nickel	3.98	0.55	F039
		0.44	F006, F007, F008, F009, F011, F012, K015, K061, K062, P074
		0.32	P073
		0.47	F024, K022, K028, K083, K115
Selenium	0.82	0.82	F039
		1.0	P103, P114, U204, U205
Silver	0.43	0.29	F039, P099, P104
Thallium	1.4	0.14	P113, P114, P115, U214, U215, U216, U217
		1.4	F039
Vanadium	4.3	0.042	F039
		28	P119, P120
Zinc	2.61	1.0	F039

In the proposal, EPA solicited comments on changing the limits for cadmium, chromium, lead, nickel, silver, and zinc to those used in the Office of Water's Metal Finishing Effluent Guidelines. These standards represented a more comprehensive database, addressed many more facilities, and represented the most difficult to treat waste. Although none of the commenters submitted data, they (commenters) supported the use of the Metal Finishing standards as the UTS wastewater treatment numbers. We are adopting the metal wastewater limits used for the Effluent Guidelines for the Metal Finishers Point Source category for cadmium, chromium, lead, nickel, silver and zinc for the reasons outlined above.

The Agency received comments, but no data, that the proposed vanadium limit of 0.042 was unachievably low. At the proposed level, vanadium would be the most stringent regulated metal. With little data supporting the proposed level, the Agency tried to follow up with commenters and other sources to obtain data. Wastewater with significant vanadium is rare, and EPA's efforts yielded limited data supporting a level of 4.3 mg/l. This level is within the range of other metal limits, and is achievable, based on the data availability. While the Agency would have preferred having more data for vanadium, the UTS is set at 4.3 mg/l. If the few facilities that have significant vanadium wastewaters can not meet this limit, EPA's treatability variance process is available. Also, the Agency would be willing to reassess this limit in a future rule, if data are submitted which supports a change in this standard.

For all other metal wastewater UTS—antimony, arsenic, barium, beryllium, mercury, selenium and thallium—EPA is promulgating limits as proposed. The data used for UTS reflect, for each of these metals, the best data available. With the possibility of more wastewaters being treated to comply with LDR standards—particularly characteristic wastewaters that heretofore have been decharacterized and whose underlying hazardous constituents may not have been treated, EPA has made a determined effort in this rulemaking to base treatment standards on the best data available, which data reflects a wide variety of wastewaters. Although the UTS are in some cases higher than existing limits, EPA believes that these existing lower limits, in many cases, reflected low levels of metals in untreated wastes. In addition, wastewater standards, to date, have not had direct effect on many wastes, because most hazardous wastewaters are either treated in tanks and discharged, managed in § 3005(j)(ii) impoundments, injected into Class I hazardous deep wells which have received no-migration variances, or decharacterized, and so are not subject to these lower standards.

The following table is a compilation of final metal universal treatment standards for wastewaters.

UNIVERSAL TREATMENT STANDARDS FOR METAL[1] HAZARDOUS CONSTITUENTS

[Wastewaters]

Regulated constituent	Maximum for any single grab sample (mg/l)
Antimony	1.9
Arsenic	1.4
Barium	1.2
Beryllium	0.82
Cadmium	0.69
Chromium (Total)	2.77
Lead	0.69
Mercury	0.15
Nickel	3.98
Selenium	0.82
Silver	0.43
Thallium	1.4
Vanadium	4.3
Zinc	2.61

[1] Treatment standards for cyanide wastes are discussed in the next preamble section.

6. Universal Treatment Standards for Cyanide Wastes

For the nonwastewater forms of cyanide wastes, EPA is promulgating the UTS as proposed: 590 mg/kg (total cyanide) and 30 mg/kg (amenable cyanide). For wastewaters, EPA is promulgating the UTS: 1.2 mg/l (total cyanide) and 0.86 mg/l (amenable cyanide). These wastewater standards differ from those that were proposed (see section b of the cyanide UTS discussion below). The cyanide wastewater and nonwastewater UTS are based on the treatment of wastewaters via alkaline chlorination.

EPA is also codifying in 40 CFR 268.40 that compliance with the cyanide nonwastewater UTS requires the use of EPA SW–846, Test Methods 9010 and 9012, along with a specified sample size of 10 grams, and a distillation time of 75 minutes. Most commenters, in particular those from the hazardous waste treatment industry, welcomed and supported this part of EPA's proposal. These kind of provisions eliminate variabilities that can result from the analyses of different sample sizes and distillation times. A detailed discussion of these treatment standards follows.

a. Cyanide Nonwastewaters

EPA proposed three options for cyanide in nonwastewater forms (a standard based on total and amenable cyanide concentrations, a standard based on TCLP concentrations, and a standard that specifies treatment methods) at 58 FR 48104. EPA is promulgating the first option.

EPA is discussing in this preamble only the major comments on the first option. Please see the Response to Comments Document in the docket for this rule for EPA's responses to all the comments received on the proposed three options.

EPA requested comments on its rationale for setting a common cyanide UTS for all nonwastewater forms of cyanide. Two primary issues were emphasized in the proposal: (1) the establishment of a cyanide UTS that is less stringent for wastes that contain little to no cyanide; and, (2) standardized sample size and distillation time for compliance monitoring.

EPA believes that by basing a universal treatment on the cyanide matrix that is most difficult to treat, the universal treatment standard will indeed be uniformly achievable. EPA has determined that electroplating wastes with high concentrations of iron represent the most difficult to treat of all the cyanide wastes. The available performance data for treating electroplating wastes support the establishment of a UTS of 590 mg/kg (total cyanide) and 30 mg/kg (amenable cyanide).

EPA noted that although other cyanide wastes were required to meet lower treatment standards, the establishment of this higher UTS was not likely to discourage effective treatment of these other wastes. Examples of the other wastes of concern include multi-source leachate, pigments, petroleum, coking, ink solvents and organo-nitrogen wastes. These wastes generally have very little cyanide in the untreated waste, have cyanide along with organic constituents which are routinely incinerated, or have cyanide in a free form which is easier to treat by conventional treatment methods (alkaline chlorination). Because these wastes are routinely treated by incineration or a cyanide destruction technology, EPA believes further subcategorization of the cyanide UTS standard is not warranted at this time. (Put another way, the Agency does not believe as a practical matter that more cyanide will be land disposed as a result of UTS, and therefore that the interest in simplified standards warrants against further subcategorization of cyanide wastes.)

The majority of the commenters supported EPA's proposed rationale for developing a cyanide UTS and believe EPA's proposed approach is appropriate for setting UTS. Two commenters, however, urged EPA to withdraw the proposed UTS and to promulgate instead a lower cyanide UTS, as described below.

The first commenter believes that EPA should set two categories of cyanide UTS: (1) organic, which would include all those cyanide wastes with regulated organics; and, (2) inorganic, which include all cyanide wastes with regulated metals. For organics, they suggested a UTS of 30 mg/kg (total cyanide) and 1.8 mg/kg (amenable cyanide). For inorganics, the commenter suggested a UTS of 400 mg/kg (total cyanide) based on rejecting three data points used to calculate the 590 mg/kg limits.

The other commenter believes that it is inappropriate for EPA to raise the standards for all nonwastewater forms of cyanide wastes. They said that existing treatment technologies can treat cyanide wastes to levels below the proposed UTS, and they asked EPA to promulgate lower cyanide levels such as those promulgated for nonwastewater forms of F011 and F012.

EPA is not persuaded by these comments. First, a separate lower treatment standard for cyanide in organic wastes is currently unnecessary because combustion of these wastes to comply with organic treatment standards effectively destroys cyanides. Second, EPA believes that the three data points queried in CyanoKem's comment are in fact representative. None of these three data points fail a statistical Outlier test. Furthermore, the description of the design and operating conditions make it appear that treatment was conducted properly. Third, the limit for F011 and F012 (which had a treatment standard for cyanide below the UTS) has not been previously subject to the 1 hour and 15 minute distillation time and 10 gram sample requirements, which can greatly influence results and are required conditions for the UTS.

CyanoKem's comment, in fact, amounts to a request that EPA reopen the technology basis for the cyanide standard, an issue not opened for public comment. The treatment standards for cyanide are based on performance of alkaline chlorination technology. 54 FR at 26610–611 (June 23, 1989). CyanoKem has upgraded that technology with certain proprietary modifications. 56 FR at 12355 (March 25, 1991). EPA has already indicated that this adapted technology is not, and need not serve as the basis for the treatment standard. *Id.*

In any case, EPA does not believe that this is an appropriate time to undertake

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major changes to the cyanide standards. This is because the cyanide analytic method, although improved by the changes in this rule which are the best available at the present time, continues to have shortcomings. EPA is working to develop a different analytic method. It may be that after the new method is developed, further investigation of cyanide standards will be warranted.

UNIVERSAL TREATMENT STANDARDS FOR CYANIDE [1]

[Nonwastewaters]

Regulated constituent	Maximum for any single composite sample (mg/kg)
Cyanide (Total)	590
Cyanide (Amenable)	30

[1] Cyanide nonwastewaters are analyzed using SW–846 Method 9010 or 9012, sample size 10 grams, distillation time, one hour and 15 minutes.

b. Cyanide Wastewaters

EPA is promulgating 1.2 mg/l (total cyanide) and 0.86 mg/l (amenable cyanide) as UTS for wastewater forms of cyanide wastes. In the proposed rule, EPA pointed out that a total cyanide concentration of 1.9 mg/l, regardless of process waste type, is widely used in wastewater discharge regulations—namely those for the Metal Finishing Industry and the Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) Industry; however, the concentration of 1.9 mg/l was a typographical error. The Agency intended to propose a concentration 1.2 mg/l of total cyanide. (The 1.2 mg/l level is supported by EPA's OCPSF regulations and the background information in the record to the proposed rule supporting the proposed total cyanide UTS applicable to cyanide wastewaters.) The majority of commenters from the pharmaceutical and waste treatment industry commented on the proposed UTS cyanide for wastewaters assuming a standard of 1.2 mg/l total cyanide level was proposed.

Commenters pointed out that the proposed level of 1.2 mg/l (total cyanide) is not always applied to OCPSF discharges. EPA has authorized permit writers or control authorities to exempt a source from OCPSF's total cyanide (discharge) limit, and to establish a Best Professional Judgement ("BPJ") amenable cyanide limit. The BPJ limit must be based on a determination that the cyanide limits are not achievable due to elevated levels of non-amenable cyanide that result from the unavoidable complexing of cyanide at the process source (40 CFR 414.11(g), 414.91, and 414.101). As with the CWA regulations, EPA provides facilities with a RCRA treatability variance process in the 40 CFR 268.44 regulations that would allow a facility to achieve an alternate treatment standard (see discussion of treatability variance at section XII of this preamble). EPA believes that this provision provides a mechanism for establishing an alternative cyanide limit for OCPSF facilities in appropriate cases.

These commenters also reported that CWA regulations for the Pharmaceutical Industry specify cyanide limitations as high as 33.5 mg/l total cyanide. EPA looked into these concerns; in particular, whether the proposed standard of 1.2 mg/l can be achieved universally. Treatment performance data, however, were not submitted by the commenters. Contrary to the commenters' arguments, the literature and the performance data on cyanide treatment clearly show that cyanide wastewaters are treatable to 1.2 mg/l total cyanide. While the CWA cyanide limit is 33.5 mg/l for the pharmaceutical industry, that limit was established in 1983 and is currently being investigated for possible revision. Data were obtained from these ongoing efforts, confirming that pharmaceutical wastes can achieve the 1.2 mg/l cyanide level.

Other commenters emphasized that because EPA's proposed universal wastewater standard of 1.2 mg/l total CN could not be routinely met by cyanide destruction technologies available at their site, EPA should only set a treatment level of 0.86 mg/l (amenable cyanide). Another commenter added that in the Third Third rule (see 55 FR 22550–22553, June 1, 1990), EPA already set a level of 0.86 mg/l for amenable cyanide in characteristic wastewaters which is routinely met by their modified wastewater treatment system. The proposed UTS treatment standard of 0.86 mg/l (amenable cyanide) is based on the treatment of complex-iron wastewaters from the electroplating industry by alkaline chlorination (a cyanide destruction technology, and BDAT). The commenter urged EPA to set this level as the sole cyanide UTS.

In the first place, the Agency views the issue of requiring treatment for both total and amenable CN to be settled in past rules, and did not intend to reopen it. See 54 FR at 26609 (June 23, 1989). If further response is deemed necessary, EPA remains unpersuaded by these arguments. Clean Water Act effluent limitations could technically be met by adding ferro-sulfate or other sulfate reagents to wastewaters. These chemical reagents do not destroy cyanides in the effluent wastewater but instead, they leave behind iron-cyanide complexes or thiocyanates. By requiring compliance for both amenable and total cyanide, facilities must pursue treatment practices that can effectively destroy cyanides. EPA is thus promulgating 1.2 mg/l (total cyanide) and 0.86 mg/l (amenable cyanide) as UTS for wastewater forms of cyanide wastes.

EPA had previously reserved the treatment standard for total cyanide in wastewater forms of D003 reactive cyanide wastes. In today's rule, EPA is applying the UTS of 1.2 mg/l to this waste. EPA sees no reason that the limit is not generally achievable, and commenters supplied no reasons.

UNIVERSAL TREATMENT STANDARD FOR CYANIDE

[Wastewaters]

Regulated constituent	Maximum for any single composite sample (mg/l)
Cyanide (Total)	1.2
Cyanide (Amenable)	0.86

C. Consolidation of Equivalent Technology-Specific Combustion Standards

Another improvement to the existing Land Disposal Restrictions program that is being made in today's rule is the simplification of two equivalent technology-specific combustion standards in: Table 1—Technology Codes and Description of Technology-Based Standards in 40 CFR 268.42. The Agency is consolidating the descriptions of INCIN (incineration) and FSUBS (fuel substitution), by combining them into one term, CMBST (combustion). The definition of CMBST, as stated in § 268.42 Table 1, is: "combustion in incinerators, boilers, or industrial furnaces operated in accordance with the applicable requirements of 40 CFR part 264 subpart O, and part 266, subpart H." (Because the Part 265 interim status standards for incinerators are largely nonsubstantive, EPA does not view facilities operating pursuant to these standards to be performing BDAT treatment. This is not true of boilers and industrial furnaces, where the interim status standards are nearly as stringent as those for permitted units.)

This definition includes a specific reference to boilers and industrial furnaces in order to clarify that combustion in these units is (and always has been) allowed as a means of complying with FSUBS. The Agency is also clarifying that any future

regulations, such as potential emission limits on metals or halogenated organic content, established in part 264 subpart O, and part 266 subpart H, shall also apply automatically to the standard of CMBST (or INCIN) in part 268. The consolidation of INCIN with FSUBS to read CMBST does not represent any change to the promulgated standards and additional notice and comment was, therefore, not required.

All of the K-, U-, and P-listed wastes that have technology-specific standards contain chemicals that are very difficult to quantify in treatment residues. The chemicals representing the waste codes for which the Agency has promulgated CMBST as a standard are, for the most part, thermally labile and are expected to be destroyed relatively easily in any type of combustion unit. EPA originally set up the two separate standards of INCIN and FSUBS (Final Rule for Third Third Wastes, June 1, 1990), because the Agency did not have in place the operating requirements for boilers and industrial furnaces (i.e., the requirements for FSUBS). See 52 FR at 17021 (May 6, 1987). Because these requirements have been promulgated (56 FR 7134 (February 21, 1991), both sets of standards should assure equally efficient combustion of hazardous waste. For the same reason, there is no need to distinguish between the types of units that are allowed to handle each specific waste code. (EPA is, however, actively reviewing current regulations for combustion units to assure the rules' protectiveness, and may propose more stringent standards for such units. See EPA's Draft Combustion Strategy of May 18, 1993).

As a result of today's action the standards for the following waste codes are modified to read "CMBST":

(1) Two treatment subcategories of D001 wastes
(2) Six source-specific wastes listed in § 261.32: K027, K039, K113, K114, K115, K116
(3) Seventeen wastes listed in § 261.33(e): P001, P003, P005, P009, P040, P041, P043, P044, P062, P068, P081, P085, P088, P102, P105, P109, P112
(4) Forty-one wastes listed in § 261.33(f): U008, U016, U023, U053, U055, U056, U057, U058, U064, U085, U086, U087, U089, U090, U094, U096, U098, U099, U103, U109, U113, U122, U123, U124, U125, U126, U133, U147, U154, U160, U166, U182, U186, U197, U201, U213, U221, U248, U328, U353, U359

Other technology-specific standards and/or numerical standards that have been promulgated for the above listed codes remain unchanged. In particular, the promulgated standards of CHRED and CHOXD (i.e., chemical reduction and chemical oxidation) remain unchanged as alternatives to CMBST for fourteen of the above U and P waste codes. These standards were established because the chemicals represented by these wastes hydrolyze relatively rapidly (i.e., react with water) and both of the technologies represented by these standards are typically performed under aqueous conditions. These waste codes include: P009, P068, P081, P105, P112, U023, U086, U096, U098, U099, U103, U109, U133, U160.

Today's rule does not affect the existing standards for waste codes where INCIN was specified, but FSUBS was not. For those waste codes, the standard remains identified as INCIN, rather than CMBST.

The Agency is further investigating potential modifications to the presentation in 40 CFR 268.40 of all of the technology-specific standards in order to simplify and clarify the promulgated treatment standards, and may propose additional changes in the future.

D. Incorporation of Newly Listed Wastes Into Lab Packs and Changes to Appendices

On June 1, 1990 (55 FR 22629), EPA promulgated alternative treatment standards under 40 CFR 268.42(c) for waste codes listed in 40 CFR 268 Appendix IV and V that are placed in lab packs. These alternative standards are legally constructed, in part, as "specified methods of treatment" because of physical difficulties in measuring compliance with numerical standards for these multi-coded waste forms (i.e., compliance is complicated by the fact that many lab packs are comprised of hundreds of small containers, each with different organic or organo-metallic chemicals in them, making it difficult to accurately sample treatment residues for those organics). In the January, 1991, correction notice and again in the May 30, 1991, Advance Notice of Proposed Rulemaking (56 FR 24453), the Agency requested comment on potential improvements to these alternative standards.

EPA's original intent in establishing two separate appendices was to distinguish between those lab packs containing organo-metallics (Appendix IV) and those containing only organics (Appendix V). As such, lab packs containing organo-metallics (Appendix IV) were expected to need stabilization after performing the specified method of treatment, INCIN (i.e., incineration), while Appendix V lab packs only needed to be incinerated. However, under 40 CFR 268.42(c)(4), all treatment residues of either type of lab pack also had to comply with the standards for the extraction procedure (EP) for metals, i.e., D004, D005, D006, D007, D008, D010, and D011. (D009 is not included in this list because most mercury-bearing wastes were excluded from the use of the alternative standards in both of these Appendices.) As such, if metals were concentrated in the residues from the incineration of an Appendix V lab pack and the resultant residues then exhibited one of the characteristics for EP metals, these residues would also have had to be stabilized to comply with the appropriate treatment standard for metals. In such a case, there was no practical difference between Appendix IV and Appendix V lab packs in terms of the treatment that was needed.

The majority of the comments received from the regulated community supported the Agency's proposed approach. In this final rule EPA is, therefore, replacing Appendix IV and Appendix V with a new Appendix IV. In order to simplify the new Appendix IV it only contains those wastes excluded from lab packs. The following wastes are excluded from lab packs (and appear in new Appendix IV) for the purpose of using the alternative lab pack treatment standard in 40 CFR 268.42(c): D009, F019, K003, K004, K005, K006, K062, K071, K100, K106, P010, P011, P012, P076, P078, U134, U151.

In today's rule, EPA is also stating that the alternative treatment standard for lab packs applies to the following additional waste codes that were previously not included in Appendix IV or V: wastes for which treatment standards were promulgated in the LDR Phase I rule August 1, 1992 (57 FR 37194), and wastes (including TC organic wastes) for which treatment standards are promulgated in this final rule. Today's rule does not list these as excluded waste codes in the new Appendix IV.

As a matter of clarification, the alternative treatment standard for lab packs is INCIN. This required combustion technology combined with the requirements of 40 CFR 268.42(c)(4) (ash residues are treated to meet the characteristic metals treatment standards), will ensure that all underlying hazardous constituents present in characteristic wastes (other than those excluded in the new Appendix IV), will be treated. The use of this alternative lab pack standard negates the requirement to monitor for, or comply with, the UTS for underlying hazardous organic constituents.

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For reasons outlined in the June 1, 1990 final rule, mercury wastes were excluded from this alternative standard for lab packs. Mercury is considered a "volatile metal" which may lead to excessive air emissions in some combustion devices when present in large quantities. Mercury is also very difficult to stabilize if present in ash residues in large quantities. Commenters did not provide any justifiable technical reason for EPA to modify its position with respect to mercury wastes, and thus these wastes shall remain excluded from this alternative lab pack treatment standard.

E. Changes in the LDR Program in Response to the LDR Roundtable

EPA convened a roundtable meeting on January 12–14, 1993 to discuss the LDR program. The purpose of the roundtable was for EPA to hear suggestions on improvements to the LDR program from persons who implement it. Participants included representatives of hazardous waste generators, treaters, and disposers; public interest groups; state environmental agencies; EPA regional offices; and other federal agencies. EPA is today promulgating several recommendations made by roundtable participants. The Agency is consolidating the three existing treatment standard tables into one table, and is simplifying notification requirements and reducing paperwork, as discussed below. In addition, as discussed in an earlier section of this preamble, the Agency is also promulgating universal treatment standards. Furthermore, the Agency is committed to continue to identify ways the LDR program can be simplified. Additional opportunities for such streamlining will be explored in future LDR rulemakings.

1. Consolidated Treatment Table

Several of the groups present at the LDR roundtable expressed an interest in having a consolidated treatment standard table in the regulations. Participants stated that the existing system of three separate tables at 40 CFR 268.41–268.43 was too complex and burdensome. In its September 14, 1993 notice, EPA proposed a single consolidated table of treatment standards. Comments on the table were favorable.

Today, EPA is replacing the three existing treatment standard tables with the consolidated table, called "Treatment Standards for Hazardous Waste" and placing it at § 268.40 along with much of the text found currently in §§ 268.41–268.43. Section 268.42 continues to describe the technology codes, to regulate California list PCBs and HOCs, to set out exemptions from the required methods, and to provide procedures for equivalency determinations. The numerical treatment standards in the consolidated table are identical to the UTS promulgated in today's rule with the exception of characteristic metal wastes.

Reformatting §§ 268.40–268.43 also corrects a confusing aspect of the way the Code of Federal Regulations (CFR) has appeared for some time. The "No Land Disposal" treatment standards that have appeared at § 268.43 will be deleted from the regulations and should no longer appear in the CFR. These treatment standards have not been in effect since 1990, when the LDR Third Third rule set treatment standards for these wastes that were expressed as either methods of treatment or numerical standards that now appear in the consolidated treatment standard table § 268.40. It was only a drafting oversight that made these "No Land Disposal" standards continue to appear in the regulations, and today's rule corrects this mistake.

2. Simplified LDR Notification Requirements

Comments on LDR notification requirements at the roundtable ranged from suggestions that EPA should eliminate notifications altogether to suggestions that EPA modify or delete data items on the notification. In response, EPA proposed to eliminate the requirement at 40 CFR 268.7(a)(1)(ii) and at 268.9(d)(1) that the notification include treatment standards or references to those standards. It was argued that such a simplification makes particular sense in conjunction with EPA's proposal to consolidate the treatment standard tables. Commenters on this issue all supported this proposed simplification. EPA is thus dropping the treatment standard or reference to the treatment standard from the LDR notification in this final rule.

Today's action does not eliminate the existing requirement to identify the constituents in F001–F005 spent solvent wastes, F039 wastes, or the underlying hazardous constituents in D001, D002, and in TC organic wastes, unless the generator/treater is going to monitor for all hazardous constituents in the waste. However, the regulatory language is made clearer, and there is no longer any requirement that the corresponding constituent level be included with the constituents identified on the LDR notification for these wastes.

IV. Treatment Standards for Toxicity Characteristic Waste

A. Introduction—Content and Scope

EPA is promulgating treatment standards for the newly identified toxicity characteristic (TC) organic wastes (D018–D043) as proposed. These are identical to the UTS in today's rule. The UTS apply to the underlying hazardous constituents in the TC waste as well as the individual constituent responsible for the TC designation. Underlying hazardous constituents are any constituents in § 268.48 which are reasonably expected to be present at levels above the UTS at the point of generation of the TC waste. (See definition at § 268.2(i).) Although the intent of today's regulations is to require treating all underlying hazardous constituents present plus the TC constituent, today's rule calls for generators to monitor only the TC constituent and those underlying hazardous constituents "reasonably expected to be present" in their waste at its point of generation. Today's rule is promulgating the compliance monitoring provisions that were proposed. Section X of this preamble (Compliance Monitoring and Notification) discusses them in detail.

Several commenters suggested that EPA promulgate alternative standards of incineration (INCIN), fuel substitution (FSUBS) and recovery of organics (RORGS) for these wastes. These commenters pointed to the Interim Final Rule of May 24, 1993 (58 FR 29867) where EPA extended the use of these methods of treatment to all D001 wastes disposed outside CWA or CWA-equivalent impoundments or Safe Drinking Water Act regulated Class I underground injection wells. EPA is not adopting this approach in today's rule for TC organic wastes. First, EPA does not believe that methods of treatment intended to address organic constituents will always adequately address any underlying metal constituents present in these wastes. In addition, the Agency has not yet been able to completely evaluate the appropriateness of requiring specified treatment technologies for TC wastes and other wastes.

1. Waste Management Systems Affected by Today's Rule

In terms of waste management systems, today's rule applies to those TC wastes which are managed in systems other than: (1) wastewater treatment systems which include surface impoundments whose ultimate discharge is subject to the Clean Water Act (CWA); (2) zero dischargers who, before permanent land disposal of the wastewater, treat the wastewaters in a CWA-equivalent wastewater treatment system; or, (3) Class I underground injection wells subject to the Safe Drinking Water Act (SDWA) Underground Injection Control (UIC) program. CWA-equivalent treatment means biological treatment for organics, reduction of hexavalent chromium, precipitation/sedimentation for metals, alkaline chlorination or ferrous sulfate precipitation of cyanide (to the extent these constituents are present in the untreated influent to wastewater treatment systems), or treatment that the facility can show performs as well or better than these enumerated technologies. See § 268.37(a), 58 FR at 29885 (May 24, 1993). Organic TC wastes managed in these types of systems will be regulated in the next LDR rule.

Additionally, "decharacterizing" the TC wastes regulated under this rule by rendering them noncharacteristic does not remove them from the scope of these regulations. *Chemical Waste Management* v. *EPA*, 976 F. 2d at 14–15. Consequently today's final rule will apply to some injection practices, in particular, those involving Class V injection wells. These typically are wells injecting nonhazardous wastes above or into underground sources of drinking water. (If, however, the TC wastes injected into non-Class I wells were to be treated by CWA-equivalent means before injection, today's treatment standards would not apply. This is an example of the type of zero discharger referred to above.)

2. Categories of TC Wastes Affected by Today's Rule

The following TC wastes are subject to UTS: (1) all wastes identified as D018 through D043 (described in the proposed rule as "new organic constituents); (2) D012 through D017 organic pesticide wastes whose TCLP extract composition meets the concentration criteria of 40 CFR 261.24, Table A but whose EP extract composition does not; (3) D012 through D017 pesticide wastes whose TCLP extract composition meets the concentration criteria of 40 CFR 261.24 Table A, as does the EP extract composition, and (4) soil and debris contaminated with the preceeding three sets of wastes. The first two categories are newly identified wastes, i.e. wastes not yet identified as hazardous at the time of the 1984 amendments and therefore not covered by the original statutory schedule. (The March 29, 1990 rule extended the list of chemicals defined as TC and changed the extraction step to a more sensitive procedure which may potentially identify more pesticide wastes than did the EP.) For soil contaminated with the TC wastes, the variance process is available (see discussion in the Background section of this rule under the heading "E. Treatment Standards for Hazardous Soil").

As noted in the proposed rule, regulating land disposal of newly identified TC wastes by addressing underlying hazardous constituents is the same approach as EPA adopted in the recent interim final rule for ignitable (D001) and corrosive (D002) characteristic wastes, promulgated on May 10, 1993 (published on May 24, 1993, 58 FR 29860) in response to the court's decision in *Chemical Waste Management* v. *EPA*, 976 F. 2d 2. That case vacated and remanded certain Agency regulations (commonly referred to as the Third Third rule) establishing prohibitions and treatment standards for characteristic wastes, and also established rules as to when the prohibitions and standards would not apply. A summary of the court's decision, an overview of the interim final rule published on May 24, 1993, and a discussion of how the Agency proposed to apply this approach to the TC wastes can be found in the text of the proposed rule at 58 FR 48092.

Today's rule regulates underlying hazardous constituents in the D018–D043 as well as in newly identified D012–D017 and in the rest of the universe of D012–D017 wastes. (The definition of "underlying hazardous constituents" is contained at 268.2(i) in this rule.) For those D012–D017 nonwastewaters originally regulated in the Third Third rule, today's rule changes the numerical value of the previously applicable treatment standards to the UTS.

3. Soil Contaminated by Underground Storage Tanks

Soil which is contaminated with petroleum and is managed during corrective action of releases from a RCRA Subtitle I underground storage tank (UST) is not subject to the treatment standards promulgated today for the TC organic wastes (D018–D043). Such soil that fails the TC for one or more of the newly identified organic wastes (D018–D043) has been temporarily deferred from regulation as a hazardous waste (55 FR 26986). In addition, the Agency has proposed to permanently exempt UST petroleum-contaminated soils from the TC rule (58 FR 8504). However, any Subtitle I petroleum-contaminated soil identified as D001 through D017 would not be subject to the deferral and would be subject to all applicable RCRA land disposal restriction requirements.

The Agency reminds the regulated community that any soil contaminated by a release from a hazardous substance UST (Subtitle I) as well as from all non-Subtitle I USTs (including petroleum tanks) will continue to be subject to applicable RCRA hazardous waste requirements, including the land disposal restrictions. Likewise, petroleum-contaminated soils from non-UST sources that exhibit a hazardous characteristic are also subject to applicable Subtitle C requirements.

4. Metal TC Wastes Are Not Affected by Today's Rule

Today's rule does not affect TC metal wastes at all; this rule leaves the Third Third final treatment standards (which apply to EP metals) in place. Furthermore, today's rule does not affect the mineral processing wastes which were formerly exempt from Subtitle C regulation under the Bevill Amendment but which recently lost that exemption. Included in that set of wastes are wastes from the remediation of historic manufactured gas plant or coal gasification sites. EPA will address TC metal wastes and the former Bevill mineral processing wastes in a future rulemaking.

B. Background

1. Legal and Policy Basis for Today's TC Standards

Today's rule applies the UTS to underlying hazardous constituents in D012–D043 wastewaters and nonwastewaters. Commenters' principal objection to the proposed standards for TC wastes was that the September 1992 Circuit Court decision did not authorize EPA to regulate underlying hazardous constituents in TC wastes.

Most of these comments asserted that organic TC wastes were fundamentally different from ignitable or corrosive wastes and therefore EPA's decision to apply the standards promulgated in the May 24, 1993 Interim Final Rule for ignitable and corrosive wastes was inappropriate. These commenters said that TC wastes were unlikely to pose a threat to human health and the environment once treatment removed the single constituent, partly because such treatment would remove other similar hazardous components of the waste. None of these commenters submitted process data demonstrating these claims. On the other hand, some commenters argued that merely deactivating characteristic wastes might

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well leave hazardous components intact.

The Agency is regulating in this rule underlying hazardous constituents in TC wastes when they are managed in non-CWA/non-CWA equivalent/non-Class I injection well waste management systems. If, as commenters assert, treatment of the TC constituent effectively treats underlying hazardous constituents, then regulating the underlying hazardous constituent poses no further burden. Additionally, EPA believes that the compliance monitoring provisions requiring the generator to address only those underlying constituents "reasonably expected to be present in the wastes" relieves generators and treaters from an undue regulatory burden.

Several commenters objected that extending the requirement to treat underlying hazardous constituents from ignitable and corrosive wastes, as promulgated in the May 24, 1993 Interim Final Rule, to TC wastes was unnecessary. The numerical treatment standard for the constituent present at the TC level, the commenters reasoned, meets RCRA's section 3004(m) "minimize threat" requirement. EPA is not persuaded by such reasoning. 55 FR 22542, 22652 (June 1, 1990); Chemical Waste Management, 976 F.2d at 14; HWTC III, 886 F. 2d at 362. The TC level identifies wastes that are clearly hazardous, and does not evaluate presence of underlying hazardous constituents, non-groundwater exposure pathways, or adverse environmental effects.

2. Ongoing Management Practices for TC Wastes

The proposed rule solicited comments and data on volumes of TC wastes managed in Class V injection wells, and on waste management practices employed prior to such injection. EPA received little substantive comment and consequently has no basis for changing the proposed approach.

The proposed rule also solicited information about industrial generation patterns in order to allow the Agency to assess the potential for source reduction or recycling for these TC wastes in light of their wide diversity. However, EPA received no comments describing current industry practices upon which the Agency could act.

The Agency is to consider opportunities for source reduction and recycling of these wastes, and ways treatment standards could reflect such types of waste minimization. The Agency notes that the subtitle C rules generally, and the LDR rules in particular, have already resulted in substantial volumes of hazardous waste no longer being generated, because these rules impose waste management costs on hazardous waste generators, and thus create a financial incentive to generate less waste.

Finally, several commenters expressed concerns about achievability of UTS for underlying hazardous constituents in complex matrices and about the appropriateness of numerical standards based on incineration. See the discussion of UTS in section III.A of this preamble for more information on these comments.

C. Treatment Standards for New TC Organic Constituents (D018–D043)

1. Nonwastewaters

The Agency is also promulgating concentration-based treatment standards for TC organic constituents in nonwastewaters, that are identical to the levels promulgated as UTS in a separate section of this preamble. These standards are based on treatment data that were used to establish UTS for these same constituents in listed wastes. These standards are primarily based on incineration data and are presented at the end of this section.

EPA believes that a variety of treatment technologies, combustion and non-combustion, can achieve these treatment standards. EPA reiterates that any technology that does not constitute impermissible dilution can be used to meet these concentration levels.

BDAT STANDARDS FOR TC ORGANIC WASTES

[Nonwastewaters]

Code	Regulated constituent	Maximum for any single grab sample. Total composition (mg/kg)
D018	Benzene	10
D019	Carbon tetrachloride	6.0
D020	Chlordane	0.26
D021	Chlorobenzene	6.0
D022	Chloroform	6.0
D023	o-Cresol	5.6
D024	m-Cresol	[1]5.6
D025	p-Cresol	[1]5.6
D026	Cresol	5.6
D027	1,4-Dichlorobenzene	6.0
D028	1,2-Dichloroethane	6.0
D029	1,1-Dichloroethylene	6.0
D030	2,4-Dinitrotoluene	140
D031	Heptachlor	0.066
D031	Heptachlor epoxide	0.066
D032	Hexachlorobenzene	10
D033	Hexachloro-1,3-butadiene.	5.6
D034	Hexachloroethane	30
D035	Methyl ethyl ketone	36

BDAT STANDARDS FOR TC ORGANIC WASTES—Continued

[Nonwastewaters]

Code	Regulated constituent	Maximum for any single grab sample. Total composition (mg/kg)
D036	Nitrobenzene	14
D037	Pentachlorophenol	7.4
D038	Pyridine	16
D039	Tetrachloroethylene	6.0
D040	Trichloroethylene	6.0
D041	2,4,5-Trichlorophenol	7.4
D042	2,4,6-Trichlorophenol	7.4
D043	Vinyl Chloride	6.0

[1] m- and p-cresol are regulated together as the sum of their concentrations.

2. Wastewaters

The Agency is today promulgating concentration-based treatment standards for the TC organic constituents in wastewaters, that are identical to the levels promulgated as UTS in a separate part of today's rule. These standards were based on existing treatment data that were used to establish UTS for these same constituents in the broad array of listed wastes. Today's standards are based on data representing a variety of wastewater treatment units and are presented at the end of this section.

These wastewater treatment standards apply to newly identified TC wastewaters that are managed in systems other than those regulated under the CWA, those regulated under the SDWA that inject TC wastewaters into Class I injection wells, and those zero discharge facilities that engage in CWA-equivalent treatment prior to land disposal. The treatment standards promulgated today for newly identified TC organic (D018–D043) wastewaters require treatment to meet the UTS for the TC constituent and for the underlying hazardous constituents in the TC waste as generated.

BDAT STANDARDS FOR TC ORGANICS

[Wastewaters]

Constituent	Maximum for any single grab sample. Total composition (mg/l)
D018—Benzene	0.14
D019—Carbon tetrachloride	0.057
D020—Chlordane	0.0033
D021—Chlorobenzene	0.057
D022—Chloroform	0.046
D023—o-Cresol	0.11
D024—m-Cresol	0.77

BDAT STANDARDS FOR TC ORGANICS—Continued

[Wastewaters]

Constituent	Maximum for any single grab sample. Total composition (mg/l)
D025—p-Cresol	0.77
D026—Cresol	0.88
D027—1,4-Dichlorobenzene	0.09
D028—1,2-Dichloroethane	0.21
D029—1,1-Dichloroethylene	0.025
D030—2,4-Dinitrotoluene	0.32
D031—Heptachlor	0.0012
D031—Heptachlor epoxide	0.016
D032—Hexachlorobenzene	0.055
D033—Hexachloro-1,3-butadiene	0.055
D034—Hexachaloroethane	0.055
D035—Methyl ethyl ketone	0.28
D036—Nitrobenzene	0.068
D037—Pentachlorophenol	0.089
D038—Pyridine	0.014
D039—Tetrachloroethylene	0.056
D040—Trichloroethylene	0.054
D041—2,4,5-Trichlorophenol	0.18
D042—2,4,6-Trichlorophenol	0.035
D043—Vinyl Chloride	0.27

3. Radioactive Mixed Waste

Radioactive mixed wastes are those wastes that satisfy the definition of radioactive waste subject to the Atomic Energy Act (AEA) that also contain waste that is either listed as a hazardous waste in Subpart D of 40 CFR Part 261, or that exhibit any of the hazardous waste characteristics identified in subpart C of 40 CFR Part 261. Since the hazardous portions of the mixed waste are subject to RCRA, the land disposal restrictions apply. This means that the RCRA hazardous portion of all mixed waste must meet the appropriate treatment standards for all applicable waste codes before land disposal. Therefore, any radioactive waste mixed with organic TC wastes that are managed in non-CWA/non-CWA-equivalent/non-Class I SDWA facilities must meet the treatment standards being promulgated today for the TC wastes.

The standards that were proposed for the TC wastes were also proposed for TC radioactive mixed wastes. Prior to this proposal, however, the Department of Energy (DOE) had expressed some concerns about meeting certain treatment standards and stated that they were collecting data from their facilities on mixed TC wastes. EPA stated in the proposed rule that, for the most part, the low concentrations of radioactive compounds should not interfere with the treatability of the hazardous constituents in the waste, and requested data on instances when the radioactivity prevented the waste from meeting the LDR treatment standard.

One commenter suggested that EPA postpone its decision on appropriate methods for treating mixed waste until information currently being collected profiling commercially generated low-level radioactive mixed waste has been submitted and reviewed by EPA. This commenter claimed that the results of this profile contradict EPA's statement that radioactive material concentrations in mixed waste are low and should not interfere with the treatment of the mixed waste. Another commenter expressed the belief that the presence of radioactive components within the limits of operator exposure and safety should not interfere with the treatment of hazardous constituents in waste.

Neither commenter submitted any data or other supporting information to substantiate their assertions regarding the treatability of radioactive mixed waste; therefore, EPA has decided to promulgate the standards for newly identified TC radioactive mixed wastes as proposed. However, if data is submitted to EPA indicating that the presence of radioactive components prevents a waste from meeting the LDR treatment standards, the Agency will evaluate the data and amend the standards as appropriate. The Agency's variance provisions of 40 CFR 268.44 can also be used to obtain alternate limits in the meantime.

D. Treatment Standards for Pesticide Wastes Exhibiting the Toxicity Characteristic

D012—Endrin
D013—Lindane
D014—Methoxychlor
D015—Toxaphene
D016—2,4-D
D017—2,4,5-TP (Silvex)

The Agency is promulgating treatment standards for these wastes essentially as proposed with the additional requirement that underlying hazardous constituents be treated in nonwastewater forms of these wastes. Today's standards apply to all D012–D017 wastes managed in non-CWA/non-CWA-equivalent/non-Class I injection well waste management facilities. These are the toxic pesticide wastes which are identified as toxic following application of the TCLP. The TCLP is more sensitive than the EP analysis, possibly bringing more wastes into the toxicity characteristic category than did the EP.

1. Newly Identified Pesticide Nonwastewaters

EPA is today regulating newly identified D012–D017 nonwastewaters plus D012–D017 nonwastewaters regulated earlier in the Third Third rule. Treatment standards for both sets of D012–D017 nonwastewaters include the UTS value for the TC constituents plus UTS values for underlying hazardous constituents. The changes between the Third Third standards and today's rule are that the numerical value of the toxaphene nonwastewater standard rises from 1.3 to 2.6 and the standard for D013, lindane, incorporates numbers for the four BHC isomers. (It should be noted that EPA determined that the amount of D012–D017 waste subject to the treatment standards is very small. 55 FR at 22634, 22646. Based on this determination, it is very unlikely that newly identified D012–D017 are being generated.)

Today's rule also prohibits dilution of D012–D017 nonwastewaters injected into Class I deep injection wells. Consequently, these pesticide wastes must be treated to meet the treatment standards before they can permissibly be injected into such units, unless that unit has been granted a no-migration determination. Section VIII of this preamble discusses this and other deepwell injection issues presented in today's rule in more detail.

BDAT STANDARDS FOR PESTICIDES

[Nonwastewaters]

Code	Regulated constituent	Maximum for any single grab sample. Total composition (mg/kg)
D012	Endrin	0.13
D012	Endrin aldehyde	0.13
D013	alpha-BHC	0.066
D013	beta-BHC	0.066
D013	gamma-BHC	0.066
D013	delta-BHC	0.066
D014	Methoxychlor	0.18
D015	Toxaphene	2.6
D016	2,4-D	10
D017	2,4,5-TP (Silvex)	7.9

2. Pesticide Wastewaters

EPA set treatment standards expressed as required methods of treatment for the EP toxic pesticide wastewaters in the Third Third final rule (55 FR 22554). Today's rule extends these treatment standards to those pesticide wastewaters covered in today's rule. (See 268.40)

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E. Exemptions for De Minimis Losses of Commercial Chemical Product or Chemical Intermediates That Exhibit the Toxicity Characteristic (TC), and for TC Laboratory Wastes Discharged to CWA Wastewater Treatment Systems

In the Interim Final Rule published May 24, 1993, EPA established *de minimis* exemptions for commercial chemical product or chemical intermediates that are ignitable or corrosive hazardous wastes and that contained underlying hazardous constituents (58 FR 29875). The Agency proposed in Phase II to extend the exemptions in 40 CFR 268.1 to commercial chemical products or chemical intermediates that are TC organic wastes when disposed (58 FR 48118). Commenters expressed support for this approach.

This action is necessary to avoid situations where minor leaks of organic TC commercial chemical products or chemical intermediates to a wastewater treatment system would potentially trigger all of the potential consequences of treating all underlying hazardous constituents that might be in the waste. As EPA noted in originally determining that the mixture rule should not apply in such situations, such small losses are as a practical matter unavoidable; responsible management involves channeling these minor losses to a centralized wastewater treatment system. In addition, there is a natural incentive to minimize the losses because the materials would otherwise be commercial chemical products or intermediates (46 FR 56583, Nov. 17, 1981). Moreover, allowing *de minimis* losses of TC materials to trigger all of the LDR treatment consequences would be anomalously stringent because *de minimis* losses of listed wastes (i.e., the commercial chemical products listed in § 261.33), which tend to be more concentrated (see generally 58 FR at 29875), would not be regulated because of the exception to the mixture rule found at § 261.3(a)(iv)(D).

This same type of exception is needed for TC laboratory wastes that are commingled with other plant wastewaters under designated circumstances: TC laboratory wastes containing underlying hazardous constituents from laboratory operations, that are mixed with other plant wastewaters at facilities whose ultimate discharge is subject to regulation under the CWA (including wastewaters at facilities which have eliminated the discharge of wastewater), provided that the annualized flow of laboratory wastewater into the facility's headwork does not exceed one part per million (the same condition that applies to the existing exemption in § 261.3(a)(2)(iv)(E)).

Thus *de minimis* losses of commercial chemical product or chemical intermediates that are TC organic wastes, and TC organic laboratory wastes discharged to CWA wastewater treatment systems, are not subject to the requirements of 40 CFR 268. *De minimis* losses are those occurring from normal material handling, minor leaks of equipment tanks or containers, and similar small but, for practical purposes, unavoidable losses. See § 261.3(a)(2)(iv)(D) and 268.1(e)(4) as promulgated at 58 FR 29884 (May 24, 1993). The definition of *de minimis* loss is the same as EPA used in the May 24, 1993 rule. This definition mirrors the parallel language in § 261.3(a)(iv)(D) except that it also includes discharges from safety showers and rinsing and cleaning of personal safety equipment and rinsate from empty containers or from containers that are rendered empty by that rinsing. When the § 268.1(e)(4) definition was originally promulgated in the May 24, 1993 rule, it seemed unlikely that ignitable or corrosive wastes would be generated from safety showers or rinsate. The Agency believes it is more likely that TC wastes could be generated in such a manner, therefore, the definition is being expanded to include this language in this rule.

EPA also notes that the characteristic commercial chemical products exempted under this rule and the May, 1993 rule are not limited to products in which a particular chemical is "the commercially pure grade of the chemical, any technical grades of the chemical, and all formulations in which the chemical is the sole active ingredient." (See § 261.33(d) comment). Rather, the exemption extends to *de minimis* losses (as defined) of in-process materials such as intermediates and materials that would be products if they were not inadvertently discarded. 55 FR at 2869 (Jan. 31, 1991). The citation in the comment to § 261.33(d), quoted above, is necessary to define the scope of the listing, but as just explained, does not apply to losses of characteristic materials.

V. Treatment Standards for Newly Listed Wastes

A. Treatment Standards for Coke By-product Production Wastes

K141—Process residues from the recovery of coal tar, including but not limited to tar collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087, decanter tank tar sludge from coking operations.

K142—Tar storage tank residues from the production of coke from coal or the recovery of coke by-products produced from coal.

K143—Process residues from the recovery of light oil, including but not limited to those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal.

K144—Wastewater treatment sludges from light oil refining, including but not limited to intercepting or contamination sump sludges from the recovery of coke by-products produced from coal.

K145—Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.

K147—Tar storage tank residues from coal tar refining.

K148—Residues from coal tar distillation, including but not limited to still bottoms.

EPA is promulgating the treatment standards that were proposed for coke by-product production wastes. These treatment standards also apply to soil and debris contaminated with these wastes, although a variance process is available for such soils (see discussion on variances in the Background section of this rule under the heading "E. Treatment Standards for Hazardous Soil"). The preamble of the proposed rule describes the generation and characteristics of the newly listed wastes in greater detail (58 FR 48119). Today's standards are concentration-based limits for wastewaters and nonwastewaters, numerically identical to the UTS promulgated elsewhere in this rule for the nine constituents regulated in these wastes.

The American Coke and Coal Chemicals Institute requested that EPA allow the use of these wastes as fuels in blast furnaces and other applications where coke, coal and coal tar are used as fuels. The commenters were requesting EPA to extend the existing recycling exclusion—which allows these wastes to be combined with coal feedstock residue as it is charged to the coke oven, added to the coal recovery process or mixed with coal tar before this coal tar is sold as a product or further refined. Extending this exclusion is beyond the scope of this regulation; it was not included in the September proposal as an option for managing these wastes. The Definition of Solid Waste Task Force is examining the broad range of these types of issues.

The other comments received concerning the proposed treatment standards for coke products' wastes came from the waste treatment industry. Several waste treatment companies supported applying universal standards to these waste streams and the UTS concept in general. However, one commenter provided data in support of extending the standards originally applied to K087 to these wastes. EPA evaluated these data but found no reason not to apply UTS to these wastes. EPA's evaluation of these data is presented in the Background Document for these wastes. In separate comments, two waste treatment companies objected to the benzene nonwastewater standards as unnecessarily high and pointed out that their facilities could achieve benzene limits below that proposed in the UTS. EPA does not believe these data really reflect better treatment. Rather, the commenters appear to have generated a waste matrix in which benzene is detectable at lower levels. EPA is promulgating the benzene nonwastewater standard as proposed, believing that it reflects an appropriate and broader assessment of benzene detection limits in combustion residues.

BDAT STANDARDS FOR K141, K142, K143, K144, K145, K147, AND K148

[Nonwastewaters]

Constituent	Maximum for any single grab sample. Total composition (mg/kg)	Constituents regulated for waste codes						
		K141	K142	K143	K144	K145	K147	K148
Benzene	10	X	X	X	X	X	X	
Benz(a)anthracene	3.4	X	X	X	X	X	X	X
Benzo(a)pyrene	3.4	X	X	X	X	X	X	X
Benzo(b)fluoranthene	[1]6.8	X	X	X	X		X	X
Benzo(k)fluoranthene	[1]6.8	X	X	X	X		X	X
Chrysene	3.4	X	X	X	X	X	X	X
Dibenz(a,h)anthracene	8.2	X	X		X	X	X	X
Indeno(1,2,3-cd)pyrene	3.4	X	X				X	X
Naphthalene	5.6					X		

[1] This standard represents the sum of the concentrations for each of this pair of constituents.

BDAT STANDARDS FOR K141, K142, K143, K144, K145, K147, AND K148

[Wastewaters]

Constituent	Maximum for any single grab sample. Total composition (mg/l)	Constituents regulated for waste codes						
		K141	K142	K143	K144	K145	K147	K148
Benzene	0.14	X	X	X	X	X	X	
Benz(a)anthracene	0.059	X	X	X	X	X	X	
Benzo(a)pyrene	0.061	X	X	X	X	X	X	X
Benzo(b)fluoranthene	[1]0.11	X	X	X	X		X	X
Benzo(k)fluoranthene	[1]0.11	X	X	X	X		X	X
Chrysene	0.059	X	X	X	X	X	X	X
Dibenz(a,h)anthracene	0.055	X	X		X	X	X	X
Indeno(1,2,3-cd)pyrene	0.0055	X	X				X	X
Naphthalene	0.059					X		

[1] This standard represents the sum of the concentrations for each of this pair of constituents.

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B. Treatment Standards for Chlorotoluenes

K149—Distillation bottoms from the production of alpha (methyl) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (This waste does not include still bottoms from the distillation of benzyl chloride.)

K150—Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha (methyl) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.

K151—Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha (methyl) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides and compounds with mixtures of these functional groups

EPA is promulgating the treatment standards that were proposed for chlorotoluene wastes. The preamble of the proposed rule describes the generation and characteristics in greater detail (58 FR 48121). Today's standards are concentration-based limits for wastewaters and nonwastewaters, numerically identical to the UTS promulgated elsewhere in this rule for the thirteen constituents regulated in these wastes.

Comments received concerning the proposed treatment standards for chlorotoluene wastes came from the waste treatment industry; they were similar to those received concerning the treatment standards for coking wastes. Several waste treatment companies supported applying universal standards to these waste streams and the UTS concept in general. Two waste treatment companies objected to the benzene nonwastewater standards as unnecessarily high and pointed out that their facilities could achieve benzene limits below that proposed in the UTS. EPA, however, believes that the UTS for benzene nonwastewaters reflects an appropriate and broad assessment of benzene detection levels in combustion residues.

BDAT STANDARDS FOR K149, K150, AND K151

[Nonwastewaters]

Constituent	Maximum for any single grab sample. Total composition (mg/kg)	Constituents regulated for waste codes		
		K149	K150	K151
Benzene	10			X
Carbon tetrachlonde	6.0		X	X
Chloroform	6.0	X	X	X
Chloromethane	30	X	X	
Chlorobenzene	6.0	X		
1,4-Dichlorobenzene	6.0	X	X	
Hexachlorobenzene	10	X	X	X
Pentachlorobenzene	10	X	X	X
1,2,4,5-Tetrachlorobenzene	14	X	X	X
1,1,2,2-Tetrachloroethane	6.0		X	
Tetrachloroethylene	6.0		X	X
1,2,4-Trichlorobenzene	19		X	
Toluene	10	X		X

BDAT STANDARDS FOR K149, K150, AND K151

[Wastewaters]

Constituent	Maximum for any single grab sample. Total composition (mg/l)	Constituents regulated for waste codes		
		K149	K150	K151
Benzene	0.14			X
Carbon tetrachloride	0.057		X	X
Chloroform	0.046	X	X	X
Chloromethane	0.19	X	X	
Chlorobenzene	0.057	X		
1,4-Dichlorobenzene	0.090	X	X	
Hexachlorobenzene	0.055	X	X	X
Pentachlorobenzene	0.055	X	X	X
1,2,4,5-Tetrachlorobenzene	0.055	X	X	X
1,1,2,2-Tetrachloroethane	0.057		X	
Tetrachloroethylene	0.056		X	X

BDAT STANDARDS FOR K149, K150, AND K151—Continued

[Wastewaters]

Constituent	Maximum for any single grab sample. Total composition (mg/l)	Constituents regulated for waste codes		
		K149	K150	K151
1,2,4-Trichlorobenzene	0.055		X	
Toluene	0.080	X		X

VI. Debris Contaminated With Newly Listed or Identified Wastes

Debris contaminated with the hazardous wastes included in today's rule must be treated prior to land disposal. The hazardous debris may be treated to meet the treatment standards promulgated today for the constituents which are contaminating the debris, or it may be treated to meet the alternative debris standards promulgated in the LDR for Newly Listed Wastes and Hazardous Debris (57 FR 37194, August 18, 1992).

A. Debris Treated To Meet the Phase II Treatment Standards

Debris that is treated to meet the treatment standards promulgated in today's rule for newly listed wastes would remain subject to the hazardous waste management regulations (subtitle C) for as long as the debris "contains" the hazardous waste (see 57 FR 37625–26, August 18, 1992). On the other hand, debris that is treated to meet the treatment standards promulgated in today's rule for newly identified TC organic wastes, including any underlying hazardous constituents the generator reasonably expects to be present in the waste, could be disposed in a nonhazardous waste (subtitle D) landfill because the characteristic identifying the waste as hazardous is removed through meeting the LDR treatment standards.

B. Debris Treated To Meet the Alternative Debris Treatment Standards

The alternative treatment standards require the use of specific technologies from one or more of the following categories: extraction technologies, destruction technologies, or immobilization. Treatment must be performed in accordance with specified performance standards found in the regulations at 40 CFR 268.45. If one of the extraction or destruction technologies is used, and the debris does not display any characteristic of hazardous waste, then EPA would consider the treated debris to no longer contain hazardous waste. Such treated debris could, therefore, be reused, returned to the natural environment, or disposed in a nonhazardous waste (subtitle D) facility. Nondebris residuals generated from the treatment of debris contaminated with listed wastes would still be hazardous wastes by virtue of the derived-from rule and would be subject to the hazardous waste management system, including the treatment standards for newly listed wastes in today's rule.

VII. Response to Comments Regarding Exclusion of Hazardous Debris That Has Been Treated by Immobilization Technologies

A. Background

The final Phase I Land Disposal Restrictions (LDR) rule promulgated on June 30, 1992 (57 FR 37194, August 18, 1992), excludes from Subtitle C control hazardous debris that is treated using an extraction or destruction technology provided the treated debris meets the performance standards specified in § 268.45 Table 1. Our basis for doing this is that the debris no longer contains the hazardous waste. On the other hand, hazardous debris treated by an immobilization technology is still subject to the hazardous waste regulations because the Agency has insufficient data or information to support that such treated debris would not leach Appendix VIII constituents over time in a manner that would be protective to human health and the environment. In our proposal to the Phase I LDR rule, the Agency solicited comment on whether immobilized hazardous debris should be excluded from Subtitle C control. While the Agency received favorable comments on excluding such treated debris from the hazardous waste regulations, no information or data was provided to support such a position. Therefore, the final rule requires that immobilized hazardous debris continue to be managed as a hazardous waste.

The Agency decided to revisit the issue of whether immobilized hazardous debris, if treated in certain ways or is treated to meet certain limits, should be excluded from Subtitle C control. As a result, since the promulgation of the Phase I LDR rule, the Agency has undertaken a number of activities.

B. Roundtable Discussion

In an attempt to gather information on the issue, the Agency sponsored a roundtable discussion on August 3, 1992. Participants at the meeting included persons who commented on the Phase I LDR rule, debris treatment vendors, hazardous waste treaters and disposers, state officials, and officials from the Department of Energy (see Docket for specific list of attendees). Representatives from the environmental interest groups were also invited but were unable to attend. The purpose of the meeting was to gather information and discuss various regulatory approaches that would allow the Agency to exclude immobilized hazardous debris from Subtitle C control. While no specific data was gathered, there was a general discussion on the types of standards that could be applied such as design and operating standards, leach test, structural integrity test, permeability test for encapsulating material, so as to exclude immobilized hazardous debris from hazardous waste control. Additionally, the following points were also made by one or more participants at the roundtable.

- A number of the attendees indicated that even if immobilized hazardous debris were excluded from hazardous waste control, it would continue to be managed as a hazardous waste due to CERCLA liability concerns.
- There was some question whether a specific exclusion for immobilized hazardous debris was necessary or whether the Hazardous Waste Identification Rule (HWIR) may be a more appropriate mechanism for addressing this issue.
- A representative from the glass industry suggested that glass cullet and vitreous materials should have a separate treatment standard. He indicated that the glass matrix would

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not leach lead at a higher rate than would an immobilized product—that is, it made little sense to grind up the glass material and then to stabilize it when the original matrix is just as sound.

While no consensus was reached, the following principles were generally arrived at by most of the participants at the meeting.

Microencapsulation: Participants at the meeting seem to believe that using a leach test may be more appropriate to demonstrate effective microencapsulation immobilization over an approach of developing design and operating standards. It was noted that treatment of hazardous debris is very waste and debris specific; if one could define design and operating standards that were generally applicable, they would likely be too burdensome in many cases.

Macroencapsulation/Sealing: The participants seem to indicate that the grinding requirement in the TCLP leach test made it inappropriate for predicting performance of macroencapsulation/sealing immobilization technologies. These technologies rely on an impermeable coating applied to the outside of the debris. Rather, the participants suggested a structural test to determine whether the given debris/technology combination was sufficient to maintain the coating or a permeability test for the coating media. While the participants conceptually believed that such an approach was workable, no one was able to suggest a specific test or standard. In addition, it was felt by some of the participants that the development of such a test could be difficult to develop.

While no data or information was provided at the meeting, it was indicated that if such information was submitted to the Agency, the Agency would consider such information in making its decision.

C. EPA Investigations

In addition to the above roundtable discussions, EPA has also been reviewing the literature and talking to vendors in an effort to obtain sufficient information on how to propose standards that could allow the exclusion of immobilized hazardous debris. At the time the Phase II LDR rule was proposed, no useful insights had been gained on how to specify design and operating standards that would ensure that immobilized hazardous debris was nonhazardous; the reason for this was the paucity of experience in immobilizing hazardous debris. Nevertheless, the Agency expressed interest in pursuing this area and specifically sought assistance from the regulated community on this issue.

D. Specific Questions for Which Comments Were Solicited

While the Agency had a better sense of the types of standards that may be appropriate for excluding immobilized hazardous debris from Subtitle C control at the time of the Phase II proposal, the Agency still did not have the data to propose specific exclusions. For microencapsulation in particular, if a leach test were the most appropriate mechanism for determining whether such treated debris is nonhazardous, the Agency expressed the belief that HWIR may be the most appropriate rulemaking to address this issue. The Agency had a series of studies underway, was evaluating comments, but was not in a position to determine what such levels were at that time. With respect to macroencapsulation/sealing, additional data or information needed to be gathered before the Agency would be in a position to exclude this type of immobilized hazardous debris. To assist the Agency in this effort, we specifically solicited comment on the following questions:

Microencapsulation:

- Is the use of a leach test for excluding immobilized hazardous debris more appropriate than specification of design and operating standards?
- Is exclusion of immobilized hazardous debris using design and operating standards workable?

Macroencapsulation/Sealing:

- What type of structural or other test could be used?
- What type of criteria should be applied in determining whether such debris is nonhazardous?

The Agency is also considering allowing stabilization for soils containing low levels of organic constituents, and solicited comment on whether similar stabilization techniques or tests to ensure the effectiveness of such stabilization would be appropriate for excluding debris from Subtitle C control.

In addition, the Agency specifically solicited comment on any available data or information to demonstrate that immobilized hazardous debris (if treated properly) would not pose a substantial hazard to human health and the environment, stating that if such information were submitted to the Agency, the Agency would exclude such debris from Subtitle C control.

E. Comments Received and Conclusions

Microencapsulation: One commenter stated that specifying design and operating standards is appropriate for excluding immobilized hazardous debris from subtitle C, asserting that nothing is gained in performing a leach test on hazardous debris. Other commenters suggested that EPA consider a combination of a structural test combined with a leaching test conducted on a representative intact sample of the encapsulated waste. None of these commenters submitted any supporting information to substantiate these conflicting claims. However, the commenters did agree that if a leach test is used, the TCLP as it is now defined is inappropriate for immobilized debris.

Macroencapsulation/Sealing: Several commenters claimed that the TCLP test is inappropriate for immobilized material because the size reduction required by the test protocol destroys the encapsulant, thereby defeating the purpose of the technology. These commenters suggested that EPA instead consider a combination of a structural test (a 50 psi standard was suggested) combined with a leaching test conducted on a representative intact sample of the encapsulated waste. These commenters did not submit any data to verify that a 50 psi standard would insure the integrity of the immobilized waste, and although some commenters recommended that a new leach test protocol be developed, they did not suggest any specific protocols for a leach test on the intact debris waste.

Exclusion of Immobilized Debris from Subtitle C Regulation: Several commenters maintained that debris treated with an immobilization technology should be excluded from Subtitle C regulation. However, these commenters did not submit any supporting data to verify this claim.

Two commenters claimed that a careful reading of 40 CFR 268.7(b) indicates that waste which is treated using a specified treatment technology is not subject to further testing to exit Subtitle C and claimed that the rules for debris treated in accordance with the alternative treatment standards specified in 40 CFR 268.45 should be the same. Their interpretation of this section of the CFR is incorrect. With regard to wastes for which technologies have been specified as the treatment standard, 40 CFR 268.7(b) contains the wording of the certification stating that the waste has been treated in accordance with § 268.42; this certification must be signed before the waste may be land disposed. 40 CFR 268.7(b) does not say that this waste is no longer subject to subtitle C regulation.

One commenter suggested that, at a minimum, EPA should establish health based numerical standards for exclusion of hazardous debris from subtitle C. This commenter made no suggestion as to what test method should be used. The issue of basing LDR standards on the basis of risk rather than technology performance is addressed in Section III A 2 a of this rule, "Risk-based Universal Treatment Standards."

Finally, one commenter suggested that EPA allow the use of stainless steel as an encapsulant, claiming that its performance would be superior to that of other encapsulants, such as polymeric organics, which allegedly fail due to the radiation effects to their chemical bonds.

Conclusions: Although commenters were in general agreement on a number of issues (e.g. inappropriateness of the TCLP for debris, use of a 50 psi structural test as a performance standard, use of a leach test performed on intact debris), no supporting data or other information was submitted to support their claims and requests. Therefore, the Agency is not promulgating any modifications to the debris rule at this time. The Agency is evaluating exclusions as part of the HWIR process and will reassess appropriate action on debris if HWIR does not adequately address debris.

VIII. Deep Well Injection Issues

A. Prohibition of Dilution of High TOC Ignitable and of TC Pesticide Wastes Injected Into Class I Deep Wells

Today's rule prohibits the disposal of two types of waste into deep-well injection via Class I Underground Injection Control (UIC) wells unless the wastes first meet the land disposal restrictions promulgated in today's rule for these wastes, or the wastes are injected into a well that is subject to a no-migration determination. These wastes are nonwastewaters exhibiting the characteristic of ignitability at the point of generation and containing greater than 10 percent Total Organic Carbon ("high TOC ignitable liquids subcategory") and also TC toxic halogenated pesticide wastes (D012–D017). Thus, EPA is promulgating, as proposed, regulations excluding these two wastes from the portion of the rule at 40 CFR 268.1(c)(3) that allows a waste to be injected into a Class I deep injection well if the waste no longer exhibits a characteristic at the point of injection. Today's rule also includes a one-year capacity variance for these injected waste streams.

For D001 High TOC ignitables, the treatment standard is expressed as methods of treatment that must be used prior to land disposal: combustion (i.e. incineration or fuel substitution) or recovery of organics. The preamble to the proposed rule stated that high TOC ignitable nonwastewaters contain high concentrations of organics that can either be recovered directly for reuse, or can be burned in combustion devices. These wastes are not injected in significant volumes, so that redirection of the wastes to treatment technologies will not have significant impact on well operators. 58 FR 48118–48119. EPA received no information to the contrary from commenters.

The treatment standards for TC pesticide wastewaters are also expressed as methods of treatment: biodegradation or incineration. On the other hand, the treatment standards for EP pesticide nonwastewaters are expressed as levels that may be achieved by using any treatment technology, other than impermissible dilution. (The Third Third rule had already disqualified these wastes from the exception that allowed dilution of characteristic wastes that were to be managed in Clean Water Act treatment systems including surface land disposal units, § 268.3(b) and 55 FR 22657.)

As discussed at length in the preamble to the proposed rule, the Agency's initial reading of the D.C. Circuit Court's decision is that wastes that are characteristically hazardous at the point of generation must typically be treated to destroy or remove hazardous constituents before land disposal, or be disposed of in a no-migration unit. 976 F.2d at 24. This is certainly a permissible interpretation of the opinion. Furthermore, the decision encompasses underground injection wells, specifically Class I deep wells, since they are permanent land disposal units. 976 F.2d at 25. Thus, under this reading of the court's opinion, these ignitable and pesticide wastes would have to be treated to remove hazardous constituents before injection.

EPA's decision to prohibit injection of these untreated wastes, however, is based not only on its initial interpretation of the Chemical Waste Management opinion (which, as noted below, may still evolve), but also on the particular wastes involved here. The wastes at issue are ignitable wastes with potentially very high concentrations of hazardous constituents, and pesticide wastes containing very toxic constituents.

Treatment is also warranted to reduce the amounts of these toxic wastes being land disposed. RCRA section 1003(a)(6) ("statutory goal of minimizing the . . . land disposal of hazardous waste by encouraging . . . properly conducted recycling and reuse, and treatment"); *Steel Manufacturers' Association* v. *EPA*, _____ F.3d _____, (D.C. Cir. July 9, 1994) ("We conclude that minimizing the overall volume of slag that is to be disposed is by itself, a sufficient justification for the zinc treatment standard . . .") (slip op. at 13). Finally, only small volumes of these wastes are injected, and segregation of the wastes should not prove to be unduly difficult. For all of these reasons, the Agency believes it appropriate to prohibit injection of these wastes at this time, unless the wastes are treated to satisfy section 3004(m) or are disposed in a no-migration unit. In this regard, the Agency emphasizes that no-migration petitions for Class I nonhazardous wells receiving decharacterized wastes may be submitted to EPA or the Authorized States for evaluation at this time. The petitions may encompass not only the pesticide and high-TOC ignitable wastes prohibited in this rule, but other types of decharacterized wastes (which are not yet prohibited but are scheduled to be addressed in Phase III) as well.

Most comments to the proposed rule requested independent consideration of Class I injection wells, because they believed that underground injection differs from other forms of land disposal, such as landfills and impoundments. Other comments questioned EPA's interpretation of the Third Third court decision and the Agency's belief that treatment of these waste streams should be the preferred management approach for them. These commenters indicated that aggregation of waste streams meets the minimize threat standard and expressed their opinion that segregation of these wastes for treatment poses substantial risks to the environment and that underground injection is an inherently safer waste management practice. The Agency intends to consider all the above arguments (e.g., risks posed by wastes going to deep well injection) in the identification of alternatives for land disposal standards. The Agency will continue to investigate any and all information received concerning these comments, and intends to address land disposal standards for underground injection of characteristic wastes in a comprehensive manner in the Phase III rulemaking. Until these treatment standards become effective one year from the date of publication of this rule, they may continue to be injected into Class I injection wells without prior treatment.

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B. Request for Comment on Petition From Chemical Manufacturer's Association Regarding Deep Well Injection of Ignitable and Corrosive Characteristic Wastes

The proposed rule solicited comments on a request from the Chemical Manufacturer's Association (CMA) that EPA develop separate treatment standards intended for those wastes disposed in Class I deep injection wells. CMA requested a separate set of treatment standards for ignitable and corrosive wastes managed by deep well injection that, in view of the unique circumstances of deep well injection, meet the statutory "minimize threats" standard. Many comments received by EPA urged the Agency to develop so-called UIC-specific treatment standards in light of this petition. However, EPA received virtually no technical information to support these comments.

Therefore, the Agency is not issuing a final response to CMA's request in today's rule. EPA continues to solicit information necessary to enable EPA to act on this petition in the future. These requests are documented in the rulemaking docket for today's rule. In particular, the Agency particularly requests data concerning waste volumes, waste transport, injection system integrity or the fate of disposed pollutants throughout the course of the injection procedure.

IX. Modifications to Hazardous Waste Recycling Regulations

A. Introduction

Today's rulemaking finalizes the proposed changes to the hazardous waste recycling regulations, thus slightly broadening the scope of an existing exclusion (and related variance). This modification of the regulatory framework will allow for environmentally beneficial recycling to occur without unnecessary regulatory consequences.

EPA wishes to note that the changes to the definition of solid waste being promulgated today are narrow in scope and will have minor impact. A more broad-ranged evaluation of the regulations applicable to the recycling of hazardous waste is being conducted by EPA's Definition of Solid Waste Task Force. This Task Force has been administering a public dialogue process to examine the overall impacts of the RCRA program on recycling, and will consider broader changes to the definition of solid waste as part of that process.

B. Modification of the Existing "Closed-loop" Recycling Exclusion and Related Case-specific Variance

1. "Closed-loop" Recycling Exclusion and Related Variance

In the January 4, 1985 final rule, the Agency promulgated an exclusion from the definition of solid waste at § 261.2(e)(1)(iii) for secondary materials that are recycled in a "closed-loop," (i.e., returned to the original production process in which the material was generated (see preamble discussion at 50 FR 639)). To be considered such a "closed-loop" process, three conditions must be met. First, the secondary material must be returned to the original process without undergoing significant alteration or reprocessing (i.e., it must be returned without first being reclaimed. See 261.2(e)(3) and Table 1). Second, the production process to which the unreclaimed materials is returned must be a primary production process (i.e., a process that uses raw materials as the majority of its feedstock, as opposed to a secondary process that uses spent materials or scrap metal as the majority of its feedstock). And third, the secondary material must be returned as a feedstock to the original production process and must be recycled as part of that process (as opposed to an ancillary process such as degreasing). EPA believes that these conditions characterize a material that is part of an on-going production process, and as such, the management of the material should not be characterized as waste management (i.e., the material is not part of the waste management problem).

Today's action addresses the second condition—that the production process to which a secondary material is returned be a primary process. This condition was part of the original exclusion due to considerations regarding jurisdiction, as it was understood in 1985, rather than to an evaluation of the potential impacts on the environment from such "closed-loop" recycling involving secondary processes. This condition thus was established without a consideration of whether such secondary materials would be part of the waste management problem. By definition, a secondary process uses waste materials as its principal feedstock. The Agency therefore concluded that the process residue, which is returned to the original process as a substitute for feedstock that is itself waste, is no less a waste than the waste material originally introduced (see 50 FR 639). (The Agency notes that with few exceptions, this condition has no actual impact on the recycling of residues from secondary processes because such residues that exhibit a characteristic of hazardous waste (i.e., characteristic by-products and sludges) are likewise excluded from the definition of solid waste if reclaimed.)

Although the Agency continues to believe that the jurisdictional logic behind this condition is sound, the judicial opinions regarding RCRA jurisdiction allow more weight to be given to environmental considerations. *API* v. *EPA (API)*, 906 F.2d at 740–41; *AMC* v. *EPA (AMC II)*, 907 F.2d 1179, 1186 (D.C. Cir. 1990). Thus, EPA has reevaluated this condition of the exclusion from the definition of solid waste due to its impact on the recycling of residues from secondary processes, in particular secondary lead smelters, and has determined that the condition of a closed-loop involving only primary processes is not legally compelled, and that this condition is less relevant as an environmental consideration, assuming that the secondary material is well-managed prior to reprocessing in the primary or secondary process that generated it.

Comments received on the Agency's proposal to remove this condition from the exclusion were favorable. Although several commenters said that the Agency should go further in modifying the existing regulations to encourage the recycling of hazardous wastes, such an action is beyond the scope of this proceeding. Such further action could result from the efforts currently underway to reevaluate the regulations applicable to hazardous waste recycling (i.e., the Roundtable discussions undertaken by the Definition of Solid Waste Task Force). One commenter also urged the Agency to make regulatory modifications only as part of the Definition of Solid Waste Task Force. EPA does not view the salutary and relatively modest change to the rules promulgated here as undermining the Task Force effort, and so is adopting the amendment.

Thus, the Agency is today removing this condition (i.e., that the process be a primary production process) from the "closed-loop" recycling exclusion. By doing this, secondary materials that are recycled back into the secondary production process from which they were generated are excluded from the definition of solid waste.

Following the same reasoning, the Agency proposed and is today finalizing a modification to section 260.30(b) a related case-by-case variance for materials that are reclaimed prior to reuse in the original primary production process from which they were generated

(see 50 FR 652 (January 4, 1985) for a discussion of the existing variance). This modification similarly expands the variance to make it available for materials that are returned to secondary processes, as well as those returned to primary processes.

2. Storage Prior to Recycling

At proposal, the Agency proposed to condition the "closed-loop" exclusion (and the related 260.30(b) variance) such that secondary materials recycled back into secondary processes from which they were generated would continue to be managed in an environmentally sound manner. The Agency proposed this condition to address concerns that, absent this condition, a listed waste that would otherwise be required to be managed in a protective manner (e.g., without direct placement on the land) could begin to be managed in an unprotective manner because, as an excluded secondary material, no regulatory requirements would apply. Storage of hazardous secondary materials on the land can be deemed to be a type of discarding ("part of the waste disposal problem" in the words of the D.C. Circuit), and hence provide a basis for classifying the materials as solid and hazardous wastes. *AMC II*, 907 F.2d at 1187. The only comments received addressing this proposed condition asked for more clarification of what would be considered "a protective manner." The Agency is promulgating the condition to the exclusion that such secondary materials be managed in a protective manner such that there is no placement on the land, that is no land disposal as defined in § 3004(k). See § 261.4(a)(10) and (11) where EPA has attached this same condition to comparable exclusions. Management that is designed to contain the material or otherwise prevent its release to the environment, such as in a containment building (see 40 CFR 264.1100) or tank, is permissible. The Agency believes that this condition will not require any changes in how these secondary materials are currently managed and will ensure that providing regulatory relief will not unintentionally increase risk to human health and the environment.

Additional changes were proposed and are being promulgated in this rule in order to implement and be consistent with the changes in variances discussed above. Previously the Regional Administrator granted variances from classification as a solid waste in 40 CFR 260.30, 260.31, 260.32, and 260.33. Today's rule transfers this authority to grant variances from the Regional Administrator to the Administrator. The changes in §§ 260.30 and 260.31 are necessary because such variances involve determining RCRA jurisdiction over secondary materials going to secondary processes. The other changes in authority to grant variances in §§ 260.32 and 260.33 are being made in order to be consistent with the provisions of §§ 260.30 and 260.31.

X. Compliance Monitoring and Notification

A. Compliance Monitoring

As proposed, the Agency is adopting an approach that will allow generators and facilities that manage organic toxicity characteristic (TC) wastes in systems other than those regulated under the Clean Water Act (CWA), those engaged in CWA-equivalent treatment prior to land disposal, and those injecting into Class I deep injection wells, to monitor or otherwise determine the presence of underlying hazardous constituents "reasonably expected to be present" in their waste. (See definition at 268.2(i).) This means that regulated entities do not have to ascertain the presence of all hazardous constituents for which EPA is promulgating a universal treatment standard. Generators may base this determination on their knowledge of the raw materials they use, the process they operate, and the potential reaction products of the process, or upon the results of a one-time analysis for the entire list of constituents at § 268.48.

The Agency solicited comment on whether generators should be required to do some testing of organic TC wastes to determine what underlying hazardous constituents are present and whether they meet UTS. Furthermore, the Agency noted that generators who also treat (including generators who decharacterize their waste but do not treat for underlying hazardous constituents) are classified as treaters, and would therefore be required to do some analysis of their wastes pursuant to § 268.7(b) and prepare a treater's certification pursuant to § 268.9(d) (58 FR 48134). A few commenters believed that generators should have to test their organic TC wastes at least once. Most commenters on this issue, however, strongly opposed a generator testing requirement and said that generators should be allowed to use knowledge of their wastes to make such a determination. Based on these comments, and the Agency's reluctance to require generator testing of characteristic wastes but not listed wastes, the Agency is not imposing a testing requirement on generators of organic TC wastes at this time.

The Agency believes, however, that certifications should identify which hazardous constituents may be present in the waste. This is necessary in order that there be some record that the waste indeed requires treatment of these constituents before it can be land disposed. As explained below, existing regulations already require mention of the presence of underlying hazardous constituents in some situations. EPA is slightly amending those regulations today to make the requirement uniform, as discussed below.

If a generator does not treat a prohibited characteristic waste, then the generator must prepare the standard notification and certification required by § 268.7(a)(1) (for wastes that have not been treated to meet the treatment standard) (see § 268.9(d), first clause). These requirements explicitly require mention of underlying hazardous constituents (§ 268.7(a)(1)(ii)).

If a generator partially treats a waste, however, for example by decharacterizing it but not treating the underlying hazardous constituents, there is a slight gap in the existing rules. Those rules require that a one-time notification and certification be prepared (§ 268.9(d)) and that the certification "must state the language found in 268.7(b)(5)" (§ 268.9(d)(2)). The § 268.7(b)(5) certifications, however, do not contemplate the possibility that wastes may require additional treatment for underlying hazardous constituents. To allow for this possibility, EPA is amending § 268.9(d) to state that in the event underlying hazardous constituents in a decharacterized waste have not been fully treated, the certification shall so state. EPA is also adding the following new certification to § 268.7(b)(5) to account for this circumstance:

> I certify under penalty of law that the waste has been treated in accordance with the requirements of 40 CFR 268.40 to remove the hazardous toxicity characteristic or the characteristics of ignitability and corrosivity. This decharacterized waste contains underlying hazardous constituents that require further treatment to meet universal treatment standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

The Agency proposed, alternatively, that generators could be required to certify what underlying hazardous constituents are in the organic TC waste and whether they meet treatment standards, in a manner similar to the existing certification requirement for generators of wastes that meet the

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treatment standards as generated (see 40 CFR 268.7(a)(2)(ii)) (58 FR 48134). This suggestion was generally not supported by commenters, and EPA is not adopting this approach in this final rule. Before considering broader changes, EPA will see if the amended requirement in § 268.9(d)(2)(i) discussed above is sufficient to create an adequate record.

B. LDR Notification

1. Constituents To Be Included on the LDR Notification

EPA solicited comment on how to limit the underlying hazardous constituents that must be monitored in organic TC wastes, and consequently reported on the LDR notification. Commenters on this issue said that the regulated community should only be required to address those constituents which are in the organic TC wastes as generated, prior to any subsequent mixing with other wastes. This is the approach being adopted in this rule. Such an approach is identical to the approach adopted in the May 24, 1993 Interim Final Rule (58 FR 29873) and is supported by commenters.

As a simplifying measure, EPA is also slightly amending the language of § 268.7(a)(1)(ii) and § 268.7(b)(4)(ii). The language in these paragraphs required that the hazardous constituents in F001–F005 spent solvents, F039, wastes subject to the California list provisions of § 268.32 or RCRA section 3004(d), and underlying hazardous constituents in characteristic wastes be listed on the LDR notification. This language is being changed so that if all the hazardous constituents are present in the waste (and thus the generator/treater will be treating all the constituents), then there is no longer a need to list all the constituents on the notification form. If, however, a subset of constituents are present in the waste (and thus the generator/treater will only be treating these constituents), the constituents in the waste must continue to be listed on the notification form.

2. Management in Subtitle C-Regulated Facilities

The Agency has information that many of the organic TC wastes that are not managed in CWA, or SDWA systems are being treated in hazardous waste management units (primarily incinerators) subject to RCRA subtitle C. In such a case, the notification, certification, and recordkeeping requirements set out in 40 CFR 268.7 apply (which includes identification of the underlying hazardous constituents reasonably expected to be present in the organic TC waste). For organic TC wastes, once the waste is no longer hazardous, however, further recordkeeping and documentation requirements are set out in 40 CFR 268.9. Section 268.9 requires that the generator or treater (including generators who treat, see 51 FR 40598, November 7, 1986) prepare a one-time notification which is sent to the EPA Region or authorized state and also kept in the generator's or treater's files. Treaters must certify that they are familiar with the treatment process used at their facility and that the process can successfully treat the waste to meet the treatment standards without impermissible dilution. See § 268.7(b)(5), which applies to persons who treat formerly characteristic wastes (see existing § 268.9(d)(2)). The Agency believes that, normally, at least some waste analysis is needed to make a good faith showing for meeting the treatment standards, given the number of hazardous constituents that could be covered by those standards.

3. Potential Management of Decharacterized Wastes at a Subtitle D Waste Management Facility

The Agency solicited information on certain potential waste management practices for decharacterized TC wastes to help determine whether new notification requirements are needed. In particular, EPA requested whether generators or treaters, after removing the characteristic, send the decharacterized TC waste off-site to a Subtitle D (nonhazardous waste) treatment facility for further treatment to address the underlying hazardous constituents (58 FR 48134). The Agency solicited comment on potential enforcement concerns if there is not a federal requirement that generators notify Subtitle D treatment and disposal facilities receiving decharacterized wastes.

One commenter stated that the generator of the waste should be made responsible through an EPA mandate to assure that treatment of underlying hazardous constituents at a subtitle D facility meets LDR treatment standards. Other commenters thought that the generator should notify the subtitle D facility of the underlying hazardous constituents, but they did not specify that a mandated notification should be required. However, other commenters said that existing arrangements between generators and off-site treatment facilities would suffice because EPA already requires generators to notify the EPA Regional office or Authorized State when it is sending decharacterized waste to a subtitle D facility under 40 CFR 268.9. One commenter pointed to the contract between the generator and the subtitle D facility as the mechanism by which generators would notify the treatment facility of what underlying hazardous constituents are in the waste.

Only one commenter offered information on the extent that the practice of sending decharacterized wastes to a nonhazardous waste treater for treatment of underlying hazardous constituents is actually occurring. This commenter asked generators who send waste to their facilities how often they remove the characteristic prior to sending the decharacterized waste to a nonhazardous waste treatment facility for treatment of underlying hazardous constituents. They found that roughly 2–3 percent of the wastes from their survey group were decharacterized D001 and D002 wastes being sent off-site for further treatment at a nonhazardous waste treatment facility that employs CWA wastewater treatment or stabilization of underlying hazardous constituents. The commenter added, however, that there will be less decharacterized TC wastes going off-site for treatment of underlying hazardous constituents because these wastes require more sophisticated treatment systems to remove the characteristic than do the D001 and D002 wastes.

Based on this information, the Agency has decided, for the time being, not to impose new notification requirements in today's final rule (a new certification is being added in this rule to § 268.7(b)(5)(iv) as described above). The Agency continues to believe that very little decharacterized TC wastes will be sent to a subtitle D facility for treatment of underlying hazardous constituents. If such a practice should occur, generators and Subtitle D facilities have substantial incentives (such as CERCLA liability) to exchange and verify compliance with treatment standards for underlying hazardous constituents independent of federal notification requirements.

If, however, information becomes available that generators are sending substantial amounts of decharacterized TC wastes off site to subtitle D facilities for treatment of underlying hazardous constituents, or that there is a paperwork loophole that existing arrangements between generators and treatment facilities do not address, today's approach will be revisited to determine whether such tracking is necessary to assure "cradle to grave" tracking of wastes and better informing subtitle D treatment and disposal companies of the requirements to which these decharacterized wastes remain subject.

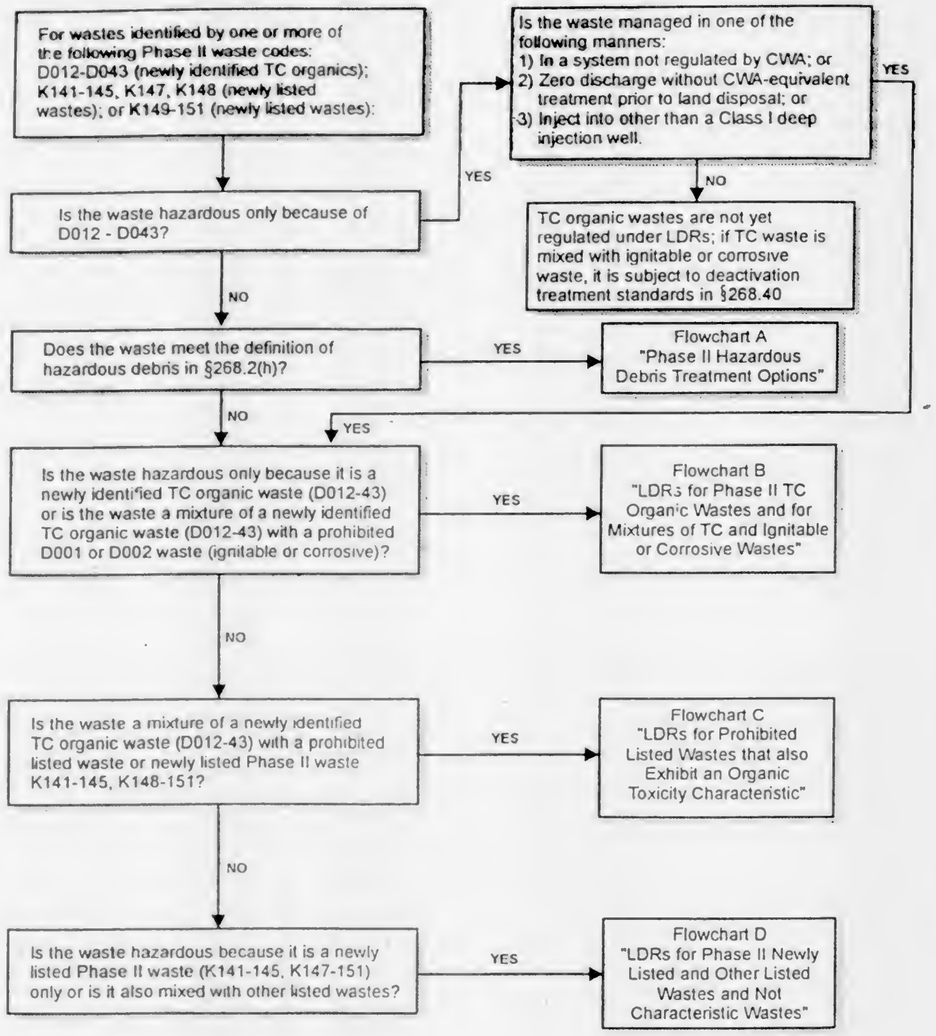
XI. Implementation of the Final Rule

This section presents flowcharts of what EPA expects will be the most frequent set of decisions that must be made to implement the regulations for TC organic wastes (including soils), mixtures of TC organic wastes with listed wastes, and mixtures of TC organic wastes with ignitable or corrosive wastes. A flowchart describing the decisions necessary to comply with treatment standards for Phase II newly listed wastes is also included Additionally, a flowchart is presented that outlines the decisions necessary to comply with treatment standards for debris contaminated with Phase II wastes. And, as a reminder that TC metals are not regulated by today's rule, a flowchart is also included of the decisions that must be made to determine if a characteristic metal waste is subject to the LDRs at this time based on regulation of Extraction Procedure (EP) metals in the Third Third rule in 1990, or is not yet subject to LDR regulation because TC metals will not be addressed until a later rulemaking. These flowcharts present only the major decisions that must be made; a thorough reading of the regulations will be necessary to fully implement the LDRs. There are requirements for specific waste management scenarios that are not included in these flowcharts because they would have become too complex to be generally useful.

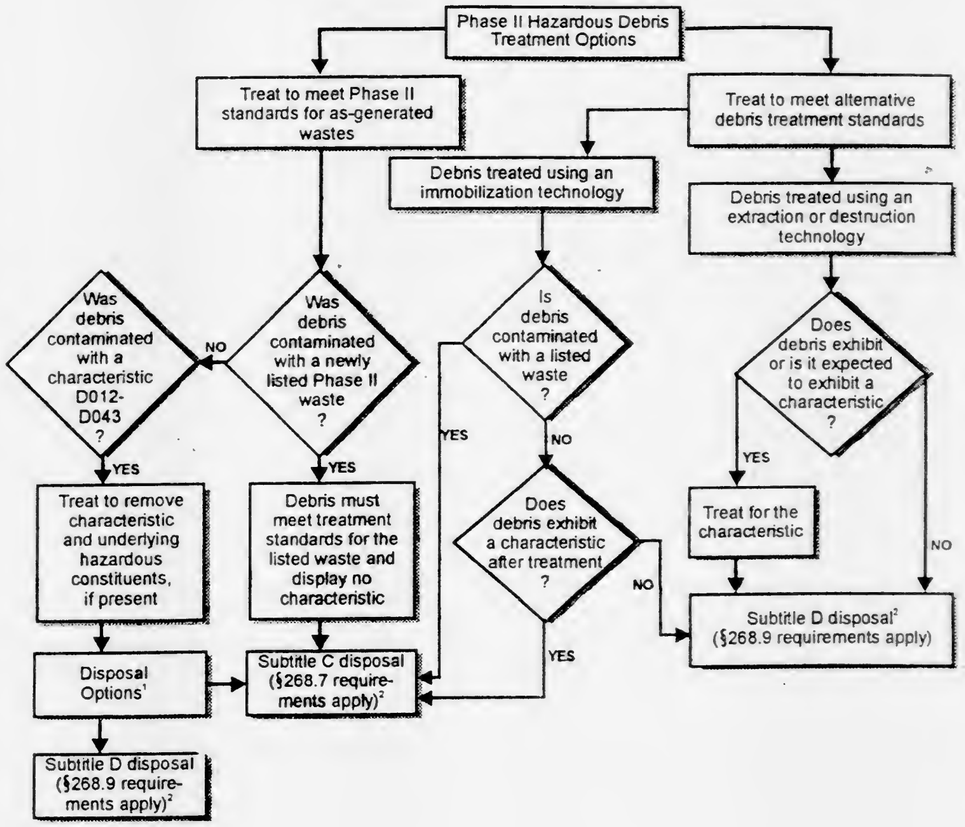
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Implementation of Key Phase II LDRs



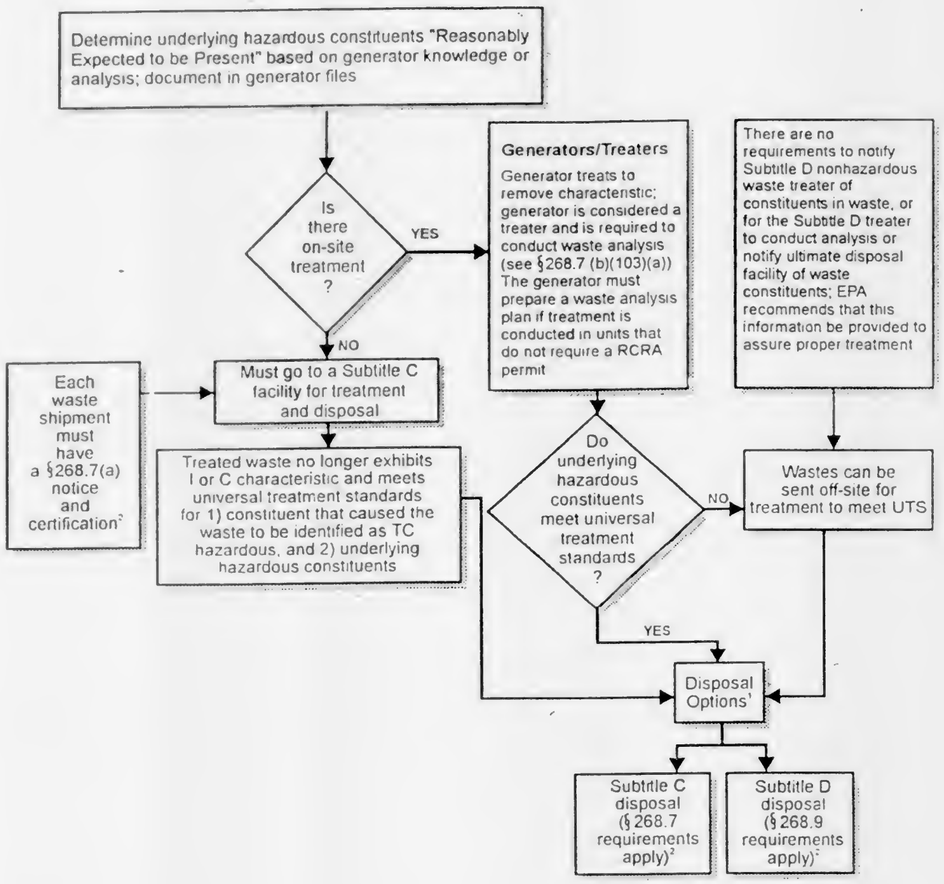
Flowchart A
Phase II Hazardous Debris Treatment Options



[1] *Treaters have the option of disposing of their treated wastes in either a Subtitle C or a Subtitle D facility.*
[2] *See Part 268, Appendix X, Table 1 for a detailed summary of all notification and certification requirements under §268.7 and §268.9*

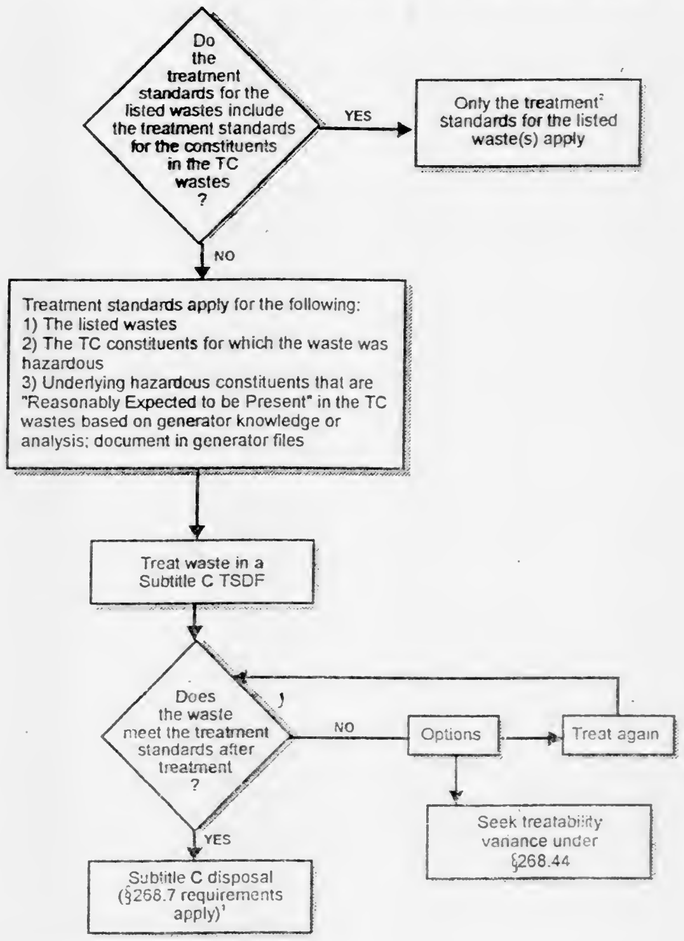
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Flowchart B
LDRs for Phase II TC Organic Wastes and for Mixtures of TC and Ignitable or Corrosive Wastes



Treaters have the option of disposing of their treated wastes in either a Subtitle C or a Subtitle D facility
See Part 268, Appendix X, Table 1 for a detailed summary of all notification and certification requirements under §268.7 and §268.9

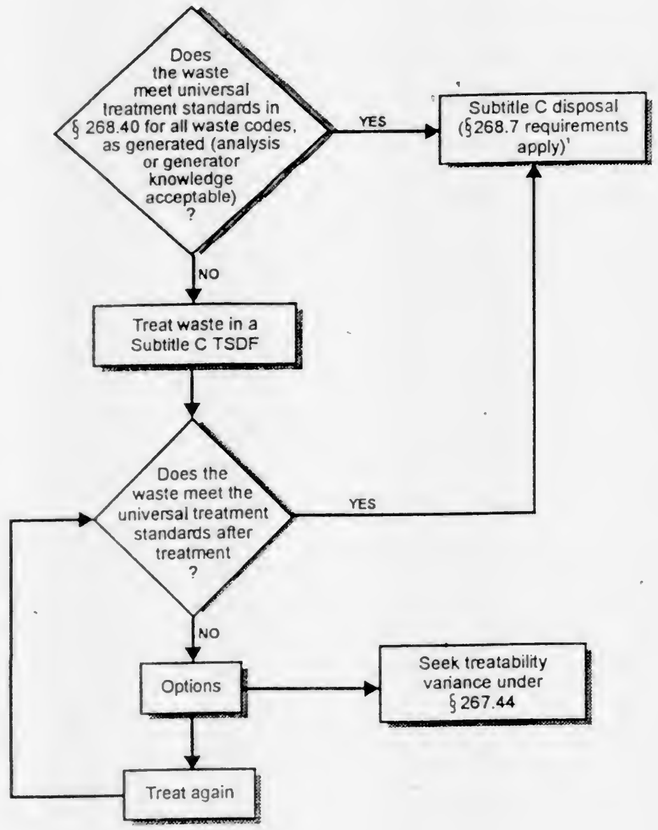
Flowchart C
LDRs for Prohibited Listed Wastes that also Exhibit an Organic Toxicity Characteristic



See Part 268, Appendix X, Table 1 for a detailed summary of all notification and certification requirements under §268.7 and §268.9
For as-generated wastes; would not apply when a TC organic waste is intentionally mixed with a listed waste (in this case the treatment standards for the underlying hazardous constituents in the TC waste and the regulated constituents in the listed waste would apply)

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Flowchart D
LDRs for Phase II Newly Listed and Other Listed Wastes and Not Characteristic Wastes



See Part 268, Appendix X, Table 1 for a detailed summary of all notification and certification requirements under §268.7 and §268.9

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XII. Guidance to Applicants for Treatability Variances for As-Generated Wastes

The Agency's existing regulations provide for variances from treatment standards if a waste cannot be treated to the specified treatment standard or if the treatment technology on which the standard is based is inappropriate for the waste. Section 268.44 (a). For guidance on treatability variances for soil, including site-specific, non-rulemaking variances, see section I.E. "Treatment Standards for Hazardous Soil" in this rule. To be granted a treatability variance, a petitioner must show that "because the physical or chemical properties of the waste differs significantly from wastes analyzed in developing the treatment standard, the waste cannot be treated to specified levels or by the specified methods." *Id.* A demonstration that the waste cannot be successfully treated can be made "by showing that attempts to treat the waste by available technologies were not successful, or through appropriate analyses of the waste which demonstrate that the waste cannot be treated to the specified levels." 51 FR at 40606 (Nov. 7, 1986). EPA evaluates treatability variance requests by "first look[ing] at the design and operation of the treatment system being used. If EPA determines that the technology and operation are consistent with BDAT, the Agency will evaluate the waste to determine if the waste matrix and/or physical parameters are such [that] the BDAT properly reflects treatment of the waste." *Id.* The guidance set out below applies exclusively to treatability variances (for as-generated wastes) evaluated by EPA headquarters and processed pursuant to rulemaking procedures.

In order to settle a lawsuit challenging the Agency's grant of treatability variances to two particular facilities, 56 FR 12351 (March 25, 1991), the Agency has agreed to provide some clarifying guidance regarding treatability variances, which essentially restates existing Agency practice and does not call into question the validity of any treatability variance the Agency has issued. First, as stated in 1986, to support an application for a treatability variance pursuant to § 268.44(a) for process waste, the applicant should collect and analyze a sufficient number of samples of the untreated waste to accurately characterize it. 51 FR at 40606 (Nov. 7, 1986). In general, the Agency would expect the applicant to collect and analyze four samples of its untreated and treated waste. (This corresponds to the minimum number of samples applicants for delisting pursuant to 260.20 must submit.) However, the exact number of samples would be determined by EPA as part of the Agency's evaluation of each treatability variance application (and so could be less than four samples in a particular case).

Second, the applicant should normally investigate and report on demonstrated and reasonably available pretreatment steps that could significantly improve the effectiveness of the treatment the applicant is conducting. 51 FR at 40606. What the Agency has in mind is that applicants not overlook potentially simple types of pretreatment to remove an interfering parameter; for example, settling to reduce excess total dissolved solids. The Agency does not intend that applicants perform an extensive or expansive engineering analysis. Nor does the Agency intend that applicants be required to utilize treatment systems significantly different from those the Agency evaluated when promulgating the treatment standard. Rather, the Agency wishes to assure that applicants not overlook some relatively obvious means of removing interferences. Again, in particular cases, it may not make sense to conduct this type of analysis, in which case no such evaluation would be necessary.

Third, the applicant should make a good faith effort to explain why the treatment standard is not achievable for its waste. 51 FR at 40606. This good faith effort is to be based on the applicant's knowledge of its process, and is not to entail additional expense (such as a consultant's engineering analysis). As a general matter, the Agency simply believes that some thought should be given (and documented) as to what might be causing the problem.

Finally, EPA's general policy has been and will be to publish a notice of its proposed decision on applications for treatability variances in the **Federal Register**, § 261.44 (e), and to allow a minimum of 30 days for the public to comment on the proposal. 51 FR 40607. All applicants will have the opportunity to comment on the reasonableness of applying one or more of these foregoing statements of guidance to their applications, and, as a result, EPA may decide not to apply them.

EPA notes further that there have been only a handful (fewer than 10) of applications for treatability variances since implementation of the land ban (aside from applications relating to contaminated media and debris), of which EPA has granted three. In the applications relating to electroplating wastes cited earlier, the Agency inferred that something about the applicants' wastes was making the wastes more difficult to treat than the waste EPA evaluated when promulgating the applicable treatment standard. This inference was based on the fact that the applicants were treating the waste with properly designed and operated BDAT treatment technology, namely the same type of treatment technology on which the treatment standard is based. 56 FR at 12352. EPA emphasizes that this type of inference was, and remains, permissible.

XIII. Clarifications and Corrections to Previous Rules

A. Corrections to the Interim Final Rule Establishing Land Disposal Restrictions for Certain Ignitable and Corrosive Wastes

On May 24, 1993, the EPA published an interim final rule establishing treatment standards for ignitable and corrosive characteristic wastes except those disposed in facilities regulated under the Clean Water Act (CWA), or Class I injection wells subject to the Safe Drinking Water Act, or zero-discharge facilities engaged in CWA-equivalent treatment. In today's rule, the Agency is clarifying that the provisions of the interim final rule remain in effect unless and until they are superseded in future LDR rules. The Agency does not plan to issue a final rule at this time; however, it is using the comments received on the interim final rule in developing future rules concerning the portions of the Third Third Land Disposal Restrictions Rule which were remanded by the D.C. Circuit (for discussion of the court ruling, see 58 FR 29861).

Among other things, the interim final rule established treatment standards for the underlying hazardous constituents reasonably expected to be present in the affected wastes at the point of generation. These treatment standards were the concentration levels for the constituents found in F039 (multisource leachate) wastewaters and nonwastewaters. The Agency is clarifying here that the universal treatment standards (UTS) established today supersede the F039 standards. Therefore, underlying hazardous constituents in the ignitable and corrosive wastes covered by the interim final rule must meet the 40 CFR 268.48, Table UTS—Universal Treatment Standards, levels before they can be land disposed. This change is being made simply so that the references to treatment standards for underlying hazardous constituents in ignitable and corrosive wastes in the interim final rule

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will be the same as those established for organic TC wastes in today's rule.

Also in the interim final rule, the Agency promulgated requirements to address a concern raised by the court about the potential for volatile organic constituent (VOC) emissions to create violent reactions during the dilution of ignitable and reactive wastes (see 58 FR 29873). The regulatory language in §§ 264.1(g)(6) and 265.1(c)(10), however, inadvertently promulgated requirements for ignitable (D001) wastes and corrosive (D002) wastes. These sections are being corrected in today's rule to indicate, rightly, that the requirements apply to ignitable (D001) and reactive (D003) wastes.

B. Corrections to the Phase I Rule Establishing Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris

Today's rule clarifies several issues from the final rule establishing Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris (57 FR 37194, August 18, 1992).

The first issue being corrected responds to questions over which treatment standards can be used for treating hazardous debris. It was stated clearly in the preamble to the August 18, 1992 rule that debris must be treated by either using one of the specified technologies in § 268.45, or, as an alternative, by meeting LDRs for the specific prohibited listed or characteristic waste with which the debris is contaminated (57 FR 37221). Subsequent comment from the regulated community indicate that this fact was not made completely clear in the regulatory language of that rule. Certain commenters suggested that a revision of the paperwork requirements found in § 268.7 indicating that generators have a choice as to which treatment standards they may use would help alleviate the confusion.

EPA is, therefore, revising § 268.7(a)(1)(iv) and § 268.7(a)(3)(v) to reflect that it is not mandatory to meet the alternative debris standards in § 268.45, and that generators have the option to meet the treatment standards for the as-generated wastes contaminating the debris. It should be noted that the paperwork requirements for meeting treatment standards for as-generated wastes contaminating debris are the same as those for as-generated wastes. A new paragraph is being added to the regulatory language to indicate this.

In addition, consistent with EPA's effort to simplify LDR paperwork requirements, EPA is shortening the notification statement accompanying prohibited debris. In § 268.7(a)(1)(iv) and § 268.7(a)(3)(v), as promulgated on August 18, 1992, the statement "This hazardous debris is subject to the alternative treatment standards of 40 CFR 268.45" was required to be placed on the LDR notification, after listing the contaminants subject to treatment. EPA is revising that particular statement today so that merely referencing § 268.45 after listing the contaminants subject to treatment is all that must be included on the LDR notification.

The second issue the Agency wishes to clarify and correct today concerns the language in § 268.45(b)(2) of the August 18, 1992 **Federal Register**. This section states that the contaminants subject to the alternative treatment standards for hazardous debris, which were promulgated in the August 18, 1992 rule, are those constituents for which BDAT standards are established in §§ 268.41 and 268.43. The Agency has received several letters asking why section 268.42 was not included in that language. Section 268.42 lists those wastes for which EPA established a treatment method as the standard. The reason section 268.42 was not included in the language in § 268.45(b)(2) is that only the wastes themselves, and not waste constituents, are listed in § 268.42.

The Agency fully intends, however, that debris contaminated with those wastes be subject to the alternate debris standards. Therefore, § 268.45(b)(2) is being clarified today to read "The contaminants subject to treatment for debris that is contaminated with a prohibited listed hazardous waste are those constituents or wastes for which BDAT standards are established for the wastes under §§ 268.41, 268.42, and 268.43."

The third issue the Agency is clarifying concerns exactly when surface impoundments which are newly subject to RCRA section 3005(j)(1) are expected to be in compliance with the requirements of § 265.221 (a), (c), and (d). As is stated in § 268.5(h)(2)(v) (as promulgated at 57 FR 37270, August 18, 1992), such surface impoundments must be in compliance within 48 months after the promulgation of additional listings or characteristics for the identification of hazardous waste. This is the maximum time allowed by RCRA section 3005(j)(6).

EPA mistakenly stated in two separate places in the preamble to the August 18, 1992 rule that the compliance date was 48 months from the effective date of a waste identification or listing (57 FR 37220). The Agency wants to make it clear that the compliance date which was promulgated in the regulations, and which is mandated by RCRA 3005(j)(6), is correct (57 FR 37270). These surface impoundments are thus required to be in compliance 48 months from the promulgation date of a new identification or listing. § 268.5(h)(2)(v).

The promulgation date is the date the Administrator signs the rule which lists the new waste(s). The effective date is the date the new waste must come into compliance with hazardous waste management requirements, and may be six months from the promulgation date. The Agency believes that 48 months to retrofit a surface impoundment is a reasonable amount of time, and believes that effort should begin as soon as the listing of a waste is published in the **Federal Register**; there is no reason to wait to begin retrofitting until a new listing or identification actually becomes effective. In any case, section 3005(j)(6) allows no other option.

Finally, in § 268.38(a) of this rule, EPA is prohibiting debris that is contaminated with the wastes that were prohibited in the Phase I rule. EPA inadvertently omitted to include such contaminated debris in the August 18, 1992 rule.

C. Amendment of Boiler and Industrial Furnace Rules for Certain Mercury-Containing Wastes

1. The Proposal

The Agency proposed a technical clarification to the Boiler and Industrial Furnace (BIF) rules on July 21, 1994 (59 FR 31964), that would exempt certain mercury-bearing hazardous wastes generated by the Chlorine Industry from the provisions of 266.100(c). Under this provision, owners and operators of smelting, melting, and refining furnaces that process hazardous wastes solely for metal recovery are conditionally exempt from regulation. To be exempt, the owner or operator must comply with certain notification, sampling and analysis, and recordkeeping provisions (see 266.100(c)(1)(i)). In addition, as indicated above, the waste must be processed solely for metal recovery; to be processed solely for metal recovery, the waste can not have a heating value greater than 5000 BTU/lb or have a total concentration of organic compounds listed in Appendix VIII of Part 261 greater than 500 ppm by weight. Wastes that have a heating value greater than 5000 BTU/lb or have a total concentration of hazardous organic compounds exceeding 500 ppm are considered by EPA to be burned for energy recovery and destruction, respectively and, thus, are subject to the BIF rules.

The Agency generally believes that most wastes that meet these criteria are appropriately subject to the BIF regulations. However, in certain instances, wastes that are burned for legitimate metal recovery can also exceed the 5000 BTU/lb and 500 ppm organic compound limits, in which case standards other than those in the BIF rules are likely more appropriate. (See 59 FR at 29776 (June 9, 1994) proposing CAA MACT standards for secondary lead smelters and indicating why RCRA air emission standards are not needed.) In fact, the Agency has specified a set of lead and nickel-bearing hazardous wastes that exceed the energy recovery or destruction limits, but are still conditionally exempt from the BIF rules if these wastes are legitimately burned for metal recovery (see 266.100(c)(3) and Appendices XI and XII to Part 266).

In the proposed technical clarification, the Agency defined some additional hazardous wastes—specifically, those generated by the Chlorine Industry and which are suitable for mercury recovery—that could be recovered in mercury retorting units without those units being subject to the BIF rules (provided the owners or operators of these units meet certain conditions). The Agency proposed this change based on the fact that these wastes contain high levels of mercury (from hundreds of parts per million to as much as 45%) and, thus are appropriate for recovery; in addition, the retort units in which these wastes are processed must be subject to emissions controls under the Clean Air Act. See § 268.42 (treatment standards for high mercury subcategory wastes that require retorting units to be subject to the CAA or comparable standards for control of mercury). It should also be noted that the Chlorine Institute, as part of their comments on the Phase II LDR proposal, requested that the Agency exempt these wastes from the BIFs rules. The remainder of this section of the preamble discusses the comments received and our response to those comments.

2. Comments and the Final Rule

The Agency received comments from five parties, Borden Chemical and Plastics (BCP), Bethlehem Apparatus (BA), PPG Industries (PPG), Olin Chemicals (Olin), and the Chlorine Institute (CI). Their collective comments and the Agency's response follows.

The proposal limited the conditional exemption to certain mercury-bearing hazardous wastes generated by the Chlorine Institute. BCP, BA, and CI argued that the proposed change was too narrow, and that other mercury recovery units may also process combustible materials for legitimate metals recovery. Commenters thus recommended that the exemption should apply to all processors of mercury wastes. The Agency generally agrees with this position. Upon reevaluation, EPA believes there is no need to differentiate between units in the Chlorine Industry and similar units outside the Chlorine Industry. Therefore, the Agency is promulgating a rule which includes units operated by manufacturers and users of mercury or mercury products.

BCP addressed a second option for broadening the exemption so that devices other than those operated in the Chlorine Industry could process combustible wastes for legitimate metals recovery. BCP suggested EPA define mercury as a precious metal and allow processors to burn mercury laden hazardous wastes subject to the Agency's BIF precious metals exemption (see § 266.100(f)). EPA does not agree with BCP's contention that mercury is a precious metal. Mercury is not considered a precious metal by EPA or other Agencies or organizations. Precious metals are defined by the Bureau of Mines to include gold, silver, platinum, and palladium (Mineral Commodity Summary, 1993), and by EPA at 40 CFR 266.70 to include gold, silver, platinum, palladium, iridium, osmium, rhodium, and ruthenium, all metals whose value assures adequate control. Therefore, EPA rejects the approach suggested by BCP.

BCP, PPG, Olin, and CI also commented that the list of materials in the proposed technical clarification should be broadened to include the following additional items:

Sweepings
Respiratory Cartridge Filters
Cleanup Articles
Plastic Bags and Other Contaminated Containers
Laboratory and Process Control Samples
Wastewater Treatment Plant Sludge and Filter Cake
Mercury cell process sump and tank sludges
Mercury cell process solids
K106
Recoverable levels of mercury contained in soil

Upon evaluation, the Agency agrees that of these materials are appropriate for an exemption as long as they have recoverable levels of mercury. However, many mercury units, e.g., retorters, are not combustion devices and organic emissions may not be controlled in these units. Therefore, the Agency is concerned that materials with recoverable levels of mercury, but laden with hazardous organics, may not provide adequate destruction of the hazardous organics in exempt retorters, and thus, may not be protective of human health and the environment. For that reason, the Agency is promulgating a broadened list of materials but is limiting the exemption to these wastes specifically identified and that contain less than 500 ppm of part 261, appendix VIII organics.

Finally, there appears to be some confusion by the Chlorine Industry about their status under the BIF rules (collectively, those regulations set forth in 40 CFR Part 266, Subpart H). CI, PPG, and Olin argued that they are not subject to BIF because they do not "burn" or "combust" anything and the BIF rules are written for combustion devices. The Agency agrees that many mercury recovery devices do not "burn" or "combust" by design; however, these units are Industrial Furnaces as defined in § 260.10 and, thus, are subject to the appropriate BIF rules. In particular, § 260.10 defines Industrial Furnaces as "devices * * * that use *thermal treatment* to accomplish recovery of materials" and that these include "refining furnaces". [Emphasis added.] Mercury recovery units raise the temperature of the waste to aid in the recovery and refining of mercury. Therefore, they are refining furnaces. In addition, § 266.100(c) states that "smelting, melting and refining furnaces * * * that *process* hazardous waste solely for metals recovery are conditionally exempt * * *." [Emphasis added.] This language includes all refining furnaces that *process* hazardous waste, irrespective of whether the process to achieve this end is combustion or not. Therefore, mercury recovery devices are BIFs, and come within the terms of § 266.100(c). EPA is using the term "mercury recovery furnace" in today's amended rule to further clarify this point. (It should be noted that compliance with the BIF rules for these devices are not rigorous. It requires sending a one time written notification to the regional Director and following the provisions set forth in § 266.100(c).)

Mercury recovery operators should note that the changes discussed in this section of the preamble only apply to units which have a metals recovery exemption. Units which process these wastes without the proper exemption are in violation of the BIF rules and subject to enforcement action.

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D. Amendment of Rules on Use Constituting Disposal

In 1985, EPA created a separate regulatory regime for hazardous wastes that are recycled by being used in a manner constituting disposal. Part 266 subpart C.[1] These rules provide, in essence, that the wastes can be so used without being subject to the RCRA facility standards if the waste-derived product (i.e. the hazardous wastes that is being used by being applied to the land (i.e. used in a manner constituting disposal)) has been "produced for the general public's use," has undergone a chemical change so as to be inseparable by physical means, and if it meets the applicable LDR treatment standard. See § 266.20(b).

Hazardous wastes used in a manner constituting disposal that do not satisfy these conditions are subject to all of the subtitle C standards. See § 266.23(a). In promulgating this provision in 1985, however, the Agency neglected to mention the then newly-enacted land disposal restriction requirements as among the standards to which the wastes were subject. The Agency obviously was not intending to amend the statute, and cannot override an express statutory requirement by regulation. The Agency only recently noticed this omission, and is using this opportunity to correct the error. Consequently, the Part 268 requirements will be added to the list of requirements in § 266.23(a) for those hazardous wastes not satisfying the conditions of § 266.20(b). This amendment is effective 90 days after publication of today's rule.

XIV. Capacity Determinations

This section presents the data sources, methodology, and results of EPA's capacity analysis for today's rule. Section A summarizes the results of the capacity analysis for the wastes covered by this rule; Section B summarizes the analysis of available capacity; Section C summarizes the capacity analysis for those newly identified and listed wastes that are land disposed in units other than deep injection wells; Section D summarizes the capacity analysis for wastes mixed with radioactive contaminants; Section E summarizes the results of the capacity analysis for high TOC ignitable and TC pesticide wastes and newly listed and identified wastes injected into Class I deep wells; and Section F presents the results of the capacity analysis for hazardous soil and debris contaminated with the newly listed and identified wastes covered in this rule.

In general, EPA's capacity analysis methodologies focus on the amount of waste currently land disposed that will require alternative commercial treatment as a result of the LDRs. Land-disposed wastes that do not require alternative commercial treatment (e.g., those that are currently treated using an appropriate treatment technology or that will be treated using an alternative on-site treatment system) are excluded from the quantity estimates. In addition, wastes managed in CWA, SDWA, CWA-equivalent systems are not included in this rule and will be addressed in an upcoming rulemaking.

EPA's decisions on whether to grant a national capacity variance are based on the demand for commercial treatment or recovery technologies. Consequently, the methodology focuses on deriving estimates of the quantity of wastes that will require commercial treatment as a result of the LDRs; quantities of waste that will be treated on-site or by facilities owned by the same company as the generator are omitted from the required commercial capacity estimates.

The major capacity information collection initiative for this rule was an EPA survey of all land disposal facilities that manage newly identified TC organic wastes (including TC-contaminated soil and debris) in land-based units (TC Survey). The survey, conducted in the spring of 1992, is a census of approximately 140 facilities. EPA identified the universe primarily based on those facilities that had submitted permit modifications or received interim status for managing these wastes. For each facility, EPA requested waste-stream specific data on newly identified TC organic wastes and information on on-site land disposal units and treatment and recovery systems.

EPA developed a data set of the information on the TC Survey results. Specifically, the data set contains information on the quantities of newly-identified organic TC wastes that will require commercial treatment capacity as a result of the LDRs. The data collected and the survey used for the required capacity estimates are part of the docket for today's final rule.

A. Capacity Analysis Results Summary

For the organic TC wastes (D018–D043), EPA estimates that 220,000 tons of newly identified organic TC sludges and solids will require alternative commercial treatment as a result of today's final rule.

EPA estimates that much smaller quantities of the other listed wastes included in today's rule will require alternative commercial treatment. Fewer than 100 tons of chlorinated toluene (K149–K151) nonwastewaters are currently being land disposed and will require alternative treatment due to the LDRs. Approximately 4,600 tons of coke by-product (K141–K145, K147 and K148) nonwastewaters are currently being land disposed. However, comments to EPA indicate that the majority of the nonwastewaters are recycled or used for energy recovery and, therefore, alternative treatment may not be required. No K141–K145, K147 and K148 wastewaters are currently being land disposed. No K149–K151 wastewaters are currently being land disposed.

The quantities of radioactive wastes mixed with wastes included in today's final rule and currently being land disposed are generated primarily by the U.S. Department of Energy (DOE). EPA estimates that 1,300 m^3 of high-level waste, 380 m^3 of mixed transuranic waste, and 1,100 m^3 of mixed low-level waste containing wastes covered in today's rule will be generated annually by DOE. These estimates exclude mixed wastes currently in storage, environmental restoration wastes, and soil and debris. DOE currently faces treatment capacity shortfalls for some high-level wastes and for all projected mixed transuranic waste generation. In addition, although the annual DOE treatment capacity for mixed low-level wastes exceeds the estimated annual generation, most of this capacity is limited to treatment of wastewaters with less than one percent total suspended solids, and is not readily adaptable for other waste forms. Consequently, DOE also faces a treatment capacity shortfall for mixed low-level nonwastewaters. Furthermore, DOE has indicated that it will generally give treatment priority to mixed wastes that are already restricted under previous LDR rules.

With respect to certain wastes being injected into deep wells, EPA has very limited information that differentiates high TOC D001 ignitable wastes from low TOC D001 ignitable wastes, particularly with reference to the type of Class I injection well (i.e., nonhazardous versus hazardous) the wastes are ultimately disposed into. The information the Agency does have indicates that both D001 ignitable wastes and D012–D017 TC pesticide wastes are deep well injected into Class I hazardous wells with no-migration exemptions. However, several commenters to the proposed rule, and other industries with Class I injection wells, indicated that it would be extremely difficult to identify, segregate, treat, and/or arrange for disposal of these waste streams in a short time frame. Consequently, EPA is granting these wastes a one-year national capacity variance.

The Agency also estimates that up to 120,000 tons of hazardous soil and 34,000 tons of hazardous debris contaminated with the newly identified organic TC wastes are expected to require alternative commercial treatment.

Table 1 lists each waste code for which EPA is promulgating LDR standards today. For each code, this table indicates whether EPA is granting a national capacity variance for land-disposed wastes. As indicated, EPA is not granting a two-year national capacity variance for the newly identified organic TC wastes, including soil and debris, nor for the listed wastes covered under this rule. Rather, EPA is granting a three-month variance. (This extension does not apply to wastes with a specified longer national capacity variance.) EPA is delaying the effective date because the Agency realizes that even where data indicate that sufficient treatment capacity exists, such capacity may not be immediately available. Additional time may be required to determine what compliance entails, redesign tracking documents, possibly adjust facility operations, and possibly segregate waste streams. EPA believes these legitimate delays can be encompassed within a short-term capacity variance because the ability to get wastes to the treatment capacity in a lawful manner is an inherent part of assessing available capacity. However, the Agency is granting a two-year national capacity variance for mixed radioactive wastes (i.e., radioactive wastes mixed with newly identified TC organic constituents D018–D043), including soil and debris contaminated with mixed radioactive wastes.

EPA also is granting a one-year national capacity variance to allow the Class I injection facilities an appropriate lead time to identify and then manage their high TOC D001 and D012–D017 waste streams by developing practical and sound treatment and/or disposal options and ultimately to come into compliance with today's rule.

TABLE 1.—CAPACITY VARIANCES FOR NEWLY LISTED AND IDENTIFIED WASTES [1]

Waste type	Variance for surface-disposed wastes	Variance for deep well-disposed wastes
High TOC D001 Wastes.	No	One year
D012–D017 Wastes [2].	No	One year
D018–D043 Nonwastewaters.	No	N/A
K141–K145 Wastes.	No	No
K147–K148 Wastes.	No	No
K149–K151 Wastes.	No	No
Soil (Phase II Wastes).	No	N/A
Debris (Phase II Wastes).	No	N/A
Mixed Radioactive	Two years	N/A
Mixed Radioactive Soil and Debris (with Phase II Wastes).	Two years	N/A

N/A=Not applicable.

[1] EPA is granting a three month national capacity variance for all the newly identified and listed wastes covered in this rule to handle logistical problems associated with complying with the new standards.

[2] Newly identified TC wastes that were not previously hazardous by the old EP Leaching Procedure.

B. Analysis of Available Capacity

The analysis of commercial capacity for newly identified and listed wastes is based primarily on data received in voluntary data submissions. These data include estimates of available capacity at commercial combustion facilities provided by the Hazardous Waste Treatment Council (HWTC) on incinerators and the Cement Kiln Recycling Coalition (CKRC) on cement kilns that burn hazardous wastes. Capacity for other conventional treatment processes (e.g., stabilization) is based on the 1990 TSDR Survey Capacity Data Set, which contains results from the National Survey of Hazardous Waste Treatment, Storage, Disposal and Recycling Survey (the TSDR Survey), and required capacity information from prior LDR rules.

Combustion Capacity. Combustion capacity for liquid hazardous wastes has historically been more readily available than capacity for sludges and solids. EPA estimates commercial combustion capacity for TC organic liquids to be about 1,267,000 tons per year. Commercial capacity for combustion of sludges and solids is available at both incinerators and industrial furnaces (primarily cement kilns that are authorized to burn hazardous wastes as fuel).

Cement kiln capacity for hazardous waste is limited by air emission limits (e.g., boiler and industrial furnace (BIF) limits under 40 CFR 266 subpart H), feed system limitations (e.g., particle size and viscosity limits), and product (i.e., cement clinker) quality considerations. For instance, cement quality considerations may require that wastes burned in cement kilns have a heating value of at least 5,000 BTU/lb to ensure adequate temperatures in the kiln. (Comments received by EPA, however, indicate that some kilns accept wastes below this heating value.) Incineration capacity is also limited by air emission limits, other permit limits (such as heat release limits), and feed system limits. EPA has taken these limitations into account in its estimates of available commercial combustion capacity.

Information available to EPA indicates that approximately 438,000 tons/year of commercial combustion capacity are available for newly identified TC organic sludges and solids, including soil and debris.[2] EPA primarily derived this estimate primarily from survey data compiled by the Hazardous Waste Treatment Council (HWTC) and Cement Kiln Recycling Coalition (CKRC). These surveys contained detailed information on the amount and types of waste burned at each commercial facility in 1992, and the maximum amount of waste that could practically be burned in light of technical, operational, and regulatory constraints. In deriving this estimate, EPA first reviewed each survey response to confirm that the information provided was based on technically valid assumptions. To be conservative in its national estimate, EPA only included facilities and units that are presently capable of operating at or near full capacity under current permit and operational constraints. EPA then derived a national baseline estimate of available capacity by subtracting the amount of waste (hazardous and nonhazardous) burned in 1992 from the maximum practical capacity at each facility. Several cement kilns that burn hazardous waste were not included in the CKRC survey results. For these facilities, EPA obtained maximum practical capacity estimates from other sources (e.g., past data submittals or

[1] These rules apply, of course, only if the recycling is legitimate, and not a form of surrogate disposal. § 266.20(a) applies only to "recyclable materials", which are hazardous wastes being recycled. § 261.6(a)(1). This does not include wastes that are abandoned by being disposed of. § 261.2(b)(1).

[2] This estimate includes solids and nonpumpable sludges, but excludes pumpable sludges. Pumpable sludge capacity in general is grouped with liquid capacity because of its limitations in particle size, solids content, and viscosity, and because pumpable sludges are often fed through the same feed ports that are used for liquids.

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general trade literature), and derived available capacity estimates by assuming that these kilns are utilized at the average rate of those included in the CKRC survey. EPA's methodology for deriving its baseline capacity estimate is described in greater detail in the capacity background document for today's rule.

Once EPA obtained its baseline available commercial combustion capacity estimate, it estimated available capacity for wastes affected by today's rule by subtracting required capacity for routinely generated F037 and F038 (69,000 tons/year) from its baseline estimate. This adjustment was needed because these wastes were not regulated during most of the 1992 base year (refer to 57 FR 37194, August 18, 1992). EPA did not adjust its capacity estimate to account for one-time generation of F037 and F038 because the Agency understands that these wastes were generally removed prior to the June 1994 effective date of the LDR standards or are being left in place when the surface impoundments that contain them are being closed.

EPA's estimate of available capacity takes into account capacity that will be required for Phase I wastes that were granted a national capacity variance, ignitable and corrosive wastes whose treatment standards were vacated (58 FR 29860, May 24, 1993), waste characteristics that affect the ability for a particular facility(s) to treat the wastes, and other factors that may limit capacity.

EPA is also considering the capacity effects of recent court decisions regarding the regulation of hazardous constituents other than those for which the waste fails the TC test. EPA solicited comments on the treatment capacity effects of requiring facilities to treat the underlying hazardous constituents in TC organic hazardous wastes to meet the then-proposed universal treatment standards. Although several commenters submitted comments in support of or in opposition to requirements for treatment of underlying hazardous constituents, few comments were received on the specific issue of the effects of this requirement on treatment capacity. EPA has concluded that sufficient combustion capacity exists to treat underlying hazardous organic constituents. One commenter indicated that few facilities could achieve the universal treatment standards (UTS) for some metals (which may be present as underlying constituents) in incinerator ash without further treatment. However, EPA believes that stabilization should generally be able to achieve the UTS levels for metal underlying constituents present in residuals from the treatment of organic TC wastes.

Stabilization Capacity. Stabilization may be required to treat the residuals of wastes covered in today's rule that contain metal underlying constituents. EPA estimates that over 1 million tons of stabilization capacity is currently available. In analyzing alternative treatment capacity for stabilization of newly identified and listed wastes, the Agency built on the capacity analysis conducted for the Third Third LDR rule. This analysis was based on data contained in the TSDR Capacity Data Set.

Innovative (Non-combustion) Technologies. There are several non-combustion technologies for the treatment of soil contaminated with RCRA hazardous wastes, including hydrolysis, vacuum extraction, photolysis, and oxidation. To the extent that these technologies can be used to treat hazardous soil on-site, the required capacity for combustion will decrease.

EPA has limited information on innovative technologies with regard to both available capacity and to limitations of the technologies or constraints on the use of these technologies. EPA solicited comments on the use of innovative technologies for the treatment of soil contaminated with RCRA hazardous wastes. Specifically, EPA requested information regarding constraints on the use of these technologies both on- and off-site, including physical or chemical characteristics of the soils, and logistical constraints such as permitting and scheduling. EPA also solicited data on volumes of contaminated soil currently being treated by these technologies, current available capacity, and estimates of future capacity. EPA received two comments regarding innovative technologies. One commenter noted that to treat soil on-site requires permitting and approval by local, state, and federal agencies, which may be a problem for some innovative technologies. Another commenter stated that the chemical concentration to which a soil can be biotreated is influenced by the particular chemical, the soil type, the age of the contaminated media, and the bioremediation process. EPA encourages the use of innovative technologies when feasible, and realizes that—in some cases—use of these technologies may be limited by technical and non-technical considerations. Sufficient conventional treatment capacity is available, however, such that these limitations do not affect capacity determinations.

C. Surface Disposed Newly Identified and Listed Wastes

1. Required Capacity for Newly Identified TC Organics (D018–D043)

The Agency is promulgating treatment standards for TC organic nonwastewaters based primarily on incineration performance data. Treatment standards for some newly identified organic TC wastewaters are also being promulgated in today's rule. (Organic TC wastewaters managed in systems regulated under the CWA, those injected into Class I injection wells as regulated under the SDWA, and those zero discharge facilities that engage in CWA-equivalent treatment prior to land disposal will be addressed in future rulemakings. EPA will make variance determinations for these wastes at that time.) For the proposed rule, the Agency did not have data indicating that facilities managing organic TC wastewaters would be impacted. Thus, EPA solicited comments in the proposed rule on the quantities of newly identified organic TC wastewaters affected by the rule. However, no comments were received on this issue. The Agency has concluded that facilities managing organic TC wastewaters will not be affected by this rule (i.e., no organic TC wastewaters will likely require alternative commercial treatment as a result of today's rule).

EPA developed estimates of the quantities of newly identified TC organic wastes based on current management options to comply with the LDR requirements. EPA did not receive any data in public comments on the quantities of organic TC nonwastewaters containing underlying metal constituents. EPA estimates that approximately 220,000 tons of organic TC nonwastewaters are subject to this rule. (See Table 2 which presents the quantities of TC nonwastewaters (except for liquid nonwastewaters) requiring off-site treatment by waste code.) Even if all this quantity contained underlying metal constituents, the residuals from the treatment of organics could not be higher than 220,000 tons. Underlying metal constituents are, by definition, at levels that are below TC levels for metals. Stabilization is an appropriate technology for treating low level metal wastes. Given that ample treatment capacity exists for stabilization (over 1 million tons), EPA believes that sufficient treatment capacity exists for residuals of organic TC wastes containing underlying metal constituents.

TABLE 2.—QUANTITIES OF TC NONWASTEWATERS REQUIRING OFF-SITE COMMERCIAL TREATMENT

[Surface disposed wastes in tons]

Code	Nonwastewaters
D018	126,000
D019	8,700
D020	6,300
D021	8,500
D022	8,400
D023	3,900
D024	520
D025	310
D026	1,500
D027	1,200
D028	10,800
D029	3,800
D030	510
D031	200
D032	3,300
D033	450
D034	410
D035	4,200
D036	260
D037	600
D038	3,600
D039	6,900
D040	6,600
D041	110
D042	120
D043	16,500
TOTAL [1]	220,000

[1] Total may not sum due to rounding.

The Agency also developed estimates of available commercial treatment capacity. Table 3 summarizes available capacity for each alternative treatment technology required for the newly identified TC nonwastewaters. The table also summarizes the required capacity for each technology. A comparison of required and available treatment capacity indicates that adequate combustion capacity exists for TC nonwastewaters. Therefore, in the proposed rule, EPA indicated they would not be granting a national capacity variance for D018–D043 nonwastewaters. EPA requested comments and any additional data on its assessment that there is adequate treatment capacity for these wastes. EPA received one comment on this issue. The commenter supported EPA's determination that sufficient capacity exists to treat D018–D043 nonwastewaters. Thus, EPA has not changed its assessment and is not granting a variance for these nonwastewaters.

TABLE 3.—REQUIRED AND AVAILABLE CAPACITY FOR NEWLY IDENTIFIED ORGANIC TC WASTES [1]

[All quantities are in tons]

Treatment technology	Available capacity	Required capacity
Liquid Combustion	1,267,000	[2] 11,000
Sludge/Solid Combustion	438,000	220,000
Stabilization	[3] 1,127,000	[4]

[1] Does not include hazardous soil and debris, mixed radioactive wastes, or deep well injected wastes.
[2] These are liquid nonwastewaters.
[3] Capacity analysis for the Phase I Newly Listed and Newly Identified Waste rule.
[4] Stabilization capacity may be required to treat underlying metal constituents in organic TC wastes after combustion.

2. Used Oil

EPA's capacity assessment does not include specific quantities of used oil which might be subject to this rule. Absent data to the contrary, EPA believes that the quantities of used oil that are land disposed and hazardous for TC organics are relatively small. (Used oil that is recycled and that exhibits the TC is not subject to the land disposal restrictions. See 261.6(a)(4).)

EPA has requested information and conducted various studies of generation, management and characteristics of used oil. Although the data are not comprehensive, based on all indications, most used oil is either recycled or reused as fuel.

In its May 20, 1992 (57 FR 21524) final listing determination for used oil, the Agency concluded that only a small portion of used oil is land disposed (less than 10 percent of the amount generated). Although in general used oil could be hazardous for TC organics (benzene) and metals (lead), the Agency furthermore observed that the trend of increased recycling and the phase down of lead in gasoline under the Clean Air Act would decrease both the quantity of used oil that is land disposed and the proportion of it that is hazardous.

To update and refine its capacity analysis for this rule, EPA requested comments in the September 14, 1993 proposed rule (58 FR 48092) and reviewed available data sources. The Agency requested comments on the quantities of used oil that exhibit the toxicity characteristic and is subject to the LDRs. EPA received only one comment from a firm that collected over 113 million gallons of used oil for re-refining in 1992, but did not receive any comments on the amounts of used oil subject to the LDRs.

To gain a broader perspective of used oil generation and management EPA examined 1991 data from the national Biennial Reporting System (BRS). EPA did not expect to obtain comprehensive total quantities of hazardous used oil generation and management; however, EPA was able to get the proportional management of reported waste oils. The BRS shows that less than one percent of all waste oil reported is landfilled. For example, in the 'waste oil from changes' category of the 1991 BRS, approximately 1,400 tons was reported as landfilled. Although EPA believes the proportionate disposal (percent) is nationally representative, the total quantity was reported for waste streams from only a few states which indicates that the total is not comprehensive.

We have received preliminary data from the State of New Jersey Hazardous Waste Facilities Siting Commission. New Jersey treats used oil as state hazardous waste and the Commission tracks generation and shipping/manifest data. In the oil category, approximately 1 percent of used oil generated is identified as land disposed (landfilled). Of this 1 percent we do not know how much would be hazardous for TC organics.

Therefore, EPA believes that the quantities of used oil that are land disposed and are also hazardous for TC organics are small and sufficient reuse-as-fuel, energy recovery, and/or incineration capacity exists. EPA believes that a capacity variance is not warranted for these wastes.

3. Required Capacity for Other Newly Listed Organic Wastes

This section presents EPA's analysis of required capacity for other listed organic wastes including coke by-product wastes and chlorinated toluene production wastes.

a. Surface Disposed Coke By-Product Wastes

K141—Process residues from the recovery of coal tar, including, but not limited to, tar collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludge from coking operations).

K142—Tar storage tank residues from the production of coke from coal or the recovery of coke by-products produced from coal.

K143—Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil units from the recovery of coke by-products produced from coal.

K144—Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump

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sludges from the recovery of coke by-products produced from coal.
K145—Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.
K147—Tar storage tank residues from coal tar refining.
K148—Residues from coal tar distillation, including but not limited to still bottoms.

For coke by-product nonwastewaters, EPA is promulgating concentration-based standards based on incineration. Under the authority of section 3007 of RCRA, EPA collected generation and management information concerning coke by-product wastes; this information was collected in 1985 and 1987. The majority of K141 to K145 nonwastewaters generated during that timeframe were recycled or used for energy recovery. Tar storage tank and tar distillation bottoms may be removed periodically. The Agency identified the following annualized land-disposed quantities of wastes: 49 tons of K141 nonwastewaters, 2,750 tons of K142 nonwastewaters, 10 tons of K143 nonwastewaters, 304 tons of K144 nonwastewaters, 1,408 tons of K147 nonwastewaters, and less than 100 tons of K148 nonwastewaters. EPA identified no K145 nonwastewaters that were being land disposed. The Agency solicited comments on the above estimated quantities that may require alternative treatment as a result of the LDRs. However, no comments were received on this issue. Thus, EPA is using the estimates shown above for the quantities of these wastes that may require treatment capacity as a result of the LDRs.

Current management practices indicate that the majority of the newly listed coke by-product wastes are amenable to recycling, and therefore alternative treatment may not be required as a result of today's final rule. Thus, EPA believes that adequate capacity exists to treat the small amount of wastes that require alternative treatment.

EPA does not have any information that coke by-product wastewaters are currently generated. The quantity of these wastewaters is assumed to be zero. EPA solicited comments on changes of management practices or generation data on these wastes. No comments were received on this issue. Consequently, EPA concludes that the quantity of these wastewaters is zero.

As a result of this analysis, EPA is not granting a national capacity variance to K141, K142, K143, K144, K145, K147, and K148 nonwastewaters and wastewaters; however, the Agency is granting a three-month variance as described in Section A for the reason described therein.

b. Surface Disposed Chlorinated Toluene Wastes

K149—Distillation bottoms from the production of alpha (methyl) chlorinated toluene, ring-chlorinated toluene, benzoyl chlorides, and compound with mixtures of these functional groups. (This waste does not include still bottoms from the distillation of benzyl chloride.)
K150—Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha (methyl) chlorinated toluene, ring-chlorinated toluene, benzoyl chlorides and compounds with mixtures of these functional groups.
K151—Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha (methyl) chlorinated toluene, ring-chlorinated toluene, benzoyl chlorides and compounds with mixtures of these functional groups.

For wastes generated during the production of chlorinated toluene, EPA is promulgating concentration-based treatment standards based on incineration for nonwastewaters. EPA collected generation and management information on wastes generated from the production of chlorinated toluene. EPA collected this information under the authority of section 3007 of RCRA during engineering site visits in 1988. This capacity analysis incorporates data from the section 3007 information request and engineering site visits. EPA identified four facilities that produce chlorinated toluene wastes.

The Agency has identified no K149 nonwastewaters, no K150 nonwastewaters, and less than 100 tons of K151 nonwastewaters that were being land disposed. For the capacity analysis, EPA assumes that these quantities are currently being land disposed and will require treatment capacity as a result of today's final rule.

EPA solicited comments on management practices and generation data on these wastes. One commenter requested a variance because high concentrations of salt and halogenated compounds make these wastes difficult to incinerate. EPA contacted a commercial incineration facility that stated that with proper management they could treat these wastes. Therefore, EPA believes that a capacity variance is not warranted for these wastes.

EPA does not have any information that chlorinated toluene wastewaters are currently generated. EPA solicited comments on changes of management practices or generation data on these wastes. No comments were received on this issue. Thus, EPA concludes that the quantity of these wastewaters is zero.

Because adequate capacity exists to treat these wastes, EPA is not granting a national capacity variance for K149, K150, and K151 nonwastewaters and wastewaters; however, like the other newly listed and identified wastes, EPA is granting a three-month variance as described in Section A for the reason described therein.

4. Newly Identified TC Wastes That Were Not Previously Hazardous by the Old EP Leaching Procedure

In the Third Third LDR rule (55 FR 22520, June 1, 1990), EPA promulgated treatment standards for D012 through D017 wastes, but only for those wastes that were previously hazardous by the old EP leaching procedure and remain hazardous under the new TCLP. D012 through D017 wastes that were not hazardous by the old EP leaching procedure but are now hazardous using the new TCLP are considered newly-identified D012 through D017 wastes.

In response to the ANPRM (56 FR 55160, October 24, 1991), EPA did not receive any estimates for additional waste quantities (or newly-identified wastes) due to the use of the TCLP rather than the EP leaching procedure. Similarly, no estimates were received in response to the proposed rule. EPA believes that the quantities of the newly-identified D012 through D017 wastes due to the use of the TCLP rather than the EP leaching procedure are small, if any, and, hence, expects little or no additional demand for commercial treatment capacity as a result of the LDRs. Because sufficient capacity exists to treat these wastes, EPA is not granting the newly-identified D012 through D017 wastes a national capacity variance. However, the Agency is granting a three-month variance as described in Section A of the preamble.

D. Required and Available Capacity for Newly Listed and Identified Wastes Mixed with Radioactive Components

EPA has defined a mixed RCRA/radioactive waste as any matrix containing a RCRA hazardous waste and a radioactive waste subject to the Atomic Energy Act (53 FR 37045–37046, September 23, 1988). These mixed wastes are subject to RCRA hazardous waste regulations, including the LDRs, regardless of the type of radioactive constituents contained in these wastes.

Radioactive wastes that are mixed with spent solvents, dioxins, California list wastes, First Third, Second Third, or Third Third wastes, and Phase I wastes, are subject to the LDRs already promulgated for these hazardous wastes.

EPA granted national capacity variances for all of these mixed wastes because of a lack of national treatment capacity. Today's rule addresses the radioactive wastes that contain newly listed and identified hazardous wastes being restricted in today's rulemaking.

Based on comments received by EPA in response to the proposed rule, the ANPRM (56 FR 55160, October 24, 1991), and previous rulemakings, the U.S. Department of Energy (DOE) is the primary generator of mixed RCRA/radioactive wastes. A variety of non-DOE facilities also generate mixed wastes, including nuclear power plants, academic and medical institutions, and industrial facilities.

1. Waste Generation

a. Non-soil and Non-debris Mixed Radiooctive Wastes

In April 1993, DOE released the Interim Mixed Waste Inventory Report (IMWIR), which included a national inventory of all mixed wastes that were being stored or would be generated over the next five years and a national inventory of mixed waste treatment capacities and technologies. The report provides waste stream-specific and treatment facility-specific information for each site managing DOE wastes. This report is currently being updated; however the Final Mixed Waste Inventory Report (MWIR) Data Base that will be used to develop the Final MWIR was made public in May, 1994. This Data Base was used to determine the quantity of DOE-generated mixed waste requiring treatment.

Based on the MWIR data, EPA estimates that DOE generates 1,700 m^3/yr of non-soil, non-debris mixed radioactive waste contaminated with TC organic constituents. In addition, DOE currently has 19,000 m^3 of these wastes in storage. Table 4 lists the quantities of each category of non-soil, non-debris mixed waste that DOE expects to generate annually, as well as the amount currently in storage.

TABLE 4.—QUANTITIES OF DOE NON-SOIL, NON-DEBRIS NEWLY IDENTIFIED TC ORGANIC MIXED RADIOACTIVE WASTES

Mixed waste category	Current inventory (m^3)	Annual generation (m^3/yr)
High-level waste (HLW)	11,000	1,300
Mixed transuranic waste (MTRU)	4,700	1
Mixed low-level waste (MLLW)	3,400	400

b. Mixed Radioactive Soil

EPA derived data on the quantities of DOE mixed radioactive soils using MWIR data. Table 5 lists the quantities of each category of mixed radioactive soil that is expected to be generated annually, as well as the amount currently in storage. The quantity of hazardous soil in storage, or projected to be generated annually, is very small. This can be attributed to the fact that the MWIR Data Base generally does not include DOE environmental restoration wastes. When these wastes are generated they will increase the quantity of newly identified mixed wastes, particularly soil, that require treatment. Although these wastes are not included in the Final MWIR Data Base, the IMWIR estimates that DOE will generate a total of approximately 600,000 m^3 of mixed environmental restoration wastes over the period from 1993 to 1997. Some of these wastes will likely be newly identified organic TC mixed wastes.

TABLE 5.—QUANTITIES OF DOE NEWLY IDENTIFIED TC ORGANIC MIXED RADIOACTIVE SOILS

Mixed waste category	Current inventory (m^3)	Annual generation (m^3/yr)
High-level waste (HLW)	0	0
Mixed transuranic waste (MTRU)	0	0
Mixed low-level waste (MLLW)	20	10

c. Mixed Radioactive Debris

EPA derived data on quantities of DOE mixed radioactive debris using MWIR data. Table 6 lists the quantities of each category of mixed radioactive debris that is expected to be generated annually, as well as the quantity currently in storage.

TABLE 6.—QUANTITIES OF DOE NEWLY IDENTIFIED TC ORGANIC MIXED RADIOACTIVE DEBRIS

Mixed waste category	Current inventory (m^3)	Annual generation (m^3/yr)
High-level waste (HLW)	0	0
Mixed transuranic waste (MTRU)	18,000	380
Mixed low-level waste (MLLW)	14,000	650

2. Available Capacity and Capacity Implications

a. Non-soil and Non-debris Mixed Radioactive Wastes

EPA's review of IMWIR data indicates that 4,000 m^3 of treatment capacity are available annually for HLW at three DOE treatment systems. The available capacity appears sufficient to treat the estimated average annual generation. Howevef, the IMWIR indicates that the current national inventory of HLW is greater than 280,000 m^3. This quantity dwarfs DOE's annual available treatment capacity for HLW. Consequently, DOE faces a treatment capacity shortfall for high-level radioactive wastes.

DOE is developing the Waste Isolation Pilot Project (WIPP) in New Mexico as a permanent repository for DOE TRU wastes, including MTRU wastes. However, DOE is not yet authorized to begin the placement of TRU wastes in the WIPP. In addition, wastes received at the WIPP must meet DOE's WIPP Waste Acceptance Criteria (WIPP–WAC). DOE is still in the planning stages for facilities designed to prepare MTRU wastes for shipment to the WIPP. As a result, DOE faces a capacity shortfall for treatment of MTRU wastes.

EPA's review of the IMWIR data indicates that 340 m^3/yr of currently available capacity exists at four DOE treatment systems for the treatment of alpha MLLW (i.e., MLLW with an alpha particle content between 10 and 100 nCi/g). However, the available capacity is greatly exceeded by the estimated quantity of alpha MLLW requiring treatment annually over the next five years, 3,700 m^3. Consequently, DOE faces a treatment capacity shortfall for non-soil, non-debris alpha MLLW.

According to IMWIR, 1,000,000 m^3/yr of treatment capacity among 26 systems are currently available to treat non-alpha MLLW. However, IMWIR states that most of DOE's currently available treatment capacity for MLLW is represented by facilities limited to the treatment of wastewaters (defined by DOE as less than 1 percent total suspended solids (TSS)). While these treatment facilities provide excess capacity for MLLW wastewaters, they cannot process wastes with high TSS and are not readily adaptable for other waste forms. Thus, although the quantity of MLLW treatment capacity is greater than the total quantity of mixed wastes, DOE faces a treatment capacity shortfall for nonwastewater MLLW, and thus non-alpha MLLW.

While DOE has provided its best available data on mixed waste generation, uncertainty remains about

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mixed waste generation at DOE (and non-DOE) facilities. For example, not all DOE Field Organizations responded to DOE's request for information following publication of the ANPRM. In addition, the data submitted to EPA generally did not include DOE environmental restoration wastes which, when generated, will increase the quantity of newly identified mixed wastes that require treatment. The IMWIR estimates that DOE will generate a total of 600,000 m^3 of mixed environmental restoration wastes over the period from 1993 to 1997. Although the IMWIR notes that the estimates of DOE environmental restoration wastes are preliminary, the quantities noted above will place additional strains on DOE's limited available mixed waste treatment capacity.

Although DOE is in the process of increasing its capacity to manage mixed RCRA/radioactive wastes, information supplied by DOE indicates that a significant capacity shortfall currently exists for the treatment of mixed RCRA/radioactive wastes, much of which are in storage facilities awaiting treatment. DOE has indicated that it will generally give treatment priority to mixed wastes that are already restricted under previous LDR rules (e.g., radioactive wastes mixed with solvents, dioxins, California list wastes, First Third, Second Third, or Third Third wastes, and Phase I wastes). DOE is also concerned about the availability of treatment capacity for mixed wastes that will be generated as a result of site remediation activities. EPA's review of non-DOE data sources also showed a significant lack of commercial treatment capacity.

In response to the Phase II proposed rule, EPA received six comments concerning the proposal to grant a two-year national capacity variance for non-soil, non-debris TC organic mixed radioactive wastes. All six commenters, including DOE, were in favor of the two-year national capacity variance. Furthermore, none of the commenters identified any additional treatment capacity for the wastes. Thus, despite the uncertainty about the exact quantities of mixed radioactive wastes containing newly listed and identified wastes that will require treatment as a result of today's rule, the quantities appear to exceed available capacity. In addition, any new commercial capacity that does become available will be needed for mixed radioactive wastes that were regulated in previous LDR rulemakings and whose variances have already expired. Therefore, EPA has determined that sufficient alternative treatment capacity is not available for mixed radioactive wastes contaminated with newly listed and identified wastes whose standards are being promulgated today, and thus is granting a two-year national capacity variance for these wastes.

b. Mixed Radioactive Soil

EPA's review of IMWIR data indicates that no available treatment capacity exists at DOE facilities for mixed radioactive soils. As indicated earlier, a preliminary estimate of mixed radioactive soil is approximately 10 m^3/yr. Therefore, EPA is granting a two-year national capacity variance for mixed radioactive soils.

c. Mixed Radioactive Debris

EPA's review of IMWIR data indicates that less than 2 m^3/yr of treatment capacity is available that can accept mixed low-level debris, an amount that exceeds the estimated annual generation. In addition, DOE has not yet been authorized to begin placement of MTRU wastes into the WIPP. As a result, DOE faces a treatment capacity shortfall for mixed transuranic debris. Therefore, EPA is granting a two-year national capacity variance to debris contaminated with mixed radioactive wastes.

E. Required and Available Capacity for High TOC Ignitable, TC Pesticide, and Newly Listed Wastes Injected Into Class I Deep Wells

As explained in previous rules concerning land disposal restrictions (see e.g., 52 FR 32450, August 27, 1987; 53 FR 30912, August 16, 1988; 55 FR 22520, June 1, 1990), EPA is allocating available capacity first to those wastes disposed in surface units, second to wastes resulting from CERCLA and RCRA clean ups, and finally to underground injected wastes. Based on this hierarchical approach, the Agency is promulgating the following effective dates for injected wastes.

EPA still has very limited information which differentiates high TOC D001 ignitable wastes from low TOC D001 ignitable wastes, particularly with reference to the type of Class I injection well (i.e., nonhazardous versus hazardous) into which the wastes are disposed. The information the Agency does have indicates that both D001 ignitable wastes and D012–D017 TC pesticide wastes are deep well injected into Class I hazardous wells with no-migration variances. EPA is concerned that since these wastes are being generated, the potential exists that diluted D001 ignitable wastes and D012–D017 TC pesticide wastes are also being injected into Class I nonhazardous wells. In the proposed rule, EPA estimated that, based on management practices, low volumes of diluted high TOC ignitable waste were injected into Class I nonhazardous wells, and less than 420 tons of D012–D017 pesticide wastes are deep well injected into Class I nonhazardous wells. However, several commenters to the proposed rule, and other industries with Class I injection wells, have indicated that it would be extremely difficult to identify, segregate, treat, and/or arrange for disposal of these waste streams in a short time frame. This may be particularly true if waste volumes for high TOC D001 ignitable wastes are discovered to greatly exceed earlier estimates. The facilities, depending on their Class I injection wells, would have to reconfigure their disposal systems, which may include the construction or rearrangement of wastelines or piping.

To allow sufficient time to address these logistical problems, EPA is granting a one-year national capacity variance to allow the Class I injection facilities an appropriate lead time to identify their decharacterized high TOC D001 and D012–D017 waste streams and to create an infrastructure that allows their alternative management consistent with today's rule and the statute. This may include installation of equipment to segregate wastes. For operators applying for no-migration petitions, the variance will allow time for conducting the modelling or other analysis, for EPA review, and for the operators to make alternative arrangements if the petitions are not granted.

The following wastes are the newly listed wastes for which numerical standards are being promulgated, and which current data indicate are not being underground injected:

Coke By-Product Wastes: K141, K142, K143, K144, K145, K147, K148

Chlorotoluene Production Wastes: K149, K150, K151

The Agency requested further comment on whether any of these wastes are being injected. Comment was also requested on what quantities of wastes are being injected, and on the characteristics of these wastes. However, no comments were received on this issue. EPA is therefore not granting a national capacity variance for coke production wastes (K141–K145, K147, K148) and for chlorotoluene production wastes (K149–K151) injected into Class I deep wells.

F. Required and Available Capacity for Hazardous Soil and Debris Contaminated with Newly Listed and Identified Wastes

This capacity analysis focuses on hazardous soil and debris contaminated with wastes whose treatment standards are promulgated in today's rule.

EPA used several data sources to estimate the total quantity of land-disposed hazardous soil and debris. These sources include: responses to the Advance Notice to the Proposed Rulemaking (ANPRM) for the newly identified wastes (56 FR 55160); the TC Survey; information provided during a series of roundtable meetings held by the Agency in May and June of 1991 with representatives of companies involved in the management and disposal of hazardous debris and soil; the Biennial Reporting System (BRS); Records of Decision (RODs) of Superfund sites; the TSDR Survey; and the National Survey of Hazardous Waste Generators.[3]

1. Waste Generation

a. Hazardous Soil

The hazardous soil covered by this rule includes soil contaminated with D018–D043 organic TC wastes, and soils contaminated with coke by-product wastes and chlorinated toluene wastes. The largest quantity of hazardous soil affected by today's rulemaking is hazardous soil contaminated with D018–D043 organic TC wastes. At the time of the proposal, the Agency estimated that approximately 233,000 tons per year of TC soils would require off-site treatment and the majority of these TC soils was expected to be generated from surface impoundment closures. Based on new data received from owners/operators concerning surface impoundment closure practices, the Agency now estimates that the annual quantities of TC soil that is land disposed and subject to the LDRs ranges from 70,000 to 120,000 tons. Because TC soil generation from surface impoundment closures is somewhat discretionary, decisions by owners/operators of facilities concerning closure methods significantly changed the generation rates previously estimated in the TC Survey.

The Agency contacted facilities expected to generate TC soils from surface impoundment closures in 1993, 1994, and 1995 to confirm generation rates. Nearly all of the owners/operators revised their estimates for TC soil generation downward. Most owners/operators revised their closure practices to minimize or eliminate TC soil generation. Some facilities closed impoundments prior to today's rulemaking and other facilities are closing their impoundments as landfills. In closing as a landfill, a facility closes the impoundment with the waste in place. The facility owners/operators remove all free liquids, stabilize the sludges, cap the impoundment, and establish a ground water monitoring system. Therefore, for these facilities, no LDR treatment capacity would be necessary for TC soils. Of the facilities that predicted TC soil generation in 1994 and 1995, no facility currently expects to ship TC soils generated from a surface impoundment closure off-site for LDR treatment.

However, for at least two facilities, some uncertainty existed concerning the ability of these facilities to ship all of their TC soils off-site prior to today's rulemaking. Nevertheless, even if these facilities generated all their TC soils after today's rulemaking, the impact on LDR treatment capacity would be minimal because these facilities were expected to generate only 5,300 tons of TC soils. Therefore, only 5,300 tons of TC soils generated by surface impoundment closures might require off-site treatment.

The Agency also reviewed the TC data base and public information on specific facilities to assess the TC soil generation rate from routine and sporadic activities that might require off-site disposal. For this analysis, the Agency assumed that routine activities and the quantity of soil generated should be considered constant over time when analyzing the generator population as a whole. However, for sporadic activities (e.g. surface impoundment closures), which by their nature occur infrequently, the year in which they occur is critically important in determining the required capacity for soil when the rule becomes effective.

In the TC Survey, some TC wastes were only characterized as a mixture of soil and debris. For the lower bound estimate (70,000 tons), the Agency assumed a 50–50 ratio of soil and debris in mixtures characterized as soil and debris. Using this assumption, EPA estimates that approximately 70,000 tons of TC soils generated by routine and sporadic activities will require additional treatment annually. In addition, in this lower bound estimate, the Agency assumed that all facilities were able to manage the TC soils generated from surface impoundment closures prior to the effective date of today's rule. Therefore, for the lower bound estimate, no TC soils from surface impoundment closures are expected to require additional treatment capacity. Based on these assumptions, the Agency calculates that the lower bound estimate is 70,000 tons of TC soils per year.

For the upper bound estimate, the Agency assigned the entire quantity of mixtures of soil and debris reported in the TC survey as TC soils. As a result, the TC soil generation rate for routine and sporadic activities increased by about 20,000 tons. The Agency conducted a similar review of facilities that submitted confidential business information (CBI) concerning TC soil generation rates. When assuming a 100 percent of mixtures were TC soils, these facilities were estimated to generate an additional 53,000 tons of TC soils for a total of 143,000 tons.

To verify the accuracy of the upper bound estimate, the Agency contacted individual facilities to determine actual TC soil generation rates. Based on these contacts, the TC data base overestimated TC soil generation from routine and sporadic activities. Many facilities stated that actual generation rates were lower or that the estimate included one time wastes from surface impoundment closures that already occurred. Therefore, when the Agency revised the upper bound estimates, TC soil generation rates for routine and sporadic activities at all facilities (non-CBI and CBI facilities) were approximately 114,000 tons. After adding the 5,300 tons of TC soils generated by surface impoundment closures, the estimated upper bound quantity of TC soil requiring additional treatment is approximately 120,000 tons per year.

Due to reduced generation of TC soils from surface impoundment closures in 1994 and 1995 and overestimations of TC soil generation rates from routine and sporadic activities, the Agency estimates that between 70,000 and 120,000 tons per year of TC soils will require off-site treatment.

At the time of the proposed rulemaking, the Agency was uncertain concerning the quantities of TC soil generated from manufactured gas plants (MGP). Most of the soil generated at these plants is expected to be contaminated with benzene. EPA requested updated information on the generation and management of these wastes and on whether there will be sufficient commercial treatment services to treat these wastes on-site. No comments were received that specified quantities of soil generated or discussed

[3] EPA conducted the surveys during 1987 and 1988 to obtain comprehensive data on the nation's capacity for managing hazardous waste and the volumes of hazardous waste being land disposed as well as data on waste generation, waste characterization, and hazardous waste treatment capacity in units exempt from RCRA permitting.

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commercial capacity for contaminated soils. While EPA acknowledges that generation of TC-contaminated soil from MGP will occur, the Agency expects that most of this quantity will be managed on-site and will not require off-site or commercial treatment capacity. Therefore, EPA has concluded that TC-contaminated soil from MGPs will not significantly affect the required treatment capacity for soil.

Similarly, several commenters to the ANPRM indicated that EPA may have underestimated the annual quantities of hazardous soil generated. Some commenters provided site specific data on the quantities of soil generated during remedial actions. The Agency incorporated these data in its analysis of the required capacity for hazardous soil.

In the proposed rule, EPA requested comments on the use of innovative technologies for hazardous soil. Specifically, EPA requested information on constraints to the use of these technologies both on- and off-site, including physical or chemical characteristics of the wastes, and logistical constraints such as permitting and scheduling. One commenter noted that to treat soil on-site requires permitting and approval by local, state, and federal agencies, which may be a problem for some innovative technologies. Another said that the chemical concentration to which a soil can be biotreated is influenced by the particular chemical, the soil type, the age of the contaminated media, and the bioremediation process. EPA has taken these comments into account in estimating the available capacity provided by innovative technologies for the treatment of hazardous soil.

b. Hazardous Debris

This rule covers debris contaminated with the newly listed and identified wastes covered in this rule. As shown in Table 7, data from the TC Survey indicates that approximately 34,000 tons of debris contaminated with D018–D043 wastes may be currently land disposed.

TABLE 7.—QUANTITIES OF TC-CONTAMINATED DEBRIS REQUIRING OFF-SITE TREATMENT

[Surface disposed wastes in tons]

Code	Debris
D018	26,400
D019	220
D020	20
D021	210
D022	80
D023	60
D024	60

TABLE 7.—QUANTITIES OF TC-CONTAMINATED DEBRIS REQUIRING OFF-SITE TREATMENT—Continued

[Surface disposed wastes in tons]

Code	Debris
D025	60
D026	700
D027	290
D028	280
D029	330
D030	90
D031	10
D032	70
D033	110
D034	40
D035	300
D036	70
D037	130
D038	570
D039	970
D040	890
D041	20
D042	20
D043	1,700
Total[1]	34,000

[1] Total may not sum due to rounding

2 Current Management Practices

Waste generators and TSDFs report that most of the soils contaminated with D018–D043 newly identified organic TC wastes are currently landfilled without prior treatment. Incineration is the commercial off-site treatment technology reportedly available for these wastes.

Other than incineration for treating organic TC-contaminated soil, EPA has no information on the commercial off-site availability of other treatment technologies (e.g., low temperature thermal desorption, bioremediation, solvent extraction). Although several commenters to the ANPRM mentioned bioremediation as an alternative to incineration for the treatment of TC contaminated soils, no commenter provided facility specific information on commercially available off-site treatment capacity for this technology. The lack of off-site commercial capacity for technologies other than incineration was confirmed by responses to EPA's request for voluntary information from vendors of innovative technologies provided in the Vendor Information System for Innovative Treatment Technologies (VISITT). At the time of the proposed rule, EPA had received no information that special-handling problems may limit the quantity of hazardous soil that currently can be treated by incineration, and EPA requested information on special-handling concerns with managing these wastes. No comments were received on this issue. Thus, EPA has concluded that the quantity of hazardous soil that can be treated by incineration will not be limited by special-handling problems.

3. Available Capacity and Capacity Implications

a. Hazardous Soil

EPA is requiring that hazardous soil be treated prior to land disposal. EPA has determined that available destruction (e.g., incineration) and immobilization (e.g., stabilization) capacity exists. Some additional capacity also exists from many of the technologies in the extraction family (e.g., soil washing, chemical extraction). However, some of the capacity of extraction technologies currently used to decontaminate soils, such as soil washing, may not have received requisite permits by the effective date of this rule, although EPA is exploring the various opportunities for these technologies to become operational in an expedited manner. (Please contact the appropriate EPA regional office or the state hazardous waste program.) Thus, EPA anticipates that the off-site commercial capacity available to treat hazardous soils at the time this rule becomes effective will be limited to incineration and stabilization.

EPA recognizes that innovative technologies are also available to treat hazardous soil. Performance of these technologies also may be the basis for treatability variances pursuant to § 268.44(h). EPA requested comments on the practicality and current availability of these technologies. EPA received comments that the proposed soil standards cannot be met by bioremediation, but may be met by innovative technologies such as thermal desorption and soil vapor extraction. However, EPA did not receive any comments on the current availability of these technologies. Thus, EPA has concluded that the off-site treatment capacity for hazardous soils will initially be limited to incineration and stabilization.

The Agency also solicited comments on the need for a capacity variance and on estimates of available treatment capacity. One commenter opposed the proposed capacity variance for soils and said that EPA should—at the very least—require treatment of "hot spots." Several commenters supported the two-year national capacity variance. However, EPA has determined that a national capacity variance is unnecessary for hazardous soils

b. Hazardous Debris

EPA estimates that approximately 34,000 tons of debris contaminated with newly identified organic TC wastes are currently land disposed and require off-site commercial treatment capacity. The capacity analysis conducted for debris contaminated with Phase II wastes indicates that sufficient capacity exists to treat debris contaminated with organics. Therefore, EPA is not granting a national capacity variance for hazardous debris contaminated with organic TC wastes and other listed organic wastes covered in this rule.

XV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA is implemented Federally in authorized States in the interim.

Certain portions of today's rule are being promulgated pursuant to sections 3004 (d) through (k), and (m), of RCRA (42 U.S.C. 6924 (d) through (k), and (m)). These will be added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble. Table 2 in 40 CFR 271.1(j) is also modified to indicate that this rule is a self-implementing provision of HSWA.

B. Effect on State Authorization

As noted above, today's rule, with the exception of the changes in the definition of solid waste (see preamble section IX, and further discussion in this section, below), will be implemented in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. On December 18, 1992, EPA extended the period allowing interim authorization to January 1, 2003 (see 40 CFR 271.24(c) and 57 FR 60129).

Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modification to EPA for approval. The deadline by which the State would have to modify its program to adopt these regulations is specified in section 271.21(e). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modifications are approved. Of course, states with existing standards could continue to administer and enforce their standards as a matter of State law. In the period between the effective date of today's rule and the approval of state program modifications, the regulated communities in authorized states generally must comply with state regulations in addition to the provisions in today's rule. The regulated community should continue to consult with state agencies authorized to administer LDRs. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these regulations in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these regulations must include standards equivalent to these regulations in their application. The requirements a state must meet when submitting its final authorization application are set forth in 40 CFR 271.3.

The regulations promulgated today need not affect the State's Underground Injection Control (UIC) primacy status. A State currently authorized to administer the UIC program under the Safe Drinking Water Act (SDWA) could continue to do so without seeking authority to administer the amendments that will be promulgated at a future date. However, a State which wished to implement Part 148 and receive authorization to grant exemptions from the land disposal restrictions would have to demonstrate that it had the requisite authority to administer sections 3004 (f) and (g) of RCRA. The conditions under which such an authorization may take place are summarized below and are discussed in a July 15, 1985 final rule (50 FR 28728).

The modifications to the definition of solid waste in this rule (see preamble section IX) are based on non-HSWA authority. This portion of the rule, because it is not based on HSWA authority, will be applicable immediately only in those States that do not have final RCRA authorization. In authorized States, these requirements will not apply until the States revise their programs to adopt equivalent requirements under State law. In addition, this modification broadens the "closed-loop" recycling exclusion from the definition of solid waste. The modification to this rule is less stringent, or reduces the scope of, the Federal program. Therefore, although EPA strongly encourages timely adoption, authorized States are not required to modify their programs to

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adopt regulations consistent with and equivalent to this provision.

XVI. Regulatory Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Executive Order No. 12866 requires agencies to determine whether a regulatory action is "significant." The Order defines a "significant" regulatory action as one that "is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

The Agency estimated the costs of today's final rule to determine if it is a significant regulation as defined by the Executive Order. The incremental compliance costs for today's rule were estimated as a range from $194 to $219 million per year. Therefore, today's final rule is considered an economically significant rule, having an annual effect on the economy of over $100 million. The Agency prepared a regulatory impact analysis which analyzed the costs, economic impacts, and benefits of today's final rule.

This section of the preamble for today's final rule provides a discussion of the methodology used for estimating the costs, economic impacts and the benefits attributable to today's final rule, followed by a presentation of the cost, economic impact and benefit results. Limitations to these estimates are described in the results section. More detailed discussions of the methodology and results may be found in the background document, "Regulatory Impact Analysis of the Land Disposal Restrictions Final Rule for the Phase 2 Newly Listed and Identified Wastes," which has been placed in the docket for today's final rule.

1. Methodology Section

In today's final rule, the Agency is establishing treatment standards for newly identified and listed wastes, as well as any soils and debris which are contaminated with such wastes. (The Agency plans to develop alternative standards for hazardous soils as a part of the Hazardous Wastes Identification Rule (HWIR).) The newly identified wastes covered under today's rule include wastes displaying the organic toxicity characteristic (TC), and pesticide wastes that were not previously hazardous by the EP leaching procedure. The newly listed wastes are Coke By-product wastes and Chlorotoluene wastes.

Of the newly regulated hazardous soil in today's rule, the only existing volumes are soils contaminated with TC wastes. (Any volumes of soil contaminated with F037 and F038 listed wastes which exist are not covered in today's rule, but are being covered in a future Agency rulemaking.) Finally, the Agency is promulgating new testing and recordkeeping requirements, as well as reducing other recordkeeping requirements.

Furthermore, today's final rule proposes Universal Treatment Standards (UTS) for wastes already regulated under the LDRs. The Agency's analysis includes an analysis of the volumes affected by this change in treatment levels. (In the switch to UTS levels there are cases where the new UTS level is less stringent than the existing listing levels, as well as cases where the UTS is more stringent than existing levels. Either of these cases would have the potential to change the costs associated with treatment of these wastes.)

a. Methodology for Estimating the Affected Universe

In determining the costs, economic impacts, and benefits associated with today's rule, the Agency estimated the volumes of TC nonwastewaters, Coke By-Product wastes, and Chlorotoluene wastes affected by today's rule. For the TC wastes, the Agency employed the 1995 volume estimates presented for each affected waste in the Agency's 1992 TC Census Database (hereafter referred to as the "TC Survey"). (There are several ways in which the volumes employed for the capacity determinations differ from those used in the RIA.) The capacity determinations section of the preamble describes the methods used there to determine volumes. The scope of the RIA differs from that of the capacity determination in the "time window" analyzed. The RIA examines the short- and long-term impacts from the rule. Capacity determinations, on the other hand, are made for a two year time frame beginning at the promulgation of today's rule.

The Agency employed the volumes of Coke By-Products and Chlorotoluene wastes estimated in their respective listing analyses. For Coke By-Products, current management practices suggest that no volumes will be land disposed.

b. Cost Methodology

The cost analysis estimates the national level incremental costs which will be incurred as a result of today's rule. The cost estimates for both the baseline and post-regulatory scenarios are calculated employing: (i) The facility wastestream volume, (ii) the management practice (baseline or post-regulatory) assigned to that wastestream, and (iii) the unit cost associated with that practice. Summing the costs for all facilities produces the total costs for the given waste and scenario. Subtracting the baseline cost from the post-regulatory cost produces the national incremental cost associated with today's rule for the given waste. The unit costs include costs for Subtitle D and Subtitle C disposal (as appropriate), and transportation costs where necessary; all dollar estimates are in 1993 dollars (unless otherwise noted.)

Each section below summarizes the baseline and post-regulatory management practices assignments for each waste. The unit costs employed for the management practices are summarized in the RIA background document for today's rule.

The cost methodology section includes three sub-sections: (i) TC organic wastes, (ii) Other newly identified wastes, (iii) Testing, record-keeping, and permit modification costs.

i. Organic Toxicity Characteristic Wastes (D018–D043)

The standards established in today's rule for the organic TC wastes require the treatment of all underlying hazardous constituents. The affected TC wastes can be divided into three groups: TC nonwastewaters, TC soils, and TC debris. While TC wastewaters which are not managed in CWA or CWA-equivalent units are being regulated in today's rule, the current management practices for these volumes do not trigger land disposal (RCRA exempt tanks, etc.), and therefore are not subject to the LDRs. Below, EPA describes the method of estimating the costs incurred in complying with the TC standards in today's rule.

In establishing a baseline for the TC nonwastewaters, TC hazardous soils, and TC hazardous debris affected by today's rule, the Agency assumed Subtitle C landfilling as the current management practice. The Agency believes that there are TC wastes which

are not affected by today's rule because they are already being treated to comply with the standards established in today's rule (e.g.: wastes with high BTU value which are being used as fuel, etc.). The Agency assumed that landfilling was occurring on-site for noncommercial (company captive) facilities, and off-site for commercial facilities. Employing today's requirement of treating for all underlying constituents reasonably expected to be present, the Agency developed technology assignments for the wastes at each facility. The assignments include a treatment technology (or treatment train where required), and subsequent Subtitle D disposal. These assignments were based on waste characterization and constituent concentration data. Where little or no such data were available for a wastestream, the weighted average unit cost was assigned (the weighted average unit cost was calculated separately for nonwastewaters, soils, and debris).

The Agency allows a generator of hazardous soil to apply for a treatability variance. The Agency, however, has not analyzed the potential short-term savings which could be realized in the management of hazardous soil, and therefore may have overestimated the cost impacts of the rule in the short-term. There is also some uncertainty where certain technologies will be available to treat TC nonwastewaters. The Agency performed a sensitivity analysis to characterize this uncertainty, which is included in the RIA Background Document.

ii. Other Newly Identified Wastes

In addition to organic TC wastes, the wastes affected by today's final rule include coke by-product and chlorotoluene wastes. Based on an economic analysis conducted by the Agency for the listing of coke by-product waste, generators recycle these wastes rather than disposing of them in Subtitle C landfills. Therefore, EPA estimates that negligible volumes of coke by-product wastes would be affected by this rule. For the chlorotoluene waste volumes, EPA conducted a detailed cost analysis using site specific data.

iii. Testing, Recordkeeping, and Permit Modification Costs

In addition to the costs for treatment of wastes, EPA estimated the incremental costs of the testing and recordkeeping requirements in today's rule. Testing and recordkeeping costs were developed for all wastes addressed in today's rule.

The Agency examined the incremental cost of the testing requirements under today's rule. The Agency considered the baseline scenario to include testing for waste identification. The post-regulatory scenario would include testing for waste identification, testing to determine the number and concentration of constituents requiring treatment, and testing following treatment to ensure compliance with the standards.

For the analysis of recordkeeping costs, the Agency employed the estimates developed in the Information Collection Request (ICR) for today's rule. These estimates were employed in a facility specific analysis to develop a total incremental cost associated with the testing and recordkeeping requirements in today's rule.

The Agency also performed a sensitivity analysis on potential permit modification costs for facilities which may switch to on-site treatment. EPA applied a schedule of payments based on the costs of permit modifications to a group of nine facilities. The results of this analysis are provided in the Background Document RIA.

c. Waste Minimization Methodology

Since reducing waste generation may be less costly than treating these wastes to LDR standards, the Agency performed an analysis examining the potential waste minimization alternatives available to facilities. The analysis followed a multi-step methodology which included: (1) Develop a profile of the industries which indicated plans for waste minimization in the 1992 TC Survey Database, (2) select industries to examine which would be representative of the TC waste universe, (3) make telephone data verification calls to facilities within these industries, (4) determine the cost components for the post-regulatory and waste minimization scenarios for all wastestreams for those facilities, (5) estimate whether potential total costs/cost savings for the waste minimization and the post-regulatory (i.e., without waste minimization) scenarios would be a profitable investment for the firms, and (6) extrapolate results to the TC waste universe, and determine overall cost/cost savings.

d. Economic Impact Methodology

The economic effects of today's final rule are defined as the difference between the industrial activity under post-regulatory conditions and the industrial activity in the absence of regulation (i.e., baseline conditions). It should be noted that the volumes used for the economic impacts analysis do not include the reduction in volumes, and thus in costs, from waste minimization practices.

The Agency has evaluated the economic impacts for facilities managing organic TC wastes on a facility specific basis, limited only by the extent that data were available. EPA estimated the economic effects by comparing incremental annual compliance costs to a number of company financial measures, such as revenues, cost of operations, operating income, and net income. Financial data were obtained from Standard & Poor's Corporation Descriptions for the last fiscal year reported.

Since EPA believes that no costs will be associated with the treatment standards for coke by-products in the final rule, no economic impacts will be associated with regulation of these wastes. Economic impacts of compliance for facilities currently land disposing chlorotoluenes were evaluated in aggregated form, as information relating to these wastes are proprietary.

e. Benefits Methodology

This section discusses the benefit estimates for today's rule. The section includes: i. Analysis of the universal treatment standards, ii. hazardous waste recycling exemption, iii. groundwater pathway benefits, and iv. air pathway benefits.

i. Analysis of the Impact of the Universal Treatment Standards

To determine the cost implications of the Universal Treatment Standards (UTS), the Agency compared the UTS levels for each constituent to those levels established for each constituent in each waste code in the Land Disposal Restrictions (LDR) program to date.

The Agency assumed that there would only be a cost impact when the levels were sufficiently different to require a change in the treatment technology used in order to meet the new UTS levels. The comparison of levels rendered three results: (a) No cost impact because the constituent levels were the same, (b) no cost impact because the constituent levels were within one order of magnitude of each other, or (c) a potential cost impact because the constituent levels were greater than one order of magnitude apart.

Upon identifying those waste code/constituent pairs which were significantly different (i.e., greater than one order of magnitude), the Agency developed an estimate of the costs/cost savings based on the incremental difference in the previous technology

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required and the new technology required to meet the specified levels.

ii. Hazardous Waste Recycling Exemption

The Agency also estimated the potential cost savings resulting from the hazardous waste recycling exemption for K069 wastes. Obtaining volumes data from the Biennial Reporting System (BRS), and employing unit cost data, the Agency calculated the cost savings associated with the change allowed in management practices. The Agency limited the analysis to K069 wastestreams that are not mixed with other hazardous waste codes, since these mixtures may not be amenable or legal for recycling.

iii. Human Health Risk Reduction—Groundwater Pathway

The Agency evaluated two types of human health benefits for today's rule: reduction in human health risks via the groundwater pathway, and reduction in human health risks via the air pathway. EPA's analysis of the benefits of today's rule covers TC wastes only. These wastes dominate the other wastestreams covered by today's rule in terms of volume. Moreover, these are the only wastes for which the Agency had the data necessary to conduct a benefits assessment, in terms of attributes such as constituent concentrations and facility-specific wastestream volumes.

The fundamental assumption underlying EPA's approach for assessing groundwater risk reduction is that Subtitle C containment is completely effective in the short-term, i.e., over a period of about 30 years, but that in the longer term, containment systems will fail. The benefits analysis performed for today's rule examines this potential long-term risk which would be avoided under today's rule (i.e., only occurring at least 30 years into the future). The difference in risks from the baseline to the post-regulatory condition is the measure of incremental benefit associated with today's rule.

The basic approach involves the following steps (which are elaborated upon in the RIA background document, which has been placed in the docket for today's rule). (1) The Agency employed waste concentration data from the TC Survey to represent waste concentrations. (2) EPA calculated the mean concentration of each constituent at each facility, weighted across the volume of all TC wastes managed at that facility. (3) EPA calculated the risk that would be posed by consumption of leachate, for both cancer and non-cancer effects, at each facility. (4) EPA developed a set of dilution/attenuation factors (DAF) to represent the effect of fate and transport processes in a homogeneous ground-water system. For each facility, the Agency divided the risk posed by the consumption of leachate by the DAF (expressed as a probability distribution) to yield the risk posed by predicted concentrations in water from hypothetical exposure wells. (5) EPA then summed the predicted risks across all facilities to develop an estimate of the distribution of individual risk at facilities managing untreated TC wastes. In addition, the Agency simulated the post-regulatory scenario, and summed the predicted risks across facilities, and developed the incremental risk reduction attributable to today's rule. (6) EPA subsequently developed an estimate of the potential incremental population risk using 1990 population estimates around each site. The Agency used standard assumptions for body weight (70 kg) and water intake (2 liters per day) for 9 years.

v. Human Health Risk Reduction—Air Pathway

Constituents contained in TC waste, soil, and debris may be emitted to air through volatilization and dust entrainment. Reducing the concentrations of TC constituents through the treatment standards set in today's rule reduces the potential for air emissions, and the risks posed by those air emissions. The goal of the air pathway risk analysis was to characterize baseline (pre-LDR) risk and the reduction in baseline risk resulting from regulatory requirements in today's rule.

The Agency's basic approach for the air pathway risk analysis involves the following steps (which are elaborated upon in the RIA background document, which has been placed in the docket for today's rule). (1) EPA used bulk waste concentration data from the TC Survey to represent waste concentrations. (2) the Agency calculated the mean concentration of each constituent at each facility, weighted across the volume of all TC wastes managed at that facility. (3) EPA calculated the unit area managing TC wastes. (4) EPA estimated emissions due to volatilization and dust entrainment for each constituent at each facility. (5) The Agency evaluated the atmospheric transport for each constituent. EPA then estimated exposure concentrations at several downwind points corresponding to potential exposure locations. The Agency employed standard high-end assumptions of body weight (70 kg) and 70-year lifetime. (6) The Agency calculated individual cancer risk and non-cancer risk across the facilities, using the modeled exposure assumptions. (7) EPA calculated population risk for exposed populations. (8) The Agency then simulated the risk under the regulatory requirements in today's rule, and determined the incremental risk reduction.

2. Results Section

a. Volume Results

The Agency has estimated the volumes affected by today's rule. A total of 295,000 tons per year of organic TC wastes (D018–D043) are affected by today's rule; this volume includes 167,000 tons per year of nonwastewaters, 94,000 tons per year of hazardous soil, and 34,000 tons per year of hazardous debris. The volume estimates used in the capacity analysis differ, as described above, from those estimates employed in the regulatory analysis. See the regulatory analysis background document for a more detailed discussion of these differences.

In addition, there are 30 tons per year of Chlorotoluene wastes affected by today's rule. The Agency also estimates that 9,760 tons per year of K069 waste will be affected as a result of the hazardous waste recycling exemption.

b. Cost Results

Exhibit XVI–1 summarizes the results of the cost analysis for today's final rule. In total, today's final rule would have an incremental annual cost of between $194 and $219 million. The lower bound cost estimate represents the effects of waste minimization compliance cost savings. In addition, there is a potential cost savings associated with the UTS standards and the hazardous waste recycling exemption of $2.1 million per year.

EXHIBIT XVI–1.—SUMMARY OF COST IMPACTS

Waste type	Post-regulatory cost (million $/yr)	Baseline cost (million $/yr)	Incremental cost (million $/yr)
Organic TC Wastes (D018–D043):			
Nonwastewaters	175	30	145
Soil	52	17	35
Debris	44	8	36
Waste Minimization			(25)
Chlorotoluenes	0.1	<0.1	<0.1
Test & Recordkeeping			3
Subtotal for All Newly Regulated Wastes	272	56	194 to 219
Previously Regulated Wastes Affected by Rule:			
K069 Recycling Wastes	0	2.0	(2.0)
Cyanide Wastes (UTS Analysis)	66.5	66.6	(0.1)
Subtotal for All Previously Regulated Wastes	66.5	68.6	(2.1)

Note: The cost impact shown for waste minimization reflects a potential compliance cost savings, and therefore is shown as a range. See the write up of the waste minimization results for more details.

i. Organic TC Wastes

As described above, EPA conducted a facility specific cost analysis for those facilities managing organic TC waste. The incremental costs for the TC wastes, presented in Exhibit XVI–1, are between $191 and $216 million per year. Sixty-seven percent of the total cost, in the upper bound, is for the treatment of organic TC nonwastewaters, and 16 percent and 17 percent is for the treatment of organic TC contaminated soil and debris, respectively.

ii. Other Newly Regulated Wastes

Since current management practices show that no coke by-product wastes are landfilled, as a result of the coke by-product listing rule (August 18, 1992, at 57 FR 37284), EPA estimates that there are no cost impacts associated with the treatment standards for coke by-product wastes. The incremental cost for chlorinated toluenes is estimated to be less than $0.1 million annually.

iii. Testing, Recordkeeping, Permit Modification Costs

The analysis of the testing requirements in today's rule estimates incremental costs of approximately $3 million per year. The costs for the recordkeeping requirements were estimated to be approximately $490,000 per year. These costs are described in more detail in the Regulatory Impact Analysis background document developed for today's rule, which has been placed in the Agency's docket.

c. Waste Minimization

Through the methodology outlined above, the Agency analyzed the cost implications of waste management alternatives involving waste minimization in today's rule. The analysis shows that there is a potential savings of $25 million per year quantifiable in comparing current management practices to waste minimization activities which could be implemented. The Agency presents the cost impact of today's rule as a range from $0 to $25 million per year, representing the cost savings possible through waste minimization activities.

In performing the waste minimization analysis, the Agency focused on specific process for two industries for which data were available. This approach allowed the analysis to be detailed in nature, providing a close examination of facility compliance alternatives. However, in doing so, the Agency believes it has underestimated the potential savings due to waste minimization. In addition, the Agency has not attempted to address any further source reduction, waste minimization, or innovative technology development which may result from today's rule.

d. Economic Impact Results

For the 14 companies with non-commercial, or captive, landfills that receive the company's waste (from the TC Survey), only one company would have a ratio of incremental compliance cost to cost of operations greater than one-half percent; all other facilities would experience even lower economic impacts resulting from today's rule.

Since no costs are associated with the treatment standards for coke by-products, no economic impacts are expected. Based on a ratio analysis of incremental cost to total sales, none of the chlorinated toluene generating facilities is expected to experience significant impacts as a result of the final rule.

e. Benefit Estimate Results

The benefit estimates for today's rule include both reduction in risk to human health, as well as incremental cost savings. Cost savings are estimated for the Universal Treatment Standards (UTS), cost savings resulting from changes to the hazardous waste recycling exemptions. Human health benefits are estimated for cancer and non-cancer risks.

However, there are some benefits which the Agency has not attempted to quantify which are potentially attributable to today's rule. For example, the Agency has not attempted to quantify any potential non-use value benefits from protection of resources through treatment of hazardous wastes.

Furthermore, the risk analysis performed by the Agency for today's rule does not account for many other potential benefits from today's rule. Ecological risk reduction from treatment of wastes under today's rule has not been quantified. Nor do the Agency's air and groundwater benefit estimates account for karst terrain, complex flow situations, or other factors which could contribute to underestimates of benefits. These unquantified benefits are discussed at greater length in the regulatory impact background document for today's rule.

i. Universal Treatment Standards Analysis

The Agency's analysis of the cost impacts realized due to the Universal Treatment Standards requiring/allowing a change in treatment technology from that required under the existing standards produced a cost savings of approximately $100,000 per year. The only wastes for which the Agency found that the UTS standards required/allowed a change in treatment were the cyanide wastes.

The Agency received a number of favorable comments on the adoption of the UTS standards. These commenters stated that the UTS would allow them to save much more in operation costs than the Agency has quantified in the above analysis. One commenter stated that they would save approximately $366,000 annually and 1736 hours per year in manhour savings associated with the UTS for F024. And another commenter stated that they would save approximately $740,000 per year as a result of the UTS. A more thorough description of these cost savings is shown in the Regulatory Impact Analysis background document developed for today's rule, which has been placed in the Agency's docket.

ii. Hazardous Waste Recycling Exemption

The analysis performed by the Agency for the cost impacts associated with the recycling exemption for K069 produced a savings of approximately $2 million per year. A detailed description of the cost savings for K069 is shown in the Regulatory Impact Analysis background document developed for today's rule, which has been placed in the Agency's docket.

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iii. Results—Groundwater Pathway

This section presents results for the baseline and post-regulatory risk analyses. For each case, results for individual cancer and non-cancer risk are presented for both high end (i.e. the 90th percentile of the distribution) and central tendency (i.e. 50th percentile of the distribution) risk estimates. The section concludes with population risk estimates for cancer risks.

The results, presented in full in the RIA background document which is included in the docket for today's rule, show that the central tendency cancer risk estimate is expected to be zero. The high-end individual cancer risk is 4×10^{-7}. For the post-regulatory scenario, EPA assumed that all constituents would be treated to universal standards. For the post-regulatory case, the central tendency risk estimate is zero, and the high-end risk estimate is 3×10^{-6}.

Using the distribution of individual risks, the Agency calculated baseline and post-regulatory cancer population risks. Based on these assumptions, EPA estimates the baseline population cancer risk to be 0.24 cases per year in the central tendency. The post-regulatory population cancer risk is about 0.02 cases per year in the central tendency. In other words, the regulatory option reduces 0.22 cases per year in the central tendency.

For the non-cancer risks, the analysis shows that the 99th percentile baseline exposure level is less than the reference dose, using central tendency assumptions. The population risk estimates show 2000 people, in the central tendency scenario, who are exposed to non-cancer risk above the threshold.

There are a number of limitations to the groundwater pathway analysis. The timeframe to which these benefits are attributable begins 30 years following promulgation of the rule. The analysis does not account for any existing regulations which would mitigate risks from groundwater (e.g., Clean Water Act). In addition, one of the wastestreams which contributes a large proportion of the groundwater population risk is made up primarily of PCBs, which are not expected to migrate any appreciable distance in groundwater. The DAF used in the analysis was calculated based on drinking wells being within one mile of the facility, and was not adjusted to accord with the population estimates used in the analysis which are based on a two-mile distance. The DAF distribution is not constituent-specific and accounts only for homogeneous flow situations.

iv. Results—Air Pathway

This section provides results for the air pathway, for the baseline and post-regulatory scenarios.

It should be noted that the high end scenario models hypothetical receptors. Approximately 26 of the 35 modeled facilities (74 percent) have individual cancer risks exceeding 10^{-6} for the high end scenario in the baseline. For the high end scenario, the non-cancer risk ratio exceeds one at one facility.

In the post-regulatory scenario, individual cancer risk is lowered considerably, indicating that at most of the facilities risk is driven by TC constituents. In the high end scenario, eight facility(s) have risks exceeding 10^{-6}. Doses of all non-carcinogens are well below reference doses.

For the population risk estimates, the Agency determined that the central tendency incremental benefits are approximately 0.037. For the incremental benefits of today's rule, the Agency performed a sensitivity analysis, described in the RIA background document, which examines the risk implications of changing volatilization rates under different assumptions of landfill cover and frequency of waste placement.

There are a number of limitations to the air pathway analysis. Facilities which were modeled in the analysis were assumed to continue to dispose of treated waste on-site, which, for some facilities, may not be the case. In addition, due to limitations in the model employed, wastes were assumed to be disposed of only one time per year. A sensitivity analysis was conducted and is included in the RIA Background Document, which examines the effect on the emissions rate from this assumption. Finally, only wastestreams with all the necessary information were analyzed. This limitation could have the effect of either under- or overestimating the risks from the air pathway.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, when an agency publishes a notice of rulemaking, for a rule that will have a significant effect on a substantial number of small entities, the agency must prepare and make available for public comment a regulatory flexibility analysis that considers the effect of the rule on small entities (i.e.: small businesses, small organizations, and small governmental jurisdictions). Under the Agency's Revised Guidelines for Implementing The Regulatory Flexibility Act, dated May 4, 1992, the Agency committed to considering regulatory alternatives in rulemakings when there were any economic impacts estimated on any small entities. Previous guidance required regulatory alternatives to be examined only when significant economic effects were estimated on a substantial number of small entities.

In assessing the regulatory approach for dealing with small entities in today's final rule, for both surface disposal of wastes and underground injection control, the Agency considered two factors. First, data on potentially affected small entities are unavailable. Second, due to the statutory requirements of the RCRA LDR program, no legal avenues exist for the Agency to provide relief from the LDR's for small entities. The only relief available for small entities is the existing small quantity generator provisions and conditionally exempt small quantity generator exemptions found in 40 CFR 262.11–12, and 261.5, respectively. These exemptions basically prescribe 100 kilograms (kg) per calendar month generation of hazardous waste as the limit below which one is exempted from complying with the RCRA standards.

Given these two factors, the Agency was unable to frame a series of small entity options from which to select the lowest cost approach; rather, the Agency was legally bound to regulate the land disposal of the hazardous wastes covered in today's rule without regard to the size of the entity being regulated.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and have been assigned control number 2050–0085. This rule will reduce the average reporting burden an estimated 0.75 hours per response, due to decreased paperwork requirements. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., S.W. (Mail Code 2138); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects

40 CFR Part 148

Environmental protection, Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 260

Administrative practice and procedure, Hazardous waste.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 264

Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 265

Hazardous waste, Packaging and containers.

40 CFR Part 266

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Penalties, Reporting and recordkeeping requirements.

Dated: July 29, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Section 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*

2. Section 148.17 is amended by redesignating paragraph (b) as (d), redesignating paragraph (c) as (e), and by adding paragraphs (b) and (c) to read as follows:

§ 148.17 Waste specific prohibitions; newly listed wastes.

* * * * *

(b) Effective December 19, 1994 the wastes specified in 40 CFR 261.32 as EPA Hazardous waste numbers K141, K142, K143, K144, K145, K147, K148, K149, K150, and K151, are prohibited from underground injection.

(c) Effective September 19, 1995 the wastes specified in 40 CFR 261.23 as D001 (High TOC Subcategory as specified at 40 CFR 268.40), and in 40 CFR 261.24 as EPA Hazardous waste numbers D012, D013, D014, D015, D016, and D017 are prohibited from underground injection.

* * * * *

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

3. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

4. In § 260.30, the introductory text and paragraph (b) are revised to read as follows:

§ 260.30 Variances from classification as a solid waste.

In accordance with the standards and criteria in § 260.31 and the procedures in § 260.33, the Administrator may determine on a case-by-case basis that the following recycled materials are not solid wastes:

* * * * *

(b) Materials that are reclaimed and then reused within the original production process in which they were generated; and

* * * * *

5. In § 260.31, the introductory text of both paragraph (a) and (b), is revised to read as follows:

§ 260.31 Standards and criteria for variances from classification as a solid waste.

(a) The Administrator may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The Administrator's decision will be based on the following criteria:

* * * * *

(b) The Administrator may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

* * * * *

6. In § 260.32, the introductory text is revised to read as follows:

§ 260.32 Variance to be classified as a boiler.

In accordance with the standards and criteria in § 260.10 (definition of "boiler"), and the procedures in § 260.33, the Administrator may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in § 260.10, after considering the following criteria:

* * * * *

7. § 260.33 is revised to read as follows:

§ 260.33 Procedures for variances from classification as a solid waste or to be classified as a boiler.

The Administrator will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed controlled flame combustion devices as boilers:

(a) The applicant must apply to the Administrator for the variance. The application must address the relevant criteria contained in § 260.31 or § 260.32.

(b) The Administrator will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the recycler is located. The Administrator will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The Administrator will issue a final decision after receipt of comments and after the hearing (if any).

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

8. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

9. Section 261.2 is amended by revising paragraph (e)(1)(iii) to read as follows:

§ 261.2 Definition of solid waste.

* * * * *

(e) * * *

(1) * * *

(iii) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a

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secondary process, the materials must be managed such that there is no placement on the land.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

10. The authority citation for Part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

11. In § 264.1, paragraph (g)(6) is revised to read as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(g) * * *

(6) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in § 260.10 of this chapter, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in § 268.40 of this chapter, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in § 264.17(b).

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

12. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6935, and 6936.

13. In § 265.1, paragraph (c)(10) is revised to read as follows:

§ 265.1 Purpose, scope, and applicability.

* * * * *

(c) * * *

(10) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in § 260.10 of this chapter, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in § 268.40 of this chapter, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in § 265.17(b).

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

14. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6934.

Subpart C—Recyclable Materials Used in a Manner Constituting Disposal

15. In § 266.23, paragraph (a) is revised to read as follows:

§ 266.23 Standards applicable to users of materials that are used in a manner that constitutes disposal.

(a) Owners or operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of subparts A through N of parts 124, 264, 265, 268, and 270 of this chapter and the notification requirement under section 3010 of RCRA. (These requirements do not apply to products which contain these recyclable materials under the provisions of § 266.20(b) of this chapter.)

* * * * *

Subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces

16. In § 266.100, the introductory text in paragraphs (c)(1), (c)(3), (c)(3)(i), and (c)(3)(ii); and paragraph (c)(3)(i)(A) are revised to read as follows:

§ 266.100 Applicability

* * * * *

(c) * * *

(1) To be exempt from §§ 266.102 through 266.111, an owner or operator of a metal recovery furnace or mercury recovery furnace, must comply with the following requirements, except that an owner or operator of a lead or a nickel-chromium recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must comply with the requirements of paragraph (c)(3) of this section:

* * * * *

(3) To be exempt from §§ 266.102 through 266.111, an owner or operator of a lead or nickel-chromium or mercury recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must provide a one-time written notice to the Director identifying each hazardous waste burned and specifying whether the owner or operator claims an exemption for each waste under this paragraph or paragraph (c)(1) of this section. The owner or operator must comply with the requirements of paragraph (c)(1) of this section for those wastes claimed to be exempt under that paragraph and must comply with the requirements below for those wastes claimed to be exempt under this paragraph (c)(3).

(i) The hazardous wastes listed in appendices XI, XII, and XIII, part 266, and baghouse bags used to capture metallic dusts emitted by steel manufacturing are exempt from the requirements of paragraph (c)(1) of this section, provided that:

(A) A waste listed in appendix IX of this part must contain recoverable levels of lead, a waste listed in appendix XII of this part must contain recoverable levels of nickel or chromium, a waste listed in appendix XIII of this part must contain recoverable levels of mercury and contain less than 500 ppm of 40 CFR part 261, appendix VIII organic constituents, and baghouse bags used to capture metallic dusts emitted by steel manufacturing must contain recoverable levels of metal; and

* * * * *

(ii) The Director may decide on a case-by-case basis that the toxic organic constituents in a material listed in appendix XI, XII, or XIII of this part that contains a total concentration of more than 500 ppm toxic organic compounds listed in appendix VIII, part 261 of this chapter, may pose a hazard to human health and the environment when burned in a metal recovery furnace exempt from the requirements of this subpart. In that situation, after adequate notice and opportunity for comment, the metal recovery furnace will become subject to the requirements of this subpart when burning that material. In making the hazard determination, the Director will consider the following factors:

* * * * *

Appendix XIII to Part 266 [Added]

17. Appendix XIII is added to read as follows:

Appendix XIII to Part 266—Mercury Bearing Wastes That May Be Processed in Exempt Mercury Recovery Units

These are exempt mercury-bearing materials with less than 500 ppm of 40 CFR Part 261, appendix VIII organic constituents when generated by manufacturers or users of mercury or mercury products.

1. Activated carbon
2. Decomposer graphite
3. Wood
4. Paper
5. Protective clothing
6. Sweepings
7. Respiratory cartridge filters
8. Cleanup articles

9. Plastic bags and other contaminated containers
10. Laboratory and process control samples
11. K106 and other wastewater treatment plant sludge and filter cake
12. Mercury cell sump and tank sludge
13. Mercury cell process solids
14. Recoverable levels or mercury contained in soil

PART 268—LAND DISPOSAL RESTRICTIONS

18. The authority citation for Part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

19. In § 268.1, paragraphs (c)(3)(ii), (e)(4), and (e)(5) are revised, and paragraph (c)(3)(iii) is added, to read as follows:

§ 268.1 Purpose, scope and applicability.

* * * * *

(c) * * *

(3) * * *

(ii) Do not exhibit any prohibited characteristic of hazardous waste at the point of injection; and

(iii) If at the point of generation the injected wastes include D001 High TOC subcategory wastes or D012–D017 pesticide wastes that are prohibited under § 148.17(c) of this chapter, those wastes have been treated to meet the treatment standards of § 268.40 before injection.

* * * * *

(e) * * *

(4) *De minimis* losses to wastewater treatment systems of commercial chemical product or chemical intermediates that are ignitable (D001), corrosive (D002), or are organic constituents that exhibit the characteristic of toxicity (D012–D043), and that contain underlying hazardous constituents as defined in § 268.2(i), are not considered to be prohibited wastes. *De minimis* is defined as losses from normal material handling operations (e.g. spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; and relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

(5) Land disposal prohibitions for hazardous characteristic wastes do not apply to laboratory wastes displaying the characteristic of ignitability (D001), corrosivity (D002), or organic toxicity (D012—D043), that are mixed with other plant wastewaters at facilities whose ultimate discharge is subject to regulation under the CWA (including wastewaters at facilities which have eliminated the discharge of wastewater), provided that the annualized flow of laboratory wastewater into the facility's headworks does not exceed one per cent, or provided that the laboratory wastes' combined annualized average concentration does not exceed one part per million in the facility's headworks.

20. In § 268.2, paragraphs (g) and (i) are revised to read as follows:

§ 268.2 Definitions applicable in this part.

* * * * *

(g) *Debris* means solid material exceeding a 60 mm particle size that is intended for disposal and that is: A manufactured object; or plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in Subpart D, Part 268, namely lead acid batteries, cadmium batteries, and radioactive lead solids; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and Intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by § 268.45 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

* * * * *

(i) *Underlying hazardous constituent* means any constituent listed in § 268.48, Table UTS—Universal Treatment Standards, except zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific UTS treatment standard.

21. Section 268.7 is amended by revising paragraphs (a) and (b)(4)(ii), and by adding paragraph (b)(5)(iv) to read as follows:

§ 268.7 Waste analysis and recordkeeping.

(a) Except as specified in § 268.32, if a generator's waste is listed in 40 CFR part 261, subpart D, the generator must test his waste, or test an extract using test method 1311 (the Toxicity Characteristic Leaching Procedure, described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 as incorporated by reference in § 260.11 of this chapter), or use knowledge of the waste, to determine if the waste is restricted from land disposal under this part. Except as specified in § 268.32, if a generator's waste exhibits one or more of the characteristics set out at 40 CFR part 261, subpart C, the generator must test an extract using test method 1311 (the Toxicity Characteristic Leaching Procedure, described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW–846)), or use knowledge of the waste, to determine if the waste is restricted from land disposal under this Part. If the generator determines that his waste exhibits the characteristic of ignitability (D001) (and is not in the High TOC Ignitable Liquids Subcategory or is not treated by CMBST or RORGS of § 268.42, Table 1), or the characteristic of corrosivity (D002), and is prohibited under § 268.37, and/or the characteristic of organic toxicity (D012–D043), and is prohibited under § 268.38, the generator must determine the underlying hazardous constituents (as defined in § 268.2, in the D001, D002, or D012–D043 wastes.

(1) If a generator determines that he is managing a restricted waste under this part and the waste does not meet the applicable treatment standards set forth in Subpart D of this part or exceeds the applicable prohibition levels set forth in § 268.32 or RCRA section 3004(d), with each shipment of waste the generator must notify the treatment or storage facility in writing of the appropriate treatment standards set forth in Subpart D of this part and any applicable prohibition levels set forth in § 268.32 or RCRA section 3004(d). The notice must include the following information:

(i) EPA Hazardous Waste Number;

(ii) The waste constituents that the treater will monitor, if monitoring will not include all regulated constituents, for wastes F001–F005, F039, D001, D002, and D012–D043. Generators must also include whether the waste is a nonwastewater or wastewater (as defined in § 268.2(d) and (f), and indicate the subcategory of the waste (such as "D003 reactive cyanide"), if applicable;

(iii) The manifest number associated with the shipment of waste;

(iv) For hazardous debris when using the alternative treatment technologies provided by § 268.45:

(A) The contaminants subject to treatment, as described in § 268.45(b), and

(B) An indication that these contaminants are being treated to comply with § 268.45.

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(v) For hazardous debris when using the treatment standards for the contaminating waste(s) in § 268.40: the requirements described in paragraphs (a)(1) (i), (ii), (iii), and (vi) of this section.

(2) If a generator determines that he is managing a restricted waste under this Part, and determines that the waste can be land disposed without further treatment, with each shipment of waste he must submit, to the treatment, storage, or land disposal facility, a notice and a certification stating that the waste meets the applicable treatment standards set forth in subpart D of this part and the applicable prohibition levels set forth in § 268.32 or RCRA section 3004(d). Generators of hazardous debris that is excluded from the definition of hazardous waste under § 261.3(e)(2) of this chapter (i.e., debris that the Director has determined does not contain hazardous waste), however, are not subject to these notification and certification requirements.

(i) The notice must include the following information:

(A) EPA Hazardous Waste Number;

(B) The waste constituents that the treater will monitor, if monitoring will not include all regulated constituents, for wastes F001–F005, F039, D001, D002, and D012–D043. Generators must also include whether the waste is a nonwastewater or wastewater (as defined in § 268.2 (d) and (f)), and indicate the subcategory of the waste (such as "D003 reactive cyanide"), if applicable;

(C) The manifest number associated with the shipment of waste;

(D) Waste analysis data, where available.

(ii) The certification must be signed by an authorized representative and must state the following:

I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in 40 CFR Part 268 Subpart D and all applicable prohibitions set forth in 40 CFR 268.32 or RCRA section 3004(d). I believe that the information I submitted is true, accurate and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment.

(3) If a generator's waste is subject to an exemption from a prohibition on the type of land disposal method utilized for the waste (such as, but not limited to, a case-by-case extension under § 268.5, an exemption under § 268.6, or a nationwide capacity variance under subpart C of this part), with each shipment of waste he must submit a notice to the facility receiving his waste stating that the waste is not prohibited from land disposal. The notice must include the following information:

(i) EPA Hazardous Waste Number;

(ii) The waste constituents that the treater will monitor, if monitoring will not include all regulated constituents, for wastes F001–F005, F039, D001, D002, and D012–D043. Generators must also include whether the waste is a nonwastewater or wastewater (as defined in § 268.2 (d) and (f)), and indicate the subcategory of the waste (such as "D003 reactive cyanide"), if applicable;

(iii) The manifest number associated with the shipment of waste;

(iv) Waste analysis data, where available;

(v) For hazardous debris when using the alternative treatment technologies provided by § 268.45:

(A) The contaminants subject to treatment, as described in § 268.45(b); and

(B) An indication that these contaminants are being treated to comply with § 268.45.

(vi) For hazardous debris when using the treatment standards for the contaminating waste(s) in § 268.40: the requirements described in paragraphs (a)(1) (i), (ii), (iii), and (vi) of this section.

(4) If a generator is managing prohibited waste in tanks, containers, or containment buildings regulated under 40 CFR 262.34, and is treating such waste in such tanks, containers, or containment buildings to meet applicable treatment standards under subpart D of this part, the generator must develop and follow a written waste analysis plan which describes the procedures the generator will carry out to comply with the treatment standards. (Generators treating hazardous debris under the alternative treatment standards of Table 1, § 268.45, however, are not subject to these waste analysis requirements.) The plan must be kept on site in the generator's records, and the following requirements must be met:

(i) The waste analysis plan must be based on a detailed chemical and physical analysis of a representative sample of the prohibited waste(s) being treated, and contain all information necessary to treat the waste(s) in accordance with the requirements of this Part, including the selected testing frequency.

(ii) Such plan must be filed with the EPA Regional Administrator (or his designated representative) or State authorized to implement Part 268 requirements a minimum of 30 days prior to the treatment activity, with delivery verified.

(iii) Wastes shipped off-site pursuant to this paragraph must comply with the notification requirements of § 268.7(a)(2).

(5) If a generator determines whether the waste is restricted based solely on his knowledge of the waste, all supporting data used to make this determination must be retained on-site in the generator's files. If a generator determines whether the waste is restricted based on testing this waste or an extract developed using the test method described in Appendix I of this part, all waste analysis data must be retained on-site in the generator's files.

(6) If a generator determines that he is managing a restricted waste that is excluded from the definition of hazardous or solid waste or exempt from Subtitle C regulation, under 40 CFR 261.2 through 261.6 subsequent to the point of generation, he must place a one-time notice stating such generation, subsequent exclusion from the definition of hazardous or solid waste or exemption from RCRA Subtitle C regulation, and the disposition of the waste, in the facility's file.

(7) Generators must retain on-site a copy of all notices, certifications, demonstrations, waste analysis data, and other documentation produced pursuant to this section for at least five years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal. The five year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator. The requirements of this paragraph apply to solid wastes even when the hazardous characteristic is removed prior to disposal, or when the waste is excluded from the definition of hazardous or solid waste under 40 CFR 261.2 through 261.6, or exempted from RCRA Subtitle C regulation, subsequent to the point of generation.

(8) If a generator is managing a lab pack waste and wishes to use the alternative treatment standard under § 268.42(c), with each shipment of waste the generator must submit a notice to the treatment facility in accordance with paragraph (a)(1) of this section, except that underlying hazardous constituents need not be determined. The generator must also comply with the requirements in paragraphs (a)(5) and (a)(6) of this section and must submit the following certification, which must be signed by an authorized representative:

I certify under penalty of law that I personally have examined and am familiar with the waste and that the lab pack contains only wastes which have not been excluded under appendix IV to 40 CFR part 268 or solid wastes not subject to regulation under 40 CFR part 261. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.

(9) [Reserved]

(10) Small quantity generators with tolling agreements pursuant to 40 CFR 262.20(e) must comply with the applicable notification and certification requirements of paragraph (a) of this section for the initial shipment of the waste subject to the agreement. Such generators must retain on-site a copy of the notification and certification, together with the tolling agreement, for at least three years after termination or expiration of the agreement. The three-year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

(b) * * *

(4) * * *

(ii) The waste constituents to be monitored, if monitoring will not include all regulated constituents, for wastes F001–F005, F039, D001, D002, and D012–D043. Generators must also include whether the waste is a nonwastewater or wastewater (as defined in § 268.2 (d) and (f), and indicate the subcategory of the waste (such as D003 reactive cyanide), if applicable.

* * * * *

(5) * * *

(iv) For characteristic wastes D001, D002, and D012–D043 that are: subject to the treatment standards in § 268.40 (other than those expressed as a required method of treatment); that are reasonably expected to contain underlying hazardous constituents as defined in § 268.2(i); are treated on-site to remove the hazardous characteristic; and are then sent off-site for treatment of underlying hazardous constituents, the certification must state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of 40 CFR 268.40 to remove the hazardous characteristic. This decharacterized waste contains underlying hazardous constituents that require further treatment to meet universal treatment standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

* * * * *

22. In § 268.9, paragraph (a), (d)(1)(i), and (d)(1)(ii) are revised, (d)(1)(iii) is removed and (d)(2) (i) and (ii) are added to read as follows:

§ 268.9 Special rules regarding wastes that exhibit a characteristic.

(a) The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under subpart D of this part. For purposes of part 268, the waste will carry the waste code for any applicable listing under 40 CFR part 261, subpart D. In addition, the waste will carry one or more of the waste codes under 40 CFR part 261, subpart C, where the waste exhibits a characteristic, except in the case when the treatment standard for the waste code listed in 40 CFR part 261, subpart D operates in lieu of the treatment standard for the waste code under 40 CFR part 261, subpart C, as specified in paragraph (b) of this section. If the generator determines that his waste displays the characteristic of ignitability (D001) (and is not in the High TOC Ignitable Liquids Subcategory or is not treated by CMBST, or RORGS), or the waste code listed in 40 CFR part 261, subpart D operates in lieu of the treatment standard for the waste code under 40 CFR part 261, subpart C, as specified in paragraph (b) of this section. If the generator determines that his waste displays the characteristic of ignitability (D001) (and is not in the High TOC Ignitable Liquids Subcategory or is not treated by CMBST, or RORGS), or the characteristic of corrosivity (D002), and is prohibited under § 268.37; or that his waste displays the characteristic of toxicity (D012–D043), and is prohibited under § 268.38, the generator must determine the underlying hazardous constituents (as defined in § 268.2), in the D001, D002, or D012–D043 wastes.

* * * * *

(d) * * *

(1) * * *

(i) Name and address of the RCRA Subtitle D facility receiving the waste shipment; and

(ii) A description of the waste as initially generated, including the applicable EPA Hazardous Waste Number(s), treatability group(s), and underlying hazardous constituents (as defined in § 268.2(i) in D001 and D002 wastes prohibited under § 268.37, or D012–D043 wastes under § 268.38.

(2) * * *

(i) If treatment removes the characteristic but does not treat underlying hazardous constituents, then the certification found in § 268.7 (b)(5)(v) apply.

(ii) [Reserved]

Subpart C—Prohibitions on Land Disposal

23. In subpart C, § 268.38 is added to read as follows:

§ 268.38 Waste specific prohibitions—newly identified organic toxicity characteristic wastes and newly listed coke by-product and chlorotoluene production wastes.

(a) Effective December 19, 1994, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K141, K142, K143, K144, K145, K147, K148, K149, K150, and K151 are prohibited from land disposal. In addition, debris contaminated with EPA Hazardous Waste numbers F037, F038, K107–K112, K117, K118, K123–K126, K131, K132, K136, U328, U353, U359, and soil and debris contaminated with D012–D043, K141–K145, and K147–K151 are prohibited from land disposal. The following wastes that are specified in 40 CFR 261.24, Table 1 as EPA Hazardous Waste numbers: D012, D013, D014, D015, D016, D017, D018, D019, D020, D021, D022, D023, D024, D025, D026, D027, D028, D029, D030, D031, D032, D033, D034, D035, D036, D037, D038, D039, D040, D041, D042, D043 that are not radioactive, or that are managed in systems other than those whose discharge is regulated under the Clean Water Act (CWA), or that are zero dischargers that do not engage in CWA-equivalent treatment before ultimate land disposal, or that are injected in Class I deep wells regulated under the Safe Drinking Water Act (SDWA), are prohibited from land disposal. CWA-equivalent treatment means biological treatment for organics, alkaline chlorination or ferrous sulfate precipitation for cyanide, precipitation/sedimentation for metals, reduction of hexavalent chromium, or other treatment technology that can be demonstrated to perform equally or better than these technologies.

(b) On September 19, 1996, radioactive wastes that are mixed with D018–D043 that are managed in systems other than those whose discharge is regulated under the Clean Water Act (CWA), or that inject in Class I deep wells regulated under the Safe Drinking Water Act (SDWA), or that are zero dischargers that engage in CWA-equivalent treatment before ultimate land disposal, are prohibited from land disposal. CWA-equivalent treatment means biological treatment for organics, alkaline chlorination or ferrous sulfate precipitation for cyanide, precipitation/sedimentation for metals, reduction of hexavalent chromium, or other treatment technology that can be

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demonstrated to perform equally or greater than these technologies. Radioactive wastes mixed with K141–K145, and K147–K151 are also prohibited from land disposal. In addition, soil and debris contaminated with these radioactive mixed wastes are prohibited from land disposal.

(c) Between December 19, 1994 and September 19, 1996, the wastes included in paragraphs (b) of this section may be disposed in a landfill or surface impoundment, only if such unit is in compliance with the requirements specified in § 268.5(h)(2) of this Part.

(d) The requirements of paragraphs (a), (b), and (c) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in Subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable alternate treatment standards established pursuant to a petition granted under § 268.44;

(4) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to these wastes covered by the extension.

(e) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in § 268.40, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable Subpart D levels, the waste is prohibited from land disposal, and all requirements of part 268 are applicable, except as otherwise specified.

Subpart D—Treatment Standards

24. Section 268.40 is revised to read as follows:

§ 268.40 Applicability of Treatment Standards.

(a) A waste identified in the table "Treatment Standards for Hazardous Wastes" may be land disposed only if it meets the requirements found in the table. For each waste, the table identifies one of three types of treatment standard requirements:

(1) All hazardous constituents in the waste or in the treatment residue must be at or below the values found in the table for that waste ("total waste standards"); or

(2) The hazardous constituents in the extract of the waste or in the extract of the treatment residue must be at or below the values found in the table ("waste extract standards"); or

(3) The waste must be treated using the technology specified in the table ("technology standard"), which are described in detail in § 268.42, Table 1—Technology Codes and Description of Technology-Based Standards.

(b) For wastewaters, compliance with concentration level standards is based on maximums for any one day, except for D004 through D011 wastes for which the previously promulgated treatment standards based on grab samples remain in effect. For all nonwastewaters, compliance with concentration level standards is based on grab sampling. For wastes covered by the waste extract standards, the test Method 1311, the Toxicity Characteristic Leaching Procedure found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW–846, as incorporated by reference in § 260.11, must be used to measure compliance. An exception is made for D004 and D008, for which either of two test methods may be used: Method 1311, or Method 1310, the Extraction Procedure Toxicity Test. For wastes covered by a technology standard, the wastes may be land disposed after being treated using that specified technology or an equivalent treatment technology approved by the Administrator under the procedures set forth in § 268.42(b).

(c) When wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue must meet the lowest treatment standard for the constituent of concern.

(d) Notwithstanding the prohibitions specified in paragraph (a) of this section, treatment and disposal facilities may demonstrate (and certify pursuant to 40 CFR 268.7(b)(5)) compliance with the treatment standards for organic constituents specified by a footnote in the table "Treatment Standards for Hazardous Wastes" in this section, provided the following conditions are satisfied:

(1) The treatment standards for the organic constituents were established based on incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O, or based on combustion in fuel substitution units operating in accordance with applicable technical requirements;

(2) The treatment or disposal facility has used the methods referenced in paragraph (d)(1) of this section to treat the organic constituents; and

(3) The treatment or disposal facility may demonstrate compliance with organic constituents if good-faith analytical efforts achieve detection limits for the regulated organic constituents that do not exceed the treatment standards specified in this section by an order of magnitude.

(e) For characteristic wastes (D001, D002, and D012–D043 that are subject to treatment standards in the following table "Treatment Standards for Hazardous Wastes," all underlying hazardous constituents (as defined in § 268.2(i)) must meet Universal Treatment Standards, found in § 268.48, Table UTS; prior to land disposal.

(f) The treatment standards for F001–F005 nonwastewater constituents carbon disulfide, cyclohexanone, and/or methanol apply to wastes which contain only one, two, or three of these constituents. Compliance is measured for these constituents in the waste extract from test Method 1311, the Toxicity Characteristic Leaching Procedure found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW–846, as incorporated by reference in § 260.11. If the waste contains any of these three constituents along with any of the other 25 constituents found in F001–F005, then compliance with treatment standards for carbon disulfide, cyclohexanone, and/or methanol are not required.

Treatment Standards for Hazardous Wastes

Note: The treatment standards that heretofore appeared in tables in §§ 268.41, 268.42, and 268.43 of this part have been consolidated into the table "Treatment Standards for Hazardous Wastes" in this section.

BILLING CODE 6560–50–P

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP" or Technology Code
D001	Ignitable Characteristic Wastes, except for the [261.21(a)(1)] High TOC Subcategory, that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems	NA	NA	DEACT and meet [268.48 standards, or RORGS, or CMBST	DEACT and meet [268.48 standards, or RORGS, or CMBST
	Ignitable Characteristic Wastes, except for the [261.21(a)(1)] High TOC Subcategory, that are managed in CWA/CWA equivalent/Class I SDWA systems	NA	NA	DEACT	DEACT
	High TOC Ignitable Characteristic Liquids Subcategory based on 40 CFR 261.21(a)(1) - Greater than or equal to 10% total organic carbon (Note: This subcategory consists of nonwastewaters only.)	NA	NA	NA	RORGS, or CMBST
D002	Corrosive Characteristic Wastes that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems	NA	NA	DEACT and meet [268.48 standards, or RORGS, or CMBST	DEACT and meet [268.48 standards
	Corrosive Characteristic Wastes that are managed in CWA, CWA-equivalent, or Class I SDWA systems	NA	NA	DEACT	DEACT
D002, D004, D005, D006, D007, D008, D009, D010, D011	Radioactive high-level wastes generated during the reprocessing of fuel rods. (Note: This subcategory consists of nonwastewaters only.)	Corrosivity (pH)	NA	NA	HLVIT
		Arsenic	7440-38-2	NA	HLVIT
		Barium	7440-39-3	NA	HLVIT
		Cadmium	7440-43-9	NA	HLVIT
		Chromium (Total)	7440-47-3	NA	HLVIT
		Lead	7439-92-1	NA	HLVIT
		Mercury	7439-97-6	NA	HLVIT
		Selenium	7782-49-2	NA	HLVIT
		Silver	7440-22-4	NA	HLVIT
D003	Reactive Sulfides Subcategory based on 261.23(a)(5)	NA	NA	DEACT	DEACT
	Explosives Subcategory based on 261.23(a)(6), (7), and (8)	NA	NA	DEACT	DEACT
	Other Reactives Subcategory based on 261.23(a)(1)	NA	NA	DEACT	DEACT
	Water Reactive Subcategory based on 261.23(a)(2), (3), and (4) (Note: This subcategory consists of nonwastewaters only.)	NA	NA	NA	DEACT
	Reactive Cyanides Subcategory based on 261.23(a)(5)	Cyanides (Total)[7]	57-12-5	Reserved	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
D004	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for arsenic based on the extraction procedure (EP) on SW846 Method 1310.	Arsenic	7440-38-2	5.0	5.0 mg/l TCLP
		Arsenic, alternate[6] standard for nonwastewaters only	7440-38-2	NA	5.0 mg/l TCLP
D005	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for barium based on the extraction procedure (EP) on SW846 Method 1310	Barium	7440-39-3	1.00	100 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3] or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP" or Technology Code
D006	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for cadmium based on the extraction procedure (EP) in SW846 Method 1310.	Cadmium	7440-43-9	1.0	1.0 mg/l TCLP
	Cadmium Containing Batteries Subcategory. (Note: This subcategory consists of non-wastewaters only.)	Cadmium	7440-43-9	NA	RTHRM
D007	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for chromium based on the extraction procedure (EP) in SW846 Method 1310.	Chromium (Total)	7440-47-3	5.0	5.0 mg/l TCLP
D008	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for lead based on the extraction procedure (EP) in SW846 Method 1310.	Lead	7439-92-1	5.0	5.0 mg/l EP
		Lead, alternate[6] standard for nonwastewaters only	7439-92-1	NA	5.0 mg/l TCLP
	Lead Acid Batteries Subcategory (Note: The standard only applies to lead acid batteries that are identified as RCRA hazardous wastes and that are not excluded elsewhere from regulation under the land disposal restrictions at 40 CFR 268 or exempted under other EPA regulations (see 40 CFR 266.80).) (Note: This subcategory consists of nonwastewaters only.)	Lead	7439-92-1	NA	RLEAD
	Radioactive Lead Solids Subcategory (Note: these lead solids include, but are not limited to, all forms of lead shielding and other elemental forms of lead. These lead solids do not include treatment residuals such as hydroxide sludges, other wastewater treatment residuals, or incinerator ashes that can undergo conventional pozzolanic stabilization, nor do they include organic-lead materials that can be incinerated and stabilized as ash.) (Note: This subcategory consists of nonwastewaters only.)	Lead	7439-92-1	NA	MACRO
D009	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310, and contain greater than or equal to 260 mg/kg total mercury that also contain organics and are not incinerator residues. (High Mercury-Organic Subcategory)	Mercury	7439-97-6	NA	RMERC, OR RMERC
	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310, and contain greater than or equal to 260 mg/kg total mercury that that are inorganic, including incinerator residues and residues from RMERC. (High Mercury Inorganic Subcategory)	Mercury	7439-97-6	NA	RMERC
	Nonwastewaters that exhibit, or are expec[illegible] to exhibit, the characteristic of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310, and contain less than 260 mg/kg total mercury. (Low Mercury Subcategory)	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	All D009 wastewaters	Mercury	7439-97-6	0.20	IA
	Elemental mercury contaminated with radioactive materials (Note: This subcategory consists of nonwastewaters only.)	Mercury	7439-97-6	NA	AMLGM
	Hydraulic oil contaminated with Mercury Radioactive Materials Subcategory (Note: This subcategory consists of nonwastewaters only.)	Mercury	7439-97-6	NA	IMERC

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3] or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP" or Technology Code
D010	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for selenium based on the extraction procedure (EP) in SW846 Method 1310.	Selenium	7782-49-2	1.0	5.7 mg/l TCLP
D011	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for silver based on the extraction procedure (EP) in SW846 Method 1310.	Silver	7440-22-4	5.0	5.0 mg/l TCLP
D012	Wastes that are TC for Endrin based on the TCLP in SW846 Method 1311.	Endrin	72-20-8	BIODG; or INCIN	0.13 and meet §268.48 standards
		Endrin aldehyde	7421-93-4	BIODG; or INCIN	0.13 and meet §268.48 standards
D013	Wastes that are TC for Lindane based on the TCLP in SW846 Method 1311.	alpha-BHC	319-84-6	CARBN, or INCIN	0.066 and meet §268.48 standards
		beta-BHC	319-85-7	CARBN, or INCIN	0.066 and meet §268.48 standards
		delta-BHC	319-86-8	CARBN, or INCIN	0.066 and meet §268.48 standards
		gamma-BHC (Lindane)	58-89-9	CARBN or INCIN	0.066 and meet §268.48 standards
D014	Wastes that are TC for Methoxychlor based on the TCLP in SW846 Method 1311.	Methoxychlor	72-43-5	WETOX or INCIN	0.18 and meet §268.48 standards
D015	Wastes that are TC for Toxaphene based on the TCLP in SW846 Method 1311.	Toxaphene	8001-35-2	BIODG or INCIN	2.8 and meet §268.48 standards
D016	Wastes that are TC for 2,4-D (2,4-Dichlorophenoxyacetic acid) based on the TCLP in SW846 Method 1311.	2,4-D (2,4-Dichlorophenoxyacetic acid)	94-75-7	CHOXD, BIODG, or INCIN	10 and meet §268.48 standards
D017	Wastes that are TC for 2,4,5-TP (Silvex) based on the TCLP in SW846 Method 1311.	2,4,5-TP (Silvex)	93-72-1	CHOXD or INCIN	7.9 and meet §268.48 standards
D018	Wastes that are TC for Benzene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Benzene	71-43-2	0.14	10 and meet §268.48 standards
D019	Wastes that are TC for Carbon tetrachloride based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Carbon tetrachloride	56-23-5	0.057	6.0 and meet §268.48 standards
D020	Wastes that are TC for Chlordane based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26 and meet §268.48 standards
D021	Wastes that are TC for Chlorobenzene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Chlorobenzene	108-90-7	0.057	6.0 and meet §268.48 standards
D022	Wastes that are TC for Chloroform based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Chloroform	67-66-3	0.046	6.0 and meet §268.48 standards

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TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
D023	Wastes that are TC for o-Cresol based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	o-Cresol	95-48-7	0.11	5.6 and meet §268.48 standards
D024	Wastes that are TC for m-Cresol based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6 and meet §268.48 standards
D025	Wastes that are TC for p-Cresol based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6 and meet §268.48 standards
D026	Wastes that are TC for Cresols (Total) based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations)	1319-77-3	0.88	11.2 and meet §268.48 standards
D027	Wastes that are TC for p-Dichlorobenzene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	p-Dichlorobenzene (1,4-Dichlorobenzene)	106-46-7	0.090	6.0 and meet §268.48 standards
D028	Wastes that are TC for 1,2-Dichloroethane based on the TCLP in SW846 Method 1211 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	1,2-Dichloroethane	107-06-2	0.21	6.0 and meet §268.48 standards
D029	Wastes that are TC for 1,1-Dichloroethylene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	1,1-Dichloroethylene	75-35-4	0.025	6.0 and meet §268.48 standards
D030	Wastes that are TC for 2,4-Dinitrotoluene based on the TCLP in SW846 Method 1211 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	2,4-Dinitrotoluene	121-14-2	0.32	140 and meet §268.48 standards
D031	Wastes that are TC for Heptachlor based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Heptachlor	76-44-8	0.0012	0.008 and meet §268.48 standards
		Heptachlor epoxide	1024-57-3	0.016	0.064 and meet §268.48 standards
D032	Wastes that are TC for Hexachlorobenzene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Hexachlorobenzene	118-74-1	0.055	10 and meet §268.48 standards
D033	Wastes that are TC for Hexachlorobutadiene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Hexachlorobutadiene	87-68-3	0.055	5.6 and meet §268.48 standards
D034	Wastes that are TC for Hexachloroethane based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Hexachloroethane	67-72-1	0.055	30 and meet §268.48 standards
D035	Wastes that are TC for Methyl ethyl ketone based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Methyl ethyl ketone	78-93-3	0.28	36 and meet §268.48 standards

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
D036	Wastes that are TC for Nitrobenzene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Nitrobenzene	98-95-3	0.068	14 and meet §268.48 standards
D037	Wastes that are TC for Pentachlorophenol based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Pentachlorophenol	87-86-5	0.089	7.4 and meet §268.48 standards
D038	Wastes that are TC for Pyridine based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Pyridine	110-86-1	0.014	16 and meet §268.48 standards
D039	Wastes that are TC for Tetrachloroethylene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Tetrachloroethylene	127-18-4	0.056	6.0 and meet §268.48 standards
D040	Wastes that are TC for Trichloroethylene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Trichloroethylene	79-01-6	0.054	6.0 and meet §268.48 standards
D041	Wastes that are TC for 2,4,5-Trichlorophenol based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	2,4,5-Trichlorophenol	95-95-4	0.18	7.4 and meet §268.48 standards
D042	Wastes that are TC for 2,4,6-Trichlorophenol based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	2,4,6-Trichlorophenol	88-06-2	0.035	7.4 and meet §268.48 standards
D043	Wastes that are TC for Vinyl chloride based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Vinyl chloride	75-01-4	0.27	6.0 and meet §268.48 standards
F001, F002, F003, F004, & F005	F001, F002, F003, F004 and/or F005 solvent wastes that contain any combination of one or more of the following spent solvents: acetone, benzene, n-butyl alcohol, carbon disulfide, carbon tetrachloride, chlorinated fluorocarbons, chlorobenzene, o-cresol, m-cresol, p-cresol, cyclohexanone, o-dichlorobenzene, 2-ethoxyethanol, ethyl acetate, ethyl benzene, ethyl ether, isobutyl alcohol, methanol, methylene chloride, methyl ethyl ketone, methyl isobutyl ketone, nitrobenzene, 2-nitropropane, pyridine, tetrachloroethylene, toluene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, 1,1,2-trichloro-1,2,2-trifluoroethane, trichloroethylene, trichloromonofluoromethane, and/or xylenes (except as specifically noted in other subcategories). See further details of these listings in § 261.31	Acetone	67-64-1	0.28	160
		Benzene	71-43-2	0.14	10
		n-Butyl alcohol	71-36-3	5.6	2.6
		Carbon disulfide	75-15-0	3.8	NA
		Carbon tetrachloride	56-23-5	0.057	6.0
		Chlorobenzene	108-90-7	0.057	6.0
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations)	1319-77-3	0.88	11.2
		Cyclohexanone	108-94-1	0.36	NA

Federal Register / Vol. 59, No. 180 / Monday, September 19, 1994 / Rules and Regulations 48053

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Waste Code	Waste Description and Treatment/Regulatory Subcategory	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Ethyl acetate	141-78-6	0.34	33
		Ethyl benzene	100-41-4	0.057	10
		Ethyl ether	60-29-7	0.12	160
		Isobutyl alcohol	78-83-1	5.6	170
		Methanol	67-56-1	5.6	NA
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Methyl isobutyl ketone	108-10-1	0.14	33
		Nitrobenzene	98-95-3	0.068	14
		Pyridine	110-86-1	0.014	16
		Tetrachloroethylene	127-18-4	0.056	6.0
		Toluene	108-88-3	0.080	10
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		1,1,2-Trichloro-1,2,2 trifluoroethane	76-13-1	0.057	30
		Trichloroethylene	79-01-6	0.054	6.0
		Trichloromonofluoromethane	75-69-4	0.020	30
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
	F003 and/or F005 solvent wastes that contain any combination of one or more of the following three solvents as the only listed F001-5 solvents: carbon disulfide, cyclohexanone, and/or methanol. (formerly 268.41(c))	Carbon disulfide	75-15-0	3.8	4.8 mg/l TCLP
		Cyclohexanone	108-94-1	0.36	0.75 mg/l TCLP
		Methanol	67-56-1	5.6	0.75 mg/l TCLP
	F005 solvent waste containing 2-Nitropropane as the only listed F001-5 solvent.	2-Nitropropane	79-46-9	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
	F005 solvent waste containing 2-Ethoxyethanol as the only listed F001-5 solvent.	2-Ethoxyethanol	110-80-5	BIODG or INCIN	INCIN

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F007	Spent cyanide plating bath solutions from electroplating operations.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP

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TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP", or Technology Code
F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	NA
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
F020, F021, F022, F023, F026	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of: (1) tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives, excluding wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol (F020); (2) pentachlorophenol, or of intermediates used to produce its derivatives (i.e., F021); (3) tetra-, penta-, or hexachlorobenzenes under alkaline conditions (i.e., F022). Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of: (1) tri- or tetrachlorophenols, excluding wastes from equipment used only for the production of Hexachlorophene from highly purified 2,4,5-trichlorophene (F023); (2) tetra-, penta-, or hexachlorobenzenes under alkaline conditions (i.e., F026).	HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP", or Technology Code
		Pentachlorophenol	87-86-5	0.089	7.4
F027	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.)	HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
		Pentachlorophenol	87-86-5	0.089	7.4
F028	Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Wastes Nos. F020, F021, F023, F026, and F027.	HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
		Pentachlorophenol	87-86-5	0.089	7.4
F024	Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in §261.31 or §261.32.)	All F024 wastes	NA	INCIN	INCIN
		2-Chloro-1,3-butadiene	126-99-8	0.057	0.28
		3-Chloropropylene	107-05-1	0.036	30
		1,1-Dichloroethane	75-34-3	0.059	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,2-Dichloropropane	78-87-5	0.85	18
		cis-1,3-Dichloropropylene	10061-01-5	0.036	18

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Waste Code	Waste Description and Treatment /Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP"; or Technology Code
		trans-1,3-Dichloropropylene	10061-02-6	0.036	18
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Hexachloroethane	67-72-1	0.055	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
F025	Condensed light ends from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025 - Light Ends Subcategory	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1-Dichloroethylene	75-35-4	0.025	6.0
		Methylene chloride	75-9-2	0.089	30
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Vinyl chloride	75-01-4	0.27	6.0
	Spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025 - Spent Filters/Aids and Desiccants Subcategory	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Methylene chloride	75-9-2	0.089	30
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Vinyl chloride	75-01-4	0.27	6.0

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP"; or Technology Code
F037	Petroleum refinery primary oil/water/solids separation sludge-Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in §261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing.	Acenaphthene	83-32-9	0.059	NA
		Anthracene	120-12-7	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	218-01-9	0.059	3.4
		Di-n-butyl phthalate	84-74-2	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[5]	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
F038	Petroleum refinery secondary (emulsified) oil/water/solids separation sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in §261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological units) and F037, K048, and K051 are not included in this listing.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	218-01-9	0.059	3.4
		Di-n-butyl phthalate	84-74-2	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6

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Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3] or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP" or Technology Code
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes (mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
F039	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under subpart D of this part. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.)	Acenaphthylene	208-96-8	0.059	3.4
		Acenaphthene	83-32-9	0.059	3.4
		Acetone	67-64-1	0.28	160
		Acetonitrile	75-05-8	5.6	NA
		Acetophenone	98-86-2	0.010	9.7
		2-Acetylaminofluorene	53-96-3	0.059	140
		Acrolein	107-02-8	0.29	NA
		Acrylonitrile	107-13-1	0.24	84
		Aldrin	309-00-2	0.021	0.066
		4-Aminobiphenyl	92-67-1	0.13	NA
		Aniline	62-53-3	0.81	14
		Anthracene	120-12-7	0.059	3.4
		Aramite	140-57-8	0.36	NA
		alpha-BHC	319-84-6	0.00014	0.066
		beta-BHC	319-85-7	0.00014	0.066
		delta-BHC	319-86-8	0.023	0.066
		gamma-BHC	58-89-9	0.0017	0.066
		Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3] or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP" or Technology Code
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Benzo(g,h,i)perylene	191-24-2	0.0055	1.8
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Bromodichloromethane	75-27-4	0.35	15
		Methyl bromide (Bromomethane)	74-83-9	0.11	15
		4-Bromophenyl phenyl ether	101-55-3	0.055	15
		n-Butyl alcohol	71-36-3	5.6	2.6
		Butyl benzyl phthalate	85-68-7	0.017	28
		2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	88-85-7	0.066	2.5
		Carbon disulfide	75-15-0	3.8	NA
		Carbon tetrachloride	56-23-5	0.057	6.0
		Chlordane (alpha and gamma isomers)	57-74-8	0.0033	0.26
		p-Chloroaniline	106-47-8	0.46	16
		Chlorobenzene	108-90-7	0.057	6.0
		Chlorobenzilate	510-15-6	0.10	NA
		2-Chloro-1,3-butadiene	126-99-8	0.057	NA
		Chlorodibromomethane	124-48-1	0.057	15
		Chloroethane	75-00-3	0.27	6.0
		bis(2-Chloroethoxy)methane	111-91-1	0.036	7.2
		bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
		Chloroform	67-66-3	0.046	6.0
		bis(2-Chloroisopropyl)ether	108-60-1	0.055	7.2
		p-Chloro-m-cresol	59-50-7	0.018	14
		Chloromethane (Methyl chloride)	74-87-3	0.19	30
		2-Chloronaphthalene	91-58-7	0.055	5.6
		2-Chlorophenol	95-57-8	0.044	5.7

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Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		3-Chloropropylene	107-05-1	0.038	30
		Chrysene	218-01-9	0.059	3.4
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		Cyclohexanone	108-94-1	0.36	NA
		1,2-Dibromo-3-chloropropane	96-12-8	0.11	15
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
		Dibromomethane	74-95-3	0.11	15
		2,4-D (2,4-Dichlorophenoxyacetic acid)	94-75-7	0.72	10
		o,p'-DDD	53-19-0	0.023	0.087
		p,p'-DDD	72-54-8	0.023	0.087
		o,p'-DDE	3424-82-6	0.031	0.087
		p,p'-DDE	72-55-9	0.031	0.087
		o,p'-DDT	789-02-6	0.0039	0.087
		p,p'-DDT	50-29-3	0.0039	0.087
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Dibenz(a,e)pyrene	192-65-4	0.061	NA
		m-Dichlorobenzene	541-73-1	0.036	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Dichlorodifluoromethane	75-71-8	0.23	7.2
		1,1-Dichloroethane	75-34-3	0.059	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1-Dichloroethylene	75-35-4	0.025	6.0
		trans-1,2-Dichloroethylene	156-60-5	0.054	30
		2,4-Dichlorophenol	120-83-2	0.044	14

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		2,6-Dichlorophenol	87-65-0	0.044	14
		1,2-Dichloropropane	78-87-5	0.85	18
		cis-1,3-Dichloropropylene	10061-01-5	0.036	18
		trans-1,3-Dichloropropylene	10061-02-6	0.036	18
		Dieldrin	60-57-1	0.017	0.13
		Diethyl phthalate	84-66-2	0.20	28
		2,4-Dimethyl phenol	105-67-9	0.036	14
		Dimethyl phthalate	131-11-3	0.047	28
		Di-n-butyl phthalate	84-74-2	0.057	28
		1,4-Dinitrobenzene	100-25-4	0.32	2.3
		4,6-Dinitro-o-cresol	534-52-1	0.28	160
		2,4-Dinitrophenol	51-28-5	0.12	160
		2,4-Dinitrotoluene	121-14-2	0.32	140
		2,6-Dinitrotoluene	606-20-2	0.55	28
		Di-n-octyl phthalate	117-84-0	0.017	28
		Di-n-propylnitrosamine	621-64-7	0.40	14
		1,4-Dioxane	123-91-1	NA	170
		Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	NA
		Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	NA
		1,2-Diphenylhydrazine	122-66-7	0.087	NA
		Disulfoton	298-04-4	0.017	6.2
		Endosulfan I	939-98-8	0.023	0.066
		Endosulfan II	33213-6-5	0.029	0.13
		Endosulfan sulfate	1 31-07-8	0.029	0.13
		Endrin	72-20-8	0.002R	0.13
		Endrin aldehyde	7421-93-4	0.025	0.13
		Ethyl acetate	141-78-6	0.34	33

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TREATMENT STANDARDS FOR HAZARDOUS WASTES

REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS	Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]
Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP", or Technology Code		
Ethyl cyanide (Propanenitrile)	107-12-0	0.24	360		
Ethyl benzene	100-41-4	0.057	10		
Ethyl ether	60-29-7	0.12	160		
bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28		
Ethyl methacrylate	97-63-2	0.14	160		
Ethylene oxide	75-21-8	0.12	NA		
Famphur	52-85-7	0.017	15		
Fluoranthene	206-44-0	0.068	3.4		
Fluorene	86-73-7	0.059	3.4		
Heptachlor	76-44-8	0.0012	0.066		
Heptachlor epoxide	1024-57-3	0.016	0.066		
Hexachlorobenzene	118-74-1	0.055	10		
Hexachlorobutadiene	87-68-3	0.055	5.6		
Hexachlorocyclopentadiene	77-47-4	0.057	2.4		
HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001		
HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001		
Hexachloroethane	67-72-1	0.055	30		
Hexachloropropylene	1888-71-7	0.035	30		
Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4		
Iodomethane	74-88-4	0.19	65		
Isobutyl alcohol	78-83-1	5.6	170		
Isodrin	465-73-6	0.021	0.066		
Isosafrole	120-58-1	0.081	2.6		
Kepone	143-50-0	0.0011	0.13		
Methacrylonitrile	126-98-7	0.24	84		
Methanol	67-56-1	5.6	NA		
Methapyrilene	91-80-5	0.081	1.5		
Methiocarb	2032-65	0.25	0.18		

TREATMENT STANDARDS FOR HAZARDOUS WASTES

REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS	Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]
Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP", or Technology Code		
3-Methylcholanthrene	56-49-5	0.0055	15		
4,4-Methylene bis(2-chloroaniline)	101-14-4	0.50	30		
Methylene chloride	75-09-2	0.089	30		
Methyl ethyl ketone	78-93-3	0.28	36		
Methyl isobutyl ketone	108-10-1	0.14	33		
Methyl methacrylate	80-62-6	0.14	160		
Methyl methanesulfonate	66-27-3	0.018	NA		
Methyl parathion	298-00-0	0.014	4.6		
Naphthalene	91-20-3	0.059	5.6		
2-Naphthylamine	91-59-8	0.52	NA		
p-Nitroaniline	100-01-6	0.028	28		
Nitrobenzene	98-95-3	0.068	14		
5-Nitro-o-toluidine	99-55-8	0.32	28		
p-Nitrophenol	100-02-7	0.12	29		
N-Nitrosodiethylamine	55-18-5	0.40	28		
N-Nitrosodimethylamine	62-75-9	0.40	NA		
N-Nitroso-di-n-butylamine	924-16-3	0.40	17		
N-Nitrosomethylethylamine	10595-95-6	0.40	2.3		
N-Nitrosomorpholine	59-89-2	0.40	2.3		
N-Nitrosopiperidine	100-75-4	0.013	35		
N-Nitrosopyrrolidine	930-55-2	0.013	35		
Parathion	56-38-2	0.014	4.6		
Total PCBs (sum of all PCB isomers, or all Aroclors)	1336-36-3	0.10	10		
Pentachlorobenzene	608-93-5	0.055	10		
PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001		
PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001		
Pentachloroethane	76-01-7	0.055	4.8		
Pentachloronitrobenzene	82-68-8	0.055	4.8		
Pentachlorophenol	87-86-5	0.089	7.4		

TREATMENT STANDARDS FOR HAZARDOUS WASTES

REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS	Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]
Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP", or Technology Code		
Phenacetin	62-44-2	0.081	16		
Phenanthrene	85-01-8	0.059	5.6		
Phenol	108-95-2	0.039	6.2		
Phorate	298-02-2	0.021	4.6		
Phthalic acid	100-21-0	0.055	28		
Phthalic anhydride	85-44-9	0.055	28		
Pronamide	23950-58-5	0.093	1.5		
Pyrene	129-00-0	0.067	8.2		
Pyridine	110-86-1	0.014	16		
Reserpine	50-55-5	0.003	5.0		
Safrole	94-59-7	0.081	22		
Silvex (2,4,5-TP)	93-72-1	0.72	7.9		
2,4,5-T	93-76-5	0.72	7.9		
TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001		
TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001		
1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14		
1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0		
1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0		
Tetrachloroethylene	127-18-4	0.056	6.0		
2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4		
Tetraethyldithiopyrophosphate	3689-24-5	0.057	1.4		
Thionazin	297-97-2	0.021	4.6		
Toluene	108-88-3	0.080	10		
Toxaphene	8001-35-2	0.0095	2.6		
Trichloroethylene	79-01-6	0.054	6.0		
Trichlorofluoromethane	75-69-4	0.020	30		
2,4,5-Trichlorophenol	95-95-4	0.18	7.4		
2,4,6-Trichlorophenol	88-06-2	0.035	7.4		
1,2,3-Trichloropropane	96-18-4	0.85	30		
Vinyl chloride	75-01-4	0.27	6.0		
Xylene (mixed)	1330-20-7	0.32	30		

TREATMENT STANDARDS FOR HAZARDOUS WASTES

REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS	Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]
Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP", or Technology Code		
Zinc (Total)	7440-66-6	4.2	4.3		

[1] Wastewaters are defined at 40 CFR 268.2(f). Nonwastewaters are defined at 40 CFR 268.2(d).

[2] CAS means Chemical Abstracts Service.

[3] Except for metals, the concentrations for nonwastewaters are based on analysis of composite samples. Except for metals, the concentrations for wastewaters are based on analysis of grab samples.

[4] Technology Codes are explained in 40 CFR 268.42 Table 1.

[5] Reserved.

[6] Reserved.

[7] Reserved.

[8] Reserved.

[9] Reserved.

[10] Reserved.

[11] Reserved.

[12] Reserved.

[13] Reserved.

[14] Reserved.

[15] Reserved.

[16] Reserved.

[17] Reserved.

[18] Reserved.

[19] Reserved.

[20] Reserved.

[21] Reserved.

[22] Reserved.

[23] Reserved.

[24] Reserved.

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP", or Technology Code
		Phenacetin	62-44-2	0.081	16
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Phorate	298-02-2	0.021	4.6
		Phthalic anhydride	85-44-9	0.055	NA
		Pronamide	23950-58-5	0.093	1.5
		Pyrene	129-00-0	0.067	8.2
		Pyridine	110-86-1	0.014	16
		Safrole	94-59-7	0.081	22
		Silvex (2,4,5-TP)	93-72-1	0.72	7.9
		2,4,5-T	93-76-5	0.72	7.9
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
		Toluene	108-88-3	0.080	10
		Toxaphene	8001-35-2	0.0095	2.6
		Bromoform (Tribromomethane)	75-25-2	0.63	15
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Trichloromonofluoromethane	75-69-4	0.020	30
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP", or Technology Code
		1,2,3-Trichloropropane	96-18-4	0.85	30
		1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	0.057	30
		tris(2,3-Dibromopropyl) phosphate	126-72-7	0.11	NA
		Vinyl chloride	75-01-4	0.27	6.0
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Antimony	7440-36-0	1.9	2.1 mg/l TCLP
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Barium	7440-39-3	1.2	7.6 mg/l TCLP
		Beryllium	7440-41-7	0.82	NA
		Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	NA
		Fluoride	16984-48-8	35	NA
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Mercury	7439-97-6	0.15	0.025 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Selenium	7782-49-2	0.82	0.16 mg/l TCLP
		Silver	7440-22-4	0.43	0.30 mg/l TCLP
		Sulfide	8496-25-8	14	NA
		Thallium	7440-28-0	1.4	NA
		Vanadium	7440-62-2	4.3	NA
K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol	Naphthalene	91-20-3	0.059	5.6
		Pentachlorophenol	87-86-5	0.089	7.4
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10

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Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3] or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP"; or Technology Code
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K003	Wastewater treatment sludge from the production of molybdate orange pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K004	Wastewater treatment sludge from the production of zinc yellow pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K005	Wastewater treatment sludge from the production of chrome green pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Cyanides (Total)[5]	57-12-5	1.2	590
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous).	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
	Wastewater treatment sludge from the production of chrome oxide green pigments (hydrated).	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	NA
K007	Wastewater treatment sludge from the production of iron blue pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Cyanides (Total)[5]	57-12-5	1.2	590
K008	Oven residue from the production of chrome oxide green pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K009	Distillation bottoms from the production of acetaldehyde from ethylene.	Chloroform	67-66-3	0.046	6.0
K010	Distillation side cuts from the production of acetaldehyde from ethylene.	Chloroform	67-66-3	0.046	6.0
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile.	Acetonitrile	75-05-8	5.6	1.8
		Acrylonitrile	107-13-1	0.24	84
		Acrylamide	79-06-1	19	23
		Benzene	71-43-2	0.14	10
		Cyanide (Total)	57-12-5	1.2	590
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile.	Acetonitrile	75-05-8	5.6	1.8

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP"; or Technology Code
		Acrylonitrile	107-13-1	0.24	84
		Acrylamide	79-06-1	19	23
		Benzene	71-43-2	0.14	10
		Cyanide (Total)	57-12-5	1.2	590
K014	Bottoms from the acetonitrile purification column in the production of acrylonitrile.	Acetonitrile	75-05-8	5.6	1.8
		Acrylonitrile	107-13-1	0.24	84
		Acrylamide	79-06-1	19	23
		Benzene	71-43-2	0.14	10
		Cyanide (Total)	57-12-5	1.2	590
K015	Still bottoms from the distillation of benzyl chloride.	Anthracene	120-12-7	0.059	3.4
		Benzal chloride	98-87-3	0.055	6.0
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Phenanthrene	85-01-8	0.059	5.6
		Toluene	108-88-3	0.080	10
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
K016	Heavy ends or distillation residues from the production of carbon tetrachloride.	Hexachlorobenzene	118-74-1	0.055	10
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachlorocyclopentadiene	77-47-4	0.057	2.4
		Hexachloroethane	67-72-1	0.055	30
		Tetrachloroethylene	127-18-4	0.056	6.0
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.	bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
		1,2-Dichloropropane	78-87-5	0.85	18
		1,2,3-Trichloropropane	96-18-4	0.85	30
K018	Heavy ends from the fractionation column in ethyl chloride production.	Chloroethane	75-00-3	0.27	6.0
		Chloromethane	74-87-3	0.19	NA

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Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		1,1-Dichloroethane	75-34-3	0.059	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Pentachloroethane	76-01-7	NA	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
		Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		p-Dichlorobenzene	106-46-7	0.090	NA
		1,2-Dichloroethane	107-06-2	0.21	6.0
		Fluorene	86-73-7	0.059	NA
		Hexachloroethane	67-72-1	0.055	30
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	NA
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Antimony	7440-36-0	1.9	2.1 mg/l TCLP
		Toluene	108-88-3	0.080	10
		Acetophenone	98-86-2	0.010	9.7
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.				
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.				
K021	Aqueous spent antimony catalyst waste from fluoromethanes production.				
K022	Distillation bottom tars from the production of phenol/acetone from cumene.				

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Diphenylamine (difficult to distinguish from diphenylbenzidine)	22-39-4	0.92	13
		Diphenylbenzidine (difficult to distinguish from diphenylamine)	86-30-6	0.92	13
		Phenol	108-95-2	0.039	6.2
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TC
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
K023	Distillation light ends from the production of phthalic anhydride from naphthalene.	Phthalic anhydride (measured as Phthalic acid)	100-21-0	0.055	28
		Phthalic anhydride	85-44-9	0.055	28
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene.	Phthalic anhydride (measured as Phthalic acid)	100-21-0	0.055	28
		Phthalic anhydride	85-44-9	0.055	28
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene.	NA	NA	LLEXT fb SSTRP fb CARBN; or INCIN	INCIN
K026	Stripping still tails from the production of methyl ethyl pyridines.	NA	NA	INCIN	INCIN
K027	Centrifuge and distillation residues from toluene diisocyanate production.	NA	NA	CARBN; or INCIN	CMBST
K028	Spent catalyst from the hydrochlorinator reactor on the production of 1,1,1-trichloroethane.	1,1-Dichloroethane	75-34-3	0.059	6.0
		trans-1,2-Dichloroethylene	156-60-5	0.054	30
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Pentachloroethane	76-01-7	NA	6.0
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Cadmium	7440-43-9	0.69	NA
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		1,1-Dichloroethane	75-34-3	0.059	6.0
		trans-1,2-Dichloroethylene	156-60-5	0.054	30
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Pentachloroethane	76-01-7	NA	6.0
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Cadmium	7440-43-9	0.69	NA
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
K029	Waste from the product steam stripper in the production of 1,1,1-trichloroethane.	1,1-Dichloroethane	75-34-3	0.059	6.0
		trans-1,2-Dichloroethylene	156-60-5	0.054	30
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Pentachloroethane	76-01-7	NA	6.0
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Cadmium	7440-43-9	0.69	NA
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
K030	Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.	1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
K031	By-product salts generated in the production of MSMA and cacodylic acid.	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
K032	Wastewater treatment sludge from the production of chlordane.	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
		Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
K033	Wastewater and scrubwater from the chlorination of cyclopentadiene in the production of chlordane.	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
		Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
		Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
K035	Wastewater treatment sludges generated in the production of creosote.	Acenaphthylene	208-96-8	0.059	3.4
		Anthracene	120-12-7	0.059	3.4
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Chrysene	218-01-9	0.059	3.4
		Fluoranthene	206-44-0	0.059	3.4
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Benzo(b)fluoranthene	205-99-2	0.055	6.8
		Benzo(k)fluoranthene	207-08-9	0.055	6.8
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
K036	Still bottoms from toluene reclamation distillation in the production of disulfoton.	Toluene	108-88-3	0.080	10
		Phorate	298-02-2	0.062	4.6
		Disulfoton	298-04-4	0.017	6.2
K037	Wastewater treatment sludges from the production of disulfoton.	Disulfoton	298-04-4	0.017	6.2
		Toluene	108-88-3	0.080	10
		Phorate	298-02-2	0.062	4.6
K038	Wastewater from the washing and stripping of phorate production.	Phorate	298-02-2	0.062	4.6
		Phorate oxygen analog	2600-69-3	0.062	4.6
K039	Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.	Phorate	298-02-2	0.062	4.6
		Phorate oxygen analog	2600-69-3	0.062	4.6
K040	Wastewater treatment sludge from the production of phorate.	Phorate	298-02-2	0.062	4.6
		Phorate oxygen analog	2600-69-3	0.062	4.6
K041	Wastewater treatment sludge from the production of toxaphene.	Toxaphene	8001-35-2	0.0095	2.6
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.	1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	NA
K043	2,6-Dichlorophenol waste from the production of 2,4-D.	2,6-Dichlorophenol	87-65-0	0.044	6.2
K044	Wastewater treatment sludges from the manufacturing and processing of explosives.	Reactivity	D003	Reactivity	Reactivity
K045	Spent carbon from the treatment of wastewater containing explosives.	Reactivity	D003	Reactivity	Reactivity
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.	Lead	7439-92-1	0.69	0.37 mg/l TCLP
K047	Pink/red water from TNT operations.	Reactivity	D003	Reactivity	Reactivity
K048	Dissolved air flotation (DAF) float from the petroleum refining industry.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Chrysene	218-01-9	0.059	3.4
		Ethylbenzene	100-41-4	0.057	10
		Naphthalene	91-20-3	0.059	5.6
		Toluene	108-88-3	0.080	10
		Xylenes (mixed or any combination of o-, m-, and p-isomers)	1330-20-7	0.32	30
		Cyanides (Total)	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K049	Slop oil emulsion solids from the petroleum refining industry.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Chrysene	218-01-9	0.059	3.4
		Ethylbenzene	100-41-4	0.057	10
		Naphthalene	91-20-3	0.059	5.6
		Toluene	108-88-3	0.080	10
		Xylenes (mixed or any combination of o-, m-, and p-isomers)	1330-20-7	0.32	30
		Cyanides (Total)	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Chrysene	218-01-9	0.059	3.4
		Ethylbenzene	100-41-4	0.057	10
		Naphthalene	91-20-3	0.059	5.6
		Toluene	108-88-3	0.080	10
		Xylenes (mixed or any combination of o-, m-, and p-isomers)	1330-20-7	0.32	30
		Cyanides (Total)	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
K029	Waste from the product steam stripper in the production of 1,1,1-trichloroethane.	Chloroform	67-66-3	0.046	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1-Dichloroethylene	75-35-4	0.025	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		Vinyl chloride	75-01-4	0.27	6.0
K030	Column bodies or heavy ends from the combined production of trichloroethylene and perchloroethylene	o-Dichlorobenzene	95-50-1	0.088	NA
		p-Dichlorobenzene	106-46-7	0.090	NA
		Hexachlorobutadiene	87-68-3	0.055	5.8
		Hexachloroethane	67-72-1	0.055	30
		Hexachloropropylene	1888-71-7	NA	30
		Pentachlorobenzene	608-93-5	NA	10
		Pentachloroethane	76-01-7	NA	6.0
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
K031	By-product salts generated in the production of MSMA and cacodylic acid.	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
K032	Wastewater treatment sludge from the production of chlordane.	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
		Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
		Heptachlor	76-44-8	0.0012	0.068
		Heptachlor epoxide	1024-57-3	0.016	0.068
K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
K035	Wastewater treatment sludges generated in the production of creosote.	Acenaphthene	83-32-9	NA	3.4
		Anthracene	120-12-7	NA	3.4
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Chrysene	218-01-9	0.059	3.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		Dibenz(a,h)anthracene	53-70-3	NA	8.2
		Fluoranthene	206-44-0	0.068	3.4
		Fluorene	86-73-7	NA	3.4
		Indeno(1,2,3-cd)pyrene	193-39-5	NA	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
K036	Still bottoms from toluene reclamation distillation in the production of disulfoton.	Disulfoton	298-04-4	0.017	6.2
K037	Wastewater treatment sludges from the production of disulfoton.	Disulfoton	298-04-4	0.017	6.2
		Toluene	108-88-3	0.080	10
K038	Wastewater from the washing and stripping of phorate production.	Phorate	298-02-2	0.021	4.6
K039	Filter cake from the filtration of diethylphosphorodithoic acid in the production of phorate.	NA	NA	CARBN; or INCIN	CMBST
K040	Wastewater treatment sludge from the production of phorate.	Phorate	298-02-2	0.021	4.6
K041	Wastewater treatment sludge from the production of toxaphene.	Toxaphene	8001-35-2	0.0095	2.6
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.	o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
K043	2,6-Dichlorophenol waste from the production of 2,4-D.	2,4-Dichlorophenol	120-83-2	0.044	14
		2,6-Dichlorophenol	187-65-0	0.044	14
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4

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TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP", or Technology Code
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
		Pentachlorophenol	87-86-5	0.089	7.4
		Tetrachloroethylene	79-01-6	0.056	6.0
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
K044	Wastewater treatment sludges from the manufacturing and processing of explosives.	NA	NA	DEACT	DEACT
K045	Spent carbon from the treatment of wastewater containing explosives.	NA	NA	DEACT	DEACT
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead based initiating compounds.	Lead	7439-92-1	0.69	0.37 mg/l TCLP
K047	Pink/red water from TNT operations	NA	NA	DEACT	DEACT
K048	Dissolved air flotation (DAF) float from the petroleum refining industry.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	218-01-9	0.059	3.4
		Di-n-butyl phthalate	84-74-2	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-33	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP", or Technology Code
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
K049	Slop oil emulsion solids from the petroleum refining industry.	Anthracene	120-12-7	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Carbon disulfide	75-15-0	3.8	NA
		Chrysene	2218-01-9	0.059	3.4
		2,4-Dimethylphenol	105-67-9	0.036	NA
		Ethylbenzene	100-41-4	0.057	10
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Cyanides (Total)[7]	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.88 mg/l TCLP
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	Benzo(a)pyrene	50-32-8	0.061	3.4
		Phenol	108-95-2	0.039	6.2
		Cyanides (Total)[7]	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP

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TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP", or Technology Code
K051	API separator sludge from the petroleum refining industry.	Acenaphthene	83-32-9	0.059	NA
		Anthracene	120-12-7	0.059	3.4
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	2218-01-9	0.059	3.4
		Di-n-butyl phthalate	105-67-9	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.08	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Cyanides (Total)[7]	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
K052	Tank bottoms (leaded) from the petroleum refining industry.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		2,4-Dimethylphenol	105-67-9	0.036	NA
		Ethylbenzene	100-41-4	0.057	10

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Toluene	108-88-3	0.08	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
K060	Ammonia still lime sludge from coking operations.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Cyanides (Total)[7]	57-12-5	1.2	590
K061	Emission control dust/sludge from the primary production of steel in electric furnaces.	Antimony	7440-36-0	NA	2.1 mg/l TCLP
		Arsenic	7440-38-2	NA	5.0 mg/l TCLP
		Barium	7440-39-3	NA	7.6 mg/l TCLP
		Beryllium	7440-41-7	NA	0.014 mg/l TCLP
		Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Mercury	7439-97-6	NA	0.025 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Selenium	7782-49-2	NA	0.16 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
		Thallium	NA	NA	0.078 mg/l TCLP
		Zinc	7440-66-6	NA	5.3 mg/l TCLP

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TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
K062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 3321)	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	NA
K069	Emission control dust/sludge from secondary lead smelting - Calcium Sulfate (Low Lead) Subcategory	Cadmium	7440-439	0.69	0.19 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
	Emission control dust/sludge from secondary lead smelting - Non Calcium Sulfate (High Lead) Subcategory	NA	NA	NA	RLEAD
K071	K071 (Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used) nonwastewaters that are residues from RMERC	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	K071 (Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used) nonwastewaters that are not residues from RMERC	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All K071 wastewaters	Mercury	7439-97-6	0.15	NA
K073	Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Hexachloroethane	67-72-1	0.055	30
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,1,1 Trichloroethane	71-55-6	0.054	6.0
K083	Distillation bottoms from aniline production	Aniline	62-53-3	0.81	14
		Benzene	71-43-2	0.14	10
		Cyclotetrasiloxane	108-94-1	0.36	NA
		Diphenylamine (difficult to distinguish from diphenylnitrosamine)	22-39-4	0.92	13
		Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	13
		Nitrobenzene	98-95-3	0.068	14
		Phenol	108-95-2	0.039	6.2
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
K084	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo arsenic compounds	Benzene	71-43-2	0.14	10
K085	Distillation or fractionation column bottoms from the production of chlorobenzenes				

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Chlorobenzene	108-90-7	0.057	6.0
		m-Dichlorobenzene	541-73-1	0.036	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Total PCBs (sum of all PCB isomers, or all Aroclors)	1336-36-3	0.10	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
		Acetone	67-64-1	0.28	160
		Acetonitrile	75-05-8	0.010	38
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		n-Butyl alcohol	71-36-3	5.6	2.6
		Butylbenzyl phthalate	85-68-7	0.017	28
		Cyclohexanone	108-94-1	0.36	NA
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Diethyl phthalate	84-66-2	0.20	28
		Dimethyl phthalate	131-11-3	0.047	28
		Di-n-butyl phthalate	84-74-2	0.057	28
		Di-n-octyl phthalate	117-84-0	0.017	28
		Ethyl acetate	141-78-6	0.34	33
		Ethylbenzene	100-41-4	0.057	10
		Methanol	67-56-1	5.6	NA
		Methyl ethyl ketone	78-93-3	0.28	36
		Methyl isobutyl ketone	108-10-1	0.14	33
		Methylene chloride	75-09-2	0.089	30
		Naphthalene	91-20-3	0.059	5.6
		Nitrobenzene	98-95-3	0.068	14
K086	Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.				

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Toluene	108-88-3	0.080	10
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K087	Decanter tar/A tar sludge from coking operations	Acenaphthylene	208-96-8	0.059	3.4
		Benzene	71-43-2	0.14	10
		Chrysene	218-01-9	0.059	3.4
		Fluoranthene	206-44-0	0.068	3.4
		Indene(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K083	Distillation light ends from the production of phthalic anhydride from ortho-xylene	Phthalic anhydride (measured as Phthalic acid)	100-21-0	0.055	28
		Phthalic anhydride	85-44-9	0.055	28
K094	Distillation bottoms from the production of phthalic anhydride from ortho-xylene	Phthalic anhydride (measured as Phthalic acid)	100-21-0	0.055	28
		Phthalic anhydride	85-44-9	0.055	28
K095	Distillation bottoms from the production of 1,1,1-trichloroethane	Hexachloroethane	67-72-1	0.055	30
		Pentachloroethane	76-01-7	0.055	6.0
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.	m-Dichlorobenzene	541-73-1	0.036	6.0
		Pentachloroethane	76-01-7	0.055	6.0
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.	Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
		Heptachlor	76-44-8	0.0012	0.066
		Heptachlor epoxide	1024-57-3	0.016	0.066
		Hexachlorocyclopentadiene	77-47-4	0.057	2.4
K098	Untreated process wastewater from the production of toxaphene	Toxaphene	8001-35-2	0.0095	2.6
K099	Untreated wastewater from the production of 2,4-D	2,4-Dichlorophenoxyacetic acid	94-75-7	0.72	10
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting	Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K101	Distillation tar residues from the distillation of aniline based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds	o-Nitroaniline	88-74-4	0.27	14
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Cadmium	7440-43-9	0.69	NA

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TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Lead	7439-92-1	0.69	NA
		Mercury	7439-97-6	0.15	NA
K102	Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	o-Nitrophenol	88-75-5	0.028	13
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Cadmium	7440-43-9	0.69	NA
		Lead	7439-92-1	0.69	NA
		Mercury	7439-97-6	0.15	NA
K103	Process residues from aniline extraction from the production of aniline.	Aniline	62-53-3	0.81	14
		Benzene	71-43-2	0.14	10
		2,4-Dinitrophenol	51-28-5	0.12	160
		Nitrobenzene	98-95-3	0.068	14
		Phenol	108-95-2	0.039	6.2
K104	Combined wastewater streams generated from nitrobenzene/ aniline production.	Aniline	62-53-3	0.81	14
		Benzene	71-43-2	0.14	10
		2,4-Dinitrophenol	51-28-5	0.12	160
		Nitrobenzene	98-95-3	0.068	14
		Phenol	108-95-2	0.039	6.2
		Cyanides (Total)[7]	57-12-5	1.2	590
K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.	Benzene	71-43-2	0.14	10
		Chlorobenzene	108-90-7	0.057	6.0
		2-Chlorophenol	95-57-8	0.044	5.7
		o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Phenol	108-95-2	0.039	6.2
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
K106	K106 (wastewater treatment sludge from the mercury cell process in chlorine production) nonwastewaters that contain greater than or equal to 260 mg/kg total mercury.	Mercury	7439-97-6	NA	RMERC

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
	K106 (wastewater treatment sludge from the mercury cell process in chlorine production) nonwastewaters that contain less than 260 mg/kg total mercury that are residues from RMERC.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	Other K106 nonwastewaters that contain less than 260 mg/kg total mercury and are not residues from RMERC.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All K106 wastewaters.	Mercury	7439-97-6	0.15	NA
K107	Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	INCIN, or CHOXD fb CARBN, or BIODG fb CARBN	INCIN
K108	Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	INCIN, or CHOXD fb CARBN, or BIODG fb CARBN	INCIN
K109	Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	INCIN, or CHOXD fb CARBN, or BIODG fb CARBN	INCIN
K110	Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	INCIN, or CHOXD fb CARBN; or BOIDG fb CARBN	INCIN
K111	Product washwaters from the production of dinitrotoluene via nitration of toluene	2,4-Dinitrotoluene	121-1-2	0.32	140
		2,6-Dinitrotoluene	606-20-2	0.55	28
K112	Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	NA	INCIN, or CHOXD fb CARBN; or BIODG fb CARBN	INCIN
K113	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	NA	CARBN, OR INCIN	CMBST
K114	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	NA	CARBN; or INCIN	CMBST
K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		NA	NA	CARBN; or INCIN	CMBST
K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.	NA	NA	CARBN, or INCIN	CMBST
K117	Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
		Chloroform	87-66-3	0.046	6.0
		Ethylene dibromide (1,2 Dibromoethane)	106-93-4	0.028	15
K118	Spent absorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
		Chloroform	67-66-3	0.046	6.0
		Ethylene dibromide (1,2 Dibromoethane)	106-93-4	0.028	15

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Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
K123	Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.	NA	NA	INCIN; or CHOXD,fb (BIODG or CARBN)	INCIN
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.	NA	NA	INCIN; or CHOXD,fb (BIODG or CARBN)	INCIN
K125	Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts.	NA	NA	INCIN; or CHOXD,fb (BIODG or CARBN)	INCIN
K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts.	NA	NA	INCIN; or CHOXD,fb (BIODG or CARBN)	INCIN
K131	Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
K132	Spent absorbent and wastewater separator solids from the production of methyl bromide.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
K136	Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
		Chloroform	67-66-3	0.046	6.0
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
K141	Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludge from coking operations).	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
K142	Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal.	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
K143	Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal.	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
K144	Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal.	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
K145	Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Naphthalene	91-20-3	0.059	5.6
K147	Tar storage tank residues from coal tar refining.	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8

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TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP"; or Technology Code
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
K148	Residues from coal tar distillation, including, but not limited to, still bottoms	Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
K149	Distillation bottoms from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (This waste does not include still bottoms from the distillations of benzyl chloride.)	Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		Toluene	108-88-3	0.080	10
K150	Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0

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		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP"; or Technology Code
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
K151	Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.	Benzene	71-43-2	0.14	10
		Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		Tetrachloroethylene	127-18-4	0.056	6.0
		Toluene	108-88-3	0.080	10
P001	Warfarin, & salts, when present at concentrations greater than 0.3%	Warfarin	81-81-2	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
P002	1-Acetyl-2-thiourea	1-Acetyl-2-thiourea	591-08-2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P003	Acrolein	Acrolein	107-02-8	0.29	CMBST
P004	Aldrin	Aldrin	309-00-2	0.021	0.066
P005	Allyl alcohol	Allyl alcohol	107-18-6	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
P006	Aluminum phosphide	Aluminum phosphide	20859-73-8	CHOXD; CHRED; or INCIN	CHOXD; CHRED, or INCIN
P007	5-Aminomethyl 3-isoxazolol	5-Aminomethyl 3-isoxazolol	2763-96-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P008	4-Aminopyridine	4-Aminopyridine	504-24-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P009	Ammonium picrate	Ammonium picrate	131-74-8	CHOXD; CHRED; CARBN, BIODG; or INCIN	CHOXD; CHRED, or CMBST
P010	Arsenic acid	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P011	Arsenic pentoxide	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P012	Arsenic trioxide	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P013	Barium cyanide	Barium	7440-39-3	NA	7.6 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30

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TREATMENT STANDARDS FOR HAZARDOUS WASTES

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		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code	
P014	Thiophenol (Benzene thiol)	Thiophenol (Benzene thiol)	108 98 5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P015	Beryllium dust	Beryllium	7440 41 7	RMETL; or RTHRM	RMETL; or RTHRM	RMETL; or RTHRM	
P016	Dichloromethyl ether (Bis(chloromethyl)ether)	Dichloromethyl ether	542 88 1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P017	Bromoacetone	Bromoacetone	598 31 2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P018	Brucine	Brucine	357 57 3	(WETOX or CHOXD) fb CARBN; or INCIN	IA; IN	IA; IN	
P020	2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	2-sec-Butyl-4,6-dinitrophenol	88 85 7	0.066	2.5	2.5	
P021	Calcium cyanide	Cyanides (Total)[7]	57 12 5	1.2	590	590	
		Cyanides (Amenable)[7]	57 12 5	0.86	30	30	
P022	Carbon disulfide	Carbon disulfide	75 15 0	3.8	INCIN	INCIN	
		Carbon disulfide, alternate[6] standard for nonwastewaters only	75 15 0	NA	4.8 mg/l TCLP	4.8 mg/l TCLP	
P023	Chloroacetaldehyde	Chloroacetaldehyde	107 20 0	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P024	p-Chloroaniline	p-Chloroaniline	106 47 8	0.46	16	16	
P026	1-(o-Chlorophenyl)thiourea	1-(o-Chlorophenyl)thiourea	6344 82 1	(WETOA or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P027	3-Chloropropionitrile	3-Chloropropionitrile	542 76 7	(WETOA or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P028	Benzyl chloride	Benzyl chloride	100 44 7	(WETOA or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P029	Copper cyanide	Cyanides (Total)[7]	57 12 5	1.2	590	590	
		Cyanides (Amenable)[7]	57 12 5	0.86	30	30	
P030	Cyanides (soluble salts and complexes)	Cyanides (Total)[7]	57 12 5	1.2	590	590	
		Cyanides (Amenable)[7]	57 12 5	0.86	30	30	
P031	Cyanogen	Cyanogen	460 19 5	CHOXD; WETOX; or INCIN	CHOXD; WETOX; or CIN	CHOXD; WETOX; or CIN	
P033	Cyanogen chloride	Cyanogen chloride	506 77 4	CHOXD; WETOX; or INCIN	CHOXD; WETOX; or CIN	CHOXD; WETOX; or CIN	
P034	2-Cyclohexyl-4,6-dinitrophenol	2-Cyclohexyl-4,6-dinitrophenol	131 89 5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P036	Dichlorophenylarsine	Arsenic	7440 38 2	1.4	5.0 mg/l TCLP	5.0 mg/l TCLP	

TREATMENT STANDARDS FOR HAZARDOUS WASTES

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		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code	
P037	Dieldrin	Dieldrin	60 57 1	0.017	0.13	0.13	
P038	Diethylarsine	Arsenic	7440 38 2	1.4	5.0 mg/l TCLP	5.0 mg/l TCLP	
P039	Disulfoton	Disulfoton	298 04 4	0.017	6.2	6.2	
P040	O,O-Diethyl O-pyrazinyl phosphorothioate	O,O-Diethyl O-pyrazinyl phosphorothioate	297 97 2	CARBN; or INCIN	CMBST	CMBST	
P041	Diethyl-p-nitrophenyl phosphate	Diethyl-p-nitrophenyl phosphate	311 45 5	CARBN; or INCIN	CMBST	CMBST	
P042	Epinephrine	Epinephrine	51-43 4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P043	Diisopropylfluorophosphate (DFP)	Diisopropylfluorophosphate (DFP)	55 91 4	CARBN; or INCIN	CMBST	CMBST	
P044	Dimethoate	Dimethoate	60 51 5	CARBN; or INCIN	CMBST	CMBST	
P045	Thiofanox	Thiofanox	39196-18 4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P046	alpha, alpha-Dimethylphenethylamine	alpha, alpha-Dimethylphenethylamine	122 09 8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P047	4,6-Dinitro-o-cresol	4,6-Dinitro-o-cresol salts	543 52 1	0.28	160	160	
	4,6-Dinitro-o-cresol salts		NA	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P048	2,4-Dinitrophenol	2,4-Dinitrophenol	51-28 5	0.12	160	160	
P049	Dithiobiuret	Dithiobiuret	541-53-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P050	Endosulfan	Endosulfan I	939 98 8	0.023	0.066		
		Endosulfan II	33213 65 9	0.029	0.13		
		Endosulfan sulfate	1031 07 8	0.029	0.13		
P051	Endrin	Endrin	72-20 8	0.0028	0.13		
		Endrin aldehyde	7421-93 4	0.025	0.13		
P054	Aziridine	Aziridine	151-56 4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P056	Fluorine	Fluoride (measured in wastewaters only)	16984 48 8	35	ADGAS fb NEUTR		
P057	Fluoroacetamide	Fluoroacetamide	640 19 7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P058	Fluoroacetic acid, sodium salt	Fluoroacetic acid, sodium salt	62 74 8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P059	Heptachlor	Heptachlor	76 44 8	0.0012	0.066	0.066	

TREATMENT STANDARDS FOR HAZARDOUS WASTES

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		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code	
P060	Isodrin	Isodrin	465 73 6	0.021	0.066	0.066	
P062	Hexaethyl tetraphosphate	Hexaethyl tetraphosphate	757 58 4	CARBN; or INCIN	CMBST	CMBST	
P063	Hydrocyanic acid	Cyanides (Total)[7]	57 12 5	1.2	590	590	
		Cyanides (Amenable)[7]	57 12 5	0.86	30	30	
P064	Ethyl isocyanate	Ethyl isocyanate	109 90 0	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P065	Mercury fulminate	Mercury (Total)	7439 97 6	0.15	RMETL; or RTHRM	RMETL; or RTHRM	
P066	Methomyl	Methomyl	16752 77 5	0.028	0.14	0.14	
P067	2-Methyllaziridine	2-Methyllaziridine	75 55 8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P068	Methyl hydrazine	Methyl hydrazine	60 34 4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P069	2-Methyllactonitrile	2-Methyllactonitrile	75 86 5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P070	Aldicarb	Aldicarb	116 06 3	0.042	0.28	0.28	
P071	Methyl parathion	Methyl parathion	298 00 0	0.014	4.6	4.6	
P072	1-Naphthyl-2-thiourea	1-Naphthyl-2-thiourea	86 88 4	0.17	5.6	5.6	
P073	Nickel carbonyl	Nickel (Total)	7440 02 0	3.98	RMETL; or RTHRM	RMETL; or RTHRM	
P074	Nickel cyanide	Nickel (Total)	7440 02 0	3.98	RMETL; or RTHRM	RMETL; or RTHRM	
		Cyanides (Total)[7]	57 12 5	1.2	590	590	
		Cyanides (Amenable)[7]	57 12 5	0.86	30	30	
P075	Nicotine and salts	Nicotine	54 11 5	0.028	4.0	4.0	
P076	Nitric oxide	Nitric oxide	10102 43 9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P077	p-Nitroaniline	p-Nitroaniline	100 01 6	0.028	0.5	0.5	
P078	Nitrogen dioxide	Nitrogen dioxide	10102 44 0	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P081	Nitroglycerine	Nitroglycerine	55 63 0	0.028	2.7	2.7	
P082	N-Nitrosodimethylamine	N-Nitrosodimethylamine	62 75 9	0.40	5.0	5.0	
P084	N-Nitrosomethylvinylamine	N-Nitrosomethylvinylamine	4549 40 0	0.40	5.0	5.0	
P085	Octamethylpyrophosphoramide	Octamethylpyrophosphoramide	152 16 9	CARBN; or INCIN	CMBST	CMBST	
P087	Osmium tetroxide	Osmium (Total)	7440 04 2	1.0	RMETL; or RTHRM	RMETL; or RTHRM	
P088	Endothall	Endothall	145 73 3	0.072	10	10	
P089	Parathion	Parathion	56 38 2	0.014	4.6	4.6	
P092	Phenylmercury acetate	Phenylmercury acetate	62 38 4	0.15	RMETL; or RTHRM	RMETL; or RTHRM	
P093	N-Phenylthiourea	N-Phenylthiourea	103 85 5	0.17	5.6	5.6	
P094	Phorate	Phorate	298 02 2	0.021	4.6	4.6	
P095	Phosgene	Phosgene	75 44 5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P096	Phosphine	Phosphine	7803 51 2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P097	Famphur	Famphur	52 85 7	0.017	15	15	
P098	Potassium cyanide	Cyanides (Total)[7]	57 12 5	1.2	590	590	
		Cyanides (Amenable)[7]	57 12 5	0.86	30	30	
P099	Potassium silver cyanide	Silver	7440 22 4	0.07	RMETL; or RTHRM	RMETL; or RTHRM	
		Cyanides (Total)[7]	57 12 5	1.2	590	590	
		Cyanides (Amenable)[7]	57 12 5	0.86	30	30	
P101	Ethyl cyanide	Ethyl cyanide	107 12 0	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P102	Propargyl alcohol	Propargyl alcohol	107 19 7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P103	Selenourea	Selenourea	630 10 4	0.17	5.7	5.7	
P104	Silver cyanide	Silver	7440 22 4	0.07	RMETL; or RTHRM	RMETL; or RTHRM	
		Cyanides (Total)[7]	57 12 5	1.2	590	590	
		Cyanides (Amenable)[7]	57 12 5	0.86	30	30	
P105	Sodium azide	Sodium azide	26628 22 8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P106	Sodium cyanide	Cyanides (Total)[7]	57 12 5	1.2	590	590	
		Cyanides (Amenable)[7]	57 12 5	0.86	30	30	
P108	Strychnine and salts	Strychnine	57 24 9	0.015	0.30	0.30	
P109	Tetraethyldithiopyrophosphate	Tetraethyldithiopyrophosphate	3689 24 5	CARBN; or INCIN	CMBST	CMBST	
P110	Tetraethyl lead	Lead (Total)	7439 92 1	0.040	RMETL; or RTHRM	RMETL; or RTHRM	
P111	Tetraethyl pyrophosphate	Tetraethyl pyrophosphate	107 49 3	CARBN; or INCIN	CMBST	CMBST	
P112	Tetranitromethane	Tetranitromethane	509 14 8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P113	Thallic oxide	Thallium (Total)	7440 28 0	0.078	RMETL; or RTHRM	RMETL; or RTHRM	
P114	Thallium selenite	Thallium (Total)	7440 28 0	0.078	RMETL; or RTHRM	RMETL; or RTHRM	
P115	Thallium sulfate	Thallium (Total)	7440 28 0	0.078	RMETL; or RTHRM	RMETL; or RTHRM	
P116	Thiosemicarbazide	Thiosemicarbazide	79 19 6	0.28	1.9	1.9	
P118	Trichloromethanethiol	Trichloromethanethiol	75 70 7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
P119	Ammonium vanadate	Vanadium (Total)	7440 62 2	0.27	RMETL; or RTHRM	RMETL; or RTHRM	
P120	Vanadium pentoxide	Vanadium (Total)	7440 62 2	0.27	RMETL; or RTHRM	RMETL; or RTHRM	
P121	Zinc cyanide	Cyanides (Total)[7]	57 12 5	1.2	590	590	
		Cyanides (Amenable)[7]	57 12 5	0.86	30	30	
P122	Zinc phosphide	Zinc (Total)	7440 66 6	4.3	RMETL; or RTHRM	RMETL; or RTHRM	
P123	Toxaphene	Toxaphene	8001 35 2	0.0095	2.6	2.6	

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		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code	
U001	Acetaldehyde	Acetaldehyde	75 07 0	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U002	Acetone	Acetone	67 64 1	0.28	160	160	
U003	Acetonitrile	Acetonitrile	75 05 8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U004	Acetophenone	Acetophenone	98 86 2	0.010	9.7	9.7	
U005	2-Acetylaminofluorene	2-Acetylaminofluorene	53 96 3	0.059	140	140	
U006	Acetyl chloride	Acetyl chloride	75 36 5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U007	Acrylamide	Acrylamide	79 06 1	0.19	23	23	
U008	Acrylic acid	Acrylic acid	79 10 7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U009	Acrylonitrile	Acrylonitrile	107 13 1	0.24	84	84	
U010	Mitomycin C	Mitomycin C	50 07 7	0.20	10	10	
U011	Amitrole	Amitrole	61 82 5	0.37	140	140	
U012	Aniline	Aniline	62 53 3	0.81	14	14	
U014	Auramine	Auramine	492 80 8	0.035	7.3	7.3	
U015	Azaserine	Azaserine	115 02 6	0.35	10	10	
U016	Benz(c)acridine	Benz(c)acridine	225 51 4	0.010	3.4	3.4	
U017	Benzal chloride	Benzal chloride	98 87 3	0.055	6.0	6.0	
U018	Benz(a)anthracene	Benz(a)anthracene	56 55 3	0.059	3.4	3.4	
U019	Benzene	Benzene	71 43 2	0.14	10	10	
U020	Benzenesulfonic acid chloride	Benzenesulfonic acid chloride	98 09 9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U021	Benzidine	Benzidine	92 87 5	0.13	9.3	9.3	
U022	Benzo(a)pyrene	Benzo(a)pyrene	50 32 8	0.061	3.4	3.4	
U023	Benzotrichloride	Benzotrichloride	98 07 7	0.055	6.0	6.0	
U024	Bis(2-chloroethoxy)methane	Bis(2-chloroethoxy)methane	111 91 1	0.036	7.2	7.2	
U025	Bis(2-chloroethyl)ether	Bis(2-chloroethyl)ether	111 44 4	0.033	6.0	6.0	
U026	Chlornaphazine	Chlornaphazine	494 03 1	0.10	5.6	5.6	
U027	Bis(2-chloroisopropyl)ether	Bis(2-chloroisopropyl)ether	108 60 1	0.055	7.2	7.2	
U028	Bis(2-ethylhexyl)phthalate	Bis(2-ethylhexyl)phthalate	117 81 7	0.28	28	28	
U029	Methyl bromide	Methyl bromide	74 83 9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U030	4-Bromophenyl phenyl ether	4-Bromophenyl phenyl ether	101 55 3	0.055	15	15	
U031	n-Butanol	n-Butanol	71 36 3	0.59	2.6	2.6	
U032	Calcium chromate	Chromium (Total)	7440 47 3	0.32	RMETL; or RTHRM	RMETL; or RTHRM	
U033	Carbonyl fluoride	Carbonyl fluoride	353 50 4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U034	Chloral	Chloral	75 87 6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U035	Chlorambucil	Chlorambucil	305 03 3	0.046	0.80	0.80	
U036	Chlordane, alpha and gamma isomers	Chlordane (alpha and gamma)	57 74 9	0.0033	0.26	0.26	
U037	Chlorobenzene	Chlorobenzene	108 90 7	0.057	6.0	6.0	
U038	Chlorobenzilate	Chlorobenzilate	510 15 6	0.10	2.8	2.8	
U039	p-Chloro-m-cresol	p-Chloro-m-cresol	59 50 7	0.018	14	14	
U041	Epichlorohydrin	Epichlorohydrin	106 89 8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U042	2-Chloroethyl vinyl ether	2-Chloroethyl vinyl ether	110 75 8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U043	Vinyl chloride	Vinyl chloride	75 01 4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U044	Chloroform	Chloroform	67 66 3	0.046	6.0	6.0	
U045	Chloromethane	Chloromethane	74 87 3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U046	Chloromethyl methyl ether	Chloromethyl methyl ether	107 30 2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U047	2-Chloronaphthalene	2-Chloronaphthalene	91 58 7	0.055	5.6	5.6	
U048	2-Chlorophenol	2-Chlorophenol	95 57 8	0.044	5.7	5.7	
U049	3-Chloro-2-methylaniline hydrochloride	3-Chloro-2-methylaniline hydrochloride	7745 89 3	0.46	30	30	
U050	Chrysene	Chrysene	218 01 9	0.059	3.4	3.4	
U051	Creosote	Creosote	8001 58 9	0.035	37	37	
U052	Cresol (Cresylic acid)	Cresol-m	108 39 4	0.77	5.6	5.6	
		Cresol-o	95 48 7	0.11	5.6	5.6	
		Cresol-p	106 44 5	0.77	5.6	5.6	
		Cresol (Cresylic acid)	1319 77 3	0.88	11.2	11.2	
U053	Crotonaldehyde	Crotonaldehyde	4170 30 3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U055	Cumene	Cumene	98 82 8	0.035	10	10	
U056	Cyclohexane	Cyclohexane	110 82 7	0.057	6.0	6.0	
U057	Cyclohexanone	Cyclohexanone	108 94 1	0.36	0.75	0.75	
U058	Cyclophosphamide	Cyclophosphamide	50 18 0	0.013	2.6	2.6	
U059	Daunomycin	Daunomycin	20830 81 3	0.023	7.4	7.4	
U060	DDD	DDD	72 54 8	0.023	0.087	0.087	
U061	DDT	DDT	50 29 3	0.0039	0.087	0.087	
U062	Diallate	Diallate	2303 16 4	0.042	28	28	
U063	Dibenz(a,h)anthracene	Dibenz(a,h)anthracene	53 70 3	0.055	8.2	8.2	
U064	1,2:7,8-Dibenzopyrene	1,2:7,8-Dibenzopyrene	189 55 9	0.061	3.4	3.4	
U066	1,2-Dibromo-3-chloropropane	1,2-Dibromo-3-chloropropane	96 12 8	0.11	15	15	
U067	Ethylene dibromide	Ethylene dibromide	106 93 4	0.028	15	15	
U068	Dibromomethane	Dibromomethane	74 95 3	0.11	15	15	
U069	Dibutyl phthalate	Dibutyl phthalate	84 74 2	0.057	28	28	
U070	o-Dichlorobenzene	o-Dichlorobenzene	95 50 1	0.088	6.0	6.0	
U071	m-Dichlorobenzene	m-Dichlorobenzene	541 73 1	0.036	6.0	6.0	
U072	p-Dichlorobenzene	p-Dichlorobenzene	106 46 7	0.090	6.0	6.0	
U073	3,3-Dichlorobenzidine	3,3-Dichlorobenzidine	91 94 1	0.067	1.0	1.0	
U074	1,4-Dichloro-2-butene	1,4-Dichloro-2-butene	764 41 0	0.057	14	14	
U075	Dichlorodifluoromethane	Dichlorodifluoromethane	75 71 8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U076	1,1-Dichloroethane	1,1-Dichloroethane	75 34 3	0.059	6.0	6.0	
U077	1,2-Dichloroethane	1,2-Dichloroethane	107 06 2	0.21	6.0	6.0	
U078	1,1-Dichloroethylene	1,1-Dichloroethylene	75 35 4	0.025	6.0	6.0	
U079	1,2-Dichloroethylene	1,2-Dichloroethylene	540 59 0	0.054	30	30	
U080	Methylene chloride	Methylene chloride	75 09 2	0.089	30	30	
U081	2,4-Dichlorophenol	2,4-Dichlorophenol	120 83 2	0.044	14	14	
U082	2,6-Dichlorophenol	2,6-Dichlorophenol	87 65 0	0.044	14	14	
U083	1,2-Dichloropropane	1,2-Dichloropropane	78 87 5	0.85	18	18	
U084	1,3-Dichloropropene	1,3-Dichloropropene	542 75 6	0.036	18	18	
U085	1,2:3,4-Diepoxybutane	1,2:3,4-Diepoxybutane	1464 53 5	0.13	1.5	1.5	
U086	N,N-Diethylhydrazine	N,N-Diethylhydrazine	1615 80 1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U087	O,O-Diethyl S-methyl dithiophosphate	O,O-Diethyl S-methyl dithiophosphate	3288 58 2	CARBN; or INCIN	CMBST	CMBST	
U088	Diethyl phthalate	Diethyl phthalate	84 66 2	0.20	28	28	
U089	Diethylstilbesterol	Diethylstilbesterol	56 53 1	0.0037	0.093	0.093	
U090	Dihydrosafrole	Dihydrosafrole	94 58 6	0.081	14	14	
U091	3,3-Dimethoxybenzidine	3,3-Dimethoxybenzidine	119 90 4	0.13	1.0	1.0	
U092	Dimethylamine	Dimethylamine	124 40 3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U093	p-Dimethylaminoazobenzene	p-Dimethylaminoazobenzene	60 11 7	0.13	13	13	
U094	7,12-Dimethylbenz(a)anthracene	7,12-Dimethylbenz(a)anthracene	57 97 6	0.038	1.7	1.7	
U095	3,3-Dimethylbenzidine	3,3-Dimethylbenzidine	119 93 7	0.13	1.0	1.0	
U096	alpha, alpha-Dimethylbenzyl hydroperoxide	alpha, alpha-Dimethylbenzyl hydroperoxide	80 15 9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U097	Dimethylcarbamoyl chloride	Dimethylcarbamoyl chloride	79 44 7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U098	1,1-Dimethylhydrazine	1,1-Dimethylhydrazine	57 14 7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U099	1,2-Dimethylhydrazine	1,2-Dimethylhydrazine	540 73 8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U101	2,4-Dimethylphenol	2,4-Dimethylphenol	105 67 9	0.036	14	14	
U102	Dimethyl phthalate	Dimethyl phthalate	131 11 3	0.047	28	28	
U103	Dimethyl sulfate	Dimethyl sulfate	77 78 1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U105	2,4-Dinitrotoluene	2,4-Dinitrotoluene	121 14 2	0.32	140	140	
U106	2,6-Dinitrotoluene	2,6-Dinitrotoluene	606 20 2	0.55	28	28	
U107	Di-n-octyl phthalate	Di-n-octyl phthalate	117 84 0	0.017	28	28	
U108	1,4-Dioxane	1,4-Dioxane	123 91 1	12.0	170	170	
U109	1,2-Diphenylhydrazine	1,2-Diphenylhydrazine	122 66 7	0.087	1.4	1.4	
U110	Dipropylamine	Dipropylamine	142 84 7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U111	Di-n-propylnitrosamine	Di-n-propylnitrosamine	621 64 7	0.40	14	14	
U112	Ethyl acetate	Ethyl acetate	141 78 6	0.34	33	33	
U113	Ethyl acrylate	Ethyl acrylate	140 88 5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U114	Ethylenebisdithiocarbamic acid, salts and esters	Ethylenebisdithiocarbamic acid, salts and esters	111 54 6	0.062	6.5	6.5	
U115	Ethylene oxide	Ethylene oxide	75 21 8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U116	Ethylenethiourea	Ethylenethiourea	96 45 7	0.20	15	15	
U117	Ethyl ether	Ethyl ether	60 29 7	0.24	160	160	
U118	Ethyl methacrylate	Ethyl methacrylate	97 63 2	0.14	160	160	
U119	Ethyl methanesulfonate	Ethyl methanesulfonate	62 50 0	0.018	1.0	1.0	
U120	Fluoranthene	Fluoranthene	206 44 0	0.068	3.4	3.4	
U121	Trichloromonofluoromethane	Trichloromonofluoromethane	75 69 4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U122	Formaldehyde	Formaldehyde	50 00 0	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U123	Formic acid	Formic acid	64 18 6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U124	Furan	Furan	110 00 9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U125	Furfural	Furfural	98 01 1	0.256	34	34	
U126	Glycidylaldehyde	Glycidylaldehyde	765 34 4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U127	Hexachlorobenzene	Hexachlorobenzene	118 74 1	0.055	10	10	
U128	Hexachlorobutadiene	Hexachlorobutadiene	87 68 3	0.055	5.6	5.6	
U129	Hexachlorocyclohexane (all isomers)	Hexachlorocyclohexane (all isomers)	608 73 1	0.0017	0.063	0.063	
U130	Hexachlorocyclopentadiene	Hexachlorocyclopentadiene	77 47 4	0.057	2.4	2.4	
U131	Hexachloroethane	Hexachloroethane	67 72 1	0.055	30	30	
U132	Hexachlorophene	Hexachlorophene	70 30 4	0.089	7.5	7.5	
U133	Hydrazine	Hydrazine	302 01 2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U134	Hydrofluoric acid	Fluoride (measured in wastewaters only)	16984 48 8	35	ADGAS fb NEUTR		
U135	Hydrogen sulfide	Hydrogen sulfide	7783 06 4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U136	Cacodylic acid	Cacodylic acid	75 60 5	0.17	1.5	1.5	
U137	Indeno(1,2,3-cd)pyrene	Indeno(1,2,3-cd)pyrene	193 39 5	0.0055	3.4	3.4	
U138	Iodomethane	Iodomethane	74 88 4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN	INCIN	
U140	Isobutyl alcohol	Isobutyl alcohol	78 83 1	0.17	170	170	
U141	Isosafrole	Isosafrole	120 58 1	0.081	2.6	2.6	
U142	Kepone	Kepone	143 50 0	0.0011	0.13	0.13	
U143	Lasiocarpine	L

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Heptachlor epoxide	1024-57-3	0.016	0.066
P060	Isodrin	Isodrin	465-73-6	0.021	0.066
P062	Hexaethyl tetraphosphate	Hexaethyl tetraphosphate	757-58-4	CARBN, or INCIN	CMBST
P063	Hydrogen cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P064	Isocyanic acid, ethyl ester	Isocyanic acid, ethyl ester	624-83-9	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
P065	P065 (mercury fulminate) nonwastewaters, regardless of their total mercury content, that are not incinerator residues or are not residues from RMERC.	Mercury	7439-97-6	NA	RMERC
	P065 (mercury fulminate) nonwastewaters that are either incinerator residues or are residues from RMERC, and contain greater than or equal to 260 mg/kg total mercury	Mercury	7439-97-6	NA	RMERC
	P065 (mercury fulminate) nonwastewaters that are residues from RMERC and contain less than 260 mg/kg total mercury.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	P065 (mercury fulminate) nonwastewaters that are incinerator residues and contain less than 260 mg/kg total mercury.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All P065 (mercury fulminate) wastewaters.	Mercury	7439-97-6	0.15	NA
P066	Methomyl	Methomyl	16752-77-5	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
P067	2-Methyl-aziridine	2-Methyl-aziridine	75-55-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P068	Methyl hydrazine	Methyl hydrazine	60-34-4	CHOXD, CHRED, CARBN, BIODG, or INCIN	CHOXD, CHRED, or CMBST
P069	2-Methyllactonitrile	2-Methyllactonitrile	75-86-5	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
P070	Aldicarb	Aldicarb	116-06-3	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
P071	Methyl parathion	Methyl parathion	298-00-0	0.014	4.6
P072	1-Naphthyl-2-thiourea	1-Naphthyl-2-thiourea	86-88-4	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
P073	Nickel carbonyl	Nickel	7440-02-0	3.98	5.0 mg/l TCLP
P074	Nickel cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
P075	Nicotine and salts	Nicotine and salts	54-11-5	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
P076	Nitric oxide	Nitric oxide	10102-43-9	ADGAS	ADGAS
P077	p-Nitroaniline	p-Nitroaniline	100-01-6	0.028	28
P078	Nitrogen dioxide	Nitrogen dioxide	10102-44-0	ADGAS	ADGAS
P081	Nitroglycerin	Nitroglycerin	55-63-0	CHOXD, CHRED, CARBN, BIODG, or INCIN	CHOXD, CHRED, or CMBST
P082	N-Nitrosodimethylamine	N-Nitrosodimethylamine	62-75-9	0.40	2.3
P084	N-Nitrosomethylvinylamine	N-Nitrosomethylvinylamine	4549-40-0	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
P085	Octamethylpyrophosphoramide	Octamethylpyrophosphoramide	152-16-9	CARBN, or INCIN	CMBST
P087	Osmium tetroxide	Osmium tetroxide	20816-12-0	RMETL; or RTHRM	RMETL; or RTHRM
P088	Endothall	Endothall	145-73-3	(WETOX or CHOXD) fb CARBN, or INCIN	CMBST
P089	Parathion	Parathion	56-38-2	0.014	4.6
P092	P092 (phenyl mercuric acetate) nonwastewaters, regardless of their total mercury content, that are not incinerator residues or are not residues from RMERC	Mercury	7439-97-6	NA	IMERC, or RMERC
	P092 (phenyl mercuric acetate) nonwastewaters that are either incinerator residues or are residues from RMERC; and still contain greater than or equal to 260 mg/kg total mercury.	Mercury	7439-97-6	NA	RMERC
	P092 (phenyl mercuric acetate) nonwastewaters that are residues from RMERC and contain less than 260 mg/kg total mercury	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	P092 (phenyl mercuric acetate) nonwastewaters that are incinerator residues and contain less than 260 mg/kg total mercury.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All P092 (phenyl mercuric acetate) wastewaters.	Mercury	7439-97-6	0.15	NA
P093	Phenylthiourea	Phenylthiourea	103-85-5	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
P094	Phorate	Phorate	298-02-2	0.021	4.6
P095	Phosgene	Phosgene	75-44-5	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
P096	Phosphine	Phosphine	7803-51-2	CHOXD, CHRED, or INCIN	CHOXD, CHRED, or INCIN
P097	Famphur	Famphur	52-85-7	0.017	15
P098	Potassium cyanide	Cyanides (Total)[7]	57-12-5	1.2	590

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TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP" or Technology Code
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P099	Potassium silver cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Silver	7440-22-4	0.43	0.30 mg/l TCLP
P101	Ethyl cyanide (Propanenitrile)	Ethyl cyanide (Propanenitrile)	107-12-0	0.24	360
P102	Propargyl alcohol	Propargyl alcohol	107-19-7	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
P103	Selenourea	Selenium	7782-49-2	0.82	0.16 mg/l TCLP
P104	Silver cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Silver	7440-22-4	0.43	0.30 mg/l TCLP
P105	Sodium azide	Sodium azide	26628-22-8	CHOAD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
P106	Sodium cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P108	Strychnine and salts	Strychnine and salts	57-24-9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P109	Tetraethyldithiopyrophosphate	Tetraethyldithiopyrophosphate	3689-24-5	CARBN; or INCIN	CMBST
P110	Tetraethyl lead	Lead	7439-92-1	0.69	0.37 mg/l TCLP
P111	Tetraethylpyrophosphate	Tetraethylpyrophosphate	107-49-3	CARBN; or INCIN	CMBST
P112	Tetranitromethane	Tetranitromethane	509-14-8	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
P113	Thallic oxide	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
P114	Thallium selenite	Selenium	7782-49-2	0.82	0.16 mg/l TCLP
P115	Thallium (I) sulfate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
P116	Thiosemicarbazide	Thiosemicarbazide	79-19-6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P118	Trichloromethanethiol	Trichloromethanethiol	75-70-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P119	Ammonium vanadate	Vanadium (measured in wastewaters only)	7440-62-2	4.3	STABL
P120	Vanadium pentoxide	Vanadium (measured in wastewaters only)	7440-62-2	4.3	STABL

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP"; or Technology Code
P121	Zinc cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P122	Zinc phosphide Zn_3P_2, when present at concentrations greater than 10%	Zinc Phosphide	1314-84-7	CHOXD; CHRED; or INCIN	CHOXD; CHRED; or INCIN
P123	Toxaphene	Toxaphene	8001-35-2	0.0095	2.6
U001	Acetaldehyde	Acetaldehyde	75-07-0	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U002	Acetone	Acetone	67-64-1	0.28	160
U003	Acetonitrile	Acetonitrile	75-05-8	5.6	INCIN
		Acetonitrile; alternate[6] standard for nonwastewaters only	75-05-8	NA	1.8
U004	Acetophenone	Acetophenone	98-86-2	0.010	9.7
U005	2-Acetylaminofluorene	2-Acetylaminofluorene	53-96-3	0.059	140
U006	Acetyl chloride	Acetyl Chloride	75-36-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U007	Acrylamide	Acrylamide	79-06-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U008	Acrylic acid	Acrylic acid	79-10-7	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U009	Acrylonitrile	Acrylonitrile	107-13-1	0.24	84
U010	Mitomycin C	Mitomycin C	50-07-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U011	Amitrole	Amitrole	61-82-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U012	Aniline	Aniline	62-53-3	0.81	14
U014	Auramine	Auramine	492-80-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U015	Azaserine	Azaserine	115-02-6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U016	Benz(c)acridine	Benz(c)acridine	225-51-4	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U017	Benzal chloride	Benzal chloride	98-87-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U018	Benz(a)anthracene	Benz(a)anthracene	56-55-3	0.059	3.4
U019	Benzene	Benzene	71-43-2	0.14	10

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TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP", or Technology Code
U020	Benzenesulfonyl chloride	Benzenesulfonyl chloride	98-09-9	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
U021	Benzidine	Benzidine	92-87-5	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
U022	Benzo(a)pyrene	Benzo(a)pyrene	50-32-8	0.061	3.4
U023	Benzotrichloride	Benzotrichloride	98-07-7	CHOXD, CHRED, CARBN, BIODG, or INCIN	CHOXD, CHRED, or CMBST
U024	bis(2-Chloroethoxy)methane	bis(2-Chloroethoxy)methane	111-91-1	0.036	7.2
U025	bis(2-Chloroethyl)ether	bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
U026	Chlornaphazine	Chlornaphazine	494-03-1	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
U027	bis(2-Chloroisopropyl)ether	bis(2-Chloroisopropyl)ether	108-60-1	0.055	7.2
U028	bis(2-Ethylhexyl) phthalate	bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
U029	Methyl bromide (Bromomethane)	Methyl bromide (Bromomethane)	74-83-9	0.11	15
U030	4-Bromophenyl phenyl ether	4-Bromophenyl phenyl ether	101-55-3	0.055	15
U031	n-Butyl alcohol	n-Butyl alcohol	71-36-3	5.6	2.6
U032	Calcium chromate	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
U033	Carbon oxyfluoride	Carbon oxyfluoride	353-50-4	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
U034	Trichloroacetaldehyde (Chloral)	Trichloroacetaldehyde (Chloral)	75-87-6	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
U035	Chlorambucil	Chlorambucil	305-03-3	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
U036	Chlordane	Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
U037	Chlorobenzene	Chlorobenzene	108-90-7	0.057	6.0
U038	Chlorobenzilate	Chlorobenzilate	510-15-6	0.10	INCIN
U039	p-Chloro-m-cresol	p-Chloro-m-cresol	59-50-7	0.018	14
U041	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	106-89-8	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
U042	2-Chloroethyl vinyl ether	2-Chloroethyl vinyl ether	110-75-8	0.062	INCIN
U043	Vinyl chloride	Vinyl chloride	75-01-4	0.27	6.0
U044	Chloroform	Chloroform	67-66-3	0.046	6.0

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP"; or Technology Code
U045	Chloromethane (Methyl chloride)	Chloromethane (Methyl chloride)	74-87-3	0.19	30
U046	Chloromethyl methyl ether	Chloromethyl methyl ether	107-30-2	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
U047	2-Chloronaphthalene	2-Chloronaphthalene	91-58-7	0.055	5.6
U048	2-Chlorophenol	2-Chlorophenol	95-57-8	0.044	5.7
U049	4-Chloro-o-toluidine hydrochloride	4-Chloro-o-toluidine hydrochloride	3165-93-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U050	Chrysene	Chrysene	218-01-9	0.059	3.4
U051	Creosote	Naphthalene	91-20-3	0.059	5.6
		Pentachlorophenol	87-86-5	0.089	7.4
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
U052	Cresols (Cresylic acid)	o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations)	1319-77-3	0.88	11.2
U053	Crotonaldehyde	Crotonaldehyde	4170-30-3	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U055	Cumene	Cumene	98-82-8	(WETOX or CHOXD) fb CARBN, or INCIN	CMBST
U056	Cyclohexane	Cyclohexane	110-82-7	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U057	Cyclohexanone	Cyclohexanone	108-94-1	0.36	CMBST
		Cyclohexanone; alternate[5] standard for nonwastewaters only	108-94-1	NA	0.75 mg/l TCLP
U058	Cyclophosphamide	Cyclophosphamide	50-18-0	CARBN, or INCIN	CMBST

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TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP" or Technology Code
U059	Daunomycin	Daunomycin	20830-81-3	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
U060	DDD	o,p'-DDD	53-19-0	0.023	0.087
		p,p'-DDD	72-54-8	0.023	0.087
U061	DDT	o,p'-DDT	789-02-6	0.0039	0.087
		p,p'-DDT	50-29-3	0.0039	0.087
		o,p'-DDD	53-19-0	0.023	0.087
		p,p'-DDD	72-54-8	0.023	0.087
		o,p'-DDE	3424-82-6	0.031	0.087
		p,p'-DDE	72-55-9	0.031	0.087
U062	Diallate	Diallate	2303-16-4	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
U063	Dibenz[a,h]anthracene	Dibenz[a,h]anthracene	53-70-3	0.055	8.2
U064	Dibenz[a,i]pyrene	Dibenz[a,i]pyrene	189-55-9	(WETOX or CHOXD) fb CARBN, or INCIN	CMBST
U066	1,2-Dibromo-3-chloropropane	1,2-Dibromo-3-chloropropane	96-12-8	0.11	15
U067	Ethylene dibromide (1,2-Dibromoethane)	Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
U068	Dibromomethane	Dibromomethane	74-95-3	0.11	15
U069	Di-n-butyl phthalate	Di-n-butyl phthalate	84-74-2	0.057	28
U070	o-Dichlorobenzene	o-Dichlorobenzene	95-50-1	0.088	6.0
U071	m-Dichlorobenzene	m-Dichlorobenzene	541-73-1	0.036	6.0
U072	p-Dichlorobenzene	p-Dichlorobenzene	106-46-7	0.090	6.0
U073	3,3'-Dichlorobenzidine	3,3'-Dichlorobenzidine	91-94-1	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
U074	1,4-Dichloro-2-butene	cis-1,4-Dichloro-2-butene	1476-11-5	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
		trans-1,4-Dichloro-2-butene	764-41-0	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
U075	Dichlorodifluoromethane	Dichlorodifluoromethane	75-71-8	0.23	7.2
U076	1,1-Dichloroethane	1,1-Dichloroethane	75-34-3	0.059	6.0
U077	1,2-Dichloroethane	1,2-Dichloroethane	107-06-2	0.21	6.0

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U078	1,1-Dichloroethylene	1,1-Dichloroethylene	75-35-4	0.025	6.0
U079	1,2-Dichloroethylene	trans-1,2-Dichloroethylene	156-60-5	0.054	30
U080	Methylene chloride	Methylene chloride	75-09-2	0.089	30
U081	2,4-Dichlorophenol	2,4-Dichlorophenol	120-83-2	0.044	14
U082	2,6-Dichlorophenol	2,6-Dichlorophenol	87-65-0	0.044	14
U083	1,2-Dichloropropane	1,2-Dichloropropane	78-87-5	0.85	18
U084	1,3-Dichloropropylene	cis-1,3-Dichloropropylene	10061-01-5	0.036	18
		trans-1,3-Dichloropropylene	10061-02-6	0.036	18
U085	1,2:3,4-Diepoxybutane	1,2:3,4-Diepoxybutane	1464-53-5	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U086	N,N'-Diethylhydrazine	N,N'-Diethylhydrazine	1615-80-1	CHOXD, CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
U087	O,O-Diethyl S-methyldithiophosphate	O,O-Diethyl S-methyldithiophosphate	3288-58-2	CARBN; or INCIN	CMBST
U088	Diethyl phthalate	Diethyl phthalate	84-66-2	0.20	28
U089	Diethyl stilbestrol	Diethyl stilbestrol	56-53-1	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U090	Dihydrosafrole	Dihydrosafrole	94-58-6	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U091	3,3'-Dimethoxybenzidine	3,3'-Dimethoxybenzidine	119-90-4	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
U092	Dimethylamine	Dimethylamine	124-40-3	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
U093	p-Dimethylaminoazobenzene	p-Dimethylaminoazobenzene	60-11-7	0.13	INCIN
U094	7,12-Dimethylbenz[a]anthracene	7,12-Dimethylbenz[a]anthracene	57-97-6	(WETOX or CHOXD) fb CARBN, or INCIN	CMBST
U095	3,3'-Dimethylbenzidine	3,3'-Dimethylbenzidine	119-93-7	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
U096	alpha, alpha-Dimethyl benzyl hydroperoxide	alpha, alpha-Dimethyl benzyl hydroperoxide	80-15-9	CHOXD; CHRED; CARBN, BIODG; or INCIN	CHOXD; CHRED, or CMBST
U097	Dimethylcarbamoyl chloride	Dimethylcarbamoyl chloride	79-44-7	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
U098	1,1-Dimethylhydrazine	1,1-Dimethylhydrazine	57-14-7	CHOXD, CHRED, CARBN, BIODG, or INCIN	CHOXD, CHRED, or CMBST

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TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U089	1,2 Dimethylhydrazine	1,2-Dimethylhydrazine	540-73-8	CHOXD, CHRED; CARBN; BIODG, or INCIN	CHOXD, CHRED, or CMBST
U101	2,4 Dimethylphenol	2,4 Dimethylphenol	105-67-9	0.036	14
U102	Dimethyl phthalate	Dimethyl phthalate	131-11-3	0.047	28
U103	Dimethyl sulfate	Dimethyl sulfate	77-78-1	CHOXD, CHRED; CARBN, BIODG; or INCIN	CHOXD, CHRED, or CMBST
U105	2,4-Dinitrotoluene	2,4-Dinitrotoluene	121-14-2	0.32	140
U106	2,6-Dinitrotoluene	2,6-Dinitrotoluene	606-20-2	0.55	28
U107	Di-n-octyl phthalate	Di-n-octyl phthalate	117-84-0	0.017	28
U108	1,4-Diexane	1,4-Diexane	123-91-1	(WETOX or CHOXD) fb CARBN, or INCIN	CMBST
		1,4-Diexane; alternate[6] standard for nonwastewaters only	123-91-1	NA	170
U109	1,2-Diphenylhydrazine	1,2-Diphenylhydrazine	122-66-7	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
		1,2-Diphenylhydrazine, alternate[6] standard for wastewaters only	122-66-7	0.087	NA
U110	Dipropylamine	Dipropylamine	142-84-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U111	Di-n-propylnitrosamine	Di-n-propylnitrosamine	621-64-7	0.40	14
U112	Ethyl acetate	Ethyl acetate	141-78-6	0.34	33
U113	Ethyl acrylate	Ethyl acrylate	140-88-5	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U114	Ethylenebisdithiocarbamic acid salts and esters	Ethylenebisdithiocarbamic acid	111-54-6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U115	Ethylene oxide	Ethylene oxide	75-21-8	(WETOX or CHOXD) fb CARBN; or INCIN	CHOXD; or INCIN
		Ethylene oxide; alternate[6] standard for wastewaters only	75-21-8	0.12	NA
U116	Ethylene thiourea	Ethylene thiourea	96-45-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U117	Ethyl ether	Ethyl ether	60-29-7	0.12	160
U118	Ethyl methacrylate	Ethyl methacrylate	97-63-2	0.14	160
U119	Ethyl methane sulfonate	Ethyl methane sulfonate	62-50-0	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U120	Fluoranthene	Fluoranthene	206-44-0	0.068	3.4
U121	Trichloromonofluoromethane	Trichloromonofluoromethane	75-69-4	0.020	30
U122	Formaldehyde	Formaldehyde	50-00-0	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U123	Formic acid	Formic acid	64-18-6	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U124	Furan	Furan	110-00-9	(WETOX or CHOXD) fb CARBN, or INCIN	CMBST
U125	Furfural	Furfural	98-01-1	(WETOX or CHOXD) fb CARBN, or INCIN	CMBST
U126	Glycidylaldehyde	Glycidylaldehyde	765-34-4	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U127	Hexachlorobenzene	Hexachlorobenzene	118-74-1	0.055	10
U128	Hexachlorobutadiene	Hexachlorobutadiene	87-68-3	0.055	5.6
U129	Lindane	alpha-BHC	319-84-6	0.00014	0.066
		beta-BHC	319-85-7	0.00014	0.066
		delta-BHC	319-86-8	0.023	0.066
		gamma-BHC (Lindane)	58-89-9	0.0017	0.066
U130	Hexachlorocyclopentadiene	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
U131	Hexachloroethane	Hexachloroethane	67-72-1	0.055	30
U132	Hexachlorophene	Hexachlorophene	70-30-4	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
U133	Hydrazine	Hydrazine	302-01-2	CHOXD; CHRED; CARBN, DIOOG; or INCIN	CHOXD; CHRED, or CMBST
U134	Hydrogen fluoride	Fluoride (measured in wastewaters only)	16964-48-8	35	ADGAS fb NEUTR, or NEUTR
U135	Hydrogen Sulfide	Hydrogen Sulfide	7783-06-4	CHOXD; CHRED, or INCIN	CHOXD, CHRED, or INCIN
U136	Cacodylic acid	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
U137	Indeno(1,2,3-c,d)pyrene	Indeno(1,2,3-c,d)pyrene	193-39-5	0.0055	3.4
U138	Iodomethane	Iodomethane	74-88-4	0.19	65
U140	Isobutyl alcohol	Isobutyl alcohol	78-83-1	5.6	170
U141	Isosafrole	Isosafrole	120-58-1	0.081	2.6
U142	Kepone	Kepone	143-50-8	0.0011	0.13

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		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP", or Technology Code
U143	Lasiocarpine	Lasiocarpine	303-34-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U144	Lead acetate	Lead	7439-92-1	0.69	0.37 mg/l TCLP
U145	Lead phosphate	Lead	7439-92-1	0.69	0.37 mg/l TCLP
U146	Lead subacetate	Lead	7439-92-1	0.69	0.37 mg/l TCLP
U147	Maleic anhydride	Maleic anhydride	108-31-6	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U148	Maleic hydrazide	Maleic hydrazide	123-33-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U149	Malononitrile	Malononitrile	109-77-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U150	Melphalan	Melphalan	148-82-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U151	U151 (mercury) nonwastewaters that cont . : greater than or equal to 260 mg/kg total mercury.	Mercury	7439-97-6	NA	RMERC
	U151 (mercury) nonwastewaters that contain less than 260 mg/kg total mercury and that are residues from RMERC only.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	U151 (mercury) nonwastewaters that contain less than 260 mg/kg total mercury and that are not residues from RMERC.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All U151 (mercury) wastewaters.	Mercury	7439-97-6	0.15	NA
	Elemental Mercury Contaminated with Radioactive Materials	Mercury	7439-97-6	NA	AMLGM
U152	Methacrylonitrile	Methacrylonitrile	126-98-7	0.24	84
U153	Methanethiol	Methanethiol	74-93-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U154	Methanol	Methanol	67-56-1	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
		Methanol; alternate[5] std of standards for both wastewaters and nonwastewaters	67-56-1	5.6	0.75 mg/l TCLP
U155	Methapyrilene	Methapyrilene	91-80-5	0.081	1.5
U156	Methyl chlorocarbonate	Methyl chlorocarbonate	79-22-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U157	3-Methylcholanthrene	3-Methylcholanthrene	56-49-5	0.0055	15
U158	4,4'-Methylene bis(2-chloroaniline)	4,4'-Methylene bis(2-chloroaniline)	101-14-4	0.50	30
U159	Methyl ethyl ketone	Methyl ethyl ketone	78-93-3	0.28	36

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP"; or Technology Code
U160	Methyl ethyl ketone peroxide	Methyl ethyl ketone peroxide	1338-23-4	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
U161	Methyl isobutyl ketone	Methyl isobutyl ketone	108-10-1	0.14	33
U162	Methyl methacrylate	Methyl methacrylate	80-62-6	0.14	160
U163	N-Methyl N'-nitro-N-nitrosoguanidine	N-Methyl N'-nitro-N-nitrosoguanidine	70-25-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U164	Methylthiouracil	Methylthiouracil	56-04-2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U165	Naphthalene	Naphthalene	91-20-3	0.059	5.6
U166	1,4-Naphthoquinone	1,4-Naphthoquinone	130-15-4	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U167	1-Naphthylamine	1-Naphthylamine	134-32-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U168	2-Naphthylamine	2-Naphthylamine	91-59-8	0.52	INCIN
U169	Nitrobenzene	Nitrobenzene	98-95-3	0.068	14
U170	p-Nitrophenol	p-Nitrophenol	100-02-7	0.12	29
U171	2-Nitropropane	2-Nitropropane	79-46-9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U172	N-Nitrosodi-n-butylamine	N-Nitrosodi-n-butylamine	924-16-3	0.40	17
U173	N-Nitrosodiethanolamine	N-Nitrosodiethanolamine	1116-54-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U174	N-Nitrosodiethylamine	N-Nitrosodiethylamine	55-18-5	0.40	28
U176	N-Nitroso-N-ethylurea	N-Nitroso-N-ethylurea	759-73-9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U177	N-Nitroso-N-methylurea	N-Nitroso-N-methylurea	684-93-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U178	N-Nitroso-N-methylurethane	N-Nitroso-N-methylurethane	615-53-2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U179	N-Nitrosopiperidine	N-Nitrosopiperidine	100-75-4	0.013	35
U180	N-Nitrosopyrrolidine	N-Nitrosopyrrolidine	930-55-2	0.013	35
U181	5-Nitro-o-toluidine	5-Nitro-o-toluidine	99-55-8	0.32	28
U182	Paraldehyde	Paraldehyde	123-63-7	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U183	Pentachlorobenzene	Pentachlorobenzene	608-93-5	0.055	10

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TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U184	Pentachloroethane	Pentachloroethane	76-01-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
		Pentachloroethane, alternate[6] standards for both wastewaters and nonwastewaters	76-01-7	0.055	6.0
U185	Pentachloronitrobenzene	Pentachloronitrobenzene	82-68-8	0.055	4.8
U186	1,3-Pentadiene	1,3-Pentadiene	504-60-9	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U187	Phenacetin	Phenacetin	62-44-2	0.081	16
U188	Phenol	Phenol	108-95-2	0.039	6.2
U189	Phosphorus sulfide	Phosphorus sulfide	1314-80-3	CHOXD, CHRED, or INCIN	CHOXD, CHRED, or INCIN
U190	Phthalic anhydride	Phthalic anhydride (measured as Phthalic acid)	100-21-0	0.055	28
		Phthalic anhydride	85-44-9	0.055	28
U191	2-Picoline	2-Picoline	109-06-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U192	Pronamide	Pronamide	23950-58-5	0.093	1.5
U193	1,3-Propane sultone	1,3-Propane sultone	1120-71-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U194	n-Propylamine	n-Propylamine	107-10-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U196	Pyridine	Pyridine	110-86-1	0.014	16
U197	p-Benzoquinone	p-Benzoquinone	106-51-4	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U200	Reserpine	Reserpine	50-55-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U201	Resorcinol	Resorcinol	108-46-3	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U202	Saccharin and salts	Saccharin	81-07-2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U203	Safrole	Safrole	94-58-7	0.081	22
U204	Selenium dioxide	Selenium	7782-49-2	0.82	0.16 mg/l TCLP
U205	Selenium sulfide	Selenium	7782-49-2	0.82	0.16 mg/l TCLP
U206	Streptozotocin	Streptozotocin	18883-66-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN

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TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U207	1,2,4,5-Tetrachlorobenzene	1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
U208	1,1,1,2-Tetrachloroethane	1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
U209	1,1,2,2-Tetrachloroethane	1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
U210	Tetrachloroethylene	Tetrachloroethylene	127-18-4	0.056	6.0
U211	Carbon tetrachloride	Carbon tetrachloride	56-23-5	0.057	6.0
U213	Tetrahydrofuran	Tetrahydrofuran	109-99-9	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U214	Thallium (I) acetate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U215	Thallium (I) carbonate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U216	Thallium (I) chloride	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U217	Thallium (I) nitrate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM[7]; or STABL
U218	Thioacetamide	Thioacetamide	62-55-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U219	Thiourea	Thiourea	62-56-6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U220	Toluene	Toluene	108-88-3	0.080	10
U221	Toluenediamine	Toluenediamine	25376-45-8	CARBN; or INCIN	CMBST
U222	o-Toluidine hydrochloride	o-Toluidine hydrochloride	636-21-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U223	Toluene diisocyanate	Toluene diisocyanate	26471-62-5	CARBN; or INCIN	CMBST
U225	Bromoform (Tribromomethane)	Bromoform (Tribromomethane)	75-25-2	0.63	15
U226	1,1,1-Trichloroethane	1,1,1-Trichloroethane	71-55-6	0.054	6.0
U227	1,1,2-Trichloroethane	1,1,2-Trichloroethane	79-00-5	0.054	6.0
U228	Trichloroethylene	Trichloroethylene	79-01-6	0.054	6.0
U234	1,3,5-Trinitrobenzene	1,3,5-Trinitrobenzene	99-35-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U235	tris-(2,3-Dibromopropyl)-phosphate	tris-(2,3-Dibromopropyl)-phosphate	126-72-7	0.11	0.10
U236	Trypan Blue	Trypan Blue	72-57-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U237	Uracil mustard	Uracil mustard	66-75-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN

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TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3], or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP", or Technology Code
U238	Ursthane (Ethyl carbamate)	Urethane (Ethyl carbamate)	51-796	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
U239	Xylene	Xylene, mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
U240	2,4-D (2,4-Dichlorophenoxyacetic acid)	2,4-D (2,4-Dichlorophenoxyacetic acid)	94-75-7	0.72	10
		2,4-D (2,4-Dichlorophenoxyacetic acid) salts and esters	NA	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
U243	Hexachloropropylene	Hexachloropropylene	1888-71-7	0.035	30
U244	Thiram	Thiram	137-26-8	(WETOX or CHOXD) fb CARBN, or INCIN	INCIN
U246	Cyanogen bromide	Cyanogen bromide	506-68-3	CHOXD, WETOX, or INCIN	CHOXD, WETOX, or INCIN
U247	Methoxychlor	Methoxychlor	72-43-5	0.25	0.18
U248	Warfarin, & salts, when present at concentrations of 0.3% or less	Warfarin	81-81-2	(WETOX or CHOXD) fb CARBN, or INCIN	CMBST
U249	Zinc Phosphide, Zn_3P_2, when present at concentrations of 10% or less	Zinc Phosphide	1314-84-7	CHOXD, CHRED, or INCIN	CHOXD, CHRED, or INCIN
U328	o-Toluidine	o-Toluidine	95-53-4	INCIN, or CHOXD fb (BIODG or CARBN), or BIODG fb CARBN	INCIN, or Thermal Destruction
U353	p-Toluidine	p-Toluidine	106-49-0	INCIN, or CHOXD fb (BIODG or CARBN), or BIODG fb CARBN	INCIN, or Thermal Destruction
U359	2-Ethoxyethanol	2-Ethoxyethanol	110-80-5	INCIN, or CHOXD fb (BIODG or CARBN), or BIODG fb CARBN	CMBST

1 The waste descriptions provided in this table do not replace waste descriptions in 40 CFR part 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.
2 CAS means Chemical Abstract Services. When the waste code and/or regulated constituent are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.
3 Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples.
4 All treatment standards for Technology Codes are explained in detail in 40 CFR 268.42, Table 1 - Technology Codes and Descriptions of Technology-Based Standards.
5 Except for metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O or 40 CFR part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.43(d). All concentration standards for nonwastewaters are based on analysis of grab samples.
6 Where an alternate treatment standard or set of alternate standards has been indicated, a facility may comply with the alternate standard, but only for the Treatment/Regulatory Subcategory or physical form (i.e., wastewater and/or nonwastewater) specified for that alternate standard.
7 Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

NOTE: NA means not applicable

BILLING CODE 6560-50-C

25. Section 268.41 is revised to read as follows:

§ 268.41 Treatment standards expressed as concentrations in waste extract.

For the requirements previously found in this section and for treatment standards in Table CCWE—Constituent Concentrations in Waste Extracts, refer to § 268.40.

26. Section 268.42 is amended by removing Table 2 and Table 3; revising paragraphs (a) introductory text, (c)(2), and (d); adding a note before paragraph (a); and adding the entry "CMBST" into Table 1.—Technology Codes and Description of Technology-Based Standards in alphabetical order, to read as follows:

§ 268.42 Treatment standards expressed as specified technologies.

Note: For the requirements previously found in this section in Table 2—Technology-Based Standards By RCRA Waste Code, and Table 3—Technology-Based Standards for Specific Radioactive Hazardous Mixed Waste, refer to § 268.40.

(a) The following wastes in paragraphs (a)(1) and (a)(2) of this section and in the table in § 268.40 "Treatment Standards for Hazardous Wastes," for which standards are expressed as a treatment method rather than a concentration level, must be treated using the technology or technologies specified in paragraphs (a)(1) and (a)(2) and Table 1 of this section.

* * * * *

TABLE 1.—Technology Codes and Description of Technology-Based Standards

Technology code	Description of technology-based standards
* * * * *	
CMBST	Combustion in incinerators, boilers, or industrial furnaces operated in accordance with the applicable requirements of 40 CFR part 264, subpart O, or 40 CFR part 266, subpart H.
* * * * *	

* * * * *

(c) * * *

(2) The lab pack does not contain any of the wastes listed in Appendix IV to part 268.

* * * * *

(d) Radioactive hazardous mixed wastes are subject to the treatment standards in § 268.40. Where treatment standards are specified for radioactive mixed wastes in the Table of Treatment Standards, those treatment standards will govern. Where there is no specific treatment standard for radioactive mixed waste, the treatment standard for the hazardous waste (as designated by EPA waste code) applies. Hazardous debris containing radioactive waste is subject to the treatment standards specified in § 268.45.

28. Section 268.43 is revised to read as follows:

§ 268.43 Treatment standards expressed as waste concentrations.

For the requirements previously found in this section and for treatment standards in Table CCW—Constituent Concentrations in Wastes, refer to § 268.40.

29. Section 268.45(b)(2) is revised to read as follows:

§ 268.45 Treatment standards for hazardous debris.

* * * * * *

(b) * * *

(2) Debris contaminated with listed waste. The contaminants subject to treatment for debris that is contaminated with a prohibited listed hazardous waste are those constituents or wastes for which treatment standards are established for the waste under § 268.40.

30. Section 268.46 is revised to read as follows:

§ 268.46 Alternative treatment standards based on HTMR.

For the treatment standards previously found in this section, refer to § 268.40.

31. In Subpart D, § 268.48 is added to read as follows:

§ 268.48 Universal Treatment Standards

(a) Table UTS identifies the hazardous constituents, along with the nonwastewater and wastewater treatment standard levels, that are used to regulate most prohibited hazardous wastes with numerical limits. For determining compliance with treatment standards for underlying hazardous constituents as defined in § 268.2(i), these treatment standards may not be exceeded. Compliance with these treatment standards is measured by an analysis of grab samples, unless otherwise noted in the following Table UTS.

§ 268.48 TABLE UTS—UNIVERSAL TREATMENT STANDARDS

Regulated constituent—common name	CAS[1] No.	Wastewater standard. Concentration in mg/l[2]	Nonwastewater standard. Concentration in mg/kg[3] unless noted as "mg/l TCLP"
Acenaphthylene	208-96-8	0.059	3.4
Acenaphthene	83-32-9	0.059	3.4
Acetone	67-64-1	0.28	160
Acetonitrile	75-05-8	5.6	1.8
Acetophenone	96-86-2	0.010	9.7
2-Acetylaminofluorene	53-96-3	0.059	140
Acrolein	107-02-8	0.29	NA
Acrylamide	79-06-1	19	23
Acrylonitrile	107-13-1	0.24	84
Aldrin	309-00-2	0.021	0.066
4-Aminobiphenyl	92-67-1	0.13	NA
Aniline	62-53-3	0.81	14
Anthracene	120-12-7	0.059	3.4
Aramite	140-57-8	0.36	NA
alpha-BHC	319-84-6	0.00014	0.066
beta-BHC	319-85-7	0.00014	0.066
delta-BHC	319-86-8	0.023	0.066
gamma-BHC	58-89-9	0.0017	0.066
Benzene	71-43-2	0.14	10

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§ 268.48 TABLE UTS—UNIVERSAL TREATMENT STANDARDS—Continued

Regulated constituent—common name	CAS [1] No.	Wastewater standard. Concentration in mg/l [2]	Nonwastewater standard. Concentration in mg/kg [3] unless noted as "mg/l TCLP"
Benz(a)anthracene	56–55–3	0.059	3.4
Benzal chloride	98–87–3	0.055	6.0
Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205–99–2	0.11	6.8
Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207–08–9	0.11	6.8
Benzo(g,h,i)perylene	191–24–2	0.0055	1.8
Benzo(a)pyrene	50–32–8	0.061	3.4
Bromodichloromethane	75–27–4	0.35	15
Methyl bromide (Bromomethane)	74–83–9	0.11	15
4-Bromophenyl phenyl ether	101–55–3	0.055	15
n-Butyl alcohol	71–36–3	5.6	2.6
Butyl benzyl phthalate	85–68–7	0.017	28
2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	88–85–7	0.066	2.5
Carbon disulfide	75–15–0	3.8	4.8 mg/l TCLP
Carbon tetrachloride	56–23–5	0.057	6.0
Chlordane (alpha and gamma isomers)	57–74–9	0.0033	0.26
p-Chloroaniline	106–47–8	0.46	16
Chlorobenzene	108–90–7	0.057	6.0
Chlorobenzilate	510–15–6	0.10	NA
2-Chloro-1,3-butadiene	126–99–8	0.057	0.28
Chlorodibromomethane	124–48–1	0.057	15
Chloroethane	75–00–3	0.27	6.0
bis(2-Chloroethoxy)methane	111–91–1	0.036	7.2
bis(2-Chloroethyl)ether	111–44–4	0.033	6.0
Chloroform	67–66–3	0.046	6.0
bis(2-Chloroisopropyl)ether	108–60–1	0.055	7.2
p-Chloro-m-cresol	59–50–7	0.018	14
2-Chloroethyl vinyl ether	110–75–8	0.062	NA
Chloromethane (Methyl chloride)	74–87–3	0.19	30
2-Chloronaphthalene	91–58–7	0.055	5.6
2-Chlorophenol	95–57–8	0.044	5.7
3-Chloropropylene	107–05–1	0.036	30
Chrysene	218–01–9	0.059	3.4
o-Cresol	95–48–7	0.11	5.6
m-Cresol (difficult to distinguish from p-cresol)	108–39–4	0.77	5.6
p-Cresol (difficult to distinguish from m-cresol)	106–44–5	0.77	5.6
Cyclohexanone	108–94–1	0.36	0.75 mg/l TCLP
1,2-Dibromo-3-chloropropane	96–12–8	0.11	15
Ethylene dibromide (1,2-Dibromoethane)	106–93–4	0.028	15
Dibromomethane	74–95–3	0.11	15
2,4-D (2,4-Dichlorophenoxyacetic acid)	94–75–7	0.72	10
o,p'-DDD	53–19–0	0.023	0.087
p,p'-DDD	72–54–8	0.023	0.087
o,p'-DDE	3424–82–6	0.031	0.087
p,p'-DDE	72–55–9	0.031	0.087
o,p'-DDT	789–02–6	0.0039	0.087
p,p'-DDT	50–29–3	0.0039	0.087
Dibenz(a,h)anthracene	53–70–3	0.055	8.2
Dibenz(a,e)pyrene	192–65–4	0.061	NA
m-Dichlorobenzene	541–73–1	0.036	6.0
o-Dichlorobenzene	95–50–1	0.088	6.0
p-Dichlorobenzene	106–46–7	0.090	6.0
Dichlorodifluoromethane	75–71–8	0.23	7.2
1,1-Dichloroethane	75–34–3	0.059	6.0
1,2-Dichloroethane	107–06–2	0.21	6.0
1,1-Dichloroethylene	75–35–4	0.025	6.0
trans-1,2-Dichloroethylene	156–60–5	0.054	30
2,4-Dichlorophenol	120–83–2	0.044	14
2,6-Dichlorophenol	87–65–0	0.044	14
1,2-Dichloropropane	78–87–5	0.85	18
cis-1,3-Dichloropropylene	10061–01–5	0.036	18
trans-1,3-Dichloropropylene	10061–02–6	0.036	18
Dieldrin	60–57–1	0.017	0.13
Diethyl phthalate	84–66–2	0.20	28
2-4-Dimethyl phenol	105–67–9	0.036	14
Dimethyl phthalate	131–11–3	0.047	28
Di-n-butyl phthalate	84–74–2	0.057	28
1,4-Dinitrobenzene	100–25–4	0.32	2.3
4,6-Dinitro-o-cresol	534–52–1	0.28	160
2,4-Dinitrophenol	51–28–5	0.12	160

§ 268.48 TABLE UTS—UNIVERSAL TREATMENT STANDARDS—Continued

Regulated constituent—common name	CAS [1] No.	Wastewater standard. Concentration in mg/l [2]	Nonwastewater standard. Concentration in mg/kg [3] unless noted as "mg/l TCLP"
2,4-Dinitrotoluene	121–14–2	0.32	140
2,6-Dinitrotoluene	606–20–2	0.55	28
Di-n-octyl phthalate	117–84–0	0.017	28
p-Dimethylaminoazobenzene	60–11–7	0.13	NA
Di-n-propylnitrosamine	621–64–7	0.40	14
1,4-Dioxane	123–91–1	NA	170
Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122–39–4	0.92	13
Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86–30–6	0.92	13
1,2-Diphenylhydrazine	122–66–7	0.087	NA
Disulfoton	298–04–4	0.017	6.2
Endosulfan I	939–98–8	0.023	0.066
Endosulfan II	33213–6–5	0.029	0.13
Endosulfan sulfate	1–31–07–8	0.029	0.13
Endrin	72–20–8	0.0028	0.13
Endrin aldehyde	7421–93–4	0.025	0.13
Ethyl acetate	141–78–6	0.34	33
Ethyl cyanide (Propanenitrile)	107–12–0	0.24	360
Ethyl benzene	100–41–4	0.057	10
Ethyl ether	60–29–7	0.12	160
bis(2-Ethylhexyl) phthalate	117–81–7	0.28	28
Ethyl methacrylate	97–63–2	0.14	160
Ethylene oxide	75–21–8	0.12	NA
Famphur	52–85–7	0.017	15
Fluoranthene	206–44–0	0.068	3.4
Fluorene	86–73–7	0.059	3.4
Heptachlor	76–44–8	0.0012	0.066
Heptachlor epoxide	1024–57–3	0.016	0.066
Hexachlorobenzene	118–74–1	0.055	10
Hexachlorobutadiene	87–68–3	0.055	5.6
Hexachlorocyclopentadiene	77–47–4	0.057	2.4
HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
Hexachloroethane	67–72–1	0.055	30
Hexachloropropylene	1888–71–7	0.035	30
Indeno (1,2,3-c,d) pyrene	193–39–5	0.0055	3.4
Iodomethane	74–88–4	0.19	65
Isobutyl alcohol	78–83–1	5.6	170
Isodrin	465–73–6	0.021	0.066
Isosafrole	120–58–1	0.081	2.6
Kepone	143–50–8	0.0011	0.13
Methacrylonitrile	126–98–7	0.24	84
Methanol	67–56–1	5.6	0.75 mg/l TCLP
Methapyrilene	91–80–5	0.081	1.5
Methoxychlor	72–43–5	0.25	0.18
3-Methylcholanthrene	56–49–5	0.0055	15
4,4-Methylene bis(2-chloroaniline)	101–14–4	0.50	30
Methylene chloride	75–09–2	0.089	30
Methyl ethyl ketone	78–93–3	0.28	36
Methyl isobutyl ketone	108–10–1	0.14	33
Methyl methacrylate	80–62–6	0.14	160
Methyl methansulfonate	66–27–3	0.018	NA
Methyl parathion	298–00–0	0.014	4.6
Naphthalene	91–20–3	0.059	5.6
2-Naphthylamine	91–59–8	0.52	NA
o-Nitroaniline	88–74–4	0.27	14
p-Nitroaniline	100–01–6	0.028	28
Nitrobenzene	98–95–3	0.068	14
5-Nitro-o-toluidine	99–55–8	0.32	28
o-Nitrophenol	88–75–5	0.028	13
p-Nitrophenol	100–02–7	0.12	29
N-Nitrosodiethylamine	55–18–5	0.40	28
N-Nitrosodimethylamine	62–75–9	0.40	2.3
N-Nitroso-di-n-butylamine	924–16–3	0.40	17
N-Nitrosomethylethylamine	10595–95–6	0.40	2.3
N-Nitrosomorpholine	59–89–2	0.40	2.3
N-Nitrosopipendine	100–75–4	0.013	35
N-Nitrosopyrrolidine	930–55–2	0.013	35
Parathion	56–38–2	0.014	4.6
Total PCBs (sum of all PCB isomers, or all Aroclors)	1336–36–3	0.10	10

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§ 268.48 TABLE UTS—UNIVERSAL TREATMENT STANDARDS—Continued

Regulated constituent—common name	CAS[1] No.	Wastewater standard. Concentration in mg/[2]	Nonwastewater standard. Concentration in mg/kg[3] unless noted as "mg/l TCLP"
Pentachlorobenzene	608–93–5	0.055	10
PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
Pentachloroethane	76–01–7	0.055	6.0
Pentachloronitrobenzene	82–68–8	0.055	4.8
Pentachlorophenol	87–86–5	0.089	7.4
Phenacetin	62–44–2	0.081	16
Phenanthrene	85–01–8	0.059	5.6
Phenol	108–95–2	0.039	6.2
Phorate	298–02–2	0.021	4.6
Phthalic acid	100–21–0	0.055	28
Phthalic anhydride	85–44–9	0.055	28
Pronamide	23950–58–5	0.093	1.5
Pyrene	129–00–0	0.067	8.2
Pyridine	110–86–1	0.014	16
Safrole	94–59–7	0.081	22
Silvex (2,4,5-TP)	93–72–1	0.72	7.9
2,4,5-T (2,4,5-Trichlorophenoxyacetic acid)	93–76–5	0.72	7.9
1,2,4,5-Tetrachlorobenzene	95–94–3	0.055	14
TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
1,1,1,2-Tetrachloroethane	630–20–6	0.057	6.0
1,1,2,2-Tetrachloroethane	79–34–6	0.057	6.0
Tetrachloroethylene	127–18–4	0.056	6.0
2,3,4,6-Tetrachlorophenol	58–90–2	0.030	7.4
Toluene	108–88–3	0.080	10
Toxaphene	8001–35–2	0.0095	2.6
Bromoform (Tribromomethane)	75–25–2	0.63	15
1,2,4-Trichlorobenzene	120–82–1	0.055	19
1,1,1-Trichloroethane	71–55–6	0.054	6.0
1,1,2-Trichloroethane	79–00–5	0.054	6.0
Trichloroethylene	79–01–6	0.054	6.0
Trichloromonofluoromethane	75–69–4	0.020	30
2,4,5-Trichlorophenol	95–95–4	0.18	7.4
2,4,6-Trichlorophenol	88–06–2	0.035	7.4
1,2,3-Trichloropropane	96–18–4	0.85	30
1,1,2-Trichloro-1,2,2-trifluoroethane	76–13–1	0.057	30
tris-(2,3-Dibromopropyl) phosphate	126–72–7	0.11	0.10
Vinyl chloride	75–01–4	0.27	6.0
Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330–20–7	0.32	30
Antimony	7440–36–0	1.9	2.1 mg/l TCLP
Arsenic	7440–38–2	1.4	5.0 mg/l TCLP
Barium	7440–39–3	1.2	7.6 mg/l TCLP
Beryllium	7440–41–7	0.82	0.014 mg/l TCLP
Cadmium	7440–43–9	0.69	0.19 mg/l TCLP
Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP
Cyanides (Total)[4]	57–12–5	1.2	590
Cyanides (Amenable)[4]	57–12–5	0.86	30
Fluoride	16964–48–8	35	NA
Lead	7439–92–1	0.69	0.37 mg/l TCLP
Mercury—Nonwastewater from Retort	7439–97–6	NA	0.20 mg/l TCLP
Mercury—All Others	7439–97–6	0.15	0.025 mg/l TCLP
Nickel	7440–02–0	3.98	5.0 mg/l TCLP
Selenium	7782–49–2	0.82	0.16 mg/l TCLP
Silver	7440–22–4	0.43	0.30 mg/l TCLP
Sulfide	8496–25–8	14	NA
Thallium	7440–28–0	1.4	0.078 mg/l TCLP
Vanadium	7440–62–2	4.3	0.23 mg/l TCLP
Zinc[5]	7440–66–6	2.61	5.3 mg/l TCLP

[1] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[2] Concentration standards for wastewaters are expressed in mg/l are based on analysis of composite samples.

[3] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O or 40 CFR part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

[4] Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

[5] Zinc is not an "underlying hazardous constituent" in characteristic wastes, according to the definition at 268.2(i).
Note: NA means not applicable.

Appendix IV to Part 268 [Revised]

32. Appendix IV to part 268 is revised to read as follows:

Appendix IV to Part 268—Wastes Excluded From Lab Packs Under the Alternative Treatment Standards of § 268.42(c)

Hazardous waste with the following EPA Hazardous Waste Codes may not be placed in lab packs under the alternative lab pack treatment standards of § 268.42(c): D009, F019, K003, K004, K005, K006, K062, K071, K100, K106, P010, P011, P012, P076, P078, U134, U151.

Appendix V to Part 268 [Removed]

33. Appendix V to part 268 is removed and reserved.

Appendix X to Part 268 [Added]

34. Appendix X to part 268 is added to read as follows:

APPENDIX X TO PART 268—RECORDKEEPING, NOTIFICATION, AND/OR CERTIFICATION REQUIREMENTS

Entity	Scenario	Frequency	Recipient of notification	Recordkeeping, notification, and/or certification requirements
I. Generator	A. Waste does not meet applicable treatment standards or exceeds applicable prohibition levels (see § 268.7(a)(1)).	Each shipment	Treatment or storage facility.	Notice must include: • EPA hazardous waste number. • Constituents of concern. • Treatability group. • Manifest number. • Waste analysis data (where available).
	B. Waste can be disposed of without further treatment (meets applicable treatment standards or does not exceed prohibition levels upon generation) (see § 268.7(a)(2)).	Each shipment	Land disposal facility	Notice and certification statement that waste meets applicable treatment standards or applicable prohibition levels. Notice must include: • EPA hazardous waste number. • Constituents of concern. • Treatability group. • Manifest number. • Waste analysis data (where available). Certification statement required under § 268.7(a)(2)(ii) that waste complies with treatment standards and prohibitions.
	C. Waste is subject to exemption from a prohibition on the type of land disposal utilized for the waste, such as a case-by-case extension under § 268.5, an exemption under § 268.6, or a nationwide capacity variance (see § 268.7(a)(3)).	Each shipment	Receiving facility	Notice must include: • Statement that waste is not prohibited from land disposal. • EPA hazardous waste number. • Constituents of concern. • Treatability group. • Manifest number. • Waste analysis data (where available). • Date the waste is subject to the prohibitions.
	D. Waste is being accumulated in tanks or containers regulated under 40 CFR 262.34 and is being treated in such tanks or containers to meet applicable treatment standards (see § 268.7(a)(4)).	Minimum of 30 days prior to treatment activity.	EPA Regional Administrator (or designated representative) or authorized State. Delivery must be verified.	Generator must develop, keep on-site, and follow a written waste analysis plan describing procedures used to comply with the treatment standards. If waste is shipped off-site, generator also must comply with notification requirement of § 268.7(a)(2).
	E. Generator is managing a lab pack containing certain wastes and wishes to use an alternative treatment standard (see § 268.7(a)(8)).	Each shipment	Treatment facility	Notice in accordance with § 268.7(a)(1), (a)(5), and (a)(6), where applicable. Certification in accordance with § 268.7(a)(8).

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APPENDIX X TO PART 268—RECORDKEEPING, NOTIFICATION, AND/OR CERTIFICATION REQUIREMENTS—Continued

Entity	Scenario	Frequency	Recipient of notification	Recordkeeping, notification, and/or certification requirements
	F. Small quantity generators with tolling agreements (pursuant to 40 CFR 262.20(e)) (see §268.7(a)(9)).	Initial shipment	Treatment facility	Must comply with applicable notification and certification requirements in §268.7(a). Generator also must retain copy of the notification and certification together with tolling agreement on-site for at least 3 years after termination or expiration of agreement.
	G. Generator has determined waste is restricted based solely on his knowledge of the waste (see §268.7(a)(5)).	N/A	Generator's file	All supporting data must be retained on-site in generator's files.
	H. Generator has determined waste is restricted based on testing waste or an extract (see §268.7(a)(5)).	N/A	Generator's file	All waste analysis data must be retained on-site in generator's files.
	I. Generator has determined that waste is excluded from the definition of hazardous or solid waste or exempt from Subtitle C regulation (see §268.7(a)(6)).	One-time	Generator's file	Notice of generation and subsequent exclusion from the definition of hazardous or solid waste, or exemption from Subtitle C regulation, and information regarding the disposition of the waste.
	J. Generator (or treater) claims that hazardous debris is excluded from the definition of hazardous waste under 40 CFR 261.3(f)(1) (see §268.7(d)).	One-time	EPA Regional Administrator or authorized State. Notification must be updated as necessary under §268.7(d)(2).	Notice must include: • Name and address of Subtitle D facility receiving treated debris. • EPA hazardous waste number and description of debris as initially generated. • Technology used to treat the debris (Table 1 of §268.45). Certification and recordkeeping in accordance with §268.7(d)(3).
	K. Generator (or treater) claims that characteristic wastes are no longer hazardous (see §268.9(d)).	One-time	Generator's (or treater's) files and EPA Regional Administrator or authorized State. Notification must be updated as necessary under §268.9(d).	Notice must include: • Name and address of Subtitle D facility receiving the waste. • EPA hazardous waste number and description of waste as initially generated. • Treatability group. • Underlying hazardous constituents. Certification in accordance with §268.9(d)(2).
	L. Other recordkeeping requirements (see §268.7(a)(7)).	N/A	Generator's file	Generator must retain a copy of all notices, certifications, demonstrations, waste analysis data, and other documentation produced pursuant to §268.7 on-site for at least 5 years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. This period is automatically extended during enforcement actions or as requested by the Administrator.
II. Treatment Facility	A. Waste shipped from treatment facility to land disposal facility (see §268.7(b)(4), (b)(5)).	Each shipment	Land disposal facility ..	Notice must include: • EPA hazardous waste number. • Constituents of concern. • Treatability group. • Manifest number. • Waste analysis data (where available). Applicable certification, in accordance with §268.7(b)(5)(i), (ii) or (iii), stating that the waste or treatment residue has been treated in compliance with applicable treatment standards and prohibitions.

APPENDIX X TO PART 268—RECORDKEEPING, NOTIFICATION, AND/OR CERTIFICATION REQUIREMENTS—Continued

Entity	Scenario	Frequency	Recipient of notification	Recordkeeping, notification, and/or certification requirements
	B. Waste treatment residue from a treatment or storage facility will be further managed at a different treatment or storage facility (see §268.7(b)(6)).	Each shipment	Receiving facility	Treatment, storage, or disposal facility must comply with all notice and certification requirements applicable to generators.
	C. Where wastes are recyclable materials used in a manner constituting disposal subject to §266.20(b) (see §268.7(b)(7)).	Each shipment	Regional Administrator (or delegated representative).	No notification to receiving facility required pursuant to §268.7(b)(4). Certification as described in §268.7(b)(5) and notice with information listed in §268.7(b)(4), except manifest number. Recycling facility must keep records of the name and location of each entity receiving hazardous waste-derived products.
III. Land Disposal Facility ...	A. Wastes accepted by land disposal facility (see §268.7(c)).	N/A	N/A	Maintain copies of notice and certifications specified in §268.7(a) and (b).

Certification Statements

A. I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in 40 CFR part 268, subpart D and all applicable prohibitions set forth in 40 CFR 268.32 or RCRA section 3004(d). I believe that the information I submitted is true, accurate and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment. (§ 268.7(a)(2)(ii))

B. I certify under penalty of law that I personally have examined and am familiar with the waste and that the lab pack does not contain any wastes identified at § 268.42(c)(2). I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment. (§ 268.7(a)(8))

C. I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly so as to comply with the performance levels specified in 40 CFR part 268, subpart D, and all applicable prohibitions set forth in 40 CFR 268.32 or RCRA section 3004(d) without impermissible dilution of the prohibited waste. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment. (§ 268.7(b)(5)(i))

D. I certify under penalty of law that the waste has been treated in accordance with the requirements of 40 CFR 268.42. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment. (§ 268.7(b)(5)(ii))

E. I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the nonwastewater organic constituents have been treated by incineration in units operated in accordance with 40 CFR part 264, subpart O or 40 CFR part 265, subpart O, or by combustion in fuel substitution units operating in accordance with applicable technical requirements, and I have been unable to detect the nonwastewater organic constituents, despite having used best good faith efforts to analyze for such constituents. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment. (§ 268.7(b)(5)(iii))

F. I certify under penalty of law that the waste has been treated in accordance with the requirements of 40 CFR 268.40 to remove the hazardous characteristic. This decharacterized waste contains underlying hazardous constituents that require further treatment to meet universal treatment standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment. (§ 268.7(b)(5)(iv))

G. I certify under penalty of law that the debris have been treated in accordance with the requirements of 40 CFR 268.45. am aware that there are significant penalties for making a false certification, including the possibility of fine and imprisonment. (§ 268.7(d)(3)(iii))

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

35. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

Subpart A—Requirements for Final Authorization

36. Section 271.1(j) is amended by adding the following entries to Table 1 in chronological order by date of publication in the **Federal Register**, and by adding the following entries to Table 2 in chronological order by effective date in the **Federal Register**:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
September 19, 1994	Land Disposal Restrictions Phase II—Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes[4] in §268.38.	[Insert FR page numbers].	December 19, 1994.

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TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984—Continued

Promulgation date	Title of regulation	Federal Register reference	Effective date
.	.	.	.

[4] The following portions of this rule are not HSWA regulations: §§ 260.30, 260.31, 261.2.

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
.	.	.	.
December 19, 1994	Prohibition on land disposal of newly listed and identified wastes.	3004(g)(4)(C) and 3004(m)	September 19, 1994. 59 FR [insert page numbers].
September 19, 1995	Establishment of treatment standards for D001 and D012–D017 wastes injected into nonhazardous deep wells.	3004(m)	Do.
September 19, 1996	Prohibition on land disposal of radioactive waste mixed with the newly listed or identified wastes, including soil and debris.	3004(g)(4)(C) and 3004(m)	Do.
.	.	.	.

[FR Doc. 94-22493 Filed 9-16-94; 8:45 am]
BILLING CODE 6560-50-P

Federal Register

Monday
September 19, 1994

Part III

Department of Commerce

National Telecommunications and Information Administration

Inquiry on Universal Service and Open Access Issues; Notice

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 940955–4255]

Inquiry on Universal Service and Open Access Issues

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of inquiry; request for comments.

SUMMARY: NTIA is conducting a comprehensive review of universal service and open access issues in communications. NTIA requests public comment relevant to such a review. After analyzing the comments, NTIA may issue a report, a series of short analyses, and/or make recommendations to the Administration's Information Infrastructure Task Force, the Federal Communications Commission, and to Congress.

DATES: The public should file comments on or before December 14, 1994 to receive full consideration.

ADDRESSES: Please send comments (seven copies plus one copy on diskette, preferably WordPerfect or DOS compatible) to the Office of Policy Analysis and Development, NTIA, U.S. Department of Commerce, 14th St. and Constitution Ave., N.W., Room 4725, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: James McConnaughey or Cynthia Nila, Office of Policy Analysis and Development, (202) 482–1880.

SUPPLEMENTARY INFORMATION:

Authority: National Telecommunications and Information Administration Organization Act of 1992, Public Law 102–538, 106 Stat. 3533 (1992) (codified at 47 U.S.C. 901 *et seq.*)

I. Introduction[1]

1. The United States has a long-standing commitment to the achievement of "universal service"—widespread availability of "basic" telephone service at affordable rates. First articulated in the early twentieth century,[2] universal service has since been adopted by Federal and State regulators as one of the core objectives of U.S. telecommunications policy. For example, it was incorporated in general terms in Section 1 of the Communications Act of 1934.[3] More importantly, many of the major regulatory reforms that have been considered over the past several decades—most notably decisions concerning whether and under what conditions to allow competition in telecommunications service and equipment markets—have been evaluated, at least in part, in terms of their possible impact on universal service.

2. Historically, universal service has meant widespread access to voice-grade telephone service, commonly referred to as "plain old telephone service" (POTS). The fundamental objective has been to give all Americans an opportunity to pick up the telephone and, at a reasonable cost, have a voice conversation with anyone else in the country or, increasingly, the world. In recent years, however, many have questioned whether traditional notions of universal service are adequate to meet the needs of the American people, now and in the 21st century.

3. This reassessment is prompted by two principal developments. First is the emergence of information as a vital economic resource and source of individual empowerment. In 1991, U.S. companies for the first time spent more money on computer and communications equipment than on industrial, mining, farm and manufacturing machinery—dramatic evidence of the nation's transition from the Industrial Age to the Information Age.[4] Increasingly, the ability of U.S. businesses to remain competitive in a global marketplace and to create challenging, high-paying jobs hinges on their proficiency in creating, manipulating, managing, and using information. Similarly, an individual's ability to acquire, develop, and sustain marketable job skills—and, indeed, to be an informed, productive participant in American society—will depend on how well he or she can access, analyze, and assimilate information.

4. Second, technological changes—particularly the convergence of computers and communications and the deployment of high capacity, digital transmission facilities—promise to make telecommunications networks the highways of the Information Age, the principal means by which individuals and businesses access and distribute essential information resources. In this environment, it may be anachronistic to continue speaking of universal service in terms of voice telephone service. Accordingly, consensus is growing that there is a need to redefine that concept to meet the demands of a new age.

5. Reform of universal service policies would be necessary even if there were no redefinition issue. As described more fully below, many experts agree that current pricing policies for voice telephone service are characterized by extensive subsidies between and among services, although the extent of those subsidies remains a matter of considerable dispute.[5] In other words, certain services (e.g., long distance, business service) have been overpriced to maintain low cost residential voice service. Whether or not that pricing structure was ever desirable as a matter of policy,[6] it could be sustained only in a market environment characterized by monopoly provision of telephone service.

6. That environment is rapidly becoming a thing of the past. Competition is the norm in many telecommunications services and equipment markets; it is growing rapidly in the rest. Competition drives prices toward the costs of providing those services and, in so doing, undermines traditional pricing structures that incorporate inter-service subsidies. As a result, even though competition is not inimical to universal service goals,[7] its emergence and expansion is forcing a re-examination of traditional universal service funding policies as surely as technological change and the emergence of the Information Age are prompting changes in the way universal service is defined.

[1] This Notice of Inquiry (Notice) and other related documents are also available in electronic form on the NTIA Bulletin Board at (202) 482–1199. Please set your communications parameters to No parity, 8 data bits, and 1 stop bit (N,8,1). Commenters are encouraged to file their comments electronically at the same number.

[2] The concept was first articulated by Theodore Vail, President of AT&T, in 1907, although his concept of universal service was quite distinct from modern notions of what that term means. *See* Milton Mueller, *Universal Service in Telephone History*, 17 Tel. Pol. 352, 353, 356–358 (1993).

[3] Section 1 authorizes the Federal Communication Commission (FCC) to regulate interstate and foreign communications "so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges." 47 U.S.C. 151 (1988). Telecommunications reform legislation pending in both Houses of Congress would make preservation and advancement of universal service an explicit goal of U.S. policy. *See* S. 1822, the Communications Act of 1934, 103d Cong., 2d Sess. Sections 101, 102 (1994); H.R. 3626, the Antitrust and Communications Reform Act of 1994, 103d Cong., 2d Sess. § 301 (1994).

[4] *See* Thomas Stewart, *The Information Age in Charts*, Fortune, Apr. 4, 1994, at 75.

[5] *See infra* Section IV.

[6] Several economists have estimated that the welfare losses associated with the existing subsidy structure can be measured in the billions of dollars annually. *See, e.g.*, James Griffin, *The Welfare Implications of Externalities and Price Elasticities for Telecommunications Pricing*, 64 Rev. Econ. & Stat. 59 (1982); Lewis Perl, *Welfare Gains from Cost-Based Telephone Pricing* (June 19, 1986) (unpublished paper).

[7] *See infra* Section II.

The challenge for government and service providers alike is to find a new funding scheme that is compatible with and sustainable in a competitive market environment.

7. The National Telecommunications and Information Administration (NTIA) is issuing this Notice to gather public comment on these important issues. The Clinton Administration (the Administration) has stated a commitment to extending the concept of universal service to ensure that information resources are available to all at affordable rates.[8] This policy is a matter of fundamental fairness; if information means empowerment, the United States "cannot accept a division of our people among telecommunications 'haves' and 'have-nots.'"[9]

8. This Notice represents another stage in NTIA's continuing investigation of universal service issues.[10] Since December 1993, NTIA has conducted field hearings in five locations across the country to gather information on those issues.[11] This Notice has been shaped by what the agency has learned over the course of those hearings. The Notice also seeks to supplement the record developed at those hearings on the many questions subsumed within the concept of universal service. At the end of this process, NTIA will work to develop a concept of universal service that fits the challenges and opportunities of the Information Age. As importantly, NTIA intends to identify mechanisms that can fund an expanded version of universal service in a competitive market environment.

9. Finally, we also seek comment on another issue related to the policies underlying universal service—"open access." If, as noted above, information is of increasing importance to businesses and individuals alike, and if competition among service providers is likely to be the norm in the future, ensuring universal service for consumers is only part of the equation. Steps must also be taken to afford information providers access to consumers and vice versa. Accordingly, the Administration is also committed to ensuring that telecommunications facilities and networks are sufficiently "open" so that all information providers can transmit their wares to consumers across those facilities reliably, efficiently, and seamlessly, without compromising the integrity or security of the information delivered.[12] NTIA therefore requests comment on a variety of questions relating to the meaning and implementation of open access.

10. Section II of the Notice considers the impact of competition on universal service goals. Section III.A of the Notice addresses current universal service policies and solicits comment on the degree to which the nation has achieved the goal of providing basic voice telephone service to all Americans. Section III.B considers the issue of redefining the traditional concept of universal service and determining what services or functions should be included in an expanded definition of universal service. Section IV focuses on mechanisms for funding universal service in an increasingly competitive market environment. Section V focuses on the role of the Federal and State governments in determining universal service policies. Finally, Section VI requests comment on the definition and implementation of open access.

II. Competition and Universal Service

11. The Federal government and many States have made a fundamental commitment to introducing and expanding competition in telecommunications markets. The benefits of that commitment are increasingly apparent and show no signs of diminishing. There is also some concern, however, about the effects of competition on universal service. While those concerns merit attention, there is much evidence to suggest that competition and universal service are not incompatible goals. Market rivalry both drives prices towards underlying costs and reduces underlying costs by forcing competing firms to operate more efficiently. Competition thus tends to reduce prices for goods and services, making them more affordable for more consumers and ultimately reducing the need for subsidies. At the same time, competition also increases the range of services and products available to consumers and, potentially, their geographic reach as well, further promoting universal service goals.

12. The potential effects of competition on rates and consumer choice can be gleaned from the recent history of the long distance and CPE markets in the United States. Prior to the break-up of the Bell System in 1984, most of the United States was served by a single long distance network operated by AT&T. Today, after a decade of government efforts to facilitate entry in the long distance market, there are more than 500 long distance carriers in the United States, offering a wide, ever-changing array of services and pricing options.[13] Due in part to this active rivalry among firms, long distance rates have declined more than sixty percent since 1984 by some estimations, making long distance calling more affordable for more Americans.[14]

13. Similarly, when the Bell System controlled the CPE market, customers could lease (but not buy) any telephone they wanted, so long as it was a black instrument that delivered unadorned voice service. Today, customers can choose their phones from a wide variety of colors, sizes, shapes, and designs. Modern telephones also include a variety of features (e.g., speed dialing, re-dial, memory programming) that greatly increase usefulness of that equipment for many customers. In addition, its cost has declined

[8] *The National Information Infrastructure: Agenda for Action* 58 Fed. Reg. 49,025, at 49,028 (1993) (*Agenda for Action*).

[9] *Id.*

[10] The Administration's activities relating to universal service are one facet of a comprehensive National Information Infrastructure (NII) initiative. The Administration has established an interagency Information Infrastructure Task Force (IITF), chaired by the Secretary of Commerce, to address the many issues relating to deployment of the NII. The IITF operates through a number of subcommittees and working groups, and with the assistance of a public/private sector Advisory Council. For further information on the IITF and related organizations, see *The NII Field Hearings on Universal Service and Open Access: America Speaks Out* 1–2 (Sept. 1944) (Report of the Telecommunications Policy Committee of the Information Infrastructure Task Force) (*NII Field Hearings*).

[11] Hearings were held in Albuquerque, New Mexico (December); South Central Los Angeles (February); Raleigh-Durham, North Carolina (April); Sunnyvale, California (May); and Indianapolis, Indiana (July). At each hearing, NTIA received testimony from public interest groups, state and local governments, labor, industry, and academia. Summaries of each of the hearings are on the on-line NTIA Bulletin Board. See not 1 for access information. In this Notice, we also request comment on how best to continue and expand these public outreach activities.

[12] *Agenda for Action*, *supra* note 8, at 49,027, 49,029. Open access may also permit users themselves to develop new services and applications or to exchange information among themselves, without waiting for services to be offered by commercial providers. *Id.* at 49,029.

[13] Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, *Trends in Telephone Service*, at 31 (May 1994) (*Telephone Trends*). AT&T now captures less than 60 percent of all long distance revenues. Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, *Long Distance Market Shares—Fourth Quarter, 1993* Table 6 (Apr. 1994).

[14] *See, e.g.*, Letter from Gerald J. Kovach, MCI, to Clarence L. Irving, Jr., NTIA, Attachment 1 at 1 (June 9, 1994) (long distance rates, adjusted for inflation, have declined 66% since 1985). As a result of the sharp decline in long distance rates, long distance calling has surged in recent years, especially relative to local calling. Toll calls (measured in minutes of use) comprised 26.6% percent of all calls in 1992, as compared to 19.9% in 1984. *Telephone Trends*, *supra* note 13, at 25 and Table 16.

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considerably in the last decade (as much as 50 percent in "real" terms).[15]

14. The impact of competition on universal service can be examined more directly by reviewing the development of local telephone service after expiration of the original Bell telephone patents in 1893/94 unleashed a twenty-five year period of competition in the provision of local telephone service.[16] In 1895, after nineteen years of the Bell System patent monopoly, there were only 251,994 telephones in the United States, or one telephone for every 276 of the nation's 69.5 million people. By 1920, at the close of the competitive era, there were some 13.4 million telephones in the United States, or one telephone for every eight of the nation's 105.7 million people.[17] Moreover, fifty-five percent of all telephone subscribers were residential customers, as compared to only ten percent in 1895.

15. We seek comment on the relationship between competition and universal service. Will competition help make new advanced telecommunications services more readily available across the nation and thereby reduce the need for universal service regulation? Some argue that the universal service rationale is based on the premise that the market alone cannot uniformly guarantee provision of telecommunications and services. They believe that depending on the market to provide advanced services may seriously impede access by important segments of society to those services, particularly if the offerings are not commercially viable in certain areas.[18] Consumer and civil rights groups, in particular, raise the specter of "electronic redlining," in which low income and minority neighborhoods are "systematically underrepresented" in the deployment of advanced services, as has been alleged with respect to various local telephone companies' video dialtone networks.[19]

16. To what extent is "electronic redlining" occurring or likely to occur, *i.e.*, the calculated exclusion of a geographic area from deployment of advanced telecommunications capabilities or services on the basis of income, ethnicity, race, or disability? What weight should be assigned to those arguments that identify economic reasons for serving certain areas on a less timely basis than others?

17. Various proposals address the concern that a marketplace-driven definition of universal service may not bring comparable services to all segments of the population or to all areas of the country at the same rate. One proposal, for example, is for government to require firms to provide services to community centers, such as schools and libraries, at the same time that such services are first provided to businesses and residences. The proponents of this approach claim that focusing on providing service to such centralized points within a community, as a transitional mechanism, could make desirable services more widely available without incurring the risks and costs of mandating universal provision of uneconomical or unwanted services.[20] We request comment on this approach. In particular, do such public institutions have the facilities, funds, and hours of operation to afford individuals, especially the young, a full and fair opportunity to explore the highways of the Information Age? If not, what mechanisms could be explored for providing such resources?

18. We also seek comment on the possible effects of competition on the achievement of universal service goals in rural areas. Some argue that competition in such areas is not only unsustainable, but potentially destructive to universal service goals.[21] On the other hand, competition may spur the introduction or expansion of service in rural areas, as suggested by the forty-fold increase in telephone penetration that occurred in rural areas during the competitive period between 1895 and 1920.[22] We also solicit comment as to whether the "rural subscriber may be just as willing to ride the information highway as his urban counterpart," thereby creating a market setting that could sustain competition.[23]

III. Universal Service Today and in the Future

19. The record developed over the course of NTIA's five universal service field hearings demonstrates considerable public support for expanding the current definition of universal service beyond "plain old telephone service"—POTS.[24] Accordingly, this section of the Notice addresses the myriad issues raised by such a redefinition.[25] Because any new concept of universal service will build on the existing definition, it is appropriate, however, first to consider the extent to which the nation has achieved its goal of universal POTS before turning our attention to a new definition of universal service.

A. Achievement of Universal POTS

19a. In many respects, U.S. universal service policies have been a major success. As of March, 1994, 93.9% of all American households had telephone service, compared to 91.4% a decade earlier, and fewer than fifty percent at the end of World War II.[26] Moreover,

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[15] *See* National Telecommunications and Information Administration, U.S. Dep't of Commerce, NTIA Special Publication 91–26 *The NTIA Infrastructure Report: Telecommunications in the Age of Information* 204–205 and n. 707 (1991) (*Infrastructure Report*).

[16] The following discussion is taken from Mueller, *supra* note 2, at 356–358, 360–361.

[17] In 1895, the number of telephones in the United States was growing by five percent annually. *Id.* at 356. At that rate, the nation would have had fewer than one million telephones by 1920.

[18] Raymond Lawton, Associate Director of The National Regulatory Research Institute, pointed out in his testimony at the Indianapolis field hearings that in an unregulated market, services are provided to rural/residential/low income service recipients last because service to them is often more expensive and they are most often unable to pay. *See* Lawton Comments, p. 2.

[19] *See* Center for Media Education, Consumer Federation of America, *et al.*, *"Information Superhighway" Could Bypass Low Income and Minority Communities*, (released May 23, 1994) and associated petitions filed with the FCC on the same date. Under the FCC's "video dialtone" rules, a local telephone company can construct, operate, and maintain a transport facility within its local service area, leasing channel capacity to unaffiliated programmers on a common carrier basis. *See Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54–63.58*, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 5781 (1992).

[20] *See, e.g.*, Comments of Carlos Atencio, Chairman, New Mexico Educational Technology Coordination Council at the Los Alamos National Laboratories, New Mexico Hearing (Dec. 16, 1993).

[21] *See, e.g.*, John Panzar and Steven Wildman, *Competition in the Local Exchange: Appropriate Policies to Maintain Universal Service in Rural Areas* (undated, unpublished paper) (Panzar and Wildman). To gather a more complete picture of market conditions in rural areas, we request the following data from rural telephone companies (although additional information would be welcome): cost of service per access line; average minutes of use per access line; number of business lines versus number of residential access lines; long distance calling by business customers versus residential customers; and nature, number, and market share of competitors, where applicable.

[22] Nearly 40% of all farm households had a telephone in 1920, as compared to less than one percent in 1895. *See* Mueller, *supra* note 2, at 356, 357.

[23] The Universal Service Subcommittee, Western Alliance, *Universal Service in the Nineties*, Section II, at 2 (a draft report by a consortium of western rural telephone companies released at the National Association of Regulatory Utility Commissioners (NARUC) Summer Meetings, San Diego, California, July 1994).

[24] *NII Field Hearings*, *supra* note 10, at 8–9.

[25] This Notice does not, of course, contain the definitive list of such issues. We encourage commenters to raise other important matters not touched on in the Notice.

[26] *See* Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, *Telephone Subscribership in the United States* at 6, Table 1 (Aug. 1994) (*Telephone Subscribership*) (citing the Census Bureau's Current Population Survey (CPS)). *See also* Congressional Budget Office, *The Changing Telephone Industry: Access Charges, Universal Service, and Local Rates* 55 (June 1984) (*cited in* Office of Policy Analysis and Development, NTIA, *Telephone Subscribership in the United States: A Post-Divestiture Analysis* (1985)).

Basic telephone service has also become increasingly affordable for the average American, particularly since the AT&T divestiture in 1984. Between 1983 and 1993, prices for telephone service, on average, rose less (2.0%) than the consumer price index for all items (3.8%) or for all services (4.7%). Moreover, since 1984, telephone service has comprised no more than 2.0–2.1% of annual household expenditures. *Telephone Trends*, *supra* note 13, Table 3, Table 8. Over this same period of time, the variety and quality of telephone services and equipment have also increased dramatically. Devices such as touch-tone service, multiple phones, cordless phones, and answering machines, that were once regarded as luxuries, have now become commonplace for many U.S. citizens.

[27] For example, compared to the world's major industrial nations—the so-called "Group of 7"—the United States in 1992 (56.49) trailed only Canada (59.21) in terms of main telephone lines per 100 inhabitants while surpassing France (52.13), Japan (46.74), the United Kingdom (45.25), Germany (43.96), and Italy (41.03). International Telecommunication Union, *World Telecommunication Development Report 1994*, A–3. Canada's success in extending universal service to its citizens (evidenced by the 98.7% of Canadian households in 1992 with basic telephone service) demonstrates, however, that there is room for improvement in the United States. *See* Universal Service Project, NARUC Subcommittee on Communications, Staff Draft Position Statement on Universal Service Principles 4 (June 1994) (*NARUC Paper*).

[28] H.R. Rpt. No. 560, 103d Cong., 2d Sess. 6 (1994).

[29] In March 1994, telephone penetration ranged from 87.7% in South Carolina to 97.2% in Pennsylvania. *Telephone Subscribership*, *supra* note 26, at 14, Table 2. Further, while more than half of Southwestern Bell's 550 central offices in Texas report penetration rates of 95% or higher, some seven percent of the company's central offices have penetration rates of 80% or less. Source: Southwestern Bell Telephone analysis of 1990 Census data. We request comment from other telephone companies as to whether similar variations exist in their subscribership.

[30] *Telephone Subscribership*, *supra* note 26, at 23, Table 4. In 1989, about 50 percent of households at or below the poverty level headed by single women with small childen did not have telephone service. Jorge Schement, *Beyond Universal Service: Characteristics of Americans Without Telephone Service* 4 (unpublished peper presented at a conference sponsored by The Benton Foundation and The Columbia Institute for Tele-Information, Washington, D.C., Oct. 15, 1993)

telephone subscribership in the United States exceeds that in most other nations, often by a substantial margin.[27]

20. On the other hand, although the vast majority of American homes have at least one telephone, approximately six million households have none.[28]

Household penetration rates (*i.e.*, the percentage of households with a telephone) vary substantially both from State to State and within a State.[29] Subscribership is also particularly low among certain segments of our society. Approximately one-third of African-American and Hispanic households with annual incomes of less than $5,000 lack telephone service, as compared to twenty percent of white households.[30] Fifty-three percent of Native American households on reservations do not have phones.[31] Nearly three-quarters of all phoneless households are renters, and fifteen percent of households headed by a person under twenty-five years of age are without telephones.[32] Finally, in many states, some areas have no telephone service at all—not even pay phones.[33]

21. Statistics such as these have caused many observers to conclude that universal service has not been fully achieved in the United States.[34] Low penetration rates among certain groups appear to result from a variety of factors. For example, witnesses at NTIA's Albuquerque, New Mexico, field hearing cited the state's low per-capita income as an important cause of the low penetration in the area.[35] More than sixty-five percent of the households of the Navajo Nation in New Mexico do not subscribe to telephone service because telephone service is either not affordable or not available.[36] Language barriers and the need for increased public education, at least among certain groups, may also result in reduced telephone service penetration.[37]

22. We seek further comment on these matters. Are there other underserved groups besides those we have mentioned? Are the measures used and types of data currently being collected by the Census Department and other government agencies adequate for determining whether universal service goals are being met in all sectors of society? If so, parties are requested to provide that information for the record. If not, what recommendations are there for providing more comprehensive and targeted data on these issues?

23. We also solicit comment (particularly studies, surveys, etc.) on why some Americans do not have telephone service. Is income the determining or predominant factor? Does subscribership depend to any significant degree on geography (*e.g.*, do penetration levels differ between rural and urban areas after controlling for factors like income)? To what extent are cultural factors important? If such factors are important, what steps can be taken to overcome them? Do different considerations affect a household's ability to retain phone service over time, as compared to its decision to subscribe initially?

24. Finally, we request comment on whether implementation of universal service should be measured in terms of availability of POTS rather than penetration. For example, some households may not have telephone service simply because they choose not to subscribe. What measure(s), applied on a regular basis for monitoring purposes, would best enable policymakers to distinguish such households from those that desire basic service but cannot obtain it?

B. Formulating an Expanded Definition of Universal Service

25. As the nation decides whether and how to redefine universal service, it is important to remember that, to a large extent, the current debate represents but a new phase in a continuing process. Although universal service has traditionally been defined as voice-grade POTS, the minimally-acceptable characteristics of that service have changed over the past sixty years. Thus, direct dialing became popular as it obviated the need to make more expensive operator-assisted calls in many instances and regulators mandated lower rates for directly-dialed calls. Party-line service has been replaced in recent decades by single-line service. Some states have directed local exchange carriers to incorporate touch-tone capability into their basic service offerings because of its importance in accessing many information services. In short, the current interest in redefining universal service is consistent with past practice. The principal differences are the ever-

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[31] Bureau of the Census, U.S. Dep't of Commerce News (Release #CB94–127) Aug. 22, 1994, at 1.

[32] Bureau of the Census, U.S. Dep't of Commerce, SB/94–16, *Phoneless in America* 1 (July 1994) (*Phoneless*) (1990 data).

[33] Universal Service Project, NARUC Subcommittee on Communications, Staff Position Statement on Universal Service Principles 4 (July 19, 1994).

[34] *See, e.g.*, *NII Field Hearings*, *supra* note 10, at 8.

[35] *See* Transcript of New Mexico Hearing at 55, 253–254 (Comments of Thomas A. Garcia, U S WEST Vice President, New Mexico; Comments of Kenneth Solomon, Acting Director, Telecommunications Division, New Mexico State Corporation Commission (Dec. 16, 1993)). Another factor in affordability may be long distance charges. *See* Field Research Corporation *Affordability of Telephone Service* 68, Customer Survey Conducted for GTE and Pacific Bell (Oct. 1993) (finding that, among other things, customers who find it difficult to afford service have a higher percentage of their average monthly bill attributable to long distance charges).

[36] Comments of Rodger Boyd, Executive Director of the Navajo Nation, Division of Economic Development (Dec. 16, 1993).

[37] For example, research indicates that people with limited knowledge of the English language frequently are not able to take full advantage of the programs and services available to them. A 1992 survey of Chinese, Korean and Latino consumers in San Francisco, Los Angeles, New York, Chicago, and Brownsville, Texas, about their knowledge of telecommunications revealed that 43% did not know how to begin the process of having a phone installed and 17% did not know who to call if the phone was not working. *See* Comments of Bong Hwan Kim, Executive Director, Korean Youth and Community Center, Los Angeles hearing, at 6 (Feb. 16, 1994).

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expanding range of services that could be incorporated into a revised concept of universal service and the quicker pace at which policymakers must make their decisions.

26. As noted above, there appears to be strong public support for expanding the existing definition of universal service. There is, however, little consensus about what services, features, and capabilities should be included within a new definition. Witnesses at the NTIA field hearings suggested that universal service encompass a host of different services, including: access to a basic set of information and telecommunications services; multiple languages, including Spanish and Native American languages that require special, non-ASCII [38] characters; set-aside resources, facilities, and capacity for public, education, and government training and use; new technologies such as video link and cellular telephone service; and services defined as characteristics or features, rather than technologies.[39] A random survey of 1,000 likely voters conducted by the Benton Foundation found that Americans are very interested in educational and informational services.[40]

27. If universal service is to be redefined as a group of services or capabilities, some mechanism or set of principles must be found to help select from the wealth of possible alternatives. We therefore request comment on whether there is an organizing principle or set of principles that can be used to determine whether a particular service or feature should be included within a modern concept of universal service. This is essential because redefinition is not without potential pitfalls. Adding each new component to the package deemed universally necessary increases both the societal costs of making that package universally available as well as the chances of prematurely mandating services or features that are ultimately proven to be commercially undesirable.[41]

28. One approach could be to allow the marketplace to identify, at least in the first instance, services and features that warrant inclusion in an expanded definition of universal service.[42] Under this approach, private firms would offer services to consumers in competition with other companies. If some service were subscribed to by a predesignated minimum percentage of U.S. households, government regulators would either have the authority to consider whether to make that service universally available or be required to do so.[43] We seek comment on whether government should select services to be included in an expanded definition of universal service and, if so, on what basis such services should be chosen? What role should the market play in determining that mix? Should there be some threshold of market penetration before a capability or service is added to the definition of universal service? If so, what should the threshold be and why? Are there disadvantages in relying on market forces even in the first instance?

29. An alternative to identifying particular services to be incorporated into an expanded concept of universal service would be to define universal service in terms of a network connection that would enable customers to access any service available via such network. If universal service were to be defined in such a fashion, the cost of making it available throughout the country would likely be reduced. Moreover, government officials would not be required to make difficult determinations about the relative value of different services or equipment; instead, it should allow the market to determine customer valuation of each service or equipment item. On the other hand, government officials may have to make equally difficult decisions as to the type of network connection that should be provided.

30. We request comment on the notion of defining universal service in terms of a network connection. Would such an approach effectively spur deployment of an advanced telecommunications infrastructure? Would it give all sectors of society a chance to participate in the information revolution? If this approach were adopted, what sort of connection should be specified (*e.g.*, in terms of capacity, transmission speed, signalling, etc.)?

31. The notion of defining universal service as customer access to a telecommunications network raises the issue of access to the Internet, which began in 1969 as a Pentagon experiment to aid researchers in trading information by computer. Today the Internet is a worldwide network linking over 21,000 separately administered computer networks. Each computer network connects tens of thousands of computers with ten million users in the United States and fifteen million users in sixty countries around the world.[44] One observer recently asserted:

> Not knowing how to use the Internet will be as grave a deficiency as not knowing how to read. The Internet will become the world's primary means of communication and will soon carry more mail than the entire postal service worldwide.[45]

If universal service is defined in terms of a network connection, should that connection provide access to the Internet?

32. Another important area of inquiry is the extent to which universal service policy should address customer premises equipment (CPE). Without adequate equipment on the customer's premises, network connection and the many services it affords is meaningless. CPE capable of providing access to advanced services may be expensive at market prices, however, and thus could serve as a barrier to the availability of advanced services. For the same reason, however, subsidizing CPE as part of universal service could be expensive, possibly prohibitively so.

Including CPE in the definition of universal service could also reverse the government's existing regulatory approach toward CPE, which is now deregulated and subject only to market forces.[46] Local exchange carriers may provide CPE in conjunction with local telephone service, subject to certain safeguards. In addition, at present, computer manufacturers, set-top box manufacturers, and television manufacturers are competing to develop the product or products that could be used for receiving advanced services. It is thus not clear which equipment the government should specify, if any, and on what basis it should choose. Moreover, government selection of a certain type of CPE for inclusion within the universal service definition carries with it the risk of government picking winners and losers, a questionable strategy.

33. We seek comment on whether CPE should be included in the new definition of universal service, and, if so, whether a category of providers should be obligated to supply it. Should the Government identify specific equipment or merely capabilities if it is included in the definition? What other alternative approaches could be adopted, e.g., such as a voucher system, which would assure that all consumers could purchase the type of CPE they desire from the provider of their choice without government specification?

IV. Funding Universal Service in a Competitive Environment

34. Today, most experts agree that current pricing policies support universal service by generating subsidies that reduce the costs of providing POTS in particular areas and make service more affordable for certain groups of customers. By and large, such subsidies have been internally generated—*i.e.*, created by setting the pricing of certain services above the costs of providing them—rather than funded by external sources, such as taxes.[47] The growth of competition, which to some extent reduces the need for subsidies and is by no means incompatible with universal service, does put pressure on existing funding mechanisms. Above-cost pricing creates market opportunities for new entrants. New entry, in turn, drives prices towards costs, in the process, eliminating excess revenues that were available, prior to competitive entry, to subsidize universal services like POTS. The challenge for policymakers is to develop funding mechanisms that help achieve universal service goals, but are sustainable in a competitive environment.

35. While there is widespread agreement that competition is putting pressure on existing mechanisms for funding universal service, there is no consensus on the amount of subsidies at risk.[48] Thus, a study sponsored by the United States Telephone Association concluded that interexchange access and toll services provided by local exchange telephone companies (LECs) are priced to produce approximately $20 billion of contribution in excess of their long-run incremental costs.[49] Those additional revenues are presumably needed to fund universal service. Teleport Communications Group (Teleport), a major provider of competitive local telecommunications services, disputes this claim, contending that only $400 million of the LECs' $86 billion in annual revenues goes toward subsidizing rates for basic telephone service.[50] A study done for MCI estimated that the subsidy is about $3.7 billion when basic service costs are examined and extraneous LEC revenue requirements are subtracted.[51] Finally, the Consumer Federation of America alleges that, far from requiring support from other services, local telephone service produces net income for the LECs in the amount of five to ten dollars per month.[52]

36. We ask for comments on the amount of the subsidy today and the basis for the estimates. What methodologies were used to derive the estimates cited, and what are the strengths and weaknesses of each approach? What data sources are available on which to base the estimates? What are the implications of universal service subsidies in terms of market inefficiencies and the positive "externalities" generated by the addition of subscribers to the network? With respect to a system of subsidies, is there a threshold point at which the net positive benefits to society are maximized?

37. There is a similar lack of agreement concerning possible new mechanisms for funding universal service, although certain themes have begun to emerge. The debate overwhelmingly centers on the sources and distribution of the funding, since most parties appear to agree that some form of universal service support should be continued.[53] The following discussion highlights some of the proposals that are currently under discussion.

A. Sources of Contribution

38. Many proposals focusing on potential funding sources look to service providers as a source of subsidies. For example, NARUC's Universal Service Project Group contends that as markets continue to evolve toward competition, all service providers that deliver services over the public switched network should be required to contribute proportionally to the universal service support mechanisms, including enhanced service providers.[54] Metropolitan Fiber Systems (MFS), another provider of competitive local telecommunications services, would require contributions from all providers of telecommunications services.[55]

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[38] ASCII is a uniform code used in computer and data communications systems. It employs seven binary digits (bits) to represent a specific set of letters, numbers, punctuation and special characters, plus a parity bit used in checking for transmission errors.

[39] Comments of KNME–TV (Channel 5); Prodigy Services Co.; University of New Mexico, Department of Engineering; Alliance for Community Media; Virtual City Network Project; Citizens Action Coalition of Indiana; Casey Luna, Lt. Governor, State of New Mexico; Valley Telephone; Chinese for Affirmative Action; State Senator Douglas Hunt, Indiana. *Cf.* Comments of The National Regulatory Research Institute; Hudson Institute, and GTE East Area Telephone Operations.

[40] Mellman Lazarus Lake, *What People Think About New Communications Technologies*, Communications Policy Briefing 2, at 4 (Benton Foundation 1994).

[41] Defining universal service to include certain services may also raise constitutional and regulatory issues. For example, government designation of certain information services as part of a universal service package could be challenged as violative of the First Amendment on the ground that it compels providers to "speak" or because it discriminates against other information services. Moreover, inclusion of information services within a redefined universal service could lead to regulation of currently unregulated services. We seek comment on these issues as well.

[42] *See, e.g.*, Comments of Neil Pickett, Director of Research and Programs, the Hudson Institute, Indianapolis field hearing.

[43] *Cf.* S. 1822, 103d Cong., 2d Sess. § 102(a) (1994), which would add a new section 201A(h) to the Communications Act requiring the FCC to incorporate within universal service "any telecommunications and information services which . . . have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers."

[44] *About the Internet*, The InfoLetter: A Monthly Roadmap to the Information Superhighway, May 1994, at 5. Parts of the Internet are growing at an exponential rate of 15 percent per month. *See* Testimony of Dr. Vinton G. Cerf, President, Internet Society, before the House Science Committee, March 22, 1994.

[45] Mark Gibbs, *Internet ABCs Essential*, Investor's Business Daily, Apr. 14, 1994, at 4.

[46] Although CPE was detariffed and generally deregulated in the early 1980s, the FCC still requires registration of this equipment to ensure that its connection does not cause harm to the public switched network. *See* 47 CFR part 68 (1994).

[47] Thus, for example, rates for the local telephone facilities used to originate and terminate long distance services—so-called access facilities—have been set above cost to subsidize local telephone rates. Long distance service providers pass those access costs through to subscribers. *See, e.g., Infrastructure Report*, *supra* note 15, at 290–291. Local service rates for business customers typically exceed relevant costs to provide support for local service to residential users. *See, e.g.*, Bruce Egan and Steven Wildman, *Funding the Public Telecommunicotions Infrastructure* 7 (unpublished paper presented at a conference sponsored by The Benton Foundation and The Columbia Institute for Tele-Information, Washington, DC., Oct. 15, 1993) (Egan and Wildman). Finally, the common regulatory practice of requiring uniform rates throughout a geographic area—so-called "geographic rate averaging"—may result in above-cost rates for some customers and below cost rates for others. *See, e.g.*, David Kaserman and John Mayo, *Telecommunications Cross-Subsidies*, 11 Yale J. on Reg. 119, 130 (1994).

Although internally generated subsidies are widely used to fund universal service, they are not the only mechanisms. For example, subsidies to fund 911 emergency services and services for the hearing impaired increasingly are generated directly through a separate charge on each subscriber's bills. *See* Egan and Wildman, *supra*, at 7.

[48] To the extent that universal service is redefined to include additional services and features, the costs (and associated subsidies) of making that new package of services universally available would likely increase above current levels.

[49] Calvin S. Monson and Jeffrey H. Rohlfs, Strategic Policy Research, *The $20 Billion Impact of Local Competition in Telecommunications* 2,3 (issued July 16, 1993).

[50] Teleport Communications Group, *What $20 Billion Impact? A Reply to USTA* (issued Aug. 10, 1993).

[51] *See* Hatfield Associates, Inc., *The Cost of Basic Universal Service* 4 (July 1994).

[52] *See* Dr. Mark Cooper, Consumer Federation of America *Local Exchange Costs and the Need for a Universal Service Fund: A Consumer View* 1 (May 1994).

[53] During the five NII field hearings on universal service and open access, numerous witnesses set forth proposals relating to funding sources and distribution. See *NII Field Hearings*, pp. 9–10.

[54] NARUC Universal Service Project, NARUC Committee on Communications, Presentation of Staff Position Statement, NARUC Summer Meetings (San Diego, California) (July 25, 1994); Universal Service Project, NARUC Subcommittee on Communications, Staff Draft Position Statement on Universal Service Principles, 22 (June 27, 1994) (Staff Draft Position Paper).

[55] *See e.g., Inquiry into Policies and Programs to Assure Universal Telephone Service in a*

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Teleport, on the other hand, suggests that all common carriers providing facilities-based, two-way telecommunications contribute to funding universal service.[56] Professor Eli Noam has developed a plan under which all entities providing "transmission path services" to third parties for compensation would pay a proportionate share, based on revenues, toward universal service funding.[57]

39. We request comment on these and other mechanisms for generating funds to support universal service. What are the advantages and disadvantages of deriving universal service support funding from service providers? What criteria should be used to determine which service providers should be required to contribute to universal service funding? Should contributions be required only from facilities-based service providers and, if so, why? If contributions are to be required from non-facilities based service providers (*e.g.*, resellers, enhanced service providers), do steps have to be taken to prevent double payment? How can the contribution scheme be structured so as to minimize adverse effects on competition?[58] Finally, should we keep any of the existing funding mechanisms?

40. Some have suggested public funding as an alternative to obtaining universal service funding from service providers. For example, Professor Noam lists a variety of tax measures that could be used to fund universal service (*e.g.*, general tax revenues, a telecommunications sales tax, a tax on telecommunications equipment, or a property tax on carriers), while pointing to problems with each.[59] Some witnesses at the NTIA field hearings asserted that subsidies should be generated from tax-based funding under ideal circumstances, with a sectoral levy on telecommunications as a second best option.[60] Finally, at NTIA's Indianapolis hearing, an executive of Procter and Gamble suggested that commercial advertising on the NII could be an alternative mechanism for funding universal service objectives.[61]

41. We request comment on the advantages and disadvantages of using public funding to advance universal service goals. While that approach would be competitively neutral, public funding would represent a sharp departure from current funding policies and would likely encounter stiff opposition, given the Federal deficit and other budget priorities. We also seek comment on the efficacy of advertising as a vehicle for funding universal service in the 21st century.

B. Distribution of Subsidies

42. The other facet of universal service funding concerns the distribution of subsidies. Currently, universal service support is provided in both targeted and untargeted fashions. As noted above, government regulators historically have mandated above-cost prices for certain services to reduce rates for residential POTS. This approach, however, effectively subsidizes all residential customers, including those who would be willing and able to pay cost-based rates for telephone service. Similarly, regulators have also directed subsidies towards high cost areas to ensure affordable POTS in those areas.[62] Once again, this approach benefits all households in high cost areas, whether or not they are low income or would terminate telephone service if faced with cost-based rates.

43. Recently, government regulators have developed more carefully targeted funding programs. For example, the FCC's Link-Up America program allows States to reduce telephone installation charges for qualified households by as much as $30, as well as to use installment payments for installation charges without any interest charges to the customer. To date, forty-eight states and the District of Columbia have implemented Link-Up America programs. Funding of the program this year will be approximately $15.9 million. Under the FCC's Lifeline program, started in 1985, the FCC matches State rate discounts to eligible subscribers (up to the maximum Federally-mandated subscriber line charge of $3.50 per month). Thirty-five states and the District of Columbia have implemented some form of Lifeline assistance, at a projected cost of some $119 million in 1994.

44. Most experts contend that universal support should be provided only to those subscribers who could not otherwise afford telephone service. Some argue for targeting subsidies to low income users, high cost areas, and special needs groups.[63] NARUC's Universal Service Project recommends continuing some support mechanisms in place today, including targeted support in low cost areas and direct assistance to end users through Lifeline and Link-up programs.[64] Others also support some form of lifeline option to assist low income customers while avoiding subsidizing every household.[65]

45. We seek comment on how best to target universal support funding. What criteria should be established to identify those eligible for subsidies? Should eligibility for support be linked to the eligibility standards associated with other social "safety net" programs. Should support be structured so that some defined package of telecommunications services consumes no more than a specified percentage of a household's annual income, or represents no more than a designated fraction of a household's yearly expenditures?[66] Should subsidies be applied to a limited set of services and, if so, how should that set of services be determined?

46. We also request comment on the current practice of providing support to firms providing service in high cost (predominantly rural) areas. Some have argued that rural telephone companies have higher average costs only if one considers the fixed costs of their telephone networks. When operating expenses (*e.g.*, labor costs, taxes, interest expenses) are factored in, total costs for some rural companies are lower than the costs incurred by companies operating in non-rural areas.[67] Commenters should address these analyses and their implications for universal service policies in rural areas.

47. In a related vein, MFS suggests that subsidies for high cost areas be based on objective criteria such as population density, geography, and other subscriber statistics rather than actual telephone company costs to reduce any incentive of LECs to inflate costs so they can keep receiving subsidies.[68] Is that a viable funding strategy? Would it be more efficient to direct support to rural households, thereby subsidizing only those subscribers who could otherwise not afford telephone service?

48. Finally, we solicit comment on the appropriate recipients of universal service support. As noted above, subsidies are directed towards the providers of telephone service, in return for their commitment to provide below cost service to certain subscribers or in certain areas. Some observers have suggested providing subsidies directly to subscribers, either as a complement to or in place of transfers to carriers. There is growing interest, for example, in a voucher system to allow subsidies to be distributed directly to eligible subscribers who would choose their own providers.[69] Similarly, there is a proposal to give eligible customers credits on their monthly bills to reflect reductions in the price of basic service.[70]

49. Directing support to end users, rather than to carriers, could give customers more control in choosing their providers, while continuing to ensure that all have access to affordable service. It might also stimulate competitive entry in some areas. Others have argued, however, that providing support to subscribers would encourage inefficient entry by new firms, jeopardize incumbent providers' ability to serve remaining customers, and actually increase universal service support requirements.[71]

50. Should universal service support payments be made to service providers, to subscribers, or in some other fashion? Would directing subsidies to carriers encourage inefficient entry in some areas? If so, under what conditions? Could a subscriber-based subsidy program be structured to avoid such problems? How much would such a program cost to establish and operate? If support payments are made to service providers, should they be limited to certain categories of providers, such as "carriers of last resort" (*i.e.*, firms that agree to provide universal services throughout an entire geographic area)? If so, would it be feasible or efficient to designate (and provide subsidy payments to) multiple carriers of last resort in a particular area? What rules should dictate when carriers of last resort can enter or exit geographic areas? What is the most effective way to establish service in currently unserved areas? For example, would it be possible to award a franchise to service an unserved area via competitive bidding? What minimum franchise requirements would be necessary to make such an auction fair and attractive to potential bidders?

C. Transition Measures

51. Establishing a new funding scheme will likely necessitate transitional measures. For example, if any rate rebalancing occurs, it will be necessary to address potential "rate shock" to local ratepayers. One commenter contends that any transition should be aimed at achieving two goals: (1) developing a level playing field for competitors and (2) continuing to protect consumers. Ameritech proposes to use what it calls the "Customers First Plan," based on what Ameritech labels "bulk billing." In effect, Ameritech would collect the necessary subsidy amount by billing long distance carriers according to their share of the total toll revenues reported to the FCC for all of Ameritech's interstate access customers. Ameritech urges this approach as a transition to long-term reform of universal service funding mechanisms.[72] We request comment on this approach, as well as on other transitional proposals. How should these mechanisms be structured so as not to distort competitive markets?

V. Role of the Federal and State Governments in Developing Universal Service Policies

52. Traditionally, FCC and state regulators have worked in tandem to promote universal service goals, but responsibility for defining the precise components of universal service has resided primarily with the States. The telecommunications reform legislation pending in Congress would specify differing degrees of Federal-State cooperation. The Senate bill, S. 1822, would charge the FCC with defining universal service, "based on recommendations from the public, Congress, and the Federal-State Joint Board," although it would authorize the States to prescribe requirements over and above the federally-established minimum as long as such regulations are not inconsistent with those prescribed by the FCC.[73] The House bill, H.R. 3626, would delegate the task to the FCC and the States, based on recommendations from the Joint Board.[74]

53. Similarly, most funding proposals recognize the joint role of the FCC and the states, given the bifurcated regulatory jurisdiction over telecommunications. For example, both bills now pending in Congress, H.R. 3626 and S. 1822, require the involvement of the FCC and the States in determining new universal service funding mechanisms, although the final distribution authority between the two levels of government will turn on the specific legislative language enacted. Many parties stress the need for administration of a funding mechanism by a neutral third party from the private sector.[75]

54. There are numerous arguments for allowing more or less federal or state

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Competitive Market Environment, Petition of MFS Communications Company, Inc. for a Notice of Inquiry and *En Banc* Hearing, at 5 (filed Nov. 1, 1993) (Petition of MFS).

[56] Comments of Michael A. Morris, Western Regional Director, Regulatory and External Affairs, Teleport Communications Group, Transcript of Los Angeles Hearing at 223 (Feb. 16, 1994).

[57] Eli M. Noam, *NetTrans Accounts: Reforming the Financial Support System for Universal Service in Telecommunications* (Sept. 1993) (unpublished paper) (Noam). His scheme would apply to all facilities-based two way transmission carriers regulated by the FCC under Title II, including local exchange carriers, interexchange carriers, cellular carriers, competitive access providers, and satellite carriers. He would exclude enhanced service providers, information providers, resellers, private networks, equipment manufacturers, and cable and broadcast operators. A system of credits and debits would be used to determine amounts owed and transfers would only be made in the event of a difference owing between providers. He would begin this program at the same time that local competition would be fully permitted, with full interconnection and collocation rights. He indicates that his proposal could be implemented under existing mechanisms.

[58] For example, MFS suggests that universal service obligations be determined annually, based on competitively neutral criteria, such as percentage of revenues or a fixed amount per access line. *See* Petition of MFS, *supra* note 55, at 19.

[59] Noam, *supra* note 57, at 17–20.

[60] Comments of Barbara A. Cherry, Ameritech 2 (Indianapolis hearing); Transcript of Los Angeles hearing at 207 (Comments of Timothy J. McCallion, West Area Vice President—Regulatory, GTE). A State regulatory official testifying at the New Mexico field hearing raised the possibility of using revenues from Federal spectrum auctions to fund universal service objectives. Ken Solomon, Acting Director of Telecommunications, New Mexico State Corporation Commission, New Mexico transcript, at 256.

[61] Comments of Robert Herbold, Senior Vice President, The Proctor & Gamble Company (Indianapolis Field Hearing).

[62] One such subsidy mechanism is the Universal Service Fund (USF) which provides monies to local telephone companies whose "local loop" costs (*i.e.*, the cost of the facility connecting the subscriber's home to the nearest company switching office) are more than 15 percent above the national average. The USF grew from $445 million in 1986 to more than $700 million in 1993, sparking an investigation by a Federal-State Joint Board and the FCC into the causes of its rapid growth. *See also* Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Notice of Inquiry, CC Docket No. 80–286 (released August 30, 1994). Another subsidy mechanism is the Rural Electrification Administration's telephone loan program, which, since 1947, has provided low-cost loans directly to rural telephone companies and cooperatives. *See* 7 U.S.C. § 901 *et seq* (1994).

[63] See *NII Field Hearings*, p. 10–11.

[64] Staff Draft Position Paper, *supra* note 54, at 8.

[65] Comments of Charles Smith, Vice President and General Manager, Pacific Bell, Los Angeles region, Transcript of Los Angeles Hearing at 55 (Feb. 16, 1994).

[66] As noted above, telephone service comprised no more than 2.0–2.1% of the average U.S. household's annual expenditures. *See supra* note 26.

[67] *See* Joseph Fuhr, Jr., *Should the U.S. Subsidize Rural Telephone Companies?*, 12 J. of Pol. Analysis and Mgmt 310 (1993); Thomas Armstrong and Joseph Fuhr, Jr., *Cost Considerations for Rural Telephone Service*, 17 Tel. Pol. 80 (1993).

[68] *See* Petition of MFS, *supra* note 55, at Attachment I, p. 4.

[69] Comments of Mark T. Bryant, MCI Telecommunications 13, New Mexico Hearing (Dec. 16, 1993). See also Noam at 36–37.

[70] *See* Petition of MFS, *supra* note 55, at 20. Carriers that provide basic exchange service would grant credits to eligible end users, and these credits would apply against the carriers' universal service obligations.

[71] *See* Panzer and Wildman, *supra* note 21, at 20–25.

[72] *See Petition for a Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region*, DA 93–481, Attachments to Ameritech's Reply Comments. Customers First: Ameritech's Advanced Universal Access Plan, Attachment G (filed July 12, 1993).

[73] S. 1822, 103d Cong., 2d Sess. Section 102(a) (1994).

[74] H.R. 3626, 103d Cong., 2d Sess. Section 302 (1994).

[75] See Petition of MFS, *supra* note 55, at 17; See also Comments of Michael Morris, TCG, *supra* note 56, at 222.

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authority over universal service policies. Defining universal service on a nationwide basis, for example, could facilitate network planning and service deployment, thereby reducing the total costs to society of implementing universal service. On the other hand, giving individual states flexibility to adopt differing definitions and funding mechanisms, as is the case today, would allow them to craft policies more in line with local conditions. Allowing for state experimentation might also reduce the risks of mandating provision of services either unnecessarily or prematurely, and or leave room for creative funding mechanisms that might reduce the total subsidy requirement. We request comment on the appropriate role of the Federal and State government in defining and funding universal service. What role should be played by the private sector?

VI. Open access for Telecommunications and Information Systems

55. The development and convergence of new telecommunications and information technologies are also leading to changes in the way people think about access to the "network." The concept of "open access" has come to represent technical, regulatory, and empowerment components. This section examines these evolving concepts of open access and the policies that can help make them a reality.

56. Historically, access has focused on issues such as physical access to a seamless and transparent web of monopoly local exchanges, equal access to long distance carriers,[76] and availability to and ease of use by consumers, among others. As a result, any telephone customer can initiate as well as receive phone calls, regardless of the local exchange and long-distance carrier serving the caller and the call recipient. This "open system" that we all take for granted has been achieved through a framework of policies designed to promote interconnection and interoperability, such as expanded interconnection and a uniform system of "addresses" (*i.e.*, telephone numbers).[77]

57. The Administrations's open access goals are broader and more multi-faceted than the traditional approach. In the evolving competitive marketplace, open access will require that multiple telecommunications and information providers as well as users can interconnect transparently and be interoperable. This will in turn promote even more competition among information providers and service options for consumers. Thus, as the NII evolves, the Administration seeks to ensure that consumers and service providers will be able to transfer information across disparate networks easily and accurately, with seamless, interactive, user-driven operations. Also, to be truly useful, an advanced information infrastructure must allow service providers to offer a full range of educational material, health information, and home and business services, and it must make those services truly accessible without unreasonable technical or regulatory barriers, particularly to disabled individuals.[78]

58. We solicit comments on how open access should be defined at this time. How should an open access policy be shaped to accommodate the changing needs of our information society? What impact will open access have on competition and ultimately on the extent of the need for universal service regulation? How can policymakers ensure that the NII fulfills its promise for education, economic growth and job creation? How will the new entrants in the market affect open access? What steps can be taken to facilitate or ensure access by Americans with disabilities?

59. The Administration also envisions open access to a two-way system of broadband communications as a means of individual empowerment. The idea is that improved access to information will build and promote the values of democracy.[79] Open access in this new environment creates opportunities for potential service providers as well as users to be providers of information, thereby promoting an enhanced concept of community involvement and competition in the free flow of ideas. Thus, open access to the NII could spur development of community-driven grass-roots networks or "electronic commons." In addition, the NII will enhance the ability of the Federal government and state and local governments to deliver information and services to citizens more effectively, and for citizens to communicate their views on legislation and policy initiatives back to government officials just as easily

60. How can the "electronic communities" envisioned by the Administration be fostered? How can access to the NII be assured for individuals, small and large businesses, non-profit institutions (in particular, schools, libraries and health care facilities) and state and local governments? How can access be assured in rural areas? Should there be different access opportunities and prices for profit and non-profit entities? Large and small entities? How can society ensure that our citizens are sufficiently "computer literate" to utilize the NII?

61. The critical question facing policymakers is how to ensure open access to the NII.[80] NTIA's field hearings revealed a general consensus among witnesses that significant issues such as interconnection,[81] interoperability and standard open interfaces,[82] and reasonable prices and tariffs[83] need to be addressed before open access can be assured.[84]

62. The NII will integrate and build upon many different hardware and software components, some of which already exist and many of which are

[76] Equal access for long-distance carriers has not yet been fully achieved for all local exchange carriers or for non-BOC cellular operators.

[77] In contrast, cable television franchises are not interconnected with other networks. Each customer is served by a local provider who provides access solely to the services that cable operator wishes to provide and the set-top box is principally a receive-only device. In the cable context, access generally refers to customer access to cable service (measured in homes passed) and to carriage requirements imposed on cable providers such as Public, Education and Government channels, leased access, and must carry channels.

[78] *See generally Agenda for Action, supra* note 8.

[79] *Id.* at 49,029.

[80] The telecommunications reform bills being considered by the 103rd Congress contain numerous provisions to promote open access. These include, for example, requirements for interconnection capability among telecommunications carriers; non-discriminatory access to network facilities, services, functions and information on an unbundled basis under certain conditions; the development of interconnection standards; joint planning among telecommunications and information service providers for interoperability of private and public networks; the elimination of restrictions on resale or sharing of network facilities and services; and the provision of advanced services, possibly with preferential rates, to various governmental and non-profit institutions. The nature and extent of these provisions will depend on final passage of telecommunications reform legislation in Congress and implementation actions by the FCC.

[81] *See* Comments of *The News & Observer*; North Carolina State University; M. Strata Rose, Virtual City Network Project; and NC Electronics & Information Technologies Association.

[82] Comments of NC Rural Economic Development Center; First Pacific Networks; Prodigy Services Company; SAGRELTO Enterprises; GTE West Area Telephone Operations; Pacific Bell; Virtual Valley Inc.; Multimedia Design Corporation; Adamation, Inc.; MCNC; and State of New Mexico, GSD/ISD Office of Communications.

[83] Comments of First Pacific Networks; Prodigy Services Company; Adamation, Inc.; Communications Resources, Inc.; Hooked, Inc.; and NC Electronics & Information Technologies Association.

[84] A number of commenters also noted that resolving security, privacy, and intellectual property issues over the NII is also critical. The Administration is currently addressing these issues through several IITF committees and working groups. These include the NII Security Issues Forum, the Network Reliability and Vulnerability Working Group, and the Privacy Working Group.

still in development. These components must be interoperable, i.e., able to work together. Interoperable components would allow distinct networks to communicate with each other and allows users to access various products and services through standard software and hardware.[85] An NII comprised of interoperable networks will create an infrastructure that is accessible to all providers and users.[86] What critical points in today's infrastructure must be interoperable if the NII vision is to be successfully implemented? What role, if any, should open or standard interfaces and protocols play? What role can government play in facilitating interoperability, both in the short term (*e.g.*, two years) and in the long term.

63. Interoperability can be accomplished in a number of different ways. Equipment can have open protocols and interfaces that permit a physical connection (as is the case of a plug and socket) or logical connection (message format and exchange procedure).[87] Equipment built with open architecture will also permit interoperability. Additionally, standards for voice, video, data and multi-media services are also crucial to interoperability.[88]

64. While there have been times when the U.S. government has promoted particular standards, industry adoption of voluntary standards, working with government officials, is now the norm. Various commenters have argued that either approach can be too slow given the fast pace of change in the industry. In addition, some argue that the industry standard-setting process is costly and requires large amounts of employee time, which creates hardships for smaller companies.

65. How should standards develop for the NII? Do standards affect the ability to innovate? How can standards be developed that are flexible and adaptable enough to meet user needs at affordable costs? If voluntary, industry-set standards are the favored approach, what procedures should be followed in establishing standards, and what fora should be used? What role, if any, should the government play?

66. Competition is one of several means of ensuring that innovation and the provision of information and transport services will flourish on the NII. At the same time, there is a recognized need for government intervention in the case of market failures, for example, to protect new entrants from the market power of incumbent operators when necessary. Will greater competition in information and transport markets alone be sufficient to achieve open access goals? If not, what other actions are necessary? What regulations or policies need to be in place to guarantee reasonable and nondiscriminatory interconnection and reasonable cost-based pricing and tariffs for the NII? What technical or regulatory barriers must be overcome?

VII. Conclusion

67. NTIA hereby requests comments in this inquiry to be filed on or before December 14, 1994.

Dated: September 13, 1994.

Larry Irving,

Assistant Secretary of Commerce for Communications and Information.

[FR Doc. 94-23033 Filed 9-14-94; 8:45 am]

BILLING CODE 3510-60-P

[85] Computer Systems Policy Project *Perspectives on the National Information Infrastructure: Ensuring Interoperability* 5 (Feb. 1944). Familiar examples of interoperability include standard size nuts and bolts, telephone jacks and telephones, and computers and modems.

[86] Many believe that the Internet is an excellent model for such interoperability, since it allows users all over the world to access information and talk to each other easily over the network. We request comments on whether the Internet is, indeed, a good model for interoperability for the NII.

[87] Protocols are the set of rules governing the operation of functional units of a communication system that make communication possible. Open interfaces are specifications for interconnection compatibility made available to all vendors.

[88] *See, e.g.*, Comments of Alan R. Blatecky, Vice President, Information Technologies, MCNC, North Carolina Hearing (Apr. 27, 1994). "It is essential to have regulatory guidelines which ensure interoperability across networks through the rapid adoption and encouragement of open standards. If standards are not adopted, the marketplace becomes a battleground for proprietary solutions which penalize users until one of the standards finally become[s] a de facto standard." *Id.* at 2.

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federal register

Monday
September 19, 1994

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

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OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

September 1, 1994.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a month report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of 65 rescission proposals and 12 deferrals contained in six special messages for FY 1994. These messages were transmitted to Congress on October 13, November 1, and November 19, 1993; and on February 7, May 2, and June 8, 1994.

Rescissions (Attachments A and C)

As of September 1, 1994, 65 rescission proposals totaling $3,172.2 million had been transmitted to the Congress. Congress approved 45 of the Administration's rescission proposals in P.L. 103–211. A total of $1,286.7 million of the rescissions proposed by the President was rescinded by that measure. There are no rescission proposals pending before the Congress. Attachment C shows the status of the FY 1994 rescission proposals.

Deferrals (Attachments B and D)

As of September 1, 1994, $1,199.6 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1994.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the **Federal Register** cited below:

58 FR 54256, Wednesday, October 20, 1993
58 FR 59517, Tuesday, November 9, 1993
58 FR 63264, Tuesday, November 30, 1993
59 FR 7122, Monday, February 14, 1994
59 FR 24006, Monday, May 9, 1994
59 FR 32068, Tuesday, June 21, 1994

Alice M. Rivlin,
Acting Director.

BILLING CODE 3110–01–M

ATTACHMENT A

STATUS OF FY 1994 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President.....	3,172.2
Rejected by the Congress.....	-1,885.5
Amounts rescinded by P.L. 103-211, the FY 1994 Emergency Supplemental Appropriations Act.....	-1,286.7
Currently before the Congress.....	0.0

ATTACHMENT B

STATUS OF FY 1994 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	8,625.8
Routine Executive releases through September 1, 1994 (OMB/Agency release of $7,426.9 million, partially offset by cumulative positive adjustment of $643 thousand.)	-7,426.2
Overturned by the Congress.....	---
Currently before the Congress.....	1,199.6

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ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of September 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
International Security Assistance								
Foreign military financing grants	R94-1		40,000	11-1-93	*			
	R94-1A		25,562	2-7-94	*		65,562	P.L. 103-211
Economic support fund	R94-2		90,000	11-1-93	*		61,350	P.L. 103-211
Military assistance	R94-38		438	2-7-94	*		438	P.L. 103-211
Agency for International Development								
Development assistance fund	R94-3		160,000	11-1-93	*		104,019	P.L. 103-211
DEPARTMENT OF AGRICULTURE								
Agricultural Research Service								
Agricultural Research Service	R94-4		16,233	11-1-93	16,233	3-4-94		
Buildings and facilities	R94-5		8,460	11-1-93	8,460	3-4-94		
Cooperative State Research Service								
Cooperative State Research Service	R94-6		30,002	11-1-93	24,268	3-4-94	5,734	P.L. 103-211
Buildings and facilities	R94-7		34,000	11-1-93	31,103	3-4-94	2,897	P.L. 103-211
Agricultural Stabilization and Conservation Service								
Salaries and expenses	R94-8		12,167	11-1-93	12,167	3-1-94		
Soil Conservation Service								
Conservation operations	R94-9		12,167	11-1-93	12,167	3-1-94		
Farmers Home Administration								
Salaries and expenses	R94-10		12,167	11-1-93			2,167	P.L. 103-211

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of September 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Rural Development Administration and Farmers Home Administration								
Rural housing insurance fund program account	R94-41		15,645	2-7-94			15,645	P.L. 103-211
Agricultural credit insurance fund program account	R94-39		5,094	2-7-94			5,094	P.L. 103-211
Rural Electrification Administration								
Rural electrification and telephone loans program account	R94-11		6,445	11-1-93	6,445	3-1-94		
	R94-40		5,688	2-7-94	2,383	3-1-94	3,305	P.L. 103-211
Food and Nutrition Service								
Commodity supplemental food program	R94-12		12,600	11-1-93	2,600	3-1-94	10,000	P.L. 103-211
Foreign Assistance Programs								
Public Law 480 grants - Titles I (OFD), II, and III	R94-42		49,600	2-7-94	20,000	4-29-94	29,600	P.L. 103-211
Public Law 480 program account	R94-43		35,400	2-7-94	12,500	3-14-94	22,900	P.L. 103-211
DEPARTMENT OF COMMERCE								
National Oceanic and Atmospheric Administration								
Operations, research, and facilities	R94-13		6,000	11-1-93	6,000	3-1-94		
Construction	R94-14		4,000	11-1-93	1,000	3-1-94	3,000	P.L. 103-211
International Trade Administration								
Operations and administration	R94-15		2,000	11-1-93			2,000	P.L. 103-211
DEPARTMENT OF DEFENSE								
Procurement								
Missile procurement, Army	R94-44		48,000	2-7-94	48,000	3-24-94		
Aircraft procurement, Navy	R94-45		51,700	2-7-94	41,700	3-17-94	10,000	P.L. 103-211

* Funds were never withheld from obligation.

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ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of September 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Shipbuilding and conversion, Navy	R94-46		50,000	2-7-94	50,000	3-25-94		
Aircraft procurement, Air Force	R94-47		105,600	2-7-94	92,800	3-30-94	12,800	P.L. 103-211
Research, Development, Test, and Evaluation								
Research, development, test, and evaluation, Defense-wide	R94-48		50,000	2-7-94	40,000	3-26-94	10,000	P.L. 103-211
Military Construction								
Military construction, Army	R94-16		116,134	11-1-93	93,815	3-1-94	22,319	P.L. 103-211
Military construction, Air Force	R94-17		85,094	11-1-93	60,307	3-1-94	24,787	P.L. 103-211
Military construction, Army Reserve	R94-18		19,807	11-1-93	17,256	3-1-94	2,551	P.L. 103-211
Military construction, Naval Reserve	R94-19		4,438	11-1-93	3,812	3-1-94	626	P.L. 103-211
Military construction, Air Force Reserve	R94-20		18,759	11-1-93	16,897	3-1-94	1,862	P.L. 103-211
Military construction, Army National Guard	R94-21		251,854	11-1-93	244,286	3-1-94	7,568	P.L. 103-211
Military construction, Air National Guard	R94-22		105,138	11-1-93	98,951	3-1-94	6,187	P.L. 103-211
DEPARTMENT OF THE ARMY-CIVIL								
Army Corps of Engineers								
General investigations	R94-23		24,970	11-1-93	24,970	3-1-94		
Construction, general	R94-24		97,319	11-1-93	97,319	3-1-94		
DEPARTMENT OF ENERGY								
Energy Programs								
Energy supply, research and development activities	R94-25		97,300	11-1-93	97,300	3-1-94		
	R94-49		10,000	2-7-94			10,000	P.L. 103-211
Uranium supply and enrichment activities	R94-25		42,000	11-1-93			42,000	P.L. 103-211

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of September 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R94-26		180,000	11-1-93	180,000	3-1-94		
Homeownership and opportunity for people everywhere grants (HOPE grants)	R94-50		66,000	2-7-94			66,000	P.L. 103-211
DEPARTMENT OF INTERIOR								
Bureau of Reclamation								
Construction	R94-27		16,000	11-1-93	16,000	3-4-94		
DEPARTMENT OF STATE								
Administration of Foreign Affairs								
Salaries and expenses	R94-28		600	11-1-93	600	2-28-94		
Buying power maintenance	R94-51		8,800	2-7-94			8,800	P.L. 103-211
DEPARTMENT OF TRANSPORTATION								
Federal Aviation Administration								
Operations	R94-29		2,750	11-1-93	2,000	3-1-94	750	P.L. 103-211
Facilities and equipment	R94-30		40,257	11-1-93			40,257	P.L. 103-211
Grants-in-aid for airports (Airport and airway trust fund)	R94-56		488,200	2-7-94			488,200	P.L. 103-211
Federal Transit Administration								
Discretionary grants	R94-31		52,037	11-1-93	51,228	3-1-94	809	P.L. 103-211
Federal Highway Administration								
Highway demonstration projects	R94-32		187,827	11-1-93	12,858	1-28-94		
	R94-32A		-12,858	2-7-94	174,969	2-28-94		

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of September 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Federal Railroad Administration								
Railroad research and development	R94-55		17,000	2-7-94			17,000	P.L. 103-211
Coast Guard								
Operating expenses	R94-57		5,000	2-7-94	5,000	4-18-94		
Acquisition, construction, and improvements	R94-58		2,000	2-7-94	2,000	4-18-94		
Office of the Secretary								
Rental payments	R94-59		1,781	2-7-94			1,781	P.L. 103-211
Payments to air carriers (Airport and airway trust fund)	R94-60		10,067	2-7-94			10,067	P.L. 103-211
DEPARTMENT OF THE TREASURY								
Financial Management Service								
Biomass energy development	R94-61		16,275	2-7-94			16,275	P.L. 103-211
GENERAL SERVICES ADMINISTRATION								
Public Buildings Service								
Federal buildings fund	R94-33		126,022	11-1-93	126,022	3-1-94		
	R94-33A		1,669	2-7-94	1,669	3-15-94		
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Research and development	R94-62		88,000	2-7-94	25,000	2-29-94	63,000	P.L. 103-211
Space flight, control, and data communications	R94-63		32,000	2-7-94			32,000	P.L. 103-211
Construction of facilities	R94-64		25,000	2-7-94			25,000	P.L. 103-211
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses	R94-34		13,100	11-1-93	13,100	3-1-94		

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of September 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
OTHER INDEPENDENT AGENCIES								
Board for International Broadcasting								
Israel relay station	R94-65		1,700	2-7-94			1,700	P.L. 103-211
National Science Foundation								
Academic research infrastructure	R94-66		10,000	2-7-94	5,000	3-7-94	5,000	P.L. 103-211
Nuclear Regulatory Commission								
Salaries and expenses	R94-67		12,700	2-7-94			12,700	P.L. 103-211
State Justice Institute								
Salaries and expenses	R94-35		6,775	11-1-93				
United States Information Agency								
Salaries and expenses	R94-36		3,000	11-1-93	1,000	3-1-94	2,000	P.L. 103-211
North/South Center	R94-37		8,700	11-1-93	7,700	3-1-94	1,000	P.L. 103-211
TOTAL RESCISSIONS		0	3,172,183		1,806,885		1,286,750	

* Funds were never withheld from obligation.

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ATTACHMENT D
Status of FY 1994 Deferrals - As of September 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 9-1-94
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D94-1	394,175		10-13-93					
	D94-1A		1,164,562	11-19-93					
	D94-1B		23,725	2-7-94	1,210,284			452	372,630
Foreign military financing grants	D94-9	3,137,279		11-19-93	3,123,533				13,746
Foreign military financing program account	D94-10	46,530		11-19-93	38,118				8,412
Agency for International Development									
Demobilization and transition fund	D94-2	8,000		10-13-93					8,000
International disaster assistance, executive	D94-11	118,059		11-19-93	115,147			191	3,103
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D94-3	461,639		10-13-93					
	D94-3A		45,102	6-8-94					506,741
Expenses, brush disposal	D94-4	40,195		10-13-93					
	D94-4A		8,230	6-8-94					48,425
Timber salvage sales	D94-5	256,897		10-13-93	52,483				204,414
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D94-6	1,852		10-13-93	390				1,462
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D94-7	7,317		10-13-93					
			2	5-2-94					7,319

[FR Doc. 94-23084 Filed 9-16-94; 8:45 am]
BILLING CODE 3110-01-C

ATTACHMENT D
Status of FY 1994 Deferrals - As of September 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 9-1-94
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund	D94-8	27,100		10-13-93					
	D94-8A		49,261	11-19-93	51,061				25,300
GENERAL SERVICES ADMINISTRATION									
Public Buildings Service									
Public buildings fund	D94-12	2,835,860		11-19-93	2,835,860				0
TOTAL, DEFERRALS		7,334,903	1,290,883		7,426,876	0		643	1,199,552

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Monday
September 19, 1994

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status and Withdrawal of Proposal to Give Endangered Status; Final Rule and Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Conservancy Fairy Shrimp, Longhorn Fairy Shrimp, and the Vernal Pool Tadpole Shrimp; and Threatened Status for the Vernal Pool Fairy Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act) for the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and the vernal pool tadpole shrimp (*Lepidurus packardi*); and threatened status for the vernal pool fairy shrimp (*Branchinecta lynchi*). These four invertebrate species are restricted to vernal pools in the State of California and are in danger of extinction principally as the result of urban development, conversion of native habitats to agriculture, and stochastic (random) extinction by virtue of the small isolated nature of many of the remaining populations. This rule implements Federal protection and recovery provisions afforded by the Act for all of these animals.

One species, the California linderiella (*Linderiella occidentalis*), which had been proposed for listing with the above species, has been withdrawn. Additional information that has become available to the Service since the publication of the proposed rule reveals that this species is more abundant than previously known. The Service has considered the additional information and has determined that the California linderiella is not likely to become either endangered or threatened throughout all or a significant portion of its range in the foreseeable future, and it does not qualify for listing under the Act. A notice withdrawing the proposal is published in the **Federal Register** concurrently with this final rule.

EFFECTIVE DATE: September 19, 1994.

ADDRESSES: The complete file for this final rule is available for public inspection, by appointment, during normal business hours at the Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way Room E–1823, Sacramento, California 95825–1846.

FOR FURTHER INFORMATION CONTACT: Chris Nagano or Jim Browning at the above address or by telephone (916/978–4866).

SUPPLEMENTARY INFORMATION:

Background

The Conservancy fairy shrimp, longhorn fairy shrimp, and the vernal pool fairy shrimp are members of the aquatic crustacean order Anostraca. The vernal pool tadpole shrimp is a member of the aquatic crustacean order Notostraca. They are endemic to vernal pools in the Central Valley, coast ranges, and a limited number of sites in the Transverse Range and Santa Rosa Plateau of California.

The three fairy shrimp and the vernal pool tadpole shrimp live in vernal pools, an ephemeral freshwater habitat. None are known to occur in riverine waters, marine waters, or other permanent bodies of water. They are ecologically dependent on seasonal fluctuations in their habitat, such as absence or presence of water during specific times of the year, duration of inundation, and other environmental factors that include specific salinity, conductivity, dissolved solids, and pH levels. Water chemistry is one of the most important factors in determining the distribution of fairy shrimp and tadpole shrimp (Belk 1977; Jamie King, University of California, *in litt.*, 1992; Marie Simovich, University of San Diego, *in litt.*, 1992). The four species included in this final rule are sporadic in their distribution, often inhabiting only one or a few pools in otherwise more widespread vernal pool complexes (Larry Eng, California Department of Fish and Game, pers. comm., 1990; Jamie King, *in litt.*, 1992; Marie Simovich, *in litt.*, 1992; Richard Brusca, San Diego Museum of Natural History, pers. comm., 1992).

Fairy shrimp have delicate elongate bodies, large stalked compound eyes, no carapace, and 11 pairs of swimming legs. They swim or glide gracefully upside down by means of complex beating movements of the legs that pass in a wave-like anterior to posterior direction. Nearly all fairy shrimp feed on algae, bacteria, protozoa, rotifers, and bits of detritus (Pennak 1989). The second pair of antennae in the adult females are cylindrical and elongate, but in the males are greatly enlarged and specialized for clasping the females during copulation. The females carry the eggs in an oval or elongate ventral brood sac. The eggs are either dropped to the pool bottom or remain in the brood sac until the female dies and sinks. The "resting" or "summer" eggs are capable of withstanding heat, cold, and prolonged desiccation. When the pools refill in the same or subsequent seasons some, but not all, of the eggs may hatch. The egg bank in the soil may be comprised of the eggs from several years of breeding (Donald 1983). The eggs hatch when the vernal pools fill with rainwater. The early stages of the fairy shrimp develop rapidly into adults. These non-dormant populations often disappear early in the season long before the vernal pools dry up.

Tadpole shrimp have dorsal compound eyes, a large shield-like carapace that covers most of the body, and a pair of long cercopods at the end of the last abdominal segment (Brusca and Brusca 1991; Pennak 1989; Linder 1952; Longhurst 1955a; Lynch 1966, 1972). They are primarily benthic animals that swim with their legs down. Tadpole shrimp climb or scramble over objects, as well as plow along in bottom sediments. Their diet consists of organic detritus and living organisms, such as fairy shrimp and other invertebrates (Pennak 1989; Fryer 1987). Mating in tadpole shrimp is described by Longhurst (1955b). The females deposit their eggs on vegetation and other objects on the bottom. Vernal pool tadpole shrimp populations pass the dry summer months as diapaused eggs in pool sediments. Some of the eggs hatch as the vernal pools are filled with rainwater in the fall and winter of subsequent seasons.

Vernal pools have a discontinuance occurrence in several regions of California. Generally vernal pool habitat is found west of the Sierra Nevada and extends from southern Oregon into northern Baja, California (Holland and Jain 1977, 1988). Vernal pools form in regions with Mediterranean climates where shallow depressions fill with water during fall and winter rains and then evaporate in the spring (Collie and Lathrop 1976; Holland 1976, 1978; Holland and Jain 1977, 1988; Norwick 1992; Thorne 1984). Overbank flooding from intermittent streams may augment the amount of water in some vernal pools (Hanes *et al.* 1990). Downward percolation is prevented by the presence of an impervious subsurface layer, such as a claypan, hardpan, or volcanic stratum (Holland 1976, 1988). Due to local topography and geology, the pools are usually clustered into pool complexes (Holland and Jain 1988). Pools within a complex typically are separated by distances on the order of meters and may form dense, interconnected mosaics of small pools or a more sparse scattering of larger

pools. Temporary inundation makes vernal pools too wet during the wetted period for adjacent upland plant species adapted to drier soil conditions, while rapid drying during late spring makes pool basins unsuitable for typical marsh or aquatic species that require a more permanent source of water. However, many indigenous plant and aquatic invertebrate species have evolved to occupy the extreme environmental conditions found in vernal pool habitats. Fairy shrimp and tadpole shrimp play an important role in the community ecology of many ephemeral water bodies (R. Brusca, pers. comm., 1992; Loring *et al.* 1988). They are fed upon by waterfowl (Ahl 1991; Driver 1981; Krapu 1974; Swanson *et al.* 1974) and other vertebrates, such as western spadefoot toad (*Scaphiopus hammondi*) tadpoles (M. Simovich, pers. comm., 1991).

The genetic characteristics of the three fairy shrimp and the vernal pool tadpole shrimp, as well as ecological conditions, such as watershed contiguity, indicate that populations of these animals are defined by pool complexes rather than by individual vernal pools (Fugate 1992; J. King, unpubl. data). Therefore, the most accurate indication of the distribution and abundance of the four vernal pool crustaceans is the number of inhabited vernal pool complexes. Individual vernal pools occupied by the four species listed herein are most appropriately referred to as subpopulations.

Urban, water, flood control, highway, and utility projects, as well as conversion of wildlands to agricultural use, have eliminated vernal pools in southern California (Riverside and San Diego Counties), the Central Valley, and San Francisco Bay area (Jones and Stokes Associates 1987). Changes in hydrologic pattern, overgrazing, and off-road vehicle use also imperil this aquatic habitat and the four species listed herein. Human activities that alter the watershed of vernal pools indirectly affect these animals. The flora and fauna in vernal pools or swales can change if the hydrologic regime is altered (Bauder 1986, 1987). Anthropogenic activities that reduce the extent of the watershed or that alter runoff patterns (i.e., amounts and seasonal distribution) may eliminate the animals, reduce their population sizes or reproductive success, or shift the location of sites inhabited by these animals.

According to Holland (1978), there were an estimated 1.7 million hectares (4.2 million acres) in the Central Valley that possibly supported vernal pools at the time Europeans arrived in California. Holland estimated that between 67 and 88 percent of this acreage was destroyed by 1973, largely by human activities (Holland 1978). However, both the acreage of historic vernal pool habitat and estimates of loss determined in this study have been disputed by others. Vernal pools in southern California have been highly impacted by human activities (Zedler 1987). The rate of loss of vernal pool habitat in parts of California has been estimated to occur at approximately 2 or 3 percent per year (Holland 1988).

Discussion of the Four Species

The Conservancy fairy shrimp (*Branchinecta conservatio*), a member of the family Branchinetidae, was described from specimens collected at the Jepson Prairie Preserve, located in the Central Valley east of Travis Air Force Base in Solano County (Eng *et al.* 1990). The animal ranges in size from 14 to 27 millimeters (0.6 to 1.1 inches) long and is most similar in appearance to Lindahl's fairy shrimp (*Branchinecta lindahli*). However, the female brood pouch is fusiform and usually ends under abdominal segment 8 in the Conservancy fairy shrimp, whereas the pouch is cylindrical and usually ends under segment 4 in Lindahl's fairy shrimp. The large, oval pulvillus at the proximal end of the basal segment of the male antenna appears similar in both species, however, the terminal end of the distal antennal segments of the Conservancy fairy shrimp are distinctive (Eng *et al.* 1990).

The Conservancy fairy shrimp inhabits vernal pools with highly turbid water. The species is known from six disjunct populations: Vina Plains, Tehama County; south of Chico, Tehama County; Jepson Prairie, Solano County; Sacramento National Wildlife Refuge, Glenn County (Joe Silviera, U.S. Fish and Wildlife Service, pers. comm., 1993), near Haystack Mountain northeast of Merced in Merced County; and the Lockewood Valley of northern Ventura County (Michael Fugate, University of California at Riverside, pers. comm., 1991). The pools inhabited by the Conservancy fairy shrimp are large, such as the 36 hectare (89 acre) Olcott Lake at Jepson Prairie (Eng, pers. comm., 1990). The Conservancy fairy shrimp has been observed from November to early April. The pools at Jepson Prairie and Vina Plains inhabited by this animal have very low conductivity, total dissolved solids (TDS), and alkalinity (Barclay and Knight 1984; Eng *et al.* 1990). The Conservancy fairy shrimp is usually collected at cool temperatures and appears to be relatively long-lived (Simovich *et al.* 1992; Patton 1984).

The longhorn fairy shrimp (*Branchinecta longiantenna*), a member of the family Branchinectidae, was described from specimens collected at Souza Ranch in the Kellogg Creek watershed, about 35 kilometers (22 miles) southeast of the City of Concord, Contra Costa County (Eng *et al.* 1990). It ranges in size from 12.1 to 20.8 mm (0.5 to 0.8 inches). This species differs from other branchinectids in that a portion of the distal segment of its antennae is flattened in the antero-posterior plane rather than the latero-medial plane.

The longhorn fairy shrimp inhabits clear to turbid grass-bottomed vernal pools in grasslands and clear-water pools in sandstone depressions. This species is known only from four disjunct populations along the eastern margin of the central coast range from Concord, Contra Costa County south to Soda Lake in San Luis Obispo County: the Kellogg Creek watershed, the Altamont Pass area, the western and northern boundaries of Soda Lake on the Carrizo Plain (Eng *et al.* 1990), and Kesterson National Wildlife Refuge in the Central Valley (Dennis Woolington, U.S. Fish and Wildlife Service, *in litt.* 1993). All vernal pools inhabited by this species are filled by winter and spring rains and may remain inundated until June. The longhorn fairy shrimp has been observed from late December until late April. The water is grassland pools inhabited by this species has very low conductivity, TDS, and alkalinity (Eng *et al.* 1990).

The vernal pool fairy shrimp (*Branchinecta lynchi*), a member of the family Branchinectidae, was described from specimens collected at Souza Ranch in the Kellogg Creek watershed, Contra Costa County, California (Eng *et al.* 1990). It ranges in size from 10.9 to 25.0 mm (0.4 to 1.0 inches). This species most resembles the Colorado fairy shrimp (*Branchinecta coloradensis*). There are several differences in the antennae of the males of the two species, including the basal segment outgrowth below and posterior to the pulvillus, which is ridge-like in the vernal pool fairy shrimp but is cylindrical and often much larger in the Colorado fairy shrimp. The shorter brood pouch of the vernal pool fairy shrimp is pyriform, whereas the longer one in the Colorado fairy shrimp is fusiform (Eng *et al.* 1990).

Although the vernal pool fairy shrimp has a relatively wide range, the majority of known populations inhabit vernal pools with clear to tea-colored water, most commonly in grass or mud

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bottomed swales, or basalt flow depression pools in unplowed grasslands, but one population occurs in sandstone rock outcrops and another population in alkaline vernal pools. The vernal pool fairy shrimp has been collected from early December to early May. The water in pools inhabited by this species has low TDS, conductivity, alkalinity, and chloride (Collie and Lathrop 1976). This species has a sporadic distribution within vernal pool complexes (Jones and Stokes, 1992, 1993; County of Sacramento 1990; Patton 1984; Stromberg 1993; Sugnet and Associates 1993b) wherein the majority of pools in a given complex typically are not inhabited by the species. Simovich *et al.* (1992) reported that the vernal pool fairy shrimp typically is found at low population densities. Only rarely does the vernal pool fairy shrimp co-occur with other fairy shrimp species, but where it does, the vernal pool fairy shrimp is never the numerically dominant one (Eng *et al.* 1990). Although it can mature quickly, allowing populations to persist in short-lived shallow pools, it also persists later into the spring where pools are longer lasting (Simovich *et al.* 1992). Sugnet and Associates (1993b) listed 178 records for the species out of 3092 "discrete locations" containing potential habitat in their report. These 178 records represent the 32 known populations of the vernal pool fairy shrimp, which extend from Stillwater Plain in Shasta County through most of the length of the Central Valley to Pixley in Tulare County, and along the central coast range from northern Solano County to Pinnacles in San Benito County (Eng *et al.* 1990; M. Fugate, pers. comm., 1991; Sugnet & Associates 1993b). Five of these populations are believed to be comprised of a single inhabited pool. Four additional, disjunct populations exist; one near Soda Lake in San Luis Obispo County, one in the mountain grasslands of northern Santa Barbara County, one near the Santa Rosa Plateau in Riverside County, and one near Rancho California in Riverside County. Three of these four isolated populations contain only a single known pool occupied by the vernal pool fairy shrimp.

The vernal pool tadpole shrimp (*Lepidurus packardi*), a member of the family Triopsidae, was described by Eugene Simon in 1866 (Longhurst 1955a). Longhurst (1955a) placed the name in synonymy with *Lepidurus opus*. Subsequently, Lynch (1972) examined the taxa and determined that *Lepidurus packardi* is a valid species. The Service accepts Lynch's taxonomic treatment of the genus *Lepidurus*, which maintains *L. packardi* as a species.

Vernal pool tadpole shrimp adults reach a length of 50 millimeters (2 inches). They have about 35 pairs of legs and two long cercopods. This species superficially resembles the ricefield tadpole shrimp (*Triops longicaudatus*). However, *Lepidurus* possess a flat paddle-shaped supra-anal plate that is entirely lacking in members of the genus *Triops* (Pennak 1989; R. Brusca *in litt.*, 1992; M. Simovich *in litt.*, 1992; J. King *in litt.*, 1992). The vernal pool tadpole shrimp is known from 18 populations in the Central Valley, ranging from east of Redding in Shasta County south through the Central Valley to the San Luis National Wildlife Refuge in Merced County, and from a single vernal pool complex located on the San Francisco Bay National Wildlife Refuge in the City of Fremont, Alameda County.

The vernal pool tadpole shrimp inhabits vernal pools containing clear to highly turbid water, ranging in size from 5 square meters (54 square feet) in the Mather Air Force Base area of Sacramento County, to the 36 hectare (89 acre) Olcott Lake at Jepson Prairie. The pools at Jepson Prairie and Vina Plains have a very low conductivity, TDS, and alkalinity (Barclay and Knight 1984; Eng *et al.* 1990). These pools are located most commonly in grass bottomed swales of grasslands in old alluvial soils underlain by hardpan or in mud-bottomed pools containing highly turbid water.

The life history of the vernal pool tadpole shrimp is linked to the phenology of the vernal pool habitat. After winter rainwater fills the pools, the populations are reestablished from diapaused eggs that lie dormant in the dry pool sediments (Ahl 1991; Lanway 1974). Ahl (1991) found that eggs in one pool hatched within three weeks of inundation and maturated to sexually reproductive adults in another three to four weeks. Simovich *et al.* (1992) reported sexually mature adults occurred in another pool three to four weeks after the pools had been filled. A female surviving to large size may lay up to six clutches of eggs, totaling about 861 eggs in her lifetime (Ahl 1991). The eggs are sticky and readily adhere to plant matter and sediment particles (Simovich *et al.* 1992). A portion of the eggs hatch immediately and the rest enter diapause and remain in the soil to hatch during later rainy seasons (Ahl 1991). The vernal pool tadpole shrimp matures slowly and is a long-lived species (Ahl 1991; Alexander 1976). Adults are often present and reproductive until the pools dry up in the spring (Ahl 1991; Simovich *et al.* 1992).

Previous Federal Actions

Ms. Roxanne Bittman petitioned the Service to list the Conservancy fairy shrimp, longhorn fairy shrimp, vernal pool fairy shrimp, and California linderiella as endangered species in a letter dated November 19, 1990, which was received by the Service on November 20, 1990. Ms. Bittman submitted additional information on these species in a letter dated November 20, 1990, which was received on November 26, 1990. On March 21, 1991, the Service made a 90-day finding that the petition contained substantial information indicating that the action requested may be warranted. A notice announcing this finding was published in the **Federal Register** on August 30, 1991 (56 FR 426968).

Ms. Dee Warenycia petitioned the Service to list the vernal pool tadpole shrimp as an endangered species in a letter dated April 28, 1991, which was received by the Service on April 30, 1991. On November 21, 1991, the Service determined in the administrative 90-day finding that the petition contained substantial information that the action requested may be warranted. On May 8, 1992, the Service published a proposed rule in the **Federal Register** (57 FR 19856) to list the four fairy shrimp and vernal pool tadpole shrimp as endangered.

Summary of Comments and Recommendations

In the May 8, 1992, proposed rule (57 FR 19856) and associated notifications, all interested parties were requested to submit factual reports or information that might assist the Service in determining whether these taxa warrant listing. Appropriate State agencies, county governments, including affected planning departments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Notices of this proposal were published in the Santa Rosa Press Democrat, San Francisco Chronicle, Monterey Herald, Chico Enterprise Record, San Luis Obispo Telegram-Tribune, Santa Barbara News-Press, Modesto Bee, Sacramento Bee, and the Fresno Bee on June 5, 1992.

On June 4, 1992, the Service received a written request for a public hearing from Mr. George Robson of the Tehama County Planning Department. Several other requests for a public hearing also were received. As a result, on August 13, 1992, the Service published a notice in the **Federal Register** (57 FR 36380) announcing the public hearing and reopening the comment period until September 18, 1992. The Service conducted a public hearing on August 31, 1992, at the Radisson Hotel in Sacramento, California. Testimony was taken from 6 p.m. to 8 p.m. Twenty-one persons presented testimony.

On September 18, 1992, the Service attended a public meeting held at the Red Bluff Community Center in Red Bluff, Tehama County, California. Six people presented oral and written comments to the Service.

During the comment periods, the Service received 117 comments (letters and oral testimony). Several people submitted more than one comment to the Service. The Service received two petitions containing 63 signatures of people supporting the listing and one petition containing 190 signatures of people opposed to the listing. The California Department of Parks and Recreation supported a listing of threatened for the four fairy shrimp but did not state a position on the vernal pool tadpole shrimp. The California Department of Fish and Game expressed concern for the fairy shrimp and also did not state a position on the vernal pool tadpole shrimp. Comments supporting the listing were received from 41 private parties, including the Riverside County Planning Department, and nine professional biologists from several institutions, including the Stanford University Center for Conservation Biology, University of California, University of San Diego, and San Diego Museum of Natural History. Comments opposing the listing were received from 34 private parties, organizations, and agencies including seven mosquito abatement districts. Opposition to the listing also was expressed by Congressman Wally Herger and Congressman Vic Fazio. Four commenters did not express an opinion.

In addition, after the comment period closed, six parties, including the California Department of Fish and Game, requested that the Service extend the date of the final determination for the five species by six months pursuant to 16 U.S.C. 1533(b)(6). The Act provides for a six-month extension if the Secretary finds that "* * * there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination * * * for the purposes of soliciting additional data." One of these commenters submitted a report that summarized collection records and field work conducted in 1993 (Sugnet and Associates 1993b). The California Department of Fish and Game supported the extension but stated that they had no additional information. The California Native Plant Society opposed the six-month extension and urged the Service to immediately list the five species under the Act.

The Service has reviewed all of the written and oral comments described above. Comments updating the data presented in the "Background" or "Summary of Factors Affecting the Species" are incorporated in those sections of this final rule. Opposing comments and other comments concerning the rule have been organized into specific issues. These issues and the Service's response to each are summarized as follows:

Issue 1: A number of commenters stated that a single public hearing was inadequate to obtain full public input on the proposal. They requested that public hearings be held in all of the towns and counties that contain vernal pools and swales inhabited by the five species.

Service Response: The Service is obligated to hold one public hearing on a listing proposal if requested to do so within 45 days of publication of the proposal (16 U.S.C. 1533(b)(5)(E)). In addition to the public hearing held on August 31, 1992, the Service attended a public meeting organized by Congressman Vic Fazio in Red Bluff, on September 18, 1992. The public comment period was extended to September 8, 1992, to allow all interested parties to provide written comments. In making a decision on a listing proposal, written comments are given the same weight as oral comments presented at hearings.

Issue 2: Several respondents stated that the Service's notification of the public on this proposal was inadequate.

Service Response: The Service went through an extensive notification process to make the public aware of this proposal; this process satisfied the requirements of the Act and is described at the beginning of this section.

Issue 3: Many respondents concluded that listing the fairy shrimp and the vernal pool tadpole shrimp would result in adverse economic impacts to thousands of hectares of land and questioned the value of these animals to society. Two commenters requested that an analysis of the economic impact of listing these species be completed. Two commenters noted that these species are restricted to vernal pools but stated that listing would result in adverse economic impacts by eliminating future residential or commercial development in areas containing this habitat. Five commenters claimed the fairy shrimp and the vernal pool tadpole shrimp are "insignificant" species and that listing would interfere with the natural evolutionary process of extinction. On the other hand, a number of respondents asserted that opposition to the listing of the species was based solely on economic interests. They cited the ecological and educational value of vernal pool plants and animals. Four crustacean biologists noted the species can be considered "living fossils" and are of great scientific value to the study of biological evolution, systematics, and ecology.

Service Response: Under section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to "ensure" that listing decisions are "based solely on biological criteria and to prevent non-biological criteria from effecting such decisions" H.R. Rep. No. 97–835, 97th Cong. 2d Sess. 19 (1982). As further stated in the legislative history, "economic considerations have no relevance to determinations regarding the status of species." Because the Service is specifically precluded from considering economic impacts in a final decision on a proposed listing, the Service has not considered possible economic consequences of listing the three fairy shrimp and the vernal pool tadpole shrimp. There may be many opinions as to a particular species' contribution to society, including their aesthetic, scientific, or other significance, however, this contribution is not among the five factors upon which a listing determination is based.

Issue 4: One commenter recommended that the Service prepare an Environmental Impact Statement (EIS), pursuant to the National Environmental Policy Act (NEPA), on this rule. He stated that a decision to list these five crustaceans is a major Federal action that significantly affects the quality of the human environment.

Service Response: For the reasons set out in the NEPA section of this document, the Service takes the position that rules issued pursuant to section 4(a) of the Act do not require the preparation of an EIS. The courts held in *Pacific Legal Foundation* v. *Andrus*, 657 F2d. 829 (6th Circuit 1981) that an EIS is not required for listing under the Act. The decision noted that preparing EIS's on listing actions does not further the goals of NEPA or the Act.

Issue 5: One commenter requested that the Service conduct a Takings Implications Assessment under Executive Order 12630 for this listing action.

Service Response: The Attorney General has issued guidelines to the

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Department of the Interior (Department) regarding implementation of Executive Order 12630.

The Attorney General's guidelines state that Taking Implications Assessments (TIAs), which are used to analyze the potential for Fifth Amendment taking claims are to be prepared after, rather than before, an agency makes a decision upon which its discretion is restricted. In enacting the Endangered Species Act, Congress required the Department to list a species based solely upon scientific and commercial data indicating whether or not the species is in danger of extinction. No discretion is afforded and the Service may not withhold a listing based upon economic concerns. Therefore, even though a TIA is required, a TIA for a listing action is to be finalized only after the final decision whether to list a species is made.

Issue 6: The California Department of parks and Recreation recommended that the four fairy shrimp should be listed as threatened species rather than endangered species.

Service Response: The Service has determined that threatened status is appropriate for the vernal pool fairy shrimp. The proposal to list the California linderiella as an endangered species has been withdrawn. The rationale for these actions and endangered status for the two other fairy shrimp species and the vernal pool tadpole shrimp is described at the conclusion of the "Summary of Factors Affecting the Species" section.

Issue 7: Several commenters expressed concern that it will be difficult or impossible to delist any or all of the crustaceans listed herein.

Service Response: When the recovery goals for a species have been met, the Service may prepare a proposal to delist or reclassify it. The process for delisting or reclassifying a species, allowed for at section 4(b)(3)(A) of the Act, is the same process used for listing the species.

Issue 8: Three respondents stated that compared to other federally listed crustaceans, the fairy shrimp and the vernal pool tadpole shrimp do not warrant listing under the Act.

Service Response: The claim that the status of the fairy shrimp and the vernal pool tadpole shrimp do not warrant listing under the Act when compared with other listed crustaceans does not address the full range of issues and complexities bearing on listing decisions. The multiplicity of factors and relationships that must be considered and interpreted in assigning the appropriate status to listed taxa is sufficiently complex that patterns of consistency may not be necessarily agreed upon by all parties.

Issue 9: Several respondents stated that critical habitat should be designated for the fairy shrimp and the vernal pool tadpole shrimp.

Service Response: The Service believes that the danger posed by designating critical habitat at this time outweighs the potential benefits. As discussed in Factors "A" and "E" under the "Summary of Factors Affecting the Species" section below, all of the species included in this final rule could be adversely affected by acts of vandalism. The Service is aware of vernal pools that contained suitable habitat for these animals that apparently were destroyed to escape regulatory requirements. Designation of critical habitat at this time would increase the degree of threat facing these species.

Issue 10: One commenter stated that there is not enough data on the species listed herein upon which to develop a recovery plan.

Service Response: Section 4(f) of the Act directs the Secretary to develop and implement recovery plans for conservation and survival of listed endangered and threatened species. The Service intends to pursue the development of a recovery plan for the four species as soon as possible. Identification of needed research and acquisition of additional data are key components of most recovery plans.

Issue 11: Several commenters stated that the California linderiella and the vernal pool fairy shrimp do not warrant listing because of their widespread distribution.

Service Response: Species may be listed under the Act if one or more of the five listing criteria imperils the species with extinction or if the species is likely to become endangered in the foreseeable future, throughout all or a significant portion of its range. These criteria apply for narrowly, as well as widely distributed species. As described elsewhere in this final rule, the vernal pool fairy shrimp is imperiled by habitat loss from construction activities and degradation to the extent that 28 of the 32 known populations face one or more of the various threats described elsewhere in this rule. Thus, even though this species has a relatively wide range in California, it is imperiled by one or more of five factors throughout a significant portion of its range.

At the time the proposed rule was published, the California linderiella was known from vernal pools in the Central Valley from central Tehama County to central Madera County and across the valley in the Sacramento area to the central and south coast mountains from Lake County south to Riverside County. Surveys conducted in 1993 and other information that has become available to the Service indicate that the range extends from Shasta County south to Fresno County and across the valley to the Coast and Transverse Ranges from Willits in Mendocino County south to near Sulfur Mountain in Ventura County. Within this area more vernal pools have been found to contain subpopulations of the California linderiella than was known at the time of the proposed rule. The populations in Riverside County have been determined to represent an undescribed species of *Linderiella*. The Service has carefully considered the additional information and has determined that the California linderiella fails to meet the definition of either an endangered or threatened species and has withdrawn it from consideration for endangered or threatened status.

Issue 12: After the comment period closed, six parties requested that the Service extend the date of the final determination for these species pursuant to 16 U.S.C. 1533(b)(6). That section of the Act provides for a six-month extension to solicit additional data if the Secretary finds that "there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination." The parties asserted that additional information on the range and status of these animals could become available during this time period. One of these commenters submitted a report as the basis for their request that summarized museum, literature, and field records, the majority of which were collected in 1993, for the five species (Sugnet and Associates 1993b). A seventh party, the California Native Plant Society, stated that they were opposed to the six month extension and they urged the Service to immediately list the five species.

Service Response: The report by Sugnet and Associates (1993b) provided a number of records for the California linderiella, vernal pool fairy shrimp, and the vernal pool tadpole shrimp that have been incorporated into this final rule. The report listed 3092 "discrete locations" that contained 703 records of the California linderiella, 178 records of the vernal pool fairy shrimp, and 345 records of the vernal pool tadpole shrimp.

The report by Sugnet and Associates (1993b) presented only township and range information on the locations of the California linderiella, vernal pool fairy shrimp, longhorn fairy shrimp, Conservancy fairy shrimp, and the vernal pool tadpole shrimp. A request by the California Department of Fish and Game to obtain the precise locations that served as the basis for the report was unsuccessful (letter from California Department of Fish and Game to Sugnet and Associates, dated December 29, 1993; letter from Sugnet and Associates to California Department of Fish and Game, dated January 29, 1994). The report also treated the records of the individual vernal pools inhabited by the California linderiella, vernal pool fairy shrimp, and the vernal pool tadpole shrimp as "discrete locations." However, as described in greater detail in the **Background** section, abundance of inhabited vernal pool complexes most appropriately describes the population status of the five vernal pool crustaceans; animals in individual pools most appropriately are referred to as subpopulations. Accordingly, the study by Sugnet and Associates (1993b) overestimated the number of populations of the California linderiella, vernal pool fairy shrimp, and the vernal pool tadpole shrimp. Statements in Sugnet and Associates (1993b), such as "Results of this effort indicate that *B. lynchi* occurs at a total of 178 discrete locations * * *", should be interpreted in light of the fact that a number of inhabited pools can occur within a single vernal pool complex, and that all of these could be threatened by a single project proposal. For example, the proposed Sunrise-Douglas development in Sacramento County contains over 500 vernal pools (Sugnet and Associates 1993a). An unknown number of these pools contain the vernal pool fairy shrimp, and/or vernal pool tadpole shrimp.

The data in Sugnet and Associates (1993b) and other information available to the Service increased the known ranges and number of populations from that described in the proposed rule for three of the five species and located additional populations for one species. The report identified a geographic range extension for the vernal pool tadpole shrimp and increased the number of populations from fourteen to seventeen; none were from unexpected areas or non-vernal pool habitat. Two additional populations of the Conservancy fairy shrimp were located, one at the Sacramento National Wildlife Refuge and one in northern Ventura County. The geographic distribution of the vernal pool fairy shrimp was not increased but additional pools containing this species were located within the known range and known populations of this animal.

With the exception of the California linderiella, the Service concludes that the report by Sugnet and Associates (1993b) does not provide a basis for significant disagreement regarding the sufficiency or accuracy of the available data relevant to this listing action. Rather, the data presented in the report substantiates the rarity and fragmented distributions of the four species listed herein. Therefore, the Service has determined to issue a final regulation pursuant to 16 U.S.C. 1533(b)(6)(i)(I).

Issue 13: Many commenters, including the California Department of Transportation and Congressman Wally Herger, requested the Service delay or not list the five species because they believed additional distributional and ecological data are needed to determine the "true" status of these animals. Several people contended that the survey work and collection data upon which the proposed rule was based are inadequate. One commenter contended that this perceived lack of information would result in a procedurally inadequate listing. Eight commenters stated that the data utilized by the Service presents only collection places inhabited by the species. They asserted that the Service did not conduct a random field survey and failed to accurately delineate the distributions of the species. These parties contended that the absence of information on locations that are not inhabited by the animals suggests a general lack of extensive collection efforts or knowledge of them. To support the need for further field work, one commenter cited 18 records of the vernal pool fairy shrimp and 30 records of the California linderiella that were not included in this proposed rule. This commenter did not provide any additional records of the Conservancy fairy shrimp, the longhorn fairy shrimp, or the vernal pool tadpole shrimp.

Service Response: Scientifically credible data on the status of the five crustaceans was collected in a random 322 kilometer (200 mile) north-south transect in the Sacramento Valley from Fall River in Shasta County to Jepson Prairie in Solano County (Simovich *et al.* 1992). This study found that distinct segments totaling 35 kilometers (22 miles), or 11 percent of the transect, contain vernal pools and swales. Within the portions of the transect, the vernal pool tadpole shrimp and the vernal pool fairy shrimp were found on 16 kilometers (10 miles), the Conservancy fairy shrimp on 6 kilometers (4 miles), and the California linderiella on 10 kilometers (6 miles). The animals were not found in all pools and swales in suitable habitat areas in this study (J. King, *in litt.*, 1992). King (*in litt.*, 1992) reported that the vernal pool tadpole shrimp was found in only five pools on 8 kilometers (5 miles) of the 16 kilometers (10 miles) of vernal pools where the animal occurred, indicating a sparse distribution within much of the area where it occurs. The fairy shrimp species and the vernal pool tadpole shrimp largely were absent from extensive regions in the Sacramento Valley where degraded vernal pools still remain, such as the Red Bluff and Coyote Creek areas of Tehama County, and the Allendale area of Solano County (R. Brusca, *in litt.*, 1992). The three crustacean biologists who conducted this research concluded that based on this random field survey, these fairy shrimp species and the vernal pool tadpole shrimp are rare throughout their ranges.

A comparison of the maps in Sugnet and Associates (1993b) indicates that the number of occupied pools, and amount of suitable habitat for the 30 populations of the California linderiella are larger than for the 32 populations of the vernal pool fairy shrimp. In addition, the California linderiella is known from the north coast, San Francisco Bay area, western areas in the San Joaquin Valley, and the western foothills of the Sierra Nevada in San Joaquin and Stanislaus Counties where the vernal pool fairy shrimp is not known to be present (Sugnet and Associates 1993b).

The Service concludes, as detailed in the "Summary of Factors" section, that there is sufficient biological evidence that the vernal pool fairy shrimp, Conservancy fairy shrimp, longhorn fairy shrimp, and the vernal pool tadpole shrimp warrant listing. Sampling conducted at various locations and intensities between 1981 and 1993 by biologists familiar with the four fairy shrimp and the vernal pool tadpole shrimp and their habitat provided adequate information on the distribution, habitat requirements, and most importantly, threats to the four species to warrant the present action. All additional data provided by respondents during the comment period, including the report by Sugnet & Associates (1993b) have been incorporated into this final rule; none of this data indicated that these taxa were not threatened or endangered. The Service's decision to propose the four fairy shrimp and the vernal pool tadpole shrimp was based on significant threats associated with habitat loss and fragmentation, rather than solely on the basis of population numbers.

Issue 14: Several commenters, including Congressman Wally Herger, requested the precise locations of the populations of the species be widely disseminated or included in the final rule. One respondent requested that the

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Service notify all landowners whose property has been found to contain one or more of the species.

Service Response: For the reasons discussed in the response dealing with critical habitat below, the Service concludes that providing the exact locations would increase the degree of threat facing these species.

Issue 15: Some commenters were concerned that the Service did not give due consideration to the impacts of the six year drought in California. They contended that increased amounts of rainfall would result in greater numbers of the fairy shrimp and the vernal pool tadpole shrimp.

Service Response: The average and above average rainfall levels that occurred in 1992/1993 did not reveal significant new populations of the five species in unexpected areas because most vernal pools held water, at least to some extent, during the drought that extended from 1987 to 1992. Even very small, shallow vernal pools were observed to hold water, allowing reproduction of the four fairy shrimp and vernal pool tadpole shrimp during these drought years (J. King pers. comm. 1992; M. Simovich pers. comm. 1992; Simovich *et al.* 1993). Also, natural vernal pool complexes are expected to have some pools that at least partially pond in drought years even though other pools may fill only during years of average or above average precipitation.

Issue 16: Several commenters concluded that the data on the crustaceans does not demonstrate a historic and consistent decline in populations levels. One commenter stated that the data on the Conservancy fairy shrimp, longhorn fairy shrimp, and the vernal pool fairy shrimp is very limited because they were only recently described.

Service Response: Relatively little information is available to reconstruct the distribution of the four species listed herein prior to the loss of vernal pool habitat that began in the late 1800's. However, the Service is required to evaluate species based on current and likely future threats to their status. As discussed in this final rule, numerous populations of the four species face severe, imminent threats that could result in substantial habitat losses and extirpations in the future. Since at least the mid-1980's, the human population has been growing rapidly throughout the Central Valley and other regions of California. Although three of the five crustaceans were described scientifically in 1990, their distribution and abundance are sufficiently documented relative to current and future threats to their continued existence. Field samples made from vernal pools have contained these three fairy shrimp prior to 1990. The earliest known collections of the Conservancy fairy shrimp were made in 1979, the vernal pool fairy shrimp in 1965, and the longhorn fairy shrimp in 1937.

Issue 17: The Contra Costa Water District reported that neither the Los Vaqueros Reservoir alternative nor the Kellogg Reservoir alternative would impact the single vernal pool complex inhabited by the vernal pool fairy shrimp within the watershed (John Gregg, Los Vaqueros Project, *in litt.*, 1992).

Service Response: The Los Vaqueros Reservoir project likely would result in adverse impacts to the California linderiella, vernal pool fairy shrimp, and the longhorn fairy shrimp based on an analysis of the environmental documents for this project (California Department of Fish and Game 1983; John Gregg, Los Vaqueros Project, *in litt.*, 1992; Jones and Stokes 1986, 1989, 1990, 1991). On September 2, 1993, the Service issued a conference opinion to the Bureau of Reclamation for the effects of the Los Vaqueros Reservoir project on the three fairy shrimp species.

Issue 18: One commenter stated that there are populations of the crustacean species located on nature preserves and for this reason the Service was urged to "slow" the listing process for these animals. Four people noted that portions of three preserves owned by the Nature Conservancy are inhabited by three of the fairy shrimp species and the vernal pool tadpole shrimp. One commenter concluded that this assured the long-term protection of these species. However, the other three commenters stated that the preserves were either not specifically managed for these animals or the sites are imperiled by activities on adjacent properties.

Service Response: The Service recognizes that while some populations of the fairy shrimp and vernal pool tadpole shrimp are found on protected public and private lands, almost all are located in areas that are not secure against adverse impacts to these animals. Please refer to Factor D below, for an expanded discussion on landownership patterns and protection for these species.

Issue 19: One commenter said the scientific articles containing data on the fairy shrimp that were used by the Service are "primitive and unreliable" and the taxonomy of these crustaceans is "confused". However, four recognized crustacean biologists noted that the taxonomy of fairy shrimp found in California had been reviewed recently in a peer-reviewed scientific journal and the taxonomic status of these species is widely accepted by current authorities.

Service Response: Using the best and most recent systematic information from a number of reliable sources, including Eng *et al.* (1990), D. Belk (pers. comm., 192), and M. Fugate (pers. comm., 1992), the Service maintains that the Conservancy fairy shrimp, vernal pool fairy shrimp, and the longhorn fairy shrimp are valid species and no further taxonomic studies are needed.

Issue 20: Several respondents, including Congressman Wally Herger contended that the vernal pool tadpole shrimp is a "taxonomically unstable species". One commenter stated that taxonomic confusion between Lemmon's tadpole shrimp (*Lepidurus lemmoni*) and the vernal pool tadpole shrimp should be resolved prior to any listing decision. Several commenters stated that the taxonomy of tadpole shrimps is unresolved and recommended that the Service not list the animal. Expressing a contrary position, three recognized authorities on crustaceans provided information showing the vernal pool tadpole shrimp is a biologically and taxonomically valid species. They reported that the vernal pool tadpole shrimp is distinct in both morphology and ecology from Lemmon's tadpole shrimp, which is restricted to alkaline lakes is western North America.

Service Response: Using the best and most recent systematic information from a number of reliable sources, including Lynch (1972) and various crustacean biologists) (R. Brusca, *in litt.*, 1992; M. Simovich, *in litt.*, 1992; J. King, *in litt,*. 1992), the Service maintains that the vernal pool tadpole shrimp is a valid species and no further taxonomic studies are needed.

Issue 21: Four respondents expressed concern that the Service was going to list the ricefield tadpole shrimp (*Triops longicaudatus*) a pest in rice fields in the Central Valley. They further stated that protection of this animal would be an "economic disaster" for rice growers of California. Alternatively, three recognized crustacean authorities provided information showing that the rice field tadpole shrimp is only distantly related to the vernal pool tadpool shrimp. They stated that *T. longicaudatus* is known to occur in the Central Valley only in rice fields while *L. packardi* is found only in vernal pools. One of the crustacean biologists stated that based on genetic studies, the two species are separated by genetic distances on the order of those normally found between crustacean orders (J. King, *in litt.*, 1992). In addition, the four

crustacean biologists noted that the two species are morphologically distinct and are easily distinguishable from each other.

Service Response: The findings in this final rule reflect the published taxonomic literature and the expert opinion of recognized crustacean biologists.

Issue 22: A number of commenters stated that Federal, State, and local regulatory processes provide adequate protection for the crustaceans. Two respondents said that listing would directly affect agriculture, industrial, and commercial development in areas that have been meticulously planned and subject to State laws such as the California Environmental Quality Act (CEQA) and California Subdivision Map Act. Some commenters noted the wetlands "no-net-loss" policies of several State and county agencies, while other cited section 404 of the Clean Water Act. On commenter analyzed data for a group of 29 development projects in the Sacramento area and found that 56 percent of the vernal pools at these project sites had been preserved and 0.9 hectare (2.2 acres) of vernal pools provided as mitigation for each acre impacted under Corps permit conditions pursuant to section 404 requirements. The commenter stated that this group of projects is representative of the level of preservation afforded vernal pool habitat in the Sacramento area and further concluded that this level of protection may be equaled or exceeded for projects requiring section 404 permits throughout the range of the five species. Another commenter noted that the Corps recently classified vernal pools at a proposed project site in Sacramento County as "aquatic resources of national importance". According to the commenter, this designation will cause the Corps to more closely evaluate impacts to vernal pools from proposed projects and thus provide significant protection to vernal pool habitat for the five crustacean species during a six-month time extension.

Expressing a contrary position, several other commenters noted that Federal, State, and local laws have been ineffective in providing protection for these species. The Mount Lassen Chapter of the California Native Plant Society provided data on the destruction of two vernal pool complexes known to have been inhabited by the vernal pool tadpole shrimp in the City of Chico. They provided information on two other vernal pool complexes in Chico that are located on properties proposed for residential development. Another commenter stated that vernal pools in Santa Rosa have been eliminated despite the protective provisions of State law (CEQA). A number of respondents noted that destruction of vernal pools commonly is allowed if an attempt is made to create artificial habitat as compensation.

Service Response: While vernal pool habitat has been preserved permanently under special conditions of section 404 permits for a number of projects, significant areas of vernal pool habitat continue to be lost in spite of the Corps jurisdictional authority to regulate these wetlands under the Clean Water Act. Since 1987, the Service has been tracking the Corps' implementation of Nationwide Permit 26 within the area of responsibility of the Service's Sacramento Field Office. A Service report produced in October 1992 showed that the Corps' Sacramento District authorized filling of 189 hectares (467 acres) of wetlands between 1987 and 1992 pursuant to Nationwide Permit 26 (U.S. Fish and Wildlife Service 1992). During this same time period, the Corps' San Francisco District authorized projects under Nationwide Permit 26 that filled a total of 104 hectares (257 acres) of wetlands of which 15.6 hectares (38.6 acres) were in the Santa Rosa Plain. The report notes that these figures are conservative estimates because notification of agencies for projects affecting less than 0.405 hectares (1.0 acre) are not mandatory. The Service estimates that a majority of the wetland losses permitted in the Sacramento District constitute vernal pools. In addition, between December 1, 1992, and June 15, 1993, the Service identified 10 unauthorized projects in Sacramento and Butte Counties that destroyed or damaged between 8.5 and 15 hectares (21 and 37 acres) of vernal pool habitat (D. Strait, pers. comm., 1993). The projects were not authorized because landowners either were not required or failed to comply with the regulatory requirements of the section 404 permitting process. In addition, gravel mines are proposed for significant areas in the Sacramento Valley, including an approximately 404 hectare (1,000 acres) site south of Mather Air Force Base that contains the California linderiella, vernal pool fairy shrimp, and the vernal pool tadpole shrimp. Under recent changes in the Corps of Engineers regulations, some gravel mining activities will be regulated. However, in the past, most of these activities were not subject to the provisions of the Clean Water Act.

In December 1992, the Department of the Interior signed a revised Memorandum of Agreement with the Department of the Army that provides an administrative process for requesting higher level review of District Engineers' decisions on section 404 individual permit applications. One criterion necessary for higher level review under the Memorandum of Agreement is that the wetlands in question must constitute "aquatic resources of national importance." The ultimate determination on whether the criterion is met will be made on a case-by-case basis by the Assistant Secretary of the Army (Civil Works). Requests for higher level review only apply to projects subject to individual permits, not Nationwide permits. Projects determined by the Corp's Sacramento District to quality for authorization under Nationwide Permit 26 are not eligible for higher level review. Department of the Army concurrence with the designation of vernal pools at the project site at issue "as aquatic resources of national importance" does not ensure application of additional protection to vernal pools beyond that site (see discussion under Issue 29 and Factor D, "Summary of Factors Affecting the Species", for a complete discussion on the adequacy of existing regulatory mechanisms for the four species listed herein). Such a designation must be made on a site-specific basis and, by itself, does not necessarily effect any protection of these resources. San Francisco District of the Corps considered possible revocation of Nationwide Permit 26 in the Santa Rosa Plain that would have ensured that all projects affecting wetlands in this area would require authorization on an individual permit basis and potential higher level review. However, the Corps decided instead to impose stricter conditions on the use of Nationwide Permit 26 in this area, including demonstration that no rare or endangered plant or animal species are supported on the wetlands within any proposed project site. The Corps also determined that individual permits would be required on wetlands that support federally proposed or listed threatened or endangered species. Regardless, of the four species listed herein, only the California linderiella is found at the Santa Rosa Plain and this area constitutes a small percentage of the overall geographical range of the species. Therefore, any additional protection afforded vernal pools in this area would not provide rangewide protection of these animals.

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Based on this and other information discussed under Factor D below, the Service concludes that proposed and on-going damage or destruction of vernal pools in California caused by urban and agricultural development is prevalent despite existing Federal, State, and local regulations and that existing levels of protection are not adequate to assure the survival of these species.

Issue 23: One commenter completed a literature survey of three reports that addressed trends in overall wetland losses throughout California and the Central Valley, in particular. Essentially, this commenter concluded that the historic trend of wetland losses throughout California subsided in the mid-1980's and that current wetland acreages actually are increasing in the State, apparently as a result of the implementation of Federal wetland regulatory mechanisms.

Service Response: Methodological flaws and ambiguities in the analysis conducted by this commenter invalidate the report's findings. The most serious flaw is the comparison of wetland acreages in various studies that focused on different geographic study areas. For example, the two Service reports reviewed by the commenter cannot be used together to draw conclusions on changes in wetland acreages because data from the Central Valley and the entire State are not comparable.

Issue 24: Several commenters disputed the Service's statement in the proposed rule that 90 percent of the original vernal pool habitat throughout the Central Valley has been lost and that an estimated 2 to 3 percent of vernal pool habitat continues to be lost annually. Several commenters contended that the study referenced by the Service actually showed a 67 to 88 percent historic loss of vernal pool acreage. One commenter further stated that additional interpretation and analysis of the data used in the study revealed that historic losses were 63 percent. Based upon information contained in a separate document prepared by the Service, other commenters asserted that the actual loss more closely approximated 50 percent. After the comment period closed, one respondent commented that preliminary results from a newly-initiated soils data analysis indicate that the original estimates of historic vernal pool losses in the Central Valley may be substantially less than was identified in the proposed rule. Another late commenter noted that U.S. Soil Conservation Service information supported recent conclusions drawn by other soil scientists that 404,700 hectares (1 million acres) of soils suitable for vernal pool habitat remain from 809,400 hectares (2 million acres) determined to have historically existed in the Central Valley, thus implying that historic losses were close to 50 percent.

Service Response: After closer review of the referenced study (Holland 1978), the Service discovered apparent arithmetic errors in the estimates of historic vernal pool habitat (i.e., areas that could have supported pools) losses. Correction of these errors yields estimates of vernal pool habitat losses between 60 and 85 percent. Accordingly, the Service finds that the study's corrected estimates of historic vernal pool habitat loss in the Central Valley are reasonably close to the range of estimates determined by those commenters who criticized the study. Comments concerning a 50 percent habitat reduction based upon a Service publication appear to be derived from the Wetlands of the California Central Valley; Status and Trends 1939 to mid-1980's (Frayer *et al.* 1989), which estimated losses of palustrine emergent wetlands. However, calculation of vernal pool losses cannot be deduced from the numerous wetland types categorized as "palustrine emergent wetlands." The results of the soils data analysis under preparation by the commenter were not available for review at the time of publication of this final rule.

The purpose of addressing historic vernal pool losses in the proposed rule was to provide a historical context to the Central Valley ecosystem inhabited by the four crustacean species. It was not the intention, nor is it appropriate, to conduct an exhaustive analysis of information pertaining to the history of vernal pool habitat losses affecting the five crustacean species. Unverifiable and/or contradictory information on the extent of former and current vernal pool habitat will generate continued debate on this issue throughout the foreseeable future. In a legal context, the extent of historic habitat loss is of academic interest only, since the five factors at 50 CFR 424.11(c) under which species may qualify for listing look prospectively to the future rather than retrospectively on the past. The relevant issues are whether the current extent of fairy and tadpole shrimp habitat is depleted and/or fragmented enough to render the species vulnerable to extinction, or whether foreseeable threats similarly threaten the species.

Issue 25: Eight commenters, including four mosquito abatement districts, reported that vernal pools provided an important breeding source for mosquitoes. They stated that the listing of the fairy shrimp and the vernal pool tadpole shrimp, when coupled with the preservation and creation of vernal pools next to residential areas, will create a serious health risk to people. They were especially concerned about the western encephalitis mosquito (*Culex tarsalis*), a vector of western equine encephalitis and Saint Louis encephalitis. Some of the respondents also expressed concern about mosquito-borne malaria and yellow fever. A number of commenters stated that continued urban development would result in greater numbers of people being affected by mosquitoes and increase the need to control mosquitoes in vernal pools. The four mosquito abatement districts were concerned that listing of the crustaceans would increase the costs and restrictions on their control activities.

Expressing a contrary position, four biologists stated that mosquitoes rarely are found in vernal pools and swales that have not been impacted by humans. They reported this is likely due to the presence of the high abundance of predatory crustaceans and aquatic insects that inhabit this ecosystem. A crustacean specialist noted that mosquitoes were absent or not present in significant numbers in pools inhabited by the fairy shrimp and the tadpole shrimp. Significant numbers of mosquito larvae were found in areas that contain created vernal pools or artificial bodies of water e.g., ditches and stock ponds where the crustaceans are sparse or absent. One biologist reported that no mosquito larvae were found in any of the 27 randomly sampled vernal pools at Beale Air Force Base (Mary Ann Griggs, private biologist, Colusa, California, *in litt.*, 1992). However, mosquitos were found in areas that had augmented water supply from a pressure release valve on a well. The water supply produced a distinctively different flora and fauna than nearby vernal pools. Commenting biologists stated that the use of oil and mosquito fish (*Gambusia affinis*) will adversely affect vernal pool fauna, including the three fairy shrimp and the vernal pool tadpole shrimp, consequently allowing mosquitoes populations to sue vernal pools where they otherwise are controlled or eradicated by the nature pool fauna.

Service Response: The best information available to the Service indicates that non-degraded vernal pools and swales do not provide a significant breeding source for mosquitoes. Mosquitoes do not appear in vernal pools until very late in the season, when they are unlikely to complete their development before the pools dry (Wright 1991; Stan Wright and Dave Brown, Sacramento-Yolo Mosquito Abatement District, pers. comm., 1993). This pattern likely is due to the ecology of vernal pool invertebrate communities rather than to oviposition timing of female mosquitoes or to water chemistry, since (1) duck ponds in the same area that fill at the same time as many vernal pools produce mosquitoes throughout the wet season while vernal pools do not, and (2) degraded pools and ruts without healthy vernal pool invertebrate communities support mosquito populations while undisturbed vernal pools in close proximity do not (S. Wright, pers. comm., 1993; J. King, pers. comm., 1993; Christopher Rogers, Redding Mosquito Abatement District, pers. comm., 1993).

Female mosquitoes are attracted to gases produced by fermentation that indicate an abundance of decaying organic matter suitable for food for mosquito larvae (S. Wright, pers. comm., 1993). This likely is the cue used by females to select oviposition sites. Healthy vernal pools appear to have tight nutrient cycling and relatively low levels of decaying organic material, which makes them undesirable as oviposition sites for gravid mosquitoes. Only late in the season when the abundance of the invertebrates in vernal pools begins to decline are enough nutrients and organic material available to make the vernal pools attractive oviposition sites. By this time, however, it is often too late for the mosquito larvae to develop before the pools dry. Therefore, protecting vernal pools from disturbance and degradation can prevent vernal pools from becoming mosquito breeding grounds, thereby naturally preempting the need for artificial mosquito control in this habitat.

Quantitative data collected from 64 vernal pools of widely varying types, depths, and locations on a random 322 kilometer (200 mile) north-south transect in the Central Valley from Fall River in Shasta County to Jepson Prairie in Solano County over an entire season indicate that mosquitoes are successful in breeding and developing only in pools that have been disturbed or degraded, or late in the season (J. King, pers. comm., 1993). Only about one third (34 percent) of the 64 pools studied were occupied by mosquito larvae or pupae. Most of these pools had relatively low population densities of mosquitoes, and in all of these pools mosquitoes were only present later in the season. Of the 5 pools (8 percent) that did contain abundant mosquitoes, one was an artificially created pool and another appeared to be degraded by vehicular use and possibly discing.

The Service recognizes that there could be potential conflicts with protection of the three fairy shrimp and the vernal pool tadpole shrimp in implementing mosquito control programs. The Service will be working with Federal, State, and local agencies, and examining additional alternatives, such as the use of *Bacillus thuringiensis* var. *israelensis* (Bti) and methoprene, to allow suppression programs to continue. In this way, the Service is confident that Federal listing will contribute to the survival of the four species and promote the understanding of their vernal pool environment without jeopardizing public health and safety.

Issue 26: Several commenters expressed concern that listing of the crustaceans would curtail or eliminate cattle and livestock grazing in areas containing vernal pools. Two crustacean biologists reported that grazing by cattle and the crustacean species are compatible with each other. They stated that moderate to low levels of grazing likely have no adverse impacts on the fairy shrimp and the vernal pool tadpole shrimp.

Service Response: The Service recognizes and acknowledges that low to moderate levels of livestock grazing likely have no impact or may be beneficial for these crustaceans. However, overgrazing in areas containing the shrimp and their habitat likely is detrimental to these species. High levels of pasture runoff may lead to increased siltation of vernal pool habitat, and high livestock densities may cause changes in pool water chemistry, water quality, and excessive physical disturbances, such as trampling.

Issue 27: Several commenters reported the presence of the fairy shrimp in non-vernal pool habitats, such as irrigation return ditches, stock ponds, a backhoe pit, a gravel pit, and a depression left from scraping. One commenter stated that a historic vernal pool habitat site in southern Sacramento County that was disced, plowed, and farmed with winter wheat still contained inundated depressions inhabited by the vernal pool fairy shrimp and vernal pool tadpole shrimp. This example was used to support the contention that these species can survive and reproduce in degraded habitat. The commenter also noted that "the site was not leveled unlike other properties in the area, and still retained some swale and hillock topography." (Bill Sugnet, Sugnet and Associates, *in litt.*, 1992). Another respondent, based on anecdotal data, concluded that the habitat for the vernal pool fairy shrimp, and the vernal pool tadpole shrimp has been insufficiently described. He reported them from roadside ditches, scrapes, tire track depressions, or similar man-made ephemeral pools from 28 locations in Sacramento County (E.J. Koford, Ebasco Environmental, *in litt.*, 1992). This commenter asserted that herbicides and/or mechanical weed control at sites located along some railroad tracks may have promoted the habitat for these species. One crustacean biologist, based on discussions, examination of photographs of these sites, and personal knowledge of the area concluded that they are remnant or disturbed vernal pools (J. King pers. comm., 1992).

Service Response: The Service has reviewed carefully the assertion that the crustaceans are found in non-vernal pool habitat. A number of the sites that served as the basis for this belief have been examined by Service biologists and were found to represent degraded vernal pool habitat or, in one case, an ephemeral wetland located in a gravel pit that likely was colonized by fairy shrimp washed in from adjacent vernal pools during periods of high rainfall. Based on the best information available, the Service believes that a significant portion of these records most likely represent "unusual" vernal pools (e.g., rock depression pools) or vernal pool habitat that was incorrectly identified. Some of these records, such as roadside ditches, scraped areas, and airport runoff ditches almost certainly represent remnant vernal pool habitat or are part of the swale systems connected to vernal pools. Lack of experience or familiarity with vernal pool ecosystems likely has led some respondents to misinterpret these observations. Most of these disturbed habitats also are imperiled by urban development, gravel mining, and, in the cases of roadside ditches, grading and spraying of herbicides for highway maintenance. In addition, the accurate identification of fairy shrimp is extremely difficult because the morphological characters required to differentiate the various species are often extremely subtle and can be misinterpreted by biologists not specifically trained in fairy shrimp identification. Widespread, common species, such as Lindahl's fairy shrimp, can be mistaken for other fairy shrimp species. Some of the records of the California linderiella and vernal pool fairy shrimp in non-vernal pool habitats may result from such misidentifications.

The potential for a fairy shrimp population to persist after habitat disturbance varies from case to case,

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depending upon specific circumstances, such as the nature and intensity of disturbance, how much of the original egg bank was destroyed, and other factors. With the exception of a few extremely rare cases, plowed fields that historically held vernal pool habitat do not support populations of these species. The example provided by the commenter is not typical of agricultural operations, as is pointed out in the commenter's statement that this site was "unlike other properties in the area . . ." (B. Sugnet, *in litt.*, 1992), with respect to the degree of disturbance (i.e., leveling) and adverse modification of the vernal pool habitat.

Issue 28: Many respondents contended that the proposed rule did not reflect accurately the success of vernal pool "creation" efforts. For example, a number of commenters claimed that artificial vernal pools, primarily in Sacramento and Placer Counties, cited in Sugnet and Associates (1992), were successful and were adequate mitigation for adverse impacts to vernal pools resulting from urban development. Other commenters asserted that ongoing creation ratios of 2:1 or greater and the ability to transplant these animals makes it likely that the habitat for these species will increase over time.

One commenter stated that the ability to successfully transplant the eggs of fairy shrimp and tadpole shrimp is well known. One submitted report (Sugnet and Associates 1992) asserted that the four fairy shrimp and vernal pool tadpole shrimp have been shown in the "literature and in field sampling to be extremely hardy and capable of surviving long-term in greatly disturbed conditions and artificial habitats". The report also stated that there are technical papers that demonstrate the ability to rear shrimp in the laboratory. The party submitting this report stated that they have been creating vernal pools as mitigation for development projects and monitoring the fairy shrimp and tadpole shrimp for the past three years from 1989 to 1992. They stated that although the presence of adult fairy shrimp may be due to a certain number of eggs continuing to hatch from the initial inoculum in successive years due to differences in physiochemical parameters, the presence of mating individuals and gravid female fairy shrimp in artificial pools, as well as historically degraded habitat, leads them to conclude that natural reproductive mechanisms are still at work. The report stated that the California linderiella and the vernal pool fairy shrimp can be transplanted successfully from one vernal pool location to another. The supporting data and criteria by which success was determined were not specified in the report. Based partly on the above information, numerous commenters stated that the fairy shrimp and vernal pool tadpole shrimp were not imperiled.

On the other hand, one crustacean biologist stated that the reports of successful vernal pool creation have been "generally poorly controlled, completely lacking in long-term monitoring, and do not appear in the peer reviewed scientific literature * * *" (J. King, *in litt.*, 1992). In addition, this commenter reported that "contrary to common misconception these organisms [vernal pool tadpole shrimp] are not easily raised outside of their natural habitat." This crustacean specialist stated that their efforts to maintain viable reproductive vernal pool tadpole shrimp in the laboratory have been unsuccessful. Another biologist pointed out that long-term studies of the effect of mixing genotypes in created pools likely are adversely impacting the fairy shrimp and the vernal pool tadpole shrimp (M. Simovich, *in litt.*, 1992).

Eight biologists specializing in crustaceans or plants inhabiting vernal pools stated that these habitats are an intricate ecosystem and efforts to recreate them likely will not be successful until they are more fully understood. Furthermore, six fairy shrimp specialists concluded that protection of these animals is best assured via the preservation of extant habitat and its associated community.

Service Response: In a review of 21 vernal pool creation projects dispersed throughout California, Ferren and Gervitz (1990) concluded that no conclusive data exist to substantiate the hypothesis "that vernal pools can be restored or created to provide functional values within the range of variability of natural pools." Though some individuals (Sugnet and Associates *et al.* 1992) have claimed complete or some degree of success, these conclusions generally are based on anecdotal unscientific studies and the persistence of fairy shrimp after only a short period of time, e.g., three years or less. Moreover, the principal pool creation technique (i.e., relocation of soil from excavated pool bottoms versus inoculation of a known quantity of eggs) and lack of scientifically designed monitoring do not allow for collection of the necessary data to determine the long-term population viability of transplanted species.

In a study on the preservation and management of vernal pools (Jones and Stokes Associates 1990), the researchers concluded that the "science of vernal pool creation is still in its infancy and is primarily an experimental mitigation technique." Environmental requirements, not dispersal, is likely the limiting factor in the distribution of the fairy shrimp and the vernal pool tadpole shrimp (D. Belk, pers. comm., 1992). The four species in this final rule require unknown, but more restrictive environmental conditions than more widely distributed taxa (J. King, *in litt.*, 1992; M. Simovich, *in litt.*, 1992; R. Brusca, pers. comm., 1992). There are no demonstrated proven long-term populations of the fairy shrimp or the vernal pool tadpole shrimp in artificial habitats.

Artifically created habitats also may increase the threat of hybridization between the four fairy shrimp and other more widespread species. For example, Lindahl's fairy shrimp is a widespread species found in western North America that inhabits a wide array of conditions, ranging from pools whose salinity is high enough to support brine shrimp (*Artemia* sp.) to snow melt pools. Poorly planned, careless construction, or haphazard placement of the substrate during vernal pool creation may enhance conditions for species like Lindahl's fairy shrimp. Laboratory studies have shown that Lindahl's fairy shrimp and the vernal pool fairy shrimp readily hybridize in the laboratory and produce viable first generation hybrids (Fugate, pers. comm., 1992). There is evidence that hybridization between other fairy shrimp has occurred in the field because of human actions. Belk (1977) reported that the westward dispersal from Texas and New Mexico of a desert fairy shrimp (*Streptocephalus dorothae*) across extensive expanses of arid land into Arizona may be due to the cattle ponds and livestock watering holes that were built after the 1800's in the region. Wiman (1979) reported that viable hybrid offspring are produced by this species and Mackin's desert fairy shrimp (*Streptocephalus mackini*), a resident species in Arizona.

Given these uncertainties associated with vernal pool creation, the Service maintains that transplanting target species (e.g., listed, proposed, and candidate species) into artificial pools cannot be considered adequate replacement for the loss of occupied vernal pool habitat. Even if such transplantation of the fairy shrimp and the vernal pool tadpole shrimp and creation of their habitat were documented to be a proven procedure rather than an evolving problematic venture, artificial pool creation for the species listed herein would not fulfill

the mandates of section 2 of the Act, which require the Service to develop programs that conserve the ecosystems upon which listed species depend. As discussed elsewhere herein, natural habitats throughout the ranges of the four species have been damaged or eliminated. As a result, the Service concludes that the continued survival and recovery of the three fairy shrimp and the vernal pool tadpole shrimp only can be assured, at this time, by the preservation of extant vernal pools and their associated watersheds.

Issue 29: Several comments were received questioning the relationship between the Endangered Species Act and the Fifth Amendment to the U.S. Constitution (e.g., "taking" without just compensation).

Service Response: The mere promulgation of a regulation, such as the enactment of a statute, is rarely sufficient to establish that private property has been taken unless the regulation on its face denies the property owner the economically viable use of his property. Listing pursuant to the Endangered Species Act does not automatically restrict all uses of one's land. A property owner cannot establish that his property has been taken as a result of a regulatory action such as the listing of a species until he has first submitted a proposal to develop the property and has received a determination as to the level of development that will be allowed. The property owner must apply for all available permits and waivers before a taking could potentially be established. With respect to listing, this means that no takings can be established until the property owner complies with section 10(a) of the Act and the Service concludes that no permit to take incidental to an otherwise lawful activity will be issued.

Issue 30: The Service received a comment that requested an explanation of the applicability of *Hoffman Homes Inc.* v. *EPA* to vernal pools.

Service Response: Hoffman Homes Inc. v. *EPA*, 916 F.2d 1310 (7th Cir. 1992) held that an isolated wetland, with no shown effect on interstate commerce, was not within EPA's nor the Corps of Engineers' jurisdiction to regulate. That decision was vacated in the same year (*Hoffman Homes Inc.* v. *EPA*, 975 F.2d 1554) and the issue reheard by the same court in 1993 (*Hoffman Homes Inc.* v. *EPA*, 999 F.2d 256). In its final interpretation of the issues presented in that case, the court held that waters whose use, degradation, or destruction *could* affect interstate commerce, were waters appropriately regulated by EPA and/or the Corps (emphasis added). Based upon the facts as presented in that case, however, the court could not find sufficient evidence to support a conclusion that the wetland in question could potentially affect interstate commerce. As such, the court determined this particular water body to be outside the realm of EPA or Corps jurisdiction.

The Service is not aware how the EPA or Corps view this case relative to vernal pools. Regardless of the interpretation, however, it is the animal (as opposed to habitat) for which the Endangered Species Act will afford protection with this final regulation. Should it be determined that neither the Corps nor EPA have jurisdiction over these wetlands, and that section 7 is not therefore applicable, then the property owner may comply with the Endangered Species Act through section 10 of the Act.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Conservancy fairy shrimp (*Branchinecta conservatio* Eng *et al.*), longhorn fairy shrimp (*Branchinecta longiantenna* Eng *et al.*), and the vernal pool tadpole shrimp,(*Lepidurus packardi* Simon) should be classified as endangered species; and the vernal pool fairy shrimp (*Branchinecta lynchi* Eng *et al.*) should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* All three fairy shrimp and the vernal pool tadpole shrimp are restricted to vernal pools in California. The habitat of these animals is imperiled by a variety of human-caused activities, primarily urban development, water supply/flood control activities, and conversion of land to agricultural use. Habitat loss occurs from direct destruction and modification of pools due to filling, grading, discing, leveling, and other activities, as well as modification of surrounding uplands that alters vernal pool watersheds.

Rapid urbanization of areas containing vernal pools poses a significant threat to the four species included in this final rule. In the Central Valley, at least five pool complexes that were known to contain suitable habitat for the vernal pool fairy shrimp and the vernal pool tadpole shrimp were eliminated by urban development in the late 1980's. Mitigation measures were either lacking or unsuccessful. In general, the growth rate of human populations and associated urban development throughout the Central Valley is equal to or exceeds that of any other region in California. Indicative of this growth rate are proposals to develop several new towns within the ranges of the vernal pool fairy shrimp and the vernal pool tadpole shrimp. As an example, two towns proposed in Placer and San Joaquin Counties would support 80,000 and 44,000 people, respectively, and likely would impact significant amounts of vernal pool habitat for these species (Laver 1991, Wiegand 1991).

Vernal pools in the Redding area that likely provided habitat for the vernal pool fairy shrimp and the vernal pool tadpole shrimp have been impacted significantly by urban development and agricultural conversion. Aerial photographs of an approximately 61-hectare (150 acre) area near the Redding Municipal Airport document that development occurring between 1952 and 1992 resulted in the loss of 62 percent and the degradation of 37 percent of the original vernal pools in this vernal pool complex (Jim Nelson, California Fish & Game, pers. com., 1993). The remaining pools at this site are inhabited by the vernal pool fairy shrimp and the vernal pool tadpole shrimp. Vernal pool areas around the airport have been zoned for enterprise, and sewer lines have been installed in anticipation of development. Several proposed residential development projects in the Redding area (e.g., Argyle West and Eagle Crest projects) also would adversely affect the vernal pool fairy shrimp and the vernal pool tadpole shrimp. A proposed electrical transmission line also threatens several pools in the area. Eucalyptus farms have been established on many historic vernal pool sites around Redding and future groves are planted at the rate of approximately 810 hectares (2,000 acres) per year (J. Nelson, California Department of Fish and Game, pers. comm. 1993).

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In the Chico area, certain areas inhabited by the vernal pool tadpole shrimp recently were ditched and drained (Patrick Kelly, Mount Lassen Chapter of the California Native Plant Society, *in litt.*, 1992). In addition, at least four residential developments proposed in Chico, including the Simmons Ranch, Foothill Park, Sierra Technology, and Bidwell Ranch projects are proposed that would eliminate approximately 810 hectares (2,000 acres) of habitat containing vernal pools inhabited by the vernal pool tadpole shrimp. No specific mitigation measures are included in these projects for this animal.

Numerous residential and commercial development projects in the Sacramento area pose a severe threat to vernal pool complexes inhabited by populations of the vernal pool fairy shrimp and vernal pool tadpole shrimp. These proposed and ongoing projects, sponsored by Federal, State and local agencies, private interests, and local governments, include, but are not limited to the closure of Mather Air Force Base, modifications to Strawberry, Elk Grove, and Laguna Creeks, two proposed surface gravel mines, and numerous residential developments including the Elliot Ranch South, Churchill Downs, Elk Ridge Estates, and Sunrise-Douglas projects.

Urban development and agricultural conversion imperil populations of the vernal pool fairy shrimp and vernal pool tadpole shrimp in the San Joaquin Valley. Castle Air Force Base is undergoing closure and the U.S. Bureau of Prisons has proposed to build a prison on vernal pools at this site known to contain the two fairy shrimp. The Corps has proposed the Merced County Streams project that would facilitate urban development in many areas that provide suitable habitat for the vernal pool fairy shrimp and the vernal pool tadpole shrimp. Numerous projects between Stockton and Bakersfield also would adversely impact the three species, including the Mueller Ranch gravel mine in Stanislaus County, a number of residential developments in San Joaquin County (e.g., the Liberty project would affect approximately 2,000 vernal pools), the Yosemite Lake project in Merced County, and the Ball Ranch project in Fresno County.

Areas in the San Francisco Bay area that contain vernal pools also are undergoing substantial urban development. Vernal pools inhabited by the vernal pool fairy shrimp in the Livermore area of Alameda County have been adversely impacted by urban development, agriculture, and alteration of the hydrology of Altamont Creek (Alan Launer, Stanford University Center for Conservation Biology, *in litt.*, 1992). The City of Livermore is evaluating land use options that could result in the conversion of 3,002 hectares (7,420 acres) of natural habitat, including vernal pools that provide suitable habitat for the vernal pool fairy shrimp, to urban use for up to 30,000 people (City of Livermore 1992; Susan Frost, Livermore Planning Department, pers. comm., 1993). The proposed expansion of the municipal airport at Byron Hot Springs in eastern Contra Costa County will eliminate a number of pools inhabited by the vernal pool fairy shrimp.

Other vernal pools located in San Luis Obispo County, including most of the known populations of the longhorn fairy shrimp and at least one population of the vernal pool fairy shrimp, are located in subdivided areas with constructed roads and lots for sale and development (Eng *et al.* 1990; Dave Chipping, Amateur biologist, *in litt.*, 1992). To date, some of the sites have been cleared and continued habitat loss is ongoing or impending. The Coastal Branch Phase II (Coastal Aqueduct) of the State Water Project, proposed by the California Department of Water Resources (Carol Nelson, California Department of Water Resources, *in litt.*, 1993), annually would convey 70,000 acre-feet of water from the Delta region of California to San Luis Obispo and Santa Barbara Counties. It is unclear if this source of water would allow urban development of the Soda Lake area, however, the longhorn fairy shrimp and the vernal pool fairy shrimp may be adversely affected by commercial development made possible by this project.

A 36-hectare (14 acre) vernal pool located at Skunk Hollow in Riverside County containing a population of the vernal pool fairy shrimp likely will be adversely affected by urban development and possibly agricultural conversion (Art Davenport, Fish and Wildlife Service, pers. comm., 1994; Joseph Jolliffe, Riverside County Planning Department, *in litt.*, 1992). The Rancho Bella Vista residential project would impact this vernal pool and, along with other major roadways, also impact the surrounding watershed (Joseph Jolliffe, *in litt.*, 1992). Skunk Hollow also contains a population of the Riverside fairy shrimp (*Streptocephalus woottoni*), an endangered species (58 FR 41384).

Because of rapid urbanization, several highway projects are proposed that may affect the vernal pool fairy shrimp and the vernal pool tadpole shrimp. Vernal pools in the Sacramento area inhabited by the vernal pool fairy shrimp and the vernal pool tadpole shrimp would be affected adversely by the proposed widening of State Highway 16 in Sacramento County. The State of California has proposed to extend State Highway 505 from Vacaville to Collinsville in Solano County; this project directly and/or indirectly would impact vernal pools inhabited by the Conservancy fairy shrimp and the vernal pool tadpole shrimp (C. Goude, pers. comm., 1993). Vernal pools inhabited by the vernal pool tadpole shrimp may be affected by improvements to Highway 70 near Gridley in Butte County (Chris Collison, California Department of Transportation, pers. comm., 1993).

Agricultural conversion poses a widespread threat to remaining vernal pools in the Central Valley. Sites containing fairy shrimp near Pixley in Tulare County and Haystack Mountain in Merced County are pockets of privately owned habitat remnants threatened by surrounding agricultural operations (Eng *et al.* 1990). A 148-hectare (365 acres) site with vernal pools adjacent to State Highway 41 north of Fresno in Fresno County that likely contained the vernal pool fairy shrimp was disced and graded in 1992 (Dames and Moore 1992). Two sites with vernal pools in the Sacramento Valley recently were plowed or disced and seeded with winter wheat, apparently in preparation for future urban development (C. Goude, pers. comm., 1993). Almond and fruit orchards in Stanislaus, Madera, and Fresno Counties continued to be planted in habitat suitable for the vernal pool fairy shrimp and the vernal pool tadpole shrimp (J. King pers. comm. 1993; K. Geer and J. Browning, U.S.F.W.S., pers. obs. 1994).

Water supply/flood control activities also generally present a degree of disturbance to affected pools that would preclude survival of any substantial fraction of the populations. The timing, frequency, and length of inundation of the vernal pool habitat are critical to the three fairy shrimp and the vernal pool tadpole shrimp; any substantial hydrologic change in these factors adversely affect the four species. Diversion of watershed runoff feeding the pools can result in premature pool dry-down before the life cycle of these animals is completed. The three species of fairy shrimp and the vernal pool tadpole shrimp also are intolerant of flowing water that washes away the egg bank. Supplemental water from outside the natural watershed into vernal pools can change the habitat into a marsh-dominated or a permanent aquatic community that is unsuitable for the four species of vernal pool shrimps. The modification of vernal pool areas to create artificial reservoirs, such as the Modesto Reservoir and Turlock Lake in Stanislaus County, have led to the extirpation of the vernal pool tadpole shrimp population that was known to occur in the vernal pools where these reservoirs now lie (J. King, pers. comm., 1993). Vernal pool watershed areas have been reduced by conversion of uplands to paved or grass-turf surfaces, by damming of swales caused by road construction, or other construction activities. Physical barriers, such as roads and canals, unsuitably deepen a vernal pool upstream of a barrier, and can isolate a fairy shrimp or vernal pool tadpole shrimp population from a portion of its aquatic habitat. Surface runoff, including non-point runoff, is altered by disturbance from trenching, grading, scraping, off-road vehicles, intensive livestock grazing, or other activities that change amounts, patterns, and direction of surface runoff to ephemeral drainages. Presence of summer water also affects the hydrologic pattern. Introduction of water during the summer disrupts the life cycles of the fairy shrimp and the vernal pool tadpole shrimp by subjecting them to greater levels of predation by animals requiring more permanent sources of water. Increased water also converts vernal pools to unsuitable marsh habitat dominated by emergent vegetation (e.g., cattails).

Direct and associated indirect impacts from the proposed Los Vaqueros Project, a water-storage project in the Kellogg Creek watershed of eastern Contra Costa County, would adversely impact two vernal pool complexes that support the highest diversity of fairy shrimp in the State (California Department of Fish and Game 1983). The rock pools in this area are inhabited by the vernal pool fairy shrimp and the longhorn fairy shrimp (John Gregg, Los Vaqueros Project, *in litt.*, 1992). Proposed construction of a major roadway, high-pressure natural gas and petroleum pipelines, and 230,000 kV electrical transmission lines at the Los Vaqueros Reservoir site would adversely affect these species (Jones and Stokes Associates 1986, 1989, 1990, 1991).

Several proposed utility projects have the potential to affect all of the three fairy shrimp and the vernal pool tadpole shrimp. For example, the Pacific Gas Transmission Company—Pacific Gas and Electric natural gas pipeline project extending from the Canadian border along the west side of the Sacramento Valley to Fresno County has adversely impacted a number of vernal pools containing the vernal pool fairy shrimp, Conservancy fairy shrimp, and the vernal pool tadpool shrimp (Federal Regulatory Energy Commission 1991; Arnold 1990; C. Nagano, pers. obs., 1992 and 1993). The Service has issued a conference opinion to the Federal Energy Regulatory Commission on a portion of this project that will adversely impact the vernal pool fairy shrimp; however, the applicant has indicated the mitigation measures will not be implemented if the species is not listed (John Cassady, PGT–PG&E Pipeline Expansion Project, *in litt.*, 1993).

Off-road vehicle (ORV) use also imperils fairy shrimp and the vernal pool tadpole shrimp inhabiting vernal pools (Bauder 1986, 1987). ORVs cut deep ruts, compact soil, destroy native vegetation, and alter pool hydrology. Fire fighting, security patrols, military maneuvers, and recreational activities cumulatively have damaged vernal pool habitats in many areas (Bauder 1986, 1987). In Solano County, an off-road vehicle park adjacent to the Jepson Prairie Reserve owned by the Nature Conservancy could adversely impact populations of the Conservancy fairy shrimp and the vernal pool tadpole shrimp.

Other secondary impacts associated with urbanization include disposal of waste materials into habitat for the four species included in this final rule (Bauder 1986, 1987). Disposal of concrete, tires, refrigerators, sofas, and other trash adversely affects these animals by eliminating habitat, disrupting pool hydrology or, in some cases, through release of toxic substances. Dust and other forms of air or water pollution from commercial development or agriculture projects also may be deleterious to these animals.

Filling of vernal pool wetlands without authorization from the Corps also poses a threat to these species (Tricia Richards, Sacramento County Planning and Community Development Department, *in litt*, 1991: D. Strait, pers. comm., 1993). In Stanislaus County, a site with 61 hectares (150 acres) of vernal pool habitat that was potentially inhabited by the vernal pool fairy shrimp was converted to irrigated pasture in 1990 (Martha Naley, U.S. Fish and Wildlife Service, pers. comm., 1991). A 112 hectare (275 acre) site containing vernal pool and swale habitat for the vernal pool tadpole shrimp in the Jepson Prairie area in Solano County was destroyed by discing in October 1992 (C. Nagano and J. Knight, pers. obs., 1992).

The Service is aware of 10 actions in the last 2 years in the Sacramento Valley, including agricultural conversion and urban development, that have resulted in the damage or destruction of as many as 17 hectares (43 acres) of vernal pools, exclusive of associated watersheds, that likely provided habitat for the vernal pool fairy shrimp and vernal pool tadpole shrimp (Dan Strait, U.S. Fish and Wildlife Service pers. comm., 1993). Some of these activities were undertaken without authority under the Clean Water Act. At least one of these parties likely intended to alter the elevations of the site to eliminate one or more of the parameters used by the Corps to define a wetland according to their 1987 jurisdictional manual. Other similar deliberate activities that are damaging or destroying vernal pools are likely occurring throughout the Central Valley (D. Strait, pers. comm., 1993). The Service is concerned that unless a final rule for the four species is issued and effective immediately upon publication, this may result in landowners knowingly destroying the habitat of these animals. Previously, this has occurred with other endangered species that inhabit vernal pools in the Santa Rosa area of Sonoma County (C. D. Nagano and J. C. Knight, U.S. Fish and Wildlife Service, pers. obs., 1992). Because of the immediate threat posed by these on-going activities, the Service finds that good cause exists for this rule to take effect immediately upon publication in accordance with 5 U.S.C. 553(d)(3).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be applicable.

C. *Disease or predation.* The three fairy shrimp and the vernal pool tadpole shrimp are a food item in the diet of migratory waterfowl and other native animals (Krapu 1974; Swanson *et al.* 1974; J. King, pers. comm., 1992). However, this naturally occurring predation is not considered a threat to the continued existence of these crustaceans.

Introduction of the bullfrog (*Rana catesbeiana*) to areas inhabited by the vernal pool tadpole shrimp appears to increase the threat of predation facing this crustacean. These amphibians are voracious predators on many species of native and exotic animals. Large numbers of vernal pool tadpole shrimp were found in stomach content analysis of bullfrogs captured in vernal pools in the Chico area (Marc Hayes, Oregon State University, pers. comm., 1993; Robert Fisher, University of California, pers. comm., 1993). Although bullfrogs are unable to establish permanent breeding populations in vernal pools, dispersing immature males take up residence in these areas during the rainy

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season (Mark Jennings, U.S. National Biological Survey, pers. comm. to Peter Sorensen, 1994). A number of bullfrogs were observed at Jepson Prairie during the winter of 1992/1993 (C. Nagano, pers. obs. 1992/93).

Vernal pool tadpole shrimp were found to have been parasitized by flukes (Trematoda) of an undetermined species at the Vina Plains, Tehama County (Ahl 1991). The gonads of both sexes were greatly reduced in size and their body cavities were filled with many young flukes (metacercariae). Ahl concluded that parasitic castration was the major limiting factor affecting reproduction of the vernal pool tadpole shrimp at the Vina Plains. The range and extent of this parasite is unknown.

There are no known diseases affecting the three fairy shrimp and the vernal pool tadpole shrimp.

D. *The inadequacy of existing regulatory mechanisms.* The primary cause for the decline of these species is loss of habitat from human activities. State and local laws and regulations have not been passed to protect the four species included in this final rule. Other regulatory mechanisms necessary for the conservation of vernal pools have proven inadequate and ineffective.

The environmental review process under the California Environmental Quality Act for projects that result in loss of habitats that support these animals sometimes requires development and implementation of mitigation plans. However, the effectiveness of this statute in protecting vernal pool habitat has not been consistent. As documented above, fairy shrimp and vernal pool tadpole shrimp habitat typically has been eliminated without offsetting mitigation measures. Most mitigation plans that have been required were designed specifically for vernal pool plants. The artificial creation of vernal pools as compensatory mitigation has not been proven scientifically to be successful (Ferren and Gevirtz 1990; Zedler and Black 1988; J. King, *in litt.*, 1992; M. Simovich, *in litt.*, 1992; R. Bruscu, *in litt.*, 1992).

Under section 404 of the Clean Water Act, the Corps regulates the discharge of fill material into waters of the United States, which include navigable waters, wetlands (e.g., vernal pools), and other waters. The Clean Eater Act requires project proponents to obtain a permit from the Corps prior to undertaking many activities (grading, discharge of soil or other fill material, etc.) that would result in fill of wetlands. The Corps promulgated Nationwide Permit 26 to address fill of isolated or headwater wetlands totalling less than 4 hectares (10 acres). Under Nationwide Permit 26, proposals that involve fill of wetlands less than one acre are considered authorized. Where fill would aversely modify between 0.4 and 4.0 hectares (one and 10 acres) of wetland, the Corps circulates for comment a predischarge notification to the Service and other interested parties to determine whether or not an individual permit should be required for fill activity and associated impacts.

Individual Corps permits are required for discharge of fill material that would fill or adversely modify greater than 4 hectares (10 acres) of wetlands. The review process for individual permits is more rigorous than for nationwide permits. Unlike nationwide permits, an analysis of cumulative wetland impacts is required for individual permit applications. Resulting permits may include special conditions that require potential avoidance or mitigation for environmental impacts. On nationwide permits, the Corps has discretionary authority to require an individual permit if the Corps believes that resources are sufficiently important, regardless of the wetland's size. In practice, however, the Corps generally does not require an individual permit when a project qualifies for a nationwide permit, unless a threatened or endangered species or other significant resources would be adversely affected by the proposed activity. Most vernal pools and swales within the range of these three species of fairy shrimp and the vernal pool tadpole shrimp encompass less that 4 hectares (10 acres). The discontinuous distribution of these sites has allowed some landowners to divide large projects into several smaller projects. Wetland acreage on these smaller projects is usually under 4 hectares (10 acres), and therefore, most projects qualify for Nationwide Permit 26. Discing and other farming or ranching practices, including overgrazing, can destroy vernal pool habitat without a permit from the Corps because many of these activities are exempt from regulation under the Clean Water Act. The discontinuous configuration of the pools and swales further obscures separation of these wetland losses.

The Sacramento District of the Corps has several thousand vernal pools under its jurisdiction (Coe 1988), which includes most of the geographic range encompassing the four species listed herein. Areas occupied by these animals are undergoing rapid urbanization and current trends indicate 60 to 70 percent of these pools could be destroyed in the next 10 to 20 years (Coe 1988).

The Conservancy fairy shrimp, vernal pool fairy shrimp, and the vernal pool tadpole shrimp are found in vernal pools within the Vina Plains in Tehama County. They likely are found in the vicinity of ephemeral swales and drainages that support *Limnanthes floccosa* ssp. *calfornica* (Butte County meadowfoam). This plant was listed as an endangered species on June 8, 1992 (57 FR 24192). These crustaceans could be protected indirectly by actions taken to conserve the Butte County meadowfoam. A "conservation plan" has been drafted for the City of Chico (Jokerst 1989) that details various actions designed to conserve the plant, such as creation of a preserve system. However, the draft plan does not address plant populations and vernal pool habitat outside city limits. Moreover, the City of Chico has yet to adopt the plan. Meanwhile, typical of other vernal pool areas, the Corps continues to use nationwide permits to authorize numerous residential developments in the Chico area.

The Conservancy fairy shrimp and the longhorn fairy shrimp each have portions of one population on lands under public ownership. Portions of four populations of the vernal pool fairy shrimp are on lands under public ownership. Portions of eight populations of the vernal pool tadpole shrimp are on lands under public ownership. The Nature Conservancy owns or controls portions of vernal pool habitat, including Jepson Prairie in Solano County, Vina Plains in Tehama County, the Carrizo Plain in San Luis Obispo County, and Santa Rosa Plateau area in Riverside County. All three fairy shrimp species and the vernal pool tadpole shrimp occur on Conservancy property. Management plans for some Federal, State, local, and Conservancy properties include provisions to protect vernal pools but none specifically address these species. Surrounding privately owned vernal pool habitat and watershed are not protected.

E. *Other natural or man-made factors affecting their continued existence.* The pools and, in some cases, pool complexes supporting the fairy shrimp species and the vernal pool tadpole shrimp are usually small and unforeseen natural and man-caused catastrophic events threaten the elimination of some sites. Many of the known populations of the four species are comprised of single or less than five pools (e.g., 3 of 6 Conservancy fairy shrimp populations, 1 of 3 longhorn fairy shrimp populations, 20 of 34 vernal pool fairy shrimp populations, 1 of the 18 vernal pool tadpole shrimp populations). In many cases, these

populations are remnants of larger, multi-pool populations that originally existed in historic vernal pool complexes. Such populations are important for their genetic uniqueness, which has been documented for the Conservancy fairy shrimp and the vernal pool tadpole shrimp (Fugate 1993; J. King pers. comm. 1992). However, these important populations are those that have the most tenuous chances for long-term persistence due to population bottlenecks in conjunction with low gene flow between populations (J. King pers. comm. 1993). Additionally, some of the areas with the largest populations (i.e., greatest number of vernal pools remaining in pool complexes) are currently under threat of fragmentation by numerous proposed projects (e.g., Sacramento and Placer Counties).

The four crustaceans in these small habitat patches are vulnerable to random fluctuations or variation (stochasticity) due to annual weather patterns and availability of food and other environmental factors superimposed on the cumulative threats described throughout this rule. The populations of the four species are isolated from other conspecific populations and are distributed in discontinuous vernal pool systems. Such populations are vulnerable to stochastic extinction. The breeding of closely related individuals may cause genetic problems in small populations of the four species, particularly in the expression of deleterious genes (known as inbreeding depression). Individuals and populations possessing deleterious genetic material are less able to cope with environmental conditions and adapt to environmental changes, even relatively minor ones. Further, small populations are subject to the effects of genetic drift (the random loss of genetic variability). The phenomenon also reduces the ability of individuals and populations to respond successfully to environmental stresses. Overall, these genetic factors could influence the survivability of isolated populations of each of the three fairy shrimp and the vernal pool tadpole shrimp.

The Service has carefully assessed the best scientific and commercial information regarding past, present, and future threats faced by these species in determining to issue this final rule. Based on this evaluation, the preferred action is to list the Conservancy fairy shrimp, longhorn fairy shrimp, and the vernal pool tadpole shrimp as endangered; and the vernal pool fairy shrimp as threatened. The three fairy shrimp and the vernal pool tadpole shrimp are imperiled by rapid urbanization, conversion of land to agricultural use, off-road vehicle use, and changes in hydrologic patterns in areas they occupy. Only a small proportion of the pools are permanently protected from these threats. Numerous ongoing and proposed development projects pose an imminent threat to the three fairy shrimp and the vernal pool tadpole shrimp. Extraordinary increases in human populations and associated pressures from urban development have rendered existing regulatory mechanisms inadequate. Stochastic events, which commonly affect small isolated populations, also may result in extirpation of some populations of these species. Four of the six known populations of the Conservancy fairy shrimp are imperiled. There are threats to the four known populations of the longhorn fairy shrimp. Twenty-eight of the 32 known populations of the vernal pool fairy shrimp are under threat. Fourteen of the 18 known populations of the vernal pool tadpole shrimp are imperiled. Because the Conservancy fairy shrimp, longhorn fairy shrimp, and the vernal pool tadpole shrimp are in danger of extinction throughout all or a significant portion of their ranges, these species fit the definition of endangered as defined in the Act. Because the vernal pool fairy shrimp is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, this species fits the definition of threatened as defined in the Act.

The Service considers the change in the listing status from endangered to threatened of the vernal pool fairy shrimp to be warranted based on two factors. Since the proposed rule was published, data gathered by Sugnet and Associates (1993b) and information otherwise available to the Service indicate that the geographic extent and number of populations and subpopulations of this species are larger than was originally known. The distribution of the species is not so fragmented as to reduce the likelihood of recolonization. As mentioned previously in this final rule, recolonization following stochastic local extinctions is probably a determining factor for the long-term persistence of this species.

Taking this information into consideration, as well as the actions discussed under factors A, C, D, and E in the "Summary of Factors Affecting the Species" section of this rule, the Service finds that the vernal pool fairy shrimp is not in imminent danger of extinction but is likely to become so in the foreseeable future throughout all or a significant portion of its range.

Designation of critical habitat for the vernal pool fairy shrimp, longhorn fairy shrimp, Conservancy fairy shrimp, and the vernal pool tadpole shrimp is not prudent at this time for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the same time the taxa are listed. The Service finds that designation of critical habitat is not prudent for these species at this time. Because the three fairy shrimp and vernal pool tadpole shrimp face numerous anthropogenic threats (see Factor A in "Summary of Factors Affecting the Species"), the publication of precise maps and descriptions of critical habitat in the Federal Register would make these species more vulnerable to incidents of vandalism and, therefore, would contribute to the decline of these species. A number of sites inhabited by the four species occur on private land that is undergoing rapid urban and agricultural development. As documented above, some areas have been destroyed to eliminate vernal pool characteristics and escape regulatory jurisdiction by the Corps. The proper agencies have been notified concerning management requirements of these animals. Protection of the habitat of these species will be addressed through the recovery, section 7 consultation, and incidental take permitting processes. Federal involvement in areas where these animals occur can be identified without designation of critical habitat. Therefore, the Service finds that designation of critical habitat for these animals is not prudent at this time, because such designation likely would increase the degree of threat from vandalism or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, local, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires recovery actions be carried out for all listed species. Such actions are initiated following listing. The protection required of Federal agencies and the

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prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

As described above, the U.S. Army Corps of engineers exerts section 404 jurisdiction over habitats supporting these animals. Nationwide permits are not valid where a federally listed endangered or threatened species would be affected by the proposed project. When listed species may be affected, formal consultation is required pursuant to section 7 of the Act before nationwide permits become effective. In addition, the Department of Housing and Urban Development (HUD) may insure housing loans in areas that presently support these animals; HUD actions regarding these loans also would be subject to review by the Service under section 7 of the Act.

Other Federal agencies that possibly could be affected if these animals are listed include the U.S. Air Force, U.S. Department of Agriculture (Farmers Home Administration), Veterans Administration, and the Department of Transportation (Federal Highways Administration). Populations of the longhorn fairy shrimp, vernal pool fairy shrimp, and the vernal pool tadpole shrimp occur on property owned by the Bureau of Land Management at the Carrizo Plain in San Luis Obispo County; and the U.S. Air Force at Castle Air Force Base, Mather Air Force Base, and Beale Air Force Base.

The listing of these fairy shrimp and the vernal pool tadpole shrimp will also bring section 5 and 6 of the Endangered Species Act into effect. Section 5 authorizes acquisition of lands for the purposes of conserving endangered and threatened species. Pursuant to section 6, the Service would be able to grant funds to affected States for management actions aiding in protection and recovery of these animals.

Listing these fairy shrimp and the vernal pool tadpole shrimp as endangered provides for the development of a recovery plan (or plans) for them. Such plan(s) will bring together State and Federal efforts for conservation of the animals. The plan(s) will establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan(s) will set recovery priorities and estimate costs of various tasks necessary to accomplish them. They also will describe site-specific management actions necessary to achieve conservation and survival of the fairy shrimp and the vernal pool tadpole shrimp.

The Act and implementing regulations found at 50 CFR 17.21 for endangered species and 17.31 for threatened species set forth a series of prohibitions and exceptions that apply to all endangered wildlife and to threatened wildlife not covered by a special rule. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any such species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions can apply to agents of Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened animal species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. For endangered species, such permits are available for scientific purposes, to enhance the propagation or survival of the species, to alleviate economic hardship in certain circumstances, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes or other purposes consistent with the purposes of the Act. Further information regarding regulations and requirements for permits may be obtained from the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–2063; FAX 503/231–6243).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available, upon request, from the Field Supervisor, Sacramento Field Office, (see **ADDRESSES** section).

Authors

The primary authors of this final rule are Chris Nagano and Jim Browning, Sacramento Field Office, 2800 Cottage Way Room E–1823, Sacramento, California 95825 (916/978–4866).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding in the table the following in alphabetical order under CRUSTACEANS to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CRUSTACEANS							
Shrimp, Conservancy fairy.	*Branchinecta conservatio.*	U.S.A. (CA)	NA	E	549	NA	NA
Shrimp, longhorn fairy.	*Branchinecta longiantenna.*	U.S.A. (CA)	NA	E	549	NA	NA
Shrimp, vernal pool fairy.	*Branchinecta lynchi*	U.S.A. (CA)	NA	T	549	NA	NA
Shrimp, vernal pool tadpole.	*Lepidurus packardi*	U.S.A. (CA)	NA	E	549	NA	NA

Dated: August 31, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–23156 Filed 9–16–94; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposal To Determine a Crustacean, the California Linderiella, an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of withdrawal.

SUMMARY: The U.S. Fish and Wildlife Service (Service) withdraws the proposal to list the California linderiella (*Linderiella occidentalis*), as an endangered species under the Endangered Species Act of 1973, as amended (Act). Additional information that has become available to the Service since the publication of the proposed rule reveals that the species is more abundant than previously known. The Service has considered the additional information and determined that this species is not likely to become either endangered or threatened throughout all or a significant portion of its range in the foreseeable future, and it does not qualify for listing under the Act.

EFFECTIVE DATES: The proposed action of May 8, 1992, to list *Linderiella occidentalis* as endangered is withdrawn on September 19, 1994.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way Room E–1823, Sacramento, California 95825–1846.

FOR FURTHER INFORMATION CONTACT: Chris Nagano at the above address or by telephone (916/978–4866).

SUPPLEMENTARY INFORMATION:

Background

On May 8, 1992, the Service published in the **Federal Register** (57 FR 19856) a proposal to list five species of crustaceans from vernal pools in California as endangered or threatened species. The California linderiella was included in this proposal. During the comment period on the proposal, additional information was received regarding the California linderiella indicating that populations exist north and west of the previously known range, and more vernal pools containing subpopulations of this species also were located. The Service has considered the new information and determined that the species does not warrant listing under the Act. The Service places this animal in category 3C of the animal notice of review. Category 3C species are species for which information now in the possession of the Service indicates that the species is more abundant or widespread than previously believed. If further research or changes in the habitat indicate a significant decline in the species, it may be reevaluated for possible inclusion in categories 1 or 2. A final rule listing the other four crustacean taxa included in the proposal is published in the **Federal Register** concurrently with this notice of withdrawal of California linderiella.

Author

The primary author of this notice is Chris Nagano (see ADDRESSES section).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 31, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–23157 Filed 9–16–94; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Monday
September 19, 1994

Part VI

Department of Health and Human Services

National Institutes of Health

National Institutes of Health Acquired Immunodeficiency Syndrome (AIDS) Research Loan Repayment Program; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

RIN 0905-ZA59

National Institutes of Health Acquired Immunodeficiency Syndrome (AIDS) Research Loan Repayment Program

AGENCY: National Institutes of Health, Public Health Service, HHS

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) announces the availability of educational loan repayment under the National Institutes of Health Acquired Immunodeficiency Syndrome (AIDS) Research Loan Repayment Program. The Program, which is authorized by section 487A of the Public Health Service (PHS) Act (42 U.S.C. 288–1), as added by the Health Omnibus Programs Extension Act of 1988 (Pub. L. 100–607) and amended by the National Institutes of Health Revitalization Act of 1993 (Pub. L. 103–43), provides for the partial repayment of the accumulated educational loan debt of health professionals who agree to conduct, as employees of the NIH, research with respect to AIDS. The Program provides for the repayment of up to $20,000 of the principal and interest of the educational loans of such health professionals for each year of obligated service. The purpose of the program is the recruitment and retention of highly qualified health professionals conducting AIDS research as NIH employees. The NIH, through this notice, invites health professionals interested in engaging in AIDS research as NIH employees to apply for participation in the NIH AIDS Research Loan Repayment Program.

DATES: Interested persons may request information about the Program beginning on September 19, 1994.

ADDRESSES: Information regarding the requirements and application procedures for the Program may be obtained by calling or writing: Mr. Marc Horowitz, Director, NIH AIDS Research Loan Repayment Program, Office of AIDS Research, National Institutes of Health, Federal Building, Suite 102, 7550 Wisconsin Avenue, Bethesda, Maryland 20892–9905 (1–800–528–7689).

SUPPLEMENTARY INFORMATION: The National Institutes of Health Revitalization Act of 1993 (Public Law 103–43) was enacted on June 10, 1993, amending section 487A of the Public Health Service (PHS) Act (42 U.S.C. 288–1). Section 487A directs the Secretary to continue a program of entering into agreements with appropriately qualified health professionals under which such health professionals agree to conduct, as employees of the NIH, research with respect to acquired immunodeficiency syndrome (AIDS) in consideration of the Federal Government agreeing to repay, for each year of service, not more than $20,000 of the principal and interest of the educational loans of such health professionals. This program is known as the NIH AIDS Research Loan Repayment Program.

Under the Program, the NIH will repay qualified educational loan debt incurred by health professionals to pay for their undergraduate, graduate, and/or medical educational expenses. Upon application, individuals must have total qualified debt which will exceed 20% of their anticipated annual NIH salary ("debt threshold") on the date of program eligibility. Half of this debt threshold amount will not be repaid by the Program and will remain the obligation of the participant.

The remaining repayable debt of qualified health professionals will be satisfied at the rate of one-third per year, subject to a statutory limit of $20,000 per year, for each year of obligated service EXCEPT for individuals with repayable debt equal to or less than $10,000. These individuals will receive repayment of their repayable debt at the rate of one-half per year. Obligated service requires individuals selected to participate in the Program to agree to serve at least 2 years as an NIH employee engaged in qualified AIDS research. Participants may apply for renewal contracts in one-year increments to satisfy their remaining repayable debt.

In return for the repayment of their educational loans, participants must agree to (1) Engage *primarily* in qualified AIDS research as employees of the NIH for a minimum period of 2 years; (2) make payments to lenders on their own behalf for periods of Leave Without Pay (LWOP); (3) pay monetary damages as required for breach of contract; and (4) satisfy other terms and conditions of the Program's contract and application procedures. Applicants must submit a signed contract, prepared by the NIH, agreeing to obligated service at the time they apply for consideration under the Program. Substantial monetary penalties will be imposed for breach of contract.

Since program participation is contingent upon employment with the NIH, an individual who wishes to apply must obtain a written commitment from an Institute, Center, or Division (ICD) Personnel Office of the NIH to be employed in a qualified AIDS research position. Current deadlines, sources for assistance, and additional details regarding application procedures are published in an annual *Applicant Information Bulletin* which is available from the Director, AIDS Research Loan Repayment Program.

The Loan Repayment Committee (LRC), whose members are appointed by the Director, NIH, review, rank, and approve or disapprove the scientific portions of Loan Repayment Program applications. The LRC is composed of NIH scientific staff and chaired by the Associate Director for AIDS Research, NIH. Review and selection of applications for approval is based upon the following:

(1) The appropriateness of the research assignment to qualified AIDS research;

(2) The scientific merit of the research assignment; and

(3) The credentials of both applicant and supervisor and other criteria the Secretary deems appropriate.

Initial contracts will be executed to cover a two-year service period. At the conclusion of this initial contract, participants may be recommended for a one-year renewal contract, subject to review of their AIDS research accomplishments. These continuation contracts may be approved on a year-to-year basis. Funding of all contracts is contingent upon appropriation and/or allocation of funds from the U.S. Congress and/or the NIH.

The NIH will repay lenders for the principal, interest, and related expenses (such as the required insurance premiums on the unpaid balances of some loans) of qualified Government (Federal, State, local) and commercial educational loans obtained by participants for the following:

(1) Undergraduate, graduate, and health professional school tuition expenses;

(2) Other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and

(3) Reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other reasonable living expenses as determined by the Secretary.

Repayments will be authorized quarterly for direct payment to lenders, following receipt of (1) The supervisor's verification of completion of the prior period of obligated service and (2) lender verification of the crediting of prior loan repayments, including the resulting account balances and current

account status. The NIH will repay loans in the following order unless significant savings would result from repaying loans in a different priority order:

(1) Health Education Assistance Loans (HEAL);

(2) Other loans guaranteed by the Federal Government; and

(3) Other qualifying loans.

The following loans are NOT repayable under the Program:

(1) Loans not obtained from a Government entity or commercial lending institution, such as loans from friends and relatives, or other private individuals;

(2) Loans for which contemporaneous documentation is not available; and

(3) Loans, or those portions of loans, obtained for educational or living expenses which exceed a "reasonable" level as determined by a review of the standard school budget for the year in which the loan was made.

In addition, for other programs which provide loans, scholarships, loan repayments, or similar awards in exchange for a future service obligation, the NIH will *NOT* repay any sums that may result from failure to serve as required or conversion of the obligation to a loan under these programs. This includes, but is not limited to the following:

(1) Physicians Shortage Area Scholarship Program;

(2) National Research Service Award Program;

(3) Public Health Service and National Health Service Corps Scholarship Programs;

(4) Armed Forces (Army, Navy, or Air Force) Health Professions Scholarship Programs; and

(5) Indian Health Service Scholarship Program.

Finally, payments will *not* be made under the Program for loans which participants have already repaid, delinquent loans, loans in default, loans not current in their payment schedule, or loans for which promissory notes have been signed after the program eligibility date. During lapses in loan repayments, due either to administrative complications or a break in service, Program participants are wholly responsible for making payments or other arrangements which maintain loans in a current payment status such that increases in either principal or interest do not occur. Penalties assessed participants as a result of NIH administrative complications may be considered for reimbursement.

Activities Constituting AIDS Research

The following parameters define whether a proposed research assignment meets the criteria for coverage under the NIH AIDS Research Loan Repayment Program—that is, whether the incumbent will be "primarily" engaged in AIDS research. "Primarily" engaged in AIDS research is defined as AIDS research activities that constitute at least 80% of a researcher's time. Clinical Associates, whose intent is to primarily engage in AIDS research, must engage in qualified AIDS research for at least three months in the first year of their program, with a total of fifteen months of qualified AIDS research during their two-year contract. AIDS researchers include registered nurses who are principal or associate investigators in AIDS research studies.

(1) AIDS research includes studies of the human immunodeficiency virus (HIV), the pathophysiology of HIV infection, the development of models of HIV infection and its sequelae, cofactors predisposing to HIV infection and AIDS, or its sequelae, and the development of vaccines and therapeutics. Specifically, the following research activities are included:

a. Studies of HIV and related retroviruses;

b. Studies of the mechanism(s) by which HIV and related retroviruses establish infection and infect host cells;

c. Studies of the mechanism(s) by which HIV and related retroviruses cause disease, including studies of the immune deficiency induced by HIV and related retroviruses;

d. Studies of the pathophysiology of host response to HIV infection;

e. Studies of *in vivo* or *in vitro* models of human HIV infection and its sequelae;

f. Epidemiologic studies of HIV and related retrovirus infection;

g. Clinical trials involving prophylaxis or therapy for HIV infection or its sequelae;

h. Preclinical studies aimed at the development of therapy for or prevention of HIV infection and the immunodeficiency caused by HIV infection and its sequelae;

i. Cofactors predisposing to acquiring HIV infection and/or the progression of HIV-related disease;

j. Basic studies and clinical trials involving vaccines, or other immunological or chemotherapeutic interventions for the prevention of HIV infection and its sequelae;

k. Studies into the transmission of HIV involving high risk behaviors and research concerning the interruption of transmission by behavioral change and pharmacologic intervention; and

l. Basic studies of the societal impact of and response to the HIV/AIDS epidemic, including subgroups within the population.

(2) AIDS researchers include scientists who are intellectually engaged in the process of providing scientific direction and guidance in programs of original AIDS research, specifically, epidemiologists, statisticians, and others who are involved in the design and conduct of research studies. The duties of such scientists may include the generation and design of studies and collation and analysis of data; and/or the preparation and publication, as author or co-author, of studies in peer-reviewed journals.

(3) AIDS researchers include physicians and registered nurses who are providing care for HIV-infected individuals who are subjects of HIV-related research.

Eligibility Criteria

Specific eligibility criteria with regard to participation in the NIH AIDS Research Loan Repayment Program include the following:

(1) Participants must be U.S. citizens, nationals, or permanent residents;

(2) Participants must have a Ph.D., M.D., D.O., D.D.S., D.M.D., D.V.M., B.S.N. or A.D.N., or equivalent degree;

(3) Participants must have qualifying educational debt in excess of 20 percent of their annual NIH salary at their expected date of program eligibility. In the case of U.S. Commissioned Corps employees, their NIH salary includes base pay plus quarters, subsistence, and variable housing allowances. Special and bonus pays, such as board certified, contract, and variable incentive pays, are not considered in the LRP's calculation of salary. For those employed under the Civil Service General Schedule, salary does not include Physicians Comparability Allowances (PCAs). However, PCA recipients who are accepted into the LRP will have their PCAs reduced by the amount of loan repayments to be received. The expected date of program eligibility is the date by which the following conditions will be met: (a) An applicant agrees to begin qualified AIDS research as a NIH employee, and (b) the Secretary is expected to execute their LRP contract;

(4) Participants must be considered employees of the NIH. The following are among those NOT considered NIH employees: (a) Visiting fellows (i.e. foreign scientists), (b) Intramural Research Training Award (IRTA) recipients, (c) National Research Service Award (NRSA) recipients, (d) Guest Researchers or Special Volunteers, (e) NIH-National Research Council (NRC) Biotechnology Research Associates

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Program participants, and (f) Intergovernmental Personnel Act (IPA) participants;

(5) Participants may be appointed under a temporary or permanent employment mechanism, so long as their employment in an LRC-approved AIDS research assignment has the potential to last a minimum of 2 years;

(6) Individuals with existing service obligations to Federal, State, or other entities will not be considered for the Program unless and until the existing service obligation is discharged or deferred for the length of Program participation;

(7) Applicants will not be excluded from consideration under the Program on the basis of age, race, culture, religion, gender, disability, or other non-merit factors.

Additional Program Information

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs.

This program is subject to OMB clearance under the requirements of the Paperwork Reduction Act of 1980. A Request for OMB Review and Approval of information collection associated with the program is being prepared by the NIH.

The Catalog of Federal Domestic Assistance number for the Program is 93.936.

Dated: June 17, 1994.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 94-23135 Filed 9-16-94; 8:45 am]

BILLING CODE 4140-01-P

Federal Register

Monday
September 19, 1994

Part VII

Federal Communications Commission

Public Information Collection Requirement Submitted to Office of Management and Budget for Review; Notice

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FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

September 14, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037 (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission (202) 418–0214. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 10236 NEOB, Washington, DC 20503 (202) 395–3561.

Please note: The Commission has requested expedited OMB review of this item by September 21, 1994, under the provisions of 5 CFR 1320.18.

OMB Number: 3060–0604.

Title: Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Third Report and Order and Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, PP Docket No. 93–253 (47 CFR Part 24).

Action: Revised collection.

Respondents: Individuals or households, state or local governments, non-profit institutions and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement(s) and recordkeeping requirement.

Estimated Annual Burden: 10–17,770 responses, .50–20 hours average burden per response, 41,100 hours annual burden; 4,554 recordkeepers, 1 hour average burden per recordkeeper, 45,654 hours total annual burden.

Needs and Uses: On May 20, 1994, the OMB approved the collections of information contained in the Third Report and Order which established service-specific rules for competitive bidding on licenses to be awarded for Personal Communications Services in the 900 MHz band ("narrowband PCS") and the general procedural and processing rules for the narrowband PCS service. The Commission received seven petitions for reconsideration of the Third Report and Order and three oppositions and comments and on reply. Upon reconsideration, the Commission has clarified, modified and supplemented the original rules governing the auction of narrowband PCS licenses. For example, the Commission has modified its original definition of small business to include larger concerns, and has codified principles for attributing the interests of various affiliates of the applicant to that applicant. The Commission has also modified the various preferential measures that are available to certain entities designated by Congress, such as increasing the available bidding credits to 40% from 25% in some cases. In order to better ensure that applicants claiming these preferences are entitled to them and to aid the Commission's enforcement efforts, winning bidders are now required to supply additional information on the ownership of the applicant. The FCC Form 175, now permits applicants to amend their FCC Form 175 applications to reflect ownership changes that do not result in a change in control of the applicant. The Commission believes that the new and modified rules and requirements will facilitate the auction process and will increase the opportunities for designated entities to participate in the provision of narrowband PCS. The rules and requirements have been carefully crafted as to not unduly burden any applicant with unnecessary paperwork requirements. We estimate that each applicant will take an additional five (5) hours to comply with the new and modified paperwork requirements. If the normal 60-day OMB review and clearance process for information collections were followed, it would effectively impede the Commission's ability in achieving Congressional objectives of encouraging rapid deployment of service, efficient use of the spectrum, enhancing access to telecommunications services, and ensuring that spectrum based services are available to a wide range of consumers. It would also thwart the Commission's ability to recover for the public a portion of the value of the public spectrum. The result would be an unnecessary delay in the anticipated benefits to the public. The revised rule sections are in the following Appendix are provided in this notice as required by the Paperwork Reduction Act of 1980.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Appendix Rules

Part 24 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 24 continues to read as follows:

Authority: Secs. 4, 301, 302, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 301, 302, 303, 309 and 332, unless otherwise noted.

2. Section 24.129 is revised to read as follows:

Section. 24.129 Frequencies

The following frequencies are available for narrowband PCS. All licenses on channels indicated with an (*) will be eligible for bidding credits of 25 percent, and all licenses indicated with an (**) will be eligible for bidding credits of 40 percent, as set forth in Section 24.309(b) of this part if competitive bidding is used to award such licenses.

(a) Eleven frequencies are available for assignment on a nationwide basis as follows:

(1) Five 50 kHz channels paired with 50 kHz channels:

Channel 1: 940.00–940.05 and 901.00–901.05 MHz;

Channel 2: 940.05–940.10 and 901.05–901.10 MHz;

Channel 3: 940.10–940.15 and 901.10–901.15 MHz;

Channel 4: 940.15–940.20 and 901.15–901.20 MHz; and,

Channel 5: 940.20–940.25 and 901.20–901.25 MHz.*

(2) Three 50 kHz channels paired with 12.5 kHz channels:

Channel 6: 930.40–930.45 and 901.7500–901.7625 MHz;

Channel 7: 930.45–930.50 and 901.7625–901.7750 MHz; and,

Channel 8: 930.50–930.55 and 901.7750–901.7875 MHz.*

(3) Three 50 kHz unpaired channels:

Channel 9: 940.75–940.80 MHz;

Channel 10: 940.80–940.85 MHz; and,

Channel 11: 940.85–940.90 MHz.*

(b) Six frequencies are available for assignment on a regional basis as follows:

(1) Two 50 kHz channels paired with 50 kHz channels:

Channel 12: 940.25–940.30 and 901.25–901.30 MHz; and,

Channel 13: 940.30–940.35 and 901.30–901.35 MHz.**

(2) Four 50 kHz channels paired with 12.5 kHz channels:

Channel 14: 930.55–930.60 and 901.7875–901.8000 MHz;

Channel 15: 930.60–930.65 and 901.8000–901.8125 MHz;

Channel 16: 930.65–930.70 and 901.8125–901.8250 MHz; and,

Channel 17: 930.70–930.75 and 901.8250–901.8375 MHz.**

(c) Seven frequencies are available for assignment on a MTA basis as follows:

(1) Two 50 kHz channels paired with 50 kHz channels:

Channel 18: 940.35–940.40 and 901.35–901.40 MHz; and,

Channel 19: 940.40–940.45 and 901.40–901.45 MHz.*

(2) Three 50 kHz channels paired with 12.5 kHz channels:

Channel 20: 930.75–930.80 and 901.8375–901.8500 MHz;

Channel 21: 930.80–930.85 and 901.8500–901.8625 MHz; and,

Channel 22: 930.85–930.90 and 901.8625–901.8750 MHz.*

(3) Two 50 kHz unpaired channels:

Channel 23: 940.90–940.95 MHz; and,

Channel 24: 940.95–941.00 MHz.*

(d) Two 50 kHz channels paired with 12.5 kHz channels are available for assignment on a BTA basis:

Channel 25: 930.90–930.95 and 901.8750–901.8875 MHz; and,

Channel 26: 930.95–931.00 and 901.8875–901.9000 MHz.*

Note 1: Operations in markets or portions of markets which border other countries, such as Canada and Mexico, will be subject to on-going coordination arrangements with neighboring countries.

3. Section 24.130 is amended by revising paragraphs (b) and (c) to read as follows:

* * * * *

(b) The following four 12.5 kHz unpaired channels are available for assignment on a MTA basis:

A: 901.9000–901.9125 MHz;

B: 901.9125–901.9250 MHz;

C: 901.9250–901.9375 MHz; and

D: 901.9375–901.9500 MHz.

(c) The following four 12.5 kHz unpaired channels are available for assignment on a BTA basis:

E: 901.9500–901.9625 MHz;

F: 901.9625–901.9750 MHz;

G: 901.9750–901.9875 MHz; and

H: 901.9875–902.0000 MHz.

4. Section 24.303 is revised to read as follows:

Sec. 24.303 Competitive Bidding Mechanisms

(a) *Sequencing.* The Commission will establish and may vary the sequence in which narrowband PCS licenses will be auctioned.

(b) *Grouping.* In the event the Commission uses either a simultaneous multiple round competitive bidding design or combinatorial bidding, the Commission will determine which licenses will be auctioned simultaneously or in combination.

(c) *Reservation Price.* The Commission may establish a reservation price, either disclosed or undisclosed, below which a license subject to auction will not be awarded.

(d) *Minimum Bid Increments.* The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms. The Commission may also establish by Public Notice a suggested opening bid or a minimum opening bid on each license.

(e) *Stopping Rules.* The Commission may establish stopping rules before or during multiple round auctions in order to terminate an auction within a reasonable time.

(f) *Activity Rules.* The Commission may establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, each bidder will be entitled to request and will be automatically granted one activity rule waiver during each stage of an auction, or one automatic waiver during a specified number of bidding rounds. The Commission may change by Public Notice the number and frequency of such automatic activity rule waivers for a specific auction.

(g) *Bidder Identification During Auctions.* The Commission may choose, on an auction-by-auction basis, to release the identity of the bidders associated with bidder identification numbers. The Commission will announce by Public Notice before each auction whether bidder identities will be revealed.

5. Section 24.308 is revised to read as follows:

Sec. 24.308 License Grant, Denial, Default, and Disqualification

(a) Unless eligible for installment payments and/or a bidding credit, each winning bidder is required to pay the balance of its winning bid in a lump sum payment within five (5) business days following the award of the license. Grant of the license will be conditioned upon full and timely payment of the winning bid amount.

(b) A bidder who withdraws its bid, defaults on a payment or is disqualified will be subject to the penalties specified in Section 1.2109 of this Chapter.

6. Section 24.309 is revised to read as follows:

Sec. 24.309 Designated Entities

(a) Designated entities entitled to preferences in the narrowband PCS service are small businesses and businesses owned by members of minority groups and/or women as defined in § § 24.320(b) and 24.320(c) of this Subpart.

(b) Designated entities will be eligible for certain special narrowband PCS provisions as follows:

(1) Installment payments. Small businesses, including small businesses owned by members of minority groups and women, will be eligible to pay the full amount of their winning bid on any regional, MTA or BTA license in installments over the term of the license pursuant to the terms set forth in Section 1.2110(d) of this Chapter.

(2) Bidding Credits. Businesses owned by members of minority groups and women, including small businesses owned by members of minority groups and women, will be eligible for a twenty-five (25) percent bidding credit when bidding on the following licenses: (1) the nationwide licenses on Channel 5, Channel 8 and Channel 11; (2) all MTA licenses on Channel 19, Channel 22, Channel 24; and (3) BTA licenses on Channel 26. This bidding credit will reduce by 25 percent the bid price that businesses owned by members of minority groups and women will be required to pay to obtain a license. Businesses owned by women and/or minorities, including small businesses owned by women and/or minorities will be eligible for a forty (40) percent bidding credit when bidding on all regional licenses on Channel 13 and Channel 17. In section 24.129 above, the licenses that will be eligible for 25 percent bidding credits are indicated by an (*); the licenses that will be eligible for 40 percent bidding credits are indicated by an (**).

(3) Tax Certificates. Any non-controlling initial investor in a business owned by members of minority groups and/or women and who provides "start-up" financing which allows such business to acquire a narrowband PCS license(s), and any non-controlling investor who purchases an interest in a narrowband PCS license held by a business owned by members of minority groups and/or women within the first year after license issuance, may, upon the sale of such investment or interest, request from the Commission a tax certificate. Any narrowband PCS licensee who assigns or transfers control of its license to a business owned by members of minority groups and/or women may request that the Commission issue the licensee a tax certificate.

(c) *Short-Form Application Certification, Long-Form Application Disclosure.*

(1) All applicants for licenses under the designated entity provisions set forth in this section shall certify on their short-form applications (Form 175) that they are eligible for those preferences pursuant to this section.

(2) In addition to the requirements in subpart I, all designated entity applicants that are winning bidders shall, in an exhibit to their long-form applications—

(i) identify each member of the applicant's control group, regardless of the size of the member's total interest in the applicant, and each member's minority group or gender classification, if applicable;

(ii) disclose the gross revenues of the applicant and its affiliates, and other persons that hold interests in the applicant and their affiliates (including all members of the applicant's control group); and

(iii) certify that the personal net worth of the applicant (if an individual), each affiliate and each person that hold an interest in the applicant is less than $40 million.

(d) *Audits.* Applicants and licensees claiming eligibility under this section shall be subject to random audits by the Commission.

(e) *Definitions.* The terms affiliate, business owned by members of minority groups and women, consortium of small businesses, control group, gross revenues, members of minority groups, passive equity, personal net worth, and small business used in this section are defined in § 24.320.

(f) Unjust Enrichment. Designated entities using installment payments, bidding credits or tax certificates to obtain a narrowband PCS license will be subject to the following unjust enrichment provisions:

(1) If a small business paying for a narrowband PCS license in installment payments seeks to transfer a license to a non-small business entity during the term of the license, the remaining principal balance must be repaid as a condition of the license transfer.

(2) If a licensee that utilizes installment financing under this section seeks to make any change in ownership structure that would result in the licensee losing eligibility for installment payments, the licensee shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of the change as a condition of approval. Increases in gross revenues that result from equity investments that are not attributable to the licensee under § 24.320(b)(2)(iv), revenues from operations, business development or expanded service

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shall not be considered changes in ownership structure under this paragraph.

7. Section 24.320 is added to read as follows:

§ 24.320 Definitions

(a) *Scope.* The definitions in this section apply to §§ 24.309–24.315 of this subpart, unless otherwise specified in those sections.

(b) *Small Business; Consortium of Small Businesses.*

(1) A small business is an entity that (i) together with its affiliates has average annual gross revenues that are not more than $40 million for the preceding three calendar years; (ii) has no attributable investor or affiliate that has a personal net worth of $40 million or more; (iii) has a control group all of whose members and affiliates are considered in determining whether the entity meets the $40 million annual gross revenues and personal net worth standards; and (iv) such control group holds 50.1 percent of the entity's voting interest, if a corporation, and at least 25 percent of the entity's equity on a fully diluted basis, except that a business owned by members of minority groups and/or women (as defined in subsection (c)) may also qualify as a small business if a control group that is 100 percent composed of members of minority groups and/or women holds 50.1 percent of the entity's voting interests, if a corporation, and 50.1 percent of the entity's total equity on a fully diluted basis and no single other investor holds more than 49.9 percent of passive equity in the entity.

(2) *Attribution and Aggregation of Gross Revenues and Personal Net Worth.*

(i) Except as specified in paragraphs (iii) and (iv), the gross revenues of the applicant (or licensee) and its affiliates, and other persons that hold interests in the applicant (or licensee) and the affiliates shall be considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is a small business.

(ii) The personal net worth of individual applicants (or licensees) and other persons that hold interests in the applicant (or licensee), and their affiliates, if less than $40 million, shall not be considered for purposes of determining whether the applicant (or licensee) is eligible to bid as a small business.

(iii) Where an applicant (or licensee) is a consortium of small businesses, the gross revenues of each small business shall not be aggregated.

(iv) (a) The gross revenues and personal net worth of a person that holds an interest in the applicant (or licensee) shall not be considered so long as (1) such person holds no more than 25 percent of the applicant's (or licensee's) passive equity and is not a member of the applicant's or control group and (2) the applicant has a control group that owns at least 25 percent of the applicant's total equity and, if a corporation, holds at least 50.1 percent of the applicant's voting interests.

(b) The gross revenues, total assets and personal net worth of a person that holds an interest in the applicant shall not be considered so long as (1) such person holds no more than 49.9 percent of the applicant's (or licensee's) passive equity and is not a member of the applicant's control group; and (2) the applicant has a control group that consists entirely of members of minority groups and/or women and that owns at least 50.1 percent of the applicant's total equity and, if a corporation, at least 50.1 percent of the applicant's voting interests.

Note: Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that the such agreements may not be used to appear to terminate or divest ownership interests before they actually do so.

(3) A small business consortium is a conglomerate organization formed as a joint venture between mutually-independent business firms, each of which individually satisfies the definition of a small business.

(c) *Business Owned by Members of Minority Groups and/or Women.* A business owned by members of minority groups and/or women is an entity (i) that has a control group composed 100 percent of members of minority groups and/or women who are United States Citizens, and (ii) such control group owns and holds 50.1 percent of the voting interests, if a corporation, and (A) owns and holds 50.1 percent of the total equity in the entity, provided that all other investors hold passive interests; or (B) holds 25 percent of the total equity in the entity, provided that no single other investor holds more than 25 percent passive equity interests in the entity. In a partnership, all general partners must be members of minority groups and/or women. Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that such agreements may not be used to appear to terminate or divest ownership interests before they actually do so.

(d) *Gross Revenues.* Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g., cost of goods sold), as evidenced by audited quarterly financial statements for the relevant period.

(e) *Personal Net Worth.* Personal net worth shall mean the market value of all assets (real and personal, tangible and intangible) owned by an individual, less all liabilities (including personal guarantees) owed by the individual in his individual capacity or as a joint obligor.

(f) *Members of Minority Groups.* Members of minority groups includes individuals of African American, Hispanic-surnamed, American Eskimo, Aleut, American Indian and Asian American extraction.

(g) *Passive Equity.* Passive equity shall mean (i) for corporations, non-voting stock or stock that includes no more than fifteen percent of the voting equity; (ii) for partnerships, joint ventures and other non-corporate entities, limited partnership interests and similar interests that do not afford the power to exercise control of the entity.

(h) *Control Group.* A control group is an entity, or a group of individuals or entities, that possesses *de jure* control and *de facto* control of an applicant or licensee, and as to which the applicant's or licensee's charters, articles of incorporation, bylaws, agreements and any other relevant documents (and amendments thereto) provide (i) that the entity and/or its members own unconditionally at least 50.1 percent of the total voting interests of a corporation; (ii) that the entity and/or its members receive at least 50.1 percent of the annual distribution of any dividends paid on the voting stock of a corporation; (iii) that, in the event of dissolution or liquidation of a corporation, the entity and/or its members are entitled to receive 100 percent of the value of each share of stock in its possession and a percentage of the retained earnings of the concern that is equivalent to the amount of equity held in the corporation; and (iv) that the entity and/or its members have the right to receive dividends, profits and regular and liquidating distributions from the business in proportion to its interest in the total equity of the applicant or licensee.

Note: Voting control does not always assure *de facto* control, such as, for example, when the voting stock of the control group is widely dispersed (*see, e.g.,* § 24.720(e)(2)(iii)).

(i) *Affiliate.* (1) Determinations regarding whether an individual or entity will be considered an affiliate of (a) an applicant or (b) a person holding an attributable interest in an applicant under paragraph (b)(2) will be made pursuant to the general affiliation rules set forth in section 24.720(l) of this part.

8. Section 24.406 is revised to read as follows:

Sec. 24.406 Filing of Narrowband PCS Applications, Fees, and Numbers of Copies

(a) As prescribed by Sections 24.305, 24.307, and 24.409 of this part, standard formal application forms applicable to the narrowband PCS may be obtained from either:

(1) Federal Communications Commission, Washington, DC 20554; or

(2) by calling the Commission's Forms Distribution Center, (202) 418–3676.

(b) Applications for the initial provision of narrowband PCS service must be filed on FCC Form 175 in accordance with the rules in Section 24.305 and Part 1, Subpart Q. In the event of mutual exclusivity between applicants filing FCC Form 175, only auction winners will be eligible to file subsequent long form applications on FCC Form 401 for initial narrowband PCS licenses. Mututally exclusive applications filed on Form 175 are subject to competitive bidding under those rules. Narrowband PCS applicants filing Form 401 need not complete Schedule B.

(c) All applicants for Narrowband PCS radio station authorizations (other than applications for initial provision of narrowband PCS service filed on FCC Form 175) shall be submitted for filing to: Federal Communications Commission, Washington, DC 20554, Attention: Narrowband PCS Processing Section. Applicants requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with Sec. 0.401(b).

(d) All correspondence or amendments concerning a submitted application shall clearly identify the name of the applicant, applicant identification number or Commission file number (if known) or station call sign of the application involved, and may be sent directly to the Common Carrier Bureau, Narrowband PCS Processing Section.

(e) Except as otherwise specified, all applicants, amendments, correspondence, pleadings and forms (including FCC Form 175) shall be submitted on one original paper copy and with three microfiche copies, including exhibits and attachments thereto, and shall be signed as prescribed by Sec. 1.743. Unless otherwise provided by the FCC, filings of five pages or less are exempt from the requirements to submit on microfiche, as well as emergency filings like letters requesting special temporary authority. Those filing any amendments, correspondence, pleadings, and forms must simultaneously submit the original hard copy which must be stamped "original". In addition to the original hard copy, those filings pleadings, including pleadings under Section 1.2108 of the rules shall also submit 2 paper copies as provided in Sec. 1.51 of the rules.

(1) Microfiche copies. Each microfiche copy must be a copy of the signed original. Each microfiche copy shall be a 148mm X 105mm negative (clear transparent characters appearing on an opaque background) at 24X to 27X reduction for microfiche or microfiche jackets. One of the microfiche sets must be a silver halide camera master or a copy made on silver halide film such as Kodak Direct Duplicatory Film. The microfiche must be placed in paper microfiche envelopes and submitted in a B6 (125 mm x 176 mm) or 5 x 7.5 inch envelope. All applicants must leave Row "A" (the first row for page images) of the first fiche blank for in-house identification purposes.

(2) All applicants and all amendments must have the following information printed on the mailing envelope, the microfiche envelope, and on the title area at the top of the microfiche:

(i) The name of the applicant;

(ii) The type of application (e.g. nationwide, regional, MTA, BTA, response channel);

(iii) The month and year of the document;

(iv) Name of the document;

(v) File number, applicant identification number, and call sign, if assigned; and

(vi) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable).

Each microfiche copy of pleadings shall include:

(A) The month and year of the document;

(B) Name of the document;

(C) Name of the filing party;

(D) File number, applicant identification number, and call sign, if assigned;

(E) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable). Abbreviations may be used if they are easily understood.

9. Section 24.422 is revised to read as follows:

Sec. 24.422 Amendment of Application for Narrowband Personal Communications Service Filed on FCC Form 175

(a) The Commission will provide bidders a limited opportunity to cure defects in FCC Form 175 specified herein except for failure to sign the application and to make certifications. These are defects which may not be cured. See also Section 1.2105.

(b) In the Narrowband PCS, applicants will be permitted to amend their Form 175 applications to make minor amendments to correct minor errors or defects such as typographical errors. Applicants will also be permitted to amend FCC Form 175 to make ownership changes or changes in the identification of parties to bidding consortia, provided such changes do not result in a change in control of the applicant and do not involve another applicant (or parties in interest to an applicant) who has applied for any of the same licenses as the applicant. Amendments which change control of the applicant will be considered major amendments. An FCC Form 175 which is amended by a major amendment will be considered to be newly filed and cannot be resubmitted after applicable filing deadlines. See also Section 1.2105.

10. Section 24.429 is amended by deleting paragraph (b) and redesignating paragraphs (c) and (d) as (b) and (c), respectively, to read as follows:

Sec. 24.429 Ownership Changes and Agreements To Amend or To Dismiss Applications or Pleadings

(a) Applicability. Subject to the provisions of Sec. 1.2105 (Bidding Application and Certification Procedures; Prohibition of Collusion), this section applies to applicants and all other parties interested in pending applications who wish to resolve contested matters among themselves with a formal or an informal agreement or understanding. This section applies only when the agreement or understanding will result in:

(1) A major change in the ownership of an applicant to which Sec. 24.423(c) and 24.423(g) would apply or which would cause the applicant to lose its status as a designated entity under Section 24.309, or

(2) The individual or mutual withdrawal, amendment or dismissal of any pending application, amendment, petitioner or other pleading.

(b) If the amendment would cause the applicant to lose its status as a designated entity under Section 24.309, the applicant must notify the Commission of this change in status and must comply with the obligations imposed by Sections 24.308, including increasing its down payment to the level required as a non-designated entity.

(c) The provisions of Section 22.927 will apply in the event of the individual or mutual withdrawal, amendment or dismissal of any pending application, amendment, petitioner or other pleading.

11. Section 24.430 is revised to read as follows:

Sec. 24.430 Opposition to Applications

(a) Petitions to deny (including petitions for other forms of relief) and responsive pleadings for Commission consideration must comply with Section 1.2108 and must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers and radio service involved) with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of Secs. 1.41 through 1.52 except where otherwise provided in Section 1.2108;

(3) Contain specific allegations of fact which, except for facts of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant of, or other Commission action regarding, the application would be prima facie inconsistent with the public interest;

(4) Be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto (unless the Commission otherwise extends the filing deadline); and

(5) Contain a certificate of service showing that it has been mailed to the applicant no later than the date of filing thereof with the Commission.

(b) A petition to deny a major amendment to a previously filed application may only raise matters directly related to the amendment which could not have been raised in connection with the underlying, previously filed application. This does not apply to petitioners who gain standing because of the major amendment.

(c) parties who file frivolous petitions to deny may be subject to sanctions including monetary forfeitures, license revocation, if they are FCC licensees, and may be prohibited from participating in future auctions.

[FR Doc. 94–23176 Filed 9–16–94; 8:45 am]

BILLING CODE 6712–01–M

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SEP
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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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918 48171
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Rules and Regulations

Federal Register
Vol. 59, No. 181
Tuesday, September 20, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 27664]

The High Density Rule

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: As part of the Clinton Administration's initiative to help revitalize the airline industry, the Department of Transportation (the Office of the Secretary and the FAA) is reviewing the 25 year old High Density Traffic Airports Rule (HDR), a regulation that limits hourly takeoffs and landings (slots) at the following airports: New York's LaGuardia and Kennedy; Chicago's O'Hare; and Washington, D.C.'s National. The review will be a thorough examination of the slot rule to assess airline capacity, competition, fares, and service patterns at the four airports. It will also evaluate the rule's economic, operational and environmental impacts, including the way domestic and international slots are allocated, and will consider alternative traffic management techniques. On April 1, 1994, the FAA published a request for comments to gather information on the effectiveness and viability of the HDR and any potential alternatives to the rule (59 FR 15332; Docket No. 27664). The comment period closed on May 27, 1994, and approximately 100 comments have been received. These public meetings will report study progress and give the public another opportunity to comment on the HDR. If the results of the review suggest changes to the HDR, those changes would be proposed through the regulatory process, pursuant to the Administrative Procedure Act. Changes affecting the number of instrument flight rule takeoffs and landings authorized for air carriers for Washington National Airport would require a legislative change since they are imposed by statute.

DATES: The public meetings will be held as follows: Washington, DC—Wednesday, October 19, 1994; New York—Friday, October 21, 1994; Chicago—Thursday, November 17, 1994. The meetings will be held from 12 p.m.–4 p.m. and 6 p.m.–8 p.m. Persons not able to attend a meeting are invited to provide written comments, which must be received on or before November 23, 1994.

ADDRESSES: The exact locations of the public meetings will be published in a separate **Federal Register** notice. Persons unable to attend the meeting may mail their comments in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Rules Docket (AGC–200), Docket No. 27664, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the meeting or questions regarding the logistics of the meeting should be directed to Cindy Herman, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7627; fax (202) 267–5075.

Questions concerning the subject matter of the meeting should be directed to Mr. Larry Barry, APO–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3305.

SUPPLEMENTARY INFORMATION:

Participation at the Meeting

Requests from persons who wish to present oral statements at the Washington, DC or New York public meetings should be received by the FAA no later than October 3, 1994. Requests from persons who wish to present oral statements at the Chicago public meeting should be received by the FAA no later than November 1, 1994. Such request should be submitted to Cindy Herman, as listed above in the section titled "**FOR FURTHER INFORMATION CONTACT**" and should include at which meeting oral statements will be presented, a written summary of oral remarks to be presented, and the estimate of time needed for the presentation. Requests received after the date specified above will be scheduled if there is time available during the meeting. Requests to present oral statements may be made on the day of the public meetings during the registration period, although time constraints may not permit the accommodation of such requests. The DOT will prepare an agenda of speakers that will be available at the meeting. The names of those individuals whose requests to present oral statements are received after the date specified above may not appear on the written agenda. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested.

Background

The HDR (14 CFR part 93, Subpart K) was adopted in 1969 as a temporary measure to reduce delays at five congested airports: JFK International, LaGuardia, Newark International, O'Hare International, and Washington National. Total hourly limits on the number of operations, or operating "slots", were imposed at each airport during certain hours of the day. For each airport, the hourly total was divided into three operator categories: air carrier, commuter (originally air taxi), and "other", which consists primarily of general aviation and charters. The limits were based on the Engineering Performance Standards (EPS), which are a method for determining the Instrument Flight Rules (IFR) operating capacity of an airport.

All limitations for Newark Airport were removed from the HDR in the early 1970's. The limits were made permanent at the four other airports in 1973, and have remained in effect in some form since 1969. Between 1981 and 1984, the HDR was superseded by the Interim Operations Plan adopted in response to the air traffic controllers' strike (SFAR 44). All SFAR 44 limitations were lifted, and the HDR limitations reinstated, by the "Interim Final Rule" issued in March 1984 (49 FR 8237, March 6, 1984). At Washington National Airport, slots are further limited by statute.

The hour and category limits in the HDR are enforced by a regulatory requirement to have an Air Traffic Control reservation for a takeoff or landing at a high density airport during restricted hours. Air carrier and

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commuter reservations are considered slots, which are continuing reservations at the same time each day. "Other" category reservations are allocated on an ad hoc basis for individual operations, using a first-come first-served reservation system. Reservations are available up to 48 hours in advance of the time of operation by calling a voice-activated computer system maintained by the FAA Air Traffic System Command Center.

The Study

The review now being conducted by the DOT will include the specific issues for public comment listed below. The requirements of each of the four airports will be reviewed separately but each airport's relation to the national air traffic system will be considered. Any changes to the HDR will be subject to the separate process required by the Administrative Procedure Act. In the case of Washington National, a change to the HDR would also require a statutory change.

Specific Issues for Public Comment

There are several specific issues on which the DOT seeks comment at the public meeting. These key issues are intended to help focus public comments on areas which will be useful to the DOT in completing its review of the HDR. The comments at the meetings need not be limited to these issues, and the DOT invites comments on any other aspect of the HDR.

(1) The economic, environmental, competitive, and operational aspects of the HDR at the four airports.

(2) The projected air traffic environment

(3) The process for allocating domestic and international slots

(4) Access for small communities at HDR airports

(5) Potential alternatives to the current regulatory scheme at the HDR airports

Meeting Procedures

The following procedures are established to facilitate the meetings:

(1) There will be no admission fee or other charge to attend or to participate in the meeting. The meeting will be open to all persons who are scheduled to present statements or who register on the day of the meeting (between 10:45 a.m. and 11:45 a.m.) subject to availability of space in the meeting rooms. The meetings may adjourn early if scheduled speakers complete their statements in less time than is scheduled for the meetings.

(2) An individual, whether speaking in a personal or a representative capacity on behalf of an organization, may be limited to a 10-minute statement. If possible, we will notify the speaker if additional time is available.

(3) The DOT will try to accommodate all speakers. If the available time does not permit this, speakers generally will be scheduled on a first-come-first-served basis. However, the DOT reserves the right to exclude some speakers if necessary to present a balance of viewpoints and issues.

(4) Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

(5) Representatives of the DOT will preside over the meeting. A panel of DOT and FAA personnel involved in this issue will be present.

(6) The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the DOT representatives during the meeting will be included in the public docket. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. Additional transcript purchase information will be available at the meeting.

(7) The DOT will review and consider all material presented by participants at the meeting. Position papers or material presenting views or arguments related to the HDR may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The DOT requests that persons participating in the meeting provide five copies of all materials to be presented for distribution to the DOT representatives; other copies may be provided to the audience at the discretion of the participant.

(8) Statements made by DOT representatives are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a DOT representative is not intended to be, and should not be construed as, a position of the DOT.

(9) The meetings are designed to solicit public views and more complete information on the HDR and issues discussed in this notice. Therefore, the meeting will be conducted in an informal and non adversarial manner. No individual will be subject to cross-examination by any other participant; however, DOT representatives may ask questions to clarify a statement and to ensure a complete and accurate record.

(Authority: 49 U.S.C. app. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1501; 49 U.S.C. 106(g)).

Issued in Washington, DC, on September 14, 1994.

Dale E. McDaniel,

Deputy Assistant Administrator for Policy, Planning & International Aviation.

[FR Doc. 94–23258 Filed 9–19–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 95

[Docket No. 27887; Amdt. No. 385]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and that is free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedures before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (Air).

Issued in Washington, DC, on September 2, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption for the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC:

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354, and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM EN ROUTE IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 385 Effective Date, October 13, 1994]

From	To	MEA
§ 95.6001 VOR Federal Airway 1 Is Amended by Adding		
Hartford, CT VORTAC *4000—MRA **2500—MOCA	*Graym, MA FIX	**3000
Graym, MA FIX *2500—MOCA	Boston, MA VORTAC	*3000
§ 95.6003 VOR Federal Airway 3 Is Amended To Read In Part		
Key West, FL VORTAC *15000—MCA Bipin Fix, W Bnd.	*Bipin, FL Fix	15000
Bipin, FL FIX *1400—MOCA	Sommy, FL FIX	*2000
§ 95.6035 VOR Federal Airway 35 Is Amended To Read In Part		
Key West, FL VORTAC *15000—MCA Bipin FIX, W Bnd.	Bipin, FL FIX W Bnd	15000
Bipin, FL FIX *1400—MOCA	Sommy, FL FIX	*2000
Sommy, FL FIX *1300—MOCA	Drown, FL FIX	*5000
§ 95.6056 VOR Federal Airway 56 Is Amended To Read In Part		
Macon, GA VORTAC *3000—MRA **2200—MOCA	*Misty, GA FIX	**6000
§ 95.6116 VOR Federal Airway 116 Is Amended To Read In Part		
Nepts, MI FIX	Keeler, MI VORTAC	2400
Keeler, MI VORTAC	Kalamazoo, MI VOR/DME	2600
Kalamazoo, MI VOR/DME	Jackson, MI VOR/DME	2700
§ 95.6172 VOR Federal Airway 172 Is Amended To Read In Part		
Polo, IL VORTAC	Dupage, IL VOR/DME	2600
§ 95.6177 VOR Federal Airway 177 Is Amended To Read In Part		
Joliet, IL VORTAC	Janesville, WI VORTAC	2600

From	To	MEA	MAA
§ 95.7151 Jet Route No. 151 Is Amended to Read In Part			
Rapid City, SD VORTAC	Billings, MT VORTAC	#22000	45000

#MEA is established with a gap in navigation signal coverage.

§ 95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

Airway segment		Changeover points	
From	To	Distance	From
V–116 Is Amended by Adding			
Kalamazoo, MI VOR/DME	Jackson, MI VOR/DME	36	Kalamazoo
V–508 Is Amended by Adding			
Sparrevohn, AK VOR/DME	Aniak, AK Ndb	68	Sparrevohn

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§ 95.8005 JET ROUTES CHANGEOVER POINTS

Airway segment		Changeover points	
From	To	Distance	From
J–48 is Amended to Read In Part			
Casanova, VA VORTAC	Montebello, VA VOR/DME	58	Casanova

[FR Doc. 94–23255 Filed 9–19–94; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27900; Amdt. No. 1622]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC, on September 9, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97 27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective December 8, 1994*

Carlsbad, CA, McClellan-Palomar, ILS RWY 24, Amdt 7
Denison, IA, Denison Muni, NDB OR GPS RWY 30, Amdt 4
Coffeyville, KS, Coffeyville Muni, VOR/DME RNAV RWY 35, Amdt 3
Coffeyville, KS, Coffeyville Muni, VOR/DME OR GPS–A, Amdt 6
Lexington, KY, Blue Grass, VOR OR GPS–A, Amdt 8
Lexington, KY, Blue Grass, NDB RWY 4, Amdt 19
Lexington, KY, Blue Grass, ILS RWY 4, Amdt 14
Lexington, KY, Blue Grass, ILS RWY 22, Amdt 15
Lexington, KY, Blue Grass, RADAR–1, Amdt 9
Caldwell, NJ, Essex County, NDB OR GPS–A, Amdt 5
East Hampton, NY, East Hampton, VOR/DME RNAV OR GPS RWY 10, Amdt 5
East Hampton, NY, East Hampton, VOR/DME RNAV OR GPS RWY 28, Amdt 2
Ithaca, NY, Tompkins County, VOR OR GPS RWY 14, Amdt 12

* * * *Effective November 10, 1994*

Wichita, KS, Colonel James Jabara, VOR/DME RNAV OR GPS RWY 18, Amdt 2
Gaithersburg, MD, Montgomery County Airpark, VOR/DME RNAV RWY 14, Amdt 4
Boyne Falls, MI, Boyne Mountain, NDB–C, Orig
Middletown, NY, Randall, NDB RWY 26, Orig, CANCELLED
Johnstown, PA, Johnston-Cambria County, ILS RWY 33, Amdt 3
Williamsport, PA, Williamsport-Lycoming County, VOR/DME RNV–A, Orig.

* * * *Effective October 13, 1994*

Ankeny, IA, Ankeny Regional, NDB RWY 36, Orig
Port Huron, MI, St Clair County Intl, VOR/DME–A, Amdt 7
Port Huron, MI, St Clair County Intl, NDB RWY 4, Amdt 2
Port Huron, MI, St Clair County Intl, ILS RWY 4, Amdt 2
Port Huron, MI, St Clair County Intl, VOR/DME RNAV RWY 22, Amdt 2
Georgetown, OH, Brown County VOR/DME–A Orig
Georgetown, OH, Brown County, NDB RWY 35, Amdt 3, CANCELLED
Painesville, OH, Casement, NDB–B, Amdt 8
Willoughby, OH, Willoughby Lost Nation Muni, VOR–B, Orig
Willoughby, OH, Willoughby Lost Nation Muni, NDB or GPS RWY 9, Amdt 9
Willoughby, OH, Willoughby Lost Nation Muni, NDB or GPS RWY 27, Amdt 12

[FR Doc. 94–23256 Filed 9–19–94; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27901; Amdt. No. 1623]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies

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the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPs. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC, on September 9, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
08/25/94	NE	Norfolk	Norfolk/Karl Stefan Memorial.	FDC 4/4843	VOR OR GPS RWY 13, AMDT 6.
08/25/94	NE	Norfolk	Norfolk Karl Stefan Memorial.	FDC 4/4845	VOR OR GPS RWY 31, AMDT 6.
08/26/94	NE	Norfolk	Norfolk/Karl Stefan Memorial.	FDC 4/4869	VOR OR GPS RWY 19, AMDT 6.
08/31/94	AK	Galena	Galena	FDC 4/4964	VOR RWY 25, AMDT 9C.
08/31/94	FL	Miami	Opa Locka	FDC 4/4973	ILS RWY 9L, AMDT 2.
08/31/94	LA	Many	Hart	FDC 4/4959	NDB RWY 12 AMDT 4.
08/31/94	WI	Merrill	Merrill Muni	FDC 4/4965	NDB RWY 16 AMDT 6.
08/31/94	WI	Merrill	Merrill Muni	FDC 4/4966	NDB OR GPS RWY 7 AMDT 2.

[FR Doc. 94-23257 Filed 9-19-94; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 208

[Docket No. R-94-1691; FR-3521-C-04]

RIN 2502-AG16

Electronic Transmission of Required Data for Certification and Recertification and Subsidy Billing Procedures for Multifamily Subsidized Projects: Notice of Correction

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule; correction.

SUMMARY: On August 24, 1994, the Department published a final rule that added provisions to regulations that require electronic transmission to HUD of certain tenant data by owners of certain subsidized multifamily projects and by the public agencies that administer the assistance contracts for HUD. The purpose of this document is to correct the listing of one telephone number in the preamble of that rule.

FOR FURTHER INFORMATION CONTACT: Barbara D. Hunter, Acting Director, Planning and Procedures Division, Office of Multifamily Housing Management, Room 6180, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, D.C. 20410, telephone (202) 708-3944. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708-4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The telephone number listed in the preamble to the final rule for obtaining information about PC SprintMail software from the TRACS Central Facility was incorrect. This document corrects that telephone number.

Accordingly, in FR Doc. 94-20656, a final rule published in the **Federal Register** on August 24, 1994 (59 FR 43472), the telephone number listed under the heading "*The PC SprintMail Electronic Informotion Packet*", found in column one on page 43473 is corrected to read 1-800-767-7588.

Dated: September 14, 1994.

Brenda W. Gladden,

Acting Assistant General Counsel for Regulations.

[FR Doc. 94-23179 Filed 9-19-94; 8:45 am]

BILLING CODE 4210-27-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

Louisiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with additional requirements, a proposed amendment to the Louisiana regulatory program (hereinafter referred to as the "Louisiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Louisiana proposed revisions to the Louisiana Surface Mining Regulations (LSMR) pertaining to revegetation success standards for tree and shrub stocking on lands with a postmining land use of forestry. The amendment specifies revegetation success standards for final bond release on reclaimed lands developed for forestry.

EFFECTIVE DATE: September 20, 1994.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Louisiana Program

On October 10, 1980, the Secretary of the Interior conditionally approved the Louisiana program. General background information on the Louisiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Louisiana program can be found in the October 10, 1980, **Federal Register** (45 FR 67340). Subsequent actions concerning Louisiana's program and program amendments can be found at 30 CFR 918.15 and 918.16.

II. Proposed Amendment

By letter dated May 3, 1994, Louisiana submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. LA-348). Louisiana submitted the proposed amendment at its own initiative. The provision of its regulatory program that Louisiana proposed to revise was LSMR 53123.B.4.a, standards for success of revegetation at final bond release on reclaimed lands developed for forestry.

In the May 26, 1994, **Federal Register** (59 FR 27252), OSM announced receipt of the proposed amendment, provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. 348.02). Because no one requested a public hearing or meeting, none was held. The public comment period ended on June 27, 1994.

During its review of the amendment, OSM identified concerns relating to the provisions of LSMR 53123.B.4.a, revegetation success standards for tree and shrub stocking on lands with a postmining land use of forestry. OSM notified Louisiana of the concerns by letter dated July 11, 1994 (administrative record No. LA-348.10).

In a letter dated August 16, 1994, Louisiana responded that (1) it would not, at this time, submit revisions in response to OSM's July 11, 1994, issue letter, and (2) OSM should proceed with the publishing of the final rule **Federal Register** notice (administrative record No. LA-348.11).

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with additional requirements, that the proposed program amendment submitted by Louisiana on May 3, 1994, is no less effective than the requirements of the corresponding Federal regulations. Accordingly, the Director approves the proposed amendment.

1. *LSMR 53123.B.4.a, Standards for Success of Revegetotion at Final Bond Release on Reclaimed Lands Developed for Forestry.*

a. *Revegetation success standards for tree stocking and ground cover.* Louisiana proposed to revise LSMR 53123.B.4.a to require that prior to final bond release there shall be 450 well-distributed free-to-grow live pine trees per acre of the same age or 250 well-distributed live hardwood trees per acre of the same age, and that countable stems shall be a minimum of 3 years old. At proposed LSMR 53123.B.4.a, Louisiana defined "well-distributed" to mean uniform stockings levels over an entire planting site, and "free-to-grow" to mean pine seedlings or saplings without significant hardwood competition, competing vegetation shades the pine's crown on less than 30 percent of the crown's circumference, and the pines are judged to have better

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than a 90 percent chance of capturing a place in the crown canopy.

LSMR 53123.B.4.a, which OSM previously approved (October 28, 1992; 57 FR 48726; administrative record No. LA–350), requires that vegetative ground cover shall not be less than 70 percent (administrative record Nos. LA–321 and LA–350). Louisiana's existing LSMR 53117.A.4, applicable to revegetation on land reclaimed for any land use, requires that a vegetative cover be established that is capable of stabilizing the soil surface from erosion. Therefore, the requirement for 70 percent ground cover on land developed for forestry is a minimum standard that must be increased if it is insufficient to control erosion.

Louisiana stated at proposed LSMR 53123.B.4.a that the tree stocking and ground cover standards were developed after consultation with and approval by the Louisiana Department of Agriculture and Forestry. Louisiana submitted to OSM a letter, dated December 27, 1993, from the Louisiana Office of Forestry, Department of Agriculture and Forestry (administrative record No. LA–348.01). In it, the Office of Forestry concurred with the technical success standards for areas developed for forestry proposed at LSMR 53123.B.4.a.

The Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i) require that minimum stocking and planting arrangements shall be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may occur on either a programwide or a permit-specific basis.

Because Louisiana proposed, at LSMR 53123.B.4.a, to specify the minimum stocking and planting arrangements, and submitted approval by the State agency responsible for the administration of forestry, Louisiana has proposed programwide standards for all reclaimed land with a designated postmining land use of forestry.

The Director finds that proposed LSMR 53123.B.4.a is no less effective than the requirements of the Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i), and approves it.

b. *Utility of trees for the approved postmining land use and tree health.* Louisiana proposed at LSMR 53123.B.4.a to delete the requirements that the trees that will be used in determining the success of stocking and the adequacy of the plant arrangement shall (1) have utility for the approved postmining land use and (2) be healthy.

The Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii) require (in part) that trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall (1) have utility for the approved postmining land use and (2) be healthy.

Because Louisiana has deleted the State counterparts to the Federal requirements, the Director finds that proposed LSMR 53123.B.4.a is less effective than the requirements of the Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii). The Director requires that Louisiana revise LSMR 53123.B.4.a to include these requirements.

c. *Length of time trees have been established.* Louisiana proposed at LSMR 53123.B.4.a to delete the requirement that, at the time of final bond release, at least 80 percent of the trees and shrubs shall have been in place for 60 percent of the 5-year responsibility period. Louisiana proposed to require that (1) there shall be 450 well-distributed free-to-grow live pine trees per acre of the same age or 250 well-distributed live hardwood trees per acre of the same age and (2) countable stems shall be a minimum of 3 years old.

The Federal regulations at 30 CFR 816.116(b0(3)(ii) and 817.116(b)(3)(ii) require in part that, at the time of bond release, at least 80 percent of the trees and shrubs used to determine such success shall have been in place for 60 percent of the applicable minimum period of responsibility ("80/60 requirement").

OSM interprets proposed LSMR 53123.B.4.a to require that 100 percent (i.e., all countable stems) of the trees must be in place for a minimum of 60 percent of the responsibility period (i.e., 3 of the 5-year minimum period of responsibility). Under this interpretation, proposed LSMR 53123.B.4.a is no less effective than the "80/60 requirement" in the Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii). However, before OSM can make this determination, Louisiana must clarify that this is its intent. Therefore, the Director requires that Louisiana either (1) clarify, by policy statement, that proposed LSMR 53123.B.4.a requires that 100 percent (i.e., all countable stems) of the trees must be in place for a minimum of 60 percent of the responsibility period (i.e., 3 of the 5-year minimum period of responsibility), or (2) revise proposed LSMR 53123.B.4.a to add the requirement that at least 80 percent of the trees and shrubs used to determine success of revegetation shall have been in place for 60 percent of the applicable minimum period of responsibility.

IV. Summary and Disposition of Comments

Following are summaries of all substantive oral and written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Louisiana program (administrative record No. LA–348.03).

The U.S. Army Corps of Engineers responded on June 10, 1994, that the proposed revisions were satisfactory (administrative record No. La–348.04).

The U.S. Bureau of Mines responded on June 14, 1994, that it had no comments (administrative record No. LA–348.05).

The U.S. Forest Service responded on June 15, 1994, that, after consulting the forest administrators in Louisiana, it had no comments (administrative record No. LA–348.06).

The U.S. Soil Conservation Service (SCS) responded on June 20, 1994, that (1) it concurred with the number of trees required for successful revegetation of mined forest land, (2) it recommended a ground cover of at least 75 percent to prevent unacceptable levels of soil erosion, and (3) all gullies should be repaired and revegetated prior to final bond release (administrative record No. 348.08).

With respect to the SCS comment concurring with the number of trees required to demonstrate revegetation success, as discussed in finding No. 1.a, the Director is approving the standard for the tree stocking rate proposed by Louisiana at LSMR 53123.B.4.a.

With respect to the SCS comment concerning a recommended ground cover of 75 percent, as discussed in finding No. 1.a, Louisiana's requirement at LSMR 53123.B.4.a for 70 percent ground cover was previously approved by OSM and is a minimum standard. The Federal regulations of 30 CFR 816.116(b)(3)(iii) and 817.116(b)(3)(iii) require, for areas to be developed for forestry, that vegetative ground cover shall not be less than that required to achieve the approved postmining land use. Louisiana, at LSMR 531117.A.4 (which is applicable to revegetation on land reclaimed for any land use), requires that a vegetative cover be established that is capable for stabilizing the soil surface from erosion.

LSMR 53117.A.4 is substantively identical to the reqtirements of the Federal regulations at 30 CFR 816.111(a)(4) and 817.111(a)(4). In addition, Louisiana requires at LSMR 53121.A that suitable mulch and other soil stabilizing practices shall be used on all regraded and topsoiled areas to control erosion, promote germination of seeds, or increase the moisture content of the soil. LSMR 53121.A is no less effective than the requirements of the Federal regulations at 30 CFR 816.114 and 817.114. Louisiana's standard for ground cover at LSMR 53123.B.4.a, in conjunction with the requirements at LSMR 53117.A.4 and 53121.A, is consistent with and no less effective in meeting SMCRA's requirements than the Federal regulations at 30 CFR 816.116(b)(3)(iii) and 817.116(b)(3)(iii). Therefore, the Director is not requiring tnat Louisiana revise the standard for ground cover on areas to be developed for forestry at LSMR 53123.B.4.a in response to this comment.

With respect to the SCS comment that gullies should be repaired and revegetated prior to final bond release, Louisiana's program at LSMR 53115 requires that (1) when rills and gullies deeper than 9 inches form in areas that have been regarded and topsoiled, the rills and gullies shall be filled, graded, or otherwise stabilized and the area reseeded or replanted according to the requirements of LSMR 53117 through 53123, and (2) rills or gullies of lesser size be stabilized and the area reseeded or replanted if the rills or gullies are disruptive to the approved postmining land use or may result in additional erosion and sedimentation. Therefore, because Louisiana's approved program addresses the repair and revegetation of gullies, the Director is not requiring that Louisiana revise LSMR 53123.B.4.a in response to this comment.

The U.S. Fish and Wildlife Service responded on June 21, 1994, that it had no objection to the proposed amendment (administrative record No. 348.07).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Louisiana proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. LA–348.03). It responded on July 8, 1994, that it had no comments (administrative record No. LA–348.09).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit the written comments of SHPO and ACHP with respect to those provisions of the proposed program amendment that relate to historic properties.

None of the revisions that Louisiana proposed to make in its amendment pertain to historic properties. Therefore, OSM did not request SHPO and ACHP comments.

V. Director's Decision

Based on the above findings, the Director approves with additional requirements Louisiana's proposed amendment as submitted on May 3, 1994.

With the requirement that Louisiana further revise its rules, the Director approves, as discussed in finding Nos. 1.a through 1.c, LSMR 53123.B.4.a, concerning standards of success for revegetation on lands developed for forestry.

In accordance with 30 CFR 732.17(f)(1), the Director is also taking this opportunity to clarify in the required amendment section at 30 CFR 918.16 that, within 60 days of the publication of this final rule, Louisiana must either submit a proposed written amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Louisiana's established administrative or legislative procedures.

The Federal regulations at 30 CFR Part 918, codifying decisions concerning the Louisiana program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that

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existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 14, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 918—LOUISIANA

1. The authority citation for Part 918 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 918.15 is amended by revising the section heading and adding paragraph (d) to read as follows:

§ 918.15 Approval of amendments to the Louisiana regulatory program.

* * * * *

(d) Revisions to LSMR 53123.B.4.a, revegetation success standards for forestry, as submitted to OSM on May 3, 1994, are approved effective September 20, 1994.

3. Section 918.16 is revised to read as follows:

§ 918.16 Required program amendments.

Pursuant to 30 CFR 732.17(f)(1), Louisiana is required to submit to OSM by the specified date the following written, proposed program amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Louisiana's established administrative or legislative procedures.

(a) By November 21, 1994, Louisiana shall revise LSMR 53123.B.4.a or otherwise modify its program, to require that trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall (1) have utility for the approved postmining land use and (2) be healthy.

(b) By November 21, 1994, Louisiana shall revise LSMR 53123.B.4.a or otherwise modify its program, to either (1) clarify, by policy statement, that proposed LSMR 53123.B.4.a requires that 100 percent (i.e., all countable stems) of the trees must be in place for a minimum of 60 percent of the responsibility period, or (2) add the requirement that at least 80 percent of the trees and shrubs used to determine success of revegetation shall have been in place for 60 percent of the applicable minimum period of responsibility.

[FR Doc. 94-23247 Filed 9-19-94; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 46-3-6506; FRL-5066-7]

Approval and Promulgation of Implementation Plans California State Implementation Plan Revision Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of a revision to the California State Implementation Plan (SIP) proposed in the **Federal Register** on January 12, 1994. The revision concerns a rule from the Santa Barbara County Air Pollution Control District (SBCAPCD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule controls VOC emissions from oil refinery leaks. Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This final rule is effective on October 20, 1994.

ADDRESSES: Copies of the rule revision and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours.

Copies of the submitted rule revision are available for inspection at the following locations:

Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket 6102, 401 "M" Street, SW., Washington, DC 20460.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive B-23, Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1197.

SUPPLEMENTARY INFORMATION:

Background

On January 12, 1994 in 59 FR 1698, EPA proposed to approve the following rule into the California SIP: SBCAPCD's Rule 331, Fugitive Emissions Inspection and Maintenance. Rule 331 was adopted by SBCAPCD on December 10, 1991. This rule was submitted by the California Air Resources Board (CARB) to EPA on June 19, 1992. This rule was submitted in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background of the above rule and nonattainment area is provided in the NPRM cited above.

EPA has evaluated the above rule for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA has found that the rule meets the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in 59 FR 1698 and in the technical support document (TSD) available at EPA's Region IX office (TSD dated June 7, 1993).

Response to Public Comments

A 30-day public comment period was provided in 59 FR 1698. No formal comments were received.

EPA Action

EPA is finalizing action to approve the above rule for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA. This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of VOCs in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 222) from the requirements of Section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 21, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review not does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: August 29, 1994.

John Wise,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c) (188)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(188) * * *

(i) * * *

(A) * * *

(*2*) Rule 331, adopted on December 10, 1991.

* * * * *

[FR Doc. 94-23158 Filed 9-19-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 63

[AD-FRL-5073-9]

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendments.

SUMMARY: This action corrects errors and clarifies regulatory text of the "National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks," which was issued as a final rule on April 22, 1994 and June 6, 1994. This rule is commonly known as the Hazardous Organic NESHAP or the HON.

EFFECTIVE DATE: September 20, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Janet S. Meyer, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5254.

SUPPLEMENTARY INFORMATION: On April 22, 1994 (59 FR 19402), and June 6, 1994 (59 FR 29196), the Environmental Protection Agency (EPA) promulgated in the **Federal Register** national emission standards for hazardous air pollutants (NESHAP) for the synthetic organic chemical manufacturing industry, and for several other processes subject to the equipment leaks portion of the rule. These regulations were promulgated as subparts F, G, H, and I in 40 CFR part 63, and are commonly referred to as the hazardous organic NESHAP, or the HON. This document contains corrections to typographical and cross-referencing errors in subparts F, H, and I of the final regulations. A few editorial corrections are also being made to clarify the intent of certain provisions in these subparts.

Paragraph (e) of § 63.103 of subpart F is being revised to clarify that the source owner or operator is required to only document the basis for the determination that the provisions of the HON do not apply, and not to keep ongoing records. Tables 1 and 2 of subpart F are revised to correct typographical errors in spelling of several chemical names or the chemical abstracts services (CAS) numbers. Thiocarbanilide is being removed from table 1 of subpart F because this chemical is listed elsewhere in table 1 as diphenyl thiourea.

A few editorial changes are being made to several sections in subpart H to clarify the intent of the provisions. Section 63.163(f) is being revised to remove a requirement to inspect sealless pumps for indications of liquids dripping from the pump seal. Since this inspection will not serve the purpose of detecting failures of these pumps, the requirement to perform these inspections is being removed. The provisions of § 63.180(b)(2) are being clarified by adding a sentence explaining that inert gases are not to be considered in evaluation of instrument response factor.

A number of corrections are being made to subpart I to improve consistency in terminology and to clarify the provisions. This document corrects subpart I to use the term "pharmaceutical production process" in § 63.190(b)(5) and in the definitions section. The definition of "pharmaceutical production process" is being clarified to reflect the intent of the regulatory negotiation committee. Editorial corrections are being made to § 63.190(e) and § 63.192(e) to correct a drafting error in usage of the term "source." Several errors in cross referencing subpart A of part 63 and

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other cross referencing errors are being corrected.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and Recordkeeping requirements.

Dated: September 12, 1994.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, title 40, chapter I, part 63, subparts F, H, and I of the Code of Federal Regulations are corrected as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: Sections 101, 112, 114, 116, and 301 of the Clean Air Act [42 U.S.C. 7401, *et seq.*, as amended by Pub. L. 101–549, 104 Stat. 2399].

Subpart F—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

2. Section 63.103 is amended by revising the first sentence of paragraph (e) to read as follows:

§ 63.103 General compliance, reporting, and recordkeeping provisions.

* * * * *

(e) The basis for the determination that a chemical manufacturing unit does not use as a reactant or manufacture as a product any organic hazardous air pollutant shall be documented. * * *

* * * * *

Table 1 of Subpart F—[Amended]

3. Table 1 of subpart F is amended by removing the entry for thiocarbanilide and its associated CAS number and group number, and by removing the terms "Butyrolacetone," "Dimethylaniline (N,N)" and "Dodecandedioic acid", in the first column, and inserting the terms "Butyrolactone," "Dimethylaniline (N,N')" and "Dodecanedioic acid" in their place, respectively.

Table 2 of Subpart F—[Amended]

4. Table 2 of subpart F is amended by revising the CAS number of hexane to read "110543."

Subpart H—National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

5. Section 63.160 is amended by revising paragraph (a) to read as follows:

§ 63.160 Applicability and designation of source.

(a) The provisions of this subpart apply to pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems, and control devices or systems required by this subpart that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of a specific subpart in 40 CFR part 63 that references this subpart.

* * * * *

6. Section 63.161 is amended by revising the definitions of "closed-vent system" and "hard-piping" to read as follows:

§ 63.161 Definitions.

* * * * *

Closed-vent system means a system that is not open to the atmosphere and that is composed of hard-piping, ductwork, connections and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device or back into a process.

* * * * *

Hard-piping means pipe or tubing that is manufactured and properly installed using good engineering judgement and standards, such as ANSI B31–3.

* * * * *

7. Section 63.162 is amended by revising paragraphs (b)(1) and (f)(3) to read as follows:

§ 63.162 Standards: General.

* * * * *

(b)(1) An owner or operator may request a determination of alternative means of emission limitation to the requirements of §§ 63.163 through 63.170, and §§ 63.172 through 63.174 of this subpart as provided in § 63.177.

* * * * *

(f) * * *

(3) The identification on equipment, except on a valve or connector, may be removed after it has been repaired. The identification on a valve or connector may be removed after it has been monitored as specified in § 63.168(f)(3), § 63.174(e), or § 63.175(e)(7)(i)(D), and no leak has been detected during the followup monitoring.

8. Section 63.163 is amended by revising paragraph (f) to read as follows:

§ 63.163 Standards: Pumps in light liquid service.

* * * * *

(f) Any pump that is designed with no externally actuated shaft penetrating the pump housing is exempt from the requirements of paragraphs (a) through (c) of this section.

* * * * *

9. Section 63.164 is amended by revising paragraph (c) to read as follows:

§ 63.164 Standards: Compressors.

* * * * *

(c) The barrier fluid shall not be in light liquid service.

* * * * *

10. Section 63.165 is amended by redesignating paragraphs (d) and (e) as paragraphs (d)(1) and (d)(2), respectively, and revising them to read as follows:

§ 63.165 Standards: Pressure relief devices in gas/vapor service.

* * * * *

(d)(1) Any pressure relief device that is equipped with a rupture disk upstream of the pressure relief device is exempt from the requirements of paragraphs (a) and (b) of this section, provided the owner or operator complies with the requirements in paragraph (d)(2) of this section.

(2) After each pressure release, a rupture disk shall be installed upstream of the pressure relief device as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in § 63.171 of this subpart.

11. Section 63.168 is amended by revising paragraph (e)(1) and by revising paragraph (h)(2) to read as follows:

§ 63.168 Standards: Valves in gas/vapor service and in light liquid service.

* * * * *

(e)(1) Percent leaking valves at a process unit shall be determined by the following equation:

$$\%V_L=(V_L/(V_T+V_C))\times 100$$

where:

$\%V_L$=Percent leaking valves.

V_L=Number of valves found leaking excluding nonrepairables as provided in paragraph (e)(3)(i) of this section.

V_T=Total valves monitored, in a monitoring period excluding valves monitored as required by (f)(3) of this section.

V_C=Optional credit for removed valves=0.67 × net number (i.e., total removed – total added) of valves in organic HAP service removed from process unit after the date set forth in § 63.100(k) of subpart F for existing process units, and after the date of initial start-up for new sources. If credits are not taken, then V_C=0.

* * * * *

(h) * * *

(2) The owner or operator of the valve has a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable.

* * * * *

12. Section 63.169 is amended by revising paragraphs (a), (c)(3), and (d) to read as follows:

§ 63.169 Standards: Pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service.

(a) Pumps, valves, connectors, and agitators in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and instrumentation systems shall be monitored within 5 calendar days by the method specified in § 63.180(b) of this subpart if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method. If a potential leak is repaired as required in paragraphs (c) and (d) of this section, it is not necessary to monitor the system for leaks by the method specified in § 63.180(b) of this subpart.

* * * * *

(c) * * *

(3) For equipment identified in paragraph (a) of this section that is not monitored by the method specified in § 63.180(b) of this subpart, repaired shall mean that the visual, audible, olfactory, or other indications of a leak have been eliminated; that no bubbles are observed at potential leak sites during a leak check using soap solution; or that the system will hold a test pressure.

(d) First attempts at repair include, but are not limited to, the practices described under §§ 63.163(c)(2) and 63.168(g) of this subpart, for pumps and valves, respectively.

13. Section 63.171 is amended by revising paragraph (e) to read as follows:

§ 63.171 Standards: Delay of repair.

* * * * *

(e) Delay of repair beyond a process unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the process unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the second process unit shutdown will not be allowed unless the third process unit shutdown occurs sooner than 6 months after the first process unit shutdown.

14. Section 63.172 is amended by revising paragraphs (b) and (k)(2) to read as follows:

§ 63.172 Standards: Closed-vent systems and control devices.

* * * * *

(b) Vapor recovery systems (e.g., condensers and adsorbers) shall be designed and operated to recover the organic HAP emissions or VOC emissions vented to them with an efficiency of 95 percent or greater.

* * * * *

(k) * * *

(2) The owner or operator has a written plan that requires inspection of the equipment as frequently as practicable during safe-to-inspect times, but not more frequently than annually.

* * * * *

15. Section 63.174 is amended by revising paragraphs (b)(1), (b)(2), (b)(3)(i); the first sentence of (b)(3)(ii); paragraph (f)(2); and the first sentence of paragraph (h)(1) introductory text to read as follows:

§ 63.174 Standards: Connectors in gas/vapor service and in light liquid service.

* * * * *

(b) * * *

(1) For each group of existing process units within an existing source, by no later than 12 months after the compliance date, the owner or operator shall monitor all connectors, except as provided in paragraphs (f) through (h) of this section.

(2) For new sources, within the first 12 months after initial start-up or by no later than 12 months after the date of promulgation of a specific subpart that references this subpart, whichever is later, the owner or operator shall monitor all connectors, except as provided in paragraphs (f) through (h) of this section.

(3) * * *

(i) Once per year (i.e., 12-month period), if the percent leaking connectors in the process unit was 0.5 percent or greater during the last required annual or biennial monitoring period.

(ii) Once every 2 years, if the percent leaking connectors was less than 0.5 percent during the last required monitoring period. * * *

* * * * *

(f) * * *

(2) The owner or operator has a written plan that requires monitoring of the connector as frequently as practicable during safe to monitor periods, but not more frequently than the periodic schedule otherwise applicable.

* * * * *

(h)(1) Any connector that is inaccessible or is glass or glass-lined, is exempt from the monitoring requirements of paragraphs (a) and (c) of this section and from the recordkeeping and reporting requirements of § 63.181 and § 63.182 of this subpart. * * *

* * * * *

16. Section 63.180 is amended by adding two sentences to the end of paragraph (b)(2) and by revising paragraph (c) introductory text to read as follows:

§ 63.180 Test methods and procedures.

* * * * *

(b) * * *

(2) * * *. For process streams that contain nitrogen, water, air, or other inerts which are not organic HAP's or VOC's, the average stream response factor may be calculated on an inert-free basis. The response factor may be determined at any concentration for which monitoring for leaks will be conducted.

* * * * *

(c) When equipment is monitored for compliance as required in §§ 63.164(i), 63.165(a), and 63.172(f) of this subpart or when equipment subject to a leak definition of 500 ppm is monitored for leaks, the monitoring shall comply with the following requirements:

* * * * *

17. Section 63.181 is amended by adding a sentence to the end of paragraph (b)(1)(i) and by revising paragraph (d)(5)(i) to read as follows:

§ 63.181 Recordkeeping requirements.

* * * * *

(b) * * *

(1)(i) * * *. With respect to connectors, the list shall be complete no later than the completion of the initial survey required by § 63.174 (b)(1) or (b)(2) of this subpart.

* * * * *

(d) * * *

(5) * * *

(i) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. The written procedures may be included as part of the startup/shutdown/malfunction plan, required by § 63.6(e)(3), for the source or may be part of a separate document that is maintained at the plant site. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

* * * * *

18. Section 63.182 is amended by revising paragraphs (a)(6)(ii), (c) introductory text, and (c)(4) to read as follows:

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§ 63.182 Reporting requirements.

(a) * * *

(6) * * *

(ii) A request for an extension of compliance must include the data described in § 63.6(i)(6)(i) of subpart A of this part.

* * * * *

(c) Each owner or operator of a source subject to this subpart shall submit a Notification of Compliance Status within 90 days after the compliance dates specified in the subpart in 40 CFR part 63 that references this subpart, except as provided in paragraph (c)(4) of this section.

* * * * *

(4) For existing sources subject to subpart F of this part, the Notification of Compliance Status shall be submitted for the group of process units with the earliest compliance date specified in § 63.100(k) of subpart F of this part, by no later than 90 days after the compliance date for that group. The Notification of Compliance Status for each subsequent group shall be submitted as part of the first periodic report that is due not less than 90 days after the compliance date for that group.

* * * * *

Subpart I—National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks

19. Section 63.190 is amended by revising paragraphs (b)(5), (c), and (e) introductory text; and by removing and reserving paragraph (b)(6)(i) to read as follows:

§ 63.190 Applicability and designation of source.

* * * * *

(b) * * *

(5) Pharmaceutical production processes using carbon tetrachloride or methylene chloride (carbon tetrachloride and methylene chloride emissions only).

(6) * * *

(i) Reserved.

* * * * *

(c) The owner or operator of a process listed in paragraph (b) of this section that does not have the designated organic hazardous air pollutants present in the process shall comply only with the requirements of § 63.192(k) of this subpart. To comply with this subpart, such processes shall not be required to comply with the provisions of subpart A of this part.

* * * * *

(e) The owner or operator of a process subject to this subpart is required to comply with the provisions of subpart H of this part on or before the dates specified in paragraphs (e)(1) or (e)(2) of this section, unless the owner or operator eliminates the use or production of all HAP's that cause the process to be subject to this rule no later than 18 months after April 22, 1994.

* * * * *

20. Section 63.191 is amended by revising paragraph (a) and by revising the definition of "Pharmaceutical production" in paragraph (b) to read as follows:

§ 63.191 Definitions.

(a) The following terms as used in subparts I and H of this part shall have the meaning given them in subpart A of this part: Act, Administrator, approved permit program, commenced, compliance date, construction, effective date, EPA, equivalent emission limitation, existing source, Federally enforceable, hazardous air pollutant, lesser quantity, major source, malfunction, new source, owner or operator, performance evaluation, performance test, permit program, permitting authority, reconstruction, relevant standard, responsible official, run, standard conditions, State, and stationary source.

(b) * * *

Pharmaceutical production process means a process that synthesizes pharmaceutical intermediate or final products using carbon tetrachloride or methylene chloride as a reactant or process solvent. Pharmaceutical production process does not mean process operations involving formulation activities such as tablet coating or spray coating of drug particles.

* * * * *

21. Section 63.192 is amended by revising paragraphs (b)(4) through (b)(8), (e), (i)(1), (i)(2) and (k) to read as follows:

§ 63.192 Standard.

* * * * *

(b) * * *

(4) The prohibited activities and circumvention provisions of § 63.4 (a)(1), (a)(2), (a)(3), (a)(5), and (b);

(5) The construction and reconstruction provisions of § 63.5(a), (b)(1), (b)(3), (d) (except the review is limited to the equipment subject to the provisions of subpart H), (e), and (f);

(6) The compliance with standards and maintenance requirements of § 63.6(a), (b)(3), (c)(5), (e), (i)(1), (i)(2), (i)(4)(i)(A), (i)(6)(i), (i)(8) through (i)(10), (i)(12) through (i)(14), (i)(16), and (j);

(7) With respect to flares, the performance testing requirements of § 63.7(a)(3), (d), (e)(1), (e)(2), (e)(4), and (h);

(8) The notification requirements of § 63.9 (a)(1), (a)(3), (a)(4), (b)(1)(i), (b)(4), (b)(5) (except, use the schedule specified in subpart H), (c), (d), and (i);

* * * * *

(e) If an owner or operator of a process plans to eliminate the use or production of all HAP's that cause the process to be subject to the provisions of subparts I and H of this part no later than 18 months after April 22, 1994, the owner or operator shall submit to the Administrator a brief description of the change, identify the HAP's eliminated, and the expected date of cessation of operation of the current process, by no later than January 23, 1995.

* * * * *

(i) * * *

(1) If EPA has approved a State operating permit program under 40 CFR part 70, the permit shall be obtained from the State authority.

(2) If the State operating permit program has not been approved, the source shall apply to the EPA regional office pursuant to 40 CFR part 71.

* * * * *

(k) The basis for the determination that a process does not use as a reactant or manufacture as a product the designated organic hazardous air pollutant shall be documented. Examples of information that could document this include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

[FR Doc. 94–23113 Filed 9–19–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5074–1]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the C&J disposal site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces the deletion of the C&J Disposal site from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York have determined that all appropriate Hazardous Substance Response Trust Fund (Fund) -financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of New York have determined that remedial actions conducted at the site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: September 20, 1994.

FOR FURTHER INFORMATION CONTACT: Jack O'Dell, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, room 29–102, New York, NY 10278, (212) 264–1263.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is:

C&J Disposal site, Eaton, New York

The closing date for comments on the notice of intent to delete was August 20, 1994. EPA received no verbal or written comments.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede EPA efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and record-keeping requirements, Superfund, Water pollution control, and Water supply.

Dated: September 2, 1994.

William J. Muszynski, P.E.,

Deputy Regional Administrator.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321 (c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.: p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.: p. 193.

Appendix B to Part 300—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the C & J Disposal Leasing Co. Dump site, New York.

[FR Doc. 94–23239 Filed 9–19–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7083

[AK–932–4210–06; AA–6684]

Withdrawal of Public Land for Nikolski Village Selection; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 11,366 acres of public land located within the Alaska Maritime National Wildlife Refuge, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, pursuant to Section 22 of the Alaska Native Claims Settlement Act. This action also reserves the land for selection by the Chaluka Corporation, the village corporation for Nikolski. This withdrawal is for a period of 120 days; however, any land selected shall remain withdrawn by the order until conveyed. Any land described herein that is not selected by the corporation will remain withdrawn as part of the Alaska Maritime National Wildlife Refuge, pursuant to the Alaska National Interest Lands Conservation Act, and will be subject to the terms and conditions of any other withdrawal of record.

EFFECTIVE DATE: September 20, 1994.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land located within the Alaska Maritime National Wildlife Refuge, is hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and is hereby reserved for selection under Section 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 (1988), by the Chaluka Corporation, the village corporation for Nikolski:

Seward Meridian

T. 81 S., R. 133 W., (Unsurveyed)
Secs. 11 to 14, inclusive;
Secs. 23 to 27, inclusive;
Secs. 34, and 35.
T. 82 S., R. 133 W., (Unsurveyed)
Sec. 3, Parcel A, as shown on Protraction Diagram No. S32–1 dated June 30, 1972;
Secs. 4, 8, 9, and 10;
Secs. 16 to 21, inclusive;
Secs. 29, and 30;
Sec. 31, Parcel A, as shown on Protraction Diagram No. S32–1 dated June 30, 1972.

The area described contains approximately 11,366 acres.

2. Prior to conveyance of any of the land withdrawn by this order, the land shall be subject to administration by the Secretary of the Interior under applicable laws and regulations, and his authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired by this withdrawal.

3. This order constitutes final withdrawal action by the Secretary of the Interior under Section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1988), to make land available for selection by the Chaluka Corporation, to fulfill the entitlement of the village for Nikolski under Section 12 and Section 14(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 and 1613 (1988).

4. This withdrawal will terminate 120 days from the effective date of this order; provided, any land selected shall remain withdrawn pursuant to this order until conveyed. Any land described in this order not selected by the corporation shall remain withdrawn as part of the Alaska Maritime National Wildlife Refuge, pursuant to Sections 303(1) and 304(c) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 668(dd) (1988); and will be subject to the terms and conditions of any other withdrawal of record.

5. It has been determined that this action is not expected to have any significant effect on subsistence uses and needs pursuant to Section 810(c) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3120(c) (1988) and this action is exempted from the National Environmental Policy Act of 1969, 83 Stat. 852, by Section 910 of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1638 (1988).

Dated: September 9, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–23225 Filed 9–19–94; 8:45 am]

BILLING CODE 4310–JA–P

VOL 59 ISS 181 SEP 20 1994 UMI

Proposed Rules

Federal Register
Vol. 59, No. 181
Tuesday, September 20, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF06

Technical Specifications

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations pertaining to technical specifications for nuclear power reactors. The proposed rule would codify criteria for determining the content of technical specifications. These criteria were developed in recognition of the overly broad use of technical specifications to impose requirements, diverting both NRC and licensee attention from the more important requirements in these documents to the extent that it has resulted in an adverse but unquantifiable impact on safety. Each licensee covered by these regulations may voluntarily use the criteria as a basis to propose the relocation of existing technical specifications that do not meet any of the criteria from the facility license to licensee-controlled documents. The voluntary conversion of current technical specifications in this manner is expected to produce an improvement in the safety of nuclear power plants through a reduction in unnecessary plant transients and more efficient use of NRC and industry resources.

DATES: Comment period expires December 5, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

Copies of comments received may be examined and copied for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christopher I. Grimes, Chief, Technical Specifications Branch, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: (301) 504–1161.

SUPPLEMENTARY INFORMATION:

Background

Section 182a. of the Atomic Energy Act of 1954 (Act), as amended (42 U.S.C. 2232), mandates the inclusion of technical specifications in licenses for the operation of production and utilization facilities. The Act requires that technical specifications include information concerning the amount, kind, and source of special nuclear material, the place of use, and the specific characteristics of the facility. That section also states that technical specifications shall contain information the Commission requires through regulation to enable it to find that the utilization of special nuclear material will be in accord with the common defense and security and will provide adequate protection of public health and safety. Finally, that section requires technical specifications to be made a part of any license issued.

The Commission promulgated § 50.36, "Technical Specifications," which implements Section 182a. of the Atomic Energy Act on December 17, 1968 (33 FR 18610). This rule delineates requirements for determining the contents of technical specifications. Technical specifications set forth the specific characteristics of the facility and the conditions for its operation that are required to provide adequate protection of the health and safety of the public. Specifically, § 50.36 requires the following:

> Each license authorizing operation of a production or utilization facility of a type described in § 50.21 or § 50.22 will include technical specifications. The technical specifications will be derived from the analyses and evaluation included in the safety analysis report, and amendments thereto, submitted pursuant to § 50.34. The Commission may include such additional technical specifications as the Commission finds appropriate.

Technical specifications cannot be changed by licensees without prior NRC approval. However, since 1969, there has been a trend toward including in technical specifications not only those requirements derived from the analyses and evaluation included in the safety analysis report but also essentially all other Commission requirements governing the operation of nuclear power reactors. This extensive use of technical specifications was due in part to a lack of well-defined criteria (in either the body of the rule or in some other regulatory document) for what should be included in technical specifications. This use has contributed to the volume of technical specifications and to the several-fold increase in the number of license amendment applications to effect changes to the technical specifications since 1969. It has diverted both NRC staff and licensee attention from the more important requirements in these documents to the extent that it has resulted in an adverse but unquantifiable impact on safety.

On March 30, 1982 (47 FR 13369), the NRC published in the **Federal Register** a proposed amendment to part 50. The proposed rule would have revised § 50.36, "Technical Specifications," to establish a new system of specifications divided into two general categories. Only those specifications contained in the first general category as technical specifications would have become part of the operating license and would have required prior NRC approval for any changes. Those specifications contained in the second general category would have become supplemental specifications and would not have required prior NRC approval for most changes. The NRC review of the first general category of specifications would have been the same as that currently performed for technical specification changes, which are amendments to the operating license. For the second category, supplemental specifications, the licensee would have been allowed to make changes within specified conditions without prior NRC approval. The NRC would have reviewed these changes when they were made and would have done so in a manner similar to that currently used for reviewing

design changes, tests, and experiments performed under the provisions of § 50.59. Because of difficulties with defining the criteria for dividing the technical specifications into the two categories of the proposed rule and because of other higher priority licensing work, the proposed amendment was deferred.

In the early 1980s, the nuclear industry and the NRC staff began studying whether the existing system of establishing technical specification requirements for nuclear power plants needed improvement. During this time frame, an NRC task group known as the Technical Specifications Improvement Project (TSIP) and a Subcommittee of the Atomic Industrial Forum's (AIF) Committee on Reactor Licensing and Safety performed two studies of this issue.[1] The overall conclusion of these studies was that many improvements in the scope and content of technical specifications were needed and that a joint NRC and industry program should be initiated to implement these improvements. Both groups made specific recommendations which are summarized as follows:

(1) The NRC should adopt the criteria for defining the scope of technical specifications proposed in the AIF and TSIP reports. Those criteria should then be used by the NRC and each of the nuclear steam supply system vendor owners groups to completely rewrite and streamline the existing Standard Technical Specifications (STS). This process would result in the transfer of many requirements from control by technical specification requirements to control by other mechanisms [e.g., the final safety analysis report (FSAR), operating procedures, quality assurance (QA) plan] that would not require a license amendment or prior NRC approval when changes were needed. The new STS should include greater emphasis on human factors principles in order to make the text of the STS clearer and easier to understand. The new STS should also provide improvements to the bases section of technical specifications, which gives the purpose for each requirement in the specification.

(2) A parallel program of short-term improvements in both the scope and substance of the existing technical specifications should be initiated in addition to developing new STS as stated in Recommendation (1).

On February 6, 1987 (52 FR 3788), the NRC published in the **Federal Register** for public comment an Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors containing proposed criteria in response to Recommendation (1). These criteria were generally derived from the criteria proposed in the AIF and TSIP reports and were modified slightly on the basis of discussions between the NRC staff and the industry. The public comment period for the interim policy statement expired on March 23, 1987.

The criteria were developed with the intention that they would apply to limiting conditions for operation (LCOs). The NRC staff believed that the safety limits needed to remain as is in the technical specifications because of their more direct link to protection of the physical barriers that guard against the uncontrolled release of radioactivity. At the time the criteria were developed, the industry did not wish to address administrative controls and design features in the effort to improve the STS. Later, however, both the industry and the NRC staff realized that it would be beneficial to include upgraded administrative controls and design features in the improved STS, and these were handled separately from the application of the criteria to the LCOs.

The NRC has developed a program for short-term improvements as described in Recommendation (2). These are known as "line-item" improvements and are generic improvements developed and promulgated by the NRC staff for voluntary adoption by licensees.

Subsequently, improved vendor-specific STS were developed and issued by the NRC in September 1992. The improved STS were published as the following NRC reports:

- NUREG–1430, "Standard Technical Specifications, Babcock and Wilcox Plants"
- NUREG–1431, "Standard Technical Specifications, Westinghouse Plants"
- NUREG–1432, "Standard Technical Specifications, Combustion Engineering Plants"
- NUREG–1433, "Standard Technical Specifications, General Electric Plants, BWR/4"
- NUREG–1434, "Standard Technical Specifications, General Electric Plants, BWR/6"

Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, by calling (202) 275–2060 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5825 Port Royal Road, Springfield, VA 22161.

These improved STS were the result of extensive technical meetings and discussions among the NRC staff, industry owners groups, vendors, and the Nuclear Management and Resources Council (NUMARC).

Finally, on July 22, 1993 (58 FR 39132), the Commission published a Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors, which incorporated experience and lessons learned since publication of the interim policy statement. The interim policy statement identified three criteria to be used to define which of the current technical specification requirements should be retained or included in technical specifications and which LCOs could be relocated to licensee-controlled documents, as follows:

Criterion 1: Installed instrumentation that is used to detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary.

Criterion 2: A process variable, design feature, or operating restriction that is an initial condition of a design basis accident or transient analysis that either assumes the failure of or presents a challenge to the integrity of a fission product barrier.

Criterion 3: A structure, system, or component that is part of the primary success path and which functions or actuates to mitigate a design basis accident or transient that either assumes the failure of or presents a challenge to the integrity of a fission product barrier.

The interim policy statement also stated that, in addition to structures, systems, and components captured by the three criteria, it was the Commission's policy that licensees retain in the technical specifications LCOs for a specified list of systems that operating experience and probabalistic safety assessment had generally shown to be important to public health and safety. In the final policy statement, the Commission retained this thought as a fourth criterion to capture those requirements that operating experience or probabilistic safety assessment show to be significant to public health and safety. The final policy statement also addressed comments received on the interim policy statement and described the Commission's intent with regard to use of the criteria and their codification through rulemaking.

The Commission believes that amending § 50.36 to include the four

[1] SECY–86–10, "Recommendations for Improving Technical Specifications," dated January 13, 1986, contains both "Recommendations for Improving Technical Specifications," NRC Technical Specifications Improvement Project, September 30, 1985, and "Technical Specifications Improvements," AIF Subcommittee on Technical Specifications Improvements, October 1, 1985.

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criteria contained in the final policy statement could codify a viable, potentially safety-enhancing and cost-saving method for technical specification improvement. The Commission encourages licensees to use the improved STS as the basis for plant-specific technical specifications. As stated in the final policy statement, the Commission will place the highest priority on requests based on the criteria for individual license amendments that are used to evaluate all of the LCOs for an individual plant to determine which LCOs should be included in the technical specifications. Related surveillance requirements and actions would be retained for each LCO that remains in the technical specifications. Each LCO, action, and surveillance requirement should have supporting bases.

In addition, the Commission will also entertain requests to adopt portions of the improved STS, even if the licensee does not adopt all STS improvements. These portions will include all related requirements and will normally be developed as line-item improvements by the NRC staff. The Commission encourages all licensees who submit technical specification related submittals based on these criteria to emphasize human factors principles.

LCOs that do not meet any of the criteria, and their associated actions and surveillance requirements, may be proposed for relocation from the technical specifications to licensee-controlled documents, such as the FSAR. The criteria may be applied to either standard or custom technical specifications. The Commission will also consider the criteria in evaluating future generic requirements for inclusion in technical specifications.

During individual technical specification conversions, a backfit analysis will be performed in cases of nonvoluntary addition of new requirements from the improved STS to individual plant technical specifications, unless the staff-suggested additional changes are needed to make the changes requested by the licensee acceptable from the standpoint of adequate protection or compliance with NRC regulations, in which case the request may be denied without the additional items.

The Commission requests comments on the criteria being proposed for inclusion in § 50.36 and, particularly, on Criterion 4 and what guidelines the Commission should use in defining "significant to public health and safety."

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission regulations in Subpart A of Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and would not degrade the environment in any way. Therefore, the Commission concludes that there will be no significant impact on the environment from this proposed rule. This discussion constitutes the environmental assessment and finding of no significant impact for this proposed rule; a separate assessment has not been prepared.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0011.

Regulatory Analysis

The Commission has determined that a regulatory analysis is not required for this proposed rule. The Commission believes the intent of the regulatory analysis has been met through the extensive consideration given to the development of the Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors and the improved STS, both of which involved an opportunity for public comment. The criteria being added to § 50.36 are identical to those contained in the final policy statement and have been used by the NRC and the nuclear power industry to define the content of technical specifications since September 1992. The criteria will continue to be used even if this proposed rule is not adopted. The proposed rule does not impose any requirements but, rather, allows nuclear power reactor licensees to voluntarily use the criteria to relocate existing technical specifications that do not meet any of the criteria to licensee-controlled documents. The NRC staff also uses these criteria to determine whether technical specifications are appropriate to provide continued regulatory control over new requirements or positions that have been justified consistent with the backfit rule.

The Commission considered the need for and consequences of this proposed action when it made the decision to not only publish the criteria in the final policy statement but also to codify the criteria through rulemaking. Appropriate alternative approaches to this action have been identified and analyzed over the life of the Technical Specifications Improvement Program, beginning with an earlier attempt to define the content of technical specifications through rulemaking. As described in the background discussion, the Commission published a proposed amendment to § 50.36 (47 FR 13369) on March 30, 1982. However, because of difficulties with defining criteria for technical specifications and because of other higher priority licensing work, the rule change was deferred. In February 1987, the Commission published an interim policy statement on Technical Specification Improvements and in July 1993, published the final policy statement. During review of the final policy statement, the Commission concluded that the four criteria should be codified in a rule. Thus, alternative approaches to regulatory objectives have been identified and analyzed, and the Commission has decided that there is no clearly preferable alternative to codifying the four criteria in a rule. With regard to evaluation of values and impacts of alternatives, the Commission believes there is no difference in the values or impacts of implementing the criteria through use of the final policy statement or through a rule, except that the criteria are more readily available to future users in a rule than in a policy statement.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 [5 U.S.C. 605(b)], the Commission certifies that, if promulgated, this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" as given in the Regulatory Flexibility Act or the Small Business Size Standards in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule, § 50.109, does not apply to this proposed rule and, therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in § 50.109(a)(1).

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons given in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment to Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58–50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.36, paragraphs (c) (2) and (3) are revised to read as follows:

§ 50.36 Technical specifications.

* * * * *

(c) * * *

(2) *Limiting conditions for operation.*

(i) Limiting conditions for operation are the lowest functional capability or performance levels of equipment required for safe operation of the facility. When a limiting condition for operation of a nuclear reactor is not met, the licensee shall shut down the reactor or follow any remedial action permitted by the technical specifications until the condition can be met. When a limiting condition for operation of any process step in the system of a fuel reprocessing plant is not met, the licensee shall shut down that part of the operation or follow any remedial action permitted by the technical specifications until the condition can be met. In the case of a nuclear reactor not licensed under § 50.21(b) or § 50.22 of this part or fuel reprocessing plant, the licensee shall notify the Commission, review the matter, and record the results of the review, including the cause of the condition and the basis for corrective action taken to preclude recurrence. The licensee shall retain the record of the results of each review until the Commission terminates the license for the nuclear reactor or the fuel reprocessing plant. In the case of nuclear power reactors licensed under § 50.21(b) or § 50.22, the licensee shall notify the Commission if required by § 50.72 and shall submit a Licensee Event Report to the Commission as required by § 50.73. In this case, licensees shall retain records associated with preparation of a Licensee Event Report for a period of three years following issuance of the report. For events which do not require a Licensee Event Report, the licensee shall retain each record as required by the technical specifications.

(ii) A technical specification limiting condition for operation of a nuclear reactor must be established for each item meeting one or more of the following criteria:

(A) *Criterion 1.* Installed instrumentation that is used to detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary.

(B) *Criterion 2.* A process variable, design feature, or operating restriction that is an initial condition of a design basis accident or transient analysis that either assumes the failure of or presents a challenge to the integrity of a fission product barrier.

(C) *Criterion 3.* A structure, system, or component that is part of the primary success path and which functions or actuates to mitigate a design basis accident or transient that either assumes the failure of or presents a challenge to the integrity of a fission product barrier.

(D) *Criterion 4.* A structure, system, or component which operating experience or probabilistic safety assessment has shown to be significant to public health and safety.

(iii) A licensee is not required to modify technical specifications that are included in any license issued before [THE EFFECTIVE DATE OF THE FINAL RULE] to satisfy the criteria in paragraph (c)(2)(ii) of this section. However, for technical specification amendments a licensee proposes after [THE EFFECTIVE DATE OF THE FINAL RULE], the criteria in paragraph (c)(2)(ii) of this section provide an acceptable scope for limiting conditions for operation.

(3) *Surveillance requirements.* Surveillance requirements are requirements relating to test, calibration, or inspection to assure that the necessary quality of systems and components is maintained, that facility operation will be within safety limits, and that the limiting conditions for operation will be met.

* * * * *

Dated at Rockville, Maryland, this 14th day of September, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–23202 Filed 9–19–94; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 259

[Release No. 35–26124; File No. S7–27–94]

RIN 3235–AG05

Annual Reports by Mutual and Subsidiary Service Companies Under the Public Utility Holding Company Act of 1935

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Proposed amendments to form and request for comment.

SUMMARY: The Commission is requesting public comment upon proposed amendments to Form U–13–60, the annual report filed by service company subsidiaries of registered holding companies under the Public Utility Holding Company Act of 1935 ("Act"). The proposed amendments would clarify the requirements for these reports and improve the disclosure of financial, accounting and operational information.

DATES: Comments must be submitted on or before November 21, 1994.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 6–9, Washington, D.C. 20549. Comment letters should refer to File No. S7–27–94. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

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FOR FURTHER INFORMATION CONTACT: Brian P. Spires, Attorney, (202) 942–0557, Joanne C. Rutkowski, Assistant Director, (202) 942–0545, Robert P. Wason, Chief Financial Analyst, (202) 942–0543, or David E. Marsh, Accountant, (202) 942–0558, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting comment on proposed amendments to Form U–13–60 [17 CFR Part 259] under the Act [15 U.S.C. 79 *et seq.*]. The Annual Report for Mutual and Subsidiary Service Companies on Form U–13–60 was adopted December 29, 1939 and last revised on February 22, 1980 (Holding Co. Act Release No. 21447).

I. Introduction

Service company subsidiaries of registered holding companies serve the needs of associate companies by providing managerial, administrative, technical and other services. Section 13(b) of the Act requires that contracts by which service companies perform services or construction work for, or sell goods to, associate companies must be performed at cost, fairly and equitably allocated among such companies.[1]

Commission rules set forth accounting and reporting requirements with respect to these intrasystem transactions. Under rule 93, the accounts and records of a service company subsidiary of a registered holding company must be consistent with the accounts required by the Uniform System of Accounts for Mutual and Subsidiary Service Companies ("Uniform System of Accounts").[2] Rule 94 requires the filing of an annual report on Form U–13–60 by every service company.[3]

On November 4, 1992, the Commission, as part of its efforts to update and streamline regulation under the Act, proposed certain amendments to Form U–13–60.[4] The proposed amendment was intended to provide the service companies with the flexibility to use accounts from the Uniform System of Accounts of the Federal Energy Regulatory Commission ("FERC System of Accounts") in preparing the Form U–13–60.[5]

The Commission received six comment letters addressing the proposed form amendment.[6] Several commenters noted with approval the purpose of the amendment to provide additional flexibility. The commenters observed that because the Uniform System of Accounts does not always contain accounts needed to classify properly charges incurred, the service companies are obliged to use accounts from the FERC System of Accounts or classify certain categories of costs improperly.[7] One commenter stated that, at present, service companies are effectively required to maintain two sets of books, one using the Uniform System of Accounts, the other using the FERC System of Accounts.[8] The commenter stated that the proposed amendments would greatly simplify the accounting system and permit service companies to classify costs more accurately.

Other commenters, however, were concerned as to how the Commission's proposal would harmonize the FERC System of Accounts with the Commission's Uniform System of Accounts. These commenters asked that the Commission clarify its proposal. In view of these comments, the Commission is today resubmitting the proposal for public comment.

In response to these comments and upon further consideration, the Commission has modified its proposal. Initially, the Commission had requested comments on the need to amend the Uniform System of Accounts to reflect the proposed changes to Form U–13–60. On balance, however, it does not appear necessary to amend the Commission's Uniform System of Accounts in the event that Form U–13–60 is amended. The Commission's Uniform System of Accounts follows the FERC System of Accounts, with modifications, and contemplates that accounts and financial statements of service companies will comply with that system.[9] As the commenters suggest, the proposed amendments to Form U–13–60 will effectively incorporate in the Uniform System of Accounts additional accounts corresponding to the FERC System of Accounts.[10]

The Commission has modified its proposal to add several new schedules to Form U–13–60 and to modify the existing schedules by adding new accounts and other requirements. The amendments are intended to result in more detailed disclosure of certain categories of information, and to ensure generally that accounting for services rendered to a system utility is consistent with the accounting for such expenses on the utility's balance sheet and income statement. In addition, the amendments will reduce some regulatory burdens by creating or modifying dollar thresholds for reporting purposes and by simplifying the reporting requirements.[11]

The various accounts proposed to be added to Form U–13–60 correspond, in each instance, to accounts under the FERC System of Accounts.

A. Instructions for Use of Form U–13–60

The Commission proposes to amend the instructions to provide that use of the new accounts is mandatory. The Commission has considered whether the use of the new accounts should be discretionary or mandatory. On the one hand, the mandatory use of these accounts could entail additional expense for some companies.[12] On the other hand, a requirement of mandatory use would help to ensure fuller identification of charges to facilitate accounting by the associate companies and regulatory examination. The Commission believes that the goal of

[1] "Service company" is not a defined term under the Act. Rather, a service company is a subsidiary company of a registered holding company that the Commission has found, pursuant to rule 88, to be "so organized and conducted . . . as to meet the requirements of section 13(b) of the Act with respect to reasonable assurance of efficient and economical performance of services or construction or sale of goods for the benefit of associate companies, at cost fairly and equitable allocated among them [or as permitted by [rule] 90]." Under rule 90, these transactions are generally conducted at cost. Rule 92, however, applies a lower-of-cost-or-market standard to transfers of seller-produced goods.

[2] The Uniform System of Accounts [17 CFR 256] was adopted May 12, 1936 and amended February 2, 1979 (Holding Co. Act Release No. 20910). *See also* 17 CFR 250.93, 250.94.

[3] *See* Holding Co. Act Release No. 1858 (Dec. 29, 1939) (adopting Form U–13–60); Holding Co. Act Release No. 21447 (Feb. 22, 1980) (amendment).

[4] *See* Holding Co. Act Release No. 25668, 57 FR 54025 (Nov. 16, 1992).

[5] The FERC System of Accounts prescribes a system of accounting for electric-utility companies under the Federal Power Act and natural gas companies under the Natural Gas Act.

The Commission's Uniform System of Accounts prescribes a system of accounting specifically for service companies in order to, among other things, track reimbursable costs and charges to customers and account for compensation for use of capital.

[6] The six commenters were five registered holding companies, American Electric Power Company ("AEP"), The Columbia Gas System, Inc. ("Columbia"), Consolidated Natural Gas Company ("CNG"), Northeast Utilities ("Northeast"), and New England Electric System ("NEES"), and one service company subsidiary of a registered holding company, EUA Service Corporation ("EUA").

[7] *See, e.g.*, EUA.

[8] *See* NEES at 2–3.

[9] Specifically, § 256.01–7(g) provides:

The Uniform System of Accounts promulgated by the Federal Energy Regulatory Commission, as amended from time to time, and the interpretations thereof adopted from time to time by the Federal Energy Regulatory Commission, . . . shall be complied with unless expressly inconsistent with the requirements of this system.

17 CFR 256.01–7(g).

[10] *See* CNG, EUA and NEES.

[11] The amendments will also make certain changes in format to facilitate Commission review, and various other minor conforming revisions.

[12] It would, however, conform to the current accounting practice of others.

improved disclosure should prevail, but invites particular comment on this aspect of the proposed amendments.

In addition, the amended instructions would require service company charges to be presented in the accompanying schedules on an "as billed" basis.[13] At present, the costs of a transaction may be classified differently on the financial statements of its associate company customers. For example, salary expenses associated with the construction of a transmission line may be classified as expenses on the income statement of the service company but as capital items on the balance sheet of the associate company. Consistent treatment of these items should aid ratemakers and others in identifying service company charges on the financial statements of associate public-utility companies. The Commission requests comment, in particular, on the need for a phase-in period of up to three years for this requirement.

B. Schedule II, Service Company Property

The Commission proposes to add a new Account 101.1—Property Under Capital Leases to this schedule.[14] Capitalized lease assets are not currently reported in Form U–13–60. The amendment is necessary to provide disclosure concerning this significant category of service company property. There would be a corresponding amendment to Schedule I, the balance sheet.[15]

C. Schedule IV, Investments

Currently, Schedule IV contains three accounts: Account 123—Investment in Associate Companies; Account 124—Other Investments; and Account 136—Temporary Cash Investments. The Commission proposes to add a new Account 128—Other Special Funds. Account 128 would include investments that have been segregated in special funds for insurance, employee pensions, savings, relief, hospital, and other purposes not provided for elsewhere. The proposed amendment would provide detail, currently lacking, with respect to these investments.

[13] "As billed" refers to the treatment of an item on the financial statements of an associate company customer.

[14] A capital lease is defined in Paragraphs 6(a) and 7 of the Statement of Financial Accounting Standards No. 13, Accounting for Leases, as a lease meeting one of four specified criteria concerning economic indicia of ownership. The criteria include length of lease term, present value of lease payments, and provision for transfer or purchase of the underlying asset at the lease term.

[15] A capital lease generally is recorded on a company's balance sheet both as an asset and as a corresponding liability.

D. Schedule V, Accounts Receivable

Schedule V requires the reporting of accounts receivable from associate companies in Account 146—Accounts Receivable From Associate Companies. The Commission is proposing to amend the instructions to Schedule V to require identification of associate company receivables that have been outstanding for 60–90 days and for more than 90 days from the due date. Companies that do not pay in a timely manner are effectively subsidized by the other system companies that do timely pay. The Commission believes that the proposed amendment will encourage service companies to adopt administrative controls to ensure that receivables are collected within ninety days.

The Commission has proposed a $25,000 threshold for reporting under this account but requests comment on whether a higher threshold, such as a $50,000 limit, as suggested by AEP, would be more appropriate.

In addition, the Commission is proposing to amend Schedule V to add a new Account 143 that would require the reporting of accounts receivable from nonassociate companies, to provide more complete information in this area.

E. Schedule XIV, Statement of Income

This schedule, currently under Schedule XV, requires the reporting of the income and expenses of the service company. Because the schedule does not contain any balance sheet accounts, a service company cannot necessarily report an item in a manner consistent with its treatment on the books of the associate company customer. As a result, commenters have noted that service companies are effectively required to maintain two sets of books, one for purposes of Form U–13–60 and the Uniform System of Accounts, and another to comply with the FERC System of Accounts.[16] The Commission is concerned that the current system results in unnecessary expense and duplication of effort for system companies.

Accordingly, the Commission proposes to include two categories of expenses, one relating to the income statement and the other relating to the balance sheet. A number of new accounts would be added to the present income statement accounts. Specifically, the amendment would add new Accounts 500–557—Power Production, Accounts 560–598—Transmission & Distribution Expenses, Accounts 901–905—Customer Accounts, and Accounts 906–917—Customer Service & Information. New accounts would also be added in Accounts 927—935—Other Administrative and General Expenses, Accounts 403—407—Depreciation and Amortization, Accounts 409—411.4—Income Taxes, Accounts 426.1—426.5—Other Deductions, and Accounts 427—431—Interest Expense. In addition, the amended schedule would include the following balance sheet accounts: Account 107—Construction Work in Progress, Accounts 108–115—Accumulated Provision for Depreciation, Account 163—Store Expenses Undistributed, Account 174—Miscellaneous Current & Accrued Assets, Account 183—Preliminary Engineering, Account 186—Miscellaneous Deferred Debits, Account 188—Research & Development, and an unnumbered account for other balance sheet expenses. The Commission also proposes to add a new income account, Account 419—Interest Income.

[16] *See supra* note 8 and accompanying text.

F. Schedule XV, Analysis of Charges-Direct vs. Indirect

Under the current schedule, service companies must report the amount of charges to associate and nonassociate companies, and categorize the charges as either direct (*i.e.*, a charge for a specific service provided to a customer) or indirect (*i.e.*, an allocated charge for an overhead expense of the service company). The Commission proposes to amend the schedule to require consistent treatment of a charge on the books of the service company and its associate company customers, to eliminate unnecessary expense and duplication of effort in system company accounting.

G. Schedule XX, Other Administrative & General Expenses

Account 930.1—General Advertising Expenses and Account 930.2—Miscellaneous General Expenses are currently reported in separate unnumbered schedules. The Commission has found that separate reporting for these items is unnecessary since historically the amounts involved have been immaterial. The Commission proposes to combine the existing schedules in a new Schedule XX which would require a detailed description of these expenses and other service company billings corresponding to

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Accounts 927–935 of the FERC System of Accounts.[17]

H. Schedule XXII, Other Deductions

The Commission proposes to combine the requirements of Account 426.1—Donations, and Account 426.5—Other Deductions, and add Account 426.2—Life Insurance, Account 426.3—Penalties, and Account 426.4—Expenditures for Certain Civic, Political and Related Activities in a new Schedule XXII.

The new schedule would require more detailed reporting in Account 426.5 to the extent that the annual aggregate amount of other deductions exceeded $25,000. The Commission believes that $25,000 is an appropriate threshold but requests comment on the need for a higher or lower threshold.

In addition, the Commission proposes to modify the reporting requirement for Account 408—Taxes, Other than Income Taxes. Based on its experience in this area, the Commission believes it is appropriate to eliminate the requirement of detailed reporting. Instead, the account will appear as a single line item on proposed Schedule XIV, the income statement.

I. Schedule XXIII, Miscellaneous Income or Loss

Schedule XV, the current income statement, requires the reporting of income or loss other than from services rendered to associate and nonassociate companies in Account 421—Miscellaneous Income or Loss. Although significant amounts of income and loss have been reported in this account, service companies at present are not required to disclose the source of the income or the cause of the loss. To obtain such information, the Commission proposes to create a new Schedule XXIII that will require a detailed description of the items contained in Account 421.

J. Schedule XXIV, Interest Expense

Interest expense is reported on present Schedule XV in Account 427—Interest on Long-Term Debt, Account 430—Interest on Debt to Associate Companies, and Account 431—Other Interest Expense, and on Schedule I, the balance sheet, in Account 237—Interest Accrued. The Commission proposes to create a new Schedule XXIV that would differentiate between long and short term debt interest expense, and require more detailed information concerning the debt and debt holders. The new schedule will enable the Commission to monitor the overall cost of capital of the service companies.

K. Schedule XXV, Notes to Financial Statements

The notes to financial statements and notes to statement of income are furnished in current Schedules XIV and XVIII, respectively. The Commission believes it is more appropriate for the notes to appear in a single schedule, and so proposes to create a new Schedule XXV for this purpose.

L. Schedule XVIII, Outside Services Employed

The Commission also proposes to amend this schedule to require separate itemizations of legal, auditing and other services.

M. Other Matters

The Commission proposes to amend certain schedules to include a footnote that the amounts referenced in these schedules include charges to both income statement and balance sheet accounts. The footnotes would cross-reference the expenses related to the income statement of new Schedule XIV for a more particular breakdown of these expense items.[18]

Finally, certain schedules would be renumbered, and the format of some items slightly changed.

II. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the proposed amended Form will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

III. Costs and Benefits

The proposed amendments to Form U–13–60 would enable the seventeen service company subsidiaries of registered holding companies to prepare income statements and balance sheets that properly reflect the accounting of the billings to their utility customers. The enhanced ability to properly classify billings should ease the record keeping burdens presently incurred by the service companies and would permit service companies to classify costs more accurately.

In addition, the proposed amendments would provide the service companies the flexibility to use FERC Accounts as appropriate given the nature of the services provided their customers. The Commission anticipates that these benefits will reduce the accounting costs of a service company by $10,000 to $20,000 per year.

IV. Paperwork Reduction Act

The proposed amended Form U–13–60 is subject to the Paperwork Reduction Act and will be submitted to the Office of Management and Budget.

V. Statutory Authority

The Commission is proposing amendments to Form U–13–60 pursuant to sections 14, 15, and 20(a) [15 U.S.C. 79n, 79o, 79t(a)] of the Act. The authority citation for the action precedes the text.

List of Subjects in 17 CFR Part 259

Utilities.

Text of Proposed Form Amendment

For the reasons set out in the preamble, the Commission is proposing to amend chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for Part 259 continues to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t.

Subpart D—Forms for Periodic Accounting Reports

Note: Form U–13–60 does not and the amendments will not appear in the Code of Federal Regulations.

* * * * *

2. Form U–13–60 (referenced in § 259.313) is amended by adding instruction 12 to Instructions For Use Of Form U–13–60 to read as follows:

FORM U–13–60

* * * * *

Instructions for Use of Form U–13–60

* * * * *

12. *Account Numbers*—The accompanying schedules shall be prepared reflecting the Commission's Uniform System of Accounts, as modified. The service company shall present the schedules on an "as billed" basis and so designate. The accompanying schedules include certain accounts which may not be applicable, depending on the presentation basis designated.

* * * * *

[17] See 18 CFR 101, 201; 17 CFR 256 (the FERC System of Accounts and the Uniform System of Accounts, respectively).

[18] *See, e.g.*, Schedule XVII (Departmental Analysis of Salaries), Schedule XVIII (Outside Services Employed), Schedule XIX (Employee Pensions and Benefits), and Schedule XXI (Rents).

3. Form U–13–60 (referenced in § 259.313) is amended by revising the "Listing of Schedules and Analysis of Accounts" to read as follows:

FORM U–13–60

* * * * *

LISTING OF SCHEDULES

Description of schedules	Schedule No.	Page No.
COMPARATIVE BALANCE SHEET	Schedule I	
Service company property	Schedule II	
Accumulated provision for depreciation and amortization of service company property	Schedule III	
Investments	Schedule IV	
Accounts receivable	Schedule V	
Fuel stock expenses undistributed	Schedule VI	
Stores expense undistributed	Schedule VII	
Miscellaneous current and accrued assets	Schedule VIII	
Miscellaneous deferred debits	Schedule IX	
Research, development, or demonstration expenditures	Schedule X	
Proprietary capital	Schedule XI	
Long-term debt	Schedule XII	
Current and accrued liabilities	Schedule XIII	
COMPARATIVE INCOME STATEMENT	Schedule XIV	
Analysis of billing—associate companies	Schedule 457	
Analysis of billing—nonassociate companies	Schedule 458	
Analysis of charges for service—associate and nonassociate companies	Schedule XV	
Schedule of expense distribution by department or service function	Schedule XVI	
Departmental analysis of salaries	Schedule XVIII	
Outside services employed	Schedule XVIII	
Employee pensions and benefits	Schedule XIX	
Other Administrative & General expenses	Schedule XX	
Rents	Schedule XXI	
Other Deductions	Schedule XXII	
Miscellaneous Income or Loss	Schedule XXIII	
Interest Expense	Schedule XXIV	
Notes to Financial Statements	Schedule XXV	

LISTING OF INSTRUCTIONAL FILING REQUIREMENTS

Description of reports or statements	Page No.
Organization Chart Methods of Allocation	
Annual Statement of Compensation for Use of Capital Billed	

* * * * *

4. Schedule I, Comparative Balance Sheet, of Form U–13–60 (referenced in § 259.313) is amended by revising the heading; by adding "101.1 Property Under Capital Leases (Schedule II)" under the heading "SERVICE COMPANY PROPERTY"; by adding "128 Other Special Funds (Schedule IV)" under the heading "INVESTMENTS"; by revising "141 Notes receivable" and "143 Accounts receivable" under the heading "CURRENT AND ACCRUED ASSETS" to read "141 Notes receivable from associate companies" and "143 Accounts receivable (Schedule V)"; by adding "243 Obligations under capital lease—current" under the heading "CURRENT AND ACCRUED LIABILITIES"; revising the heading "DEFERRED CREDITS" to read "DEFERRED CREDITS & OTHER NON-CURRENT LIABILITIES"; and adding under the heading "227 Obligations under capital lease—noncurrent" and "228.3 Accumulated provision for pension and benefits," to read as follows:

FORM U–13–60

* * * * *

Schedule I—Comparative Balance Sheet

Give balance sheet of Company as of December 31 of the current and prior year

* * * * *

Service Company Property

* * * * *

101. 1 Property Under Capital Leases (Schedule II)

* * * * *

Investments

* * * * *

128 Other Special Funds (Schedule IV)

* * * * *

Current and Accrued Assets

* * * * *

141 Notes receivable from associate companies

143 Accounts receivable (Schedule V)

* * * * *

Current and Accrued Liabilities

* * * * *

243 Obligations under capital lease—current

* * * * *

Deferred Credits & Other Non-Current Liabilities

227 Obligations under capital lease—non-current

228.3 Accumulated provision for pension and benefits

* * * * *

5. Schedule II, Service Company Property, of Form U–13–60 (referenced in § 259.313) is amended by revising the heading; adding "Account 101.1—Property Under Capital Leases [4]" under "SUB-TOTAL"; and redesignating note [4] as note [5], to read as follows:

FORM U–13–60

* * * * *

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Annual Report of

For the Year Ended December 31, 199X

(In Thousands of Dollars)

Schedule II

Service Company Property

* * * * *

Account

* * * * *

Sub-Total

101.1 Property Under Capital Leases [4]
107 Construction Work In Progress [5]

* * * * *

[4] Describe Property Under Capital Leases.
[5] Describe Construction Work in Progress.

6. Schedule IV, Investments, of Form U–13–60 (referenced in § 259.313) is amended by revising the instructions, by adding "ACCOUNT 128—OTHER SPECIAL FUNDS" and by adding "TOTAL" under each account, to read as follows:

FORM U–13–60

* * * * *

Schedule IV—Investments

Instructions: Complete the following schedule concerning investments.

For Account 123, "Investment in Associate Companies," describe investments in associate companies.

Under Account 124, "Other Investments" and Account 128, "Other Special Funds" state each investment separately, with description, including, the name of issuing company, number of shares or principal amount, etc.

Under Account 136, "Temporary Cash Investments," list each investment separately.

* * * * *

Account 123—Investment in Associate Companies
Total
Account 124—Other Investments
Total
Account 128—Other Special Funds
Total
Account 136—Temporary Cash Investments
Total

7. Schedule V, Accounts Receivable From Associate Companies, of Form U–13–60 (referenced in § 259.313) is revised to read as follows:

FORM U–13–60

* * * * *

Annual Report of

For the Year Ended December 31, 199X

(In Thousands of Dollars)

Schedule V—Accounts Receivable

Instructions: Complete the following schedule listing total accounts receivable and aging of amounts outstanding over 90 days from the due date and list separately those amounts over $25,000.

	Balance at beginning of year	Balance at close of year
Description		
Account 143—Accounts Receivable		

ACCOUNTS RECEIVABLE OUTSTANDING OVER 90 DAYS

Entity	Amount
Total	

Instructions: Complete the following schedule listing accounts receivable from each associate company. Where the service company has provided accommodation or convenience payments for associate companies, a separate listing of total payments for each associate company by subaccount should be provided. Provide an aging of all amounts outstanding 60–90 days and over 90 days from the due date in the space provided below.

	Balance at beginning of year	Balance at close of year
Description		
Account 146—Accounts Receivable From Associate Companies		
Total		

Analysis of convenience or accommodation payments	Total payments
Total payments	

AGING OF ACCOUNTS RECEIVABLE

Entity	Days outstanding		
	60–90	Over 90	Total
Total			

8. Schedule XIII, Current and Accrued Liabilities, of Form U–13–60 (referenced in § 259.313) is amended by revising the instructions to read as follows:

FORM U–13–60

* * * * *

Schedule XIII—Current and Accrued Liabilities

* * * * *

Instructions: Provide balance of notes and accounts payable to each associate company and provide a summary of short-term debt. Describe and provide the amount of miscellaneous current and accrued liabilities. Items less than $10,000 may be grouped, showing the number of items in each group.

* * * * *

9. Schedule XIV, Notes to Financial Statements, of Form U–13–60 (referenced in § 259.313) is removed and Schedule XV, Statement of Income, is redesignated as Schednle XIV; Schedule XVI, Analysis of Charges for Service—Associate and Nonassociate Companies, is redesignated as Schedule XV; and Schedule XVII, Expense Distribution by Department or Service Function, is redesignated as Schedule XVI. Newly redesignated Schedule XIV is revised to read as follows (the separate reporting of Account 457 "Analysis of Billing—Associate Companies" and Account 458 "Analysis of Billing—Nonassociate Companies" is unchanged):

FORM U–13–60

Annual Report of

For the Year Ended December 31, 199X

(In Thousands of Dollars)

Schedule XIV—Statement of Income

Instructions: Provide Income Statement of the Company for the year ended December 31, for the current year and the prior year. Indicate whether the amounts shown have been "billed to" the account ranges listed on the financial statements of associate companies.

Account Range	Description	Reference Column	Current Year	Prior Year
	Income.			
457	Services Rendered to Associate Companies			
458	Services Rendered to Nonassociated Companies			
421	Miscellaneous Income or Loss	XXIII		
419	Interest Income			
	Total Income			
	EXPENSES–Income Statement:			
500–557	Power Production			
560–598	Transmission & Distribution Expenses			
901–905	Customer Accounts			
906–917	Customer Service & Information			
920	Administrative & General Salaries			
921	Office Supplies & Expenses			
922	Administrative Expenses Transferred—Credit			
923	Outside Services Employed	XVIII		
924	Property Insurance			
925	Injuries & Damages			
926	Employee Pension & Benefits	XIX		
927–935	Other Administrative & General Expenses	XX		
403–407	Depreciation & Amortization			
408	Taxes, Other Than Income			
409–411.4	Income Taxes			
425.1–426.5	Other Deductions	XXII		
427–431	Interest Expense	XXIV		
	Total Expenses—Income Statement			
	EXPENSES—Balance Sheet:			
107	Construction Work in Progress			
108–115	Accumulated Provision for Depreciation			
163	Stores Expenses Undistributed			
174	Miscellaneous Current & Accrued Assets			
183	Preliminary Engineering			
186	Miscellaneous Deferred Debits			
188	Research & Development			
	Other			
	Total Expenses—Balance Sheet			
	NET INCOME OR (LOSS)			

10. Newly designated Schedule XV of Form U–13–60 (referenced in § 259.313) is amended by revising the heading, adding a new instruction, revising the heading "Description of Items" to read "Description of Expenses," and revising the accounts below the description, to read as follows:

FORM U–13–60

Schedule XV—Analysis of Charges—Direct vs. Indirect

Instruction: Provide a breakdown of "Direct Costs" vs. "Indirect Costs" for charges appearing on the Income Statement for the current year. Indicate whether amounts shown have been "billed to" the account ranges listed.

Account range	Description of expenses		
	EXPENSES—Income Statement:		
500–557	Power Production		
560–598	Transmission & Distribution Expenses		
901–905	Customer Accounts		
906–917	Customer Service & Information		
920	Administrative & General Salaries		

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Account range	Description of expenses		
921	Office Supplies & Expenses		
922	Administrative Expenses Transferred-Credit		
923	Outside Services Employed		
924	Property Insurance		
925	Injuries & Damages		
926	Employee Pension & Benefits		
927–935	Other Administrative & General Expenses		
403–407	Depreciation & Amortization		
408	Taxes, Other Than Income		
409–411.4	Income Taxes		
426.1–426.5	Other Deductions		
427–431	Interest Expense		
	Total Expenses—Income Statement		
	EXPENSES—Balance Sheet:		
107	Construction Work in Progress		
108–115	Accumulated Provision for Depreciation		
163	Stores Expenses Undistributed		
174	Miscellaneous Current & Accrued Assets		
183	Preliminary Engineering		
186	Miscellaneous Deferred Debits		
188	Research & Development		
188	Other		
	Total Expenses Balance Sheet.		

Net Expenses

11. Newly designated Schedule XVI of Form U–13–60 (referenced in § 259.313) is amended by revising the instruction, revising the heading "Description of items" to read "Description of Expenses", and revising the accounts below the description, to read as follows:

FORM U–13–60

* * * * * *

Schedule XVI—Expense Distribution by Department or Service Function

Instructions: Provide distribution of expenses by department for the year ended December 31, for the current year and the prior year. Indicate whether amounts shown have been "billed to" the financial statements of associate companies. (See Instructions 01–3 General Structure of Accounting System: Uniform System of Accounts.)

Account range	Description of expenses
	Expenses—Income Statement.
500–557	Power Production.
560–598	Transmission & Distribution Expenses.
901–905	Customer Accounts.
906–917	Customer Service & Information.
920	Administrative & General Salaries.
921	Office Supplies & Expenses.
922	Administrative Expenses Transferred—Credit.
923	Outside Services Employed.
924	Property Insurance.
925	Injuries & Damages.
926	Employee Pension & Benefits.
927–935	Other Administrative & General Expenses.
403–407	Depreciation & Amortization.
408	Taxes, Other Than Income.
409–411.4	Income Taxes.
426.1–426.5	Other Deductions.
427–431	Interest Expense.
	Total Expenses Income Statement.
	Expenses—Balance Sheet:
107	Construction Work in Progress.
108–115	Accumulated Provision for Depreciation.
163	Stores Expenses Undistributed.
174	Miscellaneous Current & Accrued Assets.
183	Preliminary Engineering.
186	Miscellaneous Deferred Debits.
188	Research & Development.
	Other.
	Total Expenses Balance Sheet.
	Total expenses.

12. Form U–13–60 (referenced in § 259.313) is amended by redesignating Account 920—Departmental Analysis of Salaries as Schedule XVII, Departmental Analysis of Salaries (currently, Account 920 is separately reported in newly designated Schedule XVI), and by adding a note at the bottom of the Schedule to read as follows:

FORM U–13–60

* * * * * *

Schedule XVII—Departmental Analysis of Salaries

Note.—These amounts include charges to all accounts (i.e. Income Statement and Balance Sheet accounts). Therefore the total salaries expense is included on various lines in Schedule XIV if the income statement is presented on an "as billed" basis.

13. Form U–13–60 (referenced in § 259.313) is amended by redesignating Account 923—Outside Services Employed as Schedule XVIII, Outside Services Employed (currently, Account 923 is separately reported in newly designated Schedule XVI), and by adding a new heading entitled "Nature of Service" and a note, to read as follows:

FORM U–13–60

* * * * * *

Schedule XVIII—Outside Services Employed

* * * * * *

From whom purchased	Nature of service	Relationship "A"—Assoc. "NA"—Nonassoc.	Amount
	Auditing Services:		
	Total Auditing Services		
	Legal Services:		
	Total Legal Services		
	Other Outside Services:		
	Total Other Services		
	Total Outside Services		

NOTE.—These amounts include charges to all accounts (i.e. Income Statement and Balance Sheet accounts). Therefore the total outside services expense is included on various lines in Schedule XIV if income statement is presented on an "as billed" basis.

14. Form U–13–60 (referenced in § 259.313) is amended by redesignating Account 926—Employee Pensions and Benefits as Schedule XIX—Employee Pensions and Benefits, to read as follows (Currently, Account 926 is separately reported in newly designated Schedule XVI):

* * * * * *

Schedule XIX—Employee Pensions and Benefits

* * * * * *

15. Form U–13–60 (referenced in § 259.313) is amended by redesignating Account 930.1—General Advertising Expenses and Account 930.2—Miscellaneous General Expenses as Schedule XX, Other Administrative & General Expenses, to read as follows (currently, Account 930.1 and Account 930.2 are separately reported in newly designated Schedule XVI):

FORM U–13–60

* * * * * *

Schedule XX—Other Administrative & General Expenses

Instructions: Provide a detail listing of the amounts included in Account Range 927–935, "Other Administrative & General Expenses", classifying each amount by account as defined in the account definition for each of the accounts within the account range.

Account	Description	Amount
Total		

* * * * * *

16. Form U–13–60 (referenced in § 259.313) is amended by redesignating Account 931—Rents as Schedule XXI—Rents (currently, Account 931 is separately reported in newly designated Schedule XVI) and by adding a note, to read as follows:

FORM U–13–60

* * * * * *

Schedule XXI—Rents

* * * * * *

Note.—These amounts include charges to all accounts (i.e. Income Statement and Balance Sheet accounts). Therefore the total rent expense is included on various lines in Schedule XIV if the income statement is presented on an "as billed" basis.

* * * * * *

17. Account 408—Taxes Other Than Income Taxes of Form U–13–60 (referenced in § 259.313) is removed (currently, Account 408 is separately reported in newly designated Schedule XVI).

18. Form U–13–60 (referenced in § 259.313) is amended by redesignating Account 426.1—Donations and Account 426.5—Other Deductions as Schedule XXII, Other Deductions, to read as follows (currently, Account 426.1 and Account 426.5 are separately reported in newly designated Schedule XVI):

FORM U–13–60

* * * * * *

Schedule XXII—Other Deductions

INSTRUCTIONS: Provide a listing of the amounts included in Account Range 426.1–426.5, "Other Deductions" by account. Provide a detailed listing to account 426.5 if the total account balance exceeds $25,000.

Account	*Description*	*Amount*
Total		$

Account 426.5 Detail:

Description	*Amount*
Total	

19. Form U–13–60 (referenced in § 259.313) is amended by removing Schedule XVIII, Notes to Statement of Income, and adding new Schedules XXIII, Miscellaneous Income or Loss, Schedule XXIV, Interest Expense, and Schedule XXV, Notes to Financial Statements, to read as follows:

FORM U–13–60

* * * * * *

Schedule XXIII—Miscellaneous Income or Loss

Instructions: Provide a detailed listing of the amounts included in Account 421, "Miscellaneous Income or Loss".

Description	*Amount*
Total	$

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Schedule XXIV—Interest Expense

INSTRUCTIONS: Provide a detail of interest expense by note and associate company as reported on Schedules XII and XIII. Segregate by Long-Term Debt (including current maturities) and Short-Term Debt.

	Current year	Prior year
Interest on Long-Term Debt Debt (Incl. Current Maturities):		
Total		
Interest on Short-Term Debt:		
Total		
Total Interest Expense		

Schedule XXV—Notes To Financial Statements

Instructions: The space below is provided for important notes regarding the balance sheet and income statement, or any account thereof. Furnish particulars as to any significant items incurred during the year or existing at the end of the year. Notes relating to financial statements shown elsewhere in this report may be indicated here by reference.

By the Commission.

September 13, 1994.

Margaret H. McFarland,

Deputy Secretary.

Note. This attachment to the preamble will not appear in the Code of Federal Regulations.

Regulatory Flexibility Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that proposed amendment to Form U–13–60 under the Public Utility Holding Company Act of 1935, as amended (15 U.S.C. 79 *et seq.*), concerning the annual report filed by service company subsidiaries of registered holding companies will not, if promulgated, have a significant impact on a substantial number of small businesses. The reason for this certification is that it does not appear that any small businesses would be affected by the proposed form amendment.

Dated: September 12, 1994

Arthur Levitt,

Chairman.

[FR Doc. 94–23164 Filed 9–19–94; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of a second request regarding required amendments to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Wyoming is requesting OSM to extend the required amendments' time frames at 30 CFR 950.16 (bb) through (gg), that concern shrub density reclamation standards.

This document set forth the times and locations that the Wyoming Program and the proposed extension request to that program are available for public inspection and the comment period during which interested persons may submit written comments on the proposed extension request.

DATES: Written comments must be received by 4:00 p.m., m.d.t. October 5, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to Guy V. Padgett at the address listed below.

Copies of the Wyoming program, the proposed extension request, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy V. Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement; 100 East "B" Street, Rm. 2128; Casper, Wyoming 82601–1918. Telephone: (307) 261–5776.

Dennis Hemmer, Director, Wyoming Department of Environmental Quality; Herschler Bldg., Fourth Floor West; 122 West 25th Street; Cheyenne, Wyoming 82002. Telephone: (307) 777–7758.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett; Telephone (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.11, 950.12, 950.15, and 950.16.

II. Discussion of Proposed Extension

On February 28, 1994, Wyoming DEQ requested an extension of the time frames at 30 CFR 950.16 (bb) through (gg) to enter into a negotiated rule making process (Administrative Record No. WY–26–1). OSM announced the receipt of this request in the March 21, 1994, **Federal Register** (59 FR 13286), and sought public comment on whether the proposed extension request satisfied the applicable program approval criteria of 30 CFR 732.15.

Wyoming DEQ has now completed the negotiated rule making process, only to be notified by the State Attorney General's office that the proposed rule is in conflict with two sections of existing statutes (W.S. 35–11–402(b) and (c)) and

that conflict prohibits DEQ from promulgating the rules until the statutes are changed.

In view of this opinion, and on September 1, 1994, the State of Wyoming, Department of Environmental Quality (DEQ) submitted a second request to extend the time frames at 30 CFR 950.16(bb) through (gg), as codified in the January 24, 1994, **Federal Register** (59 FR 3521), in order to allow the State time to introduce new statutory changes to the Wyoming Legislature during the 1995 Legislative Session (Administrative Record No. WY–26–7). Wyoming DEQ has prepared the required modifications to the statutory language for submission to the Wyoming Legislature's Mines and Minerals Committee for sponsorship in a bill to be introduced during the next Legislative Session which begins in January 1995.

Wyoming is requesting an extension to November 1995. The State's request outlines a time line schedule from October 1994 to November 1995. The schedule identifies milestones such as: When the Mines and Minerals Committee received the proposed statutory changes from DEQ; submission of the proposed rule to the Land Quality Advisory Board; introduction to the Legislature for debate; approval by the Governor; required revisions to the rule based on Statutory changes; required 45 days comment period; Environmental Quality Council hearing; and, submittal of a formal State Program amendment to OSM in November 1995.

OSM is now considering Wyoming's request to further extend the time frames and is seeking public comments on whether the proposed extension can and should be granted.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed extension request satisfies the applicable program approval criteria of 30 CFR 732.15. If the extension request is deemed adequate, it will become part of the Wyoming program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 950

Intergovernmental relations. Surface mining. Underground mining.

Russell Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 94–23248 Filed 9–19–94; 8:45 am]

BILLING CODE 4310–05–M

LIBRARY OF CONGRESS

36 CFR Part 702

[Docket No. LOC 94–2]

Photographing the Interior and Exterior of Library of Congress Buildings and Other Library Facilities

AGENCY: Library of Congress.

ACTION: Proposed rules.

SUMMARY: The Library of Congress proposes to revise the conditions under which the interior and exterior of Library of Congress buildings may be filmed or photographed by groups such as news organizations and commercial or freelance film crews. This part will require all persons and groups, other than individuals who are photographing the exterior of the Library of Congress buildings for their own personal use, to obtain permission from the Library of Congress' Public Affairs Officer. This rule is being promulgated to protect archival records and donated historical materials maintained in all Library buildings; to enhance the safety of persons who use Library facilities, including researchers, exhibit patrons, and Government employees, and to prevent disruption both of the conduct of official business and of the timely provision of Library services to the general public.

DATES: Comments should be received on or before October 20, 1994.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Mail Code 1050, Washington, DC 20540. If delivered by hand, copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room LM–601, First and Independence Avenue, S.E., Washington, DC 20540–1050, (202) 707–6316.

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FOR FURTHER INFORMATION CONTACT: Johnnie M. Barksdale, Regulations Officer, Office of the General Counsel, Library of Congress, Washington, DC 20540–1050. Telephone No. (202) 707–1593.

SUPPLEMENTARY INFORMATION: Under 2 U.S.C. 136 and 167f, the Librarian of Congress is authorized to make rules and regulations for the government of the Library and may prescribe such regulations as may be deemed necessary for the adequate protection of the Library of Congress buildings and grounds and of persons and property therein, and for the maintenance of suitable order and decorum within the Library of Congress buildings and grounds. The Library of Congress proposes to issue this revised part to define the conditions under which filming and photographing of any Library of Congress building or facility is permissible by groups such as news organizations and commercial or freelance film crews. It also defines the Library's restrictions on access for commercial ventures and limitations on filmmakers and photographers.

List of Subjects in 36 CFR Part 702

Federal buildings and facilities, Libraries.

Proposed Regulation

In consideration of the foregoing the Library of Congress proposes to amend 36 CFR Part 702 as follows:

PART 702—CONDUCT ON LIBRARY PREMISES

1. The authority citation for 36 CFR part 702 is revised to read as follows:

Authority: Sec. 1, 29 Stat. 544, 546; 2 U.S.C. 136 and 167f.

2. Section 702.5 is revised to read as follows:

§ 702.5 Photographing the interior and Exterior of Library of Congress Buildings and other Library facilities.

(a) *Purpose.*

This part states the Library's policy and conditions under which the interiors and exteriors of Library buildings as well as other Library facilities may be photographed by groups such as news organizations and commercial or freelance film crews.

(b) *Definitions.*

(1) *Photograph* or *photographing* means any method, including photography, filming, videotaping, or any such process of image reproduction.

(2) *Library of Congress buildings* means those buildings on Capitol Hill which constitute the main Library complex as well as other facilities assigned to the Library.

(c) *General policy.*

(1) The Public Affairs Officer, or his/her designee, is authorized to grant permission to photograph Library buildings.

(2) Those wishing to photograph a Library building shall request in writing permission from the Public Affairs Officer at least one week before the proposed photographic activity, except in extraordinary circumstances when the Public Affairs Officer makes an exception. The Public Affairs Officer may grant permission either in writing or by telephone.

(3) In those instances when the Public Affairs Officer has granted permission, he or she shall notify the Protective Services Officer of the proposed activity.

(d) *Conditions and restrictions.*

(1) Photographing shall be permitted only for the purpose of providing background to stories about either the Library or a patron who has made use of the Library's holdings. Press interviews will not be permitted unless either Library or other government employees are being interviewed in connection with official business.

(2) Permission to photograph shall not be granted to persons or groups wishing to promote commercial enterprises or commodities or to persons or groups involved with political, sectarian, or similar activities.

(3) Photographing may not impede the ingress or egress of visitors or staff to any Library building.

(4) Permission to photograph the exterior of a Library building does not constitute approval or sponsorship by the Library of the persons or groups involved, of their activities or views, or of the uses to which the works depicting a Library building are put.

(5) Permission to photograph does not release the persons or groups involved from liability for injuries to persons or property that result from their activities on Library property.

(6) Persons and groups must be accompanied at all times by a member of the Public Affairs Office or Library staff when in any Library building.

(7) Interview with Library staff and researchers shall take place only in areas designated by Public Affairs Office or Library staff.

(8) Approved photography sessions shall normally be limited to two hours.

(9) The policy set out herein does not apply to individuals who are photographing the exterior of Library of Congress buildings for their own personal purposes and do not interfere with ingress or egress of visitors or staff.

Dated: September 14, 1994.

James H. Billington,

The Librarian of Congress.

[FR Doc. 94–23232 Filed 9–19–94; 8:45 am]

BILLING CODE 1410–04–P–M

POSTAL SERVICE

39 CFR Part 111

Revisions to Standards for Palletization

AGENCY: Postal Service.

ACTION: Proposed rule; notice of public meeting.

SUMMARY: In response to requests from postal customers, the Postal Service has decided to hold a public meeting to facilitate the receipt of comments regarding a proposal to implement revised Domestic Mail Manual (DMM) standards prohibiting mailer use of "courtesy" pallets (pallets that do not meet DMM standards).

DATES: September 29, 1994, 9 a.m. to 12 p.m.

MEETING ADDRESS: Sheraton Washington Hotel, Maryland A Room, 2660 Woodley Road at Connecticut Ave., NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Cheryl Beller, (202) 268–5166, or Robert Sheehan, (202) 268–4305.

SUPPLEMENTARY INFORMATION: On August 18, 1994, the Postal Service published proposed rule changes in the **Federal Register** (59 FR 42536–42540) to amend Domestic Mail Manual (DMM) standards concerning the preparation of mail on pallets. See also the notice published in the proposed rule section of the **Federal Register** on September 19, 1994. That notice extended the period for comment on this proposal to November 3, 1994.

The proposed revisions are intended to establish consistent preparation standards for all classes of mail that result in the lowest combined costs of handling palletized mail for the Postal Service and its customers as well as to facilitate consistent service for palletized mailings. Numerous customers have indicated that implementation of the provisions prohibiting courtesy pallets would have catastrophic implications for their businesses and have requested an opportunity to present their views and concerns in person regarding the provisions in the proposed rule change pertaining to courtesy pallets.

The Postal Service generally does not hold, nor does it generally find a need for, public meetings concerning proposed rules. Nevertheless, in this limited instance, the Postal Service has determined to grant the request for a public meeting. Interested parties may, of course, submit written comments in accordance with the instructions in the **Federal Register** notice. Comments submitted at the meeting may be written or oral. Oral comments will be transcribed for future reference and will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 8430 at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC 20260–6808. Individuals wishing to present comments are asked to limit their oral presentations to 10 minutes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–23342 Filed 9–16–94; 1:23 pm]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH12–1–6318; A–1–FRL–5074–9]

Clean Air Act Limited Approval/Limited Disapproval and Promulgation of Emission Statement Implementation Plans for New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval/limited disapproval of a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision establishes an emission statement program for stationary sources throughout the State. New Hampshire's submittal includes amendments to Chapter Env-A 900 (Parts 901–903). This action proposes limited approval of New Hampshire's Chapter Env-A 900, "Owner and Operator" for the purpose of strengthening the New Hampshire SIP. In addition, this action proposes limited disapproval of New Hampshire's Chapter Env-A 900 (Parts 901–903) since the regulation fails to meet all requirements of the Clean Air Act (CAA). This action is being taken pursuant to section 110 of the CAA. Public comments are solicited on the requested SIP revisions and on EPA's proposal of a limited approval/limited disapproval.

DATES: Comments received in writing by October 20, 1994 will be considered in the development of USEPA's final rule action.

ADDRESSES: Comments should be mailed to Linda M. Murphy, Director, Air, Pesticides, and Toxics Management Division, JFK Federal Building, Boston, MA 02203.

Copies of the State's submittal and other information are available for inspection during normal business hours, by appointment, at the following location: Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA 02203. In addition, New Hampshire's submittal is available at the Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Daria L. Dilaj, U.S. Environmental Protection Agency, Region I, JFK Federal Building (APS), Boston, MA 02203. Phone: (617) 565–3249.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning and State Implementation Plan (SIP) requirements for ozone nonattainment and transport areas are set out in subparts I and II of part D of title I of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (CAA or "the Act"). EPA has published a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under title I of the CAA, including those State submittals for ozone transport areas within the States (see 57 FR 13498 (April 16, 1992) ("SIP: General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990"), 57 FR 18070 (April 28, 1992) ("Appendices to the General Preamble"), and 57 FR 55620 (November 25, 1992) ("SIP: NOx Supplement to the General Preamble")). EPA has also issued a draft guidance document describing the requirements for the emission statement programs discussed in this Notice entitled "Guidance on the Implementation of an Emission Statement Program" (July, 1992). The Agency is also conducting a rulemaking process to modify part 40 of the CFR to reflect the requirements of the emission statement program.

II. Analysis of State Submission

A. Procedural Background

The Act requires each state to observe certain procedural requirements in developing its SIP, of which the emission statement program will become a part. Section 110(l)(2) of the Act provides that each implementation plan submitted by a State under the CAA must be adopted by such State after reasonable notice and public hearing. EPA must at the outset determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991).

The State of New Hampshire held a public hearing on June 18, 1992. Following the public hearing, the plan was adopted by the State on November 13, 1992 and submitted to EPA on December 21, 1992 as a proposed revision to the SIP. The SIP revision was reviewed by EPA and deemed complete on February 19, 1993.

B. Components of Emission Statement Program

There are several key general and specific components of an acceptable emission statement program. Specifically, the State must submit a revision to its SIP and the emission statement program must meet the minimum requirements for reporting by the sources and the State. In general, the program must include, at a minimum, provisions for applicability, definitions, compliance, and the specific source requirements detailed below.

1. SIP Revision Submission

EPA requires States to submit their SIP revisions within 2 years of enactment of the Clean Air Act Amendments of 1990 (CAAA) (November 15, 1990). New Hampshire submitted its SIP revision on January 12, 1993.

2. Reporting Requirements for State

In addition to the program elements applying to sources, the SIP should include a provision that requires States to provide EPA the identifying information for the sources covered by the emission statement program, the value for rule effectiveness utilized by the State in its SIP calculations, the source data elements entered into AIRS, and quarterly emission statement status reports. The minimum source identification information should include the AIRS code, the AFS point number (ID), the AFS segment number (ID), and the Source Category Code (SCC) and descriptions for each segment. In addition, States should supply to EPA the current rule effectiveness (RE) factors at the SCC pollutant level, if applicable, and the RE method codes. The emission statement data submittal to AIRS should include

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all data obtained from the source and the State. These source-supplied data elements include source identification information (name, physical location, mailing address of the facility, latitude and longitude, and 4-digit Standard Industrial Classification (SIC) code(s)), operating schedule information (percentage annual throughput, days per week on the normal operating schedule, hours per day during the normal operating schedule, and hours per year on the normal operating schedule), process rate data (annual process rate (annual throughput) and peak ozone season daily process rate), control equipment information (current primary and secondary control equipment identification codes and current combined control equipment efficiency (%)), and emissions information (estimated actual VOC and NOx emissions at the segment level (in tons per year for an annual emission rate and pounds per day for a typical ozone season day), estimated emissions method code, calendar year for the emissions, and emission factor (if used)). EPA recommends that the States electronically submit emission statement data into the AIRS database no later than July 1 of each year, commencing in 1993. The quarterly reports should show the total number of facilities that met the State's emission statements program requirements and the number of facilities that failed to meet the requirements. Quarterly reports should be submitted commencing no later than July 1, 1993.

New Hampshire has not committed to submitting emission statement data to EPA by July 1 of each year. EPA will negotiate with New Hampshire to include a submittal date and requirement for quarterly emission statement reports in future 105 grants.

New Hampshire has not required source identification information, operating schedule information, control equipment information, process data information, and annual and typical ozone season day emissions from all potentially subject source categories. New Hampshire only requires source identification information and operating schedule information from surface coating and printing sources under Env-A 901.04(c), gasoline storage and degreasing facilities under Env-A 901.05(b), and fuel combustion and incinerator sources under Env-A 901.06(c)(1) and 901.06(c)(3). Under Env-A 901.04(h), New Hampshire requires all facilities with add-on VOC control equipment to keep records of control equipment information, but not to report this information. Facilities with add-on NOx control equipment are required to record this information under Env-A 901.06(c)(6). New Hampshire only requires process data information from surface coating and printing sources under Env-A 901.04(c)(5) and combustion sources under Env-A 901.06(c)(4). Recordkeeping, but not reporting, is required for gasoline storage sources under Env-A 901.04(e)(1) and degreasing facilities under Env-A 901.04(g)(2). New Hampshire only requires annual and typical ozone season day emissions from surface coating and printing sources under Env-A 901.04(c)(7), and combustion sources under Env-A 901.06(c)(5). This is also required from degreasing sources under Env-A 901.04(g)(4), however, sources are not required to report this information, only to keep records. No emissions reporting requirements were made for VOC/gasoline storage or for other types of sources.

3. Sources Covered

Section 182(a)(3)(B) requires that States with areas designated as nonattainment for ozone require emission statement data from all sources of VOC or NOx in the nonattainment areas. This requirement applies to all classified ozone nonattainment areas, regardless of the classification (Marginal, Moderate, etc.). Section 184(b)(2) of the Act extends the requirements for major stationary sources in moderate ozone nonattainment areas to sources in the ozone transport region. Section 182(f) extends the requirements for major stationary sources of VOC in ozone transport regions to major sources of NOx. The emission statement requirement covers sources in attainment areas and nonattainment areas which are not classified within the ozone region which emit, or have the potential to emit, 100 tpy or more of NOx or 50 tpy or more of VOC.

New Hampshire is located in the ozone transport region. Emission statement regulations must apply State-wide, and cover all stationary sources which emit or have the potential to emit 50 tpy of VOC or 100 tpy of NOx. In addition, New Hampshire has three classified ozone nonattainment areas and are therefore subject to the more stringent source threshold requirement of section 182(a)(3)(B). The area which includes all of Merrimack County, part of Hillsborough County, and part of Rockingham County, is classified Marginal. The second nonattainment area includes all of Strafford County and part of Rockingham County, and is classified as Serious. Finally, a portion of New Hampshire is in the Boston-Lawrence-Salem Consolidated Metropolitan Statistical Area (CMSA), which is also classified as Serious. This includes a range of cities and towns from Nashua to Exeter in portions of Hillsborough and Rockingham Counties. For these classified ozone nonattainment areas, the States' emission statement regulations must cover all sources which emit VOC or NOx.

For classified ozone nonattainment areas, the States may waive, with EPA approval, the requirement for an emission statement for classes or categories of sources with less than 25 tons per year of actual plant-wide NOx or VOC emissions in nonattainment areas if the class or category is included in the base year and periodic inventories and emissions are calculated using emission factors established by EPA (such as those found in EPA publication AP–42) or other methods acceptable to EPA. New Hampshire does not waive the emission statement requirement for sources emitting less than 25 tons per year of NOx or VOC emissions. New Hampshire requires certain sources that have potential emissions of less than 25 tons per year to supply their data and information required for calendar year 1992 by April 15, 1993. In addition, these sources are required to submit emission statements for every third calendar year, beginning with 1995, by April 15 of the following year. All NOx emitting sources that are required to submit emission statement information under EPA's guidance are covered in New Hampshire's regulation. Under Env-A 901.07, fuel burning devices, as well as miscellaneous sources having theoretical potential NOx emissions of at least 25 tpy, are required to submit information on an annual basis.

However, New Hampshire's regulation does not address all VOC sources recommended in EPA's guidance. Since New Hampshire is located in the ozone transport region, emission statement regulations must apply State-wide and cover all sources which emit or have the potential to emit 50 tpy of VOC. In addition, New Hampshire has three classified ozone nonattainment areas and are therefore subject to the more stringent source threshold requirement of section 182(a)(3)(B). These classified nonattainment areas must require emission statement data from all sources of VOC in the nonattainment areas unless New Hampshire waives, with EPA approval, the requirement for an emission statement for classes or categories of sources with less than 25 tons per year of actual plant-wide VOC emissions in nonattainment areas. In Env-A 901.05(d), emission statements are required to be submitted for sources which are subject to the recordkeeping requirements of Env-A 901.04 and the applicability criteria of Env-A 1204.03. The applicability criteria of Env-A 1204.03 cover sources subject to EPA's existing control technique guideline (CTG) documents and other miscellaneous sources that have the potential to emit more than 50 tpy of VOC. Env-A 901.04 covers the following sources: Any source required to be permitted under 603.02(g) (surface coating, metal cleaning, or printing); 601.02(h) (VOC storage tanks); 603.02(i) (gasoline terminal loading racks); or any other paragraph of 603.02 which pertains to VOC emitters, with the exception of sources exempted by Env-A 901.03(a)(4). Env-A 901.03(a)(4) excludes from recordkeeping requirements, those sources using No. 1 and No. 2 fuel oils, natural gas, or electrical energy. Under New Hampshire's rules, the requirements for emission statements do not apply to miscellaneous VOC source categories (i.e., non-CTG) unless those sources are covered by Env-A 603.02. Only non-CTG sources that are coating or printing sources subject to 603.02(g) are covered by New Hampshire's emission statement program.

In addition, the applicability criteria of Env-A 1204.03 only cover graphic arts printing, and non-CTG sources with potential VOC emissions greater than 50 tpy. Therefore, if certain non-CTG sources have actual VOC emissions greater than 25 tpy, but potential emissions less than 50 tpy, they would not be covered by New Hampshire's program.

Furthermore, New Hampshire's emission statement rule specifically excludes sources with VOC emissions resulting from combustion of No. 1 and No. 2 fuel oils, or natural gas. As a result, New Hampshire has not required all sources that emit or have the potential to emit more than 50 tpy of VOC to submit emission statements.

Additionally, if either VOC or NOx is emitted at or above the statutory reporting level, the other pollutant must be included in the emission statement, even if it is emitted at levels below the specified cutoffs. New Hampshire did not include this requirement in its rule. New Hampshire's rule was proposed in May 1992 and EPA provided comments in June 1992. However, this requirement was not clearly stated in EPA's emission statement guidance until July 1992. Therefore, New Hampshire was unaware of this requirement at the time the regulation was proposed.

4. Reporting Requirements for Sources

Sources covered by the State emission statement program should submit, at a minimum, the data elements described under section II.B.2 of this document.

The emission statement submitted by the source should contain a certification that the information is accurate to the best knowledge of the individual certifying the statement. EPA recommends that the State program require the submission of the data from the sources no later than April 15 of each year.

Env-A 901.05(d)(1) and 901.07(b)(1) require sources subject to the emission statement requirement to submit data for the calendar year 1992 by April 15, 1993. Furthermore, these sections require that information for each subsequent calendar year be submitted by April 15 of the following year.

New Hampshire does require a certification of data accuracy under Env-A 901.04(b) and 901.06(b), however, this certification is not required to accompany the emission statement forms. In a June 24, 1992 comment letter, EPA commented "the certificate of data accuracy shall state, at a minimum, that the records required by Env-A and maintained at the facility are true and accurate. Also, the certificate of data accuracy must be submitted with each emission statement." New Hampshire's rule only requires that the certification be kept on the premises.

5. Reporting Forms

Although EPA has developed a proposed format for the emission statement reporting process in its guidance document, the Act allows States to develop their own format for emission statement reporting. New Hampshire has not specified a format in which facilities are to submit data.

III. Proposed Action

Because of the above deficiencies, EPA cannot grant approval of New Hampshire's rule under section 110(k)(3) and part D. EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of Chapter Env-A 900 "Owner or Operator Obligations" (Parts 901–903) under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of this rule because it does not fully meet section 182(a)(3)(B) of part D of the Act. As provided under section 179(a) of the Act, the State will have up to 18 months after a final SIP disapproval to correct the deficiencies that are the subject of the disapproval before EPA is required to impose one of the two sanctions set forth in section 179(b) of the Act: either highway sanctions or new source review offsets. If the State has not corrected its deficiencies within 6 months after imposition of the first sanction, EPA must impose the second sanction. Any sanction EPA imposes must remain in place until EPA determines that the State has met the 1990 Amendments requirements. Note also that any final rulemaking disapproving the State's submission will trigger the requirement for EPA to impose a Federal implementation plan within two years of disapproval as provided under section 110(c)(1) of the Act.

IV. Request for Public Comments

Public comments are solicited on the requested SIP revision and on EPA's proposal of a limited approval/limited disapproval. Public comments received by October 20, 1994 will be considered in the development of USEPA's final rulemaking action.

V. Administrative Requirements

A. Executive Order (EO) 12866

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989. 54 FR 2214–2225. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions, 54 FR 2222 from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government

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entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Oxides of nitrogen, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q

Dated: September 6, 1994.

John P. DeVillars,

Acting Regional Administrator, Region I.

[FR Doc. 94–23241 Filed 9–19–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 60

[AD–FRL–5068–5]

Standards of Performance for New Stationary Sources: Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The EPA is proposing a new subpart Eb to regulate emissions from new municipal waste combustor (MWC) units for which construction, modification, or reconstruction began after September 20, 1994.

Today's proposal would implement sections 111 and 129 of the Clean Air Act (Act). The proposed rule would apply to new MWC units at facilities with aggregate capacities to combust greater than 35 megagrams per day (Mg/day; a megagram is a metric ton, and one megagram is equal to 2,204 pounds or about 1.1 short tons) of municipal solid waste (MSW) and would require sources to achieve emission limits reflecting the maximum degree of reduction in emissions of air pollutants that the Administrator determines is achievable, taking into consideration the cost of achieving such emission reduction, and any non-air-quality health and environmental impacts and energy requirements. The proposed rule establishes emission limits for MWC acid gases (sulfur dioxide (SO_2) and hydrogen chloride (HCl)), MWC metals (particulate matter (PM), opacity, cadmium (Cd), lead (Pb), and mercury (Hg)), MWC organics (dioxins/furans), nitrogen oxides (NO_x), and MWC fugitive fly ash/bottom ash. The proposed rule would also establish standards for MWC operating practices (carbon monoxide (CO), load, flue gas temperature at the PM control device inlet, and operator training/certification) and siting requirements for new MWC units.

DATES: *Comments.* Comments must be received on or before November 21, 1994.

Public Hearing. A public hearing will be held about 15 days following proposal. See **SUPPLEMENTARY INFORMATION** for additional information regarding the public hearing.

ADDRESSES: *Comments.* Comments on the proposal should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (Mail Code 6102), ATTN: Docket No. A–90–45, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. See **SUPPLEMENTARY INFORMATION** for additional information regarding submittal of comments.

Background Information. The key background information for the proposal includes: (1) A document entitled "FACT SHEET: New Municipal Waste Combustors—Proposed Subpart Eb NSPS," which succinctly summarizes the proposal, and (2) several technical documents listed under **SUPPLEMENTARY INFORMATION,** including all of the background information documents that supported the proposal and promulgation of the subpart Ca emission guidelines. See **SUPPLEMENTARY INFORMATION** for instructions for obtaining these documents.

Docket. Docket Nos. A–89–08 and A–90–45, containing supporting information used in developing the proposed standards, are located at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M1500, Central Mall, 401 M Street, SW., Washington, DC 20460. The docket may also be accessed by calling (202) 260–7548. See **SUPPLEMENTARY INFORMATION** for further information regarding the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Stevenson at (919) 541–5264 or Mr. Fred Porter at (919) 541–5251, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Background Information

On December 20, 1989, the EPA proposed new source performance standards (NSPS) for new MWC's in subpart Ea of 40 CFR part 60. The subpart Ea NSPS were promulgated on February 11, 1991 and were developed under authority of paragraph (b) of section 111 of the Act of 1977. The Act of 1990 requires the EPA to review these emission standards and determine if they are fully consistent with the requirements of section 129. The EPA has reviewed the subpart Ea NSPS and has concluded that they are not fully consistent with the requirements of section 129 of the Act of 1990. Therefore, the EPA is proposing a new NSPS in subpart Eb that would fully comply with the requirements of section 129. Municipal waste combustors that begin construction, modification, or reconstruction after September 20, 1994, and that meet all other applicability criteria, would be subject to the proposed subpart Eb. Municipal waste combustors that were constructed, modified, or reconstructed after December 20, 1989 and on or before September 20, 1994, and that meet all other applicability criteria, would remain subject to the subpart Ea NSPS and would not be subject to the proposed subpart Eb NSPS. Those sources subject to subpart Ea would, however, also be subject to the emission guidelines that are being proposed under subpart Cb in a separate notice in today's **Federal Register**. The proposed subpart Cb emission guidelines would be applicable to sources constructed, modified, or reconstructed on or before September 20, 1994.

The **Federal Register** notices for the proposed NSPS and a proposed EPA test method that is associated with the NSPS, and the economic impacts analysis associated with the proposed NSPS are listed below and are available on the EPA's Technology Transfer Network (TTN) electronic bulletin board. Also listed below and available on the EPA's TTN is a FACT SHEET, which succinctly summarizes the proposal and is suggested reading for persons requiring a limited overview of the proposal. The TTN contains 18 electronic bulletin boards, and the items listed below are included in the Clean Air Act Amendments (CAAA) bulletin board and the Emissions Measurement Technical Information Center (EMTIC) bulletin board. The FACT SHEET can also be obtained by calling Ms. Cassie Posey at (919) 541–0069.

MWC Items in the CAAA Electronic Bulletin Board

(1) "FACT SHEET: New Municipal Waste Combustors—Subpart Eb Proposed NSPS."

(2) **Federal Register** notice for this proposal: "Standards of Performance for New Stationary Sources: Municipal Waste Combustors" (this document).

(3) "Economic Impact Analysis for Proposed Emission Standards and Guidelines for Municipal Waste Combustors," EPA–450/3–91–029, March 1994.

MWC Items in the EMTIC Electronic Bulletin Board

1. "Emissions Test Method 29: Determination of Metals Emissions from Stationary Sources (1994 Proposal)," EPA–454/R–94–016, April 1994 (the document includes both the **Federal Register** proposal notice (chapter 1) and the full text of the rationale and regulations for the proposal (chapter 2)).

The TTN is accessible 24 hours per day, 7 days per week, except Monday morning from 8 a.m. to 12 p.m., when the system is updated. The service is free, except for the cost of the phone call. Dial (919) 541–5742 to access the TTN. The TTN is compatible with up to a 14,400 bits-per-second (bps) modem. Further instructions for accessing the TTN can be obtained by calling the help desk at (919) 541–5384.

The background information for today's proposal includes all of the documents that supported the proposal and promulgation of the subpart Ea NSPS (Docket No. A–89–08), as well as information in Docket No. A–90–45. Key background information documents used in developing the subpart Ea NSPS and today's proposed standards are as follows:

(1) "Municipal Waste Combustors—Background Information for Proposed Standards: 111(b) Model Plant Description and Cost Report," EPA–450/3–89–27b, August 1989;

(2) "Municipal Waste Combustors—Background Information for Proposed Standards: Post-Combustion Technology Performance," EPA–450/3–89–27c, August 1989;

(3) "Municipal Waste Combustion Assessment: Combustion Control at Existing Facilities," EPA–600/8–89–057, August 1989;

(4) "Municipal Waste Combustion Assessment, Technical Basis for Good Combustion Practices," EPA–600/8–89–063, August 1989;

(5) "Municipal Waste Combustors—Background Information for Proposed Standards: Control of NO_x Emissions," EPA–450/3–89–27d, August 1989;

(6) "Municipal Waste Combustors—Background Information for Proposed Standards: Cost Procedures," EPA–450/3–89–27a, August 1989; and

(7) "Economic Impact Analysis for Proposed Emission Standards and Guidelines for Municipal Waste Combustors," EPA–450/3–91–029, March 1994.

Docket Nos. A–89–08 and A–90–45 are available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the location specified in the **ADDRESSES** section of this preamble. A reasonable fee may be charged for copying. Additionally, the docket may be accessed by telephone, as specified in the **ADDRESSES** section.

Comments. Today's action is a proposal and comments are requested. The MWC regulations are complex, and the EPA expects to receive numerous comments on this proposal. The EPA has specifically requested comments on items fundamental to the proposal, including but not limited to the MACT floor, MACT performance levels, and materials separation plans. The EPA seeks full public participation in arriving at its final decisions, and strongly encourages comments on all aspects of this proposal from all interested parties. Whenever applicable, full supporting data and detailed analyses should be submitted with all comments to allow the EPA to respond to the comments.

Commenters wishing to submit proprietary information for consideration should clearly distinguish such information from other comments, and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket. Attention: Mr. Walter Stevenson, c/o Ms. Melva Toomer, U.S. EPA Confidential Business Manager, 411 W Chapel Hill Street, Room 944, Durham, North Carolina 27701. Information covered by such a claim of confidentiality will be disclosed by the EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, it may be made available to the public without further notice to the commenter.

Public Hearing. The public hearing will be held to provide interested parties an opportunity for oral presentations of data, views, or arguments concerning the proposed standards (see **DATES** for the hearing schedule). The public hearing will be held at Research Triangle Park, North Carolina; and will start at about 9 a.m. Persons wishing to present oral testimony at the public hearing must call Ms. Julia Latta at (919) 541–5578 at least 2 days in advance of the public hearing. Persons interested in attending the hearing should also call Ms. Latta to verify the time, date, and location of the hearing. Persons may call (919) 541–5264 to hear a recorded message that provides current information on the status of the public hearing.

Preamble Outline. The following outline is provided to aid in locating information in this preamble.

I. Introduction
  A. Summary of Regulatory Decisions
  B. New Source Performance Standard—General Goals
  C. Overview of this Preamble
II. Summary of the Proposed Subpart Eb Standards
  A. Source Category to be Regulated
  B. Pollutants to be Regulated
  C. Format for the Proposed Standards
  D. Proposed Standards
  E. Comparison of the 1991 NSPS and Today's Proposed NSPS
  F. Performance Testing and Monitoring Requirements
  G. Reporting and Recordkeeping Requirements
III. Impacts of the Proposed Standards
  A. Incremental Impacts of the Proposed NSPS over the 1991 NSPS
  B. Impacts of the Proposed NSPS Over a Pre-1989 Baseline
IV. Rationale for Proposed Standards for MWC Emissions
  A. Background
  B. Selection of Source Category
  C. Modification or Reconstruction of Existing MWC's
  D. Selection of Designated Pollutants
  E. Selection of Affected Facilities
  F. Selection of Maximum Achievable Control Technology
  G. Selection of Format for the Proposed Standards

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H. Performance Test Methods and Monitoring Requirements
I. Reporting and Recordkeeping Requirements
V. Rationale for the Proposed Standards for Siting Requirements
A. Overview
B. Siting Analysis
C. Materials Separation Plan
D. Public Meeting and Reporting Requirements
VI. Rationale for the Proposed Standards for Fugitive Fly Ash/Bottom Ash Emissions
A. Background
B. Fugitive Emission Control Techniques
C. Proposed Fugitive Emissions Standards
VII. Proposed Standards for Air Curtain Incinerators
VIII. Comparison of the Proposal and European Emission Limits
IX. Miscellaneous
X. Administrative Requirements
A. Public Hearing
B. Docket
C. Clean Air Act Procedural Requirements
D. Office of Management and Budget Reviews
E. Regulatory Flexibility Act Compliance

I. Introduction

This section provides an introduction to the proposed rule by: (1) Summarizing the history of the development of NSPS for new MWC's over the past 7 years; (2) summarizing the general goals of the proposed rule that are specified by sections 111(d) and 129 of the Act of 1990; and (3) providing a brief overview of the major issues discussed in this preamble.

A. Summary of Regulatory Decisions

During the early and mid-1980's, several studies were performed to determine whether MWC emissions should be regulated and, if so, under what section of the Act. As set forth in the advance notice of proposed rulemaking (ANPRM) (52 FR 25399, July 7, 1987), the EPA decided to regulate air emissions from MWC's under section 111 of the Act, and based the regulation on best demonstrated technology (BDT), as required by section 111. On December 20, 1989, the EPA proposed NSPS for new MWC's and emission guidelines for existing MWC's (54 FR 52251 and 54 FR 52209, respectively). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted and added section 129 to the Act. Section 129 of the Act specifies that revised NSPS and emission guidelines must be developed for MWC's in accordance with the requirements of sections 111 and 129. Section 129 further specifies that revised NSPS and emission guidelines be developed for both large and small MWC's and that the revised NSPS and emission guidelines must reflect a more restrictive standard of performance. Section 129 includes a schedule for revising the 1991 NSPS. When the EPA did not comply with that schedule, the Sierra Club and the Natural Resources Defense Council (NRDC) filed a complaint with the U.S. District Court for the Eastern District of New York. The resulting consent decree requires the EPA Administrator to sign a notice of proposed rulemaking not later than September 1, 1994 and a notice of promulgation not later than September 1, 1995 (Nos. CV–92–2093 and CV–93–0284).

The NSPS and guidelines promulgated on February 11, 1991 (56 FR 5488 and 56 FR 5514, respectively) apply to MWC's with unit capacities above 225 Mg/day and reflect BDT as determined by the Administrator at the time those standards were issued. Today's notice therefore proposes to create new NSPS to be fully consistent with sections 111 and 129 of the Act and to extend coverage of the standards to new MWC units located at MWC facilities with aggregate plant capacity above 35 Mg/day. Additionally, under a separate notice in today's **Federal Register**, new subpart Cb emission guidelines for existing MWC plants with aggregate capacities above 35 Mg/day of MSW are being proposed pursuant to sections 111 and 129 of the Act.

Today's proposed NSPS is more stringent than the NSPS promulgated on February 11, 1991. Today's proposed NSPS would replace the subpart Ea NSPS for those facilities for which construction, modification, or reconstruction commenced after September 20, 1994. However, the February 11, 1991 subpart Ea NSPS will remain in effect for affected facilities constructed, modified, or reconstructed after December 20, 1989 and on or before September 20, 1994. Those sources subject to the February 11, 1991 subpart Ea NSPS would also be subject to the emission guidelines being proposed under subpart Cb in a separate notice in today's **Federal Register**. In most cases, the proposed subpart Cb emission guidelines are more stringent than the existing subpart Ea standards.

B. New Source Performance Standards—General Goals

The Act requires the promulgation of performance standards under section 111 for categories of new and existing stationary sources that may contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Section 129 of the Act specifies that NSPS and emission guidelines must be developed for MWC's in accordance with the requirements of sections 111 and 129 of the Act. Section 129(a)(2) provides that the revised standards for new MWC's reflect the maximum degree of reduction in emissions of designated air pollutants, taking into consideration the cost of achieving such emission reduction, and any non-air-quality health and environmental impacts and energy requirements that the Administrator determines are achievable for a particular category of sources (this standard is commonly referred to as "maximum achievable control technology, or "MACT"). Additionally section 129 provides that standards for new sources may not be less stringent than the emissions control achieved in practice by the best controlled similar unit. This is referred to as the "MACT floor." The standards themselves are set forth as emission limits and do not specify what technology must be applied.

C. Overview of this Preamble

This preamble will:

(1) Summarize the proposed standards by discussing the conclusions reached with respect to each of the elements in the decision summary;

(2) Describe the environmental, energy, and economic impacts of the proposed standards;

(3) Present a rationale for each of the decisions associated with this proposal;

(4) Present a regulatory flexibility analysis; and

(5) Discuss administrative requirements relevant to this action.

II. Summary of the Proposed Subpart Eb Standards

This section presents a summary of the proposed NSPS, including identification of the source category and pollutants that would be regulated under the proposal, discussion of the format of the proposed standards, and presentation of the proposed standards and their associated performance testing, monitoring, recordkeeping and reporting requirements. This section also provides a comparison of the emission standards in this proposed subpart Eb NSPS versus the 1991 subpart Ea NSPS.

A. Source Category to be Regulated

Today's proposed standards would apply to each MWC unit located at an MWC facility that has an aggregate plant capacity to combust over 35 Mg/day of MSW, for which construction, modification, or reconstruction commenced after September 20, 1994. Additionally, under the proposed NSPS, plants with an aggregate capacity to combust between 25 and 35 Mg/day would be required to submit an initial report of their facility capacities and

location, but would not be subject to any other provisions of the NSPS. Municipal waste combustors that commenced construction, modification, reconstruction on or before September 20, 1994 are not covered under today's proposed standards, but are being addressed in a separate notice in today's **Federal Register**.

An MWC is defined as any setting or equipment that combusts MSW. Municipal solid waste combustion includes the burning (or pyrolysis) of MSW in any type of setting or equipment, including combustion equipment with or without heat recovery. This definition has been slightly modified from the February 11, 1991 NSPS and is discussed below.

Municipal solid waste is defined as either a mixture or a single-item stream of household, commercial, and/or institutional discards. This would include materials such as paper, wood, yard wastes, tree trimmings, plastics, leather, rubber, glass, metals, and other combustible and noncombustible materials. The MSW definition includes household discards as well as discards from institutional and commercial sources, but does not include industrial process or manufacturing discards. The definition of MSW also includes refuse-derived fuel (RDF), which is solid waste that is shredded (or pelletized) and classified by size before combustion. Municipal solid waste does not, however, include wastes that are solely segregated medical wastes. However, if segregated medical wastes are mixed with MSW, the resulting mixture remains MSW, and the proposed standards would apply if the aggregate MWC plant capacity exceeded 35 Mg/day capacity. Minor editing changes are proposed in the definition of MSW to clarify this point.

Air curtain incinerators that combust MSW are MWC's. However, air curtain incinerators that burn only yard wastes, tree trimmings, and clean untreated lumber would be covered under a separate set of proposed opacity emission limits, and no other part of the proposal would apply. Air curtain incinerator opacity requirements are discussed in section VII of this preamble.

B. Pollutants to be Regulated

Section 129 of the Act requires the EPA to establish numerical emission limits specifically for SO_2, HCl, PM, opacity, Cd, Pb, Hg, dioxins/furans, CO, and NO_X. Section 129 specifies that the EPA may also

> • • • promulgate numerical emission limitations or provide for the monitoring of post-combustion concentrations of surrogate substances, parameters, or periods of residence times in excess of stated temperatures with respect to pollutants other than those listed [above]. • • •

Therefore, the EPA is proposing standards for load and flue gas temperature at the PM control device inlet as additional indicators of MWC operating practices. The EPA is also proposing a standard for fly ash/bottom ash fugitive emissions because these emissions include Cd, Pb, Hg, and dioxins/furans (see section VI of this preamble for further discussion of the EPA's decision to regulate fugitive emissions from MWC's).

The February 11, 1991 NSPS includes standards for all of the pollutants listed above except Cd, Pb, Hg, and fly ash/bottom ash fugitive emissions. The proposed NSPS would establish standards for all of the pollutants listed above. The proposed standards for the same pollutants regulated by the February 11, 1991 NSPS (i.e., SO_2, HCl, PM, opacity, dioxins/furans, NO_X, CO, load, and flue gas temperature at the PM control device inlet) would be revised under the proposal to reflect the requirements of section 129.

C. Format for the Proposed Standards

The format of the proposed standards is similar to the format of the February 11, 1991 NSPS. In most cases, the format is in the form of emission limits (concentrations).

The February 11, 1991 NSPS specifies emission limits for PM and opacity. Particulate matter is measured as a concentration (milligrams per dry standard cubic meter (mg/dscm)) and is corrected to 7 percent oxygen (O_2), and opacity is measured on a percentage basis. The format for the PM and opacity standards would not change in today's proposal, but Cd, Pb, and Hg emission limits would be added. Emissions of Cd, Pb, and Hg would be calculated as a concentration (mg/dscm) corrected to 7 percent O_2, dry basis. For Hg, today's proposed standards would also establish an alternative percentage reduction requirement. A new method (Method 29) that would measure these pollutants is being proposed in a separate part of today's **Federal Register**.

The February 11, 1991 NSPS establishes control requirements for SO_2 and HCl (MWC acid gases) by specifying both numerical emission limits and alternative percentage reduction requirements for both SO_2 and HCl. The concentration emission limits for HCl and SO_2 are calculated as parts per million by volume (ppmv) corrected to 7 percent O_2, dry basis. Today's proposed standards for SO_2 and HCl would also be based on the same format.

The February 11, 1991 NSPS addresses a numerical emission limit for NO_X emissions. The concentration emission limit for NO_X is calculated as ppmv. Today's proposed standard for NO_X is based on the same format as the February 11, 1991 NSPS.

The February 11, 1991 NSPS establishes MWC organics control by specifying an emission limit for dioxins/furans. The format of the dioxin/furan emission limit would be revised by today's proposal. In the February 11, 1991 NSPS, emissions of dioxins/furans are calculated as a concentration (nanograms per dry standard cubic meter (ng/dscm)) corrected to 7 percent O_2, dry basis, on a total mass basis (i.e., the mass of all tetra- through octa-congeners were added together). In today's proposal, dioxin/furan emissions could be reported either in units of ng/dscm toxic equivalency (TEQ) or in units of ng/dscm total mass dioxins/furans. Reporting in TEQ units is done by first measuring the total mass of dioxin/furan congeners and then adjusting the results for the toxicity of each dioxin/furan congener. The same test method (Method 23) is used in either case. See section II.F of this preamble for further discussion of the proposed method of reporting dioxin/furan emissions in terms of TEQ.

In addition to controlling stack emissions, the February 11, 1991 NSPS also establishes good combustion operating standards for MWC's. These operating standards are part of good combustion practices (GCP) and ensure that emissions of MWC organics (dioxins/furans) are minimized on a continuous basis. The GCP requirements are included in today's proposal, but they are being extended to apply to MWC's at plants of 35 Mg/day aggregate capacity or larger. Additionally, some minor revisions are being proposed. The proposed revisions would include: (1) A requirement that all shift operators and chief facility operators obtain full operator certification, (2) "stand in" authority for MWC control room operators, and (3) required training of MWC shift supervisors. These items are discussed below.

The February 11, 1991 NSPS requires provisional certification of the chief facility operator and shift supervisors by the American Society of Mechanical Engineers (ASME) or a State certification program. Development of a site-specific training manual to be used for training other MWC personnel is also required. Today's proposal would require that the chief facility operator and shift supervisor obtain both provisional and then full operator certification.

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Today's proposal would also allow for the optional certification of one or more control room operators. Under the February 11, 1991 NSPS, all chief facility operators and shift supervisors shall be certified, and one of these individuals must be onsite during all periods of MWC operation. Under today's proposal, a provisionally certified control room operator may "stand in" for the chief facility operator or shift supervisor during periods in which the certified chief facility operator or certified shift supervisor is offsite, in order to fulfill the requirement that a certified individual be onsite during all periods of MWC operation. This would provide additional operating flexibility. Today's proposal would also require that all chief facility operators, shift supervisors, and control room operators complete the EPA or a State MWC operator training course. The EPA has developed a model training program that has been distributed to State air pollution control agencies, the EPA Regional Offices, and MWC industry groups. The EPA believes that operator training is an integral part of the implementation of GCP.

Today's proposed standards would establish siting requirements for all new MWC's at plants with aggregate capacities above 35 Mg/day. These siting requirements would include three components. First, an analysis of the impact of the facility on ambient air quality, visibility, soils, and vegetation would be required. Second, the siting requirements would include submittal of a materials separation plan for the area served by the affected facility. Third, the MWC owner or operator would be required to make both the siting analysis and the materials separation plan available to the public, hold public meetings to receive comments on the siting analysis and materials separation plan, and respond in writing to the comments received. These siting requirements were not included in the February 11, 1991 NSPS. See section V.D of this preamble for a more detailed discussion of the proposed siting requirements.

Today's proposed standards also establish standards for fugitive fly ash/bottom ash emissions from ash handling facilities. The proposed standards would establish visible emissions limits for emissions of ash from buildings where ash was transferred and from external ash transfer equipment and ash handling areas at the MWC facility. This requirement was not included in the February 11, 1991 NSPS.

D. Proposed Standards

Today's proposal would establish standards for MWC acid gases (SO_2 and HCl), MWC metals (PM, opacity, Cd, Pb, and Hg), MWC organics (dioxins/furans), and NO_X. The proposed standards also include requirements for fly ash/bottom ash fugitive handling, MWC operating practices (CO, load, and flue gas temperature), operator training and certification, and siting for new MWC units.

The proposed NSPS would divide the MWC population into two subcategories: The first would be for MWC units located at small MWC plants (i.e., those with aggregate capacities to combust greater than 35 Mg/day of MSW but equal to or less than 225 Mg/day), and the second would be for MWC units at large plants (i.e., those with aggregate capacities to combust more than 225 Mg/day of MSW). The aggregate capacity of all MWC units at one site constructed after September 20, 1994 would be added together to define aggregate MWC plant capacity for determining NSPS applicability.

The proposed NSPS for each subcategory of MWC's are summarized in table 1. The proposed NSPS are also discussed briefly below.

TABLE 1. SUMMARY OF PROPOSED NSPS FOR NEW MWC'S

[Subpart Eb][a]

Plant size (MSW combustion capacity)	Requirement
Applicability	
The proposed NSPS would apply to new MWC units located at plants with capacities to combust greater than 25 Mg/day of residential, commercial, and/or institutional discards.[b] Industrial discards are not covered by the proposed NSPS.	
≤25 Mg/day	Not covered by standards.
>25 Mg/day but ≤ 35 Mg/day	Initial report of MWC design capacity and startup date.
>35 Mg/day but ≤ 225 Mg/day (referred to as small MWC plants)	Subject to provisions listed below.
>225 Mg/day (referred to as large MWC plants)	Subject to provisions listed below.

Good Combustion Practices:

- Applies to large and small MWC plants.
- A site-specific operator training manual would be required to be developed and made available for MWC personnel. The EPA or State MWC operator training course would be required to be completed by the MWC chief facility operator, shift supervisors, and control room operators.
- The ASME or a State MWC operator certification would be required to be obtained by the MWC chief facility operator (mandatory), shift supervisors (mandatory), and control room operators (optional).
- The MWC load level would be required to be measured and not to exceed the maximum load level as demonstrated during the most recent dioxin/furan performance test.
- The PM control device inlet flue gas temperature would be required to be measured and not to exceed the level demonstrated during the most recent dioxin/furan performance test.
- The CO level would be required to be measured using CEMS, and the concentration in the flue gas would be required not to exceed the following.

MWC type	CO Level[c]	Averaging time
Modular starved-air and excessair	50 ppmv	4-hour.
Mass burn waterwall and refractory	100 ppmv	4-hour.
Mass burn rotary refractory	100 ppmv	4-hour.
Fluidized-bed combustion	100 ppmv	4-hour.
Coal/RDF mixed fuel-fired	150 ppmv	4-hour.
RDF stokers	150 ppmv	24-hour.
Mass burn rotary waterwall	100 ppmv	24-hour.

MWC Organic Emissions (measured as dioxin/furan)[c,d]	
• Dioxins/furans (compliance test by EPA Reference Method 23)	
Large and small MWC plants	13 ng/dscm total mass or 0.20 ng/dscm dioxin/furan TEQ[e].
• Basis for dioxin/furan standard	GCP and SD/FF/CI.
MWC Metal Emissions[c]	
• PM (compliance test by EPA Reference Method 5)	
Large and small MWC plants	15 mg/dscm (0.007 gr/dscf).
• Opacity (compliance test by EPA Reference Method 9)	
Large and small MWC plants	10 percent (6-minute average).
• Cd (compliance test by EPA Reference Method 29)[f]	
Large and small MWC plants	0.010 mg/dscm (4.4 gr/million dscf).
• Pb (compliance test by EPA Reference Method 29)[f]	
Large and small MWC plants	0.10 mg/dscm (44 gr/million dscf).
• Hg (compliance test by EPA Reference Method 29)[f]	
Large and small MWC plants	0.080 mg/dscm (35 gr/million dscf) or 85-percent reduction in Hg emissions.
• Basis for PM, opacity, Cd, Pb, and Hg standards	
Large and small MWC plants	See basis for dioxin/furan standard.
MWC Acid Gas Emissions[c]	
• SO_2 (compliance test by CEMS)	
Large and small MWC plants	30 ppmv or 80-percent reduction in SO_2 emissions (24-hour).
• HCl (compliance test by EPA Reference Method 26)	
Large and small MWC plants	25 ppmv or 95-percent reduction in HCl emissions.
• Basis for SO_2 and HCl standards	See basis for dioxin/furan standard.
Nitrogen Oxides Emissions[c]	
• NO_X (compliance test by CEMS)	
Large MWC plants	180 ppmv.
Small MWC plants	No NO_X control requirement.
• Basis for NO_X standard	
Large MWC plants	SNCR.
Small MWC plants	No NO_X control requirement.
Fly Ash/Bottom Ash Fugitive Emissions	
• Fly Ash/Bottom Ash (compliance test by EPA Reference Method 22)	
Large and small MWC plants	No visible emissions from buildings, ash transfer points, or ash handling areas.
• Basis for fugitive emissions standard	Wet ash handling or enclosed ash handling.
Siting Requirements	
• Large and small MWC plants	(1) Siting analysis, (2) materials separation plan, and (3) public meetings (including response to comments)[g].
Compliance Testing and Monitoring Requirements	
• Load, flue gas temperature	Continuous monitoring, 4-hour arithmetic average.
• CO	CEMS, 4- or 24-hour arithmetic average, as applicable.
• Dioxins/furans[d], PM, Cd, Pb, Hg, and HCl	
Large MWC plants	Annual stack test.
Small MWC plants	Annual or third year stack test[h].
• Opacity	COMS (6-minute average) and annual stack test.
• SO_2	CEMS, 24-hour geometric mean.
• NO_X (large MWC plants only)	CEMS, 24-hour arithmetic average.
• Fly ash/bottom ash fugitive emissions	Annual test.

[a] Definition of Abbreviations Used in Table:
ASME = American Society of Mechanical Engineers
Cd = cadmium
CEMS = continuous emission monitoring system
CO = carbon monoxide
COMS = continuous opacity monitoring system
GCP = good combustion practices
gr/dscf = grains per dry standard cubic foot
gr/million dscf = grains per million dry standard cubic feet
HCl = hydrogen chloride
Hg = mercury

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Mg/day = megagrams per day (1 Mg/day = 1.1 short tons/day (2,204 pounds/day))
mg/dscm = milligrams per dry standard cubic meter (100 mg/dscm = 0.044 gr/dscf)
MSW = municipal solid waste
MWC = municipal waste combustor
ng/dscm = nanograms per dry standard cubic meter (1,000,000 ng = 1 mg)
NO_X = nitrogen oxides
NSPS = new source performance standards
Pb = lead
PM = particulate matter
ppmv = parts per million by volume
RDF = refuse-derived fuel
SD/FF/CI = spray dryer/fabric filter/activated carbon injection
SNCR = selective noncatalytic reduction
SO_2 = sulfur dioxide
TEQ = toxic equivalency of 2,3,7,8- tetrachlorinated dibenzo-p-dioxin (North Atlantic Treaty Organization (NATO) 1989 international criteria)
Total mass = total mass of tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.

[b] Air curtain incinerators that combust only yard wastes, tree trimmings, and/or clean lumber would be subject to an opacity emission limit but to no other parts of the proposed NSPS. Air curtain incinerators that combust other MSW are subject to all requirements under the proposed NSPS.

[c] All concentration levels in the table are corrected to 7 percent O_2, dry basis.

[d] Dioxins/furans measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans. For plants complying with the TEQ format of the standard, TEQ is determined using 1989 international toxicity equivalency factors.

[e] For MWC's constructed after September 20, 1994, but on or before September 22, 1997, the standard would be 0.50 ng/dscm TEQ or 30 ng/dscm total mass for the first 3 years of operation of the MWC. After the first 3 years, the standard would be 0.20 ng/dscm TEQ or 13 ng/dscm total mass. For all MWC's constructed after September 22, 1997, the standard at startup would be 0.20 ng/dscm TEQ or 13 ng/dscm total mass.

[f] Method 29 is being proposed in a separate notice in today's FEDERAL REGISTER.

[g] Two public meetings would be held for review of the materials separation plan. The first public meeting would focus on review of a draft materials separation plan. The draft materials separation plan and the summary of responses to public comments about the plan would be submitted to EPA prior to application for a construction permit under New Source Review (NSR). A second public meeting would be held after submission of the application for a construction permit and would focus on both the final materials separation plan and the siting analysis. The siting analysis, the materials separation plan, and the summary of responses to public comments on the siting analysis and the materials separation plan would be submitted as part of the initial notification of construction.

[h] The proposed NSPS includes provisions that would allow small MWC plants to conduct performance tests for dioxins/furans, PM, Cd, Pb, Hg, and HCl every third year if the MWC meets certain specified criteria discussed in section II.F of this preamble.

The proposed standards are summarized below.

1. Municipal Waste Combustor Organics

The proposed standards for MWC organics would require new MWC's at MWC plants with capacities above 35 Mg/day for which construction commences after September 20, 1994, but on or before September 22, 1997, to meet a dioxin/furan emission limit of either 0.50 ng/dscm TEQ or 30 ng/dscm total mass, at 7 percent O_2 for the first 3 years following the date of initial startup. Thereafter, the standard would be 0.20 ng/dscm TEQ or 13 ng/dscm total mass. For MWC's at plants with capacities above 35 Mg/day for which construction commences after September 22, 1997, the standard at startup would be 0.20 ng/dscm TEQ or 13 ng/dscm total mass. Emissions reported in TEQ would be calculated using the 1989 North Atlantic Treaty Organization (NATO) international toxic equivalency factors (TEF's), using the methods described in section II.F of this preamble and section 60.58b of the proposed subpart Eb NSPS.

2. Municipal Waste Combustor Metals

The proposed standards for MWC metals would require all MWC's at MWC plants with capacities above 35 Mg/day to meet a PM emission limit of 15 mg/dscm at 7 percent O_2. Municipal waste combustors at both large and small MWC plants would also be required to meet an opacity limit of 10 percent based on a 6-minute averaging period.

The proposed standards would also establish specific emission levels for Cd, Pb, and Hg. The proposed standards would require new MWC's at MWC plants with capacities above 35 Mg/day to meet a Cd limit of 0.010 mg/dscm, a Pb limit of 0.10 mg/dscm, and an Hg limit of 0.080 mg/dscm or an 85-percent reduction in potential Hg emissions. These proposed emission limits are corrected to 7 percent O_2 on a dry basis.

3. Municipal Waste Combustor Acid Gases

The proposed standards for MWC acid gases would require MWC's at plants with capacities above 35 Mg/day to meet an HCl emission limit of either 25 ppmv or 95-percent reduction (at 7 percent O_2, dry basis). These MWC plants would also be required to achieve an SO_2 emission limit of either 30 ppmv or 80-percent reduction (at 7 percent O_2, dry basis, on a 24-hour geometric mean basis, measured continuously).

4. Good Combustion Practices

Today's proposed NSPS would require all new MWC's at MWC plants with capacities above 35 Mg/day to comply with specific operating practices that reflect GCP. These operating practices include CO emission limits, combustor load levels, and flue gas temperatures at the inlet to the PM control device.

The GCP CO levels remain basically unchanged from the February 11, 1991 NSPS. For modular starved-air and modular excess-air types of MWC's, the CO emission limit would be 50 ppmv (at 7 percent O_2, dry basis) on a 4-hour block average basis. For mass burn waterwall, mass burn refractory (rotary and fixed-wall), and fluidized-bed types of MWC's, the CO emission limit would be 100 ppmv (at 7 percent O_2, dry basis) on a 4-hour block average basis. For mass burn rotary waterwall MWC's, the CO emission limit would be 100 ppmv (at 7 percent O_2, dry basis) on a 24-hour block average basis. For RDF-stoker MWC's, the CO limit would be 150 ppmv (at 7 percent O_2, dry basis) on a 24-hour block average basis. For coal/RDF mixed fuel-fired MWC's, the CO limit would be 150 ppmv (at 7 percent O_2, dry basis) on a 4-hour block average basis. These limits remain unchanged from the February 11, 1991 NSPS except that a limit specifically for mass burn rotary refractory units has been added for clarification.

Municipal waste combustors would be allowed to operate up to 110 percent of the maximum capacity, as achieved during the most recent dioxin/furan compliance test. Maximum capacity would be based on the steam flow rate, which would be continuously monitored according to the ASME Power Test Code (PTC) for Steam Generating Units (PTC4.1 and PTC19.5). This requirement is unchanged from the February 11, 1991 NSPS. The EPA requests comments on this method of measuring load for steam-generating

MWC's. Specifically, the EPA has questions regarding the requirement for calibration of the measuring device (e.g., orifice plate) before and after each dioxin/furan compliance test. The EPA is concerned that this calibration requirement may be overly burdensome because the main steam line that contains the orifice plate may need to be cut in order to access the orifice plate for recalibration. Also, the EPA requests comments on whether the ASME PTC adequately addresses the need for calibrating the signal from the flow meter.

Additionally, the EPA requests comments on the use of boiler feed water flow as an alternative method for continuously monitoring load for steam-generating MWC's.

Furthermore, the EPA is considering allowing the use of the continuous flue gas volumetric flow rate to measure maximum capacity for both steam-generating MWC's, as well as those MWC's that do not generate steam. These types of monitors are based on ultrasonic, thermal, or differential pressure methods, and are now being required as part of the EPA's Acid Rain Program (40 CFR part 75). The EPA requests comments on whether continuous flue gas volumetric flow rate monitors are adequately demonstrated and accurate methods for determining compliance with the load level requirements, and if they should be allowed as an alternative to the use of the ASME PTC.

Under the NSPS, MWC's would establish a site-specific maximum flue gas temperature at the final PM control device inlet demonstrated during their most recent dioxin/furan compliance test. Similar to the provisions for establishing a maximum load level measurement, the maximum demonstrated PM control device inlet temperature is established as the maximum 4-hour block average temperature measured during the most recent dioxin/furan compliance test. The MWC must then be operated so that the temperature at the final PM control device inlet does not exceed this level by more than 17 °C (30 °F) (4-hour block average basis).

5. Operator Certification and Training

The proposed NSPS would require full operator certification of all MWC shift supervisors and MWC chief facility operators by the ASME or a State certification program. The proposed standards would also require that at least one of the following persons be on duty at all times during which the MWC is combusting waste: A fully certified chief facility operator, a fully certified shift supervisor, or a provisionally certified control room operator. A provisionally certified control room operator would be allowed to "stand in" during times a fully certified chief facility operator or shift supervisor is offsite. These requirements would become effective on the date of promulgation of the NSPS or 6 months after startup of a new MWC, whichever is later.

In addition, the proposed NSPS would require each owner or operator of an MWC plant with an aggregate capacity greater than 35 Mg/day to develop and maintain a site-specific training manual and to review it with all employees associated with the operation of the MWC (including MWC maintenance personnel, crane/load operators, and ash handlers). The manual and training would be updated annually. This site-specific training requirement would be effective on the date of promulgation of the NSPS or 6 months after startup of a new MWC, whichever is later.

Section 129 of the Act of 1990 requires the EPA to develop and promote a model program for the training and certification of MWC operators. Section 129 specifies that "any person with control over processes affecting emissions from a unit" must successfully complete an acceptable training program. Consistent with section 129, today's proposed revisions would require all MWC chief facility operators, shift supervisors, and control room operators to complete the EPA or a State MWC operator training course before operating an MWC or within 6 months following promulgation of the standards, whichever is later. The EPA has developed a model training program and has distributed it to State air pollution control agencies, EPA regional offices, and MWC industry groups. This model training program could be used to fulfill this requirement and prepare for the ASME certification.

6. Nitrogen Oxides Emissions

The proposed standards include a NO_X control requirement for MWC's at large plants and would require these MWC's to meet a NO_X emission limit of 180 ppmv (corrected to 7 percent O_2, dry basis, on a 24-hour daily average basis). A "no control" NO_X emission limit for MWC's at small plants is also proposed and is discussed in section VII of this preamble.

7. Siting Requirements

Siting requirements are being proposed for all new MWC's at plants with capacities above 35 Mg/day. These siting requirements are not included in the 1991 subpart Ea NSPS. The siting requirements would include the following three components: (1) A siting analysis, (2) a materials separation plan, and (3) public meetings. The siting analysis would address the impact of the facility, taking into account other major industrial facilities near the proposed site, on ambient air quality, visibility, soils, vegetation, and other factors that may be relevant in determining that the benefits of the proposed facility significantly outweigh the environmental and social costs imposed as a result of its location and construction. The materials separation plan would summarize materials separation requirements for the facility and its service area. Following public meetings on the siting analysis and materials separation plan, the facility would be required to prepare transcripts of the public meetings and summaries of comments and responses for the public meetings.

8. Fly Ash/Bottom Ash Fugitive Emissions

Standards are proposed for fly ash/bottom ash fugitive dust emissions from ash handling and storage facilities at all MWC's at plants above 35 Mg/day capacity. The proposed standards would establish a no visible emissions limit for fly ash/bottom ash handling and would apply to ash handling, conditioning, loading and storage buildings, any external ash conveyors, ash transfer points, or ash handling activities (e.g., truck loading), and any other area at the facility that is a potential source of fly ash or bottom ash fugitive emissions.

E. Comparison of the 1991 NSPS and Today's Proposed NSPS

The subpart Ea NSPS promulgated on February 11, 1991 and today's proposed subpart Eb standards both include emission limits for dioxins/furans, PM, SO_2, HCl, and NO_X; however, today's proposed standards for most of these pollutants are more stringent than the NSPS promulgated on February 11, 1991. The February 11, 1991 NSPS did not address Cd, Pb, Hg, or fly ash/bottom ash fugitive emissions, but these pollutants are included in today's proposal. Also, today's proposal would apply to all MWC units at plants with aggregate capacities above 35 Mg/day, whereas the February 11, 1991 NSPS only included MWC's with unit capacities above 225 Mg/day. A comparison of the 1991 NSPS and the proposed NSPS emission limits for these pollutants is shown in table 2.

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TABLE 2.—COMPARISON OF THE PROPOSED NSPS (SUBPART Eb) AND THE 1991 NSPS (SUBPART Ea)

Pollutant or parameter	NSPS emission limit[a]	
	Proposed NSPS (subpart Eb)	1991 NSPS (subpart Ea)
	MWC plants >35 Mg/day[b]	MWC's >225 Mg/day[c]
Dioxins/furans	0.20 ng/dscm toxic equivalence or 13 ng/dscm total mass	30 ng/dscm, total mass (equivalent to about 0.50 ng/dscm toxic equivalence).
SO_2	30 ppmv or 80-percent reduction[d]	30 ppmv or 80-percent reduction[d].
HCl	25 ppmv or 95-percent reduction[d]	25 ppmv or 95-percent reduction.[d]
PM	15 mg/dscm	34 mg/dscm.
Opacity	10 percent	10 percent.
Cd	0.010 mg/dscm	None.
Pb	0.10 mg/dscm	None.
Hg	0.080 mg/dscm (or 85-percent reduction)[d]	None.
NO_x	180 ppmv[c]	180 ppmv.
Fly ash/bottom ash fugitive emissions.	No visible emissions from buildings, ash transfer points, or ash handling areas	None.
Siting requirements	Siting analysis, materials separation plan, and public meeting requirements	None.

[a] All emission limits are corrected to 7 percent O_2, dry basis.
[b] Refers to aggregate MWC plant capacity.
[c] Refers to MWC unit capacity.
[d] Whichever is less stringent.
[e] Plants >225 Mg/day only.

The MWC operating standards (GCP) contained in today's proposal are the same as those in the February 11, 1991 NSPS. The training and certification requirements have changed somewhat. The February 11, 1991 standards require only provisional certification of MWC chief facility operators and shift supervisors, but today's proposed standards would require both provisional and then full certification. This change is being proposed because the full operator certification program is now widely available. In 1991, the program was not widely available.

Today's proposal also adds a provision to allow provisionally certified control room operators to stand in for the MWC chief facility operators or shift supervisors in their temporary absence from the MWC. Additionally, today's proposal would require all MWC chief facility operators, shift supervisors, and control room operators to complete the EPA or a State MWC training course. This training course requirement was not included in the February 11, 1991 NSPS.

F. Performance Testing and Monitoring Requirements

Information related to the performance testing and monitoring requirements for MWC acid gases (SO_2 and HCl), MWC organics (dioxin/furan), PM, opacity, MWC operating practices, and NO_x has been published in a previous **Federal Register** notice (56 FR 5488, February 11, 1991). These same requirements would be adopted by today's proposed NSPS and would be extended to apply to all MWC's at plants with aggregate capacities above 35 Mg/day. Because the proposed NSPS allows compliance with a dioxin/furan limit either on a TEQ basis or on a total mass basis, procedures are being proposed for determining dioxin/furan emissions on a TEQ basis. The mass of each tetra- through octa- chlorinated dibenzo-p-dioxin and dibenzofuran congener would be measured by EPA Reference Method 23. Each congener mass would then be adjusted by the corresponding toxic equivalency factor (TEF; the 1989 NATO international TEF's). Finally, the adjusted congener masses would be added together to determine dioxins/furans in ng/dscm TEQ. Furthermore, today's proposal would require both large and small MWC facilities to conduct annual opacity tests using EPA Reference Method 9. This testing would be in addition to the continuous monitoring of opacity levels. Also, today's proposal allows small MWC facilities to conduct less frequent testing for dioxin/furan, HCl, and PM emissions if the small facility consistently demonstrates compliance. More specifically, if three consecutive annual compliance tests for an MWC at a small MWC plant indicate compliance with the emission limit for a pollutant (i.e., dioxins/furans, PM, or HCl), the MWC would be allowed to wait 3 years before retesting for the pollutant. If the next test conducted in the third year shows compliance with the emission limit for that pollutant, then the facility could again wait 3 years to test for the pollutant. If noncompliance with the emission limit for the pollutant occurs, corrective actions would be required to be undertaken and annual testing would be required to be conducted until 3 consecutive years of compliance with the emission limit is established. At a minimum, performance tests for dioxins/furans, PM, and HCl would be required to be performed for each MWC unit at small MWC plants every 3 years. All large MWC plants would continue to be required to conduct annual compliance tests.

Annual performance tests to determine compliance with the Cd, Pb, and Hg emission limits would be based on EPA Reference Method 29. The average emission rates of three or more test runs using this methodology would be used to determine compliance. The EPA considered the use of EPA Reference Method 101A for Hg testing; however, based on available data, the EPA has concluded that Method 29 is a better measure of Cd, Pb, and Hg emissions than Method 101A and has therefore proposed Method 29 for testing MWC's.

Also, as discussed above for dioxins/furans, PM, and HCl, if small plants demonstrate compliance with the Cd, Pb, and Hg emission limits for 3 consecutive years, they would be allowed to begin testing for these three pollutants every third year.

The EPA Reference Method 29 is proposed in a separate part of today's **Federal Register**. Method 29 is very similar to the method that has been used by the EPA's Office of Solid Waste to measure metals emissions from boilers cofiring hazardous waste, commonly referred to as the EPA multimetals method. The proposed Method 29 is discussed in section IV.H of this preamble.

Testing and monitoring requirements for NO_x at large MWC's are the same as those contained in the February 11, 1991 **Federal Register** notice (56 FR 5488), and are based on use of a CEMS.

Annual performance tests to determine compliance with the proposed fly ash/bottom ash visible emissions limits would be based on EPA Reference Method 22 (3-hour continuous visual observation). The limits would apply at all times and the tests would be conducted during periods of time when fly ash/bottom ash is transferred from the combustor or from the air pollution control device to the ash loading area, and when ash is loaded for transportation or is being transported onsite.

The data availability requirement for CEMS (SO_2, NO_x, CO, and O_2 (or CO_2)) has been increased from the 1991 NSPS. Today's proposal would require that valid paired CEMS hourly averages (i.e., SO_2 and O_2 (or CO_2), NO_x and O_2 (or CO_2), and CO and O_2 (or CO_2)) be obtained for 75 percent of the hours per day for 90 percent of the days per calendar quarter that the affected facility is operated and combusting MSW.

G. Reporting and Recordkeeping Requirements

The MWC NSPS promulgated on February 11, 1991 established reporting and recordkeeping requirements for MWC organics (dioxins/furans), MWC metals (PM and opacity), MWC acid gases (SO_2 and HCl), operating practices (CO, load, flue gas temperature, and operator training/certification) and NO_x. These reporting and recordkeeping requirements are discussed in the February 11, 1991 **Federal Register** notice (56 FR 5488). These same reporting and recordkeeping requirements would be adopted under the proposed NSPS, with two exceptions. First, dioxins/furans would be recorded and reported on either a total mass basis or a TEQ basis. Second, if small MWC's meet the criteria allowing them to conduct performance tests for dioxins/furans, PM, and HCl every third year, they would submit a simplified annual report for those years in which testing was not conducted.

Today's proposal also would add reporting and recordkeeping requirements for Cd, Pb, and Hg. The proposed standards would require that initial and annual compliance reports be submitted for Cd, Pb, and Hg for MWC's at plants with aggregate capacities above 35 Mg/day. If small MWC's meet the criteria allowing them to conduct performance tests for Cd, Pb, or Hg every third year, they would be allowed to submit a simplified annual report for those years when a full compliance test was not required. The proposed NSPS would also require that the amount of activated carbon injected for Hg control at small and large plants be recorded during MWC operation.

Initial and annual compliance reports for fly ash/bottom ash visible emissions testing would be required under today's proposal for both small and large plants.

Additionally, today's proposal would require that the siting analysis, materials separation plan, and summary of responses to public comments be submitted to the State. Refer to section V.D of this preamble for a discussion of these proposed requirements.

Records of all data, including results of emission tests and compliance reports, would be maintained for 5 years following the date of submission of the data.

III. Impacts of the Proposed Standards

The EPA projects that about 72 new MWC plants with a total MSW combustion capacity of about 17.6 million Mg/yr will begin construction by the year 2000. Of those 72 plants, 48 are projected to be large plants and 24 are projected to be small plants. The proposed subpart Eb NSPS would cover both the small and large plants, while the 1991 subpart Ea NSPS covers only large plants. This section describes the impacts (i.e., air, water, solid waste, energy, control cost, and economic impacts) of the proposed NSPS. The impacts of the proposed rule are provided in two forms. First, the incremental impacts of the proposed NSPS over the 1991 subpart Ea NSPS are presented. Second, the impacts of the proposed NSPS over a pre-1989 baseline (i.e., a baseline prior to the effective date of the subpart Ea NSPS) are presented. A summary of these impacts is provided in table 3.

TABLE 3.—IMPACTS OF THE CURRENT SUBPART Ea AND PROPOSED SUBPART Eb NSPS

Parameter	Increment of proposed NSPS over the 1991 NSPS	1991 NSPS[a]	Total[a]
New MWC's subject to NSPS in the Fifth Year after Promulgation:			
Combustion capacity (10^6 Mg/yr)	0.8	16.8	17.6
Number of MWC plants	24	48	72
Cost (1990 Dollars):			
Capital cost ($10^6)	156	613	769
Annualized cost ($10^6/yr)	43	157	200
Average cost increase ($/Mg MSW combusted)	1.95	11.55	13.50
Annual Emissions Reduction (Mg/yr):			
SO_2	3,000	35,000	38,000
HCl	4,000	46,000	50,000
PM	800	5,700	6,500
Cd	1	9	10
Pb	17	140	157
Hg	18	9	27
NO_x	200	10,300	10,500
Total dioxins/furans (kg/yr)[c]	1	28	29
Dioxin/furan TEQ (g/yr)[d]	17	467	484

[a] The impacts are based on a pre-1989 baseline (i.e., a baseline prior to the effective date of the subpart Ea NSPS.

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[b] The total impacts are calculated by adding the incremental impacts of the proposed NSPS (subpart Eb) to the impacts of the 1991 NSPS (subpart Ea). These impacts would be equivalent to the total impacts of the proposed NSPS over a pre-1989 baseline
[c] kg/yr=kilograms per year.
[d] g/yr=grams per year.

In addition, a summary of economic impacts (e.g., household, community, and business impacts) is presented that provides projected economic burdens resulting from the combination of the 1991 subpart Ea NSPS and the proposed subpart Eb NSPS.

The cost estimates provided in this section are in 1990 dollars, and include costs for emission control and compliance testing. The estimates do not include costs for such things as permitting and enforcement. For further information on the impacts of the proposed NSPS, refer to the document entitled "Economic Impact Analysis for Proposed Emission Standards and Guidelines for Municipal Waste Combustors" that is included in the list of items under **SUPPLEMENTARY INFORMATION** at the beginning of this preamble.

A. Incremental Impacts of the Proposed NSPS over the 1991 NSPS

The following is a discussion of the incremental air, water and solid waste, energy, and cost impacts of the proposed NSPS over the impacts of the 1991 subpart Ea NSPS.

1. Air Impacts

The air emission reductions discussed below, as well as other impacts discussed in today's proposal, are nationwide impacts that would result from full implementation of the NSPS in the fifth year after adoption. These are incremental impacts of the proposal over the 1991 subpart Ea NSPS.

Under today's proposed standards, nationwide emissions of total dioxins/furans would be reduced by about 1 kilogram per year (kg/yr), total mass, over the reductions associated with the 1991 subpart Ea NSPS. Emissions of dioxins/furans on a TEQ basis would reduced by about 10 grams per year (g/yr). On a nationwide basis, dioxin/furan emissions would be reduced by about 33 percent over levels under the 1991 subpart Ea NSPS.

Under the proposed NSPS, nationwide emissions of PM would be reduced by about 800 megagrams per year (Mg/yr) over the levels associated with the 1991 subpart Ea NSPS. This represents a nationwide reduction of about 34 percent over the subpart Ea levels.

Nationwide emissions of Cd and Pb would be reduced by about 1 and 17 Mg/yr, respectively, over the levels associated with the 1991 subpart Ea NSPS. This represents an incremental reduction of about 53 percent for Cd and 81 percent for Pb over subpart Ea NSPS levels.

Nationwide emissions of Hg would be reduced by about 18 Mg/yr over levels associated with the 1991 subpart Ea NSPS. This represents an incremental reduction of about 72 percent over subpart Ea NSPS levels.

Nationwide emissions of SO_2 and HCl would be reduced by about 3,000 and 4,000 Mg/yr, respectively, over reductions associated with the 1991 subpart Ea NSPS. Total acid gas emissions would be reduced by about 58 percent over subpart Ea NSPS levels.

Nationwide emissions of NO_X would be reduced by about 200 Mg/yr, or about 1 percent nationwide, over levels associated with the 1991 subpart Ea NSPS.

2. Water and Solid Waste Impacts

The acid gas/PM and NO_X control technologies used as the basis for today's proposed NSPS are the same technologies used as a basis for the subpart Ea NSPS. Those technologies were determined to have negligible water or solid waste impacts, as discussed in the previous **Federal Register** notice (56 FR 5488).

In the proposed NSPS, activated carbon injection is the technological basis for controlling Hg emissions. Activated carbon injection does not produce a wastewater stream, and it would have a negligible solid waste impact.

As with the 1991 NSPS, the EPA concludes that MWC ash disposal is adequately addressed by waste management standards so that considerations of ash quality do not play a role in this rulemaking.

3. Energy Impacts

The energy impact of applying acid gas/PM controls to small plants and applying Hg controls to both small and large MWC plants will result in a total national energy increase of about 27 gigawatt hours per year (GW-hr/yr) of electricity. No increase in the use of natural gas is anticipated.

Many of the small plants covered under today's proposal produce steam that is used to generate electricity for sale. For example, a typical 100 Mg/day MWC plant would generate about 12 GW-hr/yr of electricity. Such an MWC would require additional energy to operate pollution control equipment. The required energy would be about 0 7 GW-hr/yr of electricity, which has a relatively small impact on energy generated at the plant (about 6 percent of energy generated).

4. Control Cost Impacts

The EPA estimates the incremental annual social cost of control of the proposed NSPS over the 1991 subpart Ea NSPS to be about $43 million per year and the incremental national average cost per unit of waste combusted to be about $1.95/Mg. The incremental capital cost of control in the first 5 years of application is estimated to be $156 million over the cost of the 1991 subpart Ea NSPS.

B. Impacts of the Proposed NSPS Over a Pre-1989 Baseline

The following provides a discussion of the impacts of the proposed subpart Eb NSPS over a pre-1989 baseline. Since the 1991 subpart Ea NSPS has been effective for 3 years, the impacts presented below provide a useful account of the total impact of the NSPS, based on both the 1991 subpart Ea and proposed subpart Eb standards.

1. Air Impacts

The air emission reductions discussed below are nationwide impacts that would result from full implementation of the NSPS in the fifth year after adoption. These are not incremental impacts relative to the February 11, 1991 NSPS (see section III.A for a description of incremental impacts).

In combination, today's proposed standards and the 1991 NSPS would reduce nationwide emissions of dioxins/furans by about 29 kg/yr, total mass. Emissions of dioxin/furans on a TEQ basis would be reduced by about 480 g/yr. This represents an overall reduction of about 97 percent compared to baseline dioxins/furans emission levels in the absence of the 1991 and proposed NSPS.

Under the proposed standards and the 1991 NSPS, nationwide emissions of PM would be reduced by about 6,500 Mg/yr. This represents an overall control level of over 80 percent for PM emissions compared to baseline levels in the absence of the 1991 and proposed NSPS.

Nationwide emissions of Cd and Pb would be reduced by 10 and 157 Mg/yr, respectively. This represents an overall reduction of about 94 percent for Cd emissions and about 98 percent for Pb

emissions, compared to emission levels in the absence of the 1991 and proposed NSPS.

As a result of the 1991 and proposed NSPS, nationwide Hg emissions would be reduced by about 27 Mg/yr over baseline levels. This represents an overall reduction of about 80 percent for Hg emissions compared to baseline levels in the absence of the 1991 and proposed NSPS.

Nationwide emissions of SO_2 would be reduced by about 38,000 Mg/yr, and nationwide emissions of HCl would be reduced by about 50,000 Mg/yr. The 1991 and proposed NSPS would reduce MWC acid gas emissions by about 94 percent compared to baseline emission levels.

Nitrogen oxides emissions would be reduced by about 10,500 Mg/yr. This represents an overall nationwide reduction in NO_X emissions of about 35 percent as compared to levels in the absence of the 1991 and proposed NSPS.

2. Water and Solid Waste Impacts

As discussed in section III.A.2, the technologies used to comply with both the 1991 subpart Ea and proposed subpart Eb NSPS do not produce a wastewater stream; therefore, no significant water pollution impacts are projected to occur. Additionally, the application of these technologies would result in a negligible solid waste impact.

3. Energy Impacts

As a result of the proposed and 1991 standards, total national usage of energy is estimated to increase by about 290 GW-hr/yr of electricity above baseline. No increase in the usage of natural gas is anticipated.

The majority of the MWC's covered under the proposal produce steam that is used to generate electricity for sale. Those MWC's would require energy to operate pollution control equipment, but such energy requirements have a relatively small impact on energy generated at the plant (about 4 to 6 percent of total energy generated).

4. Control Cost Impacts

a. *National Overview.* The EPA estimates the total combined annual social cost of control of the 1991 NSPS and today's proposed standards to be about $200 million per year, and the overall national average cost per unit of waste combusted would be about $13.50/Mg. For perspective, typical costs incurred in 1990 by the general public for the collection, transportation, and combustion of MSW and ash disposal ranged from $22/Mg to over $145/Mg of MSW, averaging about $90/Mg. Additionally, the EPA estimates the capital cost of control in the first 5 years of application of the 1991 NSPS and today's proposal to be $769 million.

b. *Control Costs for Typical MWC Plants.* The previous section presented costs of the proposal on a national basis. This section presents examples of typical costs that would be experienced at both a large MWC plant and a small MWC plant. These are typical costs.

The costing data presented in this section are provided in the following formats: capital cost, annualized cost, and cost per Mg of municipal waste combusted. The costing information is subcategorized by air pollution control components (i.e., acid gas scrubber, activated carbon injection application, and NO_X control). For perspective, the estimated cost of combustion units (which includes the cost of GCP) is also displayed. This costing information has been derived from 1989 background information documents that were used in developing the 1991 NSPS (see **SUPPLEMENTARY INFORMATION** for more information about these documents), and is presented in 1987 dollars (the escalation factor for converting to mid-1990 dollars is 1.111).

From table 3A, it can be noted that the capital cost for control at a new large MWC plant (730 Mg/day capacity) would be about $14.2 million of which $12.0 million would be for the acid gas control, 2.0 million for NO_X control, and less than one million for activated carbon injection. On an annualized basis, the cost would be about $4.2 million/yr or about $17.50/Mg of waste combusted. This would increase baseline combustor cost from about $60/Mg combusted to about $77/Mg combusted. Large MWC plants represent about 95 percent of MWC combustion capacity.

For a new small MWC plant (90 Mg/day capacity), table 3A shows a capital cost for control of about $3.14 million of which $3.1 million would be for the acid gas control system and the remaining for activated carbon injection. On an annualized basis, the cost would be about $920,000/yr or about $31/Mg of waste combusted. This would increase baseline combustor cost from about $60/Mg combusted to about $91/Mg combusted. Small MWC plants represent about 5 percent of MWC combustion capacity.

C. Economic Impacts

The following provides a discussion of the total economic impacts (e.g., household, community, and business impacts) of the proposed and 1991 NSPS over a pre-1989 baseline. As discussed in sections III.A.4 and III.B.4 of this preamble, the proposed subpart Eb standards would have a small incremental national average cost per unit of waste combusted ($1.95/Mg) as compared to the combined impact of the 1991 subpart Ea NSPS and the proposed subpart Eb NSPS ($13.50/Mg). Since the proposed NSPS is based on the same technologies as the 1991 NSPS, and since the 1991 NSPS has been effective for 3 years, the impacts presented below provide a useful account of the total economic impacts of the NSPS, based on both the 1991 and proposed NSPS. In estimating the economic impacts, the EPA assumed that all new MWC's would have been built with no more emission control than that mandated by regulations promulgated before 1991, specifically, 40 CFR part 60, subparts E and Db. This pre-1991 situation represents the baseline for estimating regulatory costs; therefore, all cost estimates provided are the full costs above this baseline.

TABLE 3A.—CAPITAL AND ANNUALIZED COSTS OF AIR POLLUTION CONTROL FOR TYPICAL NEW LARGE AND SMALL MWC PLANTS[a]

Parameter	Baseline combustor[b]	Air pollution control device cost[a]				
		Acid gas/PM	Cl[c]	NO_X	Total APCD cost[d]	Total combustor and APCD cost
New large MWC plant (730 Mg/day MB/WW with SD/FF, CI, and SNCR)[e, f, g]:						
Capital cost ($10[6])	50	12	0.150	2.0	14.2	64.2
Percent of total capital cost (%)[h]	78	19	0.2	3	22	100
Annualized cost ($10[6]/yr)	14.4	3.56	0.091	0.582	4.23	18.6

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TABLE 3A.—CAPITAL AND ANNUALIZED COSTS OF AIR POLLUTION CONTROL FOR TYPICAL NEW LARGE AND SMALL MWC PLANTS[a]—Continued

Parameter	Baseline combustor[b]	Air pollution control device cost[c]				
		Acid gas/PM	CI[e]	NO_x	Total APCD cost[d]	Total combustor and APCD cost
Average cost increase ($/Mg MSW combusted)	59.5	14.8	0.37	2.39	17.5	77.05
New small MWC plant (90 Mg/day MOD/SA with SD/FF and CI)[g]:						
Capital cost ($10[6])	5.5	3.1	0.043	0	3.14	8.64
Percent of total capital cost (%)[h]	64	36	0.5	0	36	100
Annualized cost ($10[6]/yr)	1.83	0.91	0.014	0	0.92	2.76
Average cost increase ($/Mg MSW combusted)	60.5	30.2	0.46	0	30.7	91.2

[a] The costs presented are in 1987 dollars. To calculate mid-1990 dollars, multiply 1987 dollars by a factor of 1.111. Total cost values may not add due to rounding.
[b] Costs for good combustion practices are included in combustor design (no cost).
[c] CI = activated carbon injection.
[d] APCD = air pollution control device.
[e] MB/WW = mass burn waterwall combustor.
[f] SD/FF = spray dryer and fabric filter.
[g] SNCR = selective noncatalytic reduction.
[h] Does not add to 100 percent due to rounding.
[i] MOD/SA = modular starved-air combustor.

The overall incremental national average cost per unit of waste combusted of $13.50/Mg (presented in section III.B.4 of this preamble) breaks down as follows: $11 for acid gas/PM and metals control; $0.40 for Hg control; $1.80 for NO_x control; and $0.35 for testing, reporting, and recordkeeping. The $1.80 cost for NO_x control is for large MWC plants only, because no small plants will incur NO_x control costs.

The standard will have a wide range of impacts on the price of combustion services. To study these potential impacts, the EPA first applied a cost accounting procedure that approximates the one that would be used by an individual publicly owned MWC. Then, using a 1993 average tipping fee of $57/Mg of MSW combusted (1990 dollars) and assuming the full cost of meeting acid gas, PM, Hg, and NO_x requirements is passed directly to MWC customers, the EPA found that the lowest and highest tipping fee increases for the model plants used in the EPA's economic analysis would be about $11/Mg and $85/Mg, respectively. The majority of tipping fee increases would be in the $13/Mg to $18/Mg range. This increase would be equivalent to about $1.00/month to $1.50/month for a typical household.

The EPA projects that, regardless of how the regulatory costs are financed, most of the burden will find its way directly or indirectly to households served by MWC's. Costs that are directly assessed to households are likely to be in the form of increased collection fees and/or increased taxes. Indirect household costs are price increases charged by businesses that similarly are faced with increases in collection fees and/or taxes. For the 1991 NSPS and the standards being proposed today, the EPA projects an increase in the average annual household cost of waste disposal of about $21 for communities that construct new MWC's. The actual cost per household will depend on local conditions, including the extent to which recycling and landfilling are also used within the affected community. Approximately 54 percent of the total average household cost is a direct cost, thus the annual direct household cost would be a little over $11. The EPA estimates that the average annual household cost breaks down to $17 per year for communities over 250,000 in population, $23 for communities with populations between 100,000 and 250,000, $29 for communities with populations between 50,000 and 100,000, and $27 for communities with populations under 50,000. This range represents 0.04 to 0.09 percent of household income. The EPA expects that comparatively few communities under 100,000 will be affected by the standards, because such communities tend to rely on landfilling.

The adoption of new regulations increases costs for a community and at some point has the potential to affect abilities to issue bonds. To address this issue, the EPA used demographic and financial data to project potential difficulty that might confront communities planning to construct new MWC's with bond financing. Applying generally accepted criteria for issuance of revenue and general obligation bonds, the EPA found that no community, large or small, should experience difficulty with bond financing as a result of the proposed standards.

To address the issue of cost increases, the EPA identified five private firms that plan to construct one or more MWC's that will be subject to the standards. Of the five, four are small (i.e., have less than $6 million in annual sales). (Firms for which annual sales data are not available are assumed to be small.) Financial data are available for only one firm, which is a large firm. Total annual costs of the 1991 and proposed NSPS as a percentage of sales is less than 1 percent for that firm. Potential tipping fee increases, based on the full pass-through of emission control costs (i.e., passing all control costs to consumers via the tipping fee) and an average tipping fee of $57/Mg (1990 dollars), will average about 28 percent for MWC's owned by small firms, and about 17 percent for MWC's owned by large firms.

In its analysis of cost, economic, and environmental impacts, the EPA assumed that the 1991 NSPS and the standards being proposed today will not cause communities to alter their plans to construct new (or to use already constructed) MWC plants. Specifically, the EPA is assuming that its projections of how much MSW will be combusted in the year 2000, and the types and sizes of new combustors that will be used, will not be effected by the standards being proposed today. However, some communities, if faced with large compliance costs, may choose to delay or cancel construction, or to downsize MWC's, or to change combustion technology. These communities probably would expand landfilling, recycling, or source-reduction activities. If the standards do cause some communities to shift away from combustion, the result will be a general reduction of the cost impacts reported here. However, any such shifts caused by the standards, and the net economic and environmental effects of those shifts, are extremely difficult to project. This is in part due to the fact that environmental regulations for landfills, as well as landfill site location problems, will be exerting an opposite influence on communities—causing them to look with more favor on combustion alternatives.

The EPA has been able to quantify some of the benefits of the standards. The absence of sufficient exposure-response and valuation information precludes a comprehensive benefits analysis for many of the MWC pollutants. The EPA expects partial benefits for reduction of PM and SO_2—primarily benefits from reductions in morbidity and mortality—to total about $160 million annually. However, recent evidence suggests the mortality reduction benefits of particulate matter controls may be higher than is assumed in this analysis.

In conclusion, based on the combined economic impacts analysis of both the 1991 and proposed NSPS, the EPA expects that no community will be significantly impacted by the proposed and 1991 NSPS. Since the incremental impact of the proposal over the 1991 NSPS is only one-seventh the total combined impact (based on incremental national average cost per unit of waste combusted), the proposal is expected to have a very small impact on communities.

IV. Rationale for Proposed Standards for MWC Emissions

This section addresses the legal, technical, and economic basis for the proposed NSPS. The basis for regulating MWC's, for regulating the specified pollutants, and for regulating MWC's according to the specified size categories are discussed. The section also presents the EPA's approach in establishing the MACT floor and selecting MACT. Additionally, the section discusses the selected format for the proposed standards, the proposed performance testing and monitoring requirements, and the proposed reporting and recordkeeping requirements.

A. Background

On November 15, 1990, the Act was amended. The amendments added a new section 129 to the Act, which applies to a range of solid waste incinerators including MWC's, medical waste incinerators (MWI's), infectious waste incinerators, and industrial waste incinerators.

Under authority of sections 111 and 129 of the Act of 1990, the EPA was directed to develop and promulgate MACT-based NSPS for MWC's according to a specified schedule. At the time of enactment of the Act as amended in 1990, the EPA had already proposed, under section 111 of the Act, NSPS based on BDT for all sizes of new MWC's. Section 129 of the Act of 1990 directed the EPA to promulgate standards based on BDT under the deadlines imposed in the consent decree in *State of New York et al.* versus *Reilly* (No. 89–1729 D.D.C.), but limited applicability of the standards to combustors with unit capacities greater than 225 Mg/day. As a result, the standards, which were proposed in 1989, under development for promulgation in late 1990 were revised to be applicable only to these MWC units. The final standards were signed by the Administrator on January 11, 1991 published in the **Federal Register** on February 11, 1991 (56 FR 5488).

Section 129 of the Act also directs the EPA to develop another NSPS for MWC's that would be based on a more stringent control scenario, apply to smaller facilities, and cover more pollutants. Specifically, section 129 directs the EPA to promulgate MACT-based NSPS for MWC units at MWC plants with capacities to combust less than 225 Mg/day. Section 129 also directs the EPA to develop numerical emission limits for Cd, Pb, and Hg, to incorporate siting requirements for new units, and to develop operator training requirements. Additionally, section 129 directs the EPA to develop an opacity limit for air curtain incinerators firing certain "clean" fuels.

Today's proposal complies with all requirements of section 129 described above. This has been done by: (1) Proposing MACT-based NSPS that cover MWC units at plants with capacities above 35 Mg/day; (2) proposing numerical emission limits for Cd, Pb, and Hg; (3) proposing siting requirements for new MWC units; (4) proposing operator training requirements; and (5) proposing opacity limits for air curtain incinerators firing specific "clean" fuels.

The proposed NSPS are, in effect, replacing the February 11, 1991 subpart Ea NSPS for MWC facilities for which construction, modification, or reconstruction begins after September 20, 1994, because the February 11, 1991 subpart Ea NSPS are based on BDT rather than MACT. The February 11, 1991 subpart Ea NSPS will remain in effect for facilities for which construction, modification or reconstruction began after December 20, 1989 but on or before September 20, 1994. Those existing facilities constructed after December 20, 1989 but before this proposal would be subject to both the 1991 subpart Ea NSPS and the subpart Cb guidelines proposed in a separate notice in today's **Federal Register**. This dual coverage under both the proposed subpart Cb and the 1991 subpart Ea is further discussed in the preamble to the proposed subpart Cb in today's **Federal Register** notice.

B. Selection of Source Category

The previous MWC NSPS adopted on February 11, 1991 provided the rationale for the selection of MWC's as a source category to be regulated (56 FR 5488). Moreover, section 129 of the Act directs the EPA to issue NSPS for this source category, and thereby confirms the EPA's earlier decision.

Today's proposed NSPS (subpart Eb) would apply to new MWC's, defined as those MWC's for which construction, modification, or reconstruction commenced after September 20, 1994. Municipal waste combustors for which construction, modification, or reconstruction commenced on or before September 20, 1994, would be covered by the subpart Cb emission guidelines proposed in a separate notice in today's **Federal Register**.

Also, as required by section 129 of the Act, today's proposed NSPS would establish opacity limits for certain new air curtain incinerators, for which construction, modification, or reconstruction commenced after September 20, 1994. Under the proposed NSPS, air curtain incinerators that burn only yard wastes, tree trimmings, and clean untreated lumber would be required to meet an opacity limit and no other requirements would apply. The proposed standards for these air curtain incinerators are presented in section VII of this preamble.

C. Modification or Reconstruction of Existing MWC's

The subpart Ea NSPS proposal published in the **Federal Register** on December 20, 1989 (54 FR 52251) provided a discussion of the terms and conditions associated with construction, modification, and reconstruction for MWC's. One change is being proposed. Previously, the terms "modification" and "reconstruction" were defined under sections 60.14 and 60.15 of subpart A of part 60. Section 129 of the Act has specified a new definition of

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"modified solid waste incineration unit" that combines and revises the previous definitions of "modification" and "reconstruction." Specifically, "modified solid waste incineration unit" refers to:

(1) Modifications for which the

* * * cumulative costs of the modifications, over the life of the unit, exceed 50 per centum of the original cost of the construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs * * *.

or (2) modifications involving

* * * a physical change in or change in the method of operation of the unit which increases the amount of any air pollutant emitted by the unit for which standards have been established under [section 129] or section 111 * * *.

D. Selection of Designated Pollutants

The previous MWC NSPS proposal published in the Federal Register on December 20, 1989 (54 FR 52251) provided the rationale for the selection of "MWC emissions" and NO_x as designated pollutants under section 111(b) of the Act. Additionally, section 129 of the Act specifies that emission limits shall be developed for PM, opacity, SO_2, HCl, NO_x, CO, Cd, Pb, Hg, and dioxins/furans. Emission limits for all but three of these pollutants (Cd, Pb, and Hg) were established in the February 11, 1991 standards. Section 129 also requires that siting requirements be established for new MWC's that will minimize, on a site-specific basis, potential risks to public health or the environment. Today's proposal responds to these new 1990 Act requirements.

Standards for fugitive MWC fly ash/bottom ash emissions are proposed today because these emissions contain PM, Cd, Pb, Hg, and dioxins/furans, which are components of the designated pollutant "MWC emissions."

E. Selection of Affected Facilities

For the proposed NSPS, the affected facility, an MWC facility, is defined as any setting or equipment chamber or pit used to burn MSW (including RDF) and extends to MWC fly ash/bottom ash emission points, including ash storage areas, conveyor transfer points, and ash loading areas for hauling trucks at the MWC site. This does not extend to ash handling outside of the MWC property boundary or at ash fill sites.

Municipal waste combustion includes the burning (or pyrolysis) of MSW in any type of equipment, chamber, or pit, including equipment with and without heat recovery. Municipal solid waste is defined as either a mixture or a single-item stream of household, commercial, and/or institutional discards. This would include discards such as paper, wood, yard wastes, tree trimmings, plastics, leather, rubber, glass, metals, and other combustible and noncombustible materials. The MSW definition includes household discards as well as discards from institutional and commercial sources, but does not include segregated industrial process/manufacturing discards or medical waste. The MSW definition also includes RDF, which is a type of MSW that is shredded (or pelletized) and classified by size before combustion. However, any mixtures of medical waste with nonmedical hospital waste or with household, commercial, or institutional waste is considered to be MSW. Any mixtures or industrial process/manufacturing discards with nonprocess industrial waste or with household, commercial, or institutional waste is considered to be MSW. Minor editing has been made in the definition of MSW to clarify this point.

Cofired combustors are those that fire MSW with non-MSW fuel such as coal. Cofired combustors that combust a fuel feed stream comprised, in aggregate, of equal to or less than 30 percent MSW or RDF (by weight, based on a 24-hour average) would not be subject to the NSPS and would be required only to submit an initial notification of construction and subsequent reports of the amount of MSW and other fuels combusted. The exclusion of cofired combustors from the NSPS is consistent with section 129 of the 1990 Act. This exclusion is unchanged from the February 11, 1991 NSPS.

Air curtain incinerators with unit capacities to combust greater than 35 Mg/day of MSW are subject to the proposal, however, air curtain incinerators that combust only tree trimmings, yard wastes, and clean untreated lumber (these are a subset of MSW) would be subject to an opacity standard and its associated testing, recordkeeping, and reporting, which are included in today's proposal, but would not be subject to any other parts of today's proposal. This exclusion does not apply to air curtain incinerators that combust other MSW materials.

Additionally, waste-fuel power generation facilities that combust a single-item waste stream of tires, fuel derived solely from tires, or used oil would be subject only to an initial notification of construction and would not be subject to any other provisions in today's proposal. This exclusion is unchanged from the NSPS promulgated on February 11, 1991.

The NSPS for MWC's proposed today would apply to MWC units at plants with capacities above 35 Mg/day. The lower size threshold of 35 Mg/day aggregate plant capacity for controlling MWC emissions under the proposed NSPS was selected after reviewing the population distributions of MWI's and MWC's. Most incinerators at medical waste facilities are smaller incinerators that fire segregated medical waste with general hospital discards (MSW), and these incinerators would have the potential to be covered by today's proposal. The population distribution of MWI's is distinctly different from the population distribution of traditional MWC plants that are the target of today's proposal. The existing distribution of MWC's is composed of about 179 plants, with an average plant size of about 600 Mg/day combustion capacity, with two or three MWC units per plant. Assuming continuous operation, the potential nationwide combustion capacity of existing MWC's is about 107,000 Mg/day. The MWI distribution is quite different and includes about 7,000 combustors with a single combustion unit per facility and an average unit size of less than 3 Mg/day combustion capacity. The total U.S. capacity of MWI's is about 20,000 Mg/day. This population is being addressed under a separate rulemaking. These population distributions of existing MWC's and MWI's are for existing units but are considered representative of new unit applications. Clearly, the MWC population represents a smaller number of comparatively larger combustors, and MWI's represent a much larger number of smaller combustors. The lower size cutoff of 35 Mg/day aggregate plant capacity that is included in today's proposal would exclude less than 1 percent of the total nationwide combustion capacity of MWC's and would result in over 99 percent of total MWC capacity being covered by the standards. The same lower size cutoff of 35 Mg/day would prevent significant dual coverage under the proposal by excluding more than 99 percent of MWI units and about 97 percent of nationwide MWI capacity from today's proposed revisions.

The proposed standards would therefore cover the great majority of MWC's, but cover only a few of the largest regional MWI's (nine units at three sites are known to cofire medical waste with MSW and are above the 35 Mg/day total plant capacity cutoff). The Act of 1990 requires that regulations for MWI's be developed separately. For these reasons, it is appropriate that today's proposed standards focus on MWC's and that a separate regulation focus on MWI's. The NSPS and emission guidelines for MWI's are scheduled to be proposed in 1995.

Those MWC's at plants with aggregate capacities below 35 Mg/day would not be subject to the emission limits or any other emission control requirements under today's proposal. However, MWC plants with aggregate capacities greater than 25 Mg/day and less than or equal to 35 Mg/day would be required to provide a one-time notification of construction, which would include their location, planned startup date, the types of fuels that will be combusted, and aggregate plant capacity and supporting information including calculations used to determine plant capacity. This one-time report would allow the EPA or State agency to enforce the lower size cutoff for applicability to the proposed standards. Plants with aggregate capacities of 25 Mg/day or below would not be subject to any provisions under this proposal.

The proposed standards for MWC's are subdivided into two subcategories of air emissions requirements: The first for MWC's located at MWC plants with aggregate capacities to combust more than 35 Mg/day but less than or equal to 225 Mg/day of MSW (referred to as small MWC plants), and the second for MWC's located at MWC plants with aggregate capacities to combust greater than 225 Mg/day of MSW (referred to as large MWC plants). The 225 Mg/day dividing point was established because the population of plants with aggregate capacities equal to or below 225 Mg/day contains many modular MWC's, and there are concerns about how applicable technologies such as selective noncatalytic reduction (SNCR) are to modular MWC's.

The EPA projects that the population of new MWC's at plants with aggregate capacities above 225 Mg/day will account for about 93 percent of new combustion capacity, whereas the population of MWC's at plants with aggregate capacities greater than 35 Mg/day but equal to or less than 225 Mg/day will account for about 7 percent of new combustion capacity.

F. Selection of Maximum Achievable Control Technology

The following discussion addresses the EPA's selection of MACT. The existing technologies for controlling emissions of the designated pollutants from MWC's are first reviewed, followed by a summary of the EPA's approach for establishing the MACT floor. Finally, the discussion presents the EPA's selection of MACT for MWC's.

1. Summary of MWC Control Technologies

The following discussion reviews the existing technologies for controlling emissions of acid gases, dioxins/furans, PM, Cd, Pb, Hg, and NO_x from MWC's.

a. *Acid Gas/PM Control Technologies.* Municipal waste combustor acid gas/PM control is a general term that refers to a group of MWC air pollution control technology combinations. These combinations control a wide range of pollutants, such as MWC acid gases (including SO_2 and HCl), MWC organics (including dioxins/furans), and PM and metals (including Cd, Pb, and a number of other metals except Hg). The two acid gas/PM controls most commonly used in the United States for new MWC's are: (1) GCP plus dry sorbent injection (DSI) followed by a fabric filter (FF); and (2) GCP plus a spray dryer (SD) followed by an FF. Discussions of these two acid gas/PM control systems were presented in the December 20, 1989 proposal preamble for the 1991 acid gas and PM NSPS in subpart Ea (54 FR 52251). Control of Cd, Pb, and Hg were not discussed in detail in the 1989 preamble.

Since 1991, the performance of the acid gas/PM control systems for removal of Cd, Pb, and Hg has been investigated in more depth. Cadmium and Pb are volatile at temperatures present in combustion systems, but condense onto PM at temperatures associated with the operation of most PM control systems. As a result, the control of Cd and Pb is generally related to the control of PM emissions. However, because of the potential for adsorption of these metals onto fine PM that is less readily collected than larger PM, the control efficiency for these metals may be lower than that for total PM.

Fabric filter-equipped systems (e.g., DSI/FF's and SD/FF's) generally have better Cd and Pb control because these devices are better able to collect fine PM than electrostatic precipitator (ESP)-equipped systems. For DSI/FF and SD/FF systems, data for controlled Cd emissions range from 0.001 to 0.010 mg/dscm. Emissions of Pb from MWC's with these systems range up to 0.10 mg/dscm, but the majority are generally less than 0.050 mg/dscm.

Although the above technologies are effective at removing Cd, Pb, and other metals, they do not consistently remove Hg without integrating some other form of Hg control. A discussion of Hg control is presented below.

b. *Mercury Control Technologies.* The EPA estimates that typical uncontrolled Hg emission levels from MWC's in the United States range from 0.20 to 1.4 mg/dscm at 7 percent O_2. Unlike other metals, Hg has a high vapor pressure at typical operating temperatures of air pollution control devices; therefore, collection of Hg by the PM control device is highly variable. The EPA collected test data from more than 30 MWC's with various air pollution control device systems that indicate a wide range of Hg control. High-efficiency PM control, lower flue gas temperatures in the air pollution control system, and a sufficient level of carbon in the fly ash facilitate Hg control. Higher levels of carbon in the fly ash and reduced flue gas temperatures enhance Hg adsorption onto the carbon, which can then be removed by the PM control device. To promote Hg adsorption, it is important to operate the control systems at temperatures less than about 150 to 200 °C. Low flue gas temperature is inherent to acid gas control.

Municipal waste combustors with high combustion efficiency will have effective carbon burnout and, therefore, will have low fly ash carbon content. These units may achieve little or no Hg control even when equipped with acid gas/PM control systems, and the control may be highly variable even at the same site.

Three techniques of Hg control are currently being used: Activated carbon injection, sodium sulfide (Na_2S) injection, and wet scrubbing. Activated carbon injection and Na_2S injection are used in conjunction with an acid gas control device. Brief discussions of these three Hg control technologies and their capabilities are presented below.

Injection of powdered activated carbon into the flue gas prior to the acid gas/PM control device has been tested at U.S. MWC's. The removal mechanism is not fully understood, but it is believed that activated carbon is a catalyst for the oxidation of elemental Hg to mercuric oxide and mercuric chloride, which can more readily be captured in the air pollution control device. This technology has been applied commercially to MWC's in Europe equipped with SD/ESP's and during test programs in Europe and Canada to MWC's with SD/FF's and DSI/FF's. The EPA also recently tested activated carbon injection at the Stanislaus County MWC in California and the Camden County MWC in New Jersey. The Stanislaus County MWC is equipped with an SD/FF, and the Camden County MWC is equipped with an SD/ESP. Test results show Hg reductions greater than 85 percent when injecting activated carbon.

Another Hg control technology that has been applied to MWC's is Na_2S

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injection. Sodium sulfide is a crystalline solid that dissolves in water. The resulting Na_2S solution is sprayed into the flue gas prior to the acid gas/PM control device. The reaction of Na_2S and Hg precipitates solid mercuric sulfide (HgS) that is collected in the PM control device.

Three MWC's in Sweden, two in Germany, and one in Canada have used Na_2S injection to control Hg emissions. All of these facilities use DSI/FF systems for acid gas/PM control, and injection of Na_2S occurs prior to the DSI/FF system at flue gas temperatures of 130 to 250 °C. In addition, Hg emission tests were conducted at the Stanislaus County MWC in California while using Na_2S injection. Results from tests at European, Canadian, and U.S. MWC's have shown Hg removal efficiencies of 40 to 90 percent when using Na_2S injection.

Wet scrubbing is a form of acid gas control that also controls Hg without use of an add-on Hg control system. This technology has primarily been used on MWC's in Europe and Japan. Typically, the flue gas is first directed through an ESP to reduce PM, followed by wet scrubbing, which involves passing the flue gas through a one- or two-stage absorber system where the gas stream is saturated with an alkaline solution. During this process, flue gas temperatures are reduced to as low as 55 °C. The low absorber operating temperature promotes Hg condensation, resulting in an Hg reduction of greater than 80 percent. The alkaline solution used in the wet scrubbing process, typically containing calcium hydroxide ($Ca(OH)_2$), reacts with the acid gas to form salts, which are generally insoluble and may be removed by sequential clarifying, thickening, and vacuum filtering. The dewatered salts or sludges are then sent to a landfill. The disadvantages of wet scrubbing include the quantity of water required, potential difficulties with waste handling, and undefined performance at U.S. MWC units firing U.S. MSW streams.

c. *Nitrogen Oxides Control Technologies.* During combustion, NO_x are formed through oxidation of fuel-bound nitrogen (N_2) contained in MSW, and fixation and oxidation of atmospheric N_2. Emissions of NO_x can be controlled using SNCR add-on control technology that reduces NO_x to N_2 without the use of catalysts. Techniques include Thermal DeNO$_x$™, which injects ammonia into the combustor as a reducing agent; the NO$_x$OUT™ process, which injects urea with chemical additives; and a two-stage urea/methanol injection process. A discussion of SNCR NO_x control was presented in the December 20, 1989 proposal preamble for the 1991 NSPS for new MWC's (54 FR 52251). The use of SNCR at MWC's results in NO_x emission reductions of about 45 percent.

There are some concerns about the applicability of SNCR to modular MWC's. The SNCR technology has never been applied to modular MWC's, and several factors may complicate the use of SNCR and may reduce its performance level. First, many modular units are batch fed in cycles of about 6 to 12 minutes per charge (due to small combustor size), which may cause frequent temperature fluctuations. When the temperature fluctuates above the required injection temperature window, the reducing reagent is oxidized to NO_x, and NO_x emissions can increase. When the temperature drops below the required range, unreacted ammonia (NH_3) emissions can occur. In addition, the varying moisture and nonhomogeneous nature of the waste burned can also result in temperature fluctuations in a small unit. With certain modifications, it may be possible to accommodate SNCR at new modular units; however, the NO_x reduction performance of an SNCR system on a modular unit will probably be lower than that for a combustor with more stable operating temperatures, as occurs at large MWC's.

The EPA requests comment on the applicability of SNCR and other NO_x control techniques to MWC's at small plants. The EPA requests that comments address the cost, technical performance, and reliability of application of SNCR or other NO_x control techniques specifically to modular starved-air MWC's and modular excess-air MWC's. Based on the comments and information received, the EPA will reconsider requiring NO_x control on MWC's at small plants.

The amount of NO_x formed varies by combustor type. Three types of MWC's, mass burn/rotary combustors, fluidized-bed combustors, and modular/excess-air combustors, are considered "low NO_x" combustors. Available data show that these types of MWC's consistently show NO_x levels below 150 ppmv without the use of SNCR.

2. MACT Floor and MACT Requirements of the Act

The NSPS promulgated under subpart Ea on February 11, 1991 is based on BDT. Section 129 requires that the NSPS promulgated under subpart Ea be reviewed and revised based on MACT. Congress established a minimum floor for the standards. For new sources, the standard may be no less stringent than "the emission control that is achieved in practice by the best controlled similar unit." This is often referred to as the "MACT floor" for new sources.

To establish the emission control level achieved by the best controlled similar unit, the EPA reviewed available MWC emissions test data associated with all types of combustors and all types of emission control technologies that are currently being used to control emissions of SO_2, HCl, PM, Pb, Cd, Hg, dioxins/furans, and NO_x. The EPA identified the best controlled unit and reviewed the performance of its associated control technology. The EPA has concluded that the control technology used by the best controlled unit is applicable to all types of combustors (with one exception, as noted below) and achieves the same level of performance on all combustor types. Thus, there is no need to subcategorize performance to different classes of similar MWC units. The EPA determined that the best controlled MWC (i.e., the basis for the MACT floor) would be an MWC equipped with an SD/FF and SNCR (large MWC plants only). Based on test data from MWC's equipped with SD/FF and SNCR (large plants only) control systems, the EPA established the MACT floor as the emission control level for each pollutant achieved in practice by the best controlled MWC unit.

The MACT floor defines the minimum level of emission control that may be considered to be MACT, regardless of cost or other considerations. However, in requiring control beyond the MACT floor when determining MACT, the EPA must determine the maximum emission reduction achievable for new MWC units taking into consideration the cost of achieving such emission reduction and any non-air-quality health and environmental impacts and energy requirements. Therefore, the level of control that represents MACT may be more stringent than the MACT floor. The following section presents the EPA's rationale for establishing the MACT floor and MACT for MWC's.

3. MACT Floor and MACT

This section summarizes the MACT floor and presents the EPA's rationale for establishing MACT for each pollutant for MWC's at both small and large MWC plants.

In establishing the MACT floor and MACT for each pollutant for small and large plants, the EPA used principally the data base created for establishing the NSPS for MWC's proposed in 1989 and promulgated in 1991 under subpart Ea. For a few pollutants in this proposal, the EPA utilized more recent test data to supplement the 1989 data base. Because most of the test data used for this proposal are more than 4 years old, and in consideration of the fact that most MWC's retest at least once per year, the EPA requests submittal of the most recent MWC emissions test data.

Additionally, the EPA requests comment on which MWC emissions test data would be the most appropriate basis for judging the performance of SD/FF's in establishing the MACT floor and MACT for new MWC's. For example, should the EPA consider test data for only the most recently-built MWC's (e.g., units that have begun operation since 1990), or should consideration be made of all operational MWC's, independent of unit age? Also, if the EPA has multiple emission tests for a given MWC over its operating history (which is common), should the EPA utilize the data from all of the emission tests performed for the unit or from only the most recent emission test, in determining the performance of the unit? The EPA also requests comment on suggestions of analytical methods to use for analysis of the data (e.g., analytical methods that could be used to address emissions variability, including methods for analyzing variable data collected over multiple years for one MWC and methods of adjusting the emissions data to account for variability). The appropriate treatment of variability will be related to the format chosen for the standards (see discussion of alternative formats below).

Based on the new data submitted and on the final choice of which test data and what analytical methods to use, the EPA may promulgate final emission limits that are more or less stringent than those proposed today.

a. *Summary of the MACT floor.* This proposal determines the MACT floor for new units based on performance of the best control technology. Under the proposal, emission control level achieved in practice by an MWC equipped with the best emission control technology (i.e., an SD/FF and SNCR (large MWC plants only)) represents the MACT floor for each pollutant (see table 4).

TABLE 4.—MACT FLOOR EMISSION LEVELS FOR NEW MWC'S

Pollutant	MACT floor emission level[a,b]
SO_2	30 ppmv or 80-percent reduction.
HCl	25 ppmv or 95-percent reduction.
Pb	0.10 mg/dscm.
Cd	0.010 mg/dscm.
PM	15 mg/dscm.
Hg	0.65 mg/dscm.
Dioxins/furans	20 ng/dscm total mass or about 0.40 ng/dscm TEQ.
NO_x	180 ppmv (large MWC plants) Uncontrolled (small MWC plants).

[a] All emission levels are corrected to 7 percent O_2, dry basis.

[b] Most of the MACT floor requirements for large MWC plants are more stringent than the 1991 subpart Ea NSPS (see table 2).

The MACT floor for new sources (best control) could be constructed in a number of different ways including a technology basis (this proposal), a permit basis, or an emission data basis. For example, under the permit basis the most stringent MWC operating permit limitation might determine the floor. Other approaches are also possible. The different approaches would result in noticeably different MACT floor performance levels. The EPA specifically requests comment on what approach is most appropriate and the rationale for that approach. Based on the EPA's review of comments received on this issue, as well as reanalysis of the data submitted, the MACT floor for the promulgated NSPS may be noticeably higher or lower than the floor included in the proposal.

b. *MACT for Sulfur Dioxide.* Uncontrolled SO_2 emission levels at both small and large MWC plants are, on average, 160 ppmv. The best emission control system for controlling SO_2 emissions is an SD/FF. The EPA's analysis of test data from existing MWC's with SD/FF systems indicates that an SO_2 emission level of either 30 ppmv or an 80-percent reduction of SO_2 emissions can be continuously achieved over a 24-hour block averaging period. Therefore, the MACT floor for SO_2 emissions is either 30 ppmv or 80-percent reduction, whichever is less stringent. The proposed MACT standard for SO_2 for MWC's at both small and large MWC plants is the MACT floor level of 30 ppmv or 80-percent reduction, whichever is less stringent.

c. *MACT for Hydrogen Chloride.* Uncontrolled HCl emission levels at both small and large MWC plants are, on average, 500 ppmv. The best emission control system for controlling HCl emissions is an SD/FF. The EPA's analysis of test data from existing MWC's with SD/FF systems indicates that an HCl emission level of either 25 ppmv or a 95-percent reduction in HCl emissions can be achieved. Compliance with the HCl limit is determined by an annual stack test rather than CEMS, so there is no CEMS data averaging period associated with this level of performance. Based on the EPA's analysis, the MACT floor for HCl emissions is either 25 ppmv or 95-percent reduction, whichever is less stringent. The proposed MACT standard for HCl for MWC's at both small and large MWC plants is the MACT floor level of either 25 ppmv or 95-percent reduction, whichever is less stringent.

d. *MACT for Particulate Matter.* Uncontrolled PM emission levels at small and large MWC plants are, on average, 1,500 and 3,700 mg/dscm, respectively. The best emission control system for controlling PM emissions is an SD/FF. The EPA's analysis of recent test data has shown that SD/FF systems can continuously achieve a PM emission level of 15 mg/dscm, which represents greater than 99-percent reduction. Therefore, the MACT floor for PM emissions is 15 mg/dscm. The proposed MACT standard for PM for MWC's at both small and large MWC plants is the MACT floor level of 15 mg/dscm.

e. *MACT for Cadmium.* Uncontrolled Cd emission levels at both small and large MWC plants are, on average, 1.2 mg/dscm. The best emission control system for controlling Cd emissions is an SD/FF. The EPA's analysis of test data from existing MWC's with SD/FF systems indicates that these systems can continuously achieve a Cd emission level of 0.010 mg/dscm, which represents greater than 99-percent reduction. Therefore, the MACT floor for Cd emissions is 0.010 mg/dscm. The proposed MACT standard for Cd for MWC's at both small and large MWC plants is the MACT floor level of 0.010 mg/dscm.

f. *MACT for Lead.* Uncontrolled Pb emission levels at both small and large MWC plants are, on average, 25 mg/dscm. The best emission control system for controlling Pb emissions is an SD/FF. The EPA's analysis of test data from existing MWC's with modern SD/FF systems indicates that these systems can continuously achieve a Pb emission level of 0.10 mg/dscm, which represents greater than 99-percent reduction. Therefore, the MACT floor for Pb emissions is 0.10 mg/dscm. The proposed MACT standard for Pb for MWC's at both small and large MWC plants is the MACT floor level of 0.10 mg/dscm.

g. *MACT for Mercury.* Uncontrolled Hg emission levels at both small and large MWC plants are, on average, 0.65 mg/dscm. The MACT floor is based on using an SD/FF. Control of Hg is highly variable, and the EPA's analysis of recent test data has indicated that the

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control efficiency of SD/FF systems for Hg ranges from no control to 50-percent Hg reduction (i.e., achieving Hg emission levels of 0.33 to 0.65 mg/dscm). Therefore, the MACT floor for Hg is 0.65 mg/dscm.

As discussed in section IV F.1.b of this preamble, the EPA has determined that Hg control is based on three variables: Lower flue gas temperatures in the air pollution control system, high-efficiency PM control (e.g., based on use of an FF or ESP), and a sufficient level of carbon in the fly ash (i.e., based on use of activated carbon injection). Recent testing programs at the MWC plants in Stanislaus County, California, and Camden County, New Jersey, have demonstrated that the combination of an SD/FF or SD/ESP system, activated carbon injection, and low flue gas temperature at the PM control device inlet can achieve high Hg control efficiency. The EPA's analysis of this test data has indicated that MWC's equipped with this combination of control technologies could continuously achieve an Hg emission level of either less than 0.080 mg/dscm, corrected to 7 percent O_2, or an 85-percent reduction in Hg emissions. Data from individual test runs show occasional spikes of high inlet Hg emissions due to the variability in the waste feed composition. In cases where Hg levels are temporarily elevated, a 0.080 mg/dscm level may not be consistently achievable; however, activated carbon injection could achieve an 85-percent reduction during such episodes. Based on the data from MWC's using activated carbon injection, Hg control to these levels is achievable by properly operated systems on all types of MWC's. Since activated carbon injection is a relatively new technology and has not yet been applied commercially, the 0.080 mg/dscm or 85-percent reduction Hg emission level is not part of the MACT floor. The EPA estimates the cost to add carbon injection to be reasonable, at a cost effectiveness of $1.00/Mg of MSW combusted. Therefore, the EPA is proposing MACT for Hg for MWC's at both small and large MWC plants to be more stringent than the MACT floor, at a level of 0.080 mg/dscm or an 85-percent reduction in Hg emissions, whichever is least stringent.

The EPA has selected activated carbon injection as the basis for achieving MACT for Hg, although facilities may use any technology capable of meeting the proposed standard. Of the three Hg control technologies discussed in section IV.F.1.b of this preamble, the EPA has determined that the performance of activated carbon injection is the best demonstrated of the three Hg control technologies in the United States

h. *MACT for Dioxins/Furans.* Uncontrolled dioxin/furan emission levels at both small and large MWC plants are, on average, 1,000 ng/dscm, total mass. The best emission control system for controlling dioxin/furan emissions is an SD/FF system and GCP. The EPA's analysis of available test data for dioxin/furan emissions from new MWC's with SD/FF systems and GCP indicates that dioxin/furan emission levels of less than 20 ng/dscm total mass are continuously achievable. Therefore, the MACT floor for dioxins/furans is 20 ng/dscm, which represents a 98-percent reduction.

The EPA has determined that additional dioxin/furan control is achievable with activated carbon injection, which is the basis for MACT for Hg, as discussed above. The EPA's analysis of test data from a recent testing program at an MWC at the Camden County, New Jersey, facility and other facilities indicates that the injection of activated carbon into the flue gas of an SD-based scrubbing system provides additional removal of dioxins/furans (greater than 50 percent additional control over levels achieved with SD/ESP systems alone). As such, the EPA believes a dioxin/furan level of approximately 10 ng/dscm total mass (which represents a 99-percent reduction) is achievable for MWC's using GCP and equipped with SD/FF's and activated carbon injection. Because carbon injection is being proposed as part of the basis for MACT for Hg, the EPA is proposing MACT for dioxins/furans for MWC's at both small and large MWC plants based on carbon injection. The EPA is proposing MACT for dioxins/furans on both a TEQ basis and a total mass basis. Based on the EPA's analysis of an average TEQ ratio, the 10 ng/dscm total mass emission level translates to 0.16 TEQ. However, because there is uncertainty about the ratio, the proposed MACT floor for dioxins/furans on a TEQ basis is 0.20 ng/dscm. Using the average TEQ ratio, 0.20 ng/dscm TEQ is equivalent to about 13 ng/dscm total mass dioxins/furans. Therefore, the EPA is proposing MACT for dioxins/furans for MWC's at both small and large MWC plants at a level of 0.20 ng/dscm TEQ or 13 ng/dscm total mass. Sources may comply with either format of the limit.

However, since the activated carbon injection technology does not have a long-term record of commercial application in the United States and since the 0.20 ng/dscm TEQ or 13 ng/dscm total mass standard is restrictive, the EPA is proposing a 3-year optimization schedule for activated carbon injection applied at initial subpart Eb applications. All affected facilities commencing construction after September 20, 1994, but on or before September 22, 1997 would be required to meet a standard of 0.50 ng/dscm TEQ or 30 ng/dscm total mass for the first 3 years following the date of initial startup. Thereafter, the standard would be 0.20 ng/dscm TEQ or 13 ng/dscm total mass. For all affected facilities commencing construction after September 22, 1997, the standard at startup would be 0.20 ng/dscm TEQ or 13 ng/dscm total mass. Starting in 1994, MWC units with activated carbon injection technology will be initiating commercial operation. As dioxin/furan data become available from MWC's operating with carbon injection technology, the EPA will reconsider the appropriateness of the 3-year optimization schedule.

i. *MACT for Nitrogen Oxides.* The average NO_X emission level for MWC's without postcombustion NO_X control (at both small and large MWC plants) is 225 ppmv. The best emission control system for controlling NO_X emissions from MWC's at large MWC plants is SNCR. The EPA's analysis of test data for existing MWC's (excluding modular MWC's) equipped with SNCR indicates that an emission level of 180 ppmv can be continuously achieved. Therefore, the MACT floor for NO_X for MWC's at large MWC plants is 180 ppmv (24-hour averaging period).

As discussed in section IV.F.1.c of this preamble, the addition of SNCR postcombustion NO_X control has not been demonstrated on any modular MWC, and the performance of such a system on a modular MWC is in question. Since the performance of an SNCR system on a modular MWC is in question, postcombustion NO_X control is not being considered for MWC's at small MWC plants; therefore, the MACT floor for NO_X for MWC's at small MWC plants is no control.

The proposed MACT standard for NO_X for MWC's at large MWC plants is the MACT floor level of 180 ppmv. The proposed MACT standard for NO_X for MWC's at small MWC plants is based on no control. Section IX of this preamble discusses the proposed "no control" NO_X standard for MWC's at small MWC plants.

G. Selection of Format for the Proposed Standards

The February 11, 1991 NSPS described a format for MWC acid gases (SO_2 and HCl), MWC metals (PM and opacity), MWC organics (dioxins/furans), MWC operating practices (CO, load, and flue gas temperature at the PM control device inlet) and NO_X, and that same format is being adopted by today's proposed NSPS except for dioxins/furans. The selection of the format for the standards for the above pollutants, is described in previous **Federal Register** notices (54 FR 52251, December 20, 1989 and 56 FR 5488, February 11, 1991). The specific formats of the proposed standards for Cd, Pb, and Hg are discussed below. For dioxins/furans, the revised format is in units of either TEQ or total mass dioxin/furans.

As required by section 129(a)(4) of the Act, the proposed standards would establish numerical limitations for Cd, Pb, and Hg. For the purpose of regulating Cd and Pb, the format selected in the proposed NSPS for the numerical emission limitations would be numerical concentration limits (mg/dscm) at 7 percent O_2. For the purpose of regulating Hg, the format selected would be both a numerical concentration limit (mg/dscm) and an alternative percentage reduction requirement. The numerical Hg emission limit reflects the emission level that can be achieved based on activated carbon injection in combination with SD/FF controls. An alternative Hg percentage reduction requirement may be met instead of the numerical emission limit because emissions of Hg can be highly variable and dependent on the Hg input level. Even at the same MWC, test data show occasional spikes of high Hg emissions due to variability in the waste feed. In cases where Hg levels are temporarily elevated, the 0.080 mg/dscm level may not be consistently achievable; however, the control devices could achieve the 85-percent reduction during such episodes. Therefore, a combination of a concentration limit and an optional percentage reduction format best assures the maximum achievable Hg control while accommodating potential spikes in Hg emission levels.

As discussed above, the proposed standards for SO_2, HCl, and Hg include two formats: (1) a percent reduction format, and (2) an emission limit (concentration) format. The EPA requests comment on and test data supporting the appropriateness of promulgating final standards for SO_2, HCl, and Hg which include only the emission limit format. For each pollutant, the commenter should specify an appropriate emission limit (without an associated alternative percent reduction format) and provide rationale for the limit. Based on the comments received, the EPA may promulgate final standards for SO_2, HCl, and Hg in the form of emission limits that are higher or lower than the proposed emission limits.

The EPA has proposed emission limits that reflect the performance levels achieved by MWC's equipped with properly designed, constructed, and operated air pollution control systems. The proposed standards would apply during all periods of MWC operation. To comply with the proposed standards, the air pollution control system would be designed and operated such that actual emissions are less than the proposed emission limits. Where continuous monitoring systems are available, such as for SO_2 and NO_X, the proposal would require their use to determine compliance on a continuous basis. For other pollutants, an annual stack test would be required. The EPA requests comment on whether continuous monitoring methods exist for any additional pollutants.

The EPA also seeks comments on alternate formats of the standard that would encourage optimal control system operation and optimal performance, thus minimizing emissions. For example, the standard could provide incentives, such as reduced testing and reporting, for MWC's that operate well below the emission limit. One approach would be to structure the standard such that, for an MWC with multiple units, if all units demonstrated emissions at least 30 percent less than the limit, then only one of the units would be tested each year. The unit selected for testing would be rotated such that each unit would be tested during its rotational cycle (e.g., once every three years, for an MWC plant with three units).

Another potential regulatory approach to assure optimal performance would be to supplement the current emission limits (which must be demonstrated by annual stack tests) with more stringent emission limits calculated for each pollutant based on long-term average emission levels. Compliance with this supplemental limit would be determined by continuous monitoring, where applicable, or by the average of the annual emissions tests from the current year and one or more preceding years. The current limits account for variability from one emissions test to another, whereas the composite average emission limits would reflect the mean performance level over the life of the plant. This may be a preferable measure of environmental performance for some of the pollutants because it is their long term or cumulative emissions that are of most concern. Other formats of the standard that encourage optimal performance would also be possible. Comments and suggestions are requested. Based on the information and comments received, the EPA may change the form of the rule to include a long term emissions average, an alternative compliance testing schedule, or other alternative format to encourage optimal performance of the air pollution control system.

Additionally, the EPA requests comment and suggestions on specific work practice requirements or equipment requirements that would assure optimal operation of the air pollution control system and minimize emissions. Such operating practices or equipment practices would be most beneficial for minimizing emissions of those pollutants for which annual stack testing is the proposed compliance test method. Comments are specifically requested on work practice standards or equipment requirements that would minimize dioxin/furan, Hg, Cd, and PM emissions. Based on the information received, the EPA may require specific work practices or equipment to supplement the emission limits included in the final standards.

H. Performance Test Methods and Monitoring Requirements

The NSPS promulgated on February 11, 1991 for MWC's with unit capacities above 225 Mg/day established performance testing and monitoring requirements for MWC acid gases (SO_2 and HCl), MWC metals (PM and opacity), MWC organics (dioxins/furans), MWC operating practices (CO, load, and flue gas temperature), and NO_X. These testing and monitoring requirements are described in the NSPS promulgated on February 11, 1991 (56 FR 5488). These same testing and monitoring requirements will apply to MWC's at all size plants under today's proposed NSPS, except that: (1) Procedures are being proposed for determining dioxin/furan emissions on a TEQ basis; (2) continuous monitoring of NO_X is not required at small plants; (3) provisions have been incorporated to allow compliance testing every third year for dioxins/furans, PM, and HCl at small plants that pass their compliance test for 3 years in a row; and (4) annual opacity tests using EPA Reference Method 9 (in combination with continuous monitoring of opacity level) would be required for both large and small MWC plants. Furthermore, today's proposal includes new data availability requirements for CEMs. Today's proposal requires that valid paired CEMs hourly averages (i.e., SO_2 and O_2 (or CO_2), NO_X and O_2 (or CO_2), and CO and O_2 (or CO_2)) be obtained for 75 percent of the hours per day for 90

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percent of the days per calendar quarter that the MWC is operating and combusting MSW.

Because the proposed NSPS allows compliance with a dioxin/furan limit either on a TEQ basis or on a total mass basis, procedures are being proposed for determining dioxin/furan emissions on a TEQ basis. For measuring dioxins/furans, on a TEQ basis, the mass of each dioxin/furan tetra- through octa-congener would be measured by EPA Reference Method 23. Then, each congener mass would be adjusted by the corresponding TEF's, which are listed in the proposed NSPS. Finally, the adjusted congener masses would be added together to determine dioxins/furans in terms of nanograms per dry standard cubic meter TEQ.

Under the proposed standards, if three consecutive annual compliance tests for an MWC at a small MWC plant indicate compliance with the emission limit for a pollutant (i.e., dioxins/furans, PM, or HCl), the MWC would be allowed to wait 3 years before retesting for the pollutant. If the next test conducted in the third year shows compliance with the emission limit for the pollutant, then the facility could again wait 3 years to wait for the pollutant. If noncompliance with the emission limit for the pollutant occurs, corrective actions would be required to be undertaken and annual testing would be required to be conducted until 3 consecutive years of compliance with the emission limit established. At a minimum, performance tests for dioxins/furans, PM, and HCl must be performed for each MWC at a small MWC plant overy 3 years. This provision is included to minimize costs for small plants, while still retaining periodic testing to ensure compliance.

Testing and monitoring requirements are being proposed today to ensure control of Cd, Pb, and Hg emissions. For Cd, Pb, and Hg, an initial performance test would be required for MWC's at small and large plants to determine compliance with the proposed emission limits. The performance test for Cd, Pb, and Hg would be conducted in accordance with EPA Reference Method 29. The number and location of sampling points would be determined using EPA Reference Method 1, and flue gas analysis would be performed using EPA Reference Method 3. All performance tests would consist of a minimum of three test runs conducted under representative full load operating conditions. The average Cd, Pb, and Hg emission rates of three test runs or more would be used to determine compliance.

Also, as discussed above for dioxins/furans, PM, and HCl, if small plants demonstrate compliance with the Cd, Pb, and Hg emission limits for 3 consecutive years, they would be allowed to begin testing for these three pollutants every third year. At a minimum, performance tests for Cd, Pb, and Hg would be required to be conducted by small MWC plants every 3 years. Large plants would be required to test for Cd, Pb, and Hg annually. These annual testing requirements are consistent with those for other pollutants, and MWC plants can reduce testing expenses by testing for multiple pollutants during the same test period.

Studies conducted by the EPA have shown EPA Reference Method 29 to be a more reliable method for measuring Hg from MWC's than EPA Reference Method 101A. Recent refinements have been made to Method 101A, but the EPA has concluded that Method 29 remains a superior method.

In a separate notice in today's **Federal Register**, EPA Reference Method 29 is being proposed for determining emissions of Hg and other metals from MWC's, MWI's, and power plants. Method 29 consists of a particulate filter followed in series by two nitric acid/hydrogen peroxide (HNO_3/H_2O_2) impingers and two acidified potassium permangenate ($KMnO_4/H_2SO_4$) impingers. The method is identical to the EPA's Office of Solid Waste multimetals method, except that Method 29 requires filtration and analysis of the impinger solution collected in the $KMnO_4/H_2SO_4$ impingers. These filtration and analysis requirements are being added to the method for quality assurance purposes to protect against the loss of Hg in the manganese oxide (MnO_2) precipitate that can form in this solution. This additional step will result in similar sample preparation and analysis requirements for EPA Reference Methods 29 and 101A.

The EPA does not believe that addition of the filtration and analysis step will change the achievable Hg emission rates for MWC's and MWI's. Because of the significant amount of chlorine in MWC and MWI flue gas, most of the Hg in these flue gases occurs as water-soluble ionic Hg. As a result, use of Method 29 collects most of the Hg in these flue gases on the filter and in the HNO_3/H_2O_2 impingers, with the remainder collected in the $KMnO_4/H_2SO_4$ impingers. Flue gases emitted from processes having lower chlorine levels and/or higher sulfur levels (e.g., coal-fired power plants) have a higher fraction of their Hg emissions present as water-insoluble elemental Hg that is collected in the $KMnO_4/H_2SO_4$ impingers.

In testing conducted by the EPA at an MWC during which Method 101A $KMnO_4/H_2SO_4$ impinger solutions were filtered and the filters analyzed (with Method 101A, all of the Hg in the flue gas is collected by the $KMnO_4/H_2SO_4$ impingers), results showed that less than 3 percent of the total Hg collected by the sampling train was associated with precipitated MnO_2. Based on review of analytical procedures used with multimetal trail samples collected during several other EPA-sponsored test programs, the EPA believes the potential loss of Hg in precipitated MnO_2 during these tests was less than 3 percent (during these tests, the $KMnO_4/H_2SO_4$ impingers were shaken prior to removal of a representative analytical sample and, thus, a portion of any precipitated MnO_2 was likely to have been included in the analytical sample).

Because the analytical filter makes only a negligible difference in the Hg test results for MWC's and because it is desirable to use a uniform Hg test method for all source categories, the EPA is proposing that the full Method 29 test procedures (including the analytical filter analysis) be used for measuring Hg emissions from MWC's.

Overall, the proposed guidelines would require that CEMS be used as the compliance test method for those pollutants for which CEMS are available (i.e., SO_2, NO_x, CO, CO_2 (or O_2), opacity, MWC load level, and air pollution control device temperature). For those pollutants for which CEMS are not available (i.e., HCl, Hg, Cd, Pb, PM, and dioxins/furans), the proposed guidelines would require that stack test methods be used on an annual basis to determine compliance. Progress continues to be made on the development of new and improved CEMS. The EPA requests comment on the availability of CEMS to replace stack testing for any of the pollutants listed above. The EPA specifically requests comment on the availability, precision, accuracy, and cost of CEMS for HCl and Hg. Based on the information received, the EPA will reconsider CEMS requirements and may increase the number of pollutants monitored by CEMS.

I. Reporting and Recordkeeping Requirements

The proposed standards would require owners and operators of all affected facilities to submit notifications of construction or reconstruction, date of anticipated startup, and anticipated date of demonstration of the continuous emission monitoring system (CEMS) (if applicable), as required under § 60.7 of subpart A of part 60.

The NSPS promulgated on February 11, 1991 include reporting and recordkeeping requirements for MWC acid gases, MWC metals (PM and opacity), MWC organics (dioxins/furan), MWC operating practices, and NO_x. These reporting and recordkeeping requirements are summarized in the previous **Federal Register** notice (56 FR 5488, February 11, 1991). Under today's proposed standards, these same reporting and recordkeeping requirements would apply to MWC's at both small and large plants with the following four exceptions: (1) Dioxin/furan emissions would be recorded and reported either in terms of dioxin/furan TEQ or as total mass of dioxins/furans; (2) monitoring and reporting of NO_x emissions would not be required for small plants because NO_x control is not applicable; (3) if MWC's at small plants have met the criteria allowing them to conduct compliance tests for dioxin/furans, PM, or HCl every third year, they would submit a simplified report for years when a full compliance test was not required; and (4) both small and large MWC plants would be required to report the results of annual method 9 opacity tests.

The reporting and recordkeeping requirements in the proposed NSPS are necessary to inform enforcement personnel of the compliance status of new MWC's that begin operation.

In addition, the records would provide the data and information necessary to ensure continued compliance of these MWC's with the proposed regulation. At the same time, these requirements would not impose an unreasonable burden on MWC owners or operators. All required records and all quarterly and annual reports must be maintained for 5 years following the date of such records or submittal of such reports. All information contained in the records must be open to the public.

Recordkeeping and reporting requirements are being proposed in today's NSPS for Cd, Pb, and Hg. After the initial performance test has been completed, the proposed standard would require the submission of annual compliance reports for Cd, Pb, and Hg for MWC's at both small and large plants. However, if MWC's at small plants have met the criteria allowing them to conduct compliance tests for Cd, Pb, or Hg every third year, they would submit a simplified annual report for years in which a full compliance test was not required.

The proposed NSPS would require that certain types of records be maintained. If an activated carbon injection system is used for Hg control, MWC plants would be required to keep records of the quantity of activated carbon used for each 8-hour period of MWC operation. These records would provide documentation that these systems continue to be operated properly between compliance tests. The proposed NSPS would also require the submittal of initial and annual compliance reports for fly ash/bottom ash fugitive emissions testing for MWC's at both small and large MWC plants.

Additionally, today's proposal would require that the siting analysis, materials separation plan, and summary of response to public comment be submitted to the State. Refer to section V.D of this preamble for a discussion of the proposed reporting requirements.

V. Rationale for the Proposed Standards for Siting Requirements

This section presents the EPA's rationale for establishing the proposed siting requirements, including a siting analysis, a materials separation plan, and public meetings.

A. Overview

Under authority of section 129 of the Act, the EPA is proposing siting requirements for new MWC's. As proposed, the siting requirements include three major components: (1) A siting analysis, (2) a materials separation plan, and (3) public meetings with responses to public comments. These siting requirements would apply only to MWC units at MWC facilities with aggregate capacities to combust greater than 35 Mg/day of MSW, for which the initial application for a construction permit under 40 CFR part 51, subpart I, or part 52 is submitted after the date of promulgation of the final rule. These siting requirements would not apply to existing MWC's.

B. Siting Analysis

The following discussion presents the EPA's rationale for proposing the requirement for sources to prepare a siting analysis, including the various siting approaches considered and the proposed siting analysis.

1. Siting Analysis Approaches Considered

The EPA considered four approaches in the development of proposed siting analysis requirements. These approaches are summarized below.

The first approach would require that an environmental assessment be conducted, patterned on requirements under the National Environmental Policy Act. This would require an examination of impacts in all media (i.e., air, water, solid waste, energy, and land use). It would also require a description of alternatives to the proposed project including alternative sites, technologies, or design. The elements of this approach would cover a range of health and environmental impacts that can be considered in siting an MWC. However, many of these elements are addressed in current Federal, State, or local permitting processes or review procedures.

The second approach is patterned after the Resource Conservation and Recovery Act (RCRA). Requirements for siting hazardous waste treatment, storage, and disposal facilities. It consists of an exclusion list with the provision that an MWC cannot be sited in certain locations (e.g., in a 100-year floodplain or over a high-quality groundwater resource) unless "it can be shown to the satisfaction of EPA" that no adverse impact will occur.

The third approach would be a regulatory review approach. Under this approach, the MWC owner or operator would prepare a document listing all current Federal, State, and local regulatory requirements and permit conditions that apply to the proposed MWC, along with a discussion of the equipment, construction practices, operating practices, and other conditions used to comply with each requirement. This approach addresses relevant siting issues, and would not require duplicate analyses of health or environmental impacts that are already required under other authorities (e.g., New Source Review (NSR) air permits, National Pollution Discharge Elimination System (NPDES) water discharge permits, stormwater permits, wetland permits, State solid waste permits, or local zoning permits).

The fourth approach would establish general siting requirements patterned after requirements currently in use under the NSR program. This approach would require an analysis of the impact of the facility, taking into account other major industrial facilities near the proposal site, on ambient air quality, visibility, soils, and vegetation. This approach has already been successfully implemented under the NSR program. Under this approach, facilities may be able to use analyses conducted under the NSR program to comply with the NSPS siting requirements. This approach would also involve public meetings, and the facility owner or operator would be required to prepare summaries and comments to the public comments received at the public meetings.

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2. Proposed Siting Analysis

The EPA is proposing the fourth approach, as discussed above, as the basis for the proposed siting analysis. The first three approaches were considered to either overlap with current requirements or be overly complex. Under the proposal, MWC owners or operators would be required to conduct an analysis of the impact of the proposed facility on ambient air quality, visibility, soils, and vegetation. Furthermore, this analysis would be required to consider the air quality, visibility, soils, and vegetation impacts of other major industrial facilities located near the planned MWC. Consideration of the impacts of other local facilities would involve an analysis of both background air quality levels and emissions from other sources in the area prior to operation of the planned MWC and total air emissions in the area after addition of the planned MWC due to the incremental impact of the planned MWC.

The EPA believes that requiring this type of siting analysis would allow facilities to use the same type of siting analysis for complying with both NSR and NSPS requirements. The Agency invites comments regarding the proposed siting analysis, including suggestions of alternative approaches.

C. Materials Separation/Materials Management Planning

The following discussion presents the EPA's rationale for proposing the requirement for sources to prepare a materials separation plan.

1. Background

As State and local governments plan for solid waste management, the EPA has encouraged them to employ the Integrated Solid Waste Management (ISWM) approach. Through ISWM, communities achieve flexibility by looking beyond a single solution. In tailoring systems to meet their unique needs, communities consider all four elements of ISWM: Reduction, recycling, combustion, and landfilling, as described in EPA's document entitled "An Agenda for Action". In this integrated approach, systems are designed so that some or all of the four waste management options are used as a complement to one another to safely and efficiently manage municipal solid waste. The system is "custom designed" to meet local environmental, economic, and institutional needs. A key element of integrated waste management is the hierarchy, which favors source reduction (including reuse) to decrease the volume and toxicity and increase the useful life of products in order to reduce the volume and toxicity of waste. Recycling (including composting) is the preferred waste management option to further reduce potential risks to human health and the environment, divert waste from landfills and combustors, conserve energy, and slow the depletion of nonrenewable natural resources. In implementing source reduction and recycling, shifting risks from one medium to another (e.g., groundwater to air) or from one population to another must be avoided. Landfills and combustors will be necessary for the foreseeable future to handle a significant portion of wastes, but are lower on the hierarchy because of the potential risks to human health and the environment and long-term management costs. This risk potential can be largely minimized through proper design and management. Integrated waste management can and should be implemented at a local level to the extent practical, and is a useful conceptual tool for making management decisions; however, it must be considered in the context of each community's unique waste and demographic characteristics. Diversion of solid waste by reducing the quantity generated and by recycling materials from the waste stream can effectively reduce the burden on MWC's and landfills.

Waste diversion has become increasingly popular at the local level, as well as nationally and internationally, as the tool to reduce waste going to MWC's or landfills. In 1989, the EPA challenged the nation to reduce and recycle 25 percent of MSW by 1992. The EPA called on all sectors of our society to voluntarily assume responsibility for helping to attain this goal. Today, many states have source reduction programs, including, for example, yard waste composting, fee-for-service programs, and Industrial/commercial waste minimization programs. In fact, all but eight States have established waste diversion goals. These goals vary, but generally call for diversion of 20 to 60 percent of the solid waste stream and are to be attained over the next 5 years.

With EPA encouragement, communities are increasingly using the "variable rate fee" approach to charge for waste management services. This approach fosters waste reduction and recycling because the waste generators are charged only for the amount of waste they produce that must be combusted or landfilled. Waste generators can reduce the amount they pay for services by reducing the amount of waste they produce or by recycling more materials, thereby diverting materials from MWC's and landfills.

Across the nation, residents, businesses, and communities are using a variety of approaches to collect, separate, and otherwise prepare recovery materials for recycling. These materials may be sorted into different categories at the point of generation (e.g., residences or businesses) for separate collection, or they may be collected together and taken to a regional or community facility for sorting and processing for recycling.

The collection of recovered materials has grown dramatically and continues to increase. According to EPA studies, the national recycling rate was only 9 percent in 1980 and grew to 17 percent by 1992. The EPA estimates the current national recycling rate at about 22 percent. Certain States and communities report even higher rates. Across the nation, materials that formerly were relegated to combustion or landfilling are being recovered for recycling. Waste reduction and recycling are increasingly becoming key factors in the sizing, design, and siting of MWC's and landfills.

Markets for recycled materials are critical to the success of recycling, and this has been recognized both here and abroad. In the United States, States have been creative in developing a variety of nonregulatory approaches to spur markets. These include several measures to help start new businesses using recovered materials and to help existing businesses convert to the use of recovered materials, such as: (1) Information and technical assistance, (2) financing assistance, (3) direct financial assistance, (4) tax breaks (i.e., credits and exemptions), and (5) "buy recycled" programs to encourage the purchase of goods made from recovered materials.

The EPA continues to be instrumental in enhancing markets for goods from recycled materials. In an effort to position the Federal community in a leadership role, the EPA is providing guidelines to assist Federal procurement agencies in buying increasing quantities of goods made from recovered materials. In October 1993, an Executive Order was signed by the President of the United States directing Federal agencies to procure goods made from recovered materials, harnessing the purchasing power of the Federal community to strengthen markets for these materials.

There are substantial public and private sector efforts underway across the nation to foster markets for recycled goods. For example, the Chicago Board of Trade has recently announced that by late 1994 they will add recyclable plastics and glass to their listing of commodities. From these efforts, the demand for recovered materials will grow to complement the increasing supply of materials diverted from the solid waste stream as more communities implement the ISWM approach. This diversion will impact the characteristics of the remaining portion of the waste stream.

2. Proposed Materials Separation Plan

The design of any element of an ISWM system, whether a landfill or an MWC, must necessarily reflect the impact of the other elements. To provide for proper sizing and other elements of the landfill or MWC design, it is important to consider current and projected waste generation rates and the impact of source reduction and diversion on the character of the remaining waste stream that serves as the MWC feedstock. Today's proposal is consistent with and complements the ISWM approach by providing for an assessment of the impact of materials separation on municipal waste combustion.

Under today's proposal, prior to applying for a permit to construct a new MWC, the owner or operator of the MWC would be required to submit a materials separation plan for public review and comment. Today's proposal would require the materials separation plan to be applicable to the area served by the MWC. No rigid performance levels, specification of separation system design, or designation of materials to be separated are specified in the proposal.

The proposal allows the materials separation plan to be tailored to the service area, considered in the design of the new MWC, and reviewed by the public prior to construction of the MWC. The materials separation plan may be optimized for the entire service area, so that certain subareas may have materials separation requirements while other subareas may not have materials separation requirements. This approach is fully consistent with EPA's ISWM goals for both MWC's and landfills.

The Agency invites comments regarding the proposed materials separation plan requirements, including suggestions of alternative approaches. A definition of "materials separation plan" has been included in the definitions section (§ 60.51b) of the proposed NSPS.

The above requirements for a materials separation plan are being proposed only for new MWC's and are not being proposed for existing MWC's. The MWC industry has made impressive progress in implementing materials separation programs at existing MWC's, and this should be encouraged.

D. Public Meeting and Reporting Requirements

The proposed NSPS requires that the MWC owner or operator make the materials separation plan available to the public in the service area where the affected facility is to be constructed. As part of making this information available to the public, the MWC owner or operator would be required to distribute a preliminary draft materials separation plan to all public libraries in the affected service area and to publish a notification of the public meeting in the principal newspaper(s) serving the area where the MWC will be sited and where the waste will be collected. The MWC owner or operator would then be required to hold a public meeting and accept comments on the preliminary draft materials separation plan. The public meeting would be required to be held in the county where the MWC is to be constructed and would be required to be scheduled 30 days or more after making the materials separation plan available to the public and publishing the notification of the public meeting.

At the public meeting, information should be provided that summarizes what materials are planned for separation, how they will be separated, what service areas will be included in the plan, and what level of separation is expected. The information presented at the meeting should also identify the amount of MSW that is expected to remain after the separation plan is implemented and identify alternative disposal methods available for the waste (e.g., local MWC, local landfill, long-distance transport to an MWC, or long-distance transport to a landfill). The following hypothetical plan and discussion serve as an example of the types of information that would be provided at the meeting. At the public meeting, a plan is proposed that: (1) Yard waste be collected from specific residential areas using a curbside collection program, and (2) corrugated paper be collected from commercial facilities in specific commercial area using dumpster pickup. The plan is expected to reduce the overall MSW stream by 20 percent, resulting in a residual MSW stream of approximately 400 Mg/day to be disposed of by either a local MWC or a local landfill.

Although not included as a component of today's proposal, the EPA encourages the development and public presentation of a supplementary regional waste management plan. Such plans have already been developed for many areas. Presentation of a materials management plan at the initial materials separation public meeting would inform the public about current regional waste management plans if such plans existed. If a regional management plan does not exist, the meeting would provide the opportunity for local public input into the development of a regional solid waste management plan. A waste management plan would focus on the full range of options available to manage municipal solid waste, as exemplified in ISWM. Such a plan could include an analysis of the current waste generation situation and the range of strategies that are currently used to deal with municipal solid waste, including the following examples: current waste generation rates; existing waste disposal options (e.g., landfills versus MWC's); current source reduction (e.g., composting and waste disposal fees); and materials separation and recycling programs. The materials management plan could consider the adequacy of current strategies to handle projected waste generation.

Finally, as in the integrated management approach called for under ISWM, the whole range of strategies available to meet projected waste disposal needs could be fully examined and considered. This could include consideration of the role of landfilling, the role of MWC application, the role of source reduction, and the role of materials separation and recycling. The materials separation management plan could outline the expected cost of these alternative strategies to the public, including the cost per Mg of municipal waste disposed (or the cost of waste disposal avoided), and their impact in terms of waste disposal capacity or waste generation avoided.

As mentioned above, a materials management plan is not part of the proposed siting requirements. The proposed siting requirements include the development of only a materials separation plan. However, the materials separation plan and regional materials management plan are closely related, and public input in their development is encouraged.

The MWC owner or operator would be required to prepare responses to the comments received at the public meeting. The MWC owner or operator would be required to make the document summarizing responses to the public comments available to the public in the service area where the MWC is to be located, including distribution to all public libraries in the service area. The MWC owner or operator would then be required to submit the final draft materials separation plan and the

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document summarizing responses to public comments to the State or the EPA, as applicable, prior to the facility's application for a construction permit under NSR (40 CFR part 51, subpart I, or part 52, as applicable). The EPA concluded that the draft materials separation plan should be submitted during the initial planning process with the application for a construction permit to be fully consistent with the EPA's ISWM approach and to ensure that the facility is designed to meet the materials separation goals of the region or community. Following application for a NSR construction permit, the public would again have the opportunity to review and comment on the final draft materials separation plan at the public meeting that would be held for public review of the siting analysis, as discussed below. The final materials separation plan would be submitted with the initial notification of construction.

The proposed NSPS also requires that, during the period of review of the materials separation plan and NSR application for a construction permit, the MWC owner or operator make the MWC siting analysis available to the public in the service area where the affected facility is to be constructed. As part of making this information available to the public, the MWC owner or operator would be required to distribute the siting analysis to all public libraries in the affected service area and to publish a notification of the public meeting in the principal newspaper(s) serving the area where the MWC will be sited and where the waste will be collected. The MWC owner or operator would then be required to hold a public meeting and accept comments on the siting analysis. The public meeting would be required to be held in the county where the MWC is to be constructed and would be required to be scheduled 30 days or more after making the siting analysis available to the public and publishing the notification of the public meeting. Because the proposed siting analysis is based on the NSR requirements, the EPA anticipates that if a public meeting is scheduled to address the environmental impacts analysis required by the NSR program, the same public meeting could also be used to discuss the proposed siting analysis. Also, as discussed above, the same public meeting would address the final draft materials separation plan.

The MWC owner or operator would be required to prepare responses to the comments received at the public meeting and to make the document summarizing responses to public comments available to the public in the service area where the MWC is to be located, including distribution to all public libraries in the service area. The MWC owner or operator would be required to submit the siting analysis, the final materials separation plan, and the document summarizing responses to public comments on the siting analysis and any additional public comment on the materials separation plan as part of the facility's initial notification of construction.

As discussed above, the final materials separation plan is submitted with the initial notification of construction of the MWC. Under this proposal, after the final plan is submitted, no subsequent reporting would be required. However, the EPA is considering requiring an annual materials separation report. The EPA requests comment on the usefulness of using a materials separation report to document the effectiveness of the plan and any changes made to it, and to help determine if any changes are warranted. Comment is also requested on appropriate means to ensure that the adopted materials separation plan is implemented. Based on the comments received, the final regulation may require submission of annual reports for assessing the performance of the materials separation plan.

VI. Rationale for the Proposed Standards for Fugitive Fly Ash/Bottom Ash Emissions

The following discussion addresses the basis for EPA's decision to regulate fugitive fly ash/bottom ash emissions from MWC facilities. The available technologies for controlling these fugitive emissions and the EPA's selection of MACT for these emissions are presented.

A. Background

Fugitive fly ash/bottom ash emissions are emissions of dust from fly ash and bottom ash handling that are not confined (i.e., emissions that are not contained within a fully enclosed ash handling system). The fly ash/bottom ash dust consists of PM and various associated pollutants adsorbed to the PM such as Cd, Pb, Hg, and organic compounds (e.g., dioxins/furans). A study of MWC ash handling and storage facilities at best controlled MWC facilities has shown that such facilities, when improperly controlled, can be sources of these pollutants through fugitive fly ash/bottom ash emissions. Therefore, visible emissions standards for fugitive fly ash/bottom ash emissions are being proposed to ensure control equipment and operating practices are implemented to eliminate such emissions.

B. Fugitive Emission Control Techniques

Sources of MWC fugitive fly ash/bottom ash emissions include fly ash and bottom ash conveyors and conveyor transfer points, storage facilities (including ash storage bins or piles), and ash loading facilities for trucks or containers.

Fugitive fly ash/bottom ash emissions from conveyors that are not already inside enclosed structures can be controlled by totally enclosing the conveyors. Emissions from conveyor transfer points can be controlled by totally enclosing the transfer point and ventilating it to a control device if the transfer point is not inside an enclosed structure. Alternatively, adequate moisture in the fly ash and bottom ash can be maintained to control fugitive emissions from conveyors or transfer points.

Fugitive fly ash/bottom ash emissions from the ash storage facilities at an MWC plant can be controlled by totally enclosing the ash storage operations and by ensuring that the fly ash and bottom ash have an adequate moisture content to prevent dust generation. Chemical stabilizers and binders may also be used in addition to or in place of moisture to prevent dust emissions from MWC ash for nearly all the activities described in this section.

Fugitive fly ash/bottom ash emissions from loading ash into trucks or containers can be controlled by ensuring an adequate moisture content of the ash, either by adding extra moisture (water) or by combining and mixing fly ash with bottom ash that has passed through a water-filled quench tank. Fugitive fly ash/bottom ash emissions from the ash loading facility may also be controlled by enclosing the ash loading facility, fitting the truck bays with doors that can be closed, and discharging the vent air to a control device.

Fugitive fly ash/bottom ash emissions from moving trucks used for hauling ash can be controlled by ensuring that the ash is moist and that the truck or container is properly sealed and covered during transit. Truck tires can be washed prior to leaving the ash handling facility to prevent ash from being tracked onto roadways where it can later become airborne as fugitive fly ash/bottom ash emissions. Additional emissions control can be achieved by reducing ash spills during loading and by recovering any spilled ash through sweeping, vacuuming, or washing before the spilled ash can be tracked out of the facility.

Data collected at several MWC's indicate that when the control methods described above are applied in a consistent and conscientious manner, fugitive fly ash/bottom ash emissions can be controlled so that no visible emissions are observed from the ash storage facilities, ash transfer points, ash loading to trucks or containers, and trucks hauling MWC ash.

C. Proposed Fugitive Emissions Standards

A standard of no visible fugitive fly ash/bottom ash emissions from ash handling and storage facilities and transfer points is being proposed and is consistent with the determination that the controls described above represent MACT. Section 129 of the Act requires that standards for new sources cannot be less stringent than the control achieved in practice by the best controlled similar source. The controls described above are in place at the ash handling and storage facilities at many MWC's and are the most stringent available controls for new MWC's.

Therefore, fugitive emission standards are consistent with MACT and are being proposed. Fugitive fly ash/bottom ash emissions from any MWC ash storage facility or any ash transfer point at an MWC plant with aggregate capacity to combust greater than 35 Mg/day of MSW would have to be controlled so that no visible emissions shall be detected.

The fly ash/bottom ash visible emission standard will be determined using EPA Reference Method 22 (3-hour continuous visual observation). Compliance with the visible emissions standards would be determined by an annual performance test. Reports of initial and annual performance tests would be required.

Any technology may be used to meet these standards. The fly ash/bottom ash fugitive emissions standards would apply to ash handling facilities within the property boundary of the MWC, but would not apply to offsite transport of ash.

VII. Proposed Standards for Air Curtain Incinerators

Air curtain incinerators operate by forcefully projecting a curtain of air across the top of an open chamber or pit. The air curtain reduces emissions during operation by promoting better combustion. Incinerators of this type are built either above or below ground and typically have refractory walls and a floor. Section 129 of the Act exempts air curtain incinerators firing MSW from the definition of "municipal waste combustion unit" provided that the air curtain incinerator burns only tree trimmings, yard wastes, and clean untreated lumber, and that it complies with an opacity limit that would be established by the EPA. As clarified under the proposed NSPS, "untreated lumber" means that the lumber has not been painted, pigment-stained, or "pressure treated."

Today's proposed NSPS includes opacity limits specifically for air curtain incinerators that would combust greater than 35 Mg/day of yard wastes, tree trimmings, or clean untreated lumber. The proposed opacity limits are 10-percent opacity (6-minute average), except that a level of up to 35 percent (6-minute average) would be allowed during the first 30 minutes of operation of the unit. The proposed opacity limits are based on levels achieved by well-designed and operated air curtain incinerators. Compliance with the proposed air curtain incinerator opacity limits would be demonstrated by conducting an annual compliance test in accordance with EPA Reference Method 9.

Air curtain incinerators with unit capacities above 35 Mg/day that burn MSW other than yard wastes, tree trimmings, or clean untreated lumber are covered by the NSPS for MWC's. Air curtain incinerators with unit capacities above 35 Mg/day that burn only yard wastes, tree trimmings, or clean untreated lumber would be subject to the proposed opacity standard and its associated testing, reporting, and recordkeeping requirements, but would not be subject to any other parts of the proposed NSPS.

VIII. Comparison of the Proposal and European Emission Limits for MWC's

Europe is more densely populated than the United States and the combustion of MSW became increasing common after World War II. Because European countries have more experience combusting MSW, it is interesting to compare the emission control requirements for MWC's located in the Member States of the European Union (EU) to those for MWC's in the United States. In addition to comparing emission requirements, the EPA also compared the prevalence of waste combustion in the United States and the EU.

In general, MSW combustion is more common in the EU than in the United States. There are 12 members of the EU: Belgium, Denmark, France, Germany, Great Britain, Greece, Ireland, Italy, Luxembourg, The Netherlands, Spain, and Portugal. The percentage of waste combusted in many of the EU countries is over 30 percent, with Denmark, Luxembourg, and the Netherlands, combusting 60, 60, and 40 percent of their waste, respectively. As a national average for the United States, 16 percent of the waste generated is combusted. In the Eastern United States, where the majority of MWC's are located, the rate of waste combustion is higher, averaging 25 to 30 percent. In the New England region, the rate of waste combustion approaches 60 percent. Therefore, although the United States as a whole has a much lower rate of waste combustion than does the EU, certain regions of the United States have combustion rates similar to those in the EU.

Factors such as population density, percentage of urbanization, land availability, and topography/geology influence the method of waste disposal for a country or a region. In the EU, the majority of the countries have population densities that range from 200 to 600 people per square mile and urban population percentages of 60 to 90 percent. The United States, in comparison, has a much lower average population density of approximately 70 people per square mile, and the percentage of the population living in urban areas is approximately 75 percent. In the Eastern United States, the population density and percentage of urban population are higher than national levels, at around 200 people per square mile with over 80 percent of the population living in urban areas, which is comparable to most of Europe. As noted above, other factors contribute to the use of MWC technology. For example, in Florida, the geology is such that in some cases landfilling waste is not a desirable option. Similarly, the mountainous regions in parts of Europe restrict the use of landfilling, and the increased use of MWC's is common.

Regarding regulatory development in the EU, the EU sets uniform environmental guidelines, and individual EU countries may adopt those guidelines or more stringent requirements. This is similar to the role the EPA plays with the individual States. Table 5 presents: (1) The proposed EPA NSPS for new MWC plants with capacities above 35 and 225 Mg/day and (2) the EU guidelines that apply to new MWC plants with capacities greater than 72 Mg/day.

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TABLE 5.—COMPARISON OF THE EPA'S PROPOSED NSPS AND THE EU REQUIREMENTS FOR NEW MWC'S

Pollutant	Units[a] (@ 7% O_2)	Proposed EPA NSPS[b]		EU guidelines[d]
		Small plants[b]	Large plants[c]	
PM	mg/dscm	15	15	39
Cd	mg/dscm	0.010	0.0101	(e)
Pb	mg/dscm	0.10	0.10	(e)
Hg	mg/dscm	[f]0.080	[f]0.080	(e)
Hg and Cd	mg/dscm	[g]0.09	[g]0.09	[h]0.2
Pb+Cr+Cu+Mn[i]	mg/dscm	(j)	(j)	[h]6.5
HCl	ppmv	[k]25	[k]25	[kl]43
SO_2	ppmv	[m]30	[m]30	[h]147
NO_X	ppmv	500	180	[n]
CO	ppmv	[o]100	[o]100	[p]112
Dioxins/furans	ng/dscm.			
	TEQ	0.20	0.20	[n]
	Total mass	13	13	[n]

[a] All limits are presented on a dry basis, at standard conditions (20 °C, 101 kilopascals) corrected to 7 percent O_2.
[b] Applies to plants that commence construction, modification, or reconstruction after September 20, 1994 and have capacities greater than 35 Mg/day and less than or equal to 225 Mg/day.
[c] Applies to plants that commence construction, modification, or reconstruction after September 20, 1994 and have capacities larger than 225 Mg/day.
[d] Applies to all new plants with capacities greater than 72 Mg/day.
[e] No individual limit specified. See combined limit.
[f] Or 85 percent reduction.
[g] The proposed NSPS does not include a combined limit for Hg and Cd; however, based on the individual limits, a combined limit is shown for comparison.
[h] Based on periodic determination.
[i] Cr, Cu, and Mn are abbreviations for chromium, copper, and manganese, respectively.
[j] No combined limit specified. See individual Pb limit.
[k] Or 95-percent reduction. Emissions measured by an annual stack test.
[l] Based on a 7-day rolling average, measured continuously.
[m] Or 80-percent reduction. Limit based on a 24-hour average, measured continuously.
[n] No limit specified.
[o] For mass burn/waterwall combustors. Based on a 4-hour average, measured continuously.
[p] Based on an hourly average, measured continuously.

As shown in table 5, the EU guidelines cover many of the same pollutants as the EPA NSPS proposed in today's notice. There are differences between the EPA standards and the EU guidelines with regard to regulatory flexibility for demonstrating compliance, as well as the test methods used to measure emissions. Factors like these should be considered when comparing emission requirements. The EPA and EU both have set levels for PM, HC1, SO_2, and CO. For these pollutants, the allowable emission levels proposed by the EPA are more restrictive than the EU guidelines. No EU guidelines exist for NO_X or dioxins/furans, and the EU metals emission guidelines are for combined metals (e.g., Hg+Cd). As shown in table 5, the EPA NSPS for both large and small plants for Hg and Cd, if combined, are lower than the EU Hg+Cd guideline.

Some of the EU countries have adopted limits that are more stringent than the general EU guidelines. For example, The Netherlands has recently adopted standards for new and existing MWC's that are considered to be some of the most stringent in the world. For example, the Dutch Hg limit of 0.065 mg/dscm for new MWC's (corrected to 7 percent O_2) is lower than both the EU guideline and the EPA's proposed Hg standards. The Dutch dioxin/furan limit for new MWC's is 0.13 ng/dscm TEQ. This limit is lower than the EPA's proposed standard of 0.20 ng/dscm TEQ or 13 ng/dscm total dioxins/furans. The EU has no dioxin/furan limit.

It is difficult to directly compare the Dutch standards to the EPA standards or to the performance of U.S. MWC's because the test methods used in The Netherlands to measure emissions are different from those used in the United States. Several new MWC plants are currently being constructed in The Netherlands and are expected to demonstrate compliance in 1995.

As with some of the EU countries, some of the individual States are establishing more stringent emissions standards than those in today's proposed standards. Brief descriptions of the regulations under consideration in Florida, Minnesota, and New Jersey are presented below.

The State of Florida has promulgated a regulation that would set an Hg emission limit of 0.070 mg/dscm (corrected to 7 percent O_2), or an 80-percent Hg reduction, for facilities that install Hg control equipment (e.g., activated carbon injection) and that are equipped with acid gas control equipment. This limit must be met by July 1, 1995, and compliance must be demonstrated annually using EPA Reference Method 101A. For facilities equipped with acid gas control equipment that choose to control Hg exclusively through the use of an Hg waste separation program, Hg emissions would be limited to 0.14 mg/dscm after July 1, 1995 and to 0.070 mg/dscm after July 1, 1997. Compliance must be demonstrated semiannually using Reference Method 101A. Facilities not currently equipped with acid gas controls will be required to meet the proposed Hg emission limits when the facility is required to demonstrate compliance with the acid gas limits included in the EPA's proposal. Florida's rulemaking procedures to develop SO_2 and HC1 emission limits will be initiated by December 1, 1994, unless the Federal regulations (today's action) have been proposed by that date.

The State of Minnesota has also promulgated Hg requirements for MWC's. For mass burn MWC's with acid gas control, the quarterly Hg emission limit (one three-test run average) is 0.10 mg/dscm (corrected to 7 percent O_2). However, the annual average Hg emissions limit (average of the four most recent quarterly tests) is 0.060 mg/dscm. Measurements must be made using EPA

Reference Method 29. The Minnesota requirement also allows MWC's to demonstrate compliance with the quarterly and annual limits by achieving an alternative 85-percent reduction in Hg emissions.

Similar to the Florida regulations, the Minnesota regulations provide less stringent standards for MWC's without acid gas control until the time that acid gas control is required.

The State of New Jersey will be proposing an Hg standard for MWC's of 0.028 mg/dscm (corrected to 7 percent O_2), which would be effective as of January 1, 2000, and an interim standard of 0.065 mg/dscm or an 80-percent reduction, which would be effective as of December 31, 1995. The 0.028 mg/dscm limit is based on reducing the uncontrolled Hg emission level (assumed to be 0.70 mg/dscm) by 80 percent through reduction of Hg in the waste burned, and another 80-percent reduction from Hg in the flue gas. These limits are annual averages based on quarterly 3-run testing (i.e., a total of 12 runs), using EPA Reference Method 29.

IX. Miscellaneous

This section addresses the two following issues: (1) The selection of a "no control" limit for NO_X for MWC's at small MWC plants, and (2) the July 14, 1992 remand of the issue of lead-acid vehicle battery combustion, and (3) a general request for comment on the proposal.

Regarding the first issue, section 129 of the Act specifies that standards for MWC's must include emission limits for PM, opacity, SO_2, HC1, NO_X, CO, Pb, Cd, Hg, and dioxins/furans. This means that emission limits for these pollutants must be specified even if the MACT selected for a subcategory of facilities does not control that particular pollutant. In particular, under today's proposal, the MACT floor and MACT for NO_X control at small MWC plants is based on no control (see section IV.F.1.c for additional discussion). Therefore, a "no control" emission limit is proposed for NO_X emissions from small MWC plants. The proposed "no control" limit for NO_X for small MWC plants is 500 ppmv. This proposed limit is not intended to result in emissions control, and the proposal does not include any testing, reporting, or recordkeeping requirements. The EPA expects that the "no control" limit will not be exceeded.

The 500 ppmv limit represents an emission level higher than any of the test data and allows an adequate margin to accommodate the variability in NO_X emission levels. The EPA requests public comments on whether it is appropriate to include such a "no control" emission limit in the final NSPS or whether such a limit is not necessary.

Regarding the second issue, on December 20, 1989, the EPA proposed NSPS and emission guidelines for new and existing MWC's under section 111 of the Act. The proposed NSPS and emission guidelines included a prohibition on the combustion of lead-acid vehicle batteries in MWC's. On February 11, 1991, the EPA promulgated standards and guidelines for new and existing MWC's that did not prohibit the combustion of lead-acid vehicle batteries. The decision not to prohibit the combustion of lead-acid vehicle batteries was challenged in the U.S. Court of Appeals by the NRDC, the State of New York, and the State of Florida. In 1992, the U.S. Court of Appeals for the District of Columbia Circuit concluded that the EPA had not adequately explained its decision not to require a lead acid battery separation as part of the 1991 NSPS and emission guidelines, when it had included such a requirement in its proposed rule (*State of New York* v. *Reilly*, 969 F.2d 1147, 1153 (D.C. Cir. 1992)). The EPA is not addressing the lead acid battery issue in this notice, but will publish a separate notice in the **Federal Register** in the near future.

Regarding the third issue, the MWC regulations are complex, and the EPA expects to receive numerous comments on this proposal. The EPA has specifically requested comments on items fundamental to the proposal, including but not limited to the MACT floor, MACT performance levels, and materials separation plans.

X. Administrative Requirements

This section addresses the following administrative requirements: public hearing, docket, procedural requirements of the Act, Office of Management and Budget review, and Regulatory Flexibility Act compliance.

A. Public Hearing

A public hearing will be held 15 days following proposal. The public hearing will discuss the proposed standards in accordance with section 307(d)(5) of the Act. Persons wishing to make oral presentations at the public hearing should contact the EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be mailed to the Air and Radiation Docket and Information Center at the address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air and Radiation Docket and Information Center in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review, except for interagency review material (section 307(d)(7)(A)) of the Act. The docket number for this rulemaking is A–90–45. Docket No. A–89–08 also includes background information for this rulemaking that supported the proposal and promulgation of the subpart Ea NSPS.

C. Clean Air Act Procedural Requirements

The following procedural requirements of the Act are addressed: administrative listing, periodic review, external participation, and economic impact assessment.

1. Administrator Listing—Sections 111 and 129 of the Act

As prescribed by section 111 of the Act, establishment of standards of performance for MWC's is based on the Administrator's determination (52 FR 25399, July 7, 1987) that these sources contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. Additionally, section 129 of the Act of 1990 directs the Administrator to promulgate revised NSPS for new MWC's.

2. Periodic Review—Sections 111 and 129 of the Act

Sections 111 and 129 of the Act require that the regulation be reviewed not later than 5 years following the initial promulgation. At that time and at 5-year intervals thereafter, the Administrator shall review the regulation and revise it if necessary. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in

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emission control technology, and reporting requirements.

3. External Participation

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator welcomes comments on all aspects of the proposal, including economic and technological issues.

4. Economic Impact Assessment

Section 317A of the Act requires the EPA to prepare an economic impact assessment for any NSPS promulgated under section 111(b) of the Act. An economic impact assessment was prepared for the proposed standards. In the manner described in sections III, IV, V, and VI of this preamble regarding the impacts of and rationale for the proposed standards, the EPA considered all aspects of the economic impact assessment in proposing the standards. The economic impact assessment is included in the list of key technical documents at the beginning of today's notice under SUPPLEMENTARY INFORMATION.

D. Office of Management and Budget Reviews

1. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1506.03) and a copy may be obtained from Sandy Farmer, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 or by calling (202) 260–2740.

This collection of information is estimated to have an average annual reporting burden of about 0.81 person years per recordkeeper (MWC facility). Very small MWC plants with capacities between 25 and 35 Mg/day will have a smaller burden. These plants would only be required to submit reports of notification of construction, anticipated startup date, and actual startup date. Small MWC plants with capacities between 35 and 225 Mg/day would incur the greatest burden as a result of today's proposed standards. The reporting and recordkeeping burden for these plants would include initial and annual testing and reporting of emissions of PM, Pb, Cd, Hg, dioxins/furans, and HCl; SO_2 and CO CEMS demonstration and reporting; preparation of a site selection analysis report, and other requirements.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for the EPA." The final rule will address any comments on the information collection requirements contained in this proposal.

2. Executive Order 12866 Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant", and therefore, subject to the OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, users fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the EPA considers the proposed NSPS not to be a "significant" rule because the annual effect on the economy is expected not to exceed $43 million over the cost of the existing subpart Ea NSPS. However, the EPA considers this proposed NSPS to be "significant" because of its relationship to the emission guidelines for MWC's that are being proposed under a separate notice in today's **Federal Register**. The proposed emission guidelines would cost about $450 million/year. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public docket for this rulemaking.

3. Executive Order 12875

Under Executive Order 12875, the EPA is required to consult with representatives of affected State, local, and tribal governments, and keep these affected parties informed about the content and effect of the proposed standards. The following discussion provides a brief summary of the content, need for, and cost of the proposal, as well as the actions that the EPA has taken to communicate and consult with the affected parties.

a. *Summary of the Proposed Standards.* The proposed NSPS would establish emission limitations for new MWC units located at MWC plants with plant capacities to combust greater than 35 Mg/day of MSW. The proposed standards do not specify which type of air pollution control equipment must be used at MWC's to meet the proposed emission limitations. The EPA expects, however, that, as a result of the proposal, most large MWC plants (plants with greater than 225 Mg/day capacity) would use scrubbing systems (SD/FF) for dioxins/furans, metals, and acid gas control and SNCR for NO_x control. Small MWC plants (plants with 35 to 225 Mg/day capacity) would be expected to install scrubbing systems (SD/FF), but SNCR technology would not be necessary. Refer to section II of this preamble for a more detailed discussion of the proposed standards.

b. *Need for the Proposed Standards.* Under the Act Amendments of 1990, section 129 includes a schedule that requires the EPA to adopt the standards for large and small MWC plants by the end of 1991 and 1992, respectively. The EPA did not comply with that schedule and is now under court order to propose the standards by September 1, 1994 and promulgate the standards by September 1, 1995. As required by section 129, the proposed standards would establish emission limits for MWC organics (dioxins/furans), MWC metals (Cd, Pb, Hg, PM, and opacity), MWC acid gases (HCl and SO_2), and NO_x. See section I of this preamble for further discussion of the regulatory history and general goals of the proposed standards.

c. *Cost of the Proposal.* The national cost of the proposed NSPS would be about $43 million per year. The subpart Ea NSPS promulgated in 1991 already requires the installation of acid gas/PM control systems; therefore, the cost of installing acid gas/PM control systems is not included in the $43 million per year national cost of the proposal (see section III.B of this preamble for a discussion of national costs based on a pre-1989 baseline.) However, for perspective, the cost of the entire air pollution control system (including acid gas/PM control systems) is provided here. For an individual combustor subject to the proposed standards, the cost of the air pollution control system will vary depending on the plant size. The average annualized cost of control required by the proposed standards for a typical large MWC plant would be about $3.8 million per year. The average annualized cost of control of the proposed standards for a typical small MWC plant would be about $0.84 million per year. Tipping fees at combustors currently average about $57/Mg of MSW combusted. As a result of the air pollution control required by the proposal, the tipping fees for new MWC plants would typically increase by $13 to $18/Mg, with the lower cost being for large MWC plants and the higher cost being for small MWC plants. Regarding the impact of the proposed standards directly or indirectly on households, the EPA projects an increase in the household cost of waste disposal of about $17 to $29 per year or about $2 per month for communities that have MWC's. Refer to section III of this preamble for a more complete summary of the cost and economic impacts of the proposed NSPS, on both national and plant-specific bases.

d. *Communication with Affected Parties.* As previously mentioned, Executive Order 12875 requires the EPA to consult with representatives of affected State, local, and tribal governments, and prior to promulgation of final standards, summarize concerns of the governmental entities and respond to their comments. The EPA has already initiated consultations with numerous governmental entities including, but not limited to, the U.S. Conference of Mayors, the National League of Cities, the National Association of Counties, the Municipal Waste Management Association, and the Solid Waste Association of North America. These groups have been informed of the content of the proposal and the estimated impacts. In drafting the proposal, the EPA has considered the concerns expressed by these groups, and discussions with these groups will continue following proposal. Following proposal, the EPA will mail a copy of this proposal to all owners/operators of MWC's and their associated local governmental official. The EPA awaits their comments on the proposal and will respond to their comments.

E. Regulatory Flexibility Act Compliance

Section 605 of the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are small businesses, small organizations, and small governments. The major purpose of the RFA is to keep paperwork and regulatory requirements from getting out of proportion to the scale of the entities being regulated, without compromising the objectives of, in this case, the Act.

If a regulation is likely to have a significant economic impact on a substantial number of small entities, the EPA may give special consideration to those small entities when analyzing regulatory alternatives and drafting the regulation. In the case at hand, the EPA considers that a regulation that is likely to affect 20 percent or more of small entities with MWC's is a regulation that will affect a substantial number of small entities.

Definitions of small entities are flexible. For analysis of the regulations being proposed today, the EPA considers a small business in this industry to be one with gross annual revenue less than $6 million, and a small government to be one that serves a population less than 50,000. (A typical city of 50,000 generates about 90 Mg/day of MSW.) Most small governments dispose of their MSW by landfilling and, therefore, will not be affected by regulation of MWC emissions. In regard to small organizations such as independent not-for-profit enterprises, the EPA finds that they have no more than a very minor involvement with MWC's, and for that reason the EPA has not found it necessary to study potential direct impacts on small organizations.

Many MWC's exist that range in size up to 35 Mg/day. The EPA estimates that MWC's under 35 Mg/day in capacity except for MWI's, which are being regulated in a separate action, contribute a negligible fraction of total MWC emissions. Many MWC's under 35 Mg/day in capacity, and a few larger ones, are owned or operated by small entities. The EPA estimates that considerably fewer than 20 percent of small-entity MWC's would be affected by the standards being proposed today were those MWC's to be constructed in the future. The EPA projects that the relative proportion of MWC's that are small-entity MWC's combusting less than 35 Mg/day will remain the same in the future as it is today.

Thus, the number of affected small entities is not expected to be substantial, and a regulatory flexibility analysis is not required. Nevertheless, the EPA has conducted an extensive analysis of potential regulatory impacts on households, small governments, and small businesses. The analysis is summarized above in the discussion of regulatory cost and economic impacts. The full analysis is included in the economic impact assessment in the docket and is listed at the beginning of today's notice under SUPPLEMENTARY INFORMATION.

On December 20, 1989, the EPA proposed standards for MWC's that applied to all sizes of MWC's. The proposal had no lower size cutoff. Small businesses, small governments, and groups representing small-entity interests commented extensively on the need to lighten the potential regulatory burden on small entities. Most commenters suggested a small size cutoff considerably smaller than the one now being proposed. The most frequently suggested levels were 5 to 11 Mg/day, 18 Mg/day, 23 Mg/day, and 45 Mg/day. The EPA has used these suggestions and the information submitted by these commenters, as well as information from other sources, to fulfill the intent of the RFA. The EPA has incorporated into the regulation being proposed today several features that will mitigate, and in most cases eliminate, any potential, adverse economic impacts on small entities. These features are as follows:

(1) The regulation will apply only to MWC's with a plant capacity of greater than 35 Mg/day. This cutoff eliminates from the purview of the regulation the overwhelming majority of projected new, very small MWC's (There will be a one-time requirement for MWC plants in the 25 to 35 Mg/day range to report for verification the capacities and locations of the plants, but this paperwork will impose no economic burden);

(2) The regulation is "tiered" so that the stringency (and therefore potential economic burden) of the emission standards increases as the size of the MWC plant increases. Plants with capacities less than or equal to 25 Mg/day are not covered under the proposed NSPS. Plants with capacities of 25 to 35 Mg/day would have only the one-time reporting requirement of capacity and location. Plants with capacities of 35 to 225 Mg/day are not required to control NO_x. Only plants with capacities larger than 225 Mg/day—plants not often associated with small entities—are subject to a full complement of rigorous standards; and

(3) The regulation consists predominantly of emission standards, as opposed to design, equipment, work practice, or operational standards. Emission standards give MWC owners and operators the freedom to select the most economical means of compliance with the standards.

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Pursuant to the provisions of 5 U.S.C. 605(b), the EPA certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities, because the number of small entities affected is not substantial.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping.

Dated: September 1, 1994.

Jonathan Z. Cannon,

Acting Administrator.

[FR Doc. 94-22344 Filed 9-19-94; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 60

[AD-FRL-5068-6]

Emission Guidelines: Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed guidelines and notice of public hearing.

SUMMARY: The EPA is proposing new subpart Cb "emission guidelines" to be used by States in developing State regulations to control emissions from existing municipal waste combustors (MWC's). Today's proposed guidelines would apply to MWC's for which construction, modification, or reconstruction began on or before September 20, 1994.

Today's proposal would implement sections 111 and 129 of the Clean Air Act (Act). The proposed guidelines would apply to existing MWC units at facilities with capacities to combust greater than 35 megagrams per day (Mg/day; a megagram is a metric ton, and one megagram is equal to 2,204 pounds or about 1.1 short tons) of municipal solid waste (MSW) and would require sources to achieve emission levels reflecting the maximum degree of reduction in emissions of air pollutants that the Administrator determines is achievable, taking into consideration the costs, non-air-quality health and environmental impacts, and energy impacts. The proposed guidelines would establish emission limits for MWC acid gases (sulfur dioxide (SO_2) and hydrogen chloride (HCl)), MWC metals (particulate matter (PM), opacity, cadmium (Cd), lead (Pb), and mercury (Hg)), MWC organics (dioxins/furans), nitrogen oxides (NO_x), and MWC fugitive fly ash/bottom ash emissions. The proposed guidelines would also establish requirements for MWC operating practices (carbon monoxide (CO), load, and flue gas temperature), and operator training and certification.

DATES: *Comments.* Comments must be received on or before November 21, 1994.

Public Hearing. A public hearing will be held about 15 days following proposal. See **SUPPLEMENTARY INFORMATION** for additional information regarding the public hearing.

ADDRESSES: *Comments.* Comments on the proposal should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (Mail Code 6102), ATTN: Docket No. A-90-45, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. See **SUPPLEMENTARY INFORMATION** for additional information regarding submittal of comments.

Background Information. Key background information for the proposal includes: (1) A document entitled "FACT SHEET: Existing Municipal Waste Combustors—Proposed Subpart Cb Emission Guidelines," which succinctly summarizes the proposal, and (2) several technical documents listed under **SUPPLEMENTARY INFORMATION,** including all of the background information documents that supported the proposal and promulgation of the subpart Ca emission guidelines. See **SUPPLEMENTARY INFORMATION** for instructions for obtaining these documents.

Docket. Docket Nos. A-90-45 and A-89-08, containing supporting information used in developing the proposed emission guidelines, are located at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M1500, Central Mall, 401 M Street, SW, Washington, DC 20460. The docket may also be accessed by calling (202) 260-7548. See **SUPPLEMENTARY INFORMATION** for further information regarding the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Stevenson at (919) 541-5264 or Mr. Fred Porter at (919) 541-5251, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Background Information

On December 20, 1989, the EPA proposed emission guidelines for existing MWC's in subpart Ca of 40 CFR part 60. The subpart Ca emission guidelines were promulgated on February 11, 1991 and were developed under authority of section 111 of the Act of 1977. The Act of 1990 requires the EPA to review and revise, as necessary, the subpart Ca guidelines. The EPA has reviewed the subpart Ca emission guidelines and has concluded that they are not adequate to comply with the requirements of section 129 of the Act of 1990. In a separate notice in today's **Federal Register**, the EPA is proposing to withdraw the subpart Ca emission guidelines that were promulgated on February 11, 1991. Today's proposed subpart Cb guidelines would fully comply with the requirements of section 129 of the Act of 1990.

The **Federal Register** notices for the proposed emission guidelines, withdrawal of the subpart Ca emission guidelines, and a proposed EPA test method that is associated with the proposed guidelines, and the economic impacts analysis associated with the proposed emission guidelines are listed below and are available on the EPA's Technology Transfer Network (TTN) electronic bulletin board. Also listed below and available on the EPA's TTN is a FACT SHEET, which succinctly summarizes the proposal and is suggested reading for persons requiring a limited overview of the proposal. The TTN contains 18 electronic bulletin boards, and the items listed below are included in the Clean Air Act Amendments (CAAA) bulletin board and the Emissions Measurement Technical Information Center (EMTIC) bulletin board. The FACT SHEET can also be obtained by calling Ms. Cassie Posey at (919) 541-0069.

MWC Items in the CAAA Electronic Bulletin Board

(1) "FACT SHEET: Existing Municipal Waste Combustors—Proposed Subpart Cb Emission Guidelines."

(2) **Federal Register** notice for this proposal: "Emission Guidelines: Municipal Waste Combustors" (this document).

(3) **Federal Register** notice: "Withdrawal of the 1991 Emission Guidelines for Municipal Waste Combustors."

(4) "Economic Impact Analysis for Proposed Emission Standards and Guidelines for Municipal Waste Combustors," EPA-450/3-91-029, March 1994.

MWC Items in the EMTIC Electronic Bulletin Board

(1) "Emissions Test Method 29: Determination of Metals Emissions from Stationary Sources (1994 Proposal)," EPA-454/R-94-016, April 1994, (which includes both the **Federal Register** proposal notice (chapter 1) and the full text of the rationale and test method for the proposal (chapter 2)).

The TTN is accessible 24 hours per day, 7 days per week, except Monday morning from 8 a.m. to 12 p.m., when the system is updated. The service is free, except for the cost of the phone call. Dial (919) 541-5742 to access the TTN. The TTN is compatible with up to a 14,400 bits-per-second (bps) modem. Further instructions for accessing the TTN can be obtained by calling the help desk at (919) 541-5384.

The background information for today's proposal includes all of the documents that supported the proposal and promulgation of the subpart Ca emission guidelines (Docket No. A-89-08), as well as information in Docket No. A-90-45. Key background information documents used in developing the subpart Ca emission guidelines as well as today's proposed guidelines are as follows:

(1) "Municipal Waste Combustors—Background Information for Proposed Guidelines for Existing Facilities," EPA-450/3-89-27e, August 1989;

(2) "Municipal Waste Combustors—Background Information for Proposed Standards: Post-Combustion Technology Performance," EPA-450/3-89-27c, August 1989;

(3) "Municipal Waste Combustion Assessment: Combustion Control at Existing Facilities," EPA-600/8-89-057, August 1989;

(4) "Municipal Waste Combustion Assessment, Technical Basis for Good Combustion Practices," EPA-600/8-89-063, August 1989;

(5) "Municipal Waste Combustors—Background Information for Proposed Standards: Cost Procedures," EPA-450/3-89-27a, August 1989; and

(6) "Economic Impact Analysis for Proposed Emissions Standards and Guidelines for Municipal Waste Combustors," EPA-450/3-91-029, March 1994.

Docket Nos. A-90-45 and A-89-08 are available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the location specified in the **ADDRESSES** section of this preamble. A reasonable fee may be charged for copying. Additionally, the docket may be accessed by telephone, as specified in the **ADDRESSES** section.

Comments. Today's action is a proposal and comments are requested. The MWC regulations are complex, and the EPA expects to receive numerous comments on this proposal. The EPA has specifically requested comments on items fundamental to the proposal, including but not limited to the MACT floor, MACT performance levels, and a consideration of materials separation requirements for existing MWC's. The EPA seeks full public participation in arriving at its final decisions, and strongly encourages comments on all aspects of this proposal from all interested parties. Whenever applicable, full supporting data and detailed analyses should be submitted with all comments to allow the EPA to respond to the comments.

Commenters wishing to submit proprietary information for consideration should clearly distinguish such information from other comments, and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Walter Stevenson, c/o Ms. Melva Toomer, U.S. EPA Confidential Business Manager, 411 W. Chapel Hill Street, Room 944, Durham, North Carolina 27701. Information covered by such a claim of confidentiality will be disclosed by the EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, it may be made available to the public without further notice to the commenter.

Public Hearing. The public hearing will be held to provide interested parties an opportunity for oral presentation of data, views, or arguments concerning the proposed guidelines (see **DATES** for the hearing schedule). The public hearing will be held at Research Triangle Park, North Carolina, and will start at about 9 a.m. Persons wishing to present oral testimony at the public hearing should call Ms. Julia Latta at (919) 541-5578 at least 2 days in advance of the public hearing. Persons interested in attending the hearing should also call Ms. Latta to verify the time, date, and location of the hearing. Persons may call (919) 541-5264 to hear a recorded message that provides current information on the status of the public hearing.

Preamble Outline. The following outline is provided to aid in locating information in this preamble.

I. Introduction
- A. Summary of Regulatory History
- B. Emission Guidelines—General Goals
- C. Overview of this Preamble

II. Summary of the Proposed Subpart Cb MWC Emission Guidelines
- A. Source Category to be Regulated
- B. Pollutants to be Regulated
- C. Format for the Proposed Guidelines
- D. Proposed Emission Guidelines
- E. Comparison of the 1991 Guidelines and Today's Proposal
- F. Performance Testing and Monitoring Requirements
- G. Reporting, Recordkeeping, and Compliance Schedule Guidelines

III. Impacts of the Proposed Emission Guidelines
- A. Air Impacts
- B. Water and Solid Waste Impacts
- C. Energy Impacts
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IV. Rationale for the Proposed Guidelines for MWC Emissions
- A. Background
- B. Selection of Source Category
- C. Modification or Reconstruction of Existing MWC's
- D. Selection of Designated Pollutants
- E. Selection of Designated Facilities
- F. Selection of Maximum Achievable Control Technology
- G. Selection of Format for the Proposed Guidelines
- H. Performance Test Methods and Monitoring Requirements
- I. Reporting, Recordkeeping, and Compliance Schedule Requirements

V. Rationale for the Proposed Guidelines for Fugitive Fly Ash/Bottom Ash Emissions
- A. Background
- B. Fugitive Emission Control Techniques
- C. Proposed Fugitive Emissions Guidelines

VI. Proposed Guidelines for Air Curtain Incinerators

VII. Comparison of the Proposal and European Emission Limits

VIII. Miscellaneous

IX. Administrative Requirements
- A. Public Hearing
- B. Docket
- C. Clean Air Act Procedural Requirements
- D. Executive Order 12866 Review
- E. Regulatory Flexibility Act Compliance

I. Introduction

This section provides an introduction to the proposed rule by: (1) Summarizing the history of the development of emission guidelines for existing MWC's over the past 7 years; (2) summarizing the general goals of the proposed rule that are specified by sections 111(d) and 129 of the Act of 1990; and (3) providing a brief overview of the major issues discussed in this preamble.

A. Summary of Regulatory History

Today's proposal is a result of a series of regulatory decisions that were initiated in 1987. During the early and mid-1980's, studies were performed to determine whether MWC emissions should be regulated and, if so, under what section of the Act. As set forth in the advance notice of proposed rulemaking (52 FR 25399, July 7, 1987), the EPA decided to regulate air emissions from MWC's under section 111 of the Act as it existed prior to the 1990 Amendments. Section 111 of the Act required that the regulations be

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based on best demonstrated technology (BDT). On December 20, 1989, the EPA proposed new source performance standards (NSPS) for new MWC's and emission guidelines for existing MWC's (54 FR 52251 and 54 FR 52209, respectively). On November 15, 1990, the Act Amendments of 1990 were enacted and added section 129 to the Act. Section 129 of the Act specifies that revised NSPS and emission guidelines must be developed for MWC's in accordance with the requirements of sections 111 and 129. Section 129 further specifies that revised NSPS and emission guidelines be developed for both large and small MWC's and that the NSPS and emission guidelines must reflect certain standards of performance. Section 129 includes a schedule for revising the 1991 emission guidelines. When the EPA did not comply with that schedule, the Sierra Club and the Natural Resources Defense Council (NRDC) filed a complaint with the U.S. District Court for the Eastern District of New York. The resulting consent decree requires the EPA Administrator to sign a notice of proposed rulemaking not later than September 1, 1994 and a notice of promulgation not later than September 1, 1995 (Nos. CV–92–2093 and CV–93–0284).

The NSPS and guidelines promulgated on February 11, 1991 (56 FR 5488 and 56 FR 5514, respectively) apply to MWC's with unit capacities above 225 Mg/day and reflect BDT as determined by the Administrator at the time those guidelines were issued. Today's notice therefore proposes to create new emission guidelines to be fully consistent with sections 111 and 129 of the Act and to extend coverage of the guidelines to existing MWC units located at MWC facilities with aggregate plant capacity above 35 Mg/day. In a separate notice in today's **Federal Register**, the EPA is proposing to withdraw the subpart Ca emission guidelines that were promulgated on February 11, 1991.

Under a separate regulatory action in today's **Federal Register**, a new subpart Eb NSPS for new MWC plants with aggregate capacities above 35 Mg/day of MSW that are constructed after September 20, 1994 is being proposed pursuant to sections 111(b) and 129 of the Act. Even though a new subpart Eb NSPS is being proposed, the February 11, 1991 subpart Ea NSPS will remain in effect. Municipal waste combustors constructed, modified, or reconstructed after December 20, 1989 but on or before September 20, 1994 would be subject to both subpart Ea (NSPS) requirements and today's proposed subpart Cb (guideline) requirements. In most cases, the control technologies being used to meet the 1991 subpart Ea NSPS emission limits would be able to comply with the proposed subpart Cb guidelines, except that additional controls would be required to reduce Hg emissions, dioxin/furan emissions, and fugitive fly ash/bottom ash emissions.

B. Emission Guidelines—General Goals

The Act requires the promulgation of performance standards under section 111 for categories of new and existing stationary sources that may contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Section 129 of the Act specifies that NSPS and emission guidelines must be developed for MWC's in accordance with the requirements of sections 111 and 129. Section 129(a)(2) provides that emission guidelines for existing MWC's reflect the maximum degree of reduction in emissions of designated air pollutants, taking into consideration the cost of achieving such emission reduction, and any non-air-quality health and environmental impacts and energy requirements that Administrator determines is achievable for a particular category of sources (this standard is commonly referred to as "maximum achievable control technology, or "MACT"). Additionally, section 129 provides that the emissions limitations in the guidelines for existing MWC's may not be less stringent than the average emissions limitation achieved by the best performing 12 percent of units in the category. This is referred to as the "MACT floor."

According to sections 111(d) and 129(b), States must submit to the Administrator, within 1 year of the EPA's promulgation of the guidelines, a plan that accomplishes the following: (1) Establishes for existing sources emission standards for designated pollutants; and (2) provides for implementation and enforcement of the emission standards. Section 129(b) provides that a State plan for existing MWC's be at least as protective as the emission guidelines.

As specified in section 129 of the Act, States are required to submit to the Administrator a plan implementing the emission guidelines within 1 year after the promulgation of the guidelines. This proposal further requires that a State plan shall provide that each unit subject to the guidelines shall be in compliance with all requirements of the State plan within 3 years following issuance of a revised construction or operation permit, if a permit modification is required, or within 3 years following approval of the State plan, if a permit modification is not required. Section 60.24(e)(1) of subpart B of part 60 requires that any compliance schedule extending more than 1 year from adoption of a State plan shall include legally enforceable increments of progress to achieve compliance for each designated facility. The proposed emission guidelines include this requirement. This proposed compliance schedule is more comprehensive than the compliance schedule and timetable specified in the subpart Ca emission guidelines promulgated on February 11, 1991 (56 FR 5514). The Act specifies that the procedure for State submission of a plan shall be similar to the procedure for submission of State implementation plans under section 110. Section 129 specifies that the EPA, in reviewing State plans for any variation from the emission guidelines, must ensure that State plans and their resulting MWC control requirements are at least as protective as the EPA guidelines, including incorporation of the compliance scheduling requirements established by the guidelines. The Act also provides that the EPA shall prescribe a plan according to procedures similar to those in section 110(c) if a State fails to submit a "satisfactory plan."

Moreover, States that believe additional control is desirable may require more extensive controls, which might have the effect of closing otherwise marginal facilities or banning a particular category of sources outright.

C. Overview of This Preamble

This preamble will:

(1) Summarize the proposed guidelines by discussing the conclusions reached with respect to each of the elements in the decision summary;

(2) describe the environmental, energy, and economic impacts of these proposed guidelines;

(3) present a rationale for each of the decisions associated with this proposal;

(4) present a regulatory flexibility analysis; and

(5) discuss administrative requirements relevant to this action.

II. Summary of the Proposed Subpart Cb MWC Emission Guidelines

This section presents a summary of the proposed emission guidelines, including identification of the source category and pollutants that would be regulated under the proposal, discussion of the format of the proposed guidelines, and presentation of the proposed guidelines and their associated performance testing, monitoring, recordkeeping, and reporting requirements. This section also provides a comparison of the emission guidelines in this proposed subpart Cb versus the 1991 emission guidelines (subpart Ca).

A. Source Category To Be Regulated

Today's proposed emission guidelines would require States to develop emission regulations limiting air emissions from each existing MWC unit located at an MWC facility that has an aggregate existing plant capacity to combust over 35 Mg/day of MSW, for which construction, modification, or reconstruction commenced on or before September 20, 1994. The proposed guidelines would apply to more than 99 percent of all existing MWC capacity. Additionally, plants with an aggregate capacity to combust between 25 and 35 Mg/day would be required to submit an initial report of their location and facility capacities, but would not be subject to any provisions of the guidelines.

The aggregate design capacity of all existing MWC's at an MWC plant would be considered in determining: (1) Whether a plant is subject to the guidelines; and (2) what control levels are applicable. The capacity of new MWC's (i.e., those that commenced construction, modification, or reconstruction after September 20, 1994) that are located at the MWC plant would not be considered in determining applicability of the emission guidelines to existing MWC's, but would be considered in determining the applicability of the subpart Eb NSPS. Only MWC units constructed, modified, or reconstructed on or before September 20, 1994 would be used for determining the applicability of subpart Cb guidelines. Modification of an existing MWC to comply with the emission guidelines would not bring an existing MWC under the NSPS for new MWC's.

An MWC is defined as any setting or equipment that combusts MSW. Municipal waste combustion includes the burning (or pyrolysis) of MSW in any type of setting or equipment, including combustion equipment with and without heat recovery. This definition has been slightly modified from the February 11, 1991 guidelines and is discussed below.

Municipal solid waste is defined as either a mixture or a single-item stream of household, commercial, and/or institutional discards. This would include discards such as paper, wood, yard wastes, tree trimmings, plastics, leather, rubber, glass, metals, and other combustible and noncombustible materials. The MSW definition includes household discards as well as discards from institutional and commercial sources, but does not include industrial process or manufacturing discards. The MSW definition also includes refuse-derived fuel (RDF), which is made from MSW that is shredded (or pelletized) and classified by size before combustion. Municipal solid waste does not, however, include wastes that are solely segregated medical wastes. However, if segregated medical wastes are mixed with MSW, the resulting mixture is considered to be MSW, and the proposed guidelines would apply if the aggregate plant capacity exceeded 35 Mg/day. Minor editing is proposed in the definition of MSW to clarify this point.

Air curtain incinerators that combust MSW are MWC's. However, air curtain incinerators that burn only yard wastes, tree trimmings, and clean untreated lumber would be covered under a separate set of proposed opacity emission levels, and no other part of the proposal would apply. Air curtain incinerator opacity requirements are discussed in section VI of this preamble.

B. Pollutants To Be Regulated

Section 129 of the Act requires the EPA to establish numerical emission limits specifically for SO_2, HCl, PM, opacity, Cd, Pb, Hg, dioxins/furans, CO, and NO_x. Section 129 specifies that the EPA may also:

> • • • promulgate numerical emission limitations or provide for the monitoring of post-combustion concentrations of surrogate substances, parameters, or periods of residence times in excess of stated temperatures with respect to pollutants other than those listed [above] • • •.

Therefore, the EPA is proposing guidelines for load and flue gas temperature at the PM control device inlet as additional indicators of MWC operating practices. The EPA is also proposing a guideline emission level for fly ash/bottom ash fugitive emissions because these emissions include Cd, Pb, Hg, and dioxins/furans (see section V of this preamble for further discussion of the EPA's decision to regulate fugitive emissions from MWC's).

The February 11, 1991 guidelines include emission limitations for all of the pollutants listed above except Cd, Pb, Hg, NO_x, and fly ash/bottom ash fugitive emissions. The proposed guidelines would establish guidelines for all of the pollutants listed above. The proposed guidelines for the same pollutants regulated by the February 11, 1991 guidelines (i.e., SO_2, HCl, PM, opacity, dioxins/furans, CO, load, and flue gas temperature at the PM control device inlet) have been revised to reflect the requirements of section 129.

C. Format for the Proposed Guidelines

The format of the proposed emission guidelines is similar to the format of the February 11, 1991 guidelines. In most cases, the format is in the form of an emission level (concentration).

The format of the dioxin/furan guideline would be revised in today's proposal. In the 1991 guidelines, dioxin/furan emissions were reported as a concentration (nanograms per dry standard cubic meter (ng/dscm), corrected to 7 percent oxygen (O_2), dry basis) on a total mass basis (i.e., the mass of all tetra- through octa-congeners were added together). In today's proposal, dioxin/furan emissions could be reported in units of either ng/dscm total mass or ng/dscm toxic equivalency (TEQ). Reporting in TEQ units is done by first measuring the total mass of dioxin/furan congeners and then adjusting the results to account for the varying toxicity of each congener. The same test method (Method 23) is used in either case. See section II.F of this preamble for further discussion of the proposed method of reporting dioxin/furan emissions in terms of TEQ.

The February 11, 1991 guidelines specify guideline emission levels for PM and opacity. Particulate matter is measured as a concentration (milligrams per dry standard cubic meter (mg/dscm)) and is corrected to 7 percent O_2, and opacity is measured on a percentage basis. The format for the PM and opacity guidelines would not change, but Cd, Pb, and Hg emission guideline limits would be added. Emissions of Cd, Pb, and Hg would be calculated as a concentration (mg/dscm) corrected to 7 percent O_2. For Hg, the proposed emission guidelines would also establish an alternative percentage reduction requirement. A new method (Method 29) that would measure these pollutants is being proposed in a separate part of today's **Federal Register**.

The February 11, 1991 guidelines establish control requirements for SO_2 and HCl (MWC acid gases) by specifying both numerical emission levels, calculated as parts per million by volume (ppmv) corrected to 7 percent O_2, dry basis, and percentage reduction requirements for both SO_2 and HCl. Today's proposed guidelines would also be based on the same format.

Today's proposal would also establish a guideline emission level (ppmv) for NO_x emissions. The NO_x guideline emission level would apply to MWC units at MWC plants with capacities to combust greater than 225 Mg/day.

In addition to controlling stack emissions, the February 11, 1991

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emission guidelines establish combustion operating guidelines for MWC's. These operating guidelines are part of good combustion practices (GCP) and ensure that emissions of MWC organics (dioxins/furans) are minimized on a continuous basis. The GCP requirements are included in today's proposal, but they are being extended to apply to MWC's at plants of 35 Mg/day aggregate capacity or larger.

Additionally, some minor revisions are being proposed. The proposed revisions would include: (1) A requirement that all shift supervisors and chief facility operators obtain full (as opposed to provisional) operator certification; (2) "stand in" authority for MWC control room operators; and (3) required training of MWC shift supervisors. These items are discussed below.

The February 11, 1991 emission guidelines require provisional certification of the chief facility operator and shift supervisors by the American Society of Mechanical Engineers (ASME) or a State certification program. Development of a site-specific training manual to be used for training other MWC personnel is also required. Today's proposal would require that the chief facility operator and shift supervisor obtain both provisional and then full operator certification.

Today's proposal would allow for the optional certification of one or more control room operators. Under the February 11, 1991 guidelines, all chief facility operators and shift supervisors must be certified, and one of these individuals must be onsite during all periods of MWC operation. Under today's proposal, a provisionally certified control room operator may "stand in" for the chief facility operator or shift supervisor during periods in which the certified chief facility operator or certified shift supervisor is offsite, in order to fulfill the requirement that a certified individual be on site during all periods of MWC operation. This would provide additional operating flexibility. Today's proposal would also require that all chief facility operators, shift supervisors, and control room operators complete the MWC training program developed by the EPA or a State program. The EPA has developed a model training program that has been distributed to State air pollution control agencies, EPA Regional Offices, and MWC industry groups. The EPA believes that operator training is an integral part of the implementation of GCP.

Today's proposed guidelines also establish guidelines for fugitive fly ash/bottom ash emissions from ash handling facilities. These guidelines would establish a no visible emissions level, and would apply to all buildings, external ash transfer equipment, and ash handling areas at the MWC facility.

D. Proposed Emission Guidelines

Today's proposal would establish emission guidelines for MWC organics (dioxins/furans), MWC metals (PM, opacity, Cd, Pb, and Hg), MWC acid gases (SO_2 and HCl), and NO_X. The guidelines also propose requirements for fly ash/bottom ash fugitive handling, MWC operating practices (CO, load, and flue gas temperature), and operator training and certification.

The proposed guidelines would divide the MWC population into two subcategories: The first would be for MWC units located at small MWC plants (i.e., those with aggregate capacities to combust greater than 35 Mg/day of MSW but equal to or less than 225 Mg/day), and the second would be for MWC units at large plants (i.e., those with aggregate capacities to combust more than 225 Mg/day of MSW). The aggregate capacity of all existing MWC units at one site would be added together to define aggregate MWC plant capacity for the purposes of the emission guidelines. The proposed emission guidelines for each subcategory and subclass of MWC's are summarized in table 1.

TABLE 1.—SUMMARY OF PROPOSED EMISSION GUIDELINES FOR EXISTING MWC'S

[Subpart Cb][a]

Plant size (MSW combustion capacity)	Requirement
Applicability	
The proposed guidelines would apply to existing MWC's located at plants with capacities to combust greater than 25 Mg/day of residential, commercial, and/or institutional discards.[b] **Industrial discards are not covered by the proposed guidelines.**	
≤ 25 Mg/day	Not covered by guidelines.
> 25 Mg/day but ≤ 35 Mg/day	Initial report of MWC design capacity and startup date.
> 35 Mg/day but ≤ 225 Mg/day (referred to as small MWC plants)	Subject to provisions listed below.
> 225 Mg/day (referred to as large MWC plants)	Subject to provisions listed below.

Good Combustion Practices

- Applies to large and small MWC plants.
- A site-specific operator training manual would be required to be developed and made available for MWC personnel. The EPA or a State MWC operator training course would be required to be completed by the MWC chief facility operator, shift supervisors, and control room operators.
- The ASME or a State MWC operator certification would be required to be obtained by the MWC chief facility operator (mandatory), shift supervisors (mandatory), and control room operators (optional).
- The MWC load level would be required to be measured and not to exceed the maximum load level as demonstrated during the most recent dioxin/furan performance test.
- The maximum PM control device inlet flue gas temperature would be required to be measured and not to exceed the level demonstrated during the most recent dioxin/furan performance test.
- The CO level would be required to be measured using a CEMS, and the concentration in the flue gas would be required not to exceed the following:

MWC type	CO level[c]	Averaging time
Modular starved-air and excess-air	50 ppmv	4-hour.
Mass burn waterwall and refractory	100 ppmv	4-hour.
Mass burn rotary refractory	100 ppmv	24-hour.
Fluidized-bed combustion	100 ppmv	4-hour.
Coal/RDF mixed fuel-fired	150 ppmv	4-hour.
RDF stokers	200 ppmv	24-hour.
Mass burn rotary waterwall	250 ppmv	24-hour.

MWC type	
MWC Organic Emissions (measured as dioxin/furan)[c,d]	
• Dioxins/furans (compliance test by EPA Reference Method 23)	
Large MWC plants	30 ng/dscm total mass or 0.5 ng/dscm dioxin/furan TEQ.
Small MWC plants	60 ng/dscm total mass or 1.0 ng/dscm dioxin/furan TEQ.
• Basis for dioxin/furan guideline	
Large MWC plants	GCP and SD/ESP/CI or GCP and SD/FF/CI
Small MWC plants	GCP and DSI/ESP/CI
MWC Metal Emissions[c]	
• PM (compliance test by EPA Reference Method 5)	
Large MWC plants	27 mg/dscm (0.012 gr/dscf).
Small MWC plants	69 mg/dscm (0.030 gr/dscf).
• Opacity (compliance test by EPA Reference Method 9)	
Large and small MWC plants	10 percent (6-minute average).
• Cd (compliance test by EPA Reference Method 29)[e]	
Large MWC plants	0.040 mg/dscm (18 gr/million dscf).
Small MWC plants	0.10 mg/dscm (44 gr/million dscf).
• Pb (compliance test by EPA Reference Method 29)[e]	
Large MWC plants	0.50 mg/dscm (200 gr/million dscf).
Small MWC plants	1.6 mg/dscm (700 gr/million dscf).
• Hg (compliance test by EPA Reference Method 29)[e]	
Large and small MWC plants	0.080 mg/dscm (35 gr/million dscf) or 85-percent reduction in Hg emissions.
• Basis for PM, opacity, Cd, Pb, and Hg guidelines	
Large and small MWC plants	See basis for dioxin/furan guidelines.
MWC Acid Gas Emissions[c]	
• SO_2 (compliance test by CEMS)	
Large MWC plants	35 ppmv or 75-percent reduction in SO_2 emissions (24-hour).
Small MWC plants	80 ppmv or 50-percent reduction in SO_2 emissions (24-hour).
• HCl (compliance test by EPA Reference Method 26)	
Large MWC plants	35 ppmv or 95-percent reduction in HCl emissions.
Small MWC plants	250 ppmv or 50-percent reduction in HCl emissions.
• Basis for SO_2 and HCl guidelines	
Large and small MWC plants	See basis for dioxin/furan guidelines.
Nitrogen Oxides Emissions[c]	
• NO_X (compliance test by CEMS)	
Large MWC plants	180 ppmv (except mass burn/refractory MWC's).
Mass burn refractory MWC plants	No NO_X control requirement.
Small MWC plants	No NO_X control requirement.
• Basis for NO_X guideline	
Large MWC plants	SNCR.
Mass burn refractory MWC plants	No NO_X control requirement.
Small MWC plants	No NO_X control requirement.
Fly Ash/Bottom Ash Fugitive Emissions	
• Fly Ash/Bottom Ash (compliance test by EPA Reference Method 22)	
Large and small plants	No visible emissions from buildings, ash transfer points, or ash handling areas.
• Basis for fugitive emission guideline	Wet ash handling or enclosed ash handling.
Compliance Testing/Monitoring Requirements	
• Load, flue gas temperature	Continuous monitoring systems, 4-hour arithmetic average.
• CO	CEMS, 4- or 24-hour arithmetic average, as applicable.
• **Dioxins/Furans,[d] PM, Cd, Pb, Hg, and HCl**	
Large MWC plants	Annual stack test.
Small MWC plants	Annual or third year stack test[f].
• Opacity	COMS (6-minute average) and annual stack test.
• SO_2	CEMS, 24-hour geometric mean.
• NO_X (large MWC plants only)	CEMS, 24-hour arithmetic average.
• Fly ash/bottom ash fugitive emissions	Annual test.
Compliance Schedule:	

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- State plans would be required to include one of the following two schedules for compliance with regulatory requirements: (1) Full compliance within 1 year following approval of the State plan; or (2) full compliance within 3 years following issuance of a revised construction or operation permit, if a permit modification is required, or within 3 years following approval of the State plan, if a permit modification is not required, provided the State plan includes measurable and enforceable incremental steps of progress toward compliance.
- State plans would be required to specify that all MWC's at large MWC plants for which construction, modification, or reconstruction is commenced after June 26, 1987 comply with the emission guidelines for Hg and dioxins/furans within 1 year following issuance of a revised construction or operation permit, if a permit modification is required, or within 1 year following approval of the State plan, if a permit modification is not required.
- State plans would be required to require compliance with the MWC operator training and certification requirements by 1 year after promulgation of the guidelines.

[a] Definition of abbreviations used in table:
ASME=American Society of Mechanical Engineers
Cd=cadmium
CEMS=continuous emission monitoring system
CO=carbon monoxide
COMS=continuous opacity monitoring system
DSI/ESP/CI=dry sorbent injection/electrostatic precipitator/activated carbon injection
GCP=good combustion practices
gr/dscf=grains per dry standard cubic foot
gr/million dscf=grains per million dry standard cubic feet
HCl=hydrogen chloride
Hg=mercury
mg/dscm=milligrams per dry standard cubic meter (100 mg/dscm=0.044 gr/dscf)
Mg/day=megagrams per day (1 Mg/day=1.1 short tons/day (2,204 pounds/day))
MSW=municipal solid waste
MWC=municipal waste combustor
ng/dscm=nanograms per dry standard cubic meter (1,000,000 ng=1 mg)
NO_x=nitrogen oxides
Pb=lead
PM=particulate matter
ppmv=parts per million by volume
RDF=refuse-derived fuel
SD/ESP/CI=spray dryer/electrostatic precipitator/activated carbon injection system
SD/FF/CI=spray dryer/fabric filter/activated carbon injection system
SNCR=selective noncatalytic reduction
SO_2=sulfur dioxide
TEQ=toxic equivalency of 2,3,7,8-tetrachlorinated dibenzo-p-dioxin (1989 North Atlantic Treaty Organization (NATO) international criteria)
Total mass=total mass of tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.

[b] Air curtain incinerators that combust only yard waste, tree trimmings, and/or clean untreated lumber would be subject to an opacity guideline, but to no other parts of the proposed emission guidelines. Air curtain incinerators that combust other MSW are subject to all requirements under the proposed emission guidelines.

[c] All concentration levels in the table are converted to 7 percent O_2, dry basis.

[d] Dioxins/furans are measured as tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans. For plants complying with the TEQ format, TEQ is determined using 1989 international toxicity equivalency factors.

[e] Method 29 is being proposed in a separate notice in today's FEDERAL REGISTER.

[f] The proposed guidelines include provisions that would allow small MWC plants to conduct performance tests for dioxin/furans, PM, Cd, Pb, Hg, and HCl every third year if the MWC meets certain specified criteria, as discussed in section II.F of this preamble.

The proposed guideline limits are summarized below.

1. Municipal Waste Combustor Organics

The proposed guidelines would require existing MWC's at large MWC plants to meet a dioxin/furan emission level of 0.50 ng/dscm TEQ or 30 ng/dscm total dioxins/furans, corrected to 7 percent O_2. Existing MWC's located at small MWC plants would be required to meet a dioxin/furan level of 1.0 ng/dscm TEQ or 60 ng/dscm total dioxins/furans, corrected to 7 percent O_2. The TEQ emission levels would be calculated using the 1989 North Atlantic Treaty Organization (NATO) international toxic equivalency factors (TEF's), using the methods described in section II.F of this preamble and section 60.58b of subpart Eb of today's proposed NSPS.

2. Municipal Waste Combustor Metals

The proposed emission guidelines would require MWC's at large plants to control PM to a level of 27 mg/dscm corrected to 7 percent O_2. The emission guideline PM level proposed for MWC's at small plants is 69 mg/dscm, corrected to 7 percent O_2. Municipal waste combustors at both small and large existing MWC plants would be required to meet an opacity level of 10 percent using a 6-minute averaging period.

The proposed emission guidelines would also establish specific emission levels for Cd, Pb, and Hg. The proposed guidelines would require existing MWC's at large plants to meet a Cd emission level of 0.040 mg/dscm, a Pb emission level of 0.50 mg/dscm, and an Hg emission level of 0.080 mg/dscm or an 85-percent reduction in Hg emissions.

For existing MWC's at small plants, the emission guidelines would be 0.10 mg/dscm for Cd, 1.6 mg/dscm for Pb, and 0.080 mg/dscm or an 85-percent reduction in Hg emissions.

3. Municipal Waste Combustor Acid Gases

The proposed emission guidelines for acid gases would require all existing MWC's located at large plants to control SO_2 emissions to a level of either 35 ppmv or 75-percent reduction (at 7 percent O_2, dry basis) on a 24-hour geometric mean basis and HCl emissions to a level of either 35 ppmv or 95-percent reduction (at 7 percent O_2, dry basis). All existing MWC's located at small plants would be required to meet an SO_2 emission level of either 80 ppmv or 50-percent reduction (at 7 percent O_2, dry basis) on a 24-hour geometric mean basis and an HCl emission level of either 250 ppmv or 50-percent reduction (at 7 percent O_2, dry basis).

4. Good Combustion Practices

Today's proposed emission guidelines would require all existing MWC's at plants with capacities above 35 Mg/day to comply with specified operating practices that reflect GCP. These operating practices include CO levels, combustor load levels, and flue gas temperatures and are specified below.

The GCP levels remain unchanged from the February 11, 1991 guidelines.

For modular starved-air and modular excess-air types of MWC's, the CO emission limit would be 50 ppmv (at 7 percent O_2, dry basis) on a 4-hour block average basis. For mass burn waterwall, mass burn fixed-wall refractory, and fluidized-bed types of MWC's, the CO emission limit would be 100 ppmv (at 7 percent O_2, dry basis) on a 4-hour block average basis. For mass burn rotary refractory MWC's, the CO emission limit would be 100 ppmv (at 7 percent O_2, dry basis) on a 24-hour block average basis. For mass burn rotary waterwall MWC's, the CO emission limit would be 250 ppmv (at 7 percent O_2, dry basis) on a 24-hour block average basis. For RDF-stoker MWC's, the CO limit would be 200 ppmv (at 7 percent O_2, dry basis) on a 24-hour block average basis. For coal/RDF mixed fuel-fired MWC's, the CO limit would be 150 ppmv (at 7 percent O_2, dry basis) on a 4-hour block average basis.

Municipal waste combustors would be allowed to operate up to 110 percent of the maximum capacity, as achieved during the most recent dioxin/furan compliance test. Maximum capacity would be based on the steam flow rate, which would be continuously monitored according to the ASME Power Test Code (PTC) for Steam Generating Units (PTC4.1 and PTC19.5). This requirement is unchanged from the February 11, 1991 emission guidelines. The EPA requests comments on this method of measuring load for steam-generating MWC's. Specifically, the EPA has questions regarding the requirement for calibration of the measuring device (e.g., orifice plate) before and after each dioxin/furan compliance test. The EPA is concerned that this calibration requirement may be overly burdensome because the main steam line that contains the orifice plate may need to be cut in order to access the orifice plate for recalibration. Also, the EPA requests comments on whether the ASME PTC adequately addresses the need for calibrating the signal from the flow meter.

Additionally, the EPA requests comments on the use of boiler feed water flow as an alternative method for continuously monitoring load for steam-generating MWC's.

Furthermore, the EPA is considering allowing the use of the continuous flue gas volumetric flow rate to measure maximum capacity for both steam-generating MWC's, as well as those MWC's that do not generate steam. These types of monitors are based on ultrasonic, thermal, or differential pressure methods, and are now being required as part of the EPA's Acid Rain Program (40 CFR part 75). The EPA requests comments on whether continuous flue gas volumetric flow rate monitors are adequately demonstrated and accurate methods for determining compliance with the load level requirements, and if they should be allowed as an alternative to the use of the ASME PTC.

Under the guidelines, MWC's would establish a site-specific maximum flue gas temperature at the final PM control device inlet demonstrated during their most recent dioxin/furan compliance test. Similar to the provisions for establishing a maximum load level measurement, the maximum demonstrated PM control device inlet temperature is established as the maximum 4-hour block average temperature measured during the most recent dioxin/furan compliance test. The MWC must then be operated so that the temperature at the final PM control device inlet does not exceed this level by more than 17 °C (30 °F) (4-hour block average basis).

5. Operator Certificotion and Training

The proposed emission guidelines would require full certification of all MWC shift supervisors and MWC chief facility operators by the ASME or a State program. The proposed guidelines would also require that at least one of the following persons be on duty at the MWC at all times during which the MWC is combusting waste: A fully certified MWC chief facility operator, a fully certified shift supervisor, or a provisionally certified control room operator. A provisionally certified control room operator would be allowed to "stand in" during times that a fully certified chief facility operator or shift supervisor is offsite.

In addition, the proposed emission guidelines would require each owner or operator of an MWC with an aggregate capacity greater than 35 Mg/day to develop and maintain a site-specific training manual and to review it with all employees associated with the operation of the MWC (including MWC maintenance personnel, crane/load operators, and ash handlers). The manual and training would be updated annually.

Section 129 of the Act of 1990 requires the EPA to develop and promote a model State program for the training and certification of MWC operators. Section 129 specifies that "any person with control over processes affecting emissions from a unit" must successfully complete an acceptable training program. Consistent with section 129, today's proposed emission guidelines would require all MWC chief facility operators, shift supervisors, and control room operators at MWC plants with capacities above 35 Mg/day to complete the MWC operator training course developed by the EPA or a State program. The EPA has developed a model training program and has distributed it to State air pollution control agencies, EPA regional offices, and MWC industry groups. This model training program could be used to fulfill this requirement and prepare for the ASME certification.

6. Nitrogen Oxides Emissions

The proposed emission guidelines would require MWC's at large plants, except refractory MWC's, to control NO_x emissions to a level of 180 ppmv (corrected to 7 percent O_2, dry basis, on a 24-hour daily average basis). A "no control" NO_x emission guideline level for MWC's at small plants and refractory MWC's at large plants is proposed and discussed in section VIII of this preamble.

7. Fly Ash or Bottom Ash Fugitive Emissions

The proposed guidelines for fly ash/bottom ash fugitive dust emissions would establish a guideline of no visible emissions for fly ash or bottom ash emissions from an MWC facility.

The visible emissions guidelines would apply to buildings and external ash handling or transfer activities (e.g., loading), and any other area at the designated facility that is a potential source of fly ash or bottom ash fugitive emissions.

E. Comparison of the 1991 Guidelines and Today's Proposal

The subpart Ca emission guidelines promulgated on February 11, 1991 and today's proposed subpart Cb emission guidelines both contain guideline emission levels for dioxins/furans, PM, SO_2, and HCl at large MWC's; however, today's proposed guidelines for most of these pollutants are more stringent than the guidelines promulgated on February 11, 1991. The February 11, 1991 guidelines did not address Cd, Pb, Hg, NO_x, or fly ash/bottom ash fugitive emissions, but each of these is included in today's proposal. Also, today's proposal covers all MWC units at plants with aggregate capacities above 35 Mg/day, whereas the February 11, 1991 guidelines only covered MWC units with unit capacities above 225 Mg/day. A comparison of the 1991 guidelines and proposed guideline emission levels is provided in table 2.

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TABLE 2.—COMPARISON OF THE PROPOSED GUIDELINES (SUBPART Cb) AND THE 1991 GUIDELINES (SUBPART Ca)

Pollutant	Guideline emission level[a]		
	Proposed subpart Cb guidelines[b]	1991 guidelines (subpart Ca)	
	MWC plants > 225 Mg/day[c]	MWC's > 225 Mg/day but < 1000 Mg/day[c]	MWC's > 1000 Mg/day[c]
Dioxins/furans	0.5 ng/dscm toxic equivalence or 30 ng/dscm total mass.	125 ng/dscm, total mass (equivalent to 2.0 ng/dscm toxic equivalence).	60 ng/dscm, total mass (equivalent to 1.0 ng/dscm toxic equivalence).
SO_2	35 ppmv or 75-percent reduction[d]	30 ppmv or 50-percent reduction[d]	30 ppmv or 70-percent reduction[d].
HCl	35 ppmv or 95-percent reduction[d]	25 ppmv or 50-percent reduction[d]	25 ppmv or 90-percent reduction[d].
PM	27 mg/dscm	69 mg/dscm	34 mg/dscm.
Opacity	10 percent	10 percent	10 percent.
Cd	0.040 mg/dscm	None	None.
Pb	0.50 mg/dscm	None	None.
Hg	0.080 mg/dscm (or 85-percent reduction)[d].	None	None.
NO_X	180 ppmv	None.	None.
Fly ash/bottom ash fugitive emissions.	No visible emissions from buildings, ash transfer points, or ash handling areas.	None	None.

[a] All emission levels are corrected to 7 percent O_2, dry basis.
[b] Separate guideline levels are also proposed for MWC plants with aggregate plant capacities between 35 and 225 Mg/day.
[c] The February 11, 1991 guidelines were based on MWC unit capacity, and today's proposed guidelines are based on aggregate plant capacity.
[d] Whichever is less stringent.

The MWC operating guidelines (GCP) included in today's proposal are the same as those in the February 11, 1991 guidelines. The training and certification requirements have changed somewhat. The February 11, 1991 guidelines required only provisional certification of MWC chief facility operators and shift supervisors, but today's proposed guidelines would require both provisional and then full certification. This change is being proposed because the full operator certification program is now widely available. In 1991, the program was not widely available.

Today's proposal also adds a provision to allow provisionally certified MWC control room operators to stand in for the MWC chief facility operators or shift supervisors in their temporary absence from the MWC. Additionally, today's proposal would require all MWC chief facility operators, shift supervisors, and control room operators to complete the EPA or a State MWC training course. This training course requirement was not included in the February 11, 1991 guidelines.

F. Performance Testing and Monitoring Requirements

Information related to the performance testing and monitoring requirements for MWC acid gases (SO_2 and HCl), MWC organics (dioxins/furans), PM, and MWC operating practices was published in the February 11 and 13, 1991 **Federal Register** notices (56 FR 5514 and 56 FR 5758). These same requirements would be adopted by today's proposed guidelines and would be extended to apply to all MWC's at plants with aggregate capacities above 35 Mg/day. Because the proposed guidelines allow compliance with either a dioxin/furan limit in terms of TEQ or a dioxin/furan limit on a total mass basis, procedures are being proposed for determining dioxin/furan emissions on a TEQ basis. The mass of each tetra- through octa- chlorinated dibenzo-p-dioxin and dibenzofuran congener would be measured by EPA Reference Method 23. Each congener mass would then be adjusted by the corresponding toxic equivalency factor (TEF; the 1989 NATO international TEF's). Finally, the adjusted congener masses would be added together to determine dioxins/furans in ng/dscm TEQ. Furthermore, today's proposal would require both large and small MWC facilities to conduct annual opacity tests using EPA Reference Method 9. This testing would be in addition to the continuous monitoring of opacity levels. Also, today's proposal allows small MWC facilities to conduct less frequent testing for dioxin/furan, HCl, and PM emissions if the small facility consistently demonstrates compliance. More specifically, under today's proposed emission guidelines, if three consecutive annual compliance tests for an MWC at a small MWC plant indicate compliance with the emission guideline for a pollutant (i.e., PM, HCl, or dioxins/furans), the MWC would be allowed to wait 3 years before retesting for the pollutant. If the next test conducted in the third year shows compliance with the emission guideline for that pollutant, then the facility could again wait 3 years to test for the pollutant. If noncompliance with the emission guideline for the pollutant occurs, corrective actions would be required to be undertaken and annual testing would be required to be conducted until 3 consecutive years of compliance with the emission guideline is established. At a minimum, performance tests for dioxins/furans, HCl, and PM would be required to be performed for each MWC at a small MWC plant every 3 years. This provision is included to minimize costs for small MWC plants, while still retaining periodic testing to ensure compliance. All large MWC plants would continue to be required to conduct annual compliance tests.

Annual performance tests to determine compliance with the Cd, Pb, and Hg emission guidelines would be based on EPA Reference Method 29. The average emission rates of three or more test runs using this methodology would be used to determine compliance. The EPA considered the use of EPA Reference Method 101A for Hg testing; however, based on available data, the EPA has concluded that Method 29 is a better measure of Cd, Pb, and Hg emissions than Method 101A and has therefore proposed Method 29 for testing MWC's. Also, as discussed above for dioxins/furans, PM, and HCl, if small plants demonstrate compliance with the Cd, Pb, and Hg emission guidelines for 3 consecutive years, they would be allowed to begin testing for these three pollutants every third year

The EPA Reference Method 29 is proposed in a separate part of today's **Federal Register**. Method 29 is very similar to the method that has been used by the EPA's Office of Solid Waste to measure metal emissions from boilers cofiring hazardous waste, commonly referred to as the EPA multimetals method. The proposed Method 29 is discussed in section IV.H of this preamble.

The proposed emission guidelines for NO_X would require continuous monitoring of NO_X emissions for MWC's at large plants, except refractory units for which a "no control" emission guideline is proposed. Compliance with the NO_X emission guideline level for nonrefractory MWC's at large plants would be determined by calculating the arithmetic average of the hourly emission rates, as measured by the continuous emission monitoring system (CEMS), for a 24-hour period that the MWC operates, using EPA Reference Method 19. Quality assurance would be maintained in accordance with appendix F of 40 CFR part 60.

Annual performance tests to determine compliance with proposed fly ash/bottom ash visible emissions guidelines would be based on EPA Reference Method 22 (3-hour continuous visual observation). The limits would apply at all times, and tests would be conducted during periods of time when fly ash/bottom ash is transferred from the combustor or from the air pollution control device to the ash loading area, and when ash is loaded for transportation or is being transported onsite.

The data availability requirement for CEMS (SO_2, NO_X, CO, and O_2 (or CO_2)) has been changed from the 1991 NSPS.

Today's proposal would require that valid paired CEMS hourly averages (i.e., SO_2 and O_2 (or CO_2), NO_X and O_2 (or CO_2), and CO and O_2 (or CO_2)) be obtained for 75 percent of the hours per day for 90 percent of the days per calendar quarter that the designated facility is operated and combusting MSW.

G. Reporting, Recordkeeping, and Compliance Schedule Guidelines

The MWC emission guidelines promulgated on February 11, 1991 for MWC's with unit capacities above 225 Mg/day established reporting and recordkeeping requirements for MWC organics (dioxins/furans), MWC metals (PM and opacity), MWC acid gases (SO_2 and HCl), and operating practices (CO, load, flue gas temperature, and operator training/certification). These reporting and recordkeeping requirements are discussed in the February 11, 1991 **Federal Register** notice (56 FR 5514). These same reporting and recordkeeping requirements would be adopted under the proposed guidelines, except that dioxin/furan emissions would be recorded and reported on either a total mass basis or a TEQ basis. Furthermore, if small MWC's meet the criteria in today's proposal allowing them to conduct performance tests for dioxins/furans, HCl, and PM every third year, they would submit a simplified annual report for years in which a full compliance test was not required.

Today's proposal also would add reporting and recordkeeping requirements for Cd, Pb, Hg, and NO_X. The proposed emission guidelines would require that initial and annual compliance reports be submitted for Cd, Pb, and Hg for MWC's at plants with capacities above 35 Mg/day. If small MWC's meet the criteria allowing them to conduct performance tests for Cd, Pb, or Hg every third year, they would be allowed to submit a simplified annual report for years when a full compliance test was not required. The proposed guidelines would also require that the amount of activated carbon injected for Hg control at small and large plants be recorded during MWC operation.

The NSPS for MWC's promulgated on February 11, 1991 (56 FR 5488) establishes reporting and recordkeeping requirements for NO_X for new MWC's; however, no NO_X requirements were established for existing MWC's. These NSPS reporting and recordkeeping requirements would now apply to MWC's only at large plants under today's proposed emission guidelines. Submittal of initial and quarterly reports for all CEMS data and accuracy determinations for NO_X emissions would be required. Quality assurance would be required in accordance with appendix F in 40 CFR part 60.

Initial and annual compliance reports for fly ash/bottom ash visible emissions testing would be required under today's proposal for both small and large plants.

The proposed emission guidelines include revised compliance scheduling requirements. The proposed guidelines require State plans to require both small and large MWC plants to meet one of the following two compliance schedules: (1) Full compliance with the State plan within 1 year after approval of the State plan, or (2) full compliance with the State plan within 3 years following issuance of a revised construction or operation permit, if a permit modification is required, or within 3 years following approval of the State plan, if a permit modification is not required, provided the State plan includes measurable and enforceable incremental steps of progress toward compliance with the State plan (see section IV.I of this preamble for further discussion of this requirement).

The proposed emission guidelines also include an accelerated compliance schedule for compliance with the proposed dioxin/furan and Hg emission limits for certain MWC's. Under the accelerated schedule, MWC units for which construction commenced after June 26, 1987 and that are located at large MWC plants would be required to be in compliance with the proposed dioxin/furan and Hg emission guidelines within 1 year following issuance of a revised construction or operation permit, if a permit modification is required, or within 1 year following approval of the State plan, if a permit modification is not required (these units are already equipped with acid gas/PM control systems). The rationale for requiring this accelerated schedule is provided in section IV.I of this preamble.

Additionally, the proposal requires compliance with both the operator training and certification requirements by 1 year after the date of promulgation of the emission guidelines.

Records of all data, including results of emission tests and compliance reports would be maintained for 5 years following the date of submission of the data.

III. Impacts of the Proposed Emission Guidelines

This section describes the impacts (i.e., air, water, solid waste, energy, control cost, and economic impacts) of the proposed emission guidelines for small and large MWC facilities. The impacts are summarized in table 3. Table 3 presents: (1) The impact of these proposed subpart Cb guidelines over a pre-1989 baseline (i.e., baseline prior to the effective date of the subpart Ca guidelines); and (2) the incremental impact of these proposed subpart Cb guidelines over the subpart Ca guidelines. The following discussion focuses only on the impacts of today's proposal based on a pre-1989 baseline, since the emission guidelines promulgated in 1991 have not been implemented. For further information on the impacts of the proposed emission guidelines, refer to the document entitled "Economic Impact Analysis for Proposed Emission Standards and Guidelines for Municipal Waste Combustors" that is included in the list of items under **SUPPLEMENTARY INFORMATION** at the beginning of this preamble.

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TABLE 3.—IMPACTS OF THE 1991 SUBPART Ca AND PROPOSED SUBPART Cb GUIDELINES

Parameter	1991 subpart Ca guidelines[a]	Proposed 1994 subpart Cb guidelines[a]	Increment of proposed 1994 subpart Cb guidelines over the 1991 subpart Ca guidelines[b]
Characteristics of Existing MWC's:			
Combustion capacity (10^6 Mg/yr)	35.9	39.0	3.1
Number of MWC plants	158	179	21
Cost (1990 Dollars):			
Capital cost (10^6)	888	2,100	1,212
Annualized cost (10^6/yr)	168	445	277
Average cost increase ($/Mg MSW combusted)	6.40	13.60	7.20
Annual Emissions Reduction (Mg/yr):			
SO_2	25,000	43,000	18,000
HCl	36,000	56,000	20,000
PM	1,100	3,100	2,000
Cd	2	5	3
Pb	30	83	53
Hg	11	47	36
NO_X	0	19,000	19,000
Total dioxins/furans (kg/yr)[c]	117	157	40
Dioxin/furan TEQ (g/yr)[d]	1,950	2,620	670

[a] The impacts are based on a pre-1989 baseline (i.e., a baseline prior to the effective date of the subpart Ca guidelines).
[b] The impacts are calculated by subtracting the impacts of the 1991 subpart Ca guidelines from the impacts of the proposed 1994 subpart Cb guidelines (based on a pre-1989 baseline).
[c] kg/yr = kilograms per year.
[d] g/yr = grams per year.

A. Air Impacts

The air emission reductions discussed below, as well as all other impacts discussed in today's proposal, are nationwide impacts that would result from full implementation of the guidelines and are relative to the current baseline MWC population, considering in-place air pollution control devices. These are not incremental impacts relative to the February 11, 1991 emission guidelines. The total impacts are presented because the February 11, 1991 guidelines have not been implemented and are being significantly altered by today's proposal.

Under today's proposed emission guidelines, nationwide emissions of total dioxins/furans would be reduced by about 157 kilograms per year (kg/yr) compared with emissions in the absence of nationwide guidelines. Emissions of dioxins/furans on a TEQ basis would be reduced by about 2,620 grams per year (g/yr). This represents a nationwide reduction of about 99 percent compared to baseline levels in the absence of the guidelines. Remaining nationwide dioxin/furan emissions would be about 42 g/yr TEQ.

Nationwide emissions of PM would be decreased by about 3,100 megagrams per year (Mg/yr) compared with levels in the absence of emission guidelines. This represents a reduction of just under 50 percent compared to baseline levels in the absence of nationwide guidelines. In combination with baseline control, this would represent greater than 99-percent PM control. Emissions of Cd would be reduced by about 6 Mg/yr, Pb would be reduced by about 91 Mg/yr, and Hg would be reduced by about 48 Mg/yr. These emission reductions represent decreases of about 70 to 80 percent for each of these three metals. In combination with baseline control, this would represent greater than 99-percent control for Cd and Pb and greater than 80-percent control for Hg.

Nationwide emissions of SO_2 and HCl would be decreased by 43,000 Mg/yr and 56,000 Mg/yr, respectively, relative to current baseline levels. This represents about 87-percent control of acid gases compared to baseline levels in the absence of emission guidelines. In combination with baseline control, this would represent about 95-percent control of these acid gases.

The proposed emission guidelines would reduce nationwide emissions of NO_X by 19,000 Mg/yr, representing an overall nationwide emission reduction of over 30 percent compared to baseline levels that would be emitted without the proposed guidelines.

B. Water and Solid Waste Impacts

Water and solid waste impacts that would result from today's proposal were determined not to be significant. No water pollution impacts are projected because the control technologies considered would not produce a wastewater stream.

The EPA believes that MWC ash disposal is adequately addressed by current waste management standards, so that considerations of ash quality need not play a role in this rulemaking.

C. Energy Impacts

The energy impacts of applying add-on pollutant emission controls required as part of today's proposal would not result in significant energy impacts. Today's proposal for MWC acid gases, MWC organics, MWC metals, and NO_X would affect an estimated 179 MWC plants and would result in energy requirements of 400 to 500 gigawatt-hours per year (GW-hr/yr) of electricity to operate the air pollution control devices, and about 780 terajoules per year (TJ/yr) of natural gas to maintain combustor operating conditions that reflect GCP.

Most of the MWC's that would be affected by the proposed guidelines generate electricity for sale. For example, a large mass burn/waterwall MWC plant would generate about 500 GW-hr/yr of electricity. The energy to operate its air pollution control equipment would represent only about 4 percent of generation. Additionally, natural gas that is fired for GCP

requirements represents less than 0.2 percent of the annual heat input to MWC's. Considering that a large percentage of new power plant capacity to be constructed in the next 10 years will fire natural gas, the firing of small amounts of natural gas for GCP (while generating electricity) actually reallocates natural gas use rather than just increasing consumption.

D. Cost and Economic Impacts

1. National Overview

The EPA projects that about 33 million Mg of MSW will be combusted in the year 2000 in existing MWC plants subject to the guidelines being proposed today. The EPA estimates that there would be 179 existing MWC plants in operation that would be subject to the subpart Cb guidelines: 60 in the 35- to 225-Mg/day capacity range and 119 in the larger than 225-Mg/day capacity range. The typical plant has two or three MWC units.

The cost estimates given below are in 1990 dollars and are for emission control and compliance testing. The estimates do not include costs for such things as permitting and enforcement. To estimate the costs of the guidelines being proposed today, the EPA has taken into account all existing control equipment. Cost estimates are incremental over costs associated with the control equipment in current use and include retrofit premiums. Cost estimates are total costs for the revised MWC guidelines and are not incremental to the February 11, 1991 guidelines.

The nationwide annual cost of the guidelines including testing, reporting, and recordkeeping for acid gas, PM, Hg, and NO_X control would be about $445 million. The national average annual cost of the guidelines per unit of MSW combusted would be about $14/Mg.

The above costs for the guidelines are overall national costs spread over the entire existing MWC population. However, about one half of the affected waste flow from existing MWC's larger than 225 Mg/day already is combusted in facilities equipped with spray dryer/electrostatic precipitator (SD/ESP) or spray dryer/fabric filter (SD/FF) systems, and these MWC's would incur only a minor compliance cost (about $3/Mg) as a result of the proposed guidelines. The average annual cost of acid gas, PM, and Hg control per unit of MSW combusted at large plants that do not already have SD/ESP or SD/FF systems would be about $20/Mg.

The average annual cost per unit of MSW combusted at small plants using dry sorbent injection/electrostatic precipitator (DSI/ESP) systems and Hg control would be about $36/Mg.

The guidelines will have a wide range of impacts on the price of combustion services. To study these potential impacts, the EPA first applied a cost accounting procedure that approximates the one that would be used by an individual publicly owned MWC. Then, using a 1993 average tipping fee of $57/Mg of MSW combusted (1990 dollars) of waste combusted and assuming the full cost of meeting acid gas, PM, Hg, and NO_X requirements is passed directly to MWC customers, the EPA found that the lowest and highest tipping fee increases for the model plants used in the EPA's economic analysis would be $9 and $56, respectively, per megagram of MSW combusted. The majority of tipping fee increases would be in the $17 to $28/Mg range. (These estimates apply only to MWC's at small plants that do not already have DSI/ESP, SD/ESP, or SD/FF systems or large plants that do not currently have SD/ESP or SD/FF systems.)

The EPA projects that, regardless of how the regulatory costs are financed, most of the burden will find its way directly or indirectly to households served by MWC's. Costs that are directly assessed to households are likely to be in the form of increased collection fees and/or increased taxes. Indirect household costs are price increases charged by businesses that similarly are faced with increases in collection fees and/or taxes. For the guidelines being proposed today, the EPA projects an increase in the average annual household cost of waste disposal of about $25 for communities that have MWC's. The actual cost per household will depend on local conditions, including the extent to which recycling and landfilling are also used within the affected community. Approximately 62 percent of the total average household cost is a direct cost, thus the annual direct household cost would be approximately $15. The EPA estimates that the average annual household cost breaks down to $26 per year for communities over 250,000 in population; $24 for communities with populations between 100,000 and 250,000; $24 for communities with populations between 50,000 and 100,000; and $22 for communities with populations under 50,000. This range represents less than 1 percent of household income. The actual cost per household will depend on local conditions.

The EPA identified 39 private firms each of which owns one or more MWC's. Detailed financial data are published for only 17 of the firms projected to incur costs, none of which is small (under $6 million in annual sales). (Firms for which annual sales data are not available are assumed to be small.) The total annual cost of the guidelines as a percentage of sales averages less than 1 percent and ranges from less than 1 percent to about 80 percent for these 17 firms. Potential tipping fee increases, based on an assumed full cost pass-through (i.e., passing all control costs to consumers via the tipping fee) and an average tipping fee of $57/Mg, are about 18 percent for MWC's owned by small firms and about 14 percent for MWC's owned by large firms.

Some of the benefits of the emission guidelines have been quantified. The absence of sufficient exposure-response and valuation information precludes a comprehensive benefits analysis for many of the MWC pollutants. The EPA expects partial benefits for reduction of PM and SO_2, including benefits from reductions in morbidity and mortality, to total about $106 million annually. The total benefits would be higher if benefits from reductions of other pollutants were valuated. In addition, recent evidence suggests the mortality reduction benefits of particulate mater controls may be higher than is assumed in this analysis.

2. Control Costs for Typical MWC Plants

The previous section presented costs of the proposal on a national basis. This section presents examples of typical retrofit costs that would be experienced at both a large MWC plant and a small MWC plant. These are typical costs. Lower costs will be experienced at MWC plants that have already installed the air pollution control components required by the proposal. Higher costs will be experienced for MWC plants with more difficult retrofit applications.

The costing data presented in this section are provided in the following formats: capital cost, annualized cost, and cost per Mg of municipal waste combusted. The costing information is subcategorized by air pollution control components (i.e., GCP upgrade, acid gas scrubber, activated carbon injection application, and NO_X control). For perspective, the estimated cost of combustion units is also displayed. Since the actual MWC unit cost for an existing combustion unit is sensitive to past funding practices, the EPA could not provide this cost. Instead, the EPA has provided the cost of combustion units for a new MWC plant for reference. This costing information has been derived from 1989 background information documents that were used in developing the 1991 NSPS and

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emission guidelines (see **SUPPLEMENTARY INFORMATION** for more information about these documents), and is presented in 1987 dollars (the escalation factor for converting to mid-1990 dollars is 1.111).

From table 3A, it can be noted that the capital cost for retrofit at a large existing MWC plant (980 Mg/day capacity) would be about $16.8 million of which $13.6 million would be for the acid gas control, 2.9 million for NO_x control, and less than one million for activated carbon injection and GCP. On an annualized basis, the cost would be about $5.1 million/yr or about $16/Mg of waste combusted. This would increase baseline combustor cost from about $60/Mg combusted (based on the baseline combustor cost for a new large MWC plant presented in table 3B) to about $76/Mg combusted. Large MWC plants represent about 94 percent of the existing MWC combustion capacity.

TABLE 3A.—CAPITAL AND ANNUALIZED COSTS OF AIR POLLUTION CONTROL FOR TYPICAL EXISTING LARGE AND SMALL MWC PLANTS[a]

Parameter	Baseline combustor	GCP[b]	Air pollution control device cost[a]				Total combustor and APCD cost
			Acid gas/PM	CI[c]	NO_x	Total APCD cost[d]	
Existing large MWC plant (980 Mg/day MB/WW retrofitted with GCP, SD/ESP, CI, and SNCR)[e,f,g,h]:							
Capital cost ($10[6])	NA[i]	0.086	13.6	0.279	2.9	16.8	NA
Annualized cost ($10[6]/yr)	NA	0.148	3.8	0.498	0.844	5.14	NA
Average cost increase ($/Mg MSW combusted).	NA	0.45	11.7	1.52	2.53	15.7	NA
Existing small MWC plant (135 Mg/day MOD/SA retrofitted with GCP, DSI/ESP and CI)[j,k,l]:							
Capital cost ($10[6])	NA	0.27	2.5	0.055	0	2.55	NA
Annualized cost ($10[6]/yr)	NA	0.182	0.726	0.041	0	0.77	NA
Average cost increase ($/Mg MSW combusted).	NA	4.01	16.0	0.90	0	16.9	NA

[a] The costs presented are in 1987 dollars. To calculate mid-1990 dollars, multiply 1987 dollars by a factor of 1.111. Total cost values may not add due to rounding.
[b] GCP = good combustion practices.
[c] CI = activated carbon injection.
[d] APCD = air pollution control device.
[e] MB/WW = mass burn waterwall combustor.
[f] SNCR = selective noncatalytic reduction.
[g] SD/ESP = spray dryer and electrostatic precipitator.
[h] The costs presented are based on the assumption that an existing ESP was upgraded and retrofitted with a spray dryer system.
[i] NA = not available. Because the capital cost of the existing combustor was not available, the total costs could not be calculated. Refer to the baseline combustor cost in table 3B for new facilities, which is similar to the cost for existing facilities.
[j] MOD/SA = modular starved-air combustor.
[k] DSI/ESP = dry sorbent injection and electrostatic precipitator.
[l] The costs presented are based on the assumption that an existing ESP was upgraded and retrofitted with a dry sorbent injection system.

TABLE 3B.—CAPITAL AND ANNUALIZED COSTS OF AIR POLLUTION CONTROL FOR TYPICAL NEW LARGE AND SMALL MWC PLANTS[a]

Parameter	Baseline combustor	GCP[b]	Air pollution control device cost[a]				Total combustor and APCD cost
			Acid gas/PM	CI[c]	NO_x	Total APCD cost[d]	
New large MWC plant (730 Mg/day MB/WW with SD/FF, CI, and SNCR)[e,f,g]:							
Capital cost ($10[6])	50	0	12	0.150	2.0	14.2	64.2
Percent of total capital cost (%)[h]	78	0	19	0.2	3	22	100
Annualized cost ($10[6]/yr)	14.4	0	3.56	0.091	0.582	4.23	18.6
Average cost increase ($/Mg MSW combusted)	59.5	0	14.8	0.37	2.39	17.5	77.05
New small MWC plant (90 Mg/day MOD/SA with SD/FF and CI)[i]:							
Capital cost ($10[6])	5.5	0	3.1	0.043	0	3.14	8.64
Percent of total capital cost (%)[h]	64	0	36	0.5	0	36	100
Annualized cost ($10[6]/yr)	1.83	0	0.91	0.014	0	0.92	2.76
Average cost increase ($/Mg MSW combusted)	60.5	0	30.2	0.46	0	30.7	91.2

[a] The costs presented are in 1987 dollars. To calculate mid-1990 dollars, multiply 1987 dollars by a factor of 1.111. Total cost values may not add due to rounding.
[b] GCP = good combustion practices. Costs for GCP are included in combustor design (no cost)
[c] CI = activated carbon injection.
[d] APCD = air pollution control device.
[e] MB/WW = mass burn waterwall combustor
[f] SD/FF = spray dryer and fabric filter
[g] SNCR = selective noncatalytic reduction.
[h] Does not add to 100 percent due to rounding
[i] MOD/SA = modular starved-air combustor

For a small existing MWC plant (135 Mg/day capacity), table 3A shows a capital cost for retrofit of about $2.6 million of which $2.5 million would be for the acid gas control system and the remaining for activated carbon injection and GCP. On an annualized basis, the cost would be about $770,000/yr or about $17/Mg of waste combusted. This would increase baseline combustor cost from about $61/Mg combusted (based on the baseline combustor cost for a new small MWC plant presented in table 3B) to about $78/Mg combusted. Small MWC plants represent about 6 percent of the existing MWC combustion capacity.

IV. Rationale for the Proposed Guidelines for MWC Emissions

This section addresses the legal, technical, and economic basis for the proposed emission guidelines. The basis for regulating MWC's, for regulating the specified pollutants, and for regulating MWC's according to the specified size categories are discussed. The section also presents the EPA's approach in establishing the MACT floor and selecting MACT. Additionally, the section discusses the selected format of the proposed guidelines, the proposed performance testing and monitoring requirements, and the proposed reporting and recordkeeping requirements.

A. Background

On November 15, 1990, the Act was amended. The Act of 1990 includes a new section 129 that applies to a range of solid waste incinerators including MWC's, medical waste incinerators (MWI's), infectious waste incinerators, and industrial waste incinerators.

Under authority of sections 111 and 129 of the Act of 1990, the EPA was directed to promulgate MACT-based guidelines for MWC's. However, section 129 also includes a clause directing the EPA to issue emission guidelines based on BDT under the terms imposed in the consent decree issued from *State of New York et al.* v. *Reilly* (No. 89–1729 D.D.C.), but limiting applicability of those emission guidelines to MWC's with unit capacities greater than 225 Mg/day. Emission guidelines that were signed by the Administrator on January 11, 1991 and published in the **Federal Register** on February 11, 1991 (56 FR 5514) complied with this component of the section 129 requirements.

Regarding the MACT-based guidelines, section 129 directs the EPA to promulgate MACT-based guidelines for MWC units located at plants with capacities greater than 225 Mg/day and at plants with capacities less than 225 Mg/day. The MACT-based guidelines are to include numerical emission limits for Cd, Pb, Hg, and NO_x, and are to address operator training requirements.

Today's proposal complies with all requirements of section 129 described above. This has been done by: (1) Proposing MACT-based guidelines that cover MWC units at plants with capacities above 35 Mg/day; (2) proposing numerical emission limits for Cd, Pb, Hg, and NO_x; (3) proposing operator training requirements; and (4) proposing opacity limits for air curtain incinerators firing specific "clean" fuels.

The subpart Eb NSPS that is proposed in a separate notice in today's **Federal Register** would apply to new facilities constructed after September 20, 1994. However, the February 11, 1991 subpart Ea NSPS will remain in effect. Therefore, those existing facilities subject to the February 11, 1991 NSPS that were constructed on or prior to September 20, 1994 would be subject to both the subpart Ea NSPS and the proposed subpart Cb emission guidelines.

B. Selection of Source Category

The MWC guidelines adopted on February 11, 1991 provided the rationale for the selection of MWC's as a source category to be regulated (56 FR 5514). Moreover, section 129 of the Act directs the EPA to issue guidelines for this source category, and thereby confirms the EPA's earlier decision.

Today's proposed emission guidelines (subpart Cb) would apply to existing MWC's, defined as those MWC's for which construction, modification, or reconstruction commenced on or before September 20, 1994. Municipal waste combustors for which construction, modification, or reconstruction commenced after September 20, 1994 would be covered by the subpart Eb NSPS proposed in a separate notice in today's **Federal Register**.

Also, as required by section 129 of the Act, today's proposed guidelines would establish opacity limits for certain existing air curtain incinerators, for which construction, modification, or reconstruction commenced on or before September 20, 1994. Under the proposed guidelines, air curtain incinerators that burn only yard wastes, tree trimmings, and clean untreated lumber would be required to meet an opacity limit, and no other requirements would apply. The proposed guidelines for these air curtain incinerators are presented in section VI of this preamble.

C. Modification or Reconstruction of Existing MWC's

The subpart Ea NSPS proposal published in the **Federal Register** on December 20, 1989 (54 FR 52251) provided a discussion of the terms and conditions associated with construction, modification, and reconstruction for MWC's. One change is being proposed. Previously, the terms "modification" and "reconstruction" were defined under sections 60.14 and 60.15 of subpart A of part 60. Section 129 of the Act has specified a new definition of "modified solid waste incineration unit" that combines and revises the previous definitions of "modification" and "reconstruction." Specifically, "modified solid waste incineration unit" refers to: (1) Modifications for which the

> • • • cumulative costs of the modifications, over the life of the unit, exceed 50 per centum of the original cost of the construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs. • • •

or (2) modifications involving

> • • • a physical change in or change in the method of operation of the unit which increases the amount of any air pollutant emitted by the unit for which standards have been established under [section 129] or section 111 • • •.

D. Selection of Designated Pollutants

A complete discussion of the rationale for selecting "MWC emissions" as the designated pollutants under sections 111(b) and 111(d) of the Act is provided in the December 20, 1989 proposal preamble for the 1991 emission guidelines (54 FR 52209). Additionally, section 129 of the Act specifies that emission guidelines be developed for PM, opacity, SO_2, HCl, NO_x, CO, Cd, Pb, Hg, and dioxins/furans. Emission guidelines for all but four of these pollutants (Cd, Pb, Hg, and NO_x) were established in the February 11, 1991 emission guidelines (56 FR 5514). Section 129 specifies that emission limits be set for each of the metals (Cd, Pb, and Hg).

Emission guidelines for fugitive MWC fly ash/bottom ash emissions are proposed today because these emissions also contain PM, Cd, Pb, Hg, and dioxins/furans.

E. Selection of Designated Facilities

For the proposed emission guidelines, the designated facility, an MWC unit, is defined as any setting or equipment chamber or pit used to burn MSW (including RDF) and extends to and includes MWC fly ash/bottom ash emission points, including ash storage

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areas, conveyor transfer points, and ash loading areas for hauling trucks at the MWC site. This does not extend to ash handling outside of the MWC property boundary or at ash fill sites.

Municipal waste combustion includes the burning (or pyrolysis) of MSW in any type of equipment, chamber, or pit including equipment with and without heat recovery. Municipal solid waste is defined as either a mixture or a single-item stream of household, commercial, and/or institutional discards. This would include discards such as paper, wood, yard wastes, tree trimmings, plastics, leather, rubber, glass, metals, and other combustible and noncombustible materials. The MSW definition includes household discards as well as discards from institutional and commercial sources, but does not include industrial process or manufacturing discards. The MSW definition also includes RDF, which is a type of MSW that is shredded (or pelletized) and classified by size before combustion. Municipal solid waste does not include wastes that are solely segregated medical wastes. However, any mixtures of medical waste with nonmedical hospital waste or with household, commercial, or institutional waste is considered to be MSW. Minor editing has been done to the definition of MSW to clarify this point.

Cofired combustors are those that fire MSW with non-MSW fuel such as coal. Cofired combustors that combust a fuel feed stream comprised, in aggregate, of equal to or less than 30 percent MSW or RDF (by weight, based on a 24-hour average), would not be subject to the emission guidelines and would be required only to submit reports of the amount of MSW and other fuels combusted. The exclusion of cofired combustors from the guidelines is consistent with the Act of 1990. This exclusion is unchanged from the February 11, 1991 guidelines.

Waste-fuel power generation facilities that combust a single-item waste stream of tires, fuel derived solely from tires, or used oil would be subject only to an initial report and to no other provisions in today's proposal or to the emission guidelines that were promulgated on February 11, 1991 (56 FR 5514). This exclusion is unchanged from the February 11, 1991 guidelines.

Air curtain incinerators with unit capacities to combust greater than 35 Mg/day of MSW are subject to the proposal; however, air curtain incinerators that combust only tree trimmings, yard wastes, and clean untreated lumber (these are a subset of MSW) would be subject to an opacity standard and its associated testing, recordkeeping, and reporting included in today's proposal, but would not be subject to other parts of today's proposal. This exclusion does not apply to air curtain incinerators that combust other MSW materials.

Today's proposed guidelines for MWC's would apply to MWC units at plants with capacities above 35 Mg/day The lower size cutoff of 35 Mg/day aggregate plant capacity for controlling MWC emissions under the proposed emission guidelines was selected after reviewing the population distributions of MWI's and MWC's. Most incinerators at medical waste facilities are smaller incinerators that fire segregated medical waste with general hospital discards (MSW), and these incinerators would have the potential to be covered by today's proposal. The population distribution of MWI's is distinctly different from the population distribution of traditional MWC plants that are the target of today's proposal. The existing distribution of MWC's is composed of about 372 units (about 179 plants), with an average plant size of about 600 Mg/day combustion capacity, with two or three MWC units at each plant. The potential nationwide combustion capacity of existing MWC's is about 107,000 Mg/day, assuming continuous operation. The MWI distribution is quite different and includes about 7,000 combustors with a single combustion unit per facility and an average unit size of less than 3 Mg/day combustion capacity. The total U.S. capacity of MWI's is about 20,000 Mg/day. This population is being addressed under a separate rulemaking. Clearly, the MWC population represents a smaller number of comparatively larger units, and MWI's represent a much larger number of smaller units. The lower size cutoff of 35 Mg/day aggregate plant capacity that is included in today's proposed emission guidelines would exclude less than 1 percent of the total nationwide combustion capacity of MWC's and would result in over 99 percent of total MWC capacity being covered by this proposal. The same lower size cutoff would prevent significant dual coverage under this proposal by excluding more than 99 percent of MWI units and about 97 percent of nationwide MWI capacity from today's proposed revisions.

As mentioned above, the proposed emission guidelines with a 35 Mg/day cutoff would cover the great majority of MWC's, and may also cover a few of the largest MWI's (nine units at three sites are known to cofire medical waste with MSW and are above the 35 Mg/day of MSW total plant capacity cutoff). Section 129 of the Act requires that regulations for MWI's be developed in a separate rulemaking. For these reasons, it is appropriate that today's proposed guidelines focus on MWC's and that a separate regulation focus on MWI's. The NSPS and guidelines for MWI's are scheduled to be proposed in 1995

Municipal waste combustor plants with aggregate capacities below 35 Mg/day would not be subject to the emission limits under today's proposed emission guidelines. However, those facilities with aggregate plant capacities between 25 and 35 Mg/day would be required to report (one time) their location, startup date, and aggregate plant capacity. They would also be required to provide supporting information, including calculations used to determine plant capacity. This one-time report would allow the EPA or State agency to enforce the lower size cutoff for applicability to the proposed guidelines. Plants with aggregate capacities of 25 Mg/day or below would not be subject to any provisions under this proposal.

The proposed emission guidelines for MWC's are subdivided into two subcategories of air emissions requirements: The first for MWC's located at MWC plants with aggregate capacities to combust more than 35 Mg/day but less than or equal to 225 Mg/day of MSW (referred to as small MWC plants), and the second for MWC's located at MWC plants with aggregate capacities to combust greater than 225 Mg/day of MSW (referred to as large MWC plants). The 225 Mg/day dividing point was established because this size break represents a transition point between field-erected waterwall MWC's and modular MWC's.

In the subcategory of existing plants with capacities greater than 225 Mg/day there are about 119 MWC plants with 235 MWC units. In the subcategory of existing plants with capacities greater than 35 Mg/day but equal to or less than 225 Mg/day, there are about 60 plants with 137 units. The large plant subcategory accounts for about 94 percent of the total combustion capacity whereas the smaller subcategory accounts for about 5 percent of total capacity.

F. Selection of Maximum Achievable Control Technology

The following discussion addresses the EPA's selection of MACT. The existing technologies for controlling emissions of the designated pollutants from MWC's are reviewed, followed by a summary of the EPA's approach for establishing the MACT floor. Finally, the discussion presents the EPA's selection of MACT for MWC's at small and large MWC plants.

1 Summary of MWC Control Technologies

The following discussion reviews the existing technologies for controlling emissions of acid gases, dioxins/furans, PM, Cd, Pb, Hg, and NO_x from MWC's.

a. *Acid Gas/PM Control Technologies.* Municipal waste combustor acid gas/PM control is a general term that refers to a group of MWC air pollution control technology combinations. These combinations control a wide range of pollutants, such as acid gases (including SO_2 and HCl), organics (including dioxins/furans), and PM and metals (including Cd, Pb, and a number of other metals except Hg). The three acid gas/PM controls most commonly used in the United States for existing MWC's are: (1) GCP plus DSI followed by an ESP; (2) GCP plus an SD followed by an ESP; and (3) GCP plus an SD followed by an FF. Discussions of each of these control systems were presented in the December 20, 1989 proposal preamble for the acid gas and PM emission guidelines in subpart Ca (54 FR 52209). Control of Cd, Pb, and Hg were not discussed in detail in the 1989 preamble.

Since 1991, the performance of the acid gas/PM control systems for removal of Cd, Pb, and Hg has been investigated in more depth. Cadmium and Pb are both volatile at temperatures present in combustion systems, but condense onto PM in the flue gas at temperatures associated with the operation of most PM control systems. As a result, the control of Cd and Pb is generally related to the control of PM emissions. Much of the PM in the flue gas from an MWC is fine PM; from 20 to 70 percent of the PM in the flue gas from an MWC has an aerodynamic diameter of less than 1 micrometer (1 micron). Because of the potential for adsorption of Cd and Pb onto fine PM that is less readily collected by control devices than larger PM, the control of fine PM is especially important in controlling these metals.

Both FF-equipped systems (i.e., DSI/FF's and SD/FF's) and electrostatic precipitator (ESP)-equipped systems (e.g., ESP's, DSI/ESP's, and SD/ESP's) can achieve efficient control of PM, and the efficiency of total PM and fine PM control achieved by these systems depends on their design. However, FF-equipped systems are generally more effective in capturing fine PM than ESP-equipped systems. Therefore, the control of Cd and Pb achieved by FF-equipped systems is typically better than that of ESP-equipped systems.

For DSI/FF and SD/FF systems, data for controlled Cd emissions range from 0.001 to 0.0100 mg/dscm. Emissions of Pb from MWC's with these systems are less than 0.10 mg/dscm. For SD/ESP systems, the data for Cd and Pb emissions are variable, showing emission levels from 0.005 to 0.040 mg/dscm for Cd, and levels of less than 0.10 to 0.50 mg/dscm for Pb. For DSI/ESP and ESP-only systems, there is no indication of a difference in the level of Cd and Pb control between these control systems. For both of these systems, Cd emission levels range up to 0.10 mg/dscm, and Pb emission levels range up to 1.6 mg/dscm.

Although the above combinations of acid gas/PM controls are effective at removing Cd, Pb, and other metals, they do not consistently remove Hg without integrating some other form of Hg control. A discussion of Hg control is presented below.

b. *Mercury Control Technologies.* The EPA estimates that typical uncontrolled Hg levels for MWC's in the United States range from 0.20 to 1.4 mg/dscm at 7 percent O_2. Unlike other metals, Hg has a high vapor pressure at typical operating temperatures of air pollution control devices. As a result, collection of Hg by the PM control device is highly variable. The EPA collected test data from more than 30 MWC's with various air pollution controls that indicate a wide range of Hg control. High-efficiency PM control, lower flue gas temperatures in the air pollution control system, and a sufficient level of carbon in the fly ash facilitate Hg control. Higher levels of carbon in the fly ash and reduced flue gas temperatures enhance Hg adsorption onto the carbon, which is removed by the PM control device. To promote Hg adsorption, it is important to operate the control systems at temperatures less than about 150 to 200 °C. Low flue gas temperature is inherent to acid gas control.

Municipal waste combustors having high combustion efficiency will have effective carbon burnout and, therefore, will have low fly ash carbon content. These units may achieve little or no Hg control even when equipped with acid gas/PM control systems, and the control may be highly variable even at the same site.

Three techniques for Hg control are currently being used at MWC's: Activated carbon injection, sodium sulfide (Na_2S) injection, and wet scrubbing. Activated carbon injection and Na_2S injection are used in conjunction with an existing acid gas control device. Brief discussions of these three Hg control technologies and their capabilities are presented below.

Injection of powdered activated carbon into the flue gas prior to the acid gas/PM control device has been tested at U.S. MWC's. The removal mechanism is not fully understood, but it is believed that activated carbon is a catalyst for the oxidation of elemental Hg to mercuric oxide and mercuric chloride, which can more readily be captured in the air pollution control device. This technology has been applied commercially to MWC's in Europe equipped with SD/ESP's and during test programs in Europe and Canada to MWC's with SD/FF's and DSI/FF's. The EPA also tested activated carbon injection at the Stanislaus County MWC in California and the Camden County MWC in New Jersey. The Stanislaus County MWC is equipped with an SD/FF, and the Camden County MWC is equipped with an SD/ESP. Test results show Hg reductions greater than 85 percent when injecting activated carbon.

A second Hg control technology is Na_2S injection. Sodium sulfide is a crystalline solid that dissolves in water The resulting Na_2S solution is sprayed into the flue gas prior to the acid gas/PM control device. The reaction of Na_2S and Hg precipitates solid mercuric sulfide (HgS) that is collected in the PM control device.

Three MWC's in Sweden, two in Germany, and one in Canada have used Na_2S injection to control Hg emissions. All of these facilities use DSI/FF systems for acid gas/PM control, and injection of Na_2S occurs prior to the DSI/FF system at flue gas temperatures of 130 to 250 °C. In addition, Hg emission tests were conducted at the Stanislaus County MWC in California while using Na_2S injection. Results from tests at European, Canadian, and U.S. MWC's have shown Hg removal efficiencies of 40 to 90 percent when using Na_2S injection.

Wet scrubbing is a form of acid gas control that also controls Hg without use of an add-on Hg control system. It has been used primarily in Europe and Japan. Typically, the flue gas is first directed through an ESP to reduce PM, followed by wet scrubbing, which involves passing the flue gas through a one- or two-stage absorber system where the gas stream is saturated with an alkaline solution. During this process, flue gas temperatures are reduced to as low as 55 °C. The low absorber operating temperature promotes Hg condensation, resulting in an Hg reduction of 80 percent or better. The alkaline solution used in the wet scrubbing process, typically containing calcium hydroxide, reacts with the acid gas to form salts, which are generally insoluble and may be removed by

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sequential clarifying, thickening, and vacuum filtering. The dewatered salts or sludges are then sent to a landfill. The disadvantages of wet scrubbing include the quantity of water required, potential difficulties with waste handling, and undefined performance at MWC units firing domestic (U.S.) MSW streams.

c. *Nitrogen Oxides Control Technologies.* During the combustion process, NO_x are formed through two mechanisms: (1) Oxidation of fuel-bound nitrogen (N_2) contained in MSW to NO_x; and (2) fixation and oxidation of atmospheric N_2. In MWC's, the conversion of fuel-bound N_2 accounts for most (75 to 80 percent) of the NO_x production.

Controlling NO_x emissions from MWC's can be accomplished through: (1) Combustion modifications to reduce NO_x formation; (2) postcombustion control, which reduces NO_x in the flue gas to elemental N_2; or (3) use of "low-NO_x" combustors to reduce NO_x formation. Combustion modifications include staged combustion, low excess air, and flue gas recirculation. Combustion modification retrofit at existing MWC's has had limited application and its retrofit potential must be evaluated on a case-by-case basis.

Postcombustion NO_x control using selective noncatalytic reduction (SNCR) is more flexible and has been more commonly used for MWC NO_x control. The SNCR control technology reduces NO_x to N_2 without the use of catalysts. Techniques include Thermal DeNO$_x$™, which injects ammonia into the combustor as a reducing agent; the NO$_x$OUT™ process, which injects urea with chemical additives; and a two-stage urea/methanol injection process. A discussion of SNCR NO_x control was presented in the December 20, 1989 proposal preamble (54 FR 52251) for the 1991 NSPS for new MWC's. The use of SNCR at existing MWC's results in NO_x emission reductions of about 45 percent.

However, for existing mass burn/refractory MWC's, SNCR retrofit problems exist. Mass burn/refractory MWC's are generally older and operate with greater fluctuations in combustor flue gas temperature profiles than is typical for other types of MWC's. The fluctuating temperature profiles create SNCR applicability and performance problems. The SNCR control has not been used nor is expected to be used at mass burn/refractory MWC's or other specialized combustors.

The SNCR technology has also never been applied to a modular combustor, and the performance of such a system on a modular combustor is questionable. Performance questions arise because of the potential for temperature fluctuations resulting from batch-feed operations along with the inability of the refractory-lined furnace to dampen temperature spikes. The EPA requests comment on the applicability of SNCR and other NO_x control techniques to MWC's at small plants. The EPA requests that comments address the cost, technical performance, and reliability of application of SNCR or other NO_x control techniques specifically to modular starved-air MWC's and modular excess-air MWC's. Based on the comments and information received, the EPA will reconsider requiring NO_x control on MWC's at small plants.

Three types of MWC's, mass burn/rotary combustors, fluidized-bed combustors, and modular/excess-air combustors, are considered "low NO_x" combustors. Available data show that these types of MWC's consistently show NO_x levels below 150 ppmv without the use of SNCR.

2. MACT Floor and MACT Requirements of the Act

Section 129 of the Act, as amended in 1990, directs the EPA to review and revise the February 11, 1991 guidelines to reflect MACT. Section 129 also establishes a minimum "floor" for the guidelines, in terms of their stringency; specifically:

> * * * emission standards for existing units * * * shall not be less stringent than the average emission limitation achieved by the best performing 12 percent of units in the category * * *.

The intent of this MACT floor is to ensure that the guidelines reflect the performance of the best emission control technologies currently operating at existing MWC units. A large portion of the existing MWC population is represented by relatively new and relatively well-controlled MWC units (the average age of an MWC unit is less than 10 years). This results in a large percentage of existing MWC units being operated with the best emission control technologies. This subset constitutes about 45 percent of existing MWC units at large MWC plants, and, based on EPA's current information, these units are all well maintained and operated. Based on the examination and analysis of the emission data available from these units, the EPA has not found a basis for separating the top 12 percent of these units from the remaining units in the subset of those units that are well-equipped, maintained, and operated. Consequently, to determine the MACT floor, the EPA utilized emission limitations included in Federal/State permits.

Emission limitations for existing MWC units at large plants were determined by examining the air quality permits for those units obtained from the EPA Regional Offices and by examining responses to section 114 information requests, which included a section regarding permitted emission limits. Emission limitations for MWC units at small plants were determined only by examining the responses to section 114 information requests.

The emission limitations for each pollutant were then converted to common units so that they could be compared. The emission limitations for each pollutant were ranked separately for the small and large categories of MWC plants. From those rankings, the average of the top 12 percent of emission limitations (i.e., the average of the most stringent limitations) for each pollutant in the small and large plant categories were calculated to determine the MACT floors.

The MACT floor defines the minimum level of emission control that may be considered in defining MACT, regardless of cost or other considerations. In considering control alternatives beyond the MACT floor, the EPA must consider the cost of achieving such emission reductions and any nonair quality health and environmental impacts and energy requirements. Therefore, the level of control that represents MACT may be more stringent than the MACT floor.

In the proposed regulations, subcategorization of existing MWC units was limited only to size (units at large and small MWC plants). Since the MACT floors may be sensitive to subcategorization, it is possible that further or alternative means of subcategorization may affect the determination of the MACT floor (i.e., the minimum level of control requirements under section 129). The Act provides that "the Administrator may distinguish among classes, types (including mass-burn, refuse-derived fuel, modular, and other types of units), and sizes of units within a category" in establishing MACT standards. In examining various ways of subcategorization, the EPA found that subcategorization uniformly across all emission standards could result in more stringent standards for one pollutant and somewhat less stringent standards for other pollutants. For example, subcategorization by MWC technology generally results in a less stringent MACT floor for NO_x and a more stringent floor for PM. Depending upon the approach used for subcategorization.

the NO_x MACT floor for some units could be considerably higher than the 215 ppmv floor in the proposed rule. For example, the NO_x MACT floor for mass burn/waterwall units could be 230 ppmv, and the NO_x MACT floor for refuse-derived fuel units could be 275 ppmv.

The EPA is soliciting comments on whether subcategorization (beyond size) should be used in the final rule and on the basis that one would support for such further subcategorization (e.g., the inapplicability of SNCR for mass burn/refractory combustors, and the inherently "low-NO_x" emission characteristics of mass burn/rotary combustors, fluidized bed combustors, and modular/excess-air combustors.) In addition, the EPA is seeking comment on the appropriateness of using different subcategorization approaches for different pollutants. For example, in setting standards under section 111 of the Act for industrial boilers, the EPA established different emission standards based on different fuel type inputs.

The following section presents the EPA's rationale for establishing the MACT floor and MACT for MWC's.

3. MACT Floor and MACT for Large MWC Plants

This section summarizes the MACT floor and presents the EPA's rationale for establishing MACT for each pollutant for MWC's at large MWC facilities.

a. *Summary of MACT Floor for Large MWC Plants.* This proposal determines the MACT floor for existing MWC's based on permit limits. The population of MWC's at large plants consists of about 235 combustor units. Therefore, the top 29 combustor units with the most stringent permit limitations would represent the top 12 percent of emission limitations for determining the MACT floor. An average of the top 29 permit limits was calculated to determine the floor for each pollutant. The MACT floor emission levels for each pollutant for large MWC plants is shown in table 4.

TABLE 4.—MACT FLOOR EMISSION LEVELS FOR EXISTING MWC'S AT LARGE MWC PLANTS

Pollutant	MACT floor emission level[a,b]
SO_2	35 ppmv.
HCl	35 ppmv.
PM	27 mg/dscm.
Cd	0.25 mg/dscm.
Pb	0.53 mg/dscm.
Hg	0.36 mg/dscm.
Dioxins/furans	100 ng/dscm total mass or about 1.7 ng/dscm TEQ.
NO_x	215 ppmv.

[a] All emission levels are corrected to 7 percent O_2, dry basis.

[b] Most of the MACT floor requirements for large MWC plants are more stringent than the 1991 subpart Ca guidelines. See table 2.

The top 12 percent MACT floor for the emission guidelines could be constructed in a number of different ways including a permit basis (this proposal), a technology basis, or an emissions data basis. Under a technology basis, MWC's would be ranked by their control technology to determine the technology used by the average or median of the top 12 percent of the MWC population, and the floor would be based on the performance of that technology. Under an emission data basis, data on the best top 12 percent of available test runs would be averaged to calculate the floor. Other approaches are also possible. The different approaches would result in noticeably different MACT floor performance levels. The EPA specifically requests comments on what approach is most appropriate and the rationale for that approach. Based on the EPA's review of comments received on this issue, as well as reanalysis of any data submitted, the MACT floor for the promulgated guidelines may be noticeably higher or lower than the floor included in the proposal.

b. *Discussion of the Selection of MACT for Large MWC Plants.* After establishing the MACT floor for each pollutant based on permit limits, the EPA considered the cost, health and environmental impacts, and energy requirements of selecting MACT for each pollutant at a control level more stringent than the MACT floor. In selecting MACT for each pollutant for large plants, the EPA used principally the data base created for establishing the emission guidelines for MWC's proposed in 1989 and promulgated in 1991 under subpart Ca. For a few pollutants in this proposal, the EPA utilized more recent test data to supplement the 1989 data base. Because most of the test data used for this proposal are more than 4 years old, and in consideration of the fact that most MWC's retest at least once per year, the EPA requests submittal of the most recent MWC emissions test data.

The EPA requests comment on which MWC emissions test data would be the most appropriate to use for establishing MACT for existing MWC's. For example, if the EPA has multiple emission tests for a given MWC over its operating history (which is common), should the EPA utilize the data from all of the emission tests performed for the unit or from only the most recent emission test, in determining the performance of the unit? Additionally, the EPA requests comment on suggestions of analytical methods to use for analyzing the data (e.g., analytical methods that could be used to address emissions variability, including methods for analyzing variable test data for one MWC collected over multiple years and methods of adjusting the best 12 percent of the emissions data to account for variability). The appropriate treatment of variability will be related to the format chosen for the standards (see discussion of alternative formats below).

Based on the new data submitted and on the final choice of which test data and what analysis methods to use, the EPA may promulgate final emission guidelines that are more or less stringent than those proposed today. The following sections IV.F.3.c through IV.F.3.j present the EPA's rationale for selecting MACT for each pollutant for MWC's at large MWC facilities.

c. *MACT for Sulfur Dioxide for Large MWC Plants.* Uncontrolled levels of SO_2 for MWC's are typically about 160 ppmv. The MACT floor for SO_2 at large plants is 35 ppmv. Therefore, acid gas control would be needed to achieve the MACT floor level of control. Both SD/ESP's and SD/FF's can meet the MACT floor level of control. Tests of many SD/FF's have demonstrated SO_2 control to levels below 35 ppmv.

Although SD/FF systems can generally achieve slightly better SO_2 control than SD/ESP systems, the cost of requiring existing SD/ESP systems to retrofit an SD/FF to meet SO_2 control levels more stringent than the MACT floor would be prohibitively expensive and is considered unreasonable. For example, at a typical 1,400 Mg/day MWC plant already equipped with an SD/ESP, the capital cost to remove the ESP and retrofit a new FF (as part of an SD/FF system) would be about $14 million. This cost would be in addition to paying the remaining debt for the relatively new ESP (about $5 million including interest payments) and would result in a relatively small increase in control device efficiency. The incremental cost of control for requiring a retrofit from an SD/ESP to an SD/FF would be greater than $10,000/Mg of acid gas reduction and would increase

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SO_2 removal efficiency by only about 6 percent. Therefore, the EPA is proposing that the MACT guideline level for SO_2 remain at the MACT floor level of 35 ppmv. Additionally, the EPA is proposing an alternative SO_2 guideline level of 75-percent reduction to address SO_2 emissions variability. Therefore, the proposed MACT floor guideline level for SO_2 is either 35 ppmv or 75-percent reduction (24-hour averaging period), whichever is less stringent.

d. *MACT for Hydrogen Chloride for Large MWC Plants.* Acid gas control would also be needed for large MWC's to reduce HCl emissions from uncontrolled levels of about 500 ppmv to the HCl MACT floor level of 35 ppmv. The same types of acid gas control systems needed to achieve the MACT control level for SO_2 will also meet the MACT floor levels of HCl. While it is expected that SD/FF systems could achieve slightly lower HCl levels than SD/ESP systems, it has not been demonstrated that existing SD/FF or SD/ESP systems can consistently meet HCl levels below the MACT floor. Therefore, the EPA is proposing that the MACT guideline level for HCl remain at the MACT floor level of 35 ppmv. Additionally, the EPA is proposing an alternative HCl guideline level of 95-percent reduction to address HCl emissions variability. Therefore, the proposed MACT floor guideline level for HCl is either 35 ppmv or 95-percent reduction, whichever is less stringent.

e. *MACT for Particulate Matter for Large MWC Plants.* On average, uncontrolled levels of PM from MWC's are about 3,700 mg/dscm. The MACT floor for PM at large MWC plants is 27 mg/dscm. The MACT floor will require greater than a 99-percent reduction in PM emissions. The EPA's analysis of data from existing MWC's showed that both SD/FF and SD/ESP systems can meet MACT floor PM levels. Although the newest SD/FF systems can meet levels of less than 15 mg/dscm, SD/ESP systems and many existing SD/FF systems cannot achieve such levels. Therefore, the proposed MACT for PM at large MWC's is the MACT floor level of 27 mg/dscm.

f. *MACT for Cadmium for Large MWC Plants.* Average uncontrolled levels of Cd are about 1.2 mg/dscm from MWC's. The MACT floor for Cd for large MWC plants is 0.25 mg/dscm. Therefore, the MACT floor will require about 80-percent Cd reduction. As with Pb, Cd control is associated with PM control. The EPA's analysis of Cd control showed that SD/FF systems can generally achieve Cd levels of less than 0.010 mg/dscm and that SD/ESP systems can achieve less than 0.040 mg/dscm. The Cd removal efficiency achievable with an SD/FF is only about 1.2 percent better than an SD/ESP (99.5-percent reduction versus 98.3-percent reduction, respectively). Again, the high cost of retrofit to an SD/FF is considered unreasonable for such a small incremental reduction in emissions. Because a level of 0.040 mg/dscm is achievable with both SD/ESP and SD/FF systems, and these technologies would already be needed to meet MACT for acid gas control, the proposed MACT for Cd is more stringent than the MACT floor, at a level of 0.040 mg/dscm.

g. *MACT for Lead for Large MWC Plants.* Uncontrolled Pb emissions from MWC's are about 25 mg/dscm, and the MACT floor for large MWC's is 0.53 mg/dscm. A reduction of about 98 percent would be needed to achieve the MACT floor. The SD/ESP or SD/FF systems needed to meet MACT for acid gases will also meet the MACT floor for Pb. The EPA's analysis of Pb control showed that SD/FF systems can meet Pb levels of 0.20 mg/dscm, and SD/ESP systems can meet Pb levels of 0.50 mg/dscm. The Pb removal efficiency achievable with an SD/FF is only about 0.8 percent better than an SD/ESP (reductions of about 99.8 versus 99.0 percent, respectively). As explained above, the cost of replacing an SD/ESP with an SD/FF would be unreasonable considering the small difference in control efficiency. Because both SD/FF and SD/ESP systems can achieve Pb levels of 0.50 mg/dscm, the proposed MACT for Pb is more stringent than the MACT floor, at a level of 0.50 mg/dscm.

h. *MACT for Mercury for Large MWC Plants.* Uncontrolled levels of Hg from MWC's are about 0.65 mg/dscm on average. The MACT floor for Hg for large plants is 0.36 mg/dscm. The MACT floor, therefore, will require about 40-percent reduction in Hg emissions. As described in section IV.F.1.b of this preamble, Hg control can be achieved by using activated carbon injection in combination with an acid gas/PM control system (and the associated low flue gas temperatures). Recent tests at the MWC's at Camden County, New Jersey (SD/ESP), and Stanislaus County, California (SD/FF), demonstrate that both SD/ESP and SD/FF systems with activated carbon injection can achieve an 85-percent emission reduction in Hg emissions or an Hg emission level of 0.080 mg/dscm, corrected to 7 percent O_2. Data from individual test runs show occasional spikes of high inlet Hg emissions due to the variability in the waste feed composition. In cases where Hg levels are temporarily elevated, a 0.080 mg/dscm level may not be consistently achievable; however, activated carbon injection could achieve an 85-percent reduction during such episodes. Based on the data from MWC's using activated carbon injection, Hg control to these levels is achievable by properly operated systems on all types of MWC's.

Although the MACT floor requires Hg control, the control levels achievable using SD/ESP or SD/FF systems and activated carbon injection are more stringent than the MACT floor. The incremental cost of reducing Hg emissions from the MACT floor level of 0.36 mg/dscm to the demonstrated level of 0.080 is less than about $1.00/Mg of MSW combusted. This incremental cost is considered reasonable given the toxicity and bioaccumulation potential of Hg. Therefore, the proposed MACT guidelines for Hg are 0.080 mg/dscm or an 85-percent reduction, whichever is least stringent.

The EPA has selected activated carbon injection as the basis for achieving MACT for Hg, although facilities may use any technology capable of meeting the proposed guideline. Of the three Hg control technologies discussed in section IV.F.1.b of this preamble, the EPA has determined that activated carbon injection is the most widely tested of the three Hg control technologies in the United States.

i. *MACT for Dioxins/Furans for Large MWC Plants.* The average level of dioxins/furans from an uncontrolled MWC is about 1,000 ng/dscm total mass. The MACT floor for total dioxins/furans of 100 ng/dscm would require about a 90-percent reduction.

Dioxins/furans are controlled by GCP and acid gas/PM control. Good combustion practices alone can achieve total dioxin/furan levels of about 500 ng/dscm. In combination with GCP, SD/FF systems can achieve total dioxin/furan levels less than 30 ng/dscm, and SD/ESP systems can achieve total dioxin/furan levels of less than 60 ng/dscm. Therefore, the MACT floor (i.e., 100 ng/dscm) can be achieved with either SD/ESP or SD/FF systems, and these systems would already be the basis for meeting MACT for acid gas and PM emissions.

As discussed above, the MACT for Hg would be based on activated carbon injection. Recent tests at the Camden County, New Jersey, MWC showed that the injection of activated carbon into the flue gas of an SD/ESP system provides further removal of dioxins/furans (greater than 50-percent reduction over levels achieved by the SD/ESP systems). The greater than 50-percent reduction of the 60 ng/dscm level achieved by an SD/ESP would equate to total dioxin/furan emission levels below 30 ng/dscm (0.5 ng/dscm dioxin/furan TEQ) for SD/ESP systems with activated carbon injection.

As noted, SD/ESP or SD/FF systems with activated carbon injection would already be needed to achieve MACT for acid gas, PM, and Hg. Because both of these control systems in combination with activated carbon injection can achieve a dioxin/furan emission level of 30 ng/dscm or less, and because of the high cost for retrofitting an SD/FF, the proposed guideline for dioxin/furan at large MWC's is based on GCP and SD/ESP systems plus activated carbon injection. The EPA is proposing MACT for dioxins/furans on both a TEQ and a total mass basis. The 30 ng/dscm of total dioxins/furans is equivalent to 0.50 ng/dscm of dioxin/furan TEQ; therefore, the proposed guideline level for large MWC plants is 30 ng/dscm total dioxins/furans or 0.50 ng/dscm of dioxin/furan TEQ. Comments are requested on whether lower dioxin/furan guideline levels, which would require SD/FF's, should be incorporated into the final guidelines.

j. *MACT for Nitrogen Oxides for Large MWC Plants.* The average level of NO_X emissions from MWC's without postcombustion NO_X control is about 225 ppmv. The MACT floor, however, is 215 ppmv. Therefore, postcombustion NO_X controls will be needed by most existing MWC's at large plants to meet the MACT floor.

Selective noncatalytic reduction is currently used by 16 existing MWC units at large plants. Tests conducted by the EPA at the Stanislaus County, California, MWC showed that existing SNCR systems achieve NO_X levels of 180 ppmv on a 24-hour average basis.

Because postcombustion NO_X control is required by the MACT floor, and there is only a small incremental cost to operate an SNCR system to achieve 180 ppmv versus the MACT floor level of 215 ppmv, the proposed guideline level for NO_X for large plants (excluding mass burn/refractory MWC's) is 180 ppmv.

As discussed in section IV.F.1.c of this preamble, SNCR may not be effective on mass burn/refractory MWC's. Therefore, postcombustion NO_X control is not being considered for this type of MWC. The MACT guideline for NO_X for mass burn/refractory MWC's at large MWC plants is based on no control. Section VIII of this preamble discusses "no control" emission limits for NO_X.

The EPA recognizes that costs associated with the proposed NO_X control requirements for large existing MWC plants are not insignificant. Under the proposal, about 73 percent of current MWC capacity would be expected to retrofit NO_X control. On a national basis, the retrofit of NO_X controls to existing MWC plants would cost about $56 million/yr and would represent about 13 percent of the $445 million annual cost of the entire proposal.

As discussed above, the MACT floor for large MWC plants is 215 ppmv and would require less than 20-percent NO_X control (reduction). This could be achieved by application of SNCR technology at a low performance level or, perhaps, by using combustion modification (e.g., excess air) or materials management. The proposal, however, goes beyond MACT floor requirements and would establish MACT at 180 ppmv or about 30- to 40-percent NO_X reduction based on the full application of SNCR at an MWC with average baseline emissions of 225 ppmv.

The EPA requests comment on the alternative of establishing NO_X standards at the level of the MACT floor (215 ppmv) based on the above approach. The EPA also requests comment and data supporting the achievability of a MACT floor level (24-hour arithmetic average, corrected to 7 percent O_2) without the use of an SNCR system. Additionally, the EPA requests data and information on alternative NO_X control technologies including but not limited to the application of combustion modification techniques to existing MWC's or of other management measures (perhaps separation of yard waste) to comply with either the proposed level or a floor level at a lower cost than an SNCR system.

4. MACT Floor and MACT for Small MWC Plants

This section summarizes the MACT floor and presents the EPA's rationale for establishing MACT for each pollutant for MWC's at small MWC facilities.

a. *Summary of MACT Floor for Small MWC Plants.* The proposal determines the MACT floor for existing MWC's based on permit limits. The population of MWC units at small MWC plants consists of about 137 combustor units. Only 88 of the 137 units are facilities that have federally enforceable permit limitations. Therefore, for determining the MACT floor, the emission limitations achieved by the top 11 units in the small MWC plant category represent the top 12 percent of units with federally enforced permit limitations. Many of the smallest MWC's with unit capabilities below 45 Mg/day (i.e., those MWC's not subject to the 1971 subpart E NSPS) do not have federally enforceable permit limitations. For some pollutants, less than 11 permits were identified for the category of small MWC plants (i.e., many small plants with permits have emission limits for only some of the pollutants covered by the proposed guidelines.) In such cases, typical uncontrolled emission levels for that pollutant were used for determining the average of the top 12 percent of emission limitations. Table 5 provides a summary of the MACT floor emission levels for each pollutant for small MWC plants.

TABLE 5.—MACT FLOOR EMISSION LEVELS FOR EXISTING MWC'S AT SMALL MWC PLANTS

Pollutant	MACT floor emission level[a]
SO_2	120 ppmv
HCl	660 ppmv
PM	85 mg/dscm.
Cd	1.1 mg/dscm.
Pb	15 mg/dscm
Hg	1.2 mg/dscm.
Dioxins/furans	1,700 ng/dscm total mass or about 28 ng/dscm TEQ
NO_X	Uncontrolled.

[a] All emission levels are corrected to 7 percent O_2, dry basis

As discussed in Section IV.F.3.a. for large plants, the MACT floor could be constructed in a number of different ways including a permit basis (this proposal), a technology basis, or an emission data basis. Comments are requested on what approach is most appropriate and the rationalization for the approach. Based on the EPA's review of the comments received and reanalysis of the data, the MACT floor for the promulgated guidelines may be noticeably higher or lower than the floor included in the proposal.

b. *Discussion of the Selection of MACT for Small MWC Plants.* After establishing the MACT floor for each pollutant based on permit limits, the EPA considered the cost, health and environmental impacts, and energy requirements of selecting MACT for each pollutant at a control level more stringent than the MACT floor. As discussed above for large MWC plants in section IV.F.3.b, in selecting MACT for each pollutant for small plants, the EPA used principally the data base created for establishing the emission guidelines for MWC's proposed in 1989 and promulgated in 1991 under subpart Ca. As discussed, the EPA specifically requests submittal of the most recent MWC emissions test data. Additionally, as discussed, the EPA requests comment on which MWC emissions test data would be the most appropriate to use for

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establishing MACT for existing MWC's (e.g., if the EPA has multiple emission tests for a given MWC over its operating history, should the EPA utilize the data from all of the emission tests performed for the unit or from only the most recent emission test) and comment on suggestions of analytical methods to use for analyzing the data (e.g., analytical methods that could be used to address emissions variability, including methods for analyzing variable test data for one MWC collected over multiple years and methods of adjusting the best 12 percent of the emissions data to account for variability). The appropriate treatment of variability will be related to the format chosen for the standards (see discussion of alternative formats below).

Based on the new data submitted and on the final choice of which test data to utilize, the EPA may promulgate final emission guidelines that are more or less stringent than those proposed today. The following sections IV.F.4.c through IV.F.4.j present the EPA's rationale for selecting MACT for each pollutant for MWC's at small MWC facilities.

c. *MACT for Sulfur Dioxide for Small MWC Plants.* Uncontrolled SO_2 emissions from MWC's are typically about 160 ppmv, and the MACT floor for SO_2 for small MWC plants is 120 ppmv. Therefore, MACT will require SO_2 reduction of about 35 percent compared to uncontrolled levels. Dry sorbent injection/ESP systems can achieve greater than 50-percent reductions in SO_2, and can satisfy the MACT floor requirements. Retrofitting a new SD/FF system would achieve greater acid gas control and small additional reductions in other MWC pollutants, but the associated costs of such retrofits at small MWC's would be prohibitively high (greater than $10,000/Mg of acid gas reduction).

Although the MACT floor requires SO_2 control to only 120 ppmv, the incremental cost of operating a DSI/ESP system to achieve 80 ppmv (about a 50-percent reduction) versus 120 ppmv is small and results in improved cost effectiveness. Therefore, the MACT guideline proposed for SO_2 is more stringent than the MACT floor and is proposed at a level of either 80 ppmv or 50-percent reduction (24-hour averaging period), whichever is less stringent.

The EPA recognizes that costs associated with the proposed acid gas control retrofit requirements for small MWC plants are not insignificant. Small MWC plants represent about 10 percent of the national MWC capacity to be retrofitted with acid gas control systems, and their associated cost burden would be about 15 percent of the national cost of the proposal. On a national basis, the retrofit of acid gas controls to small MWC plants would cost about $60 million annually and the retrofit of acid gas controls to large MWC plants would be about $340 million annually.

As discussed above, the MACT floor for small MWC plants is 120 ppmv and would require about 35-percent SO_2 control (reduction). This could be achieved by application of a DSI/ESP scrubbing system. The proposal, however, goes beyond the MACT floor requirements and would establish MACT at 80 ppmv or 50-percent SO_2 reduction based on the application of a DSI/ESP at its full optimal capability. Even at optimal conditions, acid gas scrubbing on MWC units at small plants has a higher control cost ($/Mg acid gas removed) than for MWC units at large plants. In fact, acid gas control costs for small plants ($/Mg acid gas removed) are more than twice those for large plants.

In the final regulations, the EPA is considering the alternative of establishing acid gas control requirements for small MWC plants at the level required by the MACT floor (120 ppmv or 35-percent reduction). The EPA requests comment and data supporting the achievability of a 120 ppmv MACT floor level (24-hour geometric average, corrected to 7 percent O_2) without the use of a scrubbing system. Additionally, the EPA requests data and information on alternative acid gas control technologies that could be applied to MWC units at small plants to comply with a 120 ppmv floor level at a lower cost than a DSI/ESP system.

Because some MWC units at small existing MWC plants are operated at a low annual capacity factor and because the cost effectiveness of acid gas control is sensitive to annual capacity factor, the EPA requests comment on the appropriateness of subcategorizing MWC units at small plants by annual capacity factor before determining the MACT floor. The reanalysis after subcategorizing by annual capacity factor may conclude that MACT for low capacity MWC units is less restrictive than MACT for high capacity MWC units at small existing plants.

If the final guidelines establish different control requirements for low capacity MWC units than high capacity MWC units, the guidelines would include operational restrictions for low capacity units. That is, each low capacity MWC unit located at a small MWC plant would be required to have a federally enforceable operating permit that limits the annual capacity factor of the unit to a specified capacity level, and records would have to be maintained to document the amount of waste fired in the unit on an annual basis. The annual capacity factor would be calculated on a unit basis and not on a plant basis. This would assure that obsolete and inoperable MWC units at an MWC site (i.e., with a 0-percent annual capacity factor) are not averaged together with replacement high capacity units to calculate the annual capacity factor, with the possible effect of circumvention of emission control requirements for high capacity factor units. Additionally, if a decision was made to switch a unit from a low capacity operational designation to a high capacity designation, the unit would have to be retrofitted with emission control equipment to comply with the emission guideline requirements for high capacity MWC's.

d. *MACT for Hydrogen Chloride for Small MWC Plants.* The MACT floor for HCl for small MWC plants is 660 ppmv, which is above the typical uncontrolled level of about 500 ppmv. The MACT floor for HCl would not require acid gas control, but MACT for SO_2 would already require acid gas control based on DSI/ESP systems. Dry sorbent injection/ESP systems used for SO_2 control can achieve greater than 50-percent reductions in HCl emissions. As discussed above, the cost to retrofit an SD/ESP or SD/FF system on a small MWC plant would be unreasonably expensive.

Because a DSI/ESP system operating in a manner that achieves the MACT for SO_2 would also achieve a 50-percent reduction in HCl, the proposed MACT guideline for HCl at small MWC plants is either 250 ppmv or 50-percent reduction, whichever is less stringent.

The EPA recognizes that costs associated with the proposed acid gas control retrofit requirements for small MWC plants are not insignificant. The same acid gas control system used to control SO_2 emissions controls HCl emissions, and similar issues exist. As discussed under the MACT SO_2 section, small MWC plants represent about 10 percent of the national MWC capacity to be retrofitted with acid gas control systems, and the associated cost burden for this acid gas retrofit would be about 15 percent of the national cost of the proposal. On a national basis, the retrofit of SO_2/HCl acid gas control systems to small MWC plants would cost about $60 million/yr and the retrofit of acid gas controls to large MWC plants would be about $340 million/yr.

As discussed above, the HCl MACT floor for small MWC plants is 660 ppmv and would not require any HCl control.

The proposal, however, goes beyond the MACT floor requirement and would establish MACT at 250 ppmv or 50-percent HCl reduction based on the DSI/ESP acid gas control system installed for SO_2 control. The EPA is soliciting comments on the alternative of establishing HCl control requirements for small MWC plants at the level required by the MACT floor (i.e., 660 ppmv, which requires no control). The EPA requests comment and data supporting the achievability of a 660 ppmv MACT floor level (24-hour geometric average, corrected to 7 percent O_2) without the use of a scrubbing system.

e. *MACT for Particulate Matter for Small MWC Plants.* Average uncontrolled PM emissions from MWC's are about 1,500 mg/dscm. The MACT floor for PM is 85 mg/dscm, which would require about a 95-percent reduction in PM over uncontrolled levels.

The MACT floor for PM can be achieved with the same DSI/ESP system needed to meet MACT for the other pollutants. A DSI/ESP system can achieve PM emissions of less than 69 mg/dscm. The cost to operate a DSI/ESP system to achieve 69 mg/dscm versus the MACT floor level of 85 mg/dscm is negligible. Therefore, the proposed MACT guideline for PM for small MWC plants is below the MACT floor at a level of 69 mg/dscm.

f. *MACT for Cadmium for Small MWC Plants.* Typical uncontrolled levels of Cd from MWC's are about 1.2 mg/dscm. The MACT floor is also 1.1 mg/dscm, thus the MACT floor requires less than 10-percent Cd control. However, the DSI/ESP systems that would already be needed to achieve the MACT floor for SO_2 can achieve Cd levels of 0.10 mg/dscm. The proposed Cd MACT guideline, therefore, is 0.10 mg/dscm based on DSI/ESP control.

g. *MACT for Lead for Small MWC Plants.* The average uncontrolled emission level of Pb from MWC's is about 25 mg/dscm, and the MACT floor for Pb for small plants is 15 mg/dscm. The MACT floor requires a 40-percent reduction in Pb. The DSI/ESP systems needed to meet MACT for acid gases can achieve Pb levels of 1.6 mg/dscm. The proposed MACT for Pb is based on DSI/ESP control, and the proposed MACT guideline Pb level is 1.6 mg/dscm.

h. *MACT for Mercury for Small MWC Plants.* The MACT floor for Hg for small MWC plants is 1.2 mg/dscm, which is above typical uncontrolled Hg emission levels for MWC's. Therefore, no Hg control is needed to meet the MACT floor.

Because acid gas/PM control systems (DSI/ESP) will be needed at small plants to meet other MACT requirements, activated carbon injection could be added to the acid gas/PM control system to achieve Hg control. The incremental cost to add activated carbon injection to control Hg at small MWC plants already equipped with acid gas/PM control is about $1.40/Mg of MSW combusted. The EPA believes that this cost is reasonable given the concerns over the bioaccumulation of Hg in the environment.

In addition to the EPA's test programs to study Hg removal using SD-based scrubbing systems with activated carbon injection, the EPA has also conducted Hg performance tests of DSI-based scrubbing systems with activated carbon injection at small MWI's (Borgess, Michigan, MWI). The use of activated carbon injection with either SD-based scrubbing systems or DSI-based scrubbing systems has demonstrated greater than 85-percent Hg control.

In combination, DSI/ESP systems with activated carbon injection can achieve Hg emission levels of 0.080 mg/dscm or an 85-percent reduction in Hg emissions. Therefore, the proposed MACT guideline for Hg for small MWC plants is 0.080 mg/dscm or an 85-percent reduction, whichever is less stringent.

i. *MACT for Dioxins/Furans for Small MWC Plants.* The MACT floor for total dioxins/furans is 1,700 ng/dscm, which is above typical uncontrolled levels of about 1,000 ng/dscm. Although the MACT floor for dioxins/furans would be based on no control, DSI/ESP is already needed to meet MACT for other pollutants, and GCP are needed to meet MWC operational and CO requirements. The combination of GCP and DSI/ESP can achieve total dioxin/furan levels of less than 125 ng/dscm.

As discussed above, MACT for Hg for small plants would be based on using activated carbon injection. Activated carbon injection provides additional removal of dioxins/furans beyond that achieved by the acid gas/PM control system, as discussed in the rationale for MACT for dioxins/furans for large plants. Recent tests at small MWI's using DSI systems with activated carbon injection have also shown that additional dioxin/furan removal is achieved with activated carbon injection (greater than a 50-percent reduction over levels achieved by the acid gas/PM control system). Based on the use of activated carbon injection with GCP and DSI/ESP systems, a level of 60 ng/dscm would be achievable. The EPA is proposing MACT for dioxins/furans on both a TEQ basis and a total mass basis. Based on EPA's analysis, a total dioxin/furan level of 60 ng/dscm is equivalent to 1.0 ng/dscm of dioxin/furan TEQ. Therefore, the proposed MACT guideline for MWC's at small plants is 1.0 ng/dscm of dioxin/furan TEQ or 60 ng/dscm total mass dioxins/furans.

j. *MACT for Nitrogen Oxides for Small MWC Plants.* Uncontrolled NO_X emissions from MWC's are about 225 ppmv on average. The MACT floor is no control. The addition of SNCR postcombustion NO_X control has not been demonstrated on any modular starved-air MWC's, and the performance of such a system on a modular starved-air MWC is in question. Since NO_X control is not required by the MACT floor and SNCR has not been demonstrated on modular starved-air MWC's, postcombustion NO_X control is not being proposed for small MWC's. The MACT guideline for NO_X for MWC's at small MWC plants is based on no control. Section VIII of this preamble discusses "no control" emission limits for NO_X.

G. Selection of Format for the Proposed Guidelines

The February 11, 1991 emission guidelines described a format for MWC acid gases (SO_2 and HCl), MWC metals (PM and opacity), MWC organics (dioxins/furans), and MWC operating practices (CO, load, and flue gas temperature), and that same format is being adopted by today's proposed guidelines, except for dioxins/furans. The selection of the format for the emission guidelines for the above pollutants is described in previous **Federal Register** notices (54 FR 52209, December 20, 1989 and 56 FR 5514, February 11, 1991). For dioxins/furans, the proposed guidelines establish dioxin/furan guideline emission levels on both a total mass dioxins/furans basis and a TEQ basis. The format for the proposed emission guidelines for NO_X is the same as the format of the 1991 NSPS (56 FR 5488, February 11, 1991) and today's proposed subpart Eb NSPS. The selection of the format for the 1991 NO_X standard is in previous **Federal Register** notices (54 FR 52251, December 20, 1989 and 56 FR 5488, February 11, 1991). The same format will apply under the emission guidelines for NO_X proposed today for MWC's at large plants. The specific formats of the proposed emission guidelines for Cd, Pb, and Hg are discussed below.

As required by section 129(a)(4) of the Act, the proposed emission guidelines would establish numerical emission limitations for Cd, Pb, and Hg. For the purpose of regulating Cd and Pb, the

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format selected in the proposed emission guidelines for the numerical emission limitations would be a numerical concentration limit (mg/dscm) corrected to 7 percent O_2. For the purpose of regulating Hg, the format selected in the proposed emissions guidelines would be both a numerical concentration limit (mg/dscm) and an alternative percentage reduction requirement. The numerical Hg emission limit reflects the emission level that can be achieved based on activated carbon injection in combination with acid gas/PM control. An alternative percentage reduction requirement may be met instead of the numerical emission level because emissions of Hg can be highly variable and dependent on the Hg input level. Even at the same MWC, test data show occasional spikes of high Hg emissions due to variability in the waste feed. In cases where Hg levels are temporarily elevated, the 0.080 mg/dscm level may not be consistently achievable. However, the control devices could achieve an 85-percent reduction during such episodes. Therefore, a combination of a concentration level and an optional percentage reduction format best assures the maximum achievable Hg control while accommodating potential spikes in Hg emission levels.

As discussed above, the proposed emission guidelines for SO_2, HCl, and Hg include two formats: (1) A percent reduction format, and (2) an emission limit (concentration) format. The EPA requests comment on and test data supporting the appropriateness of promulgating final guidelines for SO_2, HCl, and Hg which include only the emission limit format. For each pollutant, the commenter should specify an appropriate emission limit (without an associated alternative percent reduction format) and provide rationale for the limit. Based on the comments received, the EPA may promulgate final emission guidelines for SO_2, HCl, and Hg in the form of emission limits that are higher or lower than the proposed emission limits.

The EPA has proposed emission guidelines that reflect the performance levels achieved by MWC's equipped with properly designed, constructed, and operated air pollution control systems. The proposed emission guideline levels would apply during all periods of MWC operation. To comply with the proposed guideline levels, the air pollution control system would be designed and operated such that actual emissions are less than the proposed guideline levels. Where continuous monitoring systems are available, such as for SO_2 and NO_X, the proposal would require their use to determine compliance on a continuous basis. For other pollutants, an annual stack test would be required. The EPA requests comment on whether continuous monitoring methods exist for any additional pollutants.

The EPA also seeks comments on alternate formats of the guidelines that would encourage optimal control system operation and optimal performance, thus minimizing emissions. For example, the guidelines could provide incentives, such as reduced testing and reporting, for MWC's that operate well below the guideline emission levels. One approach would be to structure the guideline such that, for an MWC with three units, if all units demonstrated emissions at least 30 percent less than the limit, then only one of the units would be tested each year. The unit selected for testing would be rotated such that each unit would be tested once every three years.

Another potential regulatory approach to assure optimal performance would be to supplement the current emission guidelines (which must be demonstrated by annual stack tests) with more stringent emission guidelines calculated for each pollutant based on long-term average emission levels. Compliance with this supplemental emission level would be determined by continuous monitoring, where applicable, or by the average of the annual tests from the current year and one or more preceding years. The current guideline emission levels account for variability from one emissions test to another, whereas the composite average emission levels would reflect the mean performance level. This may be a preferable measure of environmental performance for some of the pollutants because it is their long term or cumulative emissions that are of most concern. Other formats of the guidelines that encourage optimal performance would also be possible. Comments and suggestions are requested. Based on the information and comments received, the EPA may change the form of the rule to include a long term emissions average, and alternative compliance testing schedule, or other alternative format to encourage optimal performance of the air pollution control system.

Additionally, the EPA requests comment and suggestions on specific work practice requirements or equipment requirements that would assure optimal operation of the air pollution control system and minimize emissions. Such operating practices or equipment practices would be most beneficial for minimizing emissions of those pollutants for which annual stack testing is the proposed compliance test method. Comments are specifically requested on work practices or equipment requirements that would minimize dioxin/furan, Hg, Cd, and PM emissions. Based on the information received, the EPA may require specific work practices or equipment to supplement the emission limits included in the final guidelines.

H. Performance Test Methods and Monitoring Requirements

The emission guidelines promulgated on February 11, 1991 (56 FR 5514) for MWC's with unit capacities above 225 Mg/day established performance testing and monitoring requirements for MWC acid gases (SO_2 and HCl), MWC metals (PM and opacity), MWC organics (dioxins/furans), and MWC operating practices (CO, load, and flue gas temperature). These same requirements would be adopted under today's proposed emission guidelines, except that: (1) Procedures are being proposed for determining dioxin/furan emissions on a TEQ basis; (2) testing schedule provisions have been incorporated for annual compliance testing for PM (opacity not included), HCl, and dioxins/furans at small MWC plants; and (3) annual opacity tests using EPA Reference Method 9 (in combination with continuous monitoring of opacity levels) would be required for both large and small MWC plants. Furthermore, today's proposal includes new data availability requirements for CEMS. Today's proposal requires that valid paired CEMS hourly averages (i.e., SO_2 and O_2 (or CO_2), NO_X and O_2 (or CO_2), and CO and O_2 (or CO_2)) be obtained for 75 percent of the hours per day for 90 percent of the days per calendar quarter that the MWC is operating and combusting MSW.

Because the proposed NSPS allows compliance with a dioxin/furan limit either on a TEQ basis or on a total mass basis, procedures are being proposed for determining dioxin/furan emissions on a TEQ basis. For measuring dioxins/furans on a TEQ basis, the mass of each dioxin/furan tetra- through octa-congener would be measured by EPA Reference Method 23. Each congener mass would then be adjusted by the corresponding TEF's, which are listed in the proposed NSPS. Finally, the adjusted congener masses would be added together to determine dioxins/furans in terms of nanograms per dry standard cubic meter TEQ.

As required by the 1991 subpart Ca emission guidelines, following the initial performance test for PM, HCl, and dioxins/furans, subsequent annual performance tests would be required for all MWC's to demonstrate compliance with the PM, HCl, and dioxin/furan emission limits. Under today's proposed emission guidelines, if three consecutive annual compliance tests for an MWC at a small MWC plant indicate compliance with the emission limit for a pollutant (i.e., PM, HCl, or dioxins/furans), the MWC would be allowed to wait 3 years before retesting for the pollutant. If the next test conducted in the third year shows compliance with the emission limit for that pollutant, then the facility could again wait 3 years to test for the pollutant. If noncompliance with the emission limit for the pollutant occurs, corrective actions would be required to be undertaken and annual testing would be required to be conducted until 3 consecutive years of compliance with the emission limit is established. At a minimum, performance tests for dioxins/furans, HCl, and PM would be required to be performed for each MWC at a small MWC plant every 3 years. This provision is included to minimize costs for small MWC plants, while still retaining periodic testing to ensure compliance.

Testing and monitoring requirements are being proposed in today's emission guidelines for NO_X, Cd, Pb, and Hg emissions. The 1991 NSPS for MWC's includes performance testing and monitoring requirements for NO_X. These testing and monitoring requirements are described in the NSPS promulgated on February 11, 1991 (56 FR 5488). These same testing and monitoring requirements would apply to MWC's only at large plants under today's proposed emission guidelines.

For Cd, Pb, and Hg, annual performance tests would be required for MWC's subject to the proposed emission guidelines. The performance test for all three metals would be conducted in accordance with EPA Reference Method 29. The EPA Reference Method 1 would be used for determining the number and location of sampling points. The EPA Reference Method 3 would be used for flue gas analysis. All performance tests would consist of a minimum of three test runs conducted under representative operating conditions (i.e., at full load). The average Cd, Pb, and Hg emission rates of the three runs or more would be used to determine compliance.

Also, as discussed above for dioxins/furans, PM, and HCl, if small plants demonstrate compliance with the Cd, Pb, and Hg emission limits for 3 consecutive years, they would be allowed to begin testing for these three pollutants every third year. At a minimum, performance tests for Cd, Pb, and Hg would be required to be performed by small MWC plants every 3 years. Large plants must test for each of these pollutants annually. These annual testing requirements are consistent with those for other pollutants, and MWC plants can reduce testing expenses by testing for multiple pollutants during the same test period.

Studies conducted by the EPA have shown EPA Reference Method 29 to be a more reliable method for measuring Hg from MWC's than EPA Reference Method 101A. Recent refinements have been made to Method 101A, but the EPA has concluded that Method 29 is a superior method.

In a separate notice in today's **Federal Register**, EPA Reference Method 29 is being proposed for determining emissions of Hg and other metals from MWC's, MWI's, and power plants. Method 29 consists of a particulate filter followed in series by two nitric acid/hydrogen peroxide ($HNO_3/H2O_2$) impingers and two acidified potassium permangenate ($KMnO_4/H_2SO_4$) impingers. The method is identical to the EPA's Office of Solid Waste multimetals method, except that Method 29 requires filtration and analysis of the impinger solution collected in the $KMnO_4/H_2SO_4$ impingers. These filtration and analysis requirements are being added to the method for quality assurance purposes to protect against the loss of Hg in the manganese oxide (MnO_2) precipitate that can form in this solution. This additional step will result in similar sample preparation and analysis requirements for EPA Reference Methods 29 and 101A.

The EPA does not believe that addition of this filtration and analysis step will change the achievable Hg emission rates for MWC's and MWI's. Because of the significant amount of chlorine in MWC and MWI flue gas, most of the Hg in these flue gases occurs as water-soluble ionic Hg. As a result, use of Method 29 collects most of the Hg in these flue gases on the filter and in the HNO_3/H_2O_2 impingers, with the remainder collected in the $KMnO_4/H_2SO_4$ impingers. Flue gases emitted from processes having lower chlorine levels and/or higher sulfur levels (e.g., coal-fired power plants) have a higher fraction of their Hg emissions present as water-insoluble elemental Hg that is collected in the $KMnO_4/H_2SO_4$ impingers.

In testing conducted by the EPA at an MWC during which Method 101A $KMnO_4/H_2SO_4$ impinger solutions were filtered and the filters analyzed (with Method 101A, all of the Hg in the flue gas is collected by the $KMnO_4/H_2SO_4$ impingers), results showed that less than 3 percent of the total Hg collected by the sampling train was associated with precipitated MnO_2.

Based on review of analytical procedures used with multimetal train samples collected during several other EPA-sponsored test programs, the EPA believes the potential loss of Hg in precipitated MnO_2 during these tests was less than 3 percent (during these tests, the $KMnO_4/H_2SO_4$ impingers were shaken prior to removal of a representative analytical sample and, thus, a portion of any precipitated MnO_2 was likely to have been included in the analytical sample).

Because the analytical filter only makes a negligible difference in the Hg test results for MWC's and because it is desirable to use a uniform Hg test method for all source categories, the EPA is proposing that the full Method 29 test procedures (including the analytical filter analysis) be used for measuring Hg emissions from MWC's.

Overall, the proposed guidelines would require that CEMS be used as the compliance test method for those pollutants for which CEMS are available (i.e., SO_2, NO_X, CO, CO_2 (or O_2), opacity, MWC load level, and air pollution control device temperature). For those pollutants for which CEMS are not available (i.e., HCl, Hg, Cd, Pb, PM, and dioxins/furans), the proposed guidelines would require that stack test methods be used on an annual basis to determine compliance. Progress continues to be made on the development of new and improved CEMS. The EPA requests comment on the availability of CEMS to replace stack testing for any of the pollutants listed above. The EPA specifically requests comment on the availability, precision, accuracy, and cost of CEMS for HCl and Hg. Based on the information received, the EPA will reconsider CEMS requirements and may increase the number of pollutants monitored by CEMS.

I. Reporting, Recordkeeping, and Compliance Schedule Requirements

The proposed emission guidelines would require owners and operators of all designated facilities to submit notifications of the anticipated date of startup and initial performance test and performance evaluation of the CEMS (where applicable).

The February 11, 1991 emission guidelines for MWC's established reporting and recordkeeping requirements for MWC acid gases, MWC organics (dioxins/furans), MWC metals (PM and opacity), and MWC operating practices. These reporting and

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recordkeeping requirements are summarized in the previous **Federal Register** notice promulgating the February 11, 1991 emission guidelines (56 FR 5514). These same reporting and recordkeeping requirements would be adopted under today's proposed guidelines with the following exceptions: (1) Dioxin/furan emissions would be recorded and reported either in terms of dioxin/furan TEQ or as total mass of dioxins/furans; (2) if MWC's at small plants have met the criteria allowing them to conduct compliance tests for PM, HCl, or dioxins/furans every third year (see section IV.H of this preamble), they would submit a simplified annual report for years where testing for those pollutants was not required; and (3) both small and large MWC plants would be required to report the results of annual EPA Reference Method 9 opacity tests.

Recordkeeping and reporting requirements are being proposed in today's emission guidelines for NO_x, Cd, Pb, and Hg emissions. The reporting and recordkeeping requirements for NO_x are described in the NSPS promulgated on February 11, 1991 (56 FR 5488). Under today's proposed emission guidelines, these reporting and recordkeeping requirements would apply only to MWC's at large plants.

After an initial performance test has been completed, the proposed emission guidelines would additionally require the submission of annual compliance reports for Cd, Pb, and Hg. However, if MWC's at small plants have met the criteria allowing them to conduct compliance tests for Cd, Pb, or Hg every third year (see section IV.H of this preamble), they would submit a simplified annual report for years where testing for those pollutants was not required.

The proposed emission guidelines would require that certain types of records be maintained. If an activated carbon injection system is used for Hg control, MWC plants would be required to keep records of the quantity of activated carbon used for each 8-hour period of MWC operation. These records would provide documentation that these systems continue to be operated properly between compliance tests. Initial and annual compliance reports for fly ash/bottom ash fugitive emissions testing would be required for MWC's at both small and large MWC plants.

The proposed guidelines would also require that records be kept regarding the training and certification status of individuals involved in the operation of the MWC. The proposed guidelines would specify that all training and certification requirements be met within 1 year after the date of promulgation of the guidelines.

The proposed emission guidelines include revised compliance scheduling requirements. The proposed guidelines require State plans to require both small and large MWC plants to meet one of the following two compliance schedules: (1) Full compliance with the State plan by no later than 1 year after the approval of the State plan; or (2) full compliance with the State plan by no later than 3 years following issuance of a revised construction or operation permit, if a permit modification is required, or within 3 years following approval of the State plan, if a permit modification is not required, provided the State plan includes measurable and enforceable incremental steps of progress toward compliance with the State plan. Suggested items for specification in the State plan would be as follows:

(1) Date for obtaining the services of an architectural and engineering firm;

(2) Date for obtaining design drawings of the pollution control device(s);

(3) Date of for submittal of permit modifications, if necessary;

(4) Date for ordering the pollution control device(s);

(5) Date for delivery of the major components of the air pollution control device(s);

(6) Date of initial site preparation for installing the pollution control device(s);

(7) Date for commencing installation of the pollution control device(s);

(8) Date of initial startup of the air pollution control device(s); and

(9) Date for the initial compliance test(s) of the air pollution control device(s).

The date associated with each of these incremental steps in a compliance schedule would be established on a site-specific basis, by the State air pollution control agency. Furthermore, submittal of the State plan would be required to include performance test results for dioxin/furan emissions for those MWC units with a compliance schedule longer than 1 year from the date of approval of the State plan. These tests results would be required to have been measured no earlier than 1990 and would be considered by a State in developing a facility's compliance schedule.

In the event no plan for implementing the emission guidelines is adopted, all MWC units covered by the guidelines would be required to be in compliance with the guidelines no later than the date 5 years after the date of promulgation of these guidelines.

Because of recent concern about dioxin/furan and Hg emissions, the proposed emission guidelines require State plans to include an accelerated compliance schedule for compliance with the emission limits for these two pollutants for one subset of MWC's. Under the accelerated schedule, existing MWC units for which construction, modification, or reconstruction commenced after June 26, 1987 and that are located at large MWC plants would be required to be in compliance with the proposed dioxin/furan and Hg emission guidelines within 1 year following issuance of a revised construction or operation permit, if a permit modification is required, or within 1 year following approval of the State plan, if a permit modification is not required. On June 26, 1987, the EPA issued operational guidance to State and local agencies for best available control technology (BACT) determinations for permitting of both new and modified MWC's, pursuant to the new source review (NSR) provisions of the Act. This operational guidance has resulted in all new MWC's at large MWC plants• permitted since June 26, 1987 being constructed with an SD/ESP or SD/FF control system. As discussed in section IV.F.1 of this preamble, control of dioxins/furans and Hg is based on the combination of an acid gas/PM control system and a carbon injection system. Since all MWC units at large MWC plants permitted since June 26, 1987 have been subject to NSR and are, therefore, already equipped with the appropriate acid gas/PM control devices for dioxin/furan and Hg control (i.e., SD/ESP or SD/FF), the EPA concluded that it would be reasonable to require that carbon injection be retrofitted to these MWC units according to an accelerated schedule in order to achieve additional dioxin/furan and Hg emission reductions as soon as possible.

Additionally, compliance with all operator training and certification guidelines would be required by 1 year after the date of promulgation of the emission guidelines.

All reports submitted under this rulemaking would also be required to be maintained as part of these records. All the information contained in these records would be made available to enforcement personnel upon request. All required records would be required to be maintained for 5 years following the date of such records.

The reporting and recordkeeping requirements in the proposed emission guidelines are necessary to inform enforcement personnel of the compliance status of existing MWC's. In addition, the records would provide the data and information necessary to ensure continued compliance of these

MWC's with the emission guidelines. At the same time, these requirements have been structured so as not to impose an unreasonable burden on MWC owners or operators.

V. Rationale for the Proposed Guidelines for Fugitive Fly Ash/Bottom Ash Emissions

The following discussion addresses the basis for EPA's decision to regulate fugitive fly ash/bottom ash emissions from MWC facilities. The available technologies for controlling these fugitive emissions and the EPA's selection of MACT for these emissions are presented.

A. Background

Fugitive emissions from MWC's are emissions of dust from fly ash and bottom ash handling that are not confined (i.e., emissions that are not contained within a fully enclosed ash handling system). The fly ash/bottom ash dust consists of PM and various associated pollutants adsorbed to the PM such as Cd, Pb, Hg, and organic compounds (e.g., dioxins/furans). A study of MWC ash handling and storage facilities has shown that such facilities, when improperly controlled, can be sources of these pollutants through fugitive fly ash/bottom ash emissions. Therefore, visible emission guidelines for fugitive fly ash/bottom ash emissions are being proposed to ensure that control equipment and operating practices are implemented to eliminate such emissions. Currently, more than 12 percent of existing MWC's use control systems to eliminate fugitive fly ash/bottom ash emissions.

B. Fugitive Emission Control Techniques

Sources of MWC fugitive bottom ash/fly ash emissions include the ash storage facilities (including ash storage bins or piles), fly ash and bottom ash conveyors and conveyor transfer points, and truck or container loading facilities.

Fugitive fly ash/bottom ash emissions from conveyors can be controlled by totally enclosing the conveyors when they are not already inside an enclosed structure. Emissions from conveyor transfer points can be controlled by totally enclosing the transfer point and ventilating it to a control device if the transfer point is not inside an enclosed structure. Alternatively, maintaining adequate moisture in the fly ash and bottom ash can be used to control fugitive emissions from conveyors or transfer points.

Fugitive fly ash/bottom ash emissions from the ash storage facilities at an MWC plant can be controlled by totally enclosing the ash storage areas and by ensuring that the fly ash and bottom ash have an adequate moisture content to prevent dust. Chemical stabilizers and binders may also be used in addition to or in place of moisture to prevent dust emissions from MWC ash for nearly all the activities described in this section.

Fugitive fly ash/bottom ash emissions from truck or container loading facilities at the MWC can be controlled primarily by the moisture content of the ash. Fly ash or bottom ash can be passed through a water-filled quench tank to wet the ash. Fugitive fly ash/bottom ash emissions from the ash loading facility at the MWC may also be controlled by enclosing the ash loading facility, fitting the truck bays with doors that can be closed, and discharging the vent air to a control device. Emissions can also be controlled by reducing ash spills during loading and by recovering any spilled ash through sweeping, vacuuming, or washing before the spilled ash can dry or be tracked out of the loading facility.

Fugitive fly ash/bottom ash emissions from moving trucks used for hauling ash from the MWC can be controlled by ensuring that the ash is moist and that the truck or container is properly sealed and covered during transit. Trucks can be covered with tarps, and truck tires can be washed prior to leaving the ash handling facility to prevent ash from being tracked onto roadways where it can later become airborne as fugitive dust emissions.

Data collected at several MWC's indicate that when the control methods described above are applied in a consistent and conscientious manner, fugitive fly ash/bottom ash emissions can be controlled so that no visible emissions are observed from the ash storage facilities or from ash transfer points such as conveyors, trucks or container loading facilities, and trucks hauling MWC ash.

C. Proposed Fugitive Emissions Guidelines

An emission guideline level of no visible emissions of fugitive fly ash/bottom ash emissions from ash storage facilities and transfer points is consistent with the determination that the controls described above represent MACT.

Therefore, the following MACT guidelines are being proposed. Fugitive fly ash/bottom ash emissions from any MWC ash storage facility or any ash transfer point at an MWC plant with aggregate capacity to combust greater than 35 Mg/day of MSW would be required to be controlled so that no visible emissions are detected.

The fly ash/bottom ash visible emissions guidelines would be determined using EPA Reference Method 22 (3-hour continuous visual observation). Compliance with the visible emissions guidelines would be determined by an annual performance test. Reports of initial and annual performance tests would be required.

Any technology may be used to meet these standards. The fly ash/bottom ash fugitive emissions guidelines would apply to ash handling facilities within the property boundary of the MWC including trucks moving away from the MWC, but would not apply to offsite transport of ash.

VI. Proposed Guidelines for Air Curtain Incinerators

Air curtain incinerators operate by forcefully projecting a curtain of air across the top of an open chamber or pit. The air curtain reduces emissions during operation by promoting better combustion. Incinerators of this type are built either above or below ground and typically have refractory walls and a floor. Section 129 of the Act exempts air curtain incinerators firing MSW from the definition of "municipal waste combustion unit" provided that the air curtain incinerator burns only tree trimmings, yard wastes, and clean untreated lumber and that it complies with an opacity limit that would be established by the EPA. As clarified under the proposed guidelines, "untreated lumber" means that the lumber has not been painted, pigment-stained, or "pressure treated."

Today's proposed guidelines include guideline opacity levels specifically for air curtain incinerators that would combust greater than 35 Mg/day of only yard wastes, tree trimmings, or clean untreated lumber. The proposed opacity levels are 10-percent opacity (6-minute average), except that a level of up to 35 percent (6-minute average) would be allowed during the first 30 minutes of operation of the unit. The proposed opacity levels are based on levels achieved by well-designed and operated air curtain incinerators. Compliance with the air curtain incinerator opacity guidelines would be demonstrated by conducting an annual compliance test in accordance with EPA Reference Method 9.

Air curtain incinerators with unit capacities above 35 Mg/day that burn MSW other than yard wastes, tree trimmings, or clean untreated lumber are covered by the emission guidelines for MWC's. Air curtain incinerators with unit capacities above 35 Mg/day that burn only yard wastes, tree trimmings, or clean untreated lumber would be subject to the proposed opacity guideline and its associated testing,

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reporting, and recordkeeping requirements, but would not be subject to any other parts of the proposed emission guidelines.

VII. Comparison of the Proposal and European Emission Limits

Europe is more densely populated than the United States and the combustion of MSW became increasingly common after World War II. Because European countries have more experience combusting MSW, it is interesting to compare the emission control requirements for MWC's located in the Member States of the European Union (EU) to those for MWC's in the United States. In addition to comparing emission requirements, the EPA also compared the prevalence of waste combustion in the United States and the EU.

In general, MSW combustion is more common in the EU than in the United States. There are 12 members of the EU: Belgium, Denmark, France, Germany, Great Britain, Greece, Ireland, Italy, Luxembourg, The Netherlands, Spain, and Portugal. The percentage of waste combusted in many of the EU countries is over 30 percent, with Denmark, Luxembourg, and The Netherlands, combusting 60, 60, and 40 percent of their waste, respectively. As a national average for the United States, 16 percent of the waste generated is combusted. In the Eastern United States, where the majority of MWC's are located, the rate of waste combustion is higher, averaging 25 to 30 percent. In the New England region, the rate of waste combustion approaches 60 percent. Therefore, although the United States as a whole has a much lower rate of waste combustion than does the EU, certain regions of the United States have combustion rates similar to those of the EU.

Factors such as population density, percentage of urbanization, land availability, and topography/geology influence the method of waste disposal for a country or a region. In the EU, the majority of the countries have population densities that range from 200 to 600 people per square mile and urban population percentages of 60 to 90 percent. The United States, in comparison, has a much lower average population density of approximately 70 people per square mile, and the percentage of the population living in urban areas is approximately 75 percent. In the Eastern United States, the population density and percentage of urban population are higher than national levels, at around 200 people per square mile with over 80 percent of the population living in urban areas, which is comparable to most of Europe. As noted above, other factors contribute to the use of MWC technology. For example, in Florida, the geology is such that in some cases landfilling waste is not a desirable option. Similarly, the mountainous regions in parts of Europe restrict the use of landfilling, and the increased usage of MWC's is common.

Regarding regulatory development in the EU, the EU sets uniform environmental guidelines, and individual EU countries may adopt those guidelines or more stringent requirements. This is similar to the role the EPA plays with the individual States. Table 6 presents: (1) The proposed EPA emission guidelines for existing MWC plants with capacities above 35 and 225 Mg/day; and (2) the EU limits that apply to new and existing plants. Existing MWC plants in the EU with capacities greater than 144 Mg/day must meet these requirements by December 1, 1996. All other existing plants with capacities between 24 and 144 Mg/day must meet these requirements by December 1, 2000.

TABLE 6.—COMPARISON OF THE EPA'S PROPOSED GUIDELINES AND THE EU REQUIREMENTS FOR EXISTING MWC'S

Pollutant	Units[a] (@ 7% O_2)	Proposed EPA emission guidelines[b]		EU Guidelines[d]
		Small plants[b]	Large plants[c]	
PM	mg/dscm	69	27	39
Cd	mg/dscm	0.10	0.040	(e)
Pb	mg/dscm	1.6	0.50	(e)
Hg	mg/dscm	0.080[f]	0.080[f]	(e)
Hg and Cd	mg/dscm	0.18[g]	0.12[g]	0.26[h]
Pb+Cr+Cu+Mn[i]	mg/dscm	(j)	(j)	6.5[h]
HCl	ppmv	250[k, l]	35 G5k, m	43 G5n
SO_2	ppmv	80[l, o]	35[o, p]	147[h]
NO^x	ppmv	500	180	(q)
CO	ppmv	100[r]	100[r]	112[s]
Dioxins/furans	ng/dscm TEQ	1.0	0.50	(q)
	total mass	60	30	(q)

[a] All limits are presented on a dry basis, at standard conditions (20 °C, 101 kilopascals) corrected to 7 percent O_2 dry basis.
[b] Applies to plants that commenced construction, modification, or reconstruction on or before September 20, 1994 and have capacities greater than 35 Mg/day and less than or equal to 225 Mg/day.
[c] Applies to plants that commenced construction, modification, or reconstruction on or before September 20, 1994 and have capacities greater than 225 Mg/day.
[d] Applies to all existing plants with capacities greater than 24 Mg/day.
[e] No individual limit specified. See combined limit.
[f] Or 85-percent reduction.
[g] The proposed emission guidelines do not include a combined limit for Hg and Cd; however, based on the individual limits, a combined limit is shown for comparison.
[h] Based on periodic determination.
[i] Cr, Cu, and Mn are abbreviations for chromium, copper, and manganese, respectively.
[j] No combined limit specified. See individual Pb limit.
[k] Measured by an annual stack test.
[l] Or 50-percent reduction, whichever is less stringent.
[m] Or 95-percent reduction, whichever is less stringent.
[n] Based on a 7-day rolling average, measured continuously.
[o] Based on a 24-hour average, measured continuously.
[p] Or 75-percent reduction, whichever is less stringent.
[q] No limit specified.
[r] For mass burn/waterwall combustors. Based on a 4-hour average, measured continuously.
[s] Based on an hourly average, measured continuously.

As shown in table 6, the EU guidelines cover many of the same pollutants as the EPA emission guidelines proposed in today's notice. There are differences between the EPA and the EU guidelines with regard to regulatory flexibility for demonstrating compliance, as well as the test methods used to measure emissions. Factors like these should be considered when comparing emission requirements. The EPA and EU both have set standards for PM, HCl, SO_2, and CO. For these pollutants, the allowable emission levels proposed by the EPA for large MWC plants are more restrictive than the EU guidelines. For small MWC plants, the proposed EPA emission guidelines are more restrictive for CO. No EU limits exist for NO_x or dioxins/furans, and the EU metals emission limits are for combined metals (e.g., Hg+Cd). As shown in table 6, the proposed EPA guidelines for both large and small plants for Hg and Cd, if combined, are lower than the EU Hg+Cd limit.

Some of the EU countries have adopted limits that are more stringent than the general EU guidelines. For example, The Netherlands has recently adopted standards for new and existing MWC's that are considered to be some of the most stringent in the world. For example, the Dutch Hg limit of 0.065 mg/dscm for existing MWC's (corrected to 7 percent O_2) is lower than both the EU limit and the EPA's proposed Hg guidelines of 0.080 mg/dscm. The Dutch dioxin/furan limit for existing MWC's ranges from 0.13 to 0.52 ng/dscm TEQ (the limit varies depending on site-specific economics of the MWC). These limits are more restrictive than the EPA's proposed guidelines (0.5 ng/dscm TEQ or 30 ng/dscm total dioxins/furans for large MWC plants and 1.0 ng/dscm TEQ or 60 ng/dscm total dioxins/furans for small MWC plants). As noted, the EU has no dioxin/furan guideline.

It is difficult to compare the Dutch standards directly to the EPA emission guidelines or to the performance of U.S. MWC's because the test methods used in The Netherlands to measure emissions are different from those used in the United States. Also, many Dutch MWC's are currently completing retrofits in order to meet the Dutch standards by January 1995. The actual performance level of the MWC units will be unknown until that time.

As with some of the EU countries, some of the individual States are establishing more stringent emissions standards than those in today's proposed guidelines. Brief descriptions of the regulations under consideration in Florida, Minnesota, and New Jersey are presented below.

The State of Florida has promulgated a regulation that would set an Hg emission limit of 0.070 mg/dscm (corrected to 7 percent O_2), or an 80-percent Hg reduction, for facilities that install Hg control equipment (e.g., activated carbon injection) and that are equipped with acid gas control equipment. This limit must be met by July 1, 1995, and compliance must be demonstrated annually using EPA Reference Method 101A. For facilities equipped with acid gas control equipment that choose to control Hg exclusively through the use of an Hg waste separation program, Hg emissions would be limited to 0.14 mg/dscm after July 1, 1995 and to 0.070 mg/dscm after July 1, 1997. Compliance must be demonstrated semiannually using EPA Reference Method 101A. Facilities not currently equipped with acid gas controls will be required to meet the proposed Hg emission limits when the facility is required to demonstrate compliance with the acid gas limits included in the EPA's proposal. Florida's rulemaking procedures to develop SO_2 and HCl emission limits will be initiated by December 1, 1994 unless the Federal emission guidelines (today's action) have been proposed by that date.

The State of Minnesota has also promulgated Hg requirements for MWC's. For mass burn MWC's with acid gas control, the quarterly Hg emission limit (one three-test run average) is 0.10 mg/dscm (corrected to 7 percent O_2). However, the annual average Hg emissions limit (average of the four most recent quarterly tests) is 0.060 mg/dscm. Measurements must be made using EPA Reference Method 29. The Minnesota requirement also allows MWC's to demonstrate compliance with the quarterly and annual limits by achieving an alternative 85-percent reduction in Hg emissions.

Similar to the Florida regulations, the Minnesota regulation provides less stringent standards for MWC's without acid gas control until the time that acid gas control is required.

The State of New Jersey will be proposing an Hg standard for MWC's of 0.028 mg/dscm (corrected to 7 percent O_2), which would be effective as of January 1, 2000, and an interim standard of 0.065 mg/dscm or an 80-percent reduction, which would be effective as of December 31, 1995. The 0.028 mg/dscm limit is based on reducing the uncontrolled Hg emission level (assumed to be 0.70 mg/dscm) by 80 percent through reduction of Hg in the waste burned, and another 80-percent reduction from Hg in the flue gas. These limits are annual averages based on quarterly 3-run testing (i.e., a total of 12 runs), using EPA Reference Method 29.

VIII. Miscellaneous

This section addresses the four following issues: (1) The selection of a "no control" limit for NO_x for MWC's at small MWC plants, (2) the July 14, 1992 remand of the issue of lead-acid vehicle battery combustion, (3) request for comments about requiring a materials separation plan for existing MWC plants, and (4) general request for comment on the proposal.

Regarding the first issue, section 129 of the Act specifies that standards and guidelines for MWC's must include emission limits for PM, opacity, SO_2, HCl, NO_x, CO, Pb, Cd, Hg, and dioxins/furans. This means that emission limits for these pollutants must be specified even if the MACT selected for a subcategory of facilities does not control that particular pollutant. In particular, MACT requirements for small MWC plants are based on usage of GCP, DSI/ESP, and activated carbon injection, but NO_x control is not required. Also, MACT requirements for mass burn/refractory MWC's at large MWC plants are based on usage of GCP, SD/ESP, and activated carbon injection, but NO_x control is not required under today's proposal (see section IV.F.1.c for additional discussion). Therefore, a "no control" NO_x limit is proposed for MWC's at small MWC plants and for mass burn/refractory MWC's at large MWC plants. The proposed "no control" limit for NO_x for these MWC's is 500 ppmv. The proposed guidelines do not include any testing, reporting, or recordkeeping associated with the "no control" emission limit. The 500 ppmv limit represents an emission level higher than any of the test data and allows an adequate margin to accommodate the variability in NO_x emission levels. The EPA expects that this "no control" limit will not be exceeded. The EPA requests public comments on whether it is appropriate to include such a "no control" emission limit in the final emission guidelines or whether such a limit is not necessary.

Regarding the second issue, on December 20, 1989, the EPA proposed NSPS and emission guidelines for new and existing MWC's under section 111 of the Act. The proposed NSPS and emission guidelines included a prohibition on the combustion of lead-acid vehicle batteries in MWC's. On February 11, 1991, the EPA promulgated standards and guidelines for new and existing MWC that did not prohibit the

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combustion of lead-acid vehicle batteries. The decision not to prohibit the combustion of lead-acid vehicle batteries was challenged in the U.S. Court of Appeals for the District of Columbia Circuit by NRDC, the State of New York, and the State of Florida. In 1992, the U.S. Court of Appeals for the District of Columbia Circuit concluded that the EPA had not adequately explained its decision not to require a lead acid battery separation as part of the 1991 NSPS and emission guidelines, when it had included such a requirement in its proposed rule (*State of New York* v. *Reilly*, 969 F.2d 1147, 1153 (D.C.Cir. 1992)). The EPA is not addressing the lead acid battery issue in this notice, but will publish a separate notice in the **Federal Register** in the near future.

Regarding the third issue, unlike the NSPS for new MWC's proposed in a separate part of today's **Federal Register**, the proposed emission guidelines do not include any requirement for existing MWC's to prepare a materials separation plan. However, the EPA is considering the option of adding this type of requirement to the emission guidelines at promulgation. As defined in section 69.51b of the proposed NSPS (subpart Eb) included in a separate part of today's **Federal Register**, a materials separation plan would be a plan that identifies both a goal and an approach for a given MWC to separate certain components of MSW for its service area in order to make the separated materials available for recycling. While the current NSPS proposal does not require the adoption of any particular approach, various types of approaches that the owner or operator of an MWC may choose to include in their materials separation plan are drop-off facilities, buy-back or deposit-return incentives, curbside pick-up programs, or centralized mechanical separation. Refer to the proposed NSPS in a separate part of today's **Federal Register** for further discussion of the proposed material separation plan for new MWC's.

As part of development of a materials separation plan, the owner or operator of an existing MWC would be required to hold two public hearings for presentation of preliminary and final draft materials separation plans. The first public meeting would present the opportunity for the existing facility and interested public from the service area to discuss, among other issues, the types of materials separation approaches suited to the service area of the MWC. The second public meeting would present the opportunity for the existing facility to present a plan to integrate approaches discussed at the initial public meeting into the operation of the MWC (i.e., to discuss the effects of different types of materials separation on the performance of the combustor). After each public meeting, the owner or operator would be required to prepare and distribute documents responding to the public comments received at the public meetings. The final materials separation plan would be submitted along with the report documenting the results of the initial compliance test. Additionally, the owner or operator may be required to submit some form of annual report summarizing the effectiveness of the materials separation plan and identifying any modifications made to the plan after implementation. This last requirement has not yet been incorporated into the proposed NSPS materials separation requirements included in a separate part of today's **Federal Register**; however, the EPA has specifically requested comment in that notice on the usefulness of this type of subsequent reporting for assuring efficient application of the plan.

The EPA requests comments on the appropriateness of including materials separation plan requirements in the emission guidelines for existing MWC's.

Regarding the fourth issue, the MWC regulations are complex, and the EPA expects to receive numerous comments on this proposal. The EPA has specifically requested comments on items fundamental to the proposal, including but not limited to the MACT floor, MACT performance levels, and a consideration of materials separation requirements for existing MWC's.

IX. Administrative Requirements

This section addresses the following administrative requirements: Public hearing, docket, procedural requirements of the Act, Executive Order 12866 review, and Regulatory Flexibility Act compliance.

A. Public Hearing

A public hearing will be held 15 days following proposal. The hearing will be held at Research Triangle Park, North Carolina, and will start about 9:00 a.m. At the public hearing, the proposed standards will be discussed in accordance with section 307(d)(5) of the Act. Persons wishing to make oral presentations at the public hearing should contact the EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be mailed to the Air and Radiation Docket and Information Center at the address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air and Radiation Docket and Information Center in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the official record in case of judicial review, except for interagency review material (section 307(d)(7)(A)). The docket number for this rulemaking is A–90–45. Docket No. A–89–08 also includes background information for this rulemaking that supported the proposal and promulgation of the subpart Ca emission guidelines.

C. Clean Air Act Procedural Requirements

The following procedural requirements of the Act are addressed: Administrative listing, periodic review, external participation, and economic impact assessment.

1. Administrative Listing—Sections 111 and 129 of the Act

As prescribed by section 111 of the Act, establishment of emission guidelines for MWC's is based on the Administrator's determination (52 FR 25399, July 7, 1987) that these sources contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. Additionally, section 129 of the Act of 1990 directs the Administrator to promulgate guidelines for existing MWC's.

2. Periodic Review—Sections 111 and 129 of the Act

Sections 111 and 129 of the Act require that the guidelines be reviewed no later than 5 years following the initial promulgation. At that time and at 5-year intervals thereafter, the Administrator shall review the guidelines in accordance with sections 111 and 129 of the Act and revise them if necessary. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods,

enforceability, improvements in emission control technology, and reporting requirements.

3. External Participation

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator welcomes comments on all aspects of the proposed guidelines, including economic and technological issues.

4. Economic Impact Assessment

Section 317A of the Act requires the EPA to prepare an economic impact assessment for any emission guidelines promulgated under section 111(d) of the Act. An economic impact assessment was prepared for the proposed emission guidelines. In the manner described in sections III, IV, and V of this preamble regarding the impacts of and rationale for the proposed emission guidelines, the EPA considered all aspects of the economic impact assessment in proposing the emission guidelines. The economic impact assessment is included in the list of key technical documents at the beginning of today's notice under **SUPPLEMENTARY INFORMATION.**

D. Executive Order 12866 Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and, therefore, subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines a "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, users fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the EPA considers these proposed guidelines to be "significant" because their annual effect on the economy would be expected to exceed $100 million. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public docket for this rulemaking.

E. Regulatory Flexibility Act Compliance

Section 605 of the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are small businesses, small organizations, and small governments. The major purpose of the RFA is to keep paperwork and regulatory requirements from getting out of proportion to the scale of the entities being regulated, without compromising the objectives of, in this case, the Act.

If a regulation is likely to have significant economic impacts on a substantial number of small entities, the EPA may give special consideration to those small entities when analyzing regulatory alternatives and drafting the regulation. In the case at hand, the EPA considers that a regulation that is likely to affect 20 percent or more of small entities with MWC's is a regulation that will affect a substantial number of small entities.

Definitions of small entities are flexible. For analysis of the guidelines being proposed today, the EPA considers a small business in this industry to be one with gross annual revenue less than $6 million, and a small government to be one that serves a population of less than 50,000. (A typical city of 50,000 generates about 90 Mg/day of MSW.) Most small governments dispose of their MSW by landfilling and, therefore, will not be affected by regulation of MWC emissions. In regard to small organizations such as independent not-for-profit enterprises, the EPA finds that they have no more than a very minor involvement with MWC's, and for that reason the EPA has not found it necessary to study potential direct impacts on small organizations.

A limited number of MWC units exist that range in size upward from a capacity to combust less than 1 Mg/day of MSW to those capable of combusting 35 Mg/day. The EPA estimates that MWC's under 35 Mg/day in capacity except for MWI's, which will be regulated under a separate action, contribute a negligible fraction of total MWC emissions. Many MWC's under 35 Mg/day in capacity, and a few larger ones, are owned or operated by small entities. The EPA estimates that considerably fewer than 20 percent of small-entity MWC's will be affected by the emission guidelines being proposed today.

Thus, the number of affected small entities is not expected to be substantial, and a regulatory flexibility analysis is not required. Nevertheless, the EPA has conducted an extensive analysis of potential regulatory impacts on households, small governments, and small businesses. The full analysis is included in the economic impact assessment in the docket and listed at the beginning of today's notice under **SUPPLEMENTARY INFORMATION.**

On December 20, 1989, the EPA proposed standards and emission guidelines that applied to all sizes of MWC's. The proposal had no lower size cutoff. Small businesses, small governments, and groups representing small-entity interests commented extensively on the need to lighten the potential regulatory burden on small entities. Most commenters suggested a small size cutoff considerably smaller than the one now being proposed. The most frequently suggested levels were 5 to 11 Mg/day, 18 Mg/day, 23 Mg/day, and 45 Mg/day. The EPA has used these suggestions and the information submitted by these commenters, as well as information from other sources, to fulfill the intent of the RFA. The EPA has incorporated into the guidelines being proposed today several features that will mitigate, and in most cases eliminate, any potentially adverse economic impacts on small entities. These features are as follows:

(1) The emission guidelines will apply only to MWC's with a plant capacity of greater than 35 Mg/day. This cutoff eliminates from the purview of the guidelines the overwhelming majority of existing very small MWC's (There will be a one-time requirement for MWC plants in the 25 to 35 Mg/day range to report for verification the capacities and locations of the plants, but this paperwork will impose a very minor economic burden.);

(2) The guidelines are "tiered" so that the stringency (and therefore potential economic burden) of the emission guidelines increases as the size of the MWC plant increases. Plants with capacities of 25 to 35 Mg/day would have only the one-time reporting of capacity and location. Plants with capacities of 35 to 225 Mg/day would have guidelines for PM, opacity, dioxins/furans, SO_2, HCl, Cd, Pb, Hg, operating practices, and operator training and certification. Additionally, small MWC plants would be required to perform compliance testing, but the guidelines and compliance testing requirements would not be as stringent

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as those for plants larger than 225 Mg/day. Furthermore, the plants would not be required to control NO_X. Plants with capacities above 225 Mg/day would be subject to guidelines for NO_X in addition to all other pollutants, and compliance testing would be required more frequently;

(3) The emission guidelines consist of emission limits, as opposed to design, equipment, work practice, or operational standards. Emission limits give MWC owners and operators the freedom to select the most economical means of reducing emissions; and

(4) The emission guidelines are not the usual type of regulation governed by the RFA. The guidelines will not apply directly to any MWC's, but will be used as a guide by individual State air pollution control agencies in developing site-specific regulations for MWC's. States are allowed some flexibility in implementing the guidelines. Pursuant to the provisions of 5 U.S.C. 605(b), the EPA certifies that these proposed emission guidelines, if promulgated, will not have a significant economic impact on a substantial number of small entities, because the number of small entities affected is not substantial.

F. Executive Order 12875

Under Executive Order 12875, the EPA is required to consult with representatives of affected State, local, and tribal governments, and keep these affected parties informed about the content and effect of the proposed standards. The following discussion provides a brief summary of the content, need for, and cost of the proposal, as well as the actions that the EPA has taken to communicate and consult with the affected parties.

1. Summary of the Proposed Guidelines

The proposed emission guidelines would establish emission limitations for existing MWC units located at MWC plants with plant capacities to combust greater than 35 Mg/day of MSW. The proposed guidelines do not specify which type of air pollution control equipment must be used at MWC's to meet the proposed emission limitations. The EPA expects, however, that, as a result of the proposal, most large MWC plants (plants with greater than 225 Mg/day capacity) would retrofit scrubbing systems (SD/ESP) for dioxins/furans, metals, and acid gas control and SNCR for NO_X control. Small MWC plants (plants with 35 to 225 Mg/day capacity) would be expected to install scrubbing systems (DSI/ESP), but SNCR technology would not be necessary. Refer to section II of this preamble for a more detailed discussion of the proposed guidelines.

2. Need for the Proposed Guidelines

Under the Act Amendments of 1990, section 129 includes a schedule that requires the EPA to adopt the emission guidelines for large and small MWC plants by the end of 1991 and 1992, respectively. The EPA did not comply with that schedule and is now under court order to propose the emission guidelines by September 1, 1994 and promulgate the emission guidelines by September 1, 1995. As required by section 129, the proposed emission guidelines would establish guideline emission levels for MWC organics (dioxins/furans), MWC metals (Cd, Pb, Hg, PM, and opacity), MWC acid gases (HCl and SO_2), and NO_X. See section I of this preamble for further discussion of the regulatory history and general goals of the proposed guidelines.

3. Cost of the Proposal

The national cost of the proposed guidelines would be about $445 million per year. More than 40 percent of all existing MWC capacity subject to this proposal has already installed acid gas/PM control systems. The retrofit cost of the air pollution control system for an individual combustor subject to the proposed guidelines will vary depending on the plant size and difficulty of the retrofit. The average annualized retrofit cost of the proposed guidelines for a typical large MWC plant requiring retrofit would be about $4.1 million per year. The average annualized retrofit cost of the proposed guidelines for a typical small MWC plant requiring retrofit would be about $0.9 million per year. Tipping fees at combustors currently average about $57/Mg of MSW combusted. For those MWC plants that would require an air pollution control retrofit as a result of the proposal, the tipping fees would typically increase by $17 to $28/Mg, with the lower cost being for large MWC plants and the higher cost being for small MWC plants. Regarding the impact of the proposed guidelines directly or indirectly on households, the EPA projects an increase in the household cost of waste disposal of about $22 to $26 per year or about $2 per month for communities that have MWC's. Refer to section III.D of this preamble for a more complete summary of the cost and economic impacts of the proposed guidelines, on both national and plant-specific bases.

4 Communication With Affected Parties

As previously mentioned, Executive Order 12875 requires the EPA to consult with representatives of affected State, local, and tribal governments, and prior to promulgation of final standards, summarize concerns of the governmental entities and respond to their comments. The EPA has already initiated consultations with numerous governmental entities including, but not limited to, the U.S. Conference of Mayors, the National League of Cities, the National Association of Counties, the Municipal Waste Management Association, and the Solid Waste Association of North America. These groups have been informed of the content of the proposal and the estimated impacts. In drafting the proposal, the EPA has considered the concerns expressed by these groups, and discussions with these groups will continue following proposal. Following proposal, the EPA will mail a copy of this proposal to all owners/operators of MWC's and their associated local governmental official. The EPA awaits their comments on the proposal and will respond to their comments.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping.

Dated: September 1, 1994.

Jonathan Z. Cannon,

Acting Administrator.

[FR Doc. 94–22343 Filed 9–19–94; 8:45 am]

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40 CFR Part 60

[AD-FRL–5068–8]

Withdrawal of the 1991 Emission Guidelines for Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed withdrawal of 1991 emission guidelines (subpart Ca) and request for comment.

SUMMARY: The EPA proposes to withdraw the emission guidelines for existing municipal waste combustors (MWC's) that were promulgated on February 11, 1991 in 40 CFR part 60, subpart Ca. The February 11, 1991 subpart Ca emission guidelines for MWC's would be replaced by more stringent guidelines being proposed under section 129 of the Clean Air Act (Act) as amended in 1990 (1990 Amendments). New emission guidelines that would replace those being proposed to be withdrawn in this document are being proposed in a separate document in today's **Federal Register**.

DATES: *Comments.* Comments concerning this proposal to withdraw the subpart Ca emission guidelines must be submitted on or before November 4, 1994.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (Mail Code 6102), Attention: Docket No. A–89–08, room M1500, Central Mall, 401 M Street, SW., Washington, DC 20460.

Docket. The docket is available for public inspection and copying between the hours of 8 a.m. and 4 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center (Mail Code 6102), Attention: Docket No. A–89–08, room M1500, Central Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For additional information contact Mr. Walter Stevenson at (919) 541–5264 or Mr. Fred Porter at (919) 541–5251, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: An electronic copy of this document is available from the EPA's Technology Transfer Network (TTN) electronic bulletin board system. The TTN contains 18 electronic bulletin boards, and this document is included in the Clean Air Act Amendments (CAAA) bulletin board. The TTN is accessible 24 hours per day, 7 days per week, except Monday morning from 8 a.m. to 12 p.m., when the system is updated. The service is free except for the cost of the phone call. Dial (919) 541–5742 to access the TTN. The TTN is compatible with up to a 14,400 bits-per-second (bps) modem. Further instructions for accessing the TTN can be obtained by calling the help desk at (919) 541–5384.

Summary of Proposed Withdrawal of the 1991 Emission Guidelines (Subpart Ca)

On December 20, 1989, the EPA proposed emission guidelines for all sizes of existing MWC's (54 FR 52209). Those proposed guidelines were developed under section 111(d) of the Act as amended in 1977 and were promulgated on February 11, 1991. Section 111(d) of the Act of 1977 requires emission guidelines for designated existing sources of air pollution to reflect the application of best demonstrated technology (BDT).

On November 15, 1990, just prior to the EPA's scheduled promulgation of the section 111(d) guidelines, the Act Amendments of 1990 were adopted. The 1990 Amendments added a new section 129 to the Act that applies to solid waste combustors including MWC's. Under authority of sections 111 and 129 of the Act of 1990, the EPA is required to promulgate revised guidelines for MWC's based upon the application of maximum achievable control technology (MACT). However, section 129 included a clause that directed the EPA to issue the emission guidelines developed based on BDT under the deadlines imposed in the consent decree issued from *State of New York et al.* v. *Reilly* (No. 89–1729 D.D.C.). Additionally, section 129 of the Act of 1990 directed the EPA to limit applicability of BDT-based guidelines to those MWC's with a unit capacity greater than 225 Mg/day (250 tons per day). Section 129 specified that revised MACT-based guidelines for units larger than 225 Mg/day capacity were to be adopted by the EPA within 1 year and that revised MACT-based guidelines for units smaller than 225 Mg/day were to be adopted within 2 years. Consistent with section 129, the EPA redrafted the BDT-based guidelines and limited applicability of the 1991 guidelines to MWC units larger than 225 Mg/day capacity.

In a separate document in today's **Federal Register**, the EPA is proposing emission guidelines for MWC's that reflect the application of MACT as required by section 129. The proposed MACT-based guidelines are more stringent than the February 11, 1991 BDT-based guidelines and would apply to MWC units at plants with a capacity of greater than 35 Mg/day. The MACT-based guidelines would require MWC facilities to purchase and install different types of air pollution control equipment than the BDT-based guidelines. Therefore, the EPA proposes to withdraw the February 11, 1991 guidelines since their implementation would not be consistent with the MACT requirements of section 129. The February 11, 1991 emission guidelines were promulgated in 40 CFR part 60, subpart Ca. The MACT-based guidelines proposed in a separate document in today's **Federal Register** are proposed as 40 CFR part 60, subpart Cb. This notice proposes to withdraw the subpart Ca emission guidelines.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping.

Dated: September 1, 1994.

Jonathan Z. Cannon,

Acting Administrator.

Part 60, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7429, and 7601.

Subpart Ca [Removed and Reserved]

2. Subpart Ca is removed and reserved.

§ 60.30 [Amended]

3. Section 60.30 is amended by removing and reserving paragraph (a).

[FR Doc. 94–22346 Filed 9–19–94; 8:45 am]

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40 CFR Parts 60 and 61

[AD–FRL–5068–7]

Standards of Performance for New Stationary Sources National Emission Standards for Hazardous Air Pollutants, Addition of Method 29 to Appendix A of Part 60 and Amendments to Method 101A of Appendix B of Part 61

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The EPA is proposing to add Method 29, "Determination of Metals Emissions from Stationary Sources," to appendix A of part 60, and to propose amendments to Method 101A of appendix B of part 61. Method 29 is being proposed so that it can be used to determine cadmium, lead, and mercury emissions from municipal waste combustors (MWC) under subpart Ea of part 60. The amendments to Method 101A of appendix B of part 61 are intended to expand that method's applicability, and to add procedures for handling and analyzing samples collected by the sampling train.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATES: *Comments.* Comments must be received on or before November 21, 1994.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by October 11, 1994, a public

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hearing will be held on October 20, 1994, beginning at 10 a.m. Persons interested in attending the hearing should call the contact mentioned under ADDRESSES to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact the EPA by October 11, 1994.

ADDRESSES: *Comments.* Comments on the proposal should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (Mail Code 6102), ATTN: Docket No. A–94–28, room 1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Background Information. The following document is identified as suggested reading: "Emissions Test Method 29: Determination of Metals Emissions From Stationary Sources (1994 Proposal)," EPA–454/R–94–016, April 1994. This document contains the full text of the proposed method and method revisions, and it can be obtained from the TTN or Docket No. A–94–28.

Public Hearing. If anyone contacts the EPA requesting a public hearing, it will be held at the EPA's Emission Measurement Laboratory Building, Old Page Road at I–40, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Mr. William Grimley at (919) 541–1065, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Docket. Docket No. A–94–28, containing materials relevant to this rulemaking, is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room 1500, Central Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying. Additionally, the docket may be accessed by calling (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: For information concerning the methods, contact Mr. William Grimley at (919) 541–1065, Emission Measurement Branch, Technical Support Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: This document includes a summary of the proposed method; however, this document does not contain the full text of the method or method revisions. The full text of the proposal is readily available by: (1) Accessing the EPA's electronic bulletin board (Technology Transfer Network (TTN)), or (2) requesting a copy from Docket No. A–94–28 (call (202) 260–7548). The ADDRESSES and SUPPLEMENTARY INFORMATION sections of this notice can be reviewed for instructions on accessing the TTN.

As a proposed action, public comments are solicited. Comments should address the full text of the rulemaking, which is contained in a report entitled "Emission Test Method 29: Determination of Metals Emissions From Stationary Sources," EPA–454/R–94–016 (see the ADDRESSES and SUPPLEMENTARY INFORMATION sections of this document for information on how to obtain this document). Whenever applicable, full supporting data and detailed analysis should be submitted with all comments to allow the EPA to respond to the comments. The EPA will consider all comments and information received during the public comment period, and will make changes in the methods, where appropriate, prior to promulgation of the final rule. All comments should be directed to the EPA Air and Radiation Docket and Information Center, Docket No. A–94–28 (see ADDRESSES).

An electronic copy of the item listed below is available from the EPA's TTN electronic bulletin board system. The TTN contains 12 electronic bulletin boards, and information related to this proposal is included in the Emissions Measurement Technical Information Center (EMTIC) bulletin board. The TTN is accessible 24 hours per day, 7 days per week, except Monday from 8 a.m. to 12 a.m., when the system is updated. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to 14,400 bits per second modem. Further instructions for accessing the TTN can be obtained by calling the systems operator at (919) 541–5384.

Methods 29 and 101A Item in EMTIC Electronic Bulletin Board

1. "Emissions Test Method 29: Determination of Metals Emissions From Stationary Sources (1994 Proposal)," EPA–454/R–94–016, April 1994.

I. Summary of Proposed Method 29 and Method 101A Revisions

Under Subparts Ca and Ea, the EPA is proposing guidelines and standards to regulate mercury, cadmium, and lead emissions from MWC's. Method 29 is being proposed for addition to Appendix A of 40 CFR Part 60 and will serve as the compliance test method for MWC's for mercury, cadmium, and lead. Method 29 is applicable to the determination of antimony (Sb), arsenic (As), barium (Ba), beryllium (Be), cadmium (Cd), chromium (Cr), cobalt (Co), copper (Cu), lead (Pb), manganese (Mn), mercury (Hg), nickel (Ni), phosphorus (P), selenium (Se), silver (Ag), thallium (Tl), and zinc (Zn) emissions from stationary sources. Method 29 may be used to determine particulate emissions in addition to the metals emissions if the prescribed procedures and precautions are followed. For both methods, a stack sample is withdrawn isokinetically from the source, particulate emissions are collected in the probe and on a heated filter, and gaseous emissions are then collected in an aqueous acidic solution of hydrogen peroxide (analyzed for all metals including Hg) and an aqueous acidic solution of potassium permanganate (analyzed only for Hg). The recovered samples are digested, and appropriate fractions are analyzed for Hg by cold vapor atomic absorption spectroscopy (CVAAS) and for Sb, As, Ba, Be, Cd, Cr, Co, Cu, Pb, Mn, Ni, P, Se, Ag, Tl, and Zn by inductively coupled argon plasma emission spectroscopy (ICAP) or atomic absorption spectroscopy (AAS). Graphite furnace atomic absorption spectroscopy (GFAAS) is used for analysis of Sb, As, Cd, Co, Pb, Se, and Tl if these elements require greater analytical sensitivity than can be obtained by ICAP. Additionally, if desired, the tester may use AAS for analysis of all listed metals if the resulting in-stack method detection limits meet the goal of the testing program. Mercury emissions can be measured, alternatively, using EPA Method 101A of appendix B, 40 CFR part 61. Method 101–A measures only Hg but it can be of special interest to sources which need to measure both Hg and Mn emissions. Amendments to Method 101A of appendix B of part 61 are being proposed to provide consistency with Method 29.

II. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed rule in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact the EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with the EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket address given in the ADDRESSES section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air Docket in Washington, DC (see ADDRESSES section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials) [Section 307(d)(7)(A)].

C. Office of Management and Budget Review

1. *Paperwork Reduction Act.* This rule does not contain any information collection requirements subject to the Office of Management and Budget (OMB) review under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

2. *Executive Order 12866 review.* Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to the OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

1. Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, users fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the EPA does not consider this action to be significant because it does not involve any of the above mentioned items.

D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 601 *et seq*, I hereby certify that this proposed rule, if promulgated, will not have an economic impact on small entities because no additional costs will be incurred.

List of Subjects in 40 CFR Parts 60 and 61

Air pollution control, Arsenic, Asbestos, Beryllium, Cadmium, Lead, Hazardous materials, Incorporation by reference, Intergovernmental relations, Mercury, Municipal waste combustors, Reporting and recordkeeping requirements, Sewage sludge incineration.

Statutory Authority. The statutory authority for this proposal is provided by sections 101, 111, 112, 114, 116, 129, and 301 of the Clean Air Act, as amended; 42 U.S.C., 7401, 7411, 7412, 7414, 7416, 7429, and 7601.

Dated: September 1, 1994.

Jonathan Z. Cannon,

Acting Administrator.

[FR Doc. 94–22345 Filed 9–19–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7110]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base (100-year) flood elevation modifications for the communities listed below. The base (100-year) flood elevations and modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base (100-year) flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies

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that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
OHIO	
Gilboa (Village), Putnam County	
Blanchard River:	
Approximately 1,050 feet downstream of Pearl Street	*742
Approximately 1,100 feet upstream of Pearl Street	*744
Maps available for inspection at the Municipal Council Room, 206 West Main Street, Gilboa, Ohio	
Send comments to The Honorable Richard McCullough, Mayor of the Village of Gilboa, 122 Franklin Street, Gilboa, Ohio 45875.	
Glenford (Village), Perry County	
Jonathan Creek:	
At downstream corporate limits, approximately 550 feet downstream of Main Street	*844
At upstream corporate limits, approximately 1,200 feet upstream of Main Street	*848
Maps available for inspection at the Village Clerk's Residence, 123 Mill Street, Glenford, Ohio.	
Send comments to The Honorable Nolan P. Henderson, Mayor of the Village of Glenford, P.O. Box 22, Glenford, Ohio 43739.	
Malvern (Village), Carroll County	
Big Sandy Creek:	
Approximately 600 feet downstream of downstream corporate limit	*994
Approximately 600 feet upstream of upstream corporate limit	*998
Maps available for inspection at the Village Hall, 116 West Main Street, Malvern, Ohio.	
Send comments to The Honorable Dale E. Lewis, Mayor of the Village of Malvern, 116 West Main Street, Malvern, Ohio 44644.	
Bluffton (Village), Allen County	
Riley Creek:	
Approximately 350 feet downstream of corporate limit	*812
Approximately 100 feet upstream of Norfolk and Western Railway	*827
Little Riley Creek:	
At confluence with Riley Creek	*813
Approximately 175 feet upstream of Columbus Grove-Bluffton Road	*822
Maps available for inspection at the Bluffton Village Offices, 100 East Elm Street, Bluffton, Ohio.	
Send comments to The Honorable Roger Edwards, Mayor of the Village of Bluffton, P.O. Box 63, Bluffton, Ohio 45817.	
PENNSYLVANIA	
Seward (Borough), Westmoreland County	
Conemaugh River:	
Downstream corporate limits of the Borough of Seward	*1,099
Upstream corporate limits of the Borough of Seward	*1,102
Maps available for inspection at Ms. Rose Bouch's Home, Corner of Washington Street and Hedges Street, Seward, Pennsylvania.	
Send comments to Mr. Thomas Mulligan, President of the Seward Borough Council, R.D. #2, Box 338 A, Seward, Pennsylvania 15954.	

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Florida	Taylor County (Unincorporated Areas).	Woods Creek	Approximately 350 feet upstream of confluence with Spring Creek.	*30	*31
			Approximately 100 feet upstream of U.S. Route 221 and State Route 55.	None	*50
Maps available for inspection at the Courthouse Basement, 108 North Jefferson Street, Perry, Florida.					
Send comments to Mr. Vance R. Howell, Chairman of the Taylor County Board of Commissioners, P.O. Box 620, Perry, Florida 32347.					
Kentucky	Taylor Mill (City) Kenton County.	Banklick Creek	Approximately 0.5 mile downstream of State Highway 16.	*503	*499
			Approximately 1,300 feet upstream of State Highway 16.	*503	*499
Maps available for inspection at the City Hall, 5225 Taylor Mill Road, Taylor Mill, Kentucky.					
Send comments to The Honorable Mark Kreimborg, Mayor of the City of Taylor Mill, Kenton County, 5225 Taylor Mill Road, Taylor Mill, Kentucky 41015.					
Louisiana	Grand Isle (Town) Jefferson Parish.	Gulf of Mexico	Southern shoreline of Grand Isle	*15	*13
			At Bay Lane	*11	*10
			From Bayou Thunder Von Tranc to the northern shoreline of Caminada Bay.	*14	*12

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			At bend in Oleander Drive near Bay St. Honore.	*14	*11
			South of Oleander Drive from Caminada Bay to Lona Linda Avenue.	*12	*13
Maps available for inspection at the Grand Isle Town Hall, Ludwig Lane, Grand Isle, Louisiana.					
Send comments to The Honorable Andy Valance, Mayor of the Town of Grand Isle, P.O. Box 200, Grand Isle, Louisiana 70358.					
Louisiana	Gretna (City) Jefferson Parish.	Ponding Area 20	At the intersection of Franklin Street and Stumpf Boulevard.	*1.5	*2.0
			At the intersection of Hancock Street and Isabell Street.	*1.5	*2.0
		Ponding Area 21	At the intersection of Smithway Drive and Linda Court.	*-2.0	*0.5
		Ponding Area 22	At the intersection of 28th Street and Long Avenue.	*-3.0	*0.5
Maps available for inspection at the City Hall, 2nd and Huey P. Long Avenue, Gretna, Louisiana.					
Send comments to The Honorable Ronald C. Harris, Mayor of the City of Gretna, P.O. Box 404, Gretna, Louisiana 70054.					
Louisiana	Harahan (City) Jefferson Parish.	Ponding Area 48	At intersection of Murleson and Berkley Avenue.	*11.0	*10.5
		Ponding Area 49	At intersection of Imperial and Landcaster Drive.	*12.0	*11.5
		Ponding Area 29	Approximately 600 feet east of intersection of Rosedown Place and Walter Road.	*4.0	*1.5
		Ponding Area 37	Approximately 500 feet west of intersection of State Route 48 and Normandy.	*8.5	*8.0
		Ponding Area 28	From northernmost corporate limits to Suave Road.	*2.5	*2.0
Maps available for Inspection at the City Hall, 6437 Jefferson Highway, Harahan, Louisiana.					
Send comments to The Honorable Carlo Ferrara, Mayor of the City of Harahan, 6437 Jefferson Highway, Harahan, Louisiana 70123.					
Louisiana	Jean LaFitte (Town) Jefferson Parish.	Gulf of Mexico	At Bayou Barataria, from State Route 303 to the northern corporate limits.	*3.5	*7.0
			At the confluence of Fleming Canal and Unnamed Canal.	*5.0	*9.0
			East of Bayou Barataria, from Gloria Drive to southern corporate limits.	*6.0	*8.0
			East of Bayou Barataria, from Gloria Drive to the northern corporate limits.	*6.0	*7.0
			At Unnamed Canal approximately 1,000 feet upstream of confluence with Fleming Canal.	*5.0	*8.0
Maps available for inspection at the City Hall, Route 1, Box 1, Jean Lafitte, Louisiana.					
Send comments to The Honorable Timothy Kerner, Mayor of the Town of Jean Lafitte, Route 1, Box 1, Jean LaFitte, Louisiana 70067.					
Louisiana	Jefferson Parish (Unincorporated Areas).	West Bank Waggaman Basin.			
		Ponding Area 1	At intersection of Willswood Lane and Southern Pacific Railroad.	None	*5.0
		Ponding Area 2	Approximately 1,000 feet north of intersection of U.S. Route 90 and Kenner Road.	None	*3.5
		Ponding Area 3	Approximately 1,000 feet south of confluence of Avondale Canal and Main Canal.	*4.0	*1.0
		Ponding Area 3A	Approximately 1,000 feet southwest of intersection of Avondale Road and U.S. Route 90.	*4.0	*3.5
		Ponding Area 4	At intersection of Jamie Boulevard and Anne Drive.	None	*3.5
		Ponding Area 5	At intersection of Barnes Street and Wiegand Drive.	None	*5.0
		Ponding Area 6	Approximately 500 feet east of intersection of tank farm siding and Bridge City Avenue.	None	*4.0

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Ponding Area 7	Approximately 2,000 feet northeast of intersection of U.S. Route 90 and Texas and Pacific Railroad.	*2.0	*2.5
		Ponding Area 8	Approximately 2,500 feet northeast of intersection of Texas and Pacific Railroad and tank farm siding.	*2.0	*2.5
		Ponding Area 9	North of U.S. Route 90 (Business) from West Krueger to Westwego corporate limits.	*0.5	*1.5
			North of U.S. Route 90 (Business) from West Krueger west approximately 2,000 feet.	*2.0	*1.5
		Ponding Area 10	North of main canal to U.S. Route 90 and east of main canal to Labranche Canal.	*0.5	*1.0
			Approximately 1,000 feet south of intersection of Labranche Canal and U.S. Route 90.	*2.0	*1.0
		Ponding Area 11	At intersection of Jung Boulevard and Mayronne Canal.	*2.0	*1.5
			North of Lapalco Boulevard from Garden Road east to Ames Boulevard.	*0.3	*1.5
			North of Lapalco Boulevard from Ames Boulevard east to Diane Drive.	None	*1.5
		Ponding Area 12	At the intersection of Lincolnshire Drive and Benedict Drive.	*0.3	*1.0
			Approximately 500 feet south of the intersection of Westwood Drive and Lapalco Boulevard.	*2.0	*1.0
		Ponding Area 13	East of Sauvage Levee Avenue to Caddy Drive, south of Lapalco Boulevard to Coubra.	*2.0	*3.5
			West of Mary Drive and east of Nature Drive.	*6.0	*3.5
			At intersection of Randolph and James Drive.	None	*3.5
		Ponding Area 14	At intersection of Patriot Street and Orchid Drive.	*1.5	*1.0
			Approximately 300 feet west of intersection of Floral Drive and Warwick Drive.	None	*1.0
		Ponding Area 15	State Route 45 east to Bayou Des Familles Ridge North.	*3.5	*5.0
			South of Bayou Des Families to Russell Drive.	None	*5.0
		Ponding Area 16	At intersection of Grand Terre Drive and Chenier Street.	*3.5	*5.5
		Ponding Area 17	At intersection of Teton Street and Oregon.	*3.5	*2.5
			At intersection of Pritchard Road and East Ames Boulevard.	None	*2.5
		Ponding Area 18	Bayou Des Families Ridge to State Route 3134 south.	*3.5	*5.0
		Ponding Area 19	State Route 3134 to Harvey Canal	*3.5	*1.5
		Ponding Area 20	At intersection of Van Trump Street and Palfrey Street.	None	*2.0
		Ponding Area 21	Northeast of Belle Chasse Highway and southeast of West Bank Expressway.	*-1.5	*0.5
			Northeast of East Lexington to the Gretna corporate limits.	None	*0.5
		Ponding Area 22	South of West Bank Expressway, southwest of Belle Chasse Highway and east of Southern Pacific Railroad.	*-1.5	*0.5
			At intersection of 1st Street and Maplewood Drive.	None	*0.5
		Ponding Area 23	Harvey Canal area of Intracoastal Waterway, north of Bayou Barataria.	*4.5	*5.5
		Ponding Area 24	From the western Kenner corporate limits to the Jefferson/Orleans Parish boundary, east of Bonnabel Canal, and north of West Metaire Avenue.	*-3.0	*3.5

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			From the western Kenner corporate limits to the Jefferson/Orleans Parish boundary, north of Lake Pontchartrain Levee.	*13.5	*15.0
			At the intersection of Cherokee Avenue and Poplar Street.	*-3.0	*-3.5
		Ponding Area 25	At intersection of 35th Street and Ridgelake Drive.	*-3.0	*-2.0
		Ponding Area 26	At intersection of Maple Ridge Drive E and Edinburg.	*-1.5	*0.0
			At intersection of East Livingston Place and Dolores.	None	*0.0
		Ponding Area 27	At intersection of North Upland Avenue and Milan Street.	None	*3.0
		Ponding Area 28	At intersection of Mary Lane and Stephen Drive.	None	*2.0
		Ponding Area 29	At intersection of Bellegrove Place and Orchard Road.	*4.0	*1.5
		Ponding Area 30	At intersection of Powell Street and Wholesalers Parkway.	None	*2.5
		Ponding Area 31	At intersection of Morris Place and Gelpi Avenue.	None	*4.5
		Ponding Area 32	Approximately 600 feet south on intersection of Maple Ridge Drive and Airline Highway.	None	*0.0
		Ponding Area 33	Approximately 500 feet west of intersection of Caroline Street and U.S. Route 48.	None	*7.0
		Ponding Area 34	Approximately 500 feet southwest of intersection of Valerie Avenue and State Route 48.	None	*6.5
		Ponding Area 35	At intersection of Marigold Street and Hibiscus Place.	None	*4.5
		Ponding Area 36	At intersection of 4th and Moss Lane	None	*6.0
		Ponding Area 37	Approximately 500 feet southwest of intersection of Levee View Drive and State Route 48.	None	*8.0
		Ponding Area 38	At intersection of South Drive and Central Avenue.	None	*9.5
		Ponding Area 39	Riverdale Drive east to Shrewsbury Road, south of U.S. Route 90.	None	*9.0
		Ponding Area 40	Approximately 300 feet south of intersection of U.S. Route 90 and Coolidge Street.	None	*4.0
		Ponding Area 41	At intersection of Spruce and Brooklyn Avenue.	None	*3.5
		Ponding Area 42	At intersection of Byron and Dakin Street	None	*2.0
		Gulf of Mexico	At Hackberry Bay	*10.5	*16.0
		Gulf of Mexico (Lake Catauache).	At Bayou Segnette near Mayronne Canal just south of Westwego corporate limits.	*4.5	*5.0
		Gulf of Mexico	At Caminada Bay	*9.0	*13
			At Bay Des Ilettes	*10.0	*15
			Northern end of Three Bayou Bay	*7.0	*12
			At confluence of Cheniere Traverse Bayou with Bayou Dupont.	*5.0	*12
			At confluence of Bayou Des Families with Bayou Barataria.	*3.5	*7

Maps available for inspection at the Parish Government Office Building, 1221 Elmwood Place Boulevard, Harahan, Louisiana.
Send comments to The Honorable Michael Yenni, Jefferson Parish President, 1221 Elmwood Place Boulevard, Suite 1002, Harahan, Louisiana 70123.

Louisiana	Kenner (City) Jefferson Parish.	Ponding Area 24	New Orleans International Airport east runway north towards Veterans Memorial Highway.	None	*-3.5
			West of East Grandlake Boulevard	None	*-3.5
			At the intersection of Platt and Mesa Streets.	None	*-3.5

Maps available for inspection at the City Hall, 1801 Williams Avenue, Kenner, Louisiana.
Send comments to The Honorable Aaron F. Broussard, Mayor of the City of Kenner, 1801 Williams Boulevard, Kenner, Louisiana 70062.

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Louisiana	Westwego (City) Jefferson Parish.	Ponding Area 9	At intersection of Vic A. Pitrie Drive and E Avenue.	*2.5	*1.5
			At Angela Street and western corporate limits.	*3.0	*1.5
			At intersection of Southern Pacific Railroad and western corporate limits.	*2.0	*1.5
		Gulf of Mexico	Dugues Canal at southern corporate limits.	*5.0	*6.0
Maps available for inspection at the City Hall, 419 Avenue A, Westwego, Louisiana.					
Send comments to The Honorable Robert Billiot, Mayor of the City of Westwego, 419 Avenue A, Westwego, Louisiana 70094.					
Maine	Farmington (Town) Franklin County	Sandy River	Approximately 0.5 mile downstream of State Route 41.	*338	*340
			Approximately 2.6 miles upstream of State Route 4 bridge (corporate limits).	*385	*389
		Wilson Stream	At confluence with Sandy River	*343	*345
			Approximately 0.4 mile upstream of State Route 133 bridge (corporate limits).	*376	*377
		Temple Stream	At confluence with Sandy River	*359	*355
			Approximately 0.9 mile above Russels Mill Road Bridge (corporate limits).	*454	*457
		Barker Stream	At confluence with Sandy River	*365	*368
			Approximately 800 feet upstream of State Route 27.	None	*533
		Cascade Brook	At confluence with Sandy River	*347	*352
			Approximately 180 feet above State Route 43 bridge (Allens Mill Road).	None	*484
		Beaver Brook	At confluence with Sandy River	*360	*357
			Upstream side of Middle Street bridge	*394	*395
		Clear Water Pond	Entire shoreline within community	None	*563
Maps available for inspection at the Farmington Municipal Building, 147 Lower Main Street, Farmington, Maine.					
Send comments to Ms. Francis Hardy, First Selectman of the Town of Farmington, 147 Lower Main Street, Farmington, Maine 04938.					
New Hampshire	Freedom (Town) Caroll County.	West Branch	At confluence with Ossipee Lake	None	*441
			Upstream side of Ossipee Lake Road	None	*446
		Ossipee Lake	Entire shoreline within community	None	*414
		Broad Bay	Entire shoreline within community	None	*414
		Leavitt Bay	Entire shoreline within community	None	*414
Maps available for inspection at the Town Office Building, Old Portland Road, Freedom, New Hampshire.					
Send comments to Mr. William O. Cutler, Chairman of the Town of Freedom Board of Selectmen, P.O. Box 227, Freedom, New Hampshire 03836.					
New Hampshire	Ossipee (Town) Carroll County.	Lovell River	Approximately 0.5 mile upstream of confluence with Ossipee Lake.	*414	*415
			Approximately 1,000 feet upstream of State Route 16/25.	None	*434
		West Branch	Approximately 0.6 mile upstream of confluence with Ossipee Lake.	None	*414
			At upstream corporate limits	None	*446
Maps available for inspection at the Town Hall, Main Street, Center Ossipee, New Hampshire.					
Send comments to Mr. John P. Picard, Chairman of the Town of Ossipee Board of Selectmen, Carroll County, P.O. Box 67, Center Ossipee, New Hampshire 03814.					
New York	Windham (Town) Greene County.	Batavia Kill	Approximately 0.7 mile downstream of County Route 12 (South Street).	None	*1,467
			Approximately 1.6 miles upstream of County Route 56.	None	*2,345
Maps available for inspection at the Town Hall, Route 296, Hensonville, New York.					
Send comments to Mr. Patrick P. Meehan, Jr., Supervisor of the Town of Windham, Town of Windham, Greene County, P.O. Box 96, Hensonville, New York 12439.					
Pennsylvania	Allegheny (Township) Westmoreland County.	Pine Run (Lower Reach)	At the CONRAIL	None	*789
			Approximately 700 feet upstream of State Route 56 (Bypass).	None	*815

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Allegheny Community Building, 136 Community Building Road, Leechburg, Pennsylvania.					
Send comments to Mrs. Rapheala Stoner, Chairperson of the Allegheny Board of Supervisors, 136 Community Building Road, Leechburg, Pennsylvania 15656.					
Pennsylvania	Avalon (Borough) Allegheny County.	Ohio River	Approximately 0.95 mile downstream of Divergence of Ohio River Back Channel.	None	*723
			Approximately 750 feet upstream of Divergence of Ohio River Back Channel.	None	*724
Maps available for inspection at the Borough Hall, 640 California Avenue, Avalon, Pennsylvania.					
Send comments to Ms. Joan Welsh, Manager for the Borough of Avalon, 640 California Avenue, Avalon, Pennsylvania 15202.					
Pennsylvania	Baldwin (Borough) Allegheny County.	Monongahela River	At confluence of Becks Run	*733	*734
			Approximately 0.42 mile downstream of Glenwood Bridge.	*734	*735
Maps available for inspection at the Zoning Office, 3344 Churchview Avenue, Baldwin, Pennsylvania.					
Send comments to Mr. Robert P. Bittle, President of the Borough of Baldwin Council, 3344 Churchview Avenue, Pittsburgh, Pennsylvania 15227.					
Pennsylvania	Bellevue (Borough) Allegheny County.	Ohio River	Approximately 750 feet upstream of Divergence of Ohio River Back Channel.	None	*724
			Approximately 0.43 mile downstream of McKees Rocks Bridge.	None	*724
Maps available for inspection at the Borough Hall, 537 Bayne Avenue, Bellevue, Pennsylvania.					
Send comments to Mr. Robert T. Grimm, Manager of the Borough of Bellevue, 537 Bayne Avenue, Bellevue, Pennsylvania 15202.					
Pennsylvania	Braddock (Borough) Allegheny County.	Monongahela River	At a point approximately 550 feet upstream of Rankin Bridge.	*738	*739
			At a point approximately 0.29 mile downstream of Lock & Dam No. 2.	*739	*740
Maps available for inspection at the Code Enforcement Street, 415 Sixth Street, Braddock, Pennsylvania.					
Send comments to Ms. Mildred Devich, President of the Borough of Braddock Council, 415 Sixth Street, Braddock, Pennsylvania 15104.					
Pennsylvania	California (Borough) Washington County.	Monongahela River	Approximately 1.3 miles downstream of confluence of Pike Run.	*766	*769
			Approximately 2.9 miles upstream of the confluence of Pike Run.	*770	*773
Maps available for inspection at the Municipal Building, 114 5th Street, California, Pennsylvania.					
Send comments to The Honorable Joseph Dochinez, Mayor of the Borough of California, 218 Pennsylvania Avenue, California, Pennsylvania 15419.					
Pennsylvania	Clairton (City) Allegheny County.	Monongahela River	Approximately 0.51 mile downstream of Glassport Bridge.	*747	*748
			Approximately 500 feet downstream of confluence of Wylie Run.	*748	*750
Maps available for inspection at the City Engineer's Office, 551 Ravensburg Boulevard, Clairton, Pennsylvania.					
Send comments to Mr. Bruce E. Jenkins, Engineering Assistant, 551 Ravensburg Boulevard, Clairton, Pennsylvania 15025–1297.					
Pennsylvania	Coal Center (Borough) Washington County.	Monongahela River	Approximately 1,650 feet downstream of confluence of Pike Run.	*767	*770
			Approximately 200 feet upstream of confluence of Pike Run.	*767	*770
Maps available for inspection at the Coal Center Borough Building, 132 Water Street, Coal Center, Pennsylvania.					
Send comments to The Honorable James Roberts, Mayor of the Borough of Coal Center, P.O. Box 174, Coal Center, Pennsylvania 15423.					
Pennsylvania	Collier (Township) Allegheny County.	Robinson Run	Approximately 1.09 miles downstream of Union Avenue.	None	*887
			Approximately 1.25 miles downstream of Union Avenue.	None	*888

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Chartiers Creek	Just downstream of Painters Run Road	*795	*797
			Approximately 0.39 mile upstream of State Route 519 (Washington Pike).	*802	*801

Maps available for inspection at the Zoning Office, 2418 Hilltop Road, Collier, Pennsylvania.
Send comments to Mr. Nick Mamula, Chairman of the Township of Collier Board of Commissioners, 2418 Hilltop Road, Presto, Pennsylvania 15142.

Pennsylvania	Coraopolis (Borough) Allegheny County.	Montour Run	At the upstream side of Montour Railroad	*718	*719
			Approximately 750 feet downstream of Coraopolis Boulevard.	*718	*719

Maps available for inspection at the Borough Hall, 1012 Fifth Avenue, Coraopolis, Pennsylvania.
Send comments to The Honorable Orlando Falcione, Mayor of the Borough of Coraopolis, 1012 Fifth Avenue, Coraopolis, Pennsylvania 15108.

Pennsylvania	Crafton (Borough) Allegheny County.	Chartiers Creek	Approximately 1.5 miles upstream of Ingram Avenue.	None	*754
			At Chartiers Avenue	None	*759

Maps available for inspection at the Borough Hall, 100 Stotz Avenue, Crafton, Pennsylvania.
Send comments to Mr. Alvin Handelsman, Engineer for the Borough of Crafton, 1011 Alcon Street, Pittsburgh, Pennsylvania 15220.

Pennsylvania	Cumberland (Township) Greene County.	Monongahela River	Approximately 500 feet downstream of confluence of New Run (downstream corporate limits).	None	*786
			At confluence of Little Whitley Creek (upstream corporate limits).	None	*794
		Muddy Creek	0.8 mile downstream of Township Route 634.	None	*1,005
			Approximately 470 feet upstream of Legislative Route 30102.	None	*1,031

Maps available for inspection at the Cumberland Township Building, 100 Municipal Road, Carmichaels, Pennsylvania.
Send comments to Mr. Philip A. Donaldson, Zoning Officer, Cumberland Township Building, 100 Municipal Road, Carmichaels, Pennsylvania 15320.

Pennsylvania	Delmont (Borough) Westmoreland County.	Turtle Creek (Upper Reach).	Approximately 400 feet downstream of Old William Penn Highway.	None	*1,054
			Approximately 350 feet upstream of Old William Penn Highway.	None	*1,063

Maps available for inspection at the Delmont Borough Office, 77 Greensburg Street, Delmont, Pennsylvania.
Send comments to Ms. Sarah Jane Lamont, President of the Delmont Borough Council, 77 Greensburg Street, Delmont, Pennsylvania 15626.

Pennsylvania	Dravosburg (Borough) Allegheny County.	Monongahela River	Approximately 0.75 mile downstream of Mansfield Bridge.	*745	*746
			Approximately 0.25 mile downstream of Mansfield Bridge.	*745	*746

Maps available for inspection at the Borough Hall, 226 Maple Avenue, Dravosburg, Pennsylvania.
Send comments to Mr. Art Page, President of the Borough of Dravosburg Council, P.O. Box 37, Dravosburg, Pennsylvania 15034.

Pennsylvania	Dunkard (Township) Greene County.	Monongahela River	At confluence of Dunkard Creek	None	*805
			Approximately 0.68 mile upstream of Point Marion Lock and Dam.	None	*809

Maps available for inspection at the Dunkard Township Building, Corner of Grant Street and Taylortown Road, Bobtown, Pennsylvania.
Send comments to Mr. Jerome K. Wiley, Chairman of the Township of Dunkard Board of Supervisors, Box 369, Bobtown, Pennsylvania 15315.

Pennsylvania	Duquesne (City) Allegheny County.	Monongahela River	At a point approximately 0.27 mile upstream of Lock and Dam No. 2.	*740	*741
			At a point approximately 1,200 feet upstream of McKeesport-Duquesne Bridge.	*743	*744

Maps available for inspection at the Building Inspector's Office, 12 South Second Street, Duquesne, Pennsylvania.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Send comments to The Honorable George F. Matt II, Mayor of the City of Duquesne, 12 South Second Street, Duquesne, Pennsylvania 15110.

Pennsylvania	East Huntingdon (Township) Westmoreland County.	Belson Run	Approximately 350 feet upstream of Sunny Lane.	None	*1,138
			Approximately 625 feet upstream of Sunny Lane.	None	*1,139

Maps available for inspection at the East Huntingdon Municipal Building, Route 981, Alverton, Pennsylvania.
Send comments to Mr. Joel B. Suter, Supervisor for the Township of East Huntingdon, P.O. Box 9, Alverton, Pennsylvania 15612.

Pennsylvania	East Pittsburgh (Borough) Allegheny County.	Turtle Creek	Backwater reach from Monongahela River up to Westinghouse Bridge at Lincoln Highway.	None	*741

Maps available for inspection at the Borough Hall, 516 Bessemer Avenue, East Pittsburgh, Pennsylvania.
Send comments to Mr. James Geric, President of the Borough of East Pittsburgh Council, 516 Bessemer Avenue, East Pittsburgh, Pennsylvania 15112.

Pennsylvania	Elizabeth (Borough) Allegheny County.	Monongahela River	Approximately 0.21 mile downstream of confluence of Fallen Timber Run.	*748	*750
			At confluence of Smiths Run	*749	*750
		Fallen Timber Run	At confluence with Monongahela River	*749	*750
			Approximately 400 feet downstream of Rothey Street (Pennaman Avenue).	None	*752

Maps available for inspection at the Borough Hall, 206 Third Avenue, Elizabeth, Pennsylvania.
Send comments to The Honorable Gerald M. LaFrankie, Mayor of the Borough of Elizabeth, 206 Third Avenue, Elizabeth, Pennsylvania 15037.

Pennsylvania	Elizabeth (Township) Allegheny County.	Monongahela River	Approximately 100 feet upstream of confluence of Wylie Run.	*747	*750
			Approximately 0.43 mile downstream of State Route 51.	*747	*750
		Wylie Run	At confluence with Monongahela River	*747	*750
			Approximately 150 feet downstream of Glassport Road (McKeesport Road).	*747	*750

Maps available for inspection at the Township Hall, 522 Rock Run Road, Township of Elizabeth, Pennsylvania.
Send comments to Mr. Charles Carlock, Chairman of the Township of Elizabeth Board of Supervisors, 522 Rock Run Road, Buena Vista, Pennsylvania 15018.

Pennsylvania	Fairfield (Township) Westmoreland County.	Tubmill Creek	At Tubmill Dam	None	*1,295
			Approximately 550 feet downstream of Tubmill Dam.	None	*1,289

Maps available for inspection at the Fairfield Township Municipal Building, S.R. 1011 Midget Camp Road, Bolivar, Pennsylvania.
Send comments to Mr. Paul J. Altimus, Chairman for the Township of Fairfield, R.D. #1, Box 231A, Bolivar, Pennsylvania 15923

Pennsylvania	Forward (Township) Allegheny County.	Monongahela River	At confluence of Smiths Run	*749	*750

Maps available for inspection at the Township Municipal Building, River Road, Forward, Pennsylvania.
Send comments to Mr. Louis Majoris, Chairman of the Township Board of Supervisors, R.D. 3, Box 40–A, Monongahela, Pennsylvania 15063.

Pennsylvania	Franklin Park (Borough) Allegheny County.	Bear Run	Approximately 0.51 mile upstream of Mount Nebo Road.	None	*950

Maps available for inspection at the Borough Hall, 2428 Rochester Road, Franklin Park, Pennsylvania.
Send comments to Mr. Gerald L. Reichart, Manager of the Borough of Franklin Par, 2428 Rochester Road, Sewickley, Pennsylvania 15143.

Pennsylvania	Glassport (Borough) Allegheny County.	Monongahela River	Approximately 0.34 mile upstream of confluence of Harrison Hollow Stream.	*746	*747
			Approximately 0.37 mile upstream of Glassport Bridge.	*747	*748

Maps available for inspection at the Borough Hall, Fifth & Monongahela, Glassport, Pennsylvania.

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Send comments to Mr. Anthony Pepe, President of the Borough of Glassport Council, Fifth & Monongahela, Glassport, Pennsylvania 15045.					
Pennsylvania	Greensboro (Borough) Greene County.	Monongahela River	Approximately 900 feet downstream of downstream corporate limits.	*799	*800
			At the upstream corporate limits	*800	*801
Maps available for inspection at the Greensboro Borough Building, Main Street, Greensboro, Pennsylvania.					
Send comments to Mr. Peter O. Everly, President of the Borough of Greensboro Council, P.O. Box 152, Greensboro, Pennsylvania 15338.					
Pennsylvania	Hamilton (Township) Monroe County.	McMichael Creek	At upstream corporate limits	None	*623
			Approximately 150 feet downstream of Turkey Hill Road.	*465	*466
Maps available for inspection at the Township Building, Fenner Street, Hamilton, Pennsylvania.					
Send comments to Mr. Alan Everett, Chairman of the Township of Hamilton Board of Supervisors, P.O. Box 285, Sciota, Pennsylvania 18354.					
Pennsylvania	Harmar (Township) Allegheny County.	Little Deer Creek	Approximately 150 feet downstream of Jacoby Road.	None	*783
			Approximately 700 feet upstream of Bessemer and Lake Erie Railroad.	None	*815
Maps available for inspection at the Township Hall, 701 Freeport Road, Harmar, Pennsylvania.					
Send comments to Mr. Frederick Domaratz, Chairman of the Township of Harmar Board of Supervisors, 701 Freeport Road, Cheswick, Pennsylvania 15024.					
Pennsylvania	Heidelberg (Borough) Allegheny County.	Tributary A to Chartiers Creek.	At confluence with Chartiers Creek to approximately 0.49 mile upstream of confluence.	None	*787
Maps available for inspection at the Borough Hall, 1631 East Railroad Street, Heidelberg, Pennsylvania.					
Send comments to Ms. Denise Breen, President of the Borough of Heidelberg Council, 1631 East Railroad Street, Heidelberg, Pennsylvania 15106.					
Pennsylvania	Homestead (Borough) Allegheny County.	Monongahela River	Approximately 600 feet downstream of Pittsburgh Homestead Bridge.	None	*737
			Approximately 4,000 feet upstream of Pittsburgh Homestead Bridge.	None	*737
Maps available for inspection at the Borough Hall, 1705 Maple Street, Homestead, Pennsylvania.					
Send comments to Mr. John Cornelius, Manager of the Borough of Homestead, P.O. Box 448, Homestead, Pennsylvania 15120.					
Pennsylvania	Jefferson (Borough) Allegheny County.	Lick Run	Approximately 400 feet upstream of Cochrans Mill Road.	None	*963
			At downstream side of Curry Hollow Road.	None	*985
		Monongahela River	Approximately 3,700 feet downstream of Glassport Highway Bridge.	None	*747
			At confluence of Perry Mill Run	*751	*752
		Lobbs Run	At confluence with Monogahela River	*751	*752
			Approximately 100 feet upstream of Walton Road.	*751	*752
Maps available for inspection at the Borough Hall, 925 Old Clairton Road, Jefferson, Pennsylvania.					
Send comments to Mr. Pat Capolupo, President of the Borough of Jefferson Council, 925 Old Clairton Road, Clairton, Pennsylvania 15025.					
Pennsylvania	Kilbuck (Township) Allegheny County.	Lowries Run	Approximately 3,300 feet downstream of the approximate center of the multiple lanes of Interstate 279.	None	*798
			Approximately 2,600 feet downstream of the approximate center of the multiple lanes of Interstate 279.	None	*802
Maps available for inspection at the Township Hall, 343 Eicher Road, Kilbuck, Pennsylvania.					
Send comments to Mr. Timohy Frew, Chairman of the Township of Kilbuck Board of Supervisors, 343 Eicher Road, Kilbuck, Pennsylvania 15237–1012.					

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Pennsylvania	Leetsdale (Borough) Allegheny County.	Big Sewickley Creek	At a point approximately 250 feet downstream of Ohio River Boulevard.	*712	*711
			At a point approximately 250 feet upstream of Beaver Road.	*715	*711
Maps available for inspection at the Borough Hall, 85 Broad Street, Leetsdale, Pennsylvania.					
Send comments to Mr. James F. Shaughnessy, President of the Borough of Leetsdale Council, 85 Broad Street, Leetsdale, Pennsylvania 15056–1109.					
Pennsylvania	Lincoln (Borough) Allegheny County.	Monongahela River	Approximately 0.23 mile upstream from the Glassport Highway Bridge.	*747	*748
			At the confluence with Wylie Run	*749	*750
		Boston Hollow Run	Approximately 0.56 mile upstream of Pitt Street Tributary.	None	*866
			Approximately 0.59 mile upstream of Pitt Street Tributary.	None	*868
		Wylie Run	At confluence with the Monongahela River.	*748	*750
			Approximately 0.25 mile upstream of Mill Hill Road.	None	*859
Maps available for inspection at the Borough Hall, Port View Road, Lincoln, Pennsylvania.					
Send comments to The Honorable Florence Swamtack, Mayor of the Borough of Lincoln, R.D. #4, Box 120–B, Elizabeth, Pennsylvania 15037.					
Pennsylvania	Luzerne (Township) Fayette County.	Monongahela River	Approximately 1.8 miles downstream of confluence of Rush Run (at downstream corporate limits).	*773	*775
			Approximately 3.6 miles upstream of confluence of Hereford Hollow (at upstream corporate limits).	*787	*789
Maps available for inspection at the Luzerne Township Building, 415 Hopewell Road, Brownsville, Pennsylvania.					
Send comments to Mr. William Baker, Chairman of the Luzerne Township Board of Supervisors, 415 Hopewell Road, Brownsville, Pennsylvania 15417.					
Pennsylvania	McCandless (Town) Allegheny County.	Girty's Run	Approximately 0.67 mile upstream of Three Degree Road.	None	*1,092
Maps available for inspection at the Town Hall, Zoning and Planning Office, 9955 Grubbs Road, McCandless, Pennsylvania.					
Send comments to Mr. Tobias M. Cordek, Manager of the Town of McCandless, 9955 Grubbs Road, Wexford, Pennsylvania 15090.					
Pennsylvania	McKeesport (City) Allegheny County.	Monongahela River	At McKeesport-Duquesne Bridge	*743	*744
			Approximately 0.45 mile downstream of Mansfield Bridge.	*745	*746
		Youghiogheny River	At confluence with Monongahela River	*744	*745
			Approximately 500 feet upstream of 15th Avenue.	*744	*745
Maps available for inspection at the Building Inspector's Office, 201 Lysle Boulevard, McKeesport, Pennsylvania.					
Send comments to The Honorable Lou Washowich, Mayor of the City of McKeesport, 201 Lysle Boulevard, McKeesport, Pennsylvania 15132.					
Pennsylvania	Monessen (City) Westmoreland County.	Monongahela River	Approximately 0.5 mile upstream of the Donora-Monessen Bridge.	*759	*760
			Approximately 1,025 feet upstream of North Charleroi Bridge.	*760	*762
Maps available for inspection at the City Hall, 100 Third Street, Monessen, Pennsylvania.					
Send comments to The Honorable Robert H. Leone, Mayor of the City of Monessen, 100 Third Street, Monessen, Pennsylvania 15062.					
Pennsylvania	Monongahela (City) Washington County.	Monongahela River	Approximately 1.1 miles downstream of Monongahela City Bridge.	*754	*755
			Approximately 0.9 mile upstream of Monongahela Highway.	*755	*756
		Digeon Creek	At confluence with Monongahela River	*755	*756
			Upstream corporate limit	*755	*756
Maps available for inspection at the Monongahela City Hall, 449 West Main Street, Monongahela, Pennsylvania.					

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Pennsylvania	Monroeville (Municipality) Allegheny County.	Abers Creek	Approximately 0.5 mile upstream of Mosside Boulevard.	None	*1,000
			Approximately 0.9 mile upstream of Mosside Boulevard.	None	*1,000
Maps available for inspection at the Municipal Building, 2700 Monroeville Boulevard, Monroeville, Pennsylvania.					
Send comments to Mr. Nicholas Gresh, Manager of the Municipality of Monroeville, 2700 Monroeville Boulevard, Monroeville, Pennsylvania 15146.					
Pennsylvania	Mount Lebanon (Township) Allegheny County.	Saw Mill Run	Approximately 0.5 mile upstream of Cochran Road.	None	*1,000
			Approximately 0.9 mile upstream of Cochran Road.	None	*1,000
Maps available for inspection at the Municipal Building, 710 Washington Road, Mount Lebanon, Pennsylvania.					
Send comments to Mr. Robert Bigham, Manager of the Township of Mount Lebanon, 710 Washington Road, Mount Lebanon, Pennsylvania 15228.					
Pennsylvania	Mount Oliver (Borough) Allegheny County.	Saw Mill Run	Approximately 0.5 mile upstream of Cochran Road.	None	*1,000
			Approximately 0.9 mile upstream of Cochran Road.	None	*1,000
Maps available for inspection at the Borough Hall, 150 Brownsville Road, Mount Oliver, Pennsylvania.					
Send comments to Mr. Joseph Zappala, President of the Borough of Mount Oliver Council, 150 Brownsville Road, Mount Oliver, Pennsylvania 15210.					
Pennsylvania	Munhall (Borough) Allegheny County.	Monongahela River	Approximately 1.1 miles downstream of Monongahela City Bridge.	*754	*755
			Approximately 0.9 mile upstream of Monongahela Highway.	*755	*756
Maps available for inspection at the Borough Hall, 1900 West Street, Munhall, Pennsylvania.					
Send comments to Mr. Joseph Zappala, President of the Borough of Munhall Council, 1900 West Street, Munhall, Pennsylvania 15120.					
Pennsylvania	North Braddock (Borough) Allegheny County.	Monongahela River	Approximately 1.1 miles downstream of Monongahela City Bridge.	*754	*755
			Approximately 0.9 mile upstream of Monongahela Highway.	*755	*756
Maps available for inspection at the Borough Hall, 1000 Library Street, North Braddock, Pennsylvania.					
Send comments to Mr. Joseph Zappala, President of the Borough of North Braddock Council, 1000 Library Street, North Braddock, Pennsylvania 15104.					
Pennsylvania	North Fayette (Township) Allegheny County.	Montour Run	Approximately 0.5 mile upstream of Cochran Road.	None	*1,000
			Approximately 0.9 mile upstream of Cochran Road.	None	*1,000
Maps available for inspection at the Municipal Building, 400 North Fayette Township Road, Oakdale, Pennsylvania.					
Send comments to Mr. Robert Bigham, Manager of the Township of North Fayette, 400 North Fayette Township Road, Oakdale, Pennsylvania 15071.					
Pennsylvania	North Versailles (Township) Allegheny County.	Monongahela River	Approximately 1.1 miles downstream of Monongahela City Bridge.	*754	*755
			Approximately 0.9 mile upstream of Monongahela Highway.	*755	*756
Maps available for inspection at the Township Building, 1401 Greensburg Pike, North Versailles, Pennsylvania.					
Send comments to Mr. Joseph Zappala, President of the Township of North Versailles Council, 1401 Greensburg Pike, North Versailles, Pennsylvania 15137.					
Pennsylvania	Oakmont (Borough) Allegheny County.	Allegheny River	Approximately 0.5 mile upstream of Cochran Road.	None	*1,000
			Approximately 0.9 mile upstream of Cochran Road.	None	*1,000
Maps available for inspection at the Borough Hall, 767 Allegheny River Boulevard, Oakmont, Pennsylvania.					
Send comments to Mr. Joseph Zappala, President of the Borough of Oakmont Council, 767 Allegheny River Boulevard, Oakmont, Pennsylvania 15139.					
Pennsylvania	O'Hara (Township) Allegheny County.	Girty's Run	Approximately 0.5 mile upstream of Cochran Road.	None	*1,000
			Approximately 0.9 mile upstream of Cochran Road.	None	*1,000
Maps available for inspection at the Township Building, 325 Fox Chapel Road, Pittsburgh, Pennsylvania.					
Send comments to Mr. Robert Bigham, Manager of the Township of O'Hara, 325 Fox Chapel Road, Pittsburgh, Pennsylvania 15238.					

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Pennsylvania	Penn Hills (Township) Allegheny County.	Girty's Run	Approximately 0.5 mile upstream of Cochran Road.	None	*1,000
			Approximately 0.9 mile upstream of Cochran Road.	None	*1,000
Maps available for inspection at the Municipal Building, 12245 Frankstown Road, Penn Hills, Pennsylvania.					
Send comments to Mr. Robert Bigham, Manager of the Township of Penn Hills, 12245 Frankstown Road, Penn Hills, Pennsylvania 15235.					
Pennsylvania	Pitcairn (Borough) Allegheny County.	Monongahela River	Approximately 1.1 miles downstream of Monongahela City Bridge.	*754	*755
			Approximately 0.9 mile upstream of Monongahela Highway.	*755	*756
Maps available for inspection at the Borough Hall, 582 Rebecca Avenue, Pitcairn, Pennsylvania.					
Send comments to Mr. Joseph Zappala, President of the Borough of Pitcairn Council, 582 Rebecca Avenue, Pitcairn, Pennsylvania 15140.					
Pennsylvania	Pittsburgh (City) Allegheny County.	Allegheny River	Approximately 0.5 mile upstream of Cochran Road.	None	*1,000
			Approximately 0.9 mile upstream of Cochran Road.	None	*1,000
		Monongahela River	Approximately 1.1 miles downstream of Monongahela City Bridge.	*754	*755
			Approximately 0.9 mile upstream of Monongahela Highway.	*755	*756
		Ohio River	Approximately 0.5 mile upstream of Cochran Road.	None	*1,000
			Approximately 0.9 mile upstream of Cochran Road.	None	*1,000
Maps available for inspection at the City-County Building, 414 Grant Street, Pittsburgh, Pennsylvania.					
Send comments to The Honorable Sophie Masloff, Mayor of the City of Pittsburgh, 414 Grant Street, Pittsburgh, Pennsylvania 15219.					
Pennsylvania	Plum (Borough) Allegheny County.	Girty's Run	Approximately 0.5 mile upstream of Cochran Road.	None	*1,000
			Approximately 0.9 mile upstream of Cochran Road.	None	*1,000
Maps available for inspection at the Municipal Building, 4575 New Texas Road, Pittsburgh, Pennsylvania.					
Send comments to Mr. Robert Bigham, Manager of the Borough of Plum, 4575 New Texas Road, Pittsburgh, Pennsylvania 15239.					
Pennsylvania	Port Vue (Borough) Allegheny County.	Monongahela River	Approximately 1.1 miles downstream of Monongahela City Bridge.	*754	*755
			Approximately 0.9 mile upstream of Monongahela Highway.	*755	*756
Maps available for inspection at the Borough Hall, 3800 Main Street, Port Vue, Pennsylvania.					
Send comments to Mr. Joseph Zappala, President of the Borough of Port Vue Council, 3800 Main Street, Port Vue, Pennsylvania 15133.					
Pennsylvania	Rankin (Borough) Allegheny County.	Monongahela River	Approximately 1.1 miles downstream of Monongahela City Bridge.	*754	*755
			Approximately 0.9 mile upstream of Monongahela Highway.	*755	*756
Maps available for inspection at the Borough Hall, 81 Rankin Avenue, Rankin, Pennsylvania.					
Send comments to Mr. Joseph Zappala, President of the Borough of Rankin Council, 81 Rankin Avenue, Rankin, Pennsylvania 15104.					
Pennsylvania	Ross (Township) Allegheny County.	Girty's Run	Approximately 0.5 mile upstream of Cochran Road.	None	*1,000
			Approximately 0.9 mile upstream of Cochran Road.	None	*1,000
Maps available for inspection at the Municipal Building, 1000 Ross Municipal Drive, Pittsburgh, Pennsylvania.					
Send comments to Mr. Robert Bigham, Manager of the Township of Ross, 1000 Ross Municipal Drive, Pittsburgh, Pennsylvania 15237.					
Pennsylvania	Scott (Township) Allegheny County.	Chartiers Creek	Approximately 0.5 mile upstream of Cochran Road.	None	*1,000
			Approximately 0.9 mile upstream of Cochran Road.	None	*1,000
Maps available for inspection at the Municipal Building, 301 Lindsay Road, Carnegie, Pennsylvania.					
Send comments to Mr. Robert Bigham, Manager of the Township of Scott, 301 Lindsay Road, Carnegie, Pennsylvania 15106.					
Pennsylvania	Shaler (Township) Allegheny County.	Girty's Run	Approximately 0.5 mile upstream of Cochran Road.	None	*1,000
			Approximately 0.9 mile upstream of Cochran Road.	None	*1,000
Maps available for inspection at the Municipal Building, 300 Wetzel Road, Glenshaw, Pennsylvania.					
Send comments to Mr. Robert Bigham, Manager of the Township of Shaler, 300 Wetzel Road, Glenshaw, Pennsylvania 15116.					
Pennsylvania	Stowe (Township) Allegheny County.	Ohio River	Approximately 0.5 mile upstream of Cochran Road.	None	*1,000
			Approximately 0.9 mile upstream of Cochran Road.	None	*1,000
Maps available for inspection at the Township Building, 1 Stowe Township Plaza, Stowe, Pennsylvania.					
Send comments to Mr. Robert Bigham, Manager of the Township of Stowe, 1 Stowe Township Plaza, Stowe, Pennsylvania 15136.					
Pennsylvania	Swissvale (Borough) Allegheny County.	Monongahela River	Approximately 1.1 miles downstream of Monongahela City Bridge.	*754	*755
			Approximately 0.9 mile upstream of Monongahela Highway.	*755	*756
Maps available for inspection at the Borough Hall, 7560 Roosevelt Boulevard, Swissvale, Pennsylvania.					
Send comments to Mr. Joseph Zappala, President of the Borough of Swissvale Council, 7560 Roosevelt Boulevard, Swissvale, Pennsylvania 15218.					
Pennsylvania	Turtle Creek (Borough) Allegheny County.	Monongahela River	Approximately 1.1 miles downstream of Monongahela City Bridge.	*754	*755
			Approximately 0.9 mile upstream of Monongahela Highway.	*755	*756
Maps available for inspection at the Borough Hall, 125 Monroeville Avenue, Turtle Creek, Pennsylvania.					
Send comments to Mr. Joseph Zappala, President of the Borough of Turtle Creek Council, 125 Monroeville Avenue, Turtle Creek, Pennsylvania 15145.					
Pennsylvania	Upper St. Clair (Township) Allegheny County.	Chartiers Creek	Approximately 0.5 mile upstream of Cochran Road.	None	*1,000
			Approximately 0.9 mile upstream of Cochran Road.	None	*1,000
Maps available for inspection at the Municipal Building, 1820 McLaughlin Run Road, Upper St. Clair, Pennsylvania.					
Send comments to Mr. Robert Bigham, Manager of the Township of Upper St. Clair, 1820 McLaughlin Run Road, Upper St. Clair, Pennsylvania 15241.					
Pennsylvania	Wall (Borough) Allegheny County.	Thompson Run	Approximately 0.5 mile upstream of Cochran Road.	None	*1,000
			Approximately 0.9 mile upstream of Cochran Road.	None	*1,000
Maps available for inspection at the Borough Hall, 2900 Wall Avenue, Wall, Pennsylvania.					
Send comments to Mr. Joseph Zappala, President of the Borough of Wall Council, 2900 Wall Avenue, Wall, Pennsylvania 15148.					
Pennsylvania	West Deer (Township) Allegheny County.	Girty's Run	Approximately 0.5 mile upstream of Cochran Road.	None	*1,000
			Approximately 0.9 mile upstream of Cochran Road.	None	*1,000
Maps available for inspection at the Municipal Building, 109 Main Street, Russellton, Pennsylvania.					
Send comments to Mr. Robert Bigham, Manager of the Township of West Deer, 109 Main Street, Russellton, Pennsylvania 15076.					
Pennsylvania	West Elizabeth (Borough) Allegheny County.	Monongahela River	Approximately 1.1 miles downstream of Monongahela City Bridge.	*754	*755
			Approximately 0.9 mile upstream of Monongahela Highway.	*755	*756
Maps available for inspection at the Borough Hall, 1 Main Street, West Elizabeth, Pennsylvania.					
Send comments to Mr. Joseph Zappala, President of the Borough of West Elizabeth Council, 1 Main Street, West Elizabeth, Pennsylvania 15088.					
Pennsylvania	West Homestead (Borough) Allegheny County.	Monongahela River	Approximately 1.1 miles downstream of Monongahela City Bridge.	*754	*755
			Approximately 0.9 mile upstream of Monongahela Highway.	*755	*756
Maps available for inspection at the Borough Hall, 321 Eighth Avenue, West Homestead, Pennsylvania.					
Send comments to Mr. Joseph Zappala, President of the Borough of West Homestead Council, 321 Eighth Avenue, West Homestead, Pennsylvania 15120.					
Pennsylvania	West Mifflin (Borough) Allegheny County.	Monongahela River	Approximately 1.1 miles downstream of Monongahela City Bridge.	*754	*755
			Approximately 0.9 mile upstream of Monongahela Highway.	*755	*756
Maps available for inspection at the Borough Hall, 1302 Lebanon Church Road, West Mifflin, Pennsylvania.					
Send comments to Mr. Joseph Zappala, President of the Borough of West Mifflin Council, 1302 Lebanon Church Road, West Mifflin, Pennsylvania 15122.					
Pennsylvania	Whitaker (Borough) Allegheny County.	Monongahela River	Approximately 1.1 miles downstream of Monongahela City Bridge.	*754	*755
			Approximately 0.9 mile upstream of Monongahela Highway.	*755	*756
Maps available for inspection at the Borough Hall, 560 Lysle Boulevard, Whitaker, Pennsylvania.					
Send comments to Mr. Joseph Zappala, President of the Borough of Whitaker Council, 560 Lysle Boulevard, Whitaker, Pennsylvania 15120.					
Pennsylvania	White Oak (Borough) Allegheny County.	Monongahela River	Approximately 1.1 miles downstream of Monongahela City Bridge.	*754	*755
			Approximately 0.9 mile upstream of Monongahela Highway.	*755	*756
Maps available for inspection at the Borough Hall, 2280 Longvue Avenue, White Oak, Pennsylvania.					
Send comments to Mr. Joseph Zappala, President of the Borough of White Oak Council, 2280 Longvue Avenue, White Oak, Pennsylvania 15131.					
Pennsylvania	Wilkinsburg (Borough) Allegheny County.	Monongahela River	Approximately 1.1 miles downstream of Monongahela City Bridge.	*754	*755
			Approximately 0.9 mile upstream of Monongahela Highway.	*755	*756
Maps available for inspection at the Borough Hall, 605 Ross Avenue, Wilkinsburg, Pennsylvania.					
Send comments to Mr. Joseph Zappala, President of the Borough of Wilkinsburg Council, 605 Ross Avenue, Wilkinsburg, Pennsylvania 15221.					
Pennsylvania	Wilmerding (Borough) Allegheny County.	Monongahela River	Approximately 1.1 miles downstream of Monongahela City Bridge.	*754	*755
			Approximately 0.9 mile upstream of Monongahela Highway.	*755	*756
Maps available for inspection at the Borough Hall, 1 Commercial Avenue, Wilmerding, Pennsylvania.					
Send comments to Mr. Joseph Zappala, President of the Borough of Wilmerding Council, 1 Commercial Avenue, Wilmerding, Pennsylvania 15148.					
Pennsylvania	Washington (County)	Chartiers Creek	Approximately 0.5 mile upstream of Cochran Road.	None	*1,000
			Approximately 0.9 mile upstream of Cochran Road.	None	*1,000
Maps available for inspection at the Washington County Courthouse, Main Street, Washington, Pennsylvania.					
Send comments to The Honorable Larry Maggi, Chairman of the Washington County Board of Commissioners, Washington County Courthouse, Main Street, Washington, Pennsylvania 15301.					

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Send comments to The Honorable John Moreschi, Mayor of the City of Monongahela, 449 West Main Street, Monongahela, Pennsylvania 15063.					
Pennsylvania	Monroeville (Municipality) Allegheny County.	Turtle Creek	At the confluence of Lyons Run	None	*832
			Approximately 1.48 miles upstream of confluence of Abers Creek.	None	*866
Maps available for inspection at the Engineering Office, 2700 Monroeville Boulevard, Monroeville, Pennsylvania.					
Send comments to Ms. Mary Ann Nau, Manager of the Municipality of Monroeville, 2700 Monroeville Boulevard, Monroeville, Pennsylvania 15146.					
Pennsylvania	Moon (Township) Allegheny County.	McClarens Run	At confluence with Montour Run	None	*867
			Approximately 0.34 mile upstream of Hilton Inn Drive.	None	*920
		Montour Run	Approximately 500 feet upstream of Montour Railroad.	None	*719
			At confluence of McClarens Run	None	*867
Maps available for inspection at the Building Inspector's Office, 1000 Beaver Grade Road, Moon, Pennsylvania.					
Send comments to Mr. George Semich, Chairman of the Township of Moon Board of Supervisors, Municipal Center, 1000 Beaver Grade Road, Moon, Pennsylvania 15108.					
Pennsylvania	Munhall (Borough) Allegheny County.	Monongahela River	At a point approximately 0.76 mile upstream of Pittsburgh Homestead Bridge.	None	*737
			At a point approximately 1,250 feet downstream of Rankin Bridge.	None	*739
Maps available for inspection at the Borough Hall, 1900 West Street, Munhall, Pennsylvania.					
Send comments to Mr. Robert C. Eberhart, Manager of the Borough of Munhall, 1900 West Street, Munhall, Pennsylvania 15120.					
Pennsylvania	New Stanton (Borough) Westmoreland County.	Belson Run	At downstream corporate limits with Hempfield.	None	*1,043
			At upstream corporate limits with Hempfield (near Sandworks Road).	None	*1,133
Maps available for inspection at the Borough Municipal Building, 451 West Center Avenue, New Stanton, Pennsylvania.					
Send comments to Mrs. Sally J. Taubken, New Stanton Council President, P.O. Box 237, New Stanton, Pennsylvania 15672.					
Pennsylvania	Nicholson (Township) Fayette County.	Monongahela River	At the confluence of Cats Run	*797	*798
			Approximately 1,100 feet downstream of the confluence of Georges Creek.	*801	*800
Maps available for inspection at the Nicholson Township Building, R.D. 2, Smithfield, Pennsylvania.					
Send comments to Mr. John Black, Chairman of the Township of Nicholson Board of Supervisors, Township Building, R.D. 2, Box 95, Smithfield, Pennsylvania 15478.					
Pennsylvania	North Braddock (Borough) Allegheny County.	Monongahela River	At a point approximately 700 feet downstream of Lock & Dam No. 2.	None	*740
			At a point approximately 250 feet downstream of Port Perry Bridge.	None	*741
Maps available for inspection at the Borough Hall, 600 Anderson Street, North Braddock, Pennsylvania.					
Send comments to The Honorable Raymond L. McDonough, Mayor of the Borough of North Braddock, 600 Anderson Street, North Braddock, Pennsylvania 15104.					
Pennsylvania	North Huntingdon (Township) Westmoreland County.	Brush Creek	Just upstream of confluence of Bushy Run.	None	*917
			Upstream side of second crossing of CONRAIL.	None	*929
Maps available for inspection at the North Huntingdon Township Hall, 11279 Center Highway, North Huntingdon, Pennsylvania.					

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Send comments to Mr. Eugene Walczyk, Chairman of the Board of Commissioners for the Township of North Huntingdon, 11279 Center Highway, North Huntingdon, Pennsylvania 15642.					
Pennsylvania	North Versailles (Township) Allegheny County.	Monongahela River	At a point approximately 0.55 mile upstream of Port Perry Bridge.	*741	*742
			At a point approximately 0.70 mile downstream of McKeesport-Duquesne Bridge.	*742	*743
Maps available for inspection at the Township Municipal Center, 1401 Greensburg Avenue, North Versailles, Pennsylvania.					
Send comments to Mr. Edward McGuire, Chairman of the Township of North Versailles, Board of Supervisors, 1401 Greensburg Avenue, North Versailles, Pennsylvania 15137.					
Pennsylvania	Penn Hills (Municipality) Allegheny County.	Thompson Run	Approximately 0.46 mile downstream of South McCully Drive.	None	*839
			Approximately 600 feet upstream of Union Railroad culvert opening (upstream side).	None	*962
Maps available for inspection at the Planning Department, 12245 Frankstown Road, Penn Hills, Pennsylvania.					
Send comments to The Honorable William DeSantis, Mayor of the Municipality of Penn Hills, 12245 Frankstown Road, Pittsburgh, Pennsylvania 15235.					
Pennsylvania	Penn (Township) Westmoreland County.	Lyons Run	At Pleasant Valley Road (L.R. 64089)	None	*915
			Approximately 1.1 miles upstream of Pleasant Valley Road.	None	*981
		Brush Creek	Upstream side of most upstream crossing of State Route 766.	None	*1,100
			Approximately 125 feet upstream of the most upstream crossing of State Route 766.	None	*1,101
Maps available for inspection at the Township Building, Municipal Court, Harrison City, Pennsylvania.					
Send comments to Mr. Bill Schaffer, Chairman of the Township of Penn, P.O. Box 452, Harrison City, Pennsylvania 15636.					
Pennsylvania	Pittsburgh (City) Allegheny County.	Monongahela River	Approximately 200 feet downstream of South Tenth Street Bridge.	*730	*731
			Approximately 1.11 miles upstream of Pittsburgh Homestead Bridge.	*737	*738
		Spring Garden Run	Approximately 0.29 mile downstream of Beech Street (Mount Pleasant Road).	None	*906
		Becks Run	At the confluence with the Monongahela River.	*733	*734
			Approximately 0.32 mile upstream of Beck Run Road (most upstream crossing).	None	*819
Maps available for inspection at the Department of City Planning, 4th Floor Civic Building, 200 Ross Street, Pittsburgh, Pennsylvania.					
Send comments to The Honorable Tom Murphy, Mayor of the City of Pittsburgh, 512 City County Building, Pittsburgh, Pennsylvania 15219.					
Pennsylvania	Port Vue (Borough) Allegheny County.	Youghiogheny River	Approximately 0.12 mile upstream of West 5th Avenue.	*744	*745
			Approximately 500 feet upstream of 15th Avenue.	*744	*745
Maps available for inspection at the Borough Hall, 1191 Romine Avenue, Port Vue, Pennsylvania.					
Send comments to Mr. Orlando DiMarco, President of the Borough of Port Vue Council, 1191 Romine Avenue, Port Vue, Pennsylvania 15133.					
Pennsylvania	Plum (Borough) Allegheny County.	Pucketa Creek	Just upstream of State Route 366	None	*784
			At county boundary	None	*852
Maps available for inspection at the Planning Department, 4575 New Texas Road, Plum, Pennsylvania.					
Send comments to Mr. Al Flickinger, President of the Borough of Plum Council, 4575 New Texas Road, Plum, Pennsylvania 15239.					
Pennsylvania	Rankin (Borough) Allegheny County.	Monongahela River	At Rankin Bridge	*738	*739

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				Existing	Modified
Maps available for inspection at the Borough Hall, 320 Hawkins Avenue, Rankin, Pennsylvania.					
Send comments to Mr. Pete Veltre, President of the Borough of Rankin Council, 320 Hawkins Avenue, Rankin, Pennsylvania 15104.					
Pennsylvania	Salem (Township) Westmoreland County.	Crab Tree Creek	Approximately 0.3 mile downstream of U.S. Route 119.	None	*990
			Approximately 130 feet upstream of L.R. 64054.	None	*1,037
Maps available for inspection at the Township Municipal Building, Congruity Road, Greensburg, Pennsylvania.					
Send comments to Mr. Frank Pavlovich, Chairman of the Township of Salem Board of Supervisors, Municipal Building, R.D. #4, Greensburg, Pennsylvania 15601.					
Pennsylvania	Scottdale (Borough) Westmoreland County.	Jacob's Creek (Lower Reach).	Approximately 0.5 mile upstream of 5th Avenue.	*1,035	*1,031
			Upstream Borough of Scottdale corporate limits.	*1,035	*1,036
		Stauffer Run	Confluence with Jacob's Creek	*1,035	*1,036
			Approximately 100 feet downstream of Chestnut Street.	*1,035	*1,036
Maps available for inspection at the Scottdale Borough Hall, 10 Mt. Pleasant Road, Scottdale, Pennsylvania.					
Send comments to The Honorable Eugene J. Beran, Mayor of the Borough of Scottdale, 600 Eleanor Avenue, Scottdale, Pennsylvania 15683.					
Pennsylvania	Sewickley (Township) Westmoreland County.	Youghiogheny River Tributary.	At the corporate limits with Borough of Sutersville.	None	*864
			Approximately 100 feet downstream of corporate limits with Borough of Sutersville.	None	*860
Maps available for inspection at the Municipal Building, Marshill Road, Irwin, Pennsylvania.					
Send comments to Mr. F. Regisvanyo, Chairman of the Board of Supervisors, P.O. Box 28, Herminie, Pennsylvania 15637.					
Pennsylvania	South Fayette (Township).	Robinson Run	Approximately 1.13 miles downstream of Union Avenue.	None	*888
			At the downstream side of Mevey Street	None	*922
Maps available for inspection at the Township Municipal Building, 515 Millers Run Road, South Fayette, Pennsylvania.					
Send comments to Mr. C. Kenneth Chamben, President of the Township of South Fayette Board of Commissioners, 515 Millers Run Road, Morgan, Pennsylvania 15064.					
Pennsylvania	Swissvale (Borough) Allegheny County.	Monongahela River	Approximately 1.11 miles upstream of Pittsburgh Homestead Bridge.	None	*738
			Approximately 0.61 mile downstream of Rankin Bridge.	None	*738
Maps available for inspection at the Borough Hall, 7560 Roslyn Street, Swissvale, Pennsylvania.					
Send comments to Mr. Thomas J. Esposito, Manager of the Borough of Swissvale, 7560 Roslyn Street, Swissvale, Pennsylvania 15218.					
Pennsylvania	Tarentum (Borough) Allegheny County.	Bull Creek	Approximately 50 feet downstream of State Route 28.	None	*758
			Approximately 0.57 mile upstream of State Route 28.	None	*774
Maps available for inspection at the Borough Building, 304 Lock Street, Tarentum, Pennsylvania.					
Send comments to Mr. Larry Yeasted, President of the Borough of Tarentum Council, 304 Lock Street, Tarentum, Pennsylvania 15084.					
Pennsylvania	Unity (Township) Westmoreland County.	Slate Creek	Approximately 1,700 feet upstream of U.S. Route 30.	*1,141	*1,142
			Approximately 1,200 feet upstream of U.S. Route 30.	*1,135	*1,142
Maps available for inspection at the Unity Township Municipal Building, R.D. 3, Latrobe, Pennsylvania.					
Send comments to Mr. Merle L. Musick, Code Enforcement Officer for the Township of Unity, R.D. 3, Box 526K, Latrobe, Pennsylvania 15650.					
Pennsylvania	Upper St. Clair (Township) Allegheny County.	Painters Run	Approximately 200 feet downstream of Power Hill Road.	None	*846

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 400 feet upstream of Painters Run Road.	None	*869
Maps available for inspection at the Township Municipal Building, 1820 McLaughlin Run Road, Upper St. Clair, Pennsylvania.					
Send comments to Mr. Charles Molzer, President of the Township of Upper St. Clair Board of Commission, 1820 McLaughlin Run Road, Upper St. Clair, Pennsylvania 15241.					
Pennsylvania	Washington (Township) Fayette County.	Monongahela River	At downstream corporate limits	*763	*765
			At upstream corporate limits (approximately 0.6 mile upstream of the confluence of Little Redstone Creek).	*765	*767
		Little Redstone Creek	At confluence with Monongahela River	*764	*767
			Approximately 670 feet downstream of State Route 206 bridge.	*766	*767
Maps available for inspection at the Washington Township Offices, 1390 Fayette Avenue, Belle Vernon, Pennsylvania.					
Send comments to Mr. Earnest Legg, Chairman of the Washington Township Board of Supervisors, 229 Long Avenue, Belle Vernon, Pennsylvania 15012.					
Pennsylvania	Washington (Township) Westmoreland County.	Pucketa Creek	Approximately 725 feet downstream of State Route 380.	None	*919
			Approximately 0.4 mile upstream of Ashbaug Road.	None	*1,071
		Pine Run (Upper Reach)	Approximately 0.6 mile upstream of Chamber Road (Pine Run Road).	None	*987
Maps available for inspection at the Washington Township Municipal Building, 285 Pine Run Church Road, Apollo, Pennsylvania.					
Send comments to Mr. Herbert J. Coulter, Chairperson of the Board of Supervisors, 285 Pine Run Church Road, Apollo, Pennsylvania 15613.					
Pennsylvania	West Brownsville (Borough) Washington County.	Monongahela River	Approximately 20 feet downstream of confluence of Lily Run.	*769	*773
			Approximately 1,300 feet downstream of the Brownsville Bridge.	*771	*775
Maps available for inspection at the West Brownsville Borough Building, 235 Main Street, West Brownsville, Pennsylvania, or at the home of Mr. Jack J. Sabo, West Brownsville Secretary, 615 Woodlawn Avenue, West Brownsville, Pennsylvania.					
Send comments to The Honorable Joseph A. DeSalvo, Mayor of the Borough of West Brownsville, 625 Middle Street, West Brownsville, Pennsylvania 15417.					
Pennsylvania	West Elizabeth (Borough) Allegheny County.	Monongahela River	At State Route 51	*749	*750
			Approximately 0.76 mile upstream of State Route 51.	*749	*750
Maps available for inspection at the Borough Building, Corner of 5th & Lincoln, West Elizabeth, Pennsylvania.					
Send comments to Mr. John Nikolic, President of the Borough of West Elizabeth Council, 308 Border Street, West Elizabeth, Pennsylvania 15088.					
Pennsylvania	West Homestead (Borough) Allegheny County.	Monongahela River	Approximately 650 feet upstream of Glenwood Bridge.	*735	*736
			Approximately 600 feet downstream of Pittsburgh Homestead Bridge.	*736	*737
Maps available for inspection at the Borough Engineer's Office, 401 West 8th Avenue, West Homestead, Pennsylvania.					
Send comments to Mr. William Stasko, President of the Borough of West Homestead Council, 401 West 8th Avenue, West Homestead, Pennsylvania 15120.					
Pennsylvania	West Mifflin (Borough) Allegheny County.	Monongahela River	Approximately 0.29 mile upstream of Rankin Bridge.	*738	*739
			Approximately 0.78 mile downstream of Glassport Bridge.	*746	*747
		Streets Run	Approximately 840 feet downstream of Tributary No. 1.	None	*807
			Approximately 1.34 miles upstream of Tributary No. 2.	None	*977
Maps available for inspection at the Borough Hall, 4733 Greenspring Avenue, West Mifflin, Pennsylvania.					

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Send comments to Mr. Kenneth Ruffing, President of the Borough of West Mifflin Council, 4733 Greenspring Avenue, West Mifflin, Pennsylvania 15122.					
Pennsylvania	Whitaker (Borough) Allegheny County.	Monongahela River	At a point approximately 0.24 mile downstream of Rankin Bridge.	None	*739
			At a point approximately 0.29 mile upstream of Rankin Bridge.	None	*739
Maps available for inspection at the Borough Hall, 125 Grant Street, Whitaker, Pennsylvania. Send comments to Mr. Eugene Ratay, President of the Borough of Whitaker Council, 125 Grant Street, Whitaker, Pennsylvania 15120.					
Pennsylvania	White Oak (Borough) Allegheny County.	Crooked Run	Approximately 250 feet downstream of Pennsylvania Avenue.	None	*788
			At 5th Avenue	None	*799
Maps available for inspection at the Borough Municipal Building, 2280 Lincoln Way, White Oak, Pennsylvania. Send comments to Ms. Margaret Kadar, President of the Borough of White Oak Council, 2280 Lincoln Way, White Oak, Pennsylvania 15131.					
Pennsylvania	Wilkins (Township) Allegheny County.	Thompson Run	At downstream side of Factory Entrance Drive.	*754	*755
			At downstream side of Union Railroad	*766	*767
Maps available for inspection at the Township Hall, 110 Peffer Road, Wilkins, Pennsylvania. Send comments to Mr. Michael Madden, President of the Township of Wilkins Board of Commission, 110 Peffer Road, Turtle Creek, Pennsylvania 15145.					
South Carolina	Lexington County (Unincorporated Areas).	Senn Branch	Approximately 200 feet downstream of Epharata Drive.	*225	*224
			Just upstream of Hebron Drive	None	*301
		Tributary SM–3	A point approximately 100 feet downstream of Edmund Highway (Route 302).	*175	*176
			Approximately 0.4 mile upstream of dam at Lexington Drive.	None	*214
		Stoop Creek	Approximately 70 feet upstream of Fairway Lane.	*201	*200
			Approximately 200 feet downstream of Interstate Highway 26.	*211	*210
Maps available for inspection at the Lexington County Administration Building, Planning and Development Office, 212 South Lake Drive, Lexington, South Carolina. Send comments to Mr. Ed Parlar, Lexington County Administrator, 212 South Lake Drive, Lexington, South Carolina 29072.					
Tennessee	Decherd (City) Franklin County	Wagner Creek	Approximately 600 feet upstream of Sharp Springs Road.	*893	*894
			At confluence of Bluespring Branch	None	*960
		Bluespring Branch	At confluence with Wagner Creek	None	*960
			Approximately 1.59 miles upstream of confluence with Wagner Creek.	None	*994
Maps available for inspection at the Decherd City Hall, 1301 West Main Street, Decherd, Tennessee. Send comments to Mr. Michael Foster, Decherd City Administrator, P.O. Box 488, Decherd, Tennessee 37324.					
Tennessee	Franklin County (Unincorporated Areas).	Wagner Creek	At upstream side of Old Cowan Road	None	*960
			Approximately 2.2 miles upstream of Old Cowan Road.	None	*993
		Bluespring Branch	At confluence with Wagner Creek	None	*960
			Approximately 2.2 miles upstream of confluence with Wagner Creek.	None	*1,008
		Sink Hole Area	Near the City of Decherd (north of Floyd Street).	None	*948
Maps available for inspection at the Franklin County Courthouse Annex, 110 South High Street, Winchester, Tennessee. Send comments to Mr. George Fraley, Franklin County Executive, One North Jefferson Street, Winchester, Tennessee 37398.					

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Tennessee	Lynchburg-Moore County Metropolitan Government.	East Fork Mulberry Creek	Approximately 200 feet downstream of Louse Creek Road.	None	*738
			Approximately 0.5 mile upstream of Tennessee Highway 55.	None	*828
		Price Branch	At confluence with East Fork Mulberry Creek.	None	*775
			Approximately 1.85 miles upstream of confluence with East Fork Mulberry Creek.	None	*825
Maps available for inspection at the Metro Courthouse, Public Square, Lynchburg, Tennessee. Send comments to Mr. Carl B. Payne, Lynchburg-Moore County Metropolitan Executive, Lynchburg-Moore County Metropolitan Government, P.O. Box 206, Lynchburg, Tennessee 37352.					
Tennessee	Polk County (Unincorporated Areas).	Hiwassee River	Approximately 1.8 miles downstream of Chestvee Creek confluence.	None	*711
			Approximately 0.42 mile upstream of CSX Transportation bridge.	None	*714
		Ocoee River	Approximately 100 feet upstream at the confluence with Hiwassee River.	None	*714
			Immediately downstream of Ocoee Dam #1.	None	*742
Maps available for inspection at the Polk County Courthouse, Main Street, Benton, Tennessee. Send comments to Mr. Hoyt T. Firestone, Polk County Executive, P.O. Box 128, Benton, Tennessee 37307.					
Tennessee	Winchester (City) Franklin County.	Wagner Creek	Approximately 800 feet upstream of Sharp Springs Road.	*893	*894
			Approximately 1,300 feet upstream of Old Winchester-Decherd Road.	*919	*918
Maps available for inspection at the Winchester City Hall, 7 South High Street, Winchester, Tennessee. Send comments to The Honorable David Bean, Mayor of the City of Winchester, 7 South High Street, Winchester, Tennessee 37398.					
West Virginia	Rivesville (Town) Marion County.	Monongahela River	A point approximately 0.49 mile downstream of Prickett Run (downstream corporate limit).	*867	*866
			Approximately 600 feet upstream of confluence of Prickett Run.	*867	*868
Maps available for inspection at the Town Hall, 142 Main Street, Rivesville, West Virginia. Send comments to The Honorable Richard Valentine, Mayor of the Town of Rivesville, Town Hall, 142 Main Street, Box 45, Rivesville, West Virginia 26588.					
West Virginia	Mercer County (Unincorporated Areas).	Brush Creek	Approximately 0.4 mile downstream of the U.S. Route 460 bridge.	*2,396	*2,395
			At the downstream side of County Route 19/33.	*2,413	*2,414
		South Fork	Approximately 900 feet upstream of County Route 71/6.	*2,416	*2,415
			Approximately 600 feet downstream of confluence of Middle Fork.	*2,442	*2,443
Maps available for inspection at the Mercer County Courthouse, Courthouse Square, Princeton, West Virginia. Send comments to Mr. John Rapp, President of the Mercer County Commission, P.O. Box 5469, Princeton, West Virginia 22740.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: September 14, 1994.

Robert F. Shea,

Acting Associate Director for Mitigation.

[FR Doc. 94–23224 Filed 9–19–94; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 152

RIN 3067–AC31

The Arson Prevention Act of 1994—State Grants

AGENCY: The United States Fire Administration (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would identify the eligibility criteria and procedures for States or consortia of States to apply for arson related grants, if funds are appropriated to support this activity. The proposed rule would detail the evaluation criteria and anti-arson goals that the awards are targeted to support. The intent of this proposed

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rule is to notify interested parties how FEMA intends to administer this program, and to invite comments on the proposed procedures.

DATES: We invite your comments on this proposed rule and ask that you send any comments on or before November 4, 1994.

ADDRESSES: Send your written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, D.C. 20472, (facsimile) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Kuntz, United States Fire Administration, 16825 South Seton Ave., Emmitsburg, MD. 21727, (301) 447–1271, (facsimile) (301) 447–1102.

SUPPLEMENTARY INFORMATION: The Arson Prevention Act of 1994 (Pub. L. 103–254) amends the Fire Prevention and Control Act of 1974 (15 U.S.C. 2220) to authorize competitive grants to States or consortia of States, for programs relating to arson research, prevention, and control. In anticipation of appropriations being made to fund the authorized grants, and contingent upon the availability of appropriations, FEMA is publishing proposed rules to indicate how it would administer the grant program.

National Environmental Policy Act

This proposed rule is excluded from the requirements of 44 CFR Part 10, Environmental Consideration, as having minimal or no effect on environmental quality. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the proposed rule would relate to the procedures that FEMA would follow to administer a statutorily mandated grant program, and would have no direct effect on small business or governmental entities. The proposed rule is not expected (1) To affect adversely the availability of grants to small entities, (2) to have significant secondary or incidental effects on a substantial number of small entities, nor (3) to create and additional burden on small entities. Accordingly, no regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

This proposed rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

Executive Order 12866, Regulatory Planning and Review

Promulgation of this proposed rule is required by statute, 15 U.S.C. 2221 et seq. To the extent possible under the statutory requirements of 15 U.S.C. 2221 et seq. this proposed rule adheres to the principles of regulation set forth in this Executive Order.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 152

Administrative practice and procedure, Firefighters, Fire prevention, Grant programs, Reporting and recordkeeping requirements.

Accordingly, FEMA proposes to add Part 152 to 44 CFR Subchapter C to read as follows:

PART 152—STATE GRANTS FOR ARSON RESEARCH, PREVENTION, AND CONTROL

Subpart A—Purpose, Scope, Definitions

Sec.
152.1 Purpose.
152.2 Scope.
152.3 Definitions.

Subpart B—Competitive State Grants

152.4 Grant goals.
152.5 State qualification criteria.
152.6 Grant application procedures.
152.7 Available funds and application submission.
152.8 Competitive evaluation criteria.
152.9 Reporting requirements

Subpart C—Administration

152.10 Extensions.
152.11 Technical assistance.
152.12 Consultation and cooperation
152.13 Audits.
152.14 Penalties.

Authority: 15 U.S.C. 2221; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

Subpart A—Purpose, Scope, Definitions

§ 152.1 Purpose.

This part establishes the uniform administrative rules under which States or consortia of States will request consideration for competitive arson research, prevention and control grant award(s), and details the associated administrative procedures which will be required of applicants and recipients.

§ 152.2 Scope.

This part applies to all States or consortia of States requesting competitive consideration of their respective proposals, and all those States or consortia of States actually awarded arson grants under this authority.

§ 152.3 Definitions.

Administrative costs means those actual expenses incurred by a grantee to oversee and execute the specific administrative provisions of the grant award, including as appropriate the provision of grant related monitoring services and reporting requirements, and the nominal purchase of necessary equipment and expendable supplies to support the administration of the grant.

Administrator means the Administrator of the United States Fire Administration.

Grantee means the State, consortia of States, or State and consortia of States identified as recipients of grant awards under this part.

Prevention and Control means the aggressive intervention strategies, methods, and materials developed or relied upon to minimize the occurrence and effects of arson.

Program Costs means the actually incurred expenses related to the development, delivery, training, research or other activities proposed and subsequently authorized by the grant award and other appropriate controls.

Reporting Methodology is the means by which a jurisdiction provides arson data to the National Fire Incident Reporting System (NFIRS) or the Uniform Crime Reporting (UCR) programs.

Research means the application of conventional scientific and statistical methods to assess a particular issue, application methodology, intervention or mitigation strategy in an effort to advance the collective scientific body of knowledge related to the nation's arson problem.

Resources means tangible capability enhancements including but not limited to the purchase of program related equipment, services, materials, and expendable supplies.

Responsible Official means the individual specifically authorized to act as the accountable Agent of the State for purposes of administering the grants awarded under this part.

State means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

State Consortia means a cooperative and collective group of more than one State, (or State equivalents as noted above).

Subpart B—Competitive State Grants

§ 152.4 Grant goals.

Grant applications for these grant awards must promote one or more of the following 10 goals:

(a) To improve the training by States leading to professional certification of arson investigators in accordance with nationally recognized certification standards. Certification of arson investigators is to be accomplished in accordance with State guidelines, by appropriate State authorities.

(b) To provide resources for the formulation of arson task forces or interagency organizational arrangements involving police and fire departments and other relevant local agencies, such as a State arson bureau and the office of a fire marshal of a State.

(c) To combat fraud as a cause of arson, and to advance research at the State and local levels on the significance and prevention of fraud as a motive for setting fires.

(d) To provide for the management of arson squads including:

(1) Training courses for fire departments in arson case management including standardization of investigative techniques and reporting methodology;

(2) The preparation of arson unit management guides; and

(3) The development and dissemination of new public education materials relating to the arson problem; proposals should address all three subactivities in support of the management of an arson squad.

(e) To combat civil unrest as a cause of arson, and to advance research at the State and local levels on the prevention and control of arson linked to urban disorders.

(f) To combat juvenile arson, such as juvenile fire setter counseling programs and similar intervention programs, *and* to advance research at the State and local levels on the prevention of juvenile arson.

(g) To combat drug-related arson, and to advance research at the State and local levels on the causes and prevention of drug-related arson.

(h) To combat domestic violence as a cause of arson, and to advance research at the State and local levels on the prevention of arson arising from domestic violence.

(i) To combat arson in rural areas and to improve the capability of firefighters to identify and prevent arson initiated fires in rural areas and public forests.

(j) To improve the capability of firefighters to identify and combat arson through expanded training programs, including:

(1) Training courses at the State fire academies; and

(2) Innovative courses at the (National Fire) Academy and made available to volunteer firefighters through regional delivery methods, including teleconferencing and satellite delivered television programs.

(k) Proposals addressing goals in paragraphs (a), (i), and (j) of this section would be encouraged to rely, at least in part on training course materials and offerings currently available through the National Fire Academy (NFA). Proposals should specifically identify which training components would be utilized and how they would be delivered. In the event Course content, other than that available from the NFA is proposed, the applicant will include copies of the proposed training materials with the proposal.

(l) In addition, applicants should make specific reference in their proposal(s) as to those efforts being made to provide improved and more widely available arson training courses which demonstrate particular emphasis on the needs of volunteer firefighters.

§ 152.5 State qualification criteria.

Each State or consortium of States will demonstrate by appropriate means and provide such assurances as are deemed adequate by the Administrator that the State, or consortium of States:

(a) Will obtain at least 25 percent of the cost(s) funded by the grant, in cash or in kind, from non-Federal sources.

(1) State's contribution. Applicants will identify the source and amount of their respective contribution (in cash or in kind) in the work plan and budget detail sections of the application.

(2) Cash contributions will be sourced or certified by responsible authority to be derived entirely from non-Federal sources.

(3) In kind contributions will be specifically detailed and clearly demonstrate the type, nature, value and quantity of the contribution offered to satisfy this requirement. The applicant(s) may offer current staff in support of the contribution requirement, in so far as the offering would not effect the restriction against decreasing the prior levels of spending detailed in paragraph (b) of this section.

(4) In kind contributions will also be sourced and certified to be derived from non-Federal sources.

(b) Will not as a result of receiving the grant decrease the prior level of spending of funds of the State or consortium from non-federal sources for arson research, prevention, and control programs. The applicant(s) will provide a concise overview of the level of funding dedicated to these areas for each of the two previous fiscal years. This information will be included in the grant file and is subject to post audit reviews. The applicant's responsible official will provide appropriate certification that the recipient is cognizant of this condition of award, and that no diminution of funding is to result in such anti-arson efforts in the event of a grant award. Violation of this grant award condition may subject the recipient to termination of the grant, and forfeiture of unused portions of grant funds, and other applicable administrative or criminal sanctions.

(c) Will use no more than 10 percent of the funds provided under the grant for administrative costs of the programs. Actual administrative cost incurred, not to exceed 10 percent for the funds provided, may be funded through the grant. It is recognized that the administrative costs may exceed the allocation limit, in such cases the additional expense will be born by the recipient. Excess administrative costs will *not* be considered part of the recipients required "contribution" as noted in paragraph (a) of this section; and

(d) Is making efforts to ensure that all local jurisdictions will provide arson data to the National Fire Incident Reporting System (NFIRS) or the Uniform Crime Reporting (UCR) program.

(1) The State, or consortia of States, will provide, as part of the application process, such information as will describe its current efforts to ensure that all local jurisdictions will provide data to NFIRS or UCR.

(2) This description should include the current level of local jurisdiction participation in each of the respective data collection programs. It should detail the State's reporting criteria, and data collection requirements, and statutory reporting mandates, if applicable. It should specifically identify the constructive efforts (both incentives and penalties to local jurisdiction's participation) underway to achieve complete reporting, and identify the actions, if any, to be taken under the

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proposed grant to achieve the participation target; and

(e) Has a policy to promote actively the training of its firefighters in cardiopulmonary resuscitation (CPR). The applicant(s) may demonstrate their fulfillment of this requirement by providing a true copy of the policy with the proposal, or by such other means as would reasonably attest to the applicant's active promotion of CPR training for all firefighters.

§ 152.6 Grant application procedures.

(a) Applicants, both singularly and in consortia, must format their proposals so as to assure the grant goal(s) identified in § 152.4 are clearly addressed and that the work plan descriptions of the level of effort, program activity, and program budgets are specific to each of the selected target goals.

(1) The legislation directs that awards be made in support of each of the ten (10) goals enumerated in § 152.4. The competitive evaluation of the proposals will be done on a goal by goal basis, and the grant awards will be made accordingly. In effect, all of the proposals received that address, for example § 152.4(a), will be reviewed against the competitive evaluation criteria detailed in § 152.8 in relation to achieving that goal. The best overall proposal will be the recipient of the award. Each of the other proposals offered in support of each of the other goals will likewise be assessed. The State or consortia of States may submit proposals addressing more than one of the goals. Applicants must however insure that the proposal detail is separable in its entirety, goal by goal. States, or consortia of States, applying for the competitive grants available under this section will comply with and are bound by all of the applicable provisions of 44 CFR parts 13 and 14 with respect to the Uniform Administrative Requirements for Grants to State Governments, and the Administration of Grants: Audits of State Governments.

(2) [Reserved]

(b) The application will identify the requestor's status as a:

(1) State; or

(2) Consortium of States, (detailing each of the States in the consortium).

(c) The application will specifically identify both the responsible State organizational element (e.g., the Office of the State Fire Marshal) and the responsible Official/Individual who will administer the grant in the event of an award. Grant requests from consortia of States will include this information for each of the States, and will identify which one of these responsible Officials will serve as the grant's administrative coordinator with USFA.

(d) The information provided will include the following:

(1) The applicant's complete organizational title;

(2) The applicant's complete mailing address;

(3) The name and title of the State's designated responsible Official;

(4) The responsible Official's complete mailing address; and

(5) The responsible Official's telephone and facsimile numbers.

(e) The application will indicate specifically which of the 10 grant goals in § 152.4 the proposed grant activities are intended to address. Consortia proposals may propose that each of the consortia States address a particular goal or group of goals singularly, or the States may approach the selected goals, in part or in whole, collectively.

(f) The application will provide specific work plans which detail the means by which the applicant(s) intends to pursue the selected goal's attainment through the grant. The work plan will include the overall level of effort envisioned as a result of the proposed grant's implementation, the specific tasks and time lines to be accomplished, the resources both human and material that will be applied to the effort (including the means by which the utilization of these resources will be accounted for), and the means and methods that will be utilized to assess and evaluate the accomplishment of the targeted goals.

(g) Each applicant will submit a detailed grant program budget which addresses, by goal specific reference, how the grant funds, both administrative and programmatic, will be disbursed. The grant proposal budget element will specifically distinguish between "administrative costs" and "program costs" consistent with the requirements noted herein. No more than 10 percent of the funds provided under the grant will be used for the administrative costs of the program. This restriction does not preclude the applicant(s) from proposing a greater level of effort or resource dedication to administrative activity, it simply limits the costs to be supported through the grant funding. Each of the States in a consortium may request support for actual administrative costs of no more than 10 percent of its respective program expenses.

§ 152.7 Available funds and application submission.

(a) Funds may be appropriated in Fiscal Year 1995 to support grant awards addressing the ten (10) goals of § 152.4. No grant awards would be made in Fiscal Year 1995 or future years unless and until funds are appropriated.

(b) Reasonable efforts will be made to award a grant addressing each of the enumerated goals in an expeditious manner. Upon completion of the initial competitive evaluations and the resulting grant awards, any goal(s) yet unattended will be identified and may become the subject of a second round of applications solicitation, consideration and grant award(s). Grant proposals should be formatted to address specifically the incremental use of the currently available (FY 1995) funds, and target the possible use of FY 1996 funds if made available, as logical programmatic extensions or replications of the activities proposed and supported by FY 1995 funds.

(c) Following the comment period and the publishing of the final rule incorporating these procedures, a formal announcement of grant availability will be issued in the **Federal Register**. Applicants will be afforded a period of not less than 30 and not more than 45 days, following the formal announcement, to submit applications. It is anticipated that the initial grant awards will be made during the first quarter of calendar year 1995. In the event awards are not made in support of each of the ten goals, a second Notice of Availability, addressing the unattended goals, may be published in the **Federal Register** and awards will be targeted to occur before September 30, 1995.

§ 152.8 Competitive evaluation criteria.

Each grant application/program proposal received will be competitively assessed against the following criteria:

(a) The degree to which the proposal is seen to address the targeted goal or each goal in a combination of goals;

(b) The scope and effect of the proposed initiative in relation to the proposed program cost;

(c) The degree to which the proposed activity supports a "model program initiative" suitable for replication in other jurisdictions;

(d) The degree to which the proposed activity demonstrates an effective and efficient integration of a variety of program resources;

(e) The degree to which the proposed activity could sustain itself upon the completion of the grant performance period;

(f) The degree to which the proposed activity would target intervention strategies addressing high risk groups, properties, or specific conditions.

(g) The degree to which the activity proposed would produce a lasting anti-arson program, initiative, or other such appropriate outcome;

(h) The degree to which the proposed activity promotes the introduction of new technology, innovative techniques, or non-traditional approaches to reduce the nation's arson problem;

(i) The degree to which the proposed activity relies upon the development of inter-governmental, inter-organizational, or community involving "partnerships" to promote goal attainment; and

(j) The degree to which the proposed activity supports the enhanced ability to collect arson data.

§ 152.9 Reporting requirements.

(a) Each State, or consortium of States, which is the recipient of a grant under this authority, by acceptance of the award, agrees to provide to the satisfaction of the Administrator and in timely fashion, any and all such documentation as may be requested or required to detail the methods and amounts of grant funds disbursement and such other recordkeeping, retention of records and the additional provision of information by the Grantee as may be required by the awarding Agency and applicable regulation.

(b) The reporting requirements will consist of primarily the two following types:

(1) Quarterly progress and financial status reports; and

(2) Final progress report and financial status report. The final progress report will include a summary evaluation of the program related activities under the grant. It will identify the evaluation methodology and the assessment values applied to critique the grant's effectiveness in relation to achieving the targeted goal(s).

Subpart C—Administration

§ 152.10 Extension.

The Administrator has discretionary authority to extend the duration of grants made under this regulation for one or more additional periods. Grant recipients desiring an extension of the grant performance period, will request such extensions in writing at least sixty (60) days prior to the expiration of the grant period. The request will include the reason for the requested extension, a description of the effect(s) on the program if the extension is not granted, and a statement that no additional federal funds would be necessary to support the grant activities during the extension period. Grant extension requests may not be utilized to request additional funding.

§ 152.11 Technical assistance.

The Administrator shall provide technical assistance to States in carrying out the program(s) funded by grants under the Act. This assistance will consist of providing the customary and usual information on the application process, deadlines, program and financial reporting requirements, and related grant program activities support. This provision is not intended to suggest that USFA will provide other than grant related support and technical assistance. Grant proposals should not suggest or rely upon other program related services, staff support or monies from USFA to be any part of the proposed grant activities, except as provided herein.

§ 152.12 Consultation and cooperation.

The Administrator would consult and cooperate with other Federal agencies to enhance program effectiveness and avoid duplication of effort, including the conduct of regular meetings initiated by the Administrator with representatives of other Federal agencies concerned with arson and concerned with efforts to develop a more comprehensive profile of the magnitude of the national arson problem.

§ 152.13 Audits.

In accordance with applicable regulations, all the grants awarded under part 152 of 44 CFR and all records of the recipient would be subject to audit by appropriate Federal Emergency Management Agency staff or other responsible authority.

§ 152.14 Penalties.

The recipient designated responsible official or others who provide information or documentation to federal officials in connection with the activities or funds authorized by or expended through these grants are subject to, among other laws, the criminal penalties of 18 U.S.C. 287 and 1001, which punish the submission of false, fictitious or fraudulent claims and the making of false, fictitious or fraudulent statements. Such actions are punishable by the imposition of a fine not to exceed $10,000.00 or imprisonment for not more than five (5) years, or both. Such a violation may also subject the responsible official to the civil penalties set out in 31 U.S.C. 3729 and 3730.

Dated: September 14, 1994.

James L. Witt,

Director.

[FR Doc. 94–23304 Filed 9–19–94; 8:45 am]

BILLING CODE 6718–26–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–100, RM–8509]

Radio Broadcasting Services; Okmulgee, Nowata and Pawhuska, Oklahoma

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed jointly by Integrated Broadcasting Company, Inc., requesting the substitution of Channel 231C1 for Channel 231C2 at Okmulgee, Oklahoma, and the modification of Station KTHK(FM)'s license to specify operation on the higher class channel, and by KRIG, Inc., requesting the substitution of Channel 286C3 for Channel 232A at Nowata, Oklahoma, and the modification of Station KRIG(FM)'s license to specify operation on the higher class channel or alternatively to substitute Channel 285A for Channel 232A at Nowata and the modification of Station KRIG(FM)'s license to specify the alternate Class A channel. To accommodate the allotment of Channel 286C3 to Nowata, the Commission also proposes to substitute Channel 280A for unoccupied and unapplied-for Channel 285A at Pawhuska, Oklahoma. Should no interest be expressed in the use of Channel 280A at Pawhuska, the Commission alternatively proposes to delete Channel 285A at Pawhuska without replacement. In accordance with Section 1.420(g), the licenses of Stations KTHK(FM) and KRIG(FM) can be modified as proposed without affording interested persons an opportunity to submit competing expressions of interest or requiring the petitioners to demonstrate the availability of an additional equivalent higher class channel.

DATES: Comments must be filed on or before Nov. 7, 1994, and reply comments on or before November 22, 1994.

ADDRESSES: Federal Communications Commission, Washington D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark N. Lipp, Esq., Mullin, Rhyne, Emmons and Topel, P.C., 1225 Connecticut Avenue, Suite 300, Washington, D.C. 20036 (Counsel to Integrated Broadcasting Company, Inc.), and Lawrence N. Cohn, Cohn & Marks, 1333 New Hampshire Avenue, N.W.,

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Suite 600, Washington, D.C. 20036–1573 (Counsel to KRIG, Inc.)

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: Channel 231C1 can be allotted to Okmulgee in compliance with the Commission's minimum distance separation requirements at Station KTHK(FM)'s presently licensed site, at coordinates 35–50–02 North Latitude and 96–07–28 West Longitude. Channel 286C3 can be allotted to Nowata with a site restriction of 13.6 kilometers (8.4 miles) northwest, at coordinates 36–46–13; 95–45–17, to avoid a short-spacing to the construction permit site of Station KBXT, Channel 287C3, Bixby, OK, and to accommodate KRIG, Inc.'s desired transmitter site. Channel 285A can be allotted to Nowata at Station KRIG's presently licensed site, at coordinates 36–44–35; 95–45–17. Channel 280A can be allotted to Pawhuska, OK, with a site restriction of 8.4 kilometers (5.2 miles) northwest, at coordinates 36–44–00; 96–23–00.

This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–100, adopted September 8, 1994, and released September 15, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–23207 Filed 9–19–94; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register

Vol. 59, No. 181

Tuesday, September 20, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Annual Survey of Manufactures.

Form Number(s): MA–1000(L), MA–1000(S), MA–1000(B).

Agency Approval Number: 0607–0449.

Type of Request: Revision of a currently approved collection.

Burden: 197,000 hours.

Number of Respondents: 63,000.

Avg Hours Per Response: 3 hours and 8 minutes.

Needs and Uses: The Census Bureau conducts the Annual Survey of Manufactures (ASM) to provide key measures on manufacturing activity during intercensal years. Federal agencies use the ASM's results as benchmarks for their statistical programs, including the Federal Reserve Board's Index of Industrial Production, the Bureau of Economic Analysis' estimates of the gross domestic product, and the International Trade Administration's "Industrial Outlook" publication. Within the Census Bureau, ASM data are used to benchmark and reconcile our monthly and quarterly data on manufacturing production and inventories.

Affected Public: Businesses or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–93271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 14, 1994.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–23249 Filed 9–19–94; 8:45 am]

BILLING CODE 3510–07–F

Bureau of the Census

Census Advisory Committee of the Professional Associations; Notice of Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), we are giving notice of a meeting of the Census Advisory Committee of Professional Associations. The meeting will convene on October 20–21, 1994 at the Bureau of the Census, Conference Center, Federal Building 3, Suitland, Maryland.

The committee is composed of 36 members appointed by the presidents of the American Economic Association, the American Statistical Association, the Population Association of America, and the chairman of the board of the American Marketing Association. It advises the Director, Bureau of the Census, on the full range of Census Bureau programs and activities in relation to the areas of expertise.

The agenda for the meeting on October 20 that will begin at 9 a.m. and end at 5:15 p.m. is:

- Introductory remarks by the Acting Director, Bureau of the Census;
- 2000 census update;
- Economic and Agriculture Censuses update;
- Census Bureau responses to committee recommendations;
- Annual Survey of Manufactures and Census Comparability;
- Program for the Society of Journalists;
- Elimination of the Area Sample and Expanded Use of Administrative Records;
- 2000 census content determination;
- Bureau constraints (policy and others) that affect customer-oriented strategies;
- Update on intercensal small area income and poverty estimates program;
- Reengineering the economic censuses and surveys; and
- Integrated coverage measurement.

The agenda for the April 15 meeting that will begin at 9 a.m. and adjourn at 12:15 p.m. is:

- Worker establishment characteristics data base;
- Congress-as-a-customer;
- Living Situation Survey and 1994 Coverage Test;
- Review of Office of Management and Budget standards on race and ethnicity;
- Develop recommendations and special interest activities; and
- Closing session.

The meeting is open to the public, and a brief period is set aside on October 21 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau Committee Liaison Officer at least three days before the meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Census Bureau official named below.

Persons wishing additional information regarding this meeting or who wish to submit written statements may contact the Committee Liaison Officer, Mrs. Phyllis Van Tassel, room 2419, Federal Building 3, Suitland, Maryland (mailing address: Washington, DC 20233), telephone: (301) 763–5410—TDD (301) 763–4056.

Dated: September 13, 1994.

Harry A. Scarr,

Acting Director, Bureau of the Census.

[FR Doc. 94–23162 Filed 9–19–94; 8:45 am]

BILLING CODE 3510–07–P

[Docket Number 940841–4241]

Investment Plans Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of termination and consideration.

SUMMARY: Notice is hereby given that the Bureau of the Census is proposing

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to replace the quarterly Plant and Equipment (P&E) Survey with a new semiannual Investment Plans Survey (IPS). Capital investments by businesses are a key indicator of U.S. economic performance. This change would improve the quality of intrayear data on U.S. business investment and provide comparability between intrayear investment surveys and the more detailed Annual Capital Expenditures Survey (ACES).

The P&E Survey was terminated after second quarter 1994 P&E results were released on September 8, 1994. Results for the first phase of the new IPS would be released in February 1995 and would include preliminary estimates of total 1994 expenditures for structures and equipment and planned 1995 spending for selected industry categories. Results for the second phase would be released in September 1995 and would include revised estimates of planned 1995 spending. The IPS results for future years would be released on this semiannual schedule.

The IPS methods and content have been coordinated with those of the ACES and results from this new indicator survey will be fully consistent with results from the ACES. However, because the scope and detail of the new IPS are different from the present P&E Survey, IPS results will not be directly comparable to previously released P&E Survey data.

DATES: Comments concerning this proposal should be submitted in writing by October 20, 1994 to receive consideration.

ADDRESSES: Director, Bureau of the Census, Washington, D.C. 20233.

FOR FURTHER INFORMATION CONTACT: Charles Funk, Agriculture and Financial Statistics Division, Bureau of the Census, Washington, D.C. 20233, on (301) 763–7180.

SUPPLEMENTARY INFORMATION: This proposed survey was submitted to the Office of Management and Budget on July 18, 1994 for approval in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended. This was announced in the **Federal Register** on July 21, 1994. Copies of the material submitted are made available on request to the Director, Bureau of the Census, Washington, D.C. 20233.

Authority: Title 13 United States Code, Sections 131 and 182.

Dated: September 14, 1994.

Harry A. Scarr,

Acting Director, Bureau of the Census.

[FR Doc. 94–23277 Filed 9–19–94; 8:45 am]

BILLING CODE 3510–07–P

Foreign-Trade Zones Board

[Order No. 704]

Grant of Authority for Subzone Status, Peavey Electronics Corporation (Electronic Audio and Acoustical Products), Meridian, MS, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Vicksburg/Jackson Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 158, for authority to establish special-purpose subzone status at the electronic audio and acoustical products manufacturing facilities (9 sites) of the Peavey Electronics Corporation in the Meridian, Mississippi, area, was filed by the Board on August 19, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 47–93, 58 FR 46627, 9–2–93); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 158B) at the plant sites of the Peavey Electronics Corporation in the Meridian, Mississippi, area, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 12th day of September 1994.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 94–23251 Filed 9–19–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–570–834]

Postponement of Preliminary Antidumping Duty Determination: Disposable Pocket Lighters From the People's Republic of China ("PRC")

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 20, 1994.

FOR FURTHER INFORMATION CONTACT: Julie Anne Osgood or Vincent Kane, Office of Countervailing Investigations, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–0167 and 482–2815, respectively.

Postponement

We have determined that this investigation is extraordinarily complicated due to the large number of producers and resellers. We have also determined that respondent parties to the proceeding are cooperating in this investigation. Accordingly, pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended, ("the Act") and 19 CFR 353.15(b), we are postponing the date of the preliminary determination in this investigation until no later than December 5, 1994.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: September 13, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–23252 Filed 9–19–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–301–801]

Preliminary Determination of Sales at Less Than Fair Value: Fresh Cut Roses From Colombia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 20, 1994.

FOR FURTHER INFORMATION CONTACT: James Maeder or James Terpstra, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3330, or (202) 482–3965.

Preliminary Determination

We preliminarily determine that fresh cut roses (roses) from Colombia are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930 (the Act), as amended. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on March 7, 1994 (59 FR 11771, March 14, 1994), the following events have occurred.

On March 31, 1994, the U.S. International Trade Commission (ITC) issued an affirmative preliminary determination.

On April 19, 1994, the Department decided to collect constructed value (CV) information from all respondents in addition to home market or, where appropriate, third country sales information (*See* the April 19, 1994, memorandum from the team to Barbara R. Stafford).

On May 5, 1994, the Department issued sales and cost questionnaires to the following 16 Colombian companies: Agricola Benilda; Agrorosas S.A.; Flores La Fragancia S.A.; Flores Mocari S.A.; Grupo Andes; Grupo Bojaca; Caicedo Group; Grupo Clavecol; Grupo Floramerica; Grupo Intercontinental; Grupo Papagayo; Grupo Prisma; Grupo Sabana; Grupo Sagaro; Grupo Tropicales; and Rosex LTDA. These companies accounted for approximately 40 percent of the exports of the subject merchandise during the period of investigation (POI). Although the Department "normally will examine not less than 60 percent of the dollar value or volume of the merchandise sold" during the POI, 19 CFR 353.42(b)(1), due to limited administrative resources the Department chose to examine less than 60 percent (*See* the May 2, 1994, memorandum from the team to Barbara R. Stafford).

On June 24, 1994, the Floral Trade Council, petitioner in this investigation, requested a postponement of the preliminary determination until September 12, 1994, pursuant to 19 CFR 353.15(c) (1993). As we found no compelling reason to deny the request, the Department granted this request on June 28, 1994 (59 FR 34409, July 5, 1994).

On June 24, 1994, the Department relieved all respondents except Caicedo Group from the requirement of reporting sales of roses imported and/or sold as part of bouquets (*See* the June 24, 1994, memorandum from the team to Barbara R. Stafford). On this same date, the Department also instructed respondents to report monthly-average price data for the U.S. market, home market, and where appropriate, third country markets (*See* the June 24, 1994, memorandum from the team to Barbara R. Stafford).

Also on June 24, 1994, the Department determined that eight of the respondents (Agricola Benilda; Flores La Fragancia S.A.; Grupo Bojaca; Caicedo Group; Grupo Floramerica; Grupo Intercontinental; Grupo Papagayo; and Grupo Prisma) had viable home markets and were instructed to report home market sales data as the basis for foreign market value (FMV).

In addition, the Department determined that four of the respondents (Grupo Clavecol; Grupo Sabana; Grupo Sagaro and Grupo Tropicales) did not have viable home markets and instructed the respondents to report third country sales data as a potential basis for FMV (*See* the June 24, 1994, memorandum from the team to Barbara R. Stafford). However, since respondents argued that third country markets were fundamentally different from the U.S. market, it was decided that the final basis for FMV for these last four respondents (either third country sales or CV) would not be determined until more information was received (*See* the "Third Country Sales Versus Constructed Value" section of this notice for further discussion).

The Department also instructed four of the respondents (Agrorosas S.A.; Flores Mocari S.A.; Grupo Andes; and Rosex LTDA) to report CV as the basis for FMV as the volume of sales in neither the home market nor third countries was adequate.

On June 29, 1994, one of the four respondents in the second category above, Grupo Sagaro, submitted an amendment to its questionnaire response. In that amendment, Grupo Sagaro stated that, based on further review, it did have a viable home market. After reviewing the new sales information, the Department agreed and on July 8, 1994, we instructed Grupo Sagaro to base its FMV on home market sales.

Respondents submitted responses to the Department's sales and cost questionnaires in May and July 1994. The Department issued deficiency sales and cost questionnaires in June, July, August and September 1994. Respondents submitted their responses to these deficiency sales and cost questionnaires in June and August 1994. Agricola Benilda submitted a comprehensive revision of its sales and cost information on September 8, 1994. Agrorosas S.A. submitted minor pre-verification corrections on September 9, 1994.

On July 5, 1994, petitioner requested that the Department reject home market sales as a basis for FMV for nine of the respondents for which the home market was viable. Petitioner stated that these sales were not in the ordinary course of trade. On July 11, 1994, the Department issued supplemental questionnaires to determine if the sales reported were in the ordinary course of trade. On July 25, 1994, the respondents provided their responses to these supplemental questionnaires.

On July 28, 1994, petitioner alleged that the nine respondents which had viable home markets sold roses in the home market at prices below their cost of production (COP). Petitioner also alleged that Grupo Tropicales sold roses in one of its two third country markets, Argentina, at prices below its COP.

On August 22, 1994, the Department instructed Rosex to file a consolidated response with Rosas Sausalito and Induflora. This response is due on September 12, 1994. For our preliminary determination we based our analysis on only Rosex's data.

On September 8, 1994, the Department initiated COP investigations against the nine respondents with viable home markets and against Argentine sales for Grupo Tropicales (*See* the September 8, 1994, memorandum from Richard W. Moreland to Barbara R. Stafford).

Based on information obtained from the respondents which had viable home markets, the Department determined on September 9, 1994, that home market sales were in the ordinary course of trade and, therefore, could be used in the Department's analysis (*See* the September 9, 1994, memorandum from the team to Barbara R. Stafford).

On September 12, 1994, the Department decided to base FMV for Grupo Clavecol, Grupo Sabana and Grupo Tropicales on third country sales (*See* the September 12, 1994, memorandum from the team to Barbara R. Stafford). For a further discussion, see the "Third Country Sales" section of this notice.

Scope of Investigation

The products covered by this investigation are fresh cut roses, including sweethearts or miniatures, intermediates, and hybrid teas, whether imported as individual blooms (stems) or in bouquets or bunches. Roses are classifiable under subheadings 0603.10.6010 and 0603.10.6090 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). The *HTSUS* subheadings are provided for convenience and customs purposes. The

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written description of the scope of this investigation is dispositive.

Period of Investigation

The Department initiated this investigation using our standard six-month POI from September 1, 1993, to February 28, 1994. On March 30 and April 11, respondents submitted comments on the POI. On April 5, 1994, petitioner also submitted comments on the POI. On April 14, 1994, the Department altered the POI to calendar year 1993 because of the seasonal nature of sales and production in the rose industry (*See* the April 14, 1994, memorandum from the team to Richard W. Moreland).

In addition, for purposes of price-to-price comparisons, we are basing FMV on two six-month periods: January 1, 1993, through June 30, 1993; and July 1, 1993, through December 31, 1993. For a further discussion of these periods, see the September 12, 1994, concurrence memorandum.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available (BIA) is appropriate for sales of the subject merchandise by the following respondents: (1) Agricola Benilda; (2) Grupo Intercontinental; (3) Grupo Prisma and (4) Grupo Andes.

In assigning BIA, the Department applies a two-tiered methodology based on the degree of respondent's cooperation. In the first tier, the Department normally assigns higher margins (*i.e.*, margins based on more adverse assumptions) for those respondents which did not cooperate in an investigation or which otherwise impeded the proceeding. If a respondent is deemed non-cooperative, the Department bases the preliminary margin for the relevant class or kind of merchandise on the higher of: (1) The highest margin in the petition or (2) the highest calculated margin of any respondent within that country that supplied adequate responses for the relevant class or kind of merchandise.'

In the second tier, the Department assigns lower margins to those respondents who substantially cooperate in an investigation. These margins are based on the higher of: (1) The highest calculated margin for any respondent within the country that supplied adequate information for the relevant class or kind of merchandise or (2) the average margin of the margins in the petition (*See, e.g., Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*, (54 FR 18992, May 3, 1989)).

The Department's two-tiered methodology for assigning BIA has been upheld by the U.S. Court of Appeals for the Federal Circuit (*See Allied-Signal Aerospace Co. v. United States*, 996 F.2d 1185 (Fed. Cir. 1993); *See also Krupp Stahl AG v. United States*, 822 F. Supp. 789 (CIT 1993)).

For Agricola Benilda, Grupo Intercontinental and Grupo Prisma, we have determined that these respondents' original and deficiency questionnaire responses were unusable for the preliminary determination because they contained significant deficiencies (*See* the September 12, 1994, memorandum from David L. Binder to Barbara R. Stafford). In addition, Agricola Benilda submitted substantial revisions to its sales and cost information on September 8, 1994.

However, because Agricola Benilda, Grupo Andes, Grupo Intercontinental and Grupo Prisma responded to our requests for information, we find that these respondents have been substantially cooperative for purposes of this preliminary determination. Accordingly, we used as second-tier BIA for these respondents the average of the margins contained in the petition, which is 55.94 percent. This margin is higher than the highest margin calculated for any respondent in this investigation.

Furthermore, we have issued supplemental deficiency letters to Agricola Benilda, Grupo Intercontinental and Grupo Prisma. If these respondents submit adequate and timely responses to these letters, we will conduct verification for these respondents and will consider their information for purposes of the final determination.

For Grupo Andes, we have determined that this respondent has failed to respond adequately to the Department's deficiency questionnaire and failed to inform the Department in a timely manner that it had sufficient sales of export-quality roses in the home market to deem the home market viable. While Grupo Andes stated that its home market was not viable, analysis of its deficiency response has indicated that its home market is, in fact, viable.

Grupo Andes' failure to correctly indicate that its home market was, in fact, viable constitutes a material error: the determination of what basis in which to make price comparisons is central to the entire dumping analysis.

While Andes has substantially cooperated in this investigation, the history of its responses indicates that the information reported was highly unreliable, and its failure to report home market sales was a fundamental error. Because of the serious errors in Andes' reporting, we would have needed a materially new response. We find that there is insufficient time prior to verification in which to analyze such a response and any possible supplemental responses. For these reasons we will not be conducting verification for this respondent and will also base the margin for Grupo Andes in the final determination on cooperative BIA (*See* the September 9, 1994, memorandum from David L. Binder to Barbara R. Stafford).

Such or Similar Comparisons

We have determined that all roses covered by this investigation comprise two categories of "such or similar" merchandise: culls and export-quality roses. None of the respondents reported sales of culls in the United States. Therefore, no comparisons in this such or similar category were made. Regarding export quality roses, where possible, we made comparisons of identical merchandise. Where there were no sales of identical merchandise in the home market or third country market to compare to U.S. sales, we made similar merchandise comparisons on the basis of: (1) Form (*e.g.*, as part of a bouquet, an individual stem, etc.); (2) type (*e.g.*, hybrid tea, sweetheart, etc.); (3) color; (4) stem length; and (5) variety. We did not make any adjustments for differences in the physical characteristics of the merchandise because respondents reported no cost differences between the products.

Fair Value Comparisons

To determine whether sales of roses from Colombia to the United States were made at less than fair value, we compared the United States price (USP) to the FMV for all non-BIA respondents, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For sales by all non-BIA respondents except Floramerica, we based USP on purchase price, in accordance with section 772(b) of the Act, when the subject merchandise was sold to unrelated purchasers in the United States prior to importation and when exporter's sales price (ESP) methodology was not otherwise indicated.

In addition, for all non-BIA respondents, where sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

For all U.S. prices, we used weighted-average monthly U.S. prices (*See* the September 12, 1994, concurrence memorandum).

During the POI, some of the respondents paid commissions to related parties in the United States. We determined that these commissions were directly related to the sales under consideration. We also tested these commissions for these respondents to determine whether they were paid at arm's length using the criteria set forth in the Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Belgium (56 FR 56359, November 4, 1991). Where we found that they were paid at arm's length, we deducted them from USP. However, we found that respondents used these commissions as a mechanism for reimbursing their related parties for their actual expenses. Accordingly, in order to avoid double-counting, where the actual expenses of the related party were less than the commissions, we deducted only the commissions. Where the commissions were less than the actual expenses, we also deducted the amount by which the actual expenses exceeded the commissions (*See* the September 12, 1994, concurrence memorandum).

Finally, for those respondents who had related parties in the United States and did not report inventory carrying costs on their ESP sales, we calculated these costs for these respondents using an inventory carrying period of seven days. This is the maximum amount of time which may transpire between the time a rose is cut and when it must be sold to the ultimate customer, according to a public report by Harry K. Tayama, PhD., submitted by respondents in this investigation. For companies with sales to unrelated parties, we accepted that inventory carrying costs were included in U.S. credit expenses.

We made company-specific adjustments, as discussed below:

1. Agrorosas S.A.

For Agrorosas, U.S. purchase price was based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight.

We calculated ESP based on packed prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, air freight, U.S. and Colombian indirect selling expenses, brokerage and handling charges, commissions, U.S. import duties, direct selling expenses, and credit expenses.

2. Flores La Fragancia S.A.

For Flores La Fragancia S.A., we calculated purchase price based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, foreign inland freight and air freight.

We calculated ESP based on packed prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, foreign inland freight, air freight, credit expenses and U.S. and Colombian indirect selling expenses including inventory carrying costs.

3. Flores Mocari S.A.

For Flores Mocari S.A., we calculated purchase price based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, air freight and U.S. import duties.

We calculated ESP based on packed prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, air freight, U.S. import duties, credit expenses and other direct selling expenses. Also, as described above, we deducted the greater of related party commissions or indirect selling expenses.

4. Grupo Bojaca

For Grupo Bojaca, we calculated purchase price based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight.

We calculated ESP based on packed prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, air freight, U.S. import duties, brokerage and handling and credit expenses.

5. Caicedo Group

For Caicedo Group, we calculated purchase price based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, foreign inland freight, air freight, U.S. import duties, and U.S. inland freight.

We calculated ESP based on packed prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, Columbian Flower Council (CFC) fee, foreign inland freight, air freight, U.S. import duties, U.S. inland freight, repacking expenses, and credit expenses. Also, as described above, we deducted the greater of related party commissions or indirect selling expenses.

6. Grupo Clavecol

For Grupo Clavecol, we calculated purchase price based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts and foreign inland freight.

We calculated ESP based on packed prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, air freight, U.S. brokerage and handling charges, credit expenses and U.S. and Colombian indirect selling expenses including inventory carrying costs. Because Clavecol did not adequately support its reported interest rate, we used the highest public interest rate on the record in the companion investigation of roses from Ecuador which is a ranged value for a U.S. subsidiary of an Ecuadoran rose producer, Guaisa, of 10 percent (*See* the September 12, 1994, concurrence memorandum and the September 9, 1994, memorandum to the file).

7. Grupo Floramerica

For Grupo Floramerica, we calculated ESP based on packed prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, air freight, U.S. import duties, brokerage and handling, United States Department of Agriculture inspection fees, warranty expenses including billing credits, promotional fees, credit expenses and U.S., Panamanian and Colombian indirect selling expenses including inventory carrying costs.

8. Grupo Papagayo

For Grupo Papagayo, we calculated purchase price based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight and other expenses.

We calculated ESP based on packed prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, air freight, U.S. import duties, U.S. inland freight, brokerage and handling charges, Colombian indirect selling expenses including inventory carrying costs, direct selling expenses including credit, other expenses, and commissions paid to unrelated parties.

9. Grupo Sabana

For Grupo Sabana, we calculated purchase price based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions,

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where appropriate, for discounts, foreign inland freight, air freight and U.S. import duties.

We calculated ESP based on packed prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, foreign inland freight, air freight, U.S. import duties and credit expenses. Also, as described above, we deducted the greater of related party commissions or indirect selling expenses.

10. Grupo Sagaro

For Grupo Sagaro, we calculated purchase price based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight.

We calculated ESP based on packed prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, air freight, U.S. import duties and credit expenses.

11. Grupo Tropicales

For Grupo Tropicales, we calculated purchase price based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight and air freight.

We calculated ESP based on packed prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, foreign inland freight, air freight, credit expenses, other direct selling expenses, and U.S. and Colombian indirect selling expenses including inventory carrying costs.

12. Rosex LTDA

For Rosex LTDA, we calculated purchase price based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight.

We calculated ESP based on packed prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, air freight, U.S. import duties, brokerage and handling and credit expenses.

Foreign Market Value

In calculating FMV, wherever there were no sales of comparable merchandise in the home market or third country markets, we based FMV on CV. In addition, in accordance with 19 CFR 353.58, for price to price comparisons, we compared U.S. sales to home market or third country sales made at the same level of trade, where possible.

We have three different bases for FMV: (1) Home market sales; (2) third country sales; and (3) constructed value. Each is discussed separately below:

Home Market Sales

In order to determine whether there were sufficient sales of fresh cut roses in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of export quality roses to the volume of third country sales of export quality roses in accordance with section 773(a)(1)(A) of the Act. Based on this comparison, we determined that nine of the 16 respondents had viable home markets. The nine companies were: Agricola Benilda; Flores La Fragancia S.A.; Grupo Bojaca; Caicedo Group; Grupo Floramerica; Grupo Intercontinental; Grupo Papagayo; Grupo Prisma and Grupo Sagaro. However, we did not use home market sales for Agricola Benilda, Grupo Intercontinental, Grupo Prisma or Grupo Andes because we based the margin for these companies on BIA. In addition, we based Grupo Andes' margin on BIA because we found that it had misrepresented its home market as nonviable (*See* the "Best Information Available" section of this notice for a further discussion).

Because petitioner's allegations, when considered in light of the information on the record, gave the Department "reasonable grounds to believe or suspect" that the nine respondents with known viable home markets were selling roses in Colombia at prices below their COP, the Department initiated COP investigations to determine whether these respondents had home market sales that were made at less than their respective COPs (*See* the September 8, 1994, memorandum from Richard W. Moreland to Barbara R. Stafford). Respondents requested that we depart from our normal practice and interpret our COP analysis in such a manner as to either accept or reject all sales. We denied this request as unreasonable (*See* the September 12, 1994, concurrence memorandum).

In keeping with our past practice involving perishable agricultural products where we found less than 50 percent of a respondent's sales of roses were at prices below the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities (*See Certain Fresh Winter Vegetables From Mexico* 45 FR 20512 (1980)). Where we found between 50 and 90 percent of a respondent's sales of a given product were at prices below the COP, and the below cost sales were made over an extended period of time, we disregarded only the below-cost sales. Where we found that more than 90 percent of respondent's sales were at prices below the COP, and the sales were made over an extended period of time, we disregarded all sales for that product and calculated FMV based on CV.

In order to determine whether home market prices were above the COP, we calculated the COP based on the sum of a respondent's cost of cultivation, general expenses, and packing. We calculated CV based on the sum of a respondent's cost of cultivation, plus general expenses, profit and U.S. packing. For general expenses, which includes selling and financial expenses (SG&A), we used the greater of the reported general expenses or the statutory minimum of ten percent of the cost of cultivation. For profit, we used the greater of the weighted-average third country profit during the POI or the statutory minimum of eight percent of the cost of cultivation and general expenses, in accordance with section 773(e)(B) of the Act.

For all respondents, we corrected the calculation of interest expense for COP to remove the offset to this expense. This reduction to interest expense is only applicable for CV calculations. Interest expense for all respondents was corrected to a per-unit amount. Further, for all respondents we based the amortization expense upon the amounts normally recorded by each company in its usual record keeping. We rejected adjustments that companies made to the amortization expense solely for purposes of this investigation. We also made specific adjustments to respondents' COP and CV data as described below:

1. Flores La Fragancia S.A.

For Flores La Fragancia S.A., we: (1) Corrected the calculation of greenhouse plastic amortization to reflect the methodology normally used by the company; (2) corrected the reported "material for greenhouse frames" to agree with the underlying schedules provided in the response; (3) corrected the reported net financing costs to agree to the underlying schedules; and (4) corrected for a mathematical error in the calculation of SG&A expenses.

2. Grupo Bojaca

For Grupo Bojaca, we corrected the reported general and administrative (G&A) expense amount to reflect the amount reported in the company's financial statement.

3. Caicedo Group

For Caicedo Group, we included the expenses associated with a freeze which occurred during the POI, and removed the effect of erroneous crop adjustment amounts (*i.e.*, capitalizing more costs than the total accumulated amount) reported in the COP calculation.

4. Grupo Papagoyo

For Grupo Papagayo, we removed the effect of erroneous crop adjustment amounts (*i.e.*, capitalizing more costs than the total accumulated amount) reported in the COP calculation.

In order to calculate FMV, we made company-specific adjustments as described below:

1. Flores La Fragancio S.A.

For Flores La Fragancia S.A., we calculated FMV based on delivered prices to unrelated customers in the home market.

For home market price to purchase price comparisons, pursuant to section 773(a)(4)(B) of the Act and 19 CFR 353.56(a)(2), we made circumstance of sale adjustments, where appropriate, for credit expenses. We deducted home market packing costs and added U.S. packing costs.

For home market price to ESP comparisons, we deducted the weighted-average home market indirect selling expenses, including, where appropriate, inventory carrying costs, up to the amount of the greater of related party commissions or indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(1) (*See* the September 12, 1994, concurrence memorandum). We deducted home market packing costs and added U.S. packing costs.

For CV to purchase price comparisons, we made circumstance of sale adjustments, where appropriate, for credit expenses.

For CV to ESP comparisons, we made deductions, where appropriate, for credit expenses. We also deducted from CV the weighted-average home market indirect selling expenses, including inventory carrying costs, up to the amount of the greater of related party commissions or indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

2. Grupo Bojaca

For Grupo Bojaca, more than 90 percent of Grupo Bojaca's home market sales were found to be at prices below their COP. Therefore, in accordance with section 773(c) of the Act we disregarded all home market sales and calculated FMV based on CV.

For CV to purchase price comparisons, we made circumstance of sale adjustments, where appropriate, for credit expenses.

For CV to ESP comparisons, we made deductions, where appropriate, for credit expenses. We also deducted from CV the weighted-average home market indirect selling expenses, including inventory carrying costs, up to the amount of the greater of related party commissions or indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

3. Caicedo Group

For Caicedo Group, we calculated FMV based on delivered prices to unrelated customers in the home market. We excluded from our analysis home market sales that were ultimately exported.

For home market price to purchase price comparisons, pursuant to section 773(a)(4)(B) of the Act and 19 CFR 353.56(a)(2), we made circumstance of sale adjustments, where appropriate, for credit expenses and CFC fee. We deducted home market packing costs and added U.S. packing costs.

For home market price to ESP comparisons, we made deductions, where appropriate, for credit expenses. We also deducted the weighted-average home market indirect selling expenses, including, where appropriate, inventory carrying costs, up to the amount of the greater of related party commissions or indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(1). We deducted home market packing costs and added U.S. packing costs.

For CV to purchase price comparisons, we made circumstance of sale adjustments, where appropriate, for credit expenses and CFC fee.

For CV to ESP comparisons, we made deductions, where appropriate, for credit expenses. We also deducted from CV the weighted-average home market indirect selling expenses, including inventory carrying costs, up to the amount of the greater of related party commissions or indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

For comparisons involving ESP sales, we revised U.S.-incurred indirect selling expense to: (a) Include sales to local vendors in the calculation of the indirect selling expense ratio and (b) deduct U.S. inland freight expenses that were reported as indirect selling expenses.

4. Grupo Floramerica

For Grupo Floramerica, more than 90 percent of Grupo Floramerica's home market sales were found to be at prices below their COP. Therefore, in accordance with section 773(c) of the Act we disregarded all home market sales and calculated FMV based on CV.

For CV to ESP comparisons, we made deductions, where appropriate, for credit expenses. We also deducted from CV the weighted-average home market indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

5. Grupo Papagayo

For Grupo Papagayo, more than 90 percent of its home market sales were found to be at prices below their COP. Therefore, we disregarded all home market sales and calculated FMV based on CV.

Due to the deficiencies found in respondent's reported home market sales data, we disallowed home market inland freight, packing costs, indirect selling expenses, and imputed credit from the dumping margin calculation for purposes of the preliminary determination.

On September 9, 1994, Agrorosas submitted a letter containing some pre-verification corrections pertaining to its sales and cost data. Given the limited time available to the Department to examine the newly submitted information, this information is not used in the preliminary determination dumping margin. However, the newly submitted information will be subject to verification and will be considered in the final determination of this investigation.

For CV to purchase price comparisons, we made circumstances of sales adjustment for direct selling. We also added U.S. commissions.

No deductions were made for CV to ESP comparisons due to disallowing home market indirect selling expenses from the margin calculation.

6. Grupo Sagaro

For Grupo Sagaro, more than 90 percent of its home market sales were found to be at prices below their COP. Therefore, in accordance with section 773(c) of the Act we disregarded all home market sales and calculated FMV based on CV.

For CV to purchase price comparisons, we made circumstance of sale adjustments, where appropriate, for credit expenses.

For CV to ESP comparisons, we made deductions, where appropriate, for credit expenses and commissions. We also deducted from CV the weighted-average home market indirect selling expenses up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

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Third Country Versus Constructed Value

On March 30, 1994, counsel for 14 of the 16 respondents requested that the Department reject third-country sales and rely instead on constructed value as the basis for FMV.

The Department's normal preference, based on its regulations, is to utilize third-country sales rather than constructed value when there is a viable third country market. See 19 CFR 353.48(b). Respondents have urged departure from this practice, citing *Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Review* 55 FR 20491 (May 17, 1990)(*Flowers*). The Department determined in *Flowers* that departure from our normal practice was warranted after an analysis of three unusual factors present in that case. Respondents argue that the facts in this investigation present even more compelling reasons to reject third-country sales than were present in *Flowers*. In determining whether the circumstances in this case are such that it should fall under the exception established in *Flowers*, we have analyzed the information presented in light of the three factors set forth in *Flowers*: (1) Negative correlation of price and volume movements between markets; (2) peak to non-peak comparisons; and (3) the perishability of the subject merchandise.

As a threshold matter, we note that the record in this case is different from *Flowers* in that European markets play a relatively less important role in our analysis. In *Flowers*, the Department's analysis focused solely on a comparison of the U.S. market with European markets as the vast majority of third country markets under consideration were in Europe. The Department did not evaluate conditions in other markets. In this case, and the companion investigation in Ecuador, respondents reported significant sales to Argentina and Canada, as well as Europe. Respondents in this case have submitted additional information for all the relevant markets—Europe, Canada, and Argentina. However, it is not clear that the information submitted up to this point supports respondents' assertion that sales in the third country markets should not be compared to U.S. sales in this case.

Negative Correlation Factor

In *Flowers*, the Department found a negative correlation between price and volume movements in the United States and European markets. This negative correlation indicated that price differences between markets could either mask or exaggerate dumping. The Department determined that the negative correlation was caused by a number of elements, including: (1) The greater price and volume volatility of the U.S. market; (2) the sporadic, gift-giving nature of U.S. demand; (3) respondents' lack of access to the European auctions (the main distribution point for flowers in Europe), and (4) differing peak price periods.

Respondents argue that, in this case, there is similar evidence of a negative correlation of price and volume movements between the U.S. and third country markets. In support of their position, respondents have submitted several reports. A 1994 report by Professor Tayama analyzes, among other things, the consumption patterns for roses in the United States, Europe, Canada and Argentina, and compares seasonal and holiday-purchasing patterns in the markets. Tayama asserts that both Europe and Canada have mature and relatively stable markets because both markets are supply driven (*i.e.*, in times of peak production as supply increases, prices go down). In contrast, Tayama claims that the U.S. market is demand driven—the majority of sales are made for Valentine's Day when demand increases and prices rise. With regard to Argentina, Tayama states that roses are grown for home consumption and imports occur mainly during the winter months, as in Europe. Moreover, Tayama asserts, Argentina has a different seasonal and holiday pattern from the United States. No market, he states, has the extraordinary demand for roses that exists in the U.S. market on Valentine's Day.

Petitioners have countered Tayama's assertions with an August 10, 1994, submission which contains, among other things, a report by *Roses Inc.*, an association of U.S. rose producers. The *Roses Inc.* report raises questions about the conclusions in the Tayama report, asserting that: 1) there is a global market for roses which is driven by demand everywhere; and 2) key holiday periods are actually very similar between the United States and Europe—specifically that the highest prices in both the United States and Europe occur in February. Thus, we are not in a position to conclude that the Tayama report provides a sufficient basis to determine that comparison of U.S. sales to third country sales is inappropriate.

In support of the conclusions drawn in the Tayama report, respondents submitted the 1994 *Fresh Cut Roses: Issues in the Estimation of Dumping in the U.S. Market* (Botero Report) which contains a statistical analysis of the United States, European, and Canadian markets and seeks to demonstrate the lack of correlation between price movements in the third country and U.S. markets. The Botero Report provides three types of statistical analyses which, according to respondents, support their contention that third country prices should not be used due to the "different equilibrium conditions" of these markets as compared to the U.S. market for roses. First, Botero analyzes price movements within the United States, Europe and Canada, from which he concludes that different market forces are at work (*i.e.*, price and quantity movements within Europe and Canada are negatively correlated and price and quantity movements within the United States are positively correlated). Second, Botero analyzes price and quantity movements across markets and concludes that there is no correlation between the U.S. market and either the European or Canadian markets. Third, he estimates the price cycles for roses in the U.S., European and Canadian markets and concludes that "the seasonal patterns of the two markets [U.S. and European, U.S. and Canadian] are different and therefore monthly price comparisons do not reflect price discrimination." Botero asserts that these test results demonstrate that prices in these third country markets should not be compared to prices in the U.S. market to determine price discrimination.

We have reviewed the Botero Report and have concerns regarding the data and the statistical parameters used to perform the statistical analysis on European, Canadian and U.S. rose prices. For example, Dr. Botero's relied on prices that may not be comparable. U.S. prices for a single hybrid tea variety rose were compared to European prices for all hybrid tea variety roses; and U.S. import prices, rather than U.S. domestic prices, were compared to European domestic prices. These comparisons may be inappropriate—we have no basis to conclude that a single hybrid tea rose is representative of all hybrid tea roses, or that U.S. import prices are representative of U.S. domestic prices. Moreover, Dr. Botero's F-test results appear to be invalid. Dr. Botero apparently used the incorrect degrees of freedom—(k,n–2) instead of (k–1,n–2). More importantly, Dr. Botero appears to have misread the "F Table": he reported the value of $F_{n-2,k}$ at the 99 percent confidence level, rather than $F_{k-1,n-2}$ at the 99 percent confidence level. Finally, Dr. Botero provided no explanation of his use of a 99 percent confidence level.

In light of these questions, the Department, at this stage, finds the information on the record inconclusive as to whether the third country and U.S. markets are negatively correlated. We intend to further evaluate the Botero Report for purposes of making our final determination. Further details relating to this issue are set forth in the September 12, 1994, memorandum to Barbara Stafford.

Peak to Non-Peak Factor

Third country sales in *Flowers* were not made over the entire year. They were made only in peak months. The record established that Colombian growers had little access to the European auction system and were only able to export flowers to Europe during those months when domestic supply was low. On the other hand, the Colombian growers targeted 80 percent of their production to the U.S. market and made sales to the United States in every month. As a result, the Department determined that it was unable to make contemporaneous sales comparisons in all months and would be required to compare low-value U.S. sales in off-peak months with high-value third country sales in peak months.

The circumstances on the record in this case are somewhat different. One of the three companies reporting third country sales has year-round sales to a single third country market, while the other two companies have third country sales in every month in the markets selected by the Department pursuant to § 353.49(c). Therefore, it appears that the Department may have sufficient contemporaneous sales in the aggregate for all twelve months of the POI. Further, the Department has based FMV on two six-month averages; the use of such averages also should reduce any potential for distortion.

Perishability Factor

The third factor considered in *Flowers* was related to the role of perishability on production and sale. This factor included: (1) The extreme perishability of the subject merchandise; (2) the inability of producers to control short-term production; and (3) the inability to store or make alternative use of the product. The Department found that the respondents planned 80 percent of their production around the U.S. market and sold excess production in markets in which they did not necessarily plan to sell. These factors combined to create a "chance element" to third country sales which raised the concern that any observed price differences would be unrelated to dumping.

We note that there are substantial similarities between flowers and roses. First, roses, like flowers, are extremely perishable. Second, rose growers have relatively greater, though still minor, control over short-term production than flower growers because of their ability to pinch back buds. Third, as with flowers, roses cannot be stored and we note that there are only very minor alternative uses (*e.g.*, drying). While some respondents are able to sell a small percentage of their production to markets other than the United States as a regular part of their business plan, which reduces to some extent the "chance" element to selling excess production, we note that this was also true with some companies in *Flowers*. See *Methodological Issues Concerning Colombian Cut Flowers*, Sparks Commodities, Inc. 1989.

In view of the questions raised above, we conclude that, for the purpose of the preliminary determination, the evidence at this stage is not sufficient to justify departure from our normal practice of reliance on third country prices. However, we intend to revisit this issue in our final determination in light of further information and analysis with regard to the three factors set out in *Flowers* as well as any other facts that might be relevant on this issue.

Third Country Sales

For three of the 16 respondents, the home market was not viable; therefore, we based FMV on third country sales (*See* the September 12, 1994, memorandum from the team to Barbara R. Stafford). These three companies and their selected third country markets were: Grupo Clavecol (Argentina and Canada); Grupo Sabana (Canada); and Grupo Tropicales (Argentina and Germany). In accordance with 19 CFR 353.49(c), we selected for two of these respondents more than one third country because a single third country did not meet the Department's viability standards.

In accordance with 19 CFR 353.49, we selected the appropriate third country market(s) for each respondent based on the following criteria: similarity of merchandise sold in the third country to the merchandise exported to the United States, the volume of sales to the third country, and the similarity of market organization and development between the third country and U.S. markets. For a complete discussion of the selection of third country market(s), see the June 24, 1994, memorandum from the team to Barbara R. Stafford.

Based on petitioner's allegations that Grupo Tropicales was selling roses in Argentina at prices below its COP, and information on the record, the Department had a reasonable basis to suspect or believe that sales were made below cost and therefore initiated a COP investigation to determine whether Grupo Tropicales had Argentine sales that were made at prices less than their COP. Although Grupo Tropicales also had third country sales to Germany, we did not initiate a COP investigation on these sales because they were not included in petitioner's COP allegation (*See* the September 8, 1994, memorandum from Richard W. Moreland to Barbara R. Stafford).

For a discussion of our COP test methodology, see the "Home Market Sales" section above. We made no adjustments to the COP and CV data submitted by Grupo Tropicales.

In order to calculate FMV, we made company-specific adjustments as described below:

1. Grupo Clavecol

For Grupo Clavecol, we calculated FMV based on delivered prices to unrelated customers in Argentina and Canada.

For third country to purchase price comparisons, we made deductions for foreign inland freight, air freight, and brokerage and handling, where applicable. Pursuant to section 773(a)(4)(B) of the Act and 19 CFR 353.56(a)(2), we made circumstance of sale adjustments, where appropriate, for credit expenses. We deducted third country packing costs and added U.S. packing costs.

For third country to ESP comparisons, we made deductions, where appropriate, for foreign inland freight, air freight and brokerage and handling. We also deducted the weighted-average Argentine and Canadian indirect selling expenses, including, where appropriate, inventory carrying costs, up to the amount of the greater of related party commissions or indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(1). We deducted third country packing costs and added U.S. packing costs.

2. Grupo Sabana

For Grupo Sabana, we calculated FMV based on delivered prices to unrelated customers in Canada.

For third country price to purchase price comparisons, we made deductions for Canadian inland freight, air freight, Canadian import duties, U.S. brokerage and Colombian inland freight. Pursuant to section 773(a)(4)(B) of the Act and 19 CFR 353.56(a)(2), we made

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circumstance of sale adjustments, where appropriate, for credit expenses. We deducted third country packing costs and added U.S. packing costs.

For third country price to ESP comparisons, we made deductions, where appropriate, for Canadian inland freight, air freight, Canadian import duties, Canadian brokerage and Colombian inland freight. In addition, we made deductions for credit and direct selling expenses in Canada. We also deducted the weighted-average Canadian and Colombian indirect selling expenses, including, where appropriate, inventory carrying costs, up to the amount of the greater of related party commissions or indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(1). We deducted third country packing costs and added U.S. packing costs.

3. Grupo Tropicales

For Grupo Tropicales, we calculated FMV based on delivered prices to unrelated customers in Argentina and Germany.

For third country price to purchase price comparisons, we made deductions for foreign inland freight. Pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made circumstance of sale adjustments, where appropriate, for credit expenses. We deducted third country packing costs and added U.S. packing costs.

For third country price to ESP comparisons, we made deductions, where appropriate, for foreign inland freight. In addition, we made deductions for credit. We also deducted the weighted-average Argentine and German indirect selling expenses, including, where appropriate, inventory carrying costs, up to the amount of the indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(1). We deducted third country packing costs and added U.S. packing costs.

Constructed Value

For three of the 16 respondents, we calculated FMV based directly on CV, in accordance with section 773(e) of the Act, because these respondents did not have adequate sales in either the home market nor in any third country markets during the POI. These three companies were: Agrorosas S.A.; Flores Mocari S.A. and Rosex LTDA. We calculated CV based on the sum of respondent's cost of cultivation, plus general expenses, profit and U.S. packing. For general expenses, we used the greater of the reported general expenses or the statutory minimum of ten percent of the cost of cultivation. For profit, we used the greater of the weighted average third country profit during the POI or the statutory minimum of eight percent of the cost of cultivation and total SG&A expenses, in accordance with 19 CFR 353.50(a)(2).

For these respondents, we based the amortization expense upon amounts normally recorded by each company in their usual record keeping. We rejected adjustments that companies made to the amortization expense solely for purposes of this investigation. We also made specific adjustments to respondents' CV data as described below:

1. Agrorosas S.A.

For Agrorosas S.A., we did not consider the minor pre-verification correction filed on September 9, 1994 for the preliminary determination. This data will be fully analyzed for our final determination.

2. Flores Mocari S.A.

For Flores Mocari S.A., we revised the calculation of interest expense to express the expense as a per-unit amount.

3. Rosex LTDA

For Rosex LTDA, we also revised the calculation of interest expense to express the expense as a per unit amount.

In order to calculate FMV, we made company-specific adjustments as described below:

1. Agrorosas S.A.

For CV to purchase price comparisons, we made circumstances of sale adjustments, where appropriate, for credit expenses.

For CV to ESP comparisons, we made deductions, where appropriate, for credit expenses and commissions. We also deducted from CV the weighted-average U.S. indirect selling expenses up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

2. Flores Mocari S.A.

For CV to purchase price comparisons, we made circumstances of sale adjustments, where appropriate, for credit expenses.

For CV to ESP comparisons, we made deductions, where appropriate, for credit expenses and commissions. We also deducted from CV the weighted-average U.S. indirect selling expenses, including inventory carrying costs, up to the amount of the greater of related party commissions or indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

3. Rosex LTDA

For CV to purchase price comparisons, we made circumstance of sale adjustments, where appropriate, for credit expenses.

For CV to ESP comparisons, we made deductions, where appropriate, for credit expenses and commissions. We also deducted from CV the weighted-average home market indirect selling expenses up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

Currency Conversion

Regarding transactions in third country currencies, we made currency conversions based on the official exchange rates in effect during the month of the U.S. sales as certified by the Federal Reserve Bank.

Because certified exchange rates for Colombia were unavailable from the Federal Reserve, we made currency conversions for expenses denominated in Colombian pesos based on the official monthly exchange rates in effect on the dates of the U.S. sales as published by the International Monetary Fund.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Critical Circumstances

In the petition, petitioner alleged that "critical circumstances" exist with respect to importation of roses. However, we did not initiate a critical circumstances investigation because, since roses are extremely perishable, it is not possible to accumulate an inventory of roses in order to evade a potential antidumping duty order. Therefore, we determined that an allegation that critical circumstances exist is without merit (*See* the September 12, 1994, concurrence memorandum).

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of fresh cut roses from Colombia, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The

weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Margin percent
Agrorosas	4.93
Grupo Papagayo (and its related farms Agricola Papagayo, Inversiones Calypso S.A., Omni Flora Farms Inc., and Perci S.A.)	8.02
Flores Mocari S.A. (and its related farms Cultivos Miramonte and Devor Colombia)	13.86
Grupo Sabana (and its related farms Flore de la Sabana S.A. and Roselandia S.A.)	34.35
Flores la Frangancia	27.60
Grupo Benilda (and its related farms Agricola La Maria S.A., Agricola La Celestina Ltda., and Agricola Benilda Ltda.)	55.94
Grupo Clavecol (and its related farms Claveles Colombianos Ltda., Sun Flowers Ltda., Fantasia Flowers Ltda., Splendid Flowers Ltda.)	4.58
Floramerica Group (and its related farms Floramerica S.A. (Santa Lucia and Santa Barbara Farms), Jardines de Colombia Ltda., Flores Las Palmas Ltda., Cultivos del Caribe Ltda., Jardines del Valle Ltda., and Cultivos San Nocolas Ltda.)	10.55
Rosex (and its related farms Rosex Ltda. (La Esquina and Paraiso Farms), Induflora Ltda., and Rosas Sausalito Ltda.)	13.96
Grupo Sagaro (and its related farms Flores Sagaro S.A. and Las Flores S.A.)	5.26
Grupo Tropicales (and its related farms Rosas Colombianas Ltda., Happy Candy Ltda., Mercedes Ltda., and Flores Tropicales Ltda.)	50.96
Grupo Prisma (and its related farms Flores del Campo Ltda., Flores Prisma S.A., Flores Acuarela S.A., Flores el Pincel S.A., Rosas del Colombia Ltda., Agropecuaria Cuernavaca Ltda.)	55.94
Grupo Bojaca (and its related farms Agricola Bojaca Ltda., Universal Flowers, and Plantas y Flores Tropicales Ltda. (Tropiflora))	21.21
Andes Group (and its related farms Flores Horizonte, Cultivos Buenavista, Flores de los Andes, and Inversiones Penasblancas)	55.94
Caicedo Group (and its related farms Agrobosque, Productos el Rosal S.A., Productos el Zorro S.A., Exportaciones Bochia S.A.—Flora Ltda., Flores del Cauca, Aranjuez S.A., Andalucia S.A., Inverfloral S.A., and Great America Bouquet)	29.60
Grupo Intercontinental (and its related farms Flora Intercontinental and Flores Aguablanca)	55.94
All Others	33.87

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry, before the later of 120 days after the date of the preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than October 17, 1994, and rebuttal briefs no later than October 24, 1994. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on October 25, 1994, at 9:30 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice in the **Federal Register**. Request should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentation will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15(a)(4).

Dated: September 12, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–23195 Filed 9–19–94; 8:45 am]

BILLING CODE 3510–DS–P

(A–331–801)

Preliminary Determination of Sales at Less Than Fair Value: Fresh Cut Roses From Ecuador

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 20, 1994.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1776.

PRELIMINARY DETERMINATION: We preliminarily determine that fresh cut roses (roses) from Ecuador are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930 (the Act), as amended. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on March 7, 1994 (59 FR 11771, March 14, 1994), the following events have occurred.

On March 31, 1994, the U.S. International Trade Commission (ITC) issued an affirmative preliminary determination.

On April 13, 1994, three companies, the Caicedo Group, Hilsea Investments Ltd. (Hilsea), and Quitoflores, requested that they be excluded from any potential antidumping duty order issued as a result of this investigation. Due to constraints on the Department's administrative resources, we were unable to investigate companies requesting to be excluded from the potential order or requesting to receive a questionnaire on a voluntary basis (*See* the May 2, 1994, memorandum from the team to Barbara R. Stafford).

On April 19, 1994, the Department decided to collect constructed value (CV) information from all respondents in addition to home market or, where appropriate, third country sales information (*See* the April 19, 1994, memorandum from the team to Barbara R. Stafford).

On May 5, 1994, the Department issued sales and cost questionnaires to the following four Ecuadorian companies: Arbusta-Agritab (Arbusta), Inversiones Floricola S.A. (Floricola).

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Florin S.A. (Florinsa), and Guanguilqui Agro Industrial S.A. (Guaisa). These companies accounted for approximately 40 percent of the exports of the subject merchandise during the period of investigation (POI). Although the Department "normally will examine not less than 60 percent of the dollar value of volume of the merchandise sold" during the POI, 19 CFR 353.42 (b)(1), due to the limited administrative resources, the Department chose to examine less than 60 percent (*See* the May 3, 1994, memorandum from David L. Binder to Richard W. Moreland).

On June 7, 1994, the Department relieved all respondents from the requirement of reporting sales of roses imported and/or sold as part of bouquets (*See* the June 7, 1994, memorandum from the team to Barbara R. Stafford).

On June 14, 1994, the Department selected the appropriate third country markets for all four of the respondents (*See* the June 14, 1994, memorandum from the team to Barbara R. Stafford). However, since respondents argued that third country markets were fundamentally different from the U.S. market, it was decided that the final basis for foreign market value (FMV) for the respondents (either third country sales or CV) would not be determined until more information was received (*See* the "Third Country Sales Versus Constructed Value" section of this notice for further discussion).

On June 24, 1994, the Floral Trade Council, petitioner in this investigation, requested a postponement of the preliminary determination until September 12, 1994, pursuant to 19 CFR 353.15(c) (1994). The Department granted this request on June 28, 1994 (59 FR 34409, July 5, 1994).

Also, on June 24, 1994, the Department instructed respondents to report monthly-average price data for the U.S. and third country markets (*See* the June 24, 1994, memorandum from the team to Barbara R. Stafford).

On July 25, 1994, Floricola, one of the four respondents, submitted an amendment to its questionnaire response. In that amendment, Floricola stated that, based on further review, it did not have viable third country markets.

Respondents submitted responses to the Department's sales and cost questionnaires in May, June, and July 1994. Hilsea also submitted a voluntary response to section A on May 26, 1994. Because the Department determined that it did not have the administrative resources to accept voluntary responses, Hilsea's response was returned on June 3, 1994.

The Department issued deficiency sales and cost questionnaires in June, July, August, and September 1994. Respondents submitted their responses to these deficiency sales and cost questionnaires in June and August 1994. Responses to the September deficiency letters are due later this month.

On September 12, 1994, the Department decided to base FMV for Arbusta and Guaisa on third country sales (*See* the September 12, 1994, memorandum from the team to Barbara R. Stafford). For a further discussion, see the "Third Country Versus Constructed Value" section of this notice.

Scope of Investigation

The products covered by this investigation are fresh cut roses, including sweethearts or miniatures, intermediates, and hybrid teas, whether imported as individual blooms (stems) or in bouquets or bunches. Roses are classifiable under subheadings 0603.10.6010 and 0603.10.6090 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). The *HTSUS* subheadings are provided for convenience and customs purposes. The written description of the scope of this investigation is dispositive.

Period of Investigation

The Department initiated this investigation using our standard six-month POI from September 1, 1993, to February 28, 1994. On April 5, 1994, petitioner submitted comments on the POI. On April 11, 1994, respondents also submitted comments on the POI. On April 14, 1994, the Department altered the POI to calendar year 1993 because of the seasonal nature of sales and production in the rose industry (*See* the April 14, 1994, memorandum from the team to Richard W. Moreland).

In addition, for purposes of price-to-price comparisons, we are basing FMV on two six month periods: January 1, 1993, through June 30, 1993, and July 1, 1993, through December 31, 1993. For further discussion of these periods, see the September 12, 1994, concurrence memorandum.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available (BIA) is appropriate for sales of the subject merchandise by Florinsa.

In assigning BIA, the Department applies a two-tier methodology based on the degree of respondent's cooperation. In the first tier, the Department normally assigns higher margins (*i.e.*, margins based on more adverse assumptions) for those respondents which did not cooperate in an investigation or which otherwise impede the proceeding. If a respondent is deemed as non-cooperative, the Department bases the preliminary margin for the relevant class or kind of merchandise on the higher of: (1) the highest margin in the petition or (2) the highest calculated margin of any respondent within the country that supplied adequate responses for the relevant class or kind of merchandise.

In the second tier, the Department assigns lower margins to those respondents who substantially cooperate in an investigation. These margins are based on the higher of: (1) The highest calculated margin for any respondent within that country that supplied adequate information for the relevant class or kind of merchandise or (2) the average margin of the margins in the petition (*See, e.g.*, Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992 (May 3, 1989)).

The Department's two-tiered methodology for assigning BIA has been upheld by the U.S. Court of Appeals for the Federal Circuit (*See Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993); *See also Krupp Stahl AG* v. *United States*, 822 F. Supp. 789 (CIT 1993)).

We have determined that Florinsa's original and deficiency questionnaire responses were unusable for the preliminary determination because they contain significant deficiencies (*See* the September 12, 1994, memorandum from David L. Binder to Barbara R. Stafford). However, because Florinsa responded to our requests for information, we find that it has been substantially cooperative for purposes of this preliminary determination. Accordingly, we used as second-tier BIA for this respondent the average of the margins contained in the petition, which is 84.72 percent. This margin is higher than the highest margin calculated for any respondent in this investigation.

Furthermore, we have issued a supplemental deficiency letter to Florinsa. If this respondent submits an adequate and timely response to this letter, we will conduct verification for Florinsa and will consider its information for purposes of the final determination.

Such or Similar Comparisons

We have determined that all roses covered by this investigation comprise two categories of "such or similar" merchandise: culls and export-quality roses. None of the respondents reported sales of culls in the United States. Therefore, no comparisons in this such or similar category were made. Regarding export quality roses, where possible, we made comparisons of identical merchandise. Where there were no sales of identical merchandise in the home market or third country market to compare to U.S. sales, we made similar merchandise comparisons on the basis of: (1) form (*e.g.*, as part of a bouquet, an individual stem, etc.), (2) type (*e.g.*, hybrid tea, sweetheart, etc.), (3) color, (4) stem length, and (5) variety. We did not make any adjustments for differences in the physical characteristics of the merchandise because respondents reported no cost differences between the varieties.

Fair Value Comparisons

To determine whether sales of roses from Ecuador to the United States were made at less than fair value, we compared the United States price (USP) to the FMV for all non-BIA respondents, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For sales by Arbusta and Guaisa, we based USP on purchase price, in accordance with section 772(b) of the Act, when the subject merchandise was sold to unrelated purchasers in the United States prior to importation and when exporter's sales price (ESP) methodology was not otherwise indicated.

In addition, for Arbusta, Guaisa, and Floricola, where sales to the first unrelated purchaser took place after importation into the United States, we also based USP on ESP, in accordance with section 772(c) of the Act.

During the POI, each of the respondents paid commissions to related parties in the United States. We determined that these commissions were directly related to the sales under consideration. We also tested these commissions for these respondents to determine whether they were paid at arm's length using the criteria set forth in the Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Belgium (56 FR 56359, November 4, 1991). Where we found that they were paid at arm's length, we deducted them from USP. However, we found that respondents used these commissions as a mechanism for reimbursing their related parties for their actual expenses. Accordingly, in order to avoid double-counting, where the actual expenses of the related party were less than the commissions, we deducted only the commissions. Where the commissions were less than the actual expenses, we also deducted the amount by which the actual expenses exceeded the commissions (*See* the September 12, 1994, concurrence memorandum).

In addition, each of the respondents classified credits related to quality problems with the merchandise as warranty expenses. However, because these quality-related credits functioned as price reductions, we reclassified them as such.

Finally, none of the respondents reported inventory carrying costs on their ESP sales. Accordingly, we calculated these costs using an inventory carrying period of seven days, which, due to the perishable nature of the product, is the maximum amount of time that can transpire between the time a rose is cut and when it must be sold to the ultimate customer, according to a public report by Harry K. Tayama, Ph.D., submitted in the companion investigation on fresh cut roses from Colombia and placed, as well, on the public record for this investigation.

For all U.S. prices, we used monthly USPs, because we determined that monthly prices are representative of the transactions under investigation (*See* the September 12, 1994, concurrence memorandum).

We made company-specific adjustments, as follows:

1. Arbusta

For Arbusta, we calculated purchase price based on packed F.O.B. Quito prices to unrelated customers. In accordance with section 772(d)(2)(A) of the Act, we made deductions, where appropriate, for foreign inland freight. We also made deductions for export taxes imposed by the government of Ecuador, in accordance with section 772(d)(2)(B) of the Act.

We calculated ESP based on packed prices to unrelated customers in the United States. We made deductions, where appropriate, for quality-related credits, foreign inland freight, export taxes, air freight, U.S. customs duties, U.S. brokerage and handling expenses, U.S. inland freight, and credit expenses. Also, as described above, we deducted the greater of related party commissions or indirect selling expenses.

Arbusta failed to report foreign inland freight expenses for a small number of transactions in its ESP sales listing. As BIA for these expenses, we assigned the highest freight amount for any other of Arbusta's ESP transactions.

Regarding export taxes, Arbusta did not report these taxes in its sales listing. Because the taxes are included in the USP, we, therefore, calculated them based on the formula given in Arbusta's response.

Arbusta calculated U.S. customs duties for its sales agents in Miami on the basis of sales volume. Because these duties were incurred on the basis of sales value, we recalculated them accordingly.

Arbusta calculated credit expenses using an interest rate based, in part, on loans taken outside the POI. Therefore, we revised the interest rate to reflect only POI-related borrowings and recalculated credit expenses using this revised rate.

Regarding indirect selling expenses in Ecuador, we based these expenses on BIA because Arbusta did not report them in its sales listing. As BIA, we included the per unit expense reported in Arbusta's calculation of CV. However, because Arbusta did not include the indirect selling expenses of one of its four related farms, as an additional BIA amount, we divided the expenses of the other three related farms by three and added this to the total expense amount.

Regarding indirect selling expenses incurred by Arbusta's related party in New York, we determined that Arbusta's calculations contained a number of errors. Accordingly, we based these expenses on BIA. As BIA, we used the single highest amount reported for any sales transaction by this related party.

Regarding indirect selling expenses incurred by Arbusta's other U.S. related parties, Arbusta reported monthly indirect selling expenses instead of a yearly average. Accordingly, we recalculated the expenses reported for one of these parties as a percentage of annual sales value. However, the expenses reported for the other related party appeared to pertain to another expense, unrelated to indirect selling expenses. Therefore, we based the calculation of this expense on BIA for sales through this company. As BIA, we applied the annual percentage noted above.

2. Floricola

For Floricola, we calculated ESP based on packed prices to unrelated customers in the United States. We made deductions, where appropriate, for quality-related credits, including billing and other credits, foreign inland freight, export taxes imposed by the government of Ecuador, air freight, U.S. customs duties, U.S. Department of Agriculture inspection fees, U.S. inland

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freight, and credit expenses. We also made deductions for U.S., Panamanian, and Ecuadorian indirect selling expenses, including inventory carrying costs and brokerage and handling expenses, because these services were performed in-house.

Floricola did not report export taxes. Because it is clear from other questionnaire responses that all exporters pay this tax and that the tax is included in the USP, as BIA, we calculated it using the formula provided in Arbusta's response.

3. Guaisa

For Guaisa, we calculated purchase price based on packed F.O.B. Quito prices to unrelated customers. We made deductions, where appropriate, for quality-related credits and foreign inland freight. We also made deductions for export taxes imposed by the government of Ecuador. We corrected respondent's inaccurate foreign inland freight calculation by reallocating truck maintenance expenses over the entire POI.

We calculated ESP based on packed prices to unrelated customers in the United States. We made deductions, where appropriate, for quality-related credits, foreign inland freight, air freight, U.S. customs duties, U.S. brokerage and handling expenses, and credit expenses. Also, as described above, we deducted the greater of related party commissions or indirect selling expenses.

Guaisa reported that it earned a rebate, as well as six free round-trip tickets, from its air freight carrier based on its volume of sales to the United States during the POI. We deducted the rebate from Guaisa's air freight calculations. However, because it is not clear that the airline tickets affect air freight costs, we did not adjust air freight for the value of these tickets.

Finally, Guaisa did not include the administrative expenses of its U.S. sales subsidiary in its calculation of U.S. indirect selling expenses. Moreover, Guaisa included employee commissions in its indirect selling expenses. Because the U.S. subsidiary is solely a sales organization, we reclassified its administrative expenses as indirect selling expenses, and included these expenses in our calculations. In addition, we reclassified employee commissions as commission expenses and made a separate adjustment for them.

Foreign Market Value

In calculating FMV, wherever there were no sales of comparable merchandise in the home market or third country markets, we based FMV on CV. In addition, in accordance with 19 CFR 353.58, for price-to-price comparisons, we compared U.S. sales to third country sales made at the same level of trade, where possible.

In order to determine whether there were sufficient sales of fresh cut roses in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of export quality roses to the volume of third country sales of export quality roses in accordance with section 773(a)(1)(B) of the Act. Based on this comparison, we determined that none of the three non-BIA respondents had a viable home market.

For sales made by Arbusta and Guaisa, we based FMV on third country sales or CV, when there were no third country sales of comparable merchandise. In accordance with 19 CFR 353.49(c), we selected for these respondents more than one third country because a single third country did not meet the Department's viability standards.

In accordance with 19 CFR 353.49(b), we selected the appropriate third country markets for Arbusta and Guaisa based on the following criteria: similarity of merchandise sold in the third country to the merchandise exported to the United States, the volume of sales to the third country, and the similarity of market organization between the third country and U.S. markets. For a complete discussion of the selection of third country markets, see the June 14, 1994, memorandum from the team to Barbara R. Stafford.

For all transactions made by Floricola, we based FMV on CV in accordance with sections 773(a)(2) and (e) of the Act, because it did not have sufficient sales of such or similar merchandise in the home market or in any third country markets during the POI. Additionally, we based FMV on CV for a portion of Arbusta's and Guaisa's transactions, because these sales had no matches of such or similar merchandise in the third country markets in the same period as the sales made in the United States. For a further discussion, see the "Third Country Sales Versus Constructed Value" section of this notice.

For all CV transactions, for general expenses, which includes selling and financial expenses (SG&A), we used the greater of the reported general expenses or the statutory minimum of ten percent of the cost of cultivation. For Arbusta's and Guaisa's profit, we used the greater of the weighted-average third country profit during the POI or the statutory minimum of eight percent of the cost of cultivation and general expenses, in accordance with section 773(e)(B) of the Act. For Floricola, we based profit on the statutory minimum of eight percent of the cost of cultivation and total general expenses, in accordance with section 773(e)(B) of the Act. We based the amortization expense upon amounts normally recorded by each company in their usual recordkeeping. We rejected adjustments that respondents made to the amortization expense solely for purposes of this investigation. We also made specific adjustments to respondents' CV data as described below:

1. Guaisa

For Guaisa, we 1) reallocated general and administrative expenses among products based upon the area under cultivation; 2) removed the effect of a special adjustment made to eliminate the costs associated with a severe windstorm; and 3) reallocated financial expenses among products based upon the area under cultivation.

2. Floricola

For Floricola, we removed the reported net interest income credit from the CV calculation because we only allow interest income to offset the interest expense.

In order to calculate FMV, we made company-specific adjustments as follows:

1. Arbusta

For Arbusta, we based FMV on packed prices to unrelated customers in Argentina and Germany.

For third country price-to-purchase price comparisons, we deducted post-sale home market movement charges from FMV under the circumstance-of-sale provision of 19 CFR 353.56. This adjustment included home market inland freight. Pursuant to 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses.

For third country price-to-ESP comparisons, we made deductions for foreign inland freight and credit expenses. We also made a deduction for inventory carrying costs based on an inventory carrying period of seven days, as was done for the calculation of USP. We disallowed Arbusta's claimed indirect selling expense adjustment because Arbusta failed to provide an adequate narrative description or a worksheet showing its calculations.

We recalculated credit expenses using Arbusta's POI short-term interest rate as discussed in the "United States Price" section of this notice.

For all price-to-price comparisons, we deducted third country packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act. We recalculated packing expenses in both markets to exclude depreciation on one of Arbusta's packing facilities. In addition, we recalculated these expenses on an annual basis because Arbusta's monthly calculations contained adjusting entries which were not properly matched with the month in which the expense was incurred.

For CV-to-purchase price comparisons, we made circumstance of sale adjustments, where appropriate, for credit expenses.

For CV-to-ESP comparisons, we made deductions, where appropriate, for credit expenses. We also deducted from CV the weighted-average third country market indirect selling expenses, including inventory carrying costs, up to the amount of the greater of related party commissions or indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2). We added U.S. packing expenses, in accordance with section 773(a)(1) of the Act.

2. Guaiso

For Guaisa, we based FMV on packed prices to unrelated customers in Germany and Sweden.

For third country price-to-purchase price comparisons, we deducted quality-related credits. We also deducted post-sale home market movement charges from FMV under the circumstance-of-sale provision of 19 CFR 353.56. This adjustment included foreign inland freight. Pursuant to 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses and commissions paid to an unrelated party. We deducted third country packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

For third country price-to-ESP comparisons, we made deductions for foreign inland freight, credit expenses and commissions paid to an unrelated party. We also deducted the weighted-average third country indirect selling expenses, up to the amount of the greater of related party commissions or indirect selling expenses, including invoice carrying costs, incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(1) (*See* the September 12, 1994, concurrence memorandum). Inventory carrying costs were based on an inventory carrying period of seven days, as was done for the calculation of USP.

Regarding credit expenses, Guaisa incorrectly calculated the credit period for certain third country transactions. In addition, Guaisa calculated its short-term interest rate based on borrowings from related parties. Accordingly, as BIA, we used the shortest credit period reported for any third country sale. We then recalculated Guaisa's third country and U.S. purchase price credit expenses using its interest rate paid to unrelated parties.

For CV-to-purchase price comparisons, we made circumstance of sale adjustments where appropriate, for credit expenses.

For CV-to-ESP comparisons, we made deductions, where appropriate, for credit expenses. We also deducted from CV the weighted-average third country market indirect selling expenses, including inventory carrying costs, up to the amount of the greater of related party commissions or indirect selling expenses, including indirect carrying costs, incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2). We added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

3. Floricola

For Floricola, we based FMV on CV. The CV includes the cost of materials and cultivation of the merchandise exported to the United States, plus SG&A expenses, profit, and packing. We used U.S. selling expenses in our CV calculation instead of using Floricola's home market selling expenses. For the final determination, however, we will revisit the issue of the appropriate selling expenses for use in Floricola's CV calculation.

We deducted credit expenses. We also deducted U.S. indirect selling expenses, including inventory carrying costs, in accordance with 19 CFR 353.56(b)(1) (*See* the September 12, 1994, concurrence memorandum).

We also added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

Third Country Versus Constructed Value

On March 30, 1994, counsel for 14 of the 16 Colombian respondents in the companion investigation on fresh cut roses from Colombia requested that the Department reject third-country sales and rely instead on constructed value as The basis for FMV. We considered this issue for this case as well.

The Department's normal preference, based on its regulations, is to utilize third-country sales rather than constructed value when there is a viable third country market. See 19 CFR 353.48(b). Respondents have urged departure from this practice, citing Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Review 55 FR 20491 (May 17, 1990) (*Flowers*). The Department determined in *Flowers* that departure from our normal practice was warranted after an analysis of three unusual factors present in that case. Respondents argue that the facts in this investigation present even more compelling reasons to reject third-country sales than were present in *Flowers*. In determining whether the circumstances in this case are such that it should fall under the exception established in *Flowers*, we have analyzed the information presented in light of the three factors set forth in *Flowers*: 1) negative correlation of price and volume movements between markets; 2) peak to non-peak comparisons; and 3) the perishability of the subject merchandise.

As a threshold matter, we note that the record in this case is different from *Flowers* in that European markets play a relatively less important role in our analysis. In *Flowers*, the Department's analysis focused solely on a comparison of the U.S. market with European markets as the vast majority of third country markets under consideration were in Europe. The Department did not evaluate conditions in other markets. In this case, and the companion investigation in Colombia, respondents reported significant sales to Argentina and Canada, as well as Europe. Respondents in this case have submitted additional information for all the relevant markets—Europe, Canada, and Argentina. However, it is not clear that the information submitted up to this point supports respondents' assertion that sales in the third country markets should not be compared to U.S. sales in this case.

Negative Correlation Factor

In *Flowers*, the Department found a negative correlation between price and volume movements in the United States and European markets. This negative correlation indicated that price differences between markets could either mask or exaggerate dumping. The Department determined that the negative correlation was caused by a number of elements, including: 1) the greater price and volume volatility of the U.S. market; 2) the sporadic, gift-giving nature of U.S. demand; 3) respondents' lack of access to the European auctions (the main distribution point for flowers in Europe); and 4) differing peak price periods.

Respondents argue that, in this case, there is similar evidence of a negative correlation of price and volume

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movements between the U.S. and third country markets. In support of their position, respondents have submitted several reports. A 1994 report by Professor Tayama analyzes, among other things, the consumption patterns for roses in the United States, Europe, Canada and Argentina, and compares seasonal and holiday purchasing patterns in the markets. Tayama asserts that both Europe and Canada have mature and relatively stable markets because both markets are supply driven (*i.e.*, in times of peak production as supply increases, prices go down). In contrast, Tayama claims that the U.S. market is demand driven—the majority of sales are made for Valentine's Day when demand increases and prices rise. With regard to Argentina, Tayama states that roses are grown for home consumption and imports occur mainly during the winter months, as in Europe. Moreover, Tayama asserts, Argentina has a different seasonal and holiday pattern from the United States. No market, he states, has the extraordinary demand for roses that exists in the U.S. market on Valentine's Day.

Petitioners have countered Tayama's assertions with an August 10, 1994, submission which contains, among other things, a report by *Roses Inc.*, an association of U.S. rose producers. The *Roses Inc.* report raises questions about the conclusions in the Tayama report, asserting that: 1) there is a global market for roses which is driven by demand everywhere; and 2) key holiday periods are actually very similar between the United States and Europe—specifically that the highest prices in both the United States and Europe occur in February. Thus, we are not in a position to conclude that the Tayama report provides a sufficient basis to determine that comparison of U.S. sales to third country sales is inappropriate.

In support of the conclusions drawn in the Tayama report, respondents submitted the 1994 *Fresh Cut Roses: Issues in the Estimation of Dumping in the U.S. Market* (Botero Report) which contains a statistical analysis of the United States, European, and Canadian markets and seeks to demonstrate the lack of correlation between price movements in the third country and U.S. markets. The Botero Report provides three types of statistical analyses which, according to respondents, support their contention that third country prices should not be used due to the "different equilibrium conditions" of these markets as compared to the U.S. market for roses. First, Botero analyzes price movements within the United States, Europe and Canada, from which he concludes that different market forces are at work (*i.e.*, price and quantity movements within Europe and Canada are negatively correlated and price and quantity movements within the United States are positively correlated). Second, Botero analyzes price and quantity movements across markets and concludes that there is no correlation between the U.S. market and either the European or Canadian markets. Third, he estimates the price cycles for roses in the U.S., European and Canadian markets and concludes that "the seasonal patterns of the two markets [U.S. and European, U.S. and Canadian] are different and therefore monthly price comparisons do not reflect price discrimination." Botero asserts that these test results demonstrate that prices in these third country markets should not be compared to prices in the U.S. market to determine price discrimination.

We have reviewed the Botero Report and have concerns regarding the data and the statistical parameters used to perform the statistical analysis on European, Canadian and U.S. rose prices. For example, Dr. Botero relied on prices that may not be comparable. U.S. prices for a single hybrid tea variety rose were compared to European prices for all hybrid tea variety roses; and U.S. import prices, rather than U.S. domestic prices, were compared to European domestic prices. These comparisons may be inappropriate—we have no basis to conclude that a single hybrid tea rose is representative of all hybrid tea roses, or that U.S. import prices are representative of U.S. domestic prices. Moreover, Dr. Botero's F-test results appear to be invalid. Dr. Botero apparently used the incorrect degrees of freedom—(k,n-2) instead of (k-1,n-2). More importantly, Dr. Botero appears to have misread the "F Table": he reported the value of $F_{n-2,k}$ at the 99 percent confidence level, rather than $F_{k-1,n-2}$ at the 99 percent confidence level. Finally, Dr. Botero provided no explanation of his use of a 99 percent confidence level.

In light of these questions, the Department, at this stage, finds the information on the record inconclusive as to whether the third country and U.S. markets are negatively correlated. We intend to further evaluate the Botero Report for purposes of making our final determination. Further details relating to this issue are set forth in the September 12, 1994, memorandum to Barbara Stafford.

Peak to Non-Peak Factor

Third country sales in *Flowers* were not made over the entire year. They were made only in peak months. The record established that Colombian growers had little access to the European auction system and were only able to export flowers to Europe during those months when domestic supply was low. On the other hand, the Colombian growers targeted 80 percent of their production to the U.S. market and made sales to the United States in every month. As a result, the Department determined that it was unable to make contemporaneous sales comparisons in all months and would be required to compare low-value U.S. sales in off-peak months with high-value third country sales in peak months.

The circumstances on the record in this case are somewhat different. One of the three companies reporting third country sales has year-round sales to a single third country market, while the other two companies have third country sales in every month in the markets selected by the Department pursuant to § 353.49(c). Therefore, it appears that the Department may have sufficient contemporaneous sales in the aggregate for all twelve months of the POI. Further, the Department has based FMV on two six-month averages; the use of such averages also should reduce any potential for distortion.

Perishability Factor

The third factor considered in *Flowers* was related to the role of perishability on production and sale. This factor included: 1) the extreme perishability of the subject merchandise; 2) the inability of producers to control short-term production; and 3) the inability to store or make alternative use of the product. The Department found that the respondents planned 80 percent of their production around the U.S. market and sold excess production in markets in which they did not necessarily plan to sell. These factors combined to create a "chance element" to third country sales which raised the concern that any observed price differences would be unrelated to dumping.

We note that there are substantial similarities between flowers and roses. First, roses, like flowers, are extremely perishable. Second, rose growers have relatively greater, though still minor, control over short-term production than flower growers because of their ability to pinch back buds. Third, as with flowers, roses cannot be stored and we note that there are only very minor alternative uses (*e.g.*, drying). While some respondents are able to sell a small percentage of their production to markets other than the United States as a regular part of their business plan, which reduces to some extent the "chance" element to selling excess production, we note that this was also true with some companies in *Flowers*. See Methodological Issues Concerning Colombian Cut Flowers, Sparks Commodities, Inc. 1989.

In view of the questions raised above, we conclude that, for the purpose of the preliminary determination, the evidence at this stage is not sufficient to justify departure from our normal practice of reliance on third country prices. However, we intend to revisit this issue in our final determination in light of further information and analysis with regard to the three factors set out in *Flowers* as well as any other facts that might be relevant on this issue.

Currency Conversion

Because certified exchange rates for Ecuador were unavailable from the Federal Reserve, we made currency conversions for expenses denominated in Ecuadorian sucres based on the official monthly exchange rates in effect on the dates of the U.S. sales as published by the International Monetary Fund.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Critical Circumstances

In the petition, petitioner alleged that "critical circumstances" exist with respect to importation of roses. However, we did not initiate a critical circumstances investigation because, since roses are extremely perishable, it is not possible to accumulate an inventory of roses in order to evade a potential antidumping duty order. Therefore, we determined that an allegation that critical circumstances exist is without merit (*See* the September 12, 1994, concurrence memorandum).

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of fresh cut roses from Ecuador, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Margin percent
Arbusta-Agritab (and its related farms Agrisabe, Agritab, and Flaris)	39.85
Florin S.A. (and its related farms Cuentas En Participacion Florinsa-Ertego (Florinsa Cotopaxi) and Extlodec)	84.72
Guanguilqui Agro Industrial S.A. (and its related farm Indipasisa)	20.60
Inversiones Floricola S.A. (and its related farm Flores Mitad Del Mundo S.A.)	10.34
All others	49.76

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry, before the later of 120 days after the date of the preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than October 17, 1994, and rebuttal briefs no later than October 24, 1994. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on October 25, 1994, at 9:30 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice in the **Federal Register**. The request should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15(a)(4).

Dated: September 12, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–23196 Filed 9–19–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Marine Mammals

[I.D. 082994C]

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application to modify permit no. 813 (P523).

SUMMARY: Notice is hereby given that Mr. Adam S. Frankel, University of Hawaii at Manoa, Department of Oceanography, 1000 Pope Road, Honolulu, HI 96822, has requested a modification to Permit No. 813.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001).

Written data or views, or requests for a public hearing on this request should be submitted to the Assistant Administrator for Fisheries, NMFS, NOAA, U.S. Department of Commerce, 1335 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 813, issued on February 1, 1993 (58 FR 7548) and modified on August 2, 1993 (58 FR 42300), is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the

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Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 813 authorizes the Permit Holder to potentially harass up to 1000 humpback whales (*Megaptera novaeangliae*) during the course of playback experiments and photo-identification/observational studies through September 30, 1994. The Permit Holder requests an additional one year extension of the Permit; authorization to conduct the research off the island of Kauai rather than Hawaii; and authorization to conduct playback experiments on sperm whales (*Physeter macrocephalus*)

Dated: September 2, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–23254 Filed 9–19–94; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee Meeting

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, sec. 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Agricultural Advisory Committee will conduct a public meeting on October 3, 1994 from 8:30 a.m. to 12:30 p.m. in the lower-level hearing room of the Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. The agenda will consist of:

Agenda

I. Introductory Remarks, Commissioner Joseph B. Dial;
II. Discussion of Summit on Risk Management in American Agriculture;
III. Update on the United States Department of Agriculture—Options Pilot Program;
IV. A panel discussion on IRS regulations regarding hedging transactions;
V. The Illinois Farm Bureau's START PROGRAM;
VI. Discussion of complex agricultural derivatives;
VII. The Iowa Study Group's revenue assurance plan;
VIII. Updates on dual trading/audit trail and exemptive petitions;
IX. Presentation by the National FFA Foundation;
X. Other Committee business; and
XI. Closing Remarks by Commissioner Joseph B. Dial.

The purpose of this meeting is to solicit the views of the Committee on the above-listed agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on agricultural issues. The purposes and objectives of the Advisory Committee are more fully set forth in the fifth renewal charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Joseph B. Dial, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Agricultural Advisory Committee c/o Kimberly N. Griles, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Griles in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC, on September 15, 1994.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–23269 Filed 9–19–94; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Commission on Roles and Missions of the Armed Forces

AGENCY: Department of Defense, Commission on Roles and Missions of the Armed Forces.

ACTION: Notice.

SUMMARY: Notice is hereby given of a forthcoming meeting of the Commission on Roles and Missions of the Armed Forces. The purpose of the meeting is to review the operational missions, roles and functions of the United States Coast Guard. This meeting will be open to the public.

DATES: September 20, 1994, 12:30 p.m. until 1:30 p.m.

ADDRESSES: Room 5E673, Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Commander Gregg Hartung, Director for Public Affairs, Commission on Roles and Missions, 1100 Wilson Boulevard, Suite 1200F, Arlington, Virginia 22209; telephone (703) 696–4250.

SUPPLEMENTARY INFORMATION: Seating will be limited. Individuals desiring to attend should arrive at the River Entrance to the Pentagon no later than 12:15.

Extraordinary circumstances created by scheduling and coordination conflicts compel notice of this meeting to be posted in less than the 15-day requirement.

Dated: September 14, 1994.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–23159 Filed 9–19–94; 8:45 am]

BILLING CODE 5000–4–M

Meeting of the Commission on Roles and Missions of the Armed Forces

AGENCY: Department of Defense, Commission on Roles and Missions of the Armed Forces.

ACTION: Notice.

SUMMARY: The Commission on Roles and Missions of the Armed Forces will meet in closed session from 1:30 p.m. until 6:30 p.m. on September 20, 1994.

The Commission meeting will consist of a briefing from the Secretary of the Navy, the Chief of Naval Operations and the Commandant of the Marine Corps discussing assigned functions and operational capabilities of the United States Navy and United States Marine Corps. Material to be presented and discussed will consist of both classified and unclassified information in a format that makes it impractical to separate the two.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–453, as amended (5 U.S.C. App II (1988)), it has been determined that this Commission on Roles and Missions meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1988), and that, accordingly, this meeting will be closed to the public.

SUPPLEMENTARY INFORMATION: Extraordinary circumstances created by scheduling and coordination difficulties compel notice of this meeting to be posted in less than the 15-day requirement.

Dated: September 14, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–23160 Filed 9–19–94; 8:45 am]

BILLING CODE 5000–4–M

Meeting of the Commission on Roles and Missions of the Armed Forces

AGENCY: Department of Defense, Commission on Roles and Missions of the Armed Forces.

ACTION: Notice.

SUMMARY: Notice is hereby given of a forthcoming meeting of the Commission on Roles and Missions of the Armed Forces. The Commission will meet in open session from 10:00 a.m. until 1:50 p.m., and in closed session from 2:00 p.m. until 4:00 p.m. The purpose of the meeting will be to select issues for future development and analysis by the Commission. During the closed portion of the meeting, the Commission will consider issues that will involve the discussion of classified information. In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–453, as amended (5 U.S.C. App II (1988)), it has been determined that these portions of the Commission on Roles and Missions meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that, accordingly, the meeting will be closed to the public during these times.

DATES: September 23, 1994, 10:00 a.m. until 4:00 p.m.

ADDRESSES: Suite 1200F, 1100 Wilson Boulevard, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Commander Gregg Hartung, Director for Public Affairs, Commission on Roles and Missions, 1100 Wilson Boulevard, Suite 1200F, Arlington, Virginia 22209; telephone (703) 696–4250.

SUPPLEMENTARY INFORMATION: Seating will be limited. Individuals desiring to attend should arrive at the Commission offices (Suite 1200F, 1100 Wilson Boulevard, Arlington, Virginia) no later than 9:45 a.m. for an escort to the meeting room.

Extraordinary circumstances created by scheduling and coordination conflicts compel notice of this meeting to be posted in less than the 15-day requirement.

Dated: September 14, 1994.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–23161 Filed 9–19–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Office of Administrative Law Judges; Intent to Compromise Consolidated Claims; Maine Department of Education

AGENCY: Department of Education.

ACTION: Notice of Intent to Compromise Consolidated Claims.

SUMMARY: The U.S. Department of Education (the Department) intends to compromise consolidated claims against the Maine Department of Education (the State), in a consolidated appeal which is now pending before the Department's Office of Administrative Law Judges (the OALJ), Docket Nos. 92–88–R (ACN: 01–93245) and 92–105–R (ACN: 01–13035–G), under authority of § 452(j)(1) of the General Education Provisions Act (GEPA) (20 U.S.C. 1234a(j)(1) (1988)).

DATES: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before November 4, 1994.

ADDRESSES: Comments should be addressed to Adina Kole, Esq. or Daphna Crotty, Esq., Office of the General Counsel, U.S. Department of Education, 600 Independence Avenue, SW, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Adina Kole, Esq. at (202) 401–8316 or Daphna Crotty, Esq. at (202) 401–8292. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The consolidated claims in question arose from two organization-wide audits of the Maine Department of Education, conducted by the Maine Department of Audit for the periods between July 1, 1987 and June 30, 1988 (ACN: 01–93245) and July 1, 1988 and June 30, 1989 (ACN: 01–13035–G). The audits were conducted pursuant to the Single Audit Act of 1984 and Office of Management and Budget Circular No. A–128.

In reviewing the State's administration of programs under the Individuals with Disabilities Education Act (Part B) (formerly the Education of the Handicapped Act) for the period between July 1, 1987 and June 30, 1988, the auditors found that the State's administrative costs under the Part B program exceeded the allowable maximum by $354,211.63. The auditors determined that, due to the differences between State and Federal fiscal years, $65,325 of this amount had previously been questioned in the June 30, 1987 audit report. Consequently, for the period between July 1, 1987 and June 30, 1988, the auditors questioned administrative costs in the amount of $288,886 (the difference between $354,211 and $65,325). Additionally, during this same State fiscal year, the auditors found that the State had charged personnel costs to various Federal programs for employees who had not worked exclusively on those programs, questioning $77,700 in Part B personnel costs.

On October 14, 1991, the Assistant Secretary for the Office of Special Education and Rehabilitative Services (OSERS), issued a program determination letter (PDL) stating that the administrative cost finding had been addressed in a previous PDL (dated March 27, 1991) and that the personnel finding was not being sustained due to insufficient information in the audit report. However, upon further review and follow-up by the Department's Regional Inspector General for Audit with staff of the State Auditor's office and upon review of their workpapers, it was determined that there was no support for the charging of 100 percent of two employees' time to several different Part B programs. On June 29, 1992, the Assistant Secretary for OSERS issued a Program Redetermination Letter (PRDL) seeking recovery of $311,840 in fiscal year (FY) 1987 funds.

In reviewing the State's administration of programs under Part B and under the Carl D. Perkins Vocational and Applied Technology Education Act (the Perkins Act), for the period between July 1, 1988 and June 30, 1989, the auditors found that under the Part B program the State incurred $50,580 in administrative costs in excess of the allowable maximum. Additionally, the auditors determined that personnel costs for a number of employees who did not work exclusively for the Handicapped-State Grant Program funded under Part B, and the Vocational Education Basic Grants Program funded under the Perkins Act, were charged entirely to those Federal programs. In total, the auditors questioned $133,140 in personnel costs incurred in the period between July 1, 1988 and June 30, 1989.

On August 25, 1992 the Assistant Secretary for OSERS and the Assistant Secretary for the Office of Vocational and Adult Education (OVAE) issued a joint PDL seeking recovery of $140,852 in FY 1989 funds. Of that total, $90,272 was disallowed in a joint finding between the Assistant Secretaries for OSERS and OVAE, related to salary changes under Part B and the Perkins Act. Specifically, the Assistant Secretaries determined that in FY 1989, $44,832 awarded under Part B and $45,440 awarded under the Perkins Act had been used by the State to pay administrative salaries without the required supporting documentation.

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On July 29, 1992, the State filed a timely request for review of the Assistant Secretary for OSERS' determination in the PDL for ACN: 01–93245, with the Office of Administrative Law Judges (OALJ). Upon joint motion by the parties, on March 16, 1992, the Administrative Law Judge (ALJ) assigned to this matter stayed the proceeding for purposes of mediation. On September 25, 1992, the State filed a timely request for review of the Assistant Secretaries for OSERS' and OVAE's determinations in the PDL for ACN: 01–13035–G. Upon joint motion by the parties, on October 22, 1992, the ALJ stayed the proceeding for purposes of mediation, and consolidated the two cases. On March 12, 1993, the ALJ granted a Joint Motion to Stay the Proceedings for Settlement Discussions, filed by the parties.

In the course of ensuing settlement discussions, the State submitted documentary evidence not previously seen by the auditors relevant to both the Part B excess administrative cost and the personnel salaries issues raised under the Part B and Perkins Act programs. As a result of settlement discussions, the parties tentatively agreed to a settlement under which the State would repay a total of $125,635 to the Department in full resolution of all issues.

With regard to the Part B excess administrative costs determinations contained in both PDLs, during mediation and settlement discussions the State was able to demonstrate that it had expended $12,863.27 of excess administrative costs in FY 1987, and $55,817.84 of excess administrative costs in FY 1988, for a total of $68,681.11 in excess administrative costs. Under the tentative Settlement Agreement, the State will submit revised SF–269s to the Department reflecting its reconciliation of certain administrative costs expenditures for FYs 1987 and 1988.

With regard to both Assistant Secretaries' determinations of unsupported charging of personnel salaries, in the course of mediation and settlement discussions the State submitted documentation not seen by the auditors demonstrating to the Assistant Secretary for OSERS that the majority of two salaries questioned in the PDL for ACN: 01–93245 were properly expended under Part B. Additionally, the State agreed that its charging of a $44,832 salary to the FY 1989 Part B grant was erroneous. The State proposed to offset the improper salary charges with what it believed to be allowable administrative expenditures that had not previously been charged to the Part B grant but that had been incurred during the fiscal years at issue in these audits.

On June 14, 1994, the Assistant Secretary for OSERS filed a Notice of Withdrawal of Claims and Reduction of Amount in Dispute covering disallowances in the June 29, 1992 PRDL for ACN: 01–93245 and in the August 25, 1992 PDL in ACN: 01–13015–G, in which the Assistant Secretary reduced the Part B claims in this consolidated appeal to $45,272 for the June 29, 1992 PRDL and to $115,046 for the August 25, 1992 PDL. The latter total included disallowances under the Perkins Act for which no reduction of claim was included in the June 14, 1994 Notice. As a result of the June 14, 1994 withdrawal notice, the disallowances for both cases totalled $160,318.

Under the tentative Settlement Agreement negotiated between the parties, the State has agreed to repay $125,635 to the Department in full resolution of the issues raised in both the PRDL and the PDL. Of this amount, $45,272 would be in full settlement of the claims under Part B contained in the June 29, 1992 PRDL. And, $80,363 would be in full settlement of the claims under Part B and under the Perkins Act contained in the August 25, 1992 PDL. Of this amount, $63,664 settles the Part B disallowance and $16,699 settles the Perkins Act disallowance.

In addition to the repayment of funds, the State has agreed to submit to the Department revised Financial Status Reports for fiscal years 1987 through 1993 reflecting proper coding of excess administrative costs to the grants during each of the years within that period. The State has also provided an assurance in the tentative Settlement Agreement that it will not shift excess administrative expenditures forward, to fiscal years after FY 1992, that are related to disallowances either in the June 29, 1992 PRDL or in the August 25, 1992 PDL. Finally, the State has certified in the tentative Settlement Agreement that it is currently in compliance with all requirements of the statutes and regulations pertaining to the practices and procedures that gave rise to the disallowances in question in this consolidated appeal.

In accordance with the authority provided in 20 U.S.C. 1234a(j)(1), given the documentation submitted by the State, the certification and assurances provided by the State, and the estimated litigation risks and costs of proceeding through the appeal process, the Department has determined that it would not be practical or in the public interest to continue litigation of this case. Rather, under the authority provided in 20 U.S.C. 1234a(j)(1), the Department has determined that a compromise of this claim for $125,635 would be appropriate. The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by writing to Adina Kole, Esq. or Daphne Crotty, Esq., at the address given at the beginning of this notice.

Program Authority: 20 U.S.C. 1234a(j)(2).

Dated: September 15, 1994.

Donald R. Wurtz,

Chief Financial Officer.

[FR Doc. 94–23245 Filed 9–19–94; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 20, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: September 15, 1994.

Ingrid Kolb,

Acting Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Existing
Title: Application for Grants Under the Endowment Challenge Grant Program
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 300
Burden Hours: 900
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This application form provides instructions and information necessary for eligible institutions of higher education to submit a request for an award under the Endowment Challenge Grant Program. The information submitted by applicants will be used by ED to determine the acceptability of the application, the rank order of the application, and the amount of the grant award.

[FR Doc. 94–23244 Filed 9–19–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award Renewal Grant to Southeastern Consortium for Minorities in Engineering (SECME)

AGENCY: Department of Energy (DOE).

ACTION: Notice of Intent.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance renewal award based on the criteria set forth at 10 CFR 600.7(b)(2)(i) (B) and (D) to SECME, Atlanta, GA., under Amendment A001 to Grant Number DE–FG01–93MI10270. The purpose of the award is to continue to develop an educational and training program for middle and high school students, teachers and school administrators in the District of Columbia public schools. The projects goal is to increase the number of minority students who are academically prepared to enter college and complete studies in engineering, mathematics and science. The period of performance will be extended two (2) years October 1, 1994–September 30, 1996. The total estimated cost of this budget period (10/1/94–9/30/95) is $150,000 which will be provided by DOE—there is no cost sharing.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rosemarie Marshall, HR–531.11, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The proposed renewal grant will provide funding to SECME, which is a pre-college program designed to increase the number of minority students who are academically prepared to enter and complete studies in engineering, mathematics, and science. SECME is a nonprofit organization organized in 1975 by the engineering deans of six Southeastern universities. SECME is proposing to expand its consortium network by establishing the SECME school systems model in the District of Columbia, with the development of 16 school programs in four schools systems in DC covering the northwest, northeast, southwest and southeast areas. The University of the District of Columbia's College of Engineering will serve as SECME's 33rd member university and work with SECME school programs throughout the targeted region. The University's role is vital to the success of the program. The University's support to the schools will be through Saturday School Engineering Workshops and school visits from engineering faculty consultants who provide information on additions to school curricula, on-going curriculum enrichment, and university-level preparatory courses.

The program is meritorious because by increasing the pool of minority students who are prepared to enter and complete studies in the scientific technical fields, the competitiveness and prosperity of the American workforce will be significantly enhanced in the years ahead. The project will assist teachers in formulating ways to enrich their instructional programs through the use of curriculum materials and computer applications and help them develop motivational guidance for their students. The DOE knows of no other entity which is conducting or is planning to conduct such an activity.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the application represents a beneficial method to ensure precollege students' success in courses which are prerequisite to technical education and careers. Through this project, students will be better prepared to enroll in and succeed in university-level engineering, mathematics, and science programs.

Michael B. Raizen,

Contracting Officer, Operations Branch A–1, Office of Placement and Administration.

[FR Doc. 94–23243 Filed 9–19–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER94–1168–001, et al.]

Vesta Energy Alternatives Company, et al.; Electric Rate and Corporate Regulation Filings

September 13, 1994.

Take notice that the following filings have been made with the Commission:

1. Vesta Energy Alternatives Company

[Docket No. ER94–1168–001]

Take notice that on August 15, 1994, Vesta Energy Alternatives Company (VEA) filed certain information as required by the Commission's July 8, 1994 letter order in Docket No. ER94–1168–000. Copies of VEA's informational filing are on file with the Commission and are available for public inspection.

2. Niagara Mohawk Power Corporation

[Docket No. ER94–1462–000]

Take notice that on August 29, 1994, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission an executed Certificate of Concurrence by PowerNet G.P. (PowerNet). This Certificate of Concurrence is intended to satisfy PowerNet's filing requirements due to the Exchange Unit Provision in NMPC's Power Sales Tariff, and is being submitted to FERC as a supplement to the filing (of a Service Agreement) that Niagara Mohawk made on July 15, 1994.

NMPC renews its request for an effective date of July 18, 1994. NMPC

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has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and PowerNet.

Comment date: September 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Company

[Docket No. ER94–1558–000]

Take notice that on August 16, 1994, Pacific Gas and Electric Company (PG&E) tendered for filing the ENRON–PG&E Enabling Agreement between ENRON Power Marketing, Inc. (ENRON) and PG&E. The Enabling Agreement document's terms and conditions for the purchase, sale or exchange of economy energy and surplus capacity which the Parties agree to make available to one another at defined control area border interconnection points.

Copies of this filing have been served upon ENRON and the California Public Utilities Commission.

Comment date: September 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Illinova Power Marketing, Inc.

[Docket No. ER94–1475–000]

Take notice that on August 26, 1994, Illinova Power Marketing, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: September 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. American Power Exchange, Inc.

[Docket No. ER94–1578–000]

Take notice that on September 9, 1994, American Power Exchange, Inc. (APEX) tendered for filing pursuant to 18 CFR Part 385, an amended petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

Comment date: September 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. National Power Exchange Corporation

[Docket No. ER94–1593–000]

Take notice that on September 1, 1994, National Power Exchange Corporation tendered for filing revised FERC Electric Rate Schedule No. 1.

Comment date: September 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Carolina Power & Light Company

[Docket No. ER94–1618–000]

Take notice that on August 31, 1994, Carolina Power & Light Company (CP&L) tendered for filing a letter requesting that "Exhibit A's" for the Chadbourn Peacock and Edwards Delivery Points be made supplements to Rate Schedule No. 128, and included as a part of the filing submitted on August 3, 1994, in lieu of the "Exhibit A's" for these delivery points filed on August 3, 1994, and in addition that Exhibit A for the Laurel Road Delivery Point be made a supplement to Rate Schedule No. 128.

Comment date: September 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Delmarva Power & Light Company

[Docket No. ER94–1628–000]

Take notice that on September 6, 1994, Delmarva Power & Light Company (Delmarva) of Wilmington, Delaware, filed under the provisions of Section 205 of the Federal Power Act a twenty-year power supply contract (the Service Agreement) under which Delmarva will provide all requirements service to the Town of Clayton, Delaware (Clayton). Delmarva states that the Service Agreement supersedes Delmarva's Rate Schedule No. 64 under which Clayton currently receives service.

Delmarva, with Clayton's concurrence, requests a waiver of the 60-day notice requirement and an effective date as allowed for by the terms of the Service Agreement that commences with the date prior to November 6, 1994, that Clayton actually begins taking all requirements service from the Company. Alternatively, Delmarva asks for an effective date of November 6, 1994, which is sixty days after the filing date.

The Service Agreement provides for the continuation of the requirements service previously furnished Clayton under Rate Schedule No. 64, but changes certain terms and conditions. The chief differences between the Service Agreement and Rate Schedule No. 64 are that the Service Agreement provides for all requirements service as a change from the partial requirements service Clayton was receiving, establishes a new rate for Clayton which is below the level of the rate currently charged Clayton and below the settlement rate previously established for Clayton in Docket No. ER92–236–000, and provides for future adjustments to the Clayton rate based on changes in the level of Delmarva's retail rates. The Service Agreement has a twenty year term.

Delmarva states that the filing has been posted and has been served upon the affected customer and the Delaware Public Service Commission.

Comment date: September 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Company Services, Inc.

[Docket No. ER94–1629–000]

Take notice that on September 6, 1994, Southern Company Services, Inc., on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies), tendered for filing letter agreements concerning fuel accounting procedures at the Robert W. Scherer Steam Electric Generating Plant. The letter agreements set forth the effect of the revised procedures on (i) the Amended and Restated Unit Power Sales Agreement dated February 18, 1982, between FPL and Southern Companies (with the exception of Savannah Electric and Power Company); (ii) the Unit Power Sales Agreement dated July 20, 1983, between FPL and Southern Companies; (iii) the Transition Energy Agreement dated as of December 31, 1990, between FPL and Southern Companies; (iv) the Amended and Restated Unit Power Sales Agreement dated May 19, 1982, between JEA and Southern Companies (with the exception of Savannah Electric and Power Company); (v) the Unit Power Sales Agreement dated August 17, 1988, between JEA and Southern Companies; (vi) the Transition Energy Agreement dated as of December 31, 1990, between JEA and Southern Companies; (vii) the Unit Power Sales Agreement dated July 19, 1988, between FPC and Southern Companies; and (viii) the Unit Power Sales Agreement dated December 8, 1990, between Tallahassee and Southern Companies.

Comment date: September 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Portland General Electric Company

[Docket No. ER94–1630–000]

Take notice that on September 7, 1994, Portland General Electric Company (PGE) tendered for filing a rate schedule for PGE to provide electric power to the customers of other entities during emergencies and operating contingencies.

Copies of the filing were served upon the list of entities including all proposed customers under this tariff, appearing on the Certificate of Service attached to the filing letter.

Comment date: September 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Company

[Docket No. ER94–1632–000]

Take notice that on August 22, 1994, Northeast Utilities Service Company (NUSCO), tendered for filing, on behalf of The Connecticut Light and Power Company, Holyoke Water Power Company (including Holyoke Power and Electric Company), and Public Service Company of New Hampshire (together, the NU System Companies), a refund report and a Notice of Termination for the System Power Sales Agreement (Agreement) with Hudson Light and Power Department (Hudson). The System Power Sales Agreement was terminated in accordance with its terms.

NUSCO requests that the Agreement be terminated as of November 1, 1994. NUSCO states that copies of the rate schedule have been mailed or delivered to the parties to the Agreement and the affected state utility commissions.

Comment date: September 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. The Montana Power Company

[Docket No. ER94–1634–000]

Take notice that on September 8, 1994, The Montana Power Company (Montana) tendered for filing as a change in rate schedule, Revision No. 1 of Exhibit E to its General Transfer Agreement, dated as of May 27, 1988, with the Bonneville Power Administration (Rate Schedule FERC No. 175).

A copy of the filing was served upon the Bonneville Power Administration.

Comment date: September 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. The Montana Power Company

[Docket No. ER94–1635–000]

Take notice that on September 8, 1994, The Montana Power Company (Montana), tendered for filing as a change in rate schedule, Revisions No. 1, 2 and 3 of Exhibit C, and Revision No. 1 of Exhibit D to its Transmission Agreement, dated as of May 27, 1988, with the Bonneville Power Administration.

A copy of the filing was served upon the Bonneville Power Administration.

Comment date: September 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Niagara Mohawk Power Corporation

[Docket No. ER94–1641–000]

Take notice that on September 9, 1994, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Enron Power Marketing, Inc. (Enron) dated September 7, 1994, providing for certain transmission services to Enron.

Copies of this filing were served upon Enron and the New York State Public Service Commission.

Comment date: September 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23183 Filed 9–19–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2535]

South Carolina Electric & Gas Company; Intent To Conduct Public Scoping Meetings

September 14, 1994.

The Federal Energy Regulatory Commission (FERC) has received an application for license of the Stevens Creek Hydroelectric Project, FERC No. 2535. The project is located in Edgefield and McCormick Counties, South Carolina and Columbia County, Georgia, within the Savannah River Basin.

The FERC staff intends to prepare an Environmental Assessment (EA) on the hydroelectric project in accordance with the National Environmental Policy Act.

Scoping Meetings

The FERC staff will conduct two scoping meetings. An evening scoping meeting is primarily for public input while a morning meeting will focus on resource agency concerns. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EA. Staff will visit the project site prior to the meetings to become more familiar with the project and its operation.

Both scoping meetings will be held on Wednesday, October 12, 1994, in the Savannah Rapids Pavilion, 3300 Evans to Lock Road, Martinez, Ga. The first meeting will be held from 9:00 a.m.–12:00 p.m. and will focus primarily on issues of concern to resource agencies. The second meeting will be held from 7:00 p.m.–10:00 p.m. and will focus primarily on issues of concern to the general public.

Prior to the meetings, a scoping document will be mailed to the list of interested parties. The scoping document identifies resource issues to be addressed in the EA. Copies of the scoping document will also be available at the scoping meetings or can be obtained by writing: FERC—Stevens Creek Project, c/o Tom Dupuis, CH2M HILL, P.O. Box 2090, Milwaukee, Wisconsin 53201–2090.

Objectives

At the scoping meetings the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) determine the relative depth of analysis for issues to be addressed in the EA; (3) identify resource issues that are not important and do not require detailed analysis; (4) solicit from the meeting participants all available information, especially quantified data, on the resources at issue; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The meetings will be recorded by a stenographer and all statements (oral and written) thereby become a part of the formal record of the Commission proceedings. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Participants at the public meetings are asked to keep oral comments brief and concise.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record. In addition, written scoping comments

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may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, until November 12, 1994.

All written correspondence should clearly show the following caption on the first page: Stevens Creek EA, Project No. 2535.

All those that are formally recognized by the Commission as intervenors in the licensing proceeding are asked to refrain from engaging staff or its contractor In discussions of the merits of the projects outside of any announced meetings.

Further, parties are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name is on the official service list.

For further information, please contact John Blair (202) 219–2845.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23184 Filed 9–19–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–338–002]

El Paso Natural Gas Co.; Tariff Filing

September 14, 1994.

Take notice that on September 12, 1994, El Paso Natural Gas Company (El Paso), tendered for filing and acceptance pursuant to Part 154 of the Federal Energy Regulatory Commission's (Commission) Regulations Under the Natural Gas Act a Statement of Rates tariff sheet to its Third Revised Volume No. 2 Tariff.

El Paso states that the tendered tariff sheet was inadvertently omitted from its July 29, 1994, filing at Docket No. RP94–338–000, which the Commission approved by letter order dated August 25, 1994.

El Paso states that the tendered tariff sheet, proposed to become effective August 1, 1994, provides for a decrease of $.0013 per dth in El Paso's currently effective take-or-pay Throughput Surcharge due to the removal of the unamortized portion of certain ineligible costs resulting from the Commission's Order Affirming Initial Decision and Order on Rehearing issued concurrently on June 16, 1994, at Docket No. RP90–81–000, et al., and Docket No. RP91–26–000, et al., (June 16th Orders) respectively.

El Paso states that it is requesting waiver of the notice requirement of Section 154.22 of the Commission Regulations pursuant to Section 154.51 to permit the tendered tariff sheet to become effective on August 1, 1994, in order to be consistent with the date the Commission accepted the other affected tariff sheets containing the decrease in the Throughput Surcharge. Furthermore, no party will be harmed by the waiver of the notice requirement, since the result will be a decrease in rates.

El Paso states that copies of the filing were served upon all its Volume No. 2 tariff customers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before September 21, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection in the Public Reference Room

Lois D. Cashell,

Secretary.

[FR Doc. 94–23185 Filed 9–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–187–000, et al.]

Equitrans, Inc.; Rescheduling of informal settlement conference

September 14, 1994.

Take notice that the informal conference originally scheduled in this proceeding for Tuesday, September 13, 1994, has been rescheduled. The new date for the conference is Tuesday, September 20, 1994, at 10:00 a.m. The purpose of the conference is to explore the possible settlement of the above-referenced docket. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E. Washington, DC. 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Hollis J. Alpert at (202) 208–0783 or Arnold H. Meltz at (202) 208–2161.

Lois D. Cashell

Secretary.

[FR Doc. 94–23186 Filed 9–19–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–221–037]

Frontier Gas Storage Co.; Sale Pursuant to Settlement Agreement

September 14, 1994.

Take notice that on September 9, 1994, Frontier Gas Storage Company (Frontier), % Reid & Priest, Market Square, 701 Pennsylvania Ave., N.W., Washington, D.C. 20004, in compliance with the provisions of the Commission's February 13, 1985, Order in Docket No. CP82–487–000 et al., submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of 1,000,000 MMBtu of Frontier's gas storage inventory on an "in place" basis to Western Gas Resources, Inc. (Western Gas).

Under Subpart (b) of Ordering Paragraph (G) of the Commission's February 13, 1985, Order, Frontier is "authorized to consummate the proposed sale in place unless the Commission issues an order within 20 days after expiration of such notice period either directing that the sale not take place and setting it for hearing or permitting the sale to go forward and establishing other procedures for resolving the matter. Deliveries of gas sold in place shall be made pursuant to a schedule to be set forth in an exhibit to the executed service agreement."

Any person desiring to be heard or to make a protest with reference to said tariff sheet filing should, within ten days of the publication of such notice in the **Federal Register**, file with the Federal Energy Regulatory Commission (825 North Capitol Street, N.E., Washington, D.C. 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23187 Filed 9–19–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–221–038]

Frontier Gas Storage Co.; Sale Pursuant to Settlement Agreement

September 14, 1994.

Take notice that on September 9, 1994, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., N.W., Washington, D.C. 20004, in compliance with the provisions of the Commission's February 13, 1985, Order in Docket No. CP82–487–000 et al., submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to a daily quantity of 35,000 MMBtu of Frontier's gas storage inventory on an "as metered" basis to Western Gas Resources, Inc. (Western Gas).

Under Subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985, Order, Frontier is "authorized to commence the sale of its inventory, fourteen days after filing the executed agreement with the Commission, and may continue making such sale unless the Commission issues an order either directing that the sale not take place and setting it for hearing or permitting the sale to go forward and establishing other procedures for resolving the matter.

Any person desiring to be heard or to make a protest with reference to said tariff sheet filing should, within ten days of the publication of such notice in the **Federal Register**, file with the Federal Energy Regulatory Commission (825 North Capitol Street, NE., Washington, D.C. 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23188 Filed 9–19–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–1–47–000]

MIGC, Inc.; Proposed Changes in FERC Gas Tariff

September 14, 1994

Take notice that on September 12, 1994, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 4, proposed to become effective October 1, 1994.

MIGC states that the instant filing is being submitted to reflect Annual Charge Adjustment unit charges applicable to transportation services during the fiscal year commencing October 1, 1993.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All Such petitions or protests should be filed on or before September 21, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23189 Filed 9–19–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–768–000]

Northern Natural Gas Co.; Request Under Blanket Authorization

September 14, 1994.

Take notice that on September 9, 1994, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP94–768–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point to accommodate increased natural gas deliveries to an existing customer under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to install a Town Border Station for Bridgeport, Wisconsin, in Crawford County to provide natural gas deliveries to Wisconsin Natural Gas Company (WNG), a local distribution company. Northern states that the end-users would be new commercial and residential customers. Northern estimates that the peak day and annual quantities would be 360 and 41,000 MMBtu, respectively. Northern advises that WNG would make a contribution in aid of construction for the total cost of installing the facilities, estimated to be $54,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23190 Filed 9–19–94 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–341–001]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 14, 1994.

Take notice that on September 12, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to its FERC Gas Tariff, with a proposed effective date of August 1, 1994:

Substitute First Revised Sheet No. 223

Texas Gas states that the revised tariff sheet is being filed to comply with the Commission Order dated August 26, 1994, in Docket No. RP94–341–000, which requires Texas Gas to revise its tariff language which limits waiver of the nine-month limitation to only those costs discussed in the Order and incorporate the necessary reporting requirements.

Texas Gas notes that copies of the filing are being mailed to Texas Gas' affected customers and interested state commissions and are being served on all parties in Docket No. RP94–125 (Texas Gas' initial filing to recover Account No. 191 costs) and Docket No. RP94–341–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E.,

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Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before September 21, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–231 Filed 9–19–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5063–1]

Announcement of a Request for Pre-Proposals From Minority Academic Institutions To Conduct Hazardous Substance Research, Technology Transfer and Training in Cooperation With EPA's Hazardous Substance Research Centers

AGENCY: Environmental Protection Agency.

ACTION: Publication of a request for pre-proposals and correction of deadline for receipt of pre-proposals.

SUMMARY: On August 31, 1994 (59 FR 44985), EPA published a notice, signed by the acting Assistant Administrator for Research and Development, announcing the availability of a document requesting pre-proposals from Minority Academic Institutions (MAIs) for participation in the Hazardous Substance Research Centers (HSRCs) Program. EPA has corrected the deadline for submissions of pre-proposals from October 15 to October 21. For the convenience of the public, EPA is publishing the full text of the document in this notice. EPA will also continue to make the document available separately.

The purpose of the request for pre-proposal is to set forth the eligibility and submission requirements, evaluation criteria and schedule for establishing hazardous substance research, technology transfer and training activities at MAIs, in cooperation with the five HSRCs, as authorized by section 311(d) of Superfund, and as amended by section 209 of the Superfund Amendments and Reauthorization Act of 1988. These activities will be competitively awarded.

The U. S. Environmental Protection Agency (EPA) recognizes that minority academic institutions (MAIs) are underrepresented in research and other activities relating to hazardous substance management. To improve this situation, EPA is making funds available to enhance the ability of MAIs to participate in research, technology transfer, training, and academic development activities in collaboration with EPA's five HSRCs. The program rationale and design, areas of interest, eligibility requirements, and other important information are described in the document, which is published in full under **SUPPLEMENTARY INFORMATION.**

DATES: All pre-proposals must be received by October 21, 1994.

ADDRESSES: Send pre-proposals to the appropriate contact points listed in Table 1 under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Dr. Dale Manty, Director, Hazardous Substance Research Centers Program, Office of Exploratory Research (8703), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202–260–7454).

SUPPLEMENTARY INFORMATION:

Program Announcement and Solicitation for Minority Academic Institution (MAI) Participation in Hazardous Substance Research Centers (HSRC) Program; Pre-proposal for MAI Participation in the HSRC Program

The U. S. Environmental Protection Agency (EPA) is concerned that minority academic institutions (MAIs) are underrepresented in research and other activities relating to hazardous substance management. To improve this situation, EPA announces the availability of funds to enhance the ability of MAIs to participate in research, technology transfer, training, and academic development activities in collaboration with EPA's five University Hazardous Substance Research Centers (HSRCs). The program rationale and design, areas of interest, eligibility requirements, and other important information are described below.

The process begins with submission of an original and eight copies of pre-proposals from MAIs to one of the five EPA HSRCs. An administrative review will be made by the Center Director, in consultation with the EPA National HSRC Program Director. Eligible applications will then be reviewed for relevance and quality by each Center's Director, Science Advisory Committee, and Technology Transfer and Training Advisory Committees. Successful applicants will be invited to submit full proposals.

Hazardous Substance Problems

One of the important environmental issues facing our civilization is the management of hazardous substances from manufacture to treatment and disposal. Since 1980, over 40,000 hazardous waste sites have been discovered, more than 1,000,000 underground storage tanks are estimated to be leaking, and more than 250,000 industrial and waste storage or treatment facilities are subject to permit requirements of the Resource Conservation and Recovery Act. A National Priorities List for cleanup of the worst of these sites has been established by EPA. This list, plus similar state lists, total more than 5,000 sites. Such sites are causing contamination of air, soil, and ground and surface water. There is a growing recognition of the risks such contamination inflicts upon ecological communities. Conventional methods of determining, cleaning up, and managing these problems are proving inadequate to achieve desired levels of clean-up. The HSRC Program is fueled by a strong desire to develop better, cheaper, faster, and safer methods to assess and clean up these sites. EPA priorities for addressing these problems include development of new methods to assess and remediate sites, decrease the production and use of hazardous substances, and train a new generation of hazardous substance managers.

General Description

Under Section 311(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9660(d), EPA has established five Hazardous Substance Research Centers. In 1994, Congress provided EPA with funds to encourage MAIs to participate in the HSRCs' research and training and technology transfer activities. These funds will be provided through a Federal Assistance Agreement with each HSRC, which in turn will establish sub-contracts with MAIs. If additional funds become available, additional qualified applicants may be funded. The MAI is expected to contribute a 20% match of non-federal resources. These resources may come from State, local, foundation, individual, or private sector contributions and may include in-kind contributions. No Federal funds provided for this program may be used to purchase, build, or renovate any buildings or to purchase land. Up to 15% of the funds will be available to encourage HSRC researchers to collaborate in joint projects with MAI researchers.

Hazardous Substance Research Center Program

EPA has competitively established five Hazardous Substance Research Centers to provide:

- Short- and long-term research on the manufacture, disposal, clean-up, and management of hazardous substances;
- Dissemination of research information and findings; and
- Training, technology transfer, and technical outreach and support to benefit organizations, communities, and individuals involved with hazardous substances.

Research supported by the HSRCs covers all relevant scientific and technological subjects except human health effects research (toxicology, dose-response epidemiology, etc.). Each HSRC is headed by a Center Director who is responsible for managing each Center. The Director is the intellectual leader and guide for the Center. A Technology Transfer and Training Director oversees training and commercial application of Center projects. Each of the five HSRCs serves the States within two adjoining pairs of Federal Regions. All five collaborate to form a National Hazardous Substance Research Centers Program. Each center has its own Science Advisory Committee and Technology Transfer and Training Advisory Committee which regularly review the progress of ongoing work and recommend funding of new proposals.

Availability of Funds

$3.5 million will be available for award under the terms described below.

Submission and Eligibility Requirements

U.S. MAIs in good standing with the Federal government may submit pre-proposals. Applications must include a written certification that the applicant is a minority academic institution. The applicant's eligibility as an MAI will be confirmed on the basis of enrollment data in the Integrated Postsecondary Education Data System (IPEDS) Fall Enrollment Survey, provided by postsecondary institutions, through the National Center for Education Statistics, to the Office for Civil Rights, U.S. Department of Education. The terms "accredited," "minority," and "minority institution" are set forth in 34 CFR 637.4(b).

To be considered for an award, an original pre-proposal and eight copies must be submitted to the most appropriate HSRC, as provided in the table. The pre-proposals are due at these contact points no later than 4:00 p.m. local time on Friday, October 21, 1994. Applicants are encouraged to submit their pre-proposal as soon as possible to provide for maximum opportunities to coordinate with appropriate HSRC staff and researchers. Receipt of pre-proposals will be acknowledged for those applicants providing a mailing address label. Each pre-proposal must include the information requested in the sample format at the end of this announcement. The proposed activity shall be described in up to two pages addressing the evaluation criteria. A summary budget for up to an 18 month period shall be included. HSRC research projects range from approximately $25,000–$75,000 per year. Each Center, upon reviewing the pre-proposals, shall invite submission of full proposals. All applicants will be notified of the review results.

TABLE 1.—HSRC POINTS OF CONTACT

Center	Address	Director/MAI Coordinator	Phone
Send an Original and Eight Copies of the Pre-Proposal to Any of the Following Centers:			
Northeast	New Jersey Institute of Technology, 323 Martin Luther King Jr. Blvd., Newark, NJ 07102.	Dick Magee, Director, Mary Jane Pohero, Coordinator.	(201) 596–5883
Great Lakes/Mid-Atlantic.	Dept. of Civil and Environmental Engineering, 2340 C G Brown Building, University of Michigan, Ann Arbor, MI 48109–2125.	Walt Weber, Director, Pat Miller, Coordinator.	(517) 353–9718
Great Plains/Rocky Mountains.	Kansas State University, Ward Hall, Manhattan, KS 66506–2502.	Larry Erickson, Director, Stan Grant, Coordinator.	(913) 532–4313
South and Southwest.	3418 CEBA Bldg., Louisiana State University, Baton Rouge, LA 70803–5083.	Louis Thibodeaux, Director, David Constant, Coordinator.	(504) 388–6770
Western Region	Department of Civil Engineering, Stanford University, Stanford, CA 94305–4020.	Perry McCarty, Director, Jim Leckie, Coordinator.	(415) 723–8574

Program Orientation and Training

All MAI program participants and administrative officials will meet initially with the EPA National Program Director, Center Directors, and other Center and EPA personnel to initiate the program. Requirements for record keeping, laboratory and site safety, quality assurance, etc., will be presented to program participants. All MAI research and faculty participants will meet with Center Directors and other appropriate personnel in the latter part of their first year to review the progress of the program. Requests for funds to support participation in these meetings shall be included in each minority participation project.

Pre-Proposal Evaluation

The first step in the review and selection process is an administrative review to determine eligibility and appropriateness. For each Center, the following evaluation criteria will be used to evaluate pre-proposals:

- Short- and long-term benefits to the Minority Academic Institution;
- Benefits to principal investigator professional development;
- Benefits to student academic development;
- Level of participation by minority individuals;
- Compatibility with HSRC interests;
- Leverage of resources;
- Quality of work proposed; and
- Potential impact of proposed activity.

Areas of Interest

Pre-proposals are encouraged in one or more of the following areas but will be considered in other areas as well. It is recognized that some pre-proposals will incorporate elements from several areas of interest, such as a cooperative research program that includes faculty and/or student enhancement. These pre-proposals are also encouraged and will be evaluated on the strength of the consolidated pre-proposal.

Cooperative Research Programs

It is expected that most of the funds distributed under this solicitation will

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support cooperative research projects which pair MAI investigators with HSRC investigators. The goals of a cooperative research project are to enhance the research capabilities of the minority institution, promote significant interaction among the Center and MAIs, and lead to a continuing collaboration among the investigators. Given the time constraints of the program, preference will be given to projects that build on existing Center projects. New projects developed in collaboration with Center investigators, however, can be proposed. A potential investigator is strongly encouraged to review the current projects and activities of the Centers and contact Center personnel prior to submission of a pre-proposal. Examples of project collaboration include periodic exchanges of researcher-in-residence at an MAI or HSRC facility, co-investigation of a research topic, and joint supervision of research students. The specific nature of the collaboration will be defined by the investigators. Necessary travel funds to provide for this collaboration shall be built into the project pre-proposal. Pre-proposals are encouraged in the following broad HSRC research themes:

- Thermal treatment/incineration;
- Bioremediation;
- Contaminated sediment and dredge material;
- Mine wastes and contaminated soils; and
- Remediation of contaminated groundwater.

It is suggested that interested proponents review the Abstracts of HSRC Research Activities (following) and contact the most appropriate HSRC from Table 1 for further information about specific personnel and research opportunities.

Faculty Enhancement

The goal of the faculty enhancement component is to provide hazardous substance research opportunities to promote professional growth of MAI faculty. A companion goal is to strengthen the hazardous substance research programs at their home institutions. Specifically, the program is intended to:

- Enhance research expertise and abilities;
- Expand the knowledge-base in hazardous substance management research;
- Provide hands-on experience with modern equipment and instrumentation; and
- Help faculty develop linkages for future collaborative research.

Activities to be supported include:

- Academic-year sabbaticals (1–2 semesters);
- Summer research visits (minimum of 10 weeks); and
- Short-term faculty interactions (1–2 weeks).

Faculty must be tenured or in a tenure-track position at an MAI to maximize potential benefits to the home institution. For institutions without formal tenure systems, faculty holding a long-term or permanent position shall be eligible.

Student Enhancement

MAIs are encouraged to develop pre-proposals which will provide internship programs for undergraduate and graduate students. The goal of the student enhancement component is to motivate students toward advanced study and careers in hazardous substance management by providing research and training opportunities at HSRC universities. Proposed projects should provide undergraduates with an experience that fosters interest in pursuing graduate education and research. Projects for graduate students should promote a greater understanding of the role of science and engineering in providing solutions to hazardous substance related problems. The following selection criteria apply:

- Undergraduate students should have completed one or more years of an academic program in a discipline with an environmental focus. Graduate students should be pursuing a Masters or Ph.D. in an environmental discipline.
- Pre-proposals should demonstrate a plan for guiding students to the timely completion of research projects.
- MAIs should describe a student selection process that examines student academic records and recommendations and also includes the potential student impact of selection into the program (e.g., high potential "underachievers", etc.).

The Center Director will assist in placing students into appropriate projects. Selections will be based on the strengths of the proposed program and its ability to impact participants rather than the merits of individual students.

Technology Transfer and Training

There are a number of opportunities for MAIs to participate in the technology transfer and training activities of the HSRCs. These opportunities may take a variety of forms, for example: cooperative ventures with existing HSRC programs; development of new programs to assist in the development and commercialization of research technologies to better manage hazardous substances; and training or education to communities, governmental decision makers, industry, faculty, and students.

Pre-proposals are solicited in the following areas:

- Training to provide working knowledge of new technologies;
- Train-the-trainer courses for managing hazardous substance problems in minority and other communities;
- Training and assistance to MAIs to provide technical outreach and education to communities affected by hazardous substances; and unique environmental circumstances including environmental justice, risk assessment and communication, hazardous substance information, and education;
- Practitioner-in-Residence Program, bringing a technical expert to assist faculty and students at MAIs to identify opportunities and develop programs, etc.

All technology transfer and training pre-proposals shall define target audience, beneficiaries, and the nature of the training activities.

Abstracts of HSRC Research

Northeast Hazardous Substance Research Center (NHSRC)

The NHSRC serves EPA Regions 1 and 2. New Jersey Institute of Technology (NJIT) is the lead institution in a seven member consortium formed to establish the Center. Members include Massachusetts Institute of Technology, Princeton University, Rutgers University, Stevens Institute of Technology, Tufts University and the University of Medicine and Dentistry of New Jersey.

The Center's research programs focus on development and demonstration of treatment and remediation technologies in three broad areas: incineration/thermal methods; in-situ methods; and biological/chemical/physical methods. The Center also conducts a companion technology transfer and training program. Active research areas include:

- Incineration/Thermal Treatment.

—Combustion modeling
—Chlorocarbon destruction kinetics
—Catalytic oxidation
—Flue gas scrubbing
—Two-stage combustion
—Microwave treatment and low-energy plasma

- Characterization and Monitoring.

—Fiber optic sensors
—Continuous emissions monitoring (CEM) of stack gases
—GC–IC/MS for field applications
—CEM for Volatile Organic Compounds (VOCs) in groundwater
—Micro-sensors for metals
—Laser-based monitors

- In-situ Remediation.

—Anaerobic/aerobic bioremediation
—Electro-osmosis processes
—Pneumatically enhanced soil vapor extraction
—Soil flushing and in-situ vitrification

- Ex-situ Treatment Processes.

—Separation processes
—Hollow fiber liquid membranes
—Biotreatment and reactor design
—Solidification/stabilization
—Biofilters

- Technology Transfer and Training.

—Environmental risk communication
—Pollution prevention
—Environmental justice
—Public education concerning risks
—Technology demonstrations

Great Lakes/Mid-Atlantic Center (GLMAC)

The Great Lakes and Mid-Atlantic Center for Hazardous Substance Research has responsibility for coordinating the hazardous substance research and technology transfer activities within EPA Regions 3 and 5. The University of Michigan is the lead institution of the Center. Michigan State University and Howard University are the other consortium members. Center research focuses on problems associated with environmental contamination by organic chemicals. It addresses such problems by attempting to define and refine remediation technologies that are effective, environmentally compatible and cost-effective. Current projects address in-situ remediation schemes which integrate biological processes with chemical and physicochemical technologies in the following focus areas:

- Bioremediation of PCB contaminated soils.

—Development of genetically engineered organisms
—Design of engineered systems for field applications

- Bioremediation of carbon tetrachloride contaminated groundwater and soil.

—Introduction of and maintenance of a population of carbon tetrachloride degrading organisms in the field

- Bioventing for remediation of vadoze zone soils.

—Delineation of underlying fundamental processes
—Identification of rate controlling mechanisms

- Introduction of surfactants for groundwater remediation.

—Principles controlling the dissolution and mobilization of non-aqueous phase liquids

- Site characterization and sample analysis.

—Improved methods for sample collection and analysis
—Improved methods of field characterization

In addition to research, the Center has a training and technology transfer program that is designed to complement Center research. Activities include publication of synergos, a periodical research report; production of educational videotapes; organization of conferences and seminars; and providing assistance to communities affected by hazardous waste sites.

South/Southwest Hazardous Substance Research Center

The South and Southwest Hazardous Substance Research Center is a consortium led by Louisiana State University and includes Georgia Institute of Technology and Rice University. The overall research mission of the Center is to provide short and long-term investigations into the management of hazardous substance problems associated with the Center's focus area–contaminated sediments and dredged materials–as well as problems unique to EPA Regions 4 and 6. The Center is also responsible for training and technology transfer activities including: community outreach programs; one-day regulatory update conferences; a quarterly newsletter and technical briefs; an annual symposium and report; and demonstration and transfer of technologies developed from Center activities.

Most of the Center research activities are focused on problems with contaminated sediment (CS) and dredged material (DM). The CS and DM of concern contain organics, metals and conventional pollutants as environmental contaminants both in the water column and on the bottom of rivers, bayous, lakes, harbors, estuaries, freshwater wetlands and adjoining regions of the continental shelf. Projects in the CS/DM focus examine source characterization, contaminant transport and transformation processes, ecological effects and human exposure to chemicals in contaminated sediments and dredged materials. Specific research projects are currently supported in the areas of:

- Mobility of radium sediments;
- Contaminant migration from sediment disposal facilities;
- Contaminant exchange between sediments and the overlying water via biological and physicochemical processes;
- Biotransformation of contaminated sediments;
- Plant enzyme mediated remediation of TNT contaminated soils;
- In-situ monitoring of volatile hydrocarbons; and
- Dynamics of pollutant-sediment reactions.

Great Plains/Rocky Mountain Center

Kansas State University leads the twelve institution consortium representing EPA Regions 7 and 8. Participating universities are Montana State University, South Dakota State University, Utah State University, Haskell Indian Nations University, Lincoln University and the Universities of Iowa, Missouri, Montana, Nebraska, Utah and Wyoming. The Center was established in 1989 to conduct research in identification, treatment and reduction of hazardous substances resulting from agriculture, forestry, mineral and mining processing and other concerns of regional interest.

The two regions have diverse interests resulting from the grouping of mineral-rich states with those whose principal industries are agricultural, both crop land and animal husbandry. The Center's mission is focused on contaminated soils and mining wastes.

The diversity of interests and the large geographic area are further reflected in the Center's training and technology program. Much of the Center's efforts support activities which reach large audiences with minimum resources. The Center provides a repository for printed, visual, audial and photographic materials related to hazardous substance research. The quarterly newsletter, *HazTech Transfer*, is disseminated nationally to more than 5000 addresses. The Community Technical Outreach program serves clients across the region pair where hazardous substances have become a special concern. A special program to provide public environmental information and education related hazardous substances is also underway. The Center is developing a special environmental seminar program to serve the consortium campuses and the general public in the ten states of EPA Regions 7 and 8. Current projects include:

- Soil and water contamination by heavy metals associated with mining wastes and other industrial activities;
- Soil and groundwater contamination by organic chemicals from various industrial sources;
- Improved technologies and methods for characterization and analysis of contaminated soil;
- Innovative treatment technologies for remediation of contaminated soil and groundwater; and

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• Waste minimization and pollution prevention methods and technologies.

Western Region Center

The Western Region Hazardous Substance Research Center is a cooperative activity between Stanford University and Oregon State University to address critical hazardous substance problems in EPA Regions 9 and 10. The objective of the Center is to promote—through fundamental and applied research—the development of alternative and advanced physical, chemical and biological processes for treatment of hazardous substances in the surface and subsurface environments. Groundwater cleanup and site remediation, with a strong emphasis on biological approaches, represent the major focus of Center activities.

The Center's personnel collectively represent an integrated research team representing four different schools (engineering, earth sciences, medicine and veterinary medicine) and various disciplines (microbiology, chemistry, hydrogeology, hydrology, chemical engineering, civil engineering and medicine).

The technology transfer program is focused upon field remediation of innovative technology. Training in field sampling and instrumentation are available. A program of providing technical assistance to communities affected by hazardous waste sites is being conducted. Topics of interest include:

• Bioremediation.
—Co-metabolism of chlorinated aliphatic compounds
—Anaerobic degradation of aromatic compounds
—Aerobic degradation of anaerobic metabolic products
• Fate and Transport.
—Sorption
—Physical movement
—Volatilization
—Abiotic transformation
• Treatment Technologies.
—In-situ bioremediation
—In-situ recirculation
—Air sparging
• Site Characterization and Transport Modeling.
—Geological sampling
—Hydrogeology
—Geostatistics
• Heavy Metal Remediation.
—Lead
—Chromium
—In-situ leaching

HSRC Minority Academic Institution Program Pre-Proposal Submission Format

Applicant Information

Name of Institution

Department

Name and Telephone of Contract Person on Matters Involving This Submission

HSRC to Which Submitting

Date

Address (city, county state & zip code)

Address (if different than above)

HSRC Collaborator(s)

Areas of Proposed Participation (Please Indicate All That Apply)

Cooperative Research Program

• Thermal/incineration research
• Bioremediation
• Contaminated sediment, soils or groundwater
• Other (specify)_____

Student Enhancement

• Undergraduate Internship
• Graduate/Doctoral Internship
• Other (specify)_____

Faculty Enhancement

• Academic-year Sabbatical
• Summer research visit
• Short-term faculty interations
• Other (specify)_____

Technology Transfer and Training

• New technology training
• Minority populations education project(s) expansion/training
• Train-the-trainers: hazardous substance management
• Practitioner-in-Residence Program
• Other (specify)_____

Project Title

Amount Requested
$ _____

Additional Information

In order to be considered for the HSRC Minority Academic Institution Program, applicants must submit the following documentation:

1. Proof of Minority Academic Institution status on the basis of enrollment data in the Integrated Postsecondary Education Data System (IPEDS) Fall Enrollment Survey, provided by postsecondary institutions, through the National Center for Education Statistics, to the Office for Civil Rights, U.S. Department of Education as set forth in 34 C.F.R. § 637.4(b) (7–1–93 Ed.).

2. A maximum two-page description of Proposed Activity incorporating the following criteria:

• Short- and long-term benefits to minority academic institution
• Benefits to Principal Investigator's professional development
• Compatibility with HSRC interests
• Leverage of resources
• Quality and potential impact of proposed activity

3. A statement from an Authorized Representative of the minority institution stating that, to the best of their knowledge and belief, all data in the submission are true and correct, the document(s) have been duly authorized by the governing body of the applicant and the applicant will comply with necessary assurances if the pre-proposal results in an award. The name, title and phone number for this Representative should be provided.

Dr. Dale Manty,

Director, Hazardous Substance Research Centers Program.

[FR Doc. 94–23148 Filed 9–19–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5074–7]

New Mexico; Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of New Mexico for full program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

On July 20, 1994, New Mexico applied for a determination of adequacy under section 4005 of RCRA. EPA has reviewed New Mexico's MSWLF application and has made a tentative determination that all portions of New Mexico's MSWLF permit program are adequate to assure compliance with the revised MSWLF Criteria. New Mexico's application for program adequacy determination is available for public review and comment.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has scheduled a public hearing on this determination and will hold the hearing if a sufficient number of people express interest in participating in the hearing by writing the Region or calling the contact given below within 30 days of the date of publication of this notice. If a public hearing is held, it will take place on the date given below in the "DATES" section. The Region will notify all persons who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the "CONTACTS" section below.

DATES: All comments on New Mexico's application for a determination of adequacy must be received by the close of business on October 20, 1994. If a public hearing is held, it will be scheduled for November 4, 1994 in Santa Fe, New Mexico. State of New Mexico officials will participate in the hearing, if held by EPA.

ADDRESSES: Copies of New Mexico's application for adequacy determination are available during normal business hours for inspection and copying at the following addresses: New Mexico Environment Department, 1190 St. Francis Drive, Santa Fe, New Mexico. Mr. Gerald Silva, 505–827–2775; USEPA Region 6 Library, 1445 Ross Avenue, Dallas, Texas, Becky Weber, 214–665–6760. Written comments should be sent to USEPA Region 6, Becky Weber (6H-HW), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Becky Weber, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, 214–665–6760.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an adequate program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of New Mexico

On July 20, 1994, New Mexico submitted an application for adequacy determination. EPA has reviewed New Mexico's application and has tentatively determined that all portions of New Mexico's Subtitle D program will ensure compliance with the revised Federal Criteria.

On July 8, 1994, the Solid Waste Management Regulations (EIB/SWMR–4) were adopted by the Environmental Improvement Board. As required by the New Mexico State Rules Act, NMSA 1978, Section 14–4–5 (1988 Repl. Pamp.), EIB/SWMR–4 was filed with the New Mexico State Records Center and Archives on July 18, 1994, and will be in effect thirty days after filing or August 17, 1994. NMSA 1978, Section 74–1–9.G. EIB/SWMR–4 was scheduled to be published in the New Mexico Register on July 30, 1994.

EPA has tentatively determined that New Mexico's application is consistent with the Federal Criteria and will make a final determination of adequacy after the amended regulations become effective.

The public may submit written comments on EPA's tentative determination until October 20, 1994. Copies of New Mexico's application are available for inspection and copying at the location indicated in the "ADDRESSES" section of this notice. If there is sufficient public interest, the Agency will hold a public hearing on its tentative determination on November 4, 1994 at 10 a.m. at the New Mexico Environment Department in Santa Fe, New Mexico. Comments can be submitted as transcribed from the discussion of the hearing or in writing at the time of the hearing.

EPA will consider all public comments on its tentative determination received during the public comment period and during the public hearing, if held. Issues raised by those comments may be the basis for a determination of inadequacy for New Mexico's program. EPA's final determination notice will include a summary of the reasons for the final determination and a response to all major comments.

New Mexico's solid waste program is not enforceable on Indian lands.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As

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EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 94-23240 Filed 9-19-94; 8:45 am]

BILLING CODE 6560-50-F

[FRL-5073-7]

Draft NPDES General Permit for Offshore Oil and Gas Operations on the Outer Continental Shelf (OCS) and State Waters of Alaska: Arctic NPDES General Permit

AGENCY: Environmental Protection Agency.

ACTION: Notice of Draft NPDES General Permit.

SUMMARY: The Regional Administrator, Region 10, is proposing to issue a draft National Pollutant Discharge Elimination System (NPDES) general permit for oil and gas stratigraphic test and exploration wells on the Alaskan Outer Continental Shelf and contiguous state waters. The proposed Arctic general permit will authorize offshore oil and gas stratigraphic test and exploration wells in the federal and state waters of the Beaufort and Chukchi Seas. Development and production wells are not authorized to discharge by this general permit.

Unlike previous general permits for the Beaufort and Chukchi Seas, the Arctic general permit will cover a geographic area not defined by specific state and federal lease sale tracts. Rather, the area of coverage includes the following:

—Federal waters of the Beaufort Sea and Chukchi Sea planning basins as defined by the Minerals Management Service (MMS) (see U.S. Dept. of the Interior, 1992), and

—State waters contiguous to the landward boundary of the Beaufort and Chukchi Sea planning basins.

The permit will authorize discharges from exploratory operations in all areas offered for lease by the U.S. Department of the Interior's Minerals Management Service (MMS) included in previous general permits issued by EPA for the Beaufort and Chukchi Seas. This includes federal lease sales 71, 87, 97, and 109; and state lease sales 36, 39, 43, and 43A, Federal/State lease sale BF; and "contiguous state lease sales" which were covered by the modification for the Beaufort Sea II NPDES general permit (54 FR 39574, September 27, 1989). Additional lease sale areas not previously covered by a permit will include, but are not limited to, the following: MMS federal lease sales 124 and 126; and state lease sales 65 and 68.

A brief description of the basis for the conditions and requirements of the proposed permit is given in the fact sheet published below.

PUBLIC COMMENT PERIOD: Interested persons may submit written comments on the draft general permit to the attention of the Director, Water Division, at the address below. All comments should include the name, address, and telephone number of the commenter and a concise statement of the exact basis of any comment and the relevant facts upon which it is based. Comments must be received by the regional office by November 21, 1994.

PUBLIC HEARING: Public hearings on the proposed general permit are tentatively scheduled to be held in Anchorage and Barrow, Alaska. The Barrow hearing will be held at the North Slope Borough Assembly Chambers on November 2, 1994, from 12 p.m. to 3 p.m. The Anchorage hearing will be held at the Federal Building, Room 137, 710 "C" Street, Anchorage, Alaska on November 3, 1994, from 12 p.m. until 4 p.m. Persons interested in making a statement at the hearing must contact Debra Packard at the address below or at (206) 553-1266 by 4:00 p.m. on October 24, 1994.

Either or both of the public hearings will be cancelled if insufficient interest is expressed in them. Interested persons can contact Debra Packard at (206) 553-1266 during the hours of 8:30 a.m. and 4 p.m. PDT on October 25, 1994, to confirm that the hearings will take place. At the hearings, interested persons may submit oral or written statements concerning the draft general permit.

ADMINISTRATIVE RECORD: The administrative record for the draft permit is available for public review at EPA, Region 10, at the address listed below.

ADDRESSES: Public comments and requests for coverage should be sent to: Environmental Protection Agency, Region 10, Attn: Ocean Programs Section WD-137, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Anne Dailey or Eileen Hileman, both of Region 10, at the address listed above or telephone (206) 553-2110 or (206) 553-6513, respectively. Copies of the draft general permit and today's publication will be provided upon request.

FACT SHEET

I. General Permits and Requests for Individual NPDES Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with the terms of an NPDES permit. Under EPA's regulations [40 CFR 122.28(a)(2)], EPA may issue a single general permit to a category of point sources located within the same geographic area if the regulated point sources:

—Involve the same or substantially similar types of operations;

—Discharge the same types of wastes;

—Require the same effluent limitations or operating conditions;

—Require similar monitoring requirements; and

—In the opinion of the Regional Administrator, are more appropriately controlled under a general permit than under individual permits.

In addition, under EPA regulations [40 CFR 122.28(c)(1)], the Regional Administrator shall issue general permits covering discharges from offshore oil and gas facilities within the Region's jurisdiction. Where the offshore area includes areas for which separate permit conditions are required, such as areas of environmental concern, a separate individual or general permit may be required by the Regional Administrator. The Regional Administrator has determined that exploratory oil and gas facilities operating in the area described in this general NPDES permit are more appropriately controlled by a general permit than by individual permits.

Any owner and/or operator authorized to discharge under a general permit may request to be excluded from coverage under the general permit by applying for an individual permit as provided by 40 CFR 122.28(b). The operator shall submit an application together with the reasons supporting the request to the Director, Water Division, EPA, Region 10 ("Director"). A source located within a general permit area, excluded from coverage under the general permit solely because it already has an individual permit (i.e., a permit that has not been continued under the Administrative Procedure Act), may request that its individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply. Procedures for modification, revocation, termination, and processing of NPDES permits are provided by 40 CFR 122.62-122.64. As in the case of individual permits, violation of any condition of a general permit constitutes a violation of the Act that is enforceable under Section 309 of the Act.

II. Covered Facilities and Nature of Discharges

A. Types of Discharges Authorized

The proposed general permit will authorize the following discharges from exploratory offshore oil and gas operations: Drilling mud and drilling cuttings; deck drainage; sanitary wastes; domestic wastes; desalination unit wastes; blowout preventer fluid; boiler blowdown; fire control system test water; non-contact cooling water; uncontaminated ballast water; uncontaminated bilge water; excess cement slurry; mud, cuttings, and cement at the seafloor; and test fluids. Drilling muds and cuttings are the major pollutant sources discharged from exploratory operations. Further description of discharges are given in Part V below. When issued, the proposed general permit will establish effluent limitations, standards, prohibitions, and other conditions on the authorized discharges from the facilities covered.

B. Types of Facilities Covered

The general permit proposed today authorizes the discharge of specific operational wastewaters from offshore exploratory oil and gas operations located in federal and state waters. In order to be authorized to discharge under this permit, the operator of such exploratory operations must be registered with EPA as the NPDES permittee. Development and production operations are not covered by this general permit. Exploratory operations are defined as those operations involving the drilling of wells to determine the nature of potential hydrocarbon reserves. Exploration facilities covered by this general permit are included in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435, subpart A). Under the proposed permit, the number of wells from which discharges may occur is limited to a maximum of five at a single site.

C. Areas Covered

The area of coverage under previous general permits for offshore oil and gas activities in Alaska was linked directly to federal or state lease sales. For a variety of reasons, EPA is now planning to tie the area of coverage to MMS planning basins and all contiguous state waters. This method of defining the area of coverage will ensure that all areas likely to be leased during the term of this general permit will be covered. While the planning basins are generally larger than the specific sale areas offered for lease by MMS, discharges under this permit would occur in only those areas successfully leased. EPA believes that this is a more practicable way of addressing the area of coverage. Hence, areas covered by the proposed Arctic NPDES general permit include the Beaufort Sea and Chukchi Sea planning basins as defined by MMS (U.S. Department of the Interior, 1992), and state waters contiguous to the landward boundary of the Beaufort Sea and Chukchi Sea planning basins. The general permit does not authorize discharges into any wetlands adjacent to the territorial waters of Alaska or from facilities in the Onshore or Coastal Subcategories as defined in 40 CFR Part 435.

III. Statutory Basis for Permit Conditions

Sections 301(b), 304, 306, 307, 308, 401, 402, 403, and 501 of the Clean Water Act (The Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987), 33 U.S.C. 1311, 1314 (b), (c), and (e), 1316, 1317, 1318 and 1361; 86 Stat. 816, Public Law 92-500; 91 Stat. 1567, Public Law 95-217; 101 Stat. 7, Public Law 100-4 ("the Act" or "CWA"), and the U.S. Coast Guard regulations (33 CFR Part 151), provide the basis for the permit conditions contained in the permit. The general requirements of these Sections fall into three categories, which are described below. A discussion of the basis for specific permit conditions follows in Section V of this fact sheet.

A Technology-Based Effluent Limitations

1. BPT Effluent Limitations

The Act requires particular classes of industrial dischargers to meet effluent limitations established by EPA. EPA promulgated effluent limitations guidelines requiring Best Practicable Control Technology Currently Available (BPT) for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435, subpart A) on April 13, 1979 (44 FR 22069).

BPT effluent limitations guidelines require "no discharge of free oil" for discharges of deck drainage, drilling muds, drill cuttings, and well treatment fluids. This limitation requires that a discharge shall not cause a film or sheen upon or discoloration on the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines [40 CFR 435.11(d)]. The BPT guidelines for sanitary waste require that the concentration of chlorine be maintained as close to 1 milligrams/liter as possible in discharges from facilities housing ten or more persons. For facilities continuously staffed by nine or fewer persons or only intermittently staffed by any number of persons, the BPT guideline for sanitary waste require no discharge of floating solids. A "no floating solids" guideline also applies to domestic waste.

2. BAT and BCT Effluent Limitations

As soon as practicable but in no case later than March 31, 1989, all permits are required by Section 304(b)(2) of the Act to contain effluent limitations for all categories and classes of point sources which: (1) Control toxic pollutants (40 CFR 401.15) and nonconventional pollutants through the use of Best Available Technology Economically Achievable (BAT), and (2) represent Best Conventional Pollutant Control Technology (BCT). BCT effluent limitations apply to conventional pollutants (Ph, BOD, oil and grease, suspended solids, and fecal coliform). In no case may BCT or BAT be less stringent than BPT.

BAT and BCT effluent limitations guidelines and New Source Performance Standards (NSPS) for offshore oil and gas operations were proposed on August 26, 1985 (50 FR 34592) and signed on January 15, 1993 (58 FR 12454, March 4, 1993). The new guidelines were established under the authority of Sections 301(b), 304, 306, 307, 308, and 501 of the Act. The new guidelines were also established in response to a Consent Decree entered on April 5, 1990

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(subsequently modified on May 28, 1992) in *NRDC* v. *Reilly*, D. D.C. No. 79–3442 (JHP) and are consistent with EPA's Effluent Guidelines Plan under Section 304(m) of the CWA (57 FR 41000, September 8, 1992). This permit incorporates BAT and BCT effluent limitations based upon the BAT and BCT effluent limitations guidelines.

New Source Performance Standards (NSPS) are not incorporated in this general permit. Per the guidelines, NSPS are not applicable to exploratory oil and gas operations (58 FR 12457, March 4, 1993). Exploratory operations are defined in the preamble to the guidelines as "new dischargers" (rather than "new sources") on the basis that they do not constitute "significant site preparation". NSPS do apply to certain development and production, but not exploratory, operations.

This will be the first oil and gas general permit issued by Region 10 incorporating the new effluent limitation guidelines. Offshore exploratory oil and gas wastestreams for which there are new BAT and BCT effluent guidelines include: Drilling fluids and cuttings, deck drainage, sanitary waste, and domestic wastes. This permit incorporates BAT and BCT effluent limitations from the guidelines for the aforementioned wastestreams (see also Sections IV and V below). Based upon EPA's best professional judgement, limitations on test fluids have been established to reflect guidelines applicable to produced water.

The new effluent guidelines do not specifically address other wastestreams controlled by this permit (e.g., desalination unit wastes; blowout preventer fluid; boiler blowdown; fire control system test water; non-contact cooling water; uncontaminated ballast water; uncontaminated bilge water; excess cement slurry; and muds, cuttings, cement at seafloor). In the absence of effluent limitation guidelines for these wastestreams, permit conditions must be established using Best Professional Judgement (BPJ) procedures (40 CFR Sections 122.43, 122.44, and 125.3). As with previous oil and gas general permits issued by Region 10, this permit incorporates BAT and BCT effluent limitations based on the Agency's Best Professional Judgement.

As required by Section 304(b)(2)(B) of the Act, in developing the BPJ/BAT permit conditions, the Agency considered the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Director deemed appropriate.

The types of equipment and processes employed in exploratory drilling operations are well known to the Agency. Region 10 has issued numerous general and individual permits for exploratory oil and gas operations. The records for this permit and those earlier permits thoroughly discuss the types of equipment, facilities and processes employed in exploratory drilling operations.

With regard to the engineering aspects of the application of various types of control techniques, there are no BAT permit limitations based on installation of control equipment. BAT permit limitations based on the newly issued guidelines can be achieved through product substitution for drilling muds and cuttings. Any costs of achieving the effluent limitations and any non-water quality environmental impacts were also evaluated by the Agency where the guidelines are applicable. A discussion of such evaluations is presented below with respect to any limitation where applicable.

As required by Section 304(b)(4)(B) of the Act, the same factors as in BAT are considered in determining BCT permit conditions, with one exception. Rather than considering "the cost of achieving such effluent reduction," any BCT determination includes "consideration of the reasonableness of the relationship between the costs of attaining a reduction in effluents and the effluent reduction benefits derived, and the comparison of the cost and level of reduction of such pollutants from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources." BCT effluent limitations cannot be less stringent than BPT; therefore, if the candidate industrial technology fails the BCT "cost test", BCT effluent limitations are set equal to BPT.

B. Ocean Discharge Criteria

Section 403 of the Act requires that an NPDES permit for a discharge into marine waters located seaward of the inner boundary of the territorial seas be issued in accordance with guidelines for determining the degradation of the marine environment. These guidelines, referred to as the Ocean Discharge Criteria (40 CFR part 125, subpart M), and section 403 of the Act are intended to "prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal." (45 FR 65942, October 3, 1980)

If EPA determines that the discharge will cause unreasonable degradation, an NPDES permit will not be issued. If a determination of unreasonable degradation cannot be made because of a lack of sufficient information, EPA must then determine whether a discharge will cause irreparable harm to the marine environment and whether there are reasonable alternatives to on-site disposal. To assess the probability of irreparable harm, EPA is required to make a determination that the discharger, operating under appropriate permit conditions, will not cause permanent and significant harm to the environment during a monitoring period in which additional information is gathered. If data gathered through monitoring indicate that continued discharge may cause unreasonable degradation, the discharge must be halted or additional permit limitations established.

The Director has concluded that there is sufficient information to determine that exploratory oil and gas facilities operating under the effluent limitations and conditions in this general permit will not cause unreasonable degradation of the marine environment pursuant to the Ocean Discharge Criteria guidelines as long as discharge does not occur shoreward of the 5 meter isobath (Tetra Tech, 1994a) as discussed in Section V.B.4. of this fact sheet. Conditions imposed under Section 403(c) of the Act are discussed in Section V.B.4. below.

C. State of Aloska Standards and Limitations

All dischargers to State waters must ensure compliance with water quality standards and with limitations imposed by the state as part of its certification of NPDES permits under Section 401 of the Act. The state waters of the Beaufort and Chukchi Seas have been classified by the Alaska Department of Environmental Conservation (ADEC) as marine waters with water use classes 2A through 2D (water supply; water recreation; growth and propagation of fish, shellfish, other aquatic life, and wildlife; and harvesting for consumption of raw mollusks or other raw aquatic life). In the best professional judgement of Region 10, the requirements and discharge limitations in the proposed permit will ensure compliance with the state water quality standards.

In issuing this permit, EPA has considered Alaska's antidegradation policy (18 AAC 70.010(c)). The exploratory discharges authorized under this proposed permit are expected to have minimal impact because:

—The relatively short duration of exploratory activities,
—The intermittent nature of the discharges,
—The limited areal extent of the discharges relative to the total area of coverage, and
—The controls placed on the discharges via the proposed NPDES permit.

Given the above, and since the project is not expected to result in any violations of state water quality criteria, EPA believes the project complies with the state's antidegradation policy.

D. Section 308 of the Clean Water Act

Section 308 of the Act and 40 CFR 122.44(i) authorizes the Director to require a discharger to conduct monitoring to determine compliance with effluent limitations and to assist in the development of effluent limitations. EPA has included several monitoring requirements in this permit, as listed in the table below in Section V.

IV. Summary of New or Changed Permit Conditions

This section of the fact sheet is intended to provide readers with a brief summary of the parts of the general permit which are substantively different from the previous general permits for offshore oil and gas exploratory activities in the Beaufort and Chukchi Seas. For detailed discussion of the requirements and their bases, please refer to Section V of this fact sheet. Many of the new and changed requirements are a consequence of the final Effluent Limitations Guidelines and New Source Performance Standards for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category promulgated by EPA (see 40 CFR part 435, subpart A).

Drilling Muds and Drilling Cuttings

—Combination of wastestreams: In accordance with the guidelines, drilling muds, drilling cuttings and washwater have been combined into a single discharge wastestream called drilling fluids and drilling cuttings (Discharge 001). Washwater had previously been combined with drilling cuttings in a separate wastestream but washwater is now covered as an intrinsic component of the drilling muds and cuttings wastestream.
—Discharge prohibitions: Under Section 403(c) of the Act, discharge of drilling muds and cuttings is prohibited to waters shallower than 5 meters depth in accordance with computer modeling done in preparation for this proposed permit. Previously discharge had been prohibited in waters shallower than 2 meters.
—Toxicity limit: A toxicity limit of a minimum of 30,000 ppm suspended particulate phase (SPP) has been applied to the discharge in accordance with the guidelines.
—Oil content: In accordance with the guidelines, EPA has eliminated the 10% by weight maximum oil limitation on cuttings in favor of the no free oil limitation.
—Barite: EPA has maintained the limitations on the mercury and cadmium content of stock barite but has eliminated the case-by-case waiver option present in previous permits. This waiver option has been eliminated to ensure consistency with the effluent guidelines.
—Mud Plan: EPA has included a requirement that a mud plan be developed by operators to encourage operators to estimate in advance the toxicity of the drilling muds and cuttings to ensure compliance with the toxicity limitation. The individual NPDES permit recently issued to Arco Alaska for operations in Cook Inlet contains a similar requirement.
—Area and Seasonal Restrictions: In addition to several continued restrictions, based on Section 403(c) of the Act the proposed permit also prohibits discharges within 3 miles of Kasegaluk Lagoon and its passes.
—Environmental monitoring: The requirements for environmental monitoring are more specific and detailed. These changes reflect the current level of specificity present in other NPDES permits issued by Region 10.

Domestic Wastes

—Garbage ("All other domestic waste"): Under the Coast Guard Regulations, discharges of garbage, including plastics, are prohibited with one exception. Victual or food waste can be discharged with restrictions. This requirement reflects the new offshore guidelines (58 FR 12506, March 4, 1993). Several definitions have been included to clarify this new effluent parameter.

Test Fluids

—Oil and grease: Per EPA's best professional judgement and the new guidelines, the oil and grease limitation on test fluids has been made more stringent. The limitations are now 29 mg/l monthly average and 42 mg/l daily maximum.

Discharge Limitations for All Wastestreams

—Rubbish, Trash and Other Refuse: As proposed the permit will prohibit the discharge of "garbage" including food wastes within 12 nautical miles of nearest land. With restrictions, comminuted food waste may be discharged further than 12 nautical miles from nearest land. Under the proposed permit these limitations, which are already effective under the Coast Guard regulations, will be incorporated into the Arctic general permit for consistency purposes.

Best Management Practice Plan Requirement

—The proposed general permit requires permittees to develop and implement a Best Management Practices (BMP) Plan which prevents or minimizes the generation of pollutants, their release, and potential release from the permitted facilities to the waters of the United States.

V. Specific Permit Conditions

A. Approach

The determination of appropriate conditions for each discharge was accomplished through:

(1) consideration of technology-based effluent limitations to control conventional pollutants under BCT;

(2) consideration of technology-based effluent limitations to control toxic and nonconventional pollutants under BAT; and

(3) evaluation of the Ocean Discharge Criteria for discharges, assuming conditions in (1) and (2), above, were in place.

Discussions of the specific effluent limitations and monitoring requirements derived from (1) through (3) appear below in sections B. through G. For convenience, these conditions and the regulatory basis for each are cross-referenced by discharge in the following table:

Discharge and permit conditions	Statutory basis
Drilling Muds and Drilling Cuttings:	
Toxicity limit	BAT.
No diesel	BAT.

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Discharge and permit conditions	Statutory basis
Cadmium & mercury in barite	BAT.
No free oil	BAT, BCT.
No oil-based muds & cuttings	BAT, BCT.
Chemical analysis	Section 308.
Inventory of added substances	Section 308.
Monitoring volume discharged	Section 308.
Mud plan	Section 308.
Flow rate limitations	Section 403(c).
Depth related limitations	Section 403(c).
Area and seasonal requirements	Section 403(c).
Environmental monitoring requirements	Sect. 403(c), WQS.
Deck Drainage:	
No free oil	BAT, BCT, BPT.
Monitor flow rate	Section 308.
Sanitary Wastes:	
No floating solids	BCT.
Chlorine (facilities > 10 people)	BCT.
Monitor flow rate	Section 308.
Domestic Wastes:	
No foam	BAT.
No floating solids	BCT.
All other domestic waste (garbage)	BCT.
Monitor flow rate	Section 308.
Miscellaneous Discharges (as defined in permit):	
No free oil	BCT.
Monitor flow rate	Section 308.
Test Fluids:	
pH	BCT.
No free oil	BCT.
Oil and grease limit	BAT/BPJ.
No discharge oil-based fluids	BAT.
Monitor volume	Section 308.
All Discharges:	
No floating solids, foam or oily waste	BCT.
Surfactants, dispersants, and detergents	BAT.
Rubbish, trash and other refuse	BCT.
Other toxic/non-conventional pollutants	BAT/BCT.
Best Management Practices Plan	402(a)(1).

B. Drilling Muds and Drill Cuttings

The term "drilling fluid" generally includes all compositions of fluids used to aid the production and removal of cuttings (particles from geological formations) from a borehole in the earth. The essential functions of drilling fluids are:

—To carry cuttings to the surface,
—To cool and clean drill bit,
—To reduce friction in the borehole,
—To maintain pressure balance between formation and borehole in uncased sections of hole, and
—To assist in collection and interpretation of information available from cuttings, cores, electrical logs, etc.

All drilling fluids fall into one of three classes: gas-based (e.g., mist or foam), water-based, or oil-based. When the main component of the drilling fluid is liquid (i.e., water or oil), it is referred to as "mud". All of Region 10's previous permits address only the discharge of muds, as gas fluids are not used in Alaskan offshore or coastal drilling operations. As discussed below in subsections 1 and 2, the discharge of oil-based muds (with oil as the continuous phase and water as the dispersed phase) is prohibited because they do not comply with the no free oil limitation.

The Agency understands that non-petroleum hydrocarbon organic liquids are being developed as an alternate to gas, water or hydrocarbon (e.g., diesel or mineral) oil-based drilling muds. The Agency invites comments on the applicability and feasibility of such muds to exploratory drilling operations in the offshore Arctic.

1. BCT Limitations on Drilling Muds and Cuttings

Free oil and oil-based muds: No discharge of free oil is permitted from the discharge of drilling mud and drill cuttings, based upon the guidelines. The technology basis for this limitation is substitution of water-based drilling fluids in place of oil-based muds, non-petroleum oil-containing additives, and minimization of the use of mineral oil. When this substitution is not possible, the guidelines contemplated that the technology basis was also transportation and discharge onshore. Free oil is being regulated under BAT as an "indicator" pollutant for the control of toxic pollutants. Although it is not a listed conventional pollutant, as is oil and grease, free oil is also limited as a surrogate for oil and grease under BCT.

The discharge of oil-based drilling fluids is prohibited since discharge of oil-based fluids would violate the effluent limitations of no discharge of free oil.

Compliance with the free oil limitation will be monitored by use of the Static Sheen Test (see 40 CFR part 435, appendix 1 to subpart A) daily and before bulk discharges. Region 10 has required the use of the Static Sheen Test in previous permits because visual observation of the discharge for sheen upon the receiving water will not prevent violations of the standard. This test is also appropriate for the harsh weather and extended periods of darkness common in Alaska.

Previous Region 10 permits have contained an oil content limitation on drill cuttings. However, this approach has been rejected in favor of the no free oil limitation contained in the guidelines. As discussed at 56 FR 10682 and 56 FR 10685 (March 13, 1991), the Agency rejected an oil content limitation based on cuttings washing treatment technologies because limitations on other parameters (diesel oil, free oil, and toxicity) are sufficient to reduce toxics from drilling wastes. Because the no free oil limitation is more stringent than the 10% by weight limitation on the oil content of cuttings, this change does not invoke antibacksliding provisions (see 40 CFR 122.44(l)(2)).

2. BAT Limitations on Drilling Muds and Cuttings

Toxicity: Region 10 is proposing to incorporate an effluent toxicity limit of minimum 96-hour LC_{50} of 30,000 ppm suspended particulate phase (SPP) on discharged drilling muds and cuttings. This limit is designed to be a technology-based control on toxicity, as well as toxic and nonconventional pollutants. The 30,000 ppm SPP limitation is based on the Agency's evaluation that it constitutes an economically and technically achievable level of performance and is both technologically feasible and economically achievable and reflects BAT level of control (U.S. EPA, 1993a) on a national basis. This limitation is present in the general permit for the Western Gulf of Mexico (57 FR 54652, November 19, 1992). The toxicity limit is also present in a recently issued individual NPDES permit for ARCO Alaska operations in Cook Inlet.

The purpose of this limitation is to encourage the use of water-based or other low toxicity drilling fluids and additives. This toxicity criterion became BAT when the final effluent guidelines were signed January 15, 1993 (58 FR 12469, March 4, 1993).

The toxicity limit is an end-of-pipe discharge limit; and represents a different approach to controlling this wastestream than has been applied in previous general permits issued by Region 10. When the Region issued its first general permits under the proposed guidelines, it developed a case-by-case approach to limiting the toxicity of discharged mud/additive systems as BPJ determination of BAT until guidelines could be promulgated. Region 10 used the 30,000 ppm SPP value as a criterion in evaluating available bioassay data for the proposed discharges. The process of evaluating each mud/additive system with respect to the discharge toxicity constituted BPJ determination of BAT. Since the guidelines have now been promulgated with a toxicity limitation for drilling muds and cuttings, Region 10 will be discontinuing the mud preapproval process in favor of the end-of-pipe limitation.

Compliance with the drilling mud toxicity limit will be determined by using the Drilling Fluids Toxicity Test (see appendix 2 to subpart A of part 435, 58 FR 12507, March 4, 1993). At a minimum, monitoring is to be done on a monthly basis for each well. When the end-of-well is reached, a final bioassay analysis will be required (see Part II.A.1.k. of permit). The last monthly bioassay may constitute the end-of-well bioassay. If a mineral oil pill is required (Part II.A.1.g. of permit), the mud shall be sampled for bioassay prior to application of the pill *and* after removal of the pill. Complete bioassay reports are required as part of the regulatory record for each well.

Diesel oil: The discharge of drilling muds and cuttings which have been contaminated by diesel oil is prohibited by the Agency, in accordance with the offshore oil and gas effluent guidelines (58 FR 12469, March 4, 1993). The prohibition on the discharge of diesel oil has been part of all of the general NPDES permits issued by Region 10 for the Offshore and Coastal Subcategories. Diesel oil, which is sometimes added to a water-based mud system, is a complex mixture of petroleum hydrocarbons, known to be highly toxic to marine organisms and to contain numerous toxic and nonconventional pollutants. The pollutant "diesel oil" is being used as an "indicator" of the listed toxic pollutants present in diesel oil which are controlled through compliance with the effluent limitation (i.e., no discharge). The technology basis for this limitation is product substitution of less toxic mineral oil for diesel oil.

Mercury and Cadmium in Barite: In accordance with the offshore oil and gas effluent guidelines (58 FR 12469, March 4, 1993), the proposed permit contains limitations of 1 mg/kg mercury and 3 mg/kg cadmium in barite. Barite is a major constituent of drilling muds. These restrictions on drilling fluid influent are designed to limit the discharge of mercury, cadmium, and other potentially toxic metals in the drilling fluid effluent, since these metals can occur as contaminants in some sources of barite. The justification for the limitation under BAT is product substitution or transportation and disposal of the waste onshore. That is, operators can substitute "clean" barite, which meets the above limitations, for contaminated barite, which does not meet the limitations. Numerous offshore exploratory wells and the production wells drilled under permits previously issued by Region 10 have been drilled subject to this requirement. Chemical analyses have shown that the barite used has not exceeded the limitations. Further discussion on the mercury and cadmium limits in barite is presented in the offshore oil and gas guidelines (58 FR 12479–80, March 4, 1993) and in the development document (U.S. EPA, 1993a).

EPA has eliminated a waiver provision for the barite limits which was in the previous permits. The waiver stipulated that if a permittee was unable to comply with the barite limitations due to the lack of availability of barite which meets the limitation, then the permittee could request a case-by-case waiver allowing the discharge of barite which exceeded the limits (53 FR 37858, September 28, 1988). As a part of the effluent guidelines development, EPA investigated the availability of domestic and foreign supplies of barite to meet the cadmium and mercury limits. The Agency also considered the potential for the increased demand for clean barite stocks resulting from this rule to cause a rise in the cost of barite. (See the Development Document (U.S. EPA, 1993a) and the Economic Impact Analysis (U.S. EPA, 1993d) for detailed discussion on the availability and economic availability.) EPA concluded that "there are sufficient supplies of barite capable of meeting the limits of this rule to meet the needs of offshore drilling operations (58 FR 12480, March 4, 1993). Hence, the waiver provision has not been included in this proposed general permit.

3. Section 308 Documentation and Monitoring Requirements for Muds and Cuttings

The following reporting and discharge monitoring requirements are based on Section 308 of the Act and 40 CFR 122.44(i). These requirements serve to determine compliance with, or the possible future need for, effluent limitations in the permit.

—Chemical analysis
—Chemical inventory
—Monitoring volume discharged
—Mud plan

The requirement of a mud plan is new and is explained below. The first three requirements have been present in previous NPDES general permits for all coastal and offshore operations in Region 10. The chemical analysis requirement has been expanded to require analysis of total recoverable metal concentration, in addition to total metal concentration. Analyses are to be conducted on split samples. This requirement has been included to enable the Agency to better evaluate the impact of metals in the mud discharges.

Mud Plans: As previously noted, Region 10 plans to discontinue

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authorization of mud/additive systems. Instead EPA is shifting the responsibility of case-by-case evaluations from the Region to the operator. Resources do not allow Region 10 to continue to perform case-by-case evaluations or to issue discharge authorizations for each drilling mud/additive system. Hence, the proposed permit contains a requirement that the permittee develop, have on-site, and available upon request a plan for discharge of drilling muds and additives (hereafter called "mud plan"). This requirement is analogous to analyses that the region has been performing in development of drilling mud authorizations.

The basis for the mud plan requirement is Section 308(a)(A) of the Act which provides that EPA may require the permittee to establish and maintain records and/or reports that will assist the Region to determine compliance with other requirements and effluent limitations of the permit. The mud plan is one component of the Best Management Practices Plan (see Part II.F.4.d.(4) of the permit). The mud plan requirement is also based upon the Pollution Prevention Act and its policy of prevention, reduction, recycling, and treatment of wastes (PPA Section 102(b)) through measures which include process modification, materials substitution, and improvement of management (PPA Section 107(b)(3)).

The goal of requiring development of a mud plan is to ensure that personnel on-site are knowledgeable about the information needed and the methods required to formulate the mud/additive systems in order to meet the effluent toxicity limit. Simply put, the mud plan is intended to be a written guide to planning for, and using, a mud/additive system in compliance with the permit.

Region 10's case-by-case approach to evaluating discharge of mud/additive systems coupled with use of worst case cumulative toxicity estimates as bases for authorization, has been conducive to the discharge of muds with lower toxicity than elsewhere in the OCS. To date Alaskan operators have demonstrated that thorough planning and evaluation of mud/additive systems with respect to possible cumulative toxicity does consistently result in discharge of muds that are less toxic than the 30,000 ppm SPP limit.

The mud plan is intended to demonstrate that the discharged mud/additive system for the well in question will meet the effluent limit of 30,000 ppm SPP based on the following decision criteria:

—Estimates of worst case cumulative discharge toxicity (either calculated or actual toxicity test results);
—Estimates of toxicity of discharged mud when a mineral oil pill has been used; and
—Use of less toxic alternatives where possible.

The mud plan shall also include a clearly stated procedure for dealing with situations in which additives not originally planned for are needed at the "last minute." This procedure should enable drilling and mud personnel to determine whether an additive or mud component may be added to the circulating mud system without significant effect upon the discharge toxicity. Criteria for reaching this type of "last minute" additive decision shall be clearly specified in the mud plan.

In addition to developing the mud plan, the operator is also required to certify that the mud plan is complete, on-site, and available upon request (see Part II.A.1.f. of the permit).

Certification is due no later than submission of their written notice of intent to commence discharge (see Part I.C. of the permit).

4. Section 403(c) Requirements for Muds and Cuttings

Depth-related Restrictions: Additional restrictions on these discharges are necessary to ensure no unreasonable degradation of the environment. The area of coverage includes water depths from 5 to about 3,000 meters deep. Discharge rate limitations on total muds and cuttings have been established in the ocean discharge criteria evaluation process in order to allow adequate dispersion of the discharges. These maximum rates are:

—No discharge in waters less than 5 meters deep,
—500 bbl/hr for discharges into waters greater than 5 meters but not more than 20 meters in depth,
—750 bbl/hr for discharges into waters greater than 20 meters but not more than 40 meters in depth, and
—1,000 bbl/hr for discharges into waters greater than 40 meters in depth.

These limits are necessary because for any given discharge rate, the dilution of drilling muds and cuttings is not as great in shallow waters as in deeper waters. However, at any particular water depth, greater dilution close to the discharge point will be achieved with a lower discharge rate. These maximum rates will ensure that the water quality standards will not be exceeded at the edge of the 100 meters mixing zone (Tetra Tech, 1994a).

Previous permits have allowed the discharge of drilling muds and cuttings between 2 and 5 meters depth. However, computer modeling of the dispersion of the drilling muds conducted for this permit in 2–5 meters depth did not perform adequately (Tetra Tech, 1994a). The maximum depth of mud accumulation for these cases was 10–20 times greater than the water depth. Mud accumulations of this magnitude would effectively bury the drilling mud outfall, making any calculation of dilution values meaningless. Accordingly, EPA is proposing zero discharge of muds and cuttings in waters less than 5 meters deep.

Areal Restrictions: Discharge of muds and cuttings are prohibited in the following four areas:

(a) Between the shore (mainland and barrier islands) and the 5 meters isobath,

(b) within 1000 meters of river mouths or deltas during unstable or broken ice or open water conditions,

(c) Within 1000 meters of the Stefansson Sound Boulder Patch, and

(d) Within 3 miles of Kasegaluk Lagoon or the passes of Kasegaluk Lagoon.

For the specific requirements, see Parts II.A.3. of the permit. In accordance with 40 CFR 125.123 (c), the Director has prohibited these discharges because the Region has determined they may cause unreasonable degradation of the marine environment. Prohibition (a) has changed from previous permits as described in the previous section of this fact sheet. Prohibitions (b) and (c) are contained in the previous Beaufort Sea NPDES general permits (49 FR 23734, June 7, 1984 and 53 FR 37846, September 28, 1988). This is the first time that a provision concerning Kasegaluk Lagoon has been included in a general permit for offshore oil and gas exploration since the area has never been covered by an NPDES permit for exploratory oil and gas operations.

With regard to (a) and (b) above, EPA has extensively studied the nearshore zone of the Alaskan Beaufort Sea in several Ocean Discharge Criteria Evaluations (Tetra Tech, 1994a; Jones & Stokes, 1983, 1984). These evaluations have clearly shown that these nearshore areas provide important feeding and migratory habitat for a large number of species including fish, waterfowl, and mammals. Further, these areas provide essential feeding and preferred habitat for species of major importance for subsistence and commercial fisheries.

Concerning (c) above, the proposed permit does not authorize discharges within 1000 meters of the Stefansson Sound Boulder Patch as defined by Dunton et al. (1982). The "Patch" is a rare and unique biological community that is susceptible to adverse effects caused by discharged drilling muds and cuttings.

As noted in (d) above, the proposed permit restricts activity near Kasegaluk Lagoon and its barrier island system. Specifically discharge is prohibited within Kasegaluk Lagoon and in the waters within 3 miles of the following passes intensively used by the beluga whales: Kukpowruk Pass, Akunik Pass, Utukok Pass, Icy Cape Pass, and Alokiakatat Pass. This restriction is in accordance with the North Slope Borough's Coastal Management Program (NSB, 1988). The NSB recognizes Kasegaluk Lagoon as a Candidate Area Meriting Special Attention (AMSA) and imposes the above restrictions.

Kasegaluk Lagoon extends for approximately 140 miles along the Chukchi Sea coast. About 90 miles of the lagoon is south of Icy Cape and the rest is north of Icy Cape. Kasegaluk Lagoon is located in state waters of the Chukchi Sea and provides important habitat for spotted seals and beluga whales. Beluga whales are known to feed, calve and may molt in this lagoon (North Slope Borough, 1988; Frost and Lowry, 1993; Tetra Tech, 1994a). Spotted seals also calve in Kasegaluk Lagoon (NSB, 1988). The lagoon also provides important feeding, migrating, and rearing areas for marine and anadromous fish, as well as migratory birds.

Kasegaluk Lagoon, the barrier islands, and the nearshore waters seaward of the barrier islands are an important subsistence area for the villagers of Point Lay (NSB, 1988). Subsistence activities that occur seasonally in the Kasegaluk Lagoon Candidate AMSA area include egg gathering, waterfowl hunting, sealing, fishing, walrus hunting, and whaling for belugas. This proposed permit and the Borough's management program recognizes the importance of the area for marine mammals, seabirds, and subsistence activities.

Environmental Monitoring: Environmental monitoring is required in two areas which are of particular concern to Region 10: discharge of drilling muds and cuttings below-ice to water depths shallower than 20 meters and within 1000 meters of an area of biological concern (i.e., a unique biological community or habitat). The Director has determined that controlled discharges to these areas, in accordance with 40 CFR 125.123(a) and the limitations and conditions in the draft permit, will not cause unreasonable degradation of the marine environment. Environmental monitoring is required to verify that discharges to these areas will not produce conditions in the future that would lead to unreasonable degradation.

C. Deck Drainage (Discharge 002)

Deck drainage includes all waste resulting from deck washings, spillage, rainwater, and run-off from gutters and drains including drip pans and work areas. Oil and grease are the primary pollutants identified in deck drainage. In addition to oil, various other chemicals used in drilling operations may be present. Specific conventional, toxic, and non-conventional pollutants found in deck drainage are controlled by the prohibition on the discharge of free oil. Deck drainage discharges are not continuous and can vary significantly in volume.

Free oil: EPA is controlling pollutants found in deck drainage by the prohibition on the discharge of free oil. This limit is the current BPT level of control and is also the appropriate level of control under BCT and BAT. No free oil is permitted from the discharge of deck drainage in accordance with the offshore oil and gas effluent guidelines (58 FR 12506, March 4, 1993). Deck drainage was subject to this limitation in the previous permits issued by Region 10 and past practices have not resulted in violations of this limit.

Compliance with the free oil limitation for deck drainage will be by visual observation for a sheen on the receiving water as mandated by the offshore oil and gas guidelines (58 FR 12506, March 4, 1993), except under the conditions described below. The Static Sheen Test will also be required for the monitoring of deck drainage during unstable or broken ice and stable ice conditions. Use of the Static Sheen Test will prevent a violation of the free oil limitation in those discharges most likely to be contaminated with oil. This would not be possible with an after-the-fact visual observation of a sheen on the receiving water. This requirement is similar to requirements in the Region's previous permits and will not result in any additional costs to the industry.

Flow Rate: Flow rate is required to be estimated monthly. The basis for this requirement is Section 308 of the Act.

D. Sanitary Wastes (Discharge 003)

The sanitary wastes from offshore oil and gas facilities are made up of human body wastes from the toilets and urinals. The volume and concentrations of these wastes vary widely with time, occupancy, platform characteristics, and operational status (U.S. EPA, 1993a).

Floating Solids: The prohibition on floating solids is mandated by the offshore oil and gas guidelines for facilities intermittently manned or continuously manned by fewer than 10 persons (58 FR 12470, March 4, 1993). This requirement does not specifically apply to facilities continuously manned by 10 or more persons (however, the method of compliance with the residual chlorine limit effectively limits floating solids for these facilities). Since previous permits for exploratory operations in the Beaufort and Chukchi Seas have prohibited the discharge of floating solids for all facilities regardless of staffing, Region 10 is continuing the requirement in this permit based upon antibacksliding provisions [40 CFR 122.44(l)(2)]. This BCT prohibition on the discharge of floating solids is equivalent to the current level of control for sanitary wastes in previous permits.

Residual Chlorine: Chlorine is regulated by the Agency in the offshore oil and gas effluent guidelines as a conventional pollutant. Chlorine is added to the wastestream to control fecal coliforms in the discharge. Facilities continuously manned by 10 or more persons are required to have a residual chlorine content of 1 milligram per liter (and maintained as close to the limit as possible). This limitation has been in previous Region 10 permits and is in the proposed permit as well.

For facilities with fewer than 10 persons or intermittently staffed by any number of persons (i.e., M91M facilities), the proposed permit prohibits the discharge of floating solids only, with no chlorine limitation.

E. Domestic Wastes (Discharge 004)

Domestic wastes refers to materials discharged from sinks, showers, laundries, safety showers, eyewash stations, and galleys. Because domestic wastes do not contain fecal coliform, chlorination is not required.

Floating Solids: Under BCT, EPA is prohibiting the discharge of floating solids. The limitation is included in the offshore oil and gas guidelines (58 FR 12487, March 4, 1993) and is equivalent to the current level of control for sanitary wastes in the previous permits.

Visible Foam: Discharges of visible foam are prohibited under BAT in the offshore oil and gas guidelines (58 FR 12487, March 4, 1993). This limitation is equivalent to the current level of control for domestic wastes in existing permits and past practices have not resulted in violations of this limitation.

All other domestic waste: This permit includes requirements limiting the discharge of all other domestic waste (garbage) as included in U.S. Coast Guard regulations at 33 CFR part 151. These limitations are a new feature in

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EPA offshore oil and gas permits for Beaufort and Chukchi Seas operators and reflect the offshore oil and gas effluent guidelines (58 FR 12487, March 4, 1993). The requirements on garbage are currently included in the most recent reissuance of the Western Gulf of Mexico general permit (57 FR 54654, November 19, 1992).

As proposed, the reissued permit will prohibit the discharge of garbage including food wastes within 12 nautical miles from nearest land. Comminuted food waste which is able to pass through a screen with a mesh size no larger than 25 mm (approximately 1 inch) may be discharged 12 or more nautical miles from nearest land. Incineration ash and non-plastic clinkers that can pass through a 25 mm mesh screen may be discharged beyond 3 miles from nearest land, otherwise ash and non-plastic clinkers can only be discharged beyond 12 nautical miles from nearest land.

Since this BCT limitation already exists in Coast Guard regulations and other NPDES permits, it will not result in any additional compliance cost, or additional non-water quality environmental impacts. There are no incremental costs associated with the limitation.

F. Miscellaneous Discharges:

Desalination unit wastes (005), blowout preventer fluid (006), boiler blowdown (007), fire control system test water (008), non-contact cooling water (009), uncontaminated ballast water (010), uncontaminated bilge water (011), excess cement slurry (012), and mud, cuttings, and cement at the seafloor (013).

No free oil: Region 10 has determined that no free oil shall be discharged. The no free oil limitation is Region 10's best professional judgement determination of BPT controls for these discharges. Compliance with the free oil limitation for miscellaneous discharges will be by visual observation for a sheen on the receiving water, except for bilge water under the conditions described below. All of these discharges have been subject to this limitation in the previous permits issued by Region 10 and past practices have not resulted in violations of this limit.

G. Discharge 014 (Test Fluids)

Limited volumes of formation waters which are encountered during testing of the well are authorized for discharge as test fluids. Formation waters are encountered during well testing and are similar in composition to produced waters.

Free oil: As previously discussed, no discharge of free oil is permitted from discharges authorized by this permit. In previous general permits, Region 10 has determined that the BCT effluent limitations guideline of no discharge of free oil from the discharge of deck drainage, drilling muds, drill cuttings, and well treatment fluids should apply to other discharges, including test fluids. The no free oil limitation is Region 10's best professional judgement determination of BCT controls for the test fluids discharge. Operators have been subject to a no free oil limitation in previous permits issued by Region 10, and past practices have not resulted in violations of this limitation. In accordance with Section 308, the Static Sheen Test will be required for the monitoring of test fluids.

Oil and grease: Although oil and grease is a conventional pollutant subject to BCT, it also serves as BAT (i.e., as an Indicator of toxic pollutants) for produced water. Specifically, the toxic pollutants which are controlled by limiting oil and grease include phenol, naphthalene, ethylbenzene, and toluene (U.S. EPA 1993a). EPA has determined that it is not technically feasible to control these toxic pollutants individually so that the limitation on oil and grease controls discharge these pollutants in produced water at the BAT level (U.S. EPA 1993a).

The promulgated BAT for oil and grease in produced water as 29 mg/l monthly average and 42 mg/l daily maximum based upon the improved operating performance of gas flotation technology (58 FR 12506, March 4, 1993). Based upon the chemical similarity of test fluids and produced water, Region 10 Agency has determined that it is reasonable to apply the produced water provisions to test fluids. Accordingly, the proposed permit limits on oil and grease in test fluids are 29 mg/l monthly average and 42 mg/l daily maximum.

pH: The pH of discharged test fluids (which may have a substantially different pH from that of the ambient receiving water) has been limited to a range of 6.5–8.5 at the point of discharge. In Region 10's best professional judgement, this limitation appropriately equals a BPT level of control. No more stringent standard has been identified by the Region at this time. Therefore, Region 10 is setting a BCT effluent limitation for the pH of test fluids equal to that of BPT. This limitation will ensure that pH changes greater than 0.2 pH unit will not occur beyond the edge of the 100-meter mixing zone [40 CFR § 125.121(c)]. This requirement has been and is routinely complied with by operations under previous BPT permits and thus, reflects no cost incremental to BPT.

H. Other Discharge Limitations

No Floating Solids, or Visible Foam, or Oily Wastes: Region 10 has determined that the BCT effluent limitations guideline of no discharge of floating solids from the discharge of sanitary wastes should apply to all other discharges as well. Operators have been subject to a visible foam limit and an oily waste limit in previous permits issued by Region 10 and past practices have not resulted in violations.

Surfactants, Dispersants, and Detergents: The draft permit contains a provision that the discharge of surfactants, dispersants, and detergents shall be minimized except as necessary to comply with the safety requirements of the Occupational Health and Safety Administration and the Minerals Management Service. These products contain primarily nonconventional pollutants. This provision previously appeared in the permits for the Beaufort Sea, Chukchi Sea, Norton Sound, Bering Sea, and Cook Inlet.

Rubbish, Trash, or Other Refuse: The discharge of any solid material not authorized by this permit (as described above) is prohibited. This permit includes limitations set forth by the U.S. Coast Guard in 33 CFR part 151 for domestic waste disposal from all fixed or floating offshore platforms and associated vessels engaged in exploration of seabed mineral resources. These limitations, as specified by Congress apply to all navigable waters of the United States.

This permit prohibits the discharge of "garbage" including food wastes, within 12 nautical miles from nearest land. Comminuted food waste (able to pass through a screen with a mesh size larger than 25 mm, approximately 1 inch) may be discharged from operations located 12 nautical miles or more from land. Graywater, drainage from dishwater, shower, laundry, bath and washbasins are not considered "garbage" within the meaning of the Coast Guard regulations. Incineration ash and non-plastic clinkers that can pass through a 25 mm mesh screen may be discharged greater than 3 miles from the nearest land; otherwise, ash and non-plastic clinkers can only be discharged beyond 12 nautical miles from nearest land.

Other Toxic and Non-conventional Compounds: Under the proposed permit, prohibitions on discharges of the following pollutants are retained: halogenated phenol compounds, trisodium nitrilotriacetic acid, sodium chromate, and sodium dichromate. The

class of halogenated phenol compounds includes toxic pollutants, and sodium chromate and sodium dichromate contain chromium, also a toxic pollutant. Trisodium nitrilotriacetic acid is a nonconventional pollutant. The discharge of these compounds was previously prohibited in the general permits for the Beaufort Sea, Chukchi Sea, Norton Sound, Bering Sea, and Cook Inlet.

I. Best Management Practice Plan Requirement

It is national policy that, whenever feasible, pollution should be prevented or reduced at the source, that pollution which cannot be prevented should be recycled in an environmentally safe manner, and that disposal or release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner (Pollution Prevention Act of 1990, 42 U.S.C. 13101). Section 402(a)(1) authorizes EPA to include miscellaneous requirements in permits on a case-by-case basis which are deemed necessary to carry out the provisions of the Act. Best Management Practices (BMPs), in addition to numerical effluent limitations, are required to control or abate the discharge of pollutants in accordance with 40 CFR 122.44(k).

Pursuant to Section 402(a)(1) of the Clean Water Act and Region 10 policy (EPA Region 10, 1992), development and implementation of a Best Management Practices Plan is included as a condition of this NPDES general permit.

The proposed general permit requires the development and implementation of a BMP Plan which prevents or minimizes the generation of pollutants, their release, and/or potential release from the facility to the waters of the United States through normal operations and ancillary activities. Relevant operations and activities include material storage areas, site runoff, storm water, in-plant transfer, process and material handling areas, loading or unloading operations, spillage or leaks, sludge and waste disposal, or drainage from raw material storage.

In addition to developing and implementing the BMP Plan, the operator is also required to certify that the BMP Plan is complete, on-site, and available upon request (see Part II.F.1. of the permit). Certification is required no later than submission of their written notice of intent to commence discharge (see Part I.C. of the permit). These certification requirements are similar to the requirements for a mud plan.

The BMP Plan must be amended whenever there is a change in the facility or in the operation of the facility which materially increases the potential for an increased discharge of pollutants. The BMP Plan will become an enforceable condition of the permit; a violation of the BMP Plan is a violation of the permit.

VI. Other Legal Requirements

A. Oil Spill Requirements

Section 311 of the Act prohibits the discharge of oil and hazardous materials in harmful quantities. Routine discharges specifically controlled by the permit are excluded from the provisions of Section 311. However, this permit does not preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other, unauthorized discharges of oil and hazardous materials which are covered by Section 311 of the Act.

B. Endangered Species Act

The Endangered Species Act (ESA) allocates authority to and administers requirements upon Federal agencies regarding endangered species of fish, wildlife, or plants and habitat of such species that have been designated as critical. Its implementing regulations (50 CFR Part 402) require EPA to ensure, in consultation with the Secretary of the Interior or Commerce, that any action authorized, funded or carried out by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat. [40 CFR 122.49(c)].

In compliance with Section 7 of the ESA, an endangered species list was requested by EPA and received from both the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) for the affected area. The following threatened, endangered and/or candidate species are reported to potentially occur in the vicinity of the discharges associated with oil and gas operations proposed by the permit: arctic peregrine falcon, spectacled eider, stellars eider, and bowhead whale.

A draft biological evaluation was prepared by Tetra Tech under contract to EPA to determine whether the discharges authorized by this proposed general permit are likely to adversely affect any endangered or threatened species or its critical habitat (Tetra Tech, 1994b). Based upon the available information, it is not expected that the exploratory oil and gas permitted discharges and related activities will not adversely affect any of the listed species or their habitat.

EPA has informally consulted with the USFWS and the NMFS pursuant to Section 7 consultation of the Endangered Species Act. The EPA shared the draft biological evaluation with USFWS at their request. Comments raised by the USFWS have been addressed. EPA has forwarded the revised document to both Services for their review. EPA will consider the Services' comments in developing the final permit.

C. Coastal Zone Management Act

EPA has determined that the activities authorized by this general permit are consistent with local and state Coastal Management Plans. The proposed permit and consistency determination will be submitted to the State of Alaska for state interagency review at the time of public notice. The requirements for State Coastal Zone Management Review and approval must be satisfied before the general permit may be issued.

D. Marine Protection, Research and Sanctuaries Act

No marine sanctuaries as designated by this Act exist in the vicinity of the permit areas.

E. State Water Quality Standards and State Certification

Since state waters are involved in the proposed general permit area, the provisions of Section 401 of the Act apply. In accordance with 40 CFR 124.10(c)(1), public notice of the draft permit has been provided to the State of Alaska agencies having jurisdiction over fish, shellfish, and wildlife resources (see section II.C. above).

F. Executive Order 12866

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to Section 8(b) of that order.

G. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this draft general permit under the Paperwork Reduction Act of 1980, 44 USC 3501 *et seq.* Most of the information collection requirements have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act. In addition, the environmental monitoring requirements pursuant to Section 403(c) of the Clean Water Act in Part II.B.4 of this permit are similar to the monitoring requirements that were approved by OMB for the previously issued Beaufort

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Sea II and Chukchi Sea general permits (September 28, 1988, 53 FR 37846) and the modification of the Beaufort Sea II NPDES general permit (September 27, 1989, 54 FR 39574). The final general permit will explain how the information collection requirements respond to any OMB or public comments.

H. The Regulatory Flexibility Act

After review of the facts presented in the notice of intent printed above, I hereby certify, pursuant to the provisions of 5 USC 605(b), that this general permit will not have a significant impact on a substantial number of small entities. This certification is based on the fact that the regulated parties have greater than 500 employees and are not classified as small businesses under the Small Business Administration regulations established at 49 FR 5024 *et seq.* (February 9, 1984). These facilities are classified as Major Group 13—Oil and Gas Extraction SIC 1311 Crude Petroleum and Natural Gas.

Dated: August 31, 1994.

Chuck Clarke,

Regional Administrator, Region 10.

VII. References

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U.S. EPA. 1989. Final Modifications of the NPDES General Permit for Oil and Gas Operations on the Outer Continental Shelf (OCS) and State Waters of Alaska; Beaufort Sea II. (54 FR 39574, September 27, 1989).

U.S. EPA. 1993a. Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category: Final. Office of Water. EPA 821–R–93–003.

U.S. EPA. 1993b. 40 CFR Part 135. Oil and gas extraction point source category offshore subcategory effluent limitations guidelines and new source performance standards. (58 FR 12454, March 4, 1993).

U.S. EPA. 1993c. Response to Public Comments on Proposed Effluent Limitations Guidelines and New Source Performance Standards for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (January 15, 1993). Offshore Rulemaking Record Document No. VIII.B.(3)1, Volumes 151, 152, and 154 (Excerpts only).

U.S. EPA. 1993d. Economic Impact Analysis of Final Effluent Limitations Guidelines and Standards of Performance for the Offshore Oil and Gas Industry. Office of Water. EPA–821–R–93–003.

U.S. EPA, Region 10. 1992. Region 10 Guidance: Best Management Practices Plans in NPDES Permits. June 1992.

[FR Doc. 94–23419 Filed 9–19–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2]

A Petition for Reconsideration of Actions in Rulemaking Proceedings

September 15, 1994.

A Petition for reconsideration has been filed with respect to the Commission's Order listed below. The full text of this document is available for viewing and copying in Room 616, 1919 M Street, NW., Washington, DC, by contacting Donna Viert ((202) 418–1725). In addition, copies may be purchased from the Commission's copy contractor, ITS, Inc. ((202) 857–3800). Oppositions to this petition for reconsideration must be filed by October 5, 1994. *See* Section 1.4(b) of the Commission's Rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Specifications as to Pleadings and Documents; Amendment of Section 1.49 of the Commission's Rule (FCC 94–181).

Filed By: David B. Popkin on August 10, 1994.

Action by the General Counsel.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–23208 Filed 9–19–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Holland America Line—Westours, Inc. (d/b/a Holland America Line) and HAL Antillen N.V., 300 Elliott Avenue West, Seattle, Washington 98119

Vessels:
NIEUW AMSTERDAM
NOORDAM
ROTTERDAM

Holland America Line—Westours, Inc. (d/b/a Holland America Line), HAL Shipping Ltd. and HAL Antillen N.V., 300 Elliott Avenue West, Seattle, Washington 98119

Vessel: WESTERDAM

Holland America Line—Westours, Inc. (d/b/a Windstar Cruises), Wind Star Limited, Windstar Sail Cruises Limited and HAL Antillen N.V., 300 Elliott Avenue West, Seattle, Washington 98119

Vessel: WIND STAR

Holland America Line—Westours, Inc. (d/b/a Holland America Line), HAL Cruises Limited, Wind Surf Limited and HAL Antillen N.V., 300 Elliott Avenue West, Seattle, Washington 98119

Vessel: VEEDAM

Holland America Line—Westours, Inc. (d/b/a Windstar Cruises), Wind Spirit Limited, Windstar Sail Cruises Limited and HAL Antillen N.V., 300 Elliott Avenue West, Seattle, Washington 98119

Vessel: WIND SPIRIT

Dated: September 14, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–23170 Filed 9–19–94; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Holland America Line—Westours, Inc. (d/b/a Holland America Line) and HAL Antillen N.V., 300 Elliott Avenue West, Seattle, Washington 98119

Vessels: *Nieuw Amsterdam, Noordam, Rotterdam*

Holland America Line—Westours, Inc. (d/b/a Windstar Cruises), Wind Star Limited and HAL Antillen N.V., 300 Elliott Avenue West, Seattle, Washington 98119

Vessel: *Wind Star*

Holland America Line—Westours, Inc. (d/b/a Windstar Cruises), Wind Spirit Limited and HAL Antillen N.V., 300 Elliott Avenue West, Seattle, Washington 98119

Vessel: *Wind Spirit*

Dated: September 14, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–23171 Filed 9–19–94; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Kloster Cruise Limited (d/b/a Norwegian Cruise Line), 95 Merrick Way, Two Alhambra Plaza, Coral Gables, Florida 33134

Vessel: WINDWARD

Dated: September 14, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–23172 Filed 9–19–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

BB&T Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 21, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. BB&T Financial Corporation, Wilson, North Carolina and BB&T Financial Corporation of Virginia, Virginia Beach, Virginia; to acquire 100 percent of the voting shares of Commerce Bank, Virginia Beach, Virginia.

In connection with this application BB&T Financial Corporation of Virginia had applied to become a bank holding company by acquiring 100 percent of the voting shares of Commerce Bank, Virginia Beach, Virginia.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Sun Belt Bancshares Corporation, Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of National Bank of Conroe, Conroe, Texas.

2. Woodforest Bancshares, Inc., Houston, Texas; to acquire 100 percent of the voting shares of SunBelt Bancshares Corporation, Conroe, Texas, and thereby indirectly acquire National Bank of Conroe, Conroe, Texas.

3. Woodforest Holdings Corporation, Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of National Bank of Conroe, Conroe, Texas.

Board of Governors of the Federal Reserve System, September 14, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–23209 Filed 9–19–94; 8:45 am]

BILLING CODE 6210–01–F

Bellevue State Bank Employee Stock Ownership Plan et al.; Formations of, Acquisitions by, or Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Company

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the

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proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 21, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Bellevue State Bank Employee Stock Ownership Plan, Bellevue, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Bellevue Service Company, Bellevue, Iowa, and thereby indirectly acquire Bellevue State Bank, Bellevue, Iowa.

In connection with this application, Bellevue State Bank Employee Stock Ownership Plan, Bellevue, Iowa has also applied to acquire Bellevue Insurance Agency, Bellevue, Iowa, and thereby engage in the sale of credit-related insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Superior Holdings, Inc., Scottsdale, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of De Anza Holding Corporation, Sunnyvale, California, and thereby indirectly acquire De Anza Bank, Sunnyvale, California.

In connection with this application, Superior Holdings, Inc., has also applied to engage in continuing mortgage banking activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y

Board of Governors of the Federal Reserve System, September 14, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–23210 Filed 9–19–94; 8:45 am]

BILLING CODE 6210–01–F

First of America Bank Corporation, et al.; Acquisitions of Company Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 21, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First of America Bank Corporation, Kalamazoo, Michigan; to acquire 100 percent of the voting shares of Presidential Holdings Corporation, Sarasota, Florida, and its wholly-owned subsidiary, Presidential Bank, FSB, Sarasota, Florida, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Bank System, Minneapolis, Minnesota; to acquire Metropolitan Financial Corporation, Minneapolis, Minnesota, and thereby indirectly acquire Metropolitan Federal Bank FSB, Fargo, North Dakota, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y; MFC Insurance Corporation, Minneapolis, Minnesota, and thereby engage in the sale of life insurance and fixed and variable annuities pursuant to 12 U.S.C. 1843(c)(8)(G) and § 225.25(b)(8)(vii) of the Board's Regulation Y, and the sale of securities and other investment products, including fixed and variable annuities, pursuant to § 225.25(b)(15) of the Board's Regulation Y and *Norwest Corporation*, 76 Federal Reserve Bulletin 1058 (1990); Equity Title Services, Inc., Edina, Minnesota, to thereby engage in title insurance activities pursuant to 12 U.S.C. 1843(c)(8)(G) and § 225.25(b)(8)(vii) of the Board's Regulation Y and real estate settlement and closing services pursuant to *Norwest Corporation*, 76 Federal Reserve Bulletin 1058 (1990); Rocky Mountain Management Information Services, Inc., Minneapolis, Minnesota, which owns 10 percent of WYNEB Financial, Limited Liability Company, Cheyenne, Wyoming to thereby engage in commercial real estate lending activities pursuant to § 225/25(b)(1) of the Board's Regulation Y; Rocky Mountain Insurance and Investment Corporation, Minneapolis, Minnesota to thereby engage in the sale of life insurance and fixed and variable annuities pursuant to 12 U.S.C. 1843(c)(8)(G) and § 225.25(b)(8)(vii) of the Board's Regulation Y and the sale of securities and other investment products, including fixed and variable annuities, pursuant to § 225.25(b)(15) of the Board's Regulation Y and *Norwest Corporation*, 76 Federal Reserve Bulletin 873 (1990).

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Stratford Bancshares, Inc., Stratford, Texas and Stratford Bancshares of Delaware, Inc., Dover, Delaware; to acquire Panhandle Management Corporation, Dumas, Texas, and thereby indirectly acquire 94.25 percent of North Plains Savings and Loan Association, Dumas, Texas, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 14, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–23211 Filed 9–19–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 506]

Grants For Violence-Related Injury Prevention Research; Notice of Availability of Funds for Fiscal Year 1995

Introduction

The Centers for Disease Control and Prevention (CDC) announces applications are being accepted for Violence-Related Injury Prevention Research Grants for fiscal year (FY) 1995. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the area of Violent and Abusive Behavior (To order a copy of Healthy People 2000, see the Section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under Sections 301, 391–394 of the Public Health Service Act (42 U.S.C. 241, 280b–280b–3). Program regulations are set forth in Title 42 CFR Part 52.

Eligible Applicants

Eligible applicants include all non-profit and for-profit organizations. Thus State, and local health departments, other State and local governmental agencies, universities, colleges, research institutions, and other public and private organizations, including small, minority and/or woman-owned businesses are eligible for these research grants. Current holders of CDC injury control research projects are eligible to apply.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Availability of Funds

Approximately $1.0 million may be available in FY 1995 to fund approximately 3 to 5 grants. The amount of funding actually available may vary and is subject to change. New grant awards will not exceed $300,000 per year (including both direct and indirect costs). Grant applications that exceed the $300,000 per year cap will be returned to the investigator as non-responsive. Research grant supplements will generally be no more than $75,000 (including both direct and indirect costs). New awards are expected to begin on or about September 1, 1995. Awards will be made for a 12-month budget period within a project period not to exceed 3 years. Continuation awards within the project period will be made on the basis of satisfactory progress demonstrated by investigators at work-in-progress monitoring workshops, the achievement of workplan milestones reflected in the continuation application, and the availability of Federal funds. In addition, continuation awards will be eligible for increased funding to offset inflationary costs depending upon the availability of funds.

Purpose

The purposes of this program are to:

A. Build the scientific base for the prevention of injuries and deaths due to violence in the following three priority areas: interpersonal youth violence, youth suicide, and firearm injuries as delineated in Injury Control in the 1990s: A National Plan for Action. Atlanta: Centers for Disease Control and Prevention, 1993 and Healthy People 2000;

B. Identify effective strategies to prevent violence-related injuries;

C. Expand the development and evaluation of current and new intervention methods and strategies for the primary prevention of violence-related injuries;

D. Encourage professionals from a wide spectrum of disciplines such as medicine, health care, public health, criminal justice, and behavioral and social sciences, to undertake research to prevent and control injuries from interpersonal violence and suicidal behavior.

Program Requirements

The following are applicant requirements:

A. A principal investigator who has conducted research, published the findings, and has specific authority and responsibility to carry out the proposed project.

B. Demonstrated experience in conducting, evaluating, and publishing injury control research on the applicant's project team.

C. Effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

D. An explanation of how research findings could lead to the development of injury control interventions within 3–5 years of project start-up. Furthermore, how the research findings might be disseminated and implemented through organizations (such as public health agencies) or systems, both public and private.

E. The ability to carry out injury control research projects.

F. The overall match between the applicant's proposed theme and research objectives, and the program priorities as described under the heading "Programmatic Interests" and in Injury Control in the 1990s: A National Plan for Action. Atlanta: Centers for Disease Control and Prevention, 1993, and Healthy People 2000.

Note: Grant funds will not be made available to support the provision of direct care services.

Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement) as necessary to meet the requirements of the program and strengthen the overall application.

Programmatic Interests

The grants should concentrate on the need to prevent the morbidity, mortality, and disability which results from interpersonal violence and suicidal behavior, in order to reduce their devastating social and economic impact on the nation. Applicants are encouraged to propose research which either: (1) Rigorously evaluates the outcomes of violence prevention strategies currently in use, or (2) identifies modifiable risk factors which can lead to the development of effective interventions. Examples of possible projects listed under the priority areas below are by no means exhaustive, and innovative approaches are encouraged. Because of time constraints, comments were not solicited from the general

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public regarding funding priorities and special considerations.

(1) *Evaluating the outcomes of violence prevention strategies:*

In *prevention*, there is specific interest in research which evaluates the effectiveness of interventions in preventing violent injuries or reducing their impact and develops the basic sciences of injury (i.e., social and behavioral science, biomechanics, and epidemiology). This research might evaluate one or more different approaches to implementing a specific intervention strategy. In addition, there is a need to examine intervention strategies for which evidence of effectiveness is either sparse or totally lacking. Interventions chosen for evaluation should have a significant potential for reduction in violent injury morbidity, mortality, disability, or cost. Special consideration will be given to grants which target populations at high risk for violence-related injuries and their consequences, including adolescents, women, and children, racial and ethnic minorities, urban residents, and people with low incomes.

Prevention strategies for *youth suicide* whose effectiveness should be assessed include:

- school or community "gatekeeper" training;
- screening for high-risk youth;
- peer support programs;
- suicide education of the general population;
- crisis centers and hotlines;
- limiting access to lethal means of suicide, such as firearms, prescription drugs, and high places;
- intervention after a suicide or attempted suicide to prevent imitation due to the effects of "contagion".

Interventions which should be evaluated for their effectiveness in preventing firearm injuries are listed below:

- firearm design modifications to reduce the lethality of firearms and ammunition, loading indicators, and safety mechanisms to prevent accidental discharge;
- statutory interventions (e.g., prohibiting carrying firearms in public, increasing sentences for felony gun use, or owner liability for firearm injury);
- imposing waiting periods and limits on the number of guns which can be purchased within a specified time period;
- taxing firearm and/or ammunition purchases;
- increased gun dealer fees and restrictions;
- metal detectors in schools;
- firearm licensure system (e.g., restricting youth access to firearms, owner-registration regulations, etc.);
- storage containers which limit unauthorized access to weapons and ammunition;
- disrupting illegal gun markets through localized street-level tactics currently used against illegal drug markets, and neighborhood-oriented police coordination with residents and community-based organizations;
- public education campaigns to change weapon storage practices.

Examples of interpersonal youth violence interventions which deserve further evaluation include:

- mentoring programs which provide positive adult role models for high-risk youth;
- public information campaigns which dramatize the unacceptability and enormous social and economic cost of violence, while promoting alternatives to violence as a means of conflict resolution;
- environmental changes such as improved lighting, protective landscaping, or closed-circuit television monitoring;
- legal sanctions restricting youth access to alcohol;
- job training and work experiences;
- sports and recreational activities which offer young people opportunities to spend time in a structured and purposeful environment;
- parent training to increase parental support for non-violent behavior by youths.

(2) *Identifying modifiable risk factors:*

In *epidemiology*, there is programmatic interest in analytic research that identifies mechanisms, causes, or risks of injury which might lead to new or more effective interventions against the four types of violence highlighted in this announcement. Examples of *potentially modifiable risk factors* which should be examined for each area are listed below:

Youth Suicide

- impact of acute exposure to alcohol and chronic alcohol abuse on suicidal behavior among youth;
- possible relationship between sexual orientation and suicidal behavior among youth;
- impact of accessibility to lethal means (e.g., guns, medications) upon youth suicide;
- relationship between a history of physical and/or sexual abuse and suicidal behavior among youth;

Firearm Injuries

- risk of firearm injury vs. the protective value of firearms;
- motives and sources of gun acquisition by adolescents;
- role of firearms in protecting people from injuries;

Interpersonal Youth Violence

- role of social and economic factors (e.g., unemployment, poverty, family dysfunction, and racism) in contributing to violent behavior;
- early childhood experiences of violence, as a victim or witness, related to later development of violent behavior patterns;
- link between television and media portrayals of violence and the development of attitudes which lead to violent behavior as an acceptable method of settling conflict;
- influence of alcohol or other drug use upon victimization and perpetration of violent behavior;
- role of academic performance, athletics or other extracurricular activities as a protective factor for violent behavior;
- history of prior victimization as a predictor of risk for future homicide/assault perpetration or victimization.

Also of interest is research that more accurately defines the cost of violent injuries and the cost effectiveness or prevention effectiveness of interventions. Cost analysis should be included in the plans, where appropriate, to evaluate an intervention(s) that addresses one of the three priority areas of violence-related injury research previously outlined, (i.e., youth suicide, firearm injuries, and interpersonal youth violence). A more complete discussion of methodologies for assessing cost analysis is presented in, A Framework for Assessing the Effectiveness of Disease and Injury Prevention, (CDC, Morbidity and Mortality Weekly Report, March 27, 1992, Volume 41, Number RR–3, pages 5–11). (To receive information on these reports see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Evaluation Criteria

Upon receipt, applications will be screened by CDC staff for completeness and responsiveness as outlined under the previous heading, Program Requirements (A–F). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. Applications which are complete and responsive may be subjected to a preliminary evaluation by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant further review (triage); the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further

evaluated by a dual review process. Awards will be made based on priority score ranking by the Injury Research Grants Review Committee (IRGRC), programmatic priorities and needs by the Advisory Committee for Injury Prevention and Control, and the availability of funds.

A. The first review will be a peer review to be conducted on all applications. Factors to be considered will include:

1. The specific aims of the research project, i.e., the broad long-term objectives, the intended accomplishment of the specific research proposal, and the hypothesis to be tested;

2. The background of the proposal, i.e., the basis for the present proposal, the critical evaluation of existing knowledge, and specific identification of the injury control knowledge gaps which the proposal is intended to fill;

3. The significance and originality from a scientific or technical standpoint of the specific aims of the proposed research, including the adequacy of the theoretical and conceptual framework for the research;

4. For competitive renewal and supplemental applications, the progress made during the prior project period. For new applications, (optional) the progress of preliminary studies pertinent to the application;

5. The adequacy of the proposed research design, approaches, and methodology to carry out the research, including quality assurance procedures, plan for data management, and statistical analysis plan;

6. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of the stated objectives;

7. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities;

8. The degree of commitment and cooperation of other interested parties (as evidenced by letters detailing the nature and extent of the involvement);

9. The reasonableness of the proposed budget to the proposed research and demonstration program;

10. Adequacy of existing and proposed facilities and resources.

B. The second review will be conducted by the Advisory Committee for Injury Prevention and Control. The factors to be considered will include:

1. The results of the peer review;

2. The significance of the proposed activities in relation to the objectives stated in Injury Control in the 1990s: A National Plan for Action. Atlanta: Centers for Disease Control and Prevention, 1993 and Healthy People 2000;

3. National needs;

4. Overall distribution among:

- the three priority areas of violence-related injury research: youth suicide, firearm injuries, and interpersonal youth violence;
- the major disciplines of violence-related injury prevention: social and behavioral science, biomechanics, and epidemiology;
- populations addressed (e.g., adolescents, racial and ethnic minorities, the elderly, children, urban, rural);

5. Budgetary considerations (e.g., preference may be given to applicants who submit proposals requesting funding for research projects of one to two year's duration);

6. Additional consideration may be given to those applicants who provide evidence of an active training program or mentoring program for inexperienced minority injury researchers ("junior investigators").

C. Continued Funding:

Continuation awards made after FY 1995, but within the project period, will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual workplan and satisfactory progress has been demonstrated through monitoring presentations or work-in-progress workshops;

2. The objectives for the new budget period are realistic, specific, and measurable;

3. The methods described will clearly lead to achievement of these objectives;

4. The evaluation plan will allow management to monitor whether the methods are effective; and

5. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

D. Supplementary Funding:

Competing Supplemental grant awards may be made when funds are available, to support research work or activities *not previously approved* by the Injury Research Grants Review Committee (IRGRC). Applications should be clearly labelled to denote their status as requesting *supplemental funding support*. These applications will be reviewed by the IRGRC and the secondary review group.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372, entitled Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.136.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Officer (whose address is reflected in section B, "Applications"). It should be postmarked no later than two months prior to the planned submission deadline, (e.g., December 13 for January 13 submission). The letter should identify the announcement number, name the principal investigator, and specify the priority area of violence-related injury research (i.e., youth suicide, firearm injuries, and interpersonal youth violence) addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Applications

Applicants should use Form PHS–398 and adhere to the ERRATA Instruction Sheet for Form PHS–398 contained in the Grant Application Kit. Please submit an original and five copies, on or before January 13, 1995 to: Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305.

C. Deadlines

1. Applications shall be considered as meeting a deadline if they are either:

A. Received at the above address on or before the deadline date, or

B. Sent on or before the deadline date to the above address, and received in time for the review process. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

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2. Applications which do not meet the criteria above are considered late applications and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional information, call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement Number 506. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical information may be obtained from Lisa Tamaroff, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–6796. Programmatic technical assistance may be obtained from Ted Jones, Project Officer, Extramural Research Grants Branch, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), Mailstop K–58, 4770 Buford Highway, NE., Atlanta, Georgia 30341–3724, telephone (404) 488–4824.

Please refer to Announcement 506 when requesting information or submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Copies of *Injury Control in the 1990s: A National Plan for Action*. Atlanta: Centers for Disease Control and Prevention, 1993 and *A Framework for Assessing the Effectiveness of Disease and Injury Prevention*, (CDC, *Morbidity and Mortality Weekly Report*, March 27, 1992, Volume 41, Number RR–3, pages 5–11) may be obtained by calling (404) 488–4334.

Information for obtaining the suggested readings, *Violence and the Public's Health, Understanding and Preventing Violence*, and *Violence in America: A Public Health Approach*, is included on a separate sheet with the application kit.

Dated: September 14, 1994.

Deborah L. Jones,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

Mary Ellen Bloodworth,

Certifying Officer.

[FR Doc. 94–23198 Filed 9–19–94; 8:45 am]

BILLING CODE 4163–18–P

Board of Scientific Counselors, National Institute for Occupational Safety and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

Times and Dates: 9 a.m.–5 p.m., October 6, 1994. 9 a.m.–1 p.m., October 7, 1994.

Place: Hotel Washington, 515 15th Street and Pennsylvania Avenue, NW, Washington, DC 20004–1099.

Status: Closed 9 a.m.–5 p.m., October 6; Open 9 a.m.–1 p.m., October 7.

Purpose: The board reviews research activities to provide guidance on the quality, timeliness, and efficiency of the Institute's programs.

Matters To Be Discussed: The agenda will include personnel and organizational issues relating to the transition of the NIOSH headquarters to Washington, DC, and research, training, and toxicology reviews. This meeting will convene in closed session from 9 a.m. to 5 p.m. on October 6, 1994, to discuss subject matter relating solely to the internal personnel rules and practices of NIOSH. This portion of the meeting will be closed to the public in accordance with the provisions set forth in Section 552b(c)(2), Title 5 U.S.C., and the Determination of the Acting Associate Director for Policy Coordination, CDC, pursuant to Public Law 92–463.

CONTACT PERSON FOR MORE INFORMATION: Richard A. Lemen, Ph.D., Executive Secretary, BSC, NIOSH, and Deputy Director, NIOSH, CDC, 1600 Clifton Road, NE, Mailstop D–35, Atlanta, Georgia 30333, telephone (404) 639–3773.

Dated: September 14, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–23200 Filed 9–19–94; 8:45 am]

BILLING CODE 4163–19–M

Implications of Recent Legionnaires' Disease Outbreak on Cruise Ship—Public Meeting

The National Center for Environmental Health (NCEH) and the National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), announce the following meeting.

Name: Implications of Recent Legionnaires' Disease Outbreak on Cruise Ship—Public Meeting.

Time and Date: 9 a.m.–4:30 p.m., Monday, October 17, 1994.

Place: CDC, Building 1, Auditorium B, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open.

Supplementary Information: An epidemiologic investigation of a recent outbreak of Legionnaires' disease among passengers of a cruise ship indicated that the source of the infection was aerosolized water from the recreational spa system. This meeting between CDC and the cruise-ship industry, recreational-spa industry, private and academic consultants, and other interested parties will review the circumstances of that outbreak, the current requirements for spa sanitation, and what future actions may be advisable to prevent similar outbreaks.

For a period of 15 days following the meeting, through November 1, the official record of the meeting will remain open so that additional material or comments may be submitted and made part of the record of the meeting. The meeting will be open to the public for participation, comment, and observation, limited only by space available.

For Further Information Contact: Thomas O'Toole, Deputy Chief, Special Programs Group (F29), NCEH, CDC, 4770 Buford Highway, NE, Atlanta, Georgia 30341–3724, telephone 404/488–7073.

Dated: September 14, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–23199 Filed 9–19–94; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 94N–0318]

Medical Devices; Alternatives to Silicone Breast Implants; Notice of Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public scientific workshop to discuss draft guidance for manufacturers concerning testing requirements for alternatives to breast prostheses containing silicone.

DATES: The public workshop will be held on October 21, 1994, 8:15 a.m. to 6 p.m. Public participation will take the form of written questions that may be submitted at the meeting. Written comments regarding the workshop may be submitted by December 2, 1994.

ADDRESSES: The public workshop will be held at the Omni Shoreham Hotel, 2500 Calvert St. NW., Washington, DC 20028. Advance registration, including a $40.00 registration fee, is required. A registration form may be obtained by contacting Sociometrics, Inc., 8300 Colesville Rd., suite 550, Silver Spring, MD 20910, 301–608–2151 or 1–800–729–0890 (FAX 301–608–3542). Written comments regarding the workshop may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John J. Langone or Mary Elizabeth Jacobs, Center for Devices and Radiological Health (HFZ–113), Food and Drug Administration, 12709 Twinbrook Pkwy., Rockville, MD 20852, 301–443–2911 or 301–443–7115, respectively (FAX 301–594–6775).

SUPPLEMENTARY INFORMATION: FDA recognizes that many women needing or wanting breast implants would like to have a safe and effective alternative to breast prostheses containing silicone. In addition, potential manufacturers of these medical devices would like to know the agency's views on testing requirements for alternative breast implants intended for reconstruction and/or augmentation. The purpose of the scientific workshop is to provide a forum for FDA to present draft guidance concerning alternative breast prostheses testing requirements. Among the major topics planned for discussion are developments in biomaterials, chemical characterization of materials, mechanical testing, preclinical biological testing, clinical testing, quality of life considerations, requirements for investigational device exemptions and premarket approval applications, and postmarket-epidemiological issues. The workshop will include discussion and an exchange of information by invited scientific authorities.

Dated: September 12, 1994.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 94–23152 Filed 9–19–94; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

Office of the Assistant Secretary for Health; Privacy Act of 1974; Altered System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of an altered system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of altered system of records for the attached 67 Privacy Act systems of records. The purpose of the alteration is to add a new routine use.

DATES: PHS invites interested parties to submit comments on the proposed routine use on or before October 20, 1994. PHS has sent a Report of Altered System of Records to the Congress and to the Office of Management and Budget (OMB) on September 6, 1994. The new routine use will be effective 40 days after the date of publication unless PHS receives comments that would result in a contrary determination.

ADDRESSES: Please submit comments to: PHS Privacy Act Officer, Room 17–45, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: 301–443–2055.

Comments received will be available for inspection at this same address from 8:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: The PHS Privacy Act Officer at the address listed above.

The telephone number listed above is not toll free.

SUPPLEMENTARY INFORMATION: PHS is proposing to add a new routine use to the 67 Privacy Act systems of records listed below. This routine use will permit the disclosure of information from these systems to certain individuals who are working in various PHS components but who do not have the status of agency employees and, in many instances, do not receive pay from the office that employs them. Examples of such categories of individuals are:

PHS volunteers engaged under 42 U.S.C. 217b.

Student volunteers engaged under 5 U.S.C. 3511.

Job Corps enrollees engaged under the Job Training Older American Community Service Employment Act enrollees.

Individuals working under a personal services contract.

Since some offices that use these workers wish to have them perform functions that entail access to records in Privacy Act systems of records, the question arose whether these workers can be considered employees for purposes of the Privacy Act. PHS has decided to promulgate a new routine use rather than rely on the protection of subsection (b)(1) of the Privacy Act.

The proposed new routine use is compatible with the purpose of the data collection, since the disclosures are being made for the very purpose for which the information was collected, i.e., to carry out the particular agency or program function for which the specific system of records was established.

The records will continue to be adequately protected, since the individuals to whom the information will be disclosed work under the supervision of agency employees. They must observe the same safeguards that agency employees do in the maintenance of Privacy Act records.

Dated: September 7, 1994.

Wilford J. Forbush,

Director, Office of Management.

09–25–0001 Clinical Research: Patient Records, HHS/NIH/NHLBI.

09–25–0010 Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI.

09–25–0011 Clinical Research: Blood Donor Records, HHS/NIH/CC.

09–25–0012 Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC.

09–25–0014 Clinical Research: Student Records, HHS/NIH/CC.

09–25–0015 Clinical Research: Collaborative Clinical Epilepsy Research, HHS/NIH/NINDS.

09–25–0016 Clinical Research: Collaborative Perinatal Project HHS/NIH/NINDS

09–25–0026 Clinical Research: Nervous System Studies, HHS/NIH/NINDS

09–25–0028 Clinical Research: Patient Medical Histories, HHS/NIH/NINDS and HHS/NIH/NIDCD.

09–25–0031 Clinical Research: Serological and Virus Data in Studies Related to the Central Nervous System, HHS/NIH/NINDS.

09–25–0036 Extramural Awards and Chartered Advisory Committees: IMPAC (Grant/Contract/Cooperative Agreement/Chartered Advisory Committee), HHS/NIH/DRG and HHS/NIH/CMO.

09–25–0037 Clinical Research: The Baltimore Longitudinal Study of Aging, HHS/NIH/NIA.

09–25–0038 Clinical Research: Patient Data, HHS/NIH/NIDDK.

09–25–0039 Clinical Research: Diabetes Mellitus Research Study of Southwestern American Indians, HHS/NIH/NIDDK.

09–25–0040 Clinical Research: Southwestern American Indian Patient Data, HHS/NIH/NIDDK.

09–25–0041 Research Resources: Scientists Requesting Hormone Distribution, HHS/NIH/NIDDK.

09–25–0044 Clinical Research: Sensory Testing Research Program, HHS/NIH/NIDR.

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09–25–0046 Clinical Research. Catalog of Clinical Specimens from Patients, Volunteers and Laboratory Personnel. HHS/NIH/NIAID.
09–25–0053 Clinical Research. Vision Studies, HHS/NIH/NEI.
09–25–0057 Clinical Research. Burkitt's Lymphoma Registry. HHS/NIH/NCI.
09–25–0060 Clinical Research: Division of Cancer Treatment Clinical Investigations. HHS/NIH/NCI.
09–25–0067 Clinical Research: National Cancer Incidence Surveys. HHS/NIH/NCI.
09–25–0069 NIH Clinical Center Admissions of the National Cancer Institute. HHS/NIH/NCI.
09–25–0074 Clinical Research: Division of Cancer Biology and Diagnosis Patient Trials. HHS/NIH/NCI.
09–25–0077 Biological Carcinogenesis Branch Human Specimen Program. HHS/NIH/NCI.
09–25–0078 Administration: Consultant File. HHS/NIH/NHLBI.
09–25–0091 Administration: General Files on Employees, Donors and Correspondents. HHS/NIH/NEI.
09–25–0093 Administration: Administration Authors, Reviewers and Members of the Journal of the National Cancer Institute. HHS/NIH/NCI.
09–25–0099 Clinical Research: Patient Medical Records. HHS/NIH/CC.
09–25–0100 Clinical Research: Neuropharmacology Studies. HHS/NIH/NINDS.
09–25–0105 Administration: Health Records of Employees, Visiting Scientists, Fellows, Contractors and Relatives of Inpatients. HHS/NIH/OD
09–25–0106 Administration: Executive Secretariat Correspondence Records. HHS/NIH/OD.
09–25–0108 Personnel: Guest Researchers/Student Scientists/Special Volunteers/Scientists Emeriti. HHS/NIH/DPM.
09–25–0112 Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards. HHS/NIH/OD.
09–25–0118 Contracts: Professional Services Contractors. HHS/NIH/NCI.
09–25–0126 Clinical Research: National Heart, Lung, and Blood Institute Epidemiological and Biometric Studies. HHS/NIH/NHLBI.
09–25–0128 Clinical Research: Neural Prosthesis and Biomedical Engineering Studies. HHS/NIH/NINDS.
09–25–0129 Clinical Research: Clinical Research Studies Dealing with Hearing, Speech, Language and Chemosensory Disorders. HHS/NIH/NIDCD.
09–25–0130 Clinical Research: Studies in the Division of Cancer Cause and Prevention. HHS/NIH/NICI.
09–25–0134 Clinical Research: Epidemiology Studies. National Institute of Environmental Health Sciences. HHS/NIH/NIEHS.
09–25–0142 Clinical Research. Records of Subjects in Intramural Research, Epidemiology, Demography and Biometry Studies on Aging. HHS/NIH/NIA.
09–25–0143 Biomedical Research. Records of Subjects in Clinical, Epidemiologic and Biometric Studies of the National Institute of Allergy and Infectious Diseases. HHS/NIH/NIAID.
09–25–0145 Clinical Trials and Epidemiological Studies Dealing with Visual Disease and Disorders in the National Eye Institute. HHS/NIH/NEI.
09–25–0148 Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institute of Neurological Disorders and Stroke and the National Institute on Deafness and Other Communication Disorders. HHS/NIH/NINDS and HHS/NIH/NIDCD.
09–25–0154 Biomedical Research Records of Subjects: (1) Cancer Studies of the Division of Cancer Prevention and Control. HHS/NIH/NCI; and (2) Women's Health Initiative (WHI) Studies. HHS/NIH/OD.
09–25–0156 Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institutes of Health. HHS/NIH/OD.
09–25–0158 Administration: Records of Applicants and Awardees of the NIH Intramural Research Training Awards Program. HHS/NIH/OD.
09–25–0160 United States Renal Data System (USRDS). HHS/NIH/NIDDK.
09–25–0161 Administration: NIH Consultant File. HHS/NIH/DRG.
09–25–0165 National Institutes of Health Acquired Immunodeficiency Syndrome (AIDS) Research Loan Repayment Program. HHS/NIH/OD.
09–25–0201 Clinical Research: National Institute of Mental Health Patient Records. HHS/NIH/NIMH.
09–25–0202 Patient Records on PHS Beneficiaries (1935–1974) and Civilly Committed Drug Abusers (1967–1976) Treated at the PHS Hospitals in Fort Worth, Texas, or Lexington, Kentucky. HHS/NIH/NIDA.
09–25–0203 National Institute on Drug Abuse. Addiction Research Center, Federal Prisoner and Non-Prisoner Research Files. HHS/NIH/NIDA.
09–25–0205 Alcohol, Drug Abuse, and Mental Health Epidemiologic and Biometric Research Data. HHS/NIH/NIAAA, HHS/NIH/NIDA and HHS/NIH/NIMH.
09–25–0211 Intramural Research Program Records of In- and Out-Patients With Various Types of Alcohol Abuse and Dependence, Relatives of Patients With Alcoholism, and Healthy Volunteers. HHS/NIH/NIAAA.
09–25–0212 Clinical Research: Neuroscience Research Center Patient Medical Records. HHS/NIH/NIMH.
09–20–0112 Fellowship Program and Guest Researcher Records. HHS/CDC/PMO.
09–20–0136 Epidemiologic Studies and Surveillance of Disease Problems. HHS/CDC/NCID.
09–20–0163 Applicants for National Center for Health Statistics Technical Assistance. HHS/CDC/NCHS.
09–20–0164 Health and Demographic Surveys Conducted in Probability Samples of the United States Population. HHS/CDC/NCHS.
09–20–0165 Health Manpower Inventories and Surveys. HHS/CDC/NCHS.
09–20–0166 Vital Statistics for Births, Deaths, Fetal Deaths, Marriages, and Divorces Occurring in the United States During Each Year. HHS/CDC/NCHS.
09–20–0167 Health Resources Utilization Statistics. HHS/CDC/NCHS.
09–20–0168 Curricular Vitae of Consultants to the National Center for Health Statistics. HHS/CDC/NCHS.
09–20–0169 Users of Health Statistics. HHS/CDC/NCHS.
09–17–0001 Health and Medical Records. HHS/IHS/OHP.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

The following routine use should be added as the last routine use in all systems listed above:

"Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for PHS who do not technically have the status of agency employees, if they need the records in the performance of their agency functions."

* * * * *

[FR Doc. 94–23153 Filed 9–19–94; 8:45 am]
BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–94–3816; FR–3772–N–01]

Single Family Property Disposition Sales Program for Public Safety Employees

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: Today, HUD is announcing a sales initiative under the Single Family Property Disposition Regulations that is designed to enhance the quality of life and make more homeownership opportunities available to employees who are charged with the responsibility of ensuring the safety and well-being of residents in the community. Under this effort, HUD will allow governmental entities to purchase HUD-owned properties for resale to their public safety employees, such as police officers, firefighters and emergency medical technicians. These properties will be occupied by the public safety employees as their primary residences. Assisting local governments by making properties available for purchase by public safety employees will further the Department's objective of creating a safe and decent housing environment for all American families.

DATES: September 20, 1994.

FOR FURTHER INFORMATION CONTACT: Ann M. Sudduth, Director, Single Family Property Disposition Division, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; telephone (202) 708–0740; Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

I. Background

HUD's regulations at 24 CFR part 291, Disposition of HUD-Acquired Single Family Property, allow the Secretary to sell properties to governmental entities.

On October 20, 1993, the Department published an interim rule, which subsequently became effective on November 19, 1993, amending certain provisions of part 291 to allow for a greater flexibility in fluctuating market situations and to provide greater opportunities for affordable housing to families and to State and local governments or nonprofit organizations serving low- and moderate-income families.

A major goal of the Department is to use its resources in a manner that enhances the general well-being of American communities. Promoting safe neighborhoods is a critical component of the Nation's housing policy.

The Department wants to assist these kinds of efforts. Accordingly, it will utilize its authority under 24 CFR part 291 to make single family properties nationwide available for this purpose.

II. Requirements for Purchase of Properties

Only a unit of state or local government may purchase properties under this program. Governmental entities will receive a discount of 30 percent for those properties which are uninsurable and located in revitalization areas. Insurable properties in revitalization areas will be offered at a discount of 10 percent. It is anticipated that this discount will be passed on to the public safety employee.

Governmental entities purchasing properties under this program should establish a means to ensure that its intent is not abused by the potential purchaser, the public safety employee. The public safety employee should be required to occupy the property as his or her principal residence for at least one year from the date of HUD's closing. Exceptions may be granted by the governmental entity to this occupancy requirement.

III. Participation in this Program

Properties will be sold to governmental entities through competitive bidding or direct sale. Interested governmental entities should contact the local HUD Field Office in their jurisdiction for information on this program.

Dated: September 13, 1994.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 94–23238 Filed 9–19–94; 8:45 am]
BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Technical/Agency Draft Recovery Plan for Aristida chasae, Vernonia proctorii and Lyonia truncata var. proctorii for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces availability for public review of a technical/agency draft recovery plan for *Aristida chasae, Vernonia proctorii, Lyonia truncata* var. *proctorii*. These three species are endemic to Puerto Rico and known only from the southwestern part of the island. The species are threatened by agricultural, residential and tourist development. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 21, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Ms. Susan Silander, Caribbean Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received are available upon request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander, Caribbean Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622, Telephone: 809/851–7297.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened species or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Aristida chasae, Vernonia proctorii and *Lyonia truncata* var. *proctorii* are known only from the southwestern part of the island of Puerto Rico. *A. chasae*, an endemic grass, is known from two areas: The Cabo Rojo National Wildlife Refuge in Cabo Rojo and the Sierra Bermeja hills in Cabo Rojo and Lajas, *V. proctorii and L. truncata* var. *proctorii*, two small shrubs, are known only from upper slopes of the Sierra Bermeja hills. All three species are threatened in these hills by residential, agricultural and tourist development. Wildfires, a frequent occurrence in the dry southwest scrub forests, also threatened these species, particularly in the Sierra Bermeja. *A. chasae* may also be threatened by competition from introduced grass species.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

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Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1531.

Dated: September 13, 1994.

James P. Oland,

Field Supervisor.

[FR Doc. 94-23163 Filed 9-19-94; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[AZ-020-00-4333-04; AZA-25486, 25487, 25489, 25490]

Notice of Availability of Draft Wilderness Management Plan and Environmental Assessment; Notice of Public Comment Period; Notice of Public Meetings

AGENCY: Lower Gila Resource Area, Bureau of Land Management, Interior.

ACTION: The Draft Maricopa Complex Wilderness Management Plan and Environmental Assessment is available for public review and comment. Two open public meetings will be held to facilitate and record public comment. Written comments will also be accepted through November 2, 1994.

SUMMARY: (1) Scope of Proposed Action and Alternatives: The draft plan covers the management of four Wilderness Areas: the Sierra Estrella, the North Maricopa Mountains, South Maricopa Mountains and the Table Top for a period of ten years. The environmental assessment document describes the impacts of the proposed action and three alternatives.

(2) Geographic Areas Involved: Four separate wilderness areas, totaling 173,000 acres in the Lower Sonoran Desert of Southwestern Arizona, southern Maricopa and western Pinal Counties, within a 45 mile radius of Gila Bend, Arizona and 12 to 45 miles south of the metropolitan Phoenix. Other towns in the vicinity are Maricopa, Stanfield, Casa Grande, Avondale and Buckeye, Arizona.

(3) Summary of Proposed Actions: Seventy nine miles of former vehicle ways reclaimed; 16 miles converted to pedestrian and/or equestrian trails. Four access routes shortened. Seventeen vehicle barriers constructed. Four new trails and seven trailheads established and two existing trails and trailheads improved and maintained. Signs, enlarged parking areas, and minimal camping facilities provided at some trailheads. Two vehicle safety shoulders created along Interstate 8. Trail and human encounter standards adopted, maps and other information provided. Commercial recreation outfitters and guides permitted. Six wildlife water catchments and associated fencing modified, and along with two others, maintained. One new pump installed in a wildlife water well. Transplants of desert bighorn sheep and aircraft telemetry following allowed. Installation of new wildlife catchments to be evaluated on a case-by-case basis. Animal damage control allowed. Five earthen livestock water tanks abandoned. Thirteen livestock control fences maintained. Coordination with multi-jurisdictional law enforcement and search and rescue agencies and organizations improved. Five thousand seven hundred and sixty acres of State of Arizona surface and subsurface inholdings acquired plus some access easements. New grazing standards established. All wildfire suppressed but related activities restricted. Reduction in low-level civilian aircraft flights encouraged. Twenty nine instances of motorized/mechanized use allowed annually over 9 years dropping to 18 per year thereafter, to: maintain 8 livestock fences, modify 6 wildlife catchments, maintain and haul water to these and two other catchments, respond to life-threatening emergencies, rescue sick livestock, pursue felons or major game violators, and census or track wildlife. Response actions if monitoring standards are exceeded are identified.

(4) Proposed Restrictions: No campfires, charcoal fires, wood gathering or wood cutting, and other surface disturbances. Pets prohibited on one trail; horses on another. No camping within 200 feet or sight of the established trails, five day camping limit of stay at trailheads. Some pack stock activity restrictions.

(5) Summary of Alternatives: A visitor use and wildlife enhancement alternative with additional hiking and/or riding trails and wildlife developments; a naturalness enhancement alternative without maintained trails, with most developments removed, and 10 instances of low level aircraft use occurring yearly for wildlife census; and a no action alternative maintaining the status quo.

(6) Kind and Extent of Public Involvement Provided: Two open public meetings will be held to record comments on the draft proposals. These will be held in Gila Bend and Phoenix, Arizona at the following times and locations:

Wednesday, September 28, 1994, 6 p.m.–9 p.m., Gila Bend Community Center, 202 Euclid Ave., Gila Bend, Arizona.

Monday, October 3, 1994, 6 p.m.–9 p.m., Phoenix District Office, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona.

Written comments on the draft plan and environmental assessment will be accepted through November 2, 1994. Comments should be sent to the address identified below. Comments received at that address, which are postmarked on or before November 2, 1994, will be considered in the development of the final plan.

ADDRESSES: Copies of the draft plan and environmental assessment are available by contacting the Bureau of Land Management, Phoenix District, Lower Gila Resource Area, 2015 W. Deer Valley Road, Phoenix, Arizona, 85027. Written comments regarding these documents should be mailed to this address. Address your written request to the attention of John Jamrog. Requests for the document may also be made by phoning the Phoenix District Office at (602) 780–8090.

FOR FURTHER INFORMATION CONTACT: John Jamrog, Bureau of Land Management, Phoenix District, Lower Gila Resource Area, Telephone 602–780–8090.

SUPPLEMENTARY INFORMATION: These four areas were added to the Wilderness Preservation System by Public Law 101–628, of November 28, 1990, known as the Arizona Desert Wilderness Act of 1990. The management and use of these areas is directed by this law, the Federal Land Policy and Management Act of 1976 and the Wilderness Act of 1964. All four areas share similar natural characteristics and generally are subject to the same type and amounts of uses.

Dated: September 14, 1994.

William T. Childress,

Acting District Manager.

[FR Doc. 94-23201 Filed 9-19-94; 8:45 am]

BILLING CODE 4310-32-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 10, 1994. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by October 5, 1994.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

Arizona

Pima County

Santa Cruz Catholic Church, 1220 S. Sixth Ave, Tucson, 94001196

Santa Cruz County

Tubac Townsite Historic District (Tubac Settlement MPS), Roughly bounded by Tubac and Plaza Rds. and Presidio Dr., Tubac. 94001195

California

Los Angeles County

Hotel Glendale, 701 E. Broadway, Glendale, 94001197

Iowa

Johnson County

Connon, Wilbur D. and Hattie, House, 320 Melrose Ave., Iowa City, 94001198

Louisiana

Calcasieu Parish

Cathedral of the Immaculate Conception, 935 Bilbo St., Lake Charles, 94001201

Jefferson Davis Parish

Fenton, Silas J., House, 409 Second St., Fenton, 94001200

Pennington, S.A., House, 1003 Second St., Elton, 94001199

Maryland

Baltimore Independent City

Building at 235 North Gay Street (Cast Iron Architecture of Baltimore MPS), 235 N. Gay St., Baltimore, 94001202

Missouri

Boone County

Payne, Moses U., House, 201 N. Roby Farm Rd., Rocheport vicinity, 94001204

Linn County

Plum Grove School, County Rd. 350, ⅜ mi. N of jct. with County Rd. 346, Laclede vicinity, 94001203

Pike County

Goodman—Stark House, 601 N. Third St., Louisiana, 94001205

Utah

Box Elder County

Howard Hotel (Brigham City Private Commercial and Industrial Development MPS), 35 S. Main St., Brigham City, 94001209

Davis County

Clark Lane Historic District, 207–399 W. State and 33 N. 200 W. Farmington, 94001208

Utah County

American Fork Cemetery Rock Hall, 600 N. 100 E. American Fork, 94001207

Utah State Training School Amphitheater and Wall (Public Works Buildings of Utah MPS), Roughly 845 E. 700 N, American Fork, 94001206

Wisconsin

Lafayette County

Main Street Historic District, Roughly bounded by Main, Ann, Louisa and Wells Sts., Darlington, 94001210

Waukesha County

Mukwonago High School, 308 Washington Ave., Mukwonago, 94001211

Winnebago County

Security Bank, 903 Oregon St., Oshkosh, 94001212

[FR Doc. 94-23278 Filed 9-19-94; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-33 (Sub-No. 86)]

Union Pacific Railroad Company—Abandonment—In Morgan County, CO (Julesburg Subdivision)

The Commission has issued a certificate authorizing Union Pacific Railroad Company (UP) to abandon its line of railroad known as the Julesburg Subdivision, extending from milepost 81.10 near Union to the end of the line at milepost 98.78 near Ft. Morgan, a distance of approximately 17.68 miles in Morgan County, CO. The abandonment was granted subject to: (1) The condition that UP keep intact all of the right-of-way underlying the track, including bridges, trestles, culverts, and tunnels, and retain the line intact and not sell any portion thereof, for a period of 180 days from the effective date of this decision to enable any State or local government agency or other interested person to negotiate the acquisition of the right-of-way for public use; (2) the condition that UP retain its interest in and take no steps to alter the historic integrity of line in its entirety (except for rails, ties, and related appurtenances, which may be salvaged) until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; (3) the condition that UP, prior to conducting any salvage operations, contact the U.S. Army Corps of Engineers, Omaha District, to determine if permits are required under section 404 of the Clean Water Act, 33 U.S.C. 1344; and (4) the employee protective conditions in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The abandonment certificate will become effective October 20, 1994, unless the Commission finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and UP no later than 10 days after publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Office of Proceedings, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: September 14, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons and Morgan.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94-23219 Filed 9-19-94; 8:45 am]

BILLING CODE 7035-01-P

[Finance Docket No. 32566]

Missouri Pacific Railroad Company and South Kansas and Oklahoma Railroad Company—Joint Relocation Project Exemption—In Kansas

On August 19, 1994, Missouri Pacific Railroad Company (MP) filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate a line of railroad in a joint project with the South Kansas and Oklahoma Railroad Company (SKOL). The joint project involves: (1) A haulage agreement under which SKOL will haul MP cars over its trackage, as MP's agent, between Winfield and Coffeyville, KS;[1] (2) overhead trackage rights to MP over SKOL rail lines known as: (a) The Moline Subdivision from milepost 248.1 near Winfield to milepost 127.7 near Chanute; (b) the Tulsa Subdivision from milepost 127.7 near Chanute to milepost 155.8 near Cherryvale; and (c) the Coffeyville Subdivision from milepost 155.8 (also milepost 0.0) near Cherryvale to milepost 16.9 near Coffeyville,[2] a total distance of approximately 165.4 miles; and (3) an abandonment by MP of its Wichita Branch from milepost 387.00 near Yates

[1] Car haulage is a private arrangement between carriers. It does not require Commission approval. *See Burlington N.R. Co.—Exemption—Joint Project to Relocate a Line of Railroad Between Tulsa and Muskogee, OK*, Finance Docket No. 31293 (ICC served July 19, 1988).

[2] There is an equation in the trackage mileposts at Cherryvale, where milepost 155.8 equals 0.0 at the same point.

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Center to milepost 453.20 near El Dorado, in Woodson, Greenwood and Butler Counties, KS, a distance of approximately 66.20 miles.[3] The transaction was expected to be consummated on or after August 26, 1994.

The joint relocation project will result in an alternate route with no disruption of rail service for MP's customers.[4] As indicated, SKOL will haul MP's cars over its lines between Winfield and Coffeyville, KS, pursuant to a haulage agreement. MP, in turn, will retain access to its customers via the trackage rights granted by SKOL. According to MP, the relocation of its operations will not generate new traffic, extend rail service into new territory, or impact or change the competitive situation of the rail carriers in the area. The project is expected to result in satisfactory and cost-effective rail operations in the area, as well as effective use of rail assets.

The Commission will exercise jurisdiction over the abandonment component of a relocation project, and require separate approval or exemption, only where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. *See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation over BN*, 4 I.C.C.2d 95 (1987). The Commission has determined that line relocation projects may embrace trackage rights transactions such as the one involved here. *See D.T.& I.R.—Trackage Rights*, 363 I.C.C. 878 (1981). Under these standards, the embraced incidental trackage rights component requires no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Joseph D. Anthofer, Missouri Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, Nebraska 68179.

Decided: September 13, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94-23217 Filed 9-19-94; 8:45 am]

BILLING CODE 7035-01-P

[3] The non-agency stations at Toronto (milepost 399.5) and Eureka (milepost 420.7) are within the incidental abandonment.

[4] Ranch Aid, Inc., a shipper located at Eureka, KS, has informed MP that it has no present or future need for MP's rail service.

[Finance Docket No. 32551]

San Mateo County Transit District—Purchase Exemption—Southern Pacific Transportation Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343–11345 San Mateo County Transit District's (SamTrans) purchase from the Southern Pacific Transportation Company (SP) of a rail line, known as the Dumbarton Branch, located in Alameda and San Mateo Counties, CA, and extending from milepost 26.16 at Redwood Junction, to milepost 36.99 at Newark, a distance of approximately 10.83 route miles. The purchase complements a multipart transaction that assertedly will allow the Peninsula Corridor Joint Powers Board, of which SamTrans is a member agency, and SamTrans to conduct rail passenger commuter service on the San Francisco Peninsula without disrupting SP's freight and intercity passenger operations. The exemption is subject to standard employee protective conditions.

DATES: This exemption is effective on October 20, 1994. Petitions to stay must be filed by September 30, 1994, and petitions to reopen must be filed by October 11, 1994.

ADDRESSES: Send pleadings referring to Finance Docket No. 32551, to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representative: David J. Miller, 333 Market Street, Suite 230, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359.

Decided: September 8, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons and Morgan.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94-23218 Filed 9-19-94; 8:45 am]

BILLING CODE 7035-01-P

[Ex Parte No. 388 (Sub-No. 7)]

Intrastate Rail Rate Authority—Illinois

AGENCY: Interstate Commerce Commission.

ACTION: Extension of certification.

SUMMARY: By decision served August 22, 1989, the State of Illinois, through the Illinois Commerce Commission (Illinois), was certified to regulate intrastate rail rates, classifications, rules, and practices for a five-year period ending on September 20, 1994. Pursuant to a request from Illinois, the certification will be extended for 90 days so that Illinois can make a final assessment of whether to continue its railroad regulatory program and prepare an application for recertification.

DATES: Illinois' certification is extended to December 19, 1994.

FOR FURTHER INFORMATION CONTACT: Elaine Sehrt-Green (202) 927–5269 or Beryl Gordon (202) 927–5610. [TDD for hearing impaired: (202) 927–5721]

Decided: September 14, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94-23216 Filed 9-19-94; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF COMMERCE

International Trade Administration

North Carolina State University, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–046. *Applicant:* North Carolina State University, Raleigh, NC 27695-7212. *Instrument:* Submersible Profiling Spectroradiometer and High Resolution In-water Deck Cell. *Manufacturer:* Satlantic Inc., Canada. *Intended Use:* See notice at 59 FR 23696, May 6, 1994. *Advice Received From:* The Naval Research Laboratory, July 21, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the foreign instrument was ordered (February 18, 1994). *Reasons:* The foreign instrument provides: (1) full compliance with all NASA protocols for the SeaWiFS satellite, (2) designed-in and operational free-fall deployment capability, (3) an off-ship deck cell and (4) 24-bit resolution with autoranging. The Naval Research Laboratory advises that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which was being manufactured in the United States at the time of order.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94-23197 Filed 9-19-94; 8:45 am]

BILLING CODE 3510-DS-F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Controlled Substances: Established 1994 Aggregate Production Quota

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of established 1994 aggregate production quota.

SUMMARY: This notice establishes a 1994 aggregate production quota for 3,4-methylenedioxy-N-ethylamphetamine, a substance in Schedule I of the Controlled Substances Act (CSA).

EFFECTIVE DATE: This order is effective upon September 20, 1994.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to § 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994).

On July 19, 1994, a notice of the proposed 1994 aggregate production quota for 3,4-methylenedioxy-N-ethylamphetamine, a Schedule I controlled substance, was published in the **Federal Register** (59 FR 36784). All interested persons were invited to comment on or object to this proposed aggregate production quota on or before August 18, 1994. No comments or objections were received.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by § 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator, pursuant to 59 FR 23637 (May 6, 1994), the Deputy Administrator hereby orders that the 1994 aggregate production quota for the following controlled substance, expressed in grams of anhydrous base, be established as follows:

Basic class	Established 1994 quota (in grams)
3,4-Methylenedioxy-N-ethylamphetamine	5

Dated: September 13, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94-23237 Filed 9-19-94; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Notice of Submission of Proposed Information Collections to OMB

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed information collections submitted to OMB for approval.

SUMMARY: The National Archives and Records Administration (NARA) is giving notice that the proposed collections of information described in this notice have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act and 5 CFR part 1320. Public comment is invited on these collections.

DATES: Comments should be submitted by October 20, 1994.

ADDRESSES: Copies of the proposed information collections and supporting documentation can be obtained from the Policy and Program Analysis Division (NAA), 8601 Adelphi Road, College Park, MD 20740–6001. Telephone requests may be made to (301) 713–6730, extension 226.

Written comments should be sent to Director, Policy and Program Analysis Division (NAA), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at (301) 713–6730.

The following proposed information collections have been submitted to OMB:

1. Request Pertaining to Military Records (SF 180)

Description: The information collection is the information that must be provided when requesting

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information from or copies of documents from a military service record stored at the National Personnel Records Center (NPRC) to allow NPRC to locate the record and respond to the request. Standard Form 180 is the principal form used to obtain information, but other forms and letters may be used.

Purpose: The information is used to locate the requested record and to determine the releasability of the record under Department of Defense rules.

Frequency of response: On occasion. Approximately 10 percent of respondents are asked to complete an additional form to allow NPRC to search alternative sources to supply the requested information.

Number of respondents: 713,400.

Reporting hours per response: 5 to 30 minutes.

Annual reporting burden hours: 209,616.

2. Customer Comment Forms

Description: The information collection is a comment form available in NARA research rooms and museums for customers to provide comments, suggestions, and complaints on NARA services. This is an expansion of a currently approved information collection in use in the Washington, DC, area.

Purpose: The information collection will help NARA to judge the efficacy of researcher and other visitor services, consider changes suggested by users, plan future services, and improve our performance.

Frequency of response: On occasion.

Number of respondents: 1,925.

Reporting hours per response: 5 minutes.

Annual reporting burden hours: 160.

3. National Historical Publications and Records Commission, Subvention Grant Guidelines and Application

Description: The information collection is a grant application prepared by university and other non-profit presses applying to the NHPRC grant program for subvention of part of the costs of manufacturing and distributing volumes published by NHPRC-supported documentary editorial projects.

Purpose: The information is used to determine eligibility of the applicant and evaluate the suitability of the proposed project for support.

Frequency of response: On occasion. On the average, a press submits two subvention applications per year.

Number of respondents: 10.

Reporting hours per response: 9 hours.

Annual reporting burden hours: 180.

4. National Historical Publications and Records Commission, Annual Sales Reports for Subvention Grants

Description: The information collection is a sales report made by a nonprofit press which has received a grant from the NHPRC to subvent part of the costs of manufacturing and distributing documentary volumes that have been produced by editorial projects for which the NHPRC has provided support.

Purpose: The information is used by the NHPRC to evaluate the success of a volume and to help determine the number of copies in the first printing of subsequent volumes in a series.

Frequency of response: Annually for three years. On the average, a press has two on-going subvention grants and therefore submits two sales reports per year.

Number of respondents: 30.

Reporting hours per response: 2 hours.

Annual reporting burden hours: 120.

Dated: September 12, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–23226 Filed 9–19–94; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Florida Power Corp.; Environmental Assessment and Finding of No Significant Impact

Docket No. 50–302

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. DPR–72, issued to Florida Power Corporation, (the licensee), for operation of the Crystal River Unit 3 Nuclear Generating Plant, located in Citrus County, Florida.

Environmental Assessment

Identification of Proposed Action:

The proposed action is in accordance with the licensee's application dated June 7, 1993, as supplemented March 28, 1994, for exemption from certain requirements of Title 10 Code of Federal Regulations Part 50 (10 CFR 50), Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," Section III. 0, "Oil collection system for reactor coolant pump." The exemption would allow installation of a new reactor coolant pump motor with an oil collection system which is capable of collecting oil leakage from all potential pressurized and unpressurized leakage sites except for four potential oil leakage sites. The four potential leakage sites are: the anti-reverse device (ARD) vents, upper oil supply lines from the lift pump to the ARD, lower motor leak detection system piping, and lower guide bearing thermocouple wells.

The Need for the Proposed Action:

10 CFR 50, Appendix A, "General Design Criteria for Nuclear Power Plants," Criterion 3, "Fire protection," specifies that "Structures, systems, and components important to safety shall be designed and located to minimize, consistent with other safety requirements, the probability and effect of fires and explosions." 10 CFR 50, Appendix R, sets forth fire protection features required to satisfy the general design Criterion 3 of the Commission's regulations. Pursuant to 10 CFR 50, Appendix R, Section III. 0, the RCP shall be equipped with an oil collection system which "* * * shall be capable of collecting lube oil from all potential pressurized and unpressurized leakage sites in the reactor coolant pump lube oil systems."

As part of its design improvements program to enhance motor reliability and simplify maintenance activities, the licensee proposed to replace the existing RCP motors with a new motor and implement, a re-designed RCP lube oil system. As a result of physical interferences and other design difficulties, four specific sites in the RCP motor lube oil system could not accommodate an oil collection system for collecting potential oil leakage. An exemption from 10 CFR 50, Appendix R, Section III. 0, is required to permit the four specific sites in the RCP lube oil systems without an oil collection system, and thus, exclude them from leakage protection.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the licensee's application.

Section III. 0 of Appendix R to 10 CFR Part 50 states that: "The oil collection system shall be so designed, engineered, and installed that failure will not lead to fire during normal or design basis accident conditions and that there is reasonable assurance that the system will withstand the Safe Shutdown Earthquake [SSE]. Such collection systems shall be capable of collecting lube oil from all potential pressurized and unpressurized leakage sites in the reactor coolant pump lube oil systems.

Leakage shall be collected and drained to a vented closed container that can hold the entire lube oil system inventory."

The RCP motor lube oil system, with its pumps and associated piping, supplies oil to several parts of the RCP. The existing RCP lube oil system includes a high pressure and an induced flow system. The high pressure system consists of two independent pumps, and associated piping, and supplies oil, among other components, to the ARD. The induced flow system is driven by the rotation of the RCP motor and provides lube oil to the thrust bearings, guide bearings, and to the ARD.

The new oil lubricating system would contain approximately 200 gallons of oil and would include several design features such as spray shields, series of drip and drain pans and piping, and a lube oil collection system tank. The new system eliminated one of the two lift pumps and its components which should result in a decrease in the number of potential leakage sites. The oil collection system would be capable of collecting lube oil from all possible pressurized and unpressurized leak sites except for the four specific locations. Of the four potential leakage sites, ARD vents and lower RCP motor leak detection system piping do not contain oil under routine operating conditions. The upper oil supply lines from the lift pump to the ARD are pressurized only during a brief period of motor startups and shutdowns. The lower guide bearing thermocouple wells are passive in nature. Additionally, in the new design, vents would be equipped with demisters and filters to prevent lube oil mist from escaping to the atmosphere. If leakage were to occur during normal plant operations, the oil would channel to the drain pan. Any lube oil leak which may not have been fully captured could potentially run down the RCP motor onto hot Reactor Coolant System surfaces. However, the flammability characteristics of the oil, flashpoint of 452 °F, and an auto ignition temperature of 500 °F – 7 °F, that would be used in the lube oil system, reduce the likelihood that the oil will readily ignite upon coming in contact with hot RCS piping surfaces. Additionally, if the oil leak became ignited, the fire would be localized in the area of the leakage and detected by the thermal fire detectors.

Fire protection features for the RCP motors include three temperature heat detectors with 190 °F setpoints located over each RCP. Any localized fire in the area due to oil leakage would be detected by the thermal fire detectors and would provide an alarm function in both the reactor building and annunciate in the main control room. Additional indications of a potential RCP fire would also be provided by control room alarms on low level oil, low oil pressure or high vibrations. If an RCP fire alarm is received in the main control room, it is expected that the control room operators would evaluate any alarm associated with the RCP and its lube oil system and initiate fire brigade entry into the reactor building to investigate and fight the fire. The reactor building is equipped with an internal firefighting standpipe hose station system and fire extinguishers are appropriately distributed throughout the structure. RCP firefighting would be accomplished by using either portable fire extinguishers or water from a hose stream or a combination of both. Access to the four RCPs for firefighting can be accomplished by making entry into the "D" rings.

The existing Crystal River Unit 3 RCP motor lube oil system is a non-seismic system. The new RCP lube oil system and lube oil collection systems would be seismically qualified to withstand an SSE. Therefore, if an SSE were to occur, the system is not expected to fail.

Based on the design features of the new RCP motors and the fact that their lube oil system and associated lube oil collection systems are seismically designed to withstand an SSE, there is reasonable assurance that the RCP lube oil system will not present a major fire hazard.

The staff concludes, based on its evaluation, that potential oil leakage from the specific four sites in the RCP lube oil system will not present a major fire hazard and that the current level of fire protection is sufficient to mitigate the consequences of a fire in the area of these potential leakage sites. In addition, the staff concludes that it is not expected that these potential leakage sites will fail during an SSE. On that basis, the staff finds that the licensee's proposed design of the RCP motor lube oil collection system provides an equivalent level of fire safety to that required by the provisions of Appendix R, section III.0, and, therefore, is acceptable.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact. With regard to potential non-radiological impacts, the proposed change does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statement, dated May 1973, related to operation of Crystal River Unit 3.

Agencies and Persons Consulted

The NRC staff consulted with the State of Florida regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated June 7, 1993, and March 28, 1994, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the local public document room located at Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Dated at Rockville, Maryland, this 6th day of September 1994.

For the Nuclear Regulatory Commission.

Victor M. McCree,

Acting Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–23203 Filed 9–19–94; 8:45 am]

BILLING CODE 7590–01–M

Docket Nos. 50–327 and 50–328

Tennessee Valley Authority Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the Tennessee Valley Authority, (licensee) for amendments to Facility Operating License Nos. DPR–77 and DPR–79 issued to the licensee for operation of the Sequoyah Nuclear Plant Units 1 and 2, located in Soddy Daisy, Tennessee.

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Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on November 10, 1993 (58 FR 59757).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to remove the fire protection special reporting requirements.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by a letter dated October 20, 1994, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, D.C., by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, and to the Office of the General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated September 28, 1993, and (2) the Commission's letter to the licensee dated

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, D.C., and at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 13 day of September, 1994.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Region II Reactors, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–23206 Filed 9–19–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 5, 1994, Room T–2E13, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: *Wednesday, October 5, 1994—2:00 p.m. until the conclusion of business.*

The Subcommittee will discuss proposed ACRS activities and related matters. Also, it will discuss qualifications of candidates nominated for appointment to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: September 14, 1994.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 94–23204 Filed 9–19–94; 8:45 am]

BILLING CODE 7590–01–M

Staff Meetings Open to the Public; Final Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Final policy statement.

SUMMARY: This statement presents the policy that the Nuclear Regulatory Commission (NRC) staff will follow in opening meetings between the NRC staff and one or more outside persons to public observation. This policy statement also announces central agency services available to the public for obtaining schedules for the staff meetings that are open to public attendance. Implementing guidance will be issued to the NRC staff as a management directive. The policy statement relates only to meetings involving the NRC staff and does not affect existing regulations that apply to public attendance at meetings such as Commission meetings, advisory committee meetings, and enforcement conferences.

EFFECTIVE DATE: November 1, 1994.

ADDRESSES: Management Directive 3.5 and copies of comments received on the proposed policy statement are available for inspection at the NRC Public Document Room, 2120 L St., NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, telephone: (301) 504–1881.

SUPPLEMENTARY INFORMATION:

I. Background

The NRC first published its policy for open staff meetings in the **Federal Register** on June 28, 1978 (43 FR 28058). On September 14, 1993 (58 FR 48080), the NRC published for public comment a proposed policy statement entitled "Staff Meetings Open to the Public" in the **Federal Register** that would supersede the policy statement of 1978 (58 FR 48080). The NRC requested comments on the proposed policy statement and on comments submitted previously by the American Mining Congress that were made in response to an interim NRC policy statement similar to the policy statement that was proposed.

II. Summary of Public Comments on the Proposed Policy Statement and NRC Responses

General Comments

In late 1993, the NRC received 13 letters with comments on the proposed policy statement on "Staff Meetings Open to the Public." These comments were from the following organizations: the American Mining Congress; two law firms, Winston & Strawn and Newman & Holtzinger, P.C.; and seven utilities, including Texas Electric, Yankee Atomic Electric Company, Commonwealth Edison Company, Florida Power Corporation, Georgia Power Company, Virginia Electric and Power Company, and Southern Nuclear Operating Company; the Nuclear Management and Resources Council, the State of New Jersey Department of Environmental Protection and Energy, and Ohio Citizens for Responsible Energy, Inc. (OCRE). Two of these commenters, Georgia Power Company and Virginia Electric and Power Company, endorsed the comments of the Nuclear Management and Resources Council.

Two commenters endorsed the proposed policy statement. The other commenters either objected to the proposed policy statement or expressed their preference for retaining the 1978 policy statement. Several endorsed the general concept of opening staff meetings. Most offered suggestions for improving the proposed policy statement should it be adopted by the Commission.

Impact on the Quality of Public Meetings

The principal concern expressed was that having the public present during meetings with the NRC staff would have an adverse impact on the quality of those meetings. Several commenters indicated that the presence of the public at meetings with the NRC staff would unnecessarily complicate NRC and licensee discussions, would adversely affect the candor of those discussions (because the public would likely misunderstand and misconstrue the content of conversations), and would generally have an adverse effect on open communications between the NRC and licensees.

The NRC has been conducting public meetings for nearly 15 years under the 1978 policy statement. Since September 1992, the Office of Nuclear Reactor Regulation, the Office for Analysis and Evaluation of Operational Data, and the regional offices have operated under an interim policy similar to the proposed policy statement. The NRC has not found that meetings open to the public under the 1978 policy statement or under the 1992 Interim Policy Statement have substantially interfered with the NRC staff's ability to accomplish its meeting goals or that the presence of public observers adversely affected its ability to communicate openly with licensees and other participants. Even though the NRC recognizes that having meetings open to public observation exposes the participants to the risk that information may be misunderstood or misconstrued, the NRC has not, in its many years of public meetings, found that risk to be of sufficient concern to outweigh the public confidence gained in the NRC's regulatory programs that comes from public observation of NRC staff meetings with outside persons.

Policy Expansion

Several commenters viewed the presumption that all staff meetings are open for public observation unless they fall into one of the exemptions detailed in the proposed policy statement as representing a significant extension of the agency policy on open staff meetings over that published in the 1978 policy statement. They also argue that the extension adds little to existing opportunities for public participation.

The NRC agrees that the proposed policy statement would result in more meetings being open to the public than would have been under the 1978 policy statement. The 1978 policy covered only meetings between the NRC and parties to proceedings. The proposed policy statement reflects NRC's longstanding practice of providing the public with the fullest information practicable on its activities and of conducting business in an open manner. Evolving agency practice since 1978 has resulted in additional types of meetings being open to the public that are not covered by the 1978 policy statement. These include meetings with licensees on technical issues, with licensee senior management on Systematic Assessment of Licensee Performance reports, and with licensees on exit meetings for special team inspections or by accident investigation and diagnostic evaluation teams. In addition, NRC has open meetings with trade organizations and with public interest groups regarding policy and technical issues and the agency's regulatory responsibilities. The policy statement codifies current practice by establishing uniform guidelines for the staff.

Definition of a Public Meeting

Several commenters offered suggestions for refining the definition of "public meeting." Several commenters suggested that the type of individuals attending a meeting should be a determinant of whether the meeting is open to the public. One commenter suggested limiting public meetings to those where a decision-maker was attending. Other commenters suggested limiting public meetings only to those where technical staff were in attendance or where only a project manager and one or more license representatives were present. The NRC strongly believes that the subject matter of the meeting, or the administrative burden of opening the meeting, rather than the type of participant in attendance, should be the determining criterion for deciding if a meeting should be considered open for public observation.

One commenter expressed concern that the policy does not apply to state and local governments, including agreement states. The policy statement does apply to those entities as provided for in Section C.1. of the policy statement.

A commenter suggested language be included to establish a presumption that meetings between the NRC staff and outside parties be open. The NRC believes its policy statement clearly announces a policy of openness and establishes only a limited number of necessary exemptions. The NRC believes the policy statement provides meaningful opportunities for the public to be informed of NRC activities without unduly affecting open and candid discussions between licensees and the NRC staff or interfering with the NRC staff's ability to exercise its regulatory and safety responsibilities without undue administrative burden.

Other commenters suggested that the definition of a public meeting specifically exclude all meetings other than "face to face meetings," that is, exclude meetings using electronic communications, such as telephone conference calls or teleconferencing. The NRC agrees that the definition of a public meeting is not intended to include conversations using electronic communications and has modified the definition to clarify that meetings covered by this policy statement are those where participants are physically present at a single meeting site.

One commenter suggested that the definition of a public meeting be limited to one in which public interest has been expressed or where the NRC has reason to believe there is substantial public interest. The use of this type of criterion would require that the NRC judge what is of significant interest to a wide range of groups that have varied interests. The NRC does not presume to judge for these varied groups what meetings they may

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consider to be of significant interest. The NRC believes that it is the responsibility of members of the public, not the NRC, to decide if they are interested in attending a staff meeting.

Several commenters suggested that the public's role at open staff meetings be clearly limited to that of observers. The preamble of the proposed policy statement clearly states that staff meetings open to the public would be open only to observation. However, in response to this concern, the NRC has amended the definition of a public meeting to include the phrase, "open to public observation."

Several commenters suggested that the policy statement include specific ways to limit public participation, such as permitting members of the public to ask questions only at the conclusion of a meeting or requiring them to submit written comments or questions. The policy statement is not intended to address the role of the public beyond that of observation. However, the NRC recognizes that some meetings open under the policy statement may warrant a greater degree of public participation. If participation beyond that of observation is allowed for a particular meeting, a description of the degree of participation will be specified when the meeting is announced and at the outset of the meeting by the senior NRC official participating in the meeting.

One commenter asked that NRC prohibit members of the public from interrupting meetings to pursue a personal agenda or raise public policy issues. The NRC recognizes the concern outside persons may have regarding this possibility. As above, the NRC staff will indicate the ground rules for a public meeting at the beginning of a meeting and adhere to those rules throughout the meeting.

The suggestion that the term "encounter" in the definition of a public meeting be changed to "meeting" was rejected. Had this suggestion been accepted, the definition would have read, "A public meeting is a formal meeting, * * *" phrasing that does not comply with the logical terms of a definition.

Exemptions

In reviewing the comments regarding the exemptions and scope of the policy statement, the NRC staff recognizes that exemption "g" should be clarified. The phrase, "Is a general information exchange" has been added to the exemption. Furthermore, guidance has been provided to the staff at the end of Section C.2 as follows: "Also note that meetings between staff and licensees or trade groups to discuss technical issues or licensee performance would normally be open because they may lead to a specific regulatory decision or action. However, should a meeting involving a general information exchange be closed and should discussions during such a meeting approach issues that might lead to a specific regulatory decision or action, the NRC staff may advise the meeting attendees that such matters cannot be discussed in a closed meeting and propose discussing the issues in a future open meeting."

Several commenters suggested that the policy statement contain additional specific exemptions for closing a meeting. For example, one commenter suggested closing meetings that are administrative in nature, that are held to discuss scheduling or constraints associated with licensee actions, or that are held to review material submitted to the NRC by licensees. The NRC believes that these types of meetings will be exempt to the extent the definition of a public meeting encompasses only meetings where substantive issues are discussed. Also, exemption "g" as rewritten covers those types of meetings because they are held only for the exchange of information.

Several commenters suggested closing meetings for the exchange of preliminary, unverified information; meetings held within a licensee's protected areas; and meetings between NRC Resident Inspectors and licensees. The NRC believes that these types of meetings are already exempted by the policy statement in that the first type would be closed under exemption "f," and second and third types would be closed under exemption "h."

One commenter suggested that exemptions "f," "g," and "h" need to be refined to preserve NRC's flexibility to carry out its health and safety responsibilities without being unduly inhibited by the expanded openness policy. Another commenter believed these exemptions were too broad. NRC believes exemption "f" is sufficiently focused to be clearly interpreted. Exemptions "g" and "h" have been refined and the NRC believes that the policy statement has sufficient flexibility to ensure that NRC meets its safety and regulatory responsibilities. The policy statement clearly enunciates this flexibility in stating, "[t]his policy is a matter of NRC discretion and may be departed from as NRC convenience and necessity may dictate." The commenter specifically requested that the term "substantially" be deleted from exemption "h." The NRC agrees because the NRC will not open a meeting if the NRC staff believes the administrative burden will interfere with the efficient performance of its safety and regulatory responsibilities and exemption "h" has been broadened to specifically exclude meetings held as an integral part of an NRC inspection.

One commenter interpreted the provision in exemption "f" in the policy statement as a means to exempt meetings convened to solve potential problems, such as reclamation proposals or enforcement matters. The NRC does not agree with this interpretation. The exemption addresses meetings that could result in the inappropriate disclosure and dissemination of "preliminary, unverified information." The purpose of this exemption is not to close all meetings for which preliminary information, proposals, or concerns are discussed, but to specifically ensure that agency licensees and applicants will not be inhibited in bringing preliminary, unverified information to the attention of the NRC.

The NRC staff believes that this reasoning applies to another commenter who believes that meetings between the staff and licensees, where technical issues or approaches to emerging issues are discussed, should also be classified as "preliminary" in nature and not open to the public.

Meeting Arrangements

Several commenters raised issues regarding arrangements for public meetings. One recommended that public recording and transcription of meetings be prohibited. The NRC does not believe it should limit public attendees when they want to record or transcribe proceedings which they have a right to attend. This type of a prohibition would be difficult to enforce and would infringe upon an established practice of media representatives and others who routinely record public proceedings for their convenience and subsequent use.

One commenter suggested that "outside parties" be consulted before announcing a meeting open to public observation because they may wish to submit proprietary, personal, or other confidential information prior to the meeting. Another suggested that the NRC staff inform the "outside parties" if a meeting will be a public meeting. This is the current NRC practice; however, the NRC will include a provision in its implementing management directive emphasizing that the NRC staff should make outside persons aware when a meeting will be a public meeting. This practice will allow the outside persons to raise concerns regarding confidential information before a meeting.

Several commenters expressed the concern that essential or urgent meetings would not be scheduled promptly enough because of the need to provide "ten days advanced notice." This provision is intended to ensure that when the NRC staff deems that a meeting should be a public meeting there is sufficient time to provide adequate public notice of the meeting. When a meeting is deemed essential and adequate public notice cannot be provided, exemption "h" of the policy statement would apply because trying to provide notice would constitute an administrative burden that could interfere with the NRC staff's efficient execution of its safety and regulatory responsibilities; however, limited notice would still be provided using available telephone and electronic bulletin board systems.

Another commenter noted that its experience has been that some past public meetings noticed in the **Federal Register** were published on the day of the meeting or published so close to the date of the meeting that public attendance was impossible. The NRC recognizes that delays may occur because of the requirement to publish a notice of the meeting in the **Federal Register**. Consequently, the NRC did not adopt publication in the **Federal Register** as the principal mechanism for announcing public staff meetings. The NRC will announce public meetings through a toll-free telephone recording, a toll-free electronic bulletin board, weekly distribution of public meeting announcements to the Press, and by posting meeting announcements in the NRC Public Document Room.

One commenter suggested that minutes of closed meetings be prepared when substantive regulatory issues are raised in a closed meeting or when minutes of the closed meeting can be prepared and released to the public. The NRC recognizes that closed meetings may involve discussions regarding substantive regulatory matters, such as those involving preliminary, unverified information; meetings may also be closed because of the administrative burden of opening the meeting for public observation. The NRC does not believe it is necessary to require in the policy statement the preparation of meeting minutes or summaries of closed meetings. However, current NRC practice, when appropriate, is to make publicly available summaries of non-public meetings. This practice will continue.

Duration of Policy

One commenter suggested that any revised policy adopted by the NRC be limited to a two-year trial basis similar to that approved for open enforcement conferences. Another commenter suggested that the policy statement should be limited to a period necessary to determine if there is sufficient interest to justify the expense of opening routine meetings to the public. The NRC believes that its long-term experience with open meetings justifies opening staff meetings and that this practice has resulted in significant benefits to the public. Thus the NRC does not believe its policy should be limited for any particular period of time.

Costs

Several commenters expressed concern regarding expenditures that would be required by the NRC and licensees to accommodate public observation of meetings. Two commenters expressed concern that additional expenditures would be incurred without commensurate benefits; for example, that public meetings may be held with no public attendance. Should this happen, these commenters suggested that these types of meetings be added as exemptions because no public interest in them would have been demonstrated. Others believed that the proposal should be abandoned because it would affect fee assessments under the agency's 100-percent user fee policy, resulting in a net loss in regulatory effectiveness and with no public benefit. The NRC does not envision more than a nominal increase in expenditures because the meetings in question will be held with or without public attendance, and are usually held at NRC facilities and meetings at licensee facilities are normally held in a facility readily accessible to the public. NRC's costs associated with operating the toll-free telephone line and the public-access electronic bulletin board are minimal and, to a great extent, offset by consolidating several current meeting notice telephone systems into one. Press notices of public meetings will be included in the agency's Weekly Press Release Compilation. Concerns related to fee assessments are routinely addressed as part of rulemakings for 10 CFR Parts 170 and 171. In February 1994, the NRC issued the "Report to the Congress on the U.S. Nuclear Regulatory Commission's Licensee Policy Review Required by the Energy Policy Act of 1992" that addresses concerns raised regarding the NRC licensee fee policy.

American Mining Congress Comments

The NRC invited public comment on concerns that had been submitted by the American Mining Congress (AMC) on the September 1992, Interim Policy Guidance that had been used by the NRC Office of Nuclear Reactor Regulation, the Office for Analysis and Evaluation of Operational Data, and the NRC regional offices. The AMC stated that the proposed policy was generally responsive to its concerns. AMC's additional comments and the concerns of other commenters who referenced AMC's concerns are addressed in the preceding analysis of comments in Section II of this document.

III. Discussion of the Policy

The purpose of revising the open meeting policy is to further the goal of providing meaningful opportunities for the public to be informed of NRC activities without unduly affecting open and candid discussions between licensees and the NRC staff or interfering with the NRC staff's ability to exercise its regulatory and safety responsibilities without undue administrative burden. The policy also provides guidance to the NRC staff concerning the types of meetings that should be open to public observation. The open meeting policy is a matter of NRC discretion and may be departed from as NRC convenience and necessity may dictate.

The open meeting policy excludes meetings where the expressed intent is not to discuss substantive issues that are directly associated with NRC's regulatory and safety responsibilities. Meetings that would not need to be open could include training, conferences, and association meetings where both NRC staff and applicant/licensee officials participate. The open meeting policy also excludes meetings or interviews between NRC staff and licensee staff or management personnel that occur during the performance of an NRC inspection. The policy also excludes meetings the NRC staff has with its own employees, contractors, and consultants, other Federal agencies where the matter does not relate to a specific activity for which NRC has oversight, and with representatives of foreign governments and State and local representatives on matters other than those relating to specific NRC licensing or regulatory actions involving individual NRC licensees.

Exemptions to the policy will permit meetings to be closed to ensure that classified, commercial or financial proprietary, safeguards, personal privacy, and investigative information protected by statute or otherwise requiring protection is not disclosed to the public. Other exemptions are provided to ensure that the NRC staff has sufficient flexibility to efficiently carry out its responsibilities.

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A meeting to discuss preliminary, unverified information is not an open meeting under the policy. The purpose of this exemption is to ensure that licensees and applicants are not inhibited in bringing to the Commission information that is not verified or sufficiently analyzed to draw firm conclusions. It also ensures that discussions about potential implications of this type of information occur candidly and openly without fear that it may be misunderstood by the public as fact or as final conclusions.

A meeting that is an information exchange having no direct, substantive connection to a specific NRC decision or action is not an open meeting under this policy. The purpose of this exemption is to ensure that routine administrative matters relating to regulatory activities can be carried out efficiently. For example, drop-in visits or similar management meetings between senior executives of a utility licensed to operate a nuclear power plant and the Executive Director for Operations, Regional Administrators, or other senior NRC managers are generally closed meetings because they typically consist of a general exchange of information not directly related to any regulatory action or decision. Furthermore, meetings to discuss schedules for NRC actions, or the status of an applicant's or licensee's activities would not be open under this exemption. Meetings between staff and licensees or trade groups to discuss technical issues or licensee performance would normally be open under this provision because they may lead to specific regulatory action.

The final exemption is for meetings where the administrative burden associated with public attendance could interfere with the NRC staff's efficient execution of its safety and regulatory responsibilities. This exemption ensures that the NRC staff has the discretion to have a needed meeting on short notice where adequate public notice cannot be provided without placing an undue burden on the agency. The meeting could be necessary because of an urgent issue that needs addressing or where the opportunity becomes available on short notice to meet with an official of the applicant or licensee that would benefit the NRC staff person in carrying out his or her duties. The meeting also might be in a location that does not have the facilities to easily accommodate the public, such as within a plant's protected area, because these meetings would require an undue administrative burden to establish access authorization for members of the public. For example, an NRC manager may visit a facility on short notice or without any notice for purposes other than meeting with licensee officials. These purposes may include but are not limited to monitoring and assessing the performance of NRC subordinates, touring the facility, or independently assessing licensee performance. During such a trip, he or she may visit licensee officials and may discuss substantive regulatory issues with them. Opening such a meeting to the public would constitute an undue administrative burden and could impede the efficient executions of the NRC's safety and regulatory responsibilities.

The public meeting notice system planned for providing public notice of all NRC staff meetings open to the public will have a toll-free telephone recording and a public-access electronic bulletin board for announcing meeting notice information. Open staff meetings will also be announced by a weekly press release as well as being posted in the agency's Public Document Room, as is the current practice.

IV. Commission Policy Statement on Staff Meetings Open to the Public

A. Purpose

This statement presents the policy that the Nuclear Regulatory Commission (NRC) staff will follow in opening meetings between the NRC staff and one or more outside persons to public observation. The policy continues NRC's longstanding practice of providing the public with the fullest information practicable on its activities and of conducting business in an open manner, while balancing the need for the NRC staff to exercise its regulatory and safety responsibilities without undue administrative burden. This policy also announces central agency services available to the public for obtaining schedules for the staff meetings that are open to public attendance. Implementing guidance will be issued to the NRC staff as a management directive. This meeting policy is a matter of NRC discretion and may be departed from as NRC convenience and necessity may dictate.

B. Definition

A public meeting is a planned, formal encounter open to public observation between one or more NRC staff members and one or more outside persons physically present at a single meeting site, with the expressed intent of discussing substantive issues that are directly associated with the NRC's regulatory and safety responsibilities.

An outside person is any individual who is not:

a. An NRC employee;
b. Under contract to the NRC;
c. Acting in an official capacity as a consultant to the NRC;
d. Acting in an official capacity as a representative of an agency of the executive, legislative, or judicial branch of the U.S. Government (except when the agency is subject to NRC regulatory oversight);
e. Acting in an official capacity as a representative of a foreign government;
f. Acting in an official capacity as a representative of a State or local government (except when specific NRC licensing or regulatory matters are discussed).

C. Applicability and Exemptions

1. This policy applies solely to NRC staff-sponsored and conducted meetings and not to meetings conducted by outside entities that NRC staff members might attend and participate in. It does not apply to the Commission or offices that report directly to the Commission. Similarly, it does not apply to meetings between the NRC staff and representatives of State governments, including Agreement State representatives, relating to NRC Agreement State activities or to State regulatory actions or to other matters of general interest to the State or to the Commission, that is, matters other than specific NRC licensing or regulatory actions involving specific licensees. Also, the policy is not intended to apply to or supersede any existing law, rule, or regulation that addresses public attendance at a specific type of meeting. For example, 10 CFR Part 7 specifically addresses public attendance at advisory committee meetings; and 10 CFR Part 9, Subpart C, addresses public attendance at Commission meetings. The policy also does not negate existing Memoranda of Understanding, procedural agreements, or other formal agreements or requirements regarding the accessibility of the public to observe or participate in meetings between NRC and its licensees or any other entities. In addition, the policy does not apply to meetings involving enforcement matters under 10 CFR Part 2, Appendix C nor to settlement conferences.

2. In general, meetings between the NRC staff and outside persons will be classified as public meetings unless the NRC staff determines that the subject matter to be discussed—

a. Is specifically authorized by an Executive Order to be kept secret in the interests of national defense or foreign policy (classified information) or specifically exempted from public disclosure by statute;

b. Contains trade secrets and commercial or financial information (proprietary information);

c. Contains safeguards information;

d. Is of a personal nature where such disclosure would constitute a clearly unwarranted invasion of personal privacy;

e. Is related to a planned, ongoing, or completed investigation and/or contains information compiled for law enforcement purposes;

f. Could result in the inappropriate disclosure and dissemination of preliminary, unverified information;

g. Is a general information exchange having no direct, substantive connection to a specific NRC regulatory decision or action;

h. Indicates that the administrative burden associated with public attendance at the meeting could result in interfering with the NRC staff's execution of its safety and regulatory responsibilities, such as when the meeting is an integral part of the execution of the NRC inspection program.

It is important to note that whether or not a meeting should be open for public attendance is dependent primarily on the subject matter to be discussed, not who outside nor who within the NRC staff is participating (e.g., staff level versus senior management).

Also note that meetings between staff and licensees or trade groups to discuss technical issues or licensee performance would normally be open because they may lead to a specific regulatory decision or action. However, should a meeting involving a general information exchange be closed and should discussions during such a meeting approach issues that might lead to a specific regulatory decision or action, the NRC staff may advise the meeting attendees that such matters cannot be discussed in a closed meeting and propose discussing the issues in a future open meeting.

D. Notice to the Public

1. Normally, meeting announcement information is to be provided by the staff to the agency's meeting announcement coordinator at least ten days in advance of the date of the meeting so that adequate notice can be made to the public.

Public notice will be provided through the Weekly Compilation of Press Releases and posting in the NRC headquarter's Public Document Room, 2120 L Street (Lower Level) NW., Washington, DC. The public may obtain a schedule of agency staff meetings on a toll-free telephone recording at 800–952–9674 and on a toll-free electronic bulletin board at 800–952–9676.

2. Meetings which are scheduled for the next 60 calendar days will be announced to the public. Meeting announcements will include the date, time, and location of the meeting, as well as its purpose, the agency and outside organizations in attendance, and the name and telephone number of the agency contact for the meeting. Information about canceled, rescheduled, and open meetings scheduled on short notice will be updated daily or as needed by its posting at the agency Public Document Room, on the telephone recording, and on the electronic bulletin board.

Dated at Rockville, MD, this 14th day of September 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–23205 Filed 9–19–94; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Request Under Review by Office of Management and Budget

Acting Agency Clearance Officer: David T. Copenhafer, (202) 942–8800.

Upon written request copy available from: Securities and Exchange Commission, Office of Filing and Information Services, 450 5th Street, N.W., Washington, D.C. 20549.

New Mutual Funds Prospectuses Telephone Survey—File No. 270–394.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted for OMB approval a request to execute a telephone research survey. The survey will attempt to assess the public's understanding of mutual funds and other financial matters. The results will enable the Commission to better understand the level of investor comprehension of mutual fund prospectuses and financial issues. The mutual fund comprehension telephone survey is estimated to require a total of 16.66 burden hours. The burden hour per participant will be .16 hours or 10 minutes.

Direct general comments to the Desk Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to David T. Copenhafer, Acting Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: September 12, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23227 Filed 9–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34665; File No. SR–DTC–94–07]

September 13, 1994.

Self-Regulatory Organization; the Depository Trust Company; Order Approving Proposed Rule Change Establishing the Stock Loan Income-Tracking System

On May 6, 1994, The Depository Trust Company ("DTC") submitted a proposed rule change (File No. SR–DTC–94–07) to the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal appeared in the **Federal Register** on June 22, 1994, to solicit comment from interest persons.[2] This order approves the proposal.

I. Description of the Proposal

The purpose of the proposed rule change is to establish the stock loan income-tracking system that will eliminate the need for participants to track income distributions on their securities that are the subject of outstanding stock loans. The current DTC procedures enable participants to identify stock loan related deliver orders through the use of reason codes. Proper allocation of income payments arising from the securities that are the subject of these loans currently rests entirely with the lending and borrowing participants because DTC allocates income to participants to whom the securities are credited on the relevant entitlement date (*i.e.*, the borrowing participants). Lending participants recover income that DTC has allocated to borrowing participants either through DTC's securities payment order service or through some other mutually agreed upon arrangement by the participants.

[1] 15 U.S.C. § 78s(b) (1988).

[2] Securities Exchange Act Release No. 34218 (June 15, 1994), 59 FR 32252 [File No. SR–DTC–94–07] (notice of proposed rule change).

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The proposed rule change will facilitate participants' processing of income attributable to securities that are the subject of outstanding stock loans. The proposed stock loan income-tracking system will track and monitor participants' stock loan related deliver orders; will net the share amounts by participant and CUSIP; and will automatically credit income distributions to the proper participant on income payment date. To execute these functions, DTC will create a special stock loan memo account which will maintain a daily net balance of loan obligations for each stock loan counterparty of each participant.

The proposed rule change provides that a party from whom distributions are due to be transferred may unilaterally halt all future distribution transfers by giving a letter of instructions to DTC two or more business days in advance and by giving a copy to the counterparty. DTC will notify the counterparty participant of any action taken by DTC based on the instructions. DTC will not assess the parties legal obligations to each other.[3]

If a participant's account is being transferred to another participant due to a merger or acquisition, DTC will move the transferring participant's open stock loan positions to the transferee participant.

If a participant is about to retire, DTC first will verify that the participant has closed out all its entitlements and obligations for future distributions created by stock loans. If DTC has ceased acting on behalf of a participant, DTC will determine which other DTC participants are stock loan counterparties and will adjust those participants' stock loan memo account positions in order to balance the elimination of DTC's obligations to and entitlements from the terminated participant.

Before the stock loan income-tracking system is implemented, DTC will provide a means for participants to load DTC's stock loan data base with information about currently outstanding stock loans. Deliveries with a stock loan reason code made after implementation will automatically be added to this data base.

II. Discussion

The Commission believes that the proposal is consistent with the Act and in particular Section 17A of the Act.[4] Sections 17A (b)(3)(A) and (F) of the Act[5] require that each clearing agency be organized and its rules be designed to assure the safeguarding of funds in the custody or control of the clearing agency or for which it is responsible. Moreover, in Section 17A(a)(1)(B) of the Act, Congress set forth its findings that new data processing and communication techniques create the opportunity for more efficient, effective, and safe procedures for clearing and settlement.[6]

The stock loan income tracking system is an automated system which will eliminate inefficient income processing by stock loan counterparties. Because DTC receives data related to stock loan income attributions in the normal course of its operations, DTC is in a good position to process such data and to maintain appropriate records of the rights and obligations of its participants to the income related to stock loan activity. In addition to being well situated for the centralized processing function, because DTC processes all data through its automated facilities, there should be uniform treatment of the data as opposed to the current system whereby stock loans income attributions are handled differently by each involved DTC participants. The Commission believes that the stock loan income tracking system should improve the efficiency of the income transfer and record keeping.

Additional, the stock loan income tracking system is being implemented consistently with DTC's obligation to safeguard securities and funds in its custody or control. In addition to DTC normal safety measures, DTC has built into the system risk reduction measures such as provisions for the termination of future DTC obligations upon a participant's voluntary or involuntary termination of its membership.

III. Conclusion

For the reasons stated above, the Commission finds that DTC's proposal is consistent with Section 17A of the Act.[7]

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–DTC–94–07) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23165 Filed 9–19–94; 8:45 am]

BILLING CODE 8010–01–M

[3] If the participant submitting the letter of instructions is in fact still legally obligated, the noninstructuring counterparty may seek to enforce its right to receive future distributions outside of DTC.

[4] 15 U.S.C. § 78q–1 (1988).

[5] 15 U.S.C. § 78q–1(b)(3)(A) and (F) (1988).

[6] 15 U.S.C. § 78q–1(a)(1)(B) (1988).

[7] 15 U.S.C. § 78q–1 (1988).

[8] 15 U.S.C. § 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–34664; File No. SR–NYSE–94–01]

Self-Regulatory Organizations; NYSE Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to New Organizational Structures for Members

September 13, 1994.

I. Introduction

On February 22, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's Constitution and rules to allow the admission of entities with new organizational structures as members.

The proposed rule change was noticed for comment in Securities Exchange Act Release No. 34390 (July 15, 1994), 59 FR 37278 (July 21, 1994). No comments were received on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The NYSE is amending NYSE Rule 311(f) to permit entities with new organizational structures to qualify for admission to Exchange membership. Specifically, the NYSE is amending its rules to permit the Exchange to approve as a member organization, entities that have characteristics essentially similar to corporations, partnerships, or both. For example, the amendment permits the Exchange, it its discretion, and on such terms and conditions as the Exchange may prescribe, to approve business trusts,[3] limited liability companies[4] or other organizational structures as member organizations so long as the characteristics of the entity in question are essentially similar to those of corporations or partnerships. Currently, memberships on the Exchange can be owned by individuals, partnerships, and corporations. The noncorporate or partnership entities would have to be structured in such a format that would qualify as a broker or dealer registered with the SEC pursuant to the Act, as this is a prerequisite to becoming an Exchange member organization.[5]

The Exchange believes that the rule change is consistent with Section 6(b)(2) of the Act[6] in that it permits registered brokers or dealers to become member organizations of the Exchange. The Exchange also believes that the rule change also is consistent with Section 6(b)(5) of the Act,[7] in that it broadens the types of entities which the Exchange may approve as a member organization and therefore avoids possible unfair discrimination, and with Section 6(b)(8) of the Act,[8] in that it serves to remove possible burdens on competition resulting from organizational structure not necessary or appropriate in furtherance of the purposes of the Act.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[9] Specifically, the Commission believes the amendment is consistent with Section 6(b)(2)[10] of the Act, which requires the rules of an exchange, subject to the provisions of Section 6(c) of the Act,[11] to ensure that any registered broker or dealer or natural person associated with a registered broker or dealer may become a member of the exchange and any person may become associated with a member thereof.

The NYSE currently allows individuals, partnerships, and corporations to become members of the Exchange.[12] The amendment would enable entities with new organizational structures similar to corporations and partnerships to become Exchange members and be included in the Exchange's definition of a member organization. As in the case of a partnership or corporation applying for membership, the new entity will be subject to all other requirements for membership approval.

The Commission believes that the amendment to NYSE Rule 311(f) reasonably balances the Exchange's interest in having the flexibility to approve entities with new organizational structures for Exchange membership, with the regulatory interests in protecting the financial and structural integrity of a member organization. For example, although the amendment permits the Exchange to approve business trusts, limited liability companies, or other organizational structures with characteristics of corporations or partnerships as member organizations, the NYSE will review each Exchange member organization application on a case-by-case basis, and prior to approving any such organization for membership, the Exchange must be satisfied that: (1) The Exchange would legally have appropriate jurisdiction over such an entity; and (2) the permanency of the entity's capital is consistent with that required of other member organizations.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSE–94–01) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23228 Filed 9–19–94; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] The term "business trust" is generally used to describe a trust in which the managers are principals, and the shareholders are cestuis que trust. The essential attribute is that property is placed in the hands of trustees who manage and deal with it for use and benefit of beneficiaries. *Block's Law Dictionary* 180 (5th ed. 1979).

[4] A limited liability company ("LLC") has characteristics similar to both corporations and partnerships. For example, the liability of LLC members is limited to their capital contributions, but, if properly formed and managed, an LLC is treated as a partnership for tax purposes.

[5] *See* Article I, Section 3 (i) and (j) of the NYSE's Constitution.

[6] 15 U.S.C. § 78f(b)(2) (1988).

[7] 15 U.S.C. § 78f(b)(5) (1988).

[8] 15 U.S.C. § 78f(b)(8) (1988).

[9] 15 U.S.C. § 78f(1988).

[10] 15 U.S.C. § 78f(b)(2) (1988).

[11] 15 U.S.C. § 78f(c) (1988).

[12] Article I, Section 3 of the NYSE's Constitution and NYSE Rule 2 state that the term "member organization" includes "member firms" and "member corporations." The term "member firm" is defined as a partnership. The NYSE Board of Directors has interpreted the use of the word "includes" in this Constitutional provision and Exchange rule as illustrative, and not restrictive. Therefore, the NYSE does not believe it necessary to amend Article I, Section 3 of its Constitution, nor NYSE Rule 2 to allow additional entities to be included in the term "member organization." *See* letter from Bruno Lederer, Associate General Counsel, NYSE, to Sandra Sciole, Senior Counsel, Division, dated August 22, 1994.

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1994).

The Pierpont Capital Appreciation Fund; Notice of Application for Deregistration

September 13, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Pierpont Capital Appreciation Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 25, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 7, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 461 Fifth Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, (202) 942–0567, or Barry D. Miller, Senior Special Counsel, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Massachusetts business trust, is an open-end management investment company. On April 25, 1985, applicant filed a notification of registration pursuant to section 8(a) and a registration statement on Form N–1A pursuant to section 8(b) of the Act. On that same date, applicant filed a registration statement pursuant to the Securities Act of 1933 registering an indefinite number of shares of beneficial interest. Applicant's registration statement became effective on June 20, 1985 and its initial public offering commenced shortly thereafter.

2. At meetings on January 29, March 17 and June 24, 1993, applicant's board of trustees approved a plan of reorganization, termination and deregistration of applicant (the "Reorganization"). Under the Reorganization, applicant would be converted from a stand-alone structure to a master-feeder, series structure. As stated in the resolutions of the board of trustees attached at exhibit E to the application, applicant's board determined that the Reorganization was in the best interests of applicant, and

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the interests of the existing shareholders would not be diluted as a result.

3. Proxy materials relating to the Reorganization were furnished to applicant's shareholders on or about April 29, 1993, and were filed with the SEC on May 5, 1993. At a meeting held on June 18, 1993, a majority of applicant's shareholders approved the Reorganization.

4. On July 16, 1993, pursuant to the Reorganization, The U.S. Small Company Portfolio (the "Master Fund") acquired all the investable assets and certain liabilities of applicant in exchange for a beneficial interest in the Master Fund. On July 18, 1993, all the applicant's assets, consisting substantially of a beneficial interest in the Master Fund, were transferred to The Pierpont Capital Appreciation Fund series (the "Successor Fund") of the Pierpont Funds (an open-end investment company) and the Successor Fund assumed all the applicant's liabilities in return for shares of the Successor Fund. These shares of the Successor Fund were distributed tax-free on a share for share basis to applicant's shareholders. Applicant's shareholders received shares of the Successor Fund with an aggregate net asset value equal to the aggregate net asset value of their respective interests in applicant.

5. In connection with the reorganization, applicant incurred legal, accounting, proxy solicitation, shareholder mailing, deregistration and other expenses, all of which were paid by applicant's investment adviser, Morgan Guaranty Trust Company of New York.

6. Applicant has no outstanding debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no shareholders and is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs. Applicant will apply to be terminated under Massachusetts law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-23229 Filed 9-19-94; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20548; 811-4288]

The Pierpont Equity Fund; Notice of Application for Deregistration

September 13, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Pierpont Equity Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 25, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 7, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 461 Fifth Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, (202) 942-0567, or Barry D. Miller, Senior Special Counsel, (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Massachusetts business trust, is an open-end management investment company. On April 25, 1985, applicant filed a notification of registration pursuant to section 8(a) and a registration statement on Form N-1A pursuant to section 8(b) of the Act. On that same date, applicant filed a registration statement pursuant to the Securities Act of 1933 registering an indefinite number of shares of beneficial interest. Applicant's registration statement became effective on June 20, 1985 and its initial public offering commenced shortly thereafter.

2. At meetings on January 29, March 17 and June 24, 1993, applicant's board of trustees approved a plan of reorganization, termination and deregistration of applicant (the "Reorganization"). Under the Reorganization, applicant would be converted from a stand-alone structure to a master-feeder, series structure. As stated in the resolutions of the board of trustees attached at exhibit E to the application, applicant's board determined that the Reorganization was in the best interests of applicant, and the interests of the existing shareholders would not be diluted as a result.

3. Proxy materials relating to the Reorganization were furnished to applicant's shareholders on or about April 29, 1993, and were filed with the SEC on May 5, 1993. At a meeting held on June 18, 1993, a majority of applicant's shareholders approved the Reorganization.

4. On July 16, 1993, pursuant to the Reorganization, The Selected U.S. Equity Portfolio (the "Master Fund") acquired all the investable assets and certain liabilities of applicant in exchange for a beneficial interest in the Master Fund. On July 18, 1993, all the applicant's assets, consisting substantially of a beneficial interest in the Master Fund, were transferred to The Pierpont Equity Fund series (the "Successor Fund") of the Pierpont Funds (an open-end investment company) and the Successor Fund assumed all the applicant's liabilities in return for shares of the Successor Fund. These shares of the Successor Fund were distributed tax-free on a share for share basis to applicant's shareholders. Applicant's shareholders received shares of the Successor Fund with an aggregate net asset value equal to the aggregate net asset value of their respective interests in applicant.

5. In connection with the reorganization, applicant incurred legal, accounting, proxy solicitation, shareholder mailing, deregistration and other expenses, all of which were paid by applicant's investment adviser, Morgan Guaranty Trust Company of New York.

6. Applicant has no outstanding debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no shareholders and is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs. Applicant will apply to be terminated under Massachusetts law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-23230 Filed 9-19-94; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20549; 811-6000]

The Pierpont International Equity Fund, Inc.; Notice of Application for Deregistration

September 13, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Pierpont International Equity Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 25, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 7, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington. D.C. 20549. Applicant, 461 Fifth Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, (202) 942-0567, or Barry D. Miller, Senior Special Counsel, (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Maryland corporation, is an open-end management investment company. On February 21, 1990, applicant filed a notification of registration pursuant to section 8(a) and a registration statement on Form N-1A pursuant to section 8(b) of the Act. On that same date, applicant filed a registration statement pursuant to the Securities Act of 1933 registering an indefinite number of shares of beneficial interest. Applicant's registration statement became effective on May 30, 1990 and its initial public offering commenced shortly thereafter.

2. At meetings on January 29, March 17 and June 24, 1993, applicant's board of directors approved a plan of reorganization, termination and deregistration of applicant (the "Reorganization"). Under the Reorganization, applicant would be converted from a stand-alone structure to a master-feeder, series structure. As stated in the resolutions of the board of directors attached at exhibit E to the application, applicant's board determined that the Reorganization was in the best interests of applicant, and the interests of the existing shareholders would not be diluted as a result.

3. Proxy materials relating to the Reorganization were furnished to applicant's shareholders on or about April 29, 1993, and were filed with the SEC on May 5, 1993. At a meeting held on June 18, 1993, a majority of applicant's shareholders approved the Reorganization.

4. On October 3, 1993, pursuant to the Reorganization, the Non-U.S. Equity Portfolio (the "Master Fund") acquired all the investable assets and certain liabilities of applicant in exchange for a beneficial interest in the Master Fund. On October 3, 1993, all the applicant's assets, consisting substantially of a beneficial interest in the Master Fund, were transferred to The Pierpont International Fund series (the "Successor Fund") of the Pierpont Funds (an open-end investment company) and the Successor Fund assumed all the applicant's liabilities in return for shares of the Successor Fund. These shares of the Successor Fund were distributed tax-free on a share for share basis to applicant's shareholders. Applicant's shareholders received shares of the Successor Fund with an aggregate net asset value equal to the aggregate net asset value of their respective interests in applicant.

5. In connection with the reorganization, applicant incurred legal, accounting, proxy solicitation, shareholder mailing, deregistration and other expenses, all of which were paid by applicant's investment adviser, Morgan Guaranty Trust Company of New York.

6. Applicant has no outstanding debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no shareholders and is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs. Applicant will apply to be terminated under Maryland law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-23231 Filed 9-19-94; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20553; 811-5274]

The Pierpont Bond Fund; Notice of Application for Deregistration

September 13, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Pierpont Bond Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 25, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 7, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 451 Fifth Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, (202) 942-0567, or Barry D. Miller, Senior Special Counsel, (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Massachusetts business trust, is an open-end

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management investment company. On August 5, 1987, applicant filed a notification of registration pursuant to section 8(a) and a registration statement on Form N–1A pursuant to section 8(b) of the Act. On that same date, applicant filed a registration statement pursuant to the Securities Act of 1933 registering an indefinite number of shares of beneficial interest. Applicant's registration statement became effective on January 20, 1988 and its initial public offering commenced on March 11, 1988.

2. At meetings on January 29, March 17 and June 24, 1993, applicant's board of trustees approved a plan of reorganization, termination and deregistration of applicant (the "Reorganization"). Under the Reorganization, applicant would be converted from a stand-alone structure to a master-feeder, series structure. As stated in the resolutions of the board of trustees attached at exhibit E to the application, applicant's board determined that the Reorganization was in the best interests of applicant, and the interests of the existing shareholders would not be diluted as a result.

3. Proxy materials relating to the Reorganization were furnished to applicant's shareholders on or about April 29, 1993, and were filed with the SEC on May 5, 1993. At a meeting held on June 18, 1993, a majority of applicant's shareholders approved the Reorganization.

4. On July 9, 1993, pursuant to the Reorganization, the U.S. Fixed Income Portfolio (the "Master Fund") acquired all the investable assets and certain liabilities of applicant in exchange for a beneficial interest in the Master Fund. On July 11, 1993, all the applicant's assets, consisting substantially of a beneficial interest in the Master Fund, were transferred to The Pierpont Bond Fund series (the "Successor Fund") of the Pierpoint Funds (an open-end investment company) and the Successor Fund assumed all the applicant's liabilities in return for shares of the Successor Fund. These shares of the Successor Fund were distributed tax-free on a share for share basis to applicant's shareholders. Applicant's shareholders received shares of the Successor Fund with an aggregate net asset value equal to the aggregate net asset value of their respective interests in applicant.

5. In connection with the reorganization, applicant incurred legal, accounting, proxy solicitation, shareholder mailing, deregistration and other expenses, all of which were paid by applicant's investment adviser, Morgan Guaranty Trust Company of New York.

6. Applicant has no outstanding debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no shareholders and is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs. Applicant will apply to be terminated under Massachusetts law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23166 Filed 9–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20550; 811–3453]

The Pierpont Money Market Fund; Notice of Application for Deregistration

September 13, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Pierpont Money Market Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 25, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 7, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 461 Fifth Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, (202) 942–0567, or Barry D. Miller, Senior Special Counsel, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Massachusetts business trust, is an open-end management investment company. On April 22, 1982, applicant filed a notification of registration pursuant to section 8(a) of the Act. On August 4, 1982, applicant filed a registration statement on Form N–1 pursuant to section 8(b) of the Act and a registration statement pursuant to the Securities Act of 1933 registering an indefinite number of shares of beneficial interest. Applicant's registration statement became effective and its initial public offering commenced on October 1, 1982.

2. At meetings on January 29, March 17 and June 24, 1993, applicant's board of trustees approved a plan of reorganization, termination and deregistration of applicant (the "Reorganization"). Under the Reorganization, applicant would be converted from a stand-alone structure to a master-feeder, series structure. As stated in the resolutions of the board of trustees attached at exhibit E to the application, applicant's board determined that the Reorganization was in the best interests of applicant, and the interests of the existing shareholders would not be diluted as a result.

3. Proxy materials relating to the Reorganization were furnished to applicant's shareholders on or about April 29, 1993, and were filed with the SEC on May 5, 1993. At a meeting held on June 18, 1993, a majority of applicant's shareholders approved the Reorganization.

4. On July 9, 1993, pursuant to the Reorganization, The Money Market Portfolio (the "Master Fund") acquired all the investable assets and certain liabilities of applicant in exchange for a beneficial interest in the Master Fund. On July 11, 1993, all the applicant's assets, consisting substantially of a beneficial interest in the Master Fund, were transferred to The Pierpont Money Market Fund series (the "Successor Fund") of the Pierpont Funds (an open-end investment company) and the Successor Fund assumed all the applicant's liabilities in return for shares of the Successor Fund. These shares of the Successor Fund were distributed tax-free on a share for share basis to applicant's shareholders. Applicant's shareholders received shares of the Successor Fund with an aggregate net asset value equal to the

aggregate net asset value of their respective interests in applicant.

5. In connection with the reorganization, applicant incurred legal, accounting, proxy solicitation, shareholder mailing, deregistration and other expenses, all of which were paid by applicant's investment adviser, Morgan Guaranty Trust Company of New York.

6. Applicant has no outstanding debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no shareholders and is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs. Applicant will apply to be terminated under Massachusetts law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23167 Filed 9–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20551; 811–4076]

The Pierpont Tax Exempt Bond Fund; Notice of Application for Deregistration

September 13, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Pierpont Tax Exempt Bond Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 25, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 7, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 461 Fifth Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, (202) 942–0567, or Barry D. Miller, Senior Special Counsel, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

APPLICANT'S REPRESENTATIONS:

1. Applicant, a Massachusetts business trust, is an open-end management investment company. On July 20, 1984, applicant filed a notification of registration pursuant to section 8(a) and a registration statement on Form N–1A pursuant to section 8(b) of the Act. On that same date, applicant filed a registration statement pursuant to the Securities Act of 1933 registering an indefinite number of shares of beneficial interest. Applicant's registration statement became effective on October 2, 1984, and its initial public offering commenced shortly thereafter.

2. At meetings on January 29, March 17 and June 24, 1993, applicant's board of trustees approved a plan of reorganization, termination and deregistration of applicant (the "Reorganization"). Under the Reorganization, applicant would be converted from a stand-alone structure to a master-feeder, series structure. As stated in the resolutions of the board of trustees attached at exhibit E to the application, applicant's board determined that the Reorganization was in the best interests of applicant, and the interests of the existing shareholders would not be diluted as a result.

3. Proxy materials relating to the Reorganization were furnished to applicant's shareholders on or about April 29, 1993, and were filed with the SEC on May 5, 1993. At a meeting held on June 18, 1993, a majority of applicant's shareholders approved the Reorganization.

4. On July 9, 1993, pursuant to the Reorganization, the Tax Exempt Bond Portfolio (the "Master Fund") acquired all the investable assets and certain liabilities of applicant in exchange for a beneficial interest in the Master Fund. On July 11, 1993, all the applicant's assets, consisting substantially of a beneficial interest in the Master Fund, were transferred to The Pierpont Tax Exempt Bond Fund series (the "Successor Fund") of the Pierpont Funds (an open-end investment company) and the Successor Fund assumed all the applicant's liabilities in return for shares of the Successor Fund. These shares of the Successor Fund were distributed tax-free on a share for share basis to applicant's shareholders. Applicant's shareholders received shares of the Successor Fund with an aggregate net asset value equal to the aggregate net asset value of their respective interests in applicant.

5. In connection with the reorganization, applicant incurred legal, accounting, proxy solicitation, shareholder mailing, deregistration and other expenses, all of which were paid by applicant's investment adviser, Morgan Guaranty Trust Company of New York.

6. Applicant has no outstanding debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no shareholders and is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs. Applicant will apply to be terminated under Massachusetts law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23168 Filed 9–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20552; 811–3816]

The Pierpont Tax Exempt Money Market Fund; Notice of Application for Deregistration

September 13, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Pierpont Tax Exempt Money Market Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 25, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 7, 1994, and should be

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accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 461 Fifth Avenue, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, (202) 942–0567, or Barry D. Miller, Senior Special Counsel, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Massachusetts business trust, is an open-end management investment company. On August 16, 1983, applicant filed a notification of registration pursuant to section 8(a) of the Act. On July 1, 1983, applicant filed a registration statement on Form N–1 pursuant to section 8(b) of the Act and a registration statement pursuant to the Securities Act of 1933 registering an indefinite number of shares of beneficial interest. Applicant's registration statement became effective on September 9, 1983 and its initial public offering commenced shortly thereafter.

2. At meetings on January 29, March 17, and June 24, 1993, applicant's board of trustees approved a plan of reorganization, termination and deregistration of applicant (the "Reorganization"). Under the Reorganization, applicant would be converted from a stand-alone structure to a master-feeder, series structure. As stated in the resolutions of the board of trustees attached at exhibit E to the application, applicant's board determined that the Reorganization was in the best interests of applicant, and the interests of the existing shareholders would not be diluted as a result.

3. Proxy materials relating to the Reorganization were furnished to applicant's shareholders on or about April 29, 1993, and were filed with the SEC on May 5, 1993. At a meeting held on June 18, 1993, a majority of applicant's shareholders approved the Reorganization.

4. On July 9, 1993, pursuant to the Reorganization, The Tax Exempt Money Market Portfolio (the "Master Fund") acquired all the investable assets and certain liabilities of applicant in exchange for a beneficial interest in the Master Fund. Only July 11, 1993, all the applicant's assets, consisting substantially of a beneficial interest in the Master Fund, were transferred to The Pierpont Tax Exempt Money Market Fund series (the "Successor Fund") of the Pierpont Funds (an open-end investment company) and the Successor Fund assumed all the applicant's liabilities in return for shares of the Successor Fund. These shares of the Successor Fund were distributed tax-free on a share for share basis to applicant's shareholders. Applicant's shareholders received shares of the Successor Fund with an aggregate net asset value equal to the aggregate net asset value of their respective interests in applicant.

5. In connection with the reorganization, applicant incurred legal, accounting, proxy solicitation, shareholder mailing, deregistration and other expenses, all of which were paid by applicant's investment adviser, Morgan Guaranty Trust Company of New York.

6. Applicant has no outstanding debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no shareholders and is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs. Applicant will apply to be terminated under Massachusetts law.

For the SEC, by the Division of Investment Management, under delegated authority.

[FR Doc. 94–23169 Filed 9–19–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2736]

New York (and Contiguous Counties in Pennsylvania); Declaration of Disaster Loan Area

Chemung County and the contiguous counties of Schuyler, Steuben, Tioga, and Tompkins in the State of New York, and Bradford and Tioga Counties in the State of Pennsylvania constitute a disaster area as a result of damages caused by flooding which occurred on August 17, 1994. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 7, 1994 and for economic injury until the close of business on June 8, 1995 at the address listed below:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 273606 for New York and 273706 for Pennsylvania. For economic injury the numbers are 832200 for New York and 832300 for Pennsylvania.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 8, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–23173 Filed 9–19–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2739]

South Carolina; Declaration of Disaster Loan Area

Lexington County and the contiguous counties of Aiken, Calhoun, Newberry, Orangeburg, Richland, and Saluda in the State of South Carolina constitute a disaster area as a result of damages caused by tornadoes which occurred on August 16, 1994. Applications for loans for physical damage may be filed until the close of business on November 7, 1994 and for economic injury until the close of business on June 8, 1995 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 273912; for economic injury the number is 833000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 8, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–23174 Filed 9–19–94; 8:45 am]

BILLING CODE 8025–01–M

National Advisory Council Meeting

The U.S. Small Business Administration (SBA) National Advisory Council will hold a public meeting beginning at 9:00 a.m. on Thursday, September 29 and end on Friday, September 30, 1994 in Washington, DC at the Capital Hilton Hotel, located at 1001 16th Street NW., Washington, DC 20036.

For further information, write or call Ms. Dorothy Overal, Acting Director, Office of Advisory Councils, 409 3rd Street SW., Washington, DC 20416 (202) 205–6434.

Dated: September 14, 1994.

Dorothy A. Overal,

Acting Director, Office of Advisory Councils.

[FR Doc. 94–23175 Filed 9–19–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier/General Aviation Maintenance Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier/general aviation maintenance issues.

DATES: The meeting will be held on October 31, 1994, at 1:00 p.m. Arrange for oral presentations by October 17, 1994.

ADDRESSES: The meeting will be held at the Albuquerque Marriott Hotel, 2101 Louisiana Boulevard, Salon E, Albuquerque, New Mexico, at 1:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Herber, Meeting Coordinator, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3498; fax number (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to consider air carrier/general aviation maintenance issues. The meeting will be held on October 31, 1994, at the Albuquerque Marriott Hotel, 2101 Louisiana Boulevard, Salon E, Albuquerque, NM, at 1:00 p.m. The agenda will include:

- Report on the status of the Part 65 Phase II Working Group
- Possible presentation of a completed recommendation from the Maintenance Recordkeeping Working Group (draft NPRM and advisory materials)
- Report on the status of the Major/Minor Working Group
- Possible presentation of a completed recommendation from the Parts Approval Action Team Phase III Working Group (advisory materials and consideration of additional NPRM task)
- Report on the status of the General Aviation Maintenance Working Group
- A presentation by the FAA on the Service Difficulty Reporting System
- Vote by ARAC on the recommendations submitted by the International Airworthiness Communications Working Group
- Status of ARAC recommendations being processed by the FAA
- Discussion of future activities and other business

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements on or before October 17, 1994, to present oral statements at the meeting. The public may present written statements at any time by providing 35 copies to the Assistant Chair or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the meeting coordinator listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on September 15, 1994.

Frederick J. Leonelli,

Assistant Executive Director for Air Carrier/General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–23261 Filed 9–19–94; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss transport airplane and engine issues.

DATES: The meeting will be held on October 11, 1994 at 8:30 a.m. Arrange for oral presentations by October 3, 1994.

ADDRESSES: The meeting will be held at Aerospace Industries Association of America, Inc., 1250 Eye St. NW., Suite 1100, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Office of Rulemaking, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9682.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held October 11, 1994 at Aerospace Industries Association of America, Inc., 1250 Eye St. NW., Suite 1100, Washington, DC. The agenda for the meeting will include:

- Opening remarks.
- Review of action items.
- Reports of working groups.
- Recommendations concerning future actions in continued airworthiness will be considered.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by October 3, 1994, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport

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Airplane and Engine Issues or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading FOR FURTHER INFORMATION CONTACT.

Issued in Washington, DC, on September 12, 1994.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 94-23262 Filed 9-19-94; 8:45 am]

BILLING CODE 4910-13-M

Proposed Modifications to the Yankee and Condor Military Operating Areas; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces fact-finding informal airspace meetings to solicit information concerning modifications to the Yankee and Condor Military Operating Areas (MOA's), located over portions of northeastern Maine, and northern New Hampshire and Vermont. The FAA is holding these meetings to provide interested persons an opportunity to discuss the aeronautical issues arising from a request by the National Guard Bureau to lower the floor of the Yankee and Condor MOA's from 7,000 feet above sea level (MSL) to 300 feet about ground level (AGL). All comments on the effect of the requested modification on the use of airspace by aircraft received during this meeting will be considered prior to any issuance of a decision on this request.

TIME AND DATE: The informal airspace meetings will be held from 7:00 p.m. to 9:00 p.m . on Wednesday, October 12, 1994, in St. Johnsbury, Vermont; on Thursday, October 13, 1994, in Whitefield, New Hampshire; on Wednesday, October 19, 1994, in Rangeley, Maine; and on Thursday, October 20, 1994, in Rumford, Maine.

PLACE:

St. Johnsbury Town Hall, 36 Main St., St. Johnsbury, VT 05819
Whitefield Town Hall, 7 Jefferson Road, Whitefield, NH 03598
Rangeley Lakes Regional School, Multi-Purpose Room, Mendola Drive, Rangeley, ME 04970
Rumford Municipal Building, Congress Street, Rumford, ME 04276

All written comments must be received on or before November 21, 1994.

COMMENTS: Send or deliver comments to: Manager, System Management Branch, Air Traffic Division, ANE-530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via telecopier (FAX) to (617) 238-7560.

FOR FURTHER INFORMATION CONTACT: Timothy A. Creedon, System Management Specialist, System Management Branch, Air Traffic Division, ANE-530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299; telephone: (617) 238-7531; FAX (617) 238-7560.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by a representative of the Administrator, FAA New England Region. Each participant will be given an opportunity to make a presentation, although a time limit may be imposed.

(b) The meeting will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the panel will be asked to sign in and estimate the amount of time needed for such presentation so that timeframes can be established. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. The meeting will not be adjourned until everyone on the list has had an opportunity to address the panel. The meeting may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Position papers or other handout material relating to the substance of the meeting may be accepted. Participants wishing to submit handout material should present *three* copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) The meeting will not be formally recorded. However, a summary of the comments made at this meeting will be filed in the project file.

Agenda for Each Meeting

Introductions
Presentation of Meeting Procedures
Presentation of MOA Modification Request
Public Presentations and Discussion

Issued in Burlington, Massachusetts, on September 9, 1994.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 94-23259 Filed 9-19-94; 8:45 am]

BILLING CODE 4910-13-M

RTCA, Inc.; Special Committee 159, Thirty-First Meeting; Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 159 meeting to be held October 3-7, 1994, starting at 9 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

Specific Working Groups Sessions

October 3—Working Group 1, GPS/GLONASS, Working Group 5, Fault Detection and Isolation, Ad Hoc Working Group, Interference Issues
October 4—Working Group 2, GPS/GIC/WADGNSS
October 5—Working Group 3, GPS/Other Navigation Systems
October 6—Working Group 4, Precision Landing Guidance and Airport Surface Surveillance

Agenda—Plenary Session—October 7

(1) Chairman's introductory remarks; (2) Approval of summary of the thirtieth meeting held on July 15, 1994. RTCA Paper No. 379-94/SC159-549 (enclosed); (3) Review working group (WG) progress and identify issues for resolution: (a) GPS/GLONASS (WG1); (b) GPS/GIC/WADGNSS (WG2); (c) GPS/Other Navigation Systems (WG3); (d) GPS/Precision Landing Guidance and Airport Surface Surveillance (WG4); (e) Fault Detection and Isolation (WG5); (f) Interference Issues (Ad Hoc); (5) Review of EUROCAE Activities; (6) Assignment/review of future work; (7) Other business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 14, 1994.

Steve Zaidman,

Acting Designated Officer.

[FR Doc. 94-23263 Filed 9-19-94; 8:45 am]

BILLING CODE 4910-13-M

RTCA, Inc.; Special Committee 168, Thirteenth Meeting; Lithium Batteries

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 168 meeting to be held October 31—November 1, 1994, starting at 9:30 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036.

Please note: SC-168 will meet on October 31-November 1; dates shown on Chairmen's September 8, 1994 memorandum and RTCA paper 374-94/SC168-105 are incorrect.

The agenda is as follows: (1) Chairman's remarks; (2) Approval of the summary from the twelfth meeting, RTCA Paper No. 261-94/SCI168-102 (previously distributed); (3) Review EUROCAE WG-39 Activity; (4) Review material from task assignments: Larger lithium cells and batteries requirements and testing; (5) Review/approve the proposed final MOPS draft; (7) Date and place of next meeting (if required).

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 14, 1994.

Steve Zaidman,

Acting Designated Officer.

[FR Doc. 94-23264 Filed 9-19-94; 8:45 am]

BILLING CODE 4910-13-M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Texarkana Regional Airport, Texarkana, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 20, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW-610D, Fort Worth, Texas 76193-0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Paula Neeson, Manager of Texarkana Regional Airport at the following address: Paula Neeson, Director, Texarkana Regional Airport, 201 Airport Drive, Texarkana, AR 75502.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW-610D, Fort Worth, Texas 76193-0610, (817) 222-5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Texarkana Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 26, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by Texarkana Regional Airport was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 28, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: February 1, 1995
Proposed charge expiration date: January 31, 1999
Total estimated PFC revenue: $429,959.00
Brief description of proposed project(s):

Projects To Impose and Use PFC's

Runway Safety Area Improvements; Terminal Area Improvements; Airfield Safety Improvements; Ramp and Apron Improvements; Master Plan and Noise Study Update; and Airfield Sweeper.

Proposed class of classes of air carriers to be exempted from collecting PFC's: None

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW-610D, 2601 Meacham Blvd., Fort Worth, Texas 76137-4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Texarkana Regional Airport.

Issued in Fort Worth, Texas, on August 26, 1994.

Edward N. Agnew,

Assistant Manager, Airports Division.

[FR Doc. 94-23265 Filed 9-19-94; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket S-911]

Sulphur Carriers, Inc.; Notice of Application for Permission Pursuant to Section 805(a) of the Merchant Marine Act, 1936, as amended, and Article II-13 of Waterman Steamship Corporation's Operating-Differential Subsidy Agreement, Contract MA/MSB-450 for Operation of the M/V SULPHUR ENTERPRISE in the Coastwise Trade of the United States

Notice is hereby given that Sulphur Carriers, Inc. (SCI), a U.S. corporate affiliate of Waterman Steamship Corporation (Waterman), by letter dated September 15, 1994, requested written permission pursuant to section 805(a) of the Act and Waterman's Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB-450, to operate the U.S.-flag M/V SULPHUR ENTERPRISE (Vessel), for and on behalf of Freeport-McMoran Resource Partners (Freeport)—a principle phosphate fertilizer producer in the United States—in the coastwise trade of the United States. The requested permission is to amend a previously approved section 805 permission for the M/V NORDIC LOUISIANA.

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On September 27, 1991, the Maritime Administrator granted written permission, pursuant to section 805(a) of the Act and Waterman's Operating-Differential Subsidy Agreement, Contract MA/MSB–450, for operation of the British-flag M/V/ NORDIC LOUISIANA for and on behalf of Freeport in the coastwise trade of the United States, as authorized by Public Law 102–100. The permission was for a period of four years, or until a replacement vessels for the M/V NORDIC LOUISIANA, enters service, whichever is sooner. The replacement vessel M/V SULPHUR ENTERPRISE is expected to be delivered on or about September 23, 1994.

Because of the short time frame of this notice, one party who expressed an interest previously in this matter will be contacted directly.

Any person, firm or corporation having any interest (within the meaning of section 805(a)) in SCI's request and desiring to submit comments concerning the request must by 5:00 PM on September 22, 1994, file written comments in triplicate with the Secretary, Maritime Administration, together with petition for leave to intervene. The petition shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petition for leave to intervene is received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

By Order of the Maritime Administrator.

Dated: September 16, 1994.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 94–23343 Filed 9–16–94; 1:23 pm]

BILLING CODE 4910–81–P

National Highway Traffic Safety Administration

Amendment to Cooperative Agreement Announcement; Discretionary Cooperative Agreement to Foster the Development, Evaluation, and Deployment of a Heavy Vehicle Intelligent Commercial Vehicle Communication and Powering Enhancement System(s)

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Amendment to Notice.

SUMMARY: The Cooperative Agreement Announcement entitled "Discretionary Cooperative Agreement to Foster the Development, Evaluation, and Deployment of a Heavy Vehicle Intelligent Commercial Vehicle Communication and Powering Enhancement System(s)" was published in the **Federal Register** on September 2, 1994; 59 FR 45750. Inadvertently, a duplicate notice was published on September 12, 1994; 59 FR 46880. This amendment extends the closing date for submittal of proposals to October 20, 1994.

FOR FURTHER INFORMATION CONTACT: Henrietta Mosley, Office of Contracts and Procurement, at (202) 366–9570, for general administrative questions; and C.J. Britell, Office of Crash Avoidance Research (NRD–53), (202) 366–5678 for programmatic questions; at the National Highway Traffic Safety Administration, 400 Seventh Street SW., Room 6220, Washington, DC 20590.

Dated: September 13, 1994.

William H. Walsh, Jr.,

Acting Associate Administrator for Research and Development.

[FR Doc. 94–2381 Filed 9–19–94; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before October 20, 1994.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11298–N	Reilly Industries, Inc., Indianapolis, IN	49 CFR 174.67(i)	To authorize tank cars to remain connected during unloading of Class 3, 9 and Division 2.2 material without the physical presence of an unloader (Mode 2.)
11300–N	North State Environmental, South San Francisco, CA.	49 CFR 173.12(b), 177.848(c)	To authorize transportation in commerce of cyanides, Division 6.1, in lab packs with Class 8 materials, not to exceed 55 gallons per container, to be transported on the same vehicle. (Mode 1.)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11306–N	Trinity River Authority of Texas, Grand Prairie, TX.	49 CFR 174.67(i)	To authorize rail cars to remain connected during unloading of Division 2.3 material without the physical presence of an unloader. (Mode 2.)
11307–N	Jacx Enterprises, Highlands, TX	49 CFR 179.201–1, 179.201–7	To authorize transportation in commerce of a DOT–111A100WI rail car with no safety relief device for use in transporting clay slurry. (Mode 2.)
11312–N	Packaging Specialties, Medina, OH	49 CFR 107.103(b)(2)	To authorize the manufacture, marking and sale of a 71-gallon non-specification packaging known as a square drum comparable to DOT Spec. 17C and 17H drums for use in transporting Radioactive Materials, Class 7. (Modes 1, 2, 3, 4, 5.)
11313–N	Columbiana Texas Corp., Gainesville, TX.	49 CFR 178.245	To authorize the manufacture, marking and sale of non-DOT Specification IMO Type portable tanks which conform to DOT Specification 51, except all openings are not grouped in one location, for use in transporting Division 2.1 and 2.2 materials. (Modes 1, 2, 3.)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in **Washington, DC, on September 15, 1994.**

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 94–23266 Filed 9–19–94; 8:45 am]

BILLING CODE 4910–60–M

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Modification of Exemptions or Applications to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before October 5, 1994.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application number	Applicant	Renewal of exemption
7891–X	Sigma-Aldrich Corp., St. Louis, MO [1].	7891
10789–X	Olin Corporation, Stamford, CT [2].	10798

[1] To modify exemption to include materials required to be labeled Spontaneously Combustible to be exempt from labeling and from certain segregation requirements when packaged in specially designed packagings.

[2] To modify exemption to provide for the addition of anhydrous ammonia, Division 2.2 and sodium hydroxide solutions, Class 8, contained in rail cars to remain attached to transfer connections during unloading with the physical presence of an unloader.

Application number	Applicant	Parties to exemption
2582–P	BOC Gases, Murray Hill, NJ.	2582
3004–P	BOC Gases, Murray Hill, NJ.	3004
3302–P	BOC Gases, Murray Hill, NJ.	3302
4039–P	BOC Gases, Murray Hill, NJ.	4039
5038–P	BOC Gases, Murray Hill, NJ.	5038
5600–P	BOC Gases, Murray Hill, NJ.	5600
6349–P	BOC Gases, Murray Hill, NJ.	6349
6530–P	BOC Gases, Murray Hill, NJ.	6530
6543–P	BOC Gases, Murray Hill, NJ.	6543
6626–P	BOC Gases, Murray Hill, NJ.	6626
6670–P	BOC Gases, Murray Hill, NJ.	6670
6691–P	Plattner Welding Supplies, Inc., Coffeyville, KS.	6691

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Application number	Applicant	Parties to exemption
6765–P	BOC Gases, Murray Hill, NJ.	6765
6805–P	BOC Gases, Murray Hill, NJ.	6805
7835–P	BOC Gases, Murray Hill, NJ.	7835
8451–P	Gould Laboratories, Pittman, NJ.	8451
8915–P	BOC Gases, Murray Hill, NJ.	8915
8915–P	Matheson Gas Products, Secaucus, NJ.	8915
9034–P	BOC Gases, Murray Hill, NJ.	9034
9110–P	AKZO Nobel Inc., Columbus, MS.	9110
9190–P	Olin Corporation, Downey, CA.	9190
9480–P	BOC Gases, Murray Hill, NJ.	9480
9723–P	Brewer Environmental Industries, Inc., Honolulu, HI.	9723
9723–P	Dart Trucking Company, Inc., Canfield, OH.	9723
9746–P	BOC Gases, Murray Hill, NJ.	9746
10001–P	BOC Gases, Murray Hill, NJ.	10001
10101–P	BOC Gases, Murray Hill, NJ.	10101
10427–P	Nalco Chemical Company/Exxon Energy Chemicals, L.P., Sugar Land, TX.	10427
10517–P	Nalco Chemical Company/Exxon Energy Chemicals, L.P., Sugar Land, TX.	10517
10623–P	Island Gases Limited, Jupiter, FL.	10623
10709–P	Nalco Chemical Company, Naperville, IL.	10709
10916–P	Nalco Chemical Company/Exxon Energy Chemicals, L.P., Sugar Land, TX.	10916
10979–P	Chem-Way Corporation, Charlotte, NC.	10979
10979–P	Tri-State Chemical Co., Lyman, SC.	10979
10984–P	BOC Gases, Murray Hill, NJ.	10984
11156–P	St. Lawrence Explosives Corp., Adams Center, NY.	11156
11156–P	Evenson Explosives, Inc., Morris, IL.	11156
11156–P	Explosives Technologies International, Wilmington, DE.	11156
11156–P	Dyna-Blast, Inc., Nortonville, KY.	11156
11156–P	Slurry Explosive Corporation, Columbus, KS.	11156
11251–P	Aztec Peroxides, Inc., Elyria, OH.	11251

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on September 15, 1994.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 94–23267 Filed 9–19–94; 8:45 am]

BILLING CODE 4910–60–M

International Standards on the Transport of Radioactive Materials; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to discuss issues to be considered at the International Atomic Energy Agency (IAEA) Technical Committee Meeting (TCM) to be held October 10–14, 1994 in Vienna, Austria. A TCM is a meeting of experts from member nations assembled to address particular aspects of a particular proposal.

DATES: October 3, 1994 at 10:00 am.

ADDRESSES: Room 3200, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: George Brown, Chief, Radioactive Materials Branch, Office of Hazardous Materials Technology, Department of Transportation, Washington, DC 20590; (202) 366–4545.

SUPPLEMENTARY INFORMATION: This meeting will be held to discuss several issues being considered at the TCM to be held in Vienna, Austria, on October 10–14, 1994. In general terms, the TCM will consider the following proposals for amendment to the IAEA basic safety standards on the "Regulations For The Safe Transport of Radioactive Material", IAEA Safety Series #6:

1. The recommendations of TCM–845 on issues relating to low specific activity materials and surface contaminated objects.

2. The recommendations of TCM–800.3 on the issues relating to radiation protection standards proposed by the International Commission on Radiological Protection (ICRP) in their ICRP–60 document.

3. The recommendations of TCM–675.3 on the issues relating to the air transport of radioactive material in large quantities or with high activity.

4. The recommendations contained in IAEA consultants reports completed since December 1, 1993. Topics will include: a revision of the current transport index system, a clarification of the hierarchy of IAEA publications, an expansion of the United Nations identification numbering system for radioactive materials, and a review of the basic criticality safety standards for packages containing fissile materials.

The public is invited to attend without prior notification.

Documents: Copies of documents relating to the issues to be covered at the TCM are on file in RSPA's Dockets unit (Nassif Building, Room 8421) and may be viewed Monday–Friday from 8:00 am to 4:30 pm. Documents may also be ordered by contacting RSPA's Dockets Unit at (202) 366–4453.

Issued in Washington, DC, on September 15, 1994.

Richard C. Hannon,

Director, Hazardous Materials Planning and Analysis.

[FR Doc. 94–23268 Filed 9–19–94; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

September 13, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Special Request

Authorization to utilize the form described below is required as soon as possible as the Violent Crime Control and Law Enforcement Act (The Crime Bill). Approval of ATF Form 7, "Application for License, is contingent upon receipt of this form. Firearms applications submitted without this form will be denied. Therefore, the Department of Treasury is requesting review and approval by the Office of Management (OMB) by September 13, 1994. In accordance with 5 CFR 1320.18, ATF Form 5300.37, and its instructions, are included with this for review. Copies of this may be obtained by writing to the BATF Clearance Officer shown below.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: New.
Form Number: ATF Form 5300.37.
Type of Review: New collection.
Title: Certification of Compliance with State and Local Law.
Description: Applicants for a Federal firearms license will submit a certification that they are in compliance with State and local laws and that they have provided notification of his intent to conduct a firearms business to the chief law enforcement officer in the locality of the business premises.
Respondents: Individuals or households, Businesses or other for-profit, Federal agencies or employees, Small businesses or organizations .
Estimated Number of Respondents: 70,000.
Estimated Burden Hours Per Respondent: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 7,000 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

BILLING CODE 4810–31–P

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Form Approved: OMB No. 1512- ( )

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

CERTIFICATION OF COMPLIANCE WITH STATE AND LOCAL LAW

All entries must be in ink. Please read instructions carefully before completing this form.

INSTRUCTIONS

Section 923 (d)(1)(F), Title 18, U.S.C., contains the requirements for obtaining a Federal Firearms License (FFL). These include the requirement in section 923 (d)(1)(F) to provide this certification.

INSTRUCTIONS TO APPLICANT

1. Each applicant submitting ATF F 7, Application for Federal Firearms License, must complete and submit ATF F 5300.37, with the ATF F 7 to the Chief, Firearms and Explosives Licensing Center.
2. The form must be prepared in ink, signed, and dated.
3. The certification must be executed (signed) by the owner, a partner, or in the case of a corporation, association, etc., by an officer duly authorized to sign for the applicant.
4. A collector license does not authorize the holder to conduct a firearms business. Therefore, the statement of an applicant for a collector license need only certify to items 4 and 5.
5. *NOTE: An application for an FFL received by the Firearms and Explosives Licensing Center without ATF F 5300.37 will be denied.*

DEFINITIONS

1. The term "Chief Law Enforcement Officer" means the Chief of Police, the Sheriff, or an equivalent officer or designee of any such individual.
2. The term "Intimate Partner" means with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabitated with the person.

CERTIFICATION

As required by 18 U.S.C. 923 (d)(1)(F), I certify that:

1. The business to be conducted under the Federal Firearms License is not prohibited by State or local law at the premises shown on ATF F 7.
2. Within 30 days after the application is approved the business will comply with the requirements of State and local law applicable to the conduct of business.
3. Business will not be conducted under the license until the requirements of State and local law applicable to the business have been met.
4. Notification of Application to obtain a Federal Firearms License, ATF F 5300.36, has been sent or delivered to the Chief Law Enforcement Officer of the locality in which the premises are located.
5. The applicant is not subject to a court order restraining him/her from harrassing, stalking, or threatening an intimate partner or child of such partner.

BUSINESS PREMISES ADDRESS

FIREARMS LICENSE NUMBER

APPLICANT(S) SIGNATURE AND TITLE | DATE

ATF F 5300.37 ( )

BILLING CODE 4810-31-C

Paperwork Reduction Act Notice

The information required by this form is in accordance with the Paperwork Reduction Act of 1980. The purpose of the information is to certify compliance with State and local law. The information is subject to inspection by ATF officers. The information on this form is required by 18 U.S.C. 923.

The estimated average burden associated with this collection is 6 minutes per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Reports Management Officer, Information Programs Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, and the Office of Management and Budget, Paperwork Reduction Project (1512-), Washington, D.C. 20503.

[FR Doc. 94-23233 Filed 9-19-94; 8:45 am]

BILLING CODE 4810-31-P

Public Information Collection Requirements Submitted to OMB for Review

September 14, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Office of Thrift Supervision (OTS)

OMB Number: 1550-0007.
Form Number: OTS Form No. 1582.
Type of Review: Extension.
Title: Application for Conversion from a State-Chartered Association to a Federally-Chartered Association.
Description: Section 5(i) of the Home Owners' Loan Act and 12 CFR Sections 543.8 and 552.2 require the OTS to act on requests by state-chartered institutions proposing to convert to Federal charters. OTS Form No. 1582 will be used to evaluate whether conversion applicants satisfy appropriate eligibility requirements for a Federal charter and will operate in accordance with OTS regulations and policies subsequent to the conversion.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 40.
Estimated Burden Hours Per Respondent: 4 hours.
Frequency of Response: Other (when application is submitted).
Estimated Total Reporting Burden: 160 hours.

OMB Number: 1550-0063.
Form Number: OTS Form No. 1564.
Type of Review: Revision.
Title: Activities of Savings and Loan Holding Companies.
Description: 12 C.F.R. Section 584.2-1 requires prior notification to the OTS by savings and loan holding companies proposing to engage in prescribed services and activities. The OTS uses this information to track activities and decide the advisability of other actions.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 5.
Estimated Burden Hours Per Respondent: 2.
Frequency of Response: Other (upon application).
Estimated Total Reporting Burden: 10 hours.

OMB Number: 1550-0077.
Form Number: OTS Form No. 1579.
Type of Review: Extension.
Title: Operating Subsidiaries.
Description: 12 CFR 545.81 requires a savings association proposing to establish or acquire an operating subsidiary or conduct new activities in an existing operating subsidiary to either notify the OTS or obtain the prior approval of the OTS. The regulation also requires a savings association to create and maintain certain documents.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 60.
Estimated Burden Hours Per Respondent: 10 hours.
Estimated Burden Hours Per Recordkeeper: 240 hours.
Frequency of Response: Other (when submitting application for approval of proposed activity).
Estimated Total Reporting/Recordkeeping Burden: 840 hours.
Clearance Officer: Colleen Devine (202) 906-6025, Office of Thrift Supervision, 2nd Floor, 1700 G. Street NW., Washington, DC 20552.
OMB Reviewer: Milo Sunderhauf, (202) 395-7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.

[FR Doc. 94-23234 Filed 9-19-94; 8:45 am]

BILLING CODE 4810-25-P

Public Information Collection Requirements Submitted to OMB for Review

September 14, 1994.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545-0085.
Form Number: IRS Form 1040A, Schedules 1, 2, 3, and EIC.
Type of Review: Resubmission.
Title: U.S. Individual Income Tax Return.
Description: This form is used by individuals to report their income subject to income tax and to compute their correct tax liability. The data is used to verify that the income reported on the form is correct and are also for statistics use.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 26,544,784.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 1040	Sch. 1	Sch. 2	Sch. 3	Sch. EIC
Recordkeeping	1 hr., 3 min	20 min	33 min	13 min	0 min.

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	Form 1040	Sch. 1	Sch. 2	Sch. 3	Sch. EIC
Learning about the law or the form.	2 hr., 14 min	4 min	11 min	14 min	2 min.
Preparing the form	2 hr., 51 min	10 min	41 min	28 min	4 min.
Copying, assembling and sending the form to the IRS.	35 min	20 min	28 min	35 min	20 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 219,373,149 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 94–23235 Filed 9–19–94; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

September 14, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0046.
Form Number: IRS Form 982.
Type of Review: Revision.
Title: Reduction of Tax Attributes Due to Discharge of Indebtedness.
Description: Internal Revenue Code (IRC) section 108 allows taxpayers to exclude from gross income amounts attributable to discharge of indebtedness in title 11 cases, insolvency or a qualified farm indebtedness. Section 1081(b) allows corporations to exclude from gross income amounts attributable to certain transfers of property. The data is used to verify adjustments to basis of property and reduction of tax attributes.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 1,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	5 hr., 16 min.
Learning about the law or the form.	1 hr., 53 min.
Preparing and sending the form to the IRS.	2 hr., 4 min.

Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 9,210 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 94–23236 Filed 9–19–94; 8:45 am]
BILLING CODE 4830–01–P

Substitute Return Format Standardization for Individual Returns Filed on Paper

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Announcement—Notice of intent to standardize substitute return format for individual returns filed on paper.

SUMMARY: The IRS is in the process of modernizing its computer systems and in keeping with this premise, those forms and schedules that are not filed electronically will be scanned and machine-read. This technology will expedite processing, increase customer service, and maximize the use of resources. The changes will become effective as the new computer systems of the IRS become operational and notice will be posted in the Internal Revenue Bulletin and disseminated through other media. IRS will then request that the following methods be used to file individual income tax returns:

1. Electronically-filed returns;
2. Computer-generated summary sheets (Form 1040PC);
3. IRS-published Forms 1040, 1040A, and 1040EZ and their respective forms and schedules (or machine readable substitutes, as defined in Revenue Procedure 94–51).

Publication 1167, Substitute Printed, Computer-Prepared, and Computer-Generated Tax Forms and Schedules, has been revised to reflect these preferences. There are several reasons for this initiative. The IRS receives more than 115 million individual tax returns and the volume increases annually. Form 1040PC and electronic filing provide better quality input. They also reduce the need for document storage. IRS wishes to limit the submission of traditional returns to IRS-produced paper forms in keeping with the Tax System Modernization (TSM) initiatives to scan all forms. However, IRS recognizes that many practitioners and individual taxpayers utilize software packages to produce computer generated returns and that this software is considered by the public to reduce the burden in the filing of tax returns. Therefore, IRS seeks a balance between its need to maintain strict control and the convenience the taxpaying public enjoys through the use of tax preparation software. The goal is to scan all returns received. IRS will hold a "Town Meeting" to discuss this intent with the public.

Note: Last minute changes to the date or location of the meeting are possible and could prevent advance notice.

DATES: The "Town Meeting" is scheduled to be held on October 5, 1994, at 9 a.m. The meeting will be open to the public.

ADDRESSES: The "Town Meeting" will be held at the J.W. Marriott Hotel, 1331 Pennsylvania Ave. NW, Washington, DC. Notification of intent to attend the meeting is requested in order to have a sufficient number of handouts/agendas printed. Please contact Freda George at 202–283–0578 (not a toll-free number), to confirm attendance or for additional information. If you wish to communicate by FAX, the number is 202–283–0137, to the attention of Freda George. A copy of the "Town Meeting Minutes" will be sent to all persons who mail-in comments or who call to express an interest in receiving them. The address to send your comments to is:

Internal Revenue Service, Attn: Forms Standardization Project Office T:I:F, 1111 Constitution Avenue NW., Washington, DC 20224.

Dated: September 12, 1994.
Approved:

Jim Smith,
National Director, Submission Processing.
[FR Doc. 94–23146 Filed 9–19–94; 8:45 am]
BILLING CODE 4830–01–U

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Sunshine Act Meetings

Federal Register
Vol. 59, No. 181
Tuesday, September 20, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

ASSASSINATION RECORDS REVIEW RECORD

TIME AND DATE: 10:00 a.m., October 11, 1994.

PLACE: National Archives and Records Administration, Auditorium, 7th and Pennsylvania Avenue, N.W., Washington, D.C.

STATUS: Open to the Public.

PURPOSE OF MEETING: The purpose of the hearing is to elicit public comment to assist the Board in establishing a definition of an "assassination record" in connection with the President John F. Kennedy Assassination Records Collection Act of 1992, Pub. L. 102–526. Those wishing to participate should submit statements no later than Monday, October 3, 1994 to the address below. Statements should concisely address the question of the definition of an assassination record: What kinds of records should be included in the definition? What constitutes relevance? What specific groups of records should be included? Those who submit statements and attend the meeting may be invited to offer oral testimony.

CONTACT PERSON FOR WRITTEN STATEMENTS AND MORE INFORMATION: David G. Marwell, Executive Director, Room 208, 600 E Street N.W., Washington, DC 20004, Telephone: (202) 724–0088, FAX: (202) 724–0457.

David G. Marwell,
Executive Director.
[FR Doc. 94–23386 Filed 9–16–94; 3:29 pm]
BILLING CODE 6820–TD–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 47672, September 16, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:00 a.m., September 20, 1994.

CHANGES IN MEETING: Meeting concerning Strings on Children's Clothing was canceled.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: September 16, 1994.

Sadye E. Dunn,
Secretary.
[FR Doc. 94–23384 Filed 9–16–94; 3:28 pm]
BILLING CODE 6355–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, September 26, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 16, 1994.

Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 94–23391 Filed 9–16–94; 3:55 pm]
BILLING CODE 6210–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND PLACE: 9:30 a.m., Tuesday, September 27, 1994.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6293A—Aviation Accident Report: Simmons Airlines, Inc., d/b/a American Eagle Flight 3641, False River Air Park, New Roads, Louisiana, February 1, 1994

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: September 16, 1994

Bea Hardesty,
Federal Register Liaison Officer.
[FR Doc. 94–23328 Filed 9–16–94; 10:01 am]
BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 19, 26, October 3 and 10, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 19

There are no meetings scheduled for the Week of September 19.

Week of September 26—Tentative

There are no meetings scheduled for the Week of September 26.

Week of October 3—Tentative

There are no meetings scheduled for the Week of October 3.

Week of October 10—Tentative

Thursday, October 13

8:15 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: Dr. Andrew Bates (301) 504–1963.

Dated: September 16, 1994.

William M. Hill, Jr.,
SECY Tracking Officer.
Office of the Secretary.
[FR Doc. 94–23369 Filed 9–16–94; 2:01 pm]
BILLING CODE 7590–01–M

Federal Register

Tuesday
September 20, 1994

Part II

Department of Education

Office of Vocational and Adult Education

Reauthorization of Vocational and Adult Education Programs; Notice

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DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

Reauthorization of Vocational and Adult Education Programs

AGENCY: Department of Education.

ACTION: Request for public comment on the reauthorization of vocational and adult education programs.

SUMMARY: The Secretary of Education invites written comments from the public regarding the reauthorization of programs under the Carl D. Perkins Vocational and Applied Technology Education Act; the Adult Education Act; and the National Literacy Act of 1991.

DATES: Written comments must be submitted on or before November 4, 1994.

ADDRESSES: Written comments should be addressed to Dr. Augusta Souza Kappner, Assistant Secretary for Vocational and Adult Education, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4090–MES, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Sharon Jones, Office of Vocational and Adult Education, 600 Independence Avenue, S.W., Room 4050–MES, Washington, D.C. 20202. Telephone: (202) 205–9241. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Secretary is requesting public comments on the reauthorization of the Department's Vocational and Adult Education programs, including 18 programs funded at approximately $1.5 billion in fiscal year 1994. The funded programs include: Vocational Education Basic State Grants; Tech-Prep Education; Vocational Education Research; Vocational Education Demonstrations; Vocational Education Data Systems; Adult Education State Programs; State Literacy Resource Centers; Literacy Programs for Prisoners; Workplace Literacy Partnerships; and Adult Education National Programs, including the National Institute for Literacy.

Need for Reauthorization

The statutory authorization for these programs expires on September 30, 1995. In order to contribute in a timely manner to congressional reauthorization discussions, the Secretary is beginning a review of these programs. The Secretary intends to submit to Congress the Department's proposals to reauthorize these programs in early 1995. To ensure an opportunity for public participation, the Secretary invites public comments on the reauthorization.

How the Information Will Be Used

The Department has identified six general issues, listed as follows, around which to initiate reauthorization discussions and is particularly interested in receiving comments on those issues. The Department seeks to develop program initiatives that link vocational and adult education programs to the National Education Goals and to the national effort to enable all students to achieve to challenging academic standards. As such, the reauthorization will build on the Goals 2000: Educate America Act, the School-to-Work Opportunities Act, and the pending Elementary and Secondary Education Act reauthorization, each of which focuses on—providing students with greater opportunities to meet high standards; giving States and localities flexibility in the delivery of services in exchange for accountability for results; and directing Federal resources to communities where they are most needed, in amounts sufficient to make a real difference. The Department will also examine how Federal Vocational and Adult Education programs can be coordinated with other Federal programs, such as the Job Training Partnership Act (JTPA), Higher Education Act student aid programs, and Job Opportunities and Basic Skills Training (JOBS) that address similar purposes and serve similar populations.

The reauthorization process also provides an opportunity for resolution of issues affecting current programs that have arisen through evaluations, audits, program operations, budget deliberations, and previous legislative actions. Thus, the Department, while it will examine new program strategies, also seeks comment on the program-specific issues listed below.

Issues for Public Comment

The Secretary seeks comments and suggestions regarding reauthorization of these programs. Comments are especially invited on the following issues.

General Principles and Issues

1. Restructuring Vocational and Adult Education Programs To Achieve the National Education Goals

Results of recent studies of vocational and adult education reveal that considerable progress must be made in these areas if the Department hopes to achieve the National Education Goals. For example, the National Adult Literacy Survey found that as many as 90 million adults in the United States have serious problems with literacy, and, of those, approximately 40 to 44 million function at the lowest proficiency levels defined by the survey. With the American economy in transition, increasing global challenges to our economic competitiveness, and more jobs requiring a high level of technical expertise, our employment and training systems must produce greater numbers of skilled and adaptable workers than in the past.

How can the Federal Vocational and Adult Education programs best be structured to help the Nation achieve the National Education Goals, particularly the goal of ensuring that every American is literate and possesses the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship?

2. Promoting World-Class Standards for All Students

A major theme of the Administration's earlier legislative proposals has been creating an expectation for all students to meet challenging academic or occupational skill standards. The Department is now exploring options for making this theme a core principle for the Perkins Act and Adult Education reauthorizations as well. Along these lines, how can these Federal Acts best incorporate systems of standards and implement these standards for all vocational and adult education students, including in-school and out-of-school youth, postsecondary students, adults, and special populations? How can these standards best be coordinated with standards developed under Goals 2000 and the reauthorized Elementary and Secondary Education Act?

3. Connecting Vocational and Adult Education to Broader Objectives for Achieving Education Reform

How can some of the other key themes of the Administration's earlier proposals—such as offering greater State, local, and school flexibility in exchange for accountability for student outcomes (including authorizing waivers of certain statutory and regulatory requirements), encouraging integration of services across categorical programs, and targeting resources more effectively—be incorporated in the Vocational and Adult Education reauthorization?

4. Linking the Perkins Act and the Adult Education Act

Should some aspects of the Perkins Act and the Adult Education Act be meshed? For example, could the reauthorization coordinate resources to create a more coherent system for preparing youth and young adults for further education and employment?

5. Coordinating With Other Federal Programs and Initiatives

In recent reports, the General Accounting Office identified, by its count, over 150 programs with employment training aspects, including several vocational and adult education programs. The GAO reports contend that the programs overlap one another and are poorly coordinated, and that their proliferation makes it difficult for States and localities to forge comprehensive employment training strategies. In light of these findings, how should Federal Vocational and Adult education statutes relate to other Federal programs, such as JTPA, Higher Education Act student aid programs, and the Individuals with Disabilities Education Act, and to pending initiatives such as elementary and secondary education reform, welfare reform, and the Reemployment Act? How can Perkins Act and Adult Education Act resources be better deployed to meet national needs for workforce development?

6. Building Bridges Between Vocational Education, Adult Education, and the School-to-Work Opportunities Act

Should the Perkins Act or the Adult Education Act, or both, be revised to complement the School-to-Work Opportunities Act? If so, how should this be accomplished? What principles and goals would be achieved by this linkage? Should some or all of Perkins Act resources be structured specifically to support the School-to-Work act?

Issues That Cut Across Both Vocational and Adult Education Programs

Program Standards and Assessment

Under existing legislation, States have developed systems of standards for the evaluation of both vocational and adult education. Research suggests that these standards are not widely used for program improvement. How can the reauthorization encourage the use of program standards and assessment to improve the quality of vocational and adult education? How can valid program standards, meaningful assessments, and the use of both in program improvement, be instituted in vocational and adult education at the national, State, and project levels? Is it feasible to develop national standards for either program or core standards that apply to both programs?

Distribution of Funds

Both the Adult Education Act and the Perkins Act include funding formulas that specify how the Department of Education allocates vocational and adult education funds to the States. The adult education formula is based on the number of adults, 16 years of age and above, who are not required to be in school and have not received a high school diploma or its equivalent. The vocational education formula, under the 1990 amendments to the Perkins Act, remains essentially the same as under the original Vocational Education Act of 1963; the two main elements of the formula, a set of population factors and an income factor, have remained unaltered for over 30 years. Neither formula includes incentives for States to develop successful, innovative programs or to increase their financial support for vocational or adult education.

The Department intends to review the current allocation formulas for vocational and adult education programs and seeks comment on how those allocation formulas might be changed or how the distribution of funds might otherwise be improved. For example, what methods of distribution, other than formulas, could be designed? If formulas are retained, what bases, other than population, years of schooling, and income, might be used to allocate Federal funds? What other specific changes are desirable? For example, should the adult education formula be modified to reflect the fact that many clients, particularly those enrolled in English-as-a-Second Language courses, already have earned a high school diploma or its equivalent? To consider the impact on State allocations of the in-school population count? Should the vocational education formula include need-related factors such as the State unemployment rate or dropout rate? In general, should funding allocations to States, under either program, be more targeted?

Corrections Education

The Adult Education Act, the National Literacy Act, and the Perkins Act contain three separate provisions for providing educational services to incarcerated individuals. Section 326 of the Adult Education Act requires a State to reserve at least 10 percent of its adult education allocation to fund education programs for criminal offenders in corrections institutions and other institutionalized individuals. Literacy Programs for Prisoners, section 601 of the National Literacy Act, authorizes discretionary grants to establish and operate programs that reduce recidivism through the improvement of life skills and functional literacy. Under section 102(a)(5) of the Perkins Act, States are required to set aside at least one percent of their allocations for vocational education programs for juvenile and adult criminal offenders.

Are these three separate authorities effective at meeting the vocational and adult education needs of incarcerated individuals? Would this population be served better if these authorities were combined into a comprehensive education program for criminal offenders? If so, should there continue to be a set-aside in the Adult Education Act for institutionalized individuals? If so, should it also address the needs of non-incarcerated criminal offenders, such as parolees and probationers?

State Plans and Responsibilities

Are any aspects of the State organizational and planning responsibilities under the Adult Education Act or the Perkins Act overly burdensome? If so, which provisions of the Acts should be revised or deleted to ease any administrative burden they cause? To encourage comprehensive State plans, should any of the State organizational or planning responsibilities under the Acts be modified to require linkages to other Federal education planning requirements, such as those in Goals 2000, the reauthorized Elementary and Secondary Education Act, and the School-to-Work Opportunities Act?

Professional Development

Both the Adult Education Act and the Perkins Act include provisions for encouraging educators' professional development, but a more comprehensive system of Federal support for professional development may be required. Section 353 of the Adult Education Act requires that at least 15 percent of a State's allocation be reserved for demonstration projects and teacher training activities; at least two-thirds of this reservation must be used to train adult educators. Under the Perkins Act, States and local service recipients are authorized to use Basic grants and Tech-Prep funds for professional development, and the Act also authorizes support for professional development through other, currently unfunded authorities. Despite these provisions, adult education research has found that few instructors are certified adult educators—only 18 percent of full-time staff and 8 percent of part-time

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staff. According to the recent National Assessment of Vocational Education (NAVE), both secondary and postsecondary vocational teachers have less formal education than academic teachers, while virtually all academic teachers and faculty members have at a least a bachelor's degree, 12 percent of secondary vocational teachers and 15 percent of postsecondary occupational faculty do not.

What steps can the Federal Government take through the reauthorization to ensure that vocational and adult educators possess the knowledge and skills necessary to be effective and teach to high standards? How can resources under the Perkins Act and the Adult Education Act be used to (1) Support professional development strategies that States will develop under the reauthorized Elementary and Secondary Education Act; and (2) ensure that educators learn and apply the principles of the School-to-Work Opportunities Act, so that schools accomplish real integration of academic and vocational skills?

Data Collection

In the course of collecting data for the National Evaluation of Adult Education Programs, the Department's contractor found weaknesses in the information management systems of many local programs. Many programs that participated in the study did not know how many different clients they serve during a year nor the number of students they serve on a given day. In vocational education, NAVE researchers found data inconsistencies across local tech-prep programs, and national data collection efforts in vocational education have long been problem-plagued. Yet, data collections can be extremely important because they can, if properly conducted, yield valuable information on program outcomes and can help drive funding and policy decisions at both the State and Federal levels.

What role can the Federal Government play to ensure that data collection activities in vocational and adult education programs yield meaningful information that can be used to improve programs and, ultimately, benefit the learner?

Issues Related to Individual Programs

Vocational Education

1. Basic State Grants

• Program Focus.

The last two reauthorizations of the vocational education basic grant have emphasized program improvement and achieving equitable access for special populations. Have these emphases produced the desired results of better preparation for, and success in, postsecondary education and the labor market for the target populations? Should the reauthorization address a revised or expanded set of objectives?

• Secondary and Postsecondary Education.

Should the Perkins Act be restructured to focus on assisting in the comprehensive reform and improvement of secondary education, for example by providing resources primarily to encourage the integration of academic and vocational education at the high school level? Alternatively, should the Act focus mainly on the improvement of postsecondary education, especially community college programs? As a related issue, should the Perkins Act continue to support vocational education only below the baccalaureate level? What attention should the Act give to the needs of out-of-school adults and youth, including dropouts?

• Discretionary Grant Competitions.

The final NAVE report recommends that Congress consider using some portion of Basic State Grant funds for competitive grants to States that propose, and show promise of effecting, comprehensive reforms consistent with the goals of the Act. Should the Department adopt this recommendation? More broadly, should the Act be revised to provide incentives for States to undertake comprehensive reform of their vocational education programs? How would these incentives account for the differences in progress States have already made in undertaking reforms?

• Role of the States.

Most observers agree that the 1990 amendments to the Perkins Act deemphasized the role of the States, yet the NAVE Independent Advisory Panel has contended that States hold the key to achieving vocational education reform at "a pace and scale sufficient to affect national workforce quality." Should the next reauthorization establish a stronger State role? For what purpose? Should the current State governance structure in the Act be modified to reinforce the State partnerships developing under the School-to-Work Opportunities Act? How would this be achieved?

• Targeting Funds for Special Populations.

The NAVE reports that individuals with special needs are overenrolled, relative to their presence in the population, in vocational education. Should the Perkins Act continue to target funds to areas with high concentrations of special populations? Should there be more emphasis on serving all students?

• Criteria for Services to Special Populations.

The 1990 Perkins Act amendments greatly increased the amount and specificity of procedural requirements related to provision of services to special populations. Are these provisions ensuring that members of special populations receive equal access to program services? Are the services provided of benefit to special populations? Could the level of prescription be reduced, in exchange for greater attention to higher outcomes for all students, including students with special needs? Are the current provisions and protections for special populations effective at ensuring that they have an equal opportunity to enter and succeed in the full range of high-quality vocational programs? Should the law continue to focus on providing the supplementary and other services that special populations need to succeed in vocational education, or, as the final NAVE report suggested, should it instead focus more on improvement of the vocational programs in which those students participate? If that strategy were carried forward, would other programs such as Title I of the Elementary and Secondary Education Act and the Individuals with Disabilities Education Act be able to provide the supplementary services special populations require?

• State Plans.

The current Perkins Act State planning requirements are some of the most prescriptive found in any Federal education legislation. Can the goals of these planning requirements be met without these controls on State process? Are the existing procedures for development of the plan and the items required to be included in the plan having their desired effect? If not, what changes should the Department consider?

• State Council on Vocational Education.

For over two decades, the Federal Government has funded the activities of State councils to advise on and assist in the development of vocational education programs in the States. While the 1992 JTPA amendments allow the States to consolidate their vocational education councils into broader State Human Resource Investment Councils, most States have continued to operate separate councils for vocational education.

Have the State vocational education councils fulfilled their objective of monitoring quality and ensuring

business involvement in the operation of programs in the States? Should they continue to be separately funded, or should their operation be at State discretion? Is maintaining the independence of councils chartered under the Perkins Act important? Does the existence of separate councils for vocational education contribute to a fragmentation of State policymaking within the broader areas of human resource development and employment? Should consolidation with the State Human Resource Councils be required in order to ensure coordination between JTPA and vocational education?

• Program Accountability.

According to the NAVE, most States have gone beyond the accountability requirements established in the 1990 amendments to the Perkins Act, developing fuller arrays of performance measures than required and applying them to all vocational programs, not just those receiving Perkins funds. However, while as of 1991–1992 State agencies had given a high priority to developing performance standards and measures, local implementation had not yet occurred. Have States and localities found the standards and measures useful for improving programs? How have States' experiences implementing these requirements compared to experiences with the accountability requirements under the JTPA? Should the reauthorization encourage States and localities to give more attention to development and implementation of performance standards and measures? If so, how can program performance best be evaluated and measured so as to benefit the grantees, allow for replication of successful projects, and provide meaningful information to the Department and to Congress? Additionally, should federally supported vocational programs, which currently must meet the accountability requirements set forth in the Perkins Act, be aligned with the standards-based reform activities States and localities will undertake under Goals 2000 and the reauthorized Elementary and Secondary Education Act?

Even beyond the standards and measures requirements, the 1990 Perkins amendments greatly increased the Act's focus on accountability, including adding language on "program improvement" to ensure that local grantees, and then States, take action to improve ineffective programs. Is this working? Should it be continued? Should the statute incorporate more incentives for success? How are the incentives and adjustments for special populations working? Should the statute allow States to take "corrective action" or cut funding to programs that repeatedly fail to reach the standards? More broadly, how can the reauthorization better emphasize accountability for results?

• Skill Standards.

Development of occupational and industry skill standards has become an important component of Federal policy. The Goals 2000: Educate America Act establishes a National Skill Standards Board to encourage the creation of a comprehensive system of voluntary skill standards and certification. The School-to-Work Opportunities Act includes, as a basic element of the school-based learning component, high academic and occupational skill standards to be developed under Goals 2000. Previously, the Departments of Education and Labor funded 22 grants to promote the development of skill standards and certification in a variety of industries. How could the reauthorization support the development of voluntary industry skill standards and portable skill certification? How would skill standards and certification of work-related skills affect educators developing curricula and employers seeking skilled workers?

• Coherent Sequence of Courses.

The NAVE found that, in general, secondary vocational programs are not as coherent or rigorous as they should be. They usually lack prerequisites, which maximizes access but reduces chances of aligning vocational courses with each other or with academic courses. In addition, the NAVE reported that most districts, including Title II grant recipients, do not meet the Perkins requirement for a coherent sequence of academic and vocational courses. Should the next reauthorization do more to ensure that more students have the opportunity to take a coherent sequence of academic and vocational courses? If so, how?

• All Aspects of the Industry.

The Perkins Act encourages local recipients to use basic State grant funds to provide vocational education programs that educate students in all aspects of an industry. The NAVE found that, as of the second year of implementation of the 1990 Perkins amendments, the "all aspects" language had only a minor impact on vocational programs. Should the reauthorization continue this area of statutory emphasis? If so, how can it be made more effective?

• Employer Interest and Involvement.

A 1993 survey conducted for the NAVE asked employers about their familiarity and satisfaction with vocational programs. About 60 percent of employers responding to the survey (which had a high non-response rate) said they were familiar with vocational education programs in their local areas. Forty-one percent were familiar with secondary vocational programs, and 47 percent with postsecondary programs. How should the reauthorization encourage business interest and involvement in occupational education? Along these lines, should the reauthorization seek to strengthen cooperative education, and, if so, how? Should employer involvement, through activities such as provision of work-based learning experiences, be given more prominence in the Act? If so, how can the Act increase business involvement, including increased workplace education in vocational and basic skills? What about other federally supported programs, including adult education programs?

• Sex Equity and Single Parents Programs.

The Perkins Act requires States to set aside 10.5 percent of Basic State Grant funds for programs to eliminate sex bias in vocational education and programs for single parents, single pregnant women, and displaced homemakers. Have these provisions worked effectively to eliminate sex bias and provide appropriate opportunities for single parents and displaced homemakers in vocational education? If not, what changes should be made? Do the two set-asides mesh with State priorities or are they overly restrictive? Are the two set-asides still needed?

Current law also requires that each State employ a full-time sex equity coordinator who administers the sex equity and single parents set-aside programs, collects and disseminates data on programs, provides technical assistance to local programs, and carries out other responsibilities. Is this requirement an effective means of ensuring gender-equitable practices in vocational programs? Is it still needed? Is it overly prescriptive?

• Native American and Hawaiian Natives Programs.

Currently, under Basic State Grants, the Department sets aside funds for Native Americans and Native Hawaiians. What role should Perkins play in providing vocational education for these populations? Are the current set-aside programs working effectively, or should they be revised? Would the population served through the program be better served if the program was administered by the Department of the Interior? Should the education needs of Native American youth be addressed through current means, or should greater efforts be made to provide resources for these students as part of

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more comprehensive systems? If so, how would this work?

2. Tech-Prep Education

Tech-Prep programs have expanded tremendously since their introduction in the mid-1980s. The tech-prep approach is one of the few models for local school-to-work opportunity programs and can be built on by States as they implement statewide school-to-work opportunity systems. However, the NAVE found considerable inconsistency in the quality of these programs and in the extent to which they have incorporated all the program components described in the literature and the legislation. Should the reauthorized Act continue to provide categorical support for Tech-Prep education, or should broader support for School-to-Work Opportunities programs, including other models, be offered? If the Tech-Prep program is continued, how can the Act be amended to improve the quality of local projects? Should the Tech-Prep Education program include a mandatory work-based learning component?

3. Research and Dissemination

What should the role of the Department be in conducting vocational education research, and how should it be conducted? Through a national center or centers, as is currently the case for most of the Federal effort? Through field-initiated research? Through discretionary research projects determined through annual priorities? What should be the role of the Department in disseminating research results, descriptions of effective practices, and other information on vocational education? How can vocational education research and dissemination activities, along with similar activities in other programs and Departments, be structured in order to ensure maximum benefits and the efficient use of resources?

4. Demonstration Programs

The Vocational Education Demonstrations Program authority provides the Department and educational institutions an opportunity to try new approaches to vocational education and to learn about the effectiveness of these approaches. The Department has funded a large number of demonstration projects in a variety of areas. Has the field found these demonstrations useful in obtaining information on effective educational approaches? Should a Federal vocational education demonstrations program authority be continued? If so, what areas of inquiry might be emphasized? How should the demonstration projects conducted under this authority mesh with the newly authorized School-to-Work demonstration projects and other, related Federal demonstration activities?

5. Vocational Education and Occupational Information Data Systems

Currently, under the Perkins Act, the Departments of Education and Labor provide funding for the National Occupational Information Coordinating Committee (NOICC) and its affiliated State Occupational Information Coordinating Committees (SOICCs). The NOICC and the SOICCs assess current and future labor market conditions by assembling and disseminating occupational information. Is the current system useful to educators planning programs and to students selecting careers? If not, what changes should be made? How can the NOICC and SOICCs be linked to key elements of the Reemployment Act, such as One-Stop Career Centers?

6. Tribally Controlled Postsecondary Vocational Institutions

Through this program, the Department provides grants for the operation and improvement of tribally controlled postsecondary vocational institutions. Is the program fulfilling its purposes? Should the program be continued? Would the population served through the program be better served if the program was administered by the Department of the Interior?

7. Unfunded Authorities

Currently, the Perkins Act includes separate funding authorities for career guidance and counseling programs, business-labor-education partnerships, vocational education lighthouse schools, model community education employment centers, supplementary State grants for facilities and equipment, and other program improvement activities. None of these activities is currently funded. Should any of them be continued in the reauthorization? If so, why, and with what revisions? More specifically, how should the reauthorization address the area of career development and counseling?

Adult Education

1. State Programs

• Program Focus.

According to an analysis of 1990 census data, more than 44 million adults, nearly 27 percent of the adult population of the United States, have not received a high school diploma or its equivalent. The adult education formula targets this population. Of that population, 39 percent have completed eight or fewer years of education, but 61 percent have finished between nine and twelve years of schooling. Forty-one percent of the target population is 60 years of age or older, while 11 percent fall between 16 and 24 years of age. The variation in these individuals' educational needs and goals can make it difficult and time-consuming for adult educators to design effective instructional strategies for them. An additional complication is the broad statement of purpose contained in section 311 of the Adult Education Act, which focuses, in part, on providing assistance to States "* * * to improve educational opportunities for adults who lack the level of literacy skills requisite to effective citizenship and productive employment. * * *"

Should Adult Education remain as a separate program serving a diverse population of adult learners with diverse needs? As one alternative, should the programs be refocused, for example on work preparation and literacy skills upgrading for adults? How can Federal Adult Education programs best be structured to achieve the current objectives in areas such as workforce preparation, family literacy, and English proficiency? Should program services be organized around target populations (such as dislocated workers or immigrants)? By program objective (such as basic skills or workplace literacy)?

• General Educational Development (GED) Preparation.

Many of the approximately one million adults who enrolled in Adult Secondary Education programs in 1993 had as their goal the attainment of a GED certificate. The value of the GED examination as a measure of academic competence and achievement has attracted increasing attention over the past several years as the percentage of high school certificates awarded through equivalency examinations has increased. In the United States, 475,602 of the 756,645 adults who took the GED in 1993 passed the test. Studies focusing on the skill levels, economic outcomes, and postsecondary education experience of GED holders have yielded inconclusive and sometimes contradictory results. For example, most research on the economic value of the GED shows that it is significantly less valuable than a high school diploma; on the other hand, some evidence indicates that GED recipients have higher incomes than high school dropouts.

Should attainment of a GED diploma continue to be a primary focus of Adult Secondary Education? If not, what

credential alternatives are available for adults seeking to complete their secondary education? Should local programs be encouraged to offer courses that allow adults to earn a high school diploma?

• Set-Asides.

By establishing set-asides and targeting the needs of special populations, the Adult Education Act requires States to use their Federal adult education funds to address the educational needs of a diverse population, for example: those in need of basic education services, the limited-English-proficient, incarcerated and otherwise institutionalized individuals, and public housing residents. While each of these groups may have a well-established need for adult education services, the mix of their needs may make it difficult for adult education providers to target limited resources on, and create solutions to, the most pressing problems in adult education.

Do the set-asides (e.g., 10 percent for criminal offenders in corrections education and other institutionalized individuals) required by the Adult Education Act further the purposes of the Act? Are they overly prescriptive? Should the reauthorized program continue to draw a distinction between adult basic education and adult secondary education and specify the maximum amount of funds that may be used for high school equivalency programs? Should the Gateway Grants program be continued?

• Special Experimental Demonstration Projects and Teacher Training.

For many years States have reserved formula grant funds to undertake special projects and to train adult educators. Has this set-aside been an effective means of spurring innovation and ensuring a trained adult education workforce, or should other means of achieving those objectives be considered? If this set-aside is retained, should States be required to establish mechanisms for the dissemination of effective practices?

• English-as-a-Second Language.

The National Evaluation of Adult Education Programs found that enrollments in English-as-a-Second-Language (ESL) courses are outpacing enrollments in Adult Basic Education (ABE) and Adult Secondary Education (ASE); during 1992, approximately 46 percent of all clients served in the Basic State Grants program were enrolled in ESL courses. The study also found that the characteristics of ESL clients vary considerably from those served in ABE and ASE. For example, about 50 percent of new ESL clients had a secondary school diploma or its equivalent, while 89 percent of new ABE/ASE students lacked such a credential.

Given the above findings, is the Adult Education program structured properly to address the English language instruction needs of limited English proficient individuals? If so, should the funding formula be changed, or should a new formula be added, to reflect the characteristics of this population?

• Achievement.

Should the Adult Education Act be amended to provide a greater focus on learner outcomes? What would be appropriate types and measures of learner outcomes? Should the Act prescribe creation of national program performance indicators? Should the Department, or States, use those outcomes in making resource allocation decisions?

• Client Persistence.

Although the amount and type of instruction adult learners need to meet their education goals varies because of their diverse characteristics and abilities, findings from the National Evaluation of Adult Education Programs reveal that about 15 percent of clients who register for adult education programs do not receive any instruction. How can the Federal Government promote the development of adult education programs that both attract and retain clients?

According to the National Evaluation of Adult Education Programs, the employment of at least some full-time staff and the provision of support services are two ways programs can increase client persistence and improve outcomes. However, over 80 percent of adult education instructors work part-time, and, although the vast majority of program directors reported meeting their clients' needs for counseling or job assistance, far fewer were able to meet other important support service needs. For example, 42 percent of female clients and 32 percent of male clients have children under the age of six, but only 43 percent of programs reported meeting their clients' child care needs "somewhat" or "fully." Does the Adult Education Act provide programs with sufficient flexibility or incentive to offer these services?

• Technology.

As demands on adults' time continue to escalate—with more people working longer hours, commuting greater distances, and coping with day care and elder care issues—the traditional, tutorial/classroom-based approach to adult education may not be the best mechanism, in many cases, for attracting and retaining adult education students. Incorporating new technologies into adult literacy programs may be one way to address the time constraints of the adult education student. The Office of Technology Assessment (OTA) found in a 1993 study that technology could help transform the field of adult literacy by, for example, allowing students to proceed at their own pace, customize their studies, and establish a schedule that is compatible with their daily lives. However, OTA also suggested that technology does not play a central role in most adult literacy programs.

Should the Federal Government encourage the use of more technology in adult literacy programs? If so, how can technology of proven effectiveness in enhancing learning be incorporated in cost-effective ways that learners will find beneficial?

• Linking Adult Education to Other Domestic Initiatives.

In recent years, policymakers have begun to turn to adult education services as a means of addressing other societal problems, for example, requiring participation in literacy programs for prison parole, continuation of welfare benefits, or, through Even Start, making adult literacy instruction a component of elementary and secondary education improvement. Should the Adult Education Act continue to address very general purposes, or should it be tied explicitly to national efforts to redevelop poor neighborhoods, end welfare dependency, fight crime, or ensure a smooth integration of new immigrants into American society? If the Adult Education Act is linked to other domestic initiatives, should the Act be revised to reflect the impact that mandatory participation requirements of certain programs, such as JOBS, have on adult education programs?

2. State Literacy Resource Centers

The National Literacy Act created the State Literacy Resource Centers program to stimulate the coordination of literacy services, enhance the capacity of State and local organizations to provide literacy services, and serve as a link between the National Institute for Literacy and service providers to share information and expertise.

Are State Literacy Resource Centers effective at meeting the goals of the Act? What steps, if any, should be taken at the Federal level to improve the effectiveness of the Centers? Should the funds allotted under this program continue to be channeled through State Governors?

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3. Discretionary Programs

Current law authorizes several discretionary grant programs. Most of these programs are small and fund a limited number of recipients. Although the purpose of the programs is generally the demonstration of effective strategies for addressing particular issues or problems, funds often support local projects that, while beneficial to the recipients, are not designed in a way to yield lessons for broader use.

What role should Adult Education discretionary programs play in helping the Nation achieve its education goals? Would these resources be more effectively utilized under broader authorities, such as the Adult Education State formula grant program? Do the current programs encourage a piecemeal, rather than comprehensive, approach to adult education reform (with service providers devoting too much attention to applying for and administering separate competitive grants), or do they focus attention where it is needed? If there is a need for Federal demonstration programs, what changes are needed to ensure that they are designed as true demonstrations and serve their purposes effectively? What types of evaluation and reporting ought to be required?

4. Workplace Literacy Partnerships

At current funding levels, the National Workplace Literacy program makes discretionary grants for demonstrations that provide literacy training to meet workplace needs. Since its inception in 1988, this demonstration program has generated important information about effective workplace literacy practices. The program has produced curricula transferable for use by specific types of industries, and a national evaluation, currently underway, will generate additional information about program effectiveness. However, after eight years and 261 grants the continuation of the National Workplace Literacy program, in its current form, may not appreciably add to our base of knowledge in this area.

Should the Federal Government continue to support workplace literacy programs and, if so, in what form? For example, should workplace literacy become a key focus of the Adult Education State Grants program? Or should a separate, reconfigured workplace literacy program be designed?

5. Technical Assistance and Evaluation

Section 383 of the Adult Education Act provides assistance to States in evaluating the status and effectiveness of adult education programs and measuring the extent of adult illiteracy in the Nation. Funds support applied research, development, dissemination, evaluation, and technical assistance activities that show promise of contributing to the improvement and expansion of adult education. How should this authorization be structured to provide Federal leadership activities of maximum benefit to practitioners and policy-makers?

6. National Institute for Literacy

The National Literacy Act created the National Institute for Literacy to provide leadership and coordination on adult literacy issues; improve and expand the adult literacy service delivery system; and enhance the Nation's ability to achieve the National Goal of adult literacy and lifelong learning. The Institute has worked toward accomplishing this mission by, for instance—(1) Establishing a National Adult Literacy and Learning Disabilities Center; (2) supporting State capacity-building initiatives in the areas of interagency accountability and staff development; and (3) working with providers to design and implement a national literacy information and communications system.

Does the current statutory language provide for Institute activities that meet the needs of the literacy field? Are the currently authorized activities still appropriate? How should they relate to the national leadership priorities of the Department (as currently authorized under section 383)? How can the Institute work with the Departments of Education, Labor, and Health and Human Services, which form the interagency group that oversees the Institute, to ensure more effective coordination of literacy-related policy and programs at the Federal level?

Format for Comments. This request for comments is designed to elicit the views of interested parties on how the Department's vocational and adult education programs can be structured to meet the objectives of the reauthorization effort as stated in this notice.

The Secretary requests that each respondent identify his or her role in education and the perspective from which he or she views the educational system—either as a representative of an association, agency, or school (public or private), or as an individual teacher, student, parent, or private citizen.

The Secretary urges each commenter to be specific regarding his or her proposals and to include, if possible, the data requirements, timing, procedures, and actual legislative language that the commenter proposes for the improved or redesigned program.

Programs Under Consideration.

The following is a complete list of programs under the scope of the reauthorization:

Carl D. Perkins Vocational and Applied Technology Education Act

- Title I

Assistance to the States, Allotment and Allocation, State Organizational and Planning Responsibilities

- Title II

Basic State Grants, Other State-Administered programs, Secondary, Postsecondary, and Adult Vocational Education

- Title III

Community-Based Organizations, Consumer and Homemaking Education, Comprehensive Career Guidance and Counseling Programs, Business-Labor-Education Partnership Training, Tech-Prep Education, Supplementary State Grants, Community Education Employment Centers, Vocational Education Lighthouse Schools, Tribally Controlled Postsecondary Vocational Institutions.

- Title IV

Research and Development, Demonstration Programs, Vocational Education and Occupational Information Data Systems, Bilingual Vocational Training.

Adult Education Act

- Basic State Grants
- State Literacy Resource Centers
- National Adult Education Discretionary Program
- Workplace Literacy Partnerships (National and State-Administered Programs)
- National Workforce Literacy Strategies
- Education Programs for Commercial Drivers
- National Programs

Adult Migrant Farmworker and Immigrant Education
Adult Literacy Volunteer Training
State Program Analysis Assistance and Policy Studies
National Institute for Literacy

National Literacy Act of 1991

- Title III

Family Literacy Public Broadcasting Program

- Title VI

Functional Literacy and Life Skills Programs for State and Local Prisoners

Dated: September 13, 1994.

Augusta Souza Kappner,

Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 94-23246 Filed 9-19-94; 8:45 am]
BILLING CODE 4000-01-P

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Part III

The President

Executive Order 12928—Promoting Procurement With Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals, Historically Black Colleges and Universities, and Minority Institutions

Proclamation 6720—Citizenship Day and Constitution Week, 1994

Proclamation 6721—National Farm Safety and Health Week, 1994

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Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 12928 of September 16, 1994

Promoting Procurement With Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals, Historically Black Colleges and Universities, and Minority Institutions

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to enforce rigorously the letter and spirit of public laws that promote increased participation in Federal procurement by Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals (SDBs) as described in section 8 of the Small Business Act (15 U.S.C. 637), Historically Black Colleges and Universities (HBCUs) as described in 34 C.F.R. 608.2, and Minority Institutions (MIs) as referred to in sections 1046(3) and 316(b)(1) of the Higher Education Act of 1965, as amended (20 U.S.C. 1135d-5(3) and 1059c(b)(1), respectively), it is hereby ordered as follows:

Section 1. *Policy Statement.* It is the policy of the United States Government that all department and agency heads and all Federal employees involved in the procurement of any and all goods and services shall assist SDBs, HBCUs, and MIs, as applicable, to develop viable, self-sustaining businesses capable of competing on an equal basis in the mainstream of the American economy. To that end, all Federal personnel shall commit to the letter and spirit of all laws promoting the participation of SDBs, HBCUs, and MIs in Federal procurement. The laws promote:

(a) the award of contracts to SDBs, HBCUs, and MIs through the Small Business Administration Section 8(a) Program, the Department of Defense Small and Disadvantaged Business Program, other agency programs, and through other specific statutory authority or appropriate means;

(b) the establishment of particular goals for SDBs, HBCUs, or MIs on an agency-by-agency basis and the requirement that prime contractors and other recipients of Federal funds attain similar goals in their procurement; and

(c) the establishment of other mechanisms that ensure that SDBs, HBCUs, and MIs have a fair opportunity to participate in Federal procurement.

Sec. 2. *Attainment of Goals.* All departments and agencies are required by law to establish participation goals of not less than 5 percent (15 U.S.C. 644(g)) or a greater percentage where otherwise required by law, as further provided in the Office of Federal Procurement Policy Letter No. 91–1 of March 11, 1991. Although the Federal Government has made substantial strides toward meeting established SDB, HBCU, and MI participation goals, certain departments and agencies have from time to time failed to aggressively pursue such goals. Department and agency heads are henceforth directed to execute, implement, and otherwise aggressively strive to fulfill the statutorily-mandated procurement participation goals. In addition, all departments and agencies are encouraged to set reasonable participation goals that exceed statutory requirements, to the extent permitted by law.

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Sec. 3. *Subcontracting Plans.* The Small Business Act, (15 U.S.C. 637(d)) and other related laws require certain prime contractors to maximize the use of SDBs in subcontracting plans and strive to achieve stated goals through prime contractors' subcontracting practices. Department and agency heads are directed to aggressively enforce these prime contractors' obligations to maximize awards of subcontracts to eligible SDBs.

Sec. 4. *Office of Small and Disadvantaged Business Utilization ("OSDBU").*

(a) Section 15(k) of the Small Business Act (15 U.S.C. 644(k)) establishes in each Federal department and agency an OSDBU and requires that the Director of the OSDBU "be responsible only to, and report directly to, the head of such agency or to the deputy of such head" (15 U.S.C. 644(k)(3)). To the extent not prohibited by law, each department and agency shall ensure that the aforementioned direct reporting requirements are henceforth vigorously enforced.

(b) Because of the importance of the OSDBU function, each department and agency shall also, to the extent not prohibited by law, comply with the Office of Federal Procurement Policy Letter No. 79–1 of March 7, 1979, which provides implementation guidance on section 15k and the organizational placement and functions of the OSDBU.

Sec. 5. *Anti-fraud Enforcement.* All department and agency heads shall ensure that in enforcing the laws and requirements mentioned in this order, Federal benefits or contracts intended for SDBs, HBCUs, and MIs are not awarded to entities that are not legitimate SDBs, HBCUs, and MIs. Department and agency anti-fraud enforcement, however, shall not diminish agency vigor in achieving the aforementioned participation goals, which exist to promote the development of legitimate SDBs, HBCUs, and MIs. Nothing herein is intended to change self-certification requirements.

Sec. 6. *Periodic Reports to the President.* The Administrator of the Small Business Administration and the Administrator of the Office of Federal Procurement Policy shall report to the President periodically on the progress of all departments and agencies in complying with the laws and requirements mentioned in this order.

Sec. 7. *Independent Agencies.* Independent agencies are requested to comply with the provisions of this order.

Sec. 8. This order shall be effective immediately.

William J. Clinton

THE WHITE HOUSE,
September 16, 1994.

[FR Doc. 94–23453
Filed 9–19–94; 10:59 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 6720 of September 16, 1994

Citizenship Day and Constitution Week, 1994

By the President of the United States of America

A Proclamation

The Constitution of the United States of America is as forceful and dynamic today as it was on September 17, 1787, the day it was signed by our Nation's Founders. This hallowed document has endured, and, indeed, has grown stronger over the 207 years since its adoption. Today, more than ever, the Constitution stands as a beacon for all who are dedicated to the principles of government by and for the people.

The Constitution provides a framework of both constancy and flexibility in a Nation that is forever striving to change for the better. But the Constitution is more than simply the blueprint of our system of government, more too than the guardian of our most sacred rights. It is a challenge to every American. For it is only through the daily actions of each one of us that the ideals it promises are fulfilled.

The Founders of our Nation pledged their lives, their fortunes, and their honor. They did not take their liberty or their new citizenship as Americans for granted. Neither did the countless courageous men and women who have sacrificed their lives to defend that Constitution since then. Nor have the millions of immigrants throughout our history who have braved daunting obstacles to reach the welcoming freedom of our shores. Following in our ancestors' great tradition of responsibility, Americans retain a solemn duty and a profound obligation to ensure that the world's boldest experiment in self-government continues to thrive and prosper.

Each of us has the right and the responsibility to be educated and informed, to vote for those who represent us, and to participate at every level of government. This week, let us give thanks for the freedoms we cherish and enjoy. Let us pause in our busy lives to learn more about and to appreciate our roles as American citizens. While our Constitution may set forth rights and liberties, only our citizens can maintain and guarantee them. Ours has never been an easy task, but it is one in which we will surely continue to succeed.

In recognition of the paramount importance of the Constitution to our Nation, and of all who, by birth or by naturalization, have attained the status of United States citizenship, the Congress by joint resolution on February 29, 1952 (36 U.S.C. section 153), designated September 17 as Citizenship Day, and by joint resolution of August 2, 1956 (36 U.S.C. section 159), requested the President to proclaim the week beginning September 17 and ending September 23 of each year as Constitution Week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 17, 1994, as "Citizenship Day," and the week beginning September 17 through September 23, 1994, as "Constitution Week." I call upon Federal, State, and local officials, as well as leaders of civic, educational, and religious organizations, to conduct meaningful ceremonies and programs in their schools, churches, and other community gathering places to foster a better understanding of the Constitution and of the rights and duties of citizenship.

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I further call upon the officials of the Government to display the flag of the United States on all Government buildings on September 17, 1994, in honor of Citizenship Day.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94-23462
Filed 9-19-94; 11:09 am]
Billing code 3195-01-P

Presidential Documents

Proclamation 6721 of September 16, 1994

National Farm Safety and Health Week, 1994

By the President of the United States of America

A Proclamation

America has long been known as the land of plenty. Our Nation's dedicated farmers, ranchers, and workers throughout the agricultural sector provide abundant and affordable food and fiber that feed and clothe the world. Their tremendous productivity is one of our country's greatest assets. To recognize and support the citizens who help to bring forth that extraordinary bounty, National Farm Safety and Health Week promotes the protection and well-being of America's agricultural providers.

Our country has made tremendous advances in improving safety and efficiency in agriculture over the years. But much remains to be done. Long hours, adverse weather conditions, natural disasters, human negligence, and uncertain market prices all affect both the livelihood and health of our farmers and ranchers. These individuals must also contend with a variety of other risks: exposure to hazardous chemicals, crop and livestock diseases, and the operation and maintenance of complex, powerful farm machinery. Vigilance and caution remain critical in the performance of daily tasks.

Children and young people are particularly at risk for serious injury. They are more prone to accidents and are especially vulnerable to dangerous chemicals. Their energy, optimism, and love are irreplaceable resources. We must all be mindful of the need to provide them proper supervision and guidance.

Agricultural workers face many dangers, but their work is among the most rewarding in the world. As the Earth's population grows and the demand for food rises, we depend on our providers now more than ever. We must strive to maintain our high standards of safety, while developing new technologies that will meet the challenges of tomorrow. This week, we resolve anew to make safety and health precautions indispensable tools in strengthening America's great farming and ranching traditions.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of September 18–24, 1994, as "National Farm Safety and Health Week." I call upon the agencies, organizations, and businesses that serve America's agricultural workers to strengthen their commitment to promoting farm safety and health programs. I further call upon all citizens of our great Nation to reflect on the importance of our agricultural heritage and to make the health and safety of our farmers, ranchers, and farm workers among our utmost national priorities.

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IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William Jefferson

[FR Doc. 94-23463
Filed 9-19-94; 11:18 am]
Billing code 3195-01-P

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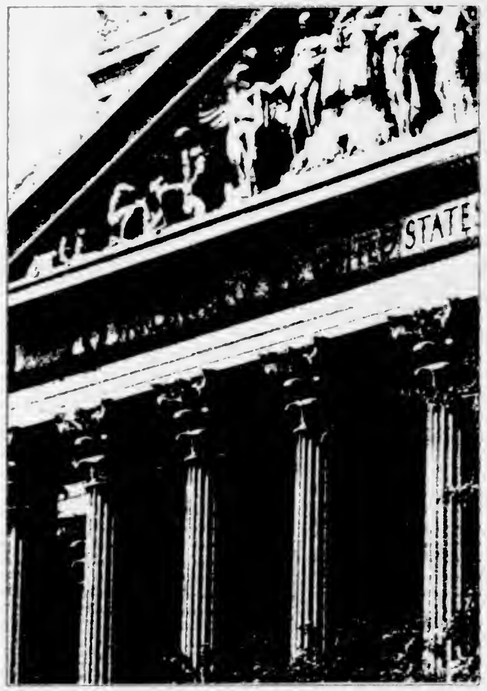
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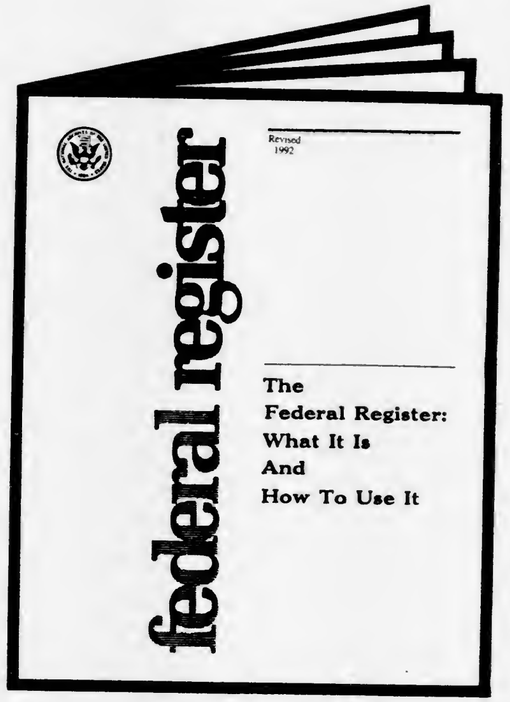
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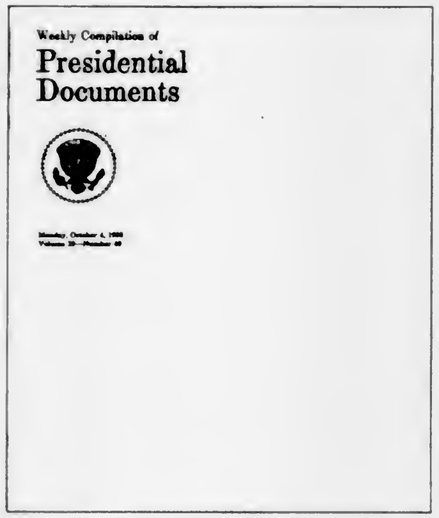
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Rules and Regulations

Federal Register
Vol. 59, No. 182
Wednesday, September 21, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–138–AD; Amendment 39–9027; AD 94–19–05]

Airworthiness Directives; British Aerospace Model BAC 1–11–200 and –400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAC 1–11–200 and –400 series airplanes. This action requires revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to limit reversion of the flight controls to manual (unpowered) operation. This action also provides optional terminating action for the AFM limitation. This amendment is prompted by reports of cracking of certain brackets and levers in the primary flight control system due to residual stresses, mechanical loading, and material properties changes associated with aging. The actions specified in this AD are intended to prevent loss of integrity of the primary flight control system due to structural failure of the brackets or levers.

DATES: Effective October 6, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 6, 1994.

Comments for inclusion in the Rules Docket must be received on or before November 21, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–138–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from British Aerospace, Inc., 22070 Broderick Drive, Sterling, Virginia 20166. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAC 1–11–200 and –400 series airplanes. The CAA advises that it has received reports of cracking of certain brackets and levers in the primary flight control system. These brackets and levers were manufactured from L53 aluminum alloy casting material. Investigation has revealed that the cracking may be attributed to a combination of residual stresses, mechanical loading, and material properties changes associated with aging. Cracking of these brackets and levers could lead to structural failure of these components. This condition, if not corrected, could result in loss of integrity of the primary flight control system.

British Aerospace has issued Alert Service Bulletin 27–A–PM6025, Issue 1, dated March 23, 1994, which specifies a new operating restriction for reversion of the flight controls to manual (unpowered) operation. Limiting /such reversion to emergency situations only will greatly reduce the probability that flight control system brackets and levers (manufactured from L53 aluminum alloy casting material) will experience higher stresses, and thereby higher probability of structural failure associated with manual operation of the flight control systems.

The alert service bulletin also describes procedures for repetitive detailed visual inspections to detect cracking of the rudder pedal pivot brackets, elevator pivot levers, and aileron pulley brackets (manufactured from L53 aluminum alloy casting material) in the primary flight control system, replacement of any cracked bracket or lever with a serviceable part, and application of water displacing fluid to the brackets and levers. The CAA classified this alert service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent loss of the integrity of the primary flight control system. This AD requires revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to limit reversion of the flight controls to manual (unpowered) operation. This AD also provides for an optional terminating action for the AFM limitation, consisting of inspections, replacement (as necessary), and application of water displacing fluid, as specified in the alert service bulletin described previously.

The FAA is considering further rulemaking to require accomplishment of the currently optional terminating action. However, the proposed compliance time for those actions is sufficiently long so that notice and time for public comment would not be impracticable.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good

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cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–138–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–19–05 British Aerospace Airbus Limited (formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Amendment 39–9027. Docket 94–NM–138–AD.

Applicability: Model BAC 1–11–200 and –400 series airplanes having rudder pedal pivot brackets, elevator pivot levers, or aileron pulley brackets (manufactured from L53 aluminum alloy casting material) identified in British Aerospace Alert Service Bulletin 27–A–PM6025, Issue 1, dated March 23, 1994; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the integrity of the primary flight control system, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following limitation; and thereafter operate the airplane in accordance with that limitation. This may be accomplished by inserting a copy of this AD in the AFM.

"The flight controls shall not be reverted to manual (unpowered) operation unless an emergency situation exists during which the flight crew must revert the flight controls to manual operation in order to maintain control of the airplane."

(b) Accomplishment of a detailed visual inspection to detect cracking of the elevator pivot levers, in accordance with paragraph 2.2 of the Accomplishment Instructions of British Aerospace Alert Service Bulletin 27–A–PM6025, Issue 1, dated March 23, 1994; constitutes terminating action for the AFM limitation required by paragraph (a) of this AD, and that limitation may be removed from the AFM. Repeat the inspection thereafter at intervals not to exceed 18 months. If any elevator pivot lever is cracked, prior to further flight, replace it with a serviceable part and apply water displacing fluid to the levers, in accordance with the alert service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection and corrective actions shall be done in accordance with British Aerospace Alert Service Bulletin 27–A–PM6025, Issue 1, dated March 23, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, Inc., 22070 Broderick Drive, Sterling, Virginia 20166. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 6, 1994.

Issued in Renton, Washington, on September 14, 1994.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–23220 Filed 9–20–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–38–AD; Amendment 39–9025; AD 94–19–03]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD).

applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires replacement of the autopilot disconnect switches with modified units. This amendment is prompted by several incidents in which the flight crew did not depress both halves of the autopilot disconnect switch during the LAND 2 or LAND 3 approach and, as a result, one autopilot remained engaged. This condition resulted in unanticipated movements of the stabilizer trim and higher than anticipated control forces of the flight controls. The actions specified by this AD are intended to prevent the flight crew from inadvertently disconnecting only one autopilot when both autopilots are engaged, which could result in unanticipated control surface movements.

DATES: Effective October 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 21, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on May 11, 1994 (59 FR 24383). That action proposed to require replacement of the autopilot disconnect switches with modified units.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 19 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $2,500 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $55,860, or $2,940 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–19–03 Fokker: Amendment 39–9025. Docket 94–NM–38–AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11286 inclusive, 11289 through 11293 inclusive, 11295 through 11297 inclusive, 11300, 11303, 11306, 11308, 11310, 11312, and 11313; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the flight crew from inadvertently disconnecting only one autopilot when both autopilots are engaged, which could result in unanticipated control surface movements, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace the autopilot disconnect switches with modified units, in accordance with Fokker Service Bulletin SBF100–22–020, dated September 25, 1990.

(b) As of 6 months after the effective date of this AD, no person shall install an autopilot disconnect switch, part number A47007–401 or A47007–403, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacement shall be done in accordance with Fokker Service Bulletin SBF100–22–020, dated September 25, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 21, 1994.

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Issued in Renton, Washington, on September 14, 1994.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–23221 Filed 9–20–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–35–AD; Amendment 39–9026; AD 94–19–04]

Airworthiness Directives; Raytheon Corporate Jets Model BAe 125–1000A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Corporate Jets Model BAe 125–1000A series airplanes, that requires modification of the control circuit wiring for the engine thrust reversers and of the wiring for annunciation of rudder bias status. This amendment is prompted by a report that a single dormant electrical fault in the control circuit of the thrust reversers could cause a thrust reverser to deploy if the pilot selects reverse thrust during the approach phase of flight; and by reports that if an asymmetric thrust reverser condition occurs, the correct rudder bias may not be annunciated before the flight crew applies high reverse thrust. The actions specified by this AD are intended to prevent adversely affected controllability of the airplane.

DATES: Effective October 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 21, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Corporate Jets Inc., 3 Bishops Square, St. Albans Road West, Hatfield, Hertfordshire, AL109NE, United Kingdom. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon Corporate Jets Model BAe 125–1000A series airplanes was published in the **Federal Register** on April 29, 1994 (59 FR 22141). That action proposed to require modification of the control circuit wiring for the engine thrust reversers and of the wiring for annunciation of rudder bias status.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 19 airplanes of U.S. registry will be affected by this AD, that it will take approximately 60 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $1,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $81,700, or $4,300 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–19–04 Raytheon Corporate Jets, Inc.: Amendment 39–9026. Docket 94–NM–35–AD.

Applicability: Model BAe 125–1000A series airplanes; serial numbers 258151, 258159, and 259003 through 259044 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent in-flight deployment of a thrust reverser, which could adversely affect the controllability of the airplane, accomplish the following:

(a) Within 8 months after the effective date of this AD, modify the control circuit wiring for the left and right engine thrust reversers and rudder bias status annunciation, in accordance with Raytheon Corporate Jets Service Bulletin SB.78–9–3662B, dated January 7, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Raytheon Corporate Jets Service Bulletin SB.78–9–3662B, dated January 7, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Corporate Jets Inc., 3 Bishops Square, St. Albans Road West, Hatfield, Hertfordshire, AL109NE, United Kingdom. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 21, 1994.

Issued in Renton, Washington, on September 14, 1994.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certificotion Service.

[FR Doc. 94–23223 Filed 9–20–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–154–AD; Amendment 39–9028; AD 94–19–06]

Airworthiness Directives; Puritan Bennett Sweep-On Model 2000 Crew Masks

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Puritan Bennett Sweep-On Model 2000 crew masks installed on various transport and commuter category airplanes. This action requires modification of certain crew oxygen masks. This amendment is prompted by reports of difficulty in exhaling into certain crew oxygen masks due to misalignment of the demand diaphragm. The actions specified in this AD are intended to prevent the flight crew from experiencing difficulty in exhaling into the affected crew oxygen masks in the event oxygen masks are required for the crew, such as during depressurization of the airplane.

DATES: Effective October 6, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 6, 1994.

Comments for inclusion in the Rules Docket must be received on or before November 21, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–154–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Puritan Bennett Aero Systems Company, 108000 Pflumm Road, Lenexa, Kansas 66215. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Systems and Equipment Branch, ANM–131L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5336; fax (310) 988–5310.

SUPPLEMENTARY INFORMATION: Recently, the flight crews from various transport and commuter category airplanes reported that they experienced difficulty in exhaling into certain Puritan Bennett Sweep-On Model 2000 crew oxygen masks. Investigation revealed that the demand diaphragm on these crew oxygen masks were misaligned, which may have resulted in the seizure of the exhalation valve. This condition, if not corrected, could result in the flight crew experiencing difficulty in exhaling into the affected crew oxygen masks in the event oxygen masks are required for the crew, such as during depressurization of the airplane.

The FAA has reviewed and approved Puritan Bennett Service Bulletin 174250–35–1, dated August 1994, which describes procedures for modification of certain crew oxygen masks. This modification entails aligning the demand diaphragm in the vertical position, which would prevent the seizure of the exhalation valve.

Since an unsafe condition has been identified that is likely to exist or develop on other Puritan Bennett Sweep-On Model 2000 crew oxygen masks that are installed on various transport and commuter category airplanes, this AD is being issued to prevent the flight crew from experiencing difficulty in exhaling into the affected crew oxygen masks. This AD requires modification of certain crew oxygen masks. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–154–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined

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further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–19–06 Puritan Bennett Aero Systems: Amendment 39–9028. Docket 94–NM–154–AD.

Applicability: Sweep-On Model 2000 crew oxygen masks, as listed in Puritan Bennett Service Bulletin 174250–35–1, dated August 1994; as installed on, but not limited to, Dornier Model 228 and 328 series airplanes, Cessna Model 550 and 650 and Citation Model I and II series airplanes, Raytheon Corporate Jets Model HS 125–700A series airplanes, Dassault Mystere Falcon Model 20 series airplanes, Beech Model 400 (Beechjet) series airplanes, and Gulfstream Model G–1159 (G–II) and G–1159A (G–III) series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the flight crew from experiencing difficulty in exhaling into the affected crew oxygen masks, accomplish the following:

(a) Within 60 days after the effective date of this AD, modify the crew oxygen masks, in accordance with Puritan Bennett Service Bulletin 174250–35–1, dated August 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Puritan Bennett Service Bulletin 174250–35–1, dated August 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Puritan Bennett Company, 108000 Pflumm Road, Lenexa, Kansas 66215. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 6, 1994.

Issued in Renton, Washington, on September 14, 1994.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–23222 Filed 9–20–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 94–AWP–16]

Establishment of Class E Airspace; Inyokern Municipal Airport, Inyokern, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Inyokern, CA. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) has been developed for the Inyokern Municipal Airport. Controlled airspace extending from 700 feet above the surface is needed for aircraft executing the approach. This action will provide adequate Class E airspace for instrument flight rules (IFR) operations at Inyokern Municipal Airport.

EFFECTIVE DATE: 0901 UTC, December 8, 1994.

FOR FURTHER INFORMATION CONTACT: Scott Speer, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 297–0697.

SUPPLEMENTARY INFORMATION:

History

On June 24, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Inyokern, CA. (59 FR 32669). A Global Positioning System (GPS) standard instrument approach procedure (SIAP) has been developed for the Inyokern Municipal Airport. Controlled airspace extending from 700 feet above the surface is needed for aircraft executing the approach.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received. China Lake Naval Air Weapons Station requested the exclusion of Class E airspace from Restricted Area R–2505. The Restricted Area was excluded in response to their request.

The coordinates in the proposal are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1.

The Class E airspace designation listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Inyokern, CA, to establish controlled airspace from 700 feet above the surface for aircraft executing the GPS SIAP into the Inyokern Municipal Airport at Inyokern, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 feet or More Above the Surface of the Earth

* * * * * *

AWP CA E5 Inyokern, CA [New]

Inyokern Municipal Airport, CA
(lat. 35°39'32" N., long. 117°49'46" W)

That airspace extending upward from 700 feet above the surface within a 2-mile radius of Inyokern Municipal Airport and within 2 miles each side of the 211° (T) bearing extending from the 2-mile radius to 10.3 miles southwest of the Inyokern Municipal Airport excluding that airspace within Restricted Area R–2505.

* * * * * *

Issued in Los Angeles, California, on September 7, 1994.

Dennis T. Koehler,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94–23335 Filed 9–20–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 89F–0453]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of *N, N, N', N', N'', N''*-hexakis(methoxymethyl)-1,3,5-triazine-2,4,6-triamine polymer with stearyl alcohol, α-octadecenyl-Ω-hydroxypoly(oxy-1,2-ethanediyl), and alkyl (C_{20+}) alcohols as a component of paper and paperboard in contact with aqueous foods. This action responds to a petition filed by PPG Industries, Inc.

DATES: Effective September 21, 1994; written objections and requests for a hearing by October 21, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 19, 1989 (54 FR 51946), FDA announced that a food additive petition (FAP 9B4172) had been filed by PPG Industries, Inc., Pittsburgh, PA 15146, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of *N, N, N', N', N'', N''*-hexakis(methoxymethyl)-1,3,5-triazine-2,4,6-triamine polymer with stearyl alcohol, α-octadecenyl-Ω-hydroxypoly(oxy-1,2-ethanediyl), and alkyl (C_{20+}) alcohols as a component of paper and paperboard in contact with aqueous foods.

In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it may contain minute amounts of unreacted 1,4-dioxane and ethylene oxide, carcinogenic impurities, resulting from the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as 1,4-dioxane and ethylene oxide, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under Section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the evidence available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer, or Delaney, clause (section 409(c)(3)(A) of the act) provides that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not constituents of the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety clause using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive, *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984).

II. Safety of the Petitioned Use

FDA estimates that the petitioned use of the additive, *N, N, N', N', N'', N''*-hexakis(methoxymethyl)-1,3,5-triazine-2,4,6-triamine polymer with stearyl alcohol, α-octadecenyl-Ω-hydroxypoly(oxy-1,2-ethanediyl), and alkyl (C_{20+}) alcohols, will result in levels of exposure to the additive of no greater than 19 parts per billion in the daily diet (Ref. 1).

FDA does not ordinarily consider chronic toxicological testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data from acute toxicity studies on the additive. No adverse effects were reported in these studies.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limits of risk presented by the carcinogenic chemicals that may be present as impurities in the additive, 1,4-dioxane and ethylene oxide. This risk evaluation of 1,4-dioxane and ethylene oxide has two aspects: (1) Assessment of the worst-case exposure to the impurities from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

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A. 1,4-Dioxane

FDA has estimated the hypothetical worst-case exposure to 1,4-dioxane from the petitioned use of the additive in the manufacture of paper and paperboard to be 11 nanograms per person per day (ng/person/day) (Ref. 1). The agency used data from a carcinogenesis bioassay on 1,4-dioxane, conducted for the National Cancer Institute (Ref. 3), to estimate the upper-bound limits of lifetime human risk from exposure to this chemical stemming from the proposed use of the additive (Ref. 3). The results of the bioassay on 1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

Based on a potential exposure of 11 ng/person/day, FDA estimates that the upper-bound limits of individual lifetime risk from the potential exposure to 1,4-dioxane from the use of the subject additive is $4x10^{-10}$, or less than 4 in 10 billion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, actual lifetime averaged individual exposure to 1,4-dioxane is likely to be substantially less than the worst-case exposure, and therefore, the calculated upper-bound limits of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to 1,4-dioxane that might result from the proposed use of the additive.

B. Ethylene Oxide

FDA estimated that the hypothetical worst-case exposure to ethylene oxide from the petitioned use of the additive in the manufacture of paper and paperboard is 11 ng/person/day (Ref. 1). The agency used data from a carcinogenesis bioassay on ethylene oxide conducted for the Institute of Hygiene, University of Mainz, Germany, to estimate the upper-bound level of lifetime human risk from exposure to ethylene oxide stemming from the proposed use of the additive (Ref. 5). The results of the bioassay on ethylene oxide demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas of the forestomach and carcinoma in situ of the glandular stomach.

Based on a potential exposure of 11 ng/person/day, FDA estimates that the upper-bound limits of individual lifetime risk from the potential exposure to ethylene oxide from the use of the subject additive is $2x10^{-8}$, or less than 2 in 100 million (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, actual lifetime-averaged individual exposure to ethylene oxide is likely to be substantially less than the worst-case exposure, and therefore, the calculated upper-bound limits of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to ethylene oxide that might result from the proposed use of the additive.

C. Formaldehyde

A review of the petition also indicates that the additive may contain formaldehyde as an impurity at a dietary concentration of 15 micrograms/person/day. The potential carcinogenicity of formaldehyde was reviewed by the Cancer Assessment Committee (the committee) that has been formed by FDA's Center for Food Safety and Applied Nutrition. The committee noted that for many years formaldehyde has been known to be a carcinogen by the inhalation route, but it concluded that these inhalation studies are not appropriate for assessing the potential carcinogenicity of formaldehyde in food because of the inappropriate route administration and the fact that tumors were observed only locally at the portal of entry (nasal turbinates). The agency has received literature reports of two drinking water studies on formaldehyde: (1) A preliminary report of a carcinogenicity study purported to be positive by Soffritti et al. (1989), conducted in Bologna, Italy (Ref. 7), and (2) a negative study by Til, et al. (1989), conducted in The Netherlands (Ref. 8). The committee reviewed both studies and concluded in a "Memorandum of Conference," dated April 24, 1991 and March 4, 1993, "* * * that data concerning the Soffritti study reported were unreliable and could not be used in the assessment of the oral carcinogenicity of formaldehyde" (Ref. 6). This conclusion is based on a lack of critical details in the study, questionable histopathologic conclusions, and the use of unusual nomenclature to describe the tumors. Thus, the committee concluded that there is no basis to find that formaldehyde is a carcinogen when ingested.

D. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of 1,4-dioxane and ethylene oxide in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which 1,4-dioxane and ethylene oxide may be expected to remain as impurities following production of the additive, the agency would not expect these impurities to become components of food at other than extremely low levels; and (2) the upper-bound limits of lifetime risk from exposure to these impurities, even under worst-case assumptions, is very low, less than 4 in 10 billion and less than 2 in 100 million for 1,4-dioxane and ethylene oxide, respectively.

III. Conclusion

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed uses for the additive in paper and paperboard products in contact with aqueous food are safe. Based on this information, the agency has also concluded that the additive will have the intended technical effect. Accordingly, § 176.170 is amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before October 21, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. FAP 9B4172—PPG Industries (Submission dated 9–8–89) "Water-Repellant Coating for Paper and Paperboard," Memorandum from the Food and Color Additives Review Section (HFF–415) to the Indirect Additives Branch (HFF–335), January 8, 1990.
2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in "Chemical Safety Regulation and Compliance," edited by F. Homburger and J. K. Marquis, S. Karger, New York, NY, pp. 24–33, 1985.
3. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.
4. Memorandum, "Report of the Quantitative Risk Assessment Committee," August 1, 1990.
5. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide Upon Intragastric Administration to Rats," *British Journal of Cancer*, 46:924, 1982.
6. Memorandum of Conference, "Meeting of the Cancer Assessment Committee," April 24, 1991, and March 4, 1993.
7. Soffritti, et al., "Formaldehyde: An Experimental Multipotential Carcinogen," *Toxicology and Industrial Health*, Vol. 5, No. 5: pp. 699–730, 1989.
8. Til, et al., "Two-Year Drinking-Water Study of Formaldehyde In Rats," *Food Chemical Toxicology*, Vol. 27, No. 2: pp. 77–87, 1989.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 379e).

2. Section 176.170 is amended in the table in paragraph (a)(5) by alphabetically adding a new entry under the headings "List of Substances" and "Limitations" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of Substances	Limitations
. . .	. . .
N,N,N',N',N'',N''-Hexakis (methoxymethyl)-1,3,5-triazine-2,4,6-triamine polymer with stearyl alcohol, α-octadecenyl-Ω-hydroxypoly(oxy-1,2-ethanediyl), and alkyl (C_{20+}) alcohols (CAS Reg. No. 130328–24–4).	For use only as a water-repellent applied to the surface of paper and paperboard at levels not to exceed 1 percent by weight of the finished dry paperboard fibers. The finished paper and paperboard will be used in contact with aqueous foods under conditions of use B through G as described in Table 2 of paragraph (c) of this section.
. . .	. . .

* * * * *

Dated: September 6, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–23274 Filed 9–20–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 888

[Docket No. N–94–3741; FR–3686–C–03]

Section 8 Housing Assistance Payments Program; Contract Rent Annual Adjustment Factors and Section 8 Housing Assistance Payments Program; Fair Market Rents; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Fair Market Rents; correction..

SUMMARY: This action makes a correction to the document on Section 8 Housing Assistance Payments Program; Contract Rent Annual Adjustments Factors published on April 26, 1994 (59 FR 21832).

EFFECTIVE DATE: April 26, 1994.

FOR FURTHER INFORMATION CONTACT: Michael R. Allard, Economic and Market Analysis Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, (202) 708–0577 (TDD: (202) 708–0770). (These telephone numbers are not toll-free).

SUPPLEMENTARY INFORMATION: The United States Housing Act of 1937 (1937 Act) requires that the assistance contracts signed by owners participating in the Department's Section 8 Housing Assistance Payments programs provide for annual or more frequent adjustment in the maximum monthly rentals for units covered by the contract to reflect changes based on fair market rents prevailing in a particular market area, or on a reasonable formula. The AAF Notice published on April 26, 1994, announced the revised FY 1994 Annual Adjustment Factors (AAF), but contained a technical error. The state of Nevada should have been identified as being part of HUD Region IX. (Under HUD's reorganization, the designation "HUD Region IX" will be "Pacific/Hawaii" in future AAF publications.)

Accordingly, the AAF document published in the **Federal Register** on April 26, 1994 (59 FR 21832), is corrected at page 21850 as set forth in the following table:

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SCHEDULE C—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS—AREA DEFINITIONS

NEVADA (HUD REGION IX)

METROPOLITAN COUNTIES

Clark, Nye, Washoe

NONMETROPOLITAN COUNTIES

Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Pershing, Storey, White Pine, Carson City

Dated: September 15, 1994.

Brenda Gladden,

Acting Assistant, General Counsel for Regulations.

[FR Doc. 94–23302 Filed 9–20–94; 8:45 am]

BILLING CODE 4210–32–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH53–2–6360; FRL–5076–1]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On August 20, 1993, in response to requirements in part D of title I of the Clean Air Act, the Ohio Environmental Protection Agency (OEPA) submitted materials to USEPA pertaining to new source review (NSR) in nonattainment areas. This submittal included no revisions to any Ohio regulations. Instead, the submittal relied on existing pre-1990 NSR rules, described how Ohio intended to implement various applicable part D requirements, and presented a rationale that no revisions to State regulations would be necessary to satisfy these requirements. USEPA disagrees with this rationale and disapproves the State's submittal for failure to satisfy applicable requirements, as proposed on March 4, 1994.

EFFECTIVE DATE: This final rule becomes effective on October 21, 1994..

ADDRESSES: Copies of the SIP revision request, public comments on the rulemaking, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone John Summerhays at (312) 886–6067 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE–17J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Air Enforcement Branch, Regulation Development Section (AE–17J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 172, 173, 182, 189, and other sections of the Clean Air Act require States to submit implementation plan provisions for new source review in nonattainment areas to USEPA for approval or disapproval. Ohio provided various materials to USEPA between November 1992 and April 1993, but USEPA notified the State on June 1, 1993, that these materials did not constitute a complete submittal and that the State had failed to submit a complete submittal. On August 20, 1993, the Ohio provided new material to USEPA addressing new source review in nonattainment areas. USEPA notified OEPA on October 22, 1993, that it found this August 1993 submittal complete.

USEPA published a notice of proposed rulemaking on the State's submittal on March 4, 1994 (59 FR 10349). This document summarized the history of new source review plans in Ohio, reviewed the submittal of August 20, 1993, and proposed disapproval of the submittal. In a cover letter accompanying the submittal, the OEPA Director stated that Ohio's NSR rules adopted in 1974 were sufficient for USEPA to find the State's submission both complete and approvable. According to the OEPA Director, "Ohio EPA believes that the current, federally approved, Ohio SIP is adequate for fulfilling the requirements of a NSR SIP, and that no changes are necessary. . . . Ohio EPA has thoroughly evaluated the basis for this submittal, and has resolved that the 1974 [NSR] rules remain the vehicle for the U.S. EPA to review as part of this NSR SIP submittal." OEPA also submitted a document dated October 1992 entitled "Requirements for Major New Sources In Nonattainment Areas" (referenced in this document as "Ohio's statement of permitting criteria"). On page 4 of this latter document, the State again states that "Ohio EPA needs not modify the current rules to conform to the legislatively mandated changes under the CAA. In fact, the current state law and Ohio EPA requires that the Director account for these new requirements in the review of new source applications." Ohio thus seeks approval of its existing pre-1990 NSR rules, along with its statement of permitting criteria, as satisfying the NSR SIP submittal requirements of part D of title I of the Act, including the new requirements imposed by the Clean Air Act Amendments of 1990 (1990 Amendments).

Based on a review of the submittal, USEPA proposed that Ohio's submittal failed to satisfy the NSR SIP submittal requirements of part D, both for requirements predating the 1990 Amendments as well as new requirements imposed by the 1990 Amendments. Concerning requirements predating the 1990 Amendments, USEPA explained that the State had failed to make any of the necessary changes to its NSR rules since USEPA's prior action on September 8, 1993 (58 FR 47211) in which USEPA concluded that the State had not satisfied the requirements of part D, even as required before 1990, particularly because of exemptions from NSR permitting for temporary sources and resource recovery facilities. Regarding requirements imposed by the 1990 Amendments, USEPA noted that Ohio's statement of permitting criteria "was not adopted according to the full procedures in Ohio for adoption of regulations, even though this statement is intended to serve purposes normally served by regulations." In an extensive discussion, USEPA also concluded that "the statement of permitting criteria lacks the specificity, the regulatory standing, and the assurance of being enforceable that are needed to satisfy Clean Air Act requirements" and that the State's reliance "on a general regulatory provision (requiring compliance with the Clean Air Act)" fails to authorize the State to impose the necessary "specific, detailed permit conditions." Therefore, USEPA proposed to disapprove Ohio's submittal.

II. Comments on Proposed Rulemaking

Subsequent to the proposed rulemaking, Ohio requested an extension of the public comment period, which USEPA granted on May 3, 1994 (59 FR 22776). During the extended comment period, comments were received from OEPA, the local air pollution control agency for the Dayton area, a law firm, and the State Chamber of Commerce. The following summarizes the comments received and USEPA's responses.

Comment: All four commenters disputed USEPA's proposed conclusion that Ohio's 1974 regulations and its statement of permitting criteria do not adequately specify applicable new source review requirements. The Chamber of Commerce stated that

Ohio's submittal has the same specificity as Federal law, the law is sufficiently specific and clear, and Ohio's submittal meets all requirements of that law. The State commented that the Clean Air Act Amendments of 1990 are very specific and clearly specify applicable requirements, such that further efforts to define these requirements by regulation would be redundant and unnecessary. Another commenter stated that "specificity and clarity of criteria" are not an appropriate basis for disapproving a submittal which has the same specificity and clarity of criteria as the relevant Federal law, and the fourth commenter stated that "[d]isagreement over [the form that Ohio's permitting mandates take rather than over the substance of those mandates] should not be a basis on which to disapprove Ohio's NSR program."

Response: As stated in the proposed disapproval, Ohio's statement of permitting criteria was not adopted pursuant to the applicable Ohio procedures for the adoption of binding, enforceable regulations and did not clearly identify detailed decisionmaking criteria, and therefore "lacks the specificity, the regulatory standing, and the assurance of being enforceable that are needed to satisfy the Clean Air Act requirements." A fundamental principle for SIPs is that SIP measures must be enforceable. See 57 FR 13498, 13568 (April 16, 1982). In its comments, OEPA did not dispute USEPA's conclusion that Ohio's statement of permitting criteria does not constitute binding regulations and is unenforceable. Instead, the State merely responded that "[t]he requirements of the CAAA are clearly enforceable via existing Ohio regulations" (emphasis added). Ohio's response makes it clear that its statement of permitting criteria is not enforceable and that Ohio seeks approval of its submission based on its existing pre-1990 NSR rules. Accordingly, USEPA concludes that it cannot rely on the unenforceable statement of permitting criteria to approve Ohio's submittal.

USEPA also evaluated whether Ohio's existing NSR rules, adopted well before the 1990 Amendments, satisfy current NSR SIP requirements. As the State conceded in its statement of permitting criteria, several applicable sections of the amended Act, including sections 182(a)(2)(C) and 189(a)(2)(A), required states to submit revisions to their State Implementation Plans for nonattainment NSR permits by various dates in 1992 and 1993. As described above, the State contends that its existing pre-1990 NSR rules are sufficient to meet current requirements because they require adherence to "applicable law," including the Clean Air Act. Thus, instead of submitting revisions to its rules, Ohio asserted that no such revisions are necessary. USEPA disagrees. It should be self-evident that Ohio's reliance on its existing pre-1990 NSR rules does not satisfy the statutory mandates enacted in 1990 for revisions to the State's NSR rules. USEPA reaffirms its view that a reference in existing state rules to the Clean Air Act, and references to pre-1990 sections of the Act, do not satisfy current NSR SIP requirements.

USEPA believes that the Act requires States to adopt specific, enforceable rules to implement the Act's requirements for a nonattainment new source review program. Although not mandated by the Act, USEPA has already provided general guidance to states concerning NSR SIP requirements (See 57 FR 13498, 13552–13556 (April 16, 1982); 57 FR 55620, 55623–55624 (Nov. 25, 1992)), and plans to issue further guidance and rules concerning NSR SIP measures later in 1994. Although certain provisions in the Act may present questions of statutory interpretation, USEPA finds that Ohio's NSR submission, consisting primarily of existing pre-1990 NSR rules supplemented by the unenforceable statement of permitting criteria completely fail to satisfy the statutory obligation to submit specific revisions to its NSR SIP rules. [1]

This regulatory situation is typical. Statutes usually establish general requirements and usually cannot be successfully implemented without detailed regulations clearly specifying criteria for evaluating individual cases. Thus, the issue is not simply philosophical or superficial, but rather a fundamental question of whether Ohio has properly set forth a regulatory framework under which to implement the mandated provisions, and whether USEPA or a member of the public could successfully object if a permit were proposed that would violate NSR requirements.

USEPA believes that it would be difficult and impractical for a commenter to object to a proposed permit based on statutory provisions in the amended Act where USEPA had approved the SIP as satisfying the requirements of the amended Act but where the SIP did not contain specific provisions to implement the amended Act. USEPA further believes that Federal enforcement of NSR requirements would be severely jeopardized by USEPA approval of NSR SIP provisions that fail to contain specific provisions implementing the amended Act. Ohio's SIP submission fails to provide enforceable NSR provisions which assure compliance with the amended Act and therefore are disapproved.

A discussion of comments and responses below addresses specific requirements for offsets, offset ratios, and major source and major modification definitions. The technical support document for the proposed rulemaking also identified deficiencies with respect to the alternatives analysis requirement, and observed that Ohio's statement of permitting criteria mistakenly assigns various USEPA responsibilities regarding clean coal technology demonstration projects to OEPA, such as promulgation of national regulations and review of other States' submittals. No comments were submitted on these latter deficiencies, and so they remain as additional examples of Ohio's submittal being inadequate to implement the mandated requirements.

Comment: The State further commented regarding emissions offsets that "[t]hese requirements are all contained and specified in either Federal rules, the Clean Air Act Amendments of 1990 or in Ohio EPA policy."

Response: As discussed above, Ohio's existing NSR rules do not contain (either directly or by reference) a definition of offset ratios reflecting the amended Clean Air Act. Ohio observes that the Clean Air Act identifies the values of the ratios to be used in various circumstances. However, Ohio does not address the concern identified in the NPR with the absence (in either the existing NSR rules or Ohio's statement of permitting criteria) of detailed, explicit criteria for evaluating offset ratios. Relevant criteria include whether fugitive or secondary emissions (with or without mobile source emissions) are to be included in computing the ratio, what averaging time to use, whether the numerator or denominator is to be potential to emit or actual emissions, and where the offsets may occur. Since these criteria are not explicit or implicit elements of Ohio's rules, it would be difficult and impractical to implement the mandated offset ratios effectively and consistent with the Clean Air Act.

[1] E.g., lowered major source thresholds, provisions governing NOx as an ozone precursor in ozone nonattainment areas, specific mandated offset ratios and other provisions governing emission offsets, a provision that emission reductions otherwise required by the Act are not creditable to satisfy NSR offset requirements, and an alternatives analysis requirement for all nonattainment NSR permits.

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Comment: The State agrees that "Appendix S is not explicit in requiring annual, actual offsets," but observes that this requirement has been established by OEPA policy and is given in Ohio's submitted statement of permitting criteria.

Response: USEPA acknowledges that OEPA interprets its regulation to require annual, actual offsets. However, this requirement should be given full regulatory standing by being incorporated into enforceable Ohio regulations.

Comment: The State asserts that it has properly relied on definitions which are given in appendix S to 40 CFR part 51.

Response: The definitions in appendix S are insufficient because of differences between appendix S and the amended Clean Air Act. Appendix S defines major stationary sources as sources with the potential to emit 100 tons per year (or sources modified such that potential to emit increases by 100 tons per year). The Clean Air Act provides that the term "major stationary source" in some areas includes sources with lower potential to emit, such as 50 tons per year in Serious ozone nonattainment areas. See section 182 of the Act. Since Ohio's regulations reference both the Clean Air Act and appendix S, Ohio's regulations are unclear as to which cutoffs apply.

Comment: The State commented on USEPA's uncertainty as to whether the State intended in its statement of permitting criteria to lower the threshold of nitrogen oxides (NO_x) source sizes at which major modifications would trigger new source review. The State commented it "does not intend to change this threshold."

Response: Notwithstanding its recent comments, the State did not change its statement of permitting criteria. Thus, Ohio's submittal contains a statement of permitting criteria that contradicts the criteria for major NO_x modifications given by reference (i.e. in appendix S) in Ohio's regulations.

Comment: Three commenters commented that requiring new State regulations every time Federal rules change would cause delays and reduce the adaptability of the new source review process.

Response: With respect to the requirements of the 1990 Amendments, this rulemaking does not concern whether hypothetical Federal rule changes would require State rule revisions but rather whether the 1990 Amendments require State rule revisions. The Clean Air Act has had significant amendments only twice since 1970, whereas Ohio has changed its Permit to Install (NSR) rules eight times during the same period. The commenters seek an approach that allows one set of State rules to impose changing requirements in accordance with changes in Federal mandates, but such approaches are prone to be too vague as to the precise obligations of regulated entities imposed by the rules and statute. In this particular case, the State's reference to the general mandates in the amended Clean Air Act does not provide sufficient specificity on the implementation of these mandates to be enforceable. In any event, Congress clearly provided for States to revise their SIP rules in accordance with the 1990 Amendments.

These comments raise a further issue, namely the extent to which a State may change permitting requirements without providing opportunity for public input by means of a rule revision process. Ohio argues that the State's regulations provide for the applicability of requirements resulting from subsequent Clean Air Act amendments even without revision of the State rules. Under this view, there would be no reason for any State SIP submittal at all, and therefore no opportunity for public review and comment on the changed requirements. This runs counter to the general principle that regulations are to be interpreted based on requirements contemplated at the time of regulation adoption and not on the basis of subsequently devised criteria. For this reason as well, the State and USEPA would face obstacles in trying to enforce the requirements of the Clean Air Act Amendments of 1990.

Comment: The State comments "U.S. EPA had expressed a concern about certain items that were identified in the Clean Air Act as part of the review of new sources which were not identified in either state or Federal rules. Ohio EPA proposed a policy that includes these additional Federal requirements. The policy was issued in proposed format and a public hearing was held on the document. After a review of the comments, Ohio EPA submitted that policy as part of the State Implementation Plan."

Response: The State implicitly agrees that certain requirements in the Clean Air Act are not addressed by any rules contained or referenced in the State's SIP, which suggests further that these requirements have not been given regulatory standing in Ohio. The notice of proposed rulemaking focussed on Ohio's statement of permitting criteria, which USEPA finds to be an inadequate instrument for giving these requirements regulatory standing, notwithstanding that this policy statement was subject to public hearing. (Ohio had previously provided essentially the same policy statement without public review, but USEPA judged this and related material not to constitute a complete submittal.)

Comment: The State commented on USEPA's concern that two source categories (certain types of municipal waste combustors and temporary sources) are exempted by appendix S and thus by Ohio rules and yet are not to be exempted under 40 CFR 51.165. The State commented that Ohio permits must comply with Federal law, Federal law does not permit these exemptions, and so the State has developed guidance that these exemptions do not apply.

Response: The State did not submit to USEPA the guidance that it claims provides that these exemptions do not apply. The State's SIP does contain appendix S, incorporated by reference in Rule 3745–31–05, and indeed relies on appendix S to interpret applicable new source review requirements. Consequently, Ohio's regulations are to be interpreted as also providing the exemptions in appendix S and therefore do not satisfy even the pre-1990 NSR requirements of part D of title I of the Act.

Comment: A local air pollution control agency comments that USEPA's involvement in permit oversight assures that Federal requirements will not be misapplied.

Response: Although USEPA agrees that its permit oversight can improve the quality of State permits, such an oversight program is not a substitute for an approvable SIP. USEPA cannot through oversight establish or correct requirements which are not correctly provided in the State regulations.

Comment: A commenter believes that USEPA acknowledges that Ohio's statutes and regulation "already require that the provisions of the amended Clean Air Act be met."

Response: The commenter is quoting statements that USEPA used to characterize the State's position; these statements do not represent USEPA's position.

III. Final Action

Notwithstanding comments to the contrary, USEPA's review indicates that Ohio's submittal does not clearly establish the specific criteria required by the Act by which judgments in new source permitting will be made. Furthermore, by relying not on properly adopted regulations but rather on a general regulatory provision (requiring compliance with the Clean Air Act) in conjunction with an unenforceable statement of permitting criteria, the State has failed to adopt enforceable SIP provisions to implement an NSR program in accordance with the Clean Air Act requirements. Furthermore, Ohio's existing regulations exempt two types of sources which may not be exempted under the Act and applicable USEPA regulations. For these reasons, USEPA takes final action to disapprove Ohio's submittal for failure to satisfy part D requirements.

Under section 179(a)(2), one of the sanctions set forth in section 179(b) shall apply unless the deficiency has been corrected within 18 months of the effective date of this disapproval. Extensive discussion of USEPA's sanctions procedures is given in the **Federal Register** of August 4, 1994, at 59 FR 39832. Pursuant to 40 CFR 52.31, unless a revised plan has been submitted and proposed for approval in the meantime, a requirement for two-for-one offsets shall apply to any permits issued after [insert date 18 months after 30 days from date of publication] for major new sources and modifications in nonattainment areas. Highway funding sanctions shall apply [insert date 24 months after 30 days from date of publication], again unless a revised plan has been submitted and proposed for approval in the meantime.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

USEPA's disapproval of the State request under section 110 and part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State enforceability. Moreover, USEPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, USEPA certifies that this disapproval action would not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 21, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: September 8, 1994

Valdas V. Adamkus,

Regional Administrator.

Chapter I, part 52, title 40 of the Code of Federal Regulationsis amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart KK—Ohio

2. Section 52.1879 is amended by adding paragraph (a) to read as follows:

§ 52.1879 Review of new sources and modifications.

(a) The requirements of sections 172, 173, 182, and 189 for permitting of major new sources and major modifications in nonattainment areas for ozone, particulate matter, sulfur dioxide, and carbon monoxide are not met, because Ohio's regulations exempt source categories which may not be exempted and because the State has not adopted the new permitting requirements of the Clean Air Act Amendments of 1990 in a clear or enforceable manner.

* * * * * *

[FR Doc. 94–23349 Filed 9–20–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Parts 52 and 81

[OH06–2–6229A, OH01–2–6230A, OH32–2–6231A; FRL–5073–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving a redesignation request and maintenance plan for Preble, Columbiana, and Jefferson Counties, Ohio as a revision to Ohio's State Implementation Plan (SIP) for ozone.

The revision is based on a request from the State of Ohio to redesignate these areas, and approve their maintenance plans, and on the supporting data the State submitted. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such change.

DATES: This final rule becomes effective on November 21, 1994 unless notice is received by October 21, 1994, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to:

William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the requested redesignation, maintenance plan, and other materials relating to this rulemaking are available for public inspection during normal business hours at the following addresses:

United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE–17J), Chicago, Illinois 60604; and Air Docket 6102, United States Environmental Protection, Agency, 401 M Street, SW., Washington, DC 20460. (It is recommended that you telephone William Jones at (312) 886–

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6058, before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: William Jones, Regulation Development Section, Air Enforcement Branch (AE-17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-6058.

SUPPLEMENTARY INFORMATION: Under Section 107(d) of the pre-amended Clean Air Act (CAA), the United States Environmental Protection Agency (USEPA) promulgated the ozone attainment status for each area of every State. For Ohio, Preble, Columbiana, and Jefferson Counties were designated as nonattainment areas for ozone. See 43 FR 8962 (March 3, 1978), and 43 FR 45993 (October 5, 1978). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. No. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. Pursuant to Section 107(d)(1)(C) of the CAA, Preble, Jefferson, and Columbiana Counties retained their designations of nonattainment for ozone by operation of law. See 56 FR 56694 (November 6, 1991). At the same time Preble, and Jefferson Counties were classified as transitional areas; and Columbiana County was classified as an incomplete data area.

The Ohio Environmental Protection Agency (OEPA) requested that Preble County be redesignated to attainment in a letter dated May 23, 1986; and that Jefferson and Columbiana Counties be redesignated to attainment in a letter dated July 14, 1986. On December 20, 1993, the United States Environmental Protection Agency (USEPA) proposed to disapprove the requested redesignations (see 58 FR 66334). The public comment period was from December 20, 1993, to January 19, 1994. In a January 18, 1994, letter, the State of Ohio requested a 90-day extension of the comment period. On February 18, 1994, the USEPA extended the comment period until April 19, 1994 (see 59 FR 8150). The OEPA submitted maintenance and contingency plans for the counties in a submittal dated April 14, 1994, and requested parallel processing of the submittal. The results of OEPA's public hearing and resulting revision to the maintenance and contingency plan was submitted in a letter dated August 10, 1994. Notwithstanding these submittals, no public comments specifically commenting on the proposed rulemaking were received during the extended comment period.

I. Review of the Requests

The State's May 23, 1986, and July 14, 1986, requests were previously reviewed in a proposed rulemaking published on December 20, 1993, (see 58 FR 66334) in which USEPA proposed to disapprove the requests due to a lack of maintenance and contingency plans and enforceability deficiencies in their Volatile Organic Compound (VOC) Reasonably Available Control Technology (RACT) regulations. Since that time the State has submitted additional information to address the basis of the proposed disapproval. The review of the previous submittal and the basic redesignation requirements are not summarized in this notice, but the reader is referred to the December 20, 1993, notice referenced above for a summary of the requirements and the previous submittal. The April 14, 1994, and August 10, 1994, submittals are summarized below and the requirements that were not met in the original submittal are addressed below

Section 176(c) of the Act requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 further provides that the conformity revisions to be submitted by States must be consistent with Federal conformity regulations that the Act required the USEPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of the final USEPA conformity regulations. When that date passed without such promulgation, USEPA's General Preamble for the implementation of Title I informed States that its conformity regulations would establish a submittal date. See 57 FR 13498, 13557 (April 16, 1992).

The USEPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and general conformity regulations on November 24, 1993 (58 FR 63214). These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under section 175A of the Act. Pursuant to section 51.396 of the transportation conformity rule and section 51.851 of the general conformity rule, the State of Ohio is required to submit SIP revisions containing transportation and general conformity criteria and procedures consistent with those established in the Federal rule by November 25 and 30, 1994, respectively. Because the deadline for such submittals has not yet come due, it is not an applicable requirement, under section 107(d)(3)(E)(v), for approval of this redesignation request.

A. Preble County

The maintenance plan provided for this county consists of an emissions and air quality summary; a mobile, area, and point source emissions inventory; and Permits-to-Install for all subject sources in Preble County.

The emissions summary for volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) are provided below:

TABLE 1.—VOC EMISSIONS IN TONS PER SUMMER DAY

Year	Point sources	Area sources	Mobile sources	Totals
1990	0.24	41.13	4.16	45.52
1995	0.27	41.33	2.53	44.12
2005	0.34	41.64	1.93	43.92

TABLE 2.—NO_X EMISSIONS IN TONS PER SUMMER DAY

Year	Point sources	Area sources	Mobile sources	Totals
1990	0.00	5.91	4.80	10.71
1995	0.00	6.16	3.96	10.12
2005	0.00	6.29	2.81	9.10

The total emissions are projected to decrease in the county, and, as a result, the county is expected to maintain the ozone air quality standard for the next ten (10) years. The mobile source NO_X and VOC emissions projections for the year 2005 will be the "budget" for transportation conformity purposes. The air quality monitoring data submitted by the State shows that the area is still in attainment of the National Ambient Air Quality Standards (NAAQS) for ozone.

Preble County, which was designated nonattainment prior to enactment of the Clean Air Act Amendments of 1990, must correct existing RACT rules for enforceability deficiencies. See 57 FR 13562. The State submitted copies of Permits-to-Install for all subject sources in the county. These permits indicate that no sources in the county are affected by a Volatile Organic Compound (VOC) Reasonably Available Control Technology (RACT) rule that has an enforceability deficiency. The one source that would have been affected (degreaser) was permanently shut down. This satisfies the requirement for correcting enforceability deficiencies in the county.

The maintenance plan also includes a contingency measure that the State will use to ensure maintenance of the NAAQS for ozone. The State has committed to lower Reid Vapor Pressure (RVP) gasoline as the contingency measure. This would be implemented in the case of a violation in the area. In order for the State to use lower RVP gasoline, a finding of necessity must first be made by USEPA under Section 211(c)(4)(C). If this finding of necessity is not provided, Ohio EPA has committed to choose an alternative unspecified emission control measure deemed appropriate based upon a consideration of cost-effectiveness, VOC reduction potential, economic and social considerations, or other factors that the State judges to be appropriate. This decision would be made and implemented within 12 months from the official notification by USEPA that a waiver would not be granted. OEPA also provided the following schedule for implementing the lower RVP measure:

TABLE 3.—SCHEDULE FOR IMPLEMENTING LOWER RVP

Date	Action/event
March 15, 1994	Submit draft rules to USEPA.
October 15, 1994 ..	Submit final rules to USEPA.
Trigger event	Monitored violation.
1 month from trigger.	Ohio EPA finding of violation announced. Ohio EPA submits request for program budget. Ohio EPA hires additional staff for program.
2 months from trigger.	Ohio EPA secures lab contracts.
3 months from trigger.	Ohio EPA purchases needed equipment.
4 months from trigger.	Ohio EPA initiates public awareness program. Ohio EPA secures lab equipment.
Six months from trigger.	Gasoline Dispensing Facilities achieve final compliance.

B. Jefferson County

The maintenance plan provided for this county consists of emissions and air quality summaries; and mobile, area, and point source emissions inventories.

The emissions summaries for volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) are provided below:

TABLE 4.—VOC EMISSIONS IN TONS PER SUMMER DAY

Year	Point sources	Area sources	Mobile sources	Totals
1990	1.13	6.50	8.51	16.14
1996	1.20	6.40	4.93	12.53
2005	1.33	6.30	4.11	11.74

TABLE 5.—NO_X EMISSIONS IN TONS PER SUMMER DAY

Year	Point sources	Area sources	Mobile sources	Totals
1990	378	2.7	4.7	385.4
1996	376	2.7	4.1	382.8
2005	340	2.6	3.4	346.0

The total emissions are projected to decrease in the county and, as a result, the county is expected to maintain the ozone air quality standard. The mobile source NO_X and VOC emissions projections for the year 2005 will be the budget for transportation conformity purposes. The air quality monitoring data submitted by the State shows that the area is still in attainment of the NAAQS for ozone.

The maintenance plan also includes a contingency measure that the State will use to ensure maintenance of the NAAQS for ozone. This is the same plan that is outlined above for Preble County.

This county is similar to Preble in that it is a transitional area. The main difference between them is that Jefferson County was never included in the post 1987 SIP call letters issued by USEPA to OEPA (dated May 26, 1988, and November 8, 1989), and was never cited as having RACT deficiencies, as Jefferson County was not in violation of the NAAQS. Thus Jefferson County is not subject to a requirement to correct RACT deficiencies.

C. Columbiana County

The maintenance plan provided for this county consisted of an emissions summary; and mobile, area, and point source emissions inventories.

The emissions summaries for volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) are provided below:

TABLE 6.—VOC EMISSIONS IN TONS PER SUMMER DAY

Year	Point sources	Area sources	Mobile sources	Totals
1990	1.89	10.40	11.69	23.98
1996	1.98	10.60	6.79	19.37
2005	2.25	10.80	5.65	18.70

TABLE 7.—NO_X EMISSIONS IN TONS PER SUMMER DAY

Year	Point sources	Area sources	Mobile sources	Totals
1990	0.06	4.60	7.00	11.66
1996	0.06	4.80	6.03	10.89
2005	0.07	4.90	5.05	10.02

The total emissions are projected to decrease in the county and, as a result, the county is expected to maintain the ozone air quality standard. The mobile source NO_X and VOC emissions projections for the year 2005 will be the budget for transportation conformity. The maintenance plan also includes a contingency measure that the State will use to ensure maintenance of the NAAQS for ozone. This is the same plan that is outlined above for Preble County.

This county is similar to Jefferson in that it was not included in the post 1987 USEPA SIP call letters to OEPA, and was never cited as having RACT deficiencies, as Columbiana County was not in violation of the NAAQS. Thus Columbiana County is not subject to a requirement to correct RACT deficiencies.

Rulemaking Action

The ozone redesignation requests for Preble, Jefferson, and Columbiana Counties are approved as meeting conditions of the CAA in section 107(d)(3)(E) for redesignation, since: (1) The area has attained the NAAQS for ozone; (ii) The Administrator has fully approved the applicable implementation plan for the area under Section 110(k); (iii) The improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations; (iv) The Administrator is fully approving maintenance plans for the counties as meeting the requirements of section 175A; and (v) Ohio has met all requirements applicable to the counties under section 110 and part D.

Because USEPA considers this action to be noncontroversial and routine, the USEPA is approving it without prior approval. This action will become effective on November 21, 1994. However, if the USEPA receives adverse comments by October 21, 1994, then the USEPA will publish a document that withdraws the action, and will address these comments in the final rule on the requested redesignation and SIP revision which has been proposed for approval in the proposed rules section of this **Federal Register**. The comment

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period will not be extended or reopened.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table three (3) action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table two (2) and three (3) SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for a period of two (2) years. USEPA has submitted a request for a permanent waiver for Table two (2) and Table three (3) SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993. OMB has exempted this regulatory action from E.O. 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 21, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Port 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

40 CFR Part 81

Air pollution control.

Dated: September 8, 1994.

Valdas V. Adamkus,

Regional Administrator.

Chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart KK—[Amended]

2. Section 52.1885 is amended by adding a new paragraph (a)(5) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(a) * * *

(5) The ozone maintenance plans for Preble, Columbiana, and Jefferson Counties.

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PURPOSES—OHIO

1. The authority citation of part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.336, the ozone table is amended by revising the entries for Columbiana, Preble, and Jefferson Counties to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * *	*	*	*	*
Columbiana County Area Columbiana County	October 21, 1994.	Attainment		
* * *	*	*	*	*
Preble County Area Preble County	October 21, 1994.	Attainment		
Steubenville Area Jefferson County	October 21, 1994.	Attainment		
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 94–23296 Filed 9–20–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[NC66–1–6567a; FRL–5071–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On April 27, 1994, the North Carolina Department of Environmental Management (NCDEM), submitted a maintenance plan and a request to redesignate the Winston-Salem/Forsyth County area from nonattainment to attainment for carbon monoxide (CO). The CO nonattainment area consists only of Forsyth County. Under the Clean Air Act as amended in 1990 (CAA), designations can be revised if sufficient data is available to warrant such revisions. In this action, EPA is approving the North Carolina request because it meets the maintenance plan and redesignation requirements set forth in the CAA.

DATES: This final rule will be effective November 7, 1994, unless critical or adverse comments are received by October 21, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to Ben Franco, at the EPA Regional Office listed below. Copies of the redesignation request and the State of North Carolina's submittal are available for public review during normal business hours at the addresses listed below.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460;

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia, 30365;

Department of Environment, Health and Natural Resources, P.O. Box 29535, Raleigh, North Carolina, 27626–0535.

FOR FURTHER INFORMATION CONTACT: Ben Franco of the EPA Region IV Air Programs Branch at (404) 347–3555, ext. 4211, and at the above address.

SUPPLEMENTARY INFORMATION:

I. Background

In a March 15, 1991, letter to the EPA Region IV Administrator, the Governor of North Carolina recommended the area of Winston-Salem/Forsyth County be designated as nonattainment for CO as required by section 107(d)(1)(A) of the 1990 Clean Air Act Amendments (CAA) (Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). The city was designated nonattainment and classified as "moderate" under the provisions outlined in sections 186 and 187 of the CAA. (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR part 81, § 81.334.) Because Winston-Salem had a design value of 9.7 ppm (based on 1988 and 1989 data), the area was considered moderate. The CAA established an attainment date of December 31, 1995, for all moderate CO areas.

Forsyth County has ambient monitoring data showing attainment of the CO NAAQS, during the period from 1990 through 1993. The area has continued to monitor attainment to date in 1994. Therefore, in an effort to comply with the CAA and to ensure continued attainment of the NAAQS, on April 27, 1994, the State of North Carolina submitted a CO redesignation request and a maintenance plan for the Winston-Salem/Forsyth County area. The request for redesignation submittal and maintenance plan was approved by NCEMC on April 14, 1994. North Carolina submitted evidence that a public hearing was held on March 25 and 28, 1994.

II. Evaluation Criteria

The 1990 CAA Amendments revised section 107(d)(1)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS;

2. The area must meet all applicable requirements under section 110 and Part D of the CAA;

3. The area must have a fully approved SIP under section 110(k) of CAA;

4. The air quality improvement must be permanent and enforceable; and,

5. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA.

III. Review of State Submittal

On June 14, 1994, Region IV determined that the information received from the NCDEM constituted a complete redesignation request under the general completeness criteria of 40 CFR part 51, appendix V, §§ 2.1 and 2.2.

The North Carolina redesignation request for the Winston-Salem/Forsyth County area meets the five requirements of section 107(d)(3)(E), noted above. The following is a brief description of how the State has fulfilled each of these requirements. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

1. Attainment of the CO NAAQS

The North Carolina request is based on an analysis of quality assured CO air monitoring data which is relevant to the maintenance plan and to the redesignation request. The ambient air CO monitoring data for calendar year 1990 through calendar year 1993 shows no violations of the CO NAAQS in the Winston-Salem/Forsyth County area. The most recent ambient CO data for the calendar year 1994 continue to show no violations in the Winston-Salem/Forsyth County area. Because the Winston-Salem/Forsyth County area has complete quality assured data showing no more than one exceedance of the standard per year over at least two consecutive years, the area has met the first statutory criterion of attainment of the CO NAAQS (40 CFR 50.9 and appendix C). North Carolina has committed to continue monitoring in this area in accordance with 40 CFR part 58.

2. Meeting Applicable Requirements of Section 110 and Part D

The 1990 CAA Amendments, modified section 110(a)(2) and, under part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the CAA, EPA has reviewed the SIP to ensure that it contains all measures that were due under the 1990 Amendments prior to or at the time the State submitted its redesignation request.

A. Section 110 Requirements

Although section 110 was amended by the 1990 Amendments, the Winston-Salem/Forsyth County SIP meets the requirements of amended section 110(a)(2). The State implemented an Oxygenated Fuel program for the areas of Raleigh/Durham and Winston-Salem during the 1992 and 1993 winter seasons. EPA has analyzed the SIP and determined that it is consistent with the

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requirements of amended section 110(a)(2).

B. Part D Requirements

Before Winston-Salem/Forsyth County may be redesignated to attainment, it also must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 3 of part D establishes additional requirements for nonattainment areas classified under section 186(a). The Winston-Salem area was classified as moderate (See 40 CFR 81.334). Therefore, in order to be redesignated to attainment, the State must meet the applicable requirements of subpart 1 of part D, specifically sections 172(c) and 176, and the requirements of subpart 3 of part D, which became due on or before April 27, 1994, the date the State submitted a complete redesignation request. EPA interprets section 107(d)(3)(v) to mean that, for a redesignation request to be approved, the State must have met all requirements that become applicable to the subject area prior to or at time of the submission of the redesignation request. The area will become subject to the CAA that come due subsequent to the submission of the redesignation request until the request is approved (See section 175A(c)) and if the redesignation is disapproved, the State remains obligated to fulfill those requirements.

B1. Subpart 1 of Part D—Section 172(c) sets forth general requirements applicable to all nonattainment areas. Under section 172(b), the section 172(c) requirements are applicable as determined by the Administrator but no later than three years after an area is designated as nonattainment. Because Winston-Salem was designated as a new CO nonattainment area on June 6, 1992, the requirements are not due until June 6, 1995. Therefore, the submission of a New Source Review program and contingency measures required under 172(c) are not yet due. The Region is, however, in the process of approving the State's revised NSR regulation which includes CO nonattainment areas. Upon redesignation of these areas to attainment, the Prevent of Significant Deterioration (PSD) provisions contained in part C of title I are applicable. On June 12, 1975, December 30, 1976, June 19, 1978, August 7, 1980, February 23, 1982, and August 15, 1994, EPA approved revisions to the State of North Carolina's PSD program (See 40 FR 25004, 41 FR 56805, 43 FR 26388, 45 FR 52676, 47 FR 7836, 59 FR 41708).

B2. Subpart 1 of Part D—Section 176(c) of the CAA requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act ("transportation conformity"). Section 176 further provides that the conformity revisions to be submitted by States must be consistent with Federal conformity regulations that the CAA required EPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, EPA's General Preamble for the Implementation of Title I informed States that its conformity regulations would establish a submittal date (see 57 FR 13498, 13557 (April 16, 1992)).

EPA promulgated final conformity regulations on November 24, 1993 (58 FR 62188) and November 30, 1993 (58 FR 63214). These conformity rules require that the States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to § 51.396 of the transportation conformity rule and § 51.851 of the general conformity rule, the State of North Carolina is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, North Carolina is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Because the deadlines for these submittals have not yet come due, they are not applicable requirements under section 107(d)(3)(E)(v) and, thus, do not affect approval of this redesignation request.

B3. Subpart 3 of Part D—Under section 187(a) areas designated nonattainment for CO under the amended CAA and classified as moderate were required to meet several requirements by November 15, 1992. North Carolina was required to submit a 1990 Emission Inventory. EPA has reviewed and is approving in this notice North Carolina's 1990 Base Year Emission Inventory. The requirement to make I/M corrections are not applicable to Forsyth County since it was not a pre-enactment nonattainment area, and therefore did not have an existing program before the CAA. Section 211(m) further required North Carolina to submit an oxygenated fuels regulation for the Winston-Salem area. North Carolina submitted a complete Oxygenated Fuel SIP on November 20, 1992. The Oxygenated Fuel Program is fully adopted and has been approved by EPA (See 59 FR 33683 published on June 30, 1994). Therefore, all Subpart 3 requirements that were applicable at the time the State submitted its redesignation request have been met.

3. Fully Approved SIP Under Section 110(k) of the CAA

Based on EPA's approval of SIP revisions under the 1990 Amendments, EPA has determined that the Winston-Salem/Forsyth County area has a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and Part D as discussed above.

4. Improvement in Air Quality Due to Permanent and Enforceable Measures

The control measures to which the emission reductions are attributed mostly to the Federal Motor Vehicle Control Program (FMVCP). The fleet turnover under the FMVCP produced annual CO emission reductions of 6 percent.

In association with its emission inventory discussed below, the State of North Carolina has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the CO emissions in the base year are not artificially low due to local economic downturn. EPA finds that the combination of certain existing EPA-approved SIP and federal measures contribute to the permanence and enforceability of reduction in ambient CO levels that have allowed the area to attain the NAAQS.

5. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. In this notice, EPA is approving the State of North Carolina's maintenance plan for the Winston-Salem/Forsyth County area because EPA finds that North Carolina's submittal meets the requirements of section 175A.

A. Emissions Inventory—Base Year Inventory

On November 16, 1992, the State of North Carolina submitted a comprehensive inventory of CO emissions from the Winston-Salem/Forsyth County area. The inventory includes emissions from area, stationary, and mobile sources using 1990 as the base year for calculations. The 1990 inventory is considered representative of attainment conditions because the NAAQS was not violated during 1990.

The State submittal contains the detailed inventory data and summaries by county and source category. The comprehensive base year emissions inventory was submitted in the National Emission Data System format. Finally, this inventory was prepared in accordance with EPA guidance. It also contains summary tables of the 1990 base year and was projected to the year 2005.

CO EMISSIONS INVENTORY SUMMARY

[Tons per day]

Year	Area	Non-road	Mobile	Point	Total
1990	32.82	0.95	285.79	4.44	324.00
1993[1]	33.40	0.97	186.59	4.57	225.53
1996	34.40	0.99	212.6	64.71	252.76
1999	36.05	1.01	195.93	4.85	237.84
2002	37.09	1.03	187.23	4.97	230.32
2005	37.83	1.04	183.90	5.06	227.83

[1] Oxygenated Fuel program was in place.

B. Demonstration of Maintenance—Projected Inventories

Total CO emissions were projected from 1990 base year out to 2005. These projected inventories were prepared in accordance with EPA guidance. North Carolina will not continue the Oxygenated Fuel program in Winston-Salem. The projections show that calculated CO emissions, assuming no oxygenated fuels program after 1993, are not expected to exceed the level of the base year inventory during this time period. Therefore, it is anticipated that Winston-Salem will maintain the CO standard without the program, and the program would no longer be implemented following redesignation. In case of an air quality problem, the program may be implemented as a contingency measure.

C. Verification of Continued Attainment

Continued attainment of the CO NAAQS in the Winston-Salem/Forsyth County area depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The State has also committed to submit periodic inventories of CO emissions every three years.

D. Contingency Plan

The level of CO emissions in the Winston-Salem/Forsyth County area will largely determine its ability to stay in compliance with the CO NAAQS in the future. Despite the State's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Also, section 175(A)(d) of the CAA requires that the contingency provisions include a requirement that the State implement all measures contained in the SIP prior to redesignation. Therefore, North Carolina has provided contingency measures with a schedule for implementation in the event of a future CO air quality problem. The plan contains triggering mechanisms to determine when contingency measures are needed. The Winston-Salem/Forsyth County contingency plan's primary trigger will be a violation of the CO NAAQS. A secondary trigger will be activated within 30 days of the State finding either: (1) The periodic emissions inventory exceeds the base inventory by 10 percent or more, or (2) a monitored air quality exceedance pattern indicates that an actual CO NAAQS violation may be imminent. A pattern will be deemed to indicate an imminent violation if: (a) One exceedance of the standard per year has been monitored at a single monitor for two successive years and those exceedances are at least greater than 20 percent above the standard (i.e., 10.8 ppm or above) or (b) the monitored air quality exceedance pattern otherwise suggest that a CO NAAQS violation is likely. Within 45 days of the trigger, the State will activate the pre-adopted regulations discussed below to become effective at the beginning of the next CO season. When other measures are needed to ensure that a future violation of the CO NAAQS does not occur, the State will complete the adoption process within one year of the secondary trigger. As the State has demonstrated that the area will continue to maintain the standard without the Oxygenated Fuels program, the State will make that program a contingency measure that will be implemented in the event of a trigger being activated. In case of a primary or secondary trigger, NCDEM will implement an oxygenated gasoline fuel program or expand an already-existing program's coverage. In addition, NCDEM may do one or a combination of the following: expand the I/M program coverage; upgrade to an enhanced I/M program; institute transportation control measures; or implement an employee commute options program. EPA finds that the contingency measures provided in the State submittal meet the requirements of section 175A(d) of the CAA.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the State has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

Final Action

EPA is approving the Winston-Salem/Forsyth County CO maintenance plan because it meets the requirements set forth in section 175A of the CAA. In addition, the Agency is approving the request and redesignating the Winston-

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Salem/Forsyth County CO area to attainment, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 7, 1994 unless, by October 21, 1994 adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 7, 1994.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The CO SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the CO NAAQS. This final redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the CO emission limitations and restrictions contained in the approved CO SIP. Changes to CO SIP regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of non-implementation (section 179(a) of the CAA) and in a SIP deficiency call made pursuant to sections 110(a)(2)(H) and 110(k)(2) of the CAA.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, it does not have any economic impact on any small entities. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. Accordingly, I certify that the approval of the redesignation request will not have an impact on any small entities.

List of Subjects

40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

40 CFR Part 81

Air pollution control, National parks, and Wilderness areas.

Dated: September 2, 1994.

Joe R. Franzmathes,

Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart II—North Carolina

2. Section 52.1770 is amended by adding paragraph (c)(75) to read as follows:

§ 52.1770 Identification of plan.

* * * * * *

(c) * * *

(75) The redesignation and maintenance plan for Winston-Salem/Forsyth County submitted by the North Carolina Department of Environmental Management on April 27, 1994, as part of the North Carolina SIP. The emission inventory projections are included in the maintenance plan.

(i) Incorporation by reference.

(A) Maintenance Plan for the Forsyth County Carbon Monoxide Nonattainment Area adopted on April 14, 1994.

(ii) Other material. None.

PART 81—[AMENDED]

Subpart C—Section 107 Attainment Status Designations

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.334 the table for "North Carolina-Carbon Monoxide" is amended by revising the entry for the Winston-Salem/Forsyth County area to read as follows:

§ 81.334 North Carolina.

* * * * *

NORTH CAROLINA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * * * * *				
Winston-Salem Area				
Forsyth County	November 7, 1994			
* * * * * *				

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 94–23294 Filed 9–20–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[OH31–2–6361; FRL–5066–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is approving maintenance plans and redesignation of Morgan and Washington Counties, Ohio, from nonattainment to attainment for sulfur dioxide (SO_2), and is deferring action on the maintenance plans and redesignation request for Gallia and Coshocton Counties. This action for Morgan and Washington Counties is based on Ohio's request, and provides that the new source review requirements for nonattainment areas will no longer apply for SO_2 in these two counties.

EFFECTIVE DATE: This final rule is effective on October 21, 1994.

ADDRESSES: Copies of the maintenance plan and redesignation request, public comments on the rulemaking, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone John Summerhays at (312) 886–6067 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE–17J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays at (312) 886–6067.

SUPPLEMENTARY INFORMATION:

I. Summary of Proposed Rulemaking

A subsequent submittal provided stack test data for one of the relevant facilities. On March 18, 1994, at 59 FR 12886, USEPA proposed to approve maintenance plans and redesignation of Morgan and Washington Counties, Ohio, from nonattainment to attainment for sulfur dioxide (SO_2). In that document, USEPA did not propose to take action on the maintenance plans and redesignation request for Gallia and Coshocton Counties. The notice of proposed rulemaking (NPR) included a background synopsis of the State's submittals and the applicable criteria, a full review of the State's submittals, and a summary of the proposed action. The NPR contained five subsections corresponding to the five criteria for redesignation from nonattainment to attainment given in section 107(d)(3)(E) of the Clean Air Act. In the NPR, USEPA made the following proposed findings: (i) All four counties are attaining the 24-hour air quality standard, Morgan and Washington Counties are attaining the 3-hour standard, and USEPA did not evaluate whether Coshocton and Gallia Counties are attaining the 3-hour standard; (ii) USEPA considered approval of the Morgan and Washington County plans under section 110(a)(2) to satisfy section 107(d)(3)(E)(ii) for these counties, but "based on questions as to whether (Federal Implementation Plans (FIPs)) satisfy the requirements of section 107(d)(3)(E)(ii)," USEPA deferred action on Ohio's request for Coshocton and Gallia Counties; (iii) USEPA judged all four counties to have permanent and enforceable emission reductions; (iv) USEPA judged the maintenance plans for Morgan and Washington Counties adequate, and did not evaluate the maintenance plans for Coshocton and Gallia Counties; and (v) USEPA judged that Ohio had satisfied the requirements of section 110 and part D of title I for Morgan and Washington Counties, and did not evaluate whether these requirements were satisfied for Coshocton and Gallia Counties. On the basis of this review, USEPA proposed to approve the maintenance plans and redesignation request for Morgan and Washington Counties and did not propose action for Coshocton and Gallia Counties.

II. Public Comments/USEPA Responses

One letter commenting on the proposed rulemaking was received, submitted by the Ohio Environmental Protection Agency (OEPA). This letter included as an attachment a letter commenting on the same issues, sent from Ohio Governor Voinovich to Administrator Carol Browner prior to publication of the notice of proposed rulemaking. The comments in these letters and USEPA's responses follow:

Comment: Ohio supports the proposed action with respect to Morgan and Washington Counties.

Response: USEPA received no adverse comments on this part of its proposal, and, for the reasons provided in the proposal, concludes that the maintenance plans and redesignation request for these counties should be approved.

Comment: The State objects to USEPA's decision to defer action on the redesignation of Coshocton and Gallia Counties, and in particular presents arguments that areas subject to FIP limits (promulgated under section 110(c) of the Clean Air Act) rather than SIP limits (approved under section 110(k) or its equivalent) may be redesignated. Ohio argues that FIP limits are equivalent to SIP limits. The State cites language previously in section 110(d) (essentially moved to section 302(q) by the Clean Air Act Amendments of 1990) that the "implementation plan" includes both approved State submittals and federally promulgated measures. The State comments that if areas with FIPs could not be redesignated, then "U.S. EPA could never promulgate a FIP because such a plan would not provide for attainment redesignations and thus would be incomplete," and "nonattainment areas would be frozen, even though air quality may be demonstrably improved."

Also, the Governor commented that designations are based on air quality and that FIPs provide for permanent air quality improvement. The Governor concluded that Coshocton and Gallia Counties have been exhibiting attainment for 14 years, and that obstruction to the attainment status of these counties is based on a narrow interpretation of the Clean Air based on "periodic changes in review requirements," and is inappropriate and unnecessary.

Response: Section 107(d)(3)(E) of the Act, as amended in 1990, precludes USEPA from redesignating areas subject to FIPs, such as Coshocton and Gallia Counties to attainment. That section of the Act prohibits USEPA from redesignating a nonattainment area to attainment unless the area satisfies certain explicit statutory criteria. It provides that:

The Administrator may not promulgate a redesignation of a nonattainment area (or portion thereof) to attainment unless—

(i) The Administrator determines that the area has attained the national ambient air quality standard;

(ii) The Administrator has fully approved the applicable implementation plan for the area under section 110(k);

(iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

this final rule does not affect the finality

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(v) The State containing such area has met all requirements applicable to the area under section 110 and part D.

As is evident, several criteria must be satisfied for an area to be redesignated to attainment apart from attaining the national ambient air quality standard and the determination that improvements in air quality are due to permanent and enforceable reductions in emissions. It is those criteria, especially that in clauses (ii), (iv) and (v), that are pertinent with respect to the issue of whether a nonattainment area may be redesignated to attainment if there is FIP, rather than a SIP, in place.

First, the language of clause (ii) requires that for USEPA to redesignate an area, USEPA must have "fully approved the applicable implementation plan for the area under section 110(k)." This clause clearly requires that a SIP be in place. Only SIPs are approved by USEPA; FIPs are not approved, but promulgated. More importantly, the clause refers to approval under section 110(k), the provision of the Act setting forth the procedure for USEPA to act on SIP revisions submitted to the Agency by states. Thus, a FIP does not qualify as a plan approved under section 110(k). In contrast, the language of section 302(q) defines the term "applicable attainment plan" as meaning a FIP or a SIP. Thus, it defines "applicable implementation plan" as "the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110 (a SIP, which is referred to in section 107(d)), or promulgated under section 110(c) (a FIP, which is not referred to in section 107(d)(3)(E)(ii))."

Second, clause (iv) requires that USEPA have fully approved a maintenance plan as meeting the requirements of section 175A. Section 175A(a) requires that each State that submits a redesignation request to submit "a revision of the applicable State implementation plan to provide for maintenance of the national primary ambient air quality standard," and thus clearly presupposes that a SIP, not a FIP, will be in place prior to redesignation.

Third, clause (v) requires that, in order to have an area redesignated to attainment, the State containing the area must meet "all requirements applicable to the area under section 110 and part D." As these requirements concern various SIP submissions, this clause also implicitly means that USEPA cannot approve a redesignation request for an area that is subject to a FIP.

Thus, the language of section 107(d)(3) plainly prohibits USEPA from redesignating an area to attainment if that area is subject to a FIP. This outcome is fully consistent with a fundamental policy underlying the law—that the states have primary responsibility for attaining and maintaining air quality standards and that FIPs are intended to be only short-term measures to fill gaps in control strategies. Further evidence of this policy is provided by the fact that sanctions imposed under section 179 due to a state's failure to comply with its SIP obligations are not suspended or lifted due to USEPA's promulgation of a FIP pursuant to its obligations under section 110(c).

USEPA also notes that areas subject to FIPs are not frozen in place as nonattainment areas. Assuming that the area continued to satisfy the national ambient air quality standards, the area would be eligible for redesignation to attainment once the state submitted approvable SIP revisions as required by the Act, and submitted an approvable state maintenance plan.

Comment: In another argument for redesignating areas with FIP-based plans, the State interprets section 110(n)(1), the "Savings Clause," as providing that "[t]he authority of USEPA to redesignate nonattainment areas under a section 110(c) plan would remain unchanged as a result of the 1990 Amendments." The State believes that former section 110(d) provided this authority prior to the 1990 amendments.

Response: Section 110(n)(1) authorizes the enforcement of plan elements approved prior to 1990. It does not authorize USEPA to ignore post-1990 Clean Air Act criteria in judging the acceptability of States' requests. The requirement now in section 107(d)(3)(E)(ii) requiring a plan approved under section 110(k) was not included in the pre-1990 Clean Air Act or in USEPA's guidance. However, this requirement is applicable now under the Act.

Comment: The Governor commented that "[a]reas with FIPs have been redesignated in Ohio in the past," indicating that USEPA agreed that FIPs provide for permanent air quality improvement, and indicating further that Gallia and Coshocton Counties should be redesignated.

Response: Regardless of the situation prior to the enactment of the Clean Air Act Amendments of 1990, the requirements of section 107(d)(3)(E) are applicable under the Act now, and must be satisfied as a prerequisite for redesignating an area from nonattainment to attainment.

Comment: The State comments that USEPA should not use 1.95 as the conversion factor from coal sulfur content to sulfur dioxide emissions, but should instead use the factor of 1.9 given in Supplement F of AP–42 (dated July 1993).

Response: USEPA agrees with the State's comment. Since the fuel quality information indicated the air quality standards being met using a 1.95 conversion factor, the fuel quality information also indicates the air quality standards being met using a 1.9 conversion factor.

III. Rulemaking Action

USEPA has reviewed the State's submittals and other related material and, for the reasons stated in the proposal, has concluded that the maintenance plan and redesignation request for Morgan and Washington Counties satisfy the applicable criteria for approval. Consequently, USEPA approves the maintenance plan for SO_2 for Morgan and Washington Counties, and redesignates these two counties to attainment. USEPA continues to defer action with respect to Ohio's maintenance plans and redesignation requests for Coshocton and Gallia Counties.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action under the processing procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 22291 for a period of 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 21, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Air pollution control, Intergovernmental relations, Sulfur oxides.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: August 25, 1994.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart KK—Ohio

2. Section 52.1881 is amended by adding paragraph (a)(12) to read as follows:

§ 52.1881 Control strategy: Sulfur oxides (sulfur dioxide).

(a) * * *

(12) In a letter dated June 25, 1992, Ohio submitted a maintenance plan for sulfur dioxide in Morgan and Washington Counties.

* * * * *

PART 81—[AMENDED]

1. The authority citation of part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.336 the "Ohio-SO_2" table is amended by revising the entries for "Morgan County" and "Washington County" to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
. . . .	.	.	.	.
Morgan County				X
. . . .	.	.	.	.
Washington County				X
. . . .	.	.	.	.

* * * * *

[FR Doc. 94–23109 Filed 9–20–14; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 81

[PA46–1–6631; FRL–5075–7]

Designation of Areas for Air Quality Planning Purposes; State of Pennsylvania; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendment.

SUMMARY: On December 21, 1993 (58 FR 67334), EPA took final action to redesignate areas as nonattainment for the PM–10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) and sulfur dioxide (SO_2) national ambient air quality standards (NAAQS). This notice corrects the entry for "Warren County" in the section 107 attainment designations table for "Pennsylvania—SO_2" displayed at 58 FR 67345. "Mead Twp" shall be classified as "Cannot be classified" only and not "Does not meet secondary standards", "Clarendon Boro" shall be classified as "Cannot be classified". "Warren Boro" shall be classified as "Does not meet secondary standards" in addition to the classification of "Does not meet primary standards". The remainder of the "Warren County" entry is complete and accurate.

EFFECTIVE DATE: January 20, 1994.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David J. Campbell, Air & Radiation Programs Branch (3AT11), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, phone: (215) 597–9781.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: August 29, 1994.

Stanley Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 81 is amended as follows.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart C—Section 107 Attainment Status Designations

2. In § 81.339 the table for "Pennsylvania—SO_2" is amended by revising the entry for "Warren County" to read as follows:

§ 81.339. Pennsylvania.

* * * * *

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PENNSYLVANIA—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
. . . . .				
VI. Northwest Pennsylvania Intrastate AQCR:				
(A) Warren County:				
Conewango Twp	X			
Mead Twp			X	
Clarendon Boro			X	
Warren Boro	X	X		
Pleasant Twp	X	X		
Glade Twp	X	X		
. . . . .				

. . . . . .

[FR Doc. 94–23352 Filed 9–20–94; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7084

[CO–932–4210–06; COC–046748]

Partial Revocation of Public Land Order No. 2632; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects 78.79 acres of public land withdrawn for the Bureau of Reclamation Savery-Pot Hook Project. The land is no longer needed for reclamation purposes, and this revocation is necessary to enable the disposal of the land through exchange.

EFFECTIVE DATE: September 21, 1994.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 2632, which withdrew public land for the Bureau of Reclamation Savery-Pot Hook Project, is hereby revoked insofar as it affects the following described land:

Sixth Principal Meridian

T. 12 N., R. 89 W.,
Sec. 30, lots 13 and 20.

The area described contains 78.79 acres in Moffat County.

2. At 9:00 a.m. on September 21, 1994 the land described in paragraph 1 of this order will be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, the April 24, 1994, segregation of record, and the requirements of applicable law.

3. If the exchange proposed on April 25, 1994, is not consummated, the land will open to the operation of the public land and mineral laws at 9:00 a.m on April 25, 1999, through expiration of the land exchange segregation, or sooner if published in the **Federal Register**.

Dated: September 9, 1994.

Bob Armstrong,
Assistant Secretary of the Interior.
[FR Doc. 94–23284 Filed 9–20–94; 8:45 am]
BILLING CODE 4310–JB–P

43 CFR Public Land Order 7085

[ID–943–4070–02; IDI–04790–01]

Public Land Order No. 7049, Correction; Partial Revocation of Public Land Order No. 1703; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order will add a flowage easement estate reservation on 1.40 acres which was omitted in Public Land Order No. 7049.

EFFECTIVE DATE: September 21, 1994.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

A flowage easement is hereby added to Public Land Order No. 7049, 59 FR 25338–25339, May 16, 1994. Accordingly, Public Land Order No. 7049 is hereby corrected by adding at the end of the publication on page 25339, first column, line 8, the following:

3. A flowage easement estate will be reserved for the Department of the Army, Corps of Engineers on the following lands:

Boise Meridian

T. 56 N., R. 4 W.,
Sec. 34, Those portions of lots 3 and 4 lying southerly of the Burlington Northern Railroad right-of-way (formerly the Great Northern Railway).

The area described contains 1.40 acres in Bonner County.

Dated: September 9, 1994.

Bob Armstrong,
Assistant Secretary of the Interior.
[FR Doc. 94–23285 Filed 9–20–94; 8:45 am]
BILLING CODE 4310–GG–P

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petition To Add the Flatwoods Salamander to the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of recision of previous 90-day petition finding for the flatwoods salamander, and issuance of a new finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) rescinds the previous 90-day finding made on a petition to list the flatwoods salamander (*Ambystoma cingulatum*) as an endangered or threatened species pursuant to the Endangered Species Act (Act) of 1973,

as amended. The previous finding, made on May 6, 1993, indicated that the petition did not present substantial information that the petitioned action may be warranted. The current finding, based upon recent changes to the Service's draft internal guidance for petition management, is that the petition presents substantial information that the requested action may be warranted. A formal review of the species' status is initiated pursuant to the current 90-day finding.

DATES: The finding announced in this document was made on September 16, 1994. To be considered in the 12-month finding for this petition, information and comments should be submitted to the Service by November 21, 1994.

ADDRESSES: Comments and information concerning this petition should be sent to the U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. The petition, finding and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Linda LaClaire at the above address.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act, as amended, requires that the Service make a finding on whether a petition to list, delist or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, the finding shall be made within 90 days following receipt of the petition and promptly published in the **Federal Register**. The Service must also commence a timely status review of the petitioned species if its accompanying information results in a positive finding. Following a positive 90-day finding, Section 4(b)(3)(B) of the Act requires the Service to make a 12-month finding as to whether the petitioned action is: (1) Not warranted, (2) warranted; or (3) warranted but precluded by other listing activity.

On May 18, 1992, the Service received a petition from the Biodiversity Legal Foundation and Ms. Elizabeth Carlton to list the flatwoods salamander as endangered or threatened and to designate critical habitat. The petition states that available evidence indicates the population of the flatwoods salamander has declined precipitously, that it is on the threshold of extirpation in many locations, that it has been extirpated from a large portion of its historic range, and that it has suffered rapid decline in National Forests. After a review of all available information, the Service made a 90-day petition finding on May 6, 1993, that the petition did not present substantial information that the petitioned action may be warranted; the finding was announced in the **Federal Register** of May 12, 1993 (58 FR 27986). The primary basis for the finding was that the petitioners did not present any information not already in possession of the Service, and a status review of the species was already in progress through the inclusion of the species as a category 2 candidate in the Service's comprehensive notice of review for animal candidates. Category 2 candidates are taxa for which information in the possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support proposed rules.

On August 12, 1993, the Biodiversity Legal Foundation and Elizabeth Carlton notified the Service of intent to file a lawsuit challenging the 90-day finding, and on April 25, 1994, suit was filed. In response to the agreed settlement, and based upon the Service's current draft guidance relating to petitions for listing category 2 candidate species, the 90-day finding made on May 6, 1993, is rescinded, and it is replaced by a finding indicating that the petitioners have presented substantial information that the requested action may be warranted. The Endangered Species Act does not indicate that designation of critical habitat is a petitionable action, but the Service will consider such designation in the event that the flatwoods salamander is proposed for listing. A status review of the flatwoods salamander is currently in progress in connection with the Service's notice of review for animal candidates. Additionally, the Service hereby announces its formal review of the species' status pursuant to this 90-day petition finding. Public comments regarding population trends, biological vulnerability and threats to this species should be sent to the office specified in the **ADDRESSES** section.

Author

The primary author of this document is Ms. Linda LaClair (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1544).

Dated: September 16, 1994.

Mollie H. Beattie,
Director, Fish and Wildlife Service.
[FR Doc. 94–23476 Filed 9–19–94; 1:42 pm]
BILLING CODE 4310–55–M

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Proposed Rules

Federal Register
Vol. 59, No. 182
Wednesday, September 21, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–127–AD]

Airworthiness Directives; de Havilland Model DHC–8–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–100 and –300 series airplanes. This proposal would require an inspection to verify the integrity of the shield grounds for the cable harness of the electronic engine control (EEC), and correction of any discrepancy. This proposal also would require measurement of the electrical resistance of certain shield grounds, and repair, if necessary. This proposal is prompted by a report of an engine flameout after a lightning strike, due to several shields for the cable harness of the EEC not being properly grounded to the airframe. The actions specified by the proposed AD are intended to prevent engine flameout due to insufficient protection of the EEC.

DATES: Comments must be received by October 31, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate ANM–103, Attention: Rules Docket No. 94–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington, or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Richard Fiesel, Aerospace Engineer, Propulsion Branch, ANE–174, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–7421; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–127–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 25, 1989, the FAA issued AD 85–14–51 R2, amendment 39–6207 (54 FR 19875, May 9, 1989), which is applicable to certain de Havilland Model DHC–8–100 series airplanes. That AD requires revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to prohibit takeoff, landing, and climb in the vicinity of lightning or thunderstorms; and to require continuous ignition operation during takeoffs, takeoff climb to 1500 feet above ground level, final approach, and landing within 5 nautical miles of lightning and thunderstorms. That AD also requires the installation of four modifications designed to protect the electronic engine control (EEC) from the effects of lightning strike, which, when accomplished, terminates the requirements of that AD and allows for the removal of the AFM limitations.

Since issuance of that AD, Transport Canada Aviation, which is the airworthiness authority for Canada, has advised the FAA of a report of an engine flameout after a lightning strike on a Model DHC–8 series airplane. Modifications required by AD 85–14–51 R2 had been accomplished on that airplane. Investigation revealed that the engine flameout occurred because several shields for the cable harness of the EEC were not properly grounded to the airframe. This condition, if not corrected, could result in insufficient protection of the EEC and may lead to an engine flameout following a lightning strike.

Bombardier has issued Service Bulletins S.B. 8–73–18 (for Model DHC–8–100 series airplanes) and S.B. 8–73–19 (for Model DHC–8–300 series airplanes), both dated April 29, 1994, which describe procedures for a visual inspection to verify the integrity of the shield grounds for the cable harness of the EEC, and correction of any discrepancy. The service bulletins also describe procedures for measurement of the electrical resistance of certain shield grounds, and repair, if necessary. The repair procedures consist of ensuring that the metal overbraid (which provides lightning protection for the EEC cable harness) is electrically bonded to the connector and the electrical receptacles are electrically bonded to the airframe. Transport Canada Aviation classified these service bulletins as mandatory and issued Canadian Airworthiness Directive CF–94–09, dated May 5, 1994, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a visual inspection to verify the integrity of the shield grounds for the cable harness of the EEC, and correction of any discrepancy. This AD also would require measurement of the electrical resistance of certain shield grounds, and repair, if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 141 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $124,080, or $880 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

De Havilland, Inc.: 94–NM–127–AD.

Applicability: Model DHC–8–102, –103, and –106 series airplanes, serial numbers 3 through 369 inclusive; and Model DHC–8–301, –311, and –314 series airplanes, serial numbers 100 through 370 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine flameout following a lightning strike, accomplish the following:

(a) Within 45 days after the effective date of this AD, perform a visual inspection of the mounting clamps and "breakout junctions" in the metal overbraid to verify the integrity of the shield grounds for the cable harness of the electronic engine control (EEC), in accordance with de Havilland Service Bulletin S.B. 8–73–18 (for Model DHC–8–100 series airplanes), or S.B. 8–73–19 (for Model DHC–8–300 series airplanes), both dated April 29, 1994, as applicable. If any discrepancy is found, prior to further flight, correct the discrepancy in accordance with the applicable service bulletin.

(b) Within 45 days after the effective date of this AD, perform an electrical resistance measurement of Class A and Class B shield grounds in accordance with de Havilland Service Bulletin S.B. 8–73–18 (for Model DHC–8–100 series airplanes), or S.B. 8–73–19 (for Model DHC–8–300 series airplanes), both dated April 29, 1994, as applicable.

(1) For Class A shield grounds: If the electrical resistance exceeds the value specified in the service bulletin, within 50 flight hours after performing the resistance measurement repair in accordance with the applicable service bulletin.

(2) For Class B shield grounds: If the electrical resistance exceeds the value specified in the service bulletin, within 180 days after performing the resistance measurement repair in accordance with the applicable service bulletin.

(c) For Model DHC–8–102, –103, and –106 series airplanes on which an interim shield ground is installed in accordance with paragraphs 19 and 93 of the Accomplishment Instructions of de Havilland Service Bulletin S.B. 8–73–18, dated April 29, 1994: Within one year after the effective date of this AD, restore the airplane to the Post-Modification 8/0772 configuration in accordance with paragraph 161 of the Accomplishment Instructions of that service bulletin.

(d) For Model DHC–8–301, –311, and –314 series airplanes on which an interim shield ground is installed in accordance with paragraphs 19 and 112 of the Accomplishment Instructions of de Havilland Service Bulletin S.B. 8–73–19, dated April 29, 1994: Within one year after the effective date of this AD, restore the airplane to the Post-Modification 8/0772 configuration in accordance with paragraph 200 of the Accomplishment Instructions of that service bulletin.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 15, 1994.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–23327 Filed 9–20–94; 8:45 am]

BILLING CODE 4910–13–U

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA37–10–6383; FRL–5076–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: EPA is proposing to approve a revision to the California State Implementation Plan (SIP) for ozone. The revision concerns the control of oxides of nitrogen (NO_x) from industrial boilers, steam generators, and process heaters in Santa Barbara County. The rule limits NO_x and carbon monoxide emissions from these sources. The intended effect of proposing approval of this rule is to regulate emissions of NO_x in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking will incorporate this rule into the federally approved SIP. EPA has evaluated this rule and is proposing to approve it under provisions of the CAA regarding EPA actions on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas

DATES: Comments on this proposed action must be received in writing on or before October 21, 1994.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revision and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Stationary Source Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Santa Barbara County Air Pollution Control District, Rule Development Section, 26 Castilian Drive B–23, Goleta, CA 93117

FOR FURTHER INFORMATION CONTACT: Wendy Colombo, Stationary Source Rulemaking, (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 Telephone: (415) 744–1202

SUPPLEMENTARY INFORMATION:

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_x emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a NPRM entitled "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of title I; Proposed Rule," (the NO_x Supplement) which describes the requirements of section 182(f). The November 25, 1992, document should be referred to for further information on the NO_x requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_x ("major" as defined in sections 302 and 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. Santa Barbara County is classified as a moderate nonattainment area for ozone;[1] therefore the Santa Barbara County area is subject to the RACT requirements of section 182(b)(2), cited above.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_x CTGs issued before enactment and EPA has not issued a CTG document for any NO_x category since enactment of the CAA. The RACT rules covering NO_x sources and submitted as SIP revisions are expected to require final installation of the actual NO_x controls by May 31, 1995 for those sources where installation by that date is practicable.

This document addresses EPA's proposed action for Santa Barbara County Air Pollution Control District (SBCAPCD) Rule 342, Control of NO_x from Boilers, Steam Generators, and Process Heaters. The rule was adopted by the SBCAPCD on March 10, 1992 and submitted by the State of California on June 19, 1992. Submitted Rule 342 was found to be complete on August 27, 1992 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[2] and is being proposed for approval into the SIP.

NO_x emissions contribute to the production of ground level ozone and smog. Rule 342 controls emissions of NO_x and carbon monoxide from commercial and industrial boilers, steam generators, and process heaters which are used in a wide variety of applications providing steam, heat, and hot water for industrial, institutional, and commercial operations. Rule 342 was adopted as part of SBCAPCD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for Rule 342.

EPA Evaluation and Proposed Action

In determining the approvability of a NO_x rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110, and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in the NO_x Supplement and various EPA policy guidance documents.[3] Among these provisions is the requirement that a NO_x rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_x emissions.

For the purposes of assisting state and local agencies in developing NO_x RACT rules, EPA prepared the NO_x Supplement to the General Preamble, cited above (57 FR 55620). In the NO_x Supplement, EPA provides guidance on how RACT will be determined for stationary sources of NO_x emissions. While most of the guidance issued by

[1] Santa Barbara County was designated nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post–1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988).

EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_x (see section 4.5 of the NO_x Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs) that identify alternative controls for all categories of stationary sources of NO_x. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_x. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_x. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_x RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

Rule 342 applies to all boilers, steam generators, and process heaters with rated heat inputs greater than or equal to 5 million British Thermal Units per hour (MMBtu/hr) used in industrial, institutional, and commercial operations. The rule limits NO_x emissions from units with rated heat inputs greater than or equal to 5 MMBtu/hr and with annual heat input greater than or equal to 9 billion Btu to 30 parts per million (ppm) or 0.036 pound per million BTU (lb/MMBtu) when operated on gas. For the same size units with annual heat inputs of the same level, which are operated on nongaseous fuel, the rule limits NO_x emissions to 40ppm or 0.052 lb/MMBtu of heat input. The same size units operating with annual heat inputs of less than 9 billion Btu are required to maintain stack-gas oxygen concentrations at less than 3 percent or perform annual tune-ups. Final compliance with these limits is required by March 10, 1996.

The RACT limits specified in the California Air Resources Board's (CARB's) reasonably available control technology/best available retrofit control technology (RACT/BARCT) determination for these types of units are 70 ppm (0.084 lb/MMBtu) and 115 ppm (0.150 lb/MMBtu) for units fired with gas and nongaseous fuels while those for BARCT are 30 ppm and 40 ppm, respectively. Although Rule 342's BARCT limits (30ppm/40ppm) are more stringent than what EPA would consider as RACT (70ppm/115ppm) for these sources, the additional reductions obtained beyond those attributable to RACT are assumed necessary for SBCAPCD's attainment planning purposes.

In evaluating the rule, EPA must also determine whether the CAA requirement for RACT implementation by May 31, 1995 is met. The rule was written such that final compliance is not required until 4 years after the date of adoption. Since the rule was adopted in March 1992, final compliance is not required until March 1996. Under certain circumstances, the determination of what constitutes RACT could include consideration of advanced control technologies, i.e., California's requirement for BARCT. In these cases, the CAA's May 1995 date for RACT implementation may be satisfied in BARCT rules that establish "interim RACT" by May 1995, and require emission limitations based on advanced control technologies (BARCT) be met after May 1995. Rule 342 requires that interim control measures be met to ensure progress toward final compliance. The interim control measures include applying for a permit to operate and authority to construct and the development and submission of a compliance plan. A more detailed discussion of the sources controlled, the controls required, and the justification for why these controls represent RACT can be found in the Technical Support Document (TSD) for Rule 342, dated May 1994.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations and EPA policy. Therefore, SBCAPCD Rule 342, Control of NO_x from Boilers, Steam Generators, and Process Heaters is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on affected small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

The OMB has exempted this action from E.O. 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 8, 1994.

John Wise,

Acting Regional Administrator.

[FR Doc. 94–23351 Filed 9–20–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[CT–11–1–5813; ME–11–1–6313; RI–10–1–6319; VT–6–1–6312; A–1–FRL–5076–5]

Clean Air Act Approval and Promulgation of Emission Statement Implementation Plans for Connecticut, Maine, Rhode Island, and Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing full approval of revisions to the respective State Implementation Plans (SIPs) for the following four States: Connecticut, Maine, Rhode Island, and Vermont. Revisions to the SIP were submitted by each of these four States to implement an emission statement program for stationary sources throughout the State. Connecticut submitted section 22a–174–4(c)(1), "Recordkeeping and Reporting," and amendments to the SIP narrative entitled "Revision to State Implementation Plan for Air Quality Emission Statements" on January 12, 1993. On January 3, 1994, Maine

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submitted Chapter 137, "Emission Statements" and amendments to Chapter 100, "Definitions." Rhode Island submitted amendments to Regulation Number 14 entitled "Record Keeping and Reporting" on January 12, 1993. On August 9, 1993, Vermont submitted a rule entitled "Registration of Air Contaminant Sources," Sections 5–801 through 5–806, and a SIP Narrative, "State of Vermont Air Quality Implementation Plan, February 1993." These SIP revisions were submitted by the States to satisfy the Federal requirements for an emission statement program as part of the SIP.

COMMENTS: Public comments are solicited on the requested SIP revisions and on US EPA's proposal to approve.

DATES: Comments received in writing by October 21, 1994, will be considered in the development of US EPA's final rulemaking action.

ADDRESSES: Comments should be mailed to Linda M. Murphy, Director, Air, Pesticides, and Toxics Management Division, JFK Federal Building, Boston, MA 02203. Copies of the States' submittals and other information are available for inspection during normal business hours, by appointment, at the following location: Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA 02203. In addition, Connecticut's submittal is available at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106; Maine's submittal is available the Bureau of Air Quality Control, Department of Environmental Protection, State House, Station 17, Augusta, ME 04333; Rhode Island's submittal is available at the Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767; and Vermont's submittal is available at the Air Pollution Control Division, Agency of Natural Resources, Department of Environmental Management, Building 3 South, 103 South Main Street, Waterbury, VT 05676.

FOR FURTHER INFORMATION CONTACT: Daria L. Dilaj, U.S. Environmental Protection Agency, Region I, JFK Federal Building (APS), Boston, MA 02203; Phone: (617) 565–3249.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning and State Implementation Plan (SIP) requirements for ozone nonattainment and transport areas are set out in subparts I and II of part D of title I of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (CAA or "the Act"). EPA has published a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under title I of the CAA, including those State submittals for ozone transport areas within the States (see 57 FR 13498 (April 16, 1992) ("SIP: General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990"), 57 FR 18070 (April 28, 1992) ("Appendices to the General Preamble"), and 57 FR 55620 (November 25, 1992) ("SIP: NO_x Supplement to the General Preamble")).

EPA has also issued a draft guidance document describing the requirements for the emission statement programs discussed in this Notice, entitled "Guidance on the Implementation of an Emission Statement Program" (July, 1992). The Agency is also conducting a rulemaking process to modify part 40 of the CFR to reflect the requirements of the emission statement program.

Section 182 of the Act sets out a graduated control program for ozone nonattainment areas. Section 182(a) sets out requirements applicable in marginal nonattainment areas, which are also made applicable in subsections (b), (c), (d), and (e) to all other classified ozone nonattainment areas. Among the requirements in section 182(a) is a program in paragraph (3) of that subsection for stationary sources to prepare and submit to the State each year emission statements showing actual emissions of volatile organic compounds and nitrogen oxides. This paragraph provides that the States are to submit a revision to their State Implementation Plans (SIPs) by November 15, 1992 establishing this emission statement program.

Section 184(b)(2) of the Act extends the requirements for major stationary sources in moderate ozone nonattainment areas to sources in the ozone transport region which emit, or have the potential to emit, 50 tpy or more of VOC. Section 182(f) extends the requirements for major stationary sources of VOC in ozone transport regions to major sources of NO_x. For areas designated as attainment or nonattainment areas which are not classified, section 182(f) refers to section 302 where the major source definition for NO_x is the potential to emit 100 tons per year. Therefore, the emission statement requirement includes sources in attainment areas and nonattainment areas which are not classified within ozone transport regions which emit, or have the potential to emit 100 tpy or more of NO_x or 50 tpy or more of VOC.

Connecticut, Rhode Island, Vermont, and Maine are each located in the ozone transport region. The applicability of these States' emission statement regulations must be State-wide, and cover all stationary sources which emit or have the potential to emit 50 tpy of VOC or 100 tpy of NO_x. In addition, Connecticut, Rhode Island, and the following counties of Maine: Androscoggin, Cumberland, Hancock, Kennebec, Knox, Lincoln, Sagadahoc, Waldo, and York are classified ozone nonattainment areas and are therefore subject to the more stringent source threshold requirement of section 182(a)(3)(B). For these classified ozone nonattainment areas, the source threshold of these States' emission statement regulations must cover all sources which emit VOC or NO_x.

For classified ozone nonattainment areas, the States may waive, with EPA approval, the requirement for an emission statement for classes or categories of sources with less than 25 tons per year of actual plant-wide NO_x or VOC emissions in nonattainment areas if the class or category is included in the base year and periodic inventories and emissions are calculated using emission factors established by EPA (such as those found in EPA publication AP–42) or other methods acceptable to EPA. Connecticut, Maine, and Rhode Island have provided 1990 baseyear inventories which include emissions from sources that emit below 25 tpy of VOC or NO_x emissions and will be updating these inventories every three years until the area is redesignated to attainment. In addition, the methods and emission factors used by Connecticut, Maine, and Rhode Island to calculate emissions for the 1990 baseyear inventory have been reviewed by EPA. As a result, EPA finds the 25 tpy threshold acceptable.

Additionally, if either VOC or NO_x is emitted at or above the statutory reporting level, the other pollutant must be included in the emission statement, even if it is emitted at levels below the specified cutoffs.

The CAA requires that States' rules specify that facilities must submit the first emission statement to the State within three years after November 15, 1990, and annually thereafter. EPA requests that the States submit the emission data to EPA through the Aerometric Information Retrieval System (AIRS). The minimum emission statement data should include: certification of data accuracy; source identification information; operating schedule; emissions information (including annual and typical ozone season day emissions); control equipment information; and process data. EPA developed emission statements data elements to be consistent with other source and State reporting requirements. This consistency is essential to assist States with quality assurance for emission estimates and to facilitate consolidation of all EPA reporting requirements.

II. Analysis of State Submission

A. Procedural Background

The Act requires States to observe certain procedural requirements in developing its SIP, of which the emission statement program will become a part. Section 110(l)(2) of the Act provides that each revision to an implementation plan submitted by a State under the CAA must be adopted by such State after reasonable notice and public hearing. EPA must at the outset determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991).

Connecticut held public hearings on the proposed changes to the SIP narrative on January 5, 6, and 7, 1993. Following the public hearing, Connecticut submitted the SIP revision to EPA on January 12, 1993. The SIP revision was reviewed by EPA and deemed complete on March 16, 1993. The State of Maine held a public hearing on Chapter 137 and amendments to Chapter 100 on July 14, 1993. Following the public hearing, the regulations were adopted by the State on November 10, 1993 and submitted to EPA on January 3, 1994. EPA deemed the submittal complete on February 16, 1994. Rhode Island held a public hearing on Regulation 14, "Record Keeping and Reporting" on December 16, 1992. The regulation was adopted by the State on January 11, 1993. EPA received the submittal on January 12, 1993 and deemed the SIP revision complete in a March 9, 1993 letter. The State of Vermont held a public hearing on the proposed changes to the SIP narrative on March 10, 1993. Vermont submitted the SIP narrative and regulations 5–801 through 5–806 to EPA on August 10, 1993. On October 25, 1993, EPA deemed the submittal complete.

EPA proposes to approve the emission statement program SIP submittals of Connecticut, Maine, Rhode Island and Vermont and invites public comment on the action.

B. Components of the Emission Statement Program

There are several key general and specific components of an acceptable emission statement program. Specifically, the State must submit a revision to its SIP and the emission statement program must meet the minimum requirements for reporting by the sources and the State. In general, the program must include, at a minimum, provisions for applicability, definitions, compliance, and specific source requirements detailed below.

1. SIP Revision Submission

EPA requires States to submit their SIP revision within 2 years of enactment of the Clean Air Act Amendments of 1990 (CAAA) (November 15, 1990).

Connecticut and Rhode Island submitted their SIP revisions on January 12, 1993. Maine and Vermont were each notified in a letter dated January 15, 1993 that a finding of failure to submit a SIP for Emission Statements was made. Vermont submitted its SIP revision on August 9, 1993, and Maine submitted its SIP revision on January 3, 1994. EPA reviewed these two submittals and, as outlined above, found them complete. Therefore, the sanctions clock was stopped for this plan element for each of these states. However, the January 15, 1993 finding also triggered the Federal Implementation Plan (FIP) clock. EPA remains obligated to promulgate a FIP until a final rulemaking action to approve these two SIP revisions is taken.

2. Reporting Requirements for State

In addition to the program elements applying to sources, the SIP should include a provision that States provide to EPA the identifying information for the sources covered by the emission statement program, the value for rule effectiveness utilized by the State in its SIP calculations, the source data elements entered into AIRS, and quarterly emission statement status reports. The minimum source identification information should include the AIRS code, the AFS point number (ID), the AFS segment number (ID), and the Source Category Code (SCC) and descriptions for each segment.

In addition, States should supply to EPA the current rule effectiveness (RE) factors at the SCC pollutant level, if applicable, and the RE method codes. The emission statement data submittal to AIRS should include all data obtained from the source and the State. These source-supplied data elements include source identification information (name, physical location, mailing address of the facility, latitude and longitude, and 4-digit Standard Industrial Classification (SIC) code(s)), operating schedule information (percentage annual throughput, days per week on the normal operating schedule, hours per day during the normal operating schedule, and hours per year on the normal operating schedule), process rate data (annual process rate (annual throughput) and peak ozone season daily process rate), control equipment information (current primary and secondary control equipment identification codes and current combined control equipment efficiency (%)), and emissions information (estimated actual VOC and NO_x emissions at the segment level (in tons per year for an annual emission rate and pounds per day for a typical ozone season day), estimated emissions method code, calendar year for the emissions, and emission factor (if used)). EPA recommends that the States electronically submit emission statement data into the AIRS database no later than July 1 of each year, commencing in 1993. The quarterly reports should show the total number of facilities that met the State's emission statements program requirements and the number of facilities that failed to meet the requirements. Quarterly reports should be submitted commencing no later than July 1, 1993.

Connecticut commits to submitting data along with supplemental data to EPA by July 1. All the EPA required data elements will be covered. EPA will negotiate with Connecticut to include a requirement for quarterly emission statement reports in future 105 grants.

Maine covers all the EPA required data elements. Maine has not committed to a data submittal date to EPA. Maine will not meet the present July 1 deadline of submitting data to EPA. Maine will, however, have plenty of time to meet the deadline of November 15 being proposed by the Emission Statement Workgroup. EPA will negotiate with Maine to include a requirement for quarterly emission statement reports in future 105 grants.

Rhode Island's rule has covered all the EPA required data elements. Rhode Island has not committed to submitting emission statement data to EPA by July 1. EPA will negotiate with Rhode Island to include a requirement for quarterly emission statement reports in future 105 grants.

Vermont has committed to report all the necessary data elements to EPA by July 1 of each calendar year. Vermont

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states in its SIP narrative that for any emissions estimates which depend on rule enforcement for control of potential emissions, rule effectiveness will also be included in the submittal to EPA. EPA will negotiate with Vermont to include a requirement for quarterly emission statement reports in future 105 grants.

3. Sources Covered

Section 182(a)(3)(B) requires that States with areas designated as nonattainment for ozone require emission statement data from all sources of VOC or NO_X in the nonattainment areas. This requirement applies to all classified ozone nonattainment areas, regardless of the classification (Marginal, Moderate, etc.). Section 184(b)(2) of the Act extends the requirements for major stationary sources in moderate ozone nonattainment areas to sources in the ozone transport region. Section 182(f) extends the requirements for major stationary sources of VOC in ozone transport regions to major sources of NO_X. Therefore, the emission statement requirement encompasses all stationary sources in all classified nonattainment areas, as well as sources in attainment areas and unclassified nonattainment areas within ozone transport regions, which emit or have the potential to emit 100 tpy or more of NO_X or 50 tpy or more of VOC.

The States may waive, with EPA approval, the requirement for emission statements for classes or categories of sources with less than 25 tons per year of actual plant-wide NO_X or VOC emissions in nonattainment areas if the class or category is included in the base year and periodic inventories. Connecticut, Maine, and Rhode Island emission statement regulations have exempted sources with VOC and NO_X emissions below 25 tpy from emission statement requirements. Connecticut, Maine, and Rhode Island have provided 1990 baseyear inventories which include emissions from sources that emit below 25 tpy of VOC or NO_X emissions and will be updating these inventories every three years until the area is redesignated to attainment. In addition, the methods and emission factors used by Connecticut, Maine, and Rhode Island to calculate emissions for the 1990 baseyear inventory have been reviewed by EPA. As a result, EPA finds the 25 tpy threshold acceptable.

The entire state of Connecticut is designated as nonattainment for ozone and is located within the boundaries of the ozone transport region. Connecticut's SIP narrative describes how for the first reporting year (1993), Connecticut will require an emission statement from each company whose actual 'calendar year 1992 emissions from all sources at a plant site total 25 tons per year or more of VOC, NO_X, or CO. For the second reporting year (1994), the state will lower the reporting threshold to 5 tons per year or more of VOC, NO_X, or CO. For the third (1995) and future reporting years, the state will expand the reporting requirement to 5 tons per year or more of any criteria pollutant (PM10, SO_X, NO_X, CO, VOC, Pb). If the 25 tpy (first year) or 5 tpy (later years) threshold is exceeded by any one pollutant, the company is required to supply data for all remaining pollutants addressed by the respective threshold criteria.

The entire state of Maine is located within the boundaries of the ozone transport region. In addition, the following counties of Maine: Androscoggin, Cumberland, Hancock, Kennebec, Knox, Lincoln, Sagadahoc, Waldo, and York are classified ozone nonattainment areas and are therefore subject to the more stringent source threshold requirement of section 182(a)(3)(B). For these classified ozone nonattainment areas, EPA requires Maine's emission statement regulations to cover all sources which emit VOC or NO_X unless the State waives requirements from sources with less than 25 tons per year of actual plant-wide NO_X or VOC emissions. Maine's Chapter 137 is applicable to all stationary sources which emit, or have the potential to emit into the ambient air, the following air pollutants at or above the minimum required reporting level:

1. Carbon Monoxide, 100 tpy
2. Sulfur Dioxide, 40 tpy
3. Volatile organic compounds, 25 tpy
4. Nitrogen oxides, 25 tpy
5. Fine Particulate Matter, 15 tpy
6. Lead, 0.1 tpy

In addition, this rule requires the reporting of 189 hazardous air pollutants identified by the CAA and other compounds known to be emitted in Maine that are of concern to human health. The list of pollutants can be found in Section 1(C) and Appendix A of Chapter 137. If any one pollutant as specified above is emitted at or above the minimum required reporting level, all the other pollutant data listed must be collected and reported.

The entire state of Rhode Island is designated as nonattainment for ozone and is located within the boundaries of the ozone transport region. Section 14.3.1 states that the owner or operator of any facility emitting VOC or NO_X which has or has had actual facility-wide emissions of 25 tons per year or more of either pollutant in 1990 or any year thereafter, shall submit annually an emission statement which includes both pollutants in accordance with the requirements of section 14.3.2. A facility may apply to the Division to be allowed to discontinue submitting annual emission statements if actual emissions at that facility decrease to below 10 tons per year as a result of a permanent process change.

Although the entire state of Vermont is in attainment it is located within the ozone transport boundaries. EPA requires Vermont to regulate source which emit, or have the potential to emit 100 tpy or more of NO_X or 50 tpy or more of VOC. Regulation 5–802 requires submittal of complete data from all sources of the five criteria pollutants which have actually emitted more than 5 tons of all of the criteria pollutants combined during the previous year.

4. Reporting Requirements for Sources

Sources covered by the State emission statement program will submit, at a minimum, the data elements described under section II.B.2. of this document.

The emission statement submitted by the source should contain a certification that the information is accurate to the best knowledge of the individual certifying the statement. EPA recommends that the State program require the submission of the data from the sources no later than April 15 of each year.

Connecticut has required, in its SIP narrative, that sources submit their emission statement data no later than April 15 of each year. The emission statement forms sent out by DEP require all data elements described under section II.B.2. of this document. Along with the forms, a letter is sent which informs the source that accuracy of the data must be certified.

Maine's Chapter 137 requires the owner or operator of any facility meeting the applicability requirements in section 1 of chapter 137 to submit an emission statement to the Department on an annual basis. The emission statement must be submitted no later than July 1 for the previous calendar year, beginning no later than July 1, 1994 for the calendar year 1993. EPA is proposing to approve this submittal date since the Emission Statement Workgroup is proposing to require States to submit emission statement data to AIRS by November 15 rather than July 1. Maine will have sufficient time to submit data to AIRS by November 15 if sources submit emission statements by July 1. Chapter 137 also includes a list of data elements required by the sources and the demand for certification of the data's accuracy.

Rhode Island's section 14.3.1 requires facilities to submit emission statements to the Director within 45 days of the end of the calendar year. Emission statements shall be submitted for the calendar year 1992 and for every year thereafter. Rhode Island requires each facility subject to section 14.3.1 to submit an emission statement in a format approved by the Director which contains all data elements described above and certification that the information contained in the emission statement is accurate.

Vermont's rule, section 5–803, requires sources to submit to the Air Pollution Control Officer source emissions data and other information on or before February 1 of each year. Certification of the data is required.

5. Reporting Forms

Although EPA has developed a proposed format for the emission statement reporting process in its guidance document, the Act allows States to develop their own format for emission statement reporting.

Connecticut, Maine, and Vermont provide the sources with emission statement forms. Connecticut and Vermont included the forms with their SIP submittals. Rhode Island does not provide sources with an emission statement form; each facility subject to emission statement requirements must submit an emission statement in a format approved by the Director.

III. Proposed Action

EPA has evaluated the States submittals for consistency with the Clean Air Act, EPA regulations, and EPA policy. EPA has determined that the proposed rules meet the Clean Air Act's requirements and is proposing approval of the following rules under section 110(k)(3): Connecticut's section 22a–174–4(c)(1), "Recordkeeping and Reporting;" Rhode Island's regulation Number 14 entitled "Record Keeping and Reporting;" Vermont's rule entitled "Registration of Air Contaminant Sources," Sections 5–801 through 5–806; Maine's Chapter 137, "Emission Statements" and amendments to Chapter 100, "Definitions;" and the SIP narrative revisions of Connecticut entitled "Revision to State Implementation Plan for Air Quality Emission Statements," and Vermont entitled "State of Vermont Air Quality Implementation Plan, February 1993." Based upon EPA's evaluation of Connecticut's and Rhode Island's January 12, 1993 submittals, Vermont's August 9, 1993 submittal, and Maine's January 3, 1994 submittal, EPA is proposing to approve the emission statement submissions as revisions to the ozone SIP.

IV. Request for Public Comments

Public comments are solicited on the requested SIP revisions and on EPA's proposal to approve. Public comments received by October 21, 1994, will be considered in the development of EPA's final rulemaking action.

V. Administrative Requirements

A. Executive Order (EO) 12866

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989. 54 FR 2214–2225. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions, 54 FR 2222, from the requirements of section 3 of Executive Order 12291 for a period of 2 years. US EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on US EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on small entities. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 12, 1994.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 94–23350 Filed 9–20–94; 8:45 am]

BILLING CODE 6560–60–P

40 CFR Parts 52 and 81

[NC66–1–6567b; FRL–5071–6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the state implementation plan (SIP) revision submitted by the State of North Carolina for the purpose of redesignating Forsyth County area to attainment for carbon monoxide (CO). In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by October 21, 1994.

ADDRESSES: Written comments should be sent to Ben Franco, EPA Region IV, Air Programs Branch, 345 Courtland Street NE, Atlanta, Georgia 30365. Copies of the redesignation request and the State of North Carolina's submittal are available for public review during normal business hours at the addresses listed below. EPA's technical support

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document (TSD) is available for public review during normal business hours at the EPA addresses listed below.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia, 30365.

Department of Environment, Health and Natural Resources, P.O. Box 29535, Raleigh, North Carolina, 27626–0535.

FOR FURTHER INFORMATION CONTACT: Ben Franco of the EPA Region IV Air Programs Branch at (404) 347–3555, ext. 4211, and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**

Dated: September 2, 1994.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 94–23295 Filed 9–20–94; 8:45 am]

BILLING CODE 6560–60–P

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40 CFR Parts 52 and 81

[OH06–2–6229B, OH01–2–6230B, OH32–2–6231B; FRL–5073–6]

Approval of Maintenance Plan and Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to approve the ozone State Implementation Plan (SIP) revision and redesignation requests submitted by the State of Ohio for the purpose of redesignating Preble, Columbiana, and Jefferson Counties to attainment for ozone. In the Final Rules Section of this **Federal Register**, USEPA is approving the State's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The USEPA will not institute a second comment period on this document.

DATES: Comments on this proposed rule must be received on or before October 21, 1994.

ADDRESSES: Written comments should be mailed to: William MacDowell, Chief, Regulatory Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: William Jones, Environmental Engineer, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6058.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q

Dated: September 8, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–23297 Filed 9–20–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 158

[OPP–00391; FRL–4912–4]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with a draft proposal rule for 40 CFR part 158, Pesticide Registration Data Requirements. Much of this proposed rule would implement changes in practice already made by the Office of Pesticide Programs in the course of registration and reregistration.

DATES: The meeting will be held on Tuesday and Wednesday, November 29 and 30, 1994 from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at: Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202, (703) 486–1111.

FOR FURTHER INFORMATION CONTACT: By mail: Robert B. Jaeger, Designated Federal Official, FIFRA Scientific Advisory Panel (7509C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 815B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–5369/7351. Copies of documents may be obtained by contacting: By mail: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 1128 Bay, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5434.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will follow the general organization of part 158, specifically addressing the changes and additions. The proposed changes to part 158 reflect increasing emphasis on health and environmental concerns from the use of pesticides in the areas of exposure to workers and handlers, neurotoxicity, ground water contamination, and ecological effects. They also reflect concerns about pesticide exposure to infants and children. These revisions would ensure that comprehensive data packages are supplied to EPA so that each pesticide can be evaluated using current health and environmental standards.

Any member of the public wishing to submit written comments should contact Robert B. Jaeger at the address or the phone number given above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advance notice to the Designated Federal Official, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify the Designated Federal Official and submit 20 copies of a summary no later than November 4, 1994, to the Public Docket and Freedom

of Information Section, Field Operations Division (7506C), at the Virginia address given above, in order to ensure appropriate consideration by the Panel.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket will be available for public inspection in Room 1128 Bay at the address given above, from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. All statements will be made part of the record and will be taken into consideration by the Panel.

Copies of the Panel's report of their recommendations will be available 10 to 15 working days after the meeting and may be obtained by contacting the Public Docket and Freedom of Information Section at the address or telephone number given above.

Dated: September 14, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94–23355 Filed 9–20–94; 8:45 am]

BILLING CODE 6560–50–F

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Notices

Federal Register
Vol. 59, No. 182
Wednesday, September 21, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

BIPARTISAN COMMISSION ON ENTITLEMENT AND TAX REFORM

Meeting

Notice is hereby given, pursuant to Public Law 92–463, that the Bipartisan Commission on Entitlement and Tax Reform will hold a meeting on October 6, 1994, at 1:00 p.m. in the Cannon House Office Building, Room 210, Washington, D.C., unless otherwise changed.

The meeting of the Commission shall be open to the public. The proposed agenda includes discussion of issues relating to the Commission's charter, including but not limited to, options for controlling the spiraling growth on entitlement expenditures and the need to examine the structure of the current federal income tax system. It is expected that various interest groups will present testimony to Commission members regarding these issues.

Records shall be kept of all Commission proceedings and shall be available for public inspection in Room 825 of the Hart Senate Office Building, 120 Constitution Avenue, N.E., Washington, D.C. 20510.

J. Robert Kerrey,
Chairman.
John C. Danforth,
Vice-Chairman.
[FR Doc. 94–23360 Filed 9–20–94; 8:45 am]
BILLING CODE 4151–04–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration.
Title: Semiconductor Infrastructure Assessment.
Agency Form Number: None assigned.
OMB Approval Number: None.
Type of Request: New Collection.
Burden: 300 hours.
Number of Respondents: 100.
Avg Hours Per Response: 3 hours.
Needs and Uses: Commerce is conducting an assessment of key suppliers to the U.S. semiconductor industry to identify weaknesses in the supply base which could inhibit this critical industry's ability to meet commercial and defense production requirements as defined by the industry's 15 year business plan. The information will be used to institute remedial action where weaknesses are found to exist.
Affected Public: Businesses or other for–profit institutions.
Frequency: One time.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration.
Title: Commercial News USA.
Agency Form Number: ITA–4063P.
OMB Approval Number: 0625–0061.
Type of Request: Revision of a currently approved collection.
Burden: 917 hours.
Number of Respondents: 2,200.
Avg Hours Per Response: 25 minutes.
Needs and Uses: As part of its export promotion activities, ITA publishes COMMERCIAL NEWS USA. The purpose of the publication is to promote new American products and technology to overseas buyers. Firms wishing to participate must submit an application. The information is used to determine if the product meets the program's criteria.
Affected Public: Businesses or other for–profit institutions, small businesses or organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration.
Title: Foreign Trade Zone Application.
Agency Form Number: None.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 8,470 hours.
Number of Respondents: 90.
Avg Hours Per Response: Varies but ranges between 19 and 128 hours.
Needs and Uses: The Foreign Trade Zone Act requires that a one–time application be made for authority to establish a foreign–trade zone project. The information on the facility, financing, operational plans, proposed manufacturing, and economic needs is used in making a decision on whether or not to approve the request.
Affected Public: State or local governments, businesses or other for–profit institutions, small businesses or organizations, non–profit institutions.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: September 15, 1994
Gerald Tache,
Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc. 94–23319 Filed 9–20–94; 8:45 am]
BILLING CODE 3510–CW–F

Bureau of Export Administration

Transportation and Related Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held October 13, 1994, 9 a.m., in the Herbert C. Hoover Building, Room 1617M(2), 14th Street & Pennsylvania Avenue, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

General Session

1. Opening remarks by the Chairman
2. Introduction of members and visitors
3. Presentation of public papers or comments
4. Discussion of recent revisions to the Export Administration Regulations (EAR)
5. Discussion of BXA reorganization

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the following address: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information or copies of the minutes call (202) 482–2583.

Dated: September 15, 1994.
Lee Ann Carpenter,
Director, Technical Advisory Committee Unit.
[FR Doc. 94–23320 Filed 9–20–94; 8:45 am]
BILLING CODE 3510–DT–M

International Trade Administration

[A–570–001]

Potassium Permanganate From the People's Republic of China; Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.
ACTION: Notice of Termination of Antidumping Duty Administrative Review.

SUMMARY: On August 15, 1994, the Department of Commerce (the Department) received a request from Carus Chemical Company (Carus), the petitioner, that it be permitted to withdraw its request for an administrative review, pursuant to 19 CFR 353.22(a)(5) (1994), of the antidumping duty order on potassium permanganate from the People's Republic of China (PRC) for the period January 1, 1993, through December 31, 1993. Although the Department received the request to withdraw after the normal period allowed, the Department is terminating this administrative review in accordance with 19 CFR 353.22(a)(5).

EFFECTIVE DATE: September 21, 1994.
FOR FURTHER INFORMATION CONTACT: Paul Stolz, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone number (202) 482–4474.

Background

On January 31, 1984, the Department published in the **Federal Register** (49 FR 3898) the antidumping duty order on potassium permanganate from the PRC. After receiving a timely request for review from Carus, the Department initiated, on February 17, 1994, an administrative review for the period January 1, 1993, through December 31, 1993 (59 FR 7979). On August 15, 1994, Carus requested that it be permitted to withdraw its request for review for this period of review.

SUPPLEMENTARY INFORMATION: In accordance with 19 CFR 353.22(a)(5), the Department may extend the normal 90-day time limit for withdrawal of a request for review if the Department determines it is reasonable to do so. We have determined that it is reasonable to extend the time limit for Carus' request because we have not yet issued questionnaires for this period and because there is no indication on the record that the substantive rights of any party would be impaired by such a decision.

Respondent Zunyi Chemical Factory (Zunyi) and an importer, Novachem, Inc. (Novachem), have objected to the termination request on the grounds that (1) Zunyi intended to submit adequate information in the current review in order to avoid the application of best information available as was done in the 1990 review, the final results of which were published on May 23, 1994 (59 FR 26625), and (2) petitioner's request for termination of this review was untimely.

Regardless of its stated intent to supply adequate information in the current review, Zunyi should have been aware that because the 1993 review was based solely on the petitioner's request, that request could be withdrawn pursuant to 19 CFR 353.22(a)(5).

Because we have extended the 90-day time period for requesting withdrawal, we hereby grant Carus' request for withdrawal.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675) and 19 CFR 353.22(a)(5).

Dated: September 9, 1994.
Roland L. MacDonald,
Acting Deputy Assistant Secretary for Compliance.
[FR Doc. 94–23365 Filed 9–20–94; 8:45 am]
BILLING CODE 3510–DS–M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 93–141R. *Applicant:* University of California, Los Alamos National Laboratory, P.O. Box 990, Los Alamos, NM 87545. *Instrument:* Current Limiting Interrupting Device *Manufacturer:* Calor-Emag AG, Germany. *Intended Use:* Original notice

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of this resubmitted application was published in the Federal Register of December 13, 1993.

Docket Number: 94–095. *Applicant:* Lamont-Doherty Earth Observatory of Columbia University, Route 9W, Palisades, NY 10964. *Instrument:* High Temperature Resistivity Logging Tool. *Manufacturer:* CSM Associates Limited, United Kingdom. *Intended Use:* The instrument will be used on board a U.S. drill ship to study sedimentary formations in the sediments below the ocean floor in areas of extremely high crustal temperatures. The tool will be lowered into the borehole to make a series of measurements and the data will be transmitted up a conducting cable to surface computers. The data will then be analyzed and used to produce scientific papers on the sedimentary and rock formations. *Application Accepted by Commissioner of Customs:* July 21, 1994.

Docket Number: 94–096. *Applicant:* Southern Methodist University, 3225 Daniel Avenue, Dallas, TX 75275-0395. *Instrument:* IR Mass Spectrometer System, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used in the analysis of whole rocks, minerals, and fluids in order to determine their isotope ratios for oxygen, carbon, and hydrogen (and to a lessor extent nitrogen) with specific interest in the stable (non-radioactive) isotopes of these elements. The major objectives of the research are to understand the evolution of the Earth's lithosphere and its fluid envelope. In addition, the instrument will be used for educational purposes in various geology courses. *Application Accepted by Commissioner of Customs:* July 22, 1994.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–23366 Filed 9–20–94; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

[I.D. 091594C]

Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Halibut Advisory Subpanel will hold a public meeting on October 13–14, 1994, at the Council office, 2130 SW. Fifth Avenue, Suite 224, Portland, OR.

The meeting will begin on October 13, at 1:00 p.m., and on October 14, at 8:00 a.m. The meeting will continue until business for each day is completed and may go into the evening.

The purpose of the meeting will be to develop final recommendations on the proposed halibut allocation options for Area 2A in 1995, and beyond, for the Council to consider at its October 24–28, 1994, meeting in Millbrae, CA.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW. Fifth Avenue, Suite 224, Portland, OR 97201; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352, at least 5 days prior to the meeting date.

Dated: September 16, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–23371 Filed 9–20–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 091594B]

North Pacific Fishery Management Council; Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Northwest Crab Industry Advisory Committee (PNCIAC) will hold a meeting on September 28, 1994, in the Northwest Ballroom, Red Lion Hotel, 18740 Pacific Highway South, Seattle, WA. The meeting will begin at 9:00 a.m.

The Agenda will include the following topics:

1. Delay of the moratorium approved by the North Pacific Fishery Management Council,
2. Delay of the Bering Sea bairdi season to January 15,
3. Bycatches of king and bairdi crabs in the Bristol Bay area, and
4. Report on the status of Bering Sea crab stocks.

FOR FURTHER INFORMATION CONTACT: Gary Loncon, PNCIAC Chairman, (206) 283–6605.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, (907) 271–2809, 5 days prior to the meeting date.

Dated: September 16, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–23370 Filed 9–20–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bangladesh

September 14, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 22, 1994.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 4039, published on January 28, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 14, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1994 and extends through January 31, 1995.

Effective on September 22, 1994, you are directed to amend the directive dated January 24, 1994 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of Bangladesh:

Category	Adjusted twelve-month limit [1]
334	106,357 dozen.
338/339	897,725 dozen.
340/640	2,269,047 dozen.
342/642	276,623 dozen.
634	377,275 dozen.
638/639	1,186,123 dozen.
641	830,612 dozen.
647/648	838,046 dozen.
847	567,789 dozen.

[1] The limits have not been adjusted to account for any imports exported after January 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–23315 Filed 9–20–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan; Correction

September 14, 1994.

In the table in the letter to the Commissioner of Customs published in the **Federal Register** on August 3, 1994 (59 FR 39547), correct the adjusted 1994 level for Categories 338/339 from 875,561 dozen to 875,831 dozen.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–23317 Filed 9–20–94; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

September 14, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: September 22, 1994.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6714. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as consultations have not resulted in a mutually satisfactory solution on Categories 342/642, the United States Government has decided to control imports in these categories for the prorated period beginning on July 28, 1994 and extending through December 31, 1994 at a level of 66,266 dozen.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in further consultations with the Government of Pakistan, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 26212, published on May 19, 1994; and 59 FR 5756, published on February 8, 1994.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 14, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 1, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on September 22, 1994, you are directed to establish a limit for cotton and man-made fiber textile products in Categories 342/642 for the period beginning on July 28, 1994 and extending through December 31, 1994 at a level of 66,266 dozen [1]. Textile products in Category 342 which are exported on and after July 28, 1994 are not subject to the group limit.

For the import period April 29, 1994 through May 19, 1994, you are directed to charge 200 dozen for Category 642 to the limit established in the directive dated May 13, 1994 for Categories 342/642 for the period beginning on April 29, 1994 and extending through July 27, 1994.

Imports charged to the limit for Categories 342/642 for the April 29, 1994 through July 27, 1994 period shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–23316 Filed 9–20–94; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after July 27, 1994.

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Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

September 14, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 22, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 2827, published on January 19, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 14, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 14, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during various periods, including March 1, 1993 through December 31, 1994 (Categories 226/313), October 28, 1993 through December 31, 1994 (Category 326) and January 1, 1994 through December 31, 1994.

Effective on September 22, 1994, you are directed to amend the directive dated January 14, 1994 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the United Arab Emirates:

Category	Adjusted level [1]
226/313	3,096,378 square meters.
326	1,873,150 square meters.
334/634	200,734 dozen.
351/651	153,896 dozen.
647/648	287,719 dozen.

[1] The limits have not been adjusted to account for any imports exported after February 28, 1993 (Categories 226/313), October 27, 1993 (Category 326) and December 31, 1993.

For the import period March 1, 1993 through January 18, 1994, there are zero charges for Category 226. For the import period October 28, 1993 through January 18, 1994, there are zero charges for Category 835. (See January 14, 1994 directive.)

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–23318 Filed 9–20–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed North Expansion of Kennecott Copper's Tailings Impoundment in Salt Lake County, UT; Correction

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent; Correction.

SUMMARY: A Notice of Intent (NOI) to Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed North Expansion of Kennecott Copper's Tailings Impoundment in Salt Lake County, Utah was published in the FEDERAL RESISTER on Friday, August 19, 1994. The NOI incorrectly listed the date of the Scoping Meeting. On page 42823, third column, second paragraph of the NOI the date was incorrectly stated as "Wednesday, September 19, 1994". The date should read "Monday, September 19, 1994".

FOR FURTHER INFORMATION CONTACT: Mr. Michael Schwinn, Project Manager, U.S. Army Corps of Engineers, Sacramento District, Utah Field Office, 1403 South 600 West, Suite A, Bountiful, Utah 84010, Telephone (801) 295–8380.

Dated: September 8, 1994.

Michael P. Schwinn,

Project Manager.

[FR Doc. 94–23030 Filed 9–20–94; 8:45 am]

BILLING CODE 3710–EH–M

DEPARTMENT OF ENERGY

Notice of a Class Deviation To Waive Federal Register Notices of Financial Assistance Awards To Help Meet Special Power and Propulsion Needs for Future Space Missions

AGENCY: U.S. Department of Energy.

ACTION: Notice of class deviation from 10 CFR 600.14(f).

SUMMARY: Pursuant to 10 CFR 600.4, *Deviations*, the Department of Energy has authorized a class deviation from 10 CFR 14(f) which requires a **Federal Register** Notice of each financial assistance award. This deviation applies exclusively to applications received in response to a Notice of Program Interest (NOPI) entitled Invitation for Proposals Designed to Support Federal Agencies and Commercial Interests in Meeting Special Power and Propulsion Needs for Future Space Missions (58 FR 63931, December 3, 1993) which was published by the Department of Energy. Applications submitted in response to the NOPI were accepted through January 31, 1994.

The intent of publishing notification of financial assistance awards is to foster competition and provide information regarding subcontracting opportunities. However, a Notice of Program Opportunity has already served as notice to interested applicants, and no subcontracting opportunities have been identified. Additionally, due to programmatic requirements, it is important that awards be made as soon as possible. Therefore, the Department of Energy has determined, pursuant to 10 CFR 600.4, that a deviation from the requirement to publish a **Federal Register** Notice of each such award is (1) Necessary to achieve program objectives, (2) necessary to conserve public funds.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: Mr. Nick Graham, HR–531.23, 1000 Independence Ave., SW., Washington, DC 20585.

Issued in Washington, DC, on September 8, 1992.

Linda Strand,

Chief, Branch B–3, Office of Placement and Administration.

[FR Doc. 94–23359 Filed 9–20–94; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Efficiency and Renewable Energy

[Case No. F–074]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to the Trane Company

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–074) granting a Waiver to The Trane Company (Trane) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Trane Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its YCC, YCX, and DCX convertible package units.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9138

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Trane has been granted a Waiver for its YCC, YCX, and DCX convertible package units, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, on September 12, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

In the Matter of: The Trane Company (Case No. F–074)

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Trane filed a "Petition for Waiver," dated June 9, 1994, in accordance with § 430.27 of 10 CFR part 430. The Department published in the **Federal Register** on July 29, 1994, Trane's petition and solicited comments, data and information respecting the petition. 59 FR 38591. Trane also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on July 25, 1994. 59 FR 38591, July 29, 1994.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department consulted with The Federal Trade Commission (FTC) concerning the Rheem Petition. The FTC did not have any objections to the issuance of the waiver to Trane.

Assertions and Determinations

Trane's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Trane requests the allowance to test using a 45-second blower time delay when testing its YCC, YCX, and DCX convertible package units. Trane states that since the 45-second delay is indicative of how these models actually operate and since such a delay results in an average of 0.3 percent improvement in energy efficiency, the petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Trane indicates that it is unable to take advantage of any of these exceptions for its YCC, YCX, and DCX convertible package units.

Since the blower controls incorporated on the Trane furnaces are designed to impose a 45-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 45-second blower

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time delay when testing the Trane YCC, YCX, and DCX convertible package units. Accordingly, with regard to testing the YCC, YCX, and DCX convertible package units, today's Decision and Order exempts Trane from the existing provisions regarding blower controls and allows testing with the 45-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by The Trane Company (Case No. F–074) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR part 430, subpart B, The Trane Company, shall be permitted to test its YCC, YCX, and DCX convertible package units on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t –), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t –), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, The Trane Company shall comply in all respects with the test procedures specified in Appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the YCC, YCX, and DCX convertible package units manufactured by The Trane Company.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective September 7, 1994, this Waiver supersedes the Interim Waiver granted The Trane Company on July 25, 1994, 59 FR 38591, July 29, 1994 (Case No. F–074).

Issued in Washington, DC, on September 7, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 94–23358 Filed 9–20–94; 8:45 am]

BILLING CODE 6450–01–P

Advisory Committee on the Demonstration and Commercial Application of Renewable Energy and Energy Efficiency, Open Meeting

Under the provisions of the Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770), notice is hereby given of the following meeting:

Name: Advisory Committee on the Demonstration and Commercial Application of Renewable Energy and Energy Efficiency Technologies.

Date and Time: October 6, 1994, 9 a.m.–5 p.m.

Place: The Renaissance Hotel, 999 9th Street, N.W., Washington, DC 20001

Contact: Elaine Guthrie, Office of Technical Assistance (EE–542), Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone 202/586–1719.

Purpose of Committee: To advise the Secretary of Energy on the development of the solicitation and evaluation criteria for commercialization ventures, and on otherwise carrying out her responsibilities under the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Pub. L. 101–218, 42 U.S.C. 12005), as amended by the Energy Policy Act of 1992 (Pub. L. 102–486, 42 U.S.C. 13201).

Tentative Agenda: Briefings and discussions of:

- Review of subcommittee work;
- FY 1995 Congressional Appropriations;
- Committee Work Plan;
- Other Matters Requiring Committee Consideration;
- Public Comment Period (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Elaine Guthrie at the address or telephone number listed above. Requests to make oral presentations must be received 5 days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room 1E–190, Forrestal, Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 16, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–23357 Filed 9–20–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EL94–93–000, et al.]

American Municipal Power-Ohio, Inc. v. Cleveland Electric Illuminating Company, et al., Electric Rate and Corporate Regulation Filings

September 14, 1994.

Take notice that the following filings have been made with the Commission:

1. American Municipal Power-Ohio, Inc. v. Cleveland Electric Illuminating Company

[Docket No. EL94–93–000]

Take notice that on September 1, 1994, American Municipal Power-Ohio, Inc. (AMP-Ohio) tendered for filing a complaint against Cleveland Electric Illuminating Company (CEI). In its filing AMP-Ohio requests that this proceeding be divided into two phases and that Phase I be resolved by a summary order requiring CEI to provide certain data and operating procedures to AMP-Ohio. AMP-Ohio requests that Phase II be deferred until AMP-Ohio completes the transmission studies, based on the information provided by CEI in Phase I, and submits to the Commission a final transmission network proposal, including any specific proposed interconnections to the CEI system.

Comment date: October 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Company

[Docket No. ER94–1619–000]

Take notice that on September 2, 1994, Boston Edison Company (Edison) filed a letter agreement between itself and thirteen Massachusetts municipal electric systems further extending the deadline for the Municipals' submission of objections to Edison's 1992 bills for services rendered under each municipal system's Pilgrim power purchase contract in 1992. On August 11, 1994, Boston Edison filed a letter agreement in Docket No. ER94–1551–000 extending that deadline from August 15, 1994, until September 7, 1994. The new letter agreement extends that deadline from September 7, 1994, until September 19, 1994. The letter agreement makes no other changes to the rates, terms and conditions of the affected Pilgrim contracts.

Edison states that it has served copies of this filing upon each of the affected customers and upon the three other Pilgrim power purchasers; Reading Municipal Light Department, Montaup Electric Company and Commonwealth Electric Company, as well as the Massachusetts Department of Public Utilities.

Comment date: September 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. The Washington Water Power Company

[Docket No. ER94–1623–000]

Take notice that on September 6, 1994, The Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 Service Agreements under WWP's FERC Electric Tariff Volume No. 4.

A copy of the filing was mailed to the parties of the new Service Agreements.

Comment date: September 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Midway-Sunset Cogeneration Company

[Docket No. QF86–433–003]

On September 2, 1994, Midway-Sunset Cogeneration Company (Applicant) tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining primarily to the technical data and the ownership structure of the cogeneration facility.

Comment date: October 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23337 Filed 9–20–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 1494–066 Oklahoma]

Grand River Dam Authority; Notice of Availability of Environmental Assessment

September 15, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for non-project use of project lands for the Pensacola Hydroelectric Project. The application proposes dredging 740 cubic yards of material from a site located at the Monkey Island area of Grand Lake O' The Cherokees, in Delaware County, Oklahoma. The staff prepared an Environmental Assessment (EA) for the action. In the EA, staff concludes that approval of the non-project use of project lands would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, Room 3308, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23305 Filed 9–20–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 6952–005 California]

McMillan Hydro, Inc.; Notice of Availability of Environmental Assessment

September 15, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 F.R. 47897), the Commission's Office of Hydropower Licensing has reviewed a non-capacity related amendment of exemption for the McMillan Hydroelectric Project, No. 6952–005. The McMillan Hydroelectric Project is located on the North Fork of Little Cow Creek in Shasta County, California. The application is to revise the project description to reflect several changes between the authorized and as-built project features. An Environmental Assessment (EA) was prepared for the application. The EA finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23306 Filed 9–20–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–4–34–001]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 15, 1994

Take notice that on September 12, 1994 Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Seventh Revised Sheet No. 8A
Eighth Revised Sheet No. 8A
First Revised Sheet No. 199
Second Revised Sheet No. 200

On May 2, 1994, FGT filed in Docket No. TM94–4–34 to suspend its Annual Unit Take-Or-Pay Surcharge (TOP

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Surcharge) effective June 1, 1994, subject to FGT making a supplemental filing to reflect actual balances pertaining to its collection of the take-or-pay buy-out and buy-down costs (Southern Fixed Charges) billed by Southern Natural Gas Company (Southern) to FGT and to make any related tariff changes required. Subsequently, on May 18, 1994, the Federal Energy Regulatory Commission (Commission) issued an order (May 18 Order) accepting FGT's filing subject to FGT's making the supplemental filing. In its order, the Commission directed that the supplemental filing should show the Southern Fixed Charge account balances and include tariff revisions required to balance any outstanding customer fixed charge account totals. FGT states the instant filing is being made in compliance with the May 18 Order.

FGT requests waiver of the provision of Section 25C of its GTC regarding the carrying charge calculation to permit FGT to waive carrying charges on amounts owed FGT between June 1, 1994 and November 1, 1994.

FGT also requests waiver of the provision of Section 25C of its GTC which requires that refunds be made within 90 days of the end of the Annual Recovery Period. FGT requests that it not be required to make refunds pending Commission approval of the instant filing. FGT proposes that any refunds due hereunder be made within thirty days of a final Commission Order accepting this filing with carrying charges on such refunds calculated through the refund date.

FGT requests that the Commission waive any other parts of its Regulations or provisions of FGT's tariff as may be required to allow the instant filing to become effective as proposed.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before September 22, 1994. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23307 filed 9–20–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL94–92–000]

Portland General Electric Company; Corrected Notice of Filing [1]

September 15, 1994.

Take notice that on August 31, 1994, Portland General Electric Company (PGE) tendered for filing a Petition for a Declaratory Order and Motion for Summary Disposition. In this Petition PGE asks the Commission to declare that it has exclusive jurisdiction to determine whether Southern California Edison Company (Edison) may terminate its July 31, 1986 Long-Term Power Sale and Exchange Agreement (Agreement) with PGE and whether PGE should refund Edison any of the fees paid pursuant to the Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23308 Filed 9–20–94; 8:45 am]

BILLING CODE 6717–01–M

[1] This notice replaces the first five paragraphs of the notice issued on September 8, 1994, and changes the comment date form September 26, 1994, to October 11, 1994.

[Docket No. SA94–3–000]

Western Gas Resources Storage, Inc.; Notice of Petition for Adjustment

September 15, 1994.

Take notice that on August 31, 1994, Western Gas Resources Storage, Inc. (WGRS) filed pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), a petition for adjustment from § 284.123(b)(1)(ii) of the Commission's regulations to permit WGRS to use its tariff on file with the Railroad Commission of Texas (TRC) for services performed pursuant to NGPA section 311.

In support of its petition, WGRS states that it is an intrastate pipeline operating in the State of Texas, and is a gas utility subject to the jurisdiction of the TRC. WGRS owns and operates the Katy Gas Storage Facility, which consists of a storage cavern and associated pipeline facilities as well as a header system. WGRS's transportation and storage rates are subject to regulation by the TRC. The Commission previously granted WGRS' request to use rates on file with the TRC for interruptible transportation and storage.[1] WGRS anticipates providing section 311 firm storage and storage-related transportation service on behalf of interstate pipeline companies or local distribution companies served by interstate pipeline companies for a charge not to exceed the rates on file with the TRC, as follows:

Firm Storage (including related transportation):
Injection—$0.05 per MMBtu
Withdrawal—$0.05 per MMBtu
Deliverability—$0.9385 per MMBtu per month
Capacity—$0.0221 per MMBtu per month

The regulations applicable to this proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission within 15 days after publication of this notice in the **Federal Register**. The petition for adjustment is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23309 Filed 9–20–94; 8:45 am]

BILLING CODE 6717–01–M

[1] Docket No. SA94–1–000, 66 FERC ¶ 62,063 (1994).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5077–1]

Clean Air Act Advisory Committee; Emergency Notice of Public Meeting

Under Section (10)(a)(2) of Title 5 U.S.C. App. 2, "The Federal Advisory Committee Act," notice is hereby given that the Subcommittee on Mobile Source Emissions and Air Quality in the Northeastern States of the Clean Air Act Advisory Committee will meet on Friday, September 30, 1994 beginning at 8:30 a.m. to 4 p.m. at the Grand Hyatt Hotel, 100 H Street, N.W., Washington, D.C. 202/582–1234. Because the Subcommittee met on September 13–14, 1994 and set September 30, 1994 as the next meeting date this emergency notice is hereby given. These meetings are open to the public. For further information concerning the meeting, please contact the individuals listed below.

Mobile Source Emissions and Air Quality in the Northern States Subcommittee

The Mobile Source Emissions and Air Quality in the Northeastern States Subcommittee of the Clean Air Act Advisory Committee will conduct a meeting to discuss the pending petition offered by the Ozone Transport Commission regarding the adoption of Low Emission Vehicle Emission Standards in the northeastern states and related issues. In addition, the meeting agenda will include progress reports from various work groups established at the previous meeting of the Subcommittee, discussion of a 49-state alternative and modeling analysis of the alternative.

Further Information and Providing Comments: For additional information concerning these meetings, please contact Mike Shields, Designated Federal Official, Office of Mobile Sources, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 260–7645.

Dated: September 15, 1994.

T W. Eagles,

Acting Director, Office of Policy Analysis and Review, Office of Air and Radiation, U.S. Environmental Protection Agency.

[FR Doc. 94–23466 Filed 9–20–94; 8:45 am]

BILLING CODE 6560–60–P–M

[FRL–5074–5]

Massachusetts: Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination to Fully Approve the Adequacy of the Commonwealth of Massachusetts's Municipal Solid Waste Permitting Program, Extension of Public Comment Period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945(c)(1)(B), requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs), which may receive hazardous household waste or small quantity generator hazardous waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C), 42 U.S.C. 6945(c)(1)(C), requires the Environmental Protection Agency (EPA) to determine whether states have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibilities provided by 40 CFR Part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria shall apply to all permitted and unpermitted MSWLF facilities.

The Commonwealth of Massachusetts has applied for a determination of adequacy under Section 4005(c)(1)(C) of RCRA, 42 USC § 6945(c)(1)(C). EPA Region I has reviewed Massachusetts's MSWLF permit program adequacy application and has made a tentative determination that all portions of Massachusetts's MSWLF permit program are adequate to assure compliance with the revised MSWLF Criteria. The public comment period is being extended for 30 days in order to ensure that all interested parties have an opportunity to comment on the Massachusetts MSWLF permitting program. Massachusetts's application for program adequacy determination is available for public review and comment at the places listed in the **ADDRESSES** section below during regular office hours.

DATES: All comments on Massachusetts's application for a determination of adequacy must be received by the close of business on October 21, 1994.

ADDRESSES: Copies of Massachusetts's application for adequacy determination are available during the hours of 8:00 a.m. to 5:00 p.m. at the following addresses for inspection and copying: Massachusetts Department of Environmental Protection, Division of Solid Waste Management, One Winter Street, 4th Floor, Boston, MA 02108; U.S. EPA Region I, Waste Management Division, Solid Waste Section, 90 Canal Street, Boston, MA 02203, Attn: Fred Friedman, telephone (617) 573–9687. Written comments should be sent to Mr John F. Hackler, Chief, Solid Waste Section, mail code HER–CAN6, EPA Region I, John F. Kennedy Federal Building, Boston, MA 02203–2211.

FOR FURTHER INFORMATION CONTACT: EPA Region I, John F. Kennedy Federal Building, Boston, MA 02203, Attn: Ms. Connie Dewire, mail code HER–CAN6, telephone (617) 573–5719.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR Part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires states to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under 40 CFR Part 258. Subtitle D also requires in Section 4005(c)(1)(C), 42 USC § 6945(c)(1)(C) that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

The EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of the STIR. EPA interprets the requirements for states or tribes to develop "adequate" programs for permits, or other forms of prior approval and conditions (for example, license to operate) to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Second, the State/Tribe must have the authority to issue a permit or other notice of prior approval and conditions to all new and existing MSWLFs in its jurisdiction. The

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State/Tribe also must provide for public participation in permit issuance and enforcement as required in Section 7004(b) of RCRA, 42 USC § 6974(b). Finally, the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "Adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the STIR. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. Commonwealth of Massachusetts

On August 13, 1993, EPA Region I received Massachusetts's final MSWLF Permit Program application for adequacy determination. Region I reviewed the final application and submitted comments to Massachusetts. Massachusetts addressed EPA's comments and submitted a revised final application for adequacy determination on August 30, 1993. Region I received additional clarifying information on the Massachusetts MSWLF Permit Program on November 2, 1993 and March 23, 1994. Region I has reviewed Massachusetts's revised application and has tentatively determined that all portions of Massachusetts's MSWLF program meet all the requirements necessary to qualify for full program approval and ensures compliance with the revised Federal Criteria.

The public may submit written comments on EPA's tentative determination until October 21, 1994. Copies of Massachusetts's application are available for inspection and copying at the location indicated in the **ADDRESSES** section of this notice.

In the Commonwealth of Massachusetts, the jurisdiction for siting and permitting of solid waste management facilities lies with local boards of health and the Department of Environmental Protection (DEP), an agency falling under the Executive Office of Environmental Affairs (EOEA). The Department of Public Health (DPH) is also given an advisory role in the siting process. Authority for respective roles of the boards of health, DEP and DPH is granted by Chapter 111, section 150A of the Massachusetts General Laws. Region I based its decision of tentative full approval on the current approach for approving the construction and operation of MSWLFs in Massachusetts. This approach includes: (1) a review pursuant to the Massachusetts Environmental Policy Act (MEPA), a public information process that generally involves the submission of an Environmental Impact Report, which must be approved by the Secretary of the Office of Environmental Affairs; (2) a Site Assignment Process, which focuses on determining whether a specific location is suitable for a specific type of solid waste facility (the local board of health is responsible for granting a site assignment in accordance with the procedures and criteria at 310 CMR 16.00); and (3) a Solid Waste Management Facility Permit, a permit that must be obtained from DEP's Division of Solid Waste Management after completing the MEPA process and obtaining a site assignment. The permitting process regulates the design, operation and maintenance, closure, post-closure and financial assurance aspects of a facility.

The Massachusetts regulations require, at 310 CMR 19.021, the repermitting of all landfills existing as of the effective date of July 1, 1990, unless they choose to close prior to July 1, 1992. Furthermore, the regulations at 310 CMR 19.022(1) require the completion of closure of all unlined areas of landfills by July 1, 1995. A recent amendment of MGL c. 111, s. 150A makes the 1995 closure date applicable only to privately owned landfills.

The design standard for new and lateral expansions of landfills currently in effect in Massachusetts includes a composite liner system which features: a subgrade layer which must ensure a minimum of four foot separation between the top of bedrock or the maximum high groundwater table and the bottom of the lowermost low permeability layer; a two foot, low permeability, soil/admixture layer having a maximum in-place saturated hydraulic conductivity of 1x10–7 cm/sec; a minimum 30-mil flexible membrane liner (60-mil minimum for high density polyethylene) in direct contact with the underlying soil/admixture; a drainage/protection layer; and a leachate collection system. Alternative liner designs must meet the performance standard for ground water protection systems found at 310 CMR 19.110 and do so in a manner which meets or exceeds the design standard of that section.

The current siting criteria carefully restrict new or expanding landfills from being located in settings that may conflict with the Location Criteria specified in 40 CFR Sections 258.10, 258.11, 258.12, 258.13, 258.14 and 258.16. By currently restricting landfills to such settings, Massachusetts has protected all state drinking water resources, whether surface water or groundwater, from the potential impact of leachate -an approach which EPA has determined to be an alternate to the 40 CFR Part 258 requirements, but still as protective as the federal requirements at 40 CFR Part 258. In addition, the Commonwealth's requirements are no less stringent than the requirements set forth at 40 CFR Part 258.

The Massachusetts MSWLF Permitting Program features an unique approach to landfill assessment which includes four parts. The first part is an Initial Site Assessment (ISA), which examines the general history of the site, the types and amounts of waste landfilled, the size of the site and other historical information concerning the site. The second part is a Comprehensive Site Assessment (CSA) to characterize the nature and extent of any contamination that may exist. The CSA, which is used to develop a suitable closure strategy, involves, in its final step, a two-phased risk assessment approach to determine whether corrective action is warranted. The first phase of the risk assessment is called a qualitative risk assessment. The following three pieces of information are analyzed in this phase: the existence of contamination above standards or approved levels; the existence of potential public health or environmental receptors; and the existence of pathways which would serve to link contamination to receptors. If all three are determined to exist in any media (air, surface water, ground water or soil), the second phase in the risk assessment process, the quantitative risk assessment, is invoked as is a round of sampling for all the 40 CFR Part 258, Appendix II constituents. The third part of the landfill assessment is a Corrective Actions Alternatives Analysis (CAAA), which is conducted to determine the type of cap and any additional remediation measures which will be needed to properly close the sanitary landfill. The fourth and final part of the landfill assessment process is a Corrective Action Design (CAD), in which the landfill cap and any additional remediation measures are designed.

Massachusetts covers the landfill assessment requirements in more detail in its *Guidance on Conducting Qualitative Risk Assessments at Solid Waste Landfills* and *Guidance for Disposal Site Risk Characterization and Related Phase II Activities*. The revised *Landfill Assessment and Closure Guidance Manual* (LAC Manual) is applicable to all existing MSWLFs and to all MSWLF permit applications effective July 1, 1993. Massachusetts will implement its MSWLF permit program through enforceable permit conditions. To ensure compliance with the federal criteria, Massachusetts has revised its current permit requirements through the existing *Supplement to Landfill Assessment and Closure Manual*. These revisions occur in the following areas:

1. The adoption of the EPA approved method 8260 to test ground water.
2. Addition of the provision on the minimum distance of a ground water monitoring well from the landfill boundary.
3. Compliance with the protocols for testing and analyzing ground water for constituents listed in Appendix II to Part 258.
4. Compliance with the procedures for notifying the DEP about explosive levels of landfill gas.
5. Compliance with the protocols for conducting inspections to detect presence of hazardous waste and procedures for reporting results of such inspections.
6. Compliance with the minimum design standard for alternative landfill cover.

The Massachusetts Department of Environmental Protection will update the permits of existing municipal solid waste landfills scheduled to remain open after the effective date of 40 CFR Part 258, to assure compliance with current state requirements. The Commonwealth of Massachusetts is not asserting jurisdiction over Tribal land recognized by the United States government for the purpose of this notice. Tribes recognized by the United States government are also required to comply with the terms and conditions found at 40 CFR Part 258.

The Commonwealth of Massachusetts is committed to implementing its MSWLF program in accordance with the principles of environmental equity. The Commonwealth has expressed this commitment in an addendum to the narrative portion of its application.

EPA will consider all public comments on its tentative determination received during the public comment period. Issues raised by those comments may be the basis for a determination of inadequacy for Massachusetts's program. EPA will make a final decision on approval of the Commonwealth of Massachusetts's program and will give notice of the final determination in the **Federal Register**. The notice shall include a summary of the reasons for the final determination and a response to all significant comments.

Section 4005(a) of RCRA, 42 USC § 6945(a) provides that citizens may use the citizen suit provisions of Section 7002 of RCRA, 42 USC § 6972 to enforce the Federal MSWLF criteria set forth in 40 CFR Part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 USC § 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act as amended. 42 USC §§ 6912, 6945 and 6949a(c–c).

Dated: September 8, 1994.

John P. DeVillars,

Regional Administrator.

[FR Doc. 94–23150 Filed 9–20–94; 8:45 am]

BILLING CODE 6560–50–P

[OPP–50789; FRL–4778–2]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

241–EUP–125. Issuance. American Cyanamid Company, Agricultural Research Division, P.O. Box 400, Princeton, NJ 08543–0400. This experimental use permit allows the use of 266 pounds of the herbicide ammonium salt of (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-methyl-3-pyridinecarboxylic acid on 3,980 acres of peanuts to evaluate the control of various weeds. The program is authorized only in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from April 13, 1994 to April 13, 1996. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 241, CM #2, (703–305–6800))

100–EUP–97. Issuance. Ciba Plant Protection, P.O. Box 18300, Greensboro, NC 27419–8300. This experimental use permit allows the use of 5.7 pounds of the herbicide 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea on 155 acres of corn to evaluate the control of various weeds. The program is authorized only in the States of Iowa, Illinois, Indiana, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, North Carolina, Ohio, Pennsylvania, South Dakota, Tennessee, Texas, and Wisconsin. The experimental use permit is effective from March 31, 1994 to March 31, 1995. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 241, CM #2, (703–305–6800))

62719–EUP–26. Issuance. DowElanco, 9330 Zionsville Rd., Indianapolis, IN 46268–1054. This experimental use permit allows the use of 1,245.48 pounds of the herbicides N-(2,6-difluorophenyl)-5-methyl-1,2,4-triazole-[1,5a]-pyrimidine-2-sulfonamide and 3,6-dichloro-2-pyridinecarboxylic acid on 4,850 acres of field corn to evaluate the control of various broadleaf weeds. The program is authorized in the States of Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North

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Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, and Wisconsin. The experimental use permit is effective from March 9, 1994 to March 9, 1996. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Joanne Miller, PM 23, Rm. 237, CM #2, (703–305–7830))

524–EUP–74. Extension. Monsanto Agricultural Company, 800 North Lindbergh Blvd., St. Louis, MO 63167. This experimental use permit allows the use of 75 pounds of the herbicide methyl 5-[[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl]-3-chloro-1-methyl-1-H-pyrazole-4-carboxylate on 600 acres of turf to evaluate the control of various broadleaf weeds. The program for turf is authorized only in the States of Alabama, Arkansas, Arizona, California, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and West Virginia. The experimental use permit also allows the use of 252 pounds of the herbicide methyl 5-[[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl]-3-chloro-1-methyl-1-H-pyrazole-4-carboxylate on 4,000 acres of field corn to evaluate the control of various broadleaf weeds. The program for field corn is authorized only in the States of Alabama, Colorado, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective for both programs from April 4, 1994 to April 1, 1995. A temporary tolerance for residues of the active ingredient in or on field corn has been established. (Joanne Miller, PM 23, Rm. 237, CM #2, (703–305–7830))

524–EUP–76. Extension. Monsanto Agricultural Company, 800 North Lindbergh Blvd., St. Louis, MO 63167. This experimental use permit allows the use of 336 pounds of the herbicide methyl 5-[[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl]-3-chloro-1-methyl-1-H-pyrazole-4-carboxylate on 4,000 acres of corn to evaluate the control of various broadleaf weeds. The program is authorized only in the States of Illinois, Indiana, Iowa, Kansas, Maryland, Michigan, Minnesota, Missouri, Nebraska, New York, Ohio, Pennsylvania, South Dakota, Virginia, and Wisconsin. The experimental use permit is effective from April 4, 1994 to April 1, 1995. A temporary tolerance for residues of the active ingredient in or on field corn has been established. (Joanne Miller, PM 23, Rm. 237, CM #2, (703–305–7830))

58998–EUP–8. Amended/Extension. Novo Nordisk Bioindustrials, Inc., 33 Turner Rd., Danbury, CT 06813. This experimental use permit allows the use of 149.91 pounds of the microbial insecticide *Bacillus thuringiensis* subspecies *israelensis* on catch basins, clean water, curb gutters in residential areas, ditches, flood water, pastures, polluted waters, ponds, retention areas, rice fields, rivers, salt marshes, storm water, streams, and tidal waters. The program is authorized only in the States of Arkansas, California, Delaware, Florida, Louisiana, Massachusetts, Michigan, Minnesota, New Jersey, Pennsylvania, South Carolina, Tennessee, Utah, and Washington. The permit is effective from March 22, 1994 to February 1, 1995. (Phil Hutton, PM 18, Rm. 213, CM #2, (703–305–7690))

10182–EUP–56. Issuance. Zeneca Ag Products, 1800 Concord Pike, Wilmington, DE 19897. This experimental use permit allows the use of 900 pounds of the chemical hybridizing agent potassium 2-[4-chlorophenyl]-1-ethyl-1,4-dihydro-6-methyl-4-oxo-3-pyridinecarboxylate on 360 acres of corn to evaluate its effectiveness as a male sterilant in the production of hybrid seed corn. The program is authorized only in the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, and Wisconsin. The experimental use permit is effective from March 15, 1994 to June 1, 1996. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Cynthia Giles-Parker, PM 22, Rm. 229, CM #2, (703–305–5540))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: September 9, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–23354 Filed 9–20–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66200; FRL–4911–7]

Notice of Intent to Cancel Registration of Certain Products Containing the Active Ingredient Metam-Sodium

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Intent to Cancel Registrations.

SUMMARY: This Notice announces the Agency's intent to cancel the registrations of the pesticide products Vaporooter A Foaming Fumigant (EPA Reg. No. 9993-1), Foam Coat Vaporooter (EPA Reg. No. 9993-2), and Sanafoam Vaporooter II (EPA Reg. No. 9993-3). EPA has determined that continued sale, distribution, and use of the products would cause unreasonable adverse effects on the environment. EPA bases this determination on data and other information showing that products that contain metam-sodium (sodium methyldithiocarbamate) when used for control of root growth in sewer lines must be classified for "Restricted Use Only" to ensure their safe use. The chemical is hazardous, and applicators need to wear protective equipment and receive specialized training when using the products for this use. Airrigation Engineering Co., Inc. (Airrigation) has failed to comply with the Agency's requirement for Restricted Use classification for the products listed above. EPA is therefore issuing this Notice of Intent to Cancel as required by section 6(b) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

DATES: Requests for a hearing by a registrant or other adversely affected parties must be received by the Office of the Hearing Clerk at the address given below on or before October 21, 1994 or within 30 days from receipt of this Notice by the registrant, whichever occurs later.

ADDRESSES: Written requests for a hearing, identified by the document control number [OPP-66200], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Steve Robbins, Acting Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Telephone: (703)-305-6900.

SUPPLEMENTARY INFORMATION:

I. Introduction

This Notice announces EPA's intent to cancel the registrations of the pesticide products Vaporooter A Foaming Fumigant (EPA Reg. No. 9993-1), Foam Coat Vaporooter (EPA Reg. No. 9993-2), and Sanafoam Vaporooter II (EPA Reg. No. 9993-3). For the reasons set forth below, the Administrator has determined that these products, when used in accordance with widespread and commonly recognized practice, will generally cause unreasonable adverse effects on public health and/or the environment unless they are classified for restricted use. This determination is based on the hazardous nature of these products and their active ingredient, metam-sodium; the complex application method for use of these products; the need for specialized equipment and training to apply these products; and the potential for residential exposure to the products due to incorrect application procedures.

A. Organization of this Notice

This Notice is divided into nine units. Unit I provides introductory information and describes the legal authority for this action. Unit II discusses the factual background for this action, including information relating to the active ingredient metamsodium, and communications with Airrigation Engineering Co. Unit III presents the EPA's determinations with regard to Airrigation's sewer use products. Unit IV describes the role of the Scientific Advisory Panel and the Secretary of Agriculture relating to this action. Unit V sets forth the Agency's determination that these product registrations must be canceled. Unit VI discusses the disposition of existing stocks of the products. Unit VII contains a discussion of the procedures for implementing the actions required by this Notice, as well as the procedures for requesting a hearing. Unit VIII identifies the references. Unit IX gives information on the Public Docket.

B. Legal Authority

Before a pesticide product may be lawfully sold or distributed in either intrastate or interstate commerce, the product must be registered by EPA, pursuant to FIFRA sections 3(a) and 12(a)(1).

A registration is a license allowing a pesticide product to be sold and distributed for specified uses in accordance with specific use instructions, precautions and other terms and conditions. A pesticide product may be registered or remain registered only if it meets the statutory standard for registration. Among other things, a pesticide must perform its intended pesticidal function without causing "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)). "Unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of [the] pesticide" (FIFRA section 2(bb)).

In addition, under FIFRA section 3(d)(1)(C), the Administrator may classify a pesticide for restricted use if she determines that the pesticide, when applied in accordance with its directions for use, warnings, and cautions, or, in accordance with widespread and commonly recognized practice, may generally cause unreasonable adverse effects on the environment, without additional regulatory restrictions. Once classified for restricted use, a product can be applied only by or under the direct supervision of a certified applicator (FIFRA sections 3(d)(1)(C), 12(a)(2)(F), 12(a)(2)(G)). EPA has promulgated regulations which establish the procedures EPA will follow when classifying a product for restricted use. Pursuant to 40 CFR 152.165(c)(2), the Agency may notify a registrant of the decision to classify its product for restricted use and require the registrant to submit certain information, listed in paragraph (c)(1) of that section, to comply with the classification decision. If the registrant fails to comply with this notification, the Agency may initiate cancellation proceedings.

The regulations at 40 CFR 152.170(a) provide general criteria that guide EPA's decision to classify a pesticide product for restricted use. In general, use of a product will be restricted if the Agency determines that: (1) the product or its use poses a serious hazard that may be mitigated by restricting use; (2) the product's labeling, when considered according to the factors in paragraph (e)(2) of that section, is not adequate to mitigate the hazard(s); (3) restriction of the product would decrease the risk of adverse effects; and (4) the decrease in risks of the pesticide as a result of restriction would exceed any attendant decrease in benefits. Paragraph (e)(2) of that section states that labeling will be judged adequate, and therefore will be appropriate for unrestricted use products, if it meets all of the following criteria: (1) the user would not be required to perform complex operations or procedures requiring specialized training and/or experience; (2) the label directions do not call for a specialized apparatus, protective equipment, or materials that reasonably would not be available to the general public; (3) failure to follow label directions in a minor way would result in few or no significant adverse effects; (4) following directions for use would result in few or no significant adverse effects of a delayed or indirect nature through bioaccumulation, persistence, or pesticide movement from the original application site; and (5) widespread and commonly recognized practices of use would not nullify or detract from label directions such that unreasonable adverse effects on the environment might occur.

The burden of demonstrating that a pesticide product satisfies the statutory criteria for registration is at all times on the proponents of initial or continued registration. Under FIFRA section 6, the Agency may issue a Notice of Intent to Cancel the registration of a pesticide product whenever it appears to the Administrator that the product no longer satisfies the statutory criteria for registration. If appropriate, the Agency may require modifications to the terms and conditions of registration, such as deletion of particular uses or revisions in labeling, as an alternative to cancellation. If the Notice requires such changes, cancellation may be avoided by making the changes specified in the Notice, if possible. Adversely affected persons may also request a hearing on the cancellation of a specified registration. If they do so in a legally effective manner, the registration will be continued pending a decision at the conclusion of an administrative hearing.

II. Factual Background

A. Metam-Sodium

Metam-sodium, the sodium salt of methyldithiocarbamate, is extremely volatile and very unstable under aerobic conditions with a half-life of 23 minutes. Its principal derivative is methyl isothiocyanate (MITC). In water, metam-sodium is rapidly decomposed to MITC and hydrogen sulfide (H_2S). Pesticide products containing metam-sodium are registered for numerous agricultural and non-agricultural uses, including as a soil fumigant to control insects, nematodes, soil-borne diseases, and weeds prior to planting crops. Other

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uses include wood preservation, tree root killer in sewers, slimicide, and use in sugar refineries.

Metam-sodium and MITC show varying degrees of acute and chronic toxicity. Due to the chemical nature of metam-sodium, in that it is readily hydrolyzed to MITC and H_2S, the Agency believes that exposure from pesticide use would be related to MITC rather than metam-sodium (Ref. 1). MITC is shown to be moderately toxic in short-term (acute) exposures to laboratory test animals. In rabbits, MITC is shown to be a severe skin and respiratory tract irritant and a severe eye irritant. Test animals exposed to high levels of air-borne MITC in acute studies show eye irritation, hypoactivity, distressed breathing, convulsions, and death.

Metam-sodium is shown to be slightly toxic to laboratory test animals in acute studies. If on skin or ingested, it is corrosive and causes severe irritation or burns. Metam-sodium has the potential for causing adverse health effects from both acute and chronic exposures. In addition, existing medical conditions may be exacerbated upon exposure to metam-sodium. Acute health effects include excessive salivation, sweating, fatigue, weakness, nausea, headache, dizziness, and eye and respiratory tract irritation. Chronic conditions can include conjunctivitis, photophobia, and blurred vision. Studies also have suggested that the chemical may exhibit reproductive toxicity. Medical conditions that are prone to further aggravation upon exposure to metam-sodium include impaired pulmonary functions and preexisting eye problems.

Potential public health and environmental impacts of this chemical were demonstrated when in July 1991, a train derailment resulted in 19,500 gallons of metam-sodium being spilled into the Sacramento River near Dunsmuir, California. All aquatic life and substantial shoreline vegetation along a 45-mile stretch of river leading to Lake Shasta were killed. As a result of this incident, the Agency expanded and intensified ongoing review of this chemical. Registrants formed the Metam-Sodium Task Force in response to the Agency's request for data needed to fully assess the environmental and public health impact of this chemical.

The Agency's review of available data led to conclusions that agricultural uses of metam-sodium may result in unacceptable risk from acute and developmental toxicity effects. In order to mitigate agricultural use risks, EPA and the Task Force entered into an agreement which included: (1) label amendments to limit around-home and small-area uses (lawns, seed-beds, plant-beds, and other non-field limited areas) to certified applicators; products will be labeled with "Restricted Use"; (2) label amendments to include requirements for protective clothing and equipment; (3) a reentry waiting period of 48 hours for agricultural sites; and (4) a tarping requirement for treated areas adjacent to homes. These requirements are currently in place and were voluntarily implemented with the cooperation of the Task Force consisting of all producers of technical grade metam-sodium as well as other product formulators.

In addition to this agreement between EPA and the registrants, both parties initiated reviews of other uses of metam-sodium. These reviews were intended to determine what measures, if any, would be needed to further mitigate risk.

B. Use of Metam-Sodium in Sewers

Sewer lines are frequently damaged and blocked by tree roots. This is a perennial and costly problem for municipalities. Lateral lines to buildings on private property may also be damaged and blocked by roots. A mechanical remedy involves the use of a rotary cutting tool. This technique only offers temporary results, and may even exacerbate the problem by causing root branching. Rotary cutters also damage sewer pipes. When the damage and blockage are too severe, sewers are dug up and replaced at considerable cost to the community or property owner (Ref. 2).

Sewer root control via this chemical system involves the use of metam-sodium, dichlobenil, and a foaming agent. Application of this pesticide involves premixing of measured chemicals and a knowledge of calibrated chemical feeding, pressurizing, and foam-generating equipment.

In 1971 and 1973, Airrigation obtained registrations for two pesticide products to control roots in sewers. Each product consisted of metam-sodium and dichlobenil mixed together just prior to use. A patent was obtained which prevented potential competition from marketing this type of combination product for controlling roots in sewers. The registrant limited sales of its products to a few contractors and encouraged them to train their staff due to the complex application method. Experience with this pesticide treatment over the ensuing years showed it to be superior to mechanical methods and it became the preferred method for controlling roots in sewers. Following the expiration of Airrigation's patent, three additional products have been registered for this use.

In March 1993, EPA learned of an incident that occurred approximately 1 year prior to that involving Airrigation's product, Sanafoam Vaporooter II. In that incident, a worker in Los Alamos, New Mexico, improperly applied the Sanafoam product, causing the product to back up into the plumbing of a nearby residence. The residents reported the incident to EPA, stating that they suffered respiratory and pulmonary injury (Ref. 3). Airrigation did not provide EPA with any information regarding the incident.

More recently, on July 11, 1994, an incident involving a metam-sodium sewer use product occurred in Roseville, CA, and resulted in a home being evacuated (Ref. 4). The foam product being applied by a municipal sewer maintenance crew flowed into one home and out into the yard of another home located behind it. What caused the pesticide product to flow into the home rather than down the sewer pipes is being investigated.

Upon completing review of the available data base and use history of products in this application, the Agency concluded that the sewer root control use of metam-sodium should be restricted. This decision was based largely upon the potential risks to workers and the public due to the hazardous nature of the chemical, the need for specialized training associated with complex equipment and application procedures, the need for specialized protective equipment, the potential for metam-sodium to enter buildings through drains, and the potential for damage to sewage biological digestion processes (Ref. 8). Technical information supporting this restricted-use classification was obtained from product literature on the registered products, two applicants of pending metam-sodium sewer use products with experience as contract users of similar registered products, and operation records from two large municipal sewage treatment systems. Moreover, the Agency believes that because of the patent expiration and the effectiveness of metam-sodium root control, there is the probability of large market expansion throughout the United States with increased potential risk from new suppliers. The Agency has concluded that the complex application method could pose an unreasonable risk to inadequately trained workers as well as to the public.

The Agency has also concluded that restricted use classification should be phased in over time to allow for development of a training program for

applicator certification. This program is being designed by metam-sodium registrants, in cooperation with the Agency. The restricted use requirement will only go into effect after the training manual, testing, and certification are available. The three most recent registrants have agreed to restricted use classification and to support development of EPA/State training programs for applicator certification. The restricted use classification must be reflected on product labeling within 120 days of the issuance of an EPA accepted training manual for applicator certification.

Airrigation's sewer treatment products are not currently classified as restricted use pesticides. Therefore, any persons can purchase and apply these products, regardless of their qualifications to do so. Airrigation has asserted that restricting the use of these products is not necessary because Airrigation gives a training program to all customers who purchase the products. However, EPA believes that this system is insufficient to assure that the people who actually perform the product application are adequately trained. If these products were classified for restricted use, it would be a violation of FIFRA for anyone other than a certified applicator, or someone under the direct supervision of a certified applicator, to apply the products (FIFRA sections 12(a)(2)(F),(G)), and EPA would have assurance that the applicators had at least received the requisite training in use of these products.

Pursuant to the decision by EPA to classify all metam-sodium sewer use products as restricted use pesticides, the Agency communicated frequently with affected registrants on this matter. The Agency's initial approach to implementing restricted use classification was to request voluntary compliance in the spirit of continued cooperation between EPA and the industry. Except for Airrigation, all affected registrants of both pending and registered metam-sodium sewer use products agreed to comply. Despite numerous meetings and much correspondence with EPA, Airrigation has remained steadfast in its refusal to voluntarily implement EPA's determination. Therefore, on September 24, 1993, a letter was sent to Airrigation which formally requested, pursuant to 40 CFR 152.165(c)(2), that the company submit amended labeling for the above-named products to reflect a restricted use classification and additionally requested a written response to that letter within 10 days (Ref. 5). Airrigation responded in a letter dated October 14, 1993, that was received by the Agency on October 22, 1993. The letter stated that the company declined to agree to the reclassification of its products (Ref. 6). Because Airrigation has failed to adopt the Agency's classification of its products for restricted use, EPA is initiating this cancellation action.

III. Findings on Airrigation Engineering Sewer Use Products

A. General Criteria

The Agency has determined, pursuant to FIFRA section 3(d)(1)(C), that restricted use classification for the use of metam-sodium in sewers is required due to the elaborate and complicated methods of applying this chemical and the potential for harmful human exposure. The Agency has examined available information regarding risks from potential exposure to metam-sodium use in sewer root control and has concluded that existing and potential risks are unacceptable, based upon the following:

1. These products pose a serious hazard to workers and the public due to their acute toxicity and developmental toxicity, which are evident from available toxicological studies (Ref. 1). There is a potential, realized in at least one incident, for the products to invade residential and commercial properties during use, causing injury to those inside (Ref. 2). Inhalation and dermal exposure risks to mixer/loaders and applicators exist due to the high volatility of methyl isothiocyanate (MITC), the principle derivative of metam-sodium (Ref. 1). Potential for worker and public exposure, through misuse or otherwise, is significant due to the complexity of the application method used for applying metam-sodium in sewer systems (Ref. 7). In addition, these products have the potential to contaminate ground and surface water, and to damage biological sewage treatment systems (Ref. 8). The Agency believes that these hazards could be mitigated through restricting the products' use.

2. The current labeling of the Airrigation products is not adequate to mitigate the hazard these products pose. Under EPA's regulations, a label will be deemed "adequate," and thus suitable for products classified for general use, only if it meets all of the factors listed in 40 CFR 152.170(e)(2). Those factors are listed in Unit I.B. of this preamble. EPA finds that Airrigation's sewer use products do not meet three of those factors as follows:

a. Users of these products are required to perform complex operations or procedures requiring specialized training or experience. All of the products' labels state "RECOMMENDED FOR USE BY TRAINED PERSONNEL" (Refs. 9, 10, and 11). On August 25, 1993, Agency personnel attended a demonstration of treatment of a sewer line with another metam sodium product to learn first-hand the type of operations that are involved. The procedures and equipment utilized were highly complex and clearly required specialized training and knowledge to effectively operate (Ref. 7). As noted above, the current labeling of these products does not restrict who can apply the products. Although Airrigation states that it provides some type of training to all of its customers, the Agency cannot ensure that only people who have been adequately trained will be permitted to apply these products. Therefore, these products do not meet factor (e)(2)(i).

b. The label directions for these products call for specialized apparatus and protective equipment that reasonably would not be available to the general public. In order to use the products, the applicator must use a special foam generator to convert the liquid product constituents to a foam form (Refs. 9, 10, and 11). The Foam-Coat Vaporooter label directs users "USE ONLY SPECIALIZED FOAM APPLICATION EQUIPMENT," and then states that this equipment is available from Airrigation Engineering (Ref. 10). This machinery is necessary to produce the foam and to introduce the foam into the sewer lines. The Sanafoam Vaporooter II label only gives directions for use of the product with Airrigation's FOAM MAKER (R) generator (Ref. 11). In addition, that label's directions for use instruct the user to "[u]se specialized foam application equipment," and, if treating a building lateral line, to "[b]e sure foam application discharge hose is also of a specialized type" (Ref. 11). Therefore, the Airrigation products' labels do not meet factor (e)(2)(ii).

c. Failure to follow label directions in a minor way could result in significant adverse effects. EPA is very concerned regarding the potential these products have to invade residential or other structures through improper application. The Sanafoam Vaporooter II label acknowledges this danger and states that "caution must be used to assure foam does not travel into adjacent structures" (Ref. 11). However, as the incident in Los Alamos, NM, shows, this result is possible in spite of the cautionary labeling. EPA no longer believes that this cautionary statement is sufficient to mitigate these products' potential to expose the general public to highly toxic fumigants. A person who is

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not thoroughly trained and familiar with the complicated application methods and equipment for these products could easily make a minor error in the application procedure, which could cause widespread human exposure and result in adverse effects to those people and the environment. Therefore, the Airrigation products' labels do not meet factor (e)(2)(iii).

3. Restriction of the use of metam-sodium products in sewers would decrease the risk of adverse effects to the public and to workers. Requiring that all workers who apply these products be properly trained certified applicators, or under the direct supervision of properly trained certified applicators, will ensure to the greatest degree possible that users of these products have the requisite skill and ability to utilize the complex machinery and application methods necessary to apply these products as safely as possible.

4. The decrease in potential risk from restricting use of these products will exceed any incidental decrease in their benefits. The Agency believes that restricted use classification will not significantly increase the cost of sewer root control treatment. Because there are other substantially similar products available which will be classified for restricted use when the applicator training program is completed, there will be little benefit to the public from having one product on the market with much higher risks than the others at comparable cost. The need for root control in sewer lines will continue to be met by the other products with less potential for adverse effects.

B. Risk-Benefit Assessment

There is a significant potential for serious harm to humans and the environment due to the improper application of these products. The Agency cannot adequately mitigate this potential risk through cautionary labeling alone because the products' application method requires specialized equipment and training. The best way EPA can ensure that all product applicators are sufficiently skilled to prevent harm to humans and the environment, to the greatest extent possible, is to require all persons who apply these products to be properly trained certified applicators or under the direct supervision of such certified applicators.

There are currently three other registrants marketing products which are substantially similar to the Airrigation products. Each of these companies agreed upon registration of its product to participate in developing a training program for sewer treatment applicators, and to label its sewer treatment products for restricted use once the program is made available to the States. EPA believes that the cost of these products is comparable to that of Airrigation's products since the amount of chemicals (active ingredients), the percentage and quality of foaming ingredients are all very similar. The other registrants have indicated to EPA that they do not expect restricted use classification to increase the cost of their products to the public. EPA also believes that these companies' products, and any new products to enter the market in the future, will be sufficient to meet the public demand for sewer root treatment. In performing this function, they will pose less overall risk to the public than the Airrigation products because they will be used only by or under the direct supervision of properly trained certified applicators.

Therefore, in comparison to other available alternatives, the Airrigation products pose serious risks and provide negligible benefits, if any. Unless these products are classified for restricted use under the same phased approach as the other registrants' products, they will no longer meet the statutory standard for registration.

C. Measures Short of Cancellation

Under FIFRA, prior to taking regulatory action to cancel a pesticide's registration, the Administrator must consider whether any measures short of cancellation would be sufficient to reduce the risk of adverse effects to an acceptable level. As discussed above, the Agency has determined that restricted use classification would reduce the potential risks of these products to humans and the environment to an acceptable level. That was the basis for EPA's letter of September 24, 1993 to Airrigation. Airrigation refused to comply with the Agency's decision. Accordingly, there are no other measures short of cancellation which would reduce the potential risks from these products to an acceptable level. In order to avoid cancellation, Airrigation must amend the registrations of these products so that they will be classified for restricted use upon issuance of the applicator training program. Additional information on avoiding cancellation can be obtained from the Office of Pesticide Program personnel listed in the section above under the heading "For Further Information Contact."

IV. Role of the Scientific Advisory Panel and the Secretary of Agriculture

Sections 6(b) and 25(d) of FIFRA provide certain opportunities for the Secretary of the Department of Agriculture (USDA) and the FIFRA Science Advisory Panel (SAP) to review and comment upon a draft Notice of Intent to Cancel, and in the case of USDA, an analysis of the impact of the proposed action on the agricultural economy. These reviews may be waived, and if they are, the Notice may be published without delay.

On May 2, 1994, EPA asked the SAP and the Secretary of USDA to waive their rights to review and comment on this Notice (Refs. 12 and 13). These requests were made because the bases for this notice are regulatory in nature due to the need for specialized training, and specialized application and protective equipment when using these products. Therefore, a science finding is not required. Moreover, the use of these products does not involve agricultural commodities. On May 23, 1994, the SAP notified EPA that it waived its review of this action (Ref. 14). On May 12, 1994, Nancy N. Ragsdale, Director, National Agricultural Pesticide Impact Assessment Program, USDA, notified EPA that the Secretary would waive review of this action (Ref. 15). Because USDA and SAP have waived their review of this action, the Agency is not delaying issuance of this Notice.

V. Agency Determination that Cancellation of Airrigation Engineering's Products is Necessary

EPA has determined that the Airrigation sewer treatment products listed above, without being classified for restricted use, fail to meet the standard for registration under FIFRA for the reasons listed below, and that the registrations of these products must be canceled.

1. These products pose a serious hazard, due to their acute and developmental toxicity and their complicated and difficult application methods, which could be adequately mitigated through restricted use classification.

2. There are adequate alternative products which will be classified for restricted use (when the certified applicator training program is available to the States) which will perform the same function and provide the same benefits while posing significantly lower risks.

3. EPA has informed Airrigation of this determination pursuant to 40 CFR 152.65(c)(2), and Airrigation has refused to comply with the Agency's decision.

VI. Disposition of Existing Stocks

For purposes of this Notice, existing stocks are defined as those stocks of Vaporooter A Foaming Fumigant (EPA Reg. No. 99931), Foam Coat Vaporooter (EPA Reg. No 9993-2), and Sanafoam Vaporooter II (EPA Reg. No. 9993-3) which were in the United States and were packaged and labeled for shipment prior to the effective date of the cancellation of the registrations of these products. The Agency has determined that no further sale, distribution, or use of existing stocks of these products will be permitted after the effective date of cancellation of the registration of the product, except for distribution for the purposes of disposal. Owners of existing stocks of the products may at any time dispose of the product in accordance with applicable local, State, and Federal regulations. The determination is based on the finding that continued use of these products without restricted use classification may result in unreasonable adverse effects on the environment.

VII. Procedural Matters

This Notice announces EPA's intent to cancel the registration of Airrigation Engineering Co., Inc., products containing metam-sodium for use in treating sewer lines, and any product with any of the registration numbers listed above that is supplementally distributed. This action is taken pursuant to authority in section 6(b) of FIFRA. Under FIFRA section 6(b)(1), registrants and other adversely affected parties may request a hearing on the cancellation actions that this Notice initiates. Any hearing concerning cancellation of registration for any affected pesticide product will be held in accordance with FIFRA section 6(d). Unless a hearing is properly requested in accordance with the provisions of this Notice, the registration will be canceled. This unit of the Notice explains how such persons may request a hearing in accordance with the procedures specified in this Notice, and the consequences of requesting or failing to request a hearing.

A. Procedures for Requesting a Hearing

To contest the regulatory action initiated by this Notice, registrants or other adversely affected persons must request a hearing within 30 days of the registrant's receipt of this Notice, or within 30 days from the date of publication of this Notice in the **Federal Register**, whichever occurs later. All registrants and other adversely affected persons who request a hearing must file the request in accordance with the procedures established by FIFRA and EPA's Rules of Practice Governing Hearings (40 CFR part 164). These procedures require that all requests must identify the specific registration by Registration Number and state the basis for objecting to the cancellation of the product for which a hearing is requested, and must be received by the Hearing Clerk within the applicable 30-day period. Failure to comply with these requirements will result in denial of the request for a hearing. Requests for a hearing should also be accompanied by objections that are specific to each basis of cancellation of the pesticide product for which a hearing is requested.

Requests for a hearing must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

1. *Consequences of filing a timely and effective hearing request.* If a hearing on any action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by EPA's Rules of Practice Governing Hearings under FIFRA section 6 (40 CFR part 164).

2. *Consequences of failure to file in a timely and effective manner.* If a hearing concerning the cancellation of a specific product subject to this Notice is not requested in a timely and effective manner by the end of the applicable 30-day period, registration of that product will be canceled automatically.

B. Separation of Functions

EPA's rules of practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding ex parte with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of his/her representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff of EPA in any administrative hearing on this Notice of Intent to Cancel: the Office of Administrative Law Judge, the Environmental Appeals Board, the Deputy Administrator and the members of the staff of the immediate office of the Deputy Administrator, and the Administrator and the members of staff in the immediate office of the Administrator. The following offices are designated as the trial staff in any proceeding which may arise under this Notice: the Office of General Counsel, the Assistant Administrator for the Office of Prevention, Pesticides, and Toxic Substances and his/her immediate staff, the Office of Pesticide Programs, and the Office of Compliance Monitoring. None of the persons designated as the judicial staff may have any ex parte communications with the trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in these proceedings, without fully complying with the applicable regulations.

VIII. References

The following list of references are contained in the Public Docket and can be made available on request:

1. June 22, 1994 Memorandum from Ameesha Mehta to Penny Fenner-Crisp regarding worker and residential/bystander risk.
2. July 24, 1992 Memorandum from Anne E. Linsay to Stephen L. Johnson regarding support needs for restricted use (RU) labeling of metam-sodium products.
3. April 11, 1992 Incident Report—Herbicide Contamination of a Private Residence in Los Alamos, NM.
4. July 12, 1994 Newspaper Article "Toxic Sewer Spill Forces Evacuation," The Press Tribune.
5. September 9, 1993 letter from Larry Culleen requesting voluntary compliance with restricted use classification.
6. October 14, 1993 Letter from Barbara H. Tiernan to Larry Culleen, refusing to voluntarily comply with Restricted Use Labeling.
7. December 30, 1992 Letter from Frank T. Sanders to Barbara H. Tiernan regarding EPA's decision to classify sewer use products as RU.
8. October 3, 1994 Letter from Anthony Malavenda, Duke's Sales, to Susan Lewis regarding metam-soduim sewer use for root control.
9. Vaporooter labeling, EPA Reg. No. 9993-1.
10. Foam-Coat Vaporooter labeling. EPA Reg. No. 9993-2.
11. Sanafoam Vaporooter II labeling. EPA Reg. No. 9993-3.
12. May 2, 1994 Memorandum from Doug Campt to Bruce Jaeger, Science Advisory Panel, requesting waiver of review.
13. May 2, 1994 Letter from Doug Campt to Nancy Ragsdale of USDA, requesting waiver of review.
14. May 23,1994 Response memorandum from SAP regarding waiver request.
15. May 12, 1994 Letter to Doug Campt on USDA's reply to request to waive review.

IX. Public Docket

The Public Docket containing the above references is located at 1921

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Jefferson Davis Highway, Rm. 1132, Arlington, Virginia. The references can be viewed from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 12, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94–23353 Filed 9–20–94; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–211039; FRL–4907–1]

TSCA Section 21 Petition; Response to Citizens' Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Response to citizens' petition.

SUMMARY: On April 4, 1994, Mr. Mark Truelock (Petitioner), of Del City, Oklahoma, sent a letter to the Administrator of EPA designated as a petition under section 21 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2620. Enclosed with that letter was a copy of an earlier letter, dated November 26, 1993, also designated as a section 21 Petition. The Petition describes problems Mr. Truelock has experienced over the years in seeking relief from periodic overflowing of raw sewage from a drainage ditch adjacent to his house. The problem described is not amenable to solution by remedies provided by section 21 of TSCA, nor does Petitioner request such action. In December of 1993, in response to earlier correspondence, EPA Region 6 informed Petitioner of actions already taken under the Clean Water Act to resolve the problem. Therefore, Petition is denied because no action authorized under TSCA section 21 has been requested. Specifically, Petitioner has not sought rulemaking under TSCA section 4, 6, or 8, or an order under TSCA section 5(e) or 6(b)(2).

FOR FURTHER INFORMATION CONTACT: Edward M. Brooks, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. 515A, 401 M St., SW., Washington, DC 20460, (202) 260–3754.

SUPPLEMENTARY INFORMATION:

I. Statutory Requirements

Section 21 of TSCA provides that any person may petition EPA to initiate proceedings for issuance of rules under sections 4, 6, and 8 of TSCA. A section 21 petition must set forth facts which the petitioner believes establish the need for the rules requested. EPA is required to grant or deny the petition within 90 days. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons in the **Federal Register**.

Within 60 days of denial, the petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking. For petition for a new rule or order, the court must provide opportunity for the petition to be considered de novo. After hearing the evidence, the court can order EPA to initiate the requested action.

Relief available under section 21 is limited to initiation of a proceeding to issue, amend, or appeal a rule under section 4, 6, or 8, or an order under section 5(e) or 6(b)(2).

II. Description of Petition and Related Events

EPA received an April 4, 1994, letter from Petitioner labeled "TSCA–21." That letter provided no details and requested no action, but simply asserted that EPA had failed to respond to a Petition on December 6, 1993. The Agency has no record of correspondence from Petitioner dated December 6th. The April 4 letter was accompanied by a second letter, dated November 26, 1993, but first received with the April letter that is also designated as a TSCA section 21 petition. The petition does not expressly request any action, but instead recounts Petitioner's experiences in seeking relief from a chronically overflowing drainage ditch that runs adjacent to his property line. The petition also references and notes that EPA had not responded to an earlier July 14, 1993 letter on the same matter Petitioner had sent to the EPA Region 6 Office in Dallas, Texas. The July 14 letter chronicled Petitioner's experiences in seeking relief from the Del City authorities, stated his intent to be compensated for past damages, and referred to three sections (308, 309, and 326) of the Clean Water Act. While neither the section 21 Petition nor the July 14, 1993 letter request any specific actions from EPA, the Agency believes it is reasonable to infer from both that Petitioner seeks action to prevent the drainage ditch from periodically overflowing into his home.

In fact, EPA's Region 6 Office did respond to Petitioner's July letter on December 7, 1993. That response noted efforts made by EPA, the Oklahoma Department of Environmental Quality, and Del City to correct the collection system deficiencies; informed Petitioner that EPA had issued an Administrative Order in February of 1992, requiring the Del City Municipal Service Authority to complete construction of the collection system improvements by the end of 1993 (Docket No. VI–921246); and concluded by suggesting that Petitioner inform the Del City Municipal Service Authority and/or EPA if sanitation sewer overflows occurred after that date, providing specific information on location(s), date/time(s), and circumstances of such events.

III. Disposition of Petition

The petition is denied because it did not request rulemaking under TSCA section 4, 6, or 8, or an order under TSCA section 5(e) or 6(b)(2).

The problem described, moreover, is not amenable to those authorities. Notwithstanding denial of the petition, the Agency has investigated Petitioner's complaints and provided relief. The problem described by Petitioner is being addressed by EPA Region 6 under the Clean Water Act, and Petitioner has been expressly requested to bring any further occurrences of the problem to the attention of the Del City Municipal Authority and/or the EPA Regional Office. Petitioner has not reported on, nor is the Agency aware of, any incidents that have occurred after December 31, 1993.

IV. Administrative Record

EPA has established a public record of those documents the Agency considered in reviewing this petition. The record consists of documents located in the file designated by Docket Number/ Administrative Record Number OPPTS–211039, located at the TSCA Nonconfidential Information Center NCIC. This docket is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460. The public record consists of all documents in the OPPTS file and all documents cited in the documents in that file.

List of Subjects

Environmental protection, Citizens petition.

Dated: September 14, 1994.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 94–23356 Filed 9–20–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; American President Lines, Ltd. et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011340–002.
Title: APL/OOCL Reciprocal Slot Exchange & Coordinated Sailing Agreement.
Parties:
American President Lines, Ltd.
Orient Overseas Container Line Inc.

Synopsis: The proposed amendment provides for the suspension of this Agreement during the unexpired period of its term, while the APL/MOL/OOCL Asia-Pacific Alliance Agreement remains effective.

Agreement No.: 203–011466.
Title: Container Transport Agreement.
Parties:
Cast Logistics (U.S.A.) Limited
DSR–Senator Lines
Compagnie Maritime d'Affretement
Cho Yang Shipping Co. Ltd.

Synopsis: The proposed Agreement authorizes the parties to consult and agree upon deployment and utilization of vessels, rationalization of sailings, and chartering of space from each other in the trade between U.S. Atlantic Coast ports (Bangor, ME./Key West, Florida range) and interior points via such ports and Mediterranean and Middle East ports. In addition, the parties may discuss and, on a voluntary basis, agree upon rates, charges, service items and conditions of service and policy in the Middle East trade.

Agreement No.: 203–011467.
Title: APL/MOL/NLL/OOCL Asia Atlantic Alliance Agreement.
Parties:
American President Lines, Ltd.
Nedlloyd Lines B.V.
Mitsui O.S.K. Lines, Ltd.
Orient Overseas Container Lines, Inc.

Synopsis: The proposed Agreement authorizes the parties to discuss and agree upon deployment and utilization of vessels, rationalization of sailings, the chartering of space from each other, and to discuss other matters of mutual concern in the trade between ports and points in the Far East, on the one hand, and, on the other, ports on the Atlantic and Gulf Coasts of the United States via the Panama Canal, and points in the U.S., including its commonwealths, territories and possessions via such Atlantic and Gulf Coast ports. In addition, the parties may discuss and agree upon any rates, terms and conditions of service contracts or tariffs. Adherence to any agreement reached is voluntary.

Agreement No.: 203–011468.
Title: APL/MOL//OOCL Asia-Pacific Alliance Agreement
Parties:
American President Lines, Ltd.
Mitsui O.S.K. Lines, Ltd.
Orient Overseas Container Lines, Inc.

Synopsis: The proposed Agreement authorizes the parties to discuss and agree upon deployment and utilization of vessels, rationalization of sailings, the chartering of space from each other, and to discuss other matters of mutual concern in the trade between ports and points in the Far East, on the one hand, and, on the other, ports on the Pacific Coast of the United States and points in the U.S., including its commonwealths, territories and possessions via such Pacific Coast ports. In addition, the parties may discuss and agree upon any rates, terms and conditions of service contracts or tariffs. Adherence to any agreement reached is voluntary.

Agreement No.: 217–011469.
Title: U.S.A. Tecmarine Inc./ Tecmarine Lines, Inc. Slot Charter Agreement.
Parties:
U.S.A. Tecmarine Inc.
Tecmarine Lines, Inc.

Synopsis: The parties have filed an Agreement for the carriage of cargo.

Agreement No.: 203–011470.
Title: FMG/Lykes Cooperative Working Agreement.
Parties:
Flota Mercante Grancolombiana S.A.
Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed Agreement authorizes the parties to discuss and agree upon deployment and utilization of vessels, rationalization of sailings, the chartering of space from each other, and to discuss matters of mutual concern in the trade between ports and points in the United States, on the one hand, and ports and points in Mexico, Colombia, Ecuador, Peru and Chile (including points in Boliva and Argentina) on the other hand. The parties have requested a shortened review period.

Dated: September 16, 1994.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 94–23333 Filed 9–20–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Fairbanco Holding Company, Inc., ESOP, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 14, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Fairbanco Holding Company, Inc., ESOP, Fairburn, Georgia; to become a bank holding company by acquiring 31 percent of the voting shares of Fairbanco

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Holding Company, Inc., Fairburn, Georgia, and thereby indirectly acquiring Fairbanco Banking Company, Fairburn, Georgia.

2. Gulf West Banks, Inc., St. Petersburg, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Mercantile Bank, St. Petersburg, Florida.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Bancorp, Inc., Denton, Texas; to acquire 100 percent of the voting shares of Kaufman Bancshares, Inc., Kaufman, Texas, and thereby indirectly acquire Farmers and Merchants National Bank, Kaufman, Texas.

2. First Delaware Boncorp, Inc., Dover, Delaware; to acquire 100 percent of the voting shares of Kaufman Bancshares, Inc., Kaufman, Texas, and thereby indirectly acquire Farmers and Merchants National Bank, Kaufman, Texas.

3. Texas Financial Bancorporation, Inc., Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Kaufman Bancshares, Inc., Kaufman, Texas, and thereby indirectly acquire Farmers and Merchants National Bank, Kaufman, Texas.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. First Interstate Bancorp, Los Angeles, California; to merge with Levy Bancorp, Ventura, California, and thereby indirectly acquire Bank of A. Levy, Ventura, California.

Board of Governors of the Federal Reserve System,

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–23288 Filed 9–20–94; 8:45 am]

BILLING CODE 6210–01–F

Valerie McLanahan Goetz, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 17, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Valerie McLanahan Goetz, as trustee of the C.R. McLanahan Trust I and II, Atlanta, Georgia; to acquire an additional 26.4 percent, for a total of 28.9 percent, of the voting shares, of First American Bancorp, Athens, Georgia, and thereby indirectly acquire First American Bank & Trust Company, Athens, Georgia.

2. John Dudley McLanahan, as trustee of the C.R. McLanahan Trust I and II, Athens, Georgia; to acquire an additional 26.4 percent, for a total of 35.9 percent, of the voting shares of First American Bancorp, Athens, Georgia, and thereby indirectly acquire First American Bank & Trust Company, Athens, Georgia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Craig H. Hoesemeyer, Menlo Park, California, as trustee of the W.L. Haesemeyer Marital Trust; to acquire 78.23 percent of the voting shares of State Center Financial, Inc., State Center, Iowa, and thereby indirectly acquire Central State Bank, State Center, Iowa.

Board of Governors of the Federal Reserve System, September 15, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–23289 Filed 9–20–94; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation, Minneapolis, Minnesota; Request for Relief from a Commitment

Norwest Corporation, Minneapolis, Minnesota (Norwest), a bank holding company within the meaning of the Bank Holding Company Act, 12 U.S.C. 1841 et seq., has requested that the Board grant to it relief from a commitment that it made in connection with the Board's approval of Norwest's application to underwrite and deal in certain securities to a limited extent through Norwest Investment Services, Inc., Minneapolis, Minnesota (NISI). *Norwest Corporation*, 76 Federal Reserve Bulletin 79 (1990) *(Norwest Order)*. In the *Norwest Order*, the Board authorized Norwest to underwrite and deal in, among other things, municipal revenue bonds pursuant to the prudential limitations and other conditions set forth in *Citicorp, J.P. Morgan & Co. Incorporated, and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987) as modified by *Order Approving Modificotions to Section 20 Orders*, 75 Federal Reserve Bulletin 751 (1989).

Among the conditions to which Norwest is subject pursuant to the *Norwest Order* is that the municipal revenue bonds underwritten by NISI must be rated as investment quality (*i.e.*, in one of the top four categories) by a nationally recognized rating agency. Norwest has requested limited relief from this condition to allow NISI to underwrite issues of municipal revenue bonds that are not rated by a nationally recognized rating agency so long as each issue of unrated bonds does not exceed $7.5 million.

Norwest supports its request for relief by contending that it is not cost effective for municipalities to obtain ratings for smaller issues of municipal revenue bonds. Norwest asserts that NISI's participation in underwriting these unrated municipal revenue bonds will benefit the communities that issue the bonds by providing additional competition in the market for this service. Norwest believes that the systems and procedures that it has in place to evaluate the creditworthiness of these issues should substantially mitigate any risk that may be associated with the underwriting of these bonds.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the request.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than October 11, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The request may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Minneapolis Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480.

Board of Governors of the Federal Reserve System, September 16, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–23373 Filed 9–20–94; 8:45 am]

BILLING CODE 6210–01–F

Otto Bremer Foundation and Bremer Financial Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 11, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Otto Bremer Foundation and Bremer Financial Corporation, St. Paul, Minnesota; to engage *de novo* in making, acquiring, and servicing loans and other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y and leasing personal and real property, pursuant to §§ 225.25(b)(5)(i) and (b)(5)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 15, 1994

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–23290 Filed 9–20–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

President's Council on Physical Fitness and Sports

AGENCY: Office of the Assistant Secretary for Health.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Council on Physical Fitness and Sports. This notice also describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: October 25, 1994, 9:30 a.m.

ADDRESSES: The White House Conference Center, Truman Room, 3rd Floor, 726 Jackson Place NW., Washington, DC 20500.

FOR FURTHER INFORMATION CONTACT: Sandra Perlmutter, Executive Director, President's Council on Physical Fitness and Sports, 701 Pennsylvania Avenue NW., Suite 250, Washington, DC 20004–2608, 202/272–3421.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports operates under Executive Order #12345, as amended, and subsequent orders. The functions of the Council are: (1) To advise the President and the Secretary concerning progress made in carrying out the provisions of the Executive Order and recommending to the President and Secretary, as necessary, actions to accelerate progress; (2) advise the President and the Secretary on matters pertaining to the ways and means of enhancing opportunities for participation in physical fitness and sports actions to extend and improve physical activity programs and services; (3) advise the President and the Secretary on state, local, and private actions to extend and improve physical activity programs and services.

The Council will hold this meeting to apprise the members of the national program on physical fitness and sports, to report on ongoing Council initiatives, and to plan for future directions.

Dated: September 16, 1994.

Sandra Perlmutter,

Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 94–23364 Filed 9–20–94; 8:45 am]

BILLING CODE 4160–17–M

Centers for Disease Control and Prevention

CDC Advisory Committee on the Prevention of HIV Infection; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: CDC Advisory Committee on the Prevention of HIV Infection.

Times and Dates: 8:30 a.m.–5 p.m., October 11, 1994; 8:30 a.m.–3 p.m., October 12, 1994.

Place: Holiday Inn Atlanta-Decatur Conference Plaza, 130 Clairemont Avenue, Decatur, Georgia 30030.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with advising the Director, CDC, regarding objectives, strategies, and priorities for HIV prevention efforts including maintaining surveillance of HIV infection and AIDS, the epidemiologic and laboratory study of HIV and AIDS, information/education and risk reduction activities designed to prevent the spread of HIV infection, and other preventive measures that become available.

Matters To Be Discussed: CDC will respond to the recommendations made by the Committee in their report entitled *External Review of CDC's HIV Prevention Strategies*. The Committee will also be updated on current HIV prevention activities. Agenda times are subject to change as priorities dictate.

Contact Person for More Information: Connie Granoff, Committee Assistant, Office of the Associate Director for HIV/AIDS, CDC, 1600 Clifton Road, NE., Mailstop E–40, Atlanta, Georgia 30333, telephone (404) 639–2918.

Dated: September 14, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–23321 Filed 9–20–94; 8:45 am]

BILLING CODE 4163–18–M

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Food and Drug Administration

[Docket No. 94E-0235]

Determination of Regulatory Review Period for Purposes of Patent Extension; Semprex™-D Capsules

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Semprex™-D Capsules and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Semprex™-D Capsules. Semprex™-D Capsules (acrivastine and pseudoephedrine hydrochloride) is indicated for relief of symptoms associated with seasonal allergic rhinitis such as sneezing, rhinorrhea, pruritus, lacrimation, and nasal congestion. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Semprex™-D Capsules (U.S. Patent No. 4,650,807) from Burroughs Wellcome Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated July 8, 1994, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Semprex™-D Capsules represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Semprex™-D Capsules is 3,489 days. Of this time, 1,210 days occurred during the testing phase of the regulatory review period, while 2,279 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* September 6, 1984. The Applicant claims August 13, 1984, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was September 6, 1984, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* December 29, 1987. FDA has verified the applicant's claim that the New Drug Application (NDA) for Semprex™-D Capsules (NDA 19-806) was initially submitted on December 29, 1987.

3. *The date the application was approved:* March 25, 1994. FDA has verified the applicant's claim that NDA 19-806 was approved on March 25, 1994.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,469 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before November 21, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before March 20, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 12, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94-23276 Filed 9-20-94; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92N-0371]

New Drug Applications; Refusal to File; Change in Schedule of Meetings of the Review Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a change in the procedure that the Center for Drug Evaluation and Research (CDER) uses to review its use of its refusal to file (RTF) procedure, by which it refuses to file new drug applications (NDA's) that are facially deficient under FDA's regulations. Since January 1994, the committee has been meeting bi-monthly rather than quarterly. Because the committee will review all RTF decisions rather than only a few, new drug application (NDA) applicants will not need to submit requests for review.

FOR FURTHER INFORMATION CONTACT: Janet M. Jones, Center for Drug Evaluation and Research (HFD-2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-6740.

SUPPLEMENTARY INFORMATION: FDA regulations on filing applications, including grounds and procedures for refusals to file, are found in 21 CFR 314.101. In the past, some review divisions in CDER have refused to file applications only where the deficiencies were extreme, e.g., the total omission of a section required by 21 CFR 314.50, or the absence of any study even arguably adequate and well controlled, while others have applied this regulation more broadly.

In the Federal Register of May 18, 1993 (58 FR 28983), FDA announced the establishment and first regular meeting of a standing committee in CDER to conduct periodic review of CDER's RTF procedure. CDER established the RTF review committee to periodically review RTF decisions to assess their scientific and procedural quality. The RTF review committee consists of senior CDER officials, a senior official from the Center for Biologics Evaluation and Research, and FDA's Chief Mediator and Ombudsman. The committee reviews, among other things, the consistency of RTF practices across new drug evaluation offices and divisions, the need for additional guidance on NDA content and format, and the need to modify FDA's RTF policy. The committee was established on a 1-year trial basis and scheduled to meet quarterly for that year. The committee has held two pilot meetings and several regular meetings since the publication of that notice. For each of the pilot meetings and for the first two of the regular meetings, FDA invited NDA applicants to use the committee's confidential mechanism to request review of any RTF decision during the preceding 12 months. RTF decisions reviewed by the committee were chosen for review by the Office of the FDA Chief Mediator and Ombudsman through a combination of random selection and selection from among those submitted by NDA applicants for review.

The RTF review committee has decided to change its procedures from those presented in the Federal Register of May 18, 1993 (58 FR 28983). Since January 1994, the committee has been meeting every other month (six times a year) and reviews all the RTF decisions that CDER makes, rather than only some of them.

There are two primary reasons for this change. One reason is that the number of applications with RTF decisions each month has decreased over the past year, so that it is feasible for the committee to review all such applications rather than only selected applications. The second reason is that RTF decisions have additional effects related to user fees. Under section 736(a)(1)(D) of the Prescription Drug User Fee Act of 1992 (21 U.S.C. § 379h(a)(1)(D)), FDA is authorized to retain 25 percent of the total user fee assessed for each NDA that is refused for filing. If the agency incorrectly refuses to file an application, the error needs to be promptly identified and corrected, so that the application may be filed and a review initiated, and the retained fees may be returned to the applicant. The review of all RTF decisions on a bimonthly basis will allow the agency to identify incorrect RTF decisions and take corrective measures in a timely manner.

Under this new procedure, NDA applicants will no longer need to submit requests for committee review to the Office of the Chief Mediator and Ombudsman. Applicants may continue to contact that office, however, to discuss concerns regarding refusal to file and other issues, as needed.

The committee believes that this change in its approach to reviewing RTF decisions will facilitate the agency's efforts to promote the timely, efficient, and consistent review of NDA's. After 1 year, the value of the bimonthly committee review of all RTF applications will be assessed.

Because the committee's deliberations will deal with confidential commercial information, the RTF review meetings are closed to the public. Summaries of the committee's deliberations, excluding all such confidential commercial information, will be available from the FDA Chief Mediator and Ombudsman. If, following the committee's review, an RTF decision changes, the reviewing division will notify the applicant of the change.

Dated: September 13, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94-23275 Filed 9-20-94; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

National Institute of Mental Health; Notice of Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Board of Scientific Counselors, NIMH, September 19-20, 1994, Building 36, Room 1B07, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland, which was published in the Federal Register on August 30, 1994 (59 FR 44743).

The meeting was cancelled due to prior commitments of several members.

Dated: September 15, 1994.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 94-23310 Filed 9-20-94; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging; Notice of Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting(s):

Name of Subcommittee: Biological and Clinical Aging Review Subcommittee A.
Date: October 3, 1994.
Time: 8:30 a.m. to adjournment.
Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.
Contact Person: Dr. Arthur Schaerdel, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-9666.
Purpose/Agenda: To review and evaluate grant applications.

Name of Subcommittee: Biological and Clinical Aging Review Subcommittee B.
Date: October 19, 1994.
Time: 8:30 a.m. to 4:00 p.m.
Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.
Contact Person: Dr. James Harwood, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-9666.
Purpose/Agenda: To review and evaluate grant applications.

Name of Subcommittee: Neuroscience, Behavior and Sociology of Aging Review Subcommittee A.
Dates: November 29-30, 1994.
Time: November 29—8:00 a.m. to Adjournment on November 30.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.
Contact Persons: Drs. Maria Mannarino or Louise Hsu, Scientific Review Administrators, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-9666.
Purpose/Agenda: To review and evaluate grant applications.

Name of Subcommittee: Neuroscience, Behavior and Sociology of Aging Review Subcommittee B.
Date: November 7-8, 1994.
Time: November 7—8:30 a.m. to Adjournment on November 8.

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Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Contact Person: Dr. Walter Spieth, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9666.

Purpose/Agenda: To review and evaluate grant applications.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: September 13, 1994.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 94–23311 Filed 9–20–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Meeting of the Research Priorities Subcommittee of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Research Priorities Subcommittee of the National Deafness and Other Communication Disorders Advisory Board on October 14, 1994. The meeting will take place from 9 a.m. to 11:30 a.m. in Conference Room 7, C–Wing, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, and will be conducted as a telephone conference with the use of a speaker phone.

The meeting, which will be open to the public from 9 a.m. to 11:15 a.m., is being held to discuss new developments in the field of smell and taste since the National Strategic Research Plan for that area was updated. Attendance by the public which will be limited to the space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 11:15 a.m. to adjournment for the discussion and recommendation of individuals to serve as consultants to the Research Priorities Subcommittee. This discussion could reveal personal information concerning these individuals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the Subcommittee's meeting and a roster of members may be obtained from Ms. Monica Davies, Executive Director, National Deafness an Other Communication Disorders Advisory Board, Building 31, Room 3C08, National Institutes of Health, Bethesda, Maryland 20892–2320, (301) 402–1129, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact that Executive Director in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93–173, Biological Research Related to Deafness and Communication Disorders)

Dated: September 14, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–23312 Filed 9–20–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panels (SEPs) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.
Date: October 3, 1994.
Time: 2:00 p.m.
Place: NIH, Westwood Building, Room 233A Telephone Conference.
Contact Person: Dr. Robert Su, Scientific Review Administrator, 5333 Westbard Ave., Room 233A, Bethesda, MD 20892, (301) 594–7320.

Name of SEP: Behavioral and Neurosciences.
Date: October 6, 1994.
Time: 8:00 a.m.
Place: Georgetown Holiday Inn, Washington, DC.
Contact Person: Ms. Carol Campbell, Scientific Review Admin., 5333 Westbard Ave., Room 306B, Bethesda, MD 20892, (301) 594–7165.

Name of SEP: Biological and Physiological Sciences.
Date: October 11, 1994.
Time: 4:00 p.m.
Place: Holiday Inn, Bethesda, MD.
Contact Person: Dr. Dennis Leszczynski, Scientific Review Admin., 5333 Westbard Ave., Room 210, Bethesda, MD 20892, (301) 594–7218.

Name of SEP: Biological and Physiological Sciences.
Date: October 11, 1994.
Time: 5:15 p.m.
Place: Holiday Inn, Bethesda, MD.
Contact Person: Dr. Dennis Leszczynski, Scientific Review Admin., 5333 Westbard Ave., Room 210, Bethesda, MD 20892, (301) 594–7218.

Name of SEP: Clinical Sciences.
Date: October 20, 1994.
Time: 8:30 a.m.
Place: Dupont Plaza Hotel, Washington, DC.
Contact Person: Dr. H. M. Stiles, Scientific Review Admin., 5333 Westbard Ave., Room 203C, (301) 594–7194.

Name of SEP: Behavioral and Neurosciences.
Date: October 25, 1994.
Time: 2 p.m.
Place: NIH, Westwood Bldg., Room 305, Telephone Conference.
Contact Person: Dr. Peggy McCardle, Scientific Review Admin., 5333 Westbard Ave., Room 305, Bethesda, MD 20892, (301) 594–7293.

Name of SEP: Biological and Physiological Sciences.
Date: November 22, 1994.
Time: 2:00 p.m.
Place: NIH, Westwood Bldg., Room 204, Telephone Conference.
Contact Person: Dr. Michael Knecht, Scientific Review Admin., 5333 Westbard Ave., Room 204, Bethesda, MD 20892, (301) 594–7247.

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.

Name of SEP: Multidisciplinary Sciences.
Date: November 2, 1994.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Donald Schneider, Scientific Review Admin., 5333 Westbard Ave., Room 2A05, Bethesda, MD 20892, (301) 594–7053.

Name of SEP: Multidisciplinary Sciences.
Date: November 2–24, 1994.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Donald Schneider, Scientific Review Admin., 5333 Westbard Ave., Room 2A05, Bethesda, MD 20892, (301) 594–7053.

Name of SEP: Behavioral and Neurosciences.
Date: November 4, 1994.
Time: 8:00 a.m.
Place: Sheraton City Centre Hotel, Washington, D.C.
Contact Person: Dr. Bob Weller, Scientific Review Administrator, 5333 Westbard Ave., Room 307, Bethesda, MD 20892, (301) 594–7340.

Name of SEP: Behavioral and Neurosciences.
Date: November 9, 1994.
Time: 12:30 p.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Herman Teitelbaum, Scientific Review Admin., 5333 Westbard Ave., Room 321, Bethesda, MD 20892, (301) 594–7245.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 15, 1994.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 94–23313 Filed 9–20–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Institutes of Health

Notice of Listing of Members of the National Institutes of Health's Senior Executive Service Performance Review Board (PRB)

The National Institutes of Health (NIH) announces the persons who will serve on the National Institutes of Health's Senior Executive Service Performance Review Board. This action is being taken in accordance with Title 5, U.S.C., Section 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95–454, which requires members of performance review boards be appointed to ensure consistency, stability, and objectivity in performance appraisals and requires the appointment of performance review board members be published in the **Federal Register**.

The following persons will serve on the NIH Performance Review Board, which oversees the evaluation of performance appraisals of Senior Executive Service (SES) members:

Ruth L. Kirschstein, M.D., Chairperson
Frederick C. Walker, Executive Secretary
Duane F. Alexander, M.D.
Wendy Baldwin, Ph.D.
Henning Birkedal-Hansen, D.D.S., Ph.D.
Samuel Broder, M.D.
M. J. Brownstein, M.D., Ph.D.
Marvin Cassman, Ph.D.
Bruce A. Chabner, M.D.
Philip S. Chen, Jr., Ph.D.
Francis S. Collins, M.D.
Rex W. Cowdry, M.D.
John W. Diggs, Ph.D.
Stephen A. Ficca
George J. Galasso, Ph.D.
John I. Gallin, M.D.
Phillip Gorden, M.D.
Enoch Gordis, M.D.
Michael M. Gottesman, M.D.
Patricia A. Grady, Ph.D.
Jerome G. Green, M.D.
Peter Greenwald, M.D.
Zach W. Hall, Ph.D.
Richard J. Hodes, M.D.
Suzanne S. Hurd, Ph.D.
Dushanka Kleinman, D.D.S., M.ScD.
Irwin J. Kopin, M.D.
Edward D. Korn, Ph.D.
Carl Kupfer, M.D.
Leamon M. Lee, Ph.D.
Claude J. Lenfant, M.D.
Alan I. Leshner, Ph.D.
Arthur S. Levine, M.D.
Donald A. B. Lindberg, M.D.
Markku Linnoila, M.D.
David Lipman, M.D.
John D. Mahoney
Thomas Malone, Ph.D.
Audrey Manley, M.D.
George R. Martin, Ph.D.
John A. McLachlan, Ph.D.
Henry Metzger, M.D.
Jay Moskowitz, Ph.D.
Carolyn L. Murdaugh, Ph.D.
Franklin A. Neva, M.D.
Robert Nussenblatt, M.D.
Kenneth Olden, Ph.D.
Alan S. Rabson, M.D.
Jerry M. Rice, Ph.D.
David Rodbard, M.D.
Philip E. Schambra, Ph.D.
Lawrence E. Shulman, M.D.
James B. Snow, Jr., M.D.
Allen M. Spiegel, M.D.
Jeffrey M. Trent, Ph.D.
George R. Uhl, M.D., Ph.D.
Judith L. Vaitukaitis, M.D.
Richard Wyatt, Ph.D.

For further information about the NIH Performance Review Board, contact the Office of Human Resources, Division of Senior Systems, National Institutes of Health, Executive Plaza South, Room 100, 6120 Executive Plaza Boulevard, Rockville, MD 20852, telephone (301) 496–1443 (not a toll-free number).

Dated: September 12, 1994.

Ruth L. Kirschstein, M.D.,

Deputy Director, NIH.

[FR Doc. 94–23314 Filed 9–20–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3803; FR 3713–C–02]

Fund Availability (NOFA) for Fiscal Year 1994 for the Family Unification Program; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of fund availability (NOFA) for fiscal year (FY) 1994 for the Family Unification Program; Correction.

SUMMARY: On August 29, 1994 (59 FR 44542), the Department published a NOFA to announce the availability of FY 94 budget authority for section 8 rental certificates under the Family Unification Program. This document makes a correction to Section II(D) of the NOFA, which concerns the selection process.

DATES: The due date for submission of applications in response to this NOFA is set forth in the August 29, 1994 **Federal Register** notice published at 59 FR 44542. This document does not change this due date.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone number (202) 708–0477 (voice), or (202) 708–4594 (TDD). (These telephone numbers are not toll-free).

SUPPLEMENTARY INFORMATION: On August 29, 1994 (59 FR 44542), the Department published a NOFA to announce the availability of FY 94 budget authority for section 8 rental certificates under the Family Unification Program. The purpose of the Family Unification program is to provide housing assistance to families for whom the lack of adequate housing is a primary factor in the separation, or imminent separation, of children from their families.

Section II(D) of the August 29, 1994 NOFA, which addresses the selection process, inadvertently omitted a sentence that advises of action that the Department may take in order to achieve geographic diversity. This document corrects Section II(D) of the NOFA to include this sentence.

Accordingly, the following correction is made to FR 94–21166, published on August 29, 1994, at 59 FR 44542:

Section II—[Corrected]

1. On page 44545, in the first column, under subsection (D) entitled "Selection Process," the second paragraph under this subsection (the paragraph which follows the six numbered items) is corrected to add a sentence at the end of this paragraph to read as follows:

(D) Selection Process

* * * * * *

Headquarters will select eligible HAs to be funded based on a lottery. All HAs identified by the HUD Offices as meeting the Threshold Criteria

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identified in the NOFA will be eligible for the lottery selection process. As HAs are selected, the costs of funding the applications will be counted against the total funds available for the Family Unification program. In order to achieve a geographic diversity, HUD Headquarters will limit the number of applications selected for funding under the lottery for any State to fifteen percent of the budget authority made available under this NOFA.

* * * * *

Dated: September 15, 1994

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 94-23303 Filed 9-20-94; 8:45 am]

BILLING CODE 4210-33-M

Office of the Secretary

[Docket No. D-94 1070; FR-3789-D-01]

Delegation of Authority to the Acting Deputy Secretary

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Delegation of Authority.

SUMMARY: The Secretary of Housing and Urban Development is delegating to the Acting Deputy Secretary of Housing and Urban Development, Dwight P. Robinson, the authority to exercise, in the absence of the Secretary, all the power and authority vested in, delegated or assigned to the Secretary of Housing and Urban Development, with the exception of the power to sue and be sued.

EFFECTIVE DATE: September 19, 1994

FOR FURTHER INFORMATION CONTACT: Sam E. Hutchinson, Associate General Counsel for Human Resources Law, Office of General Counsel, Department of Housing and Urban Development, Room 10248, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708-2088. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d), the Secretary of Housing and Urban Development may delegate any of the Secretary's functions, powers and duties to such officers and employees of the Department as the Secretary may designate, and may authorize successive redelegations of such functions, powers and duties as determined to be necessary or appropriate. In the delegation of authority issued today, the Secretary is delegating to the Acting Deputy Secretary of Housing and Urban Development, Dwight P. Robinson, the authority to exercise, in the Secretary's absence, all the power and authority vested in, delegated or assigned to the Secretary of Housing and Urban Development, with the exception of the power to sue and be sued. The authorization to act under this Order is subject to the 120-day limitation of the Vacancies Act, 5 U.S.C. 3348, whereby a vacancy caused by death or resignation of an appointee, whose appointment is vested in the President by and with the advice and consent of the Senate, may be filled temporarily for not more than 120 days.

Accordingly, the Secretary delegates as follows:

Section A. Authority Delegated

The Acting Deputy Secretary of Housing and Urban Development, Dwight P. Robinson, is hereby authorized, in the absence of the Secretary, to exercise all the power and authority vested in, delegated or assigned to the Secretary of Housing and Urban Development.

Section B. Authority Excepted

There is excepted from the authority delegated under Section A the authority to sue and be sued.

Section C. Delegation of Concurrent Authority Revoked

The Delegation of Concurrent Authority to then Deputy Secretary of Housing and Urban Development, Terrence R. Duvernay published in the Federal Register on August 31, 1993, at 58 FR 45911, is hereby revoked.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 19, 1994.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 94-23474 Filed 9-20-94; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[FES 94-29]

Final Environmental Impact Statement (EIS) for the Proposed Institute of Marine Science Infrastructure Improvement Project Located in Seward, AK

AGENCY: Office of the Secretary, Interior (DOI).

ACTION: Notice of Availability of the Final Environmental Impact Statement for the Proposed Institute of Marine Science Infrastructure Improvement Project.

SUMMARY: The DOI, as lead Federal Agency on behalf of the Exxon Valdez Oil Spill (EVOS) Trustee Council, announces the availability of the Final EIS for the Proposed Institute of Marine Science (IMS) Infrastructure Improvement Project. Single copies of the Final EIS or the Final EIS summary can be obtained from the Oil Spill Public Information Center, 645 G Street, Anchorage, Alaska 99501. Telephone Numbers: (907) 278-8008, (800) 478-7745 (within Alaska), or (800) 283-7745 (outside Alaska). Copies of the Final EIS have been sent to public libraries in Seward, Homer, Kodiak, Valdez, Cordova, Kenai, Anchorage, Fairbanks, and Juneau, among others, as well as the DOI Library in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Information about the EIS can be obtained from Nancy K. Swanton, DOI EIS Project Manager, 949 East 36th Avenue, Anchorage, Alaska 99508-4302. Telephone Numbers: (907) 271-6622 (voice) or (907) 271-6507 (fax).

SUPPLEMENTARY INFORMATION:

A. Introduction

The DOI, as lead Federal Agency on behalf of the EVOS Trustee Council, has prepared a Final EIS on a proposal to construct infrastructure improvements to the IMS in Seward, Alaska. The EVOS Trustee Council is considering providing funding for a portion of this project. The Council is comprised of the designees of the Administrator, National Oceanic and Atmospheric Administration; the Secretary of Agriculture; the Secretary of Interior; and the Commissioner of the Alaska Department of Fish and Game; the Commissioner of the Alaska Department of Environmental Conservation; and the Alaska Attorney General. The EVOS Trustee Council is responsible for decisions relating to the assessment of injuries, uses of the joint restoration funds, and all restoration activities relating to the proposed project.

In accordance with the National Environmental Policy Act of 1969, the Final EIS presents analyses of the environmental—including social and economic—effects that would be anticipated if the proposed improvements to the IMS in Seward were to occur as presently envisioned. In addition, the EIS assesses the effects of an alternative to the proposal that would eliminate the public education and visitation component, and construct only a research and wildlife rehabilitation component. Lastly, a no action alternative is assessed to determine the effects on the environment should the proposed improvements not be made.

B. The Proposed IMS Infrastructure Improvement Project

The EVOS Trustee Council is proposing to improve the existing infrastructure at the University of Alaska-Fairbanks IMS in Seward, Alaska, to enhance the EVOS Trustee Council's capabilities to study marine mammals, marine birds, and the ecosystem injured by the Exxon Valdez oil spill. The improvements are intended to help focus and carry out a long-term research and monitoring program for the EVOS area as part of an overall restoration plan. The project would be constructed adjacent to the existing campus of the IMS Seward Marine Center, and would have two components: (1) a research and wildlife rehabilitation component and (2) a public education and visitation component.

The research and wildlife rehabilitation component would consist of approximately 22,000 square feet of interior space comprised of wet and dry laboratories, staff offices, and a library for studies and rehabilitation of marine mammals, marine birds, and other wildlife. There also would be approximately 46,000 square feet of exterior space containing outdoor research habitat, tanks, and pools for pinnipeds, sea otters, and marine bird species. A 50-space, 37,000 square foot, parking lot for staff vehicles would be constructed adjacent to the existing IMS Rae Building parking lot. A research vessel and submersible may be acquired for research purposes.

The public education and visitation component would include approximately 20,000 square feet of additional interior space to promote public awareness of the marine environment. It would function in concert with, and in support of, the research and wildlife rehabilitation component. This component would include exhibits, interpretive displays, and public areas. A 166-space, 90,000 square foot, parking lot for visitors would be built adjacent to the education and visitor component. No joint EVOS restoration funds would be involved in the construction or maintenance of the public education and visitation component.

The two components would share approximately 27,000 square feet of interior building-support space, including the life support system and the facility's mechanical, administrative, and curatorial functions.

Funding for the proposed project would come, in large part, from EVOS funds. Overall, the total project capital budget is anticipated to be approximately $47.5 million, of which approximately $37.5 million would come from EVOS funds. Twelve and one-half million dollars of State EVOS restitution funds were appropriated by the Alaska Legislature in 1993 to the City of Seward for the planning, design, and construction of the proposed project. In addition, approximately $25 million of EVOS monies have been requested to fund the research and wildlife rehabilitation component of the proposed project. Lastly, it is anticipated that approximately $10 million would be raised privately to fund the public education and visitation component of the proposed project. Revenue from public education and visitation would be used to help offset the operational costs of all of the proposed improvements.

C. The NEPA Process

On March 9, 1994, the DOI, as lead Federal Agency on behalf of the EVOS Trustee Council, published a Notice of Intent to prepare an EIS on the Proposed IMS Infrastructure Improvement Project (59 FR 11082-1183). Scoping commenced on that date. Scoping meetings were held in Seward and Anchorage, Alaska, on March 22 and 24, 1994, respectively. Public notices announcing these meetings and requesting comments were published in EVOS-area newspapers; and a scoping newsletter was distributed widely throughout the EVOS area and beyond. In addition to comments and suggestions received at the scoping meetings, over 300 written responses were received. These comments were evaluated by the DOI and form the basis for the topics, issues, and alternatives addressed in the EIS.

A 45-day public comment period on the Draft EIS followed the June 24, 1994, publication of the Environmental Protection Agency's (EPA) Notice of Availability in the Federal Register (59 FR 32697). The public comment period ended on August 8, 1994. Public hearings on the Draft EIS were held in Seward and Anchorage, Alaska, respectively, on July 26 and 28, 1994. A total of four individuals presented testimony at these hearings. A total of 31 comment letters were received on the Draft EIS—eight from Federal Agencies, four from state agencies, one from the City of Seward, three from groups or organizations, and 15 from individuals. Most of the comments on the Draft EIS addressed concerns regarding: (1) traffic and transportation, (2) quality of life in and near Seward, (3) recreation resources, (4) archaeological and historic resources, (5) the possible Alaska Marine Highway ferry relocation, and (6) the feasibility of the proposed project. Comments regarding project propriety have been referred to the EVOS Trustee Council for its consideration. Although the use of EVOS settlement funds is a significant issue to be addressed with public input, it is not an environmental issue and, thus, is not analyzed in the EIS. All written and oral comments on the Draft EIS were reviewed, and responses were prepared for 231 comments. The Final EIS reflects revisions made as a result of public comments received. The effect levels predicted in the Draft EIS did not change for the Final EIS.

A Record of Decision will be issued no earlier than 30 days after EPA's Notice of Availability for the Final EIS appears in the Federal Register.

Dated: September 16, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

[FR Doc. 94-23367 Filed 9-20-94; 8:45 am]

BILLING CODE 4310-MR-P

Bureau of Land Management

[AK-963-4230-05-P; AA-11157]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec 14(h)(2) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(2), and Sec. 1416 of the Alaska National Interest Lands Conservation Act of December 2, 1980, 43 U.S.C. 1602, will be issued to Tanalian Inc. for certain lands within T 1 N., R. 29 W., Seward Meridian, Alaska, containing approximately 1,963 acres. The lands involved are in the vicinity of Port Alsworth, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation shall have until October 21, 1994 to file an appeal. However, parties receiving

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service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Katherine L. Flippen,

Land Law Examiner, Branch of Southwest Adjudication.

[FR Doc. 94-23323 Filed 9-20-94; 8:45 am]

BILLING CODE 4310-JA-M

[CO-920-94-4120-03; COC 57187]

Colorado; Notice of Invitation for Coal Exploration License Application, Cyprus Empire Corporation

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with Cyprus Empire Corporation in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Moffat County, Colorado:

T. 6 N., R. 91 W., 6th P.M.
- Sec. 5, lots 5, 11, 12, and 16;
- Sec. 6, lots 20 to 23, inclusive;
- Sec. 7, lots 17 to 20, inclusive;
- Sec. 8, lots 9 to 12, inclusive;
- Sec. 17, lot 4;
- Sec. 18, lots 16, 17, and 19;
- Sec. 19, lots 5 to 7, inclusive;
- Sec. 30, lots 5 and 6.

T. 6 N., R. 92 W., 6th P.M.
- Sec. 1, N½S½;
- Sec. 2, N½S½;
- Sec. 3, S½S½;
- Sec. 11, S½S½;
- Sec. 12, N½NE¼, W½NW¼, S½SW¼, and SE¼SE¼;
- Sec. 13, E½SW¼;
- Sec. 14, NE¼NE¼, and NE¼SW¼;
- Sec. 23, E½E½;
- Sec. 24, N½NW¼, and E½NE¼.

The area described contains approximately 2,528.68 acres.

The application for coal exploration license is available for public inspection during normal business hours under serial number COC 57187 at the Bureau of Land Management (BLM), Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Written Notice of Intent to Participate should be addressed to the attention of the following persons and must be received by them within 30 days after publication of the Notice of Invitation in the **Federal Register**:

James E. Edwards, Jr., Management Team, Division of Mineral Resources, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215, and

Marcus Middleton, Environmental Engineer, Cyprus Empire Corporation, P.O. Box 68, Craig, Colorado 81626

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to participate.

Dated: September 15, 1994.

James D. Crisp,

Management Team, Resource Services.

[FR Doc. 94-23442 Filed 9-20-94; 8:45 am]

BILLING CODE 4310-JB-M

[AZ-020-00-4333-04; AZA-25477, 25478, 25481, 25488, 25491, 25496]

Preparation of Several Wilderness Management Plans and Associated Environmental Documents and Invitation To Participate in the Identification of Issues; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In notice document 94-22392 beginning on page 46866 in the issue of Monday, September 12, 1994, make the following correction:

On page 46866, in the third column, in the fourth line from the bottom, the date previously published in the **Federal Register** for accepting written comments was October 15, 1994. This date should be changed to November 6, 1994.

Dated: September 15, 1994.

Gordon L. Chenlae,

District Manager.

[FR Doc. 94-23324 Filed 9-20-94; 8:45 am]

BILLING CODE 4310-32-M

[CA-010-4410-02]

Extension of Comment Period for Draft; Caliente Resource Management Plan Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment.

SUMMARY: The notice of availability published on June 27, 1994, in the **Federal Register**, Volume 59, No. 122 on page 33004, is hereby amended to reflect an extension of the comment period until October 28, 1994.

DATES: Written comments on the draft RMP/DEIS will be accepted until October 28, 1994.

ADDRESSES: Comments should be sent to James Wesley Abbott, Area Manager, Caliente Resource Area, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308.

FOR FURTHER INFORMATION CONTACT: Steve Larson, Resource Staff Chief, Caliente Resource Area; phone (805) 391-6099.

Dated: September 9, 1994.

James Wesley Abbott,

Area Manager, Caliente Resource Area.

[FR Doc. 94-23291 Filed 9-20-94; 8:45 am]

BILLING CODE 4310-40-M

[AK-963-4230-05-P]

Notice for Publication; AA-19429; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Bristol Bay Native Corporation for approximately 13,651 acres. The lands involved are located in T. 12 S., R. 50 W., Seward Meridian, in the vicinity of the Native village of Portage Creek, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 21, 1994, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Katherine L. Flippen,

Land Law Examiner, Branch of Southwest Adjudication.

[FR Doc. 94-23322 Filed 9-20-94; 8:45 am]

BILLING CODE 4310-JA-P

[CA-050-01-4333-24]

Closure and Restriction Orders; Shasta and Butte Counties, CA

AGENCY: Bureau of Land Management (BLM), Redding Resource Area, Ukiah District, California.

ACTION: Establishment of closure and restriction orders on public lands located within Shasta and Butte counties.

SUMMARY: Persons are restricted from camping, firearm shooting, and operating off-road vehicles on certain public lands located within the Horsetown/Clear Creek Nature Preserve within Shasta County, and the Upper Ridge Nature Preserve within Butte County. The restrictions are authorized under 43 CFR 8364 and are required in order to protect human and natural resources located within the two regions. The restrictions apply to public lands within the following recreation areas:

Horsetown/Clear Creek Nature Preserve

T. 30 N., R. 5 W.,
- Section 6: Lots 1-7, S½NE¼, SE¼NW¼, E½SW¼, SE¼ (all).
- Section 5: Lot 4 (NW¼NW¼).

T. 31 N., R. 5 W.,
- Section 31: All;
- Section 32: W½.

T. 30 N., R. 6 W.,
- Section 1: Lots 1 & 2 (NE¼), Lots 1 & 2 (NW¼), N½S½ (N½,N½S½).

T. 31 N., R. 6 W.,
- Section 36: All, except MS 307.

Upper Ridge Nature Preserve

T. 23 N., R. 3 E.,
- Section 35: NW¼NE¼, N½NW¼.

SUPPLEMENTARY INFORMATION: Redding Resource Area's, Resource Management Plan (RMP) identifies overall objectives and provides broad direction for public land management within the Redding Resource Area. The RMP directs BLM to maintain semi-primitive recreation opportunities in the Upper Ridge Nature Preserve. The RMP also directs BLM to enhance non-motorized recreation opportunities by establishing a greenway along Clear Creek within the Horsetown/Clear Creek Nature Preserve. Both recreation areas are being managed by cooperative stewardship groups.

The camping, firearm shooting and off-road vehicles riding closures are necessary to protect human and natural resources within the fragile recreation areas. Camping is defined as overnight occupancy of the public lands. Possession or use of tents, vehicles, or other shelter is not required to meet the definition of camping under this order. Firearm shooting is defined as the discharge of a weapon by any person

Off-road vehicle driving is defined as the operation of any motorized vehicle (excluding motorized wheelchairs) in any area other than established and signed parking areas and roads.

The closure orders are applicable throughout the entire year. Individuals or groups may be permitted to camp on public lands within the two recreation areas if they are conducting work in connection with the stewardship groups and have authorization from BLM. BLM employees conducting field work are excluded from the off-road vehicle closure as are other individuals conducting work authorized by BLM. Private landowners with inholdings encompassed by the Horsetown/Clear Creek Nature Preserve and/or mining claimants may be given authorization to travel over existing roads located on public lands.

DATES: This closure and restriction order shall become effective October 21, 1994.

FOR FURTHER INFORMATION CONTACT: Area Manager, Redding Resource Area Office, 355 Hemsted Drive, Redding, California, 96002.

Mark T. Morse,

Area Manager.

[FR Doc. 94-23340 Filed 9-20-94; 8:45 am]

BILLING CODE 4310-40-M

[WY-920-41-5700; WYW128681]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Dated: September 8, 1994.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW128681 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of the **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW128681 effective March 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Phyllis Alston,

Acting Supervisory Land Law Examiner.

[FR Doc. 94-23286 Filed 9-20-94; 8:45 am]

BILLING CODE 4310-22-M

[CA-050-04-4333-04]

Samoa Dunes Recreation Area Restriction Order

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given related to the emergency use restriction of Bureau of Land Management (BLM) administered lands in accordance with regulations contained in 43 CFR 8364.1 (a). This action affects approximately 300 acres of public land comprising the Samoa Dunes Recreation Area (T5N, R1W, Section 31; T4N, R1W, Section 6, Humboldt Base & Meridian). These public lands will be closed to all vehicle use ½ hour following sunset to ½ hour after sunrise. Employees, agents and permittees of the BLM may be exempt from this restriction as determined by the authorized officer.

DATES: This restriction order will be effective immediately following the installation of an entrance gate and posting of signs.

ADDRESSES: Maps and supporting documentation of the area affected are available for review at the following location: Bureau of Land Management, Arcata Resource Area, 1125 16th Street, Room 219, Arcata, CA 95521.

FOR FURTHER INFORMATION CONTACT: Lynda J. Roush, Area Manager at the Arcata address given above. Telephone: (707) 822-7648.

SUPPLEMENTARY INFORMATION: The purpose of restricting vehicle use at night in this particular area is to protect persons, property and public land and resources. During the past year, there has been a significant increase in vandalism, theft of property and other illegal activities during the evening and early morning hours, all of which have been associated with the use of vehicles. Restricting vehicle use to only daytime hours will substantially reduce these illegal activities from occurring.

Dated: September 7, 1994.

Lynda J. Roush,

Area Manager.

[FR Doc. 94-23341 Filed 9-20-94; 8:45 am]

BILLING CODE 4310-40-M

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[WY-3110-10-K004; WYW 122407]

Notice of Conveyance and Opening Order; Wyoming

AGENCY: Bureau of Land Management, (Interior).

ACTION: Notice of exchange of public land in Sweetwater County for State land in Sweetwater and Fremont Counties, and order providing for opening of public land.

SUMMARY: This notice advises the public of completion of an exchange of land between the United States, Bureau of Land Management, and the State of Wyoming under the authority of Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. The order opens the land acquired by the United States to the operation of the public land and mineral laws to the extent that it is available under the Bureau of Land Management's Interim Management Policy and Guidelines for Lands Under Wilderness Review.

EFFECTIVE DATE: September 21, 1994.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82001, 307-775-6115.

SUPPLEMENTARY INFORMATION:

1. The following Federal land and minerals have been conveyed to the State of Wyoming:

Sixth Principal Meridian

T. 26 N., R. 98 W.,
Sec. 29, all; (minerals only)
Sec. 31, lots 1, 2, 3, 4, and E½, E½W½. (surface and minerals)
The land described contains 1,286.12 acres.

The above described land in addition to other land was segregated from appropriation under the mining laws by publication of a Notice of Intent to Evaluate an Exchange Proposal in the **Federal Register** on July 27, 1992, at (57 FR 33207).

2. In exchange for the land described in paragraph 1, the United States acquired the following non-Federal land from the State of Wyoming:

Sixth Principal Meridian

T. 26 N., R. 99 W.,
Sec. 16, all; (minerals only)
T. 27 N., R. 100 W.,
Sec. 36, all; (surface and minerals).
The land described contains 1,280.00 acres.

3. The fair market value of the selected Federal lands is $38,042.00. The fair market value of the offered State land is $37,760.00, creating a value discrepancy of $282.00. Pursuant to Section 9 of the Federal Land Exchange Facilitation Act of 1988 (Public Law 100-409), the authorized officer has waived cash equalization payment by the State of Wyoming.

4. At 9 a.m. on September 21, 1994, the land described in paragraph 2 shall be open to the operation of the public land and mineral laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law to the extent that the land is available under the Bureau of Land Management's Interim Management Policy and Guidelines for Lands Under Wilderness Review. All valid applications received at or prior to 9 a.m. on September 21, 1994, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: September 9, 1994.

John A. Naylor,

Chief, Branch of Land Resources.

[FR Doc. 94-23287 Filed 9-20-94; 8:45 am]

BILLING CODE 4310-22-M

Geological Survey

Interagency Advisory Committee on Water Data; Intergovernmental Task Force on Monitoring Water Quality

AGENCY: U.S. Geological Survey, U.S. Department of the Interior.

ACTION: Notice of the availability for public review and comment of the draft final report prepared by the Intergovernmental Task Force on Monitoring Water Quality (ITFM).

SUMMARY: Notice is hereby given of the opportunity for the public to review and comment on the draft final report of the ITFM. The title of the draft report is "The Nationwide Strategy for Improving Water-Quality Monitoring." The report is available by request to the address below.

DATES: The public review and comment period extends through December 1, 1994.

ADDRESSES: Copies of the report can be obtained by writing the Office of Water Data Coordination, U.S. Geological Survey, 417 National Center, Reston, Virginia 22092, or by telephoning (703) 648-5023. Review comments should be sent to the Executive Secretary, ITFM, at the same address.

FOR FURTHER INFORMATION CONTACT: Nancy Lopez, Chief, Office of Water Data Coordination, USGS, at the above address or by telephoning (703) 648-5014. Also, for information about the ITFM and the final draft report, you may contact the chairperson of ITFM Elizabeth Fellows at (202) 260-7062. Ms. Fellows is the Chief, Monitoring Branch; Office of Wetlands, Oceans, and Watersheds; Office of Water; U.S. Environmental Protection Agency.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) established in Memorandum No. 92-01, dated December 10, 1991, the requirements to conduct a nationwide review and evaluation of water-quality monitoring and to recommend needed improvements. The ITFM is a partnership of representatives from Federal, State, Native American, and interstate governmental organizations. Working since January 1992 in consultation with representatives of other public and private organizations, the ITFM is developing an integrated, nationwide, voluntary strategy for water-quality monitoring. The proposed strategy and associated recommendations to improve water-quality monitoring are presented in the draft final report that is now available for review. Water resources considered in the strategy include surface water and ground water, near-coastal waters, associated aquatic communities and habitats, wetlands, and sediments. The five general purposes of water-quality monitoring identified in the report include characterizing status and trends, identifying and ranking in order of priority existing and emerging problems, designing and implementing programs and projects, evaluating program success and project compliance, and responding to emergencies. The scope of the ITFM proposals addresses physical, chemical (including toxicological), and biological (including habitat and ecological) aspects of water-quality monitoring. The monitoring functions considered in the strategy include the full range of activities from identifying monitoring objectives, planning and designing monitoring programs, conducting field sampling and laboratory analysis, interpreting and reporting monitoring results, to evaluating the effectiveness of monitoring efforts. The ITFM will complete the report by January 1995, and will distribute copies to the OMB, Federal agencies in the Executive Branch, Congress, Governors and others as requested or as appropriate.

P. Patrick Leahy,

Acting Chief Hydrologist.

[FR Doc. 94-23283 Filed 9-20-94; 8:45 am]

BILLING CODE 4310-31-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-360]

Certain Devices for Connecting Computers via Telephone Lines; Notice of Request for Additional Written Submissions on the Scope of a Proposed Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission seeks additional written submissions on the scope of a proposed exclusion order that may be issued in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Elizabeth C. Rose, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436. Telephone: (202) 205-3113.

SUPPLEMENTARY INFORMATION: Farallon Computing, Inc. ("Farallon") filed a complaint on October 12, 1993, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), alleging that certain respondents had violated section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain devices for connecting computers via telephone lines. The Commission published a notice of investigation in the **Federal Register** on November 17, 1993 (58 FR 60671).

On June 28, 1994, the Commission determined not to review a final initial determination issued by the presiding administrative law judge finding a violation of section 337 in this investigation. The Commission requested written submissions on the issues of remedy, the public interest, and bonding. See 59 FR 34862-63 (July 7, 1994). Both complainant Farallon and the Commission investigative attorney proposed that the Commission issue a general exclusion order that "excluded from entry into the United States," devices for connecting computers via telephone lines that are covered by claims 10, 18, or 20 of U.S. Letters Patent 5,003,579, for the remaining term of the patent, except under license of the patent owner or as provided by law.

In connection with recent deliberations concerning the scope of the exclusion order issued in 1984 in Inv. Nos. 337-TA-148/169, Certain Processes for the Manufacture of Skinless Sausage Casings and Resulting Product, the Commission became aware that the U.S. Customs Service interprets the term "exclusion from entry" differently from a majority of the Commission. The Commission therefore wishes to avoid any ambiguity inherent in the use of this term by stating more precisely in any exclusion order that may be issued exactly what is and is not covered by the order.

Written Submissions

The parties to the investigation, interested government agencies, in particular the U.S. Customs Service, and any other interested persons are encouraged to file written submissions on the scope of the proposed exclusion order and in particular on the use of the terms "exclusion from entry" and "entry." Such written submissions must be filed no later than the close of business on Monday, October 3, 1994.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.58 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.58).

Copies of Farallon's and the Commission investigative attorney's proposed exclusion orders and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Issued: September 13, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-23361 Filed 9-20-94; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337-TA-349]

Certain Diltiazem Hydrochloride and Diltiazem Preparations; Notice of Designation of Additional Commission Investigative Attorney

Notice is hereby given that, as of this date, John M. Whealan, Esq. and Juan S. Cockburn, Esq. of the Office of Unfair Import Investigations are designated as the Commission investigative attorneys in the above-cited investigation instead of John M. Whealan, Esq.

The Secretary is requested to publish this Notice in the Federal Register.

Dated: September 9, 1994.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 94-23362 Filed 9-20-94; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 1205-3]

Proposed Modifications to the Harmonized Tariff Schedule of the United States, Pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (Addendum)

AGENCY: United States International Trade Commission.

ACTION: Re-opening of investigation: request for comments on draft addendum to the Commission's report on investigation No. 1205-3 of August 24, 1993.

EFFECTIVE DATE: September 1, 1994.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (O/TA&TA) (telephone 202-205-2592) or Holm J. Kappler, Deputy Director (O/TA&TA) (202-205-2598), U.S. International Trade Commission, Washington, DC 20436.

Background and Scope of Investigation

The Commission has reopened investigation No. 1205-3, *Proposed Modifications to the Harmonized Tariff Schedule of the United States, Pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988* to address (1) the non-acceptance by contracting parties to the Harmonized System Convention of certain proposed amendments to the Harmonized System nomenclature and (2) changes in the

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tariff treatment accorded by the U.S. Customs Service to certain other products covered by the Commission's August 1993 report on this investigation.

Section 1205 (19 U.S.C. 3005) directs the Commission to keep the Harmonized Tariff Schedule of the United States (HTS) under continuous review and to recommend modifications of the HTS to the President (1) when amendments to the International Convention on the Harmonized Commodity Description and Coding System (Harmonized System or HS) are recommended by the Customs Co-operation Council (CCC) for adoption and (2) as other circumstances warrant.

In July 1993, the CCC recommended certain amendments to the nomenclature of the international Harmonized System, in accordance with Article 16 of the Harmonized System Convention. The Commission's report on investigation No. 1205–3 addressed the CCC recommended amendments. However, since the issuance of the Commission's report, a number of HS contracting parties have entered objections with the CCC with respect to certain of the proposed amendments to the HS Convention. As a result, the CCC withdrew those amendments from its final recommendation. The modifications in the recommended amendments to the HS Convention will necessitate conforming changes in the Commission's recommendations made in its report of August 1993.

In addition, the Commission has received further information concerning the tariff treatment accorded by the U.S. Customs Service to certain other products covered by the August 1993 report. This additional information and certain technical corrections should also be reflected in the Commission's report.

For these reasons, the Commission has decided to re-open its investigation in this matter for the purpose of issuing an addendum to its report on investigation No. 1205–3 with respect to the matters described above. The Commission's August 1993 report on investigation No. 1205–3 (USITC Publication 2673) and the addendum proposed to be appended thereto are available from the Office of the Secretary, Room 112, United States International Trade Commission, 500 E Street SW., Washington, DC 20436 (telephone (202) 205–2000).

The majority of the proposed modifications to the Commission's report result from the non-acceptance by the contracting parties of certain proposed amendments to the Harmonized System nomenclature and from technical and editorial amendments appearing in the final CCC recommendation. These amendments principally concerned:

—subdivision of refined petroleum products under heading 27.10,
—revision of the subheadings for oxygen-function amino compounds under heading 29.22,
—subdivision of the provision for acrylic polymers under subheading 3906.90,
—modification of the chapter 61 and 62 notes concerning the definition of ensembles,
—creation of new subdivisions for high-definition television apparatus under headings 85.28 and 85.40, and
—transfer of certain optical fiber cables from heading 85.44 to heading 90.01.

Other proposed modifications to the Commission's report concern the classification of:

—snowboard boots,
—still image video cameras,
—power supplies for automatic data processing machines, and
—cordless handset telephones.

The Commission must solicit, and give consideration to, the views of interested Federal agencies and the public before proposing recommendations to the HTS under section 1205. Further, the Commission's report to the President must present its recommendations, summarize the information on which its recommendations are based, and provide a statement of the probable economic effects of recommended changes on any industry in the United States. A copy of all written comments received from Federal agencies and a copy (or Commission-prepared summary) of the views of other interested parties must also be included.

Pursuant to section 1206 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3006), the President may proclaim modifications to the HTS (on the basis of recommendations by the Commission under section 1205) if he determines that the modifications are in conformity with U.S. obligations under the HS Convention and do not run counter to the U.S. economic interest. The President may proclaim such modifications only after the expiration of a 60 legislative day lay-over period beginning on the date he submits a report to the House Ways and Means Committee and the Senate Finance Committee that sets forth the proposed modifications and the reasons therefor. Modifications proclaimed by the President may not become effective before the 15th day after the proclamation is published in the **Federal Register**.

Notice of institution of the original investigation and scheduling of a hearing was published in the **Federal Register** of May 20, 1993 (58 F.R. 29433).

Written Submissions

Interested parties, including other Federal agencies, are invited to submit written statements concerning the subject of the draft addendum. Each statement must be submitted by not later than October 28, 1994, in order to be considered by the Commission. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Issued: September 13, 1994.
By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 94–23363 Filed 9–20–94; 8:45 am]
BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31922 (Sub-No. 1)]

Wisconsin Central Ltd.—Purchase Exemption—Soo Line Railroad Company Line Between Superior and Ladysmith, WI

AGENCY: Interstate Commerce Commission.

ACTION: Notice seeking comments on the issue of whether employees affected by a purchase transaction may have test period averages (TPAs).[1]

[1] Test period average is defined as all compensation received by the employee and all time for which he was paid for the 12-month period immediately preceding the date of his displacement divided by 12. The TPA produces a monthly average compensation and average monthly time for which the employee was paid.

SUMMARY: The Commission is considering a request by the Brotherhood of Maintenance of Way Employees (BMWE) that the Commission interpret its labor conditions as requiring a railroad employer to furnish upon request TPAs to employees affected by the sale of a rail line on which the employees work. Comments are invited on the issue.

DATES: Any person interested in participating in this proceeding as a party of record by filing and receiving written comments must file a notice of intent to do so by October 3, 1994. We will issue a service list of the parties of record shortly thereafter. Petitioners will have 10 days after service of the service list to serve each party on the list with a copy of the petition. Initial written comments must be filed within 30 days after service of the service list. All parties will have 50 days after service of the service list to reply. The exact filing dates will be specified in the notice accompanying the service list. Comments must be served upon all parties of record.

ADDRESSES: Send comments referring to Finance Docket No. 31922 (Sub-No. 1) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: An Arbitration Board found that nothing in the express wording of, or the industry practice under, the *New York Dock* conditions[2] requires a railroad to provide affected employees their TPAs until they have been "adversely" affected as a result of the purchase transaction, and thus concluded that the railroad is not obligated to provide that information except in connection with the calculation of displacement allowances under our labor conditions.

On appeal to the Commission, BMWE argues that the information permits affected employees to determine if they have been "adversely affected," *i.e.*, placed in a worse position as a result of a transaction and thereby entitled to a displacement allowance. BMWE notes in this regard that equally important to total compensation is the amount of time the employee had to work to receive it.

Second, BMWE avers that the TPA is necessary for employees to comply with the requirement of Article I, section 5 that they exercise seniority to seek a position producing compensation equal to or exceeding the compensation received in their prior position. Without the TPA information, the union says that employees are unable to determine which positions produce equal compensation. Soo Line Railroad Company, on the other hand, argues that the information is readily available to employees, is burdensome for the railroad to provide and ought not to be required.

The Commission believes it would be helpful to have additional comment on these issues from the parties as well as the interested public.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services: (202) 927–5721.]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: September 9, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commission Simmons, and Commissioner Morgan.

Vernon A. Williams,
Acting Secretary.

[FR Doc. 94–23334 Filed 9–20–94; 8:45 am]
BILLING CODE 7035–01–P

[2] Those first imposed in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), as clerified in *Wilmington Term. R.R. Inc — Pur. & Lease—CSX Transp., Inc.*, 6 I.C.C.2d 799 (1990).

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Appointment of New Members

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of appointment of members.

Notice is hereby given that appointments have been made to fill fifteen (15) vacancies on the Advisory Committee on Construction Safety and Health (ACCSH). The vacancies were created by the expiration of the terms of the fifteen (15) members on March 23, 1994. Pursuant to 29 CFR 1912.3(g), the terms of members are being staggered to provide for continuity in the membership of the ACCSH. Accordingly, seven members are being appointed for one-year terms and seven members are being appointed for two-year terms. As provided by 29 CFR 1912.3(f), the member designated by the National Institute for Occupational Safety and Health (NIOSH) does not have a fixed term. The new membership of the Committee, the categories represented and the terms of appointment are as follows:

Employee

Mr. John B. Moran, Director, Occupational Safety & Health, Laborers' National Health and Safety Fund (reappointed for one year).

Mr. William C. Rhoten, Director of Safety and Health for United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (new appointment for one year).

Dr. Knut Ringen, Director, The Center to Protect Workers' Rights (new appointment for two years). Dr. Ringen has been appointed to Chair the Advisory Committee.

Mr. William J. Smith, Jr., Director of Safety and Health, International Union of Operating Engineers (new appointment for one year).

Ms. Lauren Sugarman, Executive Director, Chicago Women in Trades (new appointment for two years).

Employer

Mr. Stewart C. Burkhammer, Vice President and Manager of Safety and Health, Bechtell Construction Co. (reappointed for two years).

Mr. Stephen J. Cloutier, Corporate Safety Manager, Metric Constructors Inc. (reappointed for one year).

Ms. Bernice Jenkins, Corporate Compliance Officer, P.J. Dick Inc./ Trumbull Corporation (new appointment for two years).

Ms. Kathryn G. Thompson, Chair and Chief Executive Officer, Kathryn G. Thompson Development Company (reappointed for one year).

Mr. Theodore E. Webster, President and Chief Operating Officer, Webster Engineering Company, Inc. (new appointment for two years).

State

Mr. Al Meier, Commissioner of Labor, State of Iowa (reappointed for one year).

Mr. John A. Pompeii, Administrator, Oregon Occupational Safety and Health Division (new appointment for two years).

Representatives Qualified by Knowledge and Experience

Dr. Ana Maria Osorio, Chief, Division of Environmental and Occupational

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Disease Control, California Department of Health Services (new appointment for one year).

Ms. Judy A. Paul, Registered Nurse, Private Consulting Services (new appointment for two years).

Federal

Ms. Diane Dunkin Porter, Assistant Director for Legislation and Policy, NIOSH (reappointment).

The terms of these members run from the date this notice was signed

The Advisory Committee on Construction Safety and Health was established under section 107 of the Contract Work Hours and Safety Standards Act and 7(b) of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor on matters pertaining to construction safety and health.

For Additional Information Contact: Tom Hall, Division of Consumer Affairs, Room N–3647, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone (202) 523–8615.

Signed at Washington, D.C., this 15th day of September, 1994.

Joseph A. Dear,

Assistant Secretary of Labor

[FR Doc. 94–23345 Filed 9–20–94, 8:45 am]

BILLING CODE 4510–26–M

Iowa State Standards; Notice of Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667; hereinafter called the Act) by which the Regional Administrators for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR part 1902. On July 20, 1973, notice was published in the **Federal Register** (38 FR 19368) of the approval of the Iowa Plan and the adoption of Subpart J of part 1952 containing the decision. Iowa was granted final approval under Section 18(e) of the Act on July 2, 1985.

The Iowa Plan provides for the adoption of Federal standards (by reference after comments and public hearing). By a letter dated August 13, 1993, from Walter H. Johnson, Deputy Labor Commissioner, to Alonzo L. Griffin, Area Director, and incorporated as part of the Plan, the State submitted State standards comparable to: Storage and Handling of Liquefied Petroleum Gases CFR Correction 1910.110; as published in the **Federal Register** (58 FR 15089, dated March 19, 1993). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested April 28, 1993; hearing scheduled for May 20, 1993; (no comments were received); and resolution adopted by the Division of Labor Services on June 23, 1993, pursuant to Chapter 17a, of the Iowa Code. The standard was effective June 23, 1993; and notice of its adoption was published by the State on June 23, 1993.

In the August 13, 1993 letter, the State also submitted State standards comparable to: Explosives and Blasting Agents CFR Correction; as published in the **Federal Register** (58 FR 16496, dated March 29, 1993). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested April 28, 1993; hearing scheduled for May 20, 1993; (no comments were received); and resolution adopted by the Division of Labor Services on June 23, 1993, pursuant to Chapter 17a, of the Iowa Code. The standard was effective June 23, 1993; and notice of its adoption was published by the State on June 23, 1993.

By letter dated September 30, 1993, from Walter H. Johnson, Deputy Labor Commissioner, to Alonzo L. Griffin, Area Director, and incorporated as part of the Plan, the State submitted State standards comparable to: Occupational Exposure to Cadmium, Correction; Final Rule; as published in the **Federal Register** (58 FR 21778, date April 23, 1993). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested May 26, 1993; hearing scheduled for June 17, 1993; (no comments were received); and resolution adopted by the Division of Labor Services on August 18, 1993, pursuant to Chapter 17a, of the Iowa Code. The standard was effective August 18, 1993; and notice of its adoption was published by the State on August 18, 1993.

In the September 30, 1993 letter, the State also submitted State standards comparable to: Lead Exposure in Construction Interim Final Rule; as published in the **Federal Register** (58 FR 22627, dated May 4, 1993). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested May 26, 1993; hearing scheduled for June 17, 1993; (no comments were received); and resolution adopted by the Division of Labor Services on August 18, 1993, pursuant to Chapter 17a, of the Iowa Code. The standard was effective August 18, 1993; and notice of its adoption was published by the State on August 18, 1993.

By a letter dated January 4, 1994, from Walter H. Johnson, Deputy Labor Commissioner, to Alonzo L. Griffin, Area Director, and incorporated as part of the Plan, the State submitted standards comparable to: Permit-Required Confined Spaces 29 CFR part 1910, Corrections to Final Rule; as published in the **Federal Register** (58 FR 34845, dated June 29, 1993). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested August 18, 1993; hearing scheduled for September 9, 1993; (no comments were received); and resolution adopted by the Division of Labor Services on October 13, 1993, pursuant to Chapter 17a, of the Iowa Code. The standard was effective October 13, 1993; and notice of its adoption was published by the State on October 13, 1993.

In the January 4, 1994 letter, the State also submitted State standards comparable to: Safety Standards for General Industry and Construction; Final Rule; Technical Amendments; as published in the **Federal Register** (58 FR 35308, dated June 30, 1993). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested August 18, 1993; hearing scheduled for September 9, 1993; (no comments were received); and resolution adopted by the Division of Labor Services on October 13, 1993, pursuant to Chapter 17a, of the Iowa Code. The standard was effective October 13, 1993; and notice of its adoption was published by the State on October 13, 1993.

In the January 4, 1994 letter, the State also submitted State standards comparable to: Incorporated of General Industry Safety and Health Standards Applicable to Construction Work and Technical Amendments; Final Rule; as published in the **Federal Register** (58 FR 35077, dated June 30, 1993). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested August 18, 1993; hearing scheduled for September 9, 1993; (no comments were received); and resolution adopted by the Division of Labor Services on October 13, 1993, pursuant to Chapter 17a, of the Iowa Code. The standard was effective October 13, 1993; and notice of its adoption was published by the State on October 13, 1993.

In the January 4, 1994 letter, the State also submitted State standards comparable to: Air Contaminants; Final Rule; as published in the **Federal Register** (58 FR 35340, dated June 30, 1993). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested August 18, 1993; hearing scheduled for September 9, 1993; (no comments were received); and resolution adopted by the Division of Labor Services on October 13, 1993, pursuant to Chapter 17a, of the Iowa Code. The standard was effective October 13, 1993; and notice of its adoption was published by the State on October 13, 1993.

In the January 4, 1994 letter, the State also submitted State standards comparable to: Incorporation of General Industry Safety and Health Standards Applicable to Construction Work; 29 CFR 1926, Correction; as published in the **Federal Register** (58 FR 40468, dated July 28, 1993). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested September 1, 1993; hearing scheduled for September 23, 1993; (no comments were received); and resolution adopted by the Division of Labor Services on October 27, 1993, pursuant to Chapter 17a, of the Iowa Code. The standard was effective October 27, 1993; and notice of its adoption was published by the State on October 27, 1993.

In the January 4, 1994 letter, the State also submitted State standards comparable to: Air Contaminants; 29 CFR 1910, Correction; as published in the **Federal Register** (58 FR 40191, dated July 27, 1993). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested September 1, 1993; hearing scheduled for September 23, 1993; (no comments were received); and resolution adopted by the Division of Labor Services on October 27, 1993, pursuant to Chapter 17a, of the Iowa Code. The standard was effective October 27, 1993; and notice of its adoption was published by the State on October 27, 1993.

2. Decision

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the comparable Federal standards and should therefore be approved.

3. Location of Supplement for Inspection and Copying

A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Directorate of Federal/State Operations, Office of State Programs, Room N3700, 200 Constitution Avenue, NW, Washington, DC 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, 406 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106; and Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

4. Public Participation

Under 29 CFR 1953.2(c) of this Chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Iowa State Plan as a proposed change and for making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the comparable Federal standards and are therefore deemed to be at least as effective.

2. The standards were adopted in accordance with the procedural requirements of State law and further public participation and notice would be unnecessary.

This decision is effective September 21, 1994.

(Section 18, Public Law 91–596, 84 Stat. 1608 [29 U.S.C. 667]).

Signed at Kansas City, Missouri, this 20 day of June, 1994.

John T. Phillips,

Regional Administrator.

[FR Doc. 94–23348 Filed 9–20–94, 8:45 am]

BILLING CODE 4510–26–M

Maryland State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On July 5, 1973, notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland State plan and the adoption of Subpart O to Part 1952 containing the decision.

The Maryland State plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of Subpart O sets forth the State's schedule for the adoption of Federal standards. By letters dated May 16 and July 25, 1994, from Commissioner Henry Koellein, Jr., Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to amendments, corrections, and revisions to: (1) 29 CFR 1926.63, pertaining to the Occupational Exposure to Cadmium Standard for the Construction Industry as published in the **Federal Register** of January 3, 1994 (59 FR 1920); (2) 29 CFR 1910.1200, including Appendices A through D, pertaining to the Hazard Communication Standard as published in the **Federal Register** of February 9, 1994 (59 FR 6169); and (3) 29 CFR 1910.269, including Appendices A through E, pertaining to the Electronic Power Generation, Transmission and Distribution Standard and related changes to 29 CFR 1910.37, 1910.331, and 1910.333 as published in the **Federal Register** of January 31, 1994 (59 FR 4435). These standards are contained in COMAR 09.12.31. Maryland occupational safety and health standards were promulgated after public hearings on March 4 and June 15, 1994. The Cadmium Standard became effective on May 9, 1994, and the Hazard Communication and Electric Power Generation, Transmission and Distribution standards became effective on July 4, 1994.

2. Decision

Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and, accordingly, are approved.

3. Location of the Supplements for Inspection and Copying

A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 3535 Market Street, Suite

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2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the OSHA Office of State Programs, U.S. Department of Labor, Room N3700, 3rd Street and Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Marylnd State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standard is identical to the Federal standard which was promulgated in accordance with Federal law including meeting requirements for public participation.

b. The standard was adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective September 21, 1994.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)

Signed at Philadelphia, Pennsylvania, this 2nd day of August 1994.

Linda R. Anku,

Regional Administrator.

[FR Doc. 94–23346 Filed 9–20–94; 8:45 am]

BILLING CODE 4510–26–M

Vermont State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On October 16, 1973, notice was published in the **Federal Register** (38 FR 28658) of the approval of the Vermont State Plan and the adoption of Subpart U to Part 1952 containing the decision.

The Vermont State Plan provides for the adoption of Federal standards as State standards after:

a. Publishing for two (2) successive weeks, in three (3) newspapers having general circulation in the center, northern and southern parts of the State, an intent to amend the State Plan by adopting the standard(s).

b. Review of standards by the Interagency Committee on Administrative Rules, State of Vermont.

c. Approval by the Legislative Committee on Administrative Rules, State of Vermont.

d. Filing in the Office of the Secretary of State, State of Vermont.

e. The Secretary of State publishing, not less than quarterly, a bulletin of all standard(s) adopted by the State.

The Vermont State Plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. By letter dated June 2, 1994, from Mary S. Hooper, Commissioner, Vermont Department of Labor and Industry, to John B. Miles, Jr., Regional Administrator; and incorporated as part of the plan, the State submitted updated State standards identical to 29 CFR Parts 1910, and 1926, and subsequent amendments thereto, as described below:

(1) Revision to 29 CFR Parts 1910, Safety and Health Standards: Welding, Cutting and Brazing; Final Rule (55 FR 13696, dated 4/11/90).

(2) Addition to 29 CFR Parts 1910 and 1926, Incorporation of General Industry Safety and Health Standards applicable to Construction Work and Technical Amendments; Final Rules (58 FR 35077, dated 6/30/93).

These standards became effective on May 12, 1994, pursuant to Section 224 of State Law.

2. Decision

The above State standards have been reviewed and compared with the relevant Federal standard. It has been determined that the State standard is identical to the Federal standard, and is accordingly approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 133 Portland Street, Boston, Massachusetts 02114; Office of the Commissioner, State of Vermont, Department of Labor and Industry, 120 State Street, Montpelier, Vermont 05602; and the Office of State Programs, 200 Constitution Avenue, NW, Room N–3700, Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Vermont State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standards were adopted in accordance with the procedural requirements of the State Law which included public comment, and further public participation would be repetitious.

This decision is effective September 21, 1994.

Authority: Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667).

Signed at Boston, Massachusetts, this 6th day of July, 1994.

Cindy A. Coe,

Acting Regional Administrator.

[FR Doc. 94–23347 Filed 9–20–94; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–409; License No. DPR–45]

Dairyland Power Cooperative; La Crosse Boiling Water Reactor (LACBWR); Confirmatory Order Modifying NRC Order Authorizing Decommissioning of Facility

I

The Dairyland Power Cooperative (DPC, the licensee) is the holder of Facility License No. DPR–45, originally issued by the Atomic Energy Commission, the predecessor to the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on August 28, 1973. The licensee's authority to operate DPR–45 was terminated by license Amendment No. 56, dated August 4, 1987. The licensee is authorized to possess but not to operate the La Crosse Boiling Water Reactor (LACBWR) in accordance with the conditions specified therein. The facility is located on the licensee's site located 19 miles south of La Crosse, Wisconsin.

II

In its Order (Decommissioning Order) of August 7, 1991, the NRC directed DPC to decommission the reactor facility in accordance with its Decommissioning Plan and the Commission's regulations. This action was taken in response to the licensee's application for authorization to decommission the facility, dated December 21, 1987, as revised February 22, 1988, September 9, 1988, September 30, 1988, January 26, 1989, March 28, 1989, June 6, 1989, October 3, 1989, July 25, 1990, May 10, 1991, and July 25, 1991. Neither the August 7, 1991, Decommissioning Order, which authorized the licensee to decommission the reactor facility, nor the approved Decommissioning Plan, contained an approved procedure that would allow the licensee to: (i) Make changes in the facility or procedures as described in the Decommissioning Plan; or (ii) conduct tests or experiments not described in the Decommissioning Plan, without prior NRC approval.

III

The licensee, in its letters of August 2, and August 5, 1994, requested the NRC to modify the August 7, 1991, Decommissioning Order to allow DPC to: (i) Make changes in the facility or procedures as described in the Decommissioning Plan; and (ii) conduct tests and experiments not described in the Decommissioning Plan, without prior NRC approval.

The licensee, as other licensees of both operating facilities and facilities in the process of being decommissioned, continues to discover facility improvements which, if implemented, would either reduce facility operating costs, improve facility safety margins, or are necessary for continued operation/maintenance of the facility. Further, a large number of these licensee-initiated facility improvements, if implemented, would neither increase the probability of an accident occurring, increase the consequences of an accident, reduce safety margins, or create a significant environmental impact not previously evaluated. Thus, in these circumstances, for the NRC to require a licensee to first receive NRC approval prior to the implementation of facility improvements that meets the above criteria would cause an unnecessary burden on the licensee. The NRC has included such change procedures in recently-issued plant specific decommissioning orders.

The licensee has committed, prior to making any changes to its Decommissioning Plan, to apply the safety and environmental review procedure specified below, which is similar to the safety review procedure specified in 10 CFR 50.59. This commitment is consistent with the flexibility under § 50.59 afforded to a licensee authorized to operate a facility and other Decommissioning Orders issued by the NRC.

Section 50.59(a)(1) allows a holder of a license authorizing operation of a production or a utilization facility to: (i) Make changes in the facility or procedures as described in the Safety Analysis Report; and (ii) conduct tests or experiments not described in the Safety Analysis Report, without NRC approval, provided the proposed action does not consist of a change to the facility technical specifications or an unreviewed safety question.

I find that the licensee's commitments as set forth in its letters of August 2, and supplemented by letter dated August 5, 1994, are acceptable and conclude that with these commitments the safety of the plant is reasonably assured. In view of the foregoing, I have determined that the public health, safety, and interest require that the licensee's commitments in its August 2, and August 5, 1994, letters be confirmed by this Order. The licensee has consented to the issuance of this Order. (59 FR 46996, September 13, 1994)

IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 50, It Is Hereby Ordered That The August 7, 1991, Decommissioning Order Is Modified As Follows:

The Order of August 7, 1991, which directed the licensee to decommission the reactor facility in accordance with its Decommissioning Plan and the Commission's regulations, is modified to include the following procedure by which the licensee is allowed to: (i) Make changes in the facility or procedures as described in the Decommissioning Plan; and (ii) conduct tests or experiments not described in the Decommissioning Plan, without prior NRC approval:

(a)(1) The licensee may (i) make changes in the facility or procedures as described in the Decommissioning Plan, and (ii) conduct tests or experiments not described in the Decommissioning Plan, without prior NRC approval, unless the proposed change, test or experiment involves a change in technical specifications (TS) incorporated in the license, an unreviewed safety question, or results in a significant environmental impact not previously evaluated in the Environmental Assessment in support of the August 7, 1991, Decommissioning Order or the Final Environmental Statement (FES) related to operation of LACBWR, dated April 21, 1980 (NUREG–0191). Notwithstanding the above, a reduction in site staffing levels below the minimum number for any group or area shown on the organization chart (Fig. 6.1) in the LACBWR Decommissioning Plan, or a change in the reporting relationships for the Plant Manager must be submitted to the NRC as specified in 10 CFR 50.4, and receive NRC approval prior to implementation.

(2) A proposed change, test or experiment shall be deemed to involve an unreviewed safety question (i) if the probability of occurrence or the consequences of an accident or malfunction of equipment necessary for SAFSTOR previously evaluated in either the Final Safety Analysis Report (FSAR) or the Decommissioning Plan may be increased, or (ii) if a possibility for an accident or malfunction of a different type than evaluated previously in the FSAR or Decommissioning Plan may be created, or (iii) if the margin of safety as defined in the basis for any TS is reduced.

(b)(1) The licensee shall maintain records of changes in the facility and of changes in procedures made pursuant to this procedure, to the extent that these changes constitute changes in the facility or procedures as described in either the FSAR or the Decommissioning Plan. The licensee shall also maintain records of tests and experiments performed pursuant to paragraph (a) of this section. These records must include a written safety evaluation containing the basis for the determination that the changes, tests or experiments do not involve an unreviewed safety question, or a significant environmental impact not previously evaluated.

(2) The licensee shall annually submit, as specified in 10 CFR 50.4, a report containing a brief description of any changes, tests, and experiments, including a summary of the safety evaluation of each.

(3) The licensee shall maintain records of changes in the facility until the date of termination of the license and shall maintain the records of changes in procedures and records of tests and experiments for a period of three years.

(c) If the licensee desires (1) a change in the TS, or (2) to make a change in the facility or procedures described in the Decommissioning Plan or conduct tests or experiments not described in the Decommissioning Plan, which involve an unreviewed safety question, a change in the TS, or a significant environmental impact not previously evaluated, the licensee shall submit an application for amendment of its license pursuant to 10 CFR 50.90.

V

Any person adversely affected by this Confirmatory Order, other than the licensee, may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555.

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Copies of the hearing request shall also be sent to the Director, Office Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532–4351, and to the licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.714(d).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, the provisions specified in Section IV shall be final 20 days from the date of this Order without further proceedings.

For further details with respect to this action, see: (1) The Commission's order authorizing decommissioning of facility, dated August 7, 1991; (2) the licensee's application for authorization to decommission the facility, dated December 21, 1987, as revised February 22, 1988, September 9, 1988, September 30, 1988, January 26, 1989, March 28, 1989, June 6, 1989, October 3, 1989, July 25, 1990, May 10, 1991, and July 25, 1991; (3) Amendment No. 66 to License No. DPR–45, SAFSTOR TS; (4) the Commission's related Safety Evaluation; and (5) the Environmental Assessment and Finding of No Significant Impact. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601. Copies of items (1), (3), (4), and (5) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Waste Management.

Dated at Rockville, Maryland, this 15th day of September 1994.

For the Nuclear Regulatory Commission

Malcolm R. Knapp,

Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–23331 Filed 9–20–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

River Bend Station; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–47 issued to Entergy Operations, Inc. (the licensee), for operation of the River Bend Station, located in West Feliciana Parish.

The proposed amendment would revise the formula for calculating the average power range monitor (APRM) flow biased simulated thermal power-high reactor trip and flow biased neutron flux-upscale control rod block trip setpoints T-factor specified in Technical Specification (TS) 3/4.2.2. The proposed changes are necessary to support implementation of recommendations contained in NRC Generic Letter 94–02, "Long-Term Solutions and Upgrade of Interim Operating Recommendations for Thermal-Hydraulic Instabilities in Boiling Water Reactors."

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request Involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), a licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change only redefines the APRM setpoints T-factor. The modified APRM setpoints T-factor does not change or affect operator required actions in relation to the APRM setpoints T-factor and is only applied at different power peaking for given reactor power. Therefore, this change only affects the precursors to events that can be initiated as a result of different power peaking. The only event affected is the formation of coupled thermal-hydraulic and neutronic oscillations (reactor stability). Since the modified APRM setpoints T-factor allows power distributions which permits the application of stability controls to increase stability margin, the probability for initiation of reactor instability is significantly reduced. Therefore, this change does not involve a significant increase in the probability of any event previously evaluated.

The consequence of a reactor instability event is minimized since the initial reactor conditions are associated with very stable power distributions. These stable conditions are established using stability controls which are permitted with the modified APRM setpoints T-factor. Since the initial reactor conditions are very stable, the severity of a postulated reactor instability event is significantly diminished. In addition, the modified APRM setpoints T-factor is confirmed to provide adequate LHGR [linear heat generation rate] protection at off-rated conditions for other anticipated events. Protection of other thermal limits for all previously analyzed events is accomplished by specific limits that are independent of the APRM setpoints T-factor. These are the power and flow dependent MCPR [minimum critical] power ratio] Operating Limits which provide protection from fuel dryout and the rated MAPLHGR [maximum average planar linear heat-generation rate] limit which provides protection of the peak clad temperature for the DBA [design-basis accident] LOCA [loss-of-coolant accident]. Therefore, the proposed changes does not involve a significant increase in the consequences of any event previously evaluated.

The proposed change in APRM setpoints T-factor permits implementation of appropriate reactor stability controls and maintains adequate off-rated LHGR margin for all operating conditions. This change, therefore, does not involve a significant increase in the probability and consequences of any event previously evaluated.

2. The request does not create the possibility of occurrence of a new or different kind of accident from any accident previously evaluated.

This change only redefines the APRM setpoints T-factor. The proposed changes do not involve any new modes of operation or any plant modifications. The ability to implement reactor stability controls do not result in any new precursors to an accident. Therefore, the proposed changes do not create the possibility of a new or different type of accident from any accident previously analyzed.

3. The request does not involve a significant reduction in a margin of safety.

The change in the APRM setpoints T-factor definition allows the implementation of reactor stability controls during reactor operation at off-rated conditions which significantly improve the reactor stability performance. This is accomplished by achieving very stable power distributions outside the stability excluded region. Since the initial reactor conditions are very stable, the severity of a postulated reactor instability event is significantly diminished.

The modified APRM setpoints T-factor accommodates higher power peaking to support the required stability controls. The modified APRM setpoints T-factor has been confirmed to provide adequate LHGR protection. Operation with higher peaking without APRM gains or flow bias trip setpoints adjustment does not involve a reduction in a margin of safety because the higher power peaking resulting from the APRM setpoints T-factor modification are below applicable LHGR limits. For power peaking conditions that result in APRM setpoints T-factor less than one, an adjustment to the APRM gains or trip setpoints is made to provide additional LHGR protection. Additionally, an upper bound is placed on power peaking by the modified APRM setpoints T-factor definition. Therefore, the modified APRM setpoint T-factor does not involve a reduction in a margin of safety because the higher power peaking resulting from the APRM setpoints T factor modification is below applicable LHGR limits.

Protection of other thermal limits for all previously analyzed events is accomplished by specific limits that are independent of the T-factor. These are the power and flow dependent MCPR Operating Limits which provide protection from fuel dryout and the rated MAPLHGR limit which provides protection of the peak clad temperature for the DBA LOCA. The proposed change does not result in an increase in core damage frequency. Therefore, the proposed change does not involve a significant reduction in the margin of safety evaluated.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes the determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 21, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The

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final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William D. Beckner: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 12, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 15th day of September 1994.

For the Nuclear Regulatory Commission.

Ramon V. Azua,

Acting Project Manager, Project Directorate IV–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–23332 Filed 9–20–94; 8:45 am]

BILLING CODE 7590–01–M

Appointments to Recertification Performance Review Boards for the Senior Executive Service

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointment to Recertification Performance Review Boards for the Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to NRC Recertification Performance Review Boards.

The following individuals are appointed as members of the NRC Recertification Performance Review Board responsible for making recommendations to the appointing and awarding authorities on recertification for Senior Executives:

New Appointees

Edward L. Jordan, Office for Analysis and Evaluation of Operational Data
Robert M. Bernero, Office of Nuclear Materials Safety and Safeguards
Karen D. Cyr, General Counsel, Office of the General Counsel

The following individuals are appointed as members of the NRC Recertification PRB Panel responsible for making recommendations to the appointing and awarding authorities on recertification of Recertification PRB members:

New Appointees

James L. Milhoan, Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations & Research, Office of the Executive Director for Operations
Patricia G. Norry, Director, Office of Administration
Hugh L. Thompson, Jr., Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, Office of the Executive Director for Operations

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

EFFECTIVE DATE: September 21, 1994.

FOR FURTHER INFORMATION CONTACT: James F. McDermott, Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (301) 415–7516.

Dated at Rockville, Maryland, this 15th day of September, 1994.

For the U.S. Nuclear Regulatory Commission.

James F. McDermott,

Secretary, Executive Resources Board.

[FR Doc. 94–23330 Filed 9–20–94; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34673; File No. SR–NASD–94–46]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Pricing of Open Orders

September 15, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 16, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Article III, Section 46 of the Rules of Fair Practice [1] to clarify that its provisions will not apply if an issuer does not notify the NASD of the declaration of a dividend or distributions. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Adjustment of Open Orders

Sec. 46.

* * * * *

(e) The provisions of this rule shall not apply to [orders]: (1) *orders* governed by the rules of a registered national securities exchange; (2) *orders* marked "do not reduce"; (3) *orders* marked "do not increase;" (4) open stop orders to buy; [or] (5) open sell orders[.]; *or (6) orders for the purchase or sale of securities where the issuer of the securities has not reported a dividend, payment or distribution pursuant to Rule 10b–17 under the Securities Exchange Act of 1934 (17 CFR § 240.10b–17).*

[1] *NASD Manual*, Rules of Fair Practice, Art. III, Sec. 46 (CCH) ¶ 2200F.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item V below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article III, Section 46 of the NASD Rules of Fair Practice, which is scheduled to go into effect on September 15, 1994, requires members to adjust open orders for securities when they are quoted ex-dividend, ex-rights, ex-distribution or ex-interest.[2] Most members are on notice that a particular security has gone ex-dividend, ex-rights, ex-distribution or ex-interest because Rule 10b–17 under the Act [3] generally requires an issuer to give notice to the Association [4] no later than ten days prior to the record date involved [5] of a dividend or other distribution in cash or in kind, a stock split or reverse split, or a rights or other subscription offering. However, if an issuer does not comply with Rule 10b–17, the member holding an open order may not have notice of the record date and permit the order to be executed when the security is quoted ex-dividend. Accordingly, the NASD is proposing an amendment to Article III, Section 46 to provide that it will not apply where the issuer has not provided the notice required by Rule 10b–17.

[2] *See* NASD Notice to Members 94–9 (February 1994) and NASD Notice to Members 94–28 (April 1994).

[3] 17 CFR 240.10b–17 (1993).

[4] If a security is listed on a national securities exchange or exchanges, the issuer of that security may give notice in accordance with the procedures of that exchange or exchanges in lieu of giving notice to the NASD.

[5] An issuer may give notice on or before the record date in the event of a rights subscription or other offering if 10 days advance notice is not practical.

The NASD has not noted a widespread Rule 10b–17 compliance problem among domestic issuers. However, NASD member firms that do a business in foreign securities are required by Article III, Section 46 to adjust the price of an open order for a foreign security traded on a foreign exchange. In some cases, issuers of such securities are not required by the laws of the issuers' country of domicile to announce a dividend, and often such issuers do not declare dividends in advance. In some cases, the markets find out about dividends when there is a significant, unexplained price change in the security and the issuer or exchange confirms, in response to inquiries, that a dividend has been declared. In such a situation the firm may find itself in violation of Article III, Section 46 by permitting an open order to be executed for such a security after the dividend has been declared.

In order to resolve the problem faced by member firms dealing in foreign securities or in securities of domestic issuers who have not complied with Rule 10b–17, the NASD has determined that an exemption for open orders for such securities from the coverage of the new section is necessary. Accordingly, the NASD is amending subsection (e) to Section 46 of the NASD Rules of Fair Practice to state that the obligation to reprice open orders does not apply with respect to securities where the issuer has not provided the required Rule 10b–17 notice. Because Rule 10b–17 requires issuers to notify the NASD or national securities exchanges upon the declaration of a dividend or other distribution, using Rule 10b–17 as the basis for the exemption means that the obligations of Article III, Section 46 of the Rules of Fair Practice would attach only if an issuer has complied with Rule 10b–17.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which require that the rules of the association be designed to prevent fraudulent and manipulative acts, promote just and equitable principles of trade, and protect investors and the public interest, in that the proposed rule preserves the current obligation to adjust open orders after the ex-date without imposing an obligation on members that would be difficult or impossible to meet if issuers did not announce dividends or distributions in advance of the ex-date.

[6] 15 U.S.C. § 78o–3.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The NASD notes that Section 46 is scheduled to go into effect on September 15, 1994; the Section requires members to adjust open orders for securities when they are quoted ex-dividend, ex-rights, ex-distribution or ex-interest; and that it is impracticable for members to fulfill the obligations imposed by the Section if an issuer has not complied with the requirements of Rule 10b–17.

Based on the NASD's representations that: (1) the laws of the home jurisdiction(s) of many foreign issuers do not require such issuers to announce the declaration of a dividend or distribution; (2) often such issuers do not declare dividends in advance; (3) markets often find out about dividends only after there has been a significant, unexplained price change in the security and the issuer or exchange confirms, in response to inquiries, that a dividend has been declared; and (4) it is impracticable for members to fulfill the obligations imposed by the Section if an issuer, whether foreign or domestic, has not complied with the requirements of Rule 10b–17, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A(b)(6). Section 15A(b)(6) requires, in part, that the rules of the NASD be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.

The Commission finds good cause for approving the proposal on an accelerated basis to prevent NASD members from violating the provisions of Section 46 in circumstances in which

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such members cannot be expected to be able to comply with that Section. The Commission believes that the proposed rule change promotes the public interest by preserving a member's obligation to adjust open orders after the ex-date without imposing an obligation that would be difficult or impossible for that member to meet if an issuer does not announce dividends or distributions in advance of the ex-date. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20459. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–94–46 and should be submitted by October 12, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–94–46), be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23344 Filed 9–20–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Pilot Export Working Capital Program

AGENCY: Small Business Administration.

ACTION: Notice of Pilot Program.

SUMMARY: The Small Business Administration (SBA) is issuing a notice to advise the public that it is beginning the Export Working Capital Program (EWCP) on a pilot basis nationwide. The pilot program is scheduled to end September 30, 1995, at which time it will be evaluated to determine what, if any, aspects of the pilot should be made permanent. This notice is issued pursuant to § 120.1–2 of SBA's regulations (13 CFR 120.1–2).

Under EWCP, SBA guarantees short-term working capital loans made by participating lenders to exporters for the purpose of financing export transactions. EWCP is intended to replace SBA's Export Revolving Line of Credit (ERLC) Program. Accordingly, the regulations for the ERLC Program (13 CFR 122.54) will not apply to EWCP loans.

The SBA and the Export Import Bank of the United States (ExIm Bank) are working to harmonize their export financing programs. Accordingly, many features of SBA's EWCP and ExIm Bank's Export Working Capital Program are similar. By design, SBA's Program will assist smaller businesses that need a guarantee of $750,000 or less and ExIm Bank's Program will serve the larger businesses and small businesses that have larger credit needs.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Wayne Foren, Office of Financial Assistance, (202) 205–7502.

SUPPLEMENTAL INFORMATION: EWCP loans are made under the authority of SBA's regular business loan program known as the 7(a) Program. The policies and procedures governing the EWCP pilot are contained in operating guidelines developed for the Program. These guidelines describe the eligibility, credit and processing considerations for the Program.

Eligibility Considerations

Under EWCP, SBA guarantees short-term working capital loans made by participating lenders to exporters. Loan proceeds may only be used to finance the acquisition or production of goods and services being exported and accounts receivable of such export sales under EWCP.

- A Pre-shipment Guarantee is used to finance the acquisition or production cost of export goods and services. The term of these loans is usually no more than 12 months. Payment is secured by letter of credit, valid purchase orders or contracts, or other such arrangement.
- A Post-shipment Guarantee is used to finance receivables resulting from export sales. The maximum term of these loans should not exceed 6 months.
- A Combined Guarantee is used to finance both the acquisition or production of export goods and services and the account receivables resulting from such export sales. The maximum term of a Combined Guarantee is 18 months.

Although payment may be made through one of several arrangements, usually ExIm bank insurance (or other comparable insurance) will be required in conjunction with an EWCP Guarantee where Post-shipment or Combined guarantees are being extended unless payment is being made by a confirmed, irrevocable letter of credit.

A loan Guarantee may be for a single transaction or for a Revolving Line of Credit which is used to finance "bundles" of individual transactions. Credit lines may be for as long as three years subject to annual renewals. Such renewals will be granted unless an adverse change has occurred in the exporter's financial condition or operations sufficient to jeopardize its ability to perform on export transactions. If a Line of Credit is terminated, no additional bundles will be financed and a reasonable period will be provided to liquidate the outstanding balance on the Line of Credit.

Standby letters of Credit are issued by a bank to cover a particular contingency. Frequently, they are used in place of a bid, performance or financial bonds. EWCP loans can be used to facilitate a Standby Letter of Credit.

Most products are eligible for EWCP financing. In some cases, however, Federal restrictions cause the product to be ineligible. For example, if ExIm Bank export credit insurance is required, the product must contain at least 51% U.S. content. Also, certain defense products are not eligible for ExIm Bank insurance. Where the product is customized or designed for special use, care must be taken to assure that the exporter has sufficient capability of payment should the transaction not be consummated.

Although service exports are eligible for EWCP financing, they entail greater risk than product exports, especially those that are independent of product sales. EWCP financing of service exports usually will require progress payments and possible additional collateral.

Applicants who produce, manufacture or sell products or provide services that enter into the export channel but do not directly export their products or services, including suppliers to other domestic manufacturers, are eligible for EWCP financing. In such cases, the applicant shall provide evidence to SBA that the goods or services are in fact being exported.

The dollar amount of the SBA Guarantee is of an EWCP loan limited to the lesser of two factors. First, EWCP loans are limited to the exporter's cost, if they are for Pre-shipment financing, or the receivable associated with the product being exported, if they are for Post-shipment or Combined financing. Second, with few exceptions, the maximum guarantee amount that may be outstanding or committed to any small business concern under the 7(a) and the 504 Programs in the aggregate is $750,000. EWCP loans are considered 7(a) loans for this calculation.

As is the case for Regular 7(a) loans, EWCP loans of $155,000 or less will be eligible for an SBA Guarantee of 90 percent of the principal amount of the loan. For loans over $155,000, the SBA Guarantee may not exceed 85 percent; however, loans made under the SBA's Preferred Lender authority may not exceed 70%. It is noted that legislation is pending before the Congress that would increase the maximum guarantee coverage for all EWCP loans to 90 percent. This legislative change will cause the guarantee percentage to be the same as ExIm Bank's guarantee percentage.

SBA will monitor, but not regulate, the interest charges and fees imposed by lenders for EWCP loans. This approach is consistent with the policies of ExIm Bank and most state export finance programs.

A $100 application fee will be assessed each applicant for an EWCP loan application or a Preliminary Commitment (PC) application. However, an application fee will not be assessed to the lender on a loan application for an exporter who had previously received a Preliminary Commitment and paid a fee. The normal guarantee fee for 7(a) loans will be assessed: One quarter of one percent (.25%) for a loan under one year and two percent (2%) for loans over one year.

As previously stated, an SBA guaranteed EWCP loan is obtained by an exporter from a lender participating in SBA's EWCP loan program. The exporter and the lender prepare the loan application which the lender submits to SBA for a loan guarantee.

In cases where an exporter is unable to find a lender willing to make the loan, the exporter can submit an application to SBA for a Preliminary Commitment. A PC is a 60 day conditional commitment issued by SBA to an exporter specifying that SBA will guaranty a loan to the exporter in accordance with the terms and conditions specified in the PC. It should be noted that PCs are not required as an interim step to obtaining an EWCP loan; rather, they help an exporter find a lender who will make the loan. Another benefit of PCs is that they allow an exporter to take advantage of SBA financial counseling and technical assistance without first having a participating lender.

In some areas, SBA approved Intermediaries will be available to assist exporters in loan packaging, deal structuring and credit analysis. Pursuant to an agreement with the exporter, these intermediaries may charge an amount not to exceed 1% of the loan amount. SBA approved resource partners will be available to assist exporters with management and technical assistance.

Applicants must be identifiable small businesses organized in the United States as for profit entities with operations in the United States. The size standards applicable to regular business loans under the 7(a) program also apply to EWCP loans. While a business organized and/or located outside the United States is ineligible for EWCP financing, a U.S. subsidiary of a foreign corporation may be eligible. Finally, Export Trading Companies and Export Management Companies are eligible for EWCP financing if they take title to the goods being exported.

Applicants must have sufficient experience and capability to complete the export transaction. Generally, exporters should have been in operations, though not necessarily in exporting, for at least 12 continuous months prior to filing an application. Exceptions will be considered where the applicant is a new business but the principals have proven expertise in the exporter's line of business.

The exporter's ability to perform is one of the most important considerations in the EWCP loan making process. This includes the exporter's ability to acquire or produce the export product or service, complete the export transaction, and present the proper documents for payment. Therefore, loan applications shall be approved only where such performance capability is determined to exist.

Credit Considerations

All SBA guaranteed loans, including EWCP loans, are statutorily required to demonstrate reasonable assurance of repayment. Usually, regular 7(a) loans are term loans and collateral is not linked to loan repayment. Assessment of the applicant's ability to repay the loan from operations over an extended period is a primary concern and collateral is important as a secondary source of repayment. Strength of the balance sheet including net worth and liquidity are essential as well as the reasonableness of projections.

Conversely, EWCP loans are short-term and transaction-based. The primary repayment source is the collateral associated with the transaction in which the lender has taken an assignment. The primary concern is the borrower's ability to perform on the contract and the ability to realize on the collateral. The horizon is short on these transactions. Balance Sheet strength, reasonableness of projections, etc. are important only as they relate to the primary concern.

SBA does not assess foreign commercial or political risk. Therefore, exporters are required to have an acceptable letter of credit, valid purchase orders and contracts, acceptable export receivables and/or ExIm Bank export credit insurance or private insurance that is acceptable. Transactions financed by EWCP loans must be payable in U.S. dollars unless SBA permits otherwise on an exceptions basis. This policy addresses both the foreign currency and foreign exchange risks.

It is essential that EWCP loans be secured with a first lien on all collateral associated with the transactions financed by the loan. Also, an assignment of proceeds from the borrower to the lender shall be required as a condition to SBA's guarantee. SBA has modified its policy on personal guarantees due to the short-term nature of these loans and their structure.

Subject to appropriate approvals. SBA and ExIm Bank plan to utilize, under the pilot, a joint loan application form. This will enable potential borrowers to better understand the program functions and uses. Also, it will facilitate the referral of applications to the appropriate Agency. Other SBA forms required by law or policy will be used by SBA during the pilot.

Processing Considerations

EWCP loan applications are processed on a three track system. Track one is regular processing and all participating lenders in EWCP have the authority to submit EWCP loan applications on this track. Track two is the Certified Lenders Program (CLP) where greater reliance is placed on the lender's analysis and three day turnaround is the standard. Track three is the Preferred Lenders Program (PLP) where lenders are given delegated authority to make loans.

In addition to regular processing, EWCP participating lenders that meet the eligibility criteria for CLP and/or PLP will have the authority to submit loans for processing on track two and/or three as the case may be. It should be

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noted that all EWCP participating lenders must have successful experience in providing trade finance to exporters and an acceptable collateral management system. Also, it is noted that all applications for Preliminary Commitments will be processed on track one, regular processing.

SBA District Offices that have affiliated U.S. Export Assistance Centers will be processing centers for EWCP loan and Preliminary Commitment applications. Other District Offices may be designated as EWCP processing centers based on activity and capability. District Offices that are not so designated will forward loan applications for processing to the designated EWCP processing center. All SBA district offices, whether or not designated as processing centers, will promote the pilot program and will continue to offer business development assistance to exporters. During the term of the pilot, the SBA Office of International Trade will work closely with the SBA processing offices to provide technical support on loan structuring and foreign risk assessment.

Because EWCP loans are short-term and often require swift action by staff familiar with the loan, the SBA recommending loan officer will retain the responsibility for loan servicing. If the lender does not handle the loan liquidation, the SBA district office which approved the loan will liquidate it.

During the pilot, EWCP loans will not be eligible for sale in the secondary market that exists for 7(a) loans.

In summary, SBA's Export Working Capital Program is a loan guarantee program for exporters to provide transaction financing. There are three important considerations in this program: (1) The existence of a transaction(s), (2) the capability of the exporter to perform and satisfy the requirements of the transaction(s), and (3) loan repayment (adequacy of documents, security interest in the collateral and assignment of proceeds).

Dated: September 15, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94-23339 Filed 9-20-94; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 27905]

Recurrent and Transition Training

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments.

SUMMARY: This notice requests public comment to identify acceptable industry standards for transition and recurrent flight training for civil aviation pilots other than those engaged in commercial air transportation. This notice asks each commenter to provide subjects and standards for transition and recurrent flight training that may be incorporated into one or more new or revised Advisory Circulars (AC). This information will help the FAA develop effective advisory material in partnership with the aviation community.

DATES: Comments should be submitted on or before January 19, 1995.

ADDRESSES: Comments should be in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 27905, 800 Independence Ave., SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27905. Comments may be examined in the Rules Docket, room 915-G, weekdays between 8:30 a.m. and 5 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas Glista, AFS-850, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8150.

SUPPLEMENTARY INFORMATION: With this notice the FAA is announcing an evaluation of transition and recurrent flight training for civil aviation pilots other than those engaged in commercial air transportation. One of the goals of the 1994 General Aviation Action Plan (GAAP) calls for increasing the effectiveness of the pilot and aircraft maintenance technician training infrastructure (flight instructors, schools, practical test standards, knowledge testing publications), and transition training and recurrent training programs. Additionally, the GAAP states that FAA efforts will include programs to solicit customer (the aviation community) feedback and other input on our services. Consequently, the FAA is requesting information on industry standards for transition and recurrent flight training.

Currently, there are several ACs that address various transition and recurrent flight training subject areas. Some of these are: AC 61-9B, *Pilot Transition Courses for Complex Single Engine and Light Twin-Engine Airplanes;* AC 61-10A, *Private and Commercial Pilot Refresher Courses;* AC 61-66 *Annual Pilot in Command Proficiency Checks;* AC 61-89A, *Pilot Certificates: Aircraft Type Ratings;* AC 61-98A, *Currency and Additional Qualification Requirements for Certificated Pilots;* AC 61-103, *Announcement of Availability: Industry-Developed Transition Training Guidelines for High Performance Aircraft;* and AC 61-107, *Operations of Aircraft at Altitudes Above 25,000 Feet MSL and/or MACH numbers (Mmo) Greater Than .75.* The FAA is considering combining these ACs into one or two ACs.

Often a pilot will transition from basic training aircraft to faster and more complicated aircraft. The FAA is seeking information on whether a pilot should receive transition training with some or all of these changes of aircraft and, if so, what training. Especially with the development and certification of pressurized single engine and light twin engine aircraft with complex systems not requiring a type rating, transition training has become more critical. The FAA believes that it should publish information on the recommended training to transition from aircraft to aircraft.

The FAA recognizes that many civil aviation pilots desire, and may obtain, an airline transport pilot (ATP) certificate, although that certificate is not required for civil aviation operations which are not air carrier operations. The FAA believes that many corporate flight departments, for their own reasons, require their pilots to hold an ATP certificate. Insurance company requirements may influence pilots to gain an ATP certificate even though it is not required for the operations performed by those pilots. Commenters should feel free to address transition and recurrent flight training subjects that they believe to be applicable to the ATP certificate as well as the recreational, private, and commercial certificates.

Additionally, the FAA believes that appropriate recurrent training can be very effective in reducing accidents and incidents. Regression analysis of the general aviation fatal accident rate data indicates that following the implementation of the biennial flight review requirement (November 1, 1974) there was a one-time 10 percent decrease in fatal accident rates beyond the existing long-term declining trend in accident rates. The FAA also believes that the more appropriate the recurrent flight training, the greater the reduction in accidents. Consequently, the FAA is requesting that the public identify subjects and standards for transition and recurrent flight training, if the current ACs should be modified and if so, how they should be modified, and the content of the ACs.

The FAA is especially seeking comments from flight instructors, manufacturers, industry groups, aircraft specific type clubs and societies, and insurance underwriters.

Issued in Washington, DC on September 14, 1994.

Louis C. Cusimano,

Acting Manager, General Aviation and Commercial Division.

[FR Doc. 94-23260 Filed 9-20-94; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss aircraft certification procedures issues.

DATES: The meeting will be held on October 13, 1994, at 9:00 a.m. Arrange for oral presentations by October 6, 1994.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, Aircraft Certification Service (AIR-1), 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267-8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking advisory committee to be held on July 21, 1994, at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW, Washington, DC 20005. The agenda for the meeting will include:

- Opening Remarks.
- Discussion of ARAC 21 assigned tasks/expansion of tasks.
- Recommendation of the International Certification Procedures Working Group (ICPTF) of a Notice of Proposed Rulemaking (NPRM) and an Advisory Circular (AC).
- Working Group Status Reports ELT, Delegation System, Parts, Production Certification.
- Old Business.
- New Business.

ARAC will be voting on whether to accept the recommendation of the ICPTF Working Group, and in turn, make a formal recommendation to the FAA. Interested members of the public may obtain a copy of the NPRM and the AC by contacting Jeanne Trapani Office of Rulemaking, on (202) 267-7624.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by October 6, 1994, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Aircraft Certification Procedures or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading FOR FURTHER INFORMATION CONTACT.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, of requested 10 calendar days before the meeting.

Issued in Washington, DC, on September 15, 1994.

Daniel Salvano,

Assistant Executive Director for Aircraft Certification Procedures, Aviation Rulemaking Advisory Committee.

[FR Doc. 94-23336 Filed 9-20-94; 8:45 am]

BILLING CODE 4910-13-M

Recordation: Treatment of Instruments With Proprietary Information Intentionally Omitted; Legal Opinion

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of legal opinion.

SUMMARY: This notice of legal opinion is issued by the FAA Chief Counsel to advise interested parties of the treatment of instruments, including leases, with certain proprietary information intentionally omitted, when they are submitted to the Civil Aviation Registry for recordation as conveyances.

ADDRESSES: Information concerning this opinion may be requested from the Assistant Chief Counsel for the Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125-4904.

FOR FURTHER INFORMATION CONTACT: Joseph R. Standell, Assistant Chief Counsel for the Aeronautical Center, address above, or by calling (405) 954-3296.

SUPPLEMENTARY INFORMATION: Section 503(a)(1) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1403(a)(1)) requires the Secretary of Transportation to establish and maintain a system for the recording of conveyances which affect title to, or any interest in, civil aircraft of the United States.

Under section 101(20) of the Federal Aviation Act (49 App. U.S.C. 1301(20)), a "conveyance" means a bill of sale, contract of conditional sale, mortgage, assignment of mortgage, or other instrument affecting title to, or interest in, property. Consistent with that definition, aircraft leases are treated as conveyances.

Leases and other conveyances are frequently submitted for recordation to the Civil Aviation Registry (the Registry). Prior to submitting documents to the Registry, law firms will often request the opinion of the FAA Assistant Chief Counsel for the Aeronautical Center with respect to questions concerning registration or recordation. In the last several years, when submitting such documents, law firms have typically asked the Assistant Chief Counsel a question similar to this:

> We hereby request your opinion that the Lease Amendment, with (i) Exhibit B (Table of Stipulated Loss Values), (ii) Exhibit C (Table of Basic Rents) and (iii) Exhibit D (End of Term Buyout Percentage) intentionally omitted from the FAA filing counterpart thereof as containing confidential information, is eligible for recordation under section 503(a) of the Act.

The Assistant Chief Counsel typically responds by permitting recordation with such omissions. Airlines and other parties that record conveyances involving large aircraft strongly favor continuation of such permission.

Now, the editor of the "Commercial Aviation Report" and persons who appraise the market value of large aircraft oppose continuation of such recordations and request that the Registry record only complete documents. Their position is set out in the Locke Parnell Rain Harrell (hereinafter, Locke Parnell) law firm's letter of September 1, 1993.

Following receipt of the Locke Parnell letter, the views of interested persons were solicited. This option addresses the concerns of all interested parties and states the agency position with respect to the recordability of conveyances with redactions and omissions.

Accordingly, consistent with 5 U.S.C. 552(a)(1)(D), the FAA publishes its response to Locke Parnell in the Appendix to this document.

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Issued in Washington, D.C., September 16, 1994.

John H. Cassady,

Deputy Chief Counsel.

Appendix—Text of Locke Parnell Letter

Bruce K. Packard, Esquire, Locke Parnell Rain Harrell, 2200 Ross Avenue, #2200, Dallas, TX 75201–6776.

Treatment of Instruments With Proprietary Information Intentionally Omitted

Dear Mr. Packard: Thank you for your letter of September 1, 1993, in which, on behalf of your client, "Commercial Aviation Report," you object to the Federal Aviation Administration (FAA) permitting air carriers and lessors to submit purchase, sale, and lease documents to FAA for recordation with certain financial information deleted.

You say that the omitted information includes lease rates, maintenance reserves, amortization schedules and debt loans. You argue that FAA's permitting the nondisclosure of such information is contrary to the public interest because the deleted information is essential in making fair and accurate assessments of a carrier's financial status, its safety and maintenance reserves and meaningful debt analysis.

You request FAA to immediately stop its policy of permitting recordation of incomplete document, or, in the alternative, to initiate formal rulemaking procedures allowing for public comment.

As your know, your letter was distributed as an attachment to FAA's letter of September 27, 1993, which requested advice from interested persons concerning the legal and policy issues. We received responses from 17 concerned parties including attorneys, airlines, appraisers, the Air Transport Association, and the editor of "Commercial Aviation Report." Twelve responses favored continuation of the FAA policy of permitting omissions. Five responses opposed it. Their positions will be discussed herein.

Based on review of the comments and our reconsideration of the issues, we have decided to continue permitting the recordation of documents with limited omissions or redactions.

As set out in your letter of September 1, 1993, and letters from Rocklin D. Lyons and Associates; Jack B. Feir and Associates; Aircraft Information Services, Inc.; Avitas Aviation; and "Commercial Aviation Report," principal arguments in support of FAA acceptance of only complete instruments are the following:

It is urged that obtaining capital to finance transactions involving transport aircraft is highly competitive. In making decisions, lenders rely heavily on information concerning financial health of an airline, as well as the real market value of aircraft. The market value is frequently determined by appraisals which are based on recent comparable transactions. A principal source of information about comparables is found in the Registry's aircraft records. If financial and other information considered proprietary is permitted to be deleted, market value appraisals become more speculative. As a result, conservative investors are less likely to back transactions where the real value of the collateral is not reliable. It is urged that will hurt the aviation industry.,

Additionally, it is urged that the overall financial situation of an airline is often discernible from a review of recorded transactions. As an example, one commenter pointed out that although a particular airline, as a public company, had filed all documents required by the Security and Exchange Commission (SEC) and Department of Transportation (DOT), it was only through a thorough review of the Registry's aircraft record that the "true extent of its financial woes" became known. The resulting publication of the "carrier's precarious condition" allegedly resulted in financial institutions withdrawing from transactions with the airline.

The same commenter pointed out that SEC and DOT do not provide current information and retain such information only for a limited time.

With respect to legality, an attorney suggests that a document with schedules deleted is not a "conveyance" because in defining a contract, Black's Law Dictionary says: the writing * * * contains the agreement of the parties with the terms and conditions* * *.

He argues that:

A written instrument that contains less than the total of the terms cannot, by definition, be "the" conveyance.

He further points out that the filing system under the Uniform Commercial Code as adopted in the various states, is totally dissimilar from the filing system under section 503 of the Federal Aviation Act.

He also says that the leading court cases which discuss the purposes of the Federal aircraft recording system do not factually involve the issue of whether proprietary information may be omitted.

The case for permitting documents to be recorded with deletions is set out in letters from Pegasus Capital Corporation; Crowe and Dunlevy; American Airlines; USAir; AINA Holdings, Inc.; British Aerospace, Inc.; Milbank, Tweed, Hadley and McCloy; United Airlines; Paul, Hastings, Janofsky, and Walker; Federal Express; Air Transport Association; and McAfee and Taft.

In regard to policy issues, practically all persons supporting FAA's recording documents with omissions or redactions have mentioned the significant harm which would befall airlines if confidential financial information were required to be released. They assert that the harm comes not only as a result of the advantage to other airlines in knowing proprietary information about the competition, but also in the weakened negotiating position of airlines if lenders are aware of financial concessions in previous agreements. Moreover, it is urged that foreign airlines and nonaviation businesses would have a distinct advantage in competing for capital.

Several airlines point out that there is a significant amount of information concerning airline fitness already available to the public. In any event, they say that the Registry was never intended as a database for financial information which even airlines' stockholders can't obtain.

Several commenters suggest that full disclosure does not benefit the public at large but only parochial interests.

With respect to legal issues, practically all pro-omission commenters point out that there is no statutory or regulatory basis to require disclosure of confidential financial information. By reference to legislative history, case law, and "plain meaning" of section 503 of the Federal Aviation Act, they point out that the Registry was established as a clearing house solely to allow interested persons to check on interests in aircraft.

An attorney in Oklahoma City argues that FAA's position with respect to permitting omissions has not really changed since 1938. He alleges that neither FAA nor its predecessor, Civil Aeronautics Authority, ever required a promissory note with underlying financial information be filed with a chattel mortgage. He also alleges that the Registry has historically accepted security agreements which contain blanks representing financial terms.

Several commenters analogize the FAA recording system to that established in each of the states based on the Uniform Commercial Code's model. One airline suggests that the FAA recording system would pass legal muster even if it were only a "notice system." A law firm says a "bare-bones conveyance" is recordable with "superfluous information in an unrecorded document."

Four commenters have pointed out that since 5 U.S.C. 552(b)(4) exempts release of commercial or financial information under the Freedom of Information Act, the Registry should not disclose such information. An airline says that under section 1104 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1505), disclosure of information obtained by FAA is not permitted if such disclosure would "adversely affect the competitive position of any carrier in foreign air transportation."

Two law firms say that FAA should not be in the business of determining the validity of instruments since that is reserved to the states under section 506 of the Act.

An Oklahoma City attorney says that Congress' intent in creating the FAA recording system can be gleaned from section 503(g) of the Act (49 App. U.S.C. 1503(g)) which authorizes FAA to issue regulations providing for endorsements upon certificates of registrations "as may be necessary to facilitate the determination of the rights of parties dealing with civil aircraft * * *."

The same attorney suggests that a recordable "conveyance" is simply whatever the Registry will accept under § 49.33(a) of the Federal Aviation Regulations (14 CFR 49.33(a)).

In answer to Locke Parnell's assertion that permitting documents to be recorded with omissions requires rulemaking action by FAA, a commenter says that the "policy" or "rule" which permits omissions is exempted from rulemaking by the Administrative Procedure Act, 5 U.S.C. 553(b)(A) because it is an interpretative rule.

All comments have been reviewed. We now begin discussion by considering the statutory language.

In pertinent part, section 503(a)(1) of the Act (49 App. U.S.C. 2403(a)(1)) provides:

The Secretary of Transportation shall establish and maintain a system for the recording of * * * any conveyance which affects the title to, or any interest in, any civil aircraft of the United States.

Under section 101(20) of the Act (49 App. U.S.C. 1301(20)), a "conveyance" means:

A bill of sale, contract of conditional sale, mortgage, assignment of mortgage, or other instrument affecting title to, or interest in, property.

(The Registry has historically treated aircraft leases as instruments affecting an interest in property.)

There is nothing in the language of section 503 of the Act, or by way of legislative history to the Act of 1958 and predecessor Civil Aeronautics Act of 1938, to suggest that section 503 of the Act mandates disclosure of confidential financial information. The purpose of section 503 of the Act is "* * * to create a central clearing house for recordation of title so that a person, wherever he may be, will know where he can find ready access to the claims against, or liens, or other legal interests in an aircraft." *Aircraft Trading And Services* v. *Bruniff, Inc.* 819 F.2d 1227 at 1231 (2nd Cir. 1987), quoting language in *Philko Aviation, Inc.* v. *Shacket*, 462 U.S. 406 at 411 (1983), which language comes from house hearings leading to passage of the Civil Aeronautics Act of 1938.

To our knowledge, there is no case law that indicates that section 503 of the Act either requires disclosure of financial information or that a legislative purpose of section 503 of the Act was to provide information concerning financial fitness or safety of airlines.

In the FAA Assistant Chief Counsel's letter of September 27, 1993, he posed the question whether a document with schedules omitted is a "conveyance." That question is relevant because under section 503 of the Act, FAA records only "conveyances" as defined in section 101(20) of the Act.

Only a few commenters responded to the question. As previously noted, one attorney argued that a document which is anything less than the complete agreement of the parties is not a conveyance.

However, other commenters say that such a document may be a conveyance:

1. * * * so long as the provisions relating to the conveyance of title or interest are not redacted * * *.

2. Because a conveyance is similar to an enforceable sale of goods under UCC 2–201 which requires only a writing sufficient to show a contract of sale.

3. Because a "bare-bones conveyance" is sufficient.

4. Because such a conveyance is considered "acceptable by the Administrator."

We believe that such a document with certain, limited omissions or redactions is a conveyance. It would be difficult to explain why a 30-page, original lease signed by the parties is not a conveyance simply because a schedule showing stipulated loss values has been intentionally omitted. The fact that the parties to such a lease may also have reached agreement as to stipulated loss value (which they are unwilling to disclose) does not, in our judgment, make the lease submitted for recordation any less a conveyance.

The regulations which implement section 503 of the Act are set out in part 49 of the Federal Aviation Regulations (14 CFR part 49); § 49.1 is a restatement of section 503 of the Act. Section 49.31 is a restatement of the definition of "conveyance" in section 101(20) of the Act and includes release, cancellation, and discharges as authorized in section 503(b) of the Act.

Section 49.33 states the eligibility requirements of recording conveyances. As pertinent to this discussion, § 49.33(a) provides that a conveyance must be "in a form prescribed by, or acceptable to, the Administrator for that kind of conveyance."

Determinations of what are "* * *acceptable to, the Administrator," can be found in the Registry's Examination Guidelines, and in opinions of the Assistant Chief Counsel for the Aeronautical Center. There are no FAA guidelines which presently speak to the issue of recordability with omissions and redactions.

During the last 5 years law firms have routinely sought favorable opinions concerning the redaction of schedules containing confidential financial information. The Assistant Chief Counsel frequently finds such redactions acceptable.

Therefore, it appears, as one of the commenters has suggested, that certain redacted conveyances when submitted for recordation are in a form which has been found and continues to be found acceptable.

Section 49.33(c) provides that a conveyance must be an original or duplicate original document. As discussed earlier, there is no indication that a Congressional purpose would be defeated by allowing the withholding of certain financial information. Nor for that matter, does § 49.33(c) require that an original document or duplicate original document contain such information when no Congressional purpose would be served. Therefore, we regard an allowably redacted conveyance with ink signatures to meet the requirement for an "original or duplicate original document."

Based on the foregoing discussion, we believe that the recording of documents with limited redactions or omissions is not contrary to statute, regulation, or other directive.

We next turn to Locke Parnell's claim that rulemaking action is necessary in order to continue the practice of recording documents with omissions or redactions. Such action would include general notice of proposed rulemaking and the public's opportunity to participate in accordance with the Administrative Procedure Act, 5 U.S.C. 553 (b) and (c).

The Air Transport Association (ATA) has commented that: FAA has informally construed the Part 49 regulations to allow conveyance transactions to be recorded without certain sensitive information * * *.

ATA suggests that what FAA is doing is in the nature of interpreting section 503(a) of the Act and that "interpretative rules" are exempt under 5 U.S.C. 553(b)(A) from formal rulemaking requirements. ("General statements of policy" are also exempt under 5 U.S.C. 553(b)(A).)

Federal courts have applied various tests, singly or in combination, to attempt to distinguish between interpretative and legislative rules (e.g., "substantial impact;" "deference to agency label;" "legal effect;" "binding norm"). See Administrative Conference of the United States, A Guide To Federal Agency Rulemaking, 55–68 (2d ed. 1991), pages 55 through 68. More recently, in determining whether rules are either legislative or interpretative, courts have focused on the legal effect of the rules. See *e.g., American Min. Congress* v. *MSHA*, 995 F.2d 1106 (D.C. Cir. 1993). "A statute or legislative rule that actually establishes a duty or right is likely to be relatively specific (and the agency's refinement will be interpretative), whereas an agency's authority to create rights and duties will typically be relatively broad (and the agency's actual establishment of rights and duties will become an amendment merely because it supplies crisper and more detailed lines than the authority being interpreted). If that were so, no rule could pass as an interpretation of a legislative rule unless it were confined to parroting the rule or replacing the original vagueness with another." *Id.* at 1112. Consequently, the FAA's delineation of section 503(a) as permitting the continued recordation of conveyances with omissions or redactions of financial data is interpretative and not legislative in nature.

Finally, we note that a commenter suggests that the FAA should adopt a UCC-like approach and only require that a filed document indicate that a party has conveyed title to or has an interest in a civil aircraft. By this opinion, we intend only to affirm the continuation of permitting schedules containing confidential, proprietary information to be redacted or omitted from otherwise recordable documents. With respect to particular documents, the advice of the Assistant Chief Counsel for the Aeronautical Center should be sought.

Sincerely,

John H. Cassady,

Deputy Chief Counsel.

[FR Doc. 94–23368 Filed 9–20–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

[FHWA Docket No. 94–26]

Availability of Documentation From the National Intelligent Vehicle Highway Systems (IVHS) Architecture Development Program; Request for Participation in Public Forums

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The Department of Transportation is making publicly available the documentation from the first phase of the National IVHS Architecture Development Program. An independent Phase I Summary Report will be made publicly available as well.

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Comments on these materials are requested from all who choose to review them. This notice also announces a series of regional forums to present these first phase results. The comments received through this announcement and at the forums will influence upcoming program decisions that shape the National IVHS Architecture in the second and final phase of the program.

DATES: Comments on the documents made available through this notice must be received by November 21, 1994. Late comments will be considered to the extent practicable.

The forums are scheduled as follows:

1. November 7, 1994, 8:00 a.m. to 4:30 p.m., Seattle, Washington.
2. November 8, 1994, 8:00 a.m. to 4:30 p.m., San Francisco, California.
3. November 8, 1994, 8:00 a.m. to 4:30 p.m., Denver, Colorado.
4. November 10, 1994, 8:00 a.m. to 4:30 p.m., Atlanta, Georgia.
5. November 10, 1994, 8:00 a.m. to 4:30 p.m., Los Angeles, California.
6. November 15, 1994, 8:00 a.m. to 4:30 p.m., College Station, Texas.
7. November 15, 1994, 8:00 a.m. to 4:30 p.m., Washington, D.C.
8. November 17, 1994, 8:00 a.m. to 4:30 p.m., Kansas City, Missouri.
9. November 17, 1994, 8:00 a.m. to 4:30 p.m., New York, New York.
10. November 18, 1994, 8:00 a.m. to 4:30 p.m., Chicago, Illinois.
11. November 18, 1994, 8:00 a.m. to 4:30 p.m., Boston, Massachusetts.

ADDRESSES: Submit written requests for the architecture documents and the Phase I Summary Report by October 3, 1994, to Mr. George Beronio, Federal Highway Administration (HTV–10), 400 Seventh Street, SW., Washington, DC 20590. Requests for the architecture documents must be accompanied by a check made payable to the FHWA in the amount of $225.00 as reimbursement for reproduction and shipping. There is no fee for the Phase I Summary Report. Please note that individual documents or subsets of this package of documents (other than the Phase I Summary Report) are not available through this announcement.

Submit written, signed comments on the documents and Summary Report to the FHWA Docket No. 94–26, Room 4232, HCC–10, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. George Beronio, Office of Traffic Management and Intelligent Vehicle Highway Systems Applications, phone (202) 366–6111, fax (202) 366–8712, Federal Highway Administration, HTV–10, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The goal of the National IVHS Architecture Development Program is to document, by the summer of 1996, a nationwide framework for implementation of IVHS. The architecture will help achieve national compatibility of IVHS technologies and systems while allowing for regional flexibility in building actual systems. This national architecture will also integrate the broad range of services available to users of IVHS to achieve efficiencies in the use of communications and infrastructure resources, while maintaining enough openness in the system to foster a rich market for products and services that allows for innovation, expansion, and modernization over time.

Teams headed by Hughes Aircraft Company, Loral Federal Systems Group, Rockwell, and Westinghouse Electric Corporation were selected in September 1993 to independently develop four alternative system concepts, or "architectures," for a nationwide IVHS. The program is proceeding in two phases. Phase I, which will conclude in December 1994, has involved the definition and preliminary analysis of alternative concepts. It is the documentation products of this effort that are being made available through this announcement. The most promising concepts will be continued into an 18-month Phase II, which will focus on detailed analysis of these concepts and resolution of differences such that a single consensus architecture is produced and documented.

A complete set of 12 documents from each of the four study teams participating in this first phase of the architecture development will be made publicly available in mid-October 1994. A Phase I Summary Report containing educational background material, overviews of the four architectures, and additional detail on the implications of each approach will also be made available shortly thereafter.

The Phase I products available through this announcement are as follows: (1) Mission Definition, a discussion of each team's goals and philosophy, with a technical discussion of operational constraints each team perceives; (2) Vision Statement, a non-technical narrative depiction of the teams' conception of their architectures over the next 20 years in urban, inter-urban, and rural contexts; (3) Logical Architecture, a set of diagrams and textual statements describing the relationship between each architecture's functions and its information needs; (4) Physical Architecture, a further set of diagrams and specifications that transpose the logical architecture components onto the physical systems that make up IVHS; (5) Traceability Matrix, which ensures that all required high-level IVHS services are accounted for at the lowest levels of the architecture (both logical and physical); (6) Evolutionary Deployment Strategy, a three-tiered set of temporal snapshots (at 5, 10, and 20 years) of the architecture, and how the teams envision the progression from the present towards their final vision at the 20-year mark; (7) Architecture Evaluation Plan, which describes the method(s) used by each team in the analysis of its architecture; (8) Initial Cost Analysis, an attempt at pricing the various ways in which IVHS will be delivered through products and services, including a market analysis and suggestion of how "service packages" could be marketed; (9) Feasibility Study (including risk analysis) exploring the various technical and institutional risks to which each architecture is subject, and how each team proposes to mitigate these risks; (10) Analysis of Data Loading Requirements, exploring the wire and wireless communications demands on the architecture; (11) Initial Performance and Benefits Summary, a discussion of the ways in which each architecture contributes to the broader goals of IVHS; and (12) Preliminary Evaluation Results Summary, detailing the results of analysis, in particular the simulation modeling.

DOT is interested in the opinions of the public, industry, all levels of government, public and private transportation agencies, and other stakeholder organizations who review these documents. Specifically, DOT is interested in comments regarding the technical feasibility, user acceptability, and general viability of the four proposed architectures. Those who wish to provide comments only on the Phase I Summary Report are encouraged to do so as well.

The entire set of documents (except the Phase I Summary Report) can be obtained for $225.00, to cover the cost of reproduction and shipping. Those who wish to view the documents at no cost may do so at multiple locations throughout the United States; for dates of availability and locations nearest to you, contact the FHWA at the address listed above under **FOR FURTHER INFORMATION CONTACT.** The Phase I Summary Report will be sent in late October, free of charge, to all who respond to this announcement. The Phase I Summary Report will also be available to all who attend the public forums.

A series of 11 public forums will be held during the second and third weeks of November 1994 to present the architectural approaches developed in the first phase of the architecture program, and to allow for stakeholder input based on the information presented. Dates and general locations of these forums are listed above under **DATES.** More information on these regional forums, including specific locations, may be obtained from the FHWA contact listed above.

The comments received as a result of this announcement, as well as the information obtained during the upcoming series of public forums, will be used in the process of selecting which of the four architecture concepts will continue into Phase II of the program. This second phase will begin in early 1995.

Authority: 23 U.S.C. 315; 49 CFR 1.48; Pub. L. 102–240, Secs. 6051–6059, 105 Stat. 1914, 2189–2195.

Issued on: September 15, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–23298 Filed 9–20–94; 8:45 am]

BILLING CODE 4910–22–P

Federal Transit Administration

Environmental Impact Statement for the Georgetown Branch Transitway and Trail, Montgomery County, MD

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the Maryland Mass Transit Administration (MTA) intend to undertake an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA). MTA will ensure that the EIS also satisfies the requirements of the Maryland Environmental Policy Act (MEPA).

This effort will be performed in cooperation with the Montgomery County Department of Transportation (MCDOT). Other key supporting agencies include the Metropolitan Washington Council of Governments (MWCOG), the Washington Metropolitan Area Transit Authority (WMATA), and the Maryland-National Capital Park and Planning Commission (M–NCPPC).

The EIS will evaluate transportation improvements in the corridor between the central business districts (CBDs) in Bethesda and Silver Spring, Maryland. In particular, the focus will be on the former CSX Railroad Georgetown Branch right-of-way (ROW) which has been purchased by Montgomery County. Additionally, the corridor will connect the Bethesda and Silver Spring Metrorail stations located in the respective CBDs. In addition to a proposed transitway, which may be either a busway or light rail transit in conjunction with a parallel hiker/biker trail, the EIS will evaluate the No-Build and the Transportation System Management (TSM) alternatives and any new alternatives generated through the scoping process. Scoping will be accomplished through correspondence with interested persons, organizations, and federal, state, and local agencies, and through a public meeting. See **SUPPLEMENTARY INFORMATION** below for details.

DATES: Comment Due Date: Written comments on the scope of alternatives and impacts to be considered should be sent to the MTA by October 26, 1994. See **ADDRESSES** below.

Scoping Meeting: The public scoping meeting will be held on Wednesday, October 5, 1994, between 3 p.m. and 9 p.m. at the Armory Place. See **ADDRESSES** below. People with special needs should contact Lisa Colletti or Diane Melia at the MTA at the address below or by calling (410) 333–3376 or (410) 333–3389. A TDD number is also available: (410) 539–3497. The building is accessible to people with disabilities. It is located within two (2) blocks of the Silver Spring Metrorail station and is served by major Metrobus and Ride-On bus routes.

The meeting will be held in an "open-house" format and project representatives will be available to discuss the project throughout the time period given. Informational displays and written materials will also be available throughout the time period given. In addition to written comments which may be made at the meeting or as described below, a stenographer will be available at the meeting to record comments.

ADDRESSES: Written comments on project scope should be sent to Mr. Ernest Baisden, Project Manager, Maryland Mass Transit Administration, 300 West Lexington Street, Baltimore, MD 21201. The Scoping meeting will be held at the following location: Armory Place, 925 Wayne Avenue, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Garrity, Jr., Transportation Program Specialist, Federal Transit, Administration, Region III, (215) 656–6900.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and the MTA invite interested individuals, organizations, and federal, state, and local agencies to participate in defining the alternatives to be evaluated in the EIS and identifying any significant social, economic, or environmental issues related to the alternatives. Scoping comments may be made at the public scoping meeting or in writing. See **DATES** and **ADDRESSES** sections above for locations and times. During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated and suggesting alternatives which are more cost effective or have less environmental impact while achieving similar transit objectives.

Scoping materials will be available at the meeting or in advance of the meeting by contacting Lisa Colletti or Diane Melia at the MTA as indicated above.

II. Description of Study Area and Project Need

The study area and corridor is wholly within Montgomery County. It is approximately 4½ miles long and connects the CBDs of Bethesda and Silver Spring. The corridor also connects two heavily used Metro stations and two major employment centers.

Existing transit service in the study area is provided by Ride-On and Metrobus. Existing traffic is primarily carried by East-West Highway (MD 410) with high traffic volumes and poor level-of-service at many of the signalized intersections.

The proposed transitway is intended to provide a high quality connection between the two branches of the Metro Red Line; to support economic viability of the Bethesda and Silver Spring CBDs through greater transit accessibility; contribute to higher transit modal splits for work trips to the CBDs and employment centers; improve cross-county movement by public transportation to help achieve regional clean air goals; and improve travel time in the Bethesda-Silver Spring corridor including improved access to the

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Bethesda and Silver Spring Metrorail stations.

III. Alternatives

The alternatives proposed for evaluation include: No-Build which involves no change to transportation services or facilities in the corridor beyond those improvements currently programmed; the TSM alternative which focuses on operational and low-cost capital improvements to transit routes and services in the corridor; the light rail transit (LRT) alternative which consists of providing light rail service along the 4.4 mile right-of-way, primarily using single-track with double-track passing sections, with a parallel hiker/biker trail; and the busway alternative which consists of providing bus service along the 4.4 mile right-of-way with a parallel hiker/biker trail. Five stations are proposed for both the light rail transit and busway alternatives: Bethesda, Connecticut Avenue, Lyttonsville, Spring Street, and Silver Spring, with future stations to be studied for operational feasibility.

IV. Probable Effects

FTA and MTA plan to evaluate in the EIS all significant social, economic, and environmental impacts of the alternatives. Among the primary issues are the expected increase in transit ridership, the expected increase in mobility for the corridor's transit dependent, the support of the region's air quality goals, the capital outlays needed to construct the project, the cost of operating and maintaining the facilities created by the project, and the financial impacts on the funding agencies. Environmental and social impacts proposed for analysis include land use and neighborhood impacts, traffic and parking impacts near stations, health and safety impacts, impacts on wetland and parkland areas, and noise and vibration impacts. Impacts on natural areas, rare and endangered species, and air and water quality, will also be covered. The impacts will be evaluated both for the construction period and for the long term period of operations. Measures to mitigate adverse impacts will be identified.

V. FTA Procedures

In accordance with federal transportation planning regulations (23 CFR Part 450), the draft EIS will be prepared in conjunction with a major transportation investment study and document the results of that study, including an evaluation of the social, economic, and environmental impacts of the alternatives. Upon completion of the MIS/DEIS, and on the basis of the comments received, the MTA Administrator in concert with the Secretary of the Maryland Department of Transportation (MDOT) and in consultation with Montgomery County, MWCOG, and other affected agencies, will select a locally preferred alternative. Then MTA, as lead agency, will seek to continue with further preliminary engineering and preparation of the Final EIS.

Issued on: September 15, 1994.

Sheldon A. Kinbar,

Regional Administrator.

[FR Doc. 94-23299 Filed 9-20-94; 8:45 am]

BILLING CODE 4910-57-P

Sunshine Act Meetings

Federal Register

Vol. 59, No. 182

Wednesday, September 21, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

Erratum

FCC Open Commission Meeting, Monday, September 19, 1994

Information appearing in Item No. 3 of subjects to be considered at the September 19 Open Meeting of the Federal Communications Commission is corrected to change the rulemaking number to "RM-8143."

Item No., Bureau, and Subject

3—Common Carrier—Title: Amendment of Part 68 of the Commission's Rules Concerning Compatibility of PBX and KTS Systems with Enhanced Emergency Calling Systems (RM-8143) and Inquiry into the Compatibility of Wireless Services with Enhanced Emergency Calling Systems.

Dated: September 16, 1994.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94-23396 Filed 9-16-94; 4:23 pm]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:30 a.m. on Monday, September 26, 1994, to consider the following matter:

Memorandum and resolution re: Revised proposed amendments to Part 345 of the Corporation's rules and regulations, entitled "Community Reinvestment," which would provide clearer guidance to financial institutions on the nature and extent of their Community Reinvestment Act obligation and the methods by which the obligation would be assessed and enforced.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942-3132 (Voice); (202) 942-3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Acting Executive Secretary of the Corporation, at (202) 898-6757.

Dated: September 19, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94-23542 Filed 9-19-94; 4:00 pm]

BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 2:00 p.m., Monday, September 26, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that the items be moved to the discussion agenda.

1. Publication for comment of proposed amendments to the Board's risk-based capital guidelines for state member banks and bank holding companies regarding country risk transfer treatment.

2. (a) Request by Fleet Financial Group, Inc., Providence, Rhode Island, for an exemption from the anti-tying provisions of section 106 of the Bank Holding Company Act; and (b) a related proposed amendment for public comment to modify Regulation Y (Bank Holding Companies and Change in Bank Control) to apply the exemption to all banks.

Discussion Agenda

3. Publication for comment of a revised proposal to amend Regulation BB (Community Reinvestment) (proposed earlier for comment; Docket No. R-0822) and related conforming amendments to Regulation C (Home Mortgage Disclosure).

4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: September 19, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-23501 Filed 9-19-94; 2:16 pm]

BILLING CODE 6210-01-P

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Part II

Environmental Protection Agency

40 CFR Parts 80, 85, 86, 88 and 600
Standards for Emissions From Natural Gas-Fueled, and Liquefied Petroleum Gas-Fueled Motor Vehicles and Motor Vehicle Engines, and Certification Procedures for Aftermarket Conversions; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80, 85, 86, 88 and 600

[AMS–FRL–4892–8]

Standards for Emissions From Natural Gas-Fueled, and Liquefied Petroleum Gas-Fueled Motor Vehicles and Motor Vehicle Engines, and Certification Procedures for Aftermarket Conversions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's rule provides emission standards and test procedures for the certification of new natural gas-fueled, and liquefied petroleum gas-fueled light-duty vehicles, light-duty trucks, heavy-duty engines and vehicles, and motorcycles. The regulations are effective with the 1997 model year, although optional certification prior to the 1997 model year will be available. Today's rule also provides fuel economy test procedures and calculation equations for natural gas-fueled light-duty vehicles and trucks, effective upon publication, to allow these vehicles to be included in a manufacturer's corporate average fuel economy (CAFE). Finally, today's rule provides procedures for the certification of aftermarket conversion equipment to allow a vehicle or engine to operate completely or in part on a fuel other than the fuel for which it was originally designed and manufactured.

This action is being taken in order to remove the possibility that the absence of such standards could hinder the development of natural gas and liquefied petroleum gas as transportation fuels. These standards are intended to provide a comparable degree of environmental protection to that afforded by the standards applicable to gasoline, diesel and methanol vehicles, and to ensure that aftermarket conversions do not degrade the emissions performance of the vehicles or engines being converted.

DATES: Except as specified elsewhere in this **DATES** section, this final rule is effective September 21, 1994.

The effective date of §§ 80.32, 80.33, 86.001–9(d)(1)(iv), 86.001–28(h), 86.004–9(d)(1)(iv), 86.004–28(h), 86.098–8(d)(1)(iv), 86.098–28(h), 86.099–8(d)(1)(iv), 86.150–98(d) and 86.157–98 is November 21, 1994, unless notice is received by October 21, 1994 that interested parties wish to submit adverse or critical comments on these sections. If the effective date is changed, timely notice will be published in the **Federal Register**.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 21, 1994, except as specified elsewhere in this **DATES** section.

40 CFR 85.503, 85.505, 86.542–90, 86.094–23, 86.095–24, 86.095–35, 86.1242–90, 86.098–28, 86.113–94, 86.1344–94, 86.142–90, 86.150–98, 86.513–94 and 600.113–93 are not effective until the Office of Management and Budget (OMB) has approved the information collection requirements contained in them. A document will be published in the **Federal Register** when OMB has approved the information collection requirements.

ADDRESSES: Written comments on those sections effective November 21, 1994 should be submitted both to the contact person for this rule (see **FOR FURTHER INFORMATION CONTACT**) and to the docket for this rulemaking at the following address. Materials relevant to this rule have been placed in Docket No. A–92–14 by EPA. The docket is located at: Air Docket Section, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected between 8 a.m. and 4 p.m. on weekdays. EPA may charge a reasonable fee for copying docket materials. In addition, copies of the Summary and Analysis of Comments document, which develops certain issues relevant to this final rulemaking, may be obtained by request from the contact person below. This document contains the Agency's response to the public comments received in regard to the Notice of Proposed Rulemaking (NPRM).

FOR FURTHER INFORMATION CONTACT: Mr. John Mueller, Regulation Development and Support Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105: phone (313) 668–4275. To obtain copies of this final rule or the Summary and Analysis of Comments document please contact Ms. Donna Hoover at (313) 668–4278 or at the above address.

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I. Introduction

Recently there has been increasing interest in the use of non-petroleum transportation fuels for a variety of reasons, including the potential environmental benefits offered by these fuels. Natural gas and liquefied petroleum gas (LPG) are among the more prominent of these fuels, along with methanol and ethanol. EPA promulgated emission standards for methanol-fueled vehicles on April 11, 1989 (54 FR 14426) due to the imminent commercialization of those vehicles. However, there are currently no emission standards in place for vehicles which operate, all or in part, on natural gas and LPG. This lack of standards is seen as a potential barrier to the widespread commercial introduction of these vehicles into the marketplace due to the uncertainties the manufacturers face regarding potential future standards where EPA has not yet addressed any of the issues involved. In addition, the recent rise in interest in these fuels has resulted in increased interest in aftermarket conversions (*i.e.*, the conversion of a vehicle or engine to operate on a fuel other than that for which it was originally designed and certified to operate). Again, the lack of defined certification procedures for conversions, as well as the absence of a method to demonstrate good emissions performance of such conversions, are seen as potential barriers to their more widespread use for two reasons. First, the lack of defined certification

procedures leads to uncertainty among converters as to whether the conversions they perform constitute tampering and result in the potential associated liability. Second, the potential for environmental benefits associated with gaseous fuels has led to increased interest in marketing conversions as an environmental strategy. The lack of a recognized procedure for confirming emissions performance has been seen as hindering efforts to market conversions in this manner. Thus, in order to remove these potential barriers EPA published a Notice of Proposed Rulemaking (NPRM) proposing emission standards for natural gas and LPG vehicles, and certification procedures for aftermarket conversions on November 5, 1992 (57 FR 52912).

A public hearing was held on December 3, 1992, in Ann Arbor, Michigan at which verbal comments on the NPRM were received. Written comments responding to the proposal were also received from 34 public and private parties. The Agency fully considered all comments received in developing today's final rule.

The remaining sections of this preamble describe EPA's resolution of the issues associated with the rulemaking. Section II describes today's action and summarizes the new requirements. Section III reviews the major comments received on the NPRM and the Agency's analysis of those comments. Subsequent sections summarize the technical feasibility, leadtime requirements, environmental effects, and economic effects associated with today's action.

II. Description of Action

This section describes each provision of today's rule. In general, today's rule extends the coverage of the existing federal motor vehicle emissions program to include natural gas and LPG vehicles (hereinafter referred to as gaseous-fueled vehicles). As such, EPA's current regulations governing certification, production line, and in-use requirements are for the most part adopted for gaseous-fueled vehicles. Rather than present an exhaustive review of the entire federal emissions program, this section contains a basic description of the gaseous-fueled vehicle regulations and highlights where these regulations differ from those currently in place for other vehicles. For additional information on the new or existing program requirements the reader is referred to the accompanying regulations appearing at the end of today's notice, and Title 40, parts 80, 85, 86, 88 and 600 of the Code of Federal Regulations, which this rulemaking amends.

A. Timing

EPA proposed that these standards be effective with the 1994 model year, and explained that the Agency did not expect that significant lead-time for developing emission control technology would be required for compliance. Nonetheless, because this rule is not being promulgated until after the start of the 1994 model year, EPA no longer believes that there is sufficient time to certify vehicles and engines pursuant to these regulations for the 1994 model year. Further, EPA received several comments stating that leadtime was required for technology development, especially for durability demonstration, in addition to that required for the certification process alone. Therefore, EPA is promulgating the standards to be effective with the 1997 model year. Finally, the refueling requirements for gaseous-fueled vehicles will be implemented consistent with the recently finalized refueling emission standards for other vehicles (three year phase-in beginning with the 1998 model year for light-duty vehicles and the 2001 model year for light-duty trucks).[1] The requirements for refueling stations will take effect on January 1, 1998 for large volume stations, with a two year delay until January 1, 2000 for those stations which dispense less than 10,000 gallons per month on a gasoline equivalent basis. This phase in for smaller stations is consistent with the approach taken with the dispensing rate limits placed on gasoline refueling stations contained in the evaporative emissions final rule.[2]

EPA proposed that manufacturers be allowed to certify engines and vehicles produced prior to the effective model year in order to include engines in the emissions trading and banking program, and to include vehicles in manufacturers' corporate average fuel economy. EPA received no adverse comments on this aspect of the proposal. For this reason, manufacturers may choose to comply prior to the 1997 model year, including the 1994 model year.

Including 1994 model year engines in the emissions trading and banking program and raises an issue whether engines manufactured in model year 1994 prior to the promulgation of this rule may be included in the program. A similar situation was confronted in the original banking and trading rule. There, EPA allowed banking for the full 1990 model year, even though the rule was promulgated on July 26, 1990. *See* 55 FR 30584, 30587. In that case, EPA placed certain restrictions on the inclusion of 1990 model year engines, to ensure credits were only given for significant reductions below the 1990 standards. This was to ensure that "windfall" credits from exceeding the arguably "lax" pre-1991 standards would not be used in the transition to the more stringent 1991 standards. As a result, if no restrictions on trading and banking were imposed, then the engines that had always exceeded the 1990 standards would for the first time be able to use the extra reductions as "windfall" credits to offset engines that did not yet meet the new and more stringent 1991 standards. *See* 55 FR at 30597.

EPA does not believe such restrictions are necessary in this case. Since 1991, engines using other fuels, such as methanol, have been able to generate credits to offset higher emitting engines. EPA believes that gaseous-fueled engines should have an equal opportunity to use such credits as gasoline-, diesel-, and methanol-fueled engines, now that emissions standards and test procedures are in place in time for the 1994 model year. As EPA explained in the response to comments in the trading and banking final rule, CNG engines were not included at that time due to the absence of standards, test procedures, and certification protocols. *See id* at 30609. Now that these rules are in place, there is no longer any reason to disadvantage CNG engines vis a vis other fuels.

In addition, EPA does not believe that the credits manufacturers might obtain from gaseous-fueled engines are "windfall," since they arguably would not have manufactured such engines in model year 1994 but for EPA's actions to provide an incentive to do so. Rather, EPA believes manufacturers had an incentive to manufacture gaseous-fueled engines based on EPA actions prior to this final rule. EPA proposed these standards in November 1992, and began developing these standards substantially before that. EPA believes this overall incentive further supports allowing manufacturers to include all 1994 model year engines in the trading and banking program.

The aftermarket conversion certification procedures contained in today's rule are available to converters as a way of obtaining an exemption from the tampering prohibition. Since this procedure creates an exemption and is optional it will be available upon publication in the **Federal Register**. EPA's current policy toward conversions will continue to apply to aftermarket conversions which have not

[1] 59 FR 16262, April 6, 1994.
[2] 58 FR 16002, March 24, 1993.

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received an exemption under this new program.[3]

The Administrative Procedure Act requires 30 days notice before a rule may become effective, except under certain circumstances such as when the rule recognizes an exemption or when the Agency can demonstrate good cause for immediate effect. The Agency believes it has good cause for this rule to take immediate effect in the case of the new vehicle standards since compliance with the new vehicle standards is optional until well after the 30 day period. In the case of aftermarket conversions, because this rule creates an exemption from the tampering prohibition under section 203 of the Act it does not require 30 days notice, and this exemption will be available upon publication in the **Federal Register**.

B. New Vehicle Standards

The new gaseous-fueled vehicle and engine emission standards contained in today's notice are effective with the 1997 model year. Optional compliance prior to the 1997 model year is available to manufacturers who wish to include their vehicles and engines in emissions averaging, trading and banking programs, as well as the CAFE program in the case of natural gas-fueled vehicles.

In general, the Agency seeks to control vehicles operated on alternative fuels so that their emissions are no greater than their petroleum-fueled counterparts. Thus, the exhaust emission standards for gaseous-fueled vehicles are numerically equivalent to those which apply to other, currently regulated vehicles and engines. The only significant departure from this approach is in the area of hydrocarbon (HC) standards for natural gas fueled vehicles and engines. Prior to the 1994 model year, regulated vehicles (*i.e.*, gasoline, petroleum diesel and methanol) are only required to meet total hydrocarbon (THC) standards. However, beginning with the 1994 model year, currently regulated light-duty vehicles and light-duty trucks will also be required to meet separate nonmethane hydrocarbon (NMHC) standards as part of the Tier 1 requirements of the Clean Air Act.[4] For natural gas-fueled light-duty vehicles and light-duty trucks only the NMHC standards will apply. In the case of natural gas-fueled heavy-duty engines, NMHC standards which provide the same degree of NMHC control as the current THC standards provide for petroleum-fueled vehicles will apply. In the case of LPG vehicles and engines, the HC standards are the same as those for currently regulated vehicles. A summary of today's gaseous-fueled vehicle emission standards is contained in Tables 1 through 4.

TABLE 1.—EMISSION STANDARDS FOR 1997 AND LATER MODEL YEAR GASEOUS-FUELED LIGHT-DUTY VEHICLES (G/MI)[1]

Fuel	Standards[2]	THC	NMHC	CO	NO_x	PM[3]	Evaporative hydrocarbons (g/test)
Intermediate Useful Life Standards[4]							
Natural Gas	Tier 0		0.34	3.4	1.0	0.20	2.0
Natural Gas	Tier 1		0.25	3.4	0.4	0.08	2.0
LPG	Tier 0	0.41		3.4	1.0	0.20	2.0
LPG	Tier 1	0.41	0.25	3.4	0.4	0.08	2.0
Full Useful Life Standards[5]							
Natural Gas	Tier 1		0.31	4.2	0.6	0.10	
LPG	Tier 1		0.31	4.2	0.6	0.10	

[1] Crankcase emissions are prohibited. Standards apply at all altitudes. For Tier 1 standards, vehicles are required to meet both the intermediate and full useful life standards.
[2] The Tier 1 standards apply to 40 percent of a manufacturer's optionally certified 1994 model year vehicles, 80 percent of optionally certified 1995 vehicles, and 100 percent of optionally certified 1996 vehicles. The Tier 0 standards apply to optionally certified pre-1996 model year vehicles not covered by the Tier 1 standards.
[3] Tier 0 particulate standards apply to diesel-cycle vehicles only. Tier 1 particulate standards apply to all vehicles.
[4] Five years or 50,000 miles, whichever occurs first.
[5] Ten years or 100,000 miles, whichever occurs first. No full useful life Tier 0 standards.

TABLE 2.—EMISSIONS STANDARDS FOR 1997 AND LATER MODEL YEAR GASEOUS-FUELED LIGHT LIGHT-DUTY TRUCKS(G/MI)[1]

Fuel	LVW (lb)[2]	Standards[3]	THC	NMHC	CO	NO_x	PM[4]	Idle CO (% conc.)	Evaporative hydrocarbons (g/test)
Intermediate Useful Life Standards[5]									
Natural Gas	0–3750	Tier 1		0.25	3.4	0.4	0.08		
Natural Gas	3751–5750	Tier 1		0.32	4.4	0.7	0.08		
LPG	0–3750	Tier 1		0.25	3.4	0.4	0.08		

[3] See March 4, 1993 Fact Sheet available in the public docket.
[4] The Agency uses the phrase "Tier 1" to denote the 1994 and later model year standards in part because they are nearly identical to the Tier 1 standards prescribed by section 202(g) of the Clean Air Act for petroleum-fueled vehicles (56 FR 25724, June 5, 1991). Use of this phrase is not meant to suggest that gaseous-fueled vehicles are subject to the section 202(g) Tier 1 standards.

TABLE 2.—EMISSIONS STANDARDS FOR 1997 AND LATER MODEL YEAR GASEOUS-FUELED LIGHT LIGHT-DUTY TRUCKS(G/MI)[1]—Continued

Fuel	LVW (lb)[2]	Standards[3]	THC	NMHC	CO	NO_x	PM[4]	Idle CO (% conc.)	Evaporative hydrocarbons (g/test)
LPG	3751–5750	Tier 1		0.32	4.4	0.7	0.08		
Full Useful Life Standards[6]									
Natural Gas	0–3750	Tier 0		0.67(0.83)	10(14)	1.2	0.26	0.50	2.0(2.6)
Natural Gas	0–3750	Tier 1		0.31	4.2	0.6	0.10	0.50	2.0(2.6)
Natural Gas	3751–5750	Tier 0		0.67(0.83)	10(14)	1.7	0.13	0.50	2.0(2.6)
Natural Gas	3751–5750	Tier 1		0.40	5.5	0.97	0.10	0.50	2.0(2.6)
LPG	0–3750	Tier 0	0.80(1.0)		10(14)	1.2	0.26	0.50	2.0(2.6)
LPG	0–3750	Tier 1	0.80	0.31	4.2	0.6	0.10	0.50	2.0(2.6)
LPG	3751–5750	Tier 0	0.80(1.0)		10(14)	1.7	0.13	0.50	2.0(2.6)
LPG	3751–5750	Tier 1	0.80	0.40	5.5	0.97	0.10	0.50	2.0(2.6)

[1] Crankcase emissions are prohibited. Standards in parenthesis apply to vehicles sold in specified high-altitude counties. For the Tier 1 standards, vehicles are required to meet both the intermediate and full useful life standards.
[2] Loaded vehicle weight (i.e., curb weight plus 300 lb.).
[3] The Tier 1 standards apply to 40 percent of a manufacturer's optionally certified 1994 model year vehicles, 80 percent of optionally certified 1995 vehicles, and 100 percent of optionally certified 1996 model year vehicles. The Tier 0 standards apply to optionally certified pre-1996 model year vehicles not covered by the Tier 1 standards.
[4] Tier 0 particulate standards apply to diesel-cycle vehicles only. Tier 1 particulate standards apply to all vehicles, but are phased in beginning one year later than the other Tier 1 standards.
[5] Five years or 50,000 miles, whichever occurs first.
[6] For Tier 0 standards eleven years or 120,000 miles, whichever occurs first. For Tier 1 standards ten years or 100,000 miles, whichever occurs first.

TABLE 3.—EMISSIONS STANDARDS FOR 1997 AND LATER MODEL YEAR GASEOUS-FUELED HEAVY LIGHT-DUTY TRUCKS (G/MI)[1]

Fuel	Weight[2]	Standards[3]	THC	NMHC	CO	NO_x	PM[4]	Idle CO (% conc.)	Evaporative hydrocarbons (g/test)
Intermediate Useful Life Standards[5]									
Natural Gas	3751–5750	Tier 1		0.32	4.4	0.7			
Natural Gas	>5750	Tier 1		0.39	5.0	1.1			
LPG	3751–5750	Tier 1		0.32	4.4	0.7			
LPG	>5750	Tier 1		0.39	5.0	1.1			
Full Useful Life Standards[6]									
Natural Gas	0–3750	Tier 0		0.67(0.83)	10(14)	1.2	0.26	0.50	2.0(2.6)
Natural Gas	>3750	Tier 0		0.67(0.83)	10(14)	1.7	0.13	0.50	2.0(2.6)
Natural Gas	3751–5750	Tier 1		0.46	6.4	0.98	0.10	0.50	2.0(2.6)
Natural Gas	>5750	Tier 1		0.56	7.3	1.53	0.12	0.50	2.0(2.6)
LPG	0–3750	Tier 0	0.80(1.0)		10(14)	1.2	0.26	0.50	2.0(2.6)
LPG	>5750	Tier 0	0.80(1.0)		10(14)	1.7	0.13	0.50	2.0(2.6)
LPG	3751–5750	Tier 1	0.80(1.0)	0.46	6.4	0.98	0.10	0.50	2.0(2.6)
LPG	>5750	Tier 1	0.80(1.0)	0.56	7.3	1.53	0.12	0.50	2.0(2.6)

[1] Crankcase emissions are prohibited. Standards in parentheses apply to vehicles sold in specified high-altitude counties. For the Tier 1 standards, vehicles are required to meet both the intermediate and full useful life standards.
[2] For Tier 0 standards the weight classification is loaded vehicle weight (i.e., curb weight plus 300 lb). For Tier 1 standards the weight classification is adjusted loaded vehicle weight (i.e., the average of curb weight and gross vehicle weight).
[3] The Tier 1 standards apply to 50 percent of a manufacturer's optionally certified 1996 model year vehicles, and 100 percent of 1997 and later vehicles. The Tier 0 standards are optional before the 1995 model year and apply to optionally certified 1995 and 1996 model year vehicles not covered by the Tier 1 standards.
[4] The Tier 0 particulate standards apply to diesel-cycle vehicles only. The Tier 1 particulate standards apply to all vehicles, but are phased in beginning one year later than the other Tier 1 standards.
[5] Five years or 50,000 miles, whichever occurs first.
[6] Eleven years or 120,000 miles, whichever occurs first.

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TABLE 4.—EMISSIONS STANDARDS FOR 1997 AND LATER MODEL YEAR GASEOUS-FUELED HEAVY-DUTY ENGINES G/BHP-HR [1]

Fuel	Combustion cycle	GVW	THC	NMHC	CO	NO_x [2]	PM	Idle CO (% conc.)	Evaporative hydrocarbons (g/test)
Natural Gas	Otto	8501–14000	.....	0.9	14.4	5.0	.....	0.50	3.0
Natural Gas	Otto	>14000	.....	1.7	37.1	5.0	.....	0.50	4.0
LPG	Otto	8501–14000	1.1	.....	14.4	5.0	.....	0.50	3.0
LPG	Otto	>14000	1.9	.....	37.1	5.0	.....	0.50	4.0
Natural Gas	Diesel	8501–14000	.....	1.2	15.5	5.0	[3]0.10	0.50	3.0
Natural Gas	Diesel	>14000	.....	1.2	15.5	5.0	[3]0.10	0.50	4.0
LPG	Diesel	8501–14000	1.3	.....	15.5	5.0	[3]0.10	0.50	3.0
LPG	Diesel	>14000	1.3	.....	15.5	5.0	[3]0.10	0.50	4.0

[1] g/BHP-hr = grams per brake horsepower hour. Crankcase emissions are prohibited beginning with the 1998 model year.
[2] The NO_x standard is 4.0 g/BHP-hr for all 1998 and later model year HDEs.
[3] For optional compliance prior to the 1997 model year this standard is 0.10 g/BHP-hr for the 1994 and later model year, except for urban bus engines. For urban bus engines the optional standards are 0.07 g/BHP-hr for the 1994 and 1995 model years, and 0.05 g/BHP-hr for the 1996 model year. The required standard for 1997 and later model year urban bus engines is 0.05 g/BHP-hr.

For the purposes of these standards, the current scheme of classifying vehicles as either Otto-cycle or diesel is being extended to gaseous-fueled vehicles, with some modifications as described below. This classification scheme was promulgated with the methanol standards to group engines regardless of fuel type in a manner that would provide equivalent control.

Although there are other factors to consider, in general an Otto-cycle engine is considered to be one that is throttled during normal operation whereas a diesel is not. The Agency recognizes, however, that in some cases this criterion may not be adequate or appropriate to determine a vehicle's classification. For example, a gaseous-fueled engine which is derived from a particular Otto-cycle or diesel base engine, and is expected to be used in similar applications as the base engine, would most appropriately be classified the same as the base engine from which it was derived. In such cases the Administrator will take into account other relevant factors, such as compression ratio, combustion and thermodynamic characteristics, or intended in-use duty cycle when classifying the vehicle.

Today's rule establishes the same evaporative emission requirements for gaseous-fueled vehicles which were recently adopted for other vehicles.[5] The Agency recognizes that due to the sealed nature of gaseous-fueled vehicle fuel systems, emissions of unburned fuel from the fuel system are expected to be near-zero. However, the evaporative requirements are being adopted to assure leak-free fuel systems.

[5] 58 FR 16002, March 24, 1993

Today's rule establishes refueling requirements for gaseous-fueled light-duty vehicles and light-duty trucks, as well as refueling stations. Natural gas-fueled vehicles must be equipped with a refueling receptacle which meets the requirements of the recently adopted ANSI/AGA NGV1 standard for refueling couplings. Natural gas refueling stations will not be allowed to vent more than 1.2 grams natural gas due to refueling nozzle disconnect. The applicable dates for these standards are discussed in the timing section of today's rule.

For LPG vehicles there are two requirements. First, all LPG vehicle refueling stations will be required to use nozzles which have very low dead volume (2.0 cm^3) from which fuel would be vented upon nozzle disconnect. This requirement was derived from the recently promulgated onboard refueling vapor recovery standard. For a complete description of the derivation please consult the summary and analysis of comments document. Second, LPG-fueled light-duty vehicles and light-duty trucks will be subject to the onboard refueling emission standards, adjusted for the difference in LPG energy density as compared to gasoline. This adjusted standard is 0.15 grams per gallon of LPG dispensed. The applicable dates for these standards are discussed in the timing section of today's rule. Additionally, for any LPG vehicle that contains a fixed liquid level valve (i.e., "outage valve"), the refueling test will be performed with the liquid level valve in the open position unless the manufacturer can demonstrate to the satisfaction of the Administrator, that the fixed liquid level gauge would not be opened during refueling in ordinary use due to inaccessibility or other reasons.

EPA recognizes that, although it did propose the control of refueling emissions from gaseous-fueled vehicles, the proposal did not include specific numerical standards as contained in today's rule. However, EPA believes that this action will be noncontroversial, and the Agency anticipates no significant comments regarding it.

Nonetheless, the public is advised that these elements of today's action dealing with refueling emissions will be effective 60 days from the date of this **Federal Register** notice, unless notice is received within 30 days that interested parties wish to submit adverse or critical comments on that element of this action. If such notice is received, this action will be withdrawn and two subsequent notices will be published. One notice, which would be published before the effective date, will withdraw the final action. Another notice will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

There is reason to believe that, in the case of some of the above-mentioned pollutants and vehicle classes, the levels of emissions will normally be substantially below the levels of the applicable standards. In such cases today's rule includes provisions for a waiver of certification testing requirements which allow a manufacturer to certify the vehicle or engine without performing the actual certification testing for which a waiver has been granted, similar to the waivers available for heavy-duty diesel engine CO, methanol vehicle and engine smoke and particulate, and Otto-cycle light-duty vehicle and light-duty truck

particulate standards.[6] A certification testing waiver can be obtained by demonstrating that, by virtue of a vehicle's design, it will always meet the standard for which the waiver was granted. This demonstration can be in the form of development testing data or other engineering data. It should be noted that these waivers only apply to certification testing requirements and do not relieve the manufacturer of liability for meeting the standard. Vehicles which have been certified using these waiver provisions also remain subject to selective enforcement audit (SEA) and in-use testing. The waivers provided in today's rule are available for all gaseous-fueled vehicle evaporative and refueling standards, gaseous-fueled heavy-duty diesel CO (including idle CO), particulate and smoke standards, and particulate standards for light-duty vehicles and light-duty trucks.

Today's rule allows gaseous-fueled vehicles to demonstrate compliance with emission standards through averaging, trading and banking in the same manner as vehicles operated on other fuels. Gaseous-fueled vehicles will be treated similarly to methanol-fueled vehicles with respect to the constraints of the various programs. For a more detailed discussion of how gaseous-fueled vehicles fit into these programs please consult the public docket for this rulemaking.[7] As explained above, in addition to new vehicles and engines, today's rule allows manufacturers to include in the averaging, trading and banking programs 1994 model year vehicles and engines manufactured before the rule's effective date, but identical to 1994 model year vehicles and engines manufactured after the effective date.

Today's rule delays the applicability of federal on-board diagnostics (OBD) requirements for natural gas-fueled light-duty vehicles and light-duty trucks until the 1998 model year. As finalized in the February 19, 1993 OBD rule [8] those requirements were scheduled to take effect with the 1994 model year for all vehicles for which emission standards exist. However, due to the feasibility issues unique to natural gas-fueled vehicles, these requirements are being delayed until the 1998 model year. OBD I requirements will apply to natural gas vehicles in the 1997 model year, as well as those natural gas vehicles optionally certified prior to the 1997 model year. The OBD requirements contained in the OBD rule will apply to liquefied petroleum gas-fueled light-duty vehicles and light-duty trucks beginning with optionally certified vehicles in the 1994 model year.

C. Certification Test Fuel Specification

The certification test fuels in today's rule are intended to represent the actual fuels gaseous-fueled vehicles are likely to see in-use. Given the wide range of in-use fuel compositions, the certification fuels are broadly defined. In the case of natural gas, the certification fuel specifications include a minimum methane content of 89 percent, as well as maximum levels for the other prominent hydrocarbons found in natural gas (*e.g.*, ethane, propane). Certification fuel under this approach reflects over 90 percent of the natural gas available in the United States. Most of the gas not meeting this criteria is gas being sold in high altitude areas, where higher levels of inert gases are added to the natural gas.

Significantly less is known about the variability of in-use LPG composition. However, the Agency believes that the composition of LPG is more consistent than that of natural gas due to common carrier pipeline and import tariff constraints. Thus, the Agency is adopting commercially available LPG as the certification fuel for LPG vehicles. As more information becomes available on LPG composition, and as experience with LPG vehicles increases, the need for a more well-defined LPG certification fuel may become apparent. Should this happen, EPA would take steps at that time to develop an appropriate LPG certification fuel specification. It should be noted that the Agency is not including any controls on in-use natural gas or LPG in today's rule, but intends to monitor in-use fuels to ensure that the certification fuels remain representative.

D. Test Procedures

For the most part, the current test cycles, and measurement and analytical procedures can be directly applied to gaseous-fueled vehicles. Thus, the test procedures contained in today's rule are largely the same as those which apply to other, currently regulated vehicles. The only exception of note is the procedure for measuring NMHC emissions from natural gas-fueled vehicles. The current procedure for measuring NMHC emissions was adopted in the Tier 1 rule.[9] While this procedure works fairly well for currently regulated vehicles, it is not nearly as accurate for natural gas-fueled vehicles due to their much higher levels of exhaust methane. Thus, today's rule contains some slight modifications to the NMHC test procedures adopted for the Tier 1 standards [10] to allow more accurate NMHC measurement from natural gas-fueled vehicles. These changes include accounting for the different flame ionization detector (FID) response to methane as opposed to the other hydrocarbons, as well as the use of fuel densities and H/C ratios in the calculations which are more appropriate to natural gas vehicles. The Agency views this as an interim measure and is currently working with the California Air Resources Board and the American Automobile Manufacturers Association as part of a cooperative research and development agreement to develop a more accurate procedure for the direct measurement of NMHC

E. Fuel Economy

Today's rule contains fuel economy test procedures and calculations for measuring the fuel economy of natural gas-fueled light-duty vehicles and light-duty trucks. The driving cycles adopted for natural gas vehicles are the same as those currently in place for gasoline-fueled vehicles. Also, the measurement and calculation procedures for natural gas vehicles rely on the same principle of carbon balance as the current gasoline procedures, but include a gasoline/natural gas equivalency factor of 100 standard cubic feet of natural gas equalling 0.823 gallons of gasoline.

These procedures and calculations will allow these vehicles to be included in a manufacturer's corporate average fuel economy (CAFE) under the Motor Vehicle Information and Cost Savings Act (MVICSA), 15 U.S.C. § 2001 *et seq.* The Alternative Motor Fuels Act of 1988,[11] provides that alternative fueled vehicles (including natural gas-fueled vehicles) may be included in a manufacturer's CAFE calculation on a favorable basis in order to encourage the manufacture of such vehicles. The AMFA provides that, for purposes of including natural gas vehicles in the CAFE calculation, fuel consumption of natural gas vehicles is only fifteen percent of equivalent gasoline fuel consumption. The AMFA also mandates the 0.823 gasoline/natural gas equivalency factor included in today's rule. Regulations governing the calculation and use of natural gas vehicle CAFE credits are contained in a separate rulemaking action.[12]

[6] 47 FR 49811, November 2, 1982; 54 FR 14426, April 11, 1989; and 56 FR 25724, June 5, 1991.
[7] Public docket A–92–14, item III–B–2.
[8] 58 FR 9468, February 19, 1993.
[9] 56 FR 25724, June 5, 1991.
[10] 56 FR 25724, June 5, 1994.
[11] Public Law 100–494, October 14, 1988
[12] 56 FR 8856, March 1, 1991.

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As will be discussed further in the Public Participation section of this rule, the Agency is not promulgating fuel economy procedures for LPG vehicles today, but will do so in a separate rulemaking action.

F. Aftermarket Conversions

Today's rule contains provisions for the certification of aftermarket conversions (*i.e.*, conversions which allow a vehicle or engine to operate on a fuel other than the fuel for which it was originally designed and certified). An exemption from the tampering prohibitions contained in section 203(a)(3) of the Clean Air Act can be secured through this certification process. The provisions contained in today's rule for securing such an exemption consist of three main parts: applicable standards, test procedures, and warranty/liability issues.

It has always been the Agency's policy that an aftermarket conversion not degrade the emissions performance of the original vehicle as a condition of being exempt from prosecution for tampering violations. Today's rule merely clarifies that policy by providing specific procedures by which one can certify that a conversion does meet this requirement, and thus secure an exemption from the tampering prohibition. Consistent with this policy, the emission standards which an aftermarket conversion shall meet in order to secure the tampering prohibition exemption are essentially the same standards the original vehicle was certified as meeting. In the case of conversions to natural gas, the converted vehicle would not be required to meet the THC standard, but must meet an NMHC standard which provides an equivalent amount of NMHC control as that afforded by the original THC standard. In the case of conversion to multi-fuel operation (i.e., where the vehicle has the ability to switch between two fuels, such as gasoline and natural gas, or where the vehicle operates on two fuels simultaneously, but retains the ability to operate exclusively on the original fuel), the vehicle would still be required to meet the emission standards it was originally certified to when operating on the original fuel, in addition to meeting the applicable requirements on the new fuel.

The test procedures applicable to aftermarket conversions under this program are those currently in place new vehicle certification as outlined in 40 CFR Part 86. The small volume manufacturers certification program contained in 40 CFR 86.092–14 is also available for aftermarket conversion certification provided the company or individual seeking certification meets the sales limits described in that section. These procedures utilize the same test cycles and analytical procedures that are used for new vehicle certification. In the case of aftermarket conversions a certificate of conformity must be sought for each engine family/conversion system combination and for each model year vehicle for which the system is intended.

As a condition of exemption from the tampering prohibition, conversion manufacturers and installers must accept in-use liability for warranty and recall as outlined in section 207 of the Act and its implementing regulations.[13] This is consistent with EPA's policy that aftermarket conversions not degrade the emissions performance of the original vehicle. It will also assure that the conversion will meet the applicable emission standards throughout its useful life. Since conversions generally rely, at least in part, on emission control equipment already on the original vehicle for emissions control, the useful life of a conversion will not extend beyond the useful life of the original vehicle.

G. Fees

Under section 217 of the Clean Air Act, EPA may establish fees to recover all reasonable costs incurred for activities associated with the Motor Vehicle and Engine Compliance Program (MVECP). The MVECP includes all compliance and enforcement activities performed by EPA which are associated with certification, fuel economy, Selective Enforcement Auditing (SEA), and in-use compliance activities. In July of 1992 EPA established these fees, to be effective with the 1993 model year.[14] These fees, as stated in the fees rule, cover all direct and indirect costs incurred by EPA for the MVECP, and automatically apply to gaseous-fueled vehicles and engines now that the MVECP applies to such vehicles and engines. Since the fees are based on the costs incurred by EPA, and since today's regulations are basically an extension of the current MVECP, the fees currently in effect for other vehicles apply to gaseous-fueled vehicles, without modification. No regulatory changes are needed and none are being made. The applicable fee must be paid, for each engine family, before the Certification Division can begin a review of the application for certification.

[13] Code of Federal Regulations, Title 40, Part 86

[14] 57 FR 30044, July 7, 1992.

III. Public Participation

A number of interested parties commented on EPA's November 5, 1992 NPRM. The comments include written submittals to the rulemaking docket and those presented at the December 3, 1992 public hearing, which was held in Ann Arbor, Michigan. The Agency has fully considered these comments in developing today's final rule.

This section describes the major issues of the rulemaking, as reflected in the public comments. The discussion of each issue opens with a brief description of what was proposed followed by a summary of the significant comments and EPA's analysis of the issue. The reader is referred to the Summary and Analysis of Comments document for the complete details of EPA's analysis. That document is available in the rulemaking docket. (For information on access to the docket, see the "*Addresses*" section above.)

A. Timing of Requirements

Summary of the proposal: As was stated in the NPRM, the Agency believes that the proposed standards are not technology-forcing, and that they could be met largely through currently available technology. Thus, the only leadtime requirement for meeting the proposed standards would be that of actually going through the certification process itself, including the required durability showing. The Agency, therefore, proposed that the new vehicle emission standards be effective with the 1994 model year, and that the aftermarket conversions take effect on January 1, 1994. Additionally, the Agency proposed that manufacturers have the option of complying with these standards prior to the effective date in order to participate in any applicable emissions averaging, trading and banking programs, as well as the CAFE program in the case of natural gas-fueled light-duty vehicles and light-duty trucks.

Summary of the comments: In general, the comments received in response to the issue of leadtime supported EPA's assessment that these standards are not technology-forcing in the sense that fundamentally new technology must be developed. However, a number of commenters raised concerns that, although the basic technology required to meet these standards has been demonstrated at low mileage, the durability of this technology in many cases remains to be proven. Additionally, one commenter pointed out that there are several mandated requirements taking effect in the next few years for new vehicles, including Tier 1 and cold CO standards, on-board diagnostics, and revised evaporative procedures, and that mandating gaseous-fueled vehicle certification with little leadtime may seriously impair the introduction of these vehicles into the marketplace. Most commenters suggested that, given the need for technology refinement and durability work, these requirements should not take effect until the 1996 or 1997 model year. In addition, the heavy-duty engine manufacturers asserted that, under section 202(a)(3)(C) of the Clean Air Act, EPA is required to provide four years leadtime in the case of any new emission standards. In most cases commenters stated that, regardless of what effective date EPA finalizes, they support the option of being able to certify prior to the effective date.

EPA response to comments: The Agency agrees that, while current gaseous-fueled vehicle technology is generally capable of meeting the emission standards contained in today's rule, work remains in some cases to meet the durability requirements. While the Agency believes that some current gaseous-fueled engine technologies are capable of demonstrating the required emissions durability, it does not believe this is the case with some of the newest technologies being developed. Given that each engine family must demonstrate durability during the new vehicle certification process, the Agency believes that not providing adequate leadtime may hinder the further development of new gaseous-fueled vehicle technology in the short term, which is contrary to the stated intent of this rule. Thus, today's requirements for new vehicles and engines will take effect with the 1997 model year as requested by some commenters. Manufacturers will have the option to comply with these provisions prior to the 1997 model year if they choose.

The Agency does not believe that this amount of leadtime will be a problem from an environmental standpoint for two reasons. First, the volume of new gaseous-fueled vehicles produced prior to the 1997 model year is not expected to be that large, given the relatively young nature of the new gaseous-fueled vehicle market. Second, the Agency expects that any new vehicle or engine family which might be sold in any significant volume prior to the 1997 model year would have demonstrated adequate durability. Since there is much incentive for early compliance in the form of CAFE credits and the emissions banking and trading program, the Agency would expect the manufacturers of these vehicles to certify them in order to take advantage of these credits.

Additionally, the Agency does not believe that it is required to provide four years leadtime for new gaseous-fueled heavy-duty engine standards because these standards are being promulgated under the general authority of section 202(a)(1). However, as will be discussed in the section on CO and crankcase emissions, the Agency has elected to provide four years of leadtime in the case of crankcase emission controls. For further discussion of the four year leadtime issue please consult the summary and analysis of comments document in the docket. Finally, manufacturers have the option of complying with these requirements prior to their effective date (including certification retroactive to the beginning of the 1994 model year) and can include such certified engines in the averaging, banking and trading program.

B. Standards for HC

1. NMHC vs. THC Standards

Summary of the proposal: Since natural gas is primarily methane, natural gas-fueled vehicles (NGV) tend to have fairly high levels of methane emissions in their exhaust HC. Due to the difficulty current catalyst formulations have in oxidizing methane, it is not currently feasible for NGVs to meet the same THC standards that other vehicles meet. Thus, only NMHC standards were proposed for NGVs, with the Agency deferring any action on THC standards for NGVs until such time as the necessary methane control technology can be developed. LPG fuel, however, contains no methane, and the exhaust methane levels associated with LPG vehicles tend to be much closer to those from petroleum-fueled vehicles. Thus, all applicable THC and NMHC standards were proposed for LPG vehicles.

Summary of the comments: The Agency's decision to defer action on THC standards for NGVs received very broad support. Only the Manufacturers of Emission Controls Association (MECA) disagreed with this approach. MECA contended that without some form of technology-forcing THC standard for NGVs, most work on methane control technology would likely stop. MECA also pointed out that the Agency has, in the past, used technology-forcing standards as impetus for the development of new emission control technology.

Several commenters suggested that the approach of exempting NGVs from THC standards should be applied to LPG vehicles as well, citing a potential unfair advantage for NGVs if LPG vehicles were required to meet THC standards. Additionally, the LP Gas Clean Fuels Coalition stated that LPG vehicles have substantially higher levels of methane emissions than their petroleum-fueled counterparts, and thus should also be exempt from meeting the THC standards. The Coalition, however, did not submit any data in support of this claim.

EPA response to the comments: The Agency continues to believe that action on the THC standards for NGVs should be deferred. The Agency continues to be concerned that compliance with the THC standard currently in place for other fuels is infeasible for NGVs. While the Agency has received data suggesting that the THC standards are technically achievable for NGVs, no data has been submitted concerning the cost of refining and implementing the necessary technology on a commercial level. Cost is a component of feasibility, and without cost information the Agency cannot conclude that compliance with the THC standards is feasible. Moreover, technical issues remain to be resolved. The data suggesting that THC standards are technically achievable was limited to vehicles operating at a stoichiometric fuel/air ratio, and operation under other conditions (*i.e.*, lean burn) remains an issue. Additionally, the durability of methane-specific catalysts remains an unknown.

Also, for the reasons explained in the proposal, EPA does not believe it can establish a technology-forcing standard. EPA continues to believe that the amount of lead-time required for adequate technology development still cannot be readily determined, because the durability of a methane catalyst formulation has not been established. EPA does not agree that the absence of a technology-forcing standard would bring work on methane control technology to a stop. The engine manufacturing industry has indicated that its research will continue based on the belief that THC standards will be imposed in the future. Also, as noted in the proposal, EPA believes that strong growth in the NGV market in the near-term is important to provide resources for technology development. Of course, EPA will continue to monitor work on methane catalyst development. If information becomes available establishing the technology's feasibility (including cost information), EPA will consider adopting THC standards for NGVs. Also, if future events further demonstrate the need for a technology-forcing standard, EPA will further consider this option as well.

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As was stated in the NPRM, the Agency believes it most appropriate to, wherever possible, apply the same standards to alternative-fueled vehicles that apply to their petroleum-fueled counterparts. In the case of NGVs there are circumstances, as discussed above, which justify deviating from this basic philosophy. However, the Agency has seen no emissions data which would suggest that a similar set of circumstances exists for LPG vehicles. Thus, LPG vehicles will be required to meet the same THC standards as currently apply to other vehicles.

2. Heavy-Duty NMHC Standards

Summary of the proposal: In setting NMHC standards for natural gas-fueled heavy-duty engines (HDE), the Agency intends to establish standards which would provide the same level of NMHC control as the THC standards in effect for petroleum diesel and gasoline HDEs. In the absence of speciated exhaust HC data on HDEs (i.e., data on the level of the individual HC components in the exhaust), EPA applied the results of an analysis done on light-duty vehicles and light-duty trucks to arrive at NMHC standards which were 82.5 percent of the level of the corresponding THC standards. The resultant standards were very close to those adopted by the California Air Resources Board (CARB), and in the NPRM the Agency requested comment on whether it should adopt CARB's standards instead.

Summary of the comments: Every commenter who expressed an opinion on this issue urged EPA to adopt the CARB standards in order that the California and federal standards be harmonized.

EPA response to the comments: The Agency believes that the differences between its proposed NMHC standards and CARB's are so small as not to be an air quality issue. Further, EPA has learned since the NPRM that the CARB standards were based on speciated data from HDEs. Thus, as EPA believes that the speciated data provides a sounder basis than EPA's, the Agency is adopting CARB's NMHC standards for HDEs.

3. Evaporative Emission Standards

Summary of the proposal: In the NPRM it was noted that, due to the sealed nature of gaseous-fueled vehicle fuel systems, their "evaporative" emissions (i.e., emissions of unburned fuel from the fuel storage system) are expected to be near-zero. Nonetheless, the Agency proposed evaporative emission controls for gaseous- fueled vehicles in order to assure that the fuel systems are not leaking. EPA proposed that the evaporative provisions for gasoline and methanol-fueled vehicles, which were in the process of being revised at the time of the proposal for this rule, be applicable to gaseous-fueled vehicles as well, with modifications to the test procedures as necessary to accommodate gaseous fuels. The Agency also proposed that certification testing waivers be available for evaporative testing in order to reduce the testing burden as much as possible, given the likelihood of near-zero emissions.

Summary of the comments: Although one commenter supported the proposed evaporative requirements for gaseous-fueled vehicles, citing potential fuel leaks from the vehicle refueling receptacle, most of the comments received expressed opposition. In general, most commenters said that, for safety reasons, as well as to simply prevent the complete escape of fuel from the vehicle for economic reasons, the fuel systems must be sealed. Since sealed systems are a practical requirement of gaseous-fueled vehicles, they argued, there is no need for EPA to regulate evaporative emissions. As a result, any certification testing required would be unnecessary. Some commenters felt that if EPA were to require some form of evaporative emissions showing that it should be in the form of an engineering evaluation of the system, or simply a one hour diurnal test.

EPA response to comments: The Agency agrees with the general comment that there are practical considerations other than emissions concerns which force the use of sealed fuel systems on gaseous-fueled vehicles. As a result, EPA would expect their evaporative emissions to be near-zero. However, the Agency believes that it is prudent to have some kind of evaporative emission standard which can be enforced, in order to assure that fuel system leaks do not become a problem. Thus, the same new evaporative provisions applicable to other vehicles beginning with the 1996 model year will also be applied to gaseous-fueled vehicles at that time, recognizing that compliance with these standards is optional prior to the 1997 model year. The Agency does recognize, however, that it is likely that, by virtue of their design, gaseous-fueled vehicles will emit well below the applicable standards. Therefore, certification testing waivers will be available for all gaseous-fueled vehicle evaporative provisions if the manufacturer can show that, by virtue of the vehicle's design, it will always meet the applicable standards.

C. Refueling Emission Standards

1. Natural Gas

Summary of the proposal: In the NPRM the Agency proposed that, in the case of natural gas refueling facilities, no refueling hoses which need to be vented down prior to disconnect shall be vented to the atmosphere. Rather, as is the case with many current natural gas refueling facilities, EPA expects that such vent-down gases should be routed back to the compressor inlet rather than being vented to the atmosphere. The timing of this requirement was not explicit in the NPRM preamble. However, the regulatory text stated that the provisions would take effect with the 1994 model year.

Summary of the comments: In general, the comments received in response to the issue of natural gas refueling hose venting opposed, to some degree, the proposed prohibition on venting emissions. Some commenters suggested that this requirement is not needed at all given the extremely small contribution to total methane emissions that vent-down gases represent. Several commenters pointed out that the upcoming ANSI/AGA NGV1 standard would address EPA's concerns about refueling emissions from natural gas refueling stations. One commenter pointed out that this proposed requirement could be interpreted as a zero-emission standard and questioned the feasibility of such an approach. Some commenters suggested that more leadtime was needed than was proposed. Several commenters pointed out that the cost of controlling these emissions varied quite a bit depending on the inlet pressure of the compressor. In cases where the natural gas supply line is at fairly low pressure (*i.e.*, 15 psi or less) the gas could be routed directly into the compressor inlet at low cost. However, in cases where the gas supply pressure is higher, additional compression equipment would be needed to compress the vent-down gas in order to route it back into the compressor, raising costs substantially. Also, the cost of such controls would be much higher for existing installations than for new stations because existing stations would likely require excavation for the return line plumbing. Finally, some commenters stated that EPA should not control natural gas refueling emissions since they are primarily methane, and the Agency only proposed NMHC standards for tailpipe emissions.

EPA response to comments: In the NPRM the Agency mentioned that the natural gas industry was moving toward the establishment of standard refueling equipment specifications. That effort.

known as the ANSI/AGA NGV1 standard, was recently adopted by the American National Standards Institute (ANSI) as the standard for natural gas vehicle fueling connection devices. While in its various draft forms, this standard contained a provision limiting the amount of natural gas that can be vented due to nozzle disconnect. This provision was based on the proposed onboard refueling vapor recovery (ORVR) standard for gasoline-fueled vehicles of 0.05 grams per gallon of dispensed gasoline.[15] As indicated in the draft ANSI standard contained in the public docket for this rule, the venting provision was deleted from the final ANSI standard since, at the time of final balloting on the standard, the ORVR rule had not yet been promulgated. The ORVR final rule was recently promulgated and included a gasoline-fueled vehicle refueling emission standard of 0.20 grams per gallon of dispensed gasoline.[16]

The Agency agrees that a zero-emission standard for natural gas vehicles is not reasonable and believes that, in its draft form, the NGV1 standard addressed EPA's concerns with natural gas vehicle refueling emissions. Thus, the Agency is using the methodology in draft NGV1 standard to apply the 0.20 gram per gallon refueling standard to natural gas vehicles. Using this approach, natural gas refueling stations will be allowed to vent no more than 1.2 grams of natural gas due to nozzle disconnect. This standard is based on the ORVR standard of 0.20 grams per gallon of fuel dispensed and a nominal fuel tank capacity of six gallons gasoline equivalent natural gas, as was assumed in the draft NGV1 standard. For a more complete discussion of how this standard was derived please consult the summary and analysis of comments document for this rule. This requirement will take effect January 1, 1998 for high volume stations, with a two year extension until January 1, 2000 for small volume stations (those which dispense less than the energy equivalent of 10,000 gallons of gasoline per month based on the AMFA fuel equivalency factor).

In addition to the requirements for natural gas refueling stations, EPA is also requiring in today's rule natural gas-fueled light-duty vehicles and light-duty trucks be equipped with refueling receptacles which comply with the recently adopted ANSI/AGA NGV1 standard. This requirement will be implemented consistent with the timing of the ORVR provisions for other vehicles (three year phase-in beginning with the 1998 model year for light-duty vehicles and the 2001 model year for light-duty trucks). The Agency expects, however, that all new natural gas-fueled vehicles will have ANSI/AGA NGV1 nozzles long before this due to the desire for standardized refueling coupling geometry within the industry.

EPA does not believe that the cost of the refueling station controls is prohibitive and believes that today's requirement is both feasible and reasonable. Consistent with this view, most new stations being installed would meet this requirement. The Agency agrees that in certain cases, such as those where additional compression equipment is needed, the cost of retrofitting may not be reasonable. Thus, for in-use refueling stations which must be retrofitted to meet this requirement, the Agency will waive the requirement in situations where the station operator can demonstrate, to the satisfaction of the Administrator, that compliance with this provision would require the use of additional compression equipment, or other similar costs. The impact of such waivers should be minimal given the small number of stations currently operating, and the small percentage of those stations which would not currently meet these requirements.

As was discussed earlier, the lack of exhaust THC standards in today's rule is a function of cost and legal constraints, and the Agency believes that control of methane is appropriate where it is feasible and economically reasonable. Thus, EPA does not believe that the desire to control refueling emissions from natural gas vehicles is inconsistent with the adoption of exhaust NMHC standards.

2. LPG Vehicle/Pump Interface

Summary of the proposal: Since LPG is transferred in a sealed system there is little concern about refueling emissions at the vehicle/pump interface during the actual fuel transfer. Of concern to the Agency, however, are emissions released when the nozzle is disconnected from the vehicle. At this point any fuel which is trapped in the dead space between the nozzle and the vehicle receptacle is released. In the NPRM the Agency proposed that refueling equipment be designed so as to prevent this escape of fuel, such as through the use of low-loss, no-bleed couplings, although no specific numerical standards were included. As with the natural gas provisions in the NPRM, the timing of this requirement was not explicit in the NPRM preamble. However, the regulatory text stated that the provisions would take effect with the 1994 model year.

Summary of the comments: The Agency received few comments on this particular aspect of the proposed refueling provisions. The comments that addressed this issue tended to agree with the need for control. However, the comments otherwise differed. One commenter suggested that any hardware requirement be performance-based, rather than prescriptive, so as to be consistent with EPA's previous consideration of refueling controls for gasoline vehicles. Also, the lack of a numerical standard was interpreted as being a zero-emission standard, which one commenter suggested is infeasible. Another commenter stated that just requiring new refueling nozzles at all current LPG fueling facilities would cost about $30 million, but provided no supporting documentation for that claim.

EPA response to comments: The Agency believes that it is appropriate to minimize the amount of LPG fuel which is vented from the dead space between the refueling nozzle check valve and the vehicle refueling receptacle check valve but also agrees that a zero-emission standard is unreasonable. Both the nozzle and the vehicle receptacle geometries play an integral role in the size of this dead space. Thus, any performance specification for vehicle/pump interface refueling emissions would have to address the nozzle and receptacle as a single system. In the case of LPG, there is not a standardized geometry for refueling nozzles, at least in terms of the parameters which would affect this dead space. Thus, it is difficult for the Agency to define a performance specification such as that which has been considered for gasoline vehicles based upon an industry standard nozzle geometry. The Agency is aware that the LPG industry is developing nozzles which dramatically reduce the dead space, especially when used in conjunction with low-bleed inserts in the vehicle receptacle.

For the reasons just mentioned EPA is finalizing a two-fold approach to refueling emissions for LPG vehicles. First, today's rule includes a requirement that LPG refueling nozzles have no more than 2.0 cm^3 dead space, as measured from the face of the nozzle which seals against the vehicle receptacle "O" ring. Second, a refueling standard and SHED-based test consistent with the recently promulgated ORVR requirement is being adopted for LPG-fueled light duty vehicles and light-duty trucks. The vehicle standard, adjusted for the difference in energy density between

[15] 52 FR 31162, August 19, 1987.
[16] 59 FR 16262, April 6, 1994.

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gasoline and LPG, is 0.15 grams per dispensed gallon of fuel. This approach will ensure that the LPG vehicles will have refueling emissions similar to those of other vehicles meeting the ORVR standards. A certification testing waiver will be available for all classes of LPG vehicles to which this standard applies if the manufacturer can demonstrate, through the use of development or other data, that the vehicle will meet the standard. For a complete discussion of how the 2.0 cm^3 standard for LPG vehicle refueling nozzles was derived please consult the summary and analysis of comments document for this rule.

This standard for LPG vehicles will apply to the same classes and model years as the ORVR rule (i.e., three year phase-in beginning with the 1998 model year for light-duty vehicles and the 2001 model year for light-duty trucks). The requirement for the refueling nozzles will take effect January 1, 1998 for high volume stations, with a two year extension until January 1, 2000 for small volume stations (those which dispense less than the energy equivalent of 10,000 gallons of gasoline per month). The Agency believes that this amount of leadtime for refueling stations will allow for the replacement or retrofit of LPG nozzles during the normal course of replacement or repair of in-use nozzles due to wear.

3. LPG Tank Venting

Summary of the proposal: Fuel tanks for LPG vehicles currently have a device known as a fixed liquid level valve, or outage valve, at the proper fill level. This is a small orifice which can be opened during refueling in order to indicate that, upon the release of liquid from the valve, the tank is filled and refueling should stop. Although LPG tanks are now constructed with built-in automatic shutoff devices to prevent overfilling, they still have outage valves on them. The Agency proposed a prohibition on all non-safety-related valves on gaseous-fueled vehicles in order to prevent the emissions of LPG from outage valves during refueling.

Summary of the comments: The Agency received a variety of comments expressing concern about the proposal to eliminate outage valves from LPG vehicles. First, several commenters pointed out that outage valves are required under the National Fire Protection Association standard 58 (NFPA 58), and that the NFPA code has been adopted by many state and local fire marshals as the applicable fire code. Second, some commenters stated that the regulatory language as proposed precluded the use of all types of valves on gaseous-fueled vehicles, including such things as manual fuel shutoff valves. Third, some comments were received expressing concern that this requirement would preclude the use of liquefied natural gas (LNG) altogether due to the need to occasionally vent excess pressure from LNG fuel tanks to prevent overpressurization. Finally, one commenter expressed concern about the application of this requirement to LPG vehicles already in service and the possibility of having to retrofit those vehicles.

EPA response to comments: The Agency understands the apparent conflict between its proposal and the requirements of NFPA 58. EPA believes that with the newer requirement in NFPA 58 for automatic shutoff (overfill prevention) mechanisms, the requirement for outage valves on vehicle fuel tanks is obsolete, and should be removed from NFPA 58. Due to this conflict, however, the Agency has chosen not to finalize its proposed requirements prohibiting outage valves, but is working with the industry and NFPA to have this requirement deleted from NFPA. While the Agency believes it has the authority to preempt NFPA 58 as adopted by fire marshals through the adoption of the proposed requirement to eliminate outage valves, it prefers to work with the industry to remove that requirement from NFPA 58 before superseding state and local law through EPA regulation. Given that the proposed language prohibiting non-safety-related valves is not being finalized, the other concerns expressed in the comments are alleviated.

While the Agency is not finalizing the proposed requirements concerning outage valves, they remain a concern as a source of emissions. This is especially true for LPG vehicles which are intended to be certified as ILEVs. Thus, for any LPG vehicle, the above-mentioned refueling test procedure will be performed with the outage valve opened, unless the manufacturer can demonstrate, to the satisfaction of the Administrator, that the outage valve or any other such gauges or valves would not be opened during refueling in-use due to inaccessibility or other design features that would prevent or make it very unlikely that they could be opened.

D. Standards for CO and Crankcase Emissions

1. Idle CO

Summary of the proposal: Until the methanol emission standards were promulgated in 1989, idle CO standards were only applied to Otto-cycle engines. EPA reasoned that diesel vehicles always operate at such lean fuel/air ratios that their idle CO emissions would always be well below the standards. The methanol rule applied idle CO standards to all methanol-fueled vehicles because the Agency was aware of diesel methanol vehicles which were throttled at idle. This same reasoning was applied to gaseous-fueled vehicles, and EPA proposed that idle CO standards apply to all gaseous-fueled vehicles, not just Otto-cycle vehicles.

Summary of the comments: The few comments EPA received on this issue were in opposition to idle CO standards for engines which operate at lean fuel/air ratios. The commenters stated that lean burn engines emit very low CO levels, and that there is no need to regulate and test for emissions which are inherently low.

EPA response to the comments: The Agency recognizes that lean burn engines do traditionally have much lower CO emissions than vehicles operating at stoichiometric fuel/air ratios. However, EPA believes that not enough data yet exists on diesel gaseous-fueled vehicles to justify their exemption from the idle CO standards. The Agency is especially concerned about those diesel designs which employ throttling at idle. It is likely that these vehicles will have no problem meeting the idle CO standards by virtue of their design and that, this being the case, the only burden this standard presents is that of the actual certification testing and reporting. Thus, certification testing waivers for diesel gaseous-fueled vehicle idle CO standards will be available to manufacturers that can demonstrate through emissions test data or other engineering data that a vehicle will, by virtue of its design, always emit at levels well below that of the applicable idle CO standard.

2. Crankcase Emissions

Summary of the proposal: Currently, all vehicles and engines, with the exception of non-naturally aspirated petroleum heavy-duty diesel engines (HDDE), are prohibited from discharging crankcase emissions into the atmosphere. The current prohibition is not applicable to non-naturally aspirated petroleum HDDEs due to concerns that the routing of oil mist-laden crankcase gases through turbochargers and other air handling equipment may foul this equipment. With the issuance of the methanol vehicle emission standards in 1989 this prohibition was applied to all methanol HDDEs whether they were naturally aspirated or not. The reasoning was that methanol engine crankcase gases were expected to be cleaner than petroleum diesel engine crankcase gases, and closer to gasoline engine crankcase emissions which are been routinely routed through turbochargers. Given that gaseous-fueled vehicles are also expected to have cleaner crankcase emissions than petroleum diesels, this prohibition on crankcase emissions was proposed to be applicable to all gaseous-fueled vehicles and engines as well, with no exemption for non-naturally aspirated, gaseous-fueled HDDEs.

Summary of the comments: In general, the comments received in this area were in opposition to crankcase controls for gaseous-fueled vehicles and engines. Some commenters suggested that crankcase controls only be applied to naturally-aspirated gaseous-fueled engines, as is currently the case with petroleum HDDEs. Others stated that, due to their inherently low emissions, gaseous-fueled vehicles and engines should be exempt from all crankcase emission provisions. One commenter expressed concern about crankcase gases possibly fouling turbochargers, and then went on to say that gaseous-fueled vehicle crankcase emissions will be inherently clean and thus do not need to be regulated.

EPA response to comments: In the absence of compelling data showing that gaseous-fueled vehicle crankcase emissions are cleaner than those of their petroleum-fueled counterparts, the Agency believes it is prudent to extend the coverage of the current prohibition on crankcase emissions to include gaseous-fueled HDDEs. Additionally, EPA believes that, since the crankcase prohibition for methanol-fueled HDDEs is not limited to naturally-aspirated engines, as well as the fact that crankcase emissions are routinely routed through gasoline engine turbochargers, there is no reason to exempt non-naturally aspirated gaseous-fueled vehicles and engines from the crankcase emissions prohibition. As was noted in the leadtime discussion, the Agency expects that current technology gaseous-fueled engines will be able to meet these standards, and therefore the minimum amount of leadtime to allow for certification has been given. However, since turbocharged gaseous-fueled HDDEs are generally derived from turbocharged petroleum HDDEs they do not tend to have crankcase emission controls. The Agency believes that, while the four year leadtime requirement in section 203(a)(3)(C) of the Act is not legally binding in the case of gaseous-fueled heavy-duty engines, in circumstances where the manufacturers must make changes to engine designs similar to those made to comply with changes in gasoline or petroleum diesel requirements, section 203(a)(3)(C) may constitute a proper default period. In order to allow for the early introduction of gaseous-fueled HDDEs, the Agency is providing four years leadtime for crankcase controls on turbocharged gaseous-fueled HDDEs in the absence of factors indicating that another period is more appropriate. Thus, this provision will take effect for the 1998 model year. It should be noted that the four years of leadtime only applies to turbocharged gaseous-fueled HDDEs, and that the crankcase emission provisions for all other classes of gaseous-fueled vehicles will take effect with the 1997 model year mandatory certification, as well as for vehicles and engines certified optionally prior to the 1997 model year.

E. On-Board Diagnostics

Summary of the proposal: EPA did not specifically address in the November 5, 1992 proposal the applicability of on-board diagnostics (OBD) requirements to gaseous-fueled vehicles. This is because the OBD regulations were not promulgated until after the gaseous-fueled vehicle standards were proposed.[17] However, EPA proposed that emission standards for gaseous-fueled vehicles generally be equivalent to those for other vehicles. Implicit in that proposal is that gaseous-fueled vehicles would be required to meet the same OBD requirements as other vehicles (OBD II or Federal OBD, as applicable by model year).

Summary of the comments: The Agency received several comments concerning OBD. These comments fell into two general areas. First, several commenters requested that the Agency clarify the applicability of OBD requirements to gaseous-fueled vehicles. Second, comments were received stating that additional leadtime should be allowed for natural gas-fueled vehicles to comply with OBD. The OBD provisions as promulgated require OBD systems to monitor for conditions which would result in increases in THC emissions. The argument for additional leadtime centered around the fact that natural gas vehicles will only be subject to NMHC standards while all other vehicles are subject to THC standards. During the course of the OBD rulemaking comments were received suggesting that natural gas systems only be required to measure NMHC emission effects. Commenters argued that the technology likely to be used to monitor for increases in THC could not be readily adapted to monitor for increases in NMHC. The Agency received a comment suggesting that a delay until 1998 would allow sufficient leadtime to develop the technology needed for natural gas-fueled vehicles to meet the OBD requirements.

EPA response to comments: The OBD requirements contained in the February 19, 1993 rule were established pursuant to section 202(m) of the Clean Air Act. That subsection provides, in pertinent part:

> (1) [T]he Administrator shall promulgate regulations under subsection (a) requiring manufacturers to install on all new light duty vehicles and light duty trucks diagnostic systems capable of—
>
> (A) accurately identifying * * * emission-related systems deterioration or malfunction * * * which could cause or result in failure of the vehicles to comply with emission standards established under this section.

By its terms, the OBD provision applies only to vehicles for which emission standards have been established under section 202. The regulations promulgated on February 19, 1993 simply add a new requirement that all new light-duty vehicles and light-duty trucks be equipped with an emission control diagnostic system capable of identifying emissions-related deterioration and malfunction as detailed in the regulations.[18] Therefore, this provision would seem to apply automatically to gaseous-fueled vehicles as soon as mandatory emissions standards are established for those vehicles.

EPA agrees that leadtime until the 1998 model year is necessary for full implementation of the Federal OBD requirements for natural gas-fueled vehicles. Therefore, under today's regulations, implementation of Federal OBD systems will not be required for certification prior to model year 1998. This is the case for both for voluntary certification prior to model year 1997, and for mandatory certification in model year 1997. However, consistent with the approach taken in the OBD rule for vehicles granted a waiver from Federal OBD requirements on feasibility grounds, natural gas-fueled vehicles certified in the 1997 model year or optionally prior to the 1997 model year will be required to comply with OBD I provisions.

EPA believes that allowing leadtime for natural gas-fueled vehicles until the 1998 model year is legally consistent with sections 202(m) and 202(a). To be sure, section 202(m)(2) specifically provides that the required OBD regulations shall take effect in model year 1994, subject to the Administrator's authority to waiver application of the

[17] 58 FR 9468, February 19, 1993.

[18] 58 FR at 9485; 40 CFR 86.094–17.

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regulations for model years 1994 and/or 1995 for any vehicle for which the Administrator determines the regulations would be infeasible in those model years. But EPA believes that Congress intended this effective date provision to apply only to vehicles for which standards existed at the time of the enactment of the Clean Air Act Amendments of 1990. EPA does not believe that Congress intended this provision to require OBD to be implemented immediately upon promulgation of any emission standards under section 202(a)(1) for new kinds of alternative-fueled vehicles at any point after 1995. EPA cannot adopt new emission standards for natural gas-fueled vehicles that would trigger a mandatory OBD requirement that is not feasible. It is also unreasonable to believe Congress intended that EPA refrain from establishing mandatory emission standards for natural gas-fueled vehicles simply because an infeasible OBD requirement would automatically apply once such standards are established. The Agency's efforts to ensure that natural gas fueled vehicles' emissions are no greater than their petroleum-fueled counterparts should not be frustrated by a concern that compliance with an OBD requirement requires more leadtime than compliance with the emission standards themselves.

Rather, EPA believes that the OBD requirements under section 202(m)(1), to be promulgated under section 202(a), incorporate the general leadtime provision in section 202(a)(2). Section 202(a)(2) specifically states that "[a]ny regulation prescribed under paragraph (1) of this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period." EPA believes that this leadtime provision applies to all aspects of new standards established with respect to previously unregulated alternative-fueled vehicles. EPA agrees with commenters that leadtime until model year 1998 is necessary for implementation of Federal OBD systems for natural gas-fueled vehicles. Therefore, Federal OBD requirements will not apply for certification of such vehicles until model year 1998; compliance with OBD I provisions is required for any natural gas-fueled vehicles certified prior to the 1998 model year, as discussed above.

EPA also recognizes that the current OBD regulations apply to vehicles subject to a THC standard. As long as only a NMHC standard applies to natural gas-fueled vehicles, these regulations should arguably be amended to monitor deterioration and malfunction regarding NMHC emissions performance. EPA anticipates commencing a rulemaking to make these changes to the OBD regulations as applicable to natural gas-fueled vehicles in the near future in time for the changes to apply in the 1998 model year. This issue does not effect the feasibility of compliance with OBD I requirements.

As was noted above, the Agency did not formally propose any specific requirements concerning the applicability of OBD requirements to gaseous-fueled vehicles. However, the Agency believes that this issue was fairly raised and sufficiently considered prior to the promulgation of this final rule since EPA's initial proposal intended to extend all applicable emission standards to gaseous-fueled vehicles, and the Agency received several comments on OBD in response to that proposal. For more discussion of this issue please consult the summary and analysis document.

F. HC Measurement

Summary of the proposal: The current method for measuring exhaust NMHC, which was adopted for the Tier 1 tailpipe standards, involves measuring THC and methane, and subtracting methane from THC to obtain NMHC. For NGVs the exhaust HC is primarily methane, whereas for other vehicles the exhaust methane tends to be a much lower percentage of THC. As a result, the current procedure is much less accurate for NGVs than for other vehicles, and the need for a better measurement technique is obvious. The NPRM discussed several potential options for improved, direct NMHC measurement. However, none of these techniques was developed sufficiently enough to warrant proposal. Thus, the Agency proposed, as an interim procedure, some slight modifications to the current procedure to improve its accuracy for NGVs. Additionally, EPA proposed that if a better technique had not been developed within the first two years of these standards' applicability then full gas chromatograph (GC) analysis would be required. This was intended to provide the industry with incentive to develop a better alternative since the inaccuracies of the current procedure clearly preclude it from being a long term solution.

Summary of the comments: EPA received little comment on this aspect of the proposal. A few commenters voiced support for the interim procedure, while some expressed concern over how resource-intensive full GC analysis would be for routine certification work.

EPA response to comments: The Agency agrees with the commenters that the modifications to the current procedure constitute the best interim option, and this is the technique that is contained in today's rule. Additionally, EPA has entered into a Cooperative Research and Development Agreement (CRADA) with the California Air Resources Board and the American Automobile Manufacturers Association to address a variety of test procedures needs which have arisen out of the Clean Air Act Amendments. One of the projects the CRADA is addressing is that of an accurate technique for the direct measurement of NMHC. The Agency believes that since it is participating in the development process through the CRADA a technology-forcing approach is not necessary at this time. Thus, rather than finalize a requirement for full GC analysis, the best approach would be to continue to work through the CRADA to develop an NMHC technique which can be adopted as the certification procedure upon its completion. However, if an appropriate technique is not developed through the CRADA, EPA will consider a more accurate procedure such as the GC for the required procedure.

G. Fuel Composition

Summary of the proposal: It is the Agency's belief that certification test fuels should resemble the fuels that a vehicle is likely to encounter in-use. Given the wide range of natural gas compositions currently available throughout the United States, the Agency proposed very broad specifications for natural gas certification fuel. These specifications included a range for methane content of 74 to 98.5 percent, as well as broad ranges for several other parameters. In the case of LPG fuel, much less information is available about composition variability nationally. Thus, commercially available LPG was proposed as the certification fuel, with no specific ranges set on any parameters other than that the primary constituent be propane. The NPRM contained no provisions for the regulation of in-use composition of either fuel.

Summary of the comments: Although the Agency received some comments in support of its proposed certification fuel specifications, in general commenters believed that the proposed specifications were much too broad. In terms of natural gas specifications, the comments in favor of tighter specifications fell into two general

categories. First, several commenters stated that they agreed with EPA's general approach of a broadly defined specification in order that certification fuel be representative of in-use fuel. These commenters, however, felt that the proposed fuel specification was much too broad and encompassed fuels which could not be considered representative of most natural gas. Other commenters felt that, in order to be able to meaningfully compare results from different tests, a very narrowly defined test fuel specification is needed. Most of these commenters recommended that EPA adopt the California Air Resources Board (CARB) certification fuel (90% methane, ± 1%, among other requirements) as the federal certification fuel. Some of the commenters who recommended a narrower range of specifications suggested that EPA adopt a range of specifications which would allow the use of CARB certification fuel (e.g., 89% methane, minimum, etc.).

The Agency received little comment on the proposed LPG certification fuel specifications. A few commenters suggested that EPA adopt the CARB LPG certification fuel specifications (93.5% propane, ±1%, etc.) as the federal certification fuel. Some commenters agreed with the proposal, stating that it allowed for the use of butane mixtures in LPG vehicles.

In addition to comments about certification fuel specifications, several comments were received requesting that the Agency adopt in-use fuel specifications. These comments generally came from engine and vehicle manufacturers. These commenters explained that in order to get maximum emission benefits from gaseous-fueled vehicles it is important to minimize in-use fuel composition variability. In addition, heavy-duty diesel engine manufacturers stated that, unlike stoichiometric engines utilizing oxygen sensor feedback control systems, lean-burn diesel engines have no way of accounting for fuel composition variability, and thus may encounter operational difficulties on some fuels.

EPA response to comments: The Agency both understands and sees the merits in the arguments for tighter certification fuel specifications. However, as was previously stated, EPA also believes it is important that certification fuel be representative of in-use fuel. Thus, in developing today's final rule the Agency has attempted to find a middle ground between these seemingly conflicting needs. In the case of natural gas certification fuel, the Agency is adopting the approach suggested by some commenters that the specification remain somewhat broad, but allow for the use of CARB certification fuel. This specification includes a minimum methane content of 89 percent, among other parameters. For the complete certification fuel specifications please see the regulatory text of today's rule. These specifications were chosen both because they encompass over 90 percent of natural gas sold in the country and because there was some general support for them in the comments as a good compromise between EPA's proposed specifications and CARB certification fuel.

Almost all of the gas not covered by this specification (i.e., gas with a methane content below 89 percent) is sold in high altitude areas where the gas tends to contain higher levels of inert gases than that sold at low altitudes. The Agency believes that excluding high altitude gas from the specifications should not present a problem for vehicles which are certified using the 89 percent minimum methane certification fuel but are operated at high altitudes because, in general, vehicles which will be certified under the provisions of today's rule are expected to utilize electronic feedback control systems for proper management of the fuel/air ratio. The Agency believes that these systems will be able to account for any differences in fuel composition between high altitude natural gas and natural gas in the rest of the country.

It should be noted that, while the natural gas certification fuel specifications contained in today's rule are much broader than CARB's, CARB certification fuel does fall within the federal specifications, and thus could be used for certification testing. For a further discussion of this issue please consult the summary and analysis of comments document available in the public docket.

The Agency would like to take a similar approach for LPG certification fuel as it took for natural gas certification fuel. However, there is little information available about in-use LPG composition upon which such a fuel specification could be based. Thus, EPA believes it prudent to adopt commercial LPG as the certification fuel at this time. Should adequate information on in-use LPG composition become available at some point in the future, EPA may elect to define a certification fuel specification for LPG at that time.

Today's rule contains no controls on in-use fuel composition for either natural gas or LPG. EPA does not believe that the need for such in-use controls has been adequately demonstrated. Further, the cost-effectiveness of such controls is not likely to justify such action. The Agency is concerned, however, about the possibility of in-use fuel composition changes over time, and urges the natural gas and LPG industries to take steps to minimize such variations. Should the in-use compositions of these fuels change in such a way as to adversely impact the emissions performance of gaseous-fueled vehicles the Agency would likely take steps to address the issue at that time, either through corresponding changes in certification fuel specifications, or possibly through in-use fuel composition specifications.

H. Fuel Economy

Summary of the proposal: The NPRM included test procedures and calculations for determining the fuel economy of natural gas-fueled light-duty vehicles and light-duty trucks for purposes of allowing them to be included in a manufacturer's CAFE calculation. The proposed procedures for determining the fuel economy of natural gas vehicles (NGV) utilize the same principles as those used in the procedures currently in place for gasoline vehicles. Availability of CAFE credits for NGVs was mandated in the Alternative Motor Fuels Act (AMFA) of 1988 (Public Law 100–494, October 14, 1988), to be effective with the 1993 model year. No CAFE provisions regarding LPG vehicles were proposed

Summary of the comments: In general, the comments regarding the CAFE provisions for NGVs were very supportive. Some commenters urged EPA to quickly finalize this rule in order to assure that CAFE credits will be available for 1993 model year NGVs. The lack of fuel economy provisions for LPG vehicles, however, was perceived by many as an unfair disadvantage for LPG vehicles. Additionally, many commenters pointed out that the National Energy Policy Act of 1992 mandated the availability of CAFE credits for LPG vehicles, and urged EPA to finalize fuel economy test procedures and calculations for LPG vehicles.

EPA response to comments: The Agency did not propose fuel economy measurement procedures for LPG vehicles because prior to the National Energy Policy Act of 1992 the determination of whether LPG vehicles should be included in the CAFE program was required to be made by the Secretary of Transportation under the Energy Policy and Conservation Act (U.S.C. 2001(5)). At the time EPA issued the NPRM for today's action the Secretary of Transportation had not made a determination to include LPG vehicles in the CAFE program. The Energy Policy Act allowing LPG vehicles to participate in the CAFE

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program was signed into law just as EPA issued its proposal. Thus, no fuel economy provisions were proposed for LPG vehicles. There are two reasons why EPA is not adopting fuel economy provisions for LPG vehicles in this rule. First, before EPA can adopt fuel economy test procedures and calculations for LPG vehicles, the U.S. Department of Transportation (DOT) is required by the Energy Policy Act to determine a fuel equivalency factor equating gasoline and LPG so that fuel economy can be calculated on a gasoline gallon- equivalent basis. This fuel equivalency factor has not yet been set by DOT. Second, the Agency believes that the required new fuel economy measurement provisions for LPG vehicles must be subject to public notice and comment. Thus, the Agency will work with DOT to develop the fuel equivalency factor, and, upon determination of that factor, will propose LPG fuel economy provisions in a separate Agency rulemaking action.

I. Aftermarket Conversions

1. Applicability

Summary of the proposal: It is the Agency's policy that, based on the tampering provisions of section 203(a)(3) of the Act, aftermarket conversions should not degrade the emissions performance of the vehicle being converted, and that following a conversion a vehicle should still meet the emission standards it was originally certified as meeting on any fuels it is capable of using. Under this policy any conversion which degrades the emissions performance of the vehicle is considered tampering. In order to clarify how compliance with this policy can be demonstrated, the Agency proposed that converters can certify as new vehicle manufacturers using the current new vehicle certification procedures applicable to small volume manufacturers. The Agency requested comment on whether the volume limit of 10,000 units that currently defines a small volume manufacturer should apply to conversions as well, or whether, as proposed, the small volume procedures should apply to all converters, regardless of the conversion sales volume of the company seeking the certification. These certification requirements were proposed to apply to all aftermarket conversions performed or sold after December 31, 1993, regardless of the class or model year of the vehicle being converted. In the proposal the Agency stated its belief that this rule would not require any leadtime for technology development and that the only leadtime required would be for the actual certification process.

Summary of the comments: In general, the comments received on the aftermarket conversion provisions were very supportive, with several commenters expressing the need for such requirements, and none completely opposed. One commenter suggested that these requirements should only apply to conversions in areas which are not in attainment with national ambient air quality standards. Comments were received both in favor of and opposed to applying the 10,000 limit to the use of the small volume procedures for conversions. Other comments received indicated that there was some confusion as to the applicability of the proposed requirements to conversions done before 1994, as well as to conversions of pre-1994 model year vehicles performed after December 31, 1993.

EPA response to comments: As was stated in the description of today's rule, an aftermarket conversion company can choose to comply with these provisions to obtain an exemption from the tampering prohibition. Only conversions which are intended to generate some form of credit, such as clean-fueled fleet vehicle purchase credits, will be required to comply with these provisions. Converters which choose not to obtain an exemption from the tampering prohibition under this procedure will be handled under the current tampering policy. Given that this is an optional certification procedure for conversions the issues of leadtime and mandatory start date are less relevant.

The Agency agrees with the comment that the production volume limits that currently define a small volume manufacturer also apply to converters seeking to certify as manufacturers under today's program. The Agency expects that the demand for aftermarket conversions will grow dramatically over the next few years in response to a variety of state and federal programs. It seems reasonable to require the larger conversion companies to undergo full new vehicle certification if they choose to get an exemption from the tampering prohibition by certifying as a manufacturer. Thus, the volume limits that currently apply to manufacturers seeking to certify under the small volume manufacturers provisions will also apply to converters seeking to certify as manufacturers. The Agency recognizes that, while the current small volume manufacturers limit applies to sales for a particular model year, conversions are routinely performed on older vehicles, and a conversion company may offer conversion systems for vehicles from several different model years at any given time. Thus, the 10,000 sales volume limit for certifying under the small volume manufacturers procedures will apply to calendar year sales for the purposes of aftermarket conversions. For a further discussion of how this volume limit will be applied see the summary and analysis of comments document.

2. Test Procedures

Summary of the proposal: In the NPRM the Agency proposed using the same test procedures for conversions that are used for new vehicle and engine certification. This approach was proposed because the Agency believes that this is the only way of truly measuring the emissions performance of a conversion relative to the emission standards applicable to the original vehicle or engine.

Summary of the comments: Most of the comments received on the issue of test procedures for aftermarket conversions concerned the differences between EPA's proposed procedures and those adopted by CARB. In general, where there are differences between CARB's procedures and those proposed by EPA the commenters requested that the Agency adopt the CARB procedures instead of what it proposed. In the case of procedures for converted light-duty vehicles and light-duty trucks EPA's proposed test procedures are essentially the same as CARB's. Thus, there is no issue in the case of light-duty vehicle and light-duty truck certification procedures for aftermarket conversions.

EPA's proposed procedures for conversions of vehicles whose engines were originally certified on an engine dynamometer (i.e., most heavy-duty engines) are quite different than CARB's. As was previously mentioned, the Agency proposed that conversions in this category be certified using the test procedure used to certify the original engine. That procedure is the engine dynamometer-based heavy-duty transient test. CARB's procedures use the chassis dynamometer-based urban dynamometer driving cycle for conversions of vehicles 14,000 pounds and under gross vehicle weight (GVW). For conversions of vehicles greater than 14,000 pounds GVW, CARB's procedures allow for either steady-state chassis dynamometer testing or an engine dynamometer test approved by the CARB Executive Officer. Most of the comments received on this issue requested that, in order to reduce compliance costs, EPA adopt the CARB test procedures for aftermarket conversions. One commenter also suggested that it is unfair to require conversions for heavy-duty engines to be certified using the heavy-duty transient test because there are few available testing facilities at which one could get the required testing done.

EPA response to comments: The Agency continues to believe that the most appropriate way to determine whether an aftermarket conversion meets the emission standards that the original vehicle or engine was certified to is to use the same test procedures that were used in certifying the original vehicle or engine. As the comments suggest, this is only an issue for the conversions intended for vehicles originally certified using the engine dynamometer procedures. While the Agency understands the concerns voiced by the commenters, it does not believe that there is an adequate alternative to using the original test procedures when attempting to demonstrate compliance with the original standards. In the case of the CARB procedures, CARB uses an approach whereby compliance is determined by comparing post-conversion emissions performance with pre-conversion performance, and allowing for some increase in emissions to account for test to test variability. Given this approach, it is not nearly as important for CARB to use the same test procedures that were used to certify the original vehicle because the standards being certified to are not those the vehicle was originally certified as meeting. However, by taking this approach it is possible that an aftermarket conversion which exceeds the original configuration's emissions standards could be certified, which is in conflict with the anti-tampering provisions of the Act.

In the case of vehicles over 14,000 pounds GVW, CARB allows the use of eight mode steady-state testing, using the same pre-conversion, post-conversion comparison as for vehicles under 14,000 pounds GVW. Again, the Agency believes that it is possible with this approach to certify an aftermarket conversion which exceeds the original configuration's emissions standards. Also, the Agency does not believe that steady-state testing is appropriate under any circumstances. It is well-understood that emission control systems can be designed for low emissions when tested using steady-state test procedures, but provide little emissions control under real-world, transient conditions.[19] It is for this reason that EPA adopted the heavy-duty transient test cycle in place of the thirteen mode steady state test for all heavy-duty engine certification, effective in the mid-1980s. Thus, EPA does not believe that it would be appropriate to adopt the CARB test procedures for these vehicles. It should be noted that CARB does allow for alternative test cycles for vehicles over 14,000 pounds GVW, subject to advance approval from the Executive Officer. It is the Agency's belief that, given the transient test is the test cycle which these vehicles would have originally been certified on, it is likely that CARB would approve its use for conversion certification, thus eliminating the need for two separate certification procedures for vehicles over 14,000 pounds GVW.

3. On-Board Diagnostics

Summary of the proposal: The Agency recently adopted requirements, effective for the 1994 model year and thereafter, which require on-board diagnostics (OBD) systems on new light-duty vehicles and light-duty trucks.[20] The purpose of the OBD system is, in part, to monitor the performance of a vehicle's emission control systems and signal to the vehicle operator if a system is malfunctioning. The Agency did not propose any specific requirements regarding how aftermarket conversions would interact with new vehicle OBD systems, but required that converted vehicles remain in compliance with all applicable Clean Air Act Title II emission requirements.

Summary of the comments: The Agency only received a few comments on the issue of aftermarket conversions and OBD. These comments tended not to be specific, but rather asked the Agency to clarify what the requirements were for an aftermarket conversion on an OBD-equipped vehicle. A few commenters suggested that EPA require new vehicle manufacturers to provide some means of shutting off the OBD system during alternative fuel operation in order to prevent the system from storing faulty trouble codes.

EPA response to comments: As explained in the preamble to the proposed rule, EPA believes that a tampering exemption should be conditioned upon certification demonstrating that the converted vehicle has the ability to comply with the applicable emission standards and will have demonstrated adequate durability. As was mentioned above, shortly after publication of the proposal for this rule, the Agency adopted requirements, effective for the 1994 model year, which require OBD systems on new light-duty vehicles and light-duty trucks.

While the aftermarket conversions proposal did not explicitly make clear that compliance with the OBD requirements (as well as certain other title II requirements) must be demonstrated to obtain a certification, the Agency believes this is implicit in the discussion of the justification for the exemption. The Agency explained in the proposal that "Congress intended to prohibit tampering that would result in emission noncompliance," and that "[t]he language of the tampering provisions emphasizes the compliance of the vehicle with the title II regulations."

EPA's justification for the exemption for conversions from tampering restrictions was based on the incongruity of prohibiting conversions that result in a vehicle meeting emission standards applicable to vehicles of the fuel type to which the vehicles have been converted. The OBD requirements, even if not "emissions standards" in the traditional sense, clearly have an underlying emissions control purpose. And the tampering prohibitions of section 203(a)(3) of the Act explicitly apply to the disabling of any device "installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title. . ." Disabling an OBD system is clearly prohibited as tampering. It is therefore not at all clear that EPA would have authority to provide an exemption from the tampering prohibition for a conversion that do not meet the same OBD requirements as the vehicle would have had to meet had it been originally manufactured to operate on fuel type to which it has been converted.

The logic of the Agency's tampering exemption for aftermarket conversions thus indicates that the Agency intended that the exemption be conditioned on compliance with all title II requirements applicable to the converted vehicle when operating on either fuel. Certainly, even if the proposal did not specifically make clear that it intended to require compliance with OBD as a condition for a tampering exemption, that requirement is a logical outgrowth of the discussion in the proposal. The comments of interested parties reflect a recognition of EPA's authority to require compliance with OBD as a condition of the tampering exemption. These comments demonstrate the adequacy of notice.[21]

4. Liability

Summary of the proposal: In the NPRM the Agency proposed that, in

[19] 45 FR 4136, January 21, 1980.

[20] 58 FR 9468, February 19, 1993.

[21] *See Shell Oil Co. v. EPA*, 950 F.2nd 741, (Dec. 6, 1991).

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order to be exempt from the Clean Air Act's tampering prohibition, the manufacturers and installers of aftermarket conversions must accept in-use liability for warranty and recall as outlined in section 207 of the Act and its implementing regulations.[22] Additionally, EPA proposed that the vehicle's original manufacturer remain liable for the in-use performance of any systems which retain their original purpose following conversion, except in cases where the failure of such a system is determined to be caused by the conversion. The Agency proposed that the useful life of a conversion be the same as that of the vehicle being converted, and requested comment on whether the useful life of the conversion should be measured from the time of the conversion or from the time of the original vehicle's manufacture.

Summary of the comments: The Agency received a variety of comments on the proposed liability scheme. In general, commenters agreed on the need for in-use liability for warranty and recall, but differed on where or with whom this liability should be placed. Some commenters suggested that the primary liability should be with the conversion system manufacturer, and that the installer should only be held liable for the proper installation of the conversion system. Other commenters agreed with EPA's proposed liability suggesting both that this approach would protect the conversion consumer in the event that one party went out of business, and that it would allow manufacturers and installers to negotiate risk of failure between them. Comments received on the issue of liability of the vehicle's original manufacturer for the proper functioning of original equipment also supported both sides of the issue, with some commenters suggesting that the original manufacturer's liability should end at the time of conversion and others supporting the Agency's proposed approach. Finally, all comments received on the issue of when the useful life begins were in favor of reducing the useful life requirement of the conversion by the amount of the original vehicle's useful life which had already passed at the time of conversion. These commenters suggested that, because aftermarket conversions generally depend on the original vehicle equipment to some extent for emissions performance, it would not be appropriate to require the conversion to continue meeting applicable emission standards after the original equipment had exceeded its useful life.

[22] 40 CFR Part 85.

EPA response to the comments: The Agency believes that by holding the entity which certifies the conversion system liable for the in-use performance of the converted vehicle it has the greatest chance of assuring quality conversions which will meet applicable emission standards throughout their useful lives. If poor installation were a defense to liability, then certifiers would have no interest in insuring their installers are competent. Such an approach does not rely on who manufactures or installs the system, but on who certifies the system as meeting applicable standards. At the time of vehicle conversion the system certifier assumes liability for the converted vehicle's in-use emissions performance. The certifier may elect to have outside agents conduct installations. However, the certifier will be solely responsible for the converted vehicle's in-use emission performance. For this reason the Agency recommends that those certifiers electing to have outside agents conduct installations work to assure quality system installation.

EPA believes that it is appropriate to hold the original vehicle manufacturer liable for the performance of any parts or systems which retain their original function following conversion. If the failure of such a part or system could be traced to the conversion then the liability would lie with the conversion certifier. A good indication of where the liability lies in such situations would be whether the failure of a part or system is also occurring in non-converted configurations of the same vehicle.

The Agency agrees with the comments that it is not appropriate to extend the useful life of a conversion past that of the original vehicle, given that conversions generally rely on many original vehicle components for proper operation. Thus, the applicable useful life of any conversion will be reduced by the amount of mileage on the vehicle at the time of conversion (*i.e.*, the useful life of a conversion will end at the same point that the useful life of the original vehicle ends).

IV. Environmental Effects

The general goal of today's emission standards is to provide a level playing field for gaseous-fueled vehicles relative to other currently regulated vehicles, and to remove a potential barrier to their commercial production. Thus, this rule is not intended to generate significant emission reductions beyond those achieved by vehicles operating on other fuel types. As such, the Agency has not attempted to accurately quantify the environmental effects of today's rule. However, there are likely to be some beneficial differences between the emissions from gaseous-fueled vehicles and conventional vehicles, including possible benefits in the areas of NMHC, CO and air toxics, as well as benefits associated with improved aftermarket conversions. For a complete discussion of these potential benefits please consult the discussion of environmental effects contained in the NPRM.[23]

V. Economic Impacts

The Agency expects the emission standards contained in this rule to be attainable using emission control technology which is similar to that used on current vehicles. Indeed, this has been the case thus far with the vehicles which have shown the ability to comply with the standards. Thus, EPA expects that the cost of emission controls for natural gas- and liquefied petroleum gas-fueled vehicles will be similar to that for current vehicles. There are two instances, however, where compliance with the standards may be less costly for gaseous-fueled vehicles than for current vehicles: evaporative emissions, and exhaust aftertreatment for gaseous-fueled heavy-duty diesel engines. For a complete discussion of these potential benefits please consult the discussion of economic impacts contained in the NPRM.[24]

It is not expected that these regulations will have a significant impact on the cost of aftermarket conversions of conventional-fueled vehicles to operate on gaseous fuels. The chief area of change in response to these regulations will be in the area of durability improvements. This may involve some increase in cost, but overall the impacts should be small.

Since the purpose of today's standards is to remove the regulatory uncertainty associated with gaseous-fueled vehicles and to place them on an equal footing with other vehicles, and not necessarily to achieve emission reductions, the Agency does not believe it is appropriate to perform a cost-effectiveness analysis for these standards. Although the Agency does expect some emission reductions to result from these standards, that is not the purpose of these regulations. Thus, the benefits cannot be readily quantified in terms of pollutant inventory reductions, nor is it appropriate to do this. For these reasons no cost effectiveness analysis was performed.

VI. Statutory Authority

Authority for the actions in this rule is granted to EPA by sections 202, 203

[23] 57 FR 52912, November 5, 1992.
[24] 57 FR 52912, November 5, 1992.

and 301(a) of the Clean Air Act (42 U.S.C. 7521 and 7601(a)).

VII. Executive Order 12866

Under Executive Order 12866,[25] the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

VIII. Reporting and Recordkeeping Requirements

The information collection requirements contained in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Public recordkeeping burden is estimated to average 115 hours per response. It is not anticipated that the revisions being promulgated today will have any impact on the recordkeeping burden. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**.

Send comments regarding the burden estimate, including suggestions for reducing this burden to Chief, Information Policy Branch, EPA, 401 M St., SW. (2136), Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

[25] 58 FR 51735, October 4, 1993.

IX. Impact on Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is required to determine whether a regulation will have a significant adverse impact on a substantial number of small entities. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. The new vehicle standards will affect only manufacturers of motor vehicles and motor vehicle engines, a group which does not contain a substantial number of small entities. The aftermarket conversion portions of today's regulations will not significantly impact the small businesses in the aftermarket conversion industry because the provisions are voluntary, and the cost of voluntary compliance with these requirements will be small when spread over the projected volumes of conversions expected to be sold in the near future.

X. Judicial Review

Under section 307(b)(1) of the Clean Air Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by September 21, 1994. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

List of Subjects

40 CFR Part 80

Environmental protection, Administrative practice and procedures, Air pollution control, Motor vehicle pollution.

40 CFR Part 85

Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 86

Administrative practice and procedures, Air pollution control, Incorporation by reference, Motor vehicles, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 88

Administrative practice and procedures, Air pollution control, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 600

Administrative practice and procedures, Fuel economy, Incorporation by reference, Motor vehicles, Reporting and recordkeeping requirements.

Dated: May 27, 1994.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, parts 80, 85, 86, 88 and 600 of chapter I of title 40 of the *Code of Federal Regulations* are amended, as set forth below:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 144, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.2 of subpart A is amended by revising paragraphs (j) and (o), and adding new paragraphs (oo), (tt) and (uu), to read as follows:

§ 80.2 Definitions.

* * * * *

(j) *Retail outlet* means any establishment at which gasoline, diesel fuel, methanol, natural gas or liquefied petroleum gas is sold or offered for sale for use in motor vehicles.

* * * * *

(o) *Wholesale purchaser-consumer* means any organization that is an ultimate consumer of gasoline, diesel fuel, methanol, natural gas or liquefied petroleum gas and which purchases or obtains gasoline, diesel fuel, natural gas or liquefied petroleum gas from a supplier for use in motor vehicles and, in the case of gasoline, diesel fuel, methanol or liquefied petroleum gas, receives delivery of that product into a storage tank of at least 550-gallon capacity substantially under the control of that organization.

* * * * *

(oo) *Liquefied petroleum gas* means a liquid hydrocarbon fuel that is stored under pressure and is composed primarily of species that are gases at atmospheric conditions (temperature = 25°C and pressure = 1 atm), excluding natural gas.

* * * * *

(tt) *Natural gas* means a fuel whose primary constituent is methane.

(uu) *Methanol* means any fuel sold for use in motor vehicles and commonly

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known or commercially sold as methanol or MXX, where XX is the percent methanol (CH_3OH) by volume.

3. Section 80.22 of subpart B is amended by revising the title to read as follows:

§ 80.22 Controls applicable to gasoline and methanol retailers and wholesale purchaser consumers.

* * * * *

4. A new § 80.32 is added to subpart B, to read as follows:

§ 80.32 Controls applicable to liquefied petroleum gas retailers and wholesale purchaser-consumers.

After January 1, 1998 every retailer and wholesale purchaser- consumer handling over 13,660 gallons of liquefied petroleum gas per month shall equip each pump from which liquefied petroleum gas is introduced into motor vehicles with a nozzle that has no greater than 2.0 cm^3 dead space from which liquefied petroleum gas will be released upon nozzle disconnect from the vehicle, as measured from the nozzle face which seals against the vehicle receptacle "O" ring, and as determined by calculation of the geometric shape of the nozzle. After January 1, 2000 this requirement applies to every liquefied petroleum gas retailer and wholesale purchaser- consumer. Any dispensing pump shown to be dedicated to heavy-duty vehicles is exempt from this requirement.

5. A new § 80.33 is added to Subpart B, to read as follows:

§ 80.33 Controls applicable to natural gas retailers and wholesale purchaser-consumers.

(a) After January 1, 1998 every retailer and wholesale purchaser-consumer handling over 1,215,000 standard cubic feet of natural gas per month shall equip each pump from which natural gas is introduced into natural gas motor vehicles with a nozzle and hose configuration which vents no more than 1.2 grams of natural gas to the atmosphere per refueling of a vehicle complying with § 86.098–8(d)(1)(iv) of this chapter, as determined by calculation of the geometric shape of the nozzle and hose. After January 1, 2000 this requirement applies to every natural gas retailer and wholesale purchaser-consumer. Any dispensing pump shown to be dedicated to heavy-duty vehicles is exempt from this requirement.

(b) The provisions of paragraph (a) of this section can be waived for refueling stations which were in operation on or before January 1, 1998 provided the station operator can demonstrate, to the satisfaction of the Administrator, that compliance with paragraph (a) of this section would require additional compression equipment or other modifications with costs similar to or greater than the cost of additional compression equipment.

PART 85—[AMENDED]

6. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7543, 7547, and 7601(a), unless otherwise noted.

7. A new subpart F is added to part 85 to read as follows:

Subpart F—Exemption of Aftermarket Conversions From Tampering Prohibition

Sec.

85.501 General applicability.
85.502 Definitions.
85.503 Conditions of exemption.
85.504 Applicable standards.
85.505 Labeling.

Subpart F—Exemption of Aftermarket Conversions From Tampering Prohibition

§ 85.501 General applicability.

Sections 85.501 through 85.505 are applicable to aftermarket conversion systems for which an enforcement exemption is sought from the tampering prohibitions contained in section 203 of the Act.

§ 85.502 Definitions.

(a) *The Act* means the Clean Air Act as amended (42 U.S.C. 7501 *et seq.*).

(b) *Administrator* means the Administrator of the Environmental Protection Agency or his or her authorized representative.

(c) *Aftermarket conversion system* means any combination of hardware, including but not limited to fuel storage and fuel metering hardware, which is installed on a light-duty vehicle, light-duty truck, heavy-duty vehicle, or heavy-duty engine with the effect of allowing the vehicle or engine to operate on a fuel other than the fuel which the vehicle or engine was originally certified to use. Components which do not affect the emissions performance of the converted vehicle or engine, as determined by the Administrator, are not included for the purposes of this subpart.

(d) *Aftermarket conversion installer* means any company or individual which installs an aftermarket conversion system on a light-duty vehicle, light-duty truck, heavy-duty vehicle, or heavy-duty engine with the effect of allowing the vehicle or engine to operate on a fuel other than the fuel which the vehicle or engine was originally certified to use.

(e) *Aftermarket conversion certifier* means any company or individual which assembles the various aftermarket conversion hardware components into a particular combination or configuration and certifies that combination or configuration according to the provisions of this subpart.

(f) *Model Year* means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year: *Provided*, That if the manufacturer has no annual production period, the term *model year* shall mean the calendar year.

§ 85.503 Conditions of exemption.

(a) As a condition of receiving an enforcement exemption from the tampering prohibitions contained in section 203 of the Act, an aftermarket conversion certifier must certify the aftermarket conversion system, using the applicable procedures in part 86 of this chapter, and meeting the applicable standards and requirements in §§ 85.504 and 85.505, and accept liability for in-use performance of the aftermarket conversion system as outlined in this part.

(b) As a condition of receiving an enforcement exemption from the tampering prohibitions contained in section 203 of the Act, an aftermarket conversion installer must:

(1) Install a conversion which has been certified as a new vehicle or engine, using the applicable procedures in part 86 of this chapter, and meeting the applicable standards and requirements in §§ 85.504 and 85.505; and

(2) Accept liability for in-use performance of the aftermarket conversion system as outlined in this part.

§ 85.504 Applicable standards.

(a) The emission standards applicable to conversions of 1993 and later model year vehicles and engines are:

(1) All of the requirements that would apply if the conversion were being certified as if it were a new vehicle or engine.

(2) If a vehicle or engine to be converted was originally certified to a NO_X or particulate family emission limit other than the applicable new vehicle NO_X or particulate standard, the family emission limit is the applicable standard.

(b) The emission standards applicable to conversions of 1992 and earlier model year vehicles and engines are:

(1) *Exhaust hydrocarbons (as applicable by fuel type).* The Tier 0 hydrocarbon standards, as applicable by vehicle class, contained in §§ 86.094–8 and 86.094–9 of this chapter, and the hydrocarbon standards, as applicable by engine class, contained in §§ 86.094–10 and 86.094–11 of this chapter;

(2) *CO, NO_X and particulate.* The applicable CO, NO_X and particulate standards or NO_X and particulate family emission limits the vehicle or engine was originally certified as meeting;

(3) *Evaporative hydrocarbons.* Any evaporative requirements applicable to the original vehicle or engine will remain applicable to the conversion if the converted vehicle or engine retains the ability to operate on the fuel which it was designed and certified to use.

§ 85.505 Labeling.

(a) The aftermarket conversion certifier shall provide with each aftermarket conversion system a supplemental emission control information label, which shall be affixed by the aftermarket conversion installer in a permanent manner to each converted vehicle, in a location adjacent to the original emission control information label required in § 86.092–35 of this chapter. If the supplemental label cannot be placed adjacent to the original label, it shall be placed in a location where it will be seen by a person viewing the original label.

(b) The supplemental label shall be affixed in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from the vehicle.

(c) The supplemental label shall clearly state that the vehicle has been equipped with an aftermarket conversion system designed to allow it to operate on a fuel other than the fuel it was originally manufactured to operate on, and shall identify the fuel(s) which the vehicle is designed to use.

(d) The supplemental label shall show the vehicle model year; the aftermarket conversion certifier's name, address and telephone number; the installer's name, address, and telephone number; the date on which the aftermarket conversion system was installed; the mileage of the vehicle at the time of the conversion; and shall state that the converted vehicle complies with federal emission requirements.

(e) The supplemental label shall list any original parts that were removed during installation of the aftermarket conversion system, as well as any changes in tune-up specifications required for the aftermarket conversion system.

PART 86—[AMENDED]

8. The authority citation for Part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, 217 and 301(a) of the Clean Air Act as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552 and 7601(a)).

9. Section 86.1 is amended by revising the table in paragraph (b)(1) and adding a new paragraph (b)(3), to read as follows:

§ 86.1 Reference materials.

* * * * *

(b) * * *

(1) * * *

Document number and name	40 CFR part 86 reference
ASTM E29–67 (Reapproved 1980), Standard Recommended Practice for Indicating Which Places of Figures Are To Be Considered Significant in Specified Limiting Values.	86.094–26; 86.094–28; 86.1105–87
ASTM E29–90, Standard Practice for Using Significant Digits in Test Data To Determine Conformance with Specifications.	86.609–84; 86.609–96; 86.1009–84; 86.1009–96; 86.1442
ASTM D2163–91, Standard Test Method for Analysis of Liquefied Petroleum (LP) Gases and Propane Concentrates by Gas Chromatography.	86.113–91; 86.113–94; 86.1213–94; 86.1313–90
ASTM D1945–91, Standard Test Method for Analysis of Natural Gas By Gas Chromatography.	86.113–91; 86.113–94; 86.513–90; 86.1213–94; 86.1313–90

* * * * *

(3) *ANSI material.* The following table sets forth material from the American National Standards Institute that has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of this part, other than § 86.1, in which the matter is referenced. The second column is presented for information only and may not be all inclusive. Copies of these materials may be obtained from the American National Standards Institute, 11 West 42nd Street, 13th Floor, New York, NY 10036.

Document number and name	40 CFR part 86 reference
ANSI/AGA NGV1–1994, Standard for Compressed Natural Gas Vehicle (NGV) Fueling Connection Devices.	86.001–9; 86.004–9; 86.098–8; 86.099–8; 86.099–9

10. The title of subpart A of part 86 is revised to read as follows:

Subpart A—General Provisions for Emission Regulations for 1977 and later Model Year New Light-Duty Vehicles, Light-Duty Trucks and Heavy-Duty Engines, and for 1985 and Later Model Year New Gasoline Fueled, Natural Gas-Fueled, Liquefied Petroleum Gas-Fueled and Methanol-Fueled Heavy-Duty Vehicles

11. Section 86.001–9 of subpart A is amended by adding new paragraphs (d)(1)(iii) and (d)(1)(iv), to read as follows:

§ 86.001–9 Emission standards for 2001 and later model year light-duty trucks.

* * * * *

(d) * * *

(1) * * *

(iii) *Hydrocarbons (for liquefied petroleum gas-fueled vehicles).* 0.15 gram per gallon (0.04 gram per liter) of fuel dispensed.

(iv) *Refueling receptacle (for natural gas-fueled vehicles).* Refueling receptacles on natural gas-fueled vehicles shall comply with the receptacle provisions of the ANSI/AGA NGV1–1994 standard (as incorporated by reference in § 86.1).

* * * * *

12. Section 86.001–28 of subpart A is amended by adding a new paragraph (h) to read as follows:

§ 86.001–28 Compliance with emission standards.

* * * * *

(h) *Fixed liquid level gauge waiver.* Liquefied petroleum gas-fueled vehicles which contain fixed liquid level gauges or other gauges or valves which can be opened to release fuel or fuel vapor during refueling, and which are being tested for refueling emissions, are not required to be tested with such gauges or valves open, as outlined in § 86.157–98(d)(2), provided the manufacturer can demonstrate, to the satisfaction of the Administrator, that such gauges or valves would not be opened during refueling in-use due to inaccessibility or other design features that would prevent or make it very unlikely that such gauges or valves could be opened.

13. Section 86.004–9 of subpart A is amended by adding new paragraphs

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(d)(1)(iii) and (d)(1)(iv), to read as follows:

§ 86.004–9 Emission standards for 2004 and later model year light-duty trucks.

* * * * *

(d) * * *

(1) * * *

(iii) *Hydrocarbons (for liquefied petroleum gas-fueled vehicles).* 0.15 gram per gallon (0.04 gram per liter) of fuel dispensed.

(iv) *Refueling receptacle (for natural gas-fueled vehicles).* Refueling receptacles on natural gas-fueled vehicles shall comply with the receptacle provisions of the ANSI/AGA NGV1–1994 standard (as incorporated by reference in § 86.1).

* * * * *

14a. Section 86.004–28 of subpart A is amended by adding a new paragraph (h) to read as follows:

§ 86.004–28 Compliance with emission standards.

* * * * *

(h) *Fixed liquid level gauge waiver.* Liquefied petroleum gas-fueled vehicles which contain fixed liquid level gauges or other gauges or valves which can be opened to release fuel or fuel vapor during refueling, and which are being tested for refueling emissions, are not required to be tested with such gauges or valves open, as outlined in § 86.157–98(d)(2), provided the manufacturer can demonstrate, to the satisfaction of the Administrator, that such gauges or valves would not be opened during refueling in-use due to inaccessibility or other design features that would prevent or make it very unlikely that such gauges or valves could be opened.

14b. Section 86.084–4 is amended by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 86.084–4 Section numbering; construction.

* * * * *

(b) A section reference without a model year suffix refers to the section applicable for the appropriate model year.

* * * * *

15. Section 86.091–10 of subpart A is amended by revising paragraphs (a)(1) introductory text, (a)(1)(i) introductory text, (a)(1)(i)(B)(*2*), (a)(1)(ii) introductory text, (a)(1)(ii)(B)(*2*) and (a)(3), and by adding paragraphs (a)(1)(i)(C)(*3*), (a)(1)(ii)(C)(*3*), (a)(1)(v), and (a)(1)(vi), to read as follows:

§ 86.091–10 Emission standards for 1991 and later model year Otto-cycle heavy-duty engines and vehicles.

(a)(1) Exhaust emissions from new 1991 and later model year Otto-cycle heavy-duty engines shall not exceed (compliance with these standards is optional through the 1996 model year natural gas- and liquefied petroleum gas-fueled heavy-duty engines):

(i) For Otto-cycle heavy-duty engines fueled with either gasoline or liquefied petroleum gas, and intended for use in all vehicles except as provided in paragraph (a)(3) of this paragraph.

* * * * *

(B) * * *

(*2*) *For Otto-cycle heavy-duty engines fueled with either gasoline or liquefied petroleum gas and utilizing aftertreatment technology.* 0.50 percent of exhaust gas flow at curb idle.

(C) * * *

(*3*) A manufacturer may elect to include any or all of its liquefied petroleum gas-fueled Otto-cycle heavy-duty engine families in any or all of the NO_X averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.091–15. If the manufacturer elects to include engine families in any of these programs, the NO_X FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(ii) For Otto-cycle heavy-duty engines fueled with either gasoline or liquefied petroleum gas, and intended for use only in vehicles with a Gross Vehicle Weight Rating of greater than 14,000 lbs.

* * * * *

(B) * * *

(*2*) *For Otto-cycle heavy-duty engines fueled with either gasoline or liquefied petroleum gas and utilizing aftertreatment technology.* 0.50 percent of exhaust gas flow at curb idle.

(C) * * *

(*3*) A manufacturer may elect to include any or all of its liquefied petroleum gas-fueled Otto-cycle heavy-duty engine families in any or all of the NO_X averaging, trading or banking programs for heavy-duty engines, within the restrictions described in § 86.091–15. If the manufacturer elects to include engine families in any of these programs, the NO_X FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(v) For natural gas-fueled Otto-cycle heavy-duty engines intended for use in all vehicles except as provided in paragraph (a)(3) of this section.

(A) *Nonmethane hydrocarbons.* 0.9 gram per brake horsepower-hour (0.33 gram per megajoule), as measured under transient operating conditions.

(B) *Carbon monoxide.* (*1*) 14.4 grams per brake horsepower-hour (5.36 grams per megajoule), as measured under transient operating conditions.

(*2*) *For natural gas-fueled Otto-cycle heavy-duty engines utilizing aftertreatment technology.* 0.50 percent of exhaust flow at curb idle.

(C) *Oxides of nitrogen.* (*1*) 5.0 grams per brake horsepower-hour (1.9 grams per megajoule), as measured under transient operating conditions.

(*2*) A manufacturer may elect to include any or all of its natural gas-fueled Otto-cycle heavy-duty engine families in any or all of the NO_X averaging, trading or banking programs for heavy-duty engines, within the restrictions described in § 86.091–15. If the manufacturer elects to include engine families in any of these programs, the NO_X FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(vi) For natural gas-fueled Otto-cycle engines intended for use only in vehicles with a Gross Vehicle Weight Rating of greater than 14,000 lbs.

(A) *Nonmethane hydrocarbons.* 1.7 grams per brake horsepower-hour (0.63 gram per megajoule), as measured under transient operating conditions.

(B) *Carbon monoxide.* (*1*) 37.1 grams per brake horsepower-hour (13.8 grams per megajoule), as measured under transient operating conditions.

(*2*) *For natural gas-fueled Otto-cycle heavy-duty engines utilizing aftertreatment technology.* 0.50 percent of exhaust gas flow at curb idle.

(C) *Oxides of nitrogen.* (*1*) 5.0 grams per brake horsepower-hour (1.9 grams per megajoule), as measured under transient operating conditions.

(*2*) A manufacturer may elect to include any or all of its natural gas-fueled Otto-cycle heavy-duty engine families in any or all of the NO_X averaging, trading or banking programs for heavy-duty engines, within the restrictions described in § 86.091–15. If the manufacturer elects to include engine families in any of these programs, the NO_X FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

* * * * *

(3)(i) A manufacturer may certify one or more Otto-cycle heavy-duty engine configurations intended for use in all vehicles to the emission standards set forth in paragraphs (a)(1)(ii), (a)(1)(iv) or (a)(1)(vi) of this section: *Provided*, that the total model year sales of such configuration(s), segregated by fuel type, being certified to the emission standards in paragraph (a)(1)(ii) of this section represent no more than five percent of total model year sales of each fuel type Otto-cycle heavy-duty engine intended for use in vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds by the manufacturer

(ii) The configurations certified to the emission standards of paragraphs (a)(1)(ii), (iv) and (vi) of this section under the provisions of paragraph (a)(3)(i) of this section shall still be required to meet the evaporative emission standards set forth in paragraphs (b)(1)(i), (b)(2)(i) and (b)(3)(i).of this section.

* * * * *

16. Section 86.091–28 of subpart A is amended by revising paragraphs (a)(4)(i) introductory text, (a)(4)(i)(C), (a)(4)(ii)(B), (a)(7)(i), (b)(4)(ii), (b)(4)(iii), (b)(6)(i), (c)(4)(ii), (c)(4)(iii)(A)(*1*), (c)(4)(iii)(A)(*2*), (c)(4)(iii)(B)(*1*), (c)(4)(iii)(B)(*2*) and (d)(1) to read as follows:

§ 86.091–28 Compliance with emission standards.

(a) * * *

(4) * * *

(i) Separate emission deterioration factors shall be determined from the exhaust emission results of the durability-data vehicle(s) for each engine-system combination. A separate factor shall be established, as required for compliance with applicable emission standards for exhaust HC, exhaust OMHCE, exhaust NMHC, exhaust CO, exhaust NO_X and exhaust particulate for each engine-system combination. A separate evaporative emission deterioration factor, as required for compliance with applicable emission standards, shall be determined for each evaporative emission family-evaporative emission control system combination from the testing conducted by the manufacturer.

* * * * *

(C)(*1*) An evaporative emissions deterioration factor shall be determined from the testing conducted as described in § 86.090–21(b)(4)(i), for each evaporative emission family-evaporative emission control system combination to indicate the evaporative emission level at 50,000 miles relative to the evaporative emission level at 4,000 miles as follows:

Factor = Evaporative emission level at 50,000 miles minus the evaporative emission level at 4,000 miles.

(*2*) The factor in paragraph (a)(4)(i)(C)(*1*) of this section shall be established to a minimum of two places to the right of the decimal.

(ii) * * *

(B) The official evaporative emission test results for each evaporative emission-data vehicle at the selected test point shall be adjusted by addition of the appropriate deterioration factor. *Provided*, that if a deterioration factor as computed in paragraph (a)(4)(i)(C) of this section is less than zero, that deterioration factor shall be zero for the purposes of this paragraph.

* * * * *

(7) * * *

(i) Separate deterioration factors shall be determined from the exhaust emission results of the durability-data vehicles for each engine family group. A separate factor as necessary to establish compliance with applicable emission standards shall be established for exhaust HC, exhaust OMHCE, exhaust NMHC, exhaust CO and exhaust NO_X for each engine family group. The evaporative emission deterioration factor for each evaporative family will be determined and applied in accordance with paragraph (a)(4) of this section.

* * * * *

(b) * * *

(4) * * *

(ii) Separate exhaust emission deterioration factors, determined from tests of vehicles, engines, subsystems or components conducted by the manufacturer, shall be supplied for each engine-system combination. Separate factors shall be established as required for compliance with applicable emission standards for transient HC, OMHCE, NMHC, CO, and NO_X, idle CO and exhaust particulate.

(iii) For transient HC, OMHCE, NMHC and CO, and NO_X, idle CO and/or exhaust particulate as appropriate, the official exhaust emission results for each emission-data vehicle at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

* * * * *

(6) * * *

(i) Separate deterioration factors shall be determined from the exhaust emission results of the durability-data vehicles for each engine family group. A separate factor shall be established for exhaust HC, exhaust OMHCE or exhaust NMHC as appropriate, and exhaust CO and exhaust NO_X for each engine family group. The evaporative emission deterioration factor for each evaporative family will be determined and applied in accordance with paragraph (b)(6) of this section.

* * * * *

(c) * * *

(4) * * *

(ii) Separate exhaust emission deterioration factors, determined from tests of engines, subsystems or components conducted by the manufacturer, shall be supplied for each engine-system combination. For Otto-cycle engines, separate factors shall be established for transient HC, OMHCE or NMHC as appropriate, CO and NO_X, and idle CO, for those engines utilizing aftertreatment technology (e.g., catalytic converters). For diesel engines, separate factors shall be established for transient HC, OMHCE or NMHC as appropriate, CO, NO_X and exhaust particulate. For diesel smoke testing, separate factors shall also be established for the acceleration mode (designated as "A"), the lugging mode (designated as "B"), and peak opacity (designated as "C").

(iii)(A) * * *

(*1*) *Otto-cycle heavy-duty engines not utilizing aftertreotment technology (e.g., catalytic converters).* For transient HC, OMHCE or NMHC as appropriate, CO and NO_X, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(*2*) *Otto-cycle heavy-duty engines utilizing aftertreatment technology (e.g., catalytic converters).* For transient HC, OMHCE or NMHC as appropriate, CO and NO_X, and for idle CO, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(B) * * *

(*1*) *Diesel heavy-duty engines not utilizing aftertreatment technology (e.g., particulate traps).* For transient HC, OMHCE or NMHC as appropriate, CO NO_X and exhaust particulate, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor

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supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(2) *Diesel heavy-duty engines utilizing aftertreatment technology (e.g., particulate traps).* For transient HC, OMHCE or NMHC as appropriate, CO, NO_X and exhaust particulate, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

* * * * *

(d)(1) Paragraph (d) of this section applies to heavy-duty vehicles required to comply with evaporative emission standards.

* * * * *

17 Section 86.092–1 of subpart A is amended by revising paragraph (a) to read as follows:

§ 86.092–1 General applicability.

(a) The provisions of this subpart apply to 1992 and later model year new Otto-cycle and diesel light-duty vehicles, 1992 and later model year new Otto-cycle and diesel light-duty trucks, and 1992 and later model year new Otto-cycle and diesel heavy-duty engines. The provisions of this subpart are optional for vehicles fueled with either natural gas or liquefied petroleum gas for the 1994 through 1996 model years. The provisions of this subpart also apply to aftermarket conversions of all model year Otto-cycle and diesel light-duty vehicles, Otto-cycle and diesel light-duty trucks, and Otto-cycle and diesel heavy-duty engines certified under the provisions of 40 CFR Part 85, Subpart F

* * * * *

18. Section 86.094–2 of subpart A is amended by revising the introductory paragraph and by adding the following definitions in alphabetical order, to read as follows:

§ 86.094–2 Definitions.

The definitions of § 86.093–2 remain effective. The definitions listed in this section are effective beginning with the 1994 model year

* * * * *

Gaseous fuel means natural gas or liquefied petroleum gas.

* * * * *

Liquefied petroleum gas means a liquid hydrocarbon fuel that is stored under pressure and is composed primarily of species that are gases at atmospheric conditions (temperature = 25°C and pressure = 1 atm), excluding natural gas.

Multi-fuel means capable of operating on two or more different fuel types, either separately or simultaneously.

Natural gas means a fuel whose primary constituent is methane.

Petroleum fuel means liquid fuels normally derived from crude oil, excluding liquefied petroleum gas. Gasoline and diesel fuel are petroleum fuels.

* * * * *

19. Section 86.094–3 of subpart A is amended by revising paragraph (b) to read as follows:

§ 86.094–3 Abbreviations.

* * * * *

(b) The abbreviations in this section apply to this subpart, and also to Subparts B, E, F, H, M, N and P of this part, and have the following meanings:

ALVW—Adjusted Loaded Vehicle Weight
OMNMHCE—Organic Material Non-Methane Hydrocarbon Equivalent
PM—Particulate Matter
THC—Total Hydrocarbons
LPG—Liquefied Petroleum Gas
NMHC—Nonmethane Hydrocarbons

20. Section 86.094–8 of subpart A is amended by revising paragraph (a)(1)(i) introductory text and Tables A94–2, A94–3, A94–5 and A94–6 at the end of paragraph (a)(1)(i)(A) to read as follows:

§ 86.094–8 Emission standards for 1994 and later model year light-duty vehicles.

* * * * *

(a)(1) *Standards.* (i) Exhaust emissions from 1994 and later model year vehicles (optional for 1994 through 1996 model year gaseous-fueled vehicles) shall meet all standards in Tables A94–2, A94–3, A94–5 and A94–6 in the rows designated with the applicable fuel type, according to the implementation schedule in Tables A94–1 and A94–4, as follows:

(A) * * *

* * * * *

TABLE A94–2.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR HCs, CO AND NO_X

Fuel	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_X
Gasoline	Tier 0	0.41				3.4	1.0
Gasoline	Tier 1	0.41	0.25			3.4	0.4
Diesel	Tier 0	0.41				3.4	1.0
Diesel	Tier 1	0.41	0.25			3.4	1.0
Methanol	Tier 0			0.41		3.4	1.0
Methanol	Tier 1			0.41	0.25	3.4	0.4
Natural Gas	Tier 0		0.34			3.4	1.0
Natural Gas	Tier 1		0.25			3.4	0.4
LPG	Tier 0	0.41				3.4	1.0
LPG	Tier 1	0.41	0.25			3.4	0.4

TABLE A94–3.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR HCs , CO AND NO_X

Fuel	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_X
Gasoline	Tier 0						
Gasoline	Tier 1		0.31			4.2	0.6
Diesel	Tier 0						
Diesel	Tier 1		0.31			4.2	1.25
Methanol	Tier 0						
Methanol	Tier 1				0.31	4.2	0.6
Natural Gas	Tier 0						
Natural Gas	Tier 1		0.31			4.2	0.6
LPG	Tier 0						
LPG	Tier 1		0.31			4.2	0.6

* * * * *

TABLE A94–5.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR PM

Fuel	Standards	PM
Gasoline	Tier 0	
Gasoline	Tier 1	0.08
Diesel	Tier 0	0.20
Diesel	Tier 1	0.08
Methanol	Tier 0	[1]0.20
Methanol	Tier 1	0.08
Natural Gas	Tier 0	[1]0.20
Natural Gas	Tier 1	0.08
LPG	Tier 0	[1]0.20
LPG	Tier 1	0.08

[1] Applicable only to diesel-cycle vehicles.

TABLE A94–6.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR PM

Fuel	Standards	PM
Gasoline	Tier 0	
Gasoline	Tier 1	0.10
Diesel	Tier 0	
Diesel	Tier 1	0.10
Methanol	Tier 0	
Methanol	Tier 1	0.10
Natural Gas	Tier 0	
Natural Gas	Tier 1	0.10
LPG	Tier 0	
LPG	Tier 1	0.10

* * * * *

21. Section 86.094–9 of subpart A is amended by revising Tables A94–8, A94–9, A94–11 and A94–12 at the end of paragraph (a)(1)(i)(A), Tables A94–14 and A94–15 at the end of paragraph (a)(1)(ii)(A), and paragraph (d)(1)(i)(A) and by adding paragraph (d)(1)(i)(C) to read as follows:

§ 86.094–9 Emission standards for 1994 and later model year light-duty trucks.

(a)(1) * * *

(i) * * *

(A) * * *

* * * * *

TABLE A94–8.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR HCs, CO AND NO_X

Fuel	LVW (lbs)	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_X
Gasoline	0–3750	Tier 0						
Gasoline	0–3750	Tier 1		0.25			3.4	0.4
Gasoline	3751–5750	Tier 0						
Gasoline	3751–5750	Tier 1		0.32			4.4	0.7
Diesel	0–3750	Tier 0						
Diesel	0–3750	Tier 1		0.25			3.4	1.0
Diesel	3751–5750	Tier 0						
Diesel	3751–5750	Tier 1		0.32			4.4	
Methanol	0–3750	Tier 0						
Methanol	0–3750	Tier 1				0.25	3.4	0.4
Methanol	3751–5750	Tier 0						
Methanol	3751–5750	Tier 1				0.32	4.4	0.7
Natural Gas	0–3750	Tier 0						
Natural Gas	0–3750	Tier 1		0.25			3.4	0.4
Natural Gas	3751–5750	Tier 0						
Natural Gas	3751–5750	Tier 1		0.32			4.4	0.7
LPG	0–3750	Tier 0						
LPG	0–3750	Tier 1		0.25			3.4	0.4
LPG	3751–5750	Tier 0						
LPG	3751–5750	Tier 1		0.32			4.4	0.7

TABLE A94–9.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR HCs, CO AND NO_X

Fuel	LVW (lbs)	Standards	THC[1]	NMHC	OMHCE[1]	OMNMHCE	CO	NO_X
Gasoline	0–3750	Tier 0	0.80				10	1.2
Gasoline	0–3750	Tier 1	0.80	0.31			4.2	0.6
Gasoline	3751–5750	Tier 0	0.80				10	1.7
Gasoline	3751–5750	Tier 1	0.80	0.40			5.5	0.97
Diesel	0–3750	Tier 0	0.80				10	1.2
Diesel	0–3750	Tier 1	0.80	0.31			4.2	1.25
Diesel	3751–5750	Tier 0	0.80				10	1.7
Diesel	3751–5750	Tier 1	0.80	0.40			5.5	0.97
Methanol	0–3750	Tier 0			0.80		10	1.2
Methanol	0–3750	Tier 1			0.80	0.31	4.2	0.6
Methanol	3751–5750	Tier 0			0.80		10	1.7
Methanol	3751–5750	Tier 1			0.80	0.40	5.5	0.97
Natural Gas	0–3750	Tier 0		0.67			10	1.2
Natural Gas	0–3750	Tier 1		0.31			4.2	0.6
Natural Gas	3751–5750	Tier 0		0.67			10	1.7
Natural Gas	3751–5750	Tier 1		0.40			5.5	0.97
LPG	0–3750	Tier 0	0.80				10	1.2
LPG	0–3750	Tier 1	0.80	0.31			4.2	0.6
LPG	3751–5750	Tier 0	0.80				10	1.7
LPG	3751–5750	Tier 1	0.80	0.40			5.5	0.97

Full useful life is 11 years or 120,000 miles, whichever occurs first.

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TABLE A94–11.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR PM

Fuel	LVW (lbs)	Standards	PM
Gasoline	0–3750	Tier 0	
Gasoline	0–3750	Tier 1	0.08
Gasoline	3751–5750	Tier 0	
Gasoline	3751–5750	Tier 1	0.08
Diesel	0–3750	Tier 0	
Diesel	0–3750	Tier 1	0.08
Diesel	3751–5750	Tier 0	
Diesel	3751–5750	Tier 1	0.08
Methanol	0–3750	Tier 0	
Methanol	0–3750	Tier 1	0.08
Methanol	3751–5750	Tier 0	
Methanol	3751–5750	Tier 1	0.08
Natural Gas	0–3750	Tier 0	
Natural Gas	0–3750	Tier 1	0.08
Natural Gas	3751–5750	Tier 0	
Natural Gas	3751–5750	Tier 1	0.08
LPG	0–3750	Tier 0	
LPG	0–3750	Tier 1	0.08
LPG	3751–5750	Tier 0	
LPG	3751–5750	Tier 1	0.08

TABLE A94–12.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR PM

Fuel	LVW (lbs)	Standards	PM
Gasoline	0–3750	Tier 0	
Gasoline	0–3750	Tier 1	0.10
Gasoline	3751–5750	Tier 0	
Gasoline	3751–5750	Tier 1	0.10
Diesel	0–3750	Tier 0	0.26
Diesel	0–3750	Tier 1	0.10
Diesel	3751–5750	Tier 0	0.13
Diesel	3751–5750	Tier 1	0.10
Methanol	0–3750	Tier 0	[1] 0.26
Methanol	0–3750	Tier 1	0.10
Methanol	3751–5750	Tier 0	[1] 0.13
Methanol	3751–5750	Tier 1	0.10
Natural Gas	0–3750	Tier 0	[1] 0.26
Natural Gas	0–3750	Tier 1	0.10
Natural Gas	3751–5750	Tier 0	[1] 0.13
Natural Gas	3751–5750	Tier 1	0.10
LPG	0–3750	Tier 0	[1] 0.26
LPG	0–3750	Tier 1	0.10
LPG	3751–5750	Tier 0	[1] 0.13
LPG	3751–5750	Tier 1	0.10

[1] Applicable only to diesel-cycle vehicles.

. . . . . (A) * * *
(ii) * * * . . . . .

TABLE A94–14.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS FOR HCS, CO, NO_X and PM

Fuel	ALVW (lbs)	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_X	PM
Gasoline	3751–5750	Tier 0							
Gasoline	3751–5750	Tier 1		0.32			4.4	0.7	
Gasoline	> 5750	Tier 0							
Gasoline	> 5750	Tier 1		0.39			5.0	1.1	
Diesel	3751–5750	Tier 0							
Diesel	3751–5750	Tier 1		0.32			4.4		
Diesel	> 5750	Tier 0							
Diesel	> 5750	Tier 1		0.39			5.0		
Methanol	3751–5750	Tier 0							
Methanol	3751–5750	Tier 1					0.32	4.4	0.7
Methanol	> 5750	Tier 0							
Methanol	> 5750	Tier 1					0.39	5.0	1.1
Natural Gas	3751–5750	Tier 0							

TABLE A94–14.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS FOR HCS, CO, NO_X and PM—Continued

Fuel	ALVW (lbs)	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_X	PM
Natural Gas	3751–5750	Tier 1		0.32			4.4	0.7	
Natural Gas	> 5750	Tier 0							
Natural Gas	> 5750	Tier 1		0.39			5.0	1.1	
LPG	3751–5750	Tier 0							
LPG	3751–5750	Tier 1		0.32			4.4	0.7	
LPG	> 5750	Tier 0							
LPG	> 5750	Tier 1		0.39			5.0	1.1	

TABLE A94–15.—FULL USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS FOR HCS, CO, NO_X AND PM

Fuel	LVW (lbs)	ALVW (lbs)	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_X	PM
Gasoline	0–3750		Tier 0	0.80				10	1.2	
Gasoline	>3750		Tier 0	0.80				10	1.7	
Gasoline		3751–5750	Tier 1	0.80	0.46			6.4	0.98	0.10
Gasoline		>5750	Tier 1	0.80	0.56			7.3	1.53	0.12
Diesel	0–3750		Tier 0	0.80				10	1.20	0.26
Diesel	>3750		Tier 0	0.80				10	1.7	0.13
Diesel		3751–5750	Tier 1	0.80	0.46			6.4	0.98	0.10
Diesel		>5750	Tier 1	0.80	0.56			7.3	1.53	0.12
Methanol	0–3750		Tier 0			0.80		10	1.2	[1] 0.26
Methanol	>3750		Tier 0			0.80		10	1.7	[1] 0.13
Methanol		3751–5750	Tier 1			0.80	0.46	6.4	0.98	0.10
Methanol		>5750	Tier 1			0.80	0.56	7.3	1.53	0.12
Natural Gas	0–3750		Tier 0		0.67			10	1.2	[1] 0.26
Natural Gas	>3750		Tier 0		0.67			10	1.7	[1] 0.13
Natural Gas		3751–5750	Tier 1		0.46			6.4	0.98	0.10
Natural Gas		>5750	Tier 1		0.56			7.3	1.53	0.12
LPG	0–3750		Tier 0	0.80				10	1.2	[1] 0.26
LPG	>3750		Tier 0	0.80				10	1.7	[1] 0.13
LPG		3751–5750	Tier 1	0.80	0.46			6.4	0.98	0.10
LPG		>5750	Tier 1	0.80	0.56			7.3	1.53	0.12

[1] Applicable only to diesel-cycle vehicles.

. . . . . .
(d) * * *
(1) * * *

(i)(A) *Hydrocarbons (for Otto-cycle and diesel light-duty trucks when fueled with petroleum fuel and/or liquefied petroleum gas).* 1.0 grams per vehicle mile (0.62 grams per vehicle kilometer).

. . . . . .

(C) *Nonmethane hydrocarbons (for Otto-cycle and diesel light-duty trucks when fueled with natural gas).* 0.83 gram per vehicle mile (0.52 gram per vehicle kilometer).

. . . . . .

22. Section 86.094–11 of subpart A is amended by revising the section heading, by revising paragraphs (a)(1) introductory text, (a)(1)(i)(A), (a)(1)(ii)(B) and (c), and adding a new paragraph (a)(1)(i)(C) to read as follows:

§ 86.094–11 Emission standards for 1994 and later model year diesel heavy-duty engines and vehicles.

(a)(1) Exhaust emissions from new 1994 and later model year diesel heavy-duty engines shall not exceed the following (optional for 1994 through 1996 model year new natural gas- and liquefied petroleum gas-fueled heavy-duty engines):

(i)(A) *Hydrocarbons (for diesel engines fueled with either petroleum-fuel or liquefied petroleum gas).* 1.3 grams per brake horsepower-hour (0.48 gram per megajoule), as measured under transient operating conditions.

. . . . . .

(C) *Nonmethane hydrocarbons (for natural gas-fueled diesel engines).* 1.2 grams per brake horsepower-hour (0.45 gram per megajoule), as measured under transient operating conditions.

(ii) * * *

(B) 0.50 percent of exhaust gas flow at curb idle (methanol-, natural gas- and liquefied petroleum gas-fueled diesel only).

. . . . . .

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1994 or later model year methanol-fueled diesel, or any naturally-aspirated diesel heavy-duty engine (optional for 1994 through 1996 model year natural gas- and liquefied petroleum gas-fueled engines). For petroleum-, natural gas- and liquefied petroleum gas-fueled engines only; this provision does not apply to engines using turbochargers, pumps, blowers, or superchargers for air induction.

. . . . . .

23. Section 86.094–17 of subpart A is amended by revising paragraph (a) introductory text to read as follows:

§ 86.094–17 Emission control diagnostic system for 1994 and later light-duty vehicles and light-duty trucks.

(a) All light-duty vehicles and light-duty trucks shall be equipped with an emission control diagnostic system capable of identifying, for each vehicle's useful life, the following types of deterioration or malfunction which could cause emission increases greater than or exceeding the following threshold levels as measured and calculated in accordance with test procedures set forth in subpart B of this part. Paragraphs (a)(2) and (a)(3) of this section do not apply to diesel cycle light-duty vehicles or light-duty trucks. Paragraphs (a)(1) through (a)(4) of this section do not apply to natural gas-fueled light-duty vehicles and light-duty trucks until the 1998 model year.

. . . . . .

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24. Section 86.094–23 of subpart A is amended by revising paragraphs (b)(3), (b)(4), (c)(1) and (c)(2)(i), to read as follows:

§ 86.094–23 Required data.

* * * * *

(b) * * *

(3) For heavy-duty vehicles equipped with gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled or methanol-fueled engines, evaporative emission deterioration factors for each evaporative emission family-evaporative emission control system combination identified in accordance with § 86.091–21(b)(4)(ii). Furthermore, a statement that the test procedure(s) used to derive the deterioration factors includes, but need not be limited to, a consideration of the ambient effects of ozone and temperature fluctuations and the service accumulation effects of vibration, time, vapor saturation and purge cycling. The deterioration factor test procedure shall be designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.091–30 will meet the evaporative emission standards in § 86.091–10 and § 86.091–11 in actual use for the useful life of the engine. Furthermore, a statement that a description of the test procedure, as well as all data, analyses and evaluations, is available to the Administrator upon request.

(4)(i) For heavy-duty vehicles with a Gross Vehicle Weight Rating of up to 26,000 pounds and equipped with gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled or methanol-fueled engines, a written statement to the Administrator certifying that the manufacturer's vehicles meet the standards of § 86.091–10 or § 86.091–11 (as applicable) as determined by the provisions of § 86.091–28. Furthermore, a written statement to the Administrator that all data, analyses, test procedures, evaluations and other documents, on which the above statement is based, are available to the Administrator upon request.

(ii) For heavy-duty vehicles with a Gross Vehicle Weight Rating of greater than 26,000 pounds and equipped with gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled or methanol-fueled engines, a written statement to the Administrator certifying that the manufacturer's evaporative emission control systems are designed, using good engineering practice, to meet the standards of § 86.091–10 or § 86.091–11 (as applicable) as determined by the provisions of § 86.091–28. Furthermore, a written statement to the Administrator that all data, analyses, test procedures, evaluations and other documents, on which the above statement is based, are available to the Administrator upon request.

(c) * * *

(1) Emission data, including in the case of methanol fuel, methanol, formaldehyde and organic material hydrocarbon equivalent, exhaust methane data in the case of vehicles meeting a non-methane hydrocarbon standard on such vehicles tested in accordance with applicable test procedures and in such numbers as specified. These data shall include zero-mile data, if generated, and emission data generated for certification as required under § 86.090–26(a)(3)(i) or § 86.090–26(a)(3)(ii). In lieu of providing emission data the Administrator may, on request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests or other information) that the engine will conform with certain applicable emission standards of § 86.094–8 or § 86.094–9. Standards eligible for such manufacturer requests are those for idle CO emissions, smoke emissions, or particulate emissions from methanol-fueled, natural gas-fueled and liquefied petroleum gas-fueled diesel-cycle certification vehicles, on evaporative emissions or refueling emissions from natural gas-fueled or liquefied petroleum gas-fueled vehicles (light-duty and heavy-duty), and those for particulate emissions from model year 1994 and later gasoline-fueled, methanol-fueled, natural gas-fueled or liquefied petroleum gas-fueled Otto-cycle certification vehicles that are not certified to the Tier 0 standards of § 86.094–9 (a)(1)(i), (a)(1)(ii), or § 86.094–8(a)(1)(i). Also eligible for such requests are standards for total hydrocarbon emissions from model year 1994 and later certification vehicles that are not certified to the Tier 0 standards of § 86.094–9 (a)(1)(i), (a)(1)(ii) or § 86.094–8(a)(1)(i). By separate request, including appropriate supporting test data, the manufacturer may request that the Administrator also waive the requirement to measure particulate emissions when conducting Selective Enforcement Audit testing of Otto-cycle vehicles, or the requirement to measure evaporative emissions when conducting Selective Enforcement Audit testing of natural gas or liquefied petroleum gas-fueled vehicles.

(2) * * *

(i) Emission data on such engines tested in accordance with applicable emission test procedures of this subpart and in such numbers as specified. These data shall include zero-hour data, if generated, and emission data generated for certification as required under § 86.090–26(c)(4). In lieu of providing emission data on idle CO emissions, smoke emissions or particulate emissions from methanol-fueled, natural gas-fueled or liquefied petroleum gas-fueled diesel certification engines, or on CO emissions from petroleum-fueled, natural gas-fueled, liquefied petroleum gas-fueled, or methanol-fueled diesel certification engines the Administrator may, on request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests or other information) that the engine will conform with the applicable emission standards of § 86.091–11, or § 86.094–11.

* * * * *

25. Section 86.094–24 of subpart A is amended by revising paragraphs (a)(5), (a)(6) introductory text, (a)(12), (a)(13) introductory text, (a)(14) introductory text and (a)(15), by removing "; and" from the end of paragraph (a)(13)(i) and adding a period in its place, and by adding paragraphs (a)(6)(iv) and (a)(13)(iii), to read as follows:

§ 86.094–24 Test vehicles and engines.

(a) * * *

(5) Light-duty vehicles and light-duty trucks covered by an application for certification will be divided into groupings (e.g., by fuel type) which are expected to have similar evaporative emission characteristics throughout their useful life. Each group of vehicles with similar evaporative emission characteristics shall be defined as a separate evaporative emission family.

(6) For light-duty vehicles and light-duty trucks to be classed in the same evaporative emission family, vehicles must be similar with respect to:

* * * * *

(iv) Fuel type.

* * * * *

(12) Vehicles powered by heavy-duty engines covered by an application for certification and using fuels for which there is an applicable evaporative emission standard will be divided into groupings of vehicles on the basis of physical features, including fuel type, which are expected to affect evaporative emissions. Each group of vehicles with similar features shall be defined as a separate evaporative emission family.

(13) For vehicles equipped with heavy-duty engines using fuels for which there are applicable evaporative emission standards to be classed in the same evaporative emission family, vehicles must be identical with respect to:

* * * * *

(iii) Fuel type.

(14) For vehicles equipped with heavy-duty engines using fuels for which there are applicable evaporative emission standards to be classed in the same evaporative emission control system family, vehicles must be identical with respect to:

* * * * *

(15) Where vehicles equipped with heavy-duty engines using fuels for which there are applicable evaporative emission standards and which cannot be divided into evaporative emission family-control system combinations based on the criteria listed above, the Administrator will establish evaporative emission family-control system combinations for those vehicles based on features most related to their evaporative emission characteristics.

* * * * *

26. Section 86.095–35 of subpart A is amended by revising paragraphs (a)(4) heading, (a)(4)(i), (a)(4)(iii)(D), (a)(4)(iii)(E), (c)(1)(ii)(A), (c)(1)(ii)(B)(*1*), and (g)(1), to read as follows:

§ 86.095–35 Labeling.

* * * * *

(a) * * *

(4) *Heavy-duty vehicles employing a fuel or fuels covered by evaporative emission standards.* (i) A permanent, legible label shall be affixed in a readily visible position in the engine compartment. If such vehicles do not have an engine compartment, the label required in paragraphs (a)(4) and (g)(1) of this section shall be affixed in a readily available position on the operator's enclosure or on the engine.

* * * * *

(iii) * * *

(D) The maximum nominal fuel tank capacity (in gallons) for which the evaporative control system is certified (this requirement does not apply to vehicles whose evaporative control system efficiency is not dependent on fuel tank capacity); and

(E) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to XXX-fueled heavy-duty vehicles.

* * * * *

(c)(1) * * *

(ii)(A) *For light-duty vehicles,* the statement: "This Vehicle Conforms to U.S. EPA Regulations Applicable to XXX-Fueled 19XX Model Year New Motor Vehicles."

(B) * * *

(*1*) the statement: "This vehicle conforms to U.S. EPA regulations applicable to XXX-Fueled 19XX Model Year New Light-Duty Trucks."

* * * * *

(g) * * *

(1) Incomplete heavy-duty vehicles employing a fuel or fuels which are nominally liquid at normal atmospheric pressure and temperature for which evaporative emission standards exist shall have the following prominent statement printed on the label required in paragraph (a)(4) of this section: "(Manufacturer's corporate name) has determined that this vehicle conforms to U.S. EPA regulations applicable to 19XX Model Year New XXX-Fueled Heavy-Duty Vehicles when completed with a nominal fuel tank capacity not to exceed XXX gallons. Persons wishing to add fuel tank capacity beyond the above maximum must submit a written statement to the Administrator that the hydrocarbon storage system has been upgraded according to the requirements of 40 CFR 86.095–35(g)(2)."

* * * * *

27. Section 86.096–8 of subpart A is amended by revising paragraph (a)(1)(i) including Tables A96–1 and A96–2, and paragraph (b)(1), to read as follows:

§ 86.096–8 Emission standards for 1996 and later model year light-duty vehicles.

(a)(1) * * *

(i) Exhaust emissions from 1996 and later model year light-duty vehicles (optional for 1996 model year natural gas-fueled and liquefied petroleum gas-fueled light-duty vehicles) shall meet all standards in Tables A96–1 and A96–2 in the rows designated with the applicable fuel type. Light-duty vehicles shall not exceed the applicable standards in Table A96–1 and shall not exceed the applicable standards in Table A96–2.

TABLE A96–1.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) for Light-Duty Vehicles

Fuel	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x	PM
Gasoline	0.41	0.25	.....	.....	3.4	0.4	0.08
Diesel	0.41	0.25	.....	.....	3.4	1.0	0.08
Methanol	.....	.....	0.41	0.25	3.4	0.4	0.08
Natural Gas	.....	0.25	.....	.....	3.4	0.4	0.08
LPG	0.41	0.25	.....	.....	3.4	0.4	0.08

TABLE A96–2.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES

Fuel	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x	PM
Gasoline	.....	0.31	.....	.....	4.2	0.6	0.10
Diesel	.....	0.31	.....	.....	4.2	1.25	0.10
Methanol	.....	.....	.....	0.31	4.2	0.6	0.10
Natural Gas	.....	0.31	.....	.....	4.2	0.6	0.10
LPG	.....	0.31	.....	.....	4.2	0.6	0.10

* * * * *

(b) * * *

(1) *Hydrocarbons (for gasoline-fueled, natural gas-fueled and liquefied petroleum gas-fueled vehicles).* (i)(A) For the full three-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 2.0 grams per test.

(B) For the supplemental two-diurnal test sequence described in § 86.130–96, diurnal plus hot soak emissions (gasoline-fueled vehicles only): 2.5 grams per test.

(ii) *Running loss test (gasoline-fueled vehicles only):* 0.05 grams per mile.

(iii) *Fuel dispensing spitback test (gasoline-fueled vehicles only):* 1.0 grams per test.

* * * * *

28. Section 86.096–9 of subpart A is amended by revising paragraphs (b)(1)

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heading, (b)(1)(i)(A) introductory text, (b)(1)(i)(B)(*2*), (b)(1)(ii) and (b)(1)(iii), to read as follows:

§ 86.096–9 Emission standards for 1996 and later model year light-duty trucks.

* * * * *

(b) * * *

(1) *Hydrocarbons (for gasoline-fueled, natural gas-fueled and liquefied petroleum gas-fueled vehicles).* (i)(A) For gasoline-fueled heavy light-duty trucks with a nominal fuel tank capacity of at least 30 gallons:

* * * * *

(B) * * *

(*2*) For the supplemental two-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements (gasoline-fueled vehicles only): 2.5 grams per test.

(ii) *Running loss test (gasoline-fueled vehicles only):* 0.05 grams per mile.

(iii) *Fuel dispensing spitback test (gasoline-fueled vehicles only):* 1.0 grams per test.

* * * * *

29. Section 86.096–10 of subpart A is amended by revising paragraphs (b)(1) heading, (b)(1)(i)(A)(*2*), (b)(1)(i)(B), (b)(1)(i)(C), (b)(1)(ii)(A)(*2*) and (b)(1)(ii)(B), to read as follows:

§ 86.096–10 Emission standards for 1996 and later model year Otto-cycle heavy-duty engines and vehicles.

* * * * *

(b) * * *

(1) *Hydrocarbons (for vehicles equipped with gasoline-fueled, natural gas-fueled or liquefied petroleum gas-fueled engines).*

(i) * * *

(A) * * *

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements (gasoline-fueled vehicles only): 3.5 grams per test.

(B) Running loss test (gasoline-fueled vehicles only): 0.05 grams per mile.

(C) Fuel dispensing spitback test (gasoline-fueled vehicles only): 1.0 gram per test.

(ii) * * *

(A) * * *

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements (gasoline-fueled vehicles only): 4.5 grams per test.

(B) Running loss test (gasoline-fueled vehicles only): 0.05 grams per mile.

* * * * *

30. Section 86.096–11 of subpart A is amended by revising the section heading, by revising paragraphs (a)(1)(i), (a)(2)(ii) and (c), redesignating paragraph (b)(4) as paragraph (b)(5) and revising it, and adding new paragraphs (a)(1)(iii) and (b)(4), to read as follows:

§ 86.096–11 Emission standards for 1996 and later model year diesel heavy-duty engines and vehicles.

(a) * * *

(1)(i) *Hydrocarbons (for diesel engines fueled with either petroleum-fuel or liquefied petroleum gas).* 1.3 grams per brake horsepower-hour (0.48 gram per megajoule), as measured under transient operating conditions.

* * * * *

(iii) *Nonmethane hydrocarbons (for natural gas-fueled diesel engines).* 1.2 grams per brake horsepower-hour (0.45 gram per megajoule), as measured under transient operating conditions.

(2) * * *

(ii) 0.50 percent of exhaust gas flow at curb idle (methanol-, natural gas-, and liquefied petroleum gas-fueled diesel only).

* * * * *

(b) * * *

(4) *Evaporative emissions* from 1996 and later model year heavy-duty vehicles equipped with natural gas-fueled or liquefied petroleum gas-fueled heavy-duty engines shall not exceed the following standards. The standards apply equally to certification and in-use vehicles.

(i) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds for the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 3.0 grams per test.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 pounds for the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 4.0 grams per test.

(5)(i) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 pounds, the standards set forth in paragraphs (b)(3) and (b)(4) of this section refer to a composite sample of evaporative emissions collected under the conditions set forth in subpart M of this part and measured in accordance with those procedures.

(ii) For vehicles with a Gross Vehicle Weight Rating greater than 26,000 pounds, the standards set forth in paragraphs (b)(3)(ii) and (b)(4)(ii) of this section refer to the manufacturer's engineering design evaluation using good engineering practice (a statement of which is required in § 86.091–23(b)(4)(ii)).

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1996 or later model year methanol-fueled diesel, or any naturally-aspirated diesel heavy-duty engine. For petroleum-, natural gas-, and liquefied petroleum gas-fueled engines only, this provision does not apply to engines using turbochargers, pumps, blowers, or superchargers for air induction.

* * * * *

31. Section 86.097–9 of subpart A is amended by revising Tables A97–1 and A97–2 in paragraph (a)(1)(i)(A), and Tables A97–3 and A97–4 in paragraph (a)(1)(ii)(A), to read as follows:

§ 86.097–9 Emission standards for 1997 and later model year light-duty trucks.

(a)(1) * * *

(i) * * *

(A) * * *

TABLE A97–1.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS

Fuel	LVW (lbs)	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x	PM
Gasoline	0–3750	.....	0.25	.....	.....	3.4	0.4	0.08
Gasoline	3751–5750	.....	0.32	.....	.....	4.4	0.7	0.08
Diesel	0–3750	.....	0.25	.....	.....	3.4	1.0	0.08
Diesel	3751–5750	.....	0.32	.....	.....	4.4	.....	0.08
Methanol	0–3750	.....	.....	.....	0.25	3.4	0.4	0.08
Methanol	3751–5750	.....	.....	.....	0.32	4.4	0.7	0.08
Natural Gas	0–3750	.....	0.25	.....	.....	3.4	0.4	0.08
Natural Gas	3751–5750	.....	0.32	.....	.....	4.4	0.7	0.08
LPG	0–3750	.....	0.25	.....	.....	3.4	0.4	0.08
LPG	3751–5750	.....	0.32	.....	.....	4.4	0.7	0.08

TABLE A97–2.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS

Fuel	LVW (lbs)	THC [1]	NMHC	OMHCE [1]	OMNMHCE	CO	NO_x	PM
Gasoline	0–3750	0.80	0.31	.....	.....	4.2	0.6	0.10
Gasoline	3751–5750	0.80	0.40	.....	.....	5.5	0.97	0.10
Diesel	0–3750	0.80	0.31	.....	.....	4.2	1.25	0.10
Diesel	3751–5750	0.80	0.40	.....	.....	5.5	0.97	0.10
Methanol	0–3750	.....	.....	0.80	0.31	4.2	0.6	0.10
Methanol	3751–5750	.....	.....	0.80	0.40	5.5	0.97	0.10
Natural Gas	0–3750	.....	0.31	.....	.....	4.2	0.6	0 10
Natural Gas	3751–5750	.....	0.40	.....	.....	5.5	0.97	0.10
LPG	0–3750	0.80	0.31	.....	.....	4.2	0.6	0.10
LPG	3751–5750	0.80	0.40	.....	.....	5.5	0.97	0.10

[1] Full useful life is 11 years or 120,000 miles, whichever occurs first.

* * * * *

(ii) * * *

(A) * * *

TABLE A97–3.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS

Fuel	ALVW (lbs)	THC *	NMHC	OMHCE	OMNMHCE	CO	NO_x	PM
Gasoline	3751–5750	.....	0.32	.....	.....	4.4	0.7	.....
Gasoline	>5750	.....	0.39	.....	.....	5.0	1.1	.....
Diesel	3751–5750	.....	0.32	.....	.....	4.4	.....	.....
Diesel	>5750	.....	0.39	.....	.....	5.0	.....	.....
Methanol	3751–5750	.....	.....	.....	0.32	4.4	0.7	.....
Methanol	>5750	.....	.....	.....	0.39	5.0	1.1	.....
Natural Gas	3751–5750	.....	0.32	.....	.....	4.4	0.7	.....
Natural Gas	>5750	.....	0.39	.....	.....	5.0	1.1	.....
LPG	3751–5750	.....	0.32	.....	.....	4.4	0.7	.....
LPG	>5750	.....	0.39	.....	.....	5.0	1.1	.....

TABLE A97–4.—FULL USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS

Fuel	ALVW (lbs)	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x	PM
Gasoline	3751–5750	0.80	0.46	.....	.....	6.4	0.98	0.10
Gasoline	>5750	0.80	0.56	.....	.....	7.3	1.53	0.12
Diesel	3751–5750	0.80	0.46	.....	.....	6.4	0.98	0.10
Diesel	>5750	0.80	0.56	.....	.....	7.3	1.53	0.12
Methanol	3751–5750	.....	.....	0.80	0.46	6.4	0.98	0.10
Methanol	>5750	.....	.....	0.80	0.56	7.3	1.53	0.12
Natural Gas	3751–5750	.....	0.46	.....	.....	6.4	0.98	0.10
Natural Gas	>5750	.....	0.56	.....	.....	7.3	1.53	0.12
LPG	3751–5750	0.80	0.46	.....	.....	6.4	0.98	0.10
LPG	>5750	0.80	0.56	.....	.....	7.3	1.53	0.12

* * * * *

32. Section 86.098–2 of subpart A is amended by adding the definition for "Fixed liquid level gauge" in alphabetical order, to read as follows:

§ 86.098–2 Definitions.

* * * * *

Fixed liquid level gauge means a type of liquid level gauge used on liquefied petroleum gas-fueled vehicles which uses a relatively small positive shutoff valve and is designed to indicate when the liquid level in the fuel tank being filled reaches the proper fill level. The venting of fuel vapor and/or liquid fuel to the atmosphere during the refueling event is generally associated with the use of the fixed liquid level gauge.

* * * * *

33. Section 86.098–8 of subpart A is amended by adding new paragraphs (d)(1)(iii) and (d)(1)(iv), to read as follows:

§ 86.098–8 Emission standards for 1998 and later model year light-duty vehicles.

* * * * *

(d) * * *

(1) * * *

(iii) *Hydrocarbons (for liquefied petroleum gas-fueled vehicles).* 0.15 gram per gallon (0.04 gram per liter) of fuel dispensed.

(iv) *Refueling receptacle (for natural gas-fueled vehicles).* Refueling receptacles on natural gas-fueled vehicles shall comply with the receptacle provisions of the ANSI/AGA NGV1 standard-1994 (as incorporated by reference in § 86.1).

* * * * *

34. Section 86.098–10 of subpart A is amended by revising paragraphs (a)(1)(i) introductory text, (a)(1)(i)(B)(*2*), (a)(1)(ii) introductory text, (a)(1)(ii)(B)(*2*), (a)(3)(i) and (a)(3)(ii), and by adding new paragraphs (a)(1)(i)(C)(*3*), (a)(1)(ii)(C)(*3*), (a)(1)(v) and (a)(1)(vi), to read as follows:

§ 86.098–10 Emission standards for 1998 and later model year Otto-cycle heavy-duty engines and vehicles.

* * * * *

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(a)(1) * * *

(i) *For Otto-cycle heavy-duty engines fueled with either gasoline or liquefied petroleum gas,* and intended for use in all vehicles except as provided in paragraph (a)(3) of this paragraph.

* * * * *

(B) * * *

(*2*) *For Otto-cycle heavy-duty engines fueled with either gasoline or liquefied petroleum gas and utilizing aftertreatment technology:* 0.50 percent of exhaust gas flow at curb idle.

(C) * * *

(*3*) A manufacturer may elect to include any or all of its liquified petroleum gas-fueled Otto-cycle heavy-duty engine families in any or all of the NO_x averaging, trading or banking programs for heavy-duty engines, within the restrictions described in § 86.094–15. If the manufacturer elects to include engine families in any of these programs, the NO_x FELs may not exceed 5.0 grams per brake horsepower-hour (1.9 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(ii) *For Otto-cycle heavy-duty engines fueled with either gasoline or liquefied petroleum gas,* and intended for use only in vehicles with a Gross Vehicle Weight Rating of greater than 14,000 pounds.

* * * * *

(B) * * *

(*2*) *For Otto-cycle heavy-duty engines fueled with either gasoline or liquefied petroleum gas and utilizing aftertreatment technology:* 0.50 percent of exhaust gas flow at curb idle.

(C) * * *

(*3*) A manufacturer may elect to include any or all of its liquified petroleum gas-fueled Otto-cycle heavy-duty engine families in any or all of the NO_x averaging, trading or banking programs for heavy-duty engines, within the restrictions described in § 86.094–15. If the manufacturer elects to include engine families in any of these programs, the NO_x FELs may not exceed 5.0 grams per brake horsepower-hour (1.9 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

* * * * *

(v) *For natural gas-fueled Otto-cycle heavy-duty engines* intended for use in all vehicles except as provided in paragraph (a)(3) of this section.

(A) *Nonmethane hydrocarbons.* 0.9 gram per brake horsepower-hour (0.33 gram per megajoule), as measured under transient operating conditions.

(B) *Carbon monoxide.* (*1*) 14.4 grams per brake horsepower-hour (5.36 grams per megajoule), as measured under transient operating conditions.

(*2*) *For natural gas-fueled Otto-cycle heavy-duty engines utilizing aftertreatment technology.* 0.50 percent of exhaust flow at curb idle.

(C) *Oxides of nitrogen.* (*1*) 5.0 grams per brake horsepower-hour (1.9 grams per megajoule), as measured under transient operating conditions.

(*2*) A manufacturer may elect to include any or all of its natural gas-fueled Otto-cycle heavy-duty engine families in any or all of the NO_x averaging, trading or banking programs for heavy-duty engines, within the restrictions described in § 86.094–15. If the manufacturer elects to include engine families in any of these programs, the NO_x FELs may not exceed 5.0 grams per brake horsepower-hour (1.9 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(vi) For *natural gas-fueled Otto-cycle engines* intended for use only in vehicles with a Gross Vehicle Weight Rating of greater than 14,000 pounds.

(A) *Nonmethane hydrocarbons.* 1.7 grams per brake horsepower-hour (0.63 gram per megajoule), as measured under transient operating conditions.

(B) *Carbon monoxide.* (*1*) 37.1 grams per brake horsepower-hour (13.8 grams per megajoule), as measured under transient operating conditions.

(*2*) *For natural gas-fueled Otto-cycle heavy-duty engines utilizing aftertreatment technology.* 0.50 percent of exhaust gas flow at curb idle.

(C) *Oxides of nitrogen.* (*1*) 5.0 grams per brake horsepower-hour (1.9 grams per megajoule), as measured under transient operating conditions.

(*2*) A manufacturer may elect to include any or all of its natural gas-fueled Otto-cycle heavy-duty engine families in any or all of the NO_x averaging, trading or banking programs for heavy-duty engines, within the restrictions described in § 86.094–15. If the manufacturer elects to include engine families in any of these programs, the NO_x FELs may not exceed 5.0 grams per brake horsepower-hour (1.9 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

* * * * *

(3)(i) A manufacturer may certify one or more Otto-cycle heavy-duty engine configurations intended for use in all vehicles to the emission standards set forth in paragraphs (a)(1)(ii), (a)(1)(iv) or (a)(1)(vi) of this paragraph: *Provided,* that the total model year sales of such configuration(s), segregated by fuel type, being certified to the emission standards in paragraph (a)(1)(ii) of this section represent no more than five percent of total model year sales of each fuel type Otto-cycle heavy-duty engine intended for use in vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds by the manufacturer.

(ii) The configurations certified to the emission standards of paragraphs (a)(1)(ii) and (vi) of this section under the provisions of paragraph (a)(3)(i) of this section shall still be required to meet the evaporative emission standards set forth in paragraphs § 86.096–10(b)(1)(i), (b)(2)(i) and (b)(3)(i).

* * * * *

35. Section 86.098–11 of subpart A is amended by revising the section heading, by revising paragraphs (a)(1)(i), (a)(2)(ii) and (c), and adding new paragraphs (a)(1)(iii) and (b)(4), to read as follows:

§ 86.098–11 Emission standards for 1998 and later model year diesel heavy-duty engines and vehicles.

(a) * * *

(1)(i) *Hydrocarbons (for diesel engines fueled with either petroleum-fuel or liquefied petroleum gas).* 1.3 grams per brake horsepower-hour (0.48 gram per megajoule), as measured under transient operating conditions.

* * * * *

(iii) *Nonmethane hydrocarbons (for natural gas-fueled diesel engines).* 1.2 grams per brake horsepower-hour (0.45 gram per megajoule), as measured under transient operating conditions.

(2) * * *

(ii) 0.50 percent of exhaust gas flow at curb idle (methanol-, natural gas-, and liquefied petroleum gas-fueled diesel only).

* * * * *

(b) * * *

(4) *Evaporative emissions* from 1998 and later model year heavy-duty vehicles equipped with natural gas-fueled or liquefied petroleum gas-fueled heavy-duty engines shall not exceed the following standards. The standards apply equally to certification and in-use vehicles.

(i) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds for the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 3.0 grams per test.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 pounds for the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 4.0 grams per test.

(iii)(A) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 pounds, the standards set forth in paragraph (b)(4) of this section refer to a composite sample of evaporative emissions collected under the conditions set forth in subpart M of this part and measured in accordance with those procedures.

(B) For vehicles with a Gross Vehicle Weight Rating greater than 26,000 lbs, the standards set forth in paragraphs (b)(3)(ii) and (b)(4)(ii) of this section refer to the manufacturer's engineering design evaluation using good engineering practice (a statement of which is required in § 86.091–23(b)(4)(ii)).

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1998 or later model year methanol-, natural gas-, or liquefied petroleum gas-fueled diesel, or any naturally-aspirated diesel heavy-duty engine. For petroleum-fueled engines only, this provision does not apply to engines using turbochargers, pumps, blowers, or superchargers for air induction.

* * * * *

36. Section 86.098–28 of subpart A is amended by adding a new paragraph (h) to read as follows:

§ 86.098–28 Compliance with emission standards.

* * * * *

(h) *Fixed liquid level gauge waiver.* Liquefied petroleum gas-fueled vehicles which contain fixed liquid level gauges or other gauges or valves which can be opened to release fuel or fuel vapor during refueling, and which are being tested for refueling emissions, are not required to be tested with such gauges or valves open, as outlined in § 86.157–98(d)(2), provided the manufacturer can demonstrate, to the satisfaction of the Administrator, that such gauges or valves would not be opened during refueling in-use due to inaccessibility or other design features that would prevent or make it very unlikely that such gauges or valves could be opened.

37. Section 86.099–8 of subpart A is amended by revising paragraph (b)(1), and adding new paragraphs (d)(1)(iii) and (d)(1)(iv), to read as follows:

§ 86.099–8 Emission standards for 1999 and later model year light-duty vehicles.

* * * * *

(b) * * *

(1) *Hydrocarbons (for gasoline-fueled, natural gas-fueled, and liquefied petroleum gas-fueled vehicles).* (i)(A) For the full three-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 2.0 grams per test.

(B) *For the supplemental two-diurnal test sequence described in § 66.130–96, diurnal plus hot soak emissions (gasoline-fueled vehicles only): 2.5 grams per test.*

(ii) *Running loss test (gasoline-fueled vehicles only):* 0.05 grams per mile.

(iii) *Fuel dispensing spitback test (gasoline-fueled vehicles only):* 1.0 grams per test.

* * * * *

(d) * * *

(1) * * *

(iii) *Hydrocarbons (for liquefied petroleum gas-fueled vehicles).* 0.15 gram per gallon (0.04 gram per liter) of fuel dispensed.

(iv) *Refueling receptacle (for natural gas-fueled vehicles).* Refueling receptacles on natural gas-fueled vehicles shall comply with the receptacle provisions of the ANSI/AGA NGV1–1994 standard (as incorporated by reference in § 86.1).

* * * * *

38. Section 86.099–9 of subpart A is amended by revising paragraphs (b)(1) heading, (b)(1)(i)(A) introductory text, (b)(1)(i)(B)(*2*), (b)(1)(ii) and (b)(1)(iii), to read as follows:

§ 86.099–9 Emission standards for 1999 and later model year light-duty trucks.

* * * * *

(b) * * *

(1) *Hydrocarbons (for gasoline-fueled, natural gas-fueled, and liquefied petroleum gas-fueled vehicles).* (i)(A) For gasoline-fueled heavy light-duty trucks with a nominal fuel tank capacity of at least 30 gallons:

* * * * *

(B) * * *

(*2*) For the supplemental two-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements (gasoline-fueled vehicles only): 2.5 grams per test.

(ii) *Running loss test (gasoline-fueled vehicles only):* 0.05 grams per mile.

(iii) *Fuel dispensing spitback test (gasoline-fueled vehicles only):* 1.0 grams per test.

* * * * *

39. Section 86.099–10 of subpart A is amended by revising paragraphs (b)(1) heading, (b)(1)(i)(A)(*2*), (b)(1)(i)(B), (b)(1)(i)(C), (b)(1)(ii)(A)(*2*) and (b)(1)(ii)(B), to read as follows:

§ 86.099–10 Emission standards for 1999 and later model year Otto-cycle heavy-duty engines and vehicles.

* * * * *

(b) * * *

(1) *Hydrocarbons (for vehicles equipped with gasoline-fueled, natural gas-fueled or liquefied petroleum gas-fueled engines).*

(i) * * *

(A) * * *

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements (gasoline-fueled vehicles only): 3.5 grams per test.

(B) Running loss test (gasoline-fueled vehicles only): 0.05 grams per mile.

(C) Fuel dispensing spitback test (gasoline-fueled vehicles only): 1.0 gram per test.

(ii) * * *

(A) * * *

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements (gasoline-fueled vehicles only): 4.5 grams per test.

(B) Running loss test (gasoline-fueled vehicles only): 0.05 grams per mile.

* * * * *

40. Section 86.099–11 of subpart A is amended by revising paragraphs (a)(1)(i), (a)(2)(ii) and (c), and adding new paragraphs (a)(1)(iii) and (b)(4), to read as follows:

§ 86.099–11 Emission standards for 1999 and later model year diesel heavy-duty engines and vehicles.

(a) * * *

(1)(i) *Hydrocarbons (for diesel engines fueled with either petroleum-fuel or liquefied petroleum gas).* 1.3 grams per brake horsepower-hour (0.48 gram per megajoule), as measured under transient operating conditions.

* * * * *

(iii) *Nonmethane hydrocarbons (for natural gas-fueled diesel engines).* 1.2 grams per brake horsepower-hour (0.45 gram per megajoule), as measured under transient operating conditions.

(2) * * *

(ii) 0.50 percent of exhaust gas flow at curb idle (methanol-, natural gas-, and liquefied petroleum gas-fueled diesel only).

* * * * *

(b) * * *

(4) *Evaporative emissions* from 1999 and later model year heavy-duty vehicles equipped with natural gas-fueled or liquefied petroleum gas-fueled heavy-duty engines shall not exceed the following standards. The standards apply equally to certification and in-use vehicles.

(i) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds for the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 3.0 grams per test.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000

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pounds for the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 4.0 grams per test.

(iii)(A) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 pounds, the standards set forth in paragraph (b)(4) of this section refer to a composite sample of evaporative emissions collected under the conditions set forth in subpart M of this part and measured in accordance with those procedures.

(B) For vehicles with a Gross Vehicle Weight Rating greater than 26,000 pounds, the standards set forth in paragraphs (b)(3)(ii) and (b)(4)(ii) of this section refer to the manufacturer's engineering design evaluation using good engineering practice (a statement of which is required in § 86.091–23(b)(4)(ii)).

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1999 or later model year methanol-, natural gas-, or liquefied petroleum gas-fueled diesel, or any naturally-aspirated diesel heavy-duty engine. For petroleum-fueled engines only, this provision does not apply to engines using turbochargers, pumps, blowers, or superchargers for air induction.

* * * * *

41. Section 86.101 of subpart B is amended by revising paragraph (a)(3) to read as follows:

§ 86.101 General applicability.

(a) * * *

(3) Sections 86.150 through 86.157 describe the refueling test procedures for light-duty vehicles and light-duty trucks and apply for model years 1998 and later.

* * * * *

42. Section 86.104 of subpart B is amended by redesignating paragraph (b) as paragraph (c) and revising it, and adding a new paragraph (b) to read as follows:

§ 86.104 Section numbering; construction.

* * * * *

(b) A section reference without a model year suffix refers to the section applicable for the appropriate model year.

(c) Unless indicated otherwise, all provisions in this subpart apply to petroleum-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled vehicles.

43. Section 86.105 of subpart B is amended by revising paragraph (b) to read as follows:

§ 86.105 Introduction; structure of subpart.

* * * * *

(b) Three topics are addressed in this subpart. Sections 86.106 through 86.115 set forth specifications and equipment requirements; §§ 86.116 through 86.126 discuss calibration methods and frequency; test procedures and data requirements are listed in §§ 86.127 through 86.157.

44. Section 86.106–94 of subpart B is amended by revising paragraph (a) to read as follows:

§ 86.106–94 Equipment required; overview.

(a) This subpart contains procedures for exhaust emissions tests on petroleum-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled light-duty vehicles and light-duty trucks, and for evaporative emission tests on gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled light-duty vehicles and light-duty trucks. Certain items of equipment are not necessary for a particular test, *e.g.*, evaporative enclosure when testing petroleum-fueled diesel vehicles. Alternate sampling systems may be used if shown to yield equivalent results and if approved in advance by the Administrator. Equipment required and specifications are as follows:

(1) *Evaporative emission tests.* The evaporative emission test is closely related to and connected with the exhaust emission test. All vehicles tested for evaporative emissions must be tested for exhaust emissions. Further, unless the evaporative emission test is waived by the Administrator under § 86.090–26, all vehicles must undergo both tests. (Petroleum-fueled diesel vehicles are excluded from the evaporative emission standard.) Section 86.107 specifies the necessary equipment.

(2) *Exhaust emission tests.* All vehicles subject to this subpart are subject to testing for both gaseous and particulate exhaust emissions using the CVS concept (§ 86.109), except where exemptions or waivers are expressly provided in subpart A of these regulations. Vehicles subject to the "Tier 0" (i.e., phase-out) standards described under subpart A are exempted from testing for methane emissions (except natural gas-fueled vehicles). Otto-cycle vehicles subject to the "Tier 0" standards are waived from testing for particulates. For vehicles waived from the requirement for measuring particulate emissions, use of a dilution tunnel is not required (§ 86.109). The CVS must be connected to the dilution tunnel if particulate emission sampling is required (§ 86.110). Petroleum- and methanol-fueled diesel-cycle vehicle testing requires that a PDP-CVS or CFV with heat exchanger be used. (This equipment may be used with methanol-fueled Otto-cycle vehicles; however, particulates need not be measured for vehicles that are waived from the requirement). All gasoline-fueled, methanol-fueled, natural gas-fueled and liquified petroleum gas-fueled vehicles are either tested for evaporative emissions or undergo a diurnal heat build. Petroleum-fueled diesel-cycle vehicles are excluded from this requirement. Equipment necessary and specifications appear in §§ 86.108 through 86.114.

(3) *Fuel, analytical gas, and driving schedule specifications.* Fuel specifications for exhaust and evaporative emissions testing and for mileage accumulation are specified in § 86.113. Analytical gases are specified in § 86.114. The EPA Urban Dynamometer Driving Schedule (UDDS) for use in exhaust emissions tests is specified in § 86.115 and Appendix I of this part.

* * * * *

45. Section 86.106–96 of subpart B is amended by revising paragraph (a) to read as follows:

§ 86.106–96 Equipment required; overview.

(a) This subpart contains procedures for exhaust emissions tests on petroleum-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled light-duty vehicles and light-duty trucks, and for evaporative emission tests on gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled light-duty vehicles and light-duty trucks. Certain items of equipment are not necessary for a particular test, *e.g.*, evaporative enclosure when testing petroleum-fueled diesel vehicles. Alternate sampling systems may be used if shown to yield equivalent results and if approved in advance by the Administrator. Equipment required and specifications are as follows:

(1) *Evaporative emission tests.* The evaporative emission test is closely related to and connected with the exhaust emission test. All vehicles tested for evaporative emissions must undergo testing according to the test sequences described in § 86.130–96; however, the Administrator may omit measurement of exhaust emissions to test for evaporative emissions. The Administrator may truncate a test after any valid emission measurement without affecting the validity of the test. Further, unless the evaporative emission test is waived by the Administrator under § 86.090–26, all vehicles must undergo both tests. (Petroleum-fueled diesel vehicles are excluded from the evaporative emission standard.) Section 86.107 specifies the necessary equipment.

(2) *Exhaust emission tests.* All vehicles subject to this subpart are subject to testing for both gaseous and particulate exhaust emissions using the CVS concept (see § 86.109), except where exemptions or waivers are expressly provided in subpart A of this part. Vehicles subject to the "Tier 0" (i.e., phase-out) standards described under subpart A of this part are exempted from testing for methane emissions. Otto-cycle vehicles subject to the "Tier 0" standards are waived from testing for particulates. For vehicles waived from the requirement for measuring particulate emissions, use of a dilution tunnel is not required (see § 86.109). The CVS must be connected to the dilution tunnel if particulate emission sampling is required (see § 86.110). Petroleum- and methanol-fueled diesel-cycle vehicle testing requires that a PDP-CVS or CFV-CVS with heat exchanger be used. (This equipment may be used with methanol-fueled Otto-cycle vehicles; however, particulates need not be measured for vehicles that are waived from the requirement). All vehicles equipped with evaporative canisters are preconditioned by loading the canisters with hydrocarbon vapors. Petroleum-fueled diesel vehicles are excluded from this requirement.

(3) *Fuel, analytical gas, and driving schedule specifications.* Fuel specifications for exhaust and evaporative emissions testing and for mileage accumulation are specified in § 86.113. Analytical gases are specified in § 86.114. The EPA Urban Dynamometer Driving Schedule (UDDS) for use in exhaust emissions tests is specified in § 86.115 and Appendix I of this part.

* * * * *

46. Section 86.107–96 of subpart B is amended by revising paragraph (b)(1) to read as follows:

§ 86.107–96 Sampling and analytical system; evaporative emissions.

* * * * *

(b) * * *

(1) For gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled vehicles a hydrocarbon analyzer utilizing the hydrogen flame ionization principle (FID) shall be used to monitor the atmosphere within the enclosure (a heated FID (HFID)(235°±15°F (113°±8°C)) is required for methanol-fueled vehicles). For natural gas-fueled vehicles, the FID may be calibrated using methane, or if calibrated using propane the FID response to methane shall be determined and applied to the FID hydrocarbon reading. Provided evaporative emission results are not effected, a probe may be used to detect or verify hydrocarbon sources during a running loss test. Instrument bypass flow may be returned to the enclosure. The FID shall have a response time to 90 percent of final reading of less than 1.5 seconds.

* * * * *

47. Section 86.109–94 of subpart B is amended by revising paragraphs (b)(4) and (c)(4), to read as follows:

§ 86.109–94 Exhaust gas sampling system; Otto-cycle vehicles not requiring particulate emission measurement.

* * * * *

(b) * * *

(4) The flow capacity of the CVS shall be large enough to eliminate water condensation in the system. (300 to 350 cfm (0.142 to 0.165 m^3/s) is sufficient for most petroleum-fueled vehicles. Higher flow rates are required for methanol-fueled vehicles and may be required for natural gas-fueled and liquefied petroleum gas-fueled vehicles. Procedures for determining CVS flow rates are detailed in "Calculation of Emissions and Fuel Economy When Using Alternative Fuels," EPA 460/3–83–009. (Copies may be obtained from the U.S. Department of Commerce, NTIS, Springfield, Virginia 22161; order #PB 84104702.)

* * * * *

(c) * * *

(4) The flow capacity of the CVS shall be large enough to virtually eliminate water condensation in the system (300 to 350 cfm (0.142 to 0.165 m^3/s) is sufficient for most petroleum-fueled vehicles). Higher flow rates are required with methanol-fueled vehicles and may be required for natural gas-fueled and liquefied petroleum gas-fueled vehicles. Procedures for determining CVS flow rates are detailed in "Calculation of Emission and Fuel Economy When Using Alternative Fuels," EPA 460/3–83–009.

* * * * *

48. Section 86.110–94 of subpart B is amended by revising paragraphs (a)(2), (b) heading and introductory text and (b)(3), by redesignating paragraphs (a)(6) and (a)(7) as paragraphs (a)(7) and (a)(8), and by adding a new paragraph (a)(6), to read as follows:

§ 86.110–94 Exhaust gas sampling system; diesel vehicles and Otto-cycle vehicles requiring particulate emissions measurements.

* * * * *

(a) * * *

(2) Bag, continuous HFID (required for petroleum-fueled diesel-cycle and optional for methanol-fueled, natural gas-fueled and liquefied petroleum gas-fueled diesel-cycle vehicles), and particulate sampling capabilities as shown in Figure B94–5 (or Figure B94–6) are required to provide both gaseous and particulate emissions sampling capabilities from a single system.

* * * * *

(6) For natural gas-fueled and liquefied petroleum gas-fueled diesel vehicles either a heated flame ionization detector (HFID) [375°±20°F (191°±11°C)] or a non-heated flame ionization detector may be used for hydrocarbon analysis.

* * * * *

* * * * *

(b) *Component description—Otto-cycle, petroleum-fueled and liquefied petroleum gas-fueled diesel-cycle vehicles.* The components necessary for petroleum-fueled and liquefied petroleum gas-fueled diesel-cycle and Otto-cycle vehicle exhaust sampling shall meet the following requirements:

* * * * *

(3) For gasoline-fueled, natural gas-fueled and liquefied petroleum gas-fueled Otto-cycle and petroleum-fueled, natural gas- fueled and liquefied petroleum gas-fueled diesel-cycle vehicles, the transfer of heat from the vehicle exhaust gas shall be minimized between the point where it leaves the vehicle tailpipe(s) and the point where it enters the dilution tunnel airstream. To accomplish this, a short length (not more than 12 feet (365 cm) if uninsulated, or not more than 20 feet (610 cm) if insulated) of smooth stainless steel tubing from the tailpipe to the dilution tunnel is required. This tubing shall have a maximum inside diameter of 4.0 inches (10.2 cm). Short sections of flexible tubing at connection points are allowed.

* * * * *

49. Section 86.111–94 of subpart B is amended by revising paragraphs (b)(3) introductory text and (b)(3)(v) to read as follows:

§ 86.111–94 Exhaust gas analytical system.

* * * * *

(b) * * *

(3) For petroleum-fueled diesel vehicles (and if selected, for methanol-

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fueled, natural gas-fueled and liquefied petroleum gas-fueled diesel vehicles) a continuous hydrocarbon sample shall be measured using a heated analyzer train as shown in Figure B90–5 (or B90–6). The train shall include a heated probe, a heated continuous sampling line, a heated particulate filter and a heated hydrocarbon instrument (HFID) complete with heated pump, filter and flow control system.

* * * * *

(v) For petroleum-fueled, natural gas-fueled and liquefied petroleum gas-fueled diesel vehicles, the sample line and filter shall be heated to maintain a sample gas temperature of 375° ±10°F (191° ±6°C) before the filter and before the HFID.

* * * * *

50. Section 86.113–94 of subpart B is revised to read as follows:

§ 86.113–94 Fuel specifications.

(a) *Gasoline fuel.* (1) Gasoline having the following specifications will be used by the Administrator in exhaust and evaporative emission testing of petroleum-fueled Otto-cycle vehicles. Gasoline having the following specification or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer in exhaust and evaporative testing except that octane specifications do not apply:

Item	ASTM test method No.	Value
Octane, Research, Min	D2699	93
Sensitivity, Min		7.5
Lead (organic):		
g/U.S. gal. (g/liter)	D3237	[1] 0.050
		[1] (0.013)
Distillation Range:		
IBP,[2] °F (°C)	D86	75–95
		(23.9–35)
10 pct. point: °F (°C)	D86	120–135
		(48.9–57.2)
50 pct. point: °F (°C)	D86	200–230
		(93.3–110)
90 pct. point: °F (°C)	D86	300–325
(148.9–162.8):		
EP, max: °F (°C)	D86	415
		(212.8)
Sulfur, weight pct. max	D1266	0.10
Phosphorus, max. g/U.S. gal. (g/liter)	D3231	0.005
		(0.0013)
RVP,[3,4] psi (kPa)	D3231	8.7–9.2
		(60.0–63.4)
Hydrocarbon composition:		
Olefins, max. pct	D1319	10
Aromatics, max. pct	D1319	35
Saturates	D1319	[5]

[1] Maximum.
[2] For testing at altitudes above 1,219 m (4,000 ft), the specified range is 75°–105°F (23.9°–40.6°C).
[3] For testing which is unrelated to evaporative emission control, the specified range is 8.0–9.2 psi (55.2–63.4 kPa).
[4] For testing at altitudes above 1,219 m (4,000 ft), the specified range is 7.6–8.0 psi (52–55 kPa).
[5] Remainder.

(2)(i) Unleaded gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation. Leaded gasoline will not be used in service accumulation.

(ii) The octane rating of the gasoline used shall be no higher than 1.0 Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(iii) The Reid Vapor Pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(3) The specification range of the gasoline to be used under paragraph (a) of this section shall be reported in accordance with § 86.094–21(b)(3).

(b) *Petroleum diesel test fuel.* (1) The petroleum fuels employed for testing diesel vehicles shall be clean and bright, with pour and cloud points adequate for operability. The petroleum diesel fuel may contain nonmetallic additives as follows: Cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant and biocide. Fuels specified for emissions testing are intended to be representative of commercially available in-use fuels.

(2) Petroleum fuel for diesel vehicles meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emission testing. The grade of petroleum diesel fuel recommended by the engine manufacturer, commercially designated as "Type 2–D" grade diesel, shall be used:

Item	ASTM test method No.	Type 2–D
Cetane Number	D613	42–50
Distillation range:		
tBP: °F (°C)	D86	340–400
		(171.1–204.4)
10 pct. point: °F (°C)	D86	400–460
		(204.4–237.8)

Item	ASTM test method No.	Type 2–D
50 pct. point: °F (°C)	D86	470–540
		(243.3–282.2)
90 pct. point: °F (°C)	D86	560–630
		(293.3–332.2)
EP: °F (°C)	D86	610–690
		(321.1–365.6)
Gravity °API	D287	32–37
Total sulfur pct.	D2622	0.03–0.05
Hydrocarbon composition:		
Aromatics, min. pct.	D1319	27
Paraffins, Naphthenes, Olefins	D1319	[1]
Flashpoint, min. °F (°C)	D93	130
		(54.4)
Viscosity, centistokes	D445	2.0–3.2

[1] Remainder.

(3) Petroleum fuel for diesel vehicles meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of petroleum diesel fuel recommended by the engine manufacturer, commercially designated as "Type 2–D" grade diesel fuel, shall be used:

Item	ASTM test method No.	Type 2–D
Cetane number	D613	38–58
Distillation range:		
90 pct. point: °F (°C)	D86	430–630
		(221.1–332.2)
Gravity, °API	D287	30–42
Total sulfur, pct	D2622	0.03–0.05
Flashpoint, min. °F (°C)	D93	130
		(54.4)
Viscosity centistokes	D445	1.5–4.5

(4) Other petroleum distillate fuels may be used for testing and service accumulation provided:

(i) They are commercially available; and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service; and

(iii) Use of a fuel listed under paragraphs (b)(2) and (b)(3) of this section would have a detrimental effect on emissions or durability; and

(iv) Written approval from the Administrator of the fuel specifications is provided prior to the start of testing.

(5) The specification range of the fuels to be used under paragraphs (b)(2), (b)(3) and (b)(4) of this section shall be reported in accordance with § 86.094–21(b)(3).

(c) *Methanol fuel.* (1) Methanol fuel used for exhaust and evaporative emission testing and in service accumulation shall be representative of commercially available methanol fuel and shall consist of at least 50 percent methanol by volume.

(i) Manufacturers shall recommend the methanol fuel to be used for testing and service accumulation.

(ii) The Administrator shall determine the methanol fuel to be used for testing and service accumulation.

(2) Other methanol fuels may be used for testing and service accumulation provided:

(i) They are commercially available; and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service; and

(iii) Use of a fuel listed under paragraph (c)(1) of this section would have a detrimental effect on emissions or durability; and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(3) The specification range of the fuels to be used under paragraphs (c)(1) and (c)(2) of this section shall be reported in accordance with § 86.094–21(b)(3).

(d) *Mixtures of petroleum and methanol fuels for flexible fuel vehicles.* (1) Mixtures of petroleum and methanol fuels used for exhaust and evaporative emission testing and service accumulation for flexible fuel vehicles shall be within the range of fuel mixtures for which the vehicle was designed.

(2) Manufacturer testing and service accumulation may be performed using only those mixtures (mixtures may be different for exhaust testing, evaporative testing and service accumulation) expected to result in the highest emissions, provided:

(i) The fuels which constitute the mixture will be used in customer service; and

(ii) Information, acceptable to the Administrator, is provided by the manufacturer to show that the designated fuel mixtures would result in the highest emissions; and

(iii) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(3) The specification range of the fuels to be used under paragraphs (d)(1) and (d)(2) of this section shall be reported in accordance with § 86.094–21(b)(3).

(e) *Natural gas fuel.* (1) Natural gas fuel having the following specifications will be used by the Administrator for exhaust and evaporative emission testing of natural gas-fueled vehicles

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Item		ASTM test method No.	Value
Methane	min. mole pct.	D1945	89.0
Ethane	max. mole pct.	D1945	4.5
C_3 and higher	max. mole pct.	D1945	2.3
C_6 and higher	max. mole pct.	D1945	0.2
Oxygen	max. mole pct.	D1945	0.6
Inert gases: Sum of CO_2 and N_2	max. mole pct.	D1945	4.0
Odorant [1]			

[1] The natural gas at ambient conditions must have a distinctive odor potent enough for its presence to be detected down to a concentration in air of not over 1/5 (one-fifth) of the lower limit of flammability.

(2) Natural gas representative of commercially available natural gas fuel which will be generally available through retail outlets shall be used in service accumulation for natural gas-fueled vehicles.

(3) Other natural gas fuels may be used for testing and service accumulation provided:

(i) They are commercially available; and

(ii) Information acceptable to the Administrator is provided to show that only the designated fuel would be used in customer service; and

(iii) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(4) The specification range of the fuels to be used under paragraphs (e)(1), (e)(2) and (e)(3) of this section shall be reported in accordance with § 86.094–21(b)(3).

(f) *Liquefied petroleum gas fuel.* (1) Liquefied petroleum gas fuel used for exhaust and evaporative emission testing and in service accumulation shall be commercially available liquefied petroleum gas fuel.

(i) Manufacturers shall recommend the liquefied petroleum gas fuel to be used for testing and service accumulation.

(ii) The Administrator shall determine the liquefied petroleum gas fuel to be used for testing and service accumulation.

(2) Other liquefied petroleum gas fuels may be used for testing and service accumulation provided:

(i) They are commercially available; and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service; and

(iii) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(3) The specification range of the fuel to be used under paragraphs (f)(1) and (f)(2) of this section shall be measured in accordance with ASTM D2163–61 and reported in accordance with § 86.094–21(b)(3).

(g) Fuels not meeting the specifications set forth in this section may be used only with the advance approval of the Administrator.

51. Section 86.121–90 of subpart B is amended by revising paragraphs (a)(2) and (b)(3), and adding a new paragraph (d), to read as follows:

§ 86.121–90 Hydrocarbon analyzer calibration.

* * * * *

(a) * * *

(2) Optimize on the most common operating range. Introduce into the analyzer a propane (methane as appropriate) in air mixture (methanol in air mixture for methanol-fueled vehicles when optional methanol calibrated HFID procedure is used during the 1994 model year) with a propane (or methane or methanol as appropriate) concentration equal to approximately 90 percent of the most common operating range.

* * * * *

(b) * * *

(3) Calibrate on each normally used operating range with propane in air calibration gases (either methanol or methane in air as appropriate) having nominal concentrations of 15, 30, 45, 60, 75 and 90 percent of that range. For each range calibrated, if the deviation from a least squares best-fit straight line is two percent or less of the value at each data point, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds two percent at any point, the best-fit non-linear equation which represents the data to within two percent of each test point shall be used to determine concentration.

* * * * *

(d) *FID response factor to methane.* When the FID analyzer is to be used for the analysis of natural gas-fueled vehicle hydrocarbon samples, the methane response factor of the analyzer shall be established. To determine the total hydrocarbon FID response to methane, known methane in air concentrations traceable to the National Institute of Standards and Technology (NIST) shall be analyzed by the FID. Several methane concentrations shall be analyzed by the FID in the range of concentrations in the exhaust sample. The total hydrocarbon FID response to methane is calculated as follows:

r_{CH4}=FIDppm/SAMppm

Where:

(1) r_{CH4}=FID response factor to methane.
(2) FIDppm=FID reading in ppmC.
(3) SAMppm=the known methane concentration in ppmC.

52. Section 86.127–96 of subpart B is amended by revising paragraphs (a)(1), (a)(3), (a)(4), (b), (d) introductory text, (d)(2) and (e), to read as follows:

§ 86.127–96 Test procedures; overview.

* * * * *

(a) * * *

(1) Gaseous exhaust THC, CO, NO_X, CO_2 (for petroleum-fueled and gaseous-fueled vehicles), plus CH_3OH and HCHO for methanol-fueled vehicles, plus CH_4 (for vehicles subject to the NMHC and OMNMHCE standards).

* * * * *

(3) Evaporative HC (for gasoline-fueled, methanol-fueled and gaseous-fueled vehicles) and CH_3OH (for methanol-fueled vehicles). The evaporative testing portion of the procedure occurs after the exhaust emission test; however, exhaust emissions need not be sampled to complete a test for evaporative emissions.

(4) Fuel spitback (this test is not required for gaseous-fueled vehicles).

(b) The Otto-cycle exhaust emission test is designed to determine gaseous THC, CO, CO_2, CH_4, NO_X, and particulate mass emissions from gasoline-fueled, methanol-fueled and gaseous-fueled Otto-cycle vehicles as well as methanol and formaldehyde from methanol-fueled Otto-cycle vehicles, while simulating an average trip in an urban area of 11 miles (18 kilometers). The test consists of engine start-ups and vehicle operation on a chassis dynamometer through a specified driving schedule. A proportional part of the diluted exhaust is collected continuously for subsequent analysis, using a constant volume (variable dilution) sampler or critical flow venturi sampler.

* * * * *

(d) The evaporative emission test (gasoline-fueled vehicles, methanol-fueled and gaseous-fueled vehicles) is designed to determine hydrocarbon and methanol evaporative emissions as a consequence of diurnal temperature fluctuation, urban driving and hot soaks following drives. It is associated with a series of events that a vehicle may experience and that may result in hydrocarbon and/or methanol vapor losses. The test procedure is designed to measure:

* * * * *

(2) Running losses resulting from a simulated trip performed on a chassis dynamometer, measured by the enclosure or point-source technique (see § 86.134; this test is not required for gaseous-fueled vehicles); and

* * * * *

(e) Fuel spitback emissions occur when a vehicle's fuel fill neck cannot accommodate dispensing rates. The vehicle test for spitback consists of a short drive followed immediately by a complete refueling event. This test is not required for gaseous-fueled vehicles.

* * * * *

53. Section 86.130–96 of subpart B is amended by revising paragraphs (a) and (b), to read as follows:

§ 86.130–96 Test sequence; general requirements.

(a) *(1) Gasoline- and methanol-fueled vehicles.* The test sequence shown in figure B96–10 shows the steps encountered as the test vehicle undergoes the procedures subsequently described to determine conformity with the standards set forth. The full three-diurnal sequence depicted in figure B96–10 tests vehicles for all sources of evaporative emissions. The supplemental two-diurnal test sequence is designed to verify that vehicles sufficiently purge their evaporative canisters during the exhaust emission test. Sections 86.132–96, 86.133–96 and 86.138–96 describe the separate specifications of the supplemental two-diurnal test sequence.

(2) *Gaseous-fueled vehicles.* The test sequence shown in figure B96–10 shows the steps encountered as the test vehicle undergoes the procedures subsequently described to determine conformity with the standards set forth, with the exception that the fuel drain and fill and precondition canister steps are not required for gaseous-fueled vehicles. In addition, the supplemental two-diurnal test and the running loss test are not required.

(b) The vehicle test for fuel spitback during fuel dispensing is conducted as a stand-alone test (see § 86.146). This test is not required for gaseous-fueled vehicles.

* * * * *

54. Section 86.132–90 of subpart B is amended by revising paragraphs (a)(4) introductory text and (a)(4)(ii) introductory text, to read as follows:

§ 86.132–90 Vehicle preconditioning.

(a) * * *

(4) The Administrator may also choose to conduct or require the conduct of additional preconditioning to insure that the evaporative emission control system is stabilized in the case of gasoline-fueled and methanol-fueled vehicles, or to insure that the exhaust system is stabilized in the case of petroleum-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled diesel vehicles.

* * * * *

(ii) *Petroleum-fueled diesel vehicles, natural gas-fueled and liquefied petroleum gas-fueled vehicles.* The preconditioning shall consist of either of the following:

* * * * *

55. Section 86.132–96 of subpart B is amended by revising paragraphs (b), (e)(2) heading and introductory text and (f), to read as follows:

§ 86.132–96 Vehicle preconditioning.

* * * * *

(b)(1) *Gasoline- and Methanol-Fueled Vehicles.* Drain the fuel tank(s) and fill with test fuel, as specified in § 86.113, to the "tank fuel volume" defined in § 86.082–2. The fuel cap(s) shall be installed within one minute after refueling.

(2) *Gaseous-Fueled Vehicles.* Vehicle fuel tanks to be filled with fuel that meets the specifications in § 86.113. Fuel tanks shall be filled to a minimum of 75% of service pressure for natural gas-fueled vehicles or a minimum of 75% of available fill volume for liquefied petroleum gas-fueled vehicles. Prior draining of the fuel tanks is not called for if the fuel in the tanks already meets the specifications in § 86.113.

* * * * *

(e) * * *

(2) *For petroleum-fueled diesel, methanol-fueled diesel, and gaseous-fueled vehicles.* The preconditioning shall consist of either of the following:

* * * * *

(f) (1) *Gasoline- and Methanol-Fueled Vehicles.* Within five minutes of completion of the preconditioning drive, the vehicle shall be driven off the dynamometer and parked. For gasoline- and methanol-fueled vehicles, drain the fuel tank(s) and fill with test fuel, as specified in § 86.113, to the "tank fuel volume" defined in § 86.082–2. The vehicle shall be refueled within one hour of completion of the preconditioning drive. The fuel cap(s) shall be installed within one minute after refueling.

(2) *Gaseous-Fueled Vehicles.* Within five minutes of completion of the preconditioning drive, the vehicle shall be driven off the dynamometer and parked. Vehicle fuel tanks shall be refilled with fuel that meets the specifications in § 86.113. Fuel tanks shall be filled to a minimum of 75% of service pressure for natural gas-fueled vehicles or a minimum of 75% of available fill volume for liquefied petroleum gas-fueled vehicles. Prior draining of the fuel tanks is not called for if the fuel in the tanks already meets the specifications in § 86.113.

* * * * *

56. Section 86.133–96 of subpart B is amended by revising paragraphs (a)(1) and (a)(3), to read as follows:

§ 86.133–96 Diurnal emission test.

(a)(1) The diurnal emission test for gasoline-, methanol- and gaseous-fueled vehicles consists of three 24-hour test cycles following the hot soak test. Emissions are measured for each 24-hour cycle, with the highest emission level used to determine compliance with the standards specified in subpart A of this part. The Administrator may truncate a test after any 24-hour cycle without affecting the validity of the collected data. Sampling of emissions from the running loss and hot soak tests is not required as preparation for the diurnal emission test. The diurnal emission test may be conducted as part of either the three- diurnal test sequence or the supplemental two-diurnal test sequence, as described in § 86.130–96.

* * * * *

(3) For the supplemental two-diurnal test sequence, the diurnal emission test outlined in paragraph (p) of this section follows the alternate hot soak test specified in § 86.138–96(k). This test is not required for gaseous-fueled vehicles.

* * * * *

57. Section 86.134–96 of subpart B is amended by revising paragraph (a) to read as follows:

§ 86.134–96 Running loss test.

(a) *Overview.* Gasoline- and methanol-fueled vehicles are to be tested for running loss emissions during

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simulated high-temperature urban driving; this test is not required for gaseous-fueled vehicles. During operation, tank temperatures are controlled according to a prescribed profile to simulate in-use conditions. If the vehicle is determined to have exceeded the standard before the end of the running loss test, the test may be terminated without invalidating the data. The test can be run either in a sealed enclosure or with the point-source method, as specified in paragraph (g) of this section.

* * * * *

58. Section 86.135–94 of subpart B is amended by revising paragraph (a) to read as follows:

§ 86.135–94 Dynamometer procedure.

* * * * *

(a) *Overview.* The dynamometer run consists of two tests, a "cold" start test, after a minimum 12-hour and a maximum 36-hour soak according to the provisions of §§ 86.132 and 86.133, and a "hot" start test following the "cold" start by 10 minutes. Engine startup (with all accessories turned off), operation over the UDDS and engine shutdown make a complete cold start test. Engine startup and operation over the first 505 seconds of the driving schedule complete the hot start test. The exhaust emissions are diluted with ambient air in the dilution tunnel as shown in Figure B94–5 and Figure B94–6. A dilution tunnel is not required for testing vehicles waived from the requirement to measure particulates. Six particulate samples are collected on filters for weighing; the first sample plus backup is collected during the first 505 seconds of the cold start test; the second sample plus backup is collected during the remainder of the cold start test (including shutdown); the third sample plus backup is collected during the hot start test. Continuous proportional samples of gaseous emissions are collected for analysis during each test phase. For gasoline-fueled, natural gas-fueled and liquefied petroleum gas-fueled Otto-cycle vehicles, the composite samples collected in bags are analyzed for THC, CO, CO_2, CH_4 and NO_X. For petroleum-fueled diesel-cycle vehicles (optional for natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled diesel-cycle vehicles), THC is sampled and analyzed continuously according to the provisions of § 86.110. Parallel samples of the dilution air are similarly analyzed for THC, CO, CO_2, CH_4 and NO_X. For natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled vehicles, bag samples are collected and analyzed for THC (if not sampled continuously), CO, CO_2, CH_4 and NO_X. For methanol-fueled vehicles, methanol and formaldehyde samples are taken for both exhaust emissions and dilution air (a single dilution air formaldehyde sample, covering the total test period may be collected). Parallel bag samples of dilution air are analyzed for THC, CO, CO_2, CH_4 and NO_X. Methanol and formaldehyde samples may be omitted for 1990 through 1994 model years when a FID calibrated on methanol is used.

* * * * *

59. Section 86.136–90 of subpart B is amended by revising paragraphs (a) heading and introductory text and (b), to read as follows:

§ 86.136–90 Engine starting and restarting.

(a) *Otto-cycle vehicles.* Paragraph (a) of this section applies to Otto-cycle vehicles.

* * * * *

(b) *Diesel vehicles.* The engine shall be started according to the manufacturers recommended starting procedures in the owners manual. The initial 20-second idle period shall begin when the engine starts. The transmission shall be placed in gear 15 seconds after the engine is started. If necessary, braking may be employed to keep the drive wheels from turning.

* * * * *

60. Section 86.138–96 of subpart B is amended by revising paragraph (a) to read as follows:

§ 86.138–96 Hot soak test.

(a) (1) *Gasoline- and methanol-fueled vehicles.* For gasoline- and methanol-fueled vehicles, the hot soak test shall be conducted immediately following the running loss test. However, sampling of emissions from the running loss test is not required as preparation for the hot soak test.

(2) *Goseous-fueled vehicles.* Since gaseous-fueled vehicles are not required to perform a running loss test, the hot soak test shall be conducted within five minutes of the hot start exhaust test.

* * * * *

61. Section 86.140–94 of subpart B is amended by revising paragraphs (a) introductory text and (b) introductory text, to read as follows:

§ 86.140–94 Exhaust sample analysis.

* * * * *

(a) For CO, CO_2, CH_4, NO_X, and for Otto-cycle and methanol-fueled, natural gas-fueled and liquefied petroleum gas-fueled (if non-heated FID option is used) diesel vehicle HC:

* * * * *

(b) For petroleum-fueled, natural gas-fueled and liquefied petroleum gas-fueled (if HFID is used) diesel vehicle HC:

* * * * *

62. Section 86.142–90 of subpart B is amended by revising paragraph (o) introductory text and adding paragraphs (q) and (r), to read as follows:

§ 86.142–90 Records required.

* * * * *

(o) Additional records required for diesel vehicles:

* * * * *

(q) *Additional required records for natural gas-fueled vehicles.* Composition, including all carbon containing compounds; e.g. CO_2, of the natural gas-fuel used during the test. C_1 and C_2 compounds shall be individually reported. C_3 and heavier hydrocarbons, and C_6 and heavier compounds may be reported as a group.

(r) *Additional required records for liquefied petroleum gas-fueled vehicles.* Composition of the liquefied petroleum gas-fuel used during the test. Each hydrocarbon compound present, through C_4 compounds, shall be individually reported. C_5 and heavier hydrocarbons may be reported as a group.

63. Section 86.143–96 of subpart B is amended by revising paragraphs (a) and (b)(1)(ii)(B), to read as follows:

§ 86.143–96 Calculations; evaporative emissions.

(a) The following equations are used to calculate the evaporative emissions from gasoline- and methanol-fueled vehicles, and for gaseous-fueled vehicles.

(b) * * *

(1) * * *

(ii) * * *

(B) C_{HC} = FID hydrocarbon concentration as ppm including FID response to methanol (or methane, as appropriate) in the sample.

* * * * *

64. Section 86.144–94 of subpart B is amended by revising paragraphs (a)(1), (c)(1)(ii), (c)(3)(iv)(C), (c)(5)(ii), (c)(6)(ii), (c)(8)(i) and (c)(8)(ii); redesignating paragraphs (c)(7)(iii) through (c)(7)(xiii) as paragraphs (c)(7)(iv) through (xiv) and revising them; and adding new paragraphs (b)(10), (c)(7)(iii), (c)(8)(vi) and (c)(9), to read as follows:

§ 86.144–94 Calculations; exhaust emissions.

* * * * *

(a) * * *

(1) Y_{WM} = Weighted mass emissions of each pollutant, *i.e.*, THC, CO, OMHCE, NMHC, OMNMHCE, CH_4, NO_X, or CO_2, in grams per vehicle mile.

* * * * *

(b) * * *

(10) Methane mass:

$CH_{4MASS} = V_{mix} \times Density_{CH4} \times (CH_{4conc} / 1{,}000{,}000)$

(c) * * *

(1) * * *

(ii) $Density_{HC}$=Density of total hydrocarbon.

(A) *For gasoline-fuel, diesel-fuel and methanol fuel;* $Density_{HC}$=16.33 g/ft³ – carbon atom (0.5768 kg/m³ – carbon atom), assuming an average carbon to hydrogen ratio of 1:1.85, at 68 °F (20 °C) and 760 mm Hg (101.3 kPa) pressure.

(B) *For natural gas and liquefied petroleum gas-fuel;* $Density_{HC}$=1.1771 (12.011+H/C (1.008)) g/ft³ – carbon atom (0.04157(12.011+H/C (1.008))kg/m³ – carbon atom), where H/C is the hydrogen to carbon ratio of the hydrocarbon components of the test fuel, at 68 °F (20 °C) and 760 mm Hg (101.3 kPa) pressure.

* * * * *

(3) * * *

(iv) * * *

(C) $CO_c = [1 - (0.01 + 0.005HCR)(CO_{2c} - 0.000323R)]CO_{cm}$ for methanol-fuel or natural gas-fuel or liquefied petroleum gas-fuel, where HCR is hydrogen-to-carbon ratio as measured for the fuel used.

* * * * *

(iii) $$DF = \frac{100 \times \frac{x}{x + y/2 + 3.76(x + y/4)}}{CO_{2c} + (NMHC_c + CH_{4c} + CO_c) \times 10^{-4}}$$

for natural gas-fueled or liquefied petroleum gas-fueled vehicles where fuel composition is C_xH_y as measured for the fuel used.

(iv)(A) K_H=Humidity correction factor.

(B) $K_H = 1/[1 - 0.0047(H - 75)]$.

(C) *For SI units,* $K_H = 1 \times [1 - 0.0329(H \times 10.71)]$.

Where:

(v) (A) H=Absolute humidity in grains (grams) of water per pound (kilogram) of dry air.

(B) $H = [(43.478)R_a \times P_d]/[P_B - (P_d \times R_a/100)]$.

(C) *For SI units,* $H = [(6.211)R_a \times P_d]/[P_B \times (P_d \times R_a/100)]$.

(vi) R_a=Relative humidity of the ambient air, percent.

(vii) P_d=Saturated vapor pressure, mm Hg (kPa) at the ambient dry bulb temperature.

(viii) P_B=Barometric pressure, mm Hg (kPa).

(ix) (A) V_{mix}=Total dilute exhaust volume in cubic feet per test phase corrected to standard conditions (528°R (293°K) and 760 mm Hg (101.3 kPa)).

(B) For PDP–CVS, V_{mix} is:

$$V_{mix} = \frac{V_O \times N \times (P_B - P_A) \times 528}{760 \times T_P}$$

(C) *For SI units,*

$$V_{mix} = \frac{V_o \times N \times (P_B - P_A) \times 293}{101.3 \times T_p}$$

Where:

(x) V_o=Volume of gas pumped by the positive displacement pump, in cubic feet (m^3) per revolution. This volume is dependent on the pressure differential across the positive displacement pump.

(xi) N=Number of revolutions of the positive displacement pump during the test phase while samples are being collected.

(xii) P_B=Barometric pressure, mm Hg (kPa).

(xiii) P_A=Pressure depression below atmospheric measured at the inlet to the positive displacement pump, in mm Hg (kPa) (during an idle mode).

(xiv) T_p=Average temperature of dilute exhaust entering positive displacement pump during test, °R(°K).

(8)(i) $NMHC_{conc} = HC_{conc} - (r_{CH4} \times CH_{4conc})$.

(ii) $Density_{NMHC}$=The density of non-methane hydrocarbon.

(A) *For gasoline-fuel and diesel-fuel;* $Density_{NMHC}$=16.33 g/ft³-carbon atom (0.5768 kg/m³-carbon atom), assuming an average carbon to hydrogen ratio of 1:1.85 at 68 °F (20 °C) and 760 mm Hg (101.3 kPa) pressure.

(B) *For natural gas and liquefied petroleum gas-fuel;* $Density_{NMHC}$=1.1771(12.011+H/C (1.008)) g/ft³-carbon atom (0.04157(12.011+H/C (1.008))kg/m³-carbon atom), where H/C is the hydrogen to carbon ratio of the hydrocarbon components of the test fuel, at 68 °F (20 °C) and 760 mm Hg(101.3 kPa) pressure.

* * * * *

(vi) r_{CH4}=HC FID response to methane for natural gas-fueled vehicles as measured in § 86.121(d). For all other vehicles r_{CH4}=1.

(9)(i) CH_{4mass}=Methane emissions, in grams per test phase.

(ii) $Density_{CH4}$=Density of methane is 18.89 g/ft³-carbon atom (0.6672 kg/m³-carbon atom), at 68 °F (20 °C) and 760 mm Hg (101.3 kPa) pressure.

* * * * *

65. Section 86.150–98 of subpart B is amended by revising the section heading and adding a new paragraph (d) to read as follows:

§ 86.150–98 Refueling test procedure; overview.

* * * * *

(d) *For liquefied petroleum gas-fueled vehicles only.* Refueling test procedures for light-duty vehicles and light-duty trucks operated on liquefied petroleum gas are described in § 86.157.

66. A new section 86.157–98 is added to subpart B to read as follows:

§ 86.157–98 Refueling test procedures for liquefied petroleum gas-fueled vehicles.

(a) *Equipment.* (1) The sampling and analytical system shall meet the specifications in § 86.107–98(a) through (i).

(2) The refueling equipment nozzle specifications shall meet the requirements described in § 80.32.

(b) *General requirements.* (1) The refueling test procedure for light-duty liquefied petroleum gas-fueled vehicles and trucks starts with the preconditioning of the vehicle followed by a refueling emissions measurement. The test is conducted by following paragraphs (c) through (f) of this section in order.

(2) Ambient temperature levels encountered by the test vehicle throughout the test sequence shall not be less than 68°F (20°C) nor more than 86°F (30°C).

(3) The vehicle shall be approximately level during all phases of the test

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sequence to prevent abnormal fuel distribution.

(c) *Vehicle preconditioning.* (1) The vehicle fuel tanks are to be filled with fuel that meets the specifications in § 86.113. Fuel tanks shall be filled to 10 percent of nominal fuel tank capacity, determined to the nearest one-tenth of a U.S. gallon (0.38 liter).

(2) The vehicle shall be parked (without starting the engine) within the temperature range specified in paragraph (a)(2) of this section for a minimum of one hour and a maximum of six hours.

(d) *Measurement procedure.* (1) The steps prior to the actual refueling event described in § 86.154–98(b) through (e)(5) shall be performed.

(2) Within one minute of obtaining the initial FID (or HFID) reading, the dispensed fuel nozzle shall be attached to the vehicle fuel receptacle, and the refueling operation shall be started. If the vehicle is equipped with a fixed liquid level gauge or other gauge or valve which could be opened to release fuel or fuel vapor during refueling, and has not received an exemption as outlined in §§ 86.098–28(h), 86.001–28(h) or 86.004–28(h), the fixed level gauge or other gauges or valves shall be opened after the dispensing nozzle is attached, but prior to the start of the refueling operation. The dispensed fuel must be at a temperature stabilized to approximately the same temperature as the vehicle was in paragraph (c)(2) of this section. The dispensing rate must be typical of in-use dispensing rates for liquefied petroleum gas into light-duty vehicles and trucks.

(3) The fuel flow shall continue until the amount of fuel dispensed is at least 85 percent of nominal fuel tank capacity, determined to the nearest one-tenth of a U.S. gallon (0.38 liter).

(4) Following the fuel shut-off the fixed liquid level gauge or other gauges or valves, if open, shall be closed and the nozzle disconnected.

(5) The final reading of the evaporative enclosure FID (or HFID) analyzer shall be taken 60 ±5 seconds following the disconnect of the refueling nozzle. This is the final hydrocarbon concentration, C_{HCf}, required in § 86.143. The elapsed time, in minutes, between the initial and final FID (or HFID) readings shall be recorded.

(6) For vehicles equipped with more than one fuel tank, the procedures described in this section shall be performed for each fuel tank.

(e) *Records required.* (1) Test: test number, system or device tested (brief description), date and time of day instrument operated, operator, enclosure barometric pressure and temperature, recorder charts (identify zero, span, and enclosure gas traces), fuel dispensing rate(s) and dispensed fuel volume.

(2) Vehicle: ID number, manufacturer, model year, engine family, evaporative/refueling emission family, fuel tank(s) capacity, basic fuel system description and odometer reading.

(3) All pertinent instrument information including nozzle and fuel delivery system description. As an alternative, a reference to a vehicle test cell number may be used, with advance approval of the Administrator, provided test cell calibration records show the pertinent instrument information.

(4) All additional information necessary for the calculations specified in paragraph (f) of this section.

(f) *Calculations.* (1) The calculation of the net hydrocarbon mass change in the enclosure is used to determine refueling mass emissions. The mass is calculated from initial and final hydrocarbon concentrations in ppm carbon, initial and final enclosure ambient temperatures, initial and final barometric pressures and net volume using the equations of § 86.143. For vehicles with multiple tanks, the results for each tank shall be calculated and then summed to determine overall refueling emissions.

(2) The final results for comparison with the refueling control emission standard shall be computed by dividing the total refueling mass emissions by the total gallons of fuel dispensed in the refueling test (see paragraph (d)(3) of this section).

(3) The results of all emission tests shall be rounded, in accordance with ASTM E 29–67 to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure. This procedure has been incorporated by reference (see § 86.1).

67. A new section 86.401–97 is added to subpart E, to read as follows:

§ 86.401–97 General applicability.

(a) This subpart applies to 1978 and later model year, new, gasoline-fueled motorcycles built after 31 December, 1977, and to 1990 and later model year, new, methanol-fueled motorcycles built after 31 December, 1989 and to 1997 and later model year, new, natural gas-fueled and liquefied petroleum gas-fueled motorcycles built after 31 December, 1996.

(b) Motorcycles with engine displacements less than 50 cc (3.1 cu in) are excluded from the requirements of this subpart.

(c) Motorcycles are excluded from the requirements of this subpart, if with an 80 kg (176 lb) driver, it cannot:

(1) Start from a dead stop using only the engine; or

(2) Exceed a maximum speed of 40 km/h (25 mph) on level paved surfaces.

68. Section 86.410–90 of subpart E is amended by revising paragraph (a)(1) introductory text, to read as follows:

§ 86.410–90 Emission standards for 1990 and later model year motorcycles.

(a)(1) Exhaust emissions from 1990 and later model year gasoline-fueled, natural gas-fueled and liquefied petroleum gas-fueled motorcycles shall not exceed (compliance with these standards is optional prior to the 1997 model year for natural gas-fueled and liquefied petroleum gas-fueled motorcycles):

* * * * *

69. Section 86.509–90 of subpart F is amended by revising paragraph (c)(4), to read as follows:

§ 86.509–90 Exhaust gas sampling system.

* * * * *

(c) * * *

(4) The location of the dilution air inlet shall be placed so as to use test-cell air for dilution air and the flow capacity of the CVS shall be large enough to virtually eliminate water condensation in the system. Control of water condensation with methanol-fueled vehicles is critical. Additional care may also be required to eliminate water condensation when testing natural gas and liquefied petroleum gas-fueled vehicles. Procedures for determining CVS flow rates are detailed in "Calculation of Emissions And Fuel Economy When Using Alternate Fuels," EPA 460/3–83–009.

* * * * *

70. A new section 86.513–94 is added to subpart F to read as follows:

§ 86.513–94 Fuel and engine lubricant specifications.

(a) *Gasoline.* (1) Gasoline having the following specifications will be used by the Administrator in exhaust emission testing of gasoline-fueled motorcycles. Gasoline having the following specifications or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer for emission testing except that the octane specifications do not apply.

Item	ASTM	Value
Octane, research, minimum	D2699	96
Lead (organic): g/liter (g/U.S. gal.)	D3237	[1]0.013 [1](0.050)
Distillation range: IBP: °C (°F)	D86	23.9–35 (75–95)
10 pct. point: °C (°F)	D86	48.9–57.2 (120–135)
50 pct. point: °C (°F)	D86	93.3–110 (200–230)
90 pct. point: °C (°F)	D86	148.9–162.8 (300–325)
EP: max. °C (°F)	D86	212.8 (415)
Sulfur, max. wt. %	D1266	0.10
Phosphorus: max. g/liter (g/U.S. gal.)	D3231	0.0013 (0.005)
RVP kPa (psi)	D323	55.2–63.4 (8.0–9.2)
Hydrocarbon composition: Olefins, max., %	D1319	10
Aromatics, max., %	D1319	35
Saturates	D1319	Remainder

[1] Maximum.

(2) Unleaded gasoline and engine lubricants representative of commercial fuels and engine lubricants which will be generally available through retail outlets shall be used in service accumulation.

(3) The octane rating of the gasoline used shall be no higher than 4.0 Research octane numbers above the minimum recommended by the manufacturer.

(4) The Reid Vapor Pressure of the gasoline used shall be characteristic of commercial gasoline fuel during the season in which the service accumulation takes place.

(b) *Methanol fuel.* (1) Methanol fuel used for exhaust and evaporative emission testing and in service accumulation of methanol-fueled motorcycles shall be representative of commercially available methanol fuel and shall consist of at least 50 percent methanol by volume.

(2) Manufacturers shall recommend the methanol fuel to be used for testing and service accumulation in accordance with paragraph (b)(1) of this section.

(3) The Administrator shall determine the methanol fuel to be used for testing and service accumulation.

(4) Other methanol fuels may be used for testing and service accumulation provided:

(i) They are commercially available; and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service; and

(iii) Use of a fuel listed under paragraphs (b)(1), (b)(2) or (b)(3) of this section would have a detrimental effect on emissions or durability; and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(c) *Mixtures of petroleum and methanol fuels for flexible fuel motorcycles.* (1) Mixtures of petroleum and methanol fuels used for exhaust and evaporative emission testing and service accumulation for flexible fuel motorcycles shall be within the range of fuel mixtures for which the motorcycle was designed.

(2) Manufacturer testing and service accumulation may be performed using only those mixtures (mixtures may be different for exhaust testing, evaporative testing and service accumulation) expected to result in the highest emissions, provided:

(i) The fuels which constitute the mixture will be used in customer service;

(ii) Information, acceptable to the Administrator, is provided by the manufacturer to show that the designated fuel mixtures would result in the highest emissions; and

(iii) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(d) *Natural gas-fuel.* (1) Natural gas-fuel having the following specifications will be used by the Administrator for exhaust and evaporative emission testing of natural gas-fueled motorcycles. Natural gas-fuel having the following specifications or substantially similar specifications approved by the Administrator, shall be used by the manufacturer for emission testing.

NATURAL GAS CERTIFICATION FUEL SPECIFICATIONS

Item		ASTM test method No.	Value
Methane	min. mole pct.	D1945	89.0
Ethane	max. mole pct.	D1945	4.5
C_3 and higher	max. mole pct.	D1945	2.3
C_6 and higher	max. mole pct.	D1945	0.2
Oxygen	max. mole pct.	D1945	0.6
Inert gases: Sum of CO_2 and N_2	max. mole pct.	D1945	4.0

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NATURAL GAS CERTIFICATION FUEL SPECIFICATIONS—Continued

Item		ASTM test method No.	Value
Odorant [1]			

[1] The natural gas at ambient conditions must have a distinctive odor potent enough for its presence to be detected down to a concentration in air of not over 1/5 (one-fifth) of the lower limit of flammability.

(2) Natural gas-fuel and engine lubricants representative of commercial fuels and engine lubricants which will be generally available through retail outlets shall be used in service accumulation.

(3) Other natural gas-fuels may be used for testing and service accumulation provided:

(i) They are commercially available;

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service;

(iii) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(e) *Liquefied petroleum gas-fuel.* (1) Liquefied petroleum gas-fuel used for exhaust and evaporative emission testing and in service accumulation of liquefied petroleum gas-fueled motorcycles shall be commercially available liquefied petroleum gas-fuel.

(2) Manufacturers shall recommend the liquefied petroleum gas-fuel to be used for testing and service accumulation in accordance with paragraph (e)(1) of this section.

(3) The Administrator shall determine the liquefied petroleum gas-fuel to be used for testing and service accumulation.

(4) Other liquefied petroleum gas-fuels may be used for testing and service accumulation provided:

(i) They are commercially available;

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service; and

(iii) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(f) *Lubricants.* (1) If the manufacturer specifies several lubricants to be used by the ultimate purchaser, the Administrator will select one to be used during service accumulation.

(2) The same lubricant(s) shall be used for both service accumulation and emission testing.

(g) The specification range of the fuels and of the engine lubricants to be used under paragraphs (a), (b), (c), (d) and (e) of this section shall be reported in accordance with § 86.416.

(h) Written approval from the Administrator of the fuel and lubricant specifications must be provided prior to the start of testing.

71. Section 86.521–90 of subpart F is amended by revising paragraphs (b) introductory text, (b)(2) and (c)(3), and adding a new paragraph (e), to read as follows:

§ 86.521–90 Hydrocarbon analyzer calibration.

* * * * * *

(b) *Initial and periodic optimization of detector response.* Prior to its introduction into service and at least annually thereafter, the FID hydrocarbon analyzer shall be adjusted for optimum hydrocarbon response. Analyzers used with petroleum fuels and liquefied petroleum gas-fuel shall be optimized using propane. Analyzers used with natural gas-fuel for measurement of hydrocarbons shall be optimized using methane. If a single analyzer is used for all measurements, it shall be optimized using propane and its response factor for methane shall be determined and accounted for in measurements of total hydrocarbons from natural gas-fuel. Alternate methods yielding equivalent results may be used, if approved in advance by the Administrator.

* * * * * *

(2) Optimize on the most common operating range. Introduce into the analyzer a propane (methane as appropriate) in air mixture (methanol in air mixture for methanol-fueled vehicles when optional methanol calibrated FID procedure is used during the 1990 through 1994 model year) with a propane (or methane or methanol as appropriate) concentration equal to approximately 90 percent of the most common operating range.

* * * * * *

(c) * * *

(3) Calibrate on each normally used operating range with propane in air (or methanol or methane in air as appropriate) calibration gases having nominal concentrations of 15, 30, 45, 60, 75 and 90 percent of that range. For each range calibrated, if the deviation from a least squares best-fit straight line is two percent or less of the value at each data point, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds two percent at any point, the best-fit non-linear equation which represents the data to within two percent of each test point shall be used to determine concentration.

* * * * * *

(e) *FID response factor to methane.* When the FID analyzer is to be used for the analysis of natural gas-fueled motorcycle hydrocarbon samples, the methane response factor of the analyzer shall be established. To determine the total hydrocarbon FID response to methane, known methane in air concentrations traceable to National Institute of Standards and Technology (NIST) shall be analyzed by the FID. Several methane concentrations shall be analyzed by the FID in the range of concentrations in the exhaust sample. The total hydrocarbon FID response to methane is calculated as follows:

r_{CH4} = FIDppm/SAMppm

Where:

(1) r_{CH4} = FID response factor to methane.

(2) FIDppm = FID reading in ppmC.

(3) SAMppm = the known methane concentration in ppmC.

72. Section 86.527–90 of subpart F is amended by revising paragraphs (a), (c) and (d), to read as follows:

§ 86.527–90 Test procedures, overview.

(a) The procedures described in this and subsequent sections are used to determine the conformity of motorcycles with the standards set forth in subpart E of this part.

* * * * * *

(c) The exhaust emission test is designed to determine hydrocarbon (gasoline-fueled, natural gas-fueled and liquefied petroleum gas-fueled motorcycles), methanol, formaldehyde, and hydrocarbon (methanol-fueled motorcycles), carbon monoxide and oxides of nitrogen mass emissions while simulating an average trip in an urban area. The test consists of engine startups and motorcycle operation on a chassis dynamometer, through a specified driving schedule. A proportional part of the diluted exhaust emissions is collected continuously for subsequent analysis, using a constant volume (variable dilution) sampler.

(d) Except in cases of component malfunction or failure, all emission control systems installed on or incorporated in a new motorcycle shall be functioning during all procedures in this Subpart. Maintenance to correct component malfunction or failure shall be authorized in accordance with subpart E of this part.

73. Section 86.540–90 of subpart F is amended by revising paragraph (a) introductory text to read as follows:

§ 86.540–90 Exhaust sample analysis.

* * * * * *

(a) For CO, CO_2, gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled motorcycle HC and, if appropriate, NO_X:

* * * * * *

74. Section 86.542–90 of subpart F is amended by adding paragraphs (q) and (r), to read as follows:

§ 86.542–90 Records required.

* * * * * *

(q) *Additional required records for natural gas-fueled vehicles.* Composition, including all carbon containing compounds; e.g. CO_2, of the natural gas-fuel used during the test. C_1 and C_2 compounds shall be individually reported. C_3 and heavier hydrocarbons and C_6 and heavier compounds may be reported as a group.

(r) *Additional required records for liquefied petroleum gas-fueled vehicles.* Composition of the liquefied petroleum gas-fuel used during the test. Each hydrocarbon compound present, through C_4 compounds, shall be individually reported. C_5 and heavier hydrocarbons may be reported as a group.

75. Section 86.544–90 of subpart F is amended by revising paragraphs (c)(1)(ii), (c)(1)(v), (c)(1)(ix), (c)(3)(iv)(C) and (c)(7)(ii), to read as follows:

§ 86.544–90 Calculations; exhaust emissions.

* * * * * *

(c) * * *

(1) * * *

(ii) $Density_{HC}$=Density of HC in exhaust gas.

(A) *For gasoline-fuel;* $Density_{HC}$=576.8 g/m³-carbon atom (16.33 g/ft³-carbon atom), assuming an average carbon to hydrogen ratio of 1:1.85, at 20 °C (68 °F) and 101.3 kPa (760 mm Hg) pressure.

(B) *For natural gas and liquefied petroleum gas-fuel;* $Density_{HC}$=41.57(12.011+H/C(1.008)) g/m³-carbon atom (1.1771(12.011+H/C(1.008)) g/ft³-carbon atom) where H/C is the hydrogen to carbon ratio of the hydrocarbon components of test fuel, at 20 °C (68 °F) and 101.3 kPa (760mm Hg) pressure.

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(v) FID HC_e=Concentration of hydrocarbon (plus methanol if methanol-fueled motorcycle is tested) in dilute exhaust as measured by the FID ppm carbon equivalent.

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(ix) FID HC_d=Concentration of hydrocarbon (plus methanol if methanol-fueled motorcycle is tested) in dilution air as measured by the FID. ppm carbon equivalent.

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(3) * * *

(iv) * * *

(C) CO_e=[1 - (0.01+0.005HCR) CO_{2e} - 0.000323R]CO_{em} for methanol-fueled, natural gas-fueled or liquefied petroleum gas-fueled motorcycles, where HCR is hydrogen to carbon ratio as measured for the fuel used.

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(7) * * *

For methanol-fueled, natural gas-fueled or liquefied petroleum gas-fueled motorcycles where fuel composition is $C_xH_yO_z$ as measured for the fuel used (for natural gas-fuel and liquefied petroleum gas-fuel, Z=0).

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(ii)
$$DF = \frac{100 \times \frac{x}{x + y/2 + 3.76(x + y/4 - z/2)}}{CO_{2e} + (HC_e + CO_e + C_{CH_3OHe}) \times 10^{-4}}$$

76. Section 86.708–94 of subpart H is amended by revising Tables H94–3, H94–4, H94–6 and H94–7 following paragraph (a)(1)(i)(A)(*3*) to read as follows:

§ 86.708–94 In-use emission standards for 1994 and later model year light duty vehicles.

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(a)(1) * * *

(i) * * *

(A) * * *

(*3*) * * *

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TABLE H94–3.—INTERMEDIATE USEFUL LIFE[1] STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR HCS, CO AND NO_X

Fuel	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_X
Gasoline	Tier 0	0.41	.....	.....	.....	3.4	1.0
Gasoline	Tier 1_i	0.41	0.32	.....	.....	3.4	0.4
Gasoline	Tier 1	0.41	0.25	.....	.....	3.4	0.4
Diesel	Tier 0	0.41	.....	.....	.....	3.4	1.0
Diesel	Tier 1_i	0.41	0.32	.....	.....	3.4	1.0
Diesel	Tier 1	0.41	0.25	.....	.....	3.4	1.0
Methanol	Tier 0	.....	.....	0.41	.....	3.4	1.0
Methanol	Tier 1_i	.....	.....	0.41	0.32	3.4	0.4
Methanol	Tier 1	.....	.....	0.41	0.25	3.4	0.4
Natural Gas	Tier 0	.....	0.34	.....	.....	3.4	1.0
Natural Gas	Tier 1_i	.....	0.32	.....	.....	3.4	0.4
Natural Gas	Tier 1	.....	0.25	.....	.....	3.4	0.4
LPG	Tier 0	0.41	.....	.....	.....	3.4	1.0
LPG	Tier 1_i	0.41	0.32	.....	.....	3.4	0.4
LPG	Tier 1	0.41	0.25	.....	.....	3.4	0.4

[1] The applicable useful life is 5 years or 50,000 miles, whichever first occurs.

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TABLE H94–4.—FULL USEFUL LIFE [1] STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR HCS, CO AND NO_X

Fuel	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x
Gasoline	Tier 0	.....	.....	.....	.....	.....	.....
Gasoline	Tier 1	.....	0.31	.....	.....	4.2	0.60
Diesel	Tier 0	.....	.....	.....	.....	.....	.....
Diesel	Tier 1	.....	0.31	.....	.....	4.2	1.25
Methanol	Tier 0	.....	.....	.....	.....	.....	.....
Methanol	Tier 1	.....	.....	.....	0.31	4.2	0.60
Natural Gas	Tier 0	.....	.....	.....	.....	.....	.....
Natural Gas	Tier 1	.....	0.31	.....	.....	4.2	0.60
LPG	Tier 0	.....	.....	.....	.....	.....	.....
LPG	Tier 1	.....	0.31	.....	.....	4.2	0.60

[1] The applicable useful life is 10 years or 100,000 miles, whichever first occurs, except that no enforcement testing will be done beyond 7 years or 75,000 miles, whichever first occurs.

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TABLE H94–6.—INTERMEDIATE USEFUL LIFE [1] STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR PM

Fuel	Standards	PM
Gasoline	Tier 0	.....
Gasoline	Tier 1	0.08
Diesel	Tier 0	0.20
Diesel	Tier 1	0.08
Methanol	Tier 0	[2]0.20
Methanol	Tier 1	10.08
Natural Gas	Tier 0	[2]0.20
Natural Gas	Tier 1	0.08
LPG	Tier 0	[2]0.20
LPG	Tier 1	0.08

[1] The applicable useful life is 5 years or 50,000 miles, whichever first occurs.
[2] Applicable only to diesel-cycle vehicles.

TABLE H94–7.—FULL USEFUL LIFE [1] STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR PM

Fuel	Standards	PM
Gasoline	Tier 0	.....
Gasoline	Tier 1	0.10
Diesel	Tier 0	.....
Diesel	Tier 1	0.10
Methanol	Tier 0	.....
Methanol	Tier 1	0.10
Natural Gas	Tier 0	.....
Natural Gas	Tier 1	0.10
LPG	Tier 0	.....
LPG	Tier 1	0.10

[1] The applicable useful life is 10 years or 100,000 miles, whichever first occurs, except that no enforcement testing will be done beyond 7 years or 75,000 miles, whichever first occurs.

TABLE H98–1.—INTERMEDIATE USEFUL LIFE [1] STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES

Fuel	THC	NMHC	OMHCE	OMNMHCE	CO	NOx	PM
Gasoline	0.41	0.25	.....	.....	3.4	0.4	0.08
Diesel	0.41	0.25	.....	.....	3.4	1.0	0.08
Methanol	.....	.....	0.41	0.25	3.4	0.4	0.08
Natural Gas	.....	0.25	.....	.....	3.4	0.4	0.08
LPG	0.41	0.25	.....	.....	3.4	0.4	0.08

[1] The applicable useful life is 5 years or 50,000 miles, whichever first occurs.

TABLE H98–2.—FULL USEFUL LIFE [1] STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES

Fuel	THC	NMHC	OMHCE	OMNMHCE	CO	NOx	PM
Gasoline	.....	0.31	.....	.....	4.2	0.6	0.10
Diesel	.....	0.31	.....	.....	4.2	1.25	0.10
Methanol	.....	.....	.....	0.31	4.2	0.6	0.10
Natural Gas	.....	0.31	.....	.....	4.2	0.6	0.10
LPG	.....	0.31	.....	.....	4.2	0.6	0.10

[1] The applicable useful life is 10 years or 100,000 miles, whichever first occurs, except that no enforcement testing will be done beyond 7 years or 75,000 miles, whichever first occurs.

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78. Section 86.709–94 of subpart H is amended by revising Tables H94–9, H94–10, H94–12 and H94–13 following paragraph (a)(1)(i)(A)(*3*), and Tables H94–15, H94–16 and H94–18 following paragraph (a)(1)(ii)(A)(*2*), to read as follows:

§ 86.709–94 In-use emission standards for 1994 and later model year light-duty trucks.

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(a)(1) * * *

(i) * * *

(A) * * *

(*3*) * * *

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77. Section 86.708–98 of subpart H is amended by revising Tables H98–1 and H98–2 following paragraph (a)(1)(i) to read as follows:

§ 86.708–98 In-use emission standards for 1998 and later model year light-duty vehicles.

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(a)(1)(i) * * *

TABLE H94–9.—INTERMEDIATE USEFUL LIFE [1] STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR HCS, CO AND NO_X

Fuel	LVW (lbs)	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x
Gasoline	0–3750	Tier 0	0.80	.....	.....	.....	10	1.2
Gasoline	0–3750	Tier 1	0.80	0.32	.....	.....	5.2	0.4
Gasoline	0–3750	Tier 1	0.80	0.25	.....	.....	3.4	0.4
Gasoline	3751–5750	Tier 0	0.80	.....	.....	.....	10	1.7
Gasoline	3751–5750	Tier 1_1	0.80	0.41	.....	.....	6.7	0.7
Gasoline	3751–5750	Tier 1	0.80	0.32	.....	.....	4.4	0.7
Diesel	0–3750	Tier 0	0.80	.....	.....	.....	10	1.2
Diesel	0–3750	Tier 1_1	0.80	0.32	.....	.....	5.2	1.2
Diesel	0–3750	Tier 1	0.80	0.25	.....	.....	3.4	1.0
Diesel	3751–5750	Tier 0	0.80	.....	.....	.....	10	1.7
Diesel	3751–5750	Tier 1_1	0.80	0.41	.....	.....	6.7	1.7
Diesel	3751–5750	Tier 1	0.80	0.32	.....	.....	4.4	0.97
Methanol	0–3750	Tier 0	.....	.....	0.80	.....	10	1.2
Methanol	0–3750	Tier 1_1	.....	.....	0.80	0.32	5.2	0.4
Methanol	0–3750	Tier 1	.....	.....	0.80	0.25	3.4	0.4
Methanol	3751–5750	Tier 0	.....	.....	0.80	.....	10	1.7
Methanol	3751–5750	Tier 1_1	.....	.....	0.80	0.41	6.7	0.7
Methanol	3751–5750	Tier 1	.....	.....	0.80	0.32	4.4	0.7
Natural Gas	0–3750	Tier 0	.....	0.67	.....	.....	10	1.2
Natural Gas	0–3750	Tier 1_1	.....	0.32	.....	.....	5.2	0.4
Natural Gas	0–3750	Tier 1	.....	0.25	.....	.....	3.4	0.4
Natural Gas	3751–5750	Tier 0	.....	0.67	.....	.....	10	1.7
Natural Gas	3751–5750	Tier 1_1	.....	0.41	.....	.....	6.7	0.7
Natural Gas	3751–5750	Tier 1	.....	0.32	.....	.....	4.4	0.7
LPG	0–3750	Tier 0	0.80	.....	.....	10	1.2	
LPG	0–3750	Tier 1_1	0.80	0.32	.....	.....	5.2	0.4
LPG	0–3750	Tier 1	0.80	0.25	.....	.....	3.4	0.4
LPG	3751–5750	Tier 0	0.80	.....	.....	10	1.7	
LPG	3751–5750	Tier 1_1	0.80	0.41	.....	6.7	0.7	
LPG	3751–5750	Tier 1	0.80	0.32	.....	.....	4.4	0.7

[1] The applicable useful life is 5 years or 50,000 miles, whichever first occurs.

TABLE H94–10.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR HCS, CO AND NO_X

Fuel	LVW (lbs)	Standards	THC[2]	NMHC[1]	OMHCE[2]	OMNMHCE[1]	CO[1]	NO_x[1]
Gasoline	0–3750	Tier 0	0.80	.....	.....	.....	10	1.2
Gasoline	0–3750	Tier 1	0.80	0.31	.....	.....	4.2	0.60
Gasoline	3751–5750	Tier 0	0.80	.....	.....	.....	10	1.7
Gasoline	3751–5750	Tier 1	0.80	0.40	.....	.....	5.5	0.97
Diesel	0–3750	Tier 0	0.80	.....	.....	.....	10	1.2
Diesel	0–3750	Tier 1	0.80	0.31	.....	.....	4.2	1.25
Diesel	3751–5750	Tier 0	0.80	.....	.....	.....	10	1.7
Diesel	3751–5750	Tier 1	0.80	0.40	.....	.....	5.5	0.97
Methanol	0–3750	Tier 0	.....	.....	0.80	.....	10	1.2
Methanol	0–3750	Tier 1	.....	.....	0.80	0.31	4.2	0.60
Methanol	3751–5750	Tier 0	.....	.....	0.80	.....	10	1.7
Methanol	3751–5750	Tier 1	.....	.....	0.80	0.40	5.5	0.97
Natural Gas	0–3750	Tier 0	2.93	0.67	.....	.....	10	1.2
Natural Gas	0–3750	Tier 1	2.93	0.31	.....	.....	4.2	0.60
Natural Gas	3751–5750	Tier 0	2.93	0.67	.....	.....	10	1.7
Natural Gas	3751–5750	Tier 1	2.93	0.40	.....	.....	5.5	0.97
LPG	0–3750	Tier 0	0.80	.....	.....	.....	10	1.2
LPG	0–3750	Tier 1	0.80	0.31	.....	.....	4.2	0.60
LPG	3751–5750	Tier 0	0.80	.....	.....	.....	10	1.7
LPG	3751–5750	Tier 1	0.08	0.40	.....	.....	5.5	0.97

[1] The applicable useful life is 10 years or 100,000 miles, which ever first occurs, except that no enforcement testing will be done beyond 7 years or 75,000 miles, whichever first occurs.
[2] The applicable useful life is 11 years or 120,000 miles, whichever first occurs.

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TABLE H94–12.—INTERMEDIATE USEFUL LIFE [1] STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR PM

Fuel	LVW (lbs)	Standards	PM
Gasoline	0–3750	Tier 0	.....

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TABLE H94–12.—INTERMEDIATE USEFUL LIFE [1] STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR PM—Continued

Fuel	LVW (lbs)	Standards	PM
Gasoline	0–3750	Tier 1	0.08
Gasoline	3751–5750	Tier 0	
Gasoline	3751–5750	Tier 1	0.08
Diesel	0–3750	Tier 0	0.26
Diesel	0–3750	Tier 1	0.08
Diesel	3751–5750	Tier 0	0.13
Diesel	3751–5750	Tier 1	0.08
Methanol	0–3750	Tier 0	
Methanol	0–3750	Tier 1	0.08
Methanol	3751–5750	Tier 0	
Methanol	3751–5750	Tier 1	0.08
Natural Gas	0–3750	Tier 0	[2] 0.26
Natural Gas	0–3750	Tier 1	0.08
Natural Gas	3751–5750	Tier 0	[2] 0.13
Natural Gas	3751–5750	Tier 1	0.08
LPG	0–3750	Tier 0	[2] 0.26
LPG	0–3750	Tier 1	0.08
LPG	3751–5750	Tier 0	[2] 0.13
LPG	3751–5750	Tier 1	0.08

[1] The applicable useful life is 5 years or 50,000 miles, whichever first occurs.
[2] Applicable only to diesel-cycle vehicles.

TABLE H94–13.—FULL USEFUL LIFE [1] STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR PM

Fuel	LVW (lbs)	Standards	PM
Gasoline	0–3750	Tier 0	
Gasoline	0–3750	Tier 1	0.10
Gasoline	3751–5750	Tier 0	
Gasoline	3751–5750	Tier 1	0.10
Diesel	0–3750	Tier 0	0.26
Diesel	0–3750	Tier 1	0.10
Diesel	3751–5750	Tier 0	0.13
Diesel	3751–5750	Tier 1	0.10
Methanol	0–3750	Tier 0	
Methanol	0–3750	Tier 1	0.10
Methanol	3751–5750	Tier 0	
Methanol	3751–5750	Tier 1	0.10
Natural Gas	0–3750	Tier 0	[2] 0.26
Natural Gas	0–3750	Tier 1	0.10
Natural Gas	3751–5750	Tier 0	[2] 0.13
Natural Gas	3751–5750	Tier 1	0.10
LPG	0–3750	Tier 0	[2] 0.26
LPG	0–3750	Tier 1	0.10
LPG	3751–5750	Tier 0	[2] 0.13
LPG	3751–5750	Tier 1	0.10

[1] The applicable useful life is 10 years or 100,000 miles, whichever first occurs, except that no enforcement testing will be done beyond 7 years or 75,000 miles, whichever first occurs.
[2] Applicable only to diesel-cycle vehicles.

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(ii) * * *

(A) * * *

(2) * * *

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TABLE H94–15.—INTERMEDIATE USEFUL LIFE [1] STANDARDS (G/MI)I FOR HEAVY LIGHT-DUTY TRUCKS FOR HCS, CO AND NO_X

Fuel	LVW (lbs)	ALVW (lbs)	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_X
Gasoline	0–3750		Tier 0	0.80				10	1.2
Gasoline	> 3750		Tier 0	0.80				10	1.7
Gasoline		3751–5750	Tier 1_I	0.80	0.40			5.5	0.88
Gasoline		3751–5750	Tier 1	0.80	0.32			4.4	0.7
Gasoline		> 5750	Tier 1_I	0.80	0.49			6.2	1.38
Gasoline		> 5750	Tier 1	0.80	0.39			5.0	1.1
Diesel	0–3750		Tier 0	0.80				10	1.2
Diesel	> 3750		Tier 0	0.80				10	1.7
Diesel	0–3750	3751–5750	Tier 1_I	0.80	0.40			5.5	0.88
Diesel	0–3750	3751–5750	Tier 1	0.80	0.32			4.4	0.7
Diesel	0–3750	> 5750	Tier 1_I	0.80	0.49			6.2	1.38
Diesel	0–3750	> 5750	Tier 1	0.80	0.39			5.0	1.1
Diesel	> 3750	3751–5750	Tier 1_I	0.80	0.40			5.5	0.88
Diesel	> 3750	3751–5750	Tier 1	0.80	0.32			4.4	0.7
Diesel	> 3750	> 5750	Tier 1_I	0.80	0.49			6.2	1.38
Diesel	> 3750	> 5750	Tier 1	0.80	0.39			5.0	1.1
Methanol	0–3750		Tier 0	0.80				10	1.2
Methanol	> 3750		Tier 0	0.80				10	1.7
Methanol		3751–5750	Tier 1_I			0.80	0.40	5.5	0.88
Methanol		3751–5750	Tier 1			0.80	0.32	4.4	0.7
Methanol		> 5750	Tier 1_I			0.80	0.49	6.2	1.38
Methanol		> 5750	Tier 1			0.80	0.39	5.0	1.1
Natural Gas	0–3570		Tier 0		0.67			10	1.2
Natural Gas	> 3750		Tier 0		0.67			10	1.7
Natural Gas		3751–5750	Tier 1_I		0.40			5.5	0.88
Natural Gas		3751–5750	Tier 1		0.32			4.4	0.7
Natural Gas		> 5750	Tier 1_I		0.49			6.2	1.38
Natural Gas		> 5750	Tier 1		0.39			5.0	1.1
LPG	0–3570		Tier 0	0.80				10	1.2
LPG	> 3750		Tier 0	0.80				10	1.7
LPG		3751–5750	Tier 1_I	0.80	0.40			5.5	0.88
LPG		3751–5750	Tier 1	0.80	0.32			4.4	0.7
LPG		> 5750	Tier 1_I	0.80	0.49			6.2	1.38
LPG		> 5750	Tier 1	0.80	0.39			5.0	1.1

TABLE H94–15.—INTERMEDIATE USEFUL LIFE [1] STANDARDS (G/MI)I FOR HEAVY LIGHT-DUTY TRUCKS FOR HCS, CO AND NO_X—Continued

Fuel	LVW (lbs)	ALVW (lbs)	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_X
Diesel	> 3750	3751–5750	Tier 1_I	0.80	0.40			5.5	1.7
Diesel		3751–5750	Tier 1	0.80	0.32			4.4	0.98
Diesel	0–3750	> 5750	Tier 1_I	0.80	0.49			6.2	1.2
Diesel	> 3750	> 5750	Tier 1_I	0.80	0.49			6.2	1.7
Diesel		> 5750	Tier 1	0.80	0.39			5.0	1.53
Methanol	0–3750		Tier 0	0.80				10	1.2
Methanol	> 3750		Tier 0	0.80				10	1.7
Methanol		3751–5750	Tier 1_I			0.80	0.40	5.5	0.88
Methanol		3751–5750	Tier 1			0.80	0.32	4.4	0.7
Methanol		> 5750	Tier 1_I			0.80	0.49	6.2	1.38
Methanol		> 5750	Tier 1			0.80	0.39	5.0	1.1
Natural Gas	0–3570		Tier 0		0.67			10	1.2
Natural Gas	> 3750		Tier 0		0.67			10	1.7
Natural Gas		3751–5750	Tier 1_I		0.40			5.5	0.88
Natural Gas		3751–5750	Tier 1		0.32			4.4	0.7
Natural Gas		> 5750	Tier 1_I		0.49			6.2	1.38
Natural Gas		> 5750	Tier 1		0.39			5.0	1.1
LPG	0–3570		Tier 0	0.80				10	1.2
LPG	> 3750		Tier 0	0.80				10	1.7
LPG		3751–5750	Tier 1_I	0.80	0.40			5.5	0.88
LPG		3751–5750	Tier 1	0.80	0.32			4.4	0.7
LPG		> 5750	Tier 1_I	0.80	0.49			6.2	1.38
LPG		> 5750	Tier 1	0.80	0.39			5.0	1.1

[1] The applicable useful life is 5 years or 50,000 miles, whichever first occurs.

TABLE H94–16.—FULL USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS FOR HCS, CO AND NO_X

Fuel	LVW (lbs)	ALVW (lbs)	Standards	THC [2]	NMHC [1]	OMHCE [2]	OMNMHCE [1]	CO [1]	NO_X [1]
Gasoline	0–3750		Tier 0	0.80				10	1.2
Gasoline	> 3750		Tier 0	0.80				10	1.7
Gasoline		3751–5750	Tier 1	0.80	0.46			6.4	0.98
Gasoline		> 5750	Tier 1	0.80	0.56			7.3	1.53
Diesel	0–3750		Tier 0	0.80				10	1.2
Diesel	> 3750		Tier 0	0.80				10	1.7
Diesel		3751–5750	Tier 1	0.80	0.46			6.4	0.98
Diesel		> 5750	Tier 1	0.80	0.56			7.3	1.53
Methanol	0–3750		Tier 0			0.80		10	1.2
Methanol	> 3750		Tier 0			0.80		10	1.7
Methanol		3751–5750	Tier 1			0.80	0.46	6.4	0.98
Methanol		> 5750	Tier 1			0.80	0.56	7.3	1.53
Natural Gas	0–3750		Tier 0		0.67			10	1.2
Natural Gas	> 3750		Tier 0		0.67			10	1.7
Natural Gas		3751–5750	Tier 1		0.46			6.4	0.98
Natural Gas		> 5750	Tier 1		0.56			7.3	1.53
LPG	0–3750		Tier 0	0.80				10	1.2
LPG	> 3750		Tier 0	0.80				10	1.7
LPG		3751–5750	Tier 1	0.80	0.46			6.4	0.98
LPG		> 5750	Tier 1	0.80	0.56			7.3	1.53

[1] The applicable useful life is 11 years or 120,000 miles, whichever first occurs, except that no enforcement testing will be done beyond 7 years or 90,000 miles, whichever first occurs.
[2] The applicable useful life is 11 years or 120,000 miles, whichever first occurs.

* * * * *

TABLE H94–18.—INTERMEDIATE USEFUL LIFE [1] STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS FOR PM

Fuel	LVW (lbs)	ALVW (lbs)	Standards	PM
Gasoline	0–3750		Tier 0	
Gasoline	> 3750		Tier 0	
Gasoline		3751–5750	Tier 1	0.10
Gasoline		> 5750	Tier 1	0.12
Diesel	0–3750		Tier 0	0.26
Diesel	> 3750		Tier 0	0.13
Diesel		3751–5750	Tier 1	0.10

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TABLE H94–18.—INTERMEDIATE USEFUL LIFE [1] STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS FOR PM—Continued

Fuel	LVW (lbs)	ALVW (lbs)	Standards	PM
Diesel	.....	> 5750	Tier 1	0.12
Methanol	0–3750	.....	Tier 0	.....
Methanol	> 3750	.....	Tier 0	.....
Methanol	.....	3751–5750	Tier 1	0.10
Methanol	.....	> 5750	Tier 1	0.12
Natural Gas	0–3750	.....	Tier 0	[2] 0.26
Natural Gas	> 3750	.....	Tier 0	[2] 0.13
Natural Gas	.....	3751–5750	Tier 1	0.10
Natural Gas	.....	> 5750	Tier 1	0.12
LPG	0–3750	.....	Tier 0	[2] 0.26
LPG	> 3750	.....	Tier 0	[2] 0.13
LPG	.....	3751–5750	Tier 1	0.10
LPG	.....	> 5750	Tier 1	0.12

[1] The applicable useful life is 5 years or 50,000 miles, whichever first occurs.
[2] Applicable only to diesel-cycle vehicles.

* * * * *

79. Section 86.709–99 of subpart H is amended by revising Tables H99–1 and H99–2 following paragraph (a)(1)(i)(A), and Tables H99–3 and H99–4 following paragraph (a)(1)(ii)(A), to read as follows:

§ 86.709–99 In-use emission standards for 1999 and later model year light-duty trucks.

* * * * *

(a)(1)(i)(A) * * *

TABLE H99–1.—INTERMEDIATE USEFUL LIFE [1] STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS

Fuel	LVW (lbs)	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x	PM
Gasoline	0–3750	.....	0.25	.....	.....	3.4	0.4	0.08
Gasoline	3751–5750	.....	0.32	.....	.....	4.4	0.7	0.08
Diesel	0–3750	.....	0.25	.....	.....	3.4	1.0	0.08
Diesel	3751–5750	.....	0.32	.....	.....	4.4	0.97	0.08
Methanol	0–3750	.....	.....	.....	0.25	3.4	0.4	0.08
Methanol	3751–5750	.....	.....	.....	0.32	4.4	0.7	0.08
Natural Gas	0–3750	.....	0.25	.....	.....	3.4	0.4	0.08
Natural Gas	3751–5750	.....	0.32	.....	.....	4.4	0.7	0.08
LPG	0–3750	.....	0.25	.....	.....	3.4	0.4	0.08
LPG	3751–5750	.....	0.32	.....	.....	4.4	0.7	0.08

[1] The applicable useful life is 5 years or 50,000 miles, whichever first occurs.

TABLE H99–2.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS

Fuel	LVW (lbs)	THC [2]	NMHC [1]	OMHCE [2]	OMNMHCE [1]	CO [1]	NO_x [1]	PM [1]
Gasoline	0–3750	0.80	0.31	.....	.....	4.2	0.6	0.10
Gasoline	3751–5750	0.80	0.40	.....	.....	5.5	0.97	0.10
Diesel	0–3750	0.80	0.31	.....	.....	4.2	1.25	0.10
Diesel	3751–5750	0.80	0.40	.....	.....	5.5	0.97	0.10
Methanol	0–3750	.....	.....	0.80	0.31	4.2	0.6	0.10
Methanol	3751–5750	.....	.....	0.80	0.40	5.5	0.97	0.10
Natural Gas	0–3750	.....	0.31	.....	.....	4.2	0.6	0.10
Natural Gas	3751–5750	.....	0.40	.....	.....	5.5	0.97	0.10
LPG	0–3750	0.80	0.31	.....	.....	4.2	0.6	0.10
LPG	3751–5750	0.80	0.40	.....	.....	5.5	0.97	0.10

[1] The applicable useful life is 10 yeras or 100,000 miles, whichever first occurs, except that no enforcement testing will be done beyond 7 years or 75,000 miles, whichever first occurs.
[2] The applicable useful life is 11 years or 120,000 miles, whichever first occurs.

* * * * *

(ii)(A) * * *

TABLE H99–3.—INTERMEDIATE USEFUL LIFE [1] STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS

Fuel	ALVW (lbs)	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x	PM
Gasoline	3751–5750	0.80	0.32	.....	.....	4.4	0.7	0.10
Gasoline	>5750	0.80	0.39	.....	.....	5.0	1.1	0.12
Diesel	3751–5750	0.80	0.32	.....	.....	4.4	0.98	0.10

TABLE H99–3.—INTERMEDIATE USEFUL LIFE [1] STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS—Continued

Fuel	ALVW (lbs)	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x	PM
Diesel	>5750	0.80	0.39	.....	.....	5.0	1.53	0.12
Methanol	3751–5750	.....	.....	0.80	0.32	4.4	0.7	0.10
Methanol	>5750	.....	.....	0.80	0.39	5.0	1.1	0.12
Natural Gas	3751–5750	.....	0.32	.....	.....	4.4	0.7	0.10
Natural Gas	>5750	.....	0.39	.....	.....	5.0	1.1	0.12
LPG	3751–5750	0.80	0.32	.....	.....	4.4	0.7	0.10
LPG	>5750	0.80	0.39	.....	.....	5.0	1.1	0.12

[1] The applicable useful life is 5 years or 50,000 miles, whichever first occurs.

TABLE H99–4.—FULL USEFUL LIFE [1] STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS

Fuel	ALVW (lbs)	THC [2]	NMHC [1]	OMHCE [2]	OMNMHCE [1]	CO [1]	NO_x [1]	PM [1]
Gasoline	3751–5750	0.80	0.46	.....	.....	6.4	0.98	0.10
Gasoline	>5750	0.80	0.56	.....	.....	7.3	1.53	0.12
Diesel	3751–5750	0.80	0.46	.....	.....	6.4	0.98	0.10
Diesel	>5750	0.80	0.56	.....	.....	7.3	1.53	0.12
Methanol	3751–5750	.....	.....	0.80	0.46	6.4	0.98	0.10
Methanol	>5750	.....	.....	0.80	0.56	7.3	1.53	0.12
Natural Gas	3751–5750	.....	0.46	.....	.....	6.4	0.98	0.10
Natural Gas	>5750	.....	0.56	.....	.....	7.3	1.53	0.12
LPG	3751–5750	0.80	0.46	.....	.....	6.4	0.98	0.10
LPG	>5750	0.80	0.56	.....	.....	7.3	1.53	0.12

[1] The applicable useful life is 11 years or 120,000 miles, whichever first occurs, except that no enforcement testing will be done beyond 7 years or 90,000 miles, whichever first occurs.
[2] The applicable useful life is 11 years or 120,000 miles, whichever first occurs.

* * * * *

80a. Section 86.884–1 of subpart I is revised to read as follows:

§ 86.884–1 General applicability.

The provisions of this subpart are applicable to new petroleum-fueled diesel heavy-duty engines beginning with the 1984 model year, methanol-fueled diesel heavy-duty engines beginning with the 1990 model year and natural gas-fueled and liquefied petroleum gas-fueled diesel heavy-duty engines beginning with the 1997 model year. The provisions of this subpart are optional prior to the 1997 model year for natural gas-fueled and liquefied petroleum gas-fueled diesel heavy-duty engines.

§ 86.884–4 [Amended].

80b. Section 86.884–4 is amended by revising the words "86.084–4(a)" to read "86.084–4".

81. The title of subpart M is revised to read as follows:

Subpart M—Evaporative Emission Test Procedures for New Gasoline-Fueled, Natural Gas-Fueled, Liquefied Petroleum Gas-Fueled and Methanol-Fueled Heavy-Duty Vehicles

82a. Section 86.1201–90 of subpart M is amended by revising paragraph (a) to read as follows:

§ 86.1201–90 Applicability.

(a) The provisions of this subpart are applicable to new gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled heavy-duty vehicles.

* * * * *

82b. Section 86.1204 is added to subpart M to read as follows:

§ 86.1204 Section numbering.

The section numbering system set forth in § 86.104 applies to this subpart.

83. Section 86.1205–90 of subpart M is amended by revising paragraph (a) to read as follows:

§ 86.1205–90 Introduction; structure of subpart.

(a) This subpart describes the equipment required and the procedures to follow in order to determine evaporative emission levels from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled heavy-duty vehicles.

* * * * *

84. Section 86.1206–96 of subpart M is amended by revising the introductory text to read as follows:

§ 86.1206–96 Equipment required; overview.

This subpart specifies procedures for testing of gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled heavy-duty vehicles. Equipment required and specifications are as follows:

* * * * *

85. Section 86.1207–96 of subpart M is amended by revising paragraph (b)(1) to read as follows:

§ 86.1207–96 Sampling and analytical systems; evaporative emissions.

* * * * *

(b) * * *

(1) For gasoline-fueled, liquefied petroleum gas-fueled, natural gas-fueled and methanol-fueled vehicles a hydrocarbon analyzer utilizing the hydrogen flame ionization principle (FID) shall be used to monitor the atmosphere within the enclosure (a heated FID (HFID) (235° ±15 °F [113 ±8 °C)) is required for methanol-fueled vehicles). Provided evaporative emission results are not affected, a probe may be used to detect or verify hydrocarbon sources during a running loss test. Instrument bypass flow may be returned to the enclosure. The FID shall have a response time to 90 percent of final reading of less than 1.5 seconds.

* * * * *

86. A new section 86.1213–94 is added to subpart M to read as follows:

§ 86.1213–94 Fuel specifications.

(a) *Gasoline fuel.* (1) Gasoline having the following specifications will be used in emissions testing for gasoline-fueled vehicles.

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Item	ASTM test method No.	Value
Octane, research, min.	D2699	93
Sensitivity, min.		7.5
Lead (organic) g/U.S. gal	D3237	[1] 0.050
(g/liter)		[1] (0.013)
Distillation range:		
IBP °F	D86	75–95
(°C)		(23.9–35)
10 pct. point °F	D86	120–135
(°C)		(48.9–57.2)
50 pct. point °F	D86	200–230
(°C)		(93.3–110)
90 pct. point °F	D86	300–325
(°C)		(148.9–162.8)
EP, max. °F	D86	415
(°C)		(212.8)
Sulphur, max. wt. pct.	D1266	0.10
Phosphorous, max. g/U.S. gal.	D3231	0.005
(g/liter)		(0.0013)
RVP, psi.	D323	8.7–9.2
(kPa)		(60.0–63.4)
Hydrocarbon composition:		
Olefins, max. pct.	D1319	10
Aromatics, max. pct.	D1319	35
Saturates	D1319	[2]

[1] Maximum.
[2] Remainder.

(2) (i) Unleaded gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation.

(ii) The octane rating of the gasoline used shall be no higher than 1.0 Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(iii) The Reid Vapor Pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(3) The specification range of the gasoline to be used under paragraphs (a)(1) and (a)(2) of this section shall be reported in accordance with § 86.094–21(b)(3).

(b) *Methanol fuel.* (1) Methanol fuel used in evaporative emission testing and in service accumulation of methanol-fueled vehicles shall be representative of commercially available methanol fuel and shall consist of at least 50 percent methanol (CH_3OH) by volume.

(i) Manufacturers shall recommend the methanol fuel to be used for testing and service accumulation.

(ii) The Administrator shall determine the methanol fuel to be used for testing and service accumulation.

(2) Other methanol fuels may be used for testing and service accumulation provided:

(i) They are commercially available;

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service; and

(iii) Use of a fuel listed under paragraph (b)(1) of this section would have a detrimental effect on emissions or durability; and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(3) The specification range of the methanol fuels to be used under paragraphs (b)(1) and (b)(2) of this section shall be reported in accordance with § 86.094–21(b)(3).

(c) *Mixtures of petroleum and methanol fuels for flexible fuel vehicles.* (1) Mixtures of petroleum and methanol fuels used for exhaust and evaporative emission testing and service accumulation for flexible fuel vehicles shall be within the range of fuel mixtures for which the vehicle was designed.

(2) Manufacturer testing and service accumulation may be performed using only those mixtures (mixtures may be different for exhaust testing, evaporative testing and service accumulation) expected to result in the highest emissions, provided:

(i) The fuels which constitute the mixture will be used in customer service;

(ii) Information, acceptable to the Administrator, is provided by the manufacturer to show that the designated fuel mixtures would result in the highest emissions; and

(iii) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(3) The specification range of the fuels to be used under paragraphs (c)(1) and (c)(2) of this section shall be reported in accordance with § 86.094–21(b)(3).

(d) *Natural gas fuel.* (1) Natural gas fuel having the following specifications will be used in evaporative emission testing and in service accumulation of natural gas-fueled vehicles shall be commercially available natural gas fuel.

NATURAL GAS CERTIFICATION FUEL SPECIFICATIONS

Item		ASTM test method No.	Value
Methane	min. mole pct	D1945	89.0

NATURAL GAS CERTIFICATION FUEL SPECIFICATIONS—Continued

Item		ASTM test method No.	Value
Ethane	max. mole pct	D1945	4.5
C_3 and higher	max. mole pct	D1945	2.3
C_6 and higher	max. mole pct	D1945	0.2
Oxygen	max. mole pct	D1945	0.6
Inert gases:			
Sum of CO_2 and N_2	max. mole pct	D1945	4.0
Odorant [1]			

[1] The natural gas at ambient conditions must have a distinctive odor potent enough for its presence to be detected down to a concentration in air of not over 1/5 (one-fifth) of the lower limit of flammability.

(2) Natural gas fuel representative of commercial natural gas which will be generally available through retail outlets shall be used in service accumulation.

(3) Other natural gas fuels may be used for emission testing and service accumulation provided:

(i) They are commercially available;

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service; and

(iii) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(4) The specification range of the fuels to be used under paragraphs (d)(1), (d)(2) and (d)(3) of this section shall be reported in accordance with § 86.094–21(b)(3).

(e) *Liquefied petroleum gas-fuel.* (1) Liquefied petroleum gas-fuel used in evaporative emission testing and in service accumulation of liquefied petroleum gas-fueled vehicles shall be commercially available liquefied petroleum gas-fuel.

(i) Manufacturers shall recommend the liquefied petroleum gas-fuel to be used for testing and service accumulation.

(ii) The Administrator shall determine the liquefied petroleum gas-fuel to be used for testing and service accumulation.

(2) Other liquefied petroleum gas fuels may be used for testing and service accumulation provided:

(i) They are commercially available;

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service; and

(iii) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(3) The specification range of the fuels to be used under paragraphs (e)(1) and (e)(2) of this section shall be measured in accordance with ASTM D2163–91 and reported in accordance with § 86.094–21(b)(3).

87. Section 86.1221–90 of subpart M is amended by revising paragraphs (a) introductory text, (a)(2) and (b)(3), and adding paragraph (e) to read as follows:

§ 86.1221–90 Hydrocarbon analyzer calibration.

* * * * *

(a) *Initial and periodic optimization of detector response.* Prior to its introduction into service and at least annually thereafter, the FID hydrocarbon analyzer shall be adjusted for optimum hydrocarbon response. (The HFID used with methanol-fueled vehicles shall be operated at 235° ±15°F (113° ±8°C)). Analyzers used with gasoline-fuel and liquefied petroleum gas-fuel shall be optimized using propane. Analyzers used with natural gas-fuel may be optimized using methane, or if calibrated using propane the FID response to methane shall be determined and applied to the FID hydrocarbon reading. Alternate methods yielding equivalent results may be used, if approved in advance by the Administrator.

* * * * *

(2) Optimize on the most common operating range. Introduce into the analyzer a propane (or methane as appropriate) in air mixture with a propane (or methane as appropriate) concentration equal to approximately 90 percent of the most common operating range.

* * * * *

(b) * * *

(3) Calibrate on each normally used operating range with propane in air (or methane in air as appropriate) calibration gases having nominal concentrations of 15, 30, 45, 60, 75 and 90 percent of that range. For each range calibrated, if the deviation from a least squares best-fit straight line is two percent or less of the value at each data point, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds two percent at any point, the best-fit non-linear equation which represents the data to within two percent of each test point shall be used to determine concentration.

* * * * *

(e) *FID response factor to methane.* When the FID analyzer to be used for the analysis of natural gas-fueled vehicle hydrocarbon samples has been calibrated using propane, the methane response factor of the analyzer shall be established. To determine the total hydrocarbon FID response to methane, known methane in air concentrations traceable to National Institute of Standards and Technology (NIST) shall be analyzed by the FID. Several methane concentrations shall be analyzed by the FID in the range of concentrations in the exhaust sample. The total hydrocarbon FID response to methane is calculated as follows:

r_{CH4} = FIDppm/SAMppm

Where:

(1) r_{CH4} = FID response factor to methane.

(2) FIDppm = FID reading in ppmC.

(3) SAMppm = the known methane concentration in ppmC.

88. Section 86.1227–96 of subpart M is amended by revising the section heading and paragraphs (b) introductory text and (b)(2) to read as follows:

§ 86.1227–96 Test procedures; overview.

* * * * *

(b) The evaporative emission test (gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled vehicles) is designed to determine hydrocarbon and/or methanol evaporative emissions as a consequence of diurnal temperature fluctuation urban driving and hot soaks during engine-off periods. It is associated with a series of events representative of heavy-duty vehicle operation, which result in hydrocarbon and/or methanol vapor losses. The test procedure is designed to measure:

* * * * *

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(2) Running losses resulting from a simulated trip on a chassis dynamometer, measured by the enclosure or point-source technique (see § 86.1234; this test is not required for gaseous-fueled vehicles); and

* * * * *

89. Section 86.1230–96 of subpart M is amended by revising paragraphs (a) and (b), to read as follows:

§ 86.1230–96 Test sequence; general requirements.

(a)(1) *Gasoline- and methanol-fueled vehicles.* The test sequence shown in figure M96–1 of this section shows the steps encountered as the test vehicle undergoes the procedures subsequently described to determine conformity with the standards set forth. The full three-diurnal sequence depicted in figure M96–1 tests vehicles for all sources of evaporative emissions. The supplemental two-diurnal test sequence is designed to verify that vehicles sufficiently purge their evaporative canisters during the dynamometer run. Sections 86.1232–96, 86.1233–96 and 86.1238–96 describe the separate specifications of the supplemental two-diurnal test sequence.

(2) *Gaseous-fueled vehicles.* The test sequence shown in figure M96–1 of this section shows the steps encountered as the test vehicle undergoes the procedures subsequently described to determine conformity with the standards set forth, with the exception that the fuel drain and fill and precondition canister steps are not required for gaseous-fueled vehicles. In addition, the supplemental two-diurnal test and the running loss test are not required.

(b) The vehicle test for fuel spitback during fuel dispensing is conducted as a stand-alone test (see § 86.1246). This test is not required for gaseous-fueled vehicles.

* * * * *

90. Section 86.1232–96 of subpart M is amended by revising paragraphs (b) and (f), to read as follows:

§ 86.1232–96 Vehicle preconditioning.

* * * * *

(b)(1) *Gasoline- and methanol-fueled vehicles.* Drain the fuel tank(s) and fill with test fuel, as specified in § 86.1213, to the "tank fuel volume" defined in § 86.082–2. The fuel cap(s) shall be installed within one minute after refueling.

(2) *Gaseous-fueled vehicles.* Vehicle fuel tanks are to be filled with fuel that meets the specifications in § 86.113. Fuel tanks shall be filled to a minimum of 75% of service pressure for natural gas-fueled vehicles or a minimum of 75% of available fill volume for liquefied petroleum gas-fueled vehicles. Prior draining of the fuel tanks is not called for if the fuel in the tanks already meets the specifications in § 86.113.

* * * * *

(f)(1) *Gasoline- and methanol-fueled vehicles.* Within five minutes of completion of the preconditioning drive, the vehicle shall be driven off the dynamometer and parked. For gasoline- and methanol-fueled vehicles, drain the fuel tank(s) and fill with test fuel, as specified in § 86.1213, to the "tank fuel volume" defined in § 86.082–2. The vehicle shall be refueled within one hour of completion of the preconditioning drive. The fuel cap(s) shall be installed within one minute after refueling.

(2) *Gaseous-fueled vehicles.* Within five minutes of completion of the preconditioning drive, the vehicle shall be driven off the dynamometer and parked. Vehicle fuel tanks shall be refilled with fuel that meets the specifications in § 86.113. Fuel tanks shall be filled to a minimum of 75% of service pressure for natural gas-fueled vehicles or a minimum of 75% of available fill volume for liquefied petroleum gas-fueled vehicles. Prior draining of the fuel tanks is not called for if the fuel in the tanks already meets the specifications in § 86.113.

* * * * *

91. Section 86.1233–96 of subpart M is amended by revising paragraphs (a)(1) and (a)(3) to read as follows:

§ 86.1233–96 Diurnal emission test.

(a)(1) The diurnal emission test for gasoline-, methanol- and gaseous-fueled vehicles consists of three 24-hour test cycles following the hot soak test. Emissions are measured for each 24-hour cycle, with the highest emission level used to determine compliance with the standards specified in subpart A of this part. The Administrator may truncate a test after any 24-hour cycle without affecting the validity of the collected data. Sampling of emissions from the running loss and hot soak tests is not required as preparation for the diurnal emission test. The diurnal emission test may be conducted as part of either the three-diurnal test sequence or the supplemental two-diurnal test sequence, as described in § 86.1230–96.

* * * * *

(3) For the supplemental two-diurnal test sequence, the diurnal emission test outlined in paragraph (p) of this section follows the alternate hot soak test specified in § 86.1238–96(k). This test is not required for gaseous-fueled vehicles.

* * * * *

92. Section 86.1234–96 of subpart M is amended by revising paragraph (a) to read as follows:

§ 86.1234–96 Running loss test.

(a) *Overview.* Gasoline- and methanol-fueled vehicles are to be tested for running loss emissions during simulated high-temperature urban driving; this test is not required for gaseous-fueled vehicles. During operation, tank temperatures are controlled according to a prescribed profile to simulate in-use conditions. If the vehicle is determined to have exceeded the standard before the end of the running loss test, the test may be terminated without invalidating the data. The test can be run either in a sealed enclosure or with the point-source method, as specified in paragraph (g) of this section.

* * * * *

93. Section 86.1238–96 of subpart M is amended by revising paragraph (a) to read as follows:

§ 86.1238–96 Hot soak test.

(a)(1) *Gasoline- and methanol-fueled vehicles.* For gasoline- and methanol-fueled vehicles, the hot soak test shall be conducted immediately following the running loss test. However, sampling of emissions from the running loss test is not required as preparation for the hot soak test.

(2) *Gaseous-fueled vehicles.* Since gaseous-fueled vehicles are not required to perform a running loss test, the hot soak test shall be conducted within five minutes of the hot start exhaust test.

* * * * *

94. Section 86.1242–90 of subpart M is amended by adding new paragraphs (m) and (n) to read as follows:

§ 86.1242–90 Records required.

* * * * *

(m) *For natural gas-fueled vehicles.* Composition, including all carbon containing compounds; e.g. CO_2, of the natural gas-fuel used during the test. C_1 and C_2 compounds shall be individually reported. C_3 and heavier hydrocarbons, and C_6 and heavier hydrocarbons may be reported as a group.

(n) *For liquefied petroleum gas-fueled vehicles.* Composition of the liquefied petroleum gas-fuel used during the test Each hydrocarbon compound present, through C_4 compounds, shall be individually reported. C_5 and heavier hydrocarbons may be reported as a group.

95. Section 86.1243–96 of subpart M is amended by revising paragraphs (a) and (b)(1)(ii)(B) to read as follows:

§ 86.1243–90 Calculations; evaporative emissions.

(a) The following equations are used to calculate the evaporative emissions from gasoline- and methanol-fueled vehicles, and for gaseous-fueled vehicles.

(b) * * *

(1) * * *

(ii) * * *

(B) C_{HC}=FID hydrocarbon concentration as ppm carbon including FID response to methanol (or methane, as applicable) in the sample.

* * * * *

96. Section 86.1306–90 of subpart N is amended by revising paragraph (a) to read as follows:

§ 86.1306–90 Equipment required and specifications; overview.

(a) *Exhaust emission tests.* All engines subject to this subpart are tested for exhaust emissions. Petroleum-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled, Otto-cycle and diesel engines are tested identically with the exception of the systems used to measure hydrocarbon, nitrogen oxide, methanol, formaldehyde and particulate; petroleum-fueled diesel engines require a heated, continuous hydrocarbon detector and a continuous nitrogen oxide detector (§ 86.1310); methanol-fueled engines require a heated hydrocarbon detector, a methanol detector and a formaldehyde detector; either a heated or a non-heated continuous hydrocarbon detector may be used with natural gas-fueled and liquefied petroleum gas-fueled diesel engines; gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled Otto-cycle engines are not tested for particulate emissions (§ 86.1309). Necessary equipment and specifications appear in §§ 86.1308, 86.1309, 86.1310 and 86.1311.

* * * * *

97. Section 86.1306–96 of subpart N is amended by revising paragraph (a) to read as follows:

§ 86.1306–96 Equipment required and specifications; overview.

(a) *Exhaust emission tests.* All engines subject to this subpart are tested for exhaust emissions. Petroleum-, natural gas-, liquefied petroleum gas-, and methanol-fueled Otto-cycle and diesel engines are tested identically with two exceptions. First, the systems used to measure hydrocarbon, nitrogen oxide, methanol, formaldehyde and particulate depend on the type of engine being tested; petroleum-fueled diesel engines require a heated, continuous hydrocarbon detector and a heated, continuous nitrogen oxide detector (see § 86.1310); methanol-fueled engines require a heated hydrocarbon detector, a methanol detector and a formaldehyde detector; either a heated or non-heated continuous hydrocarbon detector may be used with natural gas-fueled and liquefied petroleum gas-fueled diesel engines; gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled Otto-cycle engines are not tested for particulate emissions (see § 86.1309). Second, if a gasoline-fueled and methanol-fueled engine is to be used in a vehicle equipped with an evaporative canister, the test engine must have a loaded evaporative canister attached for the exhaust emission test. Necessary equipment and specifications appear in §§ 86.1308, 86.1309, 86.1310 and 86.1311.

* * * * *

98. Section 86.1309–90 of subpart N is amended by revising the section heading and paragraphs (a)(1) and (b)(4) to read as follows:

§ 86.1309–90 Exhaust gas sampling system; Otto-cycle engines.

(a)(1) *General.* The exhaust gas sampling system described in this paragraph is designed to measure the true mass of gaseous emissions in the exhaust of either gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled or methanol-fueled Otto-cycle engines. In the CVS concept of measuring mass emissions, two conditions must be satisfied; the total volume of the mixture of exhaust and dilution air must be measured, and a continuously proportioned volume of sample must be collected for analysis. Mass emissions are determined from the sample concentration and total flow over the test period.

* * * * *

(b) * * *

(4) The flow capacity of the CVS shall be large enough to eliminate water condensation in the system. This is especially critical in the case of methanol-fueled engines and may also be of concern with natural gas- and liquefied petroleum gas-fueled engines; see "Calculation of Emissions and Fuel Economy When Using Alternative Fuels," EPA 460/3–83–009.

* * * * *

99. Section 86.1310–90 of subpart N is amended by revising the section heading and paragraphs (a) introductory text and (a)(2) to read as follows:

§ 86.1310–90 Exhaust gas sampling and analytical system; and methanol-fueled diesel engines.

(a) *General.* The exhaust gas sampling system described in this paragraph is designed to measure the true mass of both gaseous and particulate emissions in the exhaust of petroleum-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled heavy-duty diesel engines. This system utilizes the CVS concept (described in § 86.1309) of measuring mass emissions of HC, CH_3OH and HCHO (methanol-fueled engines), CO, CO_2, and particulate from all fuel types. A continuously integrated system is required for HC (petroleum-fueled, natural gas-fueled and liquefied petroleum gas-fueled engines) and NO_x (petroleum-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled engines) measurement, and is allowed for all CO and CO_2 measurements plus CH_3OH, HCHO and HC from methanol-fueled engines. The mass of gaseous emissions is determined from the sample concentration and total flow over the test period. The mass of particulate emissions is determined from a proportional mass sample collected on a filter and from the sample flow and total flow over the test period. As an option, the measurement of total fuel mass consumed over a cycle may be substituted for the exhaust measurement of CO_2. General requirements are as follows:

* * * * * * *

(2) The HC analytical system for petroleum-fueled diesel engines requires a heated flame ionization detector (HFID) and heated sample system (375 ±20°F (191 ±11°C)). For natural gas-fueled and liquefied petroleum gas-fueled diesel engines either a heated flame ionization detector and heated sample system as required for petroleum fuel or a non-heated flame ionization detector may be used.

* * * * * * *

100. A new section 86.1311–94 is added to subpart N to read as follows:

§ 86.1311–94 Exhaust gas analytical system; CVS bag sample.

(a) *Schematic drawings.* Figure N94–1 is a schematic drawing of the exhaust gas analytical system used for analyzing CVS bag samples from either Otto-cycle or diesel engines. Since various configurations can produce accurate results, exact conformance with the drawing is not required. Additional components such as instruments, valves, solenoids, pumps and switches may be used to provide additional information and coordinate the functions of the component systems. Other components such as snubbers, which are not needed to maintain accuracy in some systems, may be excluded if their exclusion is based upon good engineering judgment.

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(b) *Major component description.* The analytical system, Figure N94–1, consists of a flame ionization detector (FID) (heated for methanol-fueled (235 ±15°F (113 ±8°C)) and for petroleum-fueled diesel (375 ±10°F (191 ±6°C) engines) for the measurement of hydrocarbons, a methane analyzer (consisting of a gas chromatograph combined with a FID) for the determination of CH_4 (for engines subject to NMHC standards, where applicable), nondispersive infrared analyzers (NDIR) for the measurement of carbon monoxide and carbon dioxide, and a chemiluminescence analyzer (CL) for the measurement of oxides of nitrogen. The analytical system for methanol consists of a gas chromatograph (GC), equipped with a flame ionization detector. The analysis for formaldehyde is performed using high pressure liquid chromatography (HPLC) of 2,4-dinitrophenylhydrazine (DNPH) derivatives using ultraviolet (UV) detection. The exhaust gas analytical system shall conform to the following requirements:

(1) The CL requires that the nitrogen dioxide present in the sample be converted to nitric oxide before analysis. Other types of analyzers may be used if shown to yield equivalent results and if approved in advance by the Administrator.

(2) The carbon monoxide (NDIR) analyzer may require a sample conditioning column containing $CaSO_4$, or desiccating silica gel to remove water vapor, and containing ascarite to remove carbon dioxide from the CO analysis stream.

(i) If CO instruments are used which are essentially free of CO_2 and water vapor interference, the use of the conditioning column may be deleted (see §§ 86.1322 and 86.1342).

(ii) A CO instrument will be considered to be essentially free of CO_2 and water vapor interference if its response to a mixture of three percent CO_2 in N_2, which has been bubbled through water at room temperature, produces an equivalent CO response, as measured on the most sensitive CO range, which is less than one percent of full scale CO concentration on ranges above 300 ppm full scale or less than 3 ppm on ranges below 300 ppm full scale (see § 86.1322).

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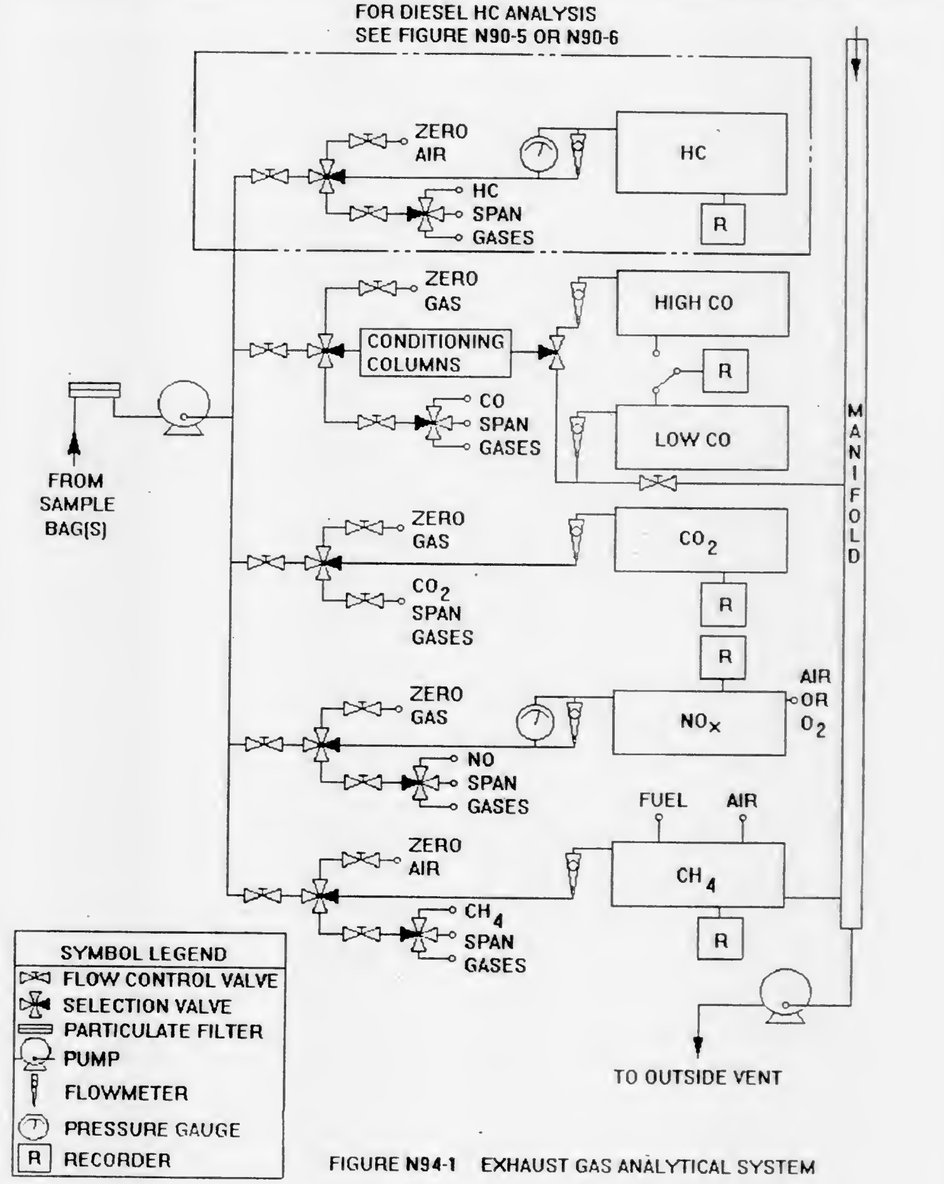


FIGURE N94-1 EXHAUST GAS ANALYTICAL SYSTEM

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(c) *Alternate analytical systems.* Analysis systems meeting the specifications of subpart D of this part may be used for testing required under this subpart, with the exception of §§ 86.346 and 86.347, provided that the systems in subpart D of this part meet the specifications of this subpart. Heated analyzers may be used in their heated configuration.

(d) *Other analyzers and equipment.* Other types of analyzers and equipment may be used if shown to yield equivalent results and if approved in advance by the Administrator.

102. Section 86.1313–94 of subpart N is revised to read as follows:

§ 86.1313–94 Fuel specifications.

(a) *Gasoline fuel.* (1) Gasoline having the specifications listed in Table N94–1 will be used by the Administrator in exhaust emission testing. Gasoline having these specifications or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer in exhaust emission testing, except that the octane specification does not apply.

TABLE N94–1

Item	ASTM	Value
Octane, research, min	D2699	93
Sensitivity, min		7.5
Lead (organic), g/U.S. gal. (g/liter)	D3237	[1] (0.050) [1] (0.013)
Distillation range:		
IBP, °F (°C)	D86	75–95 (23.9–35)
10 pct. point, °F (°C)	D86	120–135 (48.9–57.2)
50 pct. point, °F (°C)	D86	200–230 (93.3–110)
90 pct. point, °F (°C)	D86	300–325 (148.9–162.8)
EP, max. °F (°C)	D86	415 (212.8)
Sulphur, Max., wt. pct	D1266	0.10
Phosphorus, max., g/U.S. gal. (g/liter)	D3231	0.005 (0.0013)
RVP, psi (kPa)	D323	8.0–9.2 (60.0–63.4)
Hydrocarbon composition:		
Olefins, max. pct	D1319	10
Aromatics, max. pct	D1319	35
Saturates	D1319	[2]

[1] Maximum.
[2] Remainder.

(2)(i) Unleaded gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation.

(ii) The octane rating of the gasoline used shall not be higher than one Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(iii) The Reid Vapor Pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(3) The specification range of the gasoline to be used under paragraph (a) of this section shall be reported in accordance with § 86.094–21(b)(3).

(b) *Petroleum diesel test fuel.* (1) The petroleum fuels for testing diesel engines employed for testing shall be clean and bright, with pour and cloud points adequate for operability. The petroleum diesel fuel may contain nonmetallic additives as follows: Cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant and biocide. Fuels specified for emissions testing are intended to be representative of commercially available in-use fuels.

(2) Petroleum diesel fuel for diesel engines meeting the specifications in Table N94–2, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emissions testing. The grade of petroleum diesel fuel used shall be commercially designated as "Type 2–D" grade diesel fuel except that fuel commercially designated as "Type 1–D" grade diesel fuel may be substituted provided that the manufacturer has submitted evidence to the Administrator demonstrating to the Administrator's satisfaction that this fuel will be the predominant in-use fuel. Such evidence could include such things as copies of signed contracts from customers indicating the intent to purchase and use "Type 1–D" grade diesel fuel as the primary fuel for use in the engines or other evidence acceptable to the Administrator.

TABLE N94–2

Item	ASTM	Type 1–D	Type 2–D
Cetane Number	D613	40–54	40–48
Cetane Index	D976	40–54	40–48

TABLE N94–2—Continued

Item	ASTM	Type 1–D	Type 2–D
Distillation range:			
IBP °F (°C)	D86	330–390 (165.6–198.9)	340–400 (171.1–204.4)
10 pct. point °F (°C)	D86	370–430 (187.8–221.1)	400–460 (204.4–237.8)
50 pct. point °F (°C)	D86	410–480 (210–248.9)	470–540 (243.3–282.2)
90 pct. point °F (°C)	D86	460–520 (237.8–271.1)	560–630 (293.3–332.2)
EP °F (°C)	D86	500–560 (260.0–293.3)	610–690 (321.1–365.6)
Gravity °API	D287	40–44	32–37
Total sulfur pct	D2622	0.03–0.05	0.03–0.05
Hydrocarbon composition:			
Aromatics, pct	D1319	[1] 8	[1] 27
Paraffins, Naphthenes, Olefins	D1319	[2]	[2]
Flashpoint, min., °F (°C)	D93	120 (48.9)	130 (54.4)
Viscosity, centistokes	D445	1.6–2.0	2.0–3.2

[1] Maximum.
[2] Remainder.

(3) Petroleum diesel fuel for diesel engines meeting the specifications in Table N94–3, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of petroleum diesel fuel used shall be commercially designated as "Type 2–D" grade diesel fuel except that fuel commercially designated as "Type 1–D" grade diesel fuel may be substituted provided that the manufacturer has submitted evidence to the Administrator demonstrating to the Administrator's satisfaction that this fuel will be the predominant in-use fuel. Such evidence could include such things as copies of signed contracts from customers indicating the intent to purchase and use "Type 1–D" grade diesel fuel as the primary fuel for use in the engines or other evidence acceptable to the Administrator.

TABLE N94–3

Item	ASTM	Type 1–D	Type 2–D
Cetane Number	D613	40–56	30–58
Cetane Index	D976	Min. 40	Min. 40
Distillation range:			
90 pct. point °F (°C)	D86	440–530 (226.7–276.7)	540–630 (282.2–332.2)
Gravity °API	D287	39–45	30–42
Total sulfur, min. pct	D2622	0.03–0.05	0.03–0.05
Flashpoint, min. °F (°C)	D93	120 (48.9)	130 54.4
Viscosity, centistokes	D445	1.2–2.2	1.5–4.5

(4) Other petroleum distillate fuels may be used for testing and service accumulation provided:

(i) They are commercially available; and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service; and

(iii) Use of a fuel listed under paragraphs (b)(2) and (b)(3) of this section would have a detrimental effect on emissions or durability; and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(5) The specification range of the fuels to be used under paragraph (b) of this section shall be reported in accordance with § 86.094–21(b)(3).

(c) *Methanol-fuel.* (1) Methanol fuel used for exhaust and evaporative emission testing and in service accumulation of methanol-fueled engines shall be representative of commercially available methanol fuel and shall consist of at least 50 percent methanol by volume.

(i) Manufacturers shall recommend the methanol fuel to be used for testing and service accumulation.

(ii) The Administrator shall determine the methanol fuel to be used for testing and service accumulation.

(2) Other methanol fuels may be used for testing and service accumulation provided:

(i) They are commercially available; and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service; and

(iii) Use of a fuel listed under paragraph (b)(4)(c)(1) of this section would have a detrimental effect on emissions or durability; and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(3) The specification range of the fuels to be used under paragraphs (c)(1) and (c)(2) of this section shall be reported in accordance with § 86.094–21(b)(3).

(d) *Mixtures of petroleum and methanol fuels for flexible fuel vehicles.*

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(1) Mixtures of petroleum and methanol fuels used for exhaust and evaporative emission testing and service accumulation for flexible fuel vehicles shall be within the range of fuel mixtures for which the vehicle was designed.

(2) Manufacturer testing and service accumulation may be performed using only those mixtures (mixtures may be different for exhaust testing, evaporative testing and service accumulation) expected to result in the highest emissions, provided:

(i) The fuels which constitute the mixture will be used in customer service;

(ii) Information, acceptable to the Administrator, is provided by the manufacturer to show that the designated fuel mixtures would result in the highest emissions; and

(iii) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(3) The specification range of the fuels to be used under paragraph (d)(2) of this section shall be reported in accordance with § 86.090–21(b)(3).

(e) *Natural gas-fuel.* (1) Natural gas-fuel having the following specifications will be used by the Administrator for exhaust and evaporative emission testing of natural gas-fueled engines:

NATURAL GAS CERTIFICATION FUEL SPECIFICATIONS

Item		ASTM test method No.	Value
Methane	min. mole pct.	D1945	89.0
Ethane	max. mole pct.	D1945	4.5
C_3 and higher	max. mole pct.	D1945	2.3
C_6 and higher	max. mole pct.	D1945	0.2
Oxygen	max. mole pct.	D1945	0.6
Inert gases:			
Sum of CO_2 and N_2	max. mole pct.	D1945	4.0
Odorant [1]			

[1] The natural gas at ambient conditions must have a distinctive odor potent enough for its presence to be detected down to a concentration in air of not over 1/5 (one-fifth) of the lower limit of flammability.

(2) Natural gas-fuel representative of commercial natural gas-fuel and which will be generally available through retail outlets shall be used in service accumulation.

(3) Other natural gas-fuels may be used for testing and service accumulation provided:

(i) They are commercially available;

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service; and

(iii) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(3) The specification range of the fuels to be used under paragraphs (f)(1) and (f)(2) of this section shall be measured in accordance with ASTM D2163–91 and reported in accordance with § 86.094–21(b)(3).

(g) Fuels not meeting the specifications set forth in this section may be used only with the advance approval of the Administrator.

102. A new section 86.1314–94 is added to subpart N to read as follows:

§ 86.1314–94 Analytical gases.

(a) Gases for the CO and CO_2 analyzers shall be single blends of CO and CO_2, respectively, using nitrogen as the diluent.

(b) Gases for the hydrocarbon analyzer shall be single blends of propane using air as the diluent.

(c) Gases for the methane analyzer shall be single blends of methane using air as the diluent.

(d) Gases for the NO_X analyzer shall be single blends of NO named as NO_X with a maximum NO_2 concentration of five percent of the nominal value using nitrogen as the diluent.

(e) Fuel for the FID and the methane analyzer shall be a blend of 40 ±2 percent hydrogen with the balance being helium. The mixture shall contain less than 1 ppm equivalent carbon response; 98 to 100 percent hydrogen fuel may be used with advance approval of the Administrator.

(f) The allowable zero gas (air or nitrogen) impurity concentrations shall not exceed 1 ppm equivalent carbon response, 1 ppm carbon monoxide, 0.04 percent (400 ppm) carbon dioxide and 0.1 ppm nitric oxide.

(g)(1) "Zero-grade air" includes artificial "air" consisting of a blend of nitrogen and oxygen with oxygen concentrations between 18 and 21 mole percent.

(2) Calibration gases shall be accurate to within ±1 percent of NBS gas standards, or other gas standards which have been approved by the Administrator.

(3) Span gases shall be accurate to within ±2 percent of NBS gas standards, or other gas standards which have been approved by the Administrator.

(h) The use of precision blending devices (gas dividers) to obtain the required calibration gas concentrations is acceptable, provided that the blended gases are accurate to within ±1.5 percent of NBS gas standards, or other gas standards which have been approved by the Administrator. This accuracy implies that primary gases used for blending must be "named" to an accuracy of at least ±1 percent, traceable to NBS or other approved gas standards.

103. A new section 86.1316–94 is added to subpart N to read as follows:

§ 86.1316–94 Calibrations; frequency and overview.

(a) Calibrations shall be performed as specified in §§ 86.1318 through 86.1326.

(b) At least monthly or after any maintenance which could alter calibration, the following calibrations and checks shall be performed:

(1) Calibrate the hydrocarbon analyzer, methane analyzer, carbon dioxide analyzer, carbon monoxide analyzer, oxides of nitrogen analyzer, methanol analyzer and formaldehyde analyzer (certain analyzers may require more frequent calibration depending on the equipment and use).

(2) Calibrate the engine dynamometer flywheel torque and speed measurement transducers, and calculate the feedback signals to the cycle verification equipment.

(3) Check the oxides of nitrogen converter efficiency.

(c) At least weekly or after any maintenance which could alter calibration, the following checks shall be performed:

(1) Perform a CVS system verification.

(2) Check the shaft torque feedback signal at steady-state conditions by comparing:

(i) Shaft torque feedback to dynamometer beam load; or

(ii) By comparing in-line torque to armature current; or

(iii) By checking the in-line torque meter with a dead weight per § 86.1308(e).

(d) The CVS positive displacement pump or critical flow venturi shall be calibrated following initial installation, major maintenance or as necessary when indicated by the CVS system verification (described in § 86.1319).

(e) Sample conditioning columns, if used in the CO analyzer train, should be checked at a frequency consistent with observed column life or when the indicator of the column packing begins to show deterioration.

104. A new section 86.1321–94 is added to subpart N to read as follows:

§ 86.1321–94 Hydrocarbon analyzer calibration.

The FID hydrocarbon analyzer shall receive the following initial and periodic calibration. The HFID used with petroleum-fueled, natural gas-fueled and liquefied petroleum gas-fueled diesel engines shall be operated to a set point ±10 °F (±5.5 °C) between 365 and 385 °F (185 and 197 °C). The HFID used with methanol-fueled engines shall be operated at 235 ±15 °F (113 ±8 °C).

(a) *Initial and periodic optimization of detector response.* Prior to introduction into service and at least annually thereafter, the FID hydrocarbon analyzer shall be adjusted for optimum hydrocarbon response. Alternate methods yielding equivalent results may be used, if approved in advance by the Administrator.

(1) Follow good engineering practices for initial instrument start-up and basic operating adjustment using the appropriate fuel (see § 86.1314) and zero-grade air.

(2) Optimize on the most common operating range. Introduce into the analyzer a propane-in-air mixture with a propane concentration equal to approximately 90 percent of the most common operating range.

(3) One of the following procedures is required for FID or HFID optimization:

(i) The procedures outlined in Society of Automotive Engineers (SAE) paper number 770141, "Optimization of Flame Ionization Detector for Determination of Hydrocarbons in Diluted Automobile Exhaust"; author, Glenn D. Reschke. Available from Society of Automotive Engineers International, 400 Commonwealth Dr., Warrendale, PA 15096–0001.

(ii) The HFID optimization procedures outlined in subpart D of this part.

(iii) Alternative procedures may be used if approved in advance by the Administrator.

(4) After the optimum flow rates have been determined, they are recorded for future reference.

(b) *Initial and periodic calibration.* Prior to introduction into service and monthly thereafter, the FID or HFID hydrocarbon analyzer shall be calibrated on all normally used instrument ranges. Use the same flow rate and pressures as when analyzing samples. Calibration gases shall be introduced directly at the analyzer, unless the "overflow" calibration option of § 86.1310(b)(3)(i) for the HFID is taken.

(1) Adjust analyzer to optimize performance.

(2) Zero the hydrocarbon analyzer with zero-grade air.

(3) Calibrate on each used operating range with propane-in-air calibration gases having nominal concentrations of 15, 30, 45, 60, 75 and 90 percent of that range. For each range calibrated, if the deviation from a least-squares best-fit straight line is two percent or less of the value at each data point, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds two percent at any point, the best-fit non-linear equation which represents the data to within two percent of each test point shall be used to determine concentration.

(c) *FID response factor to methanol.* When the FID analyzer is to be used for the analysis of hydrocarbon samples containing methanol, the methanol response factor of the analyzer shall be established. The methanol response factor shall be determined at several concentrations in the range of concentrations in the exhaust sample.

(1) The bag sample of methanol for analysis in the FID shall be prepared using the apparatus shown in Figure N90–10. A known volume of methanol is injected, using a microliter syringe, into the heated mixing zone (250 °F (121 °C)) of the apparatus. The methanol is vaporized and swept into the sample bag with a known volume of zero-grade air measured by a dry gas meter.

(2) The bag sample is analyzed using the FID.

(3) The FID response factor, r, is calculated as follows:

r=FIDppm/SAMppm

Where:

(i) r=FID response factor.

(ii) FIDppm=FID reading in ppmC.

(iii) SAMppm=methanol concentration in the sample bag in ppmC.

0.02406×fuel injected×fuel density=Air volume × mol. wt. CH_3OH

Where:

(iv) 0.02406=volume of one mole at 29.92 in Hg and 68 °F, m^3.

(v) Fuel injected = volume of methanol injected, ml.

(vi) Fuel density=density of methanol, 0.7914 g/ml.

(vii) Air volume=volume of zero-grade air, m^3.

(viii) Mol. Wt. CH3OH=32.04.

(d) *FID response factor to methone.* When the FID analyzer is to be used for the analysis of natural gas-fueled vehicle hydrocarbon samples, the methane response factor of the analyzer shall be established. To determine the total hydrocarbon FID response to methane, known methane in air concentrations traceable to National Institute of Standards and Technology (NIST) shall be analyzed by the FID. Several methane concentrations shall be analyzed by the FID in the range of concentrations in the exhaust sample. The total hydrocarbon FID response to methane is calculated as follows:

r_{CH4}=FIDppm/SAMppm

Where:

(1) r_{CH4}=FID response factor to methane.

(2) FIDppm=FID reading in ppmC.

(3) SAMppm=the known methane concentration in ppmC.

105. A new section 86.1325–94 is added to subpart N to read as follows:

§ 86.1325–94 Methane analyzer calibration.

Prior to introduction into service and monthly thereafter, the methane analyzer shall be calibrated:

(a) Follow the manufacturer's instructions for instrument startup and

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operation. Adjust the analyzer to optimize performance.

(b) Zero the methane analyzer with zero-grade air.

(c) Calibrate on each normally used operating range with CH_4 in air with nominal concentrations of 15, 30, 45, 60, 75 and 90 percent of that range. Additional calibration points may be generated. For each range calibrated, if the deviation from a least-squares best-fit straight line is two percent or less of the value at each data point, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds two percent at any point, the best-fit non-linear equation which represents the data to within two percent of each test point shall be used to determine concentration.

106. A new section 86.1327–94 is added to subpart N to read as follows:

§ 86.1327–94 Engine dynamometer test procedures; overview.

(a) The engine dynamometer test procedure is designed to determine the brake specific emissions of hydrocarbons, nonmethane hydrocarbons (for natural gas-fueled engines only), carbon monoxide, oxides of nitrogen, particulate (petroleum-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled diesel engines), and methanol and formaldehyde (for methanol-fueled diesel engines). The test procedure consists of a "cold" start test following either natural or forced cool-down periods described in §§ 86.1334 and 86.1335, respectively. A "hot" start test follows the "cold" start test after a hot soak of 20 minutes. The idle test of Subpart P may be run after the "hot" start test. The exhaust emissions are diluted with ambient air and a continuous proportional sample is collected for analysis during both the cold- and hot-start tests. The composite samples collected are analyzed either in bags or continuously for hydrocarbons (HC), methane (CH_4—for natural gas-fueled engines only), carbon monoxide (CO), carbon dioxide (CO_2), and oxides of nitrogen (NO_X), or in sample collection impingers for methanol (CH_3OH) and sample collection impingers (or capsules) for formaldehyde (HCHO). Measurement of CH_3OH and HCHO may be omitted for 1990 through 1994 model year methanol-fueled engines when a FID calibrated on methanol is used. A bag or continuous sample of the dilution air is similarly analyzed for background levels of hydrocarbon, methane, carbon monoxide, carbon dioxide and oxides of nitrogen and, if appropriate, methanol and formaldehyde. In addition, for petroleum-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled diesel engines, particulates are collected on fluorocarbon-coated glass fiber filters or fluorocarbon-based (membrane) filters, and the dilution air may be prefiltered.

(b) Engine torque and rpm shall be recorded continuously during both the cold- and hot-start tests. Data points shall be recorded at least once every second.

(c) Using the torque and rpm feedback signals the brake horsepower is integrated with respect to time for the cold and hot cycles. This produces a brake horsepower-hour value that enables the brake-specific emissions to be determined (see § 86.1342, Calculations, gaseous exhaust emissions; and § 86.1343, Calculations, particulate exhaust emissions).

(d)(1) When an engine is tested for exhaust emissions or is operated for service accumulation on an engine dynamometer, the complete engine shall be tested, with all emission control devices installed and functioning.

(2) Evaporative emission controls need not be connected if data are provided to show that normal operating conditions are maintained in the engine induction system.

(3) On air-cooled engines, the fan shall be installed.

(4) Additional accessories (e.g., oil cooler, alternators, air compressors, etc.) may be installed or their loading simulated if typical of the in-use application.

(5) The engine may be equipped with a production type starter.

(e) Means of engine cooling which will maintain the engine operating temperatures (e.g., temperatures of intake air, oil, water, etc.) at approximately the same temperature as specified by the manufacturer shall be used. Auxiliary fan(s) may be used to maintain engine cooling during operation on the dynamometer. Rust inhibitors and lubrication additives may be used, up to the levels recommended by the additive manufacturer. Antifreeze mixtures and other coolants typical of those approved for use by the manufacturer may be used.

(f) *Exhaust system.* The exhaust system shall meet the following requirements:

(1) *Otto-cycle engines.* A chassis-type exhaust system shall be used. For all catalyst systems, the distance from the exhaust manifold flange(s) to the catalyst shall be the same as in the vehicle configuration unless the manufacturer provides data showing equivalent performance at another location.

(2) *Diesel engines.* Either a chassis-type or a facility-type exhaust system or both systems simultaneously may be used. The exhaust backpressure or restriction shall be typical of those seen in the actual average vehicle exhaust system configuration and may be set with a valve (muffler omitted).

(i) The engine exhaust system shall meet the following requirements:

(A) The total length of the tubing from the exit of the engine exhaust manifold or turbocharger outlet to the primary dilution tunnel should not exceed 32 feet (9.8 m).

(B) The initial portion of the exhaust system may consist of a typical in-use (*i.e.*, length, diameter, material, etc.) chassis-type exhaust system.

(C) The distance from the exhaust manifold flange(s) to any exhaust aftertreatment device shall be the same as in the vehicle configuration unless the manufacturer is able to demonstrate equivalent performance at another location.

(D) If the exhaust system tubing from the exit of the engine exhaust manifold or turbocharger outlet to the primary dilution tunnel exceeds 12 feet (3.7 m) in length, then all tubing in excess of 12 feet (3.7 m) (chassis and/or facility type) shall be insulated.

(E) If the tubing is required to be insulated, the radial thickness of the insulation must be at least 1.0 inch. The thermal conductivity of the insulating material must have a value no greater than 0.75 BTU—in/hr/ft²/°F measured at 700°F.

(F) A smoke meter or other instrumentation may be inserted into the exhaust system tubing. If this option is exercised in the insulated portion of the tubing, then a minimal amount of tubing not to exceed 18 inches may be left uninsulated. However, no more than 12 feet of tubing can be left uninsulated in total, including the length at the smoke meter.

(ii) The facility-type exhaust system shall meet the following requirements:

(A) It must be composed of smooth tubing made of typical in-use steel or stainless steel. This tubing shall have a maximum inside diameter of 6.0 in (15 cm).

(B) Short sections (altogether not to exceed 20 percent of the entire tube length) of flexible tubing at connection points are allowed.

107. Section 86.1327–96 of subpart N is amended by revising paragraphs (a), (f)(1) and (f)(2) introductory text to read as follows:

§ 86.1327–96 Engine dynamometer test procedures; overview.

(a) The engine dynamometer test procedure is designed to determine the brake-specific emissions of hydrocarbons, nonmethane hydrocarbons (for natural gas-fueled engines only), carbon monoxide, oxides of nitrogen, particulate (petroleum-fueled and methanol-fueled diesel engines), and methanol and formaldehyde (for methanol-fueled diesel engines). The test procedure consists of a "cold" start test following either natural or forced cool-down periods described in §§ 86.1334 and 86.1335, respectively. A "hot" start test follows the "cold" start test after a hot soak of 20 minutes. The idle test of subpart P of this part may be run after the "hot" start test. The exhaust emissions are diluted with ambient air and a continuous proportional sample is collected for analysis during both the cold- and hot-start tests. The composite samples collected are analyzed either in bags or continuously for hydrocarbons (HC), methane (CH_4—natural gas-fueled engines only), carbon monoxide (CO), carbon dioxide (CO_2), and oxides of nitrogen (NO_X), or in sample collection impingers for methanol (CH_3OH) and sample collection impingers (or capsules) for formaldehyde (HCHO). A bag or continuous sample of the dilution air is similarly analyzed for background levels of hydrocarbon, carbon-monoxide, carbon dioxide and oxides of nitrogen and, if appropriate, methane, or methanol and formaldehyde. In addition, for petroleum-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled diesel engines, particulates are collected on fluorocarbon-coated glass fiber filters or fluorocarbon-based (membrane) filters, and the dilution air may be prefiltered.

* * * * *

(f) * * *

(1) *Otto-cycle engines.* A chassis-type exhaust system shall be used. For all catalyst systems, the distance from the exhaust manifold flange(s) to the catalyst shall be the same as in the vehicle configuration unless the manufacturer provides data showing equivalent performance at another location.

(2) *Diesel engines.* Either a chassis-type or a facility-type exhaust system or both systems simultaneously may be used. The exhaust back pressure or restriction shall be typical of those seen in the actual average vehicle exhaust system configuration and may be set with a valve (muffler omitted).

* * * * *

108. Section 86.1332–90 of subpart N is amended by revising paragraphs (c)(1) heading, (c)(2) heading, (d)(2) heading, (d)(3) heading, (e)(1) heading and (e)(2) heading to read as follows:

§ 86.1332–90 Engine mapping procedures.

* * * * *

(c) * * *

(1) *Otto-cycle engines.*

* * * * *

(2) *Diesel engines.*

* * * * *

(d) * * *

(2) *Otto-cycle engines.*

* * * * *

(3) Diesel engines.

* * * * *

(e) * * *

(1) *Otto-cycle engines.*

* * * * *

(2) *Diesel engines.*

* * * * *

109. Section 86.1336–84 of subpart N is amended by revising paragraph (e)(2) heading to read as follows:

§ 86.1336–84 Engine starting, restarting, and shutdown.

* * * * *

(e) * * *

(2) *Diesel-fueled, natural gas-fueled and liquefied petroleum gas-fueled engines.*

* * * * *

110. Section 86.1337–90 of subpart N is amended by revising paragraphs (a)(7), (a)(8), (a)(13), (a)(20) and (a)(26) to read as follows:

§ 86.1337–90 Engine dynamometer test run.

(a) * * *

(7) For diesel engines tested for particulate emissions, carefully install a clean particulate sample filter into each of the filter holders and install the assembled filter holders in the sample flow line (filter holders may be preassembled).

(8) Follow the manufacturers choke and throttle instructions for cold starting. Simultaneously start the engine and begin exhaust and dilution air sampling. For petroleum-fueled diesel engines (and natural gas-fueled, liquified petroleum gas-fueled or methanol-fueled diesels, if used), turn on the hydrocarbon and NO_X (and CO and CO_2, if continuous) analyzer system integrators (if used), and turn on the particulate sample pumps and indicate the start of the test on the data collection medium.

* * * * *

(13) Immediately after the engine is turned off, turn off the engine cooling fan(s) if used, and the CVS blower (or disconnect the exhaust system from the CVS). As soon as possible, transfer the "cold start cycle" exhaust and dilution air bag samples according to § 86.1340. A stabilized reading of the exhaust sample on all analyzers shall be obtained within 20 minutes of the end of the sample collection phase of the test. Analysis of the methanol and formaldehyde samples shall be obtained within 24 hours of the end of the sample collection period. For diesel engines tested for particulate, carefully remove the filter holder from the sample flow apparatus, remove each particulate sample filter from its holder and place each in a petri dish and cover.

* * * * *

(20) For diesel engines tested for particulate, carefully install a clean particulate filter in each of the filter holders and install assembled filter holders in the sample flow line (filter holders may be preassembled).

* * * * *

(26) As soon as possible, transfer the "hot start cycle" exhaust and dilution air bag samples to the analytical system and process the samples according to § 86.1340. A stabilized reading of the exhaust sample on all analyzers shall be obtained within 20 minutes of the end of the sample collection phase of the test. Analyze the methanol and formaldehyde samples within 24 hours. (If it is not possible to perform analysis within 24 hours, the samples should be stored in a cold (approximately 0°C) dark environment until analysis can be performed). For diesel engines tested for particulate, carefully remove the assembled filter holder from the sample flow lines and remove each particulate sample filter from its holder and place in a clean petri dish and cover as soon as possible. Within one hour after the end of the hot start phase of the test, transfer the four particulate filters to the weighing chamber for post-test conditioning.

* * * * *

111. Section 86.1337–96 of subpart N is amended by revising paragraphs (a)(7), (a)(8), (a)(13), (a)(20) and (a)(26) to read as follows:

§ 86.1337–96 Engine dynamometer test run.

(a) * * *

(7) For diesel engines tested for particulate emissions, carefully install clean particulate sample filter into each of the filter holders and install the assembled filter holders in the sample flow line (filter holders may be preassembled).

(8) Follow the manufacturer's choke and throttle instructions for cold

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starting. Simultaneously start the engine and begin exhaust and dilution air sampling. For petroleum-fueled diesel engines (and natural gas-fueled, liquified petroleum gas-fueled or methanol-fueled diesels, if used) turn on the hydrocarbon and NO_x (and CO and CO_2, if continuous) analyzer system integrators (if used), and turn on the particulate sample pumps and indicate the start of the test on the data collection medium.

* * * * *

(13) Immediately after the engine is turned off, turn off the engine cooling fan(s) if used, and the CVS blower (or disconnect the exhaust system from the CVS). As soon as possible, transfer the "cold start cycle" exhaust and dilution air bag samples according to § 86.1340. A stabilized reading of the exhaust sample on all analyzers shall be obtained within 20 minutes of the end of the sample collection phase of the test. Analysis of the methanol and formaldehyde samples shall be obtained within 24 hours of the end of the sample collection period. For diesel engines tested for particulate, carefully remove the filter holder from the sample flow apparatus, remove each particulate sample filter from its holder and place each in a petri dish and cover.

* * * * *

(20) For diesel engines tested for particulate, carefully install a clean particulate filter in each of the filter holders and install assembled filter holders in the sample flow line (filter holders may be preassembled).

* * * * *

(26) As soon as possible, transfer the "hot start cycle" exhaust and dilution air bag samples to the analytical system and process the samples according to § 86.1340. A stabilized reading of the exhaust sample on all analyzers shall be obtained within 20 minutes of the end of the sample collection phase of the test. Analyze the methanol and formaldehyde samples within 24 hours. (If it is not possible to perform analysis within 24 hours, the samples should be stored in a cold (approximately 0°C) dark environment until analysis can be performed). For diesel engines tested for particulate, carefully remove the assembled filter holder from the sample flow lines, remove each particulate sample filter from its holder, place in a clean petri dish and cover as soon as possible. Within one hour after the end of the hot start phase of the test, transfer the four particulate filters to the weighing chamber for post-test conditioning.

* * * * *

112. A new section 86.1340–94 is added to subpart N to read as follows:

§ 86.1340–94 Exhaust sample analysis.

Section 86.1340–94 includes text that specifies requirements that differ from § 86.1340–90. Where a paragraph in § 86.1340–90 is identical and applicable to § 86.1340–94, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.1340–90."

(a) through (d)(6) [Reserved]. For guidance see § 86.1340–90.

(d)(7) Measure HC (except diesels), CH_4 (natural gas-fueled engines only), CO, CO_2, and NO_x sample bag(s) with approximately the same flow rates and pressures used in § 86.1340–90(d)(3). (Constituents measured continuously do not require bag analysis.)

(d)(8) through (h)(2) [Reserved]. For guidance see § 86.1340–90.

113. A new section 86.1342–94 is added to subpart N to read as follows:

§ 86.1342–94 Calculations; exhaust emissions.

Section 86.1342–94 includes text that specifies requirements that differ from § 86.1342–90. Where a paragraph in § 86.1342–90 is identical and applicable to § 86.1342–94, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.1342–90."

(a) introductory text [Reserved]. For guidance see § 86.1342–90.

(a)(1) A_{WM} = Weighted mass emission level (HC, CO, CO_2 or NO_x) in grams per brake horsepower-hour and, if appropriate, the weighted mass organic material hydrocarbon equivalent or non-methane hydrocarbon, in grams per brake horsepower-hour.

(a)(2) through (b)(7) [Reserved]. For guidance see § 86.1342–90.

(b)(8) Non-methane hydrocarbon mass:

$NMHC_{mass} = V_{mix} \times Density_{NMHC} \times (NMHC_{conc}/1{,}000{,}000)$

(c) through (d)(1)(i) [Reserved]. For guidance see § 86.1342–90.

(d)(1)(ii) $Density_{HC}$ = Density of hydrocarbons.

(A) For gasoline and the gasoline fraction of methanol-fuel, and may be used for petroleum and the petroleum fraction of methanol diesel fuel if desired; 16.33 g/ft³-carbon atom (0.5768 kg/m³-carbon atom).

(B) For #1 petroleum diesel fuel; 16.42 g/ft³-carbon atom (0.5800 kg/m³-carbon atom).

(C) For #2 diesel 16.27 g/ft³-carbon atom (0.5746 kg/m³-carbon atom). Average carbon to hydrogen ratios of 1:1.85 for gasoline, 1:1.93 for #1 petroleum diesel fuel and 1:1.80 for #2 petroleum diesel fuel are assumed at 68 °F (20 °C) and 760 mm Hg (101.3 kPa) pressure.

(D) For natural gas and liquified petroleum gas-fuel; 1.1771 (12.011+H/C (1.008)) g/ft³-carbon atom (0.04157 (12.011+H/C (1.008)) kg/m³-carbon atom) where H/C is hydrogen to carbon ratio of the hydrocarbon components of the test fuel, at 68 °F (20 °C) and 760 mm Hg (101.3 kPa) pressure.

(d)(1)(iii) through (d)(1)(iv)(A) [Reserved]. For guidance see § 86.1342–90.

(d)(1)(iv)(B) For petroleum-fueled, natural gas-fueled and liquified petroleum gas-fueled engines, HC_e is the FID measurement.

(d)(1)(iv)(C) through (d)(3)(v)(A) [Reserved]. For guidance see § 86.1342–90.

(d)(3)(v)(B) $CO_c = [1 - (0.01 + 0.005HCR)\ CO_{2e} - 0.000323R]\ CO_{em}$ for methanol-fuel, natural gas-fuel and liquified petroleum gas-fuel where HCR is hydrogen to carbon ratio as measured for the fuel used.

Where:

(d)(3)(vi) through (d)(7)(ii) [Reserved]. For guidance see § 86.1342–90.

For natural gas-fueled or liquefied petroleum gas-fueled vehicles where fuel composition is C_xH_y as measured for the fuel used.

(d)(8)(i) [Reserved]. For guidance see § 86.1342–90.

(d)(8)(ii) Otto-cycle engines: $K_H = 1/[1–0.0047\ (H–75)]$ (or for SI units, $K_H = 1/[1–0.0329(H–10.71)]$).

(iii) For diesel engines: $K_H = 1/[1–0.0026\ (H–75)]$ (or for SI units = $1/[1–0.0182\ (H–10.71)]$).

Where:

(d)(8)(iv) through (d)(9)(x) [Reserved]. For guidance see § 86.1342–90.

(d)(10)(i) $NMHC_{conc} = HC_{conc} – CH_{4conc}$

(ii) $Density_{NMHC}$ = The density of non-methane hydrocarbon, is 1.1771(12.011 + H/C (1.008)) g/ft³-carbon atom (0.04157{12.011 + H/C (1.008)}kg/m³-carbon atom), where H/C is the hydrogen to carbon ratio of the non-methane hydrocarbon components of the test fuel, at 68 °F (20 °C) and 760 mm Hg (101.3 kPa) pressure.

(iii)(A) CH_{4conc} = Methane concentration of the dilute exhaust sample corrected for background, in ppm carbon equivalent.

(B) $CH_{4conc} = r_{CH4} \times (CH_{4e} – CH_{4d}(1–1/DF))$

Where:

(*1*) CH_{4e} = Methane exhaust bag concentration in ppm carbon equivalent.

(*2*) CH_{4d} = Methane concentration of the dilution air in ppm carbon equivalent.

(*3*) r_{CH4} = HC FID response to methane for natural gas-fueled vehicles as measured in § 86.1321 (d).

(e) through (h)(2)(vii) [Reserved]. For guidance see § 85.1342–90.

114. A new section 86.1344–94 is added to subpart N to read as follows:

§ 86.1344–94 Required information.

(a) The required test data shall be grouped into the following three general categories:

(1) *Engine set up and descriptive data.* These data must be provided to the EPA supervisor of engine testing for each engine sent to the Administrator for confirmatory testing prior to the initiation of engine set-up. These data are necessary to ensure that EPA test personnel have the correct data in order to set up and test the engine in a timely and proper manner. These data are not required for tests performed by the manufacturers.

(2) *Pre-test data.* These data are general test data that must be recorded for each test. The data are of a more descriptive nature such as identification of the test engine, test site number, etc. As such, these data can be recorded at any time within 24 hours of the test.

(3) *Test data.* These data are physical test data that must be recorded at the time of testing.

(b) When requested, data shall be supplied in the format specified by the Administrator.

(c) ***Engine set-up data.*** Because specific test facilities may change with time, the specific data parameters and number of items may vary. The Application Format for Certification for the applicable model year will specify the exact requirements. In general, the following types of data will be required:

(1) Engine manufacturer.
(2) Engine system combination.
(3) Engine code and CID.
(4) Engine identification number.
(5) Applicable engine model year.
(6) Engine fuel type.
(7) Recommended oil type.
(8) Exhaust pipe configuration, pipe sizes, etc.
(9) Curb or low idle speed.
(10) Dynamometer idle speed (automatic transmission engines only).
(11) Engine parameter specifications such as spark timing, operating temperature, advance curves, etc.
(12) Engine performance data, such as maximum BHP, previously measured rated rpm, fuel consumption, governed speed, etc.
(13) Recommended start-up procedure.
(14) Maximum safe engine operating speed.
(15) Number of hours of operation accumulated on engine.
(16) Manufacturer's recommended inlet depression limit and typical in-use inlet depression level.
(17) Exhaust system:
(i) *Diesel engines:*
(A) Header pipe inside diameter.
(B) Tailpipe inside diameter.
(C) Minimum distance in-use between the exhaust manifold flange and the exit of the chassis exhaust system.
(D) Manufacturer's recommended maximum exhaust backpressure limit for the engine.
(E) Typical backpressure, as determined by typical application of the engine.
(F) Minimum backpressure required to meet applicable noise regulations.
(ii) *Otto-cycle engines:* Typical in-use backpressure in vehicle exhaust system.

(d) *Pre-test data.* The following data shall be recorded and reported to the Administrator for each test conducted for compliance with the provisions of subpart A of this part:

(1) Engine-system combination.
(2) Engine identification.
(3) Instrument operator(s).
(4) Engine operator(s).
(5) Number of hours of operation accumulated on the engine prior to beginning the test sequence (Figure N84–10).
(6) Identification and specifications of test fuel used.
(7) Date of most recent analytical assembly calibration.
(8) All pertinent instrument information such as tuning, gain, serial numbers, detector number, calibration curve number, etc. As long as this information is traceable, it may be summarized by system or analyzer identification numbers.

(e) *Test data.* The physical parameters necessary to compute the test results and ensure accuracy of the results shall be recorded for each test conducted for compliance with the provisions of subpart A of this part. Additional test data may be recorded at the discretion of the manufacturer. Extreme details of the test measurements such as analyzer chart deflections will generally not be required on a routine basis to be reported to the Administrator for each test, unless a dispute about the accuracy of the data arises. The following types of data shall be required to be reported to the Administrator. The Application Format for Certification for the applicable model year will specify the exact requirements which may change slightly from year to year with the addition or deletion of certain items.

(1) Date and time of day.
(2) Test number.
(3) Engine intake air or test cell temperature.
(4) Barometric pressure. (A central laboratory barometer may be used: *Provided*, that individual test cell barometric pressures are shown to be within ±0.1 percent of the barometric pressure at the central barometer location.)
(5) Engine intake or test cell and CVS dilution air humidity.
(6) Maximum torque versus speed curve as determined in § 86.1332, with minimum and maximum engine speeds, and a description of the mapping technique used.
(7) Measured maximum horsepower and maximum torque speeds.
(8) Measured maximum horsepower and torque.
(9) Measured high idle engine speed (governed diesel engines only).
(10) Measured fuel consumption at maximum power and torque (diesel engines only).
(11) Cold-soak time interval and cool down procedures.
(12) Temperature set point of the heated continuous analysis system components (if applicable).
(13) Test cycle validation statistics as specified in § 86.1341 for each test phase (cold and hot).
(14) Total CVS flow rate with dilution factor for each test phase (cold and hot).
(15) Temperature of the dilute exhaust mixture and secondary dilution air (in the case of a double dilution system) at the inlet to the respective gas meter(s) or flow instrumentation used for particulate sampling.

(d)(7)(iii)

$$DF = \frac{100 \times \frac{\lambda}{x + y/2 + 3.76(x + y/4)}}{CO_{2e} + (NMHC_e + CH_{4c} + CO_c) \times 10^{-4}}$$

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(16) The maximum temperature of the dilute exhaust mixture immediately ahead of the particulate filter.

(17) Sample concentrations (background corrected) for HC, CO, CO_2 and NO_X for each test phase (cold and hot).

(18) For methanol-fueled engines:

(i) Volume of sample passed through the methanol sampling system and the volume of deionized water in each impinger.

(ii) The methanol concentration in the reference sample and the peak area from the GC analysis of the reference sample.

(iii) The peak area of the GC analyses of the test samples (methanol).

(iv) Volume of sample passed through the formaldehyde sampling system.

(v) The formaldehyde concentration in the reference sample and the peak area from the LC analysis of the reference sample.

(vi) The peak area of the LC analysis of the test sample (formaldehyde).

(vii) Specification of the methanol-fuel used during testing.

(19) For natural gas-fueled engines: Composition, including all carbon containing compounds; *e.g.*, CO_2, of the natural gas-fuel used during the test. C_1 and C_2 compounds shall be individually reported. C_3 and heavier compounds, and C_6 and heavier compounds may be reported as a group.

(20) For liquefied petroleum gas-fueled engines: Composition of the liquefied petroleum gas-fuel used during the test. Each hydrocarbon compound present, through C_4 compounds, shall be individually reported. C_5 and heavier hydrocarbons may be reported as a group.

(21) The stabilized pre-test weight and post-test weight of each particulate sample and back-up filter or pair of filters.

(22) Brake specific emissions (g/BHP-hr) for HC, CO, NO_X and, if applicable, OMHCE, CH_3OH and HCHO for methanol-fueled vehicles for each test phase (cold and hot).

(23) The weighted (cold and hot) brake specific emissions (g/BHP-hr) for the total test.

(24) The weighted (cold and hot) carbon balance or mass-measured brake specific fuel consumption for the total test.

(25) The number of hours of operation accumulated on the engine after completing the test sequences described in Figure N84–10.

115. The title of subpart P is revised to read as follows:

Subpart P—Emission Regulations for New Gasoline-Fueled, Natural Gas-Fueled, Liquefied Petroleum Gas-Fueled and Methanol-Fueled Heavy-Duty Engines and New Gasoline-Fueled, Natural Gas-Fueled, Liquefied Petroleum Gas-Fueled and Methanol-Fueled Light-Duty Trucks; Idle Test Procedures

116. A new section 86.1501–94 is added to subpart P to read as follows:

§ 86.1501–94 Scope; applicability.

This subpart contains gaseous emission idle test procedures for gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled Otto-cycle heavy-duty engines, and for gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled Otto-cycle light-duty trucks. It applies to 1994 and later model years. The idle test procedures are optionally applicable to 1990 through 1993 model year natural-gas fueled and liquefied petroleum gas-fueled Otto-cycle heavy-duty engines and Otto-cycle light-duty trucks.

117. A new section 86.1504–94 is added to subpart P to read as follows:

§ 86.1504–94 Section numbering; construction.

(a) The model year of initial applicability is indicated by the section number. The two digits following the hyphen designate the first model year for which a section is effective. A section remains effective until superseded.

Example: Section 86.1511–84 applies to the 1984 and subsequent model years until superseded. If § 86.1511–85 is promulgated, it would take effect beginning with the 1985 model year. Section 86.1511–83 would apply to model years 1983 and 1984.

(b) A section reference without a model year suffix refers to the section applicable for the appropriate model year.

(c) All provisions in the subpart apply to gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled Otto-cycle heavy-duty engines, and to gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled Otto-cycle light-duty trucks.

118. A new section 86.1505–94 is added to subpart P to read as follows:

§ 86.1505–94 Introduction; structure of subpart.

(a) This subpart describes the equipment and the procedures required to perform idle exhaust emission tests on Otto-cycle heavy-duty engines and Otto-cycle light-duty trucks. Subpart A sets forth the testing requirements, reporting requirements and test intervals necessary to comply with EPA certification procedures.

(b) Four topics are addressed in this subpart. Sections 86.1505 through 86.1515 set forth specifications and equipment requirements; §§ 86.1516 through 86.1526 discuss calibration methods and frequency; test procedures and data requirements are listed in §§ 86.1527 through 86.1542 and calculation formulas are found in § 86.1544.

119. A new section 86.1506–94 is added to subpart P to read as follows:

§ 86.1506–94 Equipment required and specifications; overview.

(a) This subpart contains procedures for performing idle exhaust emission tests on Otto-cycle heavy-duty engines and Otto-cycle light-duty trucks. Equipment required and specifications are as follows:

(1) *Exhaust emission tests.* All engines and vehicles subject to this subpart are tested for exhaust emissions. Necessary equipment and specifications appear in §§ 86.1509 through 86.1511.

(2) *Fuel and analytical tests.* Fuel requirements for idle exhaust emission testing are specified in § 86.1513. Analytical gases are specified in § 86.1514.

120. A new section 86.1513–94 is added to subpart P to read as follows:

§ 86.1513–90 Fuel specifications.

The requirements of this section are set forth in § 86.1313–94 for heavy-duty engines and in § 86.113–94 for light-duty trucks.

PART 88—[AMENDED]

121. The authority citation for part 88 continues to read as follows:

Authority: 42 U.S.C. 7410, 7418, 7581, 7582, 7583, 7584, 7586, 7588, 7589 and 7601(a)

122. Section 88.311–93 of subpart C is amended by revising paragraphs (a)(1)(iii), (c) and (d) to read as follows:

§ 88.311–93 Emission standards for Inherently Low-Emission Vehicles.

(a) * * *

(1) * * *

(iii) The vehicle must meet other special requirements applicable to conventional or clean-fuel vehicles and their fuels as described in any other parts of this chapter, including 40 CFR parts 86 and 88.

* * * * *

(c) *Light-duty vehicles and light-duty trucks.* ILEVs in LDV and LDT classes shall have exhaust emissions standards in grams per mile listed in Table C93–6.1, as measure under the applicable Federal Test Procedures in 40 CFR part 86, subpart B. An ILEV must be able to operate on only one fuel, or must be certified as an ILEV on all fuels it can operate on. These vehicles shall also comply with all requirements of 40 CFR part 86 which are applicable to conventional gasoline-fueled, methanol-fueled, or diesel-fueled, natural gas-fueled or liquefied petroleum gas-fueled LDVs/LDTs of the same vehicle class and model year.

(d) *Heavy-duty vehicles.* ILEVs in the HDV class shall have exhaust emissions with combined non-methane hydrocarbon and oxides of nitrogen exhaust emissions which do not exceed the exhaust emission standards in grams per brake horsepower-hour listed in Table C93–6.2, as measure under the applicable Federal Test Procedures in 40 CFR part 86, subpart M. An ILEV must be able to operate on only one fuel, or must be certified as an ILEV on all fuels it can operate on. These vehicles shall also comply with all requirements of 40 CFR part 86 which are applicable in the case of conventional gasoline-fueled, methanol-fueled, or diesel-fueled, natural gas-fueled or liquefied petroleum gas-fueled HDVs of the same weight class and model year.

* * * * *

PART 600—[AMENDED]

123. The authority citation for part 600 continues to read as follows:

Authority: 15 U.S.C. 2001, 2002, 2003, 2005, 2006, and 2013.

124. Section 600.113–93 of subpart B is amended by revising the introductory text and paragraphs (a), (b)(1), (b)(2) and (d), and adding new paragraph (c)(3) and (h), to read as follows:

§ 600.113–93 Fuel economy calculations.

The Administrator will use the calculation procedure set forth in this paragraph for all official EPA testing of vehicles fueled with gasoline, diesel, methanol or natural gas fuel. The calculations of the weighted fuel economy values require input of the weighted grams/mile values for total hydrocarbons (HC), carbon monoxide (CO), and carbon dioxide (CO_2); and, additionally for methanol-fueled automobiles, methanol (CH_3OH) and formaldehyde (HCHO); and additionally for natural gas-fueled vehicles non-methane hydrocarbons (NMHC) and methane (CH_4) for both the city fuel economy test and the highway fuel economy test. Additionally, the specific gravity, carbon weight fraction and net heating value of the test fuel must be determined. The city and higbway fuel economy values shall be calculated as specified in this section. A sample appears in Appendix II to this part.

(a) Calculate the weighted grams/mile values for the city fuel economy test for HC, CO and CO_2; and, additionally for methanol-fueled automobiles, CH_3OH and HCHO; and additionally for natural gas-fueled automobiles NMHC and CH_4 as specified in § 86.144 of this chapter. Measure and record the test fuel's properties as specified in paragraph (c) of this section.

(b)(1) Calculate the mass values for the highway fuel economy test for HC, CO and CO_2, and where applicable CH_3OH, HCHO, NMHC and CH_4 as specified in § 86.144(b) of this chapter. Measure and record the test fuel's properties as specified in paragraph (c) of this section.

(2) Calculate the grams/mile values for the highway fuel economy test for HC, CO and CO_2, and where applicable CH_3OH, HCHO, NMHC and CH_4 by dividing the mass values obtained in paragraph (b)(1) of this section, by the actual distance traveled, measured in miles, as specified in § 86.135(h) of this chapter.

(c) * * *

(3) Natural gas test fuel shall be analyzed to determine the following fuel properties:

(i) Fuel composition per ASTM D 1945–91, Standard Test Method for Analysis of Natural Gas By Gas Chromatography. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at U.S. EPA, OAR, 401 M Street, SW., Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(ii) Specific gravity (based on fuel composition per ASTM D 1945).

(iii) Carbon weight fraction based on the carbon contained only in the HC constituents of the fuel=weight of carbon in HC constituents divided by the total weight of fuel.

(iv) Carbon weight fraction of fuel=total weight of carbon in the fuel (i.e., includes carbon contained in HC and in CO_2) divided by total weight of fuel.

(d) Calculate the city fuel economy and highway fuel economy from the grams/mile values for total HC, CO, CO_2 and, where applicable, CH_3OH, HCHO, NMHC and CH_4 and, the test fuel's specific gravity, carbon weight fraction, net heating value, and additionally for natural gas, the test fuel's composition. The emission values (obtained per paragraph (a) or (b) of this section, as applicable) used in each calculation of this section shall be rounded in accordance with § 86.084–26(a)(6)(iii) of this chapter. The CO_2 values (obtained per paragraph (a) or (b) of this section, as applicable) used in each calculation of this section shall be rounded to the nearest gram/mile. The specific gravity and the carbon weight fraction (obtained per paragraph (c) of this section) shall be recorded using three places to the right of the decimal point. The net heating value (obtained per paragraph (c) of this section) shall be recorded to the nearest whole Btu/lb. These numbers shall be rounded in accordance with the "Rounding Off Method" specified in ASTM E 29–67.

* * * * *

(h) For automobiles fueled with natural gas, the fuel economy in miles per gallon of natural gas is to be calculated using the following equation

$$mpg_e = \frac{CWF_{HC/NG} D_{NG}\, 121.5}{(0.749)CH_4 + (CWF_{NMHC})NMHC + (0.429)CO + (0.273)(CO_2 - CO_{2NG})}$$

Where:

mpg_e=miles per equivalent gallon of natural gas.

$CWF_{HC/NG}$=carbon weight fraction based on the hydrocarbon constituents in the natural gas fuel as obtained in paragraph (d) of this section.

D_{NG}=density of the natural gas fuel [grams/ft³ at 68 °F (20 °C) and 760 mm Hg (101.3 kPa)] pressure as obtained in paragraph (d) of this section.

CH_4, NMHC, CO, and CO_2=weighted mass exhaust emissions [grams/mile] for methane, non-methane

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HC, carbon monoxide, and carbon dioxide as calculated in § 600.113.

CWF_{NMHC}=carbon weight fraction of the non-methane HC constituents in the fuel as determined from the speciated fuel composition per paragraph (c)(2) of this section.

CO_{2NG}=grams of carbon dioxide in the natural gas fuel consumed per mile of travel.

$CO_{2NG} = FC_{NG} D_{NG} WF_{CO2}$

where:

FC_{NG} = cubic feet of natural gas fuel consumed per mile

$$= \frac{(0.749)CH_4 + (CWF_{NMHC})NMHC + (0.429)CO + (0.273)(CO_2)}{CWF_{NG} D_{NG}}$$

where:

CWF_{NG}=the carbon weight fraction of the natural gas fuel as calculated in paragraph (d) of this section.

WF_{CO2}=weight fraction carbon dioxide of the natural gas fuel calculated using the mole fractions and molecular weights of the natural gas fuel constituents per ASTM D 1945.

[FR Doc. 94-22131 Filed 9-20-94; 8:45 am]
BILLING CODE 6560-50-P

federal register

Wednesday
September 21, 1994

Part III

Department of the Interior

Bureau of Indian Affairs

Tribal-State Compacts Approval; Class III (Casino) Gambling: Las Vegas Paiute Tribe, Nevada; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Las Vegas Paiute Tribe and the State of Nevada Gaming Compact, which was executed on June 7, 1994.

DATES: This action is effective September 21, 1994.

FOR FURTHER INFORMATION CONTACT: Larry Scrivner, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4068.

Dated: September 9, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–23272 Filed 9–20–94; 8:45 am]

BILLING CODE 4310–02–U

Federal Register

Wednesday
September 21, 1994

Part IV

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1191

Americans With Disabilities Act Accessibility Guidelines for Buildings and Facilities; Recreation Facilities and Outdoor Developed Areas; Proposed Rule

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ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket No. 94–1]

RIN 3014–AA16

Americans With Disabilities Act Accessibility Guidelines for Buildings and Facilities; Recreation Facilities and Outdoor Developed Areas

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) announces that its Recreation Access Advisory Committee has issued a report with recommendations for making recreation facilities and outdoor developed areas readily accessible to and usable by individuals with disabilities. Single copies of the report may be obtained from the Access Board. The Access Board will use the committee's report to develop a notice of proposed rulemaking establishing accessibility guidelines for newly constructed and altered recreation facilities and outdoor developed areas under the Americans with Disabilities Act and the Architectural Barriers Act. The Access Board seeks public comment on the committee's report and will consider the comments along with the report as it develops the notice of proposed rulemaking.

DATES: Comments should be received by December 20, 1994. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Comments should be sent to the Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Comments will be available for inspection at the above address from 9:00 a.m. to 5:00 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT: Peggy H. Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 ext. 34 (Voice); (202) 272–5449 (TTY). These are not toll-free numbers. This document is available in alternate formats (cassette tape, braille, large print, or computer disk) upon request.

SUPPLEMENTARY INFORMATION:

Advisory Committee Report

Single copies of the Recreation Access Advisory Committee's report may be obtained at no cost by calling the Access Board's automated publications order line (202–272–5434), pressing 1 on the telephone keypad, then 1 again and requesting publication S26 (Recreation Report). Persons using a TTY should call 202–272–5449. Please record a name, address and telephone number. Persons who want a copy in an alternate format, should specify the type of format (audio cassette tape, braille, large print, or computer disk).

Background

The Architectural and Transportation Barriers Compliance Board (Access Board) is responsible for developing accessibility guidelines under the Americans with Disabilities Act of 1990 to ensure that new construction and alterations of facilities covered by the law are readily accessible to and usable by individuals with disabilities.[1] The Access Board initially issued the Americans with Disabilities Act Accessibility Guidelines in 1991. 36 CFR part 1191. ADAAG contains scoping provisions and technical specifications for designing parking areas, entrances, toilet rooms and other elements and spaces that typically comprise a building and its site so that individuals with disabilities will have ready access to and use of the facility. ADAAG also contains additional provisions for certain types of facilities, including restaurants, medical care facilities, business and mercantile establishments, libraries, transient lodging, and transportation facilities.[2]

Various types of recreation facilities and outdoor developed areas are covered by the Americans with Disabilities Act. Newly constructed and altered recreation facilities and outdoor developed areas are currently required to comply with ADAAG, as adopted by the Department of Justice as the standards for accessible design (28 CFR 36.406), where its provisions can be applied. For example, parking areas, entrances, toilet rooms, restaurants, and mercantile establishments that are part of newly constructed and altered recreation facilities and outdoor developed areas must comply with ADAAG.[3]

Recreation facilities and other outdoor developed areas have some unique features for which additional accessibility guidelines need to be developed. In July 1993, the Access Board convened an advisory committee as the first step in developing these guidelines. The committee was comprised of owners and operators of recreation facilities; persons who design recreation facilities or manufacture related equipment; local, State and Federal officials responsible for parks and other outdoor developed areas; and individuals with disabilities and organizations representing their interests.

The committee was requested to accomplish the following objectives within one year:

- Develop a list of the various types of recreation facilities and outdoor developed areas;
- Identify the features of each facility type that are not adequately addressed by ADAAG;
- Consider any unique design issues or constraints affecting access to each facility type;
- Review any existing voluntary guidelines for providing access to the various facility types; and
- Make recommendations for accessibility guidelines for each facility type.

The committee organized itself into six subcommittees based on facility types to accomplish these objectives: Sports facilities; places of amusement; play settings; golf; boating and fishing facilities; and outdoor developed areas.

The committee met five times between July 1993 and May 1994. Committee members spent most of their time working in subcommittees which reported to the full committee. The subcommittees also worked between committee meetings. Committee meetings were well attended by persons interested in the committee's work and public comment was received at each meeting. The subcommittees also encouraged interested persons to participate in their work, including providing information and reviewing draft reports. More than 250 people actively participated in the committee's and subcommittees' work and collectively gave between 50,000 and 60,000 hours of their time.

In July 1994, the committee formally presented its report to the Access Board. During the next year, the Access Board will review the committee's report and develop a notice of proposed rulemaking to establish accessibility guidelines for newly constructed and altered recreation facilities and outdoor developed areas under the Americans with Disabilities Act. The Access Board is also responsible for developing accessibility guidelines for federally financed facilities under the Architectural Barriers Act (42 U.S.C. 4151 et seq.) and anticipates that the notice of proposed rulemaking will also apply to recreation facilities and outdoor developed areas covered under that law. In view of the significant public interest in the committee's report and the rulemaking, the Access Board is providing copies of the committee's report to the public and will receive comments from the public on the committee's report for a 90-day period from the publication of this notice. Comments received during this period will be considered along with the committee's report as the Access Board develops the notice of proposed rulemaking.

Local, State and Federal government agencies and private entities which own or operate recreation facilities and outdoor developed areas are encouraged to review the committee's report and to send their comments to the Access Board. Individuals with disabilities and their organizations, and other interested persons are also encouraged to review and comment on the committee's report.

The committee's report contains recommendations only, and are not proposed or final accessibility guidelines. As indicated above, the committee performed most of its work through six subcommittees based on facility types. The recommendations represent the consensus of the members of each subcommittee, and not necessarily the full committee. The subcommittees approached their work with the premise that every newly constructed and altered recreation facility should be accessible. Separate facilities or areas for use by individuals with disabilities were considered to be inconsistent with the purposes of the Americans with Disabilities Act and the Architectural Barriers Act. The subcommittees identified numerous features of recreation facilities that are not adequately addressed by ADAAG. In some cases, the subcommittees recommended amending existing ADAAG sections to address the specific features. In other cases, the subcommittees recommended new scoping provisions and technical specifications for ADAAG and drafted guideline language with rationale. The draft guideline language does not necessarily conform to the ADAAG format and numbering system. Persons reviewing the committee's report need not comment on the format of the draft guideline language. The Access Board will address format issues when it develops the notice of proposed rulemaking. Rather, persons reviewing the committee's report should focus on the substance of the recommendations.

The subcommittees also identified a few areas where providing access could eliminate or change the recreation activity or experience and proposed possible solutions.[4] For example, the sports facilities subcommittee identified that providing a slip resistant surface on ice skating rinks would eliminate or change the sport and recommended that the ice surface of the rink should be exempt from any slip resistance requirement. In some areas, the subcommittees recommended that additional information and research were needed for providing access. Finally, the subcommittees noted several areas where accessibility guidelines need to be coordinated with other laws and regulations, including regulations issued by the Department of Justice. The Access Board will refer these issues to the appropriate agencies, including the Department of Justice, for their consideration.

The committee's report is 202 pages and contains many detailed recommendations which cannot be readily summarized in this notice. To assist persons reviewing the committee's report, some of the recommendations are discussed below with questions. The Access Board is interested in receiving comments on all parts of the committee's report and encourages persons interested in the rulemaking to review the entire report. In addition, the Access Board requests comments on the impact of the committee's report on the safety of all persons using the facilities and on potential costs of the recommendations in the committee's report and how these costs could be minimized while accommodating safety.

Sports Facilities (Pages 1–62)[5]

Field-of-Play (Pages 5–6)

The sports facilities subcommittee examined field sports, court sports, rink sports, and a variety of other sports. Individuals with disabilities may participate in sports as spectators, players, coaches or assistants, or may be employees of sports facilities and should have access to all elements and spaces of the facilities. The subcommittee recommended that an accessible route be provided to the field-of-play. The subcommittee observed that in some sports, the field-of-play consists of grass, artificial turf, sand, soil, ice, or other materials which do not fully meet the ADAAG requirement that surfaces along accessible routes and in accessible spaces must be stable, firm and slip resistant. The subcommittee recommended that where requiring the playing field surface to be stable, firm and slip resistant would eliminate or substantially change the sport, an exception to this requirement should be provided for the field-of-play.

In some sports, the field-of-play may extend to the sideline area directly adjacent to the boundary of the playing field. For example, in baseball a player can chase a foul ball beyond the "within-bounds" area. The sports facilities subcommittee suggested that designated key accessible route locations could be safely incorporated into sideline or "out-of-bounds" areas; or temporary, removable surfaces could be used to provide access to these areas.

Question 1: What are other possible solutions for providing an accessible route to sideline or "out-of-bounds" areas used by coaches, press and others where the field-of-play may extend to or overlap these areas? Persons responding to this question are requested to provide information regarding the location, surface requirements, and width of an accessible route serving these areas.

[1] The Americans with Disabilities Act (ADA) (42 U.S.C. 12101 et seq.) is a comprehensive Civil Rights law which prohibits discrimination on the basis of disability and requires, among other things, that newly constructed and altered State and local government building, places of public accommodation, and commercial facilities be accessible to and usable by individuals with disabilities.

[2] The Access Board recently issued an interim final rule that adds provisions to ADAAG for certain State and local government facilities, including judicial, legislative and regulatory facilities; detention and correction facilities; residential housing; and public rights-of-way. 59 FR 31676 (June 20, 1994).

[3] State and local governments currently have the option of using ADAAG or an earlier standard, the Uniform Federal Accessibility Standards (UFAS), when constructing or altering facilities under the Department of Justice regulations (28 CFR 35.151(c)). The Department of Justice has recently issued a notice of proposed rulemaking to eliminate this option. 59 FR 31808 (June 20, 1994).

[4] Some subcommittees borrowed the phrase "fundamentally alter the nature of the service, program, or activity" from the Department of Justice regulations to describe those areas where providing access could eliminate or change the recreation activity or experience. The Department of Justice uses this phrase or a variation of the phrase in its regulations to describe when public and private entities are relieved of the obligation to make reasonable modifications in policies, practices or procedures (28 CFR 35.130(b)(7) and 36.302(a)) and when public entities are relieved from providing program accessibility in existing facilities (28 CFR 35.150(a)(3)). Although the phrase does not apply to new construction and alterations, some subcommittees attempted to use the phrase by analogy when describing a few areas where providing access may not be practicable or needs to be viewed in light of the nature of the recreation experience.

[5] The relevant part of the committee's report is referenced after each heading and subheading.

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Pools (Pages 16–20)

The sports facilities subcommittee also examined access to pools.[6] There are many different types of pools such as competition pools, lap pools, leisure or family pools, and wading or children's pools. Pools are found in a variety of settings from hotels and other places of transient lodging to public parks and community centers. The sports facilities subcommittee identified three means for providing access into the water: ramps, lifts, and transfer tiers. As discussed at pages 16–18 of the committee's report, each of these means accommodates varying capabilities of individuals with disabilities with no single means best for all users. For example, ramps can facilitate independence. However, ramps require transfer to an additional chair and raise concerns regarding buoyance and water resistance for individuals ascending and descending the ramp. Lift operation may require individuals with disabilities to seek assistance; and transfer tiers pose a higher level of physical challenge.

The sports facilities subcommittee recommended that one accessible means of entry into the water should be required and that a range of alternatives (ramps, lifts, or transfer tiers) should be allowed. The subcommittee further recommended that where pools exceed a certain size, two accessible means of entry into the water should be required. (The subcommittee did not recommend a specific size.) The subcommittee emphasized that any means of entry into the water should allow for individuals with disabilities to use pools independently and with dignity.

Question 2: Given the different types of pools and various means that individuals with disabilities use for entering the water, should a range of alternatives (ramps, lifts, or transfer tiers) be allowed for providing access into the water? If not, should specific means be required and others not permitted for certain types of pools? Should requirements be related to the size of the pools, with larger pools required to provide more than one means of entry into the water? If so, what size or other criteria should trigger the additional requirement? If specific means for entering the water are required, should technical specifications be developed for those means?

[6] The places of amusements subcommittee and outdoor developed areas subcommittee also examined access to pools. See pages 85–88 and 188–189 of the committee's report for those subcommittees' recommendations.

Places of Amusement (Pages 63–88)

Amusement Rides (Pages 74–85)

The places of amusement subcommittee examined access to amusement rides. As defined by the subcommittee, amusement ride systems consist of amusement devices which carry or move a person or persons on, around, over or through a fixed or restricted course or within a defined area for purpose of amusement or entertainment and includes related elements, facilities and systems. For new construction, the subcommittee recommended that, to the greatest extent possible, at least one wheelchair space be provided within the amusement ride system where the amusement device can accommodate a person seated in a wheelchair without changing the nature of the amusement ride system or experience. When an amusement device cannot accommodate a person seated in a wheelchair, the subcommittee recommended that, to the greatest extent possible, a means of transfer onto the amusement device be provided without changing the nature of the amusement ride system or device. The subcommittee drafted detailed recommended guidelines for accomplishing a transfer from a wheelchair to the amusement device.

The places of amusement subcommittee recommended that decisions regarding the type of access provided (roll-on or transfer) be made by designers on a ride-by-ride basis after considering a variety of factors, including seating space and configuration, ride speed, forces and accelerations during normal and emergency operation, riding posture and center of gravity, restraining systems, and safety of others.

Question 3: Should a percentage of rides in newly constructed places of amusement provide either roll-on or transfer access for individuals who use wheelchairs and other mobility aids? It is acceptable to permit some rides not to provide roll-on or transfer access and, if so, what should be the criteria for not providing access? In new construction, is it acceptable that the type of access provided (roll-on or transfer) be determined on a ride-by-ride basis? The Access Board is interested in any studies or other data that provide information on the dynamic effects of forces experienced on certain rides on individuals with disabilities.

Carnivals and Fairs (Pages 73–74)

The places of amusement subcommittee also examined access to amusement rides used in temporary places of amusement such as carnivals and fairs. These amusement rides are transported on trucks and trailers, and are set up and leveled at different sites for temporary events. Depending on the terrain, the distance from the ground to ride may vary from four to six feet. The subcommittee recommended that these amusement rides comply with the same requirements as amusement rides at permanent sites.

Question 4: Should amusement rides used in temporary places of amusement be addressed in the same manner as rides at permanent sites? The Access Board is interested in receiving information on ways to provide access to these amusement rides.

Carnivals and fairs may be held on partially improved or unimproved sites such as city parks, athletic fields, or agricultural fields that are not specifically designed for the event and that do not provide stable, firm and slip resistant surfaces required for an accessible route. The places of amusement subcommittee recommended that where, due to the temporary nature of the event, changes to topography or surface conditions would be inconsistent with the primary purpose of the site, temporary, removable surfaces be used to provide an accessible path to rides and other attractions.

Question 5: Should temporary places of amusement be required to meet all the provisions for an accessible route when held on partially improved or unimproved sites? If not, what provisions should be modified (e.g., stable, firm and slip resistant surface; slope; cross slope; width; accessible elements connected)? How should protruding objects such as tent stakes and lines be addressed?

Play Settings (Pages 89–102)

Accessible Route (Pages 91–93)

The play settings subcommittee examined issues related to providing access to play areas and equipment. Play settings vary greatly in size and may be found in schools, day care centers, fast food restaurants, amusement parks, and public parks. Play is an important social experience that occurs in many ways within a play area. Play settings often include play equipment such as slides, swings, ladders, sand play areas, and open areas for play. Children without disabilities have the opportunity to maneuver throughout play areas and to access their choice of play equipment. Designers have a unique challenge in providing children with disabilities the same access.

Designers usually provide resilient surfaces meeting the ASTM F1292 performance standard within the use zone of play equipment as a safety measure. (This is also called "the fall zone.") Some resilient surfaces such as sand and wood chips are not stable, firm and slip resistant and, thus, would not meet the requirements for an accessible route. The play settings subcommittee considered cost and maintenance issues related to various types of surfaces and recommended that an expanded accessible route which is a minimum of 60 inches wide connect accessible activities within the play area in order to promote social interaction and use of the play components. This accessible route would be stable, firm, slip resistant, safe to crawl on, and where within the use zone of equipment, resilient.

Question 6: Does the play subcommittee's recommendation for an expanded accessible route adequately address the need for access within play settings? Persons responding to this question should review pages 91–93 of the committee's report.

Elevated Play Equipment (Pages 93–96)

The play setting subcommittee identified ramps and transfer systems (transfer platforms, decked platforms, and berms or natural hills) as means for providing access to elevated play equipment. For larger composite play structures having 12 or more elevated play components (or 12 or more elevated play components at one site serving the same age group), the subcommittee recommended that both ramps and transfer systems should be required, and that each means access at least one-half of the elevated play components on the play structure. The subcommittee further recommended that one-half of the play components which are accessed by ramps should be required to be like or similar to those elevated play components that are not accessed by ramps. For smaller composite play structures having less than 12 elevated play components, the subcommittee recommended that transfer systems should be required to access at least one-half of the elevated play components, and that one-half of those play components be like or similar to the elevated play components that are not accessible.

Question 7: Should a requirement for ramp access, in addition to transfer systems, be based on the number of play components? If so, what number of play components should trigger a ramp requirement, in addition to transfer systems?

Soft Contained Play Systems (Page 99)

Soft contained play systems are relatively new and are comprised of fully enclosed, resilient play components that are designed so that children climb through and within the structure. Most incorporate play activities on several different levels. Some cover 3,000 square feet and are over 20 feet high. These play structures are found in amusement parks, connected with fast food restaurants, or as stand-alone facilities. The play settings subcommittee recommended that these play structures be accessible and provide integration, and noted that the ASTM F1536 committee is currently developing standards for them.

Question 8: Should soft contained play systems be subject to the same requirements as other play structures? The Access Board is interested in receiving information on how access can be provided to these play structures.

Golf (Pages 103–118)

Accessible Route (Poges 108–112)

Golf is played in the open air on courses that incorporate natural and constructed elements. An 18-hole golf course typically occupies more than 100 acres and slopes on fairways frequently exceed 1:20. Because the route of play is determined by where the ball lands, the golf subcommittee focused on providing players with a disability access to their ball without defining an accessible route through the green. The subcommittee based its recommendations on the premise that players with a disability will use a golf car or similar mobility aid to access their balls. The subcommittee recommended that at least one accessible teeing ground be provided on each hole. An accessible route would be required from the golf car path or parking area to the accessible teeing ground. Where continuous access onto the fairway is not possible because of natural barriers, access to the fairway would be required at maximum distances of every 75 yards from the golf car path, unless precluded by extreme terrain or environmental issues (wetlands and protected areas). The subcommittee recommended against providing access to hazards and bunkers on the grounds that doing so would substantially change the nature of the game. (Practice bunkers would be accessible.) An accessible route would be required to all putting greens from the golf car path or parking area. An accessible route would also be required from golf car paths or parking areas to toilet rooms, snack bars, weather shelters, and other amenities provided for players. The subcommittee also recommended that the playing area of the golf course be exempt from the requirement for stable, firm, and slip resistant surfaces.

Question 9: Do the golf subcommittee's recommendations adequately address accessible design for golf courses?

Miniature Golf (Pages 115–117)

The golf subcommittee also examined miniature golf courses. The subcommittee recommended that all holes on miniature golf courses be connected by an accessible route and that the entire playing surface of these courses be accessible, except for sloped surfaces where the ball cannot come to rest. Access would be required at starting points, end points, and to points in between where the ball may rest. The subcommittee also recommended that where obstacles such as concrete blocks, gates, and caves are placed on the playing surface to enhance difficulty or competition, an accessible path be provided to either side of the obstacle, or entrance and exit points be provided on both sides of the obstacle to allow players with disabilities to bypass the obstacle. Owners and operators of miniature golf courses have expressed concern about requiring the entire course to be accessible, especially courses developed on smaller sites which are often designed to rise sharply in elevation to increase the playing surface area.

Question 10: Are there conditions where a lesser degree of accessibility should be allowed for miniature golf courses? The Access Board is interested in receiving information on designs for providing access to miniature golf courses.

Boating and Fishing Facilities (Pages 119–132)

Gangways (Pages 126–129)

The boating and fishing facilities subcommittee examined a variety of facilities ranging from primitive fishing areas in national parks to highly developed, multi-use marinas in urban settings. The marine environment is dynamic and poses design challenges different from those encountered in a static, land-based environment. Bodies of water experience changing levels due to such factors as tides, seasonal changes, reservoir draw-downs, flooding, and dam releases. The subcommittee identified three options at pages 126–129 of the committee's report for providing access to gangway structures which connect to floating, boating and fishing facilities. The

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subcommittee did not reach consensus on the options and encouraged public input and additional research.

Question 11: Which option most adequately addresses issues affecting access to floating, boating and fishing facilities? Are there other solutions that are not reflected in the recommended options? Persons responding to this question should review pages 126–129 of the committee's report.

Boat Slips (Pages 125–126)

The boating and fishing facilities subcommittee also recommended scoping provisions and technical specifications for accessible boat slips. The subcommittee recommended that the number of accessible boating slips be based on the scoping provision for accessible parking spaces for motor vehicles (ADAAG 4.1.2(5)).

Question 12: Should the scoping provision for accessible parking spaces for motor vehicles be applied to boat slips? Should other factors be considered such as whether the boat slips are leased on a long-term or a short-term basis?

Outdoor Developed Areas (Pages 133–202)

Outdoor Recreation Environments (Pages 133–190)

Over the past decade, the National Park Service, USDA Forest Service, various State and local government agencies, and private entities have examined issues related to providing access to outdoor recreation environments. The outdoor developed areas subcommittee built on these earlier efforts. The committee based its work on the premise that there is a spectrum of recreation settings that occur in the outdoor environment and identified four different settings based on the degree of development and modifications to the natural environment. The settings are: the highly developed or urban; the moderately developed or natural; the minimally developed or back-country; and the undeveloped or primitive. The subcommittee attempted to develop recommendations that provide the highest degree of access practicable and feasible, commensurate with the amount of development, while at the same time preserving and protecting the fundamental nature of the various elements of the outdoor recreation environment. The subcommittee outlined three degrees of accessibility (easier, moderate, and difficult) that related to the first three settings with the degree of access decreasing as the amount of development decreases. No guidelines were recommended for undeveloped or primitive settings.

The outdoor developed areas subcommittee attempted to define a process by which decisions can be made regarding the degree of access which should be provided in different outdoor recreation environments. The subcommittee proposed two approaches for determining the degree of access to be provided. The first approach is set out at pages 153–156 (outdoor recreation access routes) and pages 166–170 (recreation trails) of the committee's report and reaches decisions regarding the degree of access to be provided through analysis of the recreation setting, the condition of the natural environment, the amount of structural modification, the recreation experience, and consultation with individuals with disabilities. The second approach is set out at pages 157–159 (outdoor recreation access routes) and pages 170–171 (recreation trails) of the committee's report and begins by requiring a certain degree of accessibility and proposes a series of exceptions that allow the other degrees of accessibility for a variety of conditions including severe elevations, geologic features, historic significance, or the specific purpose of the trail. Under the second approach, an entity would also have to consult with individuals with disabilities when making an exception and document the decision. Both approaches are intended to result in the highest degree of access practicable and feasible for the setting.

Question 13: Which approach is more likely to achieve an acceptable level of access? Can these approaches be applied to all outdoor recreation environments regardless of size, location, entity, or other factors? Are there other alternatives that would facilitate application of accessibility guidelines to outdoor recreation environments? Persons responding to this question should review pages 153–159 and 166–171 of the committee's report.

Beaches (Pages 186–187)

The outdoor developed areas subcommittee also examined beach facilities and recommended that an accessible route be provided to a point 36 inches beyond the water's edge at high tide. The subcommittee stated that a stable, firm and slip resistant surface may be accomplished by using permanent materials (e.g., concrete, wood, or plastic decking); temporary, removable materials (e.g., mats or mesh) during daylight hours; or a combination of both. Water level changes due to tides, shifting shorelines, and erosion may impact on potential solutions.

Question 14: Should an accessible route be required to the water? If so, where should it be located? Should a temporary accessible route be allowed where a permanent one is not practicable or feasible?

Snow Facilities (Pages 190–201)

The outdoor developed areas subcommittee also examined skiing and a variety of other snow activities. The subcommittee recommended that accessible parking spaces be located a maximum of 300 feet from base area facilities or other snow area activities, unless an accessible transportation option is provided. The subcommittee also proposed the concept of a snow access route. The subcommittee noted that the ANSI B77.1 committee is conducting research on accessibility requirements for lifts and has recommended that guidelines for lifts be reserved pending the research, except for loading and unloading areas and lift corrals and waiting areas.

Question 15: What are the critical access issues for individuals with disabilities in snow facilities? The Access Board is interested in receiving additional information on ski lift access.

Other Facility Types

Question 16: Are there other types of recreation facilities and outdoor developed areas that are not addressed in the committee's report? If so, the Access Board is interested in receiving information on providing access to those facilities and areas.

The Recreation Access Advisory Committee has performed an invaluable public service by gathering information on diverse types of recreation facilities and outdoor developed areas; involving other interested persons in its work; and attempting to build consensus on possible solutions for providing access to these facilities and areas. The Access Board wants to encourage greater public participation as it develops a notice of proposed rulemaking establishing accessibility guidelines for newly constructed and altered recreation facilities and outdoor developed areas and invites comments on the committee's report. The comments will be considered along with the committee's report as the Access Board develops the notice of proposed rulemaking.

Authorized by vote of the Access Board on July 13, 1994.

Judith E. Heumann,

Chairperson, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 94–23180 Filed 9–20–94; 8:45 am]

BILLING CODE 8150–01–P

Federal Register

Wednesday
September 21, 1994

Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 172 and 174

Performance-Oriented Packaging Standards; Technical Revisions; Final Rule

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172 and 174

[Docket No. HM-181F; Amdt Nos. 172-137 and 174-77]

RIN 2137-AB89

Performance-Oriented Packaging Standards; Technical Revisions; Final Rule

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule corrects two errors and clarifies a third matter in a September 24, 1993 final rule published under Docket HM-181F [58 FR 50224], which adopted changes to the regulations based on petitions for rulemaking and RSPA's own initiative to help clarify certain aspects of a final rule issued on December 21, 1990. The intended effect of this final rule is to promote accuracy through certain technical revisions. This rule will not impose any new requirements on persons subject to the Hazardous Materials Regulations.

EFFECTIVE DATE: The effective date of this final rule is September 21, 1994.

FOR FURTHER INFORMATION CONTACT: Beth Romo, telephone (202) 366-4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, Washington DC, 20590-0001 or Edward W. Pritchard, telephone (202) 366-0510, Office of Safety Enforcement, Federal Railroad Administration, Washington DC, 20590-0001.

SUPPLEMENTARY INFORMATION:

Background

The Research and Special Programs Administration (RSPA) published a final rule on December 21, 1990 (Docket HM-181; 55 FR 52402), which comprehensively revised the Hazardous Materials Regulations (HMR; 49 CFR parts 171 to 180) with respect to hazard communication, classification, and packaging requirements based on the United Nations Recommendations on the Transport of Dangerous Goods. A document responding to petitions for reconsideration and containing editorial and substantive revisions to the HM-181 final rule was published on December 20, 1991 (56 FR 66124). On October 1, 1992, under Docket HM-181 and HM-189, RSPA issued additional editorial amendments to the December 21, 1990 final rule (57 FR 45446).

A petitioner to the October 1992 final rule stated Special Provision B65 in 49 CFR 172.102 was inconsistent because the first sentence specified only a DOT 105A500W tank car, while the second sentence pertained to the remarking of a DOT 105J500W tank car to a DOT 105J300W tank car. RSPA revised this special provision in the September 24, 1993 final rule to clarify that the DOT 105A500W tank car is the only authorized tank car for hydrocyanic acid, aqueous solutions and hydrogen cyanide, anhydrous stabilized [58 FR 50235]. However, the second sentence incorrectly referenced a DOT 105J tank car. Therefore, in this final rule, RSPA is correcting the second sentence in Special Provision B65 to prescribe the remarking of a DOT105A500W tank car to a DOT 105A300W tank car.

One rail carrier stated its belief that the regulations adopted under the December 21, 1990 final rule allowed rail cars moving under their own momentum to strike placarded flatcars, including flatcars loaded with placarded transport vehicles, freight containers, and bulk packagings. In order to clarify this matter, RSPA issued a correction in the Docket HM-181F final rule that amended the rail car handling requirements in § 174.83(b) [58 FR 50237]. RSPA explained that the change was being made so as not to allow an over-speed impact of any rail car transporting a Division 1.1 or 1.2 explosive, a Division 2.1 flammable gas (in a class DOT 113 tank car), or a Division 2.3 poisonous gas. Additionally, RSPA explained that in order to clarify these handling requirements, § 174.83(b) was being restructured to reflect the regulatory language that existed prior to December 21, 1990.

After publication of the September 24, 1993 final rule, several commenters noted that § 174.83(b) prohibited rail cars containing all Division 2.3 poisonous gases from moving under their own momentum, as opposed to only those containing Division 2.3 Hazard Zone A materials. Commenters further noted that the rule did not prohibit the movement of rail cars under their own momentum for Division 6.1 Packing Group I Hazard Zone A materials. A notice of proposed rulemaking published on July 12, 1993, under Docket HM-181F (58 FR 37612), proposed revisions to § 174.83(b) applicable to Division 2.3 Hazard Zone A and Division 6.1 Packing Group I Hazard Zone A materials; however, in the final rule, paragraph (b) was rewritten for clarity and did not reflect accurately the applicable categories. Therefore, this final rule amends § 174.83(b) to correct these omissions.

RSPA also is amending § 174.83(b) to clarify that handling restrictions apply only to loaded rail cars transporting a Division 1.1 or 1.2 explosive, a Division 2.3 Hazard Zone A gas or a Division 6.1 PG I Hazard Zone A material. The handling restrictions will still apply to all class DOT 113 tank cars (both loaded tank cars and those containing a residue) that are used to transport a Division 2.1 material, because of the design of the inner tank supporting system (see §§ 172.203(g)(2), 179.400-13, and 179.400-26(d)).

Summary of Regulatory Changes by Section

Section 172.102. Special Provision B65 is amended by changing the tank car specifications referenced in the second sentence to read "DOT 105A500W" and "DOT 105A300W", respectively.

Section 174.83. Paragraph (b) introductory text is revised to clarify handling restrictions and to prohibit rail cars transporting a Division 1.1 or 1.2 explosive, a Division 2.1 flammable gas (in a class DOT 113 tank car), a Division 2.3 Hazard Zone A gas or a Division 6.1 PG I Hazard Zone A material from moving under their own momentum, from being coupled into with more force than is necessary to complete the coupling, or from being struck by any other rail car moving under its own momentum.

Changed Legal Citations

On July 5, 1994, President Clinton signed H.R. 1758—now Public Law (Pub. L.) 103-272—"a bill to revise, codify, and enact without substantive change certain general and permanent laws, related to transportation," including the HMTA. Public Law 103-272, 108 Stat. 745 (1994). The purpose of Public Law 103-272 was to "clean-up" related Federal transportation laws and restate them in a format and language intended to be easier to understand without changing substantive content. Consequently, Public Law 103-272 revised, enacted and codified provisions of the Federal hazardous materials transportation law, now found at 49 U.S.C. 5101-5127. At the same time, Public Law 103-272 also repealed the original statute.

The legal citations that appear in this document reflect the non-substantive changes made by Public Law 103-272.

Regulatory Analysis and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). The original regulatory evaluation has been reexamined but not modified. The changes made under this final rule provide clarification and will not result in an adverse economic impact on industry.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Section 5125(b)(1) of Title 49 U.S.C. expressly preempts State, local, and Indian tribe requirements on certain covered subjects unless they are substantively the same as the Federal requirements. Covered subjects are:

(A) The designation, description, and classification of hazardous material;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(E) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subjects under paragraph (B) above and, therefore, preempts State, local, or Indian tribe requirements not meeting the "substantively the same" standard. Section 5125(b)(7) of Title 49 U.S.C. provides that if DOT issues a regulation concerning any of the covered subjects, after November 16, 1990, DOT must determine and publish in the Federal Register the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be December 21, 1994. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

This final rule corrects two errors and clarifies an existing requirement in the Hazardous Materials Regulations concerning operational requirements for rail carriers. I certify this rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The parenthetical authorities at the end of any sections in part 172 are removed and the authority citation is revised to read as follows:

Authority: 49 U.S.C. 5101-5127; 49 CFR 1.53.

2. In § 172.102, in paragraph (c)(3), Special Provision B65 is amended by revising the second sentence to read as follows:

§ 172.102 Special provisions

* * * * *

(c) * * *

(3) * * *

B65 * * * Each DOT 105A500W tank car must be marked as DOT 105A300W. * * *

* * * * * *

PART 174—CARRIAGE BY RAIL

3. The parenthetical authorities at the end of any sections in part 174 are removed and the authority citation is revised to read as follows:

Authority: 49 U.S.C. 5101-5127; 49 CFR 1.53.

4. In § 174.83, the introductory text in paragraph (b) is revised to read as follows:

§ 174.83 Switching placarded rail cars, transport vehicles, freight containers, and bulk packagings.

* * * * *

(b) Any loaded rail car placarded for a Division 1.1 or Division 1.2 explosive, a Division 2.3 Hazard Zone A gas or a Division 6.1 PG I Hazard Zone A material, or any Class DOT-113 tank car placarded for a Division 2.1 flammable gas may not be:

* * * * *

Issued in Washington, DC on September 14, 1994, under authority delegated in 49 CFR part 1.

D.K. Sharma,

Administrator, Research and Special Programs Administration.

[FR Doc. 94-23300 Filed 9-20-94; 8:45 am]

BILLING CODE 4910-13-P

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Part VI

The President

Presidential Determination No. 94–47—Amendment to Presidential Determination No. 94–31

Presidential Determination No. 94–48—Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as Amended

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Presidential Documents

Title 3—

The President

Presidential Determination No. 94–47 of September 9, 1994

Amendment to Presidential Determination 94–31

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that funds previously made available from the Emergency Refugee and Migration Assistance Fund to meet the urgent and unexpected needs of Haitian migrants be made available also for the urgent and unexpected needs of Cuban migrants, effective September 1, 1994. This determination amends Presidential Determination 94–31 of July 1, 1994, to permit the use of the funds authorized by that determination for Cuban as well as Haitian migrants.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority and to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, September 9, 1994.

[FR Doc. 94–23529
Filed 9–19–94; 4:24 pm]
Billing code 4710–10–M

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Presidential Documents

Presidential Determination No. 94–48 of September 9, 1994

Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(b)(2), I hereby designate persons fleeing from or repatriating to Cuba and Haiti as qualifying for assistance and determine that such assistance will contribute to the foreign policy interests of the United States.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority and to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, September 9, 1994.

[FR Doc. 94–23530
Filed 9–19–94; 4:25 pm]
Billing code 4710–10–M

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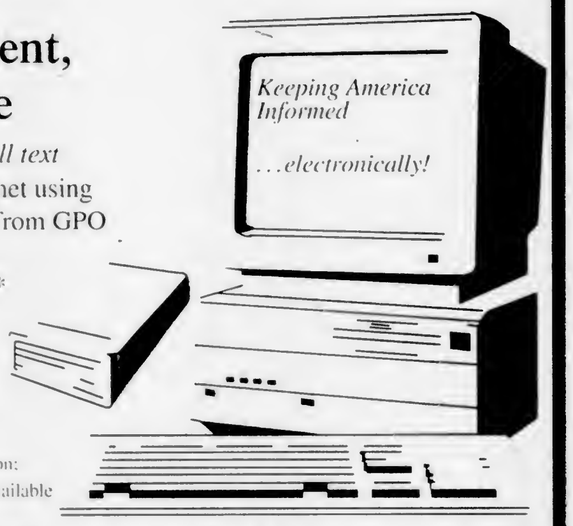
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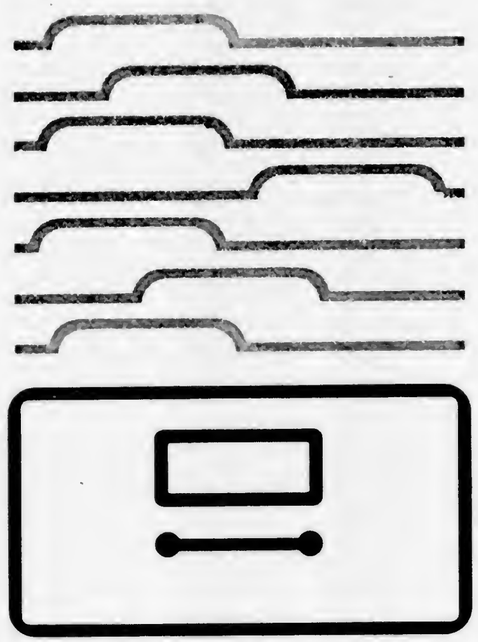
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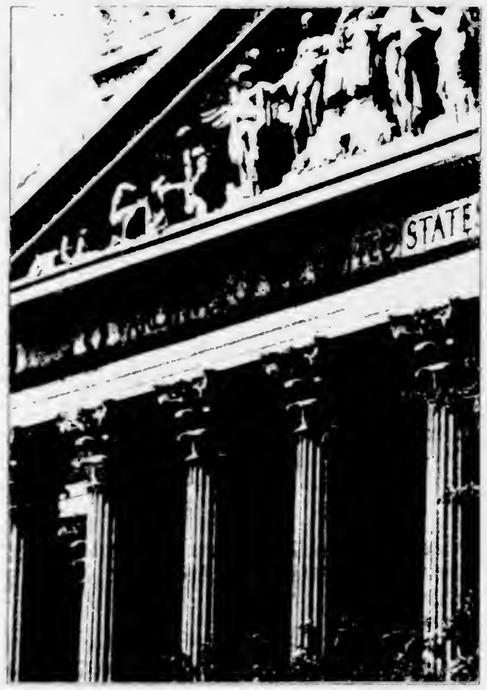
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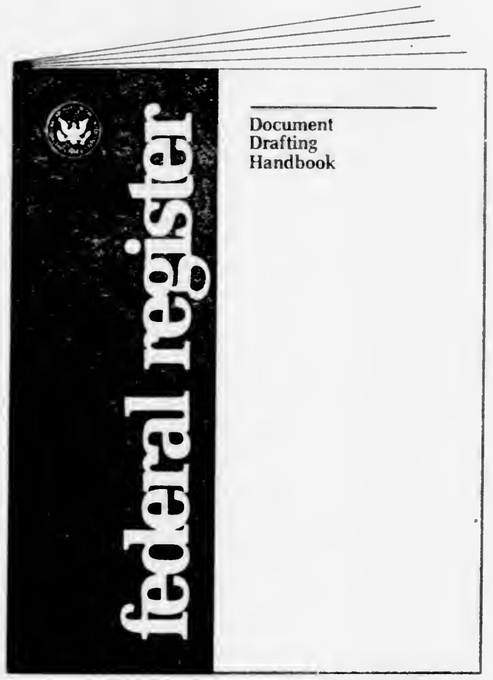
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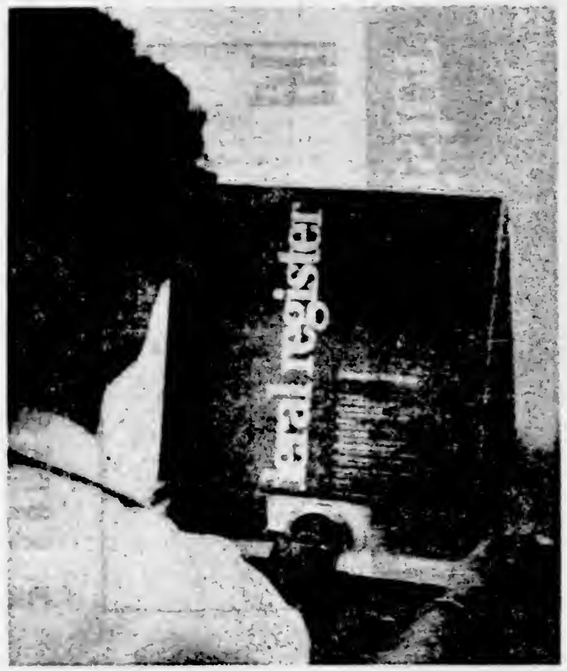
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Rules and Regulations

Federal Register
Vol. 59, No. 183
Thursday, September 22, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1036

[DA–94–14]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Revision of Cooperative Association Reserve Processing Plant Shipping Requirement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document reinstates the cooperative pool reserve processing plant delivery requirement of 35 percent under the Eastern Ohio-Western Pennsylvania Federal milk order (Order 36), as of January 1, 1996. A reduction from 35 to 25 percent was intended to be temporary for the period July 1, 1993, through August 31, 1994. The current issue of the Code of Federal Regulations shows the percentage requirement to be 25 percent. The percentage of a cooperative association's member milk that must be delivered to pool distributing plants to qualify the cooperative's reserve processing plant for pooling continues to be 25 percent until December 31, 1995, rather than 35 percent. This action is necessary to prevent uneconomic movements of milk for the purpose of pooling much of the market's supply.

EFFECTIVE DATE: The amendment of § 1036.7(d), published on July 30, 1993, and effective July 1, 1993 (58 FR 40724), will continue through December 31, 1995, and will expire January 1, 1996. Amendments 2 and 3 are effective January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Revision of Rule: Issued July 22, 1993; published July 30, 1993 (58 FR 40724).

Notice of Proposed Temporary Revision: Issued June 27, 1994; published July 1, 1994 (59 FR 33922).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the provisions of § 1036.7(f) of the Eastern Ohio-Western Pennsylvania order.

Notice of proposed rulemaking was published in the **Federal Register** (59 FR 33922) concerning a proposed relaxation of the cooperative association reserve processing plant shipping requirement. The revision was proposed to be effective for the months of September 1994 through December 1995. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by August 1, 1994. Three comments supporting the proposed revision were received. No opposing comments were received.

Statement of Consideration

This rule continues to ease the pooling requirements for cooperative reserve processing plants by 10 percentage points, to 25 percent, for the period September 1, 1994, through December 31, 1995. Under the revision the total minimum quantity of a cooperative association's milk supply that is required to be delivered to distributing plants in order for the cooperative's reserve supply plant to maintain pool status is reduced from 35 percent to 25 percent.

In order for a cooperative association plant that does not qualify as a pool distributing or pool supply plant to be a pool plant, the Eastern Ohio-Western Pennsylvania order requires that the cooperative must deliver to pool distributing plants a minimum of 35 percent of the total quantity of milk marketed by the cooperative, either during the month or during the 12-month period ending with the immediately preceding month.

The Eastern Ohio-Western Pennsylvania milk order provides authority for the Director of the Dairy Division to increase or decrease the required shipping percentages for cooperative reserve supply plants by up to 10 percentage points if such a revision is necessary to obtain needed shipments or to prevent uneconomic shipments.

The revision was requested originally for the period July 1993 through August 1994 by Milk Marketing, Inc. (MMI), a cooperative association that represents many of the market's producers. As printed in the **Federal Register**, the

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revision became effective July 1, 1993, with no termination date. The 1994 Code of Federal Regulations (CFR) reflects the revised shipping standards, and without further amendatory action, the 1995 CFR will also reflect the reduced 25-percent shipping standard.

MMI requested continued revision of the cooperative association shipping requirements for the period September 1, 1994, through December 31, 1995, and a proposed revision was issued. Comments supporting the revision were received from MMI and two other cooperative associations with members whose milk is pooled under Order 36. MMI, Eastern Milk Producers Cooperative Association, Inc. (Eastern), and Dairylea Cooperative, Inc. (Dairylea), stated that the revision is needed to prevent unnecessary and uneconomic movements of milk because of the current severe milk supply-demand imbalance in the Eastern Ohio-Western Pennsylvania marketing area.

MMI's comments included a description of milk marketing conditions for June 1994 that show milk production for the market increased over 4 percent from the same month of the previous year, representing 12 million additional pounds of milk in the Order 36 pool. For the same month, Class I sales decreased by nearly 2.5 percent from June 1993, representing a reduction of approximately 3.4 million pounds of Class I sales. As a result of the market's increasing production and declining Class I use, nearly 15.5 million pounds of milk had to be used in manufactured products than in the same month the previous year.

The comments filed by Eastern stated that the trends observable for June are expected to continue for the foreseeable future, creating additional pooling difficulties for cooperative handlers pooling milk under Order 36. Dairylea stated that continuation of the revision would prevent unnecessary, uneconomic movements of milk.

According to comments filed, milk supplies historically pooled under the order currently are continuing to lose their markets and having to find new outlets for their production. Apparently, Order 36 and nearby pool distributing and pool supply plants are releasing some of their milk suppliers to find their own markets for milk. Such institutional changes in the sources of supply for various plants may result in market instability and disorder.

Milk production in the Eastern Ohio-Western Pennsylvania marketing area appears to be increasing while Class I use is declining. As a result, greater volumes of milk must be diverted to manufacturing uses than in prior years. The last full year before the 1990 proceeding that resulted in the amendments that took effect October 1, 1993, was 1989. During the short production months (September through November) of 1989, the percentage of Order 36 producer milk needed for Class I use was over 60 percent, with less than 30 percent of the market's milk used in Class III. For the same period of 1992, the percentage of producer milk used in Class I was just 55 percent, with the Class III percentage increasing to nearly 36 percent. The trend continued during the same months of 1993, with less than 55 percent of the producer milk pooled during September, October and November used in Class I.

The increased production and decline in Class I sales, coupled with the market's changing handler-producer relationships, necessitates a continuation in the reduction of the percentage of milk that must be delivered by a cooperative association to pool distributing plants in order to assure the pool status of the cooperative's member milk.

The revision effective July 1, 1993, should continue in effect for a period long enough to allow the institutional shifts currently in process to work themselves out, and for the cooperative associations to assure themselves of an adequate fluid market for their producer milk. Therefore, the revision should remain in place through December 1995.

After consideration of all relevant material, including the proposal set forth, and other available information, it is hereby found and determined that the diversion limitation percentage set forth in § 1036.7(d) should be maintained at the present 25-percent level through December 31, 1995.

List of Subjects in 7 CFR Part 1036

Milk marketing orders.

For the reasons set forth in the preamble, Title 7, Part 1036, is amended as follows:

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. The authority notice for 7 CFR part 1036 continues to read as follows:

Authority: Secs. 1–19, 48 Stat 31, as amended; 7 U.S.C. 601–674.

§ 1036.7 [Amended]

2. Section 1036.7(d) is amended by changing the words "25 percent" to "35 percent", effective January 1, 1996.

3. Section 1036.7(d)(2) is amended by changing the words "25-percent" to "35 percent", effective January 1, 1996.

Dated: September 8, 1994.

Richard M. McKee,

Director, Dairy Division.

[FR Doc. 94–22919 Filed 9–21–94; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter 1

Issuance of Report on the NRC Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of NRC Regulatory Agenda.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued the NRC Regulatory Agenda for the second quarter, April through June of 1994. This agenda provides the public with information about NRC's rulemaking activities. The NRC Regulatory Agenda that is scheduled to be published in January 1995 will cover the period from July 1994 through December 1994. The NRC Regulatory Agenda is a compilation of all rules on which the NRC has recently completed action, or has proposed action, or is considering action, and of all petitions for rulemaking that the NRC has received that are pending disposition. Issuance of this publication is consistent with Section 610 of the Regulatory Flexibility Act.

ADDRESSES: A copy of this report, designated NRC Regulatory Agenda (NUREG–0936), Vol. 13, No. 2, is available for inspection, and copying for a fee, at the Nuclear Regulatory Commission's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

In addition, the U.S. Government Printing Office (GPO) sells the NRC Regulatory Agenda. To purchase it, a customer may call (202) 512–2249 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 415–7163, toll-free number (800) 368–5642.

Dated at Rockville, Maryland, this 15th day of September 1994.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 94–23456 Filed 9–21–94; 8:45 am]

BILLING CODE 7590–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies; Leverage

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule allows Small Business Investment Companies licensed under sections 301 (c) and (d) of the Small Business Investment Act of 1958 (Licensees) having no immediate need for SBA financial assistance (Leverage) to reserve the future availability of such financial assistance by obtaining SBA's conditional commitment to guarantee Debentures or Participating Securities (collectively "pooled securities"), or to purchase Preferred Securities, that will be offered in the future as the Licensee draws against SBA's commitment.

EFFECTIVE DATE: This final rule is effective September 22, 1994.

FOR FURTHER INFORMATION CONTACT: Saunders Miller, Office of Program Development; Telephone (202) 205–6510.

SUPPLEMENTARY INFORMATION: On August 8, 1994, SBA published a proposed rule which contemplated allowing Licensees to apply for a conditional commitment from SBA to reserve Leverage for their future use. See 59 FR 40315. The amount of Leverage that could be reserved by any Licensee was proposed to be not less than $1,000,000, and not more than 50 percent of the Licensee's Regulatory Capital.

The public was afforded a 30-day period in which to submit comments on the proposed rule. SBA received six comment letters during that time, all of which strongly supported the underlying concept of an Agency commitment of future financial assistance to Licensees but which also made several suggestions for improving the proposal.

One recurring suggestion was that SBA eliminate the restriction on the amount that could be reserved on behalf of any one Licensee. As stated above, the proposed rule would have established a commitment ceiling equal to 50% of a Licensee's Regulatory Capital. Although SBA's rationale for the ceiling was not discussed in the proposed rule, most of the commenters understood that the ceiling was proposed in an attempt to fairly distribute scarce resources and to prevent the hoarding of committed funds by any one Licensee.

SBA did realize, as the comment letters pointed out, that even if there were no ceiling in the regulations, the Agency would still have the authority to allocate commitment authority among interested Licensees. Nevertheless, SBA believed that given: (i) A probable timetable for the funding of an average Licensee's investors' commitments of 25% a year for 4 years (thereby converting the Licensee's Regulatory Capital into Leverageable Capital) and (ii) an ideal Leverage ratio during those 4 years of 2:1, the average Licensee's need for committed Leverage funds would be adequately met by an annual limit of 50% of Regulatory Capital.

SBA has reconsidered its position and has concluded that the regulation should be broad enough to accommodate, without resort to an Agency waiver, those Licensees with investor-funding schedules that are more compressed than the average. SBA still believes that some ceiling is desirable administratively, but a ceiling set at 50% of Regulatory Capital may be too low, particularly in years when demand for reserved funds does not exceed the supply. Accordingly, in this final rule, SBA has increased the ceiling to 100% of Regulatory Capital.

A second suggestion submitted during the comment period addressed the documentation proposed to be required pre- and post-funding of draws under SBA's commitment. Under the proposed rule, every Licensee with an outstanding commitment from SBA would be required to submit a Financial Statement on SBA Form 468 (Short Form) within 30 days of the close of each of its fiscal quarters. A Licensee submitting a draw request within that 30-day period would be required to submit the Short Form Financial Statement, or a statement of no adverse change since its most recent Short Form 468, with the draw request.

A few of the comment letters objected to quarterly financial reporting as burdensome and unnecessary. SBA disagrees. The preparation of a quarterly short form financial statement becomes a simple matter if performed on a personal computer, using readily-available bookkeeping software together with reporting software provided by SBA.

Furthermore, the commitment funding process as proposed by SBA was not intended to put SBA at a disadvantage relative to where it would have been if it were considering a request for Leverage under the traditional funding mechanism. Since Leverage requests outside of the commitment process must be accompanied by a Short Form 468 for the most recent fiscal quarter, and since the draw down of funds under the SBA commitment is the issuance of Leverage, SBA should receive a Short Form 468 for the most recent quarter in order to evaluate a draw request.

Under the commitment funding process, decisions on requests for draws will have to be made quickly by SBA staff, more quickly than decisions on requests for Leverage under the traditional funding process. SBA staff will need to monitor more closely the financial status of a Licensee with an outstanding SBA commitment in order to be able to respond in a timely fashion to the Licensee's draw requests. The filing of quarterly financial statements on Short Form 468 by all Licensees with outstanding SBA commitments will allow SBA to perform that function as promised.

As mentioned above, in the event the draw request is made within 30 days of the end of the Licensee's fiscal quarter, SBA had proposed to accept a statement of no adverse change in lieu of the Short Form 468. Most of the comment letters argued in favor of adopting the more familiar standard of "no material adverse change". SBA agrees that adverse changes which are immaterial to the Licensee's financial status should not be a barrier to consideration for a draw of Leverage. Accordingly, § 107.215(f)(3)(i)(A) has been finalized with the suggested change.

Most of the comment letters also contained an objection to the requirement for specific deal information both pre- and post-draw. SBA reaffirms its position that while a Licensee need not have specific transactions under consideration in order to obtain SBA's commitment, draws under that commitment must be intended for use in a particular transaction with a particular small concern.

To ease the paperwork burden on Licensees, however, the statement evidencing the Licensee's need for the funds no longer requires that the Licensee provide the small concern's Standard Industrial Classification code number or a summary of the proposed financing. See proposed § 107.215(f)(2)(i)(B), finalized as § 107.215(f)(3)(i)(B). Instead, the statement must include only the name and address of the small concern, the

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amount of the proposed financing, and the scheduled closing date.

SBA is also extending by 30 days the due date for the written explanation of the failure to close a transaction. In summary, if the intended transaction closes, the Licensee must submit a Form 1031 ("Portfolio Financing Report") within 30 days of the actual closing date. If the transaction fails to close, however, a written explanation must be filed with SBA within 60 days (instead of 30 days, as proposed) after the scheduled closing date. Penalties for the failure to file the Form 1031 or the written explanation remain unchanged from the proposed rule.

The final documentation matter addressed in some of the comment letters concerns the requirement that a Licensee submit a certified statement with each draw request representing that it is in compliance with applicable regulations. The suggestion was made that SBA be permitted to accept draw requests in the event violations are disputed or are not material in nature. SBA has considered the suggestion and believes a clarification of the subject matter is in order.

SBA did not intend to apply a different standard to draw requests than it currently applies to Leverage requests. A Licensee with an unresolved regulatory violation that would not be cause for automatic disqualification for Leverage under the traditional funding process should not, for the same violation, be disqualified automatically from drawing down Leverage under the commitment funding process.

In practice, there are two separate circumstances under the traditional funding process where SBA would consider favorably the Leverage request of a Licensee with an outstanding violation: (1) If the Licensee's violation is of a non-substantive provision of the Act or regulations and the Licensee has not repeatedly violated non-substantive provisions; or (2) if the Licensee has agreed with SBA on a course of action for the resolution of its violation, and if the terms of the agreement do not preclude the Licensee from obtaining Leverage prior to the resolution of the violation. In each case, the determination as to whether a violation exists is made by SBA, as is the decision to provide Leverage notwithstanding the violation.

SBA has revised the proposed rule to allow for favorable consideration of a draw request under those two circumstances. See new paragraph 107.215(f)(2) "Conditions to draws." Proposed § 107.215(f)(2) has been renumbered as § 107.215(f)(3), and now permits a Licensee to submit a certification that, to the best of its knowledge and belief, it is in compliance with applicable regulations (i.e., it has no unresolved regulatory violations) or an explanation as to the specific nature of any outstanding violations.

One additional change has been made to the proposed rule. The amount of the commitment fee was not set forth in the proposal. This final rule fixes -he commitment fee at 3% of the face amount of the pooled securities and 1% of the issue price of the Preferred Securities reserved under the commitment. As explained below, when pooled securities are issued by a Licensee as a draw against SBA's commitment, the 2% guaranty fee ordinarily due pursuant to § 107.210(d)(1) will be offset against the 3% commitment fee already paid. No additional payment will be necessary.

With the exception of some minor changes in wording, the proposed rule is otherwise adopted without change.

Effective immediately, any Licensee may submit an application for SBA's conditional commitment to reserve Leverage. The Application must be accompanied by the same financial information and other documentation as is required of Licensees applying for Leverage, except that no securities forms should accompany an application for SBA's commitment. For a Licensee wishing to participate in the next scheduled pooling of Leverage securities, and also wishing to obtain SBA's conditional commitment for future Leverage, separate applications should be filed.

A determination to grant a Licensee's request for a commitment will be made only after SBA reviews the applicant's financial and regulatory status as well as its representation as to projected needs. The actual amount of a commitment which SBA will approve for a particular Licensee will depend in part on factors other than the applicant Licensee's own financial and regulatory situation, including such matters as the anticipated need for Leverage by all other Licensees making Leverage requests and the amount of program authority appropriated by Congress for the fiscal year.

The commitment, when granted, will represent a conditional agreement on SBA's part to permit a Licensee to make draws against an agreed upon reserved amount of Leverage over a fixed period of time.

As a condition to a commitment's taking effect, the Licensee must pay a non-refundable commitment fee in the amount discussed above. Payment must be received within thirty days following SBA's issuance of the commitment, or prior to any draw against the commitment if requested within such thirty day period. When a Licensee issuing pooled securities draws against SBA's commitment, the amount of the user fee associated with the guarantee of the Licensee's security or securities will be debited against an account holding the commitment fees and credited against an account holding guaranty fees. Failure to make timely and full payment of the commitment fee will preclude any draws against the commitment, and will cause SBA's commitment to lapse automatically at 5:00 p.m. Eastern Time on the thirtieth calendar day following SBA's issuance of the commitment.

In any case, as mentioned above, SBA's commitment will also lapse at 5:00 p.m. Eastern Time on the 60th calendar day preceding the close of the next full Federal fiscal year following issuance of such commitment. Under present law, the Federal fiscal year ends on September 30. Therefore, depending upon when within a given Federal fiscal year a commitment was extended, the term of the commitment may be as short as ten months or as long as twenty-two months.

Requests for a draw may be submitted at any time during the term of the commitment. It is contemplated that requests for a draw of pooled securities will, eventually, be funded as frequently as twice a month. Requests for a draw of preferred securities may be funded at any time. The minimum amount of any draw of pooled securities will be $1,000,000, with integral multiples of $100,000 permitted thereafter. Requests for draws of preferred securities may be in any amount.

As was explained in the proposed rule, SBA's present general practice, which is not proposed to be changed (and which SBA is extending to Participating Securities) is to extend invitations to Licensees to participate in the creation of a pool of SBA-guaranteed Debentures, against which a public offering of SBA-guaranteed trust or pool certificates, each evidencing a fractional interest in the pool, is made to long-term investors. Such pools are formed and certificates sold every three months, give or take a few days. Preceding the closing of the sale of the pool certificates there is a ten-day period during which no more Debentures may be considered for inclusion in the pool. During that ten-day period, the rate of interest on Debentures or of Prioritized Payments on Participating Securities is determined.

When a Licensee requests a draw, it will be deemed to have authorized SBA to guarantee its security immediately, and to have authorized SBA, acting as the Licensee's agent, to sell such security to a short-term investor that will agree to hold the Licensee's security until the Licensee's security is put into the next pool, or is repurchased by the Licensee, or is repurchased by SBA because of a definitive determination based on subsequently-received adverse information concerning the Licensee's credit or regulatory status.

If the security is a Debenture, it will be sold to a short-term investor at a discount, calculated as if the maturity date of the Debenture were the next scheduled closing date for the sale of pool certificates. The Licensee will also agree to the payment of additional interest to the short-term investor, at the same rate used to calculate the discount, for each day that the sale of pool certificates is delayed beyond the scheduled date. While payment to the short-term investor of all interest accrued from the date of sale to the actual closing date shall be the responsibility of the Licensee, it shall be guaranteed by SBA. The Licensee's failure to make full payment of such additional interest shall constitute an event giving rise to a condition affecting the Licensee's good standing under SBA's regulations. If the Licensee's security is a Participating Security, the same conditions will apply, however, the Participating Security will be sold to a short-term investor at a price equal to the face amount thereof.

Although SBA guarantees the Licensee's undertaking to the short-term investor concerning payment of interest on a Debenture or Prioritized Payments on a Participating Security on the date such Debenture or Participating Security is pooled, the Licensee does not warrant, nor does SBA guarantee, that pooling will take place on any specific date. The short-term investor assumes the risk that the recovery of its invested principal and the receipt of interest or Prioritized Payments will be delayed to the extent that the pool closing is delayed. Based on historical experience, it is unlikely that any such delay will occur and if it does, the duration of the delay should be minimal. The rate at which the Licensee's Debenture will be discounted or at which the Prioritized Payments will accumulate on a Participating Security when either of these securities are sold to a short-term investor will, in both cases, be determined with reference to the current average market yield on obligations of the United States with comparable periods to maturity. However, for the purpose of determining the rate of interest or of Prioritized Payments payable to a short-term investor, "maturity" refers to the next scheduled pooling date, not the stated maturity date of the security in question.

In the normal course of events, when the sale of pool certificates closes, the Licensee's security will be included in the pool, having been purchased, as previously agreed, from the short-term investor with the Licensee's share of the proceeds of the sale of SBA guaranteed certificates issued against the pool.

The sale of the Licensee's security to a short-term investor with SBA's guaranty does not obligate SBA to include that security in a pool of long-term securities in disregard of subsequently-obtained information calling into question either the Licensee's financial soundness or the Licensee's compliance with applicable regulations. If SBA determines to withhold its guarantee of the Licensee's security to the pool, SBA will purchase the Licensee's security from the short-term investor on or before the pool closing date.

Sale of the Licensee's security to a short-term investor with SBA's guaranty does not cut off the Licensee's right to withdraw its security from entering into the pool by repurchasing it directly from the short-term investor if notice is given to SBA at least ten days prior to the pool cut-off date. However, since the sale of the Licensee's security to a short-term investor, and not the subsequent pooling of the security, is the event that discharges SBA from its reservation obligation to the extent of the security's face amount, the Licensee's subsequent repurchase of its security from the short-term investor does not re-obligate SBA under the terms of its commitment, or restore SBA's guarantee authority to the extent of the face amount of the repurchased security.

SBA's approval of an application for a commitment does not lock in any interest or Prioritized Payment rate, nor does SBA's guarantee of a security sold to a short-term investor indicate in any way what the Licensee's interest or Prioritized Payment rate will be when the security is pooled and certificates are sold to long-term investors.

Once in the hands of the pool trustee, the Licensee's Debenture or Participating Security will assume all the terms and characteristics of the other securities in the pool, including an interest or Prioritized Payment rate recalculated with reference to the maturities of the other securities being pooled.

Compliance With Executive Orders 12866, 12612, and 12778, and With the Regulatory Flexibility and Paperwork Reduction Acts

Executive Order 12866 and Regulatory Flexibility Act

This final rule will not constitute a significant regulatory action for the purposes of Executive Order 12866 because it is not likely to have an annual impact on the national economy of $100 million or more, and, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, it will not have a substantial impact upon a significant number of small entities.

1. The legal basis for this final regulation is section 308(c) of the Small Business Investment Act, 15 U.S.C. 687(c), and section 20(a)(2) of the Small Business Act, 15 U.S.C. 631 (note) as amended by section 414 of Pub. L. 102-366.

2. The potential benefits of this final regulation have been set forth in the discussion above, under Supplementary Information.

3. The potential cost of this final regulation cannot be quantified or estimated.

4. There are no Federal rules which duplicate, overlap, or conflict with this final rule.

5. SBA is not aware of regulatory alternatives that could achieve the same objectives at lower cost.

This rule was not reviewed under Executive Order 12866.

Executive Order 12612

SBA certifies that this final regulation has no federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Executive Order 12278

For the purposes of Executive Order 12278, SBA certifies that this final rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

Paperwork Reduction Act

This final regulation will impose an additional record-keeping requirement on those Licensees that voluntarily avail themselves of the benefit of this final rule. Viewing the matter from the Licensee's standpoint, the additional burden of preparing a quarterly short-form financial statement is offset by the assurance of the future availability of Leverage and the reduction of cost resulting from elimination of the need to draw down Leverage funds long before they may be invested in Small Concerns. From SBA's standpoint, the

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additional record-keeping is necessary if SBA is not to rely upon out-dated financial information when its funds draws against its commitment.

[Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies]

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs-business, Reporting and record-keeping requirements, Small businesses.

For the reasons set forth above, part 107 of Title 13, Code of Federal Regulations is amended as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for Part 107 continues to read as follows:

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 681 *et seq.*; 15 U.S.C. 683; 15 U.S.C. 687(c); 15 U.S.C. 687b; 15 U.S.C. 687d; 15 U.S.C. 687g; 15 U.S.C. 687m, as amended by Pub. L. 102–366.

2. Part 107 is amended by adding a new § 107.215 to read as follows:

§ 107.215 Commitments by SBA.

(a) *General.* A Licensee may apply for SBA's conditional commitment to reserve an amount of Leverage against which SBA may purchase its Preferred Securities or guarantee its Debentures or Participating Securities as and when offered for future public sales. The amount of any such commitment shall be not less than $1,000,000 but not more than 100 percent of Regulatory Capital. Applications shall be prepared and submitted in accordance with § 107.210(b), as amended from time to time, except to the extent that this § 107.215 is inconsistent therewith.

(b) *Commitment fees.* The Licensee shall pay to SBA a nonrefundable fee of 3% of the face amount of the Debentures or Participating Securities reserved under the commitment or, in the case of Preferred Securities reserved under a commitment, 1% of the issue price of such Preferred Securities. No request for a draw will be approved unless this fee has been paid in full. The 2% fee required to be paid by issuers of Debentures or Participating Securities pursuant to § 107.210(d) shall be credited against the 3% commitment fee paid pursuant to this paragraph (b).

(c) *Automatic cancellation of commitment.* Unless the full amount of the commitment fee is paid by 5:00 p.m. Eastern Time on the 30th calendar day following SBA's issuance of its commitment, the commitment shall be automatically cancelled.

(d) *Lapse of commitment.* Notwithstanding payment of the commitment fee, SBA's commitment shall automatically lapse at 5:00 p.m. Eastern Time on the 60th calendar day preceding the close of the next full Federal fiscal year following issuance of such commitment.

(e) *Additional record-keeping requirements.* Following notification that SBA's commitment has been granted, a Licensee shall submit a Financial Statement on SBA Form 468 (Short Form) as of the close of each quarter of its fiscal year to SBA within 30 days after the close of the quarter, or with any request for a draw that is made within such 30-day period. If a Licensee is not in compliance with this paragraph, no draw request shall be considered.

(f) *Draws.* (1) *Minimum amount of draw.* The minimum face amount of Debentures or Participating Securities that may be issued in connection with a draw against SBA's commitment is $1,000,000; plus multiples of $100,000 above $1,000,000. Preferred Securities may be issued in any amount.

(2) *Conditions to draws.* No Licensee shall be eligible to make a draw against SBA's commitment unless it is in compliance with all applicable provisions of the Act and SBA regulations (i.e., no unresolved statutory or regulatory violations); *Provided, however,* that a Licensee that is not in compliance may nevertheless be eligible for draws if SBA determines that

(i) The Licensee's outstanding violations are of non-substantive provisions of the Act or regulations and that the Licensee has not repeatedly violated non-substantive provisions of the Act or regulations or

(ii) The Licensee has agreed with SBA as to a course of action for the resolution of its violations and such agreement does not preclude the issuance of Leverage by the Licensee.

(3) *Procedures for funding draws.* (i) *General.* A request for a draw, which may be submitted at any time, is submitted in the form of a request that the Licensee's Preferred Security be purchased by SBA; or that its Debenture or Participating Security be guaranteed by SBA, sold to a short-term investor and subsequently included in the next pool for which the Licensee's securities are eligible. The following documentation shall accompany each such request for a draw:

(A) If such request is submitted within 30 days following the close of the Licensee's fiscal quarter, the request shall be accompanied by a Financial Statement on SBA Form 468 (Short Form) reflecting the Licensee's condition as of the close of that fiscal quarter; otherwise, the request shall be accompanied by a formal statement of no material adverse change in financial condition since the filing of the most recent SBA Form 468 (Long or Short Form).

(B) A certified statement executed by an officer of the Licensee or of a corporate general partner of the Licensee, or by an individual that is authorized to act as or for a general partner of the Licensee, as the case may be, representing that to the best of its knowledge and belief the Licensee is in compliance with all provisions of the Act and SBA regulations (i.e., no unresolved regulatory or statutory violations) or a statement as to the specific nature of any violations of which it is aware.

(C) A statement that the proceeds are needed to fund a particular Small Concern, which statement shall also include the name and address of the Small Concern, the amount of the Licensee's proposed Financing, and the scheduled closing date thereof. Within 30 calendar days after the actual closing date, the Licensee shall submit an SBA Form 1031 confirming the closing of the transaction(s) with the proceeds of the draw or, within 60 calendar days after the scheduled closing date, the Licensee shall submit a written explanation of the failure to close. Failure to submit an accurate Form 1031 or satisfactory written explanation of failure to close will preclude consideration of any subsequent draw requests, and may be deemed an event affecting the Licensee's good standing or constituting consent to restricted operations, as the case may be.

(ii) *Draw process.* (A) *General.* By submitting a request for a draw, a Licensee is conclusively presumed to have authorized SBA to purchase its Preferred Security, or to have authorized SBA or any agent or trustee designated by SBA to guaranty its Debenture or Participating Security and to sell it with SBA's guarantee, to enter into any agreements (and to bind the Licensee to such agreements) that may be necessary to effect:

(*1*) The sale of the Licensee's security to a short-term investor,

(*2*) Its purchase on the Licensee's behalf (or by the Licensee itself), and

(*3*) The subsequent pooling of that security with other securities with the same maturity date: *Provided, however,* That the Licensee shall retain the right to repurchase its securities upon notice to SBA at least 10 days prior to the cut-off date for the pool in which the Licensee's security is to be included by tendering the face amount of the

Debenture, or the face amount of the Participating Security plus Earned Prioritized Payments, as the case may be, to the short-term investor.

(B) *Debentures.* An SBA guaranteed Debenture shall be sold to a short-term investor at a discount calculated with reference to a rate determined by the Secretary of the Treasury in accordance with Section 303(b) of the Act (but without regard to any interest subsidy to which the Licensee may be otherwise entitled), as if the maturity date of the Debenture were the next scheduled date for the sale of pool certificates: *Provided, however,* That if the actual sale of pool certificates shall take place after the scheduled date, the Licensee shall pay to the short-term investor, on the actual sale date, an additional sum equal to daily interest as scheduled on the Debenture, at the same rate, from the scheduled sale date to the actual sale date. Failure to make such interest payment on the closing date shall constitute an event giving rise to a condition affecting the Licensee's good standing.

(C) *Participating securities.* The Licensee's Participating Security shall be sold to a short-term investor for a sum equal to the face amount thereof. The Licensee shall undertake, with SBA's guarantee, to pay the short-term investor, at the closing of the next scheduled sale of pool certificates, Prioritized Payments as scheduled on the Security at a rate determined by the Secretary of the Treasury in accordance with Section 303(b) of the Act, as if the maturity date of the Participating Security were the next scheduled date for the sale pool certificates.

Dated: September 15, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–23338 Filed 9–21–94; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–121–AD; Amendment 39–9030; AD 94–20–02]

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Airbus Model A320 series airplanes. This action requires revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to instruct the flight crew to maintain a flap setting of configuration full (CONF FULL) during landing. This amendment is prompted by a report of severe control difficulties which occurred on approach with the flaps locked in CONF FULL and the landing gear down. The actions specified in this AD are intended to prevent severely reduced controllability of the airplane during approach.

DATES: Effective October 7, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 7, 1994.

Comments for inclusion in the Rules Docket must be received on or before November 21, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–121–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The Airplane Flight Manual information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: Recently, the FAA received a report that a Model A320 series airplane experienced severe control difficulties on approach with the flaps locked in configuration full (CONF FULL) and the landing gear down. In this incident, the Electronic Centralized Aircraft Monitor (ECAM) system directed the flight crew to select configuration (CONF) 3 for landing. When the flight crew placed the slats/flaps lever in CONF 3, the slats retracted from 27 degrees to 22 degrees, but the flaps remained locked in the full position (40 degrees). Consequently, the flight crew engaged the autopilot, which resulted in the lateral control laws responding to the corresponding CONF 3. In turbulent conditions, this configuration may lead to serious lateral oscillation with the autopilot engaged or to an increase of the lateral sensitivity in manual control. This condition, if not corrected, could result in severely reduced controllability of the airplane during approach.

Airbus has issued A320/A321 Flight Manual Temporary Revision 9.99.99/20, dated June 14, 1994, which provides the flight crew with modified procedures for flaps fault/locked condition. These modified procedures instruct the flight crew to maintain CONF FULL during landing approaches.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has kept the FAA informed of the situation described above. The FAA has examined the findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent severely reduced controllability of the airplane during approach. The FAA has determined that this unsafe condition may be temporarily addressed by revising the Limitations Section of the Airplane Flight Manual (AFM) to advise the flight crew to maintain CONF FULL during landing approaches. This AFM revision is to be accomplished in accordance with the information specified in the Airbus document described previously.

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements

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affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–121–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–20–02 Airbus Industrie: Amendment 39–9030. Docket 94–NM–121–AD.

Applicability: All Model A320 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent severely reduced controllability of the airplane during approach under certain conditions, accomplish the following:

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the information specified in Airbus A320/A321 Flight Manual Temporary Revision 9.99.99/20, dated June 14, 1994.

Note 1: This may be accomplished by inserting a copy of Airbus A320/A321 Flight Manual Temporary Revision 9.99.99/20, dated June 14, 1994, in the AFM. When this temporary revision has been incorporated in the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revisions is identical to that specified in Temporary Revision 9.99.99/20.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The revision to the AFM shall be done in accordance with Airbus A320/A321 Flight Manual Temporary Revision 9.99.99/20, dated June 14, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 7, 1994.

Issued in Renton, Washington, on September 15, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–23325 Filed 9–21–94; 8:45 am]

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14 CFR Part 39

[Docket No. 93–ANE–41; Amendment 39–8907; AD 94–09–18]

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 94–09–18 applicable to General Electric Company (GE) CF6–6/–45/–50 series turbofan engines that was published in the **Federal Register** on May 5, 1994 (59 FR 23139). One phrase in the compliance section is incorrect and needs to be deleted; an additional description later in the compliance section needs to be added. This document corrects both errors. In all other respects, the original document remains the same.

EFFECTIVE DATE: June 6, 1994.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, telephone (617) 238–7138.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to General Electric Company (GE) CF6–6/–45/–50 series turbofan engines, was published in the **Federal Register** on May 5, 1994 (59 FR 23139). The following corrections are needed:

On page 23141, in the left column, in paragraph (a)(5)(ii), in the fifth line, the phrase "prior to accumulating 4,500 CSN," should be deleted.

On page 23141, starting in the center column, in paragraph (b)(5), in the seventh and eighth line, the words "and inner" should be added after the word "rim" to read, "ECI the rim and inner bolt holes".

Issued in Burlington, MA, on September 12, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–23440 Filed 9–21–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 155

Defense Industrial Personnel Security Clearance Review Program

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule; amendment.

SUMMARY: On February 14, 1992, the Department of Defense published a final rule in the **Federal Register** (57 FR 5383). This document is published as an administrative amendment for clarity.

EFFECTIVE DATE: September 22, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Leon Schachter, telephone (703) 696–4598.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 155

Administrative practice and procedure, Business and industry, Classified information.

Accordingly, 32 CFR Part 155 is amended as follows:

PART 155—[AMENDED]

1. The authority citation for part 155 is revised to read as follows:

Authority: E.O. 10865, 3 CFR 1959–1963 Comp., p. 398, as amended by E.O. 10909, 3 CFR 1959–1963 Comp., p. 437; E.O. 11382, 3 CFR 1966–1970 Comp., p. 690; and E.O. 12829, 3 CFR 1993 Comp., p. 570.

§ 155.1 [Amended]

2. Section 155.1 is amended by adding ", as amended" after "E.O. 10865".

§ 155.4 [Amended]

3. Section 155.4 is amended in paragraph (c) introductory text by adding ", as amended," after "E.O. 10865".

Appendix A to Part 155—[Amended]

4. Appendix A to Part 155 is amended in section 20 by adding ", as amended" after "E.O. 10865".

Dated: September 16, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–23385 Filed 9–21–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AG55

Loan Guaranty: Increase in Attorney Fees

AGENCY: Department of Veterans Affairs.

ACTION: Final Regulatory Amendments.

SUMMARY: The Department of Veterans Affairs (VA) is amending its loan guaranty regulations to increase from $700 to $850 the maximum allowable amount VA will reimburse a loan holder for the cost of trustee's fees and legal services incurred by the holder in liquidating a loan guaranteed by VA. Increasing the maximum allowable amount will make it easier for holders to retain experience legal counsel to perform required foreclosures in a timely manner.

EFFECTIVE DATE: October 24, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 233–3668.

SUPPLEMENTARY INFORMATION: On September 22, 1993, VA published in the Federal Register (58 FR 49253) proposed regulations on increasing the maximum allowable amount VA will reimburse a loan holder for the cost of trustee's fees and legal services. Five comments were received on the proposed amendments. Four commenters approved of the change. One commenter stated that increasing the maximum allowable amount will not make it easier to retain experienced counsel in areas where the local VA offices do not choose to reimburse attorneys the maximum allowable amount. This commenter further suggested that the local offices be required to raise the amount they reimburse attorneys to the maximum allowable amount.

The regulations are adopted as originally proposed. The suggestion that regional offices be required to pay the maximum allowable amount when they reimburse attorneys has not been adopted. We believe that local VA offices have the experience and knowledge necessary to determine the appropriate level of attorney and trustee fees for foreclosure processing in their various areas of jurisdiction.

The Secretary hereby certifies that the final regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Increasing the amount VA will reimburse holders for trustee's fees and legal services will make it easier for holders to retain experienced legal counsel to perform required foreclosures.

The Catalog of Federal Domestic Assistance Program number are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing Loan program—housing and community development, Manufactured homes, Veterans.

This amendment is made final under the authority granted the Secretary by section 501(a) of title 38, United States Code.

Approved: July 22, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36, is amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 §§ 36.4201 through 36.4287 continues to read as follows:

Authority: Section 36.4201 through 36.4287 issued under 38 U.S.C. 501(a), 3712.

2. In section 36.4276 the undesignated text at the end of paragraph (b) is removed and paragraph (b)(5) is revised to read as follows:

§ 36.4276 Advances and other charges.

* * * * *

(b) * * *

(5) Reasonable amount for legal services actually performed not to exceed 10 percent of the unpaid indebtedness as of the date of the first uncured default, or $850 whichever is less. In no event may the combined total of the amounts claimed for trustee's fees

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and legal services (paragraphs (b)(4) and (5) of this section) exceed $850.

* * * * *

3. The authority citation for part 36, sections 36.4300 through 36.4375 continues to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 38 U.S.C. 501(a).

4. In section 36.4313 the undesignated text at the end of paragraph (b) is removed and paragraph (b)(5) is revised to read as follows:

§ 36.4313 Advances and other charges.

* * * * *

(b) * * *

(5) Reasonable amount for legal services actually performed not to exceed 10 percent of the unpaid indebtedness as of the date of the first uncured default, or $850 whichever is less. In no event may the combined total of the amounts claimed for trustee's fees and legal services (paragraphs (b)(4) and (5) of this section) exceed $850.

* * * * *

[FR Doc. 94-23212 Filed 9-21-94; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1003

RIN 0991-AA44

Medicare and State Health Care Programs: Fraud and Abuse, Civil Money Penalties and Intermediate Sanctions for Certain Violations by Health Maintenance Organizations and Competitive Medical Plans

AGENCY: Office of Inspector General (OIG), HHS

ACTION: Correction to final regulations.

SUMMARY: This document corrects technical errors that appeared in 42 CFR part 1003 of the final rule published in the Federal Register on July 15, 1994 (59 FR 36072). Specifically, the final rule set forth the Secretary's authority to impose sanctions and civil money penalties on health maintenance organizations, competitive medical plans and other prepaid health plans contracting under Medicare and Medicaid. This correction notice sets forth the corrected text for §§ 1003.100, 1003.103 and 1003.106, some of which was inadvertently omitted or amended.

EFFECTIVE DATE: September 22, 1994.

FOR FURTHER INFORMATION CONTACT: Joel J. Schaer, (202) 619-0089

SUPPLEMENTARY INFORMATION:

Background

On July 15, 1994, we published a final rule implementing sections 9312(c)(2), 9312(f) and 9434(b) of Public Law 99-509, section 7 of Public Law 100-93, section 4014 of Public Law 100-203, sections 224 and 411(k) of Public Law 100-360, and section 6411(d)(3) of Public Law 101-239. These provisions broadened the Secretary's authority to impose intermediate sanctions and civil money penalties on health maintenance organizations (HMOs), competitive medical plans and other prepaid health plans contracting under Medicare or Medicaid that (1) substantially fail to provide an enrolled individual with required medically necessary items and services; (2) engage in certain marketing, enrollment, reporting or claims payment abuses; or (3) in the case of Medicare risk-contracting plans, employ or contract with, either directly or indirectly, an individual or entity excluded from participation in Medicare.

Need for Correction

As published, portions of the final regulations addressing §§ 1003.100, 1003.103 and 1003.106 contained technical errors that inadvertently amended and omitted existing regulations text.

Correction of Publication

Accordingly, the final regulations published on July 15, 1994 (59 FR 36072) amending §§ 1003.100, 1003.103 and 1003.106 are corrected as follows:

PART 1003—CIVIL MONEY PENALTIES AND ASSESSMENTS

A. On page 36085, in the third column, instruction paragraph 1. and the authority citation following it are corrected to read as follows:

1. The authority citation for part 1003 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1320a-7,1320a-7a, 1320b-10, 1395u(j), 1395u(k), 1395dd(d)(1), 1395mm, 1395ss(d), 1396b(m), 11131(c) and 11137(b)(2).

B. Beginning on page 36085, in the third column, instruction paragraph 2. and the text of § 1003.100 on page 36086 in the first column are corrected to read as follows:

2. Section 1003.100 is amended by revising paragraph (a); republishing paragraph (b) introductory text and paragraph (b)(1) introductory text; revising paragraphs (b)(1)(v) and (b)(1)(vi); and adding a new paragraph (b)(1)(vii) to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128, 1128(c), 1128A, 1140, 1842(j), 1842(k), 1876(i)(6), 1882(d), and 1903(m)(5) of the Social Security Act, and sections 421(c) and 427(b)(2) of Public Law 99-660 (42 U.S.C. 1320a-7, 1320a-7a, 1320a-7(c), 1320b-10, 1395mm, 1395ss(d), 1395u(j), 1395u(k), 1396b(m), 11131(c) and 11137(b)(2)).

(b) *Purpose.* This part—

(1) Provides for the imposition of money penalties and, as applicable, assessments against persons who—

* * * * *

(v) Misuse certain Medicare and Social Security program words, letters, symbols and emblems;

(vi) Violate a requirement of section 1867 of the Act or § 489.24 of this title; or

(vii) Substantially fail to provide an enrollee with required medically necessary items and services, or engage in certain marketing, enrollment, reporting, claims payment, employment or contracting abuses.

* * * * *

C. On page 36086, in the second column, instruction paragraph 5. and the text of § 1003.103 in the second and third columns are corrected to read as follows:

5. Section 1003.103 is amended by revising paragraph (a) and by adding a new paragraph (f) to read as follows:

§ 1003.103 Amount of penalty.

(a) Except as provided in paragraphs (b) through (f) of this section, the OIG may impose a penalty of not more than $2,000 for each item or service that is subject to a determination under § 1003.102.

* * * * *

(f)(1) The OIG may, in addition to or in lieu of other remedies available under law, impose a penalty of up to $25,000 for each determination by HCFA that a contracting organization has—

(i) Failed substantially to provide an enrollee with required medically necessary items and services and the failure adversely affects (or has the likelihood of adversely affecting) the enrollee;

(ii) Imposed premiums on enrollees in excess of amounts permitted under section 1876 or title XIX of the Act;

(iii) Acted to expel or to refuse to re-enroll a Medicare beneficiary in violation of the provisions of section 1876 of the Act and for reasons other than the beneficiary's health status or requirements for health care services;

(iv) Misrepresented or falsified information furnished to an individual or any other entity under section 1876 or section 1903(m) of the Act; or

(v) Failed to comply with the requirements of section 1876(g)(6)(A) of the Act regarding prompt payment of claims.

(2) The OIG may, in addition to or in lieu of other remedies available under law, impose a penalty of up to $25,000 for each determination by HCFA that a contracting organization with a contract under section 1876 of the Act—

(i) Employs or contracts with individuals or entities excluded, under section 1128 or section 1128A of the Act, from participation in Medicare for the provision of health care, utilization review, medical social work, or administrative services; or

(ii) Employs or contracts with any entity for the provision of services (directly or indirectly) through an excluded individual or entity.

(3) The OIG may, in addition to or in lieu of other remedies available under law, impose a penalty of up to $100,000 for each determination that a contracting organization has—

(i) Misrepresented or falsified information to the Secretary under section 1876 of the Act or to the State under section 1903(m) of the Act; or

(ii) Acted to expel or to refuse to re-enroll a Medicaid recipient,because of the individual's health status or requirements for health care services, or engaged in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by section 1876 or section 1903(m) of the Act) with the contracting organization by Medicare beneficiaries and Medicaid recipients whose medical condition or history indicates a need for substantial future medical services.

(4) If enrollees are charged more than the allowable premium, the OIG will impose an additional penalty equal to double the amount of excess premium charged by the contracting organization. The excess premium amount will be deducted from the penalty and returned to the enrollee.

(5) The OIG will impose an additional $15,000 penalty for each individual not enrolled when HCFA determines that a contracting organization has committed a violation described in paragraph (f)(3)(ii) of this section.

(6) For purposes of paragraph (f) of this section, a violation is each incident where a person has committed an act listed in § 417.500(a) or § 434.67(a) of this title, or failed to comply with a requirement set forth in § 434.80(c) of this title.

D. Beginning on page 36086, in the third column, instruction paragraph 6. and the text of § 1003.106 on page 36087 are corrected to read as follows:

6. Section 1003.106 is amended by adding a new paragraph (a)(5); redesignating paragraph (d) as paragraph (e) and republishing it; and adding a new paragraph (d) to read as follows:

§ 1003.106 Determinations regarding the amount of the penalty and assessment.

(a) *Amount of penalty.* * * *

(5) In determining the appropriate amount of any penalty in accordance with § 1003.103(f), the OIG will consider as appropriate—

(i) The nature and scope of the required medically necessary item or service not provided and the circumstances under which it was not provided;

(ii) The degree of culpability of the contracting organization;

(iii) The seriousness of the adverse effect that resulted or could have resulted from the failure to provide required medically necessary care;

(iv) The harm which resulted or could have resulted from the provision of care by a person that the contracting organization is expressly prohibited, under section 1876(i)(6) or section 1903(p)(2) of the Act, from contracting with or employing;

(v) The harm which resulted or could have resulted from the contracting organization's expulsion or refusal to re-enroll a Medicare beneficiary or Medicaid recipient;

(vi) The nature of the misrepresentation or fallacious information furnished by the contracting organization to the Secretary, State, enrollee or other entity under section 1876 or section 1903(m) of the Act;

(vii) The history of prior offenses by the contracting organization or principals of the contracting organization, including whether, at any time prior to determination of the current violation or violations, the contracting organization or any of its principals were convicted of a criminal charge or were held liable for civil or administrative sanctions in connection with a program covered by this part or any other public or private program of payment for medical services; and

(viii) Such other matters as justice may require.

* * * * *

(d) In considering the factors listed in paragraph (a)(5) of this section, for violations subject to a determination under § 1003.103(f), the following circumstances are to be considered, as appropriate, in determining the amount of any penalty—

(1) Nature and circumstances of the incident.

(i) It would be considered a mitigating circumstance if, where more than one violation exists, the appropriate items or services not provided were—

(A) Few in number, or

(B) Of the same type and occurred within a short period of time.

(ii) It would be considered an aggravating circumstance if such items or services were of several types and occurred over a lengthy period of time, or if there were many such items or services (or the nature and circumstances indicate a pattern of such items or services not being provided).

(2) Degree of culpability. It would be considered a mitigating circumstance if the violation was the result of an unintentional, unrecognized error, and corrective action was taken promptly after discovery of the error.

(3) Failure to provide required care. It would be considered an aggravating circumstance if the failure to provide required care was attributable to an individual or entity that the contracting organization is expressly prohibited by law from contracting with or employing.

(4) Use of excluded individuals. It would be considered an aggravating factor if the contracting organization knowingly or routinely engages in the prohibited practice of contracting or employing, either directly or indirectly, individuals or entities excluded from the Medicare program under section 1128 or section 1128A of the Act.

(5) Routine practices. It would be considered an aggravating factor if the contracting organization knowingly or routinely engages in any discriminatory or other prohibited practice which has the effect of denying or discouraging enrollment by individuals whose medical condition or history indicates a need for substantial future medical services.

(6) Prior offenses. It would be considered an aggravating circumstance if at any time prior to determination of the current violation or violations, the contracting organization or any of its principals was convicted on criminal charges or held liable for civil or administrative sanctions in connection with a program covered by this part or any other public or private program of payment for medical services. The lack of prior liability for criminal, civil, or administrative sanctions by the contracting organization, or the principals of the contracting organization, would not necessarily be considered a mitigating circumstance in determining civil money penalty amounts.

(e) (1) The standards set forth in this section are binding, except to the extent that their application would result in

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imposition of an amount that would exceed limits imposed by the United States Constitution.

(2) The amount imposed will not be less than the approximate amount required to fully compensate the United States, or any State, for its damages and costs, tangible and intangible, including but not limited to the costs attributable to the investigation, prosecution, and administrative review of the case.

(3) Nothing in this section will limit the authority of the Department to settle any issue or case as provided by § 1003.126, or to compromise any penalty and assessment as provided by § 1003.128.

Dated: September 13, 1994.

June Gibbs Brown,

Inspector General.

[FR Doc. 94-23415 Filed 9-21-94; 8:45 am]

BILLING CODE 4150-04-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7086

[WY-930-4210-06; WYW-84553]

Public Land Order No. 7039, Correction; Partial Revocation of Executive Order No. 5327, as Modified, and Public Land Order No. 4522; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order will correct an error in the land description of Public Land Order No. 7039.

EFFECTIVE DATE: September 22, 1994.

FOR FURTHER INFORMATION CONTACT: Duane Feick, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307-775-6127.

By virtue of the authority vested in the Secretary of the Interior by Section 204(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

The land description in Public Land Order No. 7039, 59 FR 19641, April 25, 1994, is hereby corrected as follows:

On page 19641, column 2, line 39, which reads "E½NW¼, and NE¼SE¼." is hereby corrected to read "E½NW¼, and NE¼SW¼.".

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94-23404 Filed 9-21-94; 8:45 am]

BILLING CODE 4310-22-P

43 CFR Public Land Order 7087

[AK-932-4210-06; AA-58075]

Partial Revocation of Secretarial Order Dated January 22, 1940, as Modified; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial order, as modified, insofar as it affects 22.12 acres of public land withdrawn for Air Navigation Site No. 134 at Willow. The land is no longer needed for the purpose for which it was withdrawn. This action also allows the conveyance of the land to the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State is opened and will be subject to the terms and conditions of Public Land Order No. 5186, as amended, and any other withdrawal of record.

EFFECTIVE DATE: September 22, 1994.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by Section 17(d)(1) of the Alaska Native Claims Settlement Act 43 U.S.C. 1616(d)(1) (1988), it is ordered as follows:

1. The Secretarial Order dated January 22, 1940, as modified, which withdrew public land at Willow for Air Navigation Site No. 134, is hereby revoked insofar as it affects the following described land:

Seward Meridian

Located within T. 19 N., R. 1 W., described as U.S. Survey No. 5556. The area described contains 22.12 acres.

2. The State of Alaska application for selection made under Section 6(b) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State is opened and will be subject to the terms and conditions of Public Land Order No. 5186, as amended, and any other withdrawal of record.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94-23403 Filed 9-21-94; 8:45 am]

BILLING CODE 4310-JA-P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards Board; Applicability and Thresholds for Cost Accounting Standards Coverage; Correction

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the correction notice published in the **Federal Register** on Wednesday, December 15, 1993 (58 FR 65556). The notice concerned the final rule revising applicability, thresholds and procedures for the application of Cost Accounting Standards to negotiated government contracts, which was published Thursday, November 4, 1993 (58 FR 58798).

EFFECTIVE DATE: November 4, 1993.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202-395-3254).

SUPPLEMENTARY INFORMATION: The correction notice published Wednesday, December 15, 1993, at 58 FR 65556 did not provide full text under Section 9903.201-4 and is corrected as follows.

On page 65556, in the second column, section 9903.201-4, paragraph (c)(2) and the heading and paragraph (a)(1) of the "Disclosure and Consistency of Cost Accounting Practices" clause instructions is corrected to read as follows:

9903.201-4 Contract clauses.

* * * * *

(c) * * *

(2) The clause below requires the contractor to comply with CAS 9904.401, 9904.402, 9904.405, and 9904.406, to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently disclosed and established cost accounting practices.

Disclosure and Consistency of Costs Accounting Practices (Nov 1993)

(a) * * *

(1) Comply with the requirements of 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 9904.405, Accounting for Unallowable Costs; and 9904.406, Cost Accounting Standard—Cost Accounting Period, in effect on the date of award of this contract, as indicated in Part 9904.

* * * * *

Richard C. Loeb,

Executive Secretary, Cost Accounting Standards Board.

[FR Doc. 94-23499 Filed 9-21-94; 8:45 am]

BILLING CODE 3110-01-M

48 CFR Part 9903

Cost Accounting Standards Board; Applicability for Cost Accounting Standards Coverage

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Final rule.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board, revised the applicability, thresholds and procedures for the application of Cost Accounting Standards (CAS) to negotiated government contracts, on Thursday, November 4, 1993 (58 FR 58798). The Board is taking action to avoid confusion with CAS requirements appearing at 48 CFR 9903.201-1, CAS applicability, and 48 CFR 9903.201-2, Types of CAS coverage. The change addresses the current conflicting language that concerns contracts and subcontracts with foreign governments.

EFFECTIVE DATE: November 4, 1993.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202-395-3254).

SUPPLEMENTARY INFORMATION: On November 4, 1993, the CASB promulgated rules revising applicability, thresholds and procedures for the application of the CAS to negotiated government contracts. When the final rule was published (58 FR 58798), changes to 48 CFR 9903.201-2, Types of CAS coverage, were not transmitted.

This rule serves to modify the language as it currently appears with respect to contracts and subcontracts with foreign governments, to avoid any confusion regarding CAS requirements.

1. The authority citation for part 9903 of chapter 99 of title 48 continues to read as follows:

Authority: Pub. L. 100-679, 102 Stat. 4056, 41 U.S.C. § 422.

PART 9903—CONTRACT COVERAGE

Subpart 9903.2—CAS Program Requirements

2. Section 9903.201-2 is amended by revising paragraph (e) to read as follows:

9903.201-2 Types of CAS coverage.

* * * * *

(e) *Foreign concerns.* Contracts with foreign concerns subject to CAS shall only be subject to Standard 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, and Standard 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose.

Richard C. Loeb,

Executive Secretary, Cost Accounting Standards Board.

[FR Doc. 94-23500 Filed 9-21-94; 8:45 am]

BILLING CODE 3110-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting: Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1994-95 Late Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special late season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands. This is in response to tribal requests for Service recognition of their authority to regulate hunting under established guidelines. This rule is necessary to allow establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

EFFECTIVE DATE: This rule takes effect on September 24, 1994.

ADDRESSES: Comments received on the tribal proposals and special hunting regulations are available for public inspection during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA. Communications regarding the documents should be sent to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C St., NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, 634 ARLSQ, 1849 C St., NW, Washington, DC 20240 (703/358-1714).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the August 16, 1994 **Federal Register** (59 FR 42017), the U. S. Fish and Wildlife Service (Service) proposed special migratory bird hunting regulations for the 1994-95 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the March 10-September 1 closed season mandated by the 1916 Convention on the Protection of Migratory Birds Between the U.S. and Great Britain (for Canada). Tribes that desired special hunting regulations in the 1994-95 hunting season were requested in the April 7, 1994, **Federal Register** (59 FR 16762) to submit a proposal that included details on: (1) requested season dates and other regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest; (4) steps that will be taken to

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limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and (5) tribal capabilities to establish and enforce migratory bird hunting regulations. No action is required if a tribe wishes to observe the hunting regulations that are established by the State(s) in which an Indian reservation is located. The guidelines have been used successfully since the 1985–86 hunting season, and they were made final beginning with the 1988–89 hunting season (August 18, 1988; 53 FR 31612).

Although the August 16, 1994, proposed rule included generalized regulations for both early and late season hunting, this rulemaking addresses only the late season proposals. Early season hunting was addressed in the rulemaking published in the **Federal Register** on September 1, 1994 (59 FR 45235). As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons are ordinarily those that begin in late-September or early-October, or later, each year and have a primary emphasis on waterfowl.

In the August 16 proposed rule, and in the early season final rule, the Service pointed out that there was reason for cautious optimism with regard to liberalization of duck hunting regulations in the 1994–95 season. However, at that time production information was not available and assessments could not be made on which to base final framework decisions. From survey data, it now appears that duck production is up on a continental basis, with a projected fall flight index of about 71 million ducks, and the Service has responded to this by making minor adjustments in regulations. Most notably, bag limit frameworks provide for one more duck than allowed last year, with an additional mallard drake. However, the restriction on mallard hens to one in the daily bag will remain in effect. A season on canvasbacks is optional nationwide. Other species restrictions are still in effect. The Service has eased, somewhat, the more restrictive regulations of past seasons because duck populations have generally rebounded from the lows of last year and several previous years. Duck populations recovery is closely linked to more favorable water conditions throughout most of the better duck production areas of the U.S. and Canada, as well as to more restrictive regulations imposed in the past. However, the Service has been conservative in this liberalization because the potential is there for a more complete recovery of populations in the future, compared to long-term averages, if water conditions stabilize and/or continue to improve. Length of season is considered to be a factor more closely associated with determining magnitude of harvest than is minor adjustment in bag limit so frameworks for season length across all four flyways will remain the same. The fact that some liberalization has occurred in bag limits and season length is considered in these final regulations, many of which were proposed before final decisions were made on late season frameworks for the States.

Tribal Proposals

For the 1994–95 migratory bird hunting season, the Service received requests from 14 tribes and/or Indian groups that followed the June 4, 1985, guidelines and are appropriate for rulemaking. Some of the proposals submitted by the tribes have both early and late season elements. However, as noted earlier, only those with late season proposals are included in this final rulemaking; 13 tribes have proposals with late seasons. Six tribes are represented in the early season regulations.

There have been no tribal comments or revised proposals for the late seasons received since publication of the early season final rule. However, tribal proposals were made before late-season final frameworks for States were established. Thus, with the liberalization that has occurred, changes have been made in some of the tribal seasons that are not reflected in the earlier proposed rule document.

Public Comments on Tribal Proposals

The Service received a letter from the Michigan Department of Natural Resources (MIDNR), dated August 30, 1994, that generally supports the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) migratory bird hunting proposal in the 1836 and 1842 ceded areas of Michigan. The MIDNR did advise that State rules had been modified to limit the take of brant to no more than two daily within a daily bag of seven geese. This was in response to a recent Mississippi Flyway Council recommendation.

The Service's view on this is that the likelihood of a hunter taking, or even seeing, a brant in an interior area is not very great given that brant are almost exclusively a marine species. Although they are seen on occasion, records indicate the occurrence of brant in Michigan are on a "rare" to "extremely rare" basis. Establishment of a guideline or regulation to restrict the daily bag limit of brant to two is somewhat meaningless in that context. Nevertheless, as it would seem that the regulation is in part designed to protect the hunter, the Service will defer to the GLIFWC to decide for next season how they will propose to respond to the Mississippi Flyway Council recommendation and the State of Michigan establishment of regulations for brant harvest. For this current season, after consultation with both the MIDNR and the GLIFWC, the potential problem has been taken care of through inclusion of brant in the "Other Geese" category of the GLIFWC regulations.

Other comments from States regarding tribally proposed regulations, received earlier, were addressed in the early season final rule published on September 1, 1994.

In summary, this rule amends section 20.110 of 50 CFR to make current for the late 1994–95 migratory bird hunting season the regulations that will apply on Federal Indian reservations, off-reservation trust lands and ceded lands. These regulations take into account the liberalization that the Service has determined is biologically feasible for this current season, based on improved production.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975, (40 FR 25241). A supplement to the final environmental statement, the "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)" was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). In addition, an August 1985 environmental assessment titled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs

administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *" Consequently, the Service initiated Section 7 consultation under the Endangered Species Act for the proposed migratory bird hunting seasons including those which occur on Federally recognized Indian reservations and ceded lands. The Service's biological opinion resulting from its consultation under Section 7 of the Endangered Species Act may be inspected by the public in, and will be available to the public from, the Division of Endangered Species and Habitat Conservation and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

In an August 1994 opinion, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats.

Regulatory Flexibility Act, Executive Order 12866, and the Paperwork Reduction Act

In the April 7 **Federal Register**, the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 12866. These included preparing an Analysis of Regulatory Effects, preparing a Small Entity Flexibility Analysis under the Regulatory Flexibility Act, and publishing a summary of the latter. This information is included in the present document by reference. This action was not subject to review by the Office of Management and Budget under Executive Order 12866. This rule does not contain any information collection requiring approval by the Office of Management and Budget under 44 U.S.C. 3504.

Authorship

The primary author of this final rule is Dr. Keith A. Morehouse, Office of Migratory Bird Management.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its very nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed hunting regulations for certain tribes were published on August 16, 1994, the Service established the longest possible period for public comments. In doing this, the Service recognized that time would be of the essence. However, the comment period provided the maximum amount of time possible while ensuring that this final rule would be published before the late hunting season beginning on September 24, 1994.

Under the authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703 *et seq.*), the Service prescribes final hunting regulations for certain tribes on Federal Indian reservations (including off-reservation trust lands), and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds other than waterfowl.

Therefore, for the reasons set out above, the Service finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and this final rule will take effect on September 24, 1994.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, Part 20, Subchapter B, Chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, as amended (16 U.S.C. 703 *et seq.*).

(**Editorial Note:** The following annual hunting regulations provided for by § 20.110 of 50 CFR Part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.)

2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) *Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters)*

Ducks (including mergansers).

Season Dates: Begin October 1, end November 30, 1994.

Daily Bag and Possession Limits: The daily bag limit is 5, including no more than 4 mallards (of which only 1 may be a female), 1 pintail and 2 redheads. The possession limit is twice the daily bag limit. No canvasbacks are allowed in the bag.

Geese. The 1994–95 goose season is closed.

General Conditions. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Jicarilla Tribe also apply on the reservation.

(b) *White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)*

Ducks (Including Mergansers).

Season Dates: Begin November 12, 1994, end January 8, 1995.

Daily Bag and Possession Limits: The daily bag limit is 5, including no more than 4 mallards (only 1 female mallard), 1 redhead, 2 canvasbacks and 1 pintail. The possession limit is twice the daily bag limit, but may not include more than 1 daily bag limit that has been taken in any 1 day.

Coots, Moorhens and Gallinules.

Season Dates: Begin November 12, 1994, end January 8, 1995.

Daily Bag and Possession Limits: The daily bag limit is 25, singly or in the aggregate. The possession limit is twice the daily bag limit, but may not include more than 1 daily bag limit that has been taken in any 1 day.

Canada Geese.

Season Dates: Begin November 12, 1994, end January 8, 1995.

Bag and Possession Limits: The daily bag limit is 2, and the possession limit is 4 after the first day.

General Conditions: (1) The area open to hunting in the above seasons consists of: The entire length of the Black and Salt Rivers forming the southern boundary of the reservation; the Whiteriver, extending from the Canyon Day Stockman Station to the Salt River;

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and all stock ponds located within Wildlife Management Units 4, 6 and 7. The remaining reservation waters will be closed to waterfowl hunting during the 1994–95 hunting season.

(2) Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking.

(3) See other special regulations established by the White Mountain Apache Tribe that apply on the reservation, available from the reservation Game and Fish Department.

(c) *Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Nontribal Hunters).*

Ducks.

Season Dates: Begin October 14, end November 10, 1994; then open December 9, 1994, close January 8, 1995.

Daily Bag and Possession Limits: The daily bag limit is 4, which may include no more than 2 pintails, 2 redheads, 1 Mexican duck and 1 canvasback. The possession limit is twice the daily bag limit.

Coots and Common Moorhens.

Season Dates: Begin October 14, end November 10, 1994; then open December 9, 1994, close January 8, 1995.

Daily Bag and Possession Limits: The daily bag limit is 25. The possession limit is twice the daily bag limit.

Geese.

Season Dates: Begin October 22, 1994, end January 22, 1995.

Daily Bag and Possession Limits: The daily bag limit is 5, with 5 in possession. The daily bag limit may not include more than 2 dark (Canada) geese and 3 white (snow, blue, Ross's) geese.

General Conditions: A valid Colorado River Indian Reservation hunting permit is required and must be in possession before taking any wildlife on tribal lands. Persons fourteen years and older are required to have a valid permit. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

(d) *Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only).*

Ducks.

Michigan, 1842 Treaty Zone.

Season Dates: Begin October 1 and end November 7, then begin November 12 and end November 13, 1994.

Daily Bag Limit: The daily bag limit is 3, including no more than 2 mallards (only 1 of which may be a female), 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback and 1 redhead.

Michigan, 1836 Treaty Zone.

Season Dates: North Zone, begin October 1 and end November 7, then begin November 12 and end November 13, 1994; Middle Zone, begin October 1 and end November 6, then begin November 11 and end November 13; South Zone, begin October 8 and end November 13, 1994, then begin November 25 and end November 27, 1994.

Daily Bag Limit: The daily bag limit is 3, including no more than 2 mallards (only 1 of which may be a female), 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback and 1 redhead.

Mergansers.

Michigan, 1842 Treaty Zone.

Season Dates: Begin October 1 and end November 7, then begin November 12 and end November 13, 1994.

Daily Bag Limit: The daily bag limit is 5, including no more than 1 hooded merganser.

Michigan, 1836 Treaty Zone.

Season Dates: North Zone, begin October 1 and end November 7, then begin November 12 and end November 13, 1994; Middle Zone, begin October 1 and end November 6, then begin November 11 and end November 13; South Zone, begin October 8 and end November 13, 1994, then begin November 25 and end November 27, 1994.

Daily Bag Limit: The daily bag limit is 5, including no more than 1 hooded merganser.

Canada Geese.

Michigan, 1842 Treaty Zone.

Season Dates: Begin September 24, end October 16, 1994.

Daily Bag Limit: The daily bag limit is 2.

Michigan, 1836 Treaty Zone.

Season Dates: North Zone, begin September 24 and end October 16, 1994; Middle Zone, begin October 1 and end October 23, 1994; South Zone, begin October 8 and end November 6, 1994.

Daily Bag Limit: The daily bag limit is 1 for the South Zone and 2 for the North and Middle Zones.

Other Geese (Brant, Blue, Snow, and White-fronted).

Michigan, 1842 Treaty Zone.

Season Dates: Begin September 24, end October 16, 1994.

Daily Bag Limit: The daily bag limit is 7, including no more than 2 white-fronted.

Michigan, 1836 Treaty Zone.

Season Dates: North Zone, begin September 24 and end October 16, 1994; Middle Zone, begin October 1 and end October 23, 1994; South Zone, begin October 8 and end November 6, 1994.

Daily Bag Limit: The daily bag limit is 7, including no more than 2 white-fronted.

Coots and Common Moorhens (Gallinule).

Michigan, 1842 Treaty Zone.

Season Dates: Begin October 1 and end November 7, then begin November 11 and end November 13, 1994.

Daily Bag Limit: The daily bag limit is 15, singly or in the aggregate.

Michigan, 1836 Treaty Zone.

Season Dates: North Zone, begin October 1 and end November 7, then begin November 12 and end November 13, 1994; Middle Zone, begin October 1 and end November 6, then begin November 11 and end November 13; South Zone, begin October 8 and end November 13, 1994, then begin November 25 and end November 27, 1994.

Daily Bag Limit: The daily bag limit is 15.

General Conditions: (1) While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

(2) Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as may be modified by Service final rules adopted in response to a proposed rule, these amended regulations parallel Federal requirements, 50 CFR Part 20, and shooting hour regulations in 50 CFR Part 20, subpart K, as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

(3) Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

(4) Minnesota and Michigan—Duck Blinds and Decoys. Tribal members hunting in Minnesota will comply with tribal codes that contain provisions parallel to M. S. 100.29, Subd. 18 (duck blinds and decoys). Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(5) Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit.

(6) Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with Sec. NR 19.12, Wis. Adm. Code. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(e) *Kalispel Tribe, Kalispel Reservation, Usk, Washington (Nontribal Hunters).*

Ducks.

Season Dates: Begin October 1, 1994, end January 29, 1995. During this period, days to be hunted are specified by the Kalispel Tribe as Wednesdays, weekends, holidays and for a continuous period from November 28 through December 31, 1994, the total of which is 77 days. Nontribal hunters should contact the tribe for more detail on hunting days.

Daily Bag and Possession Limits: The daily bag limit is 4 ducks, including no more than 3 mallards (only 1 of which may be a female), 1 pintail, 1 canvasback and 2 redheads. The possession limit is twice the daily bag limit.

Geese.

Dark Geese.

Season Dates: Begin October 1, 1994, end January 29, 1995. During this period, days to be hunted are specified by the Kalispel Tribe as Wednesdays, weekends, holidays and for a continuous period from November 28 through December 31, 1994, the total of which is 77 days. Nontribal hunters should contact the tribe for more detail on hunting days.

Daily Bag and Possession Limits: The daily bag limit is 4 dark geese but not more than 2 white-fronted geese. The possession limit is twice the daily bag limit.

Light Geese.

Season Dates: Begin October 1, 1994, end January 29, 1995. During this period, days to be hunted are specified by the Kalispel Tribe as Wednesdays, weekends, holidays and for a continuous period from November 28 through December 31, 1994, the total of which is 77 days. Nontribal hunters should contact the tribe for more detail on hunting days.

Daily Bag and Possession Limits: The daily bag limit is 3 light geese. The possession limit is twice the daily bag limit.

General: All State and Federal regulations, such as those contained in 50 CFR Part 20 and including the possession of a validated Migratory Bird Hunting and Conservation Stamp, will be observed by hunters.

(f) *Klamath Tribe, Chiloquin, Oregon (Tribal Members)*

Ducks.

Season Dates: Begin October 1, 1994, end January 28, 1995.

Daily Bag and Possession Limits: The daily bag limit is 9. The possession limit is twice the daily bag limit.

Coots.

Season Dates: Begin October 1, 1994, end January 28, 1995.

Daily Bag and Possession Limits: The daily bag and possession limits are 25.

Geese.

Season Dates: Begin October 1, 1994, end January 28, 1995.

Daily Bag and Possession Limits: The daily bag limit is 6. The possession limit is twice the daily bag limit.

General: The Klamath Tribe provides regulations enforcement authority in its game management officers, biologists and wildlife technicians, and has a court system with judges that hear cases and set fines.

(g) *Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters)*

Ducks.

Season Dates: Begin October 1, end November 28, 1994.

Daily Bag and Possession Limits: The bag limit is 5, including no more than 4 mallards (only 1 of which may be a female), 1 pintail, 1 canvasback and 2 redheads. The possession limit is twice the daily bag limit for each sex and/or species.

Canada Geese.

Season Dates: Begin October 1, 1994, end January 8, 1995.

Daily Bag and Possession Limits: The daily bag limit is 3. The possession limit is 6.

Coots and Common Moorhens.

Season Dates: Begin October 1, end November 28, 1994.

Daily Bag and Possession Limits: The daily bag limit is 25 singly or in the aggregate, and the possession limit is restricted to the daily bag limit (25).

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(h) *Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Nontribal Hunters)*

Ducks (including mergansers).

Season Dates: Begin October 1, end October 16; begin October 22, end November 27; and begin December 17, 1994, end January 1, 1995.

Daily Bag and Possession Limits: The daily bag limit is 4, including no more than 3 mallards (only 1 of which may be a female), 1 pintail, 1 canvasback and 2 redheads. The possession limit is twice the daily bag limit.

Coots.

Season Dates: Begin October 1, end October 16; begin October 22, end November 27; and begin December 18, 1994, end January 1, 1995.

Daily Bag and Possession Limits: The daily bag limit is 25, and the possession limit is limited to the daily bag (25).

Geese.

Dark.

Season Dates: Begin October 1, 1994, end January 8, 1995.

Daily Bag and Possession Limits: The daily bag limit is 3, which may include no more than 2 white-fronted geese. The possession limit is twice the daily bag limit.

White.

Season Dates: Begin October 1, 1994, end January 8, 1995.

Daily Bag and Possession Limits: The daily bag limit is 3, and the possession limit is 6.

Special Exception For Geese: A special early closure for goose hunting may begin at sunset, December 4, 1994, within the following area or some portion therein: Beginning at Polson, then north along U.S. Highway 93 to Irvine Flats Road, then west along Irvine Flats Road to Irvine Divide, then south along the crest of the Salish Mountains Divide to its intersection with the Ronan-Hot Springs Road, then east to Sloan's Bridge, then east along Sloan Road to its intersection with Round Butte Road, then east along Round Butte Road to Valley View Road, then north along Valley View Road to its intersection with Kerr Dam Road, then north and east to Polson, the point of beginning. Lands outside those boundaries will close to Canada goose hunting at sunset on January 8, 1995.

General Conditions. Nontribal hunters will comply with all basic Federal migratory bird hunting regulations contained in 50 CFR Part 20 regarding manner of taking. In addition, shooting hours are sunrise to sunset and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

(i) *Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters)*

Ducks.

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Season Dates: Begin October 22, end December 19, 1994.

Daily Bag and Possession Limits: The daily bag limit is 4, including no more than 3 mallards (only 1 of which may be a female), 1 pintail, 1 canvasback and 2 redheads. The possession limit is twice the daily bag limit.

Mergansers.

Season Dates: Begin October 22, end December 19, 1994.

Daily Bag and Possession Limits: The daily bag limit is 5, and the possession limit is 10.

Coots.

Season Dates: Begin October 22, end December 19, 1994.

Daily Bag and Possession Limits: The daily bag limit is 25, and the possession limit is limited to the daily bag (25).

Geese.

Season Dates: Begin October 8, 1994, end January 8, 1995.

Daily Bag and Possession Limits: The bag limit is 3 in the aggregate of all species, with no more than 2 white-fronted geese. The possession limit is twice the daily bag limit.

Common Snipe.

Season Dates: Begin October 22, end December 19, 1994.

Daily Bag and Possession Limits: The daily bag limit is 8, and the possession limit is 16.

General Conditions: Nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must have in his/her possession a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Other regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

(j) *Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nontribal Hunters)*

Ducks.

Season Dates: Begin October 29, end December 11, 1994.

Daily Bag and Possession Limits: The daily bag limit is 4, of which: only 1 may be a female mallard; only 1 may be a canvasback, only 1 may be a redhead; only 1 may be a pintail; only 2 may be wood ducks; and only 1 may be a hooded merganser. The possession limit is 8, the makeup of which may be no more than twice each of the above.

Dark Geese.

Canada, Brant and White-fronted Geese.

Season Dates: Begin October 9, 1994, end January 1, 1995.

Daily Bag and Possession Limits: The daily bag limit is 2 dark geese, which can include no more than 1 white-fronted goose (or brant). The possession limit is twice the daily bag limit.

Light Geese.

Season Dates: Begin October 9, 1994, end January 1, 1995.

Daily Bag and Possession Limits: The daily bag limit is 10, and the possession limit is 20.

General Conditions: The waterfowl hunting regulations established by this final rule apply only to tribal and trust lands within the external boundaries of the reservation. Tribal and nontribal hunters will comply with basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Crow Creek Sioux Tribe also apply on the reservation.

(k) *Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters)*

Ducks (including mergansers).

Season Dates: Begin October 8, end November 27, 1994.

Daily Bag and Possession Limits: The daily bag limit is 4, including no more than 1 pintail, 1 mottled duck, 1 redhead, 1 canvasback, 2 wood ducks, 1 female mallard and 1 hooded merganser. The possession limit is twice the daily bag limit.

Geese.

Dark Geese.

Season Dates: Begin October 1, end December 25, 1994.

Daily Bag and Possession Limits: The daily bag limit is 2 Canada geese or 1 Canada goose and 1 white-fronted goose (or 1 brant). The possession limit is twice the daily bag limit.

White Geese.

Season Dates: Begin October 1, 1994, end December 25, 1994.

Daily Bag and Possession Limits: The daily bag limit is 10, and the possession limit is 20.

General Conditions: All hunters shall comply with the basic Federal migratory bird hunting regulations in 50 CFR Part 20, including the use of steel shot. Nontribal hunters are required to have in their possession a validated Migratory Waterfowl Hunting and Conservation Stamp. The Lower Brule Sioux Tribe has an official Conservation Code that hunters must adhere to when hunting in areas subject to control by the tribe.

(l) *Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nontribal Hunters)*

Ducks including Mergansers.

Season Dates: Begin October 29, end December 6, 1994.

Daily Bag and Possession Limits: The daily bag limit is 4 ducks, of which only 1 may be a female mallard; only 1 may be a redhead; only 1 may be a pintail; only 2 may be wood ducks; and only 1 may be a hooded merganser. Other merganser species, than hooded, must be included in the duck limit. The possession limit is 8, the makeup of which may be no more than double each of the above daily bag limits.

Coots.

Season Dates: Begin October 29, end December 6, 1994.

Daily Bag and Possession Limits: The daily bag limit is 15, and the possession limit is 30.

Dark Geese (Tribal and Nontribal).

Season Dates: Begin October 1, end December 18, 1994.

Daily Bag and Possession Limits: The daily bag limit is 2, which may include no more than 1 white-fronted goose (or brant). The possession limit is twice the daily bag limit.

White Geese (Tribal and Nontribal).

Season Dates: Begin October 1, end December 18, 1994.

Daily Bag and Possession Limits: The daily bag limit is 10, and the possession limit is 20.

Special Season: For tribal and nontribal hunters, a special extended goose season will be held in the Chalk Rock Colony area of the Yankton Sioux Reservation. This season begins at the close of the regular goose season, December 19, 1994, in Goose Hunting Unit 2 and extends through January 8, 1995. Information on this special season, including bag limits and other regulations, may be obtained from the Bureau of Indian Affairs Office in Wagner, South Dakota.

General Conditions: (1) The waterfowl hunting regulations established by this final rule apply to tribal and trust lands within the external boundaries of the reservation. (2) Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

(m) *Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Nontribal Hunters)*

Ducks.

Season Dates: Begin November 13, 1994, end January 20, 1995.

Daily Bag and Possession Limits: The daily bag limit is 4, of which no more than 3 may be mallards (including only 1 female), 1 pintail, 1 canvasback and 2 redheads. The possession limit is twice the daily bag limit.

Coots.

Season Dates: Begin November 13, 1994, end January 20, 1995.

Daily Bag and Possession Limits: The daily bag limit is 25, and the possession limit is restricted to the daily bag limit (25).

Geese.

Season Dates: Begin October 15, 1994, end January 22, 1995.

Daily Bag and Possession Limits: The daily bag limit is 4, and the possession limit is 8. However, there are restrictions on white-fronted (daily/possession limits, 2 and 4) and snow geese (daily/possession, 3 and 6) statewide.

Brant.

Season Dates: Begin January 7, 1994, end January 22, 1995.

Daily Bag and Possession Limits: The daily bag limit is 2, and the possession limit is 4.

Snipe.

Season Dates: Begin November 13, 1994, end February 28, 1995.

Daily Bag and Possession Limits: The daily bag limit is 8, and the possession limit is 16.

General Conditions: All hunters are required to adhere to shooting hour regulations of one-half hour before sunrise to sunset, and a number of other special regulations enforced by the tribes.

Dated: September 8, 1994.

George T. Frampton,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94-23505 Filed 9-21-94; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 091694B]

Atlantic Tuna Fisheries; Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure of the General category fishery.

SUMMARY: NMFS has determined that the 33 metric tons (mt) set-aside for the late-season General category quota beginning September 15, will be taken by September 16, 1994. Therefore, the General category fishery will be closed effective at 1200 hours on Saturday, September 17, 1994, except that 8 mt will remain available for the New York Bight fishery beginning September 20, 1994. This action is being taken to prevent overharvest of the quota established for this fishery.

EFFECTIVE DATE: 1200 hours on September 17, 1994, through December 31, 1994.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301-713-2347, or Raymond E. Baglin, 508-281-9140.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of Atlantic bluefin tuna (ABT) by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the International Commission for the Conservation of Atlantic Tunas recommended U.S. quota among the various domestic fishing categories.

Implementing regulations for the Atlantic Tuna Fisheries at 50 CFR 285.22(a) provide for an annual quota of 531 mt of large medium and giant ABT to be harvested from the Regulatory Area by vessels permitted in the General category. Of this amount, 65 mt are to be set aside for a late-season fishery beginning September 15. Based on landings statistics, the fishery was closed on August 15, 1994, with only 23 mt remaining for the late-season set-aside. A reallocation of 18 mt from the reserve increased the set-aside to 41 mt, of which 33 mt were allocated to General category fishermen from all areas to be fished from September 15 through September 17, and 8 mt were allocated to the New York Bight fishery to be fished from September 20 until the 8 mt are taken.

Based on early landing reports, it has been determined that the late-season quota of ABT allocated for the General category will be exceeded by greater than 100 percent if the fishery remains open for the planned 3 days. However, given the need to provide sufficient notice to vessels already at sea, and out of equity and safety concerns for fishermen returning to port with legally-caught bluefin, it has been decided to effect the closure as of noon on Saturday.

Fishing for, retention of, possessing, or landing large medium or giant ABT by vessels in the General category must cease by 1200 hours September 17, 1994. The intent of this action is to prevent overharvest of the quota to such an extent that subtractions of the overage would seriously and adversely impact the 1995 fishery for this category.

This closure of the late-season General category fishery will not affect the 8 mt set-aside for the New York Bight or other categories fishing for ABT. As of this date, the Incidental, Angling, and Harpoon categories remain open, and the Purse Seine category is subject to individual quotas.

Classification

This action is taken under 50 CFR 285.20(b) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 et seq.

Dated: September 16, 1994.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-23390 Filed 9-16-94; 4:05 pm]

BILLING CODE 3510-22-P

VOL 59 ISS 183 SEP 22 1994 UMI

Proposed Rules

Federal Register
Vol. 59, No. 183
Thursday, September 22, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 93-096-2]

Horses From Mexico; Quarantine Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding the importation of horses from Mexico to remove the requirement that such horses be quarantined for not less than 7 days in vector-proof quarantine facilities before being imported into the United States. We believe this action is warranted because Mexico has reported no cases of Venezuelan equine encephalomyelitis (VEE) in over a year, and it appears that horses imported from Mexico without a 7-day quarantine would not pose a risk of transmitting VEE to horses in the United States.

DATES: Consideration will be given only to comments received on or before November 21, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93-096-2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr Joyce Bowling, Staff Veterinarian, Import-Export Animals Staff, National Center for Import and Export, Veterinary Services, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92, referred to below as the regulations, govern the importation into the United States of specified animals and animal products, including horses from Mexico, to prevent the introduction into the United States of various animal diseases.

On August 27, 1993, we published an interim rule in the **Federal Register** (58 FR 45236-45238, Docket No. 93-096-1) in which we required that horses imported into the United States from Mexico be quarantined for not less than 7 days in a vector-free facility. Prior to our interim rule, horses intended for importation from Mexico were not required to be held in quarantine for any specified number of days, but were required, instead, to be quarantined only long enough to complete the testing required by the regulations.

A 7-day quarantine became necessary when the government of Mexico reported that Venezuelan equine encephalomyelitis (VEE) had been detected in horses in that country. VEE is an equine viral disease, transmitted primarily by mosquitoes and other hematophagous (blood-feeding) insects, particularly flying insects, that results in a high mortality rate in animals infected with the disease. Although tests exist for the presence of VEE in horses, the tests currently available may yield positive results for horses that have been vaccinated for VEE but that are not otherwise affected with the disease. The most efficient method for initial identification of horses that may be infected with VEE is observation of the horses for clinical signs of the disease. A horse will usually exhibit signs of VEE within 2-5 days after contracting the disease. Seven days is considered the length of time necessary to ensure that any clinical signs of VEE manifest themselves.

In this document, we are proposing to remove the requirement that horses from Mexico be quarantined for not less than 7 days. We believe the removal of this requirement is warranted because Mexico appears to be free of VEE.

The last case of VEE in Mexico was reported in July 1993. Following the initial outbreak of VEE in the Mexican State of Chiapas in June 1993, the Government of Mexico instituted emergency measures to locate, contain, and eradicate the disease. These emergency measures included the following: Activation of the country's animal health emergency group; organization of groups such as regional livestock associations and State authorities; establishment of quarantines in areas in which the disease was known to exist; vaccination of horses in affected areas; traceback of horses that might have been moved from affected areas before quarantine measures were established; and increased surveillance in States surrounding the affected areas. Based on these considerations, the government of Mexico has requested that the U.S. Department of Agriculture consider Mexico to be free of VEE.

Based on the documentation submitted by the government of Mexico, it appears that no horses in that country are affected with VEE. (This documentation is available, upon written request, from the person listed under **FOR FURTHER INFORMATION CONTACT.**) Therefore, we are proposing to amend § 92.324 of the regulations to remove the requirement that horses intended for importation from Mexico be quarantined for not less than 7 days before being imported into the United States.

We are also proposing to remove the requirement in § 92.324 that horses from Mexico intended for importation into the United States through land border ports be quarantined in Mexico at a facility approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS) and constructed so as to prevent the entry of mosquitoes and other hematophagous insects. This requirement was necessary when VEE was known to exist in horses in Mexico, but we believe it is unnecessary now that Mexico appears to be free of VEE.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have prepared an Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities. We do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential impacts. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule.

In accordance with 21 U.S.C. 111, the Secretary of Agriculture is authorized to promulgate regulations to prevent the introduction or dissemination of any contagious, infectious, or communicable disease of animals from a foreign country into the United States. In accordance with 21 U.S.C. 102, the Secretary of Agriculture is authorized to quarantine livestock imported into the United States.

This proposed rule would remove the requirement that horses imported from Mexico be quarantined for 7 days at vector-proof quarantine facilities. We believe this action is warranted because it appears that Mexico is free of Venezuelan equine encephalomyelitis (VEE), and that horses imported from Mexico without a 7-day quarantine would not pose a risk of transmitting VEE to horses in the United States.

Compared with the 5-month period from October 1992 through February 1993 (pre-interim rule), there was a significant decline in the number of horses imported from Mexico during the period from October 1993 through February 1994 (following publication of the interim rule). During the 1992/1993 5-month period, there were 3,772 horses imported from Mexico, compared with only 125 during the 1993/1994 5-month period. It is reasonable to assume that the additional costs associated with the quarantine were at least partially responsible for the reduction in the number of horses imported during the 1993/1994 period.

There is a $50 hourly fee for inspection services conducted in Mexico by APHIS veterinary medical officers (in addition to an APHIS per horse charge of $28.50). Assuming that APHIS services would be rendered for 2 hours during each day of quarantine, and assuming an average quarantine period of 3 days prior to the VEE interim rule and 7 days following the interim rule, the reduction in user fee costs from the lifting of the restrictions due to VEE would be about $400 per shipment ($700 minus $300). For an average shipment of 40 horses, the savings in fees would be about $10 per head.

Other quarantine costs, such as for feed and handling, could also be expected to decrease by more than one-half if the 7-day quarantine is no longer required. Whereas quarantine costs prior to the interim rule averaged about $3 per head per day, we estimate that during the period following the interim rule, these charges increased to between $5 and $10 per day, due to additional precautionary measures. Again assuming a 3-day pre-interim rule quarantine, the savings in charges by removing the 7-day quarantine requirement would be between $26 and $61 per head ($35 minus $9, and $70 minus $9).

With the combined savings of reduced user fees and other quarantine charges, the removal of the VEE quarantine requirements would reduce importers' costs by an estimated $36 to $71 per head. Based on the average 1992 price of $310 per head for horses imported from Mexico, these reduced costs would represent a savings of between 11 and 23 percent of the value of each horse.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

Animal disease, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 would be amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a, 31 U.S.C. 9701, 7 CFR 2.17, 2.51, 371.2(d)

§ 92.308 [Amended]

2. In § 92.308, paragraph (a)(1) would be amended by removing the reference "§ 92.317" and adding in its place the reference "§§ 92.317 and 92.324"

§ 92.324 [Amended]

3. In § 92.324, the first sentence would be amended by removing the words ", for not less than 7 days and" and by removing the words "approved by the Administrator and constructed so as to prevent the entry of mosquitoes and other hematophagous insects"

§ 92.326 [Amended]

4. In § 92.326, the first sentence would be amended by removing the reference "92.323, and 92.324" and adding in its place the reference "and 92.323".

Done in Washington, DC, this 15th day of September 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-23468 Filed 9-21-94; 8:45 am]

BILLING CODE 3410-34-P

RESOLUTION TRUST CORPORATION

12 CFR Part 1635

RIN 3205-AA24

Claims Based Upon Acts or Omissions of the Receiver

AGENCY: Resolution Trust Corporation.

ACTION: Proposed rule.

SUMMARY: The Resolution Trust Corporation (RTC) is proposing to adopt a rule setting forth procedures applicable to administrative claims based upon acts or omissions of the RTC as receiver. The rule is intended to inform potential claimants of the circumstances under which the RTC will consider claims based upon acts or omissions of the receiver to be timely filed and to clarify when suit may be filed on these claims. The rule will thus inform and remind potential claimants of the deadlines applicable to claims and suits based upon acts or omissions of receivers. Comments received from the public will be considered in determining the form of a final rule.

DATES: Comments must be received on or before October 24, 1994.

ADDRESSES: Written comments concerning the proposed rule should be addressed to John M. Buckley, Jr., Secretary, Resolution Trust Corporation, 801 17th Street, NW., Washington, DC

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20434–0001. Comments may be hand-delivered to Room 321 on business days between 9 a.m. and 5 p.m. Comments may also be inspected in the Public Reading Room, 801 17th Street, NW., between 9 a.m. and 5 p.m. on business days. (Telephone number: 202–416–6940; FAX number: 202–416–4753. These are *not* toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Munsell St. Clair (Counsel), telephone 202–736–3034.

SUPPLEMENTARY INFORMATION: 12 U.S.C. 1821(d)(13)(D) deprives all courts of jurisdiction over, *inter alia*, any claim or action seeking payment from, or a determination of rights with respect to, the assets of an insured depository institution for which the RTC has been appointed receiver and any claim relating to any act or omission of the RTC as receiver, unless the claims process described in 12 U.S.C. 1821(d) has first been complied with.

The legislative history of 12 U.S.C. 1821(d) reveals that the dual purpose behind requiring exhaustion of claims before suit can be filed is: (1) To minimize costs to the receivership estate and to the legitimate claimants who share in the distributions from the estate, and (2) to minimize the burden on federal courts by avoiding needless litigation. H.R. Rep. No. 101–54(I), 101st Cong., 1st Sess. 2, *reprinted in* 1989 U.S. CODE CONG. & ADMIN. NEWS 215. These purposes are fulfilled by requiring that, before suit can be filed, the receivership claims process must be exhausted with respect to claims based upon acts or omissions of the RTC as receiver, since litigation and its accompanying burden on the receivership estate and the courts may be avoided if the receiver is given an initial opportunity to allow meritorious claims outside of litigation.

Thus, both the literal terms of 12 U.S.C. 1821(d)(13)(D) and the purposes of the statute make it clear that no suit can be maintained against the RTC as receiver based upon any act or omission of the RTC as receiver unless and until the claims process has been pursued.

As of March 31, 1994, the RTC held over 533,000 assets, such as real estate, mortgages and deeds of trust, and commercial and consumer loans. The RTC, as receiver, has entered into and will continue to enter into numerous contracts for the sale of these assets. In addition, the RTC, as receiver, enters into many other contracts relating to its operations. Further, many additional claims arise relating to the conduct of receivership affairs.

Because of the number of contracts that the RTC enters into as receiver and because the RTC, as receiver, acts in a wide variety of ways, disputes necessarily arise between the RTC and other persons. In order to fulfill the purposes of the claims process set forth in 12 U.S.C. 1821(d), the RTC is promulgating this proposed rule setting forth procedures applicable to claims based upon acts or omissions of the RTC as receiver. (The proposed rule does not address claims against the RTC in its corporate capacity.) When final, this rule will replace the Interim Statement of Policy Regarding Procedures to be Used with Regard to Claims Based upon Acts or Omissions of the Receiver, 59 FR 10663 (March 7, 1994), which will be superseded in its entirety.

Regulatory Flexibility Act Statement

Pursuant to section 605(b) of the Regulatory Flexibility Act, the RTC hereby certifies that this proposal is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 12 CFR Part 1635

Administrative practice and procedure.

For the reasons set out in the preamble, the Resolution Trust Corporation proposes to add part 1635 to title 12, chapter XVI, of the Code of Federal Regulations to read as follows:

PART 1635—CLAIMS BASED UPON ACTS OR OMISSIONS OF THE RECEIVER

Sec.
1635.1 Definitions.
1635.2 Period to file claims.
1635.3 Procedures.

Authority: 12 U.S.C. 1441a(b)(4)(A), (11)(A), 1821(d)(1), (3)(A) and (4)(A).

§ 1635.1 Definitions.

(a) *Claim.* For purposes of 12 U.S.C. 1821(d)(3) through (13) and this part, a *claim* shall include any claim, cause of action, complaint, counterclaim, crossclaim, third-party claim, affirmative defense, or demand or request for relief, whether monetary or non-monetary, legal or equitable, brought by any person or entity whatsoever (regardless of whether the person or entity is or was a creditor or debtor of the receivership or of the institution) that:

(1) Seeks payment from, or a determination of rights with respect to, the assets of any institution for which the RTC has been appointed receiver (including assets which the RTC may acquire from itself as receiver) or

(2) Relates to any act or omission of the institution or the receiver.

(b) *Institution.* For purposes of 12 U.S.C. 1821(d)(3) through (13) and this part, an *institution* or a *depository institution* shall include the RTC as conservator of the institution.

(c) *Post-Receivership Claim.* A Post-Receivership Claim means any claim based upon any act or omission of the RTC as receiver. A Post-Receivership Claim includes, but is not limited to, any claim alleging a tortious act or omission by the receiver, any claim based upon an agreement of the receiver, any claim based upon an act or omission of the receiver with respect to an executory agreement or unexpired lease of the institution, any claim based upon a repudiation by the receiver of any agreement or lease, and any claim alleging a violation of law by the receiver; provided, that Post-Receivership Claims shall include only claims that were not in existence as of the date of the receiver's appointment and that rely for their existence upon an act or omission of the RTC as receiver. A Post-Receivership Claim shall not include any claim in existence as of the date of the appointment of the receiver, regardless of whether the claim was then contingent, unliquidated, not matured or not known or discovered.

§ 1635.2 Period to file claims.

(a) *In general.* Any Post-Receivership Claim must be filed with the receiver within the time limits set forth in this section or the claim shall be disallowed, the disallowance shall be final, and the claimant shall have no further rights or remedies with respect to the claim.

(b) *Pre-existing contracts.* If a Post-Receivership Claim is based on a contract that is in writing, that was entered into with the RTC as receiver or as conservator prior to [THE EFFECTIVE DATE OF THE FINAL RULE], and that contains any term or provision requiring that the claim be filed with or presented to the institution or to the RTC as conservator or receiver within a certain period of time or by a certain date, then the claim must be filed by the earliest of the following dates:

(1) The date or time set forth in the contract;

(2) The 90th day after the RTC first publishes notice of its intention to terminate the receivership; or

(3) The date established by any applicable statute of limitations.

(c) *Notice.* If the receiver mails a notice to a claimant requiring that a Post-Receivership Claim with proof be filed by a certain date, then the claim must be filed by the date set forth in the notice or by the date established by any applicable statute of limitations, whichever occurs first (unless the claim is based upon a contract meeting the description set forth in paragraph (b) of this section, in which case the time limits set forth in paragraph (b) apply). The date set forth in the notice shall be not less than 90 days after the notice is mailed (and may be later than the date established pursuant to 12 U.S.C. 1821(d)(3)(B)(i)).

(d) *All other cases.* In all cases other than those described in paragraphs (b) and (c) of this section, a Post-Receivership Claim must be filed by the 90th day after the RTC first publishes notice of its intention to terminate the receivership or by the date established by any applicable statute of limitations, whichever occurs first.

(e) *No extension to file claims subject to bar of 12 U.S.C. 1821(d)(3)(B)(i) or 1821(d)(5)(C).* This section shall apply only to Post-Receivership Claims and shall not apply to and shall not be construed as extending the period to file claims described in 12 U.S.C. 1821(d)(3)(B)(i) or 1821(d)(5)(C) for any other claim.

§ 1635.3 Procedures.

(a) *Applicability of 12 U.S.C. 1821(d).* The applicable portions of 12 U.S.C. 1821(d) shall govern any Post-Receivership Claim that is filed with the receiver. No suit upon any Post-Receivership Claim may be filed or maintained until the claims process has been exhausted. Any suit filed must be filed in the courts and in accordance with the time limits specified in 12 U.S.C. 1821(d)(6) (or 1821(d)(8), when appropriate). 12 U.S.C. 1821(d)(6) requires, *inter alia*, that suit be filed in the district or territorial court of the United States for the district within which the depository institution's principal place of business is located or the United States District Court for the District of Columbia before the end of the 60-day period beginning on the earlier of the following:

(1) The end of the 180-day period (or any mutually agreed upon extension thereof) provided in 12 U.S.C. 1821(d)(5)(A)(i) for the receiver to consider the claim; or

(2) The date of any notice of disallowance of such claim pursuant to 12 U.S.C. 1821(d)(5)(A)(i).

(b) *Contractual provisions requiring forbearance from suit.* If a claim is based upon a written contract that was entered into the RTC as receiver prior to [THE EFFECTIVE DATE OF THE FINAL RULE] and that contains any term or provision requiring the claimant to forebear from filing suit for any period of time less than 180 days after first presenting or filing a claim with the RTC or receiver, then the claimant may, but need not, treat the failure of the RTC or receiver to allow or disallow the claim prior to the end of the contractual forbearance period as a disallowance pursuant to 12 U.S.C. 1821(d)(5)(A)(i) entitling the claimant to file suit within 60 days after the end of the contractual forbearance period. If the claimant does not elect to treat the failure of the RTC or receiver to allow or disallow the claim prior to the end of the contractual forbearance period as a disallowance, then, in order to preserve its claim, the claimant must file suit in the appropriate federal court during the 60-day period beginning on the earlier of:

(1) The end of the 180-day period (or any mutually agreed upon extension thereof) beginning on the date the claim is filed; or

(2) The date of any actual notice of disallowance of such claim.

By Order of the Deputy and Acting Chief Executive Officer of the Resolution Trust Corporation.

Dated at Washington, DC, this 14th day of September 1994.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 94–23242 Filed 9–21–94; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 34–34681; 35–26127; IC–20557; File No. S7–21–94]

RIN 3235–AF66

Ownership Reports and Trading by Officers, Directors and Principal Security Holders

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Rule; Extension of Comment Period and Further Request for Comment.

SUMMARY: In connection with proposals issued on August 10, 1994, Release No. 34–34514 [59 FR 42449] (the "Proposing Release"), the Commission today is requesting further comment on the treatment of compensatory cash-only instruments under its rules regarding the filing of ownership reports by officers, directors, and principal security holders, and the exemption of certain transactions by those persons from the short-swing profit recovery provisions of Section 16 of the Securities Exchange Act of 1934 ("Exchange Act"). The comment period for the Proposing Release also is extended until November 1, 1994.

DATES: Comments should be received on or before November 1, 1994.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comment letters should refer to File No. S7–21–94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C., 20549.

FOR FURTHER INFORMATION CONTACT: Anne M. Krauskopf or Mark W. Green, Office of Chief Counsel, at (202) 942–2900, or Elizabeth M. Murphy, Office of Disclosure Policy, at (202) 942–2910, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On August 10, 1994, the Commission released for public comment proposals to amend certain of its rules under Section 16[1] of the Exchange Act.[2] The Commission now seeks to clarify and amplify certain comment requests made in the Proposing Release. Specifically, the Commission is soliciting additional comment with respect to Rule 16a–1(c)(3),[3] which excludes cash-only instruments from the definition of "derivative securities" if they meet certain conditions.

The current Rule 16a–1(c)(3) definitional exclusion covers any compensatory instrument issued in an employment context that can be redeemed or exercised solely for cash, provided that the instrument either: (1) is awarded under an employee benefit plan that satisfies certain conditions prescribed by Rule 16b–3;[4] or (2) can be redeemed or exercised only upon a fixed date or dates at least six months from the date of the award, or incident to death, retirement, disability or termination of employment.[5] Both prongs of this exclusion are based on the principle that removal of the insider-recipient's discretion with respect to the timing of grant and/or realization of a cash-only instrument would minimize the opportunity for speculative abuse that Section 16 was designed to prevent.

As proposed to be amended in the Proposing Release, the Rule 16a–1(c)(3)

[1] 15 U.S.C. 78p (1988).
[2] 15 U.S.C. 78a *et seq.* (1988).
[3] 17 CFR 240.16a–1(c)(3).
[4] Rule 16a–1(c)(3)(i) [17 CFR 240.16a–1(c)(3)(i)]
[5] Rule 16a–1(c)(3)(ii) [17 CFR 240.16a–1(c)(3)(ii)]

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exclusion would extend to all compensatory cash-only instruments issued pursuant to an employer-employee relationship, even if the insider-recipient could control or influence the timing of such an instrument's grant or payout. In soliciting public comment, the Commission urged commenters to address whether

> There [is] any basis for according disparate treatment, for reporting and/or short-swing profit purposes, to equity-based securities depending on whether they are settled exclusively in cash or stock (or in either stock or cash), where both types of derivative securities provide identical opportunities for profit predicated on the underlying stock price movement [].[6]

As reflected in the above-quoted request for comment, the Commission is interested in comments on whether the current definitional exclusion for compensatory cash-only instruments codified in Rule 16a–1(c)(3) is appropriate. The Commission is interested in determining whether, for example, stock appreciation rights ("SARs") that have a multi-year term and may be exercised at the volition of the insider-recipient may provide opportunities for speculative profit that are identical, regardless of whether the SARs are payable exclusively in cash, stock, or some combination of the two and, from the perspective of shareholders and analysts, have the same Section 16(a)[7] informational value.

Accordingly, in addition to considering the proposals and alternatives addressed in the Proposing Release, the Commission invites commenters to express their views on whether the current exclusions for cash-only instruments set forth in Rules 16a–1(c)(3)(i) and (ii), respectively, are overly broad in light of the purposes of Section 16, and thus should be limited to a smaller class of such instruments. In responding to this question, commenters should discuss whether any continued exclusion for cash-only compensatory instruments should be limited to those for which the timing of settlement is not subject to the insider's volition. For example, should Rule 16a–1(c)(3)(i) be rescinded, so the exemption would be available only if the instrument met the fixed-date conditions of Rule 16a–1(c)(3)(ii)? If an exemption for cash-only instruments is appropriate, should it be made available only under the short-swing profit recovery provision of Section 16(b),[8] rather than also providing an exemption from the reporting requirements of Section 16(a)? If a separate Section 16(a) exclusion is retained for certain compensatory cash-only instruments, comment is sought on whether it should be recast as an exemptive rule, rather than the current rule, which excludes these instruments from the definition of "derivative securities" and therefore from the class of "equity securities" covered by Section 16.

Were the Commission to eliminate the definitional exclusion for volitional compensatory cash-only instruments, transactions involving these instruments would be reportable under Section 16(a) but still could qualify for Section 16(b) exemptive treatment. Specifically, Rule 16b–3 coverage would be available for these instruments if all applicable conditions were satisfied, including non-transferability (if retained as a condition[9]), six-month holding period, shareholder approval, disinterested administration (or formula), and window-period settlement. Comment is requested as to whether fewer or additional conditions should be imposed as a prerequisite to Rule 16b–3 qualification of cash-only instruments. Or should a separate exemption from Section 16(b) be created for the grant and/or settlement of these instruments? If so, what exemptive conditions would be necessary and appropriate in furtherance of the purpose of Section 16(b)?

In order to give commenters sufficient time to consider this request for further comment, the comment period on the Proposing Release is extended to November 1, 1994.

Dated: September 16, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23480 Filed 9–21–94; 8:45 am]

BILLING CODE 8010–01–P

[6] Proposing Release, Section II.C.

[7] 15 U.S.C. 78p(a).

[8] 15 U.S.C. 78p(b).

[9] *See* Proposing Release, Section II.J.

LIBRARY OF CONGRESS

36 CFR Part 701

[Docket No. LOC 94–3]

Credit and Recognition Policy on the Use of the Library of Congress Name, Seal, or Logo

AGENCY: Library of Congress.

ACTION: Proposed rules.

SUMMARY: The Library of Congress proposes to revise its policy on the use of its name, seal, or logo to assure that the Library of Congress is properly and appropriately identified and credited as a source of materials in publications that rely on Library resources, so that the public may know that the resources in its national library are being used productively and in fulfillment of its mission.

DATES: Comments should be received on or before October 24, 1994.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Mail Code 1050, Washington, D.C. 20540. If delivered by hand, copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room LM–601, First and Independence Avenue, S.E., Washington, D.C. 20540–1050, (202) 707–6316.

FOR FURTHER INFORMATION CONTACT: Johnnie M. Barksdale, Regulations Officer, Office of the General Counsel, Library of Congress, Washington, D.C. 20540–1050. Telephone No. (202) 707–1593.

SUPPLEMENTARY INFORMATION: Under the authority of 2 U.S.C. 136, the Librarian of Congress is authorized to make rules and regulations for the government of the Library. 18 U.S.C. 1017 contains criminal provisions on the misuse of official U.S. Government seals. Part 701 is revised to clarify the boundaries of when and how much credit or recognition the Library of Congress should appropriately receive when its name, seal, or logo are used in conjunction with a commercial product. It outlines also the current circumstances under which the use of both the name and seals of the Library may be granted and the procedures for doing so. This part combines and revises the provisions set forth in parts 701.35 and 701.36 of 36 CFR Chapter VII. Part 701.36 of 36 CFR Chapter VII, Use of the Seal of the Library of Congress and the Library of Congress Trust Fund Board, will be removed.

List of Subjects in 36 CFR Part 701

Libraries, Seals and insignias.

Proposed Regulation

In consideration of the foregoing the Library of Congress proposes to amend Part 701 of 36 CFR to read as follows:

PART 701—PROCEDURES AND SERVICES

1. The authority citation for part 701 is revised to read as follows:

Authority: Sec. 1, 29 Stat. 544, 546; 2 U.S.C. 136; 18 U.S.C. 1017

2. Section 701.35 is revised to read as follows:

§ 701.35 Credit and Recognition Policy on the Use of the Library Name, Seal, or Logo.

(a) *Purpose.* The purpose of this part is to assure that the Library of Congress is properly and appropriately identified and credited as a source of materials in publications that rely on Library resources, so that the public may know that the resources in its national library are being used productively in fulfillment of its mission.

(b) *Definitions.* (1) *Publication* means any tangible expression of words or thoughts in any form or format, including print, sound recording, television, optical disc, software, online delivery, or other technology now known or hereinafter created. It includes the whole range of tangible products from simple signs, posters, pamphlets, and brochures to books, television productions, and movies.

(2) *Internal Library publication* means a publication over which any unit of the Library has complete or substantial control or responsibility.

(3) *Collaborative publications* means those in which any unit of the Library is providing more than routine assistance. The assistance may be pursuant to a formal agreement or may simply be an extensive courtesy.

(4) *Commercial publications* means those known or likely to involve subsequent mass distribution, whether by a for-profit or not-for-profit organization or individual.

(5) *Noncommercial user* means an individual whose publication includes a significant number of Library references, but the intended purpose of which is personal, scholarly, or noncommercial.

(6) *Official Library logo* means any official seal of the Library.

(c) *Credit and recognition policy.* (1) The name "Library of Congress," or any abbreviation thereof, shall be used officially to represent the Library of Congress and its programs, projects, functions, activities, or elements thereof. The Library's name shall be used only when it is in the interest of the Library. Any other use of the Library's name by any person or organization, except as provided by this part, is prohibited.

(2) The Library of Congress seal symbolizes the Library's authority and standing as an official agency of the U.S. Government. As such, it shall be displayed only on official documents or publications of the Library. The seal of the Library of Congress Trust Fund Board shall be affixed to documents of that body as prescribed by the Librarian of Congress. Procedures governing the use of any other Library of Congress logo are set out in paragraphs (c)(3) through (c)(10).

(3) Questions regarding the appropriateness of the recognition or credit shall be referred to the Public Affairs Office.

(4) *Internal publications.* Each internal Library publication shall include a copy of an official Library logo in a position, format, and location suitable to the particular media involved. The logo may be alone or in addition to an approved unit or activity logo, but shall be no less prominent than any other logo used, except in the cases of the Copyright Office, the Congressional Research Service, and the Center for the Book. Other exceptions to this policy may be made only if a written request is approved by the Management Team member under whose jurisdiction the publication falls.

(5) *Collaborative/commercial publications.* (i) Individuals with whom the Library is engaged in a collaborative publication, and individuals requesting assistance for commercial publications, shall be instructed regarding Library policy on credit, recognition, and endorsement by the Library employee with whom they are dealing.

(ii) Ordinarily, the Library logo accompanied by a concise acknowledgement should appear in an appropriate and suitable location on all collaborative and all commercial publications. The Library requires that a credit line accompany reproductions of images from its collections.

(iii) The size, location, and other attributes of the logo and credit line should be positioned in such a way that they do not imply Library endorsement of the publication unless such endorsement is expressly intended by the Library, as would be the case in copublication or coproduction activities. Use of the Library name or logo in any context suggesting an explicit or implicit endorsement may be approved in only those instances where the Library has sufficient expertise to pass judgment on the subject matter, where that expertise has been engaged or applied, and where the terms of the collaborative undertaking are such that the Library has sufficient control over the publication to make changes necessary to reflect Library expertise.

(iv) Library officers working on commercial publication projects shall notify all collaborators of Library policy in writing if the collaboration is arranged through an exchange of correspondence. A statement of Library policy shall be incorporated into the agreement if the terms of the collaboration are embodied in any written instrument, such as a contract or letter of understanding.

(6) *Noncommercial users.* Staff members assisting individuals who are noncommercial users of Library resources shall encourage them to extend the customary professional courtesy of acknowledging their sources in publications, including films, television, and radio, and to use approved credit lines.

(7) Each product acquired for resale by the Library that involves new labeling or packaging shall bear a Library logo and shall contain information describing the relevance of the item to the Library or its collections. Items not involving new packaging shall be accompanied by a printed description of the Library and its mission, with Library logo, as well as the rationale for operating a gift shop program in a statement such as, "Proceeds from gift shop sales are used to support the Library collections and to further the Library's educational mission."

(8) Each item authorized by the Library pursuant to a licensing agreement (directly or through a third party) shall bear a Library logo and shall contain information describing the relevance of the item to the Library or its collections.

(9) Office Systems Services shall make available copies of the Library seal or logo in a variety of sizes and formats, including digital versions.

(10) Each service unit head shall be responsible for devising the most appropriate way to carry out and enforce this policy.

(d) *Violations.* (1) All violations or suspected violations of this part or of 18 U.S.C. 1017 shall be reported to the Office of the General Counsel as soon as they become known.

(2) Whenever the General Counsel has determined that any person or organization is engaged in or about to engage in an act or practice that constitutes or will constitute conduct prohibited by this part or a violation of any requirements of this part, the General Counsel shall take whatever action necessary, including seeking the assistance of the U.S. Department of Justice, to obtain injunctive relief or damages.

Dated: September 16, 1994.

James H. Billington,

The Librarian of Congress.

[FR Doc. 94–23416 Filed 9–21–94; 8:45 am]

BILLING CODE 1410–04–P

VOL
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ISS
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SEP
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1994
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ID 1-1-5528; FRL-5076-9]

Approval and Promulgation of State Implementation Plans: Idaho

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) proposes to take action on the state implementation plan (SIP) submitted by the State of Idaho Division of Environmental Quality (State or IDEQ) for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10) in the Ada County/Boise area. The SIP was submitted by the State to satisfy certain Federal requirements for an approvable moderate nonattainment area PM-10 SIP for Ada County/Boise, Idaho.

In summary, EPA proposes to grant full approval of the emissions inventory and PM-10 precursor exclusion elements of the SIP because they are separable and independent elements. EPA proposes limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act (CAA) of the control measures that have been submitted by the State to date. This limited approval of the control measures is for the limited purpose of making them federally enforceable and thereby advancing the Clean Air Act NAAQS-related air quality goals. At the same time, EPA is proposing to disapprove the control measures as not satisfying the specific requirement under sections 172(c)(1) and 189(a)(1)(C) of the CAA to submit a SIP revision that includes provisions to assure that reasonably available control measures (RACM) are implemented no later than December 10, 1993 and to disapprove the attainment demonstration and quantitative milestones and reasonable further progress (RFP) elements of the Ada County/Boise PM-10 SIP because the State has not adopted and submitted to EPA the mandatory wood smoke control ordinances for Eagle, Garden City, Meridian and unincorporated Ada County.

DATES: Comments on this proposed action must be received in writing by October 24, 1994.

ADDRESSES: Written comments should be addressed to: Montel Livingston, United States Environmental Protection Agency, Air Programs Development Section, 1200 Sixth Avenue, AT-082, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Stephen Fry, United States Environmental Protection Agency, Air Programs Development Section, 1200 Sixth Avenue, AT-082, Seattle, Washington, 98101, (206) 553-2575.

SUPPLEMENTARY INFORMATION:

I. Background

The Ada County/Boise, Idaho area was designated nonattainment for PM-10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990 [1] (see 56 FR 56694 (November 6, 1991) and 40 CFR 81.313). The air quality planning requirements for moderate PM-10 nonattainment areas are set out in subparts 1 and 4 of title I of the Act.[2] EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM-10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this proposal and the supporting rationale. In today's rulemaking action on the State of Idaho's moderate PM-10 SIP for the Ada County/Boise nonattainment area, EPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Additional information supporting EPA's action on this particular area is available for inspection at the address indicated above. EPA will consider any timely submitted comments before taking final action on today's proposal.

Those States containing initial moderate PM-10 nonattainment areas (those areas designated nonattainment under section 107(d)(4)(B) of the Act) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that RACM (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM-10 also apply to major stationary sources of PM-10 precursors except where the Administrator determines that such sources do not contribute significantly to PM-10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

States with initial moderate PM-10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM-10 by June 30, 1992 (see section 189(a) of the Act). This permit program element, also known as the New Source Review (NSR) program, was submitted by the State of Idaho on May 17, 1994. EPA notified Idaho in a June 10, 1994 letter to the Administrator of the IDEQ that the NSR program submittal was complete. EPA is currently reviewing Idaho's NSR program submittal to determine if the program meets the requirements of the CAA. EPA intends to take action on Idaho's NSR program in a separate document when EPA has completed its review.

In addition, States containing initial moderate PM-10 nonattainment areas were required to submit contingency measures by November 15, 1993 which become effective without further action by the State or EPA upon a determination by EPA that the area has failed to achieve RFP or to attain the PM-10 NAAQS by the applicable statutory deadline (see section 172(c)(9) of the Act and 57 FR 13510-13512 and 13543-13544). Contingency measures for the Ada County/Boise PM-10 nonattainment area have not yet been submitted by IDEQ. A findings letter, dated January 13, 1994, was mailed to the Governor of Idaho which informed

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law No. 101-549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended (CAA or Act). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM-10 nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

him that the State had failed to make the required PM-10 contingency measures submittal for Ada County/Boise. The State has until July 13, 1995 to correct this deficiency for Ada County/Boise, or it will face Federal highway or offset sanctions (see section 179 of the CAA and 58 FR 51270 (October 1, 1993)). EPA intends to take action on the contingency measures for the Ada County/Boise PM-10 nonattainment area when this requirement is submitted or intends to impose sanctions in the event this deficiency is not corrected.

II. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565-13566). In this action, as described below, EPA is proposing to grant full approval of the emission inventory element and exclusion from the PM-10 precursor control requirements. These elements of the State's moderate PM-10 nonattainment SIP submittal for Ada County/Boise are separable and independent of the provisions that the State has not adequately addressed.

Also as described below, EPA is proposing to grant a limited approval of the control measures that have been submitted by the State as of this date. EPA may grant a limited approval of these control measures under section 110(k)(3) of the Act, in light of EPA's authority under section 301(a) of the Act to adopt regulations necessary to further air quality by strengthening the SIP. The proposed approval of these control measures is limited, however, in that EPA is not proposing that these control measures satisfy the specific requirements of sections 172(c)(1) and 189(a)(1)(C) to implement RACM, including RACT, in moderate PM-10 nonattainment areas. EPA believes, however, that the control measures adopted and submitted as of this date will achieve PM-10 emissions reductions in the Ada County/Boise nonattainment area. Thus, EPA is proposing to approve these control measures for the limited purpose of strengthening the SIP and making them federally enforceable (see e.g. sections 113 and 302(q) of the Act).

Finally, because the State has not yet adopted into the SIP and submitted to EPA certain control measures on which it relies in the SIP to demonstrate timely attainment and continued maintenance of the PM-10 NAAQS in the Ada County Boise nonattainment area, EPA is proposing to disapprove the RACM (including RACT) element. In addition, because the attainment demonstration and quantitative milestones and reasonable further progress (RFP) elements of the Ada County/Boise PM-10 SIP depend in part on the control measures which the State has not yet adopted and submitted to EPA, EPA is also proposing to disapprove these elements. If this proposed disapproval becomes final, it will begin the period for the imposition of discretionary sanctions under section 110(m) of the Act and the 18-month sanctions clock for the imposition of mandatory sanctions under section 179 of the Act. If finalized, this disapproval will also authorize EPA to issue a Federal implementation plan as provided in section 110(c)(1) of the Act.

If, however, prior to EPA's final action on this proposal the State submits the additional control measures on which it relies and, based on EPA's review, these additional control measures adequately address the outstanding deficiencies, EPA will consider withdrawing this limited approval/disapproval and will instead propose full approval of the PM-10 plan for Ada County/Boise relative to those moderate area PM-10 SIP requirements which were due November 15, 1991. EPA invites public comment on its proposed action.

Analysis of State Submission

1. Procedural Background

The Act requires states to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a state must be adopted after reasonable notice and public hearing.[3] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a state under the Act must be adopted by such state after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) of the Act and 57 FR 13565). EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

The IDEQ initially held a public hearing on the Ada County/Boise PM-10 air quality improvement plan on October 11, 1990, and received no public comments regarding the plan. However, following one 24-hour PM-10 exceedance on January 7, 1991 and two near exceedances on January 4 and 6, 1991, EPA requested on March 22, 1991 that IDEQ modify the PM-10 plan to better ensure healthful air in the future. IDEQ revised the PM-10 plan and the State of Idaho subsequently held a public hearing on the modified Ada County/Boise PM-10 plan on November 4, 1991. Again, IDEQ received no public comments. The modified PM-10 plan was then adopted by the State of Idaho on November 14, 1991, and the plan was submitted to EPA on November 15, 1991 as a proposed revision to the SIP.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. A letter dated April 27, 1992 was forwarded to the Administrator of the Idaho Division of Environmental Quality indicating the completeness of the submittal and the next steps to be taken in the review process.

2. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emissions inventory should also include a comprehensive, accurate, and current inventory of allowable emissions in the area (see e.g. section 110(a)(2)(K) of the Act). Because the submission of such inventories is necessary to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with the demonstration submission (see 57 FR 13539).

The base year emission inventory (1987) developed for Ada County/Boise identified the major sources of PM-10 concentrations during 24-hour worst case winter periods as residential wood combustion (71%), fugitive road dust (15%), industrial (7%) and other sources, including but not limited to, transportation, construction and open burning (7%). Annual emissions for 1987 were fugitive road dust (51%), residential wood combustion (23%), building construction (12%), transportation (6%), industrial (6%) and other sources (2%).

EPA is proposing to approve the emissions inventory because it generally appears to be accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment

[3] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

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demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Clean Air Act.[4] Full approval of this element is appropriate because it is separable and independent of the deficiency which prevents full approval of the SIP, namely, the adoption and submission of all control measures on which the State relies in the SIP. The emissions inventory is a separable component of the Ada County/Boise PM–10 SIP because it represents an assessment of PM–10 emissions in the area prior to the adoption of control measures and will not change as the result of any additional control measures adopted. For further details, see the Technical Support Document (TSD) corresponding with this action, which is available at the EPA address indicated above.

3. Control Measures

As noted above, the initial moderate PM–10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C) of the Act). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561).

In broad terms, the State should identify available control measures evaluating them for their reasonableness in light of the feasibility of the controls and the attainment needs of the area. A State may reject available control measures if the measures are technologically infeasible or the cost of the control is unreasonable. In addition, RACM does not require controls on emissions from sources that are insignificant (i.e. de minimis) and RACM does not require the implementation of all available control measures where an area demonstrates timely attainment of the NAAQS and the implementation of additional controls would not expedite attainment (see 57 FR 13540–13544).

Idaho's SIP submittals for Ada County/Boise do not provide for implementation of control measures which assure timely attainment of the PM–10 NAAQS, nor, in the alternative, do they show that the adoption of available control measures would be economically or technologically unreasonable. Therefore, the submittals do not meet the specific statutory requirements to provide for the implementation of RACM (including RACT) in moderate PM–10 nonattainment areas.

a. Residential Wood Burning Program

The State relies on control strategies designed to reduce wood smoke for timely attainment of the 24-hour and annual PM–10 standards. The residential wood burning program has three main objectives: 1. Reduce wood burning during critical periods; 2. Improve the performance and efficiency of wood heating equipment; and 3. Provide reasonable alternatives to wood heat. The State's available control measures to be implemented in the Ada County/Boise nonattainment area that address the main objectives include the following:

(1) Episodic Wood Burning Curtailment Program

The SIP submittal discusses an episodic two-stage voluntary and mandatory wood burning curtailments in the Ada County/Boise nonattainment area. The first stage is a voluntary burn ban when 24-hour PM–10 levels in the nonattainment area are predicted to equal or exceed 100 μg/m³. The 24-hour PM–10 prediction is made after an IDEQ meteorologist calculates lower atmospheric stability and evaluates PM–10 equivalent sampler, nephelometer, upper air temperature sounding, snow cover, surface temperature, delta temperature, wind speed, cloud cover, National Weather Service and occasionally commercial weather service data.

The second stage is a mandatory curtailment program. In 1986, Boise adopted an ordinance imposing a mandatory burn ban when 24-hour PM–10 levels actually attain or exceed 110 μg/m³, and stable meteorological conditions are expected to persist for the next 24 hours (see Boise City Code, Tit. 4, Ch. 6). This ordinance was amended in January 1993 to reduce the trigger point for mandatory burn bans from 110 μg/m³ to 100 μg/m³ (see Boise City Code, Sec. 4–6–4).

The SIP states that Garden City also has a mandatory curtailment program, but no documentation of the Garden City program was included in the initial SIP submittal. The SIP further states that the State would attempt to persuade other Ada County jurisdictions to implement mandatory curtailment programs similar to the Boise program. To date, EPA has informally received copies of mandatory wood smoke curtailment ordinances (some are signed and others are unsigned) for unincorporated Ada County and the cities of Eagle, Garden City and Meridian. These ordinances, however, have not been adopted into the SIP and have not been formally submitted to EPA.

In its SIP submittal, the State notes that a county-wide[5] mandatory wood smoke curtailment program is necessary to bring the Ada County/Boise nonattainment area into timely attainment of the NAAQS because approximately 30% of the wood burning in the area occurs outside of areas covered by mandatory wood burning restrictions. For this reason, the SIP submittal for Ada County/Boise cannot be considered to satisfy the RACM requirement because the State has not adopted as part of the SIP and submitted to EPA those available control measures necessary for expeditious attainment of the PM–10 NAAQS (or shown that all economically and technologically feasible control measures have been implemented and timely attainment is impracticable). Specifically, the State has not adopted and submitted mandatory burn ban ordinances for Garden City, Eagle, Meridian and unincorporated Ada County. EPA urges the State to promptly adopt and submit to the EPA the necessary mandatory residential wood smoke burning ban ordinances on which the State relies in its SIP submittal.

Although the SIP submittal cannot be considered to satisfy the RACM requirement at this time, EPA is proposing limited approval of the Boise wood smoke control ordinance, Boise City Code Tit. 4, Ch. 6, pursuant to sections 110(k)(3) and 301(a) of the Act in order to strengthen the SIP and make the ordinance federally enforceable. EPA believes that this control measure will result in reductions in PM–10 emissions in the nonattainment area and thus advance the Act's air quality-related protection goals.

[4] The EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 *PM–10 SIP Development Guideline*. The guidance provided in this document appears to be consistent with the amended Act (see section 193 of the Act).

[5] In a letter to the EPA, dated August 14, 1992, the State argued for the exclusion of the locality south of Amity Road and west of Cloverdale Road (the Kuna area) from proposed mandatory burn bans because the area is located in a separate stream drainage from the Boise River Valley, and thus does not significantly contribute smoke to the valley where the PM–10 exceedances have been recorded. The State also noted that the emission inventory, modeling and visibility observations indicate that the Kuna area air quality is markedly cleaner than the ambient air in the Boise River Valley, which includes downtown Boise. EPA acknowledged in an August 27, 1992 letter to IDEQ, that the State had adequately demonstrated that mandatory burn bans in the Kuna area were unnecessary to demonstrate attainment and EPA formally proposes to make this determination in today's action.

(2) Wood Smoke Public Education/ Awareness Program

The wood smoke public education/ awareness program for the Ada County/ Boise nonattainment area plays a critical role in achieving the aforementioned three main objectives of IDEQ's residential wood burning program. The wood smoke public education/ awareness program was first officially initiated in 1986, following the passage of Boise's local wood burning ordinance. Brochures, television and radio public service announcements, newspaper advertisements, outreach meetings at public schools, media interviews and press conferences are the main components of the integrated awareness package. Various points have been focused on during the program's existence, including the nature of the wood smoke problem, health impacts, meteorological factors (including tips asking citizens to refrain from burning on clear, calm and/or cool days) and how to burn cleaner.

IDEQ and the City of Boise are responsible for a majority of the continuing wood smoke public education/awareness program. According to IDEQ, local surveys and building department statistics show reductions in the numbers of wood stoves installed, reduction in the average volume of wood burned per household and widespread public cooperation during poor air quality periods as the result of the wood smoke public education efforts. These surveys and statistics are the basis for the 10% annual credit IDEQ is claiming for the wood smoke public education/ awareness program during 1990 through the year 2000.

EPA believes that IDEQ has adequately demonstrated, through surveys and building department statistics, that the well-established, extensive, wood smoke public education/awareness program for the Ada County/Boise PM–10 nonattainment area has achieved at least a 10 percent wood smoke emission reduction. Therefore, EPA proposes limited approval of the wood smoke public education/awareness program described in the Ada County/Boise SIP as a SIP strengthening measure and proposes to accept the 10 percent credit requested by the IDEQ.

(3) Wood Stove Certification

The City of Boise's 1986 wood burning ordinance initiated a requirement mandating all wood burning appliances sold and installed within the city to be certified as meeting certain emission standards (see Boise City Code, Sec. 4–6–9). The ordinance is enforced by city and county building department inspectors. The initial certification program was based on the Oregon Department of Environmental Quality standards. The current program is based on the national wood burning device New Source Performance Standards developed by the EPA.

The implementation and enforcement of the certification program resulted in the City of Boise accelerating the introduction of certified stoves and the phase-out of old, high emission uncertified stoves. However, IDEQ does not take any credit for the emission reductions that have resulted from the wood stove certification program.[6]

Based upon the enforceability of the City of Boise wood stove certification program and its advancement of the PM–10 air quality goals, EPA is proposing limited approval of this program as a SIP strengthening measure.

(4) Wood Stove Change-Out Program

An initial feature of the City of Boise's 1986 wood burning ordinance was the development of a financial incentive program to replace uncertified wood stoves with certified stoves (see Boise City Code, Sec. 4–6–18). Low or no interest loans were offered to individuals participating in the program. In order to receive a loan, the participant was required to give the uncertified wood stove to the city building department for destruction. The loan program began in September 1986 and ended in September 1988. Approximately $800,000 in loans were made, resulting in the replacement of 494 uncertified wood stoves with cleaner heating devices. IDEQ does not take credit for reductions in the emissions, even though 84 uncertified wood stoves were removed from the airshed after the area source emission inventory base year (1987).

The Idaho Department of Water Resources (IDWR) also operated a wood stove change-out loan program, which ran from May 1987 to May 1993. 186 uncertified wood stoves were changed-out with cleaner heating devices during that period, with a majority of the replacements occurring during 1988–1993. Again, IDEQ did not take credit for these PM–10 emission reductions. Both the Boise and IDWR wood stove change-out loan programs strengthen the SIP and further assure that these wood smoke sources will not contribute to a future PM–10 exceedance. Accordingly, EPA proposes limited approval of the wood stove change-out loan program because it strengthens the SIP and enhances PM–10 air quality protection for the Ada County/Boise PM–10 nonattainment area.

b. Other Sources

As noted, RACM does not require controls on emissions from sources that are insignificant (i.e. de minimis) and does not require the implementation of all available control measures where an area demonstrates timely attainment and the implementation of additional controls would not expedite attainment (see 57 FR 13540–13544).

IDEQ has determined, through its analysis of the nonattainment area, that road dust contributed 15 percent of the PM–10 concentration on the worst case day in base year 1987. IDEQ did not propose controls for road dust. Rather, the State relies on wood smoke controls to demonstrate timely attainment of the 24-hour PM–10 standard, concluding that the implementation of additional control measures for road dust would not expedite attainment. However, the State's control strategy assumes the timely adoption and submittal of effective and enforceable mandatory wood smoke curtailment ordinances for the remainder of the nonattainment area. While such mandatory wood smoke curtailment ordinances, in conjunction with the other wood smoke controls described above, may demonstrate attainment of the standard, all of these control measures have not in fact been submitted. Thus, RACM is not met because it has not been demonstrated that the implementation of available control measures could not expedite attainment or that the implementation of such measures is technologically or economically unreasonable.

It is EPA's view that RACM does not require the implementation of controls for prescribed silvicultural and agricultural burning for the Ada County/ Boise nonattainment area because the area is not significantly impacted by those activities. Similarly, EPA believes that RACT does not require the implementation of control technology for stationary sources of PM–10 in the nonattainment area, because the area is primarily characterized by commercial, residential and light industrial uses. There are currently no major stationary sources operating in the Ada County/ Boise PM–10 nonattainment area and large stationary sources do not contribute significantly to the PM–10 air quality problem in Boise.

[6] According to the SIP submittal, Meridian, Eagle, Garden City, unincorporated Ada County, Nampa and Emmett also require that only certified wood stoves be sold and installed within their respective jurisdictions. However, no documentation (i.e. ordinances) supporting this statement was included in the SIP submittal.

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In summary, EPA is proposing to approve, under the authority of sections 110(k)(3) and 301(a) of the Act and for the limited purpose of strengthening the SIP and making such control measures federally enforceable, the control measures that have been submitted to date as part of the PM–10 SIP for the Ada County/Boise nonattainment area. These measures include the voluntary episodic wood burning curtailment program for the entire nonattainment area, the mandatory episodic wood burning curtailment program for the City of Boise, the wood smoke public education/awareness program, the wood stove certification program and the wood stove change-out program. A final limited approval of these existing control measures would not mean that EPA has approved these control measures as satisfying the specific Act requirement for the State to implement RACM (including RACT) in moderate PM–10 nonattainment areas (see sections 172(c)(1) and 189(a)(1)(C)). Rather, limited approval of these measures by EPA means only that these control requirements become part of the applicable implementation plan and are federally enforceable by EPA (see, e.g., sections 302(q) and 113 of the Act). EPA is concurrently proposing to disapprove the RACM (including RACT) element because the State has not adopted and submitted to EPA all of the mandatory wood smoke control ordinances on which it relies in its SIP submittal. A final disapproval of the Ada County/Boise PM–10 SIP RACM (including RACT) element would start the 18 month clock for the imposition of mandatory sanctions under section 179 of the Act and the two-year clock for the promulgation of a Federal Implementation Plan under section 110(c)(1) of the Act.

4. Demonstration

Moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B) of the Act). The General Preamble sets out EPA's guidance on the use of modeling for moderate area attainment demonstrations (57 FR 13539). Alternatively, the State must show attainment by December 31, 1994 is impracticable. The 24-hour PM–10 NAAQS is 150 micrograms/cubic meter ($\mu g/m^3$), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one (see 40 CFR 50.6). The annual PM–10 NAAQS is 50 $\mu g/m^3$, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 $\mu g/m^3$ (id.).

As indicated in the General Preamble, 57 FR 13539, EPA has developed a supplemental attainment demonstration policy for initial PM–10 nonattainment areas. This policy provides additional flexibility in meeting the PM–10 attainment demonstration requirements. An earlier April 2, 1991 memorandum titled, "PM–10 Moderate Area SIP Guidance: Final Staff Work Product" contained "Attachment 5" describing the same policy.

IDEQ conducted an attainment demonstration based upon WYNDvalley, a non-guideline dispersion model that EPA recommended be used in the Ada County/Boise nonattainment area. WYNDvalley is applicable in light and variable wind scenarios in regions influenced by complex terrain. Cold temperatures and light winds with limited vertical mixing create stagnant weather conditions in the Boise River Valley. All of the PM–10 exceedances observed in the Ada County/Boise nonattainment area have occurred during stagnant wintertime conditions.

The attainment demonstration indicates that the Ada County/Boise nonattainment area will be in attainment of the 24-hour PM–10 NAAQS during the entire period of 1993 to 2000, with the maximum predicted 24-hour concentration of 147 $\mu g/m^3$ occurring in 1995. The demonstration also addresses the quantitative milestone requirement (discussed below) by showing that the PM–10 NAAQS will be maintained after December 31, 1994 by predicting a 24-hour worst case day design concentration of 144 $\mu g/m^3$ for the year 2000. According to EPA's review, which corrected for the use of non-reference PM–10 data in 1986 and 1987 (i.e. Hi-Vol SA321A gravimetric PM–10 sampler), the Ada County/Boise area has never violated the annual arithmetic mean PM–10 standard. The highest valid three-year annual average in the nonattainment area is 43 $\mu g/m^3$ during 1987–1989, while the lowest three-year average is 39 $\mu g/m^3$ during 1990–1992.

The control strategy used to achieve these design concentrations and demonstrate attainment of both the 24-hour and annual PM–10 standards, however, relies on mandatory wood smoke control programs in Eagle, Garden City, Meridian and unincorporated Ada County. As discussed above in the section titled "Control Measures," the State has not adopted these ordinances as part of the SIP and submitted them to EPA. Accordingly, EPA proposes to disapprove the attainment demonstration. More detailed description of the attainment demonstration is contained in the TSD accompanying this document.

5. Quantitative Milestones and Reasonable Further Progress (RFP)

The PM–10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1) of the Act, toward attainment by December 31, 1994 (see section 189(c) of the CAA).

Although section 189(c) plainly provides that quantitative milestones are to be achieved until an area is redesignated attainment, it is silent in indicating the starting point for counting the first three-year period or how many milestones must be initially addressed. In the General Preamble, EPA addressed the statutory gap in the starting point for counting the three-year milestones, indicating that it would begin from the due date for the applicable implementation plan revision containing the control measures for the area (i.e., November 15, 1991 for initial moderate PM–10 nonattainment areas (see 57 FR 13539)). As to the number of milestones, EPA believes that at least two milestones must be initially addressed. Thus, submittals to address the SIP revisions due on November 15, 1991 for the initial moderate PM–10 nonattainment areas must demonstrate that two milestones will be achieved (1st milestone: November 15, 1991 through November 15, 1994; 2nd milestone: November 15, 1994 through November 15, 1997). For areas that demonstrate timely attainment of the PM–10 NAAQS, the second milestone should, at a minimum, provide for continued maintenance of the standards.[7]

For the initial PM–10 nonattainment areas that demonstrate attainment, the emissions reduction progress made between the SIP submittal (due date of November 15, 1991) and the attainment date of December 31, 1994 (46 days beyond the November 15, 1994 milestone date) will satisfy the first quantitative milestone. The de minimis timing differential makes it administratively impracticable to require separate milestone and attainment demonstrations (see 57 FR 13539). In implementing the quantitative milestone and RFP provisions for this initial moderate area, EPA has reviewed the attainment demonstration for the area to determine the nature of any milestones necessary to ensure timely attainment and whether annual incremental reductions should be required in order to ensure attainment of the PM–10 NAAQS by December 31, 1994.

The SIP purports to demonstrate attainment by 1994 and maintenance through 2000, which would satisfy three milestones. However, as discussed above, the maintenance demonstration and, therefore, the quantitative milestones directly depend on mandatory wood smoke control programs in Eagle, Garden City, Meridian and unincorporated Ada County. As discussed above in the section titled "Control Measures," the State has not adopted these ordinances as part of the SIP end submitted them to EPA. Accordingly, EPA proposes to disapprove the quantitative milestone requirement (see General Preamble, 57 FR 13565 and July 9, 1992 EPA memorandum regarding "Processing of State Implementation Plan (SIP) Submittals").

6. PM–10 Precursors

The control requirements which are applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors unless EPA determines such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in that area (see section 189(e) of the Act). The General Preamble contains guidance addressing how EPA intends to implement section 189(e) (see 57 FR 13539–13540 and 13541–13542).

Because the emission inventory for the Ada County/Boise PM–10 nonattainment area did not reveal any major stationary sources, including any major stationary sources of PM–10 precursors, EPA is proposing to grant the exclusion from control requirements authorized under section 189(e) for major stationary sources of PM–10 precursors.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by IDEQ and EPA (see sections 172(c)(6) and 110(a)(2)(A) of the Act and 57 FR 13556). EPA criteria addressing the enforceability of SIP's and SIP revisions were set forth in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

The specific control measures that were submitted as part of the SIP are addressed above under the section headed "Control Measures." As also discussed in that section, although the State relies on mandatory wood smoke control ordinances throughout the entire nonattainment area (except for the Kuna area) to demonstrate attainment and maintenance of the standard, the State has adopted and submitted to EPA a mandatory wood smoke curtailment ordinance only for the City of Boise. The necessary ordinances for Eagle, Garden City, Meridian and unincorporated Ada County, as well as evidence that the wood smoke control programs for these areas are adequately funded, implemented, enforced and maintained, have not been submitted at this time.

EPA has reviewed for enforceability the wood smoke ordinance for the City of Boise, which includes the mandatory curtailment program and the wood stove certification program for Boise, and has determined that it meets all of the criteria included in the September 23, 1987, Potter Memorandum. Exemptions from the mandatory burn bans are allowed only for the following reasons and must be approved by the City Building Department: a. wood burning is the resident's sole source of heat; b. curtailment would cause unreasonable economic hardship for low income households; or c. the wood burning device being utilized is certified by the Oregon Department of Environmental Quality or EPA as "clean burning". This is consistent with the recommendations for woodburning curtailment programs provided in EPA's Guidance Document for Residential Wood Combustion Emission Control Measures. The wood stove certification program does not contain any exemptions. Compliance with wood burning curtailments and the certification program is mainly achieved by responding to citizen complaints, but the City of Boise has limited personnel that independently monitor for noncompliance. Enforcement of burn bans and the certification program follows three progressive steps: 1. written warning; 2. fine; and 3. further legal action against the violator, if needed. IDEQ's submittals and the TSD contain further information on the enforceability of the Boise wood smoke curtailment ordinance and the personnel and funding intended to support effective implementation of this ordinance. In these respects, this control measure appears to be enforceable.

Section 110(a)(2)(E) of the Act requires that, where the State has relied on a local or regional government, agency or instrumentality for the implementation of any plan provision, the plan must provide necessary assurances that the State has responsibility for ensuring adequate implementation of such plan provision. The State's initial SIP submittal did not address the requirement of section 110(a)(2)(E). However, in a recent submission from the State addressing State responsibility for local control measures, such as the Boise wood smoke control ordinance, the State indicated that it relies on its existing ability to issue an operating permit to any stationary source when the Department determines that emission reductions from that source are necessary to attain or maintain a NAAQS (see Idaho Administrative Procedures Act (IDAPA) 16.01.01012.03.c (June 1993); IDAPA 16.01.01401.03 (May 1994)). The submission includes a copy of an opinion from the Attorney General's office stating that such permits could be issued to the owners of wood stoves and could include provisions directly implementing local mandatory wood smoke curtailment ordinances in the event a local entity fails to implement or enforce its respective local ordinance. This mechanism appears to satisfy the requirements of section 110(a)(2)(E) of the Act for State responsibility for local wood smoke control ordinances.

EPA is reserving judgment on the enforceability of the outstanding control measures (i.e. mandatory wood smoke curtailment programs for Eagle, Garden City, Meridian and unincorporated Ada County) and the adequacy of the related enforcement programs until EPA receives and reviews these measures.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIP's that demonstrate attainment must include contingency measures (see generally 57 FR 13510–13512 and 13543–13544). These measures must have been submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's core control strategy . These

[7] Section 189(c) provides that quantitative milestones are to be achieved "until the area is redesignated attainment." However, this endpoint for quantitative milestones is speculative because redesignation for an area as attainment is contingent upon several factors and future events. Therefore, EPA believes it is reasonable for States to initially address at least the first two milestones. Addressing two milestones will ensure that the State continues to maintain the NAAQS beyond the attainment date for at least some period during which an area could be redesignated attainment. However, in all instances, additional milestones must be addressed if an area is not redesignated attainment.

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measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make reasonable further progress or attain the PM–10 NAAQS by the applicable statutory deadline.

Contingency measures for the Ada County/Boise PM–10 nonattainment area have not yet been submitted by IDEQ. A findings letter, dated January 13, 1994, was mailed to the Governor of Idaho informing him that the State had failed to make the required PM–10 contingency measures submittal for the Ada County/Boise SIP. The State has until July 13, 1995 to correct this deficiency for Ada County/Boise, or it will face Federal highway and/or offset sanctions (see section 179 of the CAA).

EPA intends to take action on the contingency measures for the Ada County/Boise PM–10 nonattainment area when this requirement is submitted or intends to impose sanctions in the event this deficiency is not corrected.

9. Transportation Conformity Protective Finding

Section 176(c)(4) of the CAA and the regulations implementing that provision require that transportation plans, programs, and projects which are funded or approved under title 23 U.S.C. or the Federal Transit Act must conform with State or Federal air quality implementation plans (see 58 FR 62188 (November 24, 1993)). According to 58 FR 62228, § 51.448, areas which submitted a control strategy implementation plan before November 24, 1993 must be demonstrated to conform according to transitional period criteria and procedures by November 25, 1994. Otherwise, their conformity status will lapse, and no new project-level conformity determinations may be made. Under 40 CFR 51.448(a)(2),[8] if EPA disapproves a control strategy implementation plan revision submitted by the State and notifies the State, the Metropolitan Planning Organization (MPO), and the Department of Transportation (DOT), the conformity status of the transportation plan and transportation improvement program (TIP) lapses 120 days after EPA's disapproval. After that time, no new project-level conformity determinations may be made and no new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures. Note that these conformity consequences of a disapproval of a control strategy are in addition to the discretionary sanctions, which may be imposed under section 110(m) of the Act at any time following a disapproval, and the mandatory sanctions, which must be imposed under section 179 of the Act beginning 18 months following a disapproval.

Section 51.448(a)(3), however, allows EPA to extend the 120-day lapse period to one year from the date of disapproval if EPA determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by section 110(a)(2)(A) of the Act. If EPA makes such a "protective finding," the transportation conformity plan and TIP will be valid for 12 months following the date of disapproval and the conformity status of the transportation plan and TIP will lapse 12 months following the date of disapproval unless within that time another control strategy implementation plan revision is submitted to EPA and found to be complete.

If, as proposed in this action, EPA disapproves the control strategy in the moderate area SIP for the Ada County/Boise nonattainment area, under § 51.448(a)(2) the conformity status of the transportation plan and TIP would lapse 120 days after the effective date of the disapproval. EPA has evidence, however, that the wood smoke control ordinances for the cities of Eagle, Garden City and Meridian, and unincorporated Ada County are enforceable as a matter of local law, and believes that these control measures would have been considered approvable with respect to requirements for emission reductions if each of these control measures had been submitted to EPA in enforceable form as required by section 110(a)(2)(A). Therefore, EPA proposes that the 120-day lapse period be extended to one year under 40 CFR 51.448(a)(3). Accordingly, if EPA takes final action on this proposal, and the RACM (including RACT) requirement, attainment demonstration and quantitative milestones and RFP elements of the Ada County/Boise moderate PM–10 nonattainment SIP are disapproved, then the State of Idaho's transportation plan and TIP may be found to conform for 12 months past the effective date of the PM–10 SIP disapproval. The conformity status of the transportation plan and TIP would then lapse 12 months following the effective date of final action on this proposal unless within that time another control strategy implementation plan revision is submitted to EPA and found to be complete.

III. Implications of This Action

EPA is proposing to approve the emission inventory and, as described in the TSD, several submittals to address requirements of section 110(a)(2) of the Act, including the: a. Monitoring network (CAA section 110(a)(2)(B)); b. consultation and public notification/process (CAA section 110(a)(2)(J)); c. provisions for revising the plan (CAA section 110(a)(2)(H)); and d. prohibiting sources from significantly impacting other states (CAA section 110(a)(2)(D)). EPA is also proposing to grant the exclusion from precursor control requirements authorized under section 189(e) of the Act. EPA is proposing limited approval of the control measures that have been submitted by the State as of this date under the authority of sections 110(k)(3) and 301(a) of the Act for the limited purpose of strengthening the SIP and making them federally enforceable. EPA believes making these control measures federally enforceable will achieve PM–10 emissions reductions in the Ada County/Boise nonattainment area and, therefore, advances the NAAQS-related goals of the CAA. EPA is proposing disapproval of these control measures as meeting the RACM (including RACT) requirement, because the State has not adopted as part of the SIP and submitted to EPA those available control measures necessary for expeditious attainment of the PM–10 NAAQS (or shown that all economically and technologically feasible control measures have been implemented and timely attainment is impracticable), specifically, mandatory burn ban ordinances for Garden City, Eagle, Meridian and unincorporated Ada County. In addition, because the attainment demonstration and quantitative milestones and reasonable further progress (RFP) elements of the Ada County/Boise PM–10 SIP depend in part on the control measures which the State has not yet adopted and submitted to EPA, EPA is also proposing to disapprove these elements.

A final disapproval of these Ada County/Boise PM–10 SIP elements will authorize the imposition of discretionary sanctions under section 110(m) of the Act, and will institute the 18-month clock for the imposition of mandatory sanctions under section 179 of the Act and the two-year clock for the promulgation of a Federal Implementation Plan under section 110(c)(1) of the Act.

If, however, the State submits the additional control measures on which it relies in its SIP submittal and, based on EPA's review, these additional control measures adequately address the outstanding deficiencies, EPA will consider withdrawing this limited approval/disapproval and instead proposing full approval of the PM–10 plan for Ada County/Boise relative to those moderate area PM–10 SIP requirements which were due November 15, 1991.

IV. Request for Public Comments

EPA is requesting comments on all aspects of this proposal. As indicated at the outset of this document, EPA will consider any comments postmarked by October 24, 1994.

V. Administrative Review

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2224), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (see *Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)). EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not impose any new Federal requirements.

Authority: 42 U.S.C. 7401–7671q.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 13, 1994.

Jane S. Moore,

Acting Regional Administrator.

[FR Doc. 94–23496 Filed 9–21–94; 8:45 am]

BILLING CODE 6560–50–P

[8] Although §§ 51.448(d) (2) and (3) by their terms apply to "areas which submitted a control strategy implementation plan before November 24, 1993," the effective date of the conformity rule, EPA intended that these provisions apply only to plans on which final action had been taken prior to the effective date of the rule. EPA intended the provisions of § 51.448(a) (2) and (3) to apply to all plans, regardless of the date of submission, on which final action was not taken until after November 24, 1993. In other words, EPA intended that the conformity status of the transportation plan and TIP lapse 120 days or, in the case of a protective finding, one year after the later of the effective date of the conformity rule (November 24, 1994) or the disapproval of the control strategy.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 538

[Docket No. 94–35; Notice 1]

RIN 2127–AF37

Minimum Driving Range for Dual Fueled Electric Passenger Automobiles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for comments.

SUMMARY: This document announces that NHTSA is considering the proposal of a minimum driving range for dual fueled electric passenger automobiles, otherwise known as hybrid electric vehicles (HEVs). The purpose of establishing the range is to encourage the production of HEVs. An HEV which meets the range would qualify to have its fuel economy calculated according to a special procedure that would facilitate the efforts of its manufacturer to comply with the corporate average fuel economy standards. Comments are requested to assist the agency in developing the proposed range.

DATES: Comments must be received by November 21, 1994.

ADDRESSES: Comments on this notice must refer to the docket and notice numbers set forth above and then be submitted (preferably 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5313, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are 9:30 a.m. to 4:00 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Ms. Yolene Young, Office of Market Incentives, NRM–21, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–6349.

SUPPLEMENTARY INFORMATION: The Alternative Motor Fuels Act of 1988 (AMFA), as amended by the Energy Policy Act of 1992, has two essential purposes:

(1) To encourage the development and widespread use of methanol, ethanol, natural gas, other gaseous fuels, and electricity as transportation fuels by consumers; and

(2) To promote the production of alternatively fueled motor vehicles.

To achieve those purposes, the AMFA provides that alternatively fueled motor vehicles that meet an appropriate minimum driving range qualify for special treatment in the calculation of their fuel economy for purpose of their manufacturers' compliance with the corporate average fuel economy (CAFE) standards.

The inclusion of electricity in the list of alternative fuels covered by the AMFA necessitates that a minimum driving range be established for dual fueled electric passenger automobiles for fuel economy credit purposes. The AMFA specifies a minimum driving range of 200 miles for dual fueled passenger cars (other than dual fueled electric) when operating on the alternative fuel, but allows the Secretary of Transportation to establish the minimum driving range for dual fueled electric passenger cars.

The purpose of this notice is to seek public comments about HEVs that would aid the agency in developing a proposed driving range. The AMFA and

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Energy Policy Act provisions, which are codified at 49 U.S.C. sections 32901(c) and 32905, require the Secretary of Transportation to establish a minimum driving range for dual fueled electric vehicles. This minimum range requirement applies to passenger automobiles only. It does not apply to dual fueled light trucks.

In seeking to carry out its goals, the Act attempts to balance two competing objectives:

(1) Encouraging the production of alternatively fueled vehicles by offering CAFE standard compliance incentives; and

(2) Encouraging the purchase of alternatively fueled vehicles by consumers by providing the incentives to only those vehicles whose range of operation is large enough to meet consumer needs.

The setting of a minimum driving range for dual fueled electric automobiles must balance the needs of the consumer with the technical and economic considerations that are faced by the manufacturers. A low minimum driving range eligibility criterion might encourage the production of dual fueled cars, but lead to dual fueled electric vehicles being designed with such a low alternative fuel driving range that consumers do not buy them or, even if they buy them, infrequently operate them on the alternative fuel. Conversely, an excessively stringent minimum driving range eligibility criterion might discourage the production of dual fueled electric cars and unnecessarily compromise other vehicle attributes and aspects of performance. Manufacturers would be discouraged by an overly-stringent minimum range because a vehicle which does not meet the minimum driving range for its type is unlikely to be built since the manufacturer would not receive any of the benefits or incentives provided by the Act.

From the viewpoint of the consumer, the necessary driving range may be dictated by the convenience of a range that permits a typical workweek travel distance, or a daily travel distance for a fleet car. Also, if the majority of consumers would use a dual fueled electric vehicle in an urban area with more recharging stations or in a fleet application with a central recharging station, a large driving range may be less critical.

Whether the range is large or small, the agency will need a method of measuring the range of HEVs. NHTSA is considering basing the dual fueled electric vehicle driving range on procedures established by a Society of Automobile Engineers (SAE) committee. The SAE is currently developing procedures for chassis dynamometer measurements of range, electrical energy consumption, fuel economy, and exhaust emissions of HEVs. In a brief overview, the SAE HEV Test Procedure Task Force committee's actions will include:

(1) Classifying the vehicle by driving range and ability to complete the Environmental Protection Agency (EPA) driving cycle,

(2) Testing the vehicle on the appropriate type of cycle,

(3) Testing at other driver activated control settings, if appropriate, and

(4) Estimating annual fuel economy, emissions, and electric energy consumption.

The overview stated above is from SAE's first rough draft of the procedure for HEV testing, and it does not specify when the final procedure will be published.

To aid the agency in relating the data on driving range for dual fueled electric vehicles to the unique characteristics of dual fueled passenger automobiles, NHTSA is posing a number of questions in the following areas on the use of dual fueled electric passenger automobiles, as well as any other relevant areas such as:

(a) Consumer acceptability,
(b) Economic practicability,
(c) Technology,
(d) Environmental impact,
(e) Safety,
(f) Driveability, and
(g) Performance.

Information on other factors is also welcome. The data provided in response to these questions will be considered by NHTSA in developing a proposed minimum driving range for dual fueled electric passenger automobiles. The data will also aid the agency in making preliminary judgments about such fundamental matters as the extent to which manufacturers would seek to achieve the selected range in designing dual fueled electric passenger automobiles, the production volumes or schedules for those vehicles, the cost and other implications of different ranges, and the likely consumer acceptability of different driving ranges. For easy reference, the questions are numbered consecutively throughout the document.

In providing a comment on a particular matter or in responding to a particular question, interested persons are requested to provide any relevant factual information to support their conclusions or opinions, including but not limited to test data, statistical and cost data, and the source of such information. The agency is particularly interested in quantitative evaluations of anticipated environmental impacts and energy conservation impacts.

NHTSA requests information and comments on the following questions:

1. How should minimum driving ranges for dual fuel electric passenger automobiles be determined? Is there any trend toward increased or decreased driving ranges?

2. Can the vehicle operate solely on electricity or must the auxiliary power source be activated in order to follow the EPA driving cycle? How would you compute driving range on electricity if the auxiliary power source is activated during the driving cycle? What if the other power source is also alternative fueled?

3. Can the SAE procedure be adapted for use with the EPA urban and highway cycles for determining driving range? Why or why not? Is there some other test procedure that will be suitable for dual fueled electric vehicle?

4. Would dual fueled electric vehicles be generally utilized by consumers residing in urban areas and by fleets where it would be practical to provide for recharging at centralized facilities as opposed to consumers in rural areas? Also, where would it be practical to recharge the battery?

5. What driving range does the consumer expect from the passenger cars that he/she operates on electricity? Does the range vary with the size or typical use of the car; e.g., a subcompact car as compared to a large station wagon, or a car typically used for city commuting compared to one used primarily for urban and intercity driving? Does the expected driving range vary with the economic or social profile of the car operator; e.g., are younger drivers satisfied with smaller ranges or do high-income drivers demand greater driving ranges? Would the consumer be willing to accept a lower driving range in a vehicle with the added flexibility of dual fuel capability or with more recharging points and shorter waiting times? What is the minimum driving range acceptable to consumers?

6. Do vehicle manufacturers consider availability of fuel distribution or recharging points in establishing driving ranges?

7. Describe any trade-off for the design of the vehicle with cost that would dictate an upper limit of driving range for economic practicability.

8. Discuss reduction in vehicle driving range due to climate control energy demand. Discuss any new technology utilized in vehicle design and in advanced heating and cooling approaches to mitigate range reduction.

9. Describe how the weight/size of the battery pack will affect the driving range on dual fueled electric passenger cars. What determines this result?

10. Does the specific driving range of dual fueled electric cars create any environmental impacts that could be mitigated by choosing a different range or battery capacity? Please discuss the basis for your answer (e.g., (1) setting the minimum driving range so high that manufacturers could meet it only with battery technologies that employ more harmful chemicals, (2) setting the minimum driving range so high that manufacturers would be discouraged from trying to meet it, or so low that consumers wouldn't buy it, thus delaying the development or use of these cleaner technologies, and (3) setting the minimum driving range so low that the consumer would frequently be forced to use the more polluting non-electric fuel.)

11. For longer driving range on electric power, please discuss any significant safety or fire problems for the occupants of the dual fueled car or any object with which the car may collide. Is there an optimum battery capacity that would minimize potential safety problems for the electrolyte spillage, shock or fire? Please explain your answer.

12. Would the driveability (i.e., handling and performance) of a dual fueled electric car be penalized by a requirement for a driving range comparable to that for typical gasoline-fueled cars? Can an optimum driving range standard for dual fueled electric vehicles be established from driveability considerations? Please explain your answer.

13. Is it likely that dual fueled electric passenger car applications may have decreased performance capabilities when powered by electricity (e.g., predominately city driving, acceleration, top speed, and gradeability limit) and consequently result in lower consumer expectations for driving range. Please discuss your answer.

14. How do style or appearance considerations affect the space for the batteries and, therefore, minimum driving range? How will minimum driving range limit the storage space in the trunk of the vehicle?

15. What other factors, if any, should the agency consider in establishing the driving ranges for dual fueled electric passenger cars when operated on electricity?

16. What do you recommend as the minimum driving range for dual fueled electric passenger cars when operating on electricity?

17. What safety problems could arise if both battery acid and the second fuel spilled and mixed during an accident?

18. What kinds of range extenders are manufacturers considering for use in dual fueled electric vehicles (e.g., flywheels, hydraulic accumulators, small range heat engines, fuel cell systems, etc.)?

NHTSA solicits public comments on this notice. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above will be considered. Comments in response to this request for comments will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt on their comments in the dockets should enclose a self-addressed, stamped envelope with their comments, the docket supervisor will return the postcard by mail.

(49 U.S.C. 32901(c); delegation of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: September 19, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94-23455 Filed 9-21-94; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 638, 640, 642, and 659

[I.D. 091394A]

South Atlantic Fishery Management Council; Public Meeting, Public Hearings, and Public Scoping Meetings; Addendum

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting, public hearings, and public scoping meeting; request for comments; addendum.

SUMMARY: The South Atlantic Fishery Management Council (Council), will conduct a public hearing on proposed Amendment 4 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (Spiny Lobster FMP) in Charleston, SC. The Council will conduct a public hearing on coral-related issues on Wednesday, September 21, 1994, in Cocoa Beach, FL.

DATES: A hearing on coral-related issues will be held on Wednesday, September 21, 1994 (in conjunction with the previously published hearing notice on developing regulations for the rock shrimp fishery). A hearing on issues contained in proposed Amendment 4 to the Spiny Lobster FMP is scheduled for Thursday, October 6, 1994. Both hearings will begin at 7 p.m. Written comments on proposed Amendment 4 must be received by October 11, 1994.

ADDRESSES: The hearing on coral-related issues scheduled for September 21, 1994, will be held at the Holiday Inn, 1300 N. Atlantic Avenue, Cocoa Beach, FL. The hearing on proposed Amendment 4 scheduled for October 6, 1994, will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC. All other locations for hearings are contained in the notice published on September 8, 1994. Comments on proposed Amendment 4 should be sent to Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699 (FAX: 803-769-4520).

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, 803-571-4366.

SUPPLEMENTARY INFORMATION: A notice of a public meeting, public hearings,

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and public scoping meeting to solicit comments on coral-related issues, developing regulations for the rock shrimp fishery, and a scoping meeting on controlled access options for Atlantic group Spanish mackerel and proposed Amendment 8 to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic was published in the **Federal Register** on September 8, 1994 (59 FR 46387). This notice serves as an addendum to that September 8 notice.

The Council is considering the following options for proposed Amendment 4 to the Spiny Lobster FMP: (1) A year-round bag limit of two lobsters for all fishermen north of the Florida/Georgia, border and (2) an exemption for spiny lobsters caught on hook-and-line headboats from North Carolina through the Atlantic side of the Florida Keys. Proposed Amendment 4 will also be discussed at the previously published hearings scheduled for September 19, 20, 21, 22, and 23, 1994.

Dated: September 16, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–23372 Filed 9–19–94; 3:29 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 59, No. 183

Thursday, September 22, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 16, 1944.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Extension

- Animal and Plant Health Inspection Service

National Poultry Improvement Plan
VS Forms 9–2, 9–3, 9–4, 9–5, 9–6, 9–7, 10–3
Recordkeeping; Annually
State or local governments; Farms; Small businesses or organizations; 46,642 responses; 7,718 hours
Andrew R. Rhorer (301) 436–7768

Reinstatement

- Foreign Agricultural Service

Automated Skills Inventory Systems
OICD Form 73
Annually
Individuals or households; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 1,000 responses; 1,000 hours
Nancy Croft (202) 690–1722

- Rural Electrification Administration

Request for Mail List Data
REA Form 87
Annually
Small businesses or organizations; 964 responses; 241 hours
Daphne L. Brown (202) 205–3660

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 94–23467 Filed 9–21–94; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Thunder Mountain Fire Recovery and Salvage, Okanogan National Forest, Okanogan County, Washington, Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the USDA, Forest Service, will prepare an environmental impact statement (EIS) for a proposal to implement connected projects for the purpose of speeding recovery of the Thunder Mountain Fire burned area. Forest Service proposed projects includes: Timber sale of dead and fire damaged trees within the fire perimeter; rehabilitation of riparian areas and channels damaged by fire; and control of livestock to maintain pre-fire pristine character of streams and meadows. The EIS will develop and evaluate a range of alternatives for management of the resources within the fire perimeter. The alternatives will include a no action alternative, involving no timber harvest or road construction, and additional alternatives in response to issues identified during the scoping process. The proposed projects are consistent with the direction in the 1989 Okanogan National Forest Land and Resource Management Plan (Forest Plan) which provides the overall guidance for management of the area. The entire burned area and proposed project are within the Long Swamp Roadless Area. Implementation of proposed projects is scheduled for Fiscal Year 1995. The Long Swamp Roadless Area is located approximately 25 miles west of Tonasket, Washington. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the decision making process.

DATES: Comments concerning the scope and implementation of this proposal must be received by October 11, 1994.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Don Rose, Project Coordinator, Tonasket Ranger District, P.O. Box 466, Tonasket, Washington 98855.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental analyses to Don Rose, Project Coordinator, Tonasket Ranger District, P.O. Box 466, Tonasket, Washington 98855, telephone: (509) 486–5110.

SUPPLEMENTARY INFORMATION: The Thunder Mountain Fire was started by lightning on July 23, 1994 and was not declared controlled until August 30. During that time, the fire burned through 8,950 acres of lodgepole pine, Engelmann spruce, and subalpine fir forest. Within the fire perimeter, it is estimated that approximately 4,500 acres of trees were killed by the flames and heat of the fire. The remainder of the area within the fire perimeter either burned to a lesser degree (and may experience further dying of trees) or did not burn at all. Fire control was hampered by the roadless nature of the area which limited access.

The proposed action is to salvage dead and fire damaged trees on approximately 25 percent of the area within the fire perimeter. Approximately half of the area to be salvaged will be logged using helicopter yarding and the other half will be logged using cable and tractor systems. Approximately 3 miles of road will be constructed to improve access to the center of the area. The roads would be on three or four ridgetops running west from the main road in the area.

This area has recently been analyzed in both the Meadows Integrated Resource Analysis, which concentrated

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on issues associated with management of North American lynx, and the Chewuch Watershed Analysis, which analyzed historical disturbance patterns and how existing resource conditions differ from historical conditions. To date, the major issues identified are: Management of the roadless area; effects on lynx habitat; effects on anadromous fish habitat within the Chewuch River; future fire risk; and long term health of the soils and water within the burned area. Public meetings will be held in Tonasket and the Methow Valley (Washington) to review existing information and facilitate public scoping.

This EIS will tier to the Forest Plan, as amended by the Eastside Screening Environmental Assessment. The Forest Plan provides forest-wide standards and guidelines, management area standards and guidelines, and desired future conditions for the various lands on the Forest. This direction is provided for management practices that will be utilized during the implementation of the Forest Plan.

The Thunder Analysis Area contains about 8,950 acres. All of this is in the Long Swamp Roadless Area, which is 70,200 acres in size. The Analysis Area is allocated to the following Management Areas (MA):

—Approximately 90 percent is in MA 12 which is designed to provide habitat to support a stable lynx population over the long term while accessing the area for the purpose of growing and producing merchantable wood fiber.
—Approximately 9 percent is in MA 5 which is designed to provide opportunities for recreation and viewing scenery in a roaded natural setting.
—Approximately 1 percent is in MA 8 which is designed to preserve naturally occurring physical and biological units as Research Natural Areas.

The analysis will develop a range of alternatives—from no-action, (with no timber harvest or road construction) to an alternative that proposes harvest (no road construction), to an alternative that considers timber harvest with road construction and a lesser amount of helicopter yarding.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from other Federal, State, local agencies, and tribes, and other individuals or organizations who may be interested in or affected by the proposed project. This input will be used in preparation of the draft EIS. the scoping process includes:

—Identifying potential issues.
—Identifying major issues to be analyzed in depth.
—Identifying issues which have been covered by a relevant previous environmental analysis.
—Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.
—Identifying potential environmental effects of this project and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
—Determining potential cooperating agencies and task assignments.
—Notifying interested members of the public of opportunities to participate through meetings, personal contacts, or written comment. Keeping the public informed through the media and/or written material (e.g. newsletters, correspondence, etc.).

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December, 1994. Your comments and suggestions are encouraged and should be in writing. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft stage but that are not raised until after the completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can be meaningfully considered and responded to in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is scheduled to be completed by March, 1995. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. Sam Gehr, Forest Supervisor, is the responsible official. The responsible official will document the decision and rationale for the decision in the Record of Decision, which will be subject to Forest Service appeal regulations 36 CFR Part 215.

Dated: September 15, 1994.

Sam Gehr,

Forest Supervisor.

[FR Doc. 94–23439 Filed 9–21–94; 8:45 am]

BILLING CODE 3410–11–M

Pelican Butte Recreation Area, Winema National Forest, Klamath County, Oregon; Cancellation of an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On May 17, 1990, a Notice of Intent to prepare an environmental impact statement (EIS) for the Pelican Butte Recreation Area on the Klamath Ranger District of the Winema National Forest was published in the **Federal Register** (55 FR 20487). The Pelican Butte Recreation Area proposal has been withdrawn by the proponent. The Forest Service has decided not to prepare an EIS on this proposal; therefore, this Notice of Intent is rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Mr. Rob Shull, District Ranger, Klamath Ranger District, telephone (503) 885–3408.

Dated: September 14, 1994.

Bob Castaneda,

Forest Supervisor.

[FR Doc. 94–23438 Filed 9–21–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Technical Information Service

Title: CENDI (Commerce, Energy, NASA, National Library of Medicine and Defense Information) Customer Survey: Uses of Scientific and Technical Information.

Form Number(s): None.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 8,000 hours.

Number of Respondents: 50,000.

Avg Hours Per Response: .16 hours.

Needs and Uses: Each CENDI agency has its own acquisition and distribution program for scientific, technical, engineering and business related informtion. This customer survey is designed to make this informtion more accessible to the CENDI agencies, and also make it easier for citizens and the private sector to utilize it. To accomplish this, CENDI needs data on the characteristics and acquisition habits of their existing and future customer base. The collected information will be used to design new cost effective information delivery media and formats.

Affected Public: Businesses or other for–profit institutions, federal agencies or employees, and non-profit institutions.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maya Bernstein, OMB Desk Officer, room 10236, New Executive Office Building, Washington, DC 20503

Dated: September 16, 1994.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–23437 Filed 9–21–94; 8:45 am]

BILLING CODE 3510–CW–F

Bureau of Export Administration

Action Affecting Export Privileges; Augusto Giacomo Giangrandi Valenzuela, Also Known As Augusto Giangrandi

In the matter of: Augusto Giacomo Giangrandi Valenzuela, also known as Augusto Giangrandi, Via Roja 4863 Santiago, Chile, Respondent.

Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having notified Augusto Giacomo Giangrandi Valenzuela, also known as Augusto Giangrandi (Giangrandi), of its intention to initiate an administrative proceeding against him pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1992, and Pub. L. No. 103–277, July 5, 1994)) (the Act),[1] and Part 788 of the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1994)) (the Regulations), based on allegations that, between on or about February 14, 1983, and on or about June 11, 1988, Giangrandi conspired with Carlos Cardoen, and others, to export U.S.-origin zirconium from the United States to Chile contrary to the terms of export licenses that were issued by the U.S. Department of Commerce based on the prior representations of the conspirators; and

The Department and Giangrandi having entered into a Consent Agreement whereby the Department and Giangrandi have agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Consent Agreement having been approved by me;

It it therefore ordered,

First, Augusto Giacomo Giangrandi Valenzuela, also known as Augusto Giangrandi, Via Roja 4863, Santiago, Chile, and all of his successors, assigns, officers, representatives, agents, and employees, shall, for a period of 10 years from the date of this Order, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, and subject to the Regulations.

A. All outstanding individual validated licenses in which Giangrandi appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Giangrandi's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity:

(i) As a party or as a representative of a party to any export license application submitted to the Department;

(ii) In preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and

(v) In financing, forwarding, transporting, or other servicing of such commodities or technical data.

C. After notice and opportunity for comment as provided in § 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to Giangrandi by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order

D. As provided by § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity:

(i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then

[1] The Act expired on August 20, 1994. Executive Order No. 12924 (59 FR 43437, August 23, 1994), continued the Regulations under the International Emergency Economic Powers Act (50 U.S.C.A 1701–1706 (1991))

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subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service of participate:

(a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States;

(b) In any reexport thereof; or

(c) In any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

E. As authorized by § 788.16(c) of the Regulations, the last five years of the denial period set forth above is hereby suspended for a period of five years beginning five years from the date of entry of this Order, and shall thereafter be waived, provided that Giangrandi has met any obligation he has with the U.S. Government and that, during the period of suspension, he has committed no violation of the Act or any regulation, order, or license issued under the Act.

Second, that the proposed Charging Letter, the Consent Agreement and this Order shall be made available to the public.

This Order is effective immediately.

Entered this 15th day of September 1994.

John Despres,

Assistant Secretary for Export Enforcement.

[FR Doc. 94–23471 Filed 9–21–94; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–614–801]

Fresh Kiwifruit From New Zealand; Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On May 6, 1994, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on fresh kiwifruit from New Zealand. The review covers one exporter, the New Zealand Kiwifruit Marketing Board (NZKMB), and the period November 27, 1991, through May 31, 1993. Based on our analysis of the comments received, we determine the dumping margin for NZKMB to be 15.41 percent.

EFFECTIVE DATE: September 22, 1994.

FOR FURTHER INFORMATION CONTACT: Amer M. Kayani or Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5346 or 482–3814, respectively.

Background

On May 6, 1994, the Department published the preliminary results (59 FR 23691) of its administrative review of the antidumping duty order on fresh kiwifruit from New Zealand (57 FR 23203, (June 2, 1992)). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The product covered by the order under review is fresh kiwifruit. Processed kiwifruit, including fruit jams, jellies, pastes, purees, mineral waters, or juices made from or containing kiwifruit, are not covered under the scope of the order. The subject merchandise is currently classifiable under subheading 0810.90.20.60 of the Harmonized Tariff Schedule (HTS). Although the HTS number is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. At the request of respondent, NZKMB, we held a public hearing on June 20, 1994. We received timely comments from respondent and petitioners, the California Kiwifruit Commission (CKC).

General Comments

Comment 1

Respondent argues that the Department should exclude from NZKMB's expenses amounts of interest it incurred to finance antidumping deposits in accordance with the Department's practice in the administrative review of *Final Results of Antidumping Duty Administrative Review and Revocation in Part of an Antidumping Order; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et. al.* (58 FR 39729, (July 26, 1993)). Respondent further argues that the Department successfully verified the amount of interest NZKMB incurred as a result of the duty deposits.

Petitioners contend that this interest is not "dumping duty interest", but rather that it is simply interest incurred by respondent on short-term commercial bank financing to finance kiwifruit business operations. Furthermore, petitioners contend that respondent's reliance on the third administrative review results in *Antifriction Bearings* is misplaced because in the more recent *Antifriction Bearings* fourth administrative review, the Department disallowed a reduction for U.S. indirect-selling expenses by the amount of interest incurred to finance antidumping duty deposits.

DOC Position

We disagree with respondent. Respondent mischaracterized the Department's verification of this expense. The Department only verified the total interest expense for NZKMB. NZKMB did not provide any supporting documentation for specific interest on dumping deposits (*see* Department's verification report for NZKMB, dated April 16, 1994, pp. 14–15). Given the Department's inability to verify the interest incurred for dumping deposits, there is no evidentiary basis for making the adjustment claimed by respondent. Therefore, the issue of the Department's practice in *Antifriction Bearings* is moot.

Comment 2

Respondent argues that the general and administrative (G&A) expenses should be reduced by revenues from sales of salvaged packaging, which were posted to two accounts in NZKMB's general ledger. Respondent contends that the Department verified the items in one account and declined to examine the second account, citing lack of time. Furthermore, respondent claims that the Department traced the total amount in the second account to the general ledger and that the Department's unwillingness to go behind the ledger for this account is not sufficient grounds to doubt its accuracy.

DOC Position

We disagree. The Department informed respondent, prior to verification, in a letter dated March 4, 1994, that "it is the responsibility of the respondent to be fully prepared for the verification. If (respondent) is not prepared to support or explain a response item at the appropriate time, we will move on to another topic. Due to time constraints, it may not be possible to return to that item and we may consider the item unverified."

Respondent did not bring its claim for the adjustments in question to the Department's attention prior to the start of verification. In fact, these adjustments were first brought to the Department's attention on the third day of a five-day verification. Due to respondent's considerable delay in bringing the information to the Department's attention and subsequent lack of preparation in providing the supporting documentation, the verification team was only able to verify fully the amount reported for tender revenue packaging. The Department was unable to verify fully the amount reported in the sundry on-shore packaging account because of respondent's inability to provide supporting documentation in a timely manner. Accordingly, no adjustment has been made to G&A for the sundry on-shore packaging in the final results.

Comment 3

Respondent argues that the Department should add the delivery premium for sales in the United States to the U.S. price rather than deduct it from U.S. price. NZKMB asserts that it charges a delivery premium for sales in the United States made on a delivered basis. This amount is charged to the customer as a premium above the gross unit price. Thus, according to respondent, it should be added to the gross unit price to yield the actual price paid by the customer.

DOC Position

We agree with respondent that the delivery premium should not be subtracted from the gross price when calculating the net U.S. price and have added it to the gross unit price so that our calculations reflect the full price paid by the customer. We then have adjusted the U.S. price for actual movement expenses respondent incurred.

Comment 4

Respondent contends that the Department incorrectly used a weighted-average price for the entire period of review (POR) in the calculation of foreign market value (FMV). Respondent argues that the Department should use monthly weighted-average prices in the calculation of FMV.

DOC Position

We agree with respondent and have used monthly weighted-average prices in the calculation of FMV for the final results.

Comment 5

Respondent contends that the Department improperly treated interest expenses by including the growers' interest cost in the cost of manufacture (COM) rather than accounting for it as a general expense in accordance with the Department's practice. To remedy this alleged error, respondent suggests that the Department subtract the growers' interest from COM.

Furthermore, respondent contends that, when calculating the constructed value (CV) interest expense, the Department double-counted the growers' interest by including it both in grower's COM and in CV interest expense calculation for NZKMB. According to respondent, the amount reported as CV interest expense in NZKMB's response to the Department's grower cost questionnaire, represents the total interest expense, for both NZKMB and the growers, that should be added to CV. Respondent suggests correcting this alleged error by subtracting the grower interest from COM and multiplying the result with CV offset proposed by NZKMB in its response to the Department's questionnaire.

Petitioners contest respondent's claim that the growers' interest expense should not be included in the COM but rather should be accounted for as a general expense. Petitioners note that respondent's claim overlooks the distinction between NZKMB's and growers' costs. Petitioners point out that the interest expenses incurred by each grower are directly related to the kiwifruit operations for each grower and that the loans relate directly to individual growers' costs of cultivation and are not "general" in nature nor are they a general expense of NZKMB.

Petitioners also dispute respondent's claim that the interest expense reported in NZKMB's response to the Department's grower cost questionnaire represents the total interest, for both NZKMB and the growers, that should be added to CV. According to petitioners, the amount for CV interest expense used by the Department is much less than the actual interest incurred by either the growers or NZKMB because of an offset of interest expense with interest income that was not related to the grower interest. Petitioners argue that the Department should not allow any offset to growers' interest expense. Instead, petitioners argue that any offset that the Department chooses to make should only be subtracted from the interest expense of NZKMB. Furthermore, petitioners maintain that this offset should be in the form of a whole number instead of an estimated ratio used by respondent in its response.

DOC Position

We agree, in part, with both respondent and petitioners. We disagree with respondent's first argument that the growers' interest cost should be excluded from the COM. The Department's objective is to calculate the cost of production (COP) of the subject merchandise sold by NZKMB. This COP includes the cost incurred by the grower to produce the kiwifruit as well as the selling, general and administrative expenses (SG&A) incurred by NZKMB to sell the kiwifruit. The financial expenses incurred by growers are a part of the costs associated with producing the kiwifruit. That is, these financial expenses are directly related to individual growers' COM and are not NZKMB's general expense. NZKMB's financial expense is treated as the general expense of NZKMB and added to the grower's COM to arrive at the total COP of the kiwifruit.

With respect to respondent's argument that the Department double-counted growers' interest expenses, the Department agrees with respondent in part. We agree with respondent that the Department double-counted the growers' interest by including it both in grower's COM and in CV interest expense calculation for NZKMB. However, we disagree with the specific amount of the CV offset proposed by respondent. The CV offset proposed by respondent is a percentage factor that is applied to total interest of growers and NZKMB which was adjusted for deposits made for estimated antidumping duties. We have recalculated respondent's proposed adjustment by disallowing respondent's deduction for the interest incurred on its duty deposits. (For an explanation of the Department's position on this issue, *see* Comment 1.) Furthermore, we have allowed this offset only to NZKMB's financial expenses because, as noted above, the Department does not consider financial expenses incurred by growers to be a general expense of NZKMB.

Cost of Production Comments

Comment 6

Respondent contends that the Department's treatment of orchard set-up costs for growers who purchased already- established orchards and thus did not report actual orchard set-up costs has unfairly distorted and inflated costs. Respondent argues that the Department's decision to use the best

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information available (BIA) for these orchards set-up costs grossly exaggerates their value. Respondent maintains that a purchaser of an established orchard does not bear directly any set-up costs, since those costs were borne by the original establisher of the orchard. Respondent asserts that a purchaser's total cost for an orchard is the price the purchaser paid to the seller of the property and that a portion of that purchase price attributable to capital improvements is effectively the purchaser's set-up cost. That is, respondent contends, the difference in value between the raw land and the land with an established orchard represents the value to the purchaser of the set-up costs incurred by the original owner. Moreover, respondent points out that for most growers the Department has valued the set-up cost of the orchard at more than the price paid for the entire farm. Respondent notes that growers reported the actual amortized value of the orchard based on their purchase prices for the land and the orchard. Respondent contends that this reporting methodology was obtained from land valuation reports prepared by private appraisers and was not challenged by the Department in its supplemental questionnaire. Furthermore, respondent maintains that it is not clear what facts or information the Department believes were withheld by those growers who, in the Department's view, failed to provide actual set-up costs as those growers could not report "actual" set-up costs given that they did not incur any such costs.

Petitioners contest respondent's assertion that the Department ought to adopt a "purchase price" methodology for deriving the orchard set-up costs for growers who purchased already established orchards. Petitioners argue that the fact that a reasonable imputed set-up cost for some of these farms meets or exceeds their recent purchase price simply demonstrates that kiwifruit properties in New Zealand are depressed. Furthermore, petitioners maintain that the purchase price of these farms does not represent the costs of developing the kiwifruit operation. According to petitioners, respondent ignores the fact that set-up costs are allocated over the useful life of the orchard and that allocation of a purchase price established after the set-up period would understate actual set-up costs for a kiwifruit orchard by allowing allocation of a mere "remnant value" to be substituted for the actual set-up costs. Petitioners agree with the Department's decision to apply BIA to reflect the set-up costs associated with kiwifruit production.

DOC Position

For those growers who purchased already-established orchards in an arm's-length transaction, we agree with respondent that their "set-up" cost is the portion of the price paid for the orchard that is attributable to "capital improvements". That is, the "set-up" costs for these orchards is the difference in value between the raw land and the land with an established orchard on it.

When conducting the test for sales below the COP, we are concerned with the COP for the merchandise sold during the POR. The fact that the prevailing prices for kiwifruit orchards in New Zealand are depressed is irrelevant. What is relevant in our COP analysis are the costs incurred by growers to produce the fruit sold during the POR. Therefore, we agree with respondent that the price a grower paid for an orchard's "capital improvements" is effectively the equivalent of "set-up" costs for growers who purchased already-established orchards. Accordingly, we have revised the "set-up" costs for Growers' 1, 3, 5, and 19 in these final results.

Comment 7

Respondent argues that the Department's use of a 20-year amortization period for orchard set-up costs is entirely unsupported and that the Department should instead use a 35-year amortization period. Respondent cites excerpts from various studies conducted in New Zealand to support its claim that the useful life of kiwifruit orchards in New Zealand is at least 35 years. Furthermore, respondent asserts that the Department's staff refused to discuss this issue at verification and would not accept any offers to back up or otherwise verify the accuracy of the 35-year productive life. Respondent also asserts that the document relied on by the Department in the original investigation to support the 20-year productive life does not make the 20-year estimate with conviction nor does it claim to be based on scientific study. Respondent maintains that the document was only a guess since it was based on commercial experience in California which at the time of writing in 1989 had just recently been established.

Petitioners argue that respondent has not offered new support for a period longer than 20 years. According to petitioners, the possibility that the respondent was prepared to show the Department's verifiers a New Zealand vineyard older than 20 years is not dispositive of the issue because one, two, or even 20 farms with old vines cannot refute the fact that nearly every commercially producing kiwifruit vineyard in New Zealand and in other countries is less than 20 years old

DOC Position

We agree with petitioners. Generally accepted accounting principles (GAAP) call for the amortization and recovery of costs over the expected productive life of an asset. The estimated useful life of an asset is the period over which the asset may reasonably be expected to be useful to the individual's business or to the production of income. Some of the factors to be considered in determining this period are (1) wear and tear and decay or decline from natural causes, (2) economic changes and current developments within the industry or business, and (3) the climatic and other local conditions peculiar to the individual's business.

The information submitted by respondent in support of useful vine life does not refute the Department's 20-year estimate in the preliminary results. The excerpts from studies cited by respondent do not provide any conclusive evidence in support of respondent's claim for a 35-year or longer productive life. In fact, a letter from the Horticultural and Food Research Institute of New Zealand, Ltd. (HORT), submitted by respondent, states that "the Ministry of Agriculture and Fisheries (MAF) surveys indicate that before about 1970, there were insignificant plantings of kiwifruit—this means that in New Zealand there are very few plants more than 20–25 years old. * * *" During verification in New Zealand, the Department discovered that, because of low profitability, some of the growers in the Department's sample had either pulled out or were contemplating pulling out their kiwifruit vines to use the land for other purposes. Furthermore, respondent's argument that it was prepared to show the Department's verifiers a New Zealand vineyard older than 20 years is not conclusive because the Department's objective is to measure an average useful life and not the useful life of one or two farms. Therefore, we maintain our position that the expected productive life of a kiwifruit orchard is 20 years.

Comment 8

Respondent argues that the Department's methodology of allocating orchard costs to headlands and sidelands is flawed because the Department allocated headlands and sidelands only to kiwifruit crops, even though other fruit orchards also have associated headlands and sidelands. Respondent contends that the shelterbelt and sidelands are an integral part of all the orchard crops, not just of kiwifruit. Furthermore, respondent argues that the Department should not include headlands and sidelands in the allocation formula because the net area of the orchard is the area that is the focus of horticultural expenses. Although shelterbelts are occasionally trimmed and headlands and sidelands are mowed and sprayed for bugs, according to respondent, these costs are trivial. Respondent further contends that the Department's methodology of allocating costs to headlands and sidelands by using Grower 4 as an example is flawed because Grower 4's headlands and sidelands are only allocated to kiwifruit.

Petitioners argue that headlands, sidelands, and windbreaks are not required for all fruit orchards. Petitioners note, however, that they are crucial for kiwifruit orchards because kiwifruit vines are much more sensitive to severe weather than are other crops. Furthermore, petitioners note that the support systems on which kiwifruit vines grow are also more sensitive to weather conditions than are other more deeply rooted orchard crops. According to petitioners, respondent is wrong to question the Department's use of Grower 4 as an example for allocation of costs to headlands and sidelands because respondent's submission did not provide any information about headlands or sidelands for Grower 4's passionfruit canopy and no support was forwarded that showed that headlands and sidelands were an integral part of the grower's passionfruit crop. Petitioners further contend that contrary to respondent's contention, aerial photographs submitted by respondents for Growers 10 and 17 do not show that crops other than kiwifruit crops require shelter belts. Petitioners additionally contend that respondent's attempt to demonstrate that the Department misallocated headlands and sidelands is inconclusive. For Grower 8, for example, petitioners argue that respondent admits in its own submission that the headlands and sidelands are devoted only to kiwifruit by attributing the extra area to the kiwifruit orchards. Finally, petitioners maintain that while the headlands and sidelands are not themselves productive, these areas are nonetheless integral to the successful growth and production of kiwifruit and are therefore appropriately accounted for in the cost of producing kiwifruit.

DOC Position

We agree, in part, with both petitioners and respondent. Costs, such as fertilizer expenses, that are solely applicable to kiwifruit or to another crop's canopy area should be allocated on the basis of productive area only. However, by respondent's own admission, there are certain costs, such as trimming, mowing, spraying, *etc.*, involved in the maintenance of shelterbelts, headlands, and sidelands. These costs should be allocated over the gross kiwifruit area. Accordingly, we have adjusted our COP calculations in the final results.

With regard to respondent's comment that headlands and sidelands were allocated to kiwifruit only, the Department imputed the area for headlands and sidelands only for those growers for whom respondent did not provide the actual breakdown between the canopy and the gross area for various crops and where it was not clear from the record whether crops other than kiwifruit had shelterbelts, headlands, and sidelands around them. Therefore, no adjustment for orchard area has been made.

Comment 9

Respondent argues that the Department distorted its calculation by completely excluding the pastoral portions of the land from orchard cost allocation because pastoral activities are an integral part of the growers' operations which must bear an appropriate share of management, repair, and vehicle expenses.

Petitioners contend that pasture land should not bear expenses because it requires little tending or investment. Furthermore, petitioners note that pasture land requires virtually no management, while kiwifruit orchards require intensive management activities.

DOC Position

We agree with petitioners in part. While pasture land requires little or no labor, it may require management and vehicle-related expenses. Accordingly, we have adjusted our COP calculations to reflect these costs in the final results. (See Department's analysis memorandum dated August 29, 1994, for appropriate adjustments.)

Comment 10

Respondent argues that the Department's treatment of intra-family interest and salary and other related-party expenses in the preliminary results is inconsistent and in error. Respondent contends that it has been the Department's practice to treat transactions between related parties as unreliable and to examine costs to a company as a whole and eliminate intra-company payments and transfers. Respondent argues that the kiwifruit growers' accounting is typical of a small business in that it is essentially tax driven. In particular, respondent argues that recharacterizing grower profits as interest payments and inflated salaries paid to family members are typical methods used to cut taxes. Respondent cites Growers 5, 7, 17, and 19 as examples of this practice. Respondent uses Grower 17 for analysis purposes and argues that the wages paid by the grower to his spouse are a paper transaction only and that his spouse is not in fact a farm hand. Similarly, respondent argues that the loan from Grower 17's spouse to the grower was a paper transaction to reduce taxes in which the wife pretended to loan her husband money and the husband pretended to pay his wife interest. Respondent applies the same argument to salary payments made to the son of Grower 19 and asserts that this is a profit distribution among family members. Respondent further argues that, for Grower 8, the Department should exclude interest that the owners paid themselves from the COP calculation because it was a distribution of profits to the owners.

Petitioners argue that respondent has furnished no evidence of New Zealand tax provisions to support its claim that the inflated payments are reported for tax purposes. Petitioners argue that the Department should not accept respondent's claim that some of the expenses are not real expenses when nothing in the record demonstrates this claim to be true.

DOC Position

We agree with petitioners. Absent specific evidence to the contrary, we consider expenses recorded in a company's financial statements to reflect actual expenses incurred in its operations. *See Final Results of Sales at Less Than Fair Volue, Sweaters Wholly or in Chief Weight of Man-Mode Fiber From Taiwan*, 55 FR 34585 (1990). Respondent has not presented any documentary evidence in support of its claim that the recorded expenses were not actual expenses. Accordingly, we continue to rely on the growers' financial statements for orchard expenses in the final results.

Comment 11

Respondent argues that the Department incorrectly disallowed the rental income credit reported by Growers 8, 13, and 18. Respondent contends that these growers reported

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imputed rental income as a credit against their reported labor cost because each of these growers provided housing to their orchard employees. According to respondent, under New Zealand income tax law, employer-provided housing is considered a taxable benefit to the employee. As a result, the grower that provides housing is required, when submitting its tax information, to increase the reported salary paid in cash to the employee by the imputed value of the housing benefit. Respondent explains that, because of this calculation, the growers' income statement reflects a total labor cost that includes both the wages actually paid to employees, the imputed value of the housing benefit, and the growers' actual expenses incurred in providing employee housing. Respondent contends that this imputed housing value is not an additional expense to the grower. Respondent maintains that the Department misunderstood the nature of the housing expense and included both the imputed value of the housing benefit and the actual housing expenses incurred by the grower. Respondent argues that the Department erred in its COP calculations when it disallowed the offsetting credit amount reported in growers' financial statements to correct the employer's overstatement for employee housing expenses.

Petitioners contend that the rental income credit is inappropriate because housing rental is not a farm operation.

DOC Position

We agree with respondent. In this case, the growers provide a housing benefit to employees. Under the New Zealand tax laws, this housing benefit is considered a taxable benefit to the employees and its imputed value is reflected on the employees' income statements along with total wages. Although the growers' income statements reflect a total labor cost that includes both the wages actually paid to employees and the imputed value of the housing benefit, the imputed housing value is not an additional expense to the growers; the actual cost of the housing benefit, such as depreciation, maintenance, electricity, *etc.*, is already included in the growers' financial statements. Since the growers' financial statements show an expense for the imputed housing benefit that was not incurred, the growers offset this expense with "rental income" to reconcile their financial statements.

To include the imputed housing value plus the growers' actual expenses incurred in providing the housing benefit in the COP calculation would result in double-counting the total expenses for the housing. Accordingly, we have accepted this "rental income" credit adjustment reported by respondent for Growers 8, 13, and 18 in the final results.

Comment 12

Petitioners argue that, in its calculation of respondent's COP of kiwifruit sold in Japan, the Department failed to include: 1) NZKMB's G&A and interest expenses, 2) certain elements of third-country packing cost, which the Department included in the net prices compared to COP, and 3) the New Zealand coolstore cost.

Respondent contests petitioners' position and maintains that the figures used by the Department include NZKMB's G&A and interest.

DOC Position

We agree with petitioners that NZKMB's G&A and interest expenses should be included in the COP. However, these expenses are already included in the cost of production, therefore, we have made no further adjustment for these expenses in the final results.

We agree with petitioners argument concerning inconsistencies regarding third-country packing cost in our COP analysis. Therefore, in the final results, we have excluded certain elements of third-country packing cost from the net prices for COP comparison purposes. Lastly, we agree with petitioners that the New Zealand coolstore cost should be included in the COP because these costs were included in net prices. Since this coolstore expense is a part of NZKMB's G&A expense, however, it is already a factor in our analysis. Therefore, we made no further adjustment for this expense in our COP analysis.

Comment 13

Petitioners contend that the Department omitted NZKMB's G&A expenses from the CV calculation it used in exporter's sales price (ESP) comparisons. Petitioners note that the Department included these expenses in its CV calculations for purchase price (PP) comparisons.

Respondent agrees with petitioners that NZKMB's G&A expenses should be included in CV calculations for the purposes of PP and ESP comparisons. Respondent, however, disagrees with petitioners about the amount that should be included because, according to respondents, the figure suggested by petitioners includes both G&A and interest expenses. Respondent urges the Department to use a figure in its CV calculations which reflects only G&A expenses.

DOC Position

We agree with petitioners. Because of a clerical error, the Department did not add NZKMB's G&A expenses, including interest expense, in the preliminary CV calculation for ESP sales. We have corrected this clerical error in the final results.

We disagree with respondent on the amount that should be included in NZKMB's G&A expenses for the reasons explained in our response to Comment 5.

Comment 14

Petitioners argue that the methodology used by respondent to impute expenses grossly understated the labor costs. Respondent reported labor in three categories: "labor", "imputed labor", and "contracted labor". Petitioners allege that these disparate labor expense reporting practices resulted in a fractured, often unidentifiable, labor component. Petitioners request that the Department reject respondent's reported labor expenses and replace them with costs derived in a more logical fashion. Petitioners contend that actual kiwifruit labor costs should be determined from the responses for five growers only, based on the following factors: (1) the grower produced kiwifruit only, or the grower's kiwifruit labor costs are segregable; (2) the grower needed to impute no labor cost; (3) labor cost was not consolidated with materials; or (4) labor cost was easily identifiable. Petitioners argue that Growers 2, 7, 13 14, and 20 satisfied the above conditions. Furthermore, petitioners assert that an analysis of these growers' labor cost shows that labor cost per hectare decreases as the area under cultivation increases. Thus, petitioners argue that the Department should impute labor costs according to the following "surrogate" matches: Grower 13 as surrogate for Grower 12; Grower 7 as surrogate for Growers 1, 3, 4, 5, 6, 8, 9, 10, 11, 15, 16, 17, 18, and 19. Petitioners argue that to calculate the imputed labor cost for these 15 growers, the Department should simply multiply the growers' kiwifruit canopy hectares by the per-hectare labor cost of the surrogate grower.

Respondent argues that since the growers have reported their actual labor and contracted labor expenses and have added imputed labor expenses for family labor, there is no basis for adding additional labor costs to growers who relied more heavily on contracted labor

DOC Position

We agree with respondent. For most growers, contracted labor expenses reported by respondent include labor and material costs. In instances where labor was not contracted for, the labor was provided either by an employee, by the owner himself, or by the owner's family. In the case of growers who used family labor, an imputed expense for family labor was reported and included in the COP. Additionally, for some growers labor costs were included in direct materials such as spraying and fertilizer. Therefore, we accepted respondent's labor cost allocation as an appropriate estimation of the cost of cultivating kiwifruit and used the information in our COP analysis.

Comment 15

Petitioners argue that interest expenses should be allocated on the basis of cost of goods sold, rather than on the basis of assets, because respondent has not demonstrated linkage between the growers' assets and the interest incurred by the growers. Furthermore, petitioners contend that interest relates not to assets, but to the business operations of the orchards. According to petitioners, this is demonstrated by the fact that of the 20 growers, 11 were unprofitable in their kiwifruit operations during the POR, five were profitable on kiwifruit operations, and it was not possible to tell for the remaining four whether kiwifruit operations were profitable. Petitioners contend that based on these grounds, the interest incurred by these growers must be associated with financing the operations.

Respondent claims that interest expenses should be allocated on the basis of asset value and not on the basis of cost of goods sold. Respondent argues that the Department has allocated interest on the basis of cost of sales in a typical proceeding involving a manufacturing company with multiple products because it has been assumed that each of the consolidated lines of business of a respondent have approximately equal operating asset requirements. Respondent asserts that where that assumption of equivalent assets is not true in a particular case, the Department uses asset-based allocation as was done in the antidumping investigations of *Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic Korea*, 58 FR 15467 (1993), and *Sweaters Wholly or in Chief Weight of Man-Made Fiber from the Republic of Korea*, 55 FR 32659 (1990). Respondent asserts that the growers in this review are in a factual situation similar to that in *Man-Made Fiber Sweaters from Korea*.

DOC Position

We agree with respondent but not for the reasons stated. During verification in New Zealand, the Department observed that many kiwifruit growers reside on their farms. In most cases, these growers' financial statements list their private residence as well as orchard-related expenses together. However, during verification, the Department observed that the growers' private residences are not directly related to the cultivation of kiwifruit. Since a grower's residence does not generate a cost of sales, the allocation of interest on the basis of cost of sales would not accurately reflect the amount of interest attributable specifically to the residence of orchard operation. Therefore, we have accepted respondent's methodology of allocating interest expense on the basis of asset value, thus distinguishing between interest expenses attributable to the growers' residence and those attributable to their commercial activities. Accordingly, no adjustment for Growers' 1, 5, 6, 8, 9, 10, 12, 14, 16, 17, and 20 has been made in the final results.

Comment 16

Petitioners disagree with respondent's methodology of allocating G&A expenses for Growers' 1, 4, 5, 8, 12, 16, 17, and 20. Petitioners contend that, by using a cost of goods sold ratio based on the kiwifruit COM relative to all other costs, respondent has understated kiwifruit costs and has overstated the total orchard costs. Furthermore, petitioners argue that kiwifruit picking and packing expense should be included in the cost of goods sold. Petitioners urge the Department to recalculate growers' G&A expenses by adding the amount of picking and packing in the total cost of sales.

Respondent argues that petitioners' proposal to reallocate G&A expenses by including packing in the COM is without merit. Respondent notes that it is the Department's practice to exclude packing from the COM for the allocation of G&A. Furthermore, respondent contends that it used unpacked COM to allocate among all orchard crops. Therefore, if the Department were to include the cost of packing for allocation purposes in the cost of kiwifruit only, but not for other crops, the results would be biased. Respondent argues that while the growers ultimately pay for packing, NZKMB administers the packing and distribution of kiwifruit from the time it leaves the orchard. Therefore, NZKMB is responsible for the packing process and NZKMB has included its G&A expenses in the COP figures for the kiwifruit.

DOC Position

We disagree with petitioners that respondent understated kiwifruit costs and overstated the total orchard costs by using a cost of goods sold ratio based on the kiwifruit COM relative to all other costs. Where growers had multiple crops, respondent allocated costs between kiwifruit and other crops. Since respondent used the unpacked COM to allocate costs among all orchard crops, inclusion of packing cost for allocation purposes in the cost of kiwifruit and not for other crops would prejudice the results. Therefore, we have accepted respondent's methodology in these final results.

We agree with respondent that normally the Department does not consider packing expense as part of COM for the allocation of G&A. Therefore, we have accepted respondent's treatment of the packing expense.

Grower-Specific Comments

Grower 1

Comment 17

Petitioners argue that fertilizing, pollination, pruning, shelter, labor, and other expenses for Grower 1 should be recalculated based on the Department's revised ratio of kiwifruit area to total area in the preliminary results. Petitioners further contend that the grower did not include all costs for spraying.

DOC Position

We agree with petitioners in part. Because headlands, sidelands, and shelterbelts require regular pruning and maintenance, certain expenses such as pruning, shelter, and labor should be allocated on the basis of gross kiwifruit area. However, we disagree with petitioners about the allocation of fertilizer and pollination expenses. The fertilizer and pollination expenses are not applicable to headlands, sidelands, and shelterbelts, hence, we have allocated these expenses over the productive area only for the final results.

With regard to the spraying costs, we agree with petitioners that the grower's financial statement does not support the deduction claimed by respondent. Accordingly, we have recalculated the spraying expense for this grower.

Comment 18

Petitioners argue that the respondent miscalculated the depreciation expense

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because its starting point is not an actual depreciation but an amount adjusted for profits and losses on disposal of assets. Petitioners further contend that all depreciation related to kiwifruit reported in the partnership's financial statement also appears in the grower's assets. Therefore, petitioners argue that the full value of the depreciation of the assets should be dedicated to this grower because the assets are directly related to his property.

DOC Position

We agree with petitioners in part. The Department normally uses actual depreciation expenses, exclusive of any gains or losses. Therefore, we have made adjustments to the reported depreciation amount in the final results to reflect the total depreciation this grower experienced.

With regard to petitioners' second argument, we disagree that the full value of the partnership's depreciation expense should be dedicated to the current grower because it is not clear from the record that the current grower was the sole owner of the assets in question in the partnership. Therefore, we have not made adjustments to the partnership's depreciation expense in the final results.

Comment 19

Petitioners argue that the fact that the ownership of the kiwifruit property changed during the POR and that the original property was split complicated the calculation so much that the reported labor does not provide supportable grounds for deriving this grower's labor expenses. Petitioners contend that the Department should compute this grower's labor cost based on the methodology suggested by petitioners in Comment 14.

DOC Position

We disagree. Respondent's methodology of allocating costs based on land area is an acceptable methodology in this case. Without a more accurate alternative, we accepted respondent's labor cost allocation as an appropriate estimation of the cost of cultivating kiwifruit. Accordingly, we have accepted respondent's methodology for the final results.

Comment 20

Petitioners argue that as a result of respondent's deduction of picking and packing expenses from the COM, the calculation of this grower's total cost of goods sold is erroneous. Furthermore, petitioners contend that the costs added by respondent for the value of animal stock sold, shearing wages, management, farm working expenses, repairs and maintenance, depreciation, rates (property taxes) and vehicle expense are in error because the value of animal stock sold as described in the grower's submission does not represent actual costs of producing the goat, deer and sheep stock sold. According to petitioners, respondent's inclusion of these values resulted in grossly overstated total costs. Petitioners assert that, if these values are included, the "value" of the kiwifruit plantation should also be included.

Respondent argues that neither the value of the livestock retained, and not sold, nor the value of the orchard are included in the cost of sales it provided to the Department. Thus, respondent asserts that petitioners' argument that the value of the unsold orchard should be included in the allocation is without merit. Furthermore, respondent contends that petitioners' argument is factually unsound because U.S. GAAP governing the valuation of livestock held for sale specifies that the value of the livestock is the acquisition price, if any, plus the cost of feed and other costs of maintaining the livestock until sold. According to respondent, for tax reporting purposes in New Zealand, the principle is the same: the cost of sales is the cost of developing (*i.e.*, raising) the livestock. Respondent further contends that each year the New Zealand Inland Revenue, the tax authority in New Zealand, publishes a schedule which specifies the expected cost of developing livestock. Respondent maintains that this schedule is specific with respect to breed, sex, and maturity, and that it is this value that respondent used in its response. Respondent argues that the Department normally accepts the accounting principles of the respondent's home country, and that in the case of this grower the accounting principle is the same as that used in the United States. Therefore, respondent argues that the Department should use the cost as reported by respondent in the allocation of G&A as it was based on New Zealand GAAP and reasonably reflects actual cost.

DOC Position

With regard to the issue of picking and packing expenses in the COM, we disagree with petitioners. (See our position in response to Comment 16.)

We disagree with petitioners' second comment that the value of animal stock sold by this grower does not represent the actual cost of producing the goat, deer, and sheep. The Department normally accepts the accounting principles of the respondent's home country, and in the case of this grower the accounting principle is not distortive. Therefore, we have accepted respondent's methodology in the allocation of G&A for this grower.

Comment 21

Respondent contends that only productive hectares and not non-producing hectares should be assigned orchard set-up costs.

DOC Position

Since we have accepted respondent's methodology of allocating orchard set-up costs for the reasons explained above (see DOC position under Comment 6), respondent's comment in this instance is inconsequential.

Comment 22

Respondent contends that pasture land must bear an appropriate share of management, repairs and vehicles expenses because it is an integral part of the orchard's operations.

DOC Position

We agree that pasture land should bear a share of management, repairs and vehicles expenses. Accordingly, we have made adjustments for this grower's management, repairs and vehicle expenses in the final results.

Grower 2

Comment 23

Respondent argues that the Department has no justification for relying on BIA for the COP expenses of Grower 2. Respondent claims that the Department should use the grower's submitted costs. Respondent alleges that, contrary to the Department's preliminary analysis, the grower did not own an additional orchard during the POR. Respondent further argues that Grower 2 reported all interest and management expenses in its questionnaire response to the Department.

Petitioners argue that since respondent provided incomplete and inconsistent information for this grower, it is not possible to determine whether all expenses were reported.

DOC Position

We disagree with respondent. In the Department's letter of December 13, 1993, the Department clearly instructed the respondent to review the list of sampled growers and "determine (1) whether any of these growers is related to another grower. * * *" These instructions in no way restricted the reporting of related growers to those included in the sample and any related

grower should have been reported. In addition, previously the Department, in its October 14, 1993, letter, stated that "* * * it is important that you supply us with the information on growers which are related and, as such, should be treated as single entities." Moreover, the letter states that "If you do not provide this information, we will assume that the growers identified in your October 6, 1993, submission are not related and treat them as separate entities when drawing our sample. However, if we treat these growers as separate entities and subsequently discover that our sample includes a farm that should have been consolidated, we may have to resort to the best information available as required by section 776(b) of the Tariff Act of 1930, as amended, in determining the cost for that particular farm for the purpose of establishing the costs of the grower."

At verification, the Department, in a random review of invoices for this grower, noted an invoice which was made out in the name of an orchard that had not been reported to the Department. The grower claimed at that time that the orchard listed on the invoice was the orchard that had been reported as sold. The Grower's records did not support this claim. The name of the sold orchard was not identified in the grower's response; only the MAF number was listed. Grower 2's records reviewed at verification showed the name of the orchard with the MAF number reported as sold; that name was different than the name listed on the invoice. By way of explanation, the grower claimed that the orchard operated under two different names, but offered no evidence to support that claim. Furthermore, our review of NZKMB records did not support the grower's claim. The NZKMB records for the orchard listed on the invoice showed Grower 2 as the owner and listed a different MAF number than the one reported by Grower 2 for the sold orchard. Thus, neither the grower's records nor the NZKMB records supported Grower 2's claim that the orchard listed on the invoice and the orchard sold are one and the same.

Because the Department could not verify the Grower's claim, we concluded that the related orchard on the invoice was not reported to the Department. By failing to report all related orchards, the grower failed to report all relevant costs. Thus, we have maintained our application of BIA for Grower 2. In light of the Department's determination to use BIA regarding this grower, we need not address respondent's allegation regarding management and interest expenses.

Grower 3

Comment 24

Petitioners assert that respondent reported an imputed labor cost for this grower rather than an actual labor cost. Petitioners argue that this imputed labor value is understated and should be recalculated based on the methodology they described in reference to comments on COP (Comment 14).

DOC Position

We disagree. According to this grower's response, summer and winter pruning was performed by the owner who worked part-time on the orchard. Respondent computed the cost of pruning for the two sampled growers in the Bay of Plenty region who had contracted out for pruning and based on their cost imputed the cost of pruning for this grower. Without a more accurate alternative, we accepted respondent's methodology. Therefore, we have used respondent's figure for the final results.

Comment 25

Petitioners note that the respondent reported an incorrect value for interest expense. Petitioners urge the Department to scrutinize respondent's figures and adjust the interest claim.

DOC Position

In our preliminary results, we did not include respondent's value for the interest expense in our analysis. The Department only allows an offset of interest expenses by short-term interest income. Thus, no change in our calculations is necessary.

Grower 4

Comment 26

Petitioners argue that this grower's allocations of certain direct and indirect costs to kiwifruit based on the ratio of kiwifruit canopy area to total cultivated area or on the percentage of kiwifruit revenue of the grower's total revenue are flawed. Furthermore, petitioners support the Department's decision to recalculate expenses based on the ratio of total kiwifruit area to total cultivated area in the preliminary results.

Respondent argues that the Department allocated farm expenses among the grower's various crops incorrectly by allocating non-productive headlands and sidelands area only to kiwifruit, while ignoring the headlands and sidelands that surround the grower's passionfruit orchard.

DOC Position

We agree, in part, with petitioners' argument regarding allocation of costs between canopy and non-productive areas. Costs, such as fertilizers, that are directly applicable to the canopy area only, should be allocated exclusively to productive areas (see our position under Comment 8). However, costs applicable both to canopy and non-canopy areas should be allocated over the gross kiwifruit area. Accordingly, we have made an adjustment to the fertilizer expenses for this grower.

Regarding respondent's argument that the Department ignored headlands and sidelands surrounding the passionfruit orchard, because the respondent did not provide an exact breakdown among headlands, sidelands, and shelterbelts for either kiwifruit or passionfruit, the Department decided to impute the area devoted to headlands, sidelands, and shelterbelts for cost allocation purposes Furthermore, we could not firmly establish from this grower's response whether shelterbelts, headlands, and sidelands were also applicable to the passionfruit crop. Therefore, we imputed shelterbelts, headlands, and sidelands for kiwifruit only.

Comment 27

Petitioners maintain that respondent allocated "standing" charges to kiwifruit on the basis of the ratio of kiwifruit expenses to all operating expenses. Petitioners argue that some of these operating expenses were for contracting which occurs off-farm and is not financing or mortgage intensive. Therefore, according to petitioners, the Department should recalculate set up costs for this grower by allocating all interest expenses to kiwifruit.

DOC Position

We disagree. Respondent allocated interest charges to kiwifruit on the basis of the ratio of kiwifruit expenses to all operating expenses. There is no evidence on the record that indicates that all interest expense should be dedicated to kiwifruit. Therefore, we have used respondent's allocation in the final results.

Grower 5

Comment 28

Petitioners argue that the Department should revise its allocation of shelter costs based on land area. According to petitioners, given that the area of shelter devoted to each crop is known, a more accurate approach would be to calculate kiwifruit shelter area as a percentage of total shelter area.

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DOC Position

We disagree with petitioners. Since it was not possible to identify shelter costs for a specific crop or activity, we imputed the shelter cost attributable to kiwifruit based on land area. The methodology suggested by petitioners is not necessarily more accurate than the one used by the Department in the preliminary results. Therefore, we have not made any adjustments in the final results.

Comment 29

Respondent argues that the Department should allocate orchard expenses using net canopy area. Furthermore, respondent argues that the pastoral portion of the farm should be included in the allocation of orchard expenses.

DOC Position

We agree with respondent regarding allocation of certain orchard expenses over net canopy area (*see* our response to Comment 8). However, we disagree with respondent regarding the allocation of all orchard expenses over the pastoral portion of the farm (*see* our position under Comment 9). Accordingly, we have adjusted certain orchard expenses for this grower.

Grower 6

Comment 30

Petitioners argue that this grower's labor cost should be recomputed because the reported cost is imputed rather than actual.

DOC Position

We disagree. In this case, certain farm functions were performed by the owner who worked part-time on the orchard. Respondent computed the imputed labor cost for this grower based on the prevailing wages for unionized farm workers in New Zealand. Without a more accurate alternative, we accepted respondent's methodology as an appropriate estimation of the labor cost. Accordingly, no adjustment has been made for the final results.

Grower 7

Comment 31

Petitioners argue that this grower's actual labor costs should be used to reflect its own labor and as a surrogate for other growers' labor costs.

DOC Position

We used this grower's actual labor costs, not imputed costs, in the preliminary results and in these final results.

We disagree with petitioners concerning the use of this grower's labor costs as a surrogate for other growers. (*See* DOC position under Comment 14.)

Comment 32

Petitioners maintain that this grower has two properties: one property developed by the grower and the other purchased from another party. For the purchased property, petitioners assert that the grower's calculation of set-up costs excluded the amount for improvements. Petitioners insist that the Department should recalculate the set-up costs by including the amount of improvements and re-amortize the orchard set-up costs over 20 years instead of 35 years.

Respondent argues that all assets related to the orchard are recorded in the grower's fixed asset register and that the depreciation of these assets is already included in the COP submitted to the Department. Respondent further contends that the inclusion of the same assets in the orchard set-up costs would result in double counting of these assets.

DOC Position

We agree with petitioners that the orchard set-up costs should be amortized over 20 years instead of 35 years. (*See* our position under Comment 7.) Accordingly, we have adjusted the orchard set-up costs for this grower.

We disagree with petitioners regarding the inclusion of certain assets related to land improvement expenses in orchard set-up costs because the depreciation of these assets is already included in the COP. Therefore, we have accepted respondent's methodology for these final results.

Grower 8

Comment 33

Petitioners contend that labor costs should be recalculated because this grower raised multiple crops and did not differentiate labor costs. According to petitioners, this grower's labor costs should be recalculated based on Grower 7's labor costs.

DOC Position

We disagree. Respondent's methodology of allocating costs based on land area is an acceptable methodology in this case. Without a more accurate alternative, we accepted respondent's methodology as an appropriate estimation of the labor cost. Accordingly, we have used respondent's allocation for the final results.

Comment 34

Respondent argues that the Department should allocate horticultural expenses on net orchard area and should not exclude pasture land from its calculation of orchard expenses.

DOC Position

We agree, in part, with respondent regarding allocation of certain orchard expenses on orchard area which includes pasture land. (*See* our position under Comment 9.) Accordingly, we have adjusted certain orchard expenses for this grower in the final results. However, we disagree with respondent regarding the allocation of orchard expenses on net orchard area. (*See* our position under Comment 8.)

Grower 9

Comment 35

Petitioners argue that this grower did not report rates for one of the properties which produced kiwifruit and contend that the Department should calculate rates for this property to ensure that all costs are included in the COP calculation.

DOC Position

We disagree. This grower did not own the second property and simply purchased mature fruit in an arm's-length transaction. Rates and all other expenses associated with the cultivation of kiwifruit were accounted for in the price this grower paid for the mature fruit. Thus, this grower did not incur any expense related to rates. Accordingly, we have not added the rates expense for this grower in these final results.

Comment 36

Petitioners argue that since the grower sold kiwifruit produced on two properties and for one property did not calculate orchard set-up costs, the Department should estimate an amount based on multiplying the orchard set-up cost for the first property by the ratio of the second property's canopy hectares to the first property's canopy hectares.

Respondent contends that because the grower purchased mature fruit on the vine, the purchase price included all the costs of cultivation including labor, orchard set-up costs and property taxes.

DOC Position

We disagree with petitioners and respondent. In determining whether sales have been made at less than the COP, prices should not be substituted for some of the costs. Accordingly, we have disregarded the purchased kiwifruit's costs and the quantity from the COP analysis.

Grower 10

Comment 37

Petitioners argue that this grower's allocation of costs based on land area usage does not reflect the division of farm expenses. Petitioners request that the Department reallocate the expenses on the basis of orchard revenue. Petitioners further argue that since this grower raised multiple crops and reported imputed labor costs, labor costs for this grower should be recalculated.

DOC Position

We disagree. The Department verified this grower's costs in New Zealand and found the methodology of allocating costs based on land area to be appropriate. The methodology suggested by petitioners does not necessarily provide a more accurate estimate of orchard costs. Therefore, we have accepted this grower's allocation methodology.

Comment 38

Petitioners argue that respondent deducted picking and packing expenses from total orchard working expenses. Furthermore, according to petitioners, respondent deducted the imputed labor and management costs when calculating the kiwifruit COM. Petitioners request that the Department recalculate the G&A expenses for this grower by adding packing and imputed labor expense in the calculation of ratio for G&A expenses.

DOC Position

We agree, in part, with petitioners that respondent's methodology for calculating G&A expenses is inappropriate because it excludes the imputed labor expense. This imputed labor expense is a part of COM and should be included in the calculation of G&A ratio. Accordingly, we have made adjustment to this grower's G&A expense. However, we disagree with petitioners regarding the inclusion of packing expense. (See our position under Comment 16.)

Grower 11

Comment 39

Petitioners maintain that this grower bought packed kiwifruit from another farm and resold it to NZKMB and that this grower included, in its cost information, payment it made to the owner of the other farm. Petitioners argue that this is a faulty methodology because it mixes costs and prices. Furthermore, petitioners contend that, in an investigation into whether sales have been made at prices below COP, price should not substituted for some of the costs. Petitioners insist that the Department remove the cost and the quantity of the purchased kiwifruit from the grower's COP.

DOC Position

We agree with petitioners that in determining whether sales have been made at less than the COP, prices should not be substituted for some of the costs. Accordingly, we have disregarded the purchased kiwifruit's costs and the quantity from the COP analysis.

Comment 40

Petitioners argue that this grower deducted a portion of contracted labor income from the reported imputed labor amount. Petitioners maintain that contracted labor income does not offset non-contracted labor for the grower's kiwifruit operation and, therefore, the Department should remove this offset from the calculation.

DOC Position

We agree with petitioners that the grower's contracted labor income does not offset non-contracted labor for the grower's kiwifruit operation. The contracting income is unrelated to kiwifruit operations. We have made the appropriate adjustment to this grower's calculations for the final results.

Comment 41

Petitioners argue that respondent's approach in calculating interest expense for this grower is questionable because it appears to be based on a subjective valuation of the assets. Petitioners argue that the interest expense should be recomputed to ensure that all interest related to kiwifruit is included in the COP.

DOC Position

We agree with petitioners that, where possible, it is preferable to use actual cost in reporting expenses. This grower's financial statement shows the actual cost of assets. Therefore, it is appropriate to use the actual asset value to calculate the interest expense. We have revised the interest expense for this grower in the final results.

Grower 12

Comment 42

Petitioners note that, although the Department's preliminary analysis memorandum discusses a recalculation of this grower's rates expense, the Department used in its calculations the expense as reported. Petitioners urge the Department to use the amount calculated in the preliminary analysis memorandum, since this figure more accurately captures the rates expense.

DOC Position

Because respondent's figure understated the actual rates expense, we intended to recalculate this expense by allocating it over correct orchard area. For these final results, we have used our revised figure.

Comment 43

Petitioners argue that since this grower raised orchids as well as kiwifruit, certain labor costs for this grower were included in direct materials and should be recalculated.

DOC Position

We disagree with petitioners that certain costs should be recalculated because the labor costs in question were included in direct materials. For the reasons explained in our response to Comment 14, we have accepted respondent's classification of these expenses.

Grower 13

Comment 44

Petitioners argue that the Department should reject respondent's deductions for rent received and sale of sundries from set-up costs.

DOC Position

We disagree with petitioners. For the reasons explained in response to Comment 11, we have accepted respondent's deduction for rent received from the orchard set-up costs.

With regard to sundry income, the amount in question is inconsequential for our analysis. Therefore, we have not made an adjustment for this amount in these final results.

Grower 14

Comment 45

Petitioners argue that the Department should reject the contracted labor income offset claimed in the labor expense category by this grower because respondent has not demonstrated that contracted income was derived from actual labor performed. In addition, petitioners argue that any adjustment should be limited to the actual labor performed. Petitioners also argue that the Department should reject respondent's adjustment to labor expense for contracting income. Petitioners maintain that the income should be adjusted for overhead and profit, or, alternatively, that the actual labor expense identifiable to the contracting income be deducted

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DOC Position

We agree with petitioners in part. As a result of verification in New Zealand, the Department has determined that the contracted income was an appropriate offset against grower's labor costs because contract income included an element of labor cost which was also included in the grower's total labor costs. The disallowance of this offset would result in the inclusion of labor costs unrelated to this grower's production costs of its own kiwifruit crop. However, we agree with petitioners that the contracted labor income should be adjusted for overhead and profit. Accordingly, we have adjusted the labor expense for this grower in the final results.

Comment 46

Petitioners argue that respondent improperly omitted an amount of interest expense. Petitioners maintain that this amount should be added to the interest calculated for the parent company.

DOC Position

The interest amount in question was reported in the grower's supplemental response and we included it in the COP analysis for both the preliminary and final results.

Comment 47

Petitioners argue that, since this grower did not report an expense for rates, the Department should calculate rates for this grower.

Respondent argues that the grower leased the orchards at arm's length from unrelated parties and the lease payments constituted the entire compensation to the owner for the use of orchards.

DOC Position

We agree with respondent. The benchmark for determining costs in this case is the cost of growing kiwifruit to the current grower. This grower leased orchards from an unrelated party in an arm's-length transaction. Lease payment includes rates expense. Therefore, we have not added any additional rates' expense in our calculations.

Comment 48

Petitioners argue that this grower did not report any set-up costs and that respondent's claim that the leases for leased properties included set-up costs is unsupported. Petitioners contend that the Department should impute set-up costs for this grower

Respondent argues that the grower leased the orchards at arm's length from unrelated parties and that the lease payments constituted the entire compensation to the owner for the use of orchards.

DOC Position

We agree with respondent. This grower leased established orchards at arm's length from unrelated parties. The lease payments constituted the entire compensation to the owner for the use of orchards. Thus, the lease payment effectively reflects the lessor's portion of orchard set-up costs. Accordingly, we have accepted respondent's claim regarding set-up costs.

Comment 49

Petitioners argue that respondent understated the G&A expenses for this grower. Petitioners request that the Department recalculate the G&A expense for this grower.

DOC Position

We disagree. First, the Department verified this grower's cost in New Zealand and made certain adjustments to its G&A expenses for the preliminary results. Second, petitioners have not explained why respondent's reported G&A expense is not accurate. No additional adjustment is warranted.

Grower 15

Comment 50

Petitioners argue that certain direct and indirect expenses for this grower should be recalculated because most expenses were classified as common and allocated to kiwifruit or cattle/other on the basis of land area. Petitioners further assert that the allocation to cattle/other is unreasonable because the kiwifruit vines were not cut down and the cattle were not introduced until after the harvest, which occurred two to three months after the end of the period covered by the financial statement.

In addition, petitioners argue that insurance costs should be expensed as of the time incurred since the future financial statements are not likely to show any liability for this cost.

DOC Position

We disagree with petitioners. Respondent's methodology of allocating costs based on land area is an acceptable methodology in this case. Although cattle were not fully introduced into the grower's operations before the kiwifruit harvest, nevertheless, the grower incurred development costs during the POR that were related to the establishment of the new cattle operations. Therefore, we accepted respondent's cost allocation as an appropriate estimation of the cost of cultivating kiwifruit. Accordingly we have not adjusted respondent's figure for the final results.

With regard to petitioners' argument concerning the insurance premium, we disagree with petitioners because GAAP in New Zealand allows entities to amortize the value of insurance premiums for loans over the life of loan Accordingly, we have not adjusted respondent's costs for insurance premiums in the final results.

Comment 51

Petitioners argue that the allocation of interest expense on the basis of land area is not reasonable for this grower because it understates the interest expense applicable to kiwifruit. Petitioners contend that this expense should be recalculated.

DOC Position

We disagree with petitioners. Respondent's methodology of allocating interest based on land area is reasonable because it attempts to approximate actual expense in terms of the relative resources devoted to the kiwifruit in relation to other activities on the farm. Therefore, we have accepted respondent's allocation of interest expenses.

Grower 16

Comment 52

Petitioners argue that the Department's preliminary analysis memorandum suggests that the Department intended to recalculate the "other" category of expense for this grower. Petitioners urge the Department to recalculate the "other" expense for the final results.

DOC Position

Because respondent's figure understated its actual "other" expense category, we intended to reallocate this expense by orchard area. For these final results, we have used the revised figure.

Comment 53

Petitioners argue that the Department should recalculate labor cost for this grower because the grower raised multiple crops and reported imputed, rather than actual, labor cost.

DOC Position

We disagree with petitioners. Respondent's methodology of allocating costs is an acceptable methodology in this case. Respondent reported direct-labor costs other than owner labor based on his financial statements. Without a more accurate alternative, we accepted respondent's cost allocation as an appropriate estimation of the cost of cultivating kiwifruit Accordingly, no

adjustment has been made to respondent's information for the final results.

Comment 54

Respondent argues that the Department should reallocate horticultural costs based on net orchard area because the Department failed to account for the headlands and sidelands of other orchard crops.

DOC Position

We disagree. Since respondent did not provide an exact breakdown between canopy, shelterbelts, headlands, sidelands, pasture, and residential area, the Department imputed the land area devoted to headlands, sidelands, and shelterbelts. In addition, this grower's response to the Department's questionnaire indicated that the pasture area was leased to another party. Headlands, sidelands, and shelterbelts are crucial to growing kiwifruit. However, respondent did not put forward any support that demonstrated that headlands, sidelands, and shelterbelts are an integral part of this grower's other crops. Without any contrary evidence on the record, the Department could only conclude that the land area for headlands, sidelands, and shelterbelts applies solely to kiwifruit production.

Grower 17

Comment 55

Petitioners argue that the Department should incorporate into its COP analysis the cost of the spray expense that the grower sold to a third party because the grower failed to provide an invoice for it at verification. Furthermore, petitioners contend that there is no indication that the sale price for the spray was the same as the grower's purchase price for the spray. Petitioners argue that if the resale price of the spray was higher, the Department should ensure that the actual costs are not distorted by a profit the grower may have made on the sale.

DOC Position

We disagree with petitioners. The Department verified this grower's costs, including spray costs, in New Zealand by tracing it from the original invoice to the grower's bank account. We have found them to reflect the actual costs of producing kiwifruit. Accordingly, no adjustment to the grower's costs for the spray expense has been made in the final results.

With respect to petitioners argument regarding the resale price of the spray, the Department has made no adjustment for potential profits. The total cost of the spray and the total amount of revenue received by respondent for the resold spray was verified by the Department. The Department was able to determine that potential profit incurred on the resale of the spray would have no significant impact on the dumping margin. Thus, pursuant to 19 CFR § 353.59, we have disregarded this insignificant adjustment.

Comment 56

Petitioners contend that since this grower raised apples as well as kiwifruit, the Department should disregard respondent's allocation and recompute an imputed labor cost for the grower's labor.

DOC Position

We disagree. Respondent's methodology of allocating costs based on orchard land area is an acceptable methodology in this case. Without a more accurate alternative, we accepted respondent's cost allocation as an appropriate estimation of the cost of cultivating kiwifruit and have used it in these final results.

Comment 57

Respondent argues that the Department should allocate horticultural costs based on net orchard area because this grower's other crops have headlands, sidelands, and shelterbelts around them.

DOC Position

We agree with respondent in part. In the case of this particular grower, apple and kiwifruit crops were planted together and the Department verified that both crops were surrounded by headlands, sidelands, and shelterbelts. Although the Department recognizes that shelterbelts are not crucial to the apple trees, since both crops were planted side-by-side, we have revised some of this grower's costs and allocated them on the basis of net area only in the final results.

Comment 58

Respondent contends that the Department should not allocate to kiwifruit the entire depreciation cost of the jeep because it is a luxury vehicle used as the family car and not in the orchard business.

DOC Position

We disagree with respondent because the depreciation expense for the jeep was fully allotted to the orchard in the grower's financial statement. Absent specific evidence to the contrary, we consider expenses recorded in a company's financial statements to reflect actual expenses incurred in its operations. *See Final Results of Sales at Less Than Fair Value, Sweaters Wholly or in Chief Weight of Man-Made Fiber From Taiwan*, 55 FR 34585 (1990). Respondent has not presented any documentary evidence in support of its claim that the depreciation expense was not an actual expense. Accordingly, we continue to rely on the grower's financial statement for orchard expenses in the final results.

Comment 59

Respondent argues that the Department improperly denied a credit to COP for packaging sold by the grower and contends that it is appropriate for the Department to allow such a packaging credit.

DOC Position

We disagree with respondent. The credit in question was granted by the packhouse for kiwifruit packaging specifically to be used in future years. However, since the grower is no longer in the kiwifruit business, he would not be able to use this credit for kiwifruit packaging. Accordingly, we have not allowed for such a credit in our COP analysis.

Grower 18

Comment 60

Petitioners argue that, since this grower raised apples as well as kiwifruit, its labor cost should be recomputed to reflect actual costs of growing kiwifruit.

DOC Position

We disagree. Respondent reported direct labor as recorded in the grower's financial statement and the Department reviewed this grower's financial statements in New Zealand. The Department found the methodology of allocating labor costs for this grower to be reasonable. Without a more accurate alternative, we accepted respondent's cost allocation as an appropriate estimation of the cost of cultivating kiwifruit. Accordingly, we have used respondent's allocation for the final results.

Comment 61

Petitioners argue that since the grower did not report rates, the Department should calculate rates for this grower.

DOC Position

We disagree with petitioners. We verified this grower's expenses in New Zealand. This grower did not incur an expense for rates during the POR. Therefore, we did not include such an

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expense for this grower in our COP calculation.

Comment 62

Respondent contends that the Department should allocate horticultural costs based on net orchard area because, along with kiwifruit, this grower's other crop was also surrounded by headlands, sidelands, and shelterbelts. In addition, respondent asserts that the Department should include only those costs in the COP analysis that were incurred by the current grower during the POR.

DOC Position

We agree with respondent in part. In the case of this particular grower, apple and kiwifruit crops were planted side-by-side and the Department verified that both apples and kiwifruit crops were surrounded by headlands, sidelands, and shelterbelts. Although the Department recognizes that shelterbelts are not crucial to the apple trees, since both crops were surrounded by shelterbelts, we have revised certain costs and allocated them over net area only.

With regard to respondent's second argument, we agree with respondent that the benchmark for determining costs in this case is the cost of growing kiwifruit to the current owner. Therefore, we have excluded costs outside the POR from the COP calculations for this grower.

Grower 20

Comment 63

Petitioners assert that this grower has omitted repacking and interest expenses from its cost calculation. Furthermore, petitioners contend that gains on the sale of fixed assets in G&A expenses should be excluded. According to petitioners, since respondent claimed that coolstore costs were incurred by NZKMB, rebates from coolstore should not be deducted from packing costs.

Respondent maintains that all repacking costs have been included in NZKMB's cost response because NZKMB is responsible for these costs and reimburses the growers for any repacking expenses. Furthermore, respondent argues that interest expense was allocated on a consolidated financial statement basis which includes all debt, both corporate and for the orchard. According to respondent, gains on sales of assets are a legitimate inclusion in the G&A expense, and the coolstore rebate is a reduction in the packing cost paid to the packhouse/coolstore and should be included in COP calculation.

DOC Position

We agree with respondent that COP is allocated only to fruit sold. Thus, all costs have been properly allocated. Since NZKMB is responsible for repacking costs and reimburses the growers for these expenses, all repackaging costs have already been included in NZKMB's response. Respondent reported the grower's interest expense on a consolidated financial statement basis which includes corporate and orchard interest.

We agree with respondent that gains on sales of assets are a proper inclusion in the G&A expense and that the coolstore rebate is a reduction in the packing cost paid to the packhouse/coolstore and, therefore, is properly included in the COP.

Other Comments

Comment 64

Respondent contends that the Department failed to adjust NZKMB's interest expenses by the amount of interest NZKMB earned on short-term deposits. Respondent asserts that the Department normally permits an offset of interest expenses by short-term interest income, citing the *Final Determination of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France* (59 FR 14136, March 25, 1994).

DOC Position

We agree with respondent. Because of a clerical error the Department inadvertently did not adjust respondent's interest expenses by the amount of short-term interest income. We have corrected this clerical error for these final results.

Comment 65

Respondent contends that due to a clerical error in the computer program, the Department's model match exercise did not result in the most similar matches for the U.S. sales. Respondent urges the Department to ensure that comparisons are made on the most similar products.

DOC Position

We agree. Upon reviewing the computer program we found an error that did not allow for the most similar products to be compared to the U.S. merchandise. We have corrected the computer program for the final results.

Comment 66

Respondent argues that the Department failed to subtract the quantity adjustment amount from the quantity and that this manipulation is required to yield the actual quantity sold. Respondent urges the Department to correct this clerical error

DOC Position

We agree with respondent and have made the appropriate adjustments in the final results.

Comment 67

Petitioners argue that the Department should deduct U.S. repacking expenses in the calculation of ESP because repacking expenses represent costs for an operation performed in the United States and not an export packing expense.

DOC Position

We agree. We have made the appropriate adjustment in the final results.

Comment 68

Petitioners argue that the Department incorrectly entered a customer code in its computer program and urge the Department to correct this error. Furthermore, petitioners contend that the Department should add that particular customer's expense category to the movement expenses.

DOC Position

We agree with petitioners that an incorrect instruction in the computer program resulted in a erroneous customer code and did not add this customer's expense category to the movement expenses. We have corrected this clerical error in the final results.

Comment 69

Petitioners argue that in calculating PP, the Department treated certain expenses as indirect expenses. Petitioners assert that, as presented by NZKMB, these costs are direct expenses and, therefore, should be treated as such.

DOC Position

We agree. We have treated these expenses as direct expenses in the final results.

Comment 70

Petitioners argue that the Department incorrectly calculated U.S. packing expense by excluding labelling and tagging expenses in its sale-to-sale comparisons. Petitioners urge the Department to correct this clerical error by adding labelling and tagging expense to export packing.

DOC Position

We agree. Accordingly, we have made the appropriate adjustments in the final results.

Comment 71

Respondent argues that in calculating CV, the Department inadvertently double-counted packing costs by using the packing-inclusive cost of cultivation and then adding the packing costs again to the CV.

Petitioners assert that the Department did not use the actual packing cost in its calculations.

DOC Position

We agree with both petitioners and respondent. Upon reviewing our calculations, we found that we had inadvertently double-counted packing costs and did not use the actual packing costs. We have revised our calculations to reflect these adjustments in the final results.

Comment 72

Respondent argues that the Department improperly deducted credit expenses in calculating the net home market price to be compared to the COP. Additionally, respondent contends that the Department improperly included inventory carrying costs in the calculation of COP. To support its argument, respondent cites *Gray Portland Cement and Clinker from Japan; Final Results of Administrative Review* (58 FR 48826, 48831, September 20, 1993), in which the Department did not take into account imputed credit expense and inventory carrying costs when testing sales below the COP.

DOC Position

Upon reviewing our calculations, we found that we had inadvertently deducted credit expenses in calculating the net price to be compared to COP. We also inadvertently included inventory carrying costs in calculating the COP. We have corrected our calculations for the final results.

Comment 73

Respondent argues that the Department inadvertently double-counted pallet tagging and labelling expenses in the CV margin calculation by including these expenses twice in its calculations.

DOC Position

We agree. We have corrected our calculations for the final results.

Comment 74

Respondent argues that in testing whether sales were made below cost, the Department inadvertently used a one-month threshold, although the preliminary results indicated a threshold of "more than two months." According to respondent, the Department's practice in administrative reviews is to use a period of time greater than two months in implementing 19 CFR 353.51(a)(1), which allows the Department to disregard sales below cost in the calculation of FMV only if they are made "over an extended period" of time.

DOC Position

We inadvertently relied on a one-month threshold of sales below cost instead of a "more than two month" threshold in our preliminary COP analysis. We have corrected our calculations in the final results.

Comment 75

Petitioners argue that, in its CV calculations, the Department used a flawed formula for determining whether actual SG&A or the 10 percent of COM statutory minimum be used.

DOC Position

We agree. We have corrected this clerical error in the final results.

Final Results of Review

Upon review of comments submitted, the Department has determined that the following margin exists for the period November 27, 1991, through May 31, 1993:

Manufacturer/Exporter	Margin (percent)
New Zealand Kiwifruit Marketing Board	15.41

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentage stated above. The Department will issue appraisement instructions concerning the respondent directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed firm will be 15.41%; and (2) the cash deposit rate for merchandise exported by all other manufacturers and exporters who are not covered by this review will be the "all others" rate of 98.60 percent established in the less-than-fair-value investigation; in accordance with the Department practice. *See Floral Trade Council* v. *United States*, 822 F.Supp. 766 (1993), and *Federal Mogul Corporation*, 822 F.Supp. 782 (1993).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 16, 1994.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 94-23504 Filed 9-21-94; 8:45 am]
BILLING CODE 3510-DS-P

[A-583-806]

Small Business Telephone Systems and Subassemblies Thereof From Taiwan; Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Antidumping Duty Administrative Review.

SUMMARY: On January 18, 1994, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on small business telephone systems (SBTS) from Taiwan covering the period December 1, 1992 through November 30, 1993. We are now terminating that review.

EFFECTIVE DATE: September 22, 1994.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Michael Rill, Office of Antidumping Compliance, Import Administration, International

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Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION: On December 23, 1993, Bitronic Telecoms Co., Ltd. (Bitronic), a manufacturer/exporter of SBTS from Taiwan, requested that the Department conduct an administrative review of the antidumping duty order on SBTS from Taiwan covering the period December 1, 1992 through November 30, 1993. On January 18, 1994, the Department published in the **Federal Register** (58 FR 2593) a notice of initiation of an administrative review of the order. This notice stated that we would review this one manufacturer/exporter covering the period December 1, 1992 through November 30, 1993. On May 19, 1994, Bitronic requested that it be allowed to withdraw its request for a review and that the review be terminated.

Section 353.22(a)(5) of the Department's regulations states that "The Secretary may permit a party that requests a review under paragraph (a) of this section to withdraw the request not later than 90 days after the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so." Because no significant work has yet been done in this review, we have determined that it is reasonable to extend the 90-day time limit and to allow Bitronic to withdraw its request for review. *See Steel Wire Rope From Japon; Partial Termination of Antidumping Duty Administrative Reviews*, 56 FR 41118 (August 19, 1991). Furthermore, we note that no interested party objected to termination of the review. Accordingly, the Department is terminating this review.

This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is in accordance with section 353.22(a)(5) of the Department's regulations (19 CFR 353.22(a)(5)).

Dated: September 14, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary, for Compliance.

[FR Doc. 94–23503 Filed 9–21–94; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

[Docket No. 940949–4249]

RIN 0693–ZA01

Precision Measurement Grants Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform potential applicants that the National Institute of Standards and Technology (NIST) is continuing a program of research grants, formally titled Precision Measurement Grants, to scientists in U.S. academic institutions for significant, primarily experimental research in the field of precision measurement and fundamental constants. Applicants must submit an abbreviated proposal for preliminary screening: Based on the merit of the abbreviated proposal, applicants will be advised whether a full proposal should be submitted.

DATES: Abbreviated proposals must be received at the address listed below no later than 5 p.m. EDT on February 1, 1995. The semi-finalists will be notified of their status by March 24, 1995, and will be requested to submit their full proposals to NIST by 5 p.m. EDT on May 8, 1995. The successful applicants will be notified of their selection on or before August 15, 1995.

ADDRESSES: Applicants are requested to submit an abbreviated proposal (original and two (2) signed copies), using Standard Form 424 (Rev. 4/92) with a description of their proposed work of no more than five (5) double spaced pages. Standard Form 424A (4–92) and 424B (4–92) are also required. Copies should be sent to the following: Dr. Barry N. Taylor, Chairman, NIST Precision Measurement Grants Committee, Bldg. 245, Room C229, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001.

FOR FURTHER INFORMATION CONTACT: Technical questions concerning the NIST Precision Measurement Grants Program may be directed to the above address or call Dr. Taylor at (301) 975–4220. Prospective candidates are urged to contact Dr. Taylor before preparing their abbreviated proposal. Inquiries should be general in nature. Specific inquiries as to the usefulness or merit of any particular project, or other specific inquiries that deal with evaluation criterion can potentially impede the competitive selection process and therefore, cannot be answered.

Administrative questions concerning the NIST Precision Measurement Grants Program may be directed to the Grants Office at (301) 975–6329. Written inquiries should be forwarded to the following address: Grants Office, Acquisition and Assistance Division, Building 301/Room B129, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001.

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance Name and Number

Measurement and Engineering Research and Standards; 11.609.

Authority

As authorized by Section 2 of the Act of March 3, 1901 as amended (15 U.S.C. 272 (b)(2) and (c)(3)), NIST conducts directly, and supports through grants, a basic and applied research program in the general area of precision measurement and the determination of fundamental constants of nature. As part of this research program, NIST has since 1970 awarded Precision Measurement Grants to scientists in U.S. academic institutions for significant, primarily experimental research in the field of precision measurement and fundamental constants.

Award Period

NIST is now accepting applications for two new grants in the amount of $50,000 per year to be awarded for the period October 1, 1995, through September 30, 1996 (fiscal year 1996.) Each grant may be renewed for up to two additional years; however, future or continued funding will be at the total discretion of NIST based on such factors as satisfactory performance and the availability of funds.

Program Description

NIST sponsors these grants to encourage basic, measurement-related research in U.S. colleges and universities and to foster contacts between NIST scientists and those researchers in the U.S. academic community who are actively engaged in such work. The Precision Measurement Grants are also intended to make it possible for workers in U.S. academic institutions to pursue new measurement ideas for which other sources of support may be difficult to find.

Matching Requirements

The Precision Management Grants Program does not involve the payment of any matching funds and does not directly affect any state or local government.

Research Topics

There is considerable latitude in the kind of research projects that will be considered for support under the Precision Measurement Grants Program. The key requirement is that they are consistent with NIST's mission in the field of basic measurement science, for example:

(1) Experimental and theoretical studies of fundamental physical phenomena to test the basic laws of physics or which may lead to improved or new fundamental measurement methods and standards.

(2) The determination of important fundamental physical constants.

(3) The development of new standards for physical measurement of the highest possible precision and accuracy.

In general, proposals for experimental research will be given preference over proposals for theoretical research because of the greater expense of experimental work. Proposals from workers at the assistant and associate professor level who have some record of accomplishment are especially encouraged in view of the comparative difficulty aspiring researchers have in obtaining funds.

Typical projects which have been funded through the NIST Precision Measurement Grants Program include:

"Measurement of Fundamental Constants Using Three-Level Resonances in Hydrogen," Carl E. Wieman, University of Michigan.

"Quantum Limited Measurement of a Harmonic Oscillator," William C. Oelfke, University of Central Florida.

"Fine-Structure Constant Determination Using Precision Stark Spectroscopy," Michael G. Littman, Princeton University.

"Eötvös Experiment-Cryogenic Version," D.F. Bartlett, University of Colorado.

"A Test of Local Lorentz Invariance Using Polarized ^{21}Ne Nuclei," T.E. Chupp, Harvard University.

"A New Method to Search for an Electric dipole Moment of the Electron," L.R. Hunter, Amherst College.

"High Precision Timing of Millisecond Pulsars," D.R. Stinebring, Princeton University.

"Precision Optical Spectroscopy of Positronium," S. Chu, Stanford University.

"Quantum-Limited Cooling and Detection with Stored Ions," D.J. Heinzen, University of Texas/Austin.

Eligibility

Eligible applicants under the Precision Measurement Grants Program are limited to U.S. universities and colleges, professional institutes and associations, nonprofit organizations, and State and local governments.

Selection Procedure

To simplify the proposal writing and evaluation process, the following selection procedure will be used:

On the basis of the abbreviated proposals, four to eight semifinalist candidates will be selected by the NIST Precision Measurement Grants Committee and the Outside Review Committee to submit full proposals. The same committees will evaluate the detailed proposals, and on the basis of their evaluation, the two grantees for fiscal year 1996 will be selected.

Evaluation Criteria

The criteria to be used in evaluating the abbreviated proposals and final proposals include:

1. Importance of the proposed research to science—does it have the potential of answering some currently pressing questions or of opening up a whole new area of activity?

2. The relationship of the proposed research to measurement science—is there a possibility that it will lead to a new or improved fundamental measurement method, basic measurement unit, or physical standard? (Or to a better understanding of important but already existing measurement methods, measurement units, or physical standards?)

3. The feasibility of the research—is it likely that significant progress can be made in a three year time period with the funds and personnel available?

4. The past accomplishments of the applicant—is the quality of the research previously carried out by the prospective grantee such that there is a high probability that the proposed research will be successfully carried out?

Each of these factors are given equal weight in the selection process.

Paperwork Reduction Act

The Standard Forms 424, 424A, 424B, and LLL mentioned in this notice are subject to the requirements of the Paperwork Reduction Act and have been cleared by the Office of Management and Budget (OMB) under Control Numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046.

Application Kit

An application kit, containing all required application forms and certifications is available by calling Vickie Weedon, NIST Precision Measurement Grants Committee, (301) 975–6092. An application kit includes the following:

SF–424 (Rev 4/92)—Application for federal assistance

SF–424A (Rev 4/92)—Budget information—Non-Construction Programs

SF–424B (Rev 4/92)—Assurances—Non-Construction Programs

CD–511 (7/91)—Certification regarding debarment, suspension, and other responsibility matters; drug-free workplace requirements and lobbying

CD–512 (7/91)—Certification regarding debarment, suspension, ineligibility and voluntary exclusions—lower tier covered transactions and lobbying

SF–LLL—Disclosure of lobbying activities

SF–LLL–A—Disclosure of lobbying activities continuation sheet

Additional Requirements

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Preaward Activities

Applicants that incur any costs prior to an award being made do so solely at their own risk of not being reimbursed by the Government. Applicants are also hereby notified that notwithstanding any verbal assurance that they may have received, there is no obligation on the part of DoC to cover pre-award costs.

Primary Application Certification

All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

1. Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace

Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR

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Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying

Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater, and

4. Anti-Lobbying Disclosure

Any applicant that has been paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

5. Lower Tier Certifications

Grant recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DoC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DoC in accordance with the instructions contained in the award document.

Name Check Reviews

All for-profit and nonprofit applicants will be subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Executive Order Statement

This funding notice was determined to be not significant for purposes of Executive Order 12866.

False Statements

Applicants are reminded that a false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment as provided in 18 U.S.C. 1001.

Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received or;

3. Other arrangements satisfactory to DoC are made.

No Obligation for Future Funding

If an application is accepted for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award, increased funding, or extending the period of performance is at the total discretion of NIST.

Federal Policies and Procedures

Recipients and subrecipients under the Precision Measurement Grants Program are subject to all Federal Laws and Federal and Departmental policies, regulations, and procedures applicable to Federal financial assistance awards. The Precision Measurement Grants Program does not directly affect any state or local government. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Buy American-Made Equipment or Products

Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Dated: September 16, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–23502 Filed 9–21–94; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Requests for Assistance Under the Uniformed Services Former Spouses' Protection Act (USFSPA) for Air Force and Marine Retirees

AGENCY: Defense Finance and Accounting Service, Office of the Secretary, Department of Defense.

ACTION: Notice: Address change.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is giving notice that all requests for assistance under the Uniformed Services Former Spouses' Protection Act (USFSPA) and filing of requests for payments under the USFSPA for Air Force and Marine retirees and all garnishments for child support and alimony for Air Force and Marine retirees must be sent to Defense Finance and Accounting Service-Cleveland Center, Office of General Counsel, Code L, P.O. Box 998002, Cleveland, OH 44199–8002.

EFFECTIVE DATE: September 30, 1994.

ADDRESSES: Comments regarding this notice should be sent to Deputy Director Resource Management, Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, Crystal Mall 3, Room 416, Arlington, VA 22202–5000.

FOR FURTHER INFORMATION CONTACT: Mr. Joel Rossen at (216) 522–5420.

SUPPLEMENTARY INFORMATION: The payment of Air Force and Marine retired pay has transferred from the DFAS Denver and Kansas City Centers, respectively, to the DFAS Cleveland Center. Therefore, former spouse applications and garnishment orders for child support and alimony and the legal issues related thereto will be reviewed by the DFAS Office of General Counsel at the Cleveland Center.

Dated: September 16, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–23387 Filed 9–21–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Coastal Engineering Research Board (CERB); Meeting

AGENCY: U.S. Army Coastal Engineering Research Board, DOD.

ACTION: Meeting notice.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and AR 15–1, Committee Management, announcement is made of the following committee meeting.

Name of Committee: Coastal Engineering Research Board (CERB).

Date: 8–10 November 1994.

Place: U.S. Army Engineer Waterways Experiment Station's [WES] Coastal Engineering Research Center [CERC], Vicksburg, Mississippi.

Time: 8 November—8:30 a.m. to 5:30 p.m.; 9 November—8:00 a.m. to 5:30 p.m.; 10 November—8:30 a.m. to 10:15 a.m.

Theme: Coastal Research and Development (R&D).

Proposed Agenda: The morning session on November 8 will consist of a report of Chief of Engineers' initiatives and actions from the previous meeting; a presentation on the history of CERC/CERB/CERC Today and CERC 21; and a presentation on the Civil Works R&D Programs. Immediately after lunch, there will be a tour of models in the J.V. Hall Building. After the tour, the meeting will reconvene and presentations will include CERC Programs; and Monitoring Completed Coastal Projects, Coastal Field Data Collection Program. A tour of the Prototype Measurement and Analysis Branch Building will conclude the first day's activities.

The morning of November 9 will consist of presentations including Military Coastal Work, Scanning Hydrographic Operational Airborne Lidar Survey, Dredging Research Programs and Dredging Operations and Environmental Research, Coastal Environmentally Related Work and Civil Reimbursable Work. A tour of hydraulic models will follow lunch. After the tour, the meeting will reconvene, and presentations will include Numerical Modeling and Summary and Future Directions.

November 10 will be devoted to the recommendations of the CERB.

This meeting is open to the public; participation by the public is scheduled for 9:40 a.m. on November 10.

The entire meeting is open to the public subject to the following:

1. Since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements.

2. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Inquiries and notice of intent to attend the meeting may be addressed to Colonel Bruce K. Howard, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–23398 Filed 9–21–94; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Buckhorn Reservoir Expansion Project in Wilson County, NC

AGENCY: U.S. Army Corps of Engineers, Wilmington District, DOD.

ACTION: Notice of Intent.

SUMMARY: The city of Wilson, North Carolina, has made application for a Clean Water Act, Department of the Army Section 404 permit, to discharge fill material for the construction of a dam to impound water on Contentnea Creek, Wilson County, North Carolina. The proposed dam would be located immediately downstream of the existing Buckhorn Reservoir dam and would inundate the existing reservoir site. The existing reservoir is no longer adequate to meet the water supply needs of the city of Wilson. The proposed reservoir would meet the projected water supply needs of the city for the next 50 years.

ADDRESSES: Wilmington District, Corps of Engineers, Environmental Resources Branch, P.O. Box 1890, Wilmington, North Carolina 28402–1890.

FOR FURTHER INFORMATION CONTACT: Mr. William F. Adams, Environmental Resources Branch, (910) 251–4748 or Mr. David Franklin, Regulatory Branch, (910) 251–4952.

SUPPLEMENTARY INFORMATION: Construction of the proposed dam and reservoir requires a Clean Water Act, Department of the Army Section 404 permit, from the U.S. Army Corps of Engineers.

1. The proposed dam and reservoir would expand the existing municipal water supply reservoir. The proposed reservoir would inundate a total of 2,303 acres, including the existing 740-acre Buckhorn Water Supply Reservoir, with a normal pool at elevation 148 feet mean sea level, and provide a 29.0-million gallons per day safe yield of raw water for the city water supply.

2. The DEIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and will address the project's relationship to all other applicable Federal and State laws and Executive Orders. The DEIS will contain no designation of an alternative preferred by the U.S. Army Corps of Engineers. The decision on the Department of the Army section 404 permit application will be made with full consideration of the public interest after the comment period on the Final Environmental Impact Statement (FEIS) and the Section 404 public notice has concluded.

3. The scoping process has consisted of an interagency scoping meeting on November 6, 1990, to allow opportunity for agencies to identify issues, studies needed, and alternatives to be addressed. In addition, a Draft Environmental Assessment was sent to Federal and State agencies for review and comment on August 8, 1991.

4. The significant issues that will be addressed in the DEIS are the impacts of the proposed project on wetlands, fish and wildlife habitat, endangered species, and the social and economic considerations.

5. Fourteen alternatives to the proposed action are being evaluated including the no action alternative.

6. The DEIS is currently scheduled for distribution to the public in November 1994 and the FEIS is scheduled for distribution in June 1995.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–23399 Filed 9–21–94; 8:45am]

BILLING CODE 3710–GN–M

Intent To Prepare a Draft Environmental Impact Statement for Floodwater Retarding Structures, Coldwater River Watershed, Demonstration Erosion Control Project, Yazoo Basin, MS

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: Proposed floodwater retarding structures for the Coldwater River Watershed are an integral part of the overall or system plan for the control of erosion, sediment, and flooding in the Coldwater River Watershed. The structures will provide flood control storage to reduce peak flows on streams within this watershed system as well as serve as a sediment basin and function in the control of head cutting or on some streams.

ADDRESSES: USAED, Vicksburg, ATTN: CELMK–PD–Q, 2101 North Frontage Road, Vicksburg, Mississippi 39180–5191.

FOR FURTHER INFORMATION CONTACT: Mr. Wendell L. King, (601) 631–5967.

SUPPLEMENTARY INFORMATION: 1. *Proposed Action:* The proposed

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Coldwater Creek Watershed, Floodwater Retarding Structures project is a component of the Demonstration Erosion Control Project, which was initially authorized by Public Law 98–8, "The Emergency Jobs Appropriation Act of 1983." Public Law 98–50, "The Energy and Water Development Appropriation Act of Fiscal Year 1984," directed Joint effort by the U.S. Army Corps of Engineers and the U.S. Department of Agriculture, Soil Conservation Service, for the foothills areas of the Yazoo Basin.

2. *Alternatives.* The proposed floodwater retarding structures represent one element of the systems approach used to analyze and recommend solutions to the interrelated problems of flooding, sediment, and erosion control. Other elements of this system solution include grade control structures, bank stabilization, debris basins, and land treatments that have been evaluated in previous environmental documentation.

3. A. A scoping meeting is tentatively scheduled to be held in October 1994. Public notice will be published to inform the general public of the location, time, and date. All affected Federal, state, and local agencies and interested private organizations and groups will be invited to participate.

B. The Soil Conservation Service is a cooperating agency in this proposed project. The Environmental Protection Agency, U.S. Fish and Wildlife Service, and Mississippi Department of Wildlife, Fisheries and Parks will be invited to participate as cooperating agencies.

4. A Draft Environmental Impact Statement will be available for review by the general public during FY 96.

Kenneth L. Denton,

Army Federal Register Liaison Officer

[FR Doc. 94–23400 Filed 9–21–94; 8:45 am]

BILLING CODE 3710–PU–M

Intent To Prepare an Environmental Impact Statement for the Proposed Greybull Irrigation Dam, Cheyenne, WY

AGENCIES: U.S. Army Corps of Engineers, Omaha District, DOD; U.S. Bureau of Land Management, Wyoming, DOI.

SPONSORS: Greybull Valley Irrigation District, Emblem, Wyoming; Wyoming Water Development Commission, Cheyenne, Wyoming.

ACTION: Notice of intent.

SUMMARY: The proposed action is to construct a 150-foot high zoned earth embankment dam at the lower end of Roach Gulch, a dry tributary to the Greybull River. The dam would be 1700 feet long with a 150-foot wide earth channel spillway on the left abutment, and would be located primarily in the SW¼SW¼ of Section 23, T 51 N, R 98 W of Big Horn county. Water from the Greybull River would be diverted by means of a gated structure and delivered to the reservoir area via a 6-mile supply canal, some of which is existing. Water would be released from the dam back into the Greybull River by means of an 1100-foot earth channel, providing late-season irrigation water for 25,000 acres in the lower Greybull Valley. The project may provide secondary fishery benefits by providing winter minimum flows from the proposed dam and Upper and Lower Sunshine Reservoirs. The Greybull River Valley is located in southern Park and Big Horn counties in northwest Wyoming, approximately 25 miles southeast of Cody, Wyoming.

Alternatives being evaluated by the applicant include similar diversions into Blackstone Gulch or Rawhide Creek, as well as the enlargement of Upper Sunshine Reservoir, an existing storage reservoir. Conservation of existing water supplies, utilization of groundwater, as well as the "no action" alternative will be considered.

DATES: Public Scoping Meeting, October 26, 1994, 7:00 p.m. Emblem Gym, 3400 Road 10, Emblem, Wyoming.

ADDRESSES: Omaha District, Army Corps of Engineers, ATTN: CEMRO-PD-M, 215 N. 17th St., Omaha, Nebraska 68102–4978.

FOR FURTHER INFORMATION CONTACT: Mr. Robert S. Nebel, Chief, Environmental Analysis, Planning Division, (402) 221–4598.

SUPPLEMENTARY INFORMATION:

Future Schedule

Following review of comments received during scoping, data collection and analysis will begin for the Draft Environmental Impact Statement (DEIS). The Corps anticipates that the DEIS will be released for public review in June 1995. A Final Environmental Impact Statement is anticipated to be completed in early 1996.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–23470 Filed 9–21–94; 8:45 am]

BILLING CODE 3710–62–M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, September 28, 1994. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:00 p.m. at the Merrill Creek Reservoir Visitors Center, 116G Montana Road, Washington, New Jersey.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Holdover Project: Hatfield Quality Meats D–94–34.* An application for approval of a ground water withdrawal project to supply up to 5.4 million gallons (mg)/30 days of water to the applicant's processing facility from new Well No. 10, and to increase the existing withdrawal limit of 9.5 mg/30 days from all wells to 14.9 mg/30 days. The project is located in Hatfield Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

2. *New Jersey-American Water Company (Northern Division-Washington System) D–85–2 CP RENEWAL–2.* An application for the renewal of a ground water withdrawal project to supply up to 51.8 mg/30 days of water to the applicant's distribution system from Well Nos. 3, 4 and 5. Commission approval on August 2, 1989 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 51.8 mg/30 days. The project is located in Washington Township, Warren County, New Jersey.

3. *Borough of Bloomsbury D–90–14 CP.* An application for approval of a ground water withdrawal project to supply up to 4.65 mg/30 days of water to the applicant's distribution system from new Well No. 1, and to limit the withdrawal from all wells to 4.65 mg/30 days. The project is located in Bethlehem Township, Hunterdon County, New Jersey.

4. *Delaware County Prison D–93–46 CP.* A project to expand the applicant's 0.0967 mgd sewage treatment facilities to enable up to 0.135 mgd to be discharged by providing an interim seasonal auxiliary discharge to a proposed 27-acre spray irrigation area near the plant. The facilities will continue to serve the Delaware County Prison and the Camp Sunshine recreational area located in both Thornbury and Concord Townships, Delaware County, Pennsylvania. The facilities will continue to discharge to an unnamed tributary of the West Branch Chester Creek.

5. *Jackson Township Municipal Utilities Authority D–93–70 CP.* A project to abandon a 0.425 million gallons per day (mgd) sewage treatment plant which serves the Six Flags Great Adventure Amusement Park, convert it to a pump station and export wastewater from the Delaware River Basin (DRB). The applicant proposes to amend its service area so that wastewater generated by the proposed expansion of the Six Flags Great Adventure recreational park can be conveyed to the Ocean County Utilities Authority for treatment and discharge in the Atlantic Basin. Water will be provided via existing DRB wells operated by the applicant. The project is located in Jackson Township, Ocean County, New Jersey.

6. *Resorts USA, Inc. D–93–73 CP.* An application for approval of a ground water withdrawal project to supply up to 0.73 mg/30 days of water to the applicant's distribution system serving the developments of Saw Creek Estates and the Falls at Saw Creek, and the Outdoor World campground from new Well No. 11, and to retain the existing withdrawal limit from all wells of 22.8 mg/30 days. The project is located in Lehman Township, Pike County, Pennsylvania.

7. *Joseph Wick Nurseries, Ltd. D–94–2.* An application for approval of a ground water withdrawal project to supply water to the applicant's irrigation system from the new Ellery Farm Well, and to increase the existing withdrawal limit of 46.1 mg/30 days from all wells to 71.4 mg/30 days. The project is located in Kent County, Delaware.

8. *Papen Farms, Inc. D–94–3.* An application to replace the withdrawal of water from Well No. 4 in the applicant's water supply system which has become an unreliable source of supply. The applicant requests that the withdrawal from replacement Well No. 4A and all existing wells remain limited to 130 mg/30 days, and that the total withdrawal from all wells and surface water sources remain limited to 176 mg/30 days. The project is located in Kent County, Delaware.

9. *Pennsville Township Water Department D–94–12 CP.* An application for approval of a ground water withdrawal project to supply up to 40 mg/30 days of water to the applicant's distribution system from Well Nos. 3A, 4A and 6, and to retain the existing withdrawal limit from all wells of 52.5 mg/30 days. The project is located in Pennsville Township, Salem County, New Jersey.

10. *Mount Laurel Municipal Utilities Authority D–94–32 CP.* A project to upgrade and expand the applicant's existing 4.0 mgd Hartford Road Sewage Treatment Plant (STP) to a 6.0 mgd ultimate average monthly design capacity. A modified oxidation ditch secondary biological treatment process will replace the existing contact stabilization process and provide improved ammonia-nitrogen removal. The STP will continue to serve a portion of Mount Laurel Township and will discharge, after proposed ultra-violet disinfection, to the tidal reach of Rancocas Creek in Water Quality Zone 2. The STP is located between the New Jersey Turnpike and I–295 about 3000 feet northeast of Hartford Road in Mount Laurel Township, Burlington County, New Jersey.

11. *Slatington Borough Authority D–94–45 CP.* A project to modify and expand the applicant's existing 0.775 mgd STP to treat 0.955 mgd and continue to discharge to the Lehigh River in the Borough of Slatington, Lehigh County, Pennsylvania. The STP will continue to provide secondary biological treatment and continue to serve a portion of Washington Township and the Borough of Slatington, both in Lehigh County, and the Borough of Walnutport located in Northampton County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: September 13, 1994.

Susan M. Weisman,

Secretary.

[FR Doc. 94–23401 Filed 9–21–94; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Reauthorization of the Individuals with Disabilities Education Act

AGENCY: Department of Education.

ACTION: Notice of request for public comment on the provisions and implementation of the Individuals with Disabilities Education Act.

SUMMARY: The Secretary of Education invites written comments from the public on the Individuals with Disabilities Education Act (IDEA) to assist in the development of reauthorization legislation and for other purposes.

DATES: Comments must be received on or before November 7, 1994.

ADDRESSES: Written comments should be addressed to Dr. Thomas Hehir, Director, Office of Special Education Programs, U.S. Department of Education, Mary E. Switzer Building, 330 C St., S.W., Room 3086, Washington, DC 20202–6132.

FOR FURTHER INFORMATION CONTACT: Dr. Theda Zawaiza. Telephone (202) 205–8148. Individuals who use a telecommunication device for the deaf (TDD) may call (202) 205–5465 or the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Need for Reauthorization

Parts C through H of the IDEA are authorized through fiscal year 1994. Reauthorization of those portions of the Act provides an opportunity to consider improvements to the entire IDEA, including other portions of the Act, that would strengthen the Federal effort to give every child a world-class education based on high standards.

Description of the Act

Part A of the IDEA includes the findings and purpose of the Act; definitions; authority for the Office of Special Education Programs; provisions regarding State sovereign immunity; authority for the acquisition of equipment and construction of facilities; requirements relating to the employment of individuals with disabilities; grants for the removal of architectural barriers; regulatory provisions; and eligibility and administrative provisions applicable to the discretionary programs authorized in section 618 of Part B and Parts C through G.

Part B authorizes two formula grant programs: (1) Assistance to States for Education of Individuals with Disabilities program, which assists States in providing special education and related services to children, aged 3 through 21 years, with disabilities; and (2) the Preschool Grants for Children with Disabilities program, which provides additional funds to help States provide services to children, aged 3 through 5 years, with disabilities.

As part of the reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA), the Administration proposed that the Chapter 1 Handicapped program currently

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authorized under Title I of the ESEA be eliminated and all children with disabilities be served under the IDEA.

Section 618 of Part B includes requirements for the collection of data; requirements for an annual report on the progress being made under the Act and the publication of proposed priorities; and authority for other activities relating to implementation of the Act and national program information needs.

Parts C though G authorize a variety of discretionary research, demonstration, training, technical assistance, and dissemination activities. Part C addresses the regional resource and Federal centers; services for deaf-blind children and youth; early education for children, aged birth through 8 years, with disabilities; programs for children with severe disabilities; postsecondary education; secondary education and transitional services for youth with disabilities; and programs for children and youth with serious emotional disabilities. Part D addresses personnel training; grants to State educational agencies and institutions for traineeships; parent training and information; and the national clearinghouses on children and youth with disabilities, postsecondary education, and careers in special education. Part E addresses research and related activities, including research and demonstration projects in physical education and recreation. Part F addresses instructional media for individuals with disabilities, including the program dealing with captioned films, television, descriptive video, and educational media. Part G addresses technology, educational media, and materials.

Part H authorizes the Grants for Infants and Toddlers with Disabilities program, which provides Federal assistance to help States develop and implement statewide, comprehensive, coordinated, multidisciplinary, interagency programs for early intervention services for infants and toddlers with disabilities and their families. States must serve all children aged birth through two years who: (1) Are experiencing developmental delays as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: cognitive, physical, communication, social, emotional, or adaptive development; or (2) have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay. "Developmental delay" is defined by each State. At their discretion, States may also serve infants and toddlers who are at risk of having substantial developmental delays if early intervention services are not provided. To be eligible for funding, the statewide system must include the 13 minimum components required by the statute and must be fully implemented.

Funds are distributed to States based on their proportionate share of birth-through-two-year olds in the general population. No State, however, may receive less than one-half of one percent of the funds available to States. Under the Administration's proposal to merge the Chapter 1 Handicapped program with the programs under the IDEA, States would receive no less under the Grants for Infants and Toddlers with Disabilities Program in 1995 and thereafter than the combined total they received in 1994 for children birth through two years of age under the Grants for Infants and Toddlers with Disabilities program and the Chapter 1 Handicapped program.

Objectives of Reauthorization

The fundamental objective of the Department's reauthorization effort is to improve results for students with disabilities in America's schools. Reaching this goal requires:

- Aligning the IDEA with State and local school reform efforts to ensure a system that enables children with disabilities to benefit from those efforts;
- Preparing teachers and administrators to work more effectively with children and youth with disabilities in all educational settings;
- Promoting the education of children with disabilities in the least restrictive environment and non-categorical approaches to services to better meet the needs of each child with a disability;
- Improving the quality of educational services;
- Focusing resources on teaching and learning; and
- Improving working relationships between parents and schools.

Issues for Public Comment

The Secretary solicits comments and suggestions regarding the reauthorization of the IDEA. Parts A and B (except for Section 618) of the IDEA are authorized indefinitely. Statutory authority for Parts C through H expires at the end of fiscal year 1994. However, Parts C through H will be automatically extended by law through fiscal year 1995. Comments are especially invited on the following issues that have been identified thus far by parents, teachers, State and local education administrators, and others concerned with the IDEA reauthorization.

Assistance to States and Preschool Grants Programs (Part B)

- To what extent and under what conditions should children with disabilities be expected to achieve to State standards and how should children with disabilities be included in State assessment programs?
- Are there any changes to the legal framework for initial evaluations or for triennial reevaluations of children that could help States and LEAs improve instruction and services for students with disabilities and focus more resources on teaching and learning?
- Are there any changes to the current eligibility requirements, including the use of 13 separate disability categories, that would promote the education of children with disabilities in the least restrictive environment and non-categorical approaches that better meet the needs of each child?
- Are there any improvements to statutory provisions concerning Individualized Education Programs that would increase their effectiveness as tools for educational planning and that would better enable teachers and parents to help children achieve to high standards?
- Without diminishing the rights and protections afforded children with disabilities and their parents, how can resolving disputes be made less time-consuming, costly, and adversarial?
- Should there be any changes to the IDEA to address school safety issues, and if so, what changes would be appropriate?
- What changes to the IDEA would help States and LEAs improve the identification of, and services to, children with disabilities from culturally and linguistically diverse backgrounds?
- What changes to the IDEA would support parents and schools in working closely together to improve educational results for students with disabilities?
- Are there any changes to the Part B funding formula that would improve the program?
- Should schools that are implementing schoolwide projects under Title I of the Elementary and Secondary Education Act of 1965 be permitted to use IDEA funds for those projects as long as eligible children under IDEA continue to receive the rights and protections guaranteed by IDEA? If so, what other conditions, if any, should apply?
- Are there any changes to IDEA that should be made to address the needs of students, particularly those in kindergarten through third grade, who have not been identified as disabled, but who are having learning or emotional difficulties that may lead to them being identified as disabled at a later age and who may benefit from intervention in the early grades?

Discretionary Grant Programs (Parts C–G)

Current law authorizes a wide range of discretionary programs that support research, demonstrations, outreach, training, technical assistance, dissemination and other activities. Because these programs have evolved over time to address needs as they arose, there is considerable variation in authorized activities, terminology, target populations, eligible applicants, and funding requirements. For example, some programs focus on funding particular types of activities while other programs focus on specific disability categories or age ranges.

The Department is interested in determining how it can improve the discretionary authorities, particularly its technical assistance and training activities.

- How can the Department improve the coherence and effectiveness of its discretionary programs?
- How can resources from different programs be consolidated or coordinated to address issues that cut across age ranges, disabling conditions, and types of activities?
- Are there less categorical approaches that would better serve the needs of children with disabilities and their families?
- Should all resources for personnel development be consolidated into a single program to permit greater flexibility in meeting changing personnel training needs?

Professional Development

Qualified personnel are key to the provision of appropriate educational and early intervention services and to school reform. States are responsible for developing and implementing comprehensive systems of personnel development (CSPD) to ensure that the personnel working with children with disabilities have the knowledge and skills necessary to provide a high quality education. IDEA funding for professional development includes: (1) Part B formula funds that go to the States and LEAs and may be used for a variety of purposes, of which professional development is only one of many competing uses; (2) Part D discretionary funds, which, by law, go primarily to institutions of higher education to support pre-service training of special education teachers; and (3) discretionary funds awarded under other parts such as Part C.

The Department is interested in determining how to improve professional development of all teachers working with children with disabilities.

- Are there any changes to the current law that would help to ensure that all teachers working with children with disabilities, including regular education teachers, have the training they need to help children with disabilities achieve to high standards?
- Are there any changes that would help States to better design and implement their CSPDs?
- Are there any changes that would help ensure that pre-service and in-service training meets the needs of States and LEAs and supports local school reform efforts?

Part H—Infants and Toddlers With Disabilities

The current formula for the Grants for Infants and Toddlers with Disabilities Program allocates funds based on the number of birth-through-two-year-olds in a State's general population. The percentage of infants and toddlers in the general population served under this program varies widely among States. Some States advocate retaining the current formula, at least in the near term, while other States have suggested that funds be distributed based on a count of children actually served rather than population. In addition, some practitioners have suggested that the formula for allocating funds should take into consideration other factors in addition to population, including the fiscal capacity of States.

The Department is interested in receiving comments on whether the current Part H formula should be retained or changed, and, if so, how.

- Should the number of children in poverty be a factor in allocating funds so that high-poverty areas receive a greater share of the funds?
- How can States be encouraged to identify and serve more at-risk infants and toddlers?
- Should States be given the discretion to provide, as appropriate, a limited (as opposed to the full) array of services to at-risk children and their families?
- What statutory and regulatory barriers exist that impede successful Part H implementation, including identifying eligible infants and toddlers, providing services, and obtaining financing for services?
- What statutory changes are needed to improve coordination of services and resources at the Federal, State, and local levels?
- Should current law, which allows States, at their discretion, to charge sliding fees for early intervention services, be re-examined?

Format for Comments

This request for comments is designed to elicit views of interested parties on whether and how the IDEA can be strengthened to improve services and results. It is not intended to express views on any issues or to indicate the intention of the Secretary to propose any particular changes in the provisions of the Act.

The Secretary requests that each respondent identify her or his involvement in the area of special education, regular education, or early intervention (e.g., parent, teacher, service provider, researcher), if any. The respondent may address the issues raised in this notice, as well as raise any other issue relating to the reauthorization of IDEA. If appropriate, also please identify the relevant IDEA provision that is the subject of the comment and specify why the statute requires amendment.

The Secretary urges each commenter to be specific regarding her or his suggestions and to include, if possible, actual wording changes that the commenter proposes in the IDEA.

Invitation to Comment

The Secretary intends to submit the Department's bill to reauthorize the IDEA to Congress early in 1995. To ensure an opportunity for public participation in the development of the Administration's proposal, the Secretary invites public comment concerning possible improvements to the Individuals with Disabilities Education Act.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3090, Switzer Building, 300 C Street, S.W., Washington, D.C., between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: 20 U.S.C. 1400 *et seq.*

Dated: September 16, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–23392 Filed 9–21–94; 8:45 am]

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DEPARTMENT OF ENERGY

Unsolicited Application; Central Michigan University

AGENCY: Department of Energy

ACTION: Notice of intent to award a grant based upon an unsolicited application.

SUMMARY: The Department of Energy (DOE), Golden Field Office, through the Chicago Support Office, announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f) its intent to award a grant to Central Michigan University to analyze and evaluate the impact of solar domestic hot water heaters (SDHW) on the electric consumption and demand patterns on Beaver Island, in Lake Michigan, off the City of Charlevoix, Michigan.

SUPPLEMENTARY INFORMATION: Central Michigan University (CMU), through its Biological Station at Beaver Island, has been a lead participant in the Beaver Island Energy Project (BIEP). The BIEP assists the residents of Beaver Island to develop their economy with energy efficiency and renewable energy to sustain the Island's unique ecological and social infrastructure.

One result of the BIEP has been the increased use of solar domestic water heating, supplementing mostly electric domestic water heating. Beaver Island may have one of the largest percentage concentrations of SDHW for residential structures in the Great Lakes region. The minimal usage of other seasonal electric demand, such as air conditioning, is an opportunity to evaluate the effectiveness of SDHW as a demand-side management tool. This award will further the usage of renewable energy application by monitoring the impact of SDHW on electric power demand and consumption. This study is unique because it will take place in a northern latitude location in the Great Lakes region to supplement other ongoing studies of SDHW which are taking place in the southern and western parts of the United States. CMU has supported the BIEP with the only college-level facilities located on the Island.

The unsolicited application is being accepted by DOE as a result of DOE's determination that the proposed activity is meritorious, likely to be effective and successful, and offers a unique opportunity to further the use of renewable energy, as encouraged by Titles XII (Renewable Energy) and XVI (Global Climate Change) of the Energy Policy Act of 1992, as well as the Climate Change Action Plan. The project period for the grant award is 24-months, expected to begin October, 1994. DOE plans to provide funding in the amount of $30,000.

FOR FURTHER INFORMATION CONTACT: Mark Burger, U.S. Department of Energy, Chicago Regional Support Office, 9800 South Cass Avenue, Argonne, IL 60439, 708/252-2193

Issued in Golden, Colorado on August 30, 1994.

John W. Meeker,

Contracting Officer

[FR Doc. 94-23475 Filed 9-21-94; 8:45 am]

BILLING CODE 6450-01-M

Pittsburgh Energy Technology Center; Unsolicited Financial Assistance Award

ACTION: Acceptance of an Unsolicited Proposal Application of a Grant Award with Lovelace Institution.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR600.14, it intends to award financial assistance (grant) through the Pittsburgh Energy Technology Center to The Lovelace Institute for a research effort entitled "Velocity and Concentration Studies of Flowing Suspensions by Nuclear Magnetic Resonance Imaging."

ADDRESSES: Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921-118, Pittsburgh, PA 15236.

FOR FURTHER INFORMATION CONTACT: Cynthia Y. Mitchell, Contract Specialist (412) 892-4862. Comments or inquiries should be submitted within 14 days of the date of this announcement.

SUPPLEMENTARY INFORMATION: Grant Number: DE-FG22-94PC94248.

Title of Research Effort: "Velocity and Concentration Studies of Flowing Suspensions by Nuclear Magnetic Resonance Imaging."

Awardee: Lovelace Institute.

Term of Assistance Effort: Thirty-six (36) months.

Grant Estimated Total Value: $356,664.

Objective: Based upon the authority of 10 CFR 600.14, the objective of this grant is for The Lovelace Institute to develop Nuclear Magnetic Resonance Imaging (NRMI) as a non-invasive technique to measure flow parameters for all components of multiphase flow. The Institute will also develop a method to measure velocity of the solid phase, in addition to the liquid phase, in concentrated suspension flow regardless of the sample opacity. Such studies will contribute to the understanding of solids transport via flows of suspensions. Ultimately, Lovelace institute will measure the velocity in nonsteady flows. The Institute has pioneered the application of NMRI to flows of concentrated suspensions. The Lovelace Institute will also apply the proposed concepts to more complex flow geometries.

This project will provide non-intrusive data which will be relevant and useful in the scale-up and design of solids handling equipment, thereby providing cost savings. Since solids handling is part of almost all industrial energy production processes the public will benefit by cost savings from greater efficiencies derived from improved knowledge of solids handling processes. The project represents a unique and innovative idea which would not be eligible for financial assistance under a recent, current or planned solicitation, nor would a competitive solicitation be appropriate.

Dale A. Siciliano,

Contracting Officer.

[FR Doc. 94-23477 Filed 9-21-94; 8:45 am]

BILLING CODE 6450-01-M

Public Meetings on National Energy Policy

AGENCY: Office of Policy, Department of Energy.

ACTION: Supplemental notice of public meetings.

SUMMARY: On July 20 and September 2, 1994, the U.S. Department of Energy announced a series of public meetings around the country to solicit input in the development of the President's National Energy Policy Plan. (59 FR 37036 and 59 FR 45671). Today's notice is announcing further information regarding the Colorado meeting on September 29-30, 1994.

DATES AND ADDRESS:

September 29, Morning Session: Golden Community Center, 1470 Tenth Street, Golden, Colorado.

September 29, Afternoon Session: National Wind Technology Center, Rocky Flats, Colorado. (off State Hwy 128, 2 miles east of Hwy 93).

September 30, Morning Session: Golden Community Center, Golden, Colorado.

Agenda

The one and a half day regional meeting will begin with a town-meeting format discussion on general energy issues followed by three roundtable discussions on specific issues of particular interest to the regions. A period for general public comment and short public presentations will be available at the end of the meeting.

Thursday, September 29, 1994

Morning Session

8:30 a.m.—Introduction of Meeting
8:45 a.m.—Town Meeting with Secretary Hazel R. O'Leary
10:00 a.m.—Roundtable Discussion: "Competition in Electric Power Sectors"
12:30 p.m.—Break

Afternoon Session

2:00 p.m.—Dedication of Wind Technology Center with Secretary O'Leary
3:00 p.m.—Roundtable Discussion: "Renewable Energy: Progress and Prospects"
5:30 p.m.—Adjourn

Friday, September 30, 1994

Morning Session

8:30 a.m.—Roundtable Discussion: "Natural Gas: Utilization of a Clean Domestic Fuel"
11:30 a.m.—General Public Presentations
12:30 p.m.—Adjourn

FOR FURTHER INFORMATION CONTACT: For questions regarding the public meetings, written submissions, or if you would like to make a 3-5 minute public presentation, please call the National Energy Policy Plan Public Information Hotline: (615) 241-2545. For other information, contact Terri Walters, U.S. Department of Energy, Office of Policy, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586-1800.

Submission of Written Comments

Written comments are requested before October 31, 1994. Mail submission to Oak Ridge Institute for Science and Education, P.O. Box 117, Oak Ridge, Tennessee 37831-0117, ATTN: Mary Jean Brewer. Please submit a DOS or Macintosh diskette copy (ASCII format preferred) and a typed copy of input. Submissions can also be sent electronically through Internet at NEPP@ORAU.GOV. For all submissions, please include your name, address, and a day-time telephone number.

Susan F. Tierney,

Assistant Secretary of Energy for Policy.

[FR Doc. 94-23478 Filed 9-21-94; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Floodplain and Wetlands Involvement for BPA's Hot Springs-Garrison Fiber Optic Project

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Floodplain and Wetlands Involvement.

SUMMARY: BPA proposes to upgrade its existing operational telecommunications equipment in Northwestern Montana from BPA's Hot Springs Substation to Garrison Substation, a distance of 190 kilometers (120 miles). This upgrade will involve replacing existing microwave equipment with fiber optic cable and equipment. The fiber optic cable will be strung on existing structures on BPA's Hot Springs-Garrison line and will use existing access roads and rights-of-way. No new structures will be needed for this project. This 190 kilometer line will span both floodplains and wetlands located in the counties of Sanders, Lake, Missoula, Granite, and Powell, Montana.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

The assessment will be included in the environmental assessment being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the environmental assessment.

DATES: Comments are due to the address below no later than October 10, 1994.

FOR FURTHER INFORMATION CONTACT: Kevin A. Ward, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208-3621, phone number 503-230-5511, fax number 503-230-3984.

SUPPLEMENTARY INFORMATION: Within the transmission line corridor, wetlands can be found in association with various river systems and drainages. Many wetlands found along the Clark Fork river are remnants of old river channels, some of which were isolated during construction of Interstate 90, while others are due to the natural shifting of the channels (oxbows). Small wetlands have formed in a few areas adjacent to small drainages, such as Flint Creek. All wetlands are spanned by the fiber optic cable and avoided by access roads; therefore, there would be no direct impacts to wetlands from the proposed project. Appropriate mitigation measures will be used to reduce potential indirect impacts to wetlands.

The transmission line corridor crosses or has structures located in areas identified as 100-year floodplains. These are areas that have a 1-percent chance of being flooded in a given year. The corridor crosses floodplains associated with the Clark Fork River, Flint Creek, Rattlesnake Creek, Grant Creek, Butler Creek, Flathead River, Little Bitterroot River, and Valley Creek.

There are twenty-six structures located in 100-year floodplains. Of these, three (structures 24/8, 25/2, and 91/4) have been identified as pulling and tensioning sites. Overall impacts to floodplains would be short-term and low; the proposed project activities would not alter floodplain characteristics or create the potential for greater loss of property or life during flooding. No new access roads or structures would be needed. At pulling and tensioning sites disturbance would occur from vehicles and machines, but all three sites are agricultural and would be returned to their original condition following construction.

BPA will endeavor to allow 15 days of public review after publication of this statement of findings prior to implementing the proposed action.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on September 13, 1994.

John M. Taves,

NEPA Compliance Officer, Transmission Services.

[FR Doc. 94-23479 Filed 9-21-94; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. ER94-474-000, et al.]

The Montana Power Company, et al.; Electric Rate and Corporate Regulation Filings

September 15, 1994.

Take notice that the following filings have been made with the Commission:

1. The Montana Power Company

[Docket No. ER94-474-000]

Take notice that on September 9, 1994, The Montana Power Company (Montana) tendered for filing on behalf of itself and Puget Sound Power & Light Company (Puget) in the above-referenced docket, as a change in rate schedule, Amendment No. 2 and Revision No. 1 of Exhibit C to their Transmission Agreement, dated as of June 30, 1992, with the Bonneville Power Administration.

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Puget submitted a Certificate of Concurrence to the filing and a copy of the filing was served upon Puget and the Bonneville Power Administration.

Comment date: September 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. PacifiCorp

[Docket No. ER94–1361–000]

Take notice that on September 12, 1994, PacifiCorp, tendered for filing, in accordance with Part 35 of the Commission's Rules and Regulations, an amendment to its filing dated June 14, 1994 and July 29, 1994 under FERC docket No. ER94–1361–000. This amended filing has been prepared to revise the Tariff in preparation for future sales to Independent Power Marketers. Also, PacifiCorp has included fully executed Service Agreements with Eclipse Energy Inc., Electric Clearinghouse, Inc., Howell Power Systems, Inc., LG&E Power Marketing, Inc., PowerNet G.P., and Rainbow Energy Marketing Corporation which were previously filed with the Commission as unexecuted Service Agreements.

PacifiCorp respectfully renews its request pursuant to § 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that these Service Agreements and Tariff revisions be accepted for filing effective on June 1, 1994.

Copies of this filing were supplied to the Public Utility Commission of Oregon.

Comment date: September 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. PSI Energy, Inc.

[Docket No. ER94–1434–000]

Take notice that on September 12, 1994, PSI Energy, Inc. (PSI), tendered for filing an amended Service Schedule in the FERC Filing in Docket No. ER94–1434–000 to comply with a FERC Staff request.

Copies of the filing were served on the Enron Power Marketing, Inc., Texas Public Utility Commission and the Indiana Utility Regulatory Commission.

Comment date: September 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. PSI Energy, Inc.

[Docket No. ER94–1473–000]

Take notice that on September 12, 1994, PSI Energy, Inc. (PSI), tendered for filing an amended Service Schedule in the FERC Filing in Docket No. ER94–1473–000 to comply with a FERC Staff request

Copies of the filing were served on the Electric Clearinghouse, Inc., Texas Public Utility Commission and the Indiana Utility Regulatory Commission.

Comment date: September 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Mississippi Power Company

[Docket No. ER94–1605–000]

Take notice that on August 29, 1994, Mississippi Power Company (MPC) tendered for filing a Letter Agreement between MPC and Mississippi Electric Power Association.

Comment date: September 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company

[Docket No. ER94–1633–000]

Take notice that on September 8, 1994, Northern States Power Company (Minnesota) (NSP), tendered for filing the Connection No. 53 between NSP and Cooperative Power Association (CPA) dated August 12, 1994. This agreement allows for Cooperative Power Association to connect to NSP's Wilmarth-Waterville 69 kV transmission line which is a portion of the Integrated Transmission System owned by NSP. The service is for an existing substation called Pohl for Frost-Benco-Wells Electric, a member of CPA.

NSP requests that the Commission accept for filing this agreement effective as of the date of execution, August 12, 1994, and requests waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date. NSP requests that the Agreement be accepted as a supplement to Rate Schedule No. 342, the rate schedule for previously filed connection agreements between NSP and CPA.

Comment date: September 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corporation

[Docket No. ER94–1636–000]

Take notice that on September 8, 1994, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission proposed amendments to its Power Sales Tariff (*i.e.*, Electric Rate Schedule, Original Volume No. 2, Effective March 13, 1993). This Power Sales Tariff is the blanket agreement which describes the general terms and conditions for specific transactions that are entered into under separate Service Agreements with power purchasers. The amendments proposed by NMPC pertain to sections: 1.2 Availability, 1 7 Delivery Point, and 2.1(D) Minimum Charges.

NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and those parties having executed Service Agreements under NMPC's Tariff.

Comment date: September 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. CINergy Services, The Cincinnati Gas & Electric Co. and PSI Energy, Inc.

[Docket No. ER94–1637–000]

Take notice that on September 8, 1994, CINergy Services, Inc., on behalf of The Cincinnati Gas & Electric Co. (CG&E) and PSI Energy, Inc. (PSI) (together, CINergy), filed pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, a Network Integration Service Tariff, a Firm Point-to-Point Transmission Service Tariff and a Non-Firm Point-to-Point Transmission Service Tariff. These three Tariffs, taken together, are designed to offer transmission customers a range of flexible transmission services at rates, terms and conditions comparable to those that CINergy will provide itself following the reorganization of PSI and CG&E as wholly-owned subsidiaries of CINergy Corp.

Comment date: September 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Public Service Corporation

[Docket No. ER94–1639–000]

Take notice that on September 8, 1994, Wisconsin Public Service Corporation tendered for filing a tariff providing for network transmission service. Wisconsin Public Service states that the tariff provides for network service on a basis comparable to the network uses the Company makes of its transmission system to serve its own requirements customers.

Comment date: September 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. The Montana Power Company; PacifiCorp; Portland General Electric Company; Puget Sound Power & Light Company; and The Washington Water Power Company

[Docket No. ER94–1642–000]

Take notice that on September 9, 1994, The Montana Power Company (Montana) tendered for filing on behalf of itself and PacifiCorp, Portland General Electric Company (PGE), Puget Sound Power & Light Company (Puget) and The Washington Water Power Company (WWP) (together with Montana, the Montana Intertie Users), as a change in rate schedule, Amendment No. 1 to their Transmission Agreement, dated April 17, 1981, with the Bonneville Power Administration. PacifiCorp, Puget, PGE and WWP submitted Certificate of Concurrence to the filing and copies of the filing were served upon them and the Bonneville Power Administration.

Comment date: September 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23431 Filed 9–21–94; 8:45 am]

BILLING CODE 6717–01–P

Notice of Application

September 16, 1994.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Notice of Public Scoping Meeting.

b. Project No: 6939.

c. Applicant: City of Jackson.

d. Name of Project: Belleville Hydroelectric Project.

e. Location: On the Ohio River in Meigs County, Ohio and Wood County, Belleville, WV.

f. Applicant Contact: Philip E. Meier, AMP–OHIO, 601 Demsey Road, Westerville, OH 43081, 614–890–2805.

g. FERC Contact: Rebecca Martin, 202–219–2650.

h. Comment Date: November 4, 1994.

i. Description: The Federal Energy Regulatory Commission (FERC) will hold a public scoping meeting regarding an amendment application for the Belleville hydroelectric project. The amendment is for the relocation of a transmission line to connect the project, located on the Ohio River near Belleville, WV to a substation near Rutland, Ohio. The objectives of the meeting are to: (1) describe the proposed license amendment and alternatives; (2) summarize the environmental issues tentatively identified for analysis in and Environmental Assessment (EA) to be prepared by FERC; (3) encourage statements from the public on issues that should be analyzed in the EA; and (4) solicit available information on the resources at issue.

The meeting will be held on Monday October 3, 1994 at Meigs Local High School, 42901 Pomeroy Pike, Pomeroy, Ohio. The meeting will begin at 7:00 pm and is expected to last until approximately 10:00 pm. Persons unable to attend the meeting, or persons choosing not to speak at the meeting, may submit statements to Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426 until November 4, 1994. All correspondence should clearly show the following caption on the first page—Belleville Project No. 6939. For further information, please contact Rebecca Martin at (202) 219–2650.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2346 Filed 9–21–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP80–277–005, et al.]

Honeoye Storage Corporation, et al.; Natural Gas Certificate Filings

September 15, 1994.

Take notice that the following filings have been made with the Commission:

1. Honeoye Storage Corporation

[Docket No. CP80–277–005]

Take notice that on September 13, 1994, Honeoye Storage Corporation (Honeoye), P.O. Box 376, Honeoye, New York 14471 filed in Docket No. CP80–277–005 a petition pursuant to Section 7(c) of the Natural Gas Act requesting authority to amend the certificate issued February 7, 1975, to increase the operating pressure of its existing transmission pipeline during withdrawal operations, all as more fully set forth in the application on file with the Commission and open to public inspection.

Honeoye requests authority to increase the operating pressure of its transmission line from 774 psia to 900 psia during withdrawal operations. Honeoye advises that it is not proposing to change the maximum allowable operating pressure (MAOP) which has been 918 psia since construction. Additionally, Honeoye states that there will be no change in the service rendered to each of its customers.

Honeoye explains that it receives gas from Tennessee Gas Pipeline Company (TGPC) at TGPC's main valve No. 236 in Ontario County, New York and transports the gas for injection into Honeoye's storage field. Honeoye states that during withdrawal operations, it redelivers gas to TGPC at TGPC's main valve No. 236. Honeoye asserts that because of an increase in TGPC's line pressure, Honeoye proposes to increase the operating pressure of its transmission line to ensure continuation of reliable storage service to its customers.

Comment date: October 6, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Questar Pipeline Company

[Docket No. CP94–765–000]

Take notice that on September 9, 1994, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP94–765–000 an application pursuant to Section 7(c) of the Natural Gas Act requesting authority to construct and operate certain replacement natural gas facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Questar proposes to replace a 26.4-mile segment of its 10-inch Main Line No. 68, located in Rio Blanco and Garfield Counties, Colorado, with 14-inch pipeline. Questar states that the deteriorated condition of the 26.4-mile segment requires that it be replaced.

Questar asserts that, due to constraints in other portions of its transmission system, there will be no significant increase in transmission-system capacity as a result of replacing the existing 26.4 miles of 10-inch pipeline with 14-inch pipeline. The estimated cost of the proposed construction is $5,500,000 and the estimated cost to retire in place the 26.4 miles of 10-inch pipeline is $150,000.

Comment date: October 6, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Company

[Docket No. CP94–767–000]

Take notice that on September 9,1994, Northern Natural Gas Company (Northern), 1111 South 103rd Street,

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Omaha, Nebraska 68124–1000, filed in Docket No. CP94–767–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to upgrade one town border station (TBS) and appurtenant facilities to provide increased natural gas deliveries to Wisconsin Power & Light Company (WP&L), under Northern's existing rate schedules to accommodate increased commercial, industrial and residential service at Mauston, Wisconsin, pursuant to Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that the estimated total volumes proposed to be delivered to WP&L at the Mauston, Wisconsin TBS, located in Juneau Co., Wisconsin, are 2,850 MMBtu on a peak day and 383,800 MMBtu annually. Northern advises that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. It is stated that the estimated total cost to install the proposed delivery point is $56,800. Northern also states that WP&L would make a contribution in aid to construction for the total amount.

Comment date: October 31, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. NorAm Gas Transmission Company

[Docket No. CP94–770–000]

Take notice that on September 9, 1994, NorAm Gas Transmission Company (NGT), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP94–770–000 a request pursuant to §§ 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.212) for authorization to acquire and operate certain facilities in Louisiana under NGT's blanket certificate issued in Docket No. CP82–384–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to acquire and operate five (5) existing delivery taps and three (3) associated lines, Lines LIT–1, LIT–2 and LIM–1, located in Caddo, Bossier and DeSoto Parishes, Louisiana. NGT states that these facilities are currently owned and operated by NorAm Interstate and used to receive gas from gathering lines or from NGT and to deliver natural gas to one industrial customer, International Paper Company (IP), and to the local distribution systems of Arkla, a division of NorAm Energy Corp. (Arkla). NGT states that both IP and Arkla are also existing customers of NGT. It is stated that NGT will acquire these facilities from NorAm Interstate at the existing net book value of approximately $1.9 million and use these facilities as part of its existing interstate system.

Comment date: October 31, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. Ashland Exploration, Inc.

[Docket No. CP94–771–000]

Take notice that on September 9, 1994, Ashland Exploration, Inc. (Ashland), P. O. Box 218330, Houston, Texas 77218–8330 filed in Docket No. CP94–771–000 a request for a order declaring that the facilities that it proposes to acquire from CNG Transmission Corporation (CNGT) are exempt from the Commission's jurisdiction under the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Ashland states that it has agreed to purchase certain facilities located in the Lincoln, Boone and Kanawha Counties of West Virginia. These facilities include two compressors, related pipelines, associated structures, and rights-of-way. Following the Commissions's grant of abandonment and issuance of the proposed declaratory order CNGT will transfer the facilities to Ashland. Ashland requests that the Commission declare that these facilities are exempt from the Commission's jurisdiction by reason of the "production and gathering exemption" contained in Section 1(b) of the Natural Gas Act.

Comment date: October 6, 1994, in accordance with Standard Paragraph F at the end of this notice.

6. Natural Gas Pipeline Company of America and Mississippi River Transmission Corporation

[Docket No. CP94–773–000]

Take notice that on September 12, 1994, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, and Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed, in Docket No. CP94–773–000, a joint application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment of the exchange service performed under Natural's Rate Schedule X–42 and MRT's Rate Schedule X–9, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural and MRT relate that they entered into a July 17, 1973, gas exchange agreement with Kaskaskia Gas Company (as of 1988, United Cities Gas Company (Kaskaskia-United Cities)) to assist Kaskaskia in meeting peak day needs in several isolated areas of its system in southern Illinois. Kaskaskia Gas Company was a local distribution company with facilities in Illinois and a resale customer of both Natural and MRT. Pursuant to the agreement, Natural, upon notice from Kaskaskia, reduced its deliveries of sales gas at Cowden, Illinois in amounts up to 500 Mcf of natural gas per day and Natural instead delivered for the account of Kaskaskia corresponding volumes to MRT in Clinton County, Illinois. MRT, in turn, simultaneously, delivered equivalent volumes of natural gas to Kaskaskia for the account of Natural at the Salem, Huey, and Iuka, Illinois delivery points of MRT to Kaskaskia. Natural and MRT state that this exchange service was authorized by order issued February 27, 1974, in Docket No. CP74–78–000, and began on January 11, 1975.

Natural and MRT report that by letter agreements between Natural, MRT and United Cities dated August 20, 1993 (accepted by MRT and United Cities on September 7, 1993), and by a letter agreement between MRT and United Cities dated August 2, 1994 (accepted by United Cities on August 5, 1994), that the parties agreed to terminate the exchange service as of December 1, 1993. Further, Natural and MRT state that there are no facilities to be abandoned pursuant to this application.

Comment date: October 6, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to §§ 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell

Secretary

[FR Doc. 94–23430 Filed 9–21–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–1478–000]

Electrade Corp.; Notice of Issuance of Order

September 16, 1994.

On July 21, 1994, Electrade Corporation (Electrade) submitted for filing a rate schedule under which Electrade will engage in wholesale electric power and energy transactions as a marketer. Electrade also requested waiver of various Commission regulations. In particular, Electrade requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Electrade.

On August 25, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Electrade should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Electrade is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interests, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Electrade's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 26, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23447 Filed 9–21–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–332–001]

Florida Gas Transmission Co.; Notice of Compliance Filing

September 16, 1994.

Take notice that on September 14, 1994, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet:

Original Sheet No. 8D
Substitute First Revised Sheet No. 18
Substitute Second Revised Sheet No. 46A
Substitute First Revised Sheet No. 47
Substitute Original Sheet No. 47A
First Revised Sheet No. 206
Substitute Fourth Revised Sheet No. 207

On July 29, 1994, FGT filed tariff sheets proposing to: (1) Clarify that the Fuel Reimbursement Charge retained by FGT does not apply to volumes transported through non-contiguous laterals without compression nor through laterals without compression behind processing plants where volumes transported are consumed within the plant; and (2) modify the Fuel Reimbursement Charge Adjustment mechanism to permit FGT to discount the fuel charge for certain Western Division transportation services down to the acutal incremental fuel incurred.

On August 31, 1994, the Commission issued an order accepting in part, subject to revision, the provisions in FGT's filing concerning the application of the Fuel Reimbursement Charge, and rejecting the provisions concerning discounting the fuel charge. Specifically, the August 31 Order accepted FGT's filing to be effective September 1, 1994, subject to FGT refiling revised tariff sheets within 15 days of the August 31 order to (1) specify which laterals on FGT's system will not be subject to the Fuel Reimbursement Charge and (2) delete language providing that FGT can recover discounts of the Fuel Reimbursement Charge through its fuel tracker. In the instant filing, FGT states that it is complying with the August 31 Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before September 23, 1994. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23435 Filed 9–21–94; 8:45 am]

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K N Interstate Gas Transmission Co., Notice of Proposed Changes in FERC Gas Tariff

September 16, 1994.

Take notice that on September 13, 1994, K N Interstate Gas Transmission Co. (KNI) filed a Revised Tariff Filing. In this tariff filing, KNI has proposed revisions reflecting inadvertently omitted tariff language and typographical errors. In addition, after reviewing the effectiveness of the restructured tariff language since October 1, 1993, (KNI's restructuring implementation date), KNI realized that certain changes were necessary and, therefore, is proposing several substantive changes described more fully in the tariff filing. KNI states that copies of the revised tariff sheets were appended to KNI's application.

KNI states that all interested parties have been served with this filing as well as affected public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.21 and 385.214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 23, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-23436 Filed 9-21-94, 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-367-000]

National Fuel Gas Supply Corporation; Filing

September 16, 1994.

Take notice that on August 18, 1994, National Fuel Gas Supply Corporation (National Fuel Gas Supply) filed a limited application proposing to resolve issues concerning the rates and cost allocation methods under which National Fuel Gas Supply will provide gathering service through June 30, 2005. National Fuel Gas Supply states that its proposal is intended to comply with Commission directives in Docket No. RS92-21-000.

Any person desiring to be heard should file a motion to intervene with the Federal Energy Regulatory Commission, in accordance with § 385.214 of the Commission's Rules of Practice and Procedure. All such motions should be filed on or before September 26, 1994. Parties wishing to file comments to this proposal must file such comments on or before September 26, 1994. Reply comments are due on October 3, 1994. Parties that have already intervened in Docket No. RP94-367-000, or that have already filed comments and reply comments to the proposal need not refile. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-23449 Filed 9-21-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-1632-000]

Northeast Utilities Service Co.; Notice of Filing

September 16, 1994.

Take notice that on August 22, 1994, Northeast Utilities Service Company (NUSCO) tendered for filing, on behalf of the Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company (including Holyoke Power and Electric Company), and Public Service Company of New Hampshire (together, the "NU System Companies"), a refund report and a Notice of Termination for the System Power Sales Agreement (Agreement) with Hudson Light and Power Department (Hudson). The System Power Sales Agreement was terminated in accordance with its terms.

NUSCO requests that the Agreement be terminated as of November 1, 1994. NUSCO states that copies of the rate schedule have been mailed or delivered to the parties to the Agreement and the affected state utility commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 27, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-23434 Filed 9-21-94, 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-764-000]

Southern Natural Gas Co.; Notice of Request Under Blanket Authorization

September 16, 1994

Take notice that on September 8, 1994, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563 filed in Docket No. CP94-764-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to abandon certain regulating facilities and to change the operation of an existing delivery point, under its blanket certificate issued in Docket No. CP82-406-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern states that it is currently authorized to sell and deliver natural gas to DeKalb-Cherokee Counties Gas District (DeKalb-Cherokee) at a delivery point located near Milepost 1.724 on Southern's 6-inch Hokes Bluff Line in Etowah County, Alabama. Southern indicates that it currently delivers gas to DeKalb-Cherokee at the meter station at a contract delivery pressure of 100 psig. DeKalb-Cherokee has requested, and Southern has agreed to deliver gas at mainline pressure to DaKalb-Cherokee at the meter station. According to Southern, it must abandon two 3-inch regulators and appurtenant facilities at the meter station and make certain piping modifications in order to deliver gas at mainline pressure.

Southern states that the abandonment of facilities proposed in this application will not result in any termination of service, and that said changes will not result in a change in the total firm transportation demand delivered to DeKalb-Cherokee. Further, Southern states that (1) the revised delivery pressure will not cause a detriment or disadvantage to its other customers; (2) deliveries at the revised delivery pressure will have no impact on Southern's peak day and annual deliveries; and (3) the abandonment and change are not prohibited by any existing tariff of Southern.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7(c) of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94-23432 Filed 9-21-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-1394-000]

Valero Power Services Co.; Notice of Issuance of Order

September 16, 1994.

On June 22, 1994 and July 18, 1994, Valero Power Services Company (Valero) submitted for filing a rate schedule under which Valero will engage in wholesale electric power and energy transactions as a marketer. Valero also requested waiver of various Commission regulations. In particular, Valero requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Valero.

On August 24, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Valero should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Valero is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interests, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Valero's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 23, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94-23448 Filed 9-21-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-1621-000]

Virginia Electric and Power Co.; Notice of Filing

September 16, 1994.

Take notice that on September 2, 1994, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between PSI Energy, Inc. (PSI) and Virginia Power, dated July 1, 1994, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement, Virginia Power agrees to provide services to PSI under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 30, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-23433 Filed 9-21-94; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-5075-1]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption Notice of Decision

AGENCY: Environmental Protection Agency.

ACTION: Notice Regarding Waiver of Federal Preemption.

SUMMARY: EPA is granting California a waiver of Federal preemption pursuant to section 209(b) of the Clean Air Act, as amended, beginning in the 1995 model year to enforce amendments to its motor vehicle pollution control program which establish the following: New emission standards which are phased in over model years 1995 and 1996 (50% and 100%); and certification and compliance test procedures and durability requirements. These standards and procedures are applicable to light-duty trucks (LDTs), medium-duty vehicles and engines (MDVs), and light heavy-duty vehicles and engines (LHDVs) for the control of hydrocarbon (HC), carbon monoxide (CO), oxides of nitrogen (NO_x), and particulate matter (PM) emissions. The standards apply to gasoline, gaseous-fueled, diesel and methanol-fueled and flexible-fueled vehicles and engines (hereinafter "MDV" request).

California further amended the MDV standards addressed in this waiver during the establishment of California's Low Emission Vehicle (LEV) Program. In January of 1993 EPA granted California waiver of Federal preemption for the LDV component of the LEV Program. Action on the MDV component of the LEV Program was postponed until the earlier MDV standards which are the subject of today's waiver were acted upon. The MDV component of the LEV Program will be addressed soon and documents relative to its disposition may be found in Docket A-91-71.

ADDRESSES: The Agency's decison as well as all documents relied upon in reaching that decision, including those submitted by the California Air Resources Board, are available for public inspection in the Air and Radiation Docket and Information

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Center in Docket A–91–55 during the working hours of 8 a.m. to 4 p.m. at the Environmental Protection Agency, Air Docket (6102), Room M–1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460. Copies of the decision can be obtained from EPA's Manufacturers Operations Division by contacting Leila Holmes Cook, as noted below.

FOR FURTHER INFORMATION CONTACT: Leila Holmes Cook, Attorney/Advisor, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone: (202) 233–9252.

SUPPLEMENTARY INFORMATION: I have decided to grant California a waiver of Federal preemption pursuant to section 209(b) of the Clean Air Act, as amended (Act), 42 U.S.C. 7543(b), for amendments to its motor vehicle pollution control program which establish the following: (1) New emission standards which are phased in over model years 1995 and 1996 (50% and 100%); and (2) certification and compliance test procedures and durability requirements. These standards and procedures are applicable to light-duty trucks (LDTs), medium-duty vehicles and engines (MDVs), and light heavy-duty vehicles and engines (LHDVs) for the control of hydrocarbon (HC), carbon monoxide (CO), oxides of nitrogen (NO_X), and particulate matter (PM) emissions. The standards apply to gasoline, gaseous-fueled, diesel and methanol-fueled vehicles and engines (hereinafter "MDV" request).

This decision addresses two related waiver requests. In the first, by letter dated July 15, 1991, the California Air Resources Board (CARB) submitted to the U.S. Environmental Protection Agency (EPA) a request for waiver of Federal preemption to enforce new medium-duty vehicle standard amendments to its motor vehicle pollution control program.[1]

The second waiver request addresses dedicated-methanol and flexible-fuel passenger cars, LDTs, MDVs and heavy-duty engines for model years 1993 and 1994.[2] On August 14, 1992, EPA waived application of section 209(a) of the Act for California's amendments to its exhaust and evaporative emission standards and test procedures that made those standards and procedures applicable to dedicated-methanol and flexible-fuel passenger cars, light-duty trucks, medium-duty vehicles, and heavy-duty engines, for model years 1993 and 1994 (Methanol waiver).[3] The methanol regulations addressed in the August 14, 1992 decision had the effect of applying to dedicated methanol and flexible-fuel vehicles standards previously applicable only to otto- and diesel-cycle vehicles and engines. Because the underlying new medium-duty vehicle standards for the 1995 and later model years had not been the subject of a waiver decision, EPA postponed its decision regarding a waiver for such standards as applied to methanol and flexible-fueled light-duty trucks, medium-duty vehicles and engines and light-heavy-duty vehicles and engines for the 1995 and later model years until these underlying standards were acted upon.[4] Both the underlying standards and the methanol standards are the subject of this waiver decision.

On the basis of the record before me,[5] I cannot make the findings required for a denial of a waiver under section 209(b)(1) of the Act and applicable case law with respect to the amendments to California's motor vehicle pollution control program. Therefore, in today's MDV decision, EPA is granting to the State of California a waiver of application of section 209(a) of the Act for the California MDV standards as applied to dedicated-methanol and flexible-fuel otto-cycle and diesel-cycle medium-duty vehicles and engines for model year 1995 and following.[6]

On January 9, 1992 EPA published a notice of opportunity for a public hearing and a request for written comments concerning California's request.[7] EPA received no request for a hearing. EPA received joint written comments from the Engine Manufacturers Association (EMA) and the Motor Vehicle Manufacturers Association of America, Inc. (MVMA). Consequently, this determination is based on written submissions by CARB, the written comments submitted in response to the above-mentioned notice and all other relevant information.[8]

Section 209(b) of the Act provides that, if certain criteria are met, the Administrator shall waive Federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards; whether California needs State standards to meet compelling and extraordinary conditions; and whether California's amendments are consistent with section 202(a) of the Act.

CARB determined that these standards and accompanying enforcement procedures do not cause California's standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. Information presented to me by parties opposing California's waiver request did not demonstrate that California arbitrarily or capriciously reached this protectiveness determination. Therefore, I cannot find California's determination to be arbitrary or capricious.

CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program, which includes the subject standards and procedures. No information has been submitted to demonstrate that California no longer has a compelling and extraordinary need for its own program. Therefore, I agree that California continues to have compelling and extraordinary conditions which require its own program, and, thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information that the requirements of its emission standards and test procedures are technologically feasible and present no inconsistency with Federal requirements and are, therefore, consistent with section 202(a) of the Act. Information presented to me by parties opposing California's waiver request did not satisfy the burden of

[1] *See* letter from James D. Boyd, Executive Officer, CARB, to William K. Reilly, Administrator, EPA, dated July 15, 1991.

[2] *See* Methanol Waiver Decision Document at Air Docket A–90–29, page 10, footnote 14 and page 32, footnote 60.

[3] 57 Fed. Reg. 38503 (August 25, 1992); EPA Air Docket A–90–29.

[4] *Id*

[5] The record is located in Air Docket A–90–29.

[6] The amended regulations are Title 13, California Code of Regulations (CCR) section 1956.8 and the incorporated "California Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Model Heavy-Duty Diesel-Powered Engines and Vehicles," "California Exhaust Emission Standards and Test Procedures for 1987 and Subsequent Model Heavy-Duty Gasoline-Powered Engines and Vehicles"; 13 CCR 1960.1 and the incorporated "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles"; 13 CCR 1965 and the incorporated "California Motor Vehicle Emission Control Label Specification;" 13 CCR 1976 and the incorporated "California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Liquefied Petroleum Gas- or Gasoline-Powered Motor Vehicles;" and 13 CCR 2290 and the incorporated "Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks."

[7] 57 FR 909 (January 9, 1991).

[8] This information is contained in Docket A–91–55.

persuading EPA that the standards are not technologically feasible within the available lead time, considering costs. Thus, I cannot find that California's amendments will be inconsistent with section 202(a) of the Act. Accordingly, I hereby grant the waiver requested by California.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by November 21, 1994. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

As with past waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: August 26, 1994.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 94–23497 Filed 9–21–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5077–3]

Acid Rain Program: Draft Nitrogen Oxides Compliance Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft compliance plans and public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment 5-year nitrogen oxides (NO_X) compliance plans, which amend previously issued final Phase I Acid Rain Permits, for 19 units at 6 utility plants, in accordance with the Acid Rain Program regulations (40 CFR part 76).

DATES: Comments on draft NO_X compliance plans must be received no later than October 24, 1994 or the publication date of a similar notice in local newspapers, whichever is later.

ADDRESSES: Administrative Records. The administrative record for draft NO_X compliance plans, except information protected as confidential, may be viewed during normal operating hours at EPA Region 5, Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions to EPA Region 5 (A–18J), Air and Radiation Division, Attn: David Kee, Director (address above).

Submit all comments in duplicate and identify the NO_X compliance plan to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units covered by the plan. All timely comments will be considered, except comments on aspects of the permit other than the NO_X compliance plan and comments not relevant to the compliance plan.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting a NO_X compliance plan.

FOR FURTHER INFORMATION CONTACT: Genevieve Nearmyer, (312) 353–4761.

SUPPLEMENTARY INFORMATION: EPA proposes to approve compliance plans for 1995–1999 under which units will comply with the applicable emission limitations for NO_X under 40 CFR 76.5 (referred to as "standard emission limitation") or other indicated compliance options for the following utility plants in Indiana:

Cayuga: Three averaging plans, one for each calendar year 1997–1999 for units 1 and 2; for each year, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.45 lbs/MMBtu. The other units designated in the plans are Gibson units 1, 2, 3, and 4, Wabash River units 2, 3, 5, 6, and R Gallagher units 1, 2, 3, and 4. Units 1 and 2 are not required to meet the emission limit until 1997 pursuant to 40 CFR 72.42. The designated representative is Joseph W. Messick, Jr.

F B Culley: Standard emission limitation of 0.50 lbs/MMBtu for units 2 and 3 for 1997–1999. Units 2 and 3 are not required to meet the emission limit until 1997 pursuant to 40 CFR 72.42. The designated representative is J. Gordon Hurst.

Frank E Rotts: Standard emission limitation of 0.50 lbs/MMBtu for units 1SG1 and 2SG1 for 1995–1999. The designated representative is J. Steven Smith.

Gibson: Five averaging plans, one for each calendar year 1995–1996 for units 1, 2, and 3, and one for each calendar year 1997–1999 for units 1, 2, 3, and 4; for each year, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.50 lbs/MMBtu. The other units designated in the plans are, for 1995–1996, Wabash unit 3, and for 1997–1999, Cayuga units 1 and 2, Wabash River units 2, 3, 5, and 6, and R Gallagher units 1, 2, 3, and 4. Unit 4 is not required to meet the emission limit until 1997 pursuant to 40 CFR 72.42. The designated representative is Joseph W. Messick, Jr.

R Gallagher: Three averaging plans, one for each calendar year 1997–1999 for units 1, 2, 3, and 4; for each year, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.50 lbs/MMBtu. The other units designated in the plans are Cayuga units 1 and 2, Gibson units 1, 2, 3, and 4, and Wabash River units 2, 3, 5, and 6. Units 1, 2, 3, and 4 are not required to meet the emission limit until 1997 pursuant to 40 CFR 72.42. The designated representative is Joseph W. Messick, Jr.

Wabash River: Standard emission limitation of 0.50 lbs/MMBtu for unit 1 for 1997–1999; five averaging plans, one for each calendar year 1995–1996 for unit 3, and one for each calendar year 1997–1999 for units 2, 3, 5, and 6; the actual annual average emission rates for NO_X shall not exceed the alternative contemporaneous annual emission limitations of 0.50 lbs/MMBtu for units 2, 3, and 5 and 0.45 lbs/MMBtu for unit 6. The other units designated in the plans are, for 1995–1996, Gibson units 1, 2, and 3, and for 1997–1999, Cayuga units 1 and 2, Gibson units 1, 2, 3, and 4, and R Gallagher units 1, 2, 3, and 4. Units 1, 2, 5, and 6 are not required to meet the emission limit until 1997 pursuant to 40 CFR 72.42. The designated representative is Joseph W. Messick, Jr.

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Dated: September 12, 1994.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94-23498 Filed 9-21-94; 8:45 am]

BILLING CODE 6560-50-P

[OPPTS-00161A; FRL-4913-4]

Chemical Use Inventory (TRI Phase 3); Public Meeting; Change of Time and Location

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is changing the time and place of the public meeting described in the **Federal Register** notice of August 8, 1994 (59 FR 40362), in order to accomodate more speakers. The meeting is intended to explore issues related to the possible expansion of the Toxics Release Inventory (TRI) to include use-related data elements such as those associated with material accounting. It is part of an EPA effort to discuss the creation of a "Chemical Use Inventory" (CUI).

DATES: The date has not changed, as the meeting will still be held on September 28, 1994. However, the meeting will now start at 9 a.m.

ADDRESSES: The location has been changed from the EPA auditorium to the conference room (one floor below the lobby) at Waterside Towers Apartments, 907 6th St., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike McDonnell, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 or telephone: (202) 260-1477.

SUPPLEMENTARY INFORMATION: EPA will finalize the list of speakers by close of business on September 23, 1994. Those interested in speaking should contact the person listed under FOR FURTHER INFORMATION CONTACT.

List of Subjects

Environmental protection.

Dated: September 19, 1994.

Susan B. Hazen,

Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94-23597 Filed 9-21-94; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL RESERVE SYSTEM

First Fidelity Bancorporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 17, 1994.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. First Fidelity Bancorporation, Lawrenceville, New Jersey, and Banco Santander, S.A., Santander, Spain; to acquire Baltimore Bancorp, Baltimore, Maryland, and thereby indirectly acquire The Bank of Baltimore Interim Federal Savings Bank, Baltimore, Maryland, and thereby engage in operation of a savings bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

In connection with this application, Baltimore Bancorp, Baltimore, Maryland, proposes to acquire The Bank of Baltimore Interim Federal Savings Bank, Baltimore, Maryland, and thereby engage in the operation of a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Currently, Baltimore Bancorp is a bank holding company whose sole banking subsidiary is The Bank of Baltimore, Baltimore, Maryland, a commercial bank. Prior to First Fidelity's acquisition of Baltimore Bancorp, The Bank of Baltimore Interim Federal Savings Bank will be chartered and acquired by Baltimore Bancorp and The Bank of Baltimore will be merged with and into The Bank of Baltimore Interim Federal Savings Bank, with The Bank of Baltimore Interim Federal Savings Bank as the surviving institution.

First Fidelity also proposes to acquire the following related nonbank subsidiaries and to engage in the respective nonbanking activities:

(1) To acquire Atlantic Independent Insurance Agency, Inc., Bel Air, Maryland, and thereby act as insurance agent for the sale of credit-related life, health and accident insurance, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

(2) To acquire Atlantic Residential Mortgage Corporation, Baltimore, Maryland, and thereby engage in originating, purchasing, packaging, selling and servicing residential mortgage loans for the secondary market, itself and the bank and provide fully secured financing to other mortgage banking companies to assist them in the acquisition of servicing rights in FHLMC, FNMA, and GNMA residential mortgages, pursuant to §§ 225.25(b)(1) and (b)(5) of the Board's Regulation Y.

(3) To acquire Baltimore Bancorp Investment Services, Inc., Baltimore, Maryland, and thereby act as a discount broker of listed and OTC equities, corporate bonds, government bonds, municipal bonds, mutual funds and options, pursuant to §§ 225.25(b)(15) and (b)(16) of the Board's Regulation Y.

(4) To acquire Baltimore Bancorp Leasing & Financial, Inc., Baltimore, Maryland, and thereby act as an equipment finance and leasing company specializing in transactions with established corporations, with respect to plant equipment, computers, office furniture and equipment, medical equipment and other tangible personal property, pursuant to §§ 225.25(b)(1) and (b)(5).

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Southern National Banks, Inc., Fort Walton Beach, Florida; to acquire First Appraisal Corporation, Fort Walton Beach, Florida, and thereby engage in real estate appraisal activities, pursuant to § 225.25(b)(13) of the Board's Regulation Y. The proposed activity will be conducted throughout the state of Florida.

Board of Governors of the Federal Reserve System, September 16, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-23443 Filed 9-21-94; 8:45 am]

BILLING CODE 6210-01-F

John Chancey and Katherine Chancey McGee; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than October 12, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. John Chancey and Katherine Chancey McGee, both of Fort Walton Beach, California; to each acquire an additional 30.60 percent, for a total of 56.90 percent, of the voting shares of Florida First City Banks, Inc., Fort Walton Beach, Florida, and thereby indirectly acquire First City Bank, Fort Walton Beach, Florida.

Board of Governors of the Federal Reserve System, September 16, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-23444 Filed 9-21-94; 8:45 am]

BILLING CODE 6210-01-F

Principal National Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 17, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Principal National Bancorp, Inc., Pontiac, Illinois; to acquire 100 percent of the voting shares of Republic Savings Bank, Piper City, Illinois, an interim Illinois savings bank being used to facilitate the conversion and acquisition of Guaranty Savings Association, Piper City, Illinois, an Illinois savings and loan association.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. The Conrad Company, Minneapolis, Minnesota; to acquire 98 percent of the voting shares of The Bank of Santa Fe, Santa Fe, New Mexico.

2. Pequot Area Bancorporation, Inc., Pequot Lakes, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Pequot Lakes State Bank, Pequot Lakes, Minnesota.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. California Bancshores, Inc., San Ramon, California; to acquire 100 percent of the voting shares of Bank of Livermore, Livermore, California.

Board of Governors of the Federal Reserve System, September 16, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-23445 Filed 9-21-94; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Proposed Annex to the James C. Cleveland Federal Building-Courthouse, Concord, New Hampshire; Finding of No Significant Impact

This notice serves to inform the public that, pursuant to the provisions of GSA Order ADM P 1000.2B and the Regulations issued by the Council on Environmental Quality, November 29, 1978, and based upon the Environmental Assessment conducted for the proposed action, the General Services Administration has determined that the proposed construction of an annex to the James C. Cleveland Federal Building in Concord, New Hampshire is not considered a major federal action significantly affecting the quality of the human environment. After consideration of public comments on the EA and draft Finding Of No Significant Impact (FONSI), the GSA has thereto finalized its Finding Of No Significant Impact for this project.

For further information please contact Mr. Ralph Scalise, Planning Staff, Public Buildings Service, General Services Administration, 10 Causeway Street, Boston, Massachusetts 02222. Telephone: (617) 565-5821.

Issued in New York, NY on September 12, 1994.

Karen R. Adler,

Regional Administrator, General Services Administration.

[FR Doc. 94-23402 Filed 9-21-94; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Members on Public Advisory Committees; Science Advisory Board to the National Center for Toxicological Research

AGENCY: Food and Drug Administration, HHS.

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ACTION: Notice

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on the Science Advisory Board (the board) to the National Center for Toxicological Research. Three vacancies will occur on June 30, 1995.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically disabled candidates. Final selections from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

DATES: Nominations should be received by October 24, 1994.

ADDRESSES: All nominations for membership, except for general public representatives (consumer-nominated members), should be sent to Barbara J. Jewell (address below). All nominations for general public representatives (consumer-nominated members) should be sent to Susan K. Meadows (address below).

FOR FURTHER INFORMATION CONTACT:

Regarding all nominations for membership, except for general public representatives (consumer-nominated members): Barbara J. Jewell, National Center for Toxicological Research (HFT–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3155.

Regarding all nominations for general public representatives (consumer-nominated members): Susan K. Meadows, Office of Consumer Affairs (HFE–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members to serve on the board to the National Center for Toxicological Research (NCTR). The function of the board is to advise the Director, NCTR, on establishment and implementation of a research program that will assist in fulfilling the regulatory responsibilities of the Commissioner of Food and Drugs. The board provides an extra-agency review to ensure that the research programs at NCTR are scientifically sound and pertinent.

Criteria for Members

Persons nominated for membership shall have adequately diversified experience that is appropriate to the work of the board in the fields related to toxicological research.

The specialized training and experience necessary to qualify nominees as experts suitable for appointment are subject to review, but may include experience in medical practice, teaching, and/or research relevant to the field of activity of the board. The term of office is up to 4 years, depending on the appointment date.

General Public Representatives (Consumer-nominated Members)

FDA currently attempts to place on committees members who are nominated by consumer organizations. These members are recommended by a consortium of 12 consumer organizations that has the responsibility for screening, interviewing, and recommending consumer-nominated candidates with appropriate scientific credentials. Candidates are sought who are aware of the consumer impact of committee issues, but who also possess enough technical background to understand and contribute to the committee's work. For some advisory committees the agency notes, however, it may require such nominees to meet the same technical qualifications and specialized training required of other expert members of the committee. The term of office for these members is up to 4 years, depending on the appointment date. Nominations are invited for consideration for membership as openings become available.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on the board. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the board, and appears to have no conflict of interest that would preclude board membership. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: September 15, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–23375 Filed 9–22–94; 8:45 am]

BILLING CODE 4160–01–F

Request for Nominations for Members on Public Advisory Committees; Science Board to the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on the Science Board to the Food and Drug Administration (the board). Nominations will be accepted for current vacancies and vacancies that will or may occur on the board during the next 18 months.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or physically disabled candidates. Final selections from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

DATES: Nominations should be received by October 24, 1994.

ADDRESSES: All nominations and curricula vitae from academia, industry, and government representatives for membership, except for general public representatives (consumer-nominated members), should be sent to Zelma S. Rein (address below). All nominations for general public representatives (consumer-nominated members) should be sent to Susan K. Meadows (address below).

FOR FURTHER INFORMATION CONTACT:

Regarding all nominations for membership, except for general public representatives: Zelma S. Rein, Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5839.

Regarding all nominations for general public representatives: Susan K. Meadows, Office of Consumer Affairs (HFE–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members to serve on the board for the following vacancies: Two vacancies immediately, four vacancies occurring December 31, 1994, and three vacancies occurring December 31, 1995.

Function

The function of the board is to provide advice primarily to the agency's Senior Science Advisor and, as needed, to the Commissioner of Food and Drugs and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in academia and industry. Additionally, the board provides advice to the agency on keeping pace with technical and scientific evolutions in the field of regulatory science, on formulating an appropriate research agenda, and on upgrading its scientific and research facilities to keep pace with these changes. The board also provides the means for critical review of agency sponsored intramural and extramural scientific research programs.

Criteria for Members

Persons nominated for membership from academia, industry, and government representatives shall be knowledgeable in the fields of chemistry, pharmacology, toxicology, clinical research, and other scientific disciplines. The term of office is up to 4 years, depending on the appointment date.

General Public Representatives (Consumer-nominated Members)

FDA currently attempts to place members on advisory committees who are nominated by consumer organizations. These members are recommended by a consortium of 12 consumer organizations that has the responsibility for screening, interviewing, and recommending consumer-nominated candidates with appropriate scientific credentials. Candidates are sought who are aware of the consumer impact of committee issues, but who also possess enough technical background to understand and contribute to the committee's work. The agency notes, however, that for some advisory committees, it may require such nominees to meet the same technical qualifications and specialized training required of other expert members of the committee. The term of office for these members is up to 4 years, depending on the appointment date. Nominations are invited for consideration for membership as openings become available.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on the board. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the board, and appears to have no conflict of interest that would preclude board membership. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: September 14, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–23376 Filed 9–21–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0044]

Riker Laboratories, Inc., et al.; Withdrawal of Approval of 91 New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that withdrew approval of 91 new drug applications (NDA's). The document was published in the Federal Register of March 2, 1994 (59 FR 9989). This document corrects the name of one of the drugs.

FOR FURTHER INFORMATION CONTACT: Nancy G. Maizel, Center for Drug Evaluation and Research (HFD–53), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4320.

SUPPLEMENTARY INFORMATION: In FR Doc. 94–4660, appearing on page 9989, in the Federal Register of Wednesday, March 2, 1994, the following correction is made:

In the table on page 9991 in the entry for NDA 17–485, the drug name "Vosol Otic Solution" is corrected to read "Vosol Wick Otic Solution."

Dated: September 2, 1994.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 94–23506 Filed 9–21–94; 8:45 am]

BILLING CODE 4160–01–F

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention National Advisory Council Meeting in September

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA)

ACTION: Correction of meeting notice.

SUMMARY: Public notice was given in the Federal Register on August 15, 1994 (Vol. 59, No. 156, page 41779) that the Center for Substance Abuse Prevention National Advisory Council would be meeting on September 22–23, at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland. The location of this meeting has subsequently been changed to the Bethesda Marriott Suites (Salon Room, Second Floor), 6711 Democracy Boulevard, Bethesda, Maryland 20817.

The agenda and hours of the open and closed sessions of the meeting and the contact for additional information remain as announced.

Dated: September 19, 1994

Peggy W. Cockrill,

SAMHSA Committee Management Officer.

[FR Doc. 94–23507 Filed 9–21–94; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–4310–01; NMNM 32098]

Termination of Recreation and Public Purposes (R&PP) Classification and Opening Order; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates R&PP Classification, NMNM 32098. The land will be opened to the public land laws generally, including the mining laws. The land has been and remains open to the mineral leasing laws.

DATES: Termination of the classification is effective September 22, 1994. The land will be open to entry at 8:00 a.m. on October 24, 1994.

FOR FURTHER INFORMATION CONTACT: Bernie Creager, Caballo Resource Area, Bureau of Land Management, 1800 Marquess, Las Cruces, New Mexico 88005, (505) 525–4325.

SUPPLEMENTARY INFORMATION: On November 16, 1978, R&PP Lease NMNM 32098 was issued to the Board of County Commissioners, Otero County.

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The said lease has been relinquished and the case is closed.

Pursuant to the R&PP Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.), and the regulations contained in 43 CFR 2461.5 (b)(2), R&PP Classification NMNM 32098 is hereby terminated in its entirety and the segregation for the following described land is hereby terminated.

New Mexico Principal Meridian

T. 22 S., R. 8 E.,
Sec. 14, SW¼SE¼SW¼.
Containing 10.00 acres in Otero County.

The classification no longer serves a needed purpose as to the land described above and is hereby terminated.

At 8 a.m. on October 24, 1994 the land will be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received prior to or at 8 a.m. on October 24, 1994, will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

At 8 a.m. on October 24, 1994, the following described public land will also be open to the operation of the mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law, where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: September 12, 1994

Leland G. Keesling,

Acting Associate State Director

[FR Doc. 94-23482 Filed 9-21-94; 8:45 am]

BILLING CODE 4310-FB-P

[NM-030-4310-01; NMNM 0558520]

Termination of Recreation and Public Purposes (R&PP) Classification and Opening Order; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates R&PP Classification, NMNM 0558520. The land will be opened to the public land laws generally, including the mining laws. The land is and remains open to the mineral leasing laws.

DATES: Termination of the classification is effective October 24, 1994.

FOR FURTHER INFORMATION CONTACT: Bernie Creager, Caballo Resource Area, Bureau of Land Management, 1800 Marquess, Las Cruces, New Mexico 88005, (505) 525-4325.

SUPPLEMENTARY INFORMATION: On September 5, 1969, R&PP Patent 30-70-0014 was issued to Alamogordo Municipal Board of Education. On September 19, 1985, the land was reconveyed back to the United States. The title was accepted by the United States on January 14, 1986.

Pursuant to the R&PP Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.), and the regulations contained in 43 CFR 2461.5 (b)(2), R&PP Classification NMNM 0558520 is hereby terminated in its entirety and the segregation for the following described land is hereby terminated.

New Mexico Principal Meridian

T. 15 S., R. 10 E.,
Sec. 34, W½SW¼.
Containing 80.00 acres.

The classification no longer serves a needed purpose as to the land described above and is hereby terminated.

At 8 a.m. on October 24, 1994, the land will be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received prior to or at 8 a.m. on October 24, 1994, will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

At 8 a.m. on October 24, 1994, the following described public land will also be open to the operation of the mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States, Acts required to establish a location and to initiate a right of possession are governed by State law, where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: September 12, 1994.

Leland G. Keesling,

Acting Associate State Director.

[FR Doc. 94-23483 Filed 9-21-94; 8:45 am]

BILLING CODE 4310-FB-P

[CA-065-04-4333-05]

Closure Order for Motorized Vehicle Use, South Park Canyon Bridge, P142, Panamint Mountains, Inyo County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Vehicle Closure on the South Park Canyon Bridge on BLM Route P 142 in South Park Canyon, Panamint Mountains in Inyo County, California.

SUMMARY: Notice is hereby given that a ½ mile section of BLM Route P 142 in South Park Canyon is hereby closed to motorized vehicle use.

ORDER: Effective immediately a ½ mile segment of BLM Route P 142 in South Park Canyon from the intersection of BLM Route P 142 and the Thorndike Mine Road to a point approximately 1 mile east of the intersection of BLM Route P 142 and the Suitcase Mine Road in Section 30, Township 22 South, Range 45 East, Mount Diablo Meridian, is closed to all motorized vehicle use. No person may use, drive, transport, park, let stand, or have charge or control over any motorized vehicle in this area.

Exemptions to this order for reasonable access for mining or other purposes are by written authorization of the Ridgecrest Resource Area Manager only.

This closure order decision will be implemented with full force and effect due to the potential for the loss of person or property should this bridge fail.

EFFECTIVE DATE: This closure is effective September 9, 1994 and will remain in effect until rescinded by the authorizing official.

FOR FURTHER INFORMATION CONTACT: Area Manager, Bureau of Land Management, Ridgecrest Resource Area, 300 South Richmond Road, Ridgecrest, CA 93555, (619) 375-7125.

SUPPLEMENTARY INFORMATION: The road segment in South Park Canyon closed through this order is located on a steep canyon wall over 100 feet above the canyon bottom. Rockslides have removed a section of the roadbed and rendered the road impassible to motorized vehicles. In March 1994 a makeshift bridge was constructed across this chasm without BLM notification or authorization. The road segment and bridge will remain closed until the structure can be inspected and repaired to ensure it meets the standards prescribed by the American Association of State Highway Transportation Officials (AASHTO) and the American Society for Testing Materials (ASTM). If the bridge cannot be modified to meet these standards, it will be removed.

The purpose of this closure order in South Park Canyon is to protect persons and property on an impassable mountain road in a remote desert area. South Park Canyon can still be adequately accessed via P 142 from the west and from the east by a road network accessed from P 82 in Pleasant Canyon.

Maps showing the affected area are available by contacting the Ridgecrest Resource Area Office. Signs will be installed at the closure points and the affected area will be posted with public notices and standard motorized vehicle closure signs.

Authority for this closure is granted in 43 CFR 8364.1 (a). Violation of this order is punishable by a fine, not to exceed $100,000 and/or imprisonment not to exceed 12 months.

Dated: September 9, 1994.

Henri R. Bisson,

District Manager.

[FR Doc. 94-23405 Filed 9-21-94; 8:45 am]

BILLING CODE 4310-40-M

[ID-010-05-4210-03; IDI-29305]

Termination of Desert Land Entry Classification/Notice of Realty Action, Sale of Public Land in Owyhee County; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Termination of Desert Land Entry Classification/Sale of Public Land in Owyhee County.

SUMMARY: This order terminates a Bureau of Land Management classification affecting 40 acres of public land near Three Creek, Idaho. After termination of the classification, the following-described public land will immediately become available for disposal by sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Boise Meridian

T. 16 S., R. 11 E.,
Sec. 21, NE¼NE¼.

The area described contains 40.00 acres in Owyhee County.

By virtue of the authority vested in the Secretary of the Interior by the Act of March 3, 1877, as amended (43 U.S.C. 321, 323, 325, 327-329), it is ordered as follows: Pursuant to the regulations in 43 CFR 2520 and the authority delegated to me by BLM Manual Section 1203 (48 FR 85), the classification of the above 40 acres of public land as suitable for Desert Land Entry, under the Section 7 of the Act of June 28, 1934 (48 Stat 1272), as amended (43 U.S.C. 315f), under serial number IDI-015596, is hereby revoked. Upon termination of the classification the lands will be sold under the authority of Section 203 of the Federal Land Policy and Management act to Mearl W. Row.

The previously described land has been examined and through the public-supported land use planning process has been determined to be suitable for disposal by sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976.

The patent, when issued, will contain a reservation to the United States for the following:

1. Ditches and Canals constructed by the authority of the United States, Act of August 30, 1890, (26 Stat. 391, 43 U.S.C. 945).

2. All oil and gas resources, together with the right to prospect for, mine, and remove the minerals.

Subject to:

3. Those rights for an access road issued under right-of-way IDI-21495 to Joe Barinaga under the authority of the Act of October 21, 1976, (43 U.S.C. 1761).

DATES: September 22, 1994, the land described above will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the Federal Land Policy and Management Act. The segregative effect will end upon issuance of the patent or 270 days from the date of publication, whichever occurs first.

ADDRESSES: Boise District Office, Jarbidge Resource Area, 2620 Kimberly Road, Twin Falls, Idaho 83301.

FOR FURTHER INFORMATION CONTACT: Fred Pence, Realty Specialist, at the address shown above or (208) 736-2350.

SUPPLEMENTARY INFORMATION: This land is being offered by direct sale to Mearl W. Row, of Rogerson, Idaho, based on historical use and value of added improvements. Acceptance of the sale offer will constitute an application for conveyance of that portion of the mineral estate of no known value. A separate non-returnable fee of $50.00 will be required from the purchaser for conveyance of the mineral interest.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Boise District, 3948 Developmental Avenue, Boise, Idaho 83705. Any adverse comments will be reviewed by the District Manager, who may vacate or modify this realty action to accommodate the protest. If the protest is not accommodated, the comments are subject to review of the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: September 12, 1994.

R.E. Schmitt,

Associate District Manager.

[FR Doc. 94-23487 Filed 9-21-94; 8:45 am]

BILLING CODE 4310-GG-P

[CA-940-4210-06; CACA 7584, CACA 7839, CACA 8048, CAS 3721, CAS 047313, and CAS 076612]

Proposed Continuation of Withdrawals; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has proposed to continue withdrawals on 642.95 acres for 20 years, 30 acres for 25 years, and 40 acres for 30 years within the Toiyabe National Forest. The segregative effect on these withdrawals remains unchanged.

DATE: Comments should be received on or before December 21, 1994.

ADDRESS: Comments should be sent to the California State Director, Bureau of Land Management (CA-943.1), 2800 Cottage Way, Room E-2845, Sacramento, California 95825-1889.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 916-978-4820.

SUPPLEMENTARY INFORMATION:

1. CACA 7584

The land is described as follows:

Mount Diablo Meridian, T. 5 N., R. 24 E., sec. 23, that portion of NE¼SE¼ which lies north and east of U. S. Highway 395.

The area described contains approximately 30.00 acres in Mono County. The purpose of this withdrawal is to protect the Mono Administrative Site.

2. CACA 7839

The land is described as follows:

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Mount Diablo Meridian, T. 4 N., R. 24 E., sec. 28, lots 1 and 2; and sec. 33, lot 1.

The area described contains 88.15 acres in Mono County. The purpose of this withdrawal is to protect the Twin Lakes Recreation Area.

3. CACA 8048

Mount Diablo Meridian, T. 6 N., R. 22 E., sec. 27, E½SW¼; sec. 34, E½NW¼NW¼.

The area described contains 40.00 acres in Mono County. The purpose of the withdrawal is to protect the Coyote Administration Site.

4. CAS 3721

(a). Mount Diablo Meridian, T. 9 N., R. 20 E., sec. 28, described by metes and bounds.

The area described contains 24.80 acres in Alpine County. The purpose of the withdrawal is to protect the Silver Creek Campground.

(b). Mount Diablo Meridian, T. 7 N., R. 23 E., sec. 28, E½SE¼.

The area described contains 80.00 acres in Mono County. The purpose of the withdrawal is to protect the Bootleg Campground.

5. CAS 047313

(a). Mount Diablo Meridian, T. 10 N., R. 19 E., sec. 7, SW¼NE¼, W½W½SE¼NE¼.

The area described contains 50 acres in Alpine County. The purpose of the withdrawal is to protect the Hope Valley Forest Camp.

(b). Mount Diablo Meridian, T. 10 N., R. 19 E., sec. 1, 10 acres in lots 15 and 16 described by metes and bounds; T. 11 N., R. 19 E., sec. 33, S½S½SE¼SE¼.

The area described contains 20 acres in Alpine County. The purpose of the withdrawal is to protect the Crystal Spring Forest Camp.

(c). Mount Diablo Meridian, T. 11 N., R. 19 E., sec. 31, N½N½SW¼NW¼.

The area described contains 10 acres in Alpine County. The purpose of the withdrawal is to protect the Kit Carson Forest Camp.

(d). Mount Diablo Meridian, T. 6 N., R. 23 E., sec. 22, E½E½SE¼SE¼, sec. 23, W½W½SW¼SW¼.

The area described contains 20 acres in Mono County. The purpose of the withdrawal is to protect the Wheeler Creek Administrative Site.

(e). Mount Diablo Meridian, T. 6 N., R. 23 E., sec. 17, NE¼SW¼, NE¼NW¼SW¼.

The area described contains 50 acres in Mono County. The purpose of the withdrawal is to protect the Mountain Glen Forest Camp.

(f). Mount Diablo Meridian, T. 4 N., R. 24 E., sec. 22, SW¼SW¼, sec. 27, W½NW¼.

The area described contains 120 acres in Mono County. The purpose of the withdrawal is to protect the Robinson Creek Campground.

(g). Mount Diablo Meridian, T. 4 N., R. 24 E., sec. 15, SW¼SW¼.

The area described contains 40 acres in Mono County. The purpose of the withdrawal is to protect the Honeymoon Flat Campground.

(h). Mount Diablo Meridian, T. 2 N., R. 25 E., sec. 7, S½NW¼NE¼, SW¼NE¼, S½SE¼NW¼, N½NE¼SW¼.

The area described contains 100 acres in Mono County. The purpose of the withdrawal is to protect the Virginia Lakes Recreation Area.

6. CAS 076612

Mount Diablo Meridian, T. 4 N., R. 24 E., sec. 5, SE¼NE¼.

The area described contains 40 acres in Mono County. The purpose of the withdrawal is to protect the Buckeye Campground.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: September 14, 1994.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 94–23484 Filed 9–21–94; 8:45 am]

BILLING CODE 4310–40–P

[ID–943–4070–02; IDI–29793]

Proposed Withdrawal and Opportunity for Public Meeting; Idaho

AGENCY: Bureua of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service proposes to retain two existing withdrawals for 20 years for 37.50 acres of public land lying outside National Forest Boundaries in Bonneville County to protect the Grays Lake Refuge Headquarters. The land is presently closed to surface entry and mining by two withdrawals which are no longer needed by the Forest Service. The withdrawals would be retained and jurisdiction of the lands transferred to the Fish and Wildlife Service under the proposal.

DATES: Comments and requests for a public meeting must be received by December 21, 1994.

ADDRESSES: Comments and meeting requests should be sent to the Idaho State Director, BLM, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 American Terrace, Boise, Idaho 83706–2500, 208–384–3166.

SUPPLEMENTARY INFORMATION: On August 23, 1994, a petition was approved allowing the Fish and Wildlife Service to file an application to withdraw the following described public lands from settlement, sale, location or entry under the general land laws, including the mining laws, subject to valid existing rights:

Boise Meridian

T. 4 S., R. 43 E.,
Sec. 35, E½SE¼NE¼, N½S½NW¼SE¼ NE¼, N½NW¼SE¼NE¼ and NE¼ NE¼SE¼.

The area described contains 37.50 acres in Bonneville County.

The purpose of the proposed withdrawals are to protect the Fish and Wildlife Service Grays Lake Refuge Headquarters.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawals may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawals. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawals must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

Dated: September 14, 1994.

Jimmie Buxton,

Chief, Branch of Land and Minerals.

[FR Doc. 94–23486 Filed 9–21–94; 8:45 am]

BILLING CODE 4310–66–M

[UT–942–4210–06; U–012576 et. al.]

Proposed Continuation of Withdrawals; Utah

AGENCY: Bureau of Land Management, Interior

ACTION: Notice

SUMMARY: The Forest Service proposes that several land withdrawals embracing approximately 957.4 acres be continued. The lands will remain closed to the mining laws, and in some instances to surface entry, but have been and will remain open to mineral leasing.

DATES: Comments should be received by December 21, 1994.

ADDRESSES: Comments should be sent to the State Director, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: Randy Massey, Utah State Office, 801-539–4119.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that the existing land withdrawals identified, be continued for various time periods, as delineated, pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988). The land is described as follows:

Salt Lake Meridian, Utah

Manti-LaSal National Forest

U–012576, PLO 1736—September 22, 1958.

Kigalia Administrative Site—Continue 40 years.

T. 36 S., R. 19 E.,
Sec. 9, SW¼SW¼NE¼NE¼, S½SE¼NW¼NE¼, SW¼NE¼, W½SE¼NE¼;.
Containing 67.5 acres.

Lake Hill Recreation Area—Continue 30 years.

T. 17 S., R. 4 E.,
Sec. 20, SW¼NE¼NE¼NW¼, SE¼NW¼NE¼NW¼, SW¼NE¼NW¼, W½SE¼NE¼NW¼, N½NW¼SE¼NW¼.
Containing 25 acres.

Manti Community Recreation Area—Continue 30 years.

T. 18 S., R. 3 E.,
Sec. 13, SW¼NE¼NW¼NW¼, S½NW¼NW¼NW¼, SW¼NW¼NW¼, W½SE¼NW¼NW¼.
Sec. 14, S½NE¼NE¼NE¼, SE¼NE¼NE¼.
Containing 37.5 acres.

Castle Rock Recreation Area—Continue 20 years.

T. 15 S., R. 7 E.,
Sec. 17, SW¼SE¼NE¼, W½SE¼SE¼NE¼.
Containing 15 acres.

Huntington Canyon Recreation Area—Continue 20 years.

T. 15 S., R. 7 E.,
Sec. 5, S½S½SW¼SE¼;
Sec. 8, N½NW¼NE¼.
Containing 30 acres.

Forks of Huntington Canyon Recreation Area—Continue 20 years.

T. 15 S., R. 7 E.,
Sec. 20, SW¼NW¼SE¼
Containing 10 acres.

Flat Canyon Recreation Area—Continue 20 years.

T. 13 S., R. 6 E.,
Sec. 33, W½NE¼NE¼SW¼, NW¼NE¼SW¼, N½SW¼NE¼SW¼.
Containing 20 acres.

Ferron Reservoir Recreation Area—Continue 30 years.

T. 19 S., R. 4 E.,
Sec. 22, E½NE¼SE¼SW¼, S½NW¼SE¼SW¼, N½SW¼SE¼SW¼, N½SW¼SE¼, NW¼SE¼SE¼, S½SE¼SE¼.
Containing 65 acres.

Ashley National Forest

U–090300, PLO 2989—March 18, 1963—Continue 25 years.

Red Springs Recreation Area

T. 1 N., R. 22 E.,
Sec. 17, W½SW¼SE¼SW¼;
Sec. 20, W½NW¼NE¼NW¼, E½NE¼NW¼NW¼, NW¼NE¼SW¼NW¼, E½NW¼SW¼NW¼.
Containing 22.50 acres.

Iron Springs Campground

T. 1 S., R. 21 E.,
Sec. 28, N½SE¼NE¼SE¼.
Containing 5 acres.

Kaler Hollow Campground

T. 1 S., R. 21 E.,

A parcel of land described as follows: Beginning at a point 330 feet due north of the southwest corner of lot 10, section 30; thence due east 660 feet; thence due north 330 feet; thence due west 660 feet; thence due south 330 feet to the point of beginning. Containing 5 acres.

Oak Park Recreation Area

T. 1 S., R. 20 E.,

A parcel of land described as follows: Beginning at the northwest corner of lot 4 of section 12; thence due south 165 feet; thence due east 330 feet; thence due north 165 feet; thence due west 330 feet to the point of beginning. Containing 1.25 acres.

A parcel of land described as follows: Beginning at the northwest corner of lot 5, section 12; thence due south 660 feet' thence due east 1030 feet to the west bank of the Oaks Park Canal; thence following the west bank of the Oaks Park Canal in a northerly direction a distance of 773 feet to the north line of lot 5; thence due west 1095 feet to the point of beginning. All distances being more or less. Containing approximately 17 acres.

Uintah Meridian

U–036838, PLO 3199—August 19, 1963—Continue 25 years.

Swift Creek Campground

T. 2 N., R. 4 W.,
Sec. 4, W½SE¼NW¼
Containing 20 acres.

Reservoir Campground

T. 2 N., R. 4 W.,
Sec. 15, E½NE¼NW¼
Containing 20 acres.

Yellowstone Campground

T. 2 N., R. 4 W.,
Sec. 27, SW¼NW¼NW¼.
Containing 10 acres.

Moon Lake Recreation Area

T. 2 N., R. 6 W.,
Sec. 13, S½SE¼NE¼, SE¼SW¼NE¼, NE¼SE¼, E½NW¼SE¼;
Sec. 18, lots 6 and 7, SW¼SW¼NE¼SW¼, SE¼SW¼;
T. 2 N., R. 5 W.,
Sec. 18, lots 6 and 7, SW¼SW¼NE¼SW¼, SE¼SW¼
Containing 196.15 acres.

Miner's Gulch Campground

T. 2 N., R. 7 W.,
Sec. 25, E½SE¼SW¼SE¼, SE¼NE¼SW¼SE¼.
Containing 7.5 acres.

U–010084A, PLO 1775—January 13, 1959—Continue 25 years.

Moon Lake Administrative Site

T. 2 N., R. 6 W.,
Sec. 13, SW¼SW¼NE¼, SE¼SE¼NW¼, NE¼NE¼SW¼, NW¼NW¼SE¼;
Containing 40 acres.

Yellowstone Administrative Site

T. 2 N., R. 4 W.,
Sec. 28, S½S½NE¼NE¼.
Containing 10 acres.

Paradise Park Administrative Site

T. 3 N., R. 1 E.,
Sec. 17, NE¼SE¼NW¼NW¼; and

A parcel of land more particularly described as follows: Beginning at a point 660 feet due south of the NW corner of lot 1, section 17, thence due east 62.5 feet, thence due south 375 feet, thence due west 62.5 feet, thence due north 375 feet, to the point of beginning, all distances being more or less. Containing approximately 3.0 acres.

Salt Lake Meridian

Trout Creek Administrative Site

T. 1 S., R. 20 E.,
Sec. 3, SW¼SW¼SW¼;
Sec. 4, SE¼SE¼SE¼.
Containing 20 acres.

Colton Administrative Site

T. 2 S., R. 21 E.,
Sec. 2, E½SE¼SE¼.
Containing 20 acres.

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Ute Lookout and Summit Springs Administrative Sites

T. 2 N., R. 19 E.,
Sec. 26, NW¼NE¼SE¼;
Sec. 33, NW¼NE¼NW¼.
Containing 20 acres.

Uinta National Forest

U–029265, PLO 2300—March 14, 1961—Continue 30 years.

North Fork of American Fork Canyon Roadside Zone

A strip of land 200 feet on each side of the center line of the North Fork of American Fork Canyon Highway through the following legal subdivisions:

T. 3 S., R. 3 E.,
Sec. 32, SE¼;
Sec. 33, NW¼NE¼, NE¼NW¼.
T. 4 S., R. 2 E.,
Sec. 24, E½NE¼, NE¼SE¼.
T. 4 S., R. 3 E.,
Sec. 5, lots 2–9, SE¼NW¼.
Sec. 7, N½NE¼SE¼, S½SE¼;
Sec. 8, NW¼, NW¼SW¼;
Sec. 18, lots 3 and 4, W½NE¼, SE¼NW¼, E½SW¼;
Sec. 19, lots 1 and 2.
Containing approximately 270 acres.

The purpose of the withdrawals is to protect recreation areas, roadside zones, and administrative sites. The withdrawals segregate the land from location and entry under the mining laws, but not the mineral leasing laws, and in some instances, also segregates the land from settlement, sale, location, and entry. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the Utah State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued, and, if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Terry Catlin,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–23388 Filed 9–21–94; 8:45 am]
BILLING CODE 4310–DQ–P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–793605

Applicant: Lexington Pheasantry, Kelso, WA.

The applicant requests a permit to import 3 female captive-born white-eared pheasants (*Crossoptilon crossoptilon*) from South View Aviaries, Burnaby, B.C., Canada, for propagation to enhance the survival of the species.

PRT–793030

Applicant: Raymond Diehl, Bakersfield, CA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. Frank W. M. Bowker, "Thornkoof", Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 16, 1994.

Caroline Anderson,
Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–23374 Filed 9–21–94; 8:45 am]
BILLING CODE 4310–55–P

Geological Survey

LAC Mineral, Inc.; Contribution Acceptance

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. Geological Survey has accepted from LAC Minerals (USA), Inc. a contribution of $7,500 to support geologic studies of mineral deposits, particularly the studies of samples from the El Indio district in Chile.

DATES: This notice is effective September 22, 1994.

ADDRESSES: Information on the work is available to the public upon request at the following location: U.S. Geological Survey, Branch of Central Mineral Resources, Box 25046, MS–935, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT:

Dr. Charles Thorman of the U.S. Geological Survey, Branch of Central Mineral Resources, at the address given above; telephone 303/236–5601.

Benjamin A. Morgan,
Chief Geologist.

[FR Doc. 94–23481 Filed 9–21–94; 8:45 am]
BILLING CODE 4310–31–M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Availability of Environmental Documents Prepared for OCS Mineral Proposals on the Gulf of Mexico OCS.

SUMMARY: The Mineral Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS proposed on the Gulf of Mexico OCS. This listing includes for the following oil and gas activities all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Oryx Energy Company, Development/Production Activity, SEA No. N–4652UB.	High Island Area, East Addition, South Extension, Blocks A–384, A–385, A–378, and A379; Leases OCS–G 3316, 10311, 13807, and 13808; 112 miles southeast of the nearest coastline on Galveston Island, Texas.	06/20/94
Mobil Exploration & Producing U.S. Inc., NORM Disposal Operations, SEA No. NORM–113.	Eugene Island Area, Block 116, Lease OCS 0478, 37 miles south of St. Mary Parish, Louisiana.	04/11/94
Murphy Exploration & Production Company, NORM Disposal Operations, SEA No. NORM–114.	Ship Shoal Area, Block 118, Lease OCS 068, 20 miles south of Terrebonne Parish, Louisiana.	05/11/94
Shell Offshore, Inc., NORM Disposal Operations, SEA No. NORM–120.	Eugene Island Area, Block 276, Lease OCS–G 0985, 55 miles south of Terrebonne Parish, Louisiana.	06/28/94
Chevron U.S.A., NORM Disposal Operations, SEA No. NORM–121.	South Timbalier Area, Block 134, Lease OCS 0461, 28 miles south of Lafourche Parish, Louisiana.	07/15/94
Mobil Explorations & Producing U.S. Inc., Structure-Removal Operations SEA No. ES/SR 93–002B.	South Pelto Area, Block 9, Lease OCS–G 2924, 10 miles south of Terrebonne Parish, Louisiana.	05/10/94
Chevron U.S.A., Structure-Removal Operations, SEA Nos. ES/SR 94–033, 04–042, and 94–043.	West Cameron Area, Blocks 172 and 173, Lease OCS–G 1998 and OCS 0759, 26 miles southeast of Cameron, Louisiana.	06/13/94
Chevron U.S.A., Structure-Removal Operations, SEA No. ES/SR 94–034 through 94–035.	West Cameron Area, Block 48, Lease OCS–G 1351, 25 miles southwest of Cameron, Louisiana.	04/14/94
Murphy Exploration & Production Company, Structure-Removal Operations, SEA No. ES/SR 94–037(B).	West Cameron Area, Block 539, Lease OCS–G 5344, 76 miles south of Cameron, Louisiana.	04/11/94
Chevron U.S.A., Structure-Removal Operations, SEA No. ES/SR 94–038.	West Delta Area, Block 41, Lease OCS–G 1073, 20 miles soutn of Plaquemines Parish, Louisiana.	05/05/94
Samedan Oil Corporation, Structure-Removal Operations, SEA No. ES/SR 94–40.	High Island, Area, Block A–480, Lease OCS–G 2368, 83 miles south of Galveston County, Texas.	06/29/94
Chevron U.S.A., Structure-Removal Operations, SEA No. ES/SR 94–041.	Eugene Island Area, Block 238, Lease OCS–G 0982, 62 miles southwest of Morgan City, Louisiana.	04/15/94
Chevron U.S.A., Structure-Removal Operations, SEA No. ES/SR 94–044.	East Cameron Area, Block 281, Lease OCS–G 2050, 102 miles south of Cameron Parish, Louisiana.	04/13/94
Murphy Exploration & Production Company, Structure-Removal Operations, SEA No. ES/SR 94–045.	West Cameron Area, Block 188, Lease OCS–G 6573, 22 miles south of Cameron Parish, Louisiana.	04/08/94
Shell Offshore Inc., Structure-Removal Operations, SEA No. ES/SR 94–046.	East Cameron Area, Block 240, Lease OCS–G 4101, 70 miles south of Cameron Parish, Louisiana.	04/13/94
Chevron U.S.A, Structure-Removal Operations, SEA Nos. ES/SR 94–047 through 94–049.	South Timbalier Area; Blocks 134, 135, and 128; Leases OCS 0451, 0462, and 0498, 40 miles south of Leeville, Louisiana.	04/26/94
Sonat Exploration Company, Structure-Removal Operations, SEA No. ES/SR 94–050.	East Cameron Area, Block 239, Lease OCS–G 4100, 75 miles south of Cameron Parish, Louisiana.	05/19/94
Torch Operating Company, Structure-Removal Operations, SEA Nos. ES/SR 94–051 through 94–057.	Vermilion Area, Block 86, Lease OCS 0172, 22 miles south of Vermilion Parish, Louisiana.	06/06/94
Union Pacific Resources, Structure-Removal Operations, SEA No. ES/SR 94–058.	South Marsh Island Area, Block 30, Lease OCS–G 10695, 48 miles south-east of Intracoastal City, Louisiana.	06/06/94
Aviva America, Inc., Structure-Removal Operations, SEA No. ES/SR 94–059.	Galveston Area, Block 465, Lease OCS–G 6116, 22 miles south of Matagorda County, Texas.	06/10/94
Petrobras America Inc., Structure-Removal Operations, SEA No. ES/SR 94–060.	East Cameron Area, Block 90, Lease OCS–G 8642, 33 miles southwest of Vermilion Parish, Louisiana.	05/27/94
Pennzoil Petroleum Company, Structure-Removal Operations, SEA No. ES/SR 94–062.	West Cameron Area, Block 292, Lease OCS–G 6581, 30 miles south of Cameron Parish, Louisiana.	06/15/94
Shell Offshore Inc., Structure-Removal Operations, SEA Nos. ES/SR 94–063 and 94–065.	Brazos Area, Block A–20, Lease OCS–G 3472, 33 miles southeast of Matagorda County, Texas.	06/14/94
Vastar Resources, Inc., Structure-Removal Operations, SEA No. ES/SR 94–064.	Eugene Island Area, Block 107, Lease OCS–G 3810, 20 miles south of St. Mary Parish, Louisiana.	06/23/94
Amoco Corporation, Structure-Removal Operations, SEA No. ES/SR 94–66.	Eugene Island Area, Block 225, Lease OCS–G 8693, 57 miles south of St. Mary Parish, Louisiana.	06/20/94
Phillips Petroleum Company, Structure-Removal Operations, SEA No. ES/SR 94–067.	Ship Shoal Area, Block 26, Lease OCS–G 5530, 5 miles south of Terrebonne Parish, Louisiana.	06/10/94
The Louisiana Land and Exploration Co., Structure-Removal Operations, SEA No. ES/SR 94–069.	Eugene Island Area, Block 107, Lease OCS–G 3810, 47 miles south-southwest of Berwick, Louisiana.	06/28/94
Tennessee Gas Pipeline Company, Structure-Removal Operations, SEA No. ES/SR 94–070.	West Cameron Area, Block 180, Lease OCS 0763, 26 miles south of Cameron Parish, Louisiana.	06/17/94
Amerada Hess Corporation, Structure-Removal Operations, SEA No. ES/SR 94–071.	South Timbalier Area, Block 224, Lease OCS–G 7775, 43 miles south of Isles Dernieres, Terrebonne Parish, Louisiana.	07/08/94
Vastar Resources, Inc., Structure-Removal Operations, SEA No. ES/SR 94–074.	Eugene Island Area, Block 107, Lease OCS–G 3810, 25 miles south of St. Mary Parish, Louisiana.	07/12/94

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT:

Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepare EA's and FONSI's for proposals which relate to exploration for and the

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development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affects the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: September 15, 1994.

Chris C. Oynes,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 94-23485 Filed 9-21-94; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-677 (Final)

Coumarin From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: September 14, 1994.

FOR FURTHER INFORMATION CONTACT: Brad Hudgens (202-205-3189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202-205-1895 (N,8,1).

SUPPLEMENTARY INFORMATION: On August 2, 1994, the Commission instituted the subject investigation and established a schedule for its conduct (59 FR 43590—August 24, 1994). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from October 11, 1994, to December 19, 1994 (59 FR 46618—September 9, 1994). The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than December 2, 1994; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on December 6, 1994; the prehearing staff report will be placed in the nonpublic record on November 23, 1994; the deadline for filing prehearing briefs is December 8, 1994; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on December 13, 1994; and the deadline for filing posthearing briefs is December 21, 1994.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: September 16, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-23383 Filed 9-21-94; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337-TA-315]

Certain Plastic Encapsulated Integrated Circuits; Enforcement Proceeding; Decision Not To Review an Initial Determination Granting Partial Summary Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 7) issued on August 11, 1994, by the presiding administrative law judge (ALJ) in the above-captioned enforcement proceeding.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone 202-205-3105.

SUPPLEMENTARY INFORMATION: The Commission instituted this formal enforcement proceeding on January 10, 1994. 59 FR 3123-27 (Jan. 20, 1994). The enforcement proceeding complaint was filed by the Commission's Office of Unfair Import Investigations (OUII), and alleges violations of the Commission cease and desist order and modified cease and desist order issued in the underlying investigation against respondent Analog Devices, Inc. (Analog). The complaint seeks appropriate sanctions for these alleged violations. The parties to the enforcement proceeding are OUII, represented by its investigative attorneys (IAs); enforcement proceeding respondent Analog; and Texas Instruments, Inc. (TI), the complainant in the underlying investigation.

In its response to the complaint, Analog denied that it violated the terms of the Commission's cease and desist orders. In addition, Analog alleged several affirmative defenses, including: waiver against the Commission, equitable estoppel against the Commission, and Commission action that is arbitrary, capricious, an abuse of discretion, and contrary to law.

On June 28, 1994, Analog filed a motion for summary determination seeking termination of the enforcement proceeding on the grounds that there are no genuine issues of disputed facts. The IAs and TI filed responses in opposition to Analog's motion for summary determination. The IAs also filed a cross-motion for partial summary determination with respect to Analog's affirmative defenses. TI supported, and Analog opposed, the IAs' cross-motion.

On August 22, 1994 the ALJ issued an order (Order No. 7) denying Analog's motion for summary determination, and an ID granting the IAs' cross-motion for partial summary determination regarding Analog's affirmative defenses. Analog petitioned for review of the ID granting the IAs' cross-motion, and the IAs and TI filed responses in opposition to Analog's petition. Analog also requested oral argument on its petition. The Commission denied that request. *See* 19 CFR 210.56(a) (1994).

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and § 210.53 of the Commission's interim Rules of Practice and Procedure, 19 CFR 210.53 (1994).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this enforcement proceeding are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Issued: September 13, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-23381 Filed 9-21-94; 8:45 am]

BILLING CODE 7020-02-P

[Investigations Nos. 731-TA-720 and 721 (Preliminary)]

Wheel Inserts From the People's Republic of China and Taiwan

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-720 and 721 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China and Taiwan of wheel inserts,[1] provided for in subheading 8708.70.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by October 31, 1994.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: September 15, 1994.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202-205-1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on September 15, 1994, by Consolidated International Automotive, Inc., Los Angeles, CA.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register.** The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on October 6, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Mary Messer (202-205-3193) not later than October 4, 1994, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 12, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: September 16, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-23488 Filed 9-21-94; 8:45 am]

BILLING CODE 7020-02-P

[1] Also known as lug hole inserts or insert bushings, wheel inserts are steel, aluminum, brass, or zinc devices, usually circular in form with a round hole through the center, that are inserted through the stud holes of aluminum and alloy wheels used on automobiles, trucks, vans, buses, or trailers. The term "wheel inserts" does not include washers or wheel spacers, which are not inserted through a studhole. The subject wheel inserts may or may not have a surface coating and may or may not be heat-treated. The surface coating could include chrome plating, nickel plating, zinc plating (with or without wax coating), oxide coating, and powder coating. Wheel inserts are produced in a variety of sizes depending on the type of wheel and the size of the stud hole into which they are inserted; the shape of the insert interface may be spherical (called a ball seat) or conical to fit the lug nut or wheel lock which is attached to the stud.

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INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32555]

Gregory B. Cundiff—Continuance in Control Exemption—Rio Valley Switching Company

Gregory B. Cundiff has filed a notice of exemption to continue in control of Rio Valley Switching Company (RVSC), upon RVSC becoming a class III rail carrier.

RVSC, a noncarrier, has concurrently filed a notice of exemption in Finance Docket No. 32554, *Rio Valley Switching Company—Operation Exemption—Rio Valley Railroad, Inc.*, to operate a total of 49.12 miles of rail line leased by Rio Valley Railroad, Inc. (RVRI), and owned by Missouri Pacific Railroad Company, all in the State of Texas. That exemption was expected to be consummated on or after August 30, 1994.

Mr. Cundiff controls several existing class III rail carriers: (1) Crystal City Railroad, Inc. (CCRI) and Texas Railroad Switching, Inc. (TRSI), which operates approximately 55 miles of CCRI's rail line between Gardendale, TX, and Carrizo Springs, TX; (2) Railroad Switching Service of Missouri, Inc. (RSSM), which operates approximately 4 miles of rail line in the St. Louis, MO, switching district; and (3) Lone Star Railroad, Inc. (LSRI) and Southern Switching Company (SSC), which operates 143.3 miles of LSRI's rail line between Abilene and Wichita Falls, TX.[1]

Mr. Cundiff indicates that: (1) the rail lines operated by RVSC and the other class III rail carriers do not connect with each other; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any other railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Thomas F. McFarland, Jr., 20 North Wacker Drive, Suite 3118, Chicago, IL 60606.

Decided: September 15, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–23452 Filed 9–21–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32554]

Rio Valley Switching Company—Operation Exemption—Rio Valley Railroad, Inc.

Rio Valley Switching Company (RVSC), a noncarrier, has filed a notice of exemption to operate 49.12 miles of rail line leased by Rio Valley Railroad, Inc. (RVRI), from Missouri Pacific Railroad Company (MP).[1] The involved MP segments include: (1) The Mission Industrial Lead track extending 41 miles between milepost 1.0, near Harlingen, and milepost 42.0, near Mission, TX; and (2) the Hidalgo Industrial Lead track extending 8.12 miles between milepost 0.0, near Mission, and milepost 8.12, near Hidalgo, TX. RVSC will replace RVRI, which has been operating the lines, and will become a class III rail carrier. The parties expected to consummate the proposed transaction on or after August 30, 1994, the effective date of the notice.

This proceeding is related to Finance Docket No. 32555, *Gregory B. Cundiff—Continuance in Control Exemption—Rio Valley Switching Company*, wherein Mr. Cundiff has concurrently filed a notice of exemption under 1180.2(d)(2) to continue in control of RVSC and several other class III rail carriers upon consummation of the transaction described in this notice.

Any comments must be filed with the Commission and served on: Thomas F. McFarland, Jr., 20 North Wacker Drive, Suite 3118, Chicago, IL 60606.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 15, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–23451 Filed 9–21–94; 8:45 am]

BILLING CODE 7035–01–P

[1] Mr. Cundiff's control of these carriers was the subject of notices of exemption: (1) *Gregory B Cundiff—Control Exemption—Railroad Switching Service of Missouri, Inc., Texas Railroad Switching, Inc., and Crystal City Railroad, Inc.*, Finance Docket No. 31817 (ICC served Feb. 6, 1991), for RSSM, TRSI, and CCRI; (2) *Gregory B. Cundiff—Continuance in Control Exemption—Rio Valley Railroad, Inc.*, Finance Docket No. 32262 (ICC served Mar. 17, 1993), for RVRI, and (3) *Gregory B Cundiff—Continuance in Control Exemption—Lone Star Railroad, Inc. and Southern Switching Company*, Finance Docket No. 32501 (ICC served May 27, 1994), for LSRI and SSC.

[1] RVRI filed a notice of exemption for its lease of the MP lines in *Rio Valley Railroad, Inc.—Lease and Operation Exemption—Missouri Pacific Railroad Company*, Finance Docket No. 32261, (ICC served Mar. 17, 1993).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant To the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Atlantic Refining and Marketing Co., Inc., and Sun Co., Inc., (R&M)*, Civil Action No. 94–5482, was lodged on September 7, 1994, with the United States District Court for the Eastern District of Pennsylvania. The consent decree addresses alleged violations of Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, which occurred at the Philadelphia, Pennsylvania oil refinery owned by Atlantic Marketing and operated by Sun Co., Inc., R&M. Both entities are subsidiaries of Sun Company, Inc. Specifically, the defendants allegedly violated several parameters of the National Pollutant Discharge Elimination System ("NPDES") permit for the Philadelphia refinery. The parameters allegedly violated include those for total suspended solids, oil and grease, total chromium, hexavelant chromium, biochemical oxygen demand, phenolics, ammonia (as nitrogen), zinc, and pH. Allegedly, the violations included eleven bypasses of untreated water to the Schuylkill River.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Atlantic Refining and Marketing Co., Inc., and Sun Co., Inc., (R&M)*, DOJ Ref. #90–5–1–1 5056.

The proposed consent decree may be examined at the office of the United States Attorney, 615 Chestnut Street, 13th Floor, Suite 1300, Philadelphia, Pennsylvania 19106; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $8.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–23406 Filed 9–21–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant To the Resource Conservation and Recovery Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Great Lakes Castings Corp.*, Civ. No. 1:92–CV–645, was lodged with the United States District Court for the Western District of Michigan, on September 7, 1994. The action was brought against defendant pursuant to the Resource Conservation and Recovery Act ("the Act") for penalties and injunctive relief as a result of defendant's treatment, storage, or disposal of hazardous waste at its facility in Ludington, Michigan, without a permit or interim status under the Act, and defendant's failure to satisfy the financial responsibility requirements of the Act and its implementing regulations. The decree requires defendant to pay a civil penalty of $350,000 to the United States. The injunctive relief originally sought by the filing of this action was satisfied when the Environmental Protection Agency, in January 1994, approved the defendant's certification of the closure of the surface impoundments that were the subject of the Complaint.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to *United States* v. *Great Lakes Castings Corp.*, D.J. Ref. 90–7–1–668.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Michigan, Gerald R. Ford Federal Building, 110 Michigan Street, N.W., Room 399, Grand Rapids, Michigan, 49503, at the Region V office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and at the Consent Decree Library, 1120 G Street, N.W., 4th floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $1.75 for the decree (25 cents per page reproduction costs) payable to the Consent Decree Library. When requesting a copy, please refer to *United States* v. *Great Lakes Castings Corp.*, D.J. Ref. 90–7–1–668.

Joel Gross,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–23407 Filed 9–21–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant To the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Borough of Schuylkill, et al.*, Civil Action No. 91–5740, was lodged on Sept. 1, 1994 with the United States District Court for the Eastern District of Pennsylvania. The Consent Decree settles an action brought under the Clean Water Act (the "Act"), 33 U.S.C. § 1251, et seq., seeking an injunction and civil penalties for defendants' violations of The Act and the defendants' National Pollution Discharge Elimination System permit for operation of the schuylkill Haven sewage treatment plant. Pursuant to the Consent Decree, defendants have agreed to pay a civil penalty of $15,000 and to undertake construction of additional treatment facilities that will bring the plant into compliance with the Act and the permit by June 1, 1995.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Borough of Schuylbill Haven, et al.*, DOJ Ref. #90–5–1–1–3721.

The proposed consent decree may be examined at the office of the United States Attorney, 615 Chestnut Street, Twelfth Floor, PA 19106; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in personor by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Acting Chief, Environment Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 94–23408 Filed 9–21–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant To the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Sun Company, Inc. (R&M)*, Civil Action No. 94–5481, was lodged on September 7, 1994, with the United States District Court for the Eastern District of Pennsylvania. The consent decree addresses violations of Sections 307 and 390 (b) and (d) of the Clean Water Act (the "Act"), 33 U.S.C. 1317 and 1319 (b) and (d), against Sun Company, Inc. (R&M) ("SUN") the owner and operator of a petroleum refinery in Marcus Hook, Pennsylvania. The United States has alleged that SUN violated the Act by discharging pollutants from its Marcus Hook facility into the Delaware County Regional Water Control Authority ("DELCORA"), a publicly-owned treatment works ("POTW") located in Chester, Pennsylvania in violation of the pretreatment requirements applicable to such discharges under Section 307 of the Act, 33 U.S.C. 1317, and further for causing DELCORA to violate effluent limits imposed by its National Pollutant Discharge Elimination System ("NPDES") permits, issued pursuant to Section 402 of the Act, 33 U.S.C. 1342. In addition to several "pass-through" incidents, SUN allegedly violated on numerous occasions regulatory limits for oil and grease and ammonia nitrogen, and permit limits for Total Suspended Solids, BOD5, pH, benzene, and phenol.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed

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consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Sun Co., Inc. (R&M)*, DOJ Ref. #90–5–1–1–4140.

The proposed consent decree may be examined at the office of the United States Attorney, 615 Chestnut Street, 13th Floor, Suite 1300, Philadelphia Life Building, Philadelphia, Pennsylvania 19106; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $9.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–23409 Filed 9–21–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant To the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, and pursuant to Section 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g), notice is hereby given that a proposed consent decree in *United States* v. *Sun Company, Inc. (R & M)*, Civil Action No. 94–5483, was logwed on September 7, 1994 with the United States District Court for the Eastern District of Pennsylvania.

The proposed consent decree was lodged simultaneously with the filing of the complaint in this action. The complaint and proposed consent decree concern violations of the Clean Air Act, 42, U.S.C. § 7401 et seq. ("the Act"), and National Emission Standard for Hazardous Pollutants for Benzene Emissions from Benzene Transfer Operations, 40 CFR Part 61, Subpart BB ("Benzene Transfer NESHAP"), promulgated under Section 112 of the Act, as amended, 42 U.S.C. § 7412, at the defendant's oil refining facility located in Marcus Hook, Pennsylvania. The complaint alleges that the defendant failed to complete construction of a benzene vapor recovery system and come into compliance with the Benzene Transfer NESHAP until approximately nine months after the deadlines established in a compliance waiver EPA granted to defendant, pursuant to 40 CFR 61.10, for defendant's Marcus Hook facility. The proposed consent decree requires defendant to comply with the Act and the Benzene Transfer NESHAP in its future operations at the Marcus Hook facility, and to pay a $160,230 civil penalty.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Sun Company, Inc. (R. & M)* (E.D. Pa.), DOJ Ref. #90–5–2–1–1731.

The proposed consent decree may be examined at the office of the United States Attorney, 615 Chestnut Street, Suite 1300, Philadelphia, Pennsylvania 19106; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $2.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–23410 Filed 9–21–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. MCI Communications Corporation and BT Forty-Eight Company ("Newco"); Public Comments and Response on Proposed Final Judgment

Pursuant to the antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States of America hereby publishes below the comments received on the proposed Final Judgment in *United States* v. *MCI Communications Corporation, et al.*, Civil Action No. 94–1317, filed in the United States District Court for the District of Columbia, together with the United States' response to the comments.

Copies of the comments and response are available for inspection in Room 3235 of the Antitrust Division, U.S. Department of Justice, Tenth Street and Pennsylvania Avenue N.W., Washington, D.C. 20530 (202–514–2481) and at the office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, Third Street and Constitution Avenue N.W., Washington, D.C. 20001.

Constance K. Robinson,

Director of Operations, Antitrust Division.

Comments Relating to Proposed Final Judgment and Response of the United States to Comments

United States of America, Plaintiff, v. *MCI Communications Corporation and BT Forty-Eight Company ("NewCo")*; Defendants

[Civil Action No. 94–1317 (TFH)]

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–(h)) ("APPA"), the United States of America hereby files the public comments it has received relating to the proposed Final Judgment in this civil antitrust proceeding, and herein responds to the public comments. The United States has carefully reviewed the public comments on the proposed Final Judgment and remains convinced that entry of the proposed Final Judgment is in the public interest.

I. Background

This action was commenced on June 15, 1994, when the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, alleging that the proposed acquisition of a 20% equity interest in MCI Communications Corporation ("MCI") by British Telecommunications plc ("BT"), and the proposed formation of a joint venture between MCI and BT to provide international enhanced telecommunications services, would violate Section 7 of the Clayton Act as amended, 15 U.S.C. 18, by lessening competition in the markets for global seamless telecommunications services and for international telecommunications services between the United States and the United Kingdom.

On the same date, the United States submitted a proposed Final Judgment, a Competitive Impact Statement, and a Stipulation signed by the defendants consenting to entry of the proposed Final Judgment. The proposed Final Judgment contains terms and conditions safeguarding against discriminatory and other anticompetitive practices that would favor the defendants over competing United States providers of international telecommunications services and harm competition. The Competitive Impact Statement explains the basis for the Complaint and the reasons why entry of the proposed Final Judgment would be in the public interest. In the Stipulation, defendants and the United States consent to entry of the proposed Final Judgment by the Court after

completion of the procedures required by the APPA.

II

Compliance With the APPA

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment, 15 U.S.C. 16(b). In this case, the sixty-day comment period commenced on June 27, 1994, and terminated on August 26, 1994. During this period, the United States received comments by one competitor of MCI and BT relating to the proposed Final Judgment.[1] The United States responds herein to those comments. Upon publication in the **Federal Register** these comments and the following response of the United States to these comments, pursuant to 15 U.S.C. 16(d) of the APPA, the procedures required by the APPA prior to entry of the proposed Final Judgment will be completed, and the Court may enter the proposed Final Judgment. The United States will move the Court for entry of the proposed Final Judgment after the public comments and this response of the United States have been published in the **Federal Register**.

III

Response to Public Comments

The only comments received by the United States were filed by ACC Global Corporation ("ACC"), one of the companies recognized by the United States and the defendants in the Stipulation as a competitor entitled to receive information concerning the defendants, under the provisions of the proposed Final Judgment. ACC is a resale provider of international telecommunications services in the United States, and one of its subsidiaries has received a license to provide international simple resale services in the United Kingdom. ACC does not oppose prompt resolution of this matter through a consent decree, and indeed it considers the transparency requirements in Section II.A of the proposed Final Judgment as "of vital importance in ameliorating the potential anticompetitive impact of the agreements that gave rise to the complaint filed by the DOJ in this matter." ACC Comments at 2. These transparency requirements, ACC states, provide "substantial protection to Competitors such as ACC" because they ensure the availability of evidence that can be used in enforcement proceedings under the decree, or in proceedings before the Federal Communications Commission and British regulatory authorities. *Id.* at 3. ACC's concerns pertain solely to two limited aspects of the transparency provisions, which it recommends be clarified or modified. After consideration of ACC's comments, the United States is of the view that neither of the modifications recommended by ACC are necessary to achieve the competitive purposes of the proposed Final Judgment.

A. Provision of Information Directly to Competitors

First, ACC contends that the information to be disclosed by defendants under Section II.A should be provided by defendants simultaneously both to competitors and to the Department of Justice, rather than being submitted first to the Department and then being furnished by the Department to qualified competitors, as the proposed Final Judgment now specifies. Although ACC recognizes that it is qualified to receive the information from the Department, and does not suggest that it would be refused access, it believes that for the defendants to provide the information directly to the competitors would involve only a "slight incremental burden," would facilitate monitoring by competitors, and would relieve the Department of the "burden of handling the distribution function." ACC Comments at 3.

The procedure for providing information from defendants to their competitor through the Department, as described in Section IV.E of the proposed Final Judgment and the Stipulation, was developed in response to the concerns of defendants that they not be required to disclose to the public at large, or to competitors for use in the marketing and sales of their services, information that may be competitively sensitive. The provision of this information to competitors, as ACC appreciates, is intended to aid in detecting discriminatory or other anticompetitive conduct and making appropriate complaints to government authorities.

While the United States, in the circumstances of this case, accepted that some protection against general public disclosure of the defendants' information should be provided, it opposed allowing the defendants to have any role in screening their competitors and determining which ones would have access to the information, or being able to influence the timing of such access. The United States was reasonably concerned that the defendants would have incentives to frustrate and delay access to their information by competitors, and might impose unreasonable confidentiality restrictions that would discourage competitors from availing themselves of access to the information, were they assigned the responsibility of disseminating the information to competitors directly.

ACC's proposal, if adopted, could have the unintended consequence of impairing rather than facilitating monitoring of defendants by their competitors, and could impose the additional burden on the Department of refereeing disputes over access procedures between defendants and firms such as ACC. There is no reason for ACC to be concerned that the Department will postpone dissemination of the information that it receives from defendants. Rather, qualified competitors such as ACC that enter into a simple form confidentiality agreement with the Department and abide by the agreement will be sent promptly copies of any information furnished by defendants pursuant to Section II.A of the Final Judgment, following the Department's receipt of the information.

B. Waiver of Transparency Requirements by the United States

Second, ACC objects to the provision in Section II.A that would allow the United States to waive compliance with the transparency requirements, in whole or in part, through written notice to defendants and the Court. ACC believes that giving the United States discretion to waive the transparency requirements without prior public notice and comment and approval by the Court would "defeat the purpose of the Tunney Act," ACC Comments at 4, and could lead to the United States vitiating the decree, whether intentionally or unwittingly due to lack of the knowledge of the industry possessed by defendant's competitors.

The transparency requirements are the most detailed and complex substantive provisions of the proposed Final Judgment, and therefore the most likely to be affected by regulatory changes in the United States and the United Kingdom as well as marketplace developments. They have been designed to be consistent with existing regulatory requirements in both countries, and they do not conflict in any way with the additional obligations recently imposed by the Federal Communications Commission as a precondition to its approval of the transactions between BT and MCI, following the filing of the proposed Final Judgment with the Court.[2]

It remains possible, however, that future actions by telecommunications regulatory authorities in the United States or the United Kingdom could give rise to conflicts with the Final Judgment, or that some of the transparency provisions could become unnecessary as the result of regulatory decisions or significant changes in the competitive environment in the United Kingdom affecting international telecommunications. Accordingly, the proposed Final Judgment was drafted to provide some flexibility for limited adjustments without unduly burdening the Court. The United States agreed to include in the proposed Final Judgment language giving it authority, upon express written notice to defendants and to the Court, to waive the transparency requirements in whole or in part without a prior public comment process or formal approval by the Court. This will enable the United States to respond rapidly to changing conditions that affect the enforcement and usefulness of these requirements.

The United States would not, of course, be obliged to waive any of the transparency requirements merely because a regulatory agency adopted similar obligations for defendants, or took action giving rise to a conflict with the defendants' decree obligations. Nor would a decline in BT's market shares or other changes in its competitive position necessarily warrant modification.[3] The United States would,

[1] These comments are attached as Exhibit A.

[2] *In re Request of MCI Communications Corporation [and] British Telecommunications plc Joint Petition for declaratory Ruling Concerning Section 310(b)(4) and (d) of the Communications Act of 1934, as amended*, File No. I–S–P–93–013, FCC 94–188 (released July 25, 1994).

[3] Information disclosed in BT's most recent public report for 1994, which the United States obtained after the filing of the Complaint and proposed Final Judgment, indicates that BT's current market shares are no more than one to three percentage points below those stated in the Complaint and the Competitive Impact Statement. This report also acknowledges that there are signs that the rate of attrition of BT's market share for business customers is declining.

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however, be able to modify the transparency requirements where desirable to further the public interest, without the need for lengthy comment filing periods or delays engendered from crowded court dockets. Often it will be useful, as ACC suggests, for the United States to obtain information from competitors as well as defendants before agreeing to modify any of the transparency requirements. There is nothing in the proposed Final Judgment that precludes the United States from soliciting the views of affected competitors on a case-by-case basis before reaching a decision, and indeed the United States expects that it would frequently do so.

ACC is incorrect in suggesting that this authority for the United States to waive the transparency requirements is somehow improper under the Tunney Act. The APPA requires that any proposal for a consent judgment submitted by the United States in a civil antitrust proceeding be filed with the district court, and directs that the consent judgment only be entered after the district court has found that it is in the public interest. 15 U.S.C. 16(b), (e). It nowhere precludes the district court, however, from concluding that it would be in the public interest to permit the United States to waive compliance with certain specified provisions of a consent judgment after its entry, so as to respond to regulatory or marketplace changes. ACC cites no authority to the contrary.

Were the United States and the defendants to agree to a modification of this consent judgment after its entry, this Court would in any event be "bound to accept any modification that the Department * * * reasonably regarded as advancing the public interest." *United States* v. *Western Electric Co.*, 993 F.2d 1572, 1578 (D.C. Cir.), *cert. denied*, 114 S. Ct. 487 (1993). Section VII of the proposed Final Judgment, with which ACC does not quarrel, specifies that "[i]f a motion to modify this Final Judgment is not contested by any party, it shall be granted if the proposed modification is within the reaches of the public interest." The discretionary waiver authority in Section II.A of the proposed Final Judgment simply averts the risk of prolonged litigation over every change to the transparency requirements, litigation that would in the great majority if not all cases result in no public benefit, but would simply confirm that the modification agreed to by the United States and the defendants was within the reaches of the public interest.

IV

Standard of Review

Pursuant to 15 U.S.C. § 16(e), the proposed Final Judgment cannot be entered unless the court determines that it is in the public interest. The focus of this determination is whether the relief provided by the proposed Final Judgment is adequate to remedy the antitrust violations alleged in the Complaint. *United States* v. *Bechtel Corp.*, 1979–1 Trade Cas. (CCH) ¶ 62,430, at 76,565 (N.D. Cal. 1979), *aff'd*, 648 F.2d 660, 665–66 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981).

Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its response to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977). The court may reject the agreement of the parties as to how the public interest is best served only if it has "exceptional confidence that adverse antitrust consequences will result * * *," *United States* v. *Western Electric Co.*, 993 F.2d at 1577.

V

Conclusion

After careful consideration of the comments, the United States continues to believe that, for the reason stated herein and in the Competitive Impact Statement, the proposed Final Judgment is adequate to remedy the antitrust violations alleged in the Complaint. There has been no showing that the proposed settlement constitutes an abuse of the United States' discretion or that it is not within the zone of settlements consistent with the public interest. Therefore, entry of the proposed Final Judgment should be found to be in the puhic interest.

Dated: September 8, 1994.

Respectfully submitted,

Carl Willner,

Attorney, U.S. Department of Justice, Antitrust Division.

Certificate of Service

I hereby certify that on this date I have caused to be served by first class mail, postage prepaid, or by hand, if so indicated, a copy of the foregoing Response to Public Comment upon the following persons, counsel for defendants in the matter of *United States of America* v. *MCI Communications Corporation*:

Michael H. Salsbury, Esquire, Jenner & Block, 601 13th Street, NW., Washington, D.C. 20005

Counsel for Defendant, MCI BY HAND

Janet L. McDavid, Esquire, Hogan & Hartson, 555 13th Street, NW., Washington, D.C. 20004

Counsel for Defendant, BT Forty-Eight Company BY HAND

Dated: September 8, 1994

Carl Willner,

Attorney, Communications & Finance Section, Antitrust Division.

Exhibit A

Richard L. Rosen, Esq.,
Chief, Communication and Finance Section, Antitrust Division, Room 8104, 555 Fourth Street, NW., Washington, DC 20001

Re: *United States* v. *MCI Comm. Corp. and BT Forty-Eight Co.*, Civil Action No. 94 1317 (TFH) (D.D.C.)—Comments of ACC Global Corp.

August 26, 1994.

Dear Mr. Rosen: On behalf of ACC Global Corp. ("ACC"), we respectfully submit these comments on the Proposed Final Judgment in the above captioned case. ACC, a wholly-owned subsidiary of ACC Corp., headquartered in Rochester, New York, is an international resale interexchange carrier that is an applicant for authority to provide international private line resale service between the United States and the United Kingdom. Another ACC Corp. subsidiary, ACC Long Distance UK Limited, received the first U.K. license to provide international simple resale service. ACC is one of only seven entities which the parties have stipulated are "qualified United States International telecommunications providers" ("Competitors"), as defined in Section II.E. of the proposed Final Judgment. As such, ACC competes with BT Forty-Eight Co. and its parent firms, MCI Communications Corp. ("MCI") and British Telecommunications plc. ("BT") (collectively "Defendants").

ACC does not oppose prompt resolution of this matter through entry of a consent decree. ACC strongly recommends, however, that "the transparency" requirements of the proposed Final Judgment be clarified and modified so as to ensure that they achieve the intended effect of minimizing the potential anticompetitive effects of the Defendants' concerted activities. Specifically, ACC's comments address two respects in which ACC believes that the "transparency" provisions of the proposed Final Judgment are deficient or unclear. First, ACC believes that the proposed decree should be clarified to ensure that the Competitors as well as the Department of Justice ("DOJ") receive copies of the information required to be furnished under the transparency requirements. Second, ACC is seriously concerned about the adverse impact of the provision permitting the DOJ to waive the transparency requirements of the decree without notice or comment by the beneficiaries of those requirements and without Court approval.

I. Importance of Transparency Requirements

ACC considers the transparency requirements of the Proposed Final Judgment (Section II.A) to be of vital importance in ameliorating the potential anticompetitive impact of the agreements that gave rise to the complaint by the DOJ in this matter.

As the DOJ alleges in its Complaints, the challenged agreements between BT and MCI will provide BT with an "increased incentive" as well as the "ability" to

use its market power in the provision of local and domestic and international long distance telecommunications services in the UK to discriminate in favor of MCI and NewCo against other US international telecommunications and enhanced telecommunications providers.[1]

and

favor MCI over its competitors in the allocation of international telecommunications traffic from the UK, substantially lessening competition in the US.[2]

ACC is, of course, one of the potentially disfavored Competitors.

The proposed Final Judgment provides ACC and others subject to this discrimination

[1] Complaint, ¶ 30[a].
[2] Complaint, ¶ 30(c).

with important protection against such discrimination in the Section II.A. transparency requirements. Under Section II.A., NewCo and MCI would be required to "disclose" a broad array of information regarding their dealings with BT. Under Section IV.E., such "disclosure" would be made to the DOJ which may, in turn, disclose such information to any U.S. corporation that holds or has applied for a license to provide international telecommunication services between the U.S. and the U.K. (This would include ACC.)

As the DOJ recognizes in its Competitive Impact Statement, the benefit of this requirement is that it:

Will enable the principal competitors of MCI and NewCo to monitor whether either of these companies is receiving discriminatory treatment in their favor from BT, and provide them with evidence that could be used to make a complaint to any governmental authorities in the United States or the United Kingdom.

This provision provides substantial protection to Competitors such as ACC because it ensures the availability of evidence relevant to enforcement proceedings under the consent decree. Moreover, such evidence would be significant in complaint and licensing proceedings before the Federal Communications Commission, which has enforcement and oversight authority over the U.S. common carrier Defendants. Similarly, such evidence would be relevant to oversight proceedings in the U.K. before Oftel and other supervisory agencies.

II. Necessary Clarification and Modifications of the Transparency Requirement

Competitors should not have to rely on the DOJ to provide them, in timely fashion, with copies of information required to be furnished under the transparency provisions. Rather, the information should be provided promptly and simultaneously to both the DOJ and Competitors. Without such information, Competitors cannot provide a monitoring function contemplated by the Competitive Impact Statement as a check on potential anticompetitive activity. Particularly in light of the unusually short term of the proposed decree, any slight incremental burden on the Defendants by providing additional copies of the required information to the small number of identified Competitors is more than justified by the greater protection of the public afforded by facilitating Competitors' monitoring activities, and by relieving the Plaintiff DOJ from the burden of handling the distribution function. (The DOJ could, however, be required to modify the class of Competitors entitled to receive the information from time to time as additional potential class members request inclusion in it, and to notify the Defendants accordingly.)

Similarly, ACC is also concerned that Section II.A. of the Proposal Final Judgment permits, without either public notice or comment or Court approval, the waiver of "such disclosure * * * by plaintiff through written notice to defendants and the Court." The only explanation offered by the DOJ for this waiver provision is that the "transparency requirements may be affected by changes in regulation or other circumstances.[3]"

In ACC's view, providing the DOJ unfettered discretion to waive this critical provision of the decree without Court approval or public notice or comment would defeat the purpose of the Tunney Act. As Judge Harold Greene recognized in *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131, 148 (D.D.C. (1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983), Congress enacted the Tunney Act because "prior practice, which gave the Department almost total control of the consent decree process," failed to "fully promote the goals of the antitrust laws and foster public confidence in their fair enforcement." Judge Greene went on to observe that:

The legislative history shows that Congress was particularly concerned that the "excessive secrecy" of the consent decree process deprived the public of the opportunity to scrutinize and comment upon proposed decrees, thereby undermining confidence in the legal system. In addition, the legislators found that consent decrees often failed to provide appropriate relief, either because of miscalculations by the Justice Department or because of the "great influence and economic power" wielded by antitrust violators. The history, indeed, contains references to a number of antitrust settlements deemed "blatantly inequitable and improper" on these bases.

Id. (footnote omitted). Judge Greene also quoted the following statement of Senator Tunney, the bill's chief sponsor:

Regardless of the ability and negotiating skill of the Government's attorneys, they are neither omniscient nor infallible. The increasing expertise of so-called public interest advocates and for that matter the more immediate concern of a defendant's competitors, employees, or antitrust victims may well serve to provide additional data, analysis, or alternatives which would improve the outcome.

Id. at 148 n. 70.

As Judge Greene and Senator Tunney recognized, "mandating an opportunity for public comment" (*id.* at 148–49), including comment from the defendants' competitors, can play a major role in ensuring that a consent decree fully promotes the goals of the antitrust laws.[4] Moreover, as Judge Greene went on to observe: "It is clear that Congress wanted the courts to act as an independent check upon the terms of decrees negotiated by the Department of Justice." *Id.* at 149.

The blanket waiver authority conferred on the DOJ by the proposed Final Judgment, however, is not limited by any standards or guidelines and is totally at odds with this reasoning. Through its unfettered discretion to waive a critical requirement of the decree, absent judicial approval or the comment of the public or Defendants' competitors, the DOJ could, either unwittingly or intentionally, vitiate the decree. No adequate explanation has been offered why, if modification of the decree becomes necessary because of changed circumstances, the modification could not be submitted for public comment and Court approval in accordance with the Tunney Act, as is usually done.[5] Such a requirement could avert the clearly undesirable possibility of the DOJ's inadvertently, because of its lack of the intimate knowledge of the industry possessed by Defendants' competitors, authorizing the Defendants to engage in anticompetitive conduct. Thus, at a minimum, the DOJ should be required, prior to waiving any Section II.A. requiring, to provide notice and an opportunity to comment to the Competitors to whom information is to be provided pursuant to Section IV.E.

In sum, ACC believes that the transparency provisions are critical to the efficacy of the proposed decree. In order to ensure their implementation in an effective manner, however, they should be clarified or modified to ensure automatic and timely disclosure also to Competitors of the information required to be furnished to the DOJ, and to ensure that they cannot be waived unilaterally by the DOJ without judicial approval following notice to and an opportunity for comment by the Competitors.

Very truly yours,

Helen E. Disenhaus,

Counsel for ACC Global Corp.

Of Counsel

Francis D.R. Coleman,

ACC Long Distance Corp.

[FR Doc. 94–23472 Filed 9–21–94; 8:45 am]

BILLING CODE 4410–01–M

[3] *Id.*
[4] *See also United States* v. *Airline Tariff Pub. Co.*, 1993–2 Trade Cas. ¶ 70,409 (D.D.C. 1993).
[5] *E.g., United States* v. *American Tel. & Tel. Co., supra; United States* v. *Motor Vehicle Mfrs. Ass'n.*, 1981–2 Trade Cas. ¶ 64,370 (C.D. Cal. 1981).

Notice Pursuant To the National Cooperative Research and Production Act of 1993—Climatology and Simulation of Eddies Joint Industry Project

Notice is hereby given that, on August 11, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the participants in the Exxon Production Research Company administered project, titled "Climatology and Simulation of Eddies Joint Industry Project" ("CASE"), filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional parties have become members of CASE: BHP Petroleum (Americas), Houston, TX;

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Oryx Energy Company, Dallas, TX; and Amerada Hess Corporation, Houston, TX. No other changes have been made in either the membership or planned activity of the CASE Project.

On August 14, 1990, Exxon Production Research Company filed its original notification pursuant to Section 6(a) of the Act.

The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 18, 1990 (55 FR 38418).

Constance K. Robinson,

Director of Operations, Antitrust Division

[FR Doc. 94-23473 Filed 9-21-94; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Irving R. Majors, Sr., M.D.; Revocation of Registrations

On March 2, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Irving R. Majors, Sr., M.D., at 7710 East King Highway #56, Shreveport, Louisiana; c/o Medical Park Hospital, 2001 South Main, Hope, Arkansas; and 1905 NW Loop 281, c/o Centra Med, Longview, Texas. The Order to Show Cause proposed to revoke Dr. Majors' DEA Certificates of Registration, BM2917586, AM3141948, and AM3180635, and to deny any pending applications for renewal of such registrations as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the issuance of the Order to Show Cause was Dr. Majors' lack of authorization to handle controlled substances in the States of Arkansas, Louisiana, and Texas. 21 U.S.C. 824(a)(3). In addition, the Order to Show Cause alleged that Dr. Majors' continued registration is inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

The Order to Show Cause was sent to each of Dr. Majors' registered locations by registered mail and were returned to DEA unclaimed. The Order to Show Cause was personally served on Dr. Majors on March 14, 1994. More than thirty days have passed since the Order to Show Cause was received by Dr. Majors, and the Drug Enforcement Administration has received no response thereto. Therefore, the Deputy Administrator concludes that Dr. Majors has waived his opportunity for a hearing on the issues raised by the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order based on the investigative file. 21 CFR 1301.57.

The Deputy Administrator finds that in January 1992, the Metro Narcotics Unit, Ouachita Parish, Louisiana received information from a pharmacist regarding a suspicious telephone prescription. The Metro Narcotics Unit subsequently initiated an undercover investigation. The investigation revealed that from January 10 to 20, 1992, Dr. Majors telephoned several pharmacies and authorized the dispensation of controlled substances to an undercover operative for no legitimate medical purpose. Dr. Majors charged the undercover operative one dollar per tablet. Arrangements for the sale of the controlled substances took place in Dr. Majors' car under the direct surveillance of the Metro Narcotics Unit.

On January 20, 1992, Dr. Majors was arrested for illegal distribution of controlled substances. On July 6, 1993, Dr. Majors was indicted on one count of conspiracy to distribute a controlled substance (hydrocodone), six counts of distribution of a controlled substance (hydrocodone), and eight counts of attempted distribution of a controlled substance (hydrocodone).

As a result of the aforementioned activities, Dr. Majors' authority to handle controlled substances was terminated in three states. On March 26, 1992, the Arkansas State Medical Board issued an emergency order of suspension of Dr. Majors' medical license finding that he distributed and conspired to distribute a controlled substance. On April 28, 1993, the Louisiana State Board of Medical Examiners by Final Decision suspended Dr. Majors' license to practice medicine for three years and ordered that he be barred from prescribing, dispensing, or administering any controlled substances for the duration of his medical career. On January 14, 1994, the Texas State Board of Medical Examiners by Final Order revoked Dr. Majors' license to practice medicine. The Board concluded that Dr. Majors' continued practice of medicine was an imminent peril to the public health, safety, and welfare.

The Deputy Administrator concludes that, based upon the information contained in the investigative file, there are sufficient grounds for the revocation of Dr. Majors' DEA Certificates of Registration and for the denial of any pending applications for renewal. The fact that Dr. Majors is no longer authorized to handle controlled substances in the States of Arkansas, Louisiana and Texas is a sufficient ground, by itself, to order the revocation of his registrations. DEA has consistently held that it cannot maintain the registration of a practitioner who is not authorized to handle controlled substances in the state in which he practices. 21 U.S.C. 823(f); *Nathaniel S. Lehrman, M.D.*, 59 FR 44780 (1994); *Franz A. Arakaky, M.D.*, 59 FR 42074 (1994); *Elliott Monroe, M.D.*, 57 FR 23246 (1992); *Myong S. Yi, M.D.*, 54 FR 20618 (1989); *William D. Romers, D.D.S.*, 52 FR 12621 (1987); *Ramon Pla. M.D.*, 51 FR 41168 (1986); *Kenneth K. Birchard, M.D.*, 48 FR 33778 (1983); and cases cited therein. Since Dr. Majors is no longer authorized to handle controlled substances in the States of Arkansas, Louisiana, and Texas, the Deputy Administrator cannot maintain his DEA Certificates of Registration in those states.

In addition, the information regarding Dr. Majors' improper handling of controlled substances provides additional support for the revocation of his registrations and for the denial of any pending applications for renewal. The investigative file elucidates Dr. Majors absolute disregard for Federal and state controlled substance laws and regulations. The undercover investigation conducted by the Metro Narcotics Unit clearly and most convincingly showed that Dr. Majors abandoned his professional responsibility as a physician. He knowingly became a source of drugs to be used for non-medical purposes. Dr. Majors' continued registration would pose a serious threat to the public health and safety and would be wholly inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 (59 FR 23637), hereby orders that DEA Certificates of Registration AM3141948, BM2917586 and AM3180635 previously issued to Irving R. Majors, Sr., M.D., be, and they hereby are, revoked. The Deputy Administrator further orders that all pending applications for the renewal of such registrations, be, and they hereby are, denied. This order is effective October 24, 1994.

Dated: September 15, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94-23389 Filed 9-21-94; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biochemistry and Molecular Structure and Function; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting: Advisory Panel for biochemistry and Molecular Structure and Function—Panel B.

Name: Advisory Panel for Biochemistry and Molecular Structure and Function.

Date and Time: Wednesday, Thursday, and Friday, October 12, 13, & 14, 1994, 8:30 a.m to 6:00 p.m.

Place: The Best Western Inn by the Sea, 7830 Fay Avenue, La Jolla, California 92037.

Type of Meeting: Closed.

Contact Persons: Dr. Kamal Shukla and Dr. Stewart Hendrickson, Program Directors for Molecular Biophysics, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. (703-306-1444).

Purpose of Meeting: To provide advice and recommendations concerning research proposals submitted to the Molecular Biophysics Program of the Division of Molecular and Cellular Biosciences at NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Molecular Biophysics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 19, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-23493 Filed 9-21-94; 8:45 am]

BILLING CODE 7555-01-M

Earth Sciences Proposal Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Earth Sciences Proposal Review Panel.

Date and Time: October 12-14, 1994; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 320.

Type of Meeting: Closed.

Contact Person: Dr. Leonard E. Johnson, Program Director, Continental Dynamics Program, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone: (703) 306-1559.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Continental Dynamics proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 19, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-23494 Filed 9-21-94; 8:45 am]

BILLING CODE 7555-01-M

Division of Environmental Biology; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meetings.

Name: Advisory Panel for Ecological Sciences.

Date and Time: October 12-15, 1994, 8:00 am-5:00 pm each day.

Place: Room 380, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact Person: Dr. Michael Allen, Program Director, Ecological Studies, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. Telephone: (703) 306-1479.

Agenda: To review and evaluate Ecosystem Studies as part of the selection process for awards.

Name: Advisory Panel for Ecological Sciences.

Date and Time: October 12-15, 1994, 8:00 am-5:00 pm each day.

Place: Room 330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact Person: Dr. Scott L. Collins, Program Director, Ecological Studies, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. Telephone: (703) 306-1479.

Agenda: To review and evaluate Ecology proposals as part of the selection process for awards.

Name: Advisory Panel for Systematic and Population Biology.

Date and Time: October 19-21, 1994, 8:00 am-5:00 pm each day.

Place: Rooms 310 & 310-2, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact Person: Dr. B. Jane Harrington, Program Director, Systematic and Population Biology, Room 635, Division of Environmental Biology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. Telephone: (703) 306-1479.

Agenda: To review and evaluate Systematic Biology proposals as part of the selection process for awards.

Name: Advisory Panel for Systematic and Population Biology.

Date and Time: October 18-21, 1994, 8:00 am-5:30 pm each day

Place: Room 330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact Person: Dr. Mark W. Courtney, Program Director, Systematic and Population Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. Telephone: (703) 306-1479.

Agenda: To review and evaluate Population biology proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 19, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-23495 Filed 9-21-94; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Geosciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (#1756).

Date and Time: October 11, 1994 at 8:00 am to 6:00 pm.

Place: National Center for Atmospheric Research (NCAR), Mesa Laboratory, Damon Room, Boulder, CO 80307-3000.

Type of Meeting: Closed.

Contact Person: Ms. Pamela L. Stephens, Program Director for the Large-scale Dynamic Meteorology Program, Division of Atmospheric Sciences, Room 775, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230. Telephone number is (703) 306-1528.

Purpose of Meeting: To provide and make recommendations concerning the Small Business Innovation Research (SBIR) proposals.

Agenda: To review and evaluate the Small Business Innovation Research (SBIR) proposals

Reason for Closing: The materials being reviewed include information of a proprietary or confidential nature, including technical information; financial data; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6 of the Government Sunshine Act.

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Dated: September 19, 1994.

M. Rebecca Winkler,

Committee Management Office.

[FR Doc. 94-23492 Filed 9-21-94; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Physiology and Behavior; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Physiology and Behavior.

Date and Time: October 12-14, 1994, 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203, Room 360.

Type of Meeting: Part-Open

Contact Person: Dr. David Vleck, Program Director, Ecological and Evolutionary Physiology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203, Room 321, (703) 306-1421.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendation concerning proposals submitted to the NSF for financial support.

Agenda: Closed Session—October 12 and 14, 1994, 8:30 a.m. to 5 p.m., and October 13, 1994, 8:30 a.m. to 4 p.m. To review and evaluate proposals submitted to Ecological and Evolutionary Physiology as part of the selection process for awards.

Open Session—October 13, 1994, 4 p.m. to 5:30 p.m. for a discussion with Mary E. Clutter, Assistant Director of BIO, and Dr. Bruce L. Umminger, Division Director, Integrative Biology and Neuroscience on research trends and opportunities in Ecological and Evolutionary Physiology

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 19, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-23491 Filed 9-21-94; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Joint Statement of Understanding Between Nuclear Regulatory Commission and Department of Energy on Implementing Energy Policy Act Provisions on Regulation of Gaseous Diffusion Uranium Enrichment Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of Joint Statement of Understanding Between the Nuclear Regulatory Commission and the Department of Energy.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) and the U.S. Department of Energy (DOE) have entered into a Joint Statement of Understanding which describes the roles of the DOE and NRC in implementing the Energy Policy Act of 1992 provisions on the regulation of gaseous diffusion uranium enrichment plants. The text of the Joint Statement of Understanding is set forth below.

FOR FURTHER INFORMATION CONTACT: Gary L. Shear, Nuclear Regulatory Commission, Region III, Division of Radiation Safety and Safeguards, 801 Warrenville Road, Lisle, IL 60532, Telephone 708-829-9876.

Dated at Lisle, Illinois, this 15th day of September 1994.

For the Nuclear Regulatory Commission.

John B. Martin,

Regional Administrator, Region III.

Agreement Establishing Guidance for NRC Inspection Activities at the Paducah and Portsmouth Gaseous Diffusion Plants Between Department of Energy Regulatory Oversight Manager and Nuclear Regulatory Commission

I. Authority

The United States Department of Energy (DOE) and the United States Nuclear Regulatory Commission (NRC), Region III, enter into this Agreement under the authority of Section 1701 (c)(4)B of the Atomic Energy Act (AEA) of 1954, as amended and the Joint Statement of Understanding between the Nuclear Regulatory Commission and the Department of Energy on Implementing Energy Policy Act Provisions on Regulation of Gaseous Diffusion Uranium Enrichment Plants (Joint Statement), 59 FR 4729 (February 1, 1994).

II. Background

The Atomic Energy Act of 1954, as amended by the Energy Policy Act of 1992 (42 U.S.C. § 2297 et seq.), created the United States Enrichment Corporation (USEC), a government corporation for the purpose of managing and operating the uranium enrichment enterprise previously owned and operated by the DOE. The Energy Policy Act (the Act) also required that by October 24, 1994, the NRC establish its standards for the regulation of the gaseous diffusion plants leased by the USEC in order to protect the public health and safety and to provide for the common defense and security. After these standards are promulgated, the USEC is required to apply at least annually for a certificate of compliance with the standards. Until such time as the NRC assumes regulatory jurisdiction at the gaseous diffusion plants (GDPs), DOE will exercise nuclear safety and safeguards and security oversight authority at the leased portion of the gaseous diffusion plants located in Paducah, Kentucky, and Piketon, Ohio. The regulatory framework of DOE's authority is contained in the Regulatory Oversight Agreement, Exhibit D to the Lease Agreement between DOE and USEC dated July 1, 1993. Pursuant to the Joint Statement, it is agreed that the NRC will locate observers at the facilities on or after July 1, 1993, to obtain information and knowledge that may be useful to NRC in developing or implementing its standards. The Joint Statement also provides that interim guidance for the NRC inspectors/observers will be established between the DOE Regulatory Oversight Manager and the NRC covering the period before the NRC assumes regulatory jurisdiction over the facilities.

III. Scope

A. This agreement defines the way in which DOE and NRC will cooperate to facilitate the NRC's obtaining of information and knowledge regarding the gaseous diffusion plants and USEC's operation thereof through routine and special inspection activities during the interim period before NRC assumes regulatory responsibility. The NRC inspection activities will be conducted for the purpose of gathering information useful to the NRC in developing the 10 CFR Part 76 standards and making the initial certification decision for the GDPs as directed in the Atomic Energy Act of 1954, as amended. This Agreement does not apply to investigations or inquiries conducted by DOE.

B. For the purpose of this Agreement, the term "inspection" as applied to DOE shall mean the examination, review, or evaluation of any program or activity of the USEC with respect to: (1) the effectiveness of the program or activity in ensuring that the health and safety of the public and plant personnel are adequately protected; (2) the safe operation of the facilities; (3) compliance with any applicable DOE Nuclear Safety and Safeguards and Security Requirements as defined in the Regulatory Oversight Agreement (ROA). With respect to the NRC, the term "inspection" is defined as the onsite or Regional/Headquarters Office review of any program or activity of USEC with respect to prospective compliance with proposed NRC standards for the regulation of the leased portions of the gaseous diffusion plants.

C. Nothing in this Agreement is intended to restrict or expand the authority of DOE or to affect or otherwise alter the terms of the ROA.

D. Nothing in this Agreement confers upon the NRC Inspectors authority to (1) interpret or modify DOE requirements imposed on the USEC; (2) take enforcement actions; or (3) direct or recommend gaseous diffusion plant employees to take or not to take any actions. Authority for all such actions is reserved exclusively to DOE, until the NRC assumes regulatory oversight for the leased portion of the gaseous diffusion plants in accordance with the Act.

E. Nothing in this agreement is intended to restrict or otherwise limit the authority of the NRC to exercise its full regulatory authority, including both inspection and enforcement authority, at such time as NRC assumes regulatory authority over the leased portion of the gaseous diffusion plants in accordance with Title II of the Atomic Energy Act of 1954, as amended.

F. Under this Agreement, up to three NRC Resident Inspectors may be located at each gaseous diffusion plant site with visits from Regional and Headquarters staff to become familiar with plant operations.

IV. DOE's General Responsibilities

DOE is responsible for conducting nuclear safety and safeguards ad security inspections of the leased portions of the gaseous diffusion plants to ensure that the plants are designed, constructed, tested, operated, maintained, and decommissioned in accordance with DOE regulatory requirements. These inspections are conducted in accordance with the DOE Regulatory Oversight Inspection and Enforcement Manual (Manual) using personnel appropriately qualified and trained to perform the necessary tasks. Only the DOE may take appropriate enforcement actions for all inspections conducted under this Agreement.

V. NRC's General Responsibilities

A. The NRC, through its Resident and other inspectors, will conduct inspections and make observations for the purpose of obtaining information and knowledge of the gaseous diffusion plans and USEC's operation thereof. Such inspections shall be coordinated with the authorized DOE representative to ensure that both the scope and findings of the inspections are clearly communicated.

B. NRC activities will be performed in accordance with Federal standards and requirements and DOE practices, with no undue burden on the DOE or the USEC.

VI. Implementation

The DOE and NRC agree to work in concert to ensure that the following staffing, inspection and enforcement, communications and information exchange, and conflict resolution protocol regarding the NRC Inspector activities are followed.

A. Staffing

1. The NRC will select its inspectors in accordance with its own procedures and qualifications.

2. The NRC is responsible for obtaining security clearances for its inspectors.

3. The NRC is responsible for ensuring that NRC Inspectors comply with safety requirements established by the USEC. The NRC is not required to follow USEC's fitness-for-duty program but will instead follow its own internal fitness-for-duty program. DOE is not responsible for ensuring access or space for NRC personnel. USEC is responsible for ensuring access and space for NRC personnel.

4. NRC and Office of Government Ethics Conflict of Interest regulations will be in effect for NRC Inspectors conducting inspection activities related to the Gaseous Diffusion Plants.

B. Inspections and Enforcement

1. The NRC Inspectors' activities are intended to provide information for use in developing standards for the gaseous diffusion plants and in determining whether to issue the initial certificate and/or approve a compliance plan in accordance with the Act. NRC inspection activities are also intended to assist USEC in becoming familiar with NRC practices.

2. The NRC Inspectors are responsible for adhering to safety requirements imposed by USEC related to personal safety and radiological protection.

3. The NRC Inspectors may accompany the DOE Site Safety Representative during inspections, inspection entrance and exit interviews, and enforcement meetings

4. The DOE will provide the NRC with a copy and current updates of the DOE Manual.

5. Safety/technical allegations or concerns received by the NRC Inspectors will be provided to the DOE for processing in accordance with DOE procedures, including DOE procedures for confidential sources.

6. If an NRC Inspector identifies situations with immediate safety significance, he or she will immediately communicate this information to the USEC and the DOE Site Safety Representatives. It is essential that this information be discussed with a DOE site representative immediately upon discovery so that DOE may take prompt action as dictated by the situation. If the DOE Site Safety Representatives are unavailable, the NRC Inspector will transmit this information immediately to the DOE Regulatory Oversight Manager or his designee.

7. DOE will receive copies of all written communications between USEC and NRC relating to activities of NRC Inspectors under this agreement.

8. If potential violations of DOE regulatory requirements are identified as a result of the NRC's inspection activities, DOE may take appropriate enforcement action as set forth in Appendix B of the ROA. Enforcement action, if any, will be taken only by DOE.

C. Communications and Information Exchange

1. The DOE and NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

2. The DOE and NRC agree to meet every 6 months at mutually agreeable times and locations to exchange information on matters of common concern pertinent to this Agreement.

3. The DOE and NRC agree to consider each other's identified information needs and concerns when developing inspection plans.

4. The NRC will conform to DOE practices regarding information disclosure. For instance, the NRC must abide by DOE protocol not to publicly disclose DOE inspection findings prior to the release of the DOE inspection report. However, the NRC may discuss with USEC any NRC finding relative to the development of 10 CFR Part 76 standards or certification of the gaseous diffusion plants in accordance with the Act, as amended.

5. To preclude dissemination of information which may be exempt from disclosure pursuant to the Freedom of

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Information Act, the DOE and NRC shall consult with each other before disclosure of information related to this Agreement.

6. The NRC will notify DOE before stationing an NRC Resident Inspector at a site.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Radiation Safety and Safeguards, Region III, NRC, and the DOE Regulatory Oversight Manager. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between DOE and NRC staff members on technical and other day-to-day activities.

VIII. Resolution of Conflicts

A. If disagreements or conflicts about matters within the scope of this Agreement arise, DOE and NRC will work together to resolve these differences.

B. Resolution of differences between DOE and NRC staff over the significance of findings will be the initial responsibility of the DOE Regulatory Oversight Manager.

C. The DOE Office of Chief Counsel, Oak Ridge Operations, will have the final authority to interpret DOE's regulatory requirements.

IX. Effective Date, Termination, and Modification

This Agreement shall become effective upon signing by the Region III Administrator, NRC, and the DOE Regulatory Oversight Manager, and shall remain in effect until NRC issues the initial certificate and/or approves a compliance plan, which terminates this Agreement. A formal review, not less than 6 months after the effective date, will be performed concurrently by the DOE and NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement will be subject to periodic reviews and may be amended or modified upon written agreement by both parties.

X. Separability

If any provision(s) of this Agreement, or the application of any provision(s) to any person or circumstances, is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected.

Dated: August 11, 1994.

For the U.S. Department of Energy

J. Dale Jackson,

Regulatory Oversight Manager

Dated: August 11, 1994.

For the U.S. Nuclear Regulatory Commission.

John B. Martin,

Regional Administrator

[FR Doc. 94-23461 Filed 9-21-94; 8:45 am]

BILLING CODE 7590-01-M

Parametric Study of the Potential for BWR ECCS Strainer Blockage Due To LOCA Generated Debris (DRAFT); Availability, Correction

The U.S. Nuclear Regulatory Commission has published a FOR COMMENT draft of NUREG/CR-6224 *Parametric Study of the Potential for BWR ECCS Strainer Blockage Due to LOCA Generated Debris*, on August 29, 1994 (59 FR 45042). This report presents a draft of the methodology developed to assess the potential blockage of BWR emergency core cooling system (ECCS) strainers by a loss-of-coolant accident (LOCA) generated debris. The report describes the analysis approach, models developed and summarizes initial calculated results of the loss of ECCS recirculation capability.

The address to request a free single copy of this report has been corrected. A free single copy of draft NUREG/CR-6224, *Parametric Study of the Potential for BWR ECCS Strainer Blockage Due to LOCA Generated Debris*, may be requested by those considering public comment by writing to the Distribution Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

The public comment period will end on November 28, 1994.

Dated at Rockville, Maryland, this 16th day of September, 1994.

For the Nuclear Regulatory Commission.

Charles Z. Serpan, Jr.,

Chief, Engineering Issues Branch, Division of Safety Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 94-23460 Filed 9-21-94; 8:45 am]

BILLING CODE 7590-01-M

Public Workshop on the Seismic Revisit of the Individual Plant Examination of External Events (IPEEE) for Severe Accident Vulnerabilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of workshop and availability of Draft NRC report on Seismic Revisit of Individual Plant Examination of External Events (IPEEE).

SUMMARY: The NRC plans to conduct a workshop to discuss the results of the seismic IPEEE revisit and solicit questions and comments. A draft report on the staff position is being prepared and will be available on October 7, 1994 at the NRC Public Document Room (PDR), Gelman Building, 2120 L Street NW., Washington, DC.

DATES: October 21, 1994; 9:00-5:00.

ADDRESSES: The NRC Auditorium, 11555 Rockville Pike, Rockville, MD 20852-2738.

FOR FURTHER INFORMATION CONTACT: John T. Chen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone (301) 415-6549.

SUPPLEMENTARY INFORMATION: On June 28, 1991 the NRC issued Generic Letter 88-20, Supplement 4, Individual Plant Examination of External Events (IPEEE) for Severe Accident Vulnerabilities, and NUREG-1407, Procedural and Submittal Guidance for IPEEE. The Generic Letter requested all licensees to perform an IPEEE to identify plant-specific vulnerabilities to severe accidents due to external events and report the results to the NRC. NUREG-1407 provides guidance for conducting the IPEEE. Key elements of the development of the IPEEE guidance included assigning earthquake review level and review scope for the seismic events. In this development, for central and eastern U.S. plants, the process of assigning plants to appropriate review categories has relied largely on the use of available seismic hazard results: those developed by Lawrence Livermore National Laboratory (LLNL) in 1989 and Electric Power Research Institute (EPRI) in 1989. However, grouping of the plants relied heavily on a grouping technique with a number of attributes using seismic hazard on a relative basis. In 1993, based on a re-elicitation of LLNL ground-motion and seismicity experts, revised seismic hazard results were issued in NUREG-1488. The revised mean hazard results are significantly lower than the 1989 LLNL results, and are much closer to the 1989 EPRI hazard results. These results prompted the NRC to revisit the seismic IPEEE program and consider the potential impact of the revised LLNL results. The Draft Report will be discussed during the workshop. A detailed agenda will be available on October 14, 1994 at the PDR.

Members of licensees' staff who are involved in seismic IPEEE performance are encouraged to attend, along with other interested members of the public. Those persons who wish to make a brief presentation at the workshop, should indicate their desire to the contact listed above, so that they can be added to the agenda. Early notification is recommended since requests will be processed as they are received. Written comments will also be accepted up to 4 weeks following the workshop.

Dated in Rockville, Maryland this 15th day of September 1994.

For the Nuclear Regulatory Commission.

Joseph Murphy,

Acting Director, Division of Safety Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 94-23459 Filed 9-21-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

Illinois Power Company, et al.; Withdrawal of Application for Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Illinois Power Company (the licensee) to withdraw its February 17, 1993, application for a proposed amendment to Facility Operating License No. NPF-62 for the Clinton Power Station (CPS), Unit No. 1, located in DeWitt County, Illinois.

The proposed amendment consisted of three proposed partial exemptions from the requirements of 10 CFR Part 50, Appendix J regarding containment integrated leakage rate testing, three proposed changes to associated CPS Technical Specification 3/4.6.1.2, "Primary Containment Leakage," and changes to the CPS Technical Specification Bases and Operating License No. NPF-62.

One of the three requested exemptions was granted. A partial exemption from the 10 CFR 50, Appendix J, Section III.D.1.(a) requirement to perform the third Type A test of each 10-year service period when the plant is shut down for the 10-year plant inservice inspection was granted in Amendment #83 dated September 8, 1993. However, requests for partial exemptions from the requirements of Section III.A.1.(a) (the requirement to stop a containment integrated leak rate test if excessive leakage is detected) and Section III.A.5.(b) (acceptance criteria for containment integrated leak rate tests with respect to determining the frequency of conducting future tests) was deferred pending resolution of ongoing rulemaking activities associated with Appendix J.

SECY-94-036 dated February 17, 1994, described the staff's plans for completion of rulemaking on Appendix J and how plant-specific requests for contingency and performance based exemptions would compete for limited staff resources. The SECY paper further stated that the availability of staff resources for reviewing such exemptions would be extremely limited. Subsequently, by letter dated August 15, 1994, the licensee withdrew the amendment request.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 31, 1993 (58 FR 16864). However, by letter dated August 15, 1994, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated February 17, 1993, and the licensee's letter dated August 15, 1994, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public document Room, 2120 L Street NW., Washington, DC 20555, and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland, this 15th day of September 1994.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Acting Director, Project Directorate III-3, Division of Reactor Projects-III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94-23457 Filed 9-21-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-328]

Tennessee Valley Authority, Sequoyah Nuclear Plant Unit 2; Notice of Withdrawal of Application for Amendment To Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of the Tennessee Valley Authority (the licensee) to withdraw its June 28, 1994, application for a proposed amendment to Facility Operating License No. DPR-79 for the Sequoyah Nuclear Plant, Unit 2, located in Soddy Daisy, Tennessee.

The proposed amendment would have modified the facility technical specifications to incorporate alternate steam generator tube plugging criteria at tube support plate intersections. The proposed changes would have been implemented during the Unit 2 Cycle 6 refueling outage. Additional information was supplied by letter dated August 1, 1994.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 20, 1994 (59 FR 37084). However, by letter dated September 8, 1994, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 28, 1994; the licensee's letter dated August 1, 1994, that supplied additional information; and the licensee's letter dated September 8, 1994, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, D.C. 20555, and at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland this 15th day of September 1994.

For the Nuclear Regulatory Commission

David E. LaBarge, Sr.,

Project Manager, Project Directorate II-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94-23458 Filed 9-21-94; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34678; International Series Release No. 713; File No. SR-ISCC-94-3]

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating To a Data Transmission Link With Caja de Valores, S.A.

September 15, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on August 9, 1994, the International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ISCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

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I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a data transmission link agreement with Caja de Valores, S.A. ("CVSA").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. ISCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ISCC's Rule 40 provides that ISCC may establish links with foreign financial institutions and may make available for the benefit or on behalf of the foreign financial institution's participants and members such services of ISCC which ISCC in its sole discretion shall determine to provide. Pursuant to the authority granted by Rule 40, ISCC has entered into a link with CVSA.[2] This link is similar to the links ISCC has previously established with the Japan Securities Clearing Corporation and the Central Depository (Pte.) Ltd. of Singapore.

Under the link, CVSA will be able to hold securities in The Depository Trust Company ("DTC") through ISCC. Pursuant to the terms of the service agreement dated December 2, 1993, between ISCC and CVSA, CVSA will be bound by DTC rules applicable to the DTC services that CVSA will utilize through ISCC. While monetary obligations under the link are expected to be limited to payments for fees, CVSA will be required to collateralize its obligations to ISCC. Such collateral will be available to cover any assessments made by DTC to ISCC based on CVSA's use of DTC's services. ISCC's auditors will be able to consult with CVSA's auditors with regard to CVSA's financial condition and the activity arising under the link, and CVSA will furnish ISCC with CVSA's financial statements.

CVSA has agreed that before the link becomes operational, CVSA will appoint a registered agent in the U.S. for service of process and will provide ISCC with proof of such appointment. CVSA also has agreed that it will be subject to jurisdiction in New York for the resolution of disputes under or arising from the link.

Operationally, CVSA will be assigned one number for use on behalf of its members. ISCC will apply to DTC on CVSA's behalf to establish CVSA as an ISCC-sponsored DTC participant. ISCC on behalf of CVSA will initiate book-entry deliveries for no value. ISCC on behalf of CVSA also will accept receives of securities by book-entry for no value. Both the receive and deliver functions will be pursuant to instructions received from CVSA, and such instructions will identify, among other items, which CVSA member for whom the receipt or delivery is being effected. In special circumstances and at ISCC's discretion, DTC's withdrawal-by-transfer service also may be utilized. In such case, the securities will be delivered as directed by CVSA. Relevant DTC notices and corporate action data relating to the issues held in the CVSA/ISCC account at DTC will be provided to CVSA.

To the extent that any money settlement is required, ISCC will receive payment in the form of an official bank check or a wire transfer through the CVSA designated correspondent bank. ISCC will receive dividend and possibly interest payments from DTC with respect to shares on deposit. Dividend and interest credited to CVSA's account at DTC will be reflected in CVSA's ISCC settlement statement.[3] The settlement statement also will reflect a debit for the total dividends and interest paid to CVSA's account as its withholding bank.[4]

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder in that it will promote the prompt and accurate clearance and settlement of securities transactions. ISCC believes that the provision by ISCC to CVSA of the services described above will further the purposes of Section 17A of the Act. Specifically, it will promote the delivery and safekeeping of certain U.S. issues through a book-entry environment thus avoiding the need to move securities physically to settle trades. It also will standardize in accordance with U.S. practices and procedures the processing of U.S. securities traded on a foreign exchange. In addition, the interests of the U.S. investing public and the U.S. financial community will be served by the performance of such services by ISCC, a registered clearing agency subject to Commission supervision.

(B) Self-Regulatory Organization's Statement on Burden on Competition

ISCC does not believe that the proposed rule changes will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

ISCC has notified its members of the proposed changes to its procedures and to date has receive no written comments. ISCC will notify the Commission of any written comments received by ISCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the ISCC. All submissions should refer to File No. SR–ISCC–94–03 and should be submitted by October 13, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23393 Filed 9–21–94; 8:45 am]

BILLING CODE 8010–01–M

[2] CVSA is the sole central depository acting in Argentina

[3] On each Business day, ISCC will transmit to CVSA a settlement statement detailing the net amount due to ISCC from CVSA or from ISCC to CVSA.

[4] A withholding bank is a bank approved by the Internal Revenue Service that withholds and pays the tax applicable to dividends and interest on U.S. issues paid to non-U.S. entities.

[5] 17 CFR 200.30–3(a)(12).

[Release No. 34–34679; International Series Release No. 714; File No. SR–ISCC–94–4]

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to a Data Transmission Link With Monte Titoli, S.P.A.

September 15, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 9, 1994, the International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ISCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a data transmission link agreement with Monte Titoli, S.p.A. ("MT").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ISCC's Rule 40 provides that ISCC may establish links with foreign financial institutions and may make available for the benefit or on behalf of the foreign financial institution's participants and members such services of ISCC which ISCC in its sole discretion shall determine to provide. Pursuant to the authority granted by Rule 40, ISCC has entered into a link with MT.[2] This link is similar to the links ISCC has previously established with the Japan Securities Clearing Corporation and the Central Depository (Pte.) Ltd. of Singapore.

Under the link, MT will be able to hold securities in The Depository Trust Company ("DTC") through ISCC. Pursuant to the terms of the service agreement dated June 1, 1992, between ISCC and MT, MT will be bound by DTC rules applicable to the DTC services that MT will utilize through ISCC. While monetary obligations under the link are expected to be limited to payments for fees, MT will be required to collateralize its obligations to ISCC. Such collateral will be available to cover any assessments made by DTC to ISCC based on MT's use of DTC's services. ISCC's auditors will be able to consult with MT's auditors with regard to MT's financial condition and the activity arising under the link, and MT will furnish ISCC with MT's financial statements.

MT has agreed that before the link becomes operational, MT will appoint a registered agent in the U.S. for service of process and will provide ISCC with proof of such appointment. MT also has agreed that it will be subject to jurisdiction in New York for the resolution of disputes under or arising from the link.

Operationally, MT will be assigned one number for use on behalf of its members. ISCC will apply to DTC on MT's behalf to establish MT as an ISCC-sponsored DTC participant. ISCC on behalf of MT will initiate book-entry deliveries for no value. ISCC on behalf of MT also will accept receipts of securities by book-entry for no value. Both the receive and deliver functions will be pursuant to instructions received from MT, and such instructions will identify, among other items, the MT member for whom the receipt or delivery is being effected. In special circumstances and at ISCC's discretion, DTC's withdrawal-by-transfer service also may be utilized. In such case, the securities will be delivered as directed by MT. Relevant DTC notices and corporate action data relating to the issues held in the MT/ISCC account at DTC will be provided to MT.

To the extent that any money settlement is required, ISCC will receive payment in the form of an official bank check or a wire transfer through the MT designated correspondent bank. ISCC will receive dividend and possibly interest payments from DTC with respect to shares on deposit. Dividend and interest credited to MT's account at DTC will be reflected in MT's ISCC settlement statement.[3] The settlement statement also will reflect a debit for the total dividends and interest paid to MT's account at its withholding bank.[4]

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder in that it will promote the prompt and accurate clearance and settlement of securities transactions. ISCC believes that the provision by ISCC to MT of the services descibed above will further the purposes of Section 17A of the Act. Specifically, it will promote the delivery and safekeeping of certain U.S. issues through a book-entry environment thus avoiding the need to move securities physically to settle trades. It also will standardize in accordance with U.S. practices and procedures the processing of U.S. securities traded on a foreign exchange. In addition, the interests of the U.S. investing public and the U.S. financial community will be served by the performance of such services by ISCC, a registered clearing agency subject to Commission supervision.

(B) Self-Regulatory Organization's Statement on Burden on Competition

ISCC does not believe that the proposed rule changes will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

ISCC has notified its members of the proposed changes to its procedures and to date has received no written comments. ISCC will notify the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] MT provides settlement and depository services for securities, including securities of U.S. issuers, listed on Italian stock exchanges.

[3] On each business day, ISCC will transmit to MT a settlement statement detailing the net amount due to ISCC from MT or from ISCC to MT.

[4] A withholding bank is a bank approved by the Internal Revenue Service that withholds and pays the tax applicable to dividends and interest on U.S. issues paid to non-U.S. entities.

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commission of any written comments received by ISCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organizations consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–ISCC–94–04 and should be submitted by October 13, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23394 Filed 9–21–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 USC Chapter 35).

DATES: September 15, 1994.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on September 15, 1994:

DOT No.: 3987.
OMB No: 2130–0035.
Administration: Federal Railroad Administration.
Title: Railroad Operating Rules.
Need for Information: 39 FR 41175 requires FRA to monitor each railroads compliance with its operating rules regarding the movement of trains and other rolling equipment in the railroad industry and the operating rules instructions that each railroad provides to its employees.
Proposed Use of Information: The information will be used to consider waiver and petition applications, and to conduct accident investigations involving operating practices.
Frequency: Recordkeeping and Annually.
Burden Estimate: 620 railroads.
Respondents: 131,159.5 hours.
Form(s): None.
Average Burden Hours Per Response: 211.485 hours.

DOT No.: 3988.
OMB No: 2130–0500.
Administration: Federal Railroad Administration.
Title: Accident/Incident Reporting and Recordkeeping Requirements.
Need for Information: Title 49 CFR part 225 authorizes FRA to report accidents and incidents that the railroad attributes, at least in part, to a railroad employee's error (human error).
Proposed Use of Information: The information will be used to identify hazardous conditions associated with rail transportation and to assure compliance with the Rail Safety Act and the Rail Safety Improvement Act of 1988.
Frequency: On occasion; monthly; annually; recordkeeping.
Burden Estimate: 101,637.
Respondents: 620 railroads.
Form(s): FRA–F–6180.45; FRA–F–6180.54; FRA–F–6180.54; FRA–F–6180.55; FRA–F–6180.55A; FRA–F–6180.56; FRA–F–6180.57; FRA–F–6180.78; and FRA–F–6180.81.
Average Burden Hours Per Response: 163.9 hours.

DOT No.: 3989.
OMB No: 2115–0565.
Administration: U.S. Coast Guard.
Title: Hopper Dredge Working Freeboard; Load Line and Stability Requirements.
Need for Information: Title 43 USC 1333(d); 46 USC 3306, 3703 and 5115 and 49 CFR 1.46, establishes statutory mandates on owners and operators of vessels to maintain them in a safe operating condition.
Proposed Use of Information: The information will be used by the Coast Guard to ensure that owners and operators of self-propelled hopper dredges meet certain structural stability standards. This information will also ensure Master's of vessels are provided stability and loading information in order to allow them to operate their vessels in a safe manner.
Frequency: Once.
Burden Estimate: 51 hours.
Respondents: Owners, operators or agents of self-propelled hopper dredges.
Form(s): None.
Average Burden Hours Per Response: 50 hours reporting and 1 hour recordkeeping.

DOT No.: 3990.
OMB No: New.
Administration: Federal Highway Administration.
Title: Automated Roadside Inspection Technologies.
Need for Information: Senate Report 103–150 requires FHWA to develop and test various technologies to automate commercial roadside inspections, including those that allow computerized imaging and reporting on the safety conditions on the underside of a commercial motor vehicle.
Proposed Use of Information: The information will be used by FHWA to appraise and assess currently available technologies to inspect the underside of a commercial motor vehicle.
Frequency: Once.
Burden Estimate: 300 hours.
Respondents: Motor vehicle industry.
Form(s): None.
Average Burden Hours Per Response: 1.5 hours reporting.

DOT No: 3991.
OMB No: 2132–0011.
Administration: Federal Transit Administration.
Title: Environmental Assessments.
Need for Information: The National Environmental Policy Act (NEPA), the primary regulation implementing NEA issued by the Council on Environmental Quality (CEQ), and the FTA environmental impact regulation requires environmental assessments for projects proposed by State and local governments for funding by the FTA.
Proposed Use of Information: The information will be used to determine the probable environmental effects of projects proposed for Federal funding by the FTA and whether the project should be modified to mitigate environmental harm.
Frequency: On occasion.
Burden Estimate: 7,440 hours.
Respondents: State and local governments.
Form(s): None.
Average Burden Hours Per Response 120 hours.
DOT No 3992.
OMB No: 2127–0563.
Administration: National Highway Traffic Safety Administration.
Title: Replaceable Light Source Dimensional Information.
Need for Information: Title 49 CFR Part 564 reduces the burden to manufacturers and users of new light sources by eliminating the 18-month petitioning process and substituting a one month agency review.
Proposed Use of Information: The information will be used by the manufacturers of replacement light bulbs to standardize their bulbs so that their interchangeability dimensions and other fit and photometric aspects are all identical to those of the original bulb manufacturers.
Frequency: On occasion.
Burden Estimate: 13.33 hours.
Respondents: 1.67 average per year.
Form(s): None.
Average Burden Hours Per Response: 8 hours.
DOT No: 3993.
OMB No: 2130–0509.
Administration: Federal Railroad Administration.
Title: State Safety Participating Regulations and Remedial Actions Reporting.
Need for Information: Title 49 CFR Part 212 provides the legal framework for enforcement and funding purposes. Section 3 of the Rail Safety Enforcement and Review Act, Public Law 102–365 mandates the issuance of regulations requiring railroads be notified that a civil penalty will be recommended for a failure to comply with railroad safety laws.
Proposed Use of Information: The information will be used to administer and monitor State participants in investigative and surveillance activities under Federal Safety laws and regulations.
Frequency: Annually; monthly; semi-annually; on occasion.
Burden Estimate: 14,954 hours.
Respondents: 31 States.
Form(s): FRA–F–6180.58, 58A; 59; 59A; 68; 68A; 69; 65; 65A; 67; 5; 5A; 10; 29; 29A; 79; 96.
Average Burden Hours Per Response: 482.4 hours.
DOT No: 3994.
OMB No: 2127–0566.
Administration: National Highway Traffic Safety Administration.
Title: Drug Offender's License Suspension Certification.
Need for Information: Section 333 of the DOT and Related Agencies Appropriations Act for FY 1991 amends 23 USC Section 104 and requires the withholding of certain Federal-aid Highway funds from States that do not enact legislation requiring the revocation or suspension of an individual's drivers' license upon conviction for any violation of the Public Law 101–215.
Proposed Use of Information: The information will be used to determine each States compliance with the requirements set forth in this rule.
Frequency: Annual.
Burden Estimate: 260 hours.
Respondents: 52 States.
Form(s): None.
Average Burden Hours Per Response: 5 hours.
DOT No: 3995.
OMB No: New.
Administration: National Highway Traffic Safety Administration.
Title: Patterns of Misuse of Child Safety Seats.
Need for Information: Title 15 USC 1395 Section 106(b) gives the Secretary authorization to assess the types of child safety seat (CSS) misuse and identify underlying causes. Also, it will determine which causes of misuse are based on attitudes, beliefs, or knowledge.
Proposed Use of Information: The information will be used to identify the characteristics of adult misuse of CSS that would be useful in the development of specially targeted program strategies.
Frequency: Once.
Burden Estimate: 1,000 hours.
Respondents; 4,000.
Form(s): Questionnaire/Observation Form.
Average Burden Hours Per Response. 0.25 hours.
DOT No: 3996.
OMB No: 2138–0040.
Administration: Research and Special Programs Administration.
Title: Report of Traffic and Capacity Statistics—The T–100 System.
Need for Information: 14 CFR Part 217 and 241 authorizes the Department to provide civilian passenger and/or cargo scheduled, nonschedule and charter services to or from the United States, whether performed pursuant to a permit or exemption authority
Proposed Use of Information: The information will be used for international negotiations, monitoring air carrier fitness, international rates, and foreign air carrier applications
Frequency: Monthly; quarterly.
Burden Estimate: 12,456 hours.
Respondents, US and Foreign Air Carriers.
Form(s): T–100 and T–100(f).
Average Burden Hours Per Response US Air Carriers 10 hours and foreign air carriers 1.5 hours.
DOT No. 3997

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OMB No: New.
Administration: Federal Aviation Administration.
Title: Aviator Safety Studies.
Need for Information: FAA Act of 1958, 312(e) Civil Aeromedical Research authorizes the FAA to conduct research.
Proposed Use of Information: The information will be used in scientific studies investigating, among other issues, the decision making processes used by novice and expert pilots, the characteristics of effective intervention methodologies, and the characteristics of the targeted pilots.
Frequency: On occasion.
Burden Estimate: 12,000 hours annually for the blanket surveys.
Respondents: Individuals.
Form(s): None.
Average Burden Hours Per Response: 2 hours per response.
DOT No: 3998.
OMB No: New.
Administration: Federal Highway Administration.
Title: 1995 Nationwide Personal Transportation Study.
Need for Information: Title 49, USC Section 301 authorizes the DOT to coordinate, promote, collect and disseminate technological, statistical, economic, and other information relevant to domestic and international transportation. Title 23 USC Section 307 authorizes DOT to engage in studies to collect data in planning future highway programs.
Proposed Use of Information: The information will be used to analyze the amount and nature of personal travel, the relationship between socio-economic characteristics and travel patterns, and changes in passenger travel time.
Frequency: Reporting and recordkeeping every 5 years.
Burden Estimate: 30,520 hours.
Respondents: Individuals and households.
Form(s): None.
Average Burden Hours Per Response: Reporting .85 hours and recordkeeping 25 hours.
DOT No: 3999.
OMB No: New.
Administration: Federal Aviation Administration.
Title: Wichita Automated Flight Service Station Questionnaire.
Need for Information: Executive Order 12862 requires agencies to survey customers to determine the kind and quality of service they want and their level of satisfaction with existing services."
Proposed Use of Information. The information will be used by the FAA to improve/update services/equipment, propose changes to the national orders and directives, and to propose improvements/changes to the National Airspace System.
Frequency: Annually.
Burden Estimate: 25 hours.
Respondents: Individuals using Wichita AFSS Services.
Form(s): None.
Average Burden Hours Per Response: 15 minutes.
DOT No: 4000.
OMB No: New.
Administration: Office of the Secretary.
Title: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.
Need for Information: OMB A–110 requires provisions affecting grantees be adopted by agencies in codified regulations.
Proposed Use of Information: The information will be used to qualify and select grant applications; to monitor grantee performance; and to close out awards.
Frequency: Recordkeeping.
Burden Estimate: 10,500 hours.
Respondents: Grantees.
Form(s): SF 269, SF 269A, SF 272, SF 270, SF 271, and SF 424. Identical form requirements contained in OBM's revised circular A–110 are adopted in DOT's interim final rule.
Average Burden Hours Per Response: 70 hours.
DOT No: 4001.
OMB No: 2120–0098.
Administration: Federal Aviation Administration.
Title: Airplane Operator Security.
Need for Information: FAR Part 108 Airplane Operator Security implements the provisions of the FAA Act that relate to security of passenger and property aboard airplanes operating in commercial air transportation.
Proposed Use of Information: The information will be used by air carriers in carrying out responsibilities under the law with regard to the protection of persons and property against acts of criminal violence and aircraft piracy.
Frequency: On occasion.
Burden Estimate: 6,986 hours.
Respondents: Individuals.
Form(s): FAA Form 1650–17.
Average Burden Hours Per Response: 1.37 hours per response.
DOT No: 4002.
OMB No: New.
Administration. Federal Highway Administration.
Title: Private Motor Carrier of Passengers.
Need for Information: Title 49 CFR Parts 350 through 399 sets minimum safety requirements for motor carriers, vehicles and drivers involved in interstate commerce. Areas covered include: driver qualifications, licensing, operating conditions, inspection, and maintenance.
Proposed Use of Information: The information will be used to ensure that Private Motor Carriers of Passengers (PMCP's) are able to safely transport passengers.
Frequency: Recordkeeping every 3 years.
Burden Estimate: 115,730 hours.
Respondents: Motor Carriers.
Form(s): None.
Average Burden Hours Per Response: 16 hours recordkeeping.

Issued in Washington, D.C. on September 15, 1994.

Paula R. Ewen,
Chief, Information Management Division.

[FR Doc. 94–23450 Filed 9–21–94; 8:45 am]
BILLING CODE 4910–62–P–M

Federal Highway Administration

Environmental Impact Statement: Mills County, IA/Cass and Sarpy Counties, NE

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Mills County, Iowa, and Cass and Sarpy Counties, Nebraska.

FOR FURTHER INFORMATION CONTACT: Hubert A. Willard, FHWA Division Administrator, Federal Highway Administration, Ames, Iowa 50010. Telephone: (515) 233–1664.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Iowa Department of Transportation and the Nebraska Department of Roads, will prepare an environmental impact statement (EIS) on a proposal to reconstruct U.S. Route 34 (U.S. 34) between Interstate 29 in Iowa and U.S. Route 75 (U.S. 75) in Nebraska. The length of the project is approximately 10 km (6 miles).

Improvements to the corridor are considered necessary due to the narrow width and structural deficiency of the 65-year-old bridge over the Missouri River. Additionally, the existing route, west of the bridge, traverses through downtown and residential areas of Plattsmouth, Nebraska, on a low-speed alignment that restricts traffic flow,

causes safety problems, limits economic growth of the region, and routes heavy vehicles through the center of the city. Alternatives under consideration include (1) taking no action; (2) using alternative travel modes; (3) reconstruction on or near the existing route; and (4) constructing a limited access highway on a new location. Incorporated into and studied with the various build alternatives will be design variations of alignment and grade.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal.

A series of public scoping meetings will be held at the Community Center, 625 Avenue "A" in Plattsmouth, Nebraska, on September 27, 1994, and the Glenwood State Bank, 32 North Walnut, in Glenwood, Iowa, on September 28, 1994. Both meetings will be held between 4 pm and 7 pm. In addition, a public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: September 12, 1994.

Hubert A. Willard,
Division Administrator, Ames, Iowa.

[FR Doc. 94–23454 Filed 9–21–94; 8:45 am]
BILLING CODE 4910–22–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit, "Reflections of Women in the New Kingdom: Ancient Egyptian Art from the British Museum." (see list [1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition of the objects in Atlanta, Georgia at the Carlos Museum of Emory University from on or about February 4, 1995, to on or about May 14, 1995, is in the national interest.

Public Notice of this determination is ordered to be published in the **Federal Register.**

Dated: September 16, 1994.

Les Jin,
General Counsel.

[FR Doc. 94–23397 Filed 9–21–94; 8:45 am]
BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Neila Sheahan of the Office of the General Counsel of USIA. The telephone number is 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC. 20547.

Federalism in Russia Partnership Program

ACTION: Notice—Request for Proposals.

SUMMARY: The Office of Citizen Exchanges of the United States Information Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award program. Public or private non-profit organizations meeting the provisions described in IRS regulation 501(c)(3) may apply to develop training programs which foster permanent professional and political partnerships between Russian regional governments, institutions, political leaders and their American counterparts. The program is designed to increase the commercial, economic, educational, and political ties between Russia and the United States at the regional level.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Pub. L. 87–256, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

The funding authority for the program cited above is provided through the Freedom Support Act.

Projects must conform with Agency requirements and guidelines outlined in the Application Package. USIA programs and projects are subject to the availability of funds.

Announcement Name and Number: All communications with USIA concerning this announcement should refer to the above title and reference number E/PN–94–22.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on December 7, 1994. Faxed documents will not be accepted, nor will documents postmarked on December 7, 1994 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: *Office of Citizen Exchanges,* E/PN Room 216, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, 202–619–5326 (phone number), 202–619–4350 (fax number), to request an Application Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify *Ruth Fair Leeb,* Program Specialist in the office of Russia/Eurasian Programs, on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the *Office of Citizen Exchanges* or submitting proposals. Once the RFP deadline has passed, representatives from USIA may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Application Package and send only complete applications to: U.S. Information Agency, Reference: E/PN–95–22, Office of Grants Management, E/XE, Room 336, 301 4th Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, projects must maintain a non-political

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character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

USIA is interested in proposals that further the development of federalism in Russia at the regional level through the establishment of long-term, comprehensive relationships between regional organizations/institutions in the United States and their regional counterparts in Russia.

Projects should examine the roles of national and regional governments that exist in a federated system of government and focus on the tasks, responsibilities, and obligations charged to each. General program content will vary depending on the regions involved. Issues of interest might include but are not limited to: The balance of power between federal and regional governments; communication and coordination between regional and federal governments; regional economic development and management; and regional resource management and environmental policy. Projects should reflect the issues shared by the American and Russian regions.

Priority will be given to projects that produce tangible, manageable results, i.e. *a federalism curriculum* for a Russian institute/university, development of a regional association, development of a center/institute within an existing Russian institution to study regional issues, development of Russian and American business/commercial links, etc.

The *Office of Citizen Exchanges* is not interested in projects that are largely academic in nature (classroom lectures, structured course work, participation in existing academic courses, etc.).

USIA encourages applicants to design creative projects involving non-English speaking Russians for both in-country and U.S.-based training. USIA is interested in proposals whose designs take into account the need for the continued sharing of information and ongoing training.

Priority will be given to those projects which include a resident American in Russia for a duration of at least three months. Proposals that include U.S. specialists with background in Russia and some language will be given priority. Priority will also be given to those projects which demonstrate concrete results at the end of program activity (conference reports, ongoing exchanges, continued involvement of grantee organization in Russia, etc.). The goal of the program is to create working relationships between Russian and American officials in areas of mutual interest in order to form permanent professional and political partnerships between regional leaders and their respective institutions.

Given the regional nature of the program, American universities interested in submitting proposals are strongly encouraged to collaborate with American national and regional professional associations and organizations.

Geographic Focus

The following regions are the priority areas for the Federalism in Russia Partnership Program:

Ural Mountain region; in particular the Chelyabinsk, Perm, and Sverdlovsk oblasts.

The Volga Valley region; in particular the Samara, Saratov, and Volgograd oblasts.

Southern Siberia; in particular the Kemerovo, Krasnoyarsk, and Tomsk oblasts.

Interested organizations are encouraged to include two or more oblasts in the programmatic design of their proposal to increase its multiplier effect, but to simplify logistics and administration, prospective grantees are strongly encouraged to coordinate planning with a single oblast administration. One assistance award will be granted per region.

Programmatic Considerations

USIA will give careful consideration to proposals which demonstrate:

- In-depth, substantive knowledge of the issues related to federalism in Russia.
- Established relations with Russian regional institutions/organizations and a demonstrated commitment to continue such relationships following the conclusion of the grant period.
- The capacity to organize, manage, and administer a program of this magnitude on a regional level; including conducting orientations for both American and Russian participants, arranging all logistical aspects of the program, providing in-county support for participants prior to and following the program.
- Development of practical, written information in Russian relevant to the interests of Russian regional and local officials.
- A clear and detailed method for participant selection. The proposal should clearly describe the type of person who will participate and how that person will be selected. Grantee institutions are expected to develop slates of candidates from which to choose the final participants. USIS Moscow retains the right to accept or deny any candidate recommended for participation by the grantee institution. Also, USIS Moscow retains the right to suggest deserving individuals for participation.
- Consultations with USIS Moscow staff in the development of a training program is strongly encouraged.
- Projects must comply with J–1 visa regulations.

Materials Development

USIA encourages the development and use of written materials in Russian to increase the impact of the program. US government funds, not to exceed ten percent (10%) of the total grant award, may be used to purchase and/or translate documents and materials and to purchase the required software and hardware to achieve the goals of the project. In developing written materials, consideration should be given to their wider use, beyond the Federalism in Russian Partnership Program. USIA is interested in the multiple use of training materials through their dissemination to universities, libraries, and other organizations for use by a larger audience.

Budget

The decision to submit a proposal should not be taken lightly. Competition for USIA funding is always keen and this program is highly competitive. A USIA grant award should constitute only a portion of the total project funding. Proposals should list and provide evidence of other anticipated sources of financial and in-kind support. *USIA requires that at least 50% of all outbound travel costs be provided by the American partner organization(s) with non-federal funds. Russian partner organizations will be expected to provide for lodging, transportation, and interpreting for visiting American officials. Additional cost-sharing is strongly recommended;* it indicates a commitment on the part of the prospective grantee institution to the project.

Proposals for less than $175,000 will receive preference. Organizations with less than four yeas of not-for-profit status are limited to grants of $60,000.

All participants are covered under the terms of a USIA-sponsored health insurance policy. The premium is paid directly to the insurance company by USIA.

Please refer to the Application Package for complete budget guidelines.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Application Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the budget and contracts offices, as well as the USIA *Office of East European and NIS Affairs* and the USIA post overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA grants officer.

Tchnically eligible applications will be competitively reviewed according to the following criteria:

1. *Quality of the Program Idea:* Proposals should exhibit originality, substance, precision, and relevance to Agency mission.
2. *Program Planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.
3. *Ability to Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.
4. *Multiplier Effect:* Proposed projects should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.
5. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.
6. *Institution's Ability/Record:* Proposals should demonstrate an institutional record of successful exchange projects, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.
7. *Thematic and Area Expertise:* Proposals should reflect the institution's expertise in the subject area and should address the specific issues of concern facing the countries involved in the project.
8. *Project Personnel:* Personnel's thematic and logistical expertise should be relevant to the proposed program. Resumes should be suited to the specific proposal and no longer than two pages each.
9. *Cross-Cultural Sensitivity:* Proposals should show evidence of sensitivity to historical, linguistic, and other cross-cultural factors, as well as appropriate knowledge of the geographic area, and should show how this sensitivity will be used in practical aspects of the program, such as pre-departure orientations or briefing of American hosts.
10. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported projects are not isolated events.
11. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.
12. *Cost-Effectiveness/Cost-Sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.
13. *Support of Diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation (such as a written statement or account) summarizing and/or on-going activities and efforts that further the principle of diversity within both the organization and the program activities.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The needs of the program may require the award to be reduced, revised, or increased. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about March 6, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: September 16, 1994.

John P. Loiello,

Associate Director, Bureau for Educational and Cultural Affairs.

[FR Doc. 94–2348 Filed 9–21–94; 8:45 am]

BILLING CODE 8230–01–M

English Language Programs Advisory Panel Meeting

ACTION: Notice of meeting.

SUMMARY: The United States Information Agency announces a meeting of the English Language Programs Advisory Panel on Thursday, October 27, and Friday, October 28, 1994, in Room 840 at USIA Headquarters, 301 Fourth Street, SW, Washington, DC. The agenda will include discussion of USIA's world-wide English teaching programming, especially as executed by the English Language Programs Division. The Panel will review and discuss the activities of the Field Programs and Materials Development/*English Teaching Forum* branches of the Division. The Special Assistance Program for Central and Eastern European Countries (SEED IV and V) will also be discussed, as well as the Agency's expanded English Language Fellows programs and new support programs in Russia and the NIS. There will be a review of the Agency's English Language Teaching by Broadcast ("Family Album, USA" and "Tuning in the USA") project. Topics of professional concern, including the FY–95 budget, affecting the execution of the Division's responsibilities will be addressed. The Panel will also consider the role played in supporting English teaching overseas by other elements of USIA.

DATES: October 27 and 28, 1994.

ADDRESSES: 301 Fourth Street, SW, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Betty Taska at (202) 619–5869.

SUPPLEMENTARY INFORMATION: The October 27 meeting will be open to the

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general public. The October 28 meeting will be partially closed. In its final session on October 28, in preparing its report to the Director of USIA, the Panel will review information of a proprietary nature, including technical information and financial data, such as salaries. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act. Copies of the agenda may be obtained by calling (202) 619–5869.

Dated: September 15, 1994.

Betty K. Taska,

Chief, English Language Programs Division.

[FR Doc. 94–23292 Filed 9–21–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 183

Thursday, September 22, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 27, 1994 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, September 29, 1994 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1994–31: Warren J. Leshner on behalf of Dean Gallo for Congress Committee
Draft Notice of Proposed Rulemaking on Communications Disclaimer Requirements
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 94–23634 Filed 9–20–94; 2:34 pm]

BILLING CODE 6715–01–M

NATIONAL WOMEN'S BUSINESS COUNCIL

Notice of Meeting

SUMMARY: In accordance with the Women's Business Ownership Act, Public Law 100–533 as amended, the National Women's Business Council announces a forthcoming Council Meeting. The meeting will cover a summary of activities of the National Women's Business Council in Fiscal Year 1994, including but not limited to, increasing procurement opportunities and access to capital for women business owners.

DATES: September 30, 1994, 10:00 am to 11:00 am.

ADDRESSES: Department of Commerce, Secretary's Conference Room–5th Floor, Herbert C. Hoover Building, 14th & Constitution Avenue, NW, Washington, DC.

STATUS: Open to the public.

FOR FURTHER INFORMATION CONTACT: Amy Millman, Executive Director or Juliette Tracey, Deputy Director, National Women's Business Council, 409 Third Street, S.W., Suite 5850, Washington, D.C. 20024, (202) 205–3850.

Juliette Tracey,

Deputy Director.

[FR Doc. 94–23596 Filed 9–20–94; 4:00 pm]

BILLING CODE 8025–01–M

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Federal Register

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Part II

Environmental Protection Agency

40 CFR Part 85

Clean Air Act: Ozone Transport Commission: Low Emission Vehicle Program for Northeast Ozone Transport Region; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 85

[FRL–5074–4]

Supplemental Notice of Proposed Rulemaking on Ozone Transport Commission; Emission Vehicle Program for the Northeast Ozone Transport Region

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: Pursuant to section 184 of the Clean Air Act, the Northeast Ozone Transport Commission recommended that EPA require all state members of the OTC to adopt an Ozone Transport Commission Low Emission Vehicle (LEV) program.

In today's supplemental notice of proposed rulemaking (SNPRM), EPA is proposing to find that reduction of new motor vehicle emissions through OTC LEV or LEV-equivalent program is necessary to mitigate the effects of pollution transport and to bring nonattainment areas in the OTR into attainment and to avoid interference with maintenance. EPA believes an alternative federal low emission vehicle program can be developed that would achieve reductions equivalent to or greater than the OTC LEV program. EPA also believes there could be significant additional benefits from such a program and proposes in today's notice a process by which development of such a program could continue. The Agency intends to work with stakeholders in this effort.

Given the absence of such a program, however, EPA is proposing under sections 184(c) and 110(k)(5) of the Act that the OTC LEV program is necessary throughout the OTR and is consistent with the Act. EPA is thus proposing a SIP call under section 110(k)(5) to require each state in the OTR to revise its SIP to include the OTC LEV program within one year. Today's notice also proposes regulations determining "model year" for purposes of section 177 and part A of title II of the Act as that term is applied to on-highway motor vehicles.

DATES: The comment period for this rulemaking will reopen immediately for purposes of taking comment on issues raised in this Supplemental Proposal and will remain open until October 24, 1994. Please direct all correspondence to the address specified below. EPA will hold a public hearing on this Supplemental Notice of Proposed Rulemaking if one is requested by September 29, 1994. EPA will hold such a hearing on September 29, 1994. The hearing, if requested, would begin at 9 a.m. and continue until 4:30 p.m. or until all commenters have the opportunity to testify. Members of the public may call the contact person indicated below to find out whether a hearing will be held and, if so, the exact location.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to the Air Docket (see address below). Copies of information relevant to this matter are available for inspection in public docket A–94–11 at the Air Docket (LE–131) of the EPA, room M–1500, 401 M Street SW., Washington, DC 20460, tel. (202) 260–7548, between the hours of 8 am to 4 pm, on Monday through Friday.

The hearings, if requested, will be held in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael Shields, Office of Mobile Sources, U.S. EPA, 401 M Street SW., Washington, DC 20460, tel. (202) 260–3450.

SUPPLEMENTARY INFORMATION:

I. Outline and Background

This proposal supplements EPA's April 26 proposal, and EPA does not intend to thereby withdraw from consideration any of the various elements previously proposed. Rather, EPA intends to focus for purposes of public comment on EPA's proposed specific approach to, and basis for, approving the OTC LEV recommendation. In addition, EPA is proposing today "model year" regulations that are relevant to, but beyond the specific scope of EPA's April 26 proposal.

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I. Outline and Background

A. Overview of Title I Scheme

The OTC's recommendation under section 184(c) of the Act that EPA mandate that states in the OTR adopt the LEV program arises in the context of the program designed to address ozone (or "smog") pollution in subpart 2 of part D of title I of the Act. This program is described in detail in EPA's General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR 13498 (April 16, 1992), and the Nitrogen Oxides Supplement to the General Preamble, 57 FR 55620 (Nov. 25, 1992).

A number of provisions in subpart 2 and elsewhere in the Act are particularly important to emphasize here. Part D establishes a system for more polluted areas to have more time to attain the National Ambient Air Quality Standards (NAAQS) and subjects those more polluted areas to a graduated program of additional and more stringent specific control requirements to be accomplished over the longer timeframe.

Section 181(a) provides for classification of ozone nonattainment areas based on the degree of the nonattainment problem in the area (as measured by the area's ozone design value), and provides that attainment "shall be as expeditiously as practicable but not later than" specified deadlines expressed as years after enactment. The areas and the corresponding attainment deadlines are: Marginal (1993); moderate (1996); serious (1999); severe (2005 or 2007, depending on the design value); and extreme (2010). The Act also provides for designation of areas as attainment or as "unclassifiable." All classifications other than extreme are represented in the OTR. Section 184(b) also specifies additional requirements applicable for attainment areas in ozone transport regions, including: (1) Enhanced vehicle inspection and maintenance programs in cities meeting specified size thresholds; (2) state-wide implementation of reasonably available control measures (RACT); (3) "Stage II" vehicle refueling vapor controls or "comparable measures"; and (4) treatment of major stationary sources of ozone precursors as if they were in moderate nonattainment areas.

Section 182 establishes the graduated control measures applicable for each nonattainment classification. These measures are additive in that the higher classifications must generally adopt, in addition to measures specifically applicable to that higher classification, all measures identified for lower classifications as well. A basic requirement applicable to marginal and above classifications is that states are to submit inventories of actual emissions from all sources in each nonattainment area. See sections 182(a)(1) and 172(c)(3). These emissions inventories may be important in determining whether the LEV program is necessary in the OTR. The inventories are critical inputs for models used to determine the magnitude of emissions reductions that may be needed for attainment and the effectiveness of various measures to obtain such reductions.

Another potentially key requirement is that moderate and above areas must submit attainment demonstrations. Under section 182(b)(1)(A), for moderate and above areas, states are to specify in their plans specific annual reductions in emissions "as necessary to attain the [NAAQS] for ozone by the attainment date applicable under this Act." Under section 182(c)(2)(A), for serious and above areas, states are to submit a demonstration that the SIP, "as revised, will provide for attainment of the ozone [NAAQS] by the applicable attainment date." Further, this provision continues, "[t]his attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective." The modeling information is, of course, important to determining the reductions necessary in areas to achieve attainment throughout the OTR.

It is also relevant that states are obligated to adopt various measures specified for progress toward attainment, and to achieve certain percentage reductions in emissions by interim dates. In general, section 172(c)(2) requires that SIPs "require reasonable further progress" (RFP), defined in section 171(1) to mean "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the [NAAQS] by the applicable date." Section 182(b) specifically provides that, by November 15, 1993, states were to submit SIP revisions for moderate and above areas providing for, with a limited feasibility exception, a 15% reduction by 1996 in emissions of volatile organic compounds (VOCs) from a 1990 baseline. Further, section 182(c)(2)(B) provides that, by November 15, 1994, states are to submit SIP revisions for serious and above areas that will result, subject to a limited feasibility exception, in additional reductions in VOC emissions from the 1990 baseline of 3% each year averaged over consecutive 3-year periods beginning in 1996 and until the attainment date. Section 182(c)(2)(C) provides for substitution of reductions in emissions of nitrogen oxides (NO_x) for VOC, in accordance with EPA guidance. These RFP requirements establish minimum reductions that certain nonattainment areas in the OTR will be required to achieve apart from whether EPA approves or disapproves the OTC recommendation.

Finally, section 110 of the Act establishes general requirements for SIPs. Section 110(a)(2) specifies minimum elements of a state's SIP, and subparagraph (D) specifies that a state's SIP shall:

Contain adequate provisions—

(i) Prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

(I) Contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard.

This provision, as discussed in detail below, is the key mechanism under the transport provisions of sections 176A and 184, and is central to the OTC recommendation and to EPA's action on it.

B. Ozone Transport Region Provisions

The OTR was established by operation of law under section 184 of the Act and is comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, the District of Columbia, and the portion of Virginia that is within the Consolidated Metropolitan Statistical Area that includes the District of Columbia. Congress established the OTR in the 1990 Amendments to the Act based on the recognition that the transport of ozone and ozone precursors throughout the region may render the northeast states' attainment strategies interdependent.

Under section 184, the Administrator established a Northeast Ozone Transport Commission for the OTR consisting of the Governors of each state or their designees, the Administrator or her designee, the Regional Administrators for the EPA regional offices affected (or the Administrator's designees), and an air pollution control official representing each state in the region, appointed by the Governor.

Section 184(c) specifies a procedure for the OTC to develop recommendations for additional control measures to be applied within all or a part of the OTR if the OTC determines that such measures are necessary to bring any area in the OTR into attainment for ozone by the applicable dates in the Act. Section 184(c)(1) provides that:

Upon petition of any States within a transport region for ozone, and based on a majority vote of the Governors on the Commission (or their designees), the Commission may, after notice and

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opportunity for public comment, develop recommendations for additional control measures to be applied within all or a part of such transport region if the commission determines such measures are necessary to bring any area in such region into attainment by the dates provided by [subpart 2 of part D of title I of the Clean Air Act].

Section 184(c) also lays out procedures the Administrator is to follow in responding to recommendations from the OTC. Upon receipt of the recommendations, the Administrator is to publish a **Federal Register** notice stating that the recommendations are available and providing an opportunity for a public hearing within 90 days. The Administrator is also to "commence a review of the recommendations to determine whether the control measures in the recommendations are necessary to bring any area in such region into attainment by the dates provided by [subpart 2] and are otherwise consistent with [the] Act." Finally, in undertaking her review, the Administrator is to consult with members of the OTC and is to take into account the data, views, and comments received pursuant to the public hearing.

Last, sections 184(c)(4) and (5) govern EPA's response to the OTC recommendations. The Administrator is to determine whether to approve, disapprove, or partially approve and partially disapprove the recommendations within nine months of receipt. For any disapproval, the Administrator is to specify:

(i) Why any disapproved additional control measures are not necessary to bring any area in such region into attainment by the dates provided by [subpart 2] or are otherwise not consistent with the Act; and

(ii) Recommendations concerning equal or more effective actions that could be taken by the commission to conform the disapproved portion of the recommendations to the requirements of [section 184].

Section 184(c)(5) provides that, upon approval or partial approval of any recommendations, the Administrator is to issue to each state in the OTR to which an approved requirement applies a finding under section 110(k)(5) that the SIP for that state is inadequate to meet the requirements of section 110(a)(2)(D), quoted above. Under section 184(c)(5), the Administrator's finding of inadequacy under section 110(a)(2)(D) is to require that each affected state revise its SIP to include the approved additional control measures within one year after the finding is issued.

Finally, section 184(d) provides that, for purposes of section 184, the Administrator is to "promulgate criteria for purposes of determining the contribution of sources in one area to concentrations of ozone" in another nonattainment area. These criteria are to "require that the best available air quality monitoring and modeling techniques be used for purposes of making such determinations." EPA issued such criteria in 1991.[1]

C. Background Regarding OTC LEV Program

The Administrator convened the OTC on May 7, 1991. Thereafter, the OTC moved to work toward a regional ozone strategy with emphasis on consensus agreements to adopt regional measures to address the ozone problem in the Northeast. To address the contribution of motor vehicles to the northeast ozone problem, the OTC focused early on emissions standards for new motor vehicles and on adoption of federal reformulated gasoline throughout the OTR as potential additional control measures. The Act, however, imposes certain limitations on the states' ability to adopt new motor vehicle emissions standards.

Section 209 of the Act generally preempts states from establishing new motor vehicle emissions standards, leaving such regulation to EPA under section 202 of the Act. Section 209 does, however, provide an exception for California to adopt new motor vehicle emissions standards where the Administrator grants a preemption waiver based on a finding that California's standards will be, "in the aggregate, at least as protective of public health and welfare as applicable Federal standards." Further, under section 177 of the Act, any state which has SIP provisions approved under part D of title I may adopt and enforce new motor vehicle emission standards for any model year if:

(1) Such standards are identical to the California standards for which a waiver has been granted for such model year, and

(2) California and such state adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator).* * *.

EPA has granted a waiver for California's "Low Emission Vehicle" program. See 58 FR 4166 (Jan. 13, 1993)(announcing availability of Waiver of Federal Preemption; California Low-Emission Vehicle Standards (Jan. 8, 1993)). This program generally calls for five categories of vehicles meeting progressively more stringent emissions standards: California Tier I vehicles; Transitional Low Emission Vehicles (TLEV); Low Emission Vehicles (LEV); Ultra-Low Emission Vehicles (ULEV); and Zero Emission Vehicles (ZEV). California has also established an overall non-methane organic gas (NMOG) standard that each manufacturer must meet for its fleet of new vehicles in a particular model year by selling any combination of vehicles certified by California as meeting standards for one of the five categories. In addition, under California's program, at least 2% of each manufacturers' new vehicle fleet sold in California must be ZEV's by 1998 and 10% by 2003.

At its second meeting on July 16, 1991, the OTC adopted a Memorandum of Understanding (MOU) in which the state and District of Columbia representatives agreed that, in view of the significant contribution of motor vehicles to the northeast ozone problem, they all support California's Motor Vehicle Control Program, and call on their jurisdictions to cooperatively evaluate the feasibility, air quality benefits, and associated costs of this Program in the OTR. At its third meeting on October 29, 1991, the OTC states agreed to a further MOU providing that each OTC state would take steps to implement California's Low Emission Vehicle program as soon as possible. New York and Massachusetts are the only states that have adopted the California LEV program in legislation and regulations without contingencies, and both states are set to implement their programs. The automobile manufacturers have challenged the legality of both programs, and both lawsuits are ongoing. Other states have adopted or are adopting the program contingent on regional program adoption, and the remaining states are at various stages of the legislative or regulatory process to adopt the program.

In August 1993, Maine, Maryland, and Massachusetts petitioned the OTC to adopt a recommendation calling for the application of the California LEV program throughout the OTR. During the fall of 1993, the OTC held a number of public forums in various locations in the northeast, and held a public hearing in Hartford, Connecticut on December 16–17, 1993. Finally, at its winter meeting on February 1, 1994, in Washington, D.C., the OTC voted by a 9 to 4 majority to recommend that EPA mandate the California LEV program throughout the OTR. (The OTC refers to the program they recommend as "OTC LEV.") New Hampshire, Virginia, Delaware, and New Jersey voted against the recommendation. The OTC's recommendation contains the following elements:

(1) The OTC LEV program would be applicable to all 1999 and subsequent model year passenger cars and light-duty trucks in the OTR;

(2) Subject to certain very limited exceptions, all vehicles sold, imported, delivered, purchased, leased, rented, acquired, received, or registered in the OTR that would be subject to the OTC LEV program would have to be certified pursuant to a California Air Resources Board (CARB) Executive Order;

(3) The OTC LEV program would allow the sale of the five categories of California vehicles: California Tier I, TLEV, LEV, ULEV, and ZEV;

(4) Manufacturers could choose any combination of California certified vehicles to meet the following average NMOG fleet emission standards:

1999—0.113 g/mi
2000—0.073 g/mi
2001—0.070 g/mi
2002—0.068 g/mi
2003 and later—0.062 g/mi

Regarding California's ZEV sales mandate, the OTC recommends that, to the extent it must apply to satisfy section 177, it shall apply. But if it is not required under section 177, the OTC recommends that the "individual states within the OTC may at their option include such a requirement and/or economic incentives designed to increase the sales of ZEVs in the programs they adopt."

(5) The effective date for the OTC LEV program would be January 1, 1996, allowing two vehicle model years prior to applicability of the standards in 1999, but would not preclude earlier state implementation.

D. EPA Actions in Response to the OTC LEV Recommendation

On March 18, 1994, EPA published a notice announcing receipt of the OTC's recommendation, as required by in section 184(c)(1). See 59 FR 12914. This notice explained EPA's process for responding to the recommendation, identified the major elements of the recommendation, and briefly explained EPA's intended approach at that time for analyzing the issues. On April 8, 1994, EPA announced that the public hearing as required by section 184(c)(1) would be held in Hartford, Connecticut on May 2–3, 1994. See 59 FR 16811.

On April 26, 1994, EPA published a notice of proposed rulemaking (NPRM) on the OTC recommendation. 59 FR at 21720. This notice described the framework for EPA's action on the recommendation and provided substantial detail regarding the issues EPA was considering in deciding whether to approve, disapprove, or partially approve and partially disapprove the recommendation. The NPRM described in detail the background and context of the OTC's recommendation, as well as the legislative history of section 184. The text of the OTC's recommendation was reprinted as an appendix to the NPRM. It also addressed the applicability of rulemaking procedures for EPA's action on the recommendation. Thereafter, the notice addressed the standards applicable to EPA's review of the recommendation, including both the "necessary" and "consistent with the Act" criteria. Regarding necessity, the NPRM addressed the legal interpretation of this standard, the magnitude of emissions reductions needed for attainment in the OTR, the focus on contribution of emissions from across the OTR, and the timing of the necessary reductions, including the relevance of maintenance after attainment. The NPRM also explained the OTC's recommended LEV program in detail, EPA modeling of the emissions benefits from this program, and the auto manufacturers' FLEV alternative. The NPRM then explained EPA's approach to considering other alternatives to the OTC LEV program. Regarding consistency of the OTC LEV recommendation with the Act, EPA addressed issues common to pending litigation in New York and Massachusetts as well as other issues regarding consistency of the OTC LEV recommendation with section 177 of the Act. Overall, EPA proposed, in the alternative, to approve, disapprove, or partially approve and partially disapprove the OTC's recommendation. The NPRM provided that the public comment period would remain open until June 3, 1994, thirty days following the public hearing.

To provide a further opportunity for interactive discussion of the issues among the various interested parties, members of the public, and EPA, the Agency held an additional series of three public "roundtable" meetings in Philadelphia, Pennsylvania, Durham, New Hampshire, and New York City. The agenda for these meetings was structured to generally follow the framework for analysis described in the NPRM. EPA published a notice on June 2, 1994, providing the time, place, and agenda for each meeting. See 59 FR 28520. The primary topics discussed at the first meeting in Philadelphia were the proper interpretation of the "necessity" standard, and the OTC LEV program itself. The topics addressed at the second meeting in Durham included the magnitude of reductions needed in the OTR, alternatives to the OTC LEV program, and a proposal from the Environmental Defense Fund (EDF) for emissions trading. At the third meeting in New York City, the discussion continued regarding alternative approaches to achieving the necessary emissions reductions, including the automakers' FLEV proposal, and a proposal from Texaco, Merck, and Public Service Electric & Gas Co. to establish a cap on NO_x emissions together with trading.

At the New York City roundtable meeting, EPA re-opened the public comment period on the NPRM until July 30, 1994, to allow interested parties to submit additional information in response to issues raised in the roundtable meetings. See 59 FR 35292.

On August 4, 1994, EPA formally created a subcommittee of the Clean Air Act Advisory Committee in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. The subcommittee will focus on issues related to the OTC petition and provide a public forum to pursue discussion of alternative car standards that could apply in 49 states. The first substantive meeting of the subcommittee will take place in Washington, D.C. on Tuesday, September 13 and Wednesday, September 14, 1994 at the Ramada Plaza Hotel. EPA published a notice of these meetings on August 30, 1994. See 59 FR 44729.

II. Explanation of Proposed Action

EPA is proposing today to approve the OTC's LEV recommendation based on the determination under sections 184(c) and 110(k) of the Act that the recommended LEV or a LEV-equivalent program[2] is necessary throughout the OTR and that the recommended LEV program is otherwise consistent with the Act. EPA is proposing to find under its SIP call authority in section 110(k)(5)[3] that the SIP for each state in the OTR is substantially inadequate to meet the requirements relating to

[1] See U.S. EPA, Doc. EPA–450/4–91–015, Criteria for Assessing the Role of Transported Ozone/Precursors in Ozone Nonattainment Areas (1991).

[2] A "LEV-equivalent program" is an alternative voluntary federal program that would achieve emission reductions from new motor vehicles in the OTR equivalent to or greater than would be achieved by the OTC LEV program.

[3] Section 110(k)(5) authorizes the Administrator, whenever she finds that a SIP for an area is substantially inadequate to mitigate adequately the interstate pollutant transport described in section 176A or 184, or to otherwise comply with any requirement of the Act, to require the State to revise the SIP as "necessary" to correct the deficiency.

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pollution transport in section 110(a)(2)(D).[4] EPA is thus proposing to require each state in the OTR to revise its SIP to include the LEV program within one year after the section 110(k)(5) finding is finally issued. EPA is proposing that the SIP call allow individual OTR states to give manufacturers the choice of complying with either the OTC LEV requirements or—if such a program is developed—a voluntary new-vehicle program to which automakers could voluntarily opt-in that achieves equivalent or greater emissions reductions that are fully enforceable and qualifies for SIP credits.[5]

EPA is also proposing that states in the OTR be allowed, but not required, to adopt the Zero Emission Vehicle (ZEV) sales requirement. The OTC recommended that EPA require states to adopt the ZEV sales requirement only if it is a necessary component of a LEV program under section 177. EPA is proposing today that a ZEV sales requirement is not a required component of a LEV program adopted under section 177 and that states would therefore not be obligated to adopt it. However, states have the discretion to include a ZEV sales requirement. States may also include economic incentives designed to increase the sales of ZEVs as long as such incentives are consistent with sections 177 and 209 of the Act. EPA is also taking comment on whether to adopt a "ZEV equivalency approach" to require states either to impose ZEV mandates or to impose other requirements on new motor vehicles that achieve the evaporative NMOG and NO_x benefits associated with ZEVs.

Finally, EPA is proposing regulations to determine the term "model year" for purposes of section 177 and part A of title II of the Act, as that term applies to motor vehicles. The proposed regulations provide that model year will apply on a model-by-model basis. This regulatory action codifies long-standing EPA guidance on this definition and should clarify the applicability of the two-year lead-time requirement in section 177.

[4] Section 110(a)(2)(D) requires that SIPs contain adequate provisions to prevent emissions within the state that contribute significantly to nonattainment in, or interfere with maintenance by, any other state.

[5] EPA does not ordinarily undertake rulemaking to issue a SIP call. EPA usually issues SIP calls by letter containing a finding of substantial inadequacy. The basis for the SIP call and finding would then be the subject of notice-and-comment rulemaking before the imposition of any sanctions warranted in response to state failure to respond to the SIP call. Here, EPA is choosing instead to undertake notice-and-comment rulemaking regarding the basis of the SIP call before issuing it.

III. Statutory Framework for Proposed Action

Today's proposed action is authorized by several Clean Air Act provisions. As discussed in the NPRM, EPA has authority to approve the OTC's LEV recommendation under section 184(c). EPA also has independent authority to require that states submit LEV SIP revisions under sections 110(a)(2)(D) and 110(k)(5). EPA disagrees with the comments of the automakers that argue that EPA lacks authority to approve the OTC LEV recommendation because the section 184 process is unconstitutional and because an EPA SIP call requiring state regulation of emissions from new motor vehicles violates sections 177, 202, and 209 of the Clean Air Act.

A. EPA's Authority To Act Under Section 184

Section 184 provides a clear statutory basis for EPA's action here. EPA described that provision in detail in the background section above, and in its April 26 proposal. See 59 FR at 21722–24. In summary, the OTC is a body created by operation of law under sections 176A and 184 of the Act, and is comprised of the Governor (or Governor's designee) and an air pollution control official appointed by the Governor for each state in the OTR, as well as the EPA Administrator (or her designee) and the affected EPA Regional Administrators (or the Administrator's designees). Decisions of the OTC are by majority vote of all members other than the EPA representatives. Under section 184(c), the OTC may, after notice-and-comment, develop recommendations for additional control measures to be applied within the OTR as necessary to bring any area in the region into attainment by the dates provided in subpart 2 of part D. The OTC is then to transmit such recommendations to EPA to require such measures throughout the OTR.

Section 184 grants EPA authority to approve the recommendations and issue SIP calls requiring that the affected states adopt the recommended measures if EPA determines that the measures are "necessary to bring any area in [the OTR] into attainment by the dates provided by this subpart and are otherwise consistent with the Act." Upon approval, section 184(c)(5) authorizes the Administrator to issue a finding under section 110(k)(5) that the SIP for any state to which a requirement of the approved recommendation applies is inadequate to meet the requirements of section 110(a)(2)(D) of the Act. The effect of the finding is to require that any such state revise its SIP to include the approved recommended measures within one year after the finding is issued.

B. State Obligations and EPA's Authority To Act Under Section 110

EPA also is proposing to interpret section 110 of the Act to provide that the Agency has independent authority for today's proposed action under that section, apart from any authority provided by section 184. Under section 110(a)(2)(D), each state is obligated to submit SIP provisions prohibiting sources in the state from contributing significantly to nonattainment or interfering with maintenance in any other state. If EPA finds that a SIP is substantially inadequate to adequately mitigate interstate pollution transport, section 110(k)(5) authorizes EPA to issue a SIP call to correct the inadequacy. Under EPA's proposed interpretation, sections 110(a) and (k) allow EPA to find at any time that a SIP is inadequate due to pollution transport. Thus, EPA is proposing to find that, because of the transport of pollution, OTC LEV (or LEV-equivalent) is necessary for areas in the OTR to achieve or maintain the ozone NAAQS, and therefore, that EPA has authority under sections 110(a)(2)(D) and (k)(5) to make a finding of substantial inadequacy and to issue a SIP call requiring adoption of OTC LEV. Rather than make a general finding of SIP substantial inadequacy, EPA is proposing to find the SIPs substantially inadequate only to the extent they do not contain the OTC LEV program. EPA is therefore proposing to require these states to adopt the OTC LEV program to correct the deficiency.

The 1990 Clean Air Act Amendments broadened each state's long-standing obligation to address in its SIP the contribution of emissions in its state to air pollution in other states.[6] The changes expand the provision beyond stationary sources that prevent downwind attainment or maintenance to other sources and emissions activities

[6] Prior to 1990, section 110(a)(2)(E) required that the SIPs:

Contain adequate provisions * * * prohibiting any stationary source within the State from emitting any air pollutant in amounts which will * * * prevent attainment or maintenance by any other state of any such national primary or secondary ambient air quality standard.

In the 1990 Amendments, this provision was recodified at section 110(a)(2)(D) and broadened to require that a SIP submitted under the Act shall:

Contain adequate provisions * * * prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will * * * contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such [NAAQS].

that contribute significantly[7] to downwind nonattainment or interfere with downwind maintenance. The expanded provision encompasses, among other things, mobile source controls in light of the impact of mobile sources on downwind attainment and maintenance.

The mechanism for EPA to take action to require compliance with section 110(a)(2)(D) is the SIP call authority provided in section 110(k)(5). That provision directs:

> Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant [NAAQS], to mitigate adequately the interstate pollutant transport described in section [176A] or section [184], or to otherwise comply with any requirement of this Act, the Administrator shall require the state to revise the plan as necessary to correct such inadequacies.

Under section 110(k)(5), the Administrator is to notify the state of the inadequacies and may establish reasonable deadlines, not exceeding 18 months after notice, for submission of the plan revisions.

Importantly, the Act does not address how states' attainment demonstrations are to account for transport of ozone pollution and its precursors.[8] As was the case prior to the 1990 Amendments, neither section 110 nor any other provision of the Act specifies when states must submit SIP revisions to address the transport issue. Even with the advent of the very specific SIP submission schedules in the subpart II ozone program under the 1990 Amendments, no deadline is specified for compliance with the section 110(a)(2)(D) prohibition. EPA believes it may reasonably take action to make a finding of substantial inadequacy as soon as EPA has a factual basis to believe that states need to act in order to prevent the pollution transport problem from continuing past the downwind areas' attainment deadlines. Absent a LEV-equivalent program, EPA believes it is necessary that the states take action now to adopt the OTC LEV program, and waiting to make this finding may compromise their ability to achieve the reductions by the time they are needed for timely attainment and maintenance thereafter. This action is fully justified by the terms of section 110(k)(5). This provision states that "[w]henever" EPA makes the requisite finding of inadequacy, the state is obliged to submit a SIP revision. By its terms, section 110(k)(5) makes clear that the timing of a SIP call depends only on EPA's determination of inadequacy, and the section does not contain any provision that would tie SIP calls to any particular point on the SIP development timeline specified in sections 181 and 182.

Requiring submission of specific SIP revisions pursuant to section 110(k)(5) is consistent with past EPA actions. Prior to 1990 and the enactment of section 184, EPA required states to submit specific reasonably available control technology (RACT) control measures applicable to stationary sources as part of a SIP call under section 110(k)(5). There, EPA's rationale was that:

> Because of the relative imprecision of ozone databases and modeling techniques * * * EPA historically has required most areas to include in their control strategies certain stationary source control measures that EPA believes are reasonably available, and necessary to ensure that the SIP "provides for" attainment of the ozone standard as expeditiously as practicable.[9]

See 52 FR at 45062 (Nov. 24, 1987) (footnote added). EPA took this action right away in response to a new list of areas violating the ozone standard. See 52 FR at 45055; 53 FR 34500 (Sept. 7, 1988); 55 FR 30973 (July 30, 1990). EPA did not wait for these areas to develop attainment plans before issuing a SIP call requiring them to adopt specific controls necessary for attainment. Likewise, here EPA is proposing to require submission of the OTC LEV program as necessary for compliance with section 110(a)(2)(D).

EPA believes it has authority under section 110(k)(5) to find that the states' SIPs are substantially inadequate for lack of the many additional measures needed to fully achieve the emissions reductions necessary to adequately mitigate transport, but does not believe it should make such a broad finding of substantial inadequacy at this time. This is because the states are on track to incorporate many additional control measures into their SIPs for purposes of their attainment demonstration obligations. In preparing these demonstrations, the OTR states are actively working to adopt regional strategies to address transport. In the ordinary course, EPA believes it should allow states the first opportunity to address transport in their forthcoming SIP revisions. There is still this opportunity for states to adopt such other control measures to achieve the necessary reductions in time for downwind states to meet their attainment deadlines and to maintain the NAAQS thereafter.[10] If those efforts do not result in timely adoption of a regional strategy that will provide the emission reductions needed for attainment and maintenance, EPA may consider making a more comprehensive finding of SIP inadequacy insofar as other measures in addition to LEV are lacking.

EPA does not, however, believe it should wait to find the SIPs inadequate insofar as they lack the LEV program. This is because the LEV program depends on vehicle fleet turnover that will take an unusually long time to generate the needed emissions reductions. If EPA waits for the states' attainment demonstrations, the opportunity to ensure that necessary emissions reductions from the LEV program are achieved beginning in 1999 and growing thereafter may be

[7] To some extent the reference to contribution merely codified an EPA approach taken under the old section 110(a)(2)(E) and that at least one court decision had upheld. See Air Pollution Control District of Jefferson County, Kentucky v. EPA, 739 F.2d 1071 (6th Cir. 1984).

[8] EPA's proposed interpretation of sections 110(a)(2)(D) and (k) is best understood in the context of the general statutory scheme for attainment and maintenance of the ozone NAAQS. EPA's April 26 proposal contains a substantial explanation of the statutory program to address ozone pollution in subpart II of part D of title I added in the 1990 Amendments to the Act. See 59 FR at 21721–22 (citing General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR 13498 (April 16, 1992)). As explained there, section 181 provides for the classification of areas according to their degree of ozone pollution. The greater the degree of pollution, the longer the area has to attain and the more stringent control measures it must adopt. The classifications and deadlines by which the areas are to attain the ozone NAAQS are: marginal (1993); moderate (1996); serious (1999); severe (2005 or 2007, depending on the ozone design value); and extreme (2010).

Section 182 establishes the specific requirements and graduated control measures applicable for each type of area. One basic requirement is that states were to submit emissions inventories by November 1992. A key upcoming requirement is that, by November 15, 1994, states are to have submitted, for all moderate and above areas, demonstrations that the states' SIPs will provide for attainment of the ozone NAAQS by the relevant attainment dates. As described in detail in the April 26 notice and the General Preamble, section 182 specifies a host of control requirements that states must adopt for various areas to ensure progress toward attainment.

[9] For purposes of implementing the Clean Air Act after December 31, 1987 and prior to the 1990 Amendments, EPA interpreted the statute as requiring states to develop corrective plans to attain "as expeditiously as practicable." See 62 FR at 45044 *et seq.* (Nov. 24, 1987); See also Delaney v. EPA, 898 F.2d 687 (9th Cir. 1990).

[10] Section 181(a)(1) specified that ozone nonattainment areas are to attain the NAAQS "as expeditiously as practicable but not later than" the dates specified in that section. Based on currently available information, EPA does not believe that the serious and severe nonattainment areas in the OTR will be able to practicably attain the NAAQS earlier than the dates specified in section 181(a)(1). This is because these areas will need to rely for attainment on control measures that depend on equipment turnover that will take time to occur. For this reason, EPA's analysis in this SNPRM is based on the Agency's belief that the serious and severe attainment dates are the dates specified in section 181(a)(1).

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irrevocably lost. Any delay in beginning the fleet turnover to LEV vehicles in model year 1999 will diminish the emissions benefits in the years following. It is therefore necessary for the states to act now to adopt OTC LEV, and appropriate for EPA to make a finding of substantial SIP inadequacy now with respect to that program.

In sum, EPA is proposing to find now that the OTR states' SIPs are substantially inadequate insofar as they do not contain the OTC LEV program. This is because EPA believes that the states need to adopt this program now to mitigate pollution transport adequately by the attainment deadlines for areas in downwind states.

EPA is proposing to set a one-year deadline under section 110(k)(5) for OTC LEV SIP submissions. Even though section 110(k)(5) authorizes EPA to allow up to 18 months, EPA believes a one-year deadline is appropriate here. EPA expects the one-year deadline to fall at the end of calendar year 1995. To ensure implementation of the OTC LEV program in model year 1999, and given the two-year lead-time requirement of section 177, states must adopt the program before January 2, 1996. If states were given more than about one year to adopt the LEV program, they could not be assured of implementing it for all 1999 model year vehicles. Since EPA is proposing to conclude that 1999 model year implementation is necessary to achieve the necessary emissions reductions, it is important that the SIP submission deadline fall in time to meet the two-year lead-time requirement.

C. Constitutional Validity of Section 184 Process

The automakers' comments on EPA's April 26 proposal have raised a number of arguments that the Agency's proceedings under section 184 are unconstitutional.[11] The Natural Resources Defense Council (NRDC) has submitted a response to these constitutional arguments.[12] EPA does not believe the arguments that section 184 is unconstitutional have merit. And in any case, given EPA's independent authority under section 110(k)(5), any constitutional question regarding the validity of section 184 would not affect the validity of the action proposed today.

The automakers argue that Congress, through section 184, is commandeering the legislative processes of the OTR states by directly compelling them to take certain actions. The automakers argue that this violates principles of federalism and the Tenth Amendment to the Constitution. The Supreme Court has interpreted the Tenth Amendment to mean that Congress cannot coerce states in their sovereign political capacity to regulate private conduct.[13] Section 184 is fully within the scheme of "cooperative federalism" that the courts have confirmed is consistent with constitutional requirements.[14] As with many other federal programs, section 184 is simply an unremarkable case under the Clean Air Act's SIP program where Congress has provided incentives to the states as a method of influencing their policy choices. Congress may attach conditions on the receipt of federal funds (as long as the conditions bear some relation to the purpose of the federal spending), to influence states' legislative choices. And where Congress has the authority to regulate private activity under the Commerce Clause, the Court has recognized Congress's power to offer states the choice of regulating an activity according to federal standards or having state law pre-empted by federal regulation.[15] Here, Congress provided incentives to the states by placing conditions on highway funding; by allowing states to apply a less stringent "offset ratio" for new stationary pollution sources; and by allowing states to themselves impose regulations rather than having the federal government implement the program the state chose not to implement. See sections 179 (highway and offset sanctions) and 110(c)(1) (federal implementation plans).

The automakers also argue that section 184 constitutes an unconstitutional delegation of federal authority to the OTC and violates the Appointments Clause. They argue that through section 184 Congress delegated legislative authority outside the federal government, or authorized state officials composing the OTC to exercise significant federal executive authority that the Constitution commands only federal officials appointed consistent with the Appointments Clause may exercise. EPA does not, however, believe that state officials exercise "significant authority" pursuant to federal law in this context. EPA welcomes comment on the automakers' constitutional arguments and the response from NRDC that are in the docket.

D. Consistency of EPA Action With Limitations on Authority Under Sections 177, 202 and 209 of the Act

EPA's proposed action is fully consistent with both the letter and spirit of sections 177, 202 and 209 of the Act. These three provisions make it clear that Congress wanted auto manufacturers to have to meet only two types of standards—federal standards and California standards. Section 177 specifically contemplates that California's standards may apply outside California. Approving the OTC's recommendation is doing no more than requiring states, based on need, to exercise authority given to them by Congress. EPA is authorized to take this action under sections 184 and 110. EPA disagrees with those commenters that claim sections 177 and 202 preclude EPA from approving the OTC's recommendation.

Requiring adoption of the LEV standards in the OTR does not change any current federal standard, so it is not prohibited by section 202. Section 202(b)(1)(C) explicitly precludes EPA only from exercising its authority under section 202 to modify certain specified standards prior to model year 2004—it is not a general prohibition of all EPA action relating to the control of emissions from motor vehicles. Thus, EPA may not modify certain mandatory federal standards applicable nationwide to motor vehicles until model year 2004. However, today's proposal requires only that states adopt certain programs applicable to motor vehicles in such states, as states are permitted to do under section 177. EPA is not proposing to rely on section 202 to require the LEV standards, so the prohibition in 202(b)(1)(C) is irrelevant.

The automakers have argued that granting the OTC petition violates section 177 because EPA is making a choice (whether states should adopt California standards) that section 177 reserves to the states. This misconstrues the nature of section 177 and fails to read section 177 together with section 110(k)(5) or section 184. Section 177 provides an exception to the general prohibition in section 209 against states (other than California) adopting motor vehicle emission standards. Section 177 thus provides states the discretion to adopt controls that section 209 would otherwise preclude. Sections 110(k)(5) and 184 allow EPA to require states to take actions that would otherwise be left to their discretion. The language of section 177, that the states' authority applies "[n]otwithstanding section 209," makes clear that Congress intended to provide an exception to section 209, not bar EPA requirements under sections 110 or 184.

[11] See Letter from Kenneth W. Starr on behalf of the American Automobile Manufacturers' Association and the Association of International Automobile Manufacturers to Assistant Attorney General Walter Dellinger (July 20, 1994).

[12] See Letter from David Driesen on behalf of the Natural Resources Defense Council to Walter E. Dellinger, III (Aug. 22, 1994).

[13] See New York v. United States, 120 L.Ed.2d 123,139–44 (1992) (discussing principles of federalism and limitations on federal power to compel states to act in their political capacity under the Tenth Amendment).

[14] See Hodel v. Virginia Surface Mining & Reclamation Ass'n, Inc, 452 U.S. 264, 289 (1981).

[15] See New York v. United States, 120 L.Ed.2d at 144–45. See also Brown v. EPA, 521 F.2d 827, 840 (9th Cir. 1975) (state may not interfere with such regulation of air pollution sources as Administrator may undertake pursuant to Clean Air Act and Congress has power to authorize Administrator to obtain reluctant state's consent by conditioning federal expenditures within state on consent).

IV. Basis for Approval of OTC LEV Recommendation.

A. Necessity

1. Legal Interpretation of Necessity

EPA's April 26 proposal contains an extensive discussion of the Agency's approach to interpreting the "necessary" standard under section 184(c), and includes several options. See 59 FR at 21725–27. Today, EPA is proposing its interpretation of this standard. Section 110(k)(5) also includes a "necessary" standard providing that, upon an EPA finding of SIP inadequacy, the Agency is to require that the state submit SIP revisions that are "necessary" to correct the inadequacy. EPA is proposing that, in this particular case, the "necessary" standard under section 110(k)(5) be interpreted the same as the "necessary" standard under section 184(c).

If EPA approves or partially approves the recommendation, section 184(c)(5) provides that EPA is to issue a finding that the SIPs for the states to which an approved requirement applies are inadequate to meet the requirements of section 110(a)(2)(D). Section 110(a)(2)(D) provides that SIPs are to contain adequate provisions prohibiting emissions within the state that will "contribute significantly to nonattainment in, or interfere with maintenance by, any other state."

EPA is proposing that contributing emissions are significant under section 110(a)(2)(D) at least where controlling such emissions is necessary to bring any downwind area into attainment. EPA also is proposing that emissions interfere with downwind maintenance under 110(a)(2)(D) at least where controlling such emissions is necessary for downwind areas to maintain the NAAQS.[16] EPA is further proposing to interpret section 184 to mean that the Agency may approve the OTC's recommendation if the measures are necessary for any area in the OTR to attain or maintain the NAAQS.

Section 110(k)(5) provides that EPA may issue a SIP call whenever it finds a SIP for an area to be substantially inadequate to attain or maintain the NAAQS, to mitigate adequately interstate transport under sections 176A or 184, or to otherwise comply with any requirement of the Act. EPA is proposing to interpret section 110(k)(5) to mean that it may issue a SIP call based on a finding that a SIP does not comply with the requirement of the section 110(a)(2)(D) to address adequately the effect of pollution transport on downwind attainment and maintenance. EPA may require that the states revise their SIPs to include any particular measure that is necessary to comply with section 110(a)(2)(D).

EPA believes that the "necessary" standard requires the Agency to evaluate the emissions reductions needed, and then whether reasonable and practicable alternative measures could be adopted instead of the OTC LEV program to achieve the needed reductions. The role of "alternatives" in EPA's analysis has often been confused in the course of EPA's hearings and round-table proceedings. EPA believes two distinct kinds of alternatives are relevant to necessity.

First, an alternative program to achieve the same emissions reductions from the same emissions sources may render the OTC LEV program unnecessary. An example is useful to illustrate this point. If EPA or the states were (hypothetically) to mandate that all new motor vehicles be ZEVs, then an OTC LEV program would not be necessary—it would not make sense (and would be unnecessary) to mandate OTC LEV tailpipe standards for a new vehicle fleet consisting entirely of cars without tailpipes. This would be true regardless of what emissions reductions are needed overall and what other measures are available to achieve the needed reductions. It is in this sense that EPA believes that OTC LEV would be unnecessary if there were another program available to achieve emissions reductions from new motor vehicles comparable to, or greater than, those from OTC LEV. Under this aspect of the analysis, the ability of the alternative to achieve reductions sufficient to comply with section 110(a)(2)(D) is not relevant.

EPA is aware of alternative programs that currently are under discussion by various interested parties. EPA believes that some alternative programs could be preferable to simply approving the petition. Such alternatives focus on a 49-state approach, whereby auto manufacturers would commit to produce cars with a cleaner internal combustion engine (compared to current federal standards) nationwide. Incentives for advanced technology and zero emission vehicles are also part of the discussion. As these alternatives are developed and modeling of associated benefits is undertaken, EPA will add the analyses to the docket and publish a notice of data availability in the Federal Register.

EPA believes that a 49-state low emission vehicle approach could be better than the OTC LEV program in a number of respects. First, EPA believes that a 49-state program could have significant environmental benefits as compared to the OTC LEV program. A 49-state approach could benefit the OTR by reducing incoming pollution from other states—both transported air pollution and pollution from the migration of non-OTR vehicles into the state (as a result both of tourism and relocation). A 49-state approach would also help non-OTR states by providing NO_x and VOC reductions and other air quality benefits. EPA also believes that an alternative could provide equal or greater impetus to development of advanced technology. Second, the auto industry would benefit from uniform markets. See discussion in Section IV.A.2.(d) for a discussion of the benefits of uniform markets. The auto industry plays a vital role in our economy. Reducing the economic impacts of EPA's actions, without reducing environmental benefits are matters of concern to the Agency.

Once these 49-state alternatives are further developed, EPA intends to complete a qualitative and quantitative comparison of their environmental benefits relative to the OTC LEV program. The Agency will then publish, as soon as possible, a Federal Register notice setting forth the alternative and taking comment on issues it raises.

The options for developing an alternative program are somewhat limited. As explained above, section 202 bars EPA modification of the Tier I standards prior to model year 2004, and the states cannot, under section 177 and 209, adopt standards other than the California standards. Thus, the only alternative method for requiring vehicle manufacturers to achieve reductions in tailpipe emissions from new light-duty cars and trucks is a program in which manufacturers voluntarily agree to be bound by more stringent standards. This

[16] EPA is not addressing in this rulemaking whether under section 110(a)(2)(D), a state's emissions may "contribute significantly" to nonattainment or "interfere with maintenance" in another state when controlling the upwind state's emissions is not strictly necessary but nevertheless would be helpful to downwind states efforts to attain and maintain the NAAQS

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concept and the legal basis for it are discussed in greater detail in section V of this notice, below.

It is this first kind of alternative that underlies the basis for EPA providing in its SIP call for the possibility that an alternative program may be developed that would achieve emissions reductions from new motor vehicles that are comparable to or greater than those from OTC LEV. If such a program were developed, it would not be necessary to apply the OTC LEV program to vehicles subject to the alternative standards. This concept and the legal basis for it are discussed in greater detail in section V of this notice, below.

Second, the availability of alternative measures that are sufficient to achieve the necessary reductions without further reductions from new motor vehicles or trucks could likewise render the OTC LEV program unnecessary. The question here is not whether EPA will mandate such other measures in response to the OTC's recommendation. The OTC did not recommend such other measures and; for the reasons described in section III.B., EPA is not ready to consider mandating them under sections 110(k)(5) and 110(a)(2)(D) at this time. Rather, the question is whether such other measures are available so that it is unnecessary for EPA to require the OTC LEV program. As EPA explained in its April 26 proposal:

> To the extent more reductions will be needed even with the LEV program [to mitigate significant contribution to nonattainment in the OTR], other measures that address that shortfall would not, for that reason alone, qualify as "alternatives" to LEV. Rather, other measures might qualify as "alternatives" only if such other measures, singly or in combination, generate enough reductions to fill the entire shortfall needed without LEV.

59 FR at 21734.

EPA has established a precedent for interpreting the "necessary" standard that is consistent with this approach. EPA's interpretation is guided by its approach to interpreting that term (ultimately codified by Congress), under section 211(c)(4)(C) of the Act, as explained in the April 26 proposal. See 59 FR at 21734. That interpretation is important to evaluating the availability of alternatives sufficient to achieve the necessary emissions reductions. Under section 211(c)(4)(C), controls are necessary if they would still be needed after adoption of all other reasonable and practicable measures. That is, EPA would consider alternatives available if they are comparatively reasonable and practicable. And the reasonable and practicable alternatives must be sufficient to achieve the necessary reductions in order to conclude that the proffered control is unnecessary.[17]

Of course, whether potential alternative measures are "reasonable and practicable" as well as sufficient to achieve the necessary reductions may not be self-evident. In its April 26 proposal, EPA described approaches to factual uncertainty and other policy considerations that could influence these determinations. See 59 FR at 21726–27. As with its decisions under section 211(c)(4)(C), here EPA does not consider drastic measures such as gas rationing, or plant shutdowns to constitute reasonable alternatives to the OTC LEV program. Congress could not have intended that EPA should consider such drastic alternatives, since such alternatives would clearly be adequate to achieve any necessary reductions, and hence no proffered measure would ever be necessary. This would essentially read section 184 out of the Act. Further, EPA believes cost-effectiveness of potential alternatives is a criterion in evaluating reasonableness and comparing other measures to the measure proffered as necessary. But the comparison of the reasonableness and practicability of various measures, including what is "too drastic," is a complicated policy determination requiring consideration of cost and public acceptance, and need not be supported by a highly specific technical record. See 59 FR at 21726.

While EPA believes that it is important to assess the sufficiency of reasonable and practicable alternatives, states have the continuing opportunity to come forward to adopt sufficient alternatives and prove that the OTC LEV program indeed turns out to be unnecessary. EPA does not believe states would seriously entertain unreasonable or impracticable measures to adopt in place of OTC LEV in order to achieve the necessary emissions reductions. Nonetheless, EPA recognizes that states which do in fact comply with section 110(a)(2)(D) might thereby render the OTC LEV program unnecessary. EPA therefore is proposing that it would retain authority under the SIP call to change its necessary determination and withdraw its SIP call for those states that adopt controls sufficient to comply with section 110(a)(2)(D), including those controls EPA might now believe to be unreasonable or impracticable. As states in the northeast have not yet adopted sufficient measures proving that the LEV program (or LEV-equivalent) is unnecessary, EPA believes that it should evaluate whether sufficient reasonable and practicable alternatives exist based on the best current information and policy judgment.

EPA also discussed in its April 26 proposal various approaches to factual uncertainty regarding issues such as cost and the amount of reductions needed for compliance with section 110(a)(2)(D). There, EPA raised the question of whether the statutory structure, together with the legislative history, support giving substantial weight or "deference" to the OTC's recommendation that the OTC LEV program is necessary for attainment in the OTR. EPA suggested that it could reasonably interpret the provisions to mean that EPA is to start with a presumption of approving the OTC's recommendations and approve the recommendation unless EPA found that the recommended measures were unnecessary. EPA pointed to floor statements in the conference debate in the Senate regarding section 184 that EPA bears a "heavy burden" to "demonstrat[e] that the additional control measure(s) is not necessary." See 59 FR at 21726 (quoting Baucus-Chafee Statement of Managers and Senator Lieberman). EPA's public hearings and round-table discussions reflected some confusion about the meaning of "deference" to the OTC. EPA questions whether there is any basis under any provision of the Clean Air Act to relieve the Agency of an obligation to consider independently all of the factual information available in determining whether the OTC LEV program is necessary.

In this case, EPA believes the facts affirmatively show that this measure is indeed necessary. In addition, EPA believes that its general policy of prudence in making decisions regarding highly complex scientific issues affecting public health should apply to its analysis here. EPA believes this policy is reasonable and permissible in addressing what is "necessary" to

[17] EPA also suggested in its April 26 proposal a different possible approach to the "necessary" standard. Under that approach, EPA might consider as necessary any additional control measures that contribute to attainment, as long as measures specifically required by the Act or that are otherwise in place are insufficient to achieve attainment. That is, as long as the States in the OTR still need more reductions to address the transport problem, then EPA would consider the OTC LEV (or LEV-equivalent) program necessary. Assessment of alternative control measures would not be relevant. See 59 FR at 21725. While EPA is not proposing here to adopt that approach, EPA notes that the facts showing that the OTC LEV (or LEV equivalent) program is necessary under the approach discussed in the text would, a fortiori, be sufficient to show that the OTC LEV (or LEV equivalent) program is necessary under this different approach.

achieve and maintain the health-based ambient air quality standard for ozone.[18]

EPA believes its general policy in favor of protecting public health and welfare is particularly appropriate to evaluate whether a particular measure is needed to solve an inter-state problem. EPA believes that pollution transport and the states' obligations under section 110(a)(2)(D) to control emissions that would contribute to nonattainment or interfere with maintenance downwind are critical to the integrity of the states' attainment plans under title I. Especially in a region such as the Northeast, where extensive transport makes states inter-dependent on their collective pollution control programs, EPA believes that its general policy should apply to make sure that states adopt controls necessary for other states' attainment. These states depend for their own citizens' health on the actions of upwind states that may lack an incentive to bear the costs of protecting downwind citizens' health. In such circumstances, EPA's general policy of prudence is particularly appropriate in evaluating what is necessary in the upwind states to protect health downwind. Moreover, these states' independent efforts (and their residents' support for them) to address emissions within their own borders may depend significantly on the confidence these states have that the other states in the region are acting as "good neighbors."

High officials closely involved in the SIP planning process in these states have now come to EPA, after extensive public processes of their own, believing a particular measure is necessary for them and their neighbors to do their part to address a substantially collective public health problem. These officials, as the chief state officers responsible for ensuring state compliance with the Clean Air Act, are the closest to the air quality planning information in the states. Whether EPA responds under section 184 or by exercising its authority under section 110(k)(5), EPA believes that it makes policy sense to apply its general approach of prudence in favor of environmental protection to scientific uncertainties. EPA believes sound policy dictates that it has a responsibility to do so. The legislative history reviewed in EPA's April 26 proposal reflects that at least some in Congress intended that EPA follow this approach.

To the extent EPA's analysis reveals that other measures are reasonable and practicable but are not sufficient to achieve the necessary reductions, EPA would have authority directly under section 110(k)(5) to require the states to adopt those measures, too. But, for the reasons described above in section III.B., EPA does not believe it need exercise its authority in this manner at this time. Of course, states will need to adopt many of these measures as part of their attainment demonstrations due November 15, 1994, and this may go a long way toward these states' contribution to downwind nonattainment or their interference with downwind maintenance. But EPA believes that it should require this measure now, in light of the states' recommendation, the time needed to yield emissions benefits (due to the lead-time requirement and time for fleet turnover), and the need for a coordinated decision to adopt the program for the entire region collectively. Since it is both necessary to address the transport problem and very difficult for the states to adopt the OTC LEV program without assurance that their neighbors that need to will also do so, the Agency believes that there is adequate reason to act now to require this measure under sections 184 and 110(k)(5).

EPA recognizes that, under this approach, certain states would have to adopt the OTC LEV program even though they did not vote to make this recommendation to EPA. In its April 26 proposal, EPA questioned whether the ability of certain states to override the wishes of others by vote could militate against an environmentally conservative approach to uncertainty. EPA does not view the objection of certain states as justifying a different approach. Rather, EPA currently believes that the weight of a recommendation from high officials in a majority of the states justifies an environmentally conservative decision regarding whether the measure in question is necessary. While the minority states might understandably wish to reserve their options for compliance, their adopted attainment demonstrations are due in a matter of two months, and the work that those states have accomplished toward assembling their attainment plans has not convinced EPA that the OTC LEV (or LEV-equivalent) program will be unnecessary to address the transport problem. As noted above, EPA believes that even if these officials presented this recommendation without invoking the formal section 184 process, EPA would appropriately take an environmentally protective approach to deciding whether to issue a SIP call for the measure directly under section 110(k)(5). Moreover, as discussed above, EPA is proposing to explore the possibility that alternatives will become available and adopted so that states would no longer need the OTC LEV program, or that the states may demonstrate that they have adopted sufficient measures without LEV (potentially including those that EPA might otherwise dismiss as unreasonable or impracticable) to comply with section 110(a)(2)(D).

2. Analysis of Need for OTC LEV (or LEV-Equivalent) Program

(a) Magnitude of Reductions Needed for Attainment in 2005.

i. General Conclusions.

The first step in EPA's analysis of whether the OTC LEV (or LEV-equivalent) program is needed is to consider what emissions reductions are necessary to bring all areas into attainment. Based on EPA's region-wide modeling analyses, it is clear that very large reductions in emissions of both NO_X and VOC are needed for the serious and severe areas of the OTR to come into attainment. Based on the best analysis available to EPA to date, NO_X emission reductions on the order of 50% to 75% are needed throughout the OTR to reach attainment with the ozone NAAQS. VOC emissions reductions on the order of 50% to 75% are needed for attainment particularly in the East Coast urban corridor. These estimates are based on modeling analyses that used a 1985 emissions baseline. Updated inventory information indicates the 1985 inventory underestimated base case NO_X and VOC emissions. Therefore, EPA believes that at least a 50% to 75% reduction in emissions is necessary from the 1990 baseline.[19] Given EPA's belief that in addressing areas of factual uncertainty here it should err on the side of environmental protection, EPA requests comments on

[18] Courts have recognized that scientific evidence is cumulative, and that EPA has discretion to take an environmentally protective approach to protecting public health and welfare. In Ethyl Corp. v. EPA, 541 F.2d 1 (D.C. Cir.), cert. denied, 426 U.S. 941 (1976), the court of appeals considered EPA's action to regulate the lead content of gasoline on grounds that emissions "will endanger" the public health or welfare under prior section 211(c)(1)(A). There, the court recognized that EPA's decision may be based on "the inconclusive but suggestive results of numerous studies." Ethyl, 541 F.2d at 38. Further, the court found that the Administrator appropriately acted "conservatively" based on "suggestive" evidence to make a "prudent" determination. Ethyl, 541 F.2d at 39. EPA believes such prudence is likewise appropriate here, where the public health and welfare is at stake.

[19] The Clean Air Act requires states to develop 1990 base year emissions inventories of actual emissions on which to base planning requirements, including attainment demonstrations. Therefore, the remainder of the document will generally refer to emissions reductions required or obtained from a 1990 emissions inventory. EPA is relying on the above-noted relationship between the 1985 and 1990 inventory to draw conclusions about necessary emissions reductions from the 1990 baseline inventory.

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whether reductions from reasonable and practicable measures should be in the middle of these ranges before EPA would determine that the OTC LEV (or LEV-equivalent) program is unnecessary.

EPA has reached these conclusions based on modeling analyses of the impact of emissions reduction strategies for this region. For purposes of its modeling studies, EPA considered the impact of various strategies in the year 2005. Focusing first on the impact in 2005 is reasonable because by then all control measures explicitly mandated in subpart 2 of part D of the Act will be in place. EPA can thereby analyze more precisely what reductions beyond those already explicitly required will be needed. Since two of the three core severe nonattainment areas in the urban corridor along the East Coast from Washington D.C. to Boston have an attainment deadline of 2005, it is by this date that the Clean Air Act mandates severe area controls to be in place. These areas are the Baltimore and Philadelphia areas. The New York-New Jersey-Connecticut severe area has the slightly later attainment deadline of 2007 due to its higher ozone design value. EPA also focused on this year in its studies in part because the OTC's modeling committee asked that EPA do so.

It is important to note, however, that for purposes of this step in the analysis, the year that is the subject of the study does not affect the magnitude of necessary emissions reductions. This is because the precise question in this step is what reductions are needed from a 1990 baseline emissions inventory in order for each of the nonattainment areas in the OTR to come into attainment. For purposes of this analysis, EPA assumes that all growth in emissions since 1990 must be neutralized in addition to achieving the requisite emissions reductions from the 1990 baseline. That is, EPA's conclusion is that emission reductions on the order of 50% to 75% in VOC (primarily in the urban areas and NO_X (regionally) are needed in the OTR to reach attainment, and that growth in emissions since 1990 must be neutralized in addition to the 50% to 75% reductions. Of course, in later years the amount of growth that must be neutralized on top of the 50% to 75% reductions will increase. But the conclusion that 50% to 75% reductions from the 1990 baseline are needed remains constant over time.

ii. Analytical Modeling Tools.

Two basic atmospheric modeling tools are used to analyze the need for and effectiveness of various emissions reduction strategies to attain the ozone NAAQS. These are both photochemical grid models into which information regarding the atmosphere and emissions is input for subunits in a grid that encompasses a particular area, or "domain." The model is designed to measure the impact of changes in emissions input for each subunit on the grid. An important aspect of the models is the set of assumptions regarding the air that enters the modeling domain at its boundaries, commonly referred to as "boundary conditions."

The two basic models used to analyze ozone pollution in the northeast United States are the Urban Airshed Model (UAM) and the Regional Oxidant Model (ROM). The key differences between these models are the size of the modeling domain and the resolution of information about subunits in the photochemical grid. The resolution depends on the size of the overall domain. As their names indicate, the UAM is an urban scale model that yields more precise information about particular urban areas, and the ROM is a broader regional model that is more useful for assessing regional impacts. The UAM generally involves a modeling domain on the order of 200 km on a side, with a horizontal resolution of five km or better and five or more vertical layers.[20] EPA is using a ROM to analyze the domain encompassing the United States east of 99W longitude, covering approximately the eastern half of the country. Horizontal resolution is approximately 18 km, with three vertical layers considered.

The UAM is particularly useful to demonstrate with fine resolution whether urban areas will achieve attainment using a particular emissions reduction strategy, based on assumptions about the boundary conditions of the UAM domain. The ROM is useful for assessing the relationship between UAM domains and what is happening in the broader region to determine appropriate boundary conditions for UAM modeling. The function of ROM applications for developing attainment strategies is to provide boundary conditions for the UAM analyses. Essentially, boundary conditions are estimates of the amount of ozone and ozone precursors entering each of the UAM domains from upwind. Boundary conditions reflect the cumulative effect of pollutant transport as well as control measures and growth applied in upwind areas. Upwind areas for purposes of the ROM analysis include upwind UAM domains, portions of the OTR outside the UAM domains, and the eastern U.S. outside the OTR. The boundary conditions resulting from these ROM simulations serve as an important input to the states' UAM analyses.

Modeling using the UAM and ROM tools is an iterative process. First, UAM yield information about the strategies and impacts of strategies in smaller areas. The information from these models can then be fed into the ROM to yield information about the collective impact of the UAM assumptions throughout the region. The strategies in each area impact other areas downwind as the air moves from one area to another. The ROM then yields information about the appropriate boundary conditions to be input into the next round of each area's UAM. Each iteration in this process yields more refined information about the effect of strategies in the UAM domains and the appropriate boundary conditions for each UAM domain. In sum, the UAM is useful to assess the precise strategies in isolated nonattainment areas; the ROM is useful to assess the relationship between areas in light of their interdependence because of a common transported air mass throughout the region and to provide boundary conditions for further UAM modeling.

The Clean Air Act requires that the states submit modeled demonstrations of attainment to EPA on or before November 15, 1994. As described, states will be using the UAM with input from the ROM applications to make these modeled demonstrations, though none have yet been completed and submitted to EPA for review. In the OTR, the states will model four urban areas using the UAM: (1) New England; (2) New York City/Connecticut/northern New Jersey; (3) Philadelphia/New Jersey/Maryland; and (4) Baltimore/Maryland/Washington D.C. These urban areas are so close together and so inter-dependent that each of these four UAM modeling domains overlaps portions of at least one of the other four. EPA does not expect the states to complete UAM modeling analysis for the four urban areas that demonstrates that a particular control strategy will achieve attainment (relying on ROM applications through the iterative process discussed above), until well after November 1994. EPA's analysis of the need for the LEV program relies principally on several past and ongoing ROM studies. While EPA could use the complete UAM studies to refine the analysis, EPA believes ROM is the more important modeling tool for assessing transport. EPA further believes that certain conclusions can now be drawn about the outcome of the UAM analyses with respect to transport.

The Agency has used the ROM over the past several years to study national policies and strategies for reducing ozone. Because of the large domain subject to a ROM analysis, this tool is well-suited for assessing effects of regional strategies on regional transport of ozone and its precursors. ROM provides vital information for the states to consider in choosing sets of individual measures within each nonattainment area for purposes of their attainment demonstrations. EPA has applied ROM in various studies since 1988 to assess regional effects of control strategies. For purposes of assessing the amount of reductions needed to attain the ozone NAAQS throughout the OTR, EPA reviewed the results of these ROM studies. These studies analyzed impacts of various control strategies using data from the actual ozone exceedance episode in July 1988. During these particular episodes, the ROM model predicted that two sub-regions in the OTR would have hourly ozone concentrations over 180 ppb (50% over the ozone NAAQS), even after application of the control measures specifically mandated in the Act.

In EPA's ROMNET study,[21] except for the New York metropolitan area, scenarios with predicted ozone levels below the NAAQS involved NO_X reductions on the order of 60%–70% below 1985 levels. EPA's conclusions regarding necessary NO_X reductions varied from city to city, depending on whether VOC or NO_X was the limiting factor in ozone production near the city. VOC tends to be the limiting factor in urban areas, where there are less biogenic VOC emissions. In rural or suburban areas where biogenic emissions of VOC from vegetation are greater, NO_X tends to be the limiting factor. NO_X reductions in the rural and suburban areas can be important even where such areas are not themselves violating the NAAQS, because the ozone and ozone precursors from these areas are transported into the nonattainment areas, exacerbating conditions in the nonattainment areas. EPA concluded that VOC reductions on the order of 70%–90% from 1985[22] levels would be needed to reduce ozone levels to comply with the level specified in the NAAQS in several of the large cities along the East Coast urban corridor. Based on this and the other studies discussed below, EPA believes that NO_X controls are needed regionally, while VOC reductions are critical particularly in and near the urban areas in the region.

Another ROM study, called "the matrix study,"[23] analyzed the impact of uniform reductions in NO_X and VOC emissions throughout the eastern half of the United States. This analysis indicates that, for the July 1–15, 1988 episode for the OTR portion of the modeling domain, emission reductions for both NO_X and VOC on the order of 50% to 75% from 1985 levels are needed to reduce maximum ozone levels in the OTR portion of the modeling domain to the level specified in the NAAQS.

While these studies used a regional 1985 emission inventory as the baseline, it is the 1990 emissions baseline that is of particular concern in determining whether LEV is necessary for attainment. Under the Act, states are required to submit comprehensive 1990 inventories of NO_X and VOC emissions upon which to base their air quality planning, including their attainment demonstrations. EPA believes that, based on current, recently updated information, both the matrix and ROMNET studies relied on assumptions about the emissions inventory that underestimated base case VOC and NO_X emissions.[24] This is because inventories used in both the matrix and ROMNET studies were based on older estimates compiled for the National Acid Precipitation Assessment Program (NAPAP).[25] For example, EPA believes that inventory assumptions in the matrix study underestimated 1990 baseline emissions in the OTR for NO_X by 16% and VOC by about 38%. Correcting the inventory assumptions in the matrix study should therefore result in modeling results that reductions in NO_X and VOC emissions needed for attainment throughout the OTR are even greater than described above. EPA does not have a precise comparison between the current inventory information and the assumptions relied on in the ROMNET study, but a comparable difference is likely based on the difference between the current recently updated inventory and the older NAPAP-based inventory used in ROMNET. Based on these ROM modeling studies and analysis of 1985 and 1990 emission inventory assumptions, EPA concludes that, at a minimum, 50% to 75% reductions in NO_X throughout the OTR and VOC in and near the urban areas emissions will be necessary for regional attainment from the 1990 baseline.

(b) Contribution Analysis.

The second step in EPA's analysis is to assess the degree to which transport contributes to the ozone problem in the OTR. As explained in the April 26 notice, EPA believes that the "need" for additional measures in the OTR in order to comply with section 110(a)(2)(D) focuses primarily on the states' need to adopt the program in question for the benefit of areas downwind. See 59 FR at 21728. Of course, the states retain full authority to adopt the LEV program under section 177 for their own benefit without EPA approval. As explained below, analysis of what reductions are needed for any specific area to avoid causing ozone exceedances downwind is an enormously complicated task that depends on regional, urban, and wind trajectory modeling information and monitoring data. Further, the analysis of the controls necessary in an upwind area depends on the controls assumed in the web of downwind areas and other upwind areas. In dealing with these complications and uncertainties, EPA emphasizes that the lead-time together with the lengthy time needed for fleet turnover in order to obtain the benefits from the OTC LEV program support reaching a decision now based on the best data currently available. Based on this data, EPA's conclusion is that very large reductions in NO_X emissions on the order of 50% to 75% throughout the OTR are necessary for the serious and severe nonattainment areas in the OTR to attain the ozone standard by their respective attainment dates. EPA also believes that a similar magnitude of reductions in VOC emissions is

[20] Grid models, such as the UAM and the ROM, entail superimposing a 3-dimensional box over the area to be modeled. This box is subdivided into grid cells. The model predicts average concentration within each cell for each hour of a simulation. The spatial resolution possible with a model is defined by the size of these individual grid cells. The models do not allow one to draw conclusions about concentrations averaged over areas which are smaller than the size of the individual grid cells.

[21] See Regional Ozone Modeling for Northeast Transport (ROMNET), EPA Doc. EPA–450/4–91–002a (June 1991).

[22] Both the ROMNET study and another study (the matrix study), discussed later, used the 1985 National Acid Precipitation Assessment Program (NAPAP) regional emissions inventory as the baseline. The 1985 NAPAP inventory of NO_X and VOC was the only regional inventory available at the time for use in these studies.

[23] See Chu, S.H., E.L. Meyer, W.M. Cox, R.D. Scheffe, 1993, "The Response of Regional Ozone to VOC and NO_X Emissions Reductions: An Analysis for the Eastern United States Based on Regional Oxidant Modeling," Proceedings of U.S. EPA/AWMA International Specialty Conference on Tropospheric Ozone: Nonattainment and Design Value Issues, AWMA TR–23, pp.305–311 (1993).

[24] See E.H. Pechan & Associates, Regional Interim Emission Inventories (1987–1991), Volume I: Development Methodologies, Prepared under EPA contract 68–D2–159, Work Assignment No. 13, (May 1993).

[25] Saeger, M., J.Langstaff, R.Walters, L.Modica, D.Zimmerman, D.Fratt, D.Dulleba, R.Ryan, J.Demmy, W.Tax, D.Sprague, D.Mudgett, A.Werner, The NAPAP Emissions Inventory (Version 2): Development of the Annual Data and Modeler's Tapes, EPA Doc. No.600/7–89–012a., U.S. EPA, Research Triangle Park, NC (1989).

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necessary primarily in and near the urban areas of the OTR.

Because ROM is useful to assess regional strategies in light of the transport of ozone and ozone precursors across a region, and is therefore critical to establishing boundary conditions for UAM models, it is also useful to assess the degree of transport across a region. The ROM studies discussed above therefore are a critical component of the best current information regarding the extent to which upwind areas contribute to exceedances of the ozone standard in downwind areas throughout the OTR. Use of these studies, together with regional trajectory analyses, to assess contribution between areas, is consistent with EPA's published guidance for conducting contribution analyses.[26] The OTC, too, relied on these approaches consistent with EPA's published guidance to establish the importance of addressing pollution that is transported throughout the OTR and to thereby support its recommendation that the LEV program is necessary region-wide.

EPA believes that the ROM studies, together with regional trajectory analyses, show that the large percentage reductions in NO_X and VOC discussed above (on the order of 50% to 75% reductions, with somewhat less emphasis on VOC reductions outside the urban areas) are needed throughout the OTR for purposes of the downwind nonattainment areas to attain the NAAQS. EPA recognizes that these conclusions are based on ROM and trajectory analyses for the OTR as a whole, and that factual uncertainty remains regarding the precise degree of contribution for individual small subunits of the modeled domain to ozone violations in other areas, and the amount of emissions reductions needed to prevent such contribution.

To assess such contribution for each subunit in the grid would require a myriad of sensitivity tests that are extremely complicated. This is because contribution from one area to another can be enormously difficult to isolate. The significance of any particular area's contribution depends on the controls that have been implemented in other areas that share the same airshed. The interrelationship between the ROM and UAM models illustrates this point. The strategies needed in the urban areas depend on what is being done in other areas that affects UAM boundary conditions, and the strategies applied in all of the areas determines the boundary conditions. In short, upwind areas may need to do somewhat less to avoid causing downwind exceedances if the downwind areas themselves do more, but the upwind areas may need to do more if the downwind areas do less. And this relationship must account for such variables in the many areas that share air throughout the northeast.

While recognizing these complications and the associated factual uncertainties, modeling and wind trajectory analyses show that emissions transport from OTR areas in an arc extending from the south and southwest to the northwest substantially affect nonattainment areas along the East Coast urban corridor. The OTC's technical support document for its recommendation [27] contains several analyses that support this conclusion. These analyses relate wind trajectory data to monitored ozone data during three multi-day ozone exceedance episodes in 1992 and 1993, as well as the July 1988 episode that was the subject of the ROMNET study discussed above. These analyses also relate monitoring data at mountaintop sites during these episodes that indicate a broad region-wide buildup of ozone as the episodes progress. For the 1992 and 1993 episodes, the wind trajectory data together with the timing of high ozone readings at relatively rural sites in the northern part of the OTR support the conclusion that transport from the East Coast urban corridor toward the northeast portions of the OTR leads to high regional ozone over a prolonged period.

The analysis of the July 1988 episode relies heavily on EPA's ROMNET study. The ROMNET results indicate that emissions within the East Coast urban corridor have a dominant impact on predicted ozone levels within the corridor when emissions levels are very high. The conclusion that corridor-wide emissions play a dominant role in affecting predicted high ozone concentrations is consistent with findings in a subsequent study EPA has performed for the OTC.[28] The ROMNET study separately modeled the impact of similar large percentage reductions (60%) in NO_X emissions first in OTR nonattainment areas, second in OTR attainment areas and third in the four states bordering the OTR. The modeling showed that ozone levels in the urban corridor were more sensitive to reductions in the nonattainment areas (which are mostly in the urban corridor). This was because the actual quantity of emissions and hence the amount eliminated through a 60% reduction was greater in the urban corridor, and because these reductions were closer to the problem. However, as shown in the ROMNET study, emissions from outside the urban corridor have an increasingly important impact as the emissions within the corridor are reduced. Since modeling indicates that very large reductions inside the urban corridor are needed to approach the NAAQS, EPA expects that large reductions outside the urban corridor will also become increasingly important and in fact necessary for the nonattainment areas in the urban corridor to reach the NAAQS.

In addition to the study of these three episodes on which the OTC relied, EPA has reviewed additional surface and aloft wind trajectory information. This information was generated from ROM wind fields for each of the days analyzed in the four UAM modeling studies for purposes of attainment demonstrations currently underway for the four UAM modeling domains in the OTR. In all, EPA analyzed twenty-five days during 1987, 1988 and 1991. EPA has found that on more than 80% of these days surface winds [29] are from the south to southwesterly direction. This surface wind orientation is consistent with a large cumulative impact of emissions along the northeast urban corridor. EPA also found that, on about 70% of the days, winds aloft [30] originate from directions ranging from west-southwest through northwest. This wind aloft orientation is consistent with a longer range impact on the northeast urban corridor from sources located anywhere from the west-southwest through the northwest of each of the OTR nonattainment areas in the urban corridor. This would include sources in the western and northwestern portions of the OTR and beyond.

Even though the UAM analyses for purposes of the attainment demonstrations are not yet complete, EPA believes certain conclusions can now be drawn about the outcome with respect to transport. The episodes selected for these UAM analyses were chosen on the basis of high observed ozone concentrations. In other words, the prevailing meteorological conditions on these days were right for ozone formation. These episodes correspond with wind trajectory information that indicates a large impact from emissions transported across the region. These wind trajectories will therefore also be used in the ROM analyses to generate the boundary conditions for feedback into the UAM analyses. These UAM analyses are the basis for the attainment demonstrations for the OTR, and they are therefore likely to indicate that regional controls are critical to demonstrating attainment for the four UAM domains.

An additional source of specific information about transport along the urban corridor is the calculation of boundary conditions for Washington/Baltimore, Philadelphia, New York and New England for July 7, 1988.[31] This is the only day subject to modeling in all four UAM domains in the OTR. Estimates of the surface winds for this day are consistently from the south-southwest for all four domains. Both predicted and observed values for the boundary conditions for the UAM domains are above or approaching the level of the NAAQS (120 ppm). And the modeled values show a clear tendency to increase moving northeast along the corridor, thus supporting the conclusion that the emissions accumulate as they are transported up the corridor.

In addition, EPA has analyzed days selected for UAM modeling in any of the four domains for which calculated ROM surface wind trajectories were from the west or northwest. For most of these days, predicted and observed boundary conditions are on the order of 50–90 ppb with one exception on June 22, 1988 for New York. The data for the day with higher boundary conditions are presented in the following table. The mean values in the table represent the concentrations averaged for several monitors near the boundary of the modeling domain. The maximum (max.) values are the highest observations made in the vicinity of the boundary.

TABLE 1.—OBSERVED UPWIND BOUNDARY CONDITIONS FOR NEW YORK ON JUNE 22, 1988.[1]

Time of day	Observed ozone, (ppb) "Mean/Max."
1000–1200	79/94
1600–1800	111/142

[1] Washington D.C. and Baltimore are combined in a single modeling domain.

Predicted ozone values at the western boundary of the domain for this day are also on the order of 100 ppb. On this day, the ROM trajectories indicate light surface winds prevailed. The data in the table support the conclusion that these high boundary conditions result at least in part from long range transport from the western and northwestern OTR. This, together with all the other information available, further supports the conclusion that controls in the western and northwestern portions of the OTR are necessary for attainment throughout the region.

Finally, EPA has compiled back-trajectories calculated from ROM for each of the four UAM domains for all days selected for modeling. The results generally support the conclusion that surface winds from the south through west-southwest and winds aloft from the northwest to south-southwest transport pollutants across the OTR. This, together with all of the other available information, supports EPA's conclusion that large emission reductions in NO_X in both the northeast urban corridor and upwind areas located to the far south-through-northwest of the nonattainment areas in the urban corridor are necessary, and that large emissions reductions in VOC at least in and near the urban corridor are necessary.

In sum, EPA analyzed ozone monitoring data, wind trajectory data, and information derived from several analytical techniques and modeling studies. All of these analyses in combination lead EPA to conclude that large scale regional transport is a critical component of the ozone nonattainment problem in the OTR. It is clear that to reach attainment in the northeast urban corridor, the nonattainment areas themselves will have to implement very extensive emission control programs for NO_X and VOC to counteract their contribution to ozone violations in their immediate areas and further downwind toward the northeast. Also, EPA believes, based on best current information, that large reductions in NO_X emissions are necessary throughout areas located from the south through the west and northwest, and that large VOC reductions are necessary for at least the urban portions of the OTR.

(c) Analysis of Inventory and Options for Control Measures

Having assessed the magnitude of reductions needed throughout the OTR, the next step in EPA's analysis is to assess the options available for achieving the necessary 50% to 75% reductions in NO_X across the OTR and in VOC for the urban parts of the OTR. In doing so, EPA first assessed the best available information about the inventory of emissions across the OTR. Then EPA proceeded to consider various potential control measures to reduce these emissions by the necessary amount. As discussed above in section IV.A.1. and in the April 26 notice, EPA considered options that are at least potentially reasonable and practicable in light of the OTC LEV program. Based on this analysis, EPA believes that no combination of potentially reasonable and practicable controls on large and small stationary point sources, area sources, highway vehicles, offroad mobile sources, and fuels will be sufficient to achieve the necessary reductions without more stringent standards for new motor vehicles. And the only option legally available to the states for achieving the necessary further reductions from new motor vehicles is the OTC LEV program.

i. Inventory Analysis

The table below presents OTR-wide NO_X and VOC emission estimates for 2005. This information was derived from the 1990 interim regional inventory EPA is currently using in the ROM analyses discussed above to support UAM modeling for SIP attainment demonstrations.[32,33] These figures reflect the net effect of growth and control programs projected from 1990. As discussed above in section IV.A.2., EPA's conclusions regarding the percent reductions in NO_X and VOC emissions are based on modeling which used the 1985 NAPAP emissions inventory. However, as stated above, EPA believes that the amount of reductions necessary from the 1990 baseline are comparable to, or perhaps greater than the reductions from the 1985 inventory. This means that

[26] See U.S. EPA, Doc. EPA–450/4–91–015, Criteria for Assessing the Role of Transported Ozone/Precursors in Ozone Nonattainment Areas (1991).

[27] See "The Long Range Transport of Ozone in the Ozone Transport Region" (January 1994).

[28] See Report of OTC Modeling Committee, "Sensitivity of Regional Ozone to Reductions in NO_X and VOC Emissions: Results of Phase III ROM Analyses" (Section 9)(Winter 1993 Meeting).

[29] Surface winds in a ROM analysis represent wind flow in the lowest 100–300 meters of the atmosphere.

[30] Winds aloft in a ROM analysis represent an average over a layer from 300 meters to about 1500 meters above ground.

TABLE 1.—OBSERVED UPWIND BOUNDARY CONDITIONS FOR NEW YORK ON JUNE 22, 1988.[1]—Continued

Time of day	Observed ozone, (ppb) "Mean/Max."
1000–1800 average	101/124

[1] The table is derived from information presented in Possiel, N. and R. Wayland, Preliminary Evaluation of ROM for Estimating UAM Boundary Concentrations, (SRAB, TSD, OAQPS Internal Report)(April 1994).

[32,33] See E.H. Pechan & Associates, Regional Interim Emission Inventories (1987–1991), Volume I: Development Methodologies, Prepared under EPA contract 68–D2–159, Work Assignment No. 13 (May 1993).

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controls must counteract growth in emissions to produce a reduction from the emissions levels in 1990 of at least 50–75%. Inventories reflecting growth and controls need to be compared to the approximate reduction targets to fully evaluate the need for a LEV program. The table below indicated that light-duty vehicles (and mobile sources in general) represent a substantial portion of the OTR inventory for both NO_X and VOCs, even after accounting for implementation of all controls in the year 2005 explicitly required in the Act.

TABLE 2.—OTR-WIDE INVENTORY ANTHROPOGENIC ESTIMATES FOR 2005 [1]

(a) NO_X.

Source category	Tons per day	Percent of total inventory
Light-Duty Mobile	2034	28
Heavy-Duty Mobile (gas + diesel)	727	10
Offroad Emissions	1430	19
Stationary Point Sources	2567	35
Stationary Area Sources	555	8
Total Emissions	7314	100

(b) VOC.

Source category	Tons per day	Percent of total inventory
Light-Duty Mobile	1481	19
Heavy-Duty Mobile (gas + diesel)	210	3
Offroad Emissions	1266	16
Point Sources	1103	14
Area Sources	3767	48
Total Emissions	7827	100

[1] EPA recognizes that the precision implied by these numbers is greater than justified, given the uncertainty associated with projected emission estimates. However, the figures are provided in this and subsequent tables displaying emissions data in order for the reader to understand the full derivation of percentages reflecting the relative importance of various components of the inventory.

EPA believes it is instructive to highlight the significance of emissions from highway vehicles in the inventory. As shown in Table 2, above, EPA expects that highway vehicles will account for approximately 38% of the total NO_X inventory and 22% of the total VOC inventory in 2005. Highway mobile source NO_X and VOC emissions, therefore, constitute a major portion of the emissions in the OTR, and it is reasonable to conclude that a workable compliance plan for the OTR must include substantial controls on motor vehicles.

Further, because the LEV program would achieve emissions reductions primarily from gasoline-powered vehicles, it may be useful to separate the projected mobile source emissions into gasoline and diesel components. EPA estimates that gasoline-powered light-duty vehicles constitutes 28% of the total NO_X emissions and 19% of the total VOC emissions in the 2005 projected inventory.

ii. Analysis of Options for Control Measures Without More Stringent New Motor Vehicle Standards

This section reviews options for control measures that could potentially render the OTC LEV (or LEV-equivalent) unnecessary in the OTR. As will be discussed, EPA has determined that such measures do not provide sufficient emissions reductions without LEV and that therefore LEV is necessary.

In evaluating control options, EPA considered measures that it believes are not clearly unreasonable or impracticable (and are thus potentially reasonable and practicable). This does not mean that EPA believes that such measures are in fact reasonable and practicable. Rather, EPA believes that for purposes of assessing whether states might adopt other reasonable and practicable measures to achieve the needed reductions without OTC LEV, it should consider all measures that are not clearly unreasonable or impracticable.[34-35] EPA did not consider measures such as mandatory plant shutdowns, gas rationing, and bans on ownership of high-emitting vehicles because the Agency believes these are clearly unreasonable or impracticable to impose in comparison to the OTC LEV program.

As EPA explained in its April 26 notice and in section III.A.1. above, the Agency believes that cost-effectiveness of control options is one criterion in evaluating whether they are clearly unreasonable and impracticable. EPA believes that it should consider additional factors, such as extreme economic and societal costs, disruptions, distributional impacts, and public acceptance, that would warrant the conclusion that Congress would not have had the Agency consider particular measures to be viable options for finding other measures unnecessary. See 59 FR at 21726.

In assessing options for control measures, EPA relied, in part, on the same ROM modeling studies EPA used to assess the overall magnitude of reductions needed in the OTR. These studies are useful to check whether the impact of specific control strategies corresponds with predictions about the overall magnitude of reductions. See sections IV.A.2.(a) and (b), above. The first ROM study analyzed the impact of the control measures explicitly mandated in the Act for OTR areas. The second study is the 1991 ROMNET "matrix" study of the impact of a series of uniform reductions in emissions of NO_X, VOC or both. As discussed above, EPA reached conclusions about necessary emissions reduction targets from these studies.

In the analysis, EPA first quantified the impact of the measures required by the Act. Next, EPA evaluated an array of additional control options that are not clearly unreasonable or impracticable that could be implemented in addition to the mandatory measures. EPA then surveyed other potentially reasonable and practicable control measures to determine whether those options are sufficient to make up the shortfall which exists after application of the mandatory measures without the OTC LEV program. These other control options include the maximum region-wide limit on NO_X emissions that is not clearly unreasonable or impracticable, measures EPA included in proposed Federal Implementation Plans for three areas in California, and measures listed in compilations of NO_X and VOC controls prepared by EPA and the State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials (STAPPA/ALAPCO).

The EPA considered both NO_X and VOC control measures, but focused primarily on NO_X controls. As discussed previously, EPA believes that very large reductions in NO_X emissions on the order of 50%–75% are needed region-wide, while a similar magnitude of VOC reductions are necessary primarily in or near the East Coast urban corridor. EPA believes that there are insufficient potentially reasonable and practicable measures to achieve the necessary NO_X reductions region-wide without the LEV program. This is a sufficient basis for approval of the OTC's recommendation and for issuing a finding that the SIPs are substantially inadequate to meet section 110(a)(2)(A) without the LEV program for the entire region. EPA also believes that there are insufficient potentially reasonable and practicable measures to achieve the necessary VOC reductions in and near the urban areas, which constitutes an additional basis for approving the OTC's

[34-35] EPA does not intend its consideration of particular measures here to suggest that the Agency believes such measures constitute reasonably available control technology (RACT) or reasonably available control measures (RACM) as those terms of art are used in the Clean Air Act.

recommendation and for making a finding of substantial inadequacy with regard to interstate transport for those areas.

• Control Measures Explicitly Mandated Under the Act

The Act includes a broad array of measures applicable to stationary as well as mobile sources. As discussed above, EPA calculated emission reduction estimates from these controls and input them into ROM to study the impacts for particular meteorological episodes.[36] The modeling incorporated the following measures that, for technical reasons, may differ slightly from those mandated in the Act.

1. Reasonably available control technology (RACT) on "major" point sources of NO_X and VOC;
2. Federal emissions standards in place for off-highway vehicles;
3. Federal reformulated gasoline requirements in all OTR nonattainment areas (including Phase II standards);
4. Enhanced Inspection/Maintenance (I/M) programs for all metropolitan areas with populations above 100,000;
5. Emissions cap on large point sources (above 100 tons per year[37]) after 1996 to reflect offset requirements for new and modified major sources (i.e., equivalent to new source review requirements and 1:1 offsets);
6. Emissions cap on area sources in each nonattainment area beginning on the attainment deadlines for those areas to reflect maintenance requirements;
7. "Stage II" vapor recovery controls on gasoline pumps in all metropolitan areas with populations above 100,000;
8. Application of RACT controls specified in EPA's Control Technique Guidelines (CTG's) for eleven source categories;[38]
9. Federal controls on emissions from commercial solvents, marine vessel loading, municipal landfills and hazardous waste treatment, storage, and disposal facilities (TSDF's);[39]
10. Federal "Tier I" tailpipe emission standards for new vehicles;
11. Federal evaporative emissions controls for new vehicles;
12. Federal "Phase 2" controls on gasoline volatility;
13. Federal Maximum Available Control Technology (MACT) controls for hazardous air pollutants (which include VOCs) for approximately forty source categories;
14. Federal controls on NO_X emissions from coal-fired utility boilers under the Acid Rain program.

EPA calculated that application of these controls mandated in the Act would achieve emissions reductions by 2005 in the OTR of 20% for NO_X and 37% for VOC from the 1990 baseline. As discussed above in sections IV.A.2.(a) and (b), EPA believes this level of reductions will not be sufficient to attain the ozone NAAQS throughout the OTR. Confirming this conclusion, ROM studies of four episodes applying these measures in 2005 for all days being modeled in the four UAM domains in the OTR yield predictions of ozone levels above the 120 ppb NAAQS in five OTR subregions. These subregions include the UAM domains for Baltimore/Washington, Philadelphia, New York City and New England, and west/central Pennsylvania. Further, the model predicts ozone levels would exceed 160 ppb in at least one subregion for each of the episodes.

• Region-wide 0.15 NO_X Standard

Beyond the measures explicitly mandated in the Act, the OTC also asked EPA to analyze the impact of an additional region-wide limit on NO_X emissions of 0.15 lbs/MMBtu (the "0.15 NO_X standard") for boilers, gas turbines, and internal combustion engines with a capacity of at least 250 MMBtu/hr. EPA evaluated the 0.15 NO_X standard to represent the maximum emissions reduction from large stationary sources from measures that are not clearly unreasonable or impracticable. EPA developed emissions estimates associated with this additional control and modeled the impact on regional NO_X emissions. EPA's modeling conclusion is that a 0.15 NO_X standard would achieve a 15% reduction in inventory-wide NO_X emissions from a 2005 projected baseline, after application of other controls mandated in the Act.[40] Together with the mandatory measures, this additional measure would therefore achieve a total NO_X emissions reduction in the OTR of 32% from 1990 baseline levels. Thus, even a strategy including the additional 0.15 NO_X standard region-wide in addition to all mandated Clean Air Act measures would achieve only 32% reductions in NO_X and 37% reductions in VOC from 1990 baseline levels.

After application of the mandated Clean Air Act measures together with the 0.15 NO_X standard, highway vehicle emissions still represent a substantial component of the emissions inventory. Table 3, below, reflects these calculations.

TABLE 3.—TOTAL AND MOBILE 2005 EMISSIONS IN THE OTR CORRESPONDING TO MANDATORY MEASURES PLUS ADDITIONAL CONTROLS ON LARGE NO_X SOURCES

Emissions	NO_X, tons per day	VOC, tons per day
Total Emissions in the OTR	6181	7827
Highway Vehicle Emissions in the OTR	2759	1858
Percent of Total Emissions Attributable to Highway Vehicles	45%	24%

• STAPPA/ALAPCO Compilations of VOC and NO_X Control Measures

EPA, together with STAPPA/ALAPCO, prepared two important compilations of potential measures available to states in the OTR to address ozone air quality problems.[41] The STAPPA/ALAPCO compilations provide fairly comprehensive lists of VOC and NO_X control measures that augment traditional controls. The VOC document includes programs to obtain

[36] EPA used an 80% Rule Effectiveness value in calculating the overall effectiveness of control measures. Rule effectiveness was applied to all controls that were not an irreversible process change (for which 100% effectiveness was assumed). Thus, for the controls that consider Rule Effectiveness the emission reduction due to a particular control device was calculated as the product of the control efficiency and the Rule Effectiveness value. For example, a device that controls at a level of 75% would produce an emissions reduction of only 60% (i.e. 0.75 × 0.80). Rule effectiveness is explained in detail in this section, below.

[37] The model assumed the 100 tons per year cutoff for reasons related to the construction of the air quality model. EPA recognizes that smaller sources are also subject to new source review requirements. These are treated in the model as stationary area sources. The model cannot readily separate those individual smaller sources subject to new source review from other smaller sources.

[38] These CTG's include reductions from area sources as well as point sources, and therefore go beyond the RACT controls identified in 1.

[39] One commenter asked that EPA, in assessing the need for the OTC LEV program, consider the potential for emissions reductions from landfills. EPA has proposed a new source performance standard (NSPS) for landfills and proposed guidelines for existing landfill sources. See 56 FR 24468 (May 30, 1991). EPA expects to take final action on the NSPS and the guidance by December 1994. EPA has taken the resulting emissions reductions into account among the Clean Air Act mandatory measures.

[40] EPA notes that these percentage reductions are from a 2005 projected baseline. EPA's conclusion that a 50%–75% reduction in emissions is from a 1990 inventory baseline. It is important to bear in mind throughout this analysis that the 1990 baseline inventory is substantially larger than the projected 2005 baseline, which presumes application of mandatory Clean Air Act controls. Therefore, percentage reductions that particular measures achieve from the 2005 are larger than the percentage reductions those same measures would achieve if calculated from the 1990 baseline.

[41] See Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act: A Menu of Options, STAPPA/ALAPCO (Sept. 1993); Controlling Nitrogen Oxides Under the Clean Air Act: A Menu of Options, STAPPA/ALAPCO (July 1994).

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reductions from degreasers, vehicle refueling (Stage II vapor recovery), aerospace manufacturing and rework, bakeries, offset lithography, wood furniture coatings, and automobile assembly, among others. EPA has, however, already included most of the VOC measures from the STAPPA/ALAPCO compilation in the analysis of Clean Air Act mandated measures, described above, while others affect only a small portion of the VOC inventory.

The STAPPA/ALAPCO compilation of NO_X control measures identifies seventeen NO_X source categories. Most of the source categories listed are included in the 0.15 lbs/MMBtu NO_X standard that EPA considered. The only source categories included in the compilation, but not in the 0.15 standard, are NO_X emissions from open burning and residential space and water heaters. However, emissions from these source categories identified in the document are extremely small compared to other source categories.

With the exception of coal-fired boilers, the STAPPA/ALAPCO document recommends emission levels more stringent than the 0.15 NO_X standard that EPA modeled through application of beyond-RACT measures. Emissions from coal-fired boilers dominate the stationary source emission inventory. That is, the additional NO_X reductions from those other source categories are a relatively small portion of the emission inventory compared to the contribution from coal-fired boilers (and an even smaller portion of the overall 35% stationary source contribution to the total inventory).

- **Transportation Control Measures**

EPA also considered transportation control measures (TCMs) as potentially reasonable and practicable measures available for the OTR. There are a wide range of TCMs that have been proposed, but EPA believes that many of them, such as gasoline rationing, are unreasonable and impracticable here. Two options that EPA considers potentially reasonable and practicable are the extension of the Employee Commute Option (ECO) program region-wide and implementation of a comprehensive system of congestion pricing, employee parking pricing, and emissions-based registration fees.

Section 182(d)(1)(B) of the Act mandates that the severe areas in the OTR adopt employee trip reduction programs (also known as ECO programs). Under these programs, each employer with more than one hundred employees must offer incentives and encouragement for employees to travel to work by means other than single-occupant vehicles. The eventual goal of the program is to achieve a 25% increase in vehicle occupancy for morning commuting trips. This is equivalent to one out of five employees using a mode of commuting, other than driving. EPA's best case estimate of the benefits of extending the ECO program region-wide is a three percent reduction in vehicle miles travelled (VMT) in the OTR. This reduction in VMT would correspond to approximately a two percent reduction in NO_X and VOC emissions from light-duty vehicles in the OTR, and to a 0.6% reduction in overall NO_X emissions and a 0.4% reduction in overall VOC emissions from the 2005 baseline. The incremental amount of reductions is limited because the program would only affect the limited number of large employers outside the severe areas and because commuting trips are only a fraction of overall trips and VMT.

A second TCM option is a comprehensive system of fees and incentives designed to affect driving habits and vehicle usage. These controls, including congestion pricing, employee parking pricing, and emissions-based registration fees, are described in the Cameron Report.[42] These measures could possibly achieve a 12% reduction in car and light-truck VMT in the OTR. This would correspond to a 12% reduction in NO_X and VOC emissions from light-duty vehicles, a 2% reduction in overall VOC emissions and a 3% reduction in overall NO_X emissions from the 2005 baseline.

- **California Reformulated Gasoline**

The use of California reformulated gasoline in the OTR is another option that has been mentioned. This program would generate limited additional emissions reductions in the OTR. California reformulated gasoline achieves greater emissions reductions than Federal reformulated gasoline, due to the different specifications for the California fuel, such as a lower Reid Vapor Pressure (RVP). EPA estimates that the implementation of California reformulated gasoline in the OTR could provide an approximate six to seven percent reduction in NO_X and VOC emissions from gasoline vehicles. This corresponds to reductions from the overall 2005 baseline of 1.7% for NO_X and 1.5% for VOC. This issue was addressed in a study done for the State of Maryland [43] and a study prepared for the group of northeast states.[44] Both of these studies corroborate EPA's conclusion that California reformulated gasoline would achieve limited reductions in the OTR.

- **California Federal Implementation Plans Measures**

EPA also considered additional emission reduction measures that the Agency has included in a proposed Federal Implementation Plan (FIP) for the Ventura, Sacramento, and South Coast areas of California. See 59 FR 23263 (May 5, 1994). As the following discussion indicates, the measures proposed for consideration in these FIPs which are not unreasonable or impracticable and which could be implemented by the states in the OTR, have largely been considered as part of other strategies discussed above. Those that remain would not generate a substantial reduction in emissions from the overall inventory.[45]

Context Surrounding FIP Measures

The court-ordered obligation that EPA produce FIPs for three regions of California has placed EPA in an unusual position. The Clean Air Act places primary responsibility for clean air planning at the regional, state and local levels. This is appropriate because state and local officials have the specific knowledge, flexibility, and sensitivity to tailor clean air plans to the particular needs of their communities. Throughout the FIP development process, EPA has acknowledged that the measures at its disposal include blunt instruments that have the potential for significant social and economic impact. Also, the time constraints imposed by the court order and the functional limits on EPA's ability to fashion measures which meet the specific needs of localities have forced the Agency to propose a number of measures that would not be appropriate for implementation in the OTR.

The pollution problems experienced in California are of a magnitude far greater than those experienced anywhere else in the nation. Moreover, the OTC, with its recommendation here, seeks to benefit from the leadership California has demonstrated in setting strict pollution standards for new

[42] See "Transportation Efficiency: Tackling Southern California's Air Pollution and Congestion", Michael Cameron, EDF and Regional Institute of Southern California (March 1991).

[43] See Ellis, H., "An Analysis of Ozone Control Strategies for Maryland," Johns Hopkins University (Jan. 17, 1994).

[44] See Screening Study of Mobile-Source Strategies for the Northeast," Acurex Environmental Corporation (Oct. 1992).

[45] As the FIP proposal contains too many provisions to list exhaustively, the following discussion focuses on examples to illustrate EPA's approach.

vehicles. The measures proposed in the FIP generally supplement measures California has already adopted. The LEV program is a critical aspect of California's attainment strategy and the FIP. When considering whether FIP measures may constitute part of a set of measures sufficient to achieve the necessary reductions in the OTR without the LEV (or LEV-equivalent) program, it is essential to stress that EPA proposed these measures for California in addition to the LEV program that California had already adopted in 1990. If the LEV program had not already been adopted, EPA would have had to propose a measure very much like it for the FIP, due to the substantial and relatively cost-effective benefits that the program will provide in California.

Description of FIP Measures

For the purposes of this discussion, EPA has grouped proposed FIP measures into four broad categories: (1) FIP measures that are not practicable in the OTR because they depend on federal authority to be implemented or are predicated on special regulatory authority Congress has conferred only upon California; (2) FIP measures that are clearly unreasonable and impracticable in the OTR because they are predicated upon industrial or geographic circumstances that are particular to California; (3) FIP measures that are unreasonable and impracticable in the OTR relative to LEV implementation because they are too costly or speculative; and (4) FIP measures which are not clearly unreasonable or impracticable for implementation in the OTR.

(1) Measures excluded because they depend on unique authority.

a. Federal Authority—EPA proposed two different types of FIP measures relying on EPA's unique federal authority. Most were measures that would apply nationally, such as recreational marine vessel controls, and thus would apply in the OTR, as well. Additionally, EPA proposed some parts of the FIP solely under authority accorded to the Agency under the FIP provisions in section 110(c). These parts of the FIP regulated source categories including new locomotives and farm and construction equipment under 175 hp. See section 209(e)(1). These proposed FIPs would rely on section 110(c) to impose requirements for these sources that are more stringent than EPA has proposed for the nation as a whole. All states, including California, are preempted from regulating this category of sources. Therefore, no state in the OTR has the option of adopting these controls.

b. State Authority—California has authority under section 209 of the Act to address pollution from on-highway and nonroad engines (except certain categories of nonroad engines noted above), which other states do not have. In the FIP proposal, EPA stepped into the shoes of California and proposed several measures under California's section 209 authority for California only. Generally, these measures are tight new emission standards for new on-highway and nonroad equipment. EPA also proposed certain measures to improve durability of on-highway and nonroad equipment to better control emissions in-use. EPA again proposed these programs under California's special authority that other states do not have. Because states are preempted from adopting such regulations in the absence of California regulations actually adopted under California's Clean Air Act authority, states in the OTR do not now have the option of adopting any of these controls.

(2) FIP measures that are impracticable in the OTR because they are predicated upon industrial or geographic circumstances that are particular to California.

EPA proposed several programs for the FIP that deal with circumstances unique to California's industrial and geographic circumstances and are therefore inappropriate for the OTR. For example, due to the fire hazards inherent in an arid region, California fire departments burn vegetation periodically to lower the risk of a wild fire. EPA proposed that these burns only occur on certain days so that the pollution from the fire does not add to ozone exceedances. Since such burns do not occur in the OTR, such requirements would not make sense there. The rules regarding outer continental shelf oil exploration are another example of rules which may make sense in California but not in the OTR.

(3) FIP measures that are unreasonable or impracticable in the OTR because they are too costly or disruptive.

The FIP contains "cap" rules for stationary sources which impose an annual rate of reduction on affected sources for as many controllable VOC and NO_X categories as possible. The emission reduction targets are derived from the overall shortfall in the FIP area rather than any consideration of available emission control technologies. EPA's proposal anticipates that the state and local agencies can over time develop carefully tailored economic incentive programs or traditional rules based upon the most recent technologies and regulatory approaches. But the cap rules themselves are not examples of specific regulatory approaches to be adopted at the state or local level. These are therefore blunt instruments without specific and identifiable emissions control mechanisms in mind. As such, they may be costly to achieve and EPA cannot now conclude that they are based on technologies that are potentially practicable.

Beginning in 2004, the FIP also proposes to discourage the use of older high polluting recreational boat engines through the imposition of a user fee and permit system. EPA believes that measures which restrict individual behavior or prevent citizens from benefitting from investments made in property are particularly difficult to implement. EPA does not believe it is reasonable to adopt such measures before implementation of the LEV standards.

(4) Proposed FIP measures which are not clearly unreasonable and impracticable.

Many of the proposed FIP measures are based on national, state and local initiatives that EPA does not believe it should dismiss as clearly unreasonable or impracticable. Nationally, there are a variety of standards for stationary and mobile sources. California initiatives include the LEV program itself, as well as other measures applicable to consumer products. The FIP proposal also takes into account local efforts in the affected California areas to reduce NO_X from stationary and mobile sources.

EPA is in the process of developing many national rules that it took into account in the FIP proposal and that it therefore expects to apply in the OTR. For example, apart from the FIP proposal, EPA is developing by November 1995, nation-wide emission standards for new marine engines. EPA is also developing standards for locomotives and small nonroad engines under 25 hp. California has also developed rules to reduce VOC emissions from paints and other consumer products and EPA is developing similar controls on the VOC content of consumer and commercial solvents and architectural coatings. EPA has already accounted for the benefits of all of these measures for the OTR above, in its modeling of the impact of the mandatory Clean Air Act measures.

Local areas in California, especially the South Coast Air Quality Management District (South Coast), have been especially innovative in developing emissions reduction

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programs. There are two programs that EPA took into account in its FIP proposal which merit special comment here. First, the South Coast developed an ECO program to reduce the number of vehicle miles travelled to and from major employers. As discussed above, the Clean Air Act now requires many nonattainment areas to implement ECO programs. EPA proposed in the FIP to expand coverage to Sacramento. As discussed above, the ECO programs already required for certain areas in the OTR could be expanded region-wide, or applied to smaller employers than currently mandated. However, as noted above, the incremental benefits from these programs appear to be relatively small.

The South Coast has also developed a new program that EPA took into account in its FIP proposal, known as the Regional Clean Air Incentives Market (RECLAIM), to establish a declining cap on NO_X emissions from stationary sources. Unlike the South Coast, however, large stationary NO_X sources in the OTR are dominated by coal-fired utilities. In place of a declining NO_X cap program, the OTR states are developing a plan to impose a stringent NO_X standard for utilities. This is part of the 0.15 lbs/MMBtu NO_X standard discussed above. This standard is substantially more stringent than many in the OTR believe to be reasonable, but EPA has nonetheless modeled the impacts of such a strategy in its analysis here.

• Consideration of Rule Effectiveness

In evaluating the emissions reductions attributable to particular control measures, it is important to consider the effectiveness of the rules. If all sources fully comply with the rules at all times, and if there were never problems with control equipment, then the emission reductions associated with control measures could be calculated and summed to reflect the anticipated reductions as a result of applying specific regulations. However, past history has shown that rules are not consistently applied or enforced, control equipment malfunctions, and operating and maintenance problems occur, all contributing to air emissions. These emissions are accounted for through the application of rule effectiveness (RE) guidelines. This is a means of identifying and estimating the increased emissions failures and uncertainties in emission control programs.

Rule effectiveness is a measure of the extent to which a rule actually achieves its desired emission reductions. It accounts for a variety of factors that influence the efficacy of emission control programs, including: the nature of the regulation or control (e.g., complexity of record-keeping or test methods); nature of control techniques (e.g., potential for fugitive emissions); performance of sources in complying with the regulation (e.g., schedule of maintenance and inspection of control equipment); and performance of those enforcing the regulation (e.g., inspector training).

EPA accounts for RE for mobile source controls that affect the mobile emissions factors internally in the MOBILE model. For stationary sources, however, the emissions inventory must account for RE to yield more reliable estimates of the actual emissions reductions that SIP rules will achieve. In general, EPA specifies an 80 percent default RE value in the absence of a local category-specific RE value. In essence, this assumes that the ability to use control devices or regulations to achieve emission reductions is only 80 percent effective. Without application of RE to the emissions inventory, the emissions reductions estimated to occur as a result of control measures would be overly optimistic. Although EPA's analysis of measures mandated in the Act accounts for RE, the emissions reductions assumed for the other measures may not have accounted for REs and must therefore be considered overly optimistic.

• Conclusions

As described above, EPA believes reductions in the range of 50% to 75% from 1990 baseline NO_X and VOC emissions levels will be needed to enable all of the serious and severe nonattainment areas in the OTR to attain the ozone standard. The NO_X reductions are needed throughout the OTR and the VOC reductions are needed at least in and near the urban portions of the OTR. EPA recognizes that there are uncertainties in its modeling analysis used to reach this conclusion. For the reasons described earlier in this notice, EPA believes it would be appropriate generally to resolve uncertainties in its factual analysis in favor of the most environmentally conservative course. EPA requests comment on whether, for purposes of its analysis of alternative control measures, EPA should conclude that the middle of this range, or at least a 65% reduction from baseline NO_X emissions, will be necessary throughout the OTR. Here, as described below, EPA believes that focus on the low end of the range would not change its conclusion. In addition to uncertainties in the atmospheric models, uncertainties also exist in the base year emissions inventories, the projected emissions that account for growth in the future, the amount of emission reductions estimated to result from implementation of the control measures (including consideration of rule effectiveness), and the modeled ozone concentrations resulting from the emissions. Additionally, EPA believes that it should err on the side of environmental protection in addressing these uncertainties.

As described above, a strategy consisting of all of the mandatory Clean Air Act measures and the 0.15 NO_X standard for large boilers, gas turbines, and internal combustion engines would achieve approximately a 32% reduction in NO_X from 1990 baseline levels. Most of the source categories listed in the STAPPA/ALAPCO compilation of NO_X control measures are already included in the 0.15 NO_X standard, and the NO_X emissions from the few remaining categories of small stationary and area sources comprise an extremely small portion of the stationary source segment of the emissions inventory, and a proportionally smaller portion of the overall inventory. Hence, it is likely that those additional measures would achieve no more than a small percentage reduction in the overall NO_X inventory.

In addition, the transportation control measures that EPA would not consider clearly impracticable or unreasonable (including expanded geographic coverage of ECO programs and implementation of a comprehensive system of congestion pricing, employee parking pricing, and emissions-based registration fees, and the versions of those measures included in EPA's FIP proposal), would yield a combined reduction of 2.5% from 1990 baseline inventory-wide NO_X reductions. Beyond that, implementation of California reformulated gasoline requirements in the OTR would achieve approximately a 1.4% reduction in NO_X emissions from 1990 baseline inventory-wide levels.

It is apparent that the combined NO_X reduction of the entire set of these measures would be significantly short of the 65% NO_X reduction EPA believes is needed throughout the OTR for attainment in the serious and severe nonattainment areas of the region. As a result, those areas will not be able to attain the standard through application of all of the potentially practicable measures, without NO_X reductions from more stringent emissions standards for new vehicles region-wide.

After evaluating the control measures discussed above, EPA concludes that the emissions reductions resulting from application of potentially reasonable and practicable control measures will

not be sufficient to achieve attainment throughout the OTR without more stringent new vehicle emission standards.

Mobile source emissions comprise a significant part of the 2005 NO_X and VOC emissions inventories. Indeed, EPA believes that, apart from its analysis of each potentially reasonable control option independently, the reasonableness and practicability of adopting all these controls measures without adopting more stringent standards for new motor vehicles is questionable. And for NO_X, while additional emissions reductions from other source categories will be important to meet the attainment goal, EPA believes the measures will be needed in addition to, rather than in place of, more stringent controls for new motor vehicles throughout the OTR. Although EPA has not quantified all of the VOC reduction measures described above, EPA believes the conclusion also applies for VOC, at least in and near the urban portions of the OTR.

iii. Determination Whether Reductions from OTC LEV (or LEV-Equivalent) Approach to New Motor Vehicles Are Necessary.

EPA believes that the foregoing information supports the conclusion that sufficient options to make up the shortfall in emissions reductions necessary for attainment in the OTR are not available from sources other than new motor vehicles, and that additional reductions in NO_X and VOC emissions from new motor vehicles are therefore necessary. EPA believes that the OTC LEV program would achieve reductions beyond the mandated Clean Air Act measures by 2005 of 4% for NO_X and 2% for VOC from the 2005 baseline. This information is presented in Table 4, below.[46]

TABLE 4.—REDUCTION IN 2005 BASELINE VOC AND NO_X EMISSIONS ATTRIBUTABLE TO A LEV PROGRAM

Emissions component	NO_X changes (percent)	VOC changes (percent)
Total highway emissions	−10	−9
Total OTR emissions	−4	−2

These calculations are based on the incremental effect of the LEV program beginning in 1999 throughout the OTR over the reductions that will take place in New York and Massachusetts as a result of their existing LEV programs beginning in 1996. Due to the phase-in schedule for the LEV program and the time required for fleet turnover, the maximum benefit for LEV would not be realized until 2028. Therefore, EPA expects that emissions reductions attributable to an OTC LEV program would continue to grow after 2005.

Under the OTC LEV program, some increases in emissions would be associated with the permanent migration of non-LEVs into the OTR, and with temporary visits by non-LEV vehicles from other states. The amount of excess emissions associated with migrating and visiting vehicles is dependent on two factors: (1) the difference in emissions per car between the cars entering the OTR and the "native" fleet within the OTR; and (2) the number and age-mix of the cars entering the OTR from outside. Both questions are difficult to answer and will have different answers for permanent migration and temporary visitation. The numbers in this Table 4 do not include these effects because EPA is still analyzing this issue and has not yet quantified these effects. When this analysis is ready, EPA will put it in the docket and publish a notice of data availability in the **Federal Register**.

As described above, EPA does not believe other practicable options are available to make up the shortfall to achieve the reductions necessary in the OTR for attainment. Therefore, EPA believes that a program available to achieve more reductions from new motor vehicles is necessary.

Legal limitations make the LEV program the only option available to the states to achieve what are necessary additional reductions from new motor vehicles. Section 209 of the Act prohibits states from adopting or attempting to enforce any standard relating to the control of emissions from new motor vehicles or engines, except for California if a waiver is granted. This is subject to a limited exception provided in section 177 for states that have SIP provisions approved under part D of the Act to adopt and enforce emissions standards for new motor vehicles and engines if: (1) Such standards are identical to the California standards for which a waiver has been granted; and (2) California and the state adopt the standards at least two years before the beginning of the model year in which the standards are to apply. EPA has granted a waiver for the California LEV standards, and the states can therefore adopt them.[47,48] At the same time, section 202(b)(1)(C) explicitly prohibits EPA from changing the current "Tier 1" emissions standards for new motor vehicles in sections 202(a)(3)(B)(ii), (g), (h), and (i) before model year 2004.

Therefore, no options other than the LEV program are currently available to achieve the necessary additional reductions from new motor vehicles and engines. As explained in section V of this notice, EPA is proposing to allow for the possibility that an alternative federal program achieving comparable emissions reductions to the OTC LEV program may be developed. But the possibility that such an alternative program can be developed in the future does not contradict the conclusion that the only option currently available to the states to achieve the required reductions in new motor vehicle emissions (the LEV program) is necessary.

EPA believes that the OTC LEV program would be reasonable and practicable in the OTR. EPA granted California a waiver for its LEV program on January 8, 1993 based on the finding required under section 209(b) of the Act.[49] In addition, when the California Air Resources Board (CARB or the Board) initially approved its LEV regulations in 1990, it directed CARB to report biennially to the Board on the status of implementation of the regulations. The staff provided the Board with the first such report at a June 11, 1992 public meeting. At the time the Board found that the low-emission vehicle standards continued to be technologically feasible within the required time frames, and accordingly no changes to the standards or phase-in schedule were needed.[50]

CARB held its second LEV "status" hearing May 12 and 13, 1994, at which the Chairwoman stated in her closing statement that CARB had "had a successful launch of the Low Emission

[46] EPA's analysis presumes that the only difference in emissions between OTC LEV vehicles and federal vehicles is tailpipe emissions.

[47,48] See Waiver of Federal Preemption: California Low Emission Vehicle Standards (Jan. 8, 1993).

[49] In EPA's waiver decision regarding California's LEV program, the EPA Administrator stated, "Based on EPA's review of this record, I find reasonable and so adopt California's finding that there is adequate leadtime to permit the development of technology necessary to meet those standards giving appropriate consideration to the cost of compliance within the required time frame." Waiver of Federal Preemption; California Low-Emission Vehicle Standards at 69 (Jan. 8, 1993).

[50] See letter from Executive Officer James Boyd to EPA Administrator Carol Browner (July 21, 1994). The Board and staff did recognize that a variety of amendments would be appropriate to augment the LEV regulations, make them clearer, and facilitate their implementation. This recognition led to the adoption of several LEV "follow-up" amendments, which were formally adopted by the Board. On September 22, 1993, CARB sent a letter requesting that EPA confirm the Board's determination that these amendments fall within the scope of the January 8, 1993 waiver for the California LEV Program. EPA has not yet acted on this request.

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Vehicle program."[51] The CARB Staff Report that preceded the May meeting stated that many of the technologies that will be required for LEV "are already in production in some vehicle models, and the remaining technologies are now developed to near commercial levels of readiness."[52] In fact, CARB has to date certified several categories of LEVs, including TLEVs (produced and sold), light-duty and medium-duty ULEVs (natural gas), and ZEVs.

Furthermore, two states, New York and Massachusetts, believed the California LEV program to be reasonable and practicable enough to adopt the LEV program in legislation and regulations without contingencies. Both states are set to implement their programs. Other states have adopted or are adopting the program contingent on regional program adoption, and the remaining states are at various stages of the legislative or regulatory process to adopt the program.

Finally, the legislative history of section 177 reinforces the idea that states which adopt California standards do not create any undue burden for the auto manufacturers. The House Report noted:

> This new state authority [to promulgate standards under section 177] should not place an undue burden on vehicle manufacturers who will be required in any event, to produce vehicles meeting the California standards for sale in California.
> H.R. Rep. No. 294, 95th Cong., 1st Sess. at 31

EPA requests comment on whether it should require the OTR states to achieve the additional emissions reductions associated with the ZEV sales requirement from new motor vehicles if the Agency does not require that the OTR states adopt the ZEV sales requirement. In an August 4, 1994 letter, Arthur A. Davis, Chair of the OTC,[53] stated that, in the OTC's February 10 recommendation it indicated that one of the criteria for OTC LEV alternatives that EPA might consider was emission reduction equivalency. The letter went on to explain the principle of equivalency for purposes of discussing different options with the auto manufacturers:

To determine emission reduction equivalency, alternatives must be compared to the emission reduction potential of the OTC LEV recommendation with respect to the primary ozone precursors. This means that the OTC will assess non-methane organic gases (NMOG) exhaust emissions, NMOG evaporative emissions, and exhaust emissions of nitrogen oxides (NO_X) of significant alternatives with the emissions of the same pollutants under the OTC LEV recommendation with the full benefits available from the ZEV component.

This statement might be understood to indicate that the OTC expects its recommended program to achieve the full benefits of the ZEV sales requirement even if EPA does not mandate the ZEV sales requirement.[54]

In addition, several commenters believe that the OTC's petition included a recommendation that EPA require states to adopt programs requiring that the automobile manufacturers obtain the full emissions benefits of the ZEV sales requirement. One commenter suggested that EPA require that states' programs compel the automobile manufacturers either to sell ZEV's or achieve equivalent reductions from the new vehicle sector, including tailpipe and evaporative NMOG, NO_X, CO, toxics, and carbon dioxide. EPA believes that consideration of CO, toxics and carbon dioxide benefits are beyond the scope of the Agency's authority under Section 184 which pertains solely to ozone pollution and its precursors.

In order for auto manufacturers to achieve the additional evaporative NMOG and NO_X emissions benefits of the ZEV sales requirement without selling ZEV's, they would have to provide a mix of vehicles subject to requirements in addition to the NMOG fleet average achievement. Under the ZEV equivalency approach, states could provide the auto manufacturers the option of either complying with the ZEV sales requirement or selling a mix of other vehicles, which could include some ZEVs, that satisfies both the NMOG requirements and also achieves the additional benefits equivalent to those that would result from meeting the full ZEV sales requirement. This approach raises a number of questions on which EPA is soliciting comment: (1) What emission reductions are attributable to the ZEV sales mandate that would not be realized if only the NMOG fleet average part of the program were adopted? (2) How would auto manufacturers demonstrate that their mix of vehicles achieved the same total emissions reductions as the NMOG average plus the ZEV sales mandate? (3) Would such a demonstration require EPA or the states to set a new emission standard or a sales mandate for non-ZEV vehicles?

EPA requests comment on a number of other issues pertaining to such a "ZEV equivalency" requirement, and whether the Agency should include such a requirement in the final rule. First, EPA requests comment on whether the OTC's recommendation can be interpreted to include a requirement that the states' programs achieve the benefits of the ZEV sales requirement in addition to the remainder of the recommended LEV program from the new vehicle sector. EPA also requests comment on whether the August 4 letter from the Chair of the OTC supports this interpretation, and the extent to which EPA may rely on such a letter to determine the intent of the OTC's February 10 recommendation.

Finally, EPA notes that commenters suggesting this approach have not provided a specific explanation of how the states may adopt it consistent with sections 209 and 177 of the Act. EPA welcomes comments from the public on these legal issues.

(d) Particular circumstances of OTC LEV program.

EPA believes that its analysis of the contribution from one area to another in the OTR should be understood in the specific context of the OTC LEV program in question here. EPA believes that several aspects of this particular program further support EPA's conclusion that it is necessary to adopt this program region-wide to counteract ozone transport. Many parties have commented that the OTC LEV program should apply on a region-wide basis in order to attain the greatest amount of emissions reductions and facilitate operation of the LEV program.[55]

First, new car sales are very much an interstate business, particularly in the northeast where many smaller states are located together. Consumers frequently travel throughout a particular state and to different states to buy cars. To the extent consumers in the more polluted nonattainment areas can continue to buy cars elsewhere in the same state or in other states, then it is especially

[51] See Closing Statement by CARB Chairwoman Jacqueline Schafer at Public Meeting to Review Low-Emission Vehicle Standards at 1 (May 13, 1994).

[52] See CARB Staff Report: 1994 Low-Emission Vehicle and Zero-Emission Vehicle Program Review, at 17 (April 1994).

[53] See letter from Author A. Davis, OTC Chair, to Mary D. Nichols, Assistant Administrator, Office of Air and Radiation, U.S. EPA (Aug. 4, 1994).

[54] As indicated, the OTC plainly recommended that vehicle manufacturers comply with the NMOG tailpipe limit regardless of EPA's determination regarding the ZEV sales mandate. The issue raised here pertains solely to the additional evaporative NMOG and NO_X benefits provided by ZEV's.

[55] See, e.g., letter from Albert Hendricksen, Vice President, United Illuminating, to Mike Shields, U.S. EPA (June 3, 1994); comments to the OTC LEV docket from Gerald Esper, Director, Vehicle Environment Department, American Automobile Manufacturers Association (June 3, 1994); and comments to the OTC LEV docket from Barbara A. Kwetz, Director, Division of Air Quality Control, Massachusetts Department of Environmental Protection (June 3, 1994).

important that the cars they buy elsewhere meet the strictest emissions standards needed for emissions reductions in the more polluted areas.

The interstate business aspect is especially true in border areas of larger states, and can pervade smaller states, such as those in the OTR. For example, according to auto dealers in Greenwich, Connecticut, fifty percent of their sales are to New York residents. Dealers in different states regularly trade vehicles among themselves. Dealers also engage in "drop shipments," where a dealer accepts an order from an out-of-state customer and the vehicle is shipped directly to the customer without ever physically entering the dealer's inventory. To accommodate such practices, EPA has adopted a "cross-border sales" policy that in effect permits the sale of cars certified to California standards in states that are contiguous to those that have adopted California standards.[56] Indeed, members of Congress from Maine have urged EPA to extend this cross-border sales policy to dealers in Maine because they claim that 125 out of 170 Maine dealers rely on vehicle trades with Massachusetts dealers. While they explained that those in southern Maine are most affected, even dealers as far north as Bangor trade with Massachusetts dealers.[57]

It is important that the states adopt OTC LEV as soon as possible because the air quality benefits from the program will not be realized immediately. This delay in air quality benefits is due to the leadtime requirement in section 177 and the time required for fleet turnover. For the California standards to apply in another state, section 177 of the Act requires that California and the adopting state adopt the standards at least two years before commencement of the model year in which the LEV standards are to apply. Due to the phase-in schedule for the LEV program and the time required for fleet turnover, the maximum benefit for LEV would not be realized until 2028.

It is also very important that the emissions sources in question here are mobile. Residents of particular states drive their cars into other states, and may even relocate to such other states. This may be particularly true in the northeast, where there is a high concentration of large metropolitan areas and a very dense transportation infrastructure that allows people to drive into and between these big cities. For this reason, it makes particular sense to ensure to the maximum extent possible that the fleet of cars throughout the region meet the strictest emissions standards needed for emission reductions in the more polluted areas.

For these business and environmental reasons, industry and government organizations, including auto dealers and states, have urged that if the program is to be adopted, all states in the region should do so.[58] Requiring that different cars meeting LEV standards be sold in different parts of the same state, in a potential patchwork across the region, could create business difficulties and could also compromise the intended environmental benefits of the program. Indeed, congressional debate over the adoption of section 177 reflected this concern.[59] Presumably due to these concerns, a number of states in the OTR have actually adopted legislative authority or actual regulations to implement the LEV program under section 177 that would go into effect on the condition that some number of other neighboring states in the region likewise implement the program.

Finally, EPA believes that its action in approving state volatility controls as necessary under section 211(c)(4)(C) constitutes a precedent for considering business practices to conclude that the program should apply state-wide, even if it may not have been environmentally necessary in that case across the entire state. In that case, EPA approved New York's adoption of volatility controls as necessary throughout New York, even in areas that were in attainment for ozone, in part based on the fact that the pipeline distribution network for gasoline made the supply of different gasoline to different parts of the state difficult for business and for program administration. Therefore, EPA concluded that the need for the program in part of the state justified allowing New York to adopt it state-wide under section 211(c)(4)(C).[60]

EPA is not now proposing that Virginia adopt the OTC LEV program state-wide, but requests comment on this issue. Congress designated only the northern portion of Virginia that is part of the Washington, D.C. metropolitan area as part of the OTR. Therefore, Congress clearly intended that Northern Virginia can be treated separately from the remainder of Virginia for the purposes of ozone transport, and that pollution control in northern Virginia is particularly important for attainment of the ozone NAAQS in the northeast. Also, there has been no motion under section 176A to extend the OTR to the rest of Virginia on grounds that the rest of the state contributes significantly to nonattainment in the region.

However, certain commenters questioned a state's authority to adopt California standards in part of a state. Though EPA disagrees with such comments, as discussed below, EPA requests comment on whether its final action should require Virginia to adopt the OTC LEV program state-wide. While EPA believes that there is good reason generally for the program to apply state-wide and region-wide in the OTR, EPA does not believe that state-wide application is legally required under section 177. Section 177 was clearly designed to deal with nonattainment of standards. This is consistent with the heading for section 177: "New Motor Vehicle Standards in Nonattainment Areas."[61] Section 177 does not require statewide implementation of California standards; nor do any of the explicit requirements of section 177 imply a requirement for statewide implementation. Section 177 merely requires that the state adopt standards that are identical to the California standards. EPA believes it is most reasonable to interpret the geographical area in which the standards apply to be a part of the California program that is not an aspect of the term "standards" in section 177(1). Of course, other states applying the California standards will necessarily apply them in a variety of places different from California. And the underlying rationale for the identicality requirement that other states not adopt standards creating a "third vehicle" is not implicated by limitation of the program to part of a state.

(e) Conclusions regarding need for OTC LEV (or LEV-equivalent) for purposes of attainment by the dates provided in subpart 2 of part D of title I.

EPA's approach has been to analyze the reductions needed in the OTR for purposes of attainment, and then the

[56] See letter from Charles N. Freed, Director, Manufacturers Operations Division, U.S. EPA, to interested automobile manufacturers (Nov. 16, 1993).

[57] See letter from Rep. Olympia J. Snowe, U.S. House of Representatives, to Carol Browner, Administrator, U.S. EPA (July 18, 1994); letter from Thomas T. Brown, Jr., Executive Vice President, Maine Automobile Dealers Association, to Sen. William Cohen, U.S. Senate (June 10, 1994).

[58] See, e.g., letter from Robert A. Beck, Vice President, Environmental Affairs, Edison Electric Institute, to U.S. EPA (June 3, 1994); letter from Helene G. Goldberger and Joan Leary Matthews, Assistant Attorneys General, State of New York Department of Law, to U.S. EPA (June 2, 1994).

[59] See H.R. Rep. No. 294, 95th Cong., 2nd Sess., 309–311 (1977), reprinted in Legislative History of the Clean Air Act Amendments of 1977 at 2776–78.

[60] See 54 FR 26030, 26033 (June 21, 1989); 58 FR 12656, 12659 (March 26, 1989).

[61] See letter from EPA Administrator William Reilly to Elizabeth Haskell, Virginia Secretary of Natural Resources (January 7, 1993).

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options available to achieve those needed reductions. As discussed above, EPA believes that a 50% to 75% reduction in NO_X emissions throughout the OTR and VOC emissions in and near the urban areas will be necessary for attainment throughout the OTR. This range is based on studies that used a 1985 emissions baseline. Updated inventory information indicates that the 1985 inventory underestimated actual emissions. Therefore, EPA believes at least 50% to 75% emissions reductions, and possibly more, are needed from the 1990 emissions baseline. EPA's modeling analysis has focused generally on the inventory in the year 2005. As discussed in section IV.A.2.(a), the percentage reductions necessary from the 1990 baseline for purposes of attainment do not change over time and do not depend on EPA's choice of 2005 for purposes of modeling. Still, control options for achieving those reductions by a particular time can vary, if it takes time for certain measures to be developed or to be implemented and to achieve reductions. Also, the growth that states must counteract in order to achieve the percentage reductions from the 1990 baseline will continue to rise over time. EPA's conclusion that the OTC LEV program is necessary for attainment in the OTR applies for all of the serious and severe areas with attainment deadlines of 1999, 2005 and 2007.

Based on the analysis focusing on the 2005 inventory, EPA believes that the OTC LEV (or LEV-equivalent) program is necessary for the severe nonattainment areas in the OTR to attain by the 2005 deadline. EPA believes there is no basis to find that its conclusion that the OTC LEV (or LEV-equivalent) program is necessary would be different for emissions that contribute to nonattainment in the New York-New Jersey-Connecticut severe area, which has a 2007 attainment deadline. The control options EPA assessed will not achieve such greater reductions in the extra two years so as to make up the shortfall in reductions needed for attainment without the LEV program.

Also, it is important to note that each of the states in the New York-New Jersey-Connecticut nonattainment area needs the OTC LEV (or LEV-equivalent) program in order for the other two to reach attainment by 2007. These three states are part of a common airshed and represent a single area in which pollutants from VOC and NO_X emissions mix to form a plume of high ozone concentrations. In addition, there is considerable interstate travel by commuters between these states within this nonattainment area such that non-LEV vehicles from one state would reduce the effectiveness of a LEV program in the adjacent states. For similar reasons, these states may also need the LEV (or LEV-equivalent) program in order that the southern New Jersey-Philadelphia nonattainment area (that abuts the New York-New Jersey-Connecticut area) may attain by 2005.

EPA further believes that the OTC LEV (or LEV-equivalent) program is needed in the OTR in order for serious areas with a 1999 attainment deadline to attain on time. Such areas, including the northern serious areas downwind of the New York-New Jersey-Connecticut area and western/northwestern New England, face a need for tremendous reductions on a very fast track in order to attain by 1999. Since EPA believes that other reasonable and practicable options are not available to achieve the entire shortfall in emissions reductions necessary for timely attainment, even the limited reductions that the OTC LEV program would achieve in model year 1999 are actually necessary. And the program is not impracticable or unreasonable for this purpose, since the costs in 1999 will be limited in proportion to the limited vehicles that will meet the standards during that first model year.

Further, EPA believes the manner in which areas actually demonstrate that they ultimately achieve attainment further supports the conclusion that the OTC LEV (or LEV-equivalent) program is necessary for the serious areas to attain by 1999. According to EPA guidance, attainment is reached when an area experiences no more than three exceedances of the ozone NAAQS over a three-year period.[62] In other words, air quality that results in no more than one exceedance of the NAAQS per year averaged over three years will be sufficient for attainment, and three years of such data are necessary to demonstrate that the state has achieved such air quality.

The Clean Air Act attainment requirements take into account that states may not be able to achieve air quality improvements two years prior to the attainment year deadline in order to be able to show attainment over a three-year period ending by that deadline year. Under section 181(a)(5) of the Act, a state may apply to EPA for a one-year extension of the attainment deadline specified in section 181 if the state has complied with all SIP requirements and the area in question has experienced no more than one exceedance of the ozone NAAQS during the deadline year, containing the attainment date. EPA may grant up to two one-year extensions under this provision. Of course, in order to achieve the NAAQS and be eligible for redesignation to attainment, the states must sustain the air quality improvements achieved in order to have not more than one exceedance for each of the two extension years, and are likely to have to control growth in emissions in order to do so.

Serious areas in the OTR may need to rely on extensions of the attainment deadline under section 181(a)(5) in order to avoid a finding of failure to attain (and the consequent "bump-up" to a severe classification with a 2005 attainment date).[63] EPA believes it is highly likely, in such a case, that OTC LEV (or LEV-equivalent) will be necessary to achieve reductions in order to offset growth and sustain attainment-level air quality through the 2000 and 2001 extension years. OTC LEV would generate increasing reductions in those years, due to fleet turnover.

In sum, since OTC LEV (or LEV-equivalent) is necessary to bring serious and severe areas stretching from Washington, DC to Portsmouth, New Hampshire into attainment by the 1999, 2005, and 2007 deadlines applicable to those areas, and because the reductions from OTC LEV (or LEV-equivalent) will be needed in areas located in a broad area extending from the south through the northwest of each of those areas and nearby locations from which vehicles may travel and be traded, EPA proposes to conclude that OTC LEV is necessary throughout the OTR to bring those areas into attainment by those dates.

3. Need for OTC LEV (or LEV-Equivalent) Program for Purposes of Maintenance.

(a) Legal Relevance of Maintenance.

EPA discussed the timing of reductions from the OTC LEV program and the relevance of maintenance to its inquiry at length in the April 26 proposal. See 59 FR 21728–21730. The program would not achieve substantial reductions until after its first

[62] This is assuming the area has complete ozone monitoring data. An adjustment is specified in the ozone NAAQS to account for missing data. Where data are incomplete, the number of exceedances that would be expected had the data been complete is calculated to determine the attainment status of the area; See 40 CFR 50.9 as interpreted by Appendix H; "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990." 57 FR at 13506 (April 16, 1992); Memorandum from John Calcagni, former Director of EPA Air Quality Management Division to Regional Air Division Directors, "Procedures for Processing Requests to Redesignate Areas to Attainment." (Sept. 4, 1992.)

[63] The available evidence described in this notice indicates strongly that these areas will not be able to avoid a bump-up without relying on the one-year extensions available under section 181(a)(5).

implementation in model year 1999. There is much evidence that the nonattainment problem in the severe areas is a regional problem in origin, and that the OTC LEV program is therefore needed throughout much of the region to prevent contribution to nonattainment in the severe areas. In addition, however, EPA believes that the states in the OTR need the program to avoid interference with downwind maintenance of the NAAQS even after it is achieved.

While EPA believes it should consider this maintenance need here, it must have legal authority to do so. In the April 26 notice, EPA raised this issue because the language in section 184(c) describing the basis for an OTC recommendation, EPA's obligation in reviewing it, and EPA's obligation to explain why any control measure is not necessary all reference necessity "to bring an area in such region into attainment by the dates provided by this subpart" and omit any reference to maintenance. Nevertheless, EPA currently believes that it has legal authority to consider maintenance under section 184, and in any case has independent authority for the action proposed here on maintenance grounds directly under sections 110(k)(5) and 110(a)(2)(D). EPA believes that these sections of the Act, together with the overall structure of title I, support this conclusion.

To be sure, other provisions of the Act explicitly distinguish between "attainment" and "maintenance." Beginning with the overall goal of healthful ambient air quality, section 109(b) requires EPA to issue ambient air quality standards "the attainment and maintenance of which" are necessary to protect the public health or welfare. The current statutory structure as revised in the 1990 Amendments, however, reflects a difference between the manner in which Congress addressed states' attainment and maintenance obligations with respect to their own independent air quality and the manner in which Congress addressed states' obligations to prevent contribution to downwind nonattainment and interference with downwind maintenance. In sum, EPA believes that this new structure establishes particular time-frames for states to address attainment separately from maintenance to protect their own air quality, but left much greater discretion for EPA to insist that states address these concerns at all times when states' emissions cause harm in other states.

Prior to 1990, initial SIPs due nine months after EPA promulgation of a NAAQS were to include programs designed both to attain and thereafter maintain the standards. See prior section 110(a)(2) (B) and (D) and section 172(a). In 1990, for areas designated as nonattainment areas, Congress specified requirements for attainment and maintenance in discrete provisions that provide for discrete SIP submissions to address these two separable concerns. Section 172 continues to require submission of a SIP providing for the attainment of the NAAQS in nonattainment areas. The subpart 2 ozone program specifies deadlines for submission of a variety of SIP revisions, including attainment demonstrations for moderate and above areas. Maintenance considerations for nonattainment areas were specifically relocated to a new section 175A, which provides that states are to submit plans, including additional control measures, as necessary to ensure maintenance for at least 10 years following redesignation to attainment. See section 175A(a). Significantly, section 175A includes no requirement that a state adopt measures to address transport of pollutants that may interfere with maintenance downwind.[64]

Consistent with this new structure, Congress changed the requirement formerly codified at section 110(a)(2)(D) that required SIPs to include a permit program for stationary sources as necessary to assure that NAAQS "are achieved and maintained." The new section 110(a)(2)(C) simply requires regulation of stationary sources as necessary to assure that NAAQS "are achieved." Thus, it appears that Congress specifically deleted references to maintenance in section 110(a)(2) where it believed that to be appropriate in light of the new structure and new section 175A.[65]

[64] One might assume that an area that is in attainment and maintains that status could not interfere with attainment or maintenance downwind. Intuitively, one might not expect a "clean air" area to cause other areas to have "dirty air." But this is not the case. Areas that meet the standard may nonetheless have emissions that interfere with attainment or maintenance downwind. Indeed, Congress's decision to require control measures such as RACT and nonattainment new source review even in attainment areas throughout the OTR under section 184(b) indicates Congress understood that "clean air" areas could contribute to "dirty air" downwind.

[65] Congress did leave a reference in section 110(a)(2)(C) to "a permit program as required in parts C and D." The part C permit program codified at section 165 of the Act is designed to prevent significant deterioration of air quality in attainment areas, and hence would only be relevant to maintenance, not achieving attainment. One might argue from this that Congress intended the reference to attainment in section 110(a)(2)(C) to include maintenance, as well. But, the better view may be that Congress simply overlooked the need to delete the reference to part C in light of its specific deletion of the reference to maintenance.

However, Congress made no such change to the pollution transport provisions of section 110(a)(2). The transport provision was significantly broadened from the former section 110(a)(2)(E) to new section 110(a)(2)(D), as discussed above. Nonetheless, in changing the language of the transport provision, Congress saw fit to retain the reference to maintenance. Indeed, Congress had to specifically focus on this issue when it changed the standard from "prevent[s] attainment or maintenance" in the former provision to "contributes significantly" to nonattainment and "interfere[s] with maintenance" in the new provision. This indicates Congress specifically sought to retain maintenance as a criterion for pollution transport under section 110(a)(2) at the same time it was deleting maintenance as a criterion for the permit provisions in light of section 175A.

EPA believes this structure is consistent with the absence of any requirement that maintenance plans under section 175A address pollution transport. Thus, the only provision in the Act that requires states to prevent emissions within their borders that interfere with maintenance in another state downwind is section 110(a)(2)(D). This may be particularly important due to the staggered attainment deadlines under section 181 for ozone. As is the case in the northeast, severe areas with longer attainment deadlines may be located upwind of less polluted nonattainment areas with shorter attainment deadlines. Even if the downwind areas can attain on time, the upwind areas may continue to generate substantial emissions interfering with downwind maintenance until or even beyond the upwind area's longer attainment deadline.

As discussed generally above, EPA believes it has authority to act under section 110(k)(5) at any time, even prior to submission of attainment demonstrations under section 182, to require submission of measures EPA believes are necessary for compliance with section 110(a)(2)(D). See 59 FR at 21730 (explaining EPA's independent basis to issue SIP call under section 110(k)(5) to adopt measures necessary for compliance with maintenance aspect of section 110(a)(2)(D)). It is especially important that EPA act now, because the LEV program depends on vehicle fleet turnover that will take an unusually long time to generate the needed emissions reductions. If EPA waits for the states to develop their attainment plans, and where applicable, their maintenance plans, the opportunity to ensure that necessary emissions

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reductions from the LEV program are achieved beginning in 1999 and growing thereafter may be irrevocably lost. Any delay in beginning the fleet turnover to LEV vehicles in model year 1999 will diminish the emissions benefits in the years following. It is therefore necessary for the states to act now to adopt OTC LEV and appropriate for EPA to make a finding of substantial inadequacy now with respect to that program for the purposes of maintenance. For the same reasons discussed generally above, EPA believes an environmentally conservative approach to evaluating the need for the LEV program to avoid interference with maintenance is warranted here.

EPA believes that maintenance is a proper consideration under section 184(c), too. To be sure, that provision references timely attainment and omits maintenance. However, section 184(c)(5) provides for an EPA finding of substantial inadequacy under section 110(k)(5) that states' SIPs do not meet the requirements of section 110(a)(2)(D), which specifically prohibits emissions in states from interfering with maintenance in downwind states. Moreover, EPA believes there is an adequate basis to reasonably interpret section 184(c) to include maintenance. Specifically, EPA believes that it should understand "attainment" to include "maintenance" where the issue is whether measures are "necessary" to comply with pollution transport requirements.

The very emphasis on the "necessary" standard under section 184 supports this conclusion. In contrast, EPA's recent determination that "attainment" under section 182(f) does not include maintenance involved a different standard. There, EPA's Conformity General Preamble explained that the NO_X exemption test in section 182(f)(1)(A) where additional NO_X reductions "would not contribute to attainment" does not involve maintenance considerations. See 59 FR 31238. EPA stated that Congress could reasonably have believed it appropriate to require states to impose specified requirements on NO_X sources for areas in nonattainment, but that states might decide for themselves whether to impose such controls for maintenance purposes, even if such controls would "contribute" to maintenance. *Id.* EPA noted, however, that this distinction might not apply where the test is whether control measures are "necessary" for attainment and maintenance is not referenced, as here. *Id*

Where measures are "necessary" for maintenance, EPA does not believe it makes sense to let states decide for themselves whether to adopt the measures. Inherent in the "necessary" determination under section 184 is the conclusion that the states really have no choice: They need to adopt the measure in order to avoid interfering with downwind maintenance. Unlike the section 182(f) "contributes" context, as long as EPA determines that it is necessary, there really is no choice. It seems less reasonable to believe Congress intended that section 184 would not reach a measure in fact necessary for maintenance, when the result of a failure to implement the measure would therefore be downwind areas' relapse into nonattainment, perhaps shortly after the attainment dates in subpart 2. Where the necessary standard applies in the interstate pollution context, EPA believes it is sensible to understand "attainment" to include "maintenance."

Finally, EPA believes its discussion of section 176A in its April 26 proposal identifies an additional statutory basis to support this sensible conclusion. That is, the OTR in section 184 is established under section 184(a) "within the meaning of section 176A(a)." Section 176A authorizes a transport commission under that provision to "[r]ecommend to the Administrator such measures as the Commission determines to be necessary to ensure that the plans for the relevant states meet the requirements of section [110(a)(2)(D)]." This presumably includes both the attainment and maintenance aspects of section 110(a)(2)(D). In all other respects, EPA's obligations in response to a transport commission under section 176A are less strict than under section 184. It would therefore be odd if section 176A required EPA to consider maintenance in response to a commission's recommendations, but that EPA would not be required to do so under section 184. This is particularly so since it seems foolhardy to consider measures necessary for attainment at the exclusion of those necessary for maintenance.

Therefore, it seems reasonable to interpret the OTC under section 184 as a creature of both sections 184 and 176A. Section 184 simply adds stringency to EPA's obligations in responding to recommendations from the OTC, since Congress specifically identified the serious transport problem between the many northeast states as surely deserving the attention of such a regional commission. Thus, it makes sense to believe that Congress intended the particular dates in section 184 to highlight the specific deadlines in the subpart 2 ozone program that the OTC is specifically charged with addressing. But in so doing it does not seem as reasonable to believe that Congress intended to displace the more general authority of a commission under section 176A to make recommendations concerning the maintenance aspects of section 110(a)(2)(D). Thus, EPA believes it is most reasonable to understand the references in section 184(c) to attainment to include maintenance through section 176A, as well. Even if operating under sections 176A, 110(k)(5), and 110(a)(2)(D) directly, EPA believes it may issue a SIP call at this time under section 110(k)(5) requiring states to adopt the OTC LEV program as necessary to avoid interfering with maintenance in other states.

(b) Technical Analysis of Need for OTC LEV (or LEV-Equivalent) Program for Maintenance.

EPA believes that the OTC LEV program is necessary for all of the nonattainment areas to maintain the ozone NAAQS, even after they attain. This is because EPA's modeling analysis projects very high rates of growth in emissions in the OTR that must continue to be neutralized even after controls sufficient for attainment by the attainment deadlines are in place. Based on EPA's analysis discussed in sections II.A.(a), (b) and (c), the Agency does not believe that other available control options are sufficient to attain without OTC LEV (or LEV-equivalent). Since EPA is not aware of sufficient additional control options to counteract growth following attainment, EPA believes, *a fortiori*, that OTC LEV will be necessary for these areas to demonstrate maintenance of the NAAQS over two consecutive ten-year periods following redesignation (as required by section 175A of the Act).

Not only does EPA believe that the OTC LEV (or LEV-equivalent) program is necessary for the nonattainment areas in the OTR to maintain the ozone NAAQS, but EPA believes that this program will play an increasingly important role in counteracting growth over the maintenance periods. Of course, implementation of the program in model year 1999 will not begin to play a role until well into the maintenance periods for the marginal and moderate areas that attain the standard by 1993 and 1996, respectively. Assuming areas could achieve redesignation in their attainment years, for the serious and severe areas that have attainment deadlines under section 181 of 1999, 2005, or 2007, the OTC LEV program will contribute to both attainment and maintenance of the NAAQS. Due to the

phase-in schedule for the LEV program and the time it takes for the fleet to completely turnover, the LEV program will continue to accrue additional benefits through the year 2028. In 2015 (the last year for which EPA has done a projection analysis), emissions reductions due to the OTC LEV program will be 1200 tons of NO_X per day and 670 tons of VOC per day. This is a 39% reduction in NO_X highway vehicle emissions and a 38% reduction in VOC highway vehicle emissions compared to emissions in 2015 without the OTC LEV program.

The following table presents VMT growth rate information averaged between 1990 and 2005 for mobile source emissions within the OTR. The table focuses on growth estimates for mobile sources as the most relevant for assessing the impact of LEV in the OTR, since LEV affects emissions from this source category. These growth rates are derived from the EPA's MOBILE5 Fuel Consumption model, and are taken from a study prepared under EPA contract.[66]

Emissions rates for mobile sources are calculated by multiplying emissions factors developed for the fleet by projected activity levels, characterized as projected vehicle miles travelled (VMT). Growth in VMT tends to neutralize the downward trend in emissions factors resulting from turnover in the fleet to vehicles meeting federal tier 1 standards, and implementation of advanced inspection/maintenance programs. As the vehicle fleet turns over, fewer old cars with less advanced technology will remain on the road, and the downward trend in emissions factors will slow over time. Therefore, EPA expects that growth in VMT will overtake current programs to increase growth rates more and more over time beyond the 1990–2005 time frame in the table. Of course, the OTC LEV program would be helpful in increasing and extending the downward trend in emissions factors to offset growth in VMT and counteract overall emissions growth.

TABLE 5.—GROWTH RATES AND PROJECTED CHANGES IN MOBILE SOURCE EMISSIONS FOR OTR STATES, 1990–2005

OTR State	1990–2005 VMT growth rate, %/year
ME	2.2
NH	2.6
VT	2.1
MA	2.2
RI	2.2
CT	2.2
NY	1.9
NJ	2.3
PA	2.0
DE	2.7
MD	2.4
Wash., DC	1.8
VA	2.6

4. Relevance of EPA Transport Policy.

As EPA discussed in its April 26 proposal, EPA is developing a policy to address the particular problem where overwhelming transport from upwind areas with later attainment dates is such a dominant factor accounting for nonattainment in a downwind area with an earlier attainment date that the downwind areas will not be able to attain by the deadline. See 59 FR at 21728–29. This problem was specifically raised in the OTR for areas in Massachusetts in letters from the Massachusetts Department of Environmental Protection and the Conservation Law Foundation.[67] Of course, one solution is for the responsible upwind areas to relieve their overwhelming contribution so that the downwind areas may attain by the specified year. But, as EPA described in its April 26 proposal, in certain cases this could be at odds with the overall title I scheme that establishes later deadlines for attainment in more polluted areas and also establishes a graduated program of additional and more stringent requirements to be accomplished over the longer timeframe. It might be appropriate for EPA to interpret the Act so that, if it is impracticable to accelerate controls in the upwind areas and other facts are shown, then the downwind areas might have additional time to reach attainment beyond the section 181(a)(1) dates.

Since EPA's April 26 proposal, EPA staff has continued to work with a group of officials from states across the country that are likely to be affected, including officials from Massachusetts, Maine, and other states to develop a policy to address this problem. This policy, described in a September 1, 1994 memorandum from Mary D. Nichols, Assistant Administrator, to EPA regional offices, provides that states seeking to have the Clean Air Act interpreted so as to allow them a later attainment deadline would have to make certain showings including a showing of overwhelming transport.[68]

EPA does not expect that the states will be able to complete such analyses and have EPA make a determination by the time EPA takes final action on the OTC recommendation. Nevertheless, EPA recognizes that pervasive transport in the OTR underlies the creation of the OTC and the basis for EPA's proposed approval of the OTC LEV recommendation. EPA expects that, on this basis, a few areas in the OTR are likely candidates to make valid demonstrations that the Act should be interpreted to allow them more time to attain because overwhelming transport from upwind areas with later attainment deadlines will unavoidably prevent earlier attainment.

While this has not yet occurred, EPA can anticipate the implications here if it does. If downwind areas ultimately are subject to later attainment deadlines than are currently believed to pertain, then emissions reductions during the "extension period" would apply to reaching attainment rather than to maintenance of the NAAQS after attainment. To the extent EPA currently believes that the OTC LEV (or LEV-equivalent) program is necessary for maintenance in such areas after the section 181(a)(1) attainment year (and through any "extension period"), then such reductions likewise would be necessary for attainment if EPA grants that such areas have the "extension period" to attain. EPA does now believe that areas in the OTR will need the OTC LEV (or LEV-equivalent) program to maintain the NAAQS in the years after the section 181(a)(1) deadlines. EPA therefore expects that the OTC LEV (or LEV-equivalent) program will ultimately be necessary in those years for such areas that may have longer under the

[66] See E.H. Pechan and Associates, Regional Oxidant Modeling of the Clean Air Act Amendments: Default Projection and Control Data (Draft). Prepared under EPA Contract No. 68–D0–0120, Work Assignment II–60 (April 1993).

[67] See letters from Renee Robins, Conservation Law Foundation to John Seitz, Director, EPA Office of Air Quality Planning and Standards (Jan. 25, 1994); from Barbara Kwetz, Director, Massachusetts Division of Air Quality Control to John Seitz, Director, EPA Office of Air Quality Planning and Standards (Jan. 14, 1994); from John Seitz, Director, EPA Office of Air Quality Planning and Standards to Barbara Kwetz, Director, Massachusetts Division of Air Quality Control (March 21, 1994); from John Seitz, Director, EPA Office of Air Quality Planning and Standards to Renee Robbins, Conservation Law Foundation (March 21, 1994).

[68] See Memorandum form Mary D. Nichols, Assistant Administrator for Air and Radiation, to Air Directors of EPA Regional Offices, entitled, "Ozone Attainment Dates for Areas Affected by overwhelming Transport" (Sept. 1, 1994).

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forthcoming transport policy to actually attain the NAAQS.

In addition, even if attainment dates are not extended pursuant to a transport policy, EPA believes that it may conclude that certain serious areas in the OTR will not be able to reach attainment by 1999, nor to qualify for the one-year extensions described earlier. Such areas would then be subject to "bump up" under section 181(b)(2) of the Act and would have until 2005 (or, if sooner, as expeditiously as practicable) to attain. EPA believes that the OTC LEV (or LEV-equivalent) program will ultimately be necessary to achieve reductions in the period after 1999 for any such areas to attain.

B. Consistency With Section 177 of the Clean Air Act

1. Introduction

Section 184 requires that in reviewing the recommendation of the OTC, EPA must evaluate whether the additional control measures are "otherwise consistent with this [Act]." In general, states, with the exception of California, are prohibited under section 209(a) of the Act from regulating emissions from new motor vehicles. However, section 177 of the Act provides an exception from this prohibition that allows a state which has plan provisions approved under part D of title I of the Act to adopt California's standards relating to control of emissions from new motor vehicles and to take other actions otherwise prohibited under section 209(a) if—

(1) Such standards are identical to the California standards for which a waiver has been granted for such model year, and

(2) California and such state adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator). Nothing in this section or in Title II of this Act shall be construed as authorizing any such state to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle or engine different than a motor vehicle or engine certified in California under California standards (a "third vehicle") or otherwise create such a "third vehicle".

42 U.S.C. § 7507.

Section 177 of the Act provides the only exception in the Act from preemption of state standards for control of emissions from new motor vehicles under section 209(a). The control measures recommended by the OTC must therefore be consistent with section 177. EPA noted in the NPRM that four aspects of the OTC recommendation may implicate section 177 of the Act. See 59 FR 21735. First, the OTC recommends that EPA require use of California LEVs but specifically states that adoption of California reformulated gasoline is not a part of the recommendation. Second, the recommendation does not require inclusion of the ZEV sales requirement in any state regulations except to the extent the sales requirement is required under section 177. Third, EPA noted that the recommendation did not explicitly incorporate California's regulations. Instead, the recommendation merely stated that the OTC recommended adoption of a low emission vehicle program that includes certain elements detailed in the recommendation, pursuant to the requirements of section 177. EPA also noted that the OTC recommended incorporation of California's fleet NMOG standards and that some commenters believed incorporation of the NMOG standards was inconsistent with section 177. Finally, EPA requested comments regarding whether section 177 allows a state to adopt a California vehicle program in a portion of the state, rather than the entire state. This final point is not addressed in this section of the preamble, but is addressed in section IV.A.2.(c)iii., above.

Since the publication of the first NPRM, EPA has received comments indicating that other aspects of the OTC's recommendation may violate section 177. One commenter asserted that a state's incorporation of the California LEV program after the program is initiated in California may create a "third vehicle" because of the operation of California's emissions credit banking regulations. Also, a commenter questioned whether a state without a current nonattainment area or an approved state implementation plan can impose the California LEV requirement.

EPA today proposes to find that the OTC's recommendation for EPA to require implementation of the OTC LEV program throughout the OTR is consistent with section 177. Moreover, EPA proposes to find that implementation of the ZEV sales requirement is not necessary in order for the recommendation to be consistent with section 177. Therefore, EPA proposes not to require that states in the OTR adopt the ZEV sales requirement. Individual states may, at their discretion, incorporate the ZEV sales requirements into their programs.

2. California Fuel Regulations

EPA proposes to find that the OTC's failure to include California's clean fuel requirements in its recommendation does not violate section 177. EPA believes that the failure to include the California fuels requirements does not violate the requirement of section 177 that standards must be "identical to the California standards for which a waiver has been granted for such model year." EPA also believes that the lack of California fuel requirements does not violate the "third car prohibition" of section 177.

(a) Identicality Requirement.

Both federal courts that have reviewed the issue have found that failure of a state to promulgate California's fuel regulations does not violate the section 177 requirement that an adopting state's standards be identical to California's standards. *Motor Vehicle Manufacturers Association* v. *NYDEC*, 17 F.3d 521 (2d Cir. 1994) and *American Automobile Manufacturers Association* v. *Greenbaum*, No. 93–10799–MA (D. Mass. October 27, 1993), (the "New York case" and the "Massachusetts case", respectively). These decisions are in accord with EPA's position on this matter. The Agency filed a brief as amicus curiae with the Second Circuit in the New York case, and also filed a later brief as amicus curiae in the First Circuit on the manufacturers' appeal in the Massachusetts case.[69] Both briefs have been placed in the docket for this rulemaking.

California's clean fuel provisions were not part of California's waiver application under section 209. In fact, state standards that are related to fuel as opposed to emissions of motor vehicles, are not even governed by section 209(a). State fuel provisions are addressed separately in section 211 of the Act, which provides a substantially different regime for state fuel standards. Under section 211, states may regulate fuels if they can demonstrate to EPA that such regulation is necessary to meet federal air quality standards, except that California may regulate fuel without such a demonstration. Therefore, as California has not asked for a waiver for its fuel regulations, nor is it required to do so under the Act, such standards are

[69] The manufacturers later requested that the appeal be withdrawn with regard to all issues except one relating to lead-time, which is not at issue for EPA's decision whether to approve OTC recommendation but is discussed below in connection with the model year proposal. On August 3, 1994, the First Circuit granted the manufacturers' request to withdraw their appeal on these issues. (*AAMA* v. *Greenbaum*, No. 93–2276 (1st Cir., August 3, 1994.)

not "standards * * * for which a waiver has been granted" and thus are not subject to the identicality provisions of section 177. Were the Agency to find that states must also adopt California's fuel standards to meet the section 177 identicality requirements, then every state wishing to adopt California's motor vehicle standards would be required to meet not only the requirements of section 177 but also the requirements of section 211, so that it could simultaneously adopt associated fuel controls. EPA believes that this would be an incorrect interpretation of the Act, given the structure of the Act and its explicit differentiation between vehicle and fuel requirements. For the reasons provided in this notice and outlined by EPA in its amicus curiae briefs and by the courts in the New York and Massachusetts cases, EPA proposes to find that no conflict with section 177 exists on this point.

(b) Third Vehicle Prohibition.

EPA also proposes to find that the lack of a clean fuel requirement does not violate the "third vehicle" prohibition of section 177. Manufacturers claim that the difference in sulfur levels between the fuels sold in California and the northeast would cause deleterious effects on emission control systems on California LEV vehicles, which would require certain design changes to manage these effects. This, they claim, would require them to manufacture vehicles for the OTR that would differ from the vehicles they expect to sell for California, and would thus violate section 177's "third vehicle" prohibition.

The manufacturers' arguments fail on several grounds. First, nothing in the OTC recommendation requires any manufacturer to produce any vehicle different from a California certified vehicle. In fact, the OTC recommendation would require that any new car sold in the OTR be a California-certified vehicle. Manufacturers are free to sell cars in the OTC that are identical to those sold in California. Any design changes made by manufacturers would result from a manufacturer's voluntary decision to effect such a change. There is no third vehicle violation where a manufacturer voluntarily decides to sell a third vehicle in a state other than California. The court of appeals in the New York case, responding to a similar "third car" challenge by manufacturers regarding ZEVs, found that whatever design change "the manufacturers choose to install on cars sold in New York is a marketing choice of theirs and not a requirement imposed by the [state]." *MVMA*, 17 F.3d at 538.

Second, the "third vehicle prohibition" should not be read to apply to every design change, regardless of its nature or scope. Section 177 uses the phrase "third vehicle" to refer to "a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards." This statutory language indicates that its meaning is tied to the concept of emission certification, *i.e.* that "third vehicle" should be read to refer to design changes needed to meet certification requirements. This reading is consistent with the purpose of the third vehicle prohibition, which is to reinforce the identicality requirement by prohibiting a state from administering standards identical to California's in a way that actually requires conformance to more stringent standards.

The term "third vehicle" itself suggests it should be so limited. It presumes the existence of "first vehicles" and "second vehicles" (vehicles that meet federal and California standards, respectively). Congress was plainly aware that "first vehicles" include vehicles with widely differing physical characteristics. For example, "first vehicles" include cars both with and without rear-window defrosters. This makes it clear that vehicles may contain minor differences in design that are unnecessary to meet emission standards without creating "third vehicles." The legislative history of section 177 confirms that the "third vehicle prohibition" does not require physical identicality of vehicles and that design changes would not create a "third car violation" unless they create an "undue burden" on manufacturers.[70] Though one manufacturer has stated in other proceedings that it may need to use a different converter assembly (one that is bolted, not welded) on vehicles sold in the OTR, the manufacturers have not provided evidence indicating that significant design changes creating an "undue burden" are required to implement the OTC LEV program without California fuels.

3. ZEV Sales Requirement

EPA proposes to find today that the ZEV sales requirement is not required to ensure consistency with section 177. Therefore, as the OTC requested inclusion of the ZEV sales requirement only "to the extent that a Zero Emission Vehicle sales requirement must be a component of a LEV program adopted under Section 177," EPA proposes to approve the OTC recommendation without the ZEV sales requirement. Individual states within the OTC may at their option include such a requirement in the programs they adopt.[71]

As EPA discussed in the NPRM, the first question presented by this issue is whether the ZEV sales requirement is a "standard relating to control of emissions." See 59 FR at 21735. EPA initially determined, in letters sent to New York and Virginia state officials on January 7, 1993, that the ZEV sales requirement is not a standard, based on the belief that it had no direct effect on emissions associated with the LEV program, given the existence of the NMOG fleet average requirement. EPA stated: "The ZEV sales mandate simply limits the flexibility otherwise accorded manufacturers to choose the mix of vehicles produced to meet the NMOG fleet average requirement." *Id.* Therefore, as EPA found that the ZEV sales mandate did not limit the quantity, rate or concentration of NMOG emissions, EPA stated that the mandate was not an emission standard, but instead was an accompanying enforcement procedure. In fact, the OTC stated in documents accompanying its recommendation that the ZEV sales mandate is an accompanying enforcement procedure and is not required by section 177.

Indeed, the ZEV sales requirement does not require that overall tailpipe emissions of NMOG from California vehicles be any lower than they would have been in the absence of the sales requirement. The amount of NMOG tailpipe emissions produced by such vehicles is controlled by the NMOG fleet average requirement, not the sales mandate. However, current EPA data indicates that the ZEV sales requirement clearly will have a beneficial effect on emissions of evaporative hydrocarbons and tailpipe emissions of NO_X from vehicles in the LEV program.

Therefore, it appears that the determination of whether the ZEV mandate is a "standard" must be based on other factors. An argument that the ZEV sales requirement is not an emission standard would be based on the presumption that "standards" are

[70] See 136 Cong. Rec. at S16976 (Oct. 27, 1990) (report appended to the remarks of Senator Baucus; 136 Cong. Rec. at S16903 (Oct. 27, 1990) (Exhibit 1 to remarks of Senator Mitchell); 136 Cong. Rec. at S16954 (Oct. 27, 1990) (statement of Senator Chafee).

[71] The OTC recommendation explicitly recommended that individual states within the OTR be allowed to implement the ZEV sales mandate if they so choose. EPA believes that incorporation of the ZEV sales mandate into a state's LEV program is not inconsistent with the requirements of section 177. The court of appeals in the New York case similarly found that New York's incorporation of the ZEV sales mandate did not violate section 177's prohibition on sales limitations on California-certified vehicles or section 177's "third vehicle prohibition."

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only the numerical limits placed on sources restricting emissions of particular pollutants. This argument is similar to certain language found in *Motor and Equipment Manufacturers Association* v. *EPA (MEMA)*, 627 F.2d 1095 (D.C. Cir. 1979) the only significant court case to directly deal with the term "standard" in the context of the Act's motor vehicle emission program. EPA argued in that case that the term "standard" referred to "a numerical value setting the quantitative level of permitted emissions of pollutants by a new motor vehicle." *Id.* at 1111. The court neither adopted this definition nor did it take issue with EPA's definition. The court did state that the legislative history "indicates that Congress intended the word 'standards' to mean quantitative levels of emissions rather than regulations involving certification or in-use maintenance restrictions" (emphasis added). *Id.* at 1112. The court also cited *Adamo Wrecking Co.* v. *United States*, 434 U.S. 275,286, 98 S.Ct. 566, 573 (1978), in which the Supreme Court took a very narrow view of the term "emission standards," stating that it only applied to "a quantitative level," not to work practice standards. (*Adamo* was later overruled legislatively twice by Congress. Congress first revised section 112 in 1978 and Congress then revised section 302 in 1990 to ensure that EPA used a more expansive definition of "emission standard.")

However, this approach has some disadvantages. First, it divorces the term "emission standard" from actual emission reductions. Without a mandate to sell cleaner cars, there is no enforceable benefit to having numerical emission "standards" for those cars. In addition, it can be argued that sales requirements do "relate to the control of emissions from new motor vehicles." Moreover, such a determination may have implications for other requirements in the LEV program and other programs, particularly requirements that include averaging, banking and trading, requirements that include fleet averaging, and requirements where a phase-in is used. (If a phase-in is not a standard, could a state require 0% (or 100%) compliance, instead of partial compliance, with a standard being phased in over time?) Moreover, the court in *MEMA* stated that the "only species of emissions control regulation which directly addresses air quality is a standard." *Id.* at 1113. This language seems consistent with a determination that the term "standards" includes sales requirements because without a sales requirement, a numerical limitation on emissions from a type of vehicle by itself has no effect on air quality.

As discussed below, EPA believes that it need not reach a decision on this issue at this time. However, EPA requests comment on whether it is appropriate in the context of this proceeding to decide this issue.

Regardless of whether EPA were to find that the ZEV sales requirement is a standard, EPA believes that incorporation of the sales requirement is not required for the OTC–LEV program to meet the requirements for identicality under section 177. Section 177 allows a state to adopt and enforce "for any model year standards relating to control of emissions from new motor vehicles and * * * engines * * * if other such standards are identical to the California standards for which a waiver has been granted for such model year."

EPA believes that section 177 should not be read to require that once a state has promulgated one California standard for a particular model, the state must adopt all of California's standards relating to the control of emissions from all types of motor vehicles for that model year. The language of section 177 does not require adoption of all California standards for a given model year. Section 177 requires only that if a state adopts motor vehicle standards, such standards must be identical to California standards. Therefore, the identicality requirement only necessitates that the specific standards adopted by the state be identical to the comparable California standards. As long as the state adopts all standards that are necessary to implement a particular California vehicle program,[72] and as long as the state adopts all standards necessitated by the other requirements of section 177 (e.g., the state must not prevent a California-certified car from being sold in the state and must not create a "third car"), the state need not adopt other standards that are not integral to the particular program being adopted.

Thus, as discussed in the NPRM, EPA believes that adoption of the California LEV program does not require adoption of the California heavy-duty engine program. Similarly, EPA believes that section 177 does not require a state to promulgate standards that are clearly segregable from one another.

EPA believes that the ZEV sales requirement is clearly segregable from the rest of the LEV program. The LEV program is essentially comprised of several requirements limiting the quantity of emissions that may be emitted from particular types of vehicles (*e.g.* TLEVs, LEVs) and two requirements mandating sales of such vehicles. The first is the NMOG fleet average. The second is the ZEV sales requirement. Without implementation of either of these mandates, the requirements defining emission levels for types of vehicles are basically unenforceable because, unlike more traditional motor vehicle emission programs, the LEV program separates emission levels from mandates to buy vehicles meeting such emission levels. In other words, a statute defining the levels one must meet for a vehicle to be called a low emission vehicle may have little enforceable emissions value, unless there is an enforceable requirement to manufacture such a vehicle. The NMOG fleet average is the central provision of the LEV program to require manufacture of the low emission vehicles in the program and to obtain enforceable emission reductions from such vehicles. The ZEV sales requirement, on the other hand, is a technology requirement essentially designed to ensure the manufacture of technology-forcing vehicles. It is designed to create a new generation of vehicles. As noted previously, however, the ZEV sales mandate also provides NMOG evaporative and tailpipe NO_x emissions reduction benefits separate and distinct from the NMOG fleet average requirement.

Though the two mandates are complementary, they are not essential for one another. The designs of the vehicles in the LEV program will be based on the emission levels that manufacturers must meet. The mandates merely tell the manufacturers how many vehicles of each type must be built. Each mandate creates a fully functional and enforceable motor vehicle emissions program. Therefore, EPA believes that a LEV program designed to reduce emissions in the northeast that includes the NMOG fleet average may, but need not, include the ZEV sales requirement.

EPA continues to request comment on whether state incorporation of the ZEV sales requirement is necessary to satisfy the identicality requirement of section 177.

4. Incorporation of Minor Provisions of the California LEV Program

The OTC's initial recommendation to EPA does not specifically identify every component of the California LEV program that it intends to incorporate into the OTC LEV program; nor does the recommendation include proposed regulations. Instead the recommendation identifies the main elements of the OTC LEV program and the timeframe for the regulations.

EPA believes that the implicit intent of the recommendation was incorporation of emission standards that were identical to the California LEV program and incorporation of all provisions of California's LEV program necessary to ensure consistency with section 177 for 1999 and later model year passenger cars and light-duty trucks (0–5750 pounds loaded vehicle weight). This intent is evidenced by the implicit language of the recommendation. The recommendation specifically notes that the OTC LEV program is to be applied "[p]ursuant to the requirements of section 177." EPA believes that the listing of the most important provisions of the California LEV program to be incorporated was not meant to imply the exclusion of other provisions necessary to ensure consistency with section 177. The recommendation adopted the OTC LEV program "including" the listed provisions, implying that other provisions would also be included.

EPA's interpretation of the petition is further supported by the Response to Comments document submitted with the recommendation (and in the docket), which clearly states, at page 27, that the recommendation has been made consistent with section 177 and 184 of the Act: The Response to Comments document also notes, at pages 6 and 33, that the provisions of the recommended program were constrained by section 177's identicality requirement. Another indication that the OTC clearly intended the program to be consistent with section 177 is the fact that the recommendation requests incorporation of the ZEV sales requirement only to the extent it is required for consistency. Thus, the OTC was willing to include this controversial provision if consistency depended on its inclusion.

Moreover, the Executive Director of the OTC, Bruce Carhart, stated explicitly, in an April 15, 1994 letter responding to an EPA inquiry, that the OTC's "intention is to maintain identicality with California as required by the Clean Air Act." Mr. Carhart also indicated that the OTC intended to incorporate secondary provisions in California's LEV program into the OTC LEV program. EPA believes that it is appropriate to use this letter as further evidence of the intent of the Commission. Where there is ambiguity in the OTC petition, EPA does not believe that its ability to review the OTC recommendation is limited to examining the explicit language of the recommendation. Certainly, EPA approval of the recommendation cannot include provisions that were not contemplated by the recommendation and do not naturally arise from the face of the recommendation. However, where the recommendation is ambiguous regarding a certain point, EPA believes that, consistent with its requirement to consult with the Commission, it may request clarification of the OTC petition.

Further, under § 184(c)(3), if EPA must interpret a recommendation in a certain way in order to ensure consistency with the Act, and such an interpretation is not inconsistent with the language of the recommendation, then EPA is constrained to use that interpretation.

For these reasons, EPA interprets the recommendation to require emission standards identical to California's LEV standards and to require promulgation of provisions that ensure consistency with section 177.

A commenter notes that the OTC recommendation for the NMOG standard is not consistent with California's NMOG standard for light-duty trucks 3751–5750 lbs. This appears to have been an oversight on the part of the OTC. As the letter from Mr. Carhart shows, the OTC intended separate fleet averages for both classes of light-duty vehicles. Consistent with the discussion above, EPA interprets the recommendation to recommend NMOG fleet averages identical to California's NMOG averages for light-duty vehicles 0–3750 lbs. and for light-duty vehicles 3751–5750 lbs.

EPA does not intend at this time to delineate each portion of the California LEV program that is required for satisfaction of the requirements of section 177. Such determinations will be made in the review of each state plan or in guidance to be issued by EPA later. However, EPA notes that the April 15 letter from Bruce Carhart stated that the following specific portions of the program have been included in the OTC recommendation: The NMOG banking and trading provisions, the relevant exemptions for small and intermediate manufacturers, provisions for hybrid electric vehicles,[73] and reactivity adjustment factors as necessary for California certification.

5. The NMOG Fleet Average

As discussed in the April 26, 1994 NPRM, EPA believes that the OTC's incorporation of the NMOG fleet average does not violate section 177. Even if the identicality provision of section 177 does not require inclusion of the NMOG fleet average, manufacturers have provided no clear argument regarding why inclusion of the NMOG average, which is identical to the NMOG average promulgated by California, violates section 177. Given that identicality with California standards is a primary goal of section 177, any argument that such an identical provision is forbidden by section 177 is dubious on its face. Section 177 was designed to provide manufacturers with assurance that they would not be forced to produce several different types of vehicles to comply with different state emission standards. Manufacturers have provided no evidence that incorporation of the NMOG fleet average will in any way cause manufacturers to produce different vehicles than those certified for use in California.

Moreover, as the Second Circuit articulated in the New York case in the context of the ZEV sales requirement, the fleet average requirement does not violate the requirement of section 177 that states shall not prohibit the sale of California cars. While the NMOG average requires that a certain number of lower-emitting vehicles must be sold in a state to assure compliance, it does not prevent any California-certified car from being sold. Moreover, as the Second Circuit realized, a finding that the fleet average violated section 177 would in effect nullify section 177 for all practical purposes with regard to the LEV program and any other program that uses any sort of averaging or other flexible approach.

EPA believes that it may be appropriate for the states in the OTC to enforce the NMOG fleet average provisions through a regionwide averaging system. EPA has received comments supporting such an enforcement program. EPA intends to issue guidance after this recommendation is approved (if it is finally approved) addressing the legal and policy issues implicated by such a program.

[72] EPA believes that all standards applicable to a segregatable program must be implemented in order to assure that specific vehicles required by a particular program are subject to the same emissions requirements (e.g. a state could not adopt only California's NMOG standards for a LEV without adopting the NO_x and CO standards.)

[73] CARB's LEV program provides for the development and use of hybrid electric vehicles (HEVs) as part of the LEV fleet in California. HEVs are expected to incorporate an electric motor and an auxiliary power unit, such as a combustion engine, to allow for the efficient operation of the vehicle's propulsion system as well as its other systems, like lighting. CARB provides for three different classifications of HEVs in its statutory formula used to calculate a manufacturer's fleet average NMOG value. Additionally, HEVs are tested differently from LEVs. See Title 13, California Code of Regulations, section 1960.1 *et. seq.*

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6. Averaging, Banking, and Trading

One commenter noted that as California's LEV program includes a banking program and, as California's LEV program will start prior to model year 1999, when the state programs under the OTC recommendation would begin, a manufacturer may have banked credits under the California program by the time the 1999 model year begins.

EPA does not believe this raises any question regarding consistency with section 177. Once again, the state regulations do not require the manufacture of a "third vehicle"; nor do they prevent the sale of California certified vehicles in the state, though a slightly different mix of vehicles might be required in the first model year for a manufacturer who takes advantage of California's banking program. This amounts to a business decision by the manufacturer, and it does not create any inconsistency. Moreover, a determination that such a situation would be inconsistent with section 177 would render section 177 a nullity for any program that includes banking, because section 177's lead time requirements make it very difficult for states to begin their programs at the same time California begins its program.

7. Applicability of Section 177 in States Without Plan Provisions Approved Under Part D

A comment notes that section 177 applies only to states with plan provisions approved under part D. All states in the OTR have such approved plan provisions. All states except for Vermont currently contain nonattainment areas with associated plans. Vermont has approved plan provisions approved under part D related to earlier nonattainment problems. See 40 CFR 52.2370(c)(10)

V. SIP Call

A. Explanation of Proposed SIP Call

EPA recognizes that the timing of its action is critical for the states' SIP planning purposes. EPA intends to take final action on the OTC's LEV recommendation in November 1994. Under section 184(c)(5), EPA is to issue a SIP call under section 110(k)(5) upon approval. EPA intends that final action approving the OTC recommendation would also entail the SIP call under section 110(k)(5), thus triggering the states' obligation to submit SIP revisions to include the OTC LEV (or LEV-equivalent) program within one year, or in November 1995. Under any circumstances, and regardless of EPA's final action on the OTC LEV recommendation, the states are not precluded from adopting and submitting a LEV SIP revision at any time consistent with sections 177 and 209 of the Act, as they have always had the independent authority to do.

EPA recognizes, however, that it is possible an alternative program could be promulgated in the future that would achieve equivalent emissions reductions from new motor vehicles. Logically, such an alternative program that achieves the emission reductions the OTC LEV program would achieve, could render the OTC LEV program no longer necessary. States could then decide whether to give auto manufacturers the choice of meeting either OTC LEV standards or the alternative federal program standards. The alternative program would create emissions standards applicable to new motor vehicles that automobile manufacturers could, at their option, opt for EPA to apply to their new motor vehicles. EPA expects that, as long as issues pertaining to the enforceability of such standards can be resolved, such alternative federal standards could result in emissions benefits in the OTR equivalent to those that would result from the OTC LEV program.

EPA is currently working with the federally chartered Clean Air Act Advisory Committee (and a subcommittee created to consider this topic) to allow for the possibility of such an alternative program that is in the interest of stakeholders and the public at large. EPA expects to obtain the advice of the Clean Air Act Advisory Committee considering issues related to such a program during the fall of 1994. Thereafter, if there is reason to proceed, EPA would undertake a notice-and-comment rulemaking to establish the alternative federal standards program, and to promulgate such standards early in 1995. EPA expects that it will provide a period of time following promulgation for the automakers to decide whether to opt into the alternative federal standards program. Under a scheme EPA might consider, once automobile manufacturers opt into this voluntary program, they would be subject to all provisions of the Act and its implementing regulations (particularly provisions relating to EPA enforcement of standards) that apply to other mandatory standards currently applicable to such vehicles. EPA believes that, in this manner, it can establish an alternative mechanism to achieve emissions reductions from new motor vehicles equivalent to those that the OTC LEV program would achieve in the OTR. The alternative rulemaking would need to address a number of questions, including whether auto companies should be able to opt out of the program once they have opted in, whether states should give up their opportunity to adopt or enforce the California LEV program under section 177, and whether a consent decree addressing certain discrete issues would be useful.

EPA's proposed SIP call requiring the OTR states to submit SIP revisions keeps open the option of an alternative federal program while ensuring that necessary emission reductions are not delayed. Under EPA's proposed SIP call, each state would be required to submit the OTC LEV program as a SIP revision, but the program could allow auto manufacturers either to comply with the OTC LEV standards or to opt into and comply with EPA promulgated alternative standards, if such standards are developed. The states' regulations could provide that the LEV program would not apply to auto manufacturers who are subject to an equivalent federal program. The states' SIP revisions would have to limit this exception to automakers subject to an alternative federal program that EPA has promulgated as equivalent to the OTC LEV program. EPA would address the criteria for its determination of equivalence in any alternative federal standards rulemaking. Under this approach, the automakers would not necessarily have to forfeit their ability to opt out when they opt into the alternative standards program. Since the states would all have to adopt and submit an OTC LEV SIP revision, automakers that either do not opt into or later opt out of the alternative standards program would be required to comply with the states' OTC LEV program.

If EPA approves the OTC petition within the time specified by the Act, states' SIP revisions would be due in November 1995. If states delayed only slightly in meeting this deadline, it could result in an inability to apply the standards to all vehicles in model year 1999.

Another benefit of EPA's proposed approach is that the automakers need not all make the same choice. Rather, automakers could independently choose whether to achieve the necessary emissions reductions by opting into and complying with an equivalent federal program or by complying with the OTC LEV program. Further, if the automakers were to attach any conditions to their opt in to a federal program allowing them to escape its obligations and were to trigger such an escape provision, they would then fall back to mandatory compliance with the states' adopted OTC LEV programs.

EPA is taking comment on whether, if all automakers opted into an alternative federal standards program and did not have a right to opt out, the states should have to adopt the OTC LEV program. The only benefit EPA sees to such an approach is that the states' LEV program would then be necessary as a "back-stop" mechanism used solely to ensure that the automakers would not opt out of the alternative standards program.

EPA is also considering another approach that would eliminate the burden of state adoption of the OTC LEV program if all the automakers opt into an alternative federal program. Under this second option, if the Agency promulgates alternative emissions standards and auto manufacturers opt into that program and commit not to opt out, the OTC states' obligation to submit OTC LEV SIP revisions would automatically terminate as no longer necessary. EPA urges states to respond under either approach to a final approval with immediate action to prepare to submit an OTC LEV SIP revision to EPA by November 1995.

EPA recognizes that the states have authority to adopt whatever measures they choose beyond those mandated in the Act in order to achieve the necessary emissions reductions. EPA is therefore also proposing that it would retain authority in issuing the SIP call to change its necessary determination and withdraw its SIP call for those states that adopt controls, including those applicable to stationary and mobile sources, sufficient to comply with section 110(a)(2)(D).

B. Legal Basis To Provide for Possibility of Alternative Standards Program in SIP Call

While EPA believes that the emissions reductions that the OTC LEV program would achieve are necessary, the Agency recognizes that another program to achieve equivalent reductions from the same emissions sources could render the OTC LEV program unnecessary. But at this juncture the Clean Air Act precludes EPA from mandating another program modifying the Tier 1 controls on new light-duty vehicles to achieve further emission reductions.[74] The OTC's recommendation specifically included in its recitation clauses the OTC's expectation that EPA would evaluate alternatives comparable to the OTC LEV program, "including the program presented by the automobile manufacturers with enhancements." Especially in light of this statement, EPA believes it is appropriate to leave open the possibility that an environmentally equivalent alternative to OTC LEV that is mutually acceptable to the states and automakers could be developed that would eliminate any need for the states to apply the OTC LEV standard.

EPA believes that it is legally appropriate for it to specify in its SIP call that the consummation of an alternative federal program that achieves equivalent environmental benefits could alter the Agency's conclusion regarding necessity. Thus, the Agency believes it may specify criteria in this regard that, if satisfied, will terminate the states' obligations under the SIP call to apply the LEV standards to manufacturers subject to an equivalent alternative program. At the same time, EPA does not believe there is any reason to wait to determine whether the alternative federal program will be consummated before issuing the SIP call based on the finding that the OTC LEV program is necessary. EPA believes that additional new-vehicle tailpipe emission reductions achievable by the OTC LEV program are necessary. EPA cannot now assume, based on merely the prospect of an alternative federal program and permanent opt-in by all auto manufacturers, that OTC LEV will become unnecessary. Moreover, as explained earlier, EPA believes it is important to act now for several reasons, including the statutory deadline under section 184, the statutory requirement that the states provide two years of lead-time before they can apply standards under section 177 and the length of time it takes for the fleet to turn over.

EPA believes it may issue a SIP call that would require that states submit SIP revisions to include the OTC LEV program, but that would allow the states to accept compliance with an equivalent alternative program instead. Under this option, as discussed above, the states' obligation to submit the OTC LEV program SIP revision would not terminate upon the automakers' opt-in to an alternative standards program. This would be necessary, for example, if EPA structured the alternative program such that the automakers could opt out of it. Indeed, the automakers might insist that they retain such an "escape" in case any state exercised its continuing authority under section 177 to adopt California standards not consistent with the alternative federal program. Under this structure, the promulgation of the alternative program would not guarantee that the OTC LEV program would not be necessary, even if all automakers were to opt in initially.

Rather, EPA believes it might appropriately conclude that, as to any particular automaker that opts in and complies with the alternative program for any period of time, the OTC LEV program would not be necessary for that automaker for that time. Thus, EPA believes it might find the OTC LEV program necessary but allow states to withhold implementation of the OTC LEV standards for automakers that opt into the alternative program for as long as they remain in that program. EPA believes this approach, too, fits squarely within its authority under sections 184(c) and 110(k)(5). That is, just as EPA believes it may take account of the possibility that an equivalent alternative program could render OTC LEV no longer necessary, an equivalent alternative program could render OTC LEV unnecessary for particular manufacturers only for as long as they are bound by that program. EPA believes it may fashion its approach to take account of this, so that the states must revise their SIPs to include the necessary OTC LEV program, but need only apply it to those parties for whom and when it is "necessary" in light of those parties' choices. In sum, under section 110(k)(5), EPA believes it may require that states revise their SIPs as necessary to comply with section 110(a)(2)(D), but may allow states to account in such SIP revisions for circumstances where application of the standards may not be necessary.

C. Sanctions

Under section 179(a), if EPA finds that a state fails to make a submission required under the Act, one of the sanctions specified in section 179(b) is to apply unless the deficiency has been corrected within 18 months after EPA's finding of failure to submit or incompleteness under section 110(k). Section 179(b) specifies two sanctions available to the Administrator: Withholding of certain highway funding under section 179(b)(1); and application

[74] Section 209 of the Act preempts states (other than California) from establishing new motor vehicle emissions standards, leaving such regulation to EPA under title II of the Act. See EPA's earlier notices regarding OTC LEV, 59 FR at 21734 (April 26, 1994); 59 FR at 12915 (March 18, 1994). Of course, section 177 of the Act provides an exception whereby the OTC states could adopt standards that are identical to California's standards if certain conditions are satisfied. It is this exception that the OTC has relied upon in recommending that EPA require the states to adopt LEV standards identical to those California adopted in its LEV program. But the states in the OTR cannot establish alternative new motor vehicle emissions standards different from but equivalent to California's standards. Likewise, Congress explicitly provided that EPA may not modify the "Tier 1" auto emissions standards specified in subsections 202(a)(3)(B)(ii), (g), (h), and (i) prior to model year 2004, and thus cannot mandate an alternative that would achieve equivalent reductions. See 59 FR at 21730 (April 26, 1994).

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of a 2:1 offset ratio to new or modified stationary sources of emissions for which a new source review permit is required under part D of title I.

EPA recently promulgated final regulations to implement section 179 of the Act, which specifies sanctions that are to apply where states fail to make a submission required under the Act. See 59 FR 39832 (Aug. 4, 1994). These regulations specify the order in which these sanctions will apply in the case of state non-compliance with provisions of the Act. These regulations do not, however, address the imposition of sanctions in the case of state failure to comply with a SIP call under section 110(k)(5) of the Act. Since EPA is proposing a SIP call in this rulemaking, EPA believes it is appropriate to propose the order of sanctions for purposes of failure to comply if the SIP call is promulgated as a final regulation. EPA believes that the general scheme promulgated for sanctions generally should also apply here. Under that scheme, EPA will generally apply the 2:1 offset sanction first and the highway finding sanction second. EPA believes the rationale for this approach in the sanctions rule applies with equal force here. In addition, EPA is considering whether the particular circumstances here that states must adopt the OTC LEV program by January 2, 1996 in order to comply with the two-year lead-time requirement prior to model year 1999 may merit acceleration of sanctions. That is, EPA requests comment on whether it should provide in the final rule that discretionary sanctions under section 110(m) of the Act would apply beginning immediately upon a finding of failure to submit the OTC LEV program.

VI. Determination of Model Year

A. Introduction

EPA is proposing today to promulgate regulations determining, for the purposes of section 177 and Part A of Title II of the Clean Air Act, the definition of the term "model year" as it applies to motor vehicles and motor vehicle engines. This determination should remove any confusion regarding when a model year commences under section 177. EPA is proposing this determination in this SNPRM because, if EPA approves the OTC's LEV recommendation, the OTR states will be required to adopt the LEV program under the provisions of section 177 of the Act. The definition of the term "model year," in particular, the issue of when a model year begins, has been a major issue in the litigations that have resulted from New York and Massachusetts's attempts to adopt California LEV standards under section 177. These litigations have led to considerable confusion regarding when a model year commences under section 177. EPA intends to remove this confusion by providing nationally consistent regulations providing detailed information regarding the term "model year," including when such model years commence.

B. Statutory and Regulatory Requirements

Section 177 of the Act provides that any state which has plan provisions approved under part D may adopt and enforce California standards for any model year if such standards are identical to the California standards for which a waiver has been granted for such model year and if California and the state "adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator)." Section 202(b)(3)(A)(i) of the Act defines model year as "the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If the manufacturer has no annual production period, the term 'model year' shall mean the calendar year." This definition of model year is repeated in regulations at 40 CFR § 86.082–2 (1992).

EPA has not promulgated regulations providing more specific EPA rules regarding determination of model year. Instead, EPA has historically relied on Advisory Circulars to clarify agency policy on the determination of model year and has used these policies and definitions in the enforcement of Federal programs such as vehicle certification. The first guidance regarding model year was issued on March 27, 1972 (Mobile Source Pollution Control Program (MSPC) Advisory Circular 6). This guidance was revised by MSPC Advisory Circular 6A (September 1, 1972). The most recent iteration of this guidance was issued on December 31, 1987 (EPA Office of Mobile Sources Advisory Circular 6B).

C. New York and Massachusetts Litigations

While Advisory Circulars have been an adequate mechanism for the purposes of establishing Agency policies and using such policies for enforcement matters, the fact that EPA relies on Advisory Circulars in addition to its regulations has been an issue in litigation challenging the adoption of the California LEV program by New York and Massachusetts. Section 177 states that the term "model year" shall be "as determined by regulations of the Administrator." In the New York litigation (*Motor Vehicle Manufacturers Association* v. *NYDEC*, 17 F. 3d 521 (2d Cir. 1994), the U.S. Court of Appeals for the Second Circuit determined that the Advisory Circulars were not entitled to the deference normally provided to Agency decisions under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Counsel*, 467 U.S. 837, 843 (1984). The Second Circuit found that the circulars were not "regulations" required under section 177 and were, in any case, not prepared specifically to implement section 177.[75] The court also found that application of Advisory Circular 6B to section 177 was "newly minted" for the New York litigation,[76] and thus was entitled to little deference. The court then provided its own opinion regarding the most appropriate interpretation of the term "model year" in the section 177 context, and found that "absent promulgated EPA regulations, 'model year' is best read as applying on an industry-wide basis." *Id.*, at 535. As discussed below, the Second Circuit based its opinion on the perceived practical problems that would occur if "model year" were defined by engine family, rather than industry-wide, given the existence of the NMOG fleet averaging program, as well as questions regarding Congressional intent, industry confusion and enforceability.

In the Massachusetts litigation, *AAMA* v. *Greenbaum*, No. 93–2276 (1st Cir., Aug. 3, 1994), the First Circuit decided not to follow the lead of the Second Circuit, and instead upheld the EPA's implementation of "model year," as delineated in Advisory Circular 6B. *Id.*, slip op. at 11–24.[77] However, the First Circuit noted that an argument could be raised that the EPA Advisory Circular is owed no deference because section 177 specifically requires EPA to define "model year" by regulation, not policy statements. The First Circuit found that since plaintiffs had not raised the argument in earlier proceedings, it was precluded from raising the issue in its appeal.

Judicial review of this issue has thus resulted in contrary results from the two courts of Appeals that have ruled on the matter. However, while there was division in the circuit courts as to the final result, both courts commented on the lack of EPA regulations that define model year for the purpose of determining compliance with section 177. Though EPA continues to believe that the existing regulations and Advisory Circulars are entitled to Chevron deference, EPA is proposing new regulations specifying its definition of model year as that term is used in section 177 of the Act in an effort to remove further confusion regarding this issue and to provide national consistency. EPA is also proposing to apply these regulations to "model year" as that term is used for regulation of motor vehicles under Part A of Title II of the Act. EPA is not proposing to extend this determination at this time to regulation of nonroad engines and vehicles, which may require somewhat different provisions for "model year."

[75] The Agency had filed an *amicus curiae* brief in this case, as well as in the Massachusetts case, that argued that the Agency's decision, as delineated in the Advisory Circulars, was entitled to Chevron deference.

[76] As shown in the Massachusetts case, discussed below, this determination was factually incorrect.

[77] In so doing, the First Circuit noted that the EPA's policy had not been newly minted for these litigations, but had been issued in 1987 and had been applied to section 177 in a letter to Congressman John Dingell (D. Mich.) on March 7, 1991, prior to litigation.

D. Determination of Model Year

The determination EPA is proposing today for implementation of section 177 shall include the regulatory definition of model year as that term has been defined under section 202 of the Act. It shall also include the more specific determinations regarding model year, including the definition of "production period," delineated in Advisory Circular 6B (Dec. 31, 1987). This Advisory Circular addresses the duration of model year, defines production period and provides information on EPA policy concerning the duration and applicability of certificates of conformity. It notes that a specific model year must include January 1 of the calendar year for which it is designated and may not include a January 1 of any other calendar year, thus limiting the duration of a model year to a calendar year plus 364 days. In addition, Advisory Circular 6B defines "annual production period" for any specific model within an engine family of light-duty vehicles or heavy-duty engines as beginning either:

"(1) When such vehicle or engine is first produced, or (2) on January 2 of the calendar year preceding the year for which the model year is designated, whichever date is later.

The annual production period ends either: (1) when the last such vehicle or engine is produced, or (2) on December 31 of the calendar year for which the model year is named, whichever date is sooner."

EPA believes that the definitions of "duration of model year" and "production period for specific models within an engine family" which are contained in Advisory Circular 6B are the appropriate definitions to be used to determine compliance with section 177 as well as to determine compliance with the programs for which the Advisory Circular has been used in the past. EPA believes these definitions, and the fact that the production period is based on specific models within engine families, provide vehicle manufacturers the maximum flexibility in terms of adjusting the model year designation of their product line to marketing needs and product changes. By permitting the designation of specific engine families, or models within families, as "pull ahead" model year families without affecting the remainder of the vehicles in the model year they are presently building, a manufacturer will be able, for example, to launch a new vehicle as a 1995 model year vehicle while the remainder of their models are being produced as 1994 models.

EPA also believes that a determination that model year should be determined on a "model-by-model" basis is more appropriate than an interpretation that "model year" should begin at the same time industry-wide because the two-year lead-time of section 177 is better fulfilled through a "model-by-model" approach. Manufacturers determine the start date for manufacture of vehicle models on a model-by-model basis. Therefore, individual manufacturers are in the best position to determine when each model they produce in a model year will begin production. The lead-time provisions of section 177 were designed to give manufacturers sufficient lead-time to produce California vehicles necessary to meet the supply needs of any state that promulgates standards under section 177 ("177 state"). There is no indication that Congress intended that states be unable to regulate vehicle models that do not begin production before the two-year deadline. Nor is there any practical reason why a particular vehicle model should not be covered. Manufacturers are well aware of their own production schedules and can assure that any vehicle models that begin production after the two-year lead-time ends meet the California requirements in a particular state.[78]

EPA does not agree with the Second Circuit that an "industry-wide" approach to model year would be more appropriate in the context of California's NMOG fleet averaging program.[79] In fact, though a "model-by-model" approach might be more complicated, it actually provides to manufacturers more control over the particular engine models that will be subject to an averaging program for a particular model year, especially compared to an "industry-wide" approach. Under the "industry-wide" approach, a manufacturer commencing production of its vehicles after the lead-time expires cannot determine for itself what models would be subject to the California requirements, but must instead find out whether any of its competitor manufacturers have begun production of a model for that model year prior to the deadline.

Moreover, the increased complexity that may be caused by different emission requirements for different vehicles in a single model year is not unique to the Agency's approach to the term "model year" under section 177. In fact, any program that includes a phase-in of standards (*e.g.* the "Tier I" requirements of section 202(g)) results in different standards for different cars within a model year. Moreover, the California LEV program itself contemplates that different cars will be certified to different standards during a single model year.

Also, any increased complexity must be balanced against the emissions benefits of such a decision. The best example of the severe emissions detriment that will occur if the "industry-wide" approach is used is the example of Massachusetts' implementation of the California vehicle program for model year 1995. Massachusetts' promulgation of rules requiring model year 1995 cars to meet California standards was completed by January 31, 1992. This gave manufacturers a full two years of lead-time for any vehicle model that began production after January 31, 1994. However, model year 1995 could begin, under EPA rules, by January 2, 1994, and a few vehicle models had begun production by that time. If the "industry-wide" approach had been used for the Massachusetts situation, then, conceivably, all manufacturers could continue to provide all of their model year 1995 vehicles to Massachusetts until December 31, 1995 without meeting the California standards for any of the vehicles. Thus, there would be close to four years between promulgation of the

[78] Automobile dealerships in an affected state would be able to contact their manufacturers to find out which vehicle models must be sold to California standards in a particular state.

[79] EPA notes that this model year determination must be geared toward application to all programs that may be promulgated by California, not merely the programs promulgated as part of the LEV program. Therefore, application of the model year determination to a particular program should not be given overwhelming weight in our determination. As the First Circuit noted, "[f]leet averaging for emissions programs is a concept devised by California, not Congress."

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Massachusetts rule and full compliance with such rule by manufacturers. Moreover, the "industry-wide" rule would require that California standards not be enforced for any vehicles manufactured in the 1995 model year Since the 1996 model year does not begin for any vehicle until, at the earliest, January 2, 1995, the "industry-wide" rule would provide almost three full years between promulgation and any enforcement of California standards. The emissions increases that would result from the loss of a full model year from the California program could have a significant impact on air pollution in "177 states" and on the ability of such states to meet the attainment deadlines provided in the Clean Air Act.

The "model-by-model" approach is also preferable to the "manufacturer-by-manufacturer" approach [80] because it substantially lessens the competitiveness concerns that could otherwise result. Given that under the "model-by-model" approach, the determination of model year would be based on when each individual model begins production, there would be less of an opportunity for a manufacturer to exempt its entire vehicle fleet for a full model year by beginning production of one vehicle model before the two year deadline. Thus, there is considerably less likelihood that two manufacturers will have to meet different emission standards for all of their vehicles for a particular year based only on when one model for a particular manufacturer began production. Instead, the "model-by-model" approach is likely to result in similar percentages of vehicles for each manufacturer being covered by California rules for the "split" model year.

Finally, EPA disagrees with the Second Circuit's belief that Congress did not contemplate a "split" model year approach, differentiating manufacturers based on when each commences production. In fact, EPA's initial Advisory Circulars explaining EPA's "model-by-model" approach were announced in 1972, five years before section 177 was added to the Clean Air Act. Congress must have at least "contemplated," if not in fact expected, that EPA would interpret "model year" for section 177 as it had for section 202.

[80] The "manufacturer-by-manufacturer" approach would allow any manufacturer that had begun production of any model before the two year deadline to escape enforcement of the state regulations for every model produced by that manufacturer during that model year. This approach had been mandated by the trial court in the New York LEV case before the Second Circuit opinion was delivered, *see MVMA* v. *NYDEC*, 831 F. Supp. 57 (1993).

VII. Statutory Authority

Authority for the action in this notice is in sections 177, 184, 176(A), 110, 202, 206, 209, 307(d), and 301 of the Clean Air Act, as amended, 42 U.S.C. 7511c, 7506a, 7525, 7410, 7607(d), and 7601.

VIII. Administrative Designation and Regulatory Analysis

Under Executive Order 12866, 58 FR 51735 (Oct. 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order 12866, since this action could result in a rule that would have a substantial impact, this notice is a "significant regulatory action" because the estimated range of annual costs of the California LEV program in the OTC states is between $300 million and $1.6 billion. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record. EPA has prepared an economic analysis for this rule under E.O. 12866. A copy of this analysis has been placed in the docket. Any written comments to EPA and any written EPA responses to those comments regarding this analysis will be included in the docket for this proceeding.

IX. Impact on Small Entities

The Regulatory Flexibility Act, 5 U.S.C. 601(a), provides that, whenever an agency is required to publish a general notice of rulemaking, it must prepare and make available a regulatory flexibility analysis (RFA). While EPA intends to follow rulemaking procedures under 307(d) of the Clean Air Act, EPA believes it is not legally required to publish a general notice of rulemaking here, and hence that it need not prepare a RFA. But even if EPA is required to publish a general notice of rulemaking here, a RFA is required only for small entities which are directly regulated by the rule. See *Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F. 2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on regulated entities and not indirect impact on small entities not regulated). The OTC's recommended LEV program would directly regulate auto manufacturers. Since these auto manufacturers generally do not qualify as small businesses within the meaning of the Regulatory Flexibility Act, EPA does not believe a RFA is needed for either the proposed or final rules, even if a rulemaking is required. Accordingly, pursuant to 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Nevertheless, the Agency has considered the effect of an OTC LEV program on new and used car dealerships as part of its regulatory impact analysis, even though such analysis is not required because these businesses would not be directly regulated under the rule. The results of this analysis, set forth in the RIA, indicate that the OTC LEV would not have a significant economic impact on automobile dealerships.

X. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

List of Subjects in 40 CFR Part 85

Environmental protection, Air pollution control, Motor vehicle pollution, Penalties.

Dated: September 13, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 85 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 85—CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES AND MOTOR VEHICLE ENGINES

1. The authority citation for part 85 is revised to read as follows:

Authority: 42 U.S.C. 7507, 7521, 7522, 7524, 7525, 7541, 7542, 7543, 7547, 7601(a), unless otherwise noted.

2. Part 85 is amended by adding subpart X to read as follows:

Subpart X—Determination of Model Year for Motor Vehicles and Engines Used in Motor Vehicles Under Section 177 and Part A of Title II of the Clean Air Act

Sec.
85.2301 Applicability.
85.2302 Definition of model year
85.2303 Duration of model year.
85.2304 Definition of production period.
85.2305 Duration and applicability of certificates of conformity.

Subpart X—Determination of Model Year for Motor Vehicles and Engines Used in Motor Vehicles Under Section 177 and Part A of Title II of the Clean Air Act

§ 85.2301 Applicability.

The definitions provided by this subpart are effective [EFFECTIVE DATE OF FINAL RULE] and apply to all light-duty motor vehicles and trucks, heavy-duty motor vehicles and heavy-duty engines used in motor vehicles, and on-highway motorcycles as such vehicles and engines are regulated under section 177 and Title II part A of the Clean Air Act.

§ 85.2302 Definition of model year.

Model year means the manufacturer's annual production period (as determined under § 85.2304) which includes January 1 of such calendar year, provided, that if the manufacturer has no annual production period, the term "model year" shall mean the calendar year.

§ 85.2303 Duration of model year.

A specific model year must always include January 1 of the calendar year for which it is designated and may not include a January 1 of any other calendar year. Thus, the maximum duration of a model year is one calendar year plus 364 days.

§ 85.2304 Definition of production period.

The "annual production period" for any specific model within an engine family of light-duty motor vehicle or heavy-duty motor vehicles and engines begins either: When such vehicle or engine is first produced; or on January 2 of the calendar year preceding the year for which the model year is designated, whichever date is later. The annual production period ends either: When the last such vehicle or engine is produced; or on December 31 of the calendar year for which the model year is named, whichever date is sooner.

§ 85.2305 Duration and applicability of certificates of conformity.[1]

(a) Except as provided in paragraph (b) of this section, a certificate of conformity is deemed to be effective and cover the vehicles or engines named in such certificate and produced during the annual production period, as defined in § 85.2304.

(b) Section 203 of the Clean Air Act prohibits the sale, offering for sale, delivery for introduction into commerce, and introduction into commerce of any new vehicle or engine not covered by a certificate of conformity unless it is an imported vehicle exempted by the Administrator or otherwise authorized jointly by EPA and U.S. Customs service regulations. However, the Act does not prohibit the production of vehicles or engines without a certificate of conformity. Vehicles or engines produced prior to the effective date of a certificate of conformity, as defined in paragraph (a) of this section, may also be covered by the certificate if the following conditions are met:

(1) The vehicles or engines conform in all respects to the vehicle or engines described in the application for the certificate of conformity;

(2) The vehicles or engines are not sold, offered for sale, introduced into commerce, or delivered for introduction into commerce prior to the effective date of the certificate of conformity;

(3) The Agency is notified prior to the beginning of production when such production will start, and the Agency is provided full opportunity to inspect and/or test the vehicles during and after their production; for example, the Agency must have the opportunity to conduct selective enforcement auditing production line testing as if the vehicles had been produced after the effective date of the certificate.

(c) Vehicles or engines imported by an original equipment manufacturer after December 31 of the calendar year for which the model year is named are still covered by the certificate of conformity as long as the production of the vehicle or engine was completed before December 31 of that year. This paragraph does not apply to vehicles that may be covered by certificates held by independent commercial importers unless specifically approved by EPA.

(d) Vehicles or engines produced after December 31 of the calendar year for which the model year is named are not covered by the certificate of conformity for that model year. A new certificate of conformity demonstrating compliance with currently applicable standards must be obtained for these vehicles or engines, even if they are identical to vehicles or engines built before December 31.

[1] The extended coverage period described here for a certificate of conformity (i.e., up to one year plus 364 days) is primarily intended to allow flexibility in the introduction of new models. Under no circumstances should it be interpreted that existing models may "skip" yearly certification by pulling ahead the production of every other model year. While this situation, to the Agency's knowledge, has not occurred in the past, a practice of producing vehicles for a two year period would violate Congress's intent of annual certification based upon an annual production period. The Agency is not currently setting forth rules for how to determine when abuse has occurred, since this has not been a problem to date. However, the Agency is requiring that manufacturers shall continue to use normal yearly production periods for existing models.

[FR Doc. 94-23112 Filed 9-21-94, 8:45 am]

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Thursday
September 22, 1994

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 203 and 291
Single Family Property Disposition Program; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 203 and 291

[Docket No. R–94–1670; FR–3253–F–02]

RIN 2502–AF75

Single Family Property Disposition Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final, with changes, the amendments to regulations at 24 CFR parts 203 and 291 announced in an interim rule published on October 20, 1993 (58 FR 54244), with an effective date of November 19, 1993. The regulations govern the disposition of HUD-acquired single family properties (part 291) and the circumstances under which HUD will accept such properties when they are occupied (part 203). The preamble to this final rule responds to the comments received from the public on the interim rule.

EFFECTIVE DATE: October 24, 1994.

FOR FURTHER INFORMATION CONTACT: David H. Patton, Acting Director, Single Family Property Disposition, room 9172, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–0500; telephone (202) 708–0740; TDD for hearing- and speech-impaired (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The amendments made in this rule do not affect the information collection requirements for the Single Family Property Disposition program, which were previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and assigned OMB control numbers 2502–0306.

I. Background

Title II of the National Housing Act (the Act) authorizes HUD to insure mortgages for single family residences through the Federal Housing Administration (FHA) single family mortgage insurance program. The disposition program for single family properties, acquired by HUD in exchange for payment of insurance claims, is authorized by section 204(g) of the Act. The regulations governing the disposition program are codified at 24 CFR part 291.

On October 20, 1993, the Department published an interim rule, which subsequently became effective on November 19, 1993, amending certain provisions of part 291 to allow for greater flexibility in fluctuating market situations and to provide greater opportunities for affordable housing to families and to State and local governments or nonprofit organizations serving low- and moderate-income families. The purpose of the amendments was to implement the policy of President Clinton and Secretary Cisneros to expand access to affordable homeownership and help revitalize neighborhoods.

II. Amendments Made by Interim Rule

Single Family Property Disposition (24 CFR Part 291)

1. The purpose of the disposition program was changed to place greater emphasis on homeownership and improvement of neighborhoods, by providing that the primary objective of the program is to reduce the inventory of acquired properties in a manner that expands homeownership opportunities, strengthens neighborhoods and communities, and ensures a maximum return to the mortgage insurance fund. (24 CFR 291.1(a).)

2. A definition of "revitalization areas" was added, which defined the term as urban neighborhoods that are targeted by a city for coordinating affordable housing programs and enhanced supportive services, and where a significant number of HUD-owned properties have been in inventory at least six months. (24 CFR 291.5.)

3. Purchase money mortgages (PMMs) in revitalization areas were made available for 85 percent of the purchase price, at current market interest rates, for a period not to exceed five years for direct sale purchasers (*i.e.*, governmental entities and private nonprofit organizations) meeting FHA mortgage credit standards and purchasing properties for ultimate resale to owner-occupant purchasers at or below 115 percent of median income. (24 CFR 291.100(d).)

4. The definition of owner-occupant purchaser was amended to limit it to purchasers who intend to occupy the property as their primary residence. (The rule had previously included governmental entities and private nonprofit organizations as owner-occupant purchasers.) (24 CFR 291.5.)

5. Owner-occupant purchasers were given a priority in the competitive bid sales method. In revitalization areas, the priority was made available for up to 30 days and only for properties offered with FHA mortgage insurance. In all other areas, the priority was made available for all properties for a period of time to be set by the field office, depending on local circumstances. (24 CFR 291.105(a).)

6. The limitation on the amount of financing and closing costs that HUD pays was removed, and the rule was amended to provide that HUD will determine the maximum limit appropriate for the area. (24 CFR 291.105(b).)

7. The discount available on direct sale purchases was changed from 10 percent to an amount to be determined appropriate by HUD, but not less than 10 percent, depending on the location of the property or the number of properties purchased in a single transaction. (24 CFR 291.110 (a) and (b).)

8. The procedure by which potential purchasers under the direct sales program are notified of eligible properties was amended. (24 CFR 291.110(a).)

9. A provision was added to allow for a direct sale to an individual or other entity not otherwise specified in the rule where a finding is made, in writing, that such a sale would further the goals of the National Housing Act and would be in the best interests of the Secretary. (24 CFR 291.110(g).)

10. The rule was amended to permit initial 15-day extensions for closing at no cost to owner-occupant purchasers where documentation indicates that (1) proper and timely loan application was made, (2) the delay is not the fault of the buyer, and (3) mortgage approval is imminent. A further amendment allowed extensions at no cost, at any time and to any purchaser, where the delay is the fault of HUD or a direct endorsement lender. (24 CFR 291.130(b).)

11. An amendment was made to provide that, in the case of an uninsured sale, 100 percent of an earnest money deposit made by an owner-occupant purchaser will be returned where the purchaser is pre-approved for mortgage financing in an appropriate amount by a recognized mortgage lender and, despite good faith efforts, is unable to obtain mortgage financing; and, where an owner-occupant purchaser has not been preapproved and despite good faith efforts cannot obtain mortgage financing, 50 percent of the earnest money deposit will be returned. (24 CFR 291.135.) A definition of "pre-approved" was added to mean that a commitment has been obtained from a recognized mortgage lender for mortgage financing in a specified dollar amount sufficient to purchase the property. (24 CFR 291.5.)

Occupied Conveyance (24 CFR Part 203)

The occupied conveyance rule at 24 CFR 203.670 and 203.671 was amended to provide that HUD may accept occupied properties to avoid the payment of excessive eviction or relocation expenses required by a local government. A technical correction was also being made to §§ 203.675(b)(4) and 203.676 to conform with an earlier amendment to the rule published on September 16, 1991 (56 FR 46964) regarding the conveyance of properties occupied by persons who suffer a long-term or permanent illness.

III. Public Comments

The Department received 40 public comments during the 60-day comment period that ended on December 20, 1993. The comments were from governmental entities, private nonprofit organizations, and three members of Congress. The comments are discussed below. Numbers in parentheses following the comment refer to the number of commenters raising the issue.

Comment: HUD should continue to give a priority to purchase (and lease, in the case of homeless providers) to nonprofits and government agencies, particularly grantees under HOPE for Homeownership of Single Family Homes (HOPE 3). (36)

Response: The Department agrees that changes to its procedures for offering properties to governmental entities and nonprofit organizations are appropriate. The final rule has been changed to include governmental entities and nonprofit organizations in the definition of owner-occupant purchasers, thereby giving them a simultaneous opportunity to purchase properties eligible for FHA mortgage insurance during the competitive bidding period. If a nonprofit or government agency submits the highest net offer, *without* any discount being considered, and that offer is otherwise acceptable, it will be accepted and a discount of 10 percent (15 percent if five or more properties are purchased and closed simultaneously), regardless of the property's location, will be applied at closing. For properties not eligible for FHA mortgage insurance, nonprofits and government agencies will have first opportunity to purchase at HUD's determination of fair market value. Offers accepted will reflect the appropriate discount. For properties offered without FHA mortgage insurance, the discount will be 30 percent in revitalization areas, and 10 percent in all other areas (or 15 percent, as appropriate).

Comment In establishing revitalization areas, the number of FHA foreclosures in process should be taken into consideration rather than the number of properties currently on hand. (7)

Response: Due to the several uncertainties surrounding foreclosures (payoff by mortgagor, purchase by third parties, bankruptcy, redemption periods, the varying length of time in which foreclosure occurs, etc.), the Department believes that the use of foreclosures in process is not practical in establishing revitalization areas. The Department continues to believe it is appropriate to establish revitalization areas based on experience with its property disposition program and based on areas designated by localities for expanding affordable housing opportunities.

Comment: The discount in revitalization areas should be greater. (4)

Response: The available discount is based on anticipated savings to the Department, both in terms of selling on a direct basis and in selling properties more quickly that may otherwise require extended periods of marketing. The amount is supported by an evaluation performed on the Single Family Property Disposition Demonstration Program conducted by the Department on sales of properties in economically distressed areas. The Department believes that the current discount level is appropriate, but retains flexibility in making future determinations based on changing housing market conditions.

Comment: There should be a requirement for owner-occupant buyers to repair to code. (3)

Response: The Department believes that such a requirement, and its enforcement, properly rests with the local government.

Comment: The program should be monitored and reports provided to the public. (3)

Response: The Department does not believe there is an urgent need to devote already scarce resources to large scale monitoring of this unsubsidized program. To the extent the Department learns of falsification of the Sales Contract, or other abuses in the program, corrective measures will be taken at that time. In this regard, steps have been taken to determine the appropriateness of having the Department's computer system perform limited checking on owner-occupants purchasing more than one principal residence. Also, the Sales Contract now includes a warning to purchasers about the possible consequences of falsifying that document. The Department has recently authorized Field Offices to include resale restrictions on certain properties to prevent windfall profits and require that the properties be used for affordable housing goals. A provision has been added to the final rule at § 291.110(a)(3) to authorize the Department to request information when considered appropriate on the disposition of properties sold to governmental entities and nonprofits. Consideration is also being given to other administrative procedures to prevent abuse from all categories of buyers.

Comment: Minimum residency requirements for owner-occupant buyers should be established. (2)

Response: The Department does not agree that such requirements should be established. Unnecessary hardships could be placed on owner-occupants in some cases where job relocations or other circumstances may necessitate moving. As discussed above, the Department has taken some measures already, and is considering others, to prevent possible abuses.

Comment: The number of properties nonprofits may purchase should be limited and based on the number they have completed successfully. (2)

Response: Nonprofit organizations are currently eligible to purchase discounted properties based on differing pre-qualification standards. While the Department believes it would not be in its best interests to require a second approval, nonprofits not previously approved under another HUD program will generally be subject to requirements much like those used in the HOPE 3 program as a condition to purchasing properties at discounted prices. (See the HOPE 3 regulations at 24 CFR part 572.) In addition, the Department may specify a required minimum number of properties to be completed successfully before the purchase of additional properties.

Comment: In pricing HUD properties, appraisers should use distressed properties as comparables. (2)

Response: HUD believes its procedure for pricing properties, regardless of their location, is a fair one. Appraisers utilize recent sales of comparable properties in similar condition, and HUD's listing price is reflective of the needed level of repairs.

Comment: HUD should continue to provide lists of available properties. (2)

Response: HUD's Field Offices are required by § 291.110(a) to provide lists of properties available for direct purchase upon request. Where Field Offices have provided lists routinely, they have not been instructed to

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discontinue the practice, and some are continuing that practice. To eliminate unnecessary and duplicative work, however, some offices may elect to have the newspaper advertisement, where such advertising is used, also serve as official notification to the nonprofits and government agencies. In areas where newspapers are not used to advertise properties, other means must be used to notify nonprofits and government agencies of available properties in a timely manner. In those instances where properties being offered without FHA mortgage insurance are first made available to nonprofits and government agencies, Field Offices will continue to provide lists directly to those potential purchasers. The Department does not believe this practice creates a hardship on program participants.

Comment: A process should be established for nonprofits to appeal Field Office decisions. (1)

Response: The Department does not believe such a process is necessary and, in fact, could serve to undermine the authority vested in HUD's Field Offices. HUD headquarters will continue to oversee the program and to discuss issues with both the buyer community and its Field Offices in order to reach fair and appropriate decisions. The Department does not see the necessity of a formal appeal process to accomplish this.

Comment: A means should be developed for low-income buyers to compete better with higher income owner-occupant purchasers. (1)

Response: The Department believes that restricting sales only to buyers under a specific income limit could be viewed as discriminatory, unfair to other owner-occupant buyers, and not in the best interests of the Department or the FHA insurance fund, in its efforts to dispose of the inventory in a timely manner and at the maximum return to the insurance funds. Changes made in this final rule to give a priority purchase period to governmental agencies and nonprofits on certain properties will enhance the opportunity of low-income purchasers to acquire properties through programs sponsored by those agencies and organizations.

Comment: Investors should not be allowed to purchase properties. (1)

Response: The Department has significantly restricted the opportunity for investors to purchase. In the case of properties eligible for FHA mortgage insurance (those generally in better condition), owner-occupants (which includes nonprofits and government agencies) have first opportunity to purchase. For properties not eligible for FHA mortgage insurance, the nonprofits and government agencies have first opportunity to purchase, followed by other owner-occupant buyers, before being offered to all purchasers. It should be kept in mind that there will be certain properties, due to their physical condition, that will not be purchased by any owner-occupant purchaser, so it would not be in the best interests of the Department to eliminate totally the investor buyer from this program.

Comment: A discount in the sales price should be given to owner-occupants who have received certificates for completing homebuyer education seminars. (1)

Response: Although the Department recognizes the value of homeownership counseling programs, it does not believe the suggestion would be in its best interests. It is unlikely that there would be any "standard" by which certificates would be issued to potential buyers by the many different organizations providing such counseling. Further, the discount offered by HUD is justified primarily by the savings to the Department on direct sales to nonprofits and government agencies. These same savings (sales commission, closing/financing costs, and expected holding costs) would not be realized in sales to other than direct sale buyers. Although the Department will not sell to owner-occupant buyers that are not government agencies or nonprofits at discounted prices, properties purchased at the deep discount by those organizations are primarily intended to be resold to persons who are at or below 115 percent of median income for their area, when adjusted for family size, or used to shelter the homeless. Therefore, the program will enhance affordable homeownership opportunities.

Comment: Consideration should be given to accepting purchase offers from direct sale buyers that are below asking price. (1)

Response: This action clearly would not be in the Department's best interests. At the time properties are available for direct purchase, the asking prices are based on very recent appraisals and the Department has no reason to believe those prices are not reflective of true market value. To accept offers below those prices would effectively increase the discount the Department is willing to provide and undermine the return to the mortgage insurance funds. If properties remain available at the time of offering to the general public, those buyers who previously could purchase direct then have the opportunity to bid competitively and may, in fact, submit offers below the asking price at that time.

Comment: Homeless providers should be permitted to purchase only in nonrevitalization areas. (1)

Response: An agency that is a homeless provider (and may have leased properties from the Department for that purpose) often may be the same nonprofit or government agency that can purchase on a direct basis. Such an agency has the right to purchase properties it has leased, regardless of their location. Further, the Department does not see a legitimate reason to restrict homeless providers only to nonrevitalization areas and believes that such action would be detrimental to the goal of expanding homeownership opportunities.

IV. Other Amendments

As a result of an agreement with nonprofit organizations to place certain limits on the amount of required earnest money deposits, thus alleviating possible hardships on owner-occupant purchasers, the Department has determined that the amount of such a deposit on a property with a sales price of $50,000 or less shall be $500, except that for vacant lots the amount shall be 50 percent of the list price. For a property with a sales price greater than $50,000, the deposit shall be set by the Field Office in an amount not less than $500 or more than $2,000. This amendment is made in this final rule at § 291.105(h)(1).

V. Other Matters

Findings made under the National Environmental Policy Act, Executive Orders on Federalism and The Family, and the Regulatory Flexibility Act that were discussed in the preamble to the interim rule are not affected by any changes made in this final rule.

This rule was listed as sequence number 1594 in the Department's Semiannual Agenda of Regulations published at 59 FR 20424, 20449 on April 25, 1994, under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 291

Community facilities, Homeless, Surplus government property, Low and moderate income housing, Mortgages, Lead poisoning, Conflict of interests, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 24 CFR parts 203 and 291 published on October 20, 1993 at 58 FR 54244 through 54248 is adopted as final, with further amendments to part 291 to read as follows:

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

1. The authority citation for part 291 continues to read as follows:

Authority: 12 U.S.C. 1709 and 1715(b); 42 U.S.C. 1441, 1441a, and 3535(d).

2. Section 291.5 is amended by removing the definition for "Direct sale purchaser", and revising the definitions of "Owner-occupant purchaser" and "Revitalization area", to read as follows:

§ 291.5 Definitions.

* * * * *

Owner-occupant purchaser means a purchaser who intends to use the property as his or her principal residence; a State, governmental entity, tribe, or agency thereof; or a private nonprofit organization as defined in § 291.405 of this part. For purposes of this part, a State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States. Governmental entities include those with general governmental powers (*e.g.*, a city or county), as well as those with limited or special powers (*e.g.*, public housing agencies).

* * * * *

Revitalization area means a neighborhood that has a significant concentration of vacant properties, including properties needing extensive repairs that have been in HUD's inventory at least six months, or a longer period as determined appropriate by the Secretary; exhibits other characteristics of economic distress; and has been targeted by the locality for establishing affordable housing and providing adequate supportive services.

* * * * *

3. In § 291.100, paragraph (d)(2) and the last sentence of paragraph (h) are revised to read as follows:

§ 291.100 General policy.

(d) * * *

(2) In revitalization areas, HUD, in its sole discretion, may take back purchase money mortgages (PMMs) on property purchased by governmental entities or private nonprofit organizations who buy property for ultimate resale to owner-occupant purchasers with incomes at or below 115 percent of the area median income. When offered by HUD, PMMs will be available for 85 percent of the purchase price, at market rate interest, for a period not to exceed five years. Mortgagors must meet FHA mortgage credit standards.

* * * * *

(h) *Open listings.* * * * Purchasers participating in the competitive sales program, except government entities and nonprofit organizations, must submit bids through a participating broker.

* * * * *

4. In § 291.105, paragraphs (a) and (h)(1) are revised, to read as follows:

§ 291.105 Competitive sales procedure.

(a) *General.* (1) Properties are sold to the general public on a competitive bid basis through local real estate brokers except as provided in § 291.100(h). If a property fails to generate an acceptable bid or offer during the bidding period, it will remain on the market for an extended listing period, as described in paragraph (f) of this section. If a property's price or terms are changed, it will again be subject to another competitive bidding period.

(2) For properties being offered with mortgage insurance, priority will be given to owner-occupant purchasers, as defined in § 291.5, for a period of up to 30 days, as determined by HUD. For all other properties (i.e., properties not offered with mortgage insurance), priority will be given to governmental entities and nonprofit organizations prior to other owner-occupant purchasers.

* * * * *

(h) *Earnest money deposits.* (1) The amount of earnest money deposit required for a property with a sales price of $50,000 or less is $500, except that for vacant lots the amount is 50 percent of the list price. For a property with a sales price greater than $50,000, the amount of earnest money deposit required in the area is set by the Field Office, in an amount not less than $500 or more than $2,000. In determining the amount of earnest money deposits, a Field Office considers comparable practice in the locality, area real estate market conditions, the type of offers generally received, and the ability of the area's typical buyers to secure financing. Information on the amount of the required earnest money deposit is available from the Field Office or participating real estate brokers.

* * * * *

5. Section 291.110 is amended by revising paragraph (a) and revising the phrase "field office manager" to read "Field Office" in paragraph (b)(1), to read as follows:

§ 291.110 Other sales procedures.

(a) *Direct sales of properties without mortgage insurance to governmental entities and private nonprofit organizations.* (1) State and local governments, public agencies, and qualified private nonprofit organizations that have been preapproved to participate by HUD, according to standards determined by the Secretary, may purchase properties directly from HUD at a discount off the list price determined by the Secretary to be appropriate, but not less than 10 percent, for use in HUD and local housing or homeless programs. The amount of the discount may vary, depending on the area, the type of sale, or the number of properties purchased and closed in a single transaction.

(2)(i) Purchasers under paragraph (a)(1) of this section must designate geographical areas of interest, by ZIP code, to appropriate HUD Field Offices. Upon request, for those properties not eligible for mortgage insurance, and before they are publicly listed, Field Offices will notify governmental entities and nonprofit organizations in writing when eligible properties become available in the areas designated by them. Field Offices will coordinate the dissemination of the information to ensure that where more than one purchaser designates a specific area, those purchasers receive the list of properties at the same time, based on intervals agreed upon between HUD and the purchasers. Properties will be sold on a first come-first served basis.

(ii) Purchasers under paragraph (a)(1) of this section must notify HUD of preliminary interest in specific properties within five days of the notification of available properties (where notification is by mail, the five days will begin to run five days after mailing). Those properties in which purchasers express an interest will be held off the market for a ten-day consideration and inspection period. Other properties on the list will continue to be processed for public sale. HUD may limit the number of properties held off the market for a purchaser at any one time, based upon the purchaser's financial capacity as determined by HUD and upon past performance in HUD programs. At the end of the ten-day consideration and inspection period, properties in which no governmental entity or nonprofit organization has expressed a specific intent to purchase will be offered for sale under the competitive bid process. Properties in which a governmental entity or nonprofit organization expressed an intent to purchase, during

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the ten-day period, will continue to be held off the market pending receipt of the sales contract. If a sales contract is not received within a time period of up to ten days, as determined by HUD, following expiration of the ten-day consideration and inspection period, and no other governmental entity or nonprofit organization has expressed an interest, then the property will be offered for sale under the competitive bid process.

(3) In order to ensure that properties purchased at a discount are being utilized for expanding affordable housing opportunities, HUD may require, as appropriate, periodic, limited information regarding the purchase and resale of such properties, and certain restrictions on the resale of such properties.

* * * * *

§ 291.135 [Amended]

6. Section 291.135 is amended by removing paragraph (d).

Nicolas P. Retsinas,

Assistant Secretary-Federal Housing Commissioner.

Dated: July 28, 1994.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94-23412 Filed 9-21-94, 8:45 am]

BILLING CODE 4210-27-P

federal register

Thursday
September 22, 1994

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 54, et al.
Financial Disclosure by Clinical Investigators; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 54, 312, 314, 320, 330, 601, 807, 812, 814, and 860

[Docket No. 93N–0445]

Financial Disclosure by Clinical Investigators

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require that the sponsor of any drug, biological product, or device submit certain information concerning the compensation to, and financial interests of, any clinical investigator conducting clinical studies to determine whether that product meets the marketing requirements specified by the agency. This requirement will apply to most clinical studies involving human subjects, as well as any study to establish bioavailability or bioequivalence. The agency is proposing to require that sponsors certify to the absence of certain financial interests of clinical investigators or disclose those financial interests when clinical studies are submitted to FDA in support of product marketing. If the agency adopts this proposal, and the sponsor does not include one of the required submissions with the application for marketing a covered product that contains clinical data, the agency will refuse to file the application. FDA will propose to extend these requirements to submissions for marketing approval related to human foods, animal foods, and animal drugs in a notice to be published in a subsequent issue of the Federal Register. FDA is seeking public comment on these proposed requirements.

DATES: Written comments on or before December 21, 1994. The agency is proposing that any final rule that may issue based on this proposed rule become effective 6 months after the date of its publication.

ADDRESSES: Submit written comments and responses to questions to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: John S. Ensign, Office of Health Affairs (HFY–22), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852, 301–443–1382.

SUPPLEMENTARY INFORMATION:

I. Background

There is a growing recognition in the academic and scientific communities that certain financial arrangements between clinical investigators and product sponsors, or the personal financial interests of clinical investigators, can potentially bias the outcome of clinical trials. Although FDA and other government agencies, in parallel with these communities, are increasingly concerned about the potential for such interests to bias data generated by these studies, the agency currently has no mechanism to collect information concerning specific financial interests of clinical investigators who conduct studies in support of product marketing. The creation of a system to collect and analyze this information will strengthen the product review process.

In the **Federal Register** of June 28, 1994, the Public Health Service published a notice of proposed rulemaking on objectivity in research (59 FR 33242–33251); and the National Science Foundation published a statement of policy on financial disclosure by scientific investigators (59 FR 33308–33312).

The fact that these other government agencies have developed such policies and regulations reinforces FDA's concerns and its decision to seek an appropriate approach to the issue. Of necessity, such an approach differs in some respects among different agencies, based on differences in their responsibilities and the nature of their relationships with external communities (i.e., the role of a regulatory agency versus a grant-making agency).

For example, the PHS and NSF documents are broader in scope than the FDA proposed rule and respond to principles that govern federally funded grants and contracts. The concerns of PHS and NSF include the stewardship of public research funds and the assurance of objectivity in the research supported by these funds. Receipt of Federal funds for research is a privilege, and, just as such funds are granted for all types of research, PHS and NSF are interested in guarding against bias in all research.

In contrast, drug and device manufacturers are required under statutory authority to submit clinical trial data in order to gain FDA approval to market a product. FDA's concerns are more narrowly focused on evaluating the reliability of clinical data submissions in support of marketing approval because FDA must rely on submitted clinical data in making decisions on the safety and effectiveness of regulated products. FDA's primary interest is in the potential of certain financial interests to bias the outcome of clinical studies.

Because of the agency's special regulatory responsibilities, FDA's proposed rule differs from the NIH regulation and the NSF policy in terms of the research conducted by potentially affected investigators and in two other respects as well. FDA's proposed rule does not include a financial interest of a clinical investigator in a firm that owns a product that would compete with the tested product for market share, and FDA is not proposing to require disclosure of financial interests and arrangements in or with the sponsor by full-time employees of the sponsor. In addition, FDA's proposed rule does not identify a specific threshold dollar which would trigger disclosure of financial interests. Instead, FDA is requesting public comment on whether setting a threshold amount is appropriate, and if so, what the dollar amount should be. These additional differences, and FDA's interest in obtaining comment on them, are discussed further in section II.D. of this document.

FDA is concerned about financial interests that are unknown or undisclosed to the agency and potentially unmanaged by product sponsors to guard against purposeful or inadvertent bias. In particular, FDA is concerned about those types of financial interests whose value is heavily influenced by the outcome of the research.

Clinical research data provide the basis for FDA's assessment of the safety and effectiveness of new human drugs, devices, and biologics, the assessment of the bioequivalence of generic drugs and sometimes the substantial equivalence of devices. It is essential that these data be reliable and that steps be taken to minimize possible effects on the data resulting from potential bias on the part of an investigator. FDA acknowledges that there are many factors that could give investigators a preference for a particular outcome, but a significant financial interest in the outcome of the study is of particular concern. Bias, as used here, means a purposeful or inadvertent preference of the clinical investigator for a particular study outcome that interferes with the clinical investigator's impartiality in conducting a clinical study. Bias could, for example, interfere with a clinical

investigator's impartiality in assessing the outcome of therapy; in assigning patients to treatment (so that patients who receive the test product are those with a better prognosis); in interpreting an adverse event: in assessing the outcome of the therapy; or in deciding upon use of concomitant therapy.

In any discussion of potential sources of bias, it is important to distinguish between the actual conduct of studies and collection of data by clinical investigators, on the one hand, and the use of those studies, i.e., the analysis, interpretation, and presentation of the data from those studies by the sponsor, on the other. In the analysis, interpretation, and presentation of data, a commercial sponsor would be expected to have a clear preference for a particular result, and FDA's review of the sponsor's submissions proceeds with awareness of the sponsor's interests and potential biases. The agency regularly examines, and in some cases repeats, the statistical analysis carried out by sponsors for scientific adequacy and for accuracy, basing these examinations on the raw data collected by clinical investigators. When there is a choice of analysis or study endpoints, the agency can usually determine whether they were specified prospectively or chosen without knowledge of the study outcome, and whether the choice appears scientifically credible. Where more than one analysis is possible, FDA can independently weigh the arguments for and against a given approach. FDA can, thus, deal with potential sponsor biases in the analyses and interpretation of submitted data because the agency has complete access to the raw data and a complete description of the analyses the sponsor chose.

In contrast, there is no way to assess completely the accuracy of the raw data themselves, although the agency can, and does, take steps to help assure their validity. FDA provides guidance to sponsors of drugs, biologics and devices on how to develop monitoring systems that their study monitors can use to ensure that data generated in clinical trials are accurate and complete. As further protection against isolated unreliable data, the agency generally requires findings to be replicated before they can serve as the basis for marketing decisions; and clinical data may also be subjected to field inspections through the agency's bioresearch monitoring program. In many cases, clinical trial results arise from the combined efforts of many investigators, so that a regulatory conclusion does not depend on a single investigator's efforts.

There are, however, limits to the protection these steps provide against potential bias. Even if the primary responsibility of the study monitor to the sponsor is discounted, monitors cannot verify many of the observations made independently by investigators. Moreover, while the bioresearch monitoring program is immensely valuable in detecting certain kinds of data problems, including errors or bias leading to an inconsistency between what is reported to FDA and information in independently generated records (for example, nurses's notes, laboratory slips, office records, hospital records) and can often detect sloppiness or deliberate fraud, it has limited ability to detect faulty assessment of study endpoints, or failure to record adverse effects. Thus, although the agency tries to ensure that data are reliable, FDA relies considerably on independent clinical investigators to provide valid and reliable data.

Assessing the reliability of data is a fundamental aspect of FDA's evaluation. It is just as critical as assessing the adequacy of study design, the completeness of the studies carried out, and the meaning of the results. Therefore, financial arrangements and interests that could affect reliability of data need to be identified and considered. Such interests are already considered to exist and are taken into account when a clinical investigator is a full-time employee of a sponsor. When the investigator is not a full-time employee, the interests and arrangements that need to be identified and considered include financial arrangements in which the value of financial compensation received by the clinical investigator could be affected by the study outcome; significant payments of other sorts, such as grants for ongoing research, compensations in the form of equipment, retainers or honoraria; a proprietary interest of the investigator in the tested product, such as a patent; or a significant equity interest in the sponsoring company. Such arrangements and interests, especially if combined with such clinical trial features as open (unblinded) study designs, studies with subjective endpoints, and single-investigator studies, may increase the risk that purposeful or inadvertent bias could influence the outcome of the study. FDA needs to be aware of influences that could affect data reliability.

II. Proposed Action

A. The Proposal

In developing this proposal, the agency has considered three broad areas: (1) identification of financial information that should be reported by sponsors to FDA; (2) procedures for reporting this information; and (3) steps the agency should take to deal with potential bias in data from studies by clinical investigators found to have potentially problematic financial interests. FDA has also considered the proper balance between the agency's desire to detect and help to minimize bias in clinical data and the need to avoid intrusion into the privacy of clinical investigators and unreasonable administrative burdens on sponsors and on agency staff.

In considering procedures for reporting such information, the agency has sought to identify the method that would be least burdensome for sponsors and for agency staff. FDA has determined that a simple, direct and effective method of minimizing reporting requirements would be to give every sponsor the option of either certifying to FDA as to the absence of certain financial interests and arrangements of the investigators conducting clinical studies of the sponsor's product or alternatively, disclosing those interests and describing the steps taken to minimize the impact of possible bias. Accordingly, FDA is proposing to require that the sponsor of any product submitted to the agency for marketing approval submit a list of clinical investigators and make one of two alternative submissions for each clinical investigator who is not identified by the sponsor as a full-time employee of the sponsor at the time reports of clinical studies and their accompanying data are submitted in support of product marketing. The alternative submissions are:

(1) The sponsor may certify that for any clinical study relied upon by the sponsor to establish that the product meets the regulatory requirements for approval: (a) The sponsor has not entered into any financial arrangement with any clinical investigator in which the value of financial compensation received by the clinical investigator for conducting the studies could be affected by the outcome of the research; (b) the investigator has not received significant payments of other sorts from the sponsor, such as a grant to fund ongoing research, compensation in the form of equipment, a retainer for ongoing consultation, or honoraria; (c) the clinical investigator has no proprietary interest, such as a patent or other direct financial interest in the clinically tested product; and (d) the clinical investigator holds no significant equity interest in the sponsor's company.

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(2) If the sponsor does not provide certification, the sponsor must disclose the specific financial arrangements made with the clinical investigator, the investigator's proprietary and equity interests in the tested product and the sponsor's company, and describe steps taken to minimize the potential for bias in data submitted in support of product applications.

If a statement of certification or disclosure does not accompany an application containing clinical data, the agency will refuse to file the application. The agency believes that clinical investigators are responsible for providing the sponsor with sufficient accurate financial information to allow preparation of complete and accurate statements and is proposing to require that investigators make such information available to sponsors. Disclosure and certification requirements will extend not only to the clinical investigator, but also to the investigator's immediate family (i.e., spouse and dependent children).

Although this proposed regulation applies only to submissions for human drugs, biological products, and devices, sponsors also submit data from independent clinical investigators—i.e., clinical investigators who are not the sponsor's employees—in support of submissions such as food and color additives, infant formulas, health claims, and animal drug applications (i.e., studies involving animals that are equivalent to clinical studies). The agency will also propose to apply these requirements to submissions for marketing approval related to human foods, animal foods, and animal drugs in a notice to be published in a subsequent issue of the **Federal Register**.

B. The Certification Statement

The agency is proposing in § 54.4(a)(1) the following language for use by sponsors as a certification statement:

> With respect to all covered clinical studies [or to specific clinical studies listed below] submitted in support of this application, I certify that (name of applicant) has not entered into any financial arrangement with any clinical investigator, whereby the value of compensation to the investigator to conduct the study could be affected by the outcome of the study. I also certify that each clinical investigator was required to disclose to (name of applicant) whether the investigator had a proprietary interest in this product, or a significant equity interest in (name of applicant), and that no such interests were disclosed. I further certify that the investigator was not the recipient of significant payments of other kinds as defined in 21 CFR 54.2(f).

For purposes of this statement, a clinical investigator includes the spouse, and each dependent child of the investigator as defined in 21 CFR 54.2(d). This certification is made in compliance with 21 CFR part 54.

C. Rationale for the Proposal

In developing this policy, FDA met with representatives of numerous scientific and health care organizations, as well as industry, consumers and other Government agencies. On September 9, 1993, FDA's Science Board convened a public meeting to discuss financial disclosure by clinical investigators. There was general support for development of this policy expressed at the meeting by board members and most public speakers. The following Government groups were represented at the meeting: PHS, the National Institutes of Health, NSF, and the National Academy of Sciences. The discussion included updates by representatives of these government agencies on the development of their policies and rules pertaining to conflict of interest and financial disclosure.

Presentations were also made by the American Medical Association, the Society for Clinical Trials, the American Federation for Clinical Research, the Association of American Medical Colleges, the Health Research Group, the National Coalition of Hispanic Health and Human Service Organizations, the Women's Health Network, the Pharmaceutical Manufacturers Association, and the Health Industry Manufacturers Association. The Biotechnology Industry Organization submitted a written statement to the Board.

In addition, FDA met informally with organizations representing major segments of the regulated industry, consumer organizations, professional societies, and investigators. During the meetings, the following issues were discussed: (1) The identification of financial arrangements that have the potential for generating bias; (2) the extent of disclosure by clinical investigators to sponsors; (3) the impact of public disclosure of clinical investigators' financial interests; and (4) to whom a requirement for disclosure of financial interests might apply (e.g., the investigator's immediate family, significant business partners). Financial arrangements discussed included payments in the form of equity, such as stock and stock options, and compensation tied to the sales of the product, such as royalty interests. From these informal discussions, it appears that in most cases clinical investigators are not asked by sponsors to divulge any financial interest held by the investigators in the sponsoring firm prior to performing a clinical study. (Minutes and other disclosable statements are available at the Dockets Management Branch (address above)).

Requiring sponsors to obtain information on and either certify or disclose their clinical investigators' relevant financial interests and arrangements is intended to help ensure that sponsors consider these matters in the early stages of product development and, if necessary, consider how best to minimize potential sources of bias. FDA believes that in most cases, sponsors would be able to provide certification for clinical investigators and would not need to submit any further information.

FDA recognizes that therapeutically beneficial products have been developed through investigations in which clinical investigators were compensated in ways that may have influenced the outcome of the study and is therefore not intending to prohibit such arrangements, or rule out reliance on affected studies as a basis for product approval, but intends to give such studies particularly close scrutiny and evaluation.

Requiring certification or disclosure at the time of submission of marketing applications does not preclude a sponsor from seeking the agency's advice at the early stages of product development with respect to a potentially problematic financial arrangement with a clinical investigator. Indeed, FDA strongly encourages early consultation in cases where the sponsor may be entering into problematic financial arrangements with a clinical investigator. The agency will work with sponsors in planning careful management of such situations.

FDA is proposing to require certification or disclosure only with respect to the clinical data submissions in support of marketing applications because if this information were submitted prior to beginning clinical studies, agency staff would be unduly burdened with evaluating financial information for every clinical study undertaken, many of which never lead to marketing applications.

FDA has tentatively chosen not to seek information on investigators carrying out preclinical or manufacturing and controls operations for a number of reasons. Employees of the sponsor develop most of these data, and FDA already considers the financial interests of these employees. Also, these data are often verified independently and are relatively insensitive to inadvertent bias. In contrast, clinical data are more susceptible to inadvertent, unrecognized bias on the part of

investigators. FDA recognizes that, despite these reasons, biased preclinical or chemistry work could also affect product approvals and welcomes comments on possible approaches the agency could take to ensure the reliability of such work.

FDA believes that these requirements for certification or disclosure should apply not only to the clinical investigator's interests, but to the interests of the investigator's immediate family as well. The financial interests of a clinical investigator's immediate family are effectively shared by the investigator and thus would be as potentially biasing as if they were under the investigator's name.

The agency envisions that the financial arrangements and steps taken to minimize bias will vary with different product applications and will review these applications on a case-by-case basis. For example, if a study design is sufficiently robust as a result of factors such as independent data monitoring, multiple investigators, blinding, and independent endpoint assessment, FDA could determine that a problematic financial interest would not likely introduce bias. In other situations, there might be sufficient replication of critical results to render the questionable data less important, or it might be possible to carry out further analyses or observations (reexamination of hospital records or patients) that would provide assurance as to the reliability of the data. In still others, intensified scrutiny by FDA's bioresearch monitoring staff might be sufficient to permit FDA to accept the data in support of product marketing applications. In some cases, however, FDA might not be able to conclude that the data were reliable and might require sponsors to conduct further studies. The agency seeks comment as to other appropriate steps that FDA might take to respond to applications that may be considered problematic with respect to potential bias.

D. Related Issues for Comment

1. Public Disclosure

The agency also seeks comment on whether publicly disclosing a clinical investigator's financial interests would serve a useful purpose. FDA also requests comment on what might constitute an appropriate forum for such release—for example, whether it would be useful to disclose such information to an outside advisory committee considering the tested product. Public disclosure of such information is subject to any limitations on disclosure imposed by the Privacy Act, the Freedom of Information Act and other applicable Federal statutes. FDA requests comment on whether the value of public release is outweighed by the right to privacy of clinical investigators with respect to their financial affairs.

2. Definition of a Clinical Investigator

For the purposes of this proposed rule, FDA defines a clinical investigator as including the spouse and each dependent child of the investigator. FDA is aware of instances in which problematic financial interests or arrangements have been listed under the name of a business partner or business associate of a clinical investigator with whom the investigator shared the interests or arrangements, so that the potentially biasing factor is not readily traceable to the clinical investigator. The agency seeks comment on whether the definition of a clinical investigator should include business partners of the investigator as well and, if so, how "business partner" should be defined.

3. Scope and Amount of Financial Interests that Should Be Disclosed

In proposing to require disclosure of any significant equity interest held by a clinical investigator in the sponsor, the agency has defined a significant equity interest as "any ownership interest, stock options, or other financial interest whose value cannot be readily determined through reference to public prices, or any equity interest in a publicly traded corporation that exceeds 5 percent of total equity (see proposed § 54.2(b)). FDA seeks public comment on this definition.

FDA also seeks comment on whether to require information on other investigator interests or payments to investigators that are not directly related to the conduct of a study. These types of arrangements might give the investigator an "interest" in the company, such as financial ties with a firm or other entity that supplies, or is likely to supply equipment, materials, or services for work performed by the investigator; financial ties with parties whose financial interests would be, or would seem to be, directly and significantly affected by the investigator's work; financial ties with, or financial support from, any firm that markets, produces, or has in premarket testing a product that is, or will likely be, affected by the investigator's research. FDA also requests comment on whether there should be a "threshold of concern" with respect to such payments, (i.e., whether the agency should be concerned only when these forms of compensation to investigators exceed a certain threshold amount). Several academic institutions have instituted de minimis levels for disclosure, such as $5,000 cash and $20,000 equity interest in a publicly held and widely traded company. FDA has not identified a threshold amount and seeks public comment on whether a threshold dollar amount should be set, and if so, what that amount should be. The agency also seeks comments on any other financial relationships or arrangements that should raise concern.

4. Ownership by a Clinical Investigator of Stock in a Competing Product

The approach taken by FDA in this proposed rule differs from that of PHS and NSF in that the agency has not included ownership by a clinical investigator of stock in a product that would compete with the tested product for market share. This issue, FDA believes, is appropriately of concern to sponsors. The agency seeks comment on whether such ownership substantially threatens an individual clinical investigator's objectivity and whether there is a manageable basis for reporting this kind of interest.

5. Disclosure of Financial Interests by Full-Time Employees of the Sponsor

FDA's approach also differs from that of PHS and NSF in that FDA is not proposing to require disclosure of financial interests and arrangements in or with the sponsor by full-time employees of the sponsor. FDA assumes the clinical investigator who is a full-time employee of the sponsor has a clear interest in the outcome of research and accounts for this potential bias in the level of scrutiny with which the agency reviews the submitted data. FDA seeks comment as to what disclosure, if any, by a clinical investigator, who is a full-time employee of the sponsor, of interests in the sponsor other than salary might contribute to minimizing bias.

6. Disclosure by Clinical Investigators to Both PHS and FDA

The PHS notice of proposed rulemaking on objectivity in research (59 FR 33242) would require that an institution receiving a PHS grant for research must solicit and review financial disclosure statements from each investigator who is planning to participate in PHS-funded research. The Institution would make available to the Department of Health and Human Services, upon request, information regarding all significant financial interests identified by the institution and how those interests have been managed, reduced, or eliminated to protect the research from bias. In this

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proposed regulation, FDA would require that the sponsor of a marketing application for a regulated product either certify as to the absence of certain financial interests and arrangements of the investigators conducting clinical studies of the sponsor's product, or disclose those interests and describe the steps taken to minimize the impact of possible bias.

As noted in Section I. of this document, these two proposed regulations respond to different principles and are based on different relationships with external communities. Nevertheless, there is potential for the two regulations to overlap in a small number of instances involving PHS-funded clinical research on FDA-regulated products. Public comment is sought on whether, in such instances, clinical investigators should be required to disclose financial interests both to the institution receiving PHS funds and to the sponsor submitting a marketing application to FDA, and whether meeting the PHS requirement for disclosure to the institution should be considered to satisfy FDA's requirement for disclosure to the sponsor of a marketing application.

III. Legal Authority

The agency is generally authorized by the Federal Food, Drug, and Cosmetic Act (the act) and the Public Health Service Act to approve drugs, devices, and biological products for marketing if the products are demonstrated to be safe and effective for their intended uses and are properly labeled. More specifically, new drugs are approved for marketing if they meet the safety and effectiveness criteria set forth in section 505(d) of the act (21 U.S.C. 355(d)) and the implementing regulations (21 CFR part 314). To demonstrate effectiveness, the law requires evidence from adequate and well-controlled clinical studies on the basis of which qualified experts could fairly and responsibly conclude that the drug has the effect it is purported to have. Section 505(j)(3)(F) of the act authorizes the approval of an abbreviated new drug application if, among other things, there is sufficient information to show that the drug is "bioequivalent to the listed drug referred to in the application." Under section 505(e) of the act, approval of a new drug application is to be withdrawn if new information shows that the drug has not been demonstrated to be either safe or effective. Approval may also be withdrawn if new information shows that the drug's labeling is false or misleading. Under section 505(d)(4) of the act, in determining whether a drug is "safe for use" under the conditions proposed, the agency may consider not only information such as data from clinical studies, but also "any other information" before the agency relevant to the determination. In deciding whether the drug's proposed labeling would be "false or misleading" under section 505(d)(7) of the act, the agency is also to evaluate "all material facts."

Section 505(k) of the act authorizes the agency to promulgate regulations requiring applicants to make records and reports of data or other information that are necessary to enable the agency to determine whether there is reason to withdraw approval of a new drug application or an abbreviated new drug application.

There is similar authority under section 351(d) of the Public Health Service Act (42 U.S.C. 262) to approve biological products if their "safety, purity, and potency" are demonstrated; section 351 also authorizes the promulgation of regulations designed to ensure the continued safety, purity, and potency of the products.

FDA's authority to regulate medical devices arises from the Federal Food, Drug, and Cosmetic Act of 1938, as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Device Amendments of 1990, and the Medical Device Amendments of 1992.

Under the 1976 amendments, devices are divided into preamendments devices, i.e., those devices in commercial distribution prior to May 28, 1976, the date of the enactment of the 1976 amendments, and postamendments devices, i.e., those devices first in commercial distribution on or after the enactment of the 1976 amendments. All devices are then further classified into class I, II, or III, depending on the degree of regulatory control necessary to ensure safety and effectiveness. Class III devices are the most highly regulated category of devices and, unless exempted, are subject to premarket approval by FDA. A device may be classified into class III: (1) By operation of law if the device is a "new" device, i.e., it was not on the market before the date of the enactment of the 1976 amendments; (2) if FDA classifies or reclassifies the device into class III; or (3) by operation of law under 21 U.S.C. 360j(l) because it is a transitional device that was previously regarded as a new drug.

An unapproved class III device may be investigated for purposes of obtaining FDA approval under an investigational device exemption (IDE) (21 U.S.C. 360j(g)). Under three IDE regulatory provisions, FDA can require any information "relevant" to the review of the application (21 CFR 812.20(b)(12), 812.20(c), and 813.20(b)(18)).

Clinical data generated under an IDE and other data and information are used by FDA as a basis to grant marketing approval for class III devices and as a basis to reclassify a device. The law requires that a premarket approval application (PMA) contain "full reports of all information," known to, or which should reasonably be known to, the applicant concerning investigations concerning the safety and effectiveness of the device (21 U.S.C. 360e(c)(1)(A)). In approving a PMA, FDA must make the determination, inter alia, that there is a showing of reasonable assurance that the device is safe and effective under the conditions of use prescribed, recommended, or suggested in the proposed labeling, and that based on a fair evaluation of all material facts the proposed labeling is not false or misleading (21 U.S.C. 360e(b)). In deciding whether to grant or deny approval of a PMA, FDA relies upon "valid scientific evidence" which includes evidence from well-controlled investigations, partially controlled studies, studies and objective trials without matched controls, well-documented case histories conducted by qualified experts, and reports of significant human experience with a marketed device * * *." (21 CFR 860.7(c)(2)). FDA evaluates the data submitted and determines whether it constitutes "valid scientific evidence" for the purpose of determining the safety and effectiveness of a particular device "and whether the available evidence, when taken as a whole is adequate to support a determination that there is a reasonable assurance that the device is safe and effective for its conditions of use." (21 CFR 860.7(c)(1)). In determining whether a device should be reclassified, FDA relies upon the same regulatory definition of "valid scientific evidence." Section 515(e)(1) of the act (21 U.S.C 360(e)(1)) authorizes the agency to withdraw approval of an application if, on the basis of "new information," there is a lack of a showing of reasonable assurance that the device is safe and effective under the conditions of use, or the labeling of the device is false or misleading in any particular.

FDA may also use clinical data to determine whether a "new device," i.e. a device marketed after the date of the enactment of the 1976 amendments, may be removed from its automatic statutory class III status and thereby be exempt from premarket approval requirements (21 U.S.C. 360c(f)(1)). Such devices may be marketed without premarket approval if FDA issues an order finding them "substantially equivalent" to a predicate device that does not require premarket approval (21 U.S.C. 360c(i)(1)). In determining whether a device is "substantially equivalent" to a predicate device, FDA must determine, on the basis of a premarket application submission (510(k) submission)(21 U.S.C. 360(k)), that the device has the same intended use as the predicate device, and that the device "has the same technological characteristics as the predicate device, or * * * has different technological characteristics and the [submission] * * * contains information, including clinical data if deemed necessary by the Secretary, that demonstrates that the device is as safe and effective" as the predicate device and does not raise different questions of safety and efficacy than the predicate device. (Id.)

Pursuant to sections 519 and 701 of the act, (21 U.S.C. 360i and 371) FDA has broad authority to promulgate regulations governing the approval of devices. Section 519(a) of the act requires manufacturers of devices to "establish and maintain such records, make such reports, and provide such information, as the Secretary may, by regulation, reasonably require to assure that such device is not adulterated or misbranded and to otherwise assure its safety and effectiveness."

Thus, a critical part of the agency's function is examining clinical data to determine if the safety and effectiveness requirements of the act and the Public Health Service Act have been met. FDA is authorized by sections 505(i) and 701(a) of the act to promulgate regulations governing the conduct of studies of investigational drugs, including unlicensed biological products. There is similar authority relating to studies of devices under sections 510(k), 513, 515, 520(g), and 522 of the act (21 U.S.C. 360(k), 360c, 360e, 360j(g), and 360l). Pursuant to this authority, FDA has previously promulgated regulations whose purpose is to ensure the reliability of data submitted to FDA in support of marketing applications. FDA's investigational new drug application regulations (21 CFR part 312), promulgated under section 505(i) of the act, and its investigational device exemptions regulations (21 CFR parts 812 and 813), promulgated under section 520(g) of the act, are intended, among other things, to help ensure the validity and reliability of clinical study results submitted to FDA in support of new drug applications (NDA's) and supplements; premarket approval applications, and premarket notification submissions (510(k) submissions) for devices; and license applications and supplements for biological products. The Supreme Court has upheld the authority of the Commissioner of Food and Drugs to issue regulations to ensure the reliability of clinical study results, including requirements to minimize bias. (See *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 606 (1973)).

In recent years, the academic and scientific communities have turned their attention to the general issue of conflict of interest on research. One issue that has received particular attention has been the potential for the financial interests of investigators to bias the results of studies. There has been much discussion of the importance of protecting study outcomes from potential bias resulting from investigator interests in the area of applied research, such as research that supports the marketing applications for human medical products. This concern is shared by the PHS and NSF, both of which are currently developing regulations and policies regarding financial disclosure by clinical investigators and by FDA. FDA believes that it is important to the public health to ensure that the data submitted to the agency in support of marketing applications are free of the effects of such bias as much as possible. The agency has concluded that this regulation requiring certification and disclosure of certain financial information of clinical investigators is necessary to enable FDA to approve human medical products on the basis of valid, reliable, and unbiased data. FDA believes that the regulation is fully authorized under sections 505, 510(k), 513, 515, 519, 520(g), 522, and 701(a) of the act, and by section 351 of the Public Health Service Act.

FDA is proposing these reporting requirements because the information received will enable the agency to determine the reliability of data submitted in marketing applications more effectively. More effective review of products proposed for marketing provides greater protection to the public health, and therefore results in improved implementation of the act. FDA believes that it is essential to be able to inspect the underlying documents forming the basis of a sponsor's certification or disclosure statement. Access to these records is consistent with the agency's overall statutory authority to ensure the safety and effectiveness of drugs, biological product, and devices. FDA's authority to require maintenance of records and to provide for agency access to these records was upheld in *National Confectioners Association* v. *Califano*, 569 F.2d 690 (D.C. Cir. 1978).

IV. Alternatives Considered

FDA considered several approaches to handling the issue of potential bias of research data resulting from the financial interests of clinical investigators before deciding to adopt the certification and disclosure procedures described in this document. Two other obvious possibilities would be the prohibition of certain financial interests by the agency, e.g., compensation in the form of equity in the firm, and divestiture by the investigator of a prohibited interest. FDA believes that prohibition and divestiture of financial interests might have a disproportionate and unduly severe effect on certain industries in which an individual who has the closest financial ties, e.g., the inventor of a device being tested, is often involved as an investigator.

In other situations, such as small start up biotechnology firms, payments to clinical investigators are sometimes made in the form of equity interests, such as stock options, because these firms have limited capital. These industries rely heavily on such arrangements because they are young and not well capitalized and yet are highly creative and produce many novel products. In addition, the agency believes that the proposed approach is more appropriate in light of the fact that a number of Federal programs have been created in recent years specifically to encourage partnerships between industry, academia, and Government in the belief that such relationships result in important innovation. Examples of such programs include the Stevenson-Wydler Technology Innovation Act of 1980 (Pub. L. 96–480), which encourages technological transfer, particularly through collaboration between industry and the academic community. The Patent and Trademark Act Amendments of 1980 (Pub. L. 96–517) allow universities and other funding recipients to apply for patents developed with Federal funding (rather than awarding such rights to the Government), and expressly promote collaboration between commercial concerns and nonprofit organizations. The Economic Recovery Tax Act of 1981 (Pub. L. 97–34) is aimed at fostering research and development by small companies and associated university partners. The Federal Technology Transfer Act of 1986 (Pub. L. 99–502), which amended Pub. L. 96–480, and Executive Order 12592, provide similar

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patent and licensing authority to Federal laboratories and encourage them to participate in cooperative research and development agreements with the private sector and nonprofit organizations.

V. Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondents of the information collections are shown below with an estimate of the annual recordkeeping and periodic reporting burden.

Title: Financial Disclosure by Clinical Investigators: 21 CFR Part 54.

Description: FDA is proposing to require that the sponsor of any product submitted to the agency for marketing approval for new drugs, biological products, and devices make one of two alternative submissions at the time data from clinical studies are submitted in support of product marketing. The sponsor may either certify as to the financial arrangements and interests of clinical investigators or disclose certain financial arrangements between the sponsor and its clinical investigators and certain interests of the clinical investigators in the tested product or in the sponsor.

Description of Respondents: Sponsors of FDA regulated products that are the subject of clinical data submitted in support of marketing applications.

ESTIMATED ANNUAL BURDEN FOR REPORTING

Section	Center	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total hours
54.4	Biologics	20	11	220	.5	110
	Drugs	246	120	29,520	.5	14,760
	Devices	125	10	1,250	.5	625
Total	reporting burden [1]					15,495

[1] In calculating this burden respondents are assumed to be sponsors of marketing applications. On average, 20 sponsors submit marketing applications for biologics each year, 246 submit applications for drugs, and 125 submit applications for devices. Responses are broken down into the number of investigators certifying and disclosing for each sponsor's application. The average number of clinical investigators conducting studies related to a marketing application for a biologic is 11; for a drug, 120; and for a device, 10. It is estimated that the sponsor for a marketing application for a biologic will submit certification statements for 10 investigators and a disclosure statement for 1. It is estimated that a drug sponsor will submit certification statements for 115 and disclosure statements for 5. It is estimated that a device sponsor will submit certification statements for 8 investigators and disclosure statements for 2. Finally, it is estimated that .5 hours (30 minutes) will be required per submission. In the absence of a firm basis for estimating the frequency of either certification or disclosure, the agency is using the conservative estimate of .5 hours per response, although it is estimated that .25 hours (15 minutes) will be required for the preparation and submission of a certification statement and .5 hours (30 minutes) will be required for the preparation and submission of a disclosure statement.

ESTIMATED ANNUAL BURDEN FOR RECORDKEEPING

Section	Center	No. of recordkeepers	Hours per recordkeeper	Total recordkeeping hours
54.6	Biologics	20	5.5	110
	Drugs	246	60	14,760
	Devices	125	5	625
Total	recordkeeping burden [1]			15,945

[1] In calculating this burden, recordkeepers are assumed to be sponsors. It is assumed that each sponsor will submit one application. The hours per recordkeeper are arrived at by multiplying the average number of clinical investigators involved in each sponsor's submitted application (11 for biologics, 120 for drugs, and 10 for devices) by the time estimated for filing the financial information received from each investigator, which is .5 hours. This is considered to be a one-time burden and one that would not be repeated on an annual basis.

As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA is submitting a copy of this proposed rule to OMB for its review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspect of these information collection requirements, including suggestions for reducing the burden, should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Economic Impact

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is consistent on essential points with actions proposed by other agencies of which FDA is aware.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This rule will create costs in three areas: reporting, recordkeeping, and research. The reporting and recordkeeping burdens, which are fully described in section V. of this document, are the minimum necessary to achieve the goals of this proposed regulation. Research costs will amount to costs incurred by sponsors in validating data that is potentially compromised and are difficult to estimate because those situations can be expected to vary and will be dealt with on a case-by-case basis. FDA will encourage sponsors to consult with agency staff on management of potentially problematic situations early on so that verifying the reliability of the data will be less burdensome. FDA has not proposed to prohibit certain financial interests, such as compensation to investigators in the form of equity in the sponsor's firm, nor is the agency proposing to require divestiture by the investigator of any financial interest, because such provisions could impact significantly on certain small entities and hinder their ability to bring innovative products to market. For these reasons, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VIII. Conforming Amendments

A. Amendments to Regulations for Human Drug Products

While the proposed rule would not require sponsors to submit certification and disclosure statements until they submit a marketing application, FDA believes that sponsors should acquire financial information from investigators before starting clinical investigations. Consequently, FDA is proposing to amend § 312.53(c), the regulation governing the selection of investigators, to require sponsors to obtain financial information from clinical investigators. The agency believes that early acquisition of financial information by sponsors would be prudent to enable sponsors to discover any possible bias by the investigator that might affect the conduct of the clinical investigation before the investigation begins. Additionally, this would permit sponsors to consult FDA regarding potential bias before the sponsor and the agency have devoted resources to the clinical investigation.

The proposed amendment to § 312.57 would require sponsors to maintain records on compensation agreements and all other financial interests of investigators and investigators' immediate families as described in part 54. The agency notes that such information would be required to be made available for inspection under existing regulations. The proposed amendment to § 312.64 would require clinical investigators to provide sponsors with sufficient accurate information to allow the sponsor to submit complete and accurate certification or disclosure statements.

The agency is proposing to amend §§ 314.50 and 314.60 (21 CFR 314.50 and 314.60) to require that all new drug applications, amendments to applications, and supplements that contain new data from a previously unreported study include a certification or disclosure statement.

FDA is proposing to amend § 314.94 to require certification or disclosure statements in abbreviated new drug applications. While section 505(j)(2)(A) of the act does not specifically mention certification or disclosure statements, section 505(j)(2)(A)(iv) of the act authorizes the agency to require "information to show that the new drug is bioequivalent to the listed drug." Thus, the proposed requirement would allow FDA to better judge the reliability of bioequivalence data, and is within the scope of section 505(j)(2)(A)(iv) of the act.

Under this proposal, the agency would refuse to file any application or abbreviated antibiotic application, and refuse to receive any abbreviated new drug application that does not contain a certification or disclosure statement. Current regulations allow FDA to refuse to file or receive incomplete applications. Proposed amendments to §§ 314.50 and 314.94 would require certification or disclosure to accompany applications and abbreviated applications, therefore, any application or abbreviated application not containing a certification or disclosure statement would be incomplete and would not be filed or received. If FDA refuses to file or receive an application or abbreviated application, FDA will not review the application because the agency has determined that the application is not sufficiently complete to allow substantive review. FDA is proposing to amend § 314.60 to allow the agency to refuse to accept amendments that contain clinical data without a certification or disclosure statement.

The agency would amend §§ 314.200 and 314.300 to require any person who submits clinical data as part of the hearing process for refusals to approve and for withdrawals of approvals for NDA's, abbreviated antibiotic drug applications (AADA's), or abbreviated new drug applications (ANDA's) or the hearing process for issuing, amending, and withdrawing antibiotic regulations to submit a certification or disclosure statement.

Proposed amendments to § 320.36 (21 CFR 320.36) would require similar reporting and recordkeeping for certification and disclosure statements accompanying bioequivalence studies as would be required under part 312.

Proposed amendments to § 330.10 (21 CFR 330.10) would require certification or disclosure statements to accompany clinical data submitted as a part of the over-the-counter (OTC) monograph process. FDA believes that the clinical data submitted for OTC drug products are no less important than data submitted as part of the NDA or ANDA processes and should be treated similarly. In the case of OTC monographs, because all data are publicly available, this disclosure should also be part of the public record even if it is not made public for NDA's and ANDA's.

B. Amendments to Regulations for Biologicals

FDA is proposing to amend the regulations at § 601.2(a) (21 CFR 601.2(a)) governing the filing of applications for product licenses by adding a sentence to require the inclusion of a financial certification or disclosure statement as follows: "The applicant shall also include a financial certification or disclosure statement as required by part 54 of this chapter."

C. Amendments to Regulations for Medical Devices

The agency realizes that not all 510(k) premarket notification submissions contain clinical data. Because current regulations do not authorize FDA to require certification or disclosure statements, the agency proposes to specifically require such statements by adding a new paragraph to § 807.87 (21 CFR 807.87). After review of a 510(k), FDA does not "file the application" but has other options, depending upon the information contained in the submission. Therefore, the agency proposes to withhold the decision on the 510(k) submission until a certification or disclosure statement is submitted.

The agency recognizes that the historical file relating to a device may be retained in more than one location. FDA believes however, that a copy of the certification or disclosure statement should be accessible pursuant to § 807.31 (21 CFR 807.31) and proposes to amend the regulation to accommodate accessibility. A proposed amendment to § 812.110 would require clinical investigators to provide to

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sponsors sufficient accurate financial information to allow sponsors to submit complete and accurate certification or disclosure statements. Therefore, FDA is also proposing to amend § 814.20 to require sponsors to include in premarket approval applications a financial certification or disclosure statement as required by part 54, and to amend § 814.42 (21 CFR 814.42) to allow the agency to refuse to file an application or amendments that contain clinical data without a certification or disclosure statement.

Because supporting data are needed in a reclassification petition to satisfy the requirements of a determination of safety and effectiveness of a device, FDA is proposing to amend § 860.123 to require any sponsor who submits clinical data as part of a reclassification petition to include a certification or disclosure statement.

IX. Request for Comments

Interested persons may on or before December 21, 1994 submit to the Dockets Management Branch (HFA–305) (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 54

Clinical investigations, Financial disclosure, Reporting and recordkeeping requirements.

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 320

Drugs, Reporting and Recordkeeping requirements.

21 CFR Part 330

Over-the-counter drugs.

21 CFR Part 601

Biologics, Confidential business information.

21 CFR Part 807

Confidential business information, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical Devices, Medical Research, Reporting and recordkeeping requirements.

21 CFR Part 860

Administrative practice and procedure, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that 21 CFR chapter I be amended as follows:

1. New part 54 is added to read as follows:

PART 54—FINANCIAL DISCLOSURE BY CLINICAL INVESTIGATORS

Sec.

54.1 Purpose.
54.2 Definitions.
54.3 Scope.
54.4 Disclosure requirements.
54.5 Agency evaluation of financial interests.
54.6 Recordkeeping and record retention.

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 510, 513–520, 701, 702, 703, 704, 705, 706, and 708 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360, 360c–360j, 371, 372, 373, 374, 375, 376, and 379); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

§ 54.1 Purpose.

(a) The Food and Drug Administration (FDA) evaluates clinical studies submitted in marketing applications as required by law for new human drugs and biological products and marketing applications and reclassification petitions for medical devices.

(b) The agency reviews data generated in these clinical studies to determine whether the applications are approvable under the statutory requirements. FDA may consider clinical studies inadequate and the data inadequate if, among other things, appropriate steps have not been taken in the design, conduct, reporting, and analysis of the studies to minimize bias. One potential source of bias in clinical studies is a financial interest of the clinical investigator in the outcome of the study, either because the amount of compensation the investigator receives may be influenced by the outcome of the study, or because the investigator has a financial interest in the product under study or in the sponsor of the marketing application. This section and conforming regulations require the sponsor of a marketing application that relies in part on clinical data to disclose certain financial arrangements between the sponsor and its clinical investigators and certain interests of the clinical investigators in the product or in the sponsor. FDA will use this information, in conjunction with information about the design and purpose of the study, as well as information obtained through on-site inspections, in the agency's assessment of the reliability of the data.

§ 54.2 Definitions.

For the purposes of this part:

(a) *Compensation affected by the outcome of clinical studies* means compensation that could be higher for a favorable outcome than for an unfavorable outcome, such as compensation explicitly greater in the event of a favorable result, or compensation to the investigator in the form of an equity interest in the sponsor's company or in the form of compensation tied to sales of the product, such as a royalty interest.

(b) *Significant equity interest in the applicant means* any ownership interest, stock options, or other financial interest whose value cannot be readily determined through reference to public prices, or any equity interest in a publicly traded corporation that exceeds 5 percent of total equity.

(c) *Proprietary interest in the tested product* means a property or other financial interest in the product including, but not limited to, patent, trademark, copyright or licensing agreement.

(d) *Clinical investigator* means any investigator who is:

(i) Directly involved in the treatment or evaluation of research subjects, or

(ii) Could otherwise influence the outcome of the research; for the purposes of the requirements of this part relating to financial interests, "investigator" includes the spouse and each dependent child of the investigator.

(e) *Clinical study* means any study involving human subjects, including a study to establish bioavailability or bioequivalence, submitted in a marketing application subject to this part, that either:

(1) The sponsor identifies as one that the sponsor relies on to establish that the product meets the regulatory requirements for marketing, or

(2) FDA identifies as one that it intends to rely on to support its decision to permit the marketing of the product. Studies submitted as publications or in brief summary form will generally not be considered "covered clinical studies" unless FDA informs the sponsor otherwise. A sponsor may consult with FDA as to which clinical studies constitute "covered clinical studies" for purposes of complying with financial disclosure requirements.

(f) *Significant payments of other sorts* means payments that exceed $5,000 (e.g., grants to fund ongoing research, compensation in the form of equipment or retainers for ongoing consultation or honoraria) or that exceed 5 percent of the total equity in a publicly held and widely traded company.

§ 54.3 Scope.

The requirements in this part apply to any sponsor of human drugs, biological products, or devices who has contracted with one or more clinical investigators to conduct studies to determine whether the sponsor's product meets FDA marketing requirements and who submits data from the clinical studies for agency review.

§ 54.4 Disclosure requirements.

For purposes of this part, a sponsor must submit a list of all clinical investigators who conducted studies to determine whether the sponsor's product meets FDA marketing requirements, identifying those clinical investigators who are full-time employees of the sponsor. The sponsor must also completely and accurately disclose or certify information concerning the financial interests of a clinical investigator who is not a full-time employee of the sponsor, and the investigator's spouse and dependent children for each covered clinical study. The clinical investigator must provide the sponsor with sufficient accurate information to make the required disclosure or certification.

(a) The sponsor of an application submitted under sections 505, 506, 507, 510(k), 513, or 515 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act that relies in part on clinical studies shall submit, for each covered clinical study, either a certification described in paragraph (a)(1) of this section or a disclosure statement described in paragraph (a)(2) of this section.

(1) *Certification.* The sponsor of an application covered by this section may submit the following certification dated and signed by the chief financial officer or other responsible corporate official:

> With respect to all covered clinical studies [or to specific clinical studies listed below] submitted in support of this application, I certify that (name of applicant) has not entered into any financial arrangement with any clinical investigator, whereby the value of compensation to the investigator to conduct the study could be affected by the outcome of the study. I also certify that each clinical investigator was required to disclose to (name of applicant) whether the investigator had a proprietary interest in this product, or a significant equity interest in (name of applicant), and that no such interests were disclosed. I further certify that the investigator was not the recipient of significant payments of other kinds as defined in 21 CFR 54.2(f). For purposes of this statement, a clinical investigator includes the spouse and each dependent child of the investigator as defined in 21 CFR 54.2(d). This certification is made in compliance with 21 CFR part 54.

(2) If the certification covers less than all covered clinical data in the application, the applicant shall include in the certification a list of the studies covered by this certification.

(3) *Disclosure statement.* For any application containing a covered clinical study for which the sponsor does not submit the certification described in § 54.4(a)(1), the application shall contain a statement disclosing, completely and accurately, the following information:

(i) Any financial arrangement entered into between the applicant and any clinical investigator involved in the conduct of a covered clinical trial, whereby the value of the compensation to the clinical investigator to conduct the study could be influenced by the outcome of the study;

(ii) Any significant payments of other sorts, such as a grant to fund ongoing research, compensation in the form of equipment, retainer for ongoing consultation, or honoraria;

(iii) Any proprietary interest in the tested product held by any clinical investigator involved in a study; and

(iv) Any significant equity interest in the applicant held by any clinical investigator involved in a covered study relied on in the application and the steps taken to minimize the potential for bias.

(b) The clinical investigator shall provide to the sponsor sufficient accurate financial information to allow the sponsor to submit complete and accurate certification or disclosure statements as required in paragraph (a) of this section. The investigator shall promptly update this information if any relevant changes occur in the course of the investigation.

(c) *Refusal to file application.* FDA will refuse to file any marketing application described in paragraph (a) of this section that does not contain the information required by this section.

§ 54.5 Agency evaluation of financial interests.

(a) *Evaluation of disclosure statement.* FDA will evaluate the information disclosed under § 54.4(a)(2) about each covered clinical study in an application to determine the impact of any disclosed financial interests on the reliability of the study. FDA may consider both the size and nature of a disclosed financial interest (including the potential increase in the value of the interest if the product is approved) and steps that have been taken to minimize the potential for bias.

(b) *Effect of study design.* In assessing the potential of an investigator's financial interests to bias a study, FDA will take into account the design and purpose of the study. Study designs that utilize multiple investigators (most of whom do not have a disclosable interest), blinding, objective endpoints, or measurement of endpoints by someone other than the investigator may adequately protect against any bias created by a disclosable financial interest.

(c) *Agency actions to assure reliability of data.* If FDA determines that the financial interests of any clinical investigator raise a serious question about the integrity of the data, FDA will take any action it deems necessary to assure the reliability of the data including:

(1) Initiate agency audits of the data derived from the investigator in question;

(2) Request that the sponsor submit further analyses of data, e.g., to evaluate the effect of the investigator's data on study outcome;

(3) Request that the sponsor conduct additional independent studies to confirm the results of the covered study;

(4) Refuse to treat the covered clinical study as pivotal or primary data upon which an agency action could be taken.

§ 54.6 Recordkeeping and record retention.

(a) *Financial records of clinical investigators to be retained.* A sponsor who has submitted a marketing application containing covered clinical studies shall keep on file certain information pertaining to the financial interests of clinical investigators who conducted studies on which the application relies and who are not full-time employees of the sponsor as follows:

(1) Complete records showing all compensation paid to clinical investigators by the sponsor and all compensation agreements between the sponsor and clinical investigators;

(2) Complete records showing any significant payments of other sorts, as described in § 54.4(a)(3)(ii), made by the sponsor to the investigator;

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(3) Complete records showing any financial interests held by clinical investigators as set forth in § 54.4 (a)(3)(iii) and (a)(3)(iv).

(b) *Requirements for maintenance of clinical investigators' financial records.* (1) For any application submitted for a covered product, a sponsor shall retain records as described in paragraph (a) of this section for 2 years after the date of approval of the application, or, if the application is not approved, for 2 years after the product, for which the application was submitted, was shipped and delivered to clinical investigators for testing.

(2) The person maintaining these records shall, upon request from any properly authorized officer or employee of FDA, at reasonable times, permit such officer or employee to have access to and copy and verify these records.

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

The authority citation for 21 CFR part 312 continues to read as follows:

2. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

3. Section 312.53 is amended by adding new paragraph (c)(4) as follows:

§ 312.53 Selecting investigators and monitors.

* * * * *

(c) * * *

(4) *Financial disclosure information.* Sufficient accurate financial information to allow the sponsor to submit complete and accurate certification or disclosure statements required under part 54 of this chapter. The investigator shall promptly update this information if any relevant changes occur during the course of the investigation.

* * * * *

4. Section 312.57 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), and by adding new paragraph (b) to read as follows:

§ 312.57 Recordkeeping and record retention.

* * * * *

(b) A sponsor shall maintain complete and accurate records showing all compensation paid to investigators and all compensation agreements between the sponsor and investigators. A sponsor shall also maintain complete and accurate records concerning all other financial interests of investigators subject to part 54 of this chapter.

* * * * *

5. Section 312.64 is amended by adding new paragraph (d) to read as follows:

§ 312.64 Investigator reports.

* * * * *

(d) *Financial disclosure reports.* The investigator shall provide the sponsor with sufficient accurate financial information to allow the sponsor to submit complete and accurate certification or disclosure statements required under part 54 of this chapter. The investigator shall promptly update this information if any relevant changes occur during the course of the investigation.

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

6. The authority citation for 21 CFR part 314 is revised to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 379e).

7. Section 314.50 is amended by redesignating paragraphs (a)(4) and (a)(5) as paragraphs (a)(5) and (a)(6), and by adding new paragraph (a)(4) to read as follows:

§ 314.50 Content and format of an application.

* * * * *

(a) * * *

(4) A financial certification or disclosure statement as required by part 54 of this chapter.

* * * * *

8. Section 314.60 is amended in paragraph (a) by adding a new sentence at the end of the paragraph to read as follows:

§ 314.60 Amendments to an unapproved application.

(a) * * * An amendment that contains new clinical data from a previously unreported study shall contain a financial certification or disclosure statement as required by part 54 of this chapter, or FDA will not accept any such amendment.

* * * * *

§ 314.94 [Amended]

9. Section 314.94 Content and format of an abbreviated application is amended in paragraph (a)(1) by removing "and (a)(5)" and replacing it with "(a)(5), and (a)(6)"; and in paragraph (c) by removing "and (a)(5)" and replacing it with "(a)(5), and (a)(6)".

10. Section 314.200 is amended in paragraph (d)(3) by adding a new sentence after the first sentence to read as follows:

§ 314.200 Notice of opportunity for hearing; notice of participation and request for hearing; grant or denial of hearing.

* * * * *

(d) * * *

(3) * * * A financial certification or disclosure statement as required by part 54 of this chapter must accompany all clinical data submitted. * * *

* * * * *

11. Section 314.300 is amended in paragraph (b)(6) by adding a new sentence after the first sentence to read as follows:

§ 314.300 Procedure for the issuance, amendment, or repeal of regulations.

* * * * *

(b) * * *

(6) * * * A financial certification or disclosure statement as required by part 54 of this chapter must accompany all clinical data submitted with the request for hearing. * * *

* * * * *

PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

12. The authority citation for 21 CFR part 320 continues to read as follows:

Authority: Secs. 201, 501, 502, 505, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, 357, 371).

13. Section 320.36 is amended by designating the existing text as paragraph (a) and by adding new paragraph (b) to read as follows:

§ 320.36 Requirements for maintenance of records of bioequivalence testing.

* * * * *

(b) Any person who contracts with another party to conduct a bioequivalence study, the data of which are intended to be submitted to FDA as part of an application submitted under part 314 of this chapter, shall obtain from the person conducting the study sufficient accurate financial information to allow the submission of complete and accurate financial certifications or disclosure statements required under part 54 of this chapter and maintain that information and all records relating to the compensation given for that study and all other financial interest information required under part 54 of this chapter for 2 years after the date of approval for the application or, if the application is not approved, for 2 years after shipment and delivery of the drug which was the subject of the bioequivalence study. The person maintaining these records shall, upon request from any properly authorized officer or employee of the Food and Drug Administration, at reasonable times, permit such officer or employee to have access to and copy and verify these records.

PART 330—OVER-THE-COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED

14. The authority citation for 21 CFR part 330 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

15. Section 330.10 is amended by adding new paragraph (f) to read as follows:

§ 330.10 Procedures for classifying OTC drugs as generally recognized as safe and effective and not misbranded, and for establishing monographs.

* * * * *

(f) *Financial certification or disclosure statement.* Any clinical data submitted under this section must be accompanied by financial certifications or disclosure statements required by part 54 of this chapter.

PART 601—LICENSING

16. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 513–516, 518–520, 701, 704, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 374, 376, 381); secs. 215, 301, 351, 352 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461).

17. Section 601.2 is amended in paragraph (a) by adding a sentence after the first sentence to read as follows:

§ 601.2 Applications for establishment and product licenses; procedures for filing.

(a) * * * The applicant shall also include a financial certification or disclosure statement as required by part 54 of this chapter.

* * * * *

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND DISTRIBUTORS OF DEVICES

18. The authority citation for 21 CFR part 807 continues to read as follows:

Authority: Secs. 301, 501, 502, 510, 513, 515, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374).

19. Section 807.31 is amended by adding new paragraph (d)(3) to read as follows:

§ 807.31 Additional listing information.

* * * * *

(d) * * *

(3) A copy of the certification or disclosure statement as required by part 54 of this chapter shall be retained and physically located at the establishment maintaining the historical file.

* * * * *

20. Section 807.87 is amended by adding new paragraph (k) to read as follows:

§ 807.87 Information required in a premarket notification submission.

* * * * *

(k) A financial certification or disclosure statement as required by part 54 of this chapter.

21. Section 807.100 is amended by redesignating paragraph (a)(4) as (a)(5) and adding new paragraph (a)(4) to read as follows:

§ 807.100 FDA action on a premarket notification.

(a) * * *

(4) Withhold the decision until a certification or disclosure statement is submitted to FDA pursuant to part 54 of this chapter.

* * * * *

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

22. The authority citation for 21 CFR part 812 continues to read as follows:

Authority: Secs. 301, 501, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701, 702, 704, 706, 801 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 331, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 372, 374, 376, 381); secs. 215, 301, 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263b–263n).

* * * * *

23. Section 812.110 is amended by redesignating paragraph (d) as (e) and adding new paragraph (d) to read as follows:

§ 812.110 Specific responsibilities of investigators.

* * * * *

(d) *Financial disclosure.* An investigator shall disclose to the sponsor sufficient accurate financial information to allow the sponsor to submit complete and accurate certification or disclosure statements required under part 54 of this chapter. The investigator shall promptly update this information if any relevant changes occur during the course of the investigation.

* * * * *

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

24. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: Secs. 501, 502, 503, 510, 513–520, 701, 702, 703, 704, 705, 706, 708, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 376, 379, 381).

25. Section 814.20 is amended by redesignating paragraph (b)(12) as (b)(13) and adding new paragraph (b)(12) to read as follows:

§ 814.20 Application.

(b) * * *

(12) A financial certification or disclosure statement as required by part 54 of this chapter.

* * * * *

26. Section 814.42 is amended by adding new paragraph (e)(5) follows:

§ 814.42 Filing of PMA.

* * * * *

(e) * * *

(5) The PMA is not accompanied by a statement of either certification or disclosure pursuant to part 54 of this chapter.

PART 860—MEDICAL DEVICE CLASSIFICATION PROCEDURES

27. The authority citation for 21 CFR part 860 continues to read as follows:

Authority: Secs. 513, 514, 515, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c, 360d, 360e, 360i, 360j, 371, 374).

28. Section 860.123 is amended by adding new paragraph (a)(10) to read as follows:

§ 860.123 Reclassification section: Content and form.

(a) * * *

(10) A financial certification or disclosure statement as required by part 54 of this chapter.

* * * * *

Dated: September 13, 1994.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 94–23414 Filed 9–21–94; 8:45 am]

BILLING CODE 4160–01–P

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Part V

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 11
Law and Order on Indian Reservations: Courts of Indian Offenses; Jurisdiction; Correction; Rule

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

RIN 1076–AC78

Law and Order on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects the list published on October 21, 1993, in the **Federal Register**, 58 FR 54412 to include those courts that were inadvertently omitted.

EFFECTIVE DATE: October 21, 1993.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Chief, Branch of Judicial Services, Bureau of Indian Affairs, 1849 C St., NW., Mail Stop 2611–MIB, Washington, D.C. 20240–4001, telephone number (202) 208–4400.

SUPPLEMENTARY INFORMATION: The authority to issue this correction is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9, and 25 U.S.C. 13 which authorizes appropriations for "Indian judges."

The final rule amending the regulations contained in 25 CFR Part 11 to add the Muskogee Area Tribes (Eastern Oklahoma) to the list of tribes in Section 11.100(a) became effective January 28, 1992. Notice of a proposed rule amending the regulations contained in 25 CFR Part 11 to add the Ute Mountain Ute Tribe (Colorado), was published April 26, 1993. The Ute Mountain Ute Tribe should have been included on the list contained in the revision of 25 CFR Part 11, published October 21, 1993, at 25 CFR 11.100(a). The final rule, 25 CFR Part 11, listing tribes located in the former Oklahoma Territory, published October 21, 1993, did not contain the Ponca Tribe (Oklahoma). These additions to 25 CFR Part 11, § 11.100, *Listing of Courts of Indian Offenses*, were inadvertently omitted from the list in the final rule, published October 21, 1993.

Inclusion in § 11.100, *Listing of Courts of Indian Offenses*, does not defeat the inherent sovereignty of a tribe to establish tribal courts and exercise jurisdiction under tribal law. *Tillett* v. *Lujan*, 931 F.2d 636, 640 (10th Cir. 1991) (C.F.R. courts "retain some characteristics of an agency of the federal government" but they "also function as tribal courts"); *Combrink* v. *Allen*, 20 Indian L. Rep. 6029, 6030 (Ct. Ind. App., Tonkawa, Mar. 5, 1993) (C.F.R. court is a "federally administered tribal court"); *Ponca Tribal Election Board* v. *Snake*, 17 Indian L. Rep. 6085, 6088 (Ct. Ind. App., Ponca, Nov. 10, 1988) ("The Courts of Indian Offenses act as tribal courts since they are exercising the sovereign authority of the tribe for which the court sits."). Such exercise of inherent sovereignty and the establishment of tribal courts shall comply with the requirements set forth in 25 CFR Part 11, § 11.100(c).

The Assistant Secretary—Indian Affairs is in receipt of the Fallon Paiute-Shoshone Law and Order Code which was adopted in accordance with the Tribes' constitution and by-laws and approved by the Area Director of the Phoenix Area Office on August 26, 1986. The Assistant Secretary—Indian Affairs further recognizes that the Fallon Paiute-Shoshone Tribal Court was established in 1986 in accordance with the Tribes' constitution and by-laws; however, the Tribe was inadvertently left on the list of Courts of Indian Offenses. This correction will delete Fallon Paiute-Shoshone from the list.

Having reconsidered earlier Departmental opinions interpreting the constitution of the Minnesota Chippewa, the Assistant Secretary—Indian Affairs also recognizes the court of the Bois Forte Band of the Minnesota Chippewa Tribe as established in accordance with the Tribes' constitution. This correction will delete Bois Forte Band of the Minnesota Chippewa Tribe from the list.

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

The Department of the Interior has determined that this document is not a significant rule under Executive Order 12866 and, therefore, will not require the approval of the Office of Management and Budget.

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

In accordance with E.O. 12630, the Department has determined that this rule does not have significant takings implications. The Department has determined that this rule does not have significant federalism effects.

The Department of the Interior has determined that this correction does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

This correction does not contain information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The primary author of this document is Scott Keep, Office of the Solicitor, Division of Indian Affairs, Department of the Interior.

List of Subjects in 25 CFR Part 11

Courts, Indians—law, Law enforcement and penalties.

For reasons set out in the preamble, 25 CFR Part 11 is corrected by making the following correcting amendments:

PART 11—LAW AND ORDER ON INDIAN RESERVATIONS

1. The authority citation for Part 11 continues to read as follows:

Authority: 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; 42 Stat. 208, 25 U.S.C. 13; 38 Stat. 586, 25 U.S.C. 200.

Subpart A—Application; Jurisdiction

2. In § 11.100, paragraph (a) is revised to read as follows:

§ 11.100 Listing of Courts of Indian Offenses.

(a) Except as otherwise provided in this title, the regulations under this part are applicable to the Indian country (as defined in 18 U.S.C. 1151) occupied by the following tribes:

(1) Flandreau Santee Sioux Tribe (South Dakota).

(2) Yankton Sioux Tribe (South Dakota).

(3) Shoshone and Arapahoe Tribes of the Wind River Reservation (Wyoming).

(4) Red Lake Band of Chippewa Indians (Minnesota).

(5) Cocopah Tribe (Arizona).

(6) Kaibab Band of Paiute Indians (Arizona).

(7) Confederated Tribes of the Goshute Reservation (Nevada).

(8) Lovelock Paiute Tribe (Nevada).

(9) Te-Moak Band of Western Shoshone Indians (Nevada).

(10) Yomba Shoshone Tribe (Nevada).

(11) Duckwater Shoshone Tribe (Nevada).

(12) Kootenai Tribe (Idaho).

(13) Shoalwater Bay Tribe (Washington).

(14) Eastern Band of Cherokee Indians (North Carolina).

(15) Mississippi Band of Choctaw Indians (Mississippi).

(16) For the following tribes located in the former Oklahoma Territory (Oklahoma):

(i) Absentee Shawnee Tribe of Indians of Oklahoma

(ii) Apache Tribe of Oklahoma

(iii) Caddo Tribe of Oklahoma

(iv) Cheyenne-Arapaho Tribes of Oklahoma

(v) Citizen Band of Potawatomi Indians of Oklahoma

(vi) Comanche Tribe of Oklahoma (except Comanche Children's Court)

(vii) Delaware Tribe of Western Oklahoma

(viii) Fort Sill Apache Tribe of Oklahoma

(ix) Iowa Tribe of Oklahoma

(x) Kaw Tribe of Oklahoma

(xi) Kickapoo Tribe of Oklahoma

(xii) Kiowa Tribe of Oklahoma

(xiii) Otoe-Missouria Tribe of Oklahoma

(xiv) Pawnee Tribe of Oklahoma

(xv) Ponca Tribe of Oklahoma

(xvi) Tonkawa Tribe of Oklahoma

(xvii) Wichita and Affiliated Tribes of Oklahoma

(17) Hoopa Valley Tribe, Yurok Tribe, and Coast Indian Community of California (California) (Jurisdiction limited to special fishing regulations).

(18) Louisiana Area (Includes Coushatta and other tribes in the State of Louisiana which occupy Indian country and which accept the application of this part;

Provided that this part shall not apply to any Louisiana tribe other than the Coushatta Tribe until notice of such application has been published in the **Federal Register**).

(19) For the following tribes located in the former Indian Territory (Oklahoma):

(i) Chickasaw Nation

(ii) Choctaw Nation

(iii) Thlopthlocco Tribal Town

(iv) Seminole Nation

(v) Eastern Shawnee Tribe

(vi) Miami Tribe

(vii) Modoc Tribe

(viii) Ottawa Tribe

(ix) Peoria Tribe

(x) Quapaw Tribe

(xi) Wyandotte Tribe

(xii) Seneca-Cayuga Tribe

(xiii) Osage Tribe

(20) Ute Mountain Ute Tribe (Colorado).

* * * * *

Dated: July 1, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–23271 Filed 9–21–94; 8:45 am]

BILLING CODE 4310–02–M

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federal register

Thursday
September 22, 1994

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 207 and 290

Sale of HUD-Held Multifamily Mortgages; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 207 and 290

[Docket No. R–94–1709; FR–3549–F–02]

RIN 2502–AG18

Sale of HUD-Held Multifamily Mortgages

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule sets forth the basic policies and procedures that govern the disposition of HUD-held multifamily project mortgages.[1] In general, the Department will sell both current mortgages and delinquent mortgages. However, the Department will not sell delinquent mortgages if foreclosure is unavoidable and the project securing the mortgage is occupied by low-income tenants who are not receiving housing assistance and would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the mortgage. In addition, mortgages on subsidized properties will only be sold with Federal Housing Administration (FHA) mortgage insurance or equivalent tenant protections; mortgages for unsubsidized projects may be sold without FHA insurance.

EFFECTIVE DATE: The effective date of this rule will be October 24, 1994, unless a subsequent notice announcing an earlier effective date is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Frank Malone, Director, Office of Preservation and Property Disposition, Office of Housing, Room 6272, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3555. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Background

On April 13, 1994, the Department published a proposed rule on the sale of HUD-held multifamily mortgages (59 FR 17500). Two days earlier, on April 11, 1994, President Clinton approved the Multifamily Property Disposition Reform Act of 1994 (Pub. L. 103–233) (Multifamily Property Disposition Act). Section 101(b) of the Multifamily Property Disposition Act revised section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11) (HCD Amendments of 1978). This final rule incorporates technical changes to section 203 of the HCD Amendments of 1978, as amended by section 101(b) of the Multifamily Property Disposition Act, as those provisions affect the sale of HUD-held mortgages. HUD will be publishing, shortly, an interim rule to implement the statutory amendments affecting the management and disposition of HUD-owned multifamily projects.

Summary of Comments—Generally

The Department received a total of 11 comments on this proposed rule. The majority of the comments dealt with features of the Department's planned mortgage sale program rather than with specifics of the proposed rule. However, two commenters made recommendations regarding the negotiated sale of subsidized mortgages to State and local governments, and one commenter recommended changes to the proposed rule. All of the comments are discussed in more detail below, and, when appropriate, are addressed in the text of the rule.

Only the National Housing Law Project (NHLP) focused specifically upon the text of the proposed rule. The NHLP acknowledged HUD's authority to sell HUD-held mortgages, but urged that "the utmost care should be taken to ensure that low-income tenants do not lose benefits to which they are entitled."

With regard to the sale of subsidized mortgages with insurance, the NHLP stated that: "The mere act of selling with insurance will not necessarily by itself satisfy the statutory goal of continuing the protections for each project that are at least as advantageous as the prior program's." The NHLP sought assurance that, at a minimum, the regulatory protections contained in, for example, the regulatory agreement, note, and program regulations also would apply.

This concern is consistent with the Department's intent to preserve existing tenant protections. Consequently, the rule has been modified to include statutory language prohibiting the Secretary from selling any mortgages held by the Secretary on any subsidized project unless the sale is made part of a transaction that ensures that the project will continue to operate, at least until the maturity date of the loan or mortgage, in a manner that will provide rental housing on terms at least as advantageous to existing and future tenants as the terms required by the program under which the original loan or mortgage was made or insured. In other words, sale of a HUD-held subsidized mortgage will not affect the existing regulatory agreement, prepayment restrictions, flexible subsidy agreements, rental subsidy contracts, or other applicable program regulations and housing policies.

The NHLP also sought clarification that purchase money mortgages (PMMs) for previously subsidized projects will be treated like subsidized mortgages. The Department so intends and has modified the rule to make this evident.

The NHLP requested that a project with any project-based Section 8 assistance be treated as a subsidized project and be sold with insurance. However, doing so would be contrary to the Multifamily Property Disposition Act. In the Multifamily Property Disposition Act, Congress revised the definition of a subsidized project for the mortgage sale program (see section 203(b)(2)). Under the prior law (see section 203(i)(2)), a project that had any rent supplement assisted units was a subsidized project. The requirement that more than 50 percent of the units had to be assisted for the project to be a subsidized project applied only to assistance provided under the United States Housing Act of 1937 (other than with certificate and voucher assistance). Finally, under the former law for purposes of mortgage sales, any unit assisted under the United States Housing Act of 1937 (other than certificate and voucher assistance) made the project a subsidized project.

Under the new statutory definition of subsidized project, the more than 50 percent of the units provision applies to all forms of project-based rental assistance listed. Also, there is no longer an exception from the 50 percent requirement for mortgage sales. Thus, under the new law the definition of "subsidized project" is the same for the purpose of disposing of HUD-owned projects and for mortgage sales.

The definition of "subsidized project" in this final rule conforms to the statutory definition of "subsidized project." Accordingly, projects that are not Section 236, Section 221(d)(3) BMIR, or Section 202 projects and have some units, but not more than 50 percent of the units, assisted with project-based rental assistance are under both the statute and the rule "unsubsidized projects." However, the Department acknowledges that such partially assisted, unsubsidized mortgages merit special treatment. Therefore, the Department plans to sell these mortgages in specialized auctions to investors who will be selected, in part, on the basis of their commitment to preserving the economically integrated nature of the rental housing.

The NHLP also suggested that unsubsidized projects with affordable rents be treated as though they were subsidized and be sold with insurance. Adoption of this approach would be inconsistent with congressional direction. Therefore, the Department must reject this approach. The statute defines "subsidized project" as a project that is receiving assistance: (1) Under the section 221(d)(5) (Below Market Interest Rate) or the section 236 (Interest Reduction Payments) programs; (2) under the section 202 direct loan program; or (3) in the form of rental assistance for more than 50 percent of its units under the section 8, section 23, rent supplement or rental assistance payments ("RAP") programs. This rule merely adopts the statutory definition of "subsidized project" as the regulatory definition.

The NHLP recommended that HUD move certain statements regarding the availability of Section 8 assistance to tenants in unsubsidized projects from the preamble of the proposed rule to the regulatory text. The statements in the preamble describe HUD standards which are already addressed in other HUD regulations. As such, there is no need to repeat these standards in the mortgage sale rule.

The NHLP asked why HUD would not sell mortgages without insurance to mortgagees that are HUD-approved as well as to mortgagees that are not HUD-approved. In fact, HUD plans to offer the mortgages for sale to both types of mortgagees. The NHLP also questioned the wisdom of selling mortgages to mortgagees that are not HUD-approved, on the ground that HUD will have little regulatory leverage over such mortgagees. HUD expects that HUD's relationship with such mortgagees will be governed by and enforceable under the terms and conditions of the loan sale.

The NHLP recommended that HUD impose certain requirements in the event that a delinquent mortgage is restructured by a purchaser. Specifically, the NHLP recommended that the purchaser/mortgagor should agree:

(1) Not to discriminate against Certificate and Voucher holders merely because of their status as Certificate or Voucher holders;

(2) To accept a project-based Section 8 contract if offered, as long as the rents charged at the project are within 120 percent of the Section 8 Fair Market Rents;

(3) To require good cause eviction for all tenants; and

(4) To require that the owner provide good repair and maintenance.

HUD's ability to regulate a mortgage restructuring will depend upon whether the mortgage is subsidized or unsubsidized. In the case of a delinquent subsidized mortgage, where the mortgage will be insured upon sale, HUD's oversight can be expected to be close and prescriptive; however, in the case of delinquent unsubsidized mortgages, where the mortgages will not be insured upon sale, HUD does not expect to regulate a mortgage restructuring closely.

In section 290.202(b) of the proposed rule, HUD stated that: "Delinquent mortgages will not be sold if: (1) HUD believes that foreclosure is unavoidable; and (2) the project securing the mortgage is occupied by low-income tenants who are not receiving housing assistance, but who would receive assistance [under section 203 of the Housing and Community Development Amendments of 1978] if HUD foreclosed upon the mortgage." The NHLP recommended that HUD not sell delinquent unsubsidized mortgages "if it believes that foreclosure is unavoidable, and the project * * * is occupied by low-income tenants who are not receiving housing assistance but could do so if HUD foreclosed upon the mortgage." HUD has changed this section in the final rule to conform with the new Multifamily Property Disposition Act.

Under section 203(a) of the prior law, HUD was directed to preserve as affordable all units in unsubsidized projects that were occupied by low-income families. This statutory requirement was generally met at foreclosure or sale by placing project-based Section 8 assistance on units that were occupied by low-income families. Thus, under the prior law the import of § 290.202(b) would have been that, in general, HUD *would not* sell unsubsidized projects where foreclosure was unavoidable and there were unassisted low-income tenants in occupancy.

Under the new law, however, HUD is under no obligation when foreclosing or selling an unsubsidized project to provide Section 8 assistance to low-income tenants if those tenants were not already receiving some form of tenant-based assistance (see section 203(e)(1)(D)). HUD's only obligation upon foreclosure or sale in this regard (and it applies only to very low-income families that would have to pay more than 30 percent of their adjusted monthly income for rent, not to all low-income families) is to ensure that their rent is not increased for two years (see section 203(g)). These low-income tenants would receive Section 8 assistance only if HUD makes an administrative decision to provide more Section 8 assistance than is required by statute. Thus, the import of § 290.202(b) in the final rule is that HUD generally *will* sell unsubsidized projects where foreclosure was unavoidable and there are unassisted low-income tenants in occupancy. HUD intends to foreclose delinquent unsubsidized mortgages only if it makes a determination that unassisted tenants would receive assistance (including assistance available on a discretionary basis) if HUD were to foreclose.

Finally, the NHLP recommended that HUD not sell delinquent, partially assisted, unsubsidized mortgages facing foreclosure. As noted above, HUD acknowledges that these mortgages require special treatment, and they will be sold only under conditions that preserve the rental housing for economically integrated rental use.

Negotiated Sales to State and Local Agencies

The National Council of State Housing Agencies (NCSHA) and the Illinois Housing Development Authority (IHDA) responded to HUD's request for comments on the negotiated sale of mortgages to State and local agencies authorized by section 203(k)(3) of the Housing and Community Development Act Amendments of 1978. Both strongly supported such sales and described the unique qualifications that State housing finance agencies (HFAs) have to assist HUD in preserving the availability and affordability of the projects securing the loans for low- and moderate-income rental use. Specific comments and HUD's responses are summarized below.

Subsidy Contracts

NCSHA recommended that HUD assign Section 8 subsidy contract administration to HFAs. HUD is willing to consider this recommendation, subject to agreement on fees and the concern raised in conjunction with regulatory agreements.

Regulatory Agreements

NCSHA recommended that HUD assign broad regulatory authority to HFAs, including allowing HFAs to set rents and require owners to enter into HFA management contracts. HUD is concerned that there is no mechanism

[1] This rule and the policies contained in this rule are intended to satisfy HUD's obligations under the settlement agreement in *Walker v. Kemp*, No. C 87 2628 (N.D. Cal.), with regard to the Exhibit B mortgages.

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for restraining costs if the HFA performs financing and regulatory functions and also administers the Section 8 contract. HUD would like to explore how to combine regulatory authority with incentives to contain costs. Otherwise it is HUD's view that States may either administer Section 8 subsidy contracts or regulate rents, but not both, in order to preserve the checks and balances vital to a sound subsidy system.

Windfall Profits

NCSHA recommended and HUD concurs that mortgage insurance should be limited to the purchase price of a mortgage or the unpaid principal balance, whichever is lower. In addition, HUD would not permit resale of mortgages for capital gains, even if the gains are passed through to HUD.

Servicing

NCSHA recommended that "[w]hen an HFA requests it, HUD should turn over servicing functions to it upon its purchase of the loan." HUD intends to turn over mortgage servicing functions upon the sale of a loan in every case.

Delinquent Loans

NCSHA recommended splitting mortgages into financially viable and inviable portions, with HUD retaining the inviable portion. HUD does not wish to use this method for restoring a mortgage to financial soundness, because it is inconsistent with the overall objective of reducing the HUD-held inventory and HUD servicing responsibility. In addition, strategies that involve owner consent, such as creating new mortgage documents, may add a party to the negotiations and complicate the transaction. HUD would consider other approaches that meet mutual goals.

Long-Term Affordability

NCSHA recommended that HUD extend the mortgage insurance period when purchasers negotiate an extension of the affordability period, so the insurance would be coterminous with the financing. HUD would need more information on what is being proposed in order to assess this recommendation, e.g. what "financing" is being proposed? FHA insurance runs with the mortgage; any additional insurance period would require careful consideration and review.

Refinancing

NCSHA recommended that HUD permit HFAs to restructure high-interest rate loans through Section 223(a)(7) refinancing. HUD-held mortgages are not eligible for Section 223(a)(7) refinancing, and subsidized mortgages generally are not eligible for prepayment. However, as part of the restructuring of the mortgage, HUD will consider modifying mortgages to lower above-market interest rates (and to reduce subsidy payments, as appropriate) prior to mortgage sale. Such reduction would be considered in any pricing.

Due Diligence

NCSHA recommended that HUD work with HFAs to disseminate information on mortgages and permit HFAs to perform adequate and timely due diligence. HUD intends to cooperate fully with HFAs in their conduct of needed due diligence on the mortgages in which they are interested.

Warranties and Representations

NCSHA recommended that, among other representations, HUD warrant and represent that purchased loans are secured by projects that are in full compliance with their regulatory agreements and subsidy contracts and that the loans are current in their debt service and escrow and reserve payments. HUD's view is that not all of these representations and warranties may be appropriate for the subperforming mortgages that are the focus of this negotiated sale program. HUD proposes to discuss these representations in conjunction with necessary due diligence and a specific portfolio of mortgages identified for sale.

Interstate Mortgage Pools

NCSHA recommended consideration of the formation of interstate mortgage pools, to lower administrative burdens and transaction costs. HUD will consider such pools as long as the results are consistent with the overall objectives of the negotiated sale program, including hands-on servicing by the purchasing agency.

Others

In addition, NCSHA and IHDA recommended that HUD negotiate the sale of both unsubsidized mortgages with Section 8 contracts and nonperforming unsubsidized mortgages. As noted above, HUD intends to sell partially assisted, unsubsidized mortgages in specialized auctions to investors that will be selected in part on the basis of their commitment to preserving the economically integrated nature of this rental housing. In addition, HUD intends to sell nonperforming unsubsidized mortgages to the highest bidder in competitive auctions that are designed to put local and national bidders on equal footing. Given the high degree of investor interest in HUD's unsubsidized mortgage portfolio and the Department's aim of reducing losses to the FHA insurance fund, the Department cannot justify reserving unsubsidized mortgages for purchase only by State and local agencies. Depending upon the terms of a sale, however, these agencies may participate with other investors in the purchase of these mortgages.

HUD Mortgage Sale Program

Several comments focused upon the mechanics of HUD's auction program. Both JBS & Associates, Inc., a national real estate and loan marketing firm, and Ross-Dove Company, Inc., an auctioneering firm, recommended that HUD use open outcry auctions as one method of disposition to sell multifamily mortgages. HUD will consider the use of open outcry auctions for some of its mortgage sales.

The Real Estate Capital Recovery Association (RECRA), a trade association representing both real estate workout specialists and real estate purchasers, recommended that HUD develop a strategy and schedule for disposing of the HUD-held inventory; determine the best disposition strategy for mortgages on a case-by-case basis; and make greater use of the private sector in managing, foreclosing, and selling assets. In addition, RECRA recommended against giving mortgagors two purchase opportunities—i.e., the opportunity to payoff their mortgages and to bid in an auction. RECRA believed both: (1) that HUD's ability to negotiate a payoff would be improved if the mortgagor could not participate in the auction; and (2) that other bidders would not want to bid against the mortgagor who is most knowledgeable about the property. The terms and conditions under which a mortgagor may be permitted to bid on its mortgage are best decided in the light of the particular facts of a mortgage sale, such as whether the mortgages are being sold separately or in pools or are current or delinquent. Accordingly, HUD will announce any such terms and conditions in the mortgage sales announcement and by notice to affected mortgagors. HUD will consider these comments and other factors in setting these terms and conditions.

The National Leased Housing Association (NLHA) supported the proposed rule, but believed that it should have gone further in spelling out the details of HUD's mortgage sale program, in order to provide an opportunity for public comment. In particular, NLHA wanted more detail regarding the FHA mortgage insurance programs to be used, the minimum bid requirements, any borrower right of first refusal and right to bid policies, and the nature of the bid process. It recommended that mortgages be sold individually, bidders have adequate time in which to perform due diligence, and workout agreements be permitted to be terminated by agreement between the new mortgagee and the mortgagor. All of this advice is well-taken. The Department has consulted widely, and will continue to consult, in the development of its mortgage sales program, but does not believe that such details concerning mortgage sale procedures should be codified in regulation. Instead, the Department intends to adopt mortgage sale policies that are consistent with these regulations and are suited to the characteristics of the mortgages offered for sale. This approach also will allow the Department to learn from experience and feedback from all affected parties as it pursues a series of mortgage sales. Auction procedures will be spelled out in a bid package distributed prior to each auction.

One mortgagor recommended a carefully considered set of policies for mortgage settlements with owners. These recommendations will be considered as HUD works with its financial advisor to develop a mortgage settlement policy. A law firm urged special attention to participation by small investors in the mortgage sale program, including negotiated sales to small investors. HUD seeks to encourage participation by small investors by offering nonperforming mortgages in small pools; however, it is not authorized to negotiated sales to private entities. A development and property management firm recommended against the sale of HUD-held mortgages on the ground that they would be too deeply discounted; however, if they were sold, the firm recommended that the mortgages be sold individually, rather than in pools, to receive the highest price. HUD will determine whether to offer mortgages individually, in pools, or both, based on the characteristics of the mortgages offered for sale and other terms and conditions of the auction. The Chinese-American Golden Age Association recommended the sale of Section 202 loans. HUD is considering various options for these mortgages at the present time.

Section-by-Section Changes From Proposed Rule

Some of the provisions in the final rule have been reformatted, to aid in clarity. Substantive changes made to the proposed rule are identified below:

Section 207.270

A new provision has been added to part 207 which authorizes the Department to modify the terms of the mortgage reinsurance pursuant to section 223(c) of the National Housing Act when the Department sells a mortgage with FHA insurance. This change is necessary to take into account the fact that mortgages may be sold to investors at a discount rate due to fluctuating interest rates. When mortgages are sold at a discount rate, HUD will adjust the amount of the reinsurance to reflect the purchase price of the mortgage, not the original mortgage amount. HUD will determine the amount of the reinsurance at the time of the mortgage sale. This regulatory change codifies existing Departmental policy for mortgage sales.

Section 290.3

The definition of subsidized mortgage has been clarified to indicate that purchase money mortgages (PMMs) for previously subsidized projects will be treated like subsidized mortgages. The definition of subsidized project has been conformed with the Multifamily Property Disposition Act.

Section 290.200

Language has been added to the section describing the purpose of the new subpart D, Sale of HUD-held mortgages, to state that, except for negotiated sales to State and local governments, HUD will sell mortgages on a competitive basis. Language has also been added to explain that the Secretary retains full discretion to offer any qualifying mortgage for sale and to withhold or withdraw any offered mortgage from sale. The procedures set out in the remaining sections of this subpart apply only when the Secretary has determined that a qualifying mortgage is to be sold.

Section 290.201(a)

The Department agrees with commenters that existing tenant protections should be preserved. Consequently, a paragraph has been added to include language from section 203(k)(1) of the HCD Amendments of 1978, prohibiting the Secretary from selling a HUD-held mortgage on a subsidized project unless the sale is made part of a transaction that meets certain qualifications. The transaction must ensure that the project will continue to operate at least until the maturity date of the loan or mortgage in a manner that will provide rental housing on terms at least as advantageous to existing and future tenants as the terms required by the program under which the original mortgage was insured.

Section 290.202(b)(2)

The language has been changed to incorporate the changes made by the Multifamily Property Disposition Act in the treatment of unsubsidized projects.

Other Matters

Executive Order 12866

This rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh Street SW, Washington, D.C.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to HUD administrative procedures and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. Specifically, the requirements of this rule are directed to HUD administrative procedures, and do not impinge upon the relationship between Federal government and State and local governments.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from

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promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not affect the ability of small entities, relative to larger entities, to bid for and acquire HUD-held mortgages that HUD decides to sell.

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1) The Department finds that good cause exists to publish section 207.270 of this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary because the Department is merely codifying an existing earlier policy.

Regulatory Agenda

This final rule was listed as sequence number 1579 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20446) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 290

Low and moderate income housing, Mortgage insurance.

For the reasons stated in the preamble, part 207 and part 290 of title 24 of the Code of Federal Regulations is amended as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for part 207 is revised to read as follows:

Authority: 12 U.S.C. 1701z–11(e), 1713, and 1715b; 42 U.S.C. 3535(d).

2. Subpart B is amended by adding a new undesignated center heading to follow immediately after § 207.263, and by adding a new § 207.270 to read as follows:

Reinsured Mortgages

§ 207.270 Special Reinsurance Provisions.

The terms, method and amount for payment of insurance benefits for mortgages reinsured pursuant to section 223(c) of the National Housing Act may be modified by the terms of the Commissioner's endorsement of the note for reinsurance.

PART 290—MANAGEMENT AND DISPOSITION OF HUD-OWNED MULTIFAMILY PROJECTS AND CERTAIN MULTIFAMILY PROJECTS SUBJECT TO HUD-HELD MORTGAGES

3–4. The authority citation for part 290 continues to read as follows:

Authority: 12 U.S.C. 1701z–11, 1701z–12, 1713, 1715b, 1715z–1b; 42 U.S.C. 3535(d).

5. Section 290.1 is revised to read as follows:

§ 290.1 Applicability.

This part applies to HUD-owned multifamily housing projects and to rental housing projects that are subject to mortgages held by HUD. Specific provisions, as noted in the rule text, apply only to "rental housing projects" (including HUD-owned rental housing projects) as defined in § 290.3.

6. In § 290.3, definitions for "subsidized mortgage," "subsidized project" and "unsubsidized mortgage" are added in alphabetical order to read as follows:

§ 290.3 Definitions.

* * * * *

Subsidized mortgage means a mortgage, including a purchase money mortgage, on a subsidized project.

Subsidized project means a rental project that is receiving, or immediately before its mortgage was foreclosed by HUD or the project was acquired by HUD pursuant to this regulation was receiving, any of the following types of assistance:

(1) Below market interest rate mortgage insurance under the proviso of section 221(d)(5) of the National Housing Act (hereinafter, a BMIR project);

(2) Interest reduction payments made in connection with mortgages insured under section 236 of the National Housing Act (hereinafter, a 236 project);

(3) Direct loans made under section 202 of the Housing Act of 1959 (hereinafter, a 202 project);

(4) Assistance, to more than 50 percent of the units in the project, in the form of:

(i) Rent supplement payments under section 101 of the Housing and Urban Development Act of 1965 (hereinafter, Rent Supp);

(ii) Additional assistance payments under section 236(f)(2) of the National Housing Act (hereinafter, RAP);

(iii) Housing assistance payments under section 23 of the United States Housing Act of 1937 (as in effect before January 1, 1975) (hereinafter, Sec. 23); or

(iv) Housing assistance payments under section 8 of the United States Housing Act of 1937 (excluding payments made for tenant-based assistance under section 8) (hereinafter, project-based section 8).

* * * * *

Unsubsidized mortgage means any HUD-held mortgage that is not a subsidized mortgage.

* * * * *

7. A new Subpart D, consisting of §§ 290.200 through 290.202 is added, to read as follows:

Subpart D—Sale of HUD-Held Mortgages

290.200 Purpose and applicability of Civil Rights Requirements.
290.201 Sale of subsidized HUD-held mortgages.
290.202 Sale of unsubsidized HUD-held mortgages.

Subpart D—Sale of HUD-Held Mortgages

§ 290.200 Purpose and applicability of Civil Rights Requirements.

(a) *Purpose.* The purpose of this subpart is to set out HUD's policy regarding the sale of subsidized and unsubsidized HUD-held mortgages. Except as otherwise provided in § 290.201(b)(ii), the Department will sell mortgages on a competitive basis. The Secretary retains full discretion to offer any qualifying mortgage for sale and to withhold or withdraw any offered mortgage from sale. However, when a qualifying mortgage is offered for sale, the procedures set out in this part will govern the sale.

(b) *Applicability of Civil Rights Requirements.* Nothing in this subpart relieves HUD or housing that receives federal financial assistance from federal civil rights requirements, including section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, the Age Discrimination Act of 1975, Executive Order 11063, and related regulations and requirements. This includes housing in which less than 50% of the units are receiving housing assistance payments under either Section 23 or Section 8 of the United States Housing Act of 1937 and housing in which the rent of any unit is paid by a Section 8 certificate or voucher.

§ 290.201 Sale of subsidized HUD-held mortgages.

(a) *Tenant protections preserved.* HUD will only sell subsidized mortgages if the sale is part of a transaction that will ensure that the project subject to the mortgage will continue to operate, at least until the maturity date of the mortgage, in a manner that will provide rental housing on terms at least as advantageous to existing and future tenants as the terms required by the program under which the mortgage was insured prior to its assignment. HUD's policy for selling subsidized HUD-held mortgages is set out in paragraphs (b) and (c) of this section.

(b) *Current mortgages.* HUD may sell current mortgages, as follows:

(1) *Current mortgages with FHA mortgage insurance* will be sold either:

(i) On a competitive basis to FHA-approved mortgagees; or

(ii) On a negotiated basis, to State or local governments, or to a group of investors that includes an agency of a State or local government, if:

(A) The terms of the sale include an agreement by the State or local government, or an agency of the State or local government, to:

(*1*) Act as mortgagee or owner of a beneficial interest in the mortgage; and

(*2*) Ensure that the project will maintain occupancy by the tenant group originally intended to be served by the subsidized housing program; and

(B) The sales price is the best price that the Secretary can obtain from an agency of a State or local government while maintaining occupancy for the tenant group originally intended to be served by the subsidized housing program.

(2) *Current mortgages without FHA mortgage insurance* will be sold if HUD can offer protections equivalent to those listed for an insured sale in paragraph (b)(1) of this section.

(c) *Delinquent mortgages.* Delinquent mortgages will be sold only if, as part of the sales transaction:

(1) The mortgages are restructured; and

(2) Either FHA mortgage insurance or equivalent protections are provided.

§ 290.202 Sale of unsubsidized HUD-held mortgages.

HUD's policy for selling unsubsidized HUD-held mortgages is as follows:

(a) *Current mortgages* may be sold with or without FHA mortgage insurance.

(b) *Delinquent mortgages* may be sold without FHA mortgage insurance. However, delinquent mortgages will not be sold if:

(1) HUD believes that foreclosure is unavoidable; and

(2) The project securing the mortgage is occupied by very low-income tenants who are not receiving housing assistance and would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the mortgage.

Dated: September 16, 1994.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–23522 Filed 9–21–94; 8:45 am]

BILLING CODE 4210–27–P

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Federal Register

Thursday
September 22, 1994

Part VII

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation, Draft Guideline on Specific Aspects of Regulatory Genetoxicity Tests; Notice

VOL
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94D-0324]

International Conference on Harmonisation; Draft Guideline on Specific Aspects of Regulatory Genotoxicity Tests; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guideline entitled "Notes for Guidance on Specific Aspects of Regulatory Genotoxicity Tests." This guideline was prepared by the Safety Expert Working Group of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). This draft guideline is intended to provide guidance on genotoxicity testing.

DATES: Written comments by December 6, 1994.

ADDRESSES: Submit written comments on the draft guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Copies of the draft guideline are available from the CDER Executive Secretariat Staff (HFD-8), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT:

Regarding the draft guideline: Alan Taylor, Center for Drug Evaluation and Research (HFD-502), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2544.

Regarding the ICH: Janet Showalter, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international Harmonisation of regulatory requirements. FDA has participated in many meetings designed to enhance Harmonisation and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of Harmonisation is to identify and then reduce differences in technical requirements for drug development.

ICH was organized to provide an opportunity for tripartite Harmonisation initiatives to be developed with technical input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with Harmonisation of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held on March 10, 1994, the ICH Steering Committee agreed that a guideline entitled "Notes for Guidance on Specific Aspects of Regulatory Genotoxicity Tests" should be made available for public comment. The draft guideline is the product of the Safety Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Expert Working Group. Ultimately, FDA intends to adopt the ICH Steering Committee's final guideline.

The draft guideline is to be applied in conjunction with existing guidelines in the United States, Japan, and Europe. No required battery of genetic toxicology tests has been adopted by FDA for pharmaceutical development in the United States, pending completion of ICH negotiations on this topic. The test battery recommended by FDA's Center for Food Safety and Applied Nutrition (58 FR 16536, March 29, 1993) for food additives, however, is currently preferred for the evaluation of pharmaceuticals and is recommended to those seeking initial guidance in this area. This battery is similar to that endorsed previously by the Environmental Protection Agency's Office of Pesticides Program (*Environmental and Molecular Mutagenesis*, 21:38-45, 1993).

The draft guideline recommends methods of testing pharmaceuticals for genetic toxicity. These recommendations are based on historical information from the international pharmaceutical industry, regulatory agencies in the European Community, Japan, and the United States, and scientific literature. In general, while there may be cause for concern for mutagenic potential of certain biological products, the currently recommended tests should not be routinely applied to such products. When there is cause for concern, specific endpoints should be identified and relevant tests should be performed.

In the past, guidelines have generally been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Therefore, if the agency issues this guideline in final form, the guideline would not be issued under the authority in current § 10.90(b), and would not create or confer any rights, privileges, or benefits for or on any person, nor would it operate to bind FDA in any way.

Interested persons may, on or before December 6, 1994, submit written comments on the draft guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the draft guideline follows:

Notes for Guidance on Specific Aspects of Regulatory Genotoxicity Tests

Introduction

Guidelines for the testing of pharmaceuticals for genetic toxicity exist in the European Community (EC, 1987) and Japan (Japanese Ministry of Health and Welfare, 1989). FDA's Centers for Drug and Biologics Evaluation and Research (CDER and CBER) currently consider the guidance on genetic toxicity testing provided by FDA's Center for Food Safety and Applied Nutrition (**Federal Register** notice, March 29, 1993) to be applicable to pharmaceuticals.

The following notes for guidance should be applied in conjunction with existing guidelines in the three ICH regions. The recommendations below are derived from considerations of historical information from the international pharmaceutical industry, the three regulatory bodies, and the scientific literature. Where relevant, the recommendations from the latest review of the Organization for Economic Cooperation and Development guidelines and the International Workshop on Standardization

of Genotoxicity Test Procedures held in Melbourne, Australia (February 1993) have been considered. Information from the survey carried out by the Centre for Medicines Research on current practices and strategies used by the pharmaceutical industry for genotoxicity testing (Purves, et al., 1994) has also been considered.

A. The Base Set of Strains Used in Bacterial Mutation Assays

Current guidelines for the detection of bacterial mutagens call for the inclusion of several strains to detect base substitution and frameshift point mutations. The *Salmonella typhimurium* strains cited in guidelines (normally TA1535, TA1537, TA98, and TA100) will detect such changes at G-C sites within target histidine genes. It is clear from the literature that some mutagenic carcinogens attack A-T base pairs preferentially (e.g., Levin, 1982; Wilcox, et al., 1990; also see note 1). Therefore, the standard set of strains used in bacterial mutation assays should include strains that will detect point mutations at A-T sites, such as *S. typhimurium* TA102, which possesses a mutation at an A-T site within multiple copies of *hisG* genes or *E. coli* WP2 *uvrA*, which possesses an A-T mutational site in the *trpE* gene or the same strain carrying the plasmid (pKM101), which carries *mucAB* genes that enhance error prone repair.

In conclusion, the following base set of bacterial strains should be used for routine testing: the strains cited below are all *S. typhimurium* isolates, unless specified otherwise.

1. TA98; 2. TA100; 3. TA1535; 4. TA1537 or TA97 or TA97a (see note 2); 5. TA102 or *E. coli* WP2 *uvrA* or *E. coli* WP2 *uvrA* (pKM101).

B. Acceptable Bone Marrow Tests for the Detection of Clastogens In Vivo

Tests measuring chromosomal aberrations in nucleated bone marrow cells in rodents can detect a wide spectrum of changes in chromosomal integrity. These changes almost all result from breakage of one or more chromatids as the initial event. Breakage of chromatids can result in micronucleus formation if an acentric fragment is produced; therefore, assays detecting either chromosomal aberrations or micronuclei are acceptable for detecting clastogens (see note 3). Micronuclei can also result from dislocation of chromosomes from the mitotic spindle, and, thus, micronucleus tests have the potential to detect aneugenic compounds.

In conclusion, the analysis of either chromosomal aberrations or micronuclei in bone marrow cells *in vivo* is acceptable for the detection of clastogens.

The acceptability of the peripheral blood micronucleus assay as a substitute for the bone marrow micronucleus assay is being actively considered (see note 4).

C. Guidance on the Further Evaluation of Compounds Giving In Vitro Positive Results

Comparative trials have shown conclusively that each *in vitro* test system generates both false negative and false positive results in relation to predicting rodent carcinogenicity. The test battery approach is designed to reduce the risk of false negative results. However, the genotoxicity test batteries as described will only detect carcinogens that act primarily via a mechanism involving direct genetic damage, such as the majority of known human carcinogens. According to the results of the National Toxicology Program (Haseman, et al., 1990) and an analysis of results from tests of pharmaceuticals and industrial chemicals in Japan (Shimada, 1993), approximately 15 percent of carcinogens are not detected by the commonly used batteries of genotoxicity tests. Therefore, a positive result in any assay for genotoxicity does not necessarily mean that the test compound poses a genotoxic hazard to man. The following points should be considered when assessing *in vitro* positive results.

In vitro

Positive results that are without apparent biological relevance should be excluded. These include the following considerations (this list is not exhaustive, but is given as an aid to decisionmaking):

(i) Is the response clearly reproducible?

(ii) Is the magnitude of the response regarded as biologically significant?

(iii) For positive responses in the presence of a competent metabolic system, is *in vitro* metabolism similar to *in vivo* metabolism? Are *in vitro* specific metabolites induced?

(iv) Can the effect be attributed to extreme culture conditions that do not occur in *in vivo* situations (i.e., extremes of pH; osmolality, etc.)?

(v) Is the effect only seen at extremely low survival levels?

(vi) Are compounds in this chemical class normally associated with positive effects *in vitro*? Are compounds in this chemical class normally associated with negative effects *in vivo*?

In vivo

A positive result in an *in vitro* test that is regarded as biologically relevant (see previous paragraph) indicates that the test compound has genotoxic potential. An *in vitro* test measuring the same genetic endpoint should be carried out for confirmation. Such *in vitro* tests usually carry more significance than the comparable *in vitro* assays (Ashby, 1983). Thus, for a compound showing clastogenic activity *in vitro* the bone marrow micronucleus or chromosomal aberration assay can fulfil this role. It is recognized that, at present, there is no validated, widely used *in vivo* system which measures gene mutation. However, *in vivo* gene mutation assays using endogenous genes or transgenes in the rat and mouse are at various stages of development and validation. Until these tests for mutation become accepted, results from other widely used *in vivo* tests for genotoxicity in tissues other than the bone marrow can provide valuable additional data. Flexibility is desirable in the choice of a second *in vivo* assay (see note 5).

In conclusion, where positive results have been obtained in one or more of the established *in vitro* tests, analysis should take place on a case-by-case basis as described above and in note 5.

D. Validation of Negative In Vivo Test Results

Because *in vivo* tests have a pivotal role in genotoxicity test batteries, it is necessary to prove adequate exposure of the target tissue. This can be achieved by a clear biological response in the tissue in question or by toxicokinetic data. If adequate exposure cannot be achieved (e.g., with compounds showing very poor bioavailability, extensive protein binding, etc.), conventional *in vivo* genotoxicity tests may have little value.

The following recommendations apply to bone marrow cytogenetic assays. If other target tissues are used, similar principles should be applied.

For compounds showing positive results in any of the *in vitro* tests employed, validation of *in vivo* exposure should be made by any of the following measurements:

(i) By measuring a significant change in the proportion of immature erythrocytes among total erythrocytes in the bone marrow, at the doses and sampling times used in the micronucleus test or by measuring a significant reduction in mitotic index for the chromosomal aberration assay.

(ii) Evidence of bioavailability of drug-related material either by measuring blood or plasma levels (see note 6).

(iii) By direct measurement of drug-related material in bone marrow.

(iv) By autoradiographic assessment of tissue exposure.

For methods (ii) to (iv), assessments should be made preferentially at the top dose using the same species/strain and dosing route used in the bone marrow assay.

If *in vitro* tests do not show genotoxic potential, validation of *in vivo* (systemic) exposure is also needed and can be achieved by any of the methods above, but can also be inferred from the results of standard absorption, distribution, metabolism, and excretion (ADME) studies in rodents.

E. Definition of the Top Concentration for In Vitro Tests

(i) High dose for nontoxic compounds

For freely soluble, nontoxic compounds, the upper treatment levels are 5 mg/plate for bacteria and 5 mg/mL or 10 mM for mammalian cells.

(ii) Desired level of cytotoxicity

Most genotoxic carcinogens are not detectable in *in vitro* mammalian cell genotoxicity assays unless the concentrations tested induce some degree of cytotoxicity. It is also apparent that at very low survival levels, mechanisms other than direct genotoxicity per se can lead to 'positive' results that are related to cytotoxicity and not genotoxicity (e.g., events associated with apoptosis, endonuclease release from lysosomes, etc. (Kirkland, 1992)). Such events are likely to occur once a certain concentration threshold is reached for a toxic compound.

To balance these conflicting considerations, the following levels of cytotoxicity are currently acceptable for *in vitro* mammalian cell tests:

The desired level of toxicity for *in vitro* cytogenetic tests using cell lines is defined as greater than 50 percent inhibition of cell proliferation or culture confluency. For

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lymphocyte cultures, an inhibition of mitotic index by greater than 50 percent is considered sufficient. The desired upper limit of toxicity for mammalian cell mutation tests should be at least 80 percent of the corresponding control value. Toxicity can be measured either by assessment of cloning efficiency immediately after treatment, suspension growth immediately after treatment, or by calculation of relative total growth.

(iii) Tests of poorly soluble compounds

There is some evidence that dose-related genotoxic activity can be detected when testing particular compounds in the insoluble range. This is always associated with dose-related toxicity (see note 7). It is possible that solubilization of a precipitate is enhanced by serum in the culture medium or in the presence of S9-mix constituents. It is also probable that cell membrane lipid can facilitate absorption of lipophilic compounds into cells. In addition, some types of mammalian cells are phagocytic (e.g., Chinese hamster V79, CHO and CHL cells) and can ingest solid particles which may subsequently disperse into the cytoplasm. An insoluble compound may also contain soluble genotoxic impurities. It should also be noted that some insoluble compounds are administered *in vivo* as suspensions or as particulate materials.

Heavy precipitates can interfere with scoring the desired parameter and render control of exposure very difficult (e.g., where a centrifugation step(s) is included in a protocol to remove cells from exposure media) (see note 8), or render the test compound unavailable to enter cells and interact with DNA.

The following strategy is recommended for testing relatively insoluble compounds. The recommendation refers to the test article in the culture medium.

If no toxicity is observed, the lowest precipitating concentration should be used as the top concentration. If dose-related toxicity or mutagenicity is noted, irrespective of solubility, then the top concentration should be based on toxicity as described above. It is recognized that the desired levels of cytotoxicity may not be achievable if the extent of precipitation interferes with the scoring of the test.

In all cases, precipitation should be evaluated using the naked eye.

F. Use of Male/Female Rodents in Bone Marrow Micronucleus Tests

Extensive studies of the activity of known clastogens in the mouse bone marrow micronucleus test have shown that, in general, male mice are more sensitive than female mice for micronucleus induction (see note 9). Quantitative differences in sensitivity to micronucleus induction have been identified between the sexes, but no qualitative differences have been described. Where marked quantitative differences exist, there is invariably a difference in toxicity between the sexes. If there is a clear qualitative difference in metabolites between male and female rodents, then both sexes should be used in the micronucleus test. Similar principles can be applied for other established *in vivo* tests (see note 10). Both rats and mice are deemed acceptable for use in the bone marrow mironucleus test (see note 11). In summary, unless there are obvious differences in toxicity or metabolism between male and female rodents, males alone are sufficient for use in bone marrow micronucleus tests. If gender- specific drugs are to be tested, the appropriate sex should be used.

Notes

(1) Analysis of the database held by the Japanese Ministry of Labour on 5,526 compounds (and supported by smaller databases held by various pharmaceutical companies) has shown that approximately 7.5 percent of the bacterial mutagens identified are detected by *E. coli* WP2 *uvrA* but not by the standard set of four Salmonella strains. Although animal carcinogenicity data are not available on these compounds, it is likely that such compounds would carry the same carcinogenic potential as mutagens-inducing changes in the standard set of Salmonella strains.

(2) TA1537, TA97, and TA97a contain cytosine runs at the mutation-sensitive site within the relevant target histidine loci and show similar sensitivity to frameshift mutagens that induce deletion of bases in these frameshift hotspots. There was consensus agreement at the International Workshop on Standardization of Genotoxicity Procedures, Melbourne, 1993 (Gatehouse, et al., 1994) that all three strains could be used interchangeably, and that decision is endorsed here.

(3) As the mechanisms of micronucleus formation are related to those inducing chromosomal aberrations (e.g., Hayashi, et al., 1984), both micronuclei and chromosomal aberrations can be accepted as assay systems to screen for clastogenicity induced by test compounds. Comparisons of data where both the mouse micronucleus test and rat bone marrow metaphase analysis have been carried out on the same compounds has shown impressive correlation both qualitatively, i.e., detecting clastogenicity, and quantitatively, e.g., determination of the lowest clastogenic dose. Even closer correlations can be expected where the data are generated in the same species.

(4) The peripheral blood micronucleus test in the mouse using acridine orange supravital staining was introduced by Hayashi, et al. (1990). The test has recently been the subject of a major collaborative study by the Japanese Collaborative Study Group for the Micronucleus Test (see Mutation Research (1992) *278*, Nos. 2/3). The tests were carried out in CD-1 mica using 23 test substances of various modes of action. Peripheral blood sampled from the same animal was examined 0, 24, 48, and 72 hours (or longer) after treatment. As a rule one chemical was studied by 2 different laboratories (46 laboratories took part). All chemicals were detected as inducers of micronuclei. There were quantitative differences between laboratories, but no qualitative differences. Most chemicals gave the greatest response 48 hours after treatment. Thus, the results suggest that the peripheral blood assay using acridine orange supravital staining can generate reproducible and reliable data to evaluate the clastogenicity of chemicals. Based on these data, the Melbourne workshop concluded that this assay is equivalent in accuracy to the bone marrow micronucleus assay.

(5) Apart from the cytogenetic assays in bone marrow cells, the largest database for *in vivo* assays exists for the liver unscheduled DNA synthesis (UDS) assay. A review of the literature shows that a combination of the liver UDS test and the bone marrow micronucleus test will detect most genotoxic carcinogens with few false positive results (Tweats, 1994). Unstable genotoxins and certain aromatic amines are problematical for all existing *in vivo* screens. The choice of a second test, however, should not be restricted to UDS tests because other assays may be more appropriate (e.g., ^{32}P post-labelling, DNA strand-breakege assays, etc.). depending on the compound in question.

(6) The bone marrow is a well-perfused tissue and it can be deduced therefore that levels of drug-related materials in blood or plasma will be similar to those observed in bone marrow. This is supported by direct comparisons of drug levels in the two compartments for a large series of different pharmaceuticals. Although drug levels are not always the same, there is sufficient correlation for measurements in blood or plasma to be adequate for validating bone marrow exposure.

(7) Laboratories in Japan carrying out genotoxicity tests have much experience in testing precipitates, and have identified examples of substances that are clearly genotoxic only in the precipitating range of concentrations. These compounds include polymers and mixtures of compounds, some polycyclic hydrocarbons, some phenylene diamines, heptachlor, etc. Collaborative studies with some of these compounds have shown that they may be detectable in the soluble range; however, it does seem clear that genotoxic activity increases well into the insoluble range. A discussion of these factors is found in the report of the "*in vitro*" subgroup of the Melbourne conference (Kirkland, 1994).

(8) Testing compounds in the precipitating range is problematical with respect to defining the exposure periods for assays where the cells grow in suspension. After the defined exposure period, the cells are normally pelleted by centrifugation and are then resuspended in fresh medium without the test compound. If a precipitate is present, the compound will be carried through to the later stages of the assay, making control of exposure impossible. If such cells are used (e.g., human peripheral lymphocytes or mouse lymphoma cells), it is reasonable to use the lowest precipitating concentration as the highest concentration tested.

(9) As the induction of micronuclei and chromosomal aberrations are related, it is reasonable to assume that the same conditions can be applied for using male animals in bone marrow chromosomal aberration assays. The peripheral blood micronucleus test has been validated only in male rodents (The Collaborative Study Group for the Micronucleus Test, 1992), as has the *ex vivo* UDS test (Madle, et al., 1994).

(10) A detailed collaborative study was carried out under the auspices of the Japanese Environmental Mutagen Society (The Collaborative Study Group for the Micronucleus Test, 1986). This study indicated that, in general, male mice were more sensitive than female mice for micronucleus induction; where differences were seen, they were only quantitative, not qualitative. This analysis has been extended by the group considering the micronucleus test at the Melbourne Harmonisation workshop and, having analyzed data on 53 *in vivo* clastogens (and 48 nonclastogens), the same conclusions were drawn (Hayashi, et al., 1994).

(11) Both the rat and mouse are suitable species for use in the micronucleus test. However, data are accumulating to show that some species-specific carcinogens are species-specific genotoxins (e.g., Albanese, et al., 1988). When more data have accumulated, there may be a case for carrying out micronucleus tests in both the rat and the mouse.

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Dated: September 15, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–23377 Filed 9–21–94; 8:45 am]

BILLING CODE 4160–01–F

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Part VIII

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Draft Guideline on Impurities in New Drug Substances; Availability; Notice

generation, setting specifications, and a brief

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94D–0325]

International Conference on Harmonisation; Draft Guideline on Impurities in New Drug Substances; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guideline entitled "Impurities in New Drug Substances." The draft guideline was prepared by the Quality Expert Working Group of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guideline is intended to provide guidance to applicants for drug marketing registration on the content and qualification of impurities in new drug substances produced by chemical syntheses and not previously registered in a country, region, or member State.

DATES: Written comments by December 6, 1994.

ADDRESSES: Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Copies of the guideline are available from the CDER Executive Secretariat Staff (HFD–8), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT:

Regarding the draft guideline: Charles S. Kumkumian, Center for Drug Evaluation and Research (HFD–102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6758.

Regarding the ICH: Janet Showalter, Office of Health Affairs (HFY–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote Harmonisation of regulatory requirements. FDA has participated in many meetings designed to enhance Harmonisation and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of Harmonisation is to identify and then reduce differences in technical requirements for drug development.

ICH was organized to provide an opportunity for tripartite Harmonisation initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with Harmonisation of technical requirements for the registration of pharmaceutical products among three regions: the European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

On March 15, 1994, the ICH Steering Committee agreed that a consensus draft guideline entitled "Impurities In New Drug Substances," which was developed by the Quality Expert Working Group of the ICH, should be made available for public comment. The draft guideline will be made available for comment by the European Commission and Japanese Ministry of Health and Welfare, as well as by FDA, in accordance with their respective consultation procedures. Comments about this draft will be considered by FDA and the Expert Working Group. Ultimately, FDA intends to adopt the ICH Steering Committee's final guideline.

The draft guideline is intended to provide guidance to applicants for drug marketing registration on the content and qualification of impurities in new drug substances produced by chemical syntheses and not previously registered in a country, region, or member State. It is not intended to apply to new drug substances used during the clinical research stage of development or clinical trials. The draft guideline also does not apply to biological/biotechnological substances, peptides, radiopharmaceuticals, fermentation and semisynthetic products derived from that process, herbal products, and crude products of animal or plant origin. Impurities in new drug substances are addressed in the draft guideline from two perspectives: (1) Chemistry aspects—classification and identification of impurities, report generation, setting specifications, and a brief discussion of analytical procedures; and (2) safety aspects—guidance for qualifying impurities that were not present in batches of the new drug substance used in safety and clinical studies and/or impurity levels substantially higher than in those batches.

In the past, guidelines have generally been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but that are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Therefore, if the agency issues this guideline in final form, the guideline would not be issued under the authority of current § 10.90(b), and would not create or confer any rights, privileges, or benefits for or on any person, nor would it operate to bind FDA in any way.

Interested persons may, on or before December 6, 1994, to the Dockets Management Branch (address above) submit written comments on the draft guideline . Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the draft guideline follows:

Impurities in New Drug Substances

1. Preamble

This document is intended to provide guidance for registration applications on the content and qualification of impurities in new drug substances produced by chemical syntheses and not previously registered in a region or member State. It is not intended to apply to the regulation of new drug substances used during the clinical research stage of development, e.g., investigational new drugs or clinical trials exemptions. Biological/biotechnological, peptide, radiopharmaceutical, fermentation, and semisynthetic products derived therefrom, herbal products, and crude products of animal or plant origin are not covered. Impurities in new drug substances are addressed from two perspectives:

Chemistry aspects include classification and identification of impurities, report generation, setting specifications, and a brief discussion of analytical procedures; and

Safety aspects include specific guidance for qualifying impurities which were not present in batches of new drug substance used in safety and clinical studies and/or impurity levels substantially higher than in those batches. Threshold limits are described below which qualification should not be necessary.

2. Classification of Impurities

Impurities may be classified into the following categories:

- Organic Impurities (Process and Drug Related)
- Inorganic Impurities
- Residual Solvents

Organic impurities may arise during the manufacturing process and/or storage of the new drug substance. They may be identified or unidentified, volatile or nonvolatile, and include:

- Starting Materials
- By-Products
- Intermediates
- Degradation Products
- Reagents, Ligands, and Catalysts

Inorganic impurities may derive from the manufacturing process. They are normally known and identified and include:

- Reagents, Ligands, and Catalysts
- Heavy Metals
- Inorganic Salts
- Other Materials (e.g., Filter Aids, Charcoal, etc.)

Solvents are organic or inorganic liquids used during the manufacturing process. Since these are generally of known toxicity, the selection of appropriate controls is easily accomplished.

Excluded from this document are: Extraneous contaminants which should not occur in new drug substances and are more appropriately addressed as good manufacturing practice issues; polymorphic form, a solid state property of the new drug substance; and enantiomeric impurities.

3. Rationale for the Reporting and Control of Impurities

3.1 Organic Impurities

The applicant should summarize those actual and potential impurities most likely to arise during the synthesis, purification, and storage of the new drug substance. This summary should be based on sound scientific appraisal of the chemical reactions involved in the synthesis, impurities associated with raw materials which could contribute to the impurity profile of the new drug substance, and possible degradation products. This discussion need only include those impurities that may reasonably be expected based on knowledge of the chemical reactions and conditions involved.

In addition, the applicant should summarize the laboratory studies conducted to detect impurities in the new drug substance. This summary should include test results of batches manufactured during the development process and batches from the proposed commercial process, as well as results of intentional degradation studies used to identify potential impurities arising during storage. Assessment of the proposed commercial process may be deferred until the first batch is produced for marketing. The impurity profile of the drug substance lots intended for marketing should be compared with those used in development and any differences discussed.

The studies conducted to characterize the structure of actual impurities present in the new drug substance at or above an apparent level of 0.1 percent (e.g., calculated using the response factor of the drug substance) should be described. Note that, identification of all recurring impurities at or above the 0.1 percent level is expected in batches manufactured by the proposed commercial process. Degradation products observed in stability studies at labelled storage temperatures should be similarly identified. When identification of an impurity is not feasible, a summary of the laboratory studies demonstrating the unsuccessful effort should be included in the application. Where attempts have been made to identify impurities below the 0.1 percent level, it is useful also to report the results of these studies.

Identification of Impurities below apparent levels of 0.1 percent is generally not considered necessary. However, identification should be attempted for those potential impurities that are expected to be unusually potent, producing toxic or pharmacologic effects at a level lower than 0.1 percent. In all cases, impurities should be qualified as described later in this guideline. Although it is common practice to round analytical results of between 0.05 and 0.09 percent to the nearest number (i.e., 0.1 percent), for the purpose of these guidelines, such values would not be rounded to 0.1 percent and these impurities would not require identification.

3.2 Inorganic Impurities

Inorganic impurities are normally detected and quantitated using pharmacopeial or other appropriate procedures. Carry over of catalysts to the new drug substance should be evaluated during development. The need for inclusion or exclusion of inorganic impurities in the new drug substance specifications should be discussed. Limits are based on pharmacopeial standards of known safety data.

3.3 Solvents

The control of residues of the solvents used in the manufacturing process for the new drug substance should be discussed. Any solvents which may appear in the drug substance should be quantified using analytical procedures with an appropriate level of sensitivity. Pharmacopeial or other appropriate procedures should be utilized. Limits are based on pharmacopeial standards or known safety data taking into consideration dose, duration of treatment, and route of administration. Particular attention should be given to quantitation of toxic solvents used in the manufacturing process.

4. Analytical Procedures

The registration application should include documented evidence that the analytical procedures are validated and suitable for the detection and quantitation of impurities. Differences in the analytical procedures used during development and proposed for the commercial product should be discussed in the registration application.

Organic impurity levels can be measured by a variety of techniques, including those which compare an analytical response for an impurity to that of an appropriate reference standard or to the response of the new drug substance itself. Reference standards used in the analytical procedures for control of impurities should be evaluated and characterized according to their intended use. It is considered acceptable to use the drug substance to estimate the levels of impurities. In cases where the response factors are not close, this practice may still be acceptable, provided a correction factor is applied or the impurities are, in fact, being overestimated. Specifications and analytical procedures used to estimate identified or unidentified impurities are often based on analytical assumptions (e.g., equivalent detector response, etc.). The assumptions should be discussed in the registration application.

5. Reporting Impurity Content of Botches

Analytical results should be provided for all batches of the new drug substance used for clinical, safety, and stability testing, as well as batches representative of the proposed commercial process. The content of individual identified and unidentified and total impurities, observed in these batches of the new drug substance, should be reported with the analytical procedures indicated. A tabulation (e.g., spreadsheet) of the data is recommended. Impurities should be designated by code number or by an appropriate descriptor, e.g., retention time. Levels of impurities which are present but below the validated limit of quantitation need not be reported. When analytical procedures change during development, reported results should be linked with the procedure used, with appropriate validation information provided. Representative chromatograms should be provided. Chromatograms of such representative batches, from methods validation studies showing separation and detectability of impurities (e.g., on spiked samples), along with any other impurity tests routinely performed, can serve as the representative impurity profiles. The applicant should ensure that complete impurity profiles (i.e., chromatograms) of individual batches are available if requested. A tabulation should be provided which links the specific new drug substance batch to each safety study and each clinical study in which it has been used.

For each batch of the new drug substance, the report should include:

- Batch Identity and Size
- Date of Manufacture
- Site of Manufacture
- Manufacturing Process
- Impurity Content, Individual and Total
- Use of Batches
- Reference to Analytical Procedure Used

6. Specificotion Limits for Impurities

The specifications for a new drug substance should include limits for impurities. Stability studies, chemical

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development studies, and routine batch analyses can be used to predict those impurities likely to occur in the commercial product. The selection of impurities to include in the new drug substance specifications should be based on the impurities found in batches manufactured by the proposed commercial process. Those impurities selected for inclusion in the specifications for the new drug substance are referred to as "specified impurities" in these guidelines. Specified impurities may be identified or unidentified and are individually listed in the new drug substance specifications.

A rationale for the inclusion or exclusion of impurities in the specifications should be presented. This rationale should include a discussion of the impurity profiles observed in the safety and clinical development batches together with a consideration of the impurity profile of material manufactured by the proposed commercial process. Specific identified impurities should be included along with recurring unidentified impurities estimated to be at or above 0.1 percent. For impurities known to be unusually potent or to produce toxic or unexpected pharmacological effects, the sensitivity of the analytical methods should be commensurate with the level at which the impurities are to be controlled. For unidentified impurities, the procedure used and assumptions made in establishing the level of the impurity should be clearly stated. Unidentified impurities included in the specifications should be referred to by some appropriate qualitative analytical descriptive label (e.g., "unidentified A," "unidentified with relative retention of 0.9," etc.). Finally, a general specification limit of not more than 0.1 percent for any unspecified impurity should be included.

Limits should be set no higher than the level which can be justified by safety data, and, unless safety data indicate otherwise, no lower than the level achievable by the manufacturing process and the analytical capability. In other words, where there is no safety concern, impurity specifications are based on data generated on actual batches of the new drug substance allowing sufficient latitude to deal with normal manufacturing and analytical variation, and the stability characteristics of the new drug substance. Although normal manufacturing variations are expected, significant variation in batch-to-batch impurity levels may indicate that the manufacturing process of the new drug substance is not adequately controlled and validated.

In summary, the new drug substance specifications should include, where applicable, limits for:

- Each Specified Identified Impurity
- Each Specified Unidentified Impurity at or above 0.1 percent
- Any Unspecified Impurity, with a limit of not more than 0.1 percent
- Total Impurities
- Residual Solvents
- Inorganic Impurities

A summation of assay value and impurity levels can be used to obtain mass balance for the test sample. The mass balance need not add to exactly 100 percent because of the analytical error associated with each analytical procedure. The summation of impurity levels plus the assay value may be misleading, e.g., when the assay procedure is nonspecific (e.g., potentiometric titrimetry) and the impurity level is relatively high.

7. Qualification of Impurities

Qualification is the process of acquiring and evaluating data which establishes the biological safety of an individual impurity or a given impurity profile at the level(s) specified. The applicant should provide a rationale for selecting impurity limits based on safety considerations. The level of any impurity present in a new drug substance which has been adequately tested in safety and/or clinical studies is considered qualified. Impurities which are also significant metabolites present in animal and/or human studies do not need further qualification. A level of a qualified impurity higher than that present in a new drug substance can also be justified based on an analysis of the actual amount of impurity administered in previous safety studies.

If data are not available to qualify the proposed specification level of an impurity, studies to obtain such data may be needed when the usual qualification threshold limits given below are exceeded:

Maximum daily dose	Qualification threshold
≤ 2 g/day	0.1 percent or 1 milligram per day intake (whichever is lower).
> 2 g/day	0.05 percent.

Higher or lower threshold limits for qualification of impurities may be appropriate for some individual drugs based on scientific rationale and level of concern, including drug class effects and clinical experience. For example, qualification may be especially important when there is evidence that such impurities in certain drugs or therapeutic classes have previously been associated with adverse reactions in patients. In these instances, a lower qualification threshold limit may be appropriate. Conversely, a higher qualification threshold limit may be appropriate for individual drugs when the level of concern for safety is less than usual based on similar considerations (patient population, drug class effects, clinical considerations, etc.). Technical factors (manufacturing capability and control methodology) may be considered as part of the justification for selection of alternative threshold limits. Proposals for alternative threshold limits are considered on a case-by-case basis.

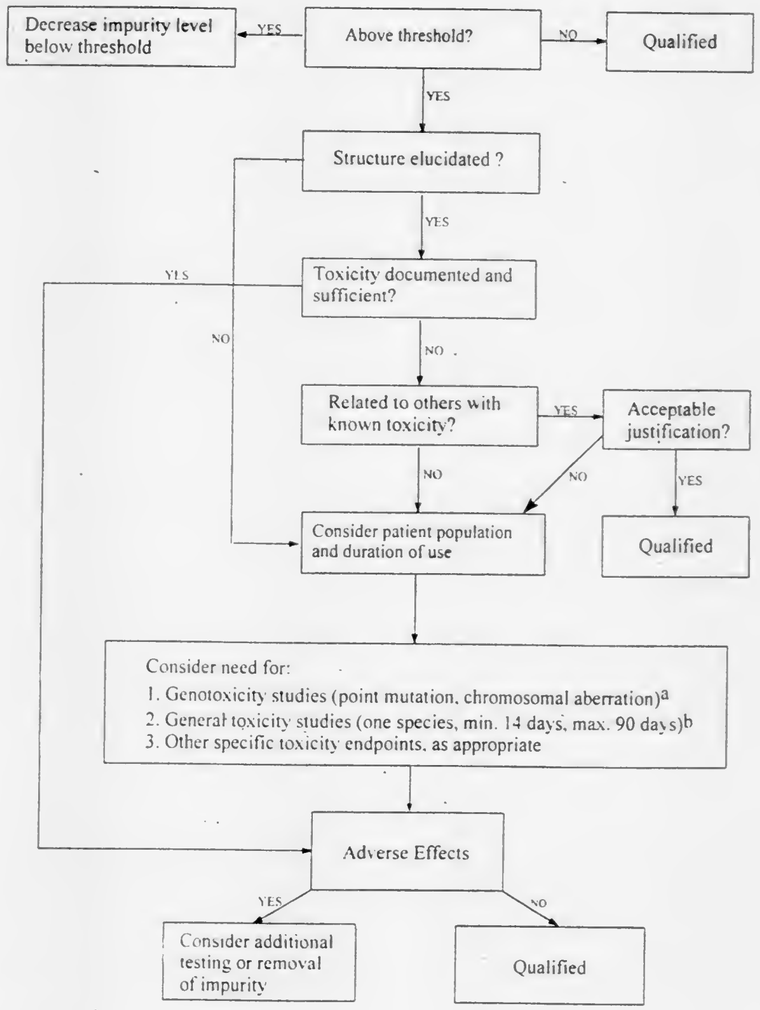
The "Decision Tree for Safety Studies" (Attachment I) describes considerations for the qualification of impurities when thresholds are exceeded. In some cases, decreasing the level of impurity below the threshold may be simpler than providing safety data. Alternatively, adequate data may be available in the scientific literature to qualify an impurity. If neither is the case, additional safety testing should be considered. The studies desired to qualify an impurity will depend on a number of factors, including the patient population, daily dose, route, and duration of drug administration. Such studies are normally conducted on the new drug substance containing the impurities to be controlled, although studies using isolated impurities are acceptable.

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Attachment I

DECISION TREE FOR SAFETY STUDIES



BILLING CODE 4160-01-C

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[a] If considered desirable, a minimum screen for genotoxic potential should be conducted. A study to detect point mutations and one to detect chromosomal aberrations, both in vitro, are seen as an acceptable minimum screen.

[b] If general toxicity studies are desirable, study(ies) should be designed to allow comparison of unqualified to qualified material. The study duration should be based on available relevant information and performed in the species most likely to maximize the potential to detect the toxicity of an impurity. In general, a minimum duration of 14 days and a maximum duration of 90 days will be acceptable.

8. New Impurities

During the course of a drug development program, the qualitative impurity profile of the new drug substance may change, or a new impurity may appear as a result of synthetic route changes, process optimization, scale-up, etc. New impurities may be identified or unidentified. Such changes call for consideration of the need for qualification of the level of the impurity unless it is below the threshold values as noted above. When a new impurity exceeds the threshold, the "Decision Tree for Safety Studies" should be consulted. Safety studies should compare the new drug substance containing a representative level of the new impurity with previously qualified material, although studies using the isolated impurity are also acceptable (these studies may not always have clinical relevance).

9. Glossary

Chemical Development Studies: Studies conducted to scale-up, optimize, and validate the manufacturing process for a new drug substance.

Enantiomers: Compounds with the same molecular formula as the drug substance, which differ in the spatial arrangement of atoms within the molecule and are nonsuperimposable mirror images.

Extraneous Substance: An impurity arising from any source extraneous to the manufacturing process.

Herbal Products: Medicinal products containing, exclusively, plant material and/or vegetable drug preparations as active ingredients.

Identified Impurity: An impurity for which a structural characterization has been achieved.

Impurity: Any component of the new drug substance which is not the chemical entity defined as the new drug substance.

Impurity Profile: A description of the identified and unidentified impurities present in a new drug substance.

Intermediate: A material produced during steps of the synthesis of a new drug substance which must undergo further molecular change before it becomes a new drug substance.

Ligand: An agent with a strong affinity to a metal ion.

Manufacture: All operations related to the new drug substance, including purchase of materials, production, quality control, release, storage, and distribution of the new drug substance.

New Drug Substance: The designated therapeutic moiety which has not been previously registered in a region or member state (also referred to as a new molecular entity or new chemical entity). It may be a complex, simple ester, or salt of a previously approved drug substance.

Polymorphism: The occurrence of different crystalline forms of the same drug substance.

Potential Impurity: An impurity which, from theoretical considerations, may arise from or during manufacture. It may or may not actually appear in the new drug substance.

Qualification: The process of acquiring and evaluating data which establishes the biological safety of an individual impurity or a given impurity profile at the level(s) specified.

Reagent: A substance, other than a starting material or solvent, which is used in the manufacture of a new drug substance.

Safety Information: The body of information that establishes the biological safety of an individual impurity or a given impurity profile at the level(s) specified.

Solvent: An inorganic or an organic liquid used as a vehicle for the preparation of solutions or suspensions in the synthesis of a new drug substance.

Specified Impurity: Identified or unidentified impurity that is selected for inclusion in the new drug substance specifications and is individually listed and limited in order to assure the safety and quality of the new drug substance.

Starting Material: A material used in the synthesis of a new drug substance which is incorporated as an element into the structure of an intermediate and/or of the new drug substance. Starting materials are normally commercially available and of defined chemical and physical properties and structure.

Toxic Impurity: Impurities having significant undesirable biological activity.

Unidentified Impurity: An impurity which is defined solely by qualitative analytical properties (e.g., chromatographic retention time).

Validated Limit of Quantitation: For impurities at a level of 0.1 percent, the validated limit of quantitation should be less than or equal to 0.05 percent. Impurities limited at higher levels may have higher limits of quantitation.

Dated: September 15, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94-23378 Filed 9-21-94; 8:45 am]

BILLING CODE 4160-01-F

federal register

Thursday
September 22, 1994

Part IX

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Guideline on Detection of Toxicity to Reproduction for Medicinal Products; Availability; Notice

VOL
59
ISS
183
SEP
22
1994
UMI

[Docket No. 93D-0140]

International Conference on Harmonisation; Guideline on Detection of Toxicity to Reproduction for Medicinal Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice

SUMMARY: The Food and Drug Administration (FDA) is publishing a final guideline entitled "Guideline on Detection of Toxicity to Reproduction for Medicinal Products." This guideline was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guideline is intended to reflect sound scientific principles for reproductive toxicity testing. The guideline is applicable to sponsors submitting applications to both the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER).

DATES: Effective September 22, 1994. Submit written comments at any time.

ADDRESSES: Submit written comments on the guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Copies of the guideline are available from the CDER Executive Secretariat Staff (HFD-8), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT:
Regarding the guideline: Joy A. Cavagnaro, Center for Biologics Evaluation and Research (HFM-500), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-594-2860.
Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international Harmonisation of regulatory requirements. FDA has participated in many meetings designed to enhance Harmonisation and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of Harmonisation is to identify and then reduce differences in technical requirements for drug development.

ICH was organized to provide an opportunity for tripartite Harmonisation initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with Harmonisation of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, FDA, and the U.S. Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Association (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

Harmonisation of reproductive toxicology testing was selected as a priority topic during the early stages of the ICH initiative. In the **Federal Register** of April 16, 1993 (58 FR 21074), FDA published a draft tripartite guideline entitled, "Guideline on Detection of Toxicity to Reproduction for Medicinal Products." The notice gave interested persons an opportunity to submit comments by May 17, 1993.

After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Steering Committee in June 1993 and endorsed by the three participating regulatory agencies. The final guideline was subsequently presented at the second ICH meeting held in October 1993. The guideline provides information applicable to sponsors submitting applications to both CDER and CBER. Sponsors submitting future applications may be asked to explain differences from the approach suggested in the guideline.

To help facilitate understanding of the guideline, the agency is providing further clarification of important questions that have been raised since initial general distribution of the document at ICH 2 by both industry and regulatory scientists.

General Comments

First pass tests in the guideline are those tests that will likely be performed as general screens (i.e., the three-study design or "most probable option") to identify potential treatment related effects. Secondary tests are those designed to characterize, e.g., the nature, scope, and/or origin of the toxic effect. In general, repeated dose general toxicity studies of 2 to 4 weeks duration may provide a close approximation of the doses to be used in the reproductive toxicology studies.

Male Fertility

As stated in the introduction to the guideline, studies are ongoing to optimize parameters to be used in fertility studies, including the optimal treatment period for males prior to mating, histological techniques for the evaluation of sex organs, and techniques to evaluate sperm. It is expected that, in most cases, viability will be measured indirectly by evaluating sperm motility. A variety of methods will be acceptable to evaluate sperm, including vital dye staining, flow cytometric analysis, and nonautomated and automated methods to measure the percent of motile sperm. Sponsors should justify the methods used and define the objective criteria established to assess the data obtained. It is expected that improvements in methods to assess male reproductive performance will evolve over the next few years.

The design of the study of fertility (ICH 4.1.1) assumes that, especially for effects on spermatogenesis, use will be made of data from repeated dose toxicity studies of at least 1-month duration. The agency encourages the use of good pathological and histopathological examination techniques in the repeated dose toxicity studies in addition to the staging of spermatogenesis which is routinely employed. The preservation of testes and epididymides from all animals from ICH study 4.1.1 provides an opportunity for more detailed histopathological examination on a case-by-case basis; for example, if unexpected effects on sperm count or viability are observed. There may be cases due to species-specific effects or technical considerations (e.g., multiple samplings are required overtime) when sperm evaluation in nonrodents may be more appropriate.

The duration of pretreatment for males in ICH study 4.1.1 is 4 weeks, unless data from other studies suggest that this should be modified. Males should be treated throughout the mating period (generally between 2 and 3 weeks) and at least through

implantation of the females. Thus, males will generally be sacrificed following at least 7 to 9 weeks dosing. Evaluations should generally include organ weights and macroscopic examinations of testis, epididymis, seminal vesicle, and prostate. Sperm counts and sperm viability (e.g., motility) should be assessed. Tissues should be saved for potential histological assessment, as such assessments may be required on a case-by-case basis. If histological data are not available from previous studies or the quality of the data are dubious, then histological evaluation should be performed in this study.

Prenatal and Postnatal Development

When studying the effect on postnatal development, the reduction of litter size by culling is still under discussion. If culling is performed, it should be randomized. Whether or not it is performed, it should be explained by the investigator. Observations on offspring in ICH study 4.1.2 include sensory functions and reflexes and behavior, consistent with previous guidelines from Japan and the European Union. Specific functional tests have not been recommended in the ICH guideline. Investigators are encouraged to use methods that will assess sensory functions, motor activity, learning, and memory to help characterize functional deficits in offspring. Under the terminology section of the guideline, a three-generation study is defined as direct exposure of the F0 generation, indirect and direct exposure of the F1 and F2, and indirect exposure of the F3 generation.

In the past, guidelines have generally been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Therefore, this guideline is not being issued under the authority of § 10.90(b), and it does not create or confer any rights, privileges, or benefits for or on any person, nor does it operate to bind FDA in any way.

As with all of FDA's guidelines, the public is encouraged to submit written comments with new data or other new information pertinent to this guideline. The comments in the docket will be periodically reviewed, and, where appropriate, the guideline will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the guideline follows:

Guideline on Detection of Toxicity to Reproduction for Medical Products

1. Introduction

1.1 Purpose of the Guideline

There is a considerable overlap in the methodology that could be used to test chemicals and medicinal products for potential reproductive toxicity. As a first step to using this wider methodology for efficient testing, this guideline attempts to consolidate a strategy based on study designs currently in use for testing of medicinal products; it should encourage the full assessment on the safety of chemicals on the development of the offspring. It is perceived that tests in which animals are treated during defined stages of reproduction better reflect human exposure to medicinal products and allow more specific identification of stages at risk. While this approach may be useful for most medicines, long-term exposure to low doses does occur and may be represented better by a one- or two-generation study approach.

The actual testing strategy should be determined by:

- Anticipated drug use especially in relation to reproduction,
- The form of the substance and route(s) of administration intended for humans, and
- Making use of any existing data on toxicity, pharmacodynamics, kinetics, and similarity to other compounds in structure/activity.

To employ this concept successfully, flexibility is needed (Note 1). No guideline can provide sufficient information to cover all possible cases. All persons involved should be willing to discuss and consider variations in test strategy according to the state-of-the-art and ethical standards in human and animal experimentation. Areas where more basic research would be useful for optimization of test designs are male fertility assessment, and kinetic and metabolism in pregnant/lactating animals.

1.2 Aim of Studies

The aim of reproduction toxicity studies is to reveal any effect of one or more active substance(s) on mammalian reproduction. For this purpose, both the investigations and the interpretation of the results should be related to all other pharmacological and toxicological data available to determine whether potential reproductive risks to humans are greater, lesser, or equal to those posed by other toxicological manifestations. Further, repeated dose toxicity studies can provide important information regarding potential effects on reproduction, particularly male fertility. To extrapolate the results to humans (assess the relevance), data on likely human exposures, comparative kinetics, and mechanisms of reproductive toxicity may be helpful.

The combination of studies selected should allow exposure of mature adults and all stages of development from conception to sexual maturity. To allow detection of immediate and latent effects of exposure, observations should be continued through one complete life cycle, i.e., from conception in one generation through conception in the following generation. For convenience of testing this integrated sequence can be subdivided into the following stages.

A. Premating to conception (adult male and female reproductive functions, development and maturation of gametes, mating behavior, fertilization).

B. Conception to implantation (adult female reproductive functions, preimplantation development, implantation).

C. Implantation to closure of the hard palate (adult female reproductive functions, embryonic development, major organ formation).

D. Closure of the hard palate to the end of pregnancy (adult female reproductive functions, fetal development and growth, organ development and growth).

E. Birth to weaning (adult female reproductive functions, neonate adaption to extrauterine life, preweaning development and growth).

F. Weaning to sexual maturity (postweaning development and growth, adaption to independent life, attainment of full sexual function).

For timing conventions see Note 2.

1.3 Choice of Studies

The guideline addresses the design of studies primarily for detection of effects on reproduction. When an effect is detected, further studies to characterize fully the nature of the response have to be designed on a case-by-case basis (Note 3). The rationale for the set of studies chosen should be given and should include an explanation for the choice of dosages.

Studies should be planned according to the "state-of-the art," and take into account preexisting knowledge of class-related effects on reproduction. They should avoid suffering and should use the minimum number of animals necessary to achieve the overall objectives. If a preliminary study is performed, the results should be considered and discussed in the overall evaluation (Note 4).

2. Animal Criteria

The animals used should be well defined with respect to their health, fertility, fecundity, prevalence of abnormalities, embryofetal deaths, and the consistency they display from study to study. Within and between studies, animals should be of comparable age, weight, and parity at the start; the easiest way to fulfill these criteria is to use animals that are young, mature adults at the time of mating with the females being virgin.

2.1 Selection and Number of Species

Studies should be conducted in mammalian species. It is generally desir-

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to use the same species and strain as in other toxicological studies. Reasons for using rats as the predominant rodent species are practicality, comparability with other results obtained in this species and the large amount of background knowledge accumulated.

In embryotoxicity studies only, a second mammalian species traditionally has been required, the rabbit being the preferred choice as a "nonrodent." Reasons for using rabbits in embryotoxicity studies include the extensive background knowledge that has accumulated, as well as availability and practicality. Where the rabbit is unsuitable, an alternative nonrodent or a second rodent species may be acceptable and should be considered on a case-by-case basis (Note 5).

2.2 Other Test Systems

Other test systems are considered to be any developing mammalian and nonmammalian cell systems, tissues, organs, or organism cultures developing independently in vitro or in vivo. Integrated with whole animal studies either for priority selection within homologous series or as secondary investigations to elucidate mechanisms of action, these systems can provide invaluable information and, indirectly, reduce the numbers of animals used in experimentation. However, they lack the complexity of the developmental processes and the dynamic interchange between the maternal and the developing organisms. These systems cannot provide assurance of the absence of effect nor provide perspective in respect of risk/exposure. In short, there are no alternative test systems to whole animals currently available for reproduction toxicity testing with the aims set out in the introduction (Note 6).

3. General Recommendations Concerning Treatment

3.1 Dosages

Selection of dosages is one of the most critical issues in design of the reproductive toxicity study. The choice of the high dose should be based on data from all available studies (pharmacology, acute and chronic toxicity and kinetic studies, Note 7). A repeated dose toxicity study of about 2 to 4 weeks duration provides a close approximation to the duration of treatment in segmental designs of reproductive studies. When sufficient information is not available, preliminary studies are advisable (see Note 4).

Having determined the high dosage, lower dosages should be selected in a descending sequence, the intervals depending on kinetic and other toxicity factors. Whilst it is desirable to be able to determine a "no observed adverse effect level," priority should be given to setting dosage intervals close enough to reveal any dosage-related trends that may be present (Note 8).

3.2 Route and Frequency of Administration

In general the route or routes of administration should be similar to those intended for human usage. One route of substance administration may be acceptable if it can be shown that a similar distribution (kinetic profile) results from different routes (Note 9).

The usual frequency of administration is once daily but consideration should be given to use either more frequent or less frequent administration taking kinetic variables into account (see also Note 10).

3.3 Kinetics

It is preferable to have some information on kinetics before initiating reproduction studies since this may suggest the need to adjust choice of species, study design, and dosing schedules. At this time, the information need not be sophisticated nor derived from pregnant or lactating animals.

At the time of study evaluation, further information on kinetics in pregnant or lactating animals may be required according to the results obtained (Note 10).

3.4 Control Groups

It is recommended that control animals be dosed with the vehicle at the same rate as test group animals. When the vehicle may cause effects or affect the action of the test substance, a second (sham- or untreated) control group should be considered.

4. Proposed Study Designs—Combination of Studies

All available pharmacological, kinetic, and toxicological data for the test compound and similar substances should be considered in deciding the most appropriate strategy and choice of study design. It is anticipated that, initially, preference will be given to designs that do not differ too radically from those of established guidelines for medicinal products (the most probable option). For most medicinal products, the three-study design will usually be adequate. Other strategies, combinations of studies, and study designs could be as valid or more valid as the "most probable option" according to circumstances. The key factor is that, in total, they leave no gaps between stages and allow direct or indirect evaluation of all stages of the reproductive process (Note 11).

Designs should be justified.

4.1 The Most Probable Option

The most probable option can be equated to a combination of studies for effects on:

- Fertility and early embryonic development,
- Prenatal and postnatal development, including maternal function, and
- Embryo-fetal development.

4.1.1 Study of Fertility and Early Embryonic Development to Implantation

Aim

To test for toxic effects/disturbances resulting from treatment from before mating (males/females) through mating and implantation. This comprises evaluation of stages A and B of the reproductive process (see 1.2). For females this should detect effects on the oestrous cycle, tubal transport, implantation, and development of preimplantation stages of the embryo. For males it will permit detection of functional effects (e.g., on libido, epididymal sperm maturation) that may not be detected by histological examinations of the male reproductive organs (Note 12).

Assessment of

- Maturation of gametes,
- Mating behavior,
- Fertility,
- Preimplantation stages of the embryo, and
- Implantation.

Animals

At least one species, preferably rats.

Number of Animals

The number of animals per sex per group should be sufficient to allow meaningful interpretation of the data (Note 13).

Administration Period

The design assumes that, especially for effects on spermatogenesis, use will be made of data from repeated dose toxicity studies of at least 1-month duration. Provided no effects have been found that preclude this, a premating treatment interval of 2 weeks for females and 4 weeks for males can be used (Note 12). Selection of the length of the premating administration period should be stated and justified (see also 1.1, pointing out the need for research). Treatment should continue throughout mating to termination of males and at least through implantation for females. This will permit evaluation of functional effects on male fertility that cannot be detected by histologic examination in repeated dose toxicity studies and effects on mating behavior in both sexes. If data from other studies show there are effects on weight or histologic appearance of reproductive organs in males or females, or if the quality of examinations is dubious or if there are no data from other studies, then a more comprehensive study should be designed (Note 12).

Mating

A mating ratio of 1:1 is advisable and procedures should allow identification of both parents of a litter (Note 14).

Terminal Sacrifice

Females may be sacrificed at any point after midpregnancy.

Males may be sacrificed at any time after mating but it is advisable to ensure successful induction of pregnancy before taking such an irrevocable step (Note 15).

Observations

During study:

- Signs and mortalities at least once daily;
- Body weight and body weight changes at least twice weekly (Note 16);
- Food intake at least once weekly (except during mating);
- Record vaginal smears daily, at least during the mating period, to determine whether there are effects on mating or precoital time; and
- Observations that have proved of value in other toxicity studies.

At terminal examination:

- Necropsy (macroscopic examination) of all adults;
- Preserve organs with macroscopic findings for possible histological evaluation; keep corresponding organs of sufficient controls for comparison;
- Preserve testes, epididymides, ovaries and uteri from all animals for possible histological examination and evaluation on a case-by-case basis; tissues can be discarded after completion and reporting of the study;
- Sperm count in epididymides or testes, as well as sperm viability;
- Count corpora lutea, implantation sites (Note 16); and
- Live and dead conceptuses.

4.1.2 Study for Effects on Prenatal and Postnatal Development, Including Maternal Function

Aim

To detect adverse effects on the pregnant/lactating female and on development of the conceptus and the offspring following exposure of the female from implantation through weaning. Since manifestations of effect induced during this period may be delayed, observations should be continued through sexual maturity (i.e., stages C to F listed in 1.2) (Notes 17 and 18).

Adverse Effects To Be Assessed

- Enhanced toxicity relative to that in nonpregnant females;
- Prenatal and postnatal death of offspring;
- Altered growth and development; and
- Functional deficits in offspring, including behavior, maturation (puberty), and reproduction (F1).

Animals

At least one species, preferably rats.

Number of Animals

The number of animals per sex per group should be sufficient to allow meaningful interpretation of the data (Note 13).

Administration Period

Females are exposed to the test substance from implantation to the end of lactation (i.e., stages C to E listed in 1.2).

Experimental Procedure

The females are allowed to deliver and rear their offspring to weaning at which time one male and one female offspring per litter should be selected (document method used) for rearing to adulthood and mating to assess reproductive competence (Note 19).

Observations

During study (for maternal animals):

- Signs and mortalities at least once daily,
- Body weight and body weight change at least twice weekly (Note 16),
- Food intake at least once weekly at least until delivery,
- Observations that have proved of value in other toxicity studies,
- Duration of pregnancy, and
- Parturition.

At terminal examination (for maternal animals and where applicable for offspring):

- Necropsy (macroscopic examination) of all adults;
- Preservation and possibly histological evaluation of organs with macroscopic findings; keep corresponding organs of sufficient controls for comparison;
- Implantations (Note 16);
- Abnormalities;
- Live offspring at birth;
- Dead offspring at birth;
- Body weight at birth;
- Preweaning and postweaning survival and growth/body weight (Note 20), maturation, and fertility;
- Physical development (Note 21);
- Sensory functions and reflexes (Note 21); and
- Behavior (Note 21).

4.1.3 Study for Effects on Embryo-Fetal Development

Aim

To detect adverse effects on the pregnant female and development of the embryo and fetus consequent to exposure of the female from implantation to closure of the hard palate (i.e., stages C to D listed in 1.2).

Adverse Effects To Be Assessed

- Enhanced toxicity relative to that in nonpregnant females,
- Embryofetal death,
- Altered growth, and
- Structural changes.

Animals

Usually, two species: one rodent, preferably rats; one nonrodent, preferably rabbits (Note 5). Justification should be provided when using one species.

Number of Animals

The number of animals should be sufficient to allow meaningful interpretation of the data (Note 13).

Administration Period

The treatment period extends from implantation to the closure of the hard palate (i.e., end of C, see 1.2).

Experimental Procedure

Females should be sacrificed and examined about 1 day prior to parturition. Eleven fetuses should be examined for viability and abnormalities. To allow subsequent assessment of the relationship between observations made by different techniques fetuses should be individually identified (Note 22).

When using techniques requiring allocation to separate examination for soft tissue or skeletal changes, it is preferable that 50 percent of fetuses from each litter be allocated for skeletal examination. A minimum of 50 percent rat fetuses should be examined for visceral alterations, regardless of the technique used. When using fresh microdissection techniques for soft tissue alterations—which is the strongly preferred method for rabbits—100 percent of rabbit fetuses should be examined for soft tissue and skeletal abnormalities.

Observations

During study (for maternal animals):

- Signs and mortalities at least once daily,
- Body weight and body weight change at least twice weekly (Note 16),
- Food intake at least once weekly, and
- Observations that have proved of value in other toxicity studies.

At terminal examination:

- Necropsy (macroscopic examination) of all adults;
- Preserve organs with macroscopic findings for possible histological evaluation; keep corresponding organs of sufficient controls for comparison;
- Count corpora lutea, numbers of live and dead implantations (Note 16);
- Individual fetal body weight;
- Fetal abnormalities (Note 22); and
- Gross evaluation of placenta.

4.2 Single Study Design (rodents)

If the dosing period of the fertility study and prenatal and postnatal study are combined into a single investigation, this comprises evaluation of stages A to F of the reproductive process (see 1.2). If such a study, if it includes fetal examinations, provided clearly negative results at sufficiently high exposure, no further reproduction studies in rodents should be required. Fetal examinations for structural abnormalities can also be supplemented with an embryo-fetal development study (or studies) to make a two-study approach (Notes 3 and 11).

Results from a study for effects on embryo-fetal development in a second species are expected (see also 4.1.3).

4.3 Two Study Design (rodents)

The simplest two-segment design would consist of the fertility study and the prenatal and postnatal development study, if it includes fetal examinations. It can be assumed, however, that if the prenatal and postnatal development study provided no indication of prenatal effects at adequate margins above human exposure, the additional fetal examinations (see 4.1.3) are most unlikely to provide a major change in the assessment of risk.

Alternatively, female treatment in the fertility study (4.1.1) could be continued until closure of the hard palate and fetuses examined according to the procedures of the embryo-fetal development study (4.1.3). This, combined with the prenatal and postnatal study (4.1.2) would provide all the examinations required in "the most probable option" but use considerably less animals (Notes 3 and 11).

Results from a study for effects on embryo-fetal development in a second species are expected (see also 4.1.3).

5. Statistics

Analysis of the statistics of a study is the means by which results are interpreted. The most important part of this analysis is to establish the relationship between the different variables and their distribution (descriptive statistics), because these determine how groups should be compared. The distributions of the endpoints observed in reproductive tests are usually nonnormal and extend from almost continuous to the extreme categorical.

When employing inferential statistics (determination of statistical significance) the mating pair or litter, not the fetus or neonate, should be used as the basic unit of comparison. The tests used should be justified (Note 23).

6. Data Presentation

The key to good reporting is the tabulation of individual values in a clear concise manner to account for every animal that was entered into the study. A reader should be

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able to follow the history of any individual animal from initiation to termination and should be able to deduce with ease the contribution that the individual has made to any group summary values. Group summary values should be presented in a form that is biologically plausible (i.e., avoid false precision) and that reflects the distribution of the variable. Appendices or tabulations of individual values such as bodyweight, food consumption, litter values should be concise and, as far as possible, consist of absolute rather than calculated values; unnecessary duplication should be avoided.

For tabulation of low frequency observations such as clinical signs, autopsy findings, abnormalities, etc., it is advisable to group together the (few) individuals with a positive recording. Especially in the presentation of data on structural changes (fetal abnormalities) the primary listing (tabulation) should clearly identify the litters containing abnormal fetuses, identify the affected fetuses in the litter, and report all the changes observed in the affected fetus. Secondary listings by type of change can be derived from this, if necessary.

7. Terminology

Besides effects on the reproductive competence of adult animals toxicity to reproduction includes:

Developmental toxicity: Any adverse effect induced prior to attainment of adult life. It includes effects induced or manifested in the embryonic or fetal period and those induced or manifested postnatally.

Embryotoxicity, fetotoxicity, embryo-fetal toxicity: Any adverse effect on the conceptus resulting from prenatal exposure, including structural or functional abnormalities or postnatal manifestations of such effects. Terms like "embryotoxicity" or "fetotoxicity" relate to the timepoint/-period of induction of adverse effects, irrespective of the time of detection.

One-, two-, or three-generation studies: Are defined according to the number of adult breeding generations directly exposed to the test material. For example, in a one-generation study there is direct exposure of the F0 generation and indirect exposure (via the mother) of the F1 generation, and the study is usually terminated at the weaning of the F1 generation. In a two-generation study as used for agro-chemicals and industrial chemicals there is direct exposure of the F0 generation, indirect and direct exposure of the F1 generation and indirect exposure of the F2 generation. A three-generation study is defined accordingly.

Body burden: The total internal dosage of an individual arising from the administration of a substance, comprising parent compound and metabolites, taking distribution and accumulation into account.

Kinetics: The term "kinetics" is used consistently throughout this guideline, irrespective of intending to mean pharmaco- and/or toxicokinetics. No better single term was available.

Notes

Note 1 (1.1) Scientific Flexibility

These guidelines are not mandatory rules, they are a starting point rather than an endpoint. They provide a basis from which an investigator can devise a strategy for testing according to available knowledge of the test material and the state-of-the art. For encouragement, some alternative test designs have been mentioned in this document but there are others that can be sought out or devised. In devising a strategy, the primary objective should be to detect and bring to light any indication of toxicity to reproduction.

Fine details of study design and technical procedures have been omitted from the text. Such decisions rightly belong in the field of the investigator since a technique that may be suitable for one laboratory may not be suitable in another. The investigator needs to utilize staff and resources to do the best he or she can achieve and should know how to do this better than any outsider; human attributes of attitude, ability, and consistency are more important than material facilities. For necessary compliance to good laboratory practices (GLP), reference is made to such regulations.

Note 2 (1.2) Timing Conventions

In this guideline the convention for timing of pregnancy is to refer to the day that a sperm-positive vaginal smear and/or plug is observed as day 0 of pregnancy even if mating occurs overnight. Unless shown otherwise it is assumed that, for rats, mice and rabbits implantation occurs on day 6-7 of pregnancy, and closure of the hard palate on day 15-18 of pregnancy.

Other conventions are equally acceptable if defined in reports. Also, the investigator should be consistent in different studies to ensure that no gaps in treatment occur. It is an advisable precaution to provide an overlap of at least 1 day in the exposure period of related studies.

The accuracy of the time of mating should be specified because this will affect the variability of fetal and neonatal parameters.

Similarly, for reared litters, the day offspring are born will be considered as postnatal or lactation day 0 unless otherwise specified. However, particularly with regard to delays in, or prolongation of, parturition, reference to a postcoital timeframe may be useful.

Note 3 (1.3) First Pass and Secondary Testing

To a greater or lesser degree, all first pass (guideline) tests are apical in nature, i.e., an effect on one endpoint may have several different origins. A reduced litter size at birth may be due to a reduced ovulation rate (corpora lutea count), higher rate of preimplantation deaths, higher rate of postimplantation deaths, or immediate postnatal deaths. In turn, these deaths may be the consequence of an earlier physical malformation that can no longer be observed due to subsequent secondary changes and so on. Particularly for effects with a natural low frequency among controls, discrimination between treatment-induced and coincidental occurrence is dependent upon association with other types of effects.

A toxicant usually induces more than one type of effect in a dose-dependent manner. For example, induction of malformation is almost invariably associated with increased embryonic death and an increased incidence of less severe structural changes. Given an effect on one endpoint, secondary investigations for possible associations should be considered, i.e., the nature, scope, and origins of the substance's toxicity should be characterized. Characterization should also include identification of dose-response relationships to facilitate risk assessment; this is different from the situation in first pass tests where the presence or absence of a dose response assists discrimination between treatment-related and coincidental differences.

Note 4 (1.3) Preliminary Studies

At the time most reproduction studies are planned or initiated there is usually information available from acute and repeated dose toxicity studies of at least 1-month duration. This information can be expected to be sufficient in identifying doses for reproductive studies. If adequate preliminary studies are performed, they are part of the justification of the choice of dose for the main study. Such studies should be submitted regardless of their GLP-status in principle. This may avoid unnecessary use of animals.

Note 5 (2.1) Selection of Species and Strains

In choosing an animal species and strain for reproductive toxicity testing, care should be given to select a relevant model. Selection of the species and strain used in other toxicology studies may avoid the need for additional preliminary studies. If it can be shown—by means of kinetic, pharmacological, and toxicological data—that the species selected is a relevant model for the human, a single species can be sufficient. There is little value in using a second species if it does not show the same similarities to humans. Advantages and disadvantages of species (strains) should be considered in relation to the substance to be tested, the selected study design, and in the subsequent interpretation of the results.

All species have their advantages. Rats, and to a lesser extent mice, are good general purpose models; the rabbit has been somewhat neglected as a "nonrodent" species for repeated dose toxicity and other reproduction studies than embryotoxicity testing. It has attributes that would make it a useful model for fertility studies, especially male fertility. For both rabbits and dogs (which are often used as a second species for chronic toxicity studies) it is feasible to obtain semen samples without resorting to painful techniques (electro ejaculation) for longitudinal semen analysis. Most of the other species are not good, general purpose models and probably are best used for very specific investigations only.

All species have their disadvantages, for example:

Rats: Sensitivity to sexual hormones, unsuitable for dopamine agonists due to dependence on prolactin as the primary hormone for establishment and maintenance of early pregnancy, highly susceptible to nonsteroidal anti-inflammatory drugs in late pregnancy.

Mice: Fast metabolic rate, stress sensitivity, malformation clusters (which occur in all species) particularly evident, small fetus.

Rabbits: Often lack of kinetic and toxicity data, susceptibility to some antibiotics and to disturbance of the alimentary tract, clinical signs can be difficult to interpret.

Guineo pigs: Often lack of kinetic and toxicity data, susceptibility to some antibiotics and to disturbance of the alimentary tract, long fetal period, insufficient historical background data.

Domestic and/or mini pigs: Malformation clusters with variable background rate, large amounts of compound required, large housing necessary, insufficient historical background data.

Ferrets: Seasonal breeder unless special management systems used (success highly dependent on human/animal interaction), insufficient historical background data.

Hamsters: Intravenous route difficult if not impossible, can hide doses in the cheek pouches and can be very aggressive, sensitive to intestinal disturbance, overly sensitive teratogenic response to many chemicals, small foetus.

Dogs: Seasonal breeders, inbreeding factors, insufficient historical background data.

Nonhuman primates: Kinetically they can differ from humans as much as other species, insufficient historical background data, often numbers too low for detection of risk. They are best used when the objective of the study is to characterize a relatively certain reproductive toxicant, rather than detect a hazard.

Note 6 (2.2) Uses of Other Test Systems Than Whole Animals

Other tests systems have been developed and used in preliminary investigations ("prescreening" or priority selection) and secondary testing.

For preliminary investigation of a range of analogue series of substances, it is essential that the potential outcome in whole animals is known for at east one member of the series to be studied (by inference, effects are expected). With this strategy, substances can be selected for higher level testing.

For secondary testing or further substance characterization, other test systems offer the possibility to study some of the observable developmental processes in detail, e.g., to reveal specific mechanisms of toxicity, to establish concentration-response relationships, to select 'sensitive periods,' or to detect effects of defined metabolites.

Note 7 (3.1) Selection of Dosages

Using similar doses in the reproductive toxicity studies as in the repeated dose toxicity studies will allow interpretation of any potential effects on fertility in context with general systemic toxicity.

Some minimal toxicity is expected to be induced in the high-dose dams.

According to the specific compound, factors limiting the high dosage determined from repeat dose toxicity studies or from preliminary reproduction studies could include:

- Reduction in bodyweight gain;
- Increased bodyweight gain, particularly when related to perturbation of homeostatic mechanisms;
- Specific target organ toxicity;
- Haematology, clinical chemistry;
- Exaggerated pharmacological response, which may or may not be reflected as marked clinical reactions (e.g., sedation, convulsions);
- The physico-chemical properties of the test substance or dosage formulation which, allied to the route of administration, may impose practical limitations in the amount that can be administered; under most circumstances 1 gram per kilogram per day (g/kg/day) should be an adequate limit dose;
- Kinetics can be useful in determining high-dose exposure for low toxicity compounds: there is, however, little point in increasing administered dosage if it does not result in increased plasma or tissue concentration; and
- Marked increase in embryo-fetal lethality in preliminary studies.

Note 8 (3.1) Determination of Dose-Response Relationships

For many of the variables in reproduction studies the power to discriminate between random variation and treatment effect is poor and the presence or absence of a dosage-related trend can be a critical means of determining the probability of a treatment effect. It has to be kept in mind that in these studies dose responses may be steep, and wide intervals between doses would be inadvisable. If an analysis of dose-response relationships for the effects observed is attempted in a single study, it is recommended to use at least three dose levels and appropriate control groups. If in doubt, a fourth dose group should be added to avoid excessive dosage intervals. Such a strategy should provide a "no observed adverse effect level" for reproductive aspects. If not, the implication is that the test substance merits a greater depth of investigation and further studies.

Note 9 (3.2) Exposure by Different Routes of Administration

If it can be shown that one route provides a greater body burden, e.g., area under the curve (AUC), there seems little reason to investigate routes that would provide a lesser body burden or which present severe practical difficulties (e.g. inhalation). Before designing new studies for a new route of administration, existing data on kinetics should be used to determine the necessity of another study.

Note 10 (3.3) Kinetics in Pregnant Animals

Kinetic investigations in pregnant and lactating animals may pose some problems due to the rapid changes in physiology. It is best to consider this as a two- or three-phase approach. In planning studies kinetic data (often from nonpregnant animals) provide information on the general suitability of the species, and can assist in deciding study designs and choice of dosage. During a study kinetic investigations can provide assurance of accurate dosing or indicate marked deviations from expected patterns.

Note 11 (4) Examples for Choosing Other Options

For compounds causing no lethality at 2 g/kg and no evidence of repeated dose toxicity at 1 g/kg, conduct of a single two-generation study with one control and two test groups (0.5 and 1.0 g/kg) would seem sufficient. However, it might pose the question as to whether the correct species had been chosen or whether the compound was an effective medicine.

For compounds that may be given as a single dose, once in a lifetime (e.g., diagnostics, medicines used in operations), it may be impossible to administer repeated dosages more than twice the human therapeutic dosage for any length of time. A reduced period of treatment allowing a higher dose would seem more appropriate. For females, considerations of human exposure suggest little or no need for exposures beyond the embryonic period.

For dopamine agonists or compounds reducing circulating prolactin levels, female rats are poor models; the rabbit would probably make a better choice for all the reproductive toxicity studies, but it does not appear to have been attempted. This also applies to other types of compound when the rabbit shows a pattern of metabolism considerably closer to humans than the rat.

For drugs where alterations in plasma kinetics are seen following repeated administration, the potential for adverse effects on embryo-fetal development may not be fully evaluated in studies according to 4.1.3. In such cases it may be desirable to extend the period of drug administration to females in a 4.1.1 study to day 17. With sacrifice at term, both fertility and embryo-fetal development can be assessed.

Note 12 (4.1.1) Premating Treatment

The design of the fertility study, especially the reduction in the premating period for males, is based on evidence accumulated and reappraisal of the basic research on the process of spermatogenesis that originally prompted the demand for a prolonged premating treatment period. Compounds inducing selective effects on male reproduction are rare; mating with females is an insensitive means of detecting effects on spermatogenesis; good pathological and histopathological examination (e.g., by employing Bouin's fixation, paraffine embedding, transverse sections of 2 to 4 microns for testes, longitudinal sections for epididymides, PAS, and haematoxylin staining) of the male reproductive organs provides a more sensitive and quicker means of detecting effects on spermatogenesis; compounds affecting spermatogenesis almost invariably affect postmeiotic stages; there is no conclusive example of a male reproductive toxicant the effects of which could be detected only by dosing males for 9 to 10 weeks and mating them with females.

Information on potential effects on spermatogenesis can be derived from repeated dose toxicity studies. This allows the investigations in the fertility study to be concentrated on other, more immediate, causes of effect. It is noted that the full sequence of spermatogenesis (including sperm maturation) in rats lasts 63 days. When the available evidence, or lack of it, suggests that the scope of investigations in the fertility study should be increased, or extended from detection to characterization, appropriate studies should be designed to further characterize the effects.

Note 13 (4.1.1, 4.1.2, 4.1.3) Number of Animals

There is very little scientific basis underlying specified group sizes in past and

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existing guidelines nor in this one. The numbers specified are educated guesses governed by the maximum study size that can be managed without undue loss of overall study control. This is indicated by the fact that the more expensive the animal is to obtain or keep, the smaller the group size proposed. Ideally, at least the same group size should be required for all species and there is a case for using larger group sizes for less frequently used species such as primates.

It should also be made clear that the numbers required depend on whether or not the group is expected to demonstrate an effect. For a high frequency effect few animals are required, to presume the absence of an effect the number required varies according to the variable (endpoint) being considered, its prevalence in control populations (rare or categorical events), or dispersion around the central tendency (continuous or semicontinuous variables). See also Note 23.

For all but the rarest events (such as malformations, abortions, total litter loss), evaluation of between 16 to 20 litters for rodents and rabbits tends to provide a degree of consistency between studies. Below 16 litters per evaluation, between study results become inconsistent, above 20 to 24 litters per group, consistency and precision are not greatly enhanced. These numbers relate to evaluation. If groups are subdivided for different evaluations the number of animals starting the study should be doubled. Similarly, in studies with 2 breeding generations, 16 to 20 litters would be required for the final evaluation of the litters of the F1 generation. To allow for natural wastage, the starting group size of the F0 generation must be larger.

Note 14 (4.1.1) Mating

Mating ratios: When both the sexes are being dosed or are of equal consideration in separate male and female studies, the preferred mating ratio is 1:1 because this is the safest option in respect of obtaining good pregnancy rates and avoiding incorrect analysis and interpretation of results.

Mating period and practices: Most laboratories would use a mating period of between 2 and 3 weeks, some remove females as soon as a positive vaginal smear or plug is observed whilst others leave the pairs together. Most rats will mate within the first 5 days of cohabitation (i.e., at the first available estrus), but in some cases females may become pseudopregnant. Leaving the female with the male for about 20 days allows these females to restart estrus cycles and become pregnant.

Note 15 (4.1.1) Terminal Sacrifice

Females

When exposure of the females ceases at implantation, termination of females between days 13 and 15 of pregnancy in general is adequate to assess effects on fertility or reproductive function, e.g., to differentiate between implantation and resorption sites.

In general, for detection of adverse effects, it is not thought necessary, in a fertility study, to sacrifice females at day 20/21 of pregnancy in order to gain information on late embryo loss, fetal death, and structural abnormalities.

Males

It would be advisable to delay sacrifice of the males until the outcome of mating is known. In the event of an equivocal result, males could be mated with untreated females to ascertain their fertility or infertility. The males treated as part of study 4.1.1 may also be used for evaluation of toxicity to the male reproductive system if dosing is continued beyond mating and sacrifice delayed.

Note 16 (4.1.1, 4.1.2, 4.1.3) Observations

Daily weighing of pregnant females during treatment can provide useful information. Weighing an animal more frequently than twice weekly during periods other than pregnancy (premating, mating, lactation) may also be advisable for some compounds.

For apparently nonpregnant rats or mice (but not rabbits), ammonium sulphide staining of the uterus might be useful to identify peri-implantation death of embryos.

Note 17 (4.1.2) Treatment of Offspring

Consequent to derivation from existing guidelines for medicines, this guideline does not fully cover exposures from weaning through puberty, nor does it deal with the possibility of reduced reproductive life span.

To detect adverse effects for medicinal products that may be used in infants and juveniles, special studies (case-by-case designs) involving direct treatment of offspring, at ages to be specified, should be considered.

Note 18 (4.1.2) Separate Embryotoxicity and Peripostnatal Studies

If a prenatal and postnatal study is separated into two studies, one covering the embryonic period the other the fetal period, parturition, and lactation, postnatal evaluation of offspring is required in both studies.

Note 19 (4.1.2) F1-Animals

The guideline suggests selection of one male and one female per litter on the evidence that it is feasible to conduct behavioral and other functional tests on the same F1 individuals that will be used for assessment of reproductive function. This has the advantage of allowing cross referencing of performance in different tests at the individual level. It is recognized, however, that some laboratories prefer to select separate sets of animals for behavior testing and for assessment of reproductive function. Which is the most suitable for an individual laboratory will depend upon the combination of tests used and the resources available.

Note 20 (4.1.2) Reduction of Litter Size

The value of culling or not culling for detection of effects on reproduction is still under discussion. Whether or not culling is performed, it should be explained by the investigator.

Note 21 (4.1.2) Physical Development, Sensory Functions, Reflexes, and Behavior

The best indicator of physical development is bodyweight. Achievement of preweaning landmarks of development such as pinna unfolding, coat growth, incisor eruption, etc., is highly correlated with pup bodyweight. This weight is better related to postcoital time than postnatal time, at least when significant differences in gestation length occur. Reflexes, surface righting, auditory startle, air righting, and response to light are also dependent on physical development.

Two postweaning landmarks of development that are advised are vaginal opening of females and cleavage of the balanopreputial gland of males. The latter is associated with increasing testosterone levels whereas testis descent is not. These landmarks indicate the onset of sexual maturity and it is advised that bodyweight be recorded at the time of attainment to determine whether any differences from control are specific or related to general growth.

Functional tests: To date, functional tests have been directed almost exclusively to behavior. Even though a great deal of effort has been expended in this direction it is not possible to recommend specific test methods. Investigators are encouraged to find methods that will assess sensory functions, motor activity, learning, and memory.

Note 22 (4.1.3) Individual Identification and Evaluation of Fetuses

It must be possible to relate all findings by different techniques (i.e., body weight, external inspection, visceral, and/or skeletal examinations) to single specimen in order to detect patterns of abnormalities. The examination of mid- and low-dose fetuses for visceral and/or skeletal abnormalities may not be necessary where the evaluation of the high-dose and the control groups did not reveal any relevant differences. It is advisable, however, to store the fixed specimen for possible later examination. If fresh dissection techniques are normally used, difficulties with later comparisons involving fixed fetuses should be anticipated.

Note 23 (5) Inferential Statistics

"Significance" tests (inferential statistics) can be used only as a support for the interpretation of results. The interpretation itself is to be based on biological plausibility. It is unwise to assume that a difference from control values is not biologically relevant simply because it is not "statistically significant." To a lesser extent it can be unwise to assume that a "statistically significant" difference must be biologically relevant. Particularly for low frequency events (e.g., embryonic death, malformations) with one-sided distributions, the statistical power of studies is low. Confidence intervals for relevant quantities

can indicate the likely size of the effect. When using statistical procedures, experimental units of comparison should be considered: the litter, not the individual conceptus, the mating pair, when both sexes are treated, the mating pair of the parent generation in a two-generation study.

Dated: September 15, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–23379 Filed 9–21–94; 8:45 am]

BILLING CODE 4160–01–F

federal register

Thursday
September 22, 1994

Part X

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Stability Testing of New Drug Substances and Products; Guideline; Availability; Notice

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[Docket No. 93D–0139]

International Conference on Harmonisation; Stability Testing of New Drug Substances and Products; Guideline; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a final guideline entitled "Stability Testing of New Drug Substances and Products." Prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH), the guideline is intended to reflect formal scientific principles for stability testing of drugs. This guideline should be useful to applicants submitting new drug applications (NDA's) for new molecular entities and associated drug products.

DATES: Effective September 22, 1994. Submit written comments at any time. Sponsors submitting future applications may be asked to explain any differences from the approach suggested in the guideline.

ADDRESSES: Submit written comments on the guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the guideline are available from the CDER Executive Secretariat Staff (HFD–8), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT:

Regarding the guideline: Charles Kunkumian, Center for Drug Evaluation and Research (HFD–102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6758.

Regarding the ICH: Janet Showalter, Office of Health Affairs (HFY–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international Harmonisation of regulatory requirements. FDA has participated in many meetings designed to enhance Harmonisation and is committed to seeking scientifically based harmonized regulatory requirements for pharmaceutical development. One of the goals of Harmonisation is to identify and then reduce differences in technical requirements for drug development.

ICH was organized to provide an opportunity for tripartite Harmonisation initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with Harmonisation of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers and Researchers of America, FDA, and the U.S. Pharmaceutical Manufacturers Association. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held on March 23 and 24, 1992, the ICH Steering Committee agreed that the draft tripartite guideline entitled "Draft Tripartite Guideline for the Stability Testing of New Drug Substances and Products" should be made available for comment. Subsequently, the draft guideline was made available for comment by the European Union and Japan, as well as by FDA (see 58 FR 21086, April 16, 1993), in accordance with their consultation procedures. The comments were analyzed and the guideline was revised as necessary.

With this notice, FDA is publishing a final guideline entitled "Stability Testing of New Drug Substances and Products." This guideline has been endorsed by all ICH sponsors. The guideline addresses the generation of stability information for submission to FDA in NDA's for new molecular entities and associated drug products.

This guideline may be useful immediately to applicants submitting NDA's to FDA. Sponsors submitting future applications may be asked to explain any differences from the approach suggested in this guideline.

Additional ICH stability documents will be appended to this harmonized guideline when they have been finalized. FDA intends to update its 1987 guideline entitled "Guideline for Submitting Documentation for the Stability of Human Drugs and Biologics" to incorporate the new elements arising from the ICH process and other changes in stability testing that have occurred since 1987. For example, the updated guideline may include information and guidance on stability issues for investigational new drug applications, stability parameters for different dosage forms, recommendations for statistical analysis, stability testing for generic drugs, stability testing for biological and biotechnological products, and stability data presentation formats. Certain aspects of the updated guideline will also apply to products subject to licensing under the Public Health Service Act (biological products) and submitted to the Center for Biologics Evaluation and Research.

Until the 1987 guideline is updated as needed and ICH sections are incorporated, FDA intends to provide both the ICH harmonized guideline, as contained in this notice, and the 1987 FDA guideline when information pertaining to stability testing of human drug and biological products is requested. At a future date, FDA may issue a new guideline publication that combines the guideline contained in this **Federal Register** notice with a revised 1987 FDA guideline.

In the past, guidelines have generally been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but that are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Therefore, this guideline is not being issued under the authority of § 10.90(b), and it does not create or confer any rights, privileges, or benefits for or on any person, nor does it operate to bind FDA in any way.

As with all of FDA's guidelines, the public is encouraged to submit written comments with new data or other new information pertinent to this guideline. The comments in the docket will be periodically reviewed, and where appropriate, the guideline will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. The text of the final guideline follows:

Stability Testing of New Drug Products and Substances

ICH Harmonized Tripartite Guideline
Endorsed by the ICH Steering Committee at Step 4 of the ICH Process, 27 October 1993

Preamble

The following guideline sets out information on stability testing for a Registration Application within the three areas of the EC, Japan, and the USA. It does not seek necessarily to cover the testing that may be required for registration in or export to other areas of the world.

The guideline seeks to exemplify the core stability data package appropriate for new drug substances and products. It is not always necessary to follow this when there are scientifically justifiable reasons for using alternative approaches.

The guideline provides a general indication of the information on product stability to be generated, but leaves sufficient flexibility to encompass the variety of different practical situations required for specific scientific situations and characteristics of the materials being evaluated.

The principle that information on stability generated in any one of the three areas of the EC, Japan, and the USA would be mutually acceptable in both of the other two areas has been established, provided it conforms to the elements of this guideline and the labelling is in accord with national/regional requirements.

Details of the specific requirements for sampling, test requirements for particular dosage forms/packaging, etc., are not covered in this guideline.

Objective

The purpose of stability testing is to provide evidence on how the quality of a drug substance or drug product varies with time under the influence of a variety of environmental factors such as temperature, humidity, and light, and enables recommended storage conditions, retest periods, and shelf lives to be established.

Scope

The guideline primarily addresses the generation of stability information for submission in Registration Applications for new molecular entities and associated drug products.

This guideline does not currently seek to cover the generation of stability information for abbreviated or abridged applications, variations, clinical trial applications, etc.

The choice of test conditions defined in this guideline is based on an analysis of the effects of climatic conditions in the three areas of the EC, Japan, and the USA. The mean kinetic temperature in any region of the world can be derived from climatic data (Grimm, W., *Drugs Made in Germany*, 28:196–202, 1985, and 29:39–47, 1986).

Drug Substance

General

Information on the stability of the drug substance is an integral part of the systematic approach to stability evaluation.

Stress Testing

Stress testing helps to determine the intrinsic stability of the molecule by establishing degradation pathways in order to identify the likely degradation products and to validate the stability indicating power of the analytical procedures used.

Formal Studies

Primary stability studies are intended to show that the drug substance will remain within specification during the retest period if stored under recommended storage conditions.

Selection of Batches

Stability information from accelerated and long-term testing is to be provided on at least three batches. The long-term testing should cover a minimum of 12 months duration on at least three batches at the time of submission.

The batches manufactured to a minimum of pilot plant scale should be by the same synthetic route and use a method of manufacture and procedure that simulates the final process to be used on a manufacturing scale.

The overall quality of the batches of drug substance placed on stability should be representative of both the quality of the material used in preclinical and clinical studies and the quality of material to be made on a manufacturing scale.

Supporting information may be provided using stability data on batches of drug substance made on a laboratory scale.

The first three production batches of drug substance manufactured postapproval, if not submitted in the original Registration Application, should be placed on long-term stability studies using the same stability protocol as in the approved drug application.

Test Procedures and Test Criteria

The testing should cover those features susceptible to change during storage and likely to influence quality, safety, and/or efficacy. Stability information should cover as necessary the physical, chemical, and microbiological test characteristics. Validated stability-indicating testing methods should be applied. The need for extent of replication will depend on the results of validation studies.

Specification

Limits of acceptability should be derived from the profile of the material as used in the preclinical and clinical batches. It will need to include individual and total upper limits for impurities and degradation products, the justification for which should be influenced by the levels observed in material used in preclinical studies and clinical trials.

Storage Conditions

The length of the studies and the storage conditions should be sufficient to cover storage, shipment, and subsequent use. Application of the same storage conditions as applied to the drug product will facilitate comparative review and assessment. Other storage conditions are allowable if justified. In particular, temperature sensitive drug substances should be stored under an alternative, lower temperature condition which will then become the designated long-term testing storage temperature. The 6 months accelerated testing should then be carried out at a temperature at least 15 °C above this designated long-term storage temperature (together with the appropriate relative humidity (RH) conditions for that temperature). The designated long-term testing conditions will be reflected in the labelling and retest date.

	Conditions	Minimum time period at submission
Long term testing	25 °C ± 2 °C/60% RH ± 5%	12 months.
Accelerated testing	40 °C ± 2 °C/75% RH ± 5%	6 months.

Where "significant change" occurs during 6 months storage under conditions of accelerated testing at 40 °C ± 2 °C/75 percent RH ± 5 percent, additional testing at an intermediate condition (such as 30 °C ± 2 °C/60 percent RH ± 5 percent) should be conducted for drug substances to be used in the manufacture of dosage forms tested long term at 25 °C/60 percent RH and this information included in the Registration Application. The initial Registration Application should include a minimum of 6 months data from a 12 months study.

"Significant change" at 40 °C/75 percent RH or 30 °C/60 percent RH is defined as failure to meet the specification.

The long-term testing will be continued for a sufficient period of time beyond 12 months to cover all appropriate retest periods, and the further accumulated data can be submitted to the Authorities during the assessment period of the Registration Application.

The data (from accelerated testing or from testing at an intermediate condition) may be used to evaluate the impact of short-term excursions outside the label storage conditions such as might occur during shipping.

Testing Frequency

Frequency of testing should be sufficient to establish the stability characteristics of the drug substance. Testing under the defined long-term conditions will normally be every

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3 months over the first year, every 6 months over the second year, and then annually.

Packaging/Containers

The containers to be used in the long-term, real time stability evaluation should be the same as or simulate the actual packaging used for storage and distribution.

Evaluation

The design of the stability study is to establish, based on testing a minimum of three batches of the drug substance and evaluating the stability information (covering as necessary the physical, chemical, and microbiological test characteristics), a retest period applicable to all future batches of the bulk drug substance manufactured under similar circumstances. The degree of variability of individual batches affects the confidence that a future production batch will remain within specification until the retest date.

An acceptable approach for quantitative characteristics that are expected to decrease with time is to determine the time at which the 95 percent one-sided confidence limit for the mean degradation curve intersects the acceptable lower specification limit. If analysis shows that the batch to batch variability is small, it is advantageous to combine the data into one overall estimate and this can be done by first applying appropriate statistical tests (for example, p values for level of significance of rejection of more than 0.25) to the slopes of the regression lines and zero time intercepts for the individual batches. If it is inappropriate to combine data from several batches, the overall retest period may depend on the minimum time a batch may be expected to remain within acceptable and justified limits.

The nature of any degradation relationship will determine the need for transformation of the data for linear regression analysis. Usually the relationship can be represented by a linear, quadratic, or cubic function on an arithmetic or logarithmic scale. Statistical methods should be employed to test the goodness of fit of the data on all batches and combined batches (where appropriate) to the assumed degradation line or curve.

The data may show so little degradation and so little variability that it is apparent from looking at the data that the requested retest period will be granted. Under the circumstances, it is normally unnecessary to go through the formal statistical analysis but merely to provide a full justification for the omission.

Limited extrapolation of the real time data beyond the observed range to extend expiration dating at approval time, particularly where the accelerated data support this, may be undertaken. However, this assumes that the same degradation relationship will continue to apply beyond the observed data and hence the use of extrapolation must be justified in each application in terms of what is known about the mechanism of degradation, the goodness of fit of any mathematical model, batch size, existence of supportive data, etc. Any evaluation should cover not only the assay, but the levels of degradation products and other appropriate attributes.

Statements/Labelling

A storage temperature range may be used in accordance with relevant national/regional requirements. The range should be based on the stability evaluation of the drug substance. Where applicable, specific requirements should be stated, particularly for drug substances that cannot tolerate freezing. The use of terms such as "ambient conditions" or "room temperature" is unacceptable.

A retest period should be derived from the stability information.

Drug Product

General

The design of the stability programme for the finished product should be based on the knowledge of the behavior and properties of the drug substance and the experience gained from clinical formulation studies and from the stability studies on the drug substance. The likely changes on storage and the rationale for the selection of product variables to include in the testing programme should be stated.

Selection of Batches

Stability information from accelerated and long-tern testing is to be provided on three batches of the same formulation and dosage form in the containers and closure proposed for marketing. Two of the three batches should be at least pilot scale. The third batch may be smaller (e.g., 25,000 to 50,000 tablets or capsules for solid oral dosage forms). The long-term testing should cover at least 12 months duration at the time of submission. The manufacturing process to be used should meaningfully simulate that which would be applied to large scale batches for marketing. The process should provide product of the same quality intended for marketing, and meeting the same quality specification as to be applied for release of material. Where possible, batches of the finished product should be manufactured using identifiably different batches of drug substance.

Data on laboratory scale batches are not acceptable as primary stability information. Data on associated formulations or packaging may be submitted as supportive information. The first three production batches manufactured postapproval, if not submitted in the original Registration Application, should be placed on accelerated and long-term stability studies using the same stability protocols as in the approved drug application.

Test Procedures and Test Criteria

The testing should cover those features susceptible to change during storage and likely to influence quality, safety, and/or efficacy. Analytical test procedures should be fully validated and the assays should be stability-indicating. The need for the extent of replication will depend on the results of validation studies.

The range of testing should cover not only chemical and biological stability but also loss of preservative, physical properties and characteristics, organoleptic properties, and, where required, microbiological attributes. Preservative efficacy testing and assays on stored samples should be carried out to determine the content and efficacy of antimicrobial preservatives.

Specifications

Limits of acceptance should relate to the release limits (where applicable), to be derived from consideration of all the available stability information. The shelf life specification could allow acceptable and justifiable derivations from the release specification based on the stability evaluation and the changes observed on storage. It will need to include specific upper limits for degradation products, the justification for which should be influenced by the levels observed in material used in preclinical studies and clinical trials. The justification for the limits proposed for certain other tests such as particle size and/or dissolution rate will require reference to the results observed for batch(es) used in bioavailability and/or clinical studies. Any differences between the release and shelf life specifications for antimicrobial preservatives should be supported by preservative efficacy testing.

Storage Test Conditions

The length of the studies and the storage conditions should be sufficient to cover storage, shipment, and subsequent use (e.g., reconstitution or dilution as recommended in the labelling).

See the Table below for accelerated and long-term storage conditions and minimum times. An assurance that long-term testing will continue to cover the expected shelf life should be provided.

Other storage conditions are allowable if justified. Heat sensitive drug products should be stored under an alternative lower temperature condition which will eventually become the designated long-term storage temperature. Special consideration may need to be given to products which change physically or even chemically at lower storage conditions, e.g., suspensions or emulsions which may sediment or cream, oils, and semi-solid preparations which may show an increased viscosity. Where a lower temperature condition is used, the 6 months accelerated testing should be carried out at a temperature at least 15 °C above its designated long-term storage temperature (together with appropriate relative humidity conditions for that temperature). For example, for a product to be stored long-term under refrigerated conditions, accelerated testing should be conducted at 25 °C ± 2 °C/60 percent RH ± 5 percent RH. The designated long-term testing conditions will be reflected in the labelling and expiration date.

Storage under conditions of high relative humidities applies particularly to solid dosage forms. For products such as solutions, suspensions, etc., contained in packs designed to provide a permanent barrier to water loss, specific storage under conditions of high relative humidity is not necessary but the same range of temperatures should be applied. Low relative humidity (e.g., 10–20 percent RH) can adversely affect products packed in semi-permeable containers (e.g., solutions in plastic bags, nose drops in small plastic containers, etc.) and consideration

should be given to appropriate testing under such conditions.

	Conditions	Minimum time period at submission
Long term testing	25 °C ± 2 °C/60% RH ± 5%	12 months.
Accelerated testing	40 °C ± 2 °C/75% RH ± 5%	6 months.

Where "significant change" occurs due to accelerated testing, additional testing at an intermediate condition, e.g., 30 °C ± 2 °C/60 percent ± 5 percent RH should be conducted. "Significant change" at the accelerated condition is defined as:

1. A 5 percent potency loss from the initial assay value of a batch;
2. Any specified degradant exceeding its specification limit;
3. The product exceeding its pH limits;
4. Dissolution exceeding the specification limits for 12 capsules or tablets;
5. Failure to meet specifications for appearance and physical properties, e.g., color, phase separation, resuspendibility, delivery per actuation, caking, hardness, etc.

Should significant change occur at 40 °C/75 percent RH then the initial Registration Application should include a minimum of 6 months data from an ongoing 1 year study at 30 °C/60 percent RH; the same significant change criteria shall then apply.

The long-term testing will be continued for a sufficient time beyond 12 months to cover shelf life at appropriate test periods. The further accumulated data should be submitted to the authorities during the assessment period of the Registration Application.

The first three production batches manufactured postapproval, if not submitted in the original Registration Application, should be placed on accelerated and long-term stability studies using the same stability protocol as in the approved drug application.

Testing Frequency

Frequency of testing should be sufficient to establish the stability characteristics of the drug product. Testing will normally be every 3 months over the first year, every 6 months over the second year, and then annually. The use of matrixing or bracketing can be applied, if justified (see *Glossary* below).

Packaging Materials

The testing should be carried out in the final packaging proposed for marketing. Additional testing of unprotected drug product can form a useful part of the stress testing and pack evaluation, as can studies carried out in other related packaging materials in supporting the definitive pack(s).

Evaluation

A systematic approach should be adopted in the presentation and evaluation of the stability information which should cover, as necessary, physical, chemical, biological, and microbiological quality characteristics, including particular properties of the dosage form (for example, dissolution rate for oral solid dose forms).

The design of the stability study is to establish, based on testing a minimum of three batches of the drug product, a shelf- life and label storage instructions applicable to all future batches of the dosage form manufactured and packed under similar circumstances. The degree of variability of individual batches affects the confidence that a future production batch will remain within specification until the expiration date.

An acceptable approach for quantitative characteristics that are expected to decrease with time is to determine the time at which the 95 percent one-sided confidence limit for the mean degradation curve intersects the acceptable lower specification limit. If analysis shows that the batch to batch variability is small, it is advantageous to combine the data into one overall estimate and this can be done by first applying appropriate statistical tests (for example, p values for level of significance of rejection of more than 0.25) to the slopes of the regression lines and zero time intercepts for the individual batches. If it is inappropriate to combine data from several batches, the overall shelf life may depend on the minimum time a batch may be expected to remain within acceptable and justified limits.

The nature of the degradation relationship will determine the need for transformation of the data for linear regression analysis. Usually the relationship can be represented by a linear, quadratic or cubic function on an arithmetic or logarithmic scale. Statistical methods should be employed to test the goodness of fit on all batches and combined batches (where appropriate) to the assumed degradation line or curve.

Where the data show so little degradation and so little variability that it is apparent from looking at the data that the requested shelf life will be granted, it is normally unnecessary to go through the formal statistical analysis but only to provide a justification for the omission.

Limited extrapolation of the real time data beyond the observed range to extend expiration dating at approval time, particularly where the accelerated data support this, may be undertaken. However, this assumes that the same degradation relationship will continue to apply beyond the observed data and hence the use of extrapolation must be justified in each application in terms of what is known about the mechanisms of degradation, the goodness of fit of any mathematical model, batch size, existence of supportive data, etc.

Any evaluation should consider not only the assay, but the levels of degradation products and appropriate attributes. Where appropriate, attention should be paid to reviewing the adequacy of the mass balance, different stability, and degradation performance.

The stability of the drug products after reconstituting or diluting according to labelling should be addressed to provide appropriate and supportive information.

Statements/Labelling

A storage temperature range may be used in accordance with relevant national/regional requirements. The range should be based on the stability evaluation of the drug product. Where applicable, specific requirements should be stated particularly for drug products that cannot tolerate freezing.

The use of terms such as "ambient conditions" or "room temperature" is unacceptable.

There should be a direct linkage between the label statement and the demonstrated stability characteristics of the drug product

Annex 1

Glossary and Information

The following terms have been in general use and the following definitions are provided to facilitate interpretation of the guideline.

Accelerated Testing

Studies designed to increase the rate of chemical degradation or physical change of an active drug substance or drug product by using exaggerated storage conditions as part of the formal, definitive, storage programme.

These data, in addition to long-term stability studies, may also be used to assess longer term chemical effects at nonaccelerated conditions and to evaluate the impact of short-term excursions outside the label storage conditions such as might occur during shipping. Results from accelerated testing results are not always predictive of physical changes.

Active Substance; Active Ingredient; Drug Substance; Medicinal Substance

The unformulated drug substance which may be subsequently formulated with excipients to produce the drug product.

Bracketing

The design of a stability schedule so that at any time point only the samples on the extremes, for example, of container size and/or dosage strengths, are tested. The design assumes that the stability of the intermediate condition samples is represented by those at the extremes.

Where a range of dosage strengths is to be tested, bracketing designs may be particularly applicable if the strengths are very closely related in composition (e.g., for a tablet range made with different compression weights of a similar basic granulation, or a capsule range made by filling different plug fill weights of the same basic composition into different size capsule shells). Where a range of sizes of immediate containers is to be evaluated, bracketing designs may be applicable if the material of composition of the container and the type of closure are the same throughout the range.

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Climatic Zones

The concept of dividing the world into four zones based on defining the prevalent annual climatic conditions.

Dosage Form; Preparation

A pharmaceutical product type, for example, tablet, capsule, solution, cream, etc., that contains a drug ingredient generally, but not necessarily, in association with excipients.

Drug Product; Finished Product

The dosage form in the final immediate packaging intended for marketing.

Excipient

Anything other than the drug substance in the dosage form.

Expiry/Expiration Date

The date placed on the container/labels of a drug product designating the time during which a batch of the product is expected to remain within the approved shelf life specification if stored under defined conditions, and after which it must not be used.

Formal (Systematic) Studies

Formal studies are those undertaken to a preapproval stability protocol which embraces the principles of these guidelines.

Long-Term (Real Time) Testing

Stability evaluation of the physical, chemical, biological, and microbiological characteristics of a drug product and a drug substance, covering the expected duration of the shelf life and retest period, which are claimed in the submission and will appear on the labelling.

Mass Balance; Material Balance

The process of adding together the assay value and levels of degradation products to see how closely these add up to 100 percent of the initial value, with due consideration of the margin of analytical precision.

This concept is a useful scientific guide for evaluating data but it is not achievable in all circumstances. The focus may instead be on assuring the specificity of the assay, the completeness of the investigation of routes of degradation, and the use, if necessary, of identified degradants as indicators of the extent of degradation via particular mechanisms.

Matrixing

The statistical design of a stability schedule so that only a fraction of the total number of samples are tested at any specified sampling point. At a subsequent sampling point, different sets of samples of the total number would be tested. The design assumes that the stability of the samples tested represents the stability of all samples. The differences in the samples for the same drug product should be identified as, for example, covering different batches, different strengths, different sizes of the same container and closure, and, possibly, in some cases, different container/closure systems.

Matrixing can cover reduced testing when more than one variable is being evaluated. Thus the design of the matrix will be dictated by the factors needing to be covered and evaluated. This potential complexity precludes inclusion of specific details and examples, and it may be desirable to discuss design in advance with the Regulatory Authority, where this is possible. In every case it is essential that all batches are tested initially and at the end of the long-term testing.

Mean Kinetic Temperature

When establishing the mean value of temperature, the formula of J. D. Haynes (*J. Pharm. Sci.*, 60:927–929, 1971) can be used to calculate the mean kinetic temperature. It is higher than the arithmetic mean temperature and takes into account the Arrhenius equation from which Haynes derived his formula.

New Molecular Entity; New Active Substance

A substance which has not previously been registered as a new drug substance with the national or regional authority concerned.

Pilot Plant Scale

The manufacture of either drug substance or drug product by a procedure fully representative of and simulating that to be applied on a full manufacturing scale.

For oral solid dosage forms this is generally taken to be at a minimum scale of one tenth that of full production or 100,000 tablets or capsules, whichever is the larger.

Primary Stability Data

Data on the drug substance stored in the proposed packaging under storage conditions that support the proposed retest date.

Data on the drug product stored in the proposed container/closure for marketing under storage conditions that support the proposed shelf life.

Retest Date

The date when samples of the drug substance should be re-examined to ensure that material is still suitable for use.

Retest Period

The period of time during which the drug substance can be considered to remain within the specification and therefore acceptable for use in the manufacture of a given drug product, provided that it has been stored under the defined conditions; after this period, the batch should be retested for compliance with specification and then used immediately.

Shelf life; Expiration Dating Period

The time interval that a drug product is expected to remain within the approved shelf-life specification provided that it is stored under the conditions defined on the label in the proposed containers and closure.

Specification—Release

The combination of physical, chemical, biological, and microbiological test requirements that determine that a drug product is suitable for release at the time of its manufacture.

Specification—Check/Shelf life

The combination of physical, chemical, biological and microbiological test requirements that a drug substance must meet up to its retest date or a drug product must meet throughout its shelf life.

Storage Conditions Tolerances

The acceptable variation in temperature and relative humidity of storage facilities.

The equipment must be capable of controlling temperature to a range of ± 2 °C and Relative Humidity to ± 5% RH. The actual temperatures and humidities should be monitored during stability storage. Short-term spikes due to opening of doors of the storage facility are accepted as unavoidable. The effect of excursions due to equipment failure should be addressed by the applicant and reported if judged to impact stability results. Excursions that exceed these ranges (i.e., ± 2 °C and/or ± 5% RH) for more than 24 hours should be described in the study report and their impact assessed.

Stress Testing (Drug Substance)

These studies are undertaken to elucidate intrinsic stability characteristics. Such testing is part of the development strategy and is normally carried out under more severe conditions than those used for accelerated tests.

Stress testing is conducted to provide data on forced decomposition products and decomposition mechanisms for the drug substance. The severe conditions that may be encountered during distribution can be covered by stress testing of definitive batches of drug substance.

These studies should establish the inherent stability characteristics of the molecule, such as the degradation pathways, and lead to identification of degradation products and hence support the suitability of the proposed analytical procedures. The detailed nature of the studies will depend on the individual drug substance and type of drug product.

This testing is likely to be carried out on a single batch of material and to include the effect of temperatures in 10 °C increments above the accelerated temperature test condition (e.g., 50 °C, 60 °C, etc.), humidity where appropriate (e.g., 75 percent or greater), oxidation and photolysis on the drug substance plus its susceptibility to hydrolysis across a wide range of pH values when in solution or suspension.

Results from these studies will form an integral part of the information provided to regulatory authorities.

Light testing should be an integral part of stress testing. (The standard conditions for light testing are still under discussion and will be considered in a further ICH document.)

It is recognized that some degradation pathways can be complex and that under forcing conditions decomposition products may be observed which are unlikely to be formed under accelerated or long-term testing. This information may be useful in developing and validating suitable analytical methods, but it may not always be necessary to examine specifically for all degradation products, if it has been demonstrated that in practice these are not formed.

Stress Testing (Drug Product)

Light testing should be an integral part of stress testing (see separate *Annex*).

Special test conditions for specific products (e.g., metered dose inhalations and creams and emulsions) may require additional stress studies.

Supporting Stability Data

Data other than primary stability data, such as stability data on early synthetic route batches of drug substance, small scale batches of materials, investigational formulations not proposed for marketing, related formulations, product presented in containers and/or closures other than those proposed for marketing, information regarding test results on containers, and other scientific rationale that support the analytical procedures, the proposed retest period or shelf life and storage conditions.

Footnote

This guideline has been developed within the Expert Working Group (Quality) of the International Conference on Harmonisation.

Discussions are still being pursued within the Expert Working Group to define and standardize the conditions for light stability testing of active substances and dosage forms and the requirements for biological/biotechnological drug substances and products. Once agreed, these conditions will be the subject of a separate document.

Dated: September 15, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–23380 Filed 9–21–94; 8:45 am]

BILLING CODE 4160–01–F

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Part XI

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171

Infectious Substances; Extension of Compliance Dates; Final Rule

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. HM–181G; Amendment No. 171–128]

RIN 2137–AC36

Infectious Substances; Extension of Compliance Dates

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; extension of compliance dates.

SUMMARY: RSPA is extending the compliance dates for classification, hazard communication, and packaging requirements of the Hazardous Materials Regulations applicable to infectious substances, including regulated medical waste. The extension is intended to provide RSPA with time to evaluate the need for changes to regulatory requirements which had been scheduled to go into effect on October 1, 1994, and to continue coordination with other Federal agencies that have jurisdiction over infectious substances. The extension is responsive to the concerns of shippers and transporters that more interagency coordination is needed in order to avoid overlapping or inconsistent Federal requirements for infectious substances.

DATES: This amendment is effective on September 22, 1994. However, if RSPA receives comments by September 30, 1994, that illustrate that an extension of compliance dates is not in the public interest, RSPA will remove this final rule amendment and propose another date.

ADDRESSES: Address comments to the Dockets Unit (DHM–30), Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should identify the docket number HM–181G) and amendment number (171–128) and be submitted, when possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street SW, Washington, DC. Office hours are 8:30 a.m. to 5 p.m., Monday through Friday, except for public holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen Martin or Ms. Jennifer Antonielli, Office of Hazardous Materials Standards, Research and Special Programs Administration, 400 Seventh St., SW., Washington, DC 20590–0001, telephone: (202) 366–8553.

SUPPLEMENTARY INFORMATION: On December 21, 1990, RSPA issued a final rule under Docket HM–181 (55 FR 52402) that comprehensively revised the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) with respect to classification, hazard communication, and packaging requirements of hazardous materials. In Docket HM–181, RSPA adopted standards based on United Nations (UN) recommendations, including replacing the term "etiologic agent" with the term "infectious substance" and expanding the definition to include additional agents having the potential to cause severe, disabling, or fatal disease. On January 3, 1991, RSPA issued a final rule under Docket HM–142A (56 FR 197), removing the previous exception from regulation for cultures and stocks of etiologic agents (infectious substances) of 50 milliliters or less total quantity in one outside package (the "50 milliliter exception").

On December 20, 1991, in response to a large number of petitions for reconsideration, RSPA published a final rule making editorial and substantive revisions to the December 1990 final rule (56 FR 66124). In response to one petition for reconsideration, RSPA identified a subcategory of Division 6.2 (infectious substances) materials described as "regulated medical waste" (RMW), and provided packaging requirements for RMW which were less rigorous than those for other infectious substances. Following issuance of the December 1991 rule, RSPA received additional petitions for reconsideration and numerous comments and requests for clarification concerning provisions applicable to infectious substances and RMW. Petitioners were concerned that RSPA had not adequately considered the costs and other ramifications of adopting requirements for RMW. Commenters were concerned over potential overlaps or inconsistencies with other Federal agencies that regulate infectious substances. In partial response to the petitions, RSPA extended the compliance date for infectious substances from October 1, 1992, to April 1, 1993 (October 1, 1992; 57 FR 45442). This extension and others which followed (March 3, 1993; 58 FR 12182 and December 20, 1993; 58 FR 66302) also applied to the 50 milliliter exception which was removed under Docket HM–142A.

On March 3, 1993, RSPA issued an advance notice of proposed rulemaking (ANPRM) and announced a public hearing under Docket HM–181G (58 FR 12207) concerning the need for additional regulatory changes pertaining to infectious substances. In order to provide time to evaluate the oral and written comments received in response to the ANPRM, RSPA also extended the compliance date (58 FR 12182) for provisions applicable to infectious substances from April 1, 1993, to January 1, 1994. The ANPRM addressed a number of complex issues, pertaining to scope of regulation, consistency with regulations of other agencies, the need for revised standards for non-bulk and bulk packagings, and defining criteria for infectious substances and RMW. Following issuance of the ANPRM, RSPA continued its efforts to gain information on other Federal agencies' regulatory requirements, and hosted and participated in a number of interagency meetings on this issue. Federal agencies that regulate infectious substances include the Occupational Safety and Health Administration of the Department of Labor, the Centers for Disease Control (CDC) and the Food and Drug Administration of the Department of Health and Human Services, the United States Postal Service and the Animal and Plant Health Inspection Service of the Department of Agriculture. On December 20, 1993 (58 FR 66302), RSPA again extended the compliance date for provisions applicable to infectious substances from January 1, 1994, to October 1, 1994, to provide additional time for resolving the issues of concern.

RSPA intends to issue a notice of proposed rulemaking (NPRM) in the near future. The NPRM will address those issues concerning infectious substances and RMW that must be addressed in the near term to ensure the safe transportation of these materials. The NPRM also will outline RSPA's intent to make a longer-term effort to harmonize requirements of the HMR with international regulations and with the regulations of the other Federal agencies, and identify and address gaps in regulation that may adversely impact transportation safety.

Based on the merits of comments and petitions, RSPA believes there may be undue adverse impacts if regulatory provisions for infectious substances go into effect on October 1, 1994 without change. Therefore, in this document, RSPA is revising 49 CFR 171.14(b) to extend the compliance dates. For regulatory requirements for RMW and for materials infectious to animals only, the compliance date is extended from October 1, 1994, to October 1, 1995. This time period should be adequate for RSPA to publish the NPRM, evaluate comments received in response to the NPRM, and make any necessary changes to the HMR based on the merits of those comments. Without an extension of this compliance date, shippers and transporters of these materials would have to comply with regulations that are likely to be changed in the near future and, thereby, incur unnecessary costs.

For other infectious substances, i.e., for cultures and stocks of substances infectious to humans, the compliance date is extended from October 1, 1994, to January 1, 1995. The requirements for these materials generally were not at issue in comments or petitions to the December 1991 final rule. The principal impacts of the January 1, 1995 compliance date will be a nomenclature change from the old "etiologic agent" hazard class to the new "Division 6.2" classification, elimination of the 50 milliliter exception for cultures and stocks, and expansion of the definition of infectious substances to cover substances, such as the human immunodeficiency virus (HIV) and Lyme disease, which are not listed in the CDC regulations (42 CFR 72.3). The removal of the 50 milliliter exception and expansion of the definition of infectious substances originally were to have occurred on February 19, 1991 (Docket HM–142A; January 3, 1991; 56 FR 197). RSPA believes it is necessary to implement these requirements as quickly as possible to ensure public safety and end confusion as to the status of materials that were not regulated prior to 1990.

During the transition periods provided in § 171.14, a person may comply with either the applicable "old" requirements of the HMR (i.e., those which were in effect on September 30, 1991), or the current requirements adopted under HM–181. If a material is an etiologic agent under the old regulations and does not meet any of the old exceptions, it must conform to either the old requirements (i.e., must be described, labeled and packaged as an "etiologic agent") or the current requirements of the HMR for "infectious substances." (Note that Section 171.14(c)(3) provides for limited intermixing of old and new requirements).

RSPA is issuing this extension of the compliance dates without prior notice and comments because we view this as a noncontroversial and necessary amendment and do not anticipate any adverse comments. However, if RSPA receives comments by September 30, 1994, that illustrate that an extension of the compliance dates is not in the public interest, RSPA will remove this final rule and propose another date. If no such comments are received, RSPA will publish a document in the Federal Register confirming the compliance dates.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is exempted from review by the Office of Management and Budget under Executive Order 12866. Although the underlying rule was significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034), this action is not significant because it does not impose additional requirements and has the effect of extending compliance dates. A regulatory evaluation for the December 20, 1991 final rule is available for review in the docket.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not substantively the same as Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(A) The designation, description, and classification of hazardous material;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, contents, and placement of those documents;

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(E) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule concerns classification, packaging, labeling, and marking of hazardous material. Therefore, this final rule preempts State, local, or Indian tribe requirements that are not substantively the same as Federal requirements on these subjects.

Section 5125(b)(2) of title 49 U.S.C. provides that when DOT issues a regulation concerning any of the covered subjects, after November 1990, DOT must determine and publish in the Federal Register the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and no later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption of this final rule will be April 3, 1995. Because RSPA lacks discretion in this area, preparation of a federalism assessment is not warranted.

Regulatory Flexibility Act

This rule affects shippers and carriers of infectious substances and regulated medical waste, some of whom may be small entities. The effect of the rule is to provide regulatory relief to these entities. Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This amendment does not impose information collection or recordkeeping requirements.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 171 is amended as set forth below:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 is revised to read as follows:

Authority: 49 U.S.C. 5101—5127; 49 CFR 1.53.

2. In § 171.14, paragraph (b)(6)(iii) is removed, paragraphs (b)(6) and (b)(7) are redesignated as paragraphs (b)(5) and (b)(8), respectively, and new paragraphs (b)(6) and (b)(7) are added to read as follows:

§ 171.14 Transitional provisions for implementing requirements based on the UN Recommendations.

* * * * *

(b) * * *

(6) *January 1, 1995.* On January 1, 1995, all applicable regulatory requirements, including those pertaining to classification (see § 173.134 of this subchapter), hazard communication, and packaging, are effective for Division 6.2 materials (infectious substances) other than regulated medical waste and infectious substances affecting animals only.

(7) *October 1, 1995.* On October 1, 1995, all applicable regulatory

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requirements, including those pertaining to classification (see § 173.134 of this subchapter), hazard communication, and packaging are effective for regulated medical waste (Division 6.2) and infectious substances affecting animals only (Division 6.2).

* * * * *

Issued in Washington, DC on September 20, 1994, under authority delegated in 49 CFR Part 1.

D.K. Sharma,

Administrator.

[FR Doc. 94-23566 Filed 9-21-94; 8:45 am]

BILLING CODE 4910-60-P

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LIST OF PUBLIC LAWS

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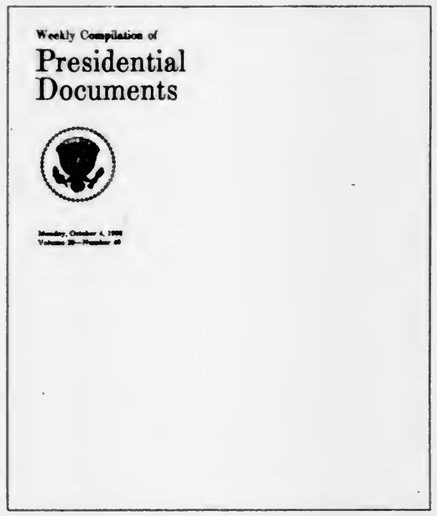
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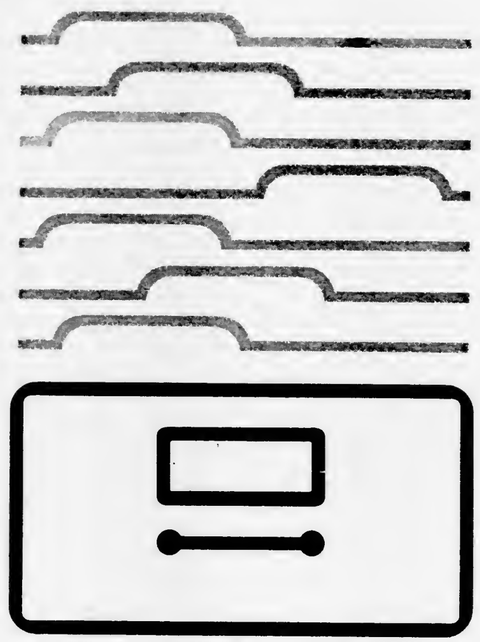
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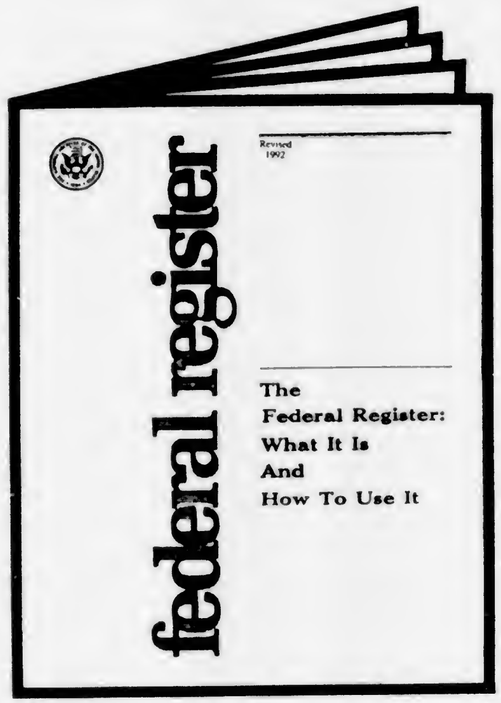
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Federal Register

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Electronic Bulletin Board
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

RIN 3206–AG07

5 CFR Part 734

Political Activities of Federal Employees

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations regarding the political activities of Federal employees. On October 6, 1993, the President signed the Hatch Act Reform Amendments of 1993. The Amendments became effective on February 3, 1994, and OPM has the authority to issue regulations under the Amendments. The interim regulations will inform Federal employees of the political activities which generally are permitted and prohibited under the Amendments. Federal employees also should refer to OPM's interim regulations at part 733, published in the **Federal Register** in the February 22, 1994 edition, regarding permitted and prohibited political activities connected with local elections in the designated communities.

DATES: Effective Date: September 23, 1994.

Comments must be received on or before November 22, 1994.

ADDRESSES: Comments may be sent or delivered to Lorraine Lewis, General Counsel, Room 7355, United States Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Chabot or Karen D. Kline at (202) 606–1700.

SUPPLEMENTARY INFORMATION: Pursuant to section 553(b)(3) of title 5, United States Code, the Director finds that good cause exits for waiving the general notice of proposed rulemaking. The notice is being waived because, in view of the statutory penalties which result from violations of the Amendments' prohibitions, it is crucial for employees who are covered under the Amendments to know about the political activities which the Amendments permit and prohibit.

While these regulations were being written, OPM received several suggestions from individuals, several Federal labor organizations, and many Federal agencies on issues that might be addressed through the regulations. Many of the comments and suggestions concerned similar or identical issues, and these issues have been addressed in the regulations. Issues which could not be addressed in the regulations are discussed in this summary.

Part 734 is divided into several subparts for purposes of clarity. Subpart A—General Provisions includes definitions as well as jurisdictional and reporting provisions.

Section 734.101 in subpart A defines the terms which are most frequently used in OPM's political activity regulations. The definitions of employee and partisan political office in § 734.101 track the statutory definitions of these terms.

The Amendments indirectly define the terms "Federal labor organization" and "multicandidate political committee" by referring to other statutory provisions which provide a detailed definition of these terms. Section 734.101 similarly defines these terms by incorporating the statutory references cited in the Amendments. Because of the complex structural organizations of the various agencies and instrumentalities of the United States and District of Columbia Government it would be difficult to adopt a comprehensive definition of "employing office." Therefore, § 734.101 specifies that the head of each agency or instrumentality shall determine the appropriate employing offices within it and provide notice to employees through internal agency notice procedures. Identification of such employing offices is distinct from, and need not coincide with, those established for any other purpose.

The definition of "Federal employee organization" is in conformance with the definition of "Federal employee organization" in Executive Order 10988, January 17, 1962 which was revoked by Executive Order 11491 and reflects that this term refers to nonprofit associations or organizations which are composed of Federal employees. The Amendments specifically tie the concept of Federal labor organization to the definition of labor organization in 5 U.S.C. 7103(a)(4). Because employees of the District of Columbia are not Federal employees, and their labor organizations are not covered under 5 U.S.C. Chapter 71, the definitions of the terms "Federal labor organizations" and "Federal employee organization" do not include such organizations comprised of employees of the District of Columbia.

Several Federal labor organizations and one agency raised the issue of what constitutes a "political contribution" commenting that the Amendments not only allow Federal employees to volunteer their services to campaigns, but also allow Federal employees to direct and solicit other volunteers. In their view, this comports with the fundamental purpose of the Amendments. These commentators felt that volunteer services under the Amendments should be treated the same as under Federal election law—i.e., they are not considered "political contributions." In a letter dated September 7, 1994, Senator John Glenn and Representative William L. Clay, the Chairmen of the respective committees of jurisdiction, opined that "as the sponsors and managers of this legislation in the House and Senate, [we] never intended that routine campaign volunteer activities should be treated as political contributions."

Clearly this is an issue that goes to the heart of the Amendments. The explicit purpose of the Amendments is to "provide for Federal civilian employees to participate voluntarily, as private citizens, in the political processes of the Nation and to protect such employees and the General citizenry from improper political solicitations." S. Rep. No. 57, 103 Cong., 1st Sess., at 1 (1993). In particular, the Amendments allow a Federal employee to manage a campaign. The issue raised by these commentators is whether the allowable political activities encompass Federal employees directing and soliciting volunteer services. The commentators argue that to conclude in the negative would be contrary to the purpose of the

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Amendments. One commentator noted, "[I]nterpreting the term 'personal services' to include the activities of these sorts of campaign volunteers would seriously undermine Congressional intent to allow Federal employees greater freedom to participate in the political process. In fact, that interpretation could entirely negate certain rights the Act explicitly grants. Thus, for example, the Act generally authorized Federal employees to 'take an active part in political management or in political campaigns.' An individual could not, as a practical matter, manage a campaign if he or she were precluded from soliciting, accepting, or even receiving, the help of volunteers." Another commentator stated that prohibiting solicitation of volunteer services "not only thwarts the intent of Hatch Act Reform, it would clearly render (the Act) internally inconsistent." Finally, Chairmen Glenn and Clay provided, "It was, and remains, our intention that the term 'political contribution' be defined in a manner that does not render meaningless the language of the Act intended to protect the ability of Federal employees to take an active part in political management or in political campaigns."

In light of the absence of a conference report, the interpretation espoused by Chairmen Glenn and Clay is logical and deserving of deference. In order to implement the intent of the Amendments to allow Federal employees to participate actively in political management and campaigns, the definition of "political contribution" in § 734.101 tracks the statutory definition of this term, with one significant addition. The regulations specify that individualized uncompensated volunteer services are not a "thing of value" and are excluded from the definition of "political contribution." This exclusion of individualized uncompensated volunteer services from the definition of "political contribution" directly parallels the definition of "contribution" found in the Federal Election Campaign Act. 2 U.S.C. 431.

Under this definition, the "personal services" which are included in the definition of "political contribution" are those paid or unpaid services of a business or corporation. The Amendments' distinction of individualized uncompensated volunteer services from services provided by a business or corporation, thus, mirrors the distinction contained in the Federal Election Campaign law.

By excluding individualized volunteer services from the definition of "political contribution," the regulations allow Federal employees to solicit, accept, and receive individualized volunteer services as well as direct or supervise those volunteers. This definition allows the Amendments' inclusion of personal services, paid or unpaid, to be read in the context of the explicitly permissible activities.

Although Federal employees are allowed to solicit, accept, and receive individualized uncompensated volunteer services, the regulations prohibit Federal employees from soliciting, accepting, or receiving such services from subordinates. Further solicitation, acceptance, or receipt of such services must comply with the Standards of Ethical Conduct for Employees of the Executive Branch in 5 CFR part 2635, as well as any other directives that may apply, *e.g.*, the Federal Property Management Regulations in 41 CFR chapter 101.

In connection with political contributions, section 734.101 also defines the terms "accept" and "receive." These definitions cover only the acts of accepting or receiving something from a person officially on behalf of a candidate, campaign, a political party, or a partisan political group. Ministerial activities which precede or follow the official acceptance and receipt, such as handling, disbursing, or accounting for contributions are not covered under the definitions of "accept" and "receive." The Amendments specifically prohibit covered employees from "knowingly" soliciting political contributions. Thus, § 734.101 of the interim regulations also defines "solicit" as expressly requesting of another person that he or she contribute something to a candidate, a campaign, a political party, or partisan political group.

Section 734.101 defines the term "on duty" because the concept is central to the political activity prohibition for most employees. The definition provides that an employee is on duty when in a pay status (i.e., when receiving pay for hours of duty) or when representing the United States Government or District of Columbia Government in an official capacity. The definition provides that for the purposes of this part, an employee is not considered to be in a pay status when in a paid leave status, using compensatory time off, using credit hours earned in an alternative work schedule, using time off granted as an incentive award, or excused absence because the employee is free to spend the time off as he or she chooses. Similarly, an employee receiving premium pay for standby duty is considered to be in a pay status for those hours, while an employee in an unpaid, on-call status is not in a pay status. Further, when an employee performs work that is recognized as overtime work under title 5 of the United States Code, the Fair Labor Standards Act, or similar statute, the employee is considered to be in a pay status, even if under some circumstances the employee is prevented from receiving pay or compensatory time off for that work (e.g., due to the biweekly pay limitation under 5 U.S.C. 5547).

The definition provides a second criterion in order to accommodate those employees who are not in a leave system. For purposes of this part, employees who are not covered by a leave system are considered to be on duty when they are representing the United States Government or District of Columbia Government in an official capacity.

Several parties have inquired as to whether an employee is on duty when in a leave without pay status. Since an employee is not in a pay status on leave without pay, he or she is not on duty. Other parties have asked about retention of life, health, and retirement benefits on leave without pay. OPM regulations concerning leave, pay, and retirement govern these issues.

One agency asked about the possibility of granting excused absence (currently described in subchapter 11 of Federal Personnel Manual Chapter 630 and colloquially referred to as "administrative leave") for purposes of engaging in political activities or political management. OPM believes that an agency's granting such excused absence for the purposes of engaging in political activities or political management is not appropriate.

Section 734.102(a) reflects that the United States Office of Special Counsel is authorized to investigate and prosecute alleged violations of the Amendments, and issue advisory opinions regarding permitted and prohibited political activities. It also provides the address and telephone numbers of that Federal agency for employees who seek advisory opinions. Section 734.102(b) reflects that the United States Merit Systems Protection Board determines when a violation of the Amendments has occurred, and describes the penalties for a violation. Section 734.102(c) reflects that the Office of Personnel Management is authorized to issue regulations concerning the political activities which the Amendments permit and prohibit. The authority of OPM to issue such regulations was affirmed by the Office of Legal Counsel of the Department of Justice on February 3, 1994.

Section 734.103 provides the criteria that multicandidate political committees must meet to be recognized as a multicandidate political committee of a Federal labor organization or Federal employee organization. One party suggested that OPM include in its regulations a list of allowable multicandidate political committees. OPM has not included a list of such committees in its interim regulations, but will consider publishing a list as a notice in the **Federal Register** at a later date.

Section 734.104 provides that employees covered under these regulations may not be further restricted except those employees who serve at the pleasure of the President of the United States.This provision is based upon an opinion of the Office of Legal Counsel of the Department of Justice. In an opinion dated September 20, 1994, the Office of Legal Counsel stated that "an Administration may impose additional restrictions on its political appointees." With regard to an Administration's political appointments in the civil service, the Office opined:

> It would be inconsistent with the character of such appointments if the appointees were free to disregard or contradict the political positions of the Administration; we would not assume that Congress intended to make such a fundamental change in the nature of political appointments without having addressed the issues that would be raised by so significant an alteration. Indeed, if the amendments to the Hatch Act were interpreted to prevent an Administration from directing the political activities of even its high-level political appointees, the amendments would raise serious constitutional questions. In particular, we believe that any attempt by Congress to block political control over those appointed by the President with the advice and consent of the Senate would be highly dubious from a constitutional standpoint. The amendments should be interpreted in a manner that avoids these serious constitutional issues. Accordingly, we believe that the Office of Personnel Management's regulations may permit the further restriction of political activities by employees appointed by the President with the advice and consent of the Senate, employees appointed by the President, non-career Senior Executive Service members, Schedule C employees (appointed pursuant to 5 CFR 213.3301, 213.3302), and any other employees serving at the pleasure of the President. We understand that one context in which these questions may arise would be the desire of some agencies to require high-level appointees to refrain from partisan political activity. We express no view, of course, about whether further regulation of employees in all of these categories would be appropriate as a policy matter.

In light of this binding opinion, the regulations permit the further proscription and restriction of employees who are appointed by the President by and with the advice and consent of the Senate, employees who are appointed by the President, non-career senior executive service members, Schedule C employees (appointed pursuant to 5 CFR 213.3301, 213.3302) and any other employees who serve at the pleasure of the President. As a policy matter, it is left to the President of the United States, or any official specifically authorized by him, to decide whether such further proscriptions and restrictions are appropriate.

Subpart B describes the political activities which are permitted for most covered employees under the Amendments, subject to the condition that political participation does not occur while an employee is on duty, in uniform, in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States, or using a vehicle owned or leased by the Government of the United States. Section 734.201, the first provision in subpart B, specifically excludes employees in certain agencies and positions who may not participate actively in partisan political activities and are covered under subpart D of the interim regulations. Permitted activities are grouped by category, with one section for each category, for ease of reference. Thus, § 734.204 of the interim regulations concerns the permissible activities that are connected with participation in political organizations, § 734.205 includes the activities that are connected with political campaigns, and § 734.207 describes the only two instances where a Federal employee may run as a candidate for public office. A candidate who is running for public office in a nonpartisan election, or a Federal employee who is working on behalf of such a candidate, is not barred by the Amendments from soliciting political contributions for that candidate's campaign; however, such solicitation must comply with the Standards of Ethical Conduct for Employees of the Executive Branch in 5 CFR part 2635, as well as any other directives that may apply, *e.g.*, the Federal Property Management Regulations in 41 CFR chapter 101.

Section 734.208 concerns participation in fundraising and permits employees who are covered under subparts B and C to make political contributions, attend political fundraisers, and solicit, accept, or receive political contributions from other employees who are members of the same Federal labor or employee organization. It does not extend to employees who are in the bargaining unit but are not members of the labor organization.

Examples are provided at the end of most of the regulatory sections in subpart B. The examples apply the regulations to specific situations which are controlled by, but not directly addressed in, the regulations. An example which refers to a specific Federal agency is not limited to the employees of that agency, but applies to all employees who are covered under subpart B.

Subpart C describes the political activities which are prohibited for most employees who are covered under the Amendments. Section 734.301 specifically excludes employees in certain positions and agencies from coverage under subpart C because they are subject to the prohibitions described in subpart D of the interim regulations. Subpart C is similar in structure to subpart B with the prohibited activities grouped by category, one section for each category, and examples describing specific situations.

Section 734.303 prohibits employees who are covered under subpart C from knowingly soliciting, accepting, or receiving political contributions. It also specifically links the prohibition to personal identification with fundraising activities because employees otherwise would be prohibited from a wide range of political activities, such as anonymously stuffing envelopes with campaign literature (which includes an appeal for political contributions) or giving a keynote speech at a fundraiser, that otherwise would be permitted. These activities do not present an employee with any opportunity to coerce other employees to make a political contribution or to become personally identified with any fundraising efforts and, therefore, should be permitted. Participation in phone bank solicitations is prohibited when political contributions are requested because it is a personal appeal for political contributions, even if it is done anonymously. However, if the phone bank solicitation involves only solicitation of individualized uncompensated volunteer services, then an employee is permitted to participate.

In this connection, OPM received a suggestion that its regulations should prohibit well-known employees from speaking at fundraisers under any circumstances, while other employees should be permitted to make such speeches as long as their speeches did not include a solicitation for political

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contributions. Because the Amendments do not provide a statutory basis for a distinction between well-known and unknown employees, OPM has not included it in the interim regulations. Employees may speak at fundraisers regardless of whether they are well known or not.

Section 734.304 of subpart C prohibits employees from running for the nomination or as a candidate for partisan political office, except as specified in § 734.207. A party suggested that OPM's regulations describe the initial act which begins the nomination process for partisan political office. Because nomination procedures are different in Federal and State elections, and may vary from State to State, it would be virtually impossible to describe all of them in OPM's regulations. Therefore, identification of the first step of the nomination process must be done on a case by case basis.

In connection with § 734.304, a party wanted to know if there is any difference between the Hatch Act's prohibition on becoming a candidate for public office in a partisan election and the Amendments' prohibition on candidacy for partisan political office. The statutory definitions for these terms are virtually identical. Therefore, OPM believes that both terms prohibit the same activities.

Section 734.306 in subpart C prohibits covered employees from participation in political activities while they are on duty, in uniform, driving a federally owned or leased vehicle, or in a room or building occupied by Federal employees who are performing their official duties. The prohibition is directly stated in the Amendments. Subsection (b) of § 734.306 specifies that certain Presidential appointees and employees paid from the appropriation for the Executive Office of the President are excluded from the prohibition on political participation under these circumstances, and reflects the specific exclusion for these employees which appears in the Amendments. However, the regulations also specify that the political activity of these employees may be further proscribed or restricted.

The prohibition on political participation while on duty or in uniform extends to employees of the Government of the District of Columbia. However, the Amendments and OPM's interim regulations do not prohibit employees of the District of Columbia from political participation, when they are off-duty and out of uniform, in buildings occupied in the discharge of official duties by an individual employed or holding office in the Government of the District of Columbia, or while using vehicles owned or leased by the District of Columbia.

Section 734.307 in subpart C reminds employees who also are spouses or family members of candidates for public office or political party office that they are subject to the same prohibitions as other employees who are covered under subpart C.

Several examples of specific activities have been included to give these employees a concrete idea of the boundaries of the permitted and prohibited activities for employees in these circumstances.

Although the Amendments allow most employees to participate actively in partisan political activities, they prohibit employees in specified positions and agencies from such active participation. Subpart D of the regulations applies to these employees who are subject to the more restrictive prohibition. The regulatory list of the agencies and positions identified in § 734.401(a) was taken directly from the Amendments. This list includes career members of the Senior Executive Service (SES) in all agencies, as well as noncareer members of the SES who work in the agencies or offices listed in § 734.401(a). A party suggested that OPM include in its list of employees covered under subpart D other employees who are not SES members, but who are appointed to positions in equivalent executive systems. Section 734.401(a) does not include employees in equivalent executive systems because the Amendments do not include them in their list of employees who still are subject to the prohibition on active partisan political participation. Therefore, unless they are employed in an agency or office listed in § 734.401(a), employees in equivalent executive systems are not covered under subpart D; they are covered under subparts B and C. It is OPM's position that, unless an employee is employed in an agency, office, or position listed in § 734.401(a), the employee is covered under subparts B and C of part 734; the heads of agencies or instrumentalities may not impose further restrictions upon employees covered under subparts B and C. There is only one circumstance where further proscription or restriction may be imposed—when the employee involved is appointed by the President with the advice and consent of the Senate, appointed by the President, a non-career Senior Executive Service member, a Schedule C employee, or any other employee who serves at the pleasure of the President.

Section 734.401(b) excludes from coverage under subpart D employees appointed by the President, by and with the advice and consent of the Senate. This exclusion is specifically provided for in the Amendments. Subpart D is similar in structure to subparts A and B in grouping permitted and prohibited activities by category, with one section for each category, and examples describing specific situations.

Sections 734.402 through 734.404 describe activities which are permitted for employees covered under subpart D. Sections 734.403 and 734.404 include among these activities running for elective office in a nonpartisan election, and participating in the nonpartisan activities of a civil, community, social, labor, or professional organization.

Section 734.405 specifically addresses the extent to which an employee who is covered under subpart D, and whose spouse or other family member runs for partisan office, may be involved in the candidate's campaign. It provides that such an employee may be included in photographs of the candidate's family which might appear in a political advertisement, broadcast, campaign literature, or similar material. Section 734.405 also reflects that an employee who is covered under subpart D may attend political functions and appear in television broadcasts with a spouse or family member who is a partisan candidate, but may not campaign actively for the candidate. It specifically is designed to resolve questions concerning employee participation in the campaigns of their spouses or family members who are partisan candidates for office.

The prohibition on political activity which appears in the Amendments and applies to employees covered under subpart D tracks the Hatch Act's prohibition on participating actively in partisan political activities. Accordingly, a party wanted to know whether OPM had abolished its Hatch Act regulations. The interim regulations which OPM published in the **Federal Register** on February 4, 1994 were intended as a revision of 5 CFR part 733 and, therefore, superseded the Hatch Act regulations. However, most of the permitted and prohibited activities described in the Hatch Act regulations appear in subpart D of the interim regulations at part 734, although they also reflect the most recent judicial interpretations of the Hatch Act's prohibition in *Blaylock* v. *United States Merit Systems Protection Board*, 851 F.2d 1348 (11th Cir. 1988) and *Biller* v. *United States Merit Systems Protection Board*, 863 F.2d 1079 (2d Cir. 1988).

These cases involved three employees, each a national president of a public employee union, who wrote

and published articles in their respective union newsletters criticizing the incumbent President of the United States and supporting the candidacy of his opponent. The courts in both cases concluded that the Hatch Act prohibited participation in "partisan" political activities, and permitted public and private expressions of individual opinion. The courts also concluded that, to be considered "partisan" and in violation of the Hatch Act, the activity or expression must be done in concert with a political party, partisan political organization, or candidate for public office in a partisan election. They ruled that these officials did not violate the Hatch Act because their articles were expressions of individual opinion and not connected with a political party, partisan political group, or candidate for public office in a partisan election.

According to these decisions, the Hatch Act permitted employees to express their individual opinions on political subjects and candidates, publicly and privately, orally or in writing, as long as the expression of opinion was not done in concert with a political party, partisan political group, or candidate for public office in a partisan election. The descriptions of prohibited activity in §§ 734.410(d), 734.412 (c) and (d), and 734.413 (b) and (c) reflect these decisions.

The Amendments, with two exceptions, prohibit all covered employees from participating in political activities while on duty, in uniform, in a room or building occupied by Federal employees who are performing their official duties, or driving a Federally owned or leased vehicle. This prohibition is reflected in § 734.407 and, through the examples in subpart D, covers an employee's wearing a button with a partisan political theme while he or she is on duty.

Finally, § 734.414 specifically prohibits employees of the Federal Election Commission from requesting or receiving political contributions from, or giving such contributions to, other employees, Members of Congress, or officers of the uniformed services. This section of the interim regulations reflects the prohibition which appears in the Amendments.

Subpart E applies to certain employees who are paid from the appropriation for the Executive Office of the President. It also applies to an employee who is appointed by the President by and with the advice and consent of the Senate, whose position is located within the United States, and who determines policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws. A party suggested that OPM define the term "who determines policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws." OPM is aware of only one category of employee, Inspectors General appointed under the Inspector General Act of 1978, who are statutorily excluded from this provision through section 3(c) of that Act. In view of the different circumstances of each employee who might claim coverage under this category, it would be impractical to seek to identify all positions which qualify for this designation. Therefore, OPM does not attempt to define this phrase in its interim regulations.

Under the Hatch Act, these employees were covered by the prohibition against misusing their official authority to interfere with or affect the result of an election, but they specifically were excluded from all aspects of the prohibition against active partisan political participation. Under the Amendments, these employees continue to be covered under the prohibition against misuse of official authority. In contrast to the Hatch Act, the Amendments subject these employees to additional prohibitions. Thus, the Amendments prohibit these employees from running for partisan political office. They also prohibit these employees from soliciting, accepting, and receiving political contributions, except under the conditions specified in the Amendments and these interim regulations. However, the Amendments specifically exclude these employees from the prohibition against political participation while on duty, in uniform, in a room or building occupied in the discharge of official duties, or in a Government-owned or leased vehicle. Section 734.502 reflects the statutory exclusion. However, § 734.502 also specifies that the political activity of these employees may be further proscribed or restricted in accordance with § 734.104.

With regard to the exclusion, the Amendments require that the costs associated with political participation must not be paid for with money derived from the Treasury of the United States. Thus, § 734.503 of the interim regulations includes instructions for allocation and reimbursement of costs associated with mixed travel. Section 734.503 does not supersede any other provision of fiscal or appropriations law; it is intended to interpret the cost provisions of the Amendments.

Subpart F of the interim regulations concerns employees who work on an irregular or occasional basis or who are special government employees. Section 734.601 provides that these employees are subject to the provisions of the applicable subpart of the interim regulations while they are on duty.

Finally, an activity which is permitted under the Amendments may be prohibited by other statutory provisions such as the Ethics in Government Act of 1978, 5 U.S.C. App. OPM received inquiries as to whether OPM would include within its interim regulations provisions explaining the interaction between the Amendments and the Ethics in Government Act of 1978, as well as the regulations promulgated under that Act. OPM also received a suggestion to explain through its interim regulations 18 U.S.C. 610 which concerns coercion of political activity and was enacted through section 4 of the Amendments. OPM does not have the jurisdiction to interpret these statutory provisions in its regulations. However, these provisions have been included in subpart G of the interim regulations which lists statutes and Executive orders that also may apply to the activities described in this part.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 734

Political activities (Government employees).

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, the Office of Personnel Management is adding 5 CFR part 734 to read as follows:

PART 734—POLITICAL ACTIVITIES OF FEDERAL EMPLOYEES

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734.102 Jurisdiction.
734.103 Multicandidate political committees of Federal labor organizations and Federal employee organizations..
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734.403 Participation in elections.
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734.407 Use of official authority; prohibition.
734.408 Participation in political management and political campaigning; prohibitions.
734.409 Participation in political organizations; prohibitions.
734.410 Participation in political fundraising; prohibitions.
734.411 Participation in political campaigning; prohibitions.
734.412 Participation in elections; prohibitions.
734.413 Employees of the Federal Election Commission; prohibitions.

Subpart E—Special Provisions for Certain Presidential Appointees and Employees Paid From the Appropriation for the Executive Office of the President

734.501 Permitted and prohibited activities.
734.502 Participation in political activity while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle.
734.503 Allocation and reimbursement of costs associated with political activities.

Subpart F—Employees Who Work on an Irregular or Occasional Basis

734.601 Employees who work on an irregular or occasional basis.

Subpart G—Related Statutes and Executive Orders

734.701 General.
734.702 Related statutes and Executive orders.

Authority: 5 U.S.C. 1103, 1104, 7325; Reorganization Plan No. 2 of 1978, 92 Stat. 3783, 3 CFR 1978 Comp. p. 323; and E.O. 12107, 3 CFR 1978 Comp. p. 264.

Subpart A—General Provisions

§ 734.101 Definitions.

For the purposes of this part:

Accept means to come into possession of something from a person officially on behalf of a candidate, a campaign, a political party, or a partisan political group.

Candidate means an individual who seeks nomination or election to any elective office whether or not the person is elected. An individual is deemed to be a candidate if the individual has received political contributions or made expenditures or has consented to another person receiving contributions or making expenditures with a view to bringing about the individual's nomination or election.

Campaign means all acts done by a candidate and his or her adherents to obtain a majority or plurality of the votes to be cast toward a nomination or in an election.

Election includes a primary, special, runoff, or general election.

Employee means any individual (other than the President, Vice President, or a member of the uniformed services) employed or holding office in—

(1) An Executive agency other than the General Accounting Office;

(2) A position within the competitive service which is not in an Executive agency;

(3) The Government of the District of Columbia, other than the Mayor or a member of the City Council or the Recorder of Deeds; or

(4) The United States Postal Service or the Postal Rate Commission.

Employing office shall have the meaning given by the head of each agency or instrumentality of the United States Government or District of Columbia Government covered by this part. Each agency or instrumentality shall provide notice identifying the appropriate employing offices within it through internal agency notice procedures.

Federal employee organization means any lawful nonprofit organization, association, society, or club composed of Federal employees.

Federal labor organization means an organization defined in 5 U.S.C. 7103(a)(4).

Multicandidate political committee means an organization defined in 2 U.S.C. 441a(a)(4).

Nonpartisan election means—

(1) An election in which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected; or

(2) An election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any question or issue of a similar character.

Office means the U.S. Office of Personnel Management.

On Duty means the time period when an employee is:

(1) In a pay status other than paid leave, compensatory time off, credit hours, time off as an incentive award, or excused or authorized absence (including leave without pay); or

(2) Representing any agency or instrumentality of the United States Government or any agency or instrumentality of the District of Columbia Government in an official capacity.

Partisan when used as an adjective means related to a political party.

Partisan political group means any committee, club, or other organization which is affiliated with a political party or candidate for public office in a partisan election, or organized for a partisan purpose, or which engages in partisan political activity.

Partisan political office means any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but does not include any office or position within a political party or affiliated organization.

Person means an individual; a State, local, or foreign government; or a corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity.

Political activity means an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.

Political contribution means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose.

(a) A political contribution includes:

(1) Any contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose;

(2) Any payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and

(3) The provision of personal services, paid or unpaid, for any political purpose.

(b) A political contribution does not include the value of services provided without compensation by any individual who volunteers on behalf of any candidate, campaign, political party, or partisan political group.

Political management means the direction or supervision of a partisan political group or campaign for partisan political office.

Political party means a national political party, a State political party, or an affiliated organization.

Political purpose means an objective of promoting or opposing a political party, candidate for partisan political office, or partisan political group.

Receive means to come into possession of something from a person officially on behalf of a candidate, a campaign, a political party, or a partisan political group.

Solicit means to request expressly of another person that he or she contribute something to a candidate, a campaign, a political party, or partisan political group.

Subordinate refers to the relationship between two employees when one employee is under the supervisory authority, control or administrative direction of the other employee.

Uniformed services means uniformed services as defined in 5 U.S.C. 2101(3).

§ 734.102 Jurisdiction.

(a) The United States Office of Special Counsel is authorized to investigate allegations of political activity prohibited by 5 CFR part 734, prosecute alleged violations before the United States Merit Systems Protection Board, and render advisory opinions concerning the applicability of 5 CFR part 734 to the political activity of Federal employees and employees of the District of Columbia Government.

Advice concerning the Hatch Act Reform Amendments may be requested from the Office of Special Counsel:

(1) By letter addressed to the Office of Special Counsel at 1730 M Street NW., Suite 300, Washington, DC 20036, or

(2) By telephone on (202) 653–7188, or (1–800) 854–2824.

(b) The Merit Systems Protection Board is authorized to determine whether a violation has occurred and to impose a minimum penalty of suspension for 30 days and a maximum penalty of removal for violation of the political activity restrictions regulated by this part. (5 U.S.C. 1204, 1212, 1216, and 7326).

(c) The Office of Personnel Management is authorized to issue regulations describing the political activities which are permitted and prohibited under the Hatch Act Reform Amendments of 1993. (5 U.S.C. 1103, 1104, 7325; Reorganization Plan No. 2 of 1978, 92 Stat. 3783, 3 CFR 1978 Comp. p. 323; and E.O. 12107, 3 CFR 1978 Comp. p. 264.)

§ 734.103 Multicandidate political committees of Federal labor organizations and Federal employee organizations.

(a) In order to qualify under this part, each multicandidate political committee of a Federal labor organization must provide to the Office the following:

(1) Information verifying that the multicandidate political committee is a multicandidate political committee as defined by 2 U.S.C. 441a(a)(4);

(2) Information identifying the Federal labor organization to which the multicandidate political committee is connected; and

(3) Information that identifies the Federal labor organization as a labor organization defined at 5 U.S.C. 7103(4).

(b) In order to qualify under this part, each multicandidate political committee of a Federal employee organization must provide to the Office the following:

(1) Information verifying that the multicandidate political committee is a multicandidate political committee as defined in 2 U.S.C. 441a(a)(4);

(2) Information identifying the Federal employee organization to which the multicandidate political committee is connected; and

(3) Information indicating that the multicandidate political committee was in existence as of October 6, 1993.

§ 734.104 Restriction of political activity.

No further proscriptions or restrictions may be imposed upon employees covered under this regulation except:

(a) Employees who are appointed by the President by and with the advice and consent of the Senate;

(b) Employees who are appointed by the President;

(c) Non-career senior executive service members;

(d) Schedule C employees, 5 CFR 213.3301, 213.3302; and

(e) Any other employees who serve at the pleasure of the President.

Subpart B—Permitted Activities

§ 734.201 Exclusion from coverage.

This subpart does not apply to employees in the agencies and positions described in subpart D of this part.

§ 734.202 Permitted activities.

Employees may take an active part in political activities, including political management and political campaigns, to the extent not expressly prohibited by law and this part.

§ 734.203 Participation in nonpartisan activities.

An employee may:

(a) Express his or her opinion privately and publicly on political subjects;

(b) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character;

(c) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization; and

(d) Participate fully in public affairs, except as prohibited by other Federal law, in a manner which does not compromise his or her efficiency or integrity as an employee or the neutrality, efficiency, or integrity of the agency or instrumentality of the United States Government or the District of Columbia Government in which he or she is employed.

Example 1: An employee may participate, including holding office, in any nonpartisan group. Such participation may include fundraising as long as the fundraising is not in any way connected with any partisan political issue, group, or candidate, and as long as the fundraising complies with part 2635 of this title as well as any other directives that may apply, e.g., the Federal Property Management Regulations in 41 CFR chapter 101.

§ 734.204 Participation in political organizations.

An employee may:

(a) Be a member of a political party or other political group and participate in its activities;

(b) Serve as an officer of a political party or other political group, a member of a national, State, or local committee

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of a political party, an officer or member of a committee of a political group, or be a candidate for any of these positions;

(c) Attend and participate fully in the business of nominating caucuses of political parties;

(d) Organize or reorganize a political party organization or political group; and

(e) Participate in a political convention, rally, or other political gathering.

Example 1: An employee of the Department of Education may serve as a delegate, alternate, or proxy to a State or national party convention.

Example 2: An employee of the Department of Health and Human Services may serve as a vice-president of a partisan or non-partisan political action committee, as long as the duties of the office do not involve personal solicitation, acceptance, or receipt of political contributions. Sections 734.208 and 734.303 of this part describe in detail permitted and prohibited activities which are related to fundraising.

Example 3: An employee of the Federal Communications Commission may make motions or place a name in nomination at a nominating caucus.

Example 4: An employee of the Department of the Interior may serve as an officer of a candidate's campaign committee as long as he does not personally solicit, accept, or receive political contributions. Sections 734.208 and 734.303 of this part describe in detail permitted and prohibited activities which are related to fundraising.

§ 734.205 Participation in political campaigns.

Subject to the prohibitions in § 734.306, an employee may:

(a) Display pictures, signs, stickers, badges, or buttons associated with political parties, candidates for partisan political office, or partisan political groups, as long as these items are displayed in accordance with the provisions of § 734.306 of subpart C of this part;

(b) Initiate or circulate a nominating petition for a candidate for partisan political office;

(c) Canvass for votes in support of or in opposition to a partisan political candidate or a candidate for political party office;

(d) Endorse or oppose a partisan political candidate or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material;

(e) Address a convention, caucus, rally, or similar gathering of a political party or political group in support of or in opposition to a partisan political candidate or a candidate for political party office; and

(f) Take an active part in managing the political campaign of a partisan political candidate or a candidate for political party office.

Example 1: An employee of the Environmental Protection Agency may broadcast endorsements for a partisan political candidate via a public address system attached to his or her private automobile.

Example 2: An employee of the Department of Interior may canvass voters by telephone on behalf of a political party or partisan political candidate.

Example 3: An employee of the Department of Agriculture may stand outside of polling places on election day and hand out brochures on behalf of a partisan political candidate or political party.

Example 4: An employee may appear in a television or radio broadcast which endorses a partisan political candidate and is sponsored by the candidate's campaign committee, a political party, or a partisan political group.

Example 5: An independent contractor is not covered by this part and may display a political button while performing the duties for which he or she is contracted.

Example 6: An employee of the Department of Commerce who is on official travel may take annual leave in the morning to give an address at a breakfast for a candidate for partisan political office.

Example 7: An employee may manage the political campaign of a candidate for public office including supervising paid and unpaid campaign workers.

§ 734.206 Participation in elections.

An employee may:

(a) Register and vote in any election;

(b) Act as recorder, watcher, challenger, or similar officer at polling places;

(c) Serve as an election judge or clerk, or in a similar position; and

(d) Drive voters to polling places for a partisan political candidate, partisan political group, or political party.

Example: An employee may drive voters to polling places in a privately owned vehicle, but not in a Government-owned or leased vehicle.

§ 734.207 Candidacy for public office.

An employee may:

(a) Run as an independent candidate in a partisan election covered by 5 CFR part 733; and

(b) Run as a candidate in a nonpartisan election.

Example 1: An employee who is a candidate for public office in a nonpartisan election is not barred by the Hatch Act from soliciting, accepting, or receiving political contributions for his or her own campaign; however, such solicitation, acceptance, or receipt must comply with part 2635 of this title as well as any other directives that may apply, e.g., The Federal Property Management Regulations in 41 CFR chapter 101.

§ 734.208 Participation in fundraising.

(a) An employee may make a political contribution to a political party, political group, campaign committee of a candidate for public office in a partisan election and multicandidate political committee of a Federal labor or Federal employee organization.

(b) Subject to the prohibitions stated in section 734.303, an employee may—

(1) Attend a political fundraiser;

(2) Accept and receive political contributions in a partisan election described in 5 CFR part 733;

(3) Solicit, accept, or receive uncompensated volunteer services from any individual; and

(4) Solicit, accept, or receive political contributions, as long as:

(i) The person who is solicited for a political contribution belongs to the same Federal labor organization, or Federal employee organization, as the employee who solicits, accepts, or receives the contribution;

(ii) The person who is solicited for a political contribution is not a subordinate employee; and

(iii) The request is for a contribution to the multicandidate political committee of a Federal labor organization or to the multicandidate political committee of a Federal employee organization in existence on October 6, 1993.

Example 1: An GS–12 employee of the Department of Treasury who belongs to the same Federal employee organization as a GS–5 employee of the Department of Treasury may solicit a contribution for the multicandidate political committee when she is not on duty as long as the GS–5 employee is not under the supervisory authority of the GS–12 employee.

Example 2: An employee of the National Park Service may give a speech or keynote address at a political fundraiser when he is not on duty, as long as the employee does not solicit political contributions, as prohibited in § 734.303(b) of this part.

Example 3: An employee's name may appear on an invitation to a political fundraiser as a guest speaker as long as the reference in no way suggests that the employee solicits or encourages contributions, as prohibited in § 734.303 of this part and described in example 2 thereunder. However, the employee's official title may not appear on invitations to any political fundraiser, except that an employee who is ordinarily addressed using a general term of address, such as "The Honorable," may use or permit the use of that term of address for such purposes.

Example 4: When an employee of the Department of Transportation is not on duty, she may engage in activities which do not require personal solicitations of contributions, such as organizing mail or phone solicitations for political contributions. However, the employee may not sign the solicitation letter unless the solicitation is for the contribution of uncompensated services of individuals. Activities such as stuffing envelopes with requests for political contributions are permitted.

Example 5: An employee who is not on duty may participate in a phone bank soliciting the uncompensated services of individuals. However, an employee may not make phone solicitations for political contributions even anonymously.

Example 6: An employee of the Department of Agriculture who is on official travel and is not in a pay status nor officially representing the Department may write invitations in his hotel room to a meet-the-candidate reception which he plans to hold in his home.

Example 7: An employee may serve as an officer or chairperson of a political fundraising organization or committee as long as he or she does not personally solicit, accept, or receive political contributions. For example, the employee may organize or manage fundraising activities as long as he or she does not violate the above prohibition.

Example 8: The head of a cabinet-level department may contribute one of her worn-out cowboy boots to the campaign committee of a Senatorial candidate to be auctioned off in a fundraising raffle for the benefit of the candidate's campaign.

Example 9: An employee may help organize a fundraiser including supplying names for the invitation list as long as he or she does not personally solicit, accept, or receive contributions.

Example 10 An employee on travel may engage in political activity when he or she is not on duty without taking annual leave.

Example 11: A Federal employee may solicit, accept, or receive the uncompensated volunteer services of any individual, except a subordinate employee, to work on behalf of a partisan political candidate or organization. However, such solicitation, acceptance, or receipt must comply with part 2635 of this title as well as any other directives that may apply, e.g., the Federal Property Management Regulations in 41 CFR chapter 101. Further, Federal employees are subject to criminal anti-coercion provisions found at 18 U.S.C. 610.

Sbupart C—Prohibited Activities

§ 734.301 Exclusion from coverage.

This subpart does not apply to employees in the agencies and positions described in subpart D of this part.

§ 734.302 Use of official authority; prohibition.

An employee may not use his or her official authority or influence for the purpose of interfering with or affecting the result of an election.

§ 734.303 Fundraising.

An employee may not knowingly:

(a) Personally solicit, accept or receive a political contribution from another person, except under the circumstances specified in § 734.208(b);

(b) Personally solicit political contributions in a speech or keynote address given at a fundraiser;

(c) Allow his or her official title to be used in connection with fundraising activities; or

(d) Solicit, accept, or receive uncompensated volunteer services from an individual who is a subordinate.

Example 1: An employee may not host a fundraiser at his or her home. However, a spouse who is not covered under this part may host such a fundraiser and the employee may attend. The employee may not personally solicit contributions to the fundraiser. Moreover, the employee may not accept, or receive political contributions, except under the circumstances stated in § 734.208(b).

Example 2: An employee's name may not appear on an invitation to a fundraiser as a sponsor of the fundraiser, or as a point of contact for the fundraiser.

Example 3: An employee may not ask a subordinate employee to volunteer on behalf of a partisan political campaign.

Example 4: An employee may not call the personnel office of a business or corporation and request that the corporation or business provide volunteers or services for a campaign. However, an employee may call an individual who works for a business or corporation and request that specific individual's services for a campaign.

§ 734.304 Candidacy for public office.

An employee may not run for the nomination or as a candidate for election to partisan political office, except as specified in § 734.207.

§ 734.305 Soliciting or discouraging the political participation of certain persons.

(a) An employee may not knowingly solicit or discourage the participation in any political activity of any person who has an application for any compensation grant, contract, ruling, license, permit, or certificate pending before the employee's employing office.

(b) An employee may not knowingly solicit or discourage the participation in any political activity of any person who is the subject of, or a participant in, an ongoing audit, investigation, or enforcement action being carried out by the employee's employing office.

(c) Each agency or instrumentality of the United States or District of Columbia Government shall determine when a matter is pending and ongoing within employing offices of the agency or instrumentality for the purposes of this part.

Example 1: An employee with agency-wide responsibility may address a large, diverse group to seek support for a partisan political candidate as long as the group has not been specifically targeted as having matters before the employing office.

Example 2: An employee of the Federal Deposit Insurance Corporation (FDIC) may not solicit or discourage the participation of an insured financial institution or its employees if the institution is undergoing examination by the FDIC.

Example 3: An employee of the Food and Drug Administration may address a banquet for a partisan political candidate which is sponsored by the candidate's campaign committee, even though the audience includes three individuals who are employed by or are officials of a pharmaceutical company. However, she may not deliver the address if the banquet is sponsored by a lobbying group for pharmaceutical companies, of if she knows that the audience will be composed primarily of employees or officials of such companies.

§ 734.306 Participation in political activities while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle.

(a) An employee may not participate in political activities subject to the provisions of subpart E of this part:

(1) While he or she is on duty;

(2) While he or she is wearing a uniform, badge, insignia, or other similar item that identifies the employing agency or instrumentality or the position of the employee;

(3) While he or she is in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; or

(4) While using a Government-owned or leased vehicle or while using a privately-owned vehicle in the discharge of official duties.

(b) The prohibitions in paragraph (a) of this section do not apply to employees covered under subpart E of this part.

Example 1: While on leave without pay, an employee is not subject to the prohibition in § 734.306(a)(1) because he or she is not on duty. However, while on leave without pay, the employee remains subject to the other prohibitions in subpart C.

Example 2: A Postal Service employee who uses her private vehicle to deliver mail may place a political bumper sticker on the vehicle, as long as she covers the bumper sticker while she is on duty.

Example 3: An employee who is being compensated for mileage when driving a privately owned vehicle may place a bumper sticker on the vehicle, as long as he covers the bumper sticker while the vehicle is being used for official duties.

Example 4: An employee may place a bumper sticker on his privately owned vehicle and park his vehicle in a parking lot of an agency or instrumentality of the United States Government or in a non-Federal facility for which the employee receives a subsidy from his or her employing agency or instrumentality.

Example 5: If an employee is not on duty he or she may engage in political activity in the office of his or her labor organization

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local even if the space is provided by an agency or instrumentality of the United States Government to the labor organization.

Example 6: An agency or instrumentality of the United States Government leases offices in a commercial building; the headquarters of a candidate for partisan political office are situated in the same building. An employee of that agency or instrumentality may do volunteer work at the candidate's headquarters when he is not on duty.

Example 7: An employee of the National Aeronautics and Space Administration (NASA) may not engage in political activities while wearing a NASA flight patch, NASA twenty-year pin or anything with an official NASA insignia.

Example 8: If a political event begins while an employee is on duty and continues into the time when he or she is not on duty, the employee must wait until he or she is not on duty to attend the event. Alternatively, an employee may request annual leave to attend the political event when it begins.

Example 9: Officials of labor organizations who have been given official time to perform representational duties are on duty.

Example 10: An employee may stuff envelopes for a mailing on behalf of a candidate for partisan political office while the employee is sitting in the park during his lunch period if he is not considered to be on duty during his lunch period.

Example 11: An employee may engage in political activity in the courtyard outside of a Federal building where no official duties are discharged as long as the employee is not on duty.

Example 12: An employee who works at home may engage in political activities at home when he or she is not in a pay status or representing the Government in an official capacity.

Example 13: An employee who is appointed by the President by and with the advice and consent of the Senate (PAS) may attend a political event with an non-PAS employee whose official duties do not require accompanying the PAS as long as the non-PAS employee is not on duty.

§ 734.307 Campaigning for a spouse or family member.

An employee covered under this subpart who is the spouse or family member of either a candidate for partisan political office, candidate for political party office, or candidate for public office in a nonpartisan election, is subject to the same prohibitions as other employees covered under this subpart.

Example 1: An employee who is married to a candidate for partisan political office may attend a fundraiser for his spouse, stand in the receiving line, sit at the head table, and urge others to vote for his spouse. However, the employee may not personally solicit, accept, or receive contributions of money or personal services, or sell or collect money for tickets to the fundraiser.

Example 2: An employee who is the daughter of a candidate for partisan political office may appear in a family photograph which is printed in a campaign flier. She may distribute fliers at a campaign rally as long as she does not personally solicit contributions.

Example 3: An employee who is married to a candidate for political partisan political office may appear with her spouse in a political advertisement or a broadcast, and urge others to vote for her spouse, as long as the employee does not personally solicit political contributions.

Subpart D—Employees in Certain Agencies and Positions

§ 734.401 Coverage.

(a) This subpart applies to employees in the following agencies and positions:

(1) The Federal Election Commission;

(2) The Federal Bureau of Investigation;

(3) The Secret Service;

(4) The Central Intelligence Agency;

(5) The National Security Council;

(6) The National Security Agency;

(7) The Defense Intelligence Agency;

(8) The Merit Systems Protection Board;

(9) The Office of Special Counsel;

(10) The Office of Criminal Investigation of the Internal Revenue Service.

(11) The Office of Investigative Programs of the United States Customs Service;

(12) The Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms;

(13) The Criminal Division of the Department of Justice;

(14) Career Senior Executive Service positions described in 5 U.S.C. 3132(a)(4);

(15) Administrative Law Judge positions described in 5 U.S.C. 5372;

(16) Contract Appeals Board Member positions described in 5 U.S.C. 5372a.

(b) Employees appointed by the President by and with the advice and consent of the Senate in the agencies and positions described in paragraph (a) of this section are excluded from coverage under this subpart.

(c) All employees covered under this subpart are free to engage in political activity to the widest extent consistent with the restrictions imposed by law and this subpart.

§ 734.402 Expression of an employee's individual opinion.

Each employee covered under this subpart retains the right to participate in any of the following political activities, as long as such activity is not performed in concert with a political party, partisan political group, or a candidate for partisan political office:

(a) Express his or her opinion as an individual privately and publicly on political subjects and candidates;

(b) Display a political picture, sign, sticker, badge, or button, as long as these items are displayed in accordance with the provisions of § 734.408 of subpart D of this part;

(c) Sign a political petition as an individual;

(d) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any other question or issue of a similar character; and

(e) Otherwise participate fully in public affairs, except as prohibited by other Federal law, in a manner which does not compromise his or her efficiency or integrity as an employee or the neutrality, efficiency, or integrity of the agency or instrumentality of the United States Government in which he or she is employed.

Example 1: An employee may purchase air time on a radio or television station to endorse a partisan political candidate. However, he or she may not endorse such a candidate in a commercial or program which is sponsored by the candidate's campaign committee, a political party, or a partisan political group.

Example 2: An employee may address a political convention or rally but not on behalf, or at the request of, a political party, partisan political group, or an individual who is running for the nomination or as a candidate for election to partisan political office.

Example 3: An employee may print at her own expense one thousand fliers which state her personal opinion that a partisan political candidate is the best suited for the job. She may distribute the fliers at a shopping mall on the weekend. However, she may not distribute fliers printed by the candidate's campaign committee, a political party, or a partisan political group.

Example 4: An employee may stand outside of a political party convention with a homemade sign which states her individual opinion that one of the candidates for nomination is the best qualified candidate.

Example 5: An employee may not wear a button with a partisan political theme while she is on duty.

§ 734.403 Participation in elections.

Each employee covered under this subpart retains the right to:

(a) Register and vote in any election;

(b) Take an active part, as a candidate or in support of a candidate, in a nonpartisan election; and

(c) Serve as an election judge or clerk, or in a similar position, to perform nonpartisan duties as prescribed by State or local law.

§ 734.404 Participation in political organizations.

Each employee covered under this subpart retains the right to:

(a) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;

(b) Be a member of a political party or other partisan political group and participate in its activities to the extent consistent with other Federal law;

(c) Attend a political convention, rally, fund-raising function, or other political gathering; and

(d) Make a financial contribution to a political party, partisan political group, or to the campaign committee of a candidate for partisan political office.

Example 1: An employee may attend a political convention or rally. However, the employee may not participate in demonstrations or parades which are sponsored by a political party, a partisan political group, or an individual who is running for nomination to be a candidate for partisan political office.

Example 2: An employee may attend a political party's annual barbecue, but he or she may not organize, distribute invitations to, or sell tickets to the barbecue.

§ 734.405 Campaigning for a spouse or family member.

An employee covered under this subpart who is the spouse or family member of either a candidate for partisan political office, or a candidate for political party office, may appear in photographs of the candidate's family which might appear in a political advertisement, a broadcast, campaign literature, or similar material. A spouse or a family member who is covered by the Hatch Act Reform Amendments also may attend political functions with the candidate. However, the spouse or family member may not distribute campaign literature or solicit, accept, or receive political contributions.

Example 1: An employee who is the spouse of a candidate for partisan political office may stand in the receiving line and sit at the head table during a political dinner honoring the spouse.

Example 2: An employee who is the daughter of a candidate for partisan political office may appear in a family photograph which is printed in a campaign flier, but she may not distribute the flier at a campaign rally.

§ 734.406 Participation in political activities while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle; prohibition.

(a) An employee covered under this subpart may not participate in political activities:

(1) While he or she is on duty;

(2) While he or she is wearing a uniform, badge, or insignia that identifies the employing agency or instrumentality or the position of the employee;

(3) While he or she is in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; or

(4) While using a Government-owned or leased vehicle or while using a privately owned vehicle in the discharge of official duties.

(b) [Reserved]

§ 734.407 Use of official authority; prohibition.

An employee covered under this subpart may not use his or her official authority or influence for the purpose of interfering with or affecting the result of an election.

§ 734.408 Participation in political management and political campaigning; prohibitions.

An employee covered under this subpart may not take an active part in political management or in a political campaign, except as permitted by this part.

§ 734.409 Participation in political organizations; prohibitions.

An employee covered under this subpart may not:

(a) Serve as an officer of a political party, a member of a national, State, or local committee of a political party, an officer or member of a committee of a partisan political group, or be a candidate for any of these positions;

(b) Organize or reorganize a political party organization or partisan political group;

(c) Serve as a delegate, alternate, or proxy to a political party convention; and

(d) Address a convention, caucus, rally, or similar gathering of a political party or partisan political group in support of or in opposition to a candidate for partisan political office or political party office, if such address is done in concert with such a candidate, political party, or partisan political group.

§ 734.410 Participation in political fundraising; prohibitions.

An employee covered under this subpart may not:

(a) Solicit, accept, or receive political contributions; or

(b) Organize, sell tickets to, promote, or actively participate in a fundraising activity of a candidate for partisan political office or of a political party, or partisan political group.

§ 734.411 Participation in political campaigning; prohibitions.

An employee covered under this subpart may not:

(a) Take an active part in managing the political campaign of a candidate for partisan political office or a candidate for political party office;

(b) Campaign for partisan political office;

(c) Canvass for votes in support of or in opposition to a candidate for partisan political office or a candidate for political party office, if such canvassing is done in concert with such a candidate, or of a political party, or partisan political group;

(d) Endorse or oppose a candidate for partisan political office or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material if such endorsement or opposition is done in concert with such a candidate, political party, or partisan political group;

(e) Initiate or circulate a partisan nominating petition.

§ 734.412 Participation in elections; prohibitions.

An employee covered under this subpart may not:

(a) Be a candidate for partisan political office except as described in § 734.403;

(b) Act as recorder, watcher, challenger, or similar officer at polling places in consultation or coordination with a political party, partisan political group, or a candidate for partisan political office;

(c) Drive voters to polling places in consultation or coordination with a political party, partisan political group, or a candidate for partisan political office.

§ 734.413 Employees of the Federal Election Commission; prohibitions.

(a) An employee of the Federal Election Commission may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a political contribution.

(b) This section does not cover employee of the Federal Election Commission who are appointed by the President by and with the advice and consent of the Senate.

Subpart E—Special Provisions for Certain Presidential Appointees and Employees Paid from the Appropriation for the Executive Office of the President

§ 734.501 Permitted and prohibited activities.

Except as otherwise specified in this part 734, employees who are appointed by the President by and with the advice and consent of the Senate are subject to

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the provisions of subparts B and C of this part.

§ 734.502 Participation in political activity while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle.

(a) This section applies to an employee:

(1) The duties and responsibilities of whose position continue outside normal duty hours and while away from the normal duty post; and

(2) Who is—

(i) An employee paid from an appropriation for the Executive Office of President; or

(ii) An employee appointed by the President by and with the advice and consent of the Senate whose position is located within the United States, who determines policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws;

(b) For the purposes of this subpart, normal duty hours and normal duty post will be determined by the head of each agency or instrumentality of the United States or District of Columbia Government.

(c) An employee described in paragraph (a) of this section may participate, subject to any restrictions that may be imposed in accordance with § 734.104, in political activities:

(1) While he or she is on duty;

(2) While he or she is wearing a uniform, badge, or insignia that identifies the agency or instrumentality of the United States Government or the position of the employee;

(3) While he or she is in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; or

(4) While using a Government-owned or leased vehicle or while using a privately-owned vehicle in the discharge of official duties.

(d) An employee, to whom subpart E of this part does not apply, who is not on duty may participate in political activities in rooms of the White House which are part of the private Residence area or which are not regularly used solely in the discharge of official duties.

Example 1: An Inspector General is appointed under the Inspector General Act of 1978, as amended. According to section 3(c) of that Act, he or she does not qualify as an employee who determines policies to be pursued by the United States in the nationwide administration of Federal laws; therefore, he or she may not participate in political activities while on duty, while wearing a uniform, badge, or insignia that identifies his or her office or position while in any room or building occupied in the discharge of official duties, or while using a Government-owned or leased vehicle or while using a privately-owned vehicle in the discharge of official duties.

Example 2: An employee who is covered by this subpart and wears a uniform as an incident of her office may wear the uniform while she is giving a speech at a political fundraiser.

Example 3: The head of an executive department may hold a partisan political meeting or host a reception which is not a fundraiser in his conference room during normal business hours.

Example 4: An employee accompanies the Secretary of Transportation to a political party convention as part of the Secretary's security or administrative detail. The employee is considered to be on duty while protecting or performing official duties for the Secretary regardless of the nature of the function that the Secretary is attending.

Example 5: An American Ambassador overseas obtains authorization from the Department of State to depart post in order to take a vacation away from post. During the period she is authorized to be on vacation away from post, she is not considered to be on duty for the purpose of the Hatch Act Reform Amendments and may engage in any political activity permitted under the Hatch Act Reform Amendments of 1993.

§ 734.503 Allocation and reimbursement of costs associated with political activities.

(a) The costs associated with the political activities described in § 733.502(c) of this chapter may not be paid for by money derived from the Treasury of the United States. Costs associated with a political activity are deemed not to be paid for by money derived from the Treasury of the United States if the Treasury is reimbursed for the costs within a reasonable period of time.

(b) For the purposes of this section, costs associated with a political activity do not include any costs that the Government would have or have incurred regardless of whether the activity was political. Examples of such costs are:

(1) The compensation of the employee described in § 734.502(a);

(2) The value of any office or other real property owned or leased by the Government;

(3) The compensation and expenses of any Government employee that is required in the performance of his or her duties to accompany or assist the person engaging in the political activity; and

(4) The cost of special security arrangements for the person engaging in the political activity, including special transportation vehicles or methods.

(c) (1) An employee covered under this subpart must apportion the costs of mixed travel based on the time spent on political activities and the time spent performing official duties. Prorating the cost of travel involves determining the "total activity time" which is the amount of time actually spent by the employee in meetings, receptions, rallies, and similar activities. Time spent in actual travel, private study, or rest and recreation is not included in the computation of the "total activity time". The proration of the cost then is determined based on how the "total activity time" was spent. The formula is as follows:

Time spent in official meetings, receptions, etc. + Time spent in political meetings, receptions, rallies = Total activity time

Time spent in official activity ÷ Total activity time = Percentage of trip that is official

Time spent in political activity ÷ Total activity time = Percentage of trip that is political

The percentage figure that represents the political portion of the trip is then multiplied by the amount that would be reimbursed to the Government if all of the travel was political. The product of that calculation represents the amount to be paid by the political entity or organization.

(2) The allocation method must be applied to all of the relevant costs of mixed travel.

(3) Expenses that are associated specifically with a political activity and not with any official activity must be treated as political, and expenses associated specifically with an official activity and not with any political activity must be treated as official.

(4) In allocating the costs of travel other than air travel, the allocation formula should be applied to any Government maximum for that type of expenditure.

(5) The determination of the proper amount of allocation must be based on the facts and circumstances involved.

(6) In the event that a minor, clearly incidental percentage of the activity of a mixed trip is devoted to either official or political activity, *e.g.* less than 3%, the entire trip should be treated as if it was wholly of the type represented by the substantial figure. The balance should be treated as *de minimis* and need not be reimbursed as political or charged as official.

(d) For any cost of a political activity of an employee that is required to be reported to the Federal Election Commission under the Federal Election Campaign Act (FECA) or the Presidential Election Campaign Fund Act (PECFA), the employee shall use the same method of allocation as used under the FECA or PECFA and regulations thereunder in lieu of the allocation method in paragraph (c) of this section.

Example 1: The Secretary, an employee described by section 7324(b)(2) of title 5 of the United States Code, holds a catered political activity (other than a fundraiser) in her office. Her security detail attends the reception as part of their duty to provide security for her. The Secretary will not be in violation of the Hatch Act Reform Amendments if the costs of her office, her compensation, and her security detail are not reimbursed to the Treasury. A violation of the Hatch Act Amendments occurs if Government funds, including reception or discretionary funds, are used to cater the political activity, unless the Treasury is reimbursed for the cost of the catering within a reasonable time.

Example 2: There should be no allocation between official and political funds for a sound system rented for a single event.

Example 3: If on a mixed trip a Government employee is only entitled to $26 per diem for food on a wholly official trip and the trip is 50% political and 50% official, the Government share would be 50% of $26, not 50% of the actual amount spent.

Example 4: The President is transported by special motorcade to and from the site of the political event. The expense of the motorcade is for special security arrangements. Thus, it would not be a violation of the Hatch Act Reform Amendments if the costs of the security arrangements, including the cost of the motorcade, are not reimbursed to the Treasury.

Subpart F—Employees Who Work on An Irregular or Occasional Basis

§ 734.601 Employees who work on an irregular or occasional basis.

An employee who works on an irregular or occasional basis or is a special Government employee as defined in 18 U.S.C. 202(a) is subject to the provisions of the applicable subpart of this part when he or she is on duty.

Example: An employee appointed to a special commission or task force who does not have a regular tour of duty may run as a partisan political candidate, but may actively campaign only when he or she is not on duty.

Subpart G—Related Statutes and Executive Orders

§ 734.701 General.

In addition to the provisions regulating political activity set forth in subparts A through G of this part, there are a number of statutes and Executive orders that establish standards to which the political activity of an employee, a Federal labor organization, a Federal employee organization, and a multicandidate political committee must conform. The list set forth in § 734.702 references some of the more significant of those statutes. It is not comprehensive and includes only references to statutes of general applicability.

§ 734.702 Related statutes and Executive orders.

(a) The prohibition against offering anything of value in consideration of the use or promise of use of influence to procure appointive office (18 U.S.C. 210).

(b) The prohibition against solicitation or acceptance of anything of value to obtain public office for another (18 U.S.C. 211).

(c) The prohibition against intimidating, threatening, or coercing voters in Federal elections (18 U.S.C. 594).

(d) The prohibition against use of official authority to interfere with a Federal election by a person employed in any administrative position by the United States in connection with any activity financed in whole or in part by Federal funds (18 U.S.C. 595).

(e) The prohibition against the promise of employment, compensation, or benefits from Federal funds in exchange for political activity (18 U.S.C. 600).

(f) The prohibition against the deprivation of or threat of deprivation of employment in exchange for political contributions (18 U.S.C. 601).

(g) The prohibition against soliciting political contributions (18 U.S.C. 602).

(h) The prohibition against making certain political contributions (18 U.S.C. 603).

(i) The prohibition against soliciting or receiving assessments, subscriptions, or contributions for political purposes from persons on Federal relief or work relief (18 U.S.C. 604).

(j) The prohibition against disclosing and receiving lists or names of persons on relief for political purposes (18 U.S.C. 605).

(k) The prohibition against intimidating employees to give or withhold a political contribution (18 U.S.C. 606).

(l) The prohibition against soliciting political contributions in navy yards, forts, or arsenals (18 U.S.C. 607).

(m) The prohibition against coercing employees of the Federal Government to engage in, or not to engage in, any political activity (18 U.S.C. 610).

(n) The prohibition against certain personnel practices (5 U.S.C. 2302).

(o) The prohibition against making, requesting, considering, or accepting political recommendations (5 U.S.C. 3303).

(p) The prohibitions against misuse of a Government vehicle (31 U.S.C. 1344).

(q) The requirements and prohibitions stated in the Federal Election Campaign Act (2 U.S.C. 431–455).

(r) The prohibitions against soliciting for gifts to superiors, giving donations for such gifts, and accepting gifts from employees who receive a lower rate of pay (5 U.S.C. 7351).

(s) The prohibitions against soliciting or accepting things of value from specified persons (5 U.S.C. 7353).

(t) The prohibitions and requirements stated in the Ethics in Government Act of 1978 (5 U.S.C. App.) and Executive Order 12674 (54 FR 15159–15162; 3 CFR 1989 Comp. 215–218) as modified by Executive Order 12731 (55 FR 42547–42550; 3 CFR 1990 Comp. 306–311).

[FR Doc. 94–23395 Filed 9–22–94; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 93–135–2]

Imported Fire Ant; Addition of Authorized Chemical Treatment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the appendix to the imported fire ant regulations to add the insecticide tefluthrin (FIREBAN®) to the list of authorized chemicals for the treatment of containerized nursery stock that is to be certified for interstate movement from quarantined areas. We are also adding provisions regarding the proper use of tefluthrin. This action gives nurseries another choice of insecticides with which to meet the certification requirement for interstate movement of containerized nursery stock.

EFFECTIVE DATE: September 23, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Brittingham, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

Imported fire ants, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, are aggressive, stinging insects that, in large numbers, can seriously injure or even kill livestock, pets, and humans.

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Imported fire ants feed on crops, and their large, hard mounds damage farm and field machinery.

The restrictions in "Subpart—Imported Fire Ant" (7 CFR §§ 301.81 through 301.81–10, referred to below as "the regulations") prevent the spread of the imported fire ant (IFA) on articles moving interstate by quarantining IFA-infested States or IFA-infested areas within States and imposing restrictions on the interstate movement of certain articles, known as regulated articles, from these quarantined States or areas.

Sections 301.81–4 and 301.81–5 of the regulations provide, among other things, that regulated articles requiring treatment before interstate movement must be treated in accordance with the methods and procedures prescribed in the Appendix to Subpart "Imported Fire Ant"—Portion of "Imported Fire Ant Program Manual" (referred to below as "the Appendix"). The Appendix sets forth the treatment provisions of the "Imported Fire Ant Program Manual."

On July 20, 1994, we published in the Federal Register (59 FR 36996–36998, Docket No. 93–135–1) a proposal to amend the Appendix by adding granular tefluthrin to the list of authorized chemicals for the treatment of regulated articles under the regulations. We also proposed to: (1) Amend paragraph III.C.3. of the Appendix by adding provisions regarding the material to be treated, the dosage rate, and the exposure period, and by adding a new "Method E—Granular Incorporation (Tefluthrin);" (2) amend paragraph III.C.4., under the "Exclusion" heading, to allow tefluthrin to be used as an alternative to bifenthrin in treating soil or potting media for plants grown on the premises to prevent infestation with or spread of the imported fire ant; and (3) amend paragraph III.C.4., under the "Enforcement" heading, by adding "tefluthrin" to a reference to chemical treatments that are described in paragraph III.C.3. of the Appendix.

In addition, we proposed to make two miscellaneous changes in paragraph III.C.4. The first, under the "Exclusion" heading, was to add the word "drench" immediately after the word "bifenthrin" in paragraph (b), to make it clear that only drench applications are to be used in treating plants received from outside sources. The second miscellaneous change, under the "Enforcement" heading, was to remove the word "liquid" in the phrase "liquid chlorpyrifos and bifenthrin" to make it clear that the bifenthrin can be in either liquid or granular form.

We solicited comments concerning our proposal for a 30-day comment period ending August 19, 1994. We received six comments by that date. They were from a nursery association, distributors of agricultural chemical treatments, and a State department of agriculture. All responses were in favor of the proposed rule. However, a few commenters brought to our attention new information which warrants changes to the proposal. These changes are discussed below.

We had proposed to add granular tefluthrin to the list of authorized chemicals under the tradename FORCE®. Several commenters noted that the insecticide tefluthrin marketed under the tradename FORCE® is only for use on field corn. The company which will distribute granular tefluthrin for the treatment of containerized nursery stock will market tefluthrin under the tradename FIREBAN®. We are, therefore, adding granular tefluthrin to the Appendix under the tradename FIREBAN®, rather than under the tradename FORCE®.

We had also proposed that the granular tefluthrin be applied at a dosage rate of 25 parts per million (ppm), with no limit on the certification period. We then received, as part of a comment, data which enables APHIS to support the treatment of soil or potting media with granular tefluthrin, for limited periods, at rates lower than the 25 ppm rate originally proposed. This data was not available when the proposal to this rule was published. However, we have reviewed the data included in the comment and have determined that a dosage rate of 10 ppm is efficacious for 6 months and that a dosage rate of 15 ppm is efficacious for 12 months. Therefore, this final rule adds provisions for dosage rates of granular tefluthrin at 10 ppm and 15 ppm, for the limited periods indicated. Treatment at a dosage rate of 25 ppm will remain an option, as proposed, in order to certify containerized nursery stock for interstate movement from quarantined areas for more than 12 months. Allowing treatment at lower dosage rates will reduce the amount of insecticide used, thus reducing the economic burden on persons moving containerized nursery stock interstate from imported fire ant-quarantined areas for limited periods.

Finally, one commenter inquired whether or not we intend to limit the use of granular tefluthrin to IFA-free nurseries only. The answer is no. We are adding granular tefluthrin to the list of authorized chemicals for the treatment of containerized nursery stock that is to be certified for interstate movement from quarantined areas (listed in § 301.81–3 of the regulations). Any containerized nursery stock that qualifies as a regulated article (see § 301.81–2) and that is moved interstate from a quarantined area must be treated with an authorized chemical (or otherwise handled in accordance with §§ 301.81–4 and 301.81–5), regardless of whether or not the nursery is IFA-free.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes noted above.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the Federal Register. This rule gives nurseries another choice of insecticides with which to meet the certification requirement for interstate movement of containerized nursery stock, and provides a backup in case one of the insecticides is taken off the market or is unavailable for any reason. Immediate implementation of this rule is necessary so that nurseries may begin treating soil and potting media with granular tefluthrin in preparation for the shipping season beginning this September. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the Federal Register.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule amends the Appendix to the imported fire ant regulations to allow the use of the insecticide tefluthrin (FIREBAN®), in granular form, for the treatment of containerized nursery stock that is to be certified for interstate movement from areas quarantined for imported fire ant.

Approximately 2,645 nurseries move containerized nursery stock interstate from quarantined areas each year. Twelve of these nurseries would be considered large; 2,633 would be considered small, with annual sales below $500,000.

Current regulations allow for the incorporation of granular bifenthrin for the treatment of containerized nursery stock that is to be certified for interstate movement from quarantined areas. A 50-pound bag of granular bifenthrin currently retails for about $38.50. The expected retail price for tefluthrin is not available, but should be comparable to that of bifenthrin. For this reason, APHIS anticipates that the economic impact to nurseries that use these products will not be significant.

The addition of tefluthrin to the list of authorized chemicals gives nurseries another choice of insecticides so they can choose whichever product best suits their needs, and provides a backup in case one of the insecticides is taken off the market or is unavailable for any reason. The addition of tefluthrin could also stimulate competition for imported fire ant insecticides, which could drive down prices for all chemicals authorized under the IFA program. If this happens, nurseries will benefit by lower treatment costs.

We do not anticipate that there will be a noticeable impact on small entities that distribute agricultural chemicals. Distributors of agricultural chemicals are diversified businesses that sell a wide variety of chemicals, fertilizers, and other farm and nursery supplies. We do not anticipate any significant economic impact on any other small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for our conclusion that use of tefluthrin at the dosage rate of 25 ppm, or less for limited periods, will not present a risk of disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under FOR FURTHER INFORMATION CONTACT.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Part 301, Subpart—Imported Fire Ant, Appendix to the subpart, is amended as follows:

a. In paragraph III.B., under the "Insecticides" heading, "Tefluthrin (FIREBAN®)" is added following "Fenoxycarb (AWARD®)".

b. Paragraph III.C.3.c. is redesignated as paragraph III.C.3.d., and a new paragraph III.C.3.c. is added to read as set forth below.

c. In newly redesignated paragraph III.C.3.d., the introductory text, the phrase "chlorpyrifos and bifenthrin" is removed and the phrase "chlorpyrifos, bifenthrin, or tefluthrin" is added in its place; and a new "Method E—Granular Incorporation (Tefluthrin)" is added at the end of the paragraph, to read as set forth below

d. In paragraph III.C.4., under the "Exclusion" heading, paragraph (b), introductory text, the word "drench" is added immediately after the word "bifenthrin", and a new paragraph, titled "*Tefluthrin*", is added immediately following the existing text, to read as set forth below

e. In paragraph III.C.4., under the "Enforcement" heading, in the sixth paragraph, the phrase "liquid chlorpyrifos or bifenthrin" is removed and the phrase "chlorpyrifos, bifenthrin, or tefluthrin" is added in its place.

Subpart—Imported Fire Ant

* * * * * *

Appendix to Subpart "Imported Fire Ant"—Portion of "Imported Fire Ant Program Manual" [8]

III. Regulatory Procedures

* * * * * *

C. *Approved Treatments*

* * * * * *

3. Plants—Balled or in Containers

* * * * * *

c. Tefluthrin: Granular Formulation.

Material: Granular tefluthrin—incorporation into soil or potting media for containerized nursery stock.

Dosage: The amount of granular tefluthrin needed to achieve a specified dosage varies with the bulk density of the soil or potting media. Follow label directions to calculate the amount of granular tefluthrin needed to achieve a specified dosage.

Granular tefluthrin dosage (parts per million)	Certification period (months after treatment)
10 ppm	0–6 months.
15 ppm	0–12 months.
25 ppm	Continuous.

Exposure period: Containerized nursery stock can be certified for interstate movement from quarantined areas immediately upon completion of the treatment.

d. * * *

* * * * * *

Method E—Granular Incorporation (Tefluthrin)

Apply tefluthrin according to the label directions for granular incorporation. Mix thoroughly to distribute the granular tefluthrin evenly throughout the soil or potting media. After potting, containers must be watered to the point of saturation.

Precautions: Saturation of the soil or potting media with the tefluthrin is essential. Water that drains from the treatment area, which may contain tefluthrin, must be

[8] A copy of the entire "Imported Fire Ant Program Manual" may be obtained from the Administrator, c/o Domestic and Emergency Operations, PPQ, APHIS, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

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disposed of in accordance with State and local laws.

4. Imported-Fire-Ant-Free Nursery—Containerized Plants Only

* * * * *

Exclusion

* * * * *

Tefluthrin

For plants grown on the premises: Treatment of soil or potting media with granular tefluthrin prior to planting is permitted as an alternative to treatment with granular or wettable powder formulation of bifenthrin. This treatment reduces the risk of infestation of containers by alate queens flying in from adjacent or nearby infested premises. The dosage rate is variable, determined by the selected certification period, for the granular tefluthrin.

Apply this treatment according to the label directions.

Mixing must be adequate to blend the required dosage of granular tefluthrin throughout the entire soil or potting media.

* * * * *

Done in Washington, DC, this 19th day of September 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-23614 Filed 9-22-94; 8:45 am]

BILLING CODE 3410-34-P

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV94-905-3-IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Repacked Citrus Fruit Shipment Exemption Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes exemption procedures governing shipments of repacked fresh citrus fruit grown in Florida. This rule permits repacking shippers to repack and ship previously inspected and certified citrus fruit exempt from further inspection and certification under specific conditions. This exemption is designed to enable repacking shippers to repack and ship fruit for specialty markets, without incurring the costs of having the fruit reinspected and recertified.

DATES: Effective on September 1, 1994.

Comments which are received by October 24, 1994 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456; or by facsimile at 202-720-5698. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark Kreaggor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456; telephone: 202-720-5127; or William G. Pimental, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813-299-4770.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 905 [7 CFR Part 905] regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C 601-674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 100 Florida citrus fruit handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 11,000 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A minority of these handlers and a majority of the producers may be classified as small entities.

The Citrus Administrative Committee (committee) met on June 21, 1994, and unanimously recommended establishment of exemption procedures, for repacked previously inspected and certified citrus fruit. The committee meets prior to and during each season to review the rules and regulations effective on a continuous basis for each citrus fruit regulated under the order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

Section 905.80 [7 CFR 905.80] provides for the shipment of fruit not subject to grade and size regulations issued under § 905.52 [7 CFR 905.52], and inspection and certification required under § 905.53 [7 CFR 905.53], including types of shipments and fruit shipped for such purposes as the committee with approval of the Secretary may specify. Section 905.80 also provides that the committee shall, with approval of the Secretary, prescribe such rules, regulations, or safeguards as

it may deem necessary to prevent varieties handled under the provisions of this section from entering channels of trade for other than the purposes authorized. Such rules, regulations, and safeguards may include the requirements that handlers file applications with the committee for authorization to handle citrus fruit exempt from certain order requirements, and report such exempted shipments to the committee.

Section 905.53 provides that when the handling of citrus fruit is regulated under § 905.52, each handler shall, prior to handling any lot of such citrus fruit, cause such citrus fruit to be inspected and certified by the Federal or Federal/State Inspection Service (FSIS) as meeting all applicable requirements of such regulation. Section 905.53 also provides that inspection and certification shall not be required for a particular lot of citrus fruit, if such lot has been previously inspected and certified by the FSIS as meeting the handling requirements issued under the authority of § 905.52. However, if such citrus fruit is repacked prior to shipment from the production area, the repacking shipper must have the citrus fruit reinspected and recertified. This is because the citrus fruit loses its lot identity during the repacking process, and there is no way to demonstrate that the repacked citrus fruit is the same fruit as that which has already been inspected and certified as meeting order requirements.

The committee recommended establishment of the following exemption procedures to enable repacking shippers who only repack and ship previously inspected and certified citrus fruit to ship such fruit exempt from further inspection and certification under specific conditions. The exemption provisions enable repacking shippers to custom repack and ship previously inspected and certified citrus fruit in different types of containers that are more acceptable to certain buyers of specialty packs of citrus fruit, without incurring the cost of having the fruit reinspected and recertified as meeting order requirements. Eliminating the cost of having the citrus fruit reinspected and certified is expected to lower repacking costs for repacking shippers, thereby placing them on a more equal cost basis with repackers of Florida citrus fruit located outside of the production area, who are not subject to the order requirements. This rule may result in greater quantities of Florida-grown citrus fruit being shipped into fresh market channels and increase returns to Florida citrus growers.

The committee also recommended the establishment of the following new rules and regulations under the order (§§ 905.161, 905.162, and 905.163) to govern the shipment of repacked citrus fruit under exemption, and to enable repacking shippers to ship repacked citrus fruit exempt from further inspection and certification. These rules and regulations are designed to provide safeguards to make sure that only citrus fruit repacked by repacking shippers under the conditions specified in §§ 905.161, 905.162, and 905.163 is shipped from the production area.

Section 905.161 defines a repacking shipper and establishes conditions under which such repacking shippers may repack and ship citrus fruit exempt from further inspection and certification under § 905.53, subject to meeting certain safeguard conditions. Under this definition, a repacking shipper is a person who repacks and ships citrus fruit grown in the production area in Florida which has been previously inspected and certified as meeting the requirements specified under § 905.52 of the order, and who has obtained a currently valid repacking certificate of privilege issued to him or her by the committee as specified in § 905.162. Under § 905.161, each repacking shipper, to qualify for a repacking certificate of privilege, must notify the committee 10 days prior to his or her first shipment of repacked citrus fruit during a particular fiscal period of his or her intent to ship such citrus fruit, submit an application on an Application for a Repacking Certificate of Privilege form supplied by the committee, and agree to other requirements as set forth in §§ 905.162 and 905.163 inclusive, with respect to such shipments. The repacking shipper shall certify that he or she will only handle previously inspected and certified citrus fruit.

Also under § 905.161, any repacking shipper who handles citrus fruit shipped under a repacking certificate of privilege must see to it that all such citrus fruit has previously been positive lot identified by the Federal or Federal/State Inspection Service and certified as meeting the applicable requirements for citrus fruit shipped to the domestic market (fruit shipped from the production area to any point outside thereof in the 48 contiguous States and the District of Columbia of the United States), prior to being repacked and shipped by the repacking shipper. Each such citrus fruit shipment shall be accompanied by a copy of the Federal-State manifest that certifies the grade and amount of each load of citrus fruit received, which shall be retained by the repacking shipper.

To prevent the packing of uninspected fruit from the field into repacked lots, repacking shippers may not utilize repacking facilities which have operable equipment for washing, brushing, waxing, or drying citrus fruit. This precludes the mixing of ungraded fruit from the field with previously inspected fruit. In addition, all citrus fruit handled by a repacking shipper shall be packed in approved Florida Department of Citrus fruit containers, and each container shipped with such citrus fruit shall be marked with the repacking shipper's repacking certificate of privilege number.

Section 905.162(a) establishes procedures under which repacking shippers who desire to repack and ship previously inspected and certified citrus fruit may apply to the committee to obtain a repacking certificate of privilege from the committee. Application for a repacking certificate of privilege by a repacking shipper shall be made on forms furnished by the committee. Each application shall contain, but need not be limited to, the name, address and Florida citrus fruit dealer license number of the applicant; approximate number of boxes to be handled during the season; the various types of containers to be used to ship the repacked citrus fruit; a certification to the Secretary of Agriculture and to the committee as to the truthfulness of the information shown thereon; and any other appropriate information or documents deemed necessary by the committee or duly authorized agents for the purposes stated in § 905.161.

Section 905.162(b) also provides a procedure for the committee to follow in approving a repacking certificate of privilege. The committee or its duly authorized agents shall give prompt consideration to each application for a repacking certificate of privilege. Approval of an application based upon a determination as to whether the information contained therein and other information available to the committee supports approval, shall be evidenced by the issuance of a repacking certificate of privilege to the applicant. Each certificate shall expire at the end of the fiscal period.

Finally, § 905.162(c) provides procedural safeguards for the committee to follow when dealing with suspensions or denials of repacking shippers certificates of privilege.

Section 905.163 establishes procedures which require repacking shippers to report to the committee all shipments of repacked citrus fruit made under a repacking certificate of privilege. Under this section, each repacking shipper who handles citrus

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fruit under a repacking certificate of privilege shall supply the committee with reports on each shipment as requested by the committee, on forms supplied by the committee, showing the name and address of the repacking shipper; name and address of the handler supplying the inspected and certified citrus fruit for such shipment; number of packages; size and containers; brand or grade; certificate number; and any other information deemed necessary by the committee. Each repacking shipper of citrus fruit shall maintain on file a copy of the Federal-State manifest that certifies the grade and amount of each load of citrus fruit received. These manifests shall be made available to the committee upon request. In addition, the repacking shipper shall promptly forward to the committee one copy of the Report of Shipments Under Certificate of Privilege form for each shipment, retain one copy of such form in his or her record files, and make sure one copy of such form accompanies the shipment. Failure to complete and return such forms shall be cause for the committee to suspend the repacking shipper's repacking certificate of privilege.

This rule reflects the committee's and the Department's appraisal of the need to establish the new rules and regulations governing the shipment of repacked fresh citrus fruit, as specified. The Department's view is that this rule may have a beneficial impact on producers and handlers of fresh Florida citrus fruit, since it will permit repacking shippers to repack and ship previously inspected and certified citrus fruit exempt from further inspection and certification.

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval and have been assigned OMB No. 0581–0094. The committee estimates that about 10 repacking shippers of Florida citrus fruit will use the Application for a Repacking Certificate of Privilege form once each year, and that it will require an average of 0.116 hours for them to complete each such form. The committee also estimates that about 10 repacking shippers of Florida citrus fruit will use the Report of Shipments Under Certificate of Privilege form 50 times each year, and that it will require an average of 0.116 hours for them to complete each such form. Thus, this rule increases the total information collection burden under the order by 59.2 hours. The committee also estimates that the recordkeeping burden on the 10 repacking shippers who are required to file and maintain a copy of the Federal-State manifest that certifies the grade and amount of each load of citrus fruit received at 50 hours annually (500 forms times an average of 0.1 hour required to file each form), and a copy of the Reports of Shipments Under Repacking Certificate of Privilege form filed with the committee at 50 hours annually (500 forms times an average of 0.1 hour required to file each form).

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that adding the provisions, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This rule relaxes handling requirements governing the shipment of repacked citrus fruit grown in Florida; (2) Florida citrus fruit handlers are aware of this relaxation which was unanimously recommended by the committee at a public meeting, and they will need no additional time to comply with the relaxed requirements; (3) shipment of the 1994–95 season Florida citrus fruit crop is expected to begin on or about September 1, 1994, and these relaxed requirements should be in effect by that date; and (4) the rule provides a 30-day comment period, and any comments received will be considered prior to any finalization of this interim final rule.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR Part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. New §§ 905.161, 905.162, and 905.163 are added to read as follows:

§ 905.161 Repacking shipper.

(a) A repacking shipper is a person who repacks and ships citrus fruit grown in the production area in Florida which has been previously inspected and certified as meeting the requirements specified under § 905.52 of the order, and who has obtained a currently valid repacking certificate of privilege issued to him or her by the committee as specified in § 905.162.

(b) Each repacking shipper, to qualify for a repacking certificate of privilege, must notify the committee 10 days prior to his or her first shipment of repacked citrus fruit during a particular fiscal period of his or her intent to ship such citrus fruit, submit an Application for a Repacking Certificate of Privilege form supplied by the committee, and agree to other requirements as set forth in §§ 905.162 and 905.163 inclusive, with respect to such shipments. The repacking shipper shall certify that he or she will only handle previously inspected and certified citrus fruit.

(c) Any repacking shipper who handles citrus fruit shipped under a repacking certificate of privilege must, other order provisions not withstanding, meet the following requirements:

(1) All such citrus fruit must be positive lot identified by the Federal or Federal/State Inspection Service and certified as meeting the applicable requirements for citrus fruit shipped to the domestic market (fruit shipped from the production area to any point outside thereof in the 48 contiguous States and the District of Columbia of the United States), prior to being repacked and shipped by the repacking shipper. Each such citrus fruit shipment shall be accompanied by a Federal-State manifest that certifies the grade and amount of each load of citrus fruit received, which shall be retained by the repacking shipper.

(2) Be reported as required in § 905.163.

(3) The repacking facility used to repack previously inspected and certified citrus fruit by the repacking shipper shall not have operable equipment to wash, brush, wax, or dry citrus fruit.

(4) All citrus fruit handled by a repacking shipper shall be packed in approved Florida Department of Citrus fruit containers.

(5) Each container shipped with such citrus fruit shall be marked with the repacking shipper's repacking certificate of privilege number.

§ 905.162 Repacking certificate of privilege.

(a) *Application.* Application for a repacking certificate of privilege by a repacking shipper shall be made on an Application for a Repacking Certificate of Privilege form supplied by the committee. Each such application shall contain, but need not be limited to, the name, address and Florida citrus fruit dealer license number of the applicant; approximate number of boxes to be handled during the season; the various types of containers to be used to ship the repacked citrus fruit; a certification to the Secretary of Agriculture and to the committee as to the truthfulness of the information shown thereon; and any other appropriate information or documents deemed necessary by the committee or duly authorized agents for the purposes stated in § 905.161.

(b) *Approval.* The committee or its duly authorized agents shall give prompt consideration to each application for a repacking certificate of privilege. Approval of an application based upon a determination as to whether the information contained therein and other information available to the committee supports approval, shall be evidenced by the issuance of a repacking certificate of privilege to the applicant. Each such certificate shall expire at the end of the fiscal period.

(c) *Suspension or denial of certificate of privilege.* The committee may investigate the handling of repacked fresh citrus fruit shipments under certificates of privilege to determine whether repacking shippers are complying with the requirements and regulations applicable to such certificates. Whenever the committee finds that a repacking shipper is failing to comply with the requirements and regulations applicable to such certificates, the certificate of privilege issued to such repacking shipper may be suspended or, in the case of an application for the issuance of an initial certificate of privilege, may be denied. Such suspension of a certificate shall be for a reasonable period of time as determined by the committee, but in no event shall it extend beyond the end of the then current fiscal period. In the case of the denial of an application for the issuance of an initial certificate, such certificate shall be denied until the applicant comes into compliance with the requirements and regulations applicable to such certificates. Prior to suspending or denying an application for a certificate of privilege, the committee shall give the shipper or applicant an opportunity, either orally or in writing, to present opposing facts and reasons. The shipper or applicant shall be informed of the committee's determination in writing and in a timely manner.

§ 905.163 Reports of shipments under repacking certificate of privilege.

(a) Each repacking shipper who handles citrus fruit under a repacking certificate of privilege shall supply the committee with reports on each shipment as requested by the committee, on a Report of Shipments Under Certificate of Privilege form supplied by the committee, showing the name and address of the repacking shipper; name and address of the handler supplying the inspected and certified citrus fruit for such shipment; number of packages; size and containers; brand; grade; certificate number; and any other information deemed necessary by the committee. Each repacking shipper of citrus fruit shall maintain on file a copy of the Federal-State manifest that certifies the grade and amount of each load of citrus fruit received. These manifests shall be readily available to the committee upon request.

(b) One copy of the Report of Shipments Under Certificate of Privilege form on each shipment shall be forwarded to the committee promptly, one copy of such form shall be retained by the repacking shipper, and one copy of such form shall accompany the shipment. Failure to complete and return such form shall be cause for suspension of the repacking shippers repacking certificate of privilege.

Dated: September 19, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–23611 Filed 9–22–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 947

[FV94–947–1FR]

Irish Potatoes Grown in Oregon and California; Establishment of Interest and Late Payment Charges on Overdue Assessment Payments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule allows the Oregon-California Potato Committee (committee) to impose interest and late payment charges on overdue assessments under the marketing order. Some handlers are frequently late paying their assessments, which tends to cause cash flow problems for the committee and is inequitable to handlers who pay assessments when due. Imposing interest and late payment charges on handlers will encourage such handlers to pay their assessment obligations in a timely manner and help the committee maintain sufficient funds to carry on normal operations.

EFFECTIVE DATE: September 23, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Matthews, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC, 20090–6456, telephone: (202) 690–0464; or Teresa Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1220 Southwest Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 114 and Marketing Order No. 947 [7 CFR part 947], as amended, regulating the handling of potatoes grown in Modoc and Siskiyou Counties in California, and all counties in Oregon, except Malheur County, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of Oregon-California potatoes who are subject to regulation under the order and approximately 450 producers in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of Oregon-California potatoes may be classified as small entities.

On May 25, 1994, a mail ballot was completed in accordance with § 947.26 during which the committee recommended, under the authority of § 947.41(a) of the order, that handlers who are delinquent in paying their assessments be subject to late payment and interest charges. Nine affirmative ballots were received, meeting the minimum number for a quorum for the fourteen-member committee.

The committee depends upon handler assessments for operating funds. Handlers are invoiced by the committee on a monthly basis. However, some handlers are continually late with their assessment payments and a few wait until the end of the season to remit to the committee what is owed. When assessments are not paid in a timely manner, the handlers paying assessments on time are placed in an unfair situation compared to the delinquent handlers.

As part of its collection efforts, the committee has requested delinquent handlers to promptly submit assessment payments. However, such requests have not substantially decreased the frequency of delinquent payments. To facilitate the collection of assessments needed for the maintenance and functioning of the committee, the committee recommended that a late payment charge of five (5) percent of the unpaid assessment balance be applied to any handler account more than thirty days overdue, and an interest charge of one (1) percent per month be applied to any assessment balance, plus the late payment charge, remaining unpaid after sixty days. The interest charge added to the bill after 60 days will be compounded monthly until the delinquent handler's assessment plus late payment charge and unpaid interest charges have been paid in full. The committee believes these charges are high enough to encourage timely payment of assessments, and are within the interest range customarily charged by banks on commercial accounts.

This rule is intended to encourage handlers to pay their assessments when due, thereby eliminating potential inequities. The committee believes that the recommended action is the only alternative available to ensure timely payments. The rule is expected to reduce the need for Department involvement with compliance efforts and thereby reduce the costs for the government to administer the marketing order program.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1988 [44 U.S.C. chapter 35], the information collection requirements that are contained in this proposal have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0581–0112.

A proposed rule on this matter was published in the August 3, 1994, **Federal Register** [59 FR 39479]. Interested persons were invited to file written comments with respect to the proposal until August 18, 1994. No comments were received.

After consideration of all relative material presented, including the recommendation submitted by the committee and other information, it is hereby found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C 553, it is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Assessments are based on the quantity of potatoes handled by each handler during the shipping season; (2) the shipping season for potatoes has already begun and the committee would like to impose charges if warranted; (3) the imposition of such charges was discussed at a public meeting, and all interested persons had an opportunity to voice concerns; and (4) there are no regulatory burdens imposed by this rule which require special preparations of handlers, and (5) the proposed rule provided a 15-day comment period and no comments were received.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 947 is hereby amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SIKIYOU COUNTIES, CALIFORNIA, AND ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR part 947 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 947.141 is added to read as follows:

§ 947.141 Late payment and interest charges.

The committee shall impose a late payment charge on any handler who fails to pay his or her assessment within thirty (30) days of the billing date shown on the handler's assessment statement received from the committee. The late payment charge shall, after 30 days, be five percent of the unpaid assessment balance. In the event the handler fails to pay the delinquent assessment amount, plus the late payment charge, within 60 days following the billing date, an additional one percent interest charge shall be applied monthly thereafter to the unpaid balance, including any accumulated interest. Any amount paid by a handler as an assessment, including any charges imposed pursuant to this paragraph, shall be credited when the payment is received in the committee office.

Dated: September 19, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–23608 Filed 9–22–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 948

[Docket No. FV94–948–2IFR]

Irish Potatoes Grown in Colorado; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 948 for the 1994–95 fiscal period. Authorization of this budget enables the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective September 1, 1994, through August 31, 1995. Comments received by October 24,1994, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone number 202–720–9918, or Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, Oregon 97204, telephone number 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Colorado potatoes are subject to assessments. Funds to administer the Colorado potato marketing order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1994–95 fiscal period which began September 1, 1994, and ends August 31, 1995. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 285 producers of Colorado Area II potatoes under the marketing order and approximately 118 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Colorado Area II potato producers and handlers may be classified as small entities.

The budget of expenses for the 1994–95 fiscal period was prepared by the Colorado Potato Administrative Committee, San Luis Valley Office (Area II), the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Colorado Area II potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado Area II potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

In Colorado, both a State and a Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. All expenses in this category are financed under the State order. The jointly operated programs consume about equal administrative time and the two orders continue to split administrative costs equally.

The Committee met and unanimously recommended a 1994–95 budget of $65,924, which is $6,818 more than the previous year. Budget items for 1994–95 which have increased compared to those budgeted for 1993–94 (in parentheses) are: Executive Director's salary, $25,082 ($20,888), assistant's salary, $10,320 ($9,828), part-time salary, $3,822 ($3,640), telephone, $1,750 ($1,500), major purchase $2,250 ($1,250), utilities, $2,000 ($700), and $750 for insurance, $2,425 for property tax, $1,000 for maintenance, and $500 for miscellaneous, for which no funding was recommended last year. Items which have decreased compared to those budgeted for 1993–94 (in parentheses) are: Compliance $1,500 ($2,000), and $3,000 for employee benefits, $1,500 for rent, and $275 for repairs, for which no funding was recommended this year.

The Committee also unanimously recommended an assessment rate of $0.0036 per hundredweight, the same as last season. This rate, when applied to

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anticipated potato shipments of 14,250,000 hundredweight, will yield $51,300 in assessment income. This, along with $14,624 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds of $88,203 in the Committee's authorized reserve at the beginning of the 1993–94 fiscal period were within the maximum permitted by the order of two fiscal periods' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period began on September 1, 1994, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR Part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 948.212 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 948.212 Expenses and assessment rate.

Expenses of $65,924 by the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) are authorized, and an assessment rate of $0.0036 per hundredweight of assessable potatoes is established for the fiscal period ending August 31, 1995. Unexpended funds may be carried over as a reserve.

Dated: September 19, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–23612 Filed 9–22–94; 8:45 am]

BILLING CODE 3410–02–W

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7 CFR Part 1106

[DA–94–17]

Milk in the Southwest Plains Marketing Area; Continued Revision of Pooling Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document continues the October 1, 1992, reduction of the shipping requirement for a cooperative association that operates a balancing plant under the Southwest Plains Federal milk order (Order 106) through September 30, 1995. This action, which was requested by Associated Milk Producers, Inc. (AMPI), is necessary to prevent the uneconomic and inefficient movement of producer milk regularly associated with the market.

DATES: Effective September 23, 1994, the effective date of the amendment to § 1106.7(c) introductory text which appeared at 57 FR 48939, October 29, 1992, is extended through September 30, 1995.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Temporary Revision: Issued July 11, 1994; published July 15, 1994 (59 FR 36095).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule continues to lessen the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Continuation of this revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the provisions of § 1106.7(c) and (d) of the Southwest Plains order.

Notice of proposed rulemaking was published in the **Federal Register** (59 FR 36095) concerning a proposed relaxation of the shipping requirement for a cooperative association that operates a balancing plant. The continuation of the revision was proposed to be effective for the months of October 1, 1994, through September 30, 1995. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by August 15, 1994. One comment supporting the proposed continuation of revision was received.

Statement of Consideration

This rule continues to reduce, from 45 to 35 percent, the shipping requirement for a cooperative association that operates a balancing plant through September 1995. In order for a cooperative association's plant that is located in the marketing area or in a county adjacent to the marketing area to be a pool plant, the Southwest Plains order requires that the cooperative deliver to pool distributing plants a minimum of 45 percent of the total quantity of the "producer milk" marketed under the Southwest Plains order by the cooperative, either during the month or during the 12-month period ending with the immediately preceding month. The order also authorizes the Director of the Dairy Division to increase or decrease this requirement by up to 10 percentage points if such a revision is necessary to obtain needed shipments or prevent uneconomic shipments of milk.

According to AMPI, Mid-America Dairymen (Mid-Am) and AMPI have formed an agency for the purpose of pooling member-producers' milk. These two cooperatives represented about 73 percent of the producers and 77 percent of the milk pooled on Order 106 in May 1994. AMPI contends that without the continuation of the reduced shipping requirements, milk normally pooled under the Southwest Plains order would become ineligible for pooling unless the cooperative made uneconomic, inefficient, and unnecessary shipments of milk to fluid handlers.

Mid-America Dairymen, Inc. (Mid-Am), filed a comment in support of the proposed continuation of revision. Mid-Am and AMPI indicate that the agency has shipped approximately 40 percent of its total receipts to pool distributing plants during the past 12 months and anticipates a similar demand for milk during the next 12 months. Mid-Am asserts that increased producer receipts and reduced sales to distributing plants warrant a continuation of the reduced shipping percentage for a cooperative association that operates a balancing plant. It states the reduction of sales to distributing plants is largely due to distributing plants procuring additional supplies from non-member producers.

The marketing conditions that currently exist in the Southwest Plains Order are expected to continue through the next year. It is anticipated that during many months over the next year member milk deliveries will be significantly below the 45 percent shipping requirement, and, subsequently, the 12-month shipping percentage average will fall below 45 percent. Thus, continuation of the revision will allow producer milk historically associated with Order 106 to continue to be pooled under the order.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found and determined that the shipping requirement set forth in § 1106.7(c) should be maintained at 35 percent through September 30, 1995.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This continued revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area through September 30, 1995;

(b) This revision does not require of persons affected, substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this continued revision. One comment supporting the continued revision was received.

Therefore, good cause exists for continuing this revision effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

For reasons set forth in the preamble, the following provision in Title 7, Part 1106, continues to read as follows:

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. **Authority:** Secs. 1–19, 48 Stat 31, as amended; 7 U.S.C. 601–674.

§ 1106.7 Pool Plant.

2. In § 1106.7(c) introductory text, the provision "35 percent" (57 FR 48939, Oct. 29, 1992) continues to read as such through September 30, 1995.

Dated: September 19, 1994.

Richard M. McKee,

Director, Dairy Division.

[FR Doc. 94–23609 Filed 9–22–94; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Part 1468

RIN 0560–AD19

Support Prices for Shorn Wool, Wool on Unshorn Lambs, and Mohair for the 1994 Marketing Year

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The National Wool Act of 1954, as amended (Wool Act), requires the Secretary of Agriculture (Secretary), through the Commodity Credit Corporation (CCC), to make loans and payments available to producers of wool and mohair through December 31, 1995. The Wool Act further provides that, in the case of the 1994 and 1995 marketing years, the payments shall be 75 percent and 50 percent, respectively, of the amount otherwise determined in accordance with section 704(a) of the Wool Act. On May 2, 1994, the Commodity Credit Corporation (CCC) issued a proposed rule (59 FR 22546) with respect to the support prices for shorn wool, wool on unshorn lambs, and mohair for the 1994 marketing year. The support level for wool on unshorn lambs has been determined by multiplying 80 percent of the difference between the 1994 support price for shorn wool and the 1994 national average market price for shorn wool by 5 (the quantity of wool on an average 100-pound unshorn lamb). The mohair support level has been determined to be $4.739, which is equal to 85 percent of the comparable percentage of parity at which shorn wool is supported for the 1994 marketing year. Payments to producers for the 1994 and 1995 marketing years shall be 75 and 50 percent, respectively, of the amount otherwise determined in accordance with section 704(a). These actions are required by sections 703 and 704 of the National Wool Act of 1954, as amended (Wool Act).

EFFECTIVE DATE: September 23, 1994.

FOR FURTHER INFORMATION CONTACT: Janise A. Zygmont, Fibers and Rice Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA), room 3756–S, PO Box 2415, Washington, DC 20013- 2415 or call 202–720–6734.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

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Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: National Wool Act Payments—10.059.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1468 set forth in this final rule will not result in any change in the public reporting burden. Therefore, the information collection requirements of the Paperwork Reduction Act are not applicable to this amendment.

Final Regulatory Impact Analysis

The Final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of the implementation of each option is available on request from the above-named individual.

Comments

A total of forty-four comments were received during the 30-day public comment period that ended June 1, 1994. Respondents included 27 producers, 5 warehouses, 4 producer organizations, 2 State legislators, 2 banks, 2 ASCS offices (1 State and 1 county), and 2 others.

Mohair. Thirty-one respondents specifically addressed the mohair support level. Eleven recommended that mohair be supported at the maximum allowed by law—115 percent of the wool parity percentage or $6.411 per pound. Nineteen recommended that mohair be supported at the 100-percent level or $5.575 per pound, and one respondent recommended either the 100 or 115 percent level. The reasons cited for these recommendations were that such levels would:

(a) Help offset the reduction in the support level due to the legislative requirement that 1994 payments be reduced by 25 percent;

(b) Lessen the negative impact of the Wool Act phase-out on those rural economies which are based on sheep/goats with few available employment or land use alternatives;

(c) Be appropriate due to low mohair prices, drought requiring increased use of supplemental feed, the high cost of supplies, leases, feed, and overhead, and predator problems; and

(d) Give producers a fair return.

Wool on Unshorn Lambs. One respondent commented that the pulled wool (unshorn lamb) support rate should remain at the current level. Another indicated that unshorn lamb payments should be eliminated. One respondent commented on a technical point relating to the unshorn lamb payment rate.

Other. Additional comments were submitted on issues for which public input was not solicited. Ten respondents commented generally on the Wool Act phase-out, either opposing it or requesting that the decision to eliminate the programs be reviewed and reconsidered. One respondent commented that the shorn wool support rate was too high.

After considering these comments, the following determinations have been made with respect to the support prices for wool on unshorn lambs and mohair for the 1994 marketing year. Shorn wool, wool on unshorn lamb and mohair payments for the 1994 marketing year shall be 75 percent of the amount otherwise determined in accordance with section 704(a) of the Wool Act.

Support Price—Wool on Unshorn Lambs. In accordance with section 703 of the Wool Act, the support price for wool on unshorn lambs shall be determined by multiplying 80 percent of the difference between the 1994 support price for shorn wool and the 1994 national average market price for shorn wool by 5 pounds (the quantity of wool on an average 100-pound unshorn lamb). Experience has shown that this formula provides a payment rate comparable to the shorn wool support price and that it helps maintain normal marketing practices.

Support Price—Mohair. In accordance with section 703 of the Wool Act, the support price for mohair for the 1994 marketing year shall be $4.739, which is equal to 85 percent of the comparable percentage of parity at which shorn wool is supported for the 1994 marketing year. This level of support is consistent with the intent of recent legislation to phase out support for wool and mohair.

Statutory Basis

This final rule amends 7 CFR part 1468 to set forth determinations with respect to the support prices for shorn wool, wool on unshorn lambs, and mohair for the 1994 marketing year. A general description of the statutory basis for such determinations in this final rule was set forth at 59 FR 22546 (May 2, 1994).

The support programs conducted pursuant to the Wool Act are subject to the provisions of the Balanced Budget and Deficit Reduction Act of 1985, as amended. As a result, the support levels announced in this rule may be recalculated to comply with this Act.

List of Subjects in 7 CFR Part 1468

Assistance grant programs—agriculture, Livestock, Mohair, Reporting and recordkeeping requirements, Wool.

Accordingly, 7 CFR part 1468 is amended as follows:

PART 1468—WOOL AND MOHAIR

1. The authority citation for 7 CFR part 1468 continues to read as follows:

Authority: 7 U.S.C. 1781–1787; 15 U.S.C. 714b and 714c.

2. Section 1468.4 is amended by:

A. Revising paragraph (b)(2)(iii), and

B. Adding paragraphs (b)(1)(ii)(D), (b)(2)(iv), and (b)(3)(iv) to read as follows:

§ 1468.4 Eligibility for payments.

* * * * *

(b)(1) * * *

(ii) * * *

(D) 1994—$2.09 per pound.

(b)(2) * * *

(iii) 1993—$6.12 per hundredweight.

(iv) 1994—an amount equal to 80 percent of the difference between the national average price received by producers for shorn wool for the 1994 marketing year and the 1994 shorn wool support price, multiplied by 5.

(b)(3) * * *

(iv) 1994—$4.739 per pound.

* * * * *

3. Section 1468.8 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 1468.8 Computation of payment.

(a)(1) The amount of the shorn wool or shorn mohair support payment shall be computed by applying the rate of payment to the net sales proceeds for the wool or mohair marketed during the specified marketing year, less the assessment due as specified in § 1468.15. In the case of the 1994 and 1995 marketing years, the payments shall be 75 percent and 50 percent, respectively, of the amount otherwise determined in accordance with this part. For shorn wool payments, if there is a purchase by the producer of unshorn lambs, the resultant amount shall be reduced by an amount resulting from multiplying the liveweight of such lambs reported in the application for payment by the calculated wool on shorn lambs support for such marketing year. If the amount of the reduction exceeds the payment computed on the shorn wool marketed, the liveweight of lambs which corresponds to the excess amount shall be carried forward and used to reduce payments on unshorn lambs marketed or slaughtered or shorn wool marketed in the current or subsequent years.

* * * * *

(b) The amount of the wool support payment due to a producer for wool on unshorn lambs shall be computed by applying the rate of payment to the liveweight of the lambs sold or moved to slaughter during the specified marketing year, reduced, on account of the purchase or importation by the producer of unshorn lambs, by the liveweight of such lambs reported in the application for payments, less the assessment due as specified in § 1468.15. In the case of the 1994 and 1995 marketing years, the payments shall be 75 percent and 50 percent, respectively, of the amount otherwise determined in accordance with this part. If the amount of the reduction exceeds the liveweight of the unshorn lambs sold or moved to slaughter during said marketing year, such excess liveweight shall be carried forward and used to reduce payments on the wool on unshorn lambs marketed or slaughtered or shorn wool marketed in the current or subsequent years.

* * * * *

Signed at Washington, DC, on September 19, 1994.

Bruce R. Weber,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–23610 Filed 9–22–94; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–0847]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendment.

SUMMARY: The Board is publishing technical amendments to Appendices A and B–2 of Regulation CC. The amendments will conform Appendix A to a realignment in Federal Reserve check processing regions by adding the routing numbers formerly assigned to the Buffalo check processing region to the Utica check processing region. The amendments will also make other minor corrections to headings in Appendices A and B–2.

EFFECTIVE DATE: October 11, 1994.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452–3625), or Stephanie Martin, Senior Attorney (202/452–3198), Legal Division. For the hearing impaired *only:* Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: The Board's Regulation CC (12 CFR part 229) implements the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*) and requires banks[1] to make funds deposited into transaction accounts available for withdrawal within specified time frames. The Act and regulation allow banks to place longer holds on nonlocal checks than on local checks. A nonlocal check is one for which the paying bank[2] is located in a different check processing region than the depositary bank. Regulation CC defines "check processing region" as "the geographical area served by an office of a Federal Reserve Bank for purposes of its check-processing activities."[3] Appendix A to Regulation CC lists the Federal Reserve check processing offices and the 4-digit routing number prefixes that are local to each office.

Effective October 11, 1994, the Federal Reserve Bank of New York will discontinue check processing at its Buffalo office and incorporate the Buffalo check processing region into the Utica check processing region. This consolidation is part of a larger effort by the Federal Reserve Bank of New York to achieve greater efficiency and cost savings in its check operations by consolidating systems, equipment, and operations. (In 1992 the Federal Reserve Bank of New York transferred its head office check processing operations to its Jericho office. The Board made corresponding changes to Appendix A of Regulation CC at that time. 58 FR 2, January 4, 1993.) Accordingly, the Board has amended the routing number list in Appendix A to reflect the Buffalo-Utica consolidation. The Board has also corrected mislabeled headings in Appendices A and B–2.

Although the substance of Regulation CC will be unaffected by the amendment to Appendix A, the consolidation of check processing regions may require some banks to adjust their internal procedures. For example, checks deposited in the former Buffalo region will now be considered local checks in the Utica region (and vice versa). Banks that now distinguish between the Buffalo and Utica regions in assigning availability will need to realign their internal operating systems to reflect the consolidation. In addition, banks in the former Buffalo region, now part of the Utica region, will be subject to the reduction of schedules for certain nonlocal checks, as listed in Appendix B–2.[4]

Banks also need to reflect any availability policy changes in their disclosures, as the availability for certain checks may be improved. Section 229.18(e) of Regulation CC provides that, in the case of an availability policy change that expedites the availability of funds, a bank shall send a notice of the change to holders of consumer accounts not later than 30 days after implementation.

The amendments adopted by the Board are technical amendments that reflect the realignment of Federal

[1] The term *bank* refers to any depository institution, including commercial banks, savings institutions, and credit unions.

[2] The *paying bank* is the bank by, at, or through which a check is payable. The *depositary bank* is the first bank to which a check is transferred.

[3] 12 CFR 229.2(m). The Act's definition is substantially similar (12 U.S.C. 4001(9)).

[4] Specifically, Appendix B–2 provides that nonlocal checks deposited in the Utica region bearing the 4-digit routing number prefixes "0210" and "0260" must be made available for withdrawal by the third business day following the banking day on which the checks were deposited.

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Reserve check processing regions and are required by the statutory and regulatory definitions of "check processing region."

Accordingly, 5 U.S.C. 553(b), requiring public comment, and 5 U.S.C. 553(d), requiring a delayed effective date, do not apply.

Final Regulatory Flexibility Analysis

The amendment will apply to all banks, regardless of size. There is no possible alternative rule for small banks, as "check processing region" is defined by the Expedited Funds Availability Act, which applies to all banks. The amendment will affect only those banks in the current Buffalo and Utica check processing regions that distinguish between checks drawn on paying banks located in those two regions for purposes of assigning availability. The Board expects that the majority of small institutions located in those two regions will be unaffected by the amendment.

List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 12 CFR part 229 is amended as follows:

PART 229—[AMENDED]

1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001 *et seq*

Appendix A to Part 229 [Amended]

2. In Appendix A to part 229, under the heading "SECOND FEDERAL RESERVE DISTRICT," the numbers appearing directly under the subheading "*Buffalo Branch*" are transferred in numerical order under the subheading "*Utico Office*", the subheading "*Buffalo Branch*" is removed, and the subheading "*Cranford Office*" is revised to read "*East Rutherford Office*".

Appendix B–2 to Part 229 [Amended]

3. In Appendix B–2 to part 229, the subheading "*Cronford*" is revised to read "*East Rutherford*".

By order of the Board of Governors of the Federal Reserve System, September 19, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–23556 Filed 9–22–94, 8.45 am]

BILLING CODE 6210–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708a

Mergers or Conversions of Federally-Insured Credit Unions: NCUA Approval

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: The NCUA is adopting a new rule, part 708a, to clarify that the NCUA Board must approve any merger or conversion of a federally insured credit union to any non credit union institution. The Board also requests additional comment on a number of issues related to the circumstances under which these transactions should be approved and related to protecting the interests of credit unions and their membership.

DATES: Effective Date: The interim final rule is effective September 23, 1994.

Comments: Comments must be postmarked or posted on the NCUA electronic bulletin board by November 22, 1994.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6553.

SUPPLEMENTARY INFORMATION: Part 708 of the NCUA Rules and Regulations sets forth procedures and requirements for mergers and for terminations or conversions of insurance. As presently drafted, part 708 addresses situations where an insured credit union drops NCUSIF insurance, either in connection with a merger or through a voluntary termination or conversion of insurance, but retains its status as a credit union. It does not, however, address situations where a credit union drops NCUSIF insurance in connection with a merger with or conversion into a savings bank or other non credit union institution. In response to recent solicitations by outside attorneys and consultants to credit unions encouraging them to merge or convert to a mutual savings bank or a stock institution, NCUA issued a proposal to amend part 708 in order to clarify that it applies to all merger and termination or conversion situations where the continuing institution is not insured by the National Credit Union Share Insurance Fund (NCUSIF). 59 FR 33702 (June 30, 1994).

Sixteen Comments were received in response to the proposal. Of the 14 that addressed the requirement that a federally-insured credit union contemplating merger with or conversion to a non credit union institution comply with part 708, 12 were in favor of the clarification. The two opposing commenters were a bank trade group and a state-chartered credit union. The bank trade group characterized the proposed rule as an effort to "increase the barriers to exiting the NCUA system." The other opposing commenter offered no rationale for their opposition. The favorable comments consistently stressed that the members need to be properly informed and that the NCUA needs to ensure that the merger or conversion would be in the members' interests. These commenters argued that there is a need to protect the interests of credit unions and their membership from the potentially self motivated interests of lawyers, consultants and credit union insiders.

The issues raised by conversions of credit unions to banks are new to the NCUA and require further study. The Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision (OTS) have recently addressed similar issues. On May 3, 1994, OTS published an interim final rule and on August 30, 1994, a final rule strengthening conversion standards and ensuring integrity in the conversion process. 59 FR 22725 and 59 FR 44615 respectively. The OTS experience has shown that not all conversions are done in the best interests of the customers.

> Given that mutual savings associations currently seeking to convert generally are well-capitalized, the OTS has become increasingly concerned that the association's management may be undertaking conversions for reasons other than the need for capital. Some thrift insiders may be sacrificing the interests of their associations and mutual account holders to acquire significant amounts of conversion stock and other benefits as cheaply as possible in the conversion process.
>
> 59 FR at 22729.

In view of these concerns, the OTS has adopted detailed rules concerning conversions from mutual to stock savings associations, designed to ensure fair evaluation and distribution of the stock of the resulting institution. 12 CFR § 563b. It is also interesting to note that the OTS has severely limited other transactions. For example, with very limited exceptions, the OTS rules require, in the case of a combination of a savings association and a non savings association institution (such as a credit union), that the resulting institution be a savings association. 12 CFR 546.2.

FDIC also recently proposed regulations to tighten control over the conversion process. 59 FR 30316 (June 13, 1994). FDIC concurred with the need for OTS's interim final rule and found it "necessary and appropriate to adopt regulations similar to OTS Revisions." 59 FR at 30318. FDIC was particularly concerned with the same type of insider abuses cited by OTS and found "it is necessary to reexamine the conversion process to explore whether existing economic value of a converting mutual institution can be better distributed directly to those who should receive it." 59 FR 30318.

> The issuance of stock options at the conversion price, rather than at the aftermarket price, which in recent years has been substantially higher than the conversion price, creates the impression that insider enrichment may be the main reason for the conversion. * * * In fact, it may be an inherent conflict of interest for management to decide to convert the bank to stock form when, as part of the proposed conversion, management will reap significant benefits.
>
> 59 FR at 30320.

NCUA cannot afford to ignore these warning signals. It is significant and not a coincidence that the recent increase in conversion solicitations from attorneys to credit unions is occurring at the same time the banking regulators are clamping down on institutions they regulate.

Interim Rule

The NCUA Board is issuing an interim final rule to immediately and clearly establish NCUA's jurisdiction over all conversions by insured credit unions. Upon further reflection, rather than place this rule in part 708 which focuses on converting from federal to private or no insurance, a new part 708a has been added to NCUA's Rules and Regulations. This interim rule sets forth the requirement that all mergers or conversions, involving one or more federally-insured credit union, including those where the resulting institution is not a credit union, must be approved by the NCUA Board. The rule also specifies that all notices are subject to NCUA approval. Further, current part 708 has been redesignated as part 708b to provide for a logical progression from general to a more specific regulation.

Request for Additional Comment

The more NCUA studies these transactions, the more apparent it becomes that the issues involved in converting to a mutual savings bank or a stock institution are more complicated than they appear on their face. A number of issues require further consideration and review. Questions of insider preferences were addressed in the proposed regulations. Insider benefits are clearly a major issue with respect to the motivations for and objectivity of the conversion process. NCUA questions whether directors and management officials involved in the conversion process should be allowed to receive any personal financial benefit from the transaction, other than that available to ordinary members.

Even assuming adequate safeguards against insider preferences, however, more basic questions exist concerning the authority for, and propriety of, a decision by the existing members of the credit union to convert the credit union to a stock corporation in order to distribute among themselves the credit union's equity and future earnings power. Some commenters have suggested that this is inherently unfair to the overall field of membership, that is, the present and future membership to be served by the credit union. In effect, these commenters have suggested that the current members and officials hold the credit union in trust for the benefit of the overall field of membership, including present and future members. They question whether existing members should be allowed to transform the credit union out of existence in order to personally "cash in" on its economic value.

Other issues also require further study if healthy credit unions are to be allowed to merge or convert to non-credit union status. Included are how to properly appraise the value of the credit union for purposes of issuing stock, how to fairly distribute the credit union's value among members/shareholders (which may include share deposits made in contemplation of merger), whether there should be a public comment period on the proposed transaction, whether a majority of eligible voting members must approve the proposed transaction (and if so, should majority be defined as a simple majority or a super majority and if a super majority, how should that be defined), and what post-merger or post-conversion controls are needed to protect against improper insider preferences after the transaction is completed.

Until the Board has fully addressed these issues and developed new specific regulatory standards and procedures for mergers and conversions to non-credit union status, it may, as a practical matter, be difficult to take final action on such transactions. Boards of directors of insured credit unions are urged to carefully consider whether it is a wise expenditure of credit union funds to pursue these transactions prior to the establishment of specific standards. Further, the NCUA Board reiterates its previously expressed intent to hold boards and management officials fully accountable for any waste of credit union resources that is motivated by the prospect of personal gain, rather than the best interests of the credit union and its members.

The Board hopes to issue permanent rules with specific standards and procedures within 60 to 90 days after the close of the comment period on this interim final rule. In developing those rules, the Board will consider the comments it received in response to its notice of proposed rulemaking and any comments received in response to this interim rule. In that connection, nine of the ten commenters previously addressing the issue of a uniform member notice supported the creation of a uniform notice. Also, two credit union trade groups on behalf of state regulators and one state league expressed concern that NCUA may attempt to usurp the state's power to make the final determination where a state-chartered credit union is involved. As expressed in the preamble to the notice of proposed rulemaking, "the Board values its positive working relationship with state credit union supervisors * * *" and "will continue to cooperate with state regulators in cases involving federally insured state chartered credit unions." NCUA remains committed to working with the state regulators to study the issues and develop any further rulemaking.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a potential number of small credit unions (primarily those under $1 million in assets). The final rule merely clarifies statutory authority. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

These amendments do not change the paperwork requirements.

Executive Order 12612

This rule applies to all federally insured credit unions. The rule clarifies existing statutory requirements of NCUA Board approval of certain transactions involving federally insured credit unions. The NCUA Board has determined that this amendment is not likely to have any direct effect on states,

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on the relationship between the states, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 708a

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on September 16, 1994.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the Preamble, pursuant to authority granted in Section 205(b)(1) of the Federal Credit Union Act (12 U.S.C. 1785(b)(1)), the Board is adding a new regulation in 12 CFR part 708a.

1. Part 708a is added to read as follows:

PART 708a—MERGERS OR CONVERSIONS OF FEDERALLY-INSURED CREDIT UNIONS: NCUA APPROVAL

Sec.
708a.1 NCUA Board approved.
708a.2 Notice to Members.

Authority: 12 U.S.C. 1766, 12 U.S.C. 1785.

§ 708a.1 NCUA Board approval.

Pursuant to Section 205(b)(1) of the Federal Credit Union Act, NCUA Board approval is required in advance of any merger, consolidation, insurance conversion, transfer of liabilities or other transaction whereby a federally-insured credit union transfers all or any part of its members' accounts to any institution that is not NCUSIF-insured or assumes responsibility for all or any portion of accounts of an institution that is not NCUSIF-insured. In transactions involving federally-insured state chartered credit unions, the Board will coordinate with the appropriate state regulatory authority.

§ 708a.2 Notice to members.

All notices to members will be preapproved by the NCUA Board Procedures and forms for the transactions where the remaining institution continues to be a credit union—mergers involving both federally-insured credit unions and non federally-insured credit unions and conversion from federal insurance to nonfederal insurance—are set forth in Part 708b, Subparts A, B and C.

Part 708 [Redesignated as Part 708b]

2. Part 708 is redesignated as part 708b.

[FR Doc. 94-23546 Filed 9-22-94; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. 94-ASW-2; Special Condition 29-ASW-14]

Special Condition: Eurocopter Deutschland Model MBB-BK 117 C-1 Helicopter, Electronic Flight Instrument System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special condition; request for comments.

SUMMARY: This special condition is issued for the Eurocopter Deutschland Model MBB-BK 117 C-1 helicopter modified by Omniflight Helicopter. This helicopter will have a novel or unusual design feature associated with the Electronic Flight Instrument System. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these critical function systems from the effects of external high intensity radiated fields (HIRF). This special condition contains additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

DATES: The effective date of this special condition is September 23, 1994. Comments must be received on or before November 22, 1994.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attn: Rules Docket No. 94-ASW-2, Fort Worth, Texas 76193-0007, or delivered in duplicate to the Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments must be marked Docket No. 94-ASW-2. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 9 a.m. and 3 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCallister, FAA, Rotorcraft Directorate, Policy and Procedures Group, Fort Worth, Texas 76193-0112; telephone (817) 222-5121.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delay delivery of the affected helicopter. These notice and comment procedures are also considered unnecessary since the public has been previously provided with a substantial number of opportunities to comment on substantially identical special conditions, and their comments have been fully considered. Therefore, good cause exists for making this special condition effective upon issuance.

Comments Invited

Although this final special condition was not subject to notice and opportunity for prior public comment, comments are invited on this final special condition. Interested persons are invited to comment on this final special condition by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered. This special condition may be changed in light of comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94-ASW-2." The postcard will be date and time stamped and returned to the commenter.

Background

On May 6, 1994, Omniflight Helicopter, Dallas, Texas, applied for a Supplemental Type Certificate for installation of an Electronic Flight Instrument System in a Eurocopter Deutschland Model MBB-BK 117 C-1 helicopter. This is a 7 (10 with approved kit) passenger, twin engine, 7,385 pound transport category helicopter.

Type Certification Basis

The certification basis established for the Eurocopter Deutschland Model MBB-BK 117 C-1 helicopter includes: 14 CFR 21.29 and 14 CFR part 29 effective February 1, 1965, Amendments 29-1 through 29-16; in addition, the Airworthiness Criteria for helicopter instrument flight rules (IFR) certification dated December 15, 1978, and Equivalent Safety Findings for Federal Aviation Regulations (FAR) §§ 29.175(b), 29.811(h)(i), and 29.1151(b).

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for this helicopter because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49 and become part of the type certification basis in accordance with 14 CFR 21.101(b)(2). Provision is made for the public comment period in 14 CFR 11.28.

Discussion

The Eurocopter Deutschland Model MBB-BK 117 C-1 helicopter, at the time of the application for modification by OmniFlight Helicopter, was identified as having modifications that incorporate one and possibly more electrical, electronic, or combination of electrical and electronic (electrical/electronic) systems that will perform functions critical to the continued safe flight and landing of the helicopters. The electronic flight instrument system performs the attitude display function. The display of attitude, altitude, and airspeed is critical to the continued safe flight and landing of the helicopters for IFR operations in instrument meteorological conditions. After the design is finalized, Eurocopter Deutschland will provide the FAA with a preliminary hazard analysis that will identify any other critical functions performed by the electrical/electronic systems that are critical to the continued safe flight and landing of the helicopters.

Recent advances in technology have prompted the design of aircraft that include advanced electrical and electronic systems that perform functions required for continued safe flight and landing. However, these advanced systems respond to the transient effects of induced electrical current and voltage caused by the high intensity radiated fields (HIRF) incident on the external surface of the helicopters. These induced transient currents and voltages can degrade the performance of the electrical/electronic systems by damaging the components or by upsetting the systems' functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of FAR § 29.1309(a). Higher energy levels radiate from operational transmitters currently used for radar, radio, and television; and the number of transmitters has increased significantly.

Existing aircraft certification requirements are inappropriate in view of these technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electrical/electronic systems when they were exposed to electromagnetic radiation.

The combined effects of technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of the electrical and electronic systems required for the continued safe flight and landing of the helicopters. Effective measures to protect these helicopters against the adverse effects of exposure to HIRF will be provided by the design and installation of these systems. The following primary factors contributed to the current conditions: (1) Increased use of sensitive electronics that perform critical functions, (2) reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials, (3) adverse service experience of military aircraft using these technologies, and (4) an increase in the number and power of radio frequency emitters and the expected increase in the future.

The FAA recognizes the need for aircraft certification standards to keep pace with technological developments and a changing environment and in 1986 initiated a high priority program to: (1) Determine and define electromagnetic energy levels; (2) develop guidance material for design, test, and analysis; and (3) prescribe and promulgate regulatory standards.

The FAA participated with industry and airworthiness authorities of other countries to develop internationally recognized standards for certification.

The FAA and airworthiness authorities of other countries have identified a level of HIRF environment that a helicopter could be exposed to during IFR operations. While the HIRF requirements are being finalized, the FAA is adopting a special condition for the certification of aircraft that employ electrical/electronic systems that perform critical functions. The accepted maximum energy levels that civilian helicopter system installations must withstand for safe operation are based on surveys and analysis of existing radio frequency emitters. This special condition will require the helicopters' electrical/electronic systems and associated wiring to be protected from these energy levels. These external threat levels are believed to represent the worst-case exposure for a helicopter operating under IFR.

The HIRF environment specified in this special condition is based on many critical assumptions. With the exception of takeoff and landing at an airport, one of these assumptions is that the aircraft would be not less than 500 feet above ground level (AGL). Helicopters operating under visual flight rules (VFR) routinely operate at less than 500 feet AGL and perform takeoffs and landings at locations other than controlled airports. Therefore, it would be expected that the HIRF environment experienced by a helicopter operating VFR may exceed the defined environment by 100 percent or more.

This special condition will require the systems that perform critical functions, as installed in the aircraft, to meet certain standards based on either a defined HIRF environment or a fixed value using laboratory tests.

The applicant may demonstrate that the operation and operational capabilities of the installed electrical/electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the defined HIRF environment. The FAA has determined that the environment defined in Table 1 is acceptable for critical functions in helicopters operating at or above 500 feet AGL. For critical functions of helicopters operating at less than 500 feet AGL, additional factors must be considered.

The applicant may also demonstrate by a laboratory test that the electrical/electronic systems that perform critical functions can withstand a peak electromagnetic field strength in a frequency range of 10 KH_z to 18 GH_z. If a laboratory test is used to show compliance with the defined HIRF environment, no credit will be given for signal attenuation due to installation. A level of 100 volts per meter (v/m) and other considerations, such as an alternate technology backup that is immune to HIRF, are appropriate for critical functions during IFR operations. A level of 200 v/m and further considerations, such as an alternate technology backup that is immune to HIRF, are more appropriate for critical functions during VFR operations. Applicants must perform a preliminary hazard analysis to identify electrical/electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the helicopters. The systems identified by the hazard analysis as performing

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critical functions are required to have HIRF protection.

A system may perform both critical and noncritical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indications. HIRF requirements would apply only to the systems that perform critical functions.

Compliance with HIRF requirements will be demonstrated by tests, analysis, models, similarity with existing systems, or a combination of these methods. The two basic options of either testing the rotorcraft to the defined environment or laboratory testing may not be combined. The laboratory test allows some frequency areas to be under tested and requires other areas to have some safety margin when compared to the defined environment. The areas required to have some safety margin are those shown, by past testing, to exhibit greater susceptibility to adverse effects from HIRF; and laboratory tests, in general, do not accurately represent the aircraft installation. Service experience alone will not be acceptable since such experience in normal flight operations may not include an exposure to HIRF. Reliance on a system with similar design features for redundancy, as a means of protection against the effects of external HIRF, is generally insufficient because all elements of a redundant system are likely to be concurrently exposed to the radiated fields.

The modulation that represents the signal most likely to disrupt the operation of the system under test, based on its design characteristics, should be selected. For example, flight control systems may be susceptible to 3 H, square wave modulation while the video signals for electronic display systems may be susceptible to 400 H, sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KH, sine wave with 80 percent depth of modulation in the frequency range from 10 KH, to 400 MH, and 1 KH, square wave with greater than 90 percent depth of modulation from 400 MH, to 18 GH,. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable system performance would be attained by demonstrating that the critical function components of the system under consideration continue to perform their intended function during and after exposure to required electromagnetic fields. Deviations from system specifications may be acceptable but must be independently assessed by the FAA on a case-by-case basis.

TABLE 1.—FIELD STRENGTH VOLTS METER

Frequency	Peak	Average
10–100 KH,	50	50
100–500	60	60
500–2000	70	70
2–30 MH,	200	200
30–100	30	30
100–200	150	33
200–400	70	70
400–700	4020	935
700–1000	1700	170
1–2 GH,	5000	990
2–4	6680	840
4–6	6850	310
6–8	3600	670
8–12	3500	1270
12–18	3500	360
18–40	2100	750

Conclusion

This action affects only certain unusual or novel design features on one model of helicopter. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the affected helicopter.

The substance of this special condition for similar installations in a variety of helicopters has been subjected to the notice and comment procedure and has been finalized without substantive change. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the helicopter, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impractical, and good cause exists for adopting this special condition immediately. Therefore, this special condition is being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to prior opportunities for comment.

List of Subjects in 14 CFR Part 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citations for this special condition are as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g).

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the Eurocopter Deutschland Model MBB–BK 117 C–1 helicopter:

Protection for Electricol and Electronic Systems From High Intensity Radiated Fields.

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on September 13, 1994.

A.J. Merrill,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–23568 Filed 9–22–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 94–SW–07–AD; Amendment 39–8931; AD 94–20–03]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 206A, 206B, 206B–1, 206L, 206L–1, 206L–3, and 206L–4 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) applicable to Bell Helicopter Textron, Inc. (BHTI) Model 206A, 206B, 206B–1, 206L, 206L–1, 206L–3, and 206L–4 helicopters, that currently requires an inspection of the main rotor hub trunnion (trunnion) for a mislocated master spline and replacement of any trunnion that has a mislocated master spline. This amendment is prompted by a report that certain main rotor hub trunnions (trunnions) were manufactured with a mislocated master spline. The actions specified by this AD are intended to identify and require replacement of any trunnion with a mislocated master spline to prevent pitch link misalignment, altered cyclic stick control position, loss of the main rotor system, and subsequent loss of control of the helicopter.

DATES: Effective October 11, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 11, 1994.

Comments for inclusion in the Rules Docket must be received on or before November 7, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–07–AD, 2601 Meacham Boulevard, Room 663, Fort Worth, Texas 76137–4298.

The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Boulevard, Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Miles, Aerospace Engineer, Rotorcraft Certification Office, FAA, Southwest Region, Rotorcraft Directorate, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298, telephone (817) 222–5172, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION: On November 18, 1993, the FAA issued Priority Letter AD 93–22–11, applicable to Bell Helicopter Textron, Inc. (BHTI) Model 206A, 206B, 206B–1, 206L, 206L–1, 206L–3, and 206L–4 helicopters, to require an inspection of the main rotor hub trunnion (trunnion), part number (P/N) 206–011–113–103 and P/N 206–011–120–103, for proper positioning of the trunnion master spline and replacement of any trunnion that had a mislocated master spline. That action was prompted by a manufacturer's report that certain trunnions were manufactured with a mislocated master spline. The manufacturer's data showed that when the trunnion master spline is mislocated, the main rotor mast does not align properly, so the operator's input to the cyclic stick does not produce the desired result in the main rotor system. After reviewing the manufacturer's data, the FAA determined that any mislocated trunnion master spline creates an unsafe condition. This condition, if not corrected, could result in pitch link misalignment, altered cyclic stick control position, loss of the main rotor system, and subsequent loss of control of the helicopter.

Since the issuance of that AD, BHTI has issued a revised Alert Service Bulletin (ASB) for Model 206L, 206L–1, 206L–3, and 206L–4 helicopters. ASB 206L–93–90, Revision A, dated November 9, 1993, changed Figure 3 to show that the center line of the trunnion should go through the crown rather than the inset of the master spline. ASB 206–93–75, dated October 19, 1993, which is applicable to Model 206A, 206B, and 206B–1 helicopters, has a correct Figure 3 showing that the center line of the trunnion should go through the inset rather than the crown of the master spline.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTI Model 206 helicopters of this same type design, this AD supersedes Priority Letter AD 93–22–11 to require, within the next 50 hours time-in-service (TIS) or 90 calendar days after the effective date of this AD, whichever occurs first, an inspection of the trunnion for proper positioning of the trunnion master spline, and replacement of any trunnion that has a mislocated master spline. The actions are required to be accomplished in accordance with the BHTI ASB 206–93–75, dated October 19, 1993, for Model 206A, 206B, and 206B–1 helicopters, and BHTI ASB 206L–93–90, Revision A, dated November 9, 1993, for Model 206L, 206L–1, 206L–3, and 206L–4 helicopters, described previously. Due to the criticalness of correct alignment of the trunnion master spline and a compliance time that is short for some operators of frequently-used helicopters, this rule must be issued immediately to correct an unsafe condition in aircraft.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–SW–07–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

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Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD), Amendment 39–9031, to read as follows:

AD 94–20–03 Bell Helicopter Textron, Inc., (BHTI): Amendment 39–9031. Docket Number 94–SW–07–AD. Supersedes Priority Letter AD 93–22–11, issued November 18, 1993.

Applicability: Model 206A, 206B, 206B–1, 206L, 206L–1, 206L–3, and 206L–4 helicopters, equipped with main rotor hub trunnion (trunnion), part number (P/N) 206–011–113–103 or P/N 206–011–120–103, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent pitch link misalignment, altered cyclic stick control position, loss of the main rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) or 90 calendar days after the effective date of this airworthiness directive (AD), whichever occurs first, inspect the trunnion master spline for proper positioning in accordance with Parts I and II of the Accomplishment Instructions contained in BHTI Alert Service Bulletin 206–93–75, dated October 19, 1993, for Model 206A, 206B, and 206B–1 helicopters, and BHTI Alert Service Bulletin 206L–93–90, Revision A, dated November 9, 1993, for Model 206L, 206L–1, 206L–3, and 206L–4 helicopters.

(b) If the master spline is not in the proper position, before further flight remove and replace the trunnion with an airworthy trunnion in accordance with the provisions of the applicable maintenance manual.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished provided there is no interference between the pitch link clevices and the swashplate outer ring or pitch horn lugs, through full motion of the cyclic and collective controls.

(e) The inspection and replacement, if necessary, shall be done in accordance with BHTI Alert Service Bulletin No. 206–93–75, dated October 19, 1993, and Alert Service Bulletin No. 206L–93–90, Revision A, dated November 9, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Boulevard, Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 11, 1994.

Issued in Fort Worth, Texas, on September 16, 1994.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–23441 Filed 9–22–94; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by publishing new ranges of comparability to be used on required labels for storage-type water heaters and on required labels and in required fact sheets (or directories) for furnaces and boilers.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580 (202–326–3035).

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA) [1] requires the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances. Storage-type water heaters, furnaces, and boilers are included in those categories. The statute also requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule covering seven of the thirteen appliance categories that were then covered by DOE test procedures: refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces (this category includes boilers).[2] The Commission has extended the coverage of the Appliance Labeling Rule ("Rule") four times since it originally issued the Rule: in 1987 (central air conditioners, heat pumps, and pulse combustion and condensing furnaces); [3] 1989 (fluorescent lamp ballasts); [4] and, 1993 (certain plumbing products [5] and certain lighting products [6]). On July 1, 1994, the Commission amended the Rule to make certain improvements, including making the label format more "user-friendly," changing the energy usage descriptors required on labels, and adopting new product sub-categories for ranges of comparability purposes.[7]

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report annually by specified dates for each product type.[8] These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency rating for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information in line with these changes, the Commission is empowered, under Section 305.10 of the Rule, to publish new ranges (but not more than annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior ranges remain in effect for the next year.

The annual submissions of data for storage-type water heaters, furnaces, and boilers have been made and have been analyzed by the Commission. These submissions of data were made by the affected manufacturers, in conjunction with the Gas Appliance Manufacturers Association (an industry trade association), in voluntary compliance with the requirements for new energy usage descriptors and sub-categories that were contained in the amendments published on July 1, 1994. These ranges will supersede the current ranges for these product categories, which were published on September 13, 1991 (storage-type water heaters) [9] and March 1, 1990 (furnaces and boilers).[10]

In consideration of the foregoing, the Commission revises Appendices D1–D3 and G1–G8 of its Appliance Labeling Rule by publishing the following ranges of comparability for use in required disclosures (including labeling) for storage-type water heaters, furnaces, and boilers manufactured on or after December 28, 1994.

[1] Pub. L. 94–163, 89 Stat. 871, 42 U.S.C. 6294 (Dec. 22, 1975).

[2] 44 FR 66466, 16 CFR Part 305 (Nov. 19, 1979). The Statement of Basis and Purpose for the final Rule describes the reasons the Commission declined to cover the other categories of covered products. *Id.* at 66467–69.

[3] 52 FR 46888 (Dec. 10, 1987).

[4] 54 FR 28031 (July 5, 1989).

[5] 58 FR 54955 (Oct. 25, 1993).

[6] 59 FR 25176 (May 13, 1993).

[7] 59 FR 34014.

[8] Reports for storage-type water heaters, furnaces, and boilers are due May 1.

[9] 56 FR 46524.

[10] 55 FR 7302.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Appendices D1–D3 to Part 305 are revised to read as follows:

Appendix D1 to Part 305—Storage-Type Water Heater—Gas

Range Information:

Capacity	Range of estimated annual energy consumption (therms/yr. and gallons/yr.)			
	Natural gas therms/yr.		Propane gallons/yr.	
First hour rating	Low	High	Low	High
Less than 21	(*)	(*)	(*)	(*)
21 to 24	(*)	(*)	(*)	(*)
25 to 29	(*)	(*)	(*)	(*)
30 to 34	(*)	(*)	(*)	(*)
35 to 40	(*)	(*)	(*)	(*)
41 to 47	242	263	265	284
48 to 55	235	278	257	304
56 to 64	238	273	262	299
65 to 74	215	283	249	310
75 to 86	220	288	266	317
87 to 99	255	295	279	310
100 to 114	268	300	294	329
115 to 131	288	288	317	336
Over 131	288	349	317	383

* No data submitted.

Appendix D2 to Part 305—Storage-Type Water Heater—Electric

Range Information:

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
First hour rating	Low	High
Less than 21	4672	4672
21 to 24	4769	4769
25 to 29	4879	4879
30 to 34	4672	4939
35 to 40	4575	4939
41 to 47	4575	5109
48 to 55	4624	5109
56 to 64	4624	5109
65 to 74	4624	5231
75 to 86	4624	5352
87 to 99	4624	5352
100 to 114	4672	5631
115 to 131	5109	5704
Over 131	(*)	(*)

* No data submitted.

Appendix D3 to Part 305—Storage-Type Water Heater—Oil

Range Information.

Capacity	Range of estimated annual energy consumption (gallons/yr.)	
First hour rating	Low	High
Less than 65	(*)	(*)
65 to 74	(*)	(*)
75 to 86	(*)	(*)
87 to 99	(*)	(*)
100 to 114	177	200
115 to 131	171	212
Over 131	180	180

* No data submitted.

3. Appendix G1 to part 305 is amended by revising the first table to read as follows:

Appendix G1 to Part 305—Furnaces—Gas

1. Range Information:

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Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	78	96.6

* * * * *

4. Appendix G2 to part 305 is amended by revising the first table to read as follows:

Appendix G2 to Part 305—Furnaces—Electric

1. Range Information:

Manufacturer's rated heating capacities (Btu's/hr.)	Ranges of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	100	100

* * * * *

5. Appendix G3 to part 305 is amended by revising the first table to read as follows:

Appendix G3 to Part 305—Furnaces—Oil

1. Range Information:

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	78	86.7

* * * * *

6. Appendix G4 to part 305 is amended by revising the first table to read as follows:

Appendix G4 to Part 305—Mobile Home Furnaces

1. Range Information:

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	75	83.2

* * * * *

7. Appendix G5 to part 305 is amended by revising the first table to read as follows:

Appendix G5 to Part 305—Boilers—Gas (Except Steam)

1 Range Information:

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	80	90.6

* * * * *

8. Appendix G6 to part 305 is amended by revising the first table to read as follows:

Appendix G6 to Part 305—Boilers—Gas (Steam)

1. Range Information:

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	75	83.5

* * * * *

9. Appendix G7 to part 305 is amended by revising the first table to read as follows:

Appendix G7 to Part 305—Boilers—Oil

1. Range Information:

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	80	88.7

* * * * *

10. Appendix G8 to part 305 is amended by revising the first table to read as follows:

Appendix G8 to Part 305—Boilers—Electric

1. Range Information:

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	100	100

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94-23577 Filed 9-22-94; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 306

Automotive Fuel Ratings, Certification and Posting

CFR Correction

In Title 16 of the Code of Federal Regulations, parts 150 to 999, revised as of January 1, 1994, make the following corrections:

1. On page 228, in § 306.6, in the second line of paragraph (a), the word "or" is changed to "of," and in the first line of paragraph (b), the word "other" is inserted between the words "or" and "written."

2. On page 228, in § 306.8, in the fifth line of paragraph (a), the word "your" is changed to "you."

3. On page 229, in § 306.10, in the fifth line of paragraph (b)(2), the zip code "20480" is changed to "20580."

[FR Doc. 94-99999 Filed 9-22-94; 8:45 am]

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 230, 239, 270, and 274

[Release Nos. 33-7083A; IC-20486A; File No. S7-26-93]

RIN 3235-AF96

Post-Effective Amendments to Investment Company Registration Statements; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correction to final rules.

SUMMARY: This document contains corrections to the release adopting rule and form amendments to rule 485 under the Securities Act of 1933 that was published Wednesday, August 24, 1994 (59 FR 43460). The amendments related to filing post-effective amendments to investment company registration statements.

EFFECTIVE DATE: The amendments will become effective on October 11, 1994.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Berman, Deputy Office Chief, (202) 942-0721, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

Need for Correction

Certain form amendments printed in the release contained numbering errors in referring to sections of rule 485. In addition, the amended text of Form N-4 contained references to provisions of rule 485 that are not applicable to funds that use the form and thus should be deleted.

Correction of Publication

The publication on August 24, 1994 of the final rule and form amendments, which was the subject of FR Doc. 94-20624, is corrected as follows:

Form S-6

1. On page 43468 in the first column, in line six of the paragraph numbered 13, remove "(a)(i)" and add in its place "(a)(1)".

Form N-1A

2. On page 43468 in the first column, in lines eight and ten under the heading FORM N-1A, remove "(a)(i)" and add in its place "(a)(1)".

3. On page 43468 in the first column, in lines twelve and fourteen under the heading FORM N-1A, remove "(a)(ii)" and add in its place "(a)(2)".

Form N-3

4. On page 43468 in the third column, in lines eight and ten under the heading FORM N-3, remove "(a)(i)" and add in its place "(a)(1)".

5. On page 43468 in the third column, in lines twelve and fourteen under the heading FORM N-3, remove "(a)(ii)" and add in its place "(a)(2)".

Form N-4

6. On page 43468 in the third column, in lines eight and ten under the heading FORM N-4, remove "(a)(i)" and add in its place "(a)(1)".

7. On page 43468 in the third column, remove the text in lines eleven through fourteen under the heading FORM N-4.

Dated: September 19, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94-23537 Filed 9-22-94; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Determination of Taxable Income in Specific Situations

CFR Correction

In Title 26 of the Code of Federal Regulations, part 1, § § 1.441 to 1.500, revised as of April 1, 1994, on page 475, a portion of paragraph (a)(1)(iii)(E)*(3), Example (ii)* through paragraph (a)(4) *Example 3* of § 1.482-2T was inadvertently omitted and as corrected should read as follows:

§ 1.482-2T Determination of taxable income in specific situations (temporary).

* * * * *

(ii) *Average collection period.* X's total sales within the same product group to unrelated persons within country Z for the period are $6,200,000. The average receivables balance for the period is $2,805,430 ($33,665,160/12). The average collection period in whole days is determined as follows:

$$\text{Receivables turnover rate} = \frac{\$6,200,000}{\$2,805,430} = 2.21$$

$$\text{Average collection period} = \frac{365}{2.21} = 165.16 \text{ days.}$$

rounded to the nearest whole day=165 days.

(iii) *Interest-free period.* Accordingly, for intercompany trade receivables incurred by X during Y's 1988 calendar taxable year attributable to the purchase of property from Y for resale to unrelated persons located in country Z and included in the product group, X may use an interest-free period of 175 days (165 days in the average collection period plus 10 days, but not in excess of a maximum of 183 days). All other intercompany trade receivables incurred by X are subject to the interest-free periods described in paragraphs (a)(1)(iii) (B), (C), or (D), whichever are applicable. If X makes sales in other foreign countries in addition to country Z or makes sales of property in more than one product group in any foreign country, separate computations of X's average collection period, by product group within each country, are required in order for X and Y to determine an interest-free period for such product groups in such foreign countries under this paragraph (a)(1)(iii)(E).

(iv) *Payment; book entries.* (A) Except as otherwise provided in this paragraph (a)(1)(iv), in determining the period of time for which an amount owed by one member of the group to another member is outstanding, payments or other credits to an account are considered to be applied against the earliest amount outstanding, that is, payments or credits are applied against amounts in a first-in, first-out (FIFO) order. Thus, tracing payments to individual intercompany trade receivables is generally not required in order to determine whether a particular intercompany trade receivable has been paid within the applicable interest-free period determined under paragraph (a)(1)(iii) of this section. The application of this paragraph (a)(1)(iv)(A) may be illustrated by the following example:

Example—(i) Facts. X and Y are members of a group of controlled entities within the meaning of section 482. Assume that the balance of intercompany trade receivables owed by X to Y on June 1 is $100, and that all of the $100 balance represents amounts incurred by X to Y during the month of May During the month of June X incurs an additional $200 of intercompany trade receivables to Y. Assume that on July 15, $60 is properly credited against X's intercompany account to Y, and that $240 is properly credited against the intercompany account on August 31. Assume that under paragraph (a)(1)(iii)(B) of this section interest must be charged on X's intercompany trade receivables to Y beginning with the first day of the third calendar month following the month the intercompany trade receivables arise, and that no alternative interest-free period applies. Thus, the interest-free period for intercompany trade receivables incurred during the month of May ends on July 31, and the interest-free period for intercompany trade receivables incurred during the month of June ends on August 31.

(ii) Application of payments. Using a FIFO payment order, the aggregate payments of $300 are applied first to the opening June balance, and then to the additional amounts incurred during the month of June. With respect to X's June opening balance of $100, no interest is required to be accrued on $60 of such balance paid by X on July 15, because such portion was paid within its interest-free period. Interest for 31 days, from August 1 to August 31 inclusive, is required to be accrued on the $40 portion of the opening balance not paid until August 31. No interest is required to be accrued on the $200 of intercompany trade receivables X incurred to Y during June because the $240 credited on August 31, after eliminating the $40 of indebtedness remaining from periods before June, also eliminated the $20 incurred by X during June prior to the end of the interest-free period for that amount. The amount of interest incurred by X to Y on the $40 amount during August creates bona fide indebtedness between controlled entities and is subject to the provisions of paragraph (a)(1)(iii)(A) of this section without regard to any of the exceptions contained in paragraphs (a)(1)(iii) (B) through (E) of this section.

(B) Notwithstanding the first-in, first-out payment application rule described in paragraph (a)(1)(iv)(A) of this section, the taxpayer may apply payments or credits against amounts owed in some other order on its books in accordance with an agreement or understanding of the related parties if the taxpayer can demonstrate that either it or others in its industry, as a regular trade practice, enter into such agreements or understandings in the case of similar balances with unrelated parties.

(2) *Arm's length interest rate*—(i) *In general.* For purposes of section 482 and paragraph (a) of this section, an arm's length rate of interest shall be a rate of interest which was charged, or would have been charged, at the time the indebtedness arose, in independent transactions with or between unrelated parties under similar circumstances. All relevant factors shall be considered, including the principal amount and duration of the loan, the security

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involved, the credit standing of the borrower, and the interest rate prevailing at the situs of the lender or creditor for comparable loans between unrelated parties.

(ii) *Funds obtained at situs of borrower.* Notwithstanding the other provisions of paragraph (a)(2) of this section, if the loan or advance represents the proceeds of a loan obtained by the lender at the situs of the borrower, the arm's length rate for any taxable year shall be equal to the rate actually paid by the lender increased by an amount which reflects the costs or deductions incurred by the lender in borrowing such amounts and making such loans, unless the taxpayer establishes a more appropriate rate under the standards set forth in paragraph (a)(2)(i) of this section.

(iii) *Safe haven interest rates for certain loans and advances made after May 8, 1986*—(A) *Applicability*—(*1*) *General rule.* Except as otherwise provided in paragraph (a)(2) of this section, paragraph (a)(2)(iii)(B) of this section applies with respect to the rate of interest charged and to the amount of interest paid or accrued in any taxable year—

(*i*) Under a term loan or advance between members of a group of controlled entities where (except as provided in paragraph (a)(2)(iii)(A)(*2*)(*ii*)) of this section the loan or advance is entered into after May 8, 1986, and

(*ii*) After May 8, 1986, under a demand loan or advance between such controlled entities.

(*2*) *Grandfather rule for existing loans.* The safe haven rates prescribed in paragraph (a)(2)(iii)(B) of this section shall not apply, and the safe haven rates prescribed in 26 CFR § 1.482–2(a)(2)(iii) (revised as of April 1, 1985) shall apply to—

(i) Term loans or advances made before May 9, 1986, and

(ii) Term loans or advances made before August 7, 1986, pursuant to a binding written contract entered into before May 9, 1986.

(B) *Safe haven interest rate based on applicable Federal rate.* Except as otherwise provided in this parngraph (a)(2), in the case of a loan or advance between members of a group of controlled entities, an arm's length rate of interest referred to in paragraph (a)(2)(i) of this section shall be for purposes of Chapter 1 of the Code—

(*1*) The rate of interest actually charged if that rate is—

(i) Not less than 100 percent of the applicable Federal rate (the "lower limit"), and

(ii) Not greater than 130 percent of the applicable Federal rate (the "upper limit"), or

(*2*) If either no interest is charged or if the rate of interest charged is less than the lower limit, then an arm's length rate of interest shall be equal to the lower limit, compounded semiannually, or

(*3*) If the rate of interest charged is greater than the upper limit, then an arm's length rate of interest shall be equal to the upper limit, compounded semiannually,

unless the taxpayer establishes a more appropriate compound rate of interest under paragraph (a)(2)(i) of this section. However, if the compound rate of interest actually charged is greater than the upper limit and less than the rate determined under paragraph (a)(2)(i) of this section, or if the compound rate actually charged is less than the lower limit and greater than the rate determined under paragraph (a)(2)(i) of this section, then the compound rate actually charged shall be deemed to be an arm's length rate under paragraph (a)(2)(i) of this section. In the case of any sale-leaseback described in section 1274(e), the lower limit shall be 110 percent of the applicable Federal rate, compounded semiannually.

(C) *Applicable Federal rate.* For purposes of paragraph (a)(2)(iii)(B) of this section, the term "applicable Federal rate" means, in the case of a loan or advance to which this section applies and having a term of—

(*1*) Not over 3 years, the Federal short-term rate.

(*2*) Over 3 years but not over 9 years, the Federal mid-term rate, or

(*3*) Over 9 years, the Federal long-term rate,

as determined under section 1274(d) in effect on the date such loan or advance is made. In the case of any sale or exchange between controlled entities, the lower limit shall be the lowest of the applicable Federal rates in effect for any month in the 3-calendar-month period ending with the first calendar month in which there is a binding written contract in effect for such sale or exchange (the "lowest 3-month rate", as defined in section 1274(d)(2)). In the case of a demand loan or advance to which this section applies, the "applicable Federal rate" means the Federal short-term rate determined under section 1274(d) (determined without regard to the lowest 3-month short-term rate determined under section 1274(d)(2)) in effect for each day on which any amount of such loan or advance (including unpaid accrued interest determined under paragraph (a)(2) of this section) is outstanding.

(D) *Lender in business of making loans.* If the lender in a loan or advance transaction to which paragraph (a)(2) of this section applies is regularly engaged in the trade or business or making loans or advances to unrelated parties, the safe haven rates prescribed in paragraph (a)(2)(iii)(B) of this section shall not apply, and the arm's length interest rate to be used shall be determined under the standards described in paragraph (a)(2)(i) of this section, including reference to the interest rates charged in such trade or business by the lender on loans or advances of a similar type made to unrelated parties at and about the time the loan or advance to which paragraph (a)(2) of this section applies was made.

(E) *Foreign currency loans.* The safe haven interest rates prescribed in paragraph (a)(2)(iii)(B) of this section do not apply to any loan or advance the principal or interest of which is expressed in a currency other than U.S. dollars.

(3) *Coordination with interest adjustments required under certain other Code sections.* If the stated rate of interest on the stated principal amount of a loan or advance between controlled entities is subject to adjustment under section 482 and is also subject to adjustment under any other section of the Code (for example, section 467, 483, 1274 or 7872), section 482 and paragraph (a) of this section may be applied to such loan or advance in addition to such other Code section. After the enactment of the Tax Reform Act of 1984, Pub. L. 98–369, and the enactment of Pub. L. 99–121, such other Code sections include sections 467, 483, 1274 and 7872. The order in which the different provisions shall be applied is as follows:

(i) First, the substance of the transaction shall be determined; for this purpose, all the relevant facts and circumstances shall be considered and any law or rule of law (assignment of income, step transaction, etc.) may apply. Only the rate of interest with respect to the stated principal amount of the bona fide indebtedness (within the meaning of paragraph (a)(1) of this section), if any, shall be subject to adjustment under section 482, paragraph (a) of this section, and any other Code section.

(ii) Second, the other Code section shall be applied to the loan or advance to determine whether any amount other than stated interest is to be treated as interest, and if so, to determine such amount according to the provisions of such other Code section.

(iii) Third, whether or not the other Code section applies to adjust the amounts treated as interest under such loan or advance, section 482 and paragraph (a) of this section may then be applied by the district director to determine whether the rate of interest charged on the loan or advance, as adjusted by any other Code section, is greater or less than an arm's length rate of interest, and if so, to make appropriate allocations to reflect an arm's length rate of interest.

(iv) Fourth, section 482 and paragraphs (b) through (e) of this section, if applicable, may be applied by the district director to make any appropriate allocations, other than an interest rate adjustment, to reflect an arm's length transaction based upon the principal amount of the loan or advance and the interest rate as adjusted under paragraph (a)(3) (i), (ii) or (iii) of this section. For example, assume that two commonly controlled taxpayers enter into a deferred payment sale of tangible property and no interest is provided, and assume also that section 483 is applied to treat a portion of the stated sales price as interest, thereby reducing the stated sales price. If after this recharacterization of a portion of the stated sales price as interest, the recomputed sales price does not reflect an arm's length sales price under the principles of paragraph (e) of this section, the district director may make other appropriate allocations (other than an interest rate adjustment) to reflect an arm's length sales price.

(4) *Examples.* The principles of paragraph (a)(3) of this section may be illustrated by the following examples:

Example (1). An individual, A, transfers $20,000 to a corporation controlled by A in exchange for the corporation's note which bears adequate stated interest. The district director recharacterizes the transaction as a contribution to the capital of the corporation in exchange for preferred stock. Under paragraph (a)(3)(i) of this section, section 1.482–2(a) does not apply to the transaction because there is no bona fide indebtedness.

Example (2). B, an individual, is an employee of Z corporation, and is also the controlling shareholder of Z. Z makes a term loan of $15,000 to B at a rate of interest that is less than the applicable Federal rate. In this instance the other operative Code section is section 7872. Under section 7872(b), the difference between the amount loaned and the present value of all payments due under the loan using a discount rate equal to 100 percent of the applicable Federal rate is treated as an amount of cash transferred from the corporation to B and the loan is treated as having original issue discount equal to such amount. Under paragraph (a)(3)(iii) of this section, section 482 and paragraph (a) of this section may also be applied by the district director to determine if the rate of interest charged on this $15,000 loan (100 percent of the AFR, compounded semiannually, as adjusted by section 7872) is an arm's length rate of interest. Because the rate of interest on the loan, as adjusted by section 7872, is within the safe haven range of 100–130 percent of the AFR, compounded semiannually, no further interest rate adjustments under section 482 and paragraph (a) of this section will be made to this loan.

Example (3). The facts are the same as in example (2) except that the amount lent by Z to B is $9,000, and that amount is the aggregate outstanding amount of loans between Z and B. Under the $10,000 *de minimis* exception of section 7872(c)(3), no adjustment for interest will be made to this $9,000 loan under section 7872. Under paragraph (a)(3)(iii) of this section, the district director may apply section 482 and paragraph (a) of this section to this $9,000 loan to determine whether the rate of interest charged is less than an arm's length rate of interest, and if so, to make appropriate allocations to reflect an arm's length rate of interest.

* * * * *

[FR Doc. 94–99999 Filed 9–22–94; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Corps of Engineers

33 CFR Part 334

Restricted Areas and Danger Zone, Key West Harbor, Key West Naval Air Station, FL

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: The U.S. Corps is amending the regulations to modify an existing restricted area offshore of Boca Chica Key and to prohibit entry into a portion of a previously established restricted area offshore of the Key West Naval Air Station, Harry S. Truman Annex. The restricted area offshore of Boca Chica Key is also redesignated as a danger zone as defined in 33 CFR 334.2. The danger zone is needed to protect the public from the dangers associated with the possibility of an errant round from an existing pistol range impacting into the water. The establishment of the danger zone will reduce the size of the previous restricted area.

EFFECTIVE DATE: October 24, 1994.

ADDRESSES: HQUSACE, Attn: CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Lonnie Shepardson at (904) 232–1677 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: The Commanding Officer, Key West Naval Air Station, Key West, Florida has requested that the Corps amend the regulations in 33 CFR 334.610 which establish several restricted areas in the waters offshore of the Key West Naval Air Station. On July 1, 1994, the Corps published the proposed changes to the restricted area regulations in the **Federal Register** (59 FR 33939), with the comment period ending on August 1, 1994. No comments were received. However, the heading and the regulation in paragraph (b)(2) did not reflect the redesignation of a restricted area to danger zone. We are adding the words "and danger zone" to the heading and to paragraph (b)(2). Accordingly, the regulations in 33 CFR 334.610 are amended as proposed pursuant to the Corps authorities in Section 7 of the Rivers and Harbors Act of 1917 (33 U.S.C. 1) and Section XIX of the Army Appropriations Act of 1919 (33 U.S.C. 3).

Economic Assessment and Certification

This rule is issued with respect to a military function of the Defense Department and accordingly, the provisions of Executive Order 12866 do not apply. These rules have been reviewed under the Regulatory Flexibility Act (Public Law 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small businesses (i.e., small businesses and small governmental jurisdictions). These regulations could have a minimal impact on individuals fishing in the area. However, in view of the abundance of high quality fishing areas available outside of these congested areas, the impact will be negligible. In addition, by these amendments a portion of one area previously closed to the public will be reopened. These amendments will not result in any increase in costs to sports fisherman or commercial fisheries in the area. Accordingly, the preparation of a regulatory flexibility analysis is not warranted.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones. In consideration of the above, the Corps proposes to amend Part 334 of Title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.610 is amended by revising the heading and paragraphs

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(a)(3), (a)(6), (b), and (c) to read as follows:

§ 334.610 Key West Harbor, at U.S. Naval Base, Key West, Fla.; naval restricted areas and danger zone.

(a) The areas. * * *

(3) All waters within 100 yards of the U.S. Coast Guard Station and the westerly end of Trumbo Point Annex beginning at the shore at Latitude 24°33'47.6" N., Longitude 81°47'55.6" W.; thence westerly to Latitude 24°33'48" N., Longitude 81°48'00.9" W.; thence due south to Latitude 24°33'45.8" N., Longitude 81°48'00.9" W.; thence westerly to Latitude 24°33'47" N., Longitude 81°48'12" W.; thence northerly to Latitude 24°34'06.2" N., Longitude 81°48'10" W.; thence easterly to a point joining the restricted area around Fleming Key at Latitude 24°34'03.3" N., Longitude 81°47'55" W. (Area #3).

* * * * *

(6) *Danger zone.* All waters within an area along the northeast side of the Naval Air Station on Boca Chica Key defined by a line beginning at Latitude 24°35'27.2" N., Longitude 81°41'48.6" W.; thence proceed in a northerly direction to a point at Latitude 24°35'48" N., Longitude 81°41'49" W.; thence proceed westerly to a point on the shore at Latitude 24°35'49.1" N., Longitude 81°42'03" W. (Area #6).

(b) *The Regulations:* (1) Entering or crossing Restricted Areas #1 and #4 and the Danger Zone (Area #6) described in Paragraph (a) of this section is prohibited.

(2) Privately owned vessels, properly registered and bearing identification in accordance with Federal and/or State laws and regulations may transit the following portions of restricted areas #2, #3 and #5. NOTE: All vessels entering the areas at night must display lights as required by Federal laws and Coast Guard regulations or, if no constant lights are required, then the vessel must display a bright white light showing all around the horizon.

(i) The channel, approximately 75 yards in width, extending from the northwest corner of Pier D–3 of Trumbo Point Annex, eastward beneath the Fleming Key bridge and along the north shore of Trumbo Point Annex (area #3).

(ii) A channel of 150 feet in width which extends easterly from the main ship channel into Key West Bight, the northerly edge of which channel passes 25 feet south of the Trumbo Point Annex piers on the north side of the Bight. While the legitimate access of privately owned vessels to facilities of Key West Bight is unimpeded, it is prohibited to moor, anchor, or fish within 50 feet of any U.S. Government-owned pier or craft (area #3).

(iii) The dredged portion of Boca Chica channel from its seaward end to a point due south of the east end of the Boca Chica Bridge (area #5).

(iv) All of the portion of Restricted Area No. 2 that lies between the Truman Annex Mole and the Key West Harbor Range Channel. The transit zone extends to the northeasterly corner of the Truman Annex Mole, thence to the northwesterly end of the breakwater at Latitude 24°33'21.3" N, Longitude 81°48'32.7" W.

(3) Stopping or landing by other than Government-owned vessels and specifically authorized private craft in any of the restricted areas or danger zone described in Paragraph (a) of this section is prohibited.

(4) Vessels using the restricted channel areas described in paragraph (b)(2) (i), (ii), (iii), and (iv) of this section shall proceed at speeds commensurate with minimum wake.

(c) The regulations in this section shall be enforced by the Commanding Officer, Naval Air Station, Key West, Florida, and such agencies as he/she may designate.

Dated: September 6, 1994.

Stanley G. Genega,

Major General, U.S. Army, Director of Civil Works.

[FR Doc. 94–22834 Filed 9–22–94; 8:45 am]

BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[WY–001a; FRL–5076–2]

Clean Air Act Interim Approval of Operating Permit Program; State of Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is promulgating interim approval of the Operating Permit Program submitted by the State of Wyoming. Wyoming's Operating Permit Program was submitted for the purpose of complying with Federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: This direct final rule is effective on November 22, 1994 unless adverse or critical comments are received by October 24, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments should be addressed to Laura Farris, 8ART-AP, at the EPA Regional 8 Office listed.

Copies of the State's submittal and other supporting information used in developing this final rule are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Laura Farris, 8ART-AP, U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202, (303) 294–7539.

SUPPLEMENTARY INFORMATION:

I. Background

As required under title V of the Clean Air Act ("the Act") as amended (1990), EPA has promulgated rules which define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permit programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70 (part 70). title V requires states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing interim approval of the Operating Permit Program submitted by the State of Wyoming should adverse or critical

comments be filed. Under the procedures established in the May 10, 1994 **Federal Register**, this action will be effective on November 22, 1994 unless, by October 24, 1994, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 22, 1994.

II. Final Action and Implications

A. Analysis of State Submission

1. Support Materials

The Governor of Wyoming submitted an administratively complete title V Operating Permit Program (PROGRAM) for the State of Wyoming on November 19, 1993. EPA deemed the PROGRAM administratively complete in a letter to the Governor dated January 4, 1994. The PROGRAM submittal includes a legal opinion from the Attorney General of Wyoming stating that the laws of the State provide adequate legal authority to carry out all aspects of the PROGRAM, and a description of how the State intends to implement the PROGRAM. The submittal additionally contains evidence of proper adoption of the PROGRAM regulations, application and permit forms, and a permit fee demonstration.

2. Regulations and Program Implementation

The Wyoming PROGRAM, including the operating permit regulation (Section 30 of the Wyoming Air Quality Standards and Regulations), substantially meets the requirements of 40 CFR 70.2 and 70.3 with respect to applicability; 40 CFR 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; 40 CFR 70.5 with respect to complete application forms and criteria which define insignificant activities (emission thresholds are identified in section 30 as one ton per year for regulated pollutants, excluding hazardous air pollutant [HAP] sources, and 1000 pounds per year for HAPs); 40 CFR 70.7 with respect to public participation and minor permit modifications; and 40 CFR 70.11 with respect to requirements for enforcement authority.

Wyoming has the authority to issue a variance from requirements imposed by State law (36–11–601 W.S.A.). The EPA regards this provision as wholly external to the PROGRAM submitted for approval under part 70, and consequently is proposing to take no action on this provision of State law. The EPA has no authority to approve provisions of State law, such as the variance provision referred to, which are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. The EPA reserves the right to enforce the terms of the part 70 permit where the permitting authority purports to grant relief from the duty to comply with a part 70 permit in a manner inconsistent with part 70 procedures.

Part 70 of the operating permit regulations requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under § 70.6(a)(3)(iii)(A). Where "prompt" is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations. The Wyoming PROGRAM has not defined prompt reporting of deviations.

A letter sent to the State dated May 10, 1994, identified areas in which the Wyoming PROGRAM was deficient and the corrective actions that were to be completed either prior to interim PROGRAM approval or prior to full PROGRAM approval. In a letter dated June 7, 1994, which included an Attorney General's opinion dated June 6, 1994, the State addressed all EPA issues that would have prevented EPA from issuing interim approval of the Wyoming PROGRAM.

The State has not addressed those issues that require corrective action prior to full PROGRAM approval. Areas in which the Wyoming PROGRAM is deficient and require corrective action prior to full PROGRAM approval are as follows: (1) Section 30 states that research and development (R&D) operations will be considered as separate and discrete stationary sources when determining whether such operations are subject to the PROGRAM. If an R&D facility is a support facility (co-located with a separate source, under common ownership or control and 50% of the output of the support unit is used by the main activity), the emissions from this R&D facility must be included, along with all other emissions at the source, to determine applicability to section 30. Section 30 must be revised to assure R&D support facilities are included in major source determinations. (2) Language in the Wyoming Environmental Quality Act (WEQA) appears to reduce the penalty for civil violations committed by surface coal mine operations from a maximum of ten thousand dollars per day to five thousand dollars per day. This language needs to be changed in the WEQA or clarified in an Attorney General's opinion to indicate that the five thousand dollar penalty relates only to activities subject to the Surface Mining Control and Reclamation Act. (3) The WEQA bases individual and corporate liability on knowing and willful violations of the WEQA. This statute needs to be revised to include language that provides strict liability for corporate officers, directors or agents in civil actions. (4) The WEQA does not provide for a per day, per violation penalty for false statements or tampering with monitoring devices, only a fine of ten thousand dollars or imprisonment for one year in county jail, or both. The statute needs to be changed to include a per day, per violation penalty. (5) Section 30 requires insignificant activities to be listed in permit applications, but does not require that applicable requirements that might apply to such activities be identified. The general provision of 40 CFR 70.5(c) ensures that information concerning applicable requirements will be included in the application. Section 30 must be revised to include language similar to the general provision in 40 CFR 70.5(c), or an AG's opinion must clarify that the State will ensure that all applicable requirements are identified for any insignificant activities. (6) The provision in section 30 regarding

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general permits is inconsistent with § 70.6(d) because they do not require notice and an opportunity for public participation consistent with § 70.7(h). This provision must be revised or clarified in an Attorney General's Opinion. (7) It is unclear if section 30 provides the State with authority to implement emissions trading under a permit cap, which is required by § 70.4(b)(12)(iii). The State must clarify its authority on this issue, or revise section 30 to provide such authority. (8) The Governor's letter submitting the Wyoming PROGRAM states that the PROGRAM will apply to all applicable operating stationary sources of air pollutants within the State of Wyoming "with the exception of those sources located on Indian lands." However, the PROGRAM does not define "Indian lands." The State must provide such a definition prior to full PROGRAM approval.

Refer to the technical support document accompanying this rulemaking for a detailed explanation of each PROGRAM deficiency and the State's corrective actions, where provided.

3. Permit Fee Demonstration

The State of Wyoming established an initial fee for regulated air pollutants below the presumptive minimum set in title V, section 502 and part 70, and was required to submit a detailed permit fee demonstration as part of its PROGRAM submittal. The basis of this fee demonstration included a workload analysis, which estimated the annual cost of running the PROGRAM to be $1.43 million. This amount, divided by the total actual emissions from part 70 sources, resulted in a $10 per ton fee for actual emissions of regulated air pollutants for fiscal year 1993 (fees will not be charged on emissions exceeding 4,000 tons per year per pollutant at a source). This fee structure is subject to a biennial review by the Wyoming Joint Minerals, Business and Economic Development Committee. After careful review, the State of Wyoming determined that these fees would support the PROGRAM costs as required by 40 CFR 70.9(a). Upon review of this demonstration, the EPA noted the following concern: The WEQA gives the State the authority to assess and collect annual permit fees in an amount sufficient to cover all reasonable direct and indirect costs of the PROGRAM for a two year period of time. The Wyoming Legislature must authorize an increase in such fees. If such an increase is not granted, and the State is not able to fund all the costs of the PROGRAM, the EPA would be required to disapprove or withdraw the part 70 program, impose sanctions, and implement a Federal permitting program.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for section 112 Implementation. Wyoming has demonstrated in its PROGRAM submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in Wyoming's WEQA and in regulatory provisions defining "applicable requirements" by stating that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow Wyoming to issue permits that assure compliance with all section 112 requirements.

For further rationale on this interpretation, please refer to the Technical Support Document accompanying this rulemaking and the April 13, 1993 guidance memorandum titled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz.

b. Implementation of 112(g) Upon Program Approval. As a condition of approval of the part 70 PROGRAM, Wyoming is required to implement section 112(g) of the Act from the effective date of the part 70 PROGRAM. Imposition of case-by-case determinations of a maximum achievable control technology (MACT) under section 112(g) will require the use of a mechanism for establishing federally enforceable restrictions on a source-specific basis. The EPA is proposing to approve Wyoming's preconstruction permitting program found in section 24, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. EPA believes this approval is necessary so that Wyoming has a mechanism in place to establish federally enforceable restrictions for section 112(g) purposes from the date of part 70 approval. Section 112(l) provides statutory authority for approval for the use of State air programs to implement section 112(g), and title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g), and does not confer or imply approval for purposes of any other provision under the Act. If Wyoming does not wish to implement section 112(g) through its preconstruction permit program and can demonstrate that an alternative means of implementing section 112(g) exists, the EPA may, in the final action approving Wyoming's PROGRAM, approve the alternative instead. To the extent the State does not have the authority to regulate HAPs through existing State law, the State may disallow modifications during the transition period.

This approval is for an interim period only, until such time as the State is able to adopt regulations consistent with any regulations promulgated by EPA to implement section 112(g). Accordingly, EPA is proposing to limit the duration of this approval to a reasonable time following promulgation of section 112(g) regulations so that Wyoming, acting expeditiously, will be able to adopt regulations consistent with the section 112(g) regulations. The EPA is proposing here to limit the duration of this approval to 18 months following promulgation by EPA of section 112(g) regulations. Comment is solicited on whether 18 months is an appropriate period considering Wyoming's procedures for adoption of Federal regulations.

c. Program for Straight Delegation of section 112 Standards. Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 general provisions subpart A and standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. The State of Wyoming acknowledges that its request for approval of a part 70 program is also a request for approval of a program for delegation of unchanged existing and future section 112 requirements under the authority of section 112(l) as they apply to part 70 sources. This shall include the most recent versions of any existing standards and all future requirements promulgated under section 112, including the general provisions for part 63 and all other infrastructure rules. The State can now receive delegation of any new authority required by section 112 of the Act through the delegation process.

The radionuclide national emission standard for HAPs (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State PROGRAM. Sources which are currently defined as part 70 sources and emit radionuclides are subject to Federal radionuclide standards. Currently the State of Wyoming has no such sources. However, sources which are not currently part 70 sources may be defined as major sources under forthcoming Federal radionuclide regulations. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

The State also has the option at any time to request, under section 112(l) of the Act, delegation of section 112 requirements in the form of State regulations which the State demonstrates are equivalent to the corresponding section 112 provisions promulgated by EPA. At this time, the State plans to use the mechanism of case-by-case rulemaking to adopt unchanged Federal section 112 requirements into its regulations.

Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated.

d. Program for Implementing Title IV of the Act. Wyoming's PROGRAM contains adequate authority to issue permits which reflect the requirements of title IV of the Act, and commits to adopt the rules and requirements promulgated by EPA to implement an acid rain program through the title V permit.

B. Options for Approval/Disapproval and Implications

The EPA is promulgating interim approval to the operating permit program submitted by the State of Wyoming on November 19, 1993. The State must make the changes discussed above to receive full approval. Evidence of these statutory and regulatory revisions must be submitted to EPA within 18 months of EPA's interim approval of the Wyoming PROGRAM.

At the time of this document, the State had not made an affirmative showing of legal authority to regulate sources within the exterior boundaries of Indian Reservations in Wyoming under the Act. Therefore, interim approval of the Wyoming PROGRAM will not extend to lands within the exterior boundaries of Indian Reservations. Until the State makes such a showing, part 70 sources within the exterior boundaries of Indian Reservations in Wyoming will be subject to the Federal operating permit program to be promulgated in 40 CFR part 71, or subject to the program of any Tribe delegated such authority under section 301(d) of the Act. The EPA anticipates promulgating an Indian Air Regulation, at which time how the State defines Indian lands could become an approval issue.

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permit program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the one year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three year time period for processing the initial permit applications.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this direct final rule. Copies of the State's submittal and other information relied upon for the development of this rule are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the review of the PROGRAM and development of this rule. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by October 24, 1994.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 14, 1994.

Kerrigan Clough,

Acting Regional Administrator.

[FR Doc. 94–23599 Filed 9–22–94; 8:45 am]

BILLING CODE 6560–60–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

[MB–52–IFC]

RIN 0938–AF69

Medicaid Program: Outstation Intake Locations for Certain Low-Income Pregnant Women, Infants, and Children Under Age 19

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule interprets the statutory requirement that State Medicaid agencies must provide for receiving and initially processing Medicaid applications by certain low-income pregnant women, infants, and children under age 19 at locations other than those used for the receipt and processing of applications for Aid to Families with Dependent Children (AFDC). The statutory requirement also provides that the application form for these individuals must be different from the application form used for AFDC.

The basis for the rule is section 1902(a)(55) of the Social Security Act, as added by section 4602(a)(3) of the Omnibus Budget Reconciliation Act of 1990.

DATES: *Effective Date.* This interim final rule is effective on October 24, 1994.

Comment Date. Comments will be considered if received at the appropriate

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address, as provided in the "ADDRESSES" section below, no later than 5:00 p.m. on November 22, 1994.

ADDRESSES: Mail comments (original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: MB–52–IFC, P.O. Box 7518, Baltimore, Md. 21207–0518.

Please address a copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, Attention: Laura Oliven, Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

If you prefer, you may deliver your comments (original and three copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Because of staffing and resource limitations, we cannot accept comments of facsimile (FAX) transmission.

In commenting, please refer to file code MB–52–IFC. Timely comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (telephone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Robert Tomlinson, (410) 966–4463.

SUPPLEMENTARY INFORMATION:

I. Background

Generally, sections 1902(a)(10)(A) and (C) of the Social Security Act (the Act) specify the groups of individuals who may be eligible for Medicaid. Among these groups are low-income pregnant women, infants, and children under age 19 who have incomes that are a specified percentage of the Federal poverty level. Because Medicaid eligibility for many of the eligibility groups specified under section 1902(a)(10)(A) is associated with eligibility for or receipt of Aid to Families With Dependent Children (AFDC), many State Medicaid agencies provide for the receipt and processing of Medicaid applications at welfare offices, either concurrent with or separate from application for AFDC or other cash assistance. In most cases in which an individual is determined to be eligible for AFDC on the basis of an AFDC application, Medicaid eligibility is automatic without a separate Medicaid application. For other eligibility groups, such as low-income pregnant women, infants, and children under age 19 with incomes related to the Federal poverty level, eligibility for Medicaid is not associated with AFDC eligibility.

In an effort to make the Medicaid application process more accessible to low-income pregnant women, infants, and children under age 19, Congress enacted section 4602 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101–508, on November 5, 1990. Section 4602(a)(3) amended the Social Security Act to add a new Medicaid State plan requirement under section 1902(a)(55) relating to the application process for these eligibility groups. The new section 1902(a)(55) requires that a State Medicaid plan provide for receipt and initial processing of Medicaid applications from the following groups of individuals at locations other than those used for processing applications for AFDC and for using at these locations an application form for Medicaid that is not the AFDC application form:

- Individuals specified under section 1902(a)(10)(A)(i)(IV) of the Act (the mandatory eligibility group of pregnant women or infants with incomes up to 133 percent of the Federal poverty level);
- Individuals specified under section 1902(a)(10)(A)(i)(VI) of the Act (the mandatory eligibility group of children age 1 up to age 6 with incomes at 133 percent of the Federal poverty level);
- Individuals specified under section 1902(a)(10)(A)(i)(VII) of the Act (the mandatory eligibility group of children age 6 up to age 19 born after September 30, 1983, with incomes up to 100 percent of the Federal poverty level);
- Individuals specified under section 1902(a)(10)(A)(ii)(IX) of the Act (the optional eligibility groups of pregnant women or infants, children age 1 up to age 6, and children age 6 up to age 19, who are not eligible as a mandatory group, with incomes up to 185 percent of the Federal poverty level).

Section 1902(a)(55) provides that the outstation locations for receipt and initial processing of applications for these individuals must include facilities defined as disproportionate share hospitals under section 1923(a)(1)(A) of the Act and Federally-qualified health centers described in section 1905(1)(2)(B) of the Act.

The provisions of section 1902(a)(55) apply to Medicaid payments for calendar quarters beginning on or after July 1, 1991, without regard to whether final regulations to carry out the provisions have been promulgated by that date.

II. Provisions of the Regulations

We are amending the Medicaid regulations under 42 CFR parts 435 and 436 to incorporate the provisions of section 1902(a)(55) of the Act. Specifically—

1. Outstation Locations

We have added a new § 435.904 to require that the State Medicaid agency provide an opportunity for the designated groups of low-income pregnant women, infants, and children under age 19 to apply for Medicaid and have their application initially processed at locations other than those at which AFDC applications are received and processed. The statutory language of section 1902(a)(55) of the Act, as added by section 4602 of OBRA '90, requires that States provide an opportunity to apply for Medicaid at locations other than welfare offices, including Federally-qualified health centers and disproportionate share hospitals. By specifying that certain types of facilities be among the outstation locations, Congress clearly intended that, at a minimum, Federally qualified health centers and disproportionate share hospitals would be among the outstation locations.

We consulted extensively with States and related organizations and agencies before developing these interim final regulations. During this consultation, we considered the option of requiring States to outstation staff at every site operated by each Federally-qualified health center and disproportionate share hospital. However, we rejected this requirement because we believe that it would be burdensome on the States. Therefore, to provide States with as much flexibility as possible, especially in this era of restricted resources, we have chosen to offer States two choices for implementing the outstationing requirement. A State may establish outstation locations at each Federally-qualified health center and each disproportionate share hospital participating in the State's Medicaid program and providing services to Medicaid-eligible pregnant women and to children, but not at every site operated by these entities. As an alternative, a State may submit a plan that provides for outstation locations which include at least some Federally-qualified health centers and disproportionate share hospitals, but not all such entities that provide services to the target populations. For the alternative plan to be approved by HCFA, the State must demonstrate that it is equally or more effective in outreach than a plan that would meet

the general requirement, including the same level of staffing and funding by the State as the State would be required to commit to implement outstationing under the general requirement.

We are requiring that the outstations include Indian health clinics operated by a tribe or tribal organization, as these clinics are specifically included in the definition of Federally-qualified health centers under section 1905(1)(2)(B) of the Act, and included in the definition of rural health clinics under 42 CFR part 491, subpart A. If a Federally-qualified health center or disproportionate share hospital has more than one site, the State must ensure that applications for Medicaid can be taken at an outstation location.

In addition to placing outstationed eligibility workers at Federally-qualified health centers and disproportionate share hospitals (or locations under an approved alternative plan) that provide services to Medicaid-eligible pregnant women and to children, States may consider other locations that are frequently visited by the targeted populations. For example, States may consider family support centers or school-linked service centers in addition to other sites operated by Federally-qualified health centers as suitable outstation locations.

To permit additional flexibility, we are allowing a State, at its option, to enter into reciprocal agreements with adjoining States to ensure that the population living in border areas of a State have the opportunity to apply for Medicaid at the health care locations they normally frequent when those facilities are in another State (§ 435.904(c)(4)).

2. Initial Processing

Section 1902(a)(55) provides for "initial processing" of applications for the designated low-income pregnant women, infant, and children groups. However, the phrase "initial processing" is ambiguous and is not defined in the statute. The House Report accompanying OBRA '90 states that the "entire application process would be conducted at [an outstation]," and that the final eligibility determination could also be made there. The language of the House Report goes further to state that "even if the eligibility worker were an employee of the hospital or clinic, the pregnant woman or child would not be required to go to the welfare office for a face-to-face interview in order to complete the eligibility determination process. Instead, the simplified application form, along with necessary documentation, would then be forwarded to the welfare office for final determination." (H. Rept. No. 881, 101st Cong., 2d Sess. 105 (1990)). We are, therefore, defining "initial processing" to mean taking applications, assisting applicants in completing the application, providing information and referrals, obtaining required documentation to complete processing of the application, assuring that the information contained on the application form is complete, and conducting any necessary interviews. Initial processing does not include evaluating the information contained on the application and the supporting documentation nor making a determination of eligibility or ineligibility § 435.904(d)(2). Even though the phrase "initial processing" is not defined to include determinations of eligibility or ineligibility, State eligibility workers who are assigned to outstation locations may perform these tasks if they are authorized to do so in the regular Medicaid agency intake office, as discussed in detail below. If we were to define initial processing to include making a determination of eligibility, the definition would conflict with the requirement of section 1902(a)(5) of the Act. Under section 1902(a)(5), the plan must be administered by a single State agency and determination of eligibility is restricted by this section to the Medicaid agency, the title IV–A agency, or SSA when administering the SSI program.

3. Staffing

The State must assure HCFA that staff are available at each outstation location to accept applications and assist applicants with the application process during the hours that the regular State Medicaid offices are normally open (§ 435.904(e)). In addition, we are providing an exception to this requirement for staffing, and hours when staff are available, at locations that are infrequently used by the designated groups of low-income pregnant women, infants, and children. To fulfill the spirit of this legislation, we also encourage States to make outstation workers available at additional hours in the evening or on weekends beyond the minimum staffing requirement set forth in these regulations, thereby making access and the opportunity to apply for Medicaid as easy as possible for the designated groups.

In order to provide the States with as much flexibility as possible, we are allowing States to target and conserve their resources while complying with the requirement on availability of staff. We are not requiring outstation intake workers to be employees of the State Medicaid agency, which is consistent with our regulations under 42 CFR Part 432. However, all staff that perform thi function must be trained to assist applicants in filing applications and to accurately answer questions that applicants may have or to refer such questions to the State agency's regular office for answers. At a minimum, staff must be available at all Federally-qualified health centers and disproportionate share hospitals that provide services to Medicaid-eligible pregnant women and to children. Proper application forms must be on hand at all locations.

We are permitting States to staff outstation locations with State employees, provider or contractor employees, or volunteers under certain conditions and limitations. When a State places staff at outstation locations, the State may schedule persons to either work at a specific location or rotate among several locations. State employees who are placed at outstation locations may perform any tasks in connection with the receipt of, and processing of, an application for Medicaid at the outstation location that the employee would be authorized to perform at the State agency office, including the eligibility determination. Provider or contractor employees at these locations may only perform initial processing. This includes taking all actions in receiving and processing applications and excludes evaluating information provided on applications and supporting documentation and making eligibility determinations. If contractor or provider employees, including provider contractors, are used, the State must ensure, whether by contract or other means, that these employees adhere to State and Federal confidentiality of information provisions concerning applicant and recipient information as specified in 42 CFR 431.300 through 431.307, to the prohibition on reassignment of provider claims, as specified in 42 CFR 447.10, and to all State and Federal laws concerning conflicts of interest. Volunteers may be used in the same manner as provider or contractor employees, with the same requirements for adherence to confidentiality of information and conflict of interest prohibitions. These provisions are consistent with our regulations at 42 CFR 431.10 (c) and (e) which specify the entities authorized to make determinations of eligibility for Medicaid and the authority of the single State agency.

At locations that are infrequently used by low-income pregnant women, infants, and children under 19, States

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may use volunteers, provider or contractor employees, or State agency staff, or telephone assistance. At these locations, the State must display a notice in a prominent place advising potential applicants about when outstation intake staff will be available. The notification methods must take into account the needs and characteristics of the population served. The notice must provide a telephone number that applicants may call for assistance with initial processing of an application when staff are not available. The notice also must comply with Federal and State laws and regulations concerning the provision of adequate notice to persons who are blind or deaf or who cannot read or understand the English language. The notice must adequately inform these people of the opportunity to apply for Medicaid at locations other than the welfare office.

4. Application Forms

Section 1902(a)(55)(B) specifies that the application form that is to be used by the designated groups of low-income pregnant women, infants, and children under 19 at the Medicaid outstation locations must be an application other than that used to apply for AFDC. The legislative history for OBRA '90 states that the House Committee bill would require States to provide for the use of applications for Medicaid-only coverage at outreach locations. It also states that "States would develop application forms for use at designated hospitals, health centers, and other outreach locations. These simplified forms would contain *only* those information requirements necessary to determine eligibility for Medicaid." (Emphasis added.) H. Rept. No. 881, 101st Cong., 2d. Sess. 105 (1990). The legislative history language further lists the items which should appear on the application form.

To permit as much flexibility as possible within the scope of the statutory language, we are specifying in § 435.907(c) that the application form, including any computerized application form, used at outstation locations be an application designed for the designated groups of low-income pregnant women, infants, and children under age 19, an application already used by Medicaid for applicants seeking Medicaid only, or a multiple-program application form in which only that information appropriate for the Medicaid program is obtained from the designated low-income eligibility groups. The application form used may not be the application form used to apply for AFDC. In response to expressed concerns, we are permitting States to continue to use an application form that is designed to accommodate all assistance programs under certain circumstances. States may continue to use a multiple-program application form if the form contains Medicaid-only application sections or parts and it is clear to Medicaid applicants that they can choose to complete only those sections or parts of the application relating to Medicaid information requirements. The person assisting the applicant at the outstation location must make it clear to the applicant before the application is completed that only the information pertinent to Medicaid eligibility for the groups described in section 1902(a)(55) needs to be completed.

III. Federal Financial Participation

Federal financial participation (FFP) is available for costs associated with the outstation locations, regardless of who provides the services. However, effective October 1, 1992, under the provisions of section 1903(w) (as added by section 2(a) of the Medicaid Voluntary Contribution and Provider Specific Tax Amendments of 1991, Public Law 102–234, December 12, 1991), FFP is limited if a State receives donations for outstationed eligibility workers made by a hospital, clinic, or similar entity for the direct costs of State or local agency personnel who are stationed at a facility to determine Medicaid eligibility or to provide outreach services to eligible (or potentially eligible) individuals. Direct costs include salaries and fringe benefits for outstationed workers and the cost of pamphlets and materials distributed by outstationed eligibility workers at the site. These donations may not exceed 10 percent of the State's total Medicaid administrative costs, excluding costs for family planning services. Donations in excess of this 10-percent limit will be deducted from the State's medical assistance expenditures prior to calculation of FFP. Outstationed worker donations are also included in an overall limitation (computed in accordance with a formula specified in section 1903(w) of the Act) on permissible donations that a State may receive.

The administrative functions of taking and processing applications are reimbursed at the 50 percent rate under the provisions of section 1903(a)(7) of the Act as costs found necessary by the Secretary for the proper and efficient administration of the State plan. Subject to the limitations for outstationed eligibility worker donations discussed above, this rate includes costs incurred by the State to implement and provide outstationing of intake workers who are State employees, provider employees, volunteers, or provider contractors. FFP is available for necessary administrative costs such as salaries, fringe benefits, travel, training, equipment, and space directly attributable to the outstationing of intake workers.

Existing regulations under §§ 432.50, 433.15, and 435.1001 already contain provisions for FFP for staffing and training costs and for administrative costs that States incur in determining and redetermining Medicaid eligibility.

IV. Application of Rules in Territories

The requirements of section 1902(a)(55) are applicable in Guam, Puerto Rico, and the Virgin Islands. Our existing regulations on eligibility determinations in the Territories cross-refer to the regulations under Part 435. Therefore, no further major changes in the regulations are necessary to make these interim final regulations applicable in the Territories. We have made a minor conforming change to § 436.2.

V. Waiver of Proposed Rulemaking

The statutory effective date of section 1902(a)(55) of the Act (as added by section 4602(a)(3) of OBRA '90) is July 1, 1991, without regard to whether regulations have been promulgated. Section 4207(k) of OBRA '90 gives the Secretary authority to issue regulations on an interim or other basis as may be necessary to implement the amendments made by the provisions of OBRA '90. Thus, we are utilizing the authority given by section 4207(k) and publishing this rule as an interim final rule. As stated earlier in this preamble, we have had extensive consultation with States and related organizations and agencies in developing the regulations. We are also providing a 60-day comment period for public comments on this interim final rule.

VI. Response to Public Comments

Because of the large number of items of correspondence we normally receive on a rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date specified in the "Comment Period" section of this preamble and respond to them in the preamble to any subsequent rule that we issue.

VII. Paperwork Burden

Section 435.907(c) of these interim final regulations with comment period contains a revised information collection requirement that is subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). State agencies may be required to develop a separate Medicaid-only application form for the designated groups of low-income pregnant women, infants, and children who may apply for Medicaid at outstation locations if a Medicaid-only application is not currently available, or to amend their existing multiple-program application form to conform it to the requirement that there must be a clearly identified Medicaid-only application section. We estimate that the burden hours for States to develop or revise this application format will be 20 hours.

We do not anticipate any additional reporting burden hours on applicants in the designated groups, as they are required under currently approved reporting requirements to complete a Medicaid application form for a determination of eligibility for Medicaid.

We do, however, anticipate an increased reporting burden for those States that choose the option of submitting an alternate plan for the establishment of outstation location sites under § 435.904(c). These States will have to demonstrate that the alternate plan compares favorably to a plan to establish outstation locations at each disproportionate share hospital and each Federally-qualified health center. The State must demonstrate that the alternative plan, at a minimum, is equally effective and commits an equal amount of staffing and funding. We estimate that it will require a minimum of 40 additional hours to develop an alternative plan.

We will publish a notice in the **Federal Register** when the approval of the information collection requirements is obtained.

VIII. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, individuals and States are not included in the definition of a small entity.

We do not believe that this interim final rule will have a significant effect on a substantial number of small entities. The statutory changes increase Medicaid program expenditures independently of the promulgation of this rule and are effective on the statutory established date, regardless of whether we have issued final regulations. Costs associated with the interim final rule are the result of legislation or due to interpretation of statutory changes already in effect. We estimate that the Federal Medicaid costs associated with implementation of the legislative changes will be approximately $40 million per fiscal year, and the State costs to be approximately $30 million per fiscal year.

This interim final rule incorporates, and, in some cases, interprets in regulations statutory changes that are already in effect. In cases where it was necessary to provide interpretations, we have relied on the available legislative history of the statutory provisions to reach the best reading of the provision. Therefore, we have not prepared a regulatory flexibility analysis under the RFA.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule will have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that has fewer than 50 beds and is located outside a Metropolitan Statistical Area.

We have determined, and the Secretary certifies, that this interim final rule with comment period will not have a significant economic impact on the operations of a substantial number of small rural hospitals, and, therefore, have not prepared a rural hospital impact statement.

The statute requires that all State Medicaid agencies must provide an opportunity for the designated groups of low-income pregnant women, infants, and children under age 19 to apply for Medicaid and to have their applications initially processed at locations other than welfare offices, including locations at Federally-qualified health centers and disproportionate share hospitals. Although this provision appears to be prescriptive, a majority of the States consider this to be a worthwhile option and have provided outstation locations in their respective States. Not only do we consider these provisions to be cost effective for potential Medicaid recipients through savings from travel, we expect State costs to be limited as a result of the availability of FFP. However, to the extent that these requirements may be burdensome, we request comments on any alternative approaches.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 436

Aid to Families with Dependent Children, Grant programs—health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

42 CFR Chapter IV, Subchapter C is amended as follows:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

A. Part 435 is amended as follows:

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, 42 U.S.C. 1302.

2. Section 435.3 is amended by republishing the introductory text of paragraph (a) and adding a new citation in numerical order to read as follows:

§ 435.3 Basis.

(a) This part implements the following sections of the Act and public laws that state eligibility requirements and standards:

* * * * *

1902(a)(55) Mandatory use of outstation locations other than welfare offices to receive and initially process applications of certain low-income pregnant women, infants, and children under age 19

* * * * *

§ 435.902 [Redesignated as § 435.901]

§ 435.903 [Redesignated as § 435.902]

§ 435.904 [Redesignated as § 435.903]

3. Sections 435.902, 435.903, and 435.904 are redesignated as §§ 435.901, 435.902, and 435.903, respectively.

4. A new § 435.904 is added to read as follows:

§ 435.904 Establishment of outstation locations to process applications for certain low-income eligibility groups.

(a) *State plan requirements.* The Medicaid State plan must specify that the requirements of this section are met.

(b) *Opportunity to apply.* The agency must provide an opportunity for the following groups of low-income pregnant women, infants, and children under age 19 to apply for Medicaid at outstation locations other than AFDC offices:

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(1) The groups of pregnant women or infants with incomes up to 133 percent of the Federal poverty level as specified under section 1902(a)(10)(A)(i)(IV) of the Act;

(2) The group of children age 1 up to age 6 with incomes at 133 percent of the Federal poverty level as specified under section 1902(a)(10)(A)(i)(VI) of the Act;

(3) The group of children age 6 up to age 19 born after September 30, 1983, with incomes up to 100 percent of the Federal poverty level as specified under section 1902(a)(10)(A)(i)(VII) of the Act; and

(4) The groups of pregnant women or infants, children age 1 up to age 6, and children age 6 up to age 19, who are not eligible as a mandatory group, with incomes up to 185 percent of the Federal poverty level as specified under section 1902(a)(10)(A)(ii)(IX) of the Act.

(c) *Outstation locations: general requirements.*

(1) The agency must establish either—

(i) Outstation locations at each disproportionate share hospital, as defined in section 1923(a)(1)(A) of the Act, and each Federally-qualified health center, as defined in section 1905(l)(2)(B) of the Act, participating in the Medicaid program and providing services to Medicaid-eligible pregnant women and children; or

(ii) Other outstation locations, which include at least some, disproportionate share hospitals and federally-qualified health centers, as specified under an alternative State plan that is submitted to and approved by HCFA if the following conditions are met:

(A) The State must demonstrate that the alternative plan for outstationing is equally effective as, or more effective than, a plan that would meet the requirements of paragraph (c)(1)(i) of this section in enabling the individuals described in paragraph (b) of this section to apply for and receive Medicaid; and

(B) The State must provide assurances that the level of staffing and funding committed by the State under the alternative plan equals or exceeds the level of staffing and funding under a plan that would meet the requirements of establishing the outstation locations at the sites specified in paragraph (c)(1)(i) of this section.

(2) The agency must establish outstation locations at Indian health clinics operated by a tribe or tribal organization as these clinics are specifically included in the definition of Federally-qualified health centers under section 1905(l)(2)(B) of the Act and are also included in the definition of rural health clinics under part 491, subpart A of this chapter.

(3) The agency may establish additional outstation locations at any other site where potentially eligible pregnant women or children receive services—for example, at school-linked service centers and family support centers. These additional sites may also include sites other than the main outstation location of those Federally-qualified health centers or disproportionate share hospitals providing services to Medicaid-eligible pregnant women and to children and that operate more than one site.

(4) The agency may, at its option, enter into reciprocal agreements with neighboring States to ensure that the groups described in paragraph (b) of this section who customarily receive services in a neighboring State have the opportunity to apply at outstation locations specified in paragraphs (c)(1) and (2) of this section.

(d) *Outstation functions.* (1) The agency must provide for the receipt and initial processing of Medicaid applications from the designated eligibility groups at each outstation location.

(2) "Initial processing" means taking applications, assisting applicants in completing the application, providing information and referrals, obtaining required documentation to complete processing of the application, assuring that the information contained on the application form is complete, and conducting any necessary interviews. It does not include evaluating the information contained on the application and the supporting documentation nor making a determination of eligibility or ineligibility.

(3) The agency may, at its option, allow appropriate State eligibility workers assigned to outstation locations to evaluate the information contained on the application and the supporting documentation and make a determination of eligibility if the workers are authorized to determine eligibility for the agency which determines Medicaid eligibility under § 431.10 of this subchapter.

(e) *Staffing.* (1) Except for outstation locations that are infrequently used by the low-income eligibility groups, the State agency must have staff available at each outstation location during the regular office operating hours of the State Medicaid agency to accept applications and to assist applicants with the application process.

(2) The agency may station staff at one outstation location or rotate staff among several locations as workload and staffing availability dictate.

(3) The agency may use State employees, provider or contractor employees, or volunteers who have been properly trained to staff outstation locations under the following conditions:

(i) State outstation intake staff may perform all eligibility processing functions, including the eligibility determination, if the staff is authorized to do so at the regular Medicaid intake office.

(ii) Provider or contractor employees and volunteers may perform only initial processing functions as defined in paragraph (d)(2) of this section.

(4) Provider and contractor employees and volunteers are subject to the confidentiality of information rules specified in part 431, subpart F, of this subchapter, to the prohibition against reassignment of provider claims specified in § 447.10 of this subchapter, and to all other State or Federal laws concerning conflicts of interest.

(5) At locations that are infrequently used by the designated low-income eligibility groups, the State agency may use volunteers, provider or contractor employees, or its own eligibility staff, or telephone assistance.

(i) The agency must display a notice in a prominent place at the outstation location advising potential applicants of when outstation intake workers will be available.

(ii) The notice must include a telephone number that applicants may call for assistance.

(iii) The agency must comply with Federal and State laws and regulations governing the provision of adequate notice to persons who are blind or deaf or who are unable to read or understand the English language.

3. Section 435.907 is revised to read as follows:

§ 435.907 Written application.

(a) The agency must require a written application from the applicant, an authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant.

(b) Subject to the conditions specified in paragraph (c) of this section, the application must be on a form prescribed by the agency and signed under a penalty of perjury.

(c) The application form used at outstation locations for low-income pregnant women, infants, and children specified in § 435.904 must not be the application form used to apply for AFDC. The application form (including any computerized application form) for these designated eligibility groups may be—

(1) A Medicaid-only form prescribed by the agency specifically for the designated eligibility groups;

(2) An existing Medicaid-only application; or

(3) A multiple-program application that contains clearly identifiable Medicaid-only sections or parts.

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO AND THE VIRGIN ISLANDS

B. Part 436 is amended as follows:

1. The authority citation for part 436 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 436.2 is amended by revising the introductory text and adding a new entry in numerical order to read as follows:

§ 436.2 Basis.

This part implements the following sections of the Act and public laws that state requirements and standards for eligibility:

* * * * *

1902(a)(55) Mandatory use of outstation locations other than welfare offices to receive and initially process applications of certain low-income pregnant women, infants, and children under age 19.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778—Medical Assistance Programs)

Dated: July 15, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: July 28, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94-23279 Filed 9-22-94; 8:45 am]

BILLING CODE 4120-01-P

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42 CFR Part 456

[MB-050-F]

RIN 0938-AF67

Medicaid Program; Drug Use Review Program and Electronic Claims Management System for Outpatient Drug Claims

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises some of the regulatory requirements for the drug use review (DUR) program for covered outpatient drugs furnished to recipients under the Medicaid program. The regulatory requirements became effective on January 2, 1993, as a result of an interim final rule with comment period that we published on November 2, 1992. Specifically, these revisions—

- Clarify the definitions of overutilization, underutilization, consensus process, peer-reviewed literature, adverse medical result, adverse drug-drug interaction, appropriate and medically necessary, and individual medical history;
- Change the requirements for licensure of DUR board members, and telephone counseling arrangements for mail order pharmacies;
- Include non-prescription drugs in the consideration of alteration of therapeutic effect;
- Require hospitals to give assurances that they have met the requirements of the statute before claiming the hospital exemption from DUR;
- Specify the issues that State agencies must address when formulating counseling standards;
- Clarify the bases for DUR board recommendations;
- Clarify the distinction between DUR and surveillance and utilization review (SUR); and
- Make certain technical and editorial corrections.

The November 1992 interim final rule with comment period incorporated and interpreted certain provisions of section 4401 of the Omnibus Budget Reconciliation Act of 1990.

DATES: These regulations are effective on October 24, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas Fulda, (410) 966-3343.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1927(g) of the Social Security Act (the Act), as added by section 4401 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), provides that, for Federal financial participation (FFP) payment to be made for covered outpatient drugs under the Medicaid program, the State must have in operation a drug use review (DUR) program. The DUR program must consist of prospective drug review, retrospective drug use review, the application of explicit predetermined standards, and an educational program. The purpose of the DUR program is to improve the quality of pharmaceutical care by ensuring that prescriptions are appropriate and medically necessary, and that they are not likely to result in adverse medical effects. Section 1927(g) of the Act specifies detailed requirements for conducting drug use reviews under the DUR program, and requirements for the establishment, composition, and functions of State DUR boards.

Section 1927(h) of the Act (also added by OBRA '90) requires the Secretary to encourage each State Medicaid agency to establish a point-of-sale electronic claims management (ECM) system for processing claims for covered outpatient drugs. The ECM system must be capable of performing on-line, real-time eligibility verifications, claims data capture, and adjudication of claims and assisting pharmacists and other authorized persons in applying for and receiving payment. If the State acquired, through the applicable competitive procurement process, the most cost-effective telecommunications network and automatic data processing services and equipment, FFP at a matching rate of 90 percent was available for expenditures made in calendar quarters during fiscal years 1991 and 1992 for the development of the ECM system.

Section 1927(j)(1) of the Act exempts covered outpatient drugs dispensed by health maintenance organizations (HMOs) from the requirements of section 1927 of the Act. Section 1927(j)(2) further requires that the Medicaid State plan provide that covered outpatient drugs dispensed by a hospital using drug formulary systems and billed to the State plan at no more than the hospital's purchasing costs are not subject to the requirements of section 1927 of the Act.

In an interim final rule with comment period, published in the **Federal Register** on November 2, 1992 (57 FR 49397), we established regulations to incorporate and interpret the provisions of sections 1927 (g), (h), and (j) of the Act under 42 CFR part 456, subpart K. In the interim final rule, we prescribed requirements for—

- An outpatient DUR program that includes prospective drug review, retrospective drug use review, and an educational program;
- The establishment, composition, and functions of a State DUR Board; and
- An optional point-of-sale ECM system for processing claims for covered outpatient drugs.

In response to the November 2, 1992, interim final rule, we received comments from 72 pharmacists and organizations on a timely basis. We summarize these comments and present our responses to them under section II of this preamble. Prior to discussion of the public comments, we present a summary of the individual provisions of the interim final regulations related to each grouping of comments.

Note: Sections 1927 (g) and (h) of the Act use the term "drug use review" to describe

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the total program (prospective review, retrospective review, and education) and in speaking of the retrospective review activity. These same sections use the term "drug review" to mean the prospective review activity. We maintain that distinction in terminology in the following discussion.

II. Public Comments and Departmental Responses

A. Definitions

In § 456.702 of the interim final regulations we define several terms that are used in the DUR program to assess drug use, including "adverse medical result", "appropriate and medically necessary", "overutilization", and "underutilization".

Comment: Five commenters suggested that the definition of "appropriate and medically necessary" be expanded to permit the use of professional prerogatives to allow for individualized drug therapy. (We defined the term to mean drug prescribing and dispensing that is in conformity with predetermined standards established in accordance with provisions in the regulations under § 456.703.) The commenters had a concern that a specific criterion might identify one approach as appropriate and, by omission, indicate that an equally acceptable approach is inappropriate.

Response: Section 456.703 states that the goal of the State's DUR program must be to ensure appropriate drug therapy, while permitting sufficient professional prerogatives to allow for individualized drug therapy. We believe that predetermined standards are necessary to identify provider outliers whose prescribing, dispensing, and drug use practices may not conform to accepted medical practice. Without predetermined standards, each provider may claim "professional prerogative" for any action taken. Within this system for developing criteria and standards, there is adequate room for the exercise of professional prerogatives because States may adopt standards to modify criteria. Also, during retrospective DUR, States may use peer review to recognize professional prerogatives in the prescribing and dispensing of drugs. We do not believe that it is necessary to change this definition.

Comment: Four commenters suggested that the definition of "overutilization" should be changed to conform with the definition of "underutilization". "Overutilization" is defined as the use of a drug in quantities or for durations that put the recipient at risk of an adverse medical effect while "underutilization" is defined as the use of a drug by a recipient in insufficient quantity to achieve a desired therapeutic goal. The commenters suggested that the definitions indicate the use of a drug in quantities or duration greater than necessary to achieve a desired therapeutic goal, and only when the use of the drug puts the recipient at risk of a clinically significant undesirable effect.

Response: We concur with the commenters and have revised these definitions to incorporate their suggested language.

Comment: Two commenters suggested that the definition of "underutilization" also include a statement regarding insufficient duration for drug therapy.

Response: We concur and have revised the regulation accordingly.

B. Exception for Nursing Facilities and HMOs

Section 456.703(b) of the interim final regulations provides an exception to the DUR requirements for drugs dispensed to residents of nursing facilities that are in compliance with the drug regimen review requirements specified in regulations at § 483.60, and an exception for drugs dispensed by HMOs.

Comment: One commenter suggested clarification of § 456.703(b) to state that pharmacies owned by nursing homes, where reimbursement of drugs is not included in the per diem rate, are subject to the DUR requirements.

Response: We do not believe that this section needs any further clarification. The regulation already states that the nursing facilities exception applies only to drugs given to patients in a nursing facility that is in compliance with the drug regimen review requirements in § 483.60. Ownership of the pharmacy by the nursing home is not a factor.

Comment: Two commenters asked for clarification of the applicability of DUR requirements to various types of residential care facilities.

Response: The term "facility", as it applies to the exception to the DUR requirements, is described at § 483.5 and means a nursing facility (NF) as defined in section 1919(a) of the Act. Drugs dispensed by any facilities not meeting this definition would not be exempt from drug use review. Residential care facilities for the treatment of mental diseases do not meet the definition of section 1919(a) of the Act. These facilities are subject to the DUR requirements and do not qualify for the nursing facility exception.

Comment: One commenter suggested clarification that the nursing facility exception also applies to rural health clinics and Federally qualified health centers.

Response: Rural health clinics and Federally qualified health centers do not meet the requirements for nursing facilities as defined in section 1919(a) of the Act. Therefore, the DUR requirements under section 1927(g) apply to these facilities.

Comment: One commenter suggested that States should not be able to apply additional nursing home requirements without appropriate Federal guidelines.

Response: The statute precludes Federal action to require DUR for drugs dispensed by nursing facilities meeting the section 1927(g)(1)(D) guidelines but leaves the States free to issue additional requirements. The interim regulations that we issued explain the DUR requirements and include guidelines for the States to implement the DUR requirements.

Comment: Four commenters suggested that HMOs not be excluded from the DUR requirements.

Response: The exemption of drugs dispensed by HMOs from the DUR requirements is in the statute and can only be changed by the Congress. We are removing the HMO exception provision under § 456.703(b), because this is a technically incorrect location, and adding a paragraph (c)(2) under § 456.703 which specifies the exemption for HMOs.

Comment: One commenter suggested that the nursing facility exception to the DUR requirement be mandatory, rather than making the exception optional.

Response: The Act precludes the Federal Government from requiring States to perform additional drug use reviews with respect to drugs dispensed to residents of nursing facilities in compliance with the drug regimen review requirements specified at section 1919 of the Act, as set forth in § 483.60. States may nonetheless impose DUR requirements on nursing facilities (see § 456.703(b)).

C. Exemptions for Certain Covered Outpatient Drugs Dispensed by Hospitals

Section 456.703(c) of the interim final regulations specifies that a State plan must provide that covered outpatient drugs dispensed by hospitals using a formulary system and billing Medicaid no more than the hospital's purchasing cost are not subject to the DUR requirements.

Comment: One commenter suggested that a hospital pharmacy that is separate from the inpatient pharmacy should be subject to the DUR requirements as are other retail pharmacies.

Response: Section 1927(j) of the Act applies the exemption to outpatient covered drugs dispensed by hospitals under certain specified conditions. Pharmacies located on the hospital premises that are separate in terms of ownership and fill only outpatient prescriptions are not entitled to the exemption.

Comment: Two commenters suggested that outpatient prescription drugs dispensed by hospital pharmacies should not be exempt from the DUR requirements.

Response: Pharmacies that operate as part of a hospital and also fill outpatient prescriptions are, by statute, entitled to the exemption. We have amended § 456.703(c)(1) to indicate that hospitals which apply for the exemption must provide the State agency with an assurance that they qualify for the exemption by meeting the requirements at section 1927(j)(2).

Comment: One commenter suggested the need for clarification of § 456.703(c) by defining "hospital's purchasing cost" and "formulary system".

Response: The statute permits States, if they wish, to define the terms "formulary system" and "hospital's purchasing cost". We do not believe that it is necessary to do so in the regulations.

D. Predetermined Standards

Section 456.703(d) of the interim final regulations specifies that the DUR program must assess drug use information against predetermined standards as provided for in section 1927(g)(1)(B) of the Act. Sections 456.703 (e)(1) through (e)(4) specify the sources of predetermined standards. Section 456.703(f) lists eight specific requirements that predetermined standards must meet, including the requirement that the source material for development of the standards must be consistent with peer-reviewed medical literature. Section 456.703(g) requires that predetermined standards be available to the public, and that pharmacists and physicians must be informed of their existence and how they may obtain copies.

Comment: One commenter requested clarification of the distinction between criteria and standards.

Response: Section 1927(g)(1)(B) indicates that the DUR program is to assess drug use, based on predetermined standards that are consistent with three compendia and the peer-reviewed medical literature. The compendia and the peer-reviewed literature are source materials for criteria, but additional work is necessary to resolve differences of opinion in source material and to consider the input of professional experts. "Criteria", as defined in § 466.1 and cross-referenced in § 456.702, are the predetermined elements of health care, developed by health professionals relying on professional expertise, prior experience, and the professional literature, with which aspects of the quality, medical necessity, and appropriateness of a health care service may be compared. "Standards", as defined in § 466.1, are professionally developed expressions of the range of acceptable variation from a norm or criterion, which may be developed by the States. If, for example, a criterion for the use of H2 receptor antagonists indicates that acute therapy should not exceed 62 days, a standard might indicate that acute therapy of up to 67 days would not warrant consideration of intervention. Although section 1927(g)(1)(B) of the Act does not define predetermined standards, we believe that the definitions of criteria and standards at § 466.1 provide an adequate base to interpret the meaning of predetermined standards.

Comment: One commenter suggested that § 456.703(e)(3) should delete specific examples of independent organizations from which predetermined standards may be obtained to broaden the sources of independent standards. This comment also indicated a typographical error in paragraph references at § 456.703(e)(4).

Response: We need to specify certain organizations in the regulations to indicate that criteria should be developed by organizations which have no vested interest in the sale of drugs covered by the criteria. Organizations with a vested interest would have an opportunity to provide input during the DUR board approval process. Therefore, we have retained the specific organization names.

We have corrected § 456.703(e)(4) to refer to paragraphs (e)(1) through (e)(4) rather than (f)(1) through (f)(4).

Comment: One commenter suggested the inclusion of additional sources of predetermined standards, including relevant guidelines from professional groups, experience of practitioners with expertise in drug therapy, information from pharmaceutical manufacturers, and data as well as experience from the DUR program.

Response: The statute provides that criteria developers are to place primary reliance on compendia and peer-reviewed literature. They may rely on other source materials to supplement what is in the compendia and the peer-reviewed literature. In the event of conflicts between primary materials and supplementary information, such as professional experience, if the professional consensus process (as specified in § 456.703(f)(2)) is unable to resolve the conflict, the supplementary information must not be relied on by the criteria developer.

Comment: One commenter suggested an amendment to require Food and Drug Administration (FDA) labeling as the primary source of DUR criteria.

Response: The statute is specific regarding the primary sources for predetermined standards. FDA labeling is not included as a primary source.

Comment: Five commenters requested clarification of § 456.703(f)(2) regarding the consensus process and what to do if consensus cannot be reached. Several commenters suggested resolving disagreements with additional input from professional or medical organizations or other outside sources. Others indicated that if consensus is not reachable because of insufficient data or lack of sufficient knowledge of therapeutic outcomes, it would be satisfactory to have no criteria or to have more than one standard. One of these commenters recommended taking into account community practice standards in seeking consensus. One commenter suggested that the DUR board have final authority in the case of disagreements.

Response: We have amended § 456.703(f)(2) to specify that consensus process means that the criteria developers should rely on professional experts in drug therapy to consider differences in criteria source materials and come to agreement on how differences should be resolved. It is expected that the differences would be resolved before a criterion was submitted to the DUR board for approval. The DUR board must know the sources, decision guidelines used in developing criteria, and any other information necessary to evaluate criteria.

Comment: One commenter suggested a revision of § 456.703(f)(5) to consider patient as well as provider outliers in identifying problems and to consider both dispensing and consumption practices. In addition, the commenter suggested that standards may be considered in deciding if in-depth review is needed to determine whether to intervene, once potential therapeutic problems have been identified through the use of clinical criteria.

Response: We agree and have revised § 456.703(f)(5) to consider recipients' consumption practices.

Comment: One commenter suggested that § 456.703(f)(6) should be clarified to indicate that testing against claims data should be to test the accuracy and ability of criteria to detect significant problems without undue levels of false positives.

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Response: We have amended § 456.703(f)(6) to specify that criteria be tested against claims data prior to adoption by the developer in order to validate the level of possibly significant therapeutic problems without undue levels of false positives.

Comment: Two commenters suggested that criteria for predetermined standards should be modified to conform to State standards of practice. Four commenters were concerned with the process used to modify criteria. One commenter suggested that the State should be required to establish a process for review and modification of criteria which provides a mechanism to get input from providers. One commenter suggested an annual period for receipt of petitions for modification of criteria. Another commenter suggested that the DUR board issue public notice when it considers changing criteria. Another commenter suggested that there is a risk of bogging down the process by establishing procedures.

Response: The State may require DUR Boards to specify the procedures suggested by the commenters. The DUR board would then establish the mechanisms to obtain input, where appropriate, from providers, the public, and other interested parties concerning modification of the criteria or the approval of the criteria. To avoid the possibility that these procedures might impede the efficient operation of the DUR program, the State may use informal mechanisms that it deems appropriate. There is no Federal requirement for the use of notice and comment procedures during the criteria development process.

Comment: Two commenters suggested that standards be accessible during development, and public comment should be obtained during criteria development. Two commenters suggested that it is unnecessarily burdensome to have to furnish providers with criteria. One of these commenters suggested providing only a general description, not the complete criteria. One commenter suggested giving criteria to providers and allowing reasonable time for compliance.

Response: We believe that making criteria and standards accessible for public comment during the development period would impede the development process. Section 456.703(g) does not require distribution of the criteria to the public or to providers; nor does it require that the State distribute the predetermined standards to the public. The regulations, however, do require that predetermined standards must be made available to the public after they are adopted by the State. They also require that physicians and pharmacists be informed of what predetermined standards have been adopted and how they can obtain copies.

Comment: One commenter suggested that criteria should consider the needs of the geriatric population. Another commenter suggested that peer reviewers, not criteria and standards, determine what is necessary and appropriate. One commenter suggested that professional prerogatives, to allow for individualized therapy, be linked to the use of criteria and standards.

Response: To the extent that the peer-reviewed medical literature and the three compendia specified in the statute reflect the results of the testing of drugs on elderly subjects, the needs of the geriatric population will be taken into consideration. Criteria and standards involve peer reviewers in the development and approval process. Also, standards provide a basis for State DUR boards to decide the degree of variation from a criterion which is acceptable to allow for such things as individualized therapy. In most instances where retrospective drug use review is conducted, peer reviewers evaluate the results of the screening process to decide which types of interventions should be applied to particular situations.

Comment: One commenter suggested that the description of "peer-reviewed" medical literature in § 456.703(f)(1) be revised to indicate that original manuscripts are "accepted" for publication rather than "rejected".

Response: We agree that if a manuscript was rejected, it would mean that the manuscript had not become peer-reviewed literature. We have deleted the words "rejected or" from the description of peer-reviewed medical literature.

Comment: One commenter suggested that the § 456.703(f)(1) provision on "peer-reviewed" medical literature should address conflicts between such literature and compendia.

Response: We realize that there will be conflict between peer-reviewed medical literature and compendia. However, the resolution of any such conflict will occur in the consensus process described in § 456.703(f)(2).

E. Confidentiality

Section 456.703(h) of the interim final regulations requires States to establish policies concerning the confidentiality of patient-related data consistent with Federal confidentiality requirements at part 431, subpart F of the Medicaid regulations, State Pharmacy Practice Acts, and guidelines adopted by the State Board of Pharmacy or other relevant licensing authority.

Comment: Six commenters suggested that § 456.703(h) should be more detailed and should require that States provide pharmacies with detailed information on how to comply with confidentiality requirements. The commenters suggested that the section include guidelines on protection of patient confidentiality in the electronic claims environment and physician-to-pharmacist confidentiality; and specify that confidentiality requirements which apply to medical records also apply to patient profiles maintained by pharmacists.

Response: We believe that the Federal confidentiality requirements in the regulations at part 431, subpart F, the State requirements contained in Pharmacy Practice Acts, and the policies developed by State bodies which regulate the practices of medicine and pharmacy should be sufficient to protect the confidentiality of patient-related data and at the same time allow providers access to data to make informed judgments necessary to effectively conduct DUR. With regard to the problem of maintaining confidentiality in an electronic environment, the Workshop on Electronic Data Interchange (WEDI) is studying these issues but has not yet developed policy recommendations. In the interim, since use of the electronic drug claims processing systems may present unique confidentiality problems, particularly with prospective DUR, States may wish to establish policies to address these problems.

Comment: One commenter indicated that, as important as confidentiality is, it should not be allowed to be used to restrict pharmacist access to relevant data needed to permit accurate assessment of patient needs so the pharmacist can make informed medication-related judgments.

Response: Section 456.703(h) of the regulations requires States to establish policies concerning the confidentially of patient-related data which is consistent with Federal confidentiality requirements and State Pharmacy Practice Acts and State Pharmacy Board guidelines. We believe that this can be accomplished in a manner which both protects patient confidentiality and allows for access to data needed to efficiently administer the Medicaid DUR program.

Comment: One commenter asked how HCFA will ensure that patient confidentiality rules are adequate and how HCFA will monitor compliance with them.

Response: Since States are primarily responsible for regulating pharmacy and medical practice, they must determine the adequacy of confidentiality rules and ensure compliance with them. HCFA will monitor compliance with the confidentiality requirements through its review process conducted by regional offices and through review of the DUR annual reports required by § 456.712.

Comment: Two commenters requested an explanation of why Federal confidentiality requirements do not apply to patient profile requirements at § 456.705(d).

Response: The Federal Privacy Act requirements do not apply where the Federal Government does not control the records in question.

F. Prospective DUR

Section 456.705(a) of the interim final regulations requires review of drug therapy before each prescription is filled or delivered to a recipient. This review, as described in § 456.705(b)(1) through (7), is done at the point of sale, based on predetermined standards, before a prescription is filled or delivered to the recipient or the recipient's caregiver. Reviews are to detect drug-disease contraindications, therapeutic duplication, adverse drug-drug interaction, incorrect drug dosage or duration of therapy, drug-allergy interactions, and clinical abuse and/or misuse. Counseling and maintenance of patient profiles by the pharmacist are required by §§ 456.705(c) and (d).

Comment: One commenter suggested that the word "prescription" be changed to "drug" in the description of drug-disease contraindications because contraindications can also occur with over-the-counter drugs. The commenter also suggested that the term "clinically significant" be used to describe adverse medical effect. This latter terminology would ensure that only significant events would be reviewed and these regulations would not identify all adverse effects as contraindications.

Response: We have revised § 456.705(b)(2)(i) to incorporate the commenter's suggestions.

Comment: Two commenters suggested that the definition of "adverse drug-drug interaction" include the phrase "clinically significant" to describe "adverse medical effect". Again, this would ensure that only significant effects would meet this definition, since all adverse effects need to be reviewed.

Response: We have revised § 456.705(b)(3) to incorporate the commenters' suggestion. We have made a conforming change to § 456.703(f)(5).

Comment: One commenter suggested that the definition of "adverse drug-drug interaction" should prohibit substitution of the FDA orange book "B" rated drugs.

Response: It is not HCFA's responsibility to require generic substitution of the FDA orange book "B" rated drugs. State laws regarding product selection will determine the requirements regarding generic substitution.

Comment: One commenter suggested an error in the definition of "incorrect drug dosage" at § 456.705(b)(4) as a potential drug therapy problem type that must be included in the screening in point-of-sale or point-of-distribution reviews. The commenter pointed out that the reference to "daily dosage range" should be "daily dosage" as the term "range" applies to the standard and is not a part of the definition. A second commenter suggested that the correct "duration" of drug treatment was hard to assess as a potential drug therapy problem type under § 456.705(b)(5).

Response: We have deleted the references to "range" in § 456.705(b)(4), since we believe that the term is redundant. We agree with the commenter that duration, in some instances, may be difficult to assess. However, ranges provided in the predetermined standards would allow for some variance in individual cases.

Comment: One commenter suggested that the definition of "drug-allergy interactions" include a statement that such problems can only be identified based upon history obtained from the patient or the physician.

Response: We agree that information regarding drug- allergy problems may be only available through contact with the physician or the patient. However, such a statement is not a proper part of the definition.

Comment: One commenter suggested that the prospective DUR screening elements definitions should be consistent with definitions developed by the National Council for Prescription Drug Programs (NCPDP).

Response: We did review the definitions of prospective DUR, retrospective DUR, and concurrent DUR developed and recommended by the NCPDP in developing the interim final regulations. Section 456.705 describes prospective DUR in detail and § 456.709 describes retrospective DUR in detail. We see no reason to define these terms in § 456.703. Because the statute does not refer to concurrent DUR, we have no reason to include this term in the regulation.

Comment: Four commenters were concerned about performing prospective DUR in an on-line electronic drug claims management environment. Two commenters suggested not implementing prospective DUR in an on-line ECM environment until demonstration projects required by the statute have been completed. Another commenter suggested a comparison of ECM-based DUR and pharmacy on-site DUR and the implementation of the most effective approach. One commenter warned against making prospective DUR too automated because the pharmacist is essential as a problem solver. One commenter suggested that detailed prospective DUR rules are unnecessary because prospective DUR can be performed based on the pharmacist's professional judgment manually, or electronically, or a combination of the two.

Response: Establishing electronic drug claims management systems and including prospective DUR as part of such systems are options available to the States; they are not required. Therefore, prospective DUR can be done electronically or on site by each pharmacy. The purpose of the demonstration project required by Congress at section 4401(c)(1)(d) of OBRA '90 is to determine the relative effectiveness of the ECM-based prospective DUR versus the on-site pharmacy prospective DUR, and thus assure implementation of ECD-based DUR. We recognize that, even with automation, prospective DUR cannot be done without the pharmacist because his or her professional judgment determines whether and how to respond to an automated alert of a potential problem.

Comment: One commenter suggested that if electronic prospective DUR is implemented, a professional oversight committee should work to keep focus on serious problems and to avoid false positives.

Response: We agree that if an electronic prospective DUR is implemented, a professional oversight committee is needed to ensure that prospective DUR is focused on serious problems and avoids false positives. We believe that the State DUR board would be the appropriate entity to provide such oversight.

Comment: One commenter suggested that in the course of the prospective DUR, prescriptions should not be changed or denied without the physician's knowledge.

Response: Except for the quantity dispensed, State law prohibits changing a prescription. It would be appropriate for the pharmacist to notify the physician if the prescription is not filled for therapeutic reasons. Establishing rules requiring such notification is in

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the province of State boards of pharmacy and could be included in the State Pharmacy Practice Acts. In the absence of such rules, the State Medicaid agency could, where appropriate, establish them.

Comment: One commenter suggested that we define a prescription.

Response: The definition of a prescription is included in the State Pharmacy Practice Acts.

Comment: One commenter suggested that approval of State plans for DUR should be contingent on the State providing adequate financial incentives for pharmacist interventions.

Response: There is no prohibition in the statute or the regulations against the State providing financial incentives for pharmacist interventions. The State is free to include, in its reimbursement for the cost of filling a prescription, consistent with the requirements of section 1902(a)(30)(A) of the Act with regard to efficiency, economy and quality of care, amounts to compensate for DUR services.

Comment: One commenter suggested that instructions for compliance with prospective DUR should go to the pharmacist, not the pharmacy.

Response: We believe that the instructions for compliance with prospective DUR should be directed to the pharmacies since they are the Medicaid providers. It would be more burdensome to furnish this information to pharmacists in part because changes in the pharmacy staff occur more frequently than do changes in the status of pharmacies. The owners or managers of pharmacies, as Medicaid providers, are responsible for furnishing their staff with information pertaining to DUR.

Comment: One commenter suggested that pharmacists should not be required to take medical histories.

Response: Nothing in the statute or the regulations requires pharmacists to take medical histories. Pharmacists must make a reasonable effort to maintain patient profiles and may, based on their professional judgment, seek patient specific information for those profiles.

Comment: Seven commenters pointed out the importance of diagnosis information and the difficulty of conducting prospective DUR screening to identify drug-disease and drug-allergy screening without patient-specific information. One commenter suggested that inaccurate diagnosis information would generate needless communication between physicians and pharmacists.

Response: We agree that it is difficult to screen for drug-disease contraindications and drug-allergy interactions without access to patient-specific information. Clearly, access to such information improves the ability to conduct prospective DUR, and obtaining accurate information is a difficult technical problem. There is also the question of the relationship of the diagnosis to the use of the prescription, for example, the diagnosis may be cancer and the prescription may be for pain. Given these difficulties, problems associated with access to patient-specific information can best be resolved by pharmacists cultivating relationships with physicians so that it becomes possible for the pharmacist to seek patient-specific information about diagnosis, allergies, and other matters when, in his professional judgment, it is appropriate for counseling.

Comment: One commenter suggested that HCFA require physicians to submit diagnosis information, while another suggested that physicians not be required to provide diagnosis information. Other commenters pointed to the difficulty of getting diagnosis information from providers.

Response: Since States regulate the practice of medicine, placing diagnosis information on prescriptions is a matter for States to decide.

G. Counseling

Section 456.705(c) of the interim final regulations provides that applicable State law, or other method satisfactory to the State, must establish standards for counseling of the recipient or the recipient's caregiver. The State must provide pharmacies with detailed information as to what they must do to comply with prospective DUR requirements, including guidelines on counseling, profiling, and documentation of prospective DUR activities by the pharmacists. The State law, or other method satisfactory to the State, must specify how counseling requirements apply to mail order pharmacies.

The standards must specify whether the pharmacist or an ancillary person may make the offer to counsel; must specify what documentation must be maintained on refusals of counsel; and must include in the counseling those matters considered significant by the pharmacist. The standards need not require a pharmacist to provide consultation when a recipient or recipient's caregiver refuses such consultation.

Comment: Five commenters addressed the physician-pharmacist relationship concerning the provision of counseling services. One commenter stated that counseling that involves the pharmacist contacting the physician would create a hassle factor for the physician. Four commenters suggested the expansion of § 456.705(c) to include specific statements regarding the physician-pharmacist relationship: the physician should be able to direct the pharmacist to include or exclude specific topics for specific patients; the pharmacist should notify the physician if the patient refuses the prescription after counseling. In addition, if the pharmacist identifies a significant risk of an adverse medical result, he or she should consult the physician prior to counseling. The commenters indicated concern that inappropriate counseling would result without the addition of these requirements.

Response: The individual State has the responsibility of establishing standards of counseling for the pharmacist. Some States may want to incorporate requirements regarding physician-pharmacist interaction in their standard; others may not. We believe these interactions will occur in the normal day-to-day relationships between physicians and pharmacists. In any event, States should be given the flexibility of either including, or not including, the suggested requirements.

Comment: Seven commenters suggested that mail order pharmacies should be treated the same as all other pharmacies. Counseling requirements should apply equally to all pharmacy providers of outpatient drugs.

Response: We concur and have removed the statement concerning mail order pharmacies from § 456.705(c). Since delivery of a prescription to a person at home by a pharmacy and mail order prescriptions raise the same issues about how to offer and provide counseling, we have amended § 456.705(c) to require State counseling standards to address this issue.

Comment: Three commenters suggested that the regulations specify whether the offer to provide counseling is required for new prescriptions only, both new and refill prescriptions, or whether the decision to make the offer should be left to the professional judgment of the pharmacist. One commenter suggested limiting the offer to new prescriptions; one commenter suggested that it apply to both new and refill prescriptions; and the third commenter suggested leaving the decision to the professional judgment of the pharmacist. Six commenters suggested that the regulations specify the role of ancillary personnel in making the offer to counsel to the patient or the patient's representative. The commenters indicated that pharmacists may have ancillary personnel make the offer of counseling on their behalf, but the pharmacists must personally conduct counseling if the offer is accepted.

Response: Since the statute requires each State to establish standards for counseling, these State standards rather than Federal regulations must, at a minimum, address the following issues:

- Whether the offer to counsel is required for new prescriptions only, or both new and refill prescriptions;
- Whether only pharmacists must make the offer to counsel or whether auxiliary personnel are authorized to make the offer;
- Whether only a patient's refusal of the offer to counsel must be documented or whether documentation of all offers is required;
- Whether documentation of counseling is required; and
- How counseling is to be addressed in situations where the patient's representative is not readily available to receive a counseling offer or the counseling itself.

We have amended § 456.705(c) to specify that State counseling standards must address these issues.

Comment: Seven commenters discussed the method of documenting a patient's refusal of the offer to provide counsel. Six commenters suggested that pharmacists be given the maximum flexibility in the method of documenting a patient's refusal of the offer to provide counsel. One of the six commenters suggested that documentation should not be mandatory. The seventh commenter suggested that a recipient should be able to sign a blanket refusal for all prescriptions.

Response: Again, we leave to the States decisions regarding documentation of offers to counsel.

Comment: Five commenters addressed documentation of counseling in general, although such documentation was not discussed in the interim final regulation. Two commenters suggested that guidelines on documentation be included and three commenters suggested that documentation standards should be general and not specific.

Response: The statute requires the States to establish standards for counseling. We have amended § 456.705(c)(1) (formerly the undesignated introductory paragraph of § 456.705(c)) to specify the subject matter that must be addressed by these standards.

Comment: Five commenters suggested that § 456.705(c)(1) specify that the content of counseling should be left to the professional prerogative of the pharmacist, who should be given proper flexibility in selecting how patient counseling should be administered in each circumstance. One commenter requested that the control of the content not be given to the prescriber.

Response: Section 456.705(c)(3), formerly § 456.705(c)(2), clearly specifies that the content of counseling is subject to the professional judgment of the pharmacist. Determining how counseling should be administered, that is, whether counseling must be oral or to what extent written communication may be used, depends on the State standards for counseling.

Comment: Six commenters discussed making an oral offer to counsel. Two of the six suggested that, in all instances, the offer must be oral. Three suggested that a written offer should be used where an oral offer was not possible. The sixth commenter advised that written material alone should not be substituted for the oral offer.

Response: We believe that the issue of whether the offer to counsel must be oral, and the extent to which written material may be substituted for an oral offer of counseling, are matters to be addressed by State standards for counseling.

Comment: Six commenters suggested additional requirements for offers of counseling when the patient was not available, when deliveries were made via mail service or offsite deliveries outside the area covered by the local telephone exchange. They suggested use of written instructions (offer to counsel) with the prescription plus a toll-free telephone number for the patient to call if there were any questions.

Response: We concur and have amended § 456.705(c)(2) to require mail order pharmacies to provide toll-free telephone service for all long distance calls. As stated in the regulation, other pharmacies whose primary patient population is accessible through a local measured or toll-free exchange may not be required to offer toll-free service. A State agency's counseling standards must address special situations where the patient, or the patient's representative, is not readily available to receive the offer to counsel or the actual counseling, for example, prescriptions delivered off site or through the mail.

Comment: Five commenters addressed the provision of a toll-free telephone number for the patient to use to ask questions or obtain additional information concerning his or her prescription. One commenter stated that requiring such a number was not practical. One commenter requested more information regarding toll-free numbers. One commenter stated "access to" should mean that every patient has the opportunity to telephone the pharmacist without cost to the patient. The fourth commenter stated that managed care pharmacies should provide a toll-free telephone counseling service. A fifth commenter also stated that pharmacies should provide a toll-free number on the prescription label which would, in part, meet the "offer to counsel" standard.

Response: As stated in the regulation, pharmacists whose primary patient population is accessible through a local measured or toll-free exchange may not be required to offer toll-free service. States are free to further define, under the counseling standards, the term "primary patient population", or otherwise specify under what circumstances pharmacies would or would not be required to provide toll-free telephone service. Otherwise, pharmacists whose primary population is not accessible as indicated above, would be required to provide toll-free telephone service.

Comment: Four commenters suggested that counseling requirements will alarm, confuse, or raise fears among recipients. Two commenters indicated that recipients would not understand that refusal to provide medical history or to accept counseling would not affect their eligibility for medical services under the Medicaid program.

Response: We do not agree that counseling would alarm, confuse, or raise fears among recipients. Overall, the program will increase the knowledge, and the understanding by patients, of the impact of drugs on their lives. With such increased knowledge, patients can better participate in the administration of the medical care that they are receiving. Rather than alarm patients, the offer to counsel and the actual counseling can be used to alleviate their fears by providing an explanation which could cover not only the items suggested in the law and regulations but also the impact of the counseling program on the individual's eligibility for medical services under the Medicaid program.

Comment: One commenter suggested that the regulations be amended to acknowledge what many States had done to implement model patient counseling legislation that established how the "offer to counsel" is made to the patient.

Response: We do not believe that an acknowledgement of what States have done thus far would serve any purpose. It would not be feasible to include a current list of such States in the regulations since the list would be growing constantly. If such recognition is provided for model patient

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counseling legislation, then recognition should also be provided to States that have model retrospective review programs, prospective programs, and point-of-sale ECM systems. HCFA intends to share with the States information and technology that various States have found effective for administering DUR.

Comment: One commenter suggested that the regulation distinguish between the "offer to counsel" and the act of counseling itself.

Response: We believe that §§ 456 705 (c)(1) and (c)(3) already distinguish between the offer and the content of counseling.

Comment: Two commenters suggested that the counseling requirements are an unwarranted Federal intrusion and may have adverse consequences for the mentally ill. They stated that absolute confidentiality must be maintained and counseling must be done in a discreet, supportive, informative, and non-threatening manner.

Response: We agree that the protection of confidentiality and the sensitivity with which counseling is conducted are critically important. Since the States and pharmacists, not the Federal Government, are responsible for counseling, we do not believe that an unwarranted Federal intrusion has occurred.

Comment: One commenter asked whether the $1 to $2 cost estimate per prescription for counseling services was based upon the pharmacist or the ancillary personnel making the offer to counsel.

Response: This estimate was based upon the pharmacist making the offer of counseling.

Comment: One commenter noted that the timing of the issuance of the rule placed States and pharmacies at a serious disadvantage as it permitted only 60 days for the adoption of counseling standards through legislation or regulation.

Response: We agree that the timeframe for issuing the regulations was unusually short and placed a burden on the States. However, most States have successfully established counseling standards to comply with the regulations.

H. Profiling

Section 456.705(d) of the interim final regulations requires States, in the case of Medicaid recipients, to require pharmacists to make a reasonable effort to obtain, record, and maintain patient profiles. The profiles, at a minimum, must contain the following information: (1) name, address, telephone number, date of birth (or age), and gender of the patient; (2) individual history, if significant, including disease state or states, known drug reactions, and a comprehensive list of medications and relevant devices; and (3) the pharmacist's comments relevant to the individual's drug therapy.

Comment: Two commenters suggested that "individual history" rather than "individual medical history" should be one of the minimum information items.

Response: We agree and we have changed § 456.705(d)(2) to delete the word "medical". The term "medical history" is not appropriate, as "medical history" includes obtaining specific information regarding laboratory results, diagnosis, and other medical findings.

Comment: Three commenters suggested that the regulations should include a statement that profile information can be obtained by ancillary personnel, but the pharmacist must review and interpret the information obtained.

Response: We believe this is an individual State decision. A State that decides to authorize auxiliary personnel to obtain profile information may include such authorization and the appropriate requirements for the use of auxiliary personnel in their standards for counseling.

Comment: Three commenters addressed the use of the term "reasonable effort" for obtaining profile information in § 456.705(d). One commenter suggested the term should be further defined or deleted. One commenter suggested expansion of the term to state that "the pharmacist is responsible for ensuring that a reasonable effort is made to obtain profile information." The third commenter suggested expanding the statement to indicate that "reasonable effort" should not include additional burden or cost to the pharmacist.

Response: We have decided not to define reasonable effort in the regulations to allow States flexibility in implementing the DUR requirements. States and their pharmacy boards may, or may not, choose to further define "reasonable effort".

Comment: One commenter stated that § 456.705(d)(2) should be amended to make it explicit that the profiling requirements are limited to recording information concerning drugs and devices dispensed at the pharmacy where the pharmacist is employed.

Response: We have retained the phrase "a comprehensive list of medications and relevant devices" as the statute specifies in section 1927(g)(2)(A)(ii) of the Act. Neither the statute nor the regulation defines a "comprehensive list"; therefore the State, if it chooses, may further define the term according to section 1927(g)(2)(A)(ii) of the Act. Methods for securing this information could include checking the pharmacy's own record, receiving an alert message from the electronic claims management system, or asking the patient, physician, or other pharmacies for additional information if, in the professional judgment of the pharmacist, it was appropriate to do so.

Comment: One commenter suggested that HCFA study the advantages and disadvantages of requiring the collection of information for profiles.

Response: We will consider these matters as a subject for HCFA studies of the DUR program and its impact on the industry and the public.

I. Retrospective DUR

Section 456.709 of the interim final regulations requires that the State Medicaid plan provide for a retrospective DUR program for ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care among physicians, pharmacists, and Medicaid recipients, or associated with specific drugs or groups of drugs. This examination must involve pattern analysis, using predetermined standards of physician prescribing practices, dispensing practices of pharmacies, and drug use by individual patients. This program must be provided through the State's mechanized drug claims processing and information retrieval system or an electronic drug claims processing system that is integrated with the Medicaid Management Information System (MMIS).

Comment: Two commenters suggested peer review prior to any intervention suggested by DUR reports or outliers identified by computerized DUR programs. A third commenter suggested that the regulations state that the system should not produce punitive decisions against physicians.

Response: It is up to each State to determine whether, and under what circumstances, peer reviews of therapeutic problems identified through screening applications based upon predetermined standards, will be required. States may require peer review prior to all interventions or identify circumstances where peer reviews are, or are not, required.

We do not believe that it is appropriate to address the question of punitive decisions against physicians. The objective of the DUR is to improve pharmaceutical care through education.

J. Education Program

Section 456.711 of the interim final regulations requires that the State plan must provide for ongoing outreach programs that educate practitioners on common drug therapy problems with the aim of improving prescribing and dispensing practices. Section 456.716(d)(5) requires the DUR Board to: (1) identify and develop educational programs if needed; (2) make recommendations regarding interventions; and (3) periodically reevaluate and, if necessary, modify interventions. Section 456.716(d)(6) specifies that the Medicaid agency, or its contractor, should apply predetermined standards to drug claims data and generate reports for use by the board and carry out educational programs specified by the board.

Comment: Five commenters suggested expanding § 456.716(d)(5) to make it more specific. One commenter suggested the creation of a fifth provision to require more in-depth review prior to intervention. Other commenters stressed "appropriate and balanced" education programs based upon program experience, matching the education program to the drug therapy problem identified, and placing more emphasis on preliminary education.

Response: We have expanded § 456.716(d)(5)(ii) to address the commenters' suggestions. The DUR Board recommendations for educational interventions must be based on an in-depth review of claims data reports. The board may decide which educational intervention approaches are suitable for the drug therapy problems identified. We have changed § 456.703(f)(5) to specify that standards (that is, exceptions to criteria) may be used in deciding whether or not to intervene after the potential therapeutic problems have been identified.

K. Annual Report

Section 456.712 of the interim final regulations provides that a State must require the DUR Board to prepare and submit annual DUR reports to the Medicaid agency. The Medicaid agency is required to prepare and submit an annual report to the Secretary of the Department of Health and Human Services that incorporates the DUR board's report and includes detailed information on the DUR program operations and an estimate of the cost savings attributable to the DUR program.

Comment: Ten commenters addressed the DUR cost savings estimate required in the annual report. Three commenters suggested that § 456.712 should specify that savings resulting from reduced physician visits and hospitalizations should be taken into account. Two commenters suggested that we require comprehensive evaluations, including both clinical and economic evaluations that would estimate total savings of DUR.

Response: The requirement that State Medicaid agencies submit a cost savings estimate refers to those savings that can be attributed to the operation of prospective and retrospective DUR. The report on cost savings must identify what is spent annually to operate the DUR program and also identify the savings to the Medicaid drug program as a result of DUR. It may include savings that result from reduced physician visits and reduced hospitalizations if the State can document such savings. We agree that evaluating both the economic and clinical impact of DUR is important and the States should, to the extent that they are able, take both types of outcomes into account when evaluating their DUR programs. Demonstration projects are also addressing outcomes, including physician visits, emergency room visits, and hospitalizations. The Agency for Health Care Policy and Research of the Public Health Service is conducting an evaluation of pharmaceutical outcomes, and may cover this topic in its study.

Comment: Three commenters stated that it would be difficult to estimate cost savings as a result of the DUR program and asked for suggestions as how to perform this task. One commenter recommended that HCFA define the word "costs" in § 456.712(b)(10) when referring to the cost savings estimates to be included in the annual report. Another commenter suggested that the cost of DUR be expressed in terms of cost per recipient.

Response: Currently HCFA is developing a cost savings methodology for use by State Medicaid agencies, at their option, when estimating the cost savings that result from DUR. These guidelines will specify data collection needs. They will also suggest what costs are to be considered and whether or not to express costs in terms of cost per recipient. The guidelines for reporting cost savings will be distributed to the States on an advisory basis.

Comment: One commenter suggested that § 456.712(b)(3) be revised to require States to include information in the annual report that describes the process and sources used for establishing and revising criteria.

Response: HCFA will provide guidance to the States about the contents of the annual reports which will include information relating to sources for criteria. We do not believe it is necessary to include this as a regulatory requirement. The State DUR Boards will have such information available if there are any questions about the selection of criteria and standards.

Comment: One commenter suggested that providing complete criteria in annual reports would be cumbersome and costly. Another questioned whether the provision of criteria in the annual report would eliminate the need for the State's cost savings estimate.

Response: Section 1927(g)(3)(D) of the Act identifies specific information that must be included in the annual report to allow us to evaluate the effectiveness of each State's DUR program. HCFA's Medicaid Bureau has provided additional informal guidance with regard to the contents of the annual reports. This guidance indicates that detailed information about DUR-approved criteria must be provided but not necessarily the criteria themselves. This approach addresses concerns about the burdensome nature of submitting complete criteria in the annual reports. The statute requires inclusion of a cost savings estimate in the annual report, therefore provision of detailed information on the criteria does not eliminate the requirement that the State must submit a cost savings estimate.

Comment: One commenter suggested that a requirement be established for adequate data to be collected by State Medicaid agencies, to prove that the DUR program is beneficial.

Response: State agencies are required to submit an annual DUR report to HCFA. As previously indicated, HCFA will provide guidance as to what data are needed to determine cost effectiveness.

L. Drug Use Review and Surveillance and Utilization Review (SUR)

Section 456.714 of the interim final regulations states that the retrospective DUR requirements parallel some portion of the Surveillance and Utilization Review (SUR) requirements in subpart A of part 456 and in part 455 of the Medicaid regulations.

Comment: Two commenters suggested that SUR and DUR activities should be completely separate and distinct.

Response: We agree with the commenters and we have revised § 456.714 to indicate that the SUR program and the DUR program have overlapping responsibilities to identify and reduce the frequency of patterns of fraud, abuse, and gross overuse of drugs. Given the historical emphasis of SUR units in this area, we believe that the DUR staffs should focus their limited resources on what constitutes appropriate and medically necessary

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pharmaceutical care. It is the State's option, however, to establish what it considers to be the appropriate balance between fraud and abuse and medical appropriateness concerns.

Comment: One commenter requested clarification of § 456.714 and an explanation of how cost savings from SUR are to be taken into account in calculating DUR cost savings required by § 456.712(b)(10).

Response: HCFA is developing specific guidance to assist the States in determining DUR costs savings as required by § 456.712(b)(10). This guidance will address the issue of whether or not to include SUR cost savings.

M. DUR Board

Sections 456.716(a) and (b) of the interim final regulations require that each State establish a DUR Board and establish requirements for the composition of the DUR Board and expertise of its members. Section 456.716(c) specifies the relationship between the DUR Board and the State Medicaid agency; § 456.716(d) discusses activities of the DUR Board; and § 456.716(e) specifies funding available for DUR Boards.

Comment: Five commenters expressed concern about the relationship between the DUR Board and the State Medicaid agency as provided for in § 456.716(c). Four commenters suggested that the DUR Board be separate from the Medicaid agency or have final authority with regard to clinical issues such as approval of criteria. One commenter suggested the DUR Board should have rulemaking authority. One commenter suggested that DUR Boards should not be independent.

Response: Section 1902(a)(5) of the Act, which specifies that a single State agency must administer or supervise the administration of the Medicaid program, precludes making DUR Boards independent of the State agency. While it is expected that a State will rely heavily on the clinical expertise of the DUR Board, this does not preclude the State agency from independently assessing the DUR Board's recommendations to assist it in reaching its decisions.

Comment: Four commenters addressed the issue of procedures for DUR Board action if a State agency overrules the DUR Board. Two commenters suggested that DUR Boards have procedures to make their activities public, including possible public comment procedure for responses to outside input. Two commenters indicated that when the State agency overrules the DUR Board, it must make public the reasons for its actions and consider public comment.

Response: States may require DUR Boards to establish informal procedures through which outside parties may contribute input with regard to the application of predetermined standards. Section 456.716(c) gives the State agency the authority to overrule the DUR Board. The State agency may or may not make its reasons public, depending on the rules which it establishes for the creation of the DUR Board.

Comment: Five commenters addressed the composition of the DUR Boards. Some commenters suggested the need for more specifics about membership such as the possibility of having public members, representatives of chain pharmacies, and psychiatrists. One commenter suggested that pharmacist members have DUR experience.

Response: The State agency is free to determine the size of the DUR board and may include any types of members that it considers appropriate so long as it complies with §§ 456.716 (a) and (b).

Comment: One commenter suggested that the issue of possible conflict of interest of Board members be dealt with.

Response: Section 1927(g)(3)(b) of the Act and § 456.716 of this regulation specify that members of the DUR boards must be health professionals who have recognized knowledge and expertise in one or more of the following: the clinically appropriate prescribing of covered outpatient drugs; the clinically appropriate dispensing and monitoring of covered outpatient drugs; drug use review, evaluation, and intervention; or medical quality assurance. We are monitoring compliance with these requirements and expect that States will take whatever actions they deem appropriate, consistent with their laws and regulations concerning conflict of interest, to protect against conflict of interest in the operation of the DUR boards.

Comment: One commenter suggested that DUR Boards have the flexibility to determine appropriate interventions and when to use them. The commenter also suggested that there is no need to have all interventions reviewed by peers before they are carried out.

Response: DUR Boards do have the flexibility to determine appropriate interventions and when to perform them. It is up to the DUR Board to decide under what circumstances peer review must occur prior to interventions and when interventions may occur without such review.

Comment: Eighteen commenters responded to the request for comment on the interim final regulations about the appropriateness of having DUR Boards certify prospective DUR software. Ten of these commenters indicated that the DUR Board should not take on the task of certifying individual pharmacy prospective DUR software because of the enormity of the task, the DUR Board's lack of expertise in this area, and because the Board should not be put in a position of providing something equivalent to a seal of approval for software products. Five of the commenters suggested that DUR Boards should approve prospective DUR software. One commenter suggested that it would be more economical for HCFA to undertake evaluation of software packages. Two commenters suggested that DUR Boards should not deal with evaluation of individual pharmacy prospective DUR software but should provide guidance as to which products available to pharmacies would meet statutory requirements.

Response: We agree with those commenters who indicated that the DUR Boards should not take on the task of certifying individual pharmacy prospective DUR software. DUR Boards should know and understand the criteria upon which the software is based, but they often do not have the expertise to evaluate the quality and efficiency of the software itself. Undertaking such certification would be excessively burdensome and create the impression that some packages have State government approval while others do not.

Comment: One commenter suggested that the requirement in § 456.716(b) that pharmacists must be licensed and actively practicing in the State on whose DUR Board they serve would be burdensome to small States seeking to recruit experts from nearby States.

Response: We concur and have revised § 456.716(b) by eliminating the requirement for licensure by the State on whose DUR Board the pharmacist is serving.

N. Electronic Drug Claims Processing

Section 456.722 of the interim final regulations establishes functional requirements for those State Medicaid agencies that choose to develop an on-line, real-time point-of-sale electronic claims management (ECM) system to perform eligibility verification, claims data capture, claims adjudication, and to assist pharmacists in applying for and receiving reimbursement for services.

Comment: Four commenters addressed the costs of in-store telecommunications and the installation and use of on-line dedicated telecommunications lines. They recommended that pharmacy providers should be compensated for the additional costs incurred. One commenter suggested that the States should pay costs, charges, and fees related to on-line communication. Four commenters addressed the issue of costs associated with establishing an on-line, real-time ECM system and asked who would be responsible for the costs. They questioned whether access to the system would be toll free. They suggested that providers be compensated for costs associated with telecommunications, software enhancements, etc., that HCFA or fiscal agents, rather than pharmacies, take responsibility for telecommunication costs, and that HCFA require States to pay associated costs.

Response: State Medicaid agencies, who may receive FFP for the ECM systematic MMIS at enhanced rates if functional requirements are met, may also decide the amount of funding they will offer providers for hardware, software, and telecommunications charges, if any. A State may base this decision on such variables as what the average cost will be for pharmacies to participate, the amount of FFP received by the State for the ECM subsystem, and whether the State's budgets will enable it to compensate pharmacies who have incurred additional costs due to ECM. The State agency is free to pay transmission charges and other costs associated with participation in an ECM system or to require pharmacies to cover these costs.

Comment: One commenter stated that "ECMS" should require only the minimum data elements necessary for processing and paying claims. No variable data elements should be permitted.

Response: HCFA requires at least the minimum data set for processing and paying claims as defined in Part 2 of the State Medicaid Manual. Given the wide variation in State programs, however, we believe that it would be unwise at this time to restrict data that States may need for proper program administration. Thus, States have the option to add other data elements, as necessary.

Comment: Eight commenters suggested that HCFA require State Medicaid agencies to comply with one industry telecommunications standard. Six of the eight commenters recommend NCPDP's Version 3.2 to be incorporated into § 456.722. One commenter suggested that HCFA require the use of RFDS 3C in all State POS/ECM systems.

Response: Currently, the State may decide the format for its ECM as long as it meets the requirements of the minimum data set provided in Part 2, section 11375 of the State Medicaid Manual. However, with the growing use of the Electronic Data Interchange (EDI) and the possibility of a Federal requirement that mandates its use by the Medicaid program, a standard format requirement for ECM subsystems may be forthcoming. Moreover, HCFA announced in an advance notice of proposed rulemaking in the Federal Register on October 19, 1992 (57 FR 47587) that it endorses electronic standards established by the American National Standards Institute (ANSI). We anticipate final adoption of the ANSI electronic standards as the required telecommunications standard.

Comment: One commenter recommended that the ECM system develop electronic payment capabilities by incorporating the electronic funds transfer (EFT) program, or it will be of little value.

Response: The States may decide whether their ECMs will have an EFT capability. HCFA requires only that ECMs take steps toward the payment of the claim, in order to receive FFP, but not that funds be sent electronically.

Comment: Four commenters addressed the establishment of ECM systems. Two commenters suggested that providers be required by HCFA to use ECM systems. One commenter suggested that participation in an ECM system be an option for the pharmacy. One commenter requested that batch processing of claims for prescriptions be included in any ECM program.

Response: State Medicaid agencies may determine whether providers will be required to use ECM systems and whether providers using the ECM system will be required to rely on the State's prospective DUR, if the State has one. At this time, HCFA does not require State Medicaid agencies to establish ECM systems or to use them to accomplish prospective DUR.

Comment: Two commenters suggested that HCFA should require mail order pharmacies' ECM systems to be on-line, real-time. One commenter suggested that the exemption allowing batch claims submission mentioned in § 456.722(b) also be available to retail pharmacies.

Response: States are responsible for determining whether mail order dispensers and other providers are required to operate a real-time ECM system, or a batch processing system at the end of each day or at a time specified by the State Medicaid agency.

Comment: One commenter recommended that HCFA not require States to obtain cost/benefit analyses prior to procuring point-of-sale ECM.

Response An analysis that shows the cost effectiveness of the ECM is required in order for the States to receive enhanced FFP for the system.

O. Dispensing Physicians

The interim final regulations are silent on the subject of dispensing physicians.

Comment: One commenter pointed out that the regulations do not deal with the situation of dispensing physicians.

Response: Section 1927(k)(3) of the Act states that the term "covered outpatient drug" does not apply to drugs provided as physicians services unless there is a separate reimbursement for the drug. If there is a separate reimbursement claim for a drug dispensed by a physician, all the requirements of section 1927(g) apply to that physician, except for the requirements to offer patient counseling and to collect, record, and maintain patient profiles. This is because the Act specifically speaks to a pharmacist's responsibilities in these two areas. The State is free to develop State requirements with regard to patient counseling and patient profiles for dispensing physicians.

Comment: One commenter suggested that dispensing physicians not be allowed to submit claims through ECM systems.

Response: While the Secretary has been explicitly directed by the statute to encourage the use of ECM systems, States are free to establish policy with regard to the submission of claims through ECM systems.

P. Renal Dialysis

Section 1927(k)(3) of the Act does not include as a "covered outpatient drug" under Medicaid, drugs provided for renal dialysis unless direct reimbursement for the drug is involved.

Comment: One commenter pointed out that drugs administered to Medicaid recipients in renal dialysis centers are or are not subject to DUR, depending on whether or not there is separate reimbursement for the drug.

Response: We agree with the commenter. Section 1927 (k)(3) of the Act provides that drugs provided to Medicaid recipients in renal dialysis centers are not subject to DUR unless there is a separate reimbursement for the drug product.

Q. Liability

The Act and the interim final regulations are silent with regard to additional liability incurred by

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pharmacists as a result of DUR requirements.

Comment: Three commenters suggested that the preamble language that pharmacies would not incur additional liability is not correct and pharmacists should expect to have additional liability problems.

Response: Suits may result from pharmacy practice of DUR, but we have no evidence to support or refute the contention that the level of liability suits will increase. Since the DUR requirements specified in OBRA '90 constitute standards of pharmacy practice for Medicaid recipients, compliance with these standards provides the best protection against possible liability actions.

Comment: Five commenters suggested that pharmacists be held harmless from liability associated with conducting DUR or that HCFA assume such liability.

Response: We know of no statutory basis for holding pharmacists harmless from such liability or for having HCFA assume such liability that may result from compliance with the DUR requirements.

Comment: One commenter asked about product liability.

Response: We do not believe that product liability would be impacted by the OBRA '90 DUR requirements.

R. Comments on the Regulatory Impact Analysis

Comment: Two commenters questioned the Congressional Budget Office estimate of $10 million to $40 million savings annually. One commenter suggested that the DUR provisions will cost more than they save. The other commenter stated that significant hardware and software costs will reduce cost savings.

Response: Since these commenters provided no specific data, we will not make changes to the Congressional Budget Office estimates.

Comment: Ten commenters questioned the hardware-software costs associated with the DUR program. They included estimates for software costs of $1,500, $1,900, $2,000 to $5,000, and $3,500. One commenter suggested the cost of a new computer would be $3,600 to $6,000; a second commenter indicated that 10 percent of their group would need new computers. One commenter indicated annual upgrade and modification costs would be $995 per pharmacy.

Response: We concur with the majority opinion that our original estimates may be low and probably should reflect costs in the $1,500 to $3,500 range. However, due to the lack of any empirical data, we are unable at this time to make this determination with any degree of certainty.

Comment: Four commenters questioned the cost of counseling, all indicating cost estimates should be higher; however, only two provided their own estimates. One commenter suggested that 5 minutes would be necessary for counseling and profiling at a cost of $2.50 per prescription. Another commenter indicated that the time and cost per prescription for the DUR requirements would be 4 minutes and $2.98 ($2.98 includes 50 cents for hardware- software costs). One commenter suggested that the usual and customary charge should be reimbursed to ensure adequate compensation for DUR services. Four commenters suggested that the dispensing fee will need to be changed to reflect the increased requirements for DUR. None of the commenters suggested specific cost figures.

Response: We believe that 5 minutes at a cost of $2.50 per prescription is a reasonable estimate that would raise our top estimate from $140 million to $175 million. However, as we stated earlier, we lack any empirical data to substantiate this claim.

Comment: Six commenters suggested that the estimates in the interim final regulations did not include, or consider, the cost of interventions or consultations with physicians. One commenter, using data from a study that the commenter conducted, reported that 1.9 percent of all prescriptions require interventions. Where interventions are made, 87 percent of these interventions involve contact with the physician. This commenter estimated that with 2 to 4 minutes per consultation, at a pharmacist hourly rate of $30, the total cost would be $10 to $20 million for approximately 140 million new prescriptions per year.

Response: We generally agree that some of our estimates may be low. However, we do not believe, absent any additional definitive research studies that we can make any provisional changes as a result of this study at this time.

Comment: Three commenters suggested reimbursement for "cognitive services." One commenter suggested that the cognitive fee be separate from the dispensing fee. The second commenter indicated that a cognitive fee payment would ensure that pharmacists would maximize program efficiencies. The third simply advocated payment for such services.

Response: Currently, there is no authorization in Federal statute or regulation for a separate payment for cognitive services. However, section 4401(c)(2) of OBRA '90 authorizes a demonstration project on the cost-effectiveness of reimbursement for pharmacists' cognitive services. When this demonstration project is completed consideration may be given to the inclusion of reimbursement for cognitive services in the payments made to pharmacists.

Comment: The commenters addressed various subjects, all indicating their impact on increasing costs. One commenter suggested that recordkeeping and liability costs will increase. Three commenters indicated that costs associated with establishing and maintaining profiles were not included in the estimates. Six commenters were concerned about increased costs (one comment indicated DUR costs would be shifted to other payers).

Response: Some of these costs will be considered by the State in establishing the dispensing fee. As indicated in existing §§ 447.331 and 447.332 of the Medicaid regulations, the State is authorized to include a reasonable dispensing fee in its payments to pharmacies. This area is discussed in response to the comment regarding liability costs in section II. Q. of this preamble.

Comment: One commenter stated that the regulatory impact analysis was not adequate and seriously underestimated the impact of the rule on small pharmacies. The commenter suggested a more comprehensive regulatory flexibility analysis and recommended a longer compliance schedule for small businesses and looking at other alternatives to ease the burden.

Response: We disagree with the commenter. The analysis in the interim final rule did address the impact on pharmacies, States, dispensing fees, cost of counseling, and the costs of educational outreach. Since the commenter offered no data to support the comment and did not suggest a methodology for conducting the analysis, we are not making a change in the regulation at this time.

III. Changes to the Interim Final Rule

In developing the November 1992 interim final regulations, we essentially relied on the language of sections 1927 (g) and (h) of the Act. We also sought and received advice from various national provider associations, pharmaceutical companies, States, drug utilization review firms, and others. The interim final regulations became effective on January 2, 1993.

We have reviewed all of the public comments received on the interim final regulations and, in summary, have made the following changes.

- We have amended § 456.702 to clarify the definitions of "overutilization" and "underutilization".
- We have removed the technically incorrect HMO exception from § 456.703(b) and added a new paragraph at § 456.703(c)(2) to indicate the HMO exemption from DUR.
- We have included under § 456.703(c)(1) a provision that those hospitals that claim the exemption from DUR must give assurances to the State that they meet the requirements of section 1927(j)(2) of the Act.
- We have removed the words "rejected or" from § 456.703(f)(1) to clarify that only published peer-reviewed literature is an acceptable criterion.
- We have added a definition of "the consensus process" to § 456.703(f)(2).
- We have amended §§ 456.703(f)(5) and 456.705(b)(3) to clarify that only "clinically significant" adverse medical results warrant consideration in the prospective drug review. We also added wording under § 456.703(f)(5) to include the consideration of patient consumption practices and standards.
- We have added wording to § 456.703(f)(6) to clarify the reason for testing criteria against claims data.
- We have changed the word "prescription" to "drug" in § 456.705(b)(2)(i) in order to include consideration of non- prescription drugs with regard to alteration of therapeutic effect.
- In § 456.705(b)(4), we have specified "daily dosage" rather than "daily dosage range" in the description of what constitutes incorrect drug dosage.
- We have removed the reference to how drug counseling requirements apply specifically to mail order pharmacies from § 456.705(c) (now designated as § 456.705(c)(1)) so that we do not give the impression that they are treated differently than other pharmacies. Also, we have added language in § 456.705(c)(1) (i) through (v) to specify the issues that State agencies must address when formulating their counseling standards.
- We have added wording to § 456.705(c)(2)(i), previously § 456.705(c)(1), to require mail-order pharmacies to provide toll-free telephone service for long distance calls for counseling.
- In § 456.705(d)(2), we have replaced the phrase "individual medical history" with "individual history" since medical history would indicate the need for much more complete records, including such items as laboratory reports, X-rays, consultation reports, and unrelated surgeries and illnesses.
- We have added a paragraph to § 456.714 clarifying the distinction between the responsibilities of DUR and SUR.
- We have amended § 456.716(b) to change the requirement for licensure of a DUR board member in the State on whose board he or she serves, to licensure in any State.
- In § 456.716(d)(5)(ii) we have added wording to clarify the bases for DUR board recommendations, and we have added wording to § 456.703(f)(5) to allow the consideration of standards if an in-depth review is needed to determine whether to intervene once the potential therapeutic problems have been identified through the use of clinical criteria.
- Also, we have made certain technical corrections and corrections of typographical errors that appeared in the interim final rule.

VI. Regulatory Impact Statement

A. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all pharmacies and prescribing physicians are considered to be small entities.

B. Comments on Regulatory Impact Analysis and Regulatory Flexibility Analysis

In the interim final rule with comment period, we included a regulatory impact and regulatory flexibility analysis because of the financial impact on the operation of pharmacies, the States, and on recipients. The analysis described the effects that the interim final rule with comment period would have on these individuals and entities.

We received 35 comments concerning the costs of the drug use review program, the cost of the DUR requirements on pharmacies, and the cost estimates included in the interim final rule. All commenters indicated that the actual costs of implementing the provisions will be higher than the amounts presented. Eight of the commenters furnished specific cost figures either for their particular operation or they supplied estimates of specific costs per prescription, type of service rendered, equipment costs, or total program costs.

The comments covered the following specific areas:

- Initial hardware and software computer costs
- Upgrade costs for computer programs
- Counseling
- Cognitive services
- Dispensing fees
- Consultation with physicians
- Interventions by pharmacies
- Recordkeeping
- Additional liability for the pharmacist
- Profiles

The other commenters suggested the cost *saving* estimate was too high, advocated increased Federal funds to offset DUR costs, urged voluntary compliance of prospective DUR requirements for small fragile pharmacies, warned that DUR cost estimates were too low, and requested a comprehensive regulatory analysis for small businesses. For a complete summarization of these comments and our responses, see section II of this preamble.

We were unable to provide a more quantitative analysis due to the lack of empirical data. However, we did receive several studies from commenters. Although these data were somewhat limited, we agree that some of our estimates were low. We believe, however, that additional research in the future concerning these issues is needed to provide us with more specific results.

This final rule revises the November 2, 1992, interim final rule with comment period based on comments submitted by the public. Costs associated with implementing these regulations are a consequence of section 4401 of OBRA '90, not the regulations. We do not believe, absent any additional definitive research studies, that the changes incorporated into this final rule as a result of public comments will have any significant effect on DUR costs.

C. Impact on Small Rural Hospitals

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing a rural impact analysis since we have determined, and the Secretary certifies, that this final rule will not have a significant impact

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on the operations of a substantial number of small rural hospitals. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

V. Collection of Information Requirements

Sections 456.703, 456.705, 456.709, 456.711, 456.712, 456.716, and 456.722 contain information collection or recordkeeping requirements or both that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The information collection requirements concern the collection of information for patient profiles of Medicaid recipients, preparation by the State DUR boards of annual reports to the State agency, and preparation of annual reports by the State agency to the Secretary. These are statutory requirements. The respondents who will provide the information include Medicaid recipients who will provide information for profiles to pharmacists, State DUR boards that will provide annual report information to the State agencies and State agencies that will provide annual report information to the Secretary. Public reporting burden for the collection of profile information is estimated to be 5 minutes for each initial encounter and 2 minutes for each subsequent encounter. Public reporting burden for the collection of the annual report information, which includes activities by the DUR board and by the State agency, is estimated to be up to 60 hours a year per State.

A notice will be published in the **Federal Register** after approval is obtained.

List of Subjects in 42 CFR Part 456

Administrative practice and procedure, Grant programs—health, Health facilities, Medicaid, Reporting and recordkeeping requirements.

42 CFR part 456 is amended as set forth below:

PART 456—UTILIZATION CONTROL

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. In § 456.702 the definitions of "overutilization" and "underutilization" are revised to read as follows:

§ 456.702 Definitions.

* * * * *

Overutilization means use of a drug in a quantity, strength, or duration that is greater than necessary to achieve a desired therapeutic goal or that puts the recipient at risk of a clinically significant undesirable effect, or both.

* * * * *

Underutilization means use of a drug by a recipient in insufficient quantity, strength, or duration to achieve a desired therapeutic goal or that puts the recipient at risk of a clinically significant undesired effect, or both.

3. In § 456.703, paragraphs (b), (c), and (e)(4) are revised, the introductory text of paragraphs (e) and (f) are republished and paragraphs (f)(1), (f)(2), (f)(5), (f)(6) and (h) are revised to read as follows:

§ 456.703 Drug use review program.

* * * * *

(b) *Exception for drugs dispensed to certain nursing facility residents.* Prospective drug review and retrospective drug use review (including interventions and education) under the DUR program are not required for drugs dispensed to residents of nursing facilities that are in compliance with the drug regimen review procedures set forth in part 483 of this chapter. This does not preclude the State agency from making such drugs subject to prospective DUR or retrospective DUR or both, provided the State agency makes the drugs subject to all the requirements of this subpart applicable to the respective review.

(c) *Exemption for certain covered outpatient drugs dispensed by hospitals and health maintenance organizations.*

(1) The State plan must provide that covered outpatient drugs dispensed by a hospital using drug formulary systems and billed to the plan at no more than the hospital's purchasing costs are not subject to the requirements of this subpart. Individual hospitals requesting this exemption must provide assurances to the State agency that they meet the requirements specified in section 1927(j)(2) of the Act.

(2) The State plan must provide that covered outpatient drugs dispensed by health maintenance organizations are not subject to the requirements of this subpart.

* * * * *

(e) *Source of predetermined standards.* The predetermined standards must be—

* * * * *

(4) Any combination of paragraphs (e)(1) through (e)(3) of this section.

(f) *Requirements for predetermined standards.* The predetermined standards used in the DUR program must meet the following requirements:

(1) The source materials for their development are consistent with peer-reviewed medical literature (that is, scientific, medical, and pharmaceutical publications in which original manuscripts are published only after having been critically reviewed by unbiased independent experts) and the following compendia.

(i) American Hospital Formulary Service Drug Information;

(ii) United States Pharmacopeia-Drug Information;

(iii) American Medical Association Drug Evaluations.

(2) Differences between source materials were resolved by physicians and pharmacists developing consensus solutions. The consensus process means the reliance, by the criteria developers, on the expertise of physicians and pharmacists to evaluate differences in criteria source materials and to come to agreement on how differences should be resolved.

* * * * *

(5) The review based on clinical criteria uses predetermined standards to determine the population at risk of a clinically significant adverse medical result and applies standards, appropriate to this population, across providers and patients to determine the provider outliers whose prescribing, dispensing, or consumption practices may not conform to accepted standards of care. Various statistical measures (including mean, range, or other measures at the discretion of the State) may be applied to these data. Standards may be considered in deciding if an in-depth review is needed to determine whether to intervene once the potential therapeutic problems have been identified through the use of clinical criteria.

(6) They have been tested against claims data prior to adoption in order to validate the level of possibly significant therapeutic problems without undue levels of false positives.

* * * * *

(h) *Confidentiality of patient related data.* In implementing the DUR program, the agency must establish, in regulations or through other means, policies concerning confidentiality of patient related data that are consistent with applicable Federal confidentiality requirements at part 431, subpart F of this chapter; the State Pharmacy Practice Act; and the guidelines adopted by the State Board of Pharmacy or other relevant licensing bodies.

4. In § 456.705, paragraph (b) introductory text is republished and paragraphs (b)(2)(i), (b)(3), (b)(4), (c), and (d) are revised to read as follows:

§ 456.705 Prospective drug review.

* * * * *

(b) *Point-of-sale or point-of-distribution review.*

* * * * *

(2) Drug-disease contraindication, that is, the potential for, or the occurrence of—

(i) An undesirable alteration of the therapeutic effect of a given drug because of the presence, in the patient for whom it is prescribed, of a disease condition; or

* * * * *

(3) Adverse drug-drug interaction, that is, the potential for, or occurrence of, a clinically significant adverse medical effect as a result of the recipient using two or more drugs together.

(4) Incorrect drug dosage, that is, the dosage lies outside the daily dosage specified in predetermined standards as necessary to achieve therapeutic benefit. Dosage is the strength multiplied by the quantity dispensed divided by day's supply.

* * * * *

(c) *Drug counseling.* (1) As part of the prospective drug review program, standards for counseling by pharmacists of recipients or the recipients' caregivers must be established by State law or other method that is satisfactory to the State agency. A State agency's counseling standards must address special situations where the patient or the patient's representative, is not readily available to receive the offer to counsel or the actual counseling, for example, prescriptions delivered offsite or through the mail. The State agency, at a minimum, must also address the following issues in their counseling standards:

(i) Whether the offer to counsel is required for new prescriptions only, or for both new and refill prescriptions;

(ii) Whether pharmacists must make the offer to counsel or auxiliary therapeutic personnel are authorized to make the offer;

(iii) Whether only a patient's refusal of the offer to counsel must be documented, or whether documentation of all offers is required;

(iv) Whether documentation of counseling is required; and

(v) Whether counseling is required in situations where the patient's representative is not readily available to receive a counseling offer or the counseling itself.

(2) The standards must meet the following requirements:

(i) They must require pharmacists to offer to counsel (in person, whenever practicable, or through access to a telephone service that is toll-free for long-distance calls) each recipient or recipient's caregiver who presents a prescription. A pharmacist whose primary patient population is accessible through a local measured or toll-free exchange need not be required to offer toll-free service. Mail order pharmacies are required to provide toll-free telephone service for long distance calls.

(ii) They need not require a pharmacist to provide consultation when a Medicaid recipient or the recipient's caregiver refuses that consultation.

(iii) They must specify what documentation by the pharmacy of refusal of the offer of counseling is required.

(3) The standards must specify that the counseling include those matters listed in paragraphs (c)(3)(i) through (c)(3)(viii) of this section that, in the exercise of his or her professional judgement (consistent with State law regarding the provision of such information), the pharmacist considers significant as well as other matters the pharmacist considers significant.

(i) The name and description of the medication;

(ii) The dosage form, dosage, route of administration, and duration of drug therapy;

(iii) Special directions and precautions for preparation, administration, and use by the patient;

(iv) Common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(v) Techniques for self-monitoring drug therapy;

(vi) Proper storage;

(vii) Prescription refill information; and

(viii) Action to be taken in the event of a missed dose.

(d) *Profiling.* The State agency must require that, in the case of Medicaid recipients, the pharmacist make a reasonable effort to obtain, record, and maintain patient profiles containing, at a minimum, the information listed in paragraphs (d)(1) through (d)(3) of this section.

(1) Name, address, telephone number, date of birth (or age), and gender of the patient;

(2) Individual history, if significant, including disease state or states, known allergies and drug reactions, and a comprehensive list of medications and relevant devices; and

(3) Pharmacist's comments relevant to the individual's drug therapy.

5. Section 456.714 is revised to read as follows:

§ 456.714 DUR/Surveillance and utilization review relationship.

(a) The retrospective DUR requirements in this subpart parallel a portion of the surveillance and utilization review (SUR) requirements in subpart A of this part and in part 455 of this chapter.

(b) A State agency may direct DUR staffs to limit review activities to those that focus on what constitutes appropriate and medically necessary care to avoid duplication of activities relating to fraud and abuse under the SUR program.

6. In § 456.716, paragraph (d) introductory text is republished and paragraphs (b), (d)(5) introductory text and (d)(5)(ii) are revised to read as follows:

§ 456.716 DUR Board.

* * * * *

(b) *Board composition.* At least one-third but not more than 51 percent of the DUR Board members must be physicians, and at least one-third of the Board members must be pharmacists. These physicians and pharmacists must be actively practicing and licensed.

* * * * *

(d) *DUR Board activities.*

* * * * *

(5) *Education program (including interventions): Board's activities.* The DUR Board must perform the following activities:

* * * * *

(ii) Make recommendations as to which mix of the interventions set forth in §§ 456.711 (a) through (d) would most effectively lead to improvement in the quality of drug therapy. The DUR board recommendations must be based upon an in-depth review of the results of the application of predetermined standards against claims data reports, must be appropriate based upon program experience, and must match the educational program with the drug therapy problems identified.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: April 1, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: June 28, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94-23280 Filed 9-22-94; 8:45 am]

BILLING CODE 4120-01-P

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61, 64, and 69

[CC Docket No. 91-115]

Tariffing Requirements for Billing Name and Address

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification.

SUMMARY: On May 13, 1993, the Federal Communications Commission adopted amendments to require local exchange carriers to provide billing name and address information on a common carrier basis to telecommunications service providers for billing purposes. On August 5, 1993, those rule amendments were suspended. By this document, the Commission clarifies that the suspension of these amendments has been lifted.

EFFECTIVE DATE: This document is effective September 23, 1994, and establishes the effective date of the rules as of January 18, 1994.

SUPPLEMENTARY INFORMATION: On May 13, 1993, the Federal Communications Commission adopted revisions to Parts 61, 64, and 69 of its Rules, 47 CFR Parts 61, 64, and 69, to require local exchange carriers to provide billing name and address information on a common carrier basis to telecommunications service providers for billing purposes. Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards. 58 FR 36143–45, July 6, 1993. On August 5, 1993, those rule revisions were suspended. Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, 58 FR 42253–54, Aug. 9, 1993. By this document, the Commission clarifies that the suspension of these rule revisions has been lifted, and these revisions took effect as of January 18, 1994. *See* Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, 58 FR 65669–71, Dec. 16, 1993.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, Tariff Division, Common Carrier Bureau, (202) 418–1530.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–23101 Filed 9–22–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–186; RM–8258, RM–8333 & RM –8343]

Radio Broadcasting Services; Diamond City, AR, Half Way, Humansville, and Ozark, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 225C2 for Channel 225A at Ozark, Missouri, modifies the construction permit for Station KZPF (FM), substitutes Channel 256A for Channel 226A at Half Way, Missouri, and modifies the construction permit for Station KYOO–FM, in response to a petition filed jointly by Ozark Mountain Broadcasting, Inc. and KYOO Broadcasting Company. *See* 58 FR 38548, July 19, 1993. The coordinates for Channel 225C2 at Ozark are 36–58–45 and 93–26–38. The coordinates for Channel 256A at Half Way are 37–44–35 and 93–15–00. The counterproposals filed by Lake Broadcasting requesting the allotment of Channel 224A to Diamond City, Arkansas, and Missouri Radio, Inc. proposing the allotment of Channel 256A to Humansville, Missouri, were withdrawn on March 3, 1994. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93–186, adopted September 12, 1994, and released September 20, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, D.C. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 225A and adding Channel 225C2 at Ozark and by removing Channel 226A and adding Channel 256A at Half Way.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–23508 Filed 9–22–94; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register

Vol. 59, No. 184

Friday, September 23, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Sunflower Seed Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby proposes provisions for sunflower seed crop insurance. These proposed provisions are contained in an endorsement to the Common Crop Insurance Policy which contains standard terms and conditions common to most crops. This action will result in automatic coverage for late and prevented planting as well as other minor policy changes to better meet the needs of the insured.

DATES: Written comments, data, and opinions on this proposed rule must be submitted no later than October 24, 1994, to be sure of consideration.

ADDRESSES: Written comments on this proposed rule should be sent to Mari Dunleavy, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, DC 20250. Hand or messenger delivery may be made to Suite 500, 2101 L Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy at address listed above. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is February 1, 1994.

This rule has been determined to be "not-significant" for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the information collection or record-keeping requirements included in this proposed rule are found in 7 CFR 400 subpart H.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this proposed rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This action will not have a significant impact on a substantial number of small businesses. This action reduces the paperwork burden on the insured farmer, the reinsured company, or the sales and service contractor. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Upon publication of 7 CFR 457.108 as a final rule, the provisions for insuring sunflower seed contained therein will supersede the current provisions contained in 7 CFR 401.124. The provisions of 7 CFR 401.124 will be amended to restrict their affect to the crop year previous to the effective date of this rule.

This rule makes minor editorial and format changes to improve its compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing other changes in the provisions for insuring sunflower seed as follows:

1. Section 4—The contract change date has been changed to November 30 to maintain an adequate time period between this date and the revised cancellation date (see summary of changes item 2).

2. Section 5—The cancellation and termination dates have been changed to March 15. This change is intended to reduce the probability that insureds may make the determination as to whether to buy insurance on the probability that a loss may or has already occurred.

3. Subsection 7.(a)—Provides that any acreage is uninsurable that does not meet the rotation requirements outlined in the Special Provisions.

4. Subsection 7.(b)—Provides that any acreage damaged prior to the final planting date must be replanted unless replanting is not practical.

5. Subsection 10.(c)—Allows replanting payments to be made to an insured in excess of their insured share. This excess payment may be made if an agreement exists between the shareholders that: 1) requires one person to incur the entire cost of replanting; or 2) gives the right to any replanting payment to the single insured entity who incurred the cost of replanting.

6. Subsection 10.(d)—Provides that liability for a unit is reduced by the amount of any replanting payment attributable to the insured's share if sunflowers are replanted using a practice that was originally uninsurable. The current sunflower provisions do not address this issue. This addition is consistent with the replant provisions under the same circumstances for other crops.

7. Paragraphs 12.(d)(1) and (2)—Provide for separate moisture and quality adjustment. Production will be eligible for excess moisture adjustment, and for quality adjustment regardless of

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moisture content. The value of damaged production will be determined based on grading factors other than moisture content.

8. Section 13—Provides protection for acreage planted within 25 days after the final planting date, and for acreage that cannot be planted due to any insurable causes of loss. If the insured is prevented from planting by the final planting date, or intends to plant within the late planting period and is prevented from doing so, insurance protection is provided at fifty percent (50%) of the production guarantee for timely planted acreage.

List of Subjects in 7 CFR Part 457

Crop insurance, Sunflower seed.

Proposed Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations, (7 CFR Part 457) as follows:

1. The authority citation for 7 CFR Part 457 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR Part 457 is amended by adding a new section, 457.108 Sunflower Seed Crop Insurance Provisions, to read as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

* * * * *

§ 457.108 Sunflower Seed Crop Insurance Provisions.

The Sunflower Seed Crop Insurance Provisions for the 1995 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Corp Insurance Corporation

Sunflower Seed Crop Provisions

If a conflict exists among the Common Crop Insurance Policy (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the common policy and these crop provisions will control the common policy.

1. Definitions

(a) *Days*—Calendar days.

(b) *Final planting date*—The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

(c) *Good farming practices*—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those recognized by the Cooperative extension Service as compatible with agronomic and weather conditions in the area.

(d) *Harvest*—Combining or threshing the sunflowers for seed.

(e) *Interplanted*—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

(f) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

(g) *Late planted*—Acreage planted to the insured crop during the late planting period.

(h) *Late planting period*—The period that begins the day after the final planting date for the insured crop and ends twenty-five (25) days after the final planting date.

(i) *Local market price*—The cash seed price per pound for oil type sunflower seed grading U.S. No. 2, or non-oil type sunflower seed with a test weight of 22 pounds per bushel and five percent (5%) kernel damage, offered by buyers in the area in which you normally market the sunflower seed. The local market price for oil type sunflower seed will reflect the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade of sunflower seed. Factors not associated with grading of sunflower seed under the Official United States Standards for Grain including, but not limited to, oil or moisture content will not be considered.

(j) *Planted acreage*—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed which has been properly prepared for the planting method and production practice. Sunflower seed must initially be planted in rows far enough apart to permit cultivation. Planting in any other manner will be considered as a failure to follow recognized good farming practices and any loss of production will not be insured, unless otherwise provided by the Special Provisions or by written agreement.

(k) *Practical to replant*—In lieu of Subsection 1.(ff) of the Common Crop Insurance Policy (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field and time to crop maturity, that replanting to the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period unless replanting is generally occurring in the area.

(l) *Prevented planting*—Inability to plant the insured crop with proper equipment by:

(1) The final planting date designated in the Special Provisions for the insured crop in the county; or

(2) The end of the late planting period.

You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting due to similar insurable causes. The insured cause of prevented planting must occur between the sales closing date and the final planting date for the insured crop in the county or within the late planting period.

(m) *Production guarantee*—The number of pounds determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(n) *Replanting*—Performing the cultural practices necessary to replace the sunflower seed and then replacing the sunflower seed in the insured acreage with the expectation of growing a successful crop.

(o) *Timely planted*—Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

(p) *Written agreement*—Designated terms of this policy may be altered by written agreement. Each agreement must be applied for by the insured in writing no later than the sales closing date and is valid for one year only. If not specifically renewed the following year, continuous insurance will be in accordance with the printed policy. All variable terms including, but not limited to, crop variety, guarantee, premium rate and price election must be contained in the written agreement. In specific instances, a written agreement may be applied for after the sales closing date, and approved if, after a physical inspection of the acreage, there is a determination that the crop has the expectancy of making at least the guaranteed yield. However, no

prevented planting liability will be established as a result of any request submitted after the sales closing date. All applications for written agreements as submitted by the insured must contain all variable terms of the contract between the company and the insured that will be in effect if the written agreement is disapproved.

2. Unit Division

Unless limited by the Special Provisions, a unit as defined in subsection 1.(tt) of the Common Crop Insurance Policy (§ 457.8), may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists. All optional units must be reflected on the acreage report for each crop year.

(a) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee.

(b) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit.

(c) You must have records of measurement of stored or marketed production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit or the production from each unit must be kept separate until after loss adjustment under the policy is completed.

(d) Each optional unit must meet one or more of the following criteria as applicable:

(1) Optional Units by Section, Section Equivalent, or ASCS Farm Serial Number: Optional units may be established if each optional unit is located in a separate legally identified Section. In the absence of Sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to: Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands as the equivalent of Sections for unit purposes. In areas which have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single ASCS Farm Serial Number.

(2) Optional Units on Acreage Including Both Irrigated and Non-Irrigated Practices: In addition to or instead of establishing optional units by Section, section equivalent or ASCS Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same Section, section equivalent or ASCS Farm Serial Number. The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which your guarantee is based and you may not continue into non-irrigated acreage in the same rows or planting pattern. You must plant, cultivate, fertilize, or otherwise care for the irrigated acreage in accordance with recognized good irrigated farming practices.

Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, variety, and planting period other than as described under this section. If you do not comply fully with these provisions we will combine all optional units which are not in compliance with these provisions into the basic unit from which they were formed. We may combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined, that portion of the premium paid for the purpose of electing optional units will be refunded to you pro rata for the units combined.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Common Crop Insurance Policy (§ 457.8), you may select only one price election for all the sunflower seed in the county insured under this policy. However, if the Special Provisions provide different price elections by type, you may select one price election for each sunflower seed type designated in the Special Provisions.

4. Contract Changes

The contract change date is November 30 preceding the cancellation date (see the provisions of section 4 (Contract Changes) of the Common Crop Insurance Policy (§ 457.8)).

5. Cancellation and Termination Dates

In accordance with subsection 2.(f) of the Common Crop Insurance Policy (§ 457.8), the cancellation and termination dates are March 15.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Common Crop Insurance Policy (§ 457.8), the crop insured will be all the oil and non-oil type sunflower seed in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are planted for harvest as sunflower seed; and

(c) That are not (unless a written agreement allows otherwise):

(1) Interplanted with another crop; or

(2) Planted into an established grass or legume.

7. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Common Crop Insurance Policy (§ 457.8):

(a) We will not insure any acreage which does not meet the rotation requirements shown in the Special Provisions; and

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that the remaining stand will not produce at least ninety percent (90%) of the production guarantee, must be replanted unless we agree that replanting is not practical (see subsection 1.(k)).

8. Insurance Period

In accordance with the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the calendar date for the end of the insurance period is November 30, immediately following planting.

9. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Common Crop Insurance Policy (§ 457.8), insurance is provided only against the following causes of loss which occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if applicable, due to an unavoidable cause of loss occurring within the insurance period.

10. Replanting Payments

(a) In accordance with section 13 (Replanting Payment) of the Common Crop Insurance Policy (§ 457.8), a replanting payment for sunflower seed is allowed if the sunflowers are

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damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least ninety percent (90%) of the production guarantee for the acreage and it is practical to replant (see subsection 1.(k)).

(b) The maximum amount of the replanting payment per acre will be the lesser of twenty percent (20%) of the production guarantee or 175 (pounds of seed), multiplied by your price election, multiplied by your insured share or the share determined in 10.(c), if applicable.

(c) When more than one person insures the same crop on a share basis, a replanting payment based on the total shares insured by us may be made to the insured person who incurs the total cost of replanting. Payment will be made in this manner only if an agreement exists between the insured persons which:

(1) Requires one person to incur the entire cost of replanting; or

(2) Gives the right to all replanting payments to one person.

(d) When sunflower seed is replanted using a practice that is uninsurable as an original planting, the liability for the unit will be reduced by the amount of the replanting payment which is attributable to your share. The premium amount will not be reduced.

11. Duties In The Event of Damage or Loss

In accordance with the requirements of section 14 (Duties in the Event of Damage or Loss) of the Common Crop Insurance Policy (§ 457.8), if you initially discover damage to any insured crop within 15 days of, or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit, and must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production:

(1) For any optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting from this the total production to count;

(3) Multiplying the remainder by your price election; and

(4) Multiplying this result by your share.

(c) The total production (pounds) to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide records of production that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with subsection 12(d)); and

(iv) Potential production on insured acreage you want to put to another use or you wish to abandon and no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us. (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) Mature sunflower seed production may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of ten percent (10%). We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality result in:

(A) Oil type sunflower seed not meeting the grade requirements for U.S. No. 2 (grades U.S. sample grade) because of test weight, kernel damage (excluding heat damage), or a musty, sour or commercially objectionable foreign odor, or distinctly low quality; or

(B) Non-oil type sunflower seed having a test weight below 22 pounds per bushel or kernel damage (excluding heat damage) in excess of five percent (5%) or a musty, sour or commercially objectionable foreign odor, or distinctly low quality; or

(ii) Substances or conditions are present that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions;

(ii) The deficiencies, substances, or conditions result in a net price for the damaged sunflower seed that is less than the local market price;

(iii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iv) The samples are analyzed by a grader licensed under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. (Test weight for quality adjustment purposes may be determined by our loss adjuster.)

(4) Sunflower seed production that is eligible for quality adjustment, as specified in paragraphs 12.(d)(2) and (3), will be reduced as follows:

(i) The market price of the qualifying damaged production and the local market price will be determined on the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit. The price for the qualifying damaged production will be the market price for the local area to the

extent feasible. Discounts used to establish the net price of the damaged production will be limited to those which are usual, customary, and reasonable. The price will not be reduced for:

(A) Moisture content;

(B) Damage due to uninsured causes; or

(C) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the sunflower seed; except, if the price of the damaged production can be increased by conditioning, we may reduce the price of the production after it has been conditioned by the cost of conditioning but not lower than the value of the production before conditioning,

(We may obtain prices from any buyer of our choice. If we obtain prices from one or more buyers located outside your local market area, we will reduce such prices by the additional costs required to deliver the sunflower seed to those buyers);

(ii) The value of the damaged or conditioned production will be divided by the local market price to determine the quality adjustment factor; and

(iii) The number of pounds remaining after any reduction due to excessive moisture (the moisture-adjusted gross pounds (if appropriate)) of the damaged or conditioned production will then be multiplied by the quality adjustment factor to determine the net production to count.

(e) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

13. Late Planting and Prevented Planting

(a) In lieu of paragraph 8.(b)(2) and subsection 1.(aa) of the Common Crop Insurance Policy (§ 457.8), insurance will be provided for acreage planted to the insured crop during the late planting period (see subsection 13.(c)), and acreage you were prevented from planting (see subsection 13.(d)). These coverages provide reduced production guarantees. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for late planted acreage or prevented planting acreage exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage). (For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted seven (7) days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit).

(b) You must provide written notice to us if you were prevented from planting (see subsection 1.(1)). This notice must be given not later three (3) days after:

(1) The final planting date for acreage you were prevented from planting by the final planting date if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you discover that planting will not be possible within the late planting period for any acreage that may be eligible for prevented planting coverage, if you were not prevented from planting such acreage by the final planting date but were prevented from planting such acreage during the late planting period.

(c) Late Planting:

(1) For sunflower acreage planted after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of sunflower seed continues after the final planting date, or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Special Provisions for the insured crop; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from planting sunflowers (see subsection 1.(1)), you may elect:

(i) To plant sunflower seed during the late planting period, (The production guarantee for such acreage will be determined in accordance with paragraph 13.(c)(1));

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year, (The production guarantee for such acreage will be fifty percent (50%) of the production guarantee for timely planted acres, (For example, if your production guarantee for timely planted acreage is 900 pounds per acre, your prevented planting production guarantee would be equivalent to 450 pounds per acre (900 pounds multiplied by 0.5)). This subparagraph does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest; or

(iii) To plant sunflower seed after the late planting period, (The production guarantee for such acreage will be fifty percent (50%) of the production guarantee for timely planted acres, (For example, if your production guarantee for timely planted acreage is 900 pounds per acre, your prevented planting production guarantee would be equivalent to 450 pounds per acre (900 pounds multiplied by 0.5)). Production to count for such acreage will be determined in accordance with subsections 12.(c) through (e).

(2) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins on the sales closing date contained in the Special Provisions for the insured crop in the county.

(3) The acreage to which prevented planting coverage applies will be limited as follows:

(i) If you participate in any program administered by the United States Department of Agriculture for the crop year which limits the number of acres that may be planted, prevented planting acreage will not exceed the ASCS base acreage for the insured crop, reduced by any acreage reduction applicable to the farm under such program.

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(ii) If you do not participate in any program administered by the United States Department of Agriculture which limits the number of acres that may be planted, unless a written agreement exists to the contrary, eligible acreage will not exceed the greater of:

(A) The ASCS base acreage for the insured crop; if applicable;

(B) The number of acres planted to sunflower seed on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date); or

(C) One hundred percent (100%) of the simple average of the number of acres planted to sunflower seed during the crop years that were used to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres properly prepared to carry out an irrigated practice.

(iv) A prevented planting production guarantee will not be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit, whichever is less;

(B) Land for which the actuarial table does not designate a premium rate unless a written agreement exists designating such premium rate;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than sunflower seed has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes;

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of sunflower acres timely planted and late planted, (For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of sunflower seed on one optional unit and 40 acres of sunflower seed on the second optional unit, your prevented planting eligible acreage would be reduced to zero, (100 acres eligible for prevented planting coverage less 100 acres planted equals zero)). If you report more sunflower acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to sunflowers in the crop year.

(5) In accordance with the provisions for section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which is not eligible will be deleted from prevented planting coverage.

Done in Washington, D.C., on September 15, 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94–23553 Filed 9–22–94, 8:45 am]

BILLING CODE 3410–08–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 704

Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: NCUA is proposing to amend its regulations governing corporate credit unions to reduce the close ties between many corporate credit unions and credit union trade associations. NCUA is concerned that these ties create unavoidable conflicts of interest for corporate credit unions.

DATES: Comments must be postmarked or posted on NCUA's electronic bulletin board by October 24, 1994.

ADDRESSES: Send comments to Becky Baker, Secretary to the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: H. Allen Carver, Director, Office of Corporate Credit Unions, (703) 518–6640, or Robert M. Fenner, General Counsel, (703) 518–6540, at the above address.

SUPPLEMENTARY INFORMATION:

A. Background

On April 12, 1994, the NCUA Board issued an advance notice of proposed rulemaking (ANPR) regarding the relationship between corporate credit unions and state leagues and trade associations. 59 FR 18503, April 19, 1994. The ANPR noted that approximately half of the corporate credit unions are closely tied to state leagues, through integrated boards or management relationships. In the case of U.S. Central Credit Union, six of nine board seats are allotted to trade association representatives: three to the Credit Union National Association (CUNA), two to the Association of Credit Union League Executives, and one to the Kansas Credit Union Association. In addition, U.S. Central's CEO reports to the CEO of CUNA.

The ANPR noted that in 1992 NCUA acted to reduce the ties between corporate credit unions and trade associations by amending Part 704 to require either that three directors not be officers, directors, or employees of an affiliated organization, such as a state league, or that the corporate credit union conduct open and independent elections. The regulation was also amended to require recusal for matters involving personal pecuniary interest and, when the amount in question exceeds 5% of the corporate credit union's capital, matters involving the pecuniary interest of an entity in which an official is interested.

Although the new regulations have resulted in greater independence for corporate credit unions, the leagues and trade associations still have considerable influence in some institutions. The ANPR stated that NCUA was considering taking additional steps to reduce that influence because of the following factors: (1) the increased scrutiny of financial institutions resulting from the savings and loan disaster; (2) the asset growth within the credit union system; (3) the fact that conflicts or the appearance of conflicts caused by the relationships between corporate credit unions and trade associations could threaten the survival of a strong and independent credit union system; and (4) the concerns surrounding U.S. Central's investment in the Banco Español de Credito [Banesto], which was taken over by the Spanish central bank because of problems in its commercial loan portfolio.

The ANPR requested comment on whether Part 704 should be amended to require that the board of directors of a corporate credit union be independently elected by its members, with the condition that a majority of the board seats be held by representatives of member credit unions, that all or a majority of the corporate credit union board be comprised of representatives who do not also serve on the board of a league or trade association, and that management of a corporate credit union report solely to the board of the corporate credit union. The ANPR also asked for comment on whether classes of directors at U.S. Central should be established, whether the election of an organizational member representative to a position in a corporate credit union should be considered the election of the individual or the organization, and whether the recusal provision should be strengthened. The ANPR noted that the proposed changes, if implemented, would affect all corporate credit unions that are federally insured or accept deposits from federal credit unions.

The ANPR was issued as part of the Board's overall plan regarding the corporate credit union system. The Board will request comment on possible changes to other sections of the corporate credit union regulation in the near future.

B. Comments

NCUA received 400 comments letters in response to the ANPR, 333 from natural person credit unions,[1] 25 from corporate credit unions, 21 from state credit union leagues, 2 from state credit union associations, 2 from state credit union "systems" (consisting of a league, corporate credit union, and a service organization), 3 from national credit union trade associations, 3 from banking trade associations, 3 from state credit union regulators, 5 from individuals, 2 from NCUA staff, and 1 from a law firm on behalf of several state leagues and corporate credit unions. The natural person credit union commenters came from 39 states, but they were not evenly distributed among those states. Credit unions located in only 6 states accounted for 48% of the 333 comments. Credit unions located in 12 states accounted for 75% of those comments. The states with the highest number of natural person credit union commenters were: Missouri (37), Colorado (33), South Carolina (23), Virginia (23), New York (22), California (20), Georgia (18), Kansas (18), Louisiana (18), Texas (14), Iowa (12), and Illinois (11).

Of the 400 commenters, 115 expressed general support for the proposed changes, 278 expressed general opposition, and 7 commented not on the proposed changes but on a tangential issue. For a comment to be considered generally supportive, the commenter had to be in favor of a requirement that all or a majority of the board be comprised of representatives who do not serve on the board of the state league or league service organization. Almost universally, commenters who were in favor of this proposed change were in favor of all of the changes. In contrast, many commenters who were considered to be generally opposed to the proposed changes did not support the elimination of integrated boards but did support the proposals to require, for example, that elections be independent or that management report to the board of the corporate.

Of the 333 natural person credit union commenters, 98 generally supported the proposed changes, 230 generally opposed them, and 5 did not comment directly on them. Commenters from states with large numbers of commenters tended to be united in their opinions, usually in opposition to the proposed changes. For example, 36 of Missouri's 37 credit union commenters were opposed to the proposed changes, as were 32 of Colorado's 33, all of South Carolina's 23, 17 of Georgia's, Kansas's, and Louisiana's 18, 10 of Iowa's 12, and 9 of Illinois's 11.

Of the 25 corporate credit unions that commented, 8 supported the proposed changes, and 17 were opposed to them. All of the 21 state leagues that commented were opposed to the changes, as were the 2 state credit union "systems." The three national banking trade associations supported the changes, as did one of the national credit union trade associations. A second credit union trade association was opposed to the changes, and the third commented on a tangential issue.

Most of the commenters who were opposed to the proposed changes took the position, "if it ain't broke, don't fix it." They argued that the ANPR had provided no discussion of specific problems resulting from conflicts of interest. The commenters stated that the structure of corporate credit unions is not a safety and soundness issue and should not be regulated by NCUA.

The commenters who were in favor of the proposed changes expressed concern about the potential for disaster to the credit union system if a loss should result from a conflict of interest in a corporate credit union. They acknowledged the role of the leagues and trade associations in establishing the corporate credit unions, but stated that it was time for corporate credit unions to stand on their own.

The Board has determined to request comment on specific proposed changes. The Board remains concerned that the ties between corporate credit unions and trade associations may threaten the safety and soundness of the entire credit union system. Those ties have, in the past, led to corporate credit union resources being used to fund trade association expenses, questionable or preferential loans to trade associations and affiliates, and other transactions with trade associations that were not in the corporate credit union's best interest. Commenters did not dispute the existence of past abuses. Those who addressed the issue suggested, instead, that the potential for further abuses was properly addressed by NCUA's 1992 amendments. Issues currently under review in specific cases, however, raise continuing concerns with respect to the potential for abuses. These issues include the propriety of amounts paid by corporate credit unions to trade associations for support and management services and the fairness and objectivity of business transactions between corporate credit unions and related trade associations.

The Board acknowledges that trade association involvement with corporate credit unions may have been appropriate when the corporate credit union system was in its infancy. At that time, asset levels were low, credit unions generally operated conservatively, and economic conditions were more relaxed. The problems that arose were serious but small enough to be handled "within the family."

In the last decade, however, the corporate credit union system has matured, managing billions of dollars and providing increasingly sophisticated services. Furthermore, economic conditions have changed, requiring corporate credit unions to act aggressively to remain competitive. Corporate credit unions have changed the way they do business just in the past few months; instead of strictly matching assets against liabilities, some have begun speculating on interest rates—and losing.

The independent committee which studied the corporate credit union system for six months also noted these changes. In its July 1994 report, the committee found that corporate credit unions were assuming more risk in their

[1] Multiple letters from members or employees of the same credit union were considered part of the credit union's comments and were not counted separately.

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investment practices than in the past, their activities in general were becoming more complex, and their credit analysis procedures had not kept pace with the increased volume of funds flowing into the system.

As the activities of corporate credit unions have changed, the Board believes that the administration of those activities must change. The stakes are higher than they were in the past and the margin for error narrower. If a problem arises today, it is likely to be much more severe than in the past and to be corrected by the marketplace rather than within the credit union community. The Board is not willing to wait until there is a catastrophic loss to take action.

The Board believes that the credit union movement of today requires absolute assurance that all corporate credit unions are directed and managed by experienced individuals who are dedicated solely to the success of their institutions. These individuals must be able to understand the financial marketplace and the appropriate role of their institutions in that marketplace. The independent committee agreed, recommending that corporate credit unions: 1) develop improved procedures to monitor and evaluate interest-rate and credit risk; 2) ensure that management personnel understand investment products as well as do the individuals who market such products to corporate credit unions; and 3) retain outside advisors who report directly to the board regarding activity involving derivative instruments, if they use such instruments.

The Board believes that these recommendations cannot be implemented successfully when a corporate credit union is too closely tied to a trade association. The interests of each entity are too often in conflict. The independent committee agreed, stating that "the integrated structure may hinder the prudent management of [a] corporate [credit union]." In response, the committee recommended that all corporate credit unions, including U.S. Central, be stand-alone institutions, independent of leagues and trade associations.

C. Section-by-Section Analysis

Section 704.2 Definitions

The Board has determined to replace the term "affiliated organization" in Section 704.12 with the term "credit union-related organization." The Board believes that this term is clearer and easier to apply. "Credit union-related organization" is defined in new paragraph (e) in Section 704.12 to be a credit union league or trade association, an affiliate of a credit union league or trade association, or a entity operated or controlled by a credit union league, trade association, or affiliate. Since the term "affiliated organizations" is no longer used in Part 704, the proposed rule deletes the first paragraph of Section 704.2

The Board is aware that in some states, credit unions are not permitted to join the corporate credit union unless they belong to the state league. The Board believes that this practice reflects and helps perpetuate the excessive influence of trade associations in the operations of some corporate credit unions. The Board believes, further, that a credit union should be able to obtain financial services from a corporate credit union without having to support a league's educational, lobbying, and other activities. The proposed rule amends the definition of "corporate credit union," adding the requirement that a corporate credit union may not condition a credit union's eligibility to join the corporate credit union on that credit union's membership in any other organization.

Section 704.12(a) Board Representation

The ANPR asked for comment on whether the board of directors of a corporate credit union should be independently elected by its members, with the condition that a majority of the board seats be held by representatives of member credit unions. It also asked whether all of a majority of the corporate credit union board should be comprised of representatives who do not also serve on the board of the state league or league service organization.

As noted earlier, virtually all the commenters who supported the proposed changes agreed that elections should be independent. This view was also shared by a number of commenters who generally opposed the proposed changes. There was little direct opposition the idea of independent elections.

The Board believes that the time has come to give the voting members of a corporate credit union control over who serves on its board. The members should have the opportunity to nominate and elect candidates independent of those selected by the nominating committee. Rather than using the terms "open" and "independent," which are unclear, the proposed rule requires that elections be conducted by mail ballot, with procedures for nominations by petition. The Board notes that election procedures generally are set forth in the bylaws and proposes to amend the standard corporate federal credit union bylaws, issued by the Board in 1983, to provide for mail balloting and nominations by petition. State-chartered corporate credit unions would be required to adopt the federal bylaws governing elections. The proposed bylaws, which are set forth later in this document, are based on standard bylaw amendments that have been successfully used by natural person federal credit unions for a number of years. While the proposed bylaws are self-explanatory, the following chart may be helpful in tracking the timing of the key steps in the nomination and balloting procedures.

Time Table for Nomination/Election Procedure in Accordance With Proposed Standard Bylaw

Board of directors appoints nominating committee.	At least 120 days prior to annual meeting.
Nominating committee files nominations with recording officer.	At least 90 days prior to annual meeting.
Recording officer notifies members in writing of persons nominated by nominating committee and of procedures to be followed to nominate someone by petition.	At least 75 days prior to annual meeting.
Period for receiving nominations by petition.	At least 30 days from above notice
Nominations by petition to be filed with recording officer.	At least 40 days prior to annual meeting.
Recording officer mails ballots to all members.	At least 30 days prior to annual meeting.
Ballots to be received by tellers of election.	At least 5 days prior to annual meeting

There was stronger opposition to the proposals to require that a majority of seats be held by representatives of member credit unions and that a majority be held by representatives who do not also serve on the board of the state league or league service organization. The commenters argued that the members of each corporate should be allowed to structure the board as they see fit. They argued that NCUA regulation in this area would violate the credit union principle of democracy. Some commenters stated that the field of qualified candidates in some states was too narrow to support separate boards for the league and the corporate credit union. The commenters who supported the proposal stated that it was impossible for an individual to represent credit union members adequately on the board of a corporate credit union while also serving on the board of a league.

The Board is not persuaded by the objections to the proposed changes, believing that corporate credit unions should be controlled by the credit unions they were chartered to serve. The Board also believes that, even in states with fewer credit unions, there are sufficient qualified candidates to support separate boards for the league and the corporate credit union. Accordingly, the proposed rule requires that at least a majority of a corporate credit union's directors be individuals who represent member credit unions and who are not officers, directors, or employees of a credit union-related organization. Recognizing the power the chair of an organization has, the proposed rule requires that the individual serving as chair of the board of directors be included in that majority. The proposed rule also provides, for purposes of meeting the required majority, that no individual from a member credit union can serve as a director of a corporate credit union if another individual from that member credit union serves as an officer, director, or employee of a credit union-related organization.

To illustrate, assume a hypothetical corporate credit union (HCCC) with a five-member board. Under proposed Section 704.12(a)(1), at least three board members of HCCC must be individuals who represent member credit unions of HCCC (credit unions A, B, and C). The three directors could not also serve, for example, as directors of a state league, a national trade association, or a CUSO operated by a league because those entities are "credit union-related organizations" as defined in new Section 701.12(e). They could, however, serve as directors of a CUSO operated or controlled by HCCC member credit unions. Under Section 704.12(a)(3), a representative of credit union B could not serve as a director of HCCC if another individual from credit union B is serving as an officer, director, agent, or employee of a league or other credit union-related organization.

The ANPR asked whether classes of directors should be established at U.S. Central in order to ensure representation by natural person credit unions and others broadly representative of the public interest. The commenters generally were not in favor of establishing classes of directors at U.S. Central; several noted that the credit union has classes of directors now. Many commenters who were opposed to prohibiting interlocking boards for corporates in general were in favor of some action to reduce trade association influence at U.S. Central. At this time, the Board is not convinced that it is necessary to establish classes of directors in order to ensure broader representation at U.S. Central. The Board believes that compliance with the requirements set forth in proposed Section 704.12(a) will be sufficient. Further comment, however, is welcome on this issue.

Also, while not proposed at this time, the Board requests comment on whether there should be a requirement that *all* of the directors of a corporate credit union be individuals who are not officers, directors, or employees of a credit-union related organization.

Section 704.12(b) Representatives of Organizational Members

An "organizational member" of a corporate credit union is a member that is not a natural person, such as credit union or service organization. The ANPR asked whether the election of an organizational member representative to a position in a corporate credit union should be considered the election of the individual or the organization. The vast majority of commenters who supported the proposed changes stated that it should be considered the election of the individual, with vacancies being filled by the board of directors of the corporate credit union according to the bylaws of the corporate credit union. Most of these commenters stated, however, that since it is the organization that is the member, if the individual leaves that organization, he or she should be removed from the corporate credit union board. They stated, furthermore, that an organization should be able to remove its representative if it chooses to, although it does not have the right to replace that individual with someone else. The commenters who were opposed to the proposed changes stated that this was a matter that should be left to each corporate credit union to determine.

An organizational member's representative is elected to the corporate credit union board based on his or her unique qualifications. The Board believes that permitting the organization to replace that representative with someone else would compromise the integrity of the election process. Therefore, the proposed rule provides that if an individual ceases to be the representative of an organization for any reason, including, but not limited to, death, departure from the organization, or withdrawal of designation by the organization, his or her seat is declared vacant and is filled by the corporate credit union board in accordance with the bylaws. In filling the seat, the requirements of proposed Section 704.12(a) would have to be maintained.

The Board notes that the term "member credit union or affiliated non-credit union member" in present Section 704.12(b) has bee replaced in proposed Section 704.12(b)(1) by the term "organizational member." As noted above, an "organizational member" is a member that is not a natural person. In addition to being clearer, the term is more comprehensive than "member credit union or affiliated non-credit union member," as it includes non-credit union members who may not be affiliated with credit unions.

Section 704.12(c) Recusal Provision

The ANPR asked whether the regulations should inquire recusal for all matters involving the pecuniary interest of an organization in which a corporate official is interested, rather than just matters where the amount in question exceeds 5% of the corporate's capital. Most of the commenters who supported the proposed changes favored a stronger recusal provision, as did a few of the commenters who were opposed to the changes. Some of the latter suggested that rather that eliminating the threshold amount entirely, NCUA should consider lowering it. Most of the commenters who were opposed to the changes stated that the current regulation was appropriate, although a few said it was too broad and that simply disclosing conflicts should be sufficient.

The Board believes that a healthy and independent credit union movement depends, in part, on preventing even the appearance of conflicts of interest. The Board further believes that a strong recusal provision is necessary to achieve this goal. In light of the increased scrutiny of financial institutions, there is no justification for allowing individuals who are interested in a matter from deliberating upon or deciding that matter, no matter how small. Further, given the proposed changes in board representation requirements, full recusal does not present the same practical problems as does the present rule. Therefore, the proposed rule does not contain a threshold below which matters can be considered by an interested individual.

Under the recusal provision, an individual who is interested in a matter may not discuss the matter with anyone in the credit union at any time. He or she may not provide an opinion on the

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matter and must leave the room or area where the matter is being discussed. Of course, he or she may not vote on the matter.

The proposed rule provides a definition of "interested," substitutes "entity" for "corporation, partnership, or association," and clarifies that the recusal provision does not apply to general policy making regarding dividends, loan rates, and fees for services. It also deletes paragraph (c)(5), as no longer necessary.

Section 704.12(d) Administration

The ANPR asked whether the management of a corporate credit union should be required to report solely to its board. Again, most of the commenters who supported the proposed changes favored the proposal, as did some who were opposed to them. Most of those who were opposed said that the issue should be determined by each corporate credit union. Some of those who were opposed commented on the statement in the ANPR that the practice of the manager of one entity reporting to another entity violates fundamental principles of general corporate law. These commenters argued that the statement was incorrect, stating that the board of a corporation may delegate all or a portion of its management functions. The Board notes that the commenters may have misunderstood the statement, which was meant simply to affirm the principle that the board of a corporation is ultimately responsible for the actions of the corporation.

The Board believes it is essential that corporate credit unions adhere to this principle of board responsibility. To that end, the proposed rule sets forth the authority of the board and management of a corporate credit union and requires that management report solely to the board. The Board wishes to stress, again, that this requirement is meant simply to make it clear that the board is ultimately responsible for the operation of the corporate credit union. To further ensure that a corporate credit union is controlled by its board and not by another entity, the proposed rule provides that no management official or other employee of a corporate credit union may be employed by or serve as an official of any credit union-related organization.

Section 704.12(e) Credit Union-Related Organization

As previously explained, the proposed rule defines "credit union-related organization" to be a credit union league or trade association, an affiliate of a credit union league or trade association, or an entity operated or controlled by a credit union league, trade association, or affiliate.

D. Applicability to State-Chartered Corporate Credit Unions

The ANPR noted that Part 704 applies to all federally insured corporate credit unions and that non-federally insured corporate credit unions must agree to comply with it as a condition of receiving funds from natural person federal credit unions. Several commenters objected to applying the proposed changes to state-chartered corporate credit unions, stating that it was a violation of state rights and outside NCUA's authority.

The Board rejects these arguments, noting that NCUA has the statutory authority: 1) to regulate federally insured corporate credit unions to protect the NCUSIF; and 2) to establish investment standards (set forth in Part 703), based on safety and soundness, for natural person federal credit unions.

E. Effective Date

The Board is considering a delayed effective date of up to one year, in order to give corporate credit unions ample time to comply with any new regulations.

F. Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the proposed rule, if made final, will not have a significant economic impact on small credit unions (those under $1 million in assets). The rule applies only to corporate credit unions, all of which have assets well in excess of $1 million. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The proposed rule does not impose any paperwork requirements.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. It states, "Federal action limiting the policy-making discretion of the states should be taken only where constitutional authority for the action is clear and certain, and the national activity is necessitated by the presence of a problem of national scope." There is no question of NCUA's constitutional authority to regulate federally insured corporate credit unions to protect the NCUSIF. The risk of loss to federally insured credit unions and the NCUSIF caused by actions of corporate credit unions are concerns of national scope. The proposed rule will help establish that NCUA has the proper tools to ensure the safety and soundness of corporate credit unions.

The rule applies to all federally insured corporate credit unions, including those that are state-chartered. State-chartered corporate credit unions enjoy the same benefits provided by the NCUSIF as do federally chartered corporate credit unions. The benefits are provided through a federal system, the responsibility for which lies with the NCUA Board. The Board believes that those who benefit from the system should bear its burdens equally. The rule also applies, indirectly, to non federally insured state-chartered corporate credit unions, which, pursuant to 12 CFR Part 703, must comply with the rule in order to receive funds from federally chartered credit unions. The proposed rule does not impose additional costs or burdens on the states or affect the states' ability to discharge traditional state government functions.

The Board had determined, pursuant to Executive Order 12612, that the proposed rule may have an occasional direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Further, the proposed amendments may supersede provisions of state law or regulation concerning federally insured state-chartered corporate credit unions.

List of Subjects in 12 CFR Part 704

Credit unions, Reporting and record keeping requirements.

By the National Credit Union Administration Board on September 16, 1994.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, 12 CFR part 704 is proposed to be amended as follows:

PART 704—CORPORATE CREDIT UNIONS

1. The authority citation for part 704 continues to read as follows:

Authority: 12 U.S.C. 1762, 1766(a), 1781, and 1789.

2. Section 704.2 is amended by removing the definition of *Affiliated organization* and revising the definition of *Corporate credit union* to read as follows:

§ 704.2 Definitions.

* * * * *

"Corporate credit union" means a credit union that:

(1) Is operated primarily for the purpose of serving other credit unions;

(2) Is designated by the National Credit Union Administration as a corporate credit union;

(3) Limits natural person members to the minimum required by state or federal law to charter and operate the credit union; and

(4) Does not condition the eligibility of any credit union to become a member on that credit union's membership in any other organization.

* * * * *

3. Section 704.12 is amended by revising paragraphs (a), (b), (c)(1), (c)(2), and (c)(4), removing paragraph (c)(5), and adding paragraphs (d) and (e), to read as follows:

§ 704.12 Representation.

(a) *Board representation.* The board shall be determined as stipulated in the standard corporate federal credit union bylaws, provided that:

(1) At least a majority of directors, including the chair of the board, are individuals who represent member credit unions and are not officers, directors, agents, or employees of a credit union-related organization;

(2) Elections are conducted by mail ballot, with procedures for nominations by petition; and

(3) For purposes of meeting the majority representation requirement of paragraph (a)(1) of this section, no individual from a member credit union can serve as a director if another individual from that credit union serves as an officer, director, agent, or employee of a credit union-related organization.

(b) *Representatives of organizational members.* (1) An organizational member of a corporate credit union may appoint one of its members or officials as a representative to the corporate credit union. The representative shall be empowered to attend membership meetings, to vote, and to stand for election on behalf of the member. No individual may serve as the representative of more than one organizational member in the same corporate credit union.

(2) Any vacancy on the board of a corporate credit union caused by a representative being unable to complete his or her term shall be filled by the board of the corporate credit union according to the bylaws.

(c) *Recusal provision.* (1) No director, committee member, officer, agent, or employee of a corporate credit union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his or her pecuniary interest or the pecuniary interest of any entity (other than the corporate credit union) in which he or she is interested, except if the matter involves general policy regarding setting dividend or loan rates or fees for services.

(2) An individual is "interested" in an entity if he or she:

(i) Serves as a director, officer, agent, or employee of the entity;

(ii) Has a business, ownership, or deposit relationship with the entity; or

(iii) Has a business, financial, or familial relationship with an individual who has a pecuniary interest in the entity.

(3) * * *

(4) In the event of the disqualification of any committee member by operation of paragraphs (c) (1) or (2) of this section, the remaining qualified committee members, if constituting a quorum with the disqualified committee members, may exercise, by majority vote, all the powers of the committee with respect to the matter under consideration. Where all of the committee members are disqualified, the matter shall be decided by the board of directors.

(d) *Administration.* (1) A corporate credit union shall be under the direction and control of its board of directors. While the board may delegate the performance of administrative duties, the board is not relieved of its responsibility for their performance. The board may employ a management official who shall have such authority and such powers as delegated by the board to conduct business from day to day. Such management official must answer solely to the board of the corporate credit union.

(2) No management official, agent, or employee of a corporate credit union may be a management official, agent, or employee of a credit union-related organization.

(e) Credit union-related organization. A "credit union-related organization" means:

(1) A credit union league;

(2) A credit union trade association;

(3) An affiliate of a credit union league or trade association; or

(4) An entity operated or controlled by a credit union league, credit union trade association, or affiliate of a credit union league or trade association.

Appendix to the Proposed Rule

[Note: The following material will not appear in the Code of Federal Regulations.]

The document entitled "Corporate Federal Credit Union Bylaws" is proposed to be amended by revising Article IV, Section 2, and Article V, Sections 1 and 2, and adding Sections 4 and 5 to Article V, to read as follows:

Article IV. Meetings of Members

* * * * *

Section 2. At least 75 days before the date of any annual meeting or 10 days before the date of any special meeting of the members, the recording officer shall cause written notice to be mailed to each member at the address that appears on the records of this credit union. Such notice shall state the date, time, and location of the meeting and such other information as the board of directors shall determine consistent with these bylaws. The written notice for the annual meeting shall advise the members of the deadlines for elections. Any meeting of the members, whether annual or special, may be held without prior notice, at any time or place, if all members entitled to vote and who are not present at such meeting shall, in writing, waive notice thereof, before, during, or after such meeting.

* * * * *

Article V. Elections

Section 1. At least 120 days prior to each annual meeting the board of directors shall appoint a nominating committee of not fewer than three from among the members. It shall be the duty of the nominating committee to nominate at least one eligible candidate for each vacancy, including any unexpired-term vacancy, for which elections are being held, and to determine that the candidates nominated are agreeable to the placing of their names in nomination and will accept office if elected. The nominating committee shall file its nominations with the recording officer at least 90 days prior to the annual meeting, and the recording officer shall notify in writing all members eligible to vote at least 75 days prior to the annual meeting that nominations for vacancies may also be made by petition signed by 5 percent of the members with a minimum of 5 and a maximum of 100.

The written notice shall indicate that the election will not be conducted by ballot and there will be no nominations from the floor when there is only one nominee for each position to be filled. A brief statement of qualifications and biographical data in such form as shall be approved by the board of directors will be included for each nominee submitted by the nominating committee with the written notice to all eligible members. Each nominee by petition shall submit a similar statement of qualifications and biographical data with the petition. The written notice

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shall state the closing date for receiving nominations by petition. The period for receiving nominations by petition shall, in all cases, extend at least 30 days from the date the petition requirement and the list of nominating committee nominees are mailed to all members. To be effective, such nominations shall be accompanied by a signed certificate from the nominee or nominees stating that they are agreeable to nomination and will serve if elected to office. Such nominations shall be filed with the recording officer at least 40 days prior to the annual meeting.

In carrying out their responsibilities, the nominating committee and board of directors must ensure that the requirements of 12 CFR 704.12(a) are satisfied.

Section 2. All elections shall be determined by plurality vote and shall be by mail ballot except where there is only one nominee for each position to be filled. Nominations shall not be made from the floor unless sufficient nominations have not been made by the nominating committee or by petition to provide for one nominee for each position to be filled or circumstances prevent the candidacy of the one nominee for a position to be filled. Only those positions without a nominee shall be subject to nominations from the floor. In the event nominations from the floor, when permitted herein, result in more than one nominee for a position to be filled, and when nominations have been closed, tellers shall be appointed by the board of directors, ballots shall be distributed, the vote shall be taken and tallied by the tellers, and the results announced. When only one member is nominated for each position to be filled, the chair may take a voice vote or declare each nominee elected by general consent or acclamation at the annual meeting.

* * * * *

Section 4. Except as provided in Section 2 of this article, all elections shall be by mail ballot, subject to the following conditions:

(a) The tellers of election shall be appointed by the board of directors;

(b) Sufficient nominations having been made by the nominating committee or by petition to provide more than one nominee for any position to be filled, the recording officer shall, at least 30 days prior to the annual meeting, cause printed ballots to be mailed to all members eligible to vote;

(c) The recording officer shall cause the following materials to be mailed to each eligible voter:

(1) One ballot, clearly identified as such, on which the names of the candidates for the board of directors and the candidates for other separately identified offices or committees shall have been printed in order as determined by the draw of lots. The name of each candidate shall be followed by a brief statement of qualifications and biographical data in such form as shall be approved by the board of directors;

(2) One envelope clearly marked with instructions that the completed ballot shall be placed therein and the envelope sealed;

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter;

(4) One mailing envelope in which the voter, pursuant to instructions provided, shall insert the sealed ballot envelope and the identification form, and which shall have been postage prepaid and pre addressed for return to the tellers of election;

(5) When properly designed, one form can be printed that represents a combined ballot/identification form, and postage prepaid and pre addressed return envelope;

(d) It shall be the duty of the tellers of election to verify, or cause to be verified, the name and account number of the credit union appearing on the identification form; to place the verified identification form and the sealed ballot envelope in separate places of safekeeping pending the count of the vote; and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved;

(e) Ballots mailed to the tellers of election must be received by the tellers no later than midnight 5 days prior to the date of the annual meeting;

(f) Voting shall be closed at the midnight deadline specified in subsection (e) hereof and the vote shall be tallied by the tellers of election. The result shall be verified at the annual meeting, and the board of directors shall make public the result of the vote at the annual meeting.

[FR Doc. 94-23545 Filed 9-22-94; 8:45 am]

BILLING CODE 7535-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Ch. II

Petition Requesting Development of Safety Standard for Portable Electric Heaters

AGENCY: Consumer Product Safety Commission.

ACTION: Request for comments.

SUMMARY: The Commission has received a petition from Bernard A. Schwartz requesting development of a safety standard for portable electric heaters. The Commission solicits written comments concerning the petition.[1]

DATES: Comments on the petition should be received in the Office of the Secretary by November 22, 1994.

ADDRESSES: Comments on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504-0800, or delivered to the Office of the Secretary, room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments should be captioned "CP 94-1, Petition for Development of Safety Standard for Portable Electric Heaters."

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0800.

SUPPLEMENTARY INFORMATION: The Commission has docketed correspondence from Bernard A. Schwartz requesting development of a safety standard for portable electric heaters as a petition for rulemaking under provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. § 2051 *et seq.*).

The petition asserts that portable electric heaters are associated with residential fires which result in a large number of deaths and injuries each year. The petition describes the test apparatus, method, and criteria for a safety standard to eliminate or reduce the risk of death and injury associated with portable electric heaters.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0800. A copy of the petition is also available for inspections from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, room 419, 4330 East West Highway, Bethesda, Maryland.

Dated: September 19, 1994

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94-23490 Filed 9-22-94; 8:45 am]

BILLING CODE 6355-01-P

[1] The Commission approved publication of this notice by a vote of 2-1, Commissioner Jones-Smith dissenting.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL78-1-6007; FRL-5078-3]

Proposed Approval and Promulgation of Revisions to the New Source Review State Implementation Plan; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to approve with a contingency, and disapprove in the alternative, a requested State Implementation Plan (SIP) revision submitted by the State of Illinois for the purpose of meeting requirements of the Clean Air Act, as amended in 1990 (amended Act) with regard to new source review (NSR) in areas that have not attained the national ambient air quality standards (NAAQS). The requested revision was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment new source review SIP for Illinois. This proposed approval is contingent upon the State correcting existing deficiencies in its NSR submittal before the USEPA promulgates a final rulemaking on this submittal. Should Illinois fail to correct all deficiencies in its NSR submittal, then this document will serve as a proposed disapproval of the State's submittal.

DATES: Comments on this proposed action must be received in writing by November 22, 1994.

ADDRESSES: Comments on this proposed rule should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (5AR-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following location: United States Environmental Protection Agency, Region 5, Air and Radiation Division, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Jennifer Drury-Buzecky, Environmental Protection Specialist, Permits and Grants Section, Regulation Development Branch (5AR-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Anyone wishing to come to the Region 5 offices should first contact Ms. Drury-Buzecky at (312) 886-3194. Reference file IL78-1-6007.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Clean Air Act (Act). The USEPA has issued a "General Preamble" describing its preliminary views on how USEPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment area NSR SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because USEPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of part D advanced in this proposal and the supporting rationale. The USEPA is currently developing a proposed rule to assist the implementation of the changes under the amended Act in the new source review provisions in parts C and D of title I of the Act. The USEPA anticipates that the proposed rule will be published for public comment in late 1994. If USEPA has not taken final action on States' NSR submittals by that time, USEPA may refer to the proposed rule as the most authoritative guidance available regarding the approvability of the submittals. USEPA expects to take final action to promulgate a rule to implement the parts C and D changes sometime during 1995. Upon promulgation of those regulations, USEPA will review the NSR SIPs of all States to determine whether additional SIP revisions are necessary.

Prior to USEPA approval of a State's NSR SIP submission, the State may continue permitting only in accordance with the new statutory requirements for permit applications completed after the relevant SIP submittal date. This policy was explained in transition guidance memoranda from John Seitz dated March 11, 1991 and September 3, 1992.

As explained in the March 11 memorandum, USEPA does not believe Congress intended to mandate the more stringent title I NSR requirements during the time provided for SIP development. States were thus allowed to continue to issue permits consistent with requirements in their current NSR SIPs during that period, or apply 40 CFR part 51, appendix S for newly designated areas that did not previously have NSR SIP requirements.

The September 3 memorandum also addressed the situation where States did not submit the part D NSR SIP requirements or revisions by the applicable statutory deadline. For permit applications found complete by the SIP submittal deadline, States may issue final permits under the prior NSR rules, assuming certain conditions in the September 3 memorandum are met. However, for applications completed after the SIP submittal deadline, USEPA will consider the source to be in compliance with the Act only where the source obtains from the State a permit that is consistent with the substantive new NSR part D provisions in the amended Act. USEPA believes this guidance continues to apply to permitting pending final action on NSR SIP submittals.

In this rulemaking action on the Illinois nonattainment NSR SIP revisions, USEPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, USEPA will consider any timely submitted comments before taking final action on this proposed rule.

II. Proposed Rulemaking Action

Section 110(k) of the Act sets out provisions governing USEPA's review of SIP submittals (see 57 FR 13565-13566).

A. Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to USEPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The USEPA also must determine whether a submittal is complete and therefore warrants further USEPA review and action. (See section 110(k)(1) and 57 FR 13565 (April 16, 1992).) The USEPA's completeness criteria for SIP submittals are set out at 40 CFR part 51,

[1] Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of section 110(a)(2).

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appendix V. The USEPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(1)(B) if a completeness determination is not made by USEPA within 6 months after receipt of the submission.

The State of Illinois submitted draft NSR rules to USEPA for parallel processing on November 15, 1992. The State of Illinois then held public hearings on January 6 and February 5, 1993, to entertain public comment on the NSR implementation plan revisions. At those hearings, the Illinois Pollution Control Board (Board) formally adopted several interpretations of those rules. Following the public hearings, the rules were adopted by the State on April 30, 1993, and both the rules and interpretations were submitted to USEPA on June 21, 1993, as a requested revision to the SIP. The requested SIP revision thus includes the NSR rules and the interpretations of those rules adopted by the State.

The SIP revision request was reviewed by USEPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. The submittal was found to be complete on August 24, 1993, and a letter was sent on that date to the Governor's designee, Bharat Mathur, Chief, Bureau of Air, Illinois Environmental Protection Agency, indicating the completeness of the submittal and the next steps to be taken in the review process. On May 27, 1994, the State submitted an amendment to its NSR submittal consisting of a correction of 35 Ill. Adm. Code Section 203.209 (a)(4). USEPA will consider that amendment in this rulemaking.

2. General Nonattainment NSR Requirements

The statutory requirements for nonattainment new source review SIPs and permitting are found at sections 172 and 173 of the Act. Part D of title I of the Act requires States to address a number of nonattainment NSR provisions in a SIP revision submittal. What follows is a summary of the requirements and how the Illinois submittal addresses them.

a. No growth moratoriums exist in the State of Illinois subsequent to USEPA action on December 17, 1992. 57 FR 59928.

b. Illinois has established provisions according to section 173(a)(1) to assure that calculations of emissions offsets are based on the same emissions baseline used in the demonstration of Reasonable Further Progress (RFP).

c. Illinois has established provisions according to section 173(c)(1) to allow offsets to be obtained in another nonattainment area if the area has an equal or higher nonattainment classification and emissions from the other nonattainment area contribute to a NAAQS violation in the area in which the source would construct.

d. Illinois has established provisions according to section 173(c)(1) that any emissions offsets obtained in conjunction with the issuance of a permit to a new or modified source must be in effect and enforceable by the time the new or modified source commences operation.

e. Illinois has established provisions according to section 173(c)(1) to assure that emissions increases from new or modified sources are offset by real reductions in actual emissions.

f. Illinois has established provisions according to section 173(c)(2) to prevent emissions reductions otherwise required by the Act from being credited for purposes of satisfying part D offset requirements.

g. Illinois has established provisions according to sections 172(c)(4) and 173(a)(1)(B) that reflect changes in growth allowances; specifically: (1) The elimination of existing growth allowances in any nonattainment area that received a notice prior to the amended Act that the SIP was substantially inadequate or receives such a notice in the future; and (2) the restriction of growth allowances to only those portions of nonattainment areas formally targeted as special zones for economic development. It should be noted that Illinois does not have any existing growth allowances in nonattainment areas, nor are there currently any existing zones for economic development. The State's submittal, however, does restrict growth allowances to special zones for economic development in accordance with section 173(a)(1)(B) of the amended Act.

h. Illinois has established provisions according to section 173(a)(5) that, as a prerequisite to issuing any part D permit, require an analysis of alternative sites, sizes, production processes, and environmental control techniques for proposed sources that demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

i. Illinois has provided according to section 173(d) for the supplying of information from nonattainment new source review permits to USEPA's Reasonably Available Control Technology, Best Available Control Technology, Lowest Achievable Emissions Reduction (RACT/BACT/LAER) clearinghouse. This provision is contained in the State's workplan of its NSR grant.

j. Illinois has established provisions according to section 173(e) that allow any existing or modified source that tests rocket engines or motors to use alternative or innovative means to offset emissions increases from firing and related cleaning, if four conditions are met: (a) The proposed modification is for expansion of a facility already permitted for such purposes prior to November 15, 1990; (b) the source has used all available offsets and all reasonable means to obtain offsets and sufficient offsets are not available; (c) the source has obtained a written finding by the appropriate, sponsoring Federal agency that the testing is essential to national security; and (d) the source will comply with an alternative measure designed to offset any emissions increases not directly offset by the source.

k. Illinois has not established provisions according to section 819 of the amended Act that effectively exempt activities related to stripper wells from the new additional NSR requirements of new subparts 2, 3, and 4 for Particulate Matter of 10 microns or less (PM–10), Ozone, or Carbon Monoxide (CO) nonattainment areas classified as serious or less and having a population of less than 350,000. Illinois does not presently have any stripper well operations and, therefore, this provision does not apply.

l. Illinois has not established provisions according to section 328 to assure that sources located on the Outer Continental Shelf (OCS) and within 25 miles of the State's seaward boundary, are subject to the same requirements applicable if the source were located in the corresponding on shore area. Because the State is not located on the OCS, section 328 does not apply.

m. Illinois has established, according to sections 302(z) and 111(a)(3), a definition of "stationary source" to include internal combustion engines other than the newly defined category of "nonroad engines".

n. Illinois has established provisions under section 173(a)(3) to assure that owners or operators of each proposed new or modified major stationary source demonstrate, as a condition of permit issuance, the compliance of all other major stationary sources under the same ownership in the State.

3. Ozone

According to section 172(c)(5), State implementation plans must require permits for the construction and operation of new or modified major stationary sources. The statutory permit requirements in ozone nonattainment areas are generally contained in section 173, and in subpart 2 of part D. These are the minimum requirements that States must include in an approvable implementation plan. For all classifications of ozone nonattainment areas and for ozone transport regions, States must adopt the appropriate major source thresholds and offset ratios, and must adopt provisions to ensure that any new or modified major stationary source of Oxides of Nitrogen (NO_X) satisfies the requirements applicable to any major source of Volatile Organic Compounds (VOC), unless a special NO_X exemption is granted by the Administrator under the provision of section 182(f). For serious and severe ozone nonattainment areas, State plans must implement sections 182(c) (6), (7) and (8) with regard to modifications. For emissions of VOC and NO_X in ozone nonattainment areas, Illinois has established major source thresholds, offset ratios, and included provisions for NO_X major stationary sources as follows:

Area classification	Major source threshold	Offset ratio	NO_X provisions
Marginal	100	1.1:1	provided.
Moderate.	100	1.15:1	provided.
Serious	50	1.2:1	provided.
Severe	25	1.3:1	provided.

It should be noted that there are no areas classified as extreme ozone nonattainment areas in Illinois. The State has areas classified as severe, moderate and marginal.

In addition, with certain exceptions described below, Illinois' plan submittal reflects appropriate modification provisions, including a de minimis level of 40 tons for marginal and moderate nonattainment areas. Section 203.209 of the State's rules details when a net emissions increase is significant. In general, a net emission increase is significant if it is equal to the emissions level specified in section 203.209(a)(1)–(6) and section 203.209(b). In order to establish whether an increase in emissions is significant, the net emissions increase must be calculated. USEPA interprets its current regulations for areas other than serious and severe ozone nonattainment areas as requiring that a proposed modification must by itself result in a significant emissions increase to be considered a major modification. If it does not result in a significant emissions increase, prior accumulated emissions may be ignored. USEPA interprets Illinois' NSR rules in the same manner. Traditionally, the calculation of net emissions involves adding the creditable increases and decreases over a period of time beginning at the time the emission increase is projected to occur and going back for the previous consecutive 5 years. Illinois seeks to rely on section 182(c)(6) of the amended Act to establish a new method of calculating net emission increases in serious and severe ozone nonattainment areas.

Section 203.209(b) of the Illinois rule states that an increase in Volatile Organic Material (VOM), an equivalent term to VOC, or NO_X shall be considered significant if the net emissions increase of such air pollutant from a stationary source located within such area exceeds 25 tons when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred. Although Illinois' section 203.209(b) is very similar to section 182(c)(6) of the Act for netting in serious and severe ozone nonattainment areas, an issue exists regarding the proper interpretation of "5 consecutive calendar years" and "net emissions increase".

USEPA believes that the language of section 203.209(b) by itself would be approvable, however, the two written interpretations of section 203.209(b) adopted by the State, unless withdrawn, will require disapproval of the State's submittal. USEPA, therefore, proposes to approve section 203.209(b) contingent upon the actual withdrawal of the Board's interpretations prior to final rulemaking. If the Board does not withdraw these interpretations by USEPA's final rulemaking, then this notice serves as a proposed disapproval of this SIP revision submittal. The reasons for USEPA's proposed approval (contingent upon withdrawal of these interpretations) are outlined below. For further information regarding this rulemaking refer to the technical support document included in this docket.

To accompany section 203.209(b) of the Illinois rule, intended to implement section 182(c)(6) of the Act, Illinois submitted two interpretations of the rule adopted by the State. The first interpretation allows a source in a serious or severe ozone nonattainment area to use a contemporaneous 5-year period for netting that includes projected emission decreases in future years as well as actual decreases from past years. In other words, under Illinois' interpretation, a source could propose a modification resulting in a significant emission increase and yet not be required to obtain a major NSR permit merely because the source asserts that it intends to make a future modification resulting in an emission decrease. As discussed below, Illinois' rule and interpretations fail to assure that such future emission decreases will in fact occur. USEPA is not in this rulemaking proposing to decide whether future years are acceptable for purposes of netting emission increases and decreases under section 182(c)(6). In a rulemaking to revise and update its nationally applicable NSR rules, USEPA will soon propose its interpretation of section 182(c)(6), (7) and (8) and intends to request comments on the use of emission decreases in future years as netting credits against emission increases from a proposed modification or new construction. After this national rulemaking becomes final, USEPA will reexamine all NSR SIPs to ensure conformity with USEPA's new regulations to implement the amended Act.

The State's interpretation allowing the use of emission decreases in future years does not ensure that these future decreases will be federally enforceable. For example, the Illinois interpretation of the rule does not require that future decreases be placed in a construction permit as a federally enforceable permit condition, nor does the rule or interpretation require that these future decreases meet all requirements for creditable netting credits. One such requirement is that decreases used for netting purposes be actual emission decreases. Although USEPA does not intend in this proposed rulemaking to address the issue of whether future decreases may ever be used under section 182(c)(6), USEPA believes that future decreases certainly may not be used where the SIP does not require these decreases to be federally enforceable. Federal enforceability is essential to assure that the projected future netting reductions being relied on to offset the new emission increase will actually occur so that the net emission increase is less than a significant increase and is not improperly escaping review. To summarize, although Illinois' written interpretation of the rule is not approvable, the language of the rule, standing alone, would be approvable.

The second interpretation of section 203.209(b) adopted by the State concerns whether a net emissions

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increase of a particular pollutant is significant. The interpretation states that the netting calculation commences with the date of an area's designation as nonattainment. Many of these nonattainment designations occurred after the November 15, 1990, effective date of the Act. Using the State's interpretation, the 5-year period for calculation of a net emissions increase of NO_X in the Chicago area would not begin until November 15, 1992. This would allow a NO_X source applying for a NSR permit in Chicago on November 15, 1992, to use a 5-year contemporaneous period from November 15, 1992, to November 15, 1997. Past emission increases occurring before November 15, 1992, would not be included in the calculation to determine whether the proposed project would result in a significant emissions increase because Illinois' interpretation does not allow the netting calculation for NO_X to begin until November 15, 1992.

The Illinois interpretation of the rule specifically provides: (1) The netting calculation for VOM emissions commences no earlier than January 6, 1992, in the newly designated nonattainment areas in the Chicago area; (2) for sources located in all ozone nonattainment areas of the State, the calculation for NO_X commences no earlier than November 15, 1992; (3) for sources with the potential to emit at least 25 tons per year (tpy) but less than 100 tpy and which are located in the Chicago nonattainment area, the netting calculation for VOM emissions commences at either the time that the source became major or November 15, 1990, whichever is later; and (4) for sources with complete construction permit applications filed (including Prevention of Significant Deterioration applications) prior to the date of an area as nonattainment, or the dates given above, whichever occurs later, the netting calculation shall not include emission increases allowed by that permit.

This four-part second interpretation of section 203.309(b) compounds the problems discussed above concerning the first interpretation. Whereas the first interpretation allows sources to use future decreases, the second interpretation, by cutting off use of past years, compels sources in serious and severe ozone nonattainment areas to use future years for the netting calculation, again without requiring these future emission decreases to be federally enforceable. Thus, all interpretations of the rule adopted by the State do not ensure the Federal enforceability of all emission decreases in the contemporaneous period and fail to account for all emission increases. USEPA believes that all interpretations should be disapproved as conflicting with the Act. Because the language of the rule, standing alone, would be approvable, USEPA proposes to approve section 203.209(b) adopted by the State contingent upon the Board withdrawing all interpretations of section 203.209(b) prior to final USEPA rulemaking.

The USEPA is limited in its ability to disapprove a portion of a State rule and approve the remainder if the effect is to make the approved portion of the rule more stringent than intended by the State. In *Bethlehem Steel Corporation* v. *Gorsuch* 742 F. 2d 1028 (7th Cir. 1984), the Court held that at least in certain circumstances USEPA may not approve parts of a SIP request and disapprove other parts if the effect of the action is to make the SIP more stringent than the State intended. For this reason in order for USEPA to approve the State's NSR rule, the interpretations of section 203.209(b) adopted by the Board in its final Opinion and Order of the Board must be withdrawn from the Opinion and Order.

The State of Illinois' NSR rules for serious and severe ozone nonattainment areas provide that major modifications to existing sources that have a potential to emit of less than 100 tpy of VOM or NO_X shall substitute BACT for LAER and may avoid major NSR by internally offsetting the emissions increase by a ratio of 1.3 to 1. The State also provides that major modifications to existing sources that have a potential to emit of greater than 100 tpy of VOM or NO_X may avoid LAER requirements by internally offsetting the emissions increase by a ratio of 1.3 to 1. For more detail, refer to the technical support document included with this docket.

4. Carbon Monoxide

The statutory NSR requirements for CO nonattainment areas are generally contained in section 173, and in subpart 3 of part D. These are the minimum requirements that States must include in an approvable implementation plan. States must adopt the appropriate major source threshold and offset ratio.

Illinois has established a major source threshold of 50 tpy, and an offset ratio of an amount equal to or greater than the amount of emission increase for serious CO nonattainment areas. It should be noted that there are no CO nonattainment areas in Illinois.

5. PM–10

The statutory NSR requirements for PM–10 nonattainment areas are generally contained in section 173, and in subpart 4 of part D. These are the minimum requirements that States must include in an approvable implementation plan. For PM–10 nonattainment areas States must adopt the appropriate major source threshold, offset ratio, significance level for modifications, and provisions for PM–10 precursors.

Illinois has established major source thresholds, offset ratios, modification significance levels, and PM–10 precursor provisions as follows: In section 203.209(b)(4) a major source threshold level of 100 tpy in an area classified as moderate nonattainment, 70 tpy major source threshold level in areas classified as serious, and in its initial submittal, an incorrect significance level of 25 tpy in section 203.209. The State, however, amended this incorrect significance level to provide for the correct level of 15 tpy in a subsequent rulemaking effective April 15, 1994. 35 Ill. Adm. Code 203.209(a)(4). This rulemaking was submitted to USEPA on May 27, 1994, to correct the deficiency in the original submittal. USEPA is, therefore, proposing to take action on the corrected 15 tpy significance level. The general offset requirement of an amount equal to or greater than the amount of emissions increase is established in section 203.302(a).

The control requirements which are applicable to major stationary sources of PM must also apply to major stationary sources of PM precursors unless USEPA determines such sources do not contribute significantly to PM levels which exceed the NAAQS in that area (see section 189(e) of the Act.) Illinois has four moderate PM–10 nonattainment areas: McCook, LaSalle, Lake Calumet and Granite City. See TSD for definitions of these nonattainment areas. On October 21, 1993, USEPA promulgated a final rule finding that precursors do not significantly contribute to PM concentrations in the LaSalle nonattainment area. 58 FR 54291. USEPA also proposed a rulemaking asserting that precursors do not significantly contribute to PM concentrations in the remaining three nonattainment areas. This proposal was published on May 25, 1994. 59 FR 26988. If this action is finalized, section 189(e) would no longer require NSR on major PM precursor sources. Please see TSD if more information is desired, or see the May 25, 1994, proposed rule at 59 FR 26988.

6. Sulfur Dioxide

The statutory NSR requirements for Sulfur Dioxide (SO_2) nonattainment areas are generally contained in section 173, and in subpart 5 of part D. These are the minimum requirements that States must include in an approvable implementation plan. For SO_2 nonattainment areas, States must adopt the appropriate major source threshold, offset ratio, and significance level for modifications.

Illinois has established a major source threshold of 100 tpy, an offset ratio of an amount equal to or greater than the amount of emissions increased, and a modification significance level of 40 tpy.

7. Lead

The statutory NSR requirements for lead nonattainment areas are generally contained in section 173, and in subpart 5 of part D. These are the minimum requirements that States must include in an approvable implementation plan. For lead nonattainment areas, States must adopt the appropriate major source threshold, offset ratio, and significance level for modifications.

Illinois has established a major source threshold level of 100 tpy, an offset ratio of an amount equal to or greater than the amount of emissions increased, and a modification significance level of .6 tpy. It should be noted that there are presently no lead nonattainment areas in Illinois.

8. Nitrogen Dioxide

The statutory NSR requirements for nitrogen dioxide nonattainment areas are generally contained in section 173, and in subpart 5 of part D. These are the minimum requirements that States must include in an approvable implementation plan. For nitrogen dioxide nonattainment areas, States must adopt the appropriate major source threshold, offset ratio, and significance level for modifications.

Illinois has established a major source threshold of 100 tpy, an offset ratio of an amount equal to or greater than the amount of emissions increased, and a modification significance level of 40 tpy. It should be noted that there are presently no nitrogen dioxide nonattainment areas in Illinois.

9. Plantwide Source Definition

On October 4, 1981, the USEPA revised the NSR regulations in 40 CFR part 51 to give States the option of adopting the "plantwide" definition of stationary source which provides that only physical or operational changes that result in a net increase in emissions at the entire plant require a NSR permit. For example, if a plant decreased emissions by the same amount at another piece of process equipment, then there would be no net increase in emissions at the plant and therefore, no "modification" to the "source." The plantwide definition is in contrast to the so-called "dual" definition [or definition of structure like that in the 1979 offset ruling (44 FR 3274), which has much the same effect as the dual definition]. Under the dual definition, the emissions from each physical or operational change are gauged without regard to reductions elsewhere at the plant.

In the October 1981 rule, USEPA set forth its rationale for allowing use of the plantwide definition (46 FR 50766–50769). In its view, allowing use of the plantwide definition was a reasonable accommodation of the conflicting goals of part D of title I of the Act. The Act provided for reasonable further progress (RFP) and timely attainment of National Ambient Air Quality Standards (NAAQS), while also allowing for maximum State flexibility and economic growth. The USEPA recognized that the plantwide definition would bring fewer plant modifications into the nonattainment permitting process, but emphasized that this generally would not interfere with RFP and timely attainment primarily because the States under the demands of part D eventually would have adequate SIPs in place. For instance, USEPA stated:

> Since demonstration of attainment and maintenance of the NAAQS continues to be required, deletion of the dual definition increases State flexibility without interfering with timely attainment of the ambient standards and so is consistent with Part D [46 FR 50767].

USEPA also indicated that under the plantwide definition, new equipment would still be subjected to any applicable new source performance standard and that wholly new plants, as well as any modifications that resulted in a significant net emissions increase, would still be subject to NSR. Thus, USEPA saw no significant disadvantage in the plantwide definition from the environmental standpoint, but advantages from the standpoints of State flexibility and economic growth. It regarded the plantwide definition as presenting, at the very worst, environmental risks that were manageable because of the independent impetus to create adequate part D plans.

As a result, USEPA ruled that a State wishing to adopt a plantwide definition generally has complete discretion to do so, and it set only one restriction on that discretion. If a State had specifically projected emission reductions from its NSR program as a result of a dual or similar definition and had relied on those reductions in an attainment strategy that USEPA later approved, then the State needed to revise its attainment strategy as necessary to accommodate reduced NSR permitting under the plantwide definition (46 FR 50767 and 50769).

In 1984, the Supreme Court upheld USEPA's action as a reasonable accommodation of the conflicting purposes of part D of title I of the Act, and hence, well within USEPA's broad discretion. *Chevron, U.S.A.* v. *NRDC*, 104 S.Ct. 2778 (1984). Specifically, the Court agreed that the plantwide definition is fully consistent with the Act's goal of maximizing State flexibility and allowing reasonable economic growth. Likewise, the Court recognized that USEPA had advanced a reasonable explanation for its conclusion that the plantwide definition serves the Act's environmental objectives as well (see 104 S.Ct. at 2792). In this rule USEPA generally reaffirms the rationales stated in the 1981 rulemaking. Those rationales were left undisturbed by the Supreme Court decision.

The SIP revision USEPA is approving in this action substitutes a plantwide definition for a dual definition in Illinois' existing nonattainment NSR program. A September 2, 1994, letter from Bharat Mathur, Chief, Bureau of Air of IEPA, to Stephen Rothblatt, Chief, Air and Radiation Branch, USEPA, states Illinois' rationale for implementing the plantwide definition. The letter further states that in obtaining USEPA approval of its original part D SIP, Illinois did not rely on emission reductions from its existing NSR program. Illinois has nonattainment areas for sulfur dioxide, ozone, and fine particulate matter. Illinois has submitted several revisions required by the amended Act prior to attainment of the NAAQS by the statutory dates, which range from 1994 to 2007 for the nonattainment areas in Illinois. For example, Illinois has submitted revisions for VOC RACT Rule Fix-ups, Stage II vapor recovery, employee commute options, 1990 base year ozone emissions inventories, and emission statement. These revisions have been or will be acted on by USEPA in subsequent actions.

10. Miscellaneous Definitions

Section 203.123 of the Board's rules adds the definition of federally enforceable to the State's NSR SIP. The State's definition is consistent with 40 CFR 51.165(a)(i)(xiv).

Section 203.303 of the Board's rules amends the definition of baseline and emission offsets determination. The new definition provides that to obtain offsets for a prior shutdown, the proposed new or modified source must be a

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replacement for the shutdown or curtailment until USEPA approves an attainment demonstration and State trading or marketing rules for the relevant pollutant. This definition complies with 40 CFR 51.165(a)(3)(ii)(C).

III. Implications of This Action

Proposed Rulemaking Actions

As stated above, the Illinois NSR submittal contains a deficiency for which USEPA proposes approval of the State's requested SIP revision with a contingency and a proposed disapproval in the alternative.

Illinois adopted written interpretations of section 203.209(b) in an attempt to implement the amended Act's special provisions for serious and severe ozone nonattainment areas, section 182(c)(6)–(8). USEPA proposes to approve section 203.209(b) adopted by the State only if the State withdraws its interpretations. The interpretations adopted by the State are deficient in that they do not ensure the Federal enforceability of any future emission reductions used for netting credits and fail to account for all emission increases occurring during the contemporaneous period. This proposed approval is contingent upon the withdrawal of all Board interpretations of section 203.209(b) as soon as possible. If the Board's interpretations of section 203.209(b) are not withdrawn before final rulemaking, USEPA proposes in the alternative that USEPA's final action would be a disapproval of the entire submittal.

After the completion of the 60-day public comment period, USEPA will ordinarily require 30 days to prepare a final notice incorporating all comments received. This notice is then forwarded to USEPA headquarters for review. Once USEPA headquarters' 45-day review period is completed, the final notice will be sent to the Office of the Federal Register for publication. USEPA, therefore, expects to take final action on this rulemaking within 180 days of publication of this proposal.

USEPA is alternatively proposing disapproval of the State's submittal. If finalized, this proposed disapproval would constitute a disapproval under section 179(a)(2) of the Act (see generally 57 FR 13566–13567). As provided under section 179(a) of the Act, the State of Illinois would have up to 18 months after a final SIP disapproval to correct the deficiencies that are the subject of the disapproval before USEPA is required to impose sanctions. If the State does not correct its SIP deficiencies within 18 months, then section 179(a)(4) requires the immediate application of sanctions. According to 179(b), sanctions can take the form of a loss of highway funds or a two to one emissions offset ratio. Once the Administrator applies one of the section 179(b) sanctions, the State will then have an additional six months to correct any deficiencies. Section 179(a)(4) requires that both highway and offsets sanctions must be applied if any deficiencies are still not corrected after the additional six month period.

On August 4, 1994, the USEPA finalized its selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Act. 59 FR 39832. This rulemaking states that the section 179(b)(2) offset sanction applies in an area 18 months from the date when the USEPA makes a finding under section 179(a) with regard to that area. Furthermore, the section 179(b)(1) highway funding restrictions apply in an area 6 months following application of the offset sanction. The USEPA will sequence the application of the section 179(b) sanctions in this manner in all cases unless the USEPA decides highway sanctions apply first by individual notice-and-comment rulemaking. USEPA, therefore, anticipates that the first sanction it would impose would be the two to one offset sanction. If the State has not corrected its deficiency within 6 months thereafter, USEPA must impose the other (highway) sanction. Any sanction USEPA imposes must remain in place until USEPA determines that the State has come into compliance.

If the USEPA's proposed disapproval of all or part of the SIP submittal for the State's nonattainment new source review provisions become a final disapproval, this will constitute a "finding" under section 179(a) for which sanctions will apply as described above. If the State fails to correct the deficiency within 18 months of such disapprovals, USEPA is required to impose sanctions per section 179(a) and presumably in the order described above. Note also that any final disapproval would trigger the section 110(c)(1) Federal Implementation Plan (FIP) provision. In the interim between the finding and either the State's correction of the SIP or the promulgation of the FIP, the State must issue NSR permits that conform with the requirements of the Act. These requirements will be embodied in the Federal part D NSR permitting regulations at 40 CFR 52.10.

IV. Request for Public Comments

The USEPA is requesting comments on all aspects of the requested SIP revision and USEPA's proposed rulemaking action. Comments received by the date indicated above will be considered in the development of USEPA's final rulemaking action.

V. Executive Order 12866

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

VI. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

USEPA's disapproval of the State request under section 110 and subchapter I, part D of the Act, does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its state-enforceability. Moreover, USEPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, USEPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal requirements.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIP's on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Lead, Carbon Monoxide, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 15, 1994.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 94–23604 Filed 9–22–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[WY–001b; FRL–5076–3]

Clean Air Act Interim Approval of Operating Permit Program; State of Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes interim approval of the Operating Permit Program submitted by the State of Wyoming. Wyoming's Operating Permit Program was submitted for the purpose of complying with Federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources. In the final rules section of this **Federal Register**, the EPA is promulgating interim approval of the Wyoming Operating Permit Program as a direct final rule without prior proposal because the Agency views this submittal as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, then the direct final will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed action must be received in writing by October 24, 1994.

ADDRESSES: Written comments should be addressed to: Laura Farris, 8ART-AP, at the EPA Regional Office listed. Copies of the State's submittal and other supporting information used in developing the proposed rule are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Laura Farris, 8ART-AP, U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202, (303) 294–7539.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title which is located in the Rules section of this **Federal Register**.

Dated: September 14, 1994.

Kerrigan Clough,

Acting Regional Administrator.

[FR Doc. 94–23598 Filed 9–22–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 30

[CGD 94–069]

Manning, Training, Qualifications, and Watchkeeping Standards for Foreign Tank Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Coast Guard is scheduling a public meeting to discuss implementation of Section 4106 of the Oil Pollution Act of 1990 (OPA 90). This section requires the Secretary of the department in which the Coast Guard is operating to evaluate the licensing, certification, manning, training, qualification, and watchkeeping standards of foreign flag tank vessels that operate in U.S. navigable waters or lighter in any port or place subject to U.S. jurisdiction. The Coast Guard will hold the meeting to give the public an opportunity to comment on, and provide input to, the development of this evaluation process.

DATES: The public meeting will be held from 9 a.m. until 4:30 p.m. on October 19, 1994. Written comments must be received by November 19, 1994.

ADDRESSES: The public meeting will be held in room 2415, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001

Persons who are unable to attend the public meeting may mail written comments to the executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–069), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Persons submitting written comments should include their names and addresses, identify this notice (CGD 94–069) and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

FOR FURTHER INFORMATION CONTACT: Marcia Landman, Project Manager, Oil Pollution Act (OPA 90) Staff, (G–MS–A), (202) 267–6770. This number is equipped to record messages on a 24-hour basis. Anyone wishing to make a presentation is requested to call this number and give the following information: docket number (CGD 94–069); name; company or organizational affiliation (if any); and the estimated amount of time needed for the comment.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this Notice are Marcia Landman, Project Manager, and Mary-Jo Cooney, Project Counsel, OPA 90 Staff. (G–MS–A).

Background and Discussion

Section 4106 of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) directs the Secretary of Transportation (Secretary) to evaluate the manning, training, certification, and watchkeeping standards of foreign tank vessels on a periodic basis and when a vessel is involved in certain marine casualties. If the Secretary finds that the vessel's flag state either does not have, or fails to enforce, standards for licensing and certification of seaman which are at least equivalent to United States law or international standards accepted by the United States (45 U.S.C. 9101(a)(3)), the

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Secretary is directed to prohibit the vessel's entry into U.S. waters subject to certain exceptions which appear in the statute.

The Coast Guard is considering a plan to amend 45 CFR Part 30 to reflect the use of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers of 1978, (STCW) as the appropriate standard for evaluating competencies of seafarers manning tank vessels certificated by foreign states. Vessels flagged in countries which are signatories to STCW would be evaluated based on that Convention. The Coast Guard would accept a certificate issued under that convention as evidence that the holder is in compliance with STCW. The proposal would also establish a presumption that flag states which are signatories to STCW meet or exceed STCW standards of training, qualification and watchkeeping.

This presumption could be rebutted by showing factors such as—

(1) Evidence that several casualties involving vessels flying the flag of that state were related to human factors;

(2) A pattern of STCW deficiencies identified during U.S. port calls, or documented in an international data exchange (based on port calls in other countries);

(3) A pattern of cases indicating that ships flying the flag of that state lacked a safe manning document;

(4) Evidence that crews on ships flying the flag of that state have failed to demonstrate proper performance of operations during port state control inspections;

(5) Lack of convincing evidence as to the familiarity of the seafarers with the ship's characteristics as may be appropriate to their assigned duties in performing duties as a member of a navigational watch or during emergency drills; or

(6) Evidence that the vessel is crewed by seafarers with certificates issued of a state other than the flag state and which are not endorsed by the flag state. On the basis of a review triggered by the above events, a previous equivalency determination could be suspended or revoked.

According to Article X.5 of the STCW, ships flagged in non-STCW signatory countries may not be treated more favorably than ships flying the flag of STCW signatories.

For tank vessels flagged in non-signatory countries, the Coast Guard would propose using U.S. law as the standard to assess whether the flag state's licensing, certification and training standards meet the equivalency and enforcement tests. The regulation would specify the documentation (in English) which a flag state, or a vessel's owner or operator, must provide so that the Coast Guard could determine whether a vessel meets the requirements. The regulations would also require submission of the information to the Coast Guard in advance of the vessel's arrival. In this way, the vessel's owner or operator would know if the vessel would be allowed to enter port. In some cases provisional entry might be permitted.

The Coast Guard is also considering a plan to amend 46 CFR part 30 to use the Safety of Life at Sea Convention of 1974, as amended (SOLAS 74/83), and relevant International Maritime Organization resolutions as guidance for evaluating manning levels. SOLAS 74/83 addresses manning levels, and requires certain ships of signatories to have an appropriate safe manning document or its equivalent. Annex 1 of IMO resolution A.481 (XII) describes the recommended contents of a SOLAS safe manning document. Certificates of Inspection issued by the U.S. Coast Guard contain substantially the same requirements as those listed in this IMO resolution. In most instances, the United States will accept a SOLAS 74/83 safe manning document as an alternative to compliance with its manning standards; however, the United States may intervene under the Ports and Waterways Safety Act (33 U.S.C. 1228) if manning is manifestly inadequate.

As required by statute, the Coast Guard is considering a plan, to evaluate the manning, training, qualification and watchkeeping standards of foreign countries periodically, and when a foreign flag tank vessel is involved in a marine casualty reportable under 46 U.S.C. 6101(a) (4) or (5). Reportable marine casualties include those involving material damage affecting the seaworthiness or efficiency of a vessel, and those which result in significant harm to the environment. The regulation would also set the period between evaluations not associated with a reportable marine casualty. This periodic review might simply be a confirmation that the flag state has continued to meet its obligations under STCW, and that the available information systems such as the Marine Safety Information System (MSIS) do not reveal a pattern of deficiencies.

The Coast Guard is interested in receiving comments on the potential costs and benefits of this regulation, the impact of this regulation, and any of the issues discussed in this notice (e.g., the appropriate length of time between periodic reviews; the combination of factors listed previously as rebutting the presumption of equivalency under STCW; or any other factors, which should result in suspension or revocation of an equivalency determination, etc.).

Because of the potential impacts of this regulation, and the results of the Coast Guard's regulatory process review, which indicated that public meetings provide an excellent opportunity for valuable input at early stages of the development of regulations, the Coast Guard has decided to hold a public meeting at the time and place indicated in this notice.

Dated: September 15, 1994.

J. F. McGowan,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–23512 Filed 9–22–94; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–101, RM 8510]

Radio Broadcasting Services; Kerman, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Valley Center Broadcasting, seeking the allotment of Channel 252A to Kerman, California, as that community's second local FM service. Coordinates used for this proposal are North Latitude 36–43–05 and West Longitude 120–03–55.

DATES: Comments must be filed on or before November 14, 1994, and reply comments on or before November 29, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Valley Center Broadcasting, Attn.: Joe S. Mauk, 365 W. Menlo Avenue, Fresno, CA 93704.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–101, adopted Sept. 12, 1994, and released Sept. 20, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–23501 Filed 9–22–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285 and 678

[I.D. 091494B]

Atlantic Shark and Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings and scoping meetings; request for comments.

SUMMARY: NMFS will hold 14 combination public hearing and scoping meetings to receive comments from fishery participants and other members of the public on bluefin tuna, yellowfin and other tuna, and Atlantic shark management issues. The purpose of this document is to notify the public of hearings and provide for public participation in the management process.

DATES: Hearings and meetings will be held October 3 through 6 and October 12 through 13, 1994. See **SUPPLEMENTARY INFORMATION** for specific dates and times of these combination meetings. Input for the issues/options statement should be submitted by September 28, 1994. Written comments on the issues must be received on or before November 22, 1994.

ADDRESSES: Written comments should be sent to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Clearly mark the outside of the envelope "Atlantic Tuna Comments" and/or "Shark Comments." Input for the issues/options statement may also be provided to the same address, or by sending a fax to Richard B. Stone at 301–713–0596. See **SUPPLEMENTARY INFORMATION** for the addresses of these combination meeting locations.

FOR FURTHER INFORMATION CONTACT: John D. Kelly for Atlantic tunas or general information, telephone: 301–713–2347, fax: 301–713–0596; C. Michael Bailey for sharks, telephone: 301–713–2347, fax: 301–713–0596.

SUPPLEMENTARY INFORMATION: The Atlantic, Caribbean and Gulf of Mexico shark fisheries are managed under authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Fishing by U.S. vessels is governed by regulations implementing the fishery management plan (FMP) at 50 CFR part 678. The Atlantic tuna fisheries are managed under regulations at 50 CFR part 285 implementing the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*), regulating the harvest of Atlantic tunas by persons and vessels subject to U.S. jurisdiction.

Issues for each combination meeting are:

1. Public hearing on the Draft Environmental Impact Statement (DEIS) for Atlantic bluefin tuna.

2. Scoping meeting on the Atlantic bluefin tuna fishery quota adjustments, allocation by user group, delayed season, moratorium on entry, and other issues.

3. Scoping meeting on the other Atlantic tunas, including permitting and reporting requirements for dealers and fishermen, changes in minimum size, catch levels, and special management zones.

4. Scoping meeting on the Atlantic shark fishery quota adjustment.

Atlantic Tunas, Bluefin

NMFS released a DEIS for Atlantic bluefin tuna in April 1994. One purpose of these announced meetings is to obtain comments on the DEIS in a public hearing. The DEIS examines a wide range of quota allocation alternatives under different levels of total quota, and should serve as background for discussion for a proposed 1995 rule. Copies of the DEIS are available upon request (see **FOR FURTHER INFORMATION CONTACT**).

These meetings will also provide a forum for open discussions on issues related to the 1995 Atlantic tunas rule. Recommendations from the 1993 meetings of the International Commission for the Conservation of Atlantic Tunas (ICCAT) call for reduction of the western Atlantic bluefin tuna quota in 1995 of 55 percent from 1991 levels, unless ICCAT scientific information indicates otherwise. This reduction would result in a U.S. quota of 743.2 metric tons. The management alternatives presented in the DEIS should provide the basis for discussions on options for the 1995 fishery.

Specific management issues for the bluefin tuna fishery that will be discussed include: Moratorium on new permits for all commercial gear categories, definition of a harpoon vessel, modifications to the relative shares of various user-group categories, and issues raised in the petitions for rulemaking.

Other Atlantic Tunas

Recommendations from the 1993 meetings of ICCAT call for countries to maintain fishing effort for yellowfin tuna at 1992 levels, since yellowfin stocks are now considered fully exploited, other specific management issues to be considered for Atlantic yellowfin, bigeye, and skipjack tunas include: Permitting and reporting requirements for fishermen and dealers, changes in the minimum size, and establishment of catch levels.

Petitions for Rulemaking

NMFS has received two petitions for rulemaking within the past year. A petition received from the National Fishing Association addresses the establishment of special management zones for recreational fisheries for Atlantic tunas, as well as other issues. The petition from the General Category Tuna Association requests a larger allocation of Atlantic bluefin tuna to the General category, prohibition of incidental catch of bluefin tuna, and modification of the definition of "benefit" in benefit-cost analyses such that employment be considered a benefit rather than a cost. The proposals in these petitions will also be discussed at the scoping meetings on Atlantic tunas.

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Atlantic Sharks

Final regulations implementing the Fishery Management Plan (FMP) for Sharks of the Atlantic Ocean became effective on April 26, 1993. The FMP concluded that the large coastal species group is overfished while the pelagic and small coastal species groups are fully exploited. In accordance with the FMP, a stock assessment workshop was held in March 1994. Lack of evidence of improvement in the stocks of large coastal sharks, combined with further information on life history characteristics, resulted in a recommendation from the workshop that the quota for large coastal sharks not be increased in 1995 as planned in the FMP. NMFS will conduct scoping meetings on the proposed modification in the 1995 quota for large coastal sharks. Other shark issues may also be addressed at these meetings.

Special Accommodations

These hearings/meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Richard H. Schaefer by September 28, 1994, (see **ADDRESSES**). To accommodate people unable to attend a scoping meeting or wishing to provide additional comments, NMFS is also soliciting written comments on these and other issues of concern in these fisheries, including comments on the DEIS.

In addition, NMFS requests input, by mail or by fax, to develop an issues/options statement prior to the scoping meetings. The issues/options statement will be used as the basis for discussion at the hearing/meetings.

Hearing Meeting Locations

Each of these hearing/meetings (unless otherwise noted) will include a shark discussion from 5:00 to 6:00 p.m., a non-bluefin tuna discussion from 6:00 to 7:00 p.m., and a bluefin discussion from 7:00 to 10:00 p.m. These scheduled times may be adjusted among the three fishery topics depending upon expressed interests of the audience. Such adjustments are at the discretion of the Meeting Officer. The meeting schedule is as follows:

October 3, 1994, Portland, ME

Jordan Seafood Restaurant
700 Main Street
South Portland, ME 04106

October 3, 1994, Galveston, TX

San Luis Hotel and Conference Center
5222 Seawall Blvd.
Galveston, TX 77551

October 3, 1994, Lake Worth, FL

Palm Beach Community College
Allied Health Lecture Hall, Room 101
4200 Congress Ave.
Lake Worth, FL 33461–4796

October 4, 1994, Plymouth, MA

Plymouth High School
Obery Street
Plymouth, MA 02360

October 4, 1994, New Orleans, LA

World Trade Center Building
Suite 1830, Crescent City Room
2 Canal St.
New Orleans, LA 70130

October 4, 1994, Manteo, NC

North Carolina State Aquarium
Airport Road
Manteo, NC 27954

October 5, 1994, Selden, NY

Suffolk Community College
533 College Road
Selden, NY 11784

October 5, 1994, Panama City, FL

NMFS Panama City Lab
3500 Delwood Beach Rd.
Panama City, FL 32407

October 5, 1994, Charleston, SC

South Carolina Wildlife
and Marine Resources Department (MRRI)
217 Fort Johnson Road
Charleston, SC 29422

October 6, 1994, Tom's River, NJ

Holiday Inn
290 Rt. 37 East
Tom's River, NJ 08753

October 6, 1994, Madeira Beach

Madeira Beach City Hall
300 Municipal Dr.
Madeira Beach, FL 33708

October 6, 1994, Norfolk, VA

Lake Wright Resort and Convention Center
6280 Northampton Blvd.
Norfolk, VA 23502

October 12, 1994, Silver Spring, MD (1 - 5 p.m.)

NMFS/NOAA/Department of Commerce
Building 4, Lobby Conference Room (1W611)
Silver Spring Metro Center
1305 East-West Highway
Silver Spring, MD 20910

October 13, 1994, Boston, MA

Hynnes Convention Center
Auditorium
900 Boyleston St.
Boston, MA 02115

Additional meetings may be announced at a later date in the **Federal Register**.

Dated: September 20, 1994.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–23616 Filed 9–20–94; 3:19 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 59, No. 184
Friday, September 23, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

Posting of Stockyards

Pursuant to the authority provided under Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below are stockyards as defined by Section 302(a). Notice was given to the stockyard owners and to the public as required by Section 302(b), by posting notices at the stockyards on the dates specified below, that the stockyards are subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

Facility No., name, and location of stockyard	Date of posting
LA–45—Stanley Brothers Livestock, Inc., Bastrop, Louisiana.	August 22, 1994.
NC–167—Foothills Livestock Auction, Inc., Spindle, North Carolina.	July 11, 1994.
OK–210—Winter Livestock, Inc., Enid, Oklahoma.	December 3, 1993.
TX–342—Hills Prairie Livestock Auction Co., Bastrop, Texas.	December 2, 1993.
TX–343—Clifton Livestock Commission Co., Inc., Clinton, Texas.	July 22, 1994.

Done at Washington, D.C. this 19th day of September 1994.

Merle E. Paulsen,

Acting Director, Livestock Marketing Division, Packers and Stockyards Administration

[FR Doc. 94–23615 Filed 9–22–94; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To Give Firms an Opportunity to Comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR [PERIOD 08/16/94–09/15/94]

Firm name	Address	Date petition accepted	Product
Dyna Turn of Oklahoma, Inc	116 Meadow Ridge, Elk City, OK 73644	08/22/94	Hard disk for drive unit in computer.
Bags by Francis, Inc	4312 Old Jonesboro Road, Forest Park, GA 30051.	08/22/94	Hats for girls.
American Medical Sales, Inc	4928 W Rosecrans Avenue, Hawthorne, CA 90250–6616.	08/22/94	Xray illuminators.
Optimized Devices, Inc	220 Marble Avenue, Pleasantville, NY 10570.	08/29/94	Automatic transformer test system.
Goldberger Doll Mfg. Co., Inc	538 Johnson Avenue, Brooklyn, NY 11237.	08/29/94	Dolls.
Barnhart Industries, Inc	P.O. Box 278, Barnhart, MO 63012	08/31/94	Soft sewing notions, garters and orthodontic headgear.
Precision Technology Corporation	19610 144th Avenue Northeast, Woodinville, WA 98072.	09/08/94	Aircraft parts, fluid metering values and medical equipment components.
Louis Allis Company (The)	427 East Stewart Street, Milwaukee, WI 53201–2020.	09/08/94	Synchronous and induction motors, syncronous generators and parts.
Perma Pleating Corporation	2171 Anderson Road, Greenville, SC 29611.	09/08/94	Pleating, apparel trim and covered buttons of customer's fabric.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

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Dated: September 19, 1994.

Thomas Heckmann,

Acting Director, Trade Adjustment Assistance Division.

[FR Doc. 94–23551 Filed 9–22–94; 8:45 am]

BILLING CODE 3510–24–M

Bureau of Export Administration

Electronics Technical Advisory Committee; Partially Closed Meeting

A meeting of the Electronics Technical Advisory Committee will be held October 20, 1994, 9:00 a.m., Herbert C. Hoover Building, Room 1617–M2, 14th Street and Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to electronics equipment or technology.

Agenda

General Session

1. Opening remarks and introductions.
2. Presentation or comments by the public.
3. Update on reorganization of the Bureau of Export Administration (BXA).
4. Update on reorganization of the Technical Advisory Committees (TACs).
5. Discussion on COCOM successor regime.
6. Update on revisions to the Export Administration Regulations (EAR).

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with U.S. export control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials or comments at least one week before the meeting to the address listed below: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(C)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: September 19, 1994.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 94–23650 Filed 9–22–94; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 30–94]

Foreign-Trade Zone 73—BWI Airport, MD; Application for Subzone Status Rotorex Company, Inc. (Rotary Compressors) Walkersville, MD

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Maryland Department of Transportation, grantee of FTZ 73, requesting special-purpose subzone status for the rotary compressor manufacturing plant of the Rotorex Company, Inc. (RCI) (subsidiary of NYCOR, Inc.), located in Walkersville, Maryland. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 6, 1994.

The RCI plant (210,000 sq. ft. on 18 acres) is located at 8301–B Retreat Road in Walkersville (Frederick County), Maryland, about 55 miles northwest of Washington, DC. The facility is used to produce rolling piston rotary pumps and compressors for R–22 unitary heat pumps and air conditioners (ranging from 5,000 to 18,000 BTUs) (duty rate—3.4%). Components and materials purchased from abroad (some 8% of total value) include: ferrous/non-ferrous powder metal stampings/valves/overloads, accumulators, copper discharge tubes, valves, gray iron castings, hermetic motors, capacitors, start assists, and terminals (duty rate range: 0.7–11.2%).

Zone procedures would exempt RCI from Customs duty payments on the foreign components used in export production. On its domestic sales, RCI would be able to choose the duty rate that applies to finished rotary compressors and pumps (3.4%) for the foreign components noted above. The application indicates that the savings from zone procedures would help improve the company's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 22, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 6, 1994.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Export Assistance Center, World Trade Center, 401 E. Pratt Street, Suite 2432, Baltimore, MD 21202

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Constitution Avenue, NW., Washington, DC 20230

Dated: September 9, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–23645 Filed 9–22–94; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 29–94)]

Foreign-Trade Zone 122—Corpus Christi, TX; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Corpus Christi Authority, grantee of FTZ 122, requesting authority to expand its zone in the Corpus Christi, Texas, area, within the Corpus Christi Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 25, 1994.

FTZ 122 was approved on September 5, 1985 (Board Order 310, 50 FR 38020; 9/19/85) and expanded on December 6, 1991 (Board Order 545, 56 FR 65884; 12/19/91). The zone project includes 4 general-purpose sites and 11 subzones in the Corpus Christi port of entry area. The general-purpose zone sites are:

Site 1 (613 acres)—ship channel portion of the Port of Corpus Christi Inner Harbor Terminal Complex

Site 2 (150 acres)—Corpus Christi Industrial Technology Park, owned by the City

Site 3 (14 acres)—Ray West Warehouse Company warehouse, located within two miles of the Port and downtown

Site 4 (176 acres)—American Petrofina Marketing, Inc. bulk storage facility, located at the mouth of the ship channel

The applicant is now requesting authority to expand the existing site and add two new sites:

—Expand Site 1 to include the entire Port of Corpus Christi Inner Harbor terminal complex (7,275 acres, excluding the area on which Subzone 122H (Hitox) is located)

—Add two general-purpose sites:

—(Proposed *Site 5*, 3 acres)—Brownsville Gulfside Warehouse, Inc., located at 6530 Leopard Street, Corpus Christi, owned by L.L. Harris Warehouse Properties, Inc.

—(Proposed *Site 6*, 3 acres)—South Texas Freezer Company, Inc., located at 260 McBride Lane, Corpus Christi

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 22, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 6, 1994).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Government Plaza, 400 Mann Street, Suite 305, Corpus Christi, Texas 78401

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: September 9, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–23646 Filed 9–22–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–475–031]

Large Power Transformers From Italy; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On April 7, 1994, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping finding on large power transformers (LPTs) from Italy. These final results of review cover one manufacturer/exporter of this merchandise and the period from June 1, 1992, through May 31, 1993.

We gave interested parties an opportunity to comment on the preliminary results. Analysis of the comments received resulted in no change in the margin for these final results.

EFFECTIVE DATE: September 23, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 1994, the Department published in the Federal Register (59 FR 16616) the preliminary results of its administrative review of the antidumping finding on LPTs from Italy (37 FR 11772, June 14, 1972). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by the review are shipments of LPTs; that is, all types of transformers rated 10,000 kVA (kilovolt-amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term "transformers" includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8504.22.00, 8504.23.00, 8504.34.33, 8504.40.00, and 8504.50.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review period is June 1, 1992, through May 31, 1993. The review covers one manufacturer/exporter of LPTs, Tamini Costruzioni Elettromeccaniche (Tamini).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from the petitioner, ABB Power T&D Company, Inc. (ABB), and the respondent, Tamini.

Comments: ABB contends that the present factual record in this administrative review is insufficient for the Department to issue a final determination supported by "substantial evidence on the record." ABB asserts that the Department has not collected sufficient information to confirm the accuracy of respondent's allocation methodology, which uses direct labor costs to allocate indirect manufacturing (overhead) costs to the transformers sold to the United States. ABB believes that Tamini's allocation methodology may not adequately account for the indirect manufacturing costs incurred by respondent to produce the U.S. transformers. ABB argues that the Department's decision to collect detailed information on the labor costs of the two transformers sold to the United States does not address the issue of whether the methodology properly allocates indirect costs across all units. ABB requests that we also require respondent to submit a separate analysis of the direct labor costs for all other transformers produced by respondent during the period of review (POR). Only by collecting such detailed information on all transformers produced during the POR can the Department satisfy itself that Tamini has not selected a model with abnormally low direct labor costs in an effort to deflate its real cost of production.

ABB states that, should the Department decide not to conduct a separate analysis of the direct labor costs for each transformer produced by Tamini during the POR, it should conduct an on-site verification or request that Tamini provide the

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financial documents that were used to develop the allocation methodology. Unless the Department obtains additional information using one of these alternatives, ABB argues that the record will not contain sufficient data to calculate a dumping margin and the Department must base its final determination on the best information available.

Tamini claims that ABB's assertions are based entirely on a misunderstanding of its allocation methodology. Tamini asserts that, despite ABB's comments to the contrary, its allocation methodology does not involve the selection of any model for purposes of allocating costs. Tamini states that it proportionately allocated actual indirect manufacturing costs to the U.S. transformers based on the ratio of the actual direct labor costs of the U.S. transformers to the total direct labor costs for all transformers.

Tamini argues that ABB's analysis of its reported actual direct labor costs is neither accurate nor objective since it attempts to compare a simple average per unit labor cost to the actual labor costs of the U.S. transformers. According to Tamini, such a simple per unit average does not take into account the vast differences among the various transformers produced by Tamini. Furthermore, Tamini claims that the simple average calculated by ABB is inaccurate since it divides the total labor costs for all transformers by the number of units of LPTs sold. Finally, Tamini claims that it has demonstrated that all direct labor costs shown on its financial statements were accounted for in the allocation methodology and that it has provided extensive documentation of the accuracy of the direct labor costs submitted for the U.S. transformers.

Tamini notes that the underlying data which would enable it to conduct an analysis of the direct labor costs for each transformer produced during the POR are not computerized. Therefore, Tamini contends that such a requirement would be extremely time-consuming and burdensome. Furthermore, Tamini claims that such detailed cost information on all other transformers produced during the POR would be pointless since it would not produce information useful for the Department's calculations.

Department's Position: We disagree with ABB's assertion that there is insufficient evidence on the record to sustain a final determination. Respondent has submitted a substantial amount of information to account for all direct labor costs shown on its financial statements. Tamini has also provided detailed documentation of the direct labor costs incurred to produce the transformers exported to the United States. In fact, some of the documentation submitted by respondent, such as payroll records and portions of the general ledger, is usually only requested at verification. Since Tamini has submitted substantial supporting information and we have no reason to suspect that the reported direct labor costs used in the allocation do not accurately reflect respondent's cost experience, we disagree with ABB's argument that it is necessary to collect the total direct labor costs for each transformer produced during the POR.

Furthermore, we agree with Tamini that ABB's analysis of Tamini's reported actual direct labor costs is flawed. ABB's calculation of a per unit average labor cost uses only LPTs in its denominator, rather than *all* types of transformers produced by respondent during the POR. ABB's analysis also does not take into account the fact that the respondent produced a variety of transformers of different types, almost all of which have unique characteristics. Such analysis incorrectly assumes that all of Tamini's products incurred the same direct labor costs. Since LPTs are highly complex merchandise which are custom designed to the specifications of the individual customers, it is necessary to base the constructed value on the actual costs of the units sold to the United States rather than an average cost of vastly dissimilar units.

Finally, in accordance with section 353.36(v)(A) of our regulations, petitioner may submit a written request for verification not later than 120 days after the date of initiation. Considering that petitioner's verification request was untimely, that ample documentation of the type usually examined at verification has been submitted, and that there is no evidence suggesting that the information submitted by respondent does not accurately reflect its cost experience, we declined to verify.

Final Results of Review

As a result of this review, we determine no dumping margins exist for Tamini for the period June 1, 1992, through May 31, 1993.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Tamini will be the rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will be 92.47 percent.

On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federol-Mogul Corporation* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders as the "all others" rate for cash deposits in all current and future administrative reviews. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical errors or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping finding, and we are unable to ascertain the "all others" rate from the Department of Treasury LTFV investigation, the Department has adopted the "new shipper" rate of 92.47 percent established in the first final results published by the Department in the **Federal Register** on August 6, 1984 (49 FR 31313).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675 (a)(1)) and 19 CFR 353.22.

Dated: September 12, 1994.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 94–23647 Filed 9–22–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–549–804]

Carbon Steel Butt-Weld Pipe Fittings From Thailand; Termination of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Countervailing Duty Administrative Review (1/1/93–12/31/93).

SUMMARY: The Department of Commerce (the Department) is terminating the countervailing duty administrative review of the order on carbon steel butt-weld pipe fittings from Thailand initiated on February 17, 1994 (59 FR 7979).

EFFECTIVE DATE: September 23, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Maria MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

Background

On January 5, 1994, the Department published in the **Federal Register** (59 FR 565) a notice of "Opportunity to Request Administrative Review" on the countervailing duty order on carbon steel butt-weld pipe fittings from Thailand (55 FR 1695; January 18, 1990) for the period January 1, 1993 through December 31, 1993. On January 31, 1994, the U.S. Fittings Group (the Group), an *ad hoc* trade association of U.S. manufacturers of the subject merchandise and petitioner in the countervailing duty investigation, requested that the Department conduct an administrative review of the subject countervailing duty order. No other interested party requested a review.

On February 17, 1994, the Department published a notice of initiation of a review of the order (59 FR 7979). On May 12, 1994, the Group withdrew its request for an administrative review. Because the request for withdrawal was timely pursuant to 19 CFR 355.22(a)(3), the Department is terminating this review.

This notice is published pursuant to section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(1)), and 19 CFR 355.22(a)(3).

Dated: September 14, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–23648 Filed 9–22–94; 8:45 am]

BILLING CODE 3510–DS–P

EPA, et al.; Notice of Consolidated Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–058. *Applicant:* US EPA, EMSL-Cincinnati, Cincinnati, OH 45268. *Instrument:* Electrothermal Vaporization Unit and Interface Upgrade. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* See notice at 59 FR 29417, June 7, 1994. *Advice Received From:* National Institutes of Health, July 18, 1994.

Docket Number: 94–072. *Applicant:* University of Florida, Gainesville, FL 32611-2046. *Instrument:* Laser Ablation System for ICP Mass Spectrometer, Model System 266. *Manufacturer:* Finnigan, United Kingdom. *Intended Use:* See notice at 59 FR 32418, June 23, 1994. *Advice Received From:* National Institutes of Health, August 22, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States. *Reasons:* These are compatible accessories for existing instruments for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer. The National Institutes of Health advises that the accessories are pertinent to the intended uses and that it knows of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the existing instruments.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–23644 Filed 9–22–94; 8:45 am]

BILLING CODE 3510–DS–F

The University of Texas Health Science Center, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 94–052. *Applicant:* The University of Texas Health Science Center, Houston, TX 77030. *Instrument:* Manipulators, Ball Joints and Magnetic Stands. *Manufacturer:* Narishige, Japan. *Intended Use:* See notice at 59 FR 29417, June 7, 1994. *Reasons:* The foreign instrument provides: (1) right or left handed operation, (2) a meta barrier, (3) suction, (4) thermister and microscope in a crowded setup and (5) small size and light weight. *Advice Received From:* National Institutes of Health, July 18, 1994.

Docket Number: 94–053. *Applicant:* University of Alabama at Birmingham, Birmingham, AL 35249. *Instrument:* Mass Spectrometer, Model Optima. *Manufacturer:* Fisons Instruments,

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United Kingdom. *Intended Use:* See notice at 59 FR 29417, June 7, 1994. *Reasons:* The foreign instrument provides a sensitivity of 1 mass 44 ion per 1100 molecules of $C0_2$ and cold finger internal precision of 0.02 per mil for 1 bar µl samples of $C0_2$. *Advice Received From:* National Institutes of Health, July 18, 1994.

Docket Number: 94–059. *Applicant:* Louisiana Tech University, Ruston, LA 71272. *Instrument:* Deep X-ray Lithography Scanner. *Manufacturer:* Jenotik, GmbH, Germany. *Intended Use:* See notice at 59 FR 29417, June 7, 1994. *Reasons:* The foreign instrument provides an enclosed system that can be evacuated to 0.1 mbar and backfilled with helium to minimize exposure of polymer chains to oxygen. *Advice Received From:* A university research department, July 26, 1994.

Docket Number: 94–060. *Applicant:* Massachusetts Institute of Technology, Cambridge, MA 02139. *Instrument:* Triaxial Deformation Apparatus for testing rocks at high temperature and pressure. *Manufacturer:* Paterson Instruments Pty, Ltd., Australia. *Intended Use:* See notice at 59 FR 29417, June 7, 1994. *Reasons:* The foreign instrument provides: (1) temperatures to 1400°C, (2) confining pressures to 700 MPa, (3) maximum axial load to 100 kN and (4) measurement of permeability and fluid transport during triaxial testing. *Advice Received From:* Los Alamos National Laboratory, August 3, 1994.

Docket Number: 94–062. *Applicant:* Rutgers University, New Brunswick, NJ 08903-0231. *Instrument:* Fluorometer, Model Aquatracka. *Manufacturer:* Chelsea Instruments, Ltd., United Kingdom. *Intended Use:* See notice at 59 FR 29417, June 7, 1994. *Reasons:* The foreign instrument provides: (1) a single log scale covering four decades, (2) changeable filters and (3) interface with a CTD data logger. *Advice Received From:* National Institutes of Health, July 18, 1994.

Docket Number: 94–063. *Applicant:* Regents of the University of California, Berkeley, Berkeley, CA 94720. *Instrument:* Segmented Thermal Manikin. *Manufacturer:* Thermal Insulation Laboratory, Denmark. *Intended Use:* See notice at 59 FR 29417, June 7, 1994. *Reasons:* The foreign instrument provides: (1) a manikin with 16 body segments, (2) outside computer controlled heating and skin temperature elements and (4) a breathing function simulator. *Advice Received From:* National Institutes of Health, July 18, 1994.

Docket Number: 94–077. *Applicant:* The Ohio State University, Columbus, OH 43235. *Instrument:* High Power, High Pressure Arc Discharge Plasma Source System. *Manufacturer:* Institute of Problems of Electrophysics, CIS. *Intended Use:* See notice at 59 FR 34412, July 5, 1994. *Reasons:* The foreign instrument provides high pressure plasma flow with high power (to 100 GW) and impulse pressure (to 1000 MPa) for efficient acceleration of projectiles to high speeds (>4000 m/s). *Advice Received From:* The Army Research Laboratory, Aberdeen, August 4, 1994.

The National Institutes of Health, a university research department, Los Alamos National Laboratory and The Army Research Laboratory, advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–23649 Filed 9–22–94; 8:45 am]

BILLING CODE 3510–DS–F

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award's Judges Panel

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet on Tuesday, October 11, 1994, from 8:00 a.m. to 5:30 p.m., on Wednesday, October 12, 1994, from 8:00 a.m. to 5:30 p.m.; and on Thursday, October 13, 1994, from 8:00 a.m. to 5:30 p.m. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The Panel's agenda has two parts: (1) Update on legislation regarding the award program, review of the 1994 award process, and planning the agenda for the 1995 award process; and (2) final judging of 1994 applicants, including a review of each of the 1994 site visits. Part (1) of the agenda which deals with legislation and planning the 1995 award process will be open to the public. The agenda for part (2) of the meeting includes judging of the 1994 applicants, which involves examination of records and discussions of applicant data, will be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code.

DATES: The meeting will convene October 11, 1994, at 8:00 a.m. and adjourn at 5:30 p.m. on October 13, 1994. The meeting will be open to the public on October 11 from 8:00 a.m. to 11:00 a.m. The meeting will be closed on October 11 from 11:00 a.m. to 5:30 p.m., and on October 12 from 8:00 a.m. to 5:30 p.m., and on October 13 from 8:00 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2036.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 4, 1994, that the meeting of the Judges Panel will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 22, section 10(d) for those portions of the meeting which involve examination of records and discussion of matters mentioned above, may be closed to the public in accordance with section 552b(c)(4) of Title 5, United States Code, since those portions of the meeting are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: September 19, 1994

Samuel Kramer,

Associate Director.

[FR Doc. 94–23575 Filed 9–22–94; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeals by Mobile Exploration & Producing Southeast, Inc., From Objections by the State of North Carolina

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of decisions.

SUMMARY: On September 2, 1994, the Secretary of Commerce (Secretary) issued decisions in two consistency appeals of Mobile Exploration & Producing Southeast, Inc. (Mobil). Mobil is the operator of Outer Continental Lease OCS A–0236, an oil and gas lease in federal waters approximately 39 miles off North Carolina's (State) coast, known as Manteo Area Block 467 (Block 467). In one decision, the Secretary declined to override the State's objection to Mobil's proposed drilling discharges. In a second decision, the Secretary declined to override the State's objection to Mobil's overall Plan of Exploration (POE).

Mobil submitted its proposed POE for Block 467 to the Minerals Management Service of the Department of the Interior on August 20, 1990. Mobil proposed drilling one exploratory well to assess hydrocarbon reserves in an area near "the Point," a biologically unique area defined by the convergence of the Gulf Stream, slope, and shelf waters, and containing significant natural resources. The Point is a prime fishing area for North Carolina fishermen.

Mobil also applied for a National Pollutant Discharge Elimination System (NPDES) permit required by section 402(a) of the Federal Water Pollution Control Act, as amended (Clean Water Act), for its drilling discharge activity. In conjunction with the exploratory drilling, Mobil proposed the discharge of drilling wastes in accordance with its NPDES permit application.

Mobil has certified that the POE and drilling discharge activities are consistent with the State's Coastal Management Program (CMP). The State objected to Mobil's POE and drilling discharges based upon a lack of necessary information to assess the consistency of Mobil's activities. Under sections 307(c)(3) (A) and (B) of the Coastal Zone Management Act, as amended (CZMA), and 15 CFR 930.121 and 930.122, the State's objections preclude any Federal agency from issuing any permit or license for Mobil's proposed activities, unless the Secretary finds that the activities are either consistent with the objectives or purposes of the CZMA (Ground I) or necessary in the interest of national security (Ground II). If the requirements of either Ground I or Ground II are met, the Secretary must override the State's objections. In accordance with sections 307(c)(3) (A) and (B) of the CZMA, Mobil filed with the Secretary two separate appeals: (1) from the State's objections to Mobil's proposed POE and (2) from the State's objections to Mobil's proposed drilling discharges. Mobil argued both Grounds I and II for a Secretarial override in each appeal.

Several threshold issues were raised by Mobil and the State during the course of both appeals. The decisions determined, in part, that the State's objections were properly lodged, and that the Secretary will necessarily determine the adequacy of information for an override rather than summarily dismiss these appeals.

Upon consideration of the information submitted by Mobil, the State and interested Federal agencies, the Secretary made the findings discussed below.

The decisions find that Mobil's proposed activities satisfy the first element of Ground I because its POE furthers, and its NPDES permit discharges indirectly further, one of the objectives or purposes of the CZMA. The CZMA recognizes a national objective in achieving a greater degree of energy self-sufficiency.

Regarding the second element of Ground I, however, the decisions find that the proposed exploration and drilling discharge activities will adversely affect the State's coastal resources and uses. Moreover, the information in the record of each appeal is insufficient to adequately identify the extent of the individual and cumulative adverse effects. Consequently, the decisions conclude that the information in the record of each appeal is inadequate to determine that the national interest benefits of Mobil's proposed POE and drilling discharges outweigh the proposed activities' adverse effects on the State's coastal resources and uses. Therefore, Mobil's proposed activities do not satisfy the second element of Ground I.

The decisions find that Mobil's proposed activities satisfy the third element of Ground I because the proposed exploration and drilling discharge activities will not violate the Clean Air Act or the Clean Water Act. The decisions also find that Mobil's proposed activities satisfy the fourth element of Ground I because there is no reasonable alternative available to Mobil that would allow the proposed exploration and drilling discharge activities to be carried out in a manner consistent with the State's CMP.

Finally, the decisions find that neither Mobil nor any Federal agency commenting on Ground II specifically identified or explained how Mobil's inability to proceed with its proposed activities would significantly impair a national defense or other national security interest.

Because Mobil's proposed POE and drilling discharge activities fail to satisfy all four of the requirements of Ground I and do not meet the requirements of Ground II, the Secretary did not override the State's objections to Mobil's proposed exploration and drilling discharges. Consequently, the proposed exploration and drilling discharge activities may not be permitted by Federal agencies. Copies of the two decisions may be obtained from the office listed below.

FOR ADDITIONAL INFORMATION CONTACT: Roger B. Eckert, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, room 6111, Silver Spring, Maryland 20910; 301–713–2967

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: September 16, 1994.

James W. Brennan,

Acting General Counsel.

[FR Doc. 94–23541 Filed 9–22–94; 8:45 am]

BILLING CODE 3510–08–M

[Docket No. 940947–4247; I.D. 072994C]

Endangered and Threatened Species; Mid-Columbia River Summer Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of determination.

SUMMARY: NMFS has determined that the mid-Columbia River summer chinook salmon, as petitioned, do not constitute a "species" under the Endangered Species Act of 1973, as amended, (ESA) and therefore does not qualify for listing under the ESA at this time. However, the mid-Columbia River summer chinook are part of a larger evolutionarily significant unit (ESU) that includes all late-run (summer and fall) Columbia River chinook salmon from the mainstem Columbia River and tributaries between Chief Joseph and McNary dams, termed mid-Columbia River Summer/fall chinook salmon. NMFS has determined that at the present time this ESU does not warrant listing as a threatened or endangered species.

ADDRESSES: Environmental and Technical Services Division, NMFS, Northwest Region, 911 NE. 11th Avenue, Suite 620, Portland, OR 97232.

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FOR FURTHER INFORMATION CONTACT:
Garth Griffin, Environmental and Technical Services Division, (503/230–5430) or Marta Nammack, Protected Species Management Division, (301/713–2322).

SUPPLEMENTARY INFORMATION:

Petition Background

On June 3, 1993, the Secretary of Commerce received a petition from American Rivers, Northwest Environmental Defense Center, Sierra Club Northwest Resource Information Center, Friends of the Earth, Inland Empire Public Lads Council, Washington Wilderness Coalition, North Central Washington Chapter Audubon Society, Trout Unlimited, Washington Trout, and the Federation of Flyfishers to list mid-Columbia River summer chinook salmon (*Oncorhynchus tshawytscha*) and to designate critical habitat under the ESA (15 U.S.C. 1531 *et seq.*). NMFS published a document on September 3, 1993 (58 FR 46944), that the petition presented substantial scientific information indicating that the listing may be warranted. NMFS also announced its intention at that time to conduct a status review of mid-Columbia River summer chinook salmon and requested comments from any party having relevant information concerning: (1) Whether this stock qualifies as a "species" under the ESA, and (2) whether the stock is endangered or threatened based on the listing criteria. Specifically, NMFS solicited information on the reproductive isolation and evolutionary significance of the mid-Columbia River summer chinook salmon compared to mid-Columbia River fall chinook salmon and the present and historic status of the mid-Columbia River summer and fall chinook salmon. NMFS also requested information on areas that may qualify as critical habitat for the mid-Columbia River summer chinook salmon

Biological Background

NMFS' Northwest Fisheries Science Center Biological Review Team (BRT) has reviewed the status of mid-Columbia River summer chinook (Northwest fisheries Science Center BRT 1994), the results of which are summarized below. A more complete discussion of the subject, including additional references, will be available upon request in the near future (see ADDRESSES)

The "mid-Columbia" region of the Columbia River Basin, as defined here, encompasses the mainstem Columbia River, includes five principal subbasins, (the Okanogan, Methow, Entiat, Wenatchee, and Yakima), and is located between Chief Joseph Dam, River Mile (RM) 545, and McNary Dam, RM 292 (see Figure 1). The petition, however, limited the "mid-Columbia" region to the Columbia River and its tributaries between Chief Joseph Dam and Priest Rapids Dam, RM 397, which excluded the Yakima Subbasin and the Hanford Reach, a section of the mainstem Columbia River downstream of Priest Rapids Dam. NMFS selected the larger boundary for the status review because it included not only the petitioned chinook salmon but also other Columbia River Basin summer- and fall-run chinook salmon above McNary Dam (excluding Snake River chinook salmon) which have a close affinity with the petitioned salmon, as indicated by genetic and life history information

In delineating the boundaries for a status review, NMFS policy is to determine if the petitioned stock represents an ESU. If NMFS determines that the petition does not address an ESU, as was the case here, NMFS examines larger units with an affinity to the petitioned stock to determine the ESU which encompasses the petitioned stock. The geographical area of this larger ESU will then serve as the boundaries for determining species status.

Chinook salmon found in the mid-Columbia region have historically been divided into three runs, spring, summer, and fall, according to adult passage timing at the mainstem Columbia River hydropower projects and spawning location and timing. All adult mid-Columbia River chinook salmon must pass the four lower Columbia River hydropower projects, including Bonneville, The Dalles, John Day, and McNary dams. Those mid-Columbia River chinook salmon destined for the northernmost spawning locations must then pass five mid-Columbia River hydropower projects, including Priest Rapids, Wanapum, Rock Island, Rocky Reach, and Wells dams.

The bulk of the adult mid-Columbia River spring-run chinook salmon typically pass Priest Rapids Dam between the end of April and the end of May. Spring-run spawning occurs in August and September in the tributaries and upper reaches of four major mid-Columbia River tributaries (the Yakima, Wenatchee, Entiat, and Methow rivers). Spring-run juveniles primarily migrate to the ocean as yearling smolts after spending a full year in freshwater and are commonly referred to as "stream-type" chinook salmon (Healey 1991).

The bulk of the mid-Columbia River summer-run chinook salmon typically pass Priest Rapids Dam between the end of June and the middle of August, overlapping with the beginning of the fall-run chinook salmon, the bulk of which typically pass Priest Rapids Dam from the middle of August through October. In addition, the summer- and fall-run spawn timing and location also overlap and appear to form a continuum rather than two discrete patterns. Summer and fall chinook spawning occurs from the end of September through November and extends from the lower reaches of the major tributaries, including the Wenatchee, Methow, and Okanogan (including the Similkameen) rivers, into the mainstem mid-Columbia River. Summer- and fall-run juveniles primarily migrate as sub-yearling smolts to the ocean, after spending less than a year in freshwater, and are considered "ocean-type" chinook salmon (Healey 1991).

Consideration as a "Species" Under the ESA

To qualify for listing as a threatened or endangered species, mid-Columbia River summer chinook salmon must be a "species" under the ESA. The ESA defines a "species" to include any "distinct population segment of any species of vertebrate. . . which interbreeds when mature." NMFS published a policy (56 FR 58612, November 20, 1991) describing how the agency will apply the ESA definition of "species" to Pacific salmonid species. This policy provides that a salmonid population will be considered distinct, and hence a species under the ESA, if it represents an evolutionary significant unit (ESU) of the biological species. The population must satisfy two criteria to be considered an ESU: (1) It must be reproductively isolated from other conspecific population units, and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute, but must be strong enough to permit evolutionary important differences to accrue in different population units. The second criterion is met if the population contributes substantially to the ecological/genetic diversity of the species as a whole. Further guidance on the application of this policy is contained in "Pacific salmon (*Oncorhynchus* spp.) and the Definition of Species under the ESA," which is available upon request (see ADDRESSES).

Reproductive Isolation

For this criterion, NMFS considered available information regarding geographic and life-history factors that may isolate mid-Columbia River summer chinook salmon as well as genetic factors that indicate reproductive isolation. Both NMFS and the petitioners considered reproductive isolation with respect to three other groups of chinook salmon within the Columbia River Basin, including: Snake River summer chinook salmon, mid-Columbia River fall chinook salmon, and mid-Columbia River spring chinook salmon.

Reproductive isolation between summer chinook salmon from the Columbia and Snake rivers is complete or nearly so. Apart from the substantial geographic distance separating the two groups, large differences in life-history patters and in genetic characteristics revealed by protein electrophoresis indicate strong isolation over a substantial period of time.

Although there is a lack of genetic information specifically for fall-run fish from the rivers identified in the petition (Methow, Okanogan, and Wenatchee), the close genetic similarity between mid-Columbia River summer chinook salmon and fall chinook salmon from the Hanford Reach area was documented in NMFS' status reviews for the Snake River spring/summer chinook salmon and Snake River fall chinook salmon (Matthews and Waples 1991; Waples et al. 1991). This relationship was confirmed in recent analyses by Washington Department of Fisheries (WDF) which found close genetic similarities between two fall-run populations, (the Hanford Reach natural population and Priest Rapids hatchery population), and summer-run adults sampled at Wells Hatchery, Wells Dam passage ladder, and in the Similkameen River (a tributary of the Okanogan River) (Marshall 1993). Hence, similar genetic characteristics, in addition to similar life history information including adult and juvenile migration timing, and spawning timing and location, indicate that the petitioned fish, mid-Columbia summer chinook, are not reproductively isolated, but instead, are closely aligned with mid-Columbia fall chinook.

There is strong evidence for reproductive isolation between spring-run chinook salmon in the mid-Columbia River and the closely aligned summer- and fall-run chinook salmon. Washington Department of Fisheries (WDF) has compiled a considerable amount of genetic data for more recent samples in the area which showed a fairly large difference between the summer/fall-run and spring-run genetic characteristics (Marshall 1993). This genetic evidence is consistent with life-history differences between the two groups in the mid-Columbia River, including adult and juvenile migration timing, and spawning timing and location.

Ecological/Genetic Diversity

For this criterion, NMFS used historic accounts to determine how the indigenous mid- and upper Columbia River chinook salmon populations have been altered and to determine the relationship of these historic populations to the present mid-Columbia River chinook salmon.

The construction of Grand Coulee Dam in 1941 blocked the access of upper Columbia River chinook salmon to their spawning habitat in the Lake Windermere region of Canada. It seems likely that, given their extensive upriver migration and, presumably, distinctive habitat characteristics, these upper Columbia River chinook salmon may have historically comprised an ESU. The salmon which used the upper Columbia River were "relocated" during the Grand Coulee Fish Maintenance Project (GCFMP) into the Entiat, Methow, and Wenatchee rivers after being trapped at Rock Island Dam. Given this relocation program, the petitioners speculate that the present summer-run chinook salmon found in the Methow and Wenatchee rivers are the last remnants of the upper Columbia River summer-run chinook salmon. While it is possible that some genes from upriver stocks were incorporated into the mid-Columbia River summer chinook salmon, NMFS found no empirical evidence that any appreciable remnants of this gene pool, or distinctive upriver stock characteristics, presently remain in the petitioned summer-run chinook salmon found in the Methow and Wenatchee rivers. Review of historic accounts of the spawn timing of upriver populations, plus comparisons with Fraser River upriver populations in geographic proximity, indicate that upper Columbia River chinook salmon may have actually been stream-type chinook salmon rather than ocean-type chinook salmon. Thus, it is uncertain what the relationship is between the ocean-type fish currently residing in the mid-Columbia River and the original upriver populations. Furthermore, if an upper Columbia River summer-run of chinook salmon with distinctively large individuals (termed "June hogs" by the petitioners) existed sometime prior to 1940, it had expired prior to the initiation of the GCFMP because late-run ocean-type fish taken at Rock Island averaged only about 8 kg (Fulton and Pearson 1981).

The Okanogan River was the only major tributary in the petitioned area that did not receive transplants from the GCFMP. However, it is unlikely that late-run fish in this river represent an essentially pure native stock. All late-run chinook salmon adults reaching rock Island Dam were taken for the GCFMP for a period of 5 years. According to age data for late-run chinook salmon from the mid-Columbia River, less than 1 percent of returning adults are older than 5 years. Therefore, the current population in the Okanogan River, which is upstream from Rock Island Dam, must be derived largely, if not entirely, from recolonization. Furthermore, several genetic studies (Hershberger et al. 1988; Marshall 1993; unpublished NMFS data) have shown a strong genetic similarity between summer-run fish from the Wenatchee and Okanogan rivers and Wells Hatchery.

Genetic and life-history information all fail to demonstrate that mid-Columbia summer chinook are reproductively isolated. Therefore, they do not comprise an ESU. Rather, this information indicates a close affinity between summer- and fall-run chinook salmon in the mid-Columbia River. In addition, coded wire tag data suggest that the two forms have a similar ocean distribution (Howell et al. 1985). Therefore, NMFS concluded that all late-run chinook salmon from the mid-Columbia River (as defined here) are part of the same ESU. NMFS evaluated the relationship of this ESU to three other groups of Columbia River Basin chinook salmon. Spring chinook salmon from the mid-Columbia River are part of a separate ESU because of substantial life-history and genetic differences. Snake River summer chinook salmon are much more closely related to Snake River spring chinook salmon than they are to Columbia River summer chinook salmon. Ecological, genetic, and ocean distribution data were previously used to demonstrate that Snake River fall chinook salmon are distinct from mid-Columbia River fall chinook salmon and represent a separate ESU (Waples et al. 1991).

Therefore, NMFS concludes that the best available information indicates that the late-run chinook salmon from the mid-Columbia River, termed mid-Columbia River summer/fall chinook salmon, meet both of the criteria necessary to be considered an ESU, are separate from all other chinook salmon in the Columbia River Basin, and are considered a "species" under the ESA.

Status of the Mid-Columbia River Summer/Fall Chinook Salmon ESU

In considering whether the ESU is threatened or endangered according to the ESA, NMFS evaluated both qualitative and quantitative information.

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Qualitative evaluations considered recent, published assessments by agencies or conservation groups of the status of chinook salmon within the geographic area. Quantitative assessments were based on time series of both salmon redd counts in the tributaries and adult counts at Columbia River dams.

Nehlsen et al. (1991) considered summer chinook salon to be of "special concern" in the Okanogan River and at "moderate risk of extinction" in the Methow River. They also considered summer chinook salmon in the Entiat River to be extinct but considered fall chinook salmon populations in this area to not be at risk. WDF et al. (1993) considered summer chinook salmon in the Okanogan and Methow rivers to be "depressed," but rated all other existing summer and fall chinook salmon stocks in this region to be "healthy."

Redd counts (both summer- and fall-run fish) for the Wenatchee, Methow, Okanogan, and Similkameen rivers all show large fluctuations, with very low points in the early 1980s. Since that time, the Wenatchee River redd counts show a substantial increase, while redd counts for the other three rivers show no discernible trend. Over the entire available data series (1956–93), only the Methow River redd counts show a downward trend, although both the Methow and Okanogan River counts are substantially below peak counts from the late 1960s and early 1970s. Both the Similkameen and Wenatchee River counts show substantial upward trends over the full data series.

Counts of adult salmon ascending fish ladders at dams provide additional assessment of population abundance and trends. However, basing conclusions on dam counts is inadvisable due to the inconsistency between an actual continuum of passage, which can vary with environmental conditions, and the inflexible count cutoff dates between spring-, summer-, and fall-run chinook salmon.

The longest time series (1993–93) count record for the mid-Columbia River is from Rock Island Dam on the mainstem Columbia River below the Wenatchee River. Because of this location, Rock Island Dam counts provide an index primarily of the petitioned stocks and not the entire ESU. Counts of adult late-run chinook salmon at Rock Island Dam decline in the late 1930, followed by a substantial increase during the 1940s and 1950s. Since the late 1950s, abundance has fluctuated over about a threefold range with no substantial trend. Counts of late-run adult chinook salmon in 1991 and 1992 at mid-Columbia River dams were well below the 10-year average, and at some dams, the 1992 counts were record lows. In 1993, counts at all dams were well above the 1992 low point, and most were near or above the 10-year average. While the low counts in 1991 and 1992 are of concern, they are not unprecedented. Similar low counts occurred in 1982 and 1983, after which counts increased, reaching record highs at Priest Rapids and Rock Island dams in the late 1980s.

Total abundance of the ESU is relatively large, with a recent (1989–93) 5-year average estimate of 22,000 adults passing Priest Rapids Dam and an additional 42,000 adults spawning in Hanford Reach of the Columbia River and the Yakima River, or a total of approximately 64,000 adults for the entire ESU. (Note that Hanford Reach and Yakima River spawning estimates are calculated by subtracting counts from Priest Rapids Dam, Ice Harbor Dam, and various hatcheries from McNary Dam counts; therefore, these estimates may be subject to error.)

NMFS has not attempted to estimate extinction probabilities for late-run mid-Columbia chinook salmon. However, two reports submitted to the administrative record (ADFG 1993; Chapman et al. 1994) provided such estimates. Both applied the Dennis et al. (1991) model to an aggregate stock of late-run mid-Columbia River chinook salmon. Collectively, the results suggest that the near-term risk of extinction of the ESU is probably low. Results from both applications of the Dennis model should be viewed with caution because they are based on a simple model, depend upon simplistic assumptions regarding salmon population age structure, may not include all sources of variation in stock abundance, ignore subpopulation structure, and have wide confidence intervals.

In conclusion, while dam and redd count information indicate that some of the individual runs, which originate in a limited portion of the ESU's geographic range, are of concern, the mid-Columbia River late-run chinook salmon ESU as a whole appears to be relatively healthy, with little risk of extinction in the foreseeable future. Even if NMFS considered a unit that included only those rivers identified in the petition (Okanogan including Similkameen, Methow, and Wenatchee), there appears to be little risk of extinction of that unit as a whole. While redd counts in two of these rivers (Okanogan and Methow) have exhibited substantial declines since the late 1960s, they have been relatively stable since 1980, and counts in both the Wenatchee and Similkameen rivers have exhibited long-term (1956–93) increasing trends. Based on Rock Island Dam adult counts, this smaller unit is certainly more abundant than it was in the 1930s and 1940s.

Special Considerations

While NMFS does not believe that this ESU is at significant risk of extinction or endangerment, the low numbers of late-run chinook salmon above Rocky Reach Dam (including the Methow and Okanogan rivers) despite the virtual elimination of in-river harvest during the summer season, are of concern. The declines since the mid 1970s in this region may indicate local problems with habitat, dam passage, or hatchery practices. Special management consideration of late-run mid-Columbia River chinook salmon may be warranted.

Some aspects of artificial propagation also pose risks for populations within the ESU. For example, large releases of fall chinook salmon have occurred in the mainstem Columbia River and in the Yakima River in recent years. The potential genetic and ecological consequences of these releases have not been adequately addressed.

The number of chinook salmon in many areas of the Columbia River Basin are at very low levels in 1994, with prospects of even lower returns in 1995. On exception was the 1994 summer chinook adult passage count as Priest Rapids Dam which reached the 10 year average count, and was similar in magnitude to the 1993 count (FPC Weekly Report #94–22). The 1994 adult return estimate for mid-Columbia River fall chinook is not yet available. While these recent adult returns numbers indicate that the population remains stable for now, the ESU should be monitored over the next few years to evaluate the effects of short-term environmental factors, as well as on-going human activities.

Determination

After a thorough analysis of all information available, NMFS has determined that the mid-Columbia River summer chinook salmon, as petitioned, do not constitute a "species" under the ESA. NMFS has determined that the mid-Columbia River summer chinook salmon is part of a large ESU that includes all late-run Columbia River chinook salmon from the mainstem Columbia River and its tributaries between Chief Joseph and McNary dams, termed mid-Columbia River summer/fall chinook salmon. NMFS has determined that at the present time this ESU does not warrant listing as a threatened or endangered species.

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Dated: September 19, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

BILLING CODE 3510–22–M

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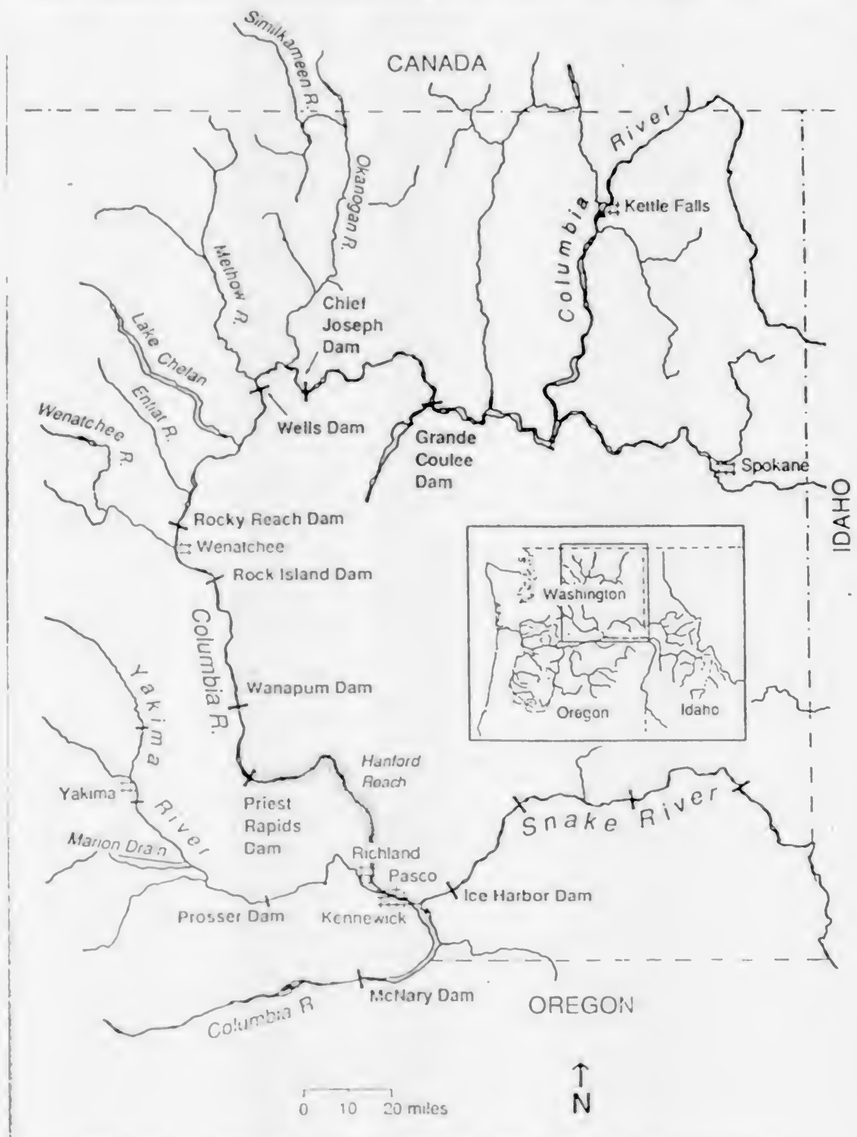


Figure 1 - Map of mid-Columbia River, showing principal tributaries and hydroelectric facilities

[FR Doc. 94-23549 Filed 9-22-94; 8:45 am]

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COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

September 16, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: September 27, 1994.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6714. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as consultations have not resulted in a mutually satisfactory solution on Category 628, the United States Government has decided to control imports in this category for the prorated period beginning on September 27, 1994 and extending through December 31, 1994 at a level of 973,572 square meters.

The United States remains committed to finding a solution concerning Category 628. Should such a solution be reached in further consultations with the Government of Pakistan, further notice will be published in the Federal Register.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 36741, published on July 19, 1994; and 59 FR 5756, published on February 8, 1994.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 16, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 1, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on September 27, 1994, you are directed to establish a limit for man-made fiber textile products in Category 628 for the period beginning on September 27, 1994 and extending through December 31, 1994 at a level of 973,572 square meters [1].

Imports charged to the limit for Category 628 for the June 29, 1994 through September 26, 1994 period shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–23651 Filed 9–22–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Mauritius

September 16, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 27, 1994.

[1] The limit has not been adjusted to account for any imports exported after September 26, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 1935, published on January 13, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated October 22, 1993, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 16, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 7, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994.

Effective on September 27, 1994, you are directed to amend the directive dated January 7, 1994 to adjust the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated

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October 22, 1993 between the Governments of the United States and Mauritius:

Category	Adjusted twelve-month limit [1]
Levels not in a group I	
347/348	774,114 dozen.
647/648/847	405,184 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94-23652 Filed 9-22-94; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 24, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On February 24, July 8, 22 and 29, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 9189, 35112, 37465 and 38585) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List.

Commodities

Ribbon, Lift-Off Dry, 7510-01-219-5753

Box, Wood, Fiberboard, 8115-00-L01-0683

(Requirements for the Defense Distribution Region East, New Cumberland, Pennsylvania)

Services

Janitorial/Custodial, General Services Administration, 18th & F Streets, NW, Washington, DC

Janitorial/Custodial, Federal Bureau of Investigation, Western Regional Computer Support Center, Pocatello, Idaho

Operation of Postal Service Center, Grand Forks Air Force Base, North Dakota

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94-23630 Filed 9-22-94; 8:45 am]

BILLING CODE 6820-33-P

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 24, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On May 20, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (59 FR 26482) of proposed addition to the Procurement List.

Comments were received from the current contractor for this day planner. The commenter claimed that the day planner proposed by the designated nonprofit agency did not meet the Committee's suitability requirements for addition to the Procurement List. Specifically, the commenter claimed that the nonprofit agency has never produced the required planner, has little experience in producing time management planners, lacks the capacity to produce the planner in required quantities, and cannot provide the customer support and training which the commenter provides. The commenter also claimed that the nonprofit agency's day planner infringes the commenter's copyrights and trademarks in its day planner. The commenter further claimed that the addition of this specific Government agency requirement to the Procurement List is a "bait and switch" situation in which the addition of a limited Government requirement for a specific day planner will inexorably lead to addition of more planners and more Government customers so the ultimate impact on the commenter will be severe.

The nonprofit agency which will produce the day planner has a long history of producing calendar products for the Government. The Committee based its conclusion that the nonprofit agency is capable of producing the day planner and can do so in sufficient quantities on a capability assessment by a central nonprofit agency industrial engineer, the contracting activity's decision to waive inspection, and the nonprofit agency's experience in producing other calendar products. The Government agency has been procuring the day planner on a "brand name or equal" basis, with the commenter's planner being the name brand, so the capability findings mean that the nonprofit agency's day planner serves all the functions of the commenter's planner which the Government agency considers essential. The Government agency's requirements do not include the customer support and training services which the commenter claims to offer, so the nonprofit agency does not need to provide them.

In order to address the commenter's claims concerning possible copyright and trademark infringement, the Committee asked for and received from the commenter a further discussion of the basis of its claims and a copy of those features of its day planner which it believed to be at issue in this claim, to compare with the nonprofit agency's day planner and trademark registration. The Committee review disclosed that there was no evidence to support the commenter's claim that it had a trademark in the term "Travel- Size Day Planner" or that either the commenter or the nonprofit agency used this term in its respective day planners. Additionally, neither day planner used any trademark which the other producer has registered.

The Committee's review also revealed that, while each day planner possessed the elements required by the Government agency, none of the approaches which the nonprofit agency's day planner used to meet the requirements copied the information and method of presenting it which the commenter's day planner used. The features which were unique to the commenter's day planner, such as a delegation record, were not required by the Government and did not appear in the nonprofit agency's day planner. Consequently, the Committee has concluded that the nonprofit agency's day planner does not appear to infringe the commenter's copyrights and trademarks in its day planner.

The Committee is required to conduct an informal rulemaking procedure with a public comment period for each proposal to add a partial or total Government requirement for a commodity or service to the Procurement List. If the Committee were to propose to add additional day planners to the Procurement List, or even extend the scope of the Government requirement to purchase the day planner which is the subject of the current addition to other Government agencies, the commenter could present its concerns to the Committee on each occasion, and the Committee would be required to take them into account in making its decision. In addition, Committee regulations require the Committee to take into account the impacts of earlier actions on affected contractors such as the commenter. Accordingly, the "bait and switch" situation described by the contractor could not occur

In connection with its "bait and switch" claim, the commenter has requested an assurance that the Committee will not add any other products the commenter makes to the Procurement List for ten years. The Committee can not make this assurance without compromising its statutory mission to increase employment for people with severe disabilities. In a 1987 court opinion, the Committee's refusal to give a similar assurance to another contractor was upheld by the court, which stated that to do otherwise would have been an abdication of the Committee's responsibility.

In concluding its comments, the commenter reproduced excerpts from a 1938 Congressional debate on the enactment of the initial version of the Committee's statute to the effect that Congress did not intend for commodities to be added to the Procurement List if the action would have any impact on private manufacturers. These same excerpts were reproduced in a 1970 court opinion construing the 1938 statute. However, it should be noted that the Committee's statute was extensively revised in 1971, and the same court in a 1978 opinion upheld the Procurement List addition with an impact many times the size of the impact of the current addition by noting that the legislative intent of the act as revised was to accept the fact that every Procurement List addition would deprive private industry of a substantial amount of potential business.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Organizer, Day Planner, Travel Size 7530-01-D08-7294

(Requirements for the Defense Supply Service, Washington, DC)

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94-23631 Filed 9-22-94; 8:45 am]

BILLING CODE 6820-33-P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 24, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2-3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities.

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The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Floorboard, Vehicular
2510–01–063–3892
NPA: Hardeman County Developmental Services Center
Bolivar, Tennessee

Services

Mailing Service
U.S. Department of Commerce
Bureau of Economic Analysis
Washington, DC
NPA: Anchor Mental Health Association
Washington, DC
Switchboard Operation
Department of Veterans Affairs Medical Center
Houston, Texas
NPA: Lighthouse for the Blind Berkely, Missouri

Beverly L. Milkman,

Executive Director

[FR Doc. 94–23633 Filed 9–22–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 24, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Drawers, Cold Weather
8415–01–227–9542
8415–01–227–9543
8415–01–227–9544
8415–01–227–9545
8415–01–227–9546
(Additional 30% of the Government's requirement)
NPA: Peckham Vocational Industries, Inc., Lansing, Michigan

Beverly L. Milkman,

Executive Director

[FR Doc. 94–23632 Filed 9–22–94; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

ENVIRONMENTAL PROTECTION AGENCY

National Industrial Competitiveness Through Energy, Environment and Economics (NICE³) Grants

AGENCY: The Department of Energy (DOE) and the Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Waste Reduction of the Department of Energy and the Pollution Prevention Division of the Environmental Protection Agency are jointly funding a State Grant Program entitled National Industrial Competitiveness Through Energy, Environment and Economics (NICE³). The goals of the NICE³ Program are (1) to foster new industrial processes and/or equipment that can significantly reduce the generation of wastes in industry, improve energy efficiency and enhance the competitiveness of U.S. industry, (2) to encourage collaborative efforts among State agencies responsible for energy, environment and economic issues together with private sector industrial partners.

DATES: The solicitation will be available October 11, 1994. Applications must be received by January 31, 1995.

FOR FURTHER INFORMATION CONTACT: Eric Hass and/or Bill Ives at the U.S. Department of Energy Golden Field Office (NREL), 1617 Cole Boulevard, Golden, Colorado 80401—Telephone (303) 275–4728—for referral to appropriate DOE Support Office or State Agency.

SUPPLEMENTARY INFORMATION: In 1994 the Department of Energy contributed $2,600,000 and the Environmental Protection Agency contributed $650,000. Ten projects were selected for funding.

Availability of Fiscal Year 1995 Funds

With this publication, DOE and EPA are announcing the availability of up to $8.5 million in grant/cooperative agreement funds for fiscal year 1995. The awards will be made through a competitive process. In response to the solicitation, a State agency may include up to 10 percent, not to exceed $25,000 per project, for State agency program support. Size of grants including State agency program support may range up to $425,000. Projects may cover a period of up to 3 years.

Restricted Eligibility

Eligible applicants for purposes of funding under this program include the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, and any territory or possession of the United States, specifically, State energy, environmental or economic agencies. For convenience, the term State in this notice refers to all eligible State applicants. Local governments, State and private universities, private non-profits, private businesses, and individuals, who are not eligible as direct applicants, must work with State agencies in developing projects. DOE and EPA strongly encourage and require this type of cooperative arrangement in support of program goals.

The Catalog of Federal Domestic Assistance number assigned to this program is 81.105. Up to $8.5 million in Federal funds are provided by DOE and EPA. Cost sharing is required by all participants. The Federal Government will provide up to 50% of the funds for the Project. The remaining funds must be provided by the eligible applicants and/or cooperating project participants. Cost sharing beyond the 50 percent match is desirable. In addition to direct financial contributions, cost sharing can include beneficial services or items, such as manpower, equipment, consultants, and computer time that are allowable in accordance with applicable cost principles. Industrial partners are required for a proposal to be considered responsive to this announcement and eligible for grant consideration. A State agency application signed by an authorized State official is required for a proposal to be responsive.

Evaluation Criteria

The first tier review will occur at the appropriate regional DOE Regional Support Office. Proposals will receive a technical and final evaluation review by a panel comprised of members representing DOE's Office of Energy Efficiency and Renewable Energy and the Environmental Protection Agency. More detailed information is available from the U.S. Department of Energy Golden Field Office at (303) 275–4728.

DOE/EPA reserves the right to fund, in whole or in part, any, all, or none of the proposals submitted in response to this notice.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy

[FR Doc. 94–23643 Filed 9–22–94; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Advisory Committee on Human Radiation Experiments

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463,86 Stat. 770), notice is hereby given of the following meeting:

DATES AND TIMES:
October 11, 1994, 2:00 p.m.–5:30 p.m.
October 12, 1994, 8:00 a.m.–4:30 p.m.
October 13, 1994, 8:00 a.m.–11:45 a.m.

PLACE: The Press Club of San Francisco, 555 Post Street, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: Steve Klaidman, The Advisory Committee on Human Radiation Experiments, 1726 M Street, NW, Suite 600, Washington, DC 20036. Telephone: (202) 254–9795, Fax: (202) 254–9828.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Advisory Committee on Human Radiation Experiments was established by the President, Executive Order No. 12891, January 15, 1994, to provide advice and recommendations on the ethical and scientific standards applicable to human radiation experiments carried out or sponsored by the United States Government. The Advisory Committee on Human Radiation Experiments reports to the Human Radiation Interagency Working Group, the members of which include the Secretary of Energy, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Attorney General, the Administrator of the National Aeronautics and Space Administration, the Director of Central Intelligence, and the Director of the Office of Management and Budget.

Tentative Agenda

Tuesday, October 11, 1994

2:00 p.m. Call to Order and Opening Remarks
2:10 p.m. Reports from Subcommittees
3:45 p.m. Break
4:00 p.m. Reports from Subcommittees (continued)
5:30 p.m. Meeting Adjourned

Wednesday, October 12, 1994

8:00 a.m. Opening Remarks
8:05 a.m. Public Comments
10:00 a.m. Break
10:15 a.m. Public Comments (continued)
12:15 p.m. Lunch
1:45 p.m. Discussion, Status of Document Collection and Review
3:30 p.m. Break
3:40 p.m. Discussion, Status of Document Collection and Review (continued)
4:30 p.m. Meeting Adjourned

Thursday, October 13, 1994

8:00 a.m. Opening Remarks
8:10 a.m. Discussion, Committee Strategy and Direction
10:00 a.m. Break
10:15 a.m. Discussion, Committee Strategy and Direction (continued)
11:45 a.m. Meeting Adjourned.

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. The chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make a oral statement should contact Kristin Crotty of the Advisory Committee at the address or telephone number listed above. Requests must be received at least five business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the office of the Advisory Committee at the address listed above between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 20, 1994.

Marcia L. Morris,

Advisory Committee Management Officer.

[FR Doc. 94–23653 Filed 9–22–94; 8:45 am]

BILLING CODE 6450–01–P

Energy Efficiency Rating, Certification and Labeling for Windows and Window Systems

AGENCY: U.S. Department of Energy: Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of determination.

SUMMARY: The Energy Policy Act of 1992 (EPAct) requires the Secretary of Energy to make a determination, within one year of enactment, on whether a window energy rating and labeling program established by the National Fenestration Rating Council (NFRC) meets the objectives of the legislation. If

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not, the Department is to develop a mandatory rating program. The Secretary has determined, provided certain conditions are accepted and met by NFRC, that NFRC's voluntary national window rating program as it is presently being developed is expected to result in a program consistent with the objectives of the Federal Government as established in the Act. The conditions include, but are not limited to, continued good progress, and completion of a basic window energy rating program by October 24, 1995. In the interim, the Department of Energy (DOE) supports NFRC's efforts to establish a uniform, national rating, certification and labeling program through incorporation of the NFRC program in Federal, state and local government and national voluntary codes and standards.

FOR FURTHER INFORMATION CONTACT: Samuel J. Taylor, Office of Building Technologies, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, Tel. 202–586–9214.

SUPPLEMENTARY INFORMATION: Section 121 of the Energy Policy Act of 1992 (EPAct), Pub. L. 102–486, requires the Department of Energy to provide technical and financial support for development of a voluntary energy performance rating and labeling program for windows and window systems. Furthermore, EPAct directs that such voluntary program will be developed by NFRC, and that it is to be developed according to "commonly accepted procedures" [section 121(a)(3)]; and states that "such a rating program shall include: Specifications for testing procedures and labels that will enable window buyers to make more informed purchasing decisions about the energy efficiency of windows and window systems; and information . . . that will allow window buyers to assess the energy consumption and potential cost savings of alternative window products" [section 121(a)(2)]. This program is currently being developed by NFRC, a voluntary coalition comprised of representatives of the building industry, product manufacturers, utilities, government, and consumer groups. The NFRC, formed in 1989, has the exclusive purpose of providing a voluntary, nationally-recognized method for rating the energy performance of fenestration products, in a fair, accurate and credible manner, and certifying and labeling these products for consumer comparison and information purposes.

EPAct also requires that the Department monitor and evaluate the efforts of the NFRC and make a determination, within one year of enactment, as to whether the NFRC program is consistent with the objectives of the legislation. If the program does not meet the objectives, then the Department is required to proceed to develop a mandatory window energy performance rating and labeling process. The EPAct Conference Report, H. Report No. 102–1018, 102nd Congress, 2nd Session, p. 384 (1992), states that "commonly accepted procedures" are those procedures that are recognized by the Federal Trade Commission or are consistent with Commission policy. The Commission recognizes "commonly accepted procedures" as those which might be described as being pro-competitive, having a sound technical basis and discouraging unfair or deceptive acts or practices. Also, the report addresses the program's implementation and administration, and says they should be in accordance with "commonly accepted procedures", *Id.* Furthermore, the Conference Report states: "It is the intent of the Conferees that the Secretary shall seek to harmonize these standards internationally, particularly with standards established or under development in Canada or Mexico, nations with which the United States conducts substantial trade. Such harmonization will simplify enforcement, reduce impediments to trade, and will reduce burdens on manufacturers." *Id.*

DOE Evaluation and Requirements

Information upon which DOE relied to make its determination, as well as information further describing EPAct and DOE objectives and requirements, is listed in this Notice within the paragraph labeled "Documentation". To carry out its evaluation, DOE requested from NFRC certain information in a letter from the Deputy Assistant Secretary for Building Technologies to the Chairman of NFRC of March 25, 1993 [see Documentation, item 6]. "This information would include a description of the current and planned program and its procedures, scope and definitions and such other information that may be needed for DOE to make its evaluation. The planned program would be described in a multi-year program plan. This plan would describe how NFRC would meet the requirements of EPAct and should describe the mission, goals and objectives of NFRC, and identify the resource and program requirements, research requirements, and intermediate milestones for completing a window energy rating and labeling program." Also DOE elaborated on the information requirements and explained DOE and EPAct objectives in the documentation associated with its fiscal year 1993 financial assistance award to NFRC [see Documentation, item 7]. NFRC provided DOE with its multi-year plan and other information useful to the evaluation by DOE, including all NFRC procedures and a copy of documentation provided to the California Energy Commission which mandated the use of the NFRC program [see Documentation, items 1 to 5].

In carrying out the evaluation of the NFRC's voluntary program and resulting determination of conformity with the objectives of EPAct, the Department has considered two major criteria: The structure of the NFRC program including requirements for such program elements as technically credible rating procedures addressing the thermal, optical and energy performance of windows and window systems, procedures to assure the fair, accurate and credible implementation and administration of the energy rating program, certification, accreditation, labeling, and consumer education; and the extent of adoption of the NFRC program by manufacturers and recognition by states and voluntary code bodies.

NFRC Program Structure

The Department believes NFRC has made good progress in the development of the program structure for window energy rating, labeling, and certification. This progress addresses: a credible technical basis, internationally recognized, for rating window energy performance; and an administrative framework for rating, labeling, and certification. Progress is being made in the development of an education program aimed at all major end users which affect the specification or purchase of windows. This progress is described below, and documentation describing the progress in greater detail is referenced in the "Documentation" paragraph of this Notice. Among this documentation, the NFRC Multi-Year Plan is important as a statement by NFRC regarding current progress and a commitment to certain future progress in meeting EPAct, DOE and membership requirements. DOE accepts the requirements, particularly the research requirements, identified in the NFRC plan as important to meeting EPAct and DOE requirements for the rating program and national energy savings. DOE expects NFRC to continue to make good progress on meeting these requirements and certain other requirements identified in this notice or clarified in subsequent communications with NFRC. DOE expects NFRC leadership to closely follow progress on meeting these requirements.

The NFRC has, and continues, to develop a highly credible scientific and technical basis for the rating of window energy performance. Historically, the NFRC program grew out of a strong collaboration among the U.S. and Canadian Governments, and among national laboratory, university and industry researchers addressing window energy performance in technical society forums, primarily the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) and the American Society for Testing and Materials (ASTM). In 1989, when NFRC was formed, the NFRC Technical Committee became the primary forum for this research. Under the Technical Committee, subcommittees were formed to develop and validate the technical basis for the different thermal and optical properties, annual energy performance and durability which comprise a complete characterization of window energy performance. This research, under development for over a decade, provided for a thermal performance (U-Value) rating procedure which was validated by U.S. and Canadian laboratories. Recently, the technical subcommittees have completed research for the initial emissivity and solar heat gain coefficient procedures. Different parts of these procedures are also being adopted by such organizations as ASTM, ASHRAE and the International Standards Organization (ISO), and are being reviewed for adoption in several foreign countries. Though the technical accomplishments are impressive, more research is needed, as discussed below, to meet DOE and EPAct objectives.

The NFRC has developed, as part of its Multi-year Plan, a five-year research plan for completing the establishment of the scientific and technical framework for a comprehensive energy performance rating, certification and labeling system. The research plan initially focuses resources on completing a basic energy rating system which would meet the minimum requirements for satisfying the objectives of DOE and EPAct. DOE finds these requirements include, but are not limited to: The establishment of a validated, internationally accepted, sound scientific and technical basis for window energy performance to enable the development of energy rating procedures for residential applications, and at least limited guidance for architects and engineers for commercial applications; the development of such energy rating procedures and technical guidance, as well as procedures for the major thermal and optical properties; and significant progress on long term energy performance procedures. The research plan indicates that less than two years of research should enable completion of the basic energy rating system. The overall comprehensive 5-year program outlined within the plan would provide, in the opinion of DOE, for a marketplace and industry which is responsive to the development, specification and selection of energy efficient windows and window systems, and other fenestration products for both residential and commercial building applications. This plan, when implemented, should produce significant energy savings. The comprehensive program is expected to accelerate development and deployment of advanced energy efficient window technologies beyond that which could be realized under the basic energy rating program. It would provide the technology to broaden the application of the rating program in commercial building applications and upgrade the procedures for residential applications (e.g., more fenestration types, both conventional and advanced, more building types, and advanced computer tools to enable more users to specify and select energy efficient products). It would also complete the procedures for long term energy performance (durability), including guidance for determining life cycle costs of window applications. NFRC's research plan further outlines the additional research and development activities that are necessary to fully accomplish all of the objectives of EPAct and DOE's energy saving goals.

NFRC has also established an operational and administrative framework for implementing a nationally-accepted window rating and labeling program which, in DOE's opinion, substantially meets the intent of EPAct. Within this framework, NFRC addresses the development of rating procedures, technical interpretations, programs for laboratory accreditation and product certification, and guidelines for such programs. NFRC has already implemented a rating program for several components of fenestration energy performance including those for U-Value, solar heat gain and emissivity, and is pursuing the development of rating procedures for other thermal and optical properties and total energy performance properties. The development of the remaining procedures involves work by the technical committee members and the significant research, by DOE and others, focused on the associated technical issues. The adoption of the U-Value procedure is the culmination of over a decade of Federally-sponsored and private-industry-supported research. This activity also includes the development and updating of procedures and program guidelines to assure the fair and credible implementation and administration of the rating program and to assure industry and consumer trust in the program. However, as program implementation proceeds, deficiencies requiring revised or new guidance will become apparent. For example, there will need to be guidance for fair, consistent and uniform implementation among the independent agents (IA) carrying out the NFRC certification and inspection programs in such areas as ratings challenges, appeals and reporting procedures. [At this time, the IA's include: American Architectural Manufacturers Association (AAMA); California Association of Window Manufacturers (CAWM); National Wood Window and Door Association (NWWDA; and Southwest Research Institute (SwRI).] Continued progress is expected in developing and updating procedures which are pro-competitive and open to innovation, have a sound technical basis, and discourage unfair or deceptive acts or practices. Also, NFRC, in updating its procedures, should consider the conformity of the different elements of its program procedures and their implementation (e.g., accreditation and quality control) to the applicable standards set forth by the International Standards Organization (ISO).

Work underway by NFRC technical committees is being closely coordinated with related work in other countries through such organizations as the International Standards Organization (ISO), the International Energy Agency, and through bilateral agreements between the U.S. and other countries. This effort by NFRC has sought to establish a common scientific and technical basis for window performance rating which, in the opinion of the Department, is an effective approach in complying with EPAct requirements for international harmonization of standards. This approach presumes the technical excellence of the common basis for rating, and a willingness by all parties to move towards adoption of cost-effective rating procedures which have been demonstrated to be technically superior. Good progress in this area is expected to continue.

NFRC has also initiated a program which would provide information to consumers that will support informed purchase decisions. At this time, a DOE-

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sponsored building simulation computer program (DOE 2) has been used to develop a simplified window energy rating computer tool and sensitivity analyses for development of simple energy rating indices. The simulation tool has been used to develop draft guidance for residential window users and the ability to develop a number of interim consumer information products. However, the procedures for providing a total energy rating as well as complete energy performance information upon which consumers could base window purchase decisions are not yet completed. The research needed to develop and validate such energy rating procedures should, in the opinion of the Department, be completed within the two years (from October 1993), as part of the basic energy rating program. The NFRC information program would develop, maintain and distribute the information products which meet the DOE and EPAct requirements to "enable window buyers to make more informed purchasing decisions about the energy efficiency of windows and window systems; and information * * * that will allow window buyers to assess the energy consumption and potential cost savings of alternative window products" [section 121(a)(2)]. "The DOE defines 'window buyers' broadly as major end users which can significantly affect the specification or purchase decision. These end users include, but are not limited to: consumers, builders, architects, utilities, building standard organizations, among others." [see Documentation, Item 7]

NFRC Program Adoption

The Department considers that the extent of adoption by states and code bodies, and the level of participation by product manufacturers, and testing and simulation laboratories show good progress toward nationwide acceptance of the NFRC program as a viable system for establishing the uniform energy performance rating and labeling of windows and window systems. Towards wider adoption of this program, NFRC has developed and is implementing an Education and Awareness plan. NFRC members are also actively participating in technical society (e.g., ASHRAE) standards committees and with regional code organizations to foster referencing of NFRC standards. NFRC members are also working with ISO technical committees and foreign standard organizations to foster recognition of NFRC rating procedures or rating procedures with a common technical basis.

Several states have adopted or referenced NFRC rating procedures, or are considering doing so. At least six states have already adopted the NFRC's procedure for rating the thermal performance of fenestration products (NFRC 100–91SM). These states ipclude: California, Oregon, Washington, Alaska, Idaho, and Minnesota. Several other states are considering adoption of NFRC 100–91SM as a part of their comprehensive building energy codes.

The NFRC's Certified Product Directory currently lists the NFRC rated thermal performance in terms of U-Value, the rate of heat loss due to a temperature difference across the product, for over 5,000 window, door, and skylight products produced by more than one hundred manufacturers.

Widespread participation exists in the NFRC energy performance rating, certification and labeling program. This program, to ensure accuracy and credibility, includes a system of checks and balances embodied in its three key subprograms: laboratory accreditation, product certification, and the certification agency program. [see Documentation, items 1 to 5 for a description of this program and its elements]. To date, the NFRC has certified the participation of twelve accredited simulation laboratories, seven testing laboratories, and four independent certification and inspection agencies to support the needs of fenestration manufacturers for product testing, certification, and labeling.

Secretary's Determination

Based on the Department's evaluation of the NFRC's program structure and current rate of adoption by states and the industry, the Secretary believes that critical elements of a basic energy performance rating, certification and labeling program are already operational or under development and that the program can expand and mature to a level consistent with the objectives of EPAct within two years. These critical program elements now operational include the administrative framework for the rating, labeling and certification program and rating procedures for certain thermal and optical properties of windows, such as U-Value and solar heat gain. Other critical elements, such as annual energy procedures or consumer information on energy performance of windows have made good progress and are expected to be completed within two years. The Secretary has therefore made a provisional determination regarding the acceptability of the NFRC rating program based on current progress by NFRC and subject to certain conditions being met and a commitment by NFRC to meet those conditions. The conditions include, but are not limited to, continued good progress towards, and completion of a basic window energy rating program which meets the objectives of the Federal Government as established under the EPAct and other relevant legislative or executive authority, by October 24, 1995. The Department shall continue to monitor, evaluate and provide periodic assessments of the NFRC's progress in developing, according to commonly accepted procedures, the basic energy rating, certification and labeling program and its procedures and program guidelines, and will be looking for continuation of substantial progress toward completion of the basic program structure. The Department shall also monitor the extent of adoption of the NFRC program by state regulatory bodies, and market acceptance of the program as established by the percentage of total product sales carrying NFRC labels. The Department's continued evaluation of progress will require certain information from NFRC such as periodic updates of the multi-year plan, and intermediate measures of progress on the level of adoption of the rating program and on development of critical elements of the program such as rating procedures and consumer information. The Department will provide the NFRC with certain information needed for the completion of the basic energy rating and labeling program such as its periodic assessments, evaluations, identification of information requirements, and clarifications on EPAct and Federal objectives and requirements. To facilitate this exchange of information and the Department's evaluation of progress, as well as the achievement of the goals and full energy savings potential described in NFRC's comprehensive multi-year plan, provisions for close collaboration between the NFRC and the Department should be maintained. Based on these conditions, the Secretary finds the NFRC program would be acceptable. Further, in the interim, DOE supports NFRC's efforts to establish a uniform, national rating, certification and labeling program through incorporation of the NFRC program in Federal, state and local government and national voluntary codes and standards.

The Secretary also finds that the Department shall continue to seek to provide the technical and financial assistance necessary to establish a basic energy performance rating, certification

and labeling system for windows and window systems that would meet the requirements of either a mandatory or voluntary program. The Department shall also take the necessary steps to ensure that a mandatory program would be in place within the statutory time limits defined by EPAct, if such a program is needed. The Department shall request financial and technical support for the full five-year comprehensive program as defined in the NFRC program plan.

Further, the Secretary finds that the Department shall use the existing NFRC performance procedures, as well as new procedures for addressing additional thermal and optical properties and the energy impacts of windows and window systems, as they become established, in DOE programs which affect the specification and selection of fenestration products in Federal buildings. The Department shall also proceed to take the necessary steps to both require and encourage the use of NFRC performance rating procedures by other Federal agencies, and to encourage their use by state and local governments and by code bodies.

Documentation

Copies of information are listed below upon which the Department has relied in making this provisional determination. Information is also listed which further addresses DOE's objectives and requirements.

1. Technical, Operational and Administrative Foundations for Fenestration Rating, Certification and Labeling: The NFRC Multi-Year Plan (and revisions to the plan), Sept. 1993 The plan outlines NFRC's accomplishments and planned growth for the five years commencing with the submission of the plan in September 1993. The plan is organized into three sections: The technical or research work plan; the operational program activities, including certification, labeling, education and communications; and NFRC's administrative management processes. Attachments include NFRC's Bylaws and operating procedures. This plan provides: A description of the rating program and its elements, the current status of the NFRC program, a description the mission, goals and objectives of NFRC and how NFRC would meet the requirements of EPAct as well as its goals and objectives, and identifies the resource and program requirements (including research requirements) for completing a window energy rating and labeling program, and the schedule for completion of all major elements of the program with intermediate milestones.

2. NFRC Technical (Rating) Procedures—for determining the thermal , optical and annual energy performance of fenestration products:

(a) (NFRC 100–91SM) Procedures for Determining Fenestration Product Thermal Properties (currently limited to U-values);

(b) (NFRC 200–93SM) Procedures for Determining Fenestration Solar Heat Gain Coefficients at Normal Incidence;

(c) (NFRC 301–92SM) Procedures for Measuring Surface Emittance.

(d) Other procedures are under development.

3. NFRC Program Documents—outline and provide the operational details of NFRC's on-going programs. To date, NFRC has published the following documents:

(a) NFRC PCP 1–92: Product Certification Program—to certify and label fenestration products using NFRC rating procedures. Under this program which sets forth the NFRC requirements for thermal efficiency certification and labeling of fenestration products, manufacturers may obtain NFRC thermal performance ratings for their fenestration products from NFRC-accredited testing and simulation laboratories, in accordance with NFRC 100–91: Procedure for Determining Fenestration Products Thermal Properties (currently limited to U-values). A fenestration manufacturer may also obtain authorization to certify the performance ratings and receive permission to label products from NFRC-licensed independent certification and inspection agencies. This program, as new technical rating procedures become approved, will provide for ratings of other thermal and optical properties and energy performance.

(b) NFRC LAP 1–92: Laboratory Accreditation Program—to accredit laboratories in the use of NFRC rating procedures, which encompass computer simulation programs and physical test procedures. Under this program, NFRC licenses independent testing and simulation laboratories to perform physical tests and computer simulations and to issue thermal performance ratings for each product line submitted for rating and certification. NFRC guarantees the integrity and uniformity of NFRC rating, certification and labeling by ensuring that testing and simulation laboratories adhere to strict NFRC requirements.

(c) NFRC CAP 1–92: Certification Agency Program—to license independent certification and inspection agencies (IA's), conducting verification and assessments of rated products. Under this program, also referred to as the "IA Program", NFRC licenses independent certification and inspection agencies to determine that all NFRC requirements for NFRC certification of fenestration energy performance ratings have been met by a manufacturer, and to grant permission to label products to indicate NFRC certification. Through the Certification Program and IA Program and their companion NFRC laboratory accreditation program set forth in the associated program documents, NFRC intends to protect the integrity and uniformity of NFRC rating, certification and labeling by ensuring manufacturers, testing and simulation laboratories, and IA's adhere to strict NFRC requirements.

4. NFRC Certified Products Directory—NFRC publishes at least annually a directory of products certified and decertified within the program. The first edition of the Directory was published November 9, 1993 and included descriptive information and thermal performance ratings for over 2100 products. The Second edition of the Directory was published January 7, 1994 and included listings for over 3800 fenestration products. To date, over 5000 products have been certified.

5. Documentation submitted by NFRC recently to the California Energy Commission (CEC) supporting CEC designation of NFRC as the supervisory entity for the California mandatory rating program.

(a) Letter from the Chairman of NFRC to the CEC (Docket No. 92–WIN–1), March 24, 1994—The letter provides detailed answers to questions raised by the Commission regarding the NFRC program. These answers provide extensive information documenting the good progress of the NFRC program which is directly applicable to the Departments determination.

(b) Final Report to the CEC, under CEC contract No. 400–90–023, March 29, 1994. In 1991, NFRC entered into a contract with the California Energy Commission. The contract directed NFRC to develop and implement an energy performance rating, certification, and labeling program for fenestration products sold in the State of California. The report documents the work completed under the project.

6. Letter—from Deputy Assistant Secretary for Building Technologies, Energy Efficiency and Renewable Energy, DOE to Chairman, NFRC, March 25, 1993. Letter formerly initiated relationship between DOE and NFRC under EPAct and identified EPAct

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requirements and DOE information requirements.

7. Financial Assistance Award documentation, DOE grant no. DE-FG03-91SF19011, 1993. The FY 1993 award included a description of the objectives of DOE regarding both the overall rating program and the objectives for key elements of the program. Program elements addressed included: education and information; research and validation; planning and analysis, including multi-year plan updates; and liaison with domestic and international organizations. Documentation associated with subsequent awards restated and clarified DOE's objectives.

These documents and other pertinent information are available at the following locations:

National Fenestration Rating Council, 1300 Spring Street, Suite 120, Silver Spring, Maryland 20910, (301) 589-6372

U.S. Department of Energy, Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue SW ., Washington, DC 20585, (202) 586-5755.

Issued in Washington, DC on September 15, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 94-23639 Filed 9-22-94; 8:45 am]

BILLING CODE 6450-01-P

Office of Energy Research

Basic Energy Sciences Advisory Committee; Notice of Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Basic Energy Sciences Advisory Committee (BESAC).

Date and Time: October 20, 1994—9:00 a.m.–5:00 p.m.; October 21, 1994—9:00 a.m.–5:00 p.m.

Place: U.S. Department of Energy, James Forrestal Building, Room 1E-245, 1000 Independence Avenue, SW., Washington, DC 20585.

Contact: Iran L. Thomas, Department of Energy, Office of Basic Energy Sciences (ER-10), Office of Energy Research, Washington, DC 20585, Telephone: 301-903-3081.

Purpose of the Committee: To provide advice on a continuing basis to the Department of Energy (DOE) on the many complex scientific and technical issues that arise in the planning, management, and implementation of the research program for the Office of Basic Energy Sciences (BES).

Tentative Agenda

Briefings and discussion of:

October 20, 1994

- Overview of Office of Energy Research and Discussion of Charge Letter.
- Discussion of Modifications in the Design of the Advanced Neutron Source.
- Discussion of Panel on Return on Taxpayers' Investment in BES Program.
- Public Comment (10 Minute Rule).

October 21, 1994

- Presentation on R&D and Environmental Restoration and Waste Management.
- Presentation on Administration's Initiatives on Sustainable Future Partnership for New Generation Vehicles and Environmental Technologies.
- Identification of BESAC Members to Serve on Panel to Review Accelerator Research.
- Public Comment (10 Minute Rule)

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Iran L. Thomas at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts

The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 19, 1994.

Marcia L. Morris,

Deputy Advisory Committee, Management Officer.

[FR Doc. 94-23636 Filed 9-22-94; 8:45 am]

BILLING CODE 6450-01-M

High Energy Physics Advisory Panel; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: November 18–19, 1994.

Place: Stanford Linear Accelerator Center, 2575 Sand Hill Road, Stanford, CA 94305.

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy, Physics Advisory Panel, U.S. Department of Energy, ER-221, GTN, Washington, DC 20585, Telephone: (301) 903-4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Friday, November 18, 1994 and Saturday, November 19, 1994

—Report on the Department of Energy High Energy Physics Programs
—Report on National Science Foundation Elementary Particle Physics Programs
—Presentation of High Energy Physics Activities at the Stanford Linear Accelerator Center
—Presentation of High Energy Physics Activities at the Lawrence Berkeley Laboratory
—Discussion of Superconducting Super Collider Project Closeout
—Reports on and Discussions of Topics of General Interest in High Energy Physics
—Public Comment (10 minute rule)

Public Participation

The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes

Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 am and 4 pm, Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 19, 1994.

Marcia L. Morris,

Acting Advisory Committee, Management Officer.

[FR Doc. 94-23637 Filed 9-22-94; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. MG94-4-001]

Alabama-Tennessee Natural Gas Company; Filing

September 19, 1994.

Take notice that on August 22, 1994, Alabama-Tennessee Natural Gas Company (Alabama) filed a response to the Commission's July 22, 1994, order[1] that includes standards of conduct

[1] 68 FERC ¶61,115 (1994).

under Order Nos. 497 *et seq.*[2] and Order No. 566.[3]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214 (1993)). All such motions to intervene or protest should be filed on or before October 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-23536 Filed 9-22-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP-94-398-000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 19, 1994.

Take notice that on September 14, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of October 1, 1994:

Original Sheet No. 98F
Sixteenth Revised Sheet No. 20A

Algonquin states that the purpose of this filing is to flow through a refund related to Texas Eastern Transmission Corporation's stranded Account No. 858 costs. Algonquin requests that the Commission waive Section 154.22 of the Commission's regulations to the extent that may be necessary to place these tariff sheets into effect as requested, and requests a waiver of Section 37.1(f) of its tariff to flow through this refund in one month.

Algonquin states that copies of this filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 26, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-23532 Filed 9-22-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MG88-55-005]

Panhandle Eastern Pipe Line Co.; Notice of Filing

September 19, 1994.

Take notice that on August 31, 1994, Panhandle Eastern Pipe Line Company (Panhandle) filed its revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order No. 566.[2] Panhandle states that it is revising its standards of conduct to incorporate the changes required by Order No. 566 and that the revised standards shall be effective October 1, 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214 (1993)). All such motions to intervene or protest should be filed on or before October 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-23534 Filed 9-22-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-331-001]

Questar Pipeline Co.; Notice of Tariff Filing

September 19, 1994.

Take notice that pursuant to 18 CFR 154.63(a)(1), and in compliance with the Commission's August 31, 1994, order in Docket No. RP94-331-000, Questar Pipeline Company on September 15, 1994, tendered for filing and acceptance to be effective September 1, 1994,

[2] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶30,820 (1988); Order No. 497-A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497-B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶30,908 (1990); Order No. 497-C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497-D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497-E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶61,381 (December 23, 1993); Order No. 497-F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶61,347 (March 24, 1994); and Order No. 497-G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶30,996 (June 17, 1994).

[3] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶30,997 (June 17, 1994).

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶30,820 (1988); Order No. 497-A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497-B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶30,908 (1990); Order No. 497-C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497-D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497-E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶61,381 (December 23, 1993); Order No. 497-F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶61,347 (March 24, 1994); and Order No. 497-G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶30,997 (June 17, 1994).

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Substitute Third Revised Sheet No. 5, Substitute First Revised Sheet Nos. 52, 60, 73, and 169 and Original Sheet No. 73A to First Revised Volume No. 1 of its FERC Gas Tariff.

Questar states that this filing was served upon its jurisdictional customers and the Wyoming and Utah Public Service Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations (18 CFR 385.211). All such protests should be filed on or before September 26, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-23531 Filed 9-22-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MG91-2-003]

Southwest Gas Storage Co.; Filing

September 19, 1994.

Take notice that on August 31, 1994, Southwest Gas Storage Company (Southwest) filed its revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order No. 566.[2] Southwest states that it is revising its standards of conduct to incorporate the changes required by Order No. 566 and that the revised standards shall be effective October 1, 1994.

Southwest states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214 (1993)). All such motions to intervene or protest should be filed on or before October 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-23535 Filed 9-22-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MG-88-26-005]

Texas Eastern Transmission Corp., Notice of Filing

September 19, 1994.

Take notice that on September 1, 1994, Texas Eastern Transmission Corporation (Texas Eastern) filed its revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order No. 566.[2] Texas Eastern states that it is revising its standards of conduct to incorporate the changes required by Order No. 566 and that the revised standards shall be effective October 1, 1994.

Texas Eastern states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214 (1993)). All such motions to intervene or protest should be filed on or before October 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this riling are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-23533 Filed 9-22-94; 8:45 am]

BILLING CODE 6717-01-M

Southwestern Power Administration

Robert Douglas Willis Hydro Power Rate; Notice of Order Approving a Power Rate Increase on an Interim Basis

AGENCY: Department of Energy, Southwestern Power Administration.

ACTION: Notice of approving a power rate increase—Robert D. Willis Hydro Project.

SUMMARY: The Deputy Secretary acting under Amendment No. 3 to Delegation Order No. 0204-108, dated November 10, 1993, 58 FR 59717, has approved Rate Order No. SWPA-30 which increases the power rate for the Robert Douglas Willis Hydro Project. This is an interim approval of the rate effective October 1, 1994, through September 30, 1998.

FOR FURTHER INFORMATION CONTACT: George C. Grisaffe, Assistant Administrator, Office of Administration and Rates, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

SUPPLEMENTARY INFORMATION: The existing rate for the Robert Douglas Willis Hydro Project is $284,580 per year. The rate was approved on a final basis by the Federal Energy Regulatory Commission on August 11, 1993, for a period ending September 30, 1997.

On June 15, 1994, the Southwestern Power Administration (Southwestern) published notice in the **Federal Register**, 59 FR 30793 of its proposed rate increase for the Robert Douglas Willis Hydro Project and to provide a 60-day comment period. One comment indicating no objection to the proposed rate increase was received from the sole customer, Sam Rayburn Municipal Power Agency

Following review of Southwestern's proposal within the Department of Energy, I approved, Rate Order No. SWPA-30, which increases the existing Robert Douglas Willis Rate to $294,312 per year for the period October 1, 1994, through September 30, 1998.

Issued at Washington, DC, the 14th day of September 1994.

William H. White,

Deputy Secretary

In the matter of: Southwestern Power Administration—Robert D. Willis, Rate Order No. SWPA-30.

Order Confirming, Approving and Placing Decreased Power Rate in Effect on an Interim Basis

September 14, 1994.

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95-91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration (Southwestern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-108, effective December 14, 1983, 48 FR 55664, the Secretary of Energy delegated to the Deputy Secretary of Energy on a non-exclusive basis the authority to confirm, approve and place into effect on an interim basis power and transmission rates, and delegated to the Federal Energy Regulatory Commission (FERC) on an exclusive basis the authority to confirm, approve and place in effect on a final basis, or to disapprove power and transmission rates. Amendment No. 1 to Delegation Order No. 0204-108, effective May 30, 1986, 51 FR 19744, revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates to the Under Secretary of Energy rather than the Deputy Secretary of Energy. This delegation was reassigned to the Deputy Secretary of Energy by Department of Energy (DOE) Notice 1110.29, dated October 27, 1988, and clarified by Secretary of Energy Notice SEN-10-89, dated August 3, 1989, and subsequent revisions. By Amendment No. 2 to Delegation Order No. 0204-108, effective August 23, 1991, 56 FR 41835, the Secretary of the Department of Energy revised Delegation Order No. 0204-108 to delegate to the Assistant Secretary, Conservation and Renewable Energy, the authority which was previously delegated to the Deputy Secretary in that Delegation Order By Amendment No. 3 to Delegation Order No. 0204-108, effective November 10, 1993, 58 FR 59717, the Secretary of Energy revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates by delegating that authority to the Deputy Secretary of Energy. This rate order is issued by the Deputy Secretary pursuant to said Amendment to Delegation Order No. 0204-108.

Background

Dam B (Town Bluff Dam), located on the Neches River in eastern Texas downstream from the Sam Rayburn Dam, was originally constructed in 1951 by the U.S. Army Corps of Engineers (Corps) and provides streamflow regulation of releases from the Sam Rayburn Dam. The Lower Neches Valley Authority contributed funds toward construction of both projects and makes established annual payments for the right to withdraw up to 2000 cubic feet of water per second from Town Bluff Dam for its own use. Power was legislatively authorized at the project, but installation of hydroelectric facilities was deferred until justified by economic conditions. A determination of feasibility was made in a 1982 Corps study. In 1983 the Sam Rayburn Municipal Power Agency (SRMA) proposed to sponsor and finance the development of hydropower at Town Bluff Dam in return for the output of the project to be delivered to its member municipalities and participating member cooperatives of the Sam Rayburn Dam Electric Cooperative. Since the hydroelectric facilities at the Town Bluff Dam have been completed, the facilities have been renamed the Robert Douglas Willis Hydroelectric Project (Robert D. Willis).

The Robert D. Willis rate is unique in that it excludes the costs associated with the hydropower design and construction performed by the Corps, because all funds for these costs were provided by SRMA. Under the Southwestern/SRMA power sales Contract No. DE-PM75-85SW00117, SRMA will continue to pay all annual operating and marketing costs, as well as expected capital replacement costs, through the rate paid to Southwestern, and will receive all power and energy produced at the project for a period of 50 years.

Discussion

The 1994 Current Robert D. Willis PRS tests the adequacy of the existing rate based on the latest cost evaluation period extending from FY 1994 through FY 1998, to recover annual expenses for marketing, operation and maintenance, and to amortize additions to plant and major replacements of the generating facilities. Since the project's design and construction were financed in their entirety by SRMA, no component for amortization of the original investment of some $18 million is included in the rate determination. The Current PRS for the Robert D. Willis project, using the existing annual rate of $284,580, indicates that the legal requirements to repay all costs will not be met without an increase in revenue. This shortage is primarily a result of operation and maintenance cost estimates increasing to match actual costs.

The existing annual Robert D. Willis project power rate of $284,580 was confirmed and approved on a final basis by the FERC on August 11, 1993, for the period April 1, 1993, through September 30, 1997. The 1994 Robert D. Willis Current Power Repayment Study (PRS) indicates that the present rate does not meet the cost recovery criteria for the isolated project. The current rate will underpay requirements by $3,211,586. The 1994 Robert D. Willis Revised PRS indicates that an annual rate of $294,312 will satisfy repayment criteria in accordance with Department of Energy Order No. RA 6120.2 and Section 5 of the Flood Control Act of 1944. The proposed increase in revenue amounts to $9,732 or 3.4 percent annually to begin October 1, 1994. The proposed rate of $294,312 annually would satisfy the present repayment criteria.

Pursuant to title 10, part 903, subpart A of the Code of Federal Regulations (10 CFR 903), "Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions", 50 FR 37837, the Administrator, Southwestern, published notice in the **Federal Register** (59 FR 30793), on June 15, 1994, announcing a 60-day period for public review and comment. Southwestern held several informal meetings and a Public Information Forum (Forum) on July 7, 1994, where Southwestern provided copies of supporting data for the 1994 Robert D. Willis PRS to interested parties. A letter was received on behalf of SRMA, indicating no opposition to the proposed rate increase.

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497-A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497-B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990), Order No. 497-C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992), Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992), Order No. 497-D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992) Order No 497-E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497-F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497-G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 16, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994)

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶30,820 (1988); Order No. 497-A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497-B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶30,908 (1990); Order No. 497-C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497-D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497-E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497-F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶61,347 (March 24, 1994), and Order No. 497-G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶30,996 (June 17, 1994).

[2] Standard of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27 1994), III FERC Stats. & Regs. ¶30,997 (June 17, 1994)

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Southwestern did not receive any request to convene a formal Public Comment Forum and, as a result, did not convene such a meeting.

Information regarding this rate proposal, including studies, comments and other supporting material, is available for public review and comment in the offices of the Southwestern Power Administration, One West Third Street, Tulsa, Oklahoma 74101

Administrator's Certification

The 1994 Revised Robert D. Willis PRS indicates that the annual power rate of $294,312 will repay all costs of the project including amortization of additions to plant and major replacements of the generating facilities consistent with provisions of DOE Order No. RA 6120.2. In accordance with Section 1 of Delegation Order No. 0204–108, as amended November 10, 1993, 58 FR 59717, and Section 5 of the Flood Control Act of 1944, the Administrator has determined that the proposed Robert D. Willis power rate is consistent with applicable law and is the lowest possible rate consistent with sound business principles.

Environment

The environmental impact of the rate increase proposal was evaluated in consideration of DOE's guidelines for implementing the procedural provisions of the National Environmental Policy Act and was determined to fall within the class of actions that are categorically excluded from the requirements of preparing either an Environmental Impact Statement or an Environmental Assessment.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm, approve and place in effect on an interim basis, effective October 1, 1994, the proposed annual rate of $294,312 for the sale of power and energy from the Robert D. Willis project to the Sam Rayburn Municipal Power Agency, under Contract No. DE-PM75–85SW00117, as amended. The rate shall remain in effect on an interim basis through September 30, 1998, or until the FERC confirms and approves the rate on a final basis.

Issued at Washington, DC, this 14th day of September 1994.

William H. White,

Deputy Secretary.

[FR Doc. 94–23642 Filed 9–22–94; 8:45 am]

BILLING CODE 6450–01–P

Sam Rayburn Dam Power Rate; Notice of Order Approving a Power Rate Increase on an Interim Basis

AGENCY: Department of Energy, Southwestern Power Administration.

ACTION: Notice of approving a power rate increase—Sam Rayburn Dam Project.

SUMMARY: The Deputy Secretary acting under Amendment No. 3 to Delegation Order No. 0204–108, dated November 10, 1993, 58 FR 59717, has approved Rate Order No. SWPA–31 which increases the power rate for the Sam Rayburn Dam Project. This is an interim approval of the rate effective October 1, 1994, through September 30, 1998.

FOR FURTHER INFORMATION CONTACT: George C. Grisaffe, Assistant Administrator, Office of Administration and Rates, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101

SUPPLEMENTARY INFORMATION: The existing hydroelectric power rate for the Sam Rayburn Dam project is $2,076,444 per year. The rate was approved on a final basis by the Federal Energy Regulatory Commission on August 11, 1993, for a period ending September 30, 1997.

On June 15, 1994, the Southwestern Power Administration (Southwestern) published notice in the **Federal Register**, 59 FR 30793 of its proposed rate increase for the Sam Rayburn Dam project and to provide for a 60-day comment period. One comment indicating no objection to the proposed rate increase was received from the sole customer, Sam Rayburn Dam Electric Cooperative.

Following review of Southwestern's proposal within the Department of Energy, I approved, Rate Order No. SWPA–31, which increases the existing Sam Rayburn Dam Rate to $2,168,136 per year for the period October 1, 1994, through September 30, 1998.

Issued at Washington, D.C., the 14th day of September 1994.

William H. White,

Deputy Secretary.

In the matter of: Southwestern Power Administration—Sam Rayburn Dam Rate. Rate Order, No. SWPA–31.

Order Approving Power Rate Increase on an Interim Basis

September 14, 1994.

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983, 48 FR 55664, the Secretary of Energy delegated to the Deputy Secretary of Energy on a non-exclusive basis the authority to confirm, approve and place into effect on an interim basis power and transmission rates, and delegated to the Federal Energy Regulatory Commission (FERC) on an exclusive basis the authority to confirm, approve and place in effect on a final basis, or to disapprove power and transmission rates. Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744, revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates by delegating such authority to the Under Secretary of Energy rather than the Deputy Secretary of Energy. This delegation was reassigned to the Deputy Secretary of Energy by Department of Energy (DOE) Notice 1110.29, dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89, dated August 3, 1989, and subsequent revisions. By Amendment No. 2 to Delegation Order No. 0204–108, effective August 23, 1991, 56 FR 41835, the Secretary of the Department of Energy revised Delegation Order No. 0204–108 to delegate to the Assistant Secretary, Conservation and Renewable Energy, the authority which was previously delegated to the Deputy Secretary in that Delegation Order. By Amendment No. 3 to Delegation Order No. 0204–108, effective November 10, 1993, 58 FR 59717, the Secretary of Energy revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates by delegating that authority to the Deputy Secretary of Energy. This rate order is issued by the Deputy Secretary pursuant to said Amendment to Delegation Order No. 0204–108.

Background

The Sam Rayburn Dam is located on the Angelina River in the State of Texas in the Neches River Basin. Since the beginning of its operation in 1965, it has been marketed under isolated project rates through a contract with the Sam Rayburn Dam Electric Cooperative, Inc., through the facilities of Gulf States Utilities Company. The contract originally provided for a rate of $79,167 per month ($950,004 annually). Subsequently, this rate has been increased on numerous occasions.

The existing annual Sam Rayburn Dam power rate of $2,076,444 was confirmed and approved on a final basis on August 11, 1993, by the FERC for the period April 1, 1993, through September 30, 1997.

Discussion

The 1994 Power Repayment Studies (PRS) indicated the need for a major rate increase of approximately 4.4 percent. The primary cause of the FY 1994 increase over the currently-approved rate was a refinement in Corps operations and maintenance estimates to better reflect actual future expenditures.

That 1994 rate increase proposal was communicated to the public through a 60-day public participation period cited in the **Federal Register** (59 FR 30793), informal meetings with the customer and a formal Public Information Forum held on July 7, 1994. No opposition was expressed. One comment was received on behalf of SRDEC, expressing no opposition to the proposed rate increase. Southwestern did not receive a request to convene a formal Public Comment Forum; consequently, the meeting was not convened.

Southwestern completed the 1994 PRS for Sam Rayburn which indicates that an annual rate of $2,168,136 is needed, beginning October 1, 1994, to satisfy all repayment criteria. The rate represents an increase of 4.4 percent over the existing rate.

Information regarding this rate increase, including studies and other supporting material, is available for public review and comment in the offices of the Southwestern Power Administration, P.O. Box 1619, Tulsa, Oklahoma 74101.

Administrator's Certification

The 1994 Revised Sam Rayburn Dam PRS indicates that the annual power rate of $2,168,136 will repay all costs of the project including amortization of the power investment consistent with provisions of DOE Order No. RA 6120.2. In accordance with Section 1 of Delegation Order No. 0204–108, as amended November 10, 1993, (58 FR 59717), and Section 5 of the Flood Control Act of 1944, the Administrator has determined that the proposed Sam Rayburn Dam power rate is consistent with applicable law and is the lowest possible rate consistent with sound business principles.

Environment

The environmental impact of the rate increase proposal was evaluated in consideration of DOE's guidelines for implementing the procedural provisions of the National Environmental Policy Act and was determined to fall within the class of actions that are categorically excluded from the requirements of preparing either an Environmental Impact Statement or an Environmental Assessment.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby increase on an interim basis, for the period October 1, 1994, through September 30, 1998, the annual Sam Rayburn Dam Rate to $2,168,136 for the sale of power and energy from Sam Rayburn Dam to the Sam Rayburn Dam Electric Cooperative, Inc., under Contract No. DE-PM75–92SW00215, dated October 7, 1992.

Issued at Washington, DC, the 14th day of September 1994.

William H. White,

Deputy Secretary.

[FR Doc. 94–23641 Filed 9–22–94; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration

Washoe Project—Notice of Order Confirming and Approving an Extension of the Nonfirm Energy Rate

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice is given of Rate Order No. WAPA–66 extending until September 30, 1995, Rate Schedule SNF–3 for the sale of nonfirm energy generated at the Stampede Powerplant (Stampede) of the Washoe Project (Washoe).

FOR FURTHER INFORMATION CONTACT: Mr. James C. Feider, Area Manager, Western Area Power Administration, Sacramento Area Office, 1825 Bell Street, Suite 105, Sacramento, CA 95825–1097, (916) 649–4418.

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing Department of Energy procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

Pursuant to Delegation Order No. 0204–108, FERC confirmed and approved Rate Schedule SNF–3 for the sale of nonfirm energy generated at Stampede. In an order issued June 7, 1991, in Docket No. EF90–5161–000, the rate was approved for the 53-month period April 30, 1990, through September 30, 1994.

This extension of the existing Washoe nonfirm energy rate until September 30, 1995, facilitates current measures being taken by Western in conjunction with the Bureau of Reclamation to service project-use loads. This extension also allows Western to examine the marketing options outside of the Sierra Pacific Power Company's control area and prepare the appropriate rate studies.

The purpose of Rate Order No. WAPA–66 is to extend Rate Schedule SNF–3 until September 30, 1995, allowing Western the time to complete the activities listed in the previous paragraph.

Issued in Washington, D.C., September 14, 1994.

Bill White,

Deputy Secretary.

In the matter of: Western Area Power Administration, Rate Adjustment for Washoe Project, Rate Order No. WAPA–66.

Order Confirming and Approving an Extension of the Washoe Project Nonfirm Energy Rate

September 14, 1994.

This power rate is established pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, (32 Stat. 388 et seq), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the project system involved, were transferred to and vested in the Secretary of Energy.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis

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to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

This rate extension is issued pursuant to the Delegation Order and the rate extension procedures in 10 CFR part 903.

Background

Pursuant to Delegation Order No. 0204–108, FERC, in the order issued June 7, 1991, in Docket No. EF90–5161–000, confirmed and approved Rate Schedule SNF–3 for the sale of nonfirm energy generated at the Stampede Powerplant (Stampede) of the Washoe Project, as administered by Western's Sacramento Area Office (SAO). The rate was approved for the period from April 30, 1990, through September 30, 1994.

Discussion

As part of the Washoe Project, Reclamation constructed the 3.65-megawatt Stampede Powerplant which is located in the Sierra Pacific Power Company (SPPC) service and load control area. The U.S. Fish and Wildlife Service (USFWS) loads at the Lahontan Fish Hatchery and the Marble Bluff Fish Facility were designated project use loads, and thus entitled the USFWS to the energy generated at Stampede on a nonreimbursable, first-priority basis. Since Stampede began operation in 1988, Western has been unable to service project use loads or to recover all related annual and capital costs of the powerplant due to limited market and transmission access and below-average hydrogeneration. As a result, Western has been exploring several marketing and transmission options to service project use and to improve the repayment status of the Washoe Project.

The June 7, 1991, Rate Order (FERC Docket No. EF90–5161–000) established an annual bidding process for the sale of Stampede energy. The energy would be sold to the entity offering the highest price for the energy, provided that the bid price is between the floor and ceiling rates established by the SAO The floor rate is based on the greater of either (a) the rate necessary to recover the projected annual operation and maintenance expenses for Stampede plus 2 mills per kilowatthour (mills/kWh) or (b) 85 percent of the purchaser's projected average marginal energy costs. The ceiling rate is the conventional repayment rate as determined by the power repayment study, which is currently 72.3 mills/kWh.

The SAO first accepted bids in 1991 and continued the bidding process each year as required by the Rate Order (FERC Docket No. EF90–5161–000). From June 1991 to June 1994, SAO did not receive any bids that fully comported with the bid requirements. SPPC submitted bids which were below the calculated floor rate. SPPC stated that the offered rates represented 85 percent of SPPC's average marginal costs. Since Stampede is directly interconnected to SPPC's system, there was no need for additional transmission agreements. Therefore, the Stampede energy has been sold to SPPC on a recurring short-term basis from July 1, 1991, to the present time.

On April 1, 1994, Western executed SAO Contract Number 94–SAO–00010 with the SPPC, which provides Western the mechanism necessary to provide service to USFWS at the Lahontan National Fish Hatchery and Marble Bluff Fish Facility. The contract also provides Western the option to market all energy, in excess of that energy which is required to service USFWS loads, outside of the SPPC's control area.

Since the mechanism is in place to serve project loads and transmit Stampede power outside the SPPC service area, Western needs additional time to evaluate the marketing options and effects of the contractual provisions on repayment of the Washoe Project. The extension of the current nonfirm energy rate is required to allow Western the time to complete its evaluation, develop a marketing program, prepare the appropriate rate studies, and conclude the public process.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve for a period effective October 1, 1994, until September 30, 1995, the existing Rate Schedule SNF–3 for the sale of nonfirm energy generated at the Stampede Powerplant of the Washoe Project.

Issued in Washington, D.C., September 14, 1994.

Bill White,

Deputy Secretary.

[FR Doc. 94–23640 Filed 9–22–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5077–5]

Public Information Visitor Center: Hours Change

AGENCY: Notice of hours change for the Headquarters Public Information Visitor Center.

SUMMARY: Effective October 1, 1994. The hours of operation for the Headquarters Public Information Visitor Center will change to 10:00 a.m. to 4:00 p.m. Monday through Friday (except Federal Holidays). This action is taken as a result of reductions in staff.

FOR FURTHER INFORMATION CONTACT: Gloris J. Butler, Public Information Center Program Manager, Information Management and Services Division at (202) 260–3639.

Linda Garrison,

Acting Chief, Information Access Branch.

[FR Doc. 94–23601 Filed 9–22–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5077–4]

Intent To Grant an Exclusive Patent License

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Grant an Exclusive Patent License.

SUMMARY: Pursuant to 37 CFR part 404, EPA hereby gives notice of its intent to grant an exclusive, royalty-bearing, revocable license to practice the inventions described and claimed in the patents listed below, and all reexamined patents and reissued patents granted in connection with such patents, to Nalco Fuel Tech, a Delaware general partnership, having a principal office at Naperville, Illinois 60566.

U.S. Patent No. 5,021,229 entitled "Reduction of Chlorinated Organics in the Incineration of Wastes," issued June 4, 1991; and

U.S. Patent No. 5,185,134 titled "Reduction of Chlorinated Organics in the Incineration of Wastes," issued February 9, 1993.

The announcement of U.S. Patent No. 5,021,229 as being available for licensing was made in the January 10, 1992 issue of the **Federal Register**, and the announcement of U.S. Patent No. 5,185,134 (application serial no. 07/672,689) as being available for licensing was made in the March 9, 1992 issue of the **Federal Register**. The proposed exclusive license will contain appropriate terms, limitations and conditions to be negotiated in accordance with 35 U.S.C. 209 and the U.S. Government Patent Licensing Regulation at 37 CFR part 404.

EPA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days from the date of this Notice the EPA Patent Counsel receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the above patents should include an application for exclusive or nonexclusive license with the information set forth in 37 CFR 404.8. The EPA Patent Counsel and other EPA officials will review all written responses and then recommend to the Assistant Administrator for Research and Development, for the U.S. Environmental Protection Agency, or his designee, who has been delegated the authority to issue patent licenses under 35 U.S.C. 207, whether to grant the exclusive license.

DATES: Comments to this notice must be received by the EPA Patent Counsel at the address listed below by November 22, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas Gorman, Patent Counsel, Office of General Counsel (Mail Code 2379), U.S. Environmental Protection Agency, Washington, D.C. 20460, telephone (202) 260–1339.

Jean C. Nelson,

General Counsel.

[FR Doc. 94–23602 Filed 9–22–94; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4715–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 5, 1994 Through September 9, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 8, 1994 (59 FR 16807).

Draft EISs

ERP No. D–BLM–A60116–00 Rating EC2, Rangeland Reform 1994 Program, Implementation, Land Acquisition and Permits Approval.

Summary: EPA expressed environmental concerns with the implementation of ecosystem management and standards and guidelines, lack of standard definitions, use of advisory councils, prohibited acts and disqualifications and air quality and conformity under the Clean Air Act. EPA requested that these issues be addressed in the final EIS.

ERP No. D–BLM–K67024–CA Rating EC2, Owen Lake Soda Ash Mining Processing Project, Construction and Operation, COE Section 404, NPDES, Right-of-Way and Conditional-Use Permits, Inyo County, CA.

Summary: EPA expressed environmental concerns due to potential project particulate matter impacts to air quality and the lack of mitigation measures to avoid wetland impacts. EPA requested that these issues be fully discussed in the final EIS.

ERP No. D–FEM–K81021–CA Rating LO, Oakland City Administration Building Project, Construction, Funding and Permit Approval, for Replacement of City Hall in the City Hall Plaza, Oakland, CA.

Summary: EPA expressed a lack of objections but asked that the final EIS more fully discuss the project's conformity under Section 176 of the Clean Air Act.

ERP No. D–FHW–K40204–CA Rating EC2, River Street Widening in Santa Cruz, Improvements from Water Street to Highway 1, Funding and Right-of-Way Grant, Santa Cruz County, CA.

Summary: EPA expressed environmental concerns for potential impacts to water quality from project construction and operation. The final EIS should clearly describe the project's consistency with water quality standards and with the local Basin Plan, as well as consistency with the stormwater permitting provisions of the Clean Water Act.

ERP No. D–NPS–K61131–00 Rating EC2, Lake Mead National Recreation Area, Management of Burros, Implementation, Clark Co., NV and Mohave Co., AZ.

Summary: EPA expressed environmental concerns regarding grazing allotment impacts, funding feasibility and mitigation measures. EPA requested that the final EIS provide additional information on these issues.

ERP No. D–USN–K11055–CA Rating EC2, Lemoore Naval Air Station Realignment, Relocation of 98 Military Construction Projects from Miramar Naval Air Station, Implementation. Lemoore County, CA.

Summary: EPA expressed environmental concerns regarding the lack of a full range of alternatives, air quality impacts and wetland impacts. EPA requested that these issues be fully discussed in the final EIS.

ERP No. D–VAD–K11056–HI Rating EC2, Veterans Affairs Medical and Regional Office Center Relocation to Tripler Army Medical Center, Construction and Renovation, Approval and NPDES Permit, Oahu, HI.

Summary: EPA expressed environmental concerns regarding the lack of a full range of alternatives, air quality impacts and vegetation/wildlife impacts. EPA requested that these issues be fully discussed in the final EIS.

ERP No. DS–BLM–K65139–NV Rating EC2, Stateline Resource Area Land and Resource Management Plan, Additional Alternative, Nye and Clark Counties, NV.

Summary: EPA expressed environmental concerns and the need for additional information on adequate funding and mitigation measures, as well as potential impacts to water quality, soils, biological resources and areas of critical environmental concern.

Final EISs

ERP No. F–AFS–K61025–CA Tallac Historic Site Master Plan, Implementation, Lake Tahoe Management Unit, Special Use Permit, El Dorado County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–FRC–G05047–AR River Mountain Pumped Storage Hydroelectric Project, FERC No. 10455, Construction, Operation and Maintenance, License, Logan County, AR.

Summary: EPA had no objections to the proposed action. Based upon our review of the information presented, we find that all areas of EPA responsibilities and concerns have been adequately addressed in the final EIS.

Dated: September 20, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–23619 Filed 9–22–94; 8:45 am]

BILLING CODE 6560–50–U

[ER-FRL–4715–5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed September 12, 1994 Through September 16, 1994 Pursuant to 40 CFR 1506.9.

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EIS No. 940380, Draft EIS, AFS, ID, Sloan-Kennally Timber Sale, Harvesting and Regenerating Timber Stands, Implementation, Payette National Forest, McCall Ranger District, Valley County, ID, Due: November 7, 1994, Contact: Linda Fitch (208) 634–0400.

EIS No. 940381, Final EIS, NPS, SD, Wind Cave National Park, General Management Plan (GMP), Implementation, Black Hills, Custer County, SD, Due: October 24, 1994, Contact: Wayne Gardner (303) 969–2833.

EIS No. 940382, Final EIS, NPS, SD, Jewel Cave National Monument General Management Plan (GMP), Implementation, Black Hills National Forest, Custer County, SD, Due: October 24, 1994, Contact: Wayne Gardner (303) 969–2833.

EIS No. 940383, Draft EIS, FHW, IN, I–65 Reconstruction Project, from the Ohio River to IN–311 at Sellersburg, Funding and COE Section 404 Permit, Clark County, IN, Due: November 9, 1994, Contact: Steve Cecil (317) 232–5468.

EIS No. 940384, Draft EIS, ICC, ME, Skinner and Vanceboro Rail Line (Docket No. AB–213 Sub No. 4) Abandonment or Discontinuation Project, Implementation, Franklin, Somerset, Piscataquis, Penobscot, Aroostook and Washington Counties, ME, Due: November 7, 1994, Contact: Phillis Johnson-Ball (202) 927–6213.

EIS No. 940385, Draft EIS, AFS, TX, Texas National Forests and Grasslands Revised Land and Resource Management Plan, Implementation, several counties, TX, Due: December 15, 1994, Contact: Alan G. Newman (409) 639–8501.

EIS No. 940386, Final EIS, DOE, OH, Fernald Environmental Management Project (FEMP), Operable Unit 4 Remedial Investigation Feasibility Study, Implementation, City of Cincinnati, Butler and Hamilton Counties, OH, Due: October 24, 1994, Contact: Gary Stegner (513) 648–3153.

EIS No. 940387, Draft EIS, FHW, PA, US 219 Transporation Project, Improvement from I–68 to Somerset and US 219 to Meyersdale, Funding, Somerset County, PA, Due: November 14, 1994, Contact: Manuel A. Mark (717) 782–3461.

EIS No. 940389, Final EIS, EPA, FL, Tampa Bay Area Ocean Dredged Material Disposal Site (ODMDS) Designation for Material Not Suitable for Beach Nourishment and Other Suitable Disposal Options, Offshore Tampa, FL, Due: October 24, 1994, Contact: W. Bowman Crum (404) 347–3555.

EIS No. 940390, Draft Supplement, FHW, TX, TX–161 Construction, Updated Information on I–20 to TX–183, Funding, Coast Guard Section 10 Permit and Possible COE Section 404 Permit, Dallas County, TX, Due: November 7, 1994, Contact: John E. Inabinet (512) 482–7988.

EIS No. 940391, Final EIS, FHW, ND, North Dakota 1806 Transportation Improvements, from the Heart River Bridge in Mandan to Fort Lincoln State Park, Funding and COE 404 Permit, Morton County, ND, Due: October 24, 1994, Contact: George A. Jensen (701) 250–4204.

EIS No. 940392, Final EIS, FHW, CA, CA–180 Transportation Project, Construction, between Temperance Avenue and Cove Road, Funding and COE Section 404 Permit, Fresno County, CA, Due: November 7, 1994, Contact: Dennis A. Scovill (916) 551–1307.

EIS No. 940393, Final EIS, DOI, AK, Institute of Marine Science Infrastructure Improvement, Long-Term Research and Monitoring of the Ecosystem affected by the Exxon Valdez Oil Spill, Funding, Seward, AK, Due: October 24, 1994, Contact: Nancy K. Swanton (907) 271–6622.

EIS No. 940394, Final EIS, FTA, CA, Los Angeles Eastside Corridor Transportation Improvement, Los Angeles Central Business District to just east of Atlantic Boulevard, Funding, NPDES and COE Section 404 Permits, Los Angeles County, CA. Due: October 24, 1994, Contact: Robert Hom (415) 744–3116.

Amended Notices

EIS No. 940349, Draft EIS, UAF, AK, Alaska Military Operations Areas (MOAs) Temporary MOAs Conversion to Permanent MOAs; New MOAs Creation; MOAs Modification; Supersonic Aircraft Operations and Routine Flying Training, Joint/Combined Flying Training and Major Flying Exercises Activities, Elmendorf Air Force Base, AK, Due: October 31, 1994, Contact: Major G. Virgil Hanson (907) 552–1807.

Published FR–08–26–94—Review period extended.

Dated: September 20, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–23618 Filed 9–22–94; 8:45 am]

BILLING CODE 6560–50–U

[OPP–30361B; FRL–4910–1]

Gardens Alive Inc.; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Gardens Alive Incorporation, to register the pesticide product A-Maizing Lawn, containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–5540).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of May 10, 1994 (59 FR 24151), which announced that Gardens Alive Inc., 5100 Schenley Place, Lawrenceburg, IN 47025, had submitted an application to register the pesticide product A-Maizing Lawn (EPA File Symbol 56872–R), containing the active ingredient maize gluten meal at 100 percent, an active ingredient not included in any previously registered product.

The application was approved on June 7, 1994, as A-Maizing Lawn for use on turfgrass and ornamentals (EPA Registration Number 56872–1).

The Agency has considered all required data on risks associated with the proposed use of maize gluten meal, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of maize gluten meal when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on this registration is contained in an EPA Pesticide Fact Sheet on maize gluten meal.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 9, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–23605 Filed 9–22–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5064–3; Region 6]

Odessa Drum Superfund Site: Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Under Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Environmental Protection Agency (EPA has agreed to settle claims for past response and future costs at the Odessa Drum Superfund Site in Odessa, Ector County, Texas, with the following parties:

3M Co. (Minnesota Mining and Manufacturing Company)
A. A. Oil Field Service, Inc.
Accron Chemical Company (acquired by DX Distributors, Inc.)
Aero Mod Service
Airmaster Equipment Corporation
American Warehouses, Inc.
Amoco Corporation
ARCO
Armco National Supply Company
Ashland Chemical Company
Avis (Avis Lube Fast Oil Change Centers)
Baker Oil (Baker Oil Treating)
Baroid
BASF Corporation
Bell Petroleum Services, Inc.
Big Lake Ener-Chem, Inc.
Big Three Industrial (presently known as Big Three Industries, Inc.)
Buckman Laboratories, Inc.
C. J. Ward
C.N.C. West, Inc.
Calgon Corporation
CECOS International, Inc.
Certified Printing
Chemcentral Corporation
Chemlink
Chemrex Coatings Corporation (presently known as Rexcel Coatings Corporation)
Chemron, Inc.
Chevron U.S.A.
City of Midland
Conoco
Continental Products
Cosden Oil & Chemical Company
Crown Cork and Seal Company, Inc.
Crown Research & Chemical Corporation
D–A
Dearborn Chemical
Delta Distributors, Inc.
Delta Water Labs
Donco Chemical Corp.
Dow Chemical Company
Dowell Schlumberger Incorporated
Dresser Industries
Dupont
Dynamit Nobel
EG & G Automotive Research, Inc.
Eddins-Walcher Company
El Paso Natural Gas Company
Emery Chemicals (presently known as Henkel Corporation)
Enchem-Energy Chemicals
Energy Industries, Inc.
Enerlink
Ethox Chemicals, Inc.
Ethyl Corporation (Albemarle Corporation)
Exxon Chemicals Company
EZEFLO (Twenty-First Century Paramount, Inc.)
Fina Oil and Chemical Company
Foamex L.P.
Frank Ligon Oil Company
GAF Chemical Corporation
Great Western Chemical Company
Halliburton Energy Services
Hor Key Oil Co., Inc.
I. C. Compound
IES CO
IMC Fertilizer, Inc.
IMCO Services
Industrial Maintenance Contractors, Inc.
Ingram Cactus Company
Interox America (presently known as Solvay Interox)
Jack Walstad Oil Company
Kent Lubrication Centers (presently known as Avis Lube Fast Oil Change Centers)
Kirby West (presently known as Scott Fetzer Company)
Leamco Services, Inc.
Liberty Reversing Units, Inc.
Lofland Company
Marathon Oil Company
McKesson Corporation
Meridian Oil Hydrocarbons, Inc.
Mobil Oil Corporation
Monachem, Inc.
Nalco Chemical Company
Natco Chemicals
National Chemical
NL Treating
Nutro Products Corporation
Odessa American
OXY NGL, Inc.
Panther Industries, Inc.
Parkem Industrial
Parker & Parsley Development Company (formerly known as Parsley Petroleum Company)
Petrochem Corporation
Phelps Dodge Corporation/ Phelps Dodge Refining Corporation
Phillips Pipe Line Company
Power Resources, Inc.
Pro-Kem, Inc.
Quandrant Chemical Corporation
R&K oil Company
Reilly Universal (presently known as Reilly Industries, Inc.)
Research Oil Center (Oil Center Research, Inc.)
Rexene Products (El Paso Products)
Safety-Kleen Corporation
Shell Oil Company
Shell Western E & P, Inc.
Shield, Inc.
Sonora-Ozona Oil Company
Specialty Research & Sales, Inc./Tom Brown, Inc.
Tech Chem Products, Inc.
Teraco, Inc.
Texaco Exploration & Production, Inc.
Texas Refinery Corporation
TMS Chemical Company
Trey Trucks
Tri-Gas, Inc.
Triton Energy Corporation
Unichem International (presently known as Simon (New Mexico), Inc.)
Union Carbide Corporation
Union Oil Company

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Unocal Chemicals Division
Varn Products Co., Inc.
W. F. J. Drilling Tools, Inc.
Weskem, Inc.
West Texas Equipment Company
West Texas Gas, Inc.
Western Environmental Management Corporation, Ltd.
Western Pacesetters
Witco Corporation
Woolley Tool and Manufacturing

EPA will consider public comments on the proposed settlement for 30 days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Mr. Carl Bolden, Superfund Enforcement Branch, Cost Recovery Section (6H–EC), U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6713.

Written comments may be submitted to the person above by October 24, 1994.

Dated: August 23, 1994

W. B. Hathaway,

Acting Regional Administrator.

[FR Doc. 94–23603 Filed 9–22–94; 8:45 am]

BILLING CODE 6560–60–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by P.L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

TIME AND PLACE: Wednesday, October 12, 1994, from 9:30 a.m. to 12:00 noon. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue NW., Washington, DC 20571.

AGENDA: The meeting agenda will include a discussion of the following topics: Roundtable Discussion—"Project Finance"; and Next Steps/Other Topics.

PUBLIC PARTICIPATION: The meeting will be open to public participation; and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Barbara Lane, Room 1112, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566–8982, not later than October 11, 1994. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to October 5, 1994, Barbara Lane, Room 1112, 811 Vermont Avenue NW., Washington, DC 20571, Voice: (202) 566–8982 or TDD: (202) 535–3913.

FOR FURTHER INFORMATION CONTACT: For further information, contact Barbara Lane, Room 1112, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566–8982.

Tamzen C. Reitan,

Vice President, Management Services and Human Resources.

[FR Doc. 94–23526 Filed 9–22–94; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficiency of Assets to Satisfy All Claims of Certain Financial Institutions in Receivership

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: In accordance with the authorities contained in 12 U.S.C. 1821(c), the Federal Deposit Insurance Corporation (FDIC) was duly appointed receiver for the financial institutions specified in **SUPPLEMENTARY INFORMATION.**

The FDIC has determined that the proceeds which can be realized from the liquidation of the assets of the below listed receivership estates are insufficient to wholly satisfy the priority claims of depositors against the receivership estates. Therefore, upon satisfaction of secured claims, depositor claims and claims which have priority over depositors under applicable law, no amount will remain or will be recovered sufficient to allow a dividend, distribution or payment to any creditor of lessor priority, including but not limited to, claims, of general creditors. Any such claims are hereby determined to be worthless.

FOR FURTHER INFORMATION CONTACT: Tina A. Lamoreaux, Counsel, room H–11027, Legal Division, FDIC, 550 17th Street NW., Washington, DC 20006 Telephone: (202) 736–3134.

SUPPLEMENTARY INFORMATION: Financial Institutions in Receivership Determined to Have Insufficient Assets to Satisfy All Claims.

ManilaBank California, #4330, Los Angeles, CA

Huntington Pacific Thrift & Loan, #4552, Huntington Beach, CA.

Dated: September 19, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–23543 Filed 9–22–94; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Fifth Third Bancorp, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 17, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Fifth Third Bancorp, Cincinnati, Ohio; to acquire Mutual Federal Savings Bank, Miamisburg, Ohio; and thereby engage in permissible savings association activities pursuant to § 225.25(b)(a) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SunTrust Banks, Inc. (Company), an affiliate bank service corporation, Atlanta, Georgia; to acquire SunTrust Service Corporation, Atlanta, Georgia, through its subsidiaries, SunBank/Gulf Coast, Sarasota, Florida, by increasing its ownership of Company, to 2.14 percent; SunBank/Tallahassee, N.A., Tallahassee, Florida, by increasing its ownership to .63 percent; The First National Bank of Florence, Florence, Alabama, by increasing its ownership to .12 percent; Trust Company Bank of South Georgia, N.A., Albany, Georgia, by increasing its ownership to .55 percent; and Trust Company Bank of North Georgia, Gainesville, Georgia, by increasing its ownership to .11 percent, and thereby engage in providing data processing services, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Banks, Inc., Clayton, Missouri; to acquire River Valley Holding, Inc., Chicago, Illinois, and thereby acquire River Valley Savings Bank, Peoria, Illinois, and thereby engage in such business as would be done by a savings and loan association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 19, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–23557 Filed 9–22–94; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 13, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to engage *de novo* through its subsidiary Norwest Agricultural Credit, Inc., Sioux Fall, South Dakota, in establishing a *de novo* office in Mesa, Arizona, and engage in agricultural lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y. Additionally, Norwest Agricultural Credit, Inc., request authority to engage in this activity on a nationwide basis.

Board of Governors of the Federal Reserve System, September 19, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board

[FR Doc. 94–23558 Filed 9–22–94; 8:45 am]

BILLING CODE 6210–01–F

Principal National Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 17, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Principal National Bancorp, Inc., Pontiac, Illinois; to acquire 100 percent of the voting shares of Republic Savings Bank, Piper City, Illinois, an interim Illinois savings bank being used to facilitate the conversion and acquisition of Home Guaranty Savings Association, Piper City, Illinois, an Illinois savings and loan association.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Truman Bancorp, Inc., Brentwood, Missouri; to acquire at least an additional 21.68 percent, for a total of 54.13 percent, of the voting shares of U.S. National Bank of Clayton, St. Louis, Missouri.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Aspen Valley Bancshares, Inc., Aspen, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Aspen Valley Bank, N.A., Aspen, Colorado, in organization.

2. FirstBank Holding Company of Colorado, ESOP, Lakewood, Colorado; to become a bank holding company by acquiring 27.4 percent of the voting shares of FirstBank Holding Company of Colorado, Lakewood, Colorado, and thereby indirectly acquire FirstBank of Arvada, National Association, Arvada, Colorado; First Bank of Aurora, Nation[illegible]

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Association, Aurora, Colorado; FirstBank of Avon, Avon, Colorado; FirstBank of South Boulder, National Association, Boulder, Colorado; FirstBank of Boulder, National Association, Boulder, Colorado, FirstBank of Breckenridge, National Association, Breckenridge, Colorado, FirstBank of Castle Rock, National Association, Castle Rock, Colorado; FirstBank of Cherry Creek, National Association, Denver, Colorado; FirstBank of Denver, N.A., Denver, Colorado; FirstBank of Longmont, Longmont, Colorado; FirstBank of Northern Colorado, Fort Collins, Colorado; FirstBank of Tech Center, National Association, Englewood, Colorado; FirstBank of Colorado, National Association, Lakewood, Colorado; FirstBank of South Jeffco, Littleton, Colorado; FirstBank of Lakewood, National Association, Lakewood, Colorado; FirstBank of Littleton, National Association, Littleton, Colorado; FirstBank of Arapahoe County, National Association, Littleton, Colorado; FirstBank of Silverthorne National Association, Silverthorne, Colorado; FirstBank of Vail, Vail, Colorado; FirstBank North, National Association, Westminster, Colorado; FirstBank of Wheatridge, National Association, Wheat Ridge, Colorado; FirstBank, National Association, Palm Desert, California

3. Tilden Bankshares, Inc., Tilden, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of The Tilden State Bank, Tilden, Nebraska.

Board of Governors of the Federal Reserve System, September 19, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board

[FR Doc. 94-23559 Filed 9-22-94, 8:45 am]

BILLING CODE 6210-01-F

Q Bancorp, Inc.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94-22964) published on page 47634 of the issue for Friday, September 16, 1994.

Under the Federal Reserve Bank of Minneapolis heading, the entry for Q Bancorp, Inc., is revised to read as follows:

1. Q Bancorp, Inc., Geraldine, Montana; to engage *de novo* in making, acquiring or servicing loans or other extensions of credit for its own account or the account of others, pursuant to § 225.25(b)(1) of the Board's Regulation Y. The geographic scope for these activities is a 35 mile radius of Geraldine, Montana.

Comments on this application must be received by October 6, 1994.

Board of Governors of the Federal Reserve System, September 19, 1994

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-23560 Filed 9-22-94, 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Docket C-3524]

The American Association of Language Specialists; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the professional association of interpreters, based in Washington, D.C., from fixing or otherwise interfering with any form of price or fee competition among language specialists in the future; from maintaining any agreement or plan to limit or restrict the specialists working time or condition; for ten years, from making statements at an association meeting concerning fees; and, for three years, from compiling and distributing aggregate information concerning fees already charged.

DATES: Complaint and Order issued August 31, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Michael McNeely, FTC/S-3308, Washington, D.C. 20580. (202) 326-2904.

SUPPLEMENTARY INFORMATION: On Wednesday, February 23, 1994, there was published in the **Federal Register**, 59 FR 8628, a proposed consent agreement with analysis In the Matter of The American Association of Language Specialists, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45).]

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94-23579 Filed 9-22-94, 8:45 am]

BILLING CODE 6750-01-M

[Docket C-3525]

American Society of Interpreters; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the professional association of interpreters, based in Washington, D.C., from fixing or otherwise interfering with any form of price or fee competition among language specialists in the future; from maintaining any agreement or plan to limit or restrict the specialists working time or condition; for ten years, from making statements at an association meeting concerning fees; and, for three years, from compiling and distributing aggregate information concerning fees already charged.

DATES: Complaint and Order issued August 31, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Michael McNeely, FTC/S-3308, Washington, D.C. 20580. (202) 326-2904.

SUPPLEMENTARY INFORMATION: On Wednesday, February 23, 1994, there was published in the **Federal Register**, 59 FR 8628, a proposed consent agreement with analysis In the Matter of American Society of Interpreters, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the compliant in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721, 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45).

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94-23578 Filed 9-22-94; 8:45 am]

BILLING CODE 6750-01-M

[File No. 941 0108]

Columbia/HCA Healthcare Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would permit, among other things, the hospital company to complete its acquisition of Medical Care America, but would require it to divest the Alaska Surgery Center within twelve months to a Commission-approved entity. If the transaction is not completed in the designated time frame, the respondents would be required to permit the Commission to appoint a trustee. In addition, the consent agreement would require the respondent, for ten years, to obtain Commission approval before acquiring an interest worth more than $1 million in any outpatient surgical services facility in Anchorage, Alaska, and before selling such an interest to any entity that operates an outpatient surgical services facility in Anchorage, Alaska.

DATES: Comments must be received on or before November 22, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Mark Horoschak, FTC/S-3115, Washington, D.C. 20580. (202) 326-2756.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission"), having initiated an investigation into the proposed acquisition of Medical Care America, Inc. by Columbia/HCA Healthcare Corporation ("Columbia/HCA"), and it now appearing that Columbia/HCA ("proposed respondent") is willing to enter into an agreement containing an order to divest certain assets and to cease and desist from making certain acquisitions, and providing for other relief:

It is hereby agreed by and between the proposed respondent by its duly authorized officer and attorney, and counsel for the Commission that:

1. The proposed respondent Columbia/HCA is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 201 West Main Street, Louisville, Kentucky, 40202.

2. The proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. The proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to divest and to cease and desist, and other relief in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. The proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or this agreement may be used to vary or contradict the terms of the order.

7. The proposed respondent has read the proposed complaint and order contemplated hereby. The proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. The proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered That as used in this order, the following definitions shall apply:

A. "Respondent" or "Columbia/HCA" means Columbia/HCA Healthcare Corporation, its partnerships, joint ventures, companies, subsidiaries,

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

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divisions, groups and affiliates controlled by Respondent, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

B. The "Acquisition" means the acquisition by Columbia/HCA of Medical Care America, Inc., including the Alaska Surgery Center.

C. "Outpatient surgery facility" means a health facility which has as a function the provision of outpatient surgery services. Outpatient surgery facilities include general acute care hospitals that offer outpatient surgery services, as well as ambulatory surgery centers that are not part of a general acute care hospital. The term "outpatient surgery facility" shall not include a physician's, other healthcare professional's, or group practice's office or offices that provide outpatient surgery services for use solely by that physician, healthcare professional, or group practice, so long as such facility is not licensed as an ambulatory surgical facility by the State of Alaska.

D. "Outpatient surgery services" means facilities, personnel, and tools and equipment used by doctors in performing surgical procedures on patients who are not confined for more than 23 hours in an acute care hospital or other facility for recovery following the surgery. Outpatient surgery services include operating rooms, recovery rooms, surgical tools and devices, nurses, anesthesia equipment and personnel.

E. To "operate an outpatient surgery facility" means to own, lease, manage, or otherwise control or direct the operations of an outpatient surgery facility, directly or indirectly.

F. "Affiliate" means any entity whose management and policies are controlled in any way, directly or indirectly, by the person with which it is affiliated.

G. "Person" means any natural person, partnership, corporation, company, association, trust, joint venture, or other business or legal entity, including any governmental agency.

H. "Commission" means the Federal Trade Commission.

I. "Schedule A Assets" means assets acquired by the respondent and listed on the attached Schedule A.

J. "Viability and competitiveness" means that the Schedule A Assets are capable of functioning independently and competitively.

K. "Assets and Businesses" include, but are not limited to, all assets, properties, businesses, rights, privileges, contractual interests, licenses, and goodwill of whatever nature, tangible and intangible, including, without limitation, the following:

1. All real property interests (including fee simple interests and real property leasehold interests, whether as lessor or lessee), together with all buildings, improvements and fixtures located thereon, all construction in progress thereat, all appurtenances thereto, and all licenses and permits related thereto (collectively, the "Real Property");

2. All contracts and agreements with physicians, other health care providers, unions, third party payors, HMOs, customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, cosigners, and consignees (collectively, the "contracts");

3. All machinery, equipment, fixtures, vehicles, furniture, inventories, and supplies (other than such inventories and supplies as are used in the ordinary course of business during the time that Columbia/HCA owns the assets) (collectively, the "Personal Property");

4. All research materials, technical information, management information systems, software, software licenses, inventions, trade secrets, technology, know how, specifications, designs, drawings, processes, and quality control data (collectively, the "Intangible Personal Property");

5. All books, records and files, excluding, however, the corporate minute books and tax records of Columbia/HCA and its Affiliates; and

6. All prepaid expenses.

II

It is further ordered That:

A. Respondent shall divest, absolutely and in good faith, within twelve (12) months of the date this order becomes final, the Schedule A Assets, and shall also divest such additional assets and businesses ancillary to the Schedule A Assets and effect such arrangements as are necessary to assure the marketability and the viability and competitiveness of the Schedule A Assets.

B. Respondent shall divest the Schedule A Assets only to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Schedule A Assets is to ensure the continuation of the Schedule A Assets as an ongoing, viable outpatient surgery facility and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. Respondent shall comply with all terms of the Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I. Said Agreement shall continue in effect until such time as respondent has fulfilled the divestiture requirements of this order or until such other time as the Agreement to Hold Separate provides.

D. Pending divestiture of the Schedule A Assets, respondent shall take such actions as are necessary to maintain the viability and competitiveness and the marketability of the Schedule A Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Schedule A Assets, except for ordinary wear and tear.

E. A condition of approval by the Commission of the divestiture shall be a written agreement by the acquirer of the Schedule A Assets that it will not sell for a period of ten (10) years from the date of divestiture, directly or indirectly, through subsidiaries, partnerships, or otherwise, without the prior approval of the Commission, the Schedule A Assets to any person who operates, or will operate immediately following the sale, any other outpatient surgery facility in the Municipality of Anchorage, Alaska.

III

It is further ordered That:

A. If the respondent has not divested, absolutely and in good faith and with the Commission's prior approval, the Schedule A Assets, in accordance with this order, within twelve (12) months of the date this order becomes final, the Commission may appoint a trustee to divest the Schedule A Assets. In the event that the Commission or the Attorney General brings an action for any failure to comply with this order or in any way relating to the Acquisition, pursuant to 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, the respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it for any failure by the respondent to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this order, the respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of the respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Schedule A Assets.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.B.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed trustee, by the court; provided however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Schedule A Assets, or to any other relevant information as the trustee may request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to the respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer as set out in Paragraph II of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of the respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Schedule A Assets.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative, or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Schedule A Assets.

12. The trustee shall report in writing to the respondent and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered That, for a period of ten (10) years from the date this order becomes final, respondent shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any person presently engaged in, or within the two years preceding such acquisition engaged in, operating an outpatient surgery facility in the Municipality of Anchorage, Alaska;

B. Acquire any assets used, or previously used, in the Municipality of Anchorage, Alaska (and still suitable for use) for operating an outpatient surgery facility from any person presently engaged in, or within the two years preceding such acquisition engaged in, operating an outpatient surgery facility in the Municipality of Anchorage, Alaska;

C. Enter into any agreement or other arrangement to obtain direct or indirect ownership, management, or control of any outpatient surgery facility, or any part thereof, in the Municipality of Anchorage, Alaska, including but not limited to, a lease of or management contract for any such outpatient surgery facility;

D. Acquire or otherwise obtain the right to designate directly or indirectly directors or trustees of any outpatient surgery facility in the Municipality of Anchorage, Alaska.

E. Permit any outpatient surgery facility it operates in the Municipality of Anchorage, Alaska to be acquired by any person that operates, or will operate immediately following such acquisition, any other outpatient surgery facility in the Municipality of Anchorage, Alaska.

Provided, however, that such prior approval shall not be required for:

1. The establishment of a new outpatient surgery service or facility (other than as a replacement for an outpatient surgery service or facility, not operated by respondent, in the Municipality of Anchorage, Alaska, pursuant to an agreement or understanding between respondent and the person operating the replaced service or facility);

2. Any transaction otherwise subject to this Paragraph IV of this order if the fair market value of (or, in case of an asset acquisition, the consideration to be paid for) the outpatient surgery facility or part thereof to be acquired does not

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exceed one million dollars ($1,000,000); or

3 The acquisition of products or services in the ordinary course of business.

V

It is further ordered That, for a period of ten (10) years from the date this order becomes final, respondent shall not, directly or indirectly, through subsidiaries, partnerships or otherwise, without providing advance written notification to the Commission, consummate any joint venture or other arrangement with any other outpatient surgery facility in the Municipality of Anchorage, Alaska, for the joint establishment or operation of any new outpatient surgery facility, or part thereof, in the Municipality of Anchorage, Alaska. Such advance notification shall be filed immediately upon respondent's issuance of a letter of intent for, or execution of an agreement to enter into, such a transaction, whichever is earlier.

Said notification required by this Paragraph V of this order shall be given on the Notification and Report Form set forth in the appendix to part 803 of title 16 of the Code of Federal Regulations (as amended), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent is not required to observe any waiting period for said notification required in this Paragraph V.

Respondent shall comply with reasonable requests by the Commission staff for additional information concerning any transaction subject to this Paragraph V of this order, within fifteen (15) days of service of such requests.

Provided, however, that no transaction shall be subject to this Paragraph V of this order if:

1. The fair market value of the assets to be contributed to the joint venture or other arrangement by outpatient surgery facilities not operated by respondent does not exceed one million dollars ($1,000,000);

2. The service, facility, or part thereof to be established or operated in a transaction subject to this order is to engage in no activities other than the provision of the following services: laundry; data processing; purchasing; materials management; billing and collection; dietary; industrial engineering; maintenance; printing; security; records management; laboratory testing; personnel education; testing, or training; or health care financing (such as through a health maintenance organization or preferred provider organization); or

3. Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a, or prior approval by the Commission is required, and has been requested, pursuant to Paragraph IV of this order.

VI

It is further ordered That, for a period of ten (10) years from the date this order becomes final, respondent shall not permit all or any substantial part of any outpatient surgery facility it operates in the Municipality of Anchorage, Alaska to be acquired by any other person (except pursuant to the divestiture required by Paragraph II of this order) unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this order, which agreement respondent shall require as a condition precedent to the acquisition.

VII

It is further ordered That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until the respondent has fully complied with Paragraph II of this order, the respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraph II of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraph II of the order, including a description of all substantive contracts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall also include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and it is complying with Paragraphs IV, V, and VI of this order.

VIII

It is further ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the order.

IX

It is further ordered That, for the purpose of determining or securing compliance with this order, the respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the respondent relating to any matters contained in this order; and

B. Upon five days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent.

Schedule A

The assets to be divested ("Schedule A Assets") shall consist of, without limitation, all Assets and Businesses relating to the Alaska Surgery Center, which were acquired by Columbia/HCA pursuant to the Acquisition (including all improvements, additions and enhancements made to such assets prior to divestiture).

* * * * *

It is further provided That to the extent that any of the contracts, warranties with respect to Personal Property, licenses or other interests in the Intangible Personal Property, or other Schedule A Assets:

(A) Also applies to facilities or operations other than those included in the Schedule A Assets, then during the period (the "Contract Period") beginning on the closing date of the Acquisition and ending on the earlier of (1) the expiration of the term of the given contract or other right and (2) the second anniversary of Columbia/HCA's divestiture of the Schedule A Assets, Columbia/HCA, at the request of the owner or acquirer of the Schedule A Assets, shall use its reasonable best efforts to cause the services, property, or other benefits provided or made available under such a contract or other Schedule A Asset to continue to be available to the owner or acquirer of the Schedule A Assets on terms and conditions substantially similar to those presently in effect; or

(B) Requires the consent of a third party in order to transfer or assign such Contract or other Schedule A Asset, then Columbia/HCA, at the request of the owner or acquirer of the Schedule A Assets, shall use its reasonable best efforts to obtain such consent and, if such consent cannot be obtained, to cooperate in any reasonable arrangement with the owner or acquirer of the Schedule A Assets designed to provide to such owner or acquirer the benefits of the given contract or other Schedule A Asset during the Contract Period on terms and conditions substantially similar to those presently in effect.

Appendix I

Agreement to Hold Separate

This Agreement to Hold Separate ("Agreement") is by and between Columbia/HCA Healthcare Corporation ("respondent" or "Columbia/HCA"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky 40202; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

Whereas, on or about May 23, 1994, Columbia agreed to acquire all of the stock of Medical Care America, Inc. ("Medical Care America"), and thereby acquire Alaska Surgery Center, an outpatient surgical facility in Anchorage, Alaska, and other Medical Care America assets, including 95 other outpatient surgical facilities (the "Acquisition"); and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), which would require the divestiture of certain assets listed in Schedule A of the Consent Order ("Schedule A Assets"), including the Alaska Surgery Center in Anchorage, Alaska, the Commission must place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Schedule A Assets during the period prior to the final acceptance and issuance of the Consent Order by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Schedule A Assets as described in Paragraph II of the Consent Order and the Commission's right to have Alaska Surgery Center continue as a viable independent outpatient surgical facility; and

Wheres, the purpose of this Agreement and the Consent Order is to:

(i) Preserve Alaska Surgical Center as a viable independent outpatient surgical facility pending its divestiture, and

(ii) Remedy any anticompetitive effects of the Acquisition;

Whereas, respondent's entering into this Agreement shall in no way be construed as an admission by respondent that the Acquisition is illegal; and

Whereas, respondent understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything in this Agreement.

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from respondent with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Schedule A Assets pursuant to the Consent Order, as follows:

1. Respondent agrees to execute the Agreement Containing Consent Order and be bound by the attached Consent Order.

2. Respondent agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a or 2.b, it will comply with the provisions of paragraph 3 of this Agreement:

a. Three [3] business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. The day after the divestiture required by the Consent Order has been completed.

3. Respondent will hold the Schedule A Assets as they are presently constituted separate and apart on the following terms and conditions:

a. The Schedule A Assets, as they are presently constituted, shall be held separate and apart and shall be operated independently of respondent (meaning here and hereinafter, Columbia/HCA excluding the Schedule A Assets), except to the extent that respondent must exercise direction an control over the Schedule A Assets to assure compliance with this Agreement or the Consent Order, and except as otherwise provided in this Agreement.

b. Prior to, or simultaneously with its acquisition of the stock of Medical Care America, respondent shall organize a distinct and separate legal entity, either a corporation, limited liability company, or general or limited partnership ("New Company") and adopt constituent documents for the New Company that are not inconsistent with other provisions of this Agreement or the Consent Order. Respondent shall transfer all ownership and control of all Schedule A Assets to the New Company.

c. The board of directors of the New Company, or, in the event respondent organizes an entity other than a corporation, the governing body of the entity ("New Company Board") shall have five members. Respondent may elect the members of the New Company Board; provided, however, that the New Company Board shall include no more than two members who are a director, officer, employee, or agent of respondent ("the respondent's New Company Board member(s)"). The New Company Board shall include a chairman who is independent of respondent and is competent to assure the continued viability and competitiveness of the Schedule A Assets. Meetings of the New Company Board during the term of this Agreement shall be stenographically transcribed and the transcripts retained for two (2) years after the termination of this Agreement.

d. Respondent shall not exercise direction or control over, or influence directly or indirectly, the Schedule A Assets, the independent Chairman of the Board of the New Company, the

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New Company Board, or the New Company or any of its operations or businesses; provided, however, that respondent may exercise only such direction and control over the New Company as is necessary to assure compliance with this Agreement or the Consent Order.

e. Respondent shall maintain the viability and competitiveness and the marketability of the Schedule A Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their viability and competitiveness or their marketability.

f. Except for the respondents New Company Board members, respondent shall not permit any director, officer, employee, or agent of respondent to also be a director, officer, or employee of the New Company.

g. The New Company shall be staffed with sufficient employees to maintain the viability and competitiveness of the Schedule A Assets, which employees shall be selected from Alaska Surgery Center's existing employee base and may also be hired from sources other than Alaska Surgery Center.

h. With the exception of the respondent's New Company Board Members, respondent shall not change the composition of the New Company Board unless the independent chairman consents. The independent chairman shall have power to remove members of the New Company Board for cause. Respondent shall not change the composition of the management of the New Company except that the New Company Board shall have the power to remove management employees for cause.

i. If the independent chairman ceases to act or fails to act diligently, a substitute chairman shall be appointed in the same manner as provided in Paragraph 3.c. of this Agreement.

j. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations, defending or prosecuting litigation, or negotiating agreements to divest assets, or complying with this Agreement or the Consent Order, respondent shall not receive or have access to, or use or continue to use, any material confidential information not in the public domain about the New Company or the activities of the New Company Board. Nor shall the New Company or the New Company Board receive or have access to, or use or continue to use, any material confidential information not in the public domain about respondent and relating to respondent's outpatient surgical facilities in Anchorage, Alaska. Respondent may receive on a regular basis aggregate financial information relating to the New Company necessary and essential to allow respondent to prepare United States consolidated financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to respondent from sources other than the New Company, and includes, but is not limited to, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.)

k. Except as permitted by this Agreement, the respondent's New Company Board members shall not in their capacity as New Company Board members, receive material confidential information and shall not disclose any such information received under this Agreement to respondent, or use it to obtain any advantage for respondent. The respondent's New Company Board members shall enter a confidentiality agreement prohibiting disclosure of material confidential information. The respondent's New Company Board members shall participate in matters that come before the New Company Board only for the limited purposes of considering a capital investment or other transaction exceeding $250,000, approving any proposed budget and operating plans, and carrying out respondent's responsibilities under this Agreement and the Consent Order. Except as permitted by this Agreement, the respondent's New Company Board members shall not participate in any matter, or attempt to influence the votes of the other members of the New Company Board with respect to matters, that would involve a conflict of interest if respondent and the New Company were separate and independent entities.

l. If necessary to assure compliance with the terms of this Agreement, the Consent Agreement, or the Consent Order, respondent may, but is not required to, assign an individual to the New Company for the purpose of overseeing such compliance ("on-site person"). The on-site person shall have access to all officers and employees of the New Company and such records of the New Company as he deems necessary and reasonable to assure compliance. Such individual shall enter into a confidentiality agreement prohibiting disclosure of material confidential information.

m. Any material transaction of the New Company that is out of the ordinary course of business must be approved by a majority vote of the New Company Board; provided that the New Company shall engage in a transaction, material or otherwise, that is precluded by this Agreement.

n. Respondent shall provide the New Company with sufficient working capital to operate at its current rate of operation, and to carry out any capital improvement plans for the New Company which have already been approved.

o. During the period commencing on the date this Agreement is effective and terminating on the earlier of (i) twelve months after the date the Consent Order becomes final, or (ii) the date contemplated by subparagraph 2.a (the "Initial Divestiture Period"), respondent shall make available for use by he New Company funds sufficient to perform all necessary routine maintenance to, and replacements of, the Schedule A Assets ("normal repair and replacement"). After termination of Initial Divestiture Period and until the earlier of the date contemplated by either subparagraph 2.a or 2.b, respondent shall make available for use by the New Company each year an amount not less than that required for normal repair and replacement. Provided, however, that in any event, respondent shall provide the New Company with such funds as are necessary to maintain the viability and competitiveness and marketability of the Schedule A Assets.

4. Should the Federal Trade Commission seek in any proceeding to compel respondent to divest any of the Schedule A Assets, as provided in the Consent Order, or to seek any other injunctive or equitable relief for any failure to comply with the Consent Order or this Agreement, or in any way relating to the Acquisition, as defined in the draft complaint, respondent shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Respondent also waives all rights to contest the validity of this Agreement.

5. To the extent that this Agreement requires respondent to take, or prohibits respondent from taking, certain actions that otherwise may be required or prohibited by contract, respondent shall abide by the terms of this Agreement or the Consent Order and shall not assert as a defense such contract requirements in a civil penalty action brought by the Commission to enforce the terms of this Agreement or Consent Order.

6. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to its principal office, respondent shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of respondent and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession, or under the control of respondent relating to compliance with this Agreement;

b. Upon five (5) days notice to respondent, and without restraint or interference from respondent, to interview officers or employees of respondent, who may have counsel present, regarding any such matters.

7. This Agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, a proposed consent order from Columbia/HCA Healthcare Corporation ("Columbia"). The agreement would settle charges by the Federal Trade Commission that Columbia's proposed acquisition of outpatient surgery facilities from Medical Care America, Inc. ("MCA") would have violated Section 7 of the Clayton Act, and Section 5 of the Federal Trade Commission Act, if it had been carried out.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or issue and serve the agreement's proposed order.

Columbia owns and operates acute care hospitals in various localities, including an acute care hospital in the Anchorage, Alaska area which provides outpatient surgery services. MCA owns and operates ambulatory surgery centers in various localities, including Anchorage, Alaska. The complaint accompanying the proposed consent order concerns the proposed acquisition's impact upon competition for outpatient surgery services in Anchorage. According to the complaint, Columbia owns and operates Alaska Regional Hospital in Anchorage which provides outpatient surgery services. MCA owns and operates the Alaska Surgery Center in Anchorage.

The consent order, if issued in final form by the Commission, would settle charges that the acquisition may substantially lessen competition in Anchorage. The complaint alleges that Columbia and MCA are competitors for outpatient surgery services in that market. The outpatient surgery services market in Anchorage, according to the complaint, is already highly concentrated, and entry by new competitors would be difficult. The complaint alleges that the Commission has reason to believe that the acquisition would have anticompetitive effects in the Anchorage outpatient surgery services market, in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates such anticompetitive effects.

The order accepted for public comment contains provisions requiring the divestiture by Columbia of the MCA outpatient surgery facility, Alaska Surgery Center, and related assets in Anchorage, Alaska. The purpose of the divestiture is to ensure the continuation of the Alaska Surgery Center as an ongoing, viable outpatient surgery facility independent of Columbia, and to remedy the lessening of competition in the Anchorage outpatient surgery services market resulting from the acquisition.

The proposed order requires Columbia to obtain the approval of the Commission for the divestiture of the Alaska Surgery Center. Under the terms of the order, the required divestiture must be completed within twelve months of the date the order becomes final. If the required divestiture were not completed within the twelve-month period, Columbia would consent to the appointment of a trustee, who would have twelve additional months to effect the divestiture. The hold separate agreement executed in conjunction with the consent agreement requires Columbia, until the completion of the divestiture or as otherwise specified, to hold separate and preserve all of the assets and businesses of the Alaska Surgery Center.

The proposed order provides that approval by the Commission of the divestiture shall be conditioned upon the agreement by the acquirer that, for ten years from the date of the divestiture, it will not sell, without the prior approval of the Commission, to another person operating (or in the process of acquiring) any outpatient surgery facility in Anchorage, Alaska.

The order would prohibit Columbia from acquiring any outpatient surgery facility in Anchorage without the prior approval of the Federal Trade Commission. It would also prohibit Columbia from transferring, without prior Commission approval, any outpatient surgery facility it operates in Anchorage to another person operating (or in the process of acquiring) an outpatient surgery facility in the area. These provisions, in combination, would give the Commission authority to prohibit any substantial combination of the outpatient surgery services operations of Columbia with those of any other outpatient surgery facility in Anchorage, unless Columbia convinced the Commission that a particular transaction would not endanger competition in Anchorage. The provision would not apply to acquisitions or sales where the value of the transferred assets is $1 million or less, and the provisions would expire ten years after the order becomes final.

For ten years, the order would prohibit Columbia from transferring all or any substantial part of any outpatient surgery facility in Anchorage to another party without first filing with the Commission an agreement by the transferee to be bound by the order.

The purpose of this analysis is to invite public comment concerning the proposed order, to assist the Commission in its determination whether to make the order final. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

The agreement is for settlement purposes only and does not constitute an admission by Columbia that its proposed acquisition would have violated the law, as alleged in the Commission's complaint.

Donald S. Clark,

Secretary.

[FR Doc. 94-23583 Filed 9-22-94; 8:45 am]

BILLING CODE 6750-01-M

[File No. 901 0032]

Medical Staff of Good Samaritan Regional Medical Center; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final

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Commission approval, would prohibit, among other things, the members of the medical staff from agreeing, or attempting to enter into an agreement, to prevent or restrict the services offered by Good Samaritan, the clinic, or any other health care provider by refusing to deal with others offering health care services, or by withholding patient referrals.

DATES: Comments must be received on or before November 22, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St., and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mark Horoschak, FTC/S–3115, Washington, DC 20580. (202) 326–2756.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the Medical Staff of Good Samaritan Regional Medical Center, hereinafter referred to as "proposed respondent," and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between the proposed respondent and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Medical Staff of Good Samaritan Regional Medical Center is an unincorporated association, organized and existing under the laws of the State of Arizona, with its mailing address at 1111 E. McDowell Road, Phoenix, Arizona 85062.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. The representatives and counsel of proposed respondent have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, the Medical Staff of Good Samaritan Regional Medical Center will be required to file compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered That for purposes of this order, the following definitions shall apply:

A. "Medical Staff" means the Medical Staff of Good Samaritan Regional Medical Center, its successors, assigns, officers, directors, committees, agents, employees, and representatives.

B. "Good Samaritan" means Samaritan Health Systems, formerly operated as two separate corporations (Samaritan Foundation and its subsidiary Samaritan Health Services), doing business as Good Samaritan Regional Medical Center, a non-profit corporation with its principal offices located at 1111 E. McDowell Road, Phoenix, Arizona 85062, its subsidiaries, affiliates, successors, assigns, officers, administrators, directors, committees, agents, employees, and representatives.

C. "SPC" means Samaritan Physicians Center, Inc., an Arizona Corporation, its subsidiaries, affiliates, successors, assigns, officers, administrators, directors, committees, agents, employees, and representatives.

D. "Integrated joint venture" means a joint arrangement to provide health care services in which physicians who would otherwise be competitors pool their capital to finance the venture, by themselves or together with others, and share a substantial risk of loss from their participation in the venture.

II

It is ordered That respondent Medical Staff, directly or indirectly, or through any device, shall cease and desist from entering into, maintaining, or continuing, or attempting to enter into, maintain, or continue, any agreement or understanding, either express or implied, between or among its members or with other physicians, providers of health care services, medical societies, hospitals, or medical staffs, for the purpose or with the effect of preventing or restricting the offering or delivery of health care services by Good Samaritan, SPC or any other provider of health care services, including any agreement to:

A. Refuse to deal, threaten to refuse to deal, or attempt to induce others to refuse to deal or threaten to refuse to deal; and

B. Withhold patient referrals, threaten to withhold patient referrals, or attempt to induce others to withhold patient referrals or threaten to withhold patient referrals.

III

A. *It is further ordered* That this order shall not be constructed to prohibit the Medical Staff or its members from offering to participate or participating with other physicians, pursuant to the Medical Staff's bylaws, in bona fide utilization review, quality assurance, or credentialling activities in connection with the provision of physician services.

B. *It is further ordered* That this order shall not be construed to prohibit any individual member of the Medical Staff from entering into an agreement or combination with any other physician or health care practitioner with whom the individual Medical Staff member practices in partnership or in a professional corporation, or who is employed by the same person as said Medical Staff member.

C. *It is furthered ordered* That this order shall not be construed to prohibit respondent Medial Staff from forming, facilitating the formation of, or participating in, an "integrated joint venture" that limits the number of participating physicians, as long as the physicians participating in the joint venture remain free to deal with other persons or entities other than through the joint venture.

IV

It is further ordered That the Medical Staff shall:

A. Within thirty (30) days after the date this order becomes final, mail a copy of this order and the accompanying compliant to each member of the Medical Staff as of the date this order becomes final, and for a period of three (3) years after the date this order becomes final, distribute to each new member of the Medical Staff a copy of this order and the accompanying compliant within thirty (30) days after he or she is officially admitted to the Medical Staff.

B. For a period of three (3) years after the date this order becomes final, maintain records adequate to describe in detail any action taken in connection with the activities covered by this order and, upon reasonable notice, make such records available to the Federal Trade Commission staff for inspection and copying.

C. Within sixty (60) days after the date this order becomes final, annually for three (3) years on the anniversary of the date this order becomes final, and at such other times as the Federal Trade Commission may by written notice require, file with the Federal Trade Commission a report setting forth in detail the manner and form in which it has compiled and is complying with this order.

D. Notify the Commission at least thirty (30) days prior to any proposed change in the respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change in the association which may affect compliance obligations arising out of this order.

Medical Staff of Good Samaritan Regional Medical Center Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Medical Staff of Good Samaritan Regional Medical Center ("the Medical Staff"). The Agreement settles charges by the Federal Trade Commission that the Medical Staff restrained competition by, among other things, combining or conspiring to threaten to boycott Good Samaritan Regional Medical Center ("Good Samaritan") in order to induce termination of Good Samaritan's involvement with a multispecialty physicians' clinic.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The purpose of this analysis is to facilitate public comment on the agreement. The analysis is not intended to constitute an official interpretation of either the proposed complaint or the proposed consent order or to modify their terms in any way.

The Complaint

Under the terms of the agreement, a proposed complaint would be issued by the Commission along with the proposed consent order. The proposed complaint alleges that members of the Medical Staff joined in a common plan to threaten to boycott Good Samaritan in order to induce termination of Good Samaritan's involvement with the Samaritan Physician Center multispecialty physicians' clinic ("SPC"). At various times during, and in furtherance of, the conspiracy, the Medical Staff allegedly:

A. Threatened to boycott Good Samaritan by representing to Good Samaritan that doctors would jointly withhold patient admissions if Good Samaritan continued its relationship with SPC; and

B. Solicited physicians on the Medical Staff to threaten to withhold patient admissions from Good Samaritan if Good Samaritan continued its relationship with SPC.

The complaint alleges that the effects of the Medical Staff's conduct have been to restrain trade unreasonably and hinder competition in the provision of health care services in Maricopa County, Arizona in the following ways, among others:

A. Depriving consumers of the price and quality benefits of competition between SPC and independent fee-for-service practitioners;

B. Depriving consumers of the full array of services that Good Samaritan sought to offer consumers in Maricopa County;

C. Hindering SPC's ability to offer health care services to consumers by raising its costs, reducing its efficiency, and delaying or preventing SPC from offering specialty and subspecialty services;

D. Limiting competition among physicians in Maricopa County to the extent that physicians agreed not to compete with each other, but rather act only on collectively determined terms, in deciding whether to admit patients to Good Samaritan, to refer patients to SPC physicians, or otherwise to deal with Good Samaritan; and

E. Raising impediments to entry into the physician services market by innovative or nontraditional providers of health care services.

The Proposed Consent Order

The proposed consent order would prohibit the Medical Staff from entering into, or attempting to enter into, any agreement or understanding between or among its members or with other physicians, providers of health care services, medical societies, hospitals, or medical staffs, for the purpose or with the effect of preventing or restricting the offering or delivery of health care services.

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The proposed consent order specifically would prohibit any agreement to:

A. Refuse to deal, threaten to refuse to deal, or attempt to induce others to do so, and

B. withhold patient referrals, threaten to withhold patient referrals, or attempt to induce others to do so.

The proposed order would not prohibit:

1. The Medical Staff or its members from participating with other physicians, pursuant to the Medical Staff's bylaws, in bona fide utilization review, quality assurance, or credentialling activities in connection with the provision of physician services;

2. Any individual member of the Medical Staff from entering into an agreement with any other physician or health care practitioner with whom the individual Medical Staff member practices in partnership or in a professional corporation, or who is employed by the same person as said Medical Staff member; or

3. The Medical Staff from forming, facilitating the formation of, or participating in, an "integrated joint venture" that limits the number of participating physicians, as long as the physicians participating in the joint venture remain free to deal with other persons or entities other than through the joint venture.

The Medical Staff agreed to the order for settlement purposes only, and the Medical Staff's agreement to the order does not constitute an admission by the Medical Staff that the law has been violated as alleged in the complaint.

Benjamin I. Berman,

Acting Secretary.

Statement of Commissioner Roscoe B. Starek, III

I do not agree with the Commission's decision to accept the consent agreement in this matter because I do not find the evidence sufficient to support reason to believe that the proposed respondent violated the law.

The centerpiece of this case is a resolution adopted by the medical staff of Good Samaritan Regional Medical Center concerning plans under consideration by the Medical Center to develop a multispecialty medical clinic that would compete with staff members' private practices. That resolution—approved on November 14, 1988, following certain medical staff members' complaints about plans for the clinic—declared that those plans "were instituted without the approval of any [m]edical [s]taff member or committee." In the wake of the resolution, the Medical Center decided to "freeze" the development and planned expansion of the clinic, and eventually the Medical Center severed its financial and other ties to the clinic.

Neither the language of the medical staff resolution nor the other information unearthed in this investigation establishes to my satisfaction the validity of the core allegation here—that in order to end the Medical Center's involvement with the clinic, medical staff members combined to threaten a boycott of the Medical Center (which they would effect by referring patients to other area hospitals). Although individual physicians on the medical staff made clear to the Medical Center's administration their displeasure with the Medical Center's role in support of the clinic, the November 14, 1988 resolution and surrounding events are insufficient to show an agreement to threaten a boycott. This case rests almost exclusively—and in my view precariously—on the purported boycott victims' characterization of the medical staff's collective state of mind. Because of the ambiguities and weaknesses that plague the evidence in the present case, I respectfully dissent from the decision to accept the consent agreement.

[FR Doc. 94-23581 Filed 9-22-94; 8:45 am]
BILLING CODE 6750-01-M

[File No. 922 3236]

Hyde Athletic Industries, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Massachusetts footwear marketer from misrepresenting the extent to which any footwear is made in the United States, and would require the respondent to maintain materials relied upon for any country of origin representations and to distribute copies of the Commission order to its operating divisions and certain company officials.

DATES: Comments must be received on or before November 22, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, IL 60603. (312) 353-8156.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with the accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Hyde Athletic Industries, Inc., a corporation ("proposed respondent"), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Hyde Athletic Industries, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Hyde Athletic Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office or place of business at 13 Centennial Industrial Park Drive, Peabody, Massachusetts 01960.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent, Hyde Athletic Industries, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any footwear in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the extent to which any such footwear is made in the United States.

Provided, however, that a representation that any such footwear is made in the United States will not be in violation of this Order so long as all, or virtually all, of the component parts of the footwear are made in the United States and all, or virtually all, of the labor in assembling the footwear is performed in the United States.

Provided further, however, respondent will not be in violation of this Order in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any such footwear, where such footwear is made or assembled in one country in whole or in part of materials made in another country, if the country of origin representation for such footwear is made through any of the following truthful representations:

A. "Made (or assembled) in 'X' (country) of 'Y' (country) components"; or

B. "Made (or assembled) in 'X' (country) of domestic and foreign components"; or

C. "Made (or assembled) in 'X' (country) of primarily (or mostly) foreign and some domestic components"; or

D. "Made (or assembled) in 'X' (country) of primarily (or mostly) domestic and some foreign components"; or

E. "Made (or assembled) in 'X' (country) of foreign components;"

F. "Built in 'X' (country) of imported components."

For purposes of this provision, where the unqualified term "domestic" is used to indicate components made in the United States, such components shall comprise a significant portion of the production costs of the footwear.

II

It is further ordered that respondent may continue to deplete its existing inventory of footwear and footwear packaging printed or labeled prior to the date of service of this Order without violating the terms of this Order, provided that respondent itself does not sell or distribute any such inventory more than ninety (90) days after the date of service of this Order.

III

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representations; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered that the respondent shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation or placement of advertisements, promotional materials, product labels or other such sales materials covered by this Order.

V

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

VI

It is further ordered that respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order

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from respondent Hyde Athletic Industries, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns country of origin claims made by the respondent for its "Saucony" brand footwear, which appeared in respondent's advertising and on labelling for certain of its footwear. The Commission's complaint charges that respondent represented that Saucony footwear is made in the United States, that is, that all, or virtually all, of the component parts of the footwear are made in the United States, and all, or virtually all, of the labor in assembling the footwear is performed in the United States. The complaint alleges that this claim is false and misleading because a substantial amount of Saucony footwear is assembled in foreign countries of foreign component parts, and a substantial amount of Saucony footwear assembled in the United States consists largely of foreign component parts.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting, directly or by implication, the extent to which any footwear is made in the United States. Part I provides, however, that a made in the USA claim will not violate the order if all or virtually all of the parts and labor are of domestic origin. It also contains a safe harbor provision that specifies language respondent can use when making a country or origin disclosure for footwear that is made or assembled in one country in whole or in part of materials made in another country.

Part II of the proposed consent order provides that the respondent may continue to deplete its existing inventory of footwear and footwear packaging printed or labeled prior to the date of service of this order, provided that the respondent itself does not sell or distribute that inventory more than ninety (90) days after the date of service of the order.

The remaining parts of the proposed consent order require the respondent to maintain materials relied upon in disseminating any country of origin representations, to distribute copies of the order of each of its operating divisions and to certain company officials, to notify the Commission of certain changes in corporate structure, and to file one or more compliance reports.

The standard set forth in the complaint and proposed order for an unqualified "Made in the USA" (or the like) claim is that all or virtually all of the parts and labor used in the manufacture of the product must be of domestic origin. This standard is consistent with Commission case precedent,[1] certain other statutes enforced by the Commission,[2] and extrinsic evidence obtained by the Commission regarding consumer perceptions of "Made in the USA" claims.[3] The Commission would be interested in receiving any information relevant to its current standard for "Made in USA" claims, including information on the competitive and other effects of this standard and on consumer perceptions of country of origin claims.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 23582 Filed 9-22-94; 8:45 am]

BILING CODE 6750-01-M

[1] See, e.g., *Windsor Pen Corp.*, 64 F.T.C. 454 (1964); *Joseph H. Meyer Bros.*, 47 F.T.C. 49 (1950); *Vulcan Lamp Works, Inc.*, 32 F.T.C. 7 (1940). The Commission's advisory opinions have also set forth this standard. See, e.g., Advisory Opinion No. 215, Misrepresenting Hoist as "Made in U.S.A.," 73 F.T.C. 1321 (1968).

[2] Wool Products Labeling Act, 15 U.S.C. 68-68j (1973 & Supp. 1994); Textile Fiber Products Identification Act, 15 U.S.C. §§ 70-70k (1972 & Supp. 1994).

[3] *Study on Country of Origin Advertising* (Feb. 1991). The Commission has determined to place this study on the public record for review by interested parties.

[Docket C-3523]

Kiwi Brands Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, Kiwi Brands Inc., a subsidiary of Sara Lee Corporation, to divest its Esquire and Griffin brands of shoe care products and related assets: to Hickory Industries, within one month of the date the order becomes final; or to a Commission approved acquirer, within twelve months of the date the order becomes final. If the sale is not accomplished within the specified time, the Commission would be entitled to appoint a trustee to sell the assets to a Commission approved acquirer in a manner approved by the Commission. In addition, for a period of ten years, the respondents are required to obtain prior Commission approval before acquiring any stocks or assets of any entity engaged in chemical shoe care products.

DATES: Complaint and Order issued August 24, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Howard Morse, FTC/S-3627, Washington, D.C. 20580, (202) 326-2949.

SUPPLEMENTARY INFORMATION: On Wednesday, July 13, 1994, there was published in the **Federal Register**, 59 FR 35730, a proposed consent agreement with analysis in the matter of Kiwi Brands Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18).

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94-23580 Filed 9-22-94; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Termination of Temporary Deferment of Activities Relating to Biologics Submissions and Notice of New Mailing Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the new address for submissions and identifying the exact period which action on pending submissions was temporarily deferred. In a notice published in the **Federal Register** of January 13, 1993 (58 FR 4173), FDA announced that the Document Control Center of the Center for Biologics Evaluation and Research (CBER) moved from various locations in Rockville and Bethesda, MD to the Woodmont Office Center, 1401 Rockville Pike, Rockville, MD. During the period required for relocation of the office, which began on January 6, 1993, and ended on January 22, 1993, the agency temporarily deferred submissions subject to CBER review and approval, and the review period, if any, on pending submissions was suspended. FDA also requested that sponsors voluntarily refrain from filing submission during this period. Normal operations resumed on January 25, 1993. FDA is also announcing the installation of automated systems to make information available to the public and to help callers identify the new telephone numbers of CBER staff involved in review activities.

ADDRESSES: All submissions for CBER review should now be addressed to the new location: Food and Drug Administration, Center for Biologics Evaluation and Research, Document Control Center (HFM-99), Woodmont Office Center, suite 200N, 1401 Rockville Pike, Rockville, MD 20852-1448.

FOR FURTHER INFORMATION CONTACT: Mark A. Elengold, Center for Biologics Evaluation and Research (HFM-11), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-594-2000.

SUPPLEMENTARY INFORMATION: CBER is responsible for many FDA activities implementing the Federal Food, Drug, and Cosmetic Act, and section 351 of the Public Health Service Act (42 U.S.C. 262), including:

(1) Developing policy and procedures governing the premarket approval, review, and evaluation of biological products;

(2) Receiving, reviewing, evaluating, and taking appropriate action on investigational new drug applications (IND's) and investigational device exemption applications (IDE's) for biological products;

(3) Receiving, reviewing, evaluating, and taking appropriate action on product license applications (PLA's) and establishment license applications (ELA's) submitted for biological products;

(4) Receiving, reviewing, evaluating, and taking appropriate action on new drug applications (NDA's), premarket approval applications (PMA's), and premarket notifications (510k's) for which CBER has been assigned responsibility; and

(5) Receiving, reviewing, evaluating, and taking appropriate action on recommendations concerning denial, suspension, and revocation of PLA's and ELA's.

In an effort to consolidate CBER offices, in January 1993, FDA moved various CBER offices from locations in Bethesda, MD and Rockville, MD to Woodmont Office Center, 1401 Rockville Pike, Rockville, MD. During the move, CBER was unable to start or continue work on new and existing submissions and reports. FDA temporarily deferred action on the items listed above, and requested that sponsors voluntarily refrain from filing submissions during this period, which ended on January 22, 1993. All normal review operations resumed on January 25, 1993.

All submissions for CBER review should now be addressed as follows:

Food and Drug Administration, Center for Biologics Evaluation and Research, Document Control Center (HFM-99), Woodmont Office Center, suite 200N, 1401 Rockville Pike, Rockville, MD 20852-1448.

In addition, IND's, PLA's, ELA's, and amendments (supplements) should be addressed to the application division within each office having primary jurisdiction over the product, as follows: Office of Blood Research and Review, Division of Blood Applications, (HFM-370), 301-594-2012; Office of Vaccine Research and Review, Division of Vaccine and Related Products Applications (HFM-475), 301-594-2090; Office of Therapeutics Research and Review, Division of Application Review and Policy (HFM-585), 301-549-5656; and the Office of Establishment Licensing and Product Surveillance, Division of Establishment Licensing (HFM-205), 301-594-2049.

NOTE: Submissions for CBER Review Should No Longer Be Addressed to the Director, CBER.

Additionally, to assist the public in obtaining information, FDA has installed several automated systems. To obtain new telephone numbers of CBER staff, or request copies of guidance documents, an automated attendant device can be reached at 301-594-1800. The CBER FAX Information System, 301-594-1939, can be called from a FAX machine with a touch-tone telephone attached or built in. This system has current CBER organizational listing and charts, as well as recent guidance documents. Finally, CBER documents can be requested by sending Internet mail to CBER_INFO@A1.CBER.FDA.GOV. A list of documents available by return Internet mail can be obtained by sending a message to DOC_LIST@A1.CBER.FDA.GOV.

Dated: September 19, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94-23617 Filed 9-22-94; 8:45 am]

BILLING CODE 4160-01-F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS), has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96-511).

1. *Type of Request:* Extension; *Title of Information Collection:* Methodology for Estimating Waiver Costs of Health Care Financing Administration Demonstration Projects; *Form No.:* HCFA-482; *Use:* The information collection is intended to provide guidance to individuals responsible for the preparation of waiver cost estimates for HCFA demonstrations. These estimates are used in analysis of potential costs and benefits associated with implementing a proposed policy. *Frequency:* Annually; *Respondents:* Small businesses or organizations, State or local governments, businesses or other for profit, nonprofit institutions; *Estimated Number of Responses:* 50; *Average Hours Per Response:* 80; *Total Estimated Burden Hours:* 4,000.

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2. *Type of Request:* Reinstatement; *Title of Information Collection:* Medicare Collection of Medical Information on Home Health Service-Intermediary Request for Medical Information on Claims to be Processed; *Form Nos.:* HCFA–485, –486, –487, –488; *Use:* This information is used by the fiscal intermediaries to assure that reimbursement is made to home health agencies only for services that are covered under Medicare Part A or Part B. The medical information contained in these forms and other medical records describes the patient and level of medical needs and/or services provided. These records are submitted with the claims or as requested; *Frequency:* On occasion; *Respondents:* Businesses or other for profit, and small businesses or organizations; *Estimated Number of Responses:* 6,804,000 (reporting), 6,800 (recordkeeping); *Average Hours Per Response:* .25 (reporting), 250 (recordkeeping); *Total Estimated Burden Hours:* 3,090,000.

3. *Type of Request:* Reinstatement; *Title of Information Collection:* End Stage Renal Disease (ESRD) Application and Survey and Certification Report; *Form No.:* HCFA–3427; *Use:* Part I of this form is a facility identification and screening measurement used to initiate the certification and recertification of ESRD facilities. Part II is completed by the Medicaid/Medicare State survey agency to determine facility compliance with ESRD conditions for coverage; *Frequency:* Annually; *Respondents:* State or local governments; *Estimated Number of Responses:* 1,253; *Average Hours Per Response:* 2.41; *Total Estimated Burden Hours:* 3,019.7.

4. *Type of Request:* Revision; *Title of Information Collection:* Medicaid Drug Rebate Program—Manufacturers; *Form No.:* HCFA–367; *Use:* The Omnibus Budget Reconciliation Act of 1990 requires drug manufacturers to enter into and have in effect a rebate agreement with the Federal Government for States to receive funding for drugs dispensed to Medicaid recipients; *Frequency:* Quarterly; *Respondents:* Businesses or other for profit; *Estimated Number of Responses:* 461; *Average Hours Per Response:* 87.33; *Total Estimated Burden Hours:* 40,260.

5. *Type of Request:* Reinstatement; *Title of Information Collection:* Municipal Health Services Cost Report; *Form No.:* HCFA–255; *Use:* In order to determine the cost of the clinical services being provided, it is necessary to determine the direct and indirect costs incurred by the participating clinics for the routine and ancillary cost centers. This form is being used to report the costs to the participating clinics providing the covered services, as well as to gather data to evaluate the demonstration; *Frequency:* Semiannually; *Respondents:* State or local governments; *Estimated Number of Responses:* 15; *Average Hours Per Response:* 34; *Total Estimated Burden Hours:* 510.

6. *Type of Request:* New; *Title of Information Collection:* Survey of Applicants to the Program of All-inclusive Care for the Elderly; *Form No.:* HCFA–R–165; *Use:* This survey will collect data on functional status, service utilization and out-of-pocket costs, and satisfaction for a sample of applicants to the program. This information will be used to analyze the decision to participate and, potentially, the impact of the program; *Frequency:* Semiannually; *Respondents:* Individuals or households; *Estimated Number of Responses:* 3,727; *Average Hours Per Response:* 1.176; *Total Estimated Burden Hours:* 4,382.500.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 3001, Washington, DC 20503.

Date: September 14, 1994.

Kathleen Larson,

Acting Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 94–23282 Filed 9–22–94; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3778–N–03]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact William Molster, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll-free information line at 1–800–927–7588 for detailed instructions or write a letter to William Molster at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366–4246; Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; Dept. of Energy: Tom Knox, Acting Team Leader, Facilities Planning and Acquisition Branch, FM–20, Forrestal Bldg., Room 6H–058, Washington, DC 20585; (202) 586–1191; (These are not toll-free numbers).

Dated: September 16, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 09/23/94

Suitable/To Be Excessed

Buildings (by State)

Oregon

Yaguina Head Lighthouse
860 Lighthouse Drive
Newport Co: Lincoln OR 97365–
Landholding Agency: DOT
Property Number: 879430003
Status: Underutilized
Comment: 300 sq. ft. tower and needs repair, 4.52 acres lighthouse area, historic property

Unsuitable Properties

Buildings (by State)

Hawaii

Bldg. 463—Storage Warehouse
Barbers Point
Honolulu Co: Honolulu HI 96862–5050
Landholding Agency: Navy
Property Number: 779430019
Status: Excess
Reason: Extensive deterioration

Nevada

Residence
237 Southeast Street
Fallon Co: Churchill NV 89406–
Landholding Agency: Interior
Property Number: 619430013
Status: Unutilized
Reason: Extensive deterioration

New Hampshire

NPS Tract 191–13
Former Holzworth Property
Wentworth Co: Grafton NH 03282–
Landholding Agency: Interior
Property Number: 619430014
Status: Excess
Reason: Extensive deterioration

New Mexico

Bldgs. 9252, 9268
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number 419430002
Status: Unutilized
Reason: Extensive deterioration

Tract 102–32
Vance House Residence
Grants Co: Cibola NM 87020–
Location: OSO Ridge 25 miles south of Grants on Highway 53
Landholding Agency: Interior
Property Number: 619430012
Status: Unutilized
Reason: Extensive deterioration

New York

Rochester Harbor Light
Greece Township Co: Monroe NY
Landholding Agency: DOT
Property Number: 879430008
Status: Excess
Reason: Secured Area, Extensive deterioration

North Carolina

Bldg. AS–299, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430020
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 854, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430021
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 883, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430022
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. TC–174, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430023
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. TC–179, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430024
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 935, Cherry Point
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 7794300
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Facility 1972, Cherry Point
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779430026
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

[FR Doc. 94–23413 Filed 9–22–94; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF INTERIOR

Bureau of Land Management

[CO–078–4333–04–261A]

Temporary Travel Restrictions for the Sloane Peak Area

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Order of area, road and trail use restriction.

SUMMARY: This order, issued under the authority of 43 CFR 8364.1 and 43 CFR

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8341.2(a), limits travel in certain public lands in the vicinity of Basalt to non motorized means. The existing Off Highway Vehicle (OHV) use "Open" designation on approximately 2,520 acres is modified as a temporary measure while a Resource Area-wide travel management plan is developed.

The affected public land is in the Glenwood Springs Resource Area, Grand Junction District, and is generally located in T. 8 S., R. 86 W. Sec. 8, 9, 10, 15, 16, 21, and Sec. 22 6th Principal Meridian; Pitkin and Eagle counties.

EFFECTIVE DATES: The restriction shall be effective immediately until rescinded or modified by the Authorized Officer.

SUPPLEMENTARY INFORMATION: Public access to affected area was acquired by Pitkin County in 1993 through purchase of private land at the base of the Sloane Peak trail. The purchase was made to provide non-motorized access to BLM and National Forest lands accessed by said trail, and a gate was installed on County property to restrict motor vehicle use. Since the access was acquired both non-motorized and motorized use has been attracted and use conflicts have been reported by visitors. Current OHV use designations for the area, established in the Glenwood Springs Resource Area Resource Management Plan, 1984 (Rev. 1988), allow motorized vehicle use on and off the roads and trails year round. With the acquired public access and increased public use by motorized and non-motorized travel, current regulations could result in damage to vegetation, soil, visual, cultural and wildlife resources from uncontrolled use. Additionally, the existing trails are narrow, with steep grades and deteriorated conditions which are not safe for general public use and unrestricted motor vehicle travel.

The area, roads, and trails affected by this order will be posted with appropriate regulatory signs. Information including maps of the restricted area is available in the Resource Area Office and District Office at the addresses shown below.

The Sloane Peak Area described herein will be subject to the following use restrictions:

All motorized vehicle use will be prohibited year round, including snowmobiles operating on snow. Non-motorized mechanized vehicle use shall be allowed on designated routes, but travel off the designated routes shall be prohibited. Persons who are exempt from the restrictions include:

(1) Any Federal, State, or local officers engaged in fire, emergency and law enforcement activities; (2) BLM employees engaged in official duties; (3) Persons authorized to operate motorized vehicles within the restricted area.

PENALTIES: Violations of this restriction order are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Michael S. Mottice, Area Manager, Glenwood Springs Resource Area, 50629 Highway 6/24, P.O. Box 1009, Glenwood Springs, CO 81602; (303) 945–2341. Mark Morse, District Manager, Grand Junction District, 2815 H Road, Grand Junction, Colorado 81506; (303) 244–3050.

Mark Morse,

Grand Junction District Manager.

[FR Doc. 94–23525 Filed 9–22–94; 8:45 am]

BILLING CODE 4333–04–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–015–94–4210–04: GP4–281]

Realty Action

AGENCY: Bureau of Land Management, Interior, Lakeview District.

ACTION: Exchange of Public Lands in Lake County, Oregon (Serial #OR 45456).

The following described lands have been determined as suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

T.35S., R.24E., W.M., Oregon
Sec.
27: SW1/4;
28: SE1/4;
33: NE1/4, E1/2NW1/4, NE1/4SW1/4;
34: W1/2NE1/4, W1/2, W1/2SE1/4, SE1/4SE1/4.
T.36S., R.24E., W.M., Oregon
Sec.
3: Lots 1 thru 9, SE1/4NW1/4, E1/2SW1/4;
4: S1/2NE1/4, E1/2SW1/4NW1/4, E1/2NW1/4SW1/4, SW1/4SW1/4, E1/2SW1/4, SE1/4;
10: Lots 1, 2, 7, 8, E1/2NW1/4.

Comprising 2,073.52 acres of public land.

The lands described above are being included in an existing exchange action (Serial #OR 45456), which was published in the **Federal Register** June 29, 1990, Vol. 55, No. 126, Pages 26789 and 26790, and are necessary in order to equalize offered private and selected public land values.

The included lands to be transferred from the United States will be subject to the following reservations, terms and conditions.

Reservations:

(1) A right-of-way thereon for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

(2) All oil, gas and geothermal resources appurtenant to the land shall be reserved to the United States, with the exception of T.35S., R.24E., W.M., Oregon, Section 34 the W1/2E1/2 and the SE1/4SE1/4, in which the mineral estate is privately owned.

Subject to:

(1) Those rights for county road purposes pursuant to right-of-way OR 28897, 60 foot width, issued under Section 501 of the Federal Land Policy and Management Act of October 1976, to Lake County, Oregon.

(2) Those rights for electrical power distribution purposes pursuant to right-of-way OR 9158, 20 foot width, issued under the Act of 3/4/1911, 43 U.S.C 9, to Surprise Valley Electric.

(3) Those rights for water ditch purposes pursuant to right-of-way OR 20642, 20 foot width, issued under Section 501 of the Federal Land Policy and Management Act of October 1976, to Flynn Brothers.

(4) Those temporary rights for hay storage purposes pursuant to Land Use Permit OR 44133, 2.5 acres, issued under Section 302 of the Federal Land Policy and Management Act of October 1976, to Warren C. Laird.

(5) Those temporary rights for hay storage purposes pursuant to Land Use Permit OR 43040, 4.2 acres, issued under section 302 of the Federal Land Policy and Management Act of October 1976, to Flynn Brothers.

Publication of this notice segregates the aforementioned public lands and those lands previously identified by notice published in the **Federal Register** June 29, 1990, Vol. 55, No. 126, Pages 26789 and 26790, from appropriation under the public land laws, including the mining laws, but not from exchange under the above cited statute for two (2) years from the date of this publication. The segregative effect of this notice on the public lands, shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination of the segregation or two (2) years from the date of its publication, whichever occurs first.

Further information concerning the exchange, including the environmental assessment and the original notice of realty action is available for review at the Bureau of Land Management, Lakeview Resource Area Office, 1000 South Ninth Street, Lakeview, Oregon 97630, (503) 947–2177.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Lakeview Resource Area Manager, Bureau of Land Management, at the above address. Objections will be reviewed by the District Manager who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: September 9, 1994.

Scott R. Florence,

Manager Lakeview Resource Area.

[FR Doc. 94–23519 Filed 9–22–94; 8:45 am]

BILLING CODE 4310–33–P

[AZ–040–4410–03]

Availability of a Decision Record for the Land Tenure Amendment to the Safford District Resource Management Plan, Safford District, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Safford District, United States Department of Interior, Bureau of Land Management has prepared a decision record for the land tenure amendment and environmental assessment to the Safford District Resource Management Plan. The amendment proposes the following changes:

1. Modify the land tenure decisions for public lands within the district made in the Safford District Resource Management Plan. Specifically, this amendment will identify additional lands for potential disposal, lands for retention, lands desired for acquisition and delete some lands previously identified for acquisition.

2. Include land tenure decisions for lands in the proposed Cienega Creek Long-Term Management Area.

3. Incorporate decisions in the Phoenix District Resource Management Plan, pertaining to lands transferred to Safford District, into the Safford District Resource Management Plan. The Decision Record complies with regulations developed by the Council on Environmental Quality for implementing the National Environmental Policy Act of 1969 (40 CFR part 1500).

DATES: September 7, 1994.

ADDRESSES: 711 14th Avenue, Safford, Arizona 85546.

FOR FURTHER INFORMATION CONTACT: Mike McQueen, Planning and Environmental Coordinator, Safford District Office, 711, 14th Avenue, Safford, Arizona 85546; telephone number (602) 428–4040.

Dated: September 7, 1994.

William T. Civish,

District Manager.

[FR Doc. 94–23521 Filed 9–22–94; 8:45 am]

BILLING CODE 4310–32–M

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Little Colorado Spinedace for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U. S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Little Colorado spinedace (*Lepidomeda vittata*) which the Service listed as a threatened species on September 16, 1987 (52 FR 35040). The range of this fish is restricted to north-flowing tributaries of the Little Colorado River in Apache, Navajo, and Coconino counties in eastern Arizona. Collected in 1871–1874 by the Wheeler expedition, this species was believed to be abundant throughout the upper Little Colorado River and cool water tributaries thereto that rise from the northern slopes of the White Mountains and the Mollogon Rim. Since 1960, populations throughout the species' known historic range have fluxuated greatly. Populations are now known to exist in the upper Little Colorado mainstem, East Clear Creek, Chevelon Creek, Nutriosa and Rudd Creek. Modifications within the Little Colorado River and tributaries and watershed have brought about reduced flows and degraded water quality. These factors plus introduction of non-native fish are believed to be major threats to the species continued existence in its Creek, native habitats. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 22, 1994, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Project Leader, Parker Fisheries Assistance Office, 60911 Highway 95, Parker, Arizona 85344. Written comments and materials regarding the plan should be addressed to the Project Leader at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Charles O. Minckley, U. S. Fish and Wildlife Service, telephone (602) 3667–4785 or at the above address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self–sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site–specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Goals set forth in the Little Colorado spinedace recovery plan are to: identify actions considered necessary to protect existing populations, restore depleted and extirpated populations, protect and enhance existing habitats and ensure that the species' continued existence in the wild is ensured. Once these goals have been achieved, the species will be proposed for delisting. Tasks believed necessary to achieve these goals are contained in the recovery plan.

The Little Colorado spinedace recovery plan has been reviewed by the appropriate Service staff in Region 2. The plan will be finalized and approved following incorporation of comments and materials received during this comment period.

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Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority

The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: September 16, 1994.

Robyn Thorson,

Acting Regional Director.

[FR Doc. 94–23550 Filed 9–22–94; 8:45 am]

BILLING CODE 4310–55–P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub No. 5) (94–4)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved a fourth quarter 1994 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The fourth quarter RCAF (Unadjusted) is 1.045. The fourth quarter RCAF (Adjusted) is 0.822, a decrease of 1.3 percent from the third quarter 1994 RCAF (Adjusted) of 0.833. Maximum fourth quarter 1994 RCAF rate levels may not exceed 98.7 percent of maximum third quarter 1994 RCAF rate levels.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: John C. Pertino, (202) 927–6229 or Robert C. Hasek, (202) 927–6239. TDD for hearing impaired (202) 927–5721.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have an adverse economic impact on a substantial number of small entities. The economic impact on small entities is not likely to be significant within the meaning of the Regulatory Flexibility Act.

Decided: September 16, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons and Morgan.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–23593 Filed 9–22–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32563]

Luzerne and Susquehanna Railway Company—Lease and Operation Exemption—Certain Lines of Luzerne County Rail Corporation, F&L Realty, Inc., and Pocono Northeast Railway, Inc.

The Luzerne and Susquehanna Railway Company (L&SR), a noncarrier, has filed a notice of exemption to lease and operate certain rail lines of the Luzerne County Rail Corporation (LCRC) in Luzerne and Lackawanna Counties, PA, which rail lines LCRC leases with an option to purchase, pending full funding, from lessors F & L Realty, Inc., and Pocono Northeast Railway, Inc., as follows: (1) The Brownsville Industrial Track, between milepost 0.0, at Hillside, and milepost 1.0, at Brownsville, a distance of 1.0 miles; (2) The Dunmore Secondary Track, between milepost 6.5, at Avoca, and milepost 8.6, at Rocky Glen, a distance of 2.1 miles; (3) The Suscon Running Track, between milepost 154.5, at Suscon, and milepost 156.6, at Suscon, a distance of 2.1 miles; (4) The Wilkes-Barre Secondary, between milepost 169.2, at Ashley, and milepost 185.5, at Pittston, a distance of 16.3 miles; (5) The Avoca Industrial Track, between milepost 1.8, at No. 7 Junction, and milepost 6.5, at Avoca, a distance of 4.7 miles, including the connection with the track of Conrail, between "LB" junction and the switch of the Dunmore Secondary Track, a distance of 0.123 miles, and the Langcliff Connecting Track, between milepost 0.0, at Duryea, and the connection with the Delaware & Hudson (CP) in the middle of York Avenue, at milepost 0.867, a distance of 0.867 miles; (6) The West Pittston Running Track, between milepost 0.0, at West Pittston, and milepost 3.0, at Harding, a distance of 3.0 miles, and between milepost 186.4, at West Pittston, and milepost 190.2, at Wyoming, a distance of 3.8 miles, and between milepost 194.2, and milepost 194.4, in Kingston, a distance of 0.2 miles; (7) The Nanticoke Industrial Track, between milepost 0.0, at Ashley, and milepost 2.6, at Central Scrap, a distance of 2.6 miles; (8) The Harry E. Breaker Spur, between milepost 0.1, at Maltby Junction, and milepost 0.5, a distance of 0.4 miles; (9) The APC line, between milepost 0.0, and milepost 0.6, in Wilkes Barre, a distance of 0.6 miles; (10) The Miner's Mills Industrial Track, between milepost 173.6, at North Wilkes Barre, and milepost 176.1, at Hudson, a distance of 2.5 miles; (11) The Wilkes Barre Industrial Track, between milepost 59.9, at Ferry Street, and milepost 62.9, at Wilkes Barre, a distance of 3.0 miles; (12) The Pettibone Branch, between milepost 0.0 and milepost 0.759, at Dorranceton, a distance of 0.759 miles; (13) The Kingston Industrial Track, between milepost 142.7, at Pittston Junction, and Railroad Station 8594+58, a distance of 8.1 miles; (14) The DH Wilkes Barre Connector, from milepost A–208.08, Hudson Yard, to Conyngham Avenue, City of Wilkes Barre, a distance of 2.5 miles.

L&SR also will acquire operating rights over the GWBP Industrial Track between milepost 0.0, at Ashley, and milepost 0.5, at Hanover Industrial Park, a distance of 0.5 miles, and the Suscon Industrial Track between milepost 154.5, at Suscon and milepost 158.7, at Hillside, a distance of 4.2 miles. These two segments are owned by the Greater Wilkes-Barre Partnership, Inc. (GWBP) and IR, Inc.

The rail line L&SR will lease and operate totals approximately 55.55 miles, plus the approximately 4.7 miles covered by the operating rights described above.

This proceeding is related to *Steven C. May—Continuance in Control Exemption—Luzerne and Susquehanna Railway Company*, Finance Docket No. 32564, wherein Steven C. May filed a notice of exemption seeking to continue in control of L&SR, and three other railroads which he controls—Owego & Harford Railway, Inc., Lackawanna Valley Railroad Corporation, and Lackawanna Railway, Inc.—upon L&SR becoming a carrier.

L&SR expected to consummate its lease of the involved lines on August 25, 1994, or as soon thereafter as the notices of exemption became effective.[1]

Any comments must be filed with the Commission and served on: Eric B. Lee, Somma, Sullivan & Lee, 501 Plaza Drive, Vestal, NY 13850.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] By decision served September 1, 1994, the Commission denied a petition filed by the Delaware Lackawanna Railroad Co., Inc., seeking to stay or reject the notices of exemption in these two proceedings. The notices became effective on August 25, 1994.

Decided: September 16, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–23592 Filed 9–22–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32564]

Steven C. May—Continuance in Control Exemption—Luzerne and Susquehanna Railway Company

Steven C. May has filed a notice of exemption to continue in control of the Luzerne and Susquehanna Railway Company (L&SR), a noncarrier, upon L&SR becoming a class III rail carrier. L&SR seeks, in a notice of exemption filed concurrently herewith, to be a carrier through its lease and operation of certain rail lines in Luzerne and Susquehanna Counties, PA, from the Luzerne County Rail Corporation (LCRC), in *Luzerne and Susquehanna Railway Company—Lease and Operation Exemption—Certain Lines of Luzerne County Rail Corporation, F&L Realty, Inc., and Pocono Northeast Railway, Inc.*, Finance Docket No. 32563.[1] The parties intend to consummate the transaction on or after August 25, 1994.

Mr. May controls three other nonconnecting class III rail carriers: Owego & Harford Railway, Inc., Lackawanna Valley Railroad Corporation, and the Lackawanna Railway, Inc. Mr. May states that: (1) The properties operated by these railroads do not connect with each other or with the lines being acquired from LCRC; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or with any railroad in the corporate family; and (3) the transaction does not involve a class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Eric B. Lee, Somma, Sullivan & Lee, 501 Plaza Drive, Vestal, NY 13850.

Decided: September 16, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–23591 Filed 9–22–94; 8:45 am]

BILLING CODE 7035–01–P

[1] By decision served September 1, 1994, the Commission denied a petition filed by the Delaware Lackawanna Railroad Co., Inc., seeking to stay or reject the notices of exemption in these two proceedings. The notices became effective on August 25, 1994.

DEPARTMENT OF JUSTICE

Antitrust Division

U.S. v. Outdoor Systems, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Northern District of Georgia in *United States of America v. Outdoor Systems, Inc.*, Civil No. 1–94–CV–2393–CC.

The Complaint alleges that the proposed acquisition by Outdoor Systems, Inc. of the outdoor advertising business of Capitol Outdoor Advertising, Inc. may be substantially to lessen competition in outdoor advertising in the Atlanta area in violation of section 7 of the Clayton Act.

The Proposed Final Judgment provides that Outdoor Systems, Inc. may acquire the outdoor advertising business of Capitol Outdoor Advertising, Inc. but that Outdoor Systems, Inc. must divest the assets of its existing outdoor advertising business in the Atlanta area within six months of the entry of the Final Judgment.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to John T. Orr, Chief, Atlanta Field Office, Antitrust Division, Department of Justice, Suite 1176, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, Georgia 30303 (telephone: (404) 331–7100).

Constance K. Robinson,

Director of Operations, Antitrust Division.

United States District Court, Northern District of Georgia, Atlanta Division

United States of America, Plaintiff, v. Outdoor Systems, Inc., Defendant. Civil No. 94– . Filed: September 8, 1994.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. This Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Northern District of Georgia, Atlanta Division;

2. The parties to this Stipulation consent that a Final Judgment in the form attached may be filed and entered by the Court, upon any party's or the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice on the defendant and by filing that notice with the Court;

3. Defendant agrees to be bound by the provisions of the proposed Final Judgment pending its approval by the Court. If plaintiff withdraws its consent or the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and its making shall be without prejudice to any party in this or any other proceeding; and

4. This Stipulation and the Final Judgment to which it relates are for settlement purposes only and do not constitute an admission by defendant in this or any other proceeding that Section 7 of the Clayton Act, 15 U.S.C. 18, or any other provision of law, has been violated.

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Dated:

Anne K. Bingaman,

Assistant Attorney General.

Steven C. Sunshine,

Deputy Assistant Attorney General

Constance K. Robinson

Director of Operations

John T. Orr,

Chief, Atlanta Field Office, U.S. Department of Justice, Antitrust Division.

Mark W. Ryan by David H. Fin

With express authorization Schreeder, Wheeler & Flint, 1600 Candler Bldg, Atlanta, GA 30303-1845, 404-681-3450, GA. Bar, No. 264600.

Mark W. Ryan,

Counsel For defendant.

Mayer, Brown & Platt, 2000 Pennsylvania Avenue NW., Washington, D.C. 20006, (202) 778-0627.

Justin M. Nicholson,

William G. Traynor

Attorneys, Antitrust Division, U.S. Department of Justice, Richard B. Russell Building, 75 Spring Street, SW., Suite 1176, Atlanta, Georgia 30303, (404) 331-7100.

United States District Court, Northern District of Georgia, Atlanta Division

United States of America, Plaintiff, v. Outdoor Systems, Inc., Defendant. Civil No. 94- . Filed: September 8, 1994.

Final Judgment

Plaintiff, United States of America, filed its Complaint on September 8, 1994. Plaintiff and defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not constitute any evidence against, or an admission by, any party with respect to any issue of law or fact. Defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court. Prompt and certain diverstiture is the essence of this agreement, and defendant has represented to plaintiff that the diverstiture required below can and will be made and that defendant will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below. Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law, and upon consent of the parties.

It is hereby ordered, adjudged and decreed as follows:

I

Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties consenting to this Final Judgment. The Compliant states a claim upon which relief may be granted against defendant under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

Definitions

As used in this Final Judgment:

A. "Capitol" shall mean Capitol Outdoor Advertising, Inc., Capitol Outdoor Leasing Co., Inc., each of their subsidiaries and affiliates and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them. Such term shall also mean the entity owned by defendant that acquires the assets of Capitol Outdoor Advertising, Inc. and Capitol Outdoor Leasing Co., Inc.;

B. "OSI-Atlanta" shall mean the entity conducting the outdoor advertising business of Outdoor Systems, Inc. as of the date of the entry of this Final Judgment, or any successor entity, in the greater Atlanta, Georgia metropolitan area, each of their subsidiaries and affiliates and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them;

C. "Holding Company" or "defendant" shall mean defendant Outdoor Systems, Inc., each of its subsidiaries and affiliates and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them;

D. "Separated Assets" shall mean (1) all of the outdoor advertising billboards (including bulletins and poster panels), structures and leases of OSI-Atlanta, (2) all contracts, including but not limited to advertising contracts, agreements, invoices, ledgers and other books and records relating to the business of OSI-Atlanta and (3) such equipment currently owned or operated by Capitol as the purchaser may select that would provide the purchaser with the functional equivalent of the equipment owned or operated by OSI-Atlanta;

E. "Separated Business" shall mean Capitol or OSI-Atlanta, as the case may be;

F. "Purchaser" shall mean an independent third party, not connected or affiliated in any way with Capitol, OSI-Atlanta or Holding Company, that acquires the Separated Assets; and

G. "Person" shall mean any natural person, corporation, association, firm, partnership or other business or legal entity.

III

Applicability

A. The provisions of this Final Judgment shall apply to defendant, to its successors and assigns, to its subsidiaries, affiliates, directors, officers, managers, agents and employees and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Nothing herein shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV

Divestiture of OSI-Atlanta

A. Defendant is hereby ordered and directed to divest all of its direct and indirect ownership and control of the Separated Assets to a purchaser within six (6) months of the entry of this Final Judgment. In addition, defendant shall offer to any purchaser of the Separated Assets the opportunity, which may be exercised in the purchaser's sole and absolute discretion, (1) To make offers of employment to all or any of the employees currently employed by Capitol and (2) to assume the lease of the facility now operated by Capitol in the conduct of its outdoor advertising business. The obligation to divest shall be satisfied if, within six (6) months of the entry of this Final Judgment, defendant has entered into a binding contract with a qualified purchaser for the sale of the Separated Assets according to terms approved by plaintiff that are contingent upon compliance with the terms of this Final Judgment and that specify a prompt and reasonable date for the closing and if the sale is completed pursuant to the contract.

B. Defendant agrees to take all reasonable steps to accomplish the divestiture as quickly as possible. In carrying out the divestiture of the Separated Assets, defendant may divest the Separated Assets alone, or may divest along with the Separated Assets any other assets of defendant.

C. In accomplishing the divestiture ordered by this Final Judgment, defendant promptly shall make known, by usual and customary means, the availability of the Separated Assets for sale and the opportunities described in Paragraph IV.A. above. Defendant shall notify any person making an inquiry regarding the possible purchase of the Separated Assets that the sale is being made pursuant to this Final Judgment and provide such person with a copy of the Final Judgment, if requested. Defendant shall also offer to furnish to all bona fide prospective purchasers of the Separated Assets, subject to

customary confidentiality assurances, all pertinent information regarding OSI-Atlanta, except information subject to attorney-client privilege or attorney work product privilege. Defendant shall make available to plaintiff, upon plaintiff's request, such information as is made available to such potential purchasers. Defendant shall permit prospective purchasers of the Separated Assets to have access to personnel at the business and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant and customary to the sale of an outdoor advertising business.

D. The divestiture required by this Final Judgment shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the Separated Assets can and will be operated by the purchaser as a viable, ongoing business. Divestiture shall be made to a purchaser for whom it is demonstrated to plaintiff's satisfaction that (1) The purchase is for the purpose of competing effectively in the outdoor advertising business in the greater Atlanta, Georgia metropolitan area, and (2) the purchaser has the managerial, operational, and financial capability to compete effectively in the outdoor advertising business.

V

Financing

With prior consent of plaintiff, defendant may finance all or any part of any purchase made pursuant to this Final Judgment.

VI

Appointment of Trustee for OSI-Atlanta

A. If defendant has not accomplished the divestiture required by Section IV. of this Final Judgment within five (5) months of the entry of this Final Judgment, then defendant shall notify plaintiff of that fact. Within ten (10) days after notification, plaintiff shall provide defendant with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Defendant shall notify plaintiff within ten (10) days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to defendant, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to defendant, it shall furnish to plaintiff, within ten (10) days after plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. If either or both of such nominees are acceptable to plaintiff, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to plaintiff, it shall furnish the Court the names and qualifications of its proposed nominess and the names and qualifications of the nominees proposed by defendant. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

B. If defendant has not accomplished the required divestiture at the expiration of the period specified in paragraph IV.A. of this Final Judgment, the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect divestiture of the Separated Assets.

C. After the trustee's appointment has become effective, only the trustee shall have the right to sell the Separated Assets and to offer any prospective purchasers the same opportunities as defendant is obligated to extend as provided in paragraph IV.A. The trustee shall have the power and authority to accomplish the divestiture to a purchaser acceptable to plaintiff at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of paragraph IX.A. of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendant shall not object to a sale of the Separated Assets by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendant must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has notified defendant of the proposed sale.

D. The trustee shall serve at the cost and expense of defendant, shall receive compensation based on a fee arrangement providing an incentive based on the price and terms of the divestiture and the speed with which it is accomplished and shall serve on such other terms and conditions as the Court may prescribe; provided, however, that the trustee shall receive no compensation, nor incur any costs or expenses, prior to the effective date of his or her appointment. The trustee shall account for all monies derived from a sale of the Separated Assets and all costs and expenses incurred in connection therewith. After approval by the Court of the trustee's accounting, including fees for the trustee's services, all remaining monies shall be paid to defendant and the trust shall then be terminated.

E. Defendant shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Separated Assets and shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee shall have full and complete access to the personnel, books, records and facilities of OSI-Atlanta.

F After his or her appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture of the Separated Assets as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire or was contacted or made an inquiry about acquiring any ownership interest in the Separated Assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these operations.

G. Within six (6) months after his or her appointment has become effective, if the trustee has not accomplished the divestiture required by this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include extending the trust and the term of the trustee's appointment.

VII

Notification

Immediately following entry of a binding contract, contingent upon compliance with the terms of this Final

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Judgment, to effect the proposed divestiture pursuant to Section IV. or VI. of this Final Judgment, defendant or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendant. The notice shall set forth the details of the proposed transaction and list the name, address and telephone number of each person not previously identified who offered to, or expressed an interest in the business that is the subject of the binding contract, together with full details of same. Within fifteen (15) days of receipt by plaintiff of such notice, plaintiff may request additional information concerning the proposed divestiture and the proposed purchaser. Defendant and/or the trustee shall furnish any additional information requested within twenty (20) days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within twenty (20) days after plaintiff has been provided the additional information requested (excluding any additional information requested of persons other than defendant or the trustee), whichever is later, plaintiff shall provide written notice to defendant and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff provides written notice to defendant or the trustee that it does not object, then the divestiture may be consummated, subject only to defendant's limited right to object to the sale under the provisions in Section VI.C. Absent written notice that the plaintiff does not object to the proposed purchaser, a divestiture under Section IV. shall not be consummated. Upon objection by plaintiff, or by defendant under the proviso in Section IV.C., a divestiture proposed under Section VI. shall not be consummated.

VIII

Affidavits

Upon filing of this Final Judgment and every thirty (30) days thereafter until the divestiture has been completed or authority to effect divestiture passes to the trustee pursuant to Section VI. of this Final Judgment, defendant shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section IV. of this Final Judgment. Each such affidavit shall include the name, address and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire or was contacted or made an inquiry about acquiring any ownership interest in the Separated Assets and shall describe in detail each contact with any such person during that period. Defendant shall maintain full records of all efforts made to divest the Separated Assets.

IX

Preservation of Assets

A. The Holding Company shall be created and take all steps necessary to assure that Capitol and OSI-Atlanta will be maintained as separate, independent and economically viable, ongoing businesses with their assets, management and operations separate, distinct and apart from one another. Without limitation of the foregoing, the Holding Company and the Separated Businesses shall comply with the following provisions during the pendency of this Final Judgment:

1. The Holding Company and the Separated Businesses shall refrain from causing or permitting any commingling of the assets of one Separated Business with those of the other Separated Business; provided, however, that financial statements may be consolidated at the Holding Company, subject to the accounting provisions set forth herein.

2. The Holding Company and the Separated Businesses shall assure that neither Separated Business, nor any of its directors, officers, employees or agents, influences or attempts to influence, directly or indirectly, any operational, marketing or financial decisions of the other Separated Business.

3. a. Within five (5) days of the entry of this Final Judgment, the Holding Company shall establish a Sales Committee ("Holding Company Sales Committee"), consisting of not less than two (2) members of the current Board of Directors of the Holding Company, or their designees, who are not involved in the management of the Holding Company or of either of the Separated Businesses.

b. The Holding Company shall designate an "Operating President" for each of OSI-Atlanta and Capitol and said Operating Presidents shall serve in those capacities for the respective Separated Businesses until the divestiture required by this Final Judgment shall have been accomplished.

c. Without limiting his or her other responsibilities, each Operating President shall be responsible to supervise and assist in the respective Separated Business's outdoor advertising businesses and shall exercise such authority and responsibilities without consulting with any officer, director or employee of the other Separated Business regarding the terms and conditions of the operation of the other Separated Business.

d. Insofar as any contract or proposal of either Separated Business shall entail actions that would otherwise require approval by either the Chief Executive Officer or Board of Directors of the Holding Company, the Operating President of the Separated Business shall report the proposal to the Holding Company Sales Committee for its consideration and any requisite action. With respect to matters that are brought to it pursuant to the terms of this subsection, the Holding Company Sales Committee shall be authorized to bind the Holding Company.

e. Insofar as either Separated Business anticipates a need to exceed the amounts provided in its annual budget for capital expenditures, authority for such additional expenditures shall be sought and first obtained by the Operating President of the Separated Business from the Holding Company Sales Committee.

4. Except as expressly allowed by the terms of this Final Judgment, neither Separated Business, nor any of its directors, officers, employees or agents, shall provide to the other Separated Business, or any director, officer, employee or agent of the other Separated Business, any competitively sensitive information, including but not limited to actual or proposed prices, costs, bids, contract terms, financial data or profit data (other than aggregated monthly or quarterly results provided to the Board of Directors of the Holding Company). The Holding Company and the independent accounting firm referred to in this Final Judgment shall not provide any competitively sensitive information relating to one Separated Business to any director, officer or employee of the other Separated Business.

5. Except as authorized by the terms of this Final Judgment, Capitol and OSI-Atlanta shall not permit the use of the other's trademarks or otherwise identify the relationship of these Separated Businesses in their advertising, sales or promotional materials. In dealing with third parties, the Separated Business shall indicate and make clear that the Separated Businesses are being operated as discrete and separate business entities during the pendency of this Final Judgment.

6. Each Separated Business shall compete with the other Separated Business in the same fashion as it competes with other outdoor advertising businesses in the greater Atlanta, Georgia metropolitan area.

7. Each Separated Business shall keep and maintain in accordance with generally accepted accounting principles, separate financial statements and records, including separate unaudited monthly and quarterly financial statements. Additionally, the Holding Company shall assure that an independent certified public accountant shall prepare certified annual financial statements for each Separated Business.

8. Paragraph IX.E. of this Final Judgment shall not preclude Arte Moreno from performing the following functions in his capacity as the Chief Operating Officer of the Holding Company:

a. Participating in decisions regarding the management of the cash and short-term assets of the Holding Company and the Separated Businesses, subject to all of the explicit limitations contained in this Final Judgment;

b. Participating in decisions regarding the deployment of existing equipment of either Separated Business in servicing contracts that have been awarded to that Separated Business;

c. Participating in decisions regarding the employment and redeployment of staff and administrative personnel within each Separated Business, as well as all personnel at the Holding Company level; and

d. Participating in decisions regarding employee compensation and employee benefits within the Holding Company.

B. The Holding Company and the Separated Businesses shall refrain from taking any action that would jeopardize the sale or operation of either Separated Business or would otherwise adversely affect the capability of either Separated Business to compete effectively in the sale of outdoor advertising, including but not limited to the following:

1. The Holding Company and the Separated Businesses shall refrain from taking any action, directly or indirectly, that would cause any material adverse change or alteration to be made in the operations of each Separated Business that would impair the ability of the Holding Company to sell or dispose of such Separated Business;

2. Except as incident to obtaining financing or refinancing of the transaction pursuant to which the Holding Company acquired Capitol, the Holding Company and each Separated Business shall refrain from disposing of, mortgaging, pledging or otherwise encumbering any of the assets of the Separated Businesses, other than in the ordinary course of business of the Holding Company or the respective Separated Businesses; and

3. Upon the entry of this Final Judgment, the Holding Company may move current employees of OSI-Atlanta a Capitol, but each employee moved from OSI-Atlanta to Capitol must be replaced at OSI-Atlanta by an employee of similar job description and experience. Replacement employees may come from Capitol.

C. Each Separated Business shall maintain, in accordance with usual industry standards, all outdoor advertising structures owned or operated by it.

D. The Separated Businesses shall have such outside financing for capital improvements and working capital available as is consistent with their budgets and past practices. Holding Company shall provide, consistent with the budgets established for the respective Separated Businesses prior to the date of this Final Judgment, funds for necessary capital improvements.

E. No director, officer or employee of one Separated Business shall also serve as a director, officer or employee of the other Separated Business. To the extent any director, officer or employee of the Holding Company is also a director, officer or employee of a Separated Business, that person may not receive any competitively sensitive information provided to the Board of Directors of the Holding Company by the other Separated Business.

X

Modifications

To the extent that either party later determines that modifications of this Final Judgment are necessary or appropriate, the parties shall first discuss any such proposed modifications among themselves, and shall present to the Court any such proposed modifications on which they agree in a form that they recommend the Court approve. In the event the parties cannot agree on any such modifications, either party may file a motion to the Court seeking a modification of this Final Judgment only after having provided the other party fifteen days' advance written notice of intention to seek such modification.

XI

Compliance Inspection

A. For purposes of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time, duly authorized representatives of the Department of Justice shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal office, be permitted:

1. access during office hours of defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. subject to the reasonable convenience of defendant and without restraint or interference from it to interview officers, employees and agents of defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section XI shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedures, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," governing protection of trade secrets and confidential commercial information, then ten days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the

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enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII

Termination

This Final Judgment will expire upon consummation of the divestiture of the Separated Assets in accordance with the terms herein.

XIV

Public Interest

Entry of this Final Judgment is in the public interest.

So ordered.

United States District Judge, Northern District of Georgia.

Dated:

United States District Court, Northern District of Georgia, Atlanta Division

United States of America, Plaintiff, v. Outdoor Systems, Inc., Defendant. Civil No. 1–94–CV–2393–CC, Filed: September 8, 1994.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of Outdoor Services, Inc., in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On September 8, 1994, the United States filed a civil antitrust complaint, under Section 15 of the Clayton Act, 15 U.S.C. 25, against Outdoor Services, Inc., alleging that the proposed acquisition by Outdoor Services, Inc. ("OSI") of the outdoor advertising business of Capitol Outdoor Advertising, Inc. ("Capitol") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that the effect of the merger may be substantially to lessen competition in outdoor advertising in the Atlanta area. The Complaint seeks, among other relief, a permanent injunction preventing defendant from combining its outdoor advertising business with that of Capitol.

Also on September 8, 1994, the United States and OSI filed a Stipulation by which they consented to the entry of a proposed Final Judgment designed to preserve competition in the outdoor advertising business in the Atlanta area. The proposed Final Judgment, as explained more fully below, would allow OSI to acquire the outdoor advertising business of Capitol but orders OSI to divest its own outdoor advertising business in the Atlanta area within six months. The Final Judgment also provides that pending the sale of OSI's outdoor advertising business, a holding company will be established to hold separate the businesses of OSI and Capitol.

The United States and OSI have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify and enforce the Final Judgment and to punish violations of the Final Judgment.

II

Background to the Alleged Violation

On or about July 27, 1994, OSI and Capitol entered into a purchase agreement under which the two companies would merge and OSI would become the sole surviving entity. This acquisition would, if unchallenged, effectively merge all of the business of OSI and Capitol. The purchase price was approximately $40 million.

OSI is a corporation organized and existing under the laws of the State of Delaware. It maintains its principal offices at 2502 North Black Canyon Highway, Phoenix, Arizona. OSI is in the business of providing outdoor advertising services in the Atlanta area. OSI's Atlanta area office is located at 3745 Atlanta Industrial Drive, N.W., Atlanta, Georgia. OSI had outdoor advertising revenues in the Atlanta area of about $7.4 million in 1993.

Capitol is a corporation organized and existing under the laws of the State of Delaware. It maintains its principal offices at 732 Ashby Street, N.W., Atlanta, Georgia. Capitol is in the business of providing outdoor advertising services in the Atlanta area. Capitol had outdoor advertising revenues in the Atlanta area of about $17.1 million in 1992.

The Complaint alleges that OSI and Capital are significant competitors in the outdoor advertising market in the Atlanta area. Outdoor advertising is another name given to standardized billboard advertising in the United States. There are several types of billboards. The largest type of billboard is the "bulletin," which comes in two standard sizes, 14′ tall by 48′ long, or 20′ high by 60′ long. If painting is the method of reproduction, the bulletin is called a "paint" or a "painted bulletin." If posting is the method of reproduction, the bulletin is called a "posted bulletin." Bulletin billboards are frequently sold singly to advertisers at negotiated rental prices that depend primarily on each billboard's location. Bulletins sold in this fashion are called "permanent bulletins" and command, on average, the highest rent of any type of billboard. Bulletins are also rented as part of "rotary" plans by billboard companies. A rotary plan consists of rotating an advertiser's bulletin message to a number of well distributed bulletin locations within a metropolitan area. Usually located adjacent to interstate highways and high traffic arterials, bulletins are typically sold to advertisers for longer contract periods than other types of billboards because of the high initial expense in painting or posting the advertiser's message or illustration.

A second type of standardized billboard is the "poster panel," which comes in one size, 12′ high by 25′ long and which is customarily sold in packages called "showings." A "100 showing" of poster panels means that the billboard company will provide enough geographically distributed poster panels to deliver in one day a number of exposure opportunities, as measured by the traffic count past all the poster panels included in the showing, equal to 100% of the population of that particular market. In the Atlanta area, for example, a 100 showing requires approximately 120 poster panels. The advertising message on a poster panel billboard is carried on a printed paper poster. Poster panels are nearly always sold in groups by billboard companies and usually for a shorter contract period than painted bulletin billboards. Poster panels are generally located adjacent to primary arterial roads and busy secondary streets. The rental price for each poster panel is a showing averages about one-fifth of the rental price for each painted bulletin in a rotary.

A third type of standardized billboard is the "8-sheet," sometimes referred to as a "junior billboard." An 8-sheet is approximately 6′ high by 12′ long. An advertiser's message on an 8-sheet is usually carried on a printed paper poster. In the Atlanta area, nearly all 8-sheet locations are in inner city areas, and 8-sheets are usually sold in packages directed to residents of the areas in which they are located. An 8-sheet rents, on average, for less than one-third the rental price of a poster panel.

Many customers who use outdoor advertising also advertise in other media, especially radio, television, newspapers and magazines, but use outdoor advertising when they want a large number of exposures to consumers at a low cost per exposure. Since exposure is necessarily brief, outdoor advertising is most suitable for highly visual, limited informational advertising. Outdoor advertising's particular characteristics make it a type of advertising for which there are no close substitutes. The Complaint alleges that the customers who want or need to use outdoor advertising would not switch to another advertising medium in response to a small but significant increase in outdoor advertising rental prices.

The Atlanta area includes the City of Atlanta and the five populous counties that include and surround that city. The vast majority of the population of the greater Atlanta region lives or works in the Atlanta area and most of that region's commercial activity occurs in the Atlanta area. Advertisers who desire to employ outdoor advertising to reach the Atlanta consumer market have no reasonable substitute for billboards located within the Atlanta area; in particular, a small but significant increase in the price of outdoor advertising in the Atlanta area would not cause advertisers to turn to billboards located in more rural counties outside of the Atlanta area. About 93% of Capitol's and OSI's billboard sites are located in the Atlanta area. The Atlanta area constitutes a section of the country and relevant geographic market for antitrust purposes.

OSI and Capitol are the only companies that offer a full line of billboards in the Atlanta area. Together, OSI and Capitol control over 63% of all billboards in the Atlanta area. They are the only sellers of poster panel billboards and are two of only four sellers of bulletin rotary billboard service in the Atlanta area. A combined OSI-Capitol entity would control about 4,000 bulletin and poster panel billboards in the Atlanta area, over six times the total of the next largest outdoor advertising company in the Atlanta area and approximately eleven times the total of the third largest. The proposed acquisition of Capitol by OSI would raise OSI's market share of the outdoor advertising business in the Atlanta area, based upon the number of billboards, from approximately 24% to approximately 63%.

The Complaint further alleges that successful new entry into the outdoor advertising market in the Atlanta area is not easy, due in part to the increasing amount of government regulation limiting billboard construction, the scarcity of suitable billboard sites within in the Atlanta area, paticularly within the I–285 Perimeter around Atlanta, and the necessity of obtaining a sufficient number and geographic dispersion of billboard sites in order to be an effective competitor.

OSI regularly contracts with customers outside the State of Georgia for the sale of outdoor advertising in the Atlanta area and regularly receives outdoor advertising materials from outside of Georgia. OSI is engaged in interstate commerce, and its activities are in the flow of, and substantially affect, interstate commerce.

III

Effect on Competition

The effect of OSI's acquisition of Capitol's outdoor advertising business in the Atlanta area may be substantially to lessen competition in outdoor advertising in the Atlanta area because actual and potential competition between OSI and Capitol in outdoor advertising in the Atlanta area will be eliminated, and competition generally in outdoor advertising in the Atlanta area may be substantially lessened.

IV

Explanation of the Proposed Final Judgment

The United States brought this action because the effect of the proposed merger of OSI and Capitol may be substantially to lessen competition, in violation of Section 7, in the Atlanta area outdoor advertising market. The risk posed to competition by this transaction, however, would be substantially eliminated were defendant OSI to divest its outdoor advertising business to a purchaser that would operate it as an active, independent and financially viable competitor in the Atlanta area. To this end, the provisions of the proposed Final Judgment are designed to accomplish the sale of OSI's outdoor advertising business and to prevent the anticompetitive effects of the proposed acquisition.

The Final Judgment allows OSI to acquire the outdoor advertising business of Capitol, but requires OSI to sell its Atlanta outdoor advertising business to an independent third party within six months. The United States has the right to approve the purchaser. If OSI does not accomplish the sale within six months, a trustee will be appointed by the Court with full powers to make the sale. Pending the sale of OSI's Atlanta outdoor advertising business, a holding company will be established to preserve and hold separate the assets and business operations of OSI and Capitol. The proposed Final Judgment should ensure that an appropriate purchaser will obtain OSI's divested outdoor advertising business and operate it as a competitive member of the Atlanta area outdoor advertising market.

V

Remedies Available to Potential Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair not assist the bringing of any private antitrust actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendant.

Procedures Available for Modification of the Proposed Final Judgment

The United States and OSI have stipulated that the Court may enter the proposed Final Judgment after compliance with the APPA. The stipulation provides that entry of the Final Judgment does not constitute any evidence or admission by any party with respect to any issue of fact or law. Under the provisions of the APPA, the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. The Department believes that the proposed Final Judgment provides an adequate remedy for the alleged violation and is in the public interest. The term of the proposed Final Judgment is until the divestiture of OSI's Atlanta business is accomplished.

As provided by the APPA, any person believing that the proposed Final Judgment should be modified may submit written comments within the sixty-day period from the date of publication in the **Federal Register** to John T. Orr, Chief, Atlanta Field Office, Antitrust Division, U.S. Department of Justice, Suite 1176, 75 Spring Street, SW., Atlanta, GA 30303. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent at any time prior to entry. The proposed Final Judgment provides that the Court retains jurisdiction over these actions, and any party may apply to the Court for any other necessary or

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appropriate for their modification, interpretation or enforcement.

VII

Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, litigation to enjoin the major. The United States rejected that alternative because the relief in the proposed Final Judgment should prevent the possible occurrence of conduct the effect of which may be substantially to lessen competition in the outdoor advertising industry in the Atlanta area. The United States believes that in the hands of the appropriate purchaser, the outdoor advertising business that is divested will likely maintain the present level of competition in the Atlanta area

VIII

Determinotive Documents

No documents were determinative in the formulation of the proposed Final Judgment. Consequently, the United States has not attached any such documents to the proposed Final Judgment.

Dated: September 8, 1994

John T. Orr,

Georgia Bar No.: 554625

Justin M. Nicholson,

William G. Traynor,

Attorney, Antitrust Division, U.S. Department of Justice, Richard B. Russell Building, 75 Spring Street SW., Suite 1176, Atlanta, Georgia 30303, (404) 331-7100.

[FR Doc. 94-23411 Filed 9-22-94; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated July 11, 1994, and published in the **Federal Register** on July 19, 1994, (59 FR 37686), Applied Science Labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400)	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455)	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II

An objection was received and a hearing was requested relative to the application of Applied Science Labs as a bulk manufacturer of Amphetamine (1100), Methamphetamine (1105) and Phenylacetone (8501). Arenol Chemical Corporation, subsequently withdrew their request for a hearing based on the information provided by the Applied Science Labs on August 22, 1994, that their quota application for Amphetamine (1100), Methamphetamine (1105) and Phenylacetone (8501) is only for small quantities (2 grams each) of deuterium labeled products used as analytical standards. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: September 16, 1994

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94-23576 Filed 9-22-94; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State:

Volume II

West Virginia
WV940017 (Sep. 23, 1994)

Modification to General Wage Determinations Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Massachusetts
MA940001 (Feb. 11, 1994)
MA940017 (Aug. 12, 1994)
MA940018 (Aug. 12, 1994)
New York
NY940010 (Feb. 11, 1994)
NY940011 (Feb. 11, 1994)
NY940015 (Feb. 11, 1994)
NY940016 (Feb. 11, 1994)
NY940017 (Feb. 11, 1994)
NY940018 (Feb. 11, 1994)
NY940021 (Feb. 11, 1994)
NY940025 (Feb. 11, 1994)
NY940033 (Feb. 11, 1994)
NY940037 (Feb. 11, 1994)
NY940039 (Feb. 11, 1994)
NY940041 (Feb. 11, 1994)
NY940043 (Feb. 11, 1994)
NY940045 (Feb. 11, 1994)

Volume II:

Pennsylvania
PA940001 (Feb. 11, 1994)
PA940002 (Feb. 11, 1994)
PA940003 (Feb. 11, 1994)
PA940004 (Feb. 11, 1994)
PA940005 (Feb. 11, 1994)
PA940006 (Feb. 11, 1994)
PA940009 (Feb. 11, 1994)
PA940010 (Feb. 11, 1994)
PA940011 (Feb. 11, 1994)
PA940013 (Feb. 11, 1994)
PA940014 (Feb. 11, 1994)
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PA940020 (Feb. 11, 1994)
PA940021 (Feb. 11, 1994)
PA940022 (Feb. 11, 1994)
PA940023 (Feb. 11, 1994)
PA940025 (Feb. 11, 1994)
PA940026 (Feb. 11, 1994)
PA940027 (Feb. 11, 1994)
PA940028 (Feb. 11, 1994)
PA940030 (Feb. 11, 1994)
PA940033 (Feb. 11, 1994)
PA940037 (Feb. 11, 1994)
PA940044 (Feb. 11, 1994)
PA940045 (Feb. 11, 1994)
PA940050 (Feb. 11, 1994)
PA940051 (Feb. 11, 1994)
PA940053 (Feb. 11, 1994)
PA940060 (Feb. 11, 1994)
PA940061 (Feb. 11, 1994)
PA940062 (Feb. 11, 1994)
PA940063 (Feb. 11, 1994)
PA940064 (Feb. 11, 1994)
PA940065 (Feb. 11, 1994)
Virginia
VA940109 (May 27, 1994)
West Virginia
WV940002 (Feb. 11, 1994)
WV940003 (Feb. 11, 1994)

Volume III:

Florida
FL940017 (Feb. 11, 1994)
FL940046 (Feb. 11, 1994)
Georgia
GA940003 (Feb. 11, 1994)
GA940022 (Feb. 11, 1994)
GA940040 (Feb. 11, 1994)
GA940058 (Feb. 11, 1994)
GA940065 (Feb. 11, 1994)
GA940066(Feb. 11, 1994)

Volume IV:

Wisconsin
WI940003 (Feb. 11, 1994)

Volume V:

Nebraska
NE940011 (Feb. 11, 1994)
New Mexico
NM940001 (Feb. 11, 1994)
Oklahoma
OK940014 (Aug. 5, 1994)
Texas
TX940005 (Feb. 11, 1994)

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Volume VI

Montana
MT940004 (Feb. 11, 1994)
Nevada
NV940001 (Feb. 11, 1994)
NV940004 (Feb. 11, 1994)
Utah
UT940024 (Feb. 11, 1994)
UT940031 (Feb. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which included all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C. this 16th day of September 1994

Alan L. Moss,

Director, Division of Wage Determination

[FR Doc. 94–23382 Filed 9–22–94; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–30, 171]

Aileen's, Incorporated, New York, New York; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 1, 1994 in response to a worker petition which was filed on behalf of workers at Aileen's, Incorporated, New York, New York.

All workers from the subject firm are covered under amended certification (TA–W–29,494A). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated

Signed at Washington, D.C. this 31st day of August 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Service Group, Office of Trade Adjustment Assistance.

[FR Doc. 94–23622 Filed 9–22–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29, 492]

Banister Shoe Company, U.S. Shoe Corporation Beloit, Wisconsin; Negative Determination on Remand

By an order dated June 20, 1994, the United States Court of International Trade (USCIT) in *Former Employees of Banister Shoe Company v. Secretary of Labor* (USCIT 94–05–00260) granted the Secretary of Labor's motion for a voluntary remand for further investigation.

The workers under this petition were initially denied eligibility to apply for trade adjustment assistance (TAA) on March 29, 1994. The negative determination was published in the **Federal Register** on April 13, 1994 (59 FR 17570). The basis for that decision is the fact that the decreased sales criterion was not met.

Banister Shoe is part of the retail division of U.S. Shoe. The workers are engaged in sales, distribution, and administrative functions.

New findings on remand show that Banister Shoe is a retail factory outlet arm for only a small portion of the shoes manufactured by U.S. Shoe. As a retail outlet, the workers are not engaged in the production of an article within the meaning of the Trade Act but are engaged in performing a service—sales.

Other findings on remand show that Banister Shoe is primarily an importer of shoes. Sale services provided in support of imports would not form a basis for a certification under the Trade Act of 1974. Increased import sales would have a positive effect on employment at Banister Shoe.

Further, the administrative record shows declining profits and profit margins in 1993 compared to 1992. Profits, profit margins and prices are not worker group eligibility requirements for TAA under the Trade Act and would not, in themselves, constitute a basis for a worker group certification.

Conclusion

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers on Banister Shoe Company, Beloit, Wisconsin.

Signed at Washington, D.C., this 9th day of September 1994

Dated: September 9, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–23590 Filed 9–22–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29, 860B]

Bull HN Information Systems, Inc. Phoenix, Arizona; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification of Eligibility to Apply for Worker Adjustment Assistance on August 19, 1994. The Notice will soon be published in the **Federal Register**.

The Department, on its own motion, is changing that part of the certification (TA–W–29, 860B) relating to the April 25, 1993 impact date for workers at Bull HN Information Systems, Inc., in Phoenix, Arizona in order to avoid a coverage overlap with certification TA–W–25, 527 for the same group of workers at Bull HN Information Systems in Phoenix, Arizona.

Accordingly, the Department is deleting the April 25, 1993 impact date set in TA–W–29, 860B for the Phoenix, Arizona workers of Bull HN Information Systems and inserting a new impact date of June 25, 1993 for the Phoenix workers.

The amended notice applicable to TA–W–29, 860B is hereby issued as follows:

All workers Bull HN Information Systems, Inc., Phoenix, Arizona engaged in employment related to the production of computers who became totally or partially separated from employment on or after June 25, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 12th day of September, 1994.

James D. Van Erden,

Administrator, Office of Work-Based Learning.

[FR Doc. 94–23626 Filed 9–22–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,214]

Dresser Industries Guiberson AVA Division Dallas, Texas; Termination

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 15, 1994 in response to a worker petition which was filed on August 15, 1994 on behalf of workers at Dresser Industries, Cuiberson AVA Division, Dallas, Texas.

An active investigation covering the petitioning group of workers is currently in effect (TA–W–29,931). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 7th day of September, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–23627 Filed 9–22–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,187]

Eddie Haggar Limited, Incorporated Nahunta, GA; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 8, 1994 in response to a worker petition which was filed on behalf of workers at Eddie Haggar Limited, Incorporated, Nahunta, Georgia.

All workers from the subject firm are covered under amended certification (TA–W–29,638B). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 2nd day of September, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Service Group, Office of Trade Adjustment Assistance.

[FR Doc. 94–23623 Filed 9–22–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,971]

First Inertia Switch; Grand Blanc, MI Revised Determination on Reopening

On August 30, 1994, the Department, on its own motion, reopened its investigation for workers of the subject firm.

Investigation findings show that the subject firm was a contract-supplier for linear accelerometers to General Motors. The findings show substantial worker separations in the first half of 1994.

New findings on reopening show a decline in production of linear accelerometers in the first half of 1994 compared with the same period in 1993. Other findings on reopening show that the subject firm lost a major contract to an offshore bidder for accelerometers for General Motors Corporation, Delco Chassis Division G.M. cars during the relevant period.

Conclusions

After careful consideration of the new facts obtained on reopening, it is concluded that workers and former workers of First Inertia Switch, Grand Blanc, Michigan are adversely affected by increased imports of articles that are like or directly competitive with accelerometers produced at the subject firm. In accordance with the provisions of the Act, I make the following revised determination for workers of First Inertia Switch, Grand Blanc, Michigan.

All workers of First Inertia Switch, Grand Blanc, Michigan who became totally or partially separated from employment on or after May 25, 1993 through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974

Signed in Washington, D.C. this 2nd day of September, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–23621 Filed 9–22–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,165, TA–W–28,165A California, TA–W–28,165C Texas, TA–W–28,165B Massachusetts, TA–W–28,165D Illinois]

Genicom Corporation Waynesboro, Virginia and Operating in the Following States; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 1, 1993, applicable to all workers of the subject firm engaged in the production of printers or printer parts. The notice was published in the **Federal Register** on March 26, 1993 (58 FR 16420).

At the request of the company, the Department again reviewed its certification for the workers of Genicom Corporation in Waynesboro, Virginia. New findings show that several application engineers which support Genicom's sales of printers were laid off in California, Massachusetts, Texas and Illinois.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports. Accordingly, the Department is amending its certification to include worker separations in California, Massachusetts, Texas and Illinois.

The amended notice applicable to TA–W–28,165 is hereby issued as follows:

All workers of Genicom Corporation, Waynesboro, Virginia and operating in the following states of California, Massachusetts, Texas and Illinois engaged in the production or sales of printers or printer parts who became totally or partially separated from employment on or after December 14, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 12th day of September, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–23588 Filed 9–22–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,913]

Halliburton Energy Services Group; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of the subject firm.

The certification notice was issued on September 30, 1993 and published in the **Federal Register** on October 21, 1993 (58 FR 54377).

At the request of the State Agency, the Department again reviewed the certification for workers of the subject firm. The investigation findings show that some of the claimants' wages are reported under an unemployment insurance (UI) tax account for Halliburton Company.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–28,913 is hereby issued as follows:

All workers of Halliburton Energy Services Group, also known as (a/k/a) Halliburton Company, Houston, Texas who became totally or partially separated from employment on or after August 22, 1992 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974

Signed at Washington, D.C., this 13th day of September 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–23625 Filed 9–22–94; 8:45 am]

BILLING CODE 4510–30–M

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Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 3, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 3, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 6th day of September 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Highland Yarn Mills (ACTWU)	High Point, NC	09/06/94	07/21/94	30,269	Yarns.
Crystie Fashions (Wkrs)	Wyoming, PA	09/06/94	08/25/94	30,270	Ladies' and Girls Formal Dresses.
Chevron Chemical Co (Wkrs)	St. Louis, MO	09/06/94	08/21/94	30,271	Dry and Liquid Pesticides.
Western Publishing Co (Co/Wkrs)	Fayetteville, NC	09/06/94	08/29/94	30,272	Games and Jigsaw Puzzles.
General Electric-Engine Services (Wkrs).	Ontario, CA	09/06/94	08/26/94	30,273	Jet Engine Overhaul and Repair.
Moore Business Forms (Wkrs)	Jerome, ID	09/06/94	08/24/94	30,274	Business Forms.
Brown Shoe Co (HCCW)	Steelville, MO	09/06/94	08/18/94	30,275	Shoe Components.
Ampex Recording Media Corp (Wkrs).	Opelika, AL	09/06/94	08/25/94	30,276	Magnetic Recording Tape.
Unocal Energy Resources (Wkrs)	Houston, TX	09/06/94	08/19/94	30,277	Oil and Gas.
Ward Paper Co (UPIU)	Merrill, WI	09/06/94	08/23/94	30,278	Fine Writing Paper.
Oklahoma Gas & Electric (Wkrs)	Red Rock, OK	09/06/94	08/19/94	30,279	Electricity.
Savoy Div of Posso Corp (Wkrs)	Woodbury, TN	09/06/94	08/20/94	30,280	Storage Racks for CD's and Cassettes.
Scott Worldwide Northwest Operation (AWPPW).	Everett, WA	09/06/94	08/23/94	30,281	Market Pulp and Sanitary Paper.
Ohmeda Medical Devices, Inc (Co).	Oxnard, CA	09/06/94	08/19/94	30,282	Pressure Transducers and Accessories.
Mary Fashions, Inc (ILGWU)	Bath, PA	09/06/94	08/23/94	30,283	Ladies Sportswear.
Lasky Co (ALA)	Millburn, NJ	09/06/94	08/23/94	30,284	Offset Printed Materials.
Donahue Oil Co (Co)	Mt Carmel, IL	09/06/94	08/23/94	30,285	Oil and Gas.
Dana Corp (Co)	Pueblo, CO	09/06/94	08/24/94	30,286	Aluminum Pistons.
Code-A-Phone Corp (Wkrs)	Clackamas, OR	09/06/94	08/15/94	30,287	Provide Phone Services.
Beth Energy Mines (UMWA)	Ebensburg, PA	09/06/94	06/27/94	30,288	Steel.
Baytech, Inc (Wkrs)	Midland, TX	09/06/94	08/22/94	30,289	Oil and Gas.
BP Exploration (Alaska), Inc (Wkrs).	Anchorage, AK	09/06/94	08/23/94	30,290	Oil and Gas.
General Electric (Wkrs)	Schenectady, NY	09/06/94	08/16/94	30,291	Airfoil for Steam Turbines.
Full Systems Textron (Wkrs)	Zeeland, MI	09/06/94	08/17/94	30,292	Turbine Fuel System Components.
Enogex, Inc (Co)	Oklahoma City, OK	09/06/94	08/23/94	30,293	Natural Gas.
Enogex, Inc (Co)	Oakwood, OK	09/06/94	08/23/94	30,294	Natural Gas.
Enogex, Inc (District) (Co)	Callumet, OK	09/06/94	08/23/94	30,295	Natural Gas.
Enogex, Inc (Plant) (Co)	Callumet, OK	09/06/94	08/23/94	30,296	Natural Gas.
Enogex, Inc (Co)	Cordell, OK	09/06/94	08/23/94	30,297	Natural Gas.
Enogex, Inc (Co)	Edmond, OK	09/06/94	08/23/94	30,298	Natural Gas.
Enogex, Inc (Co)	Minco, OK	09/06/94	08/23/94	30,299	Natural Gas.
Enogex, Inc (Co)	Konawa, OK	09/06/94	08/23/94	30,300	Natural Gas.

[FR Doc. 94-23585 Filed 9-22-94; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-30,247]

Martin Marietta—Aerospace Division Utica, New York; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 29, 1994 in response to a worker petition which was filed on August 22, 1994 on behalf of workers producing printed circuit boards at martin Marietta, Aerospace Division, Utica, New York.

An active certification covering the petitioning group of workers remains in effect (TA-W-27,877). The certification was issued under the name "General Electric Company, Aerospace Electronic Systems" and was subsequently amended to reflect the name of the successor-in-interest firm, Martin Marietta. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 13th day of September, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Service Group, Office of Trade Adjustment Assistance.

[FR Doc. 94-23624 Filed 9-22-94; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,768]

Normandy Manufacturing Company, Inc., Paducah, Kentucky; Revised Determination on Reconsideration

On August 30, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the former workers of the subject firm. The notice was published in the Federal Register on September 9, 1994 (59 FR 46669).

Investigation findings show that all production ceased in March 1994 when all production workers were laid off.

U.S. imports of women's and girls' dresses, slacks and shorts, blouses and shirts increased absolutely in 1993 compared to 1992.

On reconsideration, the Department surveyed the subject firm's major declining customers for the relevant period. The survey findings show that customers accounting for a substantial portion of the subject firm's sales in 1993 increased their import purchases of women's apparel while reducing their purchases from the subject firm.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the former workers of Normandy Manufacturing Company, Inc., in Paducah, Kentucky were adversely affected by increased imports of articles like or directly competitive with women's apparel produced at Normandy Manufacturing Company, Inc., in Paducah, Kentucky.

All workers of Normandy Manufacturing Company, Inc., in Paducah, Kentucky who became totally or partially separated from employment on or after April 4, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 13th day of September 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94-23628 Filed 9-22-94; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations begin or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 3, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 3, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 29th day of August, 1994.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Occidental Chemical Corp (Wkrs)	White Springs, FL	08/29/94	07/12/94	30,243	Phosphoric Acid.
Leggett & Platt, Inc (Wkrs)	Chicago, IL	08/29/94	07/11/94	30,244	Beds, Headboards, and Footboards.
Transportation Manufacturing Corp (Wkrs).	Schenectady, NY	08/29/94	07/15/94	30,245	Rebuild RTS Brand City Transit Buses.
Century Mills (Co)	Wilmington, NC	08/29/94	08/24/94	30,246	Pocket Tees, Crew Shirts and Turtle Necks.
Martin Marietta Aerospace (IAMAW).	Utica, NY	08/29/94	08/22/94	30,247	Circuit Board Shop Assembly and Repair.
Kloehn Co., Inc (Wkrs)	Brea, CA	08/29/94	08/22/94	30,248	Fluidic System.
Vought Aircraft Co (UAW)	Dallas, TX	08/29/94	08/10/94	30,249	Aircraft Parts and Assemblies.
Washington Scientific Industries (Wkrs).	Owatonna, MN	08/29/94	08/17/94	30,250	Precision Machining.
UNISYS Corp (Wkrs)	Roseville, MN	08/29/94	06/02/94	30,251	Computers.
Sealy Connecticut, Inc (Wkrs)	Oakville, CT	08/29/94	08/04/94	30,252	Mattresses and Box Springs.
Royal Sound Co., Inc (Co)	Eatontown, NJ	08/29/94	08/16/94	30,253	Car Stereos and Accessories.
Pegasus Gold Corp (Wkrs)	Butte, MT	08/29/94	08/15/94	30,254	Exploration of Gold, Silver and Lead-Zinc.
PCA East (Wkrs)	Piscataway, NJ	08/29/94	09/10/94	30,255	Hair Sprays, Conditioners, etc.
Muelhens, Inc (Wkrs)	New York, NY	08/29/94	08/19/94	30,256	Perfumes, Cosmetics.
Morton Int'l (Wkrs)	Beverly, MA	08/29/94	08/01/94	30,257	Metal Products and Sodium Hydride.

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APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
IBM LSCD Glendale Lab (Wkrs)	Endicott, NY	08/29/94	07/29/94	30,258	Mainframe Computer Hardware, Software.
Contract Fusing (ILGWU)	Duryea, PA	08/29/94	08/19/94	30,259	Fused Material For Dresses.
C & T Machine Shop (Wkrs)	Comanche, OK	08/29/94	08/16/94	30,260	Fabricate Drilling Equipment.
Alan Bradley (Wkrs)	Fairfield, NJ	08/29/94	08/19/94	30,261	Digital Encoding Systems.
Mud Co., Inc (Wkrs)	Wichita, KS	08/29/94	07/20/94	30,262	Drilling Fluids.
M.M. Fashions/Veneto Originals (ILGWU).	Hoboken, NJ	08/29/94	08/11/94	30,263	Ladies' Coats.
Londontown Corp (ACTWU)	Baltimore, MD	08/29/94	08/15/94	30,264	Men's and Ladies' Rainwear.
Lan Technologies, Inc (Co)	Bedford, MA	08/29/94	08/17/94	30,265	Diskettes.
Hercules, Inc—Aqualon Div (Co/ICW).	Parlin, NJ	08/29/94	08/16/94	30,266	Nitrocellulose.
Romic Enterprises (Wkrs)	Passaic, NJ	08/29/94	08/05/94	30,267	Ladies' Blouses.
Born Shoe Co/Brown Group, Inc (Co).	Clayton, MO	08/29/94	08/16/94	30,268	Administrative Services.

[FR Doc. 94–23586 Filed 9–22–94; 8:45 am]
BILLING CODE 4510–30–P

[TA–W–29,825]

Washington Energy Resources Company (WERCO), Seattle, Washington; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Washington Energy Resources Co., (WERCO), Seattle, Washington. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–29,825; Washington Energy Resources Co., (WERCO), Seattle, Washington (September 8, 1994)

Signed at Washington, D.C. this 12th day of September, 1994.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–23587 Filed 9–22–94; 8:45 am]
BILLING CODE 4510–30–M

Job Training Partnership Act: Native American Employment and Training Council, Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and section 401(h)(1) of the Job Training Partnership Act (JTPA), as amended (29 U.S.C. 1671(h)(1), notice is hereby given of a meeting of the Native American Employment and Training Council.

Time and Date: The meeting will begin at 9:00 a.m. on October 25, 1994, and continue until close of business that day; and will reconvene on October 26, 1994, and adjourn at close of business that day. From 3:00 to 5:00 p.m. on October 25 will be reserved for participation and presentations by members of the public.

Place: Rooms N–4437 B, C & D, U.S. Department of Labor, 200 Constitution Avenue, Washington, DC 20210

Status: The meeting will be open to the public. Persons with disabilities, who need special accommodations, should contact the undersigned no less than 10 days before the meeting.

Matters to be Considered: The agenda will focus on the following topics: proposed regulations, automated reporting pilot, program vision and strategic plans, technical assistance and training, national conference resolutions, and reinvention activities.

Contact Person for More Information: Thomas M. Dowd, Chief, Division of Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–4641, Washington, DC 20210. Telephone: 202–219–8502 (this is not a toll-free number).

Signed at Washington, DC, this 19th day of Sept., 1994.

Doug Ross,

Assistant Secretary of Labor.

[FR Doc. 94–23629 Filed 9–22–94; 8:45 am]
BILLING CODE 4510–30–M

[NAFTA—00132]

F.C.I. Freeman, SD; Affirmative Determination Regarding Application for Reconsideration

On August 15, 1994, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on July 19, 1994 and was published in the **Federal Register** on July 28, 1994 (59 FR 38495).

The company submitted additional data showing that the bulk of Mexican production of back supports occurred after January 1994 which resulted in the termination of back support production at Freeman.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 9th day of September 1994.

Victor J. Trunzo,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 94–23589 Filed 9–22–94; 8:45 am]
BILLING CODE 4510–30–M

[NAFTA–00160]

Philips Lighting Company Philips Electronics North American Washington, PA; Affirmative Determination Regarding Application for Reconsideration

On August 15, 1994, one of the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on August 2, 1994 and will soon be published in the **Federal Register**.

The petitioner claims that the Washington facility warehoused automotive lamps that were produced at a certified facility of Philips Lighting.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 6th day of September 1994.

James D. Van Erden,

Administrator, Office of Work-Based Learning.

[FR Doc. 94–23620 Filed 9–22–94; 8:45 am]
BILLING CODE 4510–30–M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on October 12–13, 1994 at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3437A–C, Washington, DC. The meeting is open to the public and will begin at 9 a.m. on each day.

At this meeting, OSHA will consult with the Advisory Committee regarding any construction-specific considerations raised by the provisions of the Ergonomics Protection standard, which is under development. The Agency will also consult the Advisory Committee regarding any construction-specific considerations raised by the draft notice of proposed rulemaking for Recordkeeping, and by the proposed rule for Abatement Verification. In addition, the Agency will brief the Advisory Committee regarding the draft proposed rule for occupational exposure to Chromium, insofar as that rulemaking relates to construction employment, and regarding the new focused construction inspection policy.

Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs, at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chairman of the Advisory Committee. Individuals with disabilities who wish to attend the meeting should contact Tom Hall, at the address indicated below, if special accommodations are needed.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N–3647, 200 Constitution Avenue, NW., Washington, DC, 20210, Telephone 202–219–8615. An official record of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, D.C. this 19th day of September, 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94–23584 Filed 9–22–94; 8:45 am]
BILLING CODE 4510–26–M

MARTIN LUTHER KING, JR. FEDERAL HOLIDAY COMMISSION

Meeting

AGENCY: Martin Luther King, Jr. Federal Holiday Commission.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Act, Public Law 92–463, as amended, the Martin Luther King, Jr. Federal Holiday Commission announces a forthcoming meeting of the Commission.

Date: October 6, 1994.

Time: 1:00 p.m.–3:30 p.m.

Location: U.S. House of Representatives, 2168 Rayburn House Office Building, Gold Room, Washington, D.C. The public is invited.

FOR FURTHER INFORMATION CONTACT: Gerrie Maccannon, Executive Officer, Washington Office (202) 708–1005.

Dated: August 30, 1994.

Gerrie Maccannon,

Executive Officer.

[FR Doc. 94–23554 Filed 9–22–94; 8:45 am]
BILLING CODE 4210–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–072]

NASA Advisory Council, NASA Laboratory Federal Review Task Force; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Federal Laboratory Review Task Force of the NASA Advisory Council.

DATES: October 4, 1994, 8:30 a.m. to 5 p.m.; October 5, 1994, 8:00 a.m. to 5 p.m.; and October 6, 1994, 8:00 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Program Review Center, Ninth Floor, Room 9H40, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Richard L. Kline, Code AE, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4697.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Task Force Ethics and Conflict of Interest Discussion
—Task Force Operating Approach
5—OSTP Perspective on Inter-Agency Review of Federal Laboratory Review and NASA Laboratory System as a Part of this Process
—NASA Today Overview
—Strategic Enterprise Activities in Support of the NASA Strategic Plan
—Planning for Conduct of Task Force Review

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: September 15, 1994

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 94–23514 Filed 9–22–94; 8:45 am]
BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

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SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On August 8, 1994, the National Science Foundation published a notice in the Federal Register of permit applications received. Permits were issued on September 7, 1994 to the following applicants:

Gerald L. Kooyman, Permit #95–003
Wayne Z. Trivelpiece, Permit #95–004
Diana W. Freckman, Permit #95–005
Arthur L. DeVries, Permit #95–006 and #95–007
Ron Naveen, Permit #95–013

Nadene G. Kennedy,

Permit Office.

[FR Doc. 94–23548 Filed 9–22–94; 8:45 am]

BILLING CODE 7555–01–M

Permit Applications Received Under the Antarctic Conservation Act of 1978 (P.L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, P.L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by October 19, 1994. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1031.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

Permit Application No. 95–019

1. *Applicant* William R. Fraser, Biology Department, Montana State University, Bozeman, Montana 59717.

Activity for Which Permit Is Requested: Taking. The applicant requests permission to tag 200 Adelie penguins using the subcutaneous tag method. The tagging of penguins is part of a long-term ecological research (LTER) program studying the relating variability in seabird reproductive success, survival and recruitment to fluctuations in certain biotic and abiotic features in their environment.

Location: Palmer Station vicinity and nearby islands.

Dates: October 15, 1994–May 15, 1995.

Permit Application No. 95–020

2. *Applicant:* William R. Fraser, Biology Department, Montana State University, Bozeman, Montana 59717.

Activity for Which Permit is Requested: Take. The applicant proposes to continue work associated with the Long-Term Ecological Research (LTER) on the Antarctic Marine Ecosystem project studying the relating variability in seabird reproductive success, survival and recruitment to fluctuations in certain biotic and abiotic features in their environment. This work involves censusing populations; marking, weighing and measuring adults, chicks and eggs; obtaining diet samples; and placing radio transmitters on some individuals to develop profiles on foraging efforts. As in the past, all seabirds involved in the research will be released unharmed.

Location: Palmer Station vicinity and nearby islands accessible by zodiac.

Dates: October 15, 1994–15 May 1995.

Permit Application No. 95–021

3. *Applicant:* William R. Fraser, Biology Department, Montana State University, Bozeman, Montana 59717.

Activity for Which Permit is Requested: Enter Specially Protected Area and Enter Site of Special Scientific Interest. The applicant requests permission to enter Litchfield Island (SPA #17) 3 times per week for 1–2 hours to census penguins and other seabirds breeding on the island. The island can be accessed safely and easily at time of the year when sea ice and bad weather make access to other penguin rookeries difficult or impossible. The applicant relies heavily on the ability to document weekly changes in penguin populations and breeding effort. This island has thus become a reliable source of long-term comparative data on penguin demography important to the hypotheses being tested by the LTER. All visited will be restricted to the unvegetated parts of the island.

In addition, the applicant would also like to enter Biscoe Point, Anvers Island (SSSI #20) on 5 separate occasions to census penguins and other seabirds. Some penguins banded as chicks are not returning to their natal colonies, but are instead moving to colonies on islands quite distant from Palmer. The applicant needs to document how pervasive this trend is by finding previously banded birds so as to adequately incorporate them into data on survival and recruitment.

Location: SPA #17—Litchfield Island, and SSSI #20—Biscoe Point, Anvers Island.

Dates: October 15, 1994–May 15, 1995.

Permit Application No. 95–022

4. *Applicant:* Arthur L. DeVries, Department of Physiology, University of Illinois, 407 S. Goodwin Avenue, Urbana, Illinois 61801.

Activities for Which Permit is Requested: Enter Site of Special Scientific Interest. The applicant requests permission to enter Site of Special Scientific Interest #18—Northwest White Island, McMurdo Sound to take temperature-salinity measurements through an open crack located near the north-west corner of the island. This is the only known open crack in the Ross Ice Shelf that gives access to the waters beneath the shelf. A distance of several hundred meter will be maintained from the occasional seal that uses the crack for access.

Location: SSSI #18—North-West White Island, McMurdo Sound.

Dates: December 1, 1994–March 15, 1995.

Nadene G. Kennedy,

Permit Office, Office of Polar Programs.

[FR Doc. 94–23547 Filed 9–22–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

The Cleveland Electric Illuminating Company, et al.; Perry Nuclear Power Plant, Unit No. 1; Notice of Withdrawal of Remaining Portion of an Amendment Request to Facility Operating License and Associated Exemption Request

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company (the licensees) of the Perry Nuclear Power Plant (PNPP), Unit No. 1, located in Lake County, Ohio, have withdrawn the remaining portion of a proposed license amendment and an associated request for an exemption to 10 CFR Part 50, Appendix J, in a letter dated September 2, 1994.

In a letter dated March 1, 1993 (PY–CEI/NRR–1576L), the licensees requested a change to the PNPP Technical Specifications regarding the primary containment. Associated with part of the license amendment request was a request for an exemption to 10 CFR Part 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," which was contained in a letter dated March 1, 1993 (PY–CEI/NRR–1577L). The requested license amendment was noticed in the **Federal Register** on March 30, 1994 (59 FR 14896). In a letter dated May 26, 1994, the NRC staff granted the part of the requested license amendment not associated with the exemption request. Subsequently, the licensees have withdrawn the remaining portion of the requested license amendment and the associated exemption request in a letter dated September 2, 1994.

For further details with respect to this action, see the application for amendment dated March 1, 1993 (PY–CEI/NRR–1576L), the application for exemption dated March 1, 1993 (PY–CEI/NRR–1577L), Amendment No. 60 to Facility Operating License No. NPF–58 dated May 26, 1994, and the letter of withdrawal dated September 2, 1994 (PY–CEI/NRR–1783L), which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 19th day of September 1994.

For the Nuclear Regulatory Commission.

Jon B. Hopkins, Sr.,

Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–23561 Filed 9–22–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. STN 50–454 and STN 50–455]

Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing; Commonwealth Edison Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–37 and NPF–66, issued to Commonwealth Edison Company (the licensee), for operation of Byron Station, Units 1 and 2, located in Ogle County, Illinois.

The proposed amendment would revise the technical specifications (TS) to incorporate a 1.0 volt steam generator tube interim plugging criteria (IPC) for Unit 1 beginning with Cycle 7, which has begun. This supplements the information that was published in the **Federal Register** on August 31, 1994 (59 FR 45019).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Consistent with Regulatory Guide (RG) 1.121, "Basis for Plugging Degraded PWR Steam Generator Tubes," Revision 0, August 1976, the traditional depth-based criteria for SG tube repair implicitly ensures that tubes accepted for continued service will retain adequate structural and leakage integrity during normal operating, transient, and postulated accident conditions. It is recognized that defects in tubes permitted to remain in service, especially cracks, occasionally grow entirely through-wall and develop small leaks. Limits on allowable primary-to-secondary leakage established in Technical Specifications ensure timely plant shutdown before the structural and leakage integrity of the affected tube is challenged.

The proposed license amendment request to implement voltage amplitude [steam generator] SG tube support plate Interim Plugging Criteria for Byron Unit 1 Cycle 7 meets the requirements of RG 1.121. The IPC methodology demonstrates that tube leakage is acceptably low and tube burst is a highly improbable event during either normal operation or the most limiting accident condition, a postulated main steam line break (MSLB) event. Requesting a single cycle applicability is more conservative than the guidance contained in the draft Generic Letter on voltage-based repair criteria issued for comment on August 12, 1994.

Adequate SG tube leakage integrity during normal operating conditions is assured by limiting allowable primary-to-secondary leakage to 150 gpd per SG or 600 gpd total Currently, this limit is administratively controlled.

However, a license amendment request was submitted on June 3, 1994, to incorporate this limit into the Byron Technical Specifications. During normal operating conditions, the tube support plate constrains the [outer diameter stress corrosion cracking] ODSCC affected area of the tube to provide additional strength that precludes burst. Any leakage of a tube exhibiting ODSCC at the [tube support plate] TSP is fully bounded by the existing SG tube rupture analysis included in the Byron [Updated Final Safety Analysis Report] UFSAR. Therefore, probability of failure of a tube left in service or consequences of tube failure during normal operating conditions is not significantly increased by the application of IPC.

During transients, the TSP is conservatively assumed to displace due to the thermal-hydraulic loads associated with the transient. This may partially expose a crack which is within the boundary of the TSP during normal operations to free span conditions. Burst is therefore conservatively evaluated assuming the crack is fully exposed to free span conditions. The structural eddy current bobbin coil voltage limit for free-span burst is 4.54 volts. This limit takes into consideration a 1.43 safety factor applied to the steam line break differential pressure that is consistent with RG 1.121 requirements. With additional considerations for growth rate assumptions and an upper 95% confidence estimate on voltage variability, the maximum voltage indication that could remain in service is reduced to 2.7 volts. For added conservatism, the allowable indication voltage is further reduced in the proposed amendment to a 1.0 volt confirmed ODSCC indication limit. All indications greater than 1.0 volt will be subject to an RPC examination. Tubes with

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RPC confirmed ODSCC indications will be plugged or sleeved. Any ODSCC indications between 1.0 volt and 2.7 volts which are not confirmed as ODSCC will be allowed to remain in service since these indications are not as likely to affect tube structural integrity or leakage integrity over the next operating cycle as the indications that are detectable by both bobbin and RPC inspections.

The eddy current inspection process has been enhanced to address RG 1.83, "Inservice Inspection of PWR Steam Generator Tubes," Revision 1, July 1975, consideration as well as the EPRI SG Inspection Guidelines. Enhancements in accordance with NUREG-1477 and Appendix A of the Catawba IPC report (WCAP-13698) are in place to increase detection of ODSCC indications and to ensure reliable, consistent acquisition and analysis of data. Based on the conservative selection of the voltage criteria and the increased ability to identify ODSCC, the probability of tube failure during an accident is also not significantly incredsed due to application of requested IPC.

For consistency with current offsite dose limits, the site allowable leakage limit during a MSLB has been conservatively calculated to be 12.8 gpm. This leakage limit includes maximum allowable operational leakage from the unaffected SGs and the accident leakage from the affected SG. As a requirement for operation following application of IPC, the projected distribution of crack indications over the operating period must be verified to result in primary to secondary accident leakage less than the site allowable leakage limit. Thus, the consequences of a MSLB remain unchanged.

For an unscheduled mid-cycle inspection as a result of leakage due to mechanisms other than ODSCC at support plates or some other cause, the ODSCC indication limit is represented by the following equation:

$$V < \frac{\frac{\Delta t}{CL}(V_{SL} - V_{BOC}) + V_{BOC}}{1 + (0.2)\left(\frac{\Delta T}{CL}\right)}$$

where:

V=measured voltage

V_{BOC}=voltage at BOC

Δt=time period of operation to unscheduled outage

CL=cycle length (full operating cycle length where operating cycle is the time between two scheduled steam generator inspections)

V_{SL}=4.5 volts

Assuming linear flaw growth from BOC to EOC and a maximum structural limit of 4.5 volts, the voltage expected for an identified flaw at any time in the cycle can be predicted. The allowed voltage limit for an unscheduled inspection, as identified by the equation given above, reduces the predicted straightline growth voltage to ensure conservatism in the limit. A flaw which has not exceeded the predicted voltage growth at any point in the cycle would not be expected to exceed the structural limit at end of cycle or negatively impact the burst probability calculated based on results from the last scheduled inspection. Therefore, it is acceptable to leave the tube in service.

Therefore, as implementation of the 1.0 volt IPC for Byron Unit 1 Cycle 7 does not adversely affect steam generator tube integrity and results in acceptable dose consequences, the proposed license amendment request does not result in any significant increase in the probability or consequences of an accident previously evaluated within the Byron Updated Final Safety Analysis Report.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed SG tube IPC for Byron Unit 1 Cycle 7 does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism which could result in an accident outside the tube support plate elevations since industry experience indicates that ODSCC originating within the tube support plate does not extend significantly beyond the thickness of the support plate. This criteria only applies to ODSCC contained within the region of the tube bounded by the tube support plate.

In addressing the combined effects of Loss of Coolant Accident (LOCA) coincident with a Safe Shutdown Earthquake (SSE) on the SG (as required by General Design Criterion 2), it has been determined that tube collapse of select tubes may occur in the SGs at some plants, including Byron Unit 1. There are two issues associated with SG tube collapse. First, the collapse of SG tubing reduces the RCS flow area through the tubes. The reduction in flow area increases the resistance to flow of steam from the core during a LOCA which, in turn, may potentially increase Peak Clad Temperature (PCT). Second, there is a potential that partial through-wall cracks in tubes could progress to through-wall cracks during tube deformation or collapse.

A number of tubes have been identified, in the "wedge" locations of the SG TSPs, that demonstrate the potential for tube collapse during a LOCA + SSE event. Because of this potential, these tubes have been excluded from application of the voltage-based SG TSP IPC.

Therefore, neither a single nor multiple tube rupture event would be expected in a steam generator in which IPC has been applied.

ComEd has implemented a maximum primary to secondary leakage limit of 150 gpd through any one SG at Byron to help preclude the potential for excessive leakage during all plant conditions. The 150 gpd limit provides for leakage detection and plant shutdown in the event of an unexpected single crack leak associated with the longest permissible free span crack length. The 150 gpd limit provides adequate leakage detection and plant shutdown criteria in the event an unexpected single crack results in leakage that is associated with the longest permissible free span crack length. Since tube burst is precluded during normal operation due to the proximity of the TSP to the tube and the potential exists for the crevice to become uncovered during MSLB conditions, the leakage from the maximum permissible crack must preclude tube burst at MSLB conditions. Thus, the 150 gpd limit provides a conservative limit to prompt plant shutdown prior to reaching critical crack lengths under MSLB conditions.

Upon implementation of the 1.0 volt IPC for Byron Unit 1 Cycle 7, steam generator tube integrity continues to be maintained through inservice inspection and primary-to-secondary leakage monitoring. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

The use of the voltage based bobbin coil probe SG TSP IPC for Byron Unit 1 Cycle 7 will maintain steam generator tube integrity commensurate with the criteria of RG 1.121 as discussed above. Upon implementation of the criteria, even under the worst case conditions, the occurrence of ODSCC at the TSP elevations is not expected to lead to a steam generator tube rupture event during normal or faulted plant conditions. The distribution of crack indications at the TSP elevations result in acceptable primary-to-secondary leakage during all plant conditions and radiological consequences are not adversely impacted by the application of IPC.

The installation of SG tube plugs and sleeves reduces the RCS flow margin. As noted previously, implementation of the SG TSP IPC will decrease the number of tubes which must be repaired by plugging or sleeving. Thus, implementation of IPC will retain additional flow margin that would otherwise be reduced due to increased tube plugging. Therefore, no significant reduction in the margin of safety will occur during Cycle 7 as a result of the implementation of this proposed license amendment request.

Although not relied upon to prove adequacy of the proposed amendment request, the following analyses demonstrate that significant conservatism exists in the methods and justifications described above.

Limited Tube Support Plate Displacement

An analysis was performed to verify the extent of limited TSP displacement during accident conditions (MSLB). Application of minimum TSP displacement assumptions reduce the likelihood of a tube burst to negligible levels.

Consideration of limited TSP displacement would also reduce potential MSLB leakage when compared to the leakage calculated assuming free span indications.

Probability of Detection

The Electric Power Research Institute (EPRI) Performance Demonstration Program analyzed the performance of approximately 20 eddy current data analysts evaluating data from a unit with ¾" inside diameter and 0.049" wall thickness tubes. The results of this analysis clearly show that the detectability of larger voltage indications is increased which lends creditability for application of a POD of >0.6 for ODSCC indications larger than 1.0 volt.

Risk Evaluation of Core Damage

As part of ComEd's evaluation of the operability of Byron Unit 1 Cycle 7, a risk evaluation was completed. The objective of this evaluation was to compare core damage frequency under containment bypass conditions, with and without the interim plugging criteria applied at Byron Unit 1.

The total Byron core damage frequency is estimated to be 3.09E-5 per reactor year with a total contribution from containment bypass sequences of 3.72E-8 per reactor year according to the results of the current individual plant evaluation (IPE). Operation with the requested IPC resulted in an insignificant increase in core damage frequency resulting from MSLB with containment bypass conditions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11455 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 24, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Byron Public Library, 109 N. Franklin, Byron, Illinois 61010. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public

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Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mr. Robert A. Capra: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire; Sidney and Austin, One First National Plaza, Chicago, Illinois 60690, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the applications for amendment dated September 7, 1994, and September 17, 1994, (two letters) which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010.

Dated at Rockville, Maryland, this 21st day of September 1994.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–23730 Filed 9–22–94, 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

Northeast Nuclear Energy Co.; Notice of Withdrawal of Application for Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company, et al. (the licensee) to withdraw its February 28, 1991, application, as supplemented by June 17, 1991, for a proposed amendment to Facility Operating License DRP–21 for the Millstone Nuclear Power Station, Unit 1, located at the licensee's site in New London County, Connecticut.

The proposed amendment would have changed Technical Specification 3/4.14, "Plant Systems," by adding limiting conditions for operation and surveillance requirements for the Reactor High Water Level Feedwater Trip Instrumentation.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 15, 1991 (56 FR 22470). However, by letter dated September 12, 1994, the licensee withdrew the proposed amendment.

For further details with respect to this action, see the application for amendment dated February 28, 1991, as supplemented by June 17, 1991, and the licensee's letter dated September 12, 1994, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Learning Resource Center, Thames Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Dated at Rockville, Maryland, this 16th day of September 1994.

For the Nuclear Regulatory Commission

James W. Andersen,

Acting Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–23562 Filed 9–22–94, 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Acting Agency Clearance Officer: David T. Copenhafer (202) 942–8800.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Extensions: Rule 2a19–1, File No. 270–294, Rule 17f–2, File No., 270–233.

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget approval for extensions on the following previously approved rules:

Rule 2a19–1 provides that investment company directors will not be considered interested persons, as defined by section 2(a)(19) of the Investment Company Act of 1940 ("Act"), solely because they are registered broker-dealers or affiliated persons of registered broker-dealers, if the conditions of the rule are met. Approximately 4,000 respondents will incur an average of one burden hour each to comply with this rule.

Rule 17f–2 sets procedures to be followed by registered management investment companies that are deemed to maintain their portfolio securities in their own custody. Approximately 75 respondents will incur an average of 156.6 burden hours each to comply with this rule.

Direct general comments to the Desk Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to David T. Copenhafer, Acting Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, (Project Numbers 3235–0322 and 3235–0223), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: September 16, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23538 Filed 9–22–94, 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34682; File No. SR–NASD–94–50]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating To Excess Spread Parameters for CQS Securities

September 19, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 9, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items

[1] 15 U.S.C. § 78S(b)(1) (1988).

have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Schedule D to the NASD By-Laws to provide that the calculation methodology utilized to determine the excess spread parameters for CQS securities shall include quotations from national securities exchanges. In addition, in order to avoid confusion concerning the application of the excess spread parameters to CQS securities, the NASD is proposing to move the excess spread parameters for CQS securities, as amended, to Section 2 of Part VI of Schedule D to the NASD By-Laws from Section 2 of Part V of Schedule D. (Additions are in italics; deletions are bracketed.)

Schedule D

Part Requirements Applicable to Nasdaq Market Makers

Section 2 Character of Quotations

(a)–(c) No change

(d) Excess Spreads. A market maker shall not enter quotations in Nasdaq [or Consolidated Quotation Service (CQS)] securities that exceed the parameters for maximum allowable spreads as approved by the NASD Board of Governors and that may be published from time to time by the Association. The maximum allowable spreads *for Nasdaq securities* shall be 125 percent of the average of the three (3) narrowest market maker spreads in each security (if there are fewer than three (3) market makers in a security, the maximum allowable spread will be 125% of the average spread); provided however, that the maximum allowable spread shall never be less than ¼ point.

Part VI Consolidated Quotations Service (CQS)

Section 2 Obligations of CQS Market Makers

(a) No change.

(b) CQS market makers shall be required to input a minimum quotation size of 200 or 500 shares in each reported security (as established from time to time by the Association) depending on the trading characteristics of the security[, and shall be subject to the excess spread parameters established for Nasdaq market makers in Part V, Schedule D of the NASD By-Laws].

(c) Excess Spreads. A market maker shall not enter quotations in CQS securities that exceed the parameters for maximum allowable spreads as approved by the NASD Board of Governors and that may be published from time to time by the Association. The maximum allowable spreads for CQS securities shall be 125 percent of the average of the three (3) narrowest market maker spreads in each security, which average spread calculations shall include quotations from national securities exchanges (if the number of CQS market makers in a security plus the number of national securities exchanges trading that security is less than three (3), the maximum allowable spread will be 125 percent of the average spread); provided, however, that the maximum allowable spread shall never be less than ¼ of a point.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, Section 2(d) of Part V of Schedule D to the NASD By-Laws provides that registered market makers in CQS securities may not enter quotations in CQS securities that exceed the NASD's parameters for maximum allowable spreads. The maximum allowable spread presently in 125 percent of the average of the three narrowest market maker spreads in each security, with the limitation that the maximum allowable spread can never be less than 1/4 of a point.[2]

The calculation of "average dealer spreads" in CQS securities, however, does not include quotations (*i.e.*, spreads) from national securities exchanges trading those securities. Accordingly, in order to have the excess spread parameters for CQS securities be more reflective of and related to the quotations disseminated by all market centers trading CQS securities, the NASD is proposing to include quotations from the exchanges into its "average dealer spread" calculation. As a result, to the extent that the spread reflected in the best bid and offer disseminated by an exchange(s) is narrower than any of the three narrowest spreads quoted by CQS market makers, the proposed rule change may contribute narrower spreads by CQS market makers. Narrower spreads by CQS market makers, in turn, will enhance the continuity and quality of the markets provided by CQS market makers, to the ultimate benefit of investors.

In addition, in order to avoid confusion concerning the application of the excess spread parameters to CQS securities, the NASD is proposing to move the excess spread parameters for CQS securities, as amended, to Section 2 of Part VI of Schedule D to the NASD By-Laws from Section 2 of Part V of Schedule D. Part VI of Schedule D deals with the trading of CQS securities on Nasdaq and Part V deals with obligations imposed on Nasdaq market makers. By placing the excess spread parameters for CQS securities in Part VI of Schedule D instead of Part V, market participants will be less likely to overlook the parameters.

The NASD believes the proposed rule change is consistent with Sections 15A(b)(6) and 15A(b)(11) of the Act. Section 15A(b)(6) requires among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to 'and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Section 15A(b)(11) requires, among other things, that the rules of a national securities association must be designed to produce fair and informative quotations. Specifically, by including exchange quotations in its calculation methodology for determining maximum allowable spreads in CQS securities, the NASD and Nasdaq believe the proposal may contribute to narrower spreads in CQS securities, which, in turn, will promote the efficiency, continuity, and quality of Nasdaq's market in CQS securities.

[2] If there are fewer than three market makers in a security, the maximum allowable spread is 125% of the average of all market makers' spreads in the security.

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B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities, and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-94-50 and should be submitted by October 14, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

[3] 17 CFR 200.30-3(a)(12) (1994).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 94-23594 Filed 9-22-94; 8:45am]
BILLING CODE 8010-01-M

[Release No. IC-20559; File No. 812-8952]

The American Franklin Life Insurance Company, et al.

September 16, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The American Franklin Life Insurance Company ("American Franklin"), Separate Account VUL-2 of The American Franklin Life Insurance Company (the "Separate Account") and Franklin Financial Services Corporation.

RELEVANT SECTIONS OF THE ACT AND RULES: Order requested under Section 6(c) of the Act exempting Applicants from Section 27(a)(3) of the Act and Rule 6e-3(T)(b)(13)(ii) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit them to issue flexible premium variable life insurance policies ("Policies") that provide for a front-end sales load on premium payments made in any given year up to a maximum amount and no sales charge on premiums in excess of that amount.

FILING DATE: The Application was filed on April 28, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on October 11, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretray, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Franklin Square, Springfield, Illinois 62713.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, at (202) 942-0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. American Franklin is a stock life, accident and health insurance company organized under the laws of Illinois and licensed in forty-six states and the District of Columbia. It is a wholly-owned subsidiary of The Franklin Life Insurance Company, in turn a wholly-owned subsidiary of American Franklin Company, in turn a wholly-owned subsidiary of American Brands, Inc.

2. The Separate Account was established by American Franklin under Illinois law and is registered under the Act as a unit investment trust. The Separate Account has eight investment divisions, each of which invests in shares of a corresponding portfolio of either the Variable Insurance Products Fund or of the Variable Insurance Products Fund II (together, the "Funds"). Fidelity Management & Research Company, a registered investment adviser under the Investment Advisers Act of 1940, manages the investment operations of the Funds. Franklin Financial Services Corporation, a wholly-owned subsidiary of The Franklin Life Insurance Company and a registered broker-dealer, is the principal underwriter of the Policies.

3. The Policies are flexible premium variable life insurance contracts. Each Policy has a planned periodic premium, although a Policy owner may pay other premiums at any time and in any amount, within certain limits. The Policies provide for a front-end sales load equal to 5% of each premium paid during any Policy year until the total premiums for that Policy year are equal to one "target premium."[1] No front-end sales charge is deducted from premiums paid in excess of one target premium during any Policy year.

4. Within the first ten years, if a Policy is surrendered or, in some instances, lapses or if the face amount of the Policy is reduced, a contingent deferred sales charge ("CDSC") will be assessed against the account value of the Policy. Subject to a maximum surrender charge, the amount of the CDSC equals 25% of actual premiums paid during the first Policy year up to one target premium, plus 9% of any additional premiums actually paid during the first ten Policy years. The maximum total CDSC is 50% of one target premium.

[1] A target premium is defined as the hypothetical premium equal to the annual premium necessary to maintain a fixed-benefit whole life policy on the life of a person of the same age and sex as the insured person under a Policy and with a face amount equal to the face amount of such Policy. Applicants represent that a target premium will never exceed the guideline annual premium prescribed by Rules 6e-3(T)(c)(8).

5. Applicants represent that the aggregate of the front-end sales load and the CDSC assessed in connection with a Policy will not exceed sales load limitations specified in Rule 6e-3(T)(b)(13)(i)(A). Specifically, the total sales load under a Policy will not exceed 180% of the Guideline Annual Premium, or nine percent of the sum of the Guideline Annual Premiums that would be paid over a twenty year period or the life expectancy of the insured if it is less than twenty years. Applicants further represent that the sales expense deductions and surrender charges imposed under the Policies during the first two policy years will not equal or exceed the amount that would give rise to an obligation to refund excess sales load pursuant to Rule 6e-3(T)(b)(13)(v) if a Policy were surrendered during the first two policy years.[2] Applicants represent that the prospectus for the Policies will contain disclosure informing Policy owners how to minimize sales charge deductions from premiums paid.

Applicants' Legal Analysis

1. Section 27(a)(3) of the Act provides that the amount of sales charge deducted from any of the first twelve monthly payments on a periodic payment plan certificate by any registered investment company issuing such certificates, or any depositor or underwriter for such company, may not exceed proportionately the amount deducted from any other such payment, and that the amount deducted from any subsequent payment may not exceed proportionately the amount deducted from any other subsequent payment. Rule 6e-3(T)(b)(13)(ii) provides an exemption from Section 27(a)(3) provided that the proportionate amount of sales charge deducted from any payment does not exceed the proportionate amount deducted from any prior payment, unless an increase is caused by reductions in the annual cost of insurance or reduction in sales load for amounts transferred to a variable life insurance policy from another plan of insurance.

2. Under the Policy's sales load structure, no front-end sales load will be deducted from premiums in excess of one target premium paid during that Policy year. Thus, according to Applicants, a Policy owner could pay a premium in any given Policy year from which no front-end sales load deduction is made, then pay the initial premium in the next Policy year from which a front-end sales load will be deducted. Applicants state that this scenario would appear to give rise to a violation of the so-called "stair-step" provisions in Section 27(a)(3) of the Act. Moreover, the exemption provided by Rule 6e-3(T)(b)13(ii) does not appear to apply to this situation.

3. Applicants submit that the higher sales charge on the first target premium paid under a Policy in any Policy year as compared with that imposed on premiums in excess of such target premium ("Excess Premiums") reflects the fact that American Franklin will incur lower overall distribution costs (e.g., sales commissions) in connection with Excess Premiums over the life of the Policies. Applicants state that American Franklin could impose the higher front-end sales load equally on all premium payments up to the maximum permitted limits. The Policy's design, however, provides a benefit to Policy owners by passing on to them a portion of American Franklin's lower distribution costs with respect to the Excess Premiums.

4. Applicants submit that the sales load structure in the Policy is designed to give Policy owners flexibility with respect to premium payments while permitting American Franklin to deduct only those charges deemed necessary to support the benefit guarantees under the Policies. Applicants state that Section 27(a)(3), and the other sales load limitations in the Act, were designed to address the perceived abuses of periodic payment plans that deducted large amounts of front-end sales charges early in the life of the plan so that an investor who redeemed in the early periods recouped little of his or her investment. Applicants contend that the deduction of a front-end load on only the premiums paid up to one target premium per Policy year does not implicate these policy concerns. Applicants state that by spreading sales charges more evenly and fairly over the life of a Policy, the sales load structure results in a greater proportion of the Policies' sales charges to be deducted later than if sales expenses were deducted solely from premium payments.

Conclusion

For the reasons stated above, Applicants submit that the requested exemptions, in accordance with the standards of Section 6(c) of the Act, are consistent with the protection of Policy owners and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 94-23540 Filed 9-22-94; 8:45 am]
BILLING CODE 8010-01-M

[2] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

[Rel. No. IC-20558 ; File No. 812-9114

September 16, 1994.

Notice of Application for Exemption Under the Investment Company Act of 1940 ("the Act")

AGENCY: Securities and Exchange Commission ("SEC").

APPLICANTS: Franklin Gold Fund, Franklin Premier Return Fund, Franklin Equity Fund, AGE High Income Fund, Inc., Franklin Custodian Funds, Inc., Franklin Money Fund, Franklin California Tax-Free Income Fund, Inc., Franklin Federal Money Fund, Franklin Tax-Exempt Money Fund, Franklin New York Tax-Free Income Fund, Inc., Franklin Federal Tax-Free Income Fund, Franklin Tax-Free Trust, Franklin California Tax-Free Trust, Franklin New York Tax-Free Trust, Franklin Investors Securities Trust, Institutional Fiduciary Trust, Franklin Balance Sheet Investment Fund, Franklin Tax-Advantaged International Bond Fund, Franklin Tax-Advantaged U.S. Government Securities Fund, Franklin Tax-Advantaged High Yield Securities Fund, Franklin Strategic Mortgage Portfolio, Franklin Municipal Securities Trust, Franklin Managed Trust, Franklin Strategic Series, Adjustable Rate Securities Portfolios, The Money Market Portfolios, Midcap Growth Portfolio, The Portfolios Trust, Franklin International Trust, Franklin Real Estate Securities Trust, Franklin Valuemark Funds, Franklin Government Securities Trust, Franklin/Templeton Global Trust, Templeton Growth Fund, Inc., Templeton Funds, Inc., Templeton Smaller Companies Growth Fund, Inc., Templeton Income Trust, Templeton Real Estate Securities Funds, Templeton Global Investment Trust, Templeton Global Opportunities Trust, Templeton American Trust, Inc., Templeton Institutional Funds, Inc., Templeton Developing Markets Trust (collectively, the "Funds"); Franklin Advisers, Inc. ("Advisers"); Franklin Institutional Services Corporation ("FISCO"); Templeton, Galbraith & Hansberger Ltd., Templeton Investment Counsel, Inc., Templeton Investment

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Management (Hong Kong) Limited, Templeton Investment Management (Singapore) Pte. Ltd. (collectively, "Templeton Advisers"); and Franklin/Templeton Distributors, Inc. ("FTDI").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order permitting the Funds to assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC").

FILING DATE: The application was filed on June 21, 1994. Applicants have agreed to file an amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 11, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Bruce G. Leto, Esq., Stradley, Ronon, Stevens & Young, 2600 One Commerce Square, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Bradley W. Paulson, Staff Attorney, at (202) 942-0147 or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations:

1. Each Fund is an open-end management investment company. Advisers, FISCO, and Templeton Advisers provide investment advisory services to the Funds. FTDI is the principal underwriter for each Fund. Applicants request relief on behalf of themselves and any future investment company for which Advisers (or any entity controlling, controlled by, or under common control with Advisers), FISCO (or any entity controlling, controlled by, or under common control with FISCO), or the Templeton Advisers (or any entity controlling, controlled by, or under common control with any of the Templeton Advisers) act as investment adviser, or for which FTDI (or any entity controlling, controlled by, or under common control with FTDI) acts as principal underwriter.

2. Currently, some Funds assess a front-end sales charge, some have adopted a distribution plan under rule 12b–1 under the Act, and some assess a front-end sales charge and have a rule 12b–1 distribution plan. Applicants' proposed CDSC will be implemented in a manner completely separate and independent from the plans.

3. Under the proposed CDSC arrangement, a CDSC will be imposed on a redemption if the shares redeemed were purchased in an amount of $1,000,000 or more, were initially sold without a sales charge, and are redeemed within 12 months after the end of the calendar month in which the purchase order was accepted. The CDSC will be assessed against the net asset value of the shares at the time of purchase or redemption, whichever is less. Applicants anticipate that the CDSC will be assessed at a rate of 1%.

4. To determine whether a CDSC is payable, shares (or amounts representing shares) not subject to a CDSC will be deemed to be redeemed first. Thereafter, other shares or amounts will be redeemed in the order purchased. No CDSC will be imposed on redemptions of shares representing an increase in the value of an account above the net cost of the investment, which increase is due to increases in the net asset value per share; shares acquired through reinvestment of income, dividends, or capital gain distributions; shares acquired by exchange if the shares that were exchanged would not be assessed a CDSC; and shares held longer than 12 months after the end of the calendar month in which the purchase order was accepted.

5. Shares of one Fund may be exchanged for shares of another in accordance with restrictions relating to the shareholder's state of residence and the Funds' eligibility requirements or investment minimums. All exchanges will be effected in accordance with section 11(a) of the Act or rule 11a–3 thereunder.

6. Applicants also request relief to permit each Fund to waive or reduce the CDSC under certain circumstances. Any waiver or reduction will comply with the conditions in paragraphs (a) through (d) of rule 22d–1 of the Act.

Applicants' Legal Analysis

Applicants request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to permit the Funds to assess and, under certain circumstances, waive a CDSC on redemptions of shares. Applicants believe that the imposition of the CDSC as described above is fair and in the best interests of all shareholders of the Funds.

Applicants' Condition

Applicants will comply with proposed rule 6c–10, Investment Company Act Release No. 16619 (Nov. 2, 1988), as currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23539 Filed 9–22–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26128]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 16, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 11, 1994 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Jersey Central Power & Light Company (70–6903)

Jersey Central Power & Light Company ("JCP&L"), 300 Madison Avenue, Morristown, New Jersey 07962–1911, an electric utility subsidiary company of General Public Utilities Corporation, a registered holding company, has filed a post-effective amendment to its application under Sections 9(a) and 10 of the Act.

By Orders dated November 16, 1983 (HCAR No. 23121), November 19, 1984 (HCAR No. 23486), July 30, 1985 (HCAR No. 23773), June 27, 1986 (HCAR No. 24138) and January 17, 1990 (HCAR No. 25007), JCP&L was authorized, among other things, to acquire from time-to-time until December 31, 1994, up to $15 million of obligations of its electric customers, and to incur up to $500,000 of administrative and other related expenses, arising from such customers' participation in JCP&L's Home Energy Loan Program, Solar Water Heating Conversion Program and Electric Heat Conversion Program. Such obligations consist of notes evidencing disbursements made by JCP&L to contractors on behalf of these customers in connection with the programs.

JCP7L now requests authority to extend the time, through December 31, 1999, during which it may acquire such customer obligations in the same amounts and incur administrative and other related expenses in an increased amount of up to $750,000. In all other respects, the proposed transactions that were approved previously would remain unchanged.

Southwestern Electric Power Company (70–6977)

Southwestern Electric Power company ("SWEPCO"), 428 Travis Street, Shreveport, Louisiana 71156, an electric utility subsidiary company of Central and south West Corporation, a registered holding company, has filed a post-effective amendment to its declaration under Sections 6(a) and 7 of the Act.

By order dated June 8, 1984 (HCAR No. 23325), SWEPCO was authorized to issue prior to December 31, 1984, up to $75 million of unsecured notes in one or more transactions from commercial banks. Pursuant to that authority SWEPCO borrowed $50 million from The Bank of New York ("BNY") and First Interstate Bank of California ("FIBC") under a Term Loan Agreement, dated as of June 15, 19984 ("Loan Agreement").

By subsequent order dated June 7, 1991 (HCAR No. 25328), SWEPCO was authorized to enter into an amendment to the Loan Agreement with the lenders to: (1) extend the maturity of the notes through June 15, 1997; (2) amend the interest rate on the loan; (3) add provisions to compensate the lenders for their costs of complying with capital adequacy regulations; and (4) add assignment and participation provisions. SWEPCO did not receive any new proceeds as a result of entering into the amendment to the Loan Agreement and the aggregate principal amount of notes outstanding remained at $50 million.

SWEPCO now proposes, through December 31, 1994, to enter into a new Term Loan Agreement ("New Loan Agreement") with FIBC, Credit Suisse and The Yasuda Trust and Banking Co., LTD., New York Branch and with BNY, individually and as agent (collectively, the "Banks"), to replace the Loan Agreement. The New Loan Agreement will modify the Loan Agreement by: (1) extending the maturity of the outstanding loan through June 15, 2000; and (2) amending the interest rate on the loan. The aggregate principal amount of the notes outstanding under the New Loan Agreement will be $50 million. Because SWEPCO is requesting authority to replace the Existing Loan Agreement and to extend the maturity of the existing loan, no new proceeds will be received by SWEPCO upon entering into the New Loan Agreement in excess of the amounts required to prepay its obligations under the Existing Loan Agreement.

Each loan will be evidenced by a note having a final maturity date of June 15, 2000, which will bear interest at an optional rate. Through June 15, 1997, the available rates are convertible, and include: (1) an Alternate Base Rate, which for any day is an annual rate equal to the higher of (i) BNY's prime rate and (ii) the Federal Funds Rate, plus 1/2 of 1%; and (2) a Eurodollar Rate, which will be .375% above the Libor Rate, as defined in the New Loan Agreement. Loans made after June 15, 1997 will bear interest at the Alternate Base Rate. Accrued interest on Alternate Base Rates loans are payable quarterly and interest on Eurodollar Rate loans are payable on the last day of the optional interest period of one, two, three or six months selected by SWEPCO, provided that if the interest period is for six months, accrued interest is payable at the end of the third month. An arrangement fee of seven and one-half basis points ($37,500) will be paid to BNY upon Commission approval of the New Loan Agreement.

The notes and the New Loan Agreement will permit prepayment of principal in whole or in part at any time prior to maturity without penalty. No compensating balances with BNY will be required. SWEPCO presently anticipates that the notes issued under the New Loan Agreement will be repaid no later than June 15, 1997. The aggregate principal amount of notes to be issued under the New Loan Agreement together with all other unsecured indebtedness of SWEPCO will not exceed 20% of the sum of the secured indebtedness of SWEPCO and its total capital stock and surplus.

The New Loan Agreement includes a provision requiring SWEPCO to compensate each Bank for the cost to such Bank of complying with any law, rule, regulation, request or guideline of any governmental authority, central bank or comparable agency regarding capital adequacy to the extent that such cost arises as a consequence of the Bank's obligations under the New Loan Agreement. Because the circumstances of individual banks vary and it is not possible to predict what changes might occur relating to capital requirements for banks generally, the cost to SWEPCO of complying with this provision of the New Loan Agreement cannot be determined. If this provision was to increase SWEPCO's costs under the New Loan Agreement, SWEPCO could exercise its option to prepay without penalty, although the obligation of SWEPCO to pay any increased costs under this provision would survive termination of the New Loan Agreement to the extent that any demand for payment was made prior to prepayment.

American Electric Power Company, Inc., et al. (70–8307)

American Electric Power Company, Inc. ("AEP"), a registered holding company, and its nonutility subsidiary company, AEP Energy Services, Inc. ("AEP Energy") (collectively, "Applicants"), both located at 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment to their application-declaration filed under Sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and Rules 45, 87, 90, and 91 thereunder.

By order dated April 21, 1982 (HCAR No. 22468) ("1982 Order"), the Commission authorized AEP to organize AEP Energy for the purpose of providing consulting services to nonassociate companies. In addition, the 1982 Order authorized AEP to make capital

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contributions to AEP Energy in the amount of up to $1 million.[1]

By order dated March 30, 1994 (HCAR No. 26014) ("March 1994 Order"), the Commission authorized AEP to make additional investments in AEP Energy in the amount of $5 million for preliminary development activities associated with its consulting business. The Commission also authorized AEP and AEP Energy to expand the scope of AEP's financial commitments to include the issuance of guarantees or assumptions of liabilities in an aggregate amount not to exceed $25 million.

AEP now seeks to expand its investment in AEP Energy and the amount of debt of AEP Energy that AEP is authorized to guarantee to $50 million. AEP also seeks to increase the amount of guarantees or assumptions of liabilities by AEP on behalf of AEP Energy to $200 million.

AEP Energy also seeks authorization to provide energy management conservation and load management services to customers located in the states of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia ("Region") and to provide limited services outside the Region, with the restriction that revenues attributable to customers outside of the Region do not exceed revenues attributable to customers inside of the Region. AEP Energy also may provide energy management and demand side management services to associate companies, at cost.

AEP Energy further proposes to render services to associated exempt wholesale generators ("EWG"), foreign utility companies ("FUCO"), qualifying facilities ("QF") and other associated power projects (collectively, "Associated Power Projects"). Such services would include only those that AEP Energy is authorized to render to nonaffiliate companies.

AEP Energy seeks to provide such services and sell goods to any Associated Power Project at fair market prices, and requests an exemption pursuant to Section 13(b) from the requirements of Rules 90 and 91 in each of the following circumstances:

(a) An Associated Power Project derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States; or (b) An Associated Power Project is an EWG which sells electricity at market-based rates which have been approved by the Federal Energy Regulatory Commission ("FERC") or the appropriate state public utility commission, or a QF which sells electricity at the purchaser's "avoided cost" determined in accordance with the regulations under the Public Utility Regulatory Policies Act of 1978, or sells electricity at rates negotiated at arms-length with large industrial or commercial customers purchasing such electricity for their own use and not for resale; or (c) An Associated Power Project sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that: the purchaser of such electricity is not an associate company of AEP Energy and the terms and conditions (including price) of the contract pursuant to which AEP Energy agrees to provide such services or goods have been expressly approved by the holders of a majority of the equity interests of such Project other the AEP or an associate company.

In addition, AEP Energy seeks to enter into separate agreements to sell or license intellectual property that is may develop or acquire pursuant to its energy consulting activities.

Finally, AEP Energy seeks to organize subsidiary companies to render its services ("AEP Energy Sub"). Under the authorization limits described above for AEP and AEP Energy, AEP Energy proposes to make capital contributions to the AEP Energy Subs, and for the AEP Energy Subs to incur long- and short-term debt, and for AEP or AEP Energy to guarantee the debt and performance of such AEP Energy Subs.[2]

[1] The 1982 Order also authorized AEP Energy to sell or otherwise dispose of intellectual property owned and/or developed by AEP system companies. Should AEP Energy use any intellectual property developed by American Electric Power Service Corporation ("AEP Service") or any other AEP system company, AEP Energy states that it will pay the following amounts to that AEP system company for any such intellectual property actually sold or licensed by AEP Energy: (1) 70% of the revenues from the intellectual property until the AEP system company that developed the intellectual property recovers its programming and development costs, and (2) 20% of such revenues thereafter. AEP Energy would pay cost for intellectual property developed at its request. AEP Energy would address such requests only to AEP Service.

[2] In the March 1994 Order, the Commission authorized AEP Energy to obtain debt financing from unaffiliated third parties consisting of commercial banks, insurance companies or other institutional investors ("Debt Financing") and for AEP to guarantee the Debt Financing up to $5 million. Debt Financing obtained by AEP Energy would not exceed a term of 10 years or bear a floating interest rate in excess of 115% of the prime rate in effect at the time of issuance. In connection with any Debt Financing obtained by AEP Energy, it may be required to pay commitment and other fees not to exceed 25 basis points per annum on the total amount of the Debt Financing. Any debt financing of the AEP Energy Subs would mirror these terms.

Central Power and Light Company, et al. (70–8431)

Central Power and Light Company ("CPL"), 539 North Carancahua Street, Corpus Christi, Texas 78401, and Southwestern Electric Power Company ("SWEPCO"), 428 Travis Street, Shreveport, Louisiana 71101, both electric public-utility subsidiary companies of Central and South West Corporation, a registered holding company, have filed an application under Sections 9(a) and 10 of the Act.

CPL and SWEPCO ("Applicants") propose to engage in certain activities ("Activities"), involving nonaffiliates, in connection with Applicants' compliance with the "alternative fuel" requirements of the Federal Energy Policy Act of 1992 and related legislation enacted in Louisiana and Texas (collectively, "Energy Acts"). The nonaffiliates include the cities of Corpus Christi, Texas ("Corpus Christi") which is in the service territory of CPL and Shreveport, Louisiana ("Shreveport"), Caddo Parish, Louisiana, the parish in which Shreveport is located ("Caddo"), Bossier City, Louisiana, a city adjacent to Shreveport ("Bossier City"), and Longview, Texas ("Longview"), all of which are in the service territory of SWEPCO (Shreveport, Caddo, Bossier City, and Longview collectively referred to as, "SWEPCO Municipalities").

The proposed Activities are for: (1) CPL and SWEPCO to purchase, install, maintain and provide electric-powered compression equipment in an aggregate of seven fueling facilities to be constructed and owned by Corpus Christi and the SWEPCO Municipalities for the purpose of making natural gas available as an alternative fuel for vehicles; and (2) SWEPCO to provide, at an aggregate of four fueling facilities to be constructed by SWEPCO principally for use in fueling its own vehicles, compressed natural gas to vehicles owned by the SWEPCO Municipalities.

The Energy Acts require that increasing percentages of the vehicle fleets of governmental entities and electric utilities, among others, must be capable of operating on fuel other than gasoline of diesel in the next several years. The Activities would permit initial compliance by CPL and SWEPCO, and by Corpus Christi and the SWEPCO Municipalities, with the requirements of the Energy Acts.

CPL's costs of furnishing compression equipment at the one facility to be constructed by Corpus Christi would not exceed $250,000, and the initial annual revenues and expenses associated with the furnishing of compression services would aggregate $65,000 and $40,000, respectively. This cost would be financed out of internally generated funds. The gross profits from such services would be accounted for as a reduction in fleet expenses of CPL.

SWEPCO's cost of furnishing compression equipment at the six facilities to be constructed by the SWEPCO Municipalities would not exceed $1.5 million, and the initial annual revenues and expenses associated with the furnishing of compression services would aggregate $342,000 and $202,500, respectively. This cost would be financed out of internally generated funds. The gross profits from such services would be accounted for as a profit from an unregulated activity. SWEPCO's cost of constructing the four fueling facilities on its own property would aggregate $1.04 million, and the profits from the sale of compressed gas provided to vehicles operated by the SWEPCO Municipalities would be accounted for as a reduction in fleet expenses of SWEPCO.

Georgia Power Company (70–8443)

Georgia Power Company ("Georgia Power"), 333 Piedmont Avenue, N.E., Atlanta, Georgia 30308, a wholly-owned electric public-utility subsidiary company of The Southern Company, a registered holding company, has filed an application-declaration under Sections 6(a), 7, 9(a), 10 and 12(d) of the Act and Rules 44 and 54 thereunder.

Georgia Power proposes to enter into one or more loan agreements or installment sales agreements (each an "Agreement") on or before December 31, 1997 in connection with the issuance and sale by public instrumentalities (each an "Authority") of one or more series of pollution control revenue bonds in an aggregate principal amount not exceed $840 million ("Revenue Bonds"). Each issuance of Revenue Bonds by an Authority will be used to finance or refinance the costs of certain pollution control and/or sewage and solid waste disposal facilities at an electric generating plant or other facility ("Project") of Georgia Power within the jurisdiction of such Authority.

Each series of Revenue Bonds will bear an interest rate not to exceed the yield, at the time any such rate is determined, on U.S. Treasury securities having a maturity comparable to that of such series of Revenue Bonds, inclusive of any underwriter's discount commission.

The Revenue Bonds will mature between one month and forty years from the date of issuance and may, if it is deemed advisable for purposes of marketability, be entitled to the benefit of a mandatory redemption sinking fund calculated to retire a portion of the aggregate principal amount of the Revenue Bonds prior to maturity.

Proceeds from the sale of the Revenue Bonds will be deposited with a trustee ("Trustee") under the indenture to be entered into between the Authority and the Trustee ("Indenture"), pursuant to which such Revenue Bonds are to be issued and secured. Also, the Agreement will provide for the assignment to the Trustee of the Authority's interest in, and of the monies receivable by the Authority under, the Agreement.

Pursuant to the Agreement, the Authority will lend to Georgia Power the proceeds of the Sale of the Revenue Bonds. Georgia Power would apply these proceeds to pay the Cost of Construction (as defined in the Agreement) of the Project or to refund outstanding pollution control revenue obligations. Under the Agreement, Georgia Power will pay the Authority amounts at times which shall correspond to the payments with respect to the principal of, premium, if any, and interest on, the related Revenue Bonds. These payments shall be made whenever and in whatever manner the principal on such Revenue Bonds shall become due, whether at stated maturity, upon redemption or declaration or otherwise.

Georgia Power may be required to purchase any of the Revenue Bonds, or any of the Revenue Bonds may be subject to mandatory redemption, at any time if the interest thereon is determined to be subject to federal income tax. Also in the event of taxability, interest on those Revenue Bonds may be effectively converted to a higher rate, and Georgia Power also may be required to indemnify the bondholders against any other additions to interest, penalties and additions to tax.

The Indenture and the Agreement may also give the holders of the Revenue Bonds the right, during such time as the Revenue Bonds bear interest at a fluctuating rate, to require Georgia Power to purchase the Revenue Bonds from time-to-time, and arrangements may be made for the remarketing of any such Revenue Bonds through a remarketing agent. The purchase price payable by or on behalf of Georgia Power in respect to Revenue Bonds tendered for purchase at the option of the holders thereof will not exceed 100% of the principal amount thereof, plus accrued interest to the purchase date.

Additionally, the Indenture will provide that the Revenue Bonds issued thereunder will be redeemable at any time on or after a specified date or dates form the date of issuance, in whole or in part, at the option of Georgia. The exercise of such option may require the payment of a premium at a specified percentage of the principal amount. This percentage, which may decline at annual or other intervals, will not exceed the greater of (i) 5% of the principal amount of the Revenue Bonds so to be redeemed or (ii) the annual rate of interest borne by such Revenue Bonds.

Georgia Power currently has outstanding certain first mortgage bonds issued under an indenture dated as of March 1, 1941 between Georgia Power and Chemical Bank, as trustee, as supplemented and amended ("Mortgage"). In order to obtain the benefit of ratings for the Revenue Bonds equivalent to the rating of these mortgage bonds, Georgia Power may deliver to the Trustee a series of first mortgage bonds, to be issued under the Mortgage, as collateral for its obligations to the Authority related to the Revenue Bonds ("Collateral Bonds"). The aggregate principal amount of such Collateral Bonds would be equal to either: (1) the principal amount of the related Revenue Bonds, if the Collateral Bonds are interest-bearing; or (2) the sum of such principal amount of those Revenue Bonds plus interest payments thereon for a specified period, if the Collateral Bonds are not interest-bearing. The Collateral Bonds will mature on the maturity date of the Revenue Bonds.

As a further alternative to, or in conjunction with, securing its obligations through the issuance of the Collateral Bonds, Georgia Power may: (1) cause an irrevocable letter of credit ("Letter of Credit") to be delivered to the Trustee; and/or (2) cause an insurance company to issue a policy ("Policy"), guaranteeing the payment of the Revenue Bonds. In the event that the either the Letter of Credit is delivered to the Trustee or the Policy is issued, Georgia Power may also convey to the Authority a subordinated security interest in the Project or other property of Georgia Power as further security for Georgia Power's obligations under the Agreement.

Any Letter of Credit issued as security for the payment of the Revenue Bonds will be issued pursuant to a reimbursement agreement ("Reimbursement Agreement") between Georgia Power and the financial institution issuing such Letter of Credit ("LC Issuer"). Pursuant to such

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Reimbursement Agreement, the LC Issuer may advance Georgia Power amounts to repay the LC Issuer for amounts drawn under the Letter of Credit. Any such advance may have a maturity of up to 10 years and bear an interest rate not to exceed (i) the LC Issuer's prime rate, (ii) LIBOR plus ⅛ of 1%, or (iii) the LC Issuer's CD rate plus ½ of 1%.

In the event that Georgia Power is unable or determines not to issue the Collateral Bonds, delivery the Letter of Credit to the Trustee or cause the Policy to be issued, it proposes to (1) convey to the Authority a subordinated security interest in the Project or other property of Georgia Power as further security for Georgia Power's obligations under the Agreement and/or (2) guarantee the payment of the principal of, premium, if any, and interest on the Revenue Bonds.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-23595 Filed 9-22-94; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Vermont District Advisory Council; Public Meeting

The U.S. Small Business Administration Vermont District Advisory Council will hold a public meeting on Wednesday, October 5, 1994, at the Vermont Chamber of Commerce, Granger Road, Berlin Vermont to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Kenneth A. Silvia, District Director, U.S. Small Business Administration, Federal Building, P.O. Box 605, Montpelier, Vermont 05601-0605 (802) 828-4422.

Dated: September 16, 1994.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 94-23523 Filed 9-22-94; 8:45 am]

BILLING CODE 8025-01-M

[Delegation of Authority No. 23-C, Revision 3]

Inspector General; Delegation of Authority and Line of Succession

Delegation of authority No. 23-C is hereby revised to effect a delegation of authority and provide a line of succession from the Inspector General as follows:

I. Pursuant to authority vested in me by the Inspector General Act of 1978, as amended, in the event of the death, disability, absence, resignation, or removal of the Inspector General, Small Business Administration, the officials designated below, in the order indicated, and in the absence of the specific designation of another official in writing by the Inspector General or the Acting Inspector General, are hereby authorized to and shall serve as Acting Inspector General and shall perform the duties and are delegated the full authority and power ascribed to the Inspector General by law and regulation as well as those authorities delegated to the Inspector General by the Administrator, Small Business Administration:

1. Deputy Inspector General
2. Assistant Inspector General for Management and Legal Counsel
3. Assistant Inspector General for Auditing
4. Assistant Inspector General for Investigations
5. Assistant Inspector General for Inspection and Evaluation

II. Anyone designated by the Inspector General as acting in one of the positions listed above remains in the line of succession, otherwise, the authority moves to the next position.

III. This delegation is not in derogation of any authority residing in the above officials relating to the operations of their respective programs, nor does it affect the validity of any delegations currently in force and effect and not specifically cited as revoked or revised herein.

IV. The authorities delegated herein may not be redelegated.

Dated: April 9, 1994.

James F. Hoobler,

Inspector General.

[FR Doc. 94-23524 Filed 9-22-94; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended September 16, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49772
Date filed: September 15, 1994
Parties: Members of the International Air Transport Association
Subject: Comp Telex 024f—Local Currency Fare Changes—Sweden
Proposed Effective Date: October 1, 1994

Docket Number: 49773
Date filed: September 15, 1994
Parties: Members of the International Air Transport Association
Subject: TC3 Telex Mail Vote 709 Japan-TC3 Advance Ticketing Rule
Proposed Effective Date: October 1, 1994

Docket Number: 49774
Date filed: September 15, 1994
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1598 dated September 13, 1994 Canada—Europe Expedited Reso 015v
Proposed Effective Date: Expedited November 1, 1994

Docket Number: 49775
Date filed: September 15, 1994
Parties: Members of the International Air Transport Association
Subject: Expedited Within Europe Resolutions
TC2 Reso/P 1635 dated September 13, 1994 r-1 to r-3
TC2 Reso/P 1636 dated September 13, 1994 r-4 to r-9
TC2 Reso/P 1637 dated September 13, 1994 r-10 to r-16
TC2 Reso/P 1638 dated September 13, 1994 r-17 to r-19
TC2 Reso/P 1639 dated September 13, 1994 r-20 to r-25
TC2 Reso/P 1640 dated September 13, 1994 r-26 to r-27
Proposed Effective Date: Expedited January 1, 1995

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94-23573 Filed 9-22-94; 8:45 am]

BILLING CODE 4910-62-P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 16, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (see 14 CFR 302.1701 *et. seq.*) The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49768
Date filed: September 14, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 12, 1994

Description: Application of Sky Service F.B.O., Inc./Service Aerien F.B.O. Inc., pursuant to 49 U.S.C. Section 41301 and Section 41302 and Subpart Q of the Regulations, applies for a Foreign Air Carrier Permit authorizing foreign charter air transportation of persons, property, and mail between points in the United States and points in Canada.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94-23574 Filed 9-22-94; 8:45 am]

BILLING CODE 4910-62-P

Notice of Public Meeting

AGENCY: Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: The Department (DOT) will hold a Rail Safety Summit on September 30, 1994. The summit will begin at 9 a.m. and end at 11:45 a.m. Registration will begin at 8 a.m. The public is invited to attend and/or submit written statements.

DATES: The summit will occur on September 30. Written statements should be submitted before that date.

ADDRESSES: All written statements should be submitted to: Honorable Jolene M. Molitoris, Administrator, Federal Railroad Administration, 400 Seventh Street, SW., Room 8206, Washington, DC 20590. The summit will be held at the Mayflower Hotel, 1127 Connecticut Avenue, Washington, DC.

Background

On August 4, 1994, the Secretary of Transportation announced that he would hold a Rail Safety Summit to focus on safety and the prevention of railroad accidents. In a news release on that date, the Secretary said, "We want to raise safety vigilance in all aspects of the railroad system, from the freight railroads that provide track for Amtrak, to the state and local officials responsible for highway-rail grade crossings. We will bring together the best minds in the industry to heighten safety awareness throughout the railroad system * * *."

DOT originally intended to invite only specific organizations and industry leaders to the summit. However, as planning progressed, DOT decided that members of the general public might also be interested in attending and/or submitting written statements. Accordingly, the DOT obtained a site for the summit that will accommodate more than those who have been invited directly. Seating will be reserved, of course, for those who have been invited. Remaining seats will be available to the public on a first come, first served basis. Those considering attending should consider that the additional seating will be limited and that C-Span will televise the summit.

The summit is not a hearing designed to obtain advice or recommendations on what the DOT, the Federal Railroad Administration, or any other agency should do to improve railroad safety. Nor is it a regulatory hearing to discuss pending rail safety regulatory proposals. The summit is intended to be a dialogue between several of the Department's senior officials and a diverse group of industry leaders on selected issues that appear key to improving safety. The Secretary is interested in learning what the industry is doing and plans to do in the subject areas chosen for discussion. Those subjects are:

- Highway-rail grade crossing and trespasser safety
- Passenger equipment and emergency response training and planning
- Ways for passenger and freight railroads to achieve success
- The role of system safety planning, and
- The future of railroad safety

Of course, there are many other important subjects in the area of railroad safety (*e.g.*, hazardous materials transportation, track safety, and employee qualifications). Unfortunately, the time available for the summit is quite limited. Therefore, DOT had to be very selective in choosing topics and decided on these because they seem to include some of the most important and current issues in the vast field of railroad safety. For those who wish to submit written statements, we would appreciate your focusing on the specific topics set forth above.

The summit will consist primarily of panel discussions of the selected topics. DOT chose panel members that would represent a wide range of views. The Secretary and senior DOT officials will participate directly in those discussions. At the conclusion of the five panel discussions, any remaining time will be available for general questions directed to panel members or the DOT officials by members of the audience. These questions must be submitted on forms that will be available at the summit during registration.

Issued this 18th day of September, 1994.

Federico Peña,

Secretary.

[FR Doc. 94-23572 Filed 9-22-94; 8:45 am]

BILLING CODE 4910-06-M

Coast Guard

[CGD 94-076]

Chemical Transportation Advisory Committee (CTAC) Subcommittee on Marine Occupational Safety and Health Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee on Marine Occupational Safety and Health of the Chemical Transportation Advisory Committee will meet to determine how to protect the marine worker from exposure to hazardous cargo vapors. This may include the development of additional comprehensive exposure standards for marine workers. The meeting will be open to the public.

DATES: The meeting will be held October 5-6, 1994, from 9 a.m. to 5 p.m. daily. Written material should be submitted no later than September 30, 1994.

ADDRESSES: The meeting will be held in room 4432A, U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590-0001. Written material should be submitted to Mr. Guy R. Colonna, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269.

FOR FURTHER INFORMATION CONTACT: Mr. Guy R. Colonna, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269, telephone (617) 984-7435, or Dr. Alan L. Schneider, U.S. Coast Guard Headquarters (G-MTH-1), 2100 2nd Street, S.W., Washington, DC 20593-0001, telephone (202) 267-1217.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, section 1 et seq. The agenda will include the discussion of the following topics:

1. Methods that would protect the marine worker from exposure to hazardous cargo vapors; and
2. The need for additional comprehensive exposure standards for marine workers.

This meeting will continue the Subcommittee's work in this area. Attendance is open to the public. With advance notice, and at the Chairman's discretion, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify Mr. Colonna, listed above under **ADDRESSES**, no later than the day before the meeting. Written material may be submitted at any time for presentation to the Subcommittee. However, to ensure advance distribution to each

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Subcommittee member, persons submitting written material are asked to provide 30 copies to Mr. Colonna no later than September 30, 1994.

Dated: September 14, 1994.

J.F. McGowan,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94-23511 Filed 9-22-94, 8:45 am]

BILLING CODE 4910-14-M

[CGD 94-065]

Centralization of Vessel Documentation Activities; Implementation Plan; Public Meetings

AGENCY: Coast Guard, DOT

ACTION: Notice of meetings.

SUMMARY: On August 30, 1994, the Coast Guard published a notice in the **Federal Register** (59 FR 44788), in which it announced a series of public meetings to discuss plans to close vessel documentation offices in 14 cities, and to centralize all vessel documentation activities at a single location. That notice identified the dates and locations of the first two meetings and stated that a separate notice would identify the dates and locations of the remaining meetings. This notice announces the dates, times, and addresses of the remaining public meetings to be held by the Coast Guard to discuss the centralization plans.

DATES: The meetings will be held on: October 4, 1994 in Long Beach, CA; October 6, 1994 in Seattle, WA; October 21, 1994 in New York, NY; October 31, 1994 in St. Louis, MO; and November 4, 1994 in Miami, FL.

ADDRESSES: Copies of the implementation plan are available from Commandant (G-MVI-5), U.S. Coast Guard Headquarters, room 1312, 2100 Second Street, SW., Washington, DC 20593-0001. The addresses and convening times for each meeting are listed separately in this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Burley, Vessel Documentation and Tonnage Survey Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection. Telephone (202) 267-1492, telefax, (202) 267-4177.

Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to discuss the Coast Guard's implementation plan, and to obtain input from and educate the affected community and general public with regard to revised procedures and planned innovations. The planned centralization is part of the Coast Guard's ongoing efforts to provide the maximum service to the maritime community, while seeking to reduce costs.

The implementation plan describes in general terms the steps and procedures which the Coast Guard will follow in achieving centralization while maintaining full customer service.

Meeting Participation

It is unnecessary to file a written request to participate in the meeting. The Coast Guard will discuss its implementation plan and solicit input from the public for the purpose of ensuring an orderly transition to the central site. Individuals will also be afforded an opportunity to leave informal written comments on specific areas of concern. Following the public meetings, the Coast Guard will consider the input from the public and may revise its implementation plan accordingly.

Meetings

The meetings will be held in Long Beach, CA; Seattle, WA; New York, NY; St. Louis, MO; and Miami, FL.

The meetings are open to the public and will convene as follows:

On October 4, 1994, from 9 a.m. to noon in room 7200, 501 West Ocean Boulevard, Long Beach, CA 90822-5399.

On October 6, 1994, from 9 a.m. to noon in the Bear Room, Pier 36, 1519 Alaskan Way S., Seattle, WA 98134-1192.

On October 21, 1994, from 10 a.m. to 1 p.m. in the Ward Room, room 214, Marine Inspection Office, Battery Park Building, New York, NY 10004-1466.

On October 31, 1994, from 9 a.m. to noon in room 2.206, Robert A. Young Building, 1222 Spruce Street, St. Louis, MO 63103-2835.

On November 4, 1994, from 9 a.m. to noon in room 220, Federal Building, 155 S. Miami Ave., Miami, FL 33130-1609.

Dated: September 16, 1994.

J.F. McGowan,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94-23510 Filed 9-22-94, 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Summary Notice No. PE-94-34]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 13, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on September 20, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations

Petitions for Exemption

Docket No.: 25052

Petitioner: TEMSCO Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.203(a)(1)
Description of Relief Sought: To extend and amend Exemption No. 4760, as amended, which allows TEMSCO Helicopters, Inc., and other air taxi/commercial operators to conduct seaplane operations in the controlled airspace for Ketchikan, Alaska, under special visual flight rules below 500 feet above the surface. The amendment, if granted, would replace "seaplane" operations with "flight" operations, which would permit aircraft other than seaplanes to operate under the exemption, and would replace "control zone" with the current airspace classification.

Docket No.: 27770
Petitioner: Suncoast Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To permit flight crew members employed by Suncoast Helicopters, Inc., to remove and replace aircraft cabin seats when maintenance personnel are not available.

Docket No.: 27837
Petitioner: Los Angeles Police Department
Sections of the FAR Affected: 14 CFR 145.53
Description of Relief Sought: To permit the City of Los Angeles Department of General Services Helicopter Maintenance Unit, a FAA-certificated repair station, to perform maintenance on the Department's military surplus Bell Helicopter 204B, an aircraft for which the repair station is not rated.

Docket No.: 27867
Petitioner: Department of the Navy
Sections of the FAR Affected: 14 CFR 91.209 (a) and (b)
Description of Relief Sought: To permit the Marine Corps to conduct night flight military training operations without lighted aircraft position lights.

Dispositions of Petitions

Docket No.: 27646
Petitioner: Mr. Steve Baumberger
Sections of the FAR Affected: 14 CFR 65.91(c)(2)
Description of Relief Sought/Disposition: To allow Mr. Baumberger to apply for an inspection authorization without having been actively engaged in maintaining aircraft for at least the 2-year period before the date of your application
Denial, August 29, 1994, Exemption No. 5961

Correction

[**Note:** This summary replaces the summary published in the September 3, 1994, **Federal Register**. The purpose of this replacement is to further clarify and correct the currently published one. The comment period will begin with this publication.]

Docket No. 27849
Petitioner: Ilyushin Aviation Complex
Sections of the FAR Affected: 14 CFR 25.571(e)(1), Amendment 25-72
Description of Relief Sought: To allow Ilyushin relief from the bird impact requirement of § 25.571(e)(1), as amended by Amendment 25-72, which requires the airplane to be capable of continued flight and landing after impact with a 4-pound bird at Vc at sea level to 8,000 feet. Ilyushin seeks to demonstrate that the IL-96T airplane is capable of successfully completing a flight during which likely structural damage occurs as a result of impact with a 4-pound bird at whichever true airspeed is greater: Vc at sea level, or .85 Vc at 8,000 feet. The petitioner also seeks to demonstrate compliance with the empennage strength requirements of § 25.631 considering a 4-pound bird in lieu of an 8-pound bird.

[FR Doc. 94-23570 Filed 9-22-94, 8:45 am]

BILLING CODE 4910-13-M

Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Friedman Memorial Airport, Hailey, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Friedman Memorial Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and 14 CFR Part 158.

DATES: Comments must be received on or before October 24, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, 1601 Lind Avenue SW., Suite 540; Renton, WA 98055-4056 and J. Wade Bryant, Manager; Seattle Airports District Office, SEA-ADO; Federal Aviation Administration, 1601 Lind Avenue SW, Suite 250, Renton, WA 98055-4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard R. Baird, Airport Manager at the following address: P.O. Box 929, Hailey, ID 83333.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Friedman Memorial Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra M. Simmons, Federal Aviation Administration, Seattle Airports District Office, 1601 Lind Avenue SW, Suite 250, Renton, WA 98055-4056, (206) 227-2656. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Friedman Memorial Airport under the provisions of the Aviation Safety and Capacity Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On September 14, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Friedman Memorial Airport Authority was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 15, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: March 1, 1995
Proposed charged expiration date: December 31, 1995
Total estimated PFC revenue: $144,637.00

Brief description of proposed project(s): Rehabilitation of air carriers/general aviation ramp; ADA ramp for departure area of terminal; Rehabilitation Runway 13/31 resurface with a porous friction course; Environmental Assessment for Friedman Memorial Airport master plan update and first phase development; Purchase of snow removal equipment; Aircraft rescue fire fighting (ARFF) equipment upgrade/purchase; Extend sewer line, repair access road and construct terminal loop road.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 air taxi/commercial operators who conduct operations in air commerce carrying persons for compensation or hire, except air taxi/commercial operators public or private charter in aircraft with

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a seating capacity of 10 or more. The application was prepared identifying the second part of the exemption in regards to "a seating capacity of 10 or less"; however, this was a typographical error, "a seating capacity of 10 or more" was discussed at the consultation meeting. A letter notifying the carriers of the error has been distributed indicating that the actual exemption will read "a seating capacity of 10 or more" and they may respond during the Federal Register comment period certifying their agreement or disagreement.

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT and at the FAA regional airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue, SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Friedman Memorial Airport.

Issued in Renton, Washington on September 14, 1994.

Matthew J. Cavanaugh,

Acting Manager, Planning, Programming and Capacity Branch, Airports Division, Northwest Mountain Region.

[FR Doc. 94–23569 Filed 9–22–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Innovative Financing Request for Assistance

AGENCY: Federal Railroad Administration; Department of Transportation.

ACTION: Notice.

SUMMARY: The Federal Railroad Administration is requesting assistance in identifying: (1) Projects for inclusion in the Department of Transportation's innovative infrastructure financing initiative and (2) modifications to ISTEA.

ADDRESSES: Responses should be sent to Sally Hill Cooper, Associate Administrator for Policy and Program Development, Federal Railroad Administration, 400 Seventh Street, SW., Room 8300, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Tom Hartman (202) 366–0177 or Sally Hill Cooper (202) 366–0173.

SUPPLEMENTARY INFORMATION: Executive Order 12893 "Principles for Federal Infrastructure Investments," signed by the President on January 26, 1994, signals the importance the Administration places on investment in transportation. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) offers increased flexibility through new planning requirements and funding opportunities so that states and metropolitan planning organizations (MPO) can create a more integrated, environmentally sensitive, intermodal transportation network. In response to this new flexibility, but cognizant of continuing federal budget constraints, the Secretary established an infrastructure financing task force. This group is exploring innovative financing techniques that promote private-public partnerships, effectively leverage limited public dollars, apply creative solutions to infrastructure needs, and increase state and local use of the flexibility given to them under ISTEA.

As part of this effort, the Federal Railroad Administration (FRA) conducted a roundtable with industry representatives and discussed infrastructure financing. We are now working to identify selected state and locally supported rail and rail-related projects that have potential for funding under ISTEA, but are currently stalled. As we move toward reauthorization of ISTEA, we are also soliciting ideas on potential changes to ISTEA that would facilitate rail-related projects having significant public benefits.

There are additional components to the Department's infrastructure financing effort of which FRA is a part. As published in the Federal Register on April 8, 1994 (59 FR 16889), the Federal Highway Administration (FHWA) established an Innovative Financing—Test and Evaluation Project (TE–045) to increase the flexibility of ISTEA by identifying projects that "develop innovative financing concepts which hold the most potential to increase investment or reduce public agency costs." Projects are being identified that exhibit some type of private-public partnership, provide creative applications of ISTEA to address congestion, intermodal, or environmental issues, have positive economic benefits, and strong local and state support. The Federal Transit Administration (FTA) has established a similar program and, as published in the Federal Register on September 12, 1994 (59 FR 46878), is seeking input on methods to facilitate public and private transit investment and assistance toward identifying specific local transit projects that apply innovative financing techniques. FRA is working with both FHWA and FTA to coordinate efforts and identify projects with rail components.

Specifically, the FRA is requesting assistance and comments in the following areas:

1. Identifying selected rail related projects that demonstrate some form of innovative financing and are ISTEA qualified but are stalled due to regulatory or administrative obstacles or lack of appropriate financing;
2. Identifying current obstacles or impediments to the current use of ISTEA funds for rail related projects;
3. Identifying appropriate applications for public funding and partnerships with the private sector;
4. Identifying the applicability (effectiveness) of the current transportation planning requirements to multi-state rail projects; and
5. Suggesting modifications to ISTEA to enhance rail's contribution and relevancy to a more integrated, environmentally sensitive, intermodal transportation system.

Projects submitted should at a minimum provide a brief description of the project, cost and funding committed, project status, environmental implications, local/state support and the possible innovative financing aspect of the proposal. Project submissions should be submitted to FRA, if possible, by October 31, 1994.

Comments regarding modification and applicability of ISTEA to the rail industry are requested, if possible, by November 15, 1994.

Issued in Washington, D.C. on September 19, 1994.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 94–23567 Filed 9–22–94; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

Announcement of the Ninth Meeting of the Heavy Truck Subcommittee of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT

ACTION: Meeting announcement.

SUMMARY: This notice announces the ninth meeting of the Heavy Truck Subcommittee of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The MVSRAC established this Subcommittee at the February 1988 meeting to examine research questions regarding crashworthiness and crash avoidance for vehicles over 10,000 pounds.

DATES AND TIMES: The meeting is scheduled for Tuesday, October 25, 1994, from 10 a.m. until 4 p.m.

ADDRESSES: The meeting will be held in room 6332 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW., Washington, D.C.

SUPPLEMENTARY INFORMATION: The Motor Vehicle Safety Research Advisory Committee was established in May 1987. The purpose of the Committee is to provide an independent source of ideas for safety research. The MVSRAC provides information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research and provides a forum for the development, consideration, and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

At the White House Conference on Global Climate Change in June of 1993, a number of measures to reduce greenhouse gasses were discussed. One of the many measures related to vehicle fuel economy that was discussed was a suggestion to foster the increased use of low rolling resistance tires in the aftermarket. A Heavy Vehicle Tire Rolling Resistance Task Force has been established, under the Subcommittee, to explore ways of achieving that objective. The Task Force Chairperson will provide a status report on current activities with truck tire manufacturers, truck fleets, and owner organizations to promote a voluntary truck tire rolling resistance program. This status report will be followed by a discussion with the Subcommittee members relative to how best to proceed further on this subject.

At the third meeting of the Subcommittee, a Truck Tire Traction Task Force was established to develop a proposal for a cooperative government-industry research program to produce a method of uniformly measuring truck tire combined lateral and longitudinal traction characteristics. Under the auspices of the Society of Automotive Engineers (SAE), Phase I of this program was initiated to develop a standardized test procedure for characterizing pertinent tire properties. Phase II will utilize the developed test procedure in a full-scale test program to establish a data base of pertinent tire characteristics that will serve as input to vehicle dynamics models and as benchmarks for vehicle component design. NHTSA's Office of Research and Development will provide a status report on this cooperative government-industry research activity which will be followed by a discussion with the Subcommittee members to further clarify the objectives of this program.

The SAE Truck Crashworthiness Subcommittee determined that fundamental research was needed to define a "typical and representative" crash environment that can be used as a benchmark against which design improvements for heavy truck occupant crash protection could be judged. The Heavy Truck Occupant Crash Protection cooperative research program was subsequently initiated under the auspices of the SAE and is underway. Support funding has been obtained from a wide range of industry and government sources. A status report on this research program will be provided by NHTSA's Office of Research and Development to be followed by a discussion with the Subcommittee members relative to the goals and schedule of this program.

As directed by Report 103–310 of the Senate's Committee on Appropriations accompanying H.R. 4556, Department of Transportation And Related Agencies Appropriations Bill 1995, NHTSA will develop a 5-year strategic plan outlining the future of its Heavy Truck Safety Program. This report is to be delivered to the House and Senate Appropriations Committees before the agency's hearing next year. The report should outline the scope, nature, and direction of a revitalized Heavy Truck Safety Program, and be developed in consultation with the American Trucking Association Foundation, the Office of Motor Carriers, and the Motor Vehicle Safety Research Advisory Committee. At a minimum, the plan should address the objectives of NHTSA's future research in cab ergonomics, crashworthiness, human factors, and future population demographics and their relationship to driver safety. Since heavy truck safety is a very broad subject area, NHTSA's Office of Research and Development is proposing that during this announced meeting with the Heavy Truck Subcommittee, topics suitable for incorporation in a 5-year strategic plan be identified. In this meeting, efforts should be directed at developing a process for systematically evaluating and prioritizing the possible heavy truck research topics for the 5-year plan based on inputs from members of the Subcommittee.

At this Subcommittee meeting, an initial assessment of potential research focus areas will be made. The objective of the discussions will be to identify the current state of knowledge in each particular area, ongoing activities relevant to the topic, identification of information that is needed to make progress in area, and discussion of whether the subject area is worth pursuing and, if so, whether it should be a short, medium, or long range priority.

The meeting is open to the public, and participation by the public will be determined by the Subcommittee Chairperson.

A public reference file (Number 88–01) has been established to contain the products of the subcommittee and will be open to the public during the hours of 8:00 a.m. to 4:00 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in Room 5108 at 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–2768.

FOR FURTHER INFORMATION CONTACT: William A. Leasure, Jr., Chairperson, Heavy Truck Subcommittee, Office of Research and Development, 400 Seventh Street, SW., Room 6220, Washington, DC., 20590, telephone (202) 366–5662.

Issued on: September 16, 1994.

George L. Parker,

Chairman, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 94–23527 Filed 9–22–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

September 15, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980. Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0212
Form Number: IRS Form 5558
Type of Review: Extension
Title: Application for Extension of Time To File Certain Employee Plan Returns
Description: This form is used by employers to request an extension of time to file employee plan annual information returns and the employee plan excise tax return (Form 5330). The data supplied on this form is

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used to determine if such extension of time is warranted.
Respondents. Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents. 75,000
Estimated Burden Hours Per Respondent: 36 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 44,525 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–23564 Filed 9–22–94; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

September 19, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request

Authorization of the form described below is required within 7 days as the Violent Crime Control and Law Enforcement Act (The Crime Bill) requires Federal firearms licensees to report to the Bureau of Alcohol, Tobacco and Firearms and to the appropriate local authorities any theft or loss of a firearms from the licensees. In order to meet this requirement as soon as possible, the Department of the Treasury is requesting review and approval by the Office of Management (OMB) by September 26, 1994. In accordance with 5 CFR 1320.18, ATF Form 3310.11, and its instructions, are included with this for review. All public comments must be received by close of business September 22, 1994.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: New
Form Number: ATF Form 3310.11
Type of Review: New collection
Title Federal Firearms Licensee Theft/Loss Report
Description Thefts or losses of firearms from the inventory or collection of a Federal firearms licensee must be reported to the Secretary of the Treasury and the appropriate local authorities within 48 hours of discovery. This form contains the minimum information necessary for ATF to initiate criminal investigations..
Respondents: Individuals or households, Businesses or other for-profit, Federal agencies or employees
Estimated Number of Respondents: 4,000
Estimated Burden Hours Per Respondent: 24 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1,600 hours
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

FEDERAL FIREARMS LICENSEE THEFT/LOSS REPORT

Prepare in duplicate. All entries must be in ink. Before completing, please see notices and instructions on the reverse of this form.

SECTION A - FEDERAL FIREARMS LICENSEE INFORMATION

FEDERAL FIREARMS LICENSE NUMBER	TELEPHONE NUMBER OF FEDERAL FIREARMS LICENSEE (Include area code.)

TRADE/CORPORATE NAME AND ADDRESS OF Federal Firearms Licensee
(Address should reflect the Street Address and Number, City, State, Zip Code)

NAME, ADDRESS AND TELEPHONE NUMBER OF PERSON MAKING REPORT
(Address should reflect the Street Address and Number, City , State, Zip Code. Include area code in the telephone number.)

SECTION B - THEFT/LOSS INFORMATION

	DATE	TIME	DESCRIPTION OF INCIDENT
DISCOVERED			____ ROBBERY ____ THEFT
REPORTED TO LOCAL AUTHORITIES			____ CASUALTY ____ LARCENY
REPORTED TO ATF HOTLINE NUMBER			ATF HOTLINE INCIDENT NUMBER

SECTION C - DESCRIPTION OF FIREARMS

DATE OF ACQUISITION	MANUFACTURER	MODEL	CALIBER OR GAUGE	SERIAL NUMBER

I HEREBY CERTIFY THAT THE ABOVE INFORMATION IS TRUE AND CORRECT. I ALSO UNDERSTAND THAT FAILURE TO REPORT THE THEFT OR LOSS OF A FIREARM FROM MY INVENTORY OR COLLECTION WITHIN 48 HOURS AFTER THE THEFT OR LOSS IS DISCOVERED IS A VIOLATION OF 18 U.S.C. § 923 (g)(6) PUNISHABLE AS A FELONY.

SIGNATURE DATE

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IMPORTANT NOTICE

Section 923(g), Title 18 U.S.C., requires each Federal Firearms Licensee (FFL) to report the theft/loss of a firearm from the licensee's inventory from the collection of a licensed collector, within 48 hours of discovery to the Bureau of Alcohol, Tobacco and Firearms (ATF) by calling 1-800-800-3855 and to local law enforcement authorities.

FFLs who report a firearm as missing and later discover its whereabouts should advise ATF that the firearms have been located. Licensees reporting theft/loss of firearms registered under the National Firearms Act must also provide written notification to the National Firearms Act Branch, pursuant to 27 C.F.R. § 179.141.

This form should not be used by common carriers for reporting the theft/loss of firearms. Thefts/losses from interstate shipments must continue to be reported on ATF Form 3310.6, Interstate Firearms Shipment Report of Theft/Loss.

INSTRUCTIONS TO FEDERAL FIREARMS LICENSEES

1 FFLs must report the theft/loss of firearms to the ATF Theft Hotline Number (1-800-800-3855) within 48 hours of discovery

2 This form is to be used to provide written notification of firearms thefts/losses in addition to reporting firearms thefts/losses to the ATF Theft Hotline Document the date that you report the information to the ATF Theft Hotline in Section A of this form. An ATF Theft Hotline representative will provide you with an ATF Theft Hotline Incident Number. That number must be recorded in Section A of this form.

3 A separate form is required for each theft/loss report. This form must be prepared in ink, signed, and dated.

4 The description of the lost or stolen firearms provided in Section B of this form should be identical to the information contained in the Record of Acquisition and Disposition required by 27 CFR Part 178 Subpart H

5 Upon completion, the original must be forwarded to the following address:

Bureau of Alcohol, Tobacco and Firearms
Tech World Post Office
Post Office Box 50220
Washington, D.C. 20226

6 Copy 1 should be removed and retained as part of the licensee's permanent records.

7 FFLs must reflect the theft/loss as a disposition entry in the Record of Acquisition and Disposition required by 27 CFR Part 178, Subpart H. The disposition entry should indicate whether the incident is a theft or loss, the ATF Theft Hotline Report Number, and the Incident Number provided by the local law enforcement agency.

8 Should any of the firearms be located, they should be reentered into the Record of Acquisition and Disposition as an acquisition entry

9 Additional forms may be obtained through the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia, 22153 (703) 455-7801

PAPERWORK REDUCTION ACT

The information required on this form is in accordance with the Paperwork Reduction Act of 1980. The purpose of this information is to provide notification to ATF of the theft or loss of firearms from the inventory of a Federal firearms licensee and from the collection of a licensed collector. The information is subject to inspection by ATF offices. The information on this form is required by 18 U.S.C. 923(g)(6).

The estimated average burden associated with the collection is 24 min. per respondent, depending on individual circumstances Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Reports Management Officer, Information Programs Branch, Bureau of Alcohol, Tobacco and Firearms, Washington D.C. 20226, and the Office of Management and Budget, Paperwork Reduction Project (1512-), Washington, D.C. 20503

[FR Doc. 94-23565 Filed 9-22-94; 8:45 am]
BILLING CODE 4810-31-C

Customs Service

Procedures If the Generalized System of Preferences Program Expires

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: General notice.

SUMMARY: The Generalized System of Preferences (GSP) is a preferential trade program that allows the products of many developing countries to enter the United States duty free. The GSP is currently scheduled to expire at midnight on September 30, 1994, unless its provisions are extended by Congress. This document provides notice to importers that claims for duty-free treatment under the GSP may not be made for merchandise entered or withdrawn from a warehouse on or after October 1, 1994, if the program is not extended before that date. The document also sets forth a Customs mechanism to facilitate refunds, if the GSP is renewed retroactively.

DATE: The plan set forth in this document will become effective as of October 1, 1994, if Congress does not extend the GSP program before that date.

FOR FURTHER INFORMATION CONTACT: For general operational aspects: Lisa Crosby, Office of Trade Operations, 202-927-0163. For specific questions relating to the Automated Commercial Systems: Irv Fisher, Office of Automated Commercial System, 202-927-1220.

SUPPLEMENTARY INFORMATION:

Background

Section 501 of the Trade Act of 1974 (the Act), as amended (19 U.S.C. 2461) authorizes the President to establish a Generalized System of Preferences (GSP) to provide duty-free treatment for eligible articles imported from designated beneficiary countries. Beneficiary developing countries and articles eligible for duty-free treatment under the GSP are designated by the President by Presidential Proclamation in accordance with sections 502(a) and 503(a) of the Act (19 U.S.C. 2462(a) and 2463(a)). Pursuant to 19 U.S.C. 2465(a), as amended by section 13802 of Public Law 103-66, 107 Stat. 312, 667-668, duty-free treatment under the GSP is presently scheduled to expire on September 30, 1994. Thus, duties at the most-favored-nation rate must be deposited, or a claim may be made under another preferential program for which the merchandise qualifies.

Congress is currently considering whether to extend the GSP program in the context of legislation to implement the Uruguay Round of trade negotiations under the General Agreement on Tariffs and Trade. If this legislation is not enacted prior to September 30, 1994, language may be included that would renew the GSP retroactively, requiring reliquidation of numerous entries to refund duties collected.

Recognizing the impact that retroactive renewal and consequent numerous reliquidations would have on both importers and Customs, Customs has developed a mechanism to facilitate refunds, should GSP be renewed retroactively. Set forth below is Customs plan that will be implemented on October 1, 1994, if the GSP has not been extended by that date.

Claims—Duties Must Be Deposited

No claims for duty-free treatment under the GSP may be made for merchandise entered, or withdrawn from warehouse for consumption on or after October 1, 1994. Duties at the most-favored-nation rate must be deposited, or a claim may be made under another preferential program for which the merchandise qualifies (for example, the Andean Trade Preference Act, the Caribbean Basin Initiative, or the U.S.-Israel Free Trade Area Agreement).

While estimated duties must be deposited, all filers who file entry summaries through the Automated Broker Interface (ABI) may continue to file using the Special Program Indicator (SPI) for the GSP (the letter "A") as a prefix to the tariff number for all entries that would have qualified for the GSP if the GSP were still in effect. Customs Automated Commercial System (ACS) will be reprogrammed to accept the SPI "A" with the payment of duty.

Filers using the ABI may reprogram their software so that the SPI "A" can still be used as a prefix to the tariff number, but with the payment of duty. While reprogramming is strictly voluntary, continued use of the SPI "A" has some benefits. One benefit of continued use of the SPI "A" is that the filer will not have to write a letter to Customs requesting a refund if the GSP is renewed with retroactive effect. Use of the SPI "A" will enable Customs to identify affected line items and refund duties without a written request from the importer. In other words, after September 30, 1994, the SPI "A" will constitute an importer's request for a refund of duties paid for GSP line items, should GSP renewal be retroactive. Other benefits are that ACS will perform its usual edits on the information transmitted by the filer, thereby ensuring that GSP claims are for acceptable country/tariff combinations and eliminating the need for numerous statistical corrections.

Details on the programming changes required have been issued as an administrative message to all ABI filers.

Filers who do not wish to reprogram will be required to request refunds in writing if the GSP is renewed retroactively, identifying the affected entry numbers.

ABI filers continuing to use the SPI "A" may use it as they do now (for example, for warehouse entries and for formal consumption entries).

A claim for a preferential rate under another trade program, however, will preclude use of the SPI "A" to request a refund. Thus, for example, an importer entering merchandise using a reduced rate under the U.S.-Israel Free Trade Area Agreement will be precluded from using the "A" to request that the U.S.-Israel FTA claim be converted to a GSP claim, should the GSP be renewed retroactively. Importers, however, may make such a request in writing if the GSP is renewed retroactively.

Similarly, importers may not use the SPI "A" if they intend to later claim drawback. Use of the SPI "A" is the importer's indication that he wishes to receive a refund if the GSP is renewed retroactively. To claim both this refund and drawback would be to request a refund in excess of duties actually deposited. Importers who are unsure as to whether they will claim drawback are advised not to use the SPI "A". If the GSP is renewed retroactively, and they have not yet claimed drawback, they may request a refund by writing to the district director at the port of entry. If the GSP is not renewed retroactively, they will still have the option of filing a drawback entry.

Continued use of the SPI "A" is not available to non-ABI filers.

Statistics

For statistical purposes, ACS will internally convert any "A" transmitted via ABI after September 30, 1994 into a "Q". If the GSP is renewed retroactively to that date, Census will convert all "Q" statistics into "A" statistics, thereby ensuring that next year's competitive need limitations under the GSP are accurate. This will also vastly reduce the number of statistical corrections that must be done by import specialists.

Informal Entries

Refunds on informal entries filed via ABI on a Customs Form 7501 with the SPI "A" will be processed in accordance with the procedures outlined above.

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Procedures for other kinds of informal entries will be issued at a later date if necessary.

Refunds

If the GSP is renewed with retroactive effect, Customs will reliquidate all affected ABI entry summaries with a refund for the GSP line items or will provide administrative refunds for entry summaries that cannot be liquidated. Field locations shall not issue GSP refunds until instructed to do so by Customs Headquarters.

If a filer files an ABI entry summary with the SPI "A", no further action will need to be taken by the filer to request a refund; filing with the SPI "A" constitutes a valid claim for a refund. Refunds for summaries filed without the SPI "A" must be requested in writing. Instructions on how to request a refund in writing will be issued if the GSP is renewed with retroactive effect.

Customs cannot overemphasize that any refund for duty-free claims under the GSP for merchandise entered or withdrawn from warehouse on or after September 30, 1994, will only be issued provided that the GSP is renewed retroactively by Congress in the same manner that tariff preference programs have been renewed in the past.

Dated: September 20, 1994.

Samuel H. Banks,

Assistant Commissioner, Commercial Operations.

[FR Doc. 94-23657 Filed 9-20-94; 3:43 pm]

BILLING CODE 4820-02-P

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Closed Meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The closed meeting will be held October 7, 1994.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on October 7, 1994 in room 224, beginning at 9 a.m., Aerospace Center Building, 901 D Street, SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:AS:4, 901 D Street, SW, Washington, DC 20024. Telephone (202) 401-4128, (not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on October 7, 1994 in room 224, beginning at 9 a.m., Aerospace Center Building, 901 D Street, SW, Washington, DC 20024.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c) (3), (4), (6), and (7) of title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in EO 12866 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94-23513 Filed 9-22-94; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Education, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92-463) of October 6, 1972, that the Department of Veterans' Affairs Veterans' Advisory Committee on Education has been renewed for a 2-year period beginning August 26, 1994, through August 26, 1996.

Dated: September 12, 1994.

By Direction of the Secretary.

Heyward Banister,

Committee Management Officer.

[FR Doc. 94-23517 Filed 9-22-94; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92-463) of October 6, 1972, that the Department of Veterans Affairs, Advisory Committee on Structural Safety of VA Facilities has been renewed for a 2-year period beginning April 22, 1994, through April 22, 1996.

Dated: September 12, 1994.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94-23516 Filed 9-22-94; 8:45 am]

BILLING CODE 8320-01-M

Geriatrics and Gerontology Advisory Committee, Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 that a meeting of the Geriatrics and Gerontology Advisory Committee (GGAC) will be held October 5 and 6, 1994, by the Department of Veterans Affairs, in the Garden Room of the Morrison Clark Hotel located at 11th and Massachusetts Avenue, NW. The purpose of the Geriatrics and Gerontology Advisory Committee is to advise the Secretary of Veterans Affairs and the acting Under Secretary for Health relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Education and Clinical Centers. The committee will meet on October 5 from 8:30 a.m. until 4:30 p.m. and will reconvene on October 6 at 8:30 a.m. and adjourn at 12 noon. The meeting is open to the public up to the seating capacity of the room. For those wishing to attend contact Jacqueline Holmes, Program Assistant, Office of Assistant Chief Medical Director for Geriatrics and Extended Care (phone 202-535-7164) prior to October 3, 1994.

VA's status of health care reform, White House Conference on Aging, GRECC site visit reports, and Sub-Acute Units in Nursing Homes will be the primary topics for discussion.

Dated: September 13, 1994.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94-23515 Filed 9-22-94; 8:45 am]

BILLING CODE 8320-01-M

Voluntary Service National Advisory Committee, Meeting

The Department of Veterans Affairs (VA), in accordance with Pub. L. 92-463, gives notice that the annual meeting of the VA Voluntary Service (VAVS) National Advisory Committee will be held on:

Wednesday, October 19, 1994, through Saturday, October 22, 1994.

The meeting begins with participant registration at 8 a.m. on October 19, 1994, and concludes at 11:30 a.m. on October 22, 1994. The location of the meeting will be the Pier 66 Hotel, 2301 S.E. 17th Street Causeway, Fort Lauderdale, Florida.

The committee's objectives are to advise the Under Secretary for Health on how to coordinate and promote volunteer activities in VA health care facilities. The committee is comprised of the representatives of sixty national volunteer organizations. The committee member organizations provided over 8.9 million hours of VAVS volunteer service in fiscal year 1993.

The primary purposes of this meeting are: to provide for committee review of volunteer policies and procedures; to accommodate full and open communications between the volunteer organizations, representatives and the Voluntary service staff; to conduct seminars and workshops designed to share information geared towards improving volunteer programs with special emphasis on methods to recruit, retain, motivate and recognize volunteers; and to approve committee recommendations.

All portions of the meeting will be open to the public. Additional information concerning this meeting may be obtained from the Director, Voluntary Service Office (167), 810 Vermont Avenue, NW., Washington, DC, 20420.

Dated: September 12, 1994.

By Direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94-23518 Filed 9-22-94; 8:45 am]

BILLING CODE 8320-01-M

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Sunshine Act Meetings

Federal Register
Vol. 59, No. 184
Friday, September 23, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 7, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–23711 Filed 9–21–94; 10:22 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 14, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission

[FR Doc. 94–23712 Filed 9–21–94; 10:22 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 21, 1994.

PLACE: 2033 K St. NW., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission

[FR Doc. 94–23713 Filed 9–21–94; 10:22 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING

TIME AND DATE: 11:00 a.m., Friday, October 28, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–23714 Filed 9–21–94; 10:22 am]

BILLING CODE 6351–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, September 27, 1994, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Final amendment to Part 304 of the Corporation's rules and regulations, entitled "Forms, Instructions, and Reports," to rescind section 304.6 which currently requires all insured banks, with the exception of insured bankers' banks, to give the Corporation prior notice of planned rapid growth as a result of any "special funding plan or arrangement."

Discussion Agenda

Memorandum re: Recapitalization Schedule for the Bank Insurance Fund; Adequacy of the Bank Insurance Fund and Savings Association Insurance Fund Assessment Rates.

Memorandum and resolution re: Advance notice of proposed rulemaking which seeks comment on whether the deposit insurance assessment base currently provided for in the Corporation's regulations should be redefined and, if so, how.

Memorandum and resolution re: Proposed amendments to Part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which would revise and expand the set of conversion factors used to calculate the potential future exposure of derivative contracts and recognize effects of netting arrangements in the calculation of potential future exposure for derivative contracts subject to qualifying bilateral netting arrangements.

Memorandum and resolution re: Proposed amendments to Part 362 of the Corporation's rules and regulations, entitled "Activities and Investments of Insured State Banks," which would revise the Corporation's definition of equity investment to exclude treasury stock from the definition, thereby allowing institutions, in accordance with applicable Federal and state law, to acquire such stock and hold it for no longer than one year.

Memorandum and resolution re: Final amendments to Part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices Required to be Filed by Statute or Regulation," which concern delegations of authority for the newly-established Division of Compliance and Consumer Affairs, as well as other technical amendments relating to the new division.

The meeting will be held in the Board room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice); (202) 942–3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Acting Executive Secretary of the Corporation, at (202) 898–6757.

Dated: September 20, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–23727 Filed 9–21–94; 11:31 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:19 a.m. on Tuesday, September 20, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Recommendation regarding an administrative enforcement proceeding.

Matters relating to the Corporation's supervisory activities.

Application of Knoblauch State Bank, Reading, Pennsylvania, an insured State nonmember bank, for consent to merge, under its charter and title, with The Marian State Bank, Philadelphia, Pennsylvania, an insured State nonmember bank, and for consent to establish the sole office of The Marian State Bank as a branch of Knoblauch State Bank.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Dated: September 20, 1994.

Federal Deposit Insurance Corporation.

Leneta G. Gregorie,

Acting Assistant Executive Secretary.

[FR Doc. 94–23728 Filed 9–21–94; 11:31 am]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, September 28, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's renovation project.
2. Proposals regarding the Federal Reserve System's Fednet project.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 21, 1994

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–23725 Filed 9–21–94; 11:31 am]

BILLING CODE 6210–01–P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 10:30 a.m. on Monday, October 3, 1994, and at 9:00 a.m. on Tuesday, October 4, 1994, in Seattle, Washington.

The October 3 meeting is closed to the public (See 59 FR 46084, September 6, 1994). The October 4 meeting is open to the public and will be held at the Sheraton Hotel, 1400 Sixth Avenue, Seattle, in the West Ballroom.

The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

Agenda

Monday Session

October 3–10:30 a.m. (Closed)

1. Consideration of:
   a. Capital Funding for MLOCRs. (William J. Dowling, Vice President, Engineering)
   b. Expense Funding for Credit/Debit Cards. (Michael J. Riley, Chief Financial Officer and Senior Vice President)
   c. Funding for the Relocation of the Information Systems Field Office in St. Louis, Missouri. (Rudolph K. Umscheid, Vice President, Facilities)

Tuesday Session

October 4–9:00 a.m. (Open)

1. Minutes of the Previous Meeting, August 29–30, 1994.
2. Remarks of the Postmaster General/Chief Executive Officer. (Marvin Runyon)
3. Board of Governors 1995 Meeting Schedule. (Chairman Sam Winters)
4. Office of the Governors FY 1995 Budget. (Chairman Sam Winters)
5. Fiscal Year 1995 Operating Budget. (Michael J. Riley, Chief Financial Officer and Senior Vice President)
6. Review of the Capital Investment Program. (Mr. Riley)
7. Report on the Western Area. (Craig G. Wade, Vice President, Western Area Operations)
8. Capital Investment.
   a. 120 Remote Bar Coding System (RBCS). (William J. Dowling, Vice President, Engineering, and Allen R. Kane, Vice President, Operations Support)
9. Tentative Agenda for the November 7–8, 1994, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 94–23779 Filed 9–23–94; 3:10 pm]

BILLING CODE 7710–12–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

By telephone vote, a majority of the members contacted and voting, the Board of Governors voted to add to the agenda of its meeting closed to public observation on October 3, 1994, in Seattle, Washington; consideration of a funding request for the relocation of the St. Louis, Missouri, Information Systems Field Office (See 59 FR 46084. September 6, 1994).

The Board determined that pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because is likely to disclose information, the premature disclosure of which would significantly frustrate proposed procurement actions.

The Board further determines that the public interest did not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(9)(B) of title 5, United States Code; and section 7.3(i) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 94–23780 Filed 9–23–94; 3:09 pm]

BILLING CODE 7710–12–M

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Part II

Nuclear Regulatory Commission

10 CFR Part 19, et al.
Certification of Gaseous Diffusion Plants; Final Rule

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 20, 21, 26, 51, 70, 71, 73, 74, 76 and 95

RIN 3150–AE62

Certification of Gaseous Diffusion Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to add a new part that includes the requirements for certification of uranium enrichment activities of the United States Enrichment Corporation (the Corporation) in its operation of the two gaseous diffusion plants that the Corporation is leasing from the U.S. Department of Energy (DOE). These two plants are known as the Portsmouth Plant and the Paducah Plant, located at Piketon, Ohio, and Paducah, Kentucky, respectively. These regulations are being promulgated to establish standards for the protection of the public health and safety from radiological hazards and provide for the common defense and security, including adequate safeguards. A number of conforming amendments are also being made to other NRC regulations. In addition, appendix A to part 95 is being removed, since this material is now available in a separate publication.

EFFECTIVE DATE: October 24, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Nilsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6209; Mr. C.B. Sawyer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–8174; or Mr. J.K. Everly, Office of Administration, Division of Security, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7048.

SUPPLEMENTARY INFORMATION:

Background

The President signed H.R. 776, the "Energy Policy Act of 1992" (the Act), into law on October 24, 1992. The Act amended the Atomic Energy Act of 1954 (AEA), to establish a new Government Corporation, the U.S. Enrichment Corporation (the Corporation), for the purpose of managing and operating the uranium enrichment enterprise owned and previously operated by the Department of Energy (DOE). Section 1701 of the AEA, as amended, provides that within 2 years after enactment of the legislation, the NRC is to promulgate standards that will apply to the two operating gaseous diffusion plants to protect the public health and safety from radiological hazards, and to provide for the common defense and security.

Section 1701(b)(2) of the AEA, as amended, directs the NRC to establish a certification process under which the two gaseous diffusion plants at Piketon, Ohio, and Paducah, Kentucky, to be operated by the Corporation, will be certified annually by the NRC for compliance with those standards.

On February 11, 1994 (59 FR 6792), the Commission published a proposed new part 76 in the **Federal Register** for comment establishing requirements and procedures for the certification process by addition of this new part to chapter I of title 10 of the Code of Federal Regulations. In addition to the new part, a number of conforming changes to the provisions of Chapter I of Title 10 of the Code of Federal Regulations were also proposed which are necessary to implement the new part. The comment period expired on April 12, 1994.

The new 10 CFR part 76 is based upon comparable NRC requirements that have been in place for a number of years. The NRC believes these requirements are adequate and appropriate for the gaseous diffusion plants. The NRC will assume regulatory oversight authority after it completes the first certification process in late 1995.

Summary of Requirements and Analysis of Public Comments

The Nuclear Regulatory Commission is amending its regulations to add a new 10 CFR part 76 entitled, "Certification of Gaseous Diffusion Plants." This new part includes procedural requirements, generally applicable NRC health and safety standards, technical safety requirements, and safeguards and security requirements specific to the gaseous diffusion plants. The Commission will use the requirements included in this new 10 CFR part 76 to satisfy Energy Policy Act requirements. The certification requirements in this rulemaking include actions that are either required by the Act or required by the Commission's procedures to protect the public health and safety from radiological hazards, to provide for the common defense and security, and to ensure adequate safeguards. Because this action does not constitute a licensing action, many of the processes associated with issuance of a license do not apply in this certification action.

Twenty comment letters were received on the proposed rule and are available for public inspection, and copying for a fee, at the Commission's Public Document Room located at 2120 L Street, NW. (Lower Level), Washington, DC. The comments on the proposed rule came from a variety of sources that included the Corporation, the Department of Energy, citizens' groups, industry representatives, other Government agencies, and legal firms. The comments and their resolutions are discussed below and, to the extent possible, are arranged under the identified section of the rule to which they are related.

A. General Requirements

The general requirements are based on and mainly derived from 10 CFR Part 70. Part 70 contains the requirements used by the Commission to license the possession and use of special nuclear material at major fuel cycle facilities for which the NRC has regulatory responsibility for protecting public health and safety and the common defense and security. Specific sections in this new part, which are based on 10 CFR Part 70 as modified for the certification process, include the following:

Section 76.1 *Purpose.* This section defines the purpose of 10 CFR part 76 to be limited to certification of the existing 40-year-old gaseous diffusion plants previously operated by the DOE.

A comment was received indicating that reference made to "life of the plant" should be changed to "duration of lease." The final regulation has been so changed.

Section 76.2 *Scope.* This section defines the scope of part 76 to cover the operation of gaseous diffusion plants previously operated by DOE and now leased to the Corporation, and clarifies that the new part applies only to those plants.

Comments were received indicating that the rules should be clarified as only applying to operation of those portions of the diffusion plants leased to the Corporation. The appropriate changes to the rule have been made.

Section 76.4 *Definitions.* This section contains definitions of terms used in this part.

In response to comments received, several definitions have been added to, or revised in the final rule as follows:

Corporation. In response to a comment by the Corporation, the NRC agrees that the definition should be clarified to show the continued applicability of Part 76 to the operation of the gaseous diffusion plants after privatization of the Corporation if privatization were to occur.

Alert and Site area emergency. Definitions are added for consistency with other regulations.

Radioactive material. Added as requested for clarification.

Unreviewed safety question. This definition was suggested by DOE, and was added in response to comments by DOE and the Corporation, to clarify its use in § 76.68 as one factor in limiting changes that the Corporation can make without prior Commission approval.

Section 76.5 Communications. This section describes requirements for verbal and written submissions to the Commission.

No comments were received on this section.

Section 76.6 Interpretations. This section contains requirements for interpretations of these regulations that are authorized by the Commission.

No comments were received on this section.

Section 76.7 Employee protection. This section specifies activities that are protected and prohibits discrimination against an employee for engaging in protected activities.

Comments were received concerning the transition from operation under DOE orders to operation under NRC regulations. Specifically, it was suggested that various requirements for posting of NRC regulations and forms be delayed in some cases until after the NRC has taken action on the application. This section and § 76.60 have been modified to provide additional flexibility in the posting of notices by requiring posting not later than the date of the Director's initial decision on certification.

One commenter recommended that the final rule include a reference to activities protected by the National Labor Relations Act. The labor standards and/or statutes applicable to the Corporation are specified in section 1312(d) of the AEA. No further delineation of those standards and/or statutes is necessary for inclusion in NRC's certification regulations.

A comment was received expressing a perceived lack of willingness of the NRC to solicit comments from organizations that represent the plant workers. This rulemaking has been done under full public participation as required by NRC procedures within the time limits imposed by the legislation for transferring operation of the facilities to the Corporation. The certification procedure provides an opportunity for public participation at all stages of the process through written comments and participation in public meetings to be held near the sites.

Section 76.8 Information collection requirements: OMB approval not required. This section indicates that the information collection requirements contained in this part need not be reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act.

No comments were received on this section.

Section 76.9 Completeness and accuracy of information. This section specifies that all information provided to the NRC must be complete and accurate.

No comments were received on this section.

Section 76.10 Deliberate misconduct. This section describes prohibited activities and states that violations are subject to enforcement action.

No comments were received on this section.

Section 76.23 Specific exemptions. This section specifies that the Commission may grant exemptions from the requirements in part 76 provided certain conditions are met.

A comment was received from the Corporation recommending that the rule be expanded to provide that the Commission may grant exemptions where certain "special circumstances" exist due to the "unique status" of the Corporation. The special circumstances presented included a request by the Corporation or DOE that an exemption would be in the furtherance of the common defense and security of the United States, the nonproliferation of atomic weapons, or any of the other important governmental functions identified in the statutory purposes for the Corporation set forth in Section 1202 of the AEA. As proposed, § 76.23 already provides that NRC may grant exemptions and specifically includes consistency with the common defense and security of the United States as a prerequisite for granting an exemption. The NRC does not conclude that the Corporation's "unique status" introduces any additional considerations in considering requests for exemptions not already within the purview of § 76.23.

Section 76.65 Inalienability of certificates. This section sets forth the conditions for transfer of certification.

Comments were received that the proposed rule should address inalienability of certificates. This section has been added to the final rule.

Section 76.76 Backfitting. This section sets forth the conditions for requiring backfitting of the plants and establishes backfit guidelines. Backfitting is defined as any NRC-required modification or addition to systems, structures, or components of the facility, or procedures or organizations used to operate the facility.

Commissioner Rogers was particularly interested in comments on two issues regarding the provisions of this section: (1) Whether the provisions of § 76.76 should become effective immediately when 10 CFR part 76 becomes final, as would happen were the proposed section to remain unchanged, or whether there should be some interim period before these provisions become effective (e.g., until completion of the first annual certification following initial certification) and; (2) Whether the standard for requiring a backfit should be that of § 76.76(a)(3), "* * * a substantial increase in the overall protection of the public health and safety or the common defense and security * * *" or the less stringent standard of cost-effectiveness that is contained in section 1(b)(6) of Executive Order 12866 of September 30, 1993, "* * * a reasoned determination that the benefits of the intended regulation justify its costs."

A number of commenters agreed that the provisions of § 76.76 should be made effective when the rule becomes final. There were no comments received in support of a delay in the implementation of the backfit provisions. However, the Ohio Citizens for Responsible Energy opposed the application of the proposed backfit requirements to these facilities. They commented that: (1) Operations have not been trouble-free and environmentally benign, (2) the NRC has no previous experience with these plants, (3) the backfit rule would essentially "freeze" the plant design and operational practices, and (4) the NRC must be free to demand changes in the design and operation of these plants. They further commented that if the NRC establishes any backfit standard it should be the standard of Executive Order 12886: "a reasoned" determination that the benefits of the intended regulation "justify its costs."

The Corporation, DOE, and the Nuclear Energy Institute agreed with incorporation of the backfit provisions as written. The Corporation specifically supported the rewrite of 10 CFR 50.109, as proposed, as being consistent with NRC practice.

In response to the comment suggesting that the proposed backfit provisions would prevent the Commission from taking action as is required to protect public health and

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safety, the Commission does not apply backfit provisions in a manner which would inhibit imposition of requirements necessary to achieve an adequate level of safety. Under the backfit requirements in the final rule, costs are considered only for determining the need to impose requirements that provide for enhanced levels of safety that go beyond those basic requirements needed to provide adequate protection of the public health and safety.

The final rule requires a cost benefit analysis for any new requirement or NRC staff position unless the modification is required to bring the facility into compliance with written rules or orders, or into conformance with written commitments by the Corporation, or if the change is necessary to ensure that the facility provides adequate protection of the public health and safety. The final rule is unchanged.

Section 76.81 Authorized use of radioactive material. The section sets forth requirements for the Corporation's possession and use of radioactive material.

The Corporation commented that it wants language in the regulations which would authorize it to receive, possess, own, acquire possession of, and use radioactive materials in places and for purposes not covered by the certificate, if otherwise authorized by law. Such authorization would not be part of certification and would involve approval by other Federal agencies. This comment goes beyond NRC's authority with respect to certification of the gaseous diffusion facilities. To the extent that the Corporation wants NRC to approve activities associated with radioactive materials involving other locations and other activities, other locations and activities are not included in the certification authority contained in the AEA, as amended by the Energy Policy Act. The final rule has been revised to make clear that to the extent the Corporation engages in activities not covered by the certification process, it may do so as long as it complies with all applicable State and Federal regulations.

Section 76.83 Transfer of radioactive material. This section contains requirements for the Corporation's transfer of radioactive material.

DOE recommended that the provision of § 76.83(d)(3) concerning emergency shipments be deleted as they are not defined and continued implementation of current DOE practices provides methods for shipment of material outside the normal process. This comment was not adopted and the section was retained to provide the flexibility for such transfers under NRC certification in the event it would be needed and is not inconsistent with current NRC practices.

Section 76.89 Criticality accident requirements. This section contains monitoring requirements for criticality accidents.

Commenters requested that § 76.89 be revised to specifically state that certain areas do not require criticality alarms: (1) Areas containing less than 700 grams of U–235 contained in uranium of any enrichment, (2) areas containing less than 1500 grams of U–235 contained in uranium enriched up to 4%, (3) areas containing less than 1400 grams of U–235 contained in uranium enriched up to 5%, (4) areas where special nuclear material is packaged and stored in approved containers and in isolated arrays in compliance with 10 CFR part 71, and (5) process buildings containing homogeneous uranium material enriched to less than 1%. The NRC does not intend to require monitoring for areas where quantities of enriched uranium are controlled so that a criticality accident is not credible. Rather than attempting to specify quantity limits, the rule was modified to include a generic provision such that criticality alarms will not be required for such controlled areas.

Section 76.91 Emergency planning. This section contains emergency planning requirements.

Some commenters agreed with the emergency planning provisions as proposed. Others recommended that the emergency planning provisions be revised. A commenter's proposed changes were to (1) add a "general emergency" category to the classification of accidents, (2) give annual briefings and tours to fire, police, medical, and other emergency personnel, (3) conduct annual drills in addition to the proposed annual exercises, and (4) add separate sections to emergency planning documents that address the emergency operations center and public notification of basic emergency planning and information in emergency planning zones. A commenter also suggested that the proposed language would permit individuals to evaluate their own performance in the required biennial exercise, rather than have an independent and impartial evaluation.

The emergency planning provisions in 10 CFR part 76 are essentially those of 10 CFR part 70. Adoption of these comments would result in emergency planning requirements similar to those in place at nuclear power plants. The nature of the postulated accidents that are considered in emergency planning for nuclear power plants would be substantially different from those that would be involved in emergency planning for the gaseous diffusion plants. The regulatory analysis for the emergency preparedness requirements contained in Part 70 evaluated the risks associated with the release of UF_6 and concluded that offsite emergency preparedness should be based on chemical toxicity from a large UF_6 release. The current part 70 requirements are considered adequate for these facilities, therefore, these additional measures were not adopted.

One commenter concluded that § 76.91, "Emergency Planning," does not provide for any offsite emergency planning except for a minimal notification procedure to offsite response organizations and a request for offsite assistance, and that this omission implies that no offsite consequences will occur. Actually, the rule requires considerable coordination with offsite organizations, including offering opportunities for orientations and participation in exercises. Although there is a small risk of an incident which may require an offsite response, the NRC believes the nature of these incidents is such that State and local governments can be expected to respond in an adequate manner whether or not there are any formal written emergency plans for offsite releases.

Section 76.120 Reporting requirements. This section contains requirements for 1-hour notification, 4-hour notification, 24-hour notification, and for preparation and submission of reports.

One commenter recommended deletion of "general emergency" to make the language of the requirement consistent with that of § 76.91(c). Because there was no intent of including a general emergency class, this correction was made.

Another commenter recommended changing "or" to "and" between paragraphs (c)(1)(ii) and (iii), and between paragraphs (c)(2)(ii) and (iii). This change was adopted as being the intent of the proposed rule and to be consistent with 10 CFR parts 30, 40, and 70.

One commenter recommended changing the language in § 76.120(c)(1)(iii) from "to decay to a level that would allow decontamination" to "to decay prior to decontamination." This change was adopted for consistency with part 70.

The Corporation suggested that § 76.120(c)(2) could be changed to provide that the failure of equipment required by an operational safety

requirement to perform certain functions should be reported to the NRC. The NRC agrees with the intent of the suggestion but will use the technical safety requirement for consistency of terminology. The appropriate changes have been made to the final regulation.

The comment also recommended deletion of the requirement for reporting equipment failure in the case of equipment required to restore the facility to a preestablished safe condition. This suggestion was not adopted. The requirement is needed to ensure that the NRC is aware of instances when facility safety during shutdown and restart could be threatened.

The Corporation suggested a modification to § 76.120(c)(3) to reflect that both GDPs have onsite medical facilities that negate the need for reporting radioactive contamination of personnel. This suggestion was not adopted. The purpose of the requirement is to make the NRC aware of any event in which a worker needs medical attention, either onsite or offsite, due to radiological contamination.

The Corporation suggested the deletion of the record or log requirement in § 76.120(d). The NRC maintains telephone event report logs in its database system and written reports submitted on emergency actions carried out in response to an emergency plan activation. There is no health and safety benefit to be gained by the Corporation maintaining an additional log for two years after an event. Therefore, the final regulation has been changed as suggested.

One commenter suggested that the proposed verbal and written reporting requirements should be modified to be consistent with the current part 70 requirements and that the same language should be used. This suggestion was not adopted. The proposed new language only clarifies what is already required by the current wording of 10 CFR 20.2201, 20.2202, 70.50, and 70.52.

Section 76.121 Inspections. This section states that the Corporation shall afford the Commission opportunity for inspection and that office space for Commission inspection personnel must be provided.

No comments were received on this section.

Section 76.131 Violations. This section specifies actions the Commission may take to prevent a violation, such as obtaining a court order, and contains civil penalty provisions.

A commenter asserted that the proposed rules do not include enforcement provisions. The post issuance provisions in § 76.70 pertain to revocation, suspension, or amendment for cause. Revocation of a certificate or approved compliance plan would be an extremely severe sanction and, quite arguably, the most severe possible sanction for the Corporation. In addition, § 76.60 makes 10 CFR Part 21 (Reporting of Defects and Noncompliance) applicable to the gaseous diffusion plants, and § 76.22(d) includes provision for civil penalties for violations of 10 CFR part 21. Section 76.131 pertains to violations and provides for the Commission to seek an injunction or other court order to prevent a violation of the regulations and to seek an order for payment of a civil penalty for violation of Section 206 of the Energy Reorganization Act of 1974 (relating to reporting of defects and noncompliance). The commenter also indicated difficulty in determining what criminal penalties apply when examining § 76.133 and the citations therein. Section 76.133(b) identifies those sections of part 76 for which criminal penalties do not apply. As set forth in Section 223 of the AEA, as amended, the general penalty for such violation, upon conviction, is punishment "by a fine of not more than $5,000 or by imprisonment for not more than two years, or both." The rule was not changed.

Section 76.133 Criminal penalties. This section specifies criminal sanctions for violations. For purposes of section 223 of the AEA which provides for criminal sanctions, the regulations in 10 CFR part 76 for which criminal penalties apply are issued under sections 161b, or 161i. The sections for which criminal penalties do not apply are listed in § 76.133(b).

The Corporation agreed that criminal sanctions could be imposed for violations of part 76 regulations issued under sections 161b or 161o of the AEA because these sections give the Commission authority to issue regulations to govern the possession and use of special nuclear material. However, the Corporation indicated that part 76 regulations could not be issued under section 161o of the AEA, and therefore, section 161o should be removed as a potential basis for criminal sanctions under § 76.133 and other NRC regulations (e.g., 10 CFR 19.40) made applicable to the Corporation. The Corporation reasoned that the activities regulated in part 76 do not constitute licensed or other activity within the scope of 161o.

The Commission agrees that 161o of the AEA applies to licensed and other activities that are not the subjects of the regulations in part 76. Therefore, § 76.133 has been revised by deleting section 161o as an authority for the issuance of regulations in part 76 and imposition of criminal sanctions under section 223 of the AEA. The Commission does not believe that it is necessary to revise the "Criminal Penalties" sections of other parts that apply to the Corporation because the references to 161o as one of the non-exclusionary bases for issuance of regulations in the other parts also apply to actions of licensees and other persons engaged in activities within the scope of 161o.

B. Procedural Requirements

As directed by section 1701(c) of the AEA, as amended, the rule contains procedures for the annual certification process. Apart from requiring an annual application for a certificate of compliance and a determination by the Commission, in consultation with EPA, of compliance with the NRC's standards, the legislation does not specify procedures for the certification process. In addition, the amendments to the AEA provide that the requirement for a certificate of compliance is in lieu of any requirement for a license. Thus, the NRC has substantial discretion in determining appropriate procedures for the certification process. By providing for public notice and a written comment period with respect to an application for a certificate of compliance, as well as the opportunity for the Corporation and other interested parties to petition the Commission for review of the decision to grant or deny a certificate or request for approval of a compliance plan, the Commission believes that it is adopting a fair and efficient certification process/procedure.

The procedural requirements for the certification process to implement provisions of the Act and to constitute the Commission's certification process include:

Section 76.21 Certificate required. This section contains the requirement that the gaseous diffusion plants may not be operated without a certificate of compliance or an approved compliance plan.

A comment was received concerning operation of the GDPs between the time the NRC issues the standards and issues a certificate or approves a compliance plan. The Corporation's authority to continue to operate the GDPs under DOE oversight after part 76 becomes effective, but before the NRC completes

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the initial certification process, has been clarified.

A commenter stated the belief that the Corporation should not be able to operate the facilities without a certificate of compliance. This view appears to be based on a misunderstanding of the AEA. Section 1403 of the AEA requires that the Corporation lease the facilities for a period of 6 years, which commenced on July 1, 1993 (see also section 1314(e)), but section 1701 also gave the NRC 2 years from October 24, 1992, for establishment of standards under which the NRC would then determine whether to certify compliance with the standards. During the interim period, DOE has oversight responsibility for the GDPs until the NRC establishes its standards and completes the first certification process.

In response to another comment, the rule has been revised to permit receipt of radioactive material under either a certificate or an approved compliance plan.

Section 76.31 Annual application requirement. This section specifies the date by which the annual application must be filed. The initial certification would be based on review of an application submitted by the Corporation. The initial application would contain a complete description of operations, a safety analysis, and other information required to demonstrate compliance with NRC requirements. Subsequent applications could reference previously submitted information. For annual reviews after the initial certification, the Commission would focus on new information and changes from the previous year and public comments. The Commission anticipates that it will perform a complete review, similar to that performed for the initial certification, every 10 years.

The footnote concerning the date for submission of the initial application has been changed in response to a comment from the Corporation to provide at least 6 months for submission of the initial application after the rule becomes effective.

Section 76.33 Application procedures. This section contains filing requirements and specifies the required contents of the application.The rule requires any application which contains restricted data, classified national security information, unclassified controlled nuclear information, safeguards information, or proprietary or other withholdable data to be prepared in such a manner that all such information or data are separated from the information to be made available to the public.

The Corporation stated that the word "identifiable," used in § 76.33(c)(2) to describe areas of noncompliance, was unclear and should be revised to be "identified" as stated in other NRC regulations (e.g., 10 CFR 21.1 and 70.9(b)). They indicated that it is not clear how the NRC would determine whether a particular noncompliance to be addressed in a compliance plan was "identifiable." The NRC agrees that this word is ambiguous, and it has been changed to "identified" in the final rule as stated in 10 CFR 20.1 and 70.9(b).

Several comments were received concerning the environmental aspects of the certification process and existing environmental conditions at the facilities including the presence of contamination due to transuranics and their daughters. The Department of Energy prepared an Environmental Impact Statement for the Portsmouth gaseous diffusion plant in 1977 and an Environmental Assessment of the Paducah facility in 1982. The NRC has reviewed those documents, as well as environmental reports prepared by DOE for both facilities in 1992 and environmental audits prepared by DOE prior to turning operation of the Facilities over to the Corporation in 1993. The NRC also conducted extensive site visits. No significant differences in operations, previously evaluated by DOE, were identified that would result in current operations having significantly different environmental effects than those already evaluated in DOE's environmental reviews. In addition, any known quantities of transuranics or their daughters at facilities under the NRC regulatory certification process most likely came from the processing of recycled uranium in the past. The Corporation will be required to provide for adequate protection of public health and safety as a result of operations at the leased facilities, including releases of effluents to the environment as specified in § 76.60(d) that is based on the regulations in 10 CFR part 20. As established by the Act, the NRC will issue a certificate only for the current operations of the facility and will not evaluate preexisting conditions. All preexisting conditions are outside of NRC authority. In consideration of this limited authority, this section was changed to only require submittal of additional information that deviates from DOE-published environmental documents for these facilities. Also, in this regard, the Act requires the Director, as specified in § 76.53, to consult with the Environmental Protection Agency (EPA) on applications for certification.

The NRC has reviewed comments concerning decommissioning and existing site environmental contamination. The NRC is currently working with the EPA in establishing standards for the decommissioning of nuclear facilities. These EPA standards will be applied in the decommissioning of these plants.

Several commenters responded to the requirement concerning separation of certain material, such as classified or proprietary material, from the information to be made available to the public. This requirement conforms to other NRC regulations on the separation of submitted information. The special handling of the specified material is required to protect information that could be detrimental to national or facility security and the Corporation's business. In appropriate cases, the Commission has procedures to permit access to the material for individuals who have been properly cleared and are bound by law to protect the information.

The Corporation suggested that the proposed rule be modified in several places to state that the Corporation need not describe procedures for special nuclear material where the function is the responsibility of DOE. The NRC recognizes that the Corporation will not control all activities at the enrichment plant sites, and that DOE will continue to conduct certain activities involving enriched uranium at sites which are outside of NRC jurisdiction. Any interaction between DOE and the Corporation-leased facilities will be carefully monitored by NRC to assure that safety and safeguards requirements are met by the Corporation. However, the suggested rule changes were not adopted because it is inappropriate for the rule to attempt to address DOE activities which fall outside NRC jurisdiction.

Also, in response to a comment, the final rule requires more detailed information about the Corporation's management structure similar to that required by part 70.

Section 76.36 Annual renewal. The Corporation requested a change in format regarding contents of applications for the purpose of increased clarity regarding the precise scope of the initial application and of renewal applications. Included in the proposed restructuring was revision of proposed § 76.35 pertaining to contents of applications so as to limit its scope to the contents of the initial application. The Corporation also recommended the addition of a new § 76.36 so as to set

forth the precise content of the annual resubmittal.

The NRC agrees that revisions to specifically address the renewal procedures would add clarity to the prescribed content of the initial and renewal applications. As a result, the final rule adds a new Section 76.36 to address required contents for annual renewal applications and identifies the information that must be submitted for annual review following the initial certification action. This new section clarifies and confirms that the Corporation may, as part of its application for renewal, either submit the information specified in § 76.35 pertaining to the initial application or rely upon the application(s) upon which the existing certificate is based and identify any pertinent changes or proposed changes as specified in § 76.36(c)(2). The provision permitting incorporation of previous submissions by clear and specific reference has been moved from proposed § 76.33(f) to § 76.36(b).

Section 76.37 Federal Register notice. This section describes the public notice on a filing of an application, provides an opportunity for public comment, and indicates the date of any public meeting.

Ohio Citizens for Responsible Energy (OCRE) requested that the Commission provide at least an 80-day period for public comment on the initial application for a certificate and for complete review of renewal applications that is intended every 10 years. OCRE views the proposed 30-day period as too brief for learning through publication in the Federal Register of the filing of an application and to respond to such a complex matter.

Another commenter, the Central Mid-West Interstate Low-Level Radioactive Waste Commission, recommended that the Commission provide for at least a 60-day period for public comment on an application for initial issuance or renewal of a certificate.

Section 76.37 does not specify the time period which will be afforded for public comment on an application. However, the Commission has indicated that it plans to provide at least a 30-day comment period (February 11, 1994; 59 FR 6797). In light of the comments received, the Commission has determined, as a matter of policy, that it intends to provide a comment period of at least 45 days. However, the Commission cannot assure that any longer public comment period will be provided in light of the need for an expeditious determination of the application on an annual basis, including NRC staff review of the application and public comments, preparation and issuance of the Director's decision, and consideration of petitions for review by the Commission.

The Commission notes that it has provided for the annual filing of an application by a specific date and that it will promptly make a copy of the application available in local public document rooms near the gaseous diffusion plants. These aspects of the certification process should enhance the ability of the public to provide comment on the application.

Section 76.39 Public meeting. This section describes the procedures for conducting a public meeting on applications at the discretion of the Director, Office of Nuclear Material Safety and Safeguards (NMSS), NRC. A public meeting will be held on the initial certification application.

Ohio Citizens for Responsible Energy (OCRE) requested that the regulations require a public meeting on the initial certification process and for the complete review that the NRC anticipates performing every 10 years.

The final rule, as did the proposed rule, provides that a public meeting will be held if the Director, at his or her discretion, determines that a meeting is in the public interest with respect to a decision on the application. The NRC has already indicated, as a matter of policy, that a public meeting will be held on the initial certification application. The Commission continues to be committed to holding such a meeting. The scope of the Commission's review and public expression of interest in a public meeting will be important factors in the Director's decision on whether a meeting on any certificate renewal is in the public interest.

However, it is not clear that a public meeting will be necessary on any annual renewals. Commenters on an application may request a public meeting on annual renewals. The Director, NMSS, will consider these comments in making a determination of whether a public meeting is in the public interest.

OCRE also requested that the NRC provide persons whose interests may be affected by operation of the facilities with the opportunity for a formal adjudication to contest a certification and ensure correction of past problems.

The Commission has not made provision for a formal adjudicatory hearing on a certification decision whenever requested by a person whose interests are adversely affected. Public notice, opportunity for written comment, and opportunity to petition the Commission regarding a Director's decision should provide a fair and efficient procedural process for public participation in the certification decision. It must be recognized that Congress explicitly provided for a certification process in lieu of licensing requirements and did not specify any particular procedures for the certification process. However, in addition to the specific procedures which the Commission is providing, the Commission has also made clear its discretion to adopt by order further procedures that it determines would serve the purpose of the Commission's review of the Director's decision (§§ 76.62(c) and 76.64(c)).

Section 76.41 Record underlying decisions. This section specifies that any decision will be based on information in the record and that significant information on any proceeding, with limited exceptions, will be part of the public docket. This is not intended to constitute a requirement of adjudication on the record after opportunity for agency hearing under the Administrative Procedure Act.

No comments were received on this section.

Section 76.43 Annual date for decision. This section describes the timing of the annual decision on the application by the Director, NMSS, to be made within 6 months of receipt of the application.

No comments were received on this section.

Section 76.45 Application for amendment of certificate. This section states the procedures to be followed by the Corporation in applying for an amendment of a certificate before the established date of the next application for a certificate.

DOE commented that applications for amendment should be submitted by the Corporation under oath or affirmation. The Commission has included this change in the final rule.

Section 76.51 Conditions of certification. This section states that the Corporation shall comply with all requirements set forth and referenced in part 76, or in a certificate of compliance, or in an approved compliance plan.

In one of its comments, the Corporation requested that this section be revised to permit the Corporation to modify its programs for material control and accounting, physical protection, protection of special nuclear material in transit, security, safeguards, and emergency response so long as the changes do not decrease the effectiveness of the applicable plans. This permission is already granted in § 76.68 of the proposed rule. That section permits the Corporation to make

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changes to the plant or the plant's operations without prior Commission approval provided certain conditions are met.

In another comment, the Corporation suggested various retention periods for records of changes to material control and accounting plans made without prior Commission approval and for records of changes to security and safeguards plans made without prior Commission approval. Requirements for retention of these kinds of records are addressed in the proposed § 76.68(d). The record retention period for procedural-like changes is standardized at two years and is shorter than the periods proposed by the Corporation. Records of changes to the plant must be retained for the duration of the lease. The Corporation comment did not explicitly address retention of records of changes to the plant. The required period is deemed justified because it is important to both safety and safeguards to have available records describing the current and past plant configurations.

A final comment from the Corporation on this section suggested a schedule for informing the Commission of various kinds of changes made without prior Commission approval. The submission requirement is addressed in § 76.68(b). The time allowed has been extended from 90 days in the proposed rule to annually in the final rule. The annual submission date allows more time for submission than any of the Corporation's suggestions. The annual submission date could coincide with the annual application and is justified by the continuing presence of an onsite NRC resident inspector who would be aware of the changes.

Section 76.53 Consultation with Environmental Protection Agency (EPA). This section states that the Commission will consult with the EPA in making the annual decision on the application for a certificate, including the provisions of any compliance plan, and solicit their written comments on the application.

No comments were received on this section.

Section 76.55 Timely renewal. This section states that timely filing of an application for a certificate of compliance will maintain in effect any existing certification or approved compliance plan effective until issuance of a final decision on the application. This addresses the unlikely situation in which the Commission is unable to make the required annual determination regarding an application for a certificate of compliance despite timely filing of the application. In this case, the Commission will deem its prior determination regarding compliance effective until final resolution of the subsequent application and will advise Congress annually as required under Section 1701(b) of the AEA.

The Corporation requested that the provision on timely renewal be modified by providing that an existing certificate of compliance or approved compliance plan not expire until the annual application for a certificate of compliance "has been finally determined by the Commission" rather than at the time of the Director's determination of the application. The Corporation also requested that the condition of timely filing of "a sufficient annual application" be changed to timely filing of "an annual application in proper form."

The Commission agrees that an existing certificate or approved compliance plan should not expire until a final determination is made by the agency on the renewal application for the certificate. The final rule has been revised accordingly. The Commission intends that a certification process will normally be completed on an annual basis in the absence of extraordinary or unusual circumstances preventing the completion of the process.

The final rule has been revised to clarify that the Corporation will not be penalized if NRC does not complete the certification process expeditiously. However, the Corporation must timely file a sufficient application that addresses all the elements in § 76.36 for the Commission's determination. NRC staff questions regarding information provided in the application will not cause an application to be judged insufficient.

Section 76.60 Regulatory requirements which apply. This section specifies the requirements which the NRC will apply in certifying the Corporation's operation of the gaseous diffusion plants.

One commenter suggested that in several places the phrase "shall demonstrate compliance" should be changed to "shall comply." The NRC agrees with this comment and has changed the final regulation.

The Corporation requested that the rule be changed to allow two years to convert administrative and procedural elements of its radiation protection program to meet the standards for protection against radiation contained in 10 CFR part 20. DOE commented that the implementation of part 20 requirements should be based upon a schedule that achieves implementation in a timely, cost-effective manner. Although the Corporation agreed that the dose limits should become immediately effective upon receipt of the certification or an approved compliance plan, they provided no information on how they would be capable of implementing the dose limits without procedures or administrative controls in place. The requested two-year extension could mean that the elements of part 20 would not be in place until late 1996. The Commission recognizes that although there will be significant effort required to implement part 20, sufficient time is available for the Corporation to begin to implement these requirements. If the Corporation is unable to complete development of the appropriate procedures and administrative controls, including training before the date of the NMSS Director's decision, any remaining activities should be presented as a part of a compliance plan. In addition, the Corporation expressed concern with obtaining National Voluntary Laboratory Accreditation Program (NVLAP) approvals. Because NVLAP testing occurs every 3 months and the facilities possess Department of Energy Laboratory Accreditation Program (DOELAP) certification, there should be no difficulty in obtaining NVLAP accreditation before the NMSS Director's decision.

Another comment noted that until the initial certification, DOE has the regulatory oversight authority over the gaseous diffusion plants (GDPs) and, therefore, the implementation date for 10 CFR parts 19 and 21 should coincide with issuance of the initial certificate, rather than earlier as in the proposed regulation. The NRC agrees with this comment, and the regulation has been so changed.

Louisiana Energy Services (LES) raised the issue of requiring, through part 76, that the Corporation maintain liability insurance comparable to that required by 10 CFR part 140 for uranium enrichment facilities. The provision cited by LES, 10 CFR 140.13b, is based on section 193 of the AEA. This section specifically requires that the NRC require, as a condition of licensing any enrichment facility, that liability insurance be maintained by the licensee sufficient to cover liability arising from operations at the licensed facility. The legislation establishing the Corporation specifically provides that Price-Anderson indemnification will be provided by the Department of Energy under Section 170d of the Atomic Energy Act of 1954, as amended (AEA) for the gaseous diffusion facilities leased to the Corporation by the DOE. Further. Section 170a of the AEA provides that NRC may require financial protection for facilities licensed under sections 53,

63, 81, 103, 104, and 185. The certification process does not constitute issuance of a license within any of these sections of the AEA. Accordingly, it is the Commission's conclusion that requiring additional NRC mandated liability insurance for the Corporation's operations is neither appropriate nor necessary.

One commenter recommended the inclusion of the reference to 10 CFR part 95 that covers security and safeguarding information in this section for consistency as other regulations which apply are listed. The NRC agrees with this comment and the final regulation has been so changed.

Several commenters expressed concerns about the applicability of Environmental Protection Agency regulations in 40 CFR parts 61 and 190, noting that although 10 CFR part 20 incorporates 40 CFR part 190, 10 CFR part 76 did not explicitly reference 40 CFR part 190. The NRC notes that because the Corporation is required to comply with 10 CFR part 20, it must also comply with 40 CFR part 190, and 40 CFR part 61, Subpart H, and that explicit references in part 76 are not necessary.

One commenter noted that certain of the existing regulations referenced by the proposed rule provided for the imposition of civil penalties but contended that authority for the NRC to issue a civil penalty is not included in the Energy Policy Act. The NRC agrees with the comment and the final rule has been revised to delete the civil penalty provisions.

Section 76.62 Issuance of certificate and/or approval of compliance plan. This section specifies that the Director, NMSS, will issue a written decision on the Corporation's application and states that the Corporation or affected members of the public who have provided comments in the proceeding may seek the Commission's review of the Director's decision.

The Corporation recommended that this section be revised to clarify that a certificate and a compliance plan are not exclusive of the issuance of the other. They also expressed concern that the proposed language might be interpreted to require the Director to withhold the certificate of compliance in its entirety if there are any outstanding areas of noncompliance. They requested that the language of the proposed rule be modified to explicitly state that a certificate of compliance would be issued for all areas of full compliance and a compliance plan for areas of current noncompliance. The Commission agrees that it may issue a certificate of compliance covering those areas where the Corporation is in compliance with applicable requirements and the Commission may also approve concurrently a compliance plan for areas of noncompliance. This section is modified to clarify this intent.

The Corporation requested modification of proposed § 76.62(c) to provide that petitions for the Commission's review of a Director's decision to issue a certificate and/or approve a compliance plan "shall be limited to matters raised in the petitioner's written or verbal comments." The Commission declines to limit petitioners for Commission review to matters raised in that petitioner's previous written or verbal comments. A Director's decision on a certificate or proposed compliance plan may respond to issues raised by other commenters or include provisions that a commenter did not anticipate. For these reasons, those persons whose interests may be affected and who submitted written or verbal comment on an application will be permitted to seek Commission review of the Director's decision.

One commenter, OCRE, felt that the 15-day period (from the date of **Federal Register** Notice) for filing a petition for Commission review of a Director's decision to grant or deny a certificate, or approve or disapprove a compliance plan, was too short. OCRE requested that this 15-day period be extended to at least 25 days. It stated that some commenters, particularly individuals and public interest groups that depend upon libraries for access to the **Federal Register**, may not learn of the Director's decision within 15 days unless the Director's decision is provided to all commenters on the application for a certificate.

The Corporation stated that the 15-day period for filing of a petition for review of a Director's decision to deny a certificate or not approve a compliance plan was too short and requested at least 30 days to file such a petition. The Corporation also recommended that the rules provide that a Commission decision denying an application for a certificate or disapproving a compliance plan must state that it does not become effective until at least 10 days after the date of the decision. In support of these recommendations, the Corporation stated that a denial could have a significant impact on it and may have potential implications for national and public policy because the gaseous diffusion plants supply 40 percent of the world market and 90 percent of the domestic market for enriched uranium and are currently the sole domestic source of enrichment services.

Both the Corporation and OCRE felt that the 10-day period from the date of filing a petition for review for responding to a petition for review was too short. The Corporation requested that this 10-day period for filing responses to a petition for review be extended to 30 days because of the burden and prejudice that might occur if the Corporation were faced with multiple petitions.

OCRE requested that this 10-day period for responding to a petition be lengthened to at least 20 days. To ensure adequate notice to interested commenters, OCRE requested not only service of the Director's decision on commenters but also a mechanism for ensuring that commenters could receive timely notice of a petition for review. OCRE observed that the cost of requiring a petitioner to serve all commenters could be prohibitive and suggested a remedy such as a telephone information line with recorded information on the case or a computerized bulletin board system.

The Commission recognizes that the time periods for filing of a petition for Commission review and responding to a petition for review are relatively short. The Commission's flexibility in the timing of the certification process is limited, as noted above, because of the need for an expeditious determination of the application on an annual basis, including staff review of the application and public comments, preparation and issuance of the NMSS Director's decision, and consideration of petitions for review by the Commission.

The Commission will promptly make copies of an application for a certificate or approval of a compliance plan available in local public document rooms at or near the gaseous diffusion plants and will issue a press release at the time the Director's decision is issued. The Commission also intends to make promptly available copies of all **Federal Register** notices relating to the certification process, as well as petitions for review, and responses to petitions for review at those locations. In addition, the NRC staff will examine the feasibility of establishing a computer bulletin board to provide information on the application's status.

For these reasons, the Commission has not altered the time periods for filing of petitions for review or responses thereto. However, the Commission has added § 76.74 to the final rule that clarifies the computation of designated time periods and confirms the Commission's ability to extend or shorten time periods for action for good

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cause. Therefore, the Commission may be able to provide some extension of the period for filing of petitions and responses if time permits during the period of a particular certification process.

The Commission declines to specify by regulation that a decision denying an application for a certificate or disapproving a compliance plan must state that it does not become effective until at least 10 days after the date of the decision. The Commission has determined that binding itself to such a delay would be inappropriate in emergency circumstances.

Section 76.64 Denial of certificate or compliance plan. This section states that the Director, NMSS, may deny the Corporation's application and that the denial will be noticed in the **Federal Register**. This section also provides an opportunity for the Corporation to submit a compliance plan before the denial is issued. It also states that the Corporation or affected members of the public who have provided comments on the application may seek the Commission's review of the Director's decision.

In response to a comment, this section is revised to clarify that the compliance plan is a DOE document.

Section 76.66 Expiration and termination of certificate. The Corporation requested that the NRC add a new section to the final rule which would address expiration and termination of certificates.

The Commission agrees that these provisions are useful. Thus, a § 76.66 has been added to the final rule. Paragraph (a) clarifies that "except as provided in § 76.55 [timely renewal], a certificate expires at the end of the day, in the month and year stated." Paragraph (b) adds a requirement of prompt notice to the Commission when the Corporation decides to terminate operation of either of the GDPs and other authorized activities under the certificate. Paragraph (c) clarifies that the Corporation must terminate operations on or before the expiration date in the existing certificate if it does not submit an application for renewal of the certificate.

Section 76.68 Plant changes. This section describes plant or operational changes by the Corporation permitted without prior Commission approval. Documentation of these revisions must be submitted to the NRC. To make other changes would require Commission approval and would require the Corporation to apply for an amendment of the certificate under § 76.45.

Several comments were received concerning this section. The Commonwealth of Kentucky commented that the Corporation should not be allowed to make changes without modification of their certificate. Another commenter stated that the section should be preserved as written and incorporated into 10 CFR Part 70. The Corporation commented that the proposed section is overly restrictive and should be closely modeled after 10 CFR 50.59. The Department of Energy (DOE) recommended changes that would make it consistent with current DOE Orders.

As written, § 76.68 permits changes similar to those permitted under 10 CFR 50.59 for reactors and provides flexibility that is beyond that currently provided for in 10 CFR part 70. Because these plants will not have technical specifications as referenced in 10 CFR 50.59, the detailed criteria for evaluation of changes permitted without prior Commission approval are needed in § 76.68. The Commission does not believe the evaluation provisions are overly restrictive as suggested by the Corporation and the evaluation provisions are retained.

Comments were also received concerning the requirement that reports describing changes made under this section be submitted within 90 days of their adoption. The final rule has been changed to conform with 10 CFR 50.59 and thus requires that the information on changes be submitted annually or at shorter intervals as specified in the certificate.

The Commission believes that the clarified final rule will permit changes that do not decrease safety and still provide the Corporation flexibility in the operation of the facilities. The Commission has not deleted this section as requested by one commenter because the procedures contained in this section ensure that those changes which are permitted will not be in conflict with any certification requirements.

Still another comment on § 76.68 requested that the term "unreviewed safety question" be defined. The NRC has no objection to this definition and has added a definition similar to the usage of the term in 10 CFR 50.59.

A comment from DOE was also adopted that requires the Corporation to evaluate any as-found conditions that do not agree with the plant's programs, plans, policies, and operations in accordance with this section. This comment was adopted to ensure that any exceptions to what is assumed or understood are evaluated.

Section 76.70 Post-issuance. This section specifies procedures for amendment, revocation, suspension, or amendment for cause of the certificate.

The proposed rule provided that the Commission would provide "the Corporation and other interested persons with an opportunity to provide written views to the Commission" in connection with a proceeding to amend, revoke, or suspend a certificate of compliance or compliance plan. The proposed rule also provided that the Commission "may adopt by order further procedures for a hearing of the issues before making a final enforcement decision."

In its comments, the Corporation requested that participation in these enforcement actions be limited to persons whose interests may be "adversely affected" by the proposed enforcement action. The Corporation indicates that this change would make public participation rights more consistent with those applicable to similar enforcement proceedings for NRC licensees. In particular, the Corporation seeks to ensure that the NRC would preclude participation in an NRC enforcement action by persons seeking more stringent enforcement action than is proposed by the Commission.

The Commission does not believe it is necessary to limit public participation to those who are adversely affected by the order or the proceeding. Such a limitation could necessitate substantial or protracted consideration of whether a person submitting written comments on a proposed enforcement action was adversely affected. This would be inefficient and contrary to the intent of providing for an expeditious, informal resolution of the enforcement action unless such a procedure is inadequate for determination of the issues. Informal enforcement procedures that would foster expeditious resolutions are desirable, wherever sufficient, because a certification process which also affords opportunities for public participation will be occurring on an annual basis.

If the Commission determines that more extensive adjudicatory procedures are necessary in a particular case, it may order use of further procedures, such as those in 10 CFR part 2, subpart G or subpart L. In these cases, intervention would depend on the showing of how a petitioner's interest is affected in accordance with the adopted procedures.

However, the general procedural description of post-issuance enforcement action in the proposed rule does not foreclose the Commission's ability to limit the scope of a proceeding or define the issues for determination in any enforcement action. For clarity, § 76.70 has been revised to specify the procedures that would be followed in an enforcement action in more detail.

First, the final rule makes explicit that the Commission may institute a proceeding to modify, suspend, or revoke a certificate or approved compliance plan, or to take other action as appropriate by service of an order on the Corporation that specifies: The proposed action; the alleged violations, or potentially hazardous conditions, or other facts deemed to be sufficient ground for the proposed action; a reasonable period for submission of a written response to the order and for submission of written views by interested persons within a reasonable period after publication of the order in the **Federal Register**; issues for resolution if the proposed action is contested; and the effective date of the order. If the order is made immediately effective pending further order, the order must include a statement of reasons for making the proposed action immediately effective.

Second, the final rule clarifies, inter alia, that the Corporation may promptly request that the Commission set aside the effectiveness of an immediately effective order, provided that the request specifically states the reason why the order is not based on adequate evidence and is accompanied by affidavits or evidence upon which the Corporation relies. The NRC shall respond within 5 days of the receipt of the motion.

These details of the procedural process are similar to those which apply to issuance of orders to licensees under 10 CFR part 2, subpart B. However, they preserve the provision for informal procedures for resolution of the action in the absence of a determination that more extensive procedures are appropriate.

In addition, the final rule adopts a suggestion from DOE that information submitted under this section by the Corporation be signed under oath or affirmation.

Section 76.72 Miscellaneous procedural matters. This section addresses procedures for filing petitions, ruling on matters of procedure, and communication between Commission and NRC staff. Additional guidance regarding the filing and service of petitions for review of the NMSS Director's decision and responses to these petitions may be included in the Director's decision or by order of the Commission.

Except for proceedings under 10 CFR part 2, subpart G, for imposition of a civil penalty resulting from violations of section 206 of the Energy Reorganization Act of 1974, the Commission is not imposing restrictions on ex parte communications or on the ability of the NRC staff and the Commission to communicate with one another at any stage of this regulatory process. The NRC staff would not participate in a review of the Director's decision as a party but would serve as an advisor to the Commission. Congress has not required formal adjudication. The Commission believes that informal processing without such formal restrictions on communication is best suited for resolution of annual applications for a certificate.

Section 76.74 Computation of extension of time. This section has been added to the final rule to specify the duration of designated time periods and confirm the Commission's ability to extend or shorten time periods for action for good cause and specifies that additional time would be granted in the event that a required date falls on a Saturday, Sunday or legal holiday.

C. Technical Safety Requirements

The major technical safety requirements are found in the following sections:

Section 76.35 Contents of initial applications. This section specifies that applications must include a safety analysis report, a compliance status report which includes environmental and effluent monitoring data, a quality assurance program description, a description of the use of radioactive material, a description of the training program, a nuclear material control and accounting plan, a physical protection plan for special nuclear material in transit, a plant physical security plan, an emergency plan, a plan for security facility approval and protection of classified information and hardware, a description of the Corporation's response necessary to implement the International Atomic Energy Agency safeguards agreement, and a description of the waste treatment and management program.

The Corporation requested a change in format regarding contents of applications for the purpose of increased clarity regarding the precise scope of the initial application and of renewal applications. Included in the proposed restructuring was revision of proposed § 76.35 pertaining to contents of application so as to limit its scope to the contents of the initial application. The Corporation also recommended the addition of a new § 76.36 that would present the precise content of the annual resubmittal.

The NRC agrees that the revised format will add clarity to the prescribed content of the initial and renewal applications. As a result of the restructuring, the final rule makes § 76.35 applicable to initial applications and adds a new § 76.36 applicable to annual renewal.

The Corporation also recommended an application procedure which would generally follow the guidance of NRC Regulatory Guide 3.52. These proposed changes were based on an application which would contain a "Part I" comprised of binding certificate "conditions" and a "Part II" containing a nonbinding safety demonstration. This restructuring was not adopted. This decision is based on a recent review of the Commission's current licensing and oversight programs for fuel cycle plants [1] that indicates the "Part I/II" approach will probably be changed and that safety analysis reports will be required. The Corporation, in its comments, identified the "Part II" safety demonstration to be functionally equivalent to the safety analysis report. While this is generally true, with respect to technical content, the NRC believes that safety analysis reports are preferable because they provide more rigorous, binding documentation of the basis for safe operation of a plant. Changes to the safety analysis report would be permitted only in accordance with § 76.68.

In publishing the draft 10 CFR part 76, the Commission specifically requested comments on the appropriateness of requiring the Corporation to provide financial assurance for the costs associated with decontamination and decommissioning of the gaseous diffusion plants. Comments were received favoring both retention and deletion of a financial assurance requirement. The Corporation commented that DOE was responsible for decontamination and decommissioning of the gaseous diffusion plants under the AEA and that the financial assurance requirements should not apply to the Corporation. DOE, on the other hand, noted that it is only responsible for decontamination and decommissioning of pre-existing conditions under the AEA and that the Corporation will remain responsible for other costs associated with decontamination and decommissioning, including the costs associated with disposal of wastes generated during Corporation operation of the GDPs.

The NRC has determined that the Corporation does have some limited financial responsibility for decontamination and decommissioning activities. The Corporation has

[1] Proposed Method for Regulating Major Materials Licensees, NUREG–1324.

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acknowledged in its comments that, under its lease with DOE, there is at least one area where it remains responsible for the costs of decommissioning. Specifically, the Corporation has acknowledged that it is responsible for any increased costs for DOE decontamination and decommissioning of the facilities that arise from removal by the Corporation of capital improvements the Corporation makes at the facilities. In addition, the terms of the DOE/Corporation lease provide that the Corporation is to remain financially responsible, even after return of the GDPs to DOE, for the ultimate treatment and disposal of wastes generated by the Corporation. Nevertheless, the NRC has determined that the language in the draft 10 CFR part 76 requiring financial assurance from the Corporation was written to apply to a broader scope of decontamination and decommissioning activities than are the Corporation's responsibility. Accordingly, the final rule has been revised to require that the Corporation provide financial assurance for only those aspects of the decontamination and decommissioning costs which are their responsibility.

Two commenters asked that the Corporation be required to demonstrate compliance with the applicable provisions of 10 CFR Part 61 which deal with waste classification and waste disposal because these requirements are essential for the proper handling and disposal of all wastes at the GDPs. Waste classification is covered under 10 CFR part 20, subpart K; therefore, an additional reference to 10 CFR part 61 is not needed.

One commenter suggested that a specific license be required if the Corporation proposes to treat radioactive waste at one plant that was received from the other plant and that the Corporation be required to obtain approvals for the treatment from the Central Midwest Interstate Low-Level Radioactive Waste Commission. Plans for treatment of any radioactive waste stream by the Corporation are a required part of the initial application for certification under proposed § 76.35(k). The certification process, therefore, will include consideration of the waste stream issue. Under Section 1701 (c)(3) of the AEA, the certification process is in lieu of any other requirement for a license for the gaseous diffusion plants leased by the Corporation from the DOE. Accordingly, no NRC issued specific license addressing the radioactive waste streams at the DOE gaseous diffusion plants being leased to the Corporation is required.

DOE suggested that the rule specifically prohibit the Corporation from transporting special nuclear material of moderate strategic significance (Category II material) or formula quantities of special nuclear material (Category I material). These activities are not contemplated, and this prohibition has been included in the rule.

One commenter suggested that the rule include the requirement for semiannual reporting of effluents as contained in the Corporation proposal. Although semiannual reporting is a requirement in 10 CFR part 70, this recommendation was not adopted. Semiannual reporting is intended for licensees who hold multi-year licenses. The Corporation will be required to report its annual effluent with the certification application every year. This is adequate for assessment purposes. There appears to be no additional benefit in receiving the information on a semiannual basis.

Section 76.85 Assessment of accidents. This section contains the requirement for performance of a safety analysis of the potential for releases of radioactive material from accidents.

Specifically, the rule requires that a safety analysis of the site activities be performed to evaluate the potential for releases of radiological material from the existing plants. The analysis should evaluate expected releases from a reasonable spectrum of postulated accident scenarios which may occur in the gaseous diffusion plants, taking into account existing systems in operation, including procedures, that are intended to mitigate the consequence of any release. These potential releases, together with operational practices and site characteristics, including meteorology, are to be used to evaluate the potential for onsite and offsite radiological consequences.

The Corporation must provide a level of protection against accidents during plant operations sufficient to provide adequate protection of the public health and safety. In assessing the level of protection provided by the Corporation, the NRC will consider both the total radiation dose to the whole body and the intake of soluble uranium for an individual at the site boundary.

Several comments were received concerning the level of protection against accidents during plant operations sufficient to provide adequate protection of public health and safety. The Commission specifically requested comments on the use of safety objectives, including suggested limiting values with supporting rationale, and whether or not they should be included as part of the rule. The Environmental Protection Agency stated that the EPA Protective Guides (1–5 rem) should be used rather than the criteria discussed in the proposed rule and that the values should be specified in the regulation. Several other commenters agreed with this approach. Another commenter stated that the final standards for accident dose assessment should be applied equally to all enrichment facilities. The Corporation objected to the use of any limits in the rule or its accompanying statements to determine the adequacy of accident analysis results and indicated that it is well beyond current regulatory practice. DOE suggested addressing chemically toxic material as well.

The Commission has decided not to include numerical accident limits in the final rule. The NRC believes that to include a specific numerical limit in the regulation could be unduly restrictive, considering that the plants have already been designed and sited and the uncertainty of health effects for uranium intakes. The NRC staff contracted with Pacific Northwest Laboratory[2] to review the available literature on uranium toxicity and the results of this review suggested that the best estimate of a toxicity threshold would be an intake of 30 milligrams of uranium. In assessing the adequacy of protection of the public health and safety from potential accidents, the NRC will consider whether the potential consequences of a reasonable spectrum of postulated accident scenarios exceed .25 Sv (25 rems), or uranium intakes of 30 milligrams, taking into account the uncertainties associated with modeling and estimating such consequences.

In considering intakes of soluble uranium, the Commission recognizes that the chemical toxicity of uranium could be the limiting factor in the accident analysis under this section. The Commission's intended use of chemical toxicity considerations in part 76 is consistent with its practice elsewhere (e.g., 10 CFR 20.1201(e)), and prevents any potential regulatory gap in public protection against toxic effects of soluble uranium.

The EPA guidelines of 1–5 rem for offsite protection action recommendations are appropriate for emergency planning purposes but are not appropriate for accident analysis.

The final rule requires that a safety analysis of the site activities be performed to evaluate the potential for releases of radiological material from the existing plants. The analysis should

[2] Fisher, D. R. et al., "Uranium Hexafluoride Public Risk," PNL–10065, August 1994.

evaluate releases from a reasonable spectrum of postulated accident scenarios which may occur in the gaseous diffusion plants, taking into account the existing systems in operation, including procedures, that are intended to mitigate the consequence of any release. These potential releases, together with operational practices and site characteristics, including meteorology, are to be used to evaluate the potential onsite and offsite radiological consequences. Technical safety requirements will be established to ensure that releases are unlikely and, in any case, if releases occur they will be within an acceptable range.

One commenter stated that the NRC would have no mechanism for enforcement of numerical limits if they are not included in the standards. The certificate issued by the NRC will include limiting conditions for operation that will be enforceable.

LES commented that specific natural phenomena and specific accident dose limits should be applied equally to all enrichment facilities. The apparent reference for this suggestion was the current NRC review of their license application for a new uranium enrichment facility. Another commenter expressed concern that the Paducah plant resides in a geological rift zone. The NRC will not include specific reference design assessment values for the existing Corporation facilities, since these facilities are already sited, but will evaluate consequences of potential accidents resulting from natural phenomena during review of the Corporation's safety analysis.

A comment was also received concerning the discussion in the statement of considerations on the development of guidance on an integrated safety analysis (ISA) and applicability to the GDPs. The final rule does not include requirements for an ISA because its incorporation into the regulatory process is still under NRC staff review.

Section 76.87 Technical safety requirements. This section specifies that safety requirements must be included in the application. Safety topics to be considered are those mainly associated with plant operations, management controls, and confinement of radioactive material.

The rule requires the application to include technical safety requirements derived from the analyses and evaluations in the safety analysis report. These safety requirements would include safety limits and limiting control settings within which process variables would be maintained for adequate control to guard against an uncontrolled release of radioactivity. The safety requirements would also include limiting conditions for operation, surveillance requirements, design features, and administrative controls. The requirements are similar to operating technical specifications or license conditions applied to licensed nuclear facilities to assure that operations are controlled as described in the safety analysis report.

The Corporation requested that the use of the term "technical safety requirements" (TSRs) be changed to "operational safety requirements" (OSRs) as the GDPs have historically operated under OSRs which are similar to TSRs. The Corporation also suggested a change from "Safety Analysis Report" (SAR) to "Safety Demonstration" (SD) as being "functionally equivalent." The Commission prefers the term "technical safety requirements" because the requirements may cover subjects broader than operations, and because existing Corporation operational requirements include matters beyond NRC jurisdiction. Similarly, the term "safety analysis report" is preferred because it is a more generally accepted term. Therefore, no change was made to the rule.

The Corporation also recommended deletion of the list of the 14 safety topics that are to be addressed as being more appropriate for identifying accidents for analysis. DOE referenced the list of safety topics as those which must be addressed under assessment of accidents. The list of topics to be addressed in the technical safety requirements is included to ensure that operations are controlled within certain safe parameters under normal, off-normal, and accident conditions. Therefore, the list has been retained, but the rule has been revised to clarify that the Corporation must describe the procedures and/or equipment that reflect consideration of each of the listed safety topics.

Section 76.93 Quality assurance. This section requires a quality assurance program. The Commission recognizes that the GDPs are fuel cycle facilities and that the appropriate quality assurance (QA) for GDPs is not the same as for reactors. The GDPs are existing plants designed and constructed around 40 years ago. The QA requirements for the GDPs will be based on applying the applicable requirements of ASME NQA–1–1989, "Quality Assurance Program Requirements for Nuclear Facilities," in a graded approach and to an extent that is commensurate with the importance to safety.

A Corporation comment agreed with use of ASME NQA–1 as a basis for a quality assurance program (§ 76.93), but expressed concern that implementation problems could result if NQA–1 is applied in a manner similar to reactors. The Corporation suggested that the rule should allow use of equivalent alternatives to NQA–1. If found adequate under review, the NRC could approve use of an equivalent alternative to NQA–1, and the final rule has been revised accordingly.

Section 76.95 Training. This section requires a description of the training program that will be provided to personnel to enable them to perform the functions of their jobs, including information on the positions for which training will be provided, to assure that personnel are qualified to operate and maintain the plants safely and in compliance with regulatory requirements.

The Corporation strongly recommended that the performance-based training concept be deleted from the proposed rule and instead require the Corporation to "establish, implement and maintain a training program to assure that personnel are adequately trained to perform their nuclear-safety related functions." They indicated that development of performance-based training would go well beyond both the existing requirements of 10 CFR part 70 and current practices at the GDPs. They further commented that it would subject the Corporation to the very costly and difficult task of fully implementing a performance-based training program by the time that it submits its initial application for a certificate. The Corporation believes the proposed section will require the GDPs "to adopt the full performance-based training concept embodied in part 50" which uses the Institute of Nuclear Power Operations (INPO) training methodologies for commercial power reactor licensees. The Corporation estimates it will cost about $8 million to fully develop and implement a training program for selected tasks affecting nuclear safety or radiological controls.

The Commission believes that the performance-based training requirement should be retained. The Corporation's main concern is that it might be expected to establish training programs of similar complexity to those of power reactors, which is not the case. The final rule allows flexibility, and the Commission believes that the existing training program inherited by the Corporation can be adapted to comply with the rule at reasonable cost.

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The Commission must be assured that adequate training is provided and that those persons performing operations that could have an effect on health and safety have mastery of their operating tasks. Therefore, the final rule was not changed. The Commission believes that a training program that includes the concepts of performance-based training provides that assurance. The Commission also notes that a requirement for performance-based training has been established for nuclear power reactors and has been determined to be cost-effective for such facilities. The Commission does not see any reason to conclude that this will not also be the case for the enrichment plants.

D. Incorporation of Existing Regulations

Portions of existing Commission regulations are applicable to certification of the Corporation's operation of the gaseous diffusion plants and cross referenced (§ 76.60).

Requirements for notices, instructions, and reports to workers are contained in 10 CFR part 19, "Notices, Instructions, and Reports To Workers: Inspection and Investigations." Part 19 specifies the requirements for notices, instructions, and reports by the Corporation to individuals participating in gaseous diffusion activities. It also sets forth the rights and responsibilities of the Commission and individuals during interviews on any matter within the Commission's jurisdiction.

Requirements for protection against ionizing radiation are contained in 10 CFR part 20, "Standards For Protection Against Radiation." Part 20 specifies the requirements to control the receipt, possession, use, storage, transfer, and disposal of byproduct, source, and special nuclear material by the Corporation in such a manner that the total dose to an individual (including doses resulting from radioactive material and from radiation sources other than background radiation) does not exceed the standards for protection against radiation prescribed by the NRC for normal operating conditions and anticipated operational occurrences.

A comment was received indicating that the health of the public is being placed at risk presently and this policy would continue under the proposed NRC rules. The NRC standards require that the Corporation must meet part 20 requirements for protection of workers and the public against radiation. This includes specific effluent limits that the Corporation must meet. The Commission believes that the current requirements of part 20 provide for adequate safety for workers and the public from radiation effects.

Requirements for reporting of defects and noncompliance are contained in 10 CFR part 21, "Reporting of Defects and Noncompliance." Part 21 specifies the procedures and requirements for persons to notify the Commission immediately of component defects or failure to comply with regulatory requirements which could create a substantial safety hazard.

Requirements for fitness-for-duty programs are contained in 10 CFR part 26, "Fitness-for-Duty Programs." Part 26 prescribes requirements and standards for the establishment and maintenance of fitness-for-duty programs to reduce the likelihood of theft or diversion of strategic special nuclear material. The requirements of this part are relevant only to the extent that the Corporation elects to engage in activities which involve formula quantities of strategic special nuclear material.

Requirements for packaging and transportation are contained in 10 CFR part 71, "Packaging and Transportation of Radioactive Material." Part 71 establishes requirements and procedures for packaging, preparation for shipment, and transportation of radioactive material.

Requirements for physical security and material control and accounting are contained in 10 CFR part 70, "Domestic Licensing of Special Nuclear Material," part 73, "Physical Protection of Plants and Materials," and part 74, "Material Control and Accounting of Special Nuclear Material," as specified in subpart E to this part. Subpart E to part 74 identifies the specific sections that establish the requirements and procedures for transfer, protection at fixed sites and in transit, and control and accounting of the various enrichments of U–235 covered under the certification.

Safeguards regulation of special nuclear material is conducted on a graded basis. The grades reflect the importance of specified kinds and quantities of material to the public safety and to the common defense and security. Three grades of material are defined in Commission regulations. In declining order of importance they are:

(1) Formula quantities of strategic special nuclear material (also referred to by the shorter phrase "Category I material");

(2) Special nuclear material of moderate strategic significance (Category II), and

(3) Special nuclear material of low strategic significance (Category III).

The gaseous diffusion plants are to produce only Category III material, and only the safeguards for that grade of material need apply to production activities. Nonetheless, the Commission recognizes that the Corporation may need to or may opt to engage in nonproduction activities that involve the other categories of material. In the past, the Portsmouth plant has produced high enriched uranium hexafluoride (UF_6). As a result of this past production, there may be portions of the plant under lease by the Corporation or to which it will have access that will continue to have high enriched UF_6 fixed to interior surfaces of process equipment. Additionally, some areas, such as the analytical laboratory, may continue to have a high enriched inventory. The Corporation may elect to engage in nonproduction business activities that involve high enriched UF_6. To be responsive to the full range of possible Corporation activities, safeguards regulations for all three categories of material are listed in subpart E and are to be applied in accordance with the categories of material the Corporation actually uses, possesses, or has access to.

One commenter noted that the referenced requirement of § 70.51(d) is not consistent with § 74.33(c)(4)(i) [12 months verses 370 days] in specifying the static inventory frequency for material control and accounting for uranium. The NRC agrees with this comment and has revised § 76.117(a) to specify 370 days as the static inventory frequency for the GDPs. The 370-day period contained in § 74.33(c)(4)(i) and revised § 76.117(a) provides a full year with an additional margin of a few days to provide flexibility.

Other comments focus on §§ 74.15(b)(2), 74.33(c)(2), 74.33(c)(4)(i) and 74.33(c)(6), which are among the various material control and accounting requirements referenced in § 76.117. The comments request relief from various aspects of these requirements and provide rationale in support of the request. The requirements of § 74.15 and § 74.33 are performance requirements that must be implemented on a site-specific basis for the fundamental nuclear material control plans for each site that the Corporation must submit for NRC approval. The nuclear material control plans must describe how each requirement will be carried out at each of the two sites. After approval, the plan will become the principal document that governs material control and accounting at the site. Because the requirements are performance requirements rather than prescriptive requirements, wide latitude exists for achieving appropriate performance for the overall material control and accounting program. Accordingly, no change to the proposed regulation was made in response to these specific comments.

The requirement the Corporation believes has the greatest potential cost impact is § 74.33(c)(4)(i), which requires enrichment facilities to conduct periodic inventories of in-process enriched uranium for safeguards accountability purposes. This inventory consists of a large quantity of material in gaseous form and a relatively small quantity of solids. The Corporation requested that the rule require measurement of material in the gas phase only. The Corporation believes that, due to the size of the facilities, the relatively small quantity of solids, and the limitations of instruments in distinguishing between the solids and the gaseous material, extensive direct measurement of the solids is not practical and the cost would, in any case, be prohibitive. The Commission believes that a broad exemption from measurement of the solids would undermine the well-established domestic and international safeguards principle requiring strict accountability of special nuclear material. The Commission further believes that the rule can be met by methods other than extensive direct measurements, for example, appropriate sampling and use of previous measurements, at reasonable cost and, therefore the rule has not been changed.

In the course of reviewing the comments, it was found that § 70.22(h), which contains requirements for physical security plans for Category I material, had not been incorporated by reference in § 76.113 as was intended. That reference has now been incorporated. The change is for completeness and will affect the Corporation only in the unlikely event that it elects to operate a Category I plant. Additionally, it was found that § 73.70 had been unintentionally incorporated by reference into § 76.117. The reference is not relevant to § 76.117 and has been deleted.

NRC does not intend to incorporate any additional requirements for personnel security screening for access to or control over special nuclear material as contained in 10 CFR part 11, "Criteria and Procedures for Determining Eligibility for Access to or Control over Special Nuclear Material," if the Corporation elects to engage in activities which involve strategic special nuclear material. The requirements for this separate access program are met by the DOE access authorization program for the GDPs.

A comment was received indicating that no unrecovered costs should be incurred by the NRC in conjunction with certification, and a fee schedule should be included in the rule. All NRC costs associated with GDP certification are recovered from the Corporation and need not be covered in this rule. Fees are covered in 10 CFR parts 170 and 171.

Requirements for security facility approval and protection of classified matter are contained in 10 CFR part 95, "Security Facility Approval and Safeguarding of National Security Information and Restricted Data." The Corporation and its contractor personnel will be considered as authorized by the Commission under § 95.35(a) for access to classified matter based on their DOE access authorizations.

In addition, the Corporation commented that the proposed modification to § 95.5 should be deleted because it incorrectly attempts to incorporate the Corporation, which is not a licensee, under the definition of a "licensee." This suggested revision was adopted as "corporation," is covered in § 76.60 and is under the definition of "person" listed in 10 CFR 95.5.

The Corporation requested that § 76.119 be modified to require examination of 25 percent of the security containers daily on a rotational basis if the containers are in a controlled access area. The Corporation also recommended that § 76.119 be modified to specifically state that 10 CFR 95.37(g), 95.41, 95.43, and parts of § 95.47 do not apply to the Corporation and to clarify that document control practices implemented under DOE security oversight may continue. DOE commented that the rule should include an exception that the Corporation be permitted to continue using the applicable DOE procedures and practices when a conflict occurs between NRC requirements and the DOE documents. The Commission does not accept this recommendation, because the regulations for protection of classified matter should be consistent for all regulated organizations. The provisions of 10 CFR part 95, coupled with an approved security plan for the protection of classified matter, will contain all of the applicable requirements for security facility approval and for the safeguarding of classified matter at the gaseous diffusion plants. The Commission does not anticipate any significant conflicts with the previous DOE procedures. However, any conflicts that may be identified will be resolved on a case-by-case basis.

Security Facility Approval and Safeguarding of National Security Information and Restricted Data; Minor Conforming Changes

Minor editorial changes are also being made to certain sections of 10 CFR part 95 to clarify that there are unique aspects of uranium enrichment facilities and operations which handle, store, process, transport, transmit, and destroy classified matter. Specific changes include replacing the use of the term "documents" with "matter" in order to include the classified equipment and hardware associated with uranium enrichment plants; more precisely defining "NRC access authorizations" because the Corporation will not be subject to 10 CFR part 25; and modifying § 95.36 to include participants in other international agreements.

Section 95.37(a) is also being revised to replace the reference to classification guidance previously included as Appendix A to part 95. This guidance is available separately in a more usable form such as NUREG/BR–0069, Revision 2, "NRC Classification Guide for National Security Information Concerning Nuclear Material And Facilities." NUREG/BR–0069, which is publicly available, can readily be updated to promptly reflect Executive Orders that require modifications to the guidance associated with classification issues. Currently, each NRC licensee has committed in its approved security plans to using NUREG/BR 0069 instead of relying on 10 CFR part 95, appendix A. Similarly, the GDPs will be expected to reference more up-to-date classification guidance such as NUREG/BR–0069 in complying with 10 CFR part 95. Because NUREG/BR–0069 is a more appropriate reference than 10 CFR part 95, appendix A, this appendix is being deleted and appropriate changes to § 95.37(a) are being made to reflect the actual use of alternative NRC classification guidance documents.

Finding of No Significant Environmental Impact: Availability; Categorical Exclusion

The Commission has determined under the National Environmental Policy Act (NEPA) of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The two plants to be regulated by this rule have already been subject to evaluation in accordance with NEPA. The Department of Energy has prepared

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an environmental impact statement for the gaseous diffusion plant in Piketon, Ohio,[3] and an environmental assessment for the plant in Paducah, Kentucky.[4] The NRC has reviewed those documents, as well as environmental reports prepared by DOE for both facilities in 1992 and environmental audits prepared by DOE prior to turning operation of the Facilities over to the Corporation in 1993. The NRC also conducted extensive site visits. No significant differences in operations, previously evaluated by DOE, were identified that would result in current operations having significantly different environmental effects than those already evaluated in DOE's environmental reviews. The Commission's certification requirements are intended to be at least as stringent as the existing requirements applicable to the two plants which are currently operating and have been operating for nearly 40 years. The promulgation of a rule governing these plants, and their subsequent regulation by the NRC, will not result in any environmental impacts beyond those previously considered by DOE in its environmental reviews and which currently exist or would be expected to continue absent NRC regulatory oversight. The NRC environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Similarly, subsequent certificates of compliance including amendments, modifications, and renewals issued pursuant to this part will consist of findings of compliance with 10 CFR part 76. Therefore, these actions will not result in any significant new environmental impacts. The regulations require that the Corporation submit information for use by NRC in preparing an environmental assessment for certification applications addressing areas where the facilities are not in compliance with the requirements of part 76. Part 51 of Title 10 of the Code of Federal Regulations is being amended to include a categorical exclusion for such certification actions pursuant to part 76.

Under its procedures implementing NEPA, the Commission may exclude from preparation of an environmental impact statement or an environmental assessment a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in NRC procedures. In this rulemaking, the Commission finds that the issuance, amendment, modification, and revision of a certificate of compliance for the Corporation comprise a category of actions which does not individually or cumulatively have a significant effect on the human environment. Actions within this category are similar in that they will be based on a finding by NRC that the Corporation has demonstrated compliance with the requirements in part 76. After conducting an environmental assessment for part 76, the Commission made a finding of no significant environmental impact, and concluded that part 76 requirements, if promulgated, would not allow the enrichment facilities to operate in such a way as to result in any adverse environmental effects greater than those which currently exist or would be expected to continue absent NRC regulatory oversite. Accordingly, a Commission finding of compliance with the part 76 requirements would not have a significant effect on the human environment.

[3] Final Environmental Impact Statement, Portsmouth Gaseous Diffusion Plant Site, May 1977, ERDA–1555; Final Environmental Statement, Portsmouth Gaseous Diffusion Plant Expansion, September 1977, ERDA–1549.

[4] Final Environmental Impact Assessment Of The Paducah Gaseous Diffusion Plant Site, August 1982, DOE/EA–0155.

Paperwork Reduction Act Statement

The information collection requirements contained in this rule of limited applicability apply only to a wholly-owned instrumentality of the United States and affect fewer than 10 respondents. Therefore, Office of Management and Budget clearance is not required pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities because it only addresses the Corporation's operation of two existing plants which do not fall into this category.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, a backfit analysis is not required.

List of Subjects

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power reactors, Protection of information, Reporting and recordkeeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 73

Criminal penalties, Hazardous materials transportation, Export, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 74

Accounting, Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

10 CFR Part 76

Certification, Criminal penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Special nuclear material, Uranium enrichment by gaseous diffusion.

10 CFR Part 95

Classified information, Criminal penalties, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is adopting the following amendments to 10 CFR parts 19, 20, 21, 26, 51, 70, 71, 73, 74, and 95 and the new 10 CFR part 76.

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

1. The authority citation for part 19 is revised to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282, 2297f); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

2. Section 19.2 is revised to read as follows:

§ 19.2 Scope.

The regulations in this part apply to all persons who receive, possess, use, or transfer material licensed by the Nuclear Regulatory Commission pursuant to the regulations in parts 30 through 36, 39, 40, 60, 61, or part 72 of this chapter, including persons licensed to operate a production or utilization facility pursuant to part 50 of this chapter, persons licensed to possess power reactor spent fuel in an independent spent fuel storage installation (ISFSI) pursuant to part 72 of this chapter, and in accordance with 10 CFR 76.60 to persons required to obtain a certificate of compliance or an approved compliance plan under part 76 of this chapter. The regulations regarding interviews of individuals under subpoena apply to all investigations and inspections within the jurisdiction of the Nuclear Regulatory Commission other than those involving NRC employees or NRC contractors. The regulations in this part do not apply to subpoenas issued pursuant to 10 CFR 2.720.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

3. The authority citation for Part 20 is revised to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

4. Section 20.1002 is revised to read as follows:

§ 20.1002 Scope.

The regulations in this part apply to persons licensed by the Commission to receive, possess, use, transfer, or dispose of byproduct, source, or special nuclear material or to operate a production or utilization facility under parts 30 through 36, 39, 40, 50, 60, 61, 70, or 72 of this chapter, and in accordance with 10 CFR 76.60 to persons required to obtain a certificate of compliance or an approved compliance plan under part 76 of this chapter. The limits in this part do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, or to voluntary participation in medical research programs.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

5. The authority citation for Part 21 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2953 (42 U.S.C. 2201, 2282, 2297f); secs. 201, as amended, 206, 88 Stat. 1242, as amended, 1246 (42 U.S.C. 5841, 5846).

Section 21.2 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

6. Section 21.2 is amended by adding paragraph (e) to read as follows:

§ 21.2 Scope.

* * * * *

(e) The regulations in this part apply in accordance with 10 CFR 76.60 to each individual, partnership, corporation, or other entity required to obtain a certificate of compliance or an approved compliance plan under part 76 of this chapter.

PART 26—FITNESS-FOR-DUTY PROGRAMS

7. The authority citation for Part 26 is revised to read as follows:

Authority: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201, 2297f); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

8. Section 26.2 is amended by adding paragraph (d) to read as follows:

§ 26.2 Scope.

* * * * *

(d) The regulations in this part apply to the Corporation required to obtain a certificate of compliance or an approved compliance plan under part 76 of this chapter only if the Corporation elects to engage in activities involving formula quantities of strategic special nuclear material. When applicable, the requirements apply only to the Corporation and personnel carrying out the activities specified in § 26.2(a)(1) through (5).

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

9. The authority citation for Part 51 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

10. Section 51.22 is amended by adding paragraph (c)(19) to read as follows:

§ 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.

* * * * *

(c) * * *

(19) Issuance, amendment, modification, or renewal of a certificate of compliance of gaseous diffusion enrichment facilities pursuant to 10 CFR part 76.

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PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

11. The authority citation for Part 70 is revised to read as follows:

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Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246, (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

12. Section 70.1 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 70.1 Purpose.

(a) Except as provided in paragraphs (c) and (d) of this section, the regulations of this part establish procedures and criteria for the issuance of licenses to receive title to, own, acquire, deliver, receive, possess, use, and transfer special nuclear material; and establish and provide for the terms and conditions upon which the Commission will issue such licenses.

* * * * *

(d) As provided in part 76 of this chapter, the regulations of this part establish procedures and criteria for physical security and material control and accounting for the issuance of a certificate of compliance or the approval of a compliance plan.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

13. The authority citation for Part 71 is revised to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

14. Section 71.0 is amended by adding paragraph (e) to read as follows:

§ 71.0 Purpose and scope.

* * * * *

(e) The regulations in this part apply to any person required to obtain a certificate of compliance or an approved compliance plan pursuant to part 76 of this chapter if the person delivers radioactive material to a common or contract carrier for transport or transports the material outside the confines of the person's plant or other authorized place of use.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

15. The authority citation for Part 73 is revised to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

16. Section 73.1 is amended by adding paragraph (b)(9) to read as follows:

§ 73.1 Purpose and scope.

* * * * *

(b) * * *

(9) As provided in part 76 of this chapter, the regulations of this part establish procedures and criteria for physical security for the issuance of a certificate of compliance or the approval of a compliance plan.

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

17. The authority citation for Part 74 is revised to read as follows:

Authority: Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

18. Section 74.2 is amended by adding paragraph (d) to read as follows:

§ 74.2 Scope.

* * * * *

(d) As provided in part 76 of this chapter, the regulations of this part establish procedures and criteria for material control and accounting for the issuance of a certificate of compliance or the approval of a compliance plan.

19. A new part 76 is added to 10 CFR Chapter I to read as follows:

PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS

Subpart A—General Provisions

Sec.
76.1 Purpose.
76.2 Scope.
76.4 Definitions.
76.5 Communications.
76.6 Interpretations.
76.7 Employee protection.
76.8 Information collection requirements OMB approval not required.
76.9 Completeness and accuracy of information.
76.10 Deliberate misconduct.
76.21 Certificate required.
76.23 Specific exemptions.

Subpart B—Application

76.31 Annual application requirement
76.33 Application procedures.
76.35 Contents of initial application.
76.36 Annual renewals.
76.37 Federal Register notice.
76.39 Public meeting.
76.41 Record underlying decisions.
76.43 Annual date for decision.
76.45 Application for amendment of certificate.

Subpart C—Certification

76.51 Conditions of certification.
76.53 Consultation with Environmental Protection Agency.
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Authority: Secs. 161, 68 Stat. 948, as amended, secs. 1312, 1701, 106 Stat. 2932, 2951, 2952, 2953 (42 U.S.C. 2201, 2297b-11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sec. 76.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sec. 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

Subpart A—General Provisions

§ 76.1 Purpose.

(a) This part establishes requirements that will govern the operation of those portions of the Portsmouth and Paducah Gaseous Diffusion Plants located in Piketon, Ohio, and Paducah, Kentucky, respectively, that are leased by the United States Enrichment Corporation. These requirements are promulgated to protect the public health and safety from radiological hazards and provide for the common defense and security. This part also establishes the certification process that will be used to ensure compliance with the established requirements.

(b) The regulations contained in this part are issued pursuant to the Atomic Energy Act of 1954, as amended (68 Stat. 919); Title II of the Energy Reorganization Act of 1974, as amended (88 Stat. 1242); and Titles IX and XI of the Energy Policy Act of 1992 (106 Stat. 2923, 2951).

§ 76.2 Scope.

The regulations in this part apply only to those portions of the Portsmouth and Paducah Gaseous Diffusion Plants leased by the Corporation, per the Lease Agreement between the Department of Energy and the United States Enrichment Corporation. This part also gives notice to all persons who knowingly provide to the Corporation or any contractor, or subcontractor any components, equipment, materials, or other goods or services that relate to the activities subject to this part that they may be individually subject to NRC enforcement action for violation of § 76.10.

§ 76.4 Definitions.

As used in this part:

Act means the Atomic Energy Act of 1954 (68 Stat 919), and includes any amendments to the Act.

Administrative controls means the provisions relating to organization and management, procedures, recordkeeping, review and audit, and reporting necessary to ensure operation of the plant in a safe manner.

Agreement State means any State with which the Commission has entered into an effective agreement under subsection 274b. of the Act.

Non-Agreement State means any other State.

Alert means events may occur, are in progress, or have occurred that could lead to a release of radioactive material[s] but that the release is not expected to require a response by an offsite response organization to protect persons offsite.

Atomic energy means all forms of energy released in the course of nuclear fission or nuclear transformation.

Certificate of compliance or certificate means a certificate of compliance issued pursuant to this part.

Classified matter means documents or material revealing classified information.

Commission means the Nuclear Regulatory Commission or its duly authorized representatives.

Common defense and security means the common defense and security of the United States.

Compliance plan means a plan for achieving compliance approved pursuant to this part.

Corporation means the United States Enrichment Corporation (USEC), a Corporation that is authorized by statute to lease the gaseous diffusion enrichment plants in Paducah, Kentucky, and Piketon, Ohio, from the Department of Energy, or any person authorized to operate one or both of the gaseous diffusion plants pursuant to a plan for the privatization of USEC that is approved by the President in accordance with Sections 1501 and 1502 of the Atomic Energy Act of 1954, as amended.

Department and Department of Energy (DOE) means the Department of Energy established by the Department of Energy Organization Act (Pub. L. 95–91, 91 Stat. 565, 42 U.S.C. 7101 *et seq.*), to the extent that the Department, or its duly authorized representatives, exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to Sections 104(b), (c), and (d) of the Energy Reorganization Act of 1974, as amended, (Pub. L. 93–438, 88 Stat. 1233 at 1237, 42 U.S.C. 5814) and retransferred to the Secretary of Energy pursuant to Section 301(a) of the Department of Energy Organization Act (Pub. L. 95–91, 91 Stat. 565 at 577–578, 42 U.S.C. 7151).

Depleted uranium means the byproduct residues from the uranium enrichment process in which the concentration of the isotope U_{235} is less than that occurring in natural uranium.

Director means the Director, or his or her designee, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission.

Effective dose equivalent means the sum of the products of the dose equivalent to the body organ or tissue and the weighting factors applicable to each of the body organs or tissues that are irradiated, as defined in 10 CFR Part 20 (§§ 20.1001 through 20.2402).

Effective kilograms of special nuclear material means:

(1) For uranium with an enrichment in the isotope U–235 of 0.01 (1 percent) and above, its element weight in kilograms multiplied by the square of its enrichment expressed as a decimal weight fraction; and

(2) For uranium with an enrichment in the isotope U–235 below 0.01 (1 percent), its element weight in kilograms multiplied by 0.0001.

Formula quantity means strategic special nuclear material in any combination in a quantity of 5000 grams or more computed by the formula, grams = (grams contained U–235) + 2.5(grams U–233+grams plutonium).

Lease Agreement means the agreement entered into as of July 1, 1993, and any subsequent revisions between the United States Department of Energy and the United States Enrichment Corporation.

Limiting conditions for operation means the lowest functional capability or performance levels of structures, systems, components, and their support systems required for normal safe operation of the plant.

Limiting control settings means settings for automatic alarm or protective devices related to those variables having significant safety functions.

National Security Information means information that has been determined pursuant to Executive Order 12356 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

Person means:

(1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government Agency other than the Commission or the Department, except that the Department shall be considered a person within the meaning of the regulations in this part to the

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extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission pursuant to Section 202 of the Energy Reorganization Act of 1974, as amended, (88 Stat. 1244); any State or any political subdivision of or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and

(2) Any legal successor, representative, agent, or agency of the foregoing.

Process means a series of actions that achieves an end or result.

Produce, when used in relation to special nuclear material, means:

(1) To manufacture, make, produce, or refine special nuclear material;

(2) To separate special nuclear material from other substances in which such material may be contained; or

(3) To make or to produce new special nuclear material.

Radioactive material means source material, special nuclear material, or byproduct material, possessed, used, transferred, or disposed of under part 76.

Restricted Data means all data concerning design, manufacture or utilization of atomic weapons, the production of special nuclear material, or the use of special nuclear material in the production of energy, but does not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Act.

Safety limits means those bounds within which the process variables must be maintained for adequate control of the operation and that must not be exceeded in order to protect the integrity of the physical system that is designed to guard against the uncontrolled release of radioactivity.

Sealed source means any radioactive material that is encased in a capsule designed to prevent leakage or escape of the radioactive material.

Security facility approval means that a determination has been made by the NRC that a facility is eligible to use, process, store, reproduce, transmit, or handle classified matter.

Site area emergency means events may occur, are in progress, or have occurred that could lead to a significant release of radioactive material and that could require a response by offsite response organizations to protect persons offsite.

Source material means source material as defined in Section 11z. of the Act and in the regulations contained in part 40 of this chapter.

Special nuclear material means:

(1) Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of Section 51 of the Act, determines to be special nuclear material, but does not include source material; or

(2) Any material artificially enriched in any of the foregoing, but does not include source material.

Special nuclear material of low strategic significance means:

(1) Less than an amount of special nuclear material of moderate strategic significance, as defined in this section, but more than 15 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U–235 isotope), or 15 grams of uranium-233, or 15 grams of plutonium, or the combination of 15 grams when computed by the equation, grams = (grams contained U–235) + (grams plutonium) + (grams U–233); or

(2) Less than 10,000 grams but more than 1000 grams of uranium-235 (contained in uranium enriched to 10 percent or more but less than 20 percent in the U–235 isotope), or

(3) 10,000 grams or more of uranium-235 (contained in uranium enriched above natural but less than 10 percent in the U–235 isotope).

Special nuclear material of moderate strategic significance means:

(1) Less than a formula quantity of strategic special nuclear material but more than 1000 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U–235 isotope), or more than 500 grams of uranium-233 or plutonium, or in a combined quantity of more than 1000 grams when computed by the equation, grams = (grams contained U–235) + 2 (grams U–233 + grams plutonium); or

(2) 10,000 grams or more of uranium-235 (contained in uranium enriched to 10 percent or more but less than 20 percent in the U–235 isotope).

Special nuclear material scrap means the various forms of special nuclear material generated during chemical and mechanical processing, other than recycle material and normal process intermediates, which are unsuitable for use in their present form, but all or part of which will be used after further processing.

Strategic special nuclear material means uranium-235 (contained in uranium enriched to 20 percent or more in the U–235 isotope), uranium-233, or plutonium.

Surveillance requirements means requirements relating to test, calibration, or inspection to ensure that the necessary quality of systems and components is maintained, that plant operation will be within the safety limits, and that the limiting conditions of operation will be met.

Unclassified Controlled Nuclear Information is information whose unauthorized dissemination is prohibited under Section 148 of the Atomic Energy Act.

United States, when used in a geographical sense, includes Puerto Rico and all territories and possessions of the United States.

Unreviewed safety question means a change which involves any of the following:

(1) The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased;

(2) A possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created; or

(3) The margin of safety as defined in the basis for any technical safety requirement is reduced.

Uranium enrichment plant means:

(1) Any plant used for separating the isotopes of uranium or enriching uranium in the isotope 235, using gaseous diffusion technology; or

(2) Any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235, using gaseous diffusion technology.

§ 76.5 Communications.

Except where otherwise specified, all correspondence, reports, applications, and other written communications submitted pursuant to 10 CFR part 76 should be addressed to the Director, Office of Nuclear Material Safety and Safeguards, ATTN: Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and copies sent to the NRC Region III Office (shown in appendix D of part 20 of this chapter) and the applicable Resident Inspector. Communications and reports may be delivered in person at the Commission's offices at 11555 Rockville Pike, Rockville, Maryland, or at the NRC Public Document Room 2120 L Street, NW. (Lower Level), Washington DC.

§ 76.6 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 76.7 Employee protection.

(a) Discrimination by the Corporation, a contractor, or a subcontractor of the Corporation against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in Section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the above statutes or possible violations of requirements imposed under either of the above statutes;

(ii) Refusing to engage in any practice made unlawful under either of the above statutes or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the above statutes; and

(v) Assisting or participating in, or attempting to assist or participate in, the protected activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraphs (a), (e), or (f) of this section by the Corporation, or a contractor or subcontractor of the Corporation may be grounds for:

(1) Denial, revocation, or suspension of the certificate.

(2) Other enforcement action.

(d) Actions taken by an employer or others which adversely affect an employee may be predicated upon nondiscrimination grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) The Corporation shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c). This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than the date of Director's decision on the initial certificate of compliance and/or an initial plan for achieving compliance, during the term of the certificate, and for 30 days following certificate termination.

(2) The Corporation shall notify its contractors of the prohibition against discrimination for engaging in protected activities.

(3) Copies of NRC Form 3 may be obtained by writing to the NRC Region III Office listed in appendix D to part 20 of this chapter or by contacting the NRC Office of Information Resource Management, Division of Information Support Services, Information and Records Management Branch.

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

§ 76.8 Information collection requirements: OMB approval not required.

The information collection requirements contained in this part of limited applicability apply to a wholly-owned instrumentality of the United States and affect fewer than ten respondents. Therefore, Office of Management and Budget clearance is not required pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

§ 76.9 Completeness and accuracy of information.

(a) Information provided to the Commission or information required by statute or by the Commission's rules, regulations, standards, orders, or other conditions to be maintained by the Corporation must be complete and accurate in all material respects.

(b) The Corporation shall notify the Commission of information identified as having for the regulated activity a significant implication for public health and safety or common defense and security. The Corporation violates this paragraph only if the Corporation fails to notify the Commission of information that the Corporation has identified as having a significant implication for public health and safety or common defense and security. Notification must be provided to the Administrator of NRC's Region III Office within 2 working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

(c) Paragraph (b) of this section does not apply until the initial certification application is submitted pursuant to § 76.31.

§ 76.10 Deliberate misconduct.

(a) The Corporation or any employee of the Corporation and any contractor (including a supplier or consultant), subcontractor, or any employee of a contractor or subcontractor, who knowingly provides to the Corporation, or any contractor or subcontractor, components, equipment, materials, or other goods or services, that relate to the Corporation's activities subject to this part; may not:

(1) Engage in deliberate misconduct that causes or, but for detection, would have caused, the Corporation to be in violation of any rule, regulation, or order, or any term, condition, or limitation of a certificate or approval issued by the Commission; or

(2) Deliberately submit to the NRC, the Corporation, or its contractor or subcontractor, information that the

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person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B; except, that the Corporation is not subject to the authority of Section 234 of the Act.

(c) For purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause the Corporation to be in violation of any rule, regulation, or order, or any term, condition, or limitation of a certificate or approved compliance plan issued by the Director; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order or policy of the Corporation, contractor, or subcontractor.

§ 76.21 Certificate required.

(a) After the Commission completes the initial certification process, the Corporation or its contractors may not operate the gaseous diffusion plants at Piketon, Ohio, and Paducah, Kentucky, unless an appropriate certificate of compliance, and/or an approved compliance plan is in effect pursuant to this part. Except as authorized by the NRC under other provisions of this chapter, no person other than the Corporation or its contractors may acquire, deliver, receive, possess, use, or transfer radioactive material at the gaseous diffusion plants at Piketon, Ohio, and Paducah, Kentucky.

(b) For the purposes of §§ 30.41, 40.41, and 70.42 of this chapter, the Corporation shall be authorized to receive, and licensees shall be authorized to transfer to the Corporation, byproduct material, source material, or special nuclear material to the extent permitted under the certificate of compliance issued, and/or the compliance plan approved, pursuant to this part.

§ 76.23 Specific exemptions.

The Commission may, upon its own initiative or upon application of the Corporation, grant such exemptions from the requirements of the certification regulations as it determines are authorized by law and will not endanger life, or property, or the common defense and security, and are otherwise in the public interest.

Subpart B—Application

§ 76.31 Annual application requirement.

The Corporation shall file an initial certificate application in 1995 [1], and thereafter, the Corporation shall apply to the Commission each year on or before April 15, for a certificate of compliance in accordance with § 76.36.

§ 76.33 Application procedures.

(a) *Filing requirements.* (1) An application for an initial certificate of compliance must be tendered by filing 20 copies of the application with the Director, Office of Nuclear Material Safety and Safeguards, with copies sent to the NRC Region III Office and appropriate resident inspector, in accordance with § 76.5 of this part.

(2) The application must include the full name, address, age (if an individual), and citizenship of the applicant. If the applicant is a corporation or other entity, it shall indicate the State where it was incorporated or organized, the location of the principal office, the names, addresses, and citizenship of its principal office, the names, addresses, and citizenship of its principal officers, and shall include information known to the applicant concerning the control or ownership, if any, exercised over the applicant by any alien, foreign corporation, or foreign government.

(b) *Oath or affirmation.* An application for an initial certificate of compliance must be executed in a signed original by a duly authorized officer of the Corporation under oath or affirmation.

(c) *Pre-filing consultation.* The Corporation may confer with the Commission's staff prior to filing an initial application.

(d) *Additional information.* At any time during the review of an initial application, the Corporation may be required to supply additional information to the Commission's staff in order to enable the Commission or the Director, as appropriate, to determine whether the certificate should be issued or denied, or to determine whether a compliance plan should be approved.

(e) *Withholdable information.* An initial application which contains Restricted Data, National Security Information, Safeguards Information, Unclassified Controlled Nuclear Information, proprietary data, or other withholdable information, must be prepared in such a manner that all such information or data are separated from the information to be made available to the public.

§ 76.35 Contents of initial application.

The application for an initial certificate of compliance must include the information identified in this section.

(a) A safety analysis report which must include the following information:

(1) The activities and locations involving special nuclear material and the general plan for carrying out these activities;

(2) The name, amount, and specifications (including the chemical and physical form and, where applicable, isotopic content) of the special nuclear material, source and byproduct material the Corporation proposes to use, possess or produce, including any material held up in equipment from previous operations;

(3) The qualifications requirements, including training and experience, of the Corporation's management organization and key individuals responsible for safety in accordance with the regulations in this chapter;

(4) An assessment of accidents based on the requirements of § 76.85;

(5) A training program that meets the requirements of § 76.95;

(6) A description of equipment and facilities which will be used by the Corporation to protect health and minimize danger to life or property (such as handling devices, working areas, shields, measuring and monitoring instruments, devices for the treatment and disposal of radioactive effluent and wastes, storage facilities, provisions for protection against natural phenomena, fire protection systems, criticality accident alarm systems, etc.);

(7) A description of the management controls and oversight program to ensure that activities directly relevant to nuclear safety and safeguards and security are conducted in an appropriately controlled manner that ensures protection of employee and public health and safety and protection of the national security interests; and

(8) A description of the plant site, and a description of the principal structures, systems, and components of the plant.

(b) A plan prepared and approved by DOE for achieving compliance with respect to any areas of noncompliance with the NRC's regulations that are identified by the Corporation as of the date of the application that includes:

(1) A description of the areas of noncompliance;

(2) A plan of actions and schedules for achieving compliance; and

(3) A justification for continued operation with adequate safety and safeguards.

[1] The initial filing for a certificate of compliance must be tendered no later than 6 months after the effective date of this rule or by April 15, 1995, whichever is later.

(c) Any relevant information concerning deviations from the published Environmental Impact Statement, Environmental Assessments, or environmental permits under which the plants currently operate from which the Commission can prepare an environmental assessment related to the compliance plan.

(d) A quality assurance program that meets the requirements of § 76.93.

(e) Technical safety requirements in accordance with § 76.87. A summary statement of the bases or reasons for the requirements, other than those covering administrative controls, must also be included in the application, but will not be considered part of the technical safety requirements.

(f) An emergency plan that meets the requirements of § 76.91.

(g) A compliance status report that includes the status of various State, local and Federal permits, licenses, approvals, and other entitlements, as described in § 51.45(d) of this chapter. The report must include environmental and effluent monitoring data.

(h) A fundamental nuclear material control plan which describes the measures used to control and account for special nuclear material that the Corporation uses, possesses, or has access to. The plan must describe, as appropriate:

(1) How formula quantities of strategic special nuclear material will be controlled and accounted for in accordance with the relevant requirements of subpart E;

(2) How special nuclear material of moderate strategic significance will be controlled and accounted for in accordance with the relevant requirements of subpart E; and

(3) How special nuclear material of low strategic significance will be controlled and accounted for in accordance with the relevant requirements of subpart E.

(i) A transportation protection plan which describes the measures used to protect shipments of special nuclear material of low strategic significance in accordance with the relevant requirements of subpart E when in transit offsite.

(j) A physical protection plan which describes the measures used to protect special nuclear material that the Corporation uses, possesses, or has access to at fixed sites. The plan must describe, as appropriate:

(1) How formula quantities of special nuclear material will be protected against both theft and radiological sabotage in accordance with the relevant requirements of subpart E;

(2) How special nuclear material of moderate strategic significance will be protected in accordance with the relevant requirements of subpart E;

(3) How special nuclear material of low strategic significance will be protected in accordance with the relevant requirements of subpart E; and

(4) The measures used to protect special nuclear material while in transit between protected areas, all of which are located on a single fixed site under the control of the applicant. The level of protection afforded the material while in transit may not be less than that afforded the same material while it was within the protected area from which transit began.

(k) A plan describing the facility's proposed security procedures and controls as set forth in § 95.15(b) of this chapter for protection of classified matter.

(l) In response to a written request by the Commission, the Corporation shall file with the Commission the installation information described in § 75.11 of this chapter on Form N–71. The Corporation shall also permit verification of this installation information by the International Atomic Energy Agency and take any other action necessary to implement the US/IAEA Safeguards Agreement, as set forth in part 75 of this chapter.

(m) A description of the program, as appropriate, for processing, management, and disposal of mixed and radioactive wastes and depleted uranium generated by operations. This description must be limited to processing, management, and disposal activities conducted during operation of the facilities while under lease to the Corporation. The application must also include a description of the waste streams generated by enrichment operations, annual volumes of depleted uranium and waste expected, identification of radioisotopes contained in the waste, physical and chemical forms of the depleted uranium and waste, plans for managing the depleted uranium and waste, and plans for ultimate disposition of the waste and depleted uranium before turnover of the facilities to the Department of Energy under the terms of the lease agreement between the United States Enrichment Corporation and the Department.

(n) A description of the funding program to be established to ensure that funds will be set aside and available for those aspects of the ultimate disposal of waste and depleted uranium, decontamination and decommissioning, relating to the gaseous diffusion plants leased to the Corporation by the Department of Energy, which are the financial responsibility of the Corporation. The Corporation shall establish financial surety arrangements to ensure that sufficient funds will be available for the ultimate disposal of waste and depleted uranium, and decontamination and decommissioning activities which are the financial responsibility of the Corporation. The funding mechanism, such as prepayment, surety, insurance, or external sinking fund, must ensure availability of funds for any activities which are required to be completed both before or after the return of the gaseous diffusion facilities to the Department of Energy in accordance with the lease between the Department and the Corporation. The funding program must contain a basis for cost estimates used to establish funding levels and must contain means of adjusting cost estimates and associated funding levels over the duration of the lease. The funding program need not address funding for those aspects of decontamination and decommissioning of the gaseous diffusion plants assigned to the Department of Energy under the Atomic Energy Act of 1954, as amended. The Corporation should address the adequacy of the financing mechanism selected in its annual application for certification.

§ 76.36 Annual renewals.

(a) After issuance by the Commission of the initial certificate of compliance and/or an approved compliance plan, the Corporation shall file an annual application for renewal, as required by § 76.31.

(b) Information contained in previous applications, statements, or reports filed with the Commission may be referenced as part of the application, provided that the reference is clear and specific.

(c) An application for renewal is subject to the requirements in § 76.33 and must contain the following information:

(1) The information specified in § 76.35; or,

(2) A statement by the Corporation that the NRC may rely upon the information provided in the previous application(s) upon which the existing certificate is based, except for:

(i) Any proposed changes in the existing certificate of compliance conditions or technical safety requirements;

(ii) Any proposed changes to the documents submitted with the previous application in accordance with § 76.35;

(iii) Any changes which the Corporation has made without prior NRC approval pursuant to § 76.68; and,

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(iv) Any changes to certificate conditions or technical safety requirements for which the Corporation has sought and received Commission approval pursuant to § 76.45.

(d) The changes which are submitted as part of an application for renewal in accordance with paragraph (c)(2) of this section, must be in the form of specific changes to the documentation specified in § 76.35. The changes must be marked and dated for easy identification.

§ 76.37 Federal Register notice.

The Director shall publish in the **Federal Register**:

(a) A notice of the filing of an application (specifying that copies of the application, except for Restricted Data, Unclassified Controlled Nuclear Information, Classified National Security Information, Safeguards Information, Proprietary Data, or other withholdable information will be made available for the public inspection in the Commission's Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC, and in the local public document room at or near the location of the plant);

(b) A notice of opportunity for written public comment on the application; and

(c) The date of any scheduled public meeting regarding the application.

§ 76.39 Public meeting.

(a) A public meeting will be held on an application if the Director, in his or her discretion, determines that a meeting is in the public interest with respect to a decision on the application.

(b) Conduct of public meeting.

(1) The Director shall conduct any public meeting held on the application.

(2) Public meetings will take place near the locale of the subject plant, unless otherwise specified by the Director.

(3) A public meeting will be open to all interested members of the public and be conducted as deemed appropriate by the Director.

(4) Members of the public will be given an opportunity during a public meeting to make their views regarding the application known to the Director.

(5) A transcript will be kept of each public meeting.

(6) No Restricted Data, Classified National Security Information, Unclassified Controlled Nuclear Information, Safeguards Information, Proprietary Data, or other withholdable information may be introduced at the meeting.

§ 76.41 Record underlying decisions.

(a) Any decision of the Commission or its designee under this part in any proceeding regarding an application for a certificate must be based on information in the record and facts officially noticed in the proceeding.

(b) All public comments and correspondence in any proceeding regarding an application for a certificate must be made a part of the public docket of the proceeding, except as provided under 10 CFR 2.790.

§ 76.43 Annual date for decision.

The Director will render a decision on an application within 6 months of the receipt of the application unless the Director alters the date for decision and publishes notice of the new date in the Federal Register.

§ 76.45 Application for amendment of certificate.

(a) *Contents of amendment application.* In addition to the annual application for certification submitted pursuant to § 76.31, the Corporation may at any time apply for amendment of the certificate to cover proposed new or modified activities. The amendment application should contain sufficient information for the Director to make findings of compliance or acceptability for the proposed activities as required for the original certificate.

(b) *Director's decision.* Upon receipt of the Corporation's application for amendment of the certificate, the Director will determine whether the proposed activities are significant, and if so, follow the procedures specified in §§ 76.37 and 76.39. If the Director determines that the activities are not significant, the Director will, after appropriate review, issue a decision pursuant to subpart C of this part.

(c) *Oath or affirmation.* An application for an amendment of the certificate of compliance must be executed in a signed original by the Corporation under oath or affirmation.

Subpart C—Certification

§ 76.51 Conditions of certification.

The Corporation shall comply with the certificate of compliance, any approved compliance plan, and the requirements set forth and referenced in this part, except as may be modified by the certificate or approved compliance plan.

§ 76.53 Consultation with Environmental Protection Agency.

In reviewing an application for a certificate, including the provisions of any compliance plan, the Director shall consult with the Environmental Protection Agency and solicit the Environmental Protection Agency's written comments on the application.

§ 76.55 Timely renewal.

In any case in which the Corporation has timely filed a sufficient annual application for a certificate of compliance, the existing certificate of compliance or approved compliance plan does not expire until the application for a certificate of compliance has been finally determined by the NRC. For purposes of this rule, a sufficient application is one that addresses all elements of § 76.36.

§ 76.60 Regulatory requirements which apply.

The Nuclear Regulatory Commission will use the following requirements for certification of the Corporation for operation of the gaseous diffusion plants:

(a) The Corporation shall provide for adequate protection of the public health and safety and common defense and security.

(b) The Corporation shall comply with the provisions of this part.

(c) The Corporation shall comply with the applicable provisions of 10 CFR part 19, "Notices, Instructions and Reports To Workers: Inspection and Investigations," with the following modifications:

(1) Civil penalties may not be imposed on the Corporation pursuant to § 19.30 of this chapter except for violations of Section 206 of the Energy Reorganization Act.

(2) The Corporation shall post NRC Form 3 not later than the date of Director's decision on the initial certificate of compliance and/or an initial plan for achieving compliance, during the term of the certificate, and for 30 days following certificate termination.

(d) The Corporation shall comply with the applicable provisions of 10 CFR part 20, "Standards For Protection Against Radiation," with the following modifications:

(1) Civil penalties may not be imposed on the Corporation pursuant to § 20.2401 of this chapter except for violations of section 206 of the Energy Reorganization Act.

(2) The Corporation shall comply with the requirements in this part not later than the date of the Director's decision on the initial certificate of compliance and/or as specified in an approved plan for achieving compliance.

(e) The Corporation shall comply with the applicable provisions of 10 CFR part 21, "Reporting of Defects and Noncompliance," with the following modifications:

(1) The Corporation shall comply with the requirements in §§ 21.6 and 21.21 not later than the date of the Director's decision on the initial certificate of compliance and/or an initial plan for achieving compliance.

(2) Under § 21.31, procurement documents issued by the Corporation after it submits the initial application for a certificate of compliance must specify that the provisions of 10 CFR part 21 apply.

(f) The Corporation shall comply with the applicable provisions of 10 CFR part 26, "Fitness-for-Duty Programs." The requirements of this section apply only if the Corporation elects to engage in activities involving formula quantities of strategic special nuclear material. When applicable, the requirements apply only to the Corporation and personnel carrying out the activities specified in § 26.2(a) (1) through (5).

(g) The Corporation shall comply with the applicable provisions of 10 CFR part 71, "Packaging and Transportation of Radioactive Material."

(h) The Corporation shall comply with the applicable provisions for physical security and material control and accounting as specified in subpart E to this part and contained in 10 CFR part 70, "Domestic Licensing of Special Nuclear Material," part 73, "Physical Protection of Plants and Materials," and part 74, "Material Control and Accounting of Special Nuclear Material." The requirements in these parts address safeguards for three different kinds of nuclear material: Special nuclear material of low strategic significance (Category III), special nuclear material of moderate strategic significance (Category II), and formula quantities of strategic special nuclear material (Category I). The requirements for Category III material apply to the production of low enriched uranium. The requirements for Category II and Category I material apply only if the Corporation elects to engage in activities that involve these kinds of material and then only to the situations and locations that involve these kinds of material.

(i) The Corporation shall comply with the applicable provisions of 10 CFR part 95, "Security Facility Approval and Safeguarding of National Security Information and Restricted Data," as specified in subpart E to this part provided, however, that civil penalties shall not be imposed on the Corporation pursuant to § 95.61 of this chapter except for violations of Section 206 of the Energy Reorganization Act.

§ 76.62 Issuance of certificate and/or approval of compliance plan.

(a) Upon a finding of compliance with the Commission's regulations for issuance of a certificate and/or approval of a compliance plan, the Director shall issue a written decision explaining the decision. The Director may issue a certificate of compliance covering those areas where the Corporation is in compliance with applicable Commission requirements and approve a compliance plan for the remaining areas, if any, of noncompliance. The Director may impose any appropriate terms and conditions.

(b) The Director shall publish notice of the decision in the **Federal Register**.

(c) The Corporation, or any person whose interest may be affected and who submitted written comments in response to the **Federal Register** Notice on the application or compliance plan under § 76.37, or provided oral comments at any meeting held on the application or compliance plan conducted under § 76.39, may file a petition, not to exceed 30 pages, requesting review of the Director's decision. This petition must be filed with the Commission not later than 15 days after publication of the **Federal Register** notice. Any person described in this paragraph may file a response to any petition for review, not to exceed 30 pages, within 10 days after the filing of the petition. Unless the Commission grants the petition for review or otherwise acts within 60 days after the publication of the **Federal Register** notice, the Director's initial decision on the certificate application or compliance plan becomes effective and final. The Commission may adopt, by order, further procedures that, in its judgment, would serve the purpose of review of the Director's decision.

(d) The Commission may adopt, modify, or set aside the findings, conclusions, conditions, or terms in the Director's decision and will state the basis of its action in writing.

§ 76.64 Denial of certificate or compliance plan.

(a) The Director may deny an application for a certificate of compliance or not approve a compliance plan upon a written finding that the application is in noncompliance with one or more of the Commission's requirements for the plant, or that the compliance plan is inadequate to protect the public health and safety or the common defense and security.

(b) The Director shall publish notice of the decision in the **Federal Register**.

(c) Before a denial of an application for a certificate of compliance, the Director shall advise the Corporation and the Department in writing of any areas of noncompliance with the Commission's regulations and offer the Department or the Corporation an opportunity to submit a proposed compliance plan prepared by the Department regarding the identified areas of noncompliance. The Director shall take this action even if the Department or the Corporation has previously submitted a proposed compliance plan addressing in whole or in part the identified areas of noncompliance.

(d) The Corporation, or any person whose interest may be affected and who submitted written comments in response to the **Federal Register** notice on the application or compliance plan under § 76.37 or provided oral comments at any meeting held on the application or compliance plan conducted under § 76.39, may file a petition, not to exceed 30 pages, requesting review of the Director's decision. This petition must be filed with the Commission not later than 15 days after publication of the **Federal Register** notice. Any person described in this paragraph may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. Unless the Commission grants the petition for review or otherwise acts within 60 days after the publication of the **Federal Register** notice, the Director's initial decision on the certificate application or compliance plan becomes effective and final. The Commission may adopt, by order, further procedures that, in its judgment, would serve the purpose of review of the Director's decision.

(e) The Commission may adopt, modify, or set aside the findings, conclusions, conditions, or terms in the Director's decision and will state the basis of its action in writing.

§ 76.65 Inalienability of certificates.

The certificate granted under the regulations in this part may not be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any certificate to any person unless the Commission, after securing full information, finds that the transfer is in accordance with the provisions of the Act, and consents in writing.

§ 76.66 Expiration and termination of certificates.

(a) Except as provided in § 76.55, each certificate or approval issued pursuant to this part expires at the end of the day, in the month and year stated in the certificate or approval.

(b) The Corporation shall notify the Commission promptly, in writing under § 76.5, when the Corporation decides to terminate operation at either of the gaseous diffusion plants and other

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activities authorized under the certificate.

(c) If the Corporation does not submit an annual renewal application under § 76.36, the Corporation shall, on or before the expiration date specified in the existing certificate, terminate operation of the gaseous diffusion plants.

§ 76.68 Plant changes.

(a) The Corporation may make changes to the plant or to the plant's operations as described in the safety analysis report without prior Commission approval provided all the provisions of this section are met:

(1) The Corporation shall conduct a written safety analysis which demonstrates that the changes would not result in undue risk to public health and safety, the common defense and security, or to the environment.

(2) The changes must be authorized by responsible management and approved by a safety review committee.

(3) The changes may not decrease effectiveness of the plant's safety, safeguards, and security programs.

(4) The changes may not involve a change in any condition to the certificate of compliance.

(5) The changes may not involve a change to any condition to the approved compliance plan.

(6) The changes may not involve an unreviewed safety question.

(b) To ensure that the approved application remains current with respect to the actual site description and that the plant's programs, plans, policies, and operations are in place, the Corporation shall submit revised pages to the approved application and safety analysis report, marked and dated to indicate each change. The Corporation shall evaluate any as-found conditions that do not agree with the plant's programs, plans, policies, and operations in accordance with paragraph (a) of this section. These revisions must be submitted annually as specified in § 76.36 of this part or at a shorter interval as may be specified in the certificate.

(c) The Corporation shall maintain records of changes in the plant and of changes in the programs, plans, policies, procedures and operations described in the approved application, and copies of the safety analyses on which the changes were based. The records of plant changes must be retained until the end of the duration of the lease. The records of changes in programs, plans, policies, procedures, and operations and copies of the safety analysis on which the changes were based must be retained for a period of 2 years.

(d) The Corporation may at any time apply under § 76.45 for amendment of the certificate to cover proposed new or modified activities not permitted by paragraph (a) of this section.

§ 76.70 Post issuance.

(a) Amendment of certificate terms and conditions. The terms and conditions of a certificate of compliance or an approved compliance plan are subject to modification by reason of amendments to the Act, or by reason of rules, regulations, or orders issued in accordance with the Act.

(b) Revocation, suspension, or amendments for cause. A certificate of compliance or a compliance plan may be revoked, suspended, or amended, in whole or in part for:

(1) Any material false statement in the application or statement of fact required by the Commission in connection with the application;

(2) Conditions revealed by the application, or any report, record, inspection, or other means which would warrant the Commission to refuse to grant a certificate or approve a compliance plan on an original application; and

(3) Violation of, or failure to observe any of, the applicable terms and conditions of the Act, or the certificate of compliance, the compliance plan, or any rule, regulation, or order of the Commission.

(c) Procedures governing amendment, revocation, suspension, or imposing requirements by order.

(1) Except in cases of willfulness or those in which the public health interest, common defense and security, or safety requires otherwise, no certificate of compliance or compliance plan may be amended, suspended, or revoked unless before the institution of proceedings therefore, facts or conduct which may warrant the action must have been called to the attention of the Corporation in writing and the Corporation shall have been accorded an opportunity to demonstrate or achieve compliance with the lawful requirements related to such action.

(2) The Commission may institute a proceeding to modify, suspend, or revoke a certificate or take such other action as may be proper by serving on the Corporation or other person subject to the jurisdiction of the Commission an order that will:

(i) Allege the violations with which the Corporation or other person subject to the Commission's jurisdiction is charged, or the potentially hazardous conditions or other facts deemed to be sufficient ground for the proposed action, and specify the action proposed;

(ii) Provide that the Corporation or other person who is charged must, and other interested persons may, submit a written response to the order within a reasonable period after publication of the order as may be specified in the order;

(iii) Specify the issues for resolution should the order be contested;

(iv) State the effective date of the order; if the Commission finds the public health, common defense and security, or safety, so require or that the violation or conduct causing the violation is willful, the order may provide that the proposed action be immediately effective pending further order and include a statement of reasons for making the proposed action immediately effective;

(v) Provide that the Commission may make a final decision after consideration of the written submissions or may in its discretion adopt by order, upon the Commission's own initiative or at the request of the Corporation or an interested person, further procedures for a hearing of the issues before making a final enforcement decision. These procedures may include requirements for further participation in the proceeding, such as the requirements for intervention under part 2, subparts G or L of this chapter. Submission of written comments by interested persons do not constitute entitlement to further participation in the proceeding. Further procedures will not normally be provided for at the request of an interested person unless the person is adversely affected by the order.

(3) The Corporation or other person to whom the Commission has issued an immediately effective order may, in addition to submitting a written response, move the Commission to set aside the immediate effectiveness of the order on the ground that the order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. The motion must state with particularity the reasons why the order is not based on adequate evidence and must be accompanied by affidavits or other evidence relied on. The NRC staff shall respond within 5 days of the receipt of the motion.

(d) Notice of violation. (1) In response to an alleged violation of any provision of the Act or NRC regulations or the conditions of a certificate, compliance plan, or an order issued by the Commission, the Commission may serve on the Corporation or other person subject to the jurisdiction of the Commission a written notice of violation. A separate notice may be omitted if an order or demand for information pursuant to this section is issued that otherwise identifies the apparent violation. The notice of violation will concisely state the alleged violation and will require the Corporation or other person subject to it, within twenty (20) days of the date of the notice or other specified time, to submit a written explanation or statement in reply including:

(i) Corrective steps which have been taken by the Corporation or other person and the results achieved;

(ii) Corrective steps which will be taken; and

(iii) The date when full compliance will be achieved.

(2) The notice may require the Corporation or other person subject to the jurisdiction of the Commission to admit or deny the violation and to state the reasons for the violation, if admitted. It may provide that, if an adequate reply is not received within the time specified in the notice, the Commission may issue an order or a demand for information as to why the certificate should not be modified, suspended, or revoked or why such other action as may be proper should not be taken.

(e) Additional information. At any time after the granting of a certificate of compliance or approval of a compliance plan, the Commission may require further statements from the Corporation, signed under oath or affirmation, in order to enable the Commission to determine whether the certificate or approved compliance plan should be modified or revoked.

§ 76.72 Miscellaneous procedural matters.

(a) The filing of any petitions for review or any responses thereto are governed by the procedural requirements set forth in 10 CFR 2.701(a) and (c), 2.708, 2.709, 2.710, 2.711, and 2.712. Additional guidance regarding the filing and service of petitions for review of the Director's decision and responses to these petitions may be provided in the Director's decision or by order of the Commission.

(b) The Secretary of the Commission has the authority to rule on procedural matters set forth in 10 CFR 2.772.

(c) There are no restrictions on *ex parte* communications or on the ability of the NRC staff and the Commission to communicate with one another at any stage of the regulatory process, with the exception that the rules on *ex parte* communications and separation of functions set forth in 10 CFR 2.780 and 2.781 apply to proceedings under 10 CFR part 2, subpart G, for imposition of a civil penalty.

(d) The procedures set forth in 10 CFR 2.205, and in 10 CFR part 2, subpart G, will be applied in connection with NRC action to impose a civil penalty pursuant to Section 206 of the Energy Reorganization Act of 1974 and the implementing regulations in 10 CFR part 21 (Reporting of Defects and Noncompliance), as authorized by Section 1312(e) of the Atomic Energy Act of 1954, as amended.

(e) The procedures set forth in 10 CFR 2.206 apply to a request by any person to institute a proceeding pursuant to § 76.70 to amend, revoke, or suspend a certificate of compliance or approved compliance plan, or for such other action as may be proper.

§ 76.74 Computation and extension of time.

(a) In computing any period of time, the day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday at the place where the action or event is to occur, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday.

(b) Except as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may for good cause be extended or shortened by the Commission.

§ 76.76 Backfitting.

(a)(1) Backfitting is defined as the modification of, or addition to, systems, structures, or components of a plant; or to the procedures or organization required to operate a plant; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previous NRC staff position.

(2) Except as provided in paragraph (a)(4) of this section, the Commission shall require a systematic and documented analysis pursuant to paragraph (c) of this section for backfits which it seeks to impose.

(3) Except as provided in paragraph (a)(4) of this section, the Commission shall require the backfitting of a plant only when it determines, based on the analysis described in paragraph (b) of this section, that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from the backfit and that the direct and indirect costs of implementation for that plant are justified in view of this increased protection.

(4) The provisions of paragraphs (a)(2) and (a)(3) of this section are inapplicable and, therefore, backfit analysis is not required and the standards in paragraph (a)(3) of this section do not apply where the Commission or staff, as appropriate, finds and declares, with appropriately documented evaluation for its finding, any of the following:

(i) That a modification is necessary to bring a plant into compliance with a certificate or the rules or orders of the Commission, or into conformance with written commitments by the Corporation; or

(ii) That regulatory action is necessary to ensure that the plant provides adequate protection to the health and safety of the public and is in accord with the common defense and security; or

(iii) That the regulatory action involves defining or redefining what level of protection to the public health and safety or common defense and security should be regarded as adequate.

(5) The Commission shall always require the backfitting of a plant if it determines that the regulatory action is necessary to ensure that the plant provides adequate protection to the health and safety of the public and is in accord with the common defense and security.

(6) The documented evaluation required by paragraph (a)(4) of this section must include a statement of the objectives of and reasons for the modification and the basis for invoking the exception. If immediate effective regulatory action is required, then the documented evaluation may follow, rather than precede, the regulatory action.

(7) If there are two or more ways to achieve compliance with a certificate or the rules or orders of the Commission, or with written Corporation commitments, or there are two or more ways to reach a level of protection which is adequate, then ordinarily the Corporation is free to choose the way which best suits its purposes. However, should it be necessary or appropriate for the Commission to prescribe a specific way to comply with its requirements or to achieve adequate protection, then cost may be a factor in selecting the way, provided that the objective of compliance or adequate protection is met.

(b) In reaching the determination required by paragraph (a)(3) of this

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section, the Commission will consider how the backfit should be scheduled in light of other ongoing regulatory activities at the plant and, in addition, will consider information available concerning any of the following factors as may be appropriate and any other information relevant and material to the proposed backfit:

(1) Statement of the specific objectives that the proposed backfit is designed to achieve;

(2) General description of the activity that would be required by the Corporation in order to complete the backfit;

(3) Potential change in the risk to the public from the accidental release of radioactive material;

(4) Potential impact on radiological exposure of facility employees;

(5) Installation and continuing costs associated with the backfit, including the cost of plant downtime;

(6) The potential safety impact of changes in plant or operational complexity, including the relationship to proposed and existing regulatory requirements;

(7) The estimated resource burden on the NRC associated with the proposed backfit and the availability of such resources;

(8) The potential impact of differences in plant type, design, or age on the relevancy and practicality of the proposed backfit; and

(9) Whether the proposed backfit is interim or final and, if interim, the justification for imposing the proposed backfit on an interim basis.

(c) No certificate will be withheld during the pendency of backfit analyses required by the Commission's rules.

(d) The Executive Director for Operations shall be responsible for implementation of this section, and all analyses required by this section shall be approved by the Executive Director for Operations or his or her designee.

Subpart D—Safety

§ 76.81 Authorized use of radioactive material.

Unless otherwise authorized by law, the Corporation shall confine its possession and use of radioactive material to the locations and purposes covered by the certificate and/or approved compliance plan. Except as otherwise provided, the certificate or approved compliance plan issued pursuant to the requirements in this part entitles the Corporation to receive title to, own, acquire, receive, possess, and use radioactive material in accordance with the certificate.

§ 76.83 Transfer of radioactive material.

(a) The Corporation may not transfer radioactive material except as authorized pursuant to this section.

(b) Except as otherwise provided and subject to the provisions of paragraphs (c) and (d) of this section, the Corporation may transfer radioactive material:

(1) From one component of the Corporation to another;

(2) To the Department;

(3) To the agency in any Agreement State which regulates radioactive materials pursuant to an agreement with the Commission under Section 274 of the Act, if the quantity transferred is not sufficient to form a critical mass;

(4) To any person exempt from the licensing requirements of the Act and requirements in this part, to the extent permitted under the exemption;

(5) To any person in an Agreement State, subject to the jurisdiction of that State, who has been exempted from the licensing requirements and regulations of that State, to the extent permitted under the exemption;

(6) To any person authorized to receive the radioactive material under terms of a specific license or a general license or their equivalents issued by the Commission or an Agreement State;

(7) To any person abroad pursuant to an export license issued under part 110 of this chapter; or

(8) As otherwise authorized by the Commission in writing.

(c) Before transferring radioactive material to any party specified in paragraph (b) of this section, the Corporation shall verify that the transferee is authorized to receive the type, form, and quantity of radioactive material to be transferred.

(d) The following methods for the verification required by paragraph (c) of this section are acceptable:

(1) The Corporation may have in its possession and read a current copy of the transferee's specific license or confirmation of registration. The Corporation shall retain a copy of each license or confirmation for 3 years from the date that it was obtained.

(2) The Corporation may have in its possession a written confirmation by the transferee that the transferee is authorized by license or registration confirmation to receive the type, form, and quantity of special nuclear material to be transferred, specifying the license or registration confirmation number, issuing agency, and expiration date. The Corporation shall retain the written confirmation as a record for 3 years from the date of receipt of the confirmation.

(3) For emergency shipments, the Corporation may accept a certification by the transferee that he or she is authorized by license or registration certification to receive the type, form, and quantity of special nuclear material to be transferred, specifying the license or registration number, issuing agency, and expiration date, provided that the oral confirmation is confirmed in writing within 10 days. The Corporation shall retain the written confirmation of the oral certification for 3 years from the date of receipt of the confirmation;

(4) The Corporation may obtain other sources of information compiled by a reporting service from official records of the Commission or the licensing agency of an Agreement State as to the identity of licensees and the scope and expiration dates of licenses and registrations. The Corporation shall retain the compilation of information as a record for 3 years from the date that it was obtained; or

(5) When none of the methods of verification described in paragraphs (d)(1) to (4) of this section are readily available or when the Corporation desires to verify that information received by one of these methods is correct or up to date, the Corporation may obtain and record confirmation from the Commission or the licensing agency of an Agreement State that the transferee is licensed to receive the special nuclear material. The Corporation shall retain the record of confirmation for 3 years from the date the record is made.

§ 76.85 Assessment of accidents.

The Corporation shall perform an analysis of potential accidents and consequences to establish the basis for limiting conditions for operation of the plant with respect to the potential for releases of radioactive material. Special attention must be directed to assurance that plant operation will be conducted in a manner to prevent or to mitigate the consequences from a reasonable spectrum of postulated accidents which include internal and external events and natural phenomena in order to ensure adequate protection of the public health and safety. Plant operating history relevant to the assessment should be included. In performing this assessment, the full range of operations should be considered including, but not necessarily limited to, operation at the maximum capacity contemplated. The assessment must be performed using an expected release rate resulting from anticipated operational occurrences and accidents with existing systems and procedures intended to mitigate the release consequences, along with site characteristics, including meteorology, to evaluate the offsite radiological consequences.

§ 76.87 Technical safety requirements.

(a) The Corporation shall establish technical safety requirements. In establishing the requirements, the Corporation shall consider the analyses and results of the safety analysis report submitted pursuant to § 76.35.

(b) The format for the technical safety requirements must be appropriate for each individual requirement.

(c) Appropriate references to established procedures and/or equipment to address each of the following safety topics must be included in technical safety requirements:

(1) Effects of natural phenomena;

(2) Building and process ventilation and offgas;

(3) Criticality prevention;

(4) Fire prevention;

(5) Radiation protection;

(6) Radioactive waste management;

(7) Maintenance;

(8) Environmental protection;

(9) Packaging and transporting nuclear materials;

(10) Accident analysis;

(11) Chemical safety;

(12) Sharing of facilities, structures, systems and components;

(13) Utilities essential to radiological safety; and

(14) Operations.

(d) Technical safety requirements must include items in the following categories:

(1) Safety limits.

(i) If any safety limit is exceeded, corrective action must be taken as stated in the response procedures associated with the technical safety requirements or the affected part of the process must be shut down unless this action would increase the risk to the health and safety of the public or plant personnel.

(ii) If any safety limit is exceeded, the Corporation shall notify the Commission if required by § 76.120, review the matter, and record the results of the review, including the cause of the condition and the basis for corrective action taken to preclude recurrence.

(iii) The Corporation shall retain the record of the results of each review until the Commission no longer has certification authority.

(2) Limiting control settings.

(i) Where a limiting control setting is specified for a variable on which a safety limit has been placed, the setting must be so chosen that protective action, either automatic or manual, will correct the abnormal situation before a safety limit is exceeded. If, during operation, the automatic alarm or protective devices do not function as required, appropriate action must be taken to maintain the variables within the limiting control-setting values and to repair promptly the automatic devices or to shut down the affected part of the process.

(ii) If, during operation, an automatic alarm or protective device does not function as required, the Corporation shall notify the Commission if required by 76.120, review the matter, and record the results of the review, including the cause of the condition and the basis for corrective action taken to preclude recurrence.

(iii) The Corporation shall retain the record of the results of each review until the Commission no longer has certification authority.

(3) Limiting conditions for operation. When a limiting condition for operation of any process step in the system is not met, the Corporation shall shut down that part of the operation or follow any remedial action permitted by the technical safety requirements until the condition can be met.

(i) If a limiting condition for operation of any process step in the system is not met, the Corporation shall notify the Commission if required by § 76.120, review the matter, and record the results of the review, including the cause of the condition and the basis for corrective action taken to preclude recurrence.

(ii) The Corporation shall retain the record of the results of each review until the Commission no longer has certification authority.

(4) Design features. Design features to be included are those systems, components, or structures of the plant which, if altered or modified, would have a significant effect on safety and are not covered in categories described in paragraphs (d)(1), (2), and (3) of this section.

(5) Surveillance requirement.

(6) Administrative controls.

§ 76.89 Criticality accident requirements.

(a) The Corporation must maintain and operate a criticality monitoring and audible alarm system meeting the requirements of paragraph (b) of this section in all areas of the facility. The Corporation may describe for the approval of the Commission defined areas to be excluded from the monitoring requirement. This submittal must describe the measures that will be used to ensure against criticality, including kinds and quantities of material that will be permitted and measures that will be used to control those kinds and quantities of material.

(b) The system must detect and annunciate a criticality that produces an absorbed dose in soft tissue of 20 rads of combined neutron and gamma radiation at an unshielded distance of 2 meters from the reacting material within 1 minute. Coverage of all monitored areas must be provided by two detectors.

§ 76.91 Emergency planning.

The Corporation shall establish, maintain, and be prepared to follow a written emergency plan. The emergency plan submitted under § 76.35(d) must include the following information:

(a) Plant description. A brief description of the plant and area near the plant site.

(b) Types of accidents. An identification of each type of radioactive materials accident for which protective actions may be needed.

(c) Classification of accidents. A system for classifying accidents as alerts or site area emergencies.

(d) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(e) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(f) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(g) Responsibilities. A brief description of the responsibilities of all individuals supporting emergency response should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the NRC, as well as a brief description of responsibilities for developing, maintaining, and updating the plan.

(h) Notification and coordination. A commitment to and a brief description of the means to promptly notify offsite response organizations, including the request for offsite assistance and medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the plant, and some equipment does not prevent the notification and coordination. The Corporation shall also commit to notify the NRC Operations Center immediately after notification of the appropriate offsite response organizations and not later than 1 hour after the Corporation declares an emergency. These reporting requirements do not supersede or

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release the Corporation from complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99–499, or other State or Federal reporting requirements.

(i) Information to be communicated. A brief description of the plant status, radioactive releases, and recommended protective actions, if necessary, to be provided to offsite response organizations and to the NRC.

(j) Training. A brief description of the frequency, performance objectives, and plans for the training that the Corporation will provide workers on how to respond to an emergency including any special instructions, briefings, and orientation tours the Corporation would offer to fire, police, medical, and other emergency personnel. The training must familiarize personnel with site-specific emergency procedures. The training must also prepare site personnel for their responsibilities for the accident scenarios postulated as most probable for the specific site, including the use of team training for these accident scenarios.

(k) Safe shutdown. A brief description of the means of restoring the plant to a safe condition after an accident.

(l) Exercises. Provisions for conducting quarterly communications checks with offsite response organizations and biennial onsite exercises to test response to simulated emergencies. Quarterly communications checks with offsite response organizations must include the check and update of all necessary telephone numbers. The Corporation shall invite offsite response organizations to participate in the biennial exercises. Participation of offsite response organizations in biennial exercises, although recommended, is not required. Exercises must use accident scenarios postulated as most probable for the specific site and the accident scenarios must not be made known to most exercise participants. The Corporation shall critique each exercise using individuals that do not have direct implementation responsibility for the plan. Critiques of exercises must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques must be corrected.

(m) Hazardous chemicals. Confirmation that the Corporation has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99–499, if applicable to the Corporation's activities at the proposed place of use of the special nuclear material.

(n) Comment from offsite response organizations. The Corporation shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the emergency plan before submitting it to NRC with the initial certification application. The Corporation shall provide any comments received within the 60 days to the NRC with the emergency plan.

(o) Changes to emergency plan. The Corporation may make changes to the emergency plan without prior Commission approval if the changes do not decrease the effectiveness of the plan. The Corporation shall furnish these changes to the NRC in accordance with § 76.5 and to affected offsite response organizations within 6 months after the change is made.

§ 76.93 Quality assurance.

The Corporation shall establish, maintain, and execute a quality assurance program satisfying each of the applicable requirements of ASME NQA–1–1989, "Quality Assurance Program Requirements for Nuclear Facilities," or satisfying acceptable alternatives to the applicable requirements. The Corporation shall execute the criteria in a graded approach to an extent that is commensurate with the importance to safety.

§ 76.95 Training.

A training program must be established, implemented, and maintained for individuals relied upon to operate, maintain, or modify the GDPs in a safe manner. The training program shall be based on a systems approach to training that includes the following:

(a) Systematic analysis of the jobs to be performed.

(b) Learning objectives derived from the analysis which describe desired performance after training.

(c) Training design and implementation based on the learning objectives.

(d) Evaluation of trainee mastery of the objectives during training.

(e) Evaluation and revision of the training based on the performance of trained personnel in the job setting.

Subpart E—Safeguards and Security

§ 76.111 Physical security, material control and accounting, and protection of certain information.

Nuclear Regulatory Commission regulations that will be used for certification of the Corporation [2] for physical security and material control and accounting are contained in Title 10 of the Code of Federal Regulations as described in this subpart. The regulations referenced in this subpart contain requirements for physical security and material control and accounting for formula quantities of strategic special nuclear material (Category I), special nuclear material of moderate strategic significance (Category II), and special nuclear material of low strategic significance (Category III), and for protection of Restricted Data, National Security Information, Safeguards Information, and information designated by the U.S. Department of Energy as uncontrolled classified Nuclear Information.

§ 76.113 Formula quantities of strategic special nuclear material—Category I.

(a) The requirements for material control and accounting for formula quantities of strategic special nuclear material (Category I) are contained in §§ 70.51, 74.11, 74.13, 74.15, 74.17, 74.51, 74.53, 74.55, 74.57, 74.59, 74.81, and 74.82.

(b) The requirements for physical security for formula quantities of strategic special nuclear material (Category I) are contained in §§ 70.22(h), 73.20, 73.40, 73.45, 73.46, 73.70, and 73.71.

(c) The requirements for the protection of Safeguards Information pertaining to formula quantity of strategic special nuclear material (Category I) are contained in § 73.21 Information designated by the U.S. Department of Energy as uncontrolled classified Nuclear Information must be protected at a level equivalent to that accorded Safeguards Information.

(d) The Corporation may neither transport Category I material offsite nor deliver Category I material to a carrier for transport offsite.

§ 76.115 Special nuclear material of moderate strategic significance—Category II.

(a) The requirements for material control and accounting for special nuclear material of moderate strategic significance (Category II) are contained in §§ 70.51, 70.52, 70.53, 70.54, 70.57, 70.58, 74.11, 74.13, 74.15, 74.17, 74.81, and 74.82 of this chapter.

(b) The requirements for physical security for special nuclear material of moderate strategic significance

[2] For the purpose of this subpart, the terms "licensee" or "license" used in parts 70, 73, and 74 of this chapter, mean, respectively, the Corporation, or the certificate of compliance or approved compliance plan.

(Category II) are contained in §§ 73.67, and 73.71 of this chapter.

(c) The Corporation may neither transport Category II material offsite nor deliver Category II material to a carrier for transport offsite.

§ 76.117 Special nuclear material of low strategic significance—Category III.

(a) The requirements for material control and accounting for special nuclear material of low strategic significance (Category III) are contained in §§ 70.51, 74.11, 74.13, 74.15, 74.17, 74.33, 74.81, and 74.82 of this chapter. However, inventories of uranium outside of the enrichment processing equipment conducted at least every 370 days are deemed to satisfy the requirements of § 70.51(d).

(b) The requirements for physical security for special nuclear material of low strategic significance (Category III) are contained in §§ 73.67, 73.71, and 73.74 of this chapter.

§ 76.119 Security facility approval and safeguarding of National Security Information and Restricted Data.

The requirements for security facility approval and for safeguarding of classified matter are contained in part 95 of this chapter. For the purpose of this subpart, the term "licensee" or "license" used in part 95 of this chapter means, respectively, the corporation, or the certificate of compliance or approved compliance plan.

Subpart F—Reports and Inspections

§ 76.120 Reporting requirements.

(a) Immediate report. The Corporation shall notify the NRC Operations Center [3] within 1 hour after discovery of:

(1) A criticality event;

(2) Any loss, other than normal operating loss, of special nuclear material;

(3) Any theft or unlawful diversion of special nuclear material which the Corporation is authorized to possess or any incident in which an attempt has been made or is believed to have been made to commit a theft or unlawful diversion of special nuclear material; or

(4) An emergency condition that has been declared an alert or site area emergency.

(b) Four-hour report. The Corporation shall notify the NRC Operations Center as soon as possible but not later than 4 hours after discovery of an event [4] that prevents immediate protective actions necessary to avoid releases or exposures to radiation or radioactive materials that could exceed regulatory limits.

(c) Twenty-four hour report. The Corporation shall notify the NRC Operations Center within 24 hours after the discovery of any of the following events involving radioactive material:

(1) An unplanned contamination event that:

(i) Requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(ii) Involves a quantity of material greater than five times the lowest annual limit on intake specified in appendix B to §§ 20.1001 through 20.2402 of 10 CFR part 20 for the material; and

(iii) Causes access to the contaminated area to be restricted for any reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to decontamination.

(2) An event in which equipment is disabled or fails to function as designed when:

(i) The equipment is required by a Technical Safety Requirement to prevent releases, prevent exposures to radiation and radioactive materials exceeding specified limits, mitigate the consequences of an accident, or restore this facility to a preestablished safe condition after an accident;

(ii) The equipment is required by a Technical Safety Requirement to be available and operable and either should have been operating or should have operated on demand; and

(iii) No redundant equipment is available and operable to perform the required safety function.

(3) An event that requires unplanned medical treatment at a medical facility of an individual with radioactive contamination on the individual's clothing or body.

(4) A fire or explosion damaging any radioactive material or any device, container, or equipment containing radioactive material when:

(i) The quantity of material involved is greater than five times the lowest annual limit on intake specified in appendix B to §§ 20.1001 through 20.2402 of 10 CFR part 20 for the material; and

(ii) The damage affects the integrity of the radioactive material or its container.

(d) Preparation and submission of reports. Reports made by the Corporation in response to the requirements of this section must be made as follows:

(1) Operations Center reports. The Corporation shall make reports required by paragraphs (a), (b), and (c) of this section by telephone to the NRC Operations Center. To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) The caller's name and call back telephone number;

(ii) A description of the event, including date and time;

(iii) The exact location of the event;

(iv) The isotopes, quantities, and chemical and physical form of the material involved;

(v) Any personnel radiation exposure data available; and

(vi) A description of any actions taken in response to the event.

(2) Written report. A report required by paragraph (a), (b) or (c) of this section must be followed by a written report within 30 days of the initial report. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports must be sent to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555–0001, with a copy to the NRC Region III Office listed in appendix D of part 20 of this chapter and the Resident Inspector. The reports must include the following information:

(i) A description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;

(ii) The exact location of the event;

(iii) A description of isotopes, quantities and chemical and physical form of the material involved;

(iv) The date and time of the event;

(v) The causes, including the direct cause, the contributing cause, and the root cause;

(vi) Corrective actions taken or planned and the results of any evaluations or assessments;

(vii) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name; and

(viii) Lessons learned from the event.

§ 76.121 Inspections.

(a) The Corporation shall afford to the Commission opportunity to inspect the premises and plants under the Corporation's control where radioactive material is used, produced, or stored.

(b) The Corporation shall make available to the Commission for inspection records kept pertaining to receipt, possession, use, acquisition, import, export, or transfer of radioactive material.

(c)(1) The Corporation shall provide rent-free office space for the exclusive

[3] The commercial telephone number for the NRC Operations Center is (301) 816–5100 or (301) 951–0550, FAX (301) 816–5151.

[4] Events may include fires, explosions, radiological releases, etc.

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use of Commission inspection personnel upon request by the Director, Office of Nuclear Material Safety and Safeguards, or the NRC Region III Administrator. Heat, air conditioning, light, electrical outlets, and janitorial services must be furnished by the Corporation. The office must be convenient to and have full access to the plant, and must provide the inspector both visual and acoustic privacy.

(2) The space provided must be adequate to accommodate the NRC resident inspection staff, a part-time secretary, and transient NRC personnel. Space must be generally commensurate with other office facilities at the site. The office space that is provided must be subject to the approval of the Director, Office of Nuclear Material Safety and Safeguards, or the NRC Region III Office. All furniture, supplies, and communication equipment will be furnished by the Commission.

(3) The Corporation shall afford any NRC resident inspector assigned to that site or other NRC inspectors identified by the Director, Office of Nuclear Material Safety and Safeguards, or the NRC Region III Administrator, as likely to inspect the plant, immediate, unfettered access equivalent to access provided regular plant employees, following proper identification and compliance with applicable access control measures for security, radiological protection, and personal safety.

§ 76.123 Tests.

The Corporation shall perform, or permit the Commission to perform, any tests the Commission deems appropriate or necessary for administration of the requirements in this part. These tests include tests of:

(a) Radioactive material;

(b) Facilities where radioactive material is utilized, produced or stored;

(c) Radiation detection and monitoring instruments; and

(d) Other equipment and devices used in connection with the production, utilization, or storage of radioactive material.

Subpart G—Enforcement

§ 76.131 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of:

(1) The Atomic Energy Act of 1954, as amended,

(2) Title II of the Energy Reorganization Act of 1974, as amended;

(3) Title XI of the Energy Policy Act of 1992, as amended;

(4) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under Section 1312(e) of the Atomic Energy Act of 1954, as amended, and Section 206 of the Energy Reorganization Act of 1974, as amended; and for a violation of Section 206 of the Energy Reorganization Act of 1974, as amended.

§ 76.133 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under Section 161b or 161i of the Act. For purposes of Section 223, all the regulations in part 76 are issued under Section 161b or 161i except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 76 that are not issued under Section 161b or 161i for the purposes of Section 223 are as follows: §§ 76.1, 76.2, 76.4, 76.5, 76.6, 76.23, 76.33, 76.35, 76.37, 76.39, 76.41, 76.43, 76.45, 76.53, 76.55, 76.60, 76.62, 76.64, 76.70, 76.72, 76.131, and 76.133.

PART 95—SECURITY FACILITY APPROVAL AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

20. The authority citation for part 95 is revised to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 2297f); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

21. Section 95.1 is revised to read as follows:

§ 95.1 Purpose.

The regulations in this part establish procedures for obtaining security facility approval and for safeguarding matter revealing Secret and Confidential National Security Information and Restricted Data received or developed in conjunction with activities licensed or regulated by the Commission. This part does not apply to Top Secret information since no such information may be forwarded to licensees or others within the scope of an NRC license or certificate.

22. Section 95.3 is revised to read as follows:

§ 95.3 Scope.

The regulations in this part apply to licensees and others regulated by the Commission, including, in accordance with 10 CFR 76.60, persons required to obtain a certificate of compliance or an approved compliance plan under part 76 of this chapter, or their contractors, who may require access to National Security Information and/or Restricted Data used, processed, stored, reproduced, transmitted or handled in connection with a license or application for a license or in connection with a certificate, application for a certificate or an approved compliance plan under part 76 of this chapter.

23. Section 95.5 is amended by removing the definitions *Access authorization*, *"L" access authorization*, and *"Q" access authorization*, and adding the definitions of *NRC access authorization*, *NRC "L" access authorization*, and *NRC "Q" access authorization*, in alphabetical order to read as follows:

§ 95.5 Definitions.

* * * * *

NRC access authorization means an administrative determination that an individual (including a consultant) who is employed by or an applicant for employment with the NRC, NRC contractors, agents, and licensees of the NRC, or other person designated by the Executive Director for Operations, is eligible for a security clearance for access to Restricted Data or National Security Information.

NRC "L" access authorization means an access authorization granted by the Commission which is normally based on a national agency check and credit investigation (NAC&C) or national agency check, inquiries and credit investigation (NACIC) conducted by the Office of Personnel Management.

NRC "Q" access authorization means an access authorization granted by the Commission based on a full field investigation conducted by the Office of Personnel Management, the Federal Bureau of Investigation, or other U.S. Government agency which conducts personnel security investigations.

* * * * *

24. In § 95.15, paragraphs (a) and (b) are revised to read as follows:

§ 95.15 Approval for processing licensees and others for security facility approval.

(a) A licensee or other persons subject to part 95 who have a need to use, process, store, reproduce, transmit, or handle matter revealing National Security Information and/or Restricted Data at any location in connection with Commission related activities shall promptly request an NRC security facility approval.

(b) The request must include the following information: The name of the facility; the location of the facility; a security plan outlining the facility's proposed security procedures and controls for the protection of matter revealing National Security Information and/or Restricted Data; a floor plan of the area in which the matter is to be used, processed, stored, reproduced, transmitted, or handled.

* * * * *

25. In § 95.25, the introductory text of paragraph (a) and paragraphs (a)(1) and (2) are revised to read as follows:

§ 95.25 Protection of National Security Information and Restricted Data in storage.

(a) *Protection of secret matter.* (1) Secret matter while unattended or not in actual use must be stored in locked security containers protected by an NRC-approved intrusion alarm or by protective personnel.

(2) Protective personnel must be used where matter revealing National Security Information or Restricted Data cannot be adequately safeguarded during working hours by employees or during nonworking hours by an intrusion alarm system. In either case, protective personnel must be capable of responding within 15 minutes.

* * * * *

26. Section 95.31 is revised to read as follows:

§ 95.31 Protective personnel.

Whenever protective personnel are used to protect National Security Information and/or Restricted Data, they shall:

(a) Possess an "L" access authorization (or Department of Defense or DOE equivalent) if the licensee or other person possesses matter classified as Confidential National Security Information, Confidential Restricted Data or Secret National Security Information.

(b) Possess a "Q" access authorization (or Department of Defense or DOE equivalent) if the licensee or other person possesses matter classified as Secret Restricted Data and the protective personnel require access as part of their regular duties.

27. Section 95.33 is revised to read as follows:

§ 95.33 Security education.

A security education program must be established and maintained by the licensee or other persons subject to part 95 which employs individuals possessing a U.S. Government personnel security access authorization. The program must include consideration and coverage of personnel access authorization requirements, the physical security features of the facilities, the classified nature of the work, and the classification and sensitivity of the matter. In addition, the program must include an explanation of the contents of the "Classified Information Nondisclosure Agreement" (SF 312) and the procedures to be followed in ascertaining whether other persons to whom they contemplate disclosing classified information have been approved for access to such information. The procedures include verification of the individual's level of access authorization and determining whether the individual to whom the information is to be disclosed has an established need-to-know. Each security education program must provide for the security orientation and continuing security education of employees, and for the appropriate security instruction of terminating employees. Records reflecting an individual's initial and refresher security orientations and security termination must be maintained for 3 years after termination of the individual's access authorization.

28. Section 95.35 is revised to read as follows:

§ 95.35 Access to matter classified as National Security Information and Restricted Data.

(a) Except as the Commission may authorize, no person subject to the regulations in this part may receive or may permit any individual to have access to matter revealing Secret or Confidential National Security Information or Restricted Data unless the individual has:

(1)(i) A "Q" access authorization which permits access to matter classified as Secret and Confidential Restricted Data or Secret and Confidential National Security Information which includes intelligence information, CRYPTO (i.e., cryptographic information) or other classified communications security (COMSEC) information, or

(ii) An "L" access authorization which permits access to matter classified as Confidential Restricted Data and Secret and Confidential National Security Information other than that noted in paragraph (a)(1)(i) of this section except that access to certain Confidential COMSEC information is permitted as authorized by a National Communications Security Committee waiver dated February 14, 1984.

(2) An established "need-to-know" for the matter (See Definitions, § 95.5).

(3) NRC-approved storage facilities if classified documents or material are to be transmitted to the individual.

(b) Matter classified as National Security Information or Restricted Data shall not be released by a licensee or other person subject to part 95 to any personnel other than properly access authorized Commission licensee employees, or other individuals authorized access by the Commission.

(c) Access to matter which is National Security Information at NRC-licensed facilities or NRC-certified facilities by authorized representatives of IAEA is permitted in accordance with § 95.36.

29. In § 95.36, the section heading and paragraphs (a) and (e) are revised to read as follows:

§ 95.36 Access by representatives of the International Atomic Energy Agency or by participants in other international agreements.

(a) Based upon written disclosure authorization from the Division of Security that an individual is an authorized representative of the International Atomic Energy Agency (IAEA), and that the individual is authorized to make visits or inspections in accordance with the US/IAEA Safeguards Agreement, a licensee or other person subject to part 95 will permit the individual (upon presentation of the credentials specified in § 75.7 of this chapter and any other credentials identified in the disclosure authorization) to have access to matter which is National Security Information (NSI) which is relevant to the conduct of a visit or inspection. A disclosure authorization under this section does not authorize a licensee or other persons subject to part 95 to provide access to Restricted Data.

* * * * *

(c) Licensees or other persons subject to part 95, with the prior concurrence of the NRC's Division of Security, shall take such measures as may be necessary to preclude access to classified matter by participants of other international agreements unless specifically provided for under the terms of a specific agreement.

30. In § 95.37, the section heading and paragraph (a) are revised to read as follows:

§ 95.37 Classification and marking of matter.

(a) Classification. Licensees or other persons subject to part 95 shall classify and mark classified matter as National Security Information or Restricted Data, as appropriate, in accordance with classification guidance provided by NRC as part of the security facility approval. If a person or facility generates or possesses information which is believed to be classified based on guidance provided by NRC or by derivation from classified matter, but

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which no authorized classifier has determined to be classified, it must be protected and marked with the appropriate classification markings pending review and signature of an NRC authorized classifier. This final determination should be made within 30 working days. The licensee or other person subject to part 95 shall protect the matter as National Security Information or Restricted Data of the highest classification at issue while awaiting a final determination.

* * * * *

31. Section 95.41 is revised to read as follows:

§ 95.41 Accountability for Secret matter.

Each licensee or other person subject to part 95 possessing matter classified as Secret National Security Information and/or Restricted Data shall establish an accountability procedure and shall maintain records to show the disposition of such matter. Records reflecting accountability and disposition of classified matter must be maintained for 3 years after its disposition.

32. In § 95.45, paragraph (a) is revised to read as follows:

§ 95.45 Changes in classification.

(a) Matter revealing National Security Information and/or Restricted Data must be downgraded or declassified as authorized by NRC classification guides or as determined by NRC. Requests for downgrading or declassifying any National Security Information and/or Restricted Data should be forwarded to the NRC Division of Security, Office of Administration, Washington, DC 20555. Requests for downgrading or declassifying Restricted Data will be coordinated as appropriate by the NRC Division of Security with the Department of Energy.

* * * * *

33. Section 95.47 is revised to read as follows:

§ 95.47 Destruction of matter revealing National Security Information and/or Restricted Data.

Matter revealing National Security Information and/or Restricted Data may be destroyed by burning, pulping, or another method that ensures complete destruction of the information or material which it contains. The method of destruction must preclude recognition or reconstruction of the classified matter. Any doubts on methods should be referred to the NRC Division of Security. If the matter reveals Secret National Security Information and/or Restricted Data, a record of the subject or title, document number, if any, originator, its date or origination, its series designation and copy number, and the date of destruction must be signed by the person destroying the document and must be maintained in the office of the custodian at the time of destruction. These destruction records must be retained for 3 years after destruction.

34. Section 95.51 is revised to read as follows:

§ 95.51 Retrieval of classified matter following suspension or revocation of access authorization.

In any case where the access authorization of an individual is suspended or revoked, the licensee or other persons subject to part 95 shall, upon due notice of such suspension or revocation, retrieve all matter revealing National Security Information and Restricted Data possessed by the individual and take such action as necessary to preclude that individual from having further access to such matter.

35. In § 95.57, paragraph (c) is revised to read as follows:

§ 95.57 Reports.

* * * * * * *

(c) In addition, an authorized classifier of a licensee or other persons subject to part 95 shall complete an NRC Form 790 (Classification Record) whenever matter revealing National Security Information and/or Restricted Data is generated, its classification is changed, or it is declassified. Notification of declassification is not required for any document or material which has an automatic declassification date. Completed NRC Form 790 should be submitted to the NRC Division of Security, Washington, DC 20555, on a monthly basis.

Appendix A—[Removed]

36. Appendix A to Part 95 is removed in its entirety.

Dated at Rockville, Maryland, this 15th day of September, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94-23329 Filed 9-22-94; 8:45 am]

BILLING CODE 7590-01-P



Friday
September 23, 1994

Part III

Department of Agriculture

Cooperative State Research Service

7 CFR Part 3402

Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program; Administrative Provisions; Proposed Rulemaking

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DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

7 CFR Part 3402

Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program; Administrative Provisions

AGENCY: Cooperative State Research Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Cooperative State Research Service (CSRS) proposes to amend its regulations relating to the administration of the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program conducted under the authority of section 1417(b)(6) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended, 7 U.S.C. 3152(b)(6). This action is being taken to clarify certain aspects of the program, provide additional guidance to applicants so that the material submitted facilitates the evaluation of proposals, and add newly applicable Federal statutes and regulations. CSRS is publishing these regulations in their entirety to enhance their use by the public and to ensure expeditious submission and processing of grant proposals.

DATES: Comments are invited from interested individuals and organizations. To be considered in the formulation of a final rule, all relevant material must be received on or before October 24, 1994.

ADDRESSES: Comments should be sent to Dr. Jeffrey L. Gilmore, Grant Programs Manager, Office of Higher Education Programs, Cooperative State Research Service, U.S. Department of Agriculture, Ag Box 2251, Washington, D.C. 20250–2251. Comments may also be sent via electronic mail to jgilmore@csrs.esusda.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey L. Gilmore at (202) 401–1790 or via electronic mail at jgilmore@csrs.esusda.gov

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the collection of information requirements contained in this proposed rule have been reviewed and approved by the Office of Management and Budget (OMB) and given the OMB Document Nos. 0524–0022 and 0524–0024.

Classification

This proposed rule has been reviewed under Executive Order No. 12866 and it has been determined that it is not a "significant regulatory action" rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere with actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order No. 12866. In addition, it will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law No. 96–534 (5 U.S.C. 601 *et seq.*).

The following information is given in compliance with Executive Order No. 12778. All State and local laws and regulations that are in conflict with this rule are preempted. No retroactive effect is to be given to this rule. This rule does not require administrative proceedings before parties may file suit in court.

Regulatory Analysis

Not required for this proposed rulemaking.

Environmental Impact Statement

This proposed regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.210, Food and Agricultural Sciences National Needs Graduate Fellowship Grants. For the reasons set forth in the Final Rule-related Notice to 7 CFR Part 3015, subpart V, 48 FR 29115, June 24, 1983, at which time the authority to administer this program resided in the Agricultural Research Service, this program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

Under the authority of section 1417(b)(6) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended, 7 U.S.C. 3152(b)(6), the Secretary of Agriculture is authorized to conduct a competitive graduate fellowship grants program. The administrative regulations governing the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program published in the **Federal Register** on February 13, 1987, (52 FR 4712–4716) and on January 22, 1990, (55 FR 2214–2215) are proposed to be amended as follows:

Section 3402.1

This section is proposed to be revised to ensure consistency with the eligibility criteria set out by section 1608 of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act).

Section 3402.2

This section is proposed to be revised to clarify the definition of a citizen or national of the United States and to ensure consistency between the definitions furnished in this section and those provided in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended.

Section 3402.3

This section is proposed to be revised to ensure consistency with the eligibility criteria set out by section 1608 of the FACT Act.

Section 3402.4

This section is proposed to be revised to allow the Office of Higher Education Programs (HEP) to determine each year whether a new competition is warranted in order to facilitate administration of this program.

Section 3402.5

Language is proposed to be added to establish special international study or thesis/dissertation research travel allowances for a limited number of USDA Graduate Fellows, to allow HEP to determine the maximum amounts available for each graduate level thereunder, and to set out the requirements for proposals submitted thereunder in order to take full advantage of educational opportunities throughout the world. In order to facilitate administration of this program, this section is proposed to be revised further to allow HEP to determine each year whether a new competition is warranted, the graduate degree level(s) to be supported each year, Master's and/or doctoral, the proportion of appropriations to be devoted to cost-of-education institutional allowances, fellowship stipends, and special international study or thesis/dissertation research travel allowances, and the degree levels for which funding may be requested in a single proposal and announce this information in the program announcement in the **Federal Register**.

Section 3402.6

This section is proposed to be revised to modify fellowship appointments given the addition of the special international study or thesis/dissertation research travel allowances. This section is proposed to be revised further to require recipient institutions to identify Fellows within 15 months of the effective date of the grant and to allow fellowship appointments to be made only to full-time students enrolled in a graduate degree program in the national need area and at the degree level supported by the grant. Further, a new paragraph is proposed to be added to clarify that only Fellows enrolled in Master's programs of study may be supported under a Master's fellowship grant and that only Fellows enrolled in doctoral programs of study may be supported under a doctoral fellowship grant.

Section 3402.7

This section is proposed to be revised to modify fellowship activities given the addition of the special international study of thesis/dissertation research travel allowances. Further, additional language is proposed to be added to this section to ensure that a Fellow under this program is enrolled as a full-time graduate student for the duration of the fellowship in the national need area and at the degree level supported by the grant and to allow formal registration to be waived by the institution only if the Fellow is making satisfactory progress toward degree completion and is engaged full-time in fellowship activities. These changes are proposed to facilitate administration of the program and to clarify past confusion.

Section 3402.8

This section is proposed to be revised to modify program financial provisions given the addition of the special international study or thesis/dissertation research travel allowances.

Section 3402.9

This section is proposed to be revised to change references from "program brochure and application kit" to "application package" and to rename the section accordingly.

Section 3402.11

Language is proposed to be added to this section to encourage applicants to emphasize the uniqueness of the proposed graduate program of study.

Section 3402.12

In order to facilitate the evaluation of proposals, this section is proposed to be revised to set out a new section 2 and renumber the sections following and to emphasize the need for recruiting and retaining members of underrepresented groups.

Section 3402.13

Additional language is proposed to be added to this section in order to clarify pagination of proposals to facilitate the evaluation of proposals.

Section 3402.14

Additional language is proposed to be added to this section in order to clarify pagination of proposals to facilitate the evaluation of proposals.

Section 3402.15

Additional language is proposed to be added to this section to clarify pagination of proposals and to guide applicants in the content and format of the information they submit in the Appendix to facilitate the evaluation of proposals.

Section 3402.16 (previously 3402.17)

It is proposed that this section, which addresses intent to submit a proposal, precede the section that addresses where to submit a proposal in order to be chronologically correct. It is further proposed that the intent to submit a proposal document be referred to as a form rather than a card. Additional language is proposed in this section to allow HEP to determine each year whether an Intent to Submit a Proposal form is required to ease paperwork burdens, and to announce this information in the program announcement in the **Federal Register**.

Section 3402.17 (previously 3402.16)

It is proposed that this section, which addresses where to submit a proposal, follow the section that addresses intent to submit a proposal form in order to be chronologically correct. It is further proposed that the heading for this section read "Where to submit a proposal" rather than "Where to submit proposals" so that the two headings in this subpart have parallel structure.

Section 3402.19

This section is proposed to be revised in order to clarify the criteria used to evaluate the proposals and to allow the agency the discretion to change the weight for each criterion and announce such a change in the program announcement in the **Federal Register**. These proposed changes will enhance program administration.

Section 3402.21

Language is proposed to be added to this section to set out the different types of grant instruments in order to facilitate award processing.

Section 3402.22

This section is proposed to be revised to include additional Federal regulations and statutes that are applicable to this grant program.

Section 3402.25

This section is proposed to be revised to clarify the conditions upon which the project directors must submit the Graduate Fellow Exit Reports and to allow HEP to request preliminary exist reports (in situations where the Fellows have not completed the degree requirements when the five-year grant expires), additional follow-up reports to track the career patterns of Fellows, and a Final Report in order to gauge better the success of the program. This section is further proposed to be revised to reflect the initiation of the special international study or thesis/dissertation research allowance activities under this program.

Several other changes of a minor nonsubstantive nature also are proposed in order to clarify further these regulations to facilitate the administration of this program.

List of Subjects in 7 CFR Part 3402

Grant programs—agriculture, Agriculture Higher Education Programs, Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program.

For the reasons set forth in the preamble, Title 7, Chapter XXXIV, Part 3402 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 3402—FOOD AND AGRICULTURAL SCIENCES NATIONAL NEEDS GRADUATE FELLOWSHIP GRANTS PROGRAM

Subpart A—General Introduction

Sec.

3402.1 Applicability or regulations.
3402.2 Definitions.
3402.3 Institutional eligibility.

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Subpart B—Program Description

3402.4 Food and agricultural sciences areas targeted for national needs graduate fellowship grants support.
3402.5 Overview of National Needs Graduate Fellowship Grants Program.
3402.6 Fellowship appointments.
3402.7 Fellowship activities.
3402.8 Financial provisions.

Subpart C—Preparation of a Proposal

3402.9 Application package.
3402.10 Proposal cover page.
3402.11 National need summary.
3402.12 National need narrative.
3402.13 Budget.
3402.14 Faculty vitae.
3402.15 Appendix.

Subpart D—Submission of a Proposal

3402.16 Intent to submit a proposal.
3402.17 Where to submit a proposal.

Subpart E—Proposal Review and Evaluation

3402.18 Proposal review.
3402.19 Evaluation criteria.

Subpart F—Supplementary Information

3402.20 Terms and conditions of grant awards.
3402.21 Grant awards.
3402.22 Other Federal statutes and regulations that apply.
3402.23 Confidential aspects of proposals and awards.
3402.24 Access to peer review information.
3402.25 Documentation of progress on funded projects.
3402.26 Evaluation of program.

Authority: Sec. 1470, National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended, 7 U.S.C. 3316.

Subpart A—General Introduction

§ 3402.1 Applicability of regulations.

(a) The regulations of this part apply to competitive grants awarded under the provisions of section 1417(b)(6) of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended, 7 U.S.C. 3152(b)(6). This statute designates the U.S. Department of Agriculture (USDA) as the lead Federal agency for agricultural research, extension, and teaching in the food and agricultural sciences. It authorizes the Secretary of Agriculture, who has delegated the authority to the Cooperative State Research Service (CSRS), to make competitive grants to land-grant colleges and universities, colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and to other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences to administer and conduct graduate fellowship programs to help meet the Nation's needs for development of scientific and professional expertise in the food and agricultural sciences. The fellowships are intended to encourage outstanding students to pursue and complete graduate degrees in the areas of food and agricultural sciences designated by CSRS through the Office of Higher Education Programs (HEP) as national needs.

(b) The regulations of this part do not apply to grants awarded by the Department of Agriculture under any other authority.

§ 3402.2 Definitions.

As used in this part:

Citizen or national of the United States means (1) a citizen or native resident of a State; or, (2) a person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

College and university means an educational institution in any State which (1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, (2) is legally authorized within such State to provide a program of education beyond secondary education, (3) provides an educational program for which a bachelor's degree or any other higher degree is awarded, (4) is a public or other nonprofit institution, and (5) is accredited by a nationally recognized accrediting agency or association.

Food and agricultural sciences means basic, applied, and developmental research, extension, and teaching activities in the food, agricultural, renewable natural resources, forestry, and physical and social sciences in the broadest sense of these terms including but not limited to research, extension and teaching activities concerned with the production, processing, marketing, distribution, conservation, consumption, research, and development of food and agriculturally related products and services, inclusive of programs in agriculture, natural resources, aquaculture, forestry, veterinary medicine, home economics, rural development, and closely allied fields.

Graduate degree means a Master's or doctoral degree.

State means any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marinas, the Trust Territory of the Pacific Islands, the Virgin Islands of the United States, and the District of Columbia.

Teaching activities means formal classroom instruction, laboratory instruction, and practicum experience specific to the food and agricultural sciences and matters relating thereto conducted by college and universities offering baccalaureate or higher degrees.

§ 3402.3 Institutional eligibility.

Proposals may be submitted by land-grant colleges and universities, by colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and by other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences. All applicants should be institutions that confer a graduate degree in at least one area of the food and agricultural sciences targeted for national needs fellowships, that have a significant ongoing commitment to the food and agricultural sciences generally, and that have a significant ongoing commitment to the specific subject area for which a grant application is made. It is the objective to award grants to colleges and universities which have notable teaching and research competencies in the food and agricultural sciences. The grants are specifically intended to support fellowship programs that encourage outstanding students to pursue and complete a graduate degree at such institutions in an area of the food and agricultural sciences for which there is a national need for the development of scientific and professional expertise. Therefore, institutions which currently have excellent programs of graduate study and research in the food and agricultural sciences dealing with targeted national needs are particularly encouraged to apply.

Subpart B—Program Description

§ 3402.4 Food and agricultural sciences areas targeted for national needs graduate fellowship grants support.

Areas of the food and agricultural sciences appropriate for fellowship grant applications are those in which developing shortages of expertise have been determined and targeted by HEP for national needs fellowship grant support. When funds are available and HEP determines that a new competition is warranted, the specific areas and funds per area will be identified in a **Federal Register** notice announcing the program and soliciting program applications.

§ 3402.5 Overview of National Needs Graduate Fellowship Grants Program.

(a) The program will provide funds for a limited number of grants to support fixed graduate student stipends and fixed cost-of-education institutional allowances. These grants will be awarded competitively to eligible institutions. In order to encourage the development of special activities that are expected to contribute to Fellows' advanced degree objectives, the program will also provide competitive, special international study or thesis/dissertation research travel allowances for a limited number of USDA Graduate Fellows.

(b) Based on the amount of funds appropriated in any fiscal year, HEP will determine:

(1) Whether new competitions for graduate fellowships and/or special international study or thesis/dissertation research travel allowances will be held during that fiscal year;

(2) The graduate degree level(s) to be supported—Master's and/or doctoral;

(3) The proportion of appropriations to be targeted for the fellowship stipends for each respective graduate degree level supported;

(4) The proportion of appropriations to be targeted for the cost-of-education institutional allowances for each respective graduate degree level supported;

(5) The proportion of appropriations to be targeted for the special international study or thesis/dissertation research travel allowances for each respective graduate degree level supported;

(6) The allowable stipend amount for each respective graduate degree level supported, the cost-of-education institutional allowance for each respective graduate degree level supported, and the maximum funds available for each special international study or thesis/dissertation research travel allowance for each respective graduate degree level supported; and

(7) The maximum total funds that may be awarded to an institution under the program in a given fiscal year.

(c) HEP will also determine:

(1) The maximum number of national needs areas for which funding may be requested in a single proposal;

(2) The degree levels for which funding may be requested in a single proposal;

(3) The minimum and maximum number of fellowships for which an institution may apply in a single proposal; and

(4) The limits on the total number of proposals that can be submitted by an institution, college, school, or other administrative unit.

(d) All of these determinations will be published as a part of the program announcement in the **Federal Register**.

(e) For each USDA Graduate Fellow who desires to be considered for a special international study or thesis/dissertation research travel allowance, the project director must apply to HEP for a supplemental grant in accordance with instructions published in the program announcement in the **Federal Register**. Each application must include an "Application for Funding" (Form CSRS–661) and a "Budget" (Form CSRS–55). To provide HEP with sufficient information upon which to evaluate the merits of the requests for a special international study or thesis/dissertation research travel allowance, each application for a supplemental grant must contain a narrative which provides the following: (1) The specific destination(s) and duration of the travel; (2) the specific study or thesis/dissertation research activities in which the Fellow will be engated; (3) how the international experience will contribute to the Fellow's program of study; (4) a budget narrative specifying and justifying the dollar amount requested for the travel; (5) summary credentials of the faculty or other professionals with whom the Fellow will be working during the international experience (summary credentials must not exceed three pages per person; "Summary Vita—Teaching Proposal" (Form CSRS–708) may be used for this purpose); (6) a letter from the dean of the Fellow's college or equivalent administrative unit supporting the Fellow's travel request and certifying that the travel experience will not jeopardize the Fellow's satisfactory progress toward degree completion; and (7) a letter from the fellowship grant project director certifying the Fellow's eligibility, the accuracy of the Fellow's travel request, and the relevance of the travel to the Fellow's advanced degree objectives. The narrative portion of the application must not exceed 10 pages, excluding the summary vita/vitae.

(f) All complete requests will be evaluated by professional staff from USDA or other Federal agencies, as appropriate. Evaluation criteria will be published in the program announcement in the **Federal Register**. Awards will be made to the extent possible based on availability of funds.

(g) Any current fellow with sufficient time to complete the international experience before the termination date of the grant under which he/she is supported is eligible for a special international study or thesis/dissertation research travel allowance. Before the international study or thesis/dissertation research travel may commence, a Fellow must have completed one academic year of full-time study, as defined by the institution, under the fellowship appointment and arrangements must have been formalized for the Fellow to study and/or conduct research in the foreign location(s).

§ 3402.6 Fellowship appointments.

(a) Fellows must be identified and fellowships must be awarded within 15 months of the effective date of a grant. Institutions failing to meet this deadline will be required to refund monies associated with any unawarded fellowship(s). Fellowship appointments may be held only by persons who enroll and pursue full-time study in a graduate degree program in the national need area and at the degree level supported by the grant. In addition, fellows: (1) Must be newly recruited; (2) must not have been enrolled previously in the academic program at the same degree level; (3) must be citizens or nationals of the United States as determined in accordance with Federal law; and (4) must have strong interest, as judged by the institution, in pursuing a degree in a targeted national need area and in preparing for a career as a food or agricultural scientist or professional. It will be the responsibility of the grantee institution to award fellowships to students of superior academic ability. A doctoral Fellow who maintains satisfactory progress in his or her course of study is eligible for support for a maximum of 36 months within a 45-month period. Master's level Fellows, maintaining satisfactory progress, are eligible for support for a maximum of 24 months during a 33-month period. However, it is the intent of this program that Fellows pursue full-time uninterrupted study or thesis/dissertation research, including time spent pursuing USDA-funded special international study or thesis/dissertation research activities. For Fellows requiring additional time to complete a degree, it is expected that the institution will endeavor to continue supporting individuals originally appointed to fellowships through such other institutional means as teaching assistantships and research assistantships. For Fellows who complete the program of study early (less than 24 months for Master's degree or 36 months for doctoral degree), the institution must refund any unexpended monies to the granting agency.

(b) Within the framework of the regulations in this part, all decisions

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with respect to the appointment of Fellows will be made by the institution. However, institutions are urged to take maximum advantage of opportunities for awarding fellowships to members of underrepresented groups at the graduate level in the food and agricultural sciences, particularly minorities and women. Throughout a Fellow's tenure, the institution should satisfy itself that the Fellow is making satisfactory academic progress, and carrying out, or planning to carry out, national needs related research. If an institution finds it necessary to terminate support of a Fellow for insufficient academic progress or by decision on the part of the Fellow, the Fellow becomes ineligible for future assistance under the program. If a Fellow finds it necessary to interrupt his or her program of study because of health, personal reasons, outside employment, or acceptance of an assistantship, the institution must reserve the funds for the purpose of allowing the Fellow to resume funded study any time within a 9-month period. However, a Fellow who finds it necessary to interrupt his or her program of study more than one time cannot exceed a total of 9 months' cumulative leave status without forfeiting eligibility. For fellowships terminated because of insufficient academic progress, a decision on the part of the Fellow, or reserved due to an interrupted program of study but not resumed within the required time period, unexpended monies must be refunded. Institutions may not use unexpended monies associated with a terminated fellowship to recruit and support a "replacement" Fellow.

(c) Only Fellows enrolled in Master's programs of study may be supported under a Master's fellowship grant. Only Fellows enrolled in doctoral programs of study may be supported under a doctoral fellowship grant.

§ 3402.7 Fellowship activities.

A Fellow must be enrolled as a full-time graduate student, as defined by the institution, at all times during the tenure of the fellowship in the national need area and at the degree level supported by the grant. This includes the time used for special international study or thesis/dissertation research if the international travel is funded through a special international study or thesis/dissertation research travel allowance under this grant program. However, the normal requirement of formal registration during part of this tenure may be waived if permitted by the policy of the fellowship institution, provided that the fellow is making satisfactory progress toward degree completion and remains engaged in appropriate full-time fellowship activities such as thesis/dissertation research. Fellows in academic institutions are not entitled to vacations as such. They are entitled to the short normal student holidays observed by the institution. The time between academic semesters or quarters is to be utilized as an active part of the grant period. During the period of support, a Fellow may not accept employment by the institution or any other agency. However, a grant supporting research costs of the Fellow is acceptable, exclusive of salary or wages and fringe benefits for the Fellow.

§ 3402.8 Financial provisions.

The basic fellowship stipend, cost-of-education institutional allowance, and special international study or thesis/dissertation research travel allowance that may be paid from grant funds will be determined by HEP contingent upon appropriations. The amount of the stipend, cost-of-education institutional allowance, and special international study or thesis/dissertation research travel allowance will be cited in the program announcement in the **Federal Register**. An institution may elect to apply the cost-of-education institutional allowance to a Fellow's tuition and fees; however, such is not required. The allowance also may be used by an institution to defray other program expenses (e.g., recruitment, travel, publications, or salaries of project personnel). Tuition and fees are the responsibility of the Fellow unless an institution elects to use its cost-of-education institutional allowance for this purpose or elects to pay such costs out of other non-USDA monies. No dependency allowances are provided for Fellows. Stipend payments and special international study or thesis/dissertation research travel allowances will be made to Fellows by the institution, according to standard institutional procedures for fellowships and assistantships.

Subpart C—Preparation of a Proposal

§ 3402.9 Application package.

An application package will be made available to any potential grant applicant upon request. This package will include all necessary forms and instructions to apply for a grant under this program. The package also includes the regulatory provisions applicable to the program.

§ 3402.10 Proposal cover page.

The Proposal Cover Page, Form CSRS–701, must be completed in its entirety including all authorizing signatures. One copy of each grant application must contain the original pen-and-ink signatures of:

(a) The Project Director(s);

(b) The Authorized Certifying Representative for the college or equivalent administrative unit; and

(c) The Authorized Certifying Representative for the institution.

§ 3402.11 National need summary.

Using the National Need Summary, Form CSRS–702, applicants must summarize the proposed graduate program of study and the academic and research strengths of the institution in the national need area for which funding is requested. To the extent possible, applicants should emphasize the uniqueness of the proposed graduate program of study. The summary should not include any reference to the specific number of fellowships requested. The information on the summary page will be used in assigning the most appropriate panelists to review a proposal. If a proposal is supported, this page may be used in program publications.

§ 3402.12 National need narrative.

A narrative for the national need area should be written in five sections, limited to no more than 20 pages, and preceded by a table of contents. The table of contents is not considered part of the 20-page limitation. The narrative should be typed on one side of the page only, using a font no smaller than 12 point, and double-spaced. The five sections to be included in the narrative are as follows:

Sec. 1. In this section, applicants should establish clearly that the proposed program of study and research will result in the development of outstanding expertise in the national need area for which funding is requested and will do so in a reasonable period of time. Applicants should present a detailed description of the proposed graduate program of study and research. This section of the narrative should contain, but need not be limited to, the following components:

(a) The plan should specifically address the course work which Fellows will be required to take rather than the overall spectrum of departmental offerings. Identify courses, summarize content, and discuss sequencing. Explain how course work will relate to Fellows' research.

(b) Identify and describe areas of research that Fellows will be encouraged to engage in via a thesis or dissertation.

(c) Discuss graduate program examination requirements, such as a proficiency or qualifying examination, a comprehensive examination, and an oral examination.

(d) include a projected timetable for completing the proposed graduate program of study and research.

(e) If admission to a proposed doctoral program does not require a Master's degree, discuss how institutional procedures allow for the bypass of a Master's degree.

Sec. 2. In this section, applicants should highlight thoroughly any special features of the graduate program such as the extent to which it will involve an interdisciplinary, multi-disciplinary, or cross-disciplinary approach resulting in the development of expertise transcending a single discipline. Applicants should also discuss any other special features such as development of an unusual collateral specialization in a related discipline, experiential learning opportunities such as practicums or internships, unique mentoring programs, seminars, or a multi-university collaborative approach.

Sec. 3. In this section, applicants should substantiate clearly the institution's position that it presently provides a major, productive, and recognized program of graduate study and research at the level(s) of study in the area of national need in which selected Fellows would be engaged. Applicants should include evidence of the quality of existing academic attributes and resources of the institution such as teaching and research faculty, instructional and research instrumentation and facilities, library resources, computing resources, and other such indicators of academic quality. Also, applicants should discuss the extent to which graduate students have access to such institutional resources.

Sec. 4. In this section, applicants should document thoroughly the institution's plans and procedures for managing fellowship appointments. Applicants should explain in-depth the plan for recruiting academically outstanding Fellows and procedures for selecting Fellows of superior quality who appear to be highly motivated to prepare for and pursue a career as a food or agricultural scientist or professional. In addition, applicants should cite specified plans for advising and guiding Fellows through a program of study, as well as any special programs or activities that will be offered to enrich the Fellows' graduate study. Particular attention should be given to the plans and procedures for recruiting and retaining members of underrepresented groups.

Sec. 5. In this section, applicants should include important supplementary summary data for the institution relevant to the national need area for which funding is requested. Examples of appropriate data are indices of student quality, enrollments and degrees awarded for recent years, placement of graduates, facilities, faculty research support, and publications of previous graduate students. To the extent possible, applicants should present the supplementary summary data in tabular form.

§ 3402.13 Budget.

Applicants must prepare the Proposal Budget, Form CSRS–703, identifying all costs associated with the proposal. Instructions for completing the "Proposal Budget" are provided on the form. Pagination for the budget page should be continuous following the national need narrative and so indicated in the table of contents.

§ 3402.14 Faculty vitae.

This section should include a Summary Vita, Form CSRS–708, for each faculty member contributing significantly to institutional competence at the level of graduate study for the national need area addressed in the proposal. Applicants should arrange the faculty vitae with the project director(s) first, followed by the remaining faculty, in alphabetical order. Pagination for the faculty vitae should be continuous following the budget page and so indicated in the table of contents.

§ 3402.15 Appendix.

Any additional supporting information deemed essential for clarifying and/or strengthening the proposal should be included in an Appendix and referenced in the national need narrative. To the extent possible, applicants should present supporting information included in the Appendix in tabular form. Pagination for the Appendix should be continuous following the faculty vitae and so indicated in the table of contents.

Subpart D—Submission of a Proposal

§ 3402.16 Intent to submit a proposal.

To assist HEP in preparing for review of fellowship proposals, institutions planning to submit proposals for fellowships may be requested to complete and return an Intent to Submit a Proposal form (Form CSRS–706). When required, applicants should complete and return one form for each proposal they anticipate submitting. Sending this form does not commit an institution to any course of action. The program announcement published in the **Federal Register** will delineate if, when, and where the Intent to Submit a Proposal Form should be sent.

§ 3402.17 Where to submit a proposal.

The program announcement published in the **Federal Register** will delineate the date for submission of proposals and the number of proposal copies required to apply for a grant. In addition, the program announcement will provide the address to which the proposal, its accompanying duplicate copies, and the institution's latest graduate catalog should be mailed.

Subpart E—Proposal Review and Evaluation

§ 3402.18 Proposal review.

The proposal evaluation process includes both USDA internal staff review and merit evaluation by panels of scientists, educators, industrialists, and Government officials who are highly qualified to render expert advice in the targeted areas. The goal of the process of selection and structuring of evaluation panels is to provide optimum expertise and objective judgment in the evaluation of proposals specific to a particular area of national need.

§ 3402.19 Evaluation criteria.

Proposals addressing a particular national need area at a particular degree level will be evaluated in competition with other proposals addressing the same national need area at the same degree level. Both USDA internal staff and the panelists will evaluate proposals primarily on the basis of the following criteria:

Evaluation criterion	Weight (points)
a. The degree to which the proposal establishes clearly that the proposed program of graduate study will result in the development of outstanding scientific/professional expertise related to the national need area and will do so in a reasonable period of time	30
b. The degree to which the proposal highlights thoroughly any special features such as an interdisciplinary, multi-disciplinary, or cross-disciplinary approach, an unusual collateral specialization in a related discipline, experiential learning opportunities, unique mentoring programs, seminars, or a multi-university collaborative approach	10
c. The degree to which the proposal substantiates clearly that the institution's faculty, facilities and equipment, instructional support resources, and other academic attributes are excellent for providing outstanding graduate study and research at the forefront of science and technology related to the chosen area of national need	20
d. The degree to which the institution's plans and procedures for recruiting and selecting academically outstanding Fellows and for advising and guiding Fellows through a program of study reflect excellence as documented in the proposal	20
e. The degree to which supplementary summary data substantiate program quality in the targeted national need area.	10
f. The quality of the proposal as reflected by its substantive content, organization, clarity, and accuracy	10

Additional or amended evaluation criteria and new point weightings may

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be cited in the program announcement published in the **Federal Register.**

Subpart F—Supplementary Information

§ 3402.20 Terms and conditions of grant awards.

Within the limit of funds available for such purpose, the awarding official shall make project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015).

§ 3402.21 Grant awards.

(a) The grant award document shall include, at a minimum, the following:

(1) Legal name and address of performing organization.

(2) Title of project.

(3) Name(s) and address(es) of Project Director(s).

(4) Identifying grant number assigned by the Department.

(5) Project period, which specifies how long the Department intends to support the effort without requiring reapplication for funds.

(6) Total amount of Federal financial assistance approved during the project period.

(7) Legal authority under which the grant is awarded.

(8) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award.

(9) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of this particular project grant.

(b) The notice of grant award, in the form of a letter, will provide pertinent instructions and information to the grantee that are not included in the grant award document described above.

(c) The major types of grant instruments shall be as follows:

(1) *New grant.* This is a grant instrument by which HEP agrees to support a specified number of graduate Fellows at a specific institution via funds for fixed graduate student stipends and fixed cost-of-education institutional allowances. This type of grant is approved on the basis of peer review recommendation.

(2) *Supplemental grant.* This is an instrument by which HEP agrees to provide additional funding under a new grant as specified in paragraph (c)(1) of this section to provide special international study or thesis/dissertation research travel allowances for graduate Fellows. This type of grant will not require additional peer review.

§ 3402.22 Other Federal statutes and regulations that apply.

Several other Federal regulations or statutes apply to project grants awarded under this part. These include but are not limited to:

7 CFR Part 1.1—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, as amended, implementing OMB directives (i.e., Circular Nos. A–110 and A–21), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), as amended.

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3051—USDA implementation of OMB Circular No. A–133 regarding audits of institutions of higher education and other nonprofit institutions.

7 CFR part 3407—CSRS implementation of the National Environmental Policy Act.

29 U.S.C. 794, Section 504—Rehabilitation Act of 1973, and 7 CFR Part 15b (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees or small business firms and domestic nonprofit organizations, including universities, in federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

§ 3402.23 Confidential aspects of proposals and awards.

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Agency and the grantee mutually agree to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

§ 3402.24 Access to peer review information.

After final decisions have been announced, HEP will, upon request, inform the project director of the reasons for its decision on a proposal. Verbatim copies of summary reviews, not including the identify of the reviewers, will be made available to respective project directors upon specific request.

§ 3402.25 Document of progress on funded projects.

(a) A Fellowship Appointment Documentation form (Form CSRS–707) is included in the application package. Upon request by HEP, project directors awarded grants under the program will be required to complete and submit this form. Follow-up progress reports will focus on assessing continuing progress of Fellows through their graduate programs of study (including activities supported by any special international study or thesis/dissertation research allowance) and on institution adherence to program guidelines.

(b) A Graduate Fellow Exit Report (Form CSRS–709) is included in the application package. This form should be completed and submitted to HEP by the project director for each Fellow supported by a grant as soon as a Fellow either:

(1) graduates; (2) is officially terminated from the fellowship or the academic program due to unsatisfactory academic progress; or (3) voluntarily withdraws from the fellowship or the academic program. If a Fellow has not completed all degree requirements at the end of the five-year grant duration, HEP may request a preliminary exit report. In such a case, a final exit report will be required at a later date. When a final exit report for each Fellow supported by a grant has been accepted by USDA, the grantee institution will have satisfied the requirement of a final performance report for the grant. Additional follow-up reports to track the Fellows' career patterns may be requested.

(c) A Final Report must be completed and returned within 90 days after the expiration date of the project. The Final Report must be submitted to the program contact person and must contain proper data and information as specified in the "Special Terms and Conditions" of the award. Generally, the Final Report should include a summary of: recruitment strategies that were effective; successful mentoring procedures or activities; enrichment activities the fellows were afforded; barriers faced in recruiting and graduating fellows; and the impact of the fellowship grant on the overall quality of the educational programs of the institution.

§ 2402.26 Evaluation of program.

Grantees should be aware that HEP may, as a part of its own program evaluation activities, carry out in-depth evaluations of assisted activities through independent third parties. Thus, grantees should be prepared to cooperate with evaluators retained by HEP to analyze both the institutional context and the impact of any supported project.

Done at Washington, D.C., this 19th day of September 1994.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 94–23544 Filed 9–22–94, 8:45 am]

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S. 1066/P.L. 103–323

To restore Federal services to the Pokagon Band of Potawatomi Indians. (Sept. 21, 1994; 108 Stat. 2152; 4 pages)

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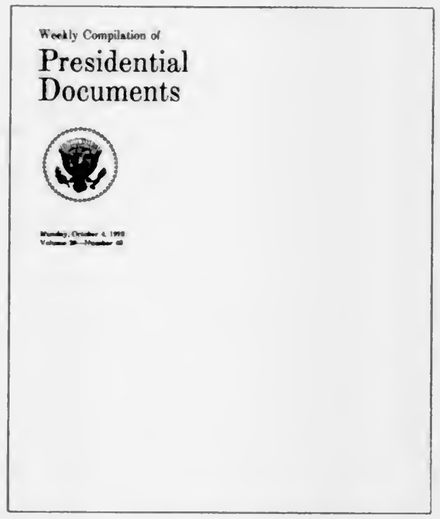
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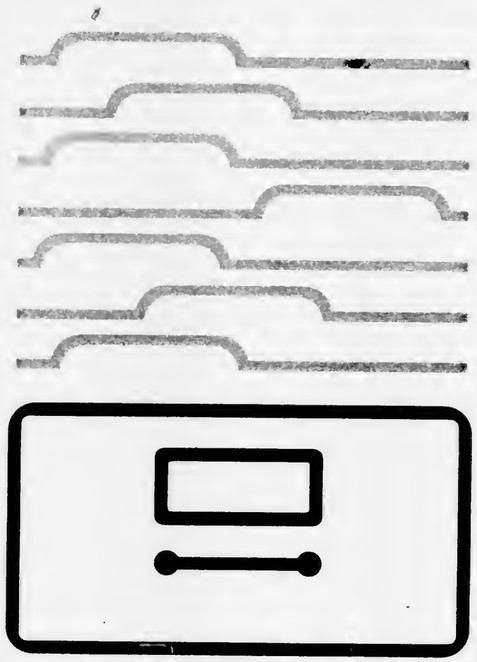
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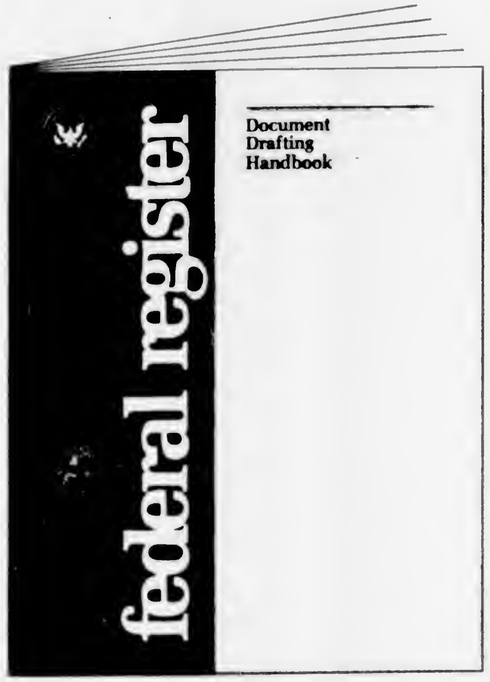
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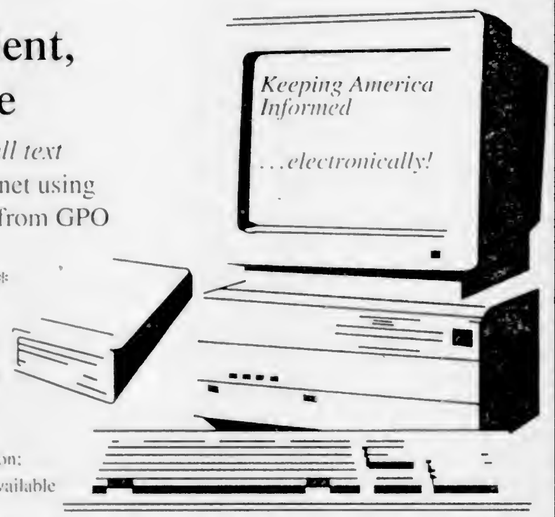
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9-26-94
Vol. 59 No. 185
Pages 48987–49150

Federal Register

Monday
September 26, 1994

VOL
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The President

Proclamation 6722 of September 20, 1994

National Historically Black Colleges and Universities Week, 1994

By the President of the United States of America

A Proclamation

From Spelman to Fayetteville State, from Talladega to Texas Southern, historically black colleges and universities continue to play an essential role in our Nation's heritage. For too many years in America, these schools were the only institutions of higher learning open to young African Americans. With their steadfast dedication to excellence in education, these proud schools help to nurture our country's greatest resource—the intelligence and imagination of our youth.

Historically black colleges and universities quickly earned distinguished reputations, both for the quality of their scholarship and for their commitment to guaranteeing equal opportunity for all. Their invaluable contributions are evident in the countless students, past and present, who have benefitted from the rich educational experience these institutions provide. Their graduates have become accomplished participants in every aspect of society, have raised new generations to respect the values of knowledge and discovery, and, with the unique perspective of their schooling, have immeasurably enriched the lives of their communities and of our entire Nation.

As we pause this year to recognize the continuing importance of these outstanding schools, we have new cause for optimism that such academic communities will remain vibrant and enduring leaders in American education. On November 1, 1993, I was proud to sign an Executive Order committing greater Federal attention to strengthening historically black colleges and universities. This order establishes a commission comprised of representatives from those schools, along with business leaders and other educational officials. Guided by the high standards set by our Goals 2000: Educate America Act, this commission will explore new ways to enhance the infrastructure of these institutions and to facilitate future planning and development. Working together, we can prepare these colleges and universities, some of America's finest, to meet the challenges of the twenty-first century and beyond.

To heighten awareness of that crucial goal and to recognize the critical role that historically black colleges and universities have played in the lives of African Americans throughout the land, the Congress, by Senate Joint Resolution 21, has designated the week beginning September 18, 1994, as "National Historically Black Colleges and Universities Week" and has authorized and requested the President to issue a proclamation in observance of this commemoration.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week of September 18 through September 24, 1994, as National Historically Black Colleges and Universities Week. I call upon the people of the United States, including government officials, educators, and volunteers, to observe this week with appropriate programs, ceremonies, and activities.

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IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of September, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

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Prices and Availability of Federal Register Publications

AGENCY: Administrative Committee of the Federal Register (ACFR).

ACTION: Final rule with request for comments.

SUMMARY: The Administrative Committee of the Federal Register (Administrative Committee) announces changes to the prices charged for **Federal Register** publications. The price changes apply to annual subscription rates for the daily **Federal Register**, the Code of Federal Regulations, the Weekly Compilation of Presidential Documents, the monthly Federal Register Index and monthly LSA (List of CFR Sections Affected), as well as to the single issue price of the daily **Federal Register**. These price changes are necessary to more accurately reflect the Government's cost of production and distribution of these publications.

DATES: The changes to 1 CFR 11.2, 1 CFR 11.6, 1 CFR 11.7, and 1 CFR 11.8 are effective October 26, 1994. The changes to 1 CFR 11.3 are effective January 1, 1995.

Comments will be accepted until January 1, 1995.

ADDRESSES: Comments may be sent to the Office of the Federal Register by the following methods: U.S. Mail: Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408. Private delivery services or messengers: Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC 20002. Fax: 202–523–6866. Electronic mail on FREND (Federal Register Electronic News Delivery service): 202–275–1538 or 202–275–0920.

FOR FURTHER INFORMATION CONTACT: Michael White at 202–523–4534.

SUPPLEMENTARY INFORMATION: The Administrative Committee of the Federal Register, which establishes prices for Federal Register publications, has determined that it must make price adjustments to certain **Federal Register** publications to accurately reflect costs of production and distribution. Price adjustments apply to subscriptions and to single issues.

On September 1, 1992, the Administrative Committee announced that it was adopting a policy of full cost recovery to ensure that revenues from subscriptions and single issue sales would keep pace with increased costs attributable to printing and labor expenses at the Government Printing Office (GPO) plant and prior postal rate increases (57 FR 40024). The Administrative Committee resolved to adjust prices over a period of several years and to conduct an annual review to determine the rate of increase necessary to gradually bring prices into alignment with costs. On December 10, 1993, the Administrative Committee further adjusted prices of **Federal Register** publications pursuant to the annual pricing review (58 FR 64871).

After reviewing the Government Printing Office's most current analysis of its production and distribution costs, the Administrative Committee has determined that further incremental increases in the prices to be charged for the paper editions of **Federal Register** publications are necessary to achieve full cost recovery. The increased prices reflected in this final rule are primarily attributable to labor charges, equipment costs and prospective postal rate increases for second class mail. Changes to prices of the microfiche editions of the **Federal Register** and the Code of Federal Regulations (CFR) are also included in this final rule. Production of the microfiche editions of these publications is subject to a competitive bidding process that determines the prices to be charged. While overall subscription prices for microfiche copies have increased, prices of individual copies have decreased or remained the same.

The following rates are effective as of October 26, 1994. The annual subscription rates for the **Federal Register** paper edition are increased to $494, or $544 for a combined **Federal Register**, Federal Register Index and LSA (List of CFR Section Affected) subscription. The annual subscription price of the microfiche edition of the **Federal Register**, including the Federal Register Index and LSA, is increased to $433. The price for single copies of the daily **Federal Register** is increased to $8 for the paper edition. The annual subscription price for the Federal Register Index is increased to $24. The annual subscription price for the monthly LSA is increased to $26. The annual subscription rates for the Weekly Compilation of Presidential Documents are increased to $75 by non-priority mail, or $132 by first-class mail. The price of an individual copy is increased to $3.

As of January 1, 1994, the annual subscription rates for a full set of the Code of Federal Regulations are increased to $883 for the paper edition and $264 for the microfiche edition. The price of a single volume in microfiche form is reduced to $1.

In the 1992 and 1993 price change rule documents, the Administrative Committee invited public comment on the pricing structure of Federal Register publications. Three comments were received regarding the December 10, 1993 rule. Two commenters inquired whether unofficial Federal Register data formerly available as ACFR publications on magnetic tape would instead be distributed under the auspices of the Superintendent of Documents. This unofficial Federal Register data derived from the printing data base remains available for purchase from GPO in compressed diskette form as a GPO reproducible product under the authority of 44 U.S.C. chapter 17. One commenter inquired about implementation of the Government Printing Office Electronic Information Access Enhancement Act of 1993 (GPO Access), 44 U.S.C. 4101, and asked when the official online edition of the **Federal Register** would be available and how much it would cost to subscribe. The online **Federal Register**, including full text and graphics, began daily service on the GPO Access System's Wide Area Information Server (WAIS) via the Internet on June 8, 1994. Subscription information is contained on page II of the daily **Federal Register** or by telnet to wais.access.gpo.gov (log in as newuser (all lower case); no password is required). Dial-up users

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(SWAIS service) should use communications software and modem to obtain subscription information at 202–512–1661 (log in as wais (all lower case); no password is required). Complete price schedules, including discounts for multiple workstations, are available by calling GPO at 202–512–1530 or by fax at 202–512–1262. Prices are subject to continuous review and will be adjusted periodically based upon GPO's calculation of the incremental cost of dissemination.

In addition to the price changes contained in this document, the Administrative Committee is updating § 11.2 to reflect the availability of the online **Federal Register**. The Committee has granted authority to the Superintendent of Documents to price the online **Federal Register** for the first six months of operation to allow GPO to collect actual cost data. The Administrative Committee continues to welcome comments on Federal Register publications and prices.

The Administrative Committee has determined that publication of a proposed rule is unnecessary. The Administrative Committee has authority under 44 U.S.C. 1506 to set the prices to be charged for **Federal Register** subscriptions and individual copies. To the extent possible, the Administrative Committee sets prices to recover only the actual cost of producing and distributing Federal Register publications. The revised prices are based on an in-depth cost study conducted for the Administrative Committee by the Government Printing Office. Because only actual costs were considered in setting the revised price schedule based on an in-depth cost study, the Administrative Committee has determined that there is good cause for promulgating this final rule without a prior notice of proposed rulemaking as permitted by 5 U.S.C. 553(b)(B).

This regulatory action has been reviewed by the Office of Management and Budget, Office of Information and Regulatory Affairs, under Executive Order 12866. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to rate increases necessary to recover the costs to the Government of printing and distributing these publications.

List of Subjects in 1 CFR Part 11

Federal Register publications, Government publications, Organization and functions (Government agencies), Subscription rates.

For the reasons discussed in the preamble, the Administrative Committee of the Federal Register amends part 11 of chapter I of title 1 of the Code of Federal Regulations as set forth below:

PART 11—SUBSCRIPTIONS

1. The authority citation for part 11 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

2. Section 11.2 is revised to read as follows:

§ 11.2 Federal Register.

(a) Daily issues are furnished by mail to subscribers for $494 per year in paper form. A combined subscription consisting of the daily issues, the monthly Federal Register Index, and the monthly LSA (List of CFR Sections Affected) is furnished by mail to subscribers for $544 per year in paper form or $433 per year in microfiche form. Six month subscriptions to the paper and microfiche editions are also available at one-half the annual rate. Limited quantities of current or recent issues may be obtained for $8 per copy in paper form or $1.50 per copy in microfiche form.

(b) The online edition of the **Federal Register** is available by subscription at prices determined by the Superintendent of Documents under the general direction of the Administrative Committee.

3. Section 11.3 is revised to read as follows:

§ 11.3 Code of Federal Regulations (CFR).

A complete set is furnished by mail to subscribers for $883 per year for the bound, paper edition; $264 per year for the microfiche edition. Individual volumes of the bound, paper edition of the CFR are sold at prices determined by the Superintendent of Documents under the general direction of the Administrative Committee. The price of an individual volume in microfiche form is $1 per copy.

4. Section 11.6 is revised to read as follows:

§ 11.6 Weekly Compilation of Presidential Documents.

Copies in paper form are furnished to subscribers for $75 per year by non-priority mail or $132 per year by first-class mail. The price of an individual copy in paper form is $3

5 Section 11 7 is revised to read as follows:

§ 11.7 Federal Register Index.

The annual subscription price for the monthly Federal Register Index, purchased separately, in paper form, is $24

6. Section 11.8 is revised to read as follows:

§ 11.8 LSA (List of CFR Sections Affected).

The annual subscription price for the monthly LSA (List of CFR Sections Affected), purchased separately, in paper form, is $26.

Trudy Huskamp Peterson,
Chairman.
Michael F. Di Mario,
Member.
Rosemary Hart,
Member.
Janet Reno,
Attorney General.
Trudy Huskamp Peterson,
Acting Archivist of the United States.

[FR Doc. 94–23706 Filed 9–23–94; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 318

[Docket No. 93–118–2]

Interstate Movement of Carambola from Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing the fruit of carambola to be moved interstate from Hawaii. As a condition of movement, the fruit of carambola must undergo prescribed treatment for fruit flies under the supervision of an inspector of Plant Protection and Quarantine, Animal and Plant Health Inspection Service. This action allows the interstate movement from Hawaii of this fruit while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States.

EFFECTIVE DATE: September 26, 1994.

FOR FURTHER INFORMATION CONTACT: Mr Frank Cooper, Senior Operations Officer, or Mr. Peter Grosser, Senior Operations Officer, Permit Unit, Port Operations, Plant Protection and Quarantine, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8645

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian Fruits and Vegetable regulations (contained in 7 CFR 318 13 through 318.13–17 and referred to below as the regulations) govern the

movement of raw and unprocessed fruits and vegetables, cut flowers, rice straw, mango seeds, and cactus plants and cactus parts, from Hawaii into or through the continental United States, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, or any other territory or possession of the United States. Under the regulations, any such movement is defined as "interstate movement."

Of the articles governed by the regulations, some are absolutely prohibited interstate movement. Others are prohibited such movement if they fail to meet certain qualifying criteria. Before the effective date of this final rule, the interstate movement of carambola from Hawaii was prohibited because of the risk that it could spread injurious insects from Hawaii to other parts of the United States.

On March 21, 1994, we published in the **Federal Register** (59 FR 13256–13257, Docket No. 93–118–1) a proposal to allow the fruit of carambola (*Averrhoa carambola*) to be moved interstate from Hawaii under specified conditions. One of the proposed conditions for interstate movement was that the fruit be treated with a specified cold treatment. This treatment has been determined to be effective against the insects in Hawaii that attack carambola—i.e., the Mediterranean fruit fly (*Ceratitis capitata*), the melon fly (*Bactrocera cucurbitae*), and the Oriental fruit fly (*Bactrocera dorsalis*).

We solicited comments concerning our proposed rule for 60 days ending May 20, 1994. We received six comments by that date. The comments were from a municipality in Hawaii, an agricultural association, and other members of the public.

Five of the commenters supported the proposal as written. One commenter expressed concerns regarding the testing done on the prescribed treatment. We discuss below each of the issues raised by the commenter.

The commenter stated that it appeared that the research done to test a cold treatment against insect pests of carambola did not include phytotoxicity tests, or the impact of the proposed treatment upon the quality of Hawaiian carambola. We are making no changes based on this comment. The Agricultural Research Service (ARS) of the U.S. Department of Agriculture conducted tests on a preliminary basis in conjunction with the Hawaii carambola industry to determine whether the fruit would tolerate the proposed cold treatment. Fruit of carambola was stored at 1 1±0.6 °C for 12 days. No adverse impact on fruit quality or marketability was observed, which follows the trend of previous observations by Campbell,[1] Campbell *et al.*,[2] and Miller *et al.*,[3] showing that the fruit of carambola tends to tolerate refrigeration relatively well.

Notwithstanding the tests discussed above, it should be emphasized that all quarantine treatments may affect fruit quality in some way. For this reason, the APHIS Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference into the regulations at 7 CFR 300.1, states that all treatments are applied at the importer's risk, and that PPQ cannot be held responsible for loss or damage as a result of any prescribed treatments.

The commenter also stated that the study did not specify the cultivar of fruit used for testing. According to the commenter, sweet and tart varieties of carambola may have very different host characteristics, and fruit size may have an impact upon the application of the treatment. We are making no changes based on this comment. In its cold treatment tests, ARS used both "sweet" and "tart" cultivars. Nel showed that temperatures and exposure times required to disinfest Mediterranean fruit fly from different host fruits remained constant regardless of host fruit.[4] This "generic" approach to cold treatments has been accepted for other fruit fly species, including Mexican fruit fly, *A. ludens* (Loew), and Queensland fruit fly, *Bactrocera tryoni* Froggatt.

With regard to the effect of fruit size on cold treatment application, ARS made the same observation as Gould and Sharp, who concluded that "* * * in terms of total treatment time, there is a small difference in cool-down time between a large and a small carambola."[5] In other words, fruit size is not an important consideration in treatment application. Additionally, APHIS closely regulates treatments by means of temperature-monitoring devices, and the treatment time is not considered to have begun until the fruit has reached the required treatment temperature.

The commenter stated that the artificial infestation procedure used in the study may have placed stress on the fruit fly larvae, making them more susceptible to cold than would be wild flies in a natural infestation. According to the commenter, the large number of larvae artificially raised on the small amount of fruit used in the study could have produced overcrowding effects not representative of field conditions.

We are making no changes based on these comments. Because of the difficulty in obtaining infestation through adult oviposition, ARS turned to artificial infestation methods. The most successful artificial infestation method used by ARS did not attempt to rear the insects on carambola, except during the cold treatment period, during which eggs and larvae were reared on both treated and control carambola. Following the treatment period, the eggs and larvae were removed from both the treated and control carambola and were placed onto a moist larval diet. This significantly increased survival of eggs and larvae from the controls, and provided optimum conditions for survival to occur among the treated eggs and larvae. This method biased the tests toward the insects' survival, rather than toward mortality.

With regard to the commenter's statement regarding the number of fruit flies raised on carambola, ARS concluded that the effects of the treatment could not be attributed to infestation load. ARS reported that, although the results were erratic, occasional large numbers of fruit flies, greatly exceeding the "normal" field infestations, were reared from artificially infested carambola controls. From this, ARS concluded that the effects of the treatment could not be attributed to infestation load. ARS indicated that it chose the optimum infestation methods that provided insect recovery while testing the quarantine security limits of the treatment.

The commenter also stated that field populations of flies might naturally be better adapted to surviving the cold than the laboratory-reared flies used. We are making no changes based on this comment. ARS concluded that there is no evidence that fruit flies from different elevations in Hawaii respond differently to cold treatments. According to ARS, this is consistent with previous testing that revealed no evidence that Caribbean fruit flies from their northernmost range in Florida respond differently to cold treatments of carambola.

[1] Campbell, C. A. 1987. Carambola Fruit Development and Storage in Florida. M.S. thesis, University of Florida, Gainesville, FL.

[2] Campbell, C. A., D. J. Huber and K. E. Koch, 1987. Postharvest Response of Carambolas to Storage at Low Temperatures. Proc. Fla. State Hort. Soc. 100: 272–275.

[3] Miller, W. R., R. E. McDonald and M. Nisperos-Carriedo. 1991. Quality of "Arkin" Carambolas with or without Conditioning Followed by Low-Temperature Quarantine Treatment. Proc. Fla. State Hort. Soc. 104: 118–122.

[4] Nel, R. G. 1936. The Utilization of Low Temperatures in the Sterilization of Deciduous Fruit Infested with the Immature Stages of the Mediterranean Fruit Fly, *Ceratitis capitata* (Wiedemann). Sci. Bull. Dept. Agric. S. Afr. No. 155.

[5] Gould, W. P. and J. L. Sharp. 1990. Cold-Storage Quarantine Treatment for Carambolas Infested with the Caribbean Fruit Fly (Diptera: Tephritidae). J. Econ. Entomol. 83: 458–460.

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The commenter also stated that, although the tested treatment satisfied statistical security requirements, the fact that some fruit flies survived the treatment might indicate an unacceptable risk when the treatment is applied on a commercial scale. We are making no changes based on this comment. The data provided by ARS indicates that "probit 9" security (at least 99.968 percent insect mortality rate) was obtained by storage of carambola at 1.1±0.6 °C for 12 days.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for carambola from Hawaii is imminent. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

We are allowing the fruit of carambola to move from Hawaii to other parts of the United States, under safeguards to prevent the introduction of injurious plant pests from Hawaii.

At present, there are approximately 5 to 10 farms in Hawaii that produce commercial quantities of carambola. These farms are small, family-owned, operations.

This rule will provide Hawaiian producers with access to markets in other parts of the United States. We estimate that approximately 1,500 to 3,000 pounds of fresh carambola fruit might be shipped from Hawaii to other parts of the United States annually. These shipments would have an estimated annual market value of between $3,000 and $9,800, depending on market prices. This represents less than .0002 percent of total Hawaiian agricultural production. The average annual market value of Hawaiian agricultural products totals about $600 million.

Small shippers of Hawaiian fruits and vegetables may also receive some benefits from this rule. We estimate that between 10 and 15 small entities will be able to increase marginally the volume of products shipped to other parts of the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0049.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

Accordingly, 7 CFR parts 300 and 318 are amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, 167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 300.1, paragraph (a) is revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was revised and reprinted November 30, 1992, and includes all revisions through August 1994, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

3. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, 167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 318.13–4 [Amended]

4. Section 318.13–4 is amended by adding, at the end of the section, the following: "(Approved by the Office of Management and Budget under control number 0579–0049)"

5. A new § 318.13–4h is added to read as follows:

§ 318.13–4h Administrative instructions; conditions governing the movement of the fruit of carambola from Hawaii.

(a) Subject to the requirements of §§ 318.13–3 and 318.13–4 and any other applicable regulations, the fruit of carambola may be moved interstate from Hawaii only if it is treated under the supervision of an inspector with a treatment authorized by the Administrator for the following pests: the Mediterranean fruit fly (*Ceratitis capitota*), the melon fly (*Bactrocera cucurbitae*), and the Oriental fruit fly (*Bactrocera dorsalis*).

(b) Treatments authorized by the Administrator are listed in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

Done in Washington, DC, this 19th day of September 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–23638 Filed 9–23–94; 8:45 am]

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9 CFR Parts 54 and 91

[Docket No. 93–070–2]

Inspection and Handling of Livestock for Exportation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations regarding inspection and handling of livestock for exportation to provide that United States origin health certificates include all test results, certifications, or other statements required by the foreign country of destination. This action is necessary to ensure that the origin health certificate contains all of the information required by the foreign country of destination. We are also amending the requirements concerning scrapie for sheep and goats intended for export. This action clarifies the regulations and makes the terminology used in the export regulations consistent with that used in our domestic scrapie regulations. We are also revising one definition in the domestic scrapie regulations to make the definitions in those regulations consistent with each other.

EFFECTIVE DATE: October 26, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Najam Faizi, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 762, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States.

On May 13, 1994, we published in the **Federal Register** (59 FR 24979–24982, Docket No. 93–070–1) a proposal to amend the regulations by providing that United States origin health certificates include all test results, certifications, or other statements required by the foreign country of destination. We also proposed to amend the requirements concerning scrapie for sheep and goats intended for export, in order to clarify the regulations and make the terminology used in the export regulations consistent with that used in the domestic scrapie regulations. Additionally, we proposed to revise a definition in the domestic scrapie regulations to make the definitions in those regulations consistent with each other.

We solicited comments concerning the proposed rule for a 60-day comment period ending July 12, 1994. The one comment we received by that date supported the proposal as written.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a Final Regulatory Flexibility Analysis regarding the impact of this rule on small entities.

This rule requires that the origin health certificate required for animals exported from the United States include any test results, certifications, or other statements required by the foreign country of destination. It also revises the export regulations in 9 CFR part 91 to make them consistent with the regulations in 9 CFR parts 54 and 79 regarding the Voluntary Scrapie Flock Certification Program.

No issues were raised by public comments in response to the Initial Regulatory Flexibility Analysis we published in our proposal, and we identified no significant alternatives to this rule. We anticipate that the changes involving certification will have little or no impact on domestic exporters. In order for exporters to sell their animals abroad, the animals must meet the import requirements of the country of destination. Therefore, it is in the exporter's interest to ensure that those requirements are met. This rule change requires only that the origin health certificate include all test results, certifications, or other statements required by the country of destination. However, estimates of the number of animals and the number of small entities that will be affected, and the potential costs to exporters, are not available.

The changes to the regulations concerning sheep and goats with regard to scrapie will affect some producers. Under the regulations, sheep and goats from "source flock" premises may not be exported. Under the regulations prior to the effective date of this rule, source flock premises are considered those from which an animal affected with scrapie was moved within 18 months or less prior to showing signs of scrapie. Under this rule, the export of sheep and goats from source flocks continues to be prohibited, but the meaning of source flock is revised to mean a flock in which at least two animals were diagnosed as scrapie-positive animals at an age of 54 months or less, provided the second diagnosis was made within 60 months of the first, and provided the requirements of a flock plan have not been completed. This change makes the regulations more restrictive, and may increase the number of animals prohibited exportation because they originated in a source flock. However, as of July 1993, there were only five source flocks in the United States.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0020.

List of Subjects

9 CFR Part 54

Animal diseases, Goats, Indemnity payments, Sheep.

9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR parts 54 and 91 are amended as follows:

PART 54—CONTROL OF SCRAPIE

1. The authority citation for part 54 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 134a–134h; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 54.1 is amended by removing the definition of *scrapie-exposed animals* and by adding, in alphabetical order, a definition of *exposed animal* to read as follows:

§ 54.1 Definitions.

* * * * *

Exposed animal. Any animal which has been in the same flock at the same time within the previous 60 months as a scrapie-positive animal, excluding limited contacts. Limited contacts are contacts between animals that occur off the premises of the flock, and do not occur during or immediately after parturition for any of the animals involved. Limited contacts do not include commingling (when animals

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concurrently share the same pen or same section in a transportation unit where there is uninhibited physical contact).

* * * * *

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

3. The authority citation for part 91 is revised to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

§ 91.3 [Amended]

4. In § 91.3, paragraph (a) is amended by removing "§ 161.2" in the fourth sentence and replacing it with "§ 161.3(k) of this chapter", and by adding a new sentence at the end of the paragraph to read as follows:

§ 91.3 General Export requirements.

(a) * * * "The origin health certificate shall include all test results, certifications, or other statements required by the foreign country of destination.

* * * * * *

5. In § 91.6, and paragraph (a)(3) is revised as set forth below: footnote 4 is removed.

§ 91.6 Goats.

(a) * * *

(3) No goat shall be exported if it is a scrapie-positive animal or an exposed animal, as defined in 9 CFR parts 54 and 79, or if it has ever been in an infected flock, source flock, or trace flock, as defined in 9 CFR parts 54 and 79; or if it is the progeny, parent, or sibling of any scrapie-positive animal.

* * * * *

6. In § 91.8, paragraph (a) introductory text is revised to read as follows:

§ 91.8 Sheep.

(a) No sheep shall be exported if it is a scrapie-positive animal or an exposed animal, as defined in 9 CFR parts 54 and 79, or if it has ever been in an infected flock, source flock, or trace flock, as defined in 9 CFR parts 54 and 79; or if it is the progeny, parent, or sibling of any scrapie-positive animal.

* * * * *

§§ 91.6 and 91.8 [Amended]

7. In § 91.6, paragraph (a)(5), and § 91.8, paragraph (a)(2), footnote 5 and the references to footnote 5 are redesignated as footnote 4.

Done in Washington, DC, this 19th day of September 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–23613 Filed 9–23–94; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150–AE31

Specific Licensing of Exports of Certain Alpha-Emitting Radionuclides and Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to establish specific licensing controls on the export of bulk tritium, transuranic isotopes americium-242m, californium-249, californium-251, curium-245, curium-247, and certain specified alpha-emitting radionuclides; revise and establish new general licenses for tritium and the specified alpha-emitting radionuclides which are keyed to the recipient country's membership in the Nuclear Suppliers Group; remove Argentina, Brazil, and Chile from the list of restricted destinations; and revise the general license for exports of Canadian-origin uranium. The amendments are necessary to conform the export controls of the United States to international export control guidelines and a treaty obligation of the U.S. under the U.S.-Canada Agreement for Cooperation.

EFFECTIVE DATE: November 10, 1994.

FOR FURTHER INFORMATION CONTACT: Elaine Hemby, Office of International Programs, Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2341.

SUPPLEMENTARY INFORMATION:

I. Background

On March 17, 1993 (58 FR 14344), the NRC published in the **Federal Register** a proposed rule that would amend NRC's regulations in 10 CFR Part 110 pertaining to the export of nuclear material and equipment. The proposed amendments would revoke the current general licenses for bulk tritium and alpha-emitting radionuclides having an alpha half-life of 10 days or greater but less than 200 years to conform NRC's regulations to the export control guidelines of the Nuclear Suppliers Group (NSG) for nuclear-related, dual-use items contained in IAEA INFCIRC/254/Revision 1/Part 2 and approved in 1992.[1] The alpha-emitting radionuclides subject to this rule are plutonium-236, plutonium-238, thorium-227, thorium-228, uranium-230, uranium-232, actinium-225, actinium-227, californium-248, californium-250, californium-252, curium-240, curium-241, curium-242, curium-243, curium-244, einsteinium-252, einsteinium-253, einsteinium-254, einsteinium-255, fermium-257, gadolinium-148, mendelevium-258, polonium-208, polonium-209, polonium-210, and radium-223 (specified alpha-emitting radionuclides). Consistent with the NSG guidelines, new general licenses would be established to permit the export of the specified alpha-emitting radionuclides and dispersed tritium to countries which are members of the NSG dual-use guidelines and to permit the export of the specified alpha-emitting radionuclides to most other countries when in a device, or a source for use in a device, containing less than 100 millicuries (3.7 GBq) of alpha activity per device (10 CFR part 71, appendix A, provides specific activities in curies per gram).

The current general license for source material in § 110.22(b) would be revised to reduce the annual limit of Canadian-origin natural uranium that can be exported to any single country from 1,000 kilograms to 500 kilograms to help assure U.S. compliance with provisions of the U.S.-Canada Agreement for Cooperation.

The current general licenses for transuranic isotopes americium-242m, californium-249, californium-251, curium-245, and curium-247 would be revoked to conform NRC's regulations to the International Atomic Energy List of the Coordinating Committee on Multilateral Export Controls (COCOM). Although COCOM was dissolved in March 1994, the NRC is placing specific licensing controls on these isotopes because the U.S. and other COCOM member countries agreed to retain export controls on the existing COCOM list of items. Steps are now being taken by former COCOM member countries to propose that the NSG control most, if not all, of the nuclear commodities on the COCOM list.

[1] Tritium and reactor produced alpha-emitting radionuclides are the two commodities on the NSG dual-use list whose exports are regulated by the NRC. The other items identified on this list, including alpha-emitting radionuclides produced with nuclear particle accelerators, are subject to Department of Commerce export controls, and are contained on a list referred to as the Nuclear Referral List.

The proposed amendment to restructure Appendix A, which describes the nuclear reactor equipment subject to NRC licensing authority, will be addressed in a separate rulemaking proceeding.

II. Comments on the Proposed Rule

The Commission received six letters commenting on the proposed rule. Copies of the letters are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW (Lower Level), Washington, DC. Five of the letters, two of which were from the same company, came from U.S. manufacturers that utilize sources containing the specified alpha-emitting radionuclides. These commenters strongly objected to the revocation of the general licenses for the specified alpha-emitting radionuclides, particularly californium-252 (Cf-252). The commenters indicated that the specific licensing requirements could result in serious economic disadvantage to their export business. It is their view that specific licenses would be disruptive to their businesses and cause them to lose potential business because of the higher expenses of license application fees, the additional paperwork burden, time delays, and uncertainties in delivery. One commenter believed the current general license regulations in Part 40 provided sufficient documentation to identify the supplier, quantity exported, and end user/end use. Several commenters argued that the revisions were unnecessary and were without any benefit to the stated objective of nonproliferation of nuclear weapons.

In view of these adverse comments, the NRC asked the companies to provide specific sales data on their exports to better understand the implications of the new regulation. After reviewing the responses, the NRC continues to believe that the economic impact on these companies is not significant because of the steps we have taken to address their concerns. First, the new general licenses permit the export of the specified alpha-emitters in quantities up to 100 millicuries to most countries, even when they are shipped separately from the equipment in which they are to be used. This understanding, in itself, reduced much of their concerns. The final rule was revised to clarify this point. Other new general licenses permit the export of unlimited quantities (except as limited by existing general licenses) of the specified alpha-emitting radionuclides to NSG member countries. These new general licenses will allow the companies to export a significant quantity of their Cf-252 sources, including replenishment sources, without obtaining specific licenses. Also the companies are encouraged to apply for broad, long-term licenses to export their Cf-252 sources. These kinds of applications could include customers in a number of friendly, non-NSG countries and in sufficient quantities to cover replenishment sources for six years.

Several commenters questioned whether a source containing less than 100 millicuries (186 micrograms) of Cf-252, if shipped separately from the device in which it is to be used, could be exported under the proposed new general license. One commenter noted that in the NRC materials licensing regulations, a "source" is not defined as a "device". As stated above, the NRC considers, for the purpose of part 110, that the export of a Cf-252 source for use in a specified device qualifies for this general license. The new general licenses are revised to clarify this point.

One commenter requested that the effective date of the rule be delayed or that exports under contract be exempted by a "grandfather" clause to avoid possible forced defaults in currently existing contracts that are now subject to specific licensing controls. In response to this concern, the effective date of this rule is 45 days after publication. This should be sufficient time for exports that are "in process" to be accomplished without default. The NRC did not consider a "grandfather" clause in the rule to cover committed contracts. One commenter has committed contracts to deliver Cf-252 sources to the year 1997. The NRC believes these sources should not be excluded from the new regulation for more than another few weeks. The applicable export control guidelines were agreed to by the U.S. and other NSG member countries in 1992 and should be implemented by the NRC without an extended delay.

A commenter representing a major U.S. vendor stated that the proposed restructuring of Appendix A and the new language still did not clearly delineate which minor reactor components required NRC licenses and which fall within the jurisdiction of the Department of Commerce. The commenter believed that the proposed amendment could result in increased confusion for exporters. In view of this comment, the Commission defers consideration of the revision of Appendix A to a future rulemaking.

The same commenter was concerned that service tooling contaminated with residual byproduct, source, or special nuclear material may be subject to specific licensing controls under the proposed rule. It is not the intent of the NRC to place new controls on these types of nuclear materials in this rulemaking.

III. The Final Rule

Under current NRC regulations, bulk tritium in quantities up to 100 curies, the specified alpha-emitting radionuclides in unlimited quantities, and transuranic isotopes americium-242m, californium-249, californium-251, and curium-245 in unlimited quantities can be exported to most countries under general licenses. The final rule amends the general license provisions in §§ 110.21–110.23 for the export of special nuclear, source, and byproduct material to revoke the general licenses for these materials. Specific licensing controls are established on the above materials. Although some of the specified alpha-emitting radionuclides inadvertently were not specifically identified in the proposed rule, they are included in the general license revocation implemented by this rule.

Argentina, Brazil, and Chile are removed from the list of restricted destinations in § 110.29. Since publication of the proposed rule, Argentina and Brazil have ratified and begun implementation of the Argentina/Brazil/IAEA full-scope safeguards agreement and Chile has waived into force the Treaty of Tlatelolco.

Section 110.30 is a list of the other member countries of the NSG. Exports of the specified alpha-emitting radionuclides in unlimited quantities (except as limited by the existing general licenses) and dispersed tritium in quantities up to 40 curies per device are permitted to NSG member countries under the new general licenses established for them. Subsequent to the publication of the proposed rule, Argentina has become a member of the NSG and is included in the list.

Three items covered in this final rule were not specifically identified in the proposed rule: (1) The general licenses in § 110.23 for einsteinium-252 -253 -254 -255, fermium-257, gadolinium-148, and mendelevium-258 are revoked; (2) Argentina, Brazil, and Chile are removed from the restricted destination list in § 110.29; and (3) Argentina is added to the NSG member list in § 110.30. Although the NRC did not publish these changes for comment in the proposed rule, the NRC is merely codifying international obligations of the United States. The NRC is proceeding to final rule because these changes involve a foreign affairs function of the United States. Therefore, solicitation of public comment is not

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required under the Administrative Procedure Act (5 U.S.C. 553(a)(1)) and 10 CFR 110.132(e) and 110.134. Here solicitation of public comments would delay U.S. conformance with its international obligations and therefore would not be in the public interest.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described as a categorical exclusion under 10 CFR 51.22 (c)(1) and (c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval numbers 3150–0036 and 3150–0027.

The public reporting burden for this collection of information is estimated to average less than 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (T–6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0036, 3150–0027), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

See the discussion in the Regulatory Flexibility Certification for the final regulatory analysis for this rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Based on the information available to the Commission at the time the proposed rule was published, the Commission previously certified that the proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities. The information to support this was obtained from the Department of Energy's national laboratories and some industry sources. The Commission also invited any small entity that determined that it is likely to bear a disproportionate economic impact because of its size to notify the Commission.

The Commission received four comments on the proposed rule from U.S. manufacturers that utilize radioactive sources containing Cf–252. Two of the companies qualify as small entities. Through their comments, the Commission became aware of the potentially detrimental economic impact that the revocation of the general licenses under which they were permitted to export Cf–252 would have. In view of these adverse comments, the NRC asked the companies to provide sales data on their exports to better reflect the implications of the new regulation. Based on a review of this summary data, the NRC, in cooperation with the companies, found that the impact of the rule changes on future sales will be much less than they had feared.

First, new general licenses are established to permit the export of CF–252 sources in quantities up to 100 millicuries to most countries, even when they are shipped separately from the equipment in which they are to be used. This understanding, in itself, reduces much of their concerns. Further, other new general licenses are established to permit the export of unlimited quantities (except as limited by existing general licenses) of Cf–252 sources to NSG member countries. These new general licenses will allow the companies to export a significant quantity of their Cf–252 sources, including replenishment sources, without obtaining specific licenses. In addition, the companies may submit broad, long-term licenses to export their Cf–252 sources to their medical, scientific, industrial, and reactor-related customers in friendly, non-NSG countries, thereby eliminating case-by-case review. Such licenses could authorize exports of Cf–252 sources in sufficient quantities to cover startup sources and replenishment sources for Taiwan and South Korean power reactors for a number of years. The anticipated value of the exports under such licenses would range from $260,000 to over $2 million. Other such licenses could authorize exports of Cf–252 sources and replenishment sources to medical, industrial, and scientific customers, with total export values under such licenses ranging from $100,000 to over $500,000. The current fee would be $1300 for each specific license application submitted. These steps will greatly reduce the financial burden of the license application fees and the additional paperwork. The processing of an export license application of this type normally takes less than 45 days for final action. The annual burden imposed by the rule is estimated to average less than 3 hours for an exporter for each specific application. The staff expects less than ten new applications a year as a result of this rule.

As an additional step to address the concerns of the exporters, the NRC consulted with the Department of Energy technical specialists to determine if any adjustments could be made to the proposed amendments for the specified alpha-emitting radionuclides, particularly Cf–252, to lessen the burden on U.S. exporters that export these materials to non-NSG member countries (exports to NSG countries would still be under general licenses). However, no acceptable adjustments were identified. We confirmed with U.S. nuclear weapons design experts that all of the specified alpha-emitting radionuclides, including Cf–252, could have some utility in nuclear explosive devices and that the 100 millicurie threshold for control was appropriate for the specified alpha-emitting radionuclides.

There are no alternatives for achieving the stated objective. This rule is necessary to conform NRC's export controls to the international export guidelines of the NSG. The United States and other NSG member countries have formally agreed to control these materials because of their utility in nuclear explosive weapons. Thus, the regulation is required to satisfy an international obligation of the United States. The foregoing discussion constitutes the regulatory flexibility analysis and the regulatory analysis for this final rule.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this final rule because these amendments do not include any provisions that would require backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 110.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

1. The authority citation for Part 110 is revised to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 5, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d, 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 et seq.).

2. In § 110.2, a definition for *Specific activity* is added in alphabetical order to read as follows:

§ 110.2 Definitions.

* * * * *

Specific activity (millicuries per gram) equals 3.575×10^8 divided by (the atomic weight times the half life in years).

* * * * *

§ 110.4 [Amended]

3. In § 110.4, first sentence, remove the words "Assistant Director for Exports, Security, and Safety Cooperation", and add in their place the words "Director for Nonproliferation, Exports, and Multilateral Relations".

§ 110.7 [Amended]

4. In § 110.7, second sentence, the reference to "§ 110.31" is revised to read "§ 110.32" and the reference to "§ 110.30", where it appears twice, is revised to read "§ 110.31".

§ 110.20 [Amended]

5. In § 110.20, paragraph (a), the reference to "110.29" is revised to read "110.30" and the reference to "§§ 110.30–110.31" is revised to read "§§ 110.31–110.32", and in the first sentence of paragraph (f), the phrase "§§ 110.21 through 110.26, 110.28, and 110.29" is revised to read "§§ 110.21 through 110.26, 110.28, 110.29, and 110.30".

6. In § 110.21, paragraphs (a)(3) and (b)(1) are revised and new paragraphs (a)(4) and (c) are added to read as follows:

§ 110.21 General license for the export of special nuclear material.

(a) * * *

(3) Special nuclear material, other than Pu–236 and Pu–238, in sensing components in instruments, if no more than 3 grams of enriched uranium or 0.1 gram of Pu or U–233 are contained in each sensing component.

(4) Pu–236 and Pu–238 when contained in a device, or a source for use in a device, in quantities of less than 100 millicuries of alpha activity (189 micrograms Pu–236, 5.88 milligrams Pu–238) per device or source.

(b) * * *

(1) Special nuclear material, other than Pu–236 and Pu–238, in individual shipments of 0.001 effective kilogram or less (e.g., 1.0 gram of plutonium, U–233 or U–235, or 10 kilograms of 1 percent enriched uranium), not to exceed 0.1 effective kilogram per year to any one country.

* * * * *

(c) A general license is issued to any person to export Pu–236 or Pu–238 to any country listed in § 110.30 in individual shipments of 1 gram or less, not to exceed 100 grams per year to any one country.

7. In § 110.22, paragraphs (a)(1), (a)(2), (b), and (c) are revised and new paragraphs (a)(3) and (d) are added to read as follows:

§ 110.22 General license for the export of source material.

(a) * * *

(1) Uranium or thorium, other than U–230, U–232, Th–227, and Th–228, in any substance in concentrations of less than 0.05 percent by weight.

(2) Thorium, other than Th–227 and Th–228, in incandescent gas mantles or in alloys in concentrations of 5 percent or less.

(3) Th–227, Th–228, U–230, and U–232 when contained in a device, or a source for use in a device, in quantities of less than 100 millicuries of alpha activity (3.12 micrograms Th–227, 122 micrograms Th–228, 3.7 micrograms U–230, 4.7 milligrams U–232) per device or source.

(b) A general license is issued to any person to export uranium or thorium, other than U–230, U–232, Th–227, or Th–228, in individual shipments of 10 kilograms or less to any country not listed in § 110.28 or § 110.29, not to exceed 1,000 kilograms per year to any one country or 500 kilograms per year to any one country when the uranium or thorium is of Canadian origin.

(c) A general license is issued to any person to export uranium or thorium, other than U–230, U–232, Th–227, or Th–228, in individual shipments of 1 kilogram or less to any country listed in § 110.29, not to exceed 100 kilograms per year to any one country.

(d) A general license is issued to any person to export U–230, U–232, Th–227, or Th–228 in individual shipments of 10 kilograms or less to any country listed in § 110.30, not to exceed 1,000 kilograms per year to any one country or 500 kilograms per year to any one country when the uranium or thorium is of Canadian origin.

8. Section 110.23 is revised to read as follows:

§ 110.23 General license for the export of byproduct material.

(a) A general license is issued to any person to export the following to any country not listed in § 110.28:

(1) All byproduct material (see Appendix F to this part), except actinium–225, actinium–227, americium–241, americium–242m, californium–248, californium–249, californium–250, californium–251, californium–252, curium–240, curium–241, curium–242, curium–243, curium–244, curium–245, curium–246, curium–247, einsteinium–252, einsteinium–253, einsteinium–254, einsteinium–255, fermium–257, gadolinium–148, mendelevium–258, neptunium–237, polonium–208, polonium–209, polonium–210, radium–223, and tritium unless authorized in paragraphs (a)(2) through (a)(6), (b), or (c) of this section.

(2) Actinium–225, actinium–227, californium–248, californium–250, californium–252, curium–240, curium–241, curium–242, curium–243, curium–244, einsteinium–252, einsteinium–253, einsteinium–254, einsteinium–255, fermium–257, gadolinium–148, mendelevium–258, polonium–208, polonium–209, polonium–210, and radium–223 when contained in a device, or a source for use in a device, in quantities of less than 100 millicuries of alpha activity (see § 110.2 for specific activity) per device or source, except that exports of polonium–210 when contained in static eliminators may not exceed 100 curies (22 grams) per individual shipment.

(3) Americium–241, except that exports exceeding one curie (308

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milligrams) per shipment or 100 curies (30.8 grams) per year to any country listed in § 110.29 must be contained in industrial process control equipment or petroleum exploration equipment in quantities not to exceed 20 curies (6.16 grams) per device or 200 curies (61.6 grams) per year to any one country.

(4) Neptunium–237 in individual shipments of less than 1 gram, not to exceed 10 grams per year to any one country.

(5) Tritium in any dispersed form (e.g., luminescent light sources and paint, accelerator targets, calibration standards, labeled compounds) in quantities of 10 curies (1.03 milligrams) or less per item, not to exceed 1,000 curies (103 milligrams) per shipment or 10,000 curies (1.03 grams) per year to any one country. This general license does not authorize exports for tritium recovery or recycle purposes.

(6) Tritium in luminescent safety devices installed in aircraft when in quantities of 40 curies (4.12 milligrams) or less per light source.

(b) A general license is issued to any person to export to the countries listed in § 110.30 tritium in any dispersed form (e.g., luminescent light sources and paint, accelerator targets, calibration standards, labeled compounds) in quantities of 40 curies (4.12 milligrams) or less per item, not to exceed 1,000 curies (103 milligrams) per shipment or 10,000 curies (1.03 grams) per year to any one country. This general license does not authorize exports for tritium recovery or recycle purposes.

(c) A general license is issued to any person to export to the countries listed in § 110.30 actinium–225, actinium–227, californium–248, californium–250, californium–252, curium–240, curium–241, curium–242, curium–243, curium–244, einsteinium–252, einsteinium–253, einsteinium–254, einsteinium–255, fermium–257, gadolinium–148, mendelevium–258, polonium–208, polonium–209, polonium–210, and radium–223, except that polonium–210 when contained in static eliminators must not exceed 100 curies (22 grams) per individual shipment.

§ 110.29 [Amended]

9. In § 110.29 remove footnote 1 and the countries of "Argentina", "Brazil", and "Chile".

§§ 110.30 and 110.31 [Redesignated]

10. Sections 110.30 and 110.31 are redesignated as § 110.31 and § 110.32.

11. A new § 110.30 is added to read as follows:

§ 110.30 Members of the Nuclear Suppliers Group.

Argentina
Australia
Austria
Belgium
Bulgaria
Canada
Czech Republic
Denmark
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Japan
Luxembourg
Netherlands
Norway
Poland
Portugal
Romania
Russia
Slovak Republic
Spain
Sweden
Switzerland
United Kingdom

§ 110.31 [Amended]

12. In § 110.31, paragraph (a), remove the words "Assistant Director for Exports, Security, and Safety Cooperation", and add in their place the words "Director for Nonproliferation, Exports, and Multilateral Relations", paragraph (d), the reference to "§ 110.31" is revised to read "§ 110.32".

13. In § 110.43, paragraph (a) is revised to read as follows:

§ 110.43 Physical security standards.

(a) Physical security measures in recipient countries must provide protection at least comparable to the recommendations in the current version of IAEA publication INFCIRC/225/Rev.2, December 1989, "The Physical Protection of Nuclear Material," and is incorporated by reference in this part. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Notice of any changes made to the material incorporated by reference will be published in the **Federal Register**. Copies of INFCIRC/225/Rev.2 may be obtained from the Director for Nonproliferation, Exports, and Multilateral Relations, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and are available for inspection at the NRC library, 11545 Rockville Pike, Rockville, Maryland 20852–2738. A copy is available for inspection at the library of the Office of the Federal Register, 800 N. Capitol Street, NW., suite 700, Washington, DC.

* * * * *

§ 110.50 [Amended]

14. In § 110.50, paragraph (b)(3), sentences one, two, and three, remove the words "Assistant Director for Exports, Security, and Safety Cooperation", and add in their place the words "Director for Nonproliferation, Exports, and Multilateral Relations".

Appendix F—[Amended]

15. Appendix F to Part 110 is amended to add, in alphabetical order, curium-240 (Cm-240), curium-241, (Cm-241) einsteinium-252 (Es-252), einsteinium-253 (Es-253), einsteinium-254 (Es-254), einsteinium-255 (Es-255), fermium-257 (Fm-257), gadolinium-148 (Gd-148), and mendelevium-258 (Md-258).

Dated in Rockville, Maryland, this 16th day of September, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission

[FR Doc. 94–23464 Filed 9–23–94, 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Parts 22 and 51

[PN 2083]

Fee for Expedited Passport Processing

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Interim final rule with request for comment.

SUMMARY: This rule amends the Schedule of Consular Fees and the passport regulations to reflect that an additional fee will be charged within the United States for expediting the processing of passports. The service will be provided upon payment of the fee when requested by the applicant and justified by urgent departure plans.

The rule establishes what service is provided for the fee; establishes when the fee will be charged; sets the amount of the fee; establishes the documentation the applicant will need to present to obtain the service; defines the limited situations when the fee will not be charged; provides for a refund when expedited services cannot be given; and provides that the after hours surcharge for consular services will not be charged within the United States.

DATES: Effective Date: October 1, 1994.

Comments: Interested persons are invited to submit written comments on or before November 1, 1994.

ADDRESSES: Director, Office of Passport Policy and Advisory Services, 1111–19th Street NW., Washington, DC 20522–1705.

FOR FURTHER INFORMATION CONTACT: William B. Wharton, Director, Office of Passport Policy and Advisory Services, 1111–19th Street NW., Washington, DC 20522–1705. Tel. (202) 955–0221.

SUPPLEMENTARY INFORMATION: On August 26, 1994, the President signed into law Public Law 103–317, the Department of State and Related Agencies Appropriations Act, 1995. The Diplomatic and Consular Programs appropriation in this Act provides that "all receipts received from a new charge from expedited passport processing" shall, in effect, be retained by the Department of State in the "Diplomatic and Consular Programs account" and available until expended. See S. Rept. 103–309, at 123 (July 14, 1994).

To utilize this new fee retention authority consistent with congressional intent, the Department of State is, in this rule, establishing a new fee for expedited passport processing. The Department already has specific authority to establish passport fees under 22 U.S.C. 214, as amended (which normally requires that fees be collected into the U.S. Treasury). The Department also is authorized to establish fees for passport related services under 31 U.S.C. 9701, a reference to which is being added to the authorities section of 22 CFR part 51.

Public Law 103–317 authorizes the Department to retain the new fee for expedited passport processing.

The Schedule of Fees for Consular Services, 22 CFR 22.1 is amended to add Item 14, Passport Expedite Fee and to limit the application of the after hours fee, Item 93, to posts abroad. The after-hours fee has been used domestically only in cases where passport agencies were open after hours to process urgent passport requests. These costs will now be subsumed in the expedited processing fee. 22 CFR part 51 is amended to add section 51.67 to provide for the expedited processing of a passport within the United States upon payment of the passport expedite fee. Section 51.64(f) is added to provide for a refund of the expedite fee when the expedited service is not, in fact, provided.

The new fee will be in addition to any other applicable fee. The expedite fee will not cover the cost of urgent mailing fees, if required.

The new fee is being set at $30.00, consistent with the Department's consultations with Congress before Public Law 103–317 was enacted. This fee will ensure that the costs of processing passports on an expedited basis, as reflected in the Department's 1991 consular fees cost study, are borne by those who receive that service and that the Department recovers additional costs associated with implementing this fee and eliminating the separate charge for overtime work. (As noted by Congress, for example, up to 60% more time is required to process a passport application on an expedited basis than to provide normal processing services.)

If expedited processing is granted, the Department, through the Passport Agencies, will undertake to process the passport within three business days. The expedited service covered by the new fee begins when the application is received by a Passport Agency through personal delivery; by mail; or, if the application is already at an Agency, when the request to expedite is approved. If the applicant's planned departure is within fewer than three days, the Passport Agency may be able to accommodate this shorter period.

There will be situations in which expedited passport processing cannot be completed within three days. Such circumstances could include cases in which the applicant does not submit adequate documentation; the applicant is the subject of an unresolved civil or criminal law enforcement matter; or, passport equipment breaks down. The Department expects that these situations will be very rare. In such circumstances, the applicant will be notified and the fee will be refunded.

The rule provides for waiver of the expedite fee in cases where the need for expedited processing results from a mistake by the Department in processing the application. No waiver of the fee will otherwise be made.

To ensure that expedited processing is used only by those who have urgent travel plans, the regulation requires a person requesting this service to provide confirmed tickets or an itinerary showing his or her imminent departure in less than ten days or showing special visa needs.

This rule takes effect on October 1, 1994, the beginning of Fiscal Year 1995, the fiscal year covered by Public Law 103–317. The implementation of this rule as an interim final rule with provision for post-promulgation comments is based upon the "good cause" exception found at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Delay in implementing this provision of Public Law 103–317 would be contrary to congressional expectations that the Department will begin collection of this fee at the beginning of FY 1995.

This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith. This rule is exempt from review under E.O. 12866, but has been reviewed internally by the Department to ensure consistency with the objectives thereof.

List of Subjects in 22 CFR Part 22 and Part 51

Passports and visas, Schedule of fees for consular services.

PART 22—[AMENDED]

For the reasons set forth in the preamble, 22 CFR is amended as follows:

1. The authority citation for Part 22 is revised to read as follows:

Authority: Secs. 3, 4, 63 Stat. 111, as amended; 22 U.S.C. 211a, 214; 2651, 2658, 3921, 4219; 31 U.S.C. 9701; Title V, Pub. L. 103–317, 108 Stat. 1724; E.O. 10718, 3 CFR, 1954–1958 Comp., p. 382; E.O. 11295, 3 CFR, 1966–1970 Comp., p. 570, unless otherwise noted.

2. Section 22.1 is amended by adding Item 14 under "Passport and Citizenship Services" to read as follows:

§ 22.1 Schedule of fees.

Item No.	Fee

* * * * *

14. Expedited Passport Processing Within the United States—30.00.

* * * * *

3. Item 93 of § 22.1 is amended by removing the words "in the United States or"; by removing the comma and inserting the word "or" between "Consul General" and "the supervising consular officer"; and, by removing the words "or the Passport Agency Director".

4. The authority citation for Part 51 is revised to read as follows:

Authority: 22 U.S.C. 211a, as amended; 22 U.S.C. 2658, 3926; sec. 122(d)(3), Pub. L. 98–164, 97 Stat. 1017; 31 U.S.C. 9701; E.O. 11295, 3 CFR, 1966–1970 Comp., p. 570; Pub. L. 100–690; sec. 129, Pub. L. 102–138, 105 Stat. 661; sec. 503, Pub. L. 102–140, 105 Stat. 820; Title V, Pub. L. 103–317, 108 Stat. 1724, unless otherwise noted.

5. Section 51.64 is amended by adding paragraph (f) to read as follows:

§ 51.64 Refunds.

* * * * *

(f) The passport expedite fee will be refunded if the Passport Agency does

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not provide the requested expedited processing as defined in § 51.67.

6. Section 51.67 is added, to read as follows:

§ 51.67 Expedited passport processing.

(a) Within the United States, an applicant for a passport service (including issuance, amendment, extension or the addition of visa pages) may request expedited processing by a Passport Agency.

(b) Expedited passport processing shall mean completing processing within 3-business days commencing when the application reaches a Passport Agency or, if the application is already with a Passport Agency, commencing when the request for expedited processing is approved. The processing will be considered completed when the passport is ready to be picked up by the applicant or is mailed to the applicant.

(c) The fee for expedited service is $30.00. This amount will be in addition to any other applicable fee and does not include urgent mailing costs, if any.

(d) A request for expedited processing normally will be accepted only if the applicant can document urgent departure with airline tickets showing confirmed reservation or similar evidence. The Passport Agency may decline to accept the request if it is apparent at the time it is made that the request cannot be granted.

(e) The expedite fee may be waived only where the need for expedited processing was necessary due to Department error, mistake or delay.

Dated: September 16, 1994.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 94-23717 Filed 9-23-94; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 220

RIN 0790-AF63

Collection From Third Party Payers of Reasonable Costs of Healthcare Services

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule replaces the current method of per diem billings to one based on diagnostic related groups, expands the single outpatient billing category to as many as sixty, and expands the billing for outpatient services to include land ambulance service, air ambulance service and hyperbaric services. This final rule improves billing methods for both inpatient and outpatient care. This expansion creates a greater level of specificity which more accurately reflects the cost of the care provided. In addition, this final rule identifies additional outpatient services for which recovery of costs will be sought.

EFFECTIVE DATE: This final rule is effective on October 26, 1994.

FOR FURTHER INFORMATION CONTACT: LCDR Patrick Kelly, (703) 756-8910.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted 10 U.S.C. 1095 as part of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, § 2001(a)(1), to permit the Department of Defense to collect from third party payers reasonable inpatient hospital care costs incurred on behalf of most DoD health care beneficiaries. To implement this statute, the Department of Defense issued a proposed rule October 8, 1986, and a final rule September 25, 1987. The final rule has been amended several times since 1987, most recently on September 9, 1992, (57 CFR 41096). That rule changed the unified per diem rate for inpatient care to a set of 12 clinical group per diem rates. It also implemented authority to bill for outpatient services by establishing a single per visit rate for most outpatient services.

II. Provisions of the Final Rule

A. Inpatient Services

In October 1992, the Department of Defense began a transition from the traditional single rate for reimbursement for various healthcare services to multiple rates reflective of the clinical care provided. The multiple rates result in charges that more closely approximate the actual costs of delivering specific categories of medical services, such as surgical care, obstetrical care, pediatric care, etc. The rates are based on the actual costs of rendering healthcare services as reflected in the Medical Expense and Performance Reporting System (MEPRS).

This rule changes paragraph 220.8(c) by replacing the current twelve billing categories with a billing method based on diagnostic related groups (DRGs), as specifically authorized by 10 U.S.C. 1095(f)(3). The DRG-based method for determining reasonable costs of inpatient care will produce more accurate and equitable billings. Billings will more accurately reflect the costs associated with the actual services provided. This rule models the DRG-based cost methodology, the basis for the DRG-based payment system for hospital care under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). However, in some respects, this rule simplifies CHAMPUS methods, with authority to introduce the additional refinements at a later date.

For example, initially this rule uses a single national standardized amount, rather than the three standardized amounts (large urban, other urban, and rural) used by CHAMPUS. The three amounts do not differ significantly and are probably not as relevant in connection with a unified federal hospital system, such as DoD's. However, the rule allows us to adopt the multiple standardized amounts at a later date.

The standardized amount is the result of dividing total system-wide costs of inpatient care by the total number of discharges system-wide. With respect to DRG relative weights, this rule uses the same weights as are used for the CHAMPUS DRG-based payment method. The CHAMPUS weights were calculated from a data base of actual CHAMPUS claims filed by civilian hospitals. Because the patient population under military treatment facilities and CHAMPUS are quite similar, we believe it is appropriate to use the same weights.

The CHAMPUS DRG-based payment method uses a number of adjustments to the product of standardized amount multiplied by the relative weight of the appropriate DRG. The adjustments relate to outlier cases, area wage differences and indirect medical education. Initially, this rule does not use these adjustments, but allows all related costs to be reflected in the standardized amount. This approach has the advantage of simplicity and predictability for payers. However, the final rule allows these adjustments to be introduced at a later date.

In accordance with current practice, the standard DRG-based rate is divided into two categories: Hospital charges, which includes ancillary charges, and Professional charges.

The effective date for implementation of a multiple rate schedule will be the effective date of this rule, barring unforeseen difficulties in automation support. The specific rates will be published in the **Federal Register**.

B. Outpatient Services

As with the inpatient rates, the outpatient rates are based on the actual costs of rendering healthcare services as reflected in the Medical Expense and Performance Reporting System (MEPRS). MEPRS is the standard expense reporting system for all fixed medical treatment facilities (MTFs) within the Department of Defense (DoD) and is the accepted source of healthcare information for Congress and offices and agencies of the Executive Branch. The reimbursement categories are selected based on board certified specialties/subspecialties widely accepted by graduate medical accrediting organizations such as the Accreditation Council for Graduate Medical Education (ACGME) or the American Board of Medical Specialties (ABMS).

Rates are established but need not be limited to each of the following clinical reimbursement categories: Internal Medicine, Allergy, Cardiology, Diabetic, Endocrinology, Gastroenterology, Hematology, Hypertension, Nephrology, Neurology, Nutrition, Oncology, Pulmonary Disease, Rheumatology, Dermatology, Infectious Disease, Physical Medicine, General Surgery, Cardiovascular and Thoracic Surgery, Neurosurgery, Ophthalmology, Organ Transplant, Otolaryngology, Plastic Surgery, Proctology, Urology, Pediatric Surgery, Family Planning, Obstetrics, Gynecology, Pediatrics, Adolescent Pediatrics, Well Baby, Orthopaedics, Cast, Orthotic Laboratory, Hand Surgery, Podiatry, Psychiatry, Psychology, Child Guidance, Mental Health, Social Work, Substance Abuse Rehabilitation, Family Practice, and Occupational and Physical Therapy. This rule does not necessarily establish a separate rate for each of these clinical reimbursement categories. Similar categories may be combined for purposes of billing.

Another revision to section 220.8 involves the expansion of a single outpatient rate to multiple reimbursement category rates similar to that for inpatient care. The Department of Defense adopts a methodology for computing rates for outpatient care similar to that used for computing multiple rates for inpatient care. Thus, collections for most outpatient services will be based on a standard per visit fee to a specialty/subspecialty which is representative of the average cost in facilities of the Uniformed Services of an outpatient visit to that specialty clinic. Multiple outpatient visits on the same day to different clinics will result in one charge for each clinic visit. Multiple visits on the same day to the same clinic will result in only one charge. As a general rule, each standard per visit amount to the specialty/subspecialty clinic will be all-inclusive. No additional charge will be made for routine laboratory, radiology, pharmacy or other ancillary or overhead services provided in conjunction with an outpatient visit.

Although most outpatient services will be billed based on the standard per visit fee for a specialty/subspecialty, there are several special rules for particular types of care. One special rule is that a separate charge for same day/ambulatory surgery will be published annually.

The effective date of the expanded number of billing categories is targeted for October 1, 1994. The specific rates will be published in the **Federal Register**.

C. Miscellaneous Healthcare Services

Initial implementation of the Third Party Collection Program was somewhat limited in scope and concentrated on inpatient and ambulatory care areas. This final rule expands the program to include outpatient services which may not traditionally be provided in hospitals or which are not traditional clinical specialties or subspecialties. This includes, but is not limited to, ambulance service, hyperbaric treatments, dental care services and immunizations. We intend to recover the cost of these services to the extent they are generally applicable coverage provisions of a third party payer.

We intend to recover the cost of ambulance service which includes the cost of providing emergency aid and then transportation of beneficiaries to a medical treatment facility. It would also include the transport of patients to other medical facilities or to specialized clinics for diagnostic or therapeutic services which is frequently necessary. We intend to recover costs on the basis of the length of time the ambulance is in service with one hour to be the minimum amount billed. The reimbursement rates for ambulance care will only cover the costs of operating the vehicle, including labor costs (driver and attendant), supplies, fuel, and overhead.

We intend to recover the cost of hyperbaric treatments provided to beneficiaries as part of a course of treatment. For example, high pressure oxygenation treatments, burn treatments and decompression treatments in response to diving incidents are frequently provided. We only intend to recover the cost of providing these treatments which includes the operating cost of the chamber, i.e., labor costs, (operators and attending medical personnel), supplies, and overhead. We do not intend to include amortization of either the actual or replacement cost of the hyperbaric chamber or the building.

Dental services are provided to beneficiaries on a space available basis and in remote locations. Dental services may include oral diagnosis and prevention, periodontics, prosthodontics (fixed and removable), implantology, oral surgery, orthodontics, pediatric dentistry and endodontics.

The Department also provides a wide range of immunizations to Military Health Service beneficiaries, including immunizations against common childhood diseases such as measles, smallpox and diphtheria and regional endemic diseases such as yellow fever, plague and cholera. We also administer a variety of medications and test beneficiaries for allergic conditions. Immunizations costs are not included as part of the reimbursement rates for either inpatient or ambulatory care. We intend to seek reimbursement for immunizations against childhood diseases and diseases characteristic of the United States and its Territories. We will also seek reimbursement for the administration of all medications or allergy extracts, when the medication or extract is purchased by the medical treatment facility, and for the testing for allergic conditions. We do not intend to seek recovery for immunizations administered incident to overseas travel or transfer, or for those medications purchased by the beneficiary and simply administered at the medical treatment facility. The reimbursement rate shall be based on the average fully burdened cost of an immunization and a separate charge shall be applied for each immunization which is administered.

D. Other Revisions

We received one public comment on the proposed rule. It was from a group of organizations who objected to the provision in the proposed rule concerning PRIMUS and NAVCARE clinics. In the proposed rule, we proposed to eliminate from the Third Party Collection Program regulation the special rule regarding PRIMUS and NAVCARE clinics, which are contractor owned, contractor operated freestanding clinics under contract with DoD. Under special demonstration program authority, these clinics have functioned under rules applicable to military medical treatment facilities, including Third Party Collection program rules. With the conclusion of the demonstration project, these clinics are no longer authorized to bill third party payers under the authority of 10 U.S.C. 1095 (but will continue to bill under other authority). Therefore, the change set forth in the proposed rule is necessary, and has been included in the final rule.

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The organizations who objected to this proposed change did so on the belief that this would terminate features of PRIMUS and NAVCARE clinics that they strongly support, including access to primary care visits without deductible or copayment requirements, and eligibility for military beneficiaries who are not CHAMPUS eligible (such as active duty members and Medicare-eligible beneficiaries). These organizations can be assured that the adoption of this final rule has no impact on those aspects of the PRIMUS/NAVCARE program.

We have added one other revision to the regulation, a technical correction to section 220.8(d), which had incorrectly referred to paragraph (j) concerning a matter for which paragraph (k) is the appropriate reference.

III. Regulatory Procedures

This final rule is not a significant regulatory action under Executive Order 12866. It will not have an impact of $100 million or other significant economic impacts. Similarly, the rule does not significantly affect a substantial number of small entities within the meaning of the Regulatory Flexibility Act. As stated above, for the most part, this final rule simply incorporates into the third party collection program regulation more precise cost calculation methods. In addition, this rule does not impose new information collection requirements for purposes of the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 220

Claims, Health care, Health insurance.

For the reasons stated in the preamble, 32 CFR Part 220 is amended as follows:

PART 220—COLLECTION FROM THIRD PARTY PAYERS OF REASONABLE COSTS OF HEALTHCARE SERVICES

1. The authority citation for part 220 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 1095.

2. Section 220.8 is amended by revising paragraph (a), the heading and first sentence of paragraph (c), and paragraphs (d), (e), (g), (h), (i), (k) and (l) as follows:

§ 220.8 Reasonable costs.

(a) *Diagnosis related group (DRG)-based method for calculating reasonable costs for inpatient services.*

(1) *In general.* As authorized by 10 U.S.C. 1095(f)(3), the calculation of reasonable costs for purposes of collections for inpatient hospital care under 10 U.S.C. 1095 and this part shall be based on diagnosis related groups (DRGs). Costs shall be based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal diagnosis involved. The average cost per case shall be published annually as an inpatient standardized amount. A relative weight for each DRG shall be the same as the DRG weights published annually for hospital reimbursement rates under the Civilian Health and Medicare Program of the Uniformed Services (CHAMPUS) pursuant to 32 CFR 199.14(a)(1).

(2) *Standardized amount.* The standardized amount shall be determined by dividing the total costs of all inpatient care in all military medical treatment facilities by the total number of discharges. This will produce a single national standardized amount. The Department of Defense is authorized, but not required by this part to calculate three standardized amounts, one each for large urban areas, other urban areas, and rural areas, utilizing the same distinctions in identifying those areas as is used for CHAMPUS under 32 CFR 199.14(a)(1).

(3) *DRG relative weights.* Costs for each DRG will be determined by multiplying the standardized amount per discharge by the DRG relative weight. For this purpose, the DRG relative weights used for CHAMPUS pursuant to 32 CFR 199.14(a)(1) shall be used.

(4) *Adjustments for outliers, area wages, and indirect medical education.* The Department of Defense may, but is not required by this part, to adjust cost determinations in particular cases for length-of-stay outliers (long stay and short stay), cost outliers, area wage rates, and indirect medical education. If any such adjustments are used, the method shall be comparable to that used for CHAMPUS hospital reimbursements pursuant to 32 CFR 199.14(a)(1)(iii)(E), and the calculation of the standardized amount under paragraph (a)(2) of this section will reflect that such adjustments will be used.

(5) *Identification of professional and hospital costs.* For purposes of billing third party payers other that automobile liability and no-fault insurance carriers, inpatient billings will be subdivided into two categories:

(i) Hospital charges (which refers to routine service charges associated with the hospital stay and ancillary charges).

(ii) Professional charges (which refers to professional services provided by physicians and certain other providers).

(6) Outpatient billings will continue to be subdivided into three categories:

(i) Hospital charges (which refers to routine service charges associated with the outpatient visit).

(ii) Professional charges (which refers to professional services provided by physicians and certain other providers).

(iii) Ancillary charges (which refers to diagnostic and treatment services, other than professional services, provided by components of the hospital in connection with the outpatient visit).

* * * * *

(c) *Clinical groups per diem rates for care provided on or after October 1, 1992, and prior to October 1, 1994.* For inpatient hospital care provided on or after October 1, 1992, and prior to October 1, 1994, the computation of reasonable costs shall be based on the per diem full reimbursement rate applicable to the clinical category of services involved. * * *

* * * * *

(d) *Medical services and subsistence charges included.* Medical services charges pursuant to 10 U.S.C. 1078 or subsistence charges pursuant to 10 U.S.C. 1075 are included in the claim filed with the third party payer pursuant to 10 U.S.C. 1095. For any patient of a facility of the Uniformed Services who indicates that he or she is a beneficiary of a third party payer plan, the usual medical services or subsistence charge will not be collected from the patient to the extent that payment received from the payer exceeds the medical services or subsistence charge. Thus, except in cases covered by section 220.8(k), payment of the claim made pursuant to 10 U.S.C. 1095 which exceeds the medical services or subsistence charge, will satisfy all of the third party payer's obligation arising from the inpatient hospital care provided by the facility of the Uniformed Services on that occasion.

(e) *Per visit rates.*

(1) As authorized by 10 U.S.C. 1095(f)(2), the computation of reasonable costs for purposes of collections for most outpatient services shall be based on a per visit rate for a clinical specialty or subspecialty. The per visit charge shall be equal to the outpatient full reimbursement rate for that clinical specialty or subspecialty and includes all routine ancillary services. A separate charge will be calculated for cases that are considered same day/ambulatory surgeries. These rates shall be updated and published annually. As with inpatient billing categories, clinical groups representing selected board certified specialties/subspecialties widely accepted by graduate medical accrediting organizations such as the Accreditation Council for Graduate Medical Education (ACGME) or the American Board of Medical Specialties will be used for ambulatory billing categories. Related clinical groups may be combined for purposes of billing categories.

(2) The following clinical reimbursement categories are representative, but not all-inclusive of the billing category clinical groups referred to in paragraph (e)(1) of this section: Internal Medicine, Allergy, Cardiology, Diabetic, Endocrinology, Gastroenterology, Hematology, Hypertension, Nephrology, Neurology, Nutrition, Oncology, Pulmonary Disease, Rheumatology, Dermatology, Infectious Disease, Physical Medicine, General Surgery, Cardiovascular and Thoracic Surgery, Neurosurgery, Ophthalmology, Organ Transplant, Otolaryngology, Plastic Surgery, Proctology, Urology, Pediatric Surgery, Family Planning, Obstetrics, Gynecology, Pediatrics, Adolescent Pediatrics, Well Baby, Orthopaedics, Cast, Orthotic Laboratory, Hand Surgery, Podiatry, Psychiatry, Psychology, Child Guidance, Mental Health, Social Work, Substance Abuse Rehabilitation, Family Practice, and Occupational and Physical Therapy.

* * * * *

(g) *Special rule for services ordered and paid for by a facility of the Uniformed Services but provided by another provider.* In cases where a facility of the Uniformed Services purchases ancillary services or procedures, from a source other than a Uniformed Services facility, the cost of the purchased services will be added to the standard rate. Examples of ancillary services and other procedures covered by this special rule include (but are not limited to): laboratory, radiology, pharmacy, pulmonary function, cardiac catheterization, hemodialysis, hyperbaric medicine, electrocardiography, electroencephalography, electroneuromyography, pulmonary function, inhalation and respiratory therapy and physical therapy services.

(h) *Special rule for certain ancillary services ordered by outside providers and provided by a facility of the Uniformed Services.* If a Uniformed Services facility provides certain ancillary services, prescription drugs or other procedures based on a request from a source other than a Uniformed Services facility and are not incident to any outpatient visit or inpatient services, the reasonable cost will not be based on the usual per diem or per visit rate. Rather, a separate standard rate shall be established based on the cost of the particular high-cost service, drug, or procedure provided. This special rule applies only to services, drugs or procedures having a cost of at least $60. The reasonable cost for the services, drugs or procedures to which this special rule applies shall be calculated and published annually.

(i) *Miscellaneous health care services.* Some outpatient services are provided which may not traditionally be provided in hospitals or which are not traditional clinical specialties or subspecialties. This includes, but is not limited to, land ambulance service, air ambulance service, hyperbaric treatments, dental care services and immunizations.

(1) The charge for ambulance services shall be based on the full costs of operating the ambulance service.

(2) For hyperbaric treatments (such as high pressure oxygenation treatments, burn treatments and decompression treatments in response to diving incidents), charges will be based on the full operating costs of the hyperbaric treatment services.

(3) Charges for dental services (including oral diagnosis and prevention, periodontics, prosthodontics (fixed and removable), implantology, oral surgery, orthodontics, pediatric dentistry and endodontics) will be based on a full cost of the dental services.

(4) The charge for immunizations, allergin extracts, allergic condition tests, and the administration of certain medications when these services are provided in a separate immunizations or shot clinic, will be based on the average full cost of these services, exclusive of any costs considered for purposes of any outpatient visit. A separate charge shall be made for each immunization, injection or medication administered.

* * * * *

(k) *Special rule for partnership program providers.* In cases in which the professional provider services are provided under the Partnership Program (or similar program operated under the authority of 10 U.S.C. 1096), the professional charges component of the total standard rate will be deleted, as applicable, from the claim for the facility of the Uniformed Services. The third party payer will receive a claim for professional services directly from the individual healthcare provider, who is not an employee or agent of the Department of Defense. Such claims are not covered by 10 U.S.C. 1095 or this part, but are governed by statutory and regulatory requirements of the CHAMPUS program (see 32 CFR part 199). The same is true for the professional services provided on an outpatient basis under the Partnership Program.

(l) *Alternative determination of reasonable costs.* Any third party payer that can satisfactorily demonstrate a prevailing rate of payment in the same geographic area for the same or similar aggregate groups of services that is less than the standard rate (or other amount as determined under paragraphs (f) through (k) of this section) of the facility of the Uniformed Services may, with the agreement of the facility of the Uniformed Services (or other authorized representatives of the United States), limit payments under 10 U.S.C. 1095 to that prevailing rate for that aggregate category of services. The determination of the third party payer's prevailing rate shall be based on a review of valid contractual arrangements with other facilities or providers constituting a majority of the services for which payment is made under the third party payer's plan. This paragraph does not apply to cases covered by § 220.11.

* * * * *

3. Section 220.10 is amended by revising paragraph (c)(1)(ii), as follows:

§ 220.10 Special rules for Medicare supplement plans.

* * * * *

(c) * * *

(1) * * *

(ii) Include adjustments, as appropriate, to identify major components of the all inclusive per diem or per visit rates for which Medicare has special rules.

* * * * *

[FR Doc. 94-23465 Filed 9-23-94; 8:45 am]

BILLING CODE 5000-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[TN 132-6436a; FRL-5063-9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This action makes corrections to the final rule published on August 4, 1994 (59 FR 39692). The final rule addressed the attainment status of the Memphis and Shelby County area for Ozone.

EFFECTIVE DATE: This action is effective September 26, 1994.

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FOR FURTHER INFORMATION CONTACT: Karen Borel, Stationary Source Planning Unit, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street NE., Atlanta, GA 30365. The telephone number is 404/347–3555 X4197.

SUPPLEMENTARY INFORMATION:

Background

This correction clarifies language in the preamble, and corrects a typographical error which incorrectly identified Knox County, Tennessee as a "Nonattainment" area. EPA published a rule designating Knox County as "Unclassifiable/ Attainment" for ozone on September 27, 1993 (58 FR 50271), effective October 27, 1993.

Dated: August 22, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

Correction of Publication

Accordingly, the final rule published on August 4, 1994 at 59 FR 39692 is corrected as follows.

1. In the preamble on page 39696, in the first column, paragraph two, line 21, the words "* * * above a de minimis level * * *" are removed. The sentence, as corrected, reads as follows: "Although approval of NO_X increases is a departure from EPA guidance, EPA believes that the emissions projections demonstrate that the area will continue to maintain the O_3 NAAQS because this area achieved attainment through VOC controls and reductions."

§ 81.343 [Corrected]

2. The attainment status designation table for ozone, beginning on page 39697, is corrected to read as follows:

TENNESSEE—OZONE

Designation area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Nashville Area				
Davidson County		Nonattainment		Moderate.
Rutherford County		Nonattainment		Moderate.
Sumner County		Nonattainment		Moderate.
Williamson County		Nonattainment		Moderate.
Wilson County		Nonattainment		Moderate.
Rest of State		Unclassifiable/Attainment		
Anderson County				
Bedford County				
Benton County				
Bledsoe County				
Blount County				
Bradley County				
Campbell County				
Cannon County				
Carroll County				
Carter County				
Cheatham County				
Chester County				
Claiborne County				
Clay County				
Cocke County				
Coffee County				
Crockett County				
Cumberland County				
DeKalb County				
Decatur County				
Dickson County				
Dyer County				
Fayette County				
Fentress County				
Franklin County				
Gibson County				
Giles County				
Grainger County				
Greene County				
Grundy County				
Hamblen County				
Hamilton County				
Hancock County				
Hardeman County				
Hardin County				
Hawkins County				
Haywood County				
Henderson County				
Henry County				
Hickman County				
Houston County				
Humphreys County				
Jackson County				
Jefferson County				
Johnson County				

TENNESSEE—OZONE—Continued

Designation area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Knox County	10/27/93			
Lake County				
Lauderdale County				
Lawrence County				
Lewis County				
Lincoln County				
Loudon County				
Macon County				
Madison County				
Marion County				
Marshall County				
Maury County				
McMinn County				
McNairy County				
Meigs County				
Monroe County				
Montgomery County				
Moore County				
Morgan County				
Obion County				
Overton County				
Perry County				
Pickett County				
Polk County				
Putnam County				
Rhea County				
Roane County				
Robertson County				
Scott County				
Sequatchie County				
Sevier County				
Shelby County	10/3/94			
Smith County				
Stewart County				
Sullivan County				
Tipton County				
Trousdale County				
Unicoi County				
Union County				
Van Buren County				
Warren County				
Washington County				
Wayne County				
Weakley County				
White County				

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 94–23765 Filed 9–23–94; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 112

[SW H–FRL–5078–7]

RIN 2050–AD 30

Oil Pollution Prevention; Non-Transportation-Related Onshore Facilities; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; corrections.

SUMMARY: EPA is making technical corrections to errors in the technical appendices to the final rule for facility response plans required by the Oil Pollution Act (OPA) of 1990, which appeared in the **Federal Register** on July 1, 1994 (59 FR 34070).

EFFECTIVE DATE: August 30, 1994.

FOR FURTHER INFORMATION CONTACT: Bobbie Lively-Diebold, Oil Pollution Response and Abatement Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 at 703–356–8774; the ERNS/SPCC Information line at 202–260–2342; or the RCRA/Superfund Hotline at 800–424–9346 (in the Washington, DC metropolitan area, 703–412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800–553–7672 (in the Washington, DC metropolitan area, 703–412–3323).

SUPPLEMENTARY INFORMATION:

Background

EPA published a final rule in the **Federal Register** on July 1, 1994 (59 FR 34070) revising the Oil Pollution Prevention regulation, 40 CFR part 112, originally promulgated under the Clean Water Act. The revision incorporates new requirements added by the Oil Pollution Act of 1990, 33 U.S.C. 2701 et seq., that direct facility owners and operators to prepare plans for responding to a worst case discharge of oil and to a substantial threat of such a discharge.

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Need for Correction

As published, the final rule contained a number of minor technical errors that may prove to be misleading and are in need of clarification. The reasons for these technical changes (including clarifying section references and correcting minor grammatical errors) are, for the most part, self-evident. None of these changes is intended to effect substantive requirements; they only correct inadvertent errors in the July 1, 1994 final rule and ensure consistency within the Appendices to the final rule, and between them and the regulatory text.

Corrections 7 and 8, while also technical and non-substantive in nature, warrant a brief discussion. To avoid confusion, corrections 7 and 8 are made to clarify that the Emergency Notification Phone List and Spill Response Notification Form are each separate parts of Section 1.3.1 of the overall response plan. Thus, items 2 and 3 of Section 1.1 each call for a partial, inclusion of Section 1.3.1 (item 2 calls for the Emergency Notification Phone List and item 3 calls for the Spill Response Notification Form). Together, items 2 and 3 call for the complete Section 1.3.1. As published, the final rule incorrectly stated that items 2 and 3 each called for the complete Section 1.3.1. This is being corrected to state that each calls for only part of Section 1.3.1.

In addition, an inaccuracy in the summary section of the preamble to the final rule needs to be noted. The U.S Environmental Protection Agency regulates *non*-transportation-related facilities under sections 311(j)(1)(C) and 311(j)(5) of the CWA as delegated by Executive Order 12777. The preamble language in one instance incorrectly and inadvertently indicated that the Oil Pollution Prevention regulation applied to transportation-related facilities.

Correction of Publication

PART 112—[CORRECTED]

Accordingly, the final rule is corrected as follows:

1. On page 34110, in the third column, in the first paragraph under section A.2.3, in line 7, "A2(b)" is corrected to read "A.2.2".

2. On page 34111, in the first column, in the first paragraph under section B.2.3, in line 9, "B2(b)" is corrected to read "B.2.2".

3. On page 34112, in the first column, in section 1.2.8, the text which reads "Other definitions are included in § 112.2, section 1.2 of Appendices C and E, and section 3.0 of Appendix F" is corrected to read "Other definitions are included in § 112.2 and section 1.1 of Appendix C".

4. On page 34112, in the third column, in section 4.3, in line 9, the text which reads "section 1.2" is corrected to read "section 1.1".

5. On page 34114, in the third column, in section 7.3, in line 4, the text which reads "for Groups 1" is corrected to read "for Group 1".

6. On page 34115, in the first column, in section 7.4, in line 4, the text which reads "for a facility" is deleted.

7. On page 34124, in the first column, in section 1.1, in item 2, the word "complete" is corrected to read "partial".

8. On page 34124, in the first column, in section 1.1, in item 3, the word "complete" is corrected to read "partial".

9. On page 34135, in the second column, in the heading for section 2.1, the text which reads "Page One—General Information" is corrected to read "General Information".

10. On page 34135, in the second column, in the heading for section 2.2, the text which reads "Page Two—Applicability of Substantial Harm Criteria" is corrected to read "Applicability of Substantial Harm Criteria".

11. On page 34135, in the third column, in the heading for section 2.3, the text which reads "Page Three—Certification" is corrected to read "Certification".

Authority: 33 U.S.C. 1321 and 1361; E.O. 12777 (October 18, 1991), 3 CFR, 1991 comp., p. 351

Dated: September 19, 1994

Elliott P. Laws,

Assistant Administrator.

[FR Doc. 94-23764 Filed 9-23-94; 8:45 am]

BILLING CODE 6560-60-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-140; DA 94-1013]

Revision of Radio Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction of rule and confirmation of effective date.

SUMMARY: This *Order* confirms that the stay of certain changes to the FCC's multiple ownership rule was lifted on September 16, 1992, and reprints the corrected rule in its entirety. The Mass Media Bureau takes this action to ensure that the correct version of the rule is printed in the Code of Federal Regulations. Because the stay was lifted in an ordering clause to a Commission document but not in the Federal Register summary associated with that document, the lifting of the stay was not recognized by the Federal Register. As a result, the rule is currently printed in the Code of Federal Regulations as if the stay was still in effect. This *Order* is intended solely to correct the outdated version of the multiple ownership rule; no substantive rule changes have been made.

EFFECTIVE DATE: September 26, 1994.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley Halprin, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Order

Adopted: September 15, 1994
Released: September 19, 1994

In the Matter of: Revision of Radio Rules and Policies.

By the Acting Chief, Mass Media Bureau:

1. In its *Report and Order* in MM Docket No. 91-140, 7 FCC Rcd 2755 (1992), 57 FR 18089 (April 29, 1992), the Commission amended 47 CFR 73.3555. The effective date of the changes adopted in the *Report and Order* was subsequently deferred pending resolution of petitions for reconsideration. *Order Deferring Effective Date* in MM Docket No. 91-140, FCC 92-351 (released July 30, 1992), 57 FR 35763 (Aug. 11, 1992). The stay of the effective date was lifted by *Memorandum Opinion and Order* in MM Docket No. 91-140, 7 FCC Rcd 6387 (1992), 57 FR 42701 (September 16, 1992). Because the stay was lifted in an ordering clause to the document rather than in the Appendix that contained the modified rules, the lifting of the stay was not picked up by the Federal Register. As a result, the rule is currently printed in the Code of Federal Regulations as if the stay was still in effect.

2. This *Order* is intended solely to correct the outdated version of Section 73.3555 currently printed in the Code of Federal Regulations. No substantive changes have been made to the rules; notice and comment are therefore unnecessary. *See* 5 U.S.C. 553(b)(3). The correct version of § 73.3555 is printed in its entirety below.

3. Accordingly, it is ordered that 47 CFR § 73.3555 is amended as set forth below.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Renee Licht,

Acting Chief, Mass Media Bureau.

Rule Changes

Part 73 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 73—RADIO BROADCAST SERVICES

1. The Authority Citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334.

2. The stay of the effective date of § 73.3555 was lifted by publication of a *Memorandum Opinion and Order* in MM Docket No. 91-140 in the **Federal Register** at 57 FR 42701 (September 16, 1992), and § 73.3555 is revised to read as follows:

§ 73.3555 Multiple ownership.

(a)(1) *Radio contour overlap rule.* No license for an AM or FM broadcasting station shall be granted to any party (including all parties under common control) if the grant of such license will result in overlap of the principal community contour of that station and the principal community contour of any other broadcasting station directly or indirectly owned, operated, or controlled by the same party, except that such license may be granted in connection with a transfer or assignment from an existing party with such interests, or in the following circumstances:

(i) In radio markets with 14 or fewer commercial radio stations, a party may own up to 3 commercial radio stations, no more than 2 of which are in the same service (AM or FM), provided that the owned stations, if other than a single AM and FM station combination, represent less than 50 percent of the stations in the market.

(ii) In radio markets with 15 or more commercial radio stations, a party may own up to 2 AM and 2 FM commercial stations, provided, however, that evidence that grant of any application will result in a combined audience share exceeding 25 percent will be considered *primo facie* inconsistent with the public interest.

Note to paragraph (a)(1)(ii): When evaluating audience share evidence submitted under § 73.3555(a)(1)(ii), the Commission will consider data that eliminates statistical anomalies, provides a better focused survey area or includes revenue data or other relevant information. Where applicants certify that they do not have readily available audience share data, they may substitute other information that can serve as a proxy for such data. *See Memorandum Opinion and Order* in MM Docket No. 91-140, 7 FCC Rcd 6387 (1992), 57 FR 42701 (Sept. 16, 1992).

(iii) Overlap between two stations in different services is permissible if neither of those two stations overlaps a third station in the same service.

(2)(i) Where the principal community contours of two radio stations overlap and a party (including all parties under common control) with an attributable ownership interest in one such station brokers more than 15 percent of the broadcast time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraphs (a) and (e) of this section. This limitation shall apply regardless of the source of the brokered programming supplied by the party to the brokered station.

(ii) Every time brokerage agreement of the type described in paragraph (a)(2)(i) of this section shall be undertaken only pursuant to a signed written agreement that shall contain a certification by the licensee or permittee of the brokered station verifying that it maintains ultimate control over the station's facilities, including specifically control over station finances, personnel and programming, and by the brokering station that the agreement complies with the provisions of paragraphs (a)(1) and (e)(1) of this section.

(iii) Any party operating in conflict with the requirements of paragraph (a)(2)(ii) of this section on September 16, 1992 shall come into compliance within one year thereafter.

(3) For purposes of this paragraph:

(i) The "principal community contour" for AM stations is the predicted or measured 5 mV/m groundwave contour computed in accordance with § 73.183 or § 73.186 and for FM stations is the predicted 3.16 mV/m contour computed in accordance with § 73.313.

(ii) The number of stations in a radio market is the number of commercial stations whose principal community contours overlap, in whole or in part, with the principal community contours of the stations in question (*i.e.*, the station for which an authorization is sought and any station in the same service that would be commonly owned whose principal community contour overlaps the principal community contour of that station). In addition, if the area of overlap between the stations in question is overlapped by the principal community contour of a commonly owned station or stations in a different service (AM or FM), the number of stations in the market includes stations whose principal community contours overlap the principal community contours of such commonly owned station or stations in a different service.

(iii) A station's "audience share" is the average number of persons age 12 or older on an average quarter hour basis, Monday-Sunday, 6 a.m.-midnight, who listen to the station, expressed as a percentage of the average number of persons listening to AM and FM stations in that radio metro market or a recognized equivalent, in which a majority of the overlap between the stations in question takes place. The "combined audience share" is the total audience share of all AM or FM stations that would be under common ownership or control following a proposed acquisition. In situations where no metro market or recognized equivalent exists, the relevant audience share data are the data for all counties that are within the principal community contours of the stations in question, in whole or in part.

(iv) "Time brokerage" is the sale by a licensee of discrete blocks of time to a "broker" that supplies the programming to fill that time and sells the commercial spot announcements in it.

(b) *Television contour overlap (duopoly) rule.* No license for a TV broadcast station shall be granted to any party (including all parties under common control) if the grant of such license will result in overlap of the Grade B contour of that station (computed in accordance with § 73.684) and the Grade B contour of any other TV broadcast station directly or indirectly owned, operated, or controlled by the same party.

(c) *One-to-a-market ownership rule.* No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls one or more such broadcast stations and the grant of such license will result in:

(1) The predicted or measured 2 mV/m groundwave contour of an existing or proposed AM station, computed in accordance with § 73.183 or § 73.186, encompassing the entire community of license of an existing or proposed TV broadcast station(s), or the Grade A contour(s) of the TV broadcast station(s), computed in accordance with § 73.684, encompassing the entire community of license of the AM station; or

(2) The predicted 1 mV/m contour of an existing or proposed FM station, computed in accordance with § 73.313, encompassing the entire community of

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license of an existing or proposed TV broadcast station(s), or the Grade A contour(s) of the TV broadcast station(s), computed in accordance with § 73.684, encompassing the entire community of license of the FM station.

(d) *Daily newspaper cross-ownership rule.* No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in:

(1) The predicted or measured 2 mV/m contour of an AM station, computed in accordance with § 73.183 or § 73.186, encompassing the entire community in which such newspaper is published; or

(2) The predicted 1 mV/m contour for an FM station, computed in accordance with § 73.313, encompassing the entire community in which such newspaper is published; or

(3) The Grade A contour of a TV station, computed in accordance with § 73.684, encompassing the entire community in which such newspaper is published.

(e)(1) *National multiple ownership rule.* No license for a commercial AM, FM or TV broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors, directly or indirectly, owning, operating or controlling, or having a cognizable interest in:

(i) More than 18 AM or more than 18 FM stations, or more than 20 AM or more than 20 FM stations two years after the effective date of this rule, provided, however, that an entity may have an attributable but noncontrolling interest in an additional 3 AM and 3 FM stations that are small business controlled or minority-controlled;

(ii) More than 14 television stations; or

(iii) More than 12 television stations that are not minority-controlled.

(2) No license for a commercial TV broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors, directly or indirectly, owning, operating or controlling, or having a cognizable interest in, either:

(i) TV stations which have an aggregate national audience reach exceeding thirty (30) percent, or

(ii) TV stations which have an aggregate national audience reach exceeding twenty-five (25) percent and which are not minority-controlled.

(3) For purposes of this paragraph:

(i) *National audience reach* means the total number of television households in the Arbitron Area of Dominant Influence (ADI) markets in which the relevant stations are located divided by the total national television households as measured by ADI data at the time of a grant, transfer or assignment of a license. For purposes of making this calculation, UHF television stations shall be attributed with 50 percent of the television households in their ADI market. Where the relevant application forms require a showing with respect to audience reach and the application relates to an area where Arbitron ADI market data are unavailable, then the applicant shall make a showing as to the number of television households in its market. Upon such a showing, the Commission shall make a determination as to the appropriate audience reach to be attributed to the applicant.

(ii) *TV broadcast station or TV station* excludes stations which are primarily satellite operations.

(iii) *Minority-controlled* means more than 50 percent owned by one or more members of a minority group.

(iv) *Minority* means Black, Hispanic, American Indian, Alaska Native, Asian and Pacific Islander.

(v) *Small business* means an individual or business entity which, at the time of application to the Commission, had, including all affiliated entities under common control, annual revenues of less than $500,000 and assets of less than $1,000,000.

(f) This section is not applicable to noncommercial educational FM and noncommercial educational TV stations.

Note 1: The word "control" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

Note 2: In applying the provisions of this section, ownership and other interests in broadcast licensees, cable television systems and daily newspapers will be attributed to their holders and deemed cognizable pursuant to the following criteria:

(a) Except as otherwise provided herein, partnership and direct ownership interests and any voting stock interest amounting to 5% or more of the outstanding voting stock of a corporate broadcast licensee, cable television system or daily newspaper will be cognizable;

(b) No minority voting stock interest will be cognizable if there is a single holder of more than 50% of the outstanding voting stock of the corporate broadcast licensee, cable television system or daily newspaper in which the minority interest is held;

(c) Investment companies, as defined in 15 U.S.C. 80a–3, insurance companies and banks holding stock through their trust departments in trust accounts will be considered to have a cognizable interest only if they hold 10% or more of the outstanding voting stock of a corporate broadcast licensee, cable television system or daily newspaper, or if any of the officers or directors of the broadcast licensee, cable television system or daily newspaper are representatives of the investment company, insurance company or bank concerned. Holdings by a bank or insurance company will be aggregated if the bank or insurance company has any right to determine how the stock will be voted. Holdings by investment companies will be aggregated if under common management.

(d) Attribution of ownership interests in a broadcast licensee, cable television system or daily newspaper that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. [For example, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of "Licensee," then X's interest in "Licensee" would be 25% (the same as Y's interest since X's interest in Y exceeds 50%), and A's interest in "Licensee" would be 2.5% (0.1×0.25). Under the 5% attribution benchmark, X's interest in "Licensee" would be cognizable, while A's interest would not be cognizable.]

(e) Voting stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust. An otherwise qualified trust will be ineffective to insulate the grantor or beneficiary from attribution with the trust's assets unless all voting stock interests held by the grantor or beneficiary in the relevant broadcast licensee, cable television system or daily newspaper are subject to said trust.

(f) Holders of non-voting stock shall not be attributed an interest in the issuing entity. Holders of debt and instruments such as warrants, convertible debentures, options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.

(g)(1) A limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the licensee or system so certifies.

(2) In order for a licensee or system to make the certification set forth in paragraph (g)(1) of this section, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the media activities of the partnership. The criteria which would assume adequate insulation for purposes of this certification are described in the *Memorandum Opinion and Order* in MM Docket No. 83–46, FCC 85–252 (released June 24, 1985), as modified on reconsideration in the *Memorandum Opinion and Order* in MM Docket No. 83–46, FCC 86–410 (released November 28, 1986). Irrespective of the terms of the certificate of limited partnership or partnership agreement, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners in the management or operation of the media-related businesses of the partnership.

(h) Officers and directors of a broadcast licensee, cable television system or daily newspaper are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in businesses in addition to its primary business of broadcasting, cable television service or newspaper publication, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to its primary business. The officers and directors of a parent company of a broadcast licensee, cable television system or daily newspaper, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the broadcast licensee, cable television system or daily newspaper subsidiary, and a statement properly documenting this fact is submitted to the Commission. [This statement may be included on the appropriate Ownership Report.] The officers and directors of a sister corporation of a broadcast licensee, cable television system or daily newspaper shall not be attributed with ownership of these entities by virtue of such status.

(i) Discrete ownership interests will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if:

(1) The sum of the interests held by or through "passive investors" is equal to or exceeds 10 percent; or

(2) The sum of the interests other than those held by or through "passive investors" is equal to or exceeds 5 percent; or

(3) The sum of the interests computed under paragraph (i)(1) of this section plus the sum of the interests computed under paragraph (i)(2) of this section is equal to or exceeds 10 percent.

Note 3: In cases where record and beneficial ownership of voting stock is not identical (*e.g.*, bank nominees holding stock as record owners for the benefit of mutual funds, brokerage houses holding stock in street names for the benefit of customers, investment advisors holding stock in their own names for the benefit of clients, and insurance companies holding stock), the party having the right to determine how the stock will be voted will be considered to own it for purposes of these rules.

Note 4: Paragraphs (a) through (e) of this section will not be applied so as to require divestiture, by any licensee, of existing facilities, and will not apply to applications for increased power for Class C stations, to applications for assignment of license or transfer of control filed in accordance with § 73.3540(f) or § 73.3541(b), or to applications for assignment of license or transfer of control to heirs or legatees by will or intestacy if no new or increased overlap would be created between commonly owned, operated or controlled broadcast stations in the same service and if no new encompassment of Communities proscribed in paragraphs (c) and (d) of this section as to commonly owned, operated or controlled broadcast stations or daily newspaper would result. Said paragraphs will apply to all applications for new stations, to all other applications for assignment or transfer, and to all applications for major changes in existing stations except major changes that will result in overlap of contours of broadcast stations in the same service with each other no greater than already existing. (The resulting areas of overlap of contours of such broadcast stations with each other in such major change cases may consist partly or entirely of new terrain. However, if the population in the resulting areas substantially exceeds that in the previously existing overlap areas, the Commission will not grant the application if it finds that to do so would be against the public interest, convenience or necessity.) Commonly owned, operated or controlled broadcast stations with overlapping contours or with community-encompassing contours prohibited by this section may not be assigned or transferred to a single person, group or entity, except as provided above in this note and by § 73.3555(a). If a commonly owned, operated or controlled broadcast station and daily newspaper fall within the encompassing proscription of this section, the station may not be assigned to a single person, group or entity if the newspaper is being simultaneously sold to such single person, group or entity.

Note 5: Paragraphs (a) through (e) of this section will not be applied to cases involving television stations that are "satellite" operations. Such cases will be considered in accordance with the analysis set forth in the *Report and Order* in MM Docket No. 87–8, FCC 91–182(released July 8, 1991), in order to determine whether common ownership, operation, or control of the stations in question would be in the public interest. An authorized and operating "satellite" television station, the Grade B contour of which overlaps that of a commonly owned, operated, or controlled "non-satellite" parent television broadcast station, or the Grade A contour of which completely encompasses the community of publication of a commonly owned, operated, or controlled daily newspaper, or the community of license of a commonly owned, operated, or controlled AM or FM broadcast station, or the community of license of which is completely encompassed by the 2 mV/m contour of such AM broadcast station or the 1 mV/m contour of such FM broadcast station, may subsequently become a "non-satellite" station under the circumstances described in the aforementioned *Report and Order* in MM Docket No. 87–8. However, such commonly owned, operated, or controlled "non-satellite" television stations and AM or FM stations with the aforementioned community encompassment, may not be transferred or assigned to a single person, group, or entity except as provided in Note 4 of this section. Nor shall any application for assignment or transfer concerning such "non-satellite" stations be granted if the assignment or transfer would be to the same person, group or entity to which the commonly owned, operated, or controlled newspaper is proposed to be transferred, except as provided in Note 4 of this section.

Note 6: For the purposes of this section a daily newspaper is one which is published four or more days per week, which is in the English language and which is circulated generally in the community of publication. A college newspaper is not considered as being circulated generally.

Note 7: The Commission will entertain requests to waive the restrictions of paragraph (c) of this section on a case-by-case basis. The Commission will look favorably upon waiver applications that meet either of the following two standards:

(1) Those involving radio and television station combinations in the top 25 television markets where there will be at least 30 separately owned, operated and controlled broadcast licensees after the proposed combination, as determined by counting television licensees in the relevant ADI television market and radio licensees in the relevant television metropolitan market;

(2) Those involving "failed" broadcast stations that have not been operated for a substantial period of time, *e.g.*, four months, or that are involved in bankruptcy proceedings. For the purposes of determining the top 25 ADI television markets, the relevant ADI television market, and the relevant television metropolitan market for each prospective combination, we will use the most recent *Arbitron Ratings Television ADI Market Guide*. We will determine that number of radio stations in the relevant television metropolitan market and the number of television licensees within the relevant ADI television market based on the most recent Commission ownership records.

Other waiver requests will be evaluated on a more rigorous case-by-case basis, as set forth in the *Second Report and Order* in MM Docket No. 87–7, FCC 88–407, released February 23, 1989, and *Memorandum Opinion and Order* in MM Docket No. 87–7, FCC 89–256, released August 4, 1989.

Note 8: Paragraph (a)(1) of this section will not apply to an application for an AM station license in the 535–1605 kHz band where grant of such application will result in the overlap of 5 mV/m groundwave contours of the proposed station and that of another AM

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station in the 535–1605 kHz band that is commonly owned, operated or controlled if the applicant shows that a significant reduction in interference to adjacent or co-channel stations would accompany such common ownership. Such AM overlap cases will be considered on a case-by-case basis to determine whether common ownership, operation or control of the stations in question would be in the public interest. Applicants in such cases must submit a contingent application of the major or minor facilities change needed to achieve the interference reduction along with the application which seeks to create the 5 mV/m overlap situation.

Note 9: Paragraph (a)(1) of this section will not apply to an application for an AM station license in the 1605–1705 kHz band where grant of such application will result in the overlap of the 5 mV/m groundwave contours of the proposed station and that of another AM station in the 535–1605 kHz band that is commonly owned, operated or controlled. Paragraphs (d)(1)(i) and (d)(1)(ii) of this section will not apply to an application for an AM station license in the 1605–1705 kHz band by an entity that owns, operates, controls or has a cognizable interest in AM radio stations in the 535–1605 kHz band.

Note 10: Authority for joint ownership granted pursuant to Note 9 will expire at 3 a.m. local time on the fifth anniversary for the date of issuance of a construction permit for an AM radio station in the 1605–1705 kHz band.

[FR Doc. 94–23659 Filed 9–23–94; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–02; Notice 05]

RIN [2127–AF14]

Federal Motor Vehicle Safety Standards; Compressed Natural Gas Fuel Container Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule establishes a new Federal motor vehicle safety standard, Standard No. 304, *Compressed Natural Gas Fuel Containers*, that specifies performance requirements applicable to compressed natural gas (CNG) fuel containers: a pressure cycling test evaluates a container's durability; a burst test evaluates a container's initial strength; and a bonfire test evaluates a container's pressure relief characteristics. In addition, the final rule specifies labeling requirements for CNG containers. The purpose of this new standard is to reduce deaths and injuries occurring from fires that result from fuel leakage from CNG containers.

DATES: *Effective Date:* The Standard becomes effective March 27, 1995.

Incorporation by reference: The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 27, 1995.

Petitions for Reconsideration: Any petition for reconsideration of this rule must be received by NHTSA no later than October 26, 1994.

ADDRESSES: Petitions for reconsideration of this rule should refer to Docket 93–02; Notice 5 and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Gary R. Woodford, NRM–01.01, Special Projects Staff, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–4931).

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I. Background

A. General Information

Natural gas is a vapor that is lighter than air at standard temperature and pressure.[1] When used as a motor fuel, natural gas is typically stored on-board a vehicle in cylindrical containers at a pressure of approximately 20,684 kPa pressure (3,000 psi). Natural gas is kept in this compressed state to increase the amount that can be stored on-board the vehicle. This in turn serves to increase the vehicle's driving range. Since natural gas is a flammable fuel and is stored under high pressure, natural gas containers pose a potential risk to motor vehicle safety.

Vehicles powered by CNG have not been numerous to date, although they are increasing. The number of CNG vehicles in the United States more than doubled from 10,300 in 1990 to 23,800 at the end of 1992. The number of CNG vehicles is projected to again double to an estimated 50,800 vehicles in 1994. As discussed in detail in a final rule regarding CNG vehicles published on April 25, 1994, recent Federal legislation, as well as the need to meet environmental and energy security goals, will lead to greater increases in the production and use of these vehicles. (59 FR 19648).

B. Previous Agency Rulemakings

On October 12, 1990, NHTSA published an advance notice of proposed rulemaking (ANPRM) to explore whether the agency should issue Federal motor vehicle safety standards (FMVSSs) applicable to CNG fuel containers and the fuel systems of motor vehicles using CNG or liquified petroleum gas (LPG) as a motor fuel. (55 FR 41561). The ANPRM sought comment about the crash integrity of vehicle fuel systems, the integrity of fuel storage containers, and pressure relief for such containers.

On January 21, 1993, NHTSA published a notice of proposed rulemaking (NPRM) in which the agency proposed to establish a new FMVSS specifying performance requirements for vehicles fueled by CNG. (58 FR 5323). The proposal was based on comments received in response to the ANPRM and other available information. The NPRM was divided into two segments: (1) vehicle requirements that focus on the integrity of the entire fuel system, and (2) equipment requirements that focus on the fuel containers alone.

NHTSA decided to model the proposed requirements applicable to CNG fueled motor vehicles on Standard No. 301, *Fuel System Integrity*. Standard

[1] Standard temperature is 0° Celsius or 32° Fahrenheit and standard pressure is 101.4 kiloPascals (kPa) or 147.7 pounds per square inch (psi).

No. 301 specifies performance requirements for vehicles that use fuel with a boiling point above 32 °Fahrenheit (i.e., fuels that are liquid under standard temperature and pressure). Vehicles manufactured to use only CNG are not subject to Standard No. 301 since CNG has a boiling point below 32 °F. Standard No. 301 limits the amount of fuel spillage from "light vehicles" [2] during and after frontal, rear, and lateral barrier crash tests and a static rollover test. The Standard also limits fuel spillage from school buses with a GVWR over 10,000 pounds after being impacted by a moving contoured barrier at any point and any angle. By basing the CNG rulemaking on Standard No. 301, the agency believed that passengers of CNG vehicles would be afforded a level of safety comparable to that provided passengers of vehicles fueled by gasoline or diesel fuel.

With respect to the "vehicle" requirements for CNG vehicles, NHTSA proposed that the fuel system integrity requirements would include frontal, rear, and lateral barrier crash tests for light vehicles, and a moving contoured barrier crash test for large school buses. The agency proposed that fuel system integrity would be determined by measuring the fuel system's pressure drop after the crash test rather than fuel spillage, since CNG is a vapor and not a liquid. The allowable pressure drop for CNG fueled vehicles would be equivalent, as measured by the energy content of the lost fuel, to the allowable spillage of gasoline during Standard No. 301 compliance testing.

With respect to the "equipment" requirements for CNG containers, NHTSA proposed a definition for "CNG fuel tank" and performance requirements that would apply to all such fuel containers manufactured for use as part of a fuel system on any motor vehicle, including aftermarket containers.[3] Thus, while vehicles with a GVWR over 10,000 pounds (other than school buses) would not be subject to Standard No. 303, the CNG containers in those vehicles would be subject to the equipment requirements. The agency proposed that each CNG container would be subject to a pressure cycling test to evaluate container durability and a pressure burst test to evaluate the container's initial strength as well as its resistance to degradation over time. In addition, the NPRM proposed requirements to regulate how the container "vents" its contents under specified conditions of elevated temperature and pressure.

II. Comments on the Proposal

NHTSA received a large number of comments to the docket addressing the CNG proposal. The commenters included manufacturers of CNG containers, vehicle manufacturers, trade associations, other CNG-oriented businesses, research organizations, State and local governments, the United States Department of Energy, and energy companies. In addition, NHTSA met with the Compressed Gas Association (CGA) and the Natural Gas Vehicle Coalition (NGVC) and had telephone conversations and meetings with some of the commenters. A record of each of these contacts may be reviewed in the public docket.

The commenters generally believed that a Federal safety standard regulating the integrity of CNG fuel systems and fuel containers is necessary and appropriate. In fact, some commenters, including the CGA, the NGVC, and CNG container manufacturers stated that NHTSA should issue a Federal standard as soon as possible to facilitate the safe and expeditious introduction of CNG fueled vehicles. With respect to the equipment requirements, the commenters generally believed that Federal requirements about CNG fuel container integrity are needed and should be implemented as quickly as possible. The CNG vehicle industry, led by CGA and NGVC, expressed concern that lack of Federal regulations has created a problem for the industry, given the issuance of potentially conflicting industry and State regulations. Therefore, these commenters stated that CNG container manufacturers may not know the appropriate standards to which they should manufacture their containers. In contrast, the American Automobile Manufacturers Association (AAMA) stated that the vehicle system requirements are sufficient to regulate the overall integrity of CNG fueled vehicles and that separate requirements for CNG fuel containers are not needed. Nevertheless, AAMA provided detailed comments about the container proposal in case the agency decided to issue separate container requirements.

The commenters addressed a variety of issues discussed in the NPRM. These issues include the appropriateness of adopting the American National Standards Institute (ANSI) voluntary industry standard known as NGV2;[4] the pressure cycling requirements and test procedures; the burst requirements and test procedures, including the proposed safety factor, hold time interval, and need for sequential testing; the pressure relief requirements and test procedures, including types of pressure relief devices, shielding, test gas, test pressure, test fuel, and fuel pan depth; labeling requirements; leadtime; costs; and benefits.

NHTSA issued an SNPRM proposing to pattern the burst requirements more closely on NGV2, based on its consultation with other Federal agencies, its review of comments to the January 1993 proposal, and other available information. (58 FR 68846, December 29, 1993). NHTSA proposed a burst test that would link the use of particular designs and materials to compliance with safety factors tailored to those designs and materials. NHTSA requested comment on the appropriateness of requiring CNG containers to meet design and material requirements, such as those specified in NGV2, and to meet safety factors tailored to those requirements. As an alternative approach, the agency asked whether it should specify a catch-all high end safety factor for any container whose design and materials are not specified in NGV2.

Most commenters supported the proposal to incorporate NGV2 into the Federal standard. However, AAMA and Ford opposed the design and material specific approach of NGV2.

III. Agency's Decision

A. Overview

In today's final rule, NHTSA is issuing a new Federal motor vehicle safety standard, Standard No. 304, *Compressed Natural Gas Fuel Containers*, that specifies performance requirements applicable to a CNG fuel container's durability, strength, and venting. A pressure cycling test evaluates a container's durability by requiring a container to withstand, without any leakage, 18,000 cycles of pressurization and depressurization. This requirement helps to ensure that a CNG container is capable of sustaining the cycling loads imposed on the container during refuelings over its entire service life. A burst test evaluates a container's initial strength and resistance to degradation over time. This requirement helps to ensure that a

[2] Light vehicles include passenger cars, multipurpose passenger vehicles (MPV's), trucks, and buses with a gross vehicle weight rating (GVWR) of 10,000 pounds or less.

[3] Among the terms used to describe CNG fuel tanks are tanks, containers, cylinders, and high pressure vessels. The agency will refer to them as "containers" throughout this document.

[4] NGV2 is a recently issued voluntary industry standard that was adopted by the ANSI and addresses CNG fuel containers. It was developed by an industry working group that included container manufacturers, CNG users, and utilities.

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container's design and material are appropriately strong over the container's life. A bonfire test evaluates a container's pressure relief characteristics when pressure builds in a container, primarily due to temperature rise. In addition, the final rule specifies labeling requirements for CNG fuel containers.

As previously mentioned, the agency has issued a final rule establishing a new Federal motor vehicle safety standard, Standard No. 303, *Fuel System Integrity of Compressed Natural Gas Vehicles*, that specifies vehicle performance requirements applicable to the fuel system of a CNG fueled vehicle. As explained in that final rule, the fuel system integrity requirements are comparable to those requirements in Standard No. 301. Like that Standard, the new requirements limit the amount of fuel leakage in specified frontal, rear, and lateral barrier crash tests for light vehicles and a moving contoured barrier crash test for school buses with a GVWR over 10,000 pounds.

NHTSA believes that CNG containers must be evaluated in all possible failure modes and environments to which they may be subjected. Since the requirements contained in today's final rule do not address all these situations, the agency is currently investigating other possible requirements for CNG fuel containers and anticipates issuing a SNPRM that would propose performance requirements applicable to such characteristics as a CNG fuel container's internal and external resistance to corrosion, brittle fracture, fragmentation, and external damage caused by incidental contact with road debris or mechanical damage during the vehicle's operation. The agency tentatively believes that these additional performance requirements are critical for determining a CNG container's safety. In addition, the agency anticipates proposing additional labeling requirements that should provide critical safety information about inspecting a CNG container and its service life.

NHTSA notes that it has no statutory authority to regulate certain aspects involving CNG containers, including inspection requirements during the manufacturing process, in-use inspection requirements, and retest requirements during use.

B. Adopting Industry Standards

In the NPRM, NHTSA explained its decision to propose pressure cycling and burst tests and requirements. While the agency's proposal was based on NGV2, the agency decided not to propose certain provisions of the voluntary industry standard that the agency tentatively believed might unreasonably restrict future designs. Similarly, NHTSA decided not to propose regulations issued by the Research and Special Programs Administration (RSPA)[5] for CNG storage containers used on motor vehicles, explaining that the RSPA regulations do not address the conditions unique to the motor vehicle environment (e.g., increased cycling due to refueling and pressure relief when the cylinder is less than full). NHTSA further explained that in contrast to RSPA, NHTSA does not typically regulate design and materials since NHTSA is statutorily directed to issue performance-based safety standards.

NGVC and several CNG container manufacturers stated that NHTSA should adopt the voluntary industry standard that has been developed by the CNG industry working group. In support of this request, the American Gas Association (AGA) cited a 1982 Office of Management and Budget Circular that states "It is the policy of the Federal Government to (a) Rely on voluntary standards * * * whenever feasible and consistent with law and regulation pursuant to law * * *." AGA and NGVC believed that the voluntary standards provide a higher level of safety than the regulations proposed by NHTSA. They further stated that if NHTSA were unable to adopt NGV2 due to its prescriptive nature, then NHTSA should still allow automobile and equipment manufacturers the option of certifying to the industry standard by referencing NGV2 in the regulations.

In promulgating a CNG container standard, NHTSA has sought to the extent possible to adopt the tests and requirements set forth in NGV2. NHTSA was limited in its ability to do this by the National Traffic and Motor Vehicle Safety Act (Safety Act, 49 U.S.C. 30111), which commands the agency to issue "motor vehicle safety standards" as minimum standards of motor vehicle performance that are practicable, meet the need for motor vehicle safety, and are stated in objective terms. NHTSA found it necessary to modify certain elements of NGV2 to be consistent with this statutory mandate. For instance, the agency has not incorporated those aspects of NGV2 that are stated in nonobjective terms (e.g., a container shall not show "evidence" of deterioration or failure) NHTSA has decided to incorporate NGV2's design and material requirements since the agency has been unable to find or develop a meaningful dynamic performance requirement that would adequately evaluate a container's initial strength and susceptibility to degradation over time. The agency believes that the requirements are no more specific than necessary to achieve these safety purposes.

NHTSA notes that it would be impermissible under the Safety Act for the agency to adopt FMVSS provisions referencing NGV2 in its entirety and stating that automobile and equipment manufacturers had the option of certifying compliance to NGV2 by referencing this voluntary industry standard. The Safety Act provides for manufacturer self-certification with respect to FMVSSs only. To be part of a FMVSS, the provisions of a voluntary industry standard must fully meet all of the requirements of the Safety Act. Since all of NGV2 does not meet these requirements, NGV2 may not be incorporated in its entirety. Even if NGV2 met these requirements, NGV2 could not be incorporated in the FMVSS except to the extent that the FMVSS made compliance with NGV2 mandatory.

C. Pressure Cycling Test

In the NPRM, NHTSA proposed pressure cycling requirements that would require that the fuel container withstand a cycling test at ambient temperature, without any leakage or deformation exceeding one percent of any circumference. In the test, the container would be hydrostatically pressurized to the service pressure, then to not more than 10 percent of the service pressure, for 13,000 cycles. The container would next be hydrostatically pressurized to 125 percent of the service pressure, then to not more than 10 percent of the service pressure, for 5,000 cycles. The cycling rate would not exceed ten cycles per minute.

1. Number of Cycles

The proposed cycling requirements were intended to establish minimum levels of safety performance for the durability of CNG fuel containers used in motor vehicles. The agency stated its tentative belief that the requirements are consistent with provisions in NGV2 and with RSPA regulations for containers used to transport CNG. The agency believed that the pressure cycling requirement would help to assure that a CNG container is capable of sustaining the cycling loads imposed on the container during refuelings. The number of cycles specified in the proposal, 13,000 plus 5,000, is representative of four refuelings per day, 300 days per year, for 15 years.

AAMA, Norris, and Thomas commented on the number of pressure cycles. These commenters stated that the proposed number of cycles was excessive and not representative of the actual operating conditions the CNG containers would typically experience. AAMA and Norris stated that cycling the container at 125 percent of service pressure for 5,000 cycles would be adequate. Thomas made inconsistent statements about the appropriate number of cycles. On the one hand, it stated that 9,000 cycles at service pressure would be more reasonable than the proposed number of cycles. On the other hand, it stated that the agency should adopt NGV2 which specifies 18,000 cycles.

After reviewing the comments and other available information, NHTSA continues to believe that the proposed number of pressure cycles accurately represents the extreme conditions that CNG fuel containers could experience during their lifetime, with a margin of safety. This is based on the large number of cycles to which fleet vehicles are subjected. The agency believes that the 5,000 cycles suggested by AAMA and Norris would not ensure the safety of vehicles that experience multiple refuelings each day, such as taxis and other fleets. NHTSA further notes that the number of cycles being adopted is consistent with the cycles in NGV2 and therefore establishes a minimum level of safety that is consistent with NGV2, a standard supported by a large majority of the commenters. Accordingly, the agency has determined that a CNG fuel container will be subject to 18,000 pressure cycles.

2. Failure Criteria

In the NPRM, NHTSA proposed that a CNG fuel container would have to meet two test criteria to pass the pressure cycling test: (1) No leakage, and (2) no permanent circumferential deformation greater than one percent. The agency proposed these two criteria to provide objective means of evaluating a container's durability during compliance testing. NHTSA adopted the no leakage portion of the proposal from NGV2's pressure cycling test. The one percent deformation level, which is not in NGV2's pressure cycling test, was based on the Society of Automotive Engineers (SAE) Recommended Practice J10, August 1985, a requirement involving the performance of metal air brake reservoirs. The agency proposed a limit on circumferential deformation to aid in determining when a container's failure was impending.

No commenters objected to the no leakage criterion. Accordingly, the agency has adopted the no leakage requirement in the final rule. The agency believes that specifying that containers "shall not leak" provides an objective measure that will ensure that a container maintains its integrity by retaining its contents under pressure.

Sixteen commenters addressed the issue of the allowable circumferential deformation criterion. The commenters were NGVC, Brunswick, Pressed Steel Tank (PST), Structural Composites Industry (SCI), Tecogen, CGA, AAMA, Amoco, Alusuisse, Oklahoma Gas, ARC, Flxible, Fiber Dynamics, Norris, Comdyne, and EDO. All the commenters, except Brunswick, believed that the agency should not include a deformation requirement in the pressure cycling or burst tests. The commenters believed that the test requirement is not appropriate for all container materials and designs. They stated that due to the nature of the different materials used in these containers, and their different rates of deformation under load, some materials such as fiberglass, would deform more than others, such as steel. The commenters also stated that deformation was not an indicator of impending failure and that the SAE brake reservoir test was not appropriate for a CNG fuel container application.

NHTSA has decided not to adopt the one percent circumferential deformation requirement. In proposing this criterion, NHTSA tentatively concluded that it would be an appropriate indicator of the fuel container's durability characteristics. However, as the comments note, it is not an appropriate criterion because of the differing construction and materials used for CNG fuel container applications. After reviewing the comments and other available information, the agency now believes that limiting the circumferential deformation is not a meaningful way to determine a container's strength or impending failure, since the larger deformation experienced by some materials does not necessarily represent these characteristics. Instead, the agency believes that the no-leakage requirement, by itself, is the appropriate criterion to define a container failure, after being subjected to the pressure cycling test.

Brunswick further commented that some container designs, such as full-wrapped composite containers, would deform in the axial direction in addition to the circumferential direction. To account for axial deformation, Brunswick recommended allowing a maximum five percent volumetric expansion of the container.[6] Brunswick stated that this test is used to assure that the container material exhibits elastic behavior at expected operating conditions.

NHTSA agrees with Brunswick's statement that some container designs deform in the axial direction. Nevertheless, the agency believes that measuring volumetric expansion would not provide an appropriate measure of a container's impending failure in a destructive test (i.e., where the container cannot be used again). In addition, the NPRM provided no notice to amend the standard to measure such expansion in the axial direction. Since the pressure cycling and burst tests being adopted in this rule are capable of evaluating a CNG container's durability, the agency believes that another non-destructive test would be redundant and therefore is not needed. The agency further notes that the five percent maximum level of expansion would not provide a meaningful measure of a container's impending failure, since this level is based on a container's performance under less stringent test conditions.

D. Burst Test

1. Safety Factor

With respect to the burst test, NHTSA proposed that a CNG fuel container would have to withstand an internal hydrostatic pressure of 3.50 times the service pressure for 60 seconds, without any leakage or circumferential deformation over one percent. The multiple of the internal hydrostatic pressure, 3.50, is known as the safety factor. The agency tentatively concluded that the burst test, together with a pressure cycling test, would be sufficient to assure adequate levels of safety performance for both the strength and durability of CNG fuel containers used in motor vehicles.

The proposal of a burst test with a safety factor was based in part on NGV2. NGV2 specifies several sets of detailed material and design requirements. For each set of those requirements, NGV2 specifies a unique safety factor for calculating the internal hydrostatic pressure that the container must withstand. The safety factors range from 2.25 to 3.50, depending on the material and design involved. To satisfy this aspect of NGV2, a container must meet

[5] RSPA is an administration within the United States Department of Transportation that among other things regulates the transportation of hazardous materials.

[6] Both RSPA's standards and NGV2 incorporate the concept of volumetric expansion. In these standards, the volumetric expansion is measured when hydrostatic testing is performed on the container at 1.50 to 1.67 times the service pressure. This test is a non-destructive one, i.e., the container may be put into service after it is tested.

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both the material and design requirements as well as the burst test.

NGV2 specifies four types of container designs. A Type 1 container is a metallic noncomposite container. A Type 2 container is a metallic liner over which an overwrap such as carbon fiber or fiberglass is applied in a hoop wrapped pattern over the liner's cylinder sidewall. A Type 3 container is a metallic liner over which an overwrap such as carbon fiber or fiberglass is applied in a full wrapped pattern over the entire liner, including the domes. A Type 4 container is a non-metallic liner over which an overwrap such as carbon fiber or fiberglass is applied in a full wrapped pattern over the entire liner, including the domes.

The agency did not propose adoption of the material and design requirements of NGV2. Instead, the agency proposed a single safety factor of 3.50 for all containers, regardless of their materials or design. It tentatively concluded that the factor would not impede technological development, yet would assure an acceptable level of safety for all containers.

CNG container manufacturers, CNG trade associations (NGVC and AGA), utility companies, the American Automobile Manufacturers Association (AAMA) and other commenters addressed the issue of the safety factor. Most commenters disagreed with the agency's proposal to require that all containers meet the same safety factor.

NGVC, AGA, and the CNG container manufacturers generally believed that the material and design of the fuel container need to be taken into account in establishing an appropriate safety factor, if safe, cost-effective, and light-weight containers are to be produced. Establishing an overly high factor for a given combination of material and design could result in unnecessarily over-designed, heavy containers, according to these commenters. They believed that some materials, such as fiberglass, need a higher safety factor because they degrade faster over time. In contrast, a material such as steel maintains its strength for a longer time, and therefore containers made of it could be made safely with a lower safety factor.

Many of these commenters recommended that NHTSA adopt the safety factors specified in NGV2. They stated that compared to the regulations proposed by NHTSA, the NGVC voluntary industry standard provides a more appropriate level of safety, given the need to specify safety factors based on the design and materials used.

However, several commenters disagreed with certain safety factors specified in NGV2. CGA, PST, SCI, and NGV Systems supported a higher safety factor for containers using unproven materials. In particular, they were concerned with containers reinforced with carbon fiber overwrap, for which NGV2 specifies a 2.25 safety factor for all carbon reinforced containers, Types 2, 3, and 4.

NGV Systems stated that a safety factor of 2.25 constitutes an "unacceptable safety risk," given the industry's limited experience with carbon fiber and lack of a significant data base demonstrating this materials safety and reliability. Accordingly, NGV Systems supported a safety factor of 3.5 for what it termed unproven designs, which may then be lowered as more experience and data accumulate. CGA recommended safety factors of 2.5 for all Type 2 containers and 3.33 for all Type 3 and 4 containers, stating that these are used on all fiber reinforced compressed gas containers now in commercial use. CGA indicated that unlike other fiber overwrap used in the past for transportation pressure vessels, there is no commercial experience with the safety of carbon fiber reinforced containers for motor vehicle applications to justify a 2.25 safety factor for such containers. CGA stated that NGV2 does not adequately address damage tolerance concerns for carbon reinforced fully wrapped containers with low safety factors. PST recommended 3.33 for carbon fiber Types 3 and 4 containers. That commenter recommended such conservative safety factors until substantial data are accumulated on the use of carbon fiber containers in actual service. SCI provided similar comments, and recommended safety factors of 3.33 for the fully wrapped containers, which are Types 3 and 4.

Three commenters stated that a single safety factor was appropriate. CNG Pittsburgh, a consulting firm, stated that a safety factor of 3.50 is conservative but reasonable for CNG fuel containers. AAMA stated that adopting NGV2's approach with various safety factors depending on the material and design involved would limit a manufacturer's choice of container designs and materials. EDO recommended a safety factor of 2.5 for all containers.

NHTSA decided to issue an SNPRM proposing to pattern the burst requirement more closely on NGV2, based on its consultation with other Federal agencies, its review of comments to the January 1993 proposal, and other available information. In explaining its reason for issuing the SNPRM, NHTSA stated that there did not appear to be any procedures that could adequately test a container's susceptibility to degradation over time. Therefore, it believed that specifying a single safety factor would not protect in all instances against these problems since the strength of some containers is dependent on the specific material and method of design. Therefore, NHTSA decided to propose a burst test that would link the use of particular designs and materials to compliance with safety factors tailored to those designs and materials. The agency tentatively concluded that such an approach might be necessary to ensure the safe performance of pressure vessels used for fuel containers. The agency further noted that international standards addressing CNG fuel containers, including regulations of Transport Canada and those being drafted by the International Standards Organization (ISO) link the use of particular designs and materials with strength requirements suitable for those designs and materials.

In the SNPRM, NHTSA requested comment on the appropriateness of requiring CNG containers to meet design and material requirements, such as those specified in NGV2, and to meet safety factors tailored to those requirements. The agency also asked about the effect of adopting NGV2 on future container technology, since the only way a container manufacturer could comply with the Federal standard would be by producing a container that uses those materials and designs specified in NGV2 if the agency incorporated NGV2's material and design provisions in the FMVSS. As an alternative approach, the agency asked whether it should specify a catch-all high end safety factor for any container whose design and materials are not specified in NGV2.

NHTSA received 18 comments to the December 1993 SNPRM about adopting the design and material specific approach of NGV2. Sixteen commenters, including NGVC/AGA, CGA, CNG container manufacturers, public utilities, and two bus manufacturers supported the proposal to incorporate NGV2 into the Federal standard. Eleven commenters supported the safety factors in NGV2. Five others were concerned about the level of some safety factors in NGV2 or the use of relatively new materials, such as carbon fiber. CGA and SCI referenced their earlier comments to the NPRM, again recommending safety factors of 2.5 for all Type 2 containers and 3.33 for all Type 3 and Type 4 containers. AAMA and Ford opposed the design and material specific approach of NGV2. AAMA stated that some of NGV2's requirements limit

opportunities for future development of advance container design or materials that may not fit in the specifications in NGV2. No commenter favored having a catch-all high end safety factor.

Based on the available information, NHTSA has decided to require CNG containers to meet the safety factors applicable to the design and material requirements specified in NGV2, except for carbon fiber. Specifically, the agency is specifying separate safety factors for containers using various materials (e.g., fiberglass, carbon, steel, aluminum) and different designs (non-composite, hoop wrapped or full wrapped composite containers, and welded). The agency believes that this approach will result in the manufacture of safe containers for CNG powered vehicles.

NHTSA has decided to adopt the specific safety factors and related requirements set forth in NGV2, except for those safety factors specified for carbon fiber. While NGV2 currently specifies a safety factor of 2.25 for Type 2, 3, and 4 carbon fiber containers, NHTSA has decided to specify a safety factor of 2.5 for Type 2 carbon fiber containers and 3.33 for the Type 3 and 4 carbon fiber containers. The agency is requiring a higher safety factor for Type 3 and 4 containers since the fibers on those containers carry a greater proportion of the load than on Type 2 containers.

NHTSA made this decision after reviewing all of the comments and information obtained in response to both the NPRM and SNPRM; meetings with container manufacturers, CGA and NGVC/AGA; and discussions with other Federal agencies, including RSPA. Comments and information were presented to support safety factors for carbon fiber containers, ranging from 2.25 to 3.5. Brunswick, in particular, submitted substantial test data and other technical information in support of NGV2's 2.25 safety factor for carbon fiber, including testing it performed on such containers which showed favorable results. RSPA recommended a safety factor of not less than 3.0 for carbon fiber, which is consistent with its FRP–1 and FRP–2 standards.

Notwithstanding comments supporting the 2.25 safety factor, NHTSA has determined that under its statutory mandate, it is necessary to specify higher safety factors for carbon fiber containers. In adopting these more stringent requirements, NHTSA sought the advice of RSPA, which has accumulated significant experience and expertise through its efforts to regulate the safety of pressure vessels used to transport hazardous materials. Specifically, NHTSA has adopted RSPA's recommendation not to specify the 2.25 safety factor for carbon composite containers.

The more stringent safety factors being adopted are consistent with RSPA's longstanding approach to initially adopt conservative requirements and subsequently modify the requirements, if further real-world safety data become available supporting less stringent regulations. NHTSA has determined that applying this approach to the safety factors for carbon fiber containers is necessary, since carbon fiber containers have not been used extensively in motor vehicle applications. The agency believes that the higher safety factors are justified until further data are developed and become available on the use of carbon fiber containers in motor vehicle applications.

NHTSA acknowledges that using such a safety-oriented approach may result in costlier and heavier carbon fiber containers. However, the agency believes that the requirements being adopted will not preclude the introduction and effective use of this new technology. Overall, the agency believes that the safety factors being specified for carbon fiber containers, along with the remaining safety factors it has adopted from NGV2 for other materials, will result in safe CNG containers.

As for AAMA's comment, NHTSA shares that association's concerns about restricting future developments. However, based on comments by the container manufacturers and other Federal agencies, the agency believes that few, if any, designs beyond those accounted for in NGV2 are planned. If a new container technology is developed, the agency will evaluate its safety in the context of a petition for rulemaking to amend the Federal safety standard.

NHTSA has decided not to adopt the catch-all high level safety factor, which could allow containers incorporating materials or designs that have not been incorporated in NGV2 and thus might be detrimental to safety. The agency further believes that it would be inappropriate, at this time, to add a catchall factor. While such a proviso would facilitate innovation and design change, the agency agrees with commenters that specifying such a catchall might be detrimental to safety, since untested designs and materials would be permitted.

2. Hold Time Interval

In the NPRM, NHTSA proposed that during the burst test, elevated pressure would have to be sustained for 60 seconds. The agency noted that while RSPA regulations also specify a 60-second period, NGV2 requires a 10-second hold time interval once the maximum pressure is obtained. The agency believed that because NGV2 includes additional tests to qualify container designs and the agency was not proposing these additional tests, a shorter hold time would not be suitable.

NHTSA received six comments addressing the appropriate hold time interval. All commenters except EDO believed the 60 second hold time requirement was not necessary. EDO stated that the requirement was "tough but reasonable." NGVC, Brunswick, PST, and ARC stated that specifying the hold time at 60 seconds instead of 10 seconds would not compensate for the lack of other NGV2 required tests. NGVC stated that the ten second hold time interval is not intended as a test of container strength, but as the time for the pressure in the container to stabilize. PST stated that along with the 3.5 safety factor, the 60 second hold time would make an already conservative test even more stringent.

After reviewing the comments and other available information, NHTSA has decided to specify a hold time of 10 seconds instead of 60 seconds. The agency notes that the proposal was based on a misperception of the hold time requirement's purpose. As the commenters stated, the hold period is included only to stabilize the pressure. It is not used as a surrogate for initial burst strength. Therefore, the reduction in hold time will not affect the test's stringency. In addition, the agency anticipates issuing a SNPRM that would propose additional performance requirements to evaluate other aspects of a CNG fuel container's integrity.

3. Sequential Testing

In the NPRM, NHTSA proposed that a container that passed the pressure cycling test would then be subjected to the burst test. In proposing that the same fuel container be used in both the pressure cycling and burst tests, the agency believed that it would be appropriate to establish that the fuel container maintained its initial strength after being subject to the durability test.

Seven commenters addressed the issue of using the same container for both the pressure cycling and burst tests. NGVC, AAMA, Comdyne, Pressed Steel Tanks, and Amoco stated that requiring the same fuel container for both tests would be unrealistic and overly stringent, because in real world situations, a container would not be subject to pressure cycling and burst conditions sequentially. They stated

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that otherwise unnecessary material would have to be added to strengthen the container so it could meet the burst test requirement after the pressure cycling test. These commenters believed such additional material would significantly increase the container's cost and weight to the extent that the container would no longer be economically viable to produce. They further stated that most containers that are currently produced to meet NGV2 or RSPA requirements would not be able to meet this requirement. In contrast, EDO and Metropolitan Suburban Bus Authority (MSBA) favored the use of sequential testing.

After reviewing the comments and other available information, NHTSA has decided not to require sequential testing. The agency believes that using different containers in the pressure cycling and burst tests will provide an adequate measure of both the container's initial strength and its durability over its life, without imposing new cost burdens on the industry. The agency notes that such testing is consistent with the way in which industry currently tests under both NGV2 and RSPA standards. The agency further notes that in testing for compliance with some FMVSSs, the agency allows a manufacturer to use a separate vehicle or component for different tests within a standard. For example, three vehicles are crashed in Standard No. 301, and different brake hoses are used for various tests in Standard No. 106, *Brake Hoses*.

4. Failure Criteria

In the NPRM, NHTSA proposed that to pass the burst test, a container would have to meet the same two performance criteria as in the pressure cycling test: (1) No leakage, and (2) no permanent circumferential deformation of more than one percent. The purpose of these requirements was to provide objective means to evaluate a container's compliance strength. NGV2 includes the no leakage criterion, but not the one percent circumferential deformation criterion. As explained in the section on the pressure cycling test, the deformation requirement was based on SAE Recommended Practice J10, August 1985, which addresses the performance of metal air brake reservoirs. The agency proposed a circumferential deformation limit to aid in determining a container's impending failure.

After reviewing the comments, NHTSA is adopting the no leakage criterion to evaluate failure of the burst test. The agency has decided not to adopt the one percent deformation criterion because the agency believes that circumferential deformation is not a meaningful measure of a fuel container's impending failure in the burst test. See the section above regarding the pressure cycling test for a more comprehensive discussion about the agency's decision not to adopt the pressure deformation criterion.

E. Bonfire Test

1. Performance Requirements

In the NPRM, NHTSA proposed performance requirements for CNG fuel containers to address the need to withstand high temperatures and pressures without catastrophic failure. Large pressure increases due to exposure to flames could cause the CNG to escape catastrophically and result in an explosive fire. The agency proposed that the ability to withstand high temperatures and pressures be provided by a pressure relief device. More specifically, it proposed that compliance would be determined by first pressurizing the fuel container to 100 percent of service pressure with nitrogen or air and placing it over a bonfire until the container's contents are completely vented through a pressure relief device. A pressure relief device can prevent a container from experiencing high pressure for long periods of time. The agency proposed a second test to be conducted in the same manner, except the container would be pressurized to 25 percent of the service pressure. The second test would evaluate container performance when containers are partially filled. The purpose of the test is to reduce the explosion potential of CNG containers when exposed to high temperatures and pressures.

The proposed requirements were based on NGV2. However, there were two differences between the agency's proposal and NGV2. First, under the NPRM, the container would be pressurized with nitrogen or air; in NGV2, it is pressurized by CNG. Second, under the NPRM, all fuel containers would be required to use a pressure relief device to completely vent the container's contents; in NGV2, the test is run for 20 minutes or until the container is completely vented, whichever comes first. Therefore, under NGV2, a manufacturer could establish compliance either by a container successfully withstanding the test conditions for 20 minutes without bursting or by completely venting its contents by means of a pressure relief device at some point during that 20 minute period. In the NPRM, the agency sought comment about whether to allow an alternative way of demonstrating compliance with the bonfire test that did not depend upon a pressure relief device. Under the alternative, a container would be considered to have passed the test if it did not burst during the test period. Compliance with the alternative would be achieved by designing a container so that it has sufficient strength to enable it to sustain the heat and pressure buildup during the test.

Eleven commenters addressed the issue of whether containers should be required to have a pressure relief device. NGVC, EDO, ARC, Flxible, Manchester, Thomas, and MSBA agreed with the proposal to require containers to be equipped with such a device. They stated that a pressure relief device is an integral part of a CNG container and that its importance warrants a requirement that each container have one. In contrast, Brunswick, Comdyne, Pressure Technology, and AAMA stated that containers should not be required to have a pressure relief device because such a requirement would be design restrictive. Brunswick and Pressure Technology stated that the container should be required to "safely vent" its contents without rupturing, whether the venting is done through a pressure relief device or the container wall. AAMA stated that a container should pass the requirement if it possesses enough strength to retain its contents throughout the test. ARC believed that the container sidewalls should not be permitted to rupture during the bonfire test.

After reviewing the comments, NHTSA has determined that each CNG container must be equipped with a pressure relief device. This is necessary because each CNG fuel container needs to possess a means of releasing its contents in case the internal pressure or temperature reaches a dangerous level. By requiring containers to be equipped with a pressure relief device, the agency will ensure the safety of individuals, such as vehicle occupants and rescue personnel, who would be near a CNG vehicle in a fire. The agency notes that the conditions experienced in the bonfire test may be less severe than certain real-world crash situations. Therefore, the agency is adopting a more conservative approach and requiring a pressure relief device for all containers. In addition, such a requirement is consistent with the practice of most container manufacturers and NGV2 which requires such a device on all containers.

Based on the comments, NHTSA has decided to adopt NGV2's test criteria that allows the test to be completed after 20 minutes or when the container has completely vented, whichever comes first. Adopting these criteria alters the test in that while still requiring a pressure relief device, a container could comply with the bonfire test if it either completely vents its contents by means of a pressure relief device at some point during that 20 minute period or by successfully retaining the container's entire contents without bursting for the duration of the bonfire test (i.e., 20 minutes). The agency believes that each criterion appropriately measures a container's ability to withstand high temperature and pressure because the bonfire test represents extreme conditions. The agency emphasizes that in either case the CNG container must be equipped with a pressure relief device.

NHTSA disagrees with the approach advocated by AAMA, Brunswick and Pressure Technology to allow containers to "safely vent" their contents from an area other than the pressure relief device such as the sidewall. The agency acknowledges that, as an alternative to a pressure relief device, pressure relief can be accomplished by allowing the overpressurized container to vent its contents at a controlled rate, without fragmentation, through the container's sidewall. However, there would be significant problems with this approach. First, it would not afford as high a degree of safety as requiring a pressure relief device. The agency continues to believe that the safest way to release CNG from an overpressurized container is through a pressure relief device because some sidewall ruptures could result in fragments being propelled from the container. Second, it would raise potential enforceability problems since the concepts of "release its contents at a controlled rate" and "rupture without fragmentation" are difficult to define objectively. Based on the above considerations, NHTSA has decided to require each CNG fuel container to either completely vent its contents through a pressure relief device or not burst when tested in accordance with the test conditions.

2. Types of Pressure Relief Devices

The proposal did not specify the use of a particular type of pressure relief device. The agency is aware of three types of devices currently being used: (1) The rupture disc, which is designed to release CNG in the container when it reaches a specific pressure, (2) the fusible plug, which is designed to release CNG in the container when it reaches a specific temperature, and (3) a device that combines these two devices.

Four commenters recommended the use of specific types of pressure relief devices. EDO recommended that the agency require the fusible plug device and prohibit the rupture disc device. EDO stated that a combination of hot conditions and overfill at the refueling pump could cause a rupture disc to activate, releasing CNG and causing a potentially dangerous situation. It further believed that the safety factor in the burst test would be sufficient to prevent over pressurization and that the pressure relief device should only open in a fire situation. Flxible stated that the agency should require a fusible plug to ensure pressure relief of partially filled containers subject to heat or fire. NYCFD stated that the agency should prohibit the combination fusible plug and rupture disc devices, claiming that over-charged containers exposed to high ambient temperature are likely to fail whether or not they are exposed to fire. Thomas commented that the agency should require the combination fusible plug and rupture disc device because it is required by NFPA 52.[7]

After reviewing the comments, NHTSA has concluded that the standard should not specify the type of pressure relief device with which a container may be equipped. The NPRM and SNPRM did not provide sufficient notice for the agency to adopt such a specification as part of this final rule. Further, the agency believes that the bonfire test, which is performed at both 100 percent of service pressure and 25 percent of service pressure, will adequately evaluate a container's ability to vent its contents in a high temperature/pressure situation. In the first test, the combination of the 100 percent service pressure condition and the high heat from the bonfire will cause the container's pressure to increase rapidly. This test evaluates a container's ability to vent its contents at high temperatures and pressures. In the second test, the 25 percent service pressure condition and the heat will cause the container's temperature to increase before the pressure in the container reaches a critical point. This test evaluates a container's ability to vent its contents at high temperatures, where the container is at a less than full condition.

[7] NFPA 52, *Standard for Compressed Natural Gas (CNG) Vehicular Fuel Systems*, is a voluntary standard adopted by the National Fire Protection Association that specifies guidelines for the "design and installation of CNG engine fuel systems on vehicles of all types including aftermarket and OEMs and to their associated fueling (dispensing) systems." (NFPA 52, § 1–1)

3. Shielding

NHTSA notes that there are two types of shielding that can affect the performance of pressure relief devices in bonfire tests: (1) "Vehicle-based protective shielding" that is placed around the container in the vehicle to protect the container from surrounding heat, and (2) "test shielding" that is placed over the pressure relief device to prevent flames from contacting the device. Test shielding is, as the name suggests, installed only for the purpose of conducting bonfire tests. Unlike vehicle-based protective shielding, it is not used to affect real world performance.

In the NPRM, NHTSA recognized that some CNG vehicles may have vehicle-based shielding installed to protect the containers from exposure to heat. Nevertheless, the agency proposed that no vehicle-based shielding be used during the bonfire test because Standard No. 304 is an equipment standard, and applies to CNG containers, not to vehicles. Further, since the presence or amount of shielding could vary from vehicle to vehicle, the agency tentatively concluded that the containers should be tested in the worst case situation, i.e., without any vehicle-based shielding. Nevertheless, the agency stated that it did not want to discourage vehicle manufacturers from including shielding in CNG vehicles as an added safety feature.

NHTSA received six comments addressing the use of vehicle-based shielding during the bonfire test. PST, EDO, ARC, Ontario, and NGVC agreed with the agency that vehicle-based shielding of the container should not be used during the bonfire test. They believed that such shielding could detract from or mask the results of the test. In contrast, AAMA stated that "[i]f a manufacturer chooses to add the additional expense to protect the fuel tank from exposure to potential flame, the protection ought to be allowed in any test as representative of the tank's use in the vehicle."

After reviewing the comments, NHTSA has decided not to permit vehicle-based shielding of the container during the bonfire test. As explained in the NPRM, the bonfire test is intended to evaluate the container and not the vehicle. Since this is an equipment standard, the tests are designed to ensure that the containers are safe for installation in any vehicle, regardless of the amount of protective vehicle shielding, if any, with which it is equipped. The agency disagrees with AAMA's contention. Using vehicle shielding in compliance testing would

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not ensure that a container could perform safely under worst case conditions (i.e., no vehicle-based shielding of any type or extent) that the container could encounter during its service life (e.g., if the container is subsequently placed in a different vehicle).

Test shielding consists of a metal plate over the pressure relief device and is permitted, but not required, under NGV2 for purposes of the horizontal bonfire test. In the horizontal test, the CNG container is positioned over the bonfire with its longitudinal axis in a horizontal position. In the NGV2 vertical bonfire test (container longitudinal axis in a vertical position), pressure relief device shielding is also permitted, but not required, except where the CNG container is fitted with a pressure relief device on both ends. In that case, the bottom pressure relief device must be shielded. The goal is to not allow flames to impinge directly on any relief device. This may be done through test shielding, or by orienting the container so as to avoid flame impingement on any pressure relief device. Without this metal plate, the flames could contact the pressure relief device, possibly causing it to vent the container prematurely. If this occurred, the bonfire test results would neither evaluate the CNG container as a whole nor accurately reflect the container's pressure relief characteristics.

CGA and PST opposed allowing shielding of the pressure relief device during the bonfire test. They commented that shielding the pressure relief device during the bonfire test would not be representative of a real-world crash fire situation. CGA stated that allowing, but not requiring shielding to be placed around pressure relief devices could produce non-repeatable results. PST stated that excessive shielding around the pressure relief device could cause an otherwise acceptable design to fail the test, but did not elaborate as to how this could occur.

NHTSA has decided to require test shielding of the pressure relief device during the horizontal bonfire test. The agency notes that the purpose of this test is to replicate the effect of fires on the pressure relief device and the fuel container as a system. Requiring shielding will assure that the bonfire test is evaluating the fuel container as a whole, rather than merely the pressure relief device, since a flame that impinges on the pressure relief device, could activate prematurely. Requiring shielding, rather than simply allowing it, will assure repeatable and consistent test results. The rule also requires shielding of the pressure relief device during the vertical bonfire test, except where the container is fitted with a pressure relief device on only one end. In that case, the container is positioned with the pressure relief device on top, so as to avoid direct contact with the flame.

4. Test Gas and Pressure

In the NPRM, NHTSA proposed that the CNG container be pressurized with either nitrogen or air to 100 percent of service pressure for the bonfire test. The agency acknowledged that NGV2 specifies the use of CNG, but tentatively concluded that using nitrogen or air as the test gas would be safer than using CNG.

AAMA and Tecogen recommended that CNG be used as the test gas. Tecogen further commented that the container manufacturers have historically conducted such tests using CNG and are therefore well aware of the necessary safety precautions. It further stated that using CNG as the test gas would reveal the pressure relief valve's effectiveness with respect to the discharge rate. AAMA commented that CNG should be used as the test gas because the thermal properties of CNG differ from those of nitrogen and air and NGV2 specifies the use of CNG as the test gas. AAMA also recommended that the CNG containers be pressurized at the start of the test to 95 to 100 percent of service pressure, but offered no rationale.

After reviewing the comments, NHTSA has determined that using CNG as the test gas would better reflect the real-world conditions in a fire, since the test gas would be the same as the gas used in CNG containers. The agency notes that the bonfire test addresses the responsiveness of the pressure relief device and that air and nitrogen have different thermal properties than CNG. Therefore, the pressure relief device might perform differently if air or nitrogen were used instead of CNG. In the NPRM, the agency explained that using CNG as a test gas might not be safe. These initial concerns have been allayed by the comments indicating that manufacturers are aware of and accustomed to taking the necessary safety precautions when using CNG as a test gas to evaluate a container. NHTSA notes that it decided not to specify CNG as the test gas in the CNG vehicle standard. Nevertheless, the agency believes that differences in reaction to heat are important for the bonfire test, which involves high temperatures, but not for crash tests, which do not involve such temperatures.

NHTSA continues to believe that it is necessary to pressurize the CNG container to 100 percent of service pressure at the outset of the test. The agency has determined that the containers need to be tested at full service pressure to represent the worst case scenario.

5. Wind Velocity and Direction

In the NPRM and SNPRM, NHTSA did not address the allowable wind velocity and direction. The agency received comments from NGVC, CGA, and PST stating that a limit should be placed on wind velocity to increase the bonfire test's repeatability.

After reviewing the comments, NHTSA has decided to specify that the average wind velocity at the container during the test may not exceed 2.24 meters per second (5 mph). The agency believes that permitting higher crosswinds would vary or reduce the flame's heat. Therefore, placing limits on the crosswind assures the test's repeatability and the level of stringency that the agency anticipated in proposing this test.

6. Bonfire Fuel

In the NPRM, NHTSA proposed that the fire for the bonfire tests be generated using No. 2 diesel fuel. This fuel type was proposed so that the standard would be consistent with the bonfire test in NGV2, which also specifies this type of fuel.

NGVC, CGA, AAMA, and Norris commented that the agency should specify a different fuel to generate the bonfire that is more environmentally sound. CGA stated that the large amounts of smoke that would be created by burning the diesel fuel are contrary to the environmental objectives of developing CNG vehicles. NGVC and Norris suggested using a CNG or propane grill for the test.

After reviewing the comments and other available information, NHTSA has decided to specify the use of No. 2 diesel fuel in the final rule. The agency is aware of the environmental problems associated with this type of fuel and will further study whether other fuels should be used to generate the bonfire test. However, until the agency can determine that a different fuel is an appropriate replacement for diesel fuel, the Standard will specify No. 2 diesel fuel for use in the bonfire test.

7. Bonfire Test Fuel Pan Depth

In the NPRM, NHTSA proposed that the bonfire test pan containing No. 2 diesel fuel be at least 100 centimeters (cm) deep. The agency specified a depth

to ensure that there would be an adequate amount of fuel to run the test.

AAMA, Comdyne, CGA, Alusuisse, and PST commented that the fuel pan depth was excessive. Alusuisse stated that a pan of the proposed size would contain more than 1,000 liters of fuel. PST stated that a 100 millimeter (mm) depth would be more reasonable. CGA, AAMA, and Comdyne stated that the depth of the fuel pan should not be specified so long as a sufficient quantity of fuel is provided for the test.

The agency intended to propose a depth of 100 mm. However, due to a typographical error, it proposed a depth of 100 cm. NHTSA agrees that a fuel pan with a depth of at least 100 cm would be too deep. NHTSA also agrees that the fuel pan's depth does not need to be specified, provided that there is a sufficient amount of fuel to maintain the fire for the duration of the test. Accordingly, the agency has removed the requirement for fuel pan depth and has replaced it with the provision that there be "sufficient fuel to burn for at least 20 minutes." The agency believes that this provision is consistent with the test's purpose of simulating a severe fire by raising the container's temperature and pressure by completely surrounding it with flames produced by a specific fuel type.

F. Labeling Requirements

In the NPRM, NHTSA proposed to require that container manufacturers certify that each of their containers complies with the proposed equipment requirements and permanently label the container with the following information: the symbol "DOT" to constitute a certification by the manufacturer that the container conforms to all requirements of the standard; the date of manufacture of the container; the name and address of the container manufacturer; and the maximum service pressure. The agency stated that labeling the container would provide vehicle manufacturers and consumers with assurance that they are purchasing containers that comply with the Federal safety standards. In addition, the agency believed that the proposed requirement would facilitate the agency's enforcement efforts by providing a ready means of identifying the container and its manufacturer.

EDO, NGVC, Thomas, NYCFD, and Volvo GM addressed the proposed labeling requirements. EDO and NYCFD stated that the label should include the maximum fill pressure at a location close to the fill receptacle. NGVC recommended that a blank area for the container installation date be included in the label to be filled in by the installer. Volvo GM stated that only containers that are manufactured after the standard's effective date, and therefore actually subject to the standard, should be entitled to display the DOT symbol as certification of compliance with the standard. Thomas stated, without elaboration, that the labeling requirements of NGV2 should be adopted. NHTSA's proposal did not include certain additional information included in NGV2, including the type of container, inspector symbols, trademarks, manufacturer's part number, and serial numbers.

After reviewing the comments, NHTSA has decided to adopt the proposed labeling requirements with a slight modification from the proposed format. In item (a), the agency has modified the proposal which states "The tank manufacturer's name and address" to state the following: include the statement that "If there is a question about the proper use, installation, or maintenance of this container, contact [*manufacturer's name, address, and telephone number*]."

The agency has decided not to require the other additional items of information in NGV2 since the agency did not propose the inclusion of such information in the NPRM. Notwithstanding the agency's decision not to require this additional information, a manufacturer may list such information on the label, provided the additional information does not obscure or confuse the required information. In particular, NHTSA encourages manufacturers to include the container type, e.g., Type 1, 2, 3 or 4, since the agency has decided to adopt NGV2's design and material specifications in this final rule. Specifying the type of container should facilitate oversight of compliance tests since each type of container is required to undergo hydrostatic burst tests, but with different safety factors.

In the upcoming SNPRM, NHTSA anticipates proposing additional requirements about the CNG fuel container's label, including the container type. In addition, the agency anticipates proposing that the label include an additional statement addressing the container's inspection and maintenance. Specifically, the label would state that "This container should be visually inspected after an accident or fire or at least every 12 months for damage and deterioration in accordance with the applicable Compressed Gas Association guidelines." The agency believes that such a statement would alert owners to the desirability for reinspection over time or in the event of an accident. NHTSA will also propose requirements related to the label's location, in response to EDO's and NYCFD's comment that the maximum service pressure should be labeled in an area close to the fill receptacle.

G. Leadtime

In the NPRM, NHTSA proposed to make the equipment requirements effective on September 1, 1994. The agency believed that this would provide a reasonable time period for manufacturers to make minor modifications in container design. This proposal was based on the agency's belief that the proposed requirements were similar to RSPA standards currently in effect. The agency requested comment on the feasibility of this effective date.

NHTSA received eleven comments about the proposed effective date applicable to the container requirements. The commenters were TMC, the U.S. Department of Energy, TBB, Oklahoma Gas, NGVC, EDO, Volvo/GM, AAMA, ARC, Navistar, and NGV Systems. EDO and Navistar requested that the final rule be issued as early as possible. DOE and Oklahoma Gas recommended an effective date of September 1, 1995. NGVC recommended an effective date of September 1, 1996, unless NGV2 were adopted which would permit an immediate supply of containers. NGV Systems stated that an earlier effective date would be difficult to meet since the rule, as proposed, would require new tooling, process development, and perhaps equipment modification. ARC stated that the rule, as proposed, would require major modifications, since its containers have been designed to comply with NGV2. AAMA and Volvo/GM stated that the effective dates for the vehicle requirements and the equipment requirements should not be concurrent.

NHTSA notes that these comments were based on the requirements, as proposed in the NPRM. Since the final rule has been made essentially consistent with NGV2 (with the exception of carbon fiber containers), the agency anticipates that container manufacturers can for the most part already certify that containers, other than carbon fiber ones, comply with the new standard. This belief is based on comments on the NPRM and meetings with NGVC, the CGA, and CNG container manufacturers. With regard to manufacturers of carbon fiber containers, EDO indicated that it already complies with the standard and Brunswick indicated that it would need less than one month lead time for a safety factor greater than 2.25. Brunswick further stated that it would

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need an unspecified time period to modify the mounting brackets and other hardware. The CNG industry groups have informed the agency that they want a CNG fuel container standard to be effective as quickly as possible. In addition, they favor having an opportunity to "voluntarily certify compliance" to the standard once the final rule is published. The CNG industry groups believe that it is necessary for Federal standards to be in place as soon as possible, given the expected increased demand for CNG containers in light of Federal and State fleet programs for clean fuel vehicles. They also favor quick adoption of a Federal standard to preempt state regulations that otherwise may be promulgated and to ensure that substandard CNG containers are not marketed.

After reviewing the comments, NHTSA has decided to establish an effective date six months after the final rule is issued. As explained above, most CNG containers can be certified to comply with the new Federal motor vehicle safety standard since they already comply with NGV2 or can be modified so that they comply within six months. Nevertheless, the agency believes that it is necessary to provide a leadtime of six months to allow manufacturers time to make whatever design changes are necessary and to conduct testing so that they can certify that their containers comply with the new standard. In the meantime, prior to the standard's effective date, the industry is free to advertise containers as meeting the CNG equipment standard that will take effect in six months.[8] Manufacturers have taken the approach of seeking early compliance with respect to other agency requirements such as those relating to dynamic side impact protection and air bags. Therefore, the agency encourages manufacturers to seek, to the extent feasible, to manufacture their CNG containers to meet these new requirements before the date the standard takes effect.

With regard to the concern expressed by AAMA and Volvo GM that the effective date of the container regulation should precede that of the vehicle regulation, AAMA based its comments on the belief that it will need to know the performance of the containers it will use in the fuel systems of its vehicles. NHTSA notes that CNG containers now typically meet NGV2 and thus should comply with NHTSA's standards. Therefore, AAMA members already have access to and detailed knowledge about containers that should meet the new requirements.

H. Benefits

In the NPRM, NHTSA addressed the proposal's benefits with respect to CNG vehicles. The notice did not directly address the benefits of regulating the CNG fuel containers.

NHTSA received no comments directly addressing the benefits of regulating CNG containers. Brunswick criticized the proposal, believing that it would place carbon fiber containers at a competitive disadvantage. Brunswick stated that the proposed single burst factor would provide less benefits than if the agency adopted NGV2.[9]

NHTSA anticipates that the number of CNG fuel vehicles will increase greatly in the near future, in light of directives by the Clinton Administration [10] and legislation by Congress to develop vehicles powered by cleaner burning fuels. This final rule will increase the safety of this growing population of vehicles.

I. Costs

In the NPRM, NHTSA stated that each container would cost $600. The agency further stated that the container testing costs would range from approximately $4,050 to $8,600 for each model of container.

NGVC, NGV Systems, PST, Brunswick, ARC, Thomas Built, and Flxible addressed the costs of the proposal with respect to CNG containers. NGVC and the CNG container manufacturers stated that the proposal, especially given the single safety factor in the burst test requirements, significantly understated the costs of the rulemaking. Brunswick stated that container manufacturers would incur significant costs since they would have to redesign and requalify their currently designed tanks. As a result, it believed that the CNG containers would be more expensive and heavier. It estimated that the proposal would increase costs between 10 percent and 55 percent, depending on the material and method of construction. Brunswick further stated that this proposal would add many millions of dollars on an industry-wide basis.

NGVC commented that the qualification tests could cost $20,000 for each model of container since many tests will be required on prototype containers. It stated that some manufacturers estimate that the design, manufacture, and qualification costs could approach $150,000 per container model, a figure that greatly exceeded NHTSA's estimate of $74,000.

NHTSA believes that the basis for the comments about the costs of this rulemaking have been largely eliminated except in connection with carbon fiber tanks. The comments were based on the proposal for a single safety factor of 3.5 for all types of tanks. As noted above, the agency has decided to specify multiple safety factors that are consistent with NGV2 except in the case of the factors for carbon fiber containers. Since all the container manufacturers commenting on the proposal either already certify to or can comply with NGV2 without any design changes, the cost to manufacturers will be minimal for noncarbon fiber tanks.

V. Rulemaking Analyses

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be "nonsignificant" under the Department of Transportation's regulatory policies and procedures. NHTSA has estimated the costs of the amendments in a Final Regulatory Evaluation (FRE) which is included in the docket for this rulemaking. As discussed in that document, NHTSA estimates that the cost for the pressure cycling, burst, and bonfire testing will range from $9,000 to $21,725 per container size and type. In addition, the cost of the containers used in the test is estimated to range from $1,800 to $6,600. Since the safety factors in the burst test applicable to carbon fiber containers are more stringent than those in NGV2, the cost of those containers will increase. Based on comments by Brunswick and other information, the switch from carbon fiber containers meeting a 2.25 safety factor to carbon fiber containers meeting the factors adopted in this final rule will increase the container cost and the lifetime fuel costs about 8.75 percent for vehicles equipped with Type 2 containers. Those costs would be range from $115 for passenger cars to $602 for heavy trucks. The switch would increase costs about 37.1 percent for vehicles equipped with Type 3 and Type 4 containers, resulting in a cost increase ranging from $496 for cars to $2,560 for heavy trucks.

[8] However, the agency emphasizes that a manufacturer may not certify a container as meeting the equipment standard until the standard goes into effect. Under the Vehicle Safety Act, a certification is a statement that a vehicle or item of equipment meets all applicable Federal Motor Vehicle Safety Standards that are then in effect. Therefore, until a standard is effective, manufacturers may not certify compliance with it.

[9] Because NHTSA is adopting Brunswick's request for multiple safety factors, that commenter's concern about a single safety factor is moot.

[10] Executive Order 12844 increased by 50 percent the number of alternatively fueled vehicles to be acquired by the Federal Government from 1993 through 1995. (April 21, 1993) In addition, in 1993, the President established the Federal Fleet Conversion Task Force to accelerate the commercialization and market acceptance of alternative fueled vehicles throughout the country.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. Based upon the agency's evaluation, I certify that this rule will not have a significant economic impact on a substantial number of small entities. Information available to the agency indicates that businesses manufacturing CNG fuel containers are not small businesses.

C. Executive Order 12612 (Federalism)

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. No state has adopted requirements regulating CNG containers.

D. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this rule. The agency has determined that this rule will have no adverse impact on the quality of the human environment. On the contrary, because NHTSA anticipates that ensuring the safety of CNG vehicles will encourage their use, NHTSA believes that the rule will have positive environmental impacts. CNG vehicles are expected to have near-zero evaporative emissions and the potential to produce very low exhaust emissions as well.

E. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.5 is amended by redesignating (b)(7) as (b)(10) and adding new paragraphs (b)(7) through (b)(9), to read as follows:

§ 571.5 Matter incorporated by reference.

* * * * *

(b) * * *

(7) *Standards of Suppliers of Advanced Composite Materials Association (SACMA).* They are published by Suppliers of Advanced Composite Materials Association. Information and copies may be obtained by writing to: Suppliers of Advanced Composite Materials Association, 1600 Wilson Blvd., Suite 1008, Arlington, VA 22209.

(8) *Standards of the American Society of Mechanical Engineers (ASME).* They are published by The American Society of Mechanical Engineers. Information and copies may be obtained by writing to: The American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017.

(9) *Computer Analysis by the National Aeronautics and Space Administration (NASA).* This was conducted by the National Aeronautics and Space Administration. Information and copies may be obtained by writing to: National Aeronautics and Space Administration, 600 Independence Avenue SW, Washington, DC 20546.

* * * * *

3. A new § 571.304, *Standard No. 304; Compressed Natural Gas Fuel Container Integrity,* is added to Part 571, to read as follows:

§ 571.304 Standard No. 304; Compressed Natural Gas Fuel Container Integrity.

S1. *Scope.* This standard specifies requirements for the integrity of compressed natural gas (CNG), motor vehicle fuel containers.

S2. *Purpose.* The purpose of this standard is to reduce deaths and injuries occurring from fires that result from fuel leakage during and after motor vehicle crashes.

S3. *Application.* This standard applies to containers designed to store CNG as motor fuel on-board any motor vehicle.

S4. *Definitions.*

Brazing means a group of welding processes wherein coalescence is produced by heating to a suitable temperature above 800 °F and by using a nonferrous filler metal, having a melting point below that to the base metals. The filler metal is distributed between the closely fitted surfaces of the joint by capillary attraction.

Burst pressure means the highest internal pressure reached in a CNG fuel container during a burst test at a temperature of 21 °C (70 °F).

CNG fuel container means a container designed to store CNG as motor fuel on-board a motor vehicle.

Fill pressure means the internal pressure of a CNG fuel container attained at the time of filling. Fill pressure varies according to the gas temperature in the container which is dependent on the charging parameters and the ambient conditions.

Full wrapped means applying the reinforcement of a filament or resin system over the entire liner, including the domes.

Hoop wrapped means winding of filament in a substantially circumferential pattern over the cylindrical portion of the liner so that the filament does not transmit any significant stresses in a direction parallel to the cylinder longitudinal axis.

Hydrostatic pressure means the internal pressure to which a CNG fuel container is taken during testing set forth in S5.4.1.

Liner means the inner gas tight container or gas cylinder to which the overwrap is applied.

Service pressure means the internal settled pressure of a CNG fuel container at a uniform gas temperature of 21 °C (70 °F) and full gas content. It is the pressure for which the container has been constructed under normal conditions.

Stress ratio means the stress in the fiber at minimum burst pressure divided by the stress in the fiber at service pressure.

S5 *Container and material requirements.*

S5.1 *Container designations.* Container designations are as follows:

S5.1.1 *Type 1—Non-composite metallic container* means a metal container.

S5.1.2 *Type 2—Composite metallic hoop wrapped container* means a metal liner reinforced with resin impregnated continuous filament that is "hoop wrapped."

S5.1.3 *Type 3—Composite metallic full wrapped container* means a metal liner reinforced with resin impregnated continuous filament that is "full wrapped."

S5.1.4 *Type 4—Composite non-metallic full wrapped container* means resin impregnated continuous filament with a non-metallic liner "full wrapped."

S5.2 *Material designations.*

S5.2.1 *Steel containers and liners.*

(a) Steel containers and liners shall be of uniform quality. Only the basic oxygen or electric furnace processes are authorized. The steel shall be aluminum killed and produced to predominantly fine grain practice. The steel heat analysis shall be in conformance with one of the following grades:

TABLE ONE—STEEL HEAT ANALYSIS

Grade element	Chrome-Molybdenum percent	Carbon-Boron percent	Carbon-Manganese percent
Carbon	0.25 to 0.38	0.27 to 0.37	0.40 max.
Manganese	0.40 to 1.05	0.80 to 1.40	1.65 max.
Phosphorus	0.015 max	0.015 max	0.025 max.
Sulfur	0.010 max	0.010 max	0.010 max.
Silicon	0.15 to 0.35	0.30 max	0.10/0.30
Chromium	0.80 to 1.15	N/A	N/A
Molybdenum	0.15 to 0.25	N/A	N/A
Boron	N/A	0.0005 to 0.003	N/A
Aluminum	0.02 to 0.07	0.02 to 0.07	0.02/0.07

[1] "N/A" means not applicable.

(b) Incidental elements shall be within the limits specified in the *Standard Specification for Steel, Sheet and Strip, Alloy, Hot-Rolled and Cold-Rolled, General Requirements for* ASTM A 505 (1987).

S5.2.1.1 When carbon-boron steel is used, the test specimen is subject to a hardenability test in accordance with the *Standard Method for End-Quench Test For Hardenability of Steel,* ASTM A 255 (1989). The hardness evaluation is made 7.9 mm (5/16 inch) from the quenched end of the Jominy quench bar.

S5.2.1.2 The test specimen's hardness shall be at least Rc (Rockwell Hardness) 33 and no more than Rc 53.

S5.2.2 *Aluminum containers and aluminum liners.* (Type 1, Type 2 and Type 3) shall be 6010 alloy, 6061 alloy, and T6 temper. The aluminum heat analysis shall be in conformance with one of the following grades:

TABLE TWO—ALUMINUM HEAT ANALYSIS

Grade element	6010 alloy percent	6061 alloy percent
Magnesium	0.60 to 1.00	0.60 to 1.20
Silicon	0.80 to 1.20	0.40 to 0.80
Copper	0.15 to 0.60	0.15 to 0.40
Chromium	0.05 to 0.10	0.04 to 0.35
Iron	0.50 max	0.70 max.
Titanium	0.10 max	0.15 max.
Manganese	0.20 to 0.80	0.15 max.
Zinc	0.25 max	0.25 max.
Bismuth	0.003 max	0.003 max.
Lead	0.003 max	0.003 max.
Others, Each [1].	0.05 max	0.05 max.
Others, Total [1].	0.15 max	0.15 max.

TABLE TWO—ALUMINUM HEAT ANALYSIS—Continued

Grade element	6010 alloy percent	6061 alloy percent
Aluminum	Remainder	Remainder.

[1] Analysis is made only for the elements for which specific limits are shown, except for unalloyed aluminum. If, however, the presence of other elements is indicated to be in excess of specified limits, further analysis is made to determine that these other elements are not in excess of the amount specified. (Aluminum Association Standards and Data—Sixth Edition 1979.)

S5.2.3 Structural reinforcing filament material shall be commercial grade E-glass, commercial grade S-glass, aramid fiber or carbon fiber. Filament strength shall be tested in accordance with the *Standard Test Method for Tensile Properties of Glass Fiber Strands, Yarns, and Rovings Used in Reinforced Plastics,* ASTM D 2343 (1967, Reapproved 1985), or SACMA *Recommended Test Method for Tow Tensile Testing of Carbon Fibers,* SRM 16–90, 1990. Fiber coupling agents (sizing) shall be compatible with the resin system. If carbon fiber reinforcement is used the design shall incorporate means to prevent galvanic corrosion of metallic components of the fuel container.

S5.2.4 The resin system shall be epoxy, modified epoxy, polyester, vinyl ester or thermoplastic.

S5.2.4.1 The resin system is tested on a sample coupon representative of the composite overwrap in accordance with the *Standard Test Method for Apparent Interlaminar Shear Strength of Parallel Fiber Composites by Short-Beam Method,* ASTM D 2344, (1984, Reapproved 1989) following a 24-hour water boil.

S5.2.4.2 The test specimen shall have a shear strength of at least 13.8 MPa (2,000 psi).

S5.2.5 For nonmetallic liners, the permeation of CNG through the finished container's wall at service pressure is less than 0.25 normal cubic centimeters per hour per liter water capacity of the container.

S5.3 *Manufacturing processes for composite containers.*

S5.3.1 *Composite containers with metallic liners.* The CNG fuel container shall be manufactured from a metal liner overwrapped with resin impregnated continuous filament windings, applied under controlled tension to develop the design composite thickness. After winding is complete, composites using thermoset resins shall be cured by a controlled temperature process.

S5.3.1.1 *Type 2 containers.* Type 2 containers shall have a hoop wrapped winding pattern.

S5.3.1.2 *Type 3 containers.* Type 3 containers shall have a full wrapped "helical or in plane" and a "hoop" wrap winding pattern.

S5.3.2 Type 4 containers. Composite containers with nonmetallic liners shall be fabricated from a nonmetallic liner overwrapped with resin impregnated continuous filament windings. The winding pattern shall be "helical or in plane" and "hoop" wrap applied pattern under controlled tension to develop the design composite thickness.

After winding is complete, the composite shall be cured by a controlled temperature process.

S5.3.3 *Brazing.* Brazing is prohibited.

S5.3.4 Welding. Welding shall be done in accordance with the *American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code,* Section IX, Article II, QW–304 and QW–305 (1992). Weld efficiencies shall be in accordance with *ASME Boiler and Pressure Vessel Code,* Section VIII, UW–12 (1989). Any weld shall be subject to full radiographic requirements in accordance with *ASME Boiler and Pressure Vessel Code,* Section VIII, UW–51 thru UW–53 (1989). For Type 2 and Type 3 liners, longitudinal welds and nonconsumable backing strips or rings shall be prohibited.

S5.4 *Wall thickness.*

S5.4.1 *Type 1 containers.*

(a) The wall thickness of a Type 1 container shall be at least an amount such that the wall stress at the minimum prescribed hydrostatic test pressure does not exceed 67 percent of the minimum tensile strength of the metal as determined by the mechanical properties specified in S5.7 and S5.7.1.

(b) For minimum wall thickness calculations, the following formula is used:

$$S = \frac{P(1.3D^2 + 0.4d^2)}{(D^2 - d^2)}$$

Where:

S = Wall stress in MPa (psi).
P = Minimum hydrostatic test pressure in Bar (psig).
D = Outside diameter in mm (inches).
d = Inside diameter in mm (inches).

S5.4.2 *Type 2 containers.*

S5.4.2.1 The wall thickness of a liner to a Type 2 container shall be at least an amount such that the longitudinal tensile stress at the minimum design burst pressure does not exceed the ultimate tensile strength of the liner material as determined in S5.7 and S5.7.1.

S5.4.2.2 The wall thickness of a liner to a Type 2 container shall be at least an amount such that the compressive stress in the sidewall of the finished container at zero pressure shall not exceed 95 percent of the yield strength of the liner as determined in S5.7 and S5.7.1 or 95 percent of the minimum design yield strength shown in S5.7,3. The maximum tensile stress in the liner at service pressure shall not exceed 66 percent of the yield strength.

S5.4.2.3 Stresses at the end designs at internal pressures between no more than 10 percent of service pressure and service pressure shall be less than the maximum stress limits in the sidewall as prescribed above.

S5.4.3 *Type 3 containers.* The wall thickness of a liner to a Type 3 container shall be such that the compressive stress in the sidewall of the finished container at zero pressure shall not exceed 95 percent of the minimum yield strength of the liner as determined in S5.7 and S5.7.1 or 95 percent of the minimum design yield strength shown in S5.7.3

S5.4.4 *Type 4 containers.* The wall thickness of a liner to a Type 4 container shall be such that the permeation rate requirements of this specification are met.

S5.5 *Composite reinforcement for Type 2, Type 3, and Type 4 Containers.*

S5.5.1 Compute stresses in the liner and composite reinforcement using National Aeronautics and Space Administration (NASA) NAS 3–6292, *Computer Program for the Analysis of Filament Reinforced Metal-Shell Pressure Vessels,* (May 1966).

S5.5.2 The composite overwrap shall meet or exceed the following composite reinforcement stress ratio values shown in Table 3.

S5.6 *Thermal treatment.*

S5.6.1 *Steel containers or liners.*

S5.6.1.1 After all metal forming and welding operations, completed containers or liners shall be uniformly and properly heat treated under the same conditions of time, temperature and atmosphere prior to all tests.

S5.6.1.2 All containers or liners of steel grades "Chrome-Molybdenum" or "Carbon Boron" shall be quenched in a medium having a cooling rate not in excess of 80 percent that of water. "Carbon-Manganese" steel grades shall be normalized and do not require tempering after normalizing.

S5.6.1.3 All steel temperature on quenching shall not exceed 926°C (1700°F).

S5.6.1.4 All containers or liners or steel grades "Chrome-Molybdenum" or "Carbon Boron" shall be tempered after quenching at a temperature below the transformation ranges, but not less than 482°C (900°F) for "Carbon-Boron" steel or 565°C (1050°F) for "Chrome-Molybdenum" steel. "Carbon Manganese" steel grades do not require tempering after normalizing.

S5.6.2 *Aluminum containers or liners (seamless and welded).* After all forming and welding operations, aluminum containers or liners shall be solution heat treated and aged to the T6 temper. The liner and composite overwrap shall meet the cycle life and strength requirements set forth in S7.1 and S7.2 of this standard.

S5.7 *Yield strength, tensile strength, material elongation (metal containers and metal liners only).* To determine yield strength, tensile strength, and elongation of the material, cut two specimens from one container or liner. The specimen either has (a) a gauge length of 50 mm (2 inches) and a width not over 38 mm (1.5 inches), or (b) a gauge length of four times the specimen diameter, provided that a gauge length which is at least 24 times the thickness with a width not over 6 times the thickness is permitted when the liner wall is not over 5 mm (3/16 inch) thick. The specimen shall not be flattened, except that grip ends may be flattened to within 25 mm (1 inch) of each end of the reduced section. Heating of specimens is prohibited.

S5.7.1 *Yield strength.* The yield strength in tension shall be the stress corresponding to a permanent strain of 0.2 percent based on the gauge length.

S5.7.1.1 The yield strength shall be determined by either the "offset" method or the "extension under load" method as prescribed by *Standard Test Methods for Tension Testing of Metallic Materials,* ASTM E8 1993.

S5.7.1.2 In using the "extension under load" method, the total strain or "extension under load" corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations shall be based on an elastic modulus of 69 GPa (10,000,000 psi) for aluminum, or 207 GPa (30,000,000 psi) for steel. If the elastic extension calculation does not provide a conclusive result, the entire stress strain diagram shall be plotted and the yield strength determined from the 0.2 percent offset.

S5.7.1.3 For the purpose of strain measurement, the initial strain is set while the test specimen is under a stress of 41 MPa (6,000 psi) for aluminum, and 83 MPa (12,000 psi) for steel. The strain indicator reading is set at the calculated corresponding strain.

S5.7.1.4 Cross-head speed of the testing machine is 3.2 mm (1/8 inch) per minute or less during yield strength determination.

S5.7.2 *Elongation.* Elongation of material, when tested in accordance with S5.7, shall be at least 14 percent for aluminum or at least 20 percent for steel; except that an elongation of 10 percent is acceptable for both aluminum and steel when the authorized specimen

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size is 24t gauge length x 6t wide, where "t" equals specimen thickness.

S5.7.3 *Tensile strength.* Tensile strength shall not exceed 725 MPa (105,000 psi) for "Carbon Manganese" and 966 MPa (140,000 psi) for "Chrome-Molybdenum" and "Carbon-Boron."

S6 *General requirements.*

S6.1 Each passenger car, multipurpose passenger vehicle, truck, and bus that uses CNG as a motor fuel shall be equipped with a CNG fuel container that meets the requirements of S7 through S7.4.

S6.2 Each CNG fuel container manufactured on or after March 27, 1994, shall meet the requirements of S7 through S7.4.

S7 *Test requirements.* Each CNG fuel container shall meet the applicable requirements of S7 through S7.4.

S7.1 *Pressure cycling test at ambient temperature.* Each CNG fuel container shall not leak when tested in accordance with S8.1.

S7.2 *Hydrostatic burst test.*

S7.2.1 Each Type 1 CNG fuel container shall not leak when subjected to burst pressure and tested in accordance with S8.2. Burst pressure shall be not less than 2.25 times the service pressure for non-welded containers when analyzed in accordance with the stress ratio requirements of S5.4.1, and shall not be less than 3.5 times the service pressure for welded containers.

S7.2.2 Each Type 2, Type 3, or Type 4 CNG fuel container shall not leak when subjected to burst pressure and tested in accordance with S8.2. Burst pressure shall be no less than the value necessary to meet the stress ratio requirements of Table 3, when analyzed in accordance with the requirements of S5.5.1. Burst pressure is calculated by multiplying the service pressure by the applicable stress ratio set forth in Table Three.

TABLE THREE—STRESS RATIOS

Material	Type 2	Type 3	Type 4
E-Glass	2.65	3.5	3.5
S-Glass	2.65	3.5	3.5
Aramid	2.25	3.0	3.0
Carbon	2.50	3.33	3.33

S7.3 *Bonfire test.* Each CNG fuel container shall be equipped with a pressure relief device. Each CNG fuel container shall completely vent its contents through a pressure relief device or shall not burst while retaining its entire contents when tested in accordance with S8.3.

S7.4. *Labeling.* Each CNG fuel container shall be permanently labeled with the information specified in paragraphs (a) through (d). The information specified in paragraphs (a) through (d) of this section shall be in English and in letters and numbers that are at least 12.7 mm (½ inch) high.

(a) The statement: "If there is a question about the proper use, installation, or maintenance of this container, contact _____." inserting the *CNG fuel container manufacturer's name, address, and telephone number.*

(b) The statement: "Manufactured in _____." inserting the month and year of manufacture of the CNG fuel container.

(c) Maximum service pressure _____ kPa (_____ psig).

(d) The symbol DOT, constituting a certification by the CNG container manufacturer that the container complies with all requirements of this standard.

S8 *Test conditions: fuel container integrity.*

S8.1 *Pressure cycling test.* The requirements of S7.1 shall be met under the conditions of S8.1.1 through S8.1.4.

S8.1.1 Hydrostatically pressurize the CNG container to the service pressure, then to not more than 10 percent of the service pressure, for 13,000 cycles.

S8.1.2 After being pressurized as specified in S8.1.1, hydrostatically pressurize the CNG container to 125 percent of the service pressure, then to not more than 10 percent of the service pressure, for 5,000 cycles.

S8.1.3 The cycling rate for S8.1.1 and S8.1.2 shall not exceed 10 cycles per minute.

S8.1.4 The cycling is conducted at ambient temperature.

S8.2 *Hydrostotic burst test.* The requirements of S7.2 shall be met under the conditions of S8.2.1 through S8.2.2.

S8.2.1 Hydrostatically pressurize the CNG fuel container, as follows: The pressure is increased up to the minimum prescribed burst pressure determined in S7.2.1 or S7.2.2, and held constant at the minimum burst pressure for 10 seconds.

S8.2.2 The pressurization rate throughout the test shall not exceed 1,379 kPa (200 psi) per second.

S8.3 *Bonfire test.* The requirements of S7.3 shall be met under the conditions of S8.3.1 through S8.3.10.

S8.3.1 The CNG fuel container is filled with compressed natural gas and tested at (1) 100 percent of service pressure and (2) 25 percent of service pressure. Manufacturers may conduct these tests using the same container or with separate containers.

S8.3.2 The CNG fuel container is positioned so that its longitudinal axis is horizontal. Subject the entire length to flame impingement, except that the flame shall not be allowed to impinge directly on any pressure relief device. Shield the pressure relief device with a metal plate.

S8.3.3 If the test container is 165 cm (65 inches) in length or less, place it in the upright position and subject it to total fire engulfment in the vertical. The flame shall not be allowed to impinge directly on any pressure relief device. For containers equipped with a pressure relief device on one end, the container is positioned with the relief device on top. For containers equipped with pressure relief devices on both ends, the bottom pressure relief device shall be shielded with a metal plate.

S8.3.4 The lowest part of the container is 102 mm (4 inches) above the liquid surface of the diesel fuel at the beginning of the test.

S8.3.5 The CNG fuel container is tested with the valve and pressure relief device or devices in place.

S8.3.6 The fire is generated by No. 2 diesel fuel.

S8.3.7 The fuel specified in S8.3.6 is contained in a pan such that there is sufficient fuel to burn for at least 20 minutes. The pan's dimensions ensure that the sides of the fuel containers are exposed to the flame. The pan's length and width shall exceed the fuel container projection on a horizontal plane by at least 20 cm (8 inches) but not more than 50 cm (20 inches). The pan's sidewalls shall not project more than 2 cm (0.8 inches) above the level of fuel.

S8.3.8 Time-pressure readings are recorded at 30 second intervals, beginning when the fire is lighted and continuing until the container is completely tested.

S8.3.9 The CNG fuel container is exposed to the bonfire for 20 minutes or until its contents are completely vented.

S8.3.10 The average wind velocity at the container is not to exceed 2.24 meters/second (5 mph).

Issued on September 16, 1994.

Ricardo Martinez,

Administrator.

[FR Doc. 94-23571 Filed 9-21-94; 1:13 pm]

BILLING CODE 4910-60-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB92

Endangered and Threatened Wildlife and Plants; Endangered Status for Four Ferns From the Hawaiian Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for four plants: *Asplenium fragile* var. *insulare* (no common name (NCN)), *Ctenitis squamigera* (pauoa), *Diplazium molokaiense* (NCN), and *Pteris lidgatei* (NCN). *Asplenium fragile* var. *insulare* is currently known only from the island of Hawaii. The three other species are reported from more than one island: *Ctenitis squamigera* is known from the islands of Oahu, Lanai, and Maui, and *Diplazium molokaiense* and *Pteris lidgatei* are known from Oahu and Maui. The four plant taxa and their habitats have been variously affected or are threatened by one or more of the following: Habitat degradation and/or predation by feral goats, sheep, cattle, axis deer, and pigs; and competition for space, light, water, and nutrients from alien plants. Because of the small number of extant individuals and their severely restricted distributions, populations of these taxa are subject to an increased likelihood of extinction from stochastic events. This final rule implements the Federal protection provided by the Act.

EFFECTIVE DATE: October 26, 1994.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, Field Supervisor, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

Asplenium fragile var. *insulare*, *Ctenitis squamigera*, *Diplazium molokaiense*, and *Pteris lidgatei* are endemic to the Hawaiian Islands. *Asplenium fragile* var. *insulare* is currently known only from the island of Hawaii. *Ctenitis squamigera* is known from the islands of Oahu, Lanai, and Maui. *Diplazium molokaiense* and *Pteris lidgatei* are known from Oahu and Maui.

The vegetation of the Hawaiian Islands varies greatly according to elevation, moisture regime, and substrate. Major vegetation formations include forests, woodlands, shrublands, grasslands, herblands, and pioneer associations on lava and cinder substrates. There are lowland, montane, and subalpine forest types. Coastal and lowland forests are generally dry or mesic, and may be open- or closed-canopied, with the canopy generally under 10 meters (m) (30 feet (ft)) in height. Of the four endangered fern taxa, three have been reported from lowland forest habitat. *Ctenitis squamigera* is typically found in lowland mesic forests, while *Pteris lidgatei* appears to be restricted to lowland wet forest. *Diplazium molokaiense* has been reported from lowland to montane forests in mesic to wet settings. Montane forests, occupying elevations between 1,000 and 2,000 m (3,000 and 6,500 ft) are dry to mesic on the leeward (southwest) slopes of Maui and Hawaii. On those islands, as well as Oahu and Lanai, mesic to wet montane forests occur on the windward (northeast) slopes and summits. The dry and mesic forests may be open- to closed-canopied, and may exceed 20 m (65 ft) in stature. *Asplenium fragile* var. *insulare* has been reported from montane mesic and dry forest habitats. *Diplazium molokaiense* is also found in montane mesic forests as well as montane wet forests. At high montane and subalpine elevations, above 2,000 m (6,500 ft) elevation, the forests are usually open-canopied, and form a mosaic with surrounding grasslands and shrublands. Subalpine forests and associated ecosystems are known only from East Maui and the island of Hawaii. *Asplenium fragile* var. *insulare* has been reported from subalpine dry forest and shrubland habitat (Gagne and Cuddihy 1990).

The land that supports these four plant taxa is owned by the State of Hawaii, the Federal government, and private entities. The State lands are under the jurisdiction of the Department of Land and Natural Resources (including the natural area reserves system, forest reserves, and State parks) and the Department of Hawaiian Home Lands. Federally owned land consists of Hawaii Volcanoes National Park, Pohakuloa Training Area on the island of Hawaii, and Schofield Barracks Military Reservation on Oahu. The latter two are under the jurisdiction of the U.S. Army.

Discussion of the Four Taxa

The Hawaiian plants now referred to as *Asplenium fragile* var. *insulare* were considered by William Hillebrand (1888) to be conspecific with *Asplenium fragile* from Central and South America. The Hawaiian plants were subsequently treated as a distinct endemic species, *Asplenium rhomboideum* Brack. (Robinson 1913). However, that species is now considered native to the New World and not present in Hawaii. The name *Asplenium fragile* var. *insulare* was published in 1947, as the Hawaiian plants were considered distinct at the varietal level from the extra-Hawaiian plants (Morton 1947).

Asplenium fragile var. *insulare*, a member of the spleenwort family (Aspleniaceae), is a fern with a short suberect stem. The leaf stalks are 5 to 15 centimeters (cm) (2 to 6 inches (in)) long. The main axis of the frond is dull gray or brown, with two greenish ridges. The fronds are thin-textured, bright green, long and narrow, 23 to 41 cm (9 to 16 in) long, 2 cm (0.8 in) wide above the middle, and pinnate with 20 to 30 pinnae (leaflets) on each side. The pinnae are rhomboidal, 0.8 cm (0.3 in) wide, and notched into two to five blunt lobes on the side towards the tip of the frond. The sori (spore-producing bodies) are close to the main vein of the pinna, with one to two on the lower side and two to four on the upper side (Hillebrand 1888, Wagner and Wagner 1992). The Hawaiian fern species most similar to *Asplenium fragile* var. *insulare* is *Asplenium macraei*. The two can be distinguished by a number of characters, including the size and shape of the pinnae and the number of sori per pinna (Wagner and Wagner 1992).

Asplenium fragile var. *insulare* was known historically from East Maui, where it was recorded from the north slope of Haleakala and Kanahau Hill (Hawaii Heritage Program 1992a6, Hillebrand 1888). On the island of Hawaii, the taxon was found historically below Kalaieha, Laumaia, and Puu Moana on Mauna Kea (HHP 1992a12, 1992a14, 1992a15), Puuwaawaa on Hualalai (HHP 1992a4), west of Keawewai, above Kipuka Ahiu on Mauna Loa (HHP 1992a3, 1992a5), and near Hilo (HHP 1992a2). This fern is now known from eight populations on Hawaii between 1,600 and 2,377 m (5,250 and 7,800 ft) elevation (HHP 1992a7, Shaw 1992). These populations are on Federal, State, and private land. The populations are located at Keanakolu, Puu Huluhulu, Pohakuloa Training Area (nine subpopulations), Kulani Correctional Facility, Keauhou, the Mauna Loa Strip in Hawaii

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Volcanoes National Park, Kapapala Forest Reserve, and the summit area of Hualalai (HHP 1992a1, 1992a7 to 1992a11, 1992a13; Shaw 1992; Paul Higashino, The Nature Conservancy of Hawaii, Daniel Palmer, naturalist, and Warren H. Wagner, Jr., University of Michigan, pers. comms., 1992). The eight known populations total about 295 plants (Shaw 1992; Robert Shaw, *in litt.*, 1993; P. Higashino, D. Palmer, and W. Wagner, pers. comms., 1992). This fern is found in *Metrosideros* (Ohia) Dry Montane Forest, *Dodonaea* (Aalii) Dry Montane Shrubland, *Myoporum/Sophora* (Naio/Mamane) Dry Montane Forest (Shaw 1992), and ohia/*Acacia* (koa) forest (HHP 1992a9). *Asplenium fragile* var. *insulare* grows almost exclusively in lava tubes, pits, and deep cracks, with at least a moderate soil or ash accumulation, associated with mosses and liverworts. Infrequently, this fern has been found growing on the interface between younger aa lava flows and much older pahoehoe lava or ash deposits (Shaw 1992). The primary threats to *Asplenium fragile* var. *insulare* are browsing by feral sheep (*Ovis aries*) and goats (*Capra hircus*) and competition with the alien plant *Pennisetum setaceum* (fountain grass). At least one population is threatened by military operations and/or fires resulting from these operations (Loyal Mehrhoff, U.S. Fish and Wildlife Service (USFWS), pers. comm., 1993). Stochastic extinction due to the relatively small number of existing individuals is also of concern.

Ctenitis squamigera was first published as *Nephrodium squamigerum* by Hooker and Arnott in 1832. The species was subsequently placed in the genera *Lastraea*, *Aspidium*, and *Dryopteris*. In 1957 it was transferred to the genus *Ctenitis*, resulting in the currently accepted combination *Ctenitis squamigera* (Degener and Degener 1957).

Ctenitis squamigera, a member of the spleenwort family (Aspleniaceae), has a rhizome (horizontal stem) 5 to 10 millimeters (mm) (0.2 to 0.4 in) thick, creeping above the ground and densely covered with scales similar to those on the lower part of the leaf stalk. The leaf stalks are 20 to 60 cm (8 to 24 in) long and densely clothed with tan-colored scales up to 1.8 cm (0.7 in) long and 1 mm (0.04 in) wide. The leafy part of the frond is deltoid to ovate-oblong, dark green, thin, and twice pinnate to thrice pinnatifid (leaflet sections). The sori are tan-colored when mature and in a single row one-third of the distance from the margin to the midrib of the ultimate segments (Degener and Degener 1957). *Ctenitis squamigera* can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering of tan-colored scales on its fronds (Wagner and Wagner 1992).

Historically, *Ctenitis squamigera* was recorded from above Waimea on Kauai (HHP 1992b3); Kaluanui, southeast of Kahana Bay, Pauoa, Nuuanu, Niu, and Wailupe in the Koolau Mountains of Oahu (HHP 1992b4 to 1992b5, 1992b9 to 1992b12); at Kaluaaha Valley on Molokai (HHP 1992b6); in the mountains near Koele on Lanai (HHP 1992b7); in the Honokohau Drainage on West Maui (HHP 1992b1); and at "Kalua" on the island of Hawaii (HHP 1992b13). The seven populations that have been observed within the last 50 years are in the Waianae Mountains of Oahu, Lanai, and East and West Maui. The two Waianae Mountain populations are in the East Makaleha/Kaawa area and at Schofield Barracks (HHP 1991, 1992b2; W. Wagner, pers. comm., 1992). On Lanai, *Ctenitis squamigera* is known from the Waiapaa-Kapohaku area on the leeward side of the island, and Lopa Gulch and Waiopa Gulch on the windward side (HHP 1991). The West Maui population is in Iao Valley (Joel Lau, HHP, pers. comm., 1992). The East Maui population is at Manawainui Stream, 3.5 kilometers (km) (2.2 miles (mi)) north of Kaupo Village (HHP 1992b8). The seven populations are on State, Federal, and private land and total approximately 80 plants (J. Lau and W. Wagner, pers. comms., 1992). This species is found in the understory of forests at elevations of 380 to 915 m (1,250 to 3,000 ft) (HHP 1991, 1992b8), in Ohia/*Diospyros* (Lama) Mesic Forest and diverse mesic forest (HHP 1991). Associated plant taxa include *Myrsine* (kolea), *Psychotria* (kopiko), and *Xylosma* (maua) (HHP 1991; J. Lau, pers. comm., 1992). The primary threats to *Ctenitis squamigera* are habitat degradation by feral pigs (*Sus scrofa*), goats, and axis deer (*Axis axis*); competition with alien plant taxa; and stochastic extinction due to the small number of existing populations and individuals.

Diplazium molokaiense was published by Winifred Robinson (1913) as a new name for the Hawaiian plants that had previously been referred to as the extra-Hawaiian species, *Asplenium arboreum* Willd., by Hillebrand (1888).

Diplazium molokaiense, a member of the spleenwort family (Aspleniaceae), has a short prostrate rhizome. The leaf stalks are 15 to 20 cm (6 to 8 in) long and green or straw-colored. The frond is thin-textured, ovate-oblong, 15 to 50 cm (6 to 20 in) long and 10 to 15 cm (4 to 6 in) wide, truncate at the base, and pinnate with a pinnatifid apex. The sori are 0.8 to 1.3 cm (0.3 to 0.5 in) long and lie alongside the side veins of the pinnae (Hillebrand 1888, Wagner and Wagner 1992). *Diplazium molokaiense* can be distinguished from other species of *Diplazium* in the Hawaiian Islands by a combination of characters, including venation pattern, the length and arrangement of the sori, frond shape, and the degree of dissection of the frond (Wagner and Wagner 1992).

Historically, *Diplazium molokaiense* was found at Kaholuamano on Kauai (HHP 1992c7); Makaleha on Oahu (HHP 1992c3); Kalae, Kaluaaha, Mapulehu, and the Wailau Trail on Molokai (HHP 1992c5, 1992c11 to 1992c13); Mahana Valley and Kaiholena on Lanai (HHP 1992c8, 1992c9); and Wailuku (Iao) Valley and Waikapu on West Maui (HHP 1992c1, 1992c4). However, within the last 50 years, it has been recorded from only one location on Oahu and three on East Maui. The Oahu population is at Schofield Barracks in the Waianae Mountains (HHP 1992c2). The three Maui populations are on the slopes of Haleakala: Two populations on the north slope at Ainahou and Maliko Gulch (HHP 1992c6, 1992c10), and the third on the south slope at Waiopai Gulch (Robert Hobdy, Hawaii Division of Forestry and Wildlife, and J. Lau, pers. comms., 1992). The currently known populations of *Diplazium molokaiense* are between 850 and 1,680 m (2,800 and 5,500 ft) in elevation (HHP 1992c6, 1992c10) in lowland to montane habitats, including Montane Mesic Ohia/Koa Forest (R. Hobdy, pers. comm., 1992). The four populations are on private, State, and Federal land and total 23 individuals (R. Hobdy and W. Wagner, pers. comms., 1992). The primary threats to *Diplazium molokaiense* are habitat degradation by feral goats, cattle (*Bos taurus*), and pigs; competition with alien plant taxa; and stochastic extinction due to the extremely small number of populations and individuals.

Cheilanthes lidgatei was described in 1883 on the basis of a specimen collected on Oahu. Hillebrand (1888) erected the genus *Schizostege* for this anomalous species. In 1897, it was placed in the genus *Pteris* by H. Christ, resulting in the currently accepted combination *Pteris lidgatei* (Wagner 1949).

Pteris lidgatei, a member of the maidenhair fern family (Adiantaceae), is a coarse herb, 0.5 to 1 m (1.6 to 3.3 ft) tall. It has a horizontal rhizome 1.5 cm (0.6 in) thick and at least 10 cm (3.9 in) long when mature. The fronds, including the leaf stalks, are 60 to 95 cm (24 to 37 in) long and 20 to 45 cm (8 to 18 in) wide. The leafy portion of the frond is oblong-deltoid to broadly ovate-deltoid, thick, brittle, and dark gray-green. The sori are apparently marginal in position, either fused into long linear sori, or more typically separated into distinct shorter sori, with intermediate conditions being common (Wagner 1949). *Pteris lidgatei* can be distinguished from other species of *Pteris* in the Hawaiian Islands by the texture of its fronds and the tendency of the sori along the leaf margins to be broken into short segments instead of being fused into continuous marginal sori (Wagner and Wagner 1992).

Historically, *Pteris lidgatei* was found at Olokui on Molokai (HHP 1992d4) and Waihee on West Maui (HHP 1992d5). The species was also recorded historically at three locations in the Koolau Mountains of Oahu: Waiahole, Lulumahu Stream, and Wailupe (HHP 1992d1, 1992d2, 1992d6). Only three populations totaling 26 individuals, have been seen within the past 50 years. One population, containing 13 plants, is on State-owned land in the Kaluanui Stream drainage on the windward side of the central Koolau Mountains at 530 to 590 m (1,750 to 1,930 ft) elevation (HHP 1992d3; W. Wagner, pers. comm., 1992). The Kaluanui population grows on steep stream banks in wet ohia forest with mosses and other ferns, including *Cibotium chamissoi* (hapuu ii), *Dicranopteris linearis* (uluhe), *Elaphoglossum crassifolium*, *Sadleria squarrosa* (amau), and *Sphenomeris chusana* (palaa) (HHP 1992d3). One additional plant was discovered on Oahu along the South Kaukonahua Stream (HHP 1993). One population of 12 plants was also discovered along the back wall of Kauaula Valley on Maui (Steve Perlman, National Tropical Botanical Garden, pers. comm., 1993). The primary threats to *Pteris lidgatei* are the alien plant *Clidemia hirta* (Koster's curse), habitat destruction by feral pigs, and stochastic extinction.

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Asplenium fragile* var. *insulare*, *Diplazium molokaiense*, and *Pteris lidgatei* were considered to be endangered. *Ctenitis squamigera* was considered to be extinct. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant taxa, including all of the above taxa considered to be endangered or thought to be extinct. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, including these four species, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In these three notices, *Pteris lidgatei* was treated as a category 1 candidate for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. In the 1980 and 1985 notices, *Asplenium fragile* var. *insulare*, *Ctenitis squamigera*, and *Diplazium molokaiense* were considered category 1* species. Category 1* taxa are those which are possibly extinct. Because new information indicated their current existence, *Asplenium fragile* var. *insulare* (as *Asplenium fragile*) and *Diplazium molokaiense* were given category 1 status in the 1990 notice. In that notice, *Ctenitis squamigera* was still considered a category 1* species. However, because this species was rediscovered within the past 3 years, it is included in this rule.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on petitions that present substantial information indicating that the petitioned action may be warranted within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these taxa was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the Service to consider the petition as having been resubmitted, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the proposal to list the species constituted the final 1-year finding for these four taxa.

On June 24, 1993, the Service published in the **Federal Register** (58 FR 34231) a proposal to list these four ferns from the Hawaiian Islands as endangered. This proposal was based primarily on information supplied by the Hawaii Heritage Program and observations by botanists and naturalists. With the publication of this final rule, the Service determines these four ferns from the Hawaiian Islands to be endangered.

Summary of Comments and Recommendations

In the June 24, 1993, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The public comment period ended on August 23, 1993. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in "The Honolulu Advertiser" on July 16, 1993, "The Maui News" on July 21, 1993, and the "Hawaii Tribune Herald on July 19, 1993. One letter of comment was received offering additional information on the distribution of one taxon. This information has been incorporated into this final rule. One phone call was received opposing the listing and raising the following issue:

Issue: The control of feral ungulates is unnecessary and done using inhumane methods.

Response: Several studies verify that feral ungulates damage native plants and habitats. Feral goats and pigs have been implicated in the damage of native vegetation ranging from lowland to subalpine areas (Mueller-Dombois and Spatz 1972; Spatz and Mueller-Dombois

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1973, 1975; Scowcroft and Sakai 1983). Goat browsing damage has been observed on individuals of *Asplenium fragile* var. *insulare* (R. Shaw, *in litt.*, 1993). Goats, sheep, axis deer, and/or pigs threaten all four taxa through habitat degradation. Recovery efforts for these four endangered taxa should include the control of feral ungulates, but this control should be done in the most humane way possible, consistent with the need to protect the habitat of these taxa.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal lists of endangered and threatened species. A species may be determined to be an endangered species due to one or more of the five factors described in section 4(a)(1). The threats facing these four taxa are summarized in Table 1.

TABLE 1.—SUMMARY OF THREATS

Species	Feral animal activity					Alien plants	Fire	Human impacts	Limited numbers [1]
	Goats	Sheep	Cattle	Axis deer	Pigs				
Asplenium fragile var. *insulare*	X	X	.....	.....	.....	X	P	X	X
Ctenitis squamigera	X	.....	.....	X	X	X	P	.....	X
Diplazium molokaiense	X	.....	X	.....	X	X	P	.....	X
Pteris lidgatei	.....	.....	.....	.....	X	X	.....	.....	X

X = Immediate and significant threat.
P = Potential threat.
[1] No more than 100 individuals and/or fewer than 10 populations.

These factors and their application to *Asplenium fragile* Presl var. *insulare* Morton (no common name (NCN)), *Ctenitis squamigera* (Hook. & Arnott) Copel. (pauoa), *Diplazium molokaiense* W. J. Robinson (NCN), and *Pteris lidgatei* (Baker) Christ (NCN) are as follows:

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* Native vegetation on all of the main Hawaiian Islands has undergone extreme alteration because of past and present land management practices including ranching, deliberate animal and alien plant introductions, and agricultural development (Cuddihy and Stone 1990, Wagner *et al.* 1985). Military operations threaten at least one population of *Asplenium fragile* var. *insulare* (L. Mehrhoff, pers. comm., 1993). Habitat disturbance caused by human activities such as military construction and road building could detrimentally impact *Asplenium fragile* var. *insulare* at Pohakuloa Training Area (Shaw 1992). The primary threats facing the four endangered taxa include ongoing and threatened destruction and modification of habitat by feral animals and competition with alien plants. All four taxa are threatened by feral animals. Pigs, goats, sheep and cattle were introduced either by the early Hawaiians or more recently by European settlers for food and commercial ranching activities. Over the 200 years following their introduction, their numbers increased and the adverse impacts of these ungulates on native vegetation have become increasingly apparent.

First introduced to Maui in 1793 (Stone and Loope 1987), goats became established on other Hawaiian islands by the 1820s (Cuddihy and Stone 1990, Culliney 1988). Far from controlling their numbers, the era of trade in goatskins (mid-1800s) saw the feral goat population increase into the millions (Culliney 1988). As a result of their agility, they were able to reach more remote areas than other ungulates (Culliney 1988). Feral goats now occupy a wide variety of habitats, from dry lowland forests to alpine grasslands, where they consume native vegetation, trample roots and seedlings, accelerate erosion, and promote the invasion of alien plants (Cuddihy and Stone 1990, Stone 1985, Stone and Loope 1987). Three of the endangered fern taxa are threatened by habitat degradation caused by goats. On Oahu, goats are contributing to the decline of a population of *Ctenitis squamigera* at East Makaleha/Kaawa in the Mokuleia region of the Waianae Mountains (HHP 1991). On Maui, large populations of feral goats persist on the south slope of Haleakala, outside of Haleakala National Park, where they threaten the population of *Diplazium molokaiense* at Waiopai (R. Hobdy, pers. comm., 1992). Goats have reduced the species' habitat there to small remnants. On the island of Hawaii, feral goats are also present in large numbers within Pohakuloa Training Area in the saddle between Mauna Loa and Mauna Kea, where they threaten *Asplenium fragile* var. *insulare* through habitat degradation as well as direct browsing on the plants (R. Shaw, *in litt.*, 1993; J. Lau, pers. comm., 1992).

Feral sheep have become firmly established on the island of Hawaii (Tomich 1986) since their introduction almost 200 years ago (Cuddihy and Stone 1990). Like feral goats, sheep roam the upper elevation dry forests of Mauna Kea (above 1,000 m (3,300 ft)), including Pohakuloa Training Area, causing damage similar to that of goats (Stone 1985). The presence of sheep at Pohakuloa Training Area is contributing to the degradation of the habitat of *Asplenium fragile* var. *insulare*.

Large-scale cattle ranching in the Hawaiian Islands began in the middle of the 19th century on the islands of Kauai, Oahu, Maui, and Hawaii. Ranches, tens of thousands of acres in size, developed on East Maui and Hawaii (Cuddihy and Stone 1990), where most of the State's large ranches still exist. Degradation of native forests used for ranching activities became evident soon after full-scale ranching began. The negative impact of cattle on Hawaii's ecosystems is similar to that described for goats and sheep (Cuddihy and Stone 1990, Stone 1985). Cattle ranching is the primary economic activity on the west and southwest slopes of East Maui, where a population of *Diplazium molokaiense* exists at Waiopai (R. Hobdy, pers. comm., 1992).

Habitat degradation caused by axis deer (*Axis axis*) is now considered to be a major threat to the forests of Lanai (Culliney 1988). Deer browse on native vegetation, destroying or damaging the habitat. Their trampling removes ground cover, compacts the soil, promotes erosion, and opens areas, allowing alien plants to invade (Cuddihy and Stone 1990, Culliney 1988, Scott *et al.* 1986, Tomich 1986). Extensive red erosional scars caused by decades of deer activity are evident on Lanai. Axis deer are presently actively managed for recreational hunting by the State Department of Land and Natural Resources. All three of the Lanai populations of *Ctenitis squamigera* are negatively affected to some extent by axis deer (HHP 1991).

Feral pigs have invaded primarily wet and mesic forests and grasslands of Kauai, Oahu, Molokai, Maui, and Hawaii. Pigs damage the native vegetation by rooting and trampling the forest floor, and encourage the expansion of alien plants in the newly tilled soil (Stone 1985). Pigs also disseminate alien plant seeds through their feces and on their bodies, accelerating the spread of alien plants through native forest (Cuddihy and Stone 1990, Stone 1985). On Oahu, populations of *Ctenitis squamigera*, *Diplazium molokaiense*, and *Pteris lidgatei* have already sustained loss of individual plants and/or habitat as a result of feral pig activities. The following Oahu populations are threatened by pigs: *Ctenitis squamigera* at Schofield Barracks and nearby East Makaleha-Kaawa; *Diplazium molokaiense* at Schofield Barracks (HHP 1991; J. Lau, pers. comm., 1992); and, in Kaluanui Valley, the only extant population of *Pteris lidgatei* (HHP 1992d3; W. Wagner, pers. comm., 1992). On East Maui, feral pigs threaten the populations of *Diplazium molokaiense* at both Ainahou and Waiopai (R. Hobdy and J. Lau, pers. comms., 1992).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although not currently known to be a factor, unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could seriously impact three of these taxa. *Ctenitis squamigera*, *Diplazium molokaiense*, and *Pteris lidgatei* each number fewer than 100 individuals and fewer than 10 populations, making them especially vulnerable to human disturbance. Such disturbance could promote erosion and greater ingression of alien plant taxa.

C. *Disease or predation.* No evidence of disease has been reported for the four endangered fern taxa. Predation by feral goats and/or sheep has been reported for *Asplenium fragile* var. *insulare* at Pohakuloa Training Area (Shaw 1992, R. Shaw, *in litt.*, 1993). Because no colonies have been completely decimated by the animals, they apparently do not seek out this fern. However, further predation may occur if their preferred forage is not available. Predation by feral goats is a potential threat to the other two sizable known populations of this fern at Keauhou and Kulani (Linda Cuddihy, Hawaii Volcanoes National Park, pers. comm., 1992).

D. *The inadequacy of existing regulatory mechanisms.* Three of the endangered fern taxa have populations located on privately owned land. All four also occur on State and Federal lands. The known populations of these species located on Federal lands are inadequate to ensure their long-term survival. There are no State laws or existing regulatory mechanisms at the present time to protect or prevent further decline of these plants on State or private land. However, Federal listing automatically invokes listing under Hawaii State law. Hawaii's Endangered Species Act (HRS, Sect. 195D–4(a)) states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the Endangered Species Act [of 1973] shall be deemed to be an endangered species under the provisions of this chapter." This State law prohibits cutting, collecting, uprooting, destroying, injuring, or possessing any listed species of plant on State or private land, or attempting to engage in any such conduct. However, the regulations are difficult to enforce because of limited personnel. Further, the State law encourages conservation by State government agencies. The State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, Sect. 195D–5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Listing of these four plant taxa therefore triggers, reinforces and supplements the protection available under State law. The Act also provides additional protection to these four species because it is a violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. *Other natural or manmade factors affecting their continued existence.* The small number of populations and of individual plants of these taxa increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or the only known extant population. For example, only 4 populations of *Diplazium molokaiense* are known, totaling 23 individuals. *Pteris lidgatei* is known from 3 populations totaling 26 individuals, *Ctenitis squamigera* from 7 populations, and *Asplenium fragile* var. *insulare* from 8 populations. Three of the endangered taxa are estimated to number no more than 100 known individuals and the fourth (*Asplenium fragile* var. *insulare*) numbers fewer than 300 known individuals.

All four endangered fern taxa are threatened by competition with one or more alien plant taxa. Koster's curse, a noxious shrub first reported on Oahu in 1941, had spread through much of the Koolau Mountains by the early 1960s, and spread to the Waianae Mountains by 1970 (Cuddihy and Stone 1990). This shrub replaces native plants of the forest understory and poses a serious threat to the population of *Pteris lidgatei* located in Kaluanui Valley on the windward side of the Koolau Mountains (J. Lau, pers. comm., 1992). It also poses a threat to populations of *Ctenitis squamigera* and *Diplazium molokaiense* in the Waianae Mountains (HHP 1991; J. Lau, pers. comm., 1992).

Noxious alien plants such as *Schinus terebinthifolius* (Christmasberry) have invaded the dry to mesic lowland regions of the Hawaiian Islands. Introduced to Hawaii prior to 1911, Christmasberry forms dense thickets that shade out and displace other plants (Cuddihy and Stone 1990). Both of the Oahu populations of *Ctenitis squamigera*, the West Maui population, and one of the Lanai populations are negatively affected by this invasive plant, as is the population of *Diplazium molokaiense* at Schofield Barracks (HHP 1991; J. Lau, pers. comm., 1992). *Psidium cattleianum* (strawberry guava), a shrub or small tree, has become naturalized on all of the main Hawaiian islands except Niihau and Kahoolawe. Like Christmasberry, strawberry guava is capable of forming dense stands that exclude other plant taxa (Cuddihy and Stone 1990). This alien plant grows primarily in mesic and wet habitats and provides food for several alien animal taxa, including feral pigs and game birds, that disperse the plant's seeds through the forest (Smith 1985, Wagner *et al.* 1985). Strawberry guava is considered one of the greatest alien plant threats to Hawaii's wet forests and is known to pose a direct threat to the populations of *Ctenitis squamigera* and *Diplazium molokaiense* in the Waianae Mountains on Oahu (J. Lau, pers. comm., 1992). It also threatens the populations of *Ctenitis squamigera* on Lanai and East Maui (HHP 1991; J. Lau, pers. comm., 1992).

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Fountain grass is a fire-adapted bunch grass that has spread rapidly over bare lava flows and open areas on the island of Hawaii since its introduction in the early 1900s. Fountain grass is particularly detrimental to Hawaii's dry forests because it is able to invade areas once dominated by native plants, where it interferes with plant regeneration, carries fires, and increases the likelihood of fires (Cuddihy and Stone 1990, Smith 1985). Fountain grass threatens the native vegetation at PTA, competing with *Asplenium fragile* var. *insulare* (J. Lau, pers. comm., 1992).

Toona ciliata (Australian red cedar) is a fast-growing tree that has been extensively planted and has become naturalized in mesic to wet forests (Wagner *et al.* 1990). This tree threatens populations of *Ctenitis squamigera* and *Diplazium molokaiense* in the Waianae Mountains of Oahu (HHP 1991; J. Lau, pers. comm., 1992). Those same populations are threatened by *Syzygium cumini* (Java plum), a large evergreen tree that forms a dense cover, excluding other taxa. Java plum is an aggressive invader of undisturbed lowland mesic and dry forests (Smith 1985). *Myrica faya* (firetree) has attracted a great deal of attention and concern for its recent explosive increase on several Hawaiian islands. It is capable of forming a dense, nearly monospecific stand (Cuddihy and Stone 1990). Because of its ability to fix nitrogen, it outcompetes native taxa and enriches the soil so that other alien plants can invade (Wagner *et al.* 1990). The Lanai populations of *Ctenitis squamigera* are threatened by the invasion of firetree (HHP 1991; J. Lau, pers. comm., 1992). Although not yet widespread in the Hawaiian Islands, *Cinnamomum burmanii* (Padang cassia) could become a dominant component of Hawaiian mesic forests (J. Lau, pers. comm., 1992). A dense and enlarging stand of it threatens a population of *Ctenitis squamigera* on Lanai (HHP 1991).

Fire constitutes a potential threat to three of the endangered fern taxa growing in dry to mesic grassland, shrubland, and forests on the islands of Oahu and Hawaii. On Oahu, fire is a potential threat to *Ctenitis squamigera* and the population of *Diplazium molokaiense* on the Schofield Barracks Military Reservation. These populations are located near an area currently utilized as a military firing range. Fires originating on the firing range have the potential of spreading into the native forest habitat of the two fern taxa (J. Lau, pers. comm., 1992). Fire is also a potential threat to the population of *Asplenium fragile* var. *insulare* at Pohakuloa Training Area on the island of Hawaii (Shaw 1992), where military exercises utilizing live ammunition are conducted. The presence of fountain grass at Pohakuloa Training Area increases the potential of fire.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining this final rule. Based on this evaluation, this rulemaking will list four taxa—*Asplenium fragile* var. *insulare*, *Ctenitis squamigera*, *Diplazium molokaiense*, and *Pteri lidgatei*—as endangered. All 4 endangered taxa are known from fewer than 10 populations and 3 of the taxa number no more than 100 individuals. The four taxa are threatened by one or more of the following: Habitat degradation and/or predation by feral goats, sheep, cattle, deer, and pigs; and competition from alien plants. Small population size and limited distribution make these taxa particularly vulnerable to extinction from stochastic events. Because these four taxa are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

Critical habitat is not being proposed for the four taxa included in this rule for reasons discussed in the "Critical Habitat" section below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these taxa. All of the taxa have extremely low total populations and face anthropogenic threats. The publication of precise maps and descriptions of critical habitat in the **Federal Register**, as required in designation of critical habitat, would increase the degree of threat to these plants from take or vandalism and, therefore, could contribute to their decline. All involved parties and the major landowners have been notified of the general location of these taxa. Protection of the habitat of the taxa will be addressed through the recovery process and through the section 7 consultation process.

Two Federal departments conduct activities within the currently known habitat of the endangered plants—the National Park Service of the Department of the Interior and the Department of Defense. One taxon is found in Hawaii Volcanoes National Park, where Federal law protects all plants from damage or removal. Three taxa are located on land owned or leased by the Department of Defense or on nearby State lands. Three of the taxa are found on Schofield Barracks Military Reservation. Although military and ordnance training takes place on this federally owned property, the impact areas and buffer zones for these activities are outside the area where the taxa occur. One taxon is known from Pohakuloa Training Area on the Island of Hawaii. The Army is aware of the presence and location of this taxon, and any Federal activities that may affect the continued existence of these plants will be addressed through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for these taxa is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and it would not provide overriding benefits.

Available Conservation Measures

Conservation measures provided to species listed as endangered under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Listing can encourage and result in conservation actions by Federal, State, private organizations, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery plans be developed for listed species. The requirements for Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

A population of *Asplenium fragile* var. *insulare* is located in Hawaii Volcanoes National Park. Laws relating to national parks prohibit damage or removal of any plants growing in the parks. Another population of *Asplenium*

fragile var. *insulare* is located within the Pohakuloa Training Area. The Army is aware of the location of this taxon, and any Federal activities that may affect the continued existence of these plants will be addressed through the section 7 consultation process. *Ctenitis squamigera*, *Diplazium molokaiense*, and *Pteris lidgatei* are found on Schofield Barracks Military Reservation. These plants are not located inside impact or buffer zones for ordnance training. There are no other known Federal activities that occur within the present known habitat of these four plant taxa.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to the four fern taxa listed as endangered, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant species; transport such species in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale such species in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few permits would ever be sought or issued because the taxa are not common in cultivation or in the wild.

Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–2063; FAX 503/231–6243).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866. In accordance with the 1982 amendments to the Endangered Species Act, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not applicable to section 4 listing rules. This rule contains no recordkeeping requirements as defined under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Office (see **ADDRESSES** section).

Authors

The primary authors of this final rule are Marie M. Bruegmann, Joan E. Canfield, and Derral R. Herbst of the Pacific Islands Office (see **ADDRESSES** section) (808/541–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under the families indicated, in alphabetical order, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Adiantaceae—maidenhair fern family:						
Pteris lidgatei	None	U.S.A. (HI)	E	553	NA	NA
Aspleniaceae—spleenwort family:						
Asplenium fragile var. *insulare*	None	U.S.A. (HI)	E	553	NA	NA
Ctenitis sqamigera	Pauoa	U.S.A. (HI)	E	553	NA	NA
Diplazium molokaiense	None	U.S.A. (HI)	E	553	NA	NA

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Dated: September 9, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94-23751 Filed 9-23-94; 8:45 am]

BILLING CODE 4310-55-P

50 CFR Part 17

Availability of a Draft Recovery Plan for the California Condor (Gymnogyps californianus) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the California Condor (Gymnogyps californianus). Recovery recommendations in the draft plan would likely affect six Southern California counties; Ventura, Los Angeles, Santa Barbara, San Luis Obispo, Kern and Tulare. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received by November 25, 1994, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contracting: Craig A. Faanes, Field Supervisor, Ecological Services, Ventura Field Office, 2140 Eastman Avenue, Suite 100, Ventura, California 93003, or telephone (805) 644-1766. Written comments and materials regarding the draft plan should be addressed to the above address. Comments and materials received are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Mesta, Condor Program Coordinator, at the above address or telephone (805) 644-1766.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comment into account in the course of implementing approved recovery plans.

As a result of illegal shooting, poisoning, collisions with man-made structures and the loss of habitat, the California condor was extirpated from the wild in 1987. The last wild condor was captured and brought into a captive breeding program in an attempt to save the species from extinction. The California Condor Recovery Plan outlines recovery actions to re-establish the California condor in the wild. The recovery actions will be concentrated in the following six Southern California counties; Ventura, Santa Barbara, San Luis Obispo, Los Angeles, Kern, and Tulare.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531).

Dated: September 17, 1994.

Michael J. Spear,

Regional Director.

[FR Doc. 94-23721 Filed 9-23-94; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 931100-4043; I.D. 092194A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the allowance of the total allowable catch (TAC) of pollock for the offshore component in the BS.

EFFECTIVE DATE: 12 noon, Alaska local time, (A.l.t.), September 24, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The allowance of pollock TAC for vessels catching pollock for processing by the offshore component in the BS was established by the final 1994 initial groundfish specifications (59 FR 7656, February 16, 1994) and a subsequent reserve apportionment (59 FR 21673, April 26, 1994) as 799,662 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), determined, in accordance with § 675.20(a)(8), that the allowance of pollock TAC for the offshore component in the BS soon will be reached. Therefore, the Regional Director established a directed fishing allowance of 789,662 mt after determining that 10,000 mt will be taken as incidental catch in directed fishing for other species in the BS. Consequently, NMFS is prohibiting directed fishing for pollock by operators of vessels catching pollock for processing by the offshore component in the BS effective from 12 noon, A.l.t., September 24, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 21, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-23279 Filed 9-21-94; 12:53 pm]

BILLING CODE 3510-22-F

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Proposed Rules

Federal Register
Vol. 59, No. 185
Monday, September 26, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

RIN 3206–AF53

Temporary, Seasonal, and Intermittent Employment in the Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise its regulations to consolidate excepted service authorities for filling temporary, intermittent, and seasonal jobs, to remove coverage for appointments that no longer meet the criteria for exception, and to establish a new excepted service authority which could be used by agencies to meet urgent, short-term hiring needs.

DATES: Comments must be received on or before November 25, 1994.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director for Career Entry, Office of Personnel Management, Room 6F08, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer, (202) 606–0830, or fax (202) 606–2329.

SUPPLEMENTARY INFORMATION: This proposal is the second step in OPM's program to simplify temporary hiring authorities and ensure their appropriate use. Regulations were proposed on February 1, 1994, (59 FR 4601) to set a uniform service limit for temporary appointments in both the competitive and the excepted service at 1 year with no more than one 1-year extension. The regulations now proposed would revise and consolidate paragraphs (i) and (m) of § 213.3102, which both cover temporary, intermittent, and seasonal employment in the excepted service. The revision would eliminate overlapping and obsolete appointing authorities

In July 1993, OPM advised all agencies that use Schedule A authorities which were established specifically for temporary or seasonal employment that, if they wished to retain the authorities, they would need to justify why examining for the positions is impracticable. Our intent was to identify the situations where excepted service hiring is appropriate and to replace individual agencies' authorities with a Governmentwide authority that could be used by any agency in those situations. However, agencies reported only one situation that would have general applicability and one that may have general applicability. The rest are so agency-specific that creation of a Governmentwide authority would serve no practical purpose.

Temporary and less-than-full-time hiring in remote locations. Several agencies need to hire short-term or supplemental staff, often on short notice, in locations that are remote or isolated from a population center. Examining for these jobs is impracticable when: Only residents of the immediate area can be expected to reach the work site whenever they are needed; the amount of employment involved would not encourage outside applicants to move to the isolated area; and staff from an OPM or agency examining office could not readily reach the location to administer tests or conduct recruiting.

We propose to establish a Schedule A authority that would define "remote/isolated location" and would limit excepted employment to 1,040 working hours in a service year. Any agency could use the authority, without prior OPM approval, for jobs that meet the conditions set out in the regulation.

Urgent, short-term hiring needs. OPM is abolishing the Federal Personnel Manual (FPM), as recommended by the National Performance Review. OPM has granted certain authorities to agencies through the FPM that are not specifically reflected in regulations. One of those authorities (set out in section 2–9 of FPM Chapter 316) allows agencies to make temporary appointments not to exceed 30 days and to extend those appointments for no more than 30 additional days without regard to normal appointment procedures. Unless that authority is incorporated in a regulation, it will be lost when FPM Chapter 316 is abolished in December 1994.

We believe the special need authority serves a valid purpose and should be continued as an excepted service appointing authority. (Competitive requirements have never applied to special need appointments.) Service limits and conditions for use of the current special need authority would remain the same. The new Schedule A authority would be available for use by any agency without prior OPM approval.

Fellowships and related programs. Three agencies suggested creation of a Governmentwide authority covering post-doctoral fellowships, internships, and similar programs designed to increase the pool of candidates in a particular specialty for all employers, not just the Federal Government. On May 13, 1994, we published proposed regulations that would create a consolidated authority for employment of students. However, several agencies have internship or fellowship programs that provide professional experience to individuals who have completed their formal education.

We agree that a consolidated authority for those appointments would be appropriate. We expect to consider consolidation of most Schedule A and B appointing authorities—not only those covering temporary hiring—and may propose creation of a fellowship authority. In the meantime, however, we are not sure that such an authority should be restricted to temporary employment. Many appointments under existing programs are made for periods longer than 1 year.

Consequently, we have not included a specific provision for internship or fellowship appointments in the proposed authority for temporary Schedule A appointments. We welcome your comments on this issue, however, and will add such a provision if there is sufficient interest. If there is not enough interest to justify a Governmentwide authority, we would entertain requests for single-agency exceptions from agencies wishing to establish temporary fellowship programs.

Other positions. Several agencies reported specific situations in which competitive hiring procedures would not be appropriate or effective However, because each of these situations is unique to the agency involved, issuance of Governmentwide Schedule A authorities would serve no practical purpose. Therefore, the proposed regulation would provide for exception of additional positions with prior OPM approval.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they apply only to Federal employees.

List of Subjects in 5 CFR Part 213

Government employees, Reporting and recordkeeping requirements.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend 5 CFR part 213 as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, 8337(h), and 8456.

2. In § 213.3102, paragraph (i) is revised and paragraph (m) is removed and reserved, as follows:

§ 213.3102 Entire executive civil service.

* * * * *

(i) Temporary and less-than-full-time positions, as follows:

(1) Positions in remote/isolated locations where examination is impracticable. A remote/isolated location is outside the local commuting area of a population center from which an employee can reasonably be expected to travel on short notice under adverse weather and/or road conditions which are normal for the area. For this purpose, a population center is a town with housing, schools, health care, stores and other businesses in which the servicing examining office can schedule tests and/or reasonably expect to attract applicants. An individual appointed under this authority may not be employed in the same agency under a combination of this and any other appointment for more than 1,040 working hours in a service year. Temporary appointments under this authority may be extended in 1-year increments, with no limit on the number of such extensions, as an exception to the service limits in § 213.104.

(2) Positions for which a critical hiring need exists. This includes both short-term positions and continuing positions that an agency must fill on an interim basis pending completion of competitive examining, clearances, or other procedures required for a longer appointment. Appointments under this authority may not exceed 30 days and may be extended for up to an additional 30 days if continued employment is essential to the agency's operations. The appointments may not be used to extend the service limit of any other appointing authority. An agency may not employ the same individual under this authority for more than 60 days in any 12-month period.

(3) Other positions for which OPM determines that examining is impracticable.

* * * * *

(m) [Reserved]

* * * * *

[FR Doc. 94–23716 Filed 9–23–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD

24 CFR Part 100

[Docket No. N–94–1706; FR–3502–N–03]

Housing for Older Persons: Defining Significant Facilities and Services; Notice of Extension of Public Comment Deadline on Proposed Rule; and Change in Location of Phoenix AZ Public Meeting

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Extension of Public Comment Deadline on Proposed Rule; and Change in Location of Public Meeting in Phoenix, AZ.

SUMMARY: On July 7, 1994, HUD published a proposed rule that would implement the rulemaking required by section 919 of the Housing and Community Development Act of 1992. Section 919 requires the Secretary of HUD to issue "rules defining what are 'significant facilities and services especially designed to meet the physical or social needs of older persons' required under section 807(b)(2) of the Fair Housing Act to meet the definition of the term 'housing for older persons' in such section." The July 7, 1994 proposed rule provided for the public comment period to expire on October 5, 1994. This notice extends the public comment period to November 30, 1994.

Additionally, on August 9, 1994, HUD published a notice announcing four public meetings to be held across the country to discuss the July 7, 1994 proposed rule and to provide an additional opportunity for members of the public to submit comments on the rule. This notice also advises of a change in location for the Phoenix, AZ public meeting.

DATES: Comment Due Date: November 30, 1994.

ADDRESSES: Interested persons are invited to submit comments on the proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

The September 29, 1994 meeting in Phoenix, AZ, will be held at the Holiday Inn Crowne Plaza (the Grand Ballroom), 111 North Central Ave., Phoenix, AZ, 85004.

FOR FURTHER INFORMATION CONTACT: Peter Kaplan, Office of Regulatory Initiatives and Federal Coordination, Office of Fair Housing and Equal Opportunity, Room 5240, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500, telephone (202) 708–2904 (not a toll-free number). The toll-free TDD number is: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On July 7, 1994 (59 FR 34902), HUD published a proposed rule that would implement the rulemaking required by section 919 of the Housing and Community Development Act of 1992. Section 919 requires the Secretary of HUD to issue "rules defining what are 'significant facilities and services especially designed to meet the physical or social needs of older persons' required under section 807(b)(2) of the Fair Housing Act to meet the definition of the term 'housing for older persons' in such section." The regulations governing "housing for older persons" are codified in 24 CFR part 100, subpart E, and the July 7, 1994 proposed rule (also referred to as the "Significant Facilities proposed rule") would amend subpart E to provide the definitions required by section 919.

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Extension of Public Comment Period

The July 7, 1994 proposed rule provided for a 90-day public comment period which is scheduled to close on October 5, 1994. Because of the significant public interest in this rule, HUD is extending the public comment period to November 30, 1994.

Change in Location of Phoenix, AZ Meeting

Additionally, on August 9, 1994 (59 FR 40502), HUD published a notice announcing four public meetings to be held across the country to discuss the Significant Facilities proposed rule and to provide an additional opportunity for members of the public to submit comments on the rule.

The August 9, 1994 notice announced that public meetings would be held in Fontana, CA, on August 15, 1994; Tampa, FL, on August 25, 1994; Phoenix, AZ on September 29, 1994; and Washington, DC, on October 6, 1994. This notice advises of a change in location for the Phoenix, AZ public meeting.

The September 29, 1994 meeting in Phoenix, AZ, will be held at the Holiday Inn Crowne Plaza (the Grand Ballroom), 111 North Central Avenue, Phoenix, AZ 85004.

Dated: September 20, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94-23708 Filed 9-23-94; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

Reform of Federal Student Aid for Postsecondary Education and Training

AGENCY: Department of Education.

ACTION: Notice of regional meetings.

SUMMARY: The Assistant Secretary for Postsecondary Education will convene four public meetings to obtain public comment for use in the development of policies relating to reform of Federal student aid for postsecondary education and training.

DATES: Meetings will be held on October 5, 13, 28 and November 2, 1994. See SUPPLEMENTARY INFORMATION.

ADDRESSES: Meetings will be held in Seattle, WA; Kansas City, MO; Boston, MA; and Atlanta, GA. See SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: For additional information about these regional meetings, call Jennifer Peck at (202) 708-5547. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

The Assistant Secretary would appreciate that persons who plan to attend a regional meeting notify the Department by calling (202) 260-8462.

SUPPLEMENTARY INFORMATION: In order to increase the opportunity for public participation in the development of policies relating to the reform of Federal student aid for postsecondary education and training, the Assistant Secretary is convening a series of meetings in different parts of the country and invites individuals and representatives of groups involved in student financial assistance programs to attend these meetings. The Secretary particularly encourages students, legal assistance organizations that represent students, institutions of higher education, guaranty agencies and lenders to attend and participate in these meetings. These regional meetings are convened to discuss only reform of Federal student aid programs for postsecondary education and training.

To facilitate discussion, the Assistant Secretary has identified three major areas for discussion: (a) Can Federal student aid be better targeted to ensure access to postsecondary education? (b) Can postsecondary vocational education and training better meet the needs and objectives of students and institutions? (c) Can regulatory and administrative simplicity help institutions better fulfill their educational missions and target their resources on educational rather than administrative tasks?

More specifically, the Assistant Secretary seeks comments, ideas, and suggestions on the following issues:

(a) Would providing a larger amount of aid to poor students improve access and encourage persistence in postsecondary education?

(b) Would establishing a guaranteed amount of Federal aid that would be available to every individual promote better awareness of and access to postsecondary education?

(c) Would a merit-based supplement to need-based aid encourage students to excel academically and better position them to reap the rewards of postsecondary education?

(d) How can the Department of Education better interact with the States and other Federal agencies to improve access to and excellence in postsecondary education?

(e) What strategies for skills training and workforce preparation are most effective?

(f) How should the Federal government support basic education for disadvantaged adults?

(g) Should there be separate student aid programs for vocational study compared with collegiate programs? How would a vocational program be defined?

(h) What is the best way to coordinate among various local, State, and Federal programs that offer vocational education?

(i) Would different rules and regulations for different groups of institutions assist in providing institutions the flexibility to accomplish their educational mission?

(j) How could administrative workload be reduced while maintaining or improving accountability to taxpayers?

(k) What information is essential to collect from institutions and students to ensure accountability and integrity of programs, while reducing the overall reporting burden?

(l) What performance measures should the Department use as a measure of institutional ability to reduce the regulatory burden of administering the student aid programs?

Participants are welcome to raise other issues relating to Federal student aid programs in addition to the above questions. The dates and location of the four regional meetings appear below.

(a) October 5, 1994, 9:00 a.m. to 12:00 p.m., University of Washington, Husky Union Building (HUB) Auditorium, Seattle, Washington.

(b) October 13, 1994, 1:00 p.m. to 4:00 p.m., Kansas City Convention Center, Bartle Hall, 301 West 13th Street, Room 1204-North Side, Kansas City, Missouri.

(c) October 28, 1994, 9:00 a.m. to 12:00 p.m., Northeastern University, the Student Center Ballroom, Boston, Massachusetts.

(d) November 2, 1994, 9:00 a.m. to 12:00 p.m., Georgia State University, The Urban Life Conference Center, Atlanta, Georgia.

If you wish to provide written comments, you may bring your comments to the meetings or send them to Lynn Mahaffie, 600 Independence Avenue, SW., ROB-3, Room 4082, Washington, DC 20202, FAX number (202) 708-9107.

(Authority: 20 USC 1001, et seq.)

Dated: September 20, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94-23665 Filed 9-23-94; 8:45 am]

BILLING CODE 4000-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 131, and 132

[FRL-5078-6]

RIN 2040-AC08

Proposed Water Quality Guidance for the Great Lakes System

AGENCY: U.S. Environmental Protection Agency.

ACTION: Extension of comment period.

SUMMARY: The purpose of this document is to announce the extension of the comment period for receiving comments on the three reports announced in the August 30, 1994, **Federal Register** that EPA is considering as it develops the final Water Quality Guidance for the Great Lakes System (Guidance). The proposed Guidance was published in the April 16, 1993, **Federal Register**, with corrections published in the **Federal Register** on August 9, 1993, and September 13, 1993.

On August 30, 1994, EPA published in the **Federal Register** a notice of data availability and request for comments on three reports that it is considering in developing the final Guidance. The three reports made available in the August 30, 1994, notice are: "Results of Simulation Tests Concerning the Percent Dissolved Metal in Freshwater Toxicity Tests"; "1991-1992 Michigan Sport Anglers Fish Consumption Study"; and "Great Lakes Water Quality Initiative Technical Support Document for the Procedure to Determine Bioaccumulation Factors, July 1994." EPA wants to ensure that the public has adequate opportunity to comment on whether any of the recommendations in these reports should be adopted in developing the final Great Lakes Water Quality Guidance.

DATES: Written comments should be submitted on or before October 14, 1994. Comments postmarked after this date may not be considered.

ADDRESSES: Send written comments to Wendy Schumacher, Water Quality Branch (WQS-16J), U.S. EPA, Region V, 77 West Jackson Blvd., Chicago, Illinois, 60604 (telephone: 312-886-0142). Commenters are requested to submit one original and four copies of their written comments. A copy of the reports identified in this document are available for inspection and copying at the U.S. EPA Region V, 77 W. Jackson Blvd., Chicago, Illinois, by appointment only. Appointments may be made by calling Wendy Schumacher (telephone: 312-886-0142). A reasonable fee will be charged for photocopies. The three reports are also available by mail upon request for a fee by sending a written request to the above address.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Fenner, Water Quality Branch Chief, (WQS-16J), U.S. EPA Region V, 77 W. Jackson Blvd., Chicago, Illinois, 60604 (telephone: 312-353-2079).

SUPPLEMENTARY INFORMATION: EPA announced the availability of three reports in the August 30, 1994, **Federal Register** (59 FR 44678). The three reports are: "Results of Simulation Tests Concerning the Percent Dissolved Metal in Freshwater Toxicity Tests"; "1991-1992 Michigan Sport Anglers Fish Consumption Study"; and "Great Lakes Water Quality Initiative Technical Support Document for the Procedure to Determine Bioaccumulation Factors, July 1994," have been placed in the administrative record for the Great Lakes Guidance because EPA is considering information in these documents as it finalizes the Great Lakes Guidance. A summary of the information provided in these three reports and the issues relevant to the Great Lakes Guidance are discussed in the August 30, 1994, notice. Readers are referred to that notice for additional details.

In this notice, EPA is extending the public comment period for the three reports to October 14, 1994, to provide additional time for public review and comment. EPA believes that extension of the comment period for this limited purpose is appropriate because of the complexity of the issues raised in the three reports announced on August 30, 1994.

Dated: September 20, 1994.

Robert Perciasepe,

Assistant Administrator.

[FR Doc. 94-23775 Filed 9-23-94; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 53

[FAR Case 91-78]

Federal Acquisition Regulation; Small Business Subcontracting Reporting (SF 295)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to a proposed rule to amend the Federal Acquisition Regulation (FAR) to authorize the addition of a column to the Standard Form 295, Summary Subcontract Report, to report the number of subcontracts awarded to small business concerns, small disadvantaged business concerns, and women-owned small business enterprises. This regulatory action was subject to Office of Management and Budget (OMB) review pursuant to Executive Order No. 12866 dated September 30, 1993.

DATES: Comments should be submitted on or before November 25, 1994, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4037, Washington, DC 20405.

Please cite FAR case 91-78 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501-0168 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR case 91-78.

SUPPLEMENTARY INFORMATION:

A. Background

The Office of Federal Procurement Policy (OFPP) issued Policy Letter 91-1, Governmentwide Small Business and Small Disadvantaged Business Goals for Procurement Contracts, which requires agencies to report the number and dollar value of subcontracts awarded to small business concerns, small disadvantaged business concerns and women-owned small businesses. Currently, the SF 295, Summary Subcontract Report, which is used to compile agency-wide data for subcontracting programs, collects dollar value of subcontracts awarded but does not collect the number of subcontracts awarded.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because small businesses are exempt from the requirement to submit the report form. An Initial Regulatory

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Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR Case 91–78), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a request for approval of a revised information collection requirement concerning Office of Management and Budget (OMB) Control Number 9000–0007 is being submitted to OMB under 44 U.S.C. 3501, *et seq.* Public comments concerning this request will be invited through a **Federal Register** notice appearing in this same issue.

List of Subjects in 48 CFR Part 53

Government procurement.

Dated: September 20, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy

Therefore, it is proposed that 48 CFR part 53 be amended as set forth below:

PART 53—FORMS

1. The authority citation for 48 CFR part 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137, and 42 U.S.C. 2473(c)

2. Section 53.219 is amended by revising paragraph (b) to read as follows:

53.219 Small business and small disadvantaged business concerns.

* * * * *

(b) *SF 295 (REV XX/XX), Summary Subcontract Report. (See 19.704(a)(5).)* SF 295 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR. Pending issuance of a new edition of the form:

(1) Add a column to the face of the form for blocks 11A through 13, entitled, "Number of Awards", to report the number of subcontract awards to: 11A, Small Business Concerns; 11B, Large Business Concerns; 11C, Total; 12, Small Disadvantaged Business Concerns; 13, Women-owned Small Business Concerns.

(2) In blocks 11A, 11B, and 12, revise the parenthetical in the title to read (Number, $ amt., and % of 11C dollars).

[FR Doc. 94–23700 Filed 9–23–94; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 567

[Docket No. 94–74, Notice 01]

RIN No. 2127–AE71

Certification

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice follows NHTSA's partial granting of a petition filed by Michael Robinson, Director, Michigan Department of State Police. The petitioner suggested making mandatory the standardized display of a permanent metal vehicle manufacturer's label for all motor vehicles with a gross vehicle weight rating of over 4,536 kilograms (kg) (10,000 pounds (lb)). The petitioner suggested that the label be fabricated of a minimum gauge metal with raised or recessed letters and numbers, be riveted to the vehicle body at specified standard locations and, in the case of trailers, be given reasonable protection from damage.

The agency proposes to amend its vehicle certification regulation to require the standardized display of a permanent metal vehicle manufacturer's label for all motor vehicles with a GVWR greater than 4,536 kg (10,000 lb). The label would contain the same information as currently required, with either raised or recessed letters, and be riveted or otherwise permanently secured to the vehicle at specified locations. The petitioner's suggestions that the label be constructed of a specified heavy gauge metal and that the label on trailers be given special protection are denied.

DATES: Comments on this notice must be received on or before November 25, 1994.

Proposed Effective Date: If adopted, the amendments proposed in this notice would become effective 180 days after publication of the final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5109, Washington, DC 20590. Docket room hours are from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Leon DeLarm, Chief, Pedestrian, Heavy Truck and Child Crash Protection Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 7th Street, SW, Washington, DC 20590, (202) 336–4920.

SUPPLEMENTARY INFORMATION:

I. Background
II. The Petition
III. Analysis of the Petition
IV. Issues for NHTSA Evaluation
V. Agency Proposal
VI. Rulemaking Analyses and Notices
A. EO 12866 and DOT Regulatory Policies and Procedures
B. Regulatory Flexibility Act
C. National Environmental Policy Act
D. EO 12612 (Federalism)
E. Civil Justice Reform
VII. Comments

I. Background

Part 567, Certification, sets forth the agency's requirements for the content and location of the label certifying the compliance of a motor vehicle with the Federal Motor Vehicle Safety Standards. The regulation requires manufacturers of motor vehicles, except vehicles manufactured in two or more stages, to affix a label to each vehicle they produce containing the information relating to that vehicle required by § 567.4(g). The labels are not required to be made out of any particular type of material but, unless riveted, must be permanently affixed so that they cannot be removed without destroying or defacing them.

For motor vehicles other than trailers and motorcycles, the label shall be affixed either to the hinge pillar, door-latch post, or the door edge that meets the door-latch post next to the driver's seating position. If those locations are not practicable, the label may be placed on the left side of the instrument panel or if that is not practicable, the inward-facing surface of the door next to the driver's seating position. If none of the above locations are practicable, the manufacturer must notify NHTSA of that fact and, with appropriate drawings or photographs, suggest an alternative location. Such suggestion must be submitted for approval to the Administrator, NHTSA. Whatever its location, the label must be easily readable without moving any part of the vehicle except the outer door, and the lettering on the label must be of a color that contrasts with the label's background.

Trailer labels must be located on the left forward half of the vehicle. Labels on motorcycles must be affixed to a permanent member of the vehicle and as close as possible to the intersection of the steering post with the handle bars.

49 CFR 567.5 prescribes the labeling requirements for vehicles manufactured

in two or more stages. Section 567.5(a) requires chassis-cab manufacturers to affix a label in the form and location specified in § 567.4 to each chassis-cab manufactured by them. Section 567.5(b) requires intermediate-stage manufacturers to affix a label in the form and location specified in § 567.4 to each chassis-cab to which they are required to furnish an addendum to the incomplete vehicle document prescribed in § 568.4, if such chassis-cab has been certified by its manufacturer in accordance with § 567.5(a). Finally, § 567.5(c) requires final-stage manufacturers to affix a label of the type and in the manner and form specified in § 567.4 to each vehicle, containing the information specified in that section relating to that vehicle.

II. The Petition

Michael Robinson, Director of the Michigan Department of State Police, petitioned the agency to amend § 567.4 to require that manufacturers' labels on vehicles weighing more than 4,536 kg (10,000 lb) be made of a heavy gauge metal of a specified thickness with raised or recessed letters and numbers and be riveted to the vehicle. He further suggested that the labels be located on the door latch post near the driver's seating position. If that is not practicable, then he wanted the label to be placed on a permanent vertical section of the cab's floor area to the left of the driver's seating position and which would be immediately visible with the driver's side door open. If that location is still not practicable, he wanted the label to be affixed to the portion of the instrument panel to the left of the steering wheel. He suggested that the label for a bus be affixed, if practicable, to the ceiling area above the windshield or windows in the driver's seating area. If none of the suggested locations are practicable, then the manufacturer must notify NHTSA as currently required by § 567.4(c).

Mr. Robinson stated that he submitted his petition because the Motor Carrier Division of his Department has identified a significant problem in locating information on the gross vehicle weight ratings (GVWR) and vehicle identification numbers (VIN) of commercial vehicles. He asserted that there are currently no Federal standards requiring labels of standard size, thickness, or format displaying either the GVWR or the VIN on commercial vehicles. Under current requirements, the label containing that information may be located in any one of several different places and in one of several different formats, including decals, adhesive labels, and riveted metal plates. Mr. Robinson alluded to the current requirement that each vehicle have a label showing the GVWR and VIN affixed when the vehicle is manufactured, but stated that there is no Federal requirement that the label remain affixed thereafter. Thus, the labels on many vehicles either fall off or are otherwise removed or obliterated after manufacture, usually by accident.

Mr. Robinson stated that prior to the inception of the Commercial Driver License (CDL) requirements, the GVWR was not normally used by law enforcement officers. Now, however, it is very important for officers to be able to determine the GVWR of commercial vehicles. Under the CDL program, drivers are licensed to operate only those vehicles within the GVWR ranges of vehicles for which the drivers have met the qualifications. Law enforcement officers often have difficulty determining the GVWRs of commercial vehicles because the labels on those vehicles are often damaged, painted over or removed, usually accidently, during the life of the vehicle. The reason for the absence of the GVWRs is that many labels are not designed or constructed to hold up under the rigors of commercial vehicle operation.

The petitioner asserted that the manufacturer's label is a prime source of the VIN and the only means that law enforcement officers have to determine the GVWR of a given vehicle. Without the GVWR, police officers who are unfamiliar with commercial vehicle operation are unable to determine the CDL GVWR range into which a particular vehicle falls. In such a case, officers cannot determine the correct enforcement action. As a result, drivers may be allowed to continue operating vehicles which they are not qualified to operate. Thus, with more certain access to VIN and GVWR information, police officers could more readily inspect and investigate commercial vehicles during routine traffic stops.

Mr. Robinson further stated that a review of reports about truck and bus accidents over the several months prior to submission of the petition revealed a large number of discrepancies in entries in the reports regarding the GVWR, presumably stemming from the investigating officers' inability to locate or read the vehicle label. He argued that this difficulty results in collection of erroneous data which is then submitted to the SAFETYNET data management system established and maintained by the Federal Highway Administration (FHWA). The SAFETYNET system is a cooperative effort to share commercial vehicle data electronically between the FHWA and the various states.

On another point, Mr. Robinson stated that as of July, 1991, the National Crime Information Center (NCIC) estimated that approximately 10,494 commercial trucks and 18,865 commercial-type trailers were classified as unrecovered stolen vehicles in the United States. He argued that identification and recovery of those vehicles is greatly hampered by the lack of uniform display of VINs on commercial vehicles. He believed that if a more standardized and permanent manufacturer's label were used on commercial vehicles, law enforcement personnel could more easily and reliably inspect and identify commercial vehicles and could possibly locate and recover many more of such vehicles.

III. Analysis of the Petition

Although NHTSA has no independent information indicating a problem in determining the GVWR of commercial vehicles in use or, if there is such a problem, its magnitude, the agency nevertheless has no reason to doubt Mr. Robinson's assertions. Further, if the problem exists in Michigan, it is reasonable to assume that it exists in other states.

The apparent existence of this problem concerns the agency. For example, the Surface Transportation Assistance Act of 1982, 49 U.S.C. App. at section 2302, authorizes the Secretary of Transportation to provide grants to states for enforcement programs applicable to commercial motor vehicle safety. Pursuant to that authority, the Federal Highway Administration (FHWA) established the Motor Carrier Safety Assistance Program (MCSAP) (49 CFR 350). MCSAP provides grants to states to support a national motor carrier safety enforcement program. The program is designed to reduce the number and severity of accidents and hazardous materials incidents of commercial motor vehicles by substantially increasing the level and effectiveness of enforcement activity and the likelihood that safety defects, driver deficiencies, and unsafe carrier practices will be detected and corrected. The increasing Federal and state involvement in that program has led to a corresponding increase in the number of functions common to both Federal and state officers. This increase has, in turn, led to an increasing need for efficient communications and exchange of accurate data. SAFETYNET, therefore, has become even more important to this effort by combining all functions into a single user-friendly data-sharing system for the use of both Federal and state personnel involved in commercial motor carrier operations.

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A typical SAFETYNET profile consists, among other things, of the type of operation, GVWR, cargo, any accident data, inspection data including any violations and out-of-service actions, work performance reports, and data entry verification. Thus, if law enforcement officers are collecting incomplete or incorrect data because of lack of GVWR information, as Mr. Robinson asserts, the effectiveness of the SAFETYNET system could be compromised.

The agency agrees that, assuming the accuracy of the petitioner's figures relating to stolen vehicles, a permanent metal label could assist in the identification and recovery of at least some of the great number of unrecovered stolen commercial vehicles in the United States.

FHWA has informed NHTSA that it supports the suggestions in Mr. Robinson's petition, believing that a permanent metal label will help enforce Federal as well as state motor carrier safety regulations. While the petitioner's primary focus seems to be enforcement of CDL requirements, FHWA believes that the importance of this rulemaking is broader in scope than that. The gross vehicle weight rating (or gross combination weight rating (GCWR) for a combination vehicle) is one of three independent criteria used to determine the applicability of the Federal Motor Carrier Safety Regulations (FMCSR) for vehicles and drivers engaged in interstate commerce. The FMCSRs cover driver qualifications, hours of service, accident record keeping, vehicle inspection, repair and maintenance, controlled substances and alcohol testing, in addition to the CDL. The GVWR/GCWR weight threshold for the general applicability of the FMCSRs is 10,001 pounds. The recently published final rules on controlled substances and alcohol testing apply to every person who operates a commercial vehicle in interstate or intrastate commerce, and is subject to the CDL requirements of 49 CFR 383. Part 383 includes a 26,001 pound threshold as one if its applicability criteria. The FHWA believes, therefore, that implementing the suggestions in this petition will help motor carriers in identifying vehicles and drivers that are subject to the FMCSRs and Federal and state officials responsible for enforcing the regulations. The permanent metal labels should provide more comprehensive enforcement of such regulations by making possible better identification of the vehicles concerned. FHWA also expressed support for the petitioner's suggestion that the labels on trailers be given reasonable protection since trailer labels are particularly susceptible to damage during commercial vehicle operations.

Mr. Robinson suggested that the thickness of the metal label be specified. NHTSA does not believe that is necessary, at least not at this time. NHTSA tentatively concludes that the primary benefit is to be obtained from specifying the use of a metal label. The agency has no information indicating that specifying a particular minimum thickness would increase that benefit significantly. NHTSA understands the petitioner's reasoning that a label of a specified heavy gauge would be more durable and more likely to survive the rigors of commercial operation. On the other hand, the agency also believes that manufacturers must have the flexibility to accommodate the thickness of the labels to the door designs of the various vehicles they produce. NHTSA is confident that manufacturers will affix labels whose sturdiness is consistent with the designs of their vehicles. If, in the future, information obtained from actual commercial vehicle experience indicates that it might be appropriate to specify a minimum thickness, appropriate rulemaking action can be taken at that time.

The agency questions whether the petitioner's four suggested permissible locations for the labels on vehicles other than trailers are too limited as compared to the five permissible locations currently allowed. In addition, the petitioner suggested the floor area as a permissible location for the label. The agency is concerned that locating the label on the vehicle floor or even on the instrument panel could place the inspecting officer in an awkward position, perhaps even in jeopardy, by having to lean into the cab of the truck and turn his or her head to read the label. Further, the possibly limited ambient light on the vehicle floor could make it difficult for an inspector to read a label there. On the other hand, inspecting officers routinely stand on the running boards of trucks to check inside for the driver's log, labels, as well as for drugs and/or alcohol. Thus, a label on the floor or the instrument panel could normally be seen by the inspector from the running board.

The petitioner also suggested locating the label for buses inside the vehicle and above the driver's side windshield or window. NHTSA has no objection to that. The agency's purpose in specifying the locations for the manufacturer's certification label was to provide an unobstructed view of the label, i.e., to ensure that the labels are easy to see and read in any vehicle. Since it is not practicable to inspect buses with passengers on board, buses are usually mounted on hoists or platforms for inspection either at the beginning or at the end of their runs. Therefore, the inspectors usually walk through buses during their inspections, making the label easily visible to the inspector if it is mounted on or above the driver's side windshield or window as the petitioner suggested.

NHTSA recognizes the merit in the petitioner's suggestion that the location of the label should be standardized in only a limited number of places so that there would be greater predictability about precisely where law enforcement personnel can expect to find the label. Nevertheless, NHTSA solicits comments on whether the permissible locations of the permanent metal label, including those on buses, should be standardized as proposed by the petitioner, or whether the larger number of permissible locations should be maintained as currently allowed. NHTSA further solicits comments on the locations in which labels should be permitted, if not in the currently-permitted locations or in the locations suggested by the petitioner.

Finally, Mr. Robinson suggested that the labels for trailers be located so as to provide reasonable protection from damage. NHTSA does not believe that this change is necessary at this time. NHTSA believes that specifying a permanent metal label with either raised or recessed letters and numbers, riveted or otherwise permanently affixed to the vehicle, would sufficiently enhance the durability of the label on trailers to make the data readable even after many years of use. Again, should actual experience in the future indicate that further action is appropriate to protect trailer labels, rulemaking can be initiated at that time.

NHTSA made a preliminary cost analysis of the proposed requirements. The analysis suggests that the incremental cost range of metal labels as proposed would be between $0.25 and $2.50 per label, depending on size, thickness, and quantity ordered. NHTSA estimates that for those manufacturers that purchase labels in large quantities, the incremental cost could range between $0.25 and $0.75. For those manufacturers that would purchase labels in smaller quantities, the cost range could be between $2.00 and $2.50 per label.

Label manufacturers typically put only certain information on labels. The vehicle manufacturer then applies the remainder of the required information at the plant, such as the GVWR, GAWR, VIN, etc. Thus, if letters and numbers are raised or recessed, vehicle manufacturers, as well as possibly some label manufacturers, may have to purchase the equipment to emboss the metal labels at a cost of between $300 and $1,500.

Agency data shows that 263,580 motor vehicles with GVWR greater than 4,536 kg (10,000 lb) and 126,904 trailers were sold in 1992. Another 35,444 school buses, which would also be included in the vehicles covered by this notice, were sold in 1991, bringing the combined total affected vehicles to approximately 425,928. The agency has no data on how many vehicles, if any, already meet the proposed requirements. Assuming that none do, the agency calculates that the total range of incremental annual costs of this proposal would be $106,482 to $1,064,810.

V. Issues for NHTSA Evaluation

In order to obtain additional data for the agency's evaluation of the issues raised by this petition, NHTSA solicits comments on the following specific issues regarding certification labels:

1. Is there a problem with manufacturers' labels on motor vehicles with a GVWR of over 4,536 kg (10,000 lb) becoming obliterated, painted over, or otherwise rendered illegible during the service life of the vehicle? If so, in what percentage of those vehicles does this occur? Are particular types, brands, models, or model years of vehicles more susceptible to this problem than others?
2. What costs do manufacturers currently incur in the purchase, printing, and application of labels?
3. What sorts of materials are currently utilized for the labels on vehicles with GVWR more than 4,536 kg (10,000 lb)? What percent of currently utilized labels are made of metal?
4. What sizes are the labels currently affixed to motor vehicles with GVWR of more than 4,536 kg (10,000 lb)? How are they affixed?
5. What incremental costs would vehicle manufacturers incur to purchase, emboss, and affix permanent metal labels with raised or recessed letters and numbers as proposed?
6. What incremental costs, if any, would label manufacturers incur in producing metal labels with raised or recessed letters and numbers?
7. In what quantities do vehicle manufacturers currently order labels?
8. How much time is currently required for vehicle manufacturers to prepare and affix labels?
9. How much time would be required for vehicle manufacturers to rivet or otherwise permanently affix metal labels as proposed?
10. What special problems, if any, would vehicle manufacturers have in affixing permanent metal labels as proposed?
11. Should a particular metal, such as aluminum, stainless steel, etc., be specified for the labels?
12. Should a minimum thickness be prescribed for the labels?
13. Should a minimum size be specified for the labels?
14. Should a minimum height or depth be specified for the letters and numbers embossed on the labels?
15. Should any information be added to or deleted from that currently required to appear on the label?
16. Should trailers with a GVWR of 4,536 kg (10,000 lb) or less also meet the requirements being proposed for large trailers?
17. Should the agency require some different approach, other than the proposed metal label requirement, for preserving VIN labels?

V. Agency Proposal

Based on the assertions by Mr. Robinson in his petition and the analysis discussed above, NHTSA proposes to amend 49 CFR 567.4 to require that, for vehicles with GVWR greater than 4,536 kg (10,000 lb), the manufacturer's certification label required by that part be made of metal. The agency also proposes that the letters and numbers on the label be raised or recessed, and that the label be riveted or otherwise permanently affixed to each vehicle in the locations suggested by the petitioner.

The agency believes that by requiring permanent metal labels, commercial vehicle safety would be enhanced by ensuring that commercial vehicles are being driven by drivers who are duly qualified and licensed to operate them. This would have the effect of identifying and removing unfit and unqualified drivers from the nation's highways, thereby enhancing the safety of the motoring public. In addition, a permanent metal label on which the GVWR and VIN remain legible throughout all or the greater part of the service life of a commercial vehicle would help to ensure that the information supplied to the SAFETYNET system would be more accurate, thus contributing directly to the enforcement efforts discussed above.

Further, to reflect rulemaking conducted by the agency pursuant to the Imported Vehicles Safety Compliance Act of 1988, Pub. L. 100–562, 102 Stat. 2818 (49 U.S.C. 30141, 30146), NHTSA proposes to amend existing § 567.4(k) to substitute "49 CFR 591.5(f)" in place of the current "19 CFR 12.80(b)(1)."

VI. Rulemaking Analyses and Notices

A. EO 12866 and DOT Regulatory Policies and Procedures

This notice was not reviewed under E.O. 12866. NHTSA has considered the impact associated with this rulemaking action and has concluded that it is not significant under the Department of Transportation's regulatory policies and procedures. As explained above, this action merely would require that the motor vehicle manufacturer's label, which is already required for all motor vehicles, be made of metal and be permanently affixed to those vehicles with a GVWR greater than 4,536 kg (10,000 lb). The costs would range from $0.25 to $2.50 per vehicle, for a total incremental annual cost of between $106,482 and $1,064,820. NHTSA has concluded, therefore, that the effect of this proposed action would be so minimal as not to warrant preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

NHTSA has considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

The agency believes that few, if any, motor vehicle manufacturers qualify as small businesses, although some label manufacturers might so qualify. Those small businesses would be affected only to the extent that they may be required to purchase equipment to emboss information on metal labels, if they do not already have such equipment, at a one-time cost of between $300 and $1,500. Such cost could be amortized over the life of the equipment, and/or passed on to customers and, eventually, to consumers. Small organizations and small governmental units would be affected by the proposed amendment only to the extent of having to pay an additional $0.25 to $2.50 per large vehicle.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act and has determined that implementation of this action would have no significant impact on the quality of the human environment.

D. EO 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in Executive Order

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12612 and has determined that this proposal does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

E. Civil Justice Reform

The proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle only if the standard is identical to the Federal standard. However, the United States Government, a state, or a political subdivision of a state may prescribe a standard for a motor vehicle or item of motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings is not required before parties may file suit in court.

VII. Comments

Interested persons are invited to submit comments on this proposal. It is requested but not required that any comments be submitted in 10 copies each.

Comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, 3 copies of the complete submission, including the purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address shown above, and 7 copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in 49 CFR part 512, the agency's confidential business information regulation.

All comments received on or before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available to the public for examination in the docket at the above address both before and after the closing date. To the extent possible, comments received after the closing date will be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for public inspection in the docket. NHTSA will continue to file relevant information in the docket after the closing date, and it is recommended that interested persons continue to monitor the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 567

Labeling, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 567 would be amended as follows:

PART 567—CERTIFICATION

1. The authority citation for Part 567 would be revised to read as follows:

Authority: 49 U.S.C. 322, 30115, 30117, 30166, 32502, 32505, 33102, 33103, 33108, and 33109; delegation of authority at 49 CFR 1.50.

2. Section 567.4 would be revised as follows:

§ 567.4 Requirements for manufacturers of motor vehicles.

(a) Each manufacturer of motor vehicles (except vehicles manufactured in two or more stages) shall affix to each vehicle a label, of the type and in the manner described below, containing the statements specified in paragraph (j) of this section.

(b) The location of the label shall be such that it is clearly visible and easily readable without moving any part of the vehicle except an outer door.

(c) For motor vehicles with a gross vehicle weight rating (GVWR) greater than 4,536 kilograms (kg) (10,000 pounds (lb)) and all trailers, the label shall be fabricated of metal, with raised or recessed letters and numbers, and, except for trailers, shall be riveted or otherwise permanently affixed to the vehicle in one of the locations specified in paragraph (e) of this section.

(d) For motor vehicles with a GVWR of 4,536 kg (10,000 lb) or less, the label shall, unless riveted, be permanently affixed in such a manner that it cannot be removed without destroying or defacing it.

(e)(1) For motor vehicles with a GVWR greater than 4,536 kg (10,000 lb) other than buses and trailers, the label shall be riveted to the door latch post next to the driver's seating position. If that location is not practicable, then to a permanent vertical position of the cab floor area to the left of the driver's seating position. If that location is not practicable, the label shall be riveted to the left side of the instrument panel, left of the steering wheel.

(2) For buses, the label shall be riveted to the ceiling area above the windshield or window(s) in the driver's seating area.

(3) If none of the preceding locations are practicable, notification of that fact, together with drawings or photographs showing a suggested alternate location in the same general area, shall be submitted for approval to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, Washington, DC 20590.

(f) For motor vehicles with a GVWR of 4,536 kg (10,000 lb) or less, except trailers and motorcycles, the label shall be affixed either to the hinge pillar, door latch post, or the door edge that meets the door latch post, next to the driver's seating position, or if none of these locations are practicable, to the left side of the instrument panel. If the latter location is not practicable, the label shall be affixed to the inward-facing surface of the door next to the driver's seating position. If none of the preceding locations are practicable, notification of that fact shall be submitted to the Administrator, NHTSA, as provided in paragraph (d)(3) of this section.

(g) The label for trailers shall be affixed to a location on the forward half of the left side, such that it is easily readable from outside the vehicle without moving any part of the vehicle.

(h) The label for motorcycles shall be affixed to a permanent member of the vehicle as close as is practicable to the intersection of the steering post with the handle bars, in a location such that it is easily readable without moving any part of the vehicle except the steering system.

(i) Except for the label specified in paragraph (c) of this section, the lettering on the label shall be of a color that contrasts with the background of the label.

(j) The label shall contain the following statements, in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high, in the order shown:

(1) Name of manufacturer: Except as provided in paragraphs (j) (1) (i), (ii), and (iii) of this section, the full corporate or individual name of the actual assembler of the vehicle shall be spelled out, except that such abbreviations as "Co." or "Inc." and their foreign equivalents, and the first and middle initials of individuals, may be used. The name of the manufacturer shall be preceded by the words "Manufactured By" or "Mfd By." In the case of imported vehicles, where the label required by this section is affixed by the Registered Importer, the name of the Registered Importer shall also be placed on the label in the manner described in this paragraph, directly below the name of the final assembler.

(i) If a vehicle is assembled by a corporation that is controlled by another corporation that assumed responsibility for the conformity with the standards, the name of the controlling corporation may be used.

(ii) If a vehicle is fabricated and delivered in complete but unassembled form, such that it is designed to be assembled without special machinery or tools, the fabricator of the vehicle may affix the label and name itself as the manufacturer for the purposes of this section.

(iii) If a trailer is sold by a person who is not its manufacturer, but who is engaged in the manufacture of trailers and assumes legal responsibility for all duties and liabilities imposed by the Act with respect to that trailer, the name of that person may appear on the label as the manufacturer. In such a case the name shall be preceded by the words "Responsible Manufacturer" or "Resp Mfr."

(2) Month and year of manufacture: This shall be the time during which work was completed at the place of main assembly of the vehicle. It may be spelled out, as "June 1970," or expressed in numerals, as "670."

(3) "Gross Vehicle Weight Rating" or "GVWR," followed by the appropriate value in kilograms with the commensurate weight in pounds shown in parentheses, which shall not be less than the sum of the unloaded vehicle weight, rated cargo load, and 68 kilograms (150 pounds) times the vehicle's designated seating capacity. However, for school buses the minimum occupant weight shall be 55 kilograms (120 pounds).

(4) "Gross Axle Weight Rating" or "GAWR," followed by the appropriate value in kilograms with the commensurate weight in pounds shown in parentheses, for each axle, identified in order from front to rear (e.g. front, first intermediate, second intermediate, rear). The ratings for any consecutive axles having identical gross axle weight ratings when equipped with tires having the same tire size designation may, at the option of the manufacturer, be stated as a single value, with label indicating to which axles the ratings apply.

Examples of Combined Ratings

GAWR: (a) All axles—1850 kg (4080 lb) with 7.00–15 LT (D) tires.

(b) Front—5442 kg (12,000 lb) with 10.00–20(G) tires.

First intermediate to rear—6803 kg (15,000 lb) with 12.00–20(H) tires.

(5) The statement: "This vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture shown above. The expression "U.S." or "U.S.A." may be inserted before the word "Federal."

(i) In the case of passenger cars manufactured on or after September 1, 1978, the expression "and bumper" shall be included in the statement following the word "safety."

(ii) In the case of 1987 and subsequent model year passenger cars manufactured on or after April 24, 1986, the expression "safety, bumper, and theft prevention" shall be substituted in the statement for the word "safety."

(6) Vehicle identification number.

(7) The type classification of the vehicle as defined in § 571.3 of this chapter (e.g. truck, MPV, bus, trailer).

(k) Multiple GVWR-GAWR ratings.

(1) (For passenger cars only) In cases where different tire sizes are offered as a customer option, a manufacturer may at his option list more than one set of values for GVWR and GAWR, in response to the requirements of paragraphs (j) (3) and (4) of this section. If the label shows more than one set of weight rating values, each value shall be followed by the phrase "with _____ tires," inserting the proper tire size designations. A manufacturer may at his option list one or more tire sizes where only one set of weight ratings is provided.

Passenger Car Example

GVWR: 1995 kg (4400 lb) with G78–14B tires. 2177 kg (4800 lb) with H78–14B tires.

GAWR: Front—907 kg (2000 lb) with G78–14B tires at 165 kPa (24 psi), 990 kg (2200 lb) with H78–14B tires at 165 kPa (24 psi).

Rear—1088 kg (2400 lb) with G78–14B tires at 193 kPa (28 psi), 1179 kg (2600 lb) with H78–14B tires at 193 kPa (28 psi).

(2) (For multipurpose passenger vehicles, trucks, buses, trailers, and motorcycles) The manufacturer may, at its option, list more than one GVWR-GAWR-tire-rim combination on the label, as long as the listing conforms in content and format to the requirements for tire-rim-inflation information set forth in Standard No. 120 of this chapter (§ 571.120).

(3) At the option of the manufacturer, additional GVWR-GAWR ratings for operation of the vehicle at reduced speeds may be listed at the bottom of the certification label following any information that is required to be listed.

(l) [Reserved]

(m) A manufacturer may, at his option, provide information concerning which tables in the document that accompanies the vehicle pursuant to § 575.6(a) of this chapter apply to the vehicle. This information may not precede or interrupt the information required by paragraph (j) of this section.

(n) In the case of passenger cars admitted to the United States under 49 CFR 591.5(f) to which the label required by this section has not been affixed by the original producer or assembler of the passenger car, a label meeting the requirements of this paragraph shall be affixed by the importer before the vehicle is imported into the United States, if the car is from a line listed in Appendix A of part 541 of this chapter. This label shall be in addition to, and not in place of, the label required by paragraphs (a) through (m), inclusive, of this section.

(1) The label shall, unless riveted, be permanently affixed in such a manner that it cannot be removed without destroying or defacing it.

(2) The label shall be affixed to either the hinge pillar, door-latch post, or the door edge that meets the door-latch post, next to the driver's seating position or, if none of these locations is practicable, to the left side of the instrument panel. If that location is also not practicable, the label shall be affixed to the inward-facing surface of the door next to the driver's seating position. The location of the label shall be such that it is easily readable without moving any part of the vehicle except an outer door.

(3) The lettering on the label shall be of a color that contrasts with the background of the label.

(4) The label shall contain the following statements, in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high, in the order shown:

(i) Model year (if applicable) or year of manufacture and line of the vehicle as reported by the manufacturer that produced or assembled the vehicle. "Model year" is used as defined in § 565.3(h) of this chapter. "Line" is used as defined in § 541.4 of this chapter.

(ii) Name of the importer: The full corporate or individual name of the importer of the vehicle shall be spelled out, except that such abbreviations as "Co." or "Inc." and their foreign equivalents and the middle initial of individuals, may be used. The name of

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the importer shall be preceded by the words "Imported By."

(iii) The statement: "This vehicle conforms to the applicable Federal motor vehicle theft prevention standard in effect on the date of manufacture."

(o) (1) In the case of a passenger car imported into the United States under 49 CFR 591.5(f) which does not have an identification number that complies with paragraph S4.2, S4.3, and S4.7 of 49 CFR 571.115 at the time of importation, the Registered Importer shall permanently affix a label to the vehicle in such a manner that, unless the label is riveted, it cannot be removed without being destroyed or defaced. The label shall be in addition to the label required by paragraph (a) of this section, and shall be affixed to the vehicle in a location specified in paragraph (f) of this section.

(2) The label shall contain the following statement, in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high, with the location on the vehicle of the manufacturer's identification number provided in the blank: ORIGINAL MANUFACTURER'S IDENTIFICATION NUMBER SUBSTITUTING FOR U.S. VIN IS LOCATED _____.

Issued on September 21, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–23732 Filed 9–23–94; 8:45 am]

BILLING CODE 4910–59–P

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49 CFR Part 567

Certification

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking submitted by the American Association of Motor Vehicle Administrators (AAMVA) concerning vehicle identification numbers (VINs). One of this agency's Federal motor vehicle safety standards requires all motor vehicles to have a VIN. In addition, NHTSA's certification regulation requires the certification label on each motor vehicle to bear that vehicle's VIN. AAMVA suggested that NHTSA amend its certification regulation to require the VIN of each trailer to be marked in a second location on the trailer to ensure the VIN is present on the vehicle in the event the certification label becomes illegible or lost. The petitioner also believes marking the VIN in a second location will help state officials find the VIN during vehicle inspections.

NHTSA is denying the petition because the agency has an ongoing rulemaking on the issue of improving the permanency and legibility of vehicle certification labels on trailers and other motor vehicles. Since those labels include the VIN, possible improvements to certification labels would address petitioner's concerns about the permanency and legibility of the VIN.

FOR FURTHER INFORMATION CONTACT: Dr. Leon DeLarm, Chief, Pedestrian, Heavy Truck and Child Crash Protection Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; (202) 366–4920.

SUPPLEMENTARY INFORMATION:

NHTSA's certification regulation, 49 CFR 567, *Certification*, requires motor vehicle manufacturers to affix a certification label to each motor vehicle. The label constitutes the manufacturer's certification that the vehicle complies with all applicable Federal motor vehicle safety standards. Section 567.4 specifies where the label must be located and what information it must include. With respect to trailers, the label must be located on the forward half of the left side of the vehicle such that it is easily readable from outside the vehicle without moving any part of the vehicle. One of the items of information required to be displayed on the label is the VIN.

The VIN is a unique identifier that facilitates NHTSA's analysis of accident data and assessment of vehicle recall campaigns. Standard No. 115, *Vehicle Identification Number—Basic Requirements*, 49 CFR 571.115, requires each motor vehicle to have a VIN. It further requires the VIN to be marked clearly and indelibly either on a part of the vehicle that is not designed to be removed or on a separate plate or label, such as the vehicle certification label required by 49 CFR 567. 49 CFR 565, *Vehicle Identification Number—Content Requirements*, specifies the content and format for the VIN. Among other things, Part 565 requires the VIN to provide information on the characteristics of the vehicle, such as its gross vehicle weight rating (GVWR).

Since a trailer's VIN is placed on the certification label, the extent to which a trailer's VIN remains legible throughout the life of the vehicle depends on the permanency of that label. Part 567 specifies that, unless riveted, the label must be permanently affixed such that it cannot be removed without destroying it (§ 567.4(b)). However, Part 567 does not specify any other requirements that ensure the permanency of the certification label, such as requiring the label to be fabricated from a durable material.

The Petition

AAMVA petitioned NHTSA to improve the permanency of the VIN marking. AAMVA petitioned on behalf of its members, state motor vehicle administrators. They use the VIN to register vehicles, to determine proper ownership of vehicles, and to find the GVWR that the vehicle manufacturer assigned to the vehicle. The petitioner said that state officials use the GVWR information for, among other purposes, determining whether a vehicle is overloaded on the highways. AAMVA suggested that NHTSA require trailers to have the VIN stamped, etched or otherwise permanently marked in a location other than the certification label. AAMVA stated that certification labels are typically plastic coated and become illegible with age and exposure to the elements. Thus, the information on the label—particularly the VIN—becomes "illegible long before the useful life of the trailer" ends. Petitioner believed that a second VIN marking would provide a backup means for determining the weight ratings and other pertinent information for the trailer.

Agency Decision

NHTSA is denying AAMVA's petition. The petitioner's justification for its suggestion, missing GVWR information, is being addressed for trailers in a separate NHTSA rulemaking. That rulemaking action seeks to improve the permanency and legibility of the certification labels used on commercial motor vehicles. It was initiated when NHTSA granted in part a petition for rulemaking submitted by the Michigan Department of State Police (MDSP).

The MDSP raised concerns similar to those of the AAMVA regarding the ability of state officials to locate GVWR and VIN information on commercial vehicles. The MDSP stated that law enforcement officers often have difficulty determining the GVWRs of commercial vehicles because the labels on those vehicles are often damaged, painted over or removed, usually accidently, during the life of the vehicle. The petitioner believed that a vehicle's VIN and GVWR information should be made more accessible and legible on commercial vehicles to enable police officers to more readily inspect and investigate commercial vehicles during routine traffic stops. Among other things, the MDSP suggested requiring certification labels for large commercial vehicles, including trailers, to be made of metal, with raised or recessed letters and numbers (see RIN 2127–AE71).

In response to the MDSP petition, NHTSA will consider the need to improve the permanency and legibility of the certification labels for large trailers, and possible ways to improve the labels. Since these labels include the VIN, any improvements to the certification label will have the effect of improving the permanency and legibility of the VIN. In addition, NHTSA will request comments in that rulemaking on whether small trailers should also meet the requirements being proposed for large trailers, and whether some different approach, other than the proposed metal label requirement, would be more effective for the certification labels. Since that rulemaking will address AAMVA's concerns about the permanency and legibility of VIN markings, AAMVA's petition is moot.

Authority: 49 U.S.C. 322, 30111, 30162; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on September 21, 1994.

Barry Felrice,

Associate Administrator, for Rulemaking.

[FR Doc. 94–23731 Filed 9–23–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Extension of Public Comment Period on Three Proposed Rules To List Four Species as Endangered and One Species as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and extension of public comment period.

SUMMARY: The Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended, gives notice that a public hearing will be held on the proposed endangered status for the San Diego fairy shrimp, Quino checkerspot butterfly, Laguna Mountains skipper butterfly, and *Downingia concolor* var. *brevior* and on the proposed threatened status for *Limnanthes gracilis* ssp. *parishii*. The hearing will allow all interested parties to submit oral or written comments on these proposals.

DATES: A public hearing will be held from 6 to 8 p.m. on Wednesday, October 19, 1994, in Rancho Bernardo (North County San Diego), California. The public comment period will be extended to October 31, 1994. Comments from all interested parties must be received by October 31, 1994.

ADDRESSES: The hearing on Wednesday, October 19, 1994, will be held at the Radisson Hotel, 11520 West Bernardo Court, Rancho Bernardo (North County San Diego), California. Written comments and materials may be submitted at the hearing or may be sent directly to the Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection during business hours by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Gail Kobetich, (telephone 619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

The Laguna Mountains skipper, a small butterfly within the skipper family (Hesperiidae), is about 3 centimeters (cm) (1 inch) in length and distinguished from other subspecies by extensive white wing markings. The Laguna Mountains skipper occurs in open meadows of pine forest and is currently found at one site in the Laguna Mountains and one site on Mount Palomar in San Diego County.

The Quino checkerspot, is a small member of the brush-footed butterfly family (Nymphalidae). It is about 3 cm (1 inch) in length and checkered with dark brown, reddish, and yellowish spots. The Quino checkerspot is restricted to sunny openings on clay soils formed from gabbro parent materials within shrubland habitats of the interior foothills of southwestern California and northwestern Baja California, Mexico. The Quino checkerspot may have been one of the most abundant butterflies in San Diego, Orange, and western Riverside Counties during the early part of the twentieth century. Currently five to six populations remain in San Diego and southern Riverside Counties.

The San Diego fairy shrimp, is a member of the Branchinectidae, a freshwater crustacean, family in the Order Anostraca (fairy shrimp). It is a small and delicate animal with large stalked compound eyes, no carapace, and 11 pairs of swimming legs. The San Diego fairy shrimp is restricted to vernal pools in San Diego County from San Marcos and Ramona south to Otay Mesa and at Valle de Palmas in northwestern Baja California, Mexico.

Downingia concolor var. *brevior*, is a low, blue-flowered annual that is restricted to grassy meadows that are vernally wet (wet during the rainy season) with saturated soil conditions. It is restricted to the Cuyamaca Valley in the vicinity of Cuyamaca Lake, San Diego County. *Limnanthes gracilis* var. *parishii*, is a low, widely-branching annual with white flowers. There are fewer than 20 population of *L. gracilis* ssp. *parishii* in the Palomar, Cuyamaca, and Laguna Mountains and on Santa Rosa Plateau. The largest population, which includes most of the individuals, is found in the Cuyamaca Valley.

These species are threatened by one or more of the following factors: grazing, habitat destruction and fragmentation from agricultural and urban development, alteration of wetlands, recreational activities, collection by lepidopterists and other human disturbances, stochastic events, exotic plants, and the inadequacy of existing regulatory mechanisms.

On August 4, 1994, the Service published three rules in the **Federal Register** that proposed the Laguna Mountains skipper and Quino checkerspot as endangered (59 FR 39868), the San Diego fairy shrimp as endangered (59 FR 39874), and *Downingia concolor* var. *brevior* as endangered and *Limnanthes gracilis* ssp. *parishii* as threatened (59 FR 39879). In response to a formal request from William Hazeltine, environmental consultant, Oroville, California, the Service has scheduled a public hearing on Wednesday, October 19, 1994 at the Radisson Hotel, 11520 West Bernardo Court, Rancho Bernardo (North County San Diego), California.

Those parties wishing to make a statement for the record should bring a copy of their statement to present to the Service at the start of the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments will be given the same weight as oral comments. Written comments may be submitted at the hearing or mailed to the address given in the **ADDRESSES** section of this notice. The comment period closes on October 31, 1994.

Authority

The authority for this action is the Endangered Species Act of 1973, as

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amended. (16 U.S.C. 1361–1407, 16 U.S.C. 1531–1544, 16 U.S.C. 4201–4245, Pub. L. 99–625, 100 Stat. 3500), unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

(Proposed Rule and Notice of Public Hearing: San Diego fairy shrimp, Quino checkerspot, Laguna Mountains skipper, *Downingia concolor* var. *brevior*; endangered without critical habitat; *Limnanthes gracilis* ssp. *parishii*, threatened without critical habitat.)

Dated: September 19, 1994.

Thomas Dwyer,

Acting Regional Director, Region U.S. Fish and Wildlife Service.

[FR Doc. 94–23555 Filed 9–23–94; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 23

RIN 1018–AC55

Export of American Ginseng Harvested in 1994–1996 Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates certain international trade in plant and animal species. Export of plants and animals listed in CITES Appendix II may occur only if the Scientific Authority has advised the permit-issuing Management Authority that such export will not be detrimental to the survival of the species and if the Management Authority is satisfied that the plant or animal specimens to be exported were not obtained in violation of laws for their protection. Export of cultivated specimens of plants listed in Appendix II may occur under certificates issued by the Management Authority if it is satisfied that the plants to be exported were artificially propagated.

This document announces proposed findings on export of American ginseng *(Panax quinquefolius)* from the 1994–1996 harvest seasons in 22 States. The U.S. Fish and Wildlife Service (Service) reviews information and data on the topics described in this proposed rule as a basis for determining whether to continue approval of export from specified States for the 1994–96 harvest seasons or to initiate changes. For Iowa and Wisconsin, approval is only for 1994. In addition, the State of North Dakota has applied to export cultivated ginseng under a State program; the State of Maine has submitted legislation which has been signed to set up a State program for the export of cultivated ginseng and is working to finalize the details of the program and to apply for export approval; and the State of Michigan has submitted draft legislation and is intending to complete its application to export cultivated ginseng under a State program soon. The Service proposes to approve only exports of cultivated ginseng from those three States, contingent on submission of adequate final State information.

Monitoring State ginseng programs for 16 years has shown that the States from which ginseng export has been approved are likely to continue to satisfy CITES requirements. To ensure that this is so, the Service plans to continue its monitoring in accordance with the procedures described herein, which have been somewhat streamlined and clarified. This monitoring includes analysis of program reports made available to the Service no later than May 31 each year from each State from which ginseng export is approved. These annual reports document the most recent previous harvest and the current status of the State's program for ginseng.

The requirement that *all* ginseng be inspected and certified by State officials is being modified to require that *all wild* ginseng be inspected and certified by State officials. Cultivated ginseng may be certified by licensed or registered dealers approved by the State to make such an accounting. This change is being considered since: (1) The origin of the roots is declared as to whether the plant was cultivated or taken from the wild; and (2) the marked difference in appearance and price between wild and cultivated ginseng make it reasonably unlikely that wild ginseng would be sold as cultivated ginseng.

DATES: The Service will consider all information and comments received by October 26, 1994, in making its final decision on this proposal. State ginseng program reports are due by May 31 of 1995, 1996, and 1997.

ADDRESSES: Please send correspondence concerning this document to Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 1849 C Street, N.W. (MS–ARLSQ–420C), Washington, DC 20240. Express and messenger deliveries should be addressed to Chief, Office of Management Authority, Room 430, 4401 North Fairfax Drive, Arlington, Virginia 22203. Materials received will be available for public inspection by appointment from 7:45 am to 4:15 pm, Monday through Friday, at the Office of Management Authority at the Arlington address.

FOR FURTHER INFORMATION CONTACT:

Management Authority: Marshall P Jones, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 1849 C Street, N.W. (MS–ARLSQ–420C), Washington, DC 20240; fax number 703–358–2280, telephone 703–358–2095.

Scientific Authority: Dr. Charles W Dane, Chief, Office of Scientific Authority (MS-ARLSQ–725), U.S. Fish and Wildlife Service, Washington, DC 20240; fax number 703–358–2276, telephone 703–358–1708.

SUPPLEMENTARY INFORMATION: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates certain international trade in CITES-listed species. Export of specimens of species listed in Appendix II of the treaty may only occur upon approval of a Scientific Authority and a Management Authority of the country of export. In the United States, the Scientific Authority and Management Authority responsibilities are assigned to the Secretary of the Interior and are carried out by offices of the U.S. Fish and Wildlife Service.

CITES provides for listing of whole plants and specifically designated parts and derivatives of Appendix II plants. Since 1973, whole plants and roots of American ginseng *(Panax quinquefolius)* have been so listed. In 1985, for reasons unrelated to the trade in American ginseng, the CITES Parties (member countries) revised listing practices and decided to regulate not only whole specimens of plants on Appendix II, but also all their readily recognizable parts and derivatives, unless they were specifically excluded. As a consequence, the listing for ginseng needed restatement, and the listing proposal adopted by the Parties (November 22, 1985, 50 FR 48212) continues to regulate ginseng exports, including plants, whole roots, essentially intact roots, and root chunks and slices [50 CFR 23.23(d)(3)].

The Service may issue findings yearly or for more than one year. It began making multiyear findings for the export of American ginseng on a State-by-State basis with issuance of the Scientific Authority and Management Authority findings to cover the 1982–84 harvest seasons. On October 4, 1982 (47 FR 43701), the Service reported that it found that the status of wild ginseng did not appear to vary greatly from one year to the next within any given State, and that the existing information compiled was adequate to justify findings under CITES for 3 years. The initial multiyear

rule was followed by a second such rule for the 1985–87 harvest seasons (50 FR 39691, September 30, 1985; 50 FR 42027, October 17, 1985), and subsequent rules for the 1988–90 seasons (53 FR 33815, September 1, 1988) and the 1991–93 seasons (56 FR 41806, August 23, 1991).

The Service uses information compiled since 1977 to make the multiyear findings. This notice concerns the Service's proposed findings to approve the export of American ginseng to be collected in certain States in the 1994–96 harvest seasons. The Service plans to continue to review current biological and harvest information concerning ginseng and those State programs approved for exporting of their ginseng. The State information previously submitted need not be resubmitted if it is incorporated by reference and its validity reaffirmed. The Service is retaining the option to revise 3-year findings whenever warranted by information that shows the need for change. The procedures herein have been somewhat streamlined and clarified, and the Service would welcome comments concerning further simplification of these procedures.

Scientific Authority Criteria

The overall criteria used by the Scientific Authority in finding whether export will not be detrimental to the survival of a species are generally as follows (summarized from a notice of July 11, 1977; 42 FR 35800):

1. Whether such export has occurred in the past and has appreciably reduced numbers or distribution of the species;
2. Whether such export has or is expected to increase, remain constant, or decrease; and
3. Whether the life-history parameters of the species and relevant structure and function in its ecosystems indicate that the present or proposed levels of export, considered with the potential impacts of other factors, are expected to appreciably reduce the numbers or distribution of the species, or cause signs of appreciable ecological stress within the species and/or in other species within its ecosystems.

For ginseng, the evaluation for nondetriment by the Scientific Authority, in accordance with these general criteria, is based on the information and data submitted on the following topics by each affected State and from other appropriate sources. Information previously submitted that remains valid need only be referenced.

The following information and data for wild ginseng can be conveniently recorded by natural region(s) of the State or by county, preferably on a State map, or in a table of the counties. Ginseng is to be considered wild if it occurs in naturally perpetuated habitat where the species is naturally propagated or with only limited planting of seeds and with no subsequent tending of plants or habitat before harvest.

1. Historic distribution of ginseng, with indication of optimal habitat.
2. Location and approximate acreage of statute-protected lands in the State on which wild ginseng occurs and where collecting is prohibited.
3. Present abundance of ginseng, using the indices of 0 = absent, 1 = rare, 2 = occasional, 3 = frequent.
4. Density within the ginseng populations for each natural region (or county) where present, using the indices of 1 = sparse, 2 = moderate, 3 = dense.
5. Harvest collecting intensity, using the indices of 0 = none, 1 = light, 2 = moderate, 3 = heavy.
6. Preferably by natural regions of the State (or by county) rather than statewide, the average number of roots per pound (dry weight) as purchased by dealers.
7. Information on trends in wild ginseng populations for the State or, if possible, natural regions of the State, indicating whether populations are apparently increasing, stable, decreasing, or being extirpated.

In addition for the wild ginseng, the following information and data can be provided in narrative form:

1. Approximate number of ginseng collectors (diggers) in the State and whether the number appears to be increasing, stable, or decreasing.
2. A description (or copy) of the State's regulations for the annual harvest of wild ginseng, including (a) designated harvest season—preferably to begin after seeds are mature; and (b) harvest requirements, such as (i) minimum size or age of plants allowed to be collected—at least 3-leaf (3-prong) is recommended, and (ii) whether seeds from collected plants are to be planted and only at the harvest sites, etc.
3. Number of pounds (dry weight) of ginseng roots certified by the State for export.
4. Information on trends in roots per pound (dry weight) for the State or, if possible, natural regions of the State, indicating whether the number of roots per pound appears to be increasing, stable, or decreasing.
5. A brief description of any research projects related to ginseng's status that the State has initiated or that are ongoing in the State.
6. The State's opinion, based on the information and data provided on the topics above and any other information and data that the State may provide, as to whether the removal of the ginseng from the wild in the State might have been adverse for the State's entire population of the species.

For cultivated ginseng, the following information and data can be provided in map, tabular, or narrative form. Ginseng is considered cultivated when it is artificially propagated and maintained under controlled conditions, for example in intensively or intermittently prepared or managed gardens or patches under artificial or natural shade.

1. Counties in which ginseng is commercially cultivated.
2. The number of pounds (dry weight) of cultivated ginseng roots certified by the State for export.

Management Authority Criteria

In addition to the Scientific Authority finding that ginseng exports will not be detrimental to the survival of the species, the Management Authority must be satisfied (1) that the ginseng was not obtained in contravention of laws for its protection, and (2) as to whether it was of wild or cultivated origin.

Criteria used by the Management Authority in determining a State program's qualifications for export are that the State has adopted and is implementing the following regulatory measures (see 50 FR 39691, September 30, 1985):

1. A State ginseng law and regulations mandating State licensing or registration of persons purchasing or selling ginseng collected or grown in that State.
2. State requirements that these licensed or registered ginseng dealers maintain true and complete records of their commerce in the annually harvested ginseng and provide copies of such records to the State in a signed and dated statement at least every 90 days (within 15 days of end of each quarter of calendar year) and a year-end accounting of the total commerce for the year.
3. Dealer records required to show date of transaction, whether roots and plants were wild or cultivated, if roots were dried or fresh (green) at time of transaction, weight of roots, weight or number of plants, State of origin of roots or plants, and identification numbers of the State certificates used to ship ginseng from the State of origin. The name and address of the seller or buyer of record of the ginseng shall be maintained by the dealer on his/her own copy of commerce record forms supplied by the State(s) of licensing and shall be made available to the State ginseng-program manager(s) upon request.

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4. Inspection and certification by State personnel of all wild ginseng harvested in the State to authenticate that ginseng was legally obtained from wild sources within the State. Cultivated ginseng harvested in the State may be certified by licensed or registered dealers approved by the State to make such an accounting of this ginseng.

Experience has shown the value of an inspection and certification program by State official(s) who can document both the weight of the ginseng roots (weight or number of plants) involved and that they were legally taken from the wild or cultivated in that State. Dealer certification for cultivated ginseng is being considered because the declared origin of the root is indicative of whether it is wild or cultivated and the marked difference in appearance and price between wild and cultivated ginseng makes it reasonably unlikely that wild ginseng would be certified by a State-approved dealer as cultivated. Cultivated ginseng may be recorded by such a dealer and exported with appropriate CITES export documents without further certification by State officials.

5. Ginseng unsold by March 31 of the year after harvest must be weighed by the State, and the dealer, digger, or root owner given a State weight receipt. Future State export certification of this stock for export is to be issued against the State weight receipt.

6. Certificate of origin forms for wild ginseng must remain in State control until issued at certification. The certificate of origin forms for all ginseng must contain the following information:

(a) State of origin;
(b) Serial number of certificate;
(c) Dealer's State registration number;
(d) Dealer's shipment number for that harvest season;
(e) Year of harvest of ginseng being certified;
(f) Designation as wild or cultivated roots or plants;
(g) Designation as dried or fresh (green) roots, or live plants;
(h) Weight of roots or plants (or number of plants) separately expressed both numerically and in writing;
(i) Verified statement by State ginseng official that the ginseng was obtained in that State in accordance with the State law of that harvest year;
(j) Name and title of State certifying official;
(k) Date of certification;
(l) Signatures of both the dealer and the State official making certification.

This certificate should be issued in triplicate, with the original designated for the dealer's use in commerce, first copy for dealer records, and second copy retained by the State for reference.

7. State regulations that (a) prohibit export from the State of its ginseng without certification by the State of origin, and (b) require uncertified ginseng supplied to State-registered dealers to be returned to the State of origin within 30 calendar days for certification. Failure to have such ginseng certified will render those roots illegal for commerce under State law.

Each State from which ginseng export is approved shall, without further notice, make program information on each year's harvest available to the Service's Office of Management Authority no later than May 31 of the subsequent year (*e.g.*, the State's 1994 ginseng data should be received by May 31, 1995). These data should be sufficient to satisfy the Scientific Authority criteria indicated above. The following information is needed to satisfy the Management Authority criteria:

1. Reaffirm the State ginseng program and indicate modifications, if any, concerning:

(a) State ginseng laws and regulations;
(b) Season of ginseng harvest and commerce;
(c) State dealer, digger, and/or grower license or registration rules;
(d) Sample of required ginseng-related licenses, including dates of authorized use;
(e) Fees for any ginseng-related license or registration;
(f) Dealer, digger, or grower record maintenance and reporting requirements;
(g) Sample of current-year dealer certificates and reporting forms;
(h) Description of State certification system for wild and cultivated ginseng legally harvested within the State, including controls to deter uncertified ginseng from moving out of or into the State;
(i) Name, address, telephone number, and fax number of State official to contact concerning such information.

2. The State data should also include information on the following:

(a) Pounds (dry weight) of wild and of cultivated ginseng roots and weight or number of live plants (i) harvested and (ii) certified by the State, and (iii) the pounds of each bought and sold from in-State and from out-of-State sources;
(b) How dealers not resident in the State obtain certification for ginseng roots harvested in that State and how this type of commerce is controlled by State law;
(c) Ginseng law enforcement procedures, violations discovered, and remedies; and
(d) A sample of the current-year State certificate of legal take and origin.

Program for Cultivated Ginseng

On October 21, 1980 (45 FR 68944), the Service announced that it would approve export of cultivated ginseng only from States for which the export of wild-collected ginseng was approved because those States had programs that could adequately document the source of the ginseng. On October 4, 1982 (47 FR 43701), the Service announced that it would approve export of cultivated ginseng from other States if procedures had been implemented to minimize the risk that wild-collected plants would be claimed as cultivated. The Service continues to consider granting such approval.

The State of North Dakota has applied to export cultivated ginseng, and the Service is proposing to approve such exports from this State. North Dakota is considered outside the native range of ginseng. The State of Michigan (which is within the native range of the species) was granted interim approval to export cultivated ginseng from the 1993 harvest. The State has been working with the Service to finalize procedures under a new State law and is planning on completing their submission requesting approval of their ginseng program prior to the publication of the final rule. The Service is considering the approval of such exports from this State. The Service's proposal to approve Michigan's program is dependent upon receiving the required information. The State of Maine (which is within the native range of the species) has passed legislation setting up a State program for cultivated ginseng and is working to complete their submission for export approval for cultivated ginseng only. The Service is considering the approval of such exports pending satisfactory completion of the application for export approval.

Previous Export Approval

On August 23, 1991 (56 FR 41806), the Service approved multiyear export of 1991–93 harvested ginseng only from States with a legally regulated ginseng program that provided for a State certification and inspection system and that satisfied the other criteria of the Management Authority and the Scientific Authority. The export of wild and cultivated ginseng harvested from 1991 through 1993 was approved only from the 19 States indicated in the Code of Federal Regulations [50 CFR 23.51(e)(1)]—see the 1991–1993 column in the table at the end of this document. Documents containing information that provided the basis for the Service's findings of legal take and origin are on file at the Office of Management Authority at the address given above.

Such export approval means that any ginseng legally harvested during those years from Service-approved State programs may be exported at any time when accompanied by appropriate State certification and valid Federal export documents granted by the U.S. Management Authority. For example, ginseng legally harvested in 1992 under a Service-approved State program may be exported in 1994 when accompanied by the 1992 State certificate of origin, a 1994 export document issued by the Management Authority, and an exporter's invoice.

Multiyear Findings

As a result of monitoring State ginseng programs and the status of ginseng since 1977, the Service expects that States from which the export of ginseng has been approved will continue to satisfy CITES requirements and that continued export of ginseng from these States will not be detrimental to the survival of the species. Therefore, States previously approved for export of ginseng for the 1991–93 harvest seasons need not submit completely new applications for export program approval for the 1994–96 harvest seasons. However, in relation to both the set of criteria used by the Scientific Authority and the set used by the Management Authority, each State needs to reaffirm the validity of its existing program and to notify the Service of any modifications or changes.

This report with information on the 1993 harvest, reaffirmation of the ongoing State program, and any new program information should have been received by May 31, 1994, from all States from which ginseng export has been approved for the 1991–93 harvest years (see 56 FR 41806; August 23, 1991). The States of Iowa and Wisconsin have been notified of the Service's concerns over the lack of State certification for wild ginseng. Therefore, the Service is proposing to approve export of wild and cultivated ginseng from these two States for 1 year only. Findings allowing further export will be made based on compliance with Service requirements. The Service is proposing to find that the status of the species and State programs is such that the 1994–96 harvests of ginseng for export will not be detrimental to the survival of the species for 17 of the 19 States approved for the 1991–93 harvest seasons. In addition, the Service is proposing the approval of exports of cultivated ginseng from Maine and Michigan, pending receipt of required information, and from North Dakota, which is outside the species' native range.

Any States wishing to initiate export programs for ginseng should begin working with the Service early so that their finalized request for approval can be submitted by March 31 of the year in which the State anticipates certifying that season's ginseng for export.

Service export approval is subject to revision prior to the 1995 and 1996 harvest seasons if a review of information reveals that Management Authority or Scientific Authority findings on any approved State may need to be changed. The Service proposes not to grant general approval for export of ginseng originating in any State not named in the 1994 codification of 50 CFR 23.51(e), for one or more of the following reasons: (1) The species does not occur there; (2) no harvest of the species is allowed by the State; or (3) the Service does not have current information needed for Management Authority and/or Scientific Authority findings.

To ensure that States for which ginseng export is approved by the Service maintain successful programs so that export is not detrimental to the survival of this species, the Service plans to annually review the export documents returned from U.S. Department of Agriculture ports and the information and data submitted by the States, including any unexplained changes in harvest levels and any other concerns presented in the State-submitted reports. Taking into account the State evaluations, the Service will continue to make an overall evaluation on the status of ginseng. Notices will be published in the **Federal Register** in 1995 and 1996 only if new information or changed conditions show reason for revised findings or guidelines.

Export Procedures

Valid Federal CITES documents are necessary to export wild or cultivated ginseng roots, major root parts, or plants. Applications for these documents should be sent to the Office of Management Authority at the address given above.

Ginseng may only be exported through ports with personnel and/or facilities of the U.S. Department of Agriculture (USDA ports) that have been designated by the U.S. Department of the Interior (49 FR 49238, October 25, 1984; see 50 CFR 24.12). For each export, the exporter must present to the port inspector of the USDA Animal and Plant Health Inspection Service, Plant Protection and Quarantine (APHIS/PPQ), the following:

1. Ginseng roots or plants being exported.
2. Original State certificates of origin for the ginseng (or foreign export documents for American ginseng imported into the United States). An exporter or dealer may split an original State certificate by striking a line through the original weight on the certificate and stating in numbers and words the new lower weight of ginseng to be exported. This change in weight must be certified by the dealer or exporter with the written words "I made these changes on (date)" followed by the full legal signature of the dealer or exporter. The modified State certificate of origin must bear this certified change in ink, in original form, and be readily legible or also given in printed style.
3. One completed Federal CITES export document (permit or certificate) with two copies.
4. One copy of the exporter's executed invoice.

The APHIS/PPQ port inspector may sign and validate the CITES documents only after a satisfactory inspection of the contents of the State certificate(s) of origin, the exporter's invoice, CITES export documentation, and the shipment. Once the CITES documents are validated, the inspector will forward the State certificates, one copy of the CITES export document, and the exporter's invoice to the Office of Management Authority for recordkeeping and reporting. The second copy of the Federal CITES export document goes to the exporter. The original CITES export document authorizes the international shipment of the ginseng and will be collected by the importing country for its recordkeeping and reporting.

Request for Information and Comments

The Service requests information and comments on (1) the status of ginseng throughout its range or in any portion of its range; (2) the proposed findings that the export of ginseng from any of the 22 States with programs to be approved will not be detrimental to the survival of the species; and (3) the status criteria used. Information and comments also are requested on the criteria and procedures and their implementation for determining (1) that exported specimens are accurately declared as wild or cultivated; (2) that the ginseng (roots) originated in a particular State; and (3) that the ginseng is not collected in contravention of laws for its protection.

The Service also requests information on environmental or economic impacts

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and effects on small entities (including small businesses, small organizations, and small governmental jurisdictions) that would result from findings for or against export approval. This information may aid the Service in further evaluating the conclusions stated below. This proposed rule is issued under authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; 87 Stat. 884, as amended), and was prepared by Mark R. Albert and Carol L. Carson, Office of Management Authority, and Charles W. Dane, Bruce MacBryde, and Wayne L. Milstead, Office of Scientific Authority.

Effects of the Rule and Required Determinations

The Service has determined that these proposed findings are not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act (42 U.S.C. 4321–4347), and therefore the preparation of an Environmental Impact Statement is not required.

This rule was not subject to Office of Management and Budget review under Executive Order 12866. For the 1994–96 harvest seasons, the Service analyzed the impacts and again concluded that the 3-year rule will not have significant economic effects on a substantial number of small entities as outlined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Exporters normally derive their product from ginseng roots harvested in a number of States. Therefore, the approval or disapproval of wild ginseng export from any one State would not significantly affect the industry. Moreover, because the proposed rule would treat exports on a State-by-State basis and proposes to approve export in accordance with State programs, the rule would have little effect on small entities in and of itself. The proposed rule would allow continued international trade in ginseng from the United States in accordance with CITES, and it does not contain any Federalism impacts as described in Executive Order 12612.

It also has been determined that this proposed rule does not contain information collection requirements that require approval by OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Imports, Plants (agriculture), Transportation, Treaties.

Proposed Regulation Promulgation

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, Part 23, Subpart F of Title 50 (Chapter I, Subchapter B) of the Code of Federal Regulations is proposed for amendment as set forth below:

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, 27 U.S.T. 108; and Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Subpart F—Export of Certain Species

§ 23.51 [Amended]

2. In § 23.51, paragraph (e)(1) is proposed to be revised as follows:

§ 23.51 American ginseng *(Panax quinquefolius)*

* * * * *

(e)(1) 1982–1996 harvests:

State	Harvest year					
	1982 & 1983	1984	1985–1987	1988–1990	1991–1993	1994–1996
Alabama	–	–	–	+	+	+
Arkansas	+	+	+	+	+	+
Georgia	+	+	+	+	+	+
Illinois	+	+	+	+	+	+
Indiana	+	+	+	+	+	+
Iowa	+	+	+	+	+	*
Kentucky	+	+	+	+	+	+
Maine	–	–	–	–	–	c
Maryland	+	+	+	+	+	+
Michigan	–	–	–	–	–	c
Minnesota	+	+	+	+	+	+
Missouri	+	+	+	+	+	+
New York	–	–	–	+	+	+
North Carolina	+	+	+	+	+	+
North Dakota	–	–	–	–	–	c
Ohio	+	+	+	+	+	+
Pennsylvania	–	–	–	+	+	+
Tennessee	+	c	+	+	+	+
Vermont	c	+	+	+	+	+
Virginia	+	+	+	+	+	+
West Virginia	+	+	+	+	+	+
Wisconsin	+	+	+	+	+	*

+ Export approved for wild and cultivated ginseng roots and plants.
c Export approved only for cultivated (artificially propagated) ginseng.
– Export either not requested or not approved.
* Export approved for 1994 only.

3. With the exception of the Note, § 23.51(e)(2) is proposed to be revised as follows:

§ 23.51 American ginseng *(Panax quinquefolius).*

* * * * *

(e)(2) Conditions on export: All roots and plants must be documented as to State of origin, season of collection, and dry or fresh (green) weight. The State must certify, or for cultivated ginseng authorize certification, whether roots and plants originated in that State, were legally obtained in a particular season, and are wild or cultivated (artificially propagated) specimens. Along with the ginseng to be exported, the following must be presented: a dealer's or exporter's executed invoice, the State certification, and a current CITES export document. The State must maintain a ginseng program as described in the current final rule. Annual program data for the preceding harvest season should be available to the Service's Office of Management Authority by May 31 each year. All other export procedures must be followed as described in 50 CFR parts 13, 14, and 23.

* * * * *

Dated: August 18, 1994

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–23739 Filed 9–23–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 940958–4258; I.D. 081894A]

RIN: 0648–AG92

Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to delay the opening of the first (roe) directed fishing season for the offshore component pollock fishery in the Bering Sea and Aleutian Islands (BSAI) management area from January 1 to January 26 of each fishing year. This action is necessary to achieve optimum roe quality and increase revenues from the BSAI pollock processed by the offshore component during the roe season. The proposed action also would prohibit vessels used to fish for BSAI or Gulf of Alaska (GOA) groundfish or BSAI king or Tanner crab prior to January 26 from participating in the offshore component pollock fishery until February 5. This 10-day prohibition on entry into the offshore component fishery would not apply to vessels used to participate in the Community Development Quota (CDQ) program prior to January 26 and is necessary to discourage participants in the offshore component pollock fishery from contributing to increased fishing effort in other fisheries prior to the start of the offshore component roe season. This action is intended to promote the fishery management objectives of the Fishery Management Plan (FMP) for the Groundfish Fishery of the BSAI.

DATES: Comments must be received by October 26, 1994.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel). Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by vessels in the exclusive economic zone of the BSAI is managed by the Secretary of Commerce (Secretary) according to the FMP for the Groundfish Fishery of the BSAI. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act and is implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 620 and 675.

Current regulations authorize all BSAI trawl fisheries, including the pollock fisheries, to start on January 20 of each year. Existing regulations at § 675.20(a)(2)(ii) also authorize the establishment of separate pollock total allowable catch (TAC) amounts for the Bering Sea and Aleutian Islands subareas and the Bogoslof District.

Through 1995, the pollock TACs specified for each subarea and district initially are allocated among the Western Alaska CDQ reserve (7.5 percent), the BSAI operational reserve (7.5 percent), and the open access fisheries (85 percent, of which 35 percent is allocated to the inshore component and 65 percent to the offshore component). The portion of the TACs allocated to the inshore and offshore components is further apportioned into two seasonal allowances. The first allowance (roe season) is available for directed fishing from January 1, until April 15, and the second allowance (non-roe season) is available for directed fishing from August 15, until December 31.

The Bering Sea pollock fishery has experienced increased harvesting and processing capacity and increased effort in recent years under the existing open access management regime. While the TAC annually specified for pollock in the last few years has remained fairly stable between 1.2 and 1.3 million metric tons, the increase in harvesting and processing capacity has led to increasing daily catch rates and reduced season lengths for both the inshore and offshore components.

Three major factors affect the length of the pollock roe season: Annual TAC, the amount of pollock TAC apportioned to the pollock roe season, and amount of fishing effort. Regulations authorizing the seasonal apportionment of pollock TACs have been effective since 1991. In 1991 and 1992, 40 percent of the Bering Sea pollock initial TAC was apportioned to the roe season, and 45 percent was apportioned in 1993 and 1994. Since 1991, the length of the Bering Sea pollock roe season has decreased each year. The roe season pollock quota was harvested in 52 days in 1991 and 46 days in 1992. Effective June 1, 1992, through December 31, 1995, pollock TACs are apportioned among the offshore component, inshore component, and CDQ pollock fisheries. The 1993 roe season allowance apportioned to the offshore component was harvested in 33 days. The inshore component roe fishery lasted 63 days from January 20, through March 24. However, a strike by vessels delivering onshore delayed fishing until the first week of February. The inshore component's roe season pollock apportionment was harvested in about 48 days. In 1994, the offshore component roe season closed on February 18 (29 days), and the inshore component roe season closed on March 2 (41 days).

Pollock roe produced from the roe season harvests represents a substantial portion of the gross wholesale value of the pollock fishery and roe maturity is one of the most important factors in determining product value. Good quality mature roe receives the highest price, followed by immature and over-mature roe. Therefore, in order to maximize the value of roe production, industry prefers to harvest as much roe as possible during the period of peak roe maturity and to minimize the harvest of immature and over-mature roe. Although the timing of peak roe maturity varies depending on the age of the fish, the location where fish spawn, and ocean conditions, industry sources report that the period of peak roe maturity usually occurs between February 10 and February 20.

The pollock roe season length has shortened to the degree that some offshore processors participating in the open access fishery believe that the fishery closes before or during the timing of peak roe maturity. Consequently, the value of the pollock harvest is significantly lower than it could be if the season were delayed.

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This trend likely will continue under the open access management system.

Concerns about a shortened roe season do not appear to be shared by participants in the inshore component pollock fishery or some of the offshore processors who also participate in the CDQ pollock fisheries, which occur after the close of the open access fishery. Inshore processors report that peak roe maturity generally occurs during the first 2 weeks of February and, because the 1994 roe season extended into early March, the fishery fully encompassed the period of peak roe maturity. Delay of the inshore component roe season would likely increase the harvest of pollock with lower valued, over-mature roe.

At the request of offshore component processors, the Council first considered alternatives for delaying the pollock roe season at its June 1993 meeting. Lack of industry consensus on a preferred alternative prevented the Council from taking action. The continued shortening of the roe season in 1994 prompted the Council again to consider alternative season opening dates for the pollock roe season.

At its June 1994 meeting, the Council considered the testimony and recommendations of its Advisory Panel, Scientific and Statistical Committee, fishing industry representatives, and the public on alternative dates for the start of the pollock roe season. For the reasons given below, the Council determined that delaying the offshore component roe season opening date to January 26 would provide the most benefit to the fishing industry and recommended that NMFS initiate rulemaking to delay the opening of the offshore component pollock roe season until this date.

To discourage a shift in fishing effort into other fisheries by pollock vessels prior to January 26, the Council also recommended that vessels used to fish for BSAI or GOA groundfish or BSAI king or Tanner crab prior to January 26 be prohibited from participating in the offshore component pollock fishery until February 5. This prohibition would not apply to vessels participating in a CDQ fishery.

Section 14.3 of the FMP requires that the Council consider the following criteria when recommending a regulatory amendment to change season opening dates: Biological, bycatch, exvessel and wholesale prices, product quality, safety, cost, other fisheries, coordinated season timing, enforcement and management costs, and allocation effects. The EA/RIR/IRFA prepared for this action addresses anticipated effects of the proposed delay relative to these criteria. The following discussion summarizes these effects relative to how the Council's objectives for an offshore component roe season delay are met under the proposed action.

Biological or bycatch effects. A delay of the roe season opening date for the offshore component pollock fishery to January 26 would affect neither the amount of pollock harvested during the roe season nor the overall duration of the fishery. Although the proposed action would result in a 6-day shift of trawl effort, significant spatial differences in trawl effort distribution would not be expected because the location of spawning stocks of pollock likely would not vary significantly during this 6-day period. Similarly, a 6-day delay in the opening date of the pollock roe season would not affect the size of pollock taken in this fishery. When female pollock are entering a spawning condition, their energy is going into the production of eggs and maintenance, and not into growth.

In the BSAI, Pacific halibut, red king crab, C. bairdi Tanner crab, and herring are prohibited species for which bycatch limits are established and apportioned each year to the pollock and other groundfish trawl fisheries based on Council recommendations. Pacific salmon also are prohibited species that may not be retained in the groundfish fisheries; however, no salmon bycatch limits currently are established. Few data exist to suggest that the proposed change in the pollock roe season would have any positive or negative impact on the prohibited species bycatch amounts. Observer data indicate that an opening date later into the season could help to reduce chinook salmon bycatch in the trawl fisheries. However, the effects of a change of less than 1 week for a start date are difficult to measure.

The proposed action would not have an adverse effect on marine mammals or seabirds, because it would not increase pollock harvests or significantly change the temporal or spatial distribution of this harvest.

Product quality and value. The proposed delay of the offshore component pollock roe season is intended to increase the value of the pollock harvested during the roe season by delaying the offshore component fishery so the season fully encompasses the period of optimum roe maturity. This action likely would affect the roe product quality and value experienced in the CDQ pollock fisheries.

Participants in the CDQ pollock fisheries include the Western Alaska community groups that have been allocated pollock quota and the processors with which they contract for the harvest and processing of the quota. In 1993 and 1994, the roe season CDQ pollock fisheries occurred immediately after the close of the open access roe season, when the proportion of mature roe produced was still quite high. Under the proposed action, CDQ harvests likely would occur between January 20 and January 26 and after the offshore component fishery closed. In either case, if the offshore component roe season delay achieves the primary objective of allowing this fishery to be prosecuted when pollock roe maturity is optimum, the overall gross wholesale value of the pollock CDQ fishery would be reduced. However, based on the volume of pollock harvested and the number of participants in the fisheries, an increase in the value of roe production during the offshore component fishery (due to increased roe quality) probably would be greater than the decrease in the value of roe production in the CDQ fisheries.

Allocation, coordinated season timing, and impacts on other fisheries. The proposed action is intended to discourage vessels participating in the offshore component pollock fishery from contributing to increased fishing effort in other fisheries prior to the start of the offshore component roe season on January 26. Under the proposed action, vessels used to participate in a BSAI groundfish fishery, a GOA groundfish fishery, or the BSAI king or Tanner crab fishery would be prevented from entering the offshore component pollock fishery until February 5—10 days after the opening of the offshore component roe season. The intent of this action is to encourage vessel owners to choose between fishing for pollock or for another species, thus minimizing any preemptive impacts on other fisheries that may otherwise occur under the proposed delay of the pollock roe season.

Costs. Vessels used to participate in a BSAI or GOA groundfish fishery or the BSAI king or Tanner crab fisheries prior to January 26 would be prohibited from participating in the offshore pollock fishery before February 5. This limitation could impose costs on those vessels that target on more than one species during the pollock roe season. These vessels would be precluded from participating in other fisheries prior to the roe season if they also wanted to continue their pollock target fisheries.

If approved by NMFS, the Council's recommended action to delay the offshore component pollock roe season would be effective only through December 31, 1995, when regulations authorizing the allocation of pollock between the inshore and offshore component expire. Continued effectiveness of the proposed delay would require new rulemaking contingent on the implementation of a separate FMP amendment that would authorize inshore/offshore groundfish allocations beyond 1995.

Classification

NMFS prepared an IRFA as part of the RIR, which concludes that this proposed rule, if adopted, could have significant effects on a substantial number of small entities (i.e., small businesses, small organizations, and small governmental jurisdictions with limited resources). The Western Alaska community groups that have received CDQs in the pollock fishery are considered small entities, because they are government jurisdictions with populations less than 50,000. The proposed action would delay the start date of the offshore pollock roe season in the BSAI in order to increase the wholesale value of roe production in the open access fishery. If this action is successful in its purpose, the value of roe production in the CDQ pollock fisheries would probably decline, thereby reducing revenue to the Western Alaska community groups. The reduction in revenue generated from the CDQ program could have a "significant impact" on these small entities by reducing their annual gross revenues by more than 5 percent.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: September 20, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, part 675 is proposed to be amended as follows:

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 675.23, paragraph (e) is revised to read as follows:

§ 675.23 Seasons.

* * * * *

(e) *Directed fishing for pollock.* (i) Subject to other provisions of this part, and except as provided in paragraph (e)(ii) of this section, directed fishing for pollock is authorized from January 1, until noon, A.l.t., April 15, and from noon, A.l.t., August 15, through the end of the fishing year.

(ii) *Applicable through December 31, 1995.* (A) Subject to other provisions of this part and except as provided in paragraph (e)(ii)(B) of this section, directed fishing for pollock by the offshore component, defined at § 675.2 of this part, or by vessels delivering pollock to the offshore component, is authorized from noon, A.l.t., January 26, until noon, A.l.t., April 15 and from noon, A.l.t., August 15, through the end of the fishing year. Directed fishing for pollock under the Western Alaska Community Development Quota Program pursuant to § 675.27 is authorized from January 1, through the end of the fishing year.

(B) Directed fishing for pollock by the offshore component or vessels delivering pollock to the offshore component is prohibited until noon, A.l.t., February 5, for those vessels that are used to fish prior to noon, A.l.t., January 26, for groundfish in the Bering Sea and Aleutians management area, groundfish in the Gulf of Alaska, as defined at § 672.2 of this chapter, or king or Tanner crab in the Bering Sea and Aleutians Area, as defined at § 671.2 of this chapter.

* * * * * *

[FR Doc. 94-23754 Filed 9-23-94; 8:45 am]
BILLING CODE 3510-22-W

VOL 59 ISS 185 SEP 26 1994 UMI

Notices

Federal Register
Vol. 59, No. 185
Monday, September 26, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ARMS CONTROL AND DISARMAMENT AGENCY

Announcement of the Hubert H. Humphrey Fellowship Competition for the 1995–96 School Year

The United States Arms Control and Disarmament Agency will conduct a competition in 1995 for one-year Hubert H. Humphrey Fellowships in support of unclassified doctoral dissertation research in arms control, nonproliferation and disarmament studies. Law candidates for the Juris Doctor or any higher degree are also eligible if they are writing a substantial paper in partial fulfillment of degree requirements. The fellowship stipends for the Ph.D. candidates will be $5,000 plus applicable tuition and fees up to a maximum of $3,400. Stipends and tuition for law candidates will be prorated according to the credits given for the research paper. Fellows must be citizens of the United States and degree candidates at a U.S. college or university. The application deadline for the awards is March 15, 1995. Candidates are asked to submit an application, a five-page thesis abstract with bibliography, three letters of reference, transcripts of all graduate course work, and proof of the acceptance of dissertation proposal. Awards will be for a twelve month period beginning in September 1995 or January 1996. For information and application materials please write: Hubert H. Humphrey Doctoral Fellowship Program, Office of Operations Analysis and Information Management, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451 or call on (703) 302–7714.

Dated: September 20, 1994.

Alfred Lieberman,

Chief of Operations Analysis and Information Management.

[FR Doc. 94–23666 Filed 9–23–94; 8:45 am]

BILLING CODE 6820–32–M

Announcement of the William C. Foster Fellows Visiting Scholars Program for the 1995–96 School Year

The U.S. Arms Control and Disarmament Agency (ACDA) will conduct a competition for selection of visiting scholars to participate in ACDA's activities during the 1995–96 academic year.

Section 28 of the Arms Control and Disarmament Act (22 U.S.C. 2568) provides that "A program for visiting scholars in the field of arms control, nonproliferation, and disarmament shall be established by the Director in order to obtain the services of scholars from the faculties of recognized institutions of higher learning." The law states that "The purpose of the program will be to give specialists in the physical sciences and other disciplines relevant to the Agency's activities an opportunity for active participation in the arms control, nonproliferation, and disarmament activities of the Agency and to gain for the Agency the perspective and expertise such persons can offer . . . . Fellows shall be chosen by a board consisting of the Director, who shall be the chairperson, and all former Directors of the Agency." Scholars are known as William C. Foster Fellows, in honor of the first Director of ACDA, William C. Foster, who served from the inception of ACDA in 1961 until 1969.

ACDA began this program by competitively selecting six visiting scholars for the 1984–85 academic year. The competition has continued each subsequent academic year until the present. One-year assignments will begin at a mutually agreeable time after successful completion of all employment requirements.

Positions are available in the Bureau of Strategic and Eurasian Affairs (SEA), the Bureau of Multilateral Affairs (MA), the Bureau of Intelligence, Verification and Information Support (IVI), and the Bureau of Nonproliferation Policy and Regional Arms Control (NP). A brochure is available describing these positions in detail. Evaluation of applicants for appointments to these positions will focus upon the scholar's potential for providing expertise or performing services needed by ACDA, rather than on the scholar's previously displayed interest in arms control. While pursuit of the scholar's own line of research may sometimes be possible, support of such activity is not the purpose of the program.

Visiting scholars will be detailed to ACDA by their universities; the universities will be compensated for the scholar's salary and benefits in accordance with the Intergovernmental Personnel Act and within Agency limitations. Visiting scholars will also receive reimbursement for travel to and from the Washington, D.C. area for their one-year assignment and either a per diem allowance during the one-year assignment or relocation costs.

Visiting scholars must be citizens of the United States, on the faculty of a recognized institution of higher learning, and tenured or on a tenure track or equivalent; they also must have served as a permanent career employee of the institution for at least ninety days before selection for the program. ACDA is an equal opportunity employer. Selections will be made without regard to race, color, religion, sex, national origin, age, or physical handicap that does not interfere with performance of duties. Prior to appointment applicants will be subject to a full-field background security investigation for a Top Secret security clearance, as required by Section 45 of the Arms Control and Disarmament Act. Visiting scholars will also be subject to applicable Federal conflict of interest laws and standards of conduct.

To apply, candidates are asked to submit a letter outlining their interests and qualifications, a curriculum vitae, copies of two publications, and additional supporting material such as letters of reference. The application deadline for assignments for the 1995-1996 academic year is January 31, 1995, subject to extension at ACDA's discretion. ACDA expects to announce tentative selections in the spring of 1995.

To request an information brochure, please write to: Visiting Scholars Program, Office of Operations Analysis and Information Management, Room 5726, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW, Washington, D.C. 20451 or call on (703) 302–7714.

Dated. September 20, 1994

Alfred Lieberman,

Chief of Operations Analysis and Information Management.

[FR Doc. 94–23667 Filed 9–23–94; 8:45 am]

BILLING CODE 6820–32–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94–092–1]

Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Tomato Line

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from DNA Plant Technology Corporation seeking a determination of nonregulated status for its delayed-ripening tomato line 1345–4. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether that genetically engineered tomato line presents a plant pest risk.

DATES: Written comments must be received on or before November 25, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 94–092–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 436–7601.

FOR FURTHER INFORMATION CONTACT: Dr. Ved Malik, Biotechnologist, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On August 16, 1994, APHIS received a petition from DNA Plant Technology Corporation (DNAP) of Oakland, CA, requesting a determination of nonregulated status under 7 CFR part 340 for its delayed-ripening tomato line 1345–4 and any progeny derived from hybrid crosses between that line and other non-transformed tomato varieties. The DNAP petition states that delayed-ripening tomato line 1345–4 should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, the delayed-ripening tomato line 1345–4 was developed using Transwitch™ gene suppression technology to introduce a truncated version of an aminocyclopropane carboxylate (ACC) synthase gene isolated from tomato into the tomato genome in the "sense" (i.e. normal) orientation, which resulted in tomato plants that exhibit significantly reduced levels of ACC synthase and ethylene biosynthesis. Ethylene is an endogenous plant hormone known to play an important role in fruit ripening in climacteric fruit such as tomato. ACC synthase is the rate-limiting enzyme that converts s-adenosylmethionine to 1-aminocyclopropane-1-carbolic acid, the immediate precursor to ethylene. Inhibition of ACC synthase biosynthesis results in reduced levels of ethylene biosynthesis. The fruit of these plants exhibited a delayed-ripening phenotype, but ripened normally when external ethylene was applied. The tomato line for which DNAP is seeking a determination, line 1345–4, contains a gene that is derived from the tomato ACC synthase gene but does not encode a functional ACC synthase enzyme. Tomato plants were produced by inserting the truncated ACC synthase gene into the genome of tomato cultivar 91103–114.

DNAP's delayed-ripening tomato line 1345–4 is currently considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences (vectors, promoters, and terminators) derived from plant pathogenic sources. In the process of reviewing permit applications for field trials of DNAP's delayed-ripening tomato line 1345–4, APHIS determined that the vectors and other elements were disarmed and that the trials would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

Food or animal feed uses of DNAP's delayed-ripening tomato line 1345–4 may be subject to regulation by the Food and Drug Administration (FDA) under the authority of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 201 *et seq.*). FDA's policy statement concerning regulation of plants derived from new plant varieties was published in the **Federal Register** on May 29, 1992 (57 FR 22984–23005).

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information.

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Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of DNAP's delayed-ripening tomato line 1345–4 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 21st day of September 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–23736 Filed 9–23–94; 8:45 am]

BILLING CODE 3410–34–P

Packers and Stockyards Administration

Posting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under the Act and are therefore, no longer subject to the provisions of the Act.

	Facility No., name, and location of stockyard	Date of posting
AL–179	Circle J. Horse Auction, Bryant, Alabama.	Oct. 23, 1989.
KY–135	Maysville Stockyards, Inc., Maysville, Kentucky.	May 18, 1948.

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register**.

Done at Washington, D.C. this 20th day of September 1994.

Merle E. Paulsen,

Acting Director, Livestock Marketing Division.

[FR Doc. 94–23664 Filed 9–23–94; 8:45 am]

BILLING CODE 3210–KD–P

Soil Conservation Service

Brandywine Creek Watershed; Supplemental Watershed Plan No. 6; Chester County, PA

AGENCY: USDA—Soil Conservation Service.

ACTION: "Notice of a Finding of No Significant Impact".

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Brandywine Creek Watershed, Supplemental Watershed Plan No. 6 in Chester County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mr. Richard N. Duncan, State Conservationist, Soil Conservation Service, One Credit Union Place, Suite 340, Harrisburg, Pennsylvania 17110–2993, telephone (717) 782–2202.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally-assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Richard N. Duncan, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The purpose of this project is to purchase 105 acres located adjacent to the Hibernia Lake Project at the Birch Run Structure (PA–436F) in order to expand the recreational facilities in the area. These facilities would include access roads, boat ramps, fishing piers, a ranger station, sanitary facilities, campgrounds, picnic tables and a maintenance and storage area. Additional land is needed to provide adequate access to the lake for fishing, boating, camping, hiking and picnicking.

The "Notice of a Finding of No Significant Impact" (FONSI) has been forwarded to the Environmental Protection Agency. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The environmental assessment and basic data may be reviewed by contacting Richard N. Duncan.

No administrative action on implementation of the proposal will be taken until thirty (30) days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance Program No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: September 14, 1994.

William Hunt,

Deputy State Conservotionist.

[FR Doc. 94–23690 Filed 9–23–94; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Shipper's Export Declaration.
Form Number(s): 7525V.
Agency Approval Number: 0607–0018.
Type of Request: Revision to a currently approved collection.
Burden: 571,272 hours.
Number of Respondents: 130,000.
Avg Hours Per Response: 11 minutes.
Needs and Uses: Shipper's Export Declarations (SED's) are required from exporters for all shipments valued over $2500 from the United States, Puerto Rico, and the U.S. Virgin Islands to all foreign countries except Canada; between the United States and Puerto Rico; and from the United States or Puerto Rico to the U.S. Virgin Islands. Information on the cargo, its origin and destination, and method and date of export are requested. Customs officials gather the SED forms from export carriers and transmit them to the Census Bureau. The vertical SED, Form 7525–V, is the standard form used to collect these data. SED's are the basic source of the official U.S. export statistics compiled by the Census Bureau. These statistics provide data for the merchandise trade balance, a major economic indicator and component of the gross domestic product.
Affected Public: Individuals or households, farms, businesses or other for profit institutions, Federal agencies or employees, non–profit insitutions, small businesses or organizations.
Frequency: On occasion.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 20, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–23771 Filed 9–23–94; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Shipper's Export Declaration.
Form Number(s): 7525–V–Alternate (Intermodal).
Agency Approval Number: 0607–0152.
Type of Request: Revision of a currently approved collection.
Burden: 430,960 hours.
Number of Respondents: 130,000.
Avg Hours Per Response: 11 minutes.
Needs and Uses: Shipper's Export Declarations (SED's) are required from exporters for all shipments valued over $2500 from the United States, Puerto Rico, and the U.S. Virgin Islands to all foreign countries except Canada; between the United States and Puerto Rico; and from the United States or Puerto Rico to the U.S. Virgin Islands. Information on the cargo, its origin and destination, and method and date of export are requested. Customs officials gather the SED forms from export carriers and transmit them to the Census Bureau. The vertical SED, Form 7525–V, is the standard form used to collect these data. The Census Bureau designed Form 7525–V–Alternate primarily for waterborne shipments to simplify documentation. SED's are the basic source of the official U.S. export statistics compiled by the Census Bureau. These statistics provide data for the merchandise trade balance, a major economic indicator and component of the gross domestic product.
Affected Public: Individuals or households, farms, businesses or other for–profit institutions, Federal agencies or employees, non–profit institutions, small businesses or organizations.
Frequency: On occasion.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 20, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–23770 Filed 9–23–94; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Shipper's Export Declaration.
Form Number(s): 7513
Agency Approval Number: 0607-0001
Type of Request: Revision of a currently approved collection.
Burden: 23,817 hours.
Number of Respondents: 10,000.
Avg Hours Per Response: 11 minutes.
Needs and Uses: Shipper's Export Declarations (SED's) are required from exporters for all shipments valued over $2500 from the United States, Puerto Rico, and the U.S. Virgin Islands to all foreign countries except Canada; between the United States and Puerto Rico; and from the United States or Puerto Rico to the U.S. Virgin Islands. Information on the cargo, its origin and destination, and method and date of export are requested. Customs officials gather the SED forms from export carriers and transmit them to the Census Bureau. The vertical SED, Form 7525-V, is the standard form used to collect these data. Carriers must file Form 7513 for merchandise shipped in bond by vessel through the United States enroute from one foreign country to another without having been entered as an import (in-transit goods). SED's are the basic source of the official U.S. export statistics compiled by the Census Bureau. These statistics provide data for the merchandise trade balance, a major economic indicator and component of the gross domestic product.
Affected Public: Individuals or households, farms, businesses or other for-profit institutions, Federal agencies or employees, non-profit institutions, small businesses or organizations.
Frequency: On occasion.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 20, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–23769 Filed 9–23–94; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

[A–201–818]

Initiation of Antidumping Duty Investigation: Carbon Steel Pipe Nipples from Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 26, 1994.

FOR FURTHER INFORMATION CONTACT: Michelle Frederick or John Brinkmann, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–0186 or (202) 482–5288, respectively.

INITIATION OF INVESTIGATION:

The Petition

On August 31, 1994, we received a petition filed in proper form by the U.S. Pipe Nipples Group (petitioner). At the request of the Department of Commerce (the Department), petitioner filed a supplement to support and clarify the petition's data on September 16, 1994. In accordance with 19 CFR 353.12 (1994), petitioner alleges that carbon steel pipe nipples (pipe nipples) from Mexico are being, or are likely to be,

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sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner states that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because the petition is filed on behalf of the U.S. industry producing the product subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, such party should file a written notification with the Assistant Secretary for Import Administration. Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

Scope of Investigation

The products covered by this investigation are carbon steel pipe nipples, both finished and unfinished, defined as cut carbon steel pipe having a maximum length of 12 inches. Unfinished pipe nipples (nipple blanks) have not been subjected to any machining following the cutting of the pipe. Finished pipe nipples have been machined after the cutting, including, but not limited to, the following processes: reaming/deburring, chamfering, and/or threading. The type of finish on one end of a pipe nipple need not be the same as the finish on the other end. For threaded pipe nipples, threading is performed along the outside diameter to permit fastening of the pipe nipple to other components with a matching inside diameter thread.

Pipe nipples manufactured from plain (black), galvanized, welded and seamless carbon steel pipe are included within the scope of this investigation.

The products under investigation are currently classifiable under subheading 7307.99.5015 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

United States Price and Foreign Market Value

Petitioner based U.S. price (USP) on F.O.B. U.S. port price lists (for November 1993 and July 1994) obtained for pipe nipples produced by a Mexican manufacturer. Petitioner calculated USP by subtracting the estimated cost of shipping expenses based on the percentage difference between customs value and C.I.F. value for pipe nipples from Mexico. Because petitioner provided home market price quotes from 1994, the Department is basing USP on the 1994 prices. We recalculated USP to include value-added taxes (VAT) in accordance with section 772(d)(1)(C) of the Act. In making our adjustment for VAT, we followed the instructions of the United States Court of International Trade (CIT) in *Federal Mogul Corp. v. United States*, 834 F.Supp. 1391 (CIT 1993). We also deducted the amount of tax due solely to price deductions in the original tax base. By making this additional tax adjustment, we avoid a distortion that could cause the creation of a dumping margin even where pre-tax dumping is zero. For discussion of this adjustment see Final Results of Administrative Review: Certain Industrial Forklifts from Japan, (59 FR 1374, January 10, 1994) and Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods from France, (58 FR 68865, December 29, 1993).

Petitioner based foreign market value (FMV) on a home market price list for identical merchandise, exclusive of VAT, obtained from a Mexican manufacturer of pipe nipples. These prices are August 1994 ex-factory prices. We recalculated FMV to include VAT. FMV was converted to U.S. dollars based on the New York Federal Reserve's quarterly exchange rate for the period July 1 through September 30, 1994.

Petitioner also supplied information on constructed value. Because petitioner was able to provide information on home market sales, and because of the regulatory preference for a home market price-to-price comparison over constructed value, we based FMV for purposes of this initiation notice on the home market price-to-price comparison (19 CFR 353.12(b)(7) and 19 CFR 353.48).

The range of alleged dumping margins of pipe nipples from Mexico, based on a home market price-to-price comparison, is from 1.71 to 92.64 percent.

Initiation of Investigation

We have examined the petition for pipe nipples from Mexico, as amended, and have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of pipe nipples from Mexico are being, or are likely to be, sold in the United States at less than fair value. If this investigation proceeds normally, we will make our preliminary determination by February 7, 1995.

International Trade Commission (ITC) Notification

Section 732(d) of the Act requires us to notify the ITC of these actions and we have done so.

Preliminary Determinations by the ITC

The ITC will determine by October 17, 1994, whether there is a reasonable indication that imports of pipe nipples from Mexico are materially injuring, or threaten material injury to, a U.S. industry. Pursuant to section 733(a) of the Act, a negative ITC determination in this investigation will result in the termination of this investigation; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: September 20, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-23768 Filed 9-23-94; 8:45 am]

BILLING CODE 3510-DS-P

[A-570-831]

Notice of Final Determination of Sales at Less Than Fair Value: Fresh Garlic From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 26, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Stagner, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-1673.

FINAL DETERMINATION: We determine that fresh garlic from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of our affirmative preliminary determination on July 6, 1994 (59 FR 35310, July 11, 1994), no new information has been added to the case record. No interested party has filed case or rebuttal briefs or has requested a hearing.

On July 5, 1994, Global Trading Inc., an interested party in this investigation, alleged that there are methodological errors in the petition data regarding constructed value and U.S. price.

Scope of Investigation

The products covered by this investigation are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing and level of decay.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0000, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9500 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is August 1, 1993, to January 31, 1994.

Best Information Available

The Department made the following efforts to obtain information from PRC exporters in this investigation: In March 1994, we sent an abbreviated section A questionnaire to the PRC Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and cables to the U.S. Embassies in Beijing and Tokyo and the U.S. consulate in Hong Kong. In April 1994, we sent an abbreviated section A questionnaire to the China Chamber of Commerce of Imports & Exports of Foodstuffs, Native Produce, and Animal By-products (China Chamber); since no response was received, we made follow-up requests to MOFTEC, the U.S. Embassies in Beijing and Tokyo, and the U.S. consulate in Hong Kong.

On May 11 and 12, 1994, the Department received information from MOFTEC and the American Embassy in Beijing, respectively, containing the names and addresses of 40 producers/exporters of the subject merchandise in the PRC. On May 18, 1994, the Department sent 40 antidumping questionnaires to the named firms and to MOFTEC and the China Chamber. On May 31, 1994 and June 21, 1994, we sent questionnaires to two additional firms at their request.

The Department received partial questionnaire responses from only nineteen companies. Of the nineteen companies, five firms stated that they did not export the subject merchandise to the United States. Four firms submitted limited information on the PRC garlic industry. Two firms submitted limited information on their U.S. sales. Eleven firms submitted critical circumstance data, and one firm stated that it could not provide the requested information. No firm submitted factors of production information or complete U.S. sales data, and no verification was conducted. Given the lack of complete, usable questionnaire responses, we determine, in accordance with section 776(c) of the Act, that the use of best information available (BIA) is appropriate for sales of the subject merchandise in this investigation.

In determining what to use as BIA, the Department follows a two-tiered methodology. Under this methodology, the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate. (See Final Determination of Sales at Less Than Fair Value: Antifriction Bearings, Other than Tapered Roller Bearings, and Parts Thereof from the Federal Republic of Germany (54 FR 18992, May 3, 1994).)

In considering the application of BIA in this case, we have taken into account that, in cases involving the PRC, the Department assigns a single rate to all PRC exporters unless a company establishes that it is entitled to a separate rate. (See Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China (59 FR 22585, May 2, 1994)). In this case, no company has demonstrated that it should receive a separate rate. Consequently, all of the companies must receive a single rate. Given that this single rate includes non-respondent companies, we have followed our standard practice and applied an adverse BIA rate, which is the highest margin alleged in the petition (*i.e.*, 376.67%). (See Initiation of Antidumping Duty Investigation: Fresh Garlic from the People's Republic of China (59 FR 9470, February 28, 1994).) This margin applies to all manufacturers, producers and exporters of fresh garlic in the PRC.

Global Trading, Inc. (Global Trading), a U.S. importer of the subject merchandise, challenged the Department's reliance on petitioners' data. In particular, Global Trading questioned petitioners' average yield per acre figure in the constructed value calculation, based on its own research in China. Global Trading also challenged petitioners' calculation of U.S. price as being "far from the actual" price.

The Department's practice with respect to challenges to petition data was outlined in the Administrative Review of Sales at Less Than Fair Value: Steel Wire Rope from Mexico (SWR from Mexico) (58 FR 7533, February 8, 1993), which established that the need for the Department to address petition deficiencies is limited. In that review, the Department stated that the "rights [of a non-respondent company] are strictly limited to those comments that it can support without submitting any information on its costs or prices for the record," and the company "is restricted to identifying clerical and methodological errors in the petition on the basis of public information." The Department found that to allow a company to selectively submit information when it did not submit an adequate questionnaire response would permit the company to manipulate the outcome of the proceeding. The Department determined that such actions would defeat the purpose of the BIA rule, which is to provide respondents with an incentive to cooperate fully in antidumping proceedings.

In applying the standard from SWR from Mexico to Global Trading's challenge in this case, we have determined that (1) for the average yield per acre, the information submitted by Global Trading was not public information and (2) for U.S. price, Global Trading submitted data regarding its own purchases of the subject merchandise from four PRC exporters. Thus, we have found that neither of Global Trading's specific challenges meets the standard established in SWR from Mexico and, therefore, we have not adjusted the data from the petition based on Global Trading's allegations. We note that the petitioners used standard methodologies, which have been examined by the Department.

Critical Circumstances

In our preliminary determination, we found that "critical circumstances" exist with respect to imports of fresh garlic from the PRC. Pursuant to section 733(e)(1) of the Act, we based our preliminary determination on a finding of (1) knowledge of dumping because the estimated dumping margin for all exporters of fresh garlic in the PRC was

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in excess of 25 percent, and (2) massive imports over a relatively short period of time because respondents failed to respond to the Department's questionnaire. As a result, we assumed, as BIA, that imports have been massive.

For the final determination, we have continued to use BIA as the basis for our determination of critical circumstances. The BIA margin exceeds the 25 percent threshold for imputing knowledge of dumping to the importers of the subject merchandise.

In addition, we have adversely assumed, as BIA, a massive increase in imports because of the non-response of exporters.

Accordingly, because the dumping margin is sufficient to impute knowledge of dumping, and because we have determined that imports of fresh garlic have been massive, we determine that critical circumstances do exist with respect to fresh garlic from the PRC.

Continuation of Suspension of Liquidation

In accordance with section 735(d)(1) and 735(c)(4)(A) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of fresh garlic from the PRC, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after April 12, 1994, which is 90 days before the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percent
All Manufacturers/producers/exporters	376.67

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of this determination. The ITC will determine, within 45 days, whether these imports are causing material injury, or threat thereof, to the industry in the U.S. producing the subject merchandise. If the ITC determines that material injury, or threat thereof, does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: September 19, 1994.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94-23767 Filed 9-23-94; 8:45 am]

BILLING CODE 3510-DS-P

United States Geological Survey, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94-067. *Applicant:* United States Geological Survey, Reston, VA 22092. *Instrument:* Mass Spectrometer. *Manufacturer:* Mass Analyzer Products, Ltd., United Kingdom. *Intended Use:* See notice at 59 FR 31208, June 17, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) a background at M/e =36 of less than 5.0×10^{-14} cc STP, (2) a rate of rise of ^{40}Ar degassing from walls of less than 1.0×10^{-12} cc STP/minute and (3) an ^{40}Ar peak top that is flat to within ± 0.1% over at least 50% of the peak tops for ion beams as small as 5.0×10^{-13} amps.

These capabilities are pertinent to the applicant's intended purpose and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94-23766 Filed 9-23-94; 8:45 am]

BILLING CODE 3510-DS-F

Minority Business Development Agency

Business Development Center Applications; Buffalo, New York

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications for its Buffalo, New York Minority Business Development Center (MBDC). The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Buffalo, New York Metropolitan Area. The award number of the MBDC will be 02-10-95003-01.

DATES: The closing date for applications is October 31, 1994. Applications must be post-marked on or before October 31, 1994.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, New York Regional Office, 26 Federal Plaza, Room 3720, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: William Fuller at (212) 264-3262.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (12 months) from March 1, 1995 to February 28, 1996, is estimated at $198,971. The total Federal amount of $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share 15% $29,846 in non-federal (cost sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: The knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (25 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determinations of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs", is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In the event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information and requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640-0006.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD-512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American Made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103-121, Sections 606 (a) and (b).

11.800 Minority Business Development Center
(Catalog of Federal Domestic Assistance)

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September 20, 1994.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 94–23698 Filed 9–23–94; 8:45 am]

BILLING CODE 3510–21–P–M

National Oceanic and Atmospheric Administration

[I.D. 083194A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for scientific research permits (P476B and P572).

SUMMARY: Notice is hereby given that the University of Washington, Washington Cooperative Fish and Wildlife Research Unit, School of Fisheries, WH–10, Seattle, WA 98195 (Principle Investigator: Dr. Glenn R. VanBlaricom) and the Florida Institute of Technology, Dept of Biological Sciences, 150 West University Blvd., Melbourne, FL 32905 (Principle Investigator: Dr. John G. Morris), have applied in due form for permits to take marine mammals for purposes of scientific research.

DATES: Written comments must be received on or before October 26, 1994.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment in the following office(s):

(P476B and P572) - Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

(P476B) - Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4001); and

Director, Northwest Region, NMFS, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115–0070 (206/526–6150); and

(P572) - Director, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813/893–3141).

Written data or views, or requests for a public hearing on either of these requests, should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1335 East-West Highway, Silver Spring, MD 20910–3226, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on these particular requests would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Glenn R. VanBlaricom, Ph.D. (P476B), requests a Permit to harass up to 334 gray whales (*Eschrichtius robustus*) (167/167 during north/southbound migrations) over a 1-year period during production of low-frequency sounds, using a transducer dropped from a boat off the central California coast. Several marine mammal species may also be affected by the acoustic studies.

John G. Morris, Ph.D. (P572), requests a Permit to harass up to 565 bottlenose dolphins (*Tursiops truncotus*) over a 1-year period incidental to photo-identification and behavioral observations.

Dated: September 19, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–23719 Filed 9–23–94; 8:45 am]

BILLING CODE 3510–22–F

Travel and Tourism Administration

Travel and Tourism Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on October 25, 1994, at 9:00 a.m. at the Hilton Head Hyatt, 1 Hyatt Circle, Hilton Head Island, South Carolina.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the International Travel Act, as amended, and provide guidance to the Under Secretary for Travel and Tourism.

Agenda items are as follows:

I. Call to Order
II. Roll Call
III. Administrative Details
IV. Current Legislative Issues
V. Tourism Policy Council
VI. White House Conference on Travel & Tourism
VII. U.S.—Japan Tourism Exchange Promotion Program
VIII. Miscellaneous
IX. Adjournment

A very limited number of seats will be available to observers from the public and the press. To assure adequate seating, individuals intending to attend should notify the Committee Control Officer in advance. The public will be permitted to file written statements with the Committee before or after the public forum and meeting. To the extent time is available, the presentation of oral statements will be allowed.

Jay E. Stewart, Committee Control Officer, United States Travel and Tourism Administration, Room 1513, U.S. Department of Commerce, Washington, D.C. 20230 (telephone: 202–501–6985) will respond to public requests for information about the meeting.

Greg Farmer,

Under Secretary of Commerce for Travel and Tourism.

[FR Doc. 94–23689 Filed 9–23–94; 8:45 am]

BILLING CODE 3510–11–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Cancellation of a Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

September 20, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Announcing the cancellation of a limit.

EFFECTIVE DATE: September 26, 1994.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has determined to rescind the current restraint level on textile products in Categories 340/640 from El Salvador in view of recent statistical information concerning a restraint on these categories at this time.

The United States reserves its right under the Arrangement Regarding International Trade in Textiles done in Geneva on December 20, 1973 and extended on December 14, 1977, December 22, 1981, July 31, 1986, December 9, 1992 and December 9, 1993, to place these Categories 340/640 under a restraint should the statistical information change in the future.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to cancel the current limit for Categories 340/640.

Should it become necessary to discuss Categories 340/640 with the Government of El Salvador at a later date, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 35501, published on July 12, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 20, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: Effective on September 26, 1994, this directive cancels the limit established in the directive issued to you on July 6, 1994, by the Chairman, Committee for the Implementation of Textile Agreements, for cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in El Salvador and exported during the twelve-month period which began on April 25, 1994 and extends through April 24 1995

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–23701 Filed 9–23–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

September 20, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 28, 1994.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6707. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for carryforward, carryover, swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 65967, published on December 17, 1993

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 20, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 13, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on September 28, 1994, you are directed to amend the December 13, 1993 directive to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Korea:

Category	Adjusted twelve-month limit [1]
Group I 200–223, 224–V [2], 224–O [3], 225–229, 300–326, 360–363, 369–O [4], 400–414, 464–469, 600–629, 665–669 and 670–O [5], as a group.	422,313,196 square meters equivalent.
Sublevels within Group I	
200	465,185 kilograms.
201	1,620,485 kilograms.
224–V	10,358,377 square meters.
611	3,708,812 square meters.
619/620	98,113,349 square meters.
624	7,977,337 square meters.
625/626/627/628/629.	15,117,821 square meters.
Group II 237, 239, 330–359, 431–459 and 630–659, as a group.	552,956,579 square meters equivalent.
Sublevels within Group II	
239	981,468 kilograms.
333/334/335	263,261 dozen of which not more than 134,555 dozen shall be in Category 335
336	44,068 dozen.
338/339	1 160,226 dozen

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Category	Adjusted twelve-month limit [1]
340	665,820 dozen of which not more than 345,715 dozen shall be in Category 340–D [6]
341	155,314 dozen.
342/642	217,584 dozen.
345	115,811 dozen.
347/348	514,597 dozen.
351/651	228,578 dozen.
352	176,242 dozen.
433	14,413 dozen.
434	7,393 dozen.
435	36,564 dozen.
442	51,828 dozen.
443	338,159 numbers.
444	55,431 numbers.
445/446	54,068 dozen.
448	36,799 dozen.
459–W [7]	97,717 kilograms.
631	300,337 dozen pairs.
632	1,561,818 dozen pairs.
633/634/635	1,392,261 dozen of which not more than 157,880 dozen shall be in Category 633 and not more than 588,368 dozen shall be in Category 635.
636	287,651 dozen.
638/639	5,368,441 dozen.
640–D [8]	3,003,053 dozen.
641	1,110,818 dozen of which not more than 42,764 dozen shall be in Category 641–Y [9].
647/648	1,246,050 dozen.
659–H [10]	1,308,007 kilograms.
Group III 831–844, and 847–859 as a group.	18,158,568 square meters equivalent.
Sublevel within Group III 835	30,628 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[3] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[4] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000 (Category 369–L), and 5601.21.0090.

[5] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

[6] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[7] Category 459–W only HTS number 6505.90.4090.

[8] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.2030 and 6205.90.4030.

[9] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[10] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–23705 Filed 9–23–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

September 20, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 28, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 341 is being increased by application of swing, reducing the limit for Category 640 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 40873, published on August 10, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements

Committee for the Implementation of Textile Agreements

September 20, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on August 4, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994

Effective on September 28, 1994, you are directed to amend the directive dated August 4, 1994 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Nepal:

Category	Adjusted twelve-month limit [1]
341	912,321 dozen.
640	103,770 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–23703 Filed 9–23–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

September 20, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 28, 1994.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6713. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 9730, published on March 1, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 20, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 23, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on September 28, 1994, you are directed to amend the directive dated February 23, 1994 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Philippines:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
335	140,442 dozen.
347/348	1,999,829 dozen.
635	369,628 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–23704 Filed 9–23–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Romania

September 20, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: September 27, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6715. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 447/448 in Group III is being increased by application of swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 65968, published on December 17, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements

Committee for the Implementation of Textile Agreements

September 20, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 13, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on September 27, 1994, you are directed to amend the directive dated December 13, 1993 to increase the limit for the Categories 447/448 to 15,264 dozen [1], as provided under the terms of the current bilateral agreements between the Governments of the United States and Romania.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–23702 Filed 9–23–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0007; FAR Case 91–78]

OMB Clearance Request for Summary Subcontract Report

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for a revision to an existing OMB clearance (9000–0007) for Standard Form 295.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition

[1] The limit has not been adjusted to account for any imports exported after December 31, 1993.

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Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for a revision of a currently approved information collection requirement concerning Summary Subcontract Report (SF 295).

DATES: Comments may be submitted on or before November 25, 1994.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

In accordance with the Small Business Act (15 U.S.C. 631, *et seq.*), contractors receiving a contract for more than $10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1,000,000 for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and are implemented in FAR 19.7.

In conjunction with these plans, contractors must submit reports of their progress on SF 295, Summary Subcontract Report. In addition, OFPP Policy Letter 91–1, Government-Wide Small Business and Small Disadvantaged Business Goals for Procurement Contracts, requires Executive branch departments and agencies to report the number and dollar value of subcontracts awarded to small business, small disadvantaged business and women-owned small business. The report is being expanded to collect information on the number of subcontract awards to small business, small disadvantaged business and women-owned small business which is not currently collected by the report.

Information submitted on SF 295 is used to assess contractor's compliance with their subcontracting plans and to report achievement of goals for subcontract awards to small business, small disadvantaged business and women-owned small business.

B. Annual Reporting Burden

Total annual public reporting burden for this collection of information is estimated to average *99,024* hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4035, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, *1,542;* responses per respondent, *3.6;* total annual responses, *5,568;* preparation hours per response, *17,78;* and total response burden hours, *99,024.*

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeeppers, *1,542;* hours per recordkeeper, *14;* and total recordkeeping burden hours, *21,588.*

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0007, FAR case 91–78, Summary Subcontract Report, in all correspondence.

Dated: September 19, 1994.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 94–23699 Filed 9–23–94; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 26, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Eduction, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement;
(2) Title;
(3) Frequency of collection;
(4) The affected public;
(5) Reporting burden; and/or
(6) Recordkeeping burden; and
(7) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: September 21, 1994.

Ingrid Kolb,

Acting Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: NEW
Title: Collection Requirements for the National Academy for Science, Space and Technology Scholarship Program
Frequency: Annually
Affected Public: Individuals or households; Non-profit institutions
Reporting Burden:
Responses: 172
Burden Hours: 43
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: P.L. 101–589, Section 621, as amended by P.L. 102–325, Section 1556, authorizes the National Academy of Science, Space and Technology Program. The statute requires that the awardeses of the scholarships be enrolled in certain major fields of study and then fulfill a one-year service obligation upon graduation. The information to be collected is required to assure that the students are enrolled in acceptable majors.

[FR Doc. 94–23752 Filed 9–23–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Nevada Operations Office; Implementation of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE), Nevada Operations Office (DOE/NV).

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE/NV announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2)(i), it is awarding a noncompetitive financial assistance grant for the research of detector materials for nonproliferation of weapons of mass destruction.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Nevada Operations Office, ATTN: Steven Curtis, P.O. Box 98518, Las Vegas, NV 89193–8518.

SUPPLEMENTARY INFORMATION: This award will provide financial support to the Nuclear Engineering Department at the Massachusetts Institute of Technology (MIT) in order to continue materials research work for detectors to aid nonproliferation of weapons of mass destruction. The MIT graduate and doctoral students have made exceptional progress in refining the purity and increasing the size of crystals. This award will enable MIT to continue making great strides in this field of research. These efforts promise to be beneficial to DOE by significantly improving detector efficiency thereby reducing the cost.

Eligibility for the award of this grant is being limited to the MIT because of their exclusive domestic capabilities and unique qualifications to perform the activity successfully.

The project period of this grant is three years and will commence on October 11, 1994, through September 29, 1997. The total estimated cost of this award is $865,000.

Issued in Las Vegas, Nevada, on September 12, 1994.

Robert M. Nelson, Jr.,

Manager, DOE Nevada Operations Office.

[FR Doc. 94–23746 Filed 9–23–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award: Virginia Polytechnic Institute and State University

AGENCY: Department of Energy, Pittsburgh Energy Technology Center.

ACTION: Notice of intent.

SUMMARY: The Department of Energy (DOE), Pittsburgh Energy Technology Center, announces that pursuant to 10 CFR 600.14 (e) and (f) it intends to make a Non-Competitive Financial Assistance Award (Grant) to Virginia Polytechnic Institute and State University based on an Unsolicited Proposal submitted to DOE by the University.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Center, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236, Attn.: William R. Mundorf, Telephone: (412) 892–4483, Comments or inquiries should be submitted within 14 days of the date of this announcement.

SUPPLEMENTARY INFORMATION: Virginia Polytechnic Institute and State University (VPI) has proposed to DOE to cost share, by approximately 20%, a program to assist the U.S. coal industry to improve its efficiency in producing lower sulfur coals. VPI will be the lead organization of the Appalachian Clean Coal Technology Consortium (ACCTC). ACCTC involves three universities (VPI, West Virginia University and the University of Kentucky) as charter members, and five coal companies, an A&E firm and an equipment company as affiliate members. The objectives of the consortium are (1) to increase the production of lower sulfur coals, (2) to enhance the competitiveness of U.S. coals in the international market, (3) to create high-tech jobs in the economically-depressed areas of Appalachia, (4) to reduce the nation's dependency of foreign energy supplies, (5) to produce coals from refuse ponds in useable forms, and (6) to minimize the impact of coal burning on the environment. Cooperative relationships with coal companies, equipment manufacturers, and A&E firms are planned to assist in achieving the objectives. The work will entail (1) development of new advanced coal cleaning technologies, (2) improvement of the efficiency of existing coal cleaning technologies, (3) information exchange, and (4) train personnel/work force for industry.

In accordance with 10 CFR 600.14 (e) and (f), acceptance of an Unsolicited Proposal from VPI has been justified. DOE support of the ACCTC activities would provide a unique and innovative method of enhancement of the competitiveness of U.S. coals that would otherwise be unavailable. This effort is therefore considered suitable for noncompetitive financial assistance and would not be eligible for financial assistance under a solicitation.

DOE funding for this research is estimated to be approximately $250,000 for a 12 month period of performance. These funds shall be used to pay for the reasonable cost of research staff and support personnel necessary for the overall project.

Issued in Washington, DC on September 12, 1994.

Richard D. Rogus,

Contracting Officer.

[FR Doc. 94–23745 Filed 9–23–94; 8:45 am]

BILLING CODE 6450–01–M

Nevada Operations Office; Implementation of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE), Nevada Operations Office (DOE/NV).

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE/NV announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2)(i), it is awarding a noncompetitive financial assistance grant for the research of detector materials for nonproliferation of weapons of mass destruction.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Nevada Operations Office, ATTN: Steven Curtis, P.O. Box 98518, Las Vegas, NV 89193–8518.

SUPPLEMENTARY INFORMATION: This award will provide financial support to the Nuclear Engineering Department at the University of Michigan, Ann Arbor in order to continue materials research work. University of Michigan graduate and doctoral students have made exceptional progress in developing

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room-temperature gamma radiation detector capabilities. This award will enable the University of Michigan to continue making great strides in this field of research in producing smaller, more useful detection tools for the nonproliferation community. These efforts promise to be beneficial to DOE by significantly improving detector efficiency thereby reducing the cost.

Eligibility for the award of this grant is being limited to the University of Michigan because of their exclusive domestic capabilities and unique qualifications to perform the activity successfully.

The project period of this grant is three years and will commence on October 11, 1994 through September 29, 1997. The total estimated cost of this award is $770,000.

Issued in Las Vegas, Nevada, on September 12, 1994.

Robert M. Nelson, Jr.,

Manager, DOE Nevada Operations Office.

[FR Doc. 94-23747 Filed 9-23-94; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed by October 26, 1994. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Norma White, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Ms. White may be telephoned at (202) 254-5327.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-512
3. 1902-0073
4. Application for Preliminary Permit
5. Extension
6. On occasion
7. Mandatory
8. Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; and Small businesses or organizations
9. 150 respondents
10. 1 response
11. 73 hours per response
12. 10,950 hours
13. FERC-512 is used to carry out the requirements of the Federal Power Act which directs the Commission to issue preliminary permits to maintain priority application for the proposed hydro development license while the permittee conducts feasibility studies and preliminary application data collections.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. 96-511), which amended Chapter 35 of Title 44 United States Code (See 44 U.S.C. 3506 (a) and (c)(1)).

Issued in Washington, DC, September 15, 1994.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 94-23744 Filed 9-23-94; 8:45 am]

BILLING CODE 6450-01-P

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed by October 26, 1994. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Norma White, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Ms. White may be telephoned at (202) 254-5327.

SUPPLEMENTARY INFORMATION: The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-500
3. 1902-0058
4. Application for License for Water Project with More Than 5 MW Capacity
5. Extension
6. On occasion
7. Mandatory
8. Individuals or households; State or local governments; Businesses or other for-profit; and Federal agencies or employees
9. 13 respondents
10. 1 response
11. 832 hours per response
12. 10,816 hours
13. FERC-500 is used to carry out the requirements of the Federal Power Act which authorizes and empowers the Commission to issue licenses to any citizen, state or municipality for the purpose of developing water reservoirs with dams, conduits, etc., to improve navigation or develop and transmit generated power.

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-505
3. 1902-0115
4. Application for License for Water Projects 5 MW or Less
5. Revision
6. On occasion
7. Mandatory
8. Individuals or households; State or local governments; Businesses or other for-profit; and Federal agencies or employees
9. 19 respondents
10. 1 response
11. 169 hours per response
12. 3,211 hours
13. See Item 13, above.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. 96-511), which amended Chapter 35 of Title 44 United States Code (See 44 U.S.C. 3506 (a) and (c)(1)).

Issued in Washington, DC, September 16, 1994.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 94-23750 Filed 9-23-94; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. CP94-763-000, et al.]

Northern Natural Gas Company, et al.; Natural Gas Certificate Filings

September 19, 1994.

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company

[Docket No. CP94-763-000]

Take notice that on September 9, 1994, Northern Natural Gas Company (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP94-763-000 an application pursuant to Section 7(c) of the Natural Gas Act for issuance of a certificate of public convenience and necessity authorizing the construction and operation of facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to construct and operate: (1) 1.42 miles of 30-inch mainline piping on Northern's C-Line in Washington County, Minnesota; (2) one town border station in Washington County; and (3) a 1,250 horsepower compressor unit in Northern's Farmington compressor station in Dakota County, Minnesota. Northern proposes an in-service date of October 12, 1996. Northern states that the total estimated cost of the proposed facilities is $4,247,000.

Northern asserts that the proposed facilities would expand the capacity of its system by 29,120 Mcf per day. Northern further asserts that it would use the expanded capacity to render firm transportation services to Peoples Natural Gas Company, a division of Utilicorp United, Inc. (Peoples) for service to LS Power-Cottage Grove Limited Partnership (LS Power).

Northern states that it has entered into a precedent agreement (Agreement) for firm transportation service with LS Power for 29,120 Mcf per day for a primary term of 20 years. Northern also states that Peoples has agreed to roll-over their currently existing firm transportation service for a quantity equal to 29,120 Mcf per day for a term equal to the term of the Agreement. Northern asserts that Peoples has agreed to permanently release the rolled-over capacity to LS Power as firm transportation capacity on Northern in Zone EF.

Comment date: October 11, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Texas Gas Transmission Corporation

[Docket No. CP94-769-000]

Take notice that on September 9, 1994, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP94-769-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a 4-inch meter run in St. Martin Parish, Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Gas proposes to abandon a 4-inch meter run in St. Martin Parish, Louisiana, since it is no longer needed because production in the Simon Pass Field has fallen and another existing meter will be sufficient to measure current and future gas production at this location.

Comment date: October 11, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP94-775-000]

Take notice that on September 13, 1994, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94-775-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain pipeline facilities located offshore Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Tennessee proposes to abandon its West Cameron 173/180 system by sale to Chevron U.S.A. Inc. (Chevron). Tennessee states that the system consists of the following.

(1) Approximately 1.27 miles of 10-inch pipeline (507K-1900) together with Meter No. 1-1223, measurement and appurtenant facilities, located in West Cameron Block 180.

(2) Approximately 0.4 miles of 6-inch pipeline (507K-2200) together with Meter No. 1-1790, measurement and appurtenant facilities located in West Cameron Block 173.

(3) The West Cameron 173F platform, two compressors totaling 6,800 horsepower, and appurtenant facilities.

Tennessee further states that, pursuant to a letter of intent dated March 8, 1994, Chevron would pay $600,000 for the facilities; which represents a loss of $316,504 when compared to the net book value.

Tennessee advises that the gas purchase and sales agreements associated with the facilities have been

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terminated and there are no other active contracts involved with the facilities.

Comment date: October 11, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-23776 Filed 9-23-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. ER94-1538-000]

EDC Power Marketing, Inc.; Notice of Issuance of Order

September 20, 1994

On August 5, 1994, EDC Power Marketing, Inc. (EDC) submitted for filing a rate schedule under which EDC will engage in wholesale electric power and energy transactions as a marketer. EDC also requested waiver of various Commission regulations. In particular, EDC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by EDC.

On September 14, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by EDC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, EDC is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of EDC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 14, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-23778 Filed 9-23-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-1432-000]

JEB Corp.; Notice of Issuance of Order

September 20, 1994.

On July 1, 1994 and July 25, 1994, JEB Corporation (JEB) submitted for filing a rate schedule under which JEB will engage in wholesale electric power and energy transactions as a marketer. JEB also requested waiver of various Commission regulations. In particular, JEB requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by JEB.

On September 8, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by JEB should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, JEB is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interests, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of JEB's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 11, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-23777 Filed 9-23-94; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5078-5]

President's Commission on Risk Assessment and Risk Management; Notice of Open Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the President's Commission on Risk Assessment and Risk Management, established as a Presidential Advisory Committee under Section 303 of the Clean Air Act Amendments of 1990, will meet on the following dates: October 20 from 4:00 p.m. to 7:00 p.m. and again on October 21 from 8:00 a.m. until 4:00 p.m. at the St. Louis Marriott Pavillion Hotel, 1 Broadway, St. Louis, MO (phone: 314-421-1776). Time will be set aside for public comment on October 21 towards the end of the day. If you wish to make a five minute presentation, please call Joanna Foellmer 703-308-8087. There will also be a meeting of the Commission in Washington, DC on November 17, 1994 and January 11, 1995. The locations of these meetings have not yet been determined. Please call Joanna Foellmer, 703-308-8087 for times, location, agendas, etc. The meetings are open to the public, and will begin at 8:00 a.m. and adjourn at approximately 4:00 p.m. Seating at the meeting is limited; therefore, seating will be on a first come basis.

Background

The Risk Assessment and Management Commission held its first meeting on May 16, 1994 (**Federal Register** 59 FR 22615 Vol. 59, No. 83, May 2, 1994.) The Commission was established by Congress to make a full investigation of the policy implications and appropriate uses of risk assessment and risk management in regulatory programs under various Federal laws to prevent cancer and other chronic human health effects which may result from exposure to hazardous substances.

It is expected that the Commission members will continue their inquiries and discussions on the five topical areas mandated by Congress: review of the National Research Council's report Science and Judgment in Risk Assessment (1994); exposure scenarios: uncertainty and variability; risk management; and cross-agency consistency.

For information about the Commission, please call Joanna Foellmer at 703-308-8087.

Dated: September 19, 1994.

Gail Charnley,

Executive Director, President's Commission on Risk Assessment and Risk Management.

[FR Doc. 94-23677 Filed 9-23-94; 8:45 am]

BILLING CODE 6560-60-P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office Of Management and Budget for Review

September 15, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 418-0214. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395-3561.

OMB Number: 3060-0192

Title: § 87.103, Posting station license

Form Number: FCC Form 395

Action: Extension of a currently approved collection

Respondents: Individuals or households, state or local governments, non-profit institutions and businesses or other for-profit (including small businesses)

Frequency of Response: Recordkeeping requirement

Estimated Annual Burden: 47,800 recordkeepers; .25 hours average burden per recordkeeper; 11,950 hours total annual burden

Needs and Uses: The recordkeeping requirements in § 87.103 are necessary to demonstrate that all transmitters in the Aviation Service are properly licensed in a accordance with the requirements of § 301 of the Communications Act of 1934, as amended. For stations at fixed locations the license or a photocopy must be posted or retained in the station's permanent records. For aircraft radio stations the license must be either posted in the aircraft or kept with the aircraft registration certificate. If a single authorization covers a fleet of aircraft, a copy of the license must be either posted in each aircraft or kept with each aircraft registration certificate. For aeronautical mobile stations, the license must be retained as a permanent part of the station records. The information is used by FCC staff during inspections and investigations to insure the particular station is licensed and operated in compliance with applicable rules, statutes, and treaties. In the case of aircraft stations, the information may be utilized for similar purposes by appropriate representatives of foreign governments when the aircraft is operated in foreign nations.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94-23658 Filed 9-23-94; 8:45 am]

BILLING CODE 6712-01-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1039-DR]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA-1039-DR), dated September 13, 1994, and related determinations.

EFFECTIVE DATE: September 13, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 13, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), *as follows:*

I have determined that the damage in certain areas of the State of Alaska, resulting from severe storms and flooding on August 8, 1994, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

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You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In addition, you are authorized to provide Individual and Family Grant assistance in accordance with Section 411 of the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Richard A. Buck of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster:

The Northwest Arctic Borough and the Yukon Educational Region for Individual Assistance and Public Assistance and the Dalton Highway for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 94–23737 Filed 9–23–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1038–DR]

California; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA–1038–DR), dated September 13, 1994, and related determinations.

EFFECTIVE DATE: September 13, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 13, 1994, the President declared a major disaster under the authority of the Robert T Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of California, resulting from the continuing effects of the warm water currents known as El Nino on the 1994 Coho salmon fishing season on May 1, 1994, through October 31, 1994, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of California.

You are authorized to provide Disaster Employment Assistance in the designated areas. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Disaster Unemployment Assistance and administrative expenses in the designated areas.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mark Duggan of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared major disaster:

The counties of Del Norte, Humboldt, Mendocino and Sonoma for Disaster Unemployment Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 94–23738 Filed 9–23–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200259–008.

Title: Jacksonville Port Authority/Crowley American Transport, Inc. Terminal Agreement.

Parties:

Jacksonville Port Authority

Crowley American Transport, Inc.

Synopsis: The proposed amendment extends the term of the Agreement.

Agreement No.: 224–200883.

Title: Tampa Port Authority/TSC—USA, Inc. Terminal Agreement.

Parties:

Tampa Port Authority ("Port")

TSC—USA, Inc. ("TSC")

Synopsis: The proposed Agreement authorizes the Port to lease acreage and warehouse space to TSC. It also provides for wharfage rates with escalations after the fifth year, and wharfage incentive rates on annual tonnages in excess of 50,000 net tons.

Agreement No.: 224–200884.

Title: Port of Oakland/Italia S.p.A. di Navigazione Terminal Use Agreement.

Parties:

Port of Oakland ("Port")

Italia S.p.A. di Navigazione ("Italia")

Synopsis: The proposed Agreement provides that Italia shall have non-exclusive rights to certain assigned premises at the Port's Charles P. Howard Terminal. As a consideration for its regular use of the Port, Italia will pay 90 percent of dockage and wharfage tariff charges subject to certain agreed upon provisions. The Agreement has an initial term of five years.

Agreement No.: 224–200885.

Title: Port of Oakland/d'Amico Societa di Navigazione per Azioni Terminal Use Agreement.

Parties:

Port of Oakland ("Port")

d'Amico Societa di Navigazione per Azioni ("d'Amico")

Synopsis: The proposed Agreement provides that d'Amico shall have non-exclusive rights to certain assigned premises at the Port's Charles P. Howard Terminal. As a consideration for its regular use of the Port, d'Amico will pay 90 percent of dockage and wharfage tariff charges subject to certain agreed upon provisions. The Agreement has an initial term of five years.

By Order of the Federal Maritime Commission

Dated: September 20, 1994

Joseph C. Polking,

Secretary

[FR Doc. 94–23743 Filed 9–23–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Raritan State Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 20, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Raritan State Bancorp, Inc., Raritan, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Raritan State Bank, Raritan, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Sleepy Eye Bancorporation, Inc., Sioux Falls, South Dakota; to acquire 99.67 percent of voting shares of Capital Bank, St. Paul, Minnesota.

2. Riverside Acquisition Corporation, Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Riverside Bancshares Corporation, Minneapolis, Minnesota, and thereby indirectly acquire Riverside Bank, Minneapolis, Minnesota.

Board of Governors of the Federal Reserve System, September 20, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–23726 Filed 9–23–94; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Federal Government Intercity Telecommunications Services; FTS2000 Contracts; Notice

The Federal government currently satisfies its intercity telecommunications services through the Federal Telecommunications System 2000 (FTS2000) contracts. The existing FTS2000 contracts will expire in 1998. As a part of the continuing, open discussion related to the post-FTS2000 provision of telecommunications services to Federal government users, the government hereby advises interested parties of the following opportunities to participate in this discussion.

The government will release a report entitled, "Analysis of Post-FTS2000 Acquisition Alternatives" on or about September 26, 1994. The report states the goals of the Post-FTS2000 acquisitions; provides a preliminary definition of the scope of the Post-FTS2000 acquisitions; describes the acquisition strategies being considered; summarizes the status of the government's analysis; and solicits views and comments from all interested parties, such as public, industry, academia, and other government agencies, that will assist the government in determining the Post-FTS2000 acquisition strategy most advantageous to the government.

This report was prepared, as a framework for further study, by the Acquisition Working Group, a subcommittee of the Interagency Management Council. At present, the government plans to make the report available for public viewing in the General Services Administration Bid Room, located at 7th and D Streets, SW, Room 1701, Washington, DC 20407 on or about September 26, 1994. The report will be electronically accessible via the Internet in one of two methods. Files may be downloaded electronically via anonymous FTP from post.fts2k.gsa.gov under the /pub directory. Files may also be pursued (and downloaded) and full-text searches may be made via a World Wide Web client (such as Mosaic) by accessing our home page, whose URL is http:/ /post.fts2k.gsa.gov/ The government will accept written comments on the report, through October 17, 1994. Comments may be submitted to the General Services Administration, Attention: Concept Development Record, c/o The MITRE Corporation, 7525 Colshire Drive (STOP Z397), McLean, VA 22102. It is preferred that comments be submitted electronically to an Internet address of cdr@post.fts2k.gsa.gov in any of the following four formats: Ordinary ASCII, PostScript; unencoded representations of Microsoft Word (version 6.0 and earlier) documents; and unencoded representations of Word Perfect (version 6.0 and earlier) documents.

The government also invites oral comments on this document for presentation before a Government Panel, consisting of members of the Interagency Management Council, at the "Post-FTS2000 Comments Review Panel Meeting" to be held October 25, 26, and 27, 1994, from 9 a.m. to 4:30 p.m., at the Department of State's Dean Acheson Auditorium, 2201 C Street, NW, Washington, DC 20520. Requests for an opportunity to speak and/or to attend the meeting will require advance reservation with the understanding that the government will limit the number of presentations based on time constraints and space. Requests for an invitation to make oral comments should be submitted with your written comments. Requests for attendance will be accepted on a first-come basis until seating capacity is reached. A Registration Form, with instructions, is included in the "Analysis of Post-FTS2000 Acquisition Alternatives" report. The following information is requested for registration: Name; Title; Organizations, Address; Phone No.; FAX No.; and Internet address. In addition, the Department of State requires Social Security No. (citizens) or Passport No. (non-citizens) and Date of Birth. Submit requests by October 17, 1994, to FAX (703) 883–5214 or (703) 883–5914 or INTERNET—cdr@post.fts2k.gsa.gov Reservations will be confirmed by October 21, 1994. Both written and oral comments will be incorporated into the Post-FTS2000 Concept Development Record which will be made available to the public.

If you have any questions regarding this notice, please contact Carolyn A. Thomas on (703) 827–5106 or Margaret Fischer on (703) 883–3363.

Dated: September 6, 1994.

Trudi Cassaday Bailey,

Contracting Officer.

[FR Doc. 94–23681 Filed 9–23–94; 8:45 am]

BILLING CODE 6820–25–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[GN# 2273]

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Gerald J. August, Ph.D., University of Minnesota Medical School: The Division of Research Investigations (DRI) of the Office of Research Integrity (ORI) reviewed an investigation conducted by the University of Minnesota into possible scientific misconduct on the part of Gerald J. August, Ph.D., an Associate Professor of Psychiatry at the University of Minnesota Medical School. The University concluded that Dr. August committed scientific misconduct by plagiarizing materials in a Public Health Service (PHS) grant application which he obtained as a member of a PHS Special Study Section. ORI concurred with the University's findings. Dr. August accepted the misconduct findings and agreed to a Voluntary Settlement Agreement under which, for a five year period beginning May 6, 1994, (1) Dr. August will not serve on PHS advisory committees, boards, or peer review groups and (2) he is to submit a certification with each document, application, or report that he submits to a PHS component that the work of others contained in the document, application, or report is properly attributed.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 301–443–5330.

Thomas G. Morford,

Deputy Director, Office of Research Integrity

[FR Doc. 94–23654 Filed 9–23–94; 8:45 am]

BILLING CODE 4160–17–M

Food and Drug Administration

[Docket No. 94D–0284]

Miscellaneous Compliance Policy Guides; Revocation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of three compliance policy guides (CPG's) because they are outdated. This action is being taken to ensure that FDA's CPG's accurately reflect FDA policy.

DATES: Effective September 26, 1994.

FOR FURTHER INFORMATION CONTACT: Judith A. Gushee, Center for Veterinary Medicine (HFV–236), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1785.

SUPPLEMENTARY INFORMATION: FDA is revoking three of its CPG's because either they no longer reflect FDA policy, or they have been superseded by more comprehensive guidance. The following three guides are being revoked:

(1) CPG 7125.03 "Sale of Prescription-legend Veterinary Drugs"

The information contained in CPG 7125.03 also is found in Compliance Program 7371.002, and the information in Compliance Program 7371.002 is more current and thorough than that contained in CPG 7125.03. Therefore, CPG 7125.03 is obsolete.

(2) CPG 7125.10 "Veterinarian Use of New Animal Drug Substances"

This CPG states that veterinarians may use within their practice whatever bulk drugs they may legally obtain, i.e., those that do not require a new animal drug application (NADA). This policy implies that the requirement for a NADA is the exceptional situation. In fact, in most cases, an approved NADA is required before bulk drug substances could be used by veterinarians to produce a finished pharmaceutical. This position was upheld in *United States* v. *9/1 KG Containers, More or Less, of an Article of Drug for Veterinary Use [Schuyler Laboratories, Inc.]*, 854 F.2d 173 (7th Cir. 1988). Therefore, FDA is revoking CPG 7125.10 so that agency policy will not be misinterpreted. Furthermore, FDA is in the process of developing policy guidance pertaining to the compounding of drugs for veterinary use that will be issued in due course.

(3) CPG 7126.02 "Gentian Violet in Animal Feed"

In a memo dated August 16, 1991, FDA's Center for Veterinary Medicine (CVM) informed all district offices and all resident posts that this CPG was no longer CVM policy. CPG 7126.02 was not revoked at the time. That oversight is now being corrected.

Dated: August 31, 1994.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 94–23773 Filed 9–23–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94C–0312]

ProMedica International; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that ProMedica International has filed a petition proposing that the color additive regulations be amended to provide for the safe use of [phthalocyaninato(2-)] copper as a color additive in nonabsorbable polyvinylidene fluoride sutures intended for use in general and ophthalmic surgery.

DATES: Written comments on the petitioner's environmental assessment by October 26, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3083.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721(b)(5) (21 U.S.C. 379e(b)(5))), notice is given that a color additive petition (CAP 4C0244) has been filed by ProMedica International, 620 Newport Center Dr., suite 575, Newport Beach, CA 92660. The petition proposes to amend the color additive regulations in § 74.3045 *[Phthalocyaninato(2-)] copper* (21 CFR 74.3045) to provide for the safe use of [phthalocyaninato(2-)] copper as a color additive in nonabsorbable polyvinylidene fluoride sutures intended for use in general and ophthalmic surgery.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before October 26, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 15, 1994.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–23774 Filed 9–23–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Ophthalmic Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. October 20 and 21, 1994, 8:30 a.m., Holiday Inn—Gaithersburg, Grand Ballroom, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the Holiday Inn—Gaithersburg. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference the FDA Ophthalmic Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, October 20, 1994, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; closed presentation of data, October 21, 1994, 8:30 a.m. to 1 p.m.; Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–2053.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 30, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss general issues relating to a premarket approval application (PMA) for an excimer laser for photorefractive keratectomy. There will be a diagnostic and surgical devices update presented to the panel including the current status of the pending PMA's for phototherapeutic keratectomy lasers. There will be announcements in the contact lens area that will include labeling issues regarding disposable lenses, and an update on: (1) The progress of contact lens care product reclassification, and (2) the development of guidance on clinical endpoints for extended wear contact lens studies. Announcements on intraocular implant issues are planned.

Closed presentation of data. The committee will discuss trade secret and/or confidential commercial information relevant to investigational device exemption applications and PMA's for contact lenses, surgical and diagnostic devices, and intraocular implants. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above)

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beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: September 19, 1994.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 94-23707 Filed 9-23-94; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for November 1994.

These meetings will be open to the public to discuss items relative to committees activities including announcements by the Director, NICHD, and scientific review administrators, for approximately one hour at the beginning of the first session of the first day of the meeting unless otherwise listed. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Committee Management Officer, NICHD, 6100 Executive Boulevard, Room 5E03, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1485, will provide a summary of the meetings and rosters of committee members. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer in advance of the meeting.

Other information pertaining to the meetings may be obtained from the Scientific Review Administrator as indicated.

Name of Committee: Maternal and Child Health Research Committee.

Scientific Review Administrator: Dr. Gopal Bhatnagar, 6100 Executive Boulevard—Rm. 5E03, Telephone 301-496-1485.

Date of Meeting: November 1-2, 1994.

Place of Meeting: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: November 1, 1994, 8:00 a.m.—9:00 a.m.

Closed: November 1, 1994, 9:00 a.m.—5:00 p.m.; November 2, 1994, 8:00 a.m.—adjournment.

Name of Committee: Population Research Committee.

Scientific Review Administrator: Dr. A. T. Gregoire, 6100 Executive Boulevard—Rm. 5E03, Telephone: 301-496-1696.

Date of Meeting: November 3-4, 1994.

Place of Meeting: Hyatt Regency, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: November 3, 1994, 8 a.m.—9:00 a.m.

Closed: November 3, 1994, 9:00 a.m.—5 p.m.; November 4, 1994, 8 a.m.—adjournment.

Name of Committee: Mental Retardation Research Committee.

Scientific Review Administrator: Dr. Norman Chang, 6100 Executive Boulevard—Rm. 5E03, Telephone: 301-496-1485.

Date of Meeting: November 11, 1994.

Place of Meeting: Crowne Plaza, Biscayne Boulevard at 16th Street, Miami, Florida 33132.

Open: November 11, 1994, 8:00 a.m.—9:00 a.m.

Closed: November 11, 1994, 9:00 a.m.—adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health.)

Dated: September 15, 1994.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 94-23670 Filed 9-23-94; 8:45 am]

BILLING CODE 4140-01-M

National Institutes of Health; National Library of Medicine

Notice of Meeting of the Biomedical Library Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biomedical Library Review Committee on November 3-4, 1994, convening at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on November 3 will be open to the public from 8:30 a.m. to approximately 11 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Roger W. Dahlen at 301-496-4221 two weeks before the meeting.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92-463, the meeting on November 3 will be closed to the public for the review, discussion, and evaluation of individual grant applications from 11 a.m. to approximately 5 p.m., and on November 4 from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Scientific Review Administrator, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301-496-4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health.)

Dated: September 15, 1994.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 94-23671 Filed 9-23-94; 8:45 am]

BILLING CODE 4140-01-M

National Institute of General Medical Sciences; Notice of meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for November 1994.

These meetings will be open to the public to discuss administrative details relating to committee business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed thereafter in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892, Telephone: 301-496-7301, FAX: 301-402-0224, will provide a summary of the meeting and a roster of committee members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Ann Dieffenbach.

Substantive program information may be obtained from each scientific review administrator whose name, room number, and telephone number are listed below each committee.

Name of Committee: Genetic Basis of Disease Review Committee.

Scientific Review Administrator: Dr. Arthur Zachary, Room 9A13, Westwood Building, Telephone: 301-594-7758.

Dates of Meeting: November 6-8, 1994.

Place of Meeting: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: November 6, 8 p.m.-10 p.m.

Closed: November 7, 8:30 a.m.-5 p.m.; November 8, 8:30 a.m.-adjournment.

Name of Committee: Minority access to Research Careers Review Subcommittee.

Scientific Review Administrator: Dr. Richard Martinez, Room 9A18, Westwood Building, Telephone: 301-594-7803.

Dates of Meeting: November 7-9, 1994.

Place of Meeting: Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20892.

Open: November 7, 8:30 a.m.-10:30 a.m.; *Closed* November 7, 10:30 a.m.-5 p.m.; November 8, 8:30 a.m.-5 p.m.; November 9, 8:30 a.m.—adjoiurnment.

Name of Committee: Cellular and Molecular Basis of Disease Review Committee.

Scientific Review Administrator: Dr. Carole Latker, Room 9A10, Westwood Building, Telephone: 301-594-7758.

Dated of Meeting: November 9-10, 1994.

Place of Meeting: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: November 9, 5:30 p.m.-7:30 p.m.

Closed: November 9, 8 a.m.-5 p.m.; November 10, 8 a.m.-adjournment.

Name of Committee: Minority Biomedical Research Support Review Subcommittee.

Scientific Review Administrator: Dr. Jean Flagg-Newton, Room 9A13, Westwood Building, Telephone: 301-594-7708.

Dates of Meeting: November 17-18, 1994.

Place of Meeting: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: November 17, 8:30-10:30 a.m.

Closed: November 17, 10:30 a.m.-5 p.m.; November 18, 8:30 a.m.-adjournment.

Name of Committee: Pharmacological Sciences Review Committee.

Scientific Review Administrator: Dr. Irene Glowinski, Room 9A18, Westwood Building, Telephone: 301-594-7741.

Dates of Meeting: November 17-18, 1994.

Place of Meeting: Embassy Suites, Chevy Chase Pavillion, 4300 Military Road, NW, Washington, DC 20015.

Open: November 17, 8 p.m.-10 p.m.

Closed: November 18, 8:30 a.m.-adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.859, 93.862, 93.863, 93.880, National Institute of General Medical Sciences, National Institutes of Health)

Date: September 15, 1994.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 94-23669 Filed 9-23-94; 8:45 am]

BILLING CODE 4140-01-M

National Center for Research Resources; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: General Clinical Research Centers Committee.

Dates of Meeting: October 19-21, 1994.

Time: 8:00 a.m.-until adjournment.

Place of Meeting: Holiday Inn, Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

Scientific Review Administrator: Dr. Bela J Gulyas, National Institutes of Health, Westwood Building, Room 10A16, Bethesda, MD 20892, Telephone: (301) 594-7903.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.333, Clinical Research, National Institutes of Health, HHS)

Dated: September 16, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-23676 Filed 9-23-94; 8:45 am]

BILLING CODE 4140-01-M

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National Cancer Institute; Notice of Meeting (Division of Cancer Treatment Board of Scientific Counselors)

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, National Institutes of Health, October 24–25, 1994, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on October 24 from 9 a.m. to approximately 5:15 p.m., to review program plans, concepts of contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on October 25 from 8:00 a.m. to approximately 11:15 a.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, Executive Plaza North Building, Room 630, National Institutes of Health, Bethesda, Maryland 20892–7405 (301–496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A44, National Institutes of Health, Bethesda, Maryland 20892–2440 (301–496–4291) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Bruce Chabner (301–496–4291) in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: September 16, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–23674 Filed 9–23–94; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research Resources; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Center for Research Resources (NCRR) for October 23–25, 1994. This meeting will be open to the public to discuss program planning, program accomplishments and special reports or other issues relating to committee business as indicated in the notice.

This meeting will be closed to the public as indicated below in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Public Affairs Officer, NCRR, Westwood Building, Room 850, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–7938, will provide a summary of meeting and a roster of the members upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary or the Scientific Review Administrator indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary, in advance of the meeting.

Name of Committee: Comparative Medicine Review Committee.

Scientific Review Administrator: Dr. Bernadette Tyree, National Institutes of Health, Westwood Building, Room 10A16, Bethesda, MD 20892. Telephone: (301) 594–7932.

Date of Meeting: October 23–25, 1994.

Place of Meeting: The Governor's House, 17th Street and Rhode Island Avenue, NW., Washington, DC 20036.

Closed: October 23, 6.30 p.m.—until recess.

Open: October 24, 8:30 a.m.—10:00 a.m.

Closed: October 24, 10:00 a.m.—until adjournment.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research, National Institutes of Health.)

Dated: September 16, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–23675 Filed 9–23–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Alcohol Abuse and Alcoholism; Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the National Institute on Alcohol Abuse and Alcoholism.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notices. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Diana Widner at (301) 443–4376.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C. of Public Law 92–463, for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meetings and the rosters of committee members may be obtained from: Ms. Diana Widner, NIAAA Committee Management Officer, National Institute on Alcohol Abuse and Alcoholism, Willco Building, Suite 409, 6000 Executive Blvd., Rockville, MD 20892–7003, Telephone: (301) 443–4376. Other information pertaining to the meetings can be obtained from the Scientific Review Administrator indicated.

Name of Committee: Neuroscience and Behavior Subcommittee, Alcohol Biomedical Research Review Committee.

Scientific Review Administrator: Antonio Noronha, Ph.D., 6000 Executive Blvd., Suite 409, Bethesda, MD 20892, 301–443–9419.

Dates of Meeting: October 12–14, 1994.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Open: October 12, 9 a.m. to 11 a.m.

Agendo: Administrative Remarks.

Closed: October 12, 11 a.m. to recess; October 13, 8 a.m. to recess; October 14, 8 a.m. to adjournment.

Name of Committee: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee.

Scientific Review Administrator: Ronald Suddendorf, Ph.D., 6000 Executive Blvd., Suite 409, Bethesda, MD 20892, 301–443–2932.

Dates of Meeting: October 17–19, 1994.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Open: October 17, 9 a.m. to 10 a.m.

Agenda: Administrative Remarks.

Closed: October 17, 10 a.m. to recess; October 18, 9 a.m. to recess; October 19, 9 a.m. to adjournment.

Name of Committee: Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee.

Scientific Review Administrator: Thomas D. Sevy, M.S.W., 6000 Executive Blvd., Suite 409, Bethesda, MD 20892, 301–443–6106.

Dates of Meeting: October 20–21, 1994.

Place of Meeting: Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

Open: October 20, 8:30 a.m. to 9:30 a.m.

Agenda: Administrative Remarks.

Closed: October 20, 9:30 a.m. to recess; October 21, 9:30 a.m. to adjournment.

Name of Committee: Epidemiology and Prevention Subcommittee of the Alcohol Psychosocial Research Review Committee.

Scientific Review Administrator: Thomas D. Sevy, M.S.W., 6000 Executive Blvd., Suite 409, Bethesda, MD 20892, 301–443–6106.

Dates of Meeting: October 27–28, 1994.

Place of Meeting: River Inn, 924 25th Street, N.W., Washington, D.C. 20037.

Open: October 27, 8:30 a.m. to 9:30 a.m.

Agenda: Administrative Remarks.

Closed: October 27, 9:30 a.m. to recess; October 28, 9:30 a.m. to adjournment.

Name of Committee: Immunology and AIDS Subcommittee of the Alcohol Biomedical Research Review Committee.

Scientific Review Administrator: Barbara Smothers, Ph.D., 6000 Executive Blvd., Suite 409, Bethesda, MD 20892, 301–443–4623.

Dates of Meeting: November 9–10, 1994.

Place of Meeting: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Open: November 9, 8:30 a.m. to 9 a.m.

Agenda: Administrative Remarks.

Closed: November 9, 9 a.m. to recess; November 10, 9 a.m. to adjournment.

(Catalog of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.281, Scientist Development Award, Research Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award, 93.891, Alcohol Research Center Grants, National Institutes of Health)

Dated: September 16, 1994

Susan K. Feldman,

Committee Management Officer, NIH

[FR Doc. 94–23672 Filed 9–23–94, 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the advisory committees of the National Institute of Mental Health for November 1994.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the entire meeting of each review committee will be closed to the public for the review, discussion and evaluation of individual grant applications. These applications, evaluations, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Joanna L. Kieffer, Committee Management Officer, National Institute of Mental Health, Parklawn Building, Room 9–105, 5600 fishers Lane, Rockville, MD 20857, Area Code 301, 443–4333, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the contact person indicated.

Committee Name: Child Psychopathology and Treatment Review Committee.

Contact: Bernice R. Cherry, Parklawn Building, Room 9C–28, Telephone: 301 443–1367.

Meeting Date: November 2–4, 1994.

Time: 9 a.m.

Place: Wyndham Brystol Hotel, 2430 Pennsylvania Avenue, N.W., Washington, D.C. 20037.

Committee Name: Psychobiological, Biological, and Neuroscience Subcommittee, Mental Health AIDS and Immunology review Committee.

Contact: Rehana A. Chowdhury, Room 9C–26, Parklawn Building, Telephone: 301 443–6470.

Meeting Date: November 7–8, 1994.

Time: 8:30 a.m.

Place: St. James Hotel, 950 24th Street, N.W., Washington, D.C. 20037

Committee Name: Epidemiology and Genetics Review Committee.

Contact: Bernice R. Cherry, Parklawn Building, Room 9C–28, Telephone: 301 443–1367

Meeting Date November 7–9, 1994

Time 9 a.m.

Place Embassy Suites Hotel, 4300 Military Road, N W , Washington, D.C. 20015

Committee Name Behavioral, Clinical, and Psychosocial Subcommittee, Mental Health AIDS and Immunology Review Committee

Contact Regina M Thomas, Parklawn Building, Room 9C–26, Telephone 301 443–6470

Meeting Date November 9–10, 1994

Time: 8:30 a.m.

Place: One Washington Circle, One Washington Circle, N.W., Washington, D.C. 20037.

(Catalog of Federal Domestic assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award.)

Dated: September 16, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–23673 Filed 9–23–94; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, on October 27 and October 28, 1994, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 9:00 a.m. to 12:45 p.m. and from 1:45 to 4:45 p.m. on October 27 and from 9:00 a.m. to approximately 12 noon on October 28 for the review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Jackie Duley at 301–496–4441 in advance of the meeting.

In accordance with provisions set forth in section 552b(c)(6), Title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on October 27, from approximately 12:45 p.m. to 1:45 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy

The Executive Secretary, Dr Harold M. Schoolman, Acting Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–4441, will furnish summaries of the meeting, rosters of committee

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members, and substantive program information.

Dated: September 15, 1994.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 94-23668 Filed 9-23-94; 8:45 am]

BILLING CODE 4140-01-M

Office of Inspector General

Performance Standards for State Medicaid Fraud Control Units

AGENCY: Office of Inspector General, HHS.

ACTION: Notice.

SUMMARY: In accordance with section 1902(a)(61) of the Social Security Act and the authority delegated to the Inspector General, this notice sets forth standards for assessing the performance of the State Medicaid Fraud Control Units. These standards will be used in the certification and recertification of each Unit and to determine if a Unit is effectively and efficiently carrying out its duties and responsibilities.

EFFECTIVE DATE: These performance standards are effective on September 26, 1994.

FOR FURTHER INFORMATION CONTACT:

Paul F. Conroy, Office of Investigations, (202) 619-3210

Joel Schaer, Legislation, Regulations and Public Affairs Staff, (202) 619-0089

SUPPLEMENTARY INFORMATION:

I. Background

Since the enactment of the Medicare and Medicaid Anti-Fraud and Abuse Amendments of 1977, authorizing the establishment and funding for Medicaid Fraud Control Units (MFCUs), 42 States have created such fraud control units to investigate and prosecute Medicaid provider fraud and patient abuse and neglect in Medicaid funded facilities.

A MFCU must be a single, identifiable entity of the State government composed of (i) one or more attorneys experienced in investigating or prosecuting civil fraud or criminal cases who are capable of giving informed advice on applicable law and procedures and providing effective prosecution or liaison with other prosecutors; (ii) one or more experienced auditors capable of supervising the review of financial records and advising or assisting in the investigation of alleged fraud, and (iii) a senior investigator with substantial experience in commercial or financial investigations who is capable of supervising and directing the investigative activities of the unit. While the preference of the enabling legislation has been for the unit to investigate and prosecute its own cases on a Statewide basis, the legislative history recognizes that not all States are lawfully able to establish the MFCU to do so.

The State Medicaid agency is required to enter into an agreement with the MFCU to refer all suspected cases of provider fraud to the unit, and to comply with the unit's requests for provider records or computerized data that is kept by the Medicaid agency. To ensure that Medicaid overpayments identified by a MFCU in the course of its investigations are recovered, each MFCU is required either to undertake civil recovery actions or have procedures to refer overpayments for collection to other appropriate State agencies.

The HHS Office of Inspector General (OIG) is delegated the authority to certify and recertify the MFCUs to ensure that the units fully comply with the governing statute and with Federal regulations set forth in 42 CFR part 1007. As part of its recertification process, the OIG reviews the State fraud units' applications for recertification and may conduct on-site visits to the units to observe their operations. The OIG also collects and analyzes statistical data on the number and type of cases under investigation, the number of convictions obtained, and the amount of recoveries.

II. Use Of Performance Standards

Section 13625 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66, amended section 1902 of the Social Security Act by adding a new paragraph (a)(61) that establishes a Medicaid State plan requirement that, effective January 1, 1995, a State must operate a MFCU in accordance with standards to be established by the Secretary.

The OIG intends to use these performance standards in the certification and recertification of a Unit, as well as for assessing the effectiveness of a Unit during on-site reviews.

III. Standards For Assessing The MFCUS

In cooperation with the Units themselves, represented by a working group from the National Association of Medicaid Fraud Control Units, the OIG has developed twelve performance standards to be used in evaluating a Unit's performance. Each of the current Unit directors has concurred with the standards and accompanying requirements or indicators set forth below.

Performance Standards

1. A Unit will be in conformance with all applicable statutes, regulations and policy directives.

In meeting this standard, the Unit must meet, but is not limited to, the following requirements—

A. The Unit professional staff must consist of permanent employees working full-time on Medicaid fraud and patient abuse matters.

B. The Unit must be separate and distinct from the single State Medicaid agency.

C. The Unit must have prosecutorial authority or an approved formal procedure for referring cases to a prosecutor.

D. The Unit must submit annual reports, with appropriate certifications, on a timely basis.

E. The Unit must submit quarterly reports on a timely basis.

F. The Unit must comply with the Americans with Disabilities Act, the Equal Employment Opportunity requirements, the Drug Free Workplace requirements, Federal lobbying restrictions, and other such rules that are made conditions of the grant.

2. A Unit should maintain staff levels in accordance with staffing allocations approved in its budget.

In meeting this standard, the following performance indicators will be considered—

A. Does the Unit employ the number of staff that were included in the Unit's budget as approved by the OIG?

B. Does the Unit employ the number of attorneys, auditors, and investigators that were approved in the Unit's budget?

C. Does the Unit employ a reasonable size of professional staff in relation to the State's total Medicaid program expenditures?

D. Are the Unit office locations established on a rational basis and are such locations appropriately staffed?

3. A Unit should establish policies and procedures for its operations, and maintain appropriate systems for case management and case tracking.

In meeting this standard, the following performance indicators will be considered—

A. Does the Unit have policy and procedure manuals?

B. Is an adequate, computerized case management and tracking system in place?

4. A unit should take steps to ensure that it maintains an adequate workload through referrals from the single State agency and other sources.

In meeting this standard, the following performance indicators will be considered—

A. Does the Unit work with the single State agency to ensure adequate fraud referrals?

B. Does the Unit work with other agencies to encourage fraud referrals?

C. Does the Unit generate any of its own fraud cases?

D. Does the Unit ensure that adequate referrals of patient abuse complaints are received from all sources?

5. A Unit's case mix, when possible, should cover all significant provider types.

In meeting this standard, the following performance indicators will be considered—

A. Does the Unit seek to have a mix of cases among all types of providers in the State?

B. Does the Unit seek to have a mix of Medicaid fraud and Medicaid patient abuse cases?

C. Does the Unit seek to have a mix of cases that reflect the proportion of Medicaid expenditures for particular provider groups?

D. Are there any special Unit initiatives targeting specific provider types that affect case mix?

E. Does the Unit consider civil and administrative remedies when appropriate?

6. A Unit should have a continuous case flow, and cases should be completed in a reasonable time.

In meeting this standard, the following performance indicators will be considered—

A. Is each stage of an investigation and prosecution completed in an appropriate time frame?

B. Are supervisors approving the opening and closing of investigations?

C. Are supervisory reviews conducted periodically and noted in the case file?

7. A Unit should have a process for monitoring the outcome of cases.

In meeting this standard, the Unit's monitoring of the following case factors and outcomes will be considered—

A. The number, age, and type of cases in inventory.

B. The number of referrals to other agencies for prosecution.

C. The number of arrests and indictments.

D. The number of convictions.

E. The amount of overpayments identified.

F. The amount of fines and restitution ordered.

G. The amount of civil recoveries.

H. The numbers of administrative sanctions imposed.

8. A Unit will cooperate with the OIG and other Federal agencies, whenever appropriate and consistent with its mission, in the investigation and prosecution of health care fraud.

In meeting this standard, the following performance indicators will be considered—

A. Does the Unit communicate effectively with the OIG and other Federal agencies in investigating or prosecuting health care fraud in their State?

B. Does the Unit provide OIG regional management, and other Federal agencies, where appropriate, with timely information concerning significant actions in all cases being pursued by the Unit?

C. Does the Unit have an effective procedure for referring cases, when appropriate, to Federal agencies for investigation and other action?

D. Does the Unit transmit to the OIG, for purposes of program exclusions under section 1128 of the Social Security Act, reports of convictions, and copies of Judgment and Sentence or other acceptable documentation within 30 days or other reasonable time period?

9. A Unit should make statutory or programmatic recommendations, when necessary, to the State government.

In meeting this standard, the following performance indicators will be considered—

A. Does the Unit recommend amendments to the enforcement provisions of the State's statutes when necessary and appropriate to do so?

B. Does the Unit provide program recommendations to single State agency when appropriate?

C. Does the Unit monitor actions taken by State legislature or State Medicaid agency in response to recommendations?

10. A Unit should periodically review its Memorandum of Understanding (MOU) with the single State Medicaid agency and seek amendments, as necessary, to ensure it reflects current law and practice.

In meeting this standard, the following performance indicators will be considered—

A. Is the MOU more than 5 years old?

B. Does the MOU meet Federal legal requirements?

C. Does the MOU address cross-training with the fraud detection staff of the State Medicaid agency?

D. Does the MOU address the Unit's responsibility to make program recommendations to the Medicaid agency and monitor actions taken by the Medicaid agency concerning those recommendations?

11. The Unit director should exercise proper fiscal control over the unit resources.

In meeting this standard, the following performance indicators will be considered—

A. Does the Unit director receive on a timely basis copies of all fiscal and administrative reports concerning Unit expenditures from the State parent agency?

B. Does the Unit maintain an equipment inventory?

C. Does the Unit apply generally accepted accounting principles in its control of Unit funding?

12. A Unit should maintain an annual training plan for all professional disciplines.

In meeting this standard, the following performance indicators will be considered—

A. Does the Unit have a training plan in place and funds available to fully implement the plan?

B. Does the Unit have a minimum number of hours training requirement for each professional discipline, and does the staff comply with the requirement?

C. Are continuing education standards met for professional staff?

D. Does training undertaken by staff aid in the mission of the Unit?

These standards may be periodically reviewed and discussed with the Units and other State representatives to ascertain their effectiveness and applicability. Additional or revised performance standards may be proposed when deemed appropriate.

Dated: September 16, 1994.

June Gibbs Brown,

Inspector General.

[FR Doc. 94-23692 Filed 9-23-94; 8:45 am]

BILLING CODE 4150-04-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-050-406A-02]

Closure of Public Lands, Idaho; Notice

AGENCY: Bureau of Land Management; Interior.

ACTION: Closure of public roads and public land.

SUMMARY: Certain public land and roads in Camas County, Idaho, have been closed to all public use until further notice.

The emergency closure will protect the public from a number of potentially hazardous materials which were recently discovered in the abandoned mill at the Princess Blue Ribbon Mine.

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The closed area is northwest of Fairfield, Idaho, and is legally described as:

T. 2 N., R. 16 E., Boise Meridian,
Section 34: SW¼NW¼SW¼.

SUPPLEMENTARY INFORMATION: Gates and barriers have been placed on the access roads leading to the abandoned mine. The area has been signed to identify the closure. The emergency closure will be rescinded once the potentially hazardous materials have been removed.

Exceptions from this closure may be approved by the Authorized Officer for federal, state, and local government personnel on official duty, emergency service personnel, removal contractors, or other permitted individuals.

The authority for this closure is 40 CFR 300.415 (b) and (d), Removal Action, and 43 CFR 8364.1, Closure and Restriction Orders. Failure to comply with this order will subject violators to the penalties provided in 43 CFR 8360.0–7.

FOR FURTHER INFORMATION CONTACT: Tim Fuller, Environmental Protection Specialist, Shoshone District Office, P.O. Box 2–B, Shoshone, Idaho, 83352. Telephone (208) 886–7273.

Dated: September 16, 1994

David A. Koehler,

Monument Resource Area Manager.

[FR Doc. 94–23691 Filed 9–23–94; 8:45 am]

BILLING CODE 4310–GG–P

[UTU–65383]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease UTU–65383 for lands in San Juan County, Utah, was timely filed and required rentals accruing from May 1, 1994, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU–65383, effective May 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robert Lopez,

Chief, Minerals Adjudication Section.

[FR Doc. 94–23693 Filed 9–23–94; 8:45 am]

BILLING CODE 4310–DQ–M

[NV–943–4210–06; N–56543]

Realty Action: Termination of Recreation and Public Purposes Classification and Opening Order, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates an existing Recreation and Public Purposes Classification N–56543 in its entirety and opens the land to appropriation under the public land laws and the general mining laws.

EFFECTIVE DATE: September 26, 1994

FOR FURTHER INFORMATION CONTACT: Carmen Donelson, Bureau of Land Management, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520–0006, (702) 785–6530.

SUPPLEMENTARY INFORMATION: The lands described below were classified suitable for lease or sale pursuant to the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, 869–1 to 869–4) and the land was segregated from appropriation under the public land laws and the general mining laws:

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 11, lots 143 and 144.

The area described contains 10.00 acres, more or less.

On January 13, 1994, West Valley Assembly of God Church applied for use of the subject land pursuant to the Recreation and Public Purposes Act. The applicant was unsuccessful in obtaining the necessary zoning change allowing construction of a church.

Pursuant to section 7 of the Taylor Gazing Act (48 Stat. 1272) and the authority delegated by Appendix 1 of the Bureau of Land Management Manual 1203, the aforementioned Recreation and Public Purposes classification is hereby terminated.

At 10:00 a.m. on September 26, 1994 the above described land will become open to the operation of the public land laws generally, subject to existing rights, the provisions of existing withdrawals, and the requirements of applicable laws, rules and regulations.

At 10:00 a.m. on September 26, 1994 the above described land will become open to the location under the United Stats mining laws. Appropriation of the land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The land has been and will remain open to the operation of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, 869–1 to 869–4), and to leasing under the mineral leasing laws.

Ronald B. Wenker,

Acting State Director, Nevada.

[FR Doc. 94–23687 Filed 9–23–94; 8:45 am]

BILLING CODE 4310–HC–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290 (Sub-No. 146X)]

Norfolk and Western Railway Company—Abandonment Exemption—In Raleigh County, WV

Norfolk and Western Railway Company (NW) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 4.3-mile line of railroad extending between milepost WG-29.3, at Whitby, and milepost WG-33.6, at Willabet, in Raleigh County, WV.

NW has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; (2) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (3) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[1]

[1] Under 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicant, in its verified notice, indicated a proposed consummation date of October 24, 1994. Because the verified notice was not filed until September 6, 1994, consummation should not have been proposed to take place prior to October 26, 1994. Applicant's representative has confirmed that the correct consummation date is on or after October 26, 1994.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 26, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by October 6, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 17, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

NW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by September 30, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 13, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–23759 Filed 9–23–94; 8:45am]

BILLING CODE 7035–01–P

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[3] See *Exempt of Rail Abandonment—Offers of Finan Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *W.R. Grace & Co.—Conn., Inc.*, Civil Action No. 93–96–M–CCL, was lodged on September 8, 1994 with the United States District Court for the District of Montana. The proposed consent decree resolves the United States' claims for W.R. Grace & Co.—Conn., Inc.'s alleged violation of the National Emissions Standards for the Hazardous Air Pollutant asbestos. In its amended complaint, the United States alleges that W.R. Grace & Co.—Conn., Inc. demolished eleven buildings at its former Libby, Montana vermiculite mine without complying with notification and work practice requirements designed to prevent the emission of asbestos fibers. The proposed consent decree requires W.R. Grace & Co.—Conn., Inc. to pay a civil penalty of $510,000 and to engage in a compliance program at its Construction Products facilities across the United States.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *W.R. Grace & Co.—Conn., Inc.*, DOJ Ref. #90–5–2–1–1834.

The proposed consent decree may be examined a the office of the United States Attorney, 100 North Park Avenue, First Floor, Helena, Montana; the Region VIII Office of the Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section.

[FR Doc. 94–23686 Filed 9–23–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; The ATM Forum

Notice is hereby given that, on June 3, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The ATM Forum (the "ATM Forum") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members of ATM Forum are: Bull SA, Echirolles Cedex, FRANCE; ETRI-Electronics Telecommunications Research Institute, St. Louis, MO; IPC Information Systems, Stamford, CT; LSI Logic Corporation, Milpitas, CA; MFS Datanet Inc., Brussels, BELGIUM; Mitel Corporation, Kanata, CANADA; Network Communications Corporation, Bloomington, MN; Quality Semiconductor Inc., Santa Clara, CA; Racal-Datacom Inc., Sunrise, FL; SITA, Valbonne, FRANCE; Siecor Corporation, Hickory, NC; TTC, Germantown, MD; Telenorma GmbH, Frankfort, GERMANY; Telstra Research Laboratories, Clayton Vic., AUSTRALIA; Toshiba Corporation, Kawasaki, JAPAN; VTT Information Technologies, Espoo, FINLAND; Valor Electronics, San Diego, CA; Xerox Corporation, Palo Alto, CA; and Zeitnet Inc., Santa Clara, CA.

No changes have been made in the planned activities of ATM Forum. Membership remains open, and the members intend to file additional written notifications disclosing all changes in membership.

On April 19, 1993, ATM filed its original notification pursuant to Section

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6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 2, 1993 (58 FR 31415).

The last notification was filed with the Department on February 16, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 28, 1994 (59 FR 21999).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–23696 Filed 9–23–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CAD Framework Initiative, Inc.

Notice is hereby given that, on June 3, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), CAD Framework Initiative, Inc. ("CFI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, these changes are as follows: (1) Electronic Tools Co., Sonoma, CA; and Engineering DataXpress, San Jose, CA, have joined as new Corporate Members; (2) Prem Jain, Austin, TX; and Andrew Scott, Kingston Ontario, Canada, have joined as new individual members; (3) Intergraph Electronics; and Synopsys, Inc., have not renewed their Corporate Memberships; and (4) Petrotechnical Open Software Corporation has not renewed its membership in CFI.

On December 30, 1988, CFI filed its original notification pursuant to section 6(a) of the Act. That filing was amended on February 7, 1989. The Department of Justice published a notice concerning the amended filing in the **Federal Register** pursuant to section 6(b) of the Act on March 13, 1989 (54 FR 10456). A correction notice was published on April 20, 1989 (54 FR 16013).

The last notification was filed with the Department on March 7, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 11, 1994 (59 FR 17117).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–23682 Filed 9–23–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on August 5, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center for Manufacturing Sciences, Inc. ("NCMS"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies were recently accepted as active members of NCMS: Advanced Quality Systems, Inc., Loves Park, IL; Automated Quality Technologies, Inc. (dba Lion Precision), St. Paul, MN; Strategic Business Management Company, Oakbrook Terrace, IL; TYCOM Corporation, Irvine, CA; and Westinghouse Electric Corporation, Baltimore, MD. In addition, the following companies were recently accepted as affiliate members of NCMS: Indiana Business Modernization and Technology Corporation, Indianapolis, IN; National Association of Metal Finishers, Chicago, IL; Oregon Advanced Technology Consortium; Wilsonville, OR; South Carolina Research Authority, Columbia, SC; Southern Arkansas University Technical Branch, Camden, AR; and The Society of the Plastics Industry, Inc. (dba American Plastics Council), Washington, DC.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on June 14, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 15, 1994 (59 FR 36218).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–23684 Filed 9–23–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Software Productivity Consortium

Notice is hereby given that, on August 8, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Software Productivity Consortium ("SPC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, P R B Associates, Inc., Arlington, VA; EER Systems Corporation, Vienna, VA; and Dual Inc. of Arlington, VA have been admitted as Small Business Members. CACI, Inc.—Federal of Arlington, VA has been admitted as a full member. Member Martin Marietta Inc.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SPC intends to file additional written notification disclosing all changes in membership.

On December 21, 1984, SPC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 17, 1985 (50 FR 2633).

The last notification was filed with the Department on September 23, 1993. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 18, 1993 (58 FR 60880).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–23685 Filed 9–23–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Switched Multi-Megabit Data Service Interest Group

Notice is hereby given that, on June 23, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Switched Multi-Megabit Data Service Interest Group ("the Group") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes to its membership. The notifications were

filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ascom Timeplex; British Telecom; GN Navtel; Digital Equipment Corporation; Hewlett-Packard; IMB; NYNEX; Network Communications; Southwestern Ball; QPSX Communications LTD; Telecom Australia; Tekelec; Telenex; and Verilink are no longer parties to the Group.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Group intends to file additional written notifications disclosing all changes in membership.

On April 19, 1991, the Group filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 23, 1991 (56 FR 23723). The last notification was filed with the Department on March 15, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 5, 1994 (59 FR 23235).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–23683 Filed 9–23–94; 8:45 am]

BILLING CODE 4410–01–M

Immigration and Naturalization Service

[INS No. 1668–94]

Notice on Elimination of Asylum Office Post Office Boxes

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice informs asylum applicants of the elimination of a Post Office Box as the mailing address for the Arlington and Miami Asylum Offices. The purpose of this notice is to advise asylum applicants that all mail and correspondence for these offices should be forwarded to the appropriate street address of these Asylum Offices.

FOR FURTHER INFORMATION CONTACT: Christine Davidson, Senior Policy Analyst, or Mark A. Curley, Asylum Officer, Office of International Affairs, Immigration and Naturalization Service (INS), 425 I Street, NW., Washington, DC 20536, Attn: ULLICO, Third Floor; Telephone (202) 633–4622.

EFFECTIVE DATE: September 26, 1994.

SUPPLEMENTARY INFORMATION: The Arlington and Miami Asylum Offices will eliminate Post Office Box numbers as mailing addresses for all correspondence that pertains to an asylum case pending in an Immigration and Naturalization Service (INS) Asylum Office. Effective with the publication of this notice, all correspondence intended for either the Miami or Arlington Asylum Offices should be mailed to the appropriate street address.

The elimination of the post office box addresses for the Arlington and Miami Asylum Office does not affect the current manner in which one applies for asylum in the United States. Asylum applicants are to submit their applications and supporting documents to the INS Service Center that serves the Asylum Office having jurisdiction over the applicant's place of residence.

Arlington Asylum Office

Effective upon publication of this notice, applicants are no longer to mail correspondence to P.O. Box 3599, Arlington, VA 22203–0599. All correspondence is to be mailed to the street address of the Arlington Asylum Office. That address is: 1500 Wilson Blvd., Lobby Level, Arlington, VA 22209.

Miami Asylum Office

Effective upon publication of this notice, applicants are no longer to mail correspondence to P.O. Box 351600, Miami, FL 33135–1600. All correspondence is to be mailed to the street address of the Miami Asylum Office. That address is: 701 S.W. 27th Ave., Suite 1400, Miami, FL 33135.

Dated: September 13, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–23661 Filed 9–23–94; 8:45 am]

BILLING CODE 4410–10–M

[INS No. 1665–94]

Notice on Circuit Ride Location Changes for Asylum Offices

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice informs asylum applicants of changes in certain interview locations. The purpose of this notice is to advise certain asylum applicants that they will be scheduled for an interview at the Immigration and Naturalization Service (INS) Asylum Office having jurisdiction over their place of residence, rather than having an interview conducted on a circuit ride.

FOR FURTHER INFORMATION CONTACT: Christine Davidson, Senior Policy Analyst, or Mark A. Curley, Asylum Officer, Office of International Affairs, Immigration and Naturalization Service (INS), 425 I Street, NW., Washington, DC 20536, Attn: ULLICO, Third Floor; Telephone (202) 633–4622.

EFFECTIVE DATE: September 26, 1994.

SUPPLEMENTARY INFORMATION: In 1991, the INS established seven Asylum Offices, in: Arlington, VA; Chicago, IL; Houston, TX; Los Angeles, CA; Miami, FL; Newark, NJ; and San Francisco, CA. These offices are situated close to where the majority of asylum applicants reside.

The vest majority of asylum interviews are conducted at the Asylum Office sites. Asylum Officers periodically visit Ports-of-Entry and District and file control offices that are more than 300 miles from the Asylum Office site in order to interview asylum applicants. Since 1991, and depending upon the number of asylum applications received (receipts), Asylum Officers have also conducted interviews on their circuit rides at locations within the 300-mile radius mentioned above.

Effective with this publication, the Asylum Office Directors intend only to schedule circuit rides to INS District or file control offices and Ports-of-Entry more than 300 miles from the Asylum Office site. If an interview site at the INS District or file control office or Port-of-Entry is within 300 miles of the Asylum Office site having jurisdiction over the applicant's place of residence, the applicant's interview will be scheduled at the local INS Asylum Office. Interviews that have already been scheduled to take place on a circuit ride and that are within the 300 mile radius of the Asylum Office will not be affected by this notice and will be conducted as scheduled.

The effect of having an interview scheduled at the INS Asylum Office rather than on a circuit ride is threefold: (1) Asylum Office Directors will be able to increase the number of available interview slots within a given month; (2) asylum applicants will be able to have an interview scheduled more expeditiously; and (3) asylum applicants will be able to receive a more timely adjudication of their claim.

Arlington Asylum Office

Effective upon publication of this notice, applicants who reside in North Carolina or within the jurisdiction of the INS suboffice in Pittsburgh, PA, will have their interviews conducted at the Arlington Asylum Office. Applicants who reside in South Carolina, Georgia.

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and Alabama will have their interviews conducted on a circuit ride to Atlanta, GA.

The Arlington Asylum Office is located at 1500 Wilson Blvd., Lobby Level, Arlington, VA 22209.

Chicago Asylum Office

Effective upon publication of this notice, applicants who reside in Michigan, including the upper peninsula, will have their interviews conducted at the Chicago Asylum Office.

The Chicago Asylum Office is located at 209 South LaSalle Street, Suite 625, Chicago, IL 60604.

Houston Asylum Office

Effective upon publication of this notice, applicants who reside within the jurisdiction of the INS District Offices of San Antonio, TX; Harlingen, TX; New Orleans, LA; and Dallas, TX, will have their interviews conducted at the Houston Asylum Office. Applicants who reside within the jurisdiction of the INS District Office in El Paso will have their inverviews conducted on a circuit ride to El Paso.

The Houston Asylum Office is located at 509 North Belt Street, 4th Floor, Houston, TX 77060.

Los Angeles Asylum Office

Effective upon publication of this notice, applicants who reside within the jurisdiction of the INS suboffice in Las Vegas, NV, or within the jurisdiction of the INS District Office in San Diego, CA, will have their interviews conducted at the Los Angeles Asylum Office.

The Los Angeles Asylum Office is located at 290 South Anaheim Blvd., Anaheim, CA 92805.

Miami Asylum Office

Effective upon publication of this notice, applicants who reside within the jurisdiction of the INS suboffice in Tampa, FL, will have their interviews conducted at the Miami Asylum Office.

The Miami Asylum Office is located at 701 S.W. 27th Ave., Suite 1400, Miami, FL 33135.

Newark Asylum Office

Effective upon publication of this notice, applicants who reside in the State of Connecticut will have their interviews conducted at the Newark Asylum Office. The Newark Asylum Office will continue to circuit ride to the interview sites of Boston MA; Buffalo, NY; Portland, ME; and St. Albans, VT.

The Newark Asylum Office is located at 20 Washington Place, 6th Floor, Newark, NJ 07102.

San Francisco Asylum Office

Effective upon publication of this notice, applicants who reside within the jurisdiction of the INS suboffice in Fresno, CA, will have their interviews conducted at the San Francisco Asylum Office.

The San Francisco Asylum Office is located at 75 Hawthorne Street, 3rd Floor, South Wing, San Francisco, CA 94105.

All asylum applicants affected by this change in the location of circuit rides will be notified of the proper location of the interview in the "Interview Notice" from the Asylum Office. Questions regarding interviews should be directed to the appropriate Asylum Office having jurisdiction over the applicant's place of residence.

Dated: September 13, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–23662 Filed 9–23–94; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission; Closed Meeting

SUMMARY: Pursuant to section 10(a) of FACA, this is to announce a meeting of the Glass Ceiling Commission which is to take place on Wednesday, October 5, 1994. The meeting will take place by teleconference.

TIME AND PLACE: The closed meeting by teleconference will be held on October 5, 1994, from 1:00 p.m. to 1:30 p.m. (Eastern Standard Time).

The Commission will meet in closed session in order to discuss commercial characteristics of applicants for the Frances Perkins-Elizabeth Hanford Dole Award. The closing of this meeting by teleconference is authorized by section 10(d) of the Federal Advisory Committee Act and Section (c)(4) of the Government in the Sunshine Act (5 U.S.C. 552b(c)(4)). This closing allows the Commission to discuss matters which if disclosed in an open meeting would reveal information that would not customarily be released to the public by the applicants.

FOR FURTHER INFORMATION CONTACT: Ms. René Redwood, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–2313, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 20th day of September, 1994

Robert B. Reich,

Secretary of Labor

[FR Doc. 94–23724 Filed 9–23–94; 8:45 am]

BILLING CODE 4510–23–M

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Full Committee Meeting

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act, will meet on October 18–19, 1994, in Room N3437 A–D of the Department of Labor Building located at 200 Constitution Avenue NW, Washington, DC. The meeting is open to the public and will begin at 8:30 a.m. each day.

Agenda items will include overviews of activities of both the Occupational Safety and Health Administration (OSHA) and the National Institute for Safety and Health (NIOSH). Presentations will also be made on the following subjects: OSHA's consultation and voluntary programs, comprehensive safety and health programs, workplace violence and a panel discussion on the effective use of data. The second afternoon will be devoted to workgroups related to: (1) Workplace violence, (2) data and (3) new strategies. These working sessions will be closed to the public, but all activities will be reported at the next public meeting on November 30.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify Joanne Goodell before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak to the extent time permits, at the discretion of the Chair of the Advisory Committee. Individuals with disabilities who need special accommodations should contact Tom Hall by October 13 at the address indicated below.

An official record of the meeting will be available for public inspection through the Tom Hall, Division of Consumer Affairs, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210, telephone 202–219–8615.

For additional information contact: Joanne Goodell, Directorate of Policy, Occupational Safety and Health Administration, Room N–3641, 200 Constitution Avenue, NW., Washington, DC 20210, telephone 202–219–8021.

Signed at Washington, D.C. this 19th day of September, 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94–23723 Filed 9–23–94; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (94–073)]

NASA Advisory Council; Task Force on Shuttle-Mir Rendezvous and Docking Missions; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Task Force on Shuttle-Mir Rendezvous and Docking Missions.

DATES: October 11, 1994, 3 p.m. to 5:30 p.m. and October 12, 1944, 7:30 a.m. to 6:00 p.m.

ADDRESSES: The National Aeronautics and Space Administration, Lyndon B. Johnson Space Center, Building 1, Room 945, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Vantine, Code M, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1698.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

Review the upcoming Shuttle-Mir missions from the following perspectives: training, operations, rendezvous and docking.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: September 20, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 94–23734 Filed 9–23–94; 8:45 am]

BILLING CODE 7510–01–M

NASA FAR Supplement (NFS); Availability in Electronic Form

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: The National Aeronautics and Space Administration is announcing the availability of the NASA FAR Supplement in electronic form in order to satisfy requests for an electronic copy of the publication. With appropriate software, users will be able to search the copy using keywords.

ADDRESSES: Requests for NFS Version 89.16 should be sent by electronic mail addressed to: dbeck@proc.hq.nasa.gov

FOR FURTHER INFORMATION CONTACT:

Dave Beck (202) 358–0482.

SUPPLEMENTARY INFORMATION: Under 42 U.S.C. 2473(c)(1), notice is given that NFS Version 89.16, effective September 30, 1994, is available in WordPerfect 5.1. For as long as we can accommodate requests, a copy will be sent by e-mail, without charge, to anyone sending an e-mail request. We are supplying the NFS by e-mail until we place the NFS on Internet.

The electronic copy contains the text that is used to produce the loose-leaf version of the NFS. The NFS is also published in 48 CFR Chapter 18. Efforts are made to minimize the differences between the loose-leaf version and 48 CFR Chapter 18. However, neither the electronic copy nor the loose-leaf version are a substitute for the Code of Federal Regulations or the **Federal Register.**

The copy supplied by e-mail will be a compressed file of 964 kilobytes along with shareware (pkunzip.exe, 30 kilobytes) for decompressing the file. When the file is "unzipped" it becomes 122 WordPerfect 5.1 files (plus a README file) totalling 3 megabytes. Persons using WordPerfect 5.1, or software capable of converting from WordPerfect 5.1, should be able to search the text of the 122 files using keywords.

(Caution: When converted to ASCII, some text and most tables are difficult to read. We will try to improve later versions of the NFS to eliminate this problem.)

Tom Luedtke,

Deputy Associate Administrator for Procurement.

[FR Doc. 94–23772 Filed 9–23–94; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on October 6–8, 1994, in Conference Room T2B3, 11545 Rockville Pike, Rockville, Maryland. The dates for this meeting were published in the **Federal Register** on Friday, August 22, 1994.

Thursday, October 6, 1994

8:30 A.M.–8:45 A.M.: Opening Remarks by the ACRS Chairman (Open)

The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 A.M.–10:45 A.M.: NRC Test Programs in Support of the AP600 and SBWR Design Certification (Open)

The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the management and status of the NRC test programs being conducted at the ROSA–V and PUMA test facilities. Representatives of the industry will participate, as appropriate.

11:00 A.M.–12:30 P.M.: Proposed Revision 2 to Regulatory Guide 1.82, Water Sources for Long-Term Recirculation Cooling Following a Loss-of-Coolant Accident (Open)

The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed Revision 2 to Regulatory Guide 1.82. Representatives of the industry will participate, as appropriate.

1:30 P.M.–2:30 P.M.: Reactor Vessel Structural Integrity (Open)

The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding materials data acquisition associated with reactor vessel structural

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integrity. Representatives of the industry will participate, as appropriate.

2:30 P.M.–5:00 P.M.: Meeting With the Director, Office for Analysis and Evaluation of Operational Data (AEOD) (Open)

The Committee will meet with the Director of AEOD to discuss items of mutual interest, including the NRC Technical Training Program.

Friday, October 7, 1994

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)

The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 A.M.–9:45 A.M.: Rod Control System Single Failure Potential (Open)

The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the rod control system single failure event at Salem Unit 2, the findings of the Augmented Inspection Team (AIT), licensee responses to Generic Letter 93–04, and the staff's actions. Representatives of the industry will participate, as appropriate.

10:00 A.M.–11:30 A.M.: IPE Insights Program (Open)

The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the IPE Insights Program.

11:30 A.M.–12:15 P.M.: Report of the P&P Subcommittee (Open/Closed)

The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business and internal organizational and personnel matters relating to the ACRS staff members.

A portion of this session may be closed to discuss matters that relate solely to internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

1:15 P.M.–1:45 P.M.: Future ACRS Activities (Open)

The Committee will discuss topics proposed for consideration during future ACRS meetings.

1:45 P.M.–2:00 P.M.: Reconciliation of ACRS Comments and Recommendations (Open)

The Committee will discuss responses from the NRC Executive Director for Operations to ACRS comments and recommendations included in recent ACRS reports.

2:00 P.M.–3:00 P.M.: Selection of New ACRS Members (Open/Closed)

The Committee will discuss qualifications of candidates nominated for appointment to the ACRS.

A portion of this session will be closed to discuss matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

3:15 P.M.–4:15 P.M.: Strategic Planning (Open)

The Committee will hold strategic planning discussions related to its future activities.

4:15 P.M.–6:30 P.M.: Preparation of ACRS Reports (Open)

The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Saturday, October 8, 1994

8:30 A.M.–11:00 A.M.: Preparation of ACRS Reports (Open)

The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

11:15 A.M.–11:45 A.M.: New Research Needs (Open)

The Committee will discuss new research needs, if any, identified during this meeting.

11:45 A.M.–12:00 Noon: Miscellaneous (Open)

The Committee will discuss miscellaneous matters related to the conduct of Committee activities and complete discussions of topics that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 30, 1993 (58 FR 51118). In accordance with these procedures, oral or written statements may be presented my members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only my members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Dr. John T. Larkins, at least five days before the meeting if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) P.L. 92–463 that it is necessary to close portions of this meeting noted above to discuss information that involves the internal personnel rules and practices of this advisory Committee per 5 U.S.C. 552(c)(2); and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the ACRS Executive Director, Dr. John T. Larkins (telephone 301–415–7361), between 7:30 A.M. and 4:15 P.M. EST.

Dated: September 20, 1994.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 94–23755 Filed 9–23–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–160]

Georgia Institute of Technology; Consideration of Application for Renewal of Facility License

The United States Nuclear Regulatory Commission (the Commission) is considering renewal of Facility License No. R–97, issued to the Georgia Institute of Technology (Georgia Tech or the licensee) for operation of the Georgia Tech Research Reactor located on the Georgia Tech campus in the city of Atlanta, Fulton County, Georgia.

The renewal would extend the expiration date of Facility License No. R–97 for twenty years from date of issuance, in accordance with the licensee's timely application for renewal dated April 19, 1994.

Prior to a decision to renew the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

Within thirty days of publication of this notice, the licensee may file a request for a hearing with respect to renewal of the subject facility license

and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document room, the Gelman Building, 2120 L Street NW., Washington, DC 20037. If a request for a hearing or petition for leave to intervene is filed within the time prescribed above, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors:

(1) The nature of the petitioner's right under the Act to be made a party to the proceeding;

(2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding; and

(3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehering conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion and the petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the pportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC within the time prescribed above. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Seymour H. Weiss: petitioner's name and telephone number; date petition was mailed; Georgia Institute of Technology; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Randy A. Nordin, Manager, Legal Division, Office of Contract Administration, Georgia Tech, Atlanta, GA 30332–0420, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for renewal dated April 19, 1994, which is available for public inspection at the Commission's Public Document Room at 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 19th day of September 1994.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 94–23756 Filed 9–23–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–352 and 50–353]

Philadelphia Electric Company; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NFP–39 and NPF–85, issued to Philadelphia Electric Company (the licensee), for operation of the Limerick Generating Station, Units 1 and 2, located in Montgomery County, Pennsylvania.

The proposed amendment would revise the Technical Specifications to permit an increase in the allowable leak rate for the main steam isolation valves (MSIVs), and delete the MSIV Leakage Control System (LCS). The main steam drain lines and the main condenser would be utilized as an alternate MSIV leakage treatment system.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 26, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request

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for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors:

(1) The nature of the petitioner's right under the Act to be made a party to the proceeding;

(2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding; and

(3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specifically requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specifics sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call of Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mohan C. Thadani, Acting Project Director: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a future notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated January 14, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Rockville, Maryland, this 20th day of September 1994.

For the Nuclear Regulatory Commission.

Mohan C. Thadani,

Acting Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–23757 Filed 9–23–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Cost Principles for Non-Profit Organizations

AGENCY: Office of Management and Budget.

ACTION: Proposed Revision to OMB Circular A–122.

SUMMARY: This Notice is a corrected version of the Notice previously printed on September 16, 1994 (59 FR 47657). This corrected version contains additional text under "Supplementary Information." This Notice offers interested parties an opportunity to comment on a proposed revision to Office of Management and Budget (OMB) Circular A–122, "Cost Principles for Non-Profit Organizations." The revision will allow Federal agencies to reimburse non-profit organizations for interest on debt used to finance the purchase of buildings and equipment, when purchasing using debt financing is less costly than leasing.

DATES: All comments on this proposal should be in writing and must be received by November 25, 1994.

ADDRESSES: Office of Management and Budget, Office of Federal Financial Management, Financial Standards and Reporting Branch, Room 6025, New Executive Office Building, Washington, DC 20503. Telephone (202) 395–3993, Facsimile (202) 395–3952.

FOR FURTHER INFORMATION CONTACT: Linda Hoogeveen, Financial Standards and Reporting Branch, Office of Federal Financial Management. Telephone (202) 395–3993.

SUPPLEMENTARY INFORMATION: The purpose of this revision is to: (1) Encourage non-profit organizations to acquire building space and equipment necessary for administering Federal programs at the lowest possible cost to the Federal Government, and (2) bring greater consistency to Federal policies covering the allowability of interest by organizations receiving Federal awards.

As the Office of Management and Budget (OMB) stated in 1980, it had been "a longstanding policy not to recognize interest as a cost" (45 FR 46022, 46023, July 8, 1980). Accordingly, the OMB circulars setting forth the cost principles for State and local governments, educational institutions, and non-profit organizations did not originally allow interest as an expense. Over time, however, OMB has gradually expanded the allowability of interest.

The first change was made with respect to State and local governments. In 1980, Circular 74–4, "Cost Principles for Grants to States and Local Governments," was revised to allow interest on buildings, but not on equipment (45 FR 27363, April 22, 1980). This policy was retained when Circular 74–4 was reissued the following year as revised OMB Circular A–87 (46 FR 9548, January 28, 1981).

OMB then revised the policy with respect to educational institutions. In 1982, Circular A–21, "Cost Principles for Educational Institutions," was revised to allow interest for both buildings and equipment (47 FR 33658, August 3, 1982).

OMB has since revisited the policy with respect to State and local governments. In 1988 and 1993, OMB proposed to revise Circular A–87 to allow interest on equipment, as well as on buildings (53 FR 40352, October 14, 1988; 58 FR 44212, August 19, 1993). OMB expects to issue a notice shortly that would make final revisions to Circular A–87.

OMB is now proposing to change the policy with respect to non-profit organizations. In this notice, OMB proposes to revise Circular A–122, "Cost Principles for Non-Profit Organizations," so that interest would be allowed for both buildings and equipment. Based on OMB's experience under the three cost principles circulars, OMB believes that the proposal would result in lower costs to the Federal Government. In addition, this proposal would result in greater consistency on the allowability of interest across the three cost principles circulars.

During the last few years, OMB has received a number of requests for waivers from Circular A–122's prohibition on the allowability of interest. As a result of reviewing the individual waiver requests, and based on the general experience gained under Circulars A–87, A–21, and A–122, OMB believes that allowing interest should encourage non-profit organizations to purchase rather than lease facilities in those situations where purchasing would result in lower costs than leasing. Consequently, OMB has decided to propose revising Circular A–122's interest policy.

This proposed revision to Circular A–122 would establish four criteria that must be met for interest to be an allowable cost. These criteria are intended to encourage decisions beneficial to the non-profit organization and the Federal Government. First, the non-profit organization must perform a lease/purchase analysis which shows that purchasing through debt financing is less costly to the Federal Government than leasing. Second, financing is provided at an interest rate no higher than the fair market rate. Third, investment earnings are used to offset allowable interest cost. Fourth, when it is expected that the Federal Government will reimburse 51 percent or more of an asset's cost, the non-profit organization must demonstrate the need for the asset in the conduct of federally sponsored activities. The fourth criterion is in addition to that which applies to State and local governments (Circular A–87) and educational institutions (Circular A–21).

OMB believes that the first and fourth criteria are especially important in the context of grants to non-profit organizations. As a general rule, the Federal Government contributes a small share of the costs of assets purchased by State and local governments and educational institutions. Since those entities must themselves fund the majority of the costs associated with acquiring an asset, they have an incentive to make the most economical lease/purchase decision. In contrast, for non-profit organizations covered by Circular A–122, the Federal share of costs is often substantial. Since this greater Federal share could decrease the incentive for non-profit organizations to make the most economical lease/purchase decisions, these additional criteria are designed to ensure that a non-profit's decision to purchase rather than lease is based on an assessment of the relative costs of leasing versus purchasing, and a demonstrated need for the asset (where the Federal Government will reimburse over half the asset's cost).

The revised policy would apply only to assets acquired after its final issuance.

OMB requests comments on all aspects of this proposal.

John B. Arthur,

Associate Director for Administration.

The following paragraph is proposed to replace paragraph 19.a of Attachment A to Circular A–122:

19. Interest, fund raising, and investment management costs.

a. Interest.

(1) Interest on debt is unallowable unless:

(a) The non-profit organization performs a lease/purchase analysis in accordance with the provisions of OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations," and OMB Circular A–94, "Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs," sections 5a, 8(c)(2), and 13, which shows that purchasing through debt financing is less costly to the Federal Government than leasing. Discount rates used should be equal to the grantee's borrowing rates, to be consistent with Circular A–94's intent to reflect the entity's cost of financing. The financial analysis must include a comparison of the present value of the projected total cash flows of both alternatives over the period the asset is expected to be used by the non-profit organization in carrying out federally sponsored activities. The cash flows associated with purchasing the asset must include the purchase price, anticipated operating and maintenance costs (including property taxes, if applicable) not included in the debt financing, less any estimated asset salvage value at the end of the period defined above. Projected rental costs should be based on the anticipated cost of renting comparable facilities or equipment at fair market rates over the period defined above, and any expected maintenance costs and property taxes to be borne by the non-profit organization

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directly or as part of the lease arrangement.

(b) Financing is provided at an interest rate no higher than the fair market rate.

(c) Investment earnings, including interest, on bond or loan principal, pending payment of the construction or acquisition costs, are used to offset allowable interest cost. Arbitrage earnings reportable to the Internal Revenue Service are not required to be offset against allowable interest costs.

(d) Where the Federal Government's reimbursement is expected to equal or exceed 51 percent of an asset's cost, the non-profit organization conducts an assessment that demonstrates the need for the asset in the conduct of federally sponsored activities. For assets costing in excess of $10 million, the needs assessment must be approved in advance by the cognizant Federal agency as a prerequisite to the allowability of depreciation and interest on debt related to the facility. For assets costing less than $10 million, the needs assessment must be maintained on file for review by the Federal Government.

(2) Interest on debt issued to finance or refinance assets acquired before or reacquired after the effective date of this policy is not allowable.

(3) Federal cognizant agencies shall require non-profit organizations to compute interest on the excess of the depreciation and interest reimbursement over the bond principal and interest payments, and that the organizations treat the computed interest as a reduction in the interest expense to be reimbursed by the Federal Government. This provision is not applicable in instances where the non-profit organization makes an initial equity contribution of 25 percent or more to purchase the asset(s).

(4) Substantial relocation of federally sponsored activities from a facility financed by indebtedness, the cost of which was funded in whole or part through Federal reimbursements, to another facility prior to the expiration of the useful life of the facility requires Federal cognizant agency approval. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation charged to date may require negotiation of space charges for Federal programs.

[FR Doc. 94-23697 Filed 9-23-94; 8:45 am]

BILLING CODE 3110-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34688; International Series Release No. 716; File No. SR-CBOE-94-31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Substituting Component Securities of the CBOE Mexico Index.

September 20, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 2, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE seeks authority to replace one component security in the CBOE Mexico Index ("Mexico Index" or "Index"), with a closed-end country fund. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Mexico Index, on which options are currently traded on the Exchange, is composed of stocks and American Depositary Receipts ("ADRs") representing ten Mexican companies.[3] The Index meets the generic criteria for listing options set forth in CBOE Rule 24.2. The Exchange is not proposing that the Commission grant the Exchange the authority to replace a component security in the Index with the Mexico Fund, a closed-end fund consisting of Mexican securities, if the Exchange decides that such a substitution is necessary or desirable. The CBOE will not replace any component security with the Mexico Fund unless after such substitution the Index will continue to meet the initial listing and maintenance criteria specified in CBOE Rule 24.2. The purpose of such a substitution would be to make the Index more attractive to investors and to facilitate hedging of the Index by substituting a more liquid component.

The Exchange expects that the substitution of the Mexico Fund for a component security in the Index could achieve these purposes for at least two reasons. First, the CBOE believes, the Index will become more representative of the Mexican economy because the Mexico Fund is composed of numerous Mexican securities representative of diverse sectors of the Mexican economy. Second, the Exchange believes, the substitution will enhance liquidity of the components of the Index to the extent that the Mexico Fund replaces a component security that maintains a lower monthly trading volume. Based on average monthly trading through August 31, 1994, the Exchange represents that the Mexico Fund has historically experienced a greater monthly trading volume than at least half of the component securities that currently comprise the Index.

Although the Mexico Fund is not currently eligible for equity options, it meets all criteria that component securities of the Index are required to satisfy. First, the Mexico Fund had a market value of $1,187,567,000 as of August 1, 1994, which is far in excess of the initial listing and maintenance criterion requiring minimum market capitalization of at least $75,000,000. Also, the Mexico Fund had average monthly trading volume of 5.4 million shares for the six month period through July 1994. The monthly trading volume did not drop below 2.8 million shares during that period.

The substitution of the Mexico Fund for a component security in the Index would also be consistent with the initial listing and maintenance criterion that no component security of the Index account for in excess of 25% of the weight of the Index. Even though the Mexico Fund may contain common stocks and ADRs that are also components of the Index, because the Index is equal dollar-weighted, the Mexico Fund will comprise 10% of the weight of the Index immediately following each quarterly rebalancing of the Index. As a result, even if it were possible for the Mexico Fund to consist entirely of another Index component security, that component security could at most constitute 20% of the weight of the Index immediately following each quarterly rebalancing of the Index, below the 25% specified in the initial listing and maintenance criteria for the Index.

Finally, the Exchange will not substitute the Mexico Fund for a component security of the Index unless securities representing at least 90% of the Index by weight and 80% of the Index by number of components will continue to be eligible for the trading of equity options under CBOE Rule 5.3, as required by the initial listing and maintenance criteria for the Index. The Mexico Fund currently is not eligible for the trading of equity options. Because one component of the Mexico Fund, Grupo Financiero Serfin SA de CV ("Grupo Serfin") also is not options eligible, in order to remain in compliance with the listing standards, the Exchange presently could substitute the Mexico Fund only for Grupo Serfin. If in the future, however, Grupo Serfin or the Mexico Fund become options eligible, the Exchange could substitute the Mexico Fund for another component security and remain in compliance with the maintenance standards for the Index.

Finally, the substitution of the Mexico Fund for a component security of the Index would not impact the Index criterion limiting the number of foreign securities or American Depositary Receipts that are components of the Index because the Mexico Fund is listed on the New York Stock Exchange, which is the primary market for the fund shares.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, foster cooperation and coordination with persons facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE.

All submissions should refer to File No. SR-CBOE-94-31 and should be submitted by October 17, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-23758 Filed 9-23-94; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] The Mexico Index is a narrow-based, equal dollar-weighted index. See Securities Exchange Act Release No. 34241 (June 22, 1994) 59 FR 33557 (June 29, 1994).

[4] 15 U.S.C. 78f(b)(5) (1988).

[5] 17 CFR 200.30-3(a)(12) (1993).

[Rel. No. IC-20562; File No. 812-8974]

Massachusetts Mutual Life Insurance Company, et al.

September 19, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act" or "Act").

APPLICANTS: Massachusetts Mutual Life Insurance Company ("MassMutual"), MML Bay State Life Insurance Company ("MML Bay State"), Massachusetts Mutual Variable Annuity Separate Account 3 ("Separate Account 3"), MML Bay State Variable Annuity Separate Account 1 ("Separate Account 1") (Separate Account 3 and Separate Account 1, collectively, the "Separate Accounts"), and MML Investors Services, Inc. ("MMLISI") (MassMutual, MML Bay State, the Separate Accounts, and MMLISI, collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from Section 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an Order to permit the deduction of a mortality and expense risk charge and enhanced death benefit expense charge in connection with the offer and sale of certain flexible premium variable annuity contracts to be funded by the Separate Accounts ("Contracts").

FILING DATE: The Application was originally filed on May 6, 1994, and Amendment No. 1 to and Restatement of the Application was filed on June 20, 1994.

HEARING OR NOTIFICATION OF HEARING: An Order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on October 14, 1994, and should be accompanied by

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proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.
Applicants: William D. Wilcox, Esq., Massachusetts Mutual Life Insurance Company, 1295 State Street, Springfield, MA 01111; and Michael Berenson, Esq., Jorden Burt Berenson & Klingensmith, Suite 400 East, 1025 Thomas Jefferson Street, NW., Washington, DC 20007–0805.

FOR FURTHER INFORMATION CONTACT: W. Thomas Conner, Attorney, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application. The complete Application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. MassMutual is a mutual life insurance company organized under the laws of the Commonwealth of Massachusetts. MML Bay State is a life insurance company organized under the laws of the State of Missouri and is a wholly-owned subsidiary of MassMutual. MMLISI is the principal underwriter of the Contracts and also is a wholly-owned subsidiary of MassMutual.

2. Separate Account 3 was established on January 12, 1994 to fund Contracts issued by MassMutual. Separate Account 1 was established on January 14, 1994 to fund Contracts issued by MML Bay State. Each Separate Account is registered as a unit investment trust under the 1940 Act.

3. The Separate Accounts will be used for the purpose of investing purchase payments received under the Contracts. The Contracts require certain minimum initial payments and permit additional flexible purchase payments. A Contract owner may, after deductions of applicable charges, direct allocation of purchase payments among the various divisions of the Separate Accounts. Additionally, both MassMutual and MML Bay State will make available, in a limited number of states, a flexible account (the "Fixed Account") to which purchase payments may be allocated. The Fixed Account will include a market value adjustment feature. Each Separate Account has filed a registration statement on Form N–4 with the Commission in connection with the Contracts.

4. Each Separate Account is divided into twelve divisions. Each division invests in corresponding shares of either MML Series Investment Trust or Oppenheimer Variable Account Funds (collectively, the "Trusts"). The Trusts are registered with the SEC as diversified open-end management investment companies.

5. The Contracts provide for certain charges. An administrative charge is assessed annually and upon the surrender or the payment of a death benefit under the Contracts. The administrative charge will be waived if a Contract's accumulated value is at least $50,000 as of the date of assessment. The administrative charge currently is $30 per year and will not be increased above $50 per year.

6. In addition to the $30 annual administrative charge, an annual administrative charge equal to 0.15% of the assets of each Separate Account will be deducted for administrative charges (the $30 annual administrative charge and the 0.15% annual administrative charge, collectively, the "administrative charges"). The administrative charges are intended to reimburse MassMutual or MML Bay State for expenses related to the maintenance of the Contracts and for operation of the Separate Accounts in connection with the Contracts. Applicants represent that these fees are based on current estimates by MassMutual and MML Bay State of administrative costs for these services over the lifetime of the Contracts. These charges are guaranteed never to be increased beyond stated maximums during the term of a Contract, and such fees are neither designed nor expected to generate a profit. Applicants rely on Rule 26a-1 under the 1940 Act to assess such fees.

7. While no sales charges are deducted when premium payments are received, the Contracts are subject to a schedule of contingent deferred sales charges ("sales charge"). A sales charge may be imposed upon full or partial redemptions, upon maturity of the Contract, and upon certain death benefits. Sales charges are based on the purchase payments made and the time that has passed since receipt of such payment. The part of the sales charge related to a purchase payment is a level percentage of that payment depending on the years that have passed since the purchase payment was received. During the first year since payment, the sales charge is 7 percent. For each successive year, the sales charge decreases 1 percent until it becomes zero in the eighth year. The amount deducted for sales charges at any time, plus any sales charges previously deducted, will not be more than 7% of the total purchase payments made to that time. In addition, during each Contract year, a Contract owner may redeem the following amounts without incurring a sales charge: (1) All unredeemed purchase payments that are at least seven years old, and (2) 10% of the unredeemed purchase payments that are less than seven years old.

8. An annual charge will be assessed against the assets of each Separate Account for mortality and expense risks assumed by MassMutual or MML Bay State. The mortality and expense risk charge currently is 1.15% and will not be increased above 1.25%. Of the current 1.15% mortality and expense risk charge, 0.30% is for the mortality risk assumed and 0.85% is for the expense risk assumed.

9. MassMutual and MML Bay State will assume mortality risks under the Contracts by their contractual obligation to make periodic payments in accordance with annuity rates and other Contract provisions regardless of how long an annuitant might live. This obligation assures each annuitant that neither the annuitant's own longevity nor an improvement in life expectancy generally will have an adverse effect on the payments received under the Contracts.

10. MassMutual and MML Bay State will assume expense risks under the Contracts by their contractual obligation to administer the Contracts even if the administrative charges are insufficient to cover the administrative expenses associated with the Contracts.

11. An annual charge of 0.10% will be assessed against the assets of each Separate Account to reimburse MassMutual and MML Bay State for bearing the risks associated with providing certain enhanced death benefits under the Contracts. A death benefit is paid upon the death of either the Contract owner or the annuitant. If an owner and annuitant are the same, the death benefit paid will be the annuitant death benefit.

If the Contract owner dies before the maturity date of the Contract, the beneficiary named in the Contract will receive the cash redemption value of the Contract. If the annuitant dies before the maturity date of the Contract, the beneficiary named in the Contract will receive the greater of two enhanced death benefits, depending on the Contract owner's state.

Under the first alternative, if the annuitant dies before the maturity date, the beneficiary named in the Contract will receive the greater of: (a) The total of all purchase payments made to the Contract, less all partial redemptions, accumulated at 5% to the annuitant's 75th birthday and 0% thereafter, but not more than two time purchase payments less redemptions; or (b) the accumulated value of the Contract less any applicable administrative charge (and any sales charge, if the annuitant's age on the Contract date exceeds 75).

The death benefit described above may not be available in certain states for annuitants whose issue age is less than 76. In those instances, the death benefit during the first three years will be equal to the greater of: (a) The total of all purchase payments made to the Contract less all partial redemptions; or (b) the accumulated value of the Contract less any applicable administrative charge. During any subsequent three Contract year period, the death benefit will be the greater of: (a) The death benefit on the last day of the previous three Contract year period plus any purchase payments made less all partial redemptions since then; or (b) the accumulated value of the Contract less any applicable administrative charge.

12. MassMutual and MML Bay State currently will permit a Contract owner to make up to 14 transfers among the divisions of the Separate Accounts (and the Fixed Account if available) each Contract year without charge during the accumulation period of the Contracts. Transfers in excess of 14 will result in the imposition of a $20 fee. MassMutual and MML Bay State reserve the right to change the number of transfers that may be made without charge. The Contracts provide, however, that the number of transfers that may be made without incurring a charge will be at least four per Contract year during the accumulation period. Amounts applied under a variable payment option during the payout period may be transferred once every 90 days. MassMutual and MML Bay State reserve the right to change transfer limitations.

13. Premium taxes ranging up to 3.5% of purchase payments are imposed by certain municipalities and states. Under current practice, MassMutual and MML Bay State will deduct amounts owned for premium taxes from a Contract's accumulated value at annuitization, maturity, or full surrender. Both MassMutual and MML Bay State have reserved the right to deduct amounts owned for premium taxes from premium payments.

Applicants' Legal Analysis

1. Sections 26(a)(2)(C) and 27(c)(2) taken together are intended to provide for the protection of the assets of investment companies that issue periodic payment plan certificates. Section 27(c)(2) of the Act prohibits the issuer of a periodic payment plan certificate and any depositor or underwriter for such periodic payment plan certificate from selling such certificates unless all proceeds of payments on such certificates (other than any sales load) are deposited with a qualified bank acting as trustee or custodian, and held under an indenture or agreement containing specified provisions. Section 26(a) of the Act requires that such indenture or custodian agreement must provide, among other things that such bank shall not allow as an expense any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services of a character normally performed by the bank itself.

2. Applicants request an order under Section 6(c) of the 1940 Act exempting them from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the mortality and expense risk charge and the enhanced death benefit charge from the assets of the Separate Accounts in connection with the issuance by MassMutual and MML Bay State of the Contracts to the funded by the Separate Accounts.

3. Applicants represent that the guaranteed mortality and expense risk charges of 1.25% are reasonable in relation to the risks assumed by MassMutual and MML Bay State under the Contract and are reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants represent that the 1.25% mortality and expense risk charge is within the range of industry practice for comparable annuity contracts issued by other insurance companies. This representation is based on MassMutal's and MML Bay State's analysis of publicly available information about such other contracts, taking into consideration such factors as current charge levels, the manner in which charges are imposed, guarantees of charge levels or annuity rates, and the markets in which the Contracts will be offered. Applicants undertake to maintain at MassMutual's home office and MML Bay State's principal office and to make available to the Commission (or its staff) upon request, memoranda setting forth in detail the products analyzed, the methodology used, and the results of their respective comparative reviews.

4. Applicants acknowledge that the withdrawal charges under the Contracts may be insufficient to cover all costs relating to the distribution of the Contracts. In such circumstances, the charges for mortality and expense risk may be a source of the profit that would be available to pay MassMutual's and/or MML Bay State's distribution expenses not reimbursed by applicable sales charges. MassMutual and MML Bay State have concluded that there is a reasonable likelihood that the proposed distribution financing agreements benefit both the Separate Accounts and the Contract owners. The basis for this conclusion is set forth in memoranda that will be maintained by MassMutal and MML Bay State at their home office and principal office, respectively. These memoranda will be available to the Commission (or its staff) upon request.

5. Applicants represent that the Separate Accounts will invest only in management investment companies that undertake, in the event the company adopts a plan to finance distribution expenses under Rule 12b–1 under the 1940 Act, to have a board of directors, a majority of whom are not interested persons of the company within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

6. Applicants assert that the mortality risk charge of 0.10% for the enhanced death benefits offered is reasonable in relation to the risks assumed by MassMutual and MML Bay State under the Contracts. In arriving at this determination, MassMutual and MML Bay State conducted a large number of trials at various issue ages to determine the expected cost of the enhanced death benefit. First, hypothetical asset returns were projected using generally accepted actuarial simulation methods. For each asset return pattern thus generated, hypothetical accumulated values were calculated by applying the projected asset returns to the initial value in a hypothetical account. Each accumulated value so calculated was then compared to the amount of the enhanced death benefit payable in the event of the hypothetical Contract owner's death during the year in question. By analyzing the results of several thousand such simulations, MassMutual and MML Bay State were able to determine actuarily the level cost of providing the enhanced death benefit. Based on this analysis, MassMutual and MML Bay State determined that a mortality risk charge of 0.10% was a reasonable charge for providing the

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enhanced death benefit. Memoranda is available to the Commission (or its staff) upon request setting forth in detail the methodology used in determining that the risk charge of 0.10% for the enhanced death benefit is reasonable in relation to the risks assumed by MassMutual and MML Bay State under the Contracts.

Conclusion

Section 6(c) of the 1940 Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit, for all of the reasons stated in the application, that their exemptive requests meet the standards set out in Section 6(c), are well precedented, and that an Order should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23663 Filed 9–23–94; 8:45am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2081]

United States International Telecommunications Advisory Committee (ITAC) Meetings Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC) Telecommunications Standardization Sector Study Group D will meet on October 11, 1994, in room 1205 from 9:30 am to 3 pm and Study Group B, October 25, 1994 from 9:30 am to 4:30 pm in room 1912, at the U.S. Department of State, 2201 "C" Street, NW, Washington, DC 220520.

The agenda for Study Group D will include a debrief of the recent ITU–T Study Group meeting and finalize preparations for the Study Group 7 meeting to be held in Seoul, Korea from October 31 to November 11, 1994. The Study Group D meeting may discuss other business, including issues relevant for meetings of the Permanent Consultative Committees of the Inter-American Telecommunication Commission (CITELs PCCs) and the Permanent Executive Committee of the Inter-American Telecommunication Commission (COM/CITEL) may also be raised.

The agenda for the October 25 meeting of Study Group B will include a review of results and activities of the ITU–T Study Group 11 Meeting, September 5–23, 1994 and consideration of contributions for ITU–T study Group 13 Meeting, November 14–25, 1994 and other matters appropriate for U.S. Study Group B. Other business, including issues relevant for meetings of CITELs PCCs and COM/CITEL may also be raised.

Please bring 35 copies of documents to be considered at this meeting. If documents has been mailed, bring only 10 copies.

If you wish to be a part of the U.S. Delegation to the SG 13 Meeting, please inform Gary Fereno at the Department of State (202–647–2592) and complete required documentation 30 days prior to the start of the meeting.

Please Note: Persons intending to attend either of the above U.S. Study Group Meetings must announce this not later than 5 days before the meeting to the Department of State, 202–647–0201 (fax: 202–647–7407). The announcement must include name, social security number, and date of birth. The above includes government and non-government attendees. All attendees must use the "C" Street entrance. A Picture ID will be required for admittance.

Dated: September 12, 1994.

Earl S. Barbely,

Chairman, U.S. ITAC for ITU–T Telecommunications Standardization Sector.

[FR Doc. 94–23679 Filed 9–13–94; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice 2082]

United States International Telecommunicatoins Advisory Committee Radiocommunication Sector Working Party 1A Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector, Working Party 1A, will meet on October 20, 1994, at 9:30 a.m. in Room 1412 at the U.S. Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Washington, DC.

The purpose of the meeting is to prepare for an international meeting of Working Party 1A that will develop a handbook on, "Computer-Aided Techniques for Spectrum Management". Working Party 1A recently recommended the division of the current handbook for Spectrum Management and Computer-Aided Techniques into two handbooks. One, which is complete and scheduled to be published shortly, treats the topic of Spectrum Management. The other, whose text is being revised, will treat the topic of Computer-Aided Techniques for Spectrum Management. It is intended that both handbooks reflect the current technology used in spectrum management and computer automation. Assistance is being sought to provide input to the document in the area of computer hardware and software requirements for spectrum management. The handbook is presently organized into the following sections:

—Introduction and Background
—Spectrum Management Data
—Computer Techniques
—Examples of Automated Aids for Spectrum Management
—Appendices

The possibility exists for vendors to advertise analysis programs and tools in the handbook.

Members of the General Public are encouraged to attend the meeting and join in the discussions, subject to the instructions of the Chairman, Mr. Carl Winkler. Anyone planning to attend the meeting is requested to contract Mr. Winkler no later than five days prior to the meeting: (i) by phone at (202) 482–3055; (ii) by fax at (202) 482–4595; (iii) by Internet E–Mail (cwinkler@ntia.doc.gov) or (iv) by mail at NTIA, 179 Admiral Cochrane Drive, Annapolis MD 21401.

Dated: September 12, 1994.

Warren G. Richards,

Chairman, U.S. ITAC for ITU–Radiocommunication Sector.

[FR Doc. 94–23680 Filed 9–23–94; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Civil Tiltrotor Development Advisory Committee; Infrastructure Subcommittee

Pursuant to Section 10(A) (2) of the Federal Advisory Committee Act Public Law (72–362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) Infrastructure Subcommittee that will be held on October 7, 1994 at the headquarters of the Airport Council International located at 1775 K Street NW, Suite 500, Washington DC 20006. The meeting will begin at 9:00 a.m. and conclude by 5:00 p.m.

The agenda for the Infrastructure Subcommittee meeting will include the following:

(1) Review the Infrastructure Subcommittee Work Plans and schedule.

(2) Review Subcommittee Assumptions.

(3) Review draft issues papers, report chapters, and other efforts.

Persons who plan to attend the meeting should notify Ms. Karen Braxton on 202–267–8759 or Ms. Deborah Ogunshakin on 202–267–9451. Attendance is open to the interested public, but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting.

Members of the public may provide a written statement to the Subcommittee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Karen Braxton or Ms. Deborah Ogunshakin at least three days prior to the meeting.

Issued in Washington, D.C., September 20, 1994.

Richard A. Weiss,

Designated Federal Official, Civil Tiltrotor Development Advisory Committee.

[FR Doc. 94–23740 Filed 9–23–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 177 Twelfth Meeting

Test Criteria and Guidance Relative to Portable Electronic Devices Carried on Board Aircraft

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 177 meeting to be held October 18–19, 1994, starting at 9:00 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue. NW., Suite 1020, Washington, DC 20036.

Please Note Location

Agenda will be as follows: (1) Chairman's remarks; (2) Review of meeting agenda; (3) Approval of the summary of the eleventh meeting; (4) Presentations of subcommittee: (a) PED testing update (Aviles), (b) Susceptibility analysis and testing (Covell), (c) In-aircraft test results (Aviles/Waltho); (5) Computer modelling status (Hughes); (6) Report input review (Wright); (7) New/other business; (8) Date and place of next meeting. Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on September 21, 1994.

David W. Ford,

Designated Officer.

[FR Doc. 94–23741 Filed 9–23–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 185 Second Meeting

Aeronautical Spectrum Planning Issue

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 185 meeting to be held November 9–10, 1994, starting at 9:00 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036.

Agenda will be as follows: (1) Administrative remarks; (2) General introductions; (3) Approval of agenda; (4) Review of revised work program; (5) Presentations on Current Aeronautical Spectrum Use and Existing and Planned FAA Radiocommunication Programs—Brandy Lohse, Dick Neat; (6) Presentation on automatic dependent surveillance—Chris Moody; (7) Formation of working/drafting groups; (8) Assign tasks; (9) Other business; (10) Establish agenda for next meeting; (11) Date and place of next meeting. Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on September 20, 1994.

David W. Ford,

Designated Officer.

[FR Doc. 94–23742 Filed 9–23–94; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 79–17; Notice 40]

New Car Assessment Program (NCAP)

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Notice of public meeting; Request for comments.

SUMMARY: This notice announces that a public meeting will be held on NHTSA's New Car Assessment Program and other vehicle safety consumer information activities. The purpose of the meeting is to seek the public's guidance on how best to provide vehicle safety information to consumers and to ascertain the types of information consumers desire.

DATES: *Public Meeting*—A public meeting will be held on Wednesday, November 9, 1994, beginning at 9 a.m., at the Public Meeting address listed below.

Persons wishing to make oral presentations or serve on panels at the Public Meeting on one or more topics of the attached agenda should contact Vincent Quarles at the address or telephone number listed below by October 19, 1994. Persons making oral presentations are requested, but not required, to submit 25 written copies of the full text of their presentation no later than the day before the meeting.

Written Comments: Written comments must be received on or before November 16, 1994.

ADDRESSES: *Public Meeting*—The Public Meeting will be held in the Federal Aviation Administration Auditorium, third floor, 800 Independence Avenue SW., Washington, DC 20591.

Written Comments: All written comments must refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. Submissions containing information for which confidential treatment is requested should be submitted (three copies) to Chief Counsel, National Highway Traffic Safety Administration, room 5219, 400 Seventh Street SW., Washington, DC 20590, and seven additional copies from

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which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Vincent R. Quarles, Office of Market Incentives, National Highway Traffic Safety Administration, room 5313, 400 Seventh Street SW., Washington, DC 20590, 202–366–1708.

SUPPLEMENTARY INFORMATION: In 1972, Congress enacted the "Motor Vehicle Information and Cost Savings Act" which includes, among other things, requirements for the development and dissemination of comparative information on the crashworthiness of motor vehicles. In 1978, the New Car Assessment Program (NCAP) was created to partially fulfill this requirement. NCAP test results evaluate the degree or crash protection provided front seat occupants by the vehicle's structure and the occupant protection devices provided for those occupants. NCAP crash tests, through model year 1994, have evaluated frontal crash protection only. In this test, vehicles are crashed into a fixed barrier at 35 mph, which is equivalent to a head-on collision between two identical vehicles each moving at 35 mph. Instrumented dummies register forces and impacts during the crash. That information is, in turn, used by NHTSA to predict potential head, chest and femur injuries. Approximately 35–40 passenger vehicles are tested each year in the NCAP and the test results are made available to the public through the periodic issuance of news releases, through the agency's Hotline, and through other means.

NCAP is NHTSA's most popular vehicle safety consumer information activity, as witnessed by the volume of calls to the agency, media attention to program results, and the use of NCAP data by numerous consumer and insurance organizations.

In recent years, the travelling public has increased its concern about motor vehicle safety. Increased safety belt usage, reduced levels of alcohol-impaired driving, and attention to vehicle safety attributes such as air bags and antilock brakes are evidence of this trend.

To take advantage of this heightened consumer awareness of safety, and to address technical and other issues associated with NCAP, the agency believes it is timely to convene a Public Meeting to discuss future activities under NCAP as well as how NCAP and other safety information activities conducted or required by NHTSA can best be integrated.

Report to Congress

On December 8, 1993, in response to the House and Senate Appropriations Committees, the agency submitted a report to Congress on NCAP.

This report, which is in the docket, provides:

- The results of an 18-month study to assess consumer and media needs and preferences for better understanding and more effective use of NCAP data. This included a summary of several consumer focus group and media studies. These studies indicated that consumers and the media desire comparative safety information on vehicles, a simplified NCAP format to better understand and utilize the crash test results, and expansion of NCAP to include other crash modes, such as side crashes and rollovers. Plans for implementing the findings of these studies are included in that report.
- Studies of real-world crashes versus NCAP crash tests. These studies tentatively conclude that NCAP test conditions approximate real-world crash conditions covering a major segment of the frontal crash safety problem. NHTSA also tentatively concludes that there is a significant correlation between NCAP results and real-world fatality risks for restrained drivers. In high speed frontal crashes, fatality risks to restrained drivers of cars that perform well in NCAP may be as much as 30 percent lower than fatality risks to restrained drivers of cars that do not perform well in NCAP. A more detailed report on this subject titled Correlation of NCAP Performance With Fatality Risk in Actual Head-On Collisions has been published by the agency, and is available in the NHTSA docket, and public comments were separately sought on that report (see 59 FR 1586, January 11, 1994).
- A study on the efficacy of allowing manufacturers to choose between the Hybrid III and the Hybrid II crash test dummy. NCAP data were utilized in this study along with an analysis of comments to Federal Register notices on the mandatory use of the Hybrid III crash test dummy in Federal Motor Vehicle Safety Standard (FMVSS) No. 208, Occupant Crash Protection, and in NCAP. From data analysis and the review of the comments to the notices, NHTSA has concluded that exclusive use of the Hybrid III in NCAP should begin with MY 1996 vehicles. This is two years earlier than the Hybrid III will be used exclusively for FMVSS No. 208 compliance tests. Beginning with MY 1994 vehicles, the Hybrid III is being used exclusively for NCAP testing for all seating positions in which the occupant is protected by an air bag.

The report also includes a review of NCAP historical performance and the following future goals:

- Reach a larger group of the population with simplified data that will assist consumers in their vehicle purchases.
- Expand the collection of safety information by utilizing the additional injury-measuring capabilities of the more advanced Hybrid III dummy.
- Expand NCAP to provide comparative side impact information to consumers along with the frontal NCAP information.
- Monitor rollover safety activities to determine the potential for providing consumers with comparative information on levels of protection in the rollover crash mode and on vehicle roll stability.

January 3, 1994 Request for Comments

NHTSA published a notice in the Federal Register on January 3, 1994, (59 FR 104), to request comments on whether it should convene a public meeting to review and discuss issues of NCAP. Comments were solicited on:

(1) the desirability and need for such a public meeting and

(2) the topics for consideration if a meeting is conducted. Suggested topics included all items that were discussed in the Congressional report and others, such as—

(A) additional frontal crash modes and/or higher frontal test speeds.

(B) additional injury measures.

(C) whether crashworthiness assessment programs should precede or follow the rulemaking process.

(D) review of the simplified NCAP format.

Response to January 3, 1994 Request for Comments

Comments were received from three automobile manufacturers (Toyota, Volkswagen (VW), and Volvo), two automobile manufacturer associations (Association of International Automobile Manufacturers (AIAM), and the American Automobile Manufacturers Association (AAMA)), the Insurance Institute for Highway Safety (IIHS), and four consumer groups (Advocates for Highway and Auto Safety (Advocates), Center for Auto Safety (CFAS), Institute for Injury Reduction, and Public Citizen).

All commenters supported the holding of a public meeting. Toyota opposed the expansion of NCAP, urging the agency instead to provide consumers information on specific vehicle safety features. VW stated that

NCAP expansion is premature while Volvo said that vehicle safety is more complex than can be represented by single tests at a single speed, etc. Conversely, Advocates, CFAS, and IIHS favor expansion of NCAP to other crash modes and speeds.

The automobile industry generally felt that new NCAP activities, such as different test speeds, injury criteria, or crash modes, should be preceded by rulemaking notices to amend existing or add new safety standards regulating the same aspect of performance. However, Advocates argued that NCAP-type consumer information programs should precede formal rulemaking.

Toyota and AAMA suggested that NCAP should consider using tests harmonized with those being conducted in the international community.

In comments on the new "star" rating system, Toyota questioned the validity of combining head and chest dummy injury readings into a single measure. VW stated that it found the new rating system more acceptable than the previous format. IIHS has reservations over the new star system because it believes that consumers may not fully understand that it can only be used to compare vehicles in the same weight class. CFAS stated that the system could be improved and should also reflect femur loads.

Several comments were provided on using additional or different injury criteria. Toyota and VW stated that the biofidelity of additional injury levels has not been established. IIHS said NHTSA needs to reassess its current NCAP injury criteria, given the widespread use of air bags. CFAS suggested using the additional injury-predicting capability of the Hybrid III test dummy.

CFAS also suggested that NHTSA publish make/model Fatal Accident Reporting System data and consider providing consumer information on window stickers. They also suggested that NHTSA define the audience for NCAP data.

VW urged NHTSA to address test repeatability and variability and the potential increase in vehicle aggressiveness if test speeds are raised.

Public Meeting

The agency has reviewed the public comments to its January 3, 1994, notice and, in response to the commenters, has decided to conduct a public meeting on the future of NCAP. However, NHTSA wishes to expand the discussion to include other vehicle safety consumer information activities. In particular, NHTSA points to CFAS' suggestion that the agency provide point-of-sale safety information via vehicle stickers. This is the same approach the agency itself proposed for NCAP frontal crash information (see 46 FR 7025, January 22, 1981) and in a Notice of Proposed Rulemaking for rollover stability information published on June 28, 1994 (59 FR 33254). The agency recognizes that window stickers, or other types of pre- or actual point-of-sale informaiton (such as consumer brochures) are the most effective means of reaching prospective vehicle purchasers, but that significant issues, such as the necessity of providing information on the limitations and use of the data, remain. The agency also wishes to point out that it may not need to continue to conduct NCAP activities, if point-of-sale information is provided. NHTSA wishes to focus public attention on this issue, which will be part of the discussion at the public meeting. However, not wishing to pre-judge the issue, the agency wishes to conduct the majority of the public meeting as if its NCAP activities will continue.

The agency wishes the public meeting to have the maximum possible level of participation. Thus, it will conduct the meeting using such informal means as follow-up questions from attendees to formal presenters, as well as having panel discussions of some issues.

To focus attention, NHTSA has prepared the attached agenda for the meeting. Agency staff will make presentations regarding items I (Introduction) and II (Background of NCAP) to set the format of, and stage for, the meeting. Agency staff will summarize the recent "real world" evaluation of NCAP (Agenda item III—Relevance of NCAP Data). NHTSA invites commenters to make presentations on the validity of that report. NHTSA staff will respond and ask questions of those making presentations.

Item IV, Reactions to NCAP information, will be in the form of a panel discussion. Those wishing to serve on the panel are requested to notify the agency. NHTSA will seek to insure balanced representation from those desiring to serve on the panel.

Item V, Methods of Presenting NCAP Information, will use the speaker format, while Item VI, Current Test Procedure Issues, will again be in a panel format.

NHTSA desires that Item VII, the Future of Consumer Safety Information Initiatives have the largest time for discussion of any item on the agenda. Again, the agency believes a panel discussion would be most appropriate for this item.

Written Comments

The agency invites written comments from all interested parties. The agency notes that participation in the public meeting is not a prerequisite for the submission of written comments. It is requested but not required that 10 copies of each written comment be submitted.

No comment may exceed 15 pages in length. (40 CFR 553.21). Necessary attachments may be appended to a comment without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit specified information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. Comments will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their written comments in the Docket Section should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receipt, the docket supervisor will return the postcard by mail.

Persons making oral presentations at the public meeting are requested, but not required, to submit 25 written copies of the full text of their presentation to Vincent Quarles no later than the day before the meeting. Presentations should be limited to 15 minutes. If time permits, persons who have not requested time, but would like to make a statement, will be afforded an opportunity to do so. Copies of all written statements will be placed in the docket for this notice. A verbatim transcript of the public meeting will be prepared and also placed in the NHTSA docket as soon as possible after the

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meeting. A schedule of the persons making oral presentations at the meeting will be available at the designated meeting area at the beginning of the public meeting.

To facilitate communication, NHTSA will provide auxiliary aids to participants as necessary, during the meeting. Thus, any person desiring assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunications, devices for deaf persons (TDDs) readers, taped texts, braille materials, or large print materials and/or a magnifying device) should contract Vincent Quarles at (202) 366–1708 by October 26, 1994.

Authority: 49 U.S.C. 32302; delegation of authority at 49 CFR 1.50.

Issued on September 21, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

Agenda

I. Introduction

A NHTSA representative will introduce the meeting and discuss its purpose. This will include a review of the Federal Register notice on January 3, 1994, and a brief summary of the comments received. The format of the meeting will be outlined. Proposed panel discussions and presentations involving both NHTSA and public participants will be announced.

II. Background of NCAP

An agency speaker will briefly discuss the background of NCAP including the statutory mandate, early efforts, a brief history of NCAP, the current program criteria, procedures and protocol and Congressional interest.

III. Relevance of NCAP Data

The agency will make presentations and discuss its recent report showing the correlation between real-world crashes and NCAP results. The agency will also discuss comments on that report.

IV. Reactions to NCAP Information

This subject will be addressed by a panel of representatives of manufacturers, media, insurers and automobile safety and consumer groups. The discussion of this and all other participant panels will be moderated by an agency representative.

V. Methods of presenting and format of NCAP Information

An agency speaker will present an historical overview of the methods used to present previous NCAP data and discuss the current star rating system. In addition, the agency will discuss the possibility of combining data from various crash modes into a single injury indicator. Outside speakers are invited to present their views, reactions and suggested revisions to the present format.

VI. Current Test Procedure Issues

This subject will be addressed by a panel of representatives of manufacturers, media, insurers and automobile safety and consumer groups. Topics will include issues such as repeatability, international harmonization and aggressivity.

VII. Future of Consumer Safety Information Initiatives

The agency will moderate a discussion of possible future changes in NCAP and its other consumer safety information initiatives. Proposed topics include; evaluating the need to change NCAP, consideration of higher test speeds, side impacts, offset crashes, different size dummies and/or developing new injury criteria. The agency will also entertain discussion of the feasibility of mandating the provision, by manufacturers, of comprehensive safety information on new models. The objective of providing such information would be to inform consumers (via one label or through other means) of important vehicle safety attributes such as protection in frontal impacts, side impacts and rollovers. It should also be noted that in 1981 the agency proposed establishment of an NCAP performance rating program to be developed by manufacturers via a window sticker.

[FR Doc 94–23722 Filed 9–23–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94-26; Notice 2]

AM General Corporation, Mootness of Petition for Determination of Inconsequential Noncompliance

AM General Corporation of Livonia, Michigan determined that some of its vehicles failed to comply with Paragraph S5.3.1.1 of 49 CFR 571.108, Federal Motor Vehicle Safety Standard No. 108, "Lamps, Reflective Devices, and Associated Equipment," and filed an appropriate report pursuant to 49 CFR Part 573 "Defect and Noncompliance Reports". AM General also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) (now 49 U.S.C. 30118 and 30120) on the basis that the noncompliance was inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on April 13, 1994, and an opportunity afforded for comment (59 FR 17635). The reader is referred to the notice for further information. No comments were received. This notice announces NHTSA's determination that the petition has been mooted.

The noncompliance reported was with the photometric requirements for a single test point on rear identification lamps. Representatives of NHTSA contacted the petitioner to verify that a noncompliance existed, and learned that the petition had been based on petitioner's assumption that a noncompliance existed because a small portion of the lamp was obscured. Petitioner then performed photometric tests on the lamps and found that their light output exceeded the minimum requirements by 100% at the test points concerned. Because the lamps do, in fact, comply, petitioner is under no legal obligation to notify and remedy a noncompliance and its petition is moot.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: September 21, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–23733 Filed 9–23–94; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. NCI 3270; Notice 1]

Child Restraint Systems Manufactured by Fisher-Price, Inc.; Public Proceeding Scheduled

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Notice of public meeting.

SUMMARY: NHTSA will hold a public meeting at 10 a.m. on October 21, 1994 regarding its initial decision that certain child restraint systems manufactured by Fisher-Price, Inc., fail to comply with the flammability requirements of Federal Motor Vehicle Safety Standard No. 213, *Child Restraint Systems.*

FOR FURTHER INFORMATION CONTACT: James Gilkey, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–5295.

SUPPLEMENTARY INFORMATION: Pursuant to 49 U.S.C. 30118(a) (formerly section 152(a) of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. 1412(a)), NHTSA has made an initial decision that certain child safety seats manufactured by Fisher-Price, Inc., do not comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, Child Restraint Systems, 49 CFR 571.213. Compliance tests performed for NHTSA indicate that the shoulder belt webbing on Fisher-Price Models AO9191, DO9191, 9103, 9149, 9173, 9179, and 9180 seats manufactured between 1988 and September 16, 1993 do not meet the flammability requirements of FMVSS No. 213 and therefore would not provide adequate protection to children in the event of a fire in a vehicle in which they are installed.

Pursuant to 49 CFR 554.10, a public meeting will be held at 10 a.m., on Monday, October 21, 1994 in Room 9230, Department of Transportation Building, 400 Seventh Street, SW., Washington, DC, at which time the manufacturer and all other interested persons will be afforded an opportunity to present data, views, and arguments on the issue of whether the child safety seats covered by this initial decision comply with FMVSS No. 213.

In September 1993, Fisher-Price filed a petition seeking an exemption from the recall requirements of the statute on the basis that any noncompliance with the flammability requirements of FMVSS No. 213 was inconsequential as it relates to motor vehicle safety (58 FR 59511). After NHTSA denied the petition (59 FR 23253), Fisher-Price appealed (59 FR 30957). In conjunction with its appeal, Fisher-Price requested the agency to convene a public meeting on the inconsequentiality issue, which was scheduled for August 17, 1994 (59 FR 39015).

Pursuant to the agency's regulations governing inconsequentiality petitions, 49 CFR 556.4(a), such petitions may only be filed after a determination that a noncompliance exists. Until recently, NHTSA had believed that Fisher-Price had made such a determination in September 1993, prior to filing its inconsequentiality petition. However, on August 10, 1994, Fisher-Price informed the agency that it was taking the position that it had never formally determined that a noncompliance existed. NHTSA therefore canceled the public meeting and terminated the inconsequentiality proceeding (59 FR 42326). The documents reflecting the agency's consideration of that petition may be found in NHTSA Docket No. 93–79.

Under the circumstances, NHTSA has resumed its noncompliance investigation and, as described above, has made an initial decision that these Fisher-Price car seats do not comply with FMVSS No. 213. Pursuant to 49 CFR 556.4(a), Fisher-Price could at this time renew its petition for an inconsequentiality determination. However, by letter dated August 25, 1994, counsel for Fisher-Price advised NHTSA that the company did not plan to file such a petition, even if the agency should finally decide that a noncompliance exists.

Interested persons are invited to participate in this proceeding through written an/or oral presentations. Persons wishing to make oral presentations are requested to notify Ms. Elaine Beale, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, Room 6111, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2832, before the close of business on October 18, 1994. Written comments must be submitted to the same address and received not later than the beginning of the meeting on October 21, 1994.

All materials related to the issues addressed by this notice are available for public inspection during working hours (9:30 a.m. to 4 p.m.) in NHTSA's Technical Reference Library, Room 5108, 400 Seventh Street, SW., Washington, DC 20590.

Authority: 49 U.S.C. 30118(a); delegations of authority at 49 CFR 1.50(a) and 49 CFR 501.8

Issued on: September 20, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–23688 Filed 9–23–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TREASURY

Customs Service

Public Meeting on Customs "MOD Act"

AGENCY: Customs Service, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces that a public meeting will be held in the Department of Commerce Auditorium in Washington, DC, commencing at 10 a.m. on Friday, October 14, 1994. The purpose of this meeting is to; (1) Provide the public with a general briefing on Customs vision of the future of the trade compliance process, (2) provide the public with a "Mod Act" implementation status update, and (3) give participants an opportunity to ask questions, make suggestions, and provide the Customs Service with informal input relative to its vision of future of the trade compliance process and its efforts to implement the Mod Act.

To facilitate building access and control attendance, those planning to attend are requested to notify Customs in advance.

DATES: October 14, 1994 from 10 a.m. to 3:30 p.m.

ADDRESS: Commerce Department Auditorium, Main Entrance to Hoover Building, 14th Street between Pennsylvania & Constitution Avenues, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dale Snell, "Mod Act" Task Force, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229. Phone: (202) 482–6990; FAX: (202) 482–6994.

SUPPLEMENTARY INFORMATION: On December 8, 1993, the President signed the "North American Free Trade Agreement Implementation Act." The Customs modernization portion of this Act (Title VI of Public Law 103–182), popularly known as the Customs Modernization Act or "Mod Act," became effective when it was signed. During the morning of Friday, October 14, 1994, Mr. Charles Winwood, the "Cargo Process Owner" under Customs' Reorganization Plan, will give a general presentation covering Customs vision of the future of the trade compliance process and how Customs plans to manage development and implementation of both new and existing components of this process. During the afternoon of the same day, presentations addressing Mod Act implementation and discussions of the interrelationships that exist between implementation of the new vision and the Mod Act will take place. Ample time will be allowed for trade participants and other in the private sector to ask questions and express reactions to ideas and information provided by Customs officials at the meeting.

The meeting is open to the public. Persons planning to attend are requested to pre-register by FAX with Mr. Dale Snell at 202–482–6994. Individuals not having access to facsimile equipment may pre-register by calling Mr. Snell at 202–482–6990. Those attending are encouraged to arrive approximately 30 minutes in advance of the meeting.

Dated: September 19, 1994.

Harvey B. Fox,

Director, Office of Regulations & Rulings.

[FR Doc. 94–23636 Filed 9–23–94; 8:45 am]

BILLING CODE 4820–02–P

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DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1994—Rev., Supp. No. 1]

Surety Companies Acceptable on Federal Bonds Termination of Authority: American Bonding Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to American Bonding Company, of Tucson, Arizona, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective September 19, 1994.

The Company was last listed as an acceptable surety on Federal bonds at 59 FR 34142, July 1, 1994.

With respect to any bonds currently in force with American Bonding Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202)/FTS) 874–6765.

Dated: September 15, 1994.

Diane E. Clark,

Assistant Commissioner, Financial Information, Financial Management Service.

[FR Doc. 94–23660 Filed 9–23–94; 8:45 am]

BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 185

Monday, September 26, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, September 28, 1994.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Lidocaine and Dibucaine

The Commission will consider a child-resistant packaging requirement under the Poison Prevention Packaging Act for the topical anesthetics lidocaine and dibucaine.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway Bethesda, MD 20207 (301) 504–0800.

Dated: September 22, 1994.

Sadye E. Dunn,

Secretary.

[FR Doc. 94–23891 Filed 9–22–94; 2:02 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, September 29, 1994.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MASTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: September 22, 1994.

[FR Doc. 94–23892 Filed 9–22–94; 2:02 pm]

BILLING CODE 6355–01–M

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

DATE AND TIME: September 28, 1994, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 616th Meeting—September 28, 1994, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 401–016, Indiana-Michigan Power Company

CAH–2.
Project Nos. 2287–005 and 2288–006, Public Service Company of New Hampshire
Project Nos. 2300–005, 2311–005, 2326–005, 2327–006 and 2422–007, James River–New Hampshire Electric, Inc.

CAH–3.
Project Nos. 10481–010 and 10482–013, Orange and Rockland Utilities, Inc.

CAH–4.
Project No. 10567–003, Barrish & Sorenson Hydroelectric Company, Inc.

CAH–5.
Project No. 10661–013, Indiana-Michigan Power Company

CAH–6.
Docket Nos. UL94–1–001 and UL94–3–001, Union Water Power Company and Kennebec Water Power Company

CAH–7.
Omitted

CAH–8.
Project No. 9401–030, Mount Hope Waterpower Project, L.P.

CAH–9.
Omitted

CAH–10.
Project No. 11038–004, County of Arapahoe and Town of Parker, Colorado

CAH–11.
Omitted

CAH–12.
Project Nos. 1855–010, 1892–005, 1904–019, 2077–007, 2323–013 and 2669–002, New England Power Company

Consent Agenda—Electric

CAE–1.
Omitted

CAE–2.
Docket No. ER94–1518–000, Commonwealth Electric Company

CAE–3.
Docket No. ER94–950–000, Hermiston Generating Company, L.P.

CAE–4.
Docket Nos. ER93–920–000, 001 and 002, New England Power Company

CAE–5.
Docket Nos. EC94–7–001 and ER94–898–001, El Paso Electric Company and Central and South West Services, Inc.

CAE–6.
Docket Nos. ER93–465–011 and ER93–922–007, Florida Power & Light Company

CAE–7.
Docket No. TX94–2–001, El Paso Electric Company and Central and South West Services, Inc., as agent for Public Service Company of Oklahoma, West Texas Utilities Company, Southwestern Electric Power Company, and Central Power and Light Company v. Southwestern Public Service Company

CAE–8.
Docket No. ER94–804–001, Midwest Power Systems, Inc.

CAE–9.
Omitted

CAE–10.
Omitted

CAE–11.
Docket No. ER93–266–001, Boston Edison Company

CAE–12.
Docket Nos. EC93–6–001 and ER94–1015–000, Cincinnati Gas & Electric Company and PSI Energy, Inc.

CAE–13.
Omitted

CAE–14.
Docket No. EG94–89–000, CNG Power Services Corporation

CAE–15.
Docket No. EL94–28–000, Seminole Electric Cooperative, Inc.
Docket No. EL94–47–000, Florida Municipal Power Agency v. Florida Power & Light Company

CAE–16.
Docket No. ER93–413–002, Pacific Gas and Electric Company

Consent Agenda—Oil and Gas

CAG–1.
Docket No. GT94–65–000, Texas Eastern Transmission Corporation

CAG–2.
Docket No. RP92–132–042, Tennessee Gas Pipeline Company

CAG–3.

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Docket No. RP94–295–000, Gasdel Pipeline System, Inc.
CAG–4.
Docket No. RP94–312–000, Columbia Gulf Transmission Company
Docket No. CP94–777–000, Columbia Gulf Transmission Company and Texas Eastern Transmission Corporation
CAG–5.
Omitted
CAG–6.
Docket No. RP94–357–000, Texas Eastern Transmission Corporation
CAG–7.
Docket Nos. RP94–375–000, RP94–125–006 and RP94–375–001, Texas Gas Transmission Corporation
CAG–8.
Docket No. RP94–377–000, Texas Gas Transmission Corporation
CAG–9.
Docket No. RP94–378–000, Texas Eastern Transmission Corporation
CAG–10.
Docket No. RP94–380–000, Southern Natural Gas Company
CAG–11.
Docket No. RP94–383–000, Columbia Gas Transmission Corporation
CAG–12.
Docket No. RP94–384–000, ANR Pipeline Company
CAG–13.
Docket No. RP94–386–000, Southern Natural Gas Company
CAG–14.
Docket No. RP94–387–000, Southern Natural Gas Company
CAG–15.
Docket No. RP94–391–000, Centra Pipelines Minnesota, Inc.
CAG–16.
Docket No. RP94–392–000, Chandeleur Pipe Line Company
CAG–17.
Docket No. TM94–16–29–000, Transcontinental Gas Pipe Line Corporation
CAG–18.
Docket No. TM95–1–16–000, National Fuel Gas Supply Corporation
CAG–19.
Docket No. TM95–2–21–000, Columbia Gas Transmission Company
CAG–20.
Omitted
CAG–21.
Docket No. RP94–328–000, KN Interstate Gas Transmission Company
CAG–22.
Docket No. RP94–376–000, KN Interstate Gas Transmission Company
CAG–23.
Docket No. RP94–379–000, Colorado Interstate Gas Company
CAG–24.
Omitted
CAG–25.
Docket No. RP94–382–000, Colorado Interstate Gas Company
CAG–26.
Docket No. RP94–385–000, Northern Natural Gas Company
CAG–27.
Docket No. RP94–388–000, Trunkline Gas Company
CAG–28.
Docket No. RP94–390–000, NorAm Gas Transmission Company
CAG–29.
Docket No. TA95–1–35–000, West Texas Gas, Inc.
CAG–30.
Docket No. TM95–1–33–000, El Paso Natural Gas Company
CAG–31.
Docket No. RP94–273–000, Columbia Gas Transmission Corporation
CAG–32.
Docket Nos. RP94–179–000, –001, RP94–86–000, 001 and RP94–252–000, Natural Gas Pipeline Company of America
CAG–33.
Omitted
CAG–34.
Docket No. TM95–1–32–000, Colorado Interstate Gas Company
CAG–35.
Docket No. RP93–175–000, Williston Basin Interstate Pipeline Company
CAG–36.
Docket Nos. IS90–21–003, IS90–31–003, IS90–32–003, IS90–40–003, IS91–1–003, SP91–3–003, SP91–5–003, IS91–21–003, IS91–28–003, IS91–33–003 and OR93–1–001, Williams Pipe Line Company
Docket Nos. IS90–39–003, IS91–3–001 and IS91–32–001, Enron Liquids Pipeline Company
CAG–37.
Docket No. RP94–213–005, CNG Transmission Corporation
CAG–38.
Docket Nos. RP94–307–001 and RP94–264–004, Southern Natural Gas Company
CAG–39.
Docket No. RP94–301–001, Stingray Pipeline Company
CAG–40.
Docket No. GT94–57–001, Colorado Interstate Gas Company
CAG–41.
Docket No. RP94–220–003, Northwest Pipeline Corporation
CAG–42.
Docket No. TM94–4–17–004, Texas Eastern Transmission Corporation
CAG–43.
Docket No. TM94–5–17–002, Texas Eastern Transmission Corporation
CAG–44.
Docket Nos. RP94–346–002, 003, 004, 005, RP94–87–000, et al., 002, 003, 005, 006, RP94–249–001, 002, 003, RP94–122–002, 003, 004, 005, RP94–169–002, 003, 004, 005, RP94–195–001, 002, 003, 004, RP94–260–002, 003 and RP94–305–001, Natural Gas Pipeline Company of America
CAG–45. Omitted
CAG–46.
Docket Nos. RP94–113–001, 002 and CP94–369–001, Columbia Gas Transmission Corporation and Tennessee Gas Pipeline Company
CAG–47. Omitted
CAG–48.
Docket No. PR91–20–001, Prairie Producing Company v. Louisiana Intrastate Gas Corporation
CAG–49.
Docket No. RP94–161–002, U–T Offshore System
CAG–50. Omitted
CAG–51.
Docket No. RP94–231–002, Panhandle Eastern Pipe Line Company
CAG–52.
Docket No. GP94–2–001, Columbia Gas Transmission Corporation
CAG–53.
Docket No. RP92–229–003, Northwest Pipeline Corporation
CAG–54. Omitted
CAG–55.
Docket Nos. ST88–2555–005, ST88–2905–000, ST88–3337–000, ST88–4985–000, ST89–229–000, consolidated; ST89–1708–000 and ST89–1775–000, Louisiana Intrastate Gas Corporation
CAG–56.
Docket No. RP94–268–000, Energy Production Corporation v. Koch Gateway Pipeline Company
CAG–57.
Docket No. RO92–5–000, Ocean Drilling & Exploration Company, ODECO Oil & Gas Company, Murphy Oil Corporation and Murphy Oil U.S.A., Inc.
CAG–58.
Docket No. GP94–10–000, Railroad Commission of Texas, Tight Formation Determination–Texas–112, 113, 114 & 115 Vicksburg Formation (M, R, S, & T Sands), FERC Nos. JD93–04541T, JD93–04589T, JD93–04590T and JD93–04591T
CAG–59.
Docket No. RP94–283–000, Gas Research Institute
CAG–60.
Docket No. RS92–23–026, Tennessee Gas Pipeline Company
Docket No. RS92–33–010, East Tennesse Natural Gas Company
CAG–61.
Docket No. CP93–505–001, Panhandle Eastern Pipe Line Company
Docket No. CP93–506–001, Panhandle Gathering Company
CAG–62.
Docket No. CP93–501–001, Tennessee Gas Pipeline Company
CAG–63. Omitted
CAG–64. Omitted
CAG–65.
Docket No. CP94–377–000, Natural Gas Pipeline Company of America
CAG–66.
Docket Nos. CP93–434–000 and 001, NorAm Gas Transmission Company
Docket No. CP93–671–000, Williams Natural Gas Company
CAG–67.
Docket No. CP94–295–000, Northern Natural Gas Company
CAG–68. Omitted
CAG–69.
Docket No. CP93–84–000, Mississippi River Transmission Corporatinn
CAG–70.
Docket No. CP94–722–000, Shell Offshore Inc.
CAG–71. Omitted
CAG–72.
Docket No. RP94–354–000, National Fuel Gas Supply Corporation
CAG–73.
Docket Nos. RP94–182–004 and RP94–272–002, NorAm Gas Transmission Company
CAG–74.
Docket Nos. RP94–197–000, RP93–151–007 and RP94–309–000, Tennessee Gas Pipeline Company
CAG–75.
Docket No. PR94–3–001, KansOk Partnership
CAG–76.
Docket No. CP94–38–000, Ouachita River Gas Storage Company, L.L.C.
CAG–77.
Docket No. CP94–88–000, Great Lakes Gas Transmission Limited Partnership

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Omitted
E–2.
Omitted
E–3.
Omitted
E–4.
Omitted

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Omitted

II. Restructuring Matters

RS–1.
Reserved

III. Pipeline Certificate Matters

PC–1.
Omitted
PC–2.
Omitted
PC–3.
Docket Nos. CP94–57–002 and 001, Columbia LNG Corporation
Docket Nos. CP94–59–003 and 001, Cove Point LNG Limited Partnership
Docket No. CP94–191–001, Columbia Gas Transmission Company and Columbia LNG Corporation. Order on application for a certificate to recommission Cove Point liquefied natural gas facilities.

Dated: September 21, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23885 Filed 9–22–94; 2:02 pm]

BILLING CODE 6717–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 48469, September 21, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2:00 p.m., Monday, September 26, 1994.

CHANGES IN THE MEETING: Deletion of the following open item from the meeting:

Summary Agenda

2. (a) Request by Fleet Financial Group, Inc., Providence, Rhode Island, for an exemption from the anti-tying provisions of section 106 of the Bank Holding Company Act; and (b) a related proposed amendment for public comment to modify Regulation Y (Bank Holding Companies and Change in Bank Control) to apply the exemption to all banks.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452–3204.

Dated: September 22, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–23866 Filed 9–22–94; 1:03 pm]

BILLING CODE 6210–01–P

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Federal Register

Monday
September 26, 1994

Part II

Environmental Protection Agency

40 CFR Parts 9 and 82
Protection of Stratospheric Ozone;
Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 82

[FRL–5078–4]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes restrictions or prohibitions on substitutes for ozone depleting substances (ODSs) under the U.S. Environmental Protection Agency (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the amended Clean Air Act of 1990 which requires EPA to evaluate and regulate substitutes for the ODSs to reduce overall risk to human health and the environment. Through these evaluations, SNAP generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors. The intended effect of the SNAP program is to expedite movement away from ozone depleting compounds while avoiding a shift into high-risk substitutes posing other environmental problems.

On March 18, 1994, EPA promulgated a final rulemaking setting forth its plan for administering the SNAP program, and issued decisions on the acceptability and unacceptability of a number substitutes. In this notice of proposed rulemaking (NPRM), EPA is issuing its preliminary decisions on the acceptability of certain substitutes not previously reviewed by the Agency. To arrive at determinations on the acceptability of substitutes, the Agency completed a cross-media evaluation of risks to human health and the environment by sector end-use.

Today's action proposes new additions to the list of controlled or prohibited substitutes. As described in the final rule for the SNAP program, EPA does believe that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list an alternative as acceptable only under certain use conditions or certain narrow end-use applications.

EPA does not, however, believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA is adding substitutes to the list of acceptable alternatives without first requesting comment on new listings. Updates to the acceptable lists are published as separate notices in the Federal Register. A comprehensive compilation of all listings will be published annually.

DATES: Written comments or data provided in response to this document must be submitted by November 10, 1994.

ADDRESSES: Written comments and data should be sent to Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays. Telephone (202) 260–7549. As provided in 40 CFC part 2, a reasonable fee may be charged for photocopying. To expedite review, a second copy of the comments should be sent to Sally Rand, Stratospheric Protection Division, Office of Atmospheric Programs, U.S. EPA, 401 M Street SW., 6205–J, Washington, DC 20460. Information designated as Confidential Business Information (CBI) under 40 CFR, part 2 subpart B must be sent directly to the contact person for this notice. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

FOR FURTHER INFORMATION CONTACT: Sally Rand at (202) 233–9739 or fax (202) 233–9577, Substitutes Analysis and Review Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation, Washington, DC.

SUPPLEMENTARY INFORMATION:

I. Overview of This Action

This action is divided into five sections, including this overview:

I. Overview of This Action
II. Section 612 Program
A. Statutory Requirements
B. Regulatory History
III. Proposed Listing of Substitutes
IV. Administrative Requirements
V. Additional Information
Appendix A: Summary of Proposed Listing Decisions

II. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA is referring to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

Rulemaking—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that: (1) Reduces the overall risk to human health and the environment; and (2) is currently or potentially available.

Listing of Unacceptable/Acceptable Substitutes—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

Petition Process—Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional 6 months.

90-day Notification—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

Outreach—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

Clearinghouse—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the Final Rulemaking (FRM) (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvent cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consume large volumes of ozone-depleting compounds.

The Agency defines a "substitute" as any chemical, product, substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators or end-users when they are responsible for introducing a substitute into commerce.

III. Proposed Listing of Substitutes

To develop the lists of unacceptable and acceptable substitutes, EPA conducts screens of health and environmental risks posed by various substitutes for ozone-depleting compounds in each use sector. The outcome of these risks screens can be found in the public docket, as described above in the ADDRESSES portion of this notice.

Under section 612, the Agency has considerable discretion in the risk management decisions it can make in SNAP. The Agency has identified five possible decision categories: acceptable, acceptable subject to use conditions; acceptable subject to narrowed use limits; unacceptable; and pending. Acceptable substitutes can be used with no limits for all applications within the relevant sector end-use. Conversely, it is illegal to replace an ODS with a substitute listed by SNAP as unacceptable. A pending listing represents substitutes for which the Agency has not received complete data or has not completed its review of the data.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if conditions of use are met to minimize risks to human health and the environment. Use of such substitutes in ways that are inconsistent with such use conditions renders these substitutes unacceptable.

Even though the Agency can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, e.g., performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. Use of such substitutes in application and end-uses which are not specified as acceptable in the narrowed use limit renders these substitutes unacceptable.

In this Notice of Proposed Rulemaking (NPRM), EPA is issuing its preliminary decision on the acceptability of certain substitutes not previously reviewed by the Agency. As described in the final rule for the SNAP program (59 FR 13044), EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes.

EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA is adding substitutes to the list of acceptable alternatives without first requesting comment on new listings. Updates to the acceptable and pending lists are published as separate notices in the Federal Register.

Parts A. through E. below present a detailed discussion of the substitute listing determinations by major use sector. Tables summarizing listing decisions in this Notice of Proposed Rulemaking are in Appendix A. The comments contained in Appendix A provide additional information on a substitute. Since comments are not part of the regulatory decision, they are not mandatory for use of a substitute. Nor should the comments be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA encourages users of acceptable substitutes to apply all comments in their use of these substitutes. In many instances, the comments simply allude to sound operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of the comments, if adopted, would not require significant changes in existing operating practices for the affected industry.

A. Refrigeration and Air Conditioning

1. Overview

The refrigeration and air conditioning sector includes all uses of class I and class II substances to produce cooling, including mechanical and non-mechanical refrigeration, air conditioning, and heat transfer. Please refer to the final SNAP rule (59 FR 13044) for a more detailed description of this sector.

The refrigeration and air conditioning sector is divided into the following end-uses:

- commercial comfort air conditioning;
- industrial process refrigeration system;
- industrial process air conditioning;
- ice skating rinks;
- uranium isotope separation processing;
- cold storage warehouses;
- refrigerated transport;
- retail food refrigeration;
- vending machines;
- water coolers;
- commercial ice machines;
- household refrigerators;
- household freezers;
- residential dehumidifiers;
- motor vehicle air conditioning;
- residential air conditioning and heat pumps;
- non-mechanical heat transfer; and
- very low temperature refrigeration.

In addition, each end-use is divided into retrofit and new equipment applications. EPA has not necessarily reviewed substitutes in every end-use for this NPRM.

EPA has modified the list of end-uses for this sector for this SNAP update. First, EPA has changed the name of the heat transfer end-use to non-mechanical heat transfer. This change is intended to avoid confusion between systems that move heat from a cool area to a warm one (mechanical refrigeration) and systems that simply aid the movement of heat away from warm areas (non-mechanical heat transfer). The second change is that EPA added a new end-use, very low temperature refrigeration. Substitutes for this end-use have been reviewed since the final rule, and therefore have been added for this SNAP update. Finally, EPA has also reviewed substitutes for CFC–13, R–13B1, and R–503 industrial process refrigeration. Please refer to the final SNAP rule (59 FR 13044) for a detailed description of end-uses other than these three. EPA may continue to add other end-uses in future SNAP updates.

a. Non-mechanical Heat Transfer. As discussed above, this end-use includes all cooling systems that rely on a fluid

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to remove heat from a heat source to a cooler area, rather than relying on mechanical refrigeration to move heat from a cool area to a warm one. Generally, there are two types of systems: systems with fluid pumps, referred to as recirculating coolers, and those that rely on natural convection currents, known as thermosyphons.

b. Very Low Temperature Refrigeration. Medical freezers, freeze-dryers, and other small appliances require extremely reliable refrigeration cycles. These systems must meet stringent technical standards that do not normally apply to refrigeration systems. They usually have very small charges. Because they operate at very high vapor pressures, and because performance is critically affected by any charge loss, standard maintenance for these systems tends to reduce leakage to a level considerably below that for other types of refrigeration and air conditioning equipment.

c. CFC–13, R–13B1, and R–503 Industrial Process Refrigeration. This end-use differs from other types of industrial refrigeration only in the extremely low temperature regimes that are required. Although some substitutes may work in both these extremely low temperatures and in systems designed to use R–502, they are acceptable only for this end-use because of global warming and atmospheric lifetime concerns. These concerns are discussed more fully below.

2. Substitutes for Refrigerants

Substitutes fall into eight broad categories. Seven of these categories are chemical substitutes used in the same vapor compression cycle as the ozone-depleting substances being replaced. They include hydrochlorofluorocarbons (HCFCs), hydrofluorocarbons (HFCs), hydrocarbons, refrigerant blends, ammonia, perfluorocarbons (PFCs), and chlorine systems. The eighth category includes alternative technologies that generally do not rely on vapor compression cycles. Please refer to the final SNAP rule (59 *FR* 13044) for more discussion of these broad categories.

a. Acceptable Subject to Use Conditions. (1) CFC–12 Automobile and Non-automobile Motor Vehicle Air Conditioners, Retrofit and New. EPA is concerned that the existence of several substitutes in this end-use may increase the likelihood of significant refrigerant cross-contamination and potential failure of both air conditioning systems and recovery/recycling equipment. In addition, a smooth transition to the use of substitutes strongly depends on the continued purity of the recycled CFC–12 supply. In order to prevent cross-contamination and preserve the purity of recycled refrigerants, EPA is proposing several conditions on the use of all motor vehicle air conditioning refrigerants. For the purposes of this rule, no distinction is made between "retrofit" and "drop-in" refrigerants; retrofitting a car to use a new refrigerant includes all procedures that result in the air conditioning system using a new refrigerant.

In particular, when retrofitting a CFC–12 system to use any substitute refrigerant, the following conditions must be met:

• Each refrigerant may only be used with a set of fittings that is unique to that refrigerant. These fittings (male or female, as appropriate) must be used with all containers of the refrigerant, on can taps, on recovery, recycling, and charging equipment, and on all air conditioning system service ports. These fittings must be designed to mechanically prevent cross-charging with another refrigerant. A refrigerant may only be used with the fittings and can taps specifically intended for that refrigerant. Using an adapter or deliberately modifying a fitting to use a different refrigerant will be a violation of this use condition. In addition, fittings shall meet the following criteria, derived from Society of Automotive Engineers (SAE) standards and recommended practices:

—When existing CFC–12 service ports are to be retrofitted, conversion assemblies shall attach to the CFC–12 fitting with a thread lock adhesive and/or a separate mechanical latching mechanism in a manner that permanently prevents the assembly from being removed.
—All conversion assemblies and new service ports must satisfy the vibration testing requirements of sections 3.2.1 or 3.2.2 of SAE J1660, as applicable, excluding references to SAE J639 and SAE J2064, which are specific to HFC–134a.
—In order to prevent discharge of refrigerant to the atmosphere, systems shall have a device to limit compressor operation before the pressure relief device will vent refrigerant. This requirement is waived for systems that do not feature such a pressure relief device.
—All CFC–12 service ports shall be retrofitted with conversion assemblies or shall be rendered permanently incompatible for use with CFC–12 related service equipment by fitting with a device attached with a thread lock adhesive and/or a separate mechanical latching mechanism in a manner that prevents the device from being removed.

• When a retrofit is performed, a label must be used as follows:

—The person conducting the retrofit must apply a label to the air conditioning system in the engine compartment that contains the following information:
•—the name and address of the technician and the company performing the retrofit
•—the date of the retrofit
•—the trade name, charge amount, and, when applicable, the ASHRAE refrigerant numerical designation of the refrigerant
•—the type, manufacturer, and amount of lubricant used
•—if the refrigerant is or contains an ozone-depleting substance, the statement "This refrigerant contains an ozone-depleting substance and it is therefore subject to the venting prohibition, recycling, and other provisions of regulations issued under section 609 of the Clean Air Act."
•—if the refrigerant is not or does not contain any ozone-depleting substances, the statement "This refrigerant does not deplete stratospheric ozone, and as of November 15, 1995, at the latest, it is subject to the venting prohibition, recycling, and other provisions of regulations issued under section 609 of the Clean Air Act."
•—if the refrigerant displays flammability limits as measured according to ASTM E681, the statement "This refrigerant is FLAMMABLE. Take appropriate precautions."
—This label must be large enough to be easily read and must be permanent.
—The background color must be unique to the refrigerant.
—The label must be affixed to the system over information related to the previous refrigerant, in a location not normally replaced during vehicle repair.
—Information on the previous refrigerant that cannot be covered by the new label must be permanently rendered unreadable.

• No substitute refrigerant may be used to "top-off" a system that uses another refrigerant. The original refrigerant must be recovered in accordance with regulations issued under section 609 of the CAA prior to charging with a substitute.

Since these use conditions necessitate unique fittings and labels, it will be necessary for developers of automotive refrigerants to consult with EPA about the existence of other alternatives. Such discussions will lower the risk of duplicating fittings already in use.

No determination guarantees satisfactory performance from a refrigerant. Consult the original equipment manufacturer or service personnel for further information on using a refrigerant in a particular system.

(a) HFC–134a. *HFC–134a is acceptable as a substitute for CFC–12 in retrofitted and new motor vehicle air conditioners, subject to the use conditions applicable to motor vehicle air conditioning described above.* HFC–134a does not contribute to ozone depletion. HFC–134a's GWP and atmospheric lifetime are close to those of other alternatives which have been determined to be acceptable for this end-use. However, HFC–134a's contribution to global warming could be significant in leaky end-uses such as motor vehicle air conditioning systems (MVACS). EPA has determined that the use of HFC–134a in these applications is acceptable because industry continues to develop technology to limit emissions. In addition, the number of available substitutes for use in MVACS is currently limited. HFC–134a is not flammable and its toxicity is low. While HFC–134a is compatible with most existing refrigeration and air conditioning equipment parts, it is not compatible with the mineral oils currently used in such systems. An appropriate ester-based, polyalkylene glycol-based, or other type of lubricant should be used. Consult the original equipment manufacturer or the retrofit kit manufacturer for further information.

(b) R–401C. *R–401C, which consists of HCFC–22, HFC–152a, and HCFC–124, is acceptable as a substitute for CFC–12 in retrofitted and new motor vehicle air conditioners, subject to the use conditions applicable to motor vehicle air conditioning described above.* HCFC–22 and HCFC–124 contribute to ozone depletion, but to a much lesser degree than CFC–12. The production of HCFC–22 will be phased out according to the accelerated phaseout schedule (published 12/10/93, 58 FR 65018). The GWP of HCFC–22 is somewhat higher than other alternatives for this end-use. Experimental data indicate that HCFC–22 may leak through flexible hosing in mobile air conditioners at a high rate. In order to preserve the blend's composition and to reduce its contribution to global warming, EPA strongly recommends using barrier hoses when hose assemblies need to be replaced during a retrofit procedure. The GWPs of the other components are low. Although this blend does contain one flammable constituent, the blend itself is not flammable. Leak testing demonstrated that the blend never becomes flammable.

(c) HCFC Blend Beta. *HCFC Blend Beta is acceptable as a substitute for CFC–12 in retrofitted and new motor vehicle air conditioners, subject to the use conditions applicable to motor vehicle air conditioning described above.* The composition of this blend has been claimed confidential by the manufacturer. This blend contains at least one HCFC, and therefore contributes to ozone depletion, but to a much lesser degree than CFC–12. Regulations regarding recycling and reclamation issued under section 609 of the Clean Air Act apply to this blend. Its production will be phased out according to the accelerated schedule (published 12/10/93, 58 FR 65018). The GWPs of the components are moderate to low. This blend is nonflammable, and leak testing has demonstrated that the blend never becomes flammable.

b. Acceptable Subject to Narrowed Use Limits. (1) Non-mechanical Heat Transfer, New and Retrofit.

(a) Perfluorocarbons.

Perfluorocarbons are proposed acceptable as substitutes for CFC–11, CFC–12, CFC–113, CFC–114, and CFC–115 in new and retrofitted thermosyphons and recirculating coolers only where no other alternatives are technically feasible due to safety or performance requirements. PFCs covered by this determination are C_3F_8, C_4F_{10}, C_5F_{12}, $C_5F_{11}NO$, C_6F_{14}, $C_6F_{13}NO$, C_7F_{16}, $C_7F_{15}NO$, C_8F_{18}, $C_8F_{16}O$, AND $C_9F_{21}N$. PFCs offer high dielectric resistance and they are low in toxicity and nonflammable. The principal characteristic of concern for PFCs is that they have long atmospheric lifetimes and have the potential to contribute to global climate change. For instance, C_5F_{12} has a lifetime of 4,100 years and a 100-year GWP of 5,600. PFCs are also included in the Climate Change Action Plan which broadly instructs EPA to use section 612 of the CAA, as well as voluntary programs, to control emissions. Despite these concerns, EPA is proposing to list PFCs as acceptable in certain small applications because they may be the only substitutes that can satisfy safety or performance requirements. For example, a transformer may require very high dielectric strength, or a heat transfer system for a chlorine manufacturing process could require compatibility with the process stream.

Users should note, however, that use of a PFC should be a last resort. As the proposed determination states, PFCs should be used "only where no other alternatives are technically feasible due to safety or performance requirements." This statement requires users to conduct a thorough search for other substitutes. Although EPA does not require users to submit information on such a search, companies must keep the results on file for future reference.

In cases where users must adopt PFCs, they should make every effort to:

• Recover and recycle these fluids during servicing
• Adopt maintenance practices that reduce leakage as much as is technically feasible
• Recover these fluids after the end of the equipment's useful life and either recycle them or destroy them
• Continue to search for other long-term alternatives

Users of PFCs should note that if other alternatives become available, EPA could be petitioned to list PFCs as unacceptable due to the availability of other suitable substitutes. If such a petition were granted, EPA may grandfather existing uses but only upon consideration of cost and timing of testing and implementation of new substitutes. In addition, while this listing allows for use of PFCs in some new systems, a petition indicating widespread design of systems using PFCs where other alternatives exist could adversely impact any grandfathering decisions.

EPA believes these end-uses are covered under section 608 of the CAA and encourages voluntary compliance with the recycling and leak repair provisions of that rule until new rulemakings specifically address non-ozone-depleting refrigerants.

c. Unacceptable Substitutes.

(1) R–403B

R–403B, which consists of HCFC–22, R–218, and propane, is proposed unacceptable as a substitute for R–502 in the following new and retrofitted end uses:

• industrial process refrigeration;
• cold storage warehouses;
• refrigerated transport;
• retail food refrigeration;
• commercial ice machines; and
• household freezers.

R–218, perfluoropropane, has an extremely high GWP and lifetime. Although this substitute may offer energy efficiency gains, its lifetime and direct GWP pose additional risk beyond that of other substitutes for these end-uses. In particular, the lifetime of R–218 is over 2000 years, which means that global warming and other effects would be essentially irreversible. EPA believes that while other substitutes may have high GWPs, they do not exhibit such long lifetimes.

(2) R–405A

R–405A, which is composed of HCFC–22, HFC–152a, HCFC–142b, and R–C318

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is proposed unacceptable as a substitute for CFC–12, R–500, and R–502 in the following new and retrofitted end-uses:

- commercial comfort air conditioning;
- industrial process refrigeration;
- ice skating rinks;
- cold storage warehouses;
- refrigerated transport;
- retail food refrigeration;
- vending machines;
- water coolers;
- commercial ice machines;
- household refrigerators;
- household freezers;
- residential dehumidifiers; and
- motor vehicle air conditioning.

R–405A was listed as HCFC/HFC/fluoroalkane Blend A in previous notices. R–405A contains a high proportion of R–c318, cycloperfluorobutane, which has an extremely high GWP and lifetime. Although this substitute may offer energy efficiency gains, its lifetime and direct GWP pose additional risk beyond that of other substitutes for these end-uses. In particular, the lifetime of R–c318 is over 3000 years, which means that global warming and other effects would be essentially irreversible. EPA believes that while other substitutes may have high GWPs, they do not exhibit such long lifetimes.

(3) Hydrocarbon Blend B

Hydrocarbon Blend B is proposed unacceptable as a substitute for CFC–12 in the following new and retrofitted end-uses:

- commercial comfort air conditioning;
- ice skating rinks;
- cold storage warehouses;
- refrigerated transport;
- retail food refrigeration;
- vending machines;
- water coolers;
- commercial ice machines;
- household refrigerators;
- household freezers;
- residential dehumidifiers; and
- motor vehicle air conditioning.

Flammability is the primary concern. EPA believes the use of this substitute in very leaky uses like motor vehicle air conditioning may pose a high risk of fire. EPA requires a risk assessment be conducted to demonstrate this blend may be safely used in any CFC–12 end-uses. The manufacturer of this blend has not submitted such a risk assessment, and EPA therefore finds it unacceptable.

(4) Flammable Substitutes

Flammable substitutes, defined as having flammability limits as measured according to ASTM E–681 with modifications included in Society of Automotive Engineers Recommended Practice J1657, including blends which become flammable during fractionation, are proposed unacceptable as substitutes for CFC–12 in retrofitted motor vehicle air conditioning systems.

Flammable refrigerants differ from traditional substances in several ways: potential gains in energy efficiency, reductions in direct contribution to global warming, and additional risks from fire. Flammable refrigerants may be good substitutes in systems designed with fire risks in mind. In addition, in certain circumstances, they may serve well as substitutes in retrofit uses. EPA encourages research efforts into the use of flammable refrigerants, but remains concerned about the dangers. Because of these concerns, EPA has established the requirement that manufacturers of flammable refrigerants conduct detailed risk assessments in all end-uses. The risks from flammability are extremely sensitive to the size of charge and end-use.

In MVACS, flammable refrigerants pose risks not found in stationary equipment, including the potential for collisions, the placement of the condenser directly behind the grille, flexible hoses which could be punctured, the hazard to technicians who are expecting to handle flammable fluids, the danger to passengers from evaporator leaks, and the dangers to personnel involved in disposal of old automobiles. Due to the length of SNAP review, certain substitutes have been marketed which EPA believes may pose substantial risk to users. The intent of the 90-day review process was not to allow manufacturers to market risky substitutes, but rather to ensure a thorough review. Because of potential risks to users and service personnel, EPA finds it necessary to find all flammable substitutes unacceptable in retrofitted automotive air conditioning to prevent hazardous substitutes from being marketed prior to a thorough risk assessment.

EPA continues to encourage investigation of all substitute refrigerants, including flammable substances. This unacceptable determination only applies to retrofitted MVACS. If a manufacturer wishes an acceptable determination for a flammable substitute in MVACS, this risk assessment must be conducted in a scientifically valid manner. EPA will consider such a risk assessment in any determination on the substitute.

B. Solvents

1. Acceptable Subject to Use Conditions

a. Electronics Cleaning. (1) HCFC–225 ca/cb. *HCFC–225 is proposed acceptable subject to use conditions as a substitute for CFC–113 and MCF in electronics cleaning.* The HCFC–225 ca isomer has a company-set exposure limit of 25 ppm. The company set exposure limit of the HCFC–225 cb isomer is 250 ppm. These limits should be readily achievable since HCFC–225 is only sold commercially as a (45%/50%) blend of –ca and –cb isomers. In addition, the vapor degreasing and cold cleaning equipment where HCFC–225 is used, typically has very low emissions.

b. Precision Cleaning. (1) HCFC–225 ca/cb. *HCFC–225 is proposed acceptable subject to use conditions as a substitute for CFC–113 and MCF in precision cleaning.* The HCFC–225 ca isomer has a company-set exposure limit of 25 ppm. The company set exposure limit of the HCFC–225 cb isomer is 250 ppm. These limits should be readily achievable since HCFC–225 is only sold commercially as a (45%/50%) blend of –ca and –cb isomers. In addition, the vapor degreasing and cold cleaning equipment where HCFC–225 is used, typically has very low emissions.

2. Unacceptable Substitutes

a. Metals Cleaning. (1) Dibromomethane. *Dibromomethane is proposed as an unacceptable substitute for CFC–113 and MCF in metals cleaning.* Dibromomethane has a comparatively high ODP and other alternatives exist which do not pose comparable risk.

b. Electronics Cleaning. (2) Dibromomethane. *Dibromomethane is proposed as an unacceptable substitute for CFC–113 and MCF in electronics cleaning.* Dibromomethane has a comparatively high ODP and other alternatives exist.

c. Precision Cleaning. (3) Dibromomethane. *Dibromomethane is proposed as an unacceptable substitute for CFC–113 and MCF in precision cleaning.* Dibromomethane has a comparatively high ODP and other alternatives exist.

C. Fire Suppression and Explosion Protection

1. Proposed Acceptable Subject to Use Conditions

a. Total Flooding Agents. (1) C_3F_8. *C_3F_8 is proposed acceptable as a Halon 1301 substitute where other alternatives are not technically feasible due to performance or safety requirements: (a) Due to their physical or chemical properties or (b) where human exposure to the agents may approach cardiosensitization levels or result in other unacceptable health effects under normal operating conditions.* This proposed agent is subject to the same use conditions stipulated for all total flooding agents, that is:

- Where egress from an area cannot be accomplished within one minute, the employer shall not use this agent in concentrations exceeding its NOAEL.
- Where egress takes longer than 30 seconds but less than one minute, the employer shall not use the agent in a concentration greater than its LOAEL.
- Agent concentrations greater than the LOAEL are only permitted in areas not normally occupied by employees provided that any employee in the area can escape within 30 seconds. The employer shall assure that no unprotected employees enter the area during agent discharge.

Cup burner tests in heptane indicate that C_3F_8 can extinguish fires in a total flood application at concentrations of 7.30 per cent and therefore has a design concentration of 8.8 per cent. The cardiotoxicity NOAEL of 30 per cent for this agent is well above its extinguishment concentration and therefore is safe for use in occupied areas. This agent can replace Halon 1301 by a ratio of 2 to 1 by weight.

Using agents in high concentrations poses a risk of asphyxiation by displacing oxygen. With an ambient oxygen level of 21 per cent, a design concentration of 22.6 per cent may reduce oxygen levels to approximately 16 per cent, the minimum level considered to be required to prevent impaired judgement or other physiological effects. Thus, the oxygen level resulting from discharge of this agent must be at least 16 per cent.

C_3F_8 has no ozone depletion potential, and is nonflammable, essentially non-toxic, and is not a VOC. However, this agent has an atmospheric lifetime of 3,200 years and a 100-year GWP of 6100. Due to the long atmospheric lifetime of C_3F_8, the Agency is finding this chemical acceptable only in those limited instances where no other alternative is technically feasible due to performance or safety requirements. In most total flooding applications, the Agency believes that alternatives to C_3F_8 exist. EPA intends that users select C_3F_8 out of need and that this agent be used as the agent of last resort. Thus, a user must determine that the requirements of the specific end-use preclude use of other available alternatives.

Users must observe the limitations on C_3F_8 acceptability by undertaking the following measures: (i) conduct an evaluation of foreseeable conditions of end use; (ii) determine that human exposure to the other alternative extinguishing agents may approach or result in cardiosensitization or other unacceptable toxicity effects under normal operating conditions; and (iii) determine that the physical or chemical properties or other technical constraints of the other available agents preclude their use.

EPA recommends that users minimize unnecessary emissions of this agent by limiting testing of C_3F_8 to that which is essential to meet safety or performance requirements; recovering C_3F_8 from the fire protection system in conjunction with testing or servicing; and destroying or recycling C_3F_8 for later use. EPA encourages manufacturers to develop aggressive product stewardship programs to help users avoid such unnecessary emissions.

(2) CF_3I. *CF_3I is proposed acceptable as a Halon 1301 substitute in normally unoccupied areas.* Any employee that could possibly be in the area must be able to escape within 30 seconds. The employer shall assure that no unprotected employees enter the area during agent discharge.

CF_3I (Halon 13001) is a fluoroiodocarbon with an atmospheric lifetime of only 1.15 days due to its rapid photolysis in the presence of light. The resulting GWP of this agent is less than one, and its ODP when released at ground level is likely to be extremely low, with current conservative estimates ranging from .008 to .01. Complete analysis of the ozone depleting potential of this agent will be available in the near future.

Anticipating EPA's concern about releases of CF_3I from aircraft, and the associated likelihood of a higher ODP value when released at altitude, the military has conducted an analysis of historical releases of Halon 1301 from both military and commercial aircraft. Initial assessment indicate that emissions from U.S. military aircraft appear to have averaged about 56 pounds annually, of which 2 pounds were emitted above 30,000 feet. Commercial aircraft worldwide released an estimated average of 933 pounds of Halon 1301 annually, of which 158 pounds was released above 30,000 feet. While EPA is awaiting the results of the ODP calculations of CF_3I, it is unlikely that such low emissions at high altitude will pose a significant threat to the ozone layer.

Interest in this agent is very high because it may constitute a drop-in replacement to Halon 1301 on a weight and volume basis. Initial tests have shown its weight equivalence for fire extinguishment to be 1.36, and its volume equivalence to be 1.0, while for explosion inertion it is 1.42 and 1.04 respectively. The research community is continuing to qualify the properties of this agent, including its materials compatibility, its storage stability and its effectiveness. While the manufacturer's SNAP submission only requests listing in normally unoccupied areas, preliminary cardiosensitization data received by the Agency indicate that CF_3I has a NOAEL of 0.2 per cent and a LOAEL of 0.4 per cent, and thus this agent would not suitably be for use in normally occupied areas.

(3) Gelled Halocarbon/Dry Chemical Suspension. *Gelled Halocarbon/Dry Chemicol Suspension is proposed acceptable as a Halon 1301 substitute in normally unoccupied areas.* Any employee who could possibly be in the area must be able to escape within 30 seconds. The employer shall assure that no unprotected employees enter the area during agent discharge.

The manufacturer is proposing to blend either of two halocarbons (HFC–125 or HFC–134a) with either ammonium polyphosphate (which is not corrosive) or monoammonium phosphate (which is corrosive on hard surfaces). An initial assessment of inhalation toxicology of fine particulates indicates that some risk exists of inhalation exposure when the particles are below a certain size compared to the mass per cubic meter in air. Particle sizes less than 10 to 15 microns and a mass above the ACGIH nuisance dust levels raise concerns which need to be further studied. In a total flooding application, the exposure levels may be of concern. In addition, because the discharge of powders obscures vision, evacuation could be impeded. EPA is asking manufacturers of total flooding systems using powdered aerosols to submit to the Agency a review of the medical implications of inhaling atmospheres flooded with fine powder particulates. While the manufacturer requested a SNAP listing for unoccupied areas only, EPA would not consider its use in occupied areas until the requested peer review is complete. Meanwhile, EPA is finding this technology acceptable for use in normally unoccupied areas.

For further discussion of this agent, including a review of particle size distributions, see the listing under "Streaming Agents—Acceptable."

(4) Inert Gas/Powdered Aerosol Blend. *Inert Gas/Powdered Aerosol Blend is acceptable as a Halon 1301 substitute in normally unoccupied areas.* In areas where personnel could possibly be present, as in a cargo area

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the employer shall provide a pre-discharge employee alarm capable of being perceived above ambient light or noise levels for alerting employees before system discharge. The pre-discharge alarm shall provide employees time to safely exit the discharge area prior to system discharge.

This alternative agent is formulated from a mixture of dry powders pressed together into pill form. Upon exposure to heat from a fire, a pyrotechnic charge initiates a series of exothermic, gas-producing reactions composed mainly of a mixture of nitrogen, carbon dioxide and water vapor, with small amounts of carbon monoxide, nitrous oxide, nitrogen dioxide, and solid residues. The oxygen level in the room is largely depleted, thus extinguishing the fire.

The manufacturer has proposed this technology for use in normally unoccupied areas only, such as engine nacelles and engine compartments, aircraft dry bay areas and unoccupied cargo areas. Comparing agents alone, deployment of 2.0 pounds of this agent at 400°F has an equivalent fire suppression effectiveness to 1.0 pound of Halon 1301 at 70°F.

This agent has no ODP. The carbon dioxide generated in the combustion of this agent has a GWP of 1.

2. Proposed Acceptable Subject to Narrowed Use Limits

a. Total Flooding Agents. (1) C_3F_8. *C_3F_8 is proposed acceptable as a Halon 1301 substitute where other alternatives are not technically feasible due to performance or safety requirements: a) due to their physical or chemical properties or b) where human exposure to the agents may approach cardiosensitization levels or result in other unacceptable health effects under normal operating conditions.* This agent is subject to the use conditions stipulated for all total flooding agents, that is:

- Where egress from an area cannot be accomplished within one minute, the employer shall not use this agent in concentrations exceeding its NOAEL.
- Where egress takes longer than 30 seconds but less than one minute, the employer shall not use the agent in a concentration greater than its LOAEL.
- Agent concentrations greater than the LOAEL are only permitted in areas not normally occupied by employees provided that any employee in the area can escape within 30 seconds. The employer shall assure that no unprotected employees enter the area during agent discharge.

Cup burner tests in heptane indicate that C_3F_8 can extinguish fires in a total flood application at concentrations of 7.30 per cent and therefore has a design concentration of 8.8 per cent. The cardiotoxic NOAEL of 30 per cent for this agent is well above its extinguishment concentration; therefore, it is safe for use in occupied areas. This agent has a weight equivalence of two-to-one by weight compared to Halon 1301.

Using agents in high concentrations poses a risk of asphyxiation by displacing oxygen. With an ambient oxygen level of 21 per cent, a design concentration of 22.6 per cent may reduce oxygen levels to approximately 16 per cent, the minimum level considered to be required to prevent impaired judgement or other physiological effects. Thus, the oxygen level resulting from discharge of this agent must be at least 16 per cent.

This agent has an atmospheric lifetime of 3,200 years and a 100-year GWP of 6,100. Due to the long atmospheric lifetime of C_3F_8, the Agency is finding this chemical acceptable only in those limited instances where no other alternative is technically feasible due to performance or safety requirements. In most total flooding applications, the Agency believes that alternatives to C_3F_8 exist. EPA intends that users select C_3F_8 out of need and that this agent be used as the agent of last resort. Thus, a user must determine that the requirements of the specific end-use preclude use of other available alternatives.

Users must observe the limitations on C_3F_8 acceptability by undertaking the following measures: (i) conduct an evaluation of foreseeable conditions of end use; (ii) determine that human exposure to the other alternative extinguishing agents may approach or result in cardiosensitization or other unacceptable toxicity effects under normal operating conditions; and (iii) determine that the physical or chemical properties or other technical constraints of the other available agents preclude their use.

EPA recommends that users minimize unnecessary emissions of this agent by limiting testing of C_3F_8 to that which is essential to meet safety or performance requirements; recovering C_3F_8 from the fire protection system in conjunction with testing or servicing; and destroying or recycling C_3F_8 for later use. EPA encourages manufacturers to develop aggressive product stewardship programs to help users avoid such unnecessary emissions.

(2) Sulfur Hexafluoride (SF_6). *SF_6 is acceptable for use as a discharge test agent in military uses only.* Sulfur Hexafluoride is a nonflammable, nontoxic gas which is colorless and odorless. With a density of approximately five times that of air, it is one of the heaviest known gases. SF_6 is relatively inert, and has an atmospheric lifetime of 3,200 years, with a 100-year, 500-year, and 1,000-year GWP of 16,100, 26,110 and 32,803 respectively.

This agent has been developed by the U.S. Navy as a test gas simulant in place of halon in new halon total flooding systems on ships which have been under construction prior to identification and qualification of substitute agents. Halon systems are no longer included in designs for new ships. The Navy estimates its annual usage to be less than 10,000 pounds annually, decreasing over time. Thus, the Agency believes that the quantities involved are not significant.

While SF_6 is not currently used in the commercial sector and new halon systems are rarely installed, EPA is proposing a narrowed use limit to ensure that emissions of this agent remain minimal. The NFPA 12a and NFPA 2001 standards recommend that halon or other total flooding gases not be used in discharge testing, but that alternative methods of ensuring enclosure and piping integrity and system functioning be used. Alternative methods can often be used, such as the "door fan" test for enclosure integrity, UL 1058 testing to ensure system functioning, pneumatic test of installed piping, and a "puff" test to ensure against internal blockages in the piping network. These stringent design and testing requirements have largely obviated the need to perform a discharge test for total flood systems containing either Halon 1301 or a substitute agent.

3. Proposed Unacceptable

a. Total Flooding. (1) HFC–32. *HFC–32 is proposed unacceptable as a total flooding agent.* HFC–32 has been determined to be flammable, with a large flammability range, and is therefore inappropriate as a halon substitute when used as a pure agent. This agent was proposed acceptable in the first SNAP proposed rulemaking (58 FR 28093, May 12, 1993) but public comment received indicated agreement about the flammability characteristics of this agent. EPA is not aware of any interest in commercializing this agent as a fire suppression agent.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that federal agencies examine the effects of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a final rule-making, it must prepare a regulatory flexibility analysis (RFA). Such an analysis is not required if the head of the Agency certifies that a rule will not have a significant economic effect on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

The agency believes that this final rule will not have a significant effect on a substantial number of small entities and has therefore concluded that a formal RFA is unnecessary. Because costs of the SNAP requirements as a whole are expected to be minor, the rule is unlikely to adversely affect businesses, particularly as the rule exempts small sectors and end-uses from reporting requirements and formal Agency review. In fact, to the extent that information gathering is more expensive and time-consuming for small companies, this rule may well provide benefits for small businesses anxious to examine potential substitutes to any ozone-depleting class I and class II substances they may be using, by requiring manufacturers to make information on such substitues available.

C. Paperwork Reduction Act

The EPA has determined that this proposed rule contains no information requirements subject to the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*

V. Additional Information

Contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday-Friday, between the hours of 10 a.m. and 4 p.m. (EST).

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). **Federal Register** notices can be ordered from the Government Printing Office Order Desk (202) 783–3238; the citation is the date of publication. Notices and rulemaking under the SNAP program can also be retrieved electronically from EPA's Technology Transfer Network (TTN), Clean Air Act Amendment Bulletin Board. The access number for users with a 1200 or 2400 bps modem is (919) 541–5742. For users with a 9600 bps modem the access number is (919) 541–1447. For assistance in accessing this service, call (919) 541–5384 during normal business hours (EST).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirments.

Dated: September 16, 1994

Carol M. Browner,

Administrator.

Appendix A to the Preamble: Summary of Proposed Decisions

REFRIGERANTS—PROPOSED ACCEPTABLE SUBJECT TO USE CONDITIONS

End-Use	Substitute	Decision	Comments
CFC–12 Automobile Motor Vehicle Air Conditioning (Retrofit and New Equipment/NIKS).	HFC–134a, R–401C, HCFC Blend Beta.	Proposed acceptable when (1) used with unique fittings and detailed labels and (2) all CFC–12 has been removed from the system prior to retrofitting. Refer to the text for a full description..	EPA is concerned that the existence of several substitutes in this end-use may increase the likelihood of significant refrigerant cross-contamination and potential failure of both air conditioning systems and recovery/recycling equipment. In addition, a smooth transition to the use of substitutes strongly depends on the continued purity of the recycled CFC–12 supply. For the purposes of this rule, no distinction is made between "retrofit" and "drop-in" refrigerants; retrofitting a car to use a new refrigerant includes all procedures that result in the air conditioning system using a new refrigerant.

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REFRIGERANTS—PROPOSED ACCEPTABLE SUBJECT TO NARROWED USE LIMITS

End-Use	Substitute	Decision	Comments
CFC–11, CFC–12, CFC–113, CFC–114, CFC–115 Non-Mechanical Heat Transfer (Retrofit and New).	C_3F_8, C_4F_{10}, C_5F_{12}, $C_5F_{11}NO$, C_6F_{14}, $C_6F_{13}NO$, C_7F_{16}, $C_7F_{15}NO$, C_8F_{18}, $C_8F_{16}O$, AND $C_9F_{21}N$.	Proposed acceptable only where no other alternatives are technically feasible due to safety or performance requirements.	Users must observe the limitations on PFC acceptability by determining that the physical or chemical properties or other technical constraints of the other available agents preclude their use. Documentation of such measures must be available for review upon request. The principal environmental characteristic of concern for PFCs is that they have high GWPs and long atmospheric lifetimes.

REFRIGERANTS—PROPOSED UNACCEPTABLE SUBSTITUTES

End-Use	Substitute	Decision	Comments
CFC–11, CFC–12, CFC–113, CFC–114, R–500 Centrifugal Chillers (Retrofit and New Equipment/NIKs).	R–405A	Proposed Unacceptable.	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend Beta.	Proposed Unacceptable.	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC–12 Reciprocating Chillers (Retrofit and New Equipment/NIKs).	R–405A	Proposed Unacceptable.	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend Beta.	Proposed Unacceptable.	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC–11, CFC–12, R–502 Industrial Process Refrigeration (Retrofit and New Equipment/NIKs).	R–403B	Proposed Unacceptable.	R–403B contains R–218, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	R–405A	Proposed Unacceptable.	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
CFC–12, R–502 Ice Skating Rinks (Retrofit and New Equipment/NIKs).	R–405A	Proposed Unacceptable.	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend Beta.	Proposed Unacceptable.	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC–12, R–502 Cold Storage Warehouses (Retroit and New Equipment/NIKs).	R–403B	Proposed Unacceptable.	R–403B contains R–218, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	R–405A	Proposed Unacceptable.	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend Beta.	Proposed Unacceptable.	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC–12, R–500, R–502 Refrigerated Transport (Retrofit and New Equipment/NIKs).	R–403B	Proposed Unacceptable.	R–403B contains R–218, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	R–405A	Proposed Unacceptable.	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend Beta.	Proposed Unacceptable.	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC–12, R–502 Retail Food Refrigeration (Retrofit and New Equipment/NIKs).	R–403B	Proposed Unacceptable.	R–403B contains R–218, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	R–405A	Proposed Unacceptable.	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend Beta	Proposed Unacceptable.	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.

REFRIGERANTS—PROPOSED UNACCEPTABLE SUBSTITUTES—Continued

End-Use	Substitute	Decision	Comments
CFC–12, R–502 Commercial Ice Machines (Retrofit and New Equipment/NIKs).	R–403B	Proposed Unacceptable.	R–403B contains R–218, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	R–405A	Proposed Unacceptable.	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend Beta.	Proposed Unacceptable.	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC–12 Vending Machines (Retrofit and New Equipment/NIKs).	R–405A	Proposed Unacceptable.	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend Beta.	Proposed Unacceptable.	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC–12 Water Coolers (Retrofit and New Equipment/NIKs).	R–405A	Proposed Unacceptable.	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend Beta.	Proposed Unacceptable.	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC–12 Household Refrigerators (Retrofit and New Equipment/NIKs).	R–405A	Proposed Unacceptable.	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend Beta.	Proposed Unacceptable.	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC–12, R–502 Household Freezers (Retrofit and New Equipment/NIKs).	R–403B	Proposed Unacceptable.	R–403B contains R–218, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	R–405A	Proposed Unacceptable.	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend Beta.	Proposed Unacceptable.	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC–12, R–500 Residential Dehumidifiers (Retrofit and New Equipment/NIKs).	R–405A	Proposed Unacceptable.	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend Beta.	Proposed Unacceptable.	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC–12 Motor Vehicle Air Conditioners (Retrofit and New Equipment/NIKs).	R–405A	Proposed Unacceptable.	R–405A contains R–c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend Beta.	Proposed Unacceptable.	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
	Flammable Substitutes.	Proposed Unacceptable.	The risks associated with using flammable substitutes in this end-use have not been addressed by a risk assessment.

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SOLVENT CLEANING SECTOR—PROPOSED ACCEPTABLE SUBJECT TO USE CONDITIONS SUBSTITUTES

Application	Substitute	Decision	Conditions	Comments
Electronics Cleaning w/CFC–113, MCF.	HCFC–225 ca/cb ..	Acceptable	Subject to the company set exposure limit of 25 ppm of the –ca isomer.	HCFC–225 ca/cb blend is offered as a 45%–ca/55%–cb blend. The company set exposure limit of the –ca isomer is 25 ppm. The company set exposure limit of the –cb isomer is 250 ppm. It is the Agency's opinion that with the low emission cold cleaning and vapor degreasing equipment designed for this use, the 25 ppm limit of the HCFC–225 ca isomer can be met. The company is submitting further exposure monitoring data.
Precision Cleaning w/CFC–113, MCF.	HCFC–225 ca/cb ..	Acceptable	Subject to the company set exposure limit of 25 ppm of the –ca isomer.	HCFC–225 ca/cb blend is offered as a 45%–ca/55%–cb blend. The company set exposure limit of the –ca isomer is 25 ppm. The company set exposure limit of the –cb isomer is 250 ppm. It is the Agency's opinion that with the low emission cold cleaning and vapor degreasing equipment designed for this use, the 25 ppm limit of the HCFC–225 ca isomer can be met. The company is submitting further exposure monitoring data.

SOLVENT CLEANING SECTOR—PROPOSED UNACCEPTABLE SUBSTITUTES

End use	Substitute	Decision	Comments
Metals cleaning w/ CFC–113.	Dibromomethane ...	Unacceptable	High ODP; other alternatives exist.
Metals cleaning w/ MCF.	Dibromomethane ...	Unacceptable	High ODP; other alternatives exist.
Electronics cleaning w/CFC–113.	Dibromomethane ...	Unacceptable	High ODP; other alternatives exist.
Electronics cleaning w/MCF.	Dibromomethane ...	Unacceptable	High ODP; other alternatives exist.
Precision cleaning w/CFC–113.	Dibromomethane ...	Unacceptable	High ODP; other alternatives exist.
Precision cleaning w/MCF.	Dibromomethane ...	Unacceptable	High ODP; other alternatives exist.

FIRE SUPPRESSION AND EXPLOSION PROTECTION—PROPOSED ACCEPTABLE SUBJECT TO USE CONDITIONS: TOTAL FLOODING AGENTS

Application	Substitute	Decision	Conditions	Comments
Halon 1301 ..... Total flooding agents	C_3F_8	Proposed acceptable where other alternatives are not technically feasible due to performance or safety requirements: a. due to their physical or chemical properties, or b. where human exposure to the extinguishing agents may approach cardiosensitization levels or result in other unacceptable health effects under normal operating conditions ..	Until OSHA establishes applicable workplace requirements, EPA proposes: For occupied areas from which personnel cannot be evacuated in one minute, use is permitted only up to concentrations not exceeding the cardiotoxicity NOAEL of 30. Although no LOAEL has been established for this product, standard OSHA requirements apply, i.e. for occupied areas from which personnel can be evacuated or egress can occur between 30 and 60 seconds, use is permitted up to a concentration not exceeding the LOAEL. All personnel must be evacuated before concentration of C_3F_8 exceeds 30%. Design concentration must result in oxygen levels of at least 16%.	The comparative design concentration based on cup burner values is approximately 8.8%. Users must observe the limitations on PFC acceptability by making reasonable efforts to undertake the following measures: (i) conduct an evaluation of foreseeable conditions of end use; (ii) determine that human exposure to the other alternative extinguishing agents may approach or result in cardiosensitization or other unacceptable toxicity effects under normal operating conditions; and (iii) determine that the physical or chemical properties or other technical constraints of the other available agents preclude their use; Documentation of such measures must be available for review upon request. The principal environmental characteristic of concern for PFCs is that they have high GWPs and long atmospheric lifetimes. Actual contributions to global warming depend upon the quantities of PFCs emitted. For additional guidance regarding applications in which PFCs may be appropriate, users should consult the description of potential uses which is included in the March 18, 1994 Rulemaking (59 FR 13043). See additional comments 1, 2, 3, 4.
	CF_3I	Proposed acceptable in normally unoccupied areas.	EPA proposes that any employee who could possibly be in the area must be able to escape within 30 seconds. The employer shall assure that no unprotected employees enter the area during agent discharge.	Manufacturer has not applied for listing for use in normally occupied areas. Preliminary cardiosensitization data indicates that this agent would not be suitable for use in normally occupied areas. EPA is awaiting results of ODP calculations. See additional comments 1, 2, 3, 4.

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FIRE SUPPRESSION AND EXPLOSION PROTECTION—PROPOSED ACCEPTABLE SUBJECT TO USE CONDITIONS: TOTAL FLOODING AGENTS—Continued

Application	Substitute	Decision	Conditions	Comments
	Gelled halocarbon/dry chemical suspension.	Proposed acceptable in normally unoccupied areas.	EPA proposes that any employee who could possibly be in the area must be able to escape within 30 seconds. The employer shall assure that no unprotected employees enter the area during agent discharge.	The manufacturer's SNAP application requested listing for use in unoccupied areas only. See additional comment 2
	Inert gas/powdered aerosol blend.	Proposed acceptable as a Halon 1301 substitute in normally unoccupied areas.	In areas where personnel could possibly be present, as in a cargo area, EPA proposes that the employer shall provide a pre-discharge employee alarm capable of being perceived above ambient light or noise levels for alerting employees before system discharge. The pre-discharge alarm shall provide employees time to safely exit the discharge area prior to system discharge.	The manufacturer's SNAP application requested listing for use in unoccupied areas only. See additional comment 2.

Additional Comments
1—Must conform with OSHA 29 CFR 1910 Subpart L Section 1910.160 of the U.S. Code.
2—Per OSHA requirements, protective gear (SCBA) must be available in the event personnel must enter/reenter the area.
3—Discharge testing should be strictly limited only to that which is essential to meet safety or performance requirements.
4—The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.

FIRE SUPPRESSION AND EXPLOSION PROTECTION—PROPOSED ACCEPTABLE SUBJECT TO NARROWED USE LIMITS: TOTAL FLOODING AGENTS

Application	Substitute	Decision	Conditions	Comments
Halon 1301 ..... Total flooding agents	C_3F_8	Proposed acceptable where other alternatives are not technically feasible due to performance or safety requirements: a. due to their physical or chemical properties, or b. where human exposure to the extinguishing agents may approach cardiosensitization levels or result in other unacceptable health effects under normal operating conditions.	Until OSHA establishes applicable workplace requirements: For occupied areas from which personnel cannot be evacuated in one minute, use is permitted only up to concentrations not exceeding the cardiotoxicity NOAEL of 30%. Although no LOAEL has been established for this product, standard OSHA requirements apply, i.e. for occupied areas from which personnel can be evacuated or egress can occur between 30 and 60 seconds, use is permitted up to a concentration not exceeding the LOAEL. All personnel must be evacuated before concentration of C_3F_8 exceeds 30%. Design concentration must result in oxygen levels of at least 16%.	The comparative design concentration based on cup burner values is approximately 8.8%. Users must observe the limitations on PFC acceptability by making reasonable efforts to undertake the following measures: (i) conduct an evaluation of foreseeable conditions of end use; (ii) determine that human exposure to the other alternative extinguishing agents may approach or result in cardiosensitization or other unacceptable toxicity effects under normal operating conditions; and (iii) determine that the physical or chemical properties or other technical constraints of the other available agents preclude their use; Documentation of such measures must be available for review upon request. The principal environmental characteristic of concern for PFCs is that they have high GWPs and long atmospheric lifetimes. Actual contributions to global warming depend upon the quantities of PFCs emitted. For additional guidance regarding applications in which PFCs may be appropriate, users should consult the description of potential uses which is included in the March 18, 1994 Final Rulemaking (58 FR 13043).
	Sulfurhexafluoride (SF_6).	Proposed acceptable as a discharge test agent in military uses only.	.....	This agent has an atmospheric lifetime greater than 1,000 years, with an estimated 100-year, 500-year, and 1,000-year GWP of 16,100, 26,110, and 32,803 respectively. Users should limit testing only to that which is essential to meet safety or performance requirements. This agent is only used to test new Halon 1301 systems.

FIRE SUPPRESSION AND EXPLOSION PROTECTION—PROPOSED UNACCEPTABLE SUBSTITUTES

Application	Substitute	Decision	Comments
Halon 1301 ... .. Total flooding agents.	HFC–32	Proposed unacceptable	Data indicate that HFC–32 is flammable and therefore is not suitable as a halon substitute.

[FR Doc. 94–23678 Filed 9–23–94, 8:45 am]
BILLING CODE 6560–50–P

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Federal Register

Monday
September 26, 1994

Part III

Department of Housing and Urban Development

Office of the Secretary

Office of the Assistant Secretary for Public and Indian Housing

Delegation and Redelegation of Authority for Issuing Loan Guarantees; Notices

VOL
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ISS
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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D–94–1071; FR–3781–D–01]

Delegation of Authority for Issuing Loan Guarantees

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: Within this notice, the Secretary is delegating his authority under the Section 184 Loan Guarantees for Indian Housing program, 12 U.S.C. 1715z–13a, to the Assistant Secretary for Public and Indian Housing. In this program, the Department guarantees certain housing loans made to Indian families and Indian housing authorities.

EFFECTIVE DATE: September 19, 1994.

FOR FURTHER INFORMATION CONTACT: Dominic A. Nessi, Director, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Room B–133, 451 7th Street, SW, Washington, DC 20410, telephone (202) 755–0032 or (202) 708–0850 (voice/TDD). (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION: Section 184 of the Housing and Community Development Act of 1992 (Public Law 102–550, approved October 28, 1992), codified at 12 U.S.C. 1715z–13a, authorizes the establishment of the Indian Housing Loan Guarantee Fund (the Fund) to provide access to sources of private financing to Indian families and Indian housing authorities who otherwise could not acquire housing financing because of the unique legal status of Indian trust land. In general, these lands, held in trust by the United States for the benefit of an Indian or Indian tribe, are inalienable. Trust lands under this program also include lands to which the title is held by an Indian tribe subject to a restriction against alienation imposed by the United States. Because the title to individual plots does not convey, and liens do not attach, conventional mortgage lending practices do not operate in this forum.

The Fund addresses these obstacles to mortgage financing by guaranteeing loans made to Indian families or Indian housing authorities to construct, acquire, or rehabilitate 1- to 4-family dwellings that are standard housing and are located on trust land or land located in an Indian or Alaska Native area. The guarantee of the loan will cover 100 percent of the unpaid principal and interest. Borrowers will be required to pay a 1% guarantee fee at closing. A loan term of up to 30 years is permitted by statute, but is not required.

The statute authorizes the Secretary of the Department of Housing and Urban Development to approve loans for guarantee, issue certificates as evidence of the guarantees, and carry out other responsibilities associated with the program. To facilitate the administration of this program, the Secretary is delegating all of his power and authority under section 184 to the Assistant Secretary for Public and Indian Housing.

Therefore, the Secretary delegates as follows:

Section A. Authority Delegated

The Secretary of Housing and Urban Development delegates to the Assistant Secretary for Public and Indian Housing all power and authority of the Secretary with respect to the Loan Guarantees for Indian Housing program, 12 U.S.C. 1715z–13a (Section 184 of the Housing and Community Development Act of 1992).

Authority: Section 7(d) Department of Housing and Urban Development Act, 42 U.S.C. Section 3535(d).

Dated: September 19, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–23710 Filed 9–23–94, 8:45 am]

BILLING CODE 4210–32–P

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. D–94–1072; FR–3781–D–02]

Redelegation of Authority for Issuing Loan Guarantees

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: Within this notice, the Assistant Secretary for Public and Indian Housing is redelegating authority under the Section 184 Loan Guarantees for Indian Housing program, 12 U.S.C. 1715z–13a, to the Director of the Office of Native American Programs, the Deputy Director for Headquarter Operations, the Deputy Director for Field Operations, and the Administrators of Field Offices of Native American Programs. In this program, the Department guarantees certain housing loans made to Indian families and Indian housing authorities.

EFFECTIVE DATE: September 19, 1994.

FOR FURTHER INFORMATION CONTACT: Dominic A. Nessi, Director, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Room B–133, 451 7th Street SW., Washington, DC 20410, (202) 755–0032 or (202) 708–0850 (voice/TDD). (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION: Section 184 of the Housing and Community Development Act of 1992 (Public Law 102–550, approved October 28, 1992), codified at 12 U.S.C. 1715z–13a, authorizes the establishment of the Indian Housing Loan Guarantee Fund (the Fund) to provide access to sources of private financing to Indian families and Indian housing authorities who otherwise could not acquire housing financing because of the unique legal status of Indian trust land. In general, these lands, held in trust by the United States for the benefit of an Indian or Indian tribe, are inalienable. Trust lands under this program also include lands to which the title is held by an Indian tribe subject to a restriction against alienation imposed by the United States. Because title to individual plots does not convey, and liens do not attach, conventional mortgage lending practices do not operate in this forum.

The Fund addresses these obstacles to mortgage financing by guaranteeing loans made to Indian families or Indian housing authorities to construct, acquire, or rehabilitate 1- to 4-family dwellings that are standard housing and are located on trust land or land located in an Indian or Alaska Native area. The guarantee of the loan will cover 100 percent of the unpaid principal and interest. Borrowers will be required to pay a 1% guarantee fee at closing. A loan term of up to 30 years is permitted by statute, but is not required.

In a delegation of authority appearing elsewhere in the **Federal Register** today, the Secretary of Housing and Urban Development has delegated all of his authority under the Section 184 Loan Guarantees for Indian Housing program, to the Assistant Secretary for Public and Indian Housing. Within this notice, the Assistant Secretary for Public and Indian Housing retains and redelegates this authority, except for certain power and authority specifically excepted from the redelegation, to the Director of the Office of Native American Programs, the Deputy Director for Headquarter Operations, the Deputy Director for Field Operations, which positions are at headquarters, and to the Administrators of Field Offices of Native American Programs, in the field.

Therefore, the Assistant Secretary for Public and Indian Housing redelegates as follows:

Section A. Authority Redelegated

1. The Assistant Secretary for Public and Indian Housing redelegates, to the Director of the Office of Native American Programs, the Deputy Director for Headquarters Operations, and the Deputy Director for Field Operations, all power and authority of the Assistant Secretary for Public and Indian Housing with respect to the Loan Guarantees for Indian Housing program, 12 U.S.C. 1715z–13a (section 184 of the Community and Development Act of 1992), except for the power and authority to issue waivers of regulations.

2. The Assistant Secretary for Public and Indian Housing redelegates, to the Administrators of Field Offices of Native American Programs, all power and authority of the Assistant Secretary for Public and Indian Housing with respect to the Loan Guarantees for Indian Housing program, 12 U.S.C. 1715z–13a (Section 184 of the Community and Development Act of 1992), except for the power and authority to issue rules, regulations, and waivers of regulations.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. Section 3535(d).

Dated: September 19, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–23709 Filed 9–23–94, 8:45 am]

BILLING CODE 4210–33–P

VOL
59
ISS
185
SE
26
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UMI

Federal Register

Monday
September 26, 1994

Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Part 106, et al.
Hazardous Materials Regulations; Editorial Corrections and Clarifications; Final Rule

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 106, 107, 110, 130, 171, 172, 173, 174, 175, 176, 177, 178, 179, and 180

[Docket No. HM–189K, Amdt. Nos. 106–10, 107–32, 110–3, 130–2, 171–2, 172–127, 173–138, 174–78, 175–51, 176–35, 177–83, 178–104, 179–49, and 180–6]

RIN 2137–AC44

Hazardous Materials Regulations; Editorial Corrections and Clarifications

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule, RSPA is correcting editorial errors, making minor regulatory changes and, in response to requests for clarification, improving the clarity of certain provisions to the Hazardous Materials Regulations (HMR). In addition, RSPA is revising legal citations in the HMR based on the codification of the hazardous materials transportation laws. The intended effect of this rule is to enhance accuracy and reduce misunderstandings of the HMR. The amendments contained in this rule are minor editorial changes and do not impose new requirements.

EFFECTIVE DATE: September 26, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Antonielli, Office of Hazardous Materials Standards, (202) 366–4488, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

RSPA annually reviews the Hazardous Materials Regulations (HMR) to detect errors which may be causing confusion to readers. Inaccuracies corrected in this final rule include typographical errors, incorrect references to other rules and regulations in the CFR, inconsistent use of terminology, and misstatements of certain regulatory requirements. In response to inquiries RSPA received concerning the clarity of particular requirements specified in the HMR, certain other changes are made to reduce uncertainties. In addition, RSPA is revising all legal citations contained in the HMR to reflect the codification of transportation laws relating to hazardous materials under 49 U.S.C. 5101–5127.

Since these amendments do not impose new requirements, notice and public procedure are unnecessary. For the same reason, there is good cause to make these amendments effective without the customary 30-day delay following publication. This will allow the changes to appear in the next revision of 49 CFR.

The following is a section-by-section summary of the amendments made under this final rule. It does not discuss editorial corrections (e.g., typographical, capitalization, and punctuation errors) or changes to the legal citations.

Part 106

Section 106.3. Paragraph (b) is revised to reflect the correct title of the Associate Administrator for Pipeline Safety, and a new paragraph (c) is added which delegates authority to the Associate Administrator for Research, Technology and Analysis.

Appendix A to Part 106. Appendix A to part 106 is removed because it duplicates the provisions in § 106.3.

Part 107

Section 107.329. In paragraphs (a) and (b), references to "subchapter B of this chapter" are revised to read "this subchapter".

Section 107.403. In paragraph (c), references to "Director" are revised to reflect the correct title of the Associate Administrator for Hazardous Materials Safety.

Section 107.503. Paragraph (c) is revised to reflect the correct reference to the ASME Certificate of Authorization.

Part 171

Section 171.2. The term "rail freight car" is replaced with "rail car".

Section 171.7. The entry for Compressed Gas Association is revised to reflect the correct address.

Section 171.8. In the definition of "NPT", the wording "in compliance with the" is revised to read "conforming to" for consistency.

Section 171.11. In paragraph (d)(6)(i), the wording "§ 171.203(d)(1)(iii)" is revised to reflect the correct section reference.

Section 171.12. In paragraph (d)(1), the wording "§ 171.203(d)(1)(iii)" is revised to reflect the correct section reference.

Part 172

Section 172.101. All references to "the appendix" in paragraph (c)(8) are revised to read "Appendix A". In paragraph (g), the reference to "subpart D" is revised to read "subpart E". In addition, paragraph (d)(4) is amended to refer to "§ 173.150 (e) or (f)" since both provisions set forth criteria for reclassing a material as a combustible liquid.

The Hazardous Materials Table (the Table). In the Table, the entry *"Ethylene oxide and carbon dioxide mixtures,* see Carbon dioxide and ethylene oxide mixtures, etc." is removed because "Carbon dioxide and ethylene oxide mixtures" is not listed as a proper shipping name.

Section 172.102. Special Provision 14 is amended to clarify the definition of motor fuel antiknock mixtures. Special Provision 42 is removed because the same provision appears in § 173.218. In Special Provision B33, the phrase "is subject to the following requirements." is revised to read "must conform to Table 1 as follows." In paragraph (c)(7)(ii), the statement "These provisions apply only to transportation in IM portable tanks:" is removed because it duplicates the introductory text of paragraph (c)(7). Special Provision T31 is amended by correcting the abbreviation "kpa" to "kPa". Additionally, in Special Provision T31, the temperature "65 °C" is revised to read "65.6 °C".

Section 172.203. Paragraph (h)(2)(i) is amended by replacing the word "to" with the word "of" preceding the words "this subchapter".

Section 172.505. In paragraph (a), immediately following the words "portable tank," the word "and" is removed and replaced with the word "or" for consistency.

Section 172.604. In paragraph (a)(3)(i), reference to "this part 172" is revised to read "this part".

Part 173

Section 173.12. Paragraph (d)(3) is removed because labpacks are only authorized for transportation by highway. Therefore, these requirements do not apply to marine pollutants because they are not regulated when packaged in non-bulk packagings and transported by highway.

Section 173.32. The wording in paragraph (g) "bad dents" is revised to read "significant dents" for consistency with paragraph (e)(2)(ii). An amendment is made in paragraph (q) to correct the wording "greater to or equal to" to read "greater than or equal to."

Section 173.33. In paragraph (c)(1)(iii), the word "shipped" is revised to read "loaded".

Section 173.34. Paragraph (e)(18)(i) is amended to correctly reference paragraph (e)(3) instead of (a)(3).

Section 173.116. In paragraph (a) table, "LC50" is corrected to read "LC_{50}" each place it appears.

Section 173.133 In paragraph (b)(1)(iv) table, references to "Hazard Zone C" and "Hazard Zone D" are removed because these zones only apply to gases (Division 2.3) and, in the entry "III (Hazard Zone D)" in column 2, the wording "Packing Groups I and II, Hazard Zones A, B and C" is revised to read "Packing Group I, Hazard Zones A and B, and Packing Group II".

Section 173.226. In paragraph (b)(4)(ii)(A), the word "and" is removed at the end of the sentence.

Section 173.230. In paragraph (d), the reference to Division "6.2" is revised to read Division "6.1".

Section 173.243. In paragraph (b)(2), the wording "cargo tanks" is added following "DOT 412".

Section 173.315. In Note 15, the section reference for "(QT) and (NQT)" marking requirements is corrected.

Section 173.318. The word "of" is revised to read "or" in paragraph (b)(1)(ii)(A). In paragraphs (b)(2)(i) (A) and (B), the words "his" and "this" are removed and replaced with the word "a". In paragraph (b)(6)(ii), the word "tanks" is revised to read "a tank". Parentheses are removed from "(MRHT)" in paragraph (g)(2)(i).

Appendix F to Part 173. A grammatical error is corrected in paragraph 2.(e).

Part 174

Section 174.63. In paragraph (b), the wording "Federal Railroad Administrator" is revised to reflect the "Associate Administrator for Safety, FRA".

Part 175

Section 175.320. In paragraph (a) table, for the entry "High explosives", in column 3, the wording "Blasting agent n.o.s." is revised to reflect the current shipping descriptions listed in the § 172.101 Table.

Section 175.700. The second sentence is removed because it is a duplicate of the first sentence.

Part 176

Section 176.415. In paragraph (b)(2), the wording "or unloading" is removed the second time it appears.

Section 176.600. In paragraph (d), the phrase "cool a reasonably" is corrected.

Part 177

Sections 177.839, 177.840 and 177.841. In paragraph (d) of these sections, the "s" is removed from the wording "cargo tanks".

Section 177.848. In paragraph (e)(6), the word "for" is added following the word "required" and preceding the word "any".

Section 177.860 In paragraph (a), the wording "materials which is" is corrected.

Part 178

Section 178.245–5. The wording "shall comply with" is revised to read "shall conform to"

Section 178.251–1. In paragraph (c), the wording "be in compliance with" is revised to read "conform".

Section 178.255–5. In paragraph (b), the wording "Every such valve" is revised to read "Each valve".

Section 178.255–12. In paragraph (a), the wording "pounds per square inch gauge" is abbreviated to "psig".

Section 178.270–11. In paragraph (b)(1), the word "transverse" is revised to read "transversal" to modify "center of the tank". In paragraph (d)(2), the phrase "or less than or" is revised to read "to less than or".

Sections 178.271–1 and 178.272–1. In paragraph (a), the wording "comply with" is revised to read "conform to".

Section 178.337–1. In paragraph (b), the word "chapter" is revised to read "subchapter". Also, in paragraph (d), the wording "unless it be" is corrected.

Section 178.337–2. In paragraph (a)(1), the wording "comply with" is revised to read "conform to". In paragraph (c), the wording "post weld" is revised to read "postweld".

Section 178.337–18. In paragraph (a)(3), the wording "comply with" is revised to read "conform to".

Section 178.348–10. In paragraph (d)(3), in the last sentence, all text after the word "acceptable" is removed.

Section 178.350–3. In paragraph (b), the section reference "§ 173.24" is revised to read "§ 172.310".

Part 180

Section 180.405. In paragraph (f)(6), the word "must" is removed and replaced with the word "shall".

Section 180.407. In paragraph (d)(4), the word "tank" is added following the word "cargo".

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. This rule is not significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This final rule does not require a Regulatory Impact Analysis, or a regulatory evaluation, or an environmental assessment or impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism") and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor editorial changes which will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

There are no new information collection requirements in this final rule.

List of Subjects

49 CFR Part 106

Administrative practice and procedure, Hazardous materials transportation, Oil, Pipeline safety.

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 110

Disaster assistance, Education, Emergency preparedness, Grant programs—Environmental protection, Grant programs—Indians, Hazardous materials transportation, Hazardous substances, Indians, Reporting and recordkeeping requirements.

49 CFR Part 130

Oil, Response plans, Reporting and recordkeeping requirements, Transportation.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

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49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 106—RULEMAKING PROCEDURES

1. The parenthetical authorities at the end of any sections in part 106 are removed and the authority citation is revised to read as follows:

Authority: 33 U.S.C. 1321; 49 U.S.C. 5101–5127, 40113, 60101–60125; 49 CFR 1.53.

2. In § 106.3, paragraph (b) is revised and a new paragraph (c) is added to read as follows:

§ 106.3 Delegations.

* * * * *

(b) Associate Administrator for Pipeline Safety.

(c) Associate Administrator for Research, Technology and Analysis.

Appendix A [Removed]

3. Appendix A to part 106 is removed.

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

4. The parenthetical authorities at the end of any sections in part 107 are removed and the authority citation is revised to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701, 49 CFR 1.45, 1.53.

§ 107.3 [Amended]

5. In § 107.3, the following changes are made:

a. In the first sentence of introductory text, the wording "Section 103 of the Act" is revised to read "49 U.S.C. 5102".

b. The term "Act" and its definition are removed.

c. For the definition "*Person*", in paragraph (2), the wording "sections 110 and 111 of the Act (49 App. U.S.C. 1809–1810)" is revised to read "49 U.S.C. 5123 and 5124".

d. For the definition "*State*", the wording "section 121 (49 App. U.S.C. 1819)" is revised to read "49 U.S.C. 5119".

6. In addition, in § 107.3, a new definition for "*Federal hazardous material transportation law*" is added in alphabetical order to read as follows:

§ 107.3 Definitions.

* * * * *

Federal hazardous material transportation law means 49 U.S.C. 5101 *et seq.*

* * * * *

§ 107.101 [Amended]

7. In § 107.101, the wording "Hazardous Materials Transportation Act" is removed and replaced with "Federal hazardous material transportation law".

§ 107.103 [Amended]

8. In 107.103, the following changes are made:

a. In paragraph (a), the wording "46 CR" is revised to read "46 CFR".

b. In paragraph (b)(10), a semicolon is added immediately following the word "reasons".

§ 107.111 [Amended]

9. In § 107.111, in paragraph (b)(3), a semicolon is added immediately following the word "applicant" and preceding the word "and".

§ 107.201 [Amended]

10. In § 107.201, the following changes are made:

a. In paragraph (a)(1), the wording "section 105(a)(4) or section 112(a)(1) or (a)(2) of the Act (49 App. U.S.C. 1804 and 1811)" is revised to read "49 U.S.C. 5125".

b. In paragraph (a)(2), the wording "section 105(a)(4) or section 112(a)(1) or (a)(2) of the Act" is revised to read "49 U.S.C. 5125".

c. In paragraph (c), the wording "the Act" is revised to read "Federal hazardous material transportation law"

11. In § 107.202, paragraphs (a), (b), and (c) are revised to read as follows:

§ 107.202 Standards for determining preemption.

(a) Except as provided in 49 U.S.C. 5125(c) and unless otherwise authorized by Federal law, any law, regulation, order, ruling, provision, or other requirement of a State, political subdivision, or Indian tribe, which concerns the following subjects and which is not substantively the same as any provision of the Federal hazardous materials transportation law or any regulation issued thereunder, is preempted:

(1) The designation, description, and classification of hazardous material.

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(3) The preparation, execution, and use of shipping documents pertaining to hazardous material and requirements related to the number, content, and placement of those documents.

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(5) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

(b) Except as provided in § 107.221 and unless otherwise authorized by Federal law, any requirement of a State or political subdivision or Indian tribe is preempted if—

(1) Complying with a requirement of the State, political subdivision, or Indian tribe and a requirement under the Federal hazardous material transportation law or regulations issued thereunder is not possible;

(2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out the Federal hazardous material transportation law or regulations issued thereunder; or

(3) It is preempted under 49 U.S.C. 5125 (b) or (c).

(c) A State, political subdivision, or Indian tribe may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and planning, developing and maintaining a capability for emergency response.

* * * * *

§ 107.203 [Amended]

12. In § 107.203, the following changes are made:

a. In paragraph (b)(3), the wording "Act or the regulations issued under the Act" is revised to read "Federal hazardous material transportation law or the regulations issued thereunder".

b. In paragraph (c), the wording "Act or any regulation issued under the Act" is revised to read "Federal hazardous material transportation law or the regulations issued thereunder".

13. In addition, in § 107.203, paragraph (a) is revised to read as follows:

§ 107.203 Application.

(a) With the exception of highway routing matters covered under 49 U.S.C. 5125(c), any person, including a State, political subdivision, or Indian tribe, directly affected by any requirement of a State, political subdivision, or Indian tribe, may apply to the Associate Administrator for Hazardous Materials Safety for a determination of whether that requirement is preempted by § 107.202 (a) or (b).

* * * * *

§ 107.209 [Amended]

14. In § 107.209, the following changes are made:

a. In paragraph (b), the wording "Act or the regulations issued under the Act" is revised to read "Federal hazardous material transportation law or the regulations issued thereunder".

b. In paragraph (e), the wording "Act" is revised to read "Federal hazardous material transportation law" each place it appears.

§ 107.215 [Amended]

15. In § 107.215, the following changes are made:

a. In the first sentence of paragraph (a) introductory text, the wording "section 105(b) of the Act (49 App. U.S.C. 1804(b))" is revised to read "49 U.S.C. 5125(c)".

b. Also in paragraph (a) introductory text, the wording "Act or the regulations issued under the Act" is revised to read "Federal hazardous material transportation law or the regulations issued thereunder".

c. In paragraph (a)(1), the wording "Act or regulations issued under the Act" is revised to read "Federal hazardous material transportation law or the regulations issued thereunder"

d. In paragraphs (b)(4), (b)(5), and (b)(6), the wording "Act or the regulations issued under the Act" is revised to read "Federal hazardous material transportation law or the regulations issued thereunder" each place it appears.

§ 107.219 [Amended]

16. In § 107.219, in paragraphs (c)(1) and (c)(2), the wording "Act or the regulations issued under the Act" is revised to read "Federal hazardous material transportation law or the regulations issued thereunder" each place it appears.

§ 107.221 [Amended]

17. In § 107.221, the following changes are made:

a. In paragraph (b) introductory text, in the first sentence, the wording "Act and the regulations issued under the Act" is revised to read "Federal hazardous material transportation law or the regulations issued thereunder".

b. In paragraph (e), the wording "under the Act" is revised to read "under the Federal hazardous material transportation law".

18. In § 107.299, the definitions are placed in alphabetical order and the definition of "*Investigation*" is revised to read as follows:

§ 107.299 Definitions.

* * * * *

Investigation includes investigations authorized under 49 U.S.C. 5121 and inspections authorized under 49 U.S.C. 5118 and 5121.

§ 107.305 [Amended]

19. In § 107.305, the following changes are made:

a. In paragraphs (a) and (b), the wording "section 109(a) of the Act" is revised to read "49 U.S.C. 5121(a)" each place it appears.

b. In paragraph (b), in the second sentence, the wording "Section 109(b) of the Act" is revised to read "49 U.S.C. 5121(c)".

§ 107.311 [Amended]

20. In § 107.311, in paragraphs (a) and (b)(1), the wording "Act, an order issued under the Act" is revised to read "Federal hazardous material transportation law, an order issued thereunder" each place it appears.

§ 107.329 [Amended]

21. In § 107.329, the following changes are made:

a. In paragraphs (a) and (b), each reference to "subchapter B of this chapter" is revised to read "this subchapter".

b. Also, in paragraphs (a) and (b), the wording "Act, an order issued under the Act" is revised to read "Federal hazardous material transportation law, an order issued thereunder" each place it appears.

§ 107.333 [Amended]

22. In § 107.333, the wording "Act or an order or regulation issued under the Act" is revised to read "Federal hazardous material transportation law or an order or regulation issued thereunder".

§ 107.337 [Amended]

23. In § 107.337, the following changes are made:

a. The wording "provision of the Act" is revised to read "provision of the Federal hazardous material transportation law".

b. At the end of the section, the wording "section 111(a) of the Act" is revised to read "49 U.S.C. 5122(a)".

§ 107.339 [Amended]

24. In § 107.339, the wording "section 111(b) of the Act" is revised to read "49 U.S.C. 5122(b)".

Subparts C, D, and E of Part 107—[Amended]

25. The authority citations for subparts C, D, and E of part 107 are removed.

§ 107.403 [Amended]

26. In § 107.403, in paragraph (c), the word "Director" is removed and replaced with "Associate Administrator for Hazardous Materials Safety", each place it appears.

§ 107.503 [Amended]

27. In § 107.503, in paragraph (c), in the last sentence, the wording "ASME Certification of Authorization" is revised to read "ASME Certificate of Authorization".

§§ 107.301, 107.307, 107.309, 107.335 [Amended]

28. In addition to the amendments set forth above, §§ 107.301, 107.307(a), 107.309(a), and 107.335 are amended by removing the word "Act" and inserting in its place "Federal hazardous material transportation law" each place it appears.

PART 110—HAZARDOUS MATERIALS PUBLIC SECTOR TRAINING AND PLANNING GRANTS

29. The authority citation for part 110 is revised to read as follows:

Authority: 49 U.S.C. 5101–5127, 49 CFR 1.53.

30. In § 110.20, the introductory paragraph and the definition of

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"*National curriculum*" are revised to read as follows:

§ 110.20 Definitions.

Unless defined in this part, all terms defined in 49 U.S.C. 5102 are used in their statutory meaning and all terms defined in 49 CFR part 18 and OMB Circular A–102, with respect to administrative requirements for grants, are used as defined therein. Other terms used in this part are defined as follows:

* * * * *

National curriculum means the curriculum required to be developed under 49 U.S.C. 5115 and necessary to train public sector emergency response and preparedness teams, enabling them to comply with performance standards as stated in 49 U.S.C. 5115(c).

* * * * *

§ 110.30 [Amended]

31. In § 110.30, in paragraph (c) introductory text, the word "Tribe" is revised to read "tribe".

32. In addition, in § 110.30, paragraph (a) introductory text is revised to read as follows:

§ 110.30 Grant application.

(a) *General.* An applicant for a planning or training grant shall use only the standard application forms approved by the Office of Management and Budget (OMB) (SF–424 and SF–424A) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3502). Applicants are required to submit an original and two copies of the application package to: Grants Manager, Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001. Applications received on or before January 1st and July 1st of each year will be considered in that cycle of the semi-annual review and award process. An initial round of the review and award process will consider applications received on or before November 15, 1992. Requests and continuation applications must include an original and two copies of the affected pages; previously submitted pages with information that is still current do not have to be resubmitted. The application must include the following:

* * * * *

§ 110.60 [Amended]

33. In § 110.60, in paragraph (a) introductory text, in the second sentence, the wording "hard match" is revised to read "hard-match"

§ 110.120 [Amended]

34. In § 110.120, in the last sentence, the wording "HMTUSA Grants Manager" is revised to read "Grants Manager".

PART 130—OIL SPILL PREVENTION AND RESPONSE PLANS

35. The authority citation for part 130 is revised to read as follows:

Authority: 33 U.S.C. 1321; 49 CFR 1.53.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

36. The parenthetical authorities at the end of any sections in part 171 are removed and the authority citation is revised to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.1 [Amended]

37. In § 171.1, the following changes are made:

a. In paragraph (c), the wording "of the Act, all orders and regulations issued under the Act" is revised to read "of the Federal hazardous material transportation law, all orders and regulations issued thereunder".

b. In addition, in paragraph (c), the wording "by the Act" is revised to read "by the Federal hazardous material transportation law".

§ 171.2 [Amended]

38. In § 171.2, the following changes are made:

a. In paragraph (f)(1), the wording "under the Act" is revised to read "under the Federal hazardous material transportation law".

b. In paragraphs (f)(2) and (g)(2), the term "rail freight car" is revised to read "rail car", each place it appears.

c. In paragraph (g)(1), the wording "Any marking label" is revised to read "Any marking, label".

d. Also in paragraph (g)(1), the wording "Act, or a regulation issued under the Act" is revised to read "Federal hazardous material transportation law, or the regulations issued thereunder".

39. In § 171.3, the Note in paragraph (b)(3)(iii) is revised to read as follows:

§ 171.3 Hazardous waste.

* * * * *

(b) * * *
(3) * * *
(iii) * * *

Note: Federal law specifies penalties up to $250,000 fine for an individual and $500,000 for a company and 5 years imprisonment for the willful discharge of hazardous waste at other than designated facilities. 49 U.S.C. 5124

* * * * *

§ 171.7 [Amended]

40. In § 171.7, the paragraph (a)(3) table, in the entry for Compressed Gas Association, Inc., the address "1235 Jefferson Davis Highway" is revised to read "1725 Jefferson Davis Highway".

§ 171.8 [Amended]

41. In § 171.8, the following changes are made:

a. For the definition of "*NPT*", the wording "in compliance with the" is revised to read "conforming to".

b. For the definition of "*Person*", in paragraph (2), the wording "sections 110 and 111 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1809–1810)" is revised to read "49 U.S.C. 5123 and 5124".

42. In addition, in § 171.8, the definition of "*Federal hazardous materials transportation law*" is added in alphabetical order to read as follows:

§ 171.8 Definitions.

* * * * *

Federal hazardous material transportation law means 49 U.S.C. 5101 *et seq.*

* * * * *

§ 171.11 [Amended]

43. In § 171.11, in paragraph (d)(6)(i), the section reference "§ 172.203(d)(1)(iii)" is revised to read "§ 172.203(d)(4)".

§ 171.12 [Amended]

44. In § 171.12, in paragraph (d)(1), the section reference "§ 172.203(d)(1)(iii)" is revised to read "§ 172.203(d)(4)".

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

45. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 172.101 [Amended]

46. In § 172.101, the following changes are made:

a. In paragraph (c)(8) introductory text and paragraph (c)(8)(ii), the wording "the appendix" is revised to read "Appendix A" each place it appears.

b. In paragraph (d)(4), the reference "§ 173.150 (f)" is revised to read "§ 173.150(e) or (f)".

c. In paragraph (g), the reference "subpart D" is revised to read "subpart E"

d. In the Hazardous Materials Table, the following changes are made:

1. The entry "*Ethylene oxide and carbon dioxide mixtures*, see Carbon dioxide and ethylene oxide mixtures, etc." is removed.

2. For the entry "*Mobility aids*, see Wheel chair, electric:.", in Column (2), the colon and period are removed at the end of the proper shipping name.

Appendix A to § 172.101 [Amended]

47. In appendix A to § 172.101, the following changes are made:

a. In the introductory text, in paragraph 1., in the second sentence, the wording "the Hazardous Materials Transportation Act" is revised to read "49 U.S.C. 5101–5127".

b. In the introductory text, in paragraph 1., in the last sentence, the wording "the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.)" is revised to read "49 U.S.C. 5101–5127".

c. In Table 1—Hazardous Substances Other Than Radionuclides, the following changes are made:

1. For the entry "Cresols", in column 2, the wording "Phenol, methyl-" is removed the second time it appears.

2. For the entry "DDT", in column 2, the word "Bezene" is revised to read "Benzene".

3. For the entry "Tetrachloroethane", in column 2, the wording "1,1,2,-Tetrachloroethane" is revised to read "1,1,2,2,-Tetrachloroethane".

§ 172.102 [Amended]

48. In § 172.102, the following changes are made:

a. In paragraph (c)(1), in Special Provision 14, a parenthetical mark is added following "dichloride" and the parenthetical mark following "stabilizers" is removed.

b. In paragraph (c)(1), Special Provision 42 is removed.

c. In paragraph (c)(3), in Special Provision B5, in the first sentence, the word "the" preceding the word "transport" is removed.

d. In paragraph (c)(3), in Special Provision B32, a comma is added to immediately follow "MC 331".

e. In paragraph (c)(3), in Special Provision B33, in the first sentence, the phrase "are subject to the following requirements." is revised to read "must conform to Table 1 of this Special Provision.".

f. In paragraph (c)(3), in Special Provision B90, in the first sentence, the wording "Steel tank" is revised to read "Steel tanks".

g. In paragraph (c)(7)(ii), the introductory text "These provisions apply only to transportation in IM portable tanks:" is removed.

h. In paragraph (c)(7)(ii), in Special Provision T31, the wording "65 kpa (9.4 psia) at 65 °C (150 °F)" is revised to read "65 kPa (9.4 psia) at 65.6 °C (150 °F)".

§ 172.203 [Amended]

49. In § 172.203, the following changes are made:

a. In paragraph (e)(2), the wording "171.8" is revised to read "§ 171.8".

b. In paragraph (h)(2)(i), the word "to" preceding the wording "this subchapter" is revised to read "of".

c. In paragraph (k) introductory text, in the second sentence, the wording "(contains caprylyl chloride)" is revised to read "(contains Caprylyl chloride)".

d. In paragraph (k)(3), in the list of proper shipping names, for the proper shipping name, "Corrosive solids, self heating, n.o.s.", a hyphen is added between the words "self" and "heating".

§ 172.334 [Amended]

50. In § 172.334, in paragraph (b)(3), a comma is added following "(c)(5)".

§ 172.505 [Amended]

51. In § 172.505, in paragraph (a), in the first sentence, immediately following the words "portable tank," the word "and" is removed and replaced with the word "or".

§ 172.600 [Amended]

52. In § 172.600, in paragraph (c)(2), the word "state" is revised to read "State".

§ 172.604 [Amended]

53. In § 172.604, in paragraph (a)(3)(i), the wording "this part 172" is revised to read "this part".

Appendix A to Part 172 [Amended]

54. In Appendix A to part 172, in the first sentence, the wording "L'Eclariage" is revised to read "L'Eclairage."

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

55. The parenthetical authorities at the end of any sections in part 173 are removed and the authority citation is revised to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 173.11 [Amended]

56. In § 173.11, in paragraph (b)(4), the comma is removed after the wording "tank car".

§ 173.12 [Amended]

57. In § 173.12, the following changes are made:

a. In paragraph (d)(1), the word "and" is added immediately following the semicolon at the end of the paragraph.

b. In paragraph (d)(2), the wording "; and" is removed and replaced with a period.

c. Paragraph (d)(3) is removed.

§ 173.27 [Amended]

58. In § 173.27, the following changes are made:

a. In paragraph (f), Table 2., in the row entitled "Solids: greater than 15 kg, not greater than 50 kg", in column 3, the quantity limit of "5 g" is revised to read "5 kg".

b. In paragraph (g)(1), the word "headings" is revised to read "headrings".

§ 173.32 [Amended]

59. In § 173.32, the following changes are made:

a. In paragraph (g), the wording "bad dents" is revised to read "significant dents".

b. In paragraph (q) introductory text, the phrase "greater to or equal to" is amended to read "greater than or equal to".

§ 173.33 [Amended]

60. In § 173.33, the following changes are made:

a. In paragraph (c)(1)(iii), the word "shipped" is revised to read "loaded" each place it appears.

b. In paragraph (c)(1)(iv), the period following the reference "(c)(1)(i)" is removed and replaced with a comma.

§ 173.34 [Amended]

61. In § 173.34, in paragraph (e)(18)(i), in the first sentence, the reference "(a)(3)" is revised to read "(e)(3)".

Subpart D—[Amended]

62. In the subpart D title, the words "other than" are revised to read "Other Than".

§ 173.116 [Amended]

63. In § 173.116, in the paragraph (a) table, in column 2, the wording "LC50" is revised to read "LC_{50}" each place it appears.

§ 173.133 [Amended]

64. In § 173.133, in the paragraph (b)(1)(iv) table, in column 1, in the third and fourth entries, the wording "(Hazard Zone C)." and "(Hazard Zone D)" are removed and in column 2, in the last entry, the wording "Packing Groups I and II, Hazard Zones A, B and C" is revised to read "Packing Group I, Hazard Zones A and B, and Packing Group II".

§ 173.217 [Amended]

65. In § 173.217, in paragraph (a), in the last sentence, the wording "2–3 kg

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(5 lbs)" is revised to read "2.3 kg (5 lbs)".

§ 173.226 [Amended]

66. In § 173.226, in paragraph (b)(4)(ii)(A), the word "and" is removed at the end of the paragraph.

§ 173.227 [Amended]

67. In § 173.227, in the section heading, the period following "Division 6.1" is removed and replaced with a comma.

§ 173.230 [Amended]

68. In § 173.230, in paragraph (d), the reference "6.2" is revised to read "6.1".

§ 173.243 [Amended]

69. In § 173.243, in paragraph (b)(2), the wording "cargo tanks" is added immediately following "DOT 412".

§ 173.301 [Amended]

70. In § 173.301, in paragraph (g) introductory text, the period following the word "methods" is removed and replaced with a colon.

§ 173.309 [Amended]

71. In § 173.309, the following changes are made:

a. In paragraph (a)(1), the word "non-corrosive" is revised to read "noncorrosive".

b. In paragraphs (a)(3)(iii), (a)(4)(ii), and (b)(2), the wording "kpa" is revised to read "kPa" each place it appears.

c. In paragraph (a)(4)(ii), the reference "55 °C— (130 °F)" is revised to read "55 °C (130 °F)" each place it appears.

§ 173.315 [Amended]

72. In § 173.315, in the paragraph (a) table, in Note 15, in the next to last sentence, the section reference "§ 172.328(d)" is revised to read "§ 172.328(c)".

§ 173.318 [Amended]

73. In § 173.318, the following changes are made:

a. In paragraph (b)(1)(ii)(A), the wording "One of more" is revised to read "One or more".

b. In paragraphs (b)(2)(i) (A) and (B), the words "his" and "this", respectively, are removed and replaced with the word "a".

c. In paragraph (b)(6)(ii), the wording "On tanks" is revised to read "On a tank".

d. In paragraph (g)(2)(i), the wording "an (MRHT)" is revised to read "an MRHT".

Subpart I—[Amended]

74. The authority citation for subpart I to part 173 is removed.

Appendix A to Part 173—[Amended]

75. In Appendix A to part 173, in paragraph 2., a comma is added immediately after the wording "surgical gauze".

Appendix F to Part 173—[Amended]

76. In Appendix F to part 173, in paragraph 2.(e), in the third sentence, the phrase "combustion are observed" is revised to read "combustion is observed".

PART 174—CARRIAGE BY RAIL

77. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 174.83 [Amended]

78. In § 174.63, in paragraph (b), the wording "Federal Railroad Administrator" is revised to read "Associate Administrator for Safety, FRA".

§ 174.100 [Amended]

79. In § 174.100, in the section heading and in the first sentence of paragraph (b), the "I" is revised to read "1".

PART 175—CARRIAGE BY AIRCRAFT

80. The parenthetical authorities at the end of any sections in part 175 are removed and the authority citation is revised to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 175.320 [Amended]

81. In § 175.320, In the table in paragraph (a), in the entry "High explosives", in column 2, the wording "Division 1.1 or 1.2 (Class A) explosives" is revised to read "Class 1 (explosive) materials" and, in column 3, the wording "Blasting agent n.o.s." is revised to read "Blasting explosives (Division 1.1D or 1.5D), or Blasting agent (Division 1.5D), Very insensitive explosive substances, n.o.s., or Substances, EVI, n.o.s. (Division 1.5D), Extremely insensitive explosive articles or Articles, EEI (Division 1.6N)".

§ 175.700 [Amended]

82. In § 175.700, in paragraph (b), the second sentence is removed.

PART 176—CARRIAGE BY VESSEL

83. The parenthetical authorities at the end of any sections in part 176 are removed and the authority citation is revised to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 176.13 [Amended]

84. In § 176.13, in paragraph (c), the reference "§ 172.704(c)" is revised to read "§ 172.704(d)".

Subpart F of Part 176—[Amended]

85. The authority citation in subpart F of part 176 is removed.

§ 176.415 [Amended]

86. In § 176.415, in paragraph (b)(2), the wording "or unloading" is removed, the second time it appears.

§ 176.600 [Amended]

87. In § 176.600, in paragraph (d), the wording "cool a reasonably" is revised to read "cool as reasonably".

PART 177—CARRIAGE BY PUBLIC HIGHWAY

88. The parenthetical authorities at the end of any sections in part 177 are removed and the authority citation is revised to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 177.838 [Amended]

89. In § 177.838, the following changes are made:

a. In paragraph (g), the wording "3.6 kg (7.9 pounds)" is revised to read "3.6 kg (8 pounds)".

b. In paragraph (h), the word "pyroforic" is revised to read "pyrophoric" each place it appears.

§ 177.839 [Amended]

90. In § 177.839, in paragraph (d) introductory text, in the first sentence, the wording "cargo tanks" is revised to read "cargo tank", each place it appears.

§ 177.840 [Amended]

91. In § 177.840, in paragraph (d), in the first sentence, the wording "cargo tanks" is revised to read "cargo tank".

§ 177.841 [Amended]

92. In § 177.841, in paragraph (d) introductory text, in the first sentence, the wording "cargo tanks" is revised to read "cargo tank", each place it appears.

§ 177.848 [Amended]

93. In § 177.848, in paragraph (e)(6), in the second sentence, the word "for" is added following the word "required" and preceding the word "any".

§ 177.860 [Amended]

94. In § 177.860, the following changes are made:

a. In paragraph (a) introductory text, in the first sentence, the wording "materials which is" is revised to read "material which Is".

b. In paragraph (b), the wording "Division 6 1" is revised to read "Division 6.1".

PART 178—SPECIFICATIONS FOR PACKAGINGS

95. The parenthetical authorities at the end of any sections in part 178 are removed and the authority citation is revised to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 178.245–5 [Amended]

96. In § 178.245–5, in paragraph (b), the wording "shall comply with" is revised to read "shall conform to".

§ 178.255–5 [Amended]

97. In § 178.255–5, in paragraph (b), in the second sentence, the wording "Every such valve" is revised to read "Each valve".

§ 178.255–12 [Amended]

98. In § 178.255–12, in the first sentence of paragraph (a), "pounds per square inch gauge" is revised to read "psig".

§ 178.270–9 [Amended]

99. In § 178.270–9, in the second sentence, the word "obround" is revised to read "round".

§ 178.270–11 [Amended]

100. In § 178.270–11, the following changes are made:

a. In paragraph (b)(1) introductory text, in the last sentence, the word "transverse" is revised to read "transversal".

b. In paragraph (d)(2), in the first sentence, the phrase "or less than or" is revised to read "to less than or".

§ 178.271–1 [Amended]

101. In § 178.271–1, in paragraph (a), the wording "comply with" is revised to read "conform to".

§ 178.272–1 [Amended]

102. In § 178.272–1, in paragraph (a), the wording "comply with" is revised to read "conform to".

§ 178.337–1 [Amended]

103. In § 178.337–1, the following changes are made:

a. In paragraph (b), the word "chapter" is revised to read "subchapter".

b. In paragraph (d), the wording "unless it be" is revised to read "unless".

§ 178.337–2 [Amended]

104. In § 178.337–2, the following changes are made:

a. In paragraph (a)(1), the wording "comply with" is revised to read "conform to".

b. In paragraph (c), in the last sentence, the wording "post weld" is revised to read "postweld".

§ 178.337–3 [Amended]

105. In § 178.337–3, in paragraph (c)(3)(i), the colon following the word "pressure" is removed and replaced with a semicolon.

§ 178.337–11 [Amended]

106. In § 178.337–11, in paragraph (a)(2)(i), in the third sentence, the wording "loading unloading" is revised to read "loading/unloading".

§ 178.337–18 [Amended]

107. In § 178.337–18, in paragraph (a)(3), in the first sentence, the wording "comply with" is revised to read "conform to".

§ 178.338–1 [Amended]

108. In § 178.338–1, in paragraph (c)(1), in the third sentence, the quotation marks before and after the wording "design pressure" are removed.

§ 178.345–3 [Amended]

109. In § 178.345–3, the following changes are made:

a. In paragraph (e), the reference "178.347–2" is revised to read "§ 178.347–2".

b. In paragraph (g) introductory text, the period is removed following the word "requirements" and replaced with a colon.

§ 178.345–7 [Amended]

110. In § 178.345–7, in paragraph (a)(2), in the last sentence, the words "conical shall" is revised to read "conical shell".

§ 178.345–14 [Amended]

111. In § 178.345–14, the following changes are made:

a. In paragraph (b)(6), the period after the parenthetical wording "(Water cap.)" is removed and replaced with a comma.

b. In paragraph (b)(15), a period is added following the word "feet".

c. In paragraph (c)(3), the semicolon following the parenthetical wording"(CT mfr.)" is removed and replaced with a period.

d. In paragraph (c)(6), the parenthetical wording "(Max load. rate, GPM)" is revised to read "(Max. load rate, GPM)".

e. In paragraph (c)(7), the parenthetical wording "(Max. unload. rate, GPM)" is revised to read "(Max. unload rate, GPM)".

§ 178.347–2 [Amended]

112. In § 178.347–2, the following changes are made:

a. In paragraph (a), in the titles of Tables I and II, a period between the words "(MS)" and "HIGH" is removed and replaced with a comma, each place it appears.

b. In Table I, in the column "Over 18 to 22", for the entry "Thickness (AL)", "0 187" is revised to read "0.187".

§ 178.348–10 [Amended]

113. In § 178.348–10, in paragraph (d)(3), in the last sentence, the phrase "as this will provide a great vent capacity requirement" is removed.

§ 178.350–3 [Amended]

114. In § 178.350–3, in paragraph (b), the reference "§ 173.24" is revised to read "§ 172.310".

PART 179—SPECIFICATIONS FOR TANK CARS

115. The parenthetical authorities at the end of any sections in part 179 are removed and the authority citation is revised to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

Subpart F—[Amended]

116. The authority citation for subpart F to part 179 is removed.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

117. The authority citation is revised to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 180.405 [Amended]

118. In § 180.405, in paragraph (f)(6), the word "must" is revised to read "shall".

§ 180.407 [Amended]

119. In § 180.407, in paragraph (d)(4), the word "tank" is added following the word "cargo".

§ 180.415 [Amended]

120. In § 180.415, in paragraph (b), in the last sentence, the colons preceding the wordings "P for pressure" and "L for lining" are removed and replaced with semicolons.

Issued in Washington, DC on September 14, 1994, under authority delegated in 49 CFR part 1.

D.K. Sharma,

Administrator.

[FR Doc. 94–23301 Filed 9–23–94; 8:45 am]

BILLING CODE 4910–60–P

VOL
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ISS
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1994
UMI

Federal Register

Monday
September 26, 1994

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 135
Air Tour Operators in the State of Hawaii; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. 27919; Special Federal Aviation Regulation (SFAR) No. 71]

RIN 2120–AF53

Air Tour Operators in the State of Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action establishes certain procedural, operational and equipment requirements for air tour operators in the State of Hawaii. This emergency rule is necessary because of an escalation of air tour accidents. The regulation is intended to enhance the safety of air tour operations within the State.

DATES: This final rule is effective October 26, 1994. Comments must be received on or before December 27, 1994.

ADDRESSES: Send comments on this final rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 27919, 800 Independence Ave., SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27919. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

Commenters who wish the FAA to acknowledge the receipt of their comments must submit with their comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27919." The postcard will be date-stamped by the FAA and returned to the commenter.

FOR FURTHER INFORMATION CONTACT: Brian Calendine, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591. Telephone (202) 267–8166

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Requests should be identified by the docket number of this rule.

Persons interested in being placed on a mailing list for notices of proposed rulemaking should request a copy of Advisory Circular No. 11–2A, "Notice of Proposed Rulemaking Distribution System," which describes the application procedure.

Background

The Air Tour Industry

Since 1980, the air tour industry in the State of Hawaii has grown rapidly, particularly on the islands of Oahu, Kauai, Maui, and Hawaii. The growth of the tourist industry, the beauty of the islands, and the inaccessibility of some areas on the islands has generated tremendous growth in the number of air tour flights. In 1982, there were approximately 63,000 helicopter and 11,000 airplane air tour flights. By 1991, these numbers had increased to approximately 101,000 for helicopters and 18,000 for airplanes. After a slight decline due to Hurricane Iniki in 1992, air tour flights in 1994 are projected to reach the 1991 levels. In Hawaii, the air tour industry carries about 400,000 passengers annually. Thirty-eight operators are conducting air tours within the State of Hawaii, using approximately 97 helicopters and 16 fixed-wing aircraft. During the 9-year period between 1982 and 1991, there were eight fatal accidents with 24 fatalities. The accident data shows an escalation of fatal accidents during the 3-year period between 1991 and 1994. During this time, there were five fatal accidents with 24 fatalities. (See table and figure)

Use of Helicopters in Air Tours

Helicopters are uniquely suited for air tours in Hawaii because they can operate at slow speeds and hover over scenic areas. Helicopter air tours are often conducted close to the ground, near scenic attractions so passengers can see and experience the thrill of being close to geological and terrain features, such as lava flows and waterfalls.

Some air tour operators advertise dramatic overwater flights to view whales, shorelines, cliffs, and waterfalls; entry into one-way canyons; flying close to hot molten lava; and hovering over the shoreline where molten lava flows into the ocean. Some advertising brochures, for example, describe air tours as "excitement to the boiling point," and invite tourists to "fly into the heart and heat of an active volcano" and "close enough to waterfalls to feel the cooling mist." One fixed-wing air tour operator formerly advertised that "[w]e fly you lower and slower than any twin engine plane can . . . lower and slower than many helicopters do . . ."

While passengers are often attracted to the thrill associated with low-flying air tours, they are generally not aware of the risks involved. Risks associated with low flying air tour operations include: unpredictable winds that create less stable flying conditions; fewer options to escape unforeseen weather; unmarked or unknown obstructions; less time to select suitable emergency landing areas; increases in pilot workload because of quick stops, rapid turns, and watching for obstructions; inability to be detected by air traffic control radar; inability to conduct two-way radio communication; increased likelihood of ingesting foreign debris, including salt water spray, into the engine; less overall reaction time; and congestion of low flying traffic at scenic locations. Further, many air tours are conducted over scenic areas along rugged coasts, where, in the event of an engine failure, the pilot must ditch in the ocean. A helicopter without flotation devices, unlike most light airplanes, may sink within moments.

History and Escalation of Accidents

The growth of the air tour sightseeing industry in Hawaii has been associated with an escalation of accidents. The proximate causes of the accidents range from engine power loss to encounters with adverse weather. Contributing factors to the causes and seriousness of accidents are: operation beyond the demonstrated performance envelope of the aircraft, inadequate preflight planning for weather and routes, lack of survival equipment, and flying at low altitudes (which does not allow time for recovery or forced landing preparation in the event of a power failure).

The following table is a synopsis of selected air tour accidents involving aircraft damage, minor or serious injuries, or fatalities that occurred between September 1982 and September 1994.

SELECTED AIR TOUR ACCIDENTS IN HAWAII, SEPTEMBER 1982–SEPTEMBER 1994

Date	Type	Part	Location	Injuries	Fatalities
9/2/82	Bell 206–L	135	Lihue	2 serious 3 minor	
4/8/84	Grumman AA–5A	91	Kamuela		4
9/26/85	Aerospatiale	135	Kula	5 minor	1
1/1/86	Cessna R172K	135	Kamuela	4 serious	1
5/18/86	Bell 206B	91	Maui	1 serious 1 minor	2
3/29/87	Bell 206B	135	Kona	3 serious 1 minor	1
4/24/87	Cessna 172N	91	Lihue		4
5/29/88	Bell 206B	135	Honolulu	2 minor	
5/20/89	Aerospatiale AS350D	135	Waialae Falls	7 minor	
6/11/89	Beech H18	135	Waipio Valley		
8/19/89	Aerospatiale AS350D	135	Volcano	1 serious 5 minor	11
5/5/91	Hughes 369HS	135	Keanae	3 minor	
6/6/91	Bell 206B	91	Lihue	3 serious 1 minor	
11/9/91	Bell 206B	135	Hilo	1 serious 2 minor	
4/22/92	Beech E18S	135	Mount Haleakala		9
9/16/92	Aerospatiale AS350B	135	Hana		7
9/21/92	Bell 47	91	Volcano National Park	3 minor	
1/25/93	Fairchild Hiller FH–1100	91	Volcano National Park	1 minor	4
2/23/94	Aerospatiale AS350B	135	Volcano National Park	1 serious 1 minor	
3/25/94	Hughes 369D	135	Hawaii National Park		
4/18/94	Hughes 369D	135	Waimea	4 serious	1
7/14/94	Aerospatiale AS350D	135	Hanalei		3
7/14/94	Aerospatiale AS350D	135	Molokai		
8/11/94	Aerospatiale AS350D	135	Waipio Valley		
9/3/94	Hughes 369D	135	Hilo		

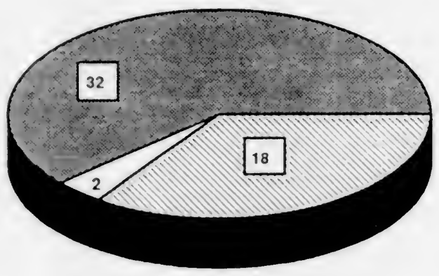
The table shows a total of 24 air tour fatalities between 1982 and 1991 (9 years). Even though there was a decline in the number of air tour flights in 1992, the accident data show an escalation of fatal accidents between 1991 and 1994. From July 1991 through July 1994 (3 years), there were 20 air tour accidents involving 24 fatalities. (See figure.) Since January 1993, three helicopter accidents have involved landings in the ocean with two of those accidents resulting in seven fatalities. The most recent fatal accident occurred on July 14, 1994. The most recent non-fatal accident occurred on September 3, 1994. (See table.)

BILLING CODE 4910–13–M

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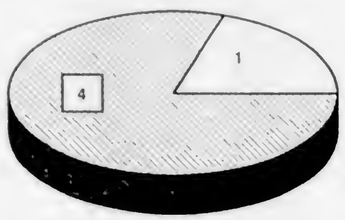
HAWAIIAN AIRCRAFT ACCIDENT ANALYSIS
JULY 1991 THROUGH JULY 1994

Total Aircraft Accidents 52



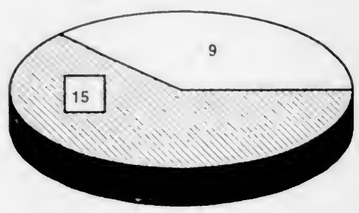
Helicopter Air Tour
Airplane Air Tour
Other than Air Tour (all categories)

Fatal Air Tour Accidents 5



Helicopter
Airplane

Air Tour Fatalities 24



Helicopter
Airplane

SOURCE: NTSB

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National Transportation Safety Board Recommendations

Based on its investigation of the April 22, 1992, accident in Haleakala National Park, the National Transportation Safety Board (NTSB) recommended that the FAA "[c]reate a specific classification for, and operating rules governing, commercial air tour operators based on the complexity of flight operations, aircraft flown, flight frequency, number of passengers carried, air traffic densities in the area of operation, and other relevant factors" (A–93–8). In addition, the NTSB recommended that the FAA "[i]dentify airspace which warrants special protection due to air tour operations," and "[c]reate special operating rules for such airspace to reduce the potential for midair collisions and other accidents commensurate with meteorological and terrain considerations." (A–93–10) In response to the NTSB's recommendations, the FAA has informed the NTSB that it is considering a special rule for air tour operators in Hawaii.

Based on the NTSB recommendations, accident investigations, and discussions with the NTSB, the FAA has identified the following as needing to be addressed:

(1) Air tour operators fly too close and too low to various attractions and land features.

(2) There is no clear definition of "suitable landing site" for helicopters.

(3) Sightseeing helicopters are operating in the avoid area of the height-speed envelope (deadman's curve) where successful autorotations are not possible.

(4) Helicopters operating along the shorelines of the Hawaiian Islands should be equipped with appropriate flotation equipment.

(5) Passengers should be briefed before flights on the use of flotation gear.

Actions Other Than Rulemaking to Address the Problems

The FAA, the State of Hawaii, and the air tour industry have been attempting to correct safety problems that affect air tour operations.

In 1986, the FAA conducted a study of helicopter sightseeing operations in Hawaii. The study team was composed of representatives from the FAA, the State of Hawaii, and industry Based on the study, recommendations were made to the State and to operators in Hawaii to improve safety and community relations. Recommendations included the following:

(1) The FAA should study the possibility of imposing limitations, through operations specifications, that would require the helicopter to be operated at a combination of height and forward speed (including hover) that would permit a safe landing in event of engine power loss, in accordance with the height-speed envelope for that helicopter under current weight and aircraft altitude. These limitations would also prevent the helicopter from being flown over areas in which a safe forced landing could not be made.

(2) The FAA should advise helicopter operators who conduct passenger-carrying operations under part 91 or part 135 that a flight (1) over an area in which a successful forced landing could not be made, or (2) at an airspeed and altitude combination that places the aircraft beyond its performance capability to successfully autorotate, would be considered a reckless operation under § 91.13 (formerly § 91.9).

The study team was also concerned about the lack of helicopter flotation equipment on some aircraft, particularly for operations along the coastlines of the islands, where cliffs and rocks make a successful autorotation to shore virtually impossible. The team believes that the shoreline must offer a reasonable chance to land safely in the event of engine failure, and that, if no such area exists, appropriate helicopter flotation equipment should be required.

Also, in 1986, the FAA conducted a joint study with the State of Hawaii on helicopter heliport and airport access. A result of that study was the Helicopter Operating Plan for Hawaii. Based on portions of that plan, the Hawaiian Helicopters Operators Association (HHOA) developed its "Fly Neighborly" program. The HHOA plan calls for voluntary compliance with a standoff distance of 1,500 feet and a minimum altitude of 1,500 feet over communities. In addition, the plan calls for a 3,000-foot standoff distance in areas of Volcanoes National Park. The HHOA program includes part 91 operators as well as part 135 certificated operators. This is a voluntary program without FAA oversight.

On January 17, 1992, the FAA issued Handbook Bulletin No. 92–01, Air Tour/Sightseeing Operations. The bulletin advises principal operations inspectors to recommend to operators that they include procedures in their operations manuals for conducting air tour/sightseeing operations. The bulletin also advises the inclusion of charts of air tour areas, procedures for obtaining current weather, provisions for pilot training, and other information specific to air tour operations.

In January 1994, the FAA held four public meetings in Hawaii to investigate complaints regarding flight safety, aircraft noise, and possible intrusive flights of helicopters. While the vast majority of the commenters addressed the noise issue, some commenters did raise safety issues. Some of the public meeting comments and subsequent comments submitted to the FAA highlight a number of personal experiences of individuals who witnessed helicopters flying dangerously low over scenic areas and above people and property on the ground. In some instances, witnesses claimed that the aircraft flew lower than the people who were walking on high elevation trails.

The Honolulu Flight Standards District Office, during the past 3 years, has conducted an extensive inspection and surveillance program of the air tour industry. On July 15, 1994, in response to a number of recent accidents, the FAA initiated a comprehensive review of operations and maintenance practices of the Hawaiian air tour operators. In addition, the FAA requested that all air tour operators in the State of Hawaii immediately conduct a "stand down" safety review of their operational and maintenance practices.

Need for Emergency Rulemaking

Despite the voluntary measures, the cooperation of the Hawaii air tour operators, and the FAA's inspections, the accident data show that additional measures are necessary to ensure safe air tour operations in Hawaii. The current regulatory scheme is not comprehensive enough to ensure the safety of all air tour operations in Hawaii.

Section 91.119 prescribes minimum altitudes for airplanes and helicopters that provide for the protection of persons and property on the surface. Generally, a pilot may not operate below an altitude allowing, if power failure occurs, an emergency landing without undue hazard to persons or property on the surface. Helicopters may be operated at lower altitudes than airplanes if the operation is conducted without hazard to persons or property on the surface and the pilot can conduct a safe emergency landing in the event of power failure.

Under ideal conditions, a helicopter, unlike an airplane, can land at or near zero forward speed, provided the landing area is relatively level and free of obstructions. Factors that make an emergency landing site unsuitable include obstacles, rugged terrain, congested areas and water Obstacles range from natural terrain features and

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trees to buildings and utility towers with wires strung between them.

A major factor affecting safety of flight in any single engine aircraft at low altitude is the limited choice of suitable emergency landing areas. Hawaii's unique topography—active volcanoes spewing hot molten lava, sharp cliffs, cascading waterfalls, rugged coastlines, mist-shrouded mountains, dense tropical rainforests and deep, closed canyons—often complicates access to suitable emergency landing areas. The air tour accidents in Hawaii indicate that helicopter pilots have had insufficient time to locate suitable landing areas after engine power loss or other problems leading to accidents.

Based on the recent escalation of accidents caused by unsafe operating practices, and the fact that voluntary measures are insufficient, the FAA is implementing this emergency final rule as Special Federal Regulation (SFAR) No. 71.

The Special Federal Aviation Regulation

The FAA is promulgating these requirements in an SFAR, rather than a general rule, to address the unique problems associated with the Hawaiian air tour operating environment.

This emergency regulatory action establishes additional operating procedures, including minimum safe altitudes (and associated increases in visual flight rules (VFR) weather minimums), minimum equipment requirements, and operational limitations for air tour aircraft in the State of Hawaii.

Applicability and Definitions

This SFAR applies to parts 91 and 135 air tour operators in the State of Hawaii (section 1). In section 2, "air tour" is defined as any VFR sightseeing flight conducted in an airplane or helicopter for compensation or hire. "Air tour operator" is defined as any person who conducts an air tour.

Flotation Devices

The SFAR requires that any single-engine air tour helicopter flown beyond the shore of any island must be amphibious or equipped with emergency floats and approved flotation gear easily accessible for each occupant, or that each person on board the helicopter wear approved flotation gear. An amphibious helicopter or one equipped with floats will allow a safe emergency ditching. This requirement is specific to helicopters because helicopters, unlike airplanes, may sink rapidly after forced landings on water.

These requirements should reduce the risk of drowning, such as the deaths that occurred on January 25, 1993, when a helicopter, operating under part 91, crashed in deep water while on a sightseeing flight to view molten lava flowing into the ocean off the coast of Volcanoes National Park. Before the accident, the pilot had been hovering near the shoreline between 100 and 150 feet above sea level. When the pilot attempted to resume forward flight, he experienced a total left pedal failure. The pilot lost control and the helicopter landed in the ocean and sank. The helicopter was not equipped with flotation devices, and the pilot and four passengers were not wearing lifevests. Only the pilot survived. The NTSB found that a factor which contributed to the passengers' fatal injuries was the operator's failure to provide lifevests to the passengers.

In a July 14, 1994, accident, an air tour helicopter with seven people on board made a forced landing in the Pacific Ocean after losing power off Kauai's Na Pali Coast. Three passengers swam to shore and another was rescued from the water. The pilot and two other passengers drowned. The helicopter was not equipped with flotation devices, and the passengers did not have sufficient time to don the lifevests on board the helicopter.

Later, on the same day, a different air tour helicopter made a forced landing after losing power off the north coast of Molokai. All persons aboard the helicopter swam to shore and were rescued the next day. The helicopter was equipped with flotation devices, and the pilot and passengers had sufficient time to don the lifevests.

Flotation equipment on a helicopter should allow the helicopter to remain afloat long enough for the persons to egress safely; the individual flotation gear should allow the survivors an opportunity to swim to shore or to be picked up by rescue personnel. Flotation equipment/lifevests helped to ensure the survival of the passengers in the second accident on July 14.

The FAA is considering changing the rule to require that all single-engine helicopters conducting air tour operations beyond the shore of any island be amphibious or fitted with flotation devices. Therefore, the FAA is requesting comments on this possibility. At the close of the comment period, the FAA will analyze the comments received and, based on its analysis, determine if further rulemaking is necessary.

Helicopter Performance Plan

Section 4 requires that, before departure, the air tour operator must complete a performance plan for the helicopter flight. The pilot in command (PIC) is required to comply with the performance plan. The plan must be based on information in the rotorcraft flight manual (RFM), considering the maximum density altitude to which the operation is planned and must address such elements as maximum gross weight and center of gravity, maximum gross weight for hovering in or out of ground effect, and maximum combination of weight, altitude, and temperature for which height-velocity information in the RFM is valid. This requirement is necessary in light of accidents attributable to the failure of the pilot to stay outside the avoid area of the helicopter height-velocity envelope. The flight is not limited to the out-of-ground effect (OGE) ceiling, and the helicopter may be operated at a higher altitude provided no hovering is planned.

This requirement should enhance flight safety in light of certain accidents, including that which took place on May 20, 1989. On that date, an Aerospatiale AS350D was on a local sightseeing flight to view Waialae Falls with six passengers on board. After hovering at a low altitude near the falls, the pilot began a pedal turn and forward movement for the initial climb away from the falls. The main rotor revolutions per minute (rpm) decayed, and the pilot turned back toward the upper falls, where he thought he could land. However, the helicopter settled into a ravine, damaging the helicopter and injuring the pilot and passengers. The NTSB determined that the probable cause of the accident was the pilot's failure to maintain rotor rpm, while turning and taking off from a hover with a relatively heavy gross weight. Additional factors related to the accident were the high density altitude and rough/uneven (rocky) terrain in the emergency landing area.

Helicopter Operating Limitations

Section 5 requires that the PIC shall operate the helicopter at a combination of height and forward speed (including hover) that would permit a safe landing in the event of engine power loss, in accordance with the height-velocity envelope for that helicopter under current weight and aircraft altitude. This requirement is necessary to prevent pilots from hovering for periods of time beyond the performance capability of the helicopter and outside what the height-velocity diagram permits for safe operation.

This requirement prohibits aircraft from being operated in dangerous flight regimes, such as the January 25, 1993, accident discussed previously (when the pilot was hovering at a low altitude over a lava flow). It also is intended to prevent the type of accidents that occurred on March 25, 1994, and April 18, 1994. On March 25, 1994, the pilot of a Hughes 369D helicopter operated under part 135 lost control and collided with mountainous terrain by the Puu'oo Vent in Hawaii National Park. The helicopter had become enveloped in a steam cloud at a 40-foot hover just before the pilot lost control. The helicopter was destroyed; the pilot and passengers sustained minor injuries. On April 18, 1994, a Hughes 369D helicopter lost power during an OGE hover and collided with rocky terrain below Waimea Falls, Waimea, Kauai. The helicopter was on a sightseeing flight operated under part 135. The pilot and three passengers were seriously injured. One passenger was fatally injured.

The requirement increases the possibility of safe landing in the event of engine failure. A safe landing may not be possible if the helicopter is within the avoid area of the height-velocity envelope when the engine failure occurs.

Minimum Flight Altitudes

Section 6 requires that, unless operating in compliance with an air traffic control clearance, or as otherwise authorized by the Administrator, air tour operations may not be conducted below an altitude of 1,500 feet above the surface; and closer than 1,500 feet from any person or property; or below any altitude provided by Federal statute or regulation. As noted earlier, Hawaii's unique topography often complicates access to suitable emergency landing areas. The air tour accidents in Hawaii have been characterized by insufficient time for pilots to locate suitable landing areas after engine power loss or other problems leading to accidents. The requirement to maintain an altitude of 1,500 feet above the surface is necessary for safety because it allows the pilot sufficient time to react in an emergency, to notify and instruct passengers, and to prepare for a forced landing. An aircraft operating at least 1,500 feet above the surface allows the pilot a greater opportunity to select a suitable landing site than would be the case at lower altitudes. The FAA notes that these minimum distances are consistent with HHOA's Fly Neighborly program.

The accident data also show low-flying aircraft flying VFR into instrument meteorological conditions (IMC). An additional benefit from the 1,500-foot minimum altitude will be the increased basic VFR weather minimums for these air tour operations. This provision is necessary in light of the numerous accidents that have occurred when the aircraft flew into terrain because of low visibility or because the pilot was flying too low The accident data show that this is a problem for both airplanes and helicopters. For instance, on April 24, 1987, an air tour flight operated under part 91 collided with terrain in the Waimae Canyon. Marginal visual meteorological conditions were reported in the vicinity of the accident site. The pilot and three passengers were fatally injured. In the January 25, 1993, accident, in which the helicopter crashed in deep water after hovering between 100 and 150 feet above sea level, the NTSB noted that a contributing factor to the accident was the pilot's choice of a hover altitude/position inadequate to reach a shoreline in the event of an emergency.

On June 11, 1989, a Beechcraft BE–H18, operating under part 135 on a sightseeing flight, crashed near a waterfall in the Waipio Valley of the Kohala Mountains on the island of Hawaii. After filing a VFR flight plan, the pilot had departed Hilo International Airport for Maui. The pilot entered a closed canyon and ultimately impacted the canyon wall 600 to 900 feet below the rim. The pilot and 10 passengers were fatally injured, and the airplane was destroyed by impact forces and postcrash fire. The NTSB determined that the probable cause of the accident was the pilot's improper decision to maneuver with insufficient altitude in a canyon area.

On April 22, 1992, a Beechcraft E–18S operating on a VFR air tour flight collided with mountainous terrain in Haleakala National Park in an area where fog had reduced visibility around the mountain top. The FAA had provided a full weather briefing to the pilot, including an advisory that VFR flight was not recommended over the interior sections of all islands, and a forecast indicating isolated areas of 3 miles visibility due to haze and moderate rainshowers. The aircraft was destroyed, and the pilot and eight passengers were killed. Weather reports and witness statements indicate that IMC existed in the area at the time of the accident. The NTSB determined that the probable cause of this accident was the pilot's decision to continue visual flight into IMC that obscured rising mountainous terrain and his failure to use properly available navigational information to remain clear of the island.

On September 16, 1992, an Aerospatiale AS–350B departed on a sightseeing flight even though adverse weather conditions including thunderstorms, rainshowers, and poor visibility were reported. A witness reported rainshowers and mountain obscuration about the time of the accident. He stated that he saw a helicopter flying in and out of clouds and stated that he could not understand why a helicopter would be flying so close to the mountains given the adverse weather conditions. The NTSB determined that a probable cause of the accident, which involved seven fatalities, was the pilot's inflight decision to continue VFR flight into adverse weather conditions. A factor in the accident was the pilot's inability to see and avoid the mountainous terrain due to the thunderstorms.

Briefing Passengers

Section 7 contains the requirement that passengers be briefed (in addition to §§ 91.102 and 135.117) before takeoff for an air tour flight with a flight segment beyond the ocean shore of any island. The briefing shall include information on water ditching procedures, use of personal flotation gear, and emergency egress from the aircraft. The PIC must orally brief passengers, distribute written instructions, or ensure that passengers have been briefed on emergency procedures. This provision is necessary in light of the flotation equipment requirements set forth in this emergency rule.

Related Rulemaking

This SFAR is an emergency final rule addressing air tour operations in the State of Hawaii in light of the increasing frequency of accidents. The FAA is considering other rulemaking action to address noise and other issues concerning sightseeing overflights in national parks and other scenic areas. On March 17, 1994, the FAA and the National Park Service (NPS) issued a joint advance notice of proposed rulemaking (ANPRM) (59 FR 12740) seeking public comment on general policy and specific recommendations for voluntary and regulatory actions to address the effects of aircraft overflights on national parks. The FAA is currently analyzing comments submitted in response to the ANPRM. This SFAR is an emergency rule and not a final action in response to the joint FAA/NPS ANPRM.

The promulgation of requirements and restrictions in this SFAR, including the minimum flight altitude restriction, does not preclude the FAA from revisiting the issues addressed in the SFAR. As mentioned above, changes to this SFAR may be necessitated after a review of the comments received from

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related regulatory proposals. Additionally, this SFAR may be amended after consideration of the comments received on this SFAR.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 et. seq.).

Regulatory Evaluation Summary

Introduction

Changes to Federal regulations are required to undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. With respect to this rule, the FAA has determined that it: (1) is "a significant regulatory action" as defined in the Executive Order; (2) is significant as defined in the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) will have a significant impact on a substantial number of small entities; and (4) will not constitute a barrier to international trade. Therefore, a full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to this rule, has been prepared. This regulatory evaluation summary presents a concise analysis of the costs and benefits associated with the final rule that amends the Federal Aviation Regulations by establishing certain operational, procedural, and equipment requirements for air tour operators in the State of Hawaii.

Costs

The FAA estimates the total cost of the SFAR to be about $2.0 million, with a present value of $1.8 million (7 percent discount rate), from 1995 to 1997. The FAA assumes that air tour operators will elect to have lifevests on board the helicopter rather than installing external flotation gear because the costs are dramatically lower. This present value cost includes the cost of about $190,000 to provide lifevests on the affected helicopters; the potential of $1.6 million in lost revenue to air tour operators due to minimum flight altitudes; and $10,090 for the development of a helicopter performance plan. Other requirements of the rule—helicopter operating limitations and passenger briefing—will impose little if any cost.

Benefits

Since 1982, Hawaiian air tour operators have experienced 15 accidents involving at least one serious injury or fatality where the lack of flotation gear, flying into bad weather, or flying low has played a role in the cause of the accident. These accidents have resulted in 48 fatalities and 30 injuries (16 serious and 14 minor). This evaluation divides these accidents into three categories: (1) Inadvertent air tour helicopter water landings without flotation gear; (2) air tour helicopter accidents related to flying into bad weather or flying low; and, (3) air tour airplane accidents related to flying into bad weather or flying low.

The potential benefits of preventing all potential sightseeing accidents of a similar nature over the next 3 years totals $36.8 million, with a present value of about $32.2 million, of which $13.7 million would be for the prevention of helicopter accidents and $18.6 million would be for the prevention of airplane accidents.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) helps to assure that Federal regulations do not overly burden small businesses, small nonprofit organizations, and airports located in small cities. The RFA requires regulatory agencies to review rules that may have "a significant economic impact on a substantial number of small entities." A substantial number of small entities, defined by FAA Order 2100.14A, "Regulatory Flexibility Criteria and Guidance," is more than one-third, but not less than 11, of the small entities subject to the existing rule. To determine if the rule will impose a significant cost impact on these small entities, the annualized cost must not exceed the annualized cost threshold established in FAA Order 2100.14A.

Small entities potentially affected by the final rule are small on-demand air tour operators in Hawaii using helicopter and fixed-wing aircraft. The FAA assumes that air tour operators will elect to have lifevests on board the helicopter rather than installing external flotation gear because the costs are dramatically lower. The FAA estimates that the annualized cost associated with acquiring lifevests for all helicopter occupants is about $127 per seat. This estimate incorporates the cost of purchasing the lifevests, maintenance, and the associated weight penalty. Also, the FAA estimates that the annualized cost of the 1,500-foot minimum altitude requirement is about $989 per seat. This cost incorporates the estimated lost profits for days when tour operations are prohibited due to inclement weather.

FAA Order 2100.14A defines small on-demand operators as those operating with a fleet of nine or fewer aircraft, which includes 37 (7 fixed-wing and 30 helicopter) of the 38 air tour operators in Hawaii. The annualized cost threshold for small operators is $4,700 in 1994 dollars. The FAA has determined that the final rule will have a significant economic effect on 6 of the 7 fixed-wing air tour operators and 25 of the 30 affected helicopter air tour operators. The final rule will impose costs greater than the annualized cost threshold of $4,700 for all affected operators except for six of the small air tour operators.

Due to the significant economic impact of the final rule on a substantial number of small entities, the FAA examined an alternative minimum altitude requirement for the affected operators. The FAA evaluated various minimum altitude requirements including 500, 800, and 1,000 feet so as to reduce the annualized cost of the final rule on individual operators. The FAA has determined that a minimum altitude requirement of 500 feet will be necessary to lower the annualized cost of the final rule below the $4,700 threshold for most air tour operators. (Under § 91.155, pilots conducting VFR flights more than 1,200 feet above the surface in class G airspace must maintain a 500-foot vertical clearance below the clouds. Pilots operating VFR in class G airspace 1,200 feet or less above the surface must remain clear of clouds.) The FAA estimates that the annualized cost of a 500-foot minimum altitude requirement is about $81 per seat. Including the cost of the lifevests, the FAA has determined that the combined cost of the lifevests and the alternative requirement for a 500-foot minimum altitude will lower the annualized cost below the $4,700 threshold for all fixed-wing air tour operators and 26 of the 30 helicopter air tour operators.

The FAA has evaluated the level of safety for the 1,500-foot minimum altitude requirement in the final rule and that provided by a 500-foot minimum altitude requirement. Although the 1,500-foot minimum altitude requirement has a significant economic impact on a substantial number of small entities, it provides operational safety superior to that provided by a 500-foot minimum altitude and is necessary in the public interest. With the 1,500-foot minimum altitude, fixed-wing aircraft and helicopters have a longer power off gliding time, and the pilots are better able to select a suitable landing area in the event of a power failure. Hawaii's unique topography often complicates access to suitable emergency landing areas. The air tour accidents in Hawaii have been characterized by insufficient time for pilots to locate suitable landing areas after engine power loss or other problems leading to accidents. Therefore, the additional safety margins at the 1,500-foot minimum altitude should be provided when conducting passenger flights.

International Trade Impact Analysis

The SFAR will not have any impact on international trade because the affected operators do not compete with foreign operators. The SFAR will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services to the United States.

Good Cause for Immediate Adoption

The FAA is implementing this emergency final rule due to the recent escalation of fatal air tour accidents. Despite voluntary measures, the cooperation of the Hawaii air tour operators, and the FAA's inspections, the accident data show that voluntary measures and existing regulations are insufficient to ensure safe air tour operations in Hawaii. The recent accidents discussed above indicate an urgent safety problem that cannot be adequately addressed solely by enforcement of existing regulations. For this reason, I find that notice and public procedure are impracticable and contrary to the public interest. However, interested persons are invited to submit such comments as they desire regarding this SFAR. Communications should identify the docket number and be submitted in triplicate to the Rules Docket address noted above. All communications received on or before the close of the comment period will be considered by the Administrator, and this SFAR may be changed in light of the comments received. All comments will be available, both before and after the closing dates for comments, in the Rules Docket for examination by interested parties.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with the Standards and Recommended Practices of the International Civil Aviation Organization to the maximum extent practicable. The FAA is not aware of any differences that this amendment will present.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is a significant regulatory action under Executive Order 12866. In addition, the FAA certifies that this regulation will have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is considered significant under DOT Regulatory Policies and Procedures. A final regulatory evaluation of the regulation, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Aviation safety

14 CFR Part 135

Air taxi, Aircraft, Airmen, Aviation safety

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 91 and 135 of the Federal Aviation Regulations (14 CFR parts 91 and 135) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

2. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g).

3. In parts 91 and 135, Special Federal Aviation Regulation No. 71, the text of which will appear at the beginning of part 91, is added to read as follows:

SFAR No. 71—Special Operating Rules for Air Tour Operators in the State of Hawaii

Section 1. Applicability. This Special Federal Aviation Regulation prescribes operating rules for airplane and helicopter visual flight rules air tour flights conducted in the State of Hawaii under parts 91 and 135 of the Federal Aviation Regulations. This rule does not apply to flights conducted in gliders or hot air balloons.

Section 2. Definitions. For the purposes of this SFAR:

"Air tour" means any sightseeing flight conducted under visual flight rules in an airplane or helicopter for compensation or hire.

"Air tour operator" means any person who conducts an air tour.

Section 3. Helicopter flotation equipment. No person may conduct an air tour in Hawaii in a single-engine helicopter beyond the shore of any island, regardless of whether the helicopter is within gliding distance of the shore, unless:

(a) The helicopter is amphibious or is equipped with floats adequate to accomplish a safe emergency ditching and approved flotation gear is easily accessible for each occupant; or

(b) Each person on board the helicopter is wearing approved flotation gear.

Section 4. Helicopter performance plan. Each operator must complete a performance plan before each helicopter air tour flight. The performance plan must be based on the information in the Rotorcraft Flight Manual (RFM), considering the maximum density altitude for which the operation is

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planned for the flight to determine the following:

(a) Maximum gross weight and center of gravity (CG) limitations for hovering in ground effect;

(b) Maximum gross weight and CG limitations for hovering out of ground effect; and,

(c) Maximum combination of weight, altitude, and temperature for which height-velocity information in the RFM. is valid.

The pilot in command (PIC) must comply with the performance plan.

Section 5. Helicopter operating limitations. Except for approach to and transition from a hover, the PIC shall operate the helicopter at a combination of height and forward speed (including hover) that would permit a safe landing in event of engine power loss, in accordance with the height-speed envelope for that helicopter under current weight and aircraft altitude.

Section 6. Minimum flight altitudes. Except when necessary for takeoff and landing, or operating in compliance with an air traffic control clearance, or as otherwise authorized by the Administrator, no person may conduct an air tour in Hawaii:

(a) Below an altitude of 1,500 feet above the surface over all areas of the State of Hawaii, and,

(b) Closer than 1,500 feet to any person or property; or,

(c) Below any altitude prescribed by federal statute or regulation.

Section 7. Passenger briefing. Before takeoff, each PIC of an air tour flight of Hawaii with a flight segment beyond the ocean shore of any island shall ensure that each passenger has been briefed on the following, in addition to requirements set forth in § 91.107 or 135.117:

(a) Water ditching procedures;

(b) Use of required flotation equipment; and

(c) Emergency egress from the aircraft in event of a water landing.'

Section 8. Termination date. This Special Federal Aviation Regulation expires on October 26, 1997.

Issued in Washington, DC, on September 22, 1994

David R. Hinson,

Administrator.

[FR Doc. 94-23840 Filed 9-22-94; 11:42 am]

BILLING CODE 4910-13-M

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Part VI

The President

Proclamation 6723—Italian-American Heritage and Culture Month, 1994

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Presidential Documents

Title 3—

The President

Proclamation 6723 of September 22, 1994

Italian-American Heritage and Culture Month, 1994

By the President of the United States of America

A Proclamation

Between 1880 and 1914, nearly four million people left the familiar comfort and sweep of Italy to make a new life for themselves and their families in the unknown land of America. Young and old, rich and poor, Italian immigrants saw in the shores of the United States a symbol of hope and opportunity. Many came with little money and few possessions. Many carried only a love of freedom, a belief in hard work, and an abiding faith in the importance of family.

Bound together by a shared heritage and by a common experience as newcomers in a new culture, the Italian-American community drew its strength from within. During work days that often began before dawn and ended well after dusk, Italian Americans relied on the knowledge and determination that continue to drive our economy today. Working side by side when times were tight, family members depended on one another to survive and, ultimately, to prosper. And their success was apparent in the bright faces of the countless sons and daughters who followed their example and went on to raise families of their own. Today, third and fourth generations of Italian Americans maintain that tradition of community, looking back on the courage of their ancestors with heartfelt gratitude and unparalleled pride.

Italian Americans have indeed worked hard to build upon their rich heritage over the last century, and the fruits of their labors are evident in every aspect of our national life. From politics to business to academia, their diverse talents and skills have sustained our society and enriched our daily lives. This month, we pause to recognize their many extraordinary accomplishments. More than that, we reflect on the unique cultural heritage that, a hundred years ago, helped to turn the dream of a distant land into the reality of an American home.

The Congress, by House Joint Resolution 175 (Public Law No. 103–309), has designated October 1994, as "Italian-American Heritage and Culture Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the month of October 1994 as Italian-American Heritage and Culture Month. I call upon the people of the United States to observe this occasion with appropriate programs, ceremonies, and activities.

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IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of September, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94-23959
Filed 9-23-94; 10:52 am]
Billing code 3195-01-P

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H.R. 3474/P.L. 103–325

Riegle Community Development and Regulatory Improvement Act of 1994 (Sept. 23, 1994; 108 Stat. 2160; 137 pages)

Last List September 23, 1994

CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	(869–022–00001–2)	$5.00	Jan. 1, 1994
3 (1993 Compilation and Parts 100 and 101)	(869–022–00002–1)	33.00	[1] Jan. 1, 1994
4	(869–022–00003–9)	5.50	Jan. 1, 1994
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7 Parts:			
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27–45	(869–022–00008–0)	14.00	Jan. 1, 1994
46–51	(869–022–00009–8)	20.00	[6] Jan. 1, 1993
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1900–1939	(869–022–00022–5)	15.00	Jan. 1, 1994
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

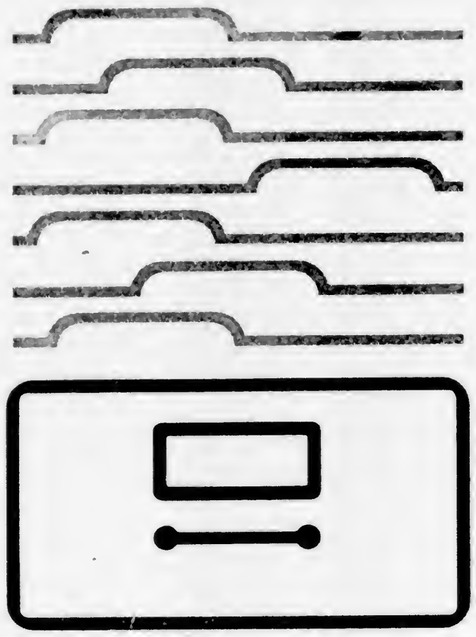
[4] No amendments to this volume were promulgated during the period Apr 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993 should be retained.

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in the Code of Federal Regulations (CFR)

Revised January 1, 1994

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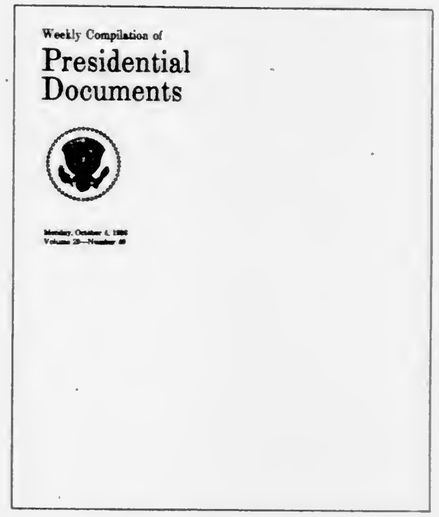
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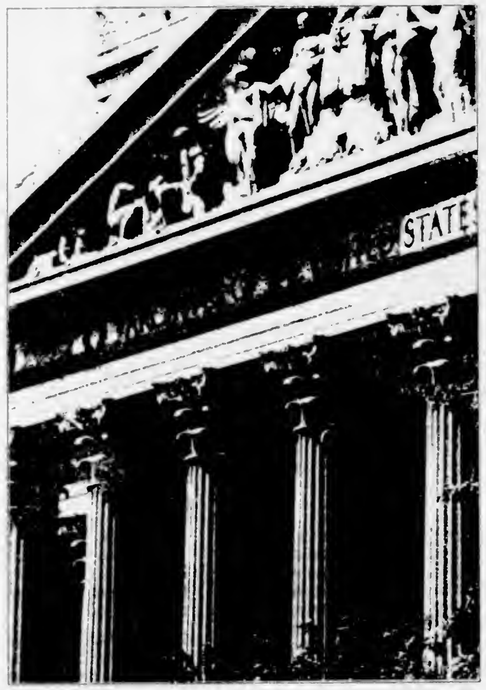
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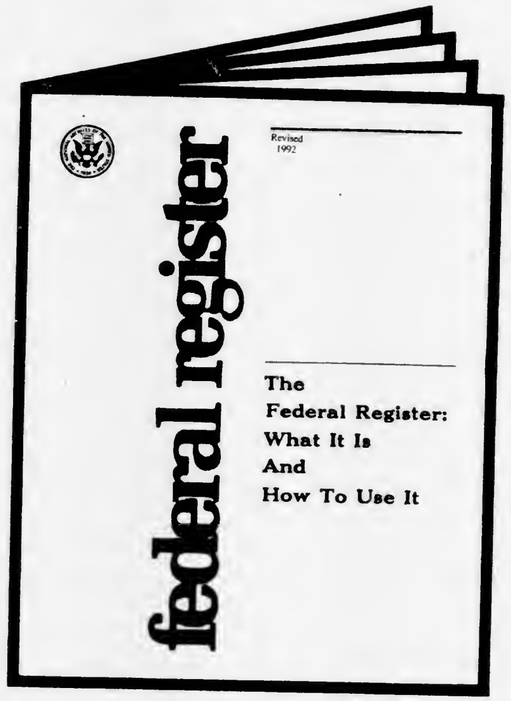
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Federal Register

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Rules and Regulations

Federal Register
Vol. 59, No. 186
Tuesday, September 27, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Cotton Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts regulations for specific crop provisions to insure cotton. These provisions will supplement the Common Crop Insurance Policy (§ 457.8) which contains standard terms and conditions common to most crops. The intended effect of this rule is to move specific crop provisions for insuring cotton from the General Crop Insurance Policy (§ 401.8) to the Common Crop Insurance Policy (§ 457.8) for ease of use by the public and conformance among policy terms.

EFFECTIVE DATE: October 27, 1994.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is March 1, 1999.

This rule has been determined to be "not significant" for purposes of Executive Order 12866, and therefore has not reviewed by the Office of Management and Budget (OMB).

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or record-keeping requirements included in this rule are found in 7 CFR part 400, subpart H.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The policies and procedures contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This action will not have a significant impact on a substantial number of small entities. The amount of work required of the insurance companies delivering these policies will not increase from the amount required to deliver previous policies. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12788. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

By separate rule, 7 CFR 401.119 will be amended to restrict the crop years of application to those prior to the crop year for which this rule will be effective. FCIC will terminate the provisions of the present policy at the end of the crop year and remove and reserve the cotton endorsement contained in 7 CFR 401.119.

On Tuesday, May 31, 1994, FCIC published a notice of proposed rulemaking in the **Federal Register** at 59 FR 28022 proposing to revise the Common Crop Insurance Regulations by adding new provisions for cotton crop insurance.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. The comments received and FCIC responses are as follows:

Comment: Two comments suggested that the crop provisions should not be implemented for the 1995 crop year because:

(1) Crop insurance reform will require many policy changes. Implementation of these crop provisions should be tabled until reform decisions are reached because impacts on policy terms are not yet clear. Delaying common policy implementation until it can be implemented in an orderly fashion should be beneficial to everyone concerned; and

(2) The Common Crop Insurance Policy should be thoroughly reviewed and revised as needed before any additional crop provisions are implemented under it.

Response: Program changes necessary to comply with crop insurance reform will have the same effects on either the existing cotton policy or these Cotton Crop Provisions. Any necessary changes can be made to the Cotton Crop Provisions as easily as they can be made to the existing policy. FCIC has recently completed a review of the Common Crop Insurance Policy Basic Provisions (§ 457.8). Any necessary changes required to be made to the Basic Provisions as a result of reform will be required whether or not the Cotton Crop Provisions have been implemented. Therefore, FCIC does not find it necessary to delay implementation for either of the reasons stated in the comments.

Comment: One comment questioned requirements contained in the definition of "Practical to replant." This definition indicated that the replanted acreage must have the potential to produce at least ninety percent (90%) of the production guarantee. The late planting

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provisions provide production guarantees much lower than the ninety percent (90%) potential requirement contained in the definition even though the late planted and replanted crop may be planted at the same time. The comment recommended removing the production potential requirement from the definition of "practical to replant."

Response: FCIC agrees that the production potential required by the definition of "practical to replant" and the production guarantee for late planted acreage may be inconsistent depending on the time of planting. Acreage initially planted twenty-five (25) days after the final planting date would have a production guarantee equal to sixty percent (60%) of the guarantee for timely planted acreage, while the definition of "practical to replant" would require acreage replanted at the same time to have a production potential equal to ninety percent (90%) of the production guarantee. However, expected yield does have an effect on whether it is practical to replant. The ninety percent (90%) production potential requirement has been removed from the definition of "practical to replant." However, the expected yield must be sufficient to cover production costs and must be at a level that growers in the area would normally care for and harvest.

Comment: One comment recommended changing the term "approved yield" to "approved APH yield" in the definition of "Production guarantee" to correspond with terminology in underwriting procedure.

Response: Underwriting procedure contains several methods which may be used to determine approved yields. These include the use of yields which may not represent actual production history (APH). Using the term "APH" could be misleading to readers not familiar with administrative procedures, and, therefore, will not be used in the crop insurance policy.

Comment: Three comments disagreed with the definition of "Written agreement". This definition required written agreements to be requested at least 15 days prior to the sales closing date.

(1) One comment recommended keeping the current deadlines for written agreements as specified in procedures. These procedures require that requests be made not later than 15 days after the acreage reporting date for most types of written agreements. Setting a deadline 15 days prior to the sales closing date will either force insureds to submit requests for written agreements they may not need, or result in uninsurable acreage if requests are not made for all possible situations. Unnecessary requests will increase paperwork for the insured, agent, FCIC Regional Service Office and company. The comment also recommended deleting the last sentence of the definition, which required written agreements to contain all variable terms including, but not limited to, crop variety, guarantee, premium and price election. The comment indicated it was not necessary to include this information on every written agreement because many written agreements do not alter these items.

(2) One comment recommended keeping the deadline of 15 days after the acreage reporting date because there are many instances when it is not known that a written agreement is necessary until the acreage is reported. The comment stated that the change would be an unreasonable requirement and would create difficulties since the sales closing dates will be 30 days earlier than in prior years.

(3) One comment stated that it is hard to understand why the written agreement deadline is 15 days prior to the time a producer has to purchase coverage, and that a more appropriate date should be established. The comment also stated that the sales closing dates are not listed in the proposed crop provisions. If these are the same date as the cancellation and termination date, the policy should so indicate.

Response: The proposed definition was intended to require that requests for written agreements be made far enough ahead of the sales closing date to allow the insurer to make the offer, and for the insured to accept the offer, by the sales closing date. Since the insurance policy is a written contract, both parties must have a meeting of the minds before the contract is valid. The terms and conditions of the policy must be known by the final date for establishing the insurance contract. In this program, the final date is the sales closing date. FCIC has determined that some situations may allow written agreements at other times. FCIC is preparing proposed written agreement regulations which will specify when written agreements must be completed. Until these regulations have been published, the written agreement must be completed by the sales closing date, or, in specific instances, a written agreement may be requested or approved after the sales closing date if the crop is physically inspected and a determination made that the crop has an expectancy of making the guaranteed yield. No prevented planting liability will be established as a result of any request submitted after the sales closing date FCIC does not agree that the final sentence should be deleted. Specifying all variable terms in the written agreement is necessary to assure a clear understanding of the terms in effect.

Although the sales closing dates normally will be the same as the cancellation and termination dates this is not always the case. Therefore, the sales closing dates will not be included in the crop provisions. Federal regulations authorize the Manager of FCIC to extend the sales closing date in any county upon the Manager's determination that no adverse selection will result during the extended period. The extended date is placed on file in the applicable service offices and a notice is placed in the **Federal Register**. If the sales closing dates were contained in the crop provisions, the crop provisions would need to be amended each time a sales closing date is extended.

Comment: One comment stated that unit division language contained in subsection 2.(b) should allow for situations in which the insured creates a discernible break via some tillage operation. The proposed provision states that the insured must plant the crop in a manner that results in a clear and discernible break in the planting pattern at the boundaries of each optional unit. There is no required method of creating a boundary as long as a discernible break is provided.

Response: The intent of the policy language is to allow separate optional units if acreage is farmed separately. Farming separately includes planting separately and keeping separate records of inputs, production, etc. Creating a boundary after the crop is planted by means of a tillage operation along a section line may or may not meet the policy requirement of planting the crop in a manner that results in a clear and discernible break at the units boundary. FCIC believes the present language clearly sets out the requirements for unit division.

Comment: Two comments were received regarding the changes in the cancellation and termination dates.

(1) One comment stated the assumption that since cancellation and termination dates were changed, that the sales closing dates will be changed to align with the new cancellation and termination dates.

(2) One comment expressed the concern that an earlier cancellation date would decrease the amount of time available for producers to make decisions regarding their insurance coverage.

Response: The sales closing dates, as contained in the Special Provisions, will be changed generally to be the same as, but no later than, the new cancellation and termination dates. Earlier cancellation and sales closing dates are intended to reduce the possibility that a producer's decision to cancel or purchase insurance is based on favorable or unfavorable growing conditions. FCIC expects this change to have favorable impact on insurance experience. Favorable results will be considered when calculating future premium rates.

Comment: One comment stated that section 6 (Insured Crop) indicates that colored cotton will be insurable under the cotton crop provisions. However, the introductory information in the **Federal Register** indicates the FCIC Regional Service Offices will issue production guarantees for colored cotton via written agreement until adequate actual production history is available for individual policyholders. The comment recommended that language to this effect be added to the policy, either in section 3 of the crop provisions or in the special provisions. The comment asked if the Crop Insurance Handbook will be revised to state that insureds must keep production history separate for colored cotton, what constitutes "adequate production history," and what information must be sent in with the request for a written agreement.

Response: FCIC's research indicates that the production potential for some colored cottons is significantly less than white upland cotton and that the value may be significantly higher. Insufficient data are currently available to establish production guarantees, prices, quality adjustment methods, etc. for colored cottons. Because data are insufficient, FCIC believes that colored cotton should be insurable only with a written agreement. Therefore, the provisions in section 6 (Insured Crop) have been changed accordingly. When requesting a written agreement, the insured should submit any available production history, the number of acres intended for planting in the current crop year, and other information normally required when requesting insurance for an uninsurable crop type. The Crop Insurance Handbook will be revised to indicate specific requirements as soon as it is practical to do so.

Comment: Two comments were received regarding the elimination of provisions that provided coverage while cotton stored in modules remains in the field.

(1) One comment stated that changing the end of the insurance period from "removal from the field" to "harvest" creates some concerns which need to be addressed. Specifically, the comment asks how quality will be accurately determined for cotton stored in modules when the modules may be stored in the field for a significant period of time?

(2) One comment opposed the removal of coverage for modules stored in the field. The comment stated that: (a) Large amounts of cotton are stored in modules and that the practice allows for timely and efficient harvest of the crop; (b) losses do not occur frequently once cotton is moduled, but there is some risk of weather-related loss until the modules are removed from the field; and (c) continuing the practice of insurance coverage until removal from the field would be consistent with recent ad hoc disaster rulings that deemed weather-damaged, field stored modules eligible for assistance.

Response: Upon further review, FCIC has determined that coverage for modules stored in the field should be provided. Approximately seventy percent (70%) of the U.S. crop is stored in modules until ginning can take place, and cotton stored in modules is not as susceptible to loss as cotton remaining on the stalk. The provisions in section 8 (Insurance Period) have been revised accordingly.

Comment: One comment recommended either revising or deleting provisions that allow the insured to leave representative samples if they disagree with the insurer's appraisal. In the event the provision cannot be deleted, the comment recommended changing the provision so that the insurer can decide when using representative samples is appropriate. In many situations, samples are more susceptible to loss and do not accurately represent what the entire unit would have produced.

Response: FCIC agrees that there are situations in which it may not be reasonable to leave representative strips from which production to count would ultimately be determined. The samples could be more vulnerable to damage than an entire field, or the insurer may be confident that the appraisal made accurately reflects production potential. However, the entire provision should not be removed. The provision has been changed to allow the insurer to determine those situations in which it is reasonable to leave representative samples to determine the amount of production to be counted. In cases where it is necessary to defer determinations the insured must be advised how production to count will ultimately be determined and the consequences of failure to leave or care for the samples.

Comment: One comment recommended that language in subsection 12.(b) be changed to require only one notice for prevented planting acreage rather than requiring notice three days after the final planting date and three days after the date the insured stops planting within the late planting period.

Response: The crop provisions provide two distinct periods during which the insured may be prevented from planting (i.e., by the final planting date and during the late planting period). The notice requirement allows the insurer the opportunity to verify that the acreage could not have been planted during such periods. FCIC agrees that an insured should only be required to give one notice if it is sufficient to cover all acreage for prevented planting purposes. Subsection 12.(b) has been modified to clarify that written notice must be given not later than three days after the final planting date for acreage the insured was prevented from planting by the final planting date, and not later than three days after the date the insured discovers that planting will not be possible if the insured was not prevented from planting such acreage by the final planting date but was prevented from planting such acreage during the late planting period.

Comment: One comment indicated that the proposed provisions in paragraph 12.(d)(3) will allow an insured to request a written agreement for prevented planting coverage for acreage exceeding the policy limitations, and to subsequently enroll in a USDA program that allows less acreage to be planted. The comment recommended revising the paragraph to limit eligible acreage to the amount allowed by any applicable USDA program, regardless of when the insured enrolls in such program or any previously approved written agreement.

Response: FCIC agrees that, if the farm is enrolled in an USDA program that limits the number of acres planted, acreage in excess of the amount allowed under an USDA program should not be eligible for prevented planting coverage. Paragraph 12.(d)(3) has been amended accordingly.

Comment: One comment recommended that language be added to paragraph 12.(d)(3) to allow prevented planting coverage by written agreement for acreage added to the insured's farming operation after the sales closing date.

Response: The insurance period for prevented planting coverage begins on the sales closing date. Allowing

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additional coverage to attach after the beginning of this period would likely result in coverage being requested primarily when conditions are favorable for a prevented planting indemnity. This adverse selection should be avoided to help maintain an actuarially sound program and to keep premium rates from rising to cover such losses. The definition of "written agreement" has been amended to specifically disallow any prevented planting liability as a result of any request submitted after the sales closing date.

In addition to the changes indicated in the responses to comments, FCIC has determined that:

1. The definition of *skip-row* should reference United States Department of Agriculture qualification requirements for *skip-row* patterns. These requirements are used to determine the land area that is considered to be planted to cotton.

2. Provisions in section 6 (Insured Crop) are modified to allow coverage on crops planted into an established grass or legume in certain instances. The increased emphasis on Highly Erodible Land Conservation had made conservation tillage and no-till more acceptable.

3. New small grain and cotton varieties that mature earlier than previously available varieties make "double cropping" more practical. However, in areas where soil moisture may be depleted by the first crop planted, this practice may not be feasible or may result in significantly more risk to the insurer. To allow insurance for this practice, yet limit the insurer's vulnerability in areas where "double cropping" may not be practical, section 6 of the crop provisions have been modified to allow insurance for "double cropped" cotton only if allowed by a written agreement or the Special Provisions.

Accordingly, the rule, "Common Crop Insurance Regulations; Cotton Crop Insurance Provisions" published at 59 FR 28022 as revised as set out below is hereby adopted as final rule.

List of Subjects in 7 CFR Part 457

Crop Insurance; Cotton.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation hereby amends the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1995 and succeeding crop years, in the following instances:

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 457 is amended by revising the heading as set forth above and by adding § 457.104 Cotton Crop Provisions to read as follows:

§ 457.104 Cotton Crop Insurance Provisions.

The Cotton Crop Insurance Provisions for the 1995 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Cotton Crop Provisions

If a conflict exists among the Common Crop Insurance Policy (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the common policy and these crop provisions will control the common policy.

1. Definitions

(a) *Cotton*—Varieties identified as American Upland Cotton.

(b) *Days*—Calendar days.

(c) *Final planting date*—The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

(d) *Good farming practices*—The cultural practices generally in use in the county for the insured crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those recognized by Cooperative Extension Service as compatible with agronomic and weather conditions in the area.

(e) *Growth area*—A geographic area designated by the Secretary of Agriculture for the purpose of reporting cotton prices.

(f) *Harvest*—The removal of the seed cotton from the open cotton boll, or the severance of the open cotton boll from the stalk by either manual or mechanical means.

(g) *Interplanted*—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

(h) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

(i) *Late planted*—Acreage planted to cotton during the late planting period.

(j) *Late planting period*—The period that begins the day after the final planting date for the insured crop and ends twenty-five (25) days after the final planting date.

(k) *Mature cotton*—Cotton that can be harvested either manually or mechanically.

(l) *Planted acreage*—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed which has been properly prepared for the planting method and production practice. Cotton must be planted in rows to be considered planted. Planting in any other manner will be considered as a failure to follow recognized good farming practices and any loss of production will not be insured unless otherwise provided by the special provisions or by written agreement to insure such crop. The yield conversion factor normally applied to non-irrigated skip-row cotton acreage will not be used if the land between the rows of cotton is planted to any crop.

(m) *Practical to replant*—In lieu of subsection 1.(ff) of the Common Crop Insurance Policy (§ 457.8) practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors including, but not limited to moisture availability, condition of the field, and time to crop maturity, that replanting to the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period unless replanting is generally occurring in the area.

(n) *Prevented planting*—Inability to plant the insured crop with proper equipment by:

(1) The final planting date designated in the Special Provisions for the insured crop in the county; or

(2) The end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting due to similar insurable causes. The insured cause of prevented planting must occur between the sales closing date and the final planting date for the insured crop in the county or within the late planting period.

(o) *Production guarantee*—The number of pounds determined by multiplying the approved yield per acre by any applicable yield conversion factor for non-irrigated skip-row planting patterns, and multiplying the result by the coverage level percentage you elect.

(p) *Replanting*—Performing the cultural practices necessary to replace the cotton seed, and replacing the seed in the insured acreage with the expectation of growing a successful crop.

(q) *Skip-row*—A planting pattern that:

(1) Consists of alternating rows of cotton and fallow land or land planted to another crop the previous fall; and

(2) Qualifies as a skip-row planting pattern as defined by the ASCS or successor agency.

(r) *Timely planted*—Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

(s) *Written agreement*—Designated terms of this policy may be altered by written agreement. Each agreement must be applied for by the insured in writing no later than the

sales closing date and is valid for one year only. If not specifically renewed the following year, continuous insurance will be in accordance with the printed policy. All variable terms including, but not limited to, crop variety, guarantee, premium rate and price election must be set out in the written agreement. In specific instances a written agreement may be applied for after the sales closing date and approved if, after a physical inspection of the acreage, there is a determination that the crop has the expectancy of making at least the guaranteed yield. However, no prevented planting liability will be established as a result of any request submitted after the sales closing date. All applications for written agreements as submitted by the insured must contain all variable terms of the contract between the company and the insured that will be in effect if the written agreement is disapproved.

2. Unit Division

Unless limited by the Special Provisions, a unit as defined in subsection 1.(tt) of the Common Crop Insurance Policy (§ 457.8), may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists. All optional units must be reflected on the acreage report for each crop year.

(a) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee.

(b) You must plan the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit.

(c) You must have records of measurement of stored or marketed production from each optional unit maintained in such a manner that we can verify the production from each optional unit or the production from each optional unit must be kept separate until after loss adjustment under the policy is completed.

(d) Each optional unit must meet one or more of the following criteria as applicable:

(1) *Optional Units by Section, Section Equivalent, or ASCS Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified Section. In the absence of Sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to: Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands an equivalent of Sections for unit purposes. In areas which have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single ASCS Farm Serial Number.

(2) *Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices:* In addition to or instead of establishing optional units by Section, section equivalent, or ASCS Farm Serial Number, optional units may be based or irrigated acreage or non-irrigated acreage if both are located in the same Section, section equivalent, or ASCS Farm Serial Number. The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which your guarantee is based and you may not continue into non-irrigated acreage in the same rows or planting pattern. You must plant, cultivate, fertilize, or otherwise care for the irrigated acreage in accordance with recognized good irrigated farming practices.

Basic units may not be divided into optional units on any basis including, but not limited to: Production practice, type, variety, or planting period, other than as described above. If you do not comply fully with these provisions, we will combine all optional units which are not in compliance with these provisions into the unit from which they were formed. We may combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions on all optional units is determined to be inadvertent, and the optional units are combined, premium paid for the purpose of electing optional units will be refunded to you.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Common Crop Insurance Policy (§ 457.8), you may select only one price election for all cotton in the county insured under this policy.

4. Contract Changes

The contract change date is November 30 preceding the cancellation date (see the provisions of section 4 (Contract Changes) of the Common Crop Insurance Policy (§ 457.8)).

5. Cancellation and Termination Dates

In accordance with subsection 2. (f) of the Common Crop Insurance Policy (§ 457.8), the cancellation and termination dates are:

State and county	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	February 15
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagon, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crocket, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 28
All other Texas counties and all other states	March 15

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Common Crop Insurance Policy (§ 457.8), the crop insured will be all the cotton lint, in the county for which premium rates are provided by the actuarial table:

(a) In which you have a share; and

(b) That is not (unless allowed by the Special Provisions or by written agreement):

(1) Colored cotton lint;

(2) Planted into an established grass or legume;

(3) Interplanted with another spring planted crop;

(4) Grown on acreage from which a hay crop was harvested in the same calendar year unless the acreage is irrigated; or

(5) Grown on acreage on which a small grain crop reached the heading stage in the same calendar year unless the acreage is irrigated or adequate measures are taken to terminate the small grain crop prior to heading and less than fifty percent (50%) of the small grain plants reach the heading stage.

7. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Common Crop Insurance Policy (§ 457.8):

(a) The acreage insured will be only the land occupied by the rows of cotton when a skip row planting pattern is utilized; and

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that the remaining stand will not produce at least ninety percent (90%) of the production guarantee, must be replanted unless we agree that replanting is not practical (see subsection 1.(m)).

8. Insurance Period

(a) In lieu of subsection 11.(b) of the Common Crop Insurance Policy (§ 457.8) (Harvest of the unit), insurance will end upon the removal of the cotton from the field.

(b) In accordance with the provisions under section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the calendar date for the end of the insurance period is the date immediately following planting as follows:

(1) September 30 in Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad,

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Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof;

(2) January 31 in Arizona, California, New Mexico, Oklahoma, and all other Texas counties; and

(3) December 31 in all other states.

9. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Common Crop Insurance Policy (§ 457.8), insurance is provided only against the following causes of loss which occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control meaures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if applicable, due to an unavoidable cause of loss occurring within the insurance period.

10. Duties in the Event of Damage or Loss

(a) In addition to your duties under section 14 (Duties in the Event of Damage or Loss) of the Common Crop Insurance Policy (§ 457.8), in the event of damage or loss:

(1) The cotton stalks must remain intact for our inspection; and

(2) If you initially discover damage to the insured crop within 15 days of harvest, or during harvest, you must leave representative samples of the unharvested crop in the field for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit.

(b) The stalks must not be destroyed, and required samples must not be harvested, until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed and written notice of probable loss given to us.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production:

(1) For any optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting from this the total production to count;

(3) Multiplying the remainder by your price election; and

(4) Multiplying this result by your share.

(c) The total production (pounds) to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes;

(D) For which you fail to provide records of production that are acceptable to us; or

(E) On which the cotton stalks are destroyed, in violation of section 10;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production of white cotton may be adjusted for quality deficiencies in accordance with subsection 11.(d)); and

(iv) Potential production on insured acreage you want to put to another use or you wish to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production of appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage, including any mature cotton retrieved from the ground.

(d) Mature white cotton may be adjusted for quality when production has been damaged by insured causes. Such production to count will be reduced if the price quotation for cotton of like quality (price quotation "A") for the applicable growth area is less than seventy-five percent (75%) of price quotation "B." Price quotation "B" is defined as the price quotation for the applicable growth area for cotton of the color and leaf grade, staple length, and micronaire reading designated in the Special Provisions for this purpose. Price quotations "A" and "B" will be the price quotations contained in the Daily Spot Cotton Quotations published by the USDA Agricultural Marketing Service on the date the last bale from the unit is classed. If the date the last bale classed is not available, the price quotations will be determined on the date the last bale from the unit is delivered to the warehouse, as shown on the producer's account summary obtained from the gin. If eligible for adjustment, the amount of production to be counted will be determined by multiplying the number of pounds of such production by the factor derived from dividing price quotation "A" by seventy-five percent (75%) of price quotation "B."

(e) Colored cotton lint will not be eligible for quality adjustment.

12. Late Planting and Prevented Planting

(a) In lieu of paragraph 8.(b)(2) and subsection 1.(aa) of the Common Crop Insurance Policy (§ 457.8), insurance will be provided for acreage planted to the insured crop during the late planting period (see subsection (c)), and acreage you were prevented from planting (see subsection (d)). These coverages provide reduced production guarantees. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for late planted acreage or prevented planting acreage exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage). (For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by thirty-five percent (0.35) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee per acre for timely planted acreage by the 150 acres in the unit.)

(b) You must provide written notice to us if you were prevented from planting (see subsection 1.(n)). This notice must be given not later than three days after:

(1) The final planting date for acreage you were prevented from planting by the final planting date if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you discover that planting will not be possible within the late planting period for acreage that may be eligible for prevented planting coverage if you were not prevented from planting such acreage by the final planting date, but were prevented from planting such acreage during the late planting period.

(c) Late Planting

(1) For cotton acreage planted after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of cotton continues after the final planting date, or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Special Provisions; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from planting cotton (see subsection 1.(n)), you may elect:

(i) To plant cotton during the late planting period (The production guarantee for such acreage will be determined in accordance with paragraph 12.(c)(1));

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year, (the production guarantee for such acreage will be thirty-five percent (0.35) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be equivalent to 245 pounds per acre (700 pounds multiplied by 0.35). This subparagraph does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest.); or

(iii) To plant cotton after the late planting period, (the production guarantee for such acreage will be thirty-five percent (0.35) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be equivalent to 245 pounds per acre (700 pounds multiplied by 0.35). Production to count for such acreage will be determined in accordance with subsections 11.(c) and (d)).

(2) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins on the sales closing date contained in the Special Provisions for the insured crop in the county.

(3) The acreage to which prevented planting coverage applies will be limited as follows:

(i) If you participate in any program administered by the United States Department of Agriculture for the crop year which limits the number of acres that may be planted, prevented planting acreage will not exceed the ASCS base acreage for the insured crop, reduced by any acreage reduction applicable to the farm under such program.

(ii) If you do not participate in any program administered by the United States Department of Agriculture which limits the number of acres that may be planted, unless a written agreement exists to the contrary, eligible acreage will not exceed the greater of:

(A) The ASCS base acreage for the insured crop, if applicable;

(B) The number of acres planted to cotton on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date); or

(C) One hundred percent (100%) of the simple average of the number of acres planted to cotton during the crop years that were used to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres properly prepared to carry out an irrigated practice.

(iv) A prevented planting production guarantee will not be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit, whichever is less;

(B) Land for which the actuarial table does not designate a premium rate unless a written agreement is in place designating such premium rate;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than cotton, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and reduced by the number of cotton acres timely planted after the final planting date. (For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of cotton on one optional unit and 40 acres of cotton on the second optional unit, your prevented planting eligible acreage would be reduced to zero. (100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more cotton acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share your report for each unit.)

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to cotton in the crop year.

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which is not eligible will be deleted from prevented planting coverage.

Done in Washington, DC on September [illegible], 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94–23833 Filed 9–26–94; 8:45 am]

BILLING CODE 3410–08–M

7 CFR Part 457

Common Crop Insurance Regulations; Coarse Grains Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts regulations for specific crop provisions to insure coarse grains (corn, grain sorghum, and soybeans). These provisions will supplement the Common Crop Insurance Policy which contains standard terms and conditions common to most crops. This rule consolidates the provisions for insuring coarse grains into one policy and provides insurance for corn intended to be harvested as silage and corn intended to be harvested as grain without the previously required corn silage option. The intended effect of this rule is to move specific crop provisions for insuring coarse grains from the General Crop Insurance Policy (§ 401.8) to the Common Crop Insurance Policy for ease of use by the public and conformance among policy terms.

EFFECTIVE DATE: October 27, 1994.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is March 1, 1999.

This rule has been determined to be "not significant" for purposes of Executive Order 12866 and therefore, has not been reviewed by the Office of Management and Budget (OMB).

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In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or record-keeping requirements included in this rule can be found in 7 CFR part 400, subpart H.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have substantial direct effects on states of their political subdivisions, or on the distribution of power and responsibilities among various levels of government.

This action will not have a significant impact on a substantial number of small entities. The amount of work required of the insurance companies delivering these policies will not increase from the amount of work required to deliver previous policies. The combination of a number of previously independent policies into one policy should ease program administration and increase efficiency. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

The Office of General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12788. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This rule will provide one policy form for insuring corn, grain sorghum, and soybeans and provide insurance for corn intended to be harvested as silage and corn intended to be harvested as grain without the previously required corn silage option. Using one policy for these three crops will: (1) Substantially reduce paperwork by issuing one policy form rather than the three separate policies previously used; (2) reduce the time involved to amend or revise the provisions by eliminating repetitious review processes; and (3) continue to allow insured the flexibility to elect any of the three coarse grain crops they wish to insure.

By separate rule, FCIC will revise and later remove the corn, grain sorghum and soybean endorsements contained in 7 CFR 401.111, 7 CFR 401.113 and 7 CFR 401.117 and the Corn Silage Option contained in 7 CFR 401.112. These regulations will be amended to restrict the crop years of application to those prior to the crop year for which this rule will be effective.

On Tuesday, May 31, 1994, FCIC published a notice of proposed rulemaking in the **Federal Register** at 59 FR 28016 proposing to revise the Common Crop Insurance Regulations by adding new provisions for corn, grain sorghum, and soybean crop insurance.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. Comments were received from the crop insurance industry. The comments received and FCIC responses are as follows:

Comment: Two comments suggested that the crop provisions should not be implemented for the 1995 crop year because:

(1) Crop insurance reform will require many policy changes. Implementation of these crop provisions should be tabled until reform decisions are reached because impacts on policy terms are not yet clear. Delaying common policy implementation until it can be implemented in an orderly fashion should be beneficial to everyone concerned; and

(2) The Common Crop Insurance Policy should be thoroughly reviewed and revised as needed before any additional crop provisions are implemented under it.

Response: Program changes necessary to comply with crop insurance reform will have the same effects on either the existing policies or these Coarse Grains Crop Provisions. Any necessary changes can more easily be made to the Coarse Grains Crop Provisions as to the existing policies since only one policy will need to be amended. FCIC has recently completed a review of the Common Crop Insurance Policy Basic Provisions (§ 457.8). Any necessary changes required to be made to the Basic Provisions as a result of this review or as a result of reform will be required whether or not the Coarse Grains Crop Provisions have been implemented. Therefore, FCIC does not find it necessary to delay implementation for either of the reasons stated in the comments.

Comment: Two comments were received regarding the proposed definition of "Planted acreage." This definition requires the crop to be planted in rows far enough apart to permit mechanical cultivation unless otherwise provided by the Special Provisions, or allowed by written agreement.

(1) One comment stated that drilling soybeans is a widespread practice and that the definition should include drilling as an insurable planting practice for soybeans. The comment also suggested that the Special Provisions could contain restrictions for any counties where drilled soybeans are uninsurable unless a written agreement is requested.

(2) One comment assumed that the Special Provisions will continue to allow for drilling the crops in the same areas as in the past.

Response: FCIC acknowledges that planting of soybeans and grain sorghum with a grain drill rather than a row planter is a common practice in some areas. The definition has been modified by removing the requirement to plant soybeans and grain sorghum in rows far enough apart to permit mechanical cultivation. Since the crop provisions allow insurance for drilled soybeans and grain sorghum, it will not be necessary for the Special Provisions to specifically allow such practice. If necessary, the Special Provisions which are provided to the insured could restrict the insurability of this planting method in a particular area.

Comment: One comment questioned requirements contained in the definition of "Practical to replant." This definition indicated that the replanted acreage must have the potential to produce at least ninety percent (90%) of the production guarantee. Late planting provisions provide production guarantees much lower than the ninety percent (90%) potential requirement contained in the definition even though the late planted and replanted crop may be planted at the same time. The comment recommended removing the production potential requirement from the definition of "Practical to replant."

Response: FCIC agrees that the production potential required by the definition of "Practical to replant" and the production guarantee for late planted acreage may be inconsistent depending on the time of planting. Acreage initially planted twenty-five (25) days after the final planting date would have a production guarantee equal to sixty (60%) of the guarantee for timely planted acreage, while the definition of "Practical to replant" would require acreage replanted at the same time to have a production potential equal to ninety percent (90%) of the production guarantee. However, expected yield does have an effect on whether it is practical to replant. The ninety percent (90%) production potential requirement has been removed from the definition of "Practical to replant". However, the expected yield must be sufficient to cover production costs and must be at a level that growers in the area would normally care for and harvest.

Comment: One comment recommended changing the term "approved yield" to "approved APH yield" in the definition of "Production guarantee" to correspond with terminology in underwriting procedure.

Response: Underwriting procedure contains several methods which may be used to determine approved yields. These include the use of yields which may not represent actual production history (APH). Using the term "APH" could be misleading to readers not familiar with administrative procedures, and, therefore will not be used in the crop insurance policy.

Comment: Three comments disagreed with the definition of "Written agreement." This definition required written agreements to be requested at least 15 days prior to the sales closing date.

(1) One comment recommended keeping the current deadlines for written agreements as specified in procedures. These procedures require that requests be made not later than 15 days after the acreage reporting date for most types of written agreements. Setting a deadline 15 days prior to the sales closing date will either force insureds to submit requests for written agreements they may not need, or result in uninsurable acreage if requests are not made for all possible situations. Unnecessary requests will increase paperwork for the insured, agent, FCIC Regional Service Office and company. The comment also recommended deleting the last sentence of the definition, which required written agreements to contain all variable terms including, but not limited to, crop variety, guarantee, premium and price election. The comment did not believe it was necessary to include this information on every written agreement because many written agreements do not alter these items.

(2) One comment recommended keeping the deadline of 15 days after the acreage reporting date because there are many instances when it is not known that a written agreement is necessary until the acreage is reported. The comment stated that the change would be an unreasonable requirement and would create difficulties since the sales closing dates will be 30 days earlier than in prior years.

(3) One comment stated that it is hard to understand why the written agreement deadline is 15 days prior to the time a producer has to purchase coverage and that a more appropriate date should be established. The comment also stated that the sales closing dates are not listed in the proposed crop provisions. If these are to be the same dates as the cancellation and termination dates, the policy should so indicate.

Response: The proposed definition was intended to require that requests for written agreements be made far enough ahead of the sales closing date to allow the insurer to make the offer, and the insured to accept the offer, by the sales closing date. Since the insurance policy is a written contract, both parties must have a meeting of the minds before the contract is valid. The terms and conditions of the policy must be known by the final date for establishing the insurance contract. In this program, the final date is the sales closing date. FCIC has determined that some situations may allow written agreements at other times. FCIC is preparing proposed written agreement regulations which will specify when written agreements must be completed. Until these regulations have been published, the written agreement must be completed by the sale closing date, or, in specific instances, a written agreement may be requested or approved after the sales closing date if the crop is physically inspected and a determination made that the crop has an expectancy of making the guaranteed yield. No prevented planting liability will be established as a result of any request submitted after the sales closing date. FCIC does not agree that the final sentence should be deleted. Specifying all variable terms in the written agreement is necessary to assure a clear understanding of the terms in effect.

Although the sales closing dates normally will be the same as the cancellation and termination dates, this is not always the case. Therefore, the sales closing dates will not be included in the crop provisions. Federal regulations authorize the Manager of FCIC to extend the sales closing date in any county upon the Manager's determination that no adverse selection will result during the extended period. The extended date is placed on file in the applicable service offices and a notice is placed in the **Federal Register**. If the sales closing dates were contained in the crop provisions, the crop provisions would need to be amended each time a sales closing date is extended.

Comment: One comment stated that unit division language contained in subsection 2.(b) should allow for situations where the insured creates a discernible break by some tillage operation. The proposed provision states that the insured must plant the crop in a manner that results in a clear and discernible break in the planting pattern at the boundaries of each optional unit. There is no required method of creating a boundary as long as a discernible break is provided.

Response: The intent of the policy language is to allow separate optional units if acreage is farmed separately. Farming separately includes planting separately and keeping separate records of inputs, production, etc. Creating a boundary after the crop is planted by means of a tillage operation along a section line may or may not meet the policy requirement of planting the crop in a manner that results in a clear and discernable break at the units boundary. FCIC believes the present language clearly sets out the requirements for unit division.

Comment: One comment stated that subsection 3.(b) requires the application to be revised when corn is harvested in a manner other than reported, and that procedure should indicate how this revision is to be made.

Response: Language in subsection 3.(b) does not require the application to be revised to elect a price election for the method of harvest (grain/silage) when the insured did not select an appropriate price election. The price specified in this provision will only be used to establish "the dollar amount of production to count for indemnity purposes." If an insured only selected a grain price election and reported the acreage as intended for harvest as grain, but harvested the acreage for silage, the amount of insurance is determined by multiplying the production guarantee for grain by the price election selected by the insured for grain. The value of any silage production is determined by multiplying the number of tons of silage to count by a price that bears the same relationship to the maximum silage price election as the selected price for grain does to the maximum grain price. FCIC has amended this subsection to clarify that this price is assigned by us only for the purpose of determining the dollar value of production to count for

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indemnity purposes and will not affect the premium or amount of insurance.

Comment: One comment assumed that since cancellation and termination dates were changed, that the sales closing dates will be changed to align with the new cancellation and termination dates.

Response: The sales closing dates as contained in the Special Provisions will be changed generally to be the same as, but no later than, the new cancellation and termination dates.

Comment: One comment expressed concerns regarding changes that will be required in underwriting and loss procedure since the new policy allows both grain and silage to be insured. The comment stated that procedure should be developed concurrently with policy language to avoid major confusion. Specifically, underwriting procedure should clearly address how grain and silage types are to be reported and insured, how production can or cannot be converted for APH purposes and whether appraisals are required if there is no loss, but the crop is harvested in a manner other than as reported. The comment also requested that FCIC consider previously submitted information when developing the procedure.

Response: FCIC agrees with the comment and has begun drafting procedure to address underwriting and loss issues. Previously submitted correspondence will be considered in procedural development.

Comment: One comment stated that a definition of "silage variety" is necessary. The comment stated that subparagraph 6.(b)(2)(ii) refers to "a variety of corn adapted for silage use only," but that their understanding is that there are no varieties adapted strictly for use as silage. The comment asked if FCIC intends to designate silage varieties on the Special Provisions.

Response: There is no uniform agreement regarding the existence or definition of a "silage variety." However, due to ongoing attempts to develop new "silage varieties," FCIC believes that language should remain in these crop provisions to prevent insuring corn on a grain basis for a variety of corn adapted for silage use only. Since there is no uniform agreement regarding the existence of silage varieties, a definition will not be added. FCIC has modified subparagraph 6.(b)(2)(ii) to delete the term "silage variety." If research succeeds in developing silage varieties, FCIC will evaluate placing specific silage variety restrictions in the Special Provisions.

Comment: One comment suggested subsection 1.(m) conflicts with subsection 10.(a), stating that: (1) Subsection 1.(m) specifies that it may be considered practical to replant after the end of the late planting period if replanting is generally occurring in the area; and (2) subection 10.(a) specifies that a replant payment may be made if replanting occurs no later than 25 days after the final planting date. The comment further stated that if it is determined to be practical to replant after the late planting period, a replanting payment must be made and subsection 10.(a) should indicate the same.

Response: FCIC agrees with the comment and has removed the provision in subsection 10.(a) that requires replanting within 25 days after the final planting date.

Comment: One comment stated that subsections 10.(b) and 10.(c) are confusing because: (1) Subsection 10.(c) allows a replant payment, based on the total insured shares, to be made to one party if an agreement exists to that effect between the insured persons; and (2) subsection 10.(b) uses "your share" in calculating the maximum replant payment. The comment suggested that a qualifier should be added to subsection 10.(b) to reflect paying a replant payment based on the total insured share if 10.(c) applies. The comment also asked which company pays the entire replant payment when persons sharing in the crop are insured with different companies.

Response: FCIC agreed that a replant payment should be calculated using the insured share or the share determined in subsection 10.(c), if applicable and has modified subsection 10.(b) accordingly. The proposed language contained in subsection 10.(c) would have required the company insuring the person given the right to the replant payment to pay the entire amount due. Upon further review, FCIC has determined it is not appropriate to require an insurer to pay replant payments based on a share in excess of the share they actually insure. Therefore, subsection 10.(c) has been revised to allow replant payments based on the total shares insured with the insurer.

Comment: One comment questioned whether FCIC intends to incorporate language contained in subsection 10.(d) into every crop provision that provides for a replant payment. This language requires that when the crop is replanted using a practice that is uninsurable as an original planting, the liability for the unit will be reduced by the amount of the replanting payment which is attributable to the insured's share and that the premium amount will not be reduced.

Response: As policies are revised, this provision will be added if appropriate for the specific crop.

Comment: One comment questioned whether a person who insured grain and silage within one unit, but did not discover damage until after the beginning of grain harvest, could give timely notice of damage more than 15 days after the end of the insurance period for silage but within the period timely notice could be given for grain.

Response: Notice would be considered timely as long as the silage acreage within the unit was not damaged. If the silage acreage within the unit was damaged, notice would be required within 72 hours of the insured's initial discovery of damage to the silage acreage (but not later than 15 days after the end of the insurance period for silage). FCIC has clarified paragraph 11.(b)(1).

Comment: One comment recommended that subparagraph 12.(b)(2)(ii) be revised to read "Multiplying each result by the price election for that type;" because the phrase "price election for each type" indicates multiplying by both grain and silage price elections.

Response: FCIC agrees with the comment and has modified the provision.

Comment: One comment recommended either revising or deleting provisions that allow the inured to leave representative samples if they disagree with the insurer's appraisal. In the event the provision cannot be deleted the comment recommended changing the provision so that the insurer can decide when using representative samples is appropriate. In many situations, samples are more susceptible to loss and do not accurately represent what the entire unit would have produced.

Response: FCIC agrees that there are situations in which it may not be reasonable to leave representative strips from which production to count would ultimately be determined. The samples could be more vulnerable to damage than an entire field, or the insurer may be confident that the appraisal made accurately reflects production potential. However, the entire provision should not be removed. The provision has been changed to allow the insurer to determine those situations in which it is reasonable to leave representative samples to determine the amount of production to be counted. In cases where it is necessary to defer determinations, the insured must be advised how production to count will ultimately be determined and the consequences of failure to leave or care for the samples.

Comment: One comment recommended amending subsection 12.(e) by specifically stating that moisture adjustment, if applicable, will be made prior to any adjustment for quality.

Response: FCIC agrees with the comment and has modified subsection 12.(e) accordingly.

Comment: One comment recommended amending subsection 12.(f) to require that moisture adjustments for silage, if applicable, will be made prior to any adjustment for quality for grain-deficient silage.

Response: Subsection 12.(f) contains the requirements that must be met for silage production to be adjusted for moisture and for grain-deficiency. Current FCIC procedure specifies that when both adjustments apply, the silage moisture adjustment factor is to be multiplied by the silage grain-deficient factor and the result multiplied by the number of tons of silage that qualify for both adjustments. This method of adjustment results in a proportionate adjustment of the silage production based on both factors. FCIC does not agree with the comment because adjusting for moisture first may result in a disproportionate adjustment of the silage production. FCIC has not amended subsection 12.(f).

Comment: One comment assumed that moving to a factor-based quality adjustment process as specified in paragraph 12.(e)(4) removes any reliance on local market price, except for quality, such as aflatoxin, not addressed by the factor table in the Special Provisions. The comment also stated that if language in subparagraph 12.(e)(3)(ii) remains in the policy, an insured would have strong justification for requesting adjustment of production that meets the grade requirements in the policy, but which has a value less than the local market price. The comment recommends deletion of subparagraph 12.(e)(3)(ii).

Response: FCIC agrees that quality adjustment should not apply if grain meets minimum grade requirements and other substances or conditions are not present causing a value less than the local market price. The Special Provisions will specify how the quality factor will be determined for quality deficiencies, substances and conditions. Subparagraph 12.(e)(3)(ii) has been deleted.

Comment: One comment recommended that language in subsection 13.(b) be changed to require only one notice for prevented planting acreage rather than requiring notice three days after the final planting date and three days after the date the insured stops planting within the late planting period.

Response: The crop provisions provide two distinct periods during which the insured may be prevented from planting (i.e., by the final planting date and during the late planting period). The notice requirement allows the insurer the opportunity to verify that the acreage could not have been planted during such periods. FCIC agrees that an insured should only be required to give one notice if it is sufficient to cover all acreage for prevented planting purposes. Subsection 13.(b) has been modified to clarify that written notice must be given not later than three days after the final planting date for acreage the insured was prevented from planting by the final planting date, and not later than three days after the date the insured discovers that planting will not be possible if the insured was not prevented from planting such acreage by the final planting date but was prevented from planting such acreage during the late planting period.

Comment: One comment indicated that the proposed provisions in paragraph 13.(d)(3) will allow an insured to request a written agreement for prevented planting coverage for acreage exceeding the policy limitations, and to subsequently enroll in a USDA program that allows less acreage to be planted. The comment recommended revising the paragraph to limit eligible acreage to the amount allowed by any applicable USDA program, regardless of when the insured enrolls in such program or any previously approved written agreement.

Response: FCIC agrees that if the farm is enrolled in a USDA program that limits the number of acres planted, acreage in excess of the amount allowed under a USDA program should not be eligible for prevented planting coverage. Paragraph 13.(d)(3) has been amended accordingly.

Comment: One comment recommended that language be added to paragraph 13.(d)(3) to allow prevented planting coverage by written agreement for acreage added to the insured's farming operation after the sales closing date.

Response: The insurance period for prevented planting coverage begins on the sales closing date. Allowing additional coverage to attach after the beginning of this period would likely result in coverage being requested primarily when conditions are favorable for a prevented planting indemnity. This adverse selection should be avoided to help maintain an actuarially sound program and to keep premium rates from rising to cover such losses. The definition of "Written agreement" has been amended to specifically disallow any prevented planting liability as a result of any request submitted after the sales closing date.

In addition to the changes indicated in the responses to comments, FCIC has made the following changes:

1. FCIC has modified paragraph 3.(a)(2) to require that the price elections for grain and silage have the same percentage relationship to the maximum price election offered for grain and silage.

2 FCIC has modified subsection 5.(b) to simplify the cancellation and termination dates in Texas.

3. The provisions in section 6 have been modified to allow insurance for coarse grains planted into an established grass or legume if allowed by the Special Provisions or by written agreement.

4. FCIC has modified paragraph 12.(b)(2) to specify that the production guarantee for a unit will be computed by multiplying the insured acreage of each type (grain/silage) by the production guarantee for the applicable type. The proposed language contained in subparagraph 12.(b)(1)(i) has been modified in a similar manner.

Accordingly, the rule, "Common Crop Insurance Regulations; Coarse Grains Crop Insurance Provisions" published at 59 FR 28016, revised as set out below, is hereby adopted as final rule.

List of Subjects in 7 CFR Part 457

Crop Insurance; corn, grain sorghum, soybean.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation hereby amends the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1995 and succeeding crop years, in the following instances:

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 457 is amended by adding § 457.113 Coarse Grains Crop Insurance Provisions to read as follows:

§ 457.113 Coarse Grains Crop Insurance Provisions.

The Coarse Grains Crop Insurance Provisions for the 1995 and succeeding crop year are as follows:

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UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Coarse Grains Crop Provisions

If a conflict exists among the Common Crop Insurance Policy (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the common policy and these crop provisions will control the common policy.

1. Definitions

(a) *Coarse grains*—Corn, grain sorghum, and soybeans.

(b) *Days*—Calendar days.

(c) *Final planting date*—The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

(d) *Good farming practices*—Good farming practices are the cultural practices generally in use in the county for the insured crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those recognized by the Cooperative Extensive Service as compatible with agronomic and weather conditions in the area.

(e) *Grain sorghum*—The crop defined as sorghum under the United States Grain Standards Act.

(f) *Harvest*—Combining, threshing, or picking the insured crop for grain, or cutting for hay, silage, or fodder.

(g) *Interplanted*—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

(h) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

(i) *Late planted*—Acreage planted to the insured crop during the late planting period.

(j) *Late planting period*—The period that begins the day after the final planting date for the insured crop and ends twenty-five (25) days after the final planting date.

(k) *Local market price*—The cash grain price per bushel for the U.S. No. 2 yellow corn, U.S. No. 2 grain sorghum, or U.S. No. 1 soybeans, offered by buyers in the area in which you normally market the insured crop. The local market price will reflect the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade for yellow corn and grain sorghum, or U.S. No. 1 grade for soybeans. Factors not associated with grading under the Official United Standards for Grain, including but not limited to protein and oil, will not be considered.

(l) *Planted acreage*—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed which as been properly prepared for the planting method and production practice. Coarse grains must initially be planted in rows to be considered planted. Corn must be planted in rows far enough apart to permit mechanical cultivation. Planting in any other manner will be considered as a failure to follow recognized good farming practices and any loss of production will not be insured unless otherwise provided by the Special Provisions or by written agreement to insure such crop.

(m) *Practical to replant*—In lieu of subsection 1.(ff) of the Common Crop Insurance Policy (§ 457.8) practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors including, but not limited to moisture availability, condition of the field, and time to crop maturity that replanting to the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period unless replanting is generally occurring in the area.

(n) *Prevented planting*—Inability to plant the insured crop with proper equipment by:

(1) The final planting date designated in the Special Provisions for the insured crop in the county; or

(2) The end of the late planting period.

You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting due to similar insurable causes. The insured cause of prevented planting must occur between the sales closing date and the final planting date for the insured crop in the county or within the late planting period.

(o) *Production guarantee*—The number of bushels (tons for corn insured as silage) determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(p) *Replanting*—Performing the cultural practices necessary to replace the seed of the same insured crop, and replacing the seed for the same crop in the insured acreage with the expectation of growing a successful crop.

(q) *Silage*—A product that results from severing the plant from the land and chopping it for the purpose of livestock feed.

(r) *Timely planted*—Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

(s) *Ton*—Two thousand (2000) pounds avoirdupois.

(t) *Written agreement*—Designated terms of this policy may be altered by written agreement. Each agreement must be applied for by the insured in writing no later than the sales closing date and is valid for one year only. If not specifically renewed the following year, continuous insurance will be in accordance with the printed policy. All variable terms including, but not limited to, crop variety, guarantee, premium rate and price election must be set out in the written agreement. In specific instances, a written agreement may be applied for after the sales closing date and approved if, after a physical inspection of the acreage, there is a determination that the crop has the expectance of making at least the guaranteed yield. However, no prevented planting liability will be established as a result of any request submitted after the closing date. All applications for written agreements as submitted by the insured must contain all variable terms of the contract between the company and the insured that will be in effect if the written agreement is disapproved.

2. Unit Division

Unless limited by the Special Provisions, a unit as defined in subsection 1.(tt) of the Common Crop Insurance Policy (§ 457.8), may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists. All optional units must be reflected on the acreage report for each crop year.

(a) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee.

(b) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit.

(c) You must have records of measurement of stored or marketed production from each optional unit maintained in such a manner that we can verify the production from each optional unit or the production from each unit must be kept separate until after loss adjustment under the policy is completed

(d) Each optional unit must meet one or more of the following criteria as applicable:

(1) *Optional Units by Section, Section Equivalent, or ASCS Form Seriol Number:* Optional units may be established if each optional unit is located in a separate legally identified Section. In the absence of Sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to: Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands as the equivalent of Sections for unit purposes. In areas which have not been surveyed using the systems identified above or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single ASCS Farm Serial Number.

(2) *Optional Units on Acreage Including Both Irrigated and Non-Irrigated Practices:* In addition to or instead of establishing optional units by Section, section equivalent, or ASCS Farm Serial Number, optional units may be established based on irrigated acreage or non-irrigated acreage if both are located in the same Section, section equivalent, or ASCS Farm Serial Number.

The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which your guarantee is based and you may not continue into non-irrigated acreage in the same rows or planting pattern. You must plant, cultivate, fertilize, or otherwise care for the irrigated acreage in accordance with recognized good irrigated farming practices.

Basic units may not be divided into optional units on any basis (production practice, type, variety, planting period, etc.) other than as described under this section. If you do not comply fully with these provisions, we will combine all optional units which are not in compliance with these provisions into the basic unit from which they were formed. We may combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and all the optional units are combined, the premium paid for the purpose of electing optional units will be refunded to you.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Common Crop Insurance Policy (§ 457.8) you may select:

(1) For grain sorghum and soybeans, only one price election for each crop in the county insured under this policy; and

(2) For corn, only one price election for all the corn in the county insured as grain under this policy, and only one price election for all the corn in the county insured as silage under this policy. The price elections you choose for grain and silage must have the same percentage relationship to the maximum price election offered by us for grain and silage. For example, if you choose one hundred percent (100%) of the maximum grain price election and you also insure corn on a silage basis, you must choose one hundred percent (100%) of the maximum silage price election.

(b) For corn only, if you harvest the crop in a manner other than the manner you reported (for example, you reported grain but harvested as silage) and you did not select a price election for the type harvested, we will assign a price election for the type harvested that bears the same percentage relationship to the maximum price election you selected for the type reported (for example, if you selected a grain price election in the amount of eighty percent (80%) of the maximum price election for grain and you did not select a silage price election, we will assign a silage price election in the amount of eighty percent (80%) of the maximum price election for silage specified in the Special Provisions if you harvest for silage). This assigned price election will be used only to determine the dollar value of production to count for indemnity purposes and will not be used to determine the amount of insurance or premium.

4. Contract Changes

The contract change date is November 30 preceding the cancellation date (see the provisions of section 4 (Contract Changes) of the Common Crop Insurance Policy (§ 457.8)).

5. Cancellation and Termination Dates

In accordance with subsection 2.(f) of the Common Crop Insurance Policy (§ 457.8), the cancellation and termination dates are:

State and county	Cancellation and termination dates
(a) For corn and grain sorghum:	
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 15.
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; and South Carolina	February 28.
All other Texas counties and all other states	March 15.
(b) For soybeans:	
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, LaSalle, and Dimmit Counties, Texas and all Texas counties lying south thereof.	February 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; and South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Maverick, Zavala, Frio, Atascosa, Karnes, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 28.
All other Texas counties and all other states	March 15.

6. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Common Crop Insurance Policy (§ 457.8), the crop insured will be each coarse grain crop you elect to insure for which premium rates are provided by the actuarial table:

(1) In which you have a share;

(2) That is adapted to the area based on days to maturity and is compatible with agronomic and weather conditions in the area; and

(3) That is not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop except as allowed in paragraph 6.(b)(1); or

(ii) Planted into an established grass or legume.

(b) For corn only, in addition to the provisions of subsection 6.(a), the corn crop insured will be all corn that is:

(1) Planted for harvest either as grain or as silage (see subsection 6.(c)). A mixture of corn and sorghum (grain or forage-type) will be insured as corn silage if the sorghum does not constitute more than twenty percent (20%) of the plants;

(2) Yellow dent or white corn, including mixed yellow and white, waxy or high-lysine corn, and excluding:

(i) High-amylose, high-oil, high-protein, flint, flour, Indian, or blue corn, or a variety genetically adapted to provide forage for wildlife or any other open pollinated corn, unless a written agreement allows insurance of such excluded crops.

(ii) A variety of corn adapted for silage use only when the corn is reported for insurance as grain.

(c) For corn only, if the actuarial table for the county provides a premium rate for:

(1) *Both grain and silage*, all insurable acreage will be insured as the type or types reported by you on or before the acreage reporting date;

(2) *Grain but not silage*, all insurable acreage will be insured as grain unless a written agreement allows insurance on all or a portion of the insurable acreage as silage; or

(3) *Silage but not grain*, all insurable corn acreage will be insured as silage unless a written agreement allows insurance on all or a portion of the insurable acreage as grain.

(d) For grain sorghum only, in addition to the provisions of subsection 6.(a), the grain sorghum crop insured will be all of the grain sorghum in the county:

(1) That is planted for harvest as grain;

(2) That is a combine-type hybrid grain sorghum (grown from hybrid seed); and

(3) That is not a dual-purpose type of grain sorghum (a type used for both grain and forage), unless a written agreement allows insurance of such grain sorghum.

(e) For soybeans only, in addition to the provisions of subsection 6.(a), the soybean crop insured will be all of the soybeans in the county that are planted for harvest as beans.

7. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Common Crop Insurance Policy (§ 457.8), any acreage of the insured crop damaged before the final planting date, to the extent that the remaining stand will not produce at least ninety percent (90%) of the production guarantee, must be replanted unless we agree

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that replanting is not practical (see subsection 1.(m)).

8. Insurance Period

In accordance with the provisions under section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the calendar date for the end of the insurance period is the date immediately following planting as follows:

(a) For corn insured as grain:	
(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	September 30.
(2) Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Pierce, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom Counties, Washington.	October 31.
(3) All other counties and states	December 10.
(b) For corn insured as silage:	
All states	September 30.
(c) For grain sorghum:	
(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	September 30.
(2) All other Texas counties and all other states	December 10.
(d) For soybeans: All states	December 10.

9. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Common Crop Insurance Policy (§ 457.8), insurance is provided only against the following causes of loss which occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if applicable, due to an unavoidable cause of loss occurring within the insurance period.

10. Replanting Payments

(a) In accordance with section 13 (Replanting Payment) of the Common Crop Insurance Policy (§ 457.8), replanting payments for coarse grains are allowed if the coarse grains are damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least ninety percent (90%) of the production guarantee for the acreage and it is practical to replant (see subsection 1.(m)).

(b) The maximum amount of the replanting per acre will be the lesser of twenty percent (20%) of the production guarantee or the number of bushels (tons for corn insured as silage) set out herein, multiplied by your price election multiplied by your insured share or the share determined under 10.(c), if applicable. The number of bushels or tons are 8 bushels for corn grain; 1 ton for corn silage; 7 bushels for grain sorghum; and 3 bushels for soybeans.

(c) When more than one person insures the same crop on a share basis, a replanting payment based on the total shares insured by us may be made to the insured person who incurs the total cost of replanting. Payment will be made in this manner only if an agreement exists between the insured persons which:

(1) Requires one person to incur the entire cost of replanting; or

(2) Gives the right to all replanting payments to one person.

(d) When the insured crop is replanted using a practice that is uninsurable as an original planting, the liability for the unit will be reduced by the amount of the replanting payment which is attributable to your share. The premium amount will not be reduced.

11. Duties in the Event of Damage or Loss

(a) In accordance with the requirements of section 14 (Duties in the Event of Damage or Loss) of the Common Crop Insurance Policy (§ 457.8), if you initially discover damage to any insured crop within 15 days of or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit, and must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

(b) For any corn unit that has separate dates for the end of the insurance period (grain and silage):

(1) In lieu of paragraph 14.(a)(2) of the Common Crop Insurance Policy (§ 457.8), if damage occurs:

(i) Before the earliest end of insurance period date (grain or silage), you must give us notice within 72 hours of your initial discovery of damage (but not later than 15 days after that earliest end of insurance period date); or

(ii) If damage does not occur before the earliest end of insurance period date (grain or silage), but occurs before the latest end of insurance period date (grain or silage), you must give notice within 72 hours of your initial discovery of damage (but not later than 15 days after that latest end of insurance period date).

(2) In lieu of subsection 14.(c) of the Common Crop Insurance Policy (§ 457.8), in addition to complying with all other notice requirements, you must submit a claim for indemnity declaring the amount of your loss not later than 60 days after the latest date for the end of insurance period for the unit. This claim must include all the information we require to settle the claim.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production:

(1) For any optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any unit:

(1) For grain sorghum and soybeans by:

(i) Multiplying the insured acreage by the production guarantee;

(ii) Subtracting from this the total production to count;

(iii) Multiplying the remainder by your price election; and

(iv) Multiplying this result by your share.

(2) For corn by:

(i) Multiplying the insured acreage of each type (grain/silage) by the production guarantee for the applicable type;

(ii) Multiplying each result by the price election for the applicable type;

(iii) Adding these values;

(iv) Multiplying the production to count of each type (see subsection 12.(d)) by the price election for that type (see the provisions under section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities));

(v) Adding these dollar values;

(vi) Subtracting the result of step (v) from the result of step (iii); and

(vii) Multiplying the result by your share.

(c) The total production in bushels (tons for corn silage) (see subsection 12.(d)) to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide records of production that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with subsection 12.(e)); and

(iv) Potential production on insured acreage you want to put to another use or you wish to abandon and no longer care for, if you and we agree on the appraised amount of production. Upon such agreement the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) The production to count for corn will be in bushels for grain and in tons for silage as follows:

(1) For harvested acreage, according to the method of harvest; and

(2) For unharvested acreage, according to the information contained on your acreage report;

except as otherwise provided in paragraph 12.(c)(1).

(e) Mature coarse grain production (excluding corn insured or harvested as silage) may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable it will be made prior to any adjustment for quality. Corn insured or harvested as silage will be adjusted for excess moisture and quality only as specified in subsection 12.(f).

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of:

(i) Fifteen percent (15%) for corn (If moisture exceeds 30 percent (30%), production will be reduced 0.2 percent for each 0.1 percentage point above 30 percent (30%));

(ii) Fourteen percent (14%) for grain sorghum; and

(iii) Thirteen percent (13%) for soybeans.

We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in:

(A) Corn not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight or kernel damage (excluding heat damage) or having a musty, sour, or commercially objectionable foreign odor;

(B) Grain sorghum not meeting the grade requirements for U.S. No. 4 (grades U.S. Sample grade) because of test weight or kernel damage (excluding heat damage) or having a musty, sour, or commercially objectionable foreign odor (except smut odor), or meets the special grade requirements for smutty grain sorghum; or

(C) Soybeans not meeting the grade requirements for U.S. No. 4 (grades U.S. Sample grade) because of test weight or kernel damage (excluding heat damage) or having a musty, sour, or commercially objectionable foreign odor (except garlic odor), or which meet the special grade requirements for garlicky soybeans; or

(ii) Substances or conditions are present that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions;

(ii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iii) The samples are analyzed by a grader licensed under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. (Test weight for quality adjustment purposes may be determined by our loss adjuster.)

(4) Coarse grain production that is eligible for quality adjustment, as specified in paragraphs 12.(e) (2) and (3), will be reduced by the quality adjustment factor contained in the Special Provisions.

(f) For corn insured or harvested as silage:

(1) Whenever our appraisal of grain content is less than 4.5 bushels of grain per ton of silage, the silage production will be reduced by 1 percentage point for each 0.1(1/10) of a bushel less than 4.5 bushels per ton (If we cannot make a grain appraisal before harvest and you do not leave a representative unharvested sample, in accordance with the policy no reduction for grain-deficient silage will be made.); and

(2) If the normal silage harvesting period has ended, or for any acreage harvested as silage or appraised as silage prior to October 1, we may increase the silage production to count to 65 percent (65%) moisture equivalent to reflect the normal moisture content of silage harvested during the normal silage harvesting period.

(g) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

13. Late Planting and Preventing Planting

(a) In lieu of paragraph 8.(b)(2) and subsection 1.(aa) of the Common Crop Insurance Policy (§ 457.8), insurance will be provided for acreage planted to the insured crop during the late planting period (see subsection 13.(c)), and acreage you were prevented from planting (see subsection 13.(d)). These coverages provide reduced production guarantees. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for late planted acreage or prevented planting acreage exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be be paid for such acreage). (For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by 93 percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by 50 percent (0.5) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.)

(b) You must provide written notice to us if you were prevented from planting (see subsection 1.(n)). This notice must be given not later than three (3) days after:

(1) The final planting date for acreage you were prevented from planting by the final planting date if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you discover that planting will not be possible within the late planting period for acreage that may be eligible for prevented planting coverage if you were not prevented from planting such acreage by the final planting date, but were prevented from planting such acreage during the late planting period.

(c) Life Planting

(1) For acreage planted to the insured crop after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must

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report the dates the acreage is planted within the late planting period.

(3) If planting of the insured crop continues after the final planting data, or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Special Provisions for the insured crop; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from planting the insured crop (see subsection 1.(n)), you may elect:

(i) To plant the insured crop during the late planting period (the production guarantee for such acreage will be determined in accordance with paragraph 13.(c)(1));

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year, (the production guarantee for such acreage will be fifty percent (0.5) of the production guarantee for timely planted acres, (For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.5). This paragraph does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest.); or

(iii) To plant the insured crop after the late planting period, (the production guarantee for such acreage will be fifty percent (0.5) of the production guarantee for timely planted acres, (For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.5). Production to count for such acreage will be determined in accordance with subsections 12.(c) through (g)).

(2) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins on the sales closing date contained in the Special Provisions for the insured crop in the county.

(3) The acreage to which prevented planting coverage applies will be limited as follows:

(i) If you participate in any program administered by the United States Department of Agriculture for the crop year which limits the number of acres that may be planted, prevented planting acreage will not exceed the ASCS base acreage for the insured crop, reduced by any acreage reduction applicable to the farm under such program.

(ii) If you do not participate in any program administered by the United States Department of Agriculture which limits the number of acres that may be planted, unless a written agreement exists to the contrary, eligible acreage will not exceed the greater of:

(A) The ASCS base acreage for the insured crop, if applicable;

(B) The number of acres planted to the insured crop on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date); or

(C) One hundred percent (100%) of the simple average of the number of acres planted to the insured crop during the crop years that were used to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres properly prepared to carry out an irrigated practice.

(iv) A prevented planting production guarantee will no be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit, whichever is less;

(B) Land for which the actuarial table does not designate a premium rate unless a written agreement is in place designating such premium rate;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than the insured crop, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop timely planted and planted after the final planting date. (For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero. (100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more insured crop acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.)

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to the insured crop in the crop year.

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which is not eligible will be deleted from prevented planting coverage.

Done in Washington, DC, on September 13, 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94-23834 Filed 9-26-94; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 457

Common Crop Insurance Regulations; Extra Long Staple Cotton Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts regulations for specific crop provisions to insure extra long staple (ELS) cotton. These provisions will supplement the Common Crop Insurance Policy (§ 457.8) which contains standard terms and conditions common to most crops. The intended effect of this rule is to move specific crop provisions for insuring ELS cotton to the Common Crop Insurance Policy (§ 457.8) for ease of use by the public and conformance among policy terms.

EFFECTIVE DATE: October 27, 1994.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 254-8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Executive Order 12866 and Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is March 1, 1999.

This rule has been determined to be "not significant" for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or record-keeping requirements included in this rule are found in 7 CFR part 400, subpart H.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The policies and procedures contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This action will not have a significant impact on a substantial number of small entities. The amount of work required of the insurance companies delivering these policies will not increase from the amount required to deliver previous policies. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and (2)(b)(2) of Executive Order 12788. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

By separate rule, 7 CFR 401.121 will be amended to restrict the crop years of application to those prior to the crop year for which this rule will be effective. FCIC will remove and reserve the ELS cotton endorsement contained in 7 CFR 401.121.

On Tuesday, May 31, 1994, FCIC published a notice of proposed rulemaking in the **Federal Register** at 59 FR 28027 proposing to revise the Common Crop Insurance Regulations by adding new provisions for ELS cotton crop insurance.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. The comments received and FCIC responses are as follows:

Comment: Two comments suggested that the crop provisions should not be implemented for the 1995 crop year because:

(1) Crop insurance reform will require many policy changes. Implementation of these crop provisions should be tabled until reform decisions are reached because impacts on policy terms are not yet clear. Delaying common policy implementation until it can be implemented in an orderly fashion should be beneficial to everyone concerned; and

(2) The Common Crop Insurance Policy should be thoroughly reviewed and revised as needed before any additional crop provisions are implemented under it.

Response: Program changes necessary to comply with crop insurance reform will have the same effects on either the existing ELS cotton policy or these ELS Cotton Crop Provisions. Any necessary changes can be made to the ELS Cotton Crop Provisions as easily as they can be made to the existing policy. FCIC has recently completed a review of the Common Crop Insurance Policy Basic Provisions (§ 457.8). Any necessary changes required to be made to the Basic Provisions as a result of reform will be required whether or not the ELS Cotton Crop Provisions have been implemented. Therefore, FCIC does not find it necessary to delay implementation for either of the reasons stated in the comments.

Comment: One comment questioned requirements contained in the definition of "practical to replant." This definition indicated that the replanted acreage must have the potential to produce at least ninety percent (90%) of the production guarantee. The late planting provisions provide production guarantees much lower than the ninety percent (90%) potential requirement contained in the definition even though the late planted and replanted crop may be planted at the same time. The comment recommended removing the production potential requirement from the definition of "practical to replant."

Response: The ELS Cotton Crop Provisions do not provide for a late planting period or late planting production guarantees. However, acreage initially planted to ELS cotton may be replanted to American Upland cotton. FCIC agrees that the production potential required by the definition of "practical to replant" and the production guarantee for late planted American Upland cotton acreage may be inconsistent depending on the time of planting. American Upland cotton acreage initially planted twenty-five (25) days after the final planting date would have a production guarantee equal to sixty percent (60%) of the guarantee for timely planted acreage, while the definition of "practical to replant" would require acreage replanted at the same time to have a production potential equal to ninety percent (90%) of the production guarantee. However, expected yield does have an effect on whether it is practical to replant. The ninety percent (90%) production potential requirement has been removed from the definition of "practical to replant." However, the expected yield must be sufficient to cover production costs and must be at a level that growers in the area would normally care for and harvest.

Comment: One comment recommended changing the term "approved yield" to "approved APH yield" in the definition of "Production guarantee" to correspond with terminology in underwriting procedure.

Response: Underwriting procedure contains several methods which may be used to determine approved yields. These include the use of yields which may not represent actual production history (APH). Using the term "APH" could be misleading to readers not familiar with administrative procedures, and, therefore, will not be used in the crop insurance policy.

Comment: Three comments disagreed with the definition of "written agreement". This definition requires written agreements to be requested at least 15 days prior to the sales closing date.

(1) One comment recommended keeping the current deadlines for written agreements as specified in procedures. These procedures require that requests be made not later than 15 days after the acreage reporting date for most types of written agreements. Setting a deadline 15 days prior to the sales closing date will either force insureds to submit requests for written agreements they may not need, or result in uninsurable acreage if requests are not made for all possible situations. Unnecessary requests will increase paperwork for the insured, agent, FCIC Regional Service Office and company. The comment also recommended deleting the last sentence of the definition, which required written agreements to contain all variable terms including, but not limited to, crop variety, guarantee, premium and price election. The comment indicated it was not necessary to include this information on every written agreement because many written agreements do not alter these items.

(2) One comment recommended keeping the deadline of 15 days after the acreage reporting date because there are many instances when it is not known that a written agreement is necessary until the acreage is reported. The

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comment stated that the change would be an unreasonable requirement and would create difficulties since the sales closing dates will be 30 days earlier than in prior years.

(3) One comment stated that it is hard to understand why the written agreement deadline is 15 days prior to the time a producer has to purchase coverage, and that a more appropriate date should be established. The comment also stated that the sales closing dates are not listed in the proposed crop provisions. If these are the same date as the cancellation and termination date, the policy should so indicate.

Response: The proposed definition was intended to require that requests for written agreements be made far enough ahead of the sales closing date to allow the insurer to make the offer, and for the insured to accept the offer, by the sales closing date. Since the insurance policy is a written contract, both parties must have a meeting of the minds before the contract is valid. The terms and conditions of the policy must be known by the final date for establishing the insurance contract. In this program, the final date is the sales closing date. FCIC has determined that some situations may allow written agreements at other times. FCIC is preparing proposed written agreement regulations which will specify when written agreements must be completed. Until these regulations have been published, the written agreement must be completed by the sales closing date, or, in specific instances, a written agreement may be requested or approved after the sales closing date if the crop is physically inspected and a determination made that the crop has an expectancy of making the guaranteed yield. No prevented planting liability will be established as a result of any request submitted after the sales closing date. FCIC does not agree that the final sentence should be deleted. Specifying all variable terms in the written agreement is necessary to assure a clear understanding of the terms in effect.

Although the sales closing dates normally will be the same as the cancellation and termination dates this is not always the case. Therefore, the sales closing dates will not be included in the crop provisions. Federal regulations authorize the Manager of FCIC to extend the sales closing date in any county upon the Manager's determination that no adverse selection will result during the extended period. The extended date is placed on file in the applicable service offices and a notice is placed in the **Federal Register**. If the sales closing dates were contained in the crop provisions, the crop provisions would need to be amended each time a sales closing date is extended.

Comment: One comment stated that unit division language contained in subsection 2.(b) should allow for situations in which the insured creates a discernible break via some tillage operation. The proposed provision states that the insured must plant the crop in a manner that results in a clear and discernible break in the planting pattern at the boundaries of each optional unit. There is no required method of creating a boundary as long as a discernible break is provided.

Response: The intent of the policy language is to allow separate optional units if acreage is farmed separately. Farming separately includes planting separately, keeping separate records of inputs, production, etc. Creating a boundary after the crop is planted by means of a tillage operation along a section line may or may not meet the policy requirement of planting the crop in a manner that results in a clear and discernable break at the units boundary. FCIC believes the present language clearly sets out the requirements for unit division.

Comment: Two comments were received regarding the changes in the cancellation and termination dates.

(1) One comment stated the assumption that since cancellation and termination dates were changed, that the sales closing dates will be changed to align with the new cancellation and termination dates.

(2) One comment expressed the concern that an earlier cancellation date would decrease the amount of time available for producers to make decisions regarding their insurance coverage.

Response: The sales closing dates, as contained in the Special Provisions, will be changed generally to be the same as, but no later than, the new cancellation and termination dates. Earlier cancellation and sales closing dates are intended to reduce the possibility that a producer's decision to cancel or purchase insurance is based on favorable or unfavorable growing conditions. FCIC expects this change to have favorable impact on insurance experience. Favorable results will be considered when calculating future premium rates.

Comment: Two comments were received regarding the elimination of provisions that provided coverage while cotton stored in modules remains in the field.

(1) One comment stated that changing the end of the insurance period from "removal from the field" to "harvest" creates some concerns which need to be addressed. Specifically, the comment asks how quality will be accurately determined for cotton stored in modules when the modules may be stored in the field for a significant period of time?

(2) One comment opposed the removal of coverage for modules stored in the field. The comment stated that: (a) Large amounts of cotton are stored in modules and that the practice allows for timely and efficient harvest of the crop; (b) losses do not occur frequently once cotton is moduled, but there is some risk of weather-related loss until the modules are removed from the field; and (c) continuing the practice of insurance coverage until removal from the field would be consistent with recent ad hoc disaster rulings that deemed weather-damaged, field stored modules eligible for assistance.

Response: Upon further review, FCIC has determined that coverage for modules stored in the field should be provided. The provisions in section 8 (Insurance Period) have been revised accordingly.

Comment: One comment recommended either revising or deleting provisions that allow the insured to leave representative samples if they disagree with the insurer's appraisal. In the event the provision cannot be deleted, the comment recommended changing the provision so that the insurer can decide when using representative samples is appropriate. In many situations, samples are more susceptible to loss and do not accurately represent what the entire unit would have produced.

Response: FCIC agrees that there are situations in which it may not be reasonable to leave representative strips from which production to count would ultimately be determined. The samples could be more vulnerable to damage than an entire field, or the insurer may be confident that the appraisal made accurately reflects production potential. However, the entire provision should not be removed. The provision has been changed to allow the insurer to determine those situations in which it is reasonable to leave representative samples to determine the amount of production to be counted. In cases where it is necessary to defer determinations the insured must be advised how production to count will ultimately be determined and the consequences of failure to leave or care for the samples.

Comment: One comment indicated that the proposed provisions in subsection 12.(e) will allow an insured to request a written agreement for prevented planting coverage for acreage exceeding the policy limitations, and to subsequently enroll in a USDA program that allows less acreage to be planted. The comment recommended revising the paragraph to limit eligible acreage to the amount allowed by any applicable USDA program, regardless of when the insured enrolls in such program or any previously approved written agreement.

Response: FCIC agrees that if the farm is enrolled in an USDA program that limits the number of acres planted, acreage in excess of the amount allowed under an USDA program should not be eligible for prevented planting coverage. Subsection 12.(e) has been amended accordingly.

Comment: One comment recommended that language be added to subsection 12.(e) to allow prevented planting coverage by written agreement for acreage added to the insured's farming operation after the sales closing date.

Response: The insurance period for prevented planting coverage begins on the sales closing date. Allowing additional coverage to attach after the beginning of this period would likely result in coverage being requested primarily when conditions are favorable for a prevented planting indemnity. This adverse selection should be avoided to help maintain an actuarially sound program and to keep premium rates from rising to cover such losses. The definition of "written agreement" has been amended to specifically disallow any prevented planting liability as a result of any request submitted after the sales closing date.

In addition to the changes indicated in the responses to comments, FCIC has determined that:

1. The definition of *skip-row* should reference United States Department of Agriculture qualification requirements for *skip-row* patterns. These requirements are used to determine the land area that is considered to be planted to cotton.

2. Provisions in section 6 (Insured Crop) are modified to allow coverage on crops planted into an established grass or legume in certain instances. The increased emphasis on Highly Erodible Land Conservation has made conservation tillage and no-till more acceptable.

Accordingly, the rule, "Common Crop Insurance Regulations; ELS Cotton Crop Insurance Provisions" published at 59 FR 28028 as revised as set out below is hereby adopted as final rule.

List of Subjects in 7 CFR Part 457

Crop Insurance; ELS Cotton.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation hereby amends the Common Crop Insurance Regulations (7 CFR Part 457), effective for the 1995 and succeeding crop years, in the following instances:

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR Part 457 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR Part 457 is amended by adding § 457.105 ELS Cotton Crop Provisions to read as follows:

§ 457.105 Extra Long Staple Cotton Crop Insurance Provisions.

The Extra Long Staple Cotton Crop Insurance Provisions for the 1995 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

ELS Cotton Crop Provisions

If a conflict exists between the Common Crop Insurance Policy (§ 457.8) and the Special Provisions, the Special Provisions will control. If a conflict exists between these Crop Provisions and the Special Provisions, the Special Provisions will control.

1. Definitions

(a) *Cotton*—Varieties identified as Extra Long Staple (ELS) cotton and American Upland (AUP) cotton if ELS cotton is destroyed by an insured cause and acreage is replanted to AUP cotton.

(b) *Days*—Calendar Days.

(c) *ELS cotton*—Extra Long Staple cotton (also called Pima cotton, American-Egyptian cotton, and American Pima cotton).

(d) *Final planting date*—The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

(e) *Good farming practices*—The cultural practices generally in use in the county for the insured crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the area.

(f) *Harvest*—The removal of the seed cotton from the open cotton boll, or the severance of the open cotton boll from the stalk by either manual or mechanical means.

(g) *Interplanted*—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

(h) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

(i) *Moture ELS cotton*—ELS cotton that can be harvested either manually or mechanically.

(j) *Planted acreage*—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed which has been properly prepared for the planting method and production practice. Cotton must be planted in rows to be considered planted. Planting in any other manner will be considered as a failure to follow recognized good farming practices and any loss of production will not be insured unless otherwise provided by the Special Provisions or by written agreement to insure such crop. The yield conversion factor normally applied to non-irrigated skip-row cotton acreage will not be used if the land between the rows of cotton is planted to any crop.

(k) *Practical to replant*—(In lieu of subsection 1.(ff) of the Common Crop Insurance Policy (§ 457.8) practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors including, but not limited to moisture availability, condition of the field, and time to crop maturity, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the final planting date unless replanting is generally occurring in the area.

(l) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting due to similar insurable causes. The insured cause of prevented planting must occur between the sales closing date and the final planting date for the insured crop in the county.

(m) *Production guarantee*—The number of pounds determined by multiplying the approved yield per acre by any applicable yield conversion factor for non-irrigated skip-row planting patterns, and multiplying the result by the coverage level percentage you elect.

(n) *Replanting*—Performing the cultural practices necessary to replace the ELS cotton seed, and replacing the seed with either ELS or AUP cotton seed in the insured acreage with the expectation of growing a successful crop.

(o) *Skip-row*—A planting pattern that:

(1) Consists of alternating rows of cotton and fallow land or land planted to another crop the previous fall; and

(2) Qualifies as a skip-row planting pattern as defined by the Agricultural Stabilization and Conservation Service or successor agency.

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(p) *Timely planted*—Planted on or before the final planting date designated in the Special Provisions.

(q) *Written agreement*—Designated terms of this policy may be altered by written agreement. Each agreement must be applied for by the insured in writing prior to the sales closing date and is valid for one year only. If not specifically renewed the following year, continuous insurance will be in accordance with the printed policy. All variable terms including, but not limited to, crop variety, guarantee, premium rate and price election must be set out in the written agreement. In specific instances a written agreement may be applied for after the sales closing date and approved if, after a physical inspection of the acreage, there is a determination that the crop has the expectancy of making at least the guaranteed yield. However, no prevented planting liability will be established as a result of any request submitted after the sales closing date. All applications for written agreements as submitted by the insured must contain all variable terms of the contract between the company and the insured that will be in effect if the written agreement is disapproved.

2. Unit Division

Unless limited by the Special Provisions, a unit as defined in subsection 1.(tt) of the Common Crop Insurance Policy (§ 457.8), may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists. All optional units must be reflected on the acreage report for each crop year.

(a) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee.

(b) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit.

(c) You must have records of measurement of stored or marketed production from each optional unit maintained in such a manner that we can verify the production from each optional unit or the production from each optional unit must be kept separate until after loss adjustment under the policy is completed.

(d) Each optional unit must meet one or more of the following criteria as applicable:

(1) *Optional Units by Section, Section Equivalent, or ASCS Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified Section. In the absence of Sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to: Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands as equivalent of Sections for unit purposes. In areas which have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single ASCS Farm Serial Number.

(2) *Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices:* In addition to or instead of establishing optional units by Section, section equivalent, or ASCS Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same Section, section equivalent, or ASCS Farm Serial Number. The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which your guarantee is based and you may not continue into non-irrigated acreage in the same rows or planting pattern. You must plant, cultivate, fertilize, or otherwise care for the irrigated acreage in accordance with recognized good irrigated farming practices.

Basic units may not be divided into optional units on any basis (production practice, type, variety, planting period, etc.) other than as described under this section. If you do not comply fully with these provisions, we will combine all optional units which are not in compliance with these provisions into the basic unit from which they were formed. We may combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions on all optional units is determined to be inadvertent, and the optional units are combined, premium paid for the purpose of electing optional units will be refunded to you.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Common Crop Insurance Policy (§ 457.8) you may select only one price election for all the cotton in the county insured under this policy.

4. Contract Changes

The contract change date is November 30 preceding the cancellation date (see the provisions of section 4 (Contract Changes) of the Common Crop Insurance Policy (§ 457.8)).

5. Cancellation and Termination Dates

In accordance with subsection 2.(f) of the Common Crop Insurance Policy (§ 457.8) the cancellation and termination dates are March 15.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Common Crop Insurance Policy (§ 457.8), the crop insured will be all the cotton lint in the county for which premium rates are provided by the actuarial table:

(a) In which you have a share; and

(b) That is not (unless allowed by the Special Provisions or by a written agreement):

(1) Planted into an established grass or legume;

(2) Interplanted with another spring planted crop;

(3) Grown on acreage from which a hay crop was harvested in the same calendar year unless the acreage is irrigated; or

(4) Grown on acreage on which a small grain crop reached the heading stage in the same calendar year unless the acreage is irrigated or adequate measures are taken to terminate the small grain crop prior to heading and less than fifty percent (50%) of the small grain plants reach the heading stage.

7. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Common Crop Insurance Policy (§ 457.8):

(a) The acreage insured will be only the land occupied by the rows of cotton when a skip row planting pattern is utilized; and

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that the remaining stand will not produce at least ninety percent (90%) of the production guarantee, must be replanted unless we agree that replanting is not practical (see subsection 1.(k)).

8. Insurance Period

(a) In lieu of subsection 11.(b) of the Common Crop Insurance Policy (§ 457.8) (Harvest of the unit), insurance will end upon the removal of the cotton from the field

(b) In accordance with the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the calendar date for the end of the insurance period is January 31 immediately following planting.

9. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Common Crop Insurance Policy (§ 457.8), insurance is provided only against the following causes of loss which occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of irrigation water supply, if applicable, due to an unavoidable cause of loss occurring within the insurance period.

10. Duties in the Event of Damage or Loss

(a) In addition to your duties under section 14 (Duties in the Event of Damage or Loss) of the Common Crop Insurance Policy (§ 457.8), in the event of damage or loss:

(1) You must give us notice if you intend to replant any acreage originally planted to ELS cotton to AUP cotton;

(2) The cotton stalks must remain intact for our inspection; and

(3) If you initially discover damage to any insured crop within 15 days of harvest, or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of the field in the unit.

(b) The stalks must not be destroyed, and required samples must not be harvested, until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed and written notice of probable loss is given to us.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production:

(1) For any optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting from this the total production to count;

(3) Multiplying the remainder by your price election; and

(4) Multiplying this result by your share.

(c) The total production (pounds) to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes;

(D) For which you fail to provide records of production that are acceptable to us; or

(E) On which the cotton stalks are destroyed in violation of section 10;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies in accordance with subsection:

(A) 11.(d) and (e) if it is mature ELS cotton; or

(B) 11.(f) if it is AUP cotton insured under these crop provisions); and

(iv) Potential production on insured acreage you want to put to another use or you wish to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provided sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count.); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage, including any mature cotton retrieved from the ground.

(d) Mature ELS cotton production may be adjusted for quality when production has been damaged by insured causes. Such production to count will be reduced if the price quotation for ELS cotton of like quality (price quotation "A") is less than seventy-five percent (75%) of price quotation "B." Price quotation "B" will be the price quotation for ELS cotton of the grade, staple length, and micronaire reading designated in the Special Provisions for this purpose. The price quotations for prices "A" and "B" will be the price quotations contained in the Weekly Cotton Market Review published by the USDA Agricultural Marketing Service the week the last bale from the unit is classed. If the date the last bale is classed is not available, the price quotations will be determined the week the last bale from the unit is delivered to the warehouse as shown on the producer's account summary obtained from the gin. In the absence of either price quotation for the applicable week, the price quotations for the nearest prior week for which an ELS cotton price quotation was listed for both prices will be used. If eligible for adjustment, the amount of production to be counted will be determined by multiplying the number of pounds of such production by the factor derived from dividing price quotation "A" by seventy-five percent (75%) of price quotation "B."

(e) For ELS cotton to be eligible for quality adjustment as shown in subsection 11.(d), ginning must have been completed at a gin using roller equipment.

(f) Any AUP cotton harvested or appraised from acreage originally planted to ELS cotton in the same growing season will be reduced by the factor obtained by dividing the price per pound of the AUP cotton by the price quotation for ELS cotton of the grade, staple length, and micronaire reading designated in the Special Provisions for this purpose. The price used for the ELS cotton will be the price contained in the Weekly Cotton Market Review published by the USDA Agricultural Marketing Service the week the last bale from the unit is classed. The price used for the AUP cotton will be the price contained in the Daily Spot Cotton Quotations published by the USDA Agricultural Marketing Service the day the last bale from the unit is classed. If the date the last bale is classed is not available, the price quotations will be determined when the last bale from the unit is delivered to the warehouse, as shown on the producers account summary obtained from the gin. If either price quotation is unavailable for the dates stated above, the price quotations for the nearest prior date for which price quotations for both the AUP and ELS cotton are available will be used. If prices are not yet available for the insured crop year, the previous season's average prices will be used.

12. Prevented Planting

(a) In lieu of paragraph 8.(b)(2) and subsection 1.(aa) of the Common Crop Insurance Policy (§ 457.8), insurance will be provided for acreage you were prevented from planting (see subsections 12.(b) through (g)). This coverage provides a reduced production guarantee.

The reduced guarantee will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for eligible prevented planting acreage will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for prevented planting acreage exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage). (For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 100 acres, of which 50 acres were planted by the final planting date and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted; and

(2) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by thirty-five percent (0.35) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the two calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 100 acres in the unit).

(b) If you were prevented from planting ELS cotton (see subsection 1.(l)), you may elect:

(1) Not to plant this acreage to any crop that is intended for harvest in the same crop year. (The production guarantee for such acreage will be thirty-five percent (0.35) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 600 pounds per acre, your prevented planting production guarantee would be equivalent to 210 pounds per acre (600 pounds multiplied by 0.35). This paragraph does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest.); or

(2) To plant ELS cotton after the final planting date (The production guarantee for such acreage will be thirty-five percent (0.35) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 600 pounds per acre, your prevented planting production guarantee would be equivalent to 210 pounds per acre (600 pounds multiplied by 0.35). Production to count for such acreage will be determined in accordance with subsections 11.(c) through (e)).

(c) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage

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beginning on the sales closing date contained in the Special Provisions for the insured crop in the county.

(d) You must provide written notice to us if you were prevented from planting (see subsection 1.(l)). This notice must be given not later than three (3) days after the final planting date if you have unplanted acreage that may be eligible for prevented planting coverage.

(e) The acreage to which prevented planting coverage applies will be limited as follows:

(1) If you participate in any program administered by the United States Department of Agriculture for the crop year which limits the number of acres that may be planted, prevented planting acreage will not exceed the ASCS base acreage for the insured crop, reduced by any acreage reduction applicable to the farm under such program.

(2) If you do not participate in any program administered by the United States Department of Agriculture which limits the number of acres that may be planted, unless a written agreement exists to the contrary, eligible acreage will not exceed the greater of:

(i) The ASCS base acreage for the insured crop, if applicable;

(ii) The number of acres planted to ELS cotton on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date); or

(iii) One hundred percent (100%) of the simple average of the number of acres planted to ELS cotton during the crop years that were used to determine your yield;

(3) Acreage intended to be planted under an irrigated practice will be limited to the number of acres properly prepared to carry out an irrigated practice.

(3) A prevented planting production guarantee will not be provided for:

(i) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit, whichever is less;

(ii) Land for which the actuarial table does not designate a premium rate unless a written agreement is in place designating such premium rate;

(iii) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(iv) Land on which any crop, other than ELS cotton, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(v) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(4) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and reduced by the number of ELS cotton acres timely planted. (For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of ELS cotton on one optional unit and 40 acres of cotton on the second optional unit, your prevented planting eligible acreage would be reduced to zero. (100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more ELS cotton acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.)

(f) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to ELS cotton in the current crop year.

(g) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457 8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date, even though you may elect to plant the acreage after the final planting date. Any acreage you report as eligible for prevented planting coverage which is not eligible will be deleted from prevented planting coverage.

(h) Late planting provisions are not available under these crop provisions.

Done in Washington, DC, on September 13, 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94-23835 Filed 9-26-94; 8:45 am]

BILLING CODE 3410-08-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) amends its regulations governing waivers to its nonmanufacturer rule. In essence, this rule reflects more accurately the statutory language set forth in section 8(a)(17)(B)(iv) of the Small Business Act to ensure that SBA's size regulations are consistent with the statute.

EFFECTIVE DATE: This rule is effective September 27, 1994.

ADDRESSES: Written comments should be addressed to David R. Kohler, Associate General Counsel for General Law, U.S. Small Business Administration, 409 3rd Street, S.W., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: John W. Klein, Chief Counsel for Special Programs, (202) 205-6645.

SUPPLEMENTARY INFORMATION: Section 210 of the Small Business Administration Reauthorization and Amendments Act of 1990, Public Law 101-574, 104 Stat. 2814, 2821, revised section 8(a)(17)(B)(iv) of the Small Business Act (the Act), 15 U.S.C. 637(a)(17)(B)(iv), by providing for the possibility of a contract-specific waiver to SBA's nonmanufacturer rule (the requirement that, for a supply contract, a small business concern that is not itself the manufacturer must provide the product of a domestic small business manufacturer in order to be considered a small business). An earlier statute, the Business Opportunity Development Reform Act of 1988 (Pub. L. 100-656, 102 Stat. 3853) provided for the possibility of waivers to the nonmanufacturer rule for classes of products for which there were no small business manufacturers in the federal market.

In a final rule (the "Rule") published in the **Federal Register** on September 21, 1993, 58 FR 48956, SBA defined the nonmanufacturer rule as "*the requirement* set forth in 13 CFR 121.906 and 121.1106 that a contractor * * * provide its own product or that of another *domestic small business* * * *" (Emphasis added). 13 CFR 121.2102(e). The final rule defined the term "Federal market" as acquisitions by the Federal government from "offerors located in the entire geographic United States" or a more restricted market area. 13 CFR 121.2102(d). The final rule also set forth procedures for waiver of the nonmanufacturer rule as to classes of products. On March 18, 1994, SBA published a final rule amending 13 CFR 121.906 and 121.1106 to provide for a contract-specific waiver. 59 FR 12811. These regulations permit waivers of the nonmanufacturer rule for either classes of products or specific procurements after a determination "that no small business manufacturer or processor is available to participate in the Federal procurement market." 13 CFR 121.906(b)(3) and 121.1106(b)(3). As further background, the prior wording of 13 CFR 121.906(b)(3) and 121.1106(b)(3) also referred to waivers for classes of products for which there were no small business manufacturers or processors "in the Federal market". Thus, SBA has consistently regarded the nonmanufacturer rule and its waivers of that rule as involving a single, non-severable requirement for domestic small business suppliers.

On August 30, 1994, the SBA published a proposed rule that would make various revisions to its section 8(a) program. 59 FR 44652. Included within this rule was a proposal to clarify the nonmanufacturer rule by specifically authorizing a small business nonmanufacturer to supply other than a product made in the United States for a small business set aside or section 8(a) contract where the procuring agency makes a non-availability determination under the Buy American Act and section 25.102(a)(4) of the Federal Acquisition Regulation (FAR), Title 48 of the Code of Federal Regulations. *Id.* at 44653-54, 44659-60. This reference was designed to take note expressly of the separate domestic business requirement imposed by the Buy American Act. The proposed rule allowed a thirty-day comment period, or until September 29, 1994.

After a careful legal review of Section 210 of Pub. L. 101-574 (the statutory provision authorizing a waiver to SBA's nonmanufacturer rule), its accompanying legislative history, and a written comment received prior to the publication of the August 30, 1994 proposed rule that pertains to the "domestic" portion of the nonmanufacturing rule, SBA has concluded that the correct interpretation of the Act is that a waiver of the nonmanufacturer rule under section 8(a)(17)(B)(iv) is a waiver of the entire requirement that a nonmanufacturer must supply the product of a domestic small business. In this regard, section 8(a)(17)(B)(iv) of the Act states that a nonmanufacturer must "supply the product of a domestic small business manufacturer or processor, unless [the Administrator grants] a waiver of *such requirement*." SBA believes that the statutory reference to "such requirement" relates to the entire requirement that, absent a waiver, a nonmanufacturer must supply the product of a domestic small business. A waiver issued pursuant to this statutory authority therefore serves to authorize a nonmanufacturer to supply other than the product of a domestic small business while still qualifying as a small business under the Act. It should be noted, however, that SBA's waiver of its nonmanufacturer rule does not waive other government-wide requirements applicable to government procurement, such as the Buy American Act, and any statements of SBA to the effect that the domestic requirement could not be waived by SBA were intended only to make this point.

SBA recognizes that its current regulations may still cause some confusion on this point. Currently, 13 CFR 121.906(b)(1), for small business set asides, and 13 CFR 121.1106(b)(1), for 8(a) procurement, each contain a separate paragraph (iv) ostensibly suggesting that a nonmanufacturer must supply a product that was manufactured or produced in the United States regardless of whether a waiver has been granted. As indicated above, SBA believes that the waiver of any domestic manufacture requirement is statutorily contained within any waiver of the nonmanufacturer rule granted. These paragraphs are also inconsistent with the other regulatory provisions described above which have dealt with definitions relevant to the nonmanufacturer rule and its waiver.

SBA believes clarification to its regulations is advisable to eliminate any such inconsistency or confusion. This final rule incorporates, without substantive change, the statutory language of section 8(a)(17)(B)(iv) of the Act into SBA's size regulations at 13 CFR 121.906(b)(1)(iii) for small business set aside procurements and at 13 CFR 121.1106(b)(1)(iii) for section 8(a) procurements, and eliminates any inconsistency in the regulations. It also adds clarifying language by adding new paragraphs 121.906(b)(4) and 121.1106(b)(4) to explain that an SBA waiver of the nonmanufacturer rule has no effect on other laws and regulations dealing with domestic or foreign sources for government acquisitions which may exist outside the Act.

Because the statutory requirement regarding waivers to the nonmanufacturer rule of section 8(a)(17)(B)(iv) of the Act is being implemented in this final rule, SBA believes that the portion of the August 30, 1994 proposed rule regarding such waivers has been superseded. The remainder of that proposed rule has not been affected by this final rule, and will be completed upon publication of a further final rule on revisions to the section 8(a) program.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

This rule was not reviewed under Executive Order 12866.

SBA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This rule is necessary to resolve a possible discrepancy between the Small Business Act and SBA's size regulations concerning the size eligibility of certain nonmanufacturers for small business set aside and section 8(a) contracts. It will have no significant effect, however, on the amount or dollar value of any contract requirement or the number of requirements set aside for small business or the 8(a) program. As such, it is not likely to have an annual economic effect of $100 million or more result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this final rule contains no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 121

Government procurement; Government property; Grant programs—business; Loan programs—business; Small businesses.

For the reasons set forth above, part 121 of Title 13, Code of Federal Regulations, is amended as follows:

PART 121—[AMENDED]

1. The authority citation for 13 CFR Part 121 continues to read as follows:

Authority: 15 U.S.C. §§ 632(a), 634(b)(6), 637(a) and 644(c); and Pub. L. 102-486, 106 Stat. 2776, 3133.

2. Section 121.906(b)(1) is revised and (b)(4) is added to read as follows:

§ 121.906 Manufactured products under small business set-aside procurements.

* * * * *

(b) * * * (1) In order to qualify as a small business, a concern need not be the manufacturer of the item(s) being acquired under a manufacturing contract, provided that the concern:

(i) Is a small business concern under this part under a 500 employee size standard;

(ii) Is primarily engaged in the wholesale or retail trade; and

(iii) Represents that it will supply the end product (as defined in paragraph (b)(2) of this section) of a domestic small business manufacturer or processor, or obtains a waiver of such requirement pursuant to paragraph (b)(3) of this section.

* * * * *

(4) Any waiver of the nonmanufacturer rule granted by the Administrator pursuant to paragraph (b)(3) of this section has no effect on requirements external to the Small Business Act which involve domestic

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sources of supply, such as the Buy American Act.

* * * * *

3. Section 121.906(b)(3) is amended by adding the word "domestic" after the words "manufactured by a" and before the phrase "small business manufacturer."

4. and 5. Section 121.1106(b)(1) is revised and (b)(4) is added to read as follows:

§ 121.1106 Manufactured products under section 8(a) contracts.

* * * * *

(b) * * * (1) In order to qualify as a small business, a concern need not be the manufacturer of the item(s) being acquired under a manufacturing contract, provided that the concern:

(i) Is a small business concern under this part under a 500 employee size standard;

(ii) Is primarily engaged in the wholesale or retail trade; and

(iii) Represents that it will supply the end product (as defined in paragraph (b)(2) of this section) of a domestic small business manufacturer or processor, or obtains a waiver of such requirement pursuant to paragraph (b)(3) of this section.

* * * * *

(4) Any waiver of the nonmanufacturer rule granted by the Administrator pursuant to paragraph (b)(3) of this section has no effect on requirements external to the Small Business Act which involve domestic sources of supply, such as the Buy American Act.

* * * * *

6. Section 121.1106(b)(3) is amended by adding the word "domestic" after the words "manufactured by a" and before the phrase "small business manufacturer."

Dated: September 20, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94-23831 Filed 9-26-94; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-191-AD; Amendment 39-8748; AD 93-23-12]

Airworthiness Directives; Learjet Model 60 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD), applicable to certain Learjet Model 60 airplanes, that currently requires deactivation of the auxiliary cabin and cockpit heating systems and installation of placards. This action corrects the applicability of the rule. This action is necessary to ensure that only airplanes subject to the addressed unsafe condition are subject to the requirements of the rule.

DATES: Effective December 15, 1993.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of December 15, 1993 (58 FR 63060, November 30, 1993).

ADDRESSES: The service information referenced in this AD may be obtained from Learjet, Inc., P.O. Box 7707, Wichita, Kansas 67277-7707. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: C. Dale Bleakney, Aerospace Engineer, Systems and Equipment Branch, ACE-130W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4135; fax (316) 946-4407.

SUPPLEMENTARY INFORMATION: On November 22, 1993, the FAA issued AD 93-23-12, amendment 39-8748 (58 FR 63060, November 30, 1993), to require deactivation of the auxiliary cabin and cockpit heating systems on all Learjet Model 60 airplanes, and the installation of a placard stating, "Cabin and Cockpit Heat Inop." That action was prompted by a report of a fire in the aft fuselage of one airplane, which had resulted from miswiring that was installed in an auxiliary cabin heater during manufacture. The actions required by that AD are intended to prevent overheating of the auxiliary cabin and cockpit heaters, which potentially could result in a fire.

Recently, the FAA has become aware of the fact that the applicability of the AD is unnecessarily broad. In developing the AD, the FAA intended that its applicability be coextensive with the effectivity listing of Learjet Alert Service Bulletin SB A60-21-1, dated November 1, 1993. (That service bulletin was referenced in the rule as the appropriate source of service information.) That service bulletin indicates that only airplanes having serial numbers 60-002 through 60-021, inclusive, are subject to the addressed unsafe condition; all other airplanes of this model were modified during production in such a way so as to preclude the unsafe condition. However, the applicability of the AD, as published, inadvertently indicated that all airplanes of this model were applicable to the requirements of the AD, rather than just those having serial numbers 60-002 through 60-021. That inadvertent action incorrectly made the requirements of the AD redundant for airplanes other than those with the specified serial numbers.

The FAA has determined that it is appropriate to take action to correct the applicability of AD 93-23-12 to specify only airplanes that are subject to the addressed unsafe condition. Therefore, action must be taken to correctly limit the AD's applicability to only Learjet Model 60 airplanes having serial numbers 60-002 through 60-021, inclusive.

Action is taken herein to correct the error and to correctly add the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13). The effective date of the rule remains December 15, 1993.

The final rule is being reprinted in its entirety for the convenience of affected operators.

Since this action only corrects an inadvertent error in the applicability of the rule, so as to eliminate airplanes not subject to the identified unsafe condition, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

93-23-12 Learjet, Inc.: Amendment 39-8748. Docket 93-NM-191-AD.

Applicability: Model 60 airplanes having serial numbers 60-002 through 60-021, inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the auxiliary cabin and cockpit heaters, which could potentially result in a fire, accomplish the following:

(a) Within 10 flight hours after the effective date of this AD, deactivate the auxiliary cabin and cockpit heating systems; and install a placard stating, "Cabin and Cockpit Heat Inop" adjacent to the AUX HT Switch (S44) on the co-pilot's switch panel; in accordance with Learjet Alert Service Bulletin SB A60-21-1, dated November 1, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with section 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The deactivation and placard installation shall be done in accordance with Learjet Alert Service Bulletin SB A60-21-1, dated November 1, 1993. This incorporation by reference was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of December 15, 1993 (58 FR 63060, November 30, 1993). Copies may be obtained from Learjet, Inc., P.O. Box 7707, Wichita, Kansas 67277-7707. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 15, 1993.

Issued in Renton, Washington, on September 20, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-23718 Filed 9-26-94; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 92-ANE-44; Amendment 39-9029; AD 94-20-01]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT8D series turbofan engines, that requires a determination of the utilization rate and coating type of the 7th, 8th, 9th, 10th, 11th, and 12th high pressure compressor (HPC) disks, and removal, inspection for corrosion, and recoating of those HPC disks based on utilization rate. This amendment is prompted by an investigation into an uncontained PW JT8D engine failure caused by severe corrosion on the 9th stage HPC disk. The actions specified by this AD are intended to prevent fracture of the HPC disks, which can result in uncontained release of engine fragments, inflight engine shutdown, and airframe damage.

DATES: Effective November 28, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 28, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, Publications Department, 400 Main Street, East Hartford, CT 06108. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone no. (617) 238-7137, fax (617) 238-7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT8D series turbofan engines was published in the **Federal Register** on July 27, 1993 (58 FR 40079). That action proposed to require a record search, initial and repetitive on-wing and shop inspections to detect corrosion on high pressure compressor (HPC) disks, and removal from service of engines with HPC disks corroded beyond serviceable limits. The inspections, and replacement, if necessary, would be accomplished in accordance with PW Alert Service Bulletin (ASB) No. 6038, Revision 3, dated May 8, 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states that disks that are recoated when complying with the inspection requirement of the AD should be zero-timed with regard to the next inspection interval. The Federal Aviation Administration (FAA) concurs. A paragraph has been added to the compliance section that addresses recoated disks.

One commenter states that there have not been enough disk failures to warrant issuance of an AD. The FAA does not concur. The need for an AD is based on a determination that an unsafe condition exists that is likely to exist in a product of the same type design. That determination rests on many factors, including the risk and hazard level of the failure mode, which in turn are based on several factors, one of which is the number of failures that have occurred. Other data, such as inspection data, analytical models, and potential consequences are also considered when determining risk and hazard level. The FAA has determined in these instances that an unsafe condition exists that is likely to exist in engines of the same type design, and, therefore, an AD is warranted.

The FAA received several comments that state that the borescope inspection for corrosion assessment of Nickel-Cadmium (NiCad) disks is unreliable and can cause unnecessary engine removals. The FAA concurs. The borescope inspection for corrosion assessment of NiCad disks has been eliminated and only in-shop inspections are now required. In addition, high utilization disks require this inspection only at next part access.

The FAA received two comments that state that the four month grace period for the records search should be extended. The FAA concurs in part. The records search is no longer specifically required, and can be replaced by a simple utilization determination and an eddy current probe inspection for coating type identification. In addition, the utilization determination is based on a fleet or sub-fleet average. The AD, however, requires that a utilization determination must be conducted for each HPC disk within four months of the effective date of this AD for low

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utilization operations. But, the FAA believes that it is now a much simpler task.

The FAA received several comments that state that the AD does not adequately address disks that have been used in both high and low utilization operations. The FAA concurs. The utilization rate determination now includes an adjustment for disks that have experienced mixed utilization rates, and both an initial and a yearly recalculation that will account for changes in utilization rate.

One commenter states that the AD should contain a provision to allow for incorporation of the inspection requirements into the operator's FAA-approved maintenance program. The FAA does not concur. The criticality of the inspections required by the AD require that they be separate and distinct from the operator's routine maintenance tasks.

The FAA received several comments that state that the records search and inspection requirements of this AD pose an undue burden on operators of PW JT8D engines. The FAA concurs in part. The records search is no longer specifically required, and has been replaced by a simpler utilization determination together with an eddy current probe inspection for coating type identification. In addition, the utilization determination is based on a fleet or sub-fleet average. The borescope inspection has been eliminated, the disk removal (for inspection) requirements have been relaxed based on additional analysis and disk inspections, and high utilization disks, fleets, and sub-fleets will not require a forced engine removal to comply with the AD.

The FAA received two comments that state that the compliance schedule for disk inspections is complex and requires extensive recordkeeping. The FAA concurs. The compliance schedule has now been simplified by eliminating the borescope inspection and by requiring high utilization operators to inspect the disks at the next access regardless of coating type.

The FAA received two comments that state that the issuance of the Final Rule should be delayed until additional analytical and statistical analyses can be performed to further refine disk fracture predictions and required inspection intervals. The FAA does not concur. The FAA performed extensive additional analysis since the issuance of the proposed rule which has resulted in the revised compliance requirements discussed in the FAA's responses to several comments. Based on this additional analysis, the FAA believes that the Final Rule should not be delayed.

One commenter states that the cost to drill the borescope hole would place an undue burden on the operator. The FAA concurs in part. The borescope inspection has been eliminated from the AD and borescope access is not specifically required. However, borescope access is required if an operator elects to forgo a records search and elects to use the eddy current probe to determine coating type.

One commenter states that the disk records do not always allow for identification of the coating. The FAA concurs. The identification of disk coating can now be accomplished by use of an eddy current probe.

One commenter states that the AD should allow for incorporation of an engine heater/de-humidifier to be installed on low utilization engines when not in operation. This type of device would reduce the accumulation of moisture in the engine, which can cause disk corrosion. The FAA concurs in part and does not dispute that an engine heater/de-humidifier would probably reduce the moisture content in low utilization engines. This type of device, however, would need to be tested to produce data to quantify its effect on moisture and associated disk corrosion. Since this data has not been submitted to the FAA, it cannot be included in the AD.

One commenter agreed with the rule as proposed.

Since publication of the NPRM, the FAA has reviewed and approved the technical contents of PW ASB No. 6038, Revision 5, dated August 17, 1994. This final rule AD references the latest revision of the ASB.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes that include elimination of the borescope inspection and associated tables, changes to the compliance intervals, elimination of the records search, addition of the optional eddy current probe inspection, addition of the adjustment for mixed utilization, and simplification of the utilization determination, are introduced in response to comments received to the NPRM. The format of the compliance section is revised to incorporate the above changes and to simplify the readability by eliminating duplication of compliance instructions that are now included in PW ASB 6038, Revision 5, dated August 17, 1994. The FAA has determined that these changes do not increase the economic burden on any operator, however, the economic analysis has been recalculated to reflect the total scope of the compliance program. The FAA has also determined that the above changes do not compromise the safety impact of the compliance program and do not increase the scope of the AD.

There are approximately 11,119 PW JT8D-1, -1A, -1B, -7, -7A, -7B, -9, -9A, -11, -15, -15A, -17, -17A, -17R, and -17AR turbofan engines of the affected design in the worldwide fleet. The FAA estimates that approximately 6,815 engines installed on aircraft of U.S. registry will be affected by this AD, and 2 work hours will be necessary to determine the utilization rate and type of surface treatment. Based on domestic fleet-wide data, the FAA estimates that approximately 8.7% or 593 engines are considered to have low utilization rates. Approximately 8.6 work hours will be required to remove these engines from the aircraft, 500 work hours to tear down, deblade, and to reassemble the engine, and 8.6 work hours to reinstall the reassembled engines. The FAA estimates 69% of the removed engines will require scrapping the disks. The FAA assumes that three disks per engine may require replacement, and the cost of a new disk is approximately $7,000. The average labor rate is $55 per work hour. Based on these figures, and a forecast 20-year compliance program, the annual cost impact of the AD on U.S. operators is estimated to be $1,308,958.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-20-01 Pratt & Whitney: Amendment 39-9029. Docket 92-ANE-44.

Applicability: Pratt & Whitney (PW) JT8D-1, -1A, -1B, -7, -7A, -7B, -9, -9A, -11, -15, -15A, -17, -17A, -17R, and -17AR turbofan engines installed on but not limited to Boeing 737 and 727 series, and McDonnell Douglas DC-9 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent fracture of the high pressure compressor (HPC) disks, that can result in uncontained release of engine fragments, inflight engine shutdown, and airframe damage, accomplish the following:

(a) Within four months after the effective date of this airworthiness directive (AD), determine the fleet and sub-fleet average engine utilization rate for the 12 months of operations prior to August 17, 1994, the issue date of PW Alert Service Bulletin (ASB) No. 6038, Revision 5, in accordance with paragraph 2.A of PW ASB No. 6038, Revision 5, dated August 17, 1994.

(1) For fleet or sub-fleet average utilization rates that are equal to or greater than 1,300 hours per year, and equal to or greater than 900 cycles per year, perform the following:

(i) For engines or disks that are added to a fleet or subfleet after the effective date of this AD, and that were previously designated as low utilization disks in accordance with this AD, comply with the requirements of paragraph (d) of this AD.

(ii) Designate all other stage 7 through 12 HPC disks as high utilization disks and comply with the requirements of paragraph (b) of this AD.

(2) For fleet or sub-fleet average utilization rates that are less than 1,300 hours per year or less than 900 cycles per year, within four months after the effective date of this AD, determine the initial utilization rate for each stage 7 through 12 HPC disk in accordance with paragraph 2.B.(1) of PW ASB No. 6038, Revision 5, dated August 17, 1994. Determination of disk utilization in accordance with PW ASB No. 6038, Revision 3, dated May 8, 1992, constitutes an acceptable alternate method of compliance to paragraph (a)(2) of this AD.

(i) For each HPC stage 7 through 12 disk with an initial utilization rate equal to or greater than 1,300 hours per year, and equal to or greater than 900 cycles per year, designate this disk as a high utilization disk and inspect in accordance with paragraph (c) of this AD.

(ii) For each HPC stage 7 through 12 disk with an initial utilization rate less than 1,300 hours per year or less than 900 cycles per year, designate this disk as a low utilization disk and inspect in accordance with paragraph (d) of this AD.

(iii) For each HPC stage 7 through 12 disk with an unknown initial utilization rate, designate this disk as a low utilization disk and inspect in accordance with paragraph (d) of this AD.

Note: Once a disk is designated as low utilization, then it must retain this designation for the life of the disk or until recoated.

(iv) For recoated or new disks, designate this disk as a high utilization disk and inspect in accordance with paragraph (c) of this AD.

(b) For high average utilization fleets and sub-fleets, excluding those disks identified in paragraph (a)(1)(i) of this AD, perform the following for each HPC stage 7 through 12 disk in that fleet or sub-fleet:

(1) Inspect, and recoat or replace if necessary, at the next part accessibility of the disk, in accordance with paragraph 2.D.(1)(b) and Chart A of PW ASB No. 6038, Revision 5, dated August 17, 1994.

(2) Recalculate the fleet or sub-fleet average utilization rate at 12 month intervals after the previous date of utilization determination in accordance with paragraph 2.B of PW ASB No. 6038, Revision 5, dated August 17, 1994.

(i) For fleet or sub-fleet average utilization rates that are equal to or greater than 1,300 hours per year, and equal to or greater than 900 cycles per year, continue to designate all stage 7 through 12 HPC disks as high utilization disks and comply with the requirements of paragraph (b) of this AD.

(ii) For fleet or sub-fleet average utilization rates that are less than 1,300 hours per year or less than 900 cycles per year, within four months of compliance with paragraph (b)(2) of this AD, determine the utilization rate for each stage 7 through 12 HPC disk in accordance with paragraph 2.B.(1) of PW ASB No. 6038, Revision 5, dated August 17, 1994, as follows:

(A) For each HPC stage 7 through 12 disk with a utilization rate equal to or greater than 1,300 hours per year, and equal to or greater than 900 cycles per year, designate this disk as a high utilization disk and inspect in accordance with paragraph (c) of this AD.

(B) For each HPC stage 7 through 12 disk with a utilization rate less than 1,300 hours per year or less than 900 cycles per year, designate this disk as a low utilization disk and inspect in accordance with paragraph (d) of this AD.

(C) For each HPC stage 7 through 12 disk with an unknown utilization rate, designate this disk as a low utilization disk and inspect in accordance with paragraph (d) of this AD.

Note: Once a disk is designated as low utilization, then it must retain this designation for the life of the disk or until recoated.

(c) For high utilization HPC stage 7 through 12 disks, perform the following:

(1) Inspect, and recoat or replace if necessary, at the next part accessibility of the disk, in accordance with paragraph 2.D.(1)(b) and Chart A of PW ASB No. 6038, Revision 5, dated August 17, 1994.

(2) Calculate the disk utilization rate at 12 month intervals after the previous date of utilization determination, or after installation of new or recoated disks, in accordance with paragraph 2.B.(3) of PW ASB No. 6038, Revision 5, dated August 17, 1994.

(i) For HPC stage 7 through 12 disks designated as high utilization in accordance with (c)(2), comply with the requirements of paragraph (c)(1) of this AD.

(ii) For HPC stage 7 through 12 disks designated as low utilization in accordance with (c)(2), comply with the requirements of paragraph (d) of this AD.

(d) For low utilization HPC stage 7 through 12 disks, perform the following:

(1) Determine the type of disk surface treatment for each HPC stage 7 through 12 disk in accordance with paragraph 2.E. of PW ASB No. 6038, Revision 5, dated August 17, 1994. Determination of type of disk coating in accordance with PW ASB No. 6038, Revision 3, dated May 8, 1992, constitutes an acceptable alternate method of compliance to paragraph (d)(1) of this AD.

(2) Inspect, and recoat or remove from service, in accordance with paragraph 2.D.(1)(c) and Chart A of PW ASB No. 6038, Revision 5, dated August 17, 1994.

(e) For HPC stage 7 through 12 disks that have been recoated in accordance with paragraphs (b)(1), (c)(1), or (d)(2) of this AD, designate these disks as high utilization and perform the following:

(1) For disks installed in an engine that is part of a high utilization fleet, comply with the requirements of paragraph (b) of this AD.

(2) For disks installed in an engine that is part of a low utilization fleet, comply with the requirements of paragraph (c) of this AD.

(f) For the purpose of this AD, recoat of an HPC disk is defined as removal and application of new plating or coating in accordance with Sections 72-36-41, Repair 02, 72-36-42, Repair 02, 72-36-43, Repair 03, 72-36-44, Repair 03, 72-36-45, Repair 03, 72-36-46, Repair 03, as applicable, of PW JT8D Engine Manual P/N 481672.

(g) For the purpose of this AD, part accessibility is defined as the removal of the disk from the engine and deblading of that disk.

(h) For the purpose of this AD, a sub-fleet is defined as any individual aircraft or any portion of an operators fleet that operates in a separate and unique route structure, characterized by different flight lengths, frequencies, or geographic location.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be

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used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(k) The inspections, and replacement or recoating if necessary, shall be done in accordance with the following service document:

Document No.	Pages	Revision	Date
PW ASB No. 6038	1	5	August 17, 1994.
	2	Original	August 5, 1991.
	3	5	August 17, 1994.
	4–6	4	July 13, 1994.
	7–26	5	August 17, 1994.
	27–41	5	August 17, 1994.
Appendix A	1–33	4	July 13, 1994.
Appendix B NDIP–803	1–2	4	July 13, 1994.
Appendix to NDIP–803			
Total Pages: 76.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Publications Department, 400 Main Street, East Hartford, Connecticut 06108. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(l) This amendment becomes effective on November 28, 1994.

Issued in Burlington, Massachusetts, on September 15, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–23326 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 756

Navajo Nation Abandoned Mine Land Reclamation (AMLR) Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment and concurrence with certification of completion of coal reclamation.

SUMMARY: Under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), OSM is approving a proposed amendment to the Navajo Nation's AMLR plan (hereinafter referred to as the "Navajo Nation plan") and, on behalf of the Secretary of the Interior, in concurring with the Navajo Nation's certification that the Navajo Nation has abated or reclaimed all coal-related AML problems on its lands under the Navajo Nation plan. The amendment, which the Navajo Nation proposed in order for its plan to meet the requirements of the Federal regulations and SMCRA, to clarify ambiguities, and to improve operational efficiency, consists of statute and rule revisions pertaining to reclamation of interim program abandoned coal mines, coal priorities, certification of completion of coal reclamation, establishment of a noncoal reclamation program subsequent to certification including the authority to undertake community impact assistance and public facilities projects, and creation of a future reclamation set-aside fund. OSM's concurrence with the Navajo Nation's certification of the completion of all coal-related problems, which was requested by the President of the Navajo Nation, means that the Navajo Nation is now authorized to use monies from the Navajo Abandoned Mine Reclamation (AMR) fund for noncoal reclamation purposes, including the construction of public facilities.

EFFECTIVE DATE: September 27, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA

Title IV of SMCRA establishes an AMLR program for the purposes of reclaiming and restoring lands and waters adversely affected by past mining. It also provides for Tribal or State submittal to OSM of an AMLR plan. The Secretary of the Interior adopted regulations in 30 CFR 870 through 888 that implement Title IV of SMCRA. Under these regulations, the Secretary reviewed the Tribe's or State's AMLR plan and solicited and considered comments of State and Federal agencies and the public. Based upon the comments received, the Secretary determined whether a Tribe or State had the ability and necessary legislation to implement the provisions of Title IV. After making such a determination, the Secretary decided whether to approve the Tribe or State AMLR plan. Approval granted the Tribe or State exclusive authority to administer its approved plan.

Following approval of a Tribe's or State's AMLR plan by the Secretary, an application may be submitted to OSM by a Tribe or State on an annual basis for funds to be expended by that Tribe or State on specific projects necessary to implement the approved plan. Such annual grant applications are reviewed and approved by OSM in accordance with the requirements of 30 CFR 886.

The Federal Abandoned Mine Reclamation Fund (Federal Fund), which is administered by the Secretary through OSM, is financed by a reclamation fee assessed on every ton of mined coal. Expenditures from the Federal Fund are subject to appropriation by Congress. The Federal Fund is divided into Tribal or State and Federal shares with each Indian tribe or State under a federally approved reclamation program entitled to 50 percent of the reclamation fees collected from coal operations on Indian lands or within the State. Annually, the Indian tribes or States receive reclamation project construction grants and administrative grants from their share of the Federal Fund. Subject to OSM approval, Tribes and States are also authorized to create special interest-bearing Tribe or State trust accounts into which up to 10 percent of their annual grants can be deposited. These "set-aside" accounts may be used to achieve the priorities of section 403(a) of SMCRA after September 30, 1995, or be deposited into an acid mine drainage abatement and treatment fund.

Noncoal AMLR projects can be undertaken by a Tribe or State under two scenarios, both of which are subject to OSM approval in the grants process. Prior to a Tribe or State certifying in accordance with section 411(a) of SMCRA that it has completed the reclamation of all eligible abandoned coal projects, it can expend Tribal or State share monies for those noncoal projects that are a hazard to public health and safety. After a Tribe or State has certified that it has completed reclamation of all eligible abandoned coal projects, it can then use the full amount of its Tribal or State share for abandoned noncoal mine land reclamation projects. Such noncoal projects include the construction of public facilities related to the coal or minerals industry.

II. Background on the Navajo Nation Plan

On May 16, 1988, the Secretary of the Interior approved, with one exception, the Navajo Nation plan as originally submitted in June 1983, resubmitted on September 6, 1983, and amended in February 1988. General background information on the Navajo Nation plan, including the Secretary's findings, the disposition of comments, the decision deferring any action on the Navajo Nation's proposal to assume the emergency response authority, and the approval of the Navajo Nation plan can be found in the May 16, 1988, **Federal Register** (53 FR 17186). Approval of the Navajo Nation plan is codified at 30 CFR 756.13.

III. Proposed Amendment and Request for Concurrence With Certification of Completion of Coal Reclamation

By letters dated April 7 and 22, 1994, the Navajo Nation submitted a proposed amendment to its AMLR plan pursuant to SMCRA (administrative record Nos. NA–207, NA–208, and NA–212). The Navajo Nation submitted the proposed amendment at its own initiative with the intent of revising its AMLR plan so it could use AMR funds to reclaim remaining interim program coal sites and for noncoal reclamation purposes, including the construction of public facilities. Interim program coal sites are eligible lands and water mined after August 3, 1977, but prior to September 28, 1984 (the date the permanent Federal regulatory program took effect on Navajo Nation lands), for which available funds for reclamation or abatement pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate abatement or reclamation at a site.

The Navajo Nation proposed revisions to its AMLR Code of 1987 at (1) the introduction to the Navajo AMLR Code; (2) Title I, section 101, findings, and section 102, purposes; (3) Title II, sections 201(a), (b), (c) and (d), duties of the Navajo Abandoned Mine Lands Reclamation Department (NAMLRD); and (4) Title IV, sections 401(a), (b)(5), (b)(6), (c)(5) and (c)(8), Navajo AMR fund and purposes; section 402, reclamation fee; sections 403(a) and (b), objectives of the fund; section 404, eligible lands and water; sections 405(a), (b), (c), and (f), Tribal reclamation program; section 407, acquisition and reclamation of lands within the Navajo Nation adversely affected by past mining practices; section 408, liens; section 409, filling voids and sealing tunnels; section 410, emergency powers; section 411, certification of completion of coal reclamation; section 412, fund report; section 413, miscellaneous powers; and section 414, interagency cooperation.

The Navajo Nation also proposed revisions to the Navajo Nation Rules implementing the AMLR Code of 1987 at (1) section II, Part D, subsections 1 and 2, reclamation priorities; Part L, subsections 1 and 2, general reclamation requirements; Part M, subsections 1 and 2, certification of completion of coal reclamation; Part N, subsection 1, eligible lands and water subsequent to certification; Part O, subsection 1, exclusion of noncoal reclamation sites; Part P, subsections 1, 2, and 3, utilities and other facilities, and (2) section III, Part E, subsection 1, future reclamation set-aside program.

In addition, by letter dated May 4, 1994, the President of the Navajo Nation notified the Secretary of the Interior that the Navajo Nation was certifying that it had completed all of its coal reclamation projects (administrative record No. NA–213) and stated that NAMLRD intends to complete all remaining priority 1 and 2 coal reclamation projects, including interim coal reclamation projects, as required by section 403(a) of SMCRA. Reclamation projects are funded under a priority schedule, such that "priority 1" projects concern those that involve the protection of public health, safety, general welfare and property from extreme danger of the adverse effects of coal mining practices while "priority 2" projects concern those that involve protection of public health, safety, and general welfare from adverse effects of coal mining practices. The Navajo Nation submitted the request for the Secretary's concurrence with certification of completion of all known coal-related problems with the intent that, if the Secretary concurred with the certification, the Nation would request AMR funds to pursue projects under the provisions of section 411 of SMCRA.

OSM announced receipt of the proposed amendment and the Navajo Nation's request for the Secretary's concurrence with its certification of completion of coal reclamation in the May 18, 1994, **Federal Register** (59 FR 25852, administrative record No. NA–214), provided an opportunity for a public hearing or meeting and public comment on the substantive adequacy of the Navajo Nation's proposed amendment and certification, and requested information concerning any known or suspected unreclaimed lands and water resources on Navajo Nation lands that would be eligible for expenditures from the AMR fund under the provisions of the Navajo Nation's reclamation program. Because no one requested a public hearing or meeting, none was held. The public comment period ended on June 17, 1994.

IV. Director's Findings

1. The Navajo Nation Plan

As discussed below, the Director of OSM, in accordance with SMCRA and 30 CFR 756.1, 884.15, and 884.14, finds that the proposed AMLR plan amendment submitted by the Navajo Nation on April 7 and 22, 1994, meets the requirements of SMCRA and the Federal regulations at 30 CFR 884.14. Accordingly, the Director approves the proposed amendment.

a. Nonsubstantive Revisions to the Navajo Nation AMLR Code of 1987

The Navajo Nation proposed revisions to the following previously-approved provisions of its code that are nonsubstantive in nature and consist of (1) minor editorial, grammatical, and punctuation changes, (2) recodification, (3) using the term "Nation" rather than "Tribal" or "Tribe of Indians" when referring to the Navajo Nation and the terms "Navajo Abandoned Mine Reclamation Program" and "Navajo Abandoned Mine Reclamation Plan" for the Navajo Nation's reclamation program and plan, and (4) clarifying the duties and responsibilities of NAMLRD, Division of Natural Resources, and Office of Navajo Land Administration in administering the AMLR plan for the Navajo Nation (corresponding SMCRA provisions are listed in parentheses):

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Introduction (introduction of SMCRA).

Title I, section 101, Findings (Title I, section 101 of SMCRA).

Title I, section 102, Purposes (Title I, section 102 of SMCRA).

Title II, sections 201(a), (c) and (d), Duties of NAMLRD (Title II, section 201 and Title IV, section 405(1) of SMCRA).

Title IV, sections 401(a) and (b)(6), Navajo Abandoned Mine Reclamation Fund and Purposes (Title IV, sections 401(a) and (b) of SMCRA).

Title IV, section 402, Reclamation Fee (Title IV, section 402 of SMCRA).

Title IV, sections 403(a)(4), (5) and (6), Objectives of Fund (Title IV, section 403(a) of SMCRA).

Title IV, sections 405(a), (b), (c), and (f), Tribal Reclamation Program (Title IV, sections 405(b), (e), and (i) of SMCRA).

Title IV, sections 407(a), (c), (c)(3), and (d) through (h), Acquisition and Reclamation of Lands Within the Navajo Nation Adversely Affected by Past Mining Practices (Title IV, section 407 of SMCRA).

Title IV, section 408(a), Liens (Title IV, section 408 of SMCRA).

Title IV, sections 409(a) and (d), Filling Voids and Sealing Tunnels (Title IV, sections 409(a) and (e) of SMCRA).

Title IV, section 412, Fund Report (Title IV, section 412 of SMCRA), and

Title IV, sections 413(b) through (e), Miscellaneous Powers (Title IV, section 413 of SMCRA).

Because the proposed revisions to these previously-approved provisions of the code are nonsubstantive in nature, the Director finds that the proposed revisions meet the requirements of SMCRA. Accordingly, the Director approves the proposed revisions to these provisions of the Navajo Nation AMLR Code of 1987.

b. Substantive Revisions to the Navajo Nation AMLR Code of 1987 and Navajo Nation Rules Implementing the Code That Are Substantively Identical to the Corresponding Provisions of SMCRA and the Federal Regulations

The Navajo Nation proposed revisions to the following sections of its code and rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding SMCRA and Federal regulation provisions (listed in parentheses).

Navajo Nation AMLR Code of 1987:

Title II, section 201(b), Duties of NAMLRD (Title II, section 201 of SMCRA).

Title IV, sections 401(c)(5) and (8), Navajo Abandoned Mine Reclamation Fund and Purposes (Title IV, section 401(c) of SMCRA).

Title IV, sections 403(a) and (b) and deletion of (a)(4), Objectives of Fund (Title sections 403(a) and (c) of SMCRA).

Title IV, section 404, Eligible Lands and Water (Title IV, section 404 of SMCRA.

Title IV, section 409(b), Filling Voids and Sealing Tunnels (Title IV section 409(c) of SMCRA) and

Title IV, section 411, Certification [of Completion of Coal Reclamation] (Title IV, section 411 of SMCRA).

Navajo Nation Rules:

II(D)(1) and (2), Reclamation Priorities (Title IV, sections 403(a) and 411(c) of SMCRA and 30 CFR 874.13 and 875.15).

II(L)(1)(a) through (c) and (e) through (g) and (2), General Reclamation Requirements (Title IV, sections 404 and 411(b) of SMCRA and 30 CFR 874.12 and 875.12).

II(M)(1) and (2), Certification of Completion of Coal Reclamation (Title IV, Sections 411(a) and (f) of SMCRA and 30 CFR 875.13 and 875.15).

II(N)(1), Eligible Lands and Water Subsequent to Certification (Title IV, section 411(b) of SMCRA and 30 CFR 875.14).

II(O)(1), Exclusion of Noncoal Reclamation Sites (Title IV, section 411(d) of SMCRA and 30 CFR 875.16).

II(P)(1), (2), and (3), Utilities and Other Facilities (Title IV, section 411(e) of SMCRA and 30 CFR 875.15), and

III(E)(1), Future Reclamation Set-Aside Program (Title IV, section 402(g)(6) of SMCRA and 30 CFR 873.12).

Because the proposed revisions to these sections of the code and rules are substantively identical to the corresponding provisions of SMCRA and the Federal regulations, the Director finds that the proposed revisions meet the requirements of SMCRA and the implementing Federal regulations. Accordingly, the Director approves the proposed revisions to these sections of the Navajo Nation AMLR Code of 1987 and the implementing Navajo Nation Rules.

c. Title IV, Section 401(b)(5), Interest Credited to the AMR Fund

The Navajo Nation proposed new language in its AMLR Code of 1987 at Title IV, section 401(b)(5) to provide that the Navajo AMR Fund shall consist, in part, of amounts derived from "interest credited to the fund under subsection (e) of section 401 of SMCRA."

Section 401(e) of SMCRA provides that interest can be earned on that portion of the Federal AMR Fund (administered by the Secretary) not required to meet current withdrawals. Interest earned on the invested portion of the Federal Fund is distributed only to the Secretarial share of the Federal Fund. Therefore, none of the interest earned on the invested portion of the Federal Fund is distributed to any portion of the Tribal or State share of the Federal Fund which each Tribe or State receives in annual grants as provided at 30 CFR 886. Section 401(e) of SMCRA does not restrict a Tribe or State from earning interest on the AMR fund created by a Tribe or State as part of its AMLR program.

Title IV, section 401(b)(5) of the Navajo Nation AMLR Code of 1987 is interpreted to mean that the interest credited to the Navajo AMR fund is not the interest earned on the Federal Fund but is limited to interest credited from the deposit of other monies as provided in the Navajo Nation AMLR Code of 1987 by sections 401(b)(2), (3), (4), and (6) which include reclamation fees, user charges, donations, recovered monies, and other reclamation fees lawfully imposed by the Navajo Nation. The Director approves proposed section 401(b)(5) of the Navajo Nation AMLR Code of 1987 with the understanding that the interest earned is limited to the aforementioned monies deposited to the Navajo AMR fund.

d. Title IV, Section 410, Emergency Powers

The Navajo Nation proposed deletion of its emergency powers provisions at Title IV, section 410 of its AMLR Code of 1987. Deletion of these provisions is consistent with the approval of the Navajo Nation's AMLR plan (53 FR 17186, 17190; May 16, 1988) where the Secretary deferred decision on the emergency response program pending additional documentation addressing the specific criteria concerning assumption of emergency response authority. Because the Navajo Nation did not submit such additional documentation, the emergency powers program was never approved. The Director, therefore, approves deletion of the provisions for emergency powers at section 410 of the Navajo Nation AMLR Code of 1987 and notes that it is the Navajo Nation's intent to delete all references to emergency powers within its AMLR Code of 1987.

e. Title IV, Section 414, Interagency Cooperation

The Navajo Nation proposed new language in its AMLR Code of 1987 at Title IV, section 414 to provide for interagency cooperation in implementing and administering the provisions of the Navajo Nation plan "where such cooperation does not conflict with existing Navajo Nation and/or applicable federal laws." Section 413(a) of SMCRA provides, in part, that a Tribe has the authority to engage in any work and to do all things necessary or expedient to implement and administer the provisions of Title IV. Therefore, the limitation of interagency cooperation to instances where no conflict with existing Navajo Nation or applicable Federal laws occur meets the requirements of section 413 of SMCRA. Accordingly, the Director approves

section 414 of the Navajo Nation AMLR Code of 1987.

OSM notes that the Navajo Nation plan provides the authority for the Tribe to conduct a reclamation program on Navajo (Indian) lands as that term is defined in section 701(9) of SMCRA. Indian lands occur within and outside traditional reservation boundaries. Although there may be jurisdictional limitations to the Navajo Nation's authority to undertake certain reclamation actions outside the reservation, the Navajo Nation plan presents a variety of reclamation procedures and activities which would allow the Tribe to undertake its reclamation program without violating the jurisdictional rights of other parties. Because certain lands within the boundaries of the Navajo Nation Reservation are "disputed lands" and other lands are under the control of the Office of the Navajo and Hopi Indian Relocation, it is understood by OSM that any reclamation or abatement action proposed by the Navajo Nation will be coordinated with and due consideration given to concerns raised by all parties asserting ownership of these lands.

f. Navajo Nation II(L)(1)(d), Interim Program Coal Sites

The Navajo Nation proposed the addition of provisions in its Navajo Nation Rules at II(L)(1)(d) that address interim program coal sites.

Section 402(g)(4) of SMCRA provides for the reclamation of interim coal program sites and further provides that sections 403(a) (1) and (2) of SMCRA determine which sites to reclaim.

The Navajo Nation does not have a statutory requirement that addresses reclamation of interim program coal sites. OSM acknowledges that the Navajo Nation has submitted a grant application in accordance with the provisions of 30 CFR 886 to fund reclamation of all remaining priority 1 and 2 abandoned coal mine sites, including interim program coal reclamation projects, as required by section 403(a) of SMCRA. The Navajo Nation has also demonstrated to OSM's satisfaction that the Navajo Nation AMR fund contains enough monies in reserve to address reclamation of the remaining sites. On this basis and upon approval of the proposed plan amendment that is the subject of this notice, OSM will begin reviewing the pending grant application. OSM also understands that the Navajo Nation is in the process of revising its AMLR Code of 1987 to provide for the reclamation of interim program coal sites. The Director, therefore, approves the Navajo Nation's proposed rule at section II, Part L, subsection 1(d) addressing interim program coal reclamation.

2. Request for Concurrence With Certification of Completion of Coal Reclamation

The President of the Navajo Nation notified the Secretary of the Interior that the Navajo Nation certifies to the completion of all its coal reclamation projects. Section 411(a) of SMCRA provides that the head of an Indian tribe may certify to the Secretary that all of the priorities stated in section 403(a) of SMCRA for eligible lands and water have been achieved and that the Secretary, after notice in the **Federal Register** and opportunity for public comment, shall concur with such certification if the Secretary determines that such certification is correct.

Since the Secretary's approval of the Navajo Nation plan, the Navajo Nation has conducted reclamation to correct or mitigate problems caused by past coal mining. The Navajo Nation has completed this reclamation in the order of priority set forth in section 403(a) of SMCRA. OSM acknowledges that there are remaining priority 1 and 2 abandoned coal mine sites yet to be reclaimed by the Navajo Nation, but upon approval of the grant application submitted by the Navajo Nation in accordance with 30 CFR 886 and as discussed in finding No. 1.e. above, the Navajo Nation will have addressed all known remaining pre-SMCRA and interim program abandoned coal mine lands.

Based upon the Navajo Nation's May 4, 1994, certification, and the absence of any known unreclaimed coal-related impacts, the Director of OSM, on behalf of the Secretary, concurs with the Navajo Nation's certification that all coal-related abandoned mine land problems have been abated or reclaimed, and finds that the Navajo Nation has satisfied the requirements of section 403 of SMCRA. If a coal problem occurs or is identified in the future, the Navajo Nation would have to seek immediate funding to reclaim the coal-related problem. Concurrence with the Navajo Nation's certification of completion of coal reclamation means that the Navajo Nation may now use annual grants made available under section 402(g)(1) of SMCRA to carry out activities or construction of specific public facilities related to the coal or minerals industry in accordance with section 411(f) of SMCRA.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

Pursuant to section 411 of SMCRA and 30 CFR 884.15(a) and 884.14(a)(1), OSM invited public comment and provided an opportunity for a public hearing on the Navajo Nation's proposed amendment and certification of completion of coal reclamation (administrative record No. NA–214). No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 884.15(a) and 884.14(a)(2), OSM solicited comments on the proposed amendment and request for concurrence with the Navajo Nation's certification of completion of coal reclamation from Federal, State, and Tribal agencies with an actual or potential interest in the Navajo Nation plan (administrative record Nos. NA–209 and NA–215).

Navajo Environmental Protection Administration (Navajo EPA)

Navajo EPA stated that the proposed amendment of the Navajo Nation plan differed from SMCRA and provided comments in a letter dated May 27, 1994 (administrative record No. NA–219), including editorial comments pertaining to the specific language proposed in the plan amendment and suggestions on how to improve such language. These editorial comments are available in the administrative record for this amendment, and a copy has been provided to the Navajo Nation. However, because these comments are nonsubstantive in nature, OSM has not addressed them below.

(1) Navajo EPA stated that the title of the Navajo Nation plan should be changed to the "Navajo Abandoned Mine Lands Reclamation Plan" to clarify that the plan refers only to abandoned mine land reclamation, and not to any active mines, over which NAMLRD has no jurisdiction. OSM responds that the Navajo Nation's Reclamation Plan is approved under Title IV, Abandoned Mine Reclamation, of SMCRA and not under Title V, Control of the Environmental Impacts of Surface Coal Mining, which provides the authority for States to administer coal mining regulatory programs. No legislation exists granting Indian tribes

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the authority to regulate coal mining on Indian lands.

(2) Navajo EPA indicated that the plan amendment did not incorporate standards to be used by NAMLRD for air, water, soil, radioactivity, and other topics, when deciding whether a site has been completely reclaimed. Title IV of SMCRA and the implementing Federal regulations do not require specific reclamation standards. OSM, during field reviews, provides the necessary oversight to ensure that projects funded using AMR funds meet the goals established when funding was approved.

(3) Navajo EPA suggested that section II(D)(1)(a–e) of the Navajo Nation Rules concerning reclamation priorities may need a clarifying statement to indicate that "Priority A" is the same as "priority 1," and so forth, as used in SMCRA and by NAMLRD (to designate priorities of eligible lands and water for expenditures from the Navajo AMR fund). OSM agrees that a clarifying statement would be helpful, but the dual designations are not so confusing as to affect their implementation.

(4) Navajo EPA expressed concern that section II(L)(1) of the Navajo Nation Rules pertaining to general reclamation requirements does not state that the eligibility requirements are set under SMCRA and were not devised by the Navajo Nation. OSM responds that, while the Navajo Nation Rules do not specifically reference SMCRA in this section, these rules implement the Navajo Nation AMLR Code of 1987 which is the Navajo Nation's counterpart to SMCRA. The eligibility requirements established by these rules are consistent with section 404 of SMCRA. Therefore, a specific reference to this SMCRA citation is not necessary.

(5) Navajo EPA stated that because it had found no indication that any "State" has held a reclamation bond for mining activities conducted within the Navajo Nation, the word "State" in the Navajo Nation Rules at section II(L)(2)(b)(3) concerning reclamation bonds should be deleted. This is an editorial comment, and the implication that the State may hold a bond for reclamation activities on Navajo Nation lands is immaterial.

(6) Navajo EPA commented that section II(M)(2) of the Navajo Nation Rules, which states that "[f]ollowing the concurrence by the Director [with the Navajo Nation's certification of completion of coal reclamation], the Nation may implement a noncoal reclamation program pursuant to the provisions of section 411 of SMCRA," should be revised to clarify that the "Director" is the Director of OSM. While Navajo EPA's comment is consistent with section 411 of SMCRA, which indicates that the Secretary (in this case, the Director of OSM for the Secretary) has the authority to concur with a Tribe's or State's certification, OSM does not find it necessary to require the Navajo Nation to revise this rule. In requesting the Secretary's concurrence on the Director of NAMLRD's certification of completion of coal reclamation, the Navajo Nation has complied with section 411 of SMCRA.

(7) Navajo EPA stated that the reference to "the Act" in section II(P)(1)(c) of the Navajo Nation Rules concerning utilities and other facilities is unclear. OSM interprets the term "the Act" as used in this rule to be the Navajo Nation AMLR Code of 1987 and does not agree with the statement by Navajo EPA that such term is unclear.

(8) Navajo EPA felt that section III(E) of the Navajo Nation Rules pertaining to creation of a future reclamation set-aside program did not clearly indicate what happens to Navajo AMR funds after all known coal reclamation has been completed. Navajo EPA asked whether the monies will become general funds, subject then to reappropriation by the Navajo Nation Council and whether the funds can be used for purposes other than coal reclamation. As discussed in finding No. 2 above, upon concurrence by the Director of OSM with the Navajo Nation's certification of completion of coal reclamation, the Navajo Nation may, in accordance with section 411(f) of SMCRA, request AMR grant monies from OSM to pursue public facilities projects related to coal or mineral development. The Navajo Nation cannot reappropriate these monies for uses other than what has been approved by OSM.

(9) Navajo EPA stated that because NAMLRD had already received Council approval for the revised code, its review seems after the fact unless suggested revisions are also put through the SAS (signature approval sheet) process and presented to the Council. As required by 30 CFR 884.13 and 884.14, OSM must approve the Navajo Nation plan amendment, of which the Navajo Nation AMLR Code of 1987 is a part, before it is effective. If Navajo EPA identified inconsistencies between the code and SMCRA and the implementing Federal regulations, OSM would require the Navajo Nation to revise its AMLR Code of 1987.

(10) Navajo EPA expressed concern that although NAMLRD prepares all environmental documents required under Federal law, the documents are only reviewed by OSM, but none of the documents are reviewed by Navajo EPA, as required. This comment concerns Tribal policy and procedures, which are not inconsistent with the requirements of SMCRA and the Federal regulations.

(11) Navajo EPA noted that Title II, section 201(d) of the Navajo Nation AMLR Code of 1987 provides that NAMLRD shall be protected from suite by sovereign immunity, and that no employee can waive this immunity. However, Navajo EPA suggested that this right may be abrogated by the Federal government as provided in section 405(1) of SMCRA. Section 405(1) of SMCRA provides for Tribe or State immunity from lawsuits except those resulting from gross negligence or intentional misconduct by the Tribe or State, so to the extent that the Tribe or State is liable under Federal law, it is held liable. Therefore, OSM responds that the sovereign immunity claimed by the Navajo Nation extends to all liability situations except those involving gross negligence or intentional misconduct by the Navajo Nation.

(12) Title IV, section 401(b)(2) of the Navajo Nation AMLR Code of 1987 indicates that the Navajo AMR fund shall consist of monies deposited in the fund from sources including any user charges imposed by the Navajo Nation on or for land reclaimed pursuant to the code, after expenditures for maintenance have been deducted. Navajo EPA asked that the type of user charges be clarified, because the code does not specify if these charges refer to grazing or other non-mining activities, whether fees are already appropriated to other departments, what maintenance expenditures are being referred to, and who will conduct said maintenance. Navajo EPA stated that this section was copied directly from SMCRA and may have limited relevance as applied to the Navajo Nation. Specific criteria pertaining to the type of user charges, appropriation of fees, and maintenance are not addressed in Title IV of SMCRA or the implementing Federal regulations. Therefore, decisions made by the Navajo Nation regarding user charges it imposes under its AMLR program are limited only to the extent that they are not inconsistent with SMCRA. Because this provision of the Navajo Nation AMLR Code of 1987 is substantively identical to section 401(b)(2) of SMCRA, it meets the requirements of SMCRA.

(13) Title IV, section 401(b)(6) of the Navajo Nation AMLR Code of 1987 indicates that the AMR fund shall consist of monies deposited in the fund from sources including "all other reclamation fees lawfully imposed by the Navajo Nation." Navajo EPA expressed concern that the statement "all other reclamation fees" is extremely broad, and wondered if it is meant to include reclamation fees for active coal and non-coal mines, for sand and gravel, or oil and gas activities; whether it applies only to reclamation bonds held by the Nation, or by Federal agencies; and suggested that it is in direct conflict with regulations outlining how those fees are held and allocated. Section 402 of SMCRA provides for payment of a reclamation fee on mined coal to be deposited in the Federal AMR Fund. SMCRA and the implementing Federal regulations do not require the payment of any additional fees and do not restrict a Tribe or State from collecting other kinds of reclamation fees. Therefore, for these reasons and for the same reasons discussed in comment No. 12 above, OSM finds this provision of the Navajo Nation AMLR Code of 1987 to be consistent with section 401(b) of SMCRA.

(14) Navajo EPA pointed out a typographical error in Title IV, section (401)(c)(1) of the Navajo Nation AMLR Code of 1987. The phrase "prevent abatement" should be "prevention, abatement * * *" as in the counterpart section 401(c)(1) of SMCRA. OSM agrees with Navajo EPA in its comment and recommends that the Navajo Nation review its plan amendment to correct grammatical, punctuation, and typographical errors and inconsistencies.

(15) Navajo EPA stated that it would be in the Navajo Nation's best interests if NAMLRD inventoried and listed their priority 3, 4, 5, and 6 projects, since that would include all public facilities projects. This comment was not made in reference to a specific provision of the Navajo Nation AMLR Code of 1987 or the Navajo Nation Rules; however, the comment appears to be directed at noncoal reclamation and having NAMLRD complete an inventory and list of public facilities projects. A Tribe or State is required only to inventory priority 1 and 2 coal sites in accordance with section 403(a) of SMCRA. NAMLRD, in accordance with section 403(c) of SMCRA, has already inventoried priority 1 and 2 coal sites. Navajo EPA also stated that it is interested in receiving a copy of the inventory of priority 1 and 2 sites to assist it in ongoing abandoned uranium mine joint reclamation projects. OSM suggests that Navajo EPA request the information from NAMLRD or contact OSM's Albuquerque Field Office.

(16) Navajo EPA suggested that since section 405(f)(7) of SMCRA requires NAMLRD to report to OSM annually on projects funded under the previous year's grant, Title IV, section 405(f) of the Navajo Nation AMLR Code of 1987 should be revised to require that the same kind of information be provided to the Division of Natural Resources and the Navajo Nation Council at the same time such information is reported as required under SMCRA. OSM responds that the Navajo Nation is complying with SMCRA reporting requirements, and if Navajo EPA requires information contained in the documentation provided by NAMLRD to OSM on an annual basis, then Navajo EPA should request this information directly from NAMLRD.

(17) Navajo EPA expressed concern that Title IV, section 407 of the Navajo Nation AMLR Code of 1987 pertaining to acquisition and reclamation of lands adversely affected by past mining practices does not clearly state whether its provisions apply only to private lands within the Navajo Nation boundaries, or to lands such as homesite leases, and individual allotments. Section 407 of SMCRA does not specify the applicability of its provisions as they relate to Indian lands. However, the Navajo Nation's jurisdiction over Navajo Nation lands was clearly defined in the approval of the Navajo Nation plan (53 FR 17186, 17187; May 16, 1988) and is addressed in finding No. 1.e.

(18) Navajo EPA stated that Title IV, section 411(a) of the Navajo Nation AMLR Code of 1987 should be changed to be consistent with the Navajo Nation Rules and provide that the Navajo Nation President will certify completion of coal reclamation rather than the Director of NAMLRD. Section 411(a) of SMCRA provides that the head of an Indian tribe will certify to the completion of coal reclamation. The request from the Navajo Nation for the Secretary's concurrence with its certification of completion of coal reclamation was made by the President of the Navajo Nation, which meets the requirements of section 411(a) of SMCRA and which is the tribal authority Navajo EPA asserted should make the certification. Therefore, although consistency between the Navajo Nation AMLR Code of 1987 and Navajo Nation Rules is desirable, it is not an issue in this instance.

(19) Navajo EPA stated that agreements for cooperative projects by the Navajo Nation with any Federal or State agency should be entered into with the advice of the Navajo Nation Department of Justice and the Division of Natural Resources, in addition to the Intergovernmental Relations Committee and Resources Committee of the Navajo Nation Council already indicated in Title IV, section 413(b) of the Navajo Nation AMLR Code of 1987. SMCRA does not require Tribes or States to conform to a specific administrative process but does provide the power and authority to engage in cooperative projects. (See finding No. 1.e.) OSM reviews any cooperative projects during its annual oversight of the Navajo Nation plan and AMLR grant program and determines at that time whether such projects are conducted in a manner that meets the requirements of SMCRA and the implementing Federal regulations.

(20) Navajo EPA stated that Title IV, section 413(d) of the Navajo Nation AMLR Code of 1987 should require that NAMLRD will turn over management and operation of water treatment facilities to the appropriate Tribal department, which will have the continuing staffing and expertise to run said facilities in perpetuity. This provision of the code is substantively identical to section 413(d) of SMCRA. SMCRA does not require that the management and operation of such a treatment plant be turned over to another agency for continued management and operation. The administration of the Navajo Nation's AMLR program is addressed during OSM's annual oversight and any deficiencies in the program are handled through the oversight process. If, during oversight, OSM determines that a problem exists with effective management of any part of the program, OSM would require resolution of the problem.

U.S. Environmental Protection Agency (EPA)

EPA responded on June 13, 1994, with the following comments (administrative record No. NA–220).

(1) EPA commented that the Navajo Nation plan does not address or reference environmental requirements that may be applicable under the National Environmental Policy Act (NEPA) and that sites found to pose an environmental problem should be coordinated through NEPA to identify the appropriate clean up remedies and standards. OSM responds, as it did at comment No. 2 of the Navajo EPA comments, that Title IV of SMCRA and the implementing Federal regulations do not require specific reclamation standards. Prior to the Navajo Nation initiating AMLR construction projects, OSM complies with the requirements of NEPA to identify environmental impacts and mitigation measures.

(2) EPA commented that the authority for certifying the completion of coal

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reclamation resides with the President of the Navajo Nation but that section 411(a) of the Navajo Nation AMLR Code of 1987 assigned the authority for the certification to the Director of NAMLRD. As stated in response to the same comment by Navajo EPA (comment No. 18), OSM responds that the request for concurrence with the Navajo Nation's certification was actually submitted by the President of the Navajo Nation in compliance with section 411(a) of SMCRA and in conformance with EPA's comment on which tribal authority should make the certification.

(3) EPA expressed concern that the Navajo Nation AMLR Code of 1987 does not provide for the Secretary's concurrence with the certification of completion of coal reclamation. SMCRA provides that the Secretary shall concur with a Tribe's or State's certification of completion of coal reclamation. Therefore, OSM responds that the Navajo Nation plan does not require revision for an action taken by the Secretary.

(4) EPA stated that it had understood that NAMLRD's Reclamation Plan would be revised to include work at priority 3 abandoned uranium mine sites, meaning NAMLRD would conduct work on abandoned uranium mine sites that exhibited environmental hazards and degradation. EPA stated further that it appeared no priority had been assigned to uranium sites in the Navajo Nation Rules at II(D)(2), pertaining to noncoal reclamation priorities prior to certification.

Section 403(a) of SMCRA provides, prior to certification of completion of coal reclamation, that "priority 3" is the restoration of lands and water and the environment previously degraded by adverse effects of coal mining practices. After certification, section 411(c) of SMCRA provides that priority 3 is the restoration of lands and water and the environment previously degraded by the adverse effects of mineral mining and processing practices. Title IV of SMCRA does not prioritize noncoal commodities, and sections 411 (e) and (f) of SMCRA provide that community impact assistance and public facilities projects may be undertaken as they relate to the priorities for noncoal reclamation. In this notice, OSM found that the Navajo Nation plan has been revised to meet the requirements of SMCRA and the implementing Federal regulations for noncoal reclamation subsequent to certification. OSM is aware that EPA, among others, continues to work with the Navajo Nation to develop a plan to address abandoned uranium mine sites.

(5) EPA asked that the Navajo Nation clarify provisions of its AMLR Code of 1987 and the Navajo Nation Rules to provide that the Nation's President has the authority to undertake action at a noncoal site before certification of completion of coal reclamation. The rules provide that this authority resides with the President of the Navajo Nation, but the code allows the Director of NAMLRD to conduct reclamation activities and take other remedial actions on noncoal sites. This comment is immaterial in light of the Secretary's concurrence in this notice with the Navajo Nation's certification of completion of coal reclamation on Navajo Nation lands.

(6) In a related manner, EPA suggested that the community participation process for reclamation at noncoal sites is not consistent between provisions of the Navajo Nation AMLR Code of 1987 and the Navajo Nation Rules. Specifically, EPA asked what mechanism ensures that a request for noncoal reclamation to the Director of NAMLRD will reach the President who has authority to request reclamation at noncoal sites and what feedback mechanism existed to inform the community of what actions will be taken. OSM, in approving the proposed Navajo Nation plan amendment that is the subject of this notice, has determined that the Tribe's public participation process for determining the priority of community assistance projects meets the requirements of SMCRA and the implementing Federal regulations.

(7) Finally, EPA stated that there appear to be no check-and-balance systems between NAMLRD and Navajo EPA, NAMLRD and the Division of Natural Resources, and NAMLRD and OSM. EPA feels systems are needed to ensure inter- and intra-governmental consistency and harmony within the Navajo Nation's various programs. SMCRA does not require coordination between Tribal agencies but does provide for interagency cooperation at section 414. The Navajo Nation AMLR Code of 1987 provides a similar provision at section 414. Therefore, OSM responds that it is up to the Navajo Nation itself to determine how its various departments will interact, coordinate, and establish and maintain relationships that are conducive to meeting the requirements of the Navajo Nation plan. Coordination between the Tribe and OSM already occurs as required by SMCRA and the Federal regulations. OSM also responds that it provides input into these relationships through oversight of the Navajo Nation's AMLR program.

Other Agencies

By letter dated May 5, 1994, the Utah State Historical Society provided the concurrence of the Utah Preservation Office with the determination that no part of the amendment pertains to cultural resources (administrative record No. NA–216).

The Arizona State Historic Preservation Office (SHPO) responded on June 1, 1994, that it assumed OSM had the concurrence of the Navajo Nation Historic Preservation Department (NNHPD) as to a determination of no effect on cultural resources under the National Historic Preservation Act of 1966 with respect to the consultation requirements of 36 CFR Part 800. Therefore, it would defer the determination of no effect on the NNHPD (administrative record No. NA–218).

Based upon the Arizona SHPO response, OSM contacted NNHPD on June 28, 1994. NNHPD stated it had elected not to respond and presumed that OSM would proceed as if a determination of no effect was in place (administrative record No. NA–221). OSM is not aware of any adverse effects on cultural resources that would result from the proposed amendment and certification of completion of coal reclamation, and on this basis, OSM is proceeding with its decision on the Navajo Nation submission.

V. Director's Decision

Based on the above findings, the Director approves the Navajo Nation's proposed amendment as submitted on April 7 and 22, 1994.

As discussed in finding No. 1.a., the Director approves nonsubstantive revisions to the Navajo Nation AMLR Code of 1987 at sections 101, 102, 401, 402, 403, 405, 407, 408, 409, 412, and 413.

As discussed in finding Nos. 1.b., c., d., and e., the Director approves substantive revisions to the Navajo Nation AMLR Code of 1987 at sections 201, 401, 403, 404, 409, 410, 411, and 414.

As discussed in finding Nos. 1.b and f., the Director approves substantive revisions to the Navajo Nation Rules at Section II, Parts D, L, M, N, O, and P, and Section III, Part E.

The Director approves the proposed revisions of the Navajo Nation AMLR Code of 1987 and Navajo Nation Rules implementing the code with the provision that they be fully promulgated in identical form to the code and rules submitted to and reviewed by OSM and the public.

The Director of OSM, on behalf of the Secretary, also concurs with the Navajo Nation's certification, as submitted by the Nation on May 4, 1994, that all abandoned coal mine related problems have been abated or reclaimed under its AMLR plan in accordance with Title IV of SMCRA.

The effect of the Director's concurrence with the Tribe's certification is to allow the Navajo Nation to use its AMR funds for community impact assistance and construction of public facilities in areas of the Navajo Nation lands impacted by coal or minerals development, mining, or processing as provided in section 411 of SMCRA.

The Director is codifying this AMLR plan decision and concurrence with the Navajo Nation's certification of completion of coal reclamation at 30 CFR Part 756.14. The Director is also taking this opportunity to revise the addresses at 30 CFR 756.13 for OSM and the Navajo Nation.

VII. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of Tribal AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific Tribe, not by OSM. Decisions on proposed Tribal AMLR plans and revisions thereof submitted by a Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed Tribal AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Tribal submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the Tribe. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

VIII. List of Subjects in 30 CFR Part 756

Abandoned mine land reclamation program, Indian lands.

Dated: September 15, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter E of the Code of Federal Regulations is amended as set forth below:

PART 756—NAVAJO NATION

1. The authority citation for Part 756 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and Pub. L. 100–71.

2. With the exception of the first sentence, § 756.13 is revised to read as follows:

§ 756.13 Approval of the Navajo Nation's Abandoned Mine Land Plan.

* * * * * * *

Copies of the approved plan are available at:

Albuquerque Field Office, Office of Surface Mining, Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 310, Albuquerque, New Mexico 87102, Telephone: (505) 766–1486.

The Navajo Nation, Navajo Abandoned Mine Land Reclamation Department, P.O. Box 308, Window Rock, Arizona 86515, Telephone: (602) 871–4941.

3. Section 756.14 is added to read as follows:

§ 756.14 Approval of amendments to the Navajo Nation's Abandoned Mine Land Plan.

(a) Revisions to the following provisions of the Navajo Nation AMLR plan, as submitted to OSM on April 7 and 22, 1994, are approved effective September 27, 1994:

Navajo Nation Abandoned Mine Land Reclamation Code of 1987: Introduction

Section 101—Findings
Section 102—Purposes
Section 201—Duties of Navajo Abandoned Mine Lands Reclamation Department
Section 401—Navajo Abandoned Mine Reclamation Fund and Purposes
Section 402—Reclamation Fees
Section 403—Objectives of Fund
Section 404—Eligible Lands and Water
Section 405—Reclamation Program
Section 407—Acquisition and Reclamation of Lands Within the Navajo Nation Adversely Affected by Past Mining Practices
Section 408—Liens
Section 409—Filling Voids and Sealing Tunnels
Section 410—Deletion of Emergency Powers
Section 411—Certification of Completion of Coal Reclamation
Section 412—Navajo Abandoned Mine Reclamation Fund Report
Section 413—Miscellaneous Powers, and
Section 414—Interagency Cooperation

Navajo Nation Rules

II(D) (1) and (2)—Reclamation Priorities
II(L) (1) and (2)—General Reclamation Requirements
II(M) (1) and (2)—Certification of Completion of Coal Reclamation
II(N) (1)—Eligible Lands and Water Subsequent to Certification
II(O) (1)—Exclusion of Noncoal Reclamation Sites
II(P) (1), (2), and (3)—Utilities and Other Facilities, and
III(E) (1)—Future Reclamation Set-Aside Program

(b) The Director concurs with the Navajo Nation's May 4, 1994, certification of completion of coal reclamation effective September 27, 1994.

[FR Doc. 94–23829 Filed 9–26–94; 8:45 am]
BILLING CODE 4310–05–M

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30 CFR Part 944

Utah Regulatory Program and Abandoned Mine Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

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ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions and additional requirements, a proposed amendment to the Utah regulatory program and abandoned mine plan (hereinafter, the "Utah program" and Utah plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah proposed revisions to the Utah Coal Mining and Reclamation Act pertaining to hearings and appeals, civil and criminal penalties, recovery of costs for reclaimed abandoned mine land, liens against reclaimed abandoned mine lands, and certification of completion of abandoned coal mine reclamation. The amendment is intended to incorporate the additional flexibility afforded by SMCRA, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: September 27, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program, and on June 3, 1983, the Secretary approved the Utah plan. General background information on the Utah program and Utah plan, including the Secretary's findings, disposition of comments, conditions of approval of the Utah program, and approval of the Utah plan can be found in the January 21, 1981, and June 3, 1983, **Federal Register's** (46 FR 5899 and 48 FR 24876). Subsequent actions concerning Utah's program, Utah's plan, and program and plan amendments can be found at 30 CFR 944.15, 944.16, 944.20, 944.25, and 944.30.

II. Proposed Amendment

By letter dated March 7, 1994, Utah submitted a proposed amendment to its program and plan pursuant to SMCRA (administrative record No. UT–900). Utah submitted the proposed amendment at its own initiative. The program provisions of the Utah Coal Mining and Reclamation Act that Utah proposed to revise were Utah Code Annotated (UCA) 40–10–14, appeals to district court of decisions by the Board of Oil, Gas and Mining (Board) and further review, and UCA 40–10–20, civil and criminal penalties. The plan provisions of the Utah Coal Mining and Reclamation Act that Utah proposed to revise were UCA 40–10–28, recovery of reclamation costs and liens against reclaimed land, and UCA 40–10–28.1, certification of completion of coal reclamation.

In the March 29, 1994, **Federal Register** (59 FR 14591), OSM announced receipt of the proposed amendment, provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT–911). Because no one requested a public hearing or meeting, none was held. The public comment period ended on April 28, 1994.

During its review of the amendment, OSM identified concerns relating to the provsions of the Utah Coal Mining and Reclamation Act at UCA 40–10–14 (3) and (6), procedural guidance for formal hearings and appeals of decisions by the Board and district court decisions; UCA 40–10–20(3), waiver of rights to contest the violation or amount of a civil penalty if the operator fails to forward the amount of the penalty within the time allowed; UCA 40–10–20(8), review proceedings of a civil penalty assessed for failure to correct a violation; and UCA 40–10–28 (1)(a)(ii) and (2)(a), sale price of reclaimed abandoned mine land and waiver of liens when certain criteria are met. OSM notified Utah of the concerns by letter dated June 10, 1994 (administrative record No. UT–935).

For each of the issues identified by OSM, Utah responded in a letter dated July 5, 1994, by submitting additional explanatory information (administrative record No. UT–949).

Based upon the additional explanatory information for the proposed program and plan amendment submitted by Utah, OSM reopened the public comment period in the July 29, 1994, **Federal Register** (59 FR 38579, administrative record No. UT–955). The public comment period ended on August 15, 1994.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15, 732.17, 884.15(a), and 884.14 finds, with certain exceptions and additional requirements, that the proposed program and plan amendment submitted by Utah on March 7, 1994, and supplemented with additional explanatory information on July 5, 1994, is no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to Utah's Statutes

Utah proposed revisions to the following previously-approved provisions of the Utah Coal Mining and Reclamation Act that are nonsubstantive in nature and consist of minor editorial, punctuation, grammatical, and recodification changes (the corresponding SMCRA provisions are listed in parentheses):

UCA 40–10–20(1) (b) and (c) (section 518(a) of SMCRA), civil penalty for violation of Chapter 10, Title 40,
UCA 40–10–20(3) (b), (c), and (d) (section 518(b) of SMCRA), public hearings,
UCA 40–10–20 (5) and (6) (sections 518 (e) and (f) of SMCRA), criminal penalties, and
UCA 40–10–28 (1), (1)(a)(i), (1)(b)(ii), and (iii) (sections 407 and 408 of SMCRA), recovery of reclamation costs and liens against reclaimed land.

Because the proposed revisions to these previously-approved sections of the Utah Coal Mining and Reclamation Act are nonsubstantive in nature, the Director finds that these proposed statutes are no less stringent than SMCRA. The Director approves the proposed revisions.

2. Substantive Revisions to Utah's Statutes That Are Substantively Identical to Provisions of SMCRA and the Federal Regulations

Utah proposed revisions to the following provisions of the Utah Coal Mining and Reclamation Act that are substantive in nature and contain language that is substantively identical to the provisions of SMCRA and the Federal regulations (listed in parentheses).

UCA 40–10–20(2) (section 518(c) of SMCRA and 30 CFR 723.19 and 723.20), informal conferences,
UCA 40–10–20(3)(e) (section 518(b) of SMCRA and 30 CFR 723.20), public hearings, and
UCA 40–10–28.1(6) (section 411(f) of SMCRA and 30 CFR 875.15(d)), certification of completion of coal reclamation.

Because these proposed revisions to the Utah Coal Mining and Reclamation Act are substantively identical to the corresponding provisions of SMCRA and the Federal regulations, the Director finds that they are no less stringent than SMCRA and no less effective than the Federal regulations. The Director approves the proposed revisions.

3. UCA 40–10–14(6), Appeal to District Court

Previously-approved UCA 40–10–14(6), regarding Board decisions on permit applications, provided, in part, that:

> Any applicant, or any person with an interest which is or may be adversely affected who has participated in the proceedings as an objector, and who is aggrieved by the decision of the board, or if the board fails to act within the time limits specified in [Title 40, Chapter 10], has the right to appeal in the district court for the county in which the proposed operation is located.

In this amendment, Utah proposed to add language to UCA 40–10–14(6) to provide that any party to the action in district court may appeal from the final judgment, order, or decree of the district court. Utah also proposed deletion of the provision that required that review of the adjudication of the district court is by the Utah Supreme Court.

By way of clarification, Utah provided additional information, stating, among other things, that, where an appeal of the Board's decision is the issue at hand, "the record established by the Board in the hearing transcript becomes the trial record which is reviewed by the Utah Supreme Court" (administration record No. UT–949). Utah further stated that where the Board fails to act, relief may be sought by an applicant or interested person in the State district court for the county where the proposed operation is located. "Under these conditions, the case or controversy is heard by state District Court and it then becomes the court of record. Appeals are thereafter to the Utah Supreme Court." The State cited provisions of the Utah Judicial Code at UCA Title 78, Chapter 2, as support for its explanation of the appellate process.

Section 526(e) of SMCRA provides, in part, that action taken by a State regulatory authority under an approved State program is subject to judicial review by a court of competent jurisdiction in accordance with State law. Although the Director finds the clarifying information to be consistent with section 526(e) of SMCRA, the Director finds that the currently-approved Utah program contains some apparent internal inconsistencies regarding the appellate process for Board decisions on permit applications. That is, although UCA 78–2–2(3)(e)(iv) appears to specify, as Utah stated in its clarifying information, that appeals of Board decisions are to the Utah Supreme Court, the first sentence of UCA 40–10–14(6), previously approved by OSM, appears to require that such appeals are to the State district court in the county where the proposed operation is located.

The Director finds that the proposed revision at UCA 40–10–14(6) is not consistent with section 526(e) of SMCRA and does not approve it. The Director requires Utah to amend its program to eliminate the discrepancy in the appellate procedures that govern Board decisions on permit applications in a manner no less stringent than the requirements of section 526(e) of SMCRA.

4. UCA 40–10–20 (1)(a) and (3)(a), Delegation of Authority for Assessing Civil Penalties in Certain Circumstances

At UCA 40–10–20 (1)(a) and (3)(a), Utah proposed to change the responsible party from the Board to the Division of Oil, Gas and Mining (Division) for assessing civil penalties when a violation of permit condition or other provision of Chapter 10, Title 40 occurs. Section 518(i) of SMCRA provides, in part, that States shall incorporate into their programs, civil and criminal penalty provisions that are no less stringent than section 518 of SMCRA and procedural requirements relating to these provisions that are the same or similar to those set forth in SMCRA. Utah's proposed transfer of authority for civil penalty assessments from the Board to the Division is not inconsistent with section 518(i) of SMCRA. Therefore, the Director approves the proposed revision to UCA 40–10–20 (1)(a) and (3)(a).

5. UCA 40–10–20(3), Contest of Violation or Amount of Penalty

Utah proposed to delete existing UCA 40–10–20(3) in its entirety. Most of the requirements of existing UCA 40–10–20(3) are recodified in this amendment as UCA 40–10–20(2) (see finding No. 2). One requirement of existing UCA 40–10–20(3) that is not retained and recodified elsewhere in the statute pertains to a waiver of rights to contest the violation or the amount of the penalty when the operator fails to forward to the Board within 30 days of receipt of the notice of violation the proposed civil penalty for placement in an escrow account.

Section 518(c) of SMCRA provides, in part, that failure to forward the amount of a proposed civil penalty to the Secretary within the specified time "shall result in a waiver of all legal rights to contest the violation or the amount of the penalty." In order to be no less stringent than SMCRA, the Utah program must include a similar provision.

Although this amendment does not include the waiver requirement, OSM notes that Utah has in another amendment dated April 14, 1994, proposed a provision that is intended to resolve this deficiency (administrative record No. UT–917). In order to consider the additional proposal prior to making a final determination, the Director has decided to defer decision on the deletion of the part of existing UCA 40–10–20(3) that provided that an operator's failure to forward the amount of a proposed civil penalty to Utah within 30 days results in a waiver of all legal rights to contest the violation or the amount of the penalty.

6. UCA 40–10–20(8), Civil Penalty for Failure to Correct Violation

Utah proposed editorial revisions to UCA 40–10–20(8). However, aside from these revisions, OSM noted in its letter dated June 10, 1994, that, while section 518(h) of SMCRA specifically references section 525, regarding administrative reviews, and section 526, regarding judicial reviews, UCA 40–10–20(8) did not contain any specific cross-references to counterpart provisions of the Utah program. Utah responded (administrative record No. UT–949) that the reviews provided in SMCRA by reference are found in the State program at UCA 40–10–22. The Director finds that the reference provided by Utah meets the requirements of section 518(h) of SMCRA. Accordingly, the Director approves the proposed revisions to UCA 40–10–20(8).

7. UCA 40–10–28 (1)(a)(ii), Recovery of Reclamation Costs

UCA 40–10–28 (1)(a)(ii), provides a formula for determining the sale price of reclaimed abandoned mine lands to be sold to a State or local government for public purposes, but the formula does not include the cost of purchase as required by section 407(e) of SMCRA. This apparent deficiency in the Utah plan would render Utah's plan less stringent than section 407(e) of SMCRA, but OSM notes that Utah has proposed to address this deficiency in a separate amendment dated April 14, 1994 (administrative record No. UT–914). In order to consider the additional proposal prior to making a final determination, the Director has decided to defer decision on proposed UCA 40–10–28 (1)(a)(ii).

8. UCA 40–10–28 (1)(b)(i) and (2)(b), Delegation of Authority to Waive Fees and Liens Against Reclaimed Land

Utah proposed to revise its provisions at UCA 40–10–28 (1)(b)(i) and (2)(b) to provide that the Division rather than the Board may waive special charges for use of reclaimed land or liens against reclaimed land in certain circumstances. Title IV of SMCRA does not prohibit a State regulatory authority from delegating responsibility for administering and enforcing the Federal provisions. Section 413(a) of SMCRA provides, in part, that a State with an approved State program shall have the power and authority to engage in any work and to do all things necessary or expedient in order to implement and administer the provisions of Title IV. Utah's proposed transfer of authority to

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waive special charges for use of or liens against reclaimed land in certain circumstances from the Board to the Division is not inconsistent with section 413(a) of SMCRA. Therefore, the Director approves the proposed revision to UCA 40–10–28 (1)(b)(i) and (2)(b).

9. UCA 40–10–28(2)(a), Liens Against Reclaimed Land

Utah proposed editorial revisions to UCA 40–10–28(2)(a), which requires that the Division shall place a lien against reclaimed abandoned mine land, the market value of which has increased as a result of the reclamation work, except where the surface owner neither consented to, participated in, nor exercised control over the mining operations which necessitated the reclamation work.

Section 408(a) of SMCRA has the same provisions, but it additionally specifies, with respect to the surface owner, that the provisions apply to a person owning the surface prior to May 2, 1977.

UCA 40–10–28(2)(a) does not include the specific date provided in section 408(a) of the SMCRA. The apparent deficiency in the Utah plan would render Utah's plan less stringent than section 408(a) of SMCRA, but OSM notes that Utah has proposed to address this deficiency in a separate amendment dated April 14, 1994 (administration record No. UT–914). In order to address this additional proposal prior to making a final determination, the Director has decided to defer decision on proposed UCA 40–10–28(2)(a).

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's response to them.

1. Public Comments

OSM invited public comments on the proposed Utah program and plan amendment, but none were received.

2. Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i) and 884.14(a)(2), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Utah program and Utah plan (administrative records Nos. UT–903 and UT–952).

The Bureau of Mines responded in telephone conversations on March 27 and July 29, 1994, that it had no comments (administrative record No. UT–906 and UT–964).

The Bureau of Mines responded in telephone conversations on March 27 and July 29, 1994, that it had no comments (administrative record Nos. UT–906 and UT–964).

By memorandum dated June 8, 1994, the U.S. Fish and Wildlife Service stated that it had reviewed the proposed changes and has no comment on them (administrative record No. UT–938).

The U.S. Army Corps of Engineers responded on August 10, 1994, that it found the changes to be satisfactory to the agency (administrative record No. UT–963).

By letter dated August 15, 1994, the Mine Safety and Health Administration (MSHA) stated that it had reviewed the (administrative record No. UT–966). No revisions to the proposed amendment were suggested.

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 12512 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Utah proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence. Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record Nos. UT–903 and UT–952). It responded on March 31 and July 28, 1994, that it had no comments and did not believe that there would be any impacts to water quality standards promulgated under authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*) (administrative record Nos. UT–909 and UT–957).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. UT–903). Neither the SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and additional requirements, Utah's proposed amendment as submitted on March 7, 1994, and as supplemented with additional explanatory information on July 5, 1994.

The Director defers decision on, as discussed in: finding No. 5, UCA 40–10–20(3), concerning contest of violation or amount of civil penalty; finding No. 7, UCA 40–10–28(1)(a)(ii), concerning recovery of abandoned mine land reclamation costs; and finding No. 9, UCA 40–10–28(2)(a), concerning liens against reclaimed abandoned mine land.

The Director approves, as discussed in: finding No. 1, UCA 40–10–20(1) (b) and (c), concerning civil penalty for violation of chapter, UCA 40–10–20(3) (b), (c), and (d), concerning public hearings, UCA 40–10–20 (5) and (6), concerning criminal penalties, and UCA 40–10–28(1), (1)(a)(i), (1)(b) (ii), and (iii), concerning recovery of reclamation costs and liens against reclaimed abandoned mine land; finding No. 2, UCA 40–10–20(2), concerning informal conferences, UCA 40–10–20(3)(e), concerning public hearings, and UCA 40–10–28.1(6), concerning certification of completion of coal reclamation; finding No. 4, UCA 40–10–20(1)(a) and (3)(a), concerning delegation of authority for assessing civil penalties; finding No. 6, UCA 40–10–20(8), concerning civil penalty for failure to correct violation; and finding No. 8, UCA 40–10–28(1)(b)(i) and (2)(b), concerning delegation of authority to waive fees and liens against reclaimed abandoned mine land.

With the requirement that Utah further revise its statute, the Director does not approve, as discussed in: finding No. 3, UCA 40–10–14(6), concerning appeals to district court.

The Director is taking this opportunity to revise 30 CFR 944.20 to include the date Utah's plan was approved by OSM.

The Federal regulations at 30 CFR Part 944 codifying decisions concerning the Utah program and Utah plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program and plan amendment process and to encourage States to bring their programs and plans into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Utah program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Utah of only such provisions.

VII. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs, abandoned mine land reclamation (AMLR) plans, program amendments, and plan revisions since each such program or plan is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met. Decisions on proposed State AMLR plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)) while State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

VIII. List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 16, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 944—UTAH

1. The authority citation for Part 944, continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding paragraph (bb) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(bb) With the exceptions of UCA 40–10–14(6), concerning appeals to district court and deletion of UCA 40–10–20(3), concerning contest of the violation or amount of the penalty, the revisions to the following sections of the Utah Code Annotated 1953, Title 40, as submitted to OSM on March 7, 1994, and as supplemented with explanatory information on July 5, 1994, are approved effective September 27, 1994:

40–10–14(3), Hearings.
40–10–20(1), Civil Penalty for Violation of Chapter.
40–10–20(2), Informal Conferences.
40–10–20(3), Public Hearings.
40–10–20 (5) and (6), Criminal Penalties.
40–10–20(8), Civil Penalty for Failure to Correct Violation.

3. Section 944.16 is amended by adding paragraph (b) to read as follows:

§ 944.16 Required program amendments.

* * * * *

(b) By March 26, 1995, Utah shall submit a proposed amendment for UCA 40–10–14(6) to eliminate the discrepancy in appellate procedures that govern Board of Oil, Gas and Mining decisions on permit applications in a manner no less stringent than section 526(e) of SMCRA.

4. Section 944.20(a) is revised to read as follows:

§ 944.20 Approval of Utah abandoned mine plan.

(a) The Utah Abandoned Mine Plan, as submitted on February 9, 1983, and as subsequently revised, is approved effective June 3, 1983.

* * * * *

5. Section 944.25 is amended by adding paragraph (b) to read as follows:

§ 944.25 Approval of amendments to State abandoned mine plan.

* * * * *

(b) With the exceptions of UCA 40–10–28(1)(a)(ii), concerning recovery of reclamation costs and UCA 40–10–28(2)(a), concerning liens against reclaimed land, the revisions to the following sections of the Utah Code Annotated 1953, Title 40, as submitted to OSM on March 7, 1994, are approved effective September 27, 1994:

40–10–28 (1), (1)(a)(i), and (1)(b), Recovery of Reclamation Costs.
40–10–28(2)(b), Liens Against Reclaimed Land.
40–10–28.1(6), Certification of Completion of Coal Reclamation.

[FR Doc. 94–23827 Filed 9–26–94; 8:45 am]
BILLING CODE 4310–05–M

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30 CFR Part 944

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

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ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Utah regulatory program (hereinafter referred to as the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah proposed revisions to the Utah Coal Mining Rules pertaining to coal exploration subject to provisions of 43 CFR 3480 through 3487, responsibilities of the Division of Oil, Gas and Mining (Division) regarding coal exploration, requirements for coal exploration approval, notices of intention to conduct minor coal exploration, coal exploration compliance and required documents to be available in the exploration area, and performance standards for coal exploration operations that substantially disturb the natural land surface. Utah proposed the amendment with the intent of streamlining the Utah regulatory program and making the exploration process more responsive to field needs for coal seam information.

EFFECTIVE DATE: September 27, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program for the regulation of coal exploration and coal mining and reclamation operations on non-Federal and non-Indian lands. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated January 27, 1994, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT–888). Utah submitted the proposed amendment at its own initiative. The provisions of the Utah Coal Mining Rules that Utah proposed to revise pertain to its coal exploration rules at Utah Administrative Rule (Utah Admin. R.) 645–200–100, scope of rules for coal exploration; Utah Admin. R. 645–200–200, responsibilities of the Division; Utah Admin. R. 645–201–100, requirements for coal exploration approval; Utah Admin. R. 645–201–200, notices of intention to conduct minor coal exploration; and Utah Admin. R. 645–202–100, required documents.

OSM announced receipt of the proposed amendment in the February 25, 1994, **Federal Register** (59 FR 9153), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT–897). Because no one requested a public hearing or meeting, none was held. The public comment period ended on March 28, 1994.

During its review of the amendment, OSM (1) identified concerns relating to the provisions of the Utah Coal Mining Rules at Utah Admin. R. 645–202–232, roads and other transportation facilities, and Utah Admin. R. 645–202–235, disturbance of the hydrologic balance, and (2) provided editorial comments. OSM notified Utah of the concerns by letter dated April 15, 1994 (administrative record No. UT–915).

Utah responded in a letter dated May 10, 1994, by submitting a revised amendment (administrative record No. UT–921). Utah proposed revisions to Utah Admin. R. 645–200–200, responsibilities; Utah Admin. R. 645–201–100, responsibilities for coal exploration plan review; Utah Admin. R. 645–201–200, notices of intention to conduct minor coal exploration; Utah Admin. R. 645–201–300, major coal exploration permits; Utah Admin. R. 645–202–100, required documents; and Utah Admin. R. 645–202–200, performance standards.

OSM announced receipt of the proposed revised amendment in the May 24, 1994, **Federal Register** (59 FR 26767) and reopened and extended the public comment period (administrative record No. UT–932). The public comment period ended on June 8, 1994.

During its review of the revised amendment, OSM identified additional concerns relating to (1) Utah Admin. R. 645–200–122, 645–200–123, and 645–201–210, lands designated as unsuitable for surface coal mining, and (2) Utah Admin. R. 645–202–235, disturbance of the hydrologic balance. OSM notified Utah of the concerns by letter dated July 7, 1994 (administrative record No. UT–943).

Utah responded in a letter dated July 11, 1994, by submitting a revised amendment (administrative record No. UT–950). Utah proposed revisions to Utah Admin. R. 645–200–100, scope of rules for coal exploration; Utah Admin. R. 645–201–200, notices of intention to conduct minor coal exploration; and Utah Admin. R. 645–202–200, performance standards.

Based upon the additional revisions to the proposed program amendment submitted by Utah, OSM reopened the public comment period in the July 29, 1994, **Federal Register** (59 FR 38578, administrative record No. UT–956). The public comment period ended on August 15, 1994.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Utah on January 27, 1994, and as revised by it on May 10 and July 11, 1994, is no less effective than the corresponding Federal regulations.

Accordingly, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to Utah's Coal Mining Rules

Utah proposed revisions to the following previously approved rules that are nonsubstantive in nature and consist of minor editorial or grammatical changes (the corresponding Federal regulation provisions are listed in parentheses):

Utah Admin. R. 645–201–323.100 (30 CFR 772.12(b)(8)(iv)), narrative description of the proposed exploration area, and

Utah Admin. R. 645–201–342.200 (30 CFR 772.12(d)(2)(ii)), approval or disapproval of an application for a major coal exploration permit.

Because the proposed revisions to these previously approved rules are nonsubstantive in nature, the Director finds that the proposed Utah rules are no less effective than the corresponding Federal regulations. The Director approves these proposed rules.

2. Substantive Revisions to Utah's Coal Mining Rules That Are Substantially Identical to the Corresponding Provisions of the Federal Regulations

Utah proposed revisions to the following rules that are substantive in nature and contain language that is substantially identical to the requirements of the corresponding Federal regulation provisions (listed in parentheses):

Utah Admin. R. 645–200–121 (30 CFR 772.1), coal exploration which is subject to 43 CFR parts 3480 through 3487,

Utah Admin. R. 645–201–200 through 220 (30 CFR 772.11), notices of intention to conduct minor coal exploration,

Utah Admin. R. 645–202–100 (30 CFR 815.13), required documents,

Utah Admin. R. 645–201–342.200 (30 CFR 815.15(b)), performance standards for roads or other transportation facilities used for coal exploration, and

Utah Admin. R. 645–202–235 (30 CFR 815.15(i), performance standards which minimize disturbance of the hydrologic balance.

Because these proposed Utah rules are substantially identical to the corresponding provisons of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

3. Utah Admin. R. 645–200–122, R. 645–200–123, 645–201–223, and 645–201–310, Coal Exploration in Relation to an Approved Permit Area

Utah proposed that its rules at Utah Admin. R. 645–200–122, 645–200–123, 645–201–223, and 645–201–310 setting forth the scope of Utah's coal exploration rules, would apply to "coal exploration" instead of coal exploration that occurs "outside an approved permit area" or coal exploration that occurs" "in relation to an approved permit area."

The corresponding Federal regulations at 30 CFR 772.11, for coal exploration operations removing 250 tons or less of coal, and at 30 CFR 772.12, for coal exploration operations removing more than 250 tons of coal, apply to coal exploration conducted "outside a permit area." In promulgating this language, OSM explained in the preamble for these Federal regulations that a coal exploration permit is not appropriate for coal exploration on lands covered by a surface coal mining permit because exploration within the permit area should have been planned as an integral part of the surface coal mining and reclamation operations (44 FR 14901, 15017–8; March 13, 1979). The effect of these Federal regulations is that, for proposed coal exploration within the permit area, the State regulatory authority would review and approve, as appropriate, the proposed coal exploration in conjunction with the review and approval of a permit application, and for coal exploration outside the permit area, would review and approve the proposed coal exploration pursuant to the appropriate rules for coal exploration.

Utah's proposed deletions of the phrases concerning approved permit areas are consistent with OSM's regulations and the rationale for them in the preamble to the Federal regulations. Therefore, the Director finds that Utah's proposed revisions to Utah Amin. R. 645–200–122, 645–200–123, 645–201–223, and 645–201–310 are no less effective than the corresponding Federal regulations at 30 CFR 772.11 and 772.12. The Director approves these proposed rules.

4. Utah Admin. R. 645–200–220, 645–200–230, and 645–201–100 through 645–201–130, Responsibilities of the Division and Coal Exploration Plan Review

Utah proposed revisions to its rules at (1) Utah Admin. R. 645–200–220 to provide that it is the Division's responsibility to review and enforce the terms of each notice of intention to conduct coal exploration; (2) Utah Amin. R. 645–200–230 to provide that it is the Division's responsibility to review and approve or disapprove major coal exploration applications and issue, condition, suspend, revoke, and enforce major coal exploration permits and coordinate with other government agencies; and (3) Utah Admin. R. 645–201–100 through 645–201–130 to provide that it is the Division's responsibility to review coal exploration plans on lands which are not subject to the requirements of 43 CFR 3480 through 3487, and to provide that, on lands [Federal lands] where the requirements of 43 CFR 3480 through 3487 apply, the review of coal exploration plans will be guided by the appropriate part of 43 CFR.

The Federal regulations at 30 CFR part 772 establish the requirements and procedures applicable to coal exploration operations on all lands except for Federal lands subject to the requirements of 43 CFR parts 3480 through 3487. The Federal regulations at 43 CFR 3480 through 3487 pertain to operations for the exploration, development, and production of Federal coal under Federal coal leases, licenses, and permits, regardless of surface ownership, pursuant to the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181, *et seq.*). The responsibility for administration of the Mineral Leasing Act is vested with the Bureau of Land Management.

Utah's proposed revision at Utah Admin. R. 645–201–110 and 645–201–120 to provide that only coal exploration operations on lands which are not subject to 43 CFR parts 3480–3487 will be regulated by the Division is thus an appropriate limitation on the Division's regulatory authority and is consistent with the corresponding limitation in the Federal regulations.

In addition, although the specific responsibilities of a State regulatory authority in administering the coal exploration program within a State are not addressed in the Federal regulations at 30 CFR Part 772 for coal exploration, the Federal regulation at 30 CFR 731.14(c)(1) requires each State to have enacted and promulgated laws and regulations which will allow the State to implement, administer, and enforce its program, and to regulate coal exploration and surface coal mining and reclamation operations in accordance with SMCRA. Utah's proposed regulations at Utah Admin. R. 645–200–220 and 645–200–230, specifying the regulatory responsibilities of the Division, are thus consistent with the requirements of 30 CFR 731.14(c)(1).

Therefore, based on the foregoing discussion, the Director finds that Utah Admin. R. 645–200–220, 645–200–230, and 645–201–100 through 645–201–130 are not inconsistent with the Federal regulations at 30 CFR Part 772. The Director approves these proposed rules.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's response to them.

1. Public Comments

OSM invited public comments on the proposed amendment (administrative record No. UT–891), but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Utah program.

In separate telephone conversations on February 11, June 1, and July 29, 1994, the Bureau of Mines stated it had no comments on the proposed amendment (administrative record Nos. UT–893, UT–933, and UT–965).

The U.S. Fish and Wildlife Service responded by letter dated March 7, 1994, that it found nothing of significant concern to the agency and again, by letters dated June 8 and August 9, 1994, that it had reviewed the proposed changes and had no comment on them (administrative record Nos. UT–901, UT–937, and UT–960).

By letters dated March 23 and August 29, 1994, the Mine Safety and Health Administration (MSHA) stated that it had reviewed the amendment and that there appeared to be no conflict with the requirements of 30 CFR (administrative record No. UT–904).

The U.S. Army Corps of Engineers responded by letters dated June 6 and August 10, 1994, that it found the changes to be satisfactory (administrative record Nos. UT–934 and UT–962).

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3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Utah proposed to make in its amendment pertained to air or water quality standards. Therefore, OSM did not request EPA's concurrence with the proposed amendment. However, pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. UT–891). EPA responded by letters dated February 15 and June 8, 1994 (administrative record Nos. UT–894 and UT–936), that it had no comments on the proposed amendment and that it did not believe there would be any impacts to water quality standards promulgated under authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. UT–891). By letter dated August 4, 1994, the SHPO indicated, after review of Utah Admin. R. 645–202–300, that it concurred with the content of the rule and OSM's determination of no effect with respect to the consultation requirements of 36 CFR Part 800 (administrative record No. UT–959). The ACHP did not respond to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves Utah's proposed amendment as submitted on January 27, 1994, and revised on May 10 and July 11, 1994. The Director approves, as discussed in: Finding No. 1, Utah Admin. R. 645–201–323.100, concerning the narrative description of the proposed exploration area, and Utah Admin. R. 645–201–342.200, concerning approval or disapproval of an application for a major coal exploration permit; finding No. 2, Utah Admin. R. 645–200–121, concerning coal exploration which is subject to 43 CFR Parts 3480 through 3487, Utah Admin. R. 645–201–200 through 220, concerning, notices of intention to conduct minor coal exploration, Utah Admin. R. 645–202–100, concerning required documents, Utah Admin. R. 645–202–232, concerning performance standards for roads or other transportation facilities used for coal exploration, and Utah Admin. R. 645–202–235, concerning performance standards which minimize disturbance of the hydrologic balance; finding No. 3, Utah Admin. R. 645–200–122, 645–200–123, 645–201–223, and 645–201–310, concerning coal exploration in relation to an approved permit area; and finding No. 4, Utah Admin. R. 645–200–220, 645–200–230, and 645–201–100 through 645–201–130, concerning the Division's responsibilities and coal exploration plan review.

The Federal regulations at 30 CFR Part 944, codifying decisions concerning the Utah program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12886 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

VII. List of Subjects in 30 CFR 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 19, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 944—UTAH

1. The authority citation for Part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding paragraph (aa) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(aa) Revisions to the following Utah Coal Mining Rules, as submitted to OSM on January 27, 1994, and as revised on May 10 and July 11, 1994, are approved effective September 27, 1994:

645–200–121, 122, and 123, Coal Exploration Categories.
645–200–220, and 230, Division Responsibilities.
645–201–100 through 130, Responsibilities for Coal Exploration Plan Review.
645–201–200 through 220 and 223, Notices of Intention to Conduct Minor Coal Exploration.
645–201–310, Major Coal Exploration Permits.
645–201–323.100, Narrative Description of the Proposed Exploration Area.
645–201–342.200, Approval or Disapproval of an Application for a Major Coal Exploration Permit.
645–202–100, Required Documents.
645–202–232, Performance Standards for Roads or Other Transportation Facilities Used for Coal Exploration.
645–202–235, Performance Standards which Minimize Disturbance of the Hydrologic Balance.

[FR Doc. 94–23823 Filed 9–26–94; 8:45 am]
BILLING CODE 4310–05–M

30 CFR Part 946

Virginia Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with exceptions, of a proposed amendment to the Virginia regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment includes changes to Virginia's regulations relative to siltation structures and impoundments, revegetation standards for success, and roads and road construction. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards and to clarify and correct inconsistencies in Virginia's rules.

EFFECTIVE DATE: September 27, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, P.O. Drawer 1217, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Virginia Program

The Secretary of the Interior approved the Virginia program on December 15, 1981. Background information on the Virginia program including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 946.11, 946.12, 946.13, 946.15, and 946.16.

II. Submission of the Proposed Amendment

By letter dated October 22, 1993 (Administrative Record No. VA–829), Virginia submitted proposed amendments to its regulatory program. The amendments address issues initially submitted to OSM on October 1, 1990 (Administrative Record Number VA–768), but subsequently withdrawn by Virginia in a letter dated May 12, 1992 (Administrative Record No. VA–818), as discussed in the final rule issued July 7, 1992 (57 FR 29788). Virginia submitted the request to withdraw portions of the October 1, 1990, submission (as modified April 18, 1991) in order to reconsider various proposals. Virginia's October 22, 1993, submission addresses the sections that Virginia withdrew in its May 12, 1992, letter except for §§ 773.16(c)(4)(ii) and 773.16(c)(7).

OSM announced receipt of the October 22, 1993, proposed amendments in the November 4, 1993, **Federal Register** (58 FR 58827), and in the same document opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The public comment period closed on December 6, 1993.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. Section 480–03–19.816/817.49(a)(3)

Virginia proposes to add new stability design requirements at § 480–03–19.816/817.49(a)(3)(ii) for impoundments not meeting the size or other criteria of 30 CFR 77.216(a), except for a coal mine waste impounding structure. The impoundments, located where failure would not be expected to result in loss of life or serious property damage, shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions. These proposed provisions are substantively identical to the Federal rule at 30 CFR 816/817.49(a)(3)(ii). The amendment further provides for use of earth embankments whose top widths are no less than 10 feet and whose embankment slopes are 2h:1v or flatter, provided the permittee documents that a minimum static safety factor of 1.3 can be met using the graphical solution methods outlined in the "Bureau of Mines Report of Investigations/1981, RI 8564, Factor of Safety Charts for Estimating the Stability of Saturated and Unsaturated Tailings Pond Embankments, United States Department of the Interior." By letter dated February 23, 1994 (Administrative Record No. VA–836), OSM advised Virginia that the graphical solution methods could be used in lieu of engineering tests, for low hazard impoundments not meeting the size or other criteria of 30 CFR 77.216(a) if all the appropriate parameters needed to use the graphs in RI 8564 are adequately documented for each embankment. OSM pointed out that the appropriate parameters included:

—Unit weight of the soil
—Height of the embankment
—Internal friction angle
—Cohesion
—Pore pressure ratio
—Slope of the embankment
—Depth factor

In addition to satisfying these parameter requirements, OSM stated that the embankment would have to be constructed of homogeneous material and the stiff base under the foundation must be flat. By letter dated March 16, 1994 (Administrative Record No. VA–837), Virginia agreed that the parameters set forth in OSM's letter of February 23, 1994, will be required by the State for use with the graphs in RI 8564 and that the parameters must be documented for each embankment. Virginia further agreed that the embankment will be required to be constructed of homogeneous material and the stiff base under the foundation will be required to be flat. The Federal regulations at 30 CFR 816/817.49(a)(3)(ii), 780.25(c)(3) and 784.16(c)(3) provide for an alternative to engineering tests that establish for impoundments a minimum

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static safety factor of 1.3. If a State regulatory authority, through the State program amendment process, can establish engineering design standards that ensure stability comparable to the 1.3 minimum static safety factor, then such design standards are no less effective than 816/817.49(a)(3)(ii). The Director has determined that the proposed amendment to the Virginia regulations at § VR 480.03.19.816/817.49(a)(3)(ii), as clarified by Virginia on March 16, 1994, ensures stability comparable to the 1.3 minimum static safety factor and is no less effective than the Federal rules at 30 CFR 816/817.49(a)(3)(ii).

2. Section VR 480–03–19.816/817.116(b)(3)

Virginia proposes to revise § VR 480–03–19.816/817.116(b)(3)(v)(A) regarding the stocking of trees, shrubs, half-shrubs, and the ground cover established on the revegetated area where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land, by deleting the phrase "approximate the stocking and ground cover on the surrounding unmined area." The Director finds the deleted language to be duplicative of requirements already found in the Virginia program. Therefore, the proposed deletion will not render Virginia's regulations less effective than the Federal requirements at 30 CFR 816.116(b)(3).

3. Section VR 480–03–19.816/817.116(c)(3)

Virginia proposed to revise these subsections by deleting the term "conservation" and replacing that term with the term "husbandry." In its submittal of this amendment Virginia stated that the wording change was made to make the language consistent with the counterpart Federal provisions at 30 CFR 816/817.116(c)(4). In addition to the proposed wording change, Virginia submitted administrative record information containing a list of normal husbandry practices and related reference materials intended to support the practices identified by Virginia as normal husbandry practices.

The Federal regulations at 30 CFR 816/817.116(c)(4) allow State regulatory authorities to select certain husbandry practices that will not extend the period of responsibility for successful revegetation and the bond liability of the permittee. These practices must be expected to continue as part of the postmining land use or that after discontinuance, the likelihood of permanent success is not reduced. Such practices must be submitted through the State program amendment process and must be approved by OSM before the State can implement such practices.

Upon review of the materials provided by Virginia, OSM determined that there was no document establishing the list of practices as Virginia policy. In addition, there was no information explaining how the lists and technical references would be used. In a letter to Virginia dated February 23, 1994 (Administrative Record No. VA–836), OSM addressed its concerns with the proposed husbandry practices amendment. Virginia responded by letter dated May 12, 1994 (Administrative Record No. VA–838). The State provided the following clarification.

Virginia stated that within 30 days of OSM's approval of the husbandry practices provision, Virginia will issue a policy statement concerning husbandry practices. The draft policy statement submitted by Virginia reads as follows:

> The Virginia program at 480–03–19.816/817.116(c)(3) provides that the Division may approve selective husbandry practices that may be utilized without extending the period of responsibility for revegetation success and bond liability. On October 1, 1990, DMLR submitted for OSM's approval a limited list of the selected practices that can be used in Virginia. On _____ OSM published in the **Federal Register** its final approval of the selected husbandry practices.
>
> Pursuant to this program amendment, there are a finite number of husbandry practices that have been approved by OSM. Coal surface mining operations may utilize only this list of practices without extending the bond liability period. For a copy of the program amendment or a description and supporting literature/publications, please contact Jerry Legg at the Division's Big Stone Gap Office.
>
> This draft language satisfies one of OSM's concerns about the proposed husbandry practices by making the following point: The list of husbandry practices approved by OSM comprises the only approved husbandry practices which may be used by industry without restarting the period of responsibility for reclamation success and bond liability.
>
> The following husbandry practices, were submitted and described by Virginia on October 22, 1993 (Administrative Record Number VA–829).
>
> Forestry—Common management practices for the land use of unmanaged forestry that will be allowed in Virginia without the restart of the bonding liability period:
>
> Replanting of trees
> Herbicide application
> Pest control
> Repair of rills and gullies as necessary to implement the land use
>
> Commercial Forestry—Common management practices for land use of commercial forestry that will be allowed in Virginia without the restart of the bonding liability period:
>
> Replanting of trees
> Herbicide application
> Basal pruning
> Insecticide application
> Mowing
> Fertilization and liming
> Repair of rills and gullies as necessary to implement the land use
>
> Hayland/Pasture—Common management practices for the land use of hayland/pasture that will be allowed in Virginia without the restart of the bonding liability period:
>
> Repair of rills and gullies
> Application of lime fertilizer
> Maintenance, weed and brush control
> Rotation or continuous grazing
> Reseeding or spot seeding
> Fencing
>
> Commercial, Industrial, Residential, or Recreational—Common management practices for the land uses of commercial, industrial, residential, or recreational that will be allowed in Virginia without the restart of the bonding liability period:
>
> Planting or replanting of trees
> Application of lime and fertilizer
> Surface roughing or the repair of rills and gullies
> Seeding or reseeding
> Irrigation
> Sodding
> Weed and pest control
> Topsoiling and other standard landscaping practices
> Gravel or asphalt
> Construct structures
>
> In the administrative record information provided by Virginia concerning the husbandry practices of reseeding and spot seeding, these practices are limited to those situations listed below.
>
> **Hayland/Pasture**
>
> Periodic reseeding to maintain or improve the desired combination of grasses and legumes.
>
> Seeding for weed control.
>
> Spot seeding in high traffic areas: e.g., around water troughs, salt licks, and areas damaged by livestock.
>
> Seeding of reclaimed rills and gullies.
>
> **Commercial, Industrial, Residential, or Recreational**
>
> Reseeding to prevent rill erosion.
>
> Seeding to maintain the desired mix of plants.

In its May 12, 1994, letter to OSM, Virginia also clarified the following points concerning its implementation of the husbandry practices provision. Virginia proposes to limit the extent of reseeding or spot seeding that it will allow as husbandry practice to a maximum of 10 percent of the applicable area. Virginia will also use the 10-percent figure to limit areas where liming, fertilization, and irrigation may be used in excess of the levels normally applied to similar lands with the same land use.

The 10-percent figure is inspired by the Virginia regulations concerning revegetation success. Specifically, VR 480–03–19.816.116(a)(2) provides that ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the approved success standard. The Federal regulations at 30 CFR 816.116(a)(2) have a similar standard.

While the 10-percent statistical standard in the revegetation rules does not directly apply to husbandry practices, the proposed limiting of reseeding or spot seeding to 10 percent is reasonable. However, the Director finds that some additional limits must apply. For example, normal husbandry practices do not include large barren blocks of the reclaimed area. On the contrary, large blocks of barren areas (such as a block representing 10 percent of the applicable area) would indicate failed reclamation, not successful revegetation. Additionally, in revegetated areas which pass the established 90-percent standard bare or poorly revegetated areas are likely to be scattered about the applicable area, and not large blocks of barren land. Again, large blocks of barren areas would indicate failed reclamation. Consequently, the reseeding of such large blocks of barren areas representing failed reclamation would be augmentative seeding and would necessitate the restarting of the period of responsibility for reclamation success and bond liability. In addition, the reestablished vegetation must be in place for a sufficient length of time so as not to adversely affect Virginia's ability to make a valid determination at the time of bond release of the success of the reclamation.

In the special case of the repair of rills and gullies as part of a forestry postmining land use, the administrative record contains a September 27, 1990, letter from the Virginia Department of Forestry. In that letter, the Regional Forester states that rills and gullies need not be repaired "as a part of typical forest management unless the magnitude of the gully would interfere with the land use (of forestry)." The letter goes on to say that rills and gullies often occur naturally in the steep slope areas of the Appalachian Region. OSM agrees that the repair of occasional and minor rills and gullies where proper grading and erosion management is practiced could be considered part of normal forestry management practice.

Virginia clarified its interpretation of the degree of allowable repair of rills and gullies. Since erosion is a natural phenomenon, the repair of minor rills and gullies is not viewed by the Virginia program as a violation, nor does it require restarting of the bonding clock. However, the State added, the Virginia program considers erosion that repeatedly creates rills and gullies over a large area as a violation of at least one performance standard and potentially a violation of several standards. When the permittee fails to comply with the Virginia performance standards and rills and gullies repeatedly develop over a large area, Virginia will require restarting of the responsibility period. Virginia has demonstrated, and the Director finds through this amendment, and Virginia's clarifications and administrative record information, that in the State of Virginia, certain specified instances of rill and gully repair associated with land used for Forestry, Commercial forestry, Commercial, industrial, residential, or recreational, and Hayland/pasture will be considered a normal husbandry practice.

Virginia also clarified that the husbandry practices for areas designed to enhance fish and wildlife will be consistent with the practices set forth for unmanaged forestry. The Director finds this to be reasonable.

Virginia stated that since the Virginia coalfields are primarily located on steep slopes, there has been no incident where cropland, other than hay, has been developed on the postmining land use. Consequently, Virginia has not developed nor proposes any husbandry practice for such croplands. Should the Virginia coalfields expand or crop production become a viable option, the State will develop husbandry practices relevant to those crops and submit them to OSM for approval. Such practices will not be permitted by the State until approved by OSM. The Director concurs with the understanding that the State will submit any new husbandry practices to OSM for approval prior to their being permitted in Virginia.

With the exceptions listed below, the Director finds the proposed amendment as augmented by the administrative record information submitted with this amendment, and as clarified by Virginia by letter dated May 12, 1994, is no less effective than the Federal regulations at 30 CFR 816/817.116(c)(4). This finding is made with the understanding that the policy statement to be issued by Virginia concerning normal husbandry practices will be identical in meaning to the draft language of that policy statement submitted to OSM by letter dated May 12, 1994. The Director is not approving as normal husbandry practice the reseeding of large blocks of areas made barren by poor reclamation, or where the reestablished vegetation has not been in place for a sufficient length of time for Virginia to make a valid determination of the success of the reclamation at the time of bond release.

4. VR § 480–03–19.816/817.151(b)

Virginia proposes to revise this section by changing the title from "Embankments" to "Safety factor," and by changing the language in (b)(1) to (1) reference "organic material" rather than "vegetative material," and (2) add the phrase "or other unsuitable material." These changes were proposed by Virginia in response to an issue letter from OSM dated March 20, 1991 (Administrative Record No. VA–792). The issue letter refers to the proposed program amendment submitted by Virginia on October 1, 1990, as discussed herein at II. Submission of Amendment. In that letter, OSM also asked Virginia to amend this rule to reflect that keyway cuts extend a minimum of two feet below the toe of the fill and that material placed in road embankments will be within acceptable moisture content levels. In its current submission, Virginia did not make the suggested changes, but provided clarification intended to show that its current regulations adequately address OSM's concerns.

Virginia's Department of Mines, Minerals and Energy (DMME) interprets its existing regulations to require keyway cuts beneath embankments on steep slopes to provide for stability of road embankments. The design of the keyway will be prepared by, or under the direction of, the applicant's registered professional engineer and will be reviewed by a DMME engineer. A minimum width of ten feet is specified and the keyway must be sloped inward in all cases. While other specifications may be proposed by the applicant or required by DMME, taking into account the conditions of the site, DMME believes the general requirement that keyway cuts be constructed at the toe of the road fills on steep slopes and the specific width and slope standards provide sufficient detail to ensure road embankment stability in most site

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specific cases. However, DMME interprets its regulations to require appropriate design given unusual site specific conditions. DMME retains the authority to require a keyway that has a two foot minimum depth below the toe of a road fill embankment as necessary when the foundations of the embankment is located in bedrock.

DMME also feels that its current regulations adequately address OSM's concerns regarding moisture content of materials placed in road embankments on steep slopes. According to DMME, its regulations require such road embankments to be constructed in uniform compacted layers. In order to achieve a desired degree of compaction, materials must be placed within the acceptable range of moisture content. The DMME interprets its rule to embody the requirement that materials must be within the acceptable range of moisture content if the larger performance standard, that of placement in compacted layers, is to be achieved. DMME believes that its existing regulation is as effective as the Federal regulation. The Director finds that based upon the March 20, 1991, letter and the clarification provided by Virginia, that VR 480–03–19.816/817.151(b)(1) through (4) as set forth in Virginia's October 22, 1993, submission is consistent with the Federal rules set forth at 30 CFR 816/817.151, 780.37(c) and 784.24(c).

5. VR § 480–03–19.816/817.152

Virginia proposes to revise the language of this rule relating to the waiver of design standards for existing roads. As originally submitted on October 22, 1993, the proposed language could be read to imply that existing roads do not have to meet the performance standards of VR 480–03–19.816/817.150 and 816/817/151. In its issue letter dated February 23, 1994, OSM suggested new language which would resolve the controversy. In its March 16, 1994, response to the issue letter, Virginia revised the proposed language consistent with OSM's suggestion. The current proposal provides that where existing roads that are to be used meet the performance standards of 816/817.150 and 816/817.151 and it can be demonstrated that reconstruction to meet the design standards of those provisions would result in greater environmental harm, the Division may waive the design requirements. Therefore, the Director finds that the provisions of VR 480–03–19.816/817.152, as revised on March 16, 1994, are not inconsistent with the requirements of 30 CFR 701.11(e) which allow existing structures that meet the performance standards but not the design requirements to be exempt from meeting the design requirements.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations of 30 CFR 732.17(h)(11)(i), the Director solicited comments from various Federal agencies with an actual or potential interest in the Virginia program. The U.S. Soil Conservation Service, U.S. Mine Safety and Health Administration, and the Environmental Protection Agency acknowledged receipt of the amendment without comment.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Air Act (42 U.S.C. 7401 *et seq.*) or the Clean Water Act (33 U.S.C. 1251 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

V. Director's Decision

Based on the above findings, the Director approves, with the exceptions noted in Finding 3 above, the proposed amendment with supplemental administrative record information which was submitted by Virginia on October 22, 1993, and as revised on March 16, 1994, and on May 12, 1994.

The Federal regulations at 30 CFR 946, codifying decisions concerning the Virginia program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not operational until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Virginia program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Virginia of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 16, 1994.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 946—VIRGINIA

1. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 946.15 is amended by adding paragraph (hh) to read as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(hh) The following amendment, with supplemental administrative record information, pertaining to the Virginia regulatory program, as submitted to OSM on October 22, 1993, and revised on March 16, 1994, and May 12, 1994, is approved, except as noted herein, effective September 27, 1994. The amendment consists of revisions to the following provisions of the Virginia Coal Surface Mining Reclamation Regulations.

VR 480–03–19.816	Topic
816.49(a)(3)(ii)	Permanent Program Performance Standards—Surface Mining Activities; Impoundments.
816.116(b)(3)(v)(A)	Permanent Program Performance Standards—Surface Mining Activities; Revegetation: Standards for Success.
816.116(c)(3)	Permanent Program Performance Standards—Surface Mining Activities; Revegetation: Standards for Success, except not approved as normal husbandry practice is the reseeding of large blocks of areas made barren by poor reclamation, or where the reestablished vegetation has not been in place for a sufficient length of time for Virginia to make a valid determination of the success of the reclamation at the time of bond release.
816.151(b)	Permanent Program Performance Standards—Surface Mining Activities; Primary Roads.
816.152	Permanent Program Performance Standards—Surface Mining Activities; Existing Roads.
817.49(a)(3)(ii)	Permanent Program Performance Standards—Underground Mining Activities; Impoundments.
817.116(b)(3)(v)(A)	Permanent Program Performance Standards—Underground Mining Activities; Revegetation: Standards for Success.
817.116(c)(3)	Permanent Program Performance Standards—Underground Mining Activities; Revegetation: Standards for Success.
817.151(b)	Permanent Program Performance Standards—Underground Mining Activities; Primary Roads.
817.152	Permanent Program Performance Standards—Underground Mining Activities; Existing Roads.

[FR Doc. 94–23826 Filed 9–26–94; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Huntington 94–006]

RIN 2115–AA97

Safety Zone; Ohio River, Mile 313.0 to 315.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Ohio River. This regulation is needed to control vessel traffic in the regulated area to prevent potential safety hazards for transiting vessels resulting from pipelaying operations, including underwater blasting, as part of a gas pipeline construction project in the vicinity of mile 314.0, Ohio River, Ceredo-Kenova, West Virginia. Vessel movements within this safety zone are permitted under the criteria set forth in this regulation.

EFFECTIVE DATES: This regulation is effective at 7 a.m. EDT on September 12, 1994. It terminates on October 31, 1994 at 8 p.m. EST, unless terminated sooner by the Captain of the Port Huntington.

FOR FURTHER INFORMATION CONTACT: LTJG Sean Moon, Chief of the Port Operations Department, Captain of the Port, Huntington, West Virginia at (304) 529–5524.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are ENS Steve Frye, Project Officer, Marine Safety Office, Huntington, West Virginia and LT S. Moody, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, anticipated pipelaying operations, including underwater blasting, as part of a gas pipeline construction project in the vicinity of mile 314.0, Ohio River, Ceredo-Kenova, West Virginia, have created a situation which presents an immediate hazard to navigation, life, and property. As a result, the Coast Guard deems it to be in the public's best interest to issue a regulation immediately.

Background and Purpose

The activity requiring this regulation is a gas pipeline construction project. The Captain of the Port Huntington did

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not receive notice of the project until September 2, 1994. Pentzien, Inc. of Omaha, Nebraska, working under contract for Columbia Gas of Charleston, West Virginia, will begin construction September 12, 1994 on an open-cut, dredged crossing in which a new gas line will replace the old gas line between Wayne County, West Virginia and Lawrence County, Ohio at mile 314.0 on the Ohio River. Pentzien, Inc. engineers anticipate completion of the construction on or before October 31, 1994. The presence of a drill barge and dredging equipment, conducting dredging and underwater blasting operations, will pose an obstructive and, at times, explosive hazard to waterborne traffic transiting in the vicinity of the construction project work site. In order to provide for the safety of vessel traffic, the Captain of the Port Huntington intends to regulate vessel traffic in that portion of the Ohio River where dredging and blasting operations will be taking place until the hazard is mitigated. All transiting vessels must contact the M/V JOE KIZZIAH, which will be tending the dredging and drill barges, on either channel 13 or 16 in order to transit the area during dredging operations. No vessels will be allowed to transit during the blasting portion of these operations. Notice of this safety zone will be published in the Local Notice to Mariners and in regularly scheduled Broadcast Notice to Mariners.

Description of the Dredging

The dredging operation will be taking place 24 hours per day, seven (7) days a week. Excavation of the river bottom will be with a 100 ton bucket dredge mounted on a 120 foot by 45 foot spud barge, MANITOWAC. The MANITOWAC will be tended by M/V JOE KIZZIAH and should always be in position to allow safe passage to either its left or right. Mariners should contact M/V JOE KIZZIAH for passing instructions. Upon request, the MANITOWAC will cease dredging operations and move to allow sufficient distance for the safe passage of commercial traffic. The M/V JOE KIZZIAH, as well as the dredging and drill barges, will display proper day marks, and lighting during night operations. Such night operations will not involve explosives.

Description of the Blasting

On the average, contractors plan to blast just once a day, occurring sometime after 3:00 p.m., but before dark. No blasting will take place when there is restricted visibility (the contractor must be able to see from bank to bank before blasting). The purpose of the blasting is to form a trench across the subsurface of the Ohio River into which sections of piping will be laid. The drill barge, DRILL BARGE NO. 1, will work in concert with the dredge MANITOWAC drilling into the dredged subsurface of the river and place explosives in the drilled holes as it goes. Drilling will cease each day at 3:00 p.m. at which time contractors will put detonators in place and prepare the area for blasting. Both the dredge and drill barges will be removed to a position well distant from the blasting. Notification of blasting will take place two hours, one hour, forty-five (45) minutes, thirty (30) minutes, fifteen (15) minutes, and immediately prior to blasting. Notification will be via VHF radio channels 13 and 16. After the drill and supply barges have been moved to a safe distance, two boats will be available for the security of the immediate blast area. The boats will be placed up and downriver of the blasting area. These boats will patrol and warn any recreational/commercial vessels traffic of the impending blast. No blasting will be permitted unless all river traffic is removed to a safe location outside of the blasting area. In addition to radio transmissions, contractors will sound warning signals. The warning signal will be a one (1) minute series of long blasts three (3) minutes prior to the blast signal. The blast signal will be a series of short blasts one (1) minute prior to the blast. Immediately following the blast and an inspection of the blast area, an all clear signal will be sounded. The all clear signal will be a prolonged blast, followed by radio notification on VHF channels 13 and 16. Signals will only be sounded by the person responsible for blasting operations. If a vessel not involved with blasting operations is within the safety zone, the contractor will not conduct the detonation until that vessel has cleared the regulated area. The drill barge and blasting equipment will be moved off site to the river bank every night to reduce the obstructive river hazard. The establishment of this safety zone regulation ensures that vessels transiting in the vicinity of the blasting area will maintain a safe distance to eliminate the associated risk. The safety zone also ensures that communication is established between the contractors and vessels transiting the waters within the safety zone. With proper communication between all parties, the contractor is assured of having ample time to comply with a request to move his operation temporarily to allow a vessel to navigate through the zone safely.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary, due to the limited duration of actual river closures.

Small Entities

The Coast Guard finds that the impact on small entities is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that it does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this regulation and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this regulation is categorically excluded from further environmental documentation as an action required to protect public safety.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Records and recordkeeping requirements, Security measures, Waterways.

Temporary Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section 165.T02–055 is added, to read as follows:

§ 165.T02–055 Safety Zone: Ohio River.

(a) *Location.* The Ohio River between mile 313.0 and 315.0 is established as a safety zone.

(b) *Effective dates.* This section becomes effective on September 12, 1994 at 7 a.m. EDT. It terminates on October 31, 1994 at 8 p.m. EST, unless terminated sooner by the Captain of the Port Huntington.

(c) *Regulations.*

(1) Except with the permission of the Captain of the Port, all vessels must:

(i) Remain outside the safety zone once the contract vessel M/V JOE KIZZIAH has completed broadcast notice on Channels 13 and 16 VHF–FM 15 minutes prior to blasting and remain outside of the zone until it has given the all-clear signal (a prolonged blast) and made broadcast notice of the same on Channel 13 or 16 VHF–FM.

(ii) Communicate with the contract vessel M/V JOE KIZZIAH on channel 13 or 16 VHF–FM to arrange for safe passage when either the dredge MANITOWAC and DRILL BARGE NO. 1 (or both) are on site in the Ohio River, providing at least twenty (20) minutes advance notice prior to transiting through the regulated area.

(iii) Provide the contract vessel M/V JOE KIZZIAH at least twenty (20) minutes advance notice to move/suspend operations in any case where the transiting vessel operator believes the safe passage of his vessel or tow is jeopardized by the presence/operation of the dredge MANITOWAC or the DRILL BARGE NO. 1.

(2) Except with the permission of the Captain of the Port, vessels involved with the Columbia gasline blasting and dredging operations must:

(i) M/V JOE KIZZIAH: Communicate with and arrange safe passage through the safety zone for all vessels not involved in the pipelaying project.

(ii) M/V JOE KIZZIAH: Initiate appropriate broadcast notices and warning signals to local mariners prior to and after conducting blasting operations. Two hours, one hour, forty-five (45) minutes, thirty (30) minutes, and fifteen (15) minutes prior to blasting, broadcast on channels 13 and 16 VHF–FM the intention to conduct blasting operations. Approximately three (3) minutes before a blast round is to be detonated, give a series of long blasts for one (1) minute to indicate that the blast area is being secured. Determine the blast area to be secured. Approximately one (1) minute prior to the blast, sound a final warning, consisting of a series of short blasts. Immediately following the blast, inspect/survey the blast area to determine whether it is clear to resume operations. Give an all clear signal consisting of a prolonged blast and radio notification on Channels 13 and 16 VHF–FM, after area is determined to be clear and safe for the resumption of normal operations.

(iii) DRILL BARGE NO. 1: Do not blast if a vessel not involved with the blasting operation is inside the safety zone, or if any contract vessel has not relocated to a safe distance away from the blast area.

(iv) DRILL BARGE NO. 1: Do not initiate any blasting operations in periods of restricted visibility (operator must ensure there is clear bank-to-bank visibility).

(v) All vessels: Relocate to a safe distance prior to conducting blasting operations.

(3) The Captain of the Port may, upon request, authorize a deviation from any rule in this section if he determines that the proposed operations can be done safely.

(4) The Captain of the Port may direct the movement of any vessel within the safety zone as appropriate to ensure the safe navigation of vessels through the safety zone.

Dated: September 9, 1994, 4:30 p.m. EDT.

F.A. Nyhuis,

Commander, U.S. Coast Guard, Captain of the Port, Huntington, WV.

[FR Doc. 94–23896 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AF39

Loan Guaranty: Credit Underwriting Standards and Procedures for Processing VA Guaranteed Loans

AGENCY: Department of Veterans Affairs.

ACTION: Final regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) is amending its loan guaranty regulations by updating the credit underwriting standards and procedures for processing VA guaranteed home loans. Updating the standards and procedures to keep pace with current economic conditions will increase the likelihood that a veteran obtaining a VA guaranteed loan will be able to repay the loan.

EFFECTIVE DATE: These regulatory amendments are effective October 27, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–7366.

SUPPLEMENTARY INFORMATION: On September 29, 1993, VA published in the **Federal Register** (58 FR 50875) proposed regulatory amendments to 38 CFR 36.4337. VA proposed to amend the credit underwriting standards and procedures for processing VA guaranteed home loans (1) by updating the figures in the residual income guidelines; (2) by requiring that income tax returns be submitted with applications for borrowers who are self-employed, paid on a commission basis, employed in the building trades, or have seasonal jobs; (3) by providing more specific time frames for considering whether income from part-time employment, second jobs overtime, self-employment, and commissions may be considered stable and reliable; (4) by adding guidelines for underwriting cases involving foreclosures and Federally-related debts; and (5) by deleting the requirement that lenders check with VA regional offices on prior VA loans. VA also proposed to delete union dues from items considered job-related expenses because these dues are part of the residual income figure. Please refer to the September 29, 1993 **Federal Register** for a complete discussion of the proposed amendments. VA is adopting the regulatory amendments as originally proposed except for the minor editorial and terminology changes discussed below.

VA received three comments on the proposed amendments. One commenter favored all the amendments. The second, a national association representing certified public accountants, suggested that more accurate accounting terms be used to describe VA's financial requirements for self-employed borrowers. Specifically, the commenter noted that "compile" is the correct term to use to describe the case where an external accountant will "prepare" the financial statements, as required by section 36.4337(f)(7)(i). The commenter also pointed out that independent accountants do not "certify the accuracy" of financial statements, rather, the technically correct usage is to

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say that the accountant conducts an "audit". VA agrees that the commenter's suggested terminology is more precise. Accordingly, we are revising paragraph (f)(7)(i) of § 36.4337 of the regulations to read that the profit and loss statement and balance sheet required for self employed applicants be "compiled", rather than "prepared", by an accountant. The words "certified as accurate" are also being deleted from the sentence which was proposed to read, "In some cases the nature of the business or the content of the financial statement may necessitate an independent audit certified as accurate by the accountant."

The third commenter requested clarification of how a loan underwriter determines the stability and reliability of a self-employed applicant's income.

The proposed new paragraph (f)(7) of § 36.4337 states that "income from self-employment is generally considered stable when the applicant has been in business for at least 2 years and that income from less than 2 years of self-employment usually cannot be considered stable unless the applicant has had previous related employment and/or extensive specialized training." It also states that "When an applicant has been self-employed less than 1 year, it will rarely be possible to demonstrate that the income is stable for qualifying purposes * * *."

As the regulations provide, VA does not require that in every case the self-employed applicant have a two-year period of continuous employment with no gaps. If the applicant has been self-employed for less than two years, it is appropriate in underwriting the loan to also consider the applicant's related employment or specialized training. For example, sufficient weight might be given to the fact that the applicant has had specialized training in his or her field of endeavor, and that therefore, the income from self-employment should be viewed as stable, even though it has been for less than 2 years. However, when the self-employment has been for less than one year, it would be very difficult to consider the income stable and reliable. In other words, in cases where the loan applicant has been self-employed for less than one year, it would not be possible to view his or her income as stable unless the applicant's training and/or related experience is such as to clearly show a very strong likelihood of success.

This commenter also asked "If the two-year history of employment applies, must it be continuous or should factors such as schooling or training be considered during that time even if no income resulted?."

As noted above, the proposed regulations provide for the consideration of training and schooling when determining the adequacy of income from self-employment. Thus it is possible to consider income as stable and reliable with less than 2 years of continuous employment, provided gaps in employment are sufficiently explained by adequate documentation of schooling or training. It is clear that the language in paragraph (f)(7)(i) is adequate to prescribe the intended standard and, therefore, the paragraph will be published as originally proposed.

VA is making an editorial change to paragraph (g) of the regulations. Language now contained in paragraph (f)(1) of the regulations explaining the requirements of the Equal Credit Opportunity Act, is being repeated in paragraph (g) for the purposes of clarity.

Accordingly, except for the terminology and editorial changes already discussed, VA is publishing these regulations as originally proposed.

The information collection requirement contained in paragraphs (f)(6), (f)(7) and (f)(9) of § 36.4337 of these regulations has been approved by the Office of Management and Budget (OMB) under OMB control number 2900–0521.

The Secretary hereby certifies that the proposed regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. These changes will not result in any major new administrative or procedural burdens on lenders or other program participants. They simply revise the criteria established by VA in determining whether home loans for veterans will be guaranteed by VA based on the veteran's income and credit history.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing Loan program—housing and community development, Manufactured homes, Veterans.

These amendments are made final under the authority granted the Secretary by section 501(a) of title 38, United States Code.

Approved: August 15, 1994.

Jesse Brown,

Secretary for Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36, is amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 §§ 36.4300 through 36.4375 is revised to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 38 U.S.C. 501(a).

2. Section 36.4337 is revised to read as follows:

§ 36.4337 Underwriting standards, processing procedures, lender responsibility and lender certification

(a) *Use of standards.* Except for refinancing loans guaranteed pursuant to 38 U.S.C. 3710(a)(8), the standards contained in paragraphs (c) through (j) of this section will be used to determine that the veteran's present and anticipated income and expenses, and credit history are satisfactory.

(b) *Waiver of standards.* Use of the standards in paragraphs (c) through (j) of this section for underwriting home loans will be waived only in extraordinary circumstances when the Secretary determines, considering the totality of circumstances, that the veteran is a satisfactory credit risk.

(c) *Methods.* The two primary underwriting tools that will be used in determining the adequacy of the veteran's present and anticipated income are debt-to-income ratio and residual income analysis. They are described in paragraphs (d) through (f) of this section. Ordinarily, to qualify for a loan, the veteran must meet both standards. Failure to meet one standard, however, will not automatically disqualify a veteran. The following shall apply to cases where a veteran does not meet both standards:

(1) If the debt-to-income ratio is 41 percent or less, and the veteran does not meet the residual income standard, the loan may be approved with justification, by the underwriter's supervisor, as set out in paragraph (c)(4) of this section.

(2) If the debt-to-income ratio is greater than 41 percent, (unless it is larger due solely to the existence of tax-free income which should be noted in the loan file) the loan may be approved with justification, by the underwriter's supervisor, as set out in paragraph (c)(4) of this section.

(3) If the ratio is greater than 41 percent and the residual income exceeds the guidelines by at least 20 percent the second level review and statement of justification is not required.

(4) In any case described by paragraphs (c)(1) and (c)(2) of this section, the lender must fully justify the decision to approve the loan or submit the loan to the Secretary for prior approval in writing. The lender's statement must not be perfunctory, but

should address the specific compensating factors, as set forth in paragraph (c)(5), justifying the approval or submission of the loan. The statement must be signed by the underwriter's supervisor. It must be stressed that the statute requires not only consideration of a veteran's present and anticipated income and expenses, but also that the veteran be a satisfactory credit risk.

Therefore, meeting both the debt-to-income ratio and residual income standards does not mean the loan is automatically approved. It is the lender's responsibility to base the loan approval or disapproval on all the factors present for any individual veteran. The veteran's credit must be evaluated based on criteria set forth in paragraph (g) of this section as well as a variety of compensating factors that should be evaluated.

(5) The following are examples of acceptable compensating factors to be considered in the course of underwriting a loan:

(i) Excellent long-term credit;
(ii) Conservative use of consumer credit;
(iii) Minimal consumer debt;
(iv) Long-term employment;
(v) Significant liquid assets;
(vi) Downpayment or the existence of equity in refinancing loans;
(vii) Little or no increase in shelter expense;
(viii) Military benefits;
(ix) Satisfactory homeownership experience;
(x) High residual income; and
(xi) Low debt-to-income ratio.

(6) The list in paragraph (c)(5) is not exhaustive and the items are not in any priority order. Valid compensating factors should represent unusual strengths rather than mere satisfaction of basic program requirements. Compensating factors must be relevant to the marginality or weakness.

(d) *Debt-to-income-ratio.* A debt-to-income ratio that compares the veteran's anticipated monthly housing expense and total monthly obligations to his or her stable monthly income will be computed to assist in the assessment of the potential risk of the loan. The ratio will be determined by taking the sum of the monthly Principal, Interest, Taxes and Insurance (PITI) to the loan being applied for, homeowners and other assessments such as special assessments, condominium fees, homeowners association fees, etc., and any long-term obligations divided by the total of gross salary or earnings and other compensation or income. The ratio should be rounded to the nearest two digits; e.g., 35.6 percent would be rounded to 36 percent. The standard is 41 percent or less. If the ratio is greater than 41 percent, (unless it is larger due solely to the existence of tax free income which should be noted in the loan file) the steps cited in paragraphs (c)(1) through (c)(6) of this section apply.

(e) *Residual income guidelines.* The guidelines provided in this paragraph for residual income will be used to determine whether the veteran's monthly residual income will be adequate to meet living expenses after estimated monthly shelter expenses have been paid and other monthly obligations have been met. The guidelines for residual income are based on data supplied in the Consumer Expenditure Survey (CES) published by the Department of Labor's Bureau of Labor Statistics. Regional minimum incomes have been developed for loan amounts up to $69,999 and for loan amounts of $70,000 and above. It is recognized that the purchase price of the property may affect family expenditure levels in individual cases. This factor may be given consideration in the final determination in individual loan analyses. For example, a family purchasing in a higher-priced neighborhood may feel a need to incur higher than average expenses to support a lifestyle comparable to that in their environment, whereas a substantially lower-priced home purchase may not compel such expenditures. It should also be clearly understood from this information that no single factor is a final determinant in any applicant's qualification for a VA guaranteed loan. Once the residual income has been established, other important factors must be examined. One such consideration is the amount being paid currently for rental or housing expenses. If the proposed shelter expense is materially in excess of what is currently being paid, the case may require closer scrutiny. In such cases, consideration should be given to the ability of the borrower and spouse to accumulate liquid assets; such as cash and bonds, and to the amount of debts incurred while paying a lesser amount for shelter. For example, if an application indicates little or no capital reserves and excessive obligations, it may not be reasonable to conclude that a substantial increase in shelter expenses can be absorbed. Another factor of prime importance is the applicant's manner of meeting obligations. A poor credit history alone is a basis for disapproving a loan, as is an obviously inadequate income. When one or the other is marginal, however, the remaining aspect must be closely examined to assure that the loan applied for will not exceed the applicant's ability or capacity to repay. Therefore, it is important to remember that the figures provided below for residual income are to be used as a guide and should be used in conjunction with the steps outlined in paragraphs (c) through (j) of this section The residual income guidelines are as follows:

(1) Table of residual incomes by region (for loan amounts to $69,999 and below):

TABLE OF RESIDUAL INCOMES BY REGION

[For loan amounts of $69,999 and below]

Family size *	Northeast	Midwest	South	West
1	$375	$367	$367	$409
2	629	616	616	686
3	758	742	742	826
4	854	835	835	930
5	886	867	867	965

* For families with more than five members, add $75 for each additional member up to a family of seven.

(2) Table of residual incomes by region (for loan amounts of $70,000 and above):

TABLE OF RESIDUAL INCOMES BY REGION

[For loan amounts of $70,000 and above]

Family size *	Northeast	Midwest	South	West
1	$433	$424	$424	$472
2	726	710	710	791
3	874	855	855	952
4	986	964	964	1074
5	1021	999	999	1113

* For families with more than five members, add $60 for each additional member up to a family of seven.

(3) *Geographic regions for residual income guidelines:* Northeast—Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont; Midwest—Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin; South—Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, Virginia, West Virginia; West—Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming.

(4) *Military adjustments:* For loan applications involving an active-duty serviceperson or military retiree, the

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residual income figures will be reduced by a minimum of 5 percent if there is a clear indication that the borrower or spouse will continue to receive the benefits resulting from the use of facilities on a nearby military base. (This reduction applies to tables in paragraph (e).)

(f) *Stability and reliability of income.* Only stable and reliable income of the veteran and spouse can be considered in determining ability to meet mortgage payments. Income can be considered stable and reliable if it can be concluded that it will continue during the foreseeable future.

(1) *Verification.* Income of the borrower and spouse which is derived from employment and which is considered in determining the family's ability to meet the mortgage payments, payments on debts and other obligations, and other expenses, must be verified. If the spouse is employed and will be contractually obligated on the loan, the combined income of both the veteran and spouse is considered when the income of the veteran alone is not sufficient to qualify for the amount of the loan sought. In other than community property States, if the spouse will not be contractually obligated on the loan, Regulation B, promulgated by the Federal Reserve Board pursuant to the Equal Credit Opportunity Act prohibits any request for, or consideration of information concerning the spouse (including income, employment, assets, or liabilities), except that if the applicant is relying on alimony, child support, or maintenance payments from a spouse or former spouse as a basis for repayment of the loan, information concerning such spouse or former spouse may be requested and considered (see paragraph (f)(4) of this section). In community property States, information concerning a spouse may be requested and considered in the same manner as that for the applicant. The standards applied to income of the veteran are also applicable to that of the spouse. There can be no discounting of income on account of sex, marital status, or any other basis prohibited by the Equal Credit Opportunity Act. Income claimed by an applicant that is not or cannot be verified cannot be given considered when analyzing the loan. If the veteran or spouse has been employed by a present employer for less than 2 years, a 2-year history covering prior employment, schooling or other training must be secured. Any periods of unemployment must be explained. Employment verifications and pay stubs must be no more than 90 days old to be considered valid. For loans closed automatically, this requirement will be considered satisfied if the date of the employment verification is within 90 days of the date of the veteran's application to the lender.

(2) *Active duty applicants.* (i) In the case of an active duty applicant, a military Leave & Earnings Statement is required and will be used instead of an employment verification. The statement must be no more than 90 days old and must be the original or a lender-certified copy of the original. For loans closed automatically, this requirement is satisfied if the date of the Leave and Earnings Statement is within 90 days of the date of the borrower's application to the lender.

(ii) For service members within 12 months of release from active duty one of the following is also required:

(A) Documentation that the service member has in fact already reenlisted or extended his/her period of active duty to a date beyond the 12 month period following the projected closing of the loan.

(B) Verification of a valid offer of local civilian employment following release from active duty. All data pertinent to sound underwriting procedures (date employment will begin, earnings, etc.) must be included.

(C) A statement from the service member that he/she intends to reenlist or extend his/her period of active duty to a date beyond the 12 month period following the projected loan closing date, and a statement from the service member's commanding officer confirming that the service member is eligible to reenlist or extend his/her active duty as indicated and that the commanding officer has no reason to believe that such reenlistment or extension of active duty will not be granted.

(D) Other unusually strong positive underwriting factors, such as a downpayment of at least 10 percent, significant cash reserves, or clear evidence of strong ties to the community coupled with a nonmilitary spouse's income so high that only minimal income from the active duty service member is needed to qualify.

(iii) Each active duty member who applies for a loan must be counseled through the use of VA Form 26–0592, Counseling Checklist for Military Homebuyers. Lenders must submit a signed and dated VA Form 26–0592 with each prior approval loan application or automatic loan report involving a borrower on active duty.

(3) *Income reliability.* Income received by the borrower and spouse is to be used only if it can be concluded that the income will continue during the foreseeable future and thus be properly considered in determining ability to meet the mortgage payments. There can be no discounting of income solely because it is derived from an annuity, pension or other retirement benefit, or from part-time employment. However, unless income from overtime work and part-time or second jobs can be accorded a reasonable likelihood that it is continuous and will continue in the foreseeable future, such income should not be used. Generally, the reliability of such income cannot be demonstrated unless the income has continued for 2 years. The hours of duty and other work conditions of the applicant's primary job, and the period of time in which the applicant was employed under such arrangement must be such as to permit a clear conclusion as to a good probability that overtime or part-time or secondary employment can and will continue. Income from overtime work and part-time jobs not eligible for inclusion as primary income may, if properly verified for at least 12 months, be used to offset the payments due on debts and obligations of an intermediate term, i.e., 6 to 24 months. Such income must be described in the loan file. The amount of any pension or compensation and other income such as dividends from stocks, interest from bonds, savings accounts, or other deposits, rents, royalties, etc., will be used as primary income if it is reasonable to conclude that such income will continue in the foreseeable future. Otherwise, it may be used only to offset intermediate-term debts, as above. Also, the likely duration of certain military allowances cannot be determined, and therefore will be used only to offset intermediate-term obligations. Such allowances are: Pro-pay, flight or hazard pay, and overseas or combat pay, all of which are subject to periodic review and/or testing of the recipient to ascertain whether eligibility for such pay will continue. Only if it can be shown that such pay has continued for a prolonged period and can be expected to continue because of the nature of the recipient's assigned duties, will such income be considered as primary income. For instance, flight pay verified for a pilot can be regarded as probably continuous and thus should be added to the base pay. Income derived from service in the reserves or National Guard may be used if the applicant has served in such capacity for a period of time sufficient to evidence good probability that such income will continue. The total period of active and reserve service may be helpful in this regard. Otherwise, such income may be used to offset intermediate-term debts. There are a number of additional income sources whose contingent nature precludes their being considered as available for repayment of a long-term mortgage obligation. Temporary income items such as VA educational allowances and unemployment compensation do not represent stable and reliable income and will not be taken into consideration in determining the ability of the veteran to meet the income requirement of the governing law. As required by the Equal Opportunity Act Amendments of 1976, Public Law 94–239, income from public assistance programs is used to qualify a loan if it can be determined that the income will probably continue for a substantial fraction of the term of the loan; i.e., one-third or more. For instance, aid to dependent children being received for a 5-year old child that will continue until the child achieves majority would be used to qualify for a 30-year loan.

(4) *Alimony, child support, maintenance payments.* If an applicant chooses to reveal income from alimony, child support, or maintenance payments (after first having been informed that any such disclosure is voluntary pursuant to the Federal Reserve Board's Regulation B), such payments are considered as income to the extent that the payments are likely to be consistently made. Factors to be considered in determining the likelihood of consistent payments include, but are not limited to: Whether the payments are received pursuant to a written agreement or court decree; the length of time the payments have been received; the regularity of receipt; the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when available under the Fair Credit Reporting Act or other applicable laws. However, the Fair Credit Reporting Act (15 U.S.C. 1681(b)) limits the permissible purposes for which credit reports may be ordered, in the absence of written instructions of the consumer to whom the report relates, to business transactions involving the subject of the credit report or extensions of credit to the subject of the credit report.

(5) *Military quarters allowance.* With respect to off-base housing (quarters) allowances for service personnel on active duty, it is the policy of the Department of Defense (DoD) to utilize available on-base housing when possible. In order for a quarters allowance to be considered as continuing income, it is necessary that the applicant furnish written authorization from his or her commanding officer for off-base housing. This authorization should verify that quarters will not be made available and that the individual should make permanent arrangements for nonmilitary housing. DD Form 1747, Status of Housing Availability, is used by the Family Housing Office to advise personnel regarding family housing. The applicant's quarters allowance cannot be considered unless item b (Permanent) or d is completed on DD Form 1747, dated October 1990. of course, if the applicant's income less quarters allowance is sufficient, there is no need for assurance that the applicant has permission to occupy nonmilitary housing provided that a determination can be made that the occupancy requirements of the law will be met. Also, authorization obtain off-base housing will not be required when certain duty assignments would clearly qualify service personnel with families for quarters allowance. For instance, off-base housing authorizations need not be obtained for service personnel stationed overseas who are not accompanied by their families, recruiters on detached duty, or military personnel stationed in areas where no on-base housing exists. In any case in which no off-base housing authorization is obtained, an explanation of the circumstances justifying its omission must be included with the loan application except when it has been established by the VA facility of jurisdiction that the waiting lists for on-base housing are so long that it is improbable that individuals desiring to purchase off-base housing would be precluded from doing so in the foreseeable future. If stations make such a determination, a release shall be issued to inform lenders.

(6) *Commissions.* When all or a major portion of the veteran's income is derived from commissions, it will be necessary to establish the stability of such income if it is to be considered in the loan analysis for the repayment of the mortgage debt and/or short-term obligations. In order to assess the value of such income, lenders should obtain written verification of the actual amount of commissions paid to date, the basis for the payment of such commissions and when commissions are paid; i.e., monthly, quarterly, semiannually, or annually. Lenders should also obtain signed and dated individual income tax returns, plus applicable schedules, for the previous 2 years, or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earnings record. The length of the veteran's employment in the type of occupation for which commissions are paid is also an important factor in the assessment of the stability of the income. If the veteran has been employed for a relatively short time, the income should not normally be considered stable unless the product or service was the same or closely related to the product or service sold in an immediate prior position. Generally, income from commissions is considered stable when the applicant has been receiving such income for at least 2 years. Less than 2 years of income from commissions cannot usually be considered stable. When an applicant has received income from commissions for less than 1 year, it will rarely be possible to demonstrate that the income is stable for qualifying purposes; such cases would require in-depth development.

(7) *Self-employment.* Generally, income from self-employment is considered stable when the applicant has been in business for at least 2 years. Less than 2 years of income from self-employment cannot usually be considered stable unless the applicant has had previous related employment and/or extensive specialized training. When an applicant has been self-employed less than 1 year, it will rarely be possible to demonstrate that the income is stable for qualifying purposes such cases would require in-depth development. The following documentation is required for all self-employed borrowers:

(i) A profit and loss statement for the prior fiscal year (12-month accounting cycle), plus the period year to date since the end of the last fiscal year (or for whatever shorter period records may be available), and a current balance sheet showing all assets and liabilities. The profit and loss statement and balance sheet will be compiled by an accountant based on the financial records. In some cases the nature of the business or the content of the financial statement may necessitate an independent audit by the accountant. Depending on the situation, this data may be on the veteran and/or the business; and

(ii) Copies of signed individual income tax returns, plus all applicable schedules for the previous 2 years, or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earnings record, must be obtained. If the business is a corporation or partnership, copies of signed federal business income tax returns for the previous two years plus all applicable schedules for the corporation or partnership must be obtained; and

(iii) If the business is a corporation or partnership, a list of all stockholders or

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partners showing the interest each holds in the business will be required. Some cases may justify a written credit report on the business as well as the applicant. When the business is of an unusual type and it is difficult to determine the probability of its continued operation, explanation as to the function and purpose of the business may be needed from the applicant and/or any other qualified party with the acknowledged expertise to express a valid opinion.

(8) *Recently discharged veterans.* Loan applications received from recently discharged veterans who have little or no employment experienco other than their military occupation and from veterans seeking VA guaranteed loans who have retired after 20 years of active military duty require special attention. The retirement income of the latter veterans in may cases may not be sufficient to meet the statutory income requirements for the loan amount sought. Many have obtained full-time employment and have been employed in their new jobs for a very short time.

(i) It is essential in determining whether veterans in these categories qualify from the income standpoint for the amount of the loan sought, that the facts in respect to their present employment and retirement income be fully developed, and that each case be considered on its individual merits.

(ii) In most cases the veteran's current income or current income plus his or her retirement income is sufficient. The problem lies in determining whether it can be properly concluded that such income level will continue for the foreseeable future. If the veteran's employment status is that of a trainee or apprentice, this will, of course, be a factor. In cases of the self-employed, the question to be resolved is whether there are reasonable prospects that the business enterprise will be successful and produce the required income. Unless a favorable conclusion can be made, the income from such source should not be considered in the loan analysis.

(iii) If a recently discharged veteran has no prior employment history and the veteran's verification of employment shows he or she has not been on the job a sufficient time in which to become established, consideration should be given to the duties the veteran performed in the military service. When it can be determined that the duties a veteran performed in the service are similar or are in direct relation to the duties of the applicant's present position, such duties may be construed as adding weight to his or her present employment experience and the income from the veteran's present employment thus may be considered available for qualifying the loan, notwithstanding the fact that the applicant has been on the present job only a short time. This same principle may be applied to veterans recently retired from the service. In addition, when the veteran's income from retirement, in relation to the total of the estimated shelter expense, long-term debts and amount available for family support, is such that only minimal income from employment is necessary to qualify from the income standpoint, it would be proper to resolve the doubt in favor of the veteran. It would be erroneous, however, to give consideration to a veteran's income from employment for a short duration in a job requiring skills for which the applicant has had no training or experience.

(iv) To illustrate the provisions of paragraph (f), it would be proper to use short-term employment income in qualifying a veteran who had experience as an airplane mechanic in the military service and the individual's employment after discharge or retirement from the service is in the same or allied field; e.g., auto mechanic or machinist. This presumes, however, that the verification of employment included a statement that the veteran was performing the duties of the job satisfactorily, the possibility of continued employment was favorable and that the loan application is eligible in all other respects. An example of nonqualifying experience is that of a veteran who was an Air Force pilot and has been employed in insurance sales on commission for a short time. Most cases, of course, fall somewhere between those extremes. It is for this reason that the facts of each case must be fully developed prior to closing the loan automatically or submitting the case to VA for prior approval.

(9) *Employment of short duration.* The provisions of paragraph (f)(7) of this section are similarly applicable to applicants whose employment is of short duration. Such cases will entail careful consideration of the employer's confirmation of employment, probability of permanency, past employment record, the applicant's qualifications for the position, and previous training, including that received in the military service. In the event that such considerations do not enable a determination that the income from the veteran's current position has a reasonable likelihood of continuance, such income should not be considered in the analysis. Applications received from persons employed in the building trades, or in other occupations affected by climatic conditions, should be supported by documentation evidencing the applicant's total earnings to date and covering a period of not less than 1 year as well as signed and dated copies of complete income tax returns, including all schedules for the past 2 years or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earnings record. If the applicant works out of a union, evidence of the previous year's earnings should be obtained together with a verification of employment from the current employer.

(10) *Rental-income.* (i) *Multi-unit subject property.* When the loan pertains to a structure with more than a one-family dwelling unit, the prospective rental income will not be considered unless the veteran can demonstrate a reasonable likelihood of success as a landlord, and sufficient cash reserves are verified to enable the veteran to carry the mortgage loan payments (principal, interest, taxes, and insurance) without assistance from the rental income for a period of at least 6 months. The determination of the veteran's likelihood of success as a landlord will be based on documentation of any prior experience in managing rental units, or other collection activities. The amount of rental income to be used in the loan analysis will be based on the prior rental history of the units as verified by the seller's financial records (e.g., prior years' tax returns) for existing structures or, for proposed construction, the appraiser's opinion of the property's fair monthly rental. Adjustments will be applied to reduce estimated gross rental income by proper allowances for operating expenses and vacancy losses.

(ii) *Rental of existing home.* Proposed rental of a veteran's existing property may be used to offset the mortgage payment on that property, provided there is no indication that the property will be difficult to rent. If available, a copy of the rental agreement should be obtained. It is the responsibility of the loan underwriter to be aware of the condition of the local rental market. For instance, in areas where the rental market is very strong the absence of a lease should not automatically prohibit the offset of the mortgage by the proposed rental income.

(iii) *Other rental property.* If income from rental property will be used to qualify for the new loan, the documentation required of a self-employed applicant should be obtained together with evidence of cash reserves equaling 3 months PITI of the rental property. As for any self-employed earnings (see paragraph (f)(7) of this section), depreciation claimed may be added back in as income. In the case of a veteran who has no experience as a landlord, it is unlikely that the income from a rental property may be used to qualify for the new loan.

(11) *Taxes and other deductions.* Deductions to be applied for Federal income taxes ad Social Security may be obtained from the Employer's Tax Guide (Circular E) issued by the Internal Revenue Service (IRS). (For veterans receiving a mortgage credit certificate (MCC), see paragraph (f)(12) of this section.) Any State or local taxes should be estimated or obtained from charts similar to those provided by IRS which may be available in those States with withholding taxes. A determination of the amount paid or withheld for retirement purposes should be made and used when calculating deductions from gross income. In determining whether a veteran-applicant meets the income criteria for a loan, some consideration may be given to the potential tax benefits the veteran will realize if the loan is approved. This can be done by using the instructions and worksheet portion of IRS Form W–4, Employee's Withholding Allowance Certificate, to compute the total number of permissible withholding allowances. That number can then be used when referring to IRS Circular E and any appropriate similar State withholding charts to arrive at the amount of Federal and State income tax to be deducted from gross income.

(12) *Mortgage credit certificates.* (i) The Internal Revenue Code, as amended by the Tax Reform Act of 1984, allows States and other political subdivisions to trade in all or part of their authority to issue mortgage revenue bonds for authority to issue MCCs. Veterans who are recipients of MCCs may realize a significant reduction in their income tax liability by receiving a Federal tax credit for a percentage of their mortgage interest payment on debt incurred on or after January 1, 1985.

(ii) Lenders must provide a copy of the MCC to VA with the home loan application. The MCC will specify the rate of credit allowed and the amount of certified indebtedness; i.e., the indebtedness incurred by the veteran to acquire a principal residence or as a qualified home improvement or rehabilitation loan.

(iii) For credit underwriting purposes, the amount of tax credit allowed to a veteran under an MCC will be treated as a reduction in the monthly Federal income tax. For example, a veteran having a $600 monthly interest payment and an MCC providing a 30-percent tax credit would receive a $180 (30%×$600) tax credit each month. However, because the annual tax credit, which amounts to $2,160 (12×$180), exceeds $2,000 and is based on a 30-percent credit rate, the maximum tax credit the veteran can receive is limited to $2,000 per year (Pub. L. 98–369) or $167 per month ($2,000÷12). As a consequence of the tax credit, the interest on which a deduction can be taken will be reduced by the amount of the tax credit to $433 ($600 − $167). This reduction should also be reflected when calculating Federal income tax.

(iv) For underwriting purposes, the amount of the tax credit is limited to the amount of the veteran's maximum tax liability. If, in the example in paragraph (f)(12)(iii), the veteran's tax liability for the year were only $1,500, the monthly tax credit would be limited to $125 ($1,500÷12).

(g) *Credit.* The conclusion reached as to whether or not the borrower and spouse are satisfactory credit risks must also be based on a careful analysis of the available credit data. Regulation B (Equal Credit Opportunity Act) requires that lenders include, in evaluating creditworthiness on a veteran's request, the credit history, when available, of any account reported in the name of the veteran's spouse or former spouse which the veteran can demonstrate reflects accurately the veteran's willingness or ability to repay. In other that community property States, if the spouse will not be contractually obligated on the loan, Regulation B, promulgated by the Federal Reserve Board pursuant to the Equal Credit Opportunity Act prohibits any request for, or consideration of information about the spouse concerning income, employment, assets or liabilities. In community property States, information concerning a spouse may be requested and considered in the same manner as that for the applicant.

(1) *Adverse data.* If the analysis develops any derogatory credit information and, despite such facts, it is determined that the borrower and spouse are satisfactory credit risks, the basis for the decision must be explained. If a borrower and spouse have debts outstanding which have not been paid timely, or which they have refused to pay, the fact that the outstanding debts are paid after the acceptability of the credit is questioned or in anticipation of applying for new credit does not, of course, alter the fact that the record for paying debts has been unsatisfactory. With respect to unpaid debts, lenders may take into consideration a veterans's claim of bona fide or legal defenses. This is not applicable when the debt has been reduced to judgment.

(2) *Bankruptcy.* When the credit information shows that the borrower or spouse has been discharged in bankruptcy under the "straight" liquidation and discharge provisions of the bankruptcy law, this would not in itself disqualify the loan. However, in such cases it is necessary to develop complete information as to the facts and circumstances concerning the bankruptcy. Generally speaking, when the borrower or spouse, as the case may be, has been regularly employed (not self-employed) and has been discharged in bankruptcy within the last 2 or 3 years, it probably would not be possible to determine that the borrower or spouse is a satisfactory credit risk unless both of the following requirements are satisfied:

(i) The borrower or spouse has obtained credit subsequent to the bankruptcy and has met the credit payments in a satisfactory manner over a continued period, and

(ii) The bankruptcy was caused by circumstances beyond control of the borrower or spouse, e.g., unemployment, prolonged strikes, medical bills not covered by insurance. The circumstances alleged must be verified. If a borrower or spouse is self-employed, has been adjudicated bankrupt, and subsequently obtains a permanent position, a finding as to satisfactory credit risk may be made provided there is no derogatory credit information prior to self-employment, there is no evidence of derogatory credit information subsequent to the bankruptcy, and the failure of the business was not due to misconduct. A bankruptcy discharged more than 5 years ago may be disregarded. A bankruptcy discharged between 3 and 5 years ago may be given some consideration, depending upon the circumstances of the bankruptcy and submission of evidence that the veteran has been paying his or her obligations in a timely manner.

(3) *Petition under Chapter 13 of Bankruptcy Law.* A wage earner's petition under chapter 13 of the Bankruptcy Law filed by the borrower or spouse is indicative of an effort to pay their creditors. Some plans may provide for full payment of debts while others arrange for payment of scaled down debts. Regular payments are made to a court-appointed trustee over a 2- to 3-year period (or up to 5 years in some cases). When the borrowers have made all payments in a satisfactory manner, they may be considered as having reestablished satisfactory credit. When they apply for a home loan before completion of the payout period, favorable consideration may

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nevertheless be given if at least three-fourths of the payments have been made satisfactorily and the Trustee or Bankruptcy Judge (Referee) approves of the new credit.

(4) *Foreclosures.* (i) When the credit information shows that the veteran or spouse has had a foreclosure on a prior mortgage, e.g., a VA guaranteed, or HUD insured mortgage, this will not in itself disqualify the borrower from obtaining the loan. Lenders and field station personnel should refer to the preceding guidelines on bankruptcies for cases involving foreclosures. As with a borrower who has been adjudicated bankrupt, it is necessary to develop complete information as to the facts and circumstances of the foreclosure.

(ii) When VA pays a claim on a VA guaranteed loan as a result of a foreclosure, the original veteran may be required to repay any loss to the Government. In some instances VA may waive the veteran's debt, in part or totally, based on the facts and circumstances of the case. However, guaranty entitlement cannot be restored unless the Government's loss has been repaid in full, regardless of whether or not the debt has been waived, compromised, or discharged in bankruptcy. Therefore, a veteran who is seeking a new VA loan after having experienced a foreclosure on a prior VA loan will in most cases have only remaining entitlement to apply to the new loan. The lender should assure that the veteran has sufficient entitlement for its secondary marketing purposes.

(5) *Federal debts.* An applicant for a Federally-assisted loan will not be considered a satisfactory credit risk for such loan if the applicant is presently delinquent or in default on any debt to the Federal Government, e.g., a Small Business Administration loan, a U.S. Guaranteed Student loan, a debt to the Public Health Service, or where there is a judgment lien against the applicant's property for a debt owed to the Government. The applicant may not be approved for the loan until the delinquent account has been brought current or satisfactory arrangements have been made between the borrower and the Federal agency owed, or the judgment is paid or otherwise satisfied. Of course, the applicant must also be able to otherwise qualify for the loan from an income and remaining credit standpoint. Refinancing under VA's interest rate reduction refinancing provisions, however, is allowed even if the borrower is delinquent on the VA guaranteed mortgage being refinanced. Prior approval processing is required in such cases.

(6) *Absence of credit history.* The fact that recently discharged veterans may have had no opportunity to develop a credit history will not preclude a determination of satisfactory credit. Similarly, other loan applicants may not have established credit histories as a result of a preference for purchasing consumer items with cash rather than credit. There are also cases in which individuals may be genuinely wary of acquiring new obligations following bankruptcy, consumer credit counseling (debt proration), or other disruptive credit occurrence. The absence of the credit history in these cases will not generally be viewed as an adverse factor in credit underwriting. However, before a favorable decision is made for cases involving bankruptcies or other derogatory credit factors, efforts should be made to develop evidence of timely payment of non-installment debts such as rent and utilities. It is anticipated that this special consideration in the absence of a credit history following bankruptcy would be the rare case and generally confined to bankruptcies which occurred over 3 years ago.

(7) *Long-term v. Short-term-debts.* All known debts and obligations including any alimony and/or child support payments of the borrower and spouse must be documented. Significant liabilities to be deducted from the total income in determining ability to meet the mortgage payments are accounts that, generally, are of a relatively long-term; i.e., 6 months or over. Other accounts for terms of less than 6 months must, of course, be considered in determining ability to meet family expenses. Certainly any account with less than 6 months' duration which requires payments so large as to cause a severe impact on the family's resources for any period of time must be considered in the loan analysis. For example, monthly payments of $300 on an auto loan with a remaining balance of $1,500 would be included in those obligations to be deducted from the total income regardless of the fact that the account can be expected to pay out in 5 months. It is clear that the applicant will, in this case, continue to carry the burden of those $300 payments for the first, most critical, months of the home loan. Similarly, when the credit information shows open accounts of several years' duration which are clearly of a revolving or open-end type, the regular monthly payment for such accounts should be considered as a long-term obligation to be deducted from income.

(8) *Requirements for verification.* If the credit investigation reveals debts or obligations of a material nature which were not divulged by the applicant, lenders must be certain to obtain clarification as to the status of such debts from the borrower. A proper analysis is obviously not possible unless there is total correlation between the obligations claimed by the borrower and those revealed by a credit report or deposit verification. Conversely, significant debts and obligations reported by the borrower must be dated. If the credit report fails to provide necessary information on such accounts, lenders will be expected to obtain their own verifications of those debts directly from the creditors. Credit reports and verifications must be no more than 90 days old to be considered valid. For loans closed automatically, this requirement will be considered satisfied if the date of the credit report or verification is within 90 days of the date of the veteran's application to the lender. Of major significance are the applicant's rental history and outstanding, assumed, or recently retired mortgages, if any, particularly prior VA loans. Lenders should be sure ratings on such accounts are obtained; a written explanation is reburied when ratings are not available. A determination is necessary as to whether alimony and/or child support payments are required. Verification of the amount of such obligations should be obtained, although documentation concerning an applicant's divorce should not be obtained automatically unless it is necessary to verify the amount of any alimony or child support liability indicated by the applicant. If in the routine course of processing the loan application, however, direct evidence is received (e.g., from the credit report) that an obligation to pay alimony or child support exists (as opposed to mere evidence that the veteran was previously divorced), the discrepancy between the loan application and credit report can and should be fully resolved in the same manner as any other such discrepancy would be handled.

(9) *Job-related expenses.* Known job-related expenses should be documented. This will include costs for any dependent care, significant commuting costs, etc. When a family's circumstances are such that dependent care arrangements would probably be necessary, it is important to determine the cost of such services in order to arrive at an accurate total of deductions.

(10) *Credit reports.* Credit reports obtained by lenders on VA guaranteed loan applications must be in conformance with the Residential Mortgage Credit Report Standards formulated jointly by the Department of Veterans Affairs, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, Farmers Home Administration, credit repositories, repository affiliated consumer reporting agencies and independent consumer reporting agencies. The Residential Mortgage Credit Report is a detailed account of the credit, employment, and residence history as well as public records information concerning an individual. All credit reports obtained by the lender must be submitted to VA.

(h) *Borrower's personal and financial status.* The number and ages of dependents have an important bearing on whether income after deduction of fixed charges is sufficient to support the family. Type and duration of employment of both the borrower and spouse are important as an indication of stability of their employment. The amount of liquid assets owned by the borrower or spouse, or both, is an important factor in determining that they have sufficient funds to close the loan, as well as being significant in analyzing the overall qualifications for the loan. (It is imperative that adequate cash assets from the veteran's own resources are verified to allow the payment of any difference between the sales price of the property and the loan amount, in addition to that necessary to cover closing costs, if the sales price exceeds the reasonable value established by VA (38 CFR 36.4336(a)(3)). Verifications must be no more than 90 days old to be considered valid. For loans closed on the automatic basis, this requirement will be considered satisfied if the date of the deposit verification is within 90 days of the date of the veteran's application to the lender. Current monthly rental or other housing expense is an important consideration when compared to that to be undertaken in connection with the contemplated housing purchase.

(i) *Estimated monthly shelter expenses.* It is important that monthly expenses such as taxes, insurance, assessments and maintenance and utilities be estimated accurately based on property location and type of house; e.g., old or new, large or small, rather than using or applying a "rule of thumb" to all properties alike. Maintenance and utility amounts for various types of property should be realistically estimated. Local utility companies should be consulted for current rates. The age and type of construction of a house may well affect these expenses. In the case of condominiums or houses in a planned unit development (PUD), the monthly amount of the maintenance assessment payable to a homeowners association should be added. If the amount currently assessed is less than the maximum provided in the covenants or master deed, and it appears likely that the amount will be insufficient for operation of the condominium or PUD, the amount used will be the maximum the veteran could be charged. If it is expected that real estate taxes will be raised, or if any special assessments are expected, the increased or additional amounts should be used. In special flood hazard areas, include the premium for any required flood insurance.

(j) *Lender responsibility.* (1) Lenders are fully responsible for developing all credit information; i.e., for obtaining verifications of employment and deposit, credit reports, and for the accuracy of the information contained in the loan application.

(2) Verifications of employment and deposits, and requests for credit reports and/or credit information must be initiated and received by the lender.

(3) In cases where the real estate broker/agent or any other party requests any of this information, the report(s) must be returned directly to the lender. This fact must be disclosed by appropriately completing the required certification on the loan application or report and the parties must be identified as agents of the lender.

(4) Where the lender relies on other parties to secure any of the credit or employment information or otherwise accepts such information obtained by any other party, such parties shall be construed for purposes of the submission of the loan documents to VA to be authorized agents of the lender, regardless of the actual relationship between such parties and the lender, even if disclosure is not provided to VA under paragraph (j)(3) of this section. Any negligent or willful representation by such parties shall be imputed to the lender as if the lender had processed those documents and the lender shall remain responsible for the quality and accuracy of the information provided to VA.

(5) All credit reports secured by the lender or other parties as identified in paragraphs (j)(3) and (j)(4) of this section shall be provided to VA. If updated credit reports reflect materially different information than that in other reports such discrepancies must be explained by the lender and the ultimate decision as to the effects of the discrepancy upon the loan application fully addressed by the underwriter.

(k) *Lender certification.* Lenders originating loans are responsible for determining and certifying to VA on the appropriate application or closing form that the loan meets all statutory and regulatory requirements. Lenders will affirmatively certify that loans were made in full compliance with the law and loan guaranty regulations as prescribed in this section.

(1) *Definitions.* The definitions contained in part 42 of this chapter and the following definitions are applicable in this section.

(i) *Another appropriate amount.* In determining the appropriate amount of a lender's civil penalty in cases where the Secretary has not sustained a loss or where two times the amount of the Secretary's loss on the loan involved does not exceed $10,000, the Secretary shall consider:

(A) The materiality and importance of the false certification to the determination to issue the guaranty, or to approve the assumption;

(B) The frequency and past pattern of such false certifications by the lender; and,

(C) Any exculpatory or mitigating circumstances.

(ii) *Complaint* includes the assessment of liability served pursuant to this subsection.

(iii) *Defendant* means a lender named in the complaint.

(iv) *Lender* includes the holder approving loan assumptions pursuant to 38 U.S.C. 3714.

(2) *Procedures for certification.*

(i) As a condition to VA issuance of a loan guaranty on all loans closed on or after October 27, 1994, and as a prerequisite to an effective loan assumption on all loans assumed pursuant to 38 U.S.C. 3714 on or after October 27, 1994, the following certification shall accompany each loan closing or assumption package:

"The undersigned lender certifies that the (loan) (assumption) application, all verifications of employment, deposit, and other income and credit verification documents have been processed in compliance with 38 CFR part 36; that all credit reports obtained or generated in connection with the processing of this borrower's (loan) (assumption) application have been provided to VA; that, to the best of the undersigned lender's knowledge and belief the (loan) (assumption) meets the underwriting standards recited in chapter 37 of title 38 United States Code and 38 CFR part 36; and that all information provided in support of this (loan) (assumption) is true, complete and accurate to the best of the undersigned lender's knowledge and belief."

(ii) The certification shall be executed by an officer of the lender authorized to execute documents and act on behalf of the lender.

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(3) Any lender who knowingly and willfully makes a false certification required pursuant to § 36.4337(k)(2) shall be liable to the United States Government for a civil penalty equal to two times the amount of the Secretary's loss on the loan involved or to another appropriate amount, not to exceed $10,000, whichever is greater.

(l) *Assessment of liability.* (1) Upon an assessment confirmed by the Under Secretary for Benefits, in consultation with the Investigating Official, that a certification, as required in this section, is false, a report of findings of the Under Secretary for Benefits shall be submitted to the Reviewing Official setting forth:

(i) The evidence that supports the allegations of a false certification and of liability;

(ii) A description of the claims or statements upon which the allegations of liability are based;

(iii) The amount of the VA demand to be made; and,

(iv) Any exculpatory or mitigating circumstances that may relate to the certification.

(2) The Reviewing Official shall review all of the information provided and will either inform the Under Secretary for Benefits and the Investigating Official that there is not adequate evidence, that the lender is liable, or serve a complaint on the lender stating:

(i) The allegations of a false certification and of liability;

(ii) The amount being assessed by the Secretary and the basis for the amount assessed;

(iii) Instructions on how to satisfy the assessment and how to file an answer to request a hearing, including a specific statement of the lender's right to request a hearing by filing an answer and to be represented by counsel; and

(iv) That failure to file an answer within 30 days of the complaint will result in the imposition of the assessment without right to appeal the assessment to the Secretary.

(m) *Hearing procedures.* A lender hearing on an assessment established pursuant to this section shall be governed by the procedures recited at 38 CFR 42.8 through 42.47.

(n) *Additional remedies.* Any assessment under this section may be in addition to other remedies available to VA, such as debarment and suspension pursuant to 38 U.S.C. 3704 and part 44 of this title or loss of automatic processing authority pursuant to 38 U.S.C. 3702, or other actions by the Government under any other law including but not limited to title 18, U.S.C. and 31 U.S.C. 3732. (Authority (38 U.S.C. 3710).

(Information collection requirements contained in 36.4337 were approved by the Office of Management and Budget under control number 2900–0521)

[FR Doc. 94–23753 Filed 9–26–94; 8:45 am]
BILLING CODE 8320–01–P–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 128, NJ–13–1–6104a; FRL–5051–3]

Approval and Promulgation of Implementation Plans; New Jersey Ozone State Implementation Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the New Jersey State Implementation Plan for ozone related to development of reasonably available control technologies for all source categories of volatile organic compounds for which EPA has issued a control techniques guideline document. This revision has been submitted in response to requirements to control ozone established in the Clean Air Act. New Jersey's submittals contained additional revisions, which EPA will be acting on in separate **Federal Register** actions.

DATES: This final rule is effective on November 28, 1994 unless adverse or critical comments are received by October 27, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: All comments should be addressed to: William J. Muszynski, Deputy Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Library, 26 Federal Plaza, room 402, New York, New York 10278.

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Raymond Werner, Chief, State Implementation Plan Section, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, room 1034A, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act (Act) sets forth a number of requirements that states with areas designated as nonattainment for ozone had to satisfy by November 15, 1992.

New Jersey must address a number of requirements of the Act including the requirements:

- To adopt Reasonably Available Control Techniques (RACT) regulations for all source types for which the Environmental Protection Agency (EPA) has developed Control Techniques Guidelines (CTGs);
- To adopt RACT regulations for all other major sources of volatile organic compounds (VOCs);
- To adopt RACT regulations for all major sources of oxides of nitrogen (NOx);
- To develop and adopt an enhanced inspection and maintenance program;
- To develop and adopt measures to offset emission increases due to increases in vehicle miles travelled (VMT) or in the number of vehicle trips;
- To adopt an emission statement program;
- To revise its new source review program to meet the new requirements of the Act;
- To develop and adopt an Employer Trip Reduction program;
- To develop an emission inventory; and
- To develop and adopt a small business assistance program.

These measures are intended to reduce emissions of VOCs and NOx. VOCs and NOx are precursors of ozone in the lower atmosphere, which is a primary component of smog. A more detailed summary of these requirements, including the relevant statutory provisions can be found in the General Preamble to title I of the Act (57 FR 13498, April 16, 1992).

The specific requirements that New Jersey must meet vary by area, depending upon the severity of the ozone problem. Eighteen of the twenty one counties in New Jersey are designated as severe nonattainment for ozone. Of the remaining three counties, Atlantic and Cape May Counties are designated as moderate nonattainment for ozone and Warren County is designated as marginal nonattainment for ozone. In addition, section 184(a) of the Act recognizes that ozone is a regional problem by designating all of New Jersey as part of an ozone transport region. Since most of New Jersey is designated as severe nonattainment for ozone, and all of New Jersey is part of an ozone transport region, New Jersey has chosen to implement statewide all of the control requirements that are addressed in this action.

State Submittal

On November 15, 1992, New Jersey submitted to EPA a request to revise its SIP for ozone. This submittal had undergone public hearings on October 27, October 29 and November 5, 1992. While New Jersey did address additional requirements in its November 15, 1992 submittal, the only requirement that EPA is addressing in this action is the requirement to adopt RACT regulations for all source types for which EPA has developed CTGs. EPA will take action on the other submittals that New Jersey made in other **Federal Register** actions.

Section 110(k) of the Clean Air Act requires EPA to determine if a state's SIP submittal is complete within sixty days of submittal but not later than six months later than that date. If EPA does not notify a state of the completeness of a submittal within six months of receipt it is automatically deemed complete. The criteria that EPA uses to determine completeness are set forth in 40 CFR part 51, appendix V. On April 20, 1993, EPA sent New Jersey a letter informing it that its November 15, 1992 submittal was not complete because it did not contain a compilation of the public comments and the State's responses to those comments. On May 14, 1993, New Jersey submitted a compilation of public comments and the State's responses to these comments. These public comments did not result in any substantive changes to New Jersey's submittal. Most of the comments involved portions of the SIP which New Jersey is still developing and will be better addressed as part of those SIP submittals. On June 10, 1993, EPA wrote to New Jersey and informed them that EPA had reviewed its May 14, 1993 submittal and was finding New Jersey's submittal complete insofar as it contained adopted RACT regulations for all source types for which EPA has developed CTGs. The following summarizes EPA's evaluation of New Jersey's submittal.

The Act sets forth two separate provisions requiring states to promulgate VOC RACT rules in ozone nonattainment areas. RACT is defined as the lowest emission that a particular source is capable of meeting with the application of control technology that is reasonably available considering technological and economic feasibility.

The first provision, referred to as RACT fix-up, requires the correction of RACT rules for which EPA identified deficiencies before the Act was amended in 1990. Under the pre-amended Clean Air Act, ozone nonattainment areas were required to adopt RACT rules for sources of VOC emissions. EPA issued three sets of CTG documents, establishing a "presumptive norm" for RACT for various categories of VOC sources. The three sets of CTGs were (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. Under section 172(a)(1), ozone nonattainment areas were generally required to attain the ozone standard by December 31, 1982. Those areas that submitted an attainment demonstration projecting attainment by that date were required to adopt RACT for sources covered by the Group I and II CTGs. Areas, such as New Jersey, that sought an extension of the attainment date under section 172(a)(2) to as late as December 31, 1987 were required to adopt RACT for all CTG sources and for all major (i.e., 100 ton per year or more of VOC emissions) non-CTG sources.

In the mid and late 1980's, EPA issued SIP Calls, notifying numerous states that they contained nonattainment areas that had failed to attain the ozone standard. In the SIP Calls, EPA required states to correct deficiencies in their existing RACT rules and to adopt rules that were required but not yet adopted. Under the amended Act, section 182(a)(2)(A) requires states to correct these RACT rules by May 15, 1991. New Jersey submitted its RACT fix-up rules to EPA on March 13, 1992, which EPA approved on April 15, 1994 (59 FR 17933). Thus New Jersey has met the RACT fix up requirement and no further action needs to be taken with respect to this requirement in today's action.

The second provision, set forth in section 182(b)(2) applies to moderate (and above) ozone nonattainment areas. The goal of this provision is to ensure that areas, that were not required previously to adopt RACT for some or all of the CTGs or for major stationary sources not covered by a CTG, adopt rules and "catch-up" to those areas previously subject to more stringent RACT requirements. In addition, the RACT catch-up provision requires those areas for which the major source definition has been lowered to adopt RACT for those sources now covered by the more stringent major stationary source definition. Section 182(b)(2) sets forth three requirements for the purpose of achieving those goals. First 182(b)(2) requires states to adopt RACT for sources subject to pre-enactment CTGs. Next, this provision requires states to adopt RACT for all sources subject to any new CTGs issued after enactment of the Amendments. Finally, section 182(b)(2) requires RACT for all major stationary sources not subject to a CTG. Section 182(b)(2) requires these rules to be submitted to EPA by November 15, 1992. Moreover, under section 185, all areas in the Ozone Transport Region, which includes all of New Jersey are subject to this requirement.

New Jersey has met the RACT requirement as it applies to sources for which there was a pre-enactment CTG. New Jersey has adopted rules for all but three of the pre-enactment CTGs and incorporated them into Subchapter 16, "Control and Prohibition of Air Pollutants by Volatile Organic Compounds." The three CTG source categories for which New Jersey has not incorporated specific control requirements into Subchapter 16 are: rubber tire manufacturing; high density polyethylene, polypropylene and polystyrene resin manufacturing and air oxidation processes in synthetic organic chemical manufacturing industry facilities. In its 1982 SIP for the Attainment and Maintenance of the Ozone and Carbon Monoxide National Ambient Air Quality Standards, New Jersey declared that it had no rubber tire manufacturing facilities. EPA approved this declaration on November 9, 1983. New Jersey reaffirmed this declaration in its November 15, 1992 submittal. New Jersey submitted on March 31, 1987, and supplemented on May 4, 1991, an equivalency demonstration which showed that high density polyethylene, polypropylene and polystyrene resin processes would be regulated under general provisions contained in both Subchapter 8 and Subchapter 16. An equivalency demonstration must show that the state rules applicable to the source category result in emissions within five percent of the emissions that would result from the control requirements recommended by the CTG. EPA approved this demonstration on October 9, 1991. On November 21, 1989, New Jersey submitted an equivalency demonstration showing that air oxidation processes at synthetic organic chemical manufacturing industry facilities would be regulated under general provisions contained in both Subchapter 8 and Subchapter 16. This submittal was supplemented on May 10, 1991. EPA approved this demonstration on September 24, 1991. EPA is approving New Jersey's reaffirmation that there are no rubber tire manufacturing sources in New Jersey. As a result of EPA's approval of New

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Jersey's negative declaration and of New Jersey's equivalency demonstrations, EPA finds that New Jersey has fully approved rules for all pre-enactment CTGs.

As to the requirement for adopting RACT for sources subject to a post-enactment CTG, New Jersey has followed the process set forth by EPA in its CTG document issued as appendix B to the General Preamble. In appendix B, EPA provided that states could delay submission of non-CTG rules for those sources the state anticipates will be covered by one of EPA's 11 proposed post-enactment CTGs. Section 183(a) requires EPA to issue these 11 CTGs by November 15, 1993. Pursuant to the procedure established in appendix B, New Jersey is required to adopt regulations in accordance with a CTG issued by November 15, 1993, in accordance with the schedule set forth by EPA. In the alternative, for source categories for which a CTG is not issued by that date, the State will adopt RACT for those source categories by November 15, 1994. Appendix B also requires states to submit a list of sources that it anticipates will be covered by such a CTG. As part of its November 15, 1992 submittal, New Jersey submitted a list of sources that it anticipates will be covered by such a CTG. New Jersey also indicated that it intends to adopt RACT regulations for all of those sources by the required date.

On November 15, 1993, EPA published a CTG for reactor processes and distillation operations in the synthetic organic chemical manufacturing industry. On March 23, 1994, in 56 FR 13717, EPA published an addendum to that CTG. In that addendum EPA explained that states are required to adopt RACT rules for this CTG category by March 23, 1995 and that sources must be in compliance with these rules no later than November 15, 1996. EPA did not publish any additional CTGs by the November 15, 1993 deadline. Therefore, in order to meet the appendix B requirement, New Jersey must adopt RACT rules for reactor processes and distillation operations in the synthetic organic chemical manufacturing industry by March 23, 1995. In addition, New Jersey must adopt RACT rules for all major sources which would be subject to other post-enactment CTG categories by November 15, 1994.

Finally, New Jersey was required to submit by November 15, 1992, non-CTG RACT rules for all major sources not covered by a pre-enactment CTG and not anticipated to be covered by a post-enactment CTG. New Jersey failed to submit such regulations on the required date and on January 15, 1993, EPA notified the Governor of New Jersey that it was starting the 18-month sanction process required by section 179(a) of the Act. On November 15, 1993, New Jersey made submittals intending to meet this requirement. EPA determined that this submittal was complete on December 29, 1993. This determination stopped the sanction process. EPA will be taking action on this state submittal in a separate **Federal Register** action.

Summary

In this rulemaking, EPA is approving New Jersey's reaffirmation that there are no major sources of rubber tire manufacturing in New Jersey. In addition EPA finds that this reaffirmation along with New Jersey's previously approved regulations and demonstrations fulfills the section 182(b)(2) RACT catch-up requirements to adopt RACT requirements for all sources for which EPA issued a CTG before the 1990 amendments to the Act.

Nothing in this rule should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Thus, this direct final action will be effective November 28, 1994 unless, by October 27, 1994, adverse or critical comments are received.

If the EPA receives such comments, this rule will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this rule should do so at this time. If no adverse comments are received, the public is advised that this rule will be effective November 28, 1994. (See 47 FR 27073 and 59 FR 24059).

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moveover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v *USEPA*, 427 US 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This rule has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under section 307(b)(l) of the Act, petitions for judicial review of this rule must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from date of publication. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This rule may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 26, 1994.

William J. Muszynski, P.E.,

Deputy Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart FF—New Jersey

2. Section 52.1582 is amended by adding new paragraph (c) to read as follows:

§ 52.1582 Control strategy and regulations: Ozone (volatile organic substances) and carbon monoxide.

* * * * *

(c) The November 15, 1993 SIP revision submitted by the New Jersey Department of Environmental Protection and Energy demonstrates the fulfillment of section 182(b)(2)(B) of the Clean Air Act for states to adopt RACT regulations for all sources for which EPA has issued a CTG before enactment of the 1990 Clean Air Act.

[FR Doc. 94–23695 Filed 9–26–94; 8:45 am]

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40 CFR Part 282

[FRL–5074–6]

Underground Storage Tank Program: Approved State Program for Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the U.S. Environmental Protection Agency (EPA) to grant approval to states to operate their underground storage tank programs in lieu of the federal program. 40 CFR part 282 codifies EPA's decision to approve state programs and incorporates by reference those provisions of the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions. This rule codifies in part 282 the prior approval of Kansas' underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

DATES: This regulation is effective November 28, 1994, unless EPA publishes a prior **Federal Register** notice withdrawing this immediate final rule. All comments on the codification of Kansas' underground storage tank program must be received by the close of business October 27, 1994. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of November 28, 1994, in accordance with 5 U.S.C. 552(a).

ADDRESSES: Comments may be mailed to WSTM/RCRA/STPG, Underground Storage Tank Program, U.S. EPA Region 7, 726 Minnesota Ave., Kansas City, Kansas, 66101. Comments received by EPA may be inspected at the above address from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Lee Daniels, Underground Storage Tank Program, U.S. EPA Region 7, 726 Minnesota Ave., Kansas City, Kansas, 66101. Phone: (913) 551–7651.

SUPPLEMENTARY INFORMATION:

Background

Section 9004 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6991c, allows the U.S. Environmental Protection Agency to approve state underground storage tank programs to operate in the state in lieu of the federal underground storage tank program. EPA published a **Federal Register** document announcing its decision to grant approval to Kansas. (59 FR 29201 June 6, 1994). Approval was effective on July 6, 1994.

EPA codifies its approval of State programs in 40 CFR part 282 and incorporates by reference therein the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of the Kansas underground storage tank program. This codification reflects the state program in effect at the time EPA granted Kansas approval under section 9004(a), 42 U.S.C. 6991c(a) for its underground storage tank program. Notice and opportunity for comment were provided earlier on the Agency's decision to approve the Kansas program, and EPA is not now reopening that decision nor requesting comment on it.

This effort provides clear notice to the public of the scope of the approved program in each state. By codifying the approved Kansas program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in Kansas, the status of federally approved requirements of the Kansas program will be readily discernible. Only those provisions of the Kansas underground storage tank program for which approval has been granted by EPA will be incorporated by reference for enforcement purposes.

To codify EPA's approval of Kansas' underground storage tank program, EPA has added § 282.66 to title 40 of the CFR. Section 282.66 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.66 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the underground storage tank program under subtitle I of RCRA.

The Agency retains the authority under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state authorized analogs to these provisions. Therefore, the approved Kansas enforcement authorities will not be incorporated by reference. Section 282.66 lists those approved Kansas authorities that would fall into this category.

The public also needs to be aware that some provisions of the State's underground storage tank program are not part of the federally approved state program. These non-approved provisions are not part of the RCRA subtitle I program because they are "broader in scope" than subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, state provisions which are "broader in scope" than the federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.66 of the codification simply lists for reference and clarity the Kansas statutory and regulatory provisions which are "broader in scope" than the federal program and which are not, therefore, part of the approved program being codified today. "Broader in scope" provisions cannot be enforced by EPA; the State, however, will continue to enforce such provisions.

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Certification Under the Regulatory Flexibility Act

This rule codifies the decision already made (59 FR 29201 June 6, 1994) to approve the Kansas underground storage tank program and thus has no separate effect. Therefore, this rule does not require a regulatory flexibility analysis. Thus, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed or final rule.

This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control

Dated: August 23, 1994

Dennis Grams,

Regional Administrator

For the reasons set forth in the preamble, 40 CFR part 282 is amended as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

Subpart B—Approved State Programs

2. Subpart B is amended by adding section 282.66 to read as follows:

§ 282.66 Kansas State-Administered Program.

(a) The State of Kansas is approved to administer and enforce an underground storage tank program in lieu of the federal program under subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the Kansas Department of Health and Environment, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this Chapter. EPA approved the Kansas program on June 6, 1994 and it was effective on July 6, 1994.

(b) Kansas has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under other statutory and regulatory provisions.

(c) To retain program approval, Kansas must revise its approved program to adopt new changes to the federal subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Kansas obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) Kansas has final approval for the following elements submitted to EPA in Kansas' program application for final approval and approved by EPA on June 6, 1994. Copies may be obtained from the Underground Storage Tank Program, Kansas Department of Health and Environment, Forbes Field, Building 740, Topeka, Kansas, 66620–0001.

(1) *State statutes and regulations.* (i) The provisions cited in this paragraph are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(A) Kansas Statutory Requirements Applicable to the Underground Storage Tank Program, 1994

(B) Kansas Regulatory Requirements Applicable to the Underground Storage Tank Program, 1994

(ii) The following statutes and regulations are part of the approved state program, although not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include: Kansas Statutes Annotated, Chapter 65, Public Health, Article 34, Kansas Storage Tank Act, Sections 108, 109 and 113.

(iii) The following statutory and regulatory provisions are broader in scope than the federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes.

(A) Kansas Statutes Annotated, Chapter 65, Article 34, Sections 105(2) insofar as it applies to aboveground storage tanks, (8) insofar as it applies to tank tightness tester qualifications, (11) & (12) insofar as it applies to licensing tank installers and fees for these licenses, (13) insofar as it applies to aboveground storage tanks; 106 insofar as it applies to aboveground storage tanks; 110 insofar as it applies licensing of tank installers and contractors; 111 insofar as it applies suspension of licenses; 112 insofar as it applies to agreements between secretary and local governments; 114 & 114a insofar as it applies to the storage tank release trust fund; 116 & 117 insofar as it applies to the storage tank release fund; 118 insofar as it applies to corrective action for aboveground storage tanks; 119–125 insofar as it applies to the storage tank release fund; 126 & 127 insofar as it applies to the third party liability insurance plan; 128 insofar as it applies to the storage tank fee fund; 129 & 130 insofar as it applies to the aboveground petroleum storage tank release trust fund.

(B) Kansas Department of Health and Environment Permanent Administrative Regulations, Chapter 28, Article 44, Section 18 insofar as it applies to registration of non-regulated underground storage tanks; 20–22 insofar as they require underground storage tank installers, tank tightness testers and contractors to be licensed; 23(b)(5) insofar as it applies to heating oil tanks.

(2) *Statement of legal authority.* (i) "Attorney General's Statement for Final Approval", signed by the Attorney General of Kansas on August 23, 1993, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(ii) Letter from the Attorney General of Kansas to EPA, August 23, 1993, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures for Adequate Enforcement" submitted as part of the original application in September, 1993, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the original application in September 1993, though not incorporated by reference, are referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 7 and the Kansas Department of Health and Environment, signed by the EPA Regional Administrator on April 29, 1994, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to part 282 is amended by adding in alphabetical order "Kansas" and its listing.

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Kansas

(a) The statutory provisions include Kansas Statutes Annotated, 1992; Chapter 65, Public Health; Article 34, Kansas Storage Tank Act:

Section 100 Statement of legislative findings
Section 101 Citation of Act
Section 102 Definitions
Section 103 Exceptions to application of Act
Section 104 Notification
Section 105 Rules and regulations, except for 65–34, 105 (a)(2), (a)(8), (a)(11), (a)(12) and the following words in (a)(13), "and aboveground storage tanks in existence on July 1, 1992" and "and aboveground storage tanks placed in service prior to July 1, 1992"
Section 106 Permits to construct, install, modify, or operate storage tank, except for the following words in 65–34, 106(a), "and any aboveground storage tank registered with the department on July 1, 1992"
Section 107 Evidence of financial responsibility required; limitation of liability
Section 115 Liability for costs of corrective action
Section 118 Corrective action; duties of owners and operators; duties of Secretary; consent agreement; contents, except for the following words in 65–34, 118(b), "or from the aboveground fund if the release was from an aboveground petroleum storage tank." and "or from the aboveground fund, if the release was from an aboveground petroleum storage tank."

(b) The regulatory provisions include Kansas Administrative Regulations, 1992; Chapter 28, Department of Health and Environment; Article 44, Petroleum Products Storage Tanks:

Section 12 General provisions
Section 13 Program scope and interim prohibition
Section 14 Definitions
Section 15 Application for installation or modification of an underground storage tank
Section 16 Underground storage tank systems: design, construction, installation and notification
Section 17 Underground storage tank operating permit
Section 19 General operating requirements
Section 23 Release detection, except for 28–44–23(b)(5)
Section 24 Release reporting, investigation, and confirmation
Section 25 Release response and corrective action for underground storage tank systems containing petroleum or hazardous substances
Section 26 Out-of-service underground storage tank systems and closure
Section 27 Financial responsibility

[FR Doc. 94–23600 Filed 9–26–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–13; RM–8431]

Radio Broadcasting Services; Agana, Guam

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 275C to Agana, Guam, as that community's sixth local FM service, at the request of Inter-Island Communications, Inc., *See* 59 FR 10606, March 7, 1994. Channel 275C can be allotted to Agana, Guam, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 275C at Agana, Guam are North Latitude 13–28–27 and West Longitude 144–44–52. With this action, this proceeding is terminated.

DATES: Effective Nov. 7, 1994. The window period for filing applications for Channel 275C at Agana, Guam, will be open on November 8, 1994, and close on December 8, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 94–13, adopted September 14, 1994, and released September 21, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street NW., Room 246, or 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Guam, amended by adding Channel 275C at Agana.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–23784 Filed 9–26–94; 8:45 am]

BILLING CODE 6712–01–M

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Proposed Rules

Federal Register
Vol. 59, No. 186
Tuesday, September 27, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1413

RIN 0560–AD39

1995 Upland Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Act of 1949 (1949 Act), as amended, requires the Secretary of Agriculture to implement an Acreage Reduction Program (ARP) for the 1995 crop of upland cotton which will result in a ratio of carry-over to total disappearance of 29.5 percent. This proposed rule would amend the regulations to set forth the acreage reduction percentage for the 1995 crop of upland cotton.

DATES: Comments must be received on or before October 17, 1994 in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Director, Fibers and Rice Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), room 3754–S, P.O. Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Wayne E. Bjorlie, Fibers and Rice Analysis Division, ASCS, USDA, room 3754–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–7954.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Preliminary Regulatory Impact Analysis

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above-named individual.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of the proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1413 set forth in this proposed rule do not contain information collections that require clearance by OMB under the provisions of 44 U.S.C. 35.

Request for Public Comment

Comments are requested with respect to this proposed rule, and such comments shall be considered in developing the final rule.

Background

In accordance with section 103B of the 1949 Act, an ARP is required to be implemented for the 1995 crop of upland cotton if it is determined that the total supply of upland cotton, in the absence of an ARP, will be excessive, taking into account the need for an adequate carry-over to maintain reasonable and stable supplies and prices and to meet a national emergency.

Land diversion payments also may be made to producers of upland cotton, whether or not an ARP for upland cotton is in effect, if needed to assist in adjusting the total national acreage of upland cotton to desirable goals. If, at the time of final announcement of the ARP, the projected carry-over of upland cotton for the crop year is equal to or greater than 8 million bales, a paid land diversion shall be offered to upland cotton producers. A paid land diversion has not been considered because, given the existing supply/use situation, it is not needed.

If an ARP is announced, the reduction shall be achieved by applying a uniform percentage reduction (from 0 to 25 percent) to the upland cotton crop acreage base for the crop for each upland cotton-producing farm. In making such a determination, the number of acres placed into the program established under subtitle D of title XII of the Food Security Act of 1985, as amended, must be taken into consideration.

A number of acres on the farm shall be devoted to conservation uses, in accordance with regulations issued by the Secretary. The acres required to be devoted to conservation uses may be reduced, at the request of the producer, if the producer's total estimated deficiency payments which would be received under the feed grain, rice, wheat, upland and ELS cotton programs are estimated to be reduced in order to comply with the payment limitations set forth in section 1001 of the Food Security Act of 1985. The amount of the reduction in the acres required to be devoted to conservation uses is proportional to the estimated reduction in payments, in accordance with 7 CFR 1413.53.

Producers who knowingly produce upland cotton in excess of the permitted upland cotton acreage for the farm plus any upland cotton acreage planted in accordance with the flexibility provisions are ineligible for upland cotton loans and payments with respect to that farm.

If it is determined that an ARP for the 1995 crop of upland cotton is needed, a preliminary announcement of the ARP uniform percentage requirement (from 0 to 25 percent) must be made not later than November 1 of the calendar year preceding the year in which the crop is harvested. Not later than January 1 of the calendar year in which the crop is harvested, a final announcement of the ARP uniform percentage requirement must be made. Producers in early planting areas may elect to participate in the program on the terms of the ARP first announced for the crop, or as subsequently revised, if the Secretary determines that the producers may be unfairly disadvantaged by the revision. The ARP for the 1995 crop of upland cotton must be set at a level that will result in a ratio of carry-over to total disappearance of 29.5 percent, based on the most recent projection of carry-over and total disappearance at the time of announcement of the ARP. For the purposes of this provision, the term "total disappearance" means all upland cotton utilization, including total domestic, total export, and total residual disappearance.

Based on August 1994 supply/use estimates, ending stocks for the 1995 marketing year under a 5-percent ARP, a 10-percent ARP, and a 15-percent ARP are 5.35 million bales, 5.10 million bales, and 4.75 million bales, respectively. Such ARP levels would result in ratios of carry-over to total disappearance of 30.6, 29.7, and 28.1 percent, respectively. For the purposes of this proposed rule, these three ARP options will be considered. However, because of changes in the supply/use situation that may develop between now and November 1, the actual announced preliminary ARP may be different from the options discussed in this rule.

The estimated impacts of the ARP options are shown in the following table.

UPLAND COTTON SUPPLY/DEMAND ESTIMATES

Item	Option 1	Option 2	Option 3
	Percent		
ARP	5	10	15
Participation	90	88	85
	Thousand		
Planted	14,150	13,650	13,050

UPLAND COTTON SUPPLY/DEMAND ESTIMATES—Continued

Item	Option 1	Option 2	Option 3
	Thousand bales		
Production	18,400	17,850	17,200
Domestic Use	10,900	10,800	10,700
Exports	6,600	6,400	6,200
Ending Stocks	5,350	5,100	4,750
	Percent		
Stocks to Use	30.6	29.7	28.1
	Million dollars		
Deficiency Payments	833	725	612

Accordingly, comments are requested as to the 1995 acreage reduction percentage for upland cotton. The final determination of this percentage will be set forth at 7 CFR part 1413.

List of Subjects in 7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

Accordingly, it is proposed that 7 CFR part 1413 be amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended by:

A. Revising paragraphs (a)(3)(iii) and (a)(3)(iv),

B. Adding paragraph (a)(3)(v),

C. Adding paragraph (d)(5) and adding and reserving paragraphs (d)(5)(i) and (d)(5)(ii), and

D. Adding paragraph (d)(5)(iii) to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(3) * * *

(iii) 1993 upland cotton, 7.5 percent;

(iv) 1994 upland cotton, 11.0 percent; and

(v) 1995 upland cotton shall be within the range of 0 to 25 percent, as determined and announced by CCC.

* * * * *

(d) * * *

(5) For the 1995 crop:

(i)–(ii) [Reserved]

(iii) Shall not be made available to producers of the 1995 crop upland cotton.

* * * * *

Signed at Washington, DC, on September 20, 1994.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–23796 Filed 9–26–94; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Reexamination of the NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is expanding its reexamination of its enforcement program to include the issue of Notices of Enforcement Discretion for operating power reactors and requests public comment on issues associated with that matter. The NRC is soliciting comments from interested public interest groups, the regulated industry, states, and concerned citizens. This request is intended to assist the NRC in a review of its enforcement program which is being conducted to make recommendations for improvements in the regulatory process.

DATES: The comment period expires October 24, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to: David Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publication Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

Comments may also be provided electronically by accessing the NRC bulletin board system (BBS) that is a subsystem of FedWorld, which is

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operated by the National Technical Information Service. The NRC BBS can be accessed directly by a toll free number, (800) 303–9672, at modem speeds up to 9600 Baud with communication parameters set at 8 data bits, no parity, 1 stop bit, full duplex, and ANSI terminal emulation. Select the Subsystems/Databases" option from the "NRC Main Menu" and then the 'Enforcement Program" option The Help/Information Center" from the 'Enforcement Program Menu" provides selections on "Request for Comments on the Enforcement Policy" and "How to Leave an Official Comment " The NRC BBS can also be accessed from the FedWorld "Subsystems/Databases" menu, which would facilitate user access using the Internet. FedWorld's access via Internet is Telnet access. fedworld.gov (192.239.92.3); FTP site access: ftp.fedworld.gov (192.239.92.205), and World Wide Web (Home Page): www.fedworld.gov (this is the URL).

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504–2741. Questions on the NRC BBS may be directed to Tom Dunning at (301) 504–1189.

SUPPLEMENTARY INFORMATION: On August 23, 1994 (59 FR 43298) [1], the Review Team for the Reexamination of the NRC Enforcement Program issued a **Federal Register** notice announcing a reexamination of the NRC enforcement program and requesting comments on the enforcement program. The comment period will close for that notice on October 24, 1994. Comments for this notice should also be submitted by October 24, 1994.

The purpose of this review effort is to (i) Perform an assessment of the NRC's enforcement program to determine whether the defined purposes of the enforcement program are appropriate, (ii) determine whether the NRC's enforcement practices and procedures for issuing enforcement actions are consistent with those purposes, and (iii) provide recommendations on any changes the Review Team believes advisable. It is expected that the Review Team will complete its review and issue its report, including recommendations, by the end of January 1995.

In the August 23, 1994 notice comments were requested on a variety of matters associated with the enforcement program. Item G. of the notice, entitled "Exercise of Discretion," raised two issues associated with the exercise of enforcement discretion. However, a note was included under Item G. that provided that the enforcement review was not addressing section VII.C. of the Enforcement Policy entitled, "Exercise of Discretion for an Operating Reactor" that addresses "Notices of Enforcement Discretion" (NOEDs). 59 FR 43303 The Review Team has since reconsidered its position and concluded that this issue should be considered as part of the reexamination Comments are now requested on this issue as described below

On September 12, 1994, a report entitled, "Notice of Enforcement Discretion Review Team Report," was issued which addressed a number of issues associated with the issuances of NOEDs. The recommendations in this report have not yet been adopted by the NRC. The report and its recommendations are undergoing staff review. A copy of that report is available for inspection and copying in the Commission's Public Document Room. In addition it is available on the NRC bulletin board system (BBS) that is a subsystem of FedWorld. Access to the NRC BBS is described in the **ADDRESSES** section above.

In providing comments on the issue addressed below, please key comments to the numbering system used to identify the specific issues by providing the issue number before the particular comment (e.g., Response to K.1). General or anecdotal comments (such as a general comment to the effect that some enforcement conferences have not been effective or that some enforcement cases have been inconsistent with the Enforcement Policy) will not be particularly useful. Rather comments should be as specific as possible and should reference specific cases, as appropriate, so that the Review Team can understand and evaluate the comment. Responses which call for a "yes" or "no" answer should be accompanied with an explanation as to why the commenter agrees or disagrees with the issue. When the term licensee is used in the issues listed below, it refers, as applicable, to licensees, vendors, and other persons subject to NRC enforcement actions.

Comments may be provided in hard copy or through the NRC electronic bulletin board (BBS). Instructions for accessing the NRC BBS are provided in the **ADDRESSES** section above.

Comments are requested on the following specific issues:

K. Exercise of Enforcement Discretion for Operating Reactors

The NRC requires that a licensee operate its facility in compliance with the NRC's regulations and the specific facility's license. When a licensee fails to comply with the conditions of its license or the NRC's regulations, the staff normally takes enforcement action against that licensee in accordance with the NRC Enforcement Policy Section VII.C of the Enforcement Policy, 10 CFR part 2, appendix C, recognizes that on occasion circumstances may arise where a power reactor licensee's compliance with a technical specification limiting condition for operation or with other license conditions would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate with the specific plant conditions, or unnecessary delays in start up without any corresponding health and safety benefits. In these circumstances it may be appropriate not to enforce the applicable requirements provided that the NRC is clearly satisfied that the action is consistent with protecting the public health and safety. Before issuing a NOED to a licensee, the licensee must justify the safety basis for the request and provide whatever information NRC deems necessary in making a decision as to whether to exercise this discretion. NOEDs are infrequently used and when issued are placed in the NRC Public Document Room. The use of enforcement discretion does not change the fact that a violation of a license requirement occurred. Under the Enforcement Policy, the NRC staff is to take enforcement action when it determines that there is an underlying violation that caused the need to seek the issuance of the NOED.

1. Under what circumstances should this type of enforcement discretion be exercised and why?

In addition to the above specific issues and those raised in the August 23, 1994 notice, commenters are invited to provide any other views on the NRC enforcement program which may assist the NRC in improving the effectiveness of NRC enforcement efforts.

Dated at Rockville, Maryland, this 21st day of September 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 94–23821 Filed 9–26–94; 8:45 am]

BILLING CODE 7590–01–M

[1] This notice was corrected on September 6, 1994 (59 FR 46004), by deleting the reference to a "Proposed rule" appearing in the action line of the August 23, 1994 notice.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–137–AD]

Airworthiness Directives; Raytheon Corporate Jets Model Hawker 800 and 1000 and Model DH/BH/HS/BAe 125 Series Airplanes

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice of proposed rulemaking (NPRM)

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon Corporate Jets Model Hawker 800 and 1000 and Model DH/BH/HS/BAe 125 series airplanes. This proposal would require inspections to detect cracking of the sidestay jack pivots of the main landing gear, and replacement of the sidestay jack pivot assemblies with new assemblies. This proposal is prompted by a report of fracturing of a jack pivot, which resulted in the inability of the main landing gear to deploy. The actions specified by the proposed AD are intended to prevent a wheels-up landing.

DATES: Comments must be received by November 1, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–137–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Manager Product Support, Customer Support Department, Raytheon Corporate Jets, Inc., Adams Field, P. O. Box 3356, Little Rock, Arkansas 72203. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–137–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–137–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Raytheon Corporate Jets Model Hawker 800 and 1000 and Model DH/BH/HS/BAe 125 series airplanes. The CAA advises that it has received a report of fracturing of a jack pivot, which resulted in the inability of the main landing gear (MLG) to deploy. The cracks are apparently caused by metal fatigue. This condition, if not corrected, could result in a wheels-up landing.

Raytheon Corporate Jets has issued Service Bulletin SB 32–233, dated June 24, 1994, which describes procedures for repetitive inspections to detect cracking of the sidestay jack pivots of the MLG, and replacement of the sidestay jack pivot assemblies with new assemblies. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require inspections to detect cracking of the sidestay jack pivots of the MLG, and replacement of the sidestay jack pivot assemblies with new assemblies. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The referenced service bulletin recommends completion of the initial inspection within 28 days after the issuance date of the service bulletin. However, the manufacturer has notified the FAA that there is a delay in the availability of replacement parts for the sidestay jack pivot assemblies. The FAA has determined that a compliance time for the initial inspection within 28 days after the effective date of the final rule for this action will allow adequate time for the manufacturer to provide the replacement parts and for operators to comply with the requirements of this AD.

The FAA estimates that 550 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The FAA has been advised that the manufacturer plans to provide the required parts at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $181,500, or $330 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Raytheon Corporate Jets, Inc. (Formerly De Havilland; Hawker Siddley; British Aerospace, PLC): Docket 94–NM–137–AD.

Applicability: Model Hawker 800 and 1000 series airplanes and Model DH/BH/HS/BAe 125–1A through–1000A series airplanes; equipped with main landing gear (MLG) sidestay assemblies on which Post-Mod 252091 steel jack pivots have been installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of the MLG to deploy and a consequent wheels-up landing, accomplish the following:

(a) Perform a detailed visual inspection, using a 10X magnifier, to detect cracking of the sidestay assembly jack pivot of the left and right MLG, in accordance with Raytheon Corporate Jets Service Bulletin SB 32–233, dated June 24, 1994, at the latest of the times specified in paragraphs (a)(1), (a)(2), or (a)(3) of this AD.

(1) Within 28 days after the effective date of this AD; or

(2) Prior to the accumulation of 3,000 total landings on the sidestay assembly since new; or

(3) Prior to the accumulation of 1,000 total landings since overhaul of the sidestay assembly.

(b) If no cracks are found and the sidestay assembly has been overhauled prior to the accomplishment of the inspection specified in paragraph (a) of this AD: Accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD in accordance with Raytheon Corporate Jets Service Bulletin SB 32–233, dated June 24, 1994.

(1) Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 1,000 landings.

(2) Prior to the accumulation of 4,000 total landings on the jack pivot assembly since the sidestay assembly was last overhauled, or within 300 landings after the effective date of this AD, whichever occurs later: Replace the jack pivot assembly with a new assembly. Thereafter, prior to the accumulation of 4,000 landings, remove the jack pivot assembly and replace it with a new assembly in accordance with the service bulletin.

(c) If no cracks are found and the sidestay assembly has not been overhauled prior to accomplishment of the inspection required by paragraph (a) of this AD: Prior to the accumulation of 4,000 total landings on the jack pivot assembly, or within 300 landings after the effective date of this AD, whichever occurs later, replace the jack pivot assembly with a new assembly in accordance with Raytheon Corporate Jets Service Bulletin SB 32–233, dated June 24, 1994. Thereafter, prior to the accumulation of 4,000 landings on the jack pivot assembly, replace it with a new assembly in accordance with the service bulletin.

(d) If any crack is found that does not exceed the limits specified in Raytheon Corporate Jets Service Bulletin SB 32–233 dated June 24, 1994, accomplish the requirements of paragraphs (d)(1), (d)(2), or (d)(3) of this AD, as applicable, in accordance with the service bulletin.

(1) For sidestay assemblies that have accumulated 4,000 or more total landings since new that have been overhauled prior to accomplishment of the inspection specified in paragraph (a) of this AD: Accomplish paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(i) Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 100 landings.

(ii) Prior to the accumulation of 4,000 total landings on the jack pivot assembly since the sidestay assembly was last overhauled, or within 300 landings after the effective date of this AD, whichever occurs later: Replace the jack pivot assembly with a new assembly. Thereafter, prior to the accumulation of 4,000 landings, remove the jack pivot assembly and replace it with a new assembly in accordance with the service bulletin.

(c) If no cracks are found and the sidestay assembly has not been overhauled prior to accomplishment of the inspection required by paragraph (a) of this AD: Prior to the accumulation of 4,000 total landings on the jack pivot assembly, or within 300 landings after the effective date of this AD, whichever occurs later, replace the jack pivot assembly with a new assembly in accordance with the service bulletin. Thereafter, prior to the accumulation of 4,000 landings on the jack pivot assembly, replace it with a new assembly in accordance with the service bulletin.

(f) An alternative method of compliance t or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 21, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–23814 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–89–AD]

Airworthiness Directives; de Havilland Model DHC–8–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8 series airplanes. This proposal would require inspection to detect corrosion on areas of the airplane structure where black film thermal insulation is used, and repair, if necessary; and replacement of black insulation blankets with certain aluminized (silver) insulation. This proposal is prompted by reports of corrosion forming on areas of the airplane structure where the black film covers the thermal insulation blankets. The actions specified by the proposed AD are intended to prevent degradation of the structural capability of the airplane fuselage and sudden loss of cabin pressure due to corrosion of the airplane fuselage structure.

DATES: Comments must be received by November 21, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6220; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–89–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8–100 and –300 series airplanes. Transport Canada Aviation advises that there have been reports of corrosion forming on areas of the airplane structure where black Orcon film covers the thermal insulation blankets. Investigation revealed that the black Orcon film used to insulate the forward fuselage, passenger compartment, flight compartment, and ventilation ducts contains carbon. The cause of this corrosion has been attributed to the formation of condensation on any aluminum airplane structure when it is in contact with the carbon in the black Orcon film. Such corrosion, if not detected and corrected in a timely manner, could result in degradation of the strength of the airplane fuselage structure and could lead to sudden loss of cabin pressure.

Bombardier, Inc. (formerly de Havilland) has issued Service Bulletins S.B. 8–25–89, Revision D; S.B. 8–25–90, Revision B; S.B. 8–25–91, Revision C; S.B. 8–25–92, Revision D; and S. B. 8–25–93, Revision B; all dated January 19, 1994. These service bulletins describe procedures for one-time visual inspection to detect corrosion on areas of the airplane structure where black film thermal insulation is used, and repaired, if necessary. The service bulletins also describe procedures for replacement of black Orcon film insulation blankets with AN4C aluminized (silver) film thermal insulation blankets in various areas of the airplane structure. Transport Canada Aviation classified these service bulletins as mandatory and issued Canadian Airworthiness Directive CF–94–08, dated April 26, 1994, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time visual inspection to detect corrosion on areas of the airplane structure where black film thermal insulation is used, and repaired, if necessary. This proposed AD also would require replacement of black Orcon film thermal insulation blankets with AN4C aluminized (silver) film insulation blankets. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 125 airplanes of U.S. registry would be affected by this

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proposed AD, that it would require approximately 650 work hours to accomplish the required actions, at an average labor charge of $55 per work hour. The FAA has been advised that the manufacturer plans to provide required parts and to accomplish the required modification at no expense to operators. Therefore, there is no cost impact on U.S. operators that is associated with this proposed rule with regard to labor charges or parts costs.

The FAA does recognize, however, that while operators may incur administrative costs associated with compliance to this proposed rule, the one-year compliance time specified in paragraph (a) of this proposed AD should allow ample time for the proposed requirements to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

De Havilland, Inc.: Docket 94–NM–89–AD.

Applicability: Model DHC–8–100 and –300 series airplanes, variants and serial numbers specified in paragraph (a) of this AD, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of the structural capability of the fuselage and sudden loss of cabin pressure, accomplish the following:

(a) For airplanes listed in the following table: Within one year after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD in accordance with the Bombardier Service Bulletins, all dated January 19, 1994, as listed in the table below, as applicable.

DHC–8 models	Airplane serial numbers	Service bulletin number	Revision level
101, 102, 103, and 106	003 through 353 inclusive	S.B. 8–25–89	D
101, 102, 103, and 106	003 through 380 inclusive	S.B. 8–25–90	B
101, 102, 103, 106, 301, 311, and 314	003 through 337 inclusive, 339, 341 through 347 inclusive, 349, 350, 351, 353, and 356.	S.B. 8–25–91	C
301, 311, and 314	100 through 336 inclusive, 342, 350, and 356	S.B. 8–25–92	D
301, 311, and 314	100 through 381 inclusive	S.B. 8–25–93	B

(1) Perform a visual inspection to detect corrosion of the passenger compartment, flight compartment, forward fuselage, and air conditioning system. If any corrosion is found; prior to further flight, repair damage in accordance with the applicable service bulletin.

(2) Replace the black Orcon film insulation blankets with AN4C aluminized (silver) film thermal insulation blankets in accordance with the applicable service bulletin.

(b) As of one year after the effective date of this AD, no person shall install black Orcon film insulation, part number AN46B/AN36B, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 21, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–23813 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 94–AAL–4]

Proposed Realignment of G–8, G–10, G–12, R–99, B–27, B–37, V–308, and V–328; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to extend Colored Federal Airways G–10 and R–99 and realign Colored Federal Airway B–37 as a result of the decommissioning of the Cape Spencer Marine Nondirectional Beacon (NDB); revise the descriptions of G–8, G–12, and B–27 Colored Federal airways; and, as a result of the decommissioning of the Quinhagak, AK, very high frequency omnidirectional range/distance measuring equipment (VOR/DME), realign Federal Airway V–328 and remove a segment of V–308. These actions would enhance navigation and reduce both pilot and air traffic controller workloads.

DATES: Comments must be received on or before November 11, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL–500, Docket No. 94–AAL–4, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AK 99533.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AAL–4." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to extend Colored Federal Airways G–10, R–99, and realign Colored Federal Airway B–37 as a result of the decommissioning of the Cape Spencer Marine NDB. Colored Federal Airways G–10 and R–99 would be extended and would include an extension of G–10 from Woody Island to Kachemak. King Salmon, AK, NDB was inadvertently used in the descriptions of Colored Federal Airways G–8 and G–12, and as a result of this proposal, Saldo, AK, NDB would replace King Salmon, AK, NDB. King Salmon, AK, Locator Outer Marker in the description of B–27 would be replaced with Saldo, AK, NDB. Finally, as a result of the Quinhagak, AK, VOR/DME being decommissioned, this action would remove that segment of V–308 between Quinhagak, AK, and Bethel, AK, and would realign V–328 as a direct route between Dillingham, AK, and Kipnuk, AK. Colored Federal airways are published in paragraphs 6009(a), 6009(b), and 6009(d) respectively, and Alaskan VOR Federal airways are published in paragraph 6010(b), of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Colored Federal airways and the Alaskan VOR Federal airways listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6009(a) Green Federal Airways

* * * * *

G–8 [Revised]

From Shemya, AK, NDB, 20 AGL Adak, AK, NDB; 20 AGL Dutch Harbor, AK, NDB, 20 AGL INT Dutch Harbor NDB 041° and Elfee, AK, NDB 253° bearings; 20 AGL Elfee NDB; 20 AGL Saldo, AK, NDB; INT Saldo NDB 054° and Kachemak, AK, NDB 269° bearings, to Kachemak NDB. From Campbell Lake, AK, NDB, via INT Campbell Lake NDB 032° and Skwentna, AK, NDB 111° bearings; Glenallen, AK, NDB; INT Glenallen NDB 052° and Nabesna, AK, NDB 252° bearings; Nabesna NDB.

* * * * *

G–10 [Revised]

From Cape Newnham, AK, NDB; St. Paul Island, AK, NDB; Elfee, AK, NDB, 20 AGL INT Elfee NDB 041° and Port Heiden, AK, NDB 248° bearings; 20 AGL Port Heiden NDB; 67 miles 12 AGL, 77 miles 85 MSL, 67 miles 12 AGL, Woody Island, AK, NDB; to Kachemak, NDB.

* * * * *

G–12 [Revised]

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From Saldo, AK, NDB; Port Heiden, AK, NDB; Borland, AK, NDB; to Elfee, AK, NDB.

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Paragraph 6009(b) Red Federal Airways

* * * * *

R–99 [Revised]

From St. Paul Island, AK, NDB; Dutch Harbor, AK, NDB; Saldo, AK, NDB; Iliamna AK, NDB; INT Iliamna NDB 124° and Kachemak, AK, NDB 269° bearings; to Kachemak.

* * * * *

Paragraph 6009(d) Blue Federal Airways

* * * * *

B–27 [Revised]

From Woody Island, AK, NDB, 50 miles 12 AGL, 50 miles 95 MSL, 53 miles 12 AGL, Saldo, AK, NDB; 51 miles 12 AGL, 84 miles 70 MSL, 63 miles 12 AGL, Oscarville, AK, NDB; St. Marys, AK, NDB; Fort Davis, AK, NDB; 35 miles 12 AGL, 71 miles 55 MSL, 54 miles 12 AGL, Hotham, AK, NDB.

* * * * *

B–37 [Revised]

From Summer Strait, AK, NDB; Elephant, AK, NDB; INT Elephant NDB 272°T(243°M) and Ocean Cape, AK, NDB 139°T(110°M) bearings.

* * * * *

Paragraph 6010(b) Alaskan VOR Federal Airways

* * * * *

V–308 [Revised]

From Bethel, AK; INT Bethel 066°T(047°M) and Sparrevohn, AK, 279°T(257°M) radials; to Sparrevohn.

* * * * *

V–328 [Revised]

From Dillingham, AK; to Kipnuk, AK.

* * * * *

Issued in Washington, DC, on September 16, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–23879 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Regulatory Program

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Oklahoma regulatory program (hereinafter, the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to revegetation success standards and statistically valid sampling techniques, and guidelines for phase I, II, and III bond release. The amendment is intended to revise the Oklahoma program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., c.d.t., October 12, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, Oklahoma 74135.

Oklahoma Department of Mines, 4040 N. Lincoln Boulevard, Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program can be found in the January 19, 1981, **Federal Register** (46 FR 4902). Subsequent actions concerning Oklahoma's program and program amendments can be found at 30 CFR 936.15, 936.16, and 936.30.

II. Proposed Amendment

By letter dated February 17, 1994, Oklahoma submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. OK–959.01). Oklahoma submitted the proposed amendment in response to the required program amendments at 30 CFR 936.16 (a) through (i). Oklahoma proposed to amend the Bond Release Guidelines that are referenced in subsections 816.116(a) and 817.116(a) of the Oklahoma rules.

OSM announced receipt of the proposed amendment in the March 8, 1994, **Federal Register** (59 FR 10770), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. OK–959.06). Because no one requested a public hearing or meeting, none was held. The public comment period ended on April 7, 1994.

During its review of the amendment, OSM identified concerns with Oklahoma's proposed revisions to the Bond Release Guidelines. OSM notified Oklahoma of these concerns by letter dated May 20, 1994 (administrative record No. OK—959.10). Oklahoma responded in a letter dated July 21, 1994, by submitting a revised amendment and additional explanatory information (administrative record No. OK–959.11).

OSM announced receipt of the July 21, 1994, revisions to the proposed amendment in the August 9, 1994, **Federal Register** (59 FR 40505) and invited public comment on its adequacy (administrative record No. OK–959.16). The public comment period closed on August 24, 1994.

By letter dated September 2, 1994 (administrative record No. OK–959.19), Oklahoma, at its own initiative in response to the U.S. Soil Conservation Service, Oklahoma State Office (SCS), August 29, 1994, comment letter (administrative record No. OK–959.18), submitted a revised amendment. Oklahoma proposes revisions to the Bond Release Guidelines in Appendices A, F, and O, concerning, respectively, the definition of "productivity," the method of sampling for production on pastureland and grazingland, and the methods for calculating a technical standard for productivity on lands reclaimed for use as pastureland and grazingland.

Specifically, Oklahoma proposes to revise the definition of "productivity" to refer to the amount of total, rather than harvestable, biomass. Also, with respect to the method of production sampling, Oklahoma proposes to (1) recommend that pastureland or grazingland with a predominance of warm season species be clipped during September or October and cool season species be clipped during May or June and (2) require that vegetation be clipped to ground level rather than within approximately two inches of ground level. Lastly, with respect to the calculation of technical standards, Oklahoma proposes (1) to require for pastureland that SCS soil productivity figures expressed in animal unit months (AUM's) be converted to pounds per acre by multiplying the AUM's by 1560 and (2) to clarify for grazingland that clipping for productivity is a direct comparison to the SCS soil productivity figures expressed in pounds per acre.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Oklahoma program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon conterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

V. List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 15, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 94–23828 Filed 9–26–94; 8:45 am]

BILLING CODE 4310–05–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Oklahoma regulatory program (hereinafter, the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of recodification of Oklahoma's coal mining rules and revisions to the rules pertaining to reclamation plan requirements for ponds, impoundments, banks, dams, and embankments; road systems; subsidence control plans; transportation facilities; requirements for releasing performance bonds; hydrologic balance requirements for siltation structures; revegetation standards for success; subsidence control; soil removal requirements for prime farmland; soil stockpiling requirements for prime farmland; and soil replacement requirements for prime farmland. The amendment is intended to revise the Oklahoma program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., c.d.t. October 27, 1994. If requested, a public hearing on the proposed amendment will be held on October 24, 1994. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.d.t. on October 12, 1994. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135

Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430.

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SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program can be found in the January 19, 1981, **Federal Register** (46 FR 4902). Subsequent actions concerning Oklahoma's program and program amendments can be found at 30 CFR 936.15, 936.16, and 936.30.

II. Proposed Amendment

By letter dated September 14, 1994, Oklahoma submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. OK–963). Oklahoma submitted the proposed amendment with the intention of revising the Oklahoma program to be consistent with the corresponding Federal regulations.

Oklahoma proposes to recodify its rules according to the standards set forth by the Oklahoma State Legislature and the Office of Administrative Code. The proposed recodification revises the Oklahoma rules from series 816 for surface coal mining operations and series 817 for underground coal mining operations to series 460 with underlying chapters and subchapters specifying the various surface and underground coal mining provisions.

In addition, Oklahoma proposes to revise the Oklahoma Coal Rules and Regulations at §§ 780.25 and 784.16, reclamation plan for ponds, impoundments, banks, dams, and embankments; § 780.37, road systems; § 784.20, subsidence control plans; § 784.24, transportation facilities; section 800.40, requirement to release performance bonds; §§ 816.46 and 817.46, hydrologic balance and siltation structures; § 816.116, revegetation success standards; § 816.121, subsidence control; § 823.12, prime farmland soil removal; § 823.13, prime farmland soil stockpiling; and § 823.14, prime farmland soil replacement.

More specifically, Oklahoma proposes the following revisions. It proposes to revise §§ 780.25 and 784.16, regarding the reclamation plan requirements for ponds, impoundments, banks, dams, and embankments, by deleting language allowing professional geologists and qualified, registered professional land surveyors to certify plans and detailed designs. In addition, Oklahoma proposes in both provisions to replace the phrase "regulatory authority' with the term "Department."

Oklahoma proposes to revise § 780.37, regarding road systems, by deleting language allowing qualified, registered professional land surveyors to certify plans and drawings for primary roads.

Oklahoma proposes to revise § 784.20, regarding subsidence control plans, by removing the phrase "to the extent required under State law" from the requirement that a permit application include a subsidence control plan containing a description of the measures to be taken to mitigate or remedy any subsidence-related material to, or diminution in value or reasonable foreseeable use of structures or facilities.

Oklahoma proposes to revise § 784.24, regarding transportation facilities, by deleting language allowing qualified, registered professional land surveyors to certify plans and drawings for primary roads.

Oklahoma proposes to revise § 800.40, regarding the requirement to release performance bonds, by providing that the Department may arrange with the permittee to allow access to the permit area upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

Oklahoma proposes to revise §§ 816.46 and 817.46, regarding the hydrologic balance requirements for siltation structures, by (1) striking a cross-reference to provisions that grant authority to qualified, registered professional land surveyors to certify plans and detailed designs for ponds, impoundments, banks, dams, and embankments; and (2) adding language to require that the qualified, registered professional engineer or land surveyor certifying the construction of siltation structures shall have experience in pond construction.

Oklahoma proposes to revise § 816.116, regarding revegetation success standards, to require that prior to approving selective husbandry practices, the Department must obtain the approval of the Director of the Office of Surface Mining that such practices are normal husbandry practices.

Oklahoma proposes to revise § 816.121, regarding subsidence control, by deleting the phrase "to the extent required under applicable provisions of State law" from the requirement to correct material damage resulting from subsidence.

Oklahoma proposes to revise § 823.12, regarding soil stockpiling requirements for prime farmland, to include the E horizon in the description of topsoil for prime farmland. In addition, Oklahoma proposes to delete the phrase "an equal or" from the requirement that a final soil have a greater productive capacity than that which existed prior to mining.

Lastly, Oklahoma proposes to revise sections 823.13 and 823.14, regarding soil stockpiling and soil replacement requirements for prime farmland, to include the E horizon in the description of topsoil for prime farmland.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t., on October 12, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

V. List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 20, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 94–23825 Filed 9–20–94; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 936

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Oklahoma regulatory program (hereinafter, the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to rules pertaining to the Small Operator Assistance Program (SOAP). The amendment is intended to revise the Oklahoma program to be consistent with SMCRA and the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., c.d.t., October 27, 1994. If requested, a public hearing on the proposed amendment will be held on October 24, 1994. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.s.t., October 12, 1994. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135

Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program can be found in the January 19, 1981, **Federal Register** (46 FR 4902). Subsequent actions concerning Oklahoma's program and program amendments can be found at 30 CFR 936.15, 936.16, and 936.30.

II. Proposed Amendment

By letter dated September 14, 1994, Oklahoma submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. OK–964). Oklahoma submitted the proposed amendment at its own initiative. The SOAP provisions of the Oklahoma Coal Rules and Regulations that Oklahoma proposes to revise are: Section 795.6, eligibility for assistance; Part 795.9, program services and data requirements; and § 795.12, applicant liability.

Specifically, Oklahoma proposes to revise its rules pertaining to an applicant's eligibility for SOAP assistance at § 795.6(a)(2) by requiring the applicant to establish that the probably total actual and attributed production from all locations during any consecutive 12-month period either during the term of the permit or during the first 5 years after issuance of the permit, whichever period is shorter, will not exceed 300,000 tons and at § 795.6(a)(2)(iv) to require that attributed production will include all coal produced by operations owned by

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members of the applicant's family and the applicant's relatives, unless it is established that there is no direct or indirect business relationship between or among them.

Oklahoma proposes to revise its rules pertaining to the kinds of data collected and the results furnished to the SOAP program administrator at (1) Section 795.9(b)(2) to include the geologic drilling and the statement of the results of test borings or core samplings for the proposed permit area; (2) Section 795.9(b)(3) to include the collection of archeological information required by section 779.12(b) and any other archeological and historical information required by the regulatory authority, and the preparation of plans necessitated thereby; (3) Section 795.9(b)(4) to include the collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the regulatory authority under § 780.16 and any other applicable regulations; (4) Section 795.9(3)(5) to include pre-blast surveys if requested under § 816.62(b); and (5) Section 795.9(3)(6) to include the development of cross-section maps and plans required under § 779.25.

Oklahoma proposes to revise its rules pertaining to the applicant's liability at §§ 795.12(a) (2) and (3) to provide that the applicant shall reimburse the Department of Mines (Department) for the cost of SOAP laboratory services performed pursuant to Part 795 if the program administrator finds that the applicant's actual and attributed annual production of coal for all locations exceeds 300,000 tons during any consecutive 12-month period either during the term of the permit for which assistance is provided or during the first 5 years after issuance of the permit, whichever period is shorter, or if the permit is sold, transferred, or assigned to another person and the transferee's total annual and attributed production exceeds the 300,000-ton annual production limit during any consecutive 12-month period of the remaining term of the permit.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t., October 12, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

V. List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 21, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 94–23822 Filed 9–26–94; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 944

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Utah regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Utah rules pertaining to the confidentiality of coal exploration information. The amendment is intended to revise the Utah program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., m.d.t., October 27, 1994. If requested, a public hearing on the proposed amendment will be held on October 24, 1994. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t., October 12, 1994. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Written comments should be mailed or hand delivered to Thomas E. Ehmett at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Thomas E. Ehmett, Acting, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102.

Utah Coal Regulatory Program, Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, Utah 84180–1203, Telephone: (801) 538–5340.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated September 9, 1994, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT–971). Utah submitted the proposed amendment in response to the required program amendment at 30 CFR 944.16(a). The provision of the Utah Coal Mining Rules that Utah proposes to revise is Utah Administrative Rule (Utah Admin. R.) 645–203–200, Confidentiality.

Specifically, Utah proposes to revise Utah Admin. R. 645–203–200 by inserting language to specify that the Division of Oil, Gas and Mining (Division) will not make information available for public inspection, if the information "concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the person intending to conduct coal exploration or that the information is confidential under the standards of the Federal Act." Utah also proposes to delete language that limited confidential information to information "classified as being protected, private, or controlled under the Government Records Access and Management Act (GRAMA) or confidential under other applicable State or federal laws, rules, or regulations."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t., October 12, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

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2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

V. List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 16, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 94–23824 Filed 9–26–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–94–110]

Drawbridge Operation Regulations; Fore River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a change to the regulations governing the Quincy Weymouth Bridge over the Fore River at mile 3.5 between Quincy and Weymouth, Massachusetts. This change will restrict the exemption in the existing regulations which permits all commercial vessels to obtain bridge openings during vehicular traffic rush hours. This proposed regulation will permit bridge openings only for self-propelled vessels greater than 10,000 gross tons during the two rush hour periods. This change is expected to alleviate some of the traffic congestion caused when the bridge opens during rush hour.

DATES: Comments must be received on or before November 28, 1994.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, Massachusetts 02110–3350. The comments and other materials referenced in this notice will be available for inspection and copying by appointment at the Captain John Foster Williams Federal Building, Room 628, 408 Atlantic Avenue, Boston, Massachusetts. Normal office hours are between 6:30 a.m. and 3 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–94–110), specify the section of this proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bounded material is requested. Persons desiring acknowledgment that their comments have been received should enclose a stamped self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and may change this proposal in light of the comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (obr), First Coast Guard District under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are Mr. John McDonald, First Coast Guard District Bridge Branch, Project Manager and Lieutenant Commander F.J. Kenney, First Coast Guard District Legal Office, Project Counsel.

Background and Purpose

Requests have been received proposing a change to the present operating regulations in 33 CFR 117.621 which state that the Quincy Weymouth Bridge need not be opened from 6:30 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m. Monday through Friday. However, commercial vessels are exempt from the two vehicular rush hour closed periods in the existing regulations and can have the bridge opened on signal at any time. Traffic delays result whenever the draws open during the morning and evening rush hours. This proposed rule will change the wording to allow only tide dependent self-propelled vessels greater than 10,000 gross tons to obtain a bridge opening during the two rush hour closed periods. By further limiting the number of rush hour openings, this change to the regulations should provide relief from the traffic delays created when the draws are opened during the two closed periods while still meeting the needs of navigation.

Discussion of Proposed Amendments

The Quincy Weymouth Bridge over the Fore River between Quincy and Weymouth has a vertical clearance of 33′ above mean high water (MHW) and 43′ above mean low water (MLW). The channel depth is 35′ at mean low water. The pilots of the vessels greater than 10,000 gross tons must transit through the bridge at or near the high tide for safety reasons. The Fore River channel width, turns, cross currents and the width of the bridge present a safety risk to the larger vessels, transiting at high tide with a favorable current reduces the risk of allisions and groundings.

The current regulations for the Quincy Weymouth Bridge are that the draws need not be opened from 6:30 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m. Monday through Friday except holidays observed in the locality.

Traffic delays during the rush hours were frequent due to the commercial barge and tug traffic requesting bridge openings. The Coast Guard held several meetings with local officials, CITGO Petroleum Corporation, and marine interests to discuss safety issues, economic impacts and possible solutions to the vehicular traffic problems in the Quincy Weymouth area. A voluntary agreement resulted that allowed only tide dependent, self-propelled vessels greater than 10,000 gross tons to obtain bridge openings at any time including the rush hour periods. This voluntary action has been successful in alleviating traffic delays resulting from bridge openings during the rush hours. The Coast Guard proposes to change the regulations to make permanent the voluntary agreement, and will specifically state that only self-propelled vessels greater than 10,000 gross tons may pass through the bridge during rush hours. The existing rush hour time periods 6:30 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m. stated in the existing regulations will be retained. The provision in the existing regulations for the passage of public vessels of the United States, state or municipal government vessels through the draw at any time is now published at 33 CFR 117.31 as a requirement for all bridges in the United States.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of executive order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. If has been exempted from review by the office of management and budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the regulation will not prevent the mariners from passing through the Quincy Weymouth Bridge but just require mariners to plan their transits around the two closed periods and the high tide.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this action will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard will accept comments on the economic impact on small entities, in connection with this proposal for a permanent change to the regulations where indicated under **ADDRESSES**.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not raise sufficient federalism implications to warrant preparation of a federal assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g(5) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination Statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.621 is revised to read as follows:

§ 117.621 Fore River.

The draw of the SR3A bridge, mile 3.5 between Quincy Point and North Weymouth, shall open on signal, except that:

(a) From 6:30 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m. Monday through Friday, except holidays observed in the locality, the draw need not be opened.

(b) The draw shall open on signal at all times for self-propelled vessels greater than 10,000 gross tons.

Dated: September 13, 1994.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 94–23895 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 128 NJ–13–1–6104b; FRL–5051–4]

Approval and Promulgation of Implementation Plans; New Jersey Ozone State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of New Jersey related to development of reasonably available control technologies for all source categories of volatile organic compounds for which EPA has issued a control techniques guideline document. In the final rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct

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final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this proposed rule. Any parties interested in commenting on this proposed rule should do so at this time.

DATES: Comments must be received on or before October 27, 1994.

ADDRESSES: All comments should be addressed to: William J. Muszynski, Deputy Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Library, 26 Federal Plaza, room 402, New York, New York 10278.

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Raymond Werner, Chief, State Implementation Plan Section, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, room 1034A, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: July 26, 1994.

William J. Muszynski, P.E.,

Deputy Regional Administrator

[FR Doc. 94–23694 Filed 9–26–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 85

[FRL–5080–6]

Supplemental Notice of Proposed Rulemaking on Ozone Transport Commission; Emission Vehicle Program for the Northeast Ozone Transport Region

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction to Supplemental Notice of Proposed Rulemaking.

SUMMARY: The SNPRM which was published on Thursday, September 22, 1994 at 59 FR 48664 referencing five working days after publication as the deadline to request a hearing, is amended as follows: EPA will hold a public hearing on the Supplemental Notice of Proposed Rulemaking if one is requested by 12:00 p.m. Wednesday, September 28, 1994. The hearing, if requested, would begin at 9:00 a.m. and continue until all commenters have an opportunity to testify. The hearing, if requested, will be held in U.S. EPA Auditorium at 401 M Street, SW., in Washington, DC.

DATES: The hearing, if requested, would be held on Thursday, September 29 beginning at 9:00 a.m. in the U.S. EPA Auditorium at 401 M Street, SW., Washington, DC.

ADDRESSES: The hearing, if requested, will be held in Washington, D.C. Written comments should be submitted (in duplicate if possible) to the Air Docket (see address below). Copies of information relevant to this matter are available for inspection in public docket A–94–11 at the Air Docket (LE–131) of the EPA, room M–1500, 401 M Street SW., Washington, DC 20460, tel. (202) 260–7548, between the hours of 8:00 a.m. to 4:00 p.m., on Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Michael Shields, Office of Mobile Sources, U.S. EPA, 401 M Street, SW., Washington, DC 20460, tel. (202) 260–3450.

Dated: September 22, 1994.

Richard D. Wilson,

Deputy Assistant Administrator.

[FR Doc. 94–23917 Filed 9–26–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[GN Docket No. 94–90; DA 94–1012]

Private Land Mobile Radio Services; Eligibility for Specialized Mobile Radio Services and Radio Services in the 220–222 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: On August 2, 1994, the Commission released a Notice of Proposed Rule Making, FCC 94–202, concerning private land mobile radio services. This Order extends the deadlines for comments and reply comments in this proceeding in response to a request filed by American Mobile Telecommunications Association. This extension will provide interested parties enough time to complete their review and submit meaningful comments on the issues we raised in this proceeding.

DATES: Comments must be filed on or before October 5, 1994, and reply comments must be filed on or before October 20, 1994.

FOR FURTHER INFORMATION CONTACT: Sue McNeil, Private Radio Bureau, Land Mobile and Microwave Division, (202) 634–2443.

SUPPLEMENTARY INFORMATION: A summary of the Notice of Proposed Rule Making in this docket was published in the **Federal Register** on August 18, 1994 (59 FR 42563).

Order

Adopted: September 16, 1994.
Released: September 16, 1994.

In the Matter of: Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220–222 MHz Land Mobile Band and Use of Radio Dispatch Communications.

By the Chief, Private Radio Bureau:

1. On September 8, 1994, American Mobile Telecommunications Association, Inc. ("AMTA") filed a Motion For Extension Of Time regarding the time for filing Comments and Reply Comments in the above-entitled proceeding. AMTA requests that the Commission extend the deadlines for filing comments and reply comments from September 21, 1994 and October 6, 1994 to October 21, 1994 and November 7, 1994 respectively. RAM Mobile Data USA Limited Partnership ("RMD") has filed an opposition to AMTA's request.

2. AMTA asserts that the rule changes proposed in this proceeding, if adopted, would fundamentally affect the wireless industry and the regulatory environment in which AMTA's members operate. AMTA seeks an extension of time so that it may evaluate these proposals in light of the Commission's recently adopted Third Report and Order in GN–Docket No. 93–252, which establishes new technical, operational, and licensing rules for commercial mobile radio services (CMRS).[1] AMTA observes that the text of the *CMRS Order* has not yet been released and requests that parties have the opportunity to review the text so that they can assess the substantive impact of the *CMRS Order* on the issues raised in this proceeding.[2]

3. RMD opposes AMTA's extension request on the grounds that it could delay disposition of a pending waiver petition submitted by RMD to waive the wireline restriction. RMD also argues that a delay would be inconsistent with the Commission's overall goal of

[1] *Third Report and Order*, GN-Docket No. 93–252, FCC 94–212, adopted August 9, 1994, release pending *(CMRS Order)*.

[2] AMTA Motion at 4.

establishing regulatory parity between SMRs and competing CMRS providers.[3]

4. We find that the public interest would be served by granting a short extension so that interested parties have the opportunity to assess the impact of the *CMRS Order* on the issues raised in this proceeding. We agree with RMD, however, that undue delay in this proceeding should be avoided. We therefore conclude that a two-week extension of the comment and reply deadlines is appropriate.

5. Accordingly, it is ordered, pursuant to § 1.46 of the Commission's Rules, 47 CFR 1.46, that the deadline for filing initial comments in this proceeding is extended from September 21, 1994 to October 5, 1994, and that the deadline for filing reply comments is extended from October 6, 1994 to October 20, 1994.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 94–23836 Filed 9–26–94; 8:45 am]

BILLING CODE 6712–01–M

[3] RMD Opposition at 2.

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Notices

Federal Register
Vol. 59, No. 186
Tuesday, September 27, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[FES 94–30]

Availability of the Final Environmental Impact Statement for the Exxon Valdez Oil Spill Restoration Plan

AGENCIES: Forest Service, Department of Agriculture, and the Office of the Secretary, Department of the Interior. National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce is a cooperating agency.

ACTION: Notice of Availability of the Final Environmental Impact Statement for the Exxon Valdez Restoration Plan.

SUMMARY: On behalf of the *Exxon Valdez* Trustee Council, the Department of Agriculture, Forest Service announces the availability of the Final Environmental Impact Statement (FEIS) for the *Exxon Valdez* Oil Spill Restoration Plan. The responsible official for the preparation of the FEIS is the Regional Forester, Phil Janik. The Restoration Plan will establish management direction and guide all natural resource restoration activities covered by the civil settlement to the *Exxon Valdez* oil spill.

DATES: It is anticipated that a decision will be made on the Restoration Program approximately 30 days after publication of the Notice of Availability by the Environmental Protection Agency in the **Federal Register**.

ADDRESSES: Copies of a Summary of the FEIS or copies of the FEIS itself are available on request from the Oil Spill Public Information Office, 645 G. Street, Anchorage, Alaska, 99501. Phone number (907) 278–8008 or within Alaska (800) 478–7745, outside Alaska (800) 283–7745. Copies also will be sent to public libraries in Anchorage, Juneau, Fairbanks, Valdez, Cordova, Kodiak, Homer, and Seward, Alaska.

SUPPLEMENTARY INFORMATION:

A. Introduction

On October 8, 1991, a federal court approved settlement between the State and Federal Governments and Exxon under which Exxon will pay $1 billion in criminal restitution and civil damages to the governments. The State and Federal Trustees will receive $900 million in civil damages from Exxon over the 10 years. The funds are to be used to restore to their pre-spill condition the natural resources and the services they provide, injured by the *Exxon Valdez* oil spill. This includes the restoration of any natural resources injured, lost or destroyed and the services provided by that resource or which replaces or substitutes for the injured, lost or destroyed resource and affected services. Restoration includes all phases of injury assessment, restoration, replacement, and enhancement of natural resources, and acquisition of equivalent resources and services.

All decisions about restoration and uses of restoration funds are made by six natural resources Trustees, three Federal and three State. The three Federal Trustees are: The Administrator for the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and the Secretaries of the Department of Agriculture and of the Interior. The three State Trustees are: The Commissioners of Fish and Game, and Environmental Conservation, and the Attorney General. A Trustee Council, located in Alaska, composed of the three State Trustees and designees of the three Federal Trustees, is responsible for decisions relating to the assessment of injuries, uses of the restoration funds, and all restoration activities including the preparation of a Restoration Plan.

On April 10, 1992 (57 FR 12473–12475) on behalf of the Exxon Valdez Trustee Council, the Forest Service published a Notice of Intent to prepare an EIS on the Restoration Plan. This was later revised on January 14, 1994 (59 FR 2352–2353).

The Trustee Council released a Draft Restoration Plan in November 1993, which was the proposed action for the analysis conducted in the FEIS. The Draft Environmental Impact Statement (DEIS) was released for public comment on June 17, 1994 (59 FR 31191) followed by a 45-day comment period ending on August 1, 1994.

B. Comments

The comment period on the DEIS was 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** During the comment period for the DEIS public meetings were held on the following dates at the locations shown:

June 27, 1994—Anchorage, AK
June 29, 1994—Seward, AK
July 1, 1994—Homer, AK
July 5, 1994—Kodiak, AK
July 7, 1994—Cordova, AK
July 19, 1994—Valdez, AK

In addition, a teleconference was held on July 20, 1994. Opportunities for involvement were provided in the following communities:

Akhiok
Chignik
Chignik Lagoon
Chignik Lake
Cordova
Fairbanks
Homer
Ivanof Bay
Juneau
Karluk
Kodiak
Larsen Bay
Nanwalek
Old Harbor
Ouzinkie
Perryville
Port Graham
Port Lions
Seldovia
Seward
Soldotna
Tatitlek
Valdez
Whittier

Dated: September 21, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

Dated: September 19, 1994.

Phil Janik,

Regional Forester, Alaska Region, Forest Service, Department of Agriculture.

[FR Doc. 94–23782 Filed 9–26–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Import Limitation; Country of Origin Quota Adjustment

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of country of origin adjustment for certain chocolate crumb from Australia.

SUMMARY: This notice adjusts the country of origin for the quota quantity of chocolate crumb containing over 5.5 percent of butterfat (except for retail) assigned to Australia.

EFFECTIVE DATE: September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Dairy Import Quota Manager, Import Policies and Trade Analysis Division, Foreign Agricultural Service, Room 5531 South Building, Department of Agriculture, Washington, D.C. 20250–1000 or telephone at (202) 720–2916.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under Executive Order 12866 and Departmental Regulation 1512–1 and has been determined not to be a significant regulatory action since it will not have any of the significant effects specified in that order. Furthermore, to the extent, if any, that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) apply to this notice, the Administrator, Foreign Agricultural Service, hereby certifies that this notice will not have a significant economic impact on a substantial number of small entities. The adjustment of the country of origin from which the quota article specified herein may be entered does not restrict the ability of importers to import this quota article, but only permits 1,750,000 kilograms of the article allocated to Australia to be imported from certain other countries.

Notice

Subchapter IV of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) contains import limitations imposed on certain dairy products, including certain chocolate crumb. U.S. note 3(a)(iii) of subchapter IV of chapter 99 of the HTS permits the reallocation of the quota quantity of a dairy article listed in chapter 99 among the countries of origin specified for a given article if it is determined that the quota quantity assigned to a particular country is not likely to be entered from that country within a given calendar year. I hereby determine that it is not likely that 1,750,000 kilograms of chocolate crumb containing over 5.5 percent butterfat specified in HTS subheading 9904.10.63 for Australia will be entered from that country during calendar year 1994.

Notice is hereby given that 1,750,000 kilograms of chocolate crumb containing over 5.5 percent butterfat specified in HTS subheading 9904.10.63 for Australia may be imported from Australia, Ireland, the Netherlands, New Zealand and the United Kingdom for the remainder of the 1994 quota year.

The entire quota quantity for HTS subheading 9904.10.63 will revert to Australia on January 1, 1995.

Issued at Washington, D.C. this 21st day of September 1994.

Christopher E. Goldthwait,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 94–23855 Filed 9–26–94; 8:45 am]

BILLING CODE 3410–10–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alaska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:30 p.m. on October 27, 1994, at the Anchorage Hilton, 500 West Third Avenue, Anchorage, Alaska 99501. The purpose of the meeting is to plan future program activities and discuss civil rights issues in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Rosalee Walker or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 19, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–23801 Filed 9–26–94; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will be convened at 2:00 p.m. and adjourn at 4:00 p.m. on Tuesday, October 18, 1994, in the State Legislative Office Building, Capitol Avenue, Hartford, Connecticut 06105. The purpose of the meeting is to adopt a proposal for a 1995 project and also to release *Campus Tensions in Connecticut: Searching for Solutions in the '90s.*

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dr. Ivor J. Echols, 203–688–2009 or John I. Binkley, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 19, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–23800 Filed 9–26–94; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the New Mexico Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission will convene at 12:30 p.m. and adjourn at 6:00 p.m. on October 28, 1994, at the San Juan College, 4601 College Boulevard, Farmington, New Mexico 87402. The purpose of the meeting is to discuss civil rights and race relations issues in northwestern New Mexico.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Emma Armendariz or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the

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services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 19, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94-23802 Filed 9-26-94; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092294D]

Marine Mammals; Pinniped Removal Authority

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of establishment of a Pinniped-Fishery Interaction Task Force and notice of first public meeting.

SUMMARY: NMFS announces the establishment of a Pinniped-Fishery Interaction Task Force (Task Force) on the sea lion/steelhead conflict at the Ballard Locks in Seattle, WA. The Task Force is being established pursuant to section 120 of the Marine Mammal Protection Act (MMPA), as recently amended. Section 120 of the MMPA sets forth a process for consideration of intentional lethal taking of individually identifiable pinnipeds that are having a significant negative impact on salmonids that migrate through the Ballard Locks in Seattle. The first Task Force meeting, which is open to the public, coincides with the date of establishment of the Task Force.

DATES: The first public meeting of the Task Force, is scheduled for September 30, 1994, at 10:00 a.m.

ADDRESSES: The Task Force meeting will be held in the Auditorium, Building 9, at NOAA's Western Regional Center, 7600 Sand Point Way NE. in Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, Northwest Region, 206-526-6143 or Ken Hollingshead, Office of Protected Resources, 301-713-2055.

SUPPLEMENTARY INFORMATION: NMFS received an application from the State of Washington on July 12, 1994, to consider the lethal removal of California sea lions that are depredating a wild run of winter steelhead as they migrate through the Ballard Locks. In accordance with the process set forth in section 120 of the MMPA, NMFS determined that the State's application provided sufficient evidence to warrant establishment of a Task Force to consider authorizing the intentional lethal taking of California sea lions that prey on wild winter-run steelhead that migrate through the Ballard Locks in Seattle, WA. Notice of receipt and acceptance of the State's application, along with an explanation of the process set forth in section 120 of the MMPA, was published in the **Federal Register** on August 2, 1994 (59 FR 39325) with a request for public comments. The public comment period closed on September 10, 1994, and approximately 100 public comments were received.

NMFS announces that, effective September 30, 1994, the Pinniped-Fishery Interaction Task Force is established and will have 60 days (in accordance with section 120 of the MMPA) or until November 30, 1994 to develop and submit its recommendations to NMFS. The Task Force will have 21 members consisting of scientists who are knowledgeable about the sea lion/steelhead conflict, representatives of conservation and fishing community organizations, the State, Indian tribes, NOAA and other Federal agencies involved in the conflict at the Locks.

The Task Force is to review the public comments received in response to the **Federal Register** document and pertinent factual information on the sea lion/steelhead interaction and within 60 days:

1. Recommend to NMFS whether to approve or deny the proposed intentional lethal taking of pinnipeds, along with the recommendation a description of the specific pinniped individuals, the proposed location, time, and method of such taking, criteria for evaluating the success of the action, and the duration of the intentional lethal taking authority; and

2. Suggest non-lethal alternatives, if available and practicable, including a recommended course of action.

All meetings will be open to the public, but the public will not be allowed to discuss or debate issues with the Task Force at its meetings. However, NMFS does intend to have a pre-designated, limited amount of time at the Task Force's first meeting to allow the public to provide new or relevant information that may assist the Task Force in its deliberations. Subsequent meetings will be determined by the Task Force during its deliberations. Public notice of subsequent meetings of the Task Force will be announced through NOAA Press Releases. The public may call the NOAA Public Affairs Office in Seattle at 206-526-6046 to obtain more detailed information on the Task Force meeting dates, times and locations.

In addition, in accordance with section 120 of the MMPA, the Task Force may need to meet again after January of 1995 to discuss the effectiveness of its recommended actions after implementation. Specifically, the MMPA requires that the Task Force evaluate the effectiveness of the permitted intentional lethal taking or alternative actions implemented. If implementation is ineffective in eliminating the interaction problem, the Task Force shall recommend additional actions. If the implementation is effective, the Task Force shall so advise NMFS and the Task Force will be disbanded.

In considering whether the State's application should be approved or denied, the Task Force is to consider:

1. Population trends, feeding habits, the location of the pinniped interaction, how and when the interaction occurs, and how many individual pinnipeds are involved;

2. Past efforts to nonlethally deter such pinnipeds, and whether the applicant has demonstrated that no feasible and prudent alternatives exist and that the applicant has taken all reasonable nonlethal steps without success;

3. The extent to which such pinnipeds are causing undue injury or impact to, or imbalance with, other species in the ecosystem, including fish populations; and

4. The extent to which such pinnipeds are exhibiting behavior that presents an ongoing threat to public safety.

NMFS expects the Task Force to strive to reach agreement on its recommendations. To enhance this process, NMFS has procured the services of a professional facilitator to chair the meetings of the Task Force. However, if consensus is not achieved, the Task Force should have each member vote on the controversial decisions or recommendations. The Task Force recommendation on whether to recommend lethal taking and other determinations should be made upon a simple majority vote; however, the minority view should be provided the opportunity to submit its recommendations in writing to NMFS at the same time the majority view is submitted. The basis and justification for the recommendations and determinations should be included in the Task Force's written recommendation. The Task Force should specifically address those considerations outlined above, and any other considerations used by the Task Force in formulating its recommendations. Other considerations may include the likelihood of success of the proposed or recommended action and relationship to any long-term solutions to the interaction problem.

The role of the Task Force is to provide recommendations to NMFS; the final decision on whether to approve the requested lethal removal remains with NMFS. In this regard, NMFS has asked the Task Force to fully consider and provide recommendations on all aspects of the interaction problem, including nonlethal alternatives and steps that should be taken toward a long-term solution. In accordance with the MMPA, upon receipt of the Task Force's recommendations, NMFS will have 30 days to decide whether to approve or deny the State's application for lethal removal. Notice of the final decision will be published in the **Federal Register.**

Dated: September 22, 1994.

William W. Fox, Jr., Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94-23990 Filed 9-26-94; 8:45 am]

BILLING CODE 3510-22-F

[Docket No. 940964-4264; I.D. 081594C]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) no longer believes that the Atlantic mackerel fishery will require the imposition of some type of limited-entry management system. Therefore, August 13, 1992, is no longer considered a control date for entry into the Atlantic mackerel fishery.

EFFECTIVE DATE: September 27, 1994.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Resource Policy Analyst, 508-281-9104.

SUPPLEMENTARY INFORMATION: As part of its preliminary deliberation of Amendment 5 to Fishery Management Plan for Atlantic mackerel, *Loligo* and *Illex* squid, and butterfish fisheries (FMP), the Council considered limited-entry management measures designed to address overfishing and overcapitalization in these fisheries. A notice announcing an August 13, 1992, control date for each of the three fisheries was published in the **Federal Register** (57 FR 36384, August 13, 1992). The intent of that notice was to promote public awareness of potential eligibility criteria for access to those fisheries and possible imposition of some form of limited-entry management regime.

Recent information regarding levels of biomass, fishing effort, and catch was presented to the Council on July 13, 1994. This information indicated that harvest levels for the squid and butterfish fisheries are approaching allowable biological catch levels. Further, the combination of increased demand, constant production capacity, and decreasing biomass demonstrates that the possibility of overfishing and overcapitalization in these fisheries persists. To address this potential, the Council is still considering a limited-entry system. Thus, a control date continues to be necessary to discourage additional entry. The Council and NMFS believe that the previously announced August 13, 1992, control date is appropriate for the squid and butterfish fisheries.

The data also indicated that Atlantic mackerel catch and fishing effort decreased in 1993 and 1994 while stock size remained fairly constant. Further, stock biomass estimates are extremely high. Due to these facts, the Council believes that the Atlantic mackerel fishery will not require a limited-entry management system in the near future. Therefore, NMFS announces the recision of the August 13, 1992, control date with respect to this fishery.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 21, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94-23781 Filed 9-26-94; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF DEFENSE

Department of the Navy

Planning and Steering Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Planning and Steering Advisory Committee will meet October 19, 1994, from 9:00 a.m. to 3:30 p.m., at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss topics relevant to SSBN security. The entire agenda will consist of classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy had determined in writing that all sessions of the meeting shall be closed to the public because they concern matters listed in 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: LCDR, D. B. Rich, Pentagon, Room 4D534, Washington, DC 20350, Telephone Number: (703) 693-7248.

Dated: September 16, 1994

L. R. McNees

LCDR, JAGC, USN

[FR Doc. 94-23805 Filed 9-26-94; 8:45 am]

BILLING CODE 3810-AE-F

Record of Decision for the Final Supplemental Environmental Impact Statement (FSEIS) for Dredging at Pier D of the Puget Sound Naval Shipyard, Bremerton, Washington

Pursuant to section 102(2) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations on Implementing NEPA Procedures (40 CFR parts 1500-1508), the Department of the Navy announces its decision to implement the final supplemental environmental impact statement (FSEIS) for dredging at Pier D of the Puget Sound Naval Shipyard (PSNS), Bremerton, Washington. This decision updates and supplements the Record of Decision for the Final Programmatic Environmental Impact Statement for the Fast Combat Support Ship (AOE-6 Class) U.S. West Coast Homeporting Program which was issued on March 10, 1992.

The proposed action is to dredge and make structural upgrades at Pier D of the PSNS, and dispose of the dredged material in federally and state approved disposal sites. The action will provide the necessary bathymetry for permanent berthing for up to two AOE-6 Class ships and temporary berthing of one of the largest deep draft ships already homeported at PSNS, typically an aircraft carrier. The proposed action has been developed from a combination of three berthing configurations and five disposal options. The required dredging quantity is approximately 105,000 cubic yards, of which approximately 53,400 cubic yards are contaminated and are unsuitable for in-water disposal. The

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disposal method is a mixed mode of operation which utilizes an upland facility (landfill) for contaminated sediment disposal and an in-water site for disposing of clean material. The primary upland disposal site is the Olympic View Sanitary Landfill (OVSL) about 10 miles south of Bremerton. The Roosevelt Regional Landfill (RRL) and Columbia Ridge Landfill and Recycling Center (CRLRC) would be used as backup in the event of unforeseen problems at OVSL. Each of these landfills is currently authorized to accept the type of dredged materials produced by this project which have been designated unsuitable for in-water disposal by regulatory agencies. The primary in-water disposal site is the Puget Sound Dredge Disposal Analysis (PSDDA) approved Elliot Bay disposal site near Seattle which is about 15 miles east of PSNS; backup sites include PSDDA approved Commencement Bay near Tacoma or Port Gardner near Everett.

Other berthing configurations and the "No Action" alternative were considered and eliminated. Other berthing configurations would not address the Navy's need for operational flexibility at PSNS with respect to large deep-draft vessels. The "No Action" alternative would not accommodate Navy's AOE–6 homeporting mission in the west coast.

Disposal options considered and eliminated were capped aquatic disposal (CAD), an upland disposal facility (CDF), near-shore confined disposal (NCDF), and a combination of PSDDA and NCDF.

Although an alternative requiring less dredging or "no action" would have fewer environmental impacts (but would not fulfill the purpose and need for the project), the dredging and dredged material disposal methods chosen will have the least practicable impacts and are environmentally preferred.

Transfer of the dredged material designated for upland disposal from marine to upland transportation will occur at a shoreside transfer area located near the west side of PSNS. The shoreside transfer area will be paved with an impervious pavement and curbing to prevent penetration of liquids into subsurface soils, or uncontrolled release into Sinclair Inlet. Within this area, dredged materials will be segregated according to moisture content, and loaded onto trucks for transport to the landfill. Runoff will be directed to sumps that will be used to convey water to settling tanks before discharging into Sinclair Inlet. If the moisture content of the dredged materials is too high for disposal at the landfill site, soil stabilization/solidification treatment measures will be employed to mitigate the problems. Materials that are acceptable to the landfill will not be treated prior to disposal.

Treatment will be through the addition of a portland cement/pozzolan mixture and/or additional drying. In a portland cement/pozzolan reaction, portland cement is combined with flyash or other pozzolan to produce a sediment-concrete mixture. Water is entrained in the hydration of the portland cement. The moist material will be screened and mechanically fed to a pugmill-type mixing plant. Portland cement/pozzolan soil additives are added through pneumatic system to the pugmill mixer. The treated material will be delivered to the landfill storage site thoroughly mixed and relatively uniform in appearance with all ingredients evenly distributed.

The preferred site for upland disposal is the OVSL in Kitsap County. The RRL and CRLRC are designated as alternative sites to provide flexibility and ensure project completion. Although OVSL has enough capacity for the volume determined to be unsuitable for open-water disposal, unforeseen circumstances related to dredging, transportation, or landfill operations could adversely affect the overall project schedule. Rather than delay the project, the alternative disposal sites would be used until use of the OVSL is reestablished. Use of these sites would involve the same process as described above for dewatering and treatment, but transportation would occur by rail car rather than by truck.

Dredging causes localized short-term effects on water quality in the immediate vicinity of the dredge operation. This will be mitigated through the use of regulatory dilution zones and water quality monitoring during the dredging operation. If water quality effects exceed these of regulatory requirements, such as alterations in pH value, dissolved oxygen, and/or turbidity to an unacceptable quantity, the dredging operation will be halted until the cause of the water quality degradation is identified and mitigated. Dredging is allowed to proceed only after all practicable measures are taken to correct the problem. The FSEIS and water quality permits provide water quality mitigation requirements. These requirements are a part of the construction specification detailing approaches and equipment requirements to maintain environmental quality.

Temporary losses will occur in benthic infauna, epifauna, and other bottom dwelling organisms through destruction of existing benthic habitat in the area affected by dredging. However, these losses are anticipated to be recovered within about a year after completion of the work.

Dredging operation, tug-barge transportation, and truck/train hauling operation will produce short term localized increases in air emissions and noise. No safety related effects are anticipated from these impacts. The affected area is in attainment with clean air standards and an air conformity analysis is not required.

The SEIS was prepared by the Navy in coordination with the U.S. Environmental Protection Agency, Region X; U.S. Army Corps of Engineers, Seattle District; Washington State Department of Ecology; City of Bremerton; and the Suquamish Tribe. The FSEIS was distributed to agencies and officials of federal, state and local governments, citizen groups and associates, public libraries, and other interested parties for review. The comment period ended on September 6, 1994. All significant issues identified were resolved through discussions with concerned agencies and parties.

Questions regarding the Draft and Final Supplemental Environmental Impact Statement prepared for this action may be directed to: Commanding Officer, Engineering Field Activity Northwest, Naval Facilities Engineering Command, 3505 Anderson Hill Road, Silverdale, WA, 98383–9130 (Attn: Mr. Peter Havens, Code 232.PH), telephone (206) 396–5976, fax (206) 396–7929.

Dated: September 21, 1994.

Elsie L. Munsell,

Deputy Assistant Secretary of the Navy (Environment and Safety).

Dated: September 21, 1994.

Saundra K. Melancon,

Alternate Federal Register Liaison Officer.

[FR Doc. 94–23795 Filed 9–26–94; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award Grant to Howard University

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criteria set forth at 10 CFR 600.7(b)(2)(i)(B) to Howard University, School of Continuing Education, Silver Spring, MD 20910 under Grant Number DE–FG01–94AD83565. The purpose of the award is to assist in the establishment of a network of colleges and universities within the metropolitan Washington, DC, Virginia, and Maryland area which have curricula addressing technologies and public policies in the following areas: Energy and the environment; Advanced materials development, Advanced manufacturing and process technology; High performance computing and communications; High energy and nuclear physics; Bioscience and biotechnology; Business and public administration professions supporting these technologies. The contemplated period of performance will be five (5) years October 1, 1994—September 30, 1999. The network will link the policy and program office of DOE with appropriate academic institutions to facilitate rapid interchange of information and concepts regarding the direction of Federal energy programs, policies and technologies. The Department is funding the first budget period (10/1/94–9/30/95) in the approximate amount of 75,000—Howard University will be cost sharing approximately $13,456, the total budget is estimated to be $88,377.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rosemarie Marshall, HR–531.11, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The proposed grant will provide funding to Howard University, which is a nationally recognized historically black academic institution with a broad curriculum. The Howard University School of Continuing Education (HUSCE) is one of the 17 schools and colleges of Howard University. HUSCE was established in April 1986 to meet the special higher-education needs of a rapidly expanding community of professionals, administrators, entrepreneurs, technical personnel, paraprofessionals and other adults. A part of the mission of the HUSCE is to serve as the central administrative unit for coordinating all continuing education at the University and for administering the Summer Sessions.

The program is meritorious because it not only provides the interface desired in the above subject areas, but also supports the Department's objective of building a well-educated and diverse community in energy-related fields of study reflecting the core values articulated in the Department of Energy Strategic Plan. This project will promote education as well as provide local colleges and universities the opportunity to provide a curriculum to the community which will better prepare them to gain employment with the Department of Energy.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the application represents a beneficial method for the Department to form partnerships with the academic community to foster educational growth closely attuned to national energy policy and technology development. The result should be university graduates which represent a diverse population with the foundation required to more adequately address the national energy challenges.

Craig S. Frame,

Contracting Officer, Operations Branch A–1, Office of Placement and Administration

[FR Doc. 94–23882 Filed 9–26–94; 8:45 am]

BILLING CODE 6450–01–M

Senior Executive Service; Performance Review Board

AGENCY: Department of Energy.

ACTION: SES Performance Review Board Standing Register.

SUMMARY: This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

EFFECTIVE DATE: These appointments are effective as of September 30, 1994.

ACHARYA, SARBESWAR NMI
ACKERLY, LAWRENCE R
ADLER, IRA M
ALESSI, VICTOR E.
ALLEN, GROVER L
ANDERSEN, ARTHUR T
ANDERSON, PHYLLIS L.
ANNAN, ROBERT H
BACA, FRANK A
BACHER, STEPHEN EUGENE
BAKER, KENNETH E
BAMBERGER, CRAIG S
BARBER, ROBERT W
BARKER, JR., WILLIAM L
BARRETT, LAKE H.
BARTHOLOMEW, JOHN W
BARTLEY, WILLIAM C
BAUBLITZ, JOHN E
BEAN, EARL W
BECHTEL, THOMAS F
BECKETT, THOMAS H
BECKNER, EVERET H
BEECY, DAVID J
BELL, GEORGE E
BELLOWS, JERRY L
BENEDICT, GEORGE W
BERGHOLZ, JR., WARREN E
BERLS, JR., ROBERT E.
BERNARD, PETER A
BERUBE, RAYMOND P
BIELAN, DOUGLAS J
BINGHAM, CARLETON D
BISHOP, YVONNE M
BIXBY, WILLIS W
BLACK, RICHARD L
BLACKWOOD, EDWARD B.
BORGSTROM, CAROL M
BORGSTROM, HOWARD G
BOWMAN, GERALD C.
BOYD, GERALD G
BRADLEY, THERON M., JR.
BRESEE, JAMES C
BREZNAY, GEORGE
BRICE, JAMES F
BRODMAN, JOHN R
BROGAN, JOHN J
BROLIN, EDSON C
BROWN, FREDERICK R
BROWN, JR., CHARLES H
BROWN, RICHARD W.
BRUSH, PETER N.
BRYANT, MCKINLEY E
BUFFUM, ELIZABETH
BURNS, THOMAS F., JR.
CANTER, HOWARD R.
CARABETTA, RALPH A
CARDINALI, HENRY A
CAREY, JR., EDWIN F.
CARLSON, LYNDA T
CARUSO, GUY F.
CHAPMAN, NAOMI R
CHAPPELL, GERALD F
CHAPUT, ERNEST S
CHERNOCK, WARREN P.
CHRISTENSEN, WILLIAM J
CHRISTOPHER, ROBERT K.
CHUN, SUN W
CHURCH, BRUCE W
CLAFLIN, ALAN B
CLAGETT, WILLIAM H. IV
CLARK, JOHN R
CLAUSEN, MAX JON
COLE, GEORGE F III
COLEMAN, HOWARD S
COMBS, MARSHALL O
CONE, RONALD E
CONLEY, MICHAEL W
COOK, JOHN S
CORNWELL, THOMAS F
COSTELLO, WILLIAM J
COTE, JOEL S
COWAN, STEPHEN P
CRANDALL, DAVID H
CRAWFORD, TIMOTHY S
CROWE, RICHARD C.
CULPEPPER, JAMES W
CUMESTY, EDWARD G
CURTIS, JAMES H
CYGELMAN, ANDRE I
CZAJKOWSKI, ANTHONY F.
DAGOSTINO, THOMAS S
DAVIES, JAMES D.
DAVIES, NELIA A
DAVIS, JAMES T
DECKER, JAMES F

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DEGRASSE, JR., ROBERT W.
DEHANAS, THOMAS W
DEMAIRE, JUDITH M.
DENNISON, WILLIAM J
DER, VICTOR K
DIALS, GEORGE E
DIAZ, JR., ROMULO L
DIDISHEIM, PETER F.
DIEBOLD, ROBERT E
DIENES, NICHOLAS S
DIFIGLIO, CARMEN
DIRKS, TIMOTHY M
DIVONE, LOUIS V
DOHERTY, DONALD P
DOMAGALA, MARTIN J
DORSEY, WILLIAM A
DOVER, AGNES P.
DOYLE, MARK J.
DURNAN, DENIS D
EDMONDSON, JOHN J
EGGER, MARY H
ENGEL, WALTER P
ERB, DONALD E
ESVELT, TERENCE G
EVANS, THOMAS W
FAUSETT, STEPHEN A
FEIBUS, HOWARD
FEIDER, JAMES C.
FIORE, JAMES J
FIORI, MARIO P
FISHER, ROGER E
FITZGERALD, JR., JOSEPH E
FORD, JAMES L
FORD, JOHN A
FORRISTER, DERRICK L.
FORSYTHE, LARRY A
FOX PENNER, PETER S.
FRANK, CLYDE WILLIAM
FRANKLIN, JOHN R
FREI, MARK W
FRIEDMAN, GREGORY H
FRYE, KEITH N
FURIGA, RICHARD D
FYGI, ERIC J
GARSON, HENRY K
GAULDIN, MICHAEL
GEBUS, GEORGE R
GEIDL, JOHN C
GEISBUSH, JON C
GIBSON, JR., WILLIAM C
GICALE, JR., LOUIS J.
GILBERT, FRANCIS C
GILBERTSON, MARK A.
GOLDENBERG, NEAL
GOLDENBERG, RALPH D
GOLDMAN, DAVID TOBIAS
GOLDSMITH, ROBERT
GOLLOMP, LAWRENCE A
GRAHAM, A. DIANE
GREEVES, ROBERT E
GREINER, LLOYD M.
GROSS, THOMAS J
GRUENSPECHT, HOWARD K
GUIDICE, CARL W
GUIDICE, STEPHEN J
GUYER, ARTHUR E
HABERMAN, NORTON
HACSKAYLO, MICHAEL S
HAHN, RICHARD D
HALE, DOUGLAS R
HALL, JAMES C
HALL, JR., SPAIN W
HALSTED, JR., CHARLES G
HAMER JR, DAVID L
HAMRIC, JON P
HANESSIAN, SOUREN
HANSON, RONALD D
HARDIN, MICHAEL G
HARDY, RANDALL W.
HARRIS, JESSIE J
HARTMAN, JAMES K
HARVEY, GORDON W
HASPEL, ABRAHAM E.
HAWKINS, FRANCIS C
HAYMOND, GEORGE R
HEATH, CHARLES C
HEENAN, THOMAS F
HEFFERNAN, JAMES H
HENDERSON, LYNWOOD H
HENDRICKS, NANCY L.
HENDRIE, DAVID L.
HENSLEY, JR., WILLIE F
HESS, WILMOT N.
HEUSSER, ROGER K
HICKEY, SUE F
HICKOK, STEVEN G
HIRAHARA, JAMES S
HOFFMAN, ALLAN R.
HOGAN, DANNY A
HOPF, RICHARD H
HOPKINS, T. J.
HOWELL, JERRY C
HUGHES, JEFFREY L.
HUNTER, RAY A
HUTZLER, MARY JEAN
INGE, JR., EDWIN F
INLOW, RUSH O
ISAACS, THOMAS H.
IZATT, RONALD D
JAFFE, HAROLD
JEWETT, DAVID S
JICHA, JR., JOHN J
JOHNSON, MILTON D
JOHNSON, OWEN B
JOHNSTON, MARC
JONES, C. RICK
JONES, DAVID A
JOSEPH, ANTIONETTE GRAYSON
JUCKETT, DONALD A.
KAROL, MICHAEL S
KATZ, MAURICE J
KEHELEY, WAYNE E
KELIHER, JOHN G
KELLY, CYNTHIA C
KENNEDY, JOHN P
KESSLER, ROLAND R
KIGHT, GENE H
KILGORE, WEBSTER C
KILPATRICK, MICHAEL A
KINGSBURY, ROBERT L
KLEIN, KEITH A
KLEIN, SUSAN ELAINE
KNUTH, DONALD F.
KOONTZ, MAX A
LAGRONE, JOE B
LANDERS, JAMES C
LANE, ANTHONY R
LANGAN, WILLIAM T
LANGENFELD, CHERRI J.
LARSON, JR., VICTOR R
LASH, TERRY R.
LAVIN, ANN W.
LECLAIRE, DAVID B
LEWIS, JR., HOWARD E
LEWIS, LENORA J
LEWIS, ROGER A.
LIEN, STEPHEN C.T.
LIGHTNER, RALPH G
LIQUE, E DIANE W
LONGTON, JOSEPH N
LOOSE, RONALD R
LORENZ, MILTON C
LOWE, OWEN W.
LUONGO, KENNETH N.
LYNCH, OLIVER D. T. JR.
LYTLE, JILL ELLMAN
MAGRUDER, JAMES K
MAHER, JOSEPH R
MANGENO, JAMES J
MANN, THOMAS O
MANNING, WILLIAM F
MARCHESE, ANDREW R.
MARIANELLI, ROBERT S
MARLAY, ROBERT C
MAROLDO, JAMES H
MARQUESS, PAUL T
MARQUEZ, RICHARD A
MARTIN, CHARLES F
MAUPIN, GARY T
MAXEY, KENNETH G.
MAYHEW, DELMAR D
MC CALLUM, EDWARD J
MCALLISTER, JR., JOHN A.
MCBRIDE, THOMAS F.
MCCAMMON, HELEN M
MCCOY, FRANK R. III
MCFADDEN, JR., GEORGE L
MCINTYRE, DONALD D
MICHELSEN, STEPHEN J
MILLER, CLARENCE L
MILLHONE, JOHN P
MILNER, RONALD A
MOCK, JOHN E
MONLYN, SYLVIA MCDONALD
MOORE, KENNETH G
MORRIS, MARCIA L
MOURNIGHAN, STEPHEN D
MRAVCA, ANDREW E
MURPHY, ROBERT E
NEALY, CARSON L.
NEFF, JR., JEFFERSON O
NEILSEN, FINN K
NELSON, DAVID B
NELSON, JR., ROBERT M
NELSON, RODNEY R
NETTLES, JR, JOHN J.
NEWHOUSE, ALAN R
NEWMAN, DAVID G
NICHOLS, CLAYTON R
NOLAN, ELIZABETH A.
NULTON, JOHN D
O'BRIEN, JR., ROBERT A
O'FALLON, JOHN R
OLIVER, LAWRENCE R
OLSON, GARY C
PARNES, SANFORD J.
PATRINOS, ARISTIDES A.

PATTERSON, II, JOHN R
PATTON, GLORIA S
PEARMAN, JR., DONALD W
PELLETIER, RAYMOND
PERIN, STEPHEN G
PETERS, FRANKLIN G
PETTENGILL, HARRY J
PETTIS, LAWRENCE A
PLAISANCE, JR., PAUL J
PODONSKY, GLENN S
POE, ROBERT W
POLLOCK, III, WALTER E.
POWERS, JAMES G.
PRAY, CHARLES P.
PREWITT, JANA S.
PRICE, JR., ROBERT S
PRUDOM, GERALD H.
PRZYBYLEK, CHARLES S
PYE, DAVID B
RABBEN, ROBERT G
REDDICK, WILLIAM C
REDENIUS, RICHARD D.
REICHER, DAN W.
REID, JAMES E
REPKE, WOLFGANG C
RHOADES, DANIEL R
RICHARDSON, STEVEN D.
RIGGS, JOHN A.
ROBERTS, MICHAEL
ROBERTSON, JOHN S
ROBISON, SALLY A
ROCK, BERNARD J
RODEHEAVER, THOMAS N
RODEKOHR, MARK E
ROLLOW, THOMAS A
ROMM, JOSEPH J.
ROONEY, JOHN M
ROSEN, SOL
ROSENZWEIG, RICHARD
ROSSELLI, ROBERT M
ROUSSO, SAMUEL NMI
ROZZI, DOLORES L
RUDINS, GEORGE
RUDY, GREGORY P.
RUMSEY, TERRY CORNWELL
SABRE, RANDOLPH E
SALM, PHILIP E
SALTZMAN, JEROME D
SALVADOR, LOUIS A
SAMBER, MARTIN
SAN MARTIN, ROBERT L
SCARBOROUGH, MURIEL L
SCHEETZ, KARL G
SCHMITT, CARL H
SCHMITT, EUGENE C
SCHMITT, WILLIAM A
SCHNAPP, ROBERT
SCHNEIDER, SANDRA L
SCOTT, RANDAL
SEASON, JR., HARRY T
SEMEDO, BARBARA
SHAFER, JOHN M
SHELOR, DWIGHT E
SHIRLEY, SR., JOHN W
SIEBERT, JR., ARLIE B
SIEGEL, JACK S
SIENKIEWICZ JR, E W
SILVERMAN, MARK N.
SIMON, ROBERT M.
SIMPSON, CHARLES KYLE
SINGER, MARVIN I
SITZER, SCOTT B
SJOBLOM, GLEN L.
SJOSTROM, LEONARD C
SMEDLEY, ELIZABETH E
SMITH, DAVID A
SMITH, DOUGLAS W.
SMITHWICK, GROVER A
SOHINKI, STEPHEN M.
SPIGAL, HARVARD P
SPILLER, REGINAL W.
STADLER, SILAS D.
STALLMAN, ROBERT M.
STARK, RICHARD M
STELLO, JR., VICTOR (NMN)
STEPHENS, RICHARD E
STEVENSON, F DEE
STEWART, JOHN B
STEWART, JR., FRANK M
STEWART, JR., JAKE W.
STONE, PHILIP M
STRAKEY, JR JOSEPH P
STREB, ALAN J
STUMBAUGH, DAVID C
SULAK, STANLEY R
SULLIVAN, MARY ANNE
SWINK, DENISE F
SYE, LINDA G.
TABOAS, ANIBAL L
TAILLIE, DENNIS K
TAMURA, THOMAS T
TATE, JR., DANIEL C.
TAVARES, ANTONIO F.
TECLAW, CHARLES E.
TEDROW, RICHARD T
THOMAS, IRAN L
THOMPSON, JERRY F
THROCKMORTON, RALPH R
TIERNEY, CHARLES R
TILLMAN, LUTHER J
TORKOS, THOMAS M
TSENG, JOHN C
TUCKER, WILLIAM E
TURI, JAMES A
TURNER, JAMES M
TUTTLE, III, EDWARD H
TWINING, BRUCE G
UTHUS, DOUGLAS B
VAETH, TERRY A
VAGTS, KENNETH A
VOLPE, FREDERICK J
WAGNER, MARY LOUISE
WAGONER, JOHN D
WALSH, ROBERT J
WALTON, HOWARD L
WARNICK, WALTER L
WATTS, CAROLYN H.
WEIDENFELLER, NANCY K.
WEINER, LAWRENCE A.
WERNER, JAMES D.
WESTERBECK, GERALD W
WHITE, JAMES K
WHITEMAN, ALBERT E
WIEBER, PAUL R
WIEKER, THOMAS L
WILCYNSKI, JOHN M
WILKEN, DANIEL H.
WILLIAMS, EDWARD R
WILLIAMS, MARK H.
WILLIAMSON, RICHARD H
WILLIS, JOHN W
WILMOT, EDWIN L
WISENBAKER, JR., WILLIAM
WOOLEY, JOHN C
YUAN-SOO HOO, CAMILLE C.

Issued in Washington, D.C. September 21, 1994.

Thomas T. Tamura,

Principal Deputy Assistant Secretary for Human Resources and Administration.

[FR Doc. 94-23881 Filed 9-26-94; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. EL94-54-000, et al.]

IES Utilities, Inc., et al.; Electric Rate and Corporate Regulation Filings

September 20, 1994.

Take notice that the following filings have been made with the Commission:

1. IES Utilities, Inc.

[Docket No. EL94-54-000]

Take notice that on August 3, 1994, IES Utilities, Inc. tendered for filing an amendment to its March 24, 1994 filing in the above-referenced docket.

Comment date: September 30, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. UtiliCorp United Inc.

[Docket No. ES94-38-000]

Take notice that on September 13, 1994, UtiliCorp United Inc. (UtiliCorp) filed an application under § 204 of the Federal Power Act seeking authority to issue up to and including 3 million shares of common stock, par value $1.00 per share, pursuant to a Dividend Reinvestment and Common Stock Purchase Plan. Also, UtiliCorp requests exemption from the Commission's competitive bidding regulations.

Comment date: October 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. New York Electric & Gas Corporation

[Docket No. ER94-1018-000]

Take notice that on September 6, 1994 New York Electric & Gas Corporation tendered for filing a Notice of Withdrawal of its March 3, 1994 filing in the above-referenced docket.

Comment date: September 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Morgan Stanley Capital Group, Inc.

[Docket No. ER94-1384-000]

Take notice that on September 9, 1994, Morgan Stanley Capital Group

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Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: October 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Dayton Power and Light Company

[Docket No. ER94–1469–000]

Take notice that on September 14, 1994, the Dayton Power and Light Company tendered for filing an amendment to its July 19, 1994 filing in the above-referenced docket.

Comment date: October 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Electrade Corporation

[Docket No. ER94–1478–001]

Take notice that Electrade Corporation (Electrade) on August 31, 1994, tendered for filing to Rules 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, 385.207 (1993), its revised Rate Schedule No. 1, to be effective September 20, 1994.

Electrade's application to engage in electric power and energy transactions as a marketer was accepted for filing by the Commission on August 25, 1994. In the instant filing, Electrade proposes that no sales will be made pursuant to its Rate Schedule No. 1 to any entity controlled by, under common control with, or controlling Electrade Corporation.

Rate Schedule No. 1, as revised, provides for the sale of energy and capacity at prices mutually agreed upon by the purchaser and Electrade, and prohibits affiliates sales.

Comment date: October 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of New Hampshire

[Docket No. ER94–1617–000]

Take notice that on September 1, 1994, Public Service Company of New Hampshire (PSNH) tendered for filing an Amendment (the "Amendment") to the Resale Service Agreement between PSNH and each of the following Municipal Systems (the "Municipal Customers"): The Town of Ashland, New Hampshire (Electric Light Department), New Hampton Village Precinct, and the Town of Wolfeboro (Municipal Electric Department). PSNH has requested an effective date for the Amendment of November 1, 1994.

PSNH states that the Amendment would implement an additional charge under the Resale Service Agreements to permit PSNH to recover from its Municipal Customers the increased costs to PSNH resulting from PSNH's implementation of the Statement of Financial Accounting Standards No. 106 which concerns the accounting for the post-retirement benefits other than pensions.

PSNH states that copies of the filing were served on the Municipal Customers and the New Hampshire Public Utilities Commission, which is the only State Commission within whose jurisdiction the Municipal Customers distribute and sell electric energy at retail.

Comment date: October 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Delmarva Power & Light Company

[Docket No. ER94–1620–000]

Take notice that Delmarva Power & Light Company (DP&L) on September 2, 1994, tendered for filing a revised fuel adjustment clause rate schedule.

The affected customers and their FERC rate schedules are as follows:

Customer	FERC rate schedule Nos.
Old Dominion Electric Cooperative	51, 52, 53
Lewes, Delaware	61
Seaford, Delaware	62
Berlin, Maryland	63
Middletown, Delaware	65
New Castle, Delaware	66
Milford, Delaware	67
Newark, Delaware	69

The proposed changes would modify the fuel adjustment clause so that demand charge payments associated with natural gas contracts are recoverable through the fuel adjustment clause.

Copies of the filing were served upon Delmarva's jurisdictional customers named above and upon the Delaware and Maryland Public Service Commissions, as well as the Virginia State Corporation Commission.

Comment date: October 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Borough of Zelienople, Pennsylvania

[Docket No. TX94–9–000]

Take notice that on September 9, 1994, the Borough of Zelienople (Borough) tendered for filing an application requesting that the Commission order Pennsylvania Power Company (Penn Power) to immediately provide transmission services pursuant to Sections 211 and 212 of the Federal Power Act.

In its application, the Borough seeks up to 7 MW of firm transmission services over Penn Power's system to the existing terminal pole and monitoring points where Penn Power's service lines meet Zelienople's 4 kV system. The Borough requested the firm transmission services for the receipt of electric power from Duquesne Light Company from a 69 kV point of interconnect at Penn Power's Valley-Frisco Substation at 69 kV to be delivered from that point by Penn Power to the 4 kV metering point at Penn Power's substation located in the Borough or, alteratively, at 138 kV at Penn Power's Hoytdale Substation.

The proposed date for initiating the requested transmission service is September 1, 1994, or as soon thereafter as possible. The proposed date for terminating the requested transmission services is September 1, 1999, or five years after initiating service.

Comment date: October 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23798 Filed 9–26–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 10854–002]

Notice of Application

September 20, 1994.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

The Federal Energy Regulatory Commission (FERC) has received an application for initial license of the Cataract Hydroelectric Project, FERC No. 10854–002. The project is located on the Escanaba River Basin in Marquette Co. near Gwinn, Michigan.

The FERC staff intends to prepare an Environmental Assessment (EA) on the hydroelectric project in accordance with the National Environmental Policy Act.

As part of the EA preparation process, FERC staff will conduct a site visit of the project on October 6, 1994. The site visit will provide an opportunity for interested parties to observe environmental conditions at the project area.

If you would like to attend the site visit, we will meet at 10:00 p.m. to Tuesday, October 6, at Jerry's Restaurant Parking Lot, Highway M–35 across from the Gwinn High School. The Cataract Hydro Project address and directions to the meeting location are as follows:

From Marquette, MI, travel approximately 8 miles west on US 41. Turn south on Highway M–35, travel approximately 25 miles to the City of Gwinn. Highway M–35 is the main road through Gwinn.

We will conclude the site visit at the Hydroelectric Project location. Please be aware that you will be responsible for your own lodging, transportation, and meals.

Please notify Mr. Max Curtis, Upper Peninsula Power Company (UPPCo), at (906) 487–5063, if you plan to attend the site visit. All those attending the site visit are urged to refrain from any communication concerning the merits of the license application to any member of the Commission staff or Commission's Contractor, CH2M HILL, outside of the established process for developing the licensing record.

For further information, please contact Ms. Angel Oliver at (202) 219–2998.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–23886 Filed 9–26–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5076–7]

Availability of Proposed Approval Decisions and Lists Under CWA Section 303(d)

AGENCY: U.S. Environmental Protection Agency (USEPA), Region VII.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of lists for the Region VII states of Kansas, Nebraska and Missouri submitted to EPA pursuant to CWA section 303(d)(2) as well as EPA's proposed decisions to approve these lists, and requests public comment.

DATES: Comments must be submitted to EPA on or before November 14, 1994.

ADDRESSES: Comments on these items should be sent to Jerome Pitt, U.S. Environmental Protection Agency Region VII, Water Management Division, 726 Minnesota Ave., Kansas City, Kansas 66101.

Copies of these items can be obtained by writing or calling Jerome Pitt, U.S. Environmental Protection Agency Region VII, Water Management Division, 726 Minnesota Ave., Kansas City, Kansas 66101; Phone: 913–551–7766; FAX: 913–551–7765.

FOR FURTHER INFORMATION CONTACT: Jerome L. Pitt at 913–551–766.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each State identify those waters for which existing required pollution controls are not stringent enough to implement State water quality standards. For those waters, states are required to establish total maximum daily loads (TMDLs) according to priority ranking. The identified waters and loads are required to be submitted to the Environmental Protection Agency (EPA) for approval from "time to time."

On January 11, 1985 EPA published a final rule (50 FR 1775) that established 40 CFR part 130 (Water Quality Planning and Management). This rule established certain requirements for State and local government water quality programs, including requirements related to the implementation of section 303(d) of the CWA. The regulation did not specify dates for State compliance with the section 303(d) requirements, but reiterated the statutory provision calling for submission from time to time. On July 24, 1992, EPA published a final rule (57 FR 33040) that amended 40 CFR 130.7. The rule established that each state shall submit biennially to the Regional Administrator beginning in 1992 the list of waters, pollutants causing impairment, and the priority ranking including waters targeted for TMDL development within the next two years.

Consistent with EPA's amended regulation Kansas, Nebraska and Missouri have submitted to EPA for approval their list decisions under section 303(d)(2). EPA today proposes to approve these lists submitted by Kansas, Nebraska and Missouri and solicits public comment on the proposed approval decisions and on the state lists.

Dated: September 19, 1994.

Ronald R. Ritter,

Director, Water Management Division, USEPA Region VII.

[FR Doc. 94–23888 Filed 9–26–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 C.F.R. part 540, as amended:

American Canadian Caribbean Line, Inc., P.O. Box 368, 461 Water Street, Warren, Rhode Island 02885

Vessel: NIAGARA PRINCE

Dated: September 21, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–23807 Filed 9–26–94; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 94–19]

L.B.L. Enterprises, Inc. v. Con-Freight Marine Line, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by L.B.L. Enterprises, Inc. ("Complainant") against Con-Freight Marine Line, Inc. ("Respondent") was served September 21, 1994.

Complainant alleges that Respondent is a non vessel operating common carrier that violated section 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. app. § 1709(d)(1). Complainant states that Respondent prepared a bill of lading incorrectly showing the Port of Discharge to be St. Petersburg, Russia on two shipments to Riga, Latvia, corrected the port of discharge while the two shipments were in transit without correcting the delivery contact agent which Complainant later found handled shipments only to Russia, refused to reimburse Complainant for costs of a Latvian driver to transport the shipments from St. Petersburg to Riga after promising to do so, and caused both shipments to arrive late. Further, Complainant alleges respondent refused to return a security deposit that was required for release of the second shipment in St. Petersburg, after promising to do so.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61,

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and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by September 21, 1995, and the final decision of the Commission shall be issued by January 19, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 94-23810 Filed 9-26-94; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License No.	Name/address	Date reissued
2379 ..	Fabian Forwarders Company, Inc., 125 Yellowstone Drive, Reno, NV 89512.	Aug. 5, 1994.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94-23806 Filed 9-26-94; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510

License Number: 2366
Name: Transtec Ocean Express Inc.
Address: 19443 Laurel Park Rd., Ste. 107, Rancho Dominguez, CA 90220
Date Revoked: July 13, 1994
Reason: Surrendered license voluntarily.

License Number: 3553
Name: International Relocation Co. dba ABcom International Transportation and Trading Co.
Address: 15272 Bolsa Chica Rd., Huntington Beach, CA 92649
Date Revoked: July 21, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 2211
Name: Golden Eagle International Forwarding, Inc.
Address: 9270 NW 100th Street, Medley, FL 33178
Date Revoked: July 22, 1994
Reason: Surrendered license voluntarily.

License Number: 3342
Name: Maria Velez De Espinosa dba MV Ocean Freight Forwarders
Address: Rio Tallaboa AV-9, Valley Verde, Bayamon, PR 00961
Date Revoked: July 27, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 2397
Name: Carl Ronay dba Aero-Mar-Terra Forwarding
Address: 1027 main, #B, Pasadena, TX 77506
Date Revoked: July 27, 1994
Reason: Surrendered license voluntarily.

License Number: 165
Name: Gerard F. Tujague, Inc.
Address: 401 Sanlin Bldg., P.O. Box 53037, New Orleans, La 70153
Date Revoked: August 1, 1994
Reason: Surrendered license voluntarily.

License Number: 3559
Name: Brunswick International, Inc.
Address: 14 Kennedy Blvd., East Brunswick, New Jersey 08816
Date Revoked: August 5, 1994
Reason: Surrendered license voluntarily.

License Number: 3362
Name: Logistic Distribution System USA, Inc. dba LDS USA
Address: 18 Self Blvd., Carteret, NJ 07008
Date Revoked: August 5, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 624
Name: Rapid World Forwarders, Inc.
Address: 27 Park Place, New York, NY 10007
Date Revoked: August 9, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 3283
Name: John Clark International, Inc.
Address: 845 Chicago Ave., Ste. 218, Evanston, IL 60202
Date Revoked: August 10, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 1830
Name: Westwind Overseas Limited
Address: 633 Broadway, Hastings-On-Hudson, New York, NY 10706
Date Revoked: August 11, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 3671
Name: Kanmar, Corp.
Address: 1701 W. 62nd Street, Hialeah, FL 33012
Date Revoked: August 13, 1994
Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94-23808 Filed 9-26-94; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

IBT Bancorp, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition,

conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 17, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. IBT Bancorp, Inc., Mt. Pleasant, Michigan; to engage *de novo* through its subsidiary IBT Financial Services, Inc., Mr. Pleasant, Michigan, in full service securities brokerage activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y. These activities will be conducted in the state of Michigan.

2. Northern Bankshares, Inc., McFarland, Wisconsin; to expand the scope of its lending activity of making and servicing loans by increasing loan participations, in an aggregate amount, up to $2 million, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. National City Bancshares, Inc., Evansville, Indiana; to engage *de novo* through its subsidiary NCBE Leasing Corp., Evansville, Indiana, in (1) leasing personal and real property; and (2) acting as agent, broker or adviser in the leasing of personal or real property, pursuant to § 225.25(b)(5) and (b)(i) and (ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 21, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-23817 Filed 9-26-94; 8:45 am]

BILLING CODE 6210-01-F

South Pointe Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 21, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. South Pointe Financial Corporation, Marion, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of South Pointe Bank, Marion, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. The First National Bank of St. James, ESOP, St. James, Minnesota; to acquire as the result of a stock redemption, 13.72 percent, for a total of 41.89 percent, of the voting shares of The First National Agency at St. James, St. James, Minnesota, and thereby indirectly acquire The First National Bank at St. James, St. James, Minnesota.

Board of Governors of the Federal Reserve System, September 21, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-23818 Filed 9-26-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Request For Comments Concerning a Study of Federal-State Cooperation

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is conducting a study mandated by Section 13 of the Federal Trade Commission Act Amendments of 1994, Public Law 103-312, which requires that the Commission review "its statutory responsibilities to identify those matters within its jurisdiction where Federal enforcement is particularly necessary or desirable and those areas that might more effectively be enforced at the State or local level." The Commission requests public comment concerning these issues.

DATES: Written comments will be accepted until October 27, 1994.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H-159, Sixth and Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Elaine D. Kolish, Assistant Director, Division of Enforcement, Bureau of Consumer Protection, (202) 326-3042, or Joan S. Greenbaum, Associate Director for Regions, Bureau of Competition, (202) 326-2629, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Federal Trade Commission Act Amendments of 1994 became law on August 26, 1994. Public Law 103-312. 108 Stat. 1691. Section 13 directs the Commission, within six months of the bill's enactment, to transmit to the Committee on Commerce, Science and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on Federal-State Cooperation. The report is "to identify those matters within [The Commission's] jurisdiction where Federal enforcement is particularly necessary or desirable and those areas that might more effectively be enforced at the State or local level." In conducting this review, the Commission is directed to "consider the resources available to the Commission and the States, as well as particular rules that have been promulgated by the Commission." In addition, the Commission must "consider such other issues as will result in more efficient implementation of the statutory responsibilities of the Commission."

Section 13 directs the Commission to "consult with the attorneys general of the States, representatives of consumers and industry, and other interested parties." The Commission is issuing this Notice to solicit written comments from interested members of the public on the issues described above. Because the report must be transmitted to Congress by February 27, 1995, the comment period is limited to 30 days.

Commission staff expects to hold informal meetings with persons and groups interested in the topics to be addressed in the report. All interested parties are nonetheless urged to file

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written comments, because the staff may not be able to accommodate all of the interested groups that wish to meet.

Comments should focus on areas of the Commission's enforcement authority that might be implemented more effectively and efficiently by altering the present manner in which enforcement activity is shared between the Commission and State or local agencies. Specific areas of interest include enforcement allocations respecting trade regulation rules, deceptive marketing practices, deceptive advertising, consumer credit and debt collection practices, and anticompetitive conduct that primarily affects consumers within a particular State or local area versus conduct that has primarily regional or national impact. In any assessment of enforcement allocations in these areas, the impact on resources available to the Commission and the States to carry out their other law enforcement responsibilities should be considered. Comments should discuss the basis for any recommendations, and describe any statutory changes or changes in the Commission's rules that might be necessary to implement the recommendations. Comments directed to telemarketing practices should recognize that the statutory authority of both the Commission and the States has recently been affected by the Telemarketing and Consumer Fraud and Abuse Prevention Act, Public Law 103–297, 108 Stat. 1545 (Aug. 16, 1994).

The Commission anticipates that both the range and the analysis of enforcement reallocation opportunities may differ with respect to the Commission's consumer protection and competition missions. Therefore, comments dealing specifically with the Commission's consumer protection responsibilities should be segregated from comments dealing with the Commission's maintaining competition responsibilities. Documents containing the former should be titled "Consumer Protection Comment;" those containing the latter should be titled "Maintaining Competition Comment."

By Direction of the Commission

Donald S. Clark,

Secretary.

[FR Doc. 94–23877 Filed 9–26–94; 8:45 am]

BILLING CODE 6750–01–M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION

[Between: 082294 and 090294]

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
The Loewen Group Inc.; Tex Kilpatrick; Kilpatrick Enterprises, Inc	94–1772	08/22/94
The Loewen Group Inc.; K.D. Kilpatrick; Kilpatrick Enterprises, Inc	94–1773	08/22/94
American Barrick Resources Corporation; Lac Minerals Ltd.; Lac Minerals Ltd	94–1873	08/22/94
The Chase Manhattan Corporation; American Residential Holding Corporation; American Residential Holding Corporation	94–1919	08/22/94
Merrill Lynch Capital Appreciation Partnership B–XXV, LP; U.S.A. Foods, Inc.; Newco	94–1823	08/23/94
Merrill Lynch Capital Appreciation Company Limited II; U.S.A. Foods, Inc.; Newco	94–1824	08/23/94
N.V. Verenigd Bezit VNU; Boston Ventures Limited Partnership II; Bill Holdings, Inc	94–1843	08/23/94
Amoco Corporation; E.I. duPont de Nemours and Company; E.I. duPont de Nemours and Company	94–1857	08/23/94
Gerber Scientific, Inc.; Microdynamics, Inc.; Microdynamics, Inc	94–1884	08/23/94
Rockwell International Corporation; ABI (Joint Venture); ABI (Joint Venture)	94–1888	08/23/94
Craig O. McCaw; Craig O. McCaw; Shreveport Cellular Telephone Company	94–1898	08/23/94
Mr. Deepak Kulkarni; Hanson PLC; Proctor & Schwartz Inc	94–1910	08/23/94
Capsure Holdings Corp.; John Knox Jr.; Universal Surety Holding Corporation	94–1917	08/23/94
Offshore Logistics, Inc.; Grasso Corporation; Grasso Corporation	94–1918	08/23/94
Cairn Energy PLC; President and Fellows of Harvard College; Smith Offshore Exploration Company II	94–1930	08/23/94
President and Fellows of Harvard College; Cairn Energy PLC; Cairn Energy USA, Inc	94–1937	08/23/94
Campbell Soup Company; Fresh Start Foods Limited Partnership; Fresh Start Foods Limited Partnership	94–1940	08/23/94
NEXTEL Communications, Inc.; Saber Communications, Inc.; Saber Communications, Inc	94–1945	08/23/94
PhyCor, Inc.; Holt-Krock Clinic; Holt-Krock Clinic	94–1948	08/23/94
USX Corporation; Kwik Sak, Incorporated; Kwik Sak, Incorporated	94–1958	08/23/94
United Meridian Corporation; General Atlantic Resources, Inc.; General Atlantic Resources, Inc	94–1964	08/23/94
General Electric Company; Stephen B. Goot; Total Audio Visual Services, Inc	94–1965	08/23/94
NV Koninklijke KNP BT; Ivan Allen Company; Ivan Allen Company	94–1986	08/23/94
United Meridian Corporation; General Atlantic Resources, Inc.; General Atlantic Resources, Inc	94–2013	08/23/94
National Spinning Co., Inc.; Equity Holdings Limited; Caron International Inc	94–1889	08/25/94
Western Resources, Inc.; HUB Entity (Joint Venture); HUB Entity (Joint Venture)	94–1907	08/25/94
Enron Corp.; HUB Entity (Joint Venture); HUB Entity (Joint Venture)	94–1912	08/25/94
Kuhlman Corporation; Communication Cable, Inc.; Communication Cable, Inc	94–1931	08/25/94
Frontenac VI Limited Partnership; Kimberly-Clark Corporation; Kimberly-Clark Corporation	94–1972	08/25/94
Edward L. Perl, M.D.; Coastal Healthcare Group, Inc.; Coastal Healthcare Group, Inc	94–1987	08/25/94
Golden Eagle Industries, Inc.; National Gypsum Company; National Gypsum Company	94–1906	08/26/94
BMC West Corporation; Economy Lumber & Hardware Co., Inc.; Greeley Economy Lumber & Hardware, Inc	94–1933	08/26/94
Bessemer Securities Corporation; Gary G. Moose; FEDCO Automotive Components Company, Inc	94–1950	08/26/94
APS Holding Corporation; Sieg Company; Sieg Company	94–1951	08/26/94

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

[Between: 082294 and 090294]

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Bessemer Securities Corporation; Timothy G. Brodene; FEDCO Automotive Components Company, Inc	94–1952	08/26/94
Ajinomoto Co., Inc.; Tate & Lyle; Orsan Corporation	94–1955	08/26/94
WMX Technologies, Inc.; Santa Fe Pacific Corporation; Rail-Cycle L.P	94–1974	08/26/94
Joseph Littlejohn & Levy Fund, L.P.; Tyco International Ltd.; Tyco International Ltd	94–1979	08/26/94
Tyco International Ltd.; Kendall International, Inc.; Kendall International, Inc	94–1981	08/26/94
Richard A. Gilleland; Tyco International Ltd.; Tyco International Ltd	94–1982	08/26/94
The Clayton & Dubilier Private Equity Fund IV, L.P.; Tyco International Ltd.; Tyco International Ltd	94–1983	08/26/94
Steelcase, Inc.; Ivan Allen Company; Ivan Allent Company	94–1985	08/26/94
ConAgra, Inc.; Larry Dinkin; MC Retail Foods	94–1997	08/26/94
Foster Wheeler Corporation; Enserch Corporation; Enserch Environmental Corporation	94–1998	08/26/94
K–III Communications Corporation; Whittle Communications L.P.; Whittle Communications L.P	94–2010	08/26/94
AmeriQuest Technolgoies, Inc.; Robec, Inc.; Robec, Inc	94–2016	08/26/94
Craig O. McCaw; Cook Inlet Region, Inc.; Cook Inlet Communications Corporation	94–2018	08/26/94
Cook Inlet Region Inc.; Craig O. McCaw; LIN Television Corporation	94–2019	08/26/94
Host Marriott Corporation; Glendale Federal Bank, Federal Savings Bank; San Francisco Airport Marriott Hotel	94–2021	08/26/94
Integon Corporation; The Travelers Inc.; Bankers and Shippers Insurance Company ("Bankers")	94–1894	08/29/94
The Garfield Weston Charitable Foundation; Kooperativa forbundet; Karlshamns USA, Inc	94–1914	08/29/94
ConAgra, Inc.; The SK Equity Fund, L.P.; Marie Callender Pie Shops, Inc	94–1994	08/29/94
Cygne Designs, Inc.; W. Glynn Manson; G.J.M. Manufacturing Ltd. (BVI)	94–2003	08/29/94
W. Glynn Manson; Cygne Designs, Inc.; Cygne Designs, Inc	94–2004	08/29/94
Nextel Communications, Inc.; MobileMedia Corporation; MobileMedia Communications, Inc	94–2025	08/29/94
Allen K. Breed; Hamlin, Incorporated; Hamlin, Incorporated	94–1916	08/30/94
Hitachi, Ltd.; NEWCO; NEWCO	94–1992	08/30/94
Texas Instruments Incorporated; NEWCO; NEWCO	94–1993	08/30/94
Nabors Industries, Inc.; Sundowner Offshore Services, Inc.; Sundowner Offshore Services, Inc	94–2026	08/30/94
Norwest Corporation; C.H. Robinson Company; CHR Equipment Financing, Inc	94–2038	08/30/94
First Financial Management Corporation; New Valley Corporation (debtor-in-possession); Western Union Financial Services, Inc	94–2036	09/01/94
Sulzer AG; Voith Sulzer Papiertechnik GmbH; Voith Sulzer Papiertechnik GmbH	94–1614	09/02/94
Familiengesellschaft Dr. HannsVoith GbR; Voith-Sulzer Papiertechnik GmbH; Voith-Sulzer Papiertechnik GmbH	94–1615	09/02/94
J.R. Hendrick, III; Joshua P. Darden, Jr.; Colonial Chevrolet Company, L.P	94–1900	09/02/94
Warburg, Pincus Investors, L.P.; Joshua P. Darden, Jr.; Colonial Chevrolet Company, L.P	94–1947	09/02/94

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contract Representatives; Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94–23875 Filed 9–26–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–837]

General Railway Signal Co.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens and modifies the Commission's 1964 order by terminating the order consistent with the Commission's new policy that the public interest requires setting aside orders in effect for more than twenty years.

DATES: Consent order issued September 24, 1964. Modifying order issued August 29, 1994.

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S–2115, Washington, D.C. 20580. (202) 326–2526.

SUPPLEMENTARY INFORMATION: In the Matter of General Railway Signal Co. The prohibited trade practices and/or corrective actions as set forth at 29 FR 14071, are deleted as indicated in the summary.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; Sec. 2, 49 Stat. 1526; 15 U.S.C. 45, 13)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94–23876 Filed 9–26–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3135]

Chemopharm Laboratory Inc., d/b/a CP Industries; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Utah corporation that markets the ice melting product, Superior Sno-N-Ice, from making any environmental claim about any product unless it possesses and relies on competent and reliable scientific evidence to substantiate the claims. In addition, the respondent would be prohibited from misrepresenting the existence or contents of any test or study.

DATES: Comments must be received on or before November 28, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, IL 60603. (312) 353–8156.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C.

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46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Chemopharm Laboratory Inc., d/b/a CP Industries, a corporation ("proposed respondent"), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between Chemopharm Laboratory Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Chemopharm Laboratory Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah with its principal office or place of business at 503 North 400 West, Salt Lake City, Utah 84103.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order, the following definitions shall apply:

1. The term "product" means any product that is offered for sale, sold or distributed to the public by respondent, its successors and assigns, under the "Superior Sno-N-Ice Melter" band name or any other brand name of respondent, its successors and assigns; and also means any product sold or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

2. The term "competent and reliable scientific evidence" means tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant areas, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I

It is ordered that respondent, Chemopharm Laboratory Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Such product is "environmentally safe," "protects the total environment," or otherwise offers any environmental benefit; or

B. Such product provides the environmental benefits of Calcium Magnesium Acetate,

unless such representation is true and, at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

II

It is further ordered that respondent, Chemopharm Laboratory Inc., a corporation, its successors and assigns, and its offers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

III

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representations; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered that the respondent shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this Order.

V

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

VI

It is further ordered that respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Chemopharm Laboratory, Inc., d/b/a CP Industries, an Utah corporation ("CP Industries" or "respondent"). Upon this agreement, the respondent will cease and desist from claiming that any product is environmentally safe, protects the total environment, otherwise offers any environmental benefit, or provides the environmental benefits of Calcium Magnesium Acetate ("CMA"), unless such representation is true and, at the time of making such representation, it possesses adequate substantiation. The proposed consent agreement also prohibits CP Industries from misrepresenting the results of any test or study.

The proposed consent order has been placed on the public record for sixy (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the proposed order contained in the agreement.

This matter concerns claims made for CP Industries' Superior Sno-N-Ice Melter product. The complaint accompanying the proposed consent order alleges, in part, that the respondent engaged in deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act. According to the complaint, the respondent represented that Superior Sno-N-Ice Melter does not harm or damage the environment; that Superior Sno-N-Ice Melter provides the environmental benefits of CMA; that scientific studies of CMA demonstrate that Superior Sno-N-Ice is beneficial to the environment; and that it had a reasonable basis for these claims. In fact, Superior Sno-N-Ice Melter contains about 95% sodium chloride (i.e., rock salt) which does harm or damage the environment. Therefore, Superior Sno-N-Ice does harm or damage the environment; Superior Sno-N-Ice Melter does not provide the environmental benefits of CMA; and scientific studies of CMA do not demonstrate that Superior Sno-N-Ice Melter is beneficial to the environment. The complaint therefore alleges that the claims are false and misleading and also alleges that CP Industries lacked a reasonable basis for making the claims.

The consent order contains provisions designed to prevent the respondents from engaging in similar allegedly illegal acts and practices in the future.

Paragraph I of the proposed consent order requires CP Industries to cease representing that any product is "environmentally safe," "protects the total environment," or otherwise offers any environmental benefit; or that any product provides the environmental benefits of CMA, unless such representation is true and substantiated.

Paragraph II of the order prohibits CP Industries from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study.

The remaining parts of the proposed consent order require the respondent to maintain materials relied upon to substantiate claims covered by the order, to distribute copies of the order to each of its operating divisions and to certain company officials, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more compliance reports.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94-23878 Filed 9-26-94; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

[G-93-3]

Delegation of Authority to the Secretary of Transportation; Correction

AGENCY: Federal Supply Service, GSA.

ACTION: Correction to notice.

SUMMARY: This document contains corrections to notice document [G-93-3] which was published Wednesday, August 11, 1993 (58 FR 42732). The document, erroneously addressed to the Secretary of Transportation, is changed to read as follows:

Delegation of Authority to the Secretary of the Treasury

Pursuant to the authority vested in the Administrator of General Services by section 3726 of title 31, United States Code, and redelegated to the Director, Office of Transportation Audits, Federal Supply Service, I have determined that it is both cost-effective and in the public interest to delegate authority to the Secretary of the Treasury; specifically, to the U.S. Customs Service, to conduct a prepayment audit of transportation bills relating to the movement of domestic and foreign household goods, motor, air and rail freight, air passenger, and water freight, subject to the provisions of the Federal Property Management Regulations, title 41, Code of Federal Regulations, subpart 101-41.

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and amendments thereto. This prepayment audit will be conducted by the General Services Administration's (GSA's) contractors, at the contractors' sites, for the U.S. Customs Service, Indianapolis, Indiana.

The Secretary of the Treasury may redelegate this authority to any officer, official, or employee of the Department of the Treasury.

The Secretary of the Treasury shall notify GSA in writing of these additional delegations. This delegation is effective upon publication in the Federal Register.

Dated: September 16, 1994.

Joseph J. Cosimano,

Director, Office of Transportation Audits.

[FR Doc. 94-23709 Filed 9-26-94; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC-508]

Cooperative Agreement With the Iowa Department of Public Health for Health Assessment of Persian Gulf War Veterans

Summary

The Centers for Disease Control and Prevention (CDC) announces the anticipated availability of fiscal year (FY) 1995 funds for a cooperative agreement with the Iowa Department of Public Health (IDPH) for Health Assessments of Persian Gulf War Veterans. Approximately $1.50 million is expected to be available in FY 1995 to fund this project. It is expected that the award will begin on or about December 1, 1994, and will be made for a 12-month budget period within a project period of up to 2 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

The purpose of this cooperative agreement will be to conduct a pilot survey which will assess the past and present health status of Iowa residents who are Persian Gulf War veterans compared with other Iowa residents who are Persian Gulf War-era veterans, in terms of self-reported health outcomes. This assessment will serve as a model for potential future similar assessments undertaken by other Federal agencies, States, local governments, or universities. CDC will serve as the principal point of contact with the Department of Defense and other Federal agencies to secure names and locating information for the study participants; provide expert review, comment and approval on all study protocols, data collection instruments, analysis plans, media releases, draft and final reports, and publications generated by the recipient and its contractors and ensures appropriate involvement of related Federal agencies and veteran services organizations.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (To order a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under the Public Health Service Act, section 301 (42 U.S.C. 241).

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Assistance will be provided only to IDPH for conducting this project. No other applications are solicited. The Program Announcement and application kit have been sent to IDPH.

IDPH is the most appropriate organization to conduct the work under this cooperative agreement for the following reasons:

1. IDPH among the States has taken aggressive and positive steps to address the health concerns among Iowa Gulf War veterans. It has already established vital links among Iowa veterans' groups and scientists to address these concerns and are therefore in the strongest position to carry out this effort rapidly and cost effectively.

2. IDPH has the statutory responsibility for protecting and enhancing the public health of the citizens of the State of Iowa. This includes assessing the impact of the Persian Gulf War experience on the health of Iowa residents who are Gulf War or Gulf War-era veterans.

3. IDPH has access to vital statistics and related State collected data which will be essential components of the project.

4. IDPH has ongoing and established organizational relationships with other Iowa agencies and veterans' groups which will be involved in providing essential support for this project.

Executive Order 12372 Review

The application is subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. IDPH should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective application and receive any necessary instructions on the State process. If the SPOC has any State process recommendations on the application submitted to CDC, they should send them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application due date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

A. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 508 and contact Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E-13, Atlanta, GA 30305, telephone (404) 842-6796.

A copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the SUMMARY may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 783-3238.

Dated: September 20, 1994.

Deborah L. Jones,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-23811 Filed 9-26-94; 8:45 am]

BILLING CODE 4163-18-P

Office of the Secretary

Health Care Financing Administration

Administration for Children and Families

[ORD-069-N]

Medicaid Program; Demonstration Proposals Pursuant to Section 1115(a) of the Social Security Act; Policies and Procedures

AGENCIES: Office of the Secretary, Health Care Financing Administration (HCFA), and Administration for Children and Families (ACF), HHS.

ACTION: Public Notice.

SUMMARY: This public notice informs interested parties of (1) the principles the Department of Health and Human Services ordinarily will consider when deciding whether to exercise its discretion to approve or disapprove demonstration projects under the authority in Section 1115(a) of the Social Security Act, 42 U.S.C. § 1315(a); (2) the kinds of procedures the Department would expect States to employ in involving the public in the development of proposed demonstration projects under Section 1115; and (3) the procedures the Department ordinarily will follow in reviewing demonstration proposals. The principles and procedures described in this public notice are being provided for the information of interested parties, and are not legally binding on the Department of Health and Human Services. This notice does not create any right or benefit, substantive or procedural, enforceable at law or equity, by any person or entity, against the United States, its agencies or instrumentalities, the States, or any other person.

FOR FURTHER INFORMATION CONTACT: Howard Rolston, Administration for Children and Families, Department of Health and Human Services, at (202) 401-9220.

Thomas Kickham, Health Care Financing Administration, Department of Health and Human Services, at (410) 966-6503.

SUPPLEMENTARY INFORMATION:

I. Introduction

Demonstration Proposals Pursuant to Section 1115 of the Social Security Act—General Policies and Procedures

Under Section 1115, the Department of Health and Human Services is given latitude, subject to the requirements of the Social Security Act, to consider and approve research and demonstration proposals with a broad range of policy objectives. The Department desires to facilitate the testing of new policy approaches to social problems. Such demonstrations can provide valuable knowledge that will help lead to improvements in achieving the purposes of the Act. The Department also is committed to both a thorough and an expeditious review of State requests to conduct such demonstrations.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. In order to ensure a sound, expeditious and open decision-making process, the Department will be guided by the policies and procedures described in this statement in accepting and reviewing proposals submitted pursuant to section 1115.

II. General Considerations

To facilitate the testing of new policy approaches to social problems the Department will—

- Work with States to develop research and demonstrations in areas consistent with the Department's policy goals;
- Consider proposals that test alternatives that diverge from that policy direction; and
- Consider, as a criterion for approval, a State's ability to implement the research or demonstration project.

While the Department expects to review and accept a range of proposals, it may disapprove or limit proposals on policy grounds or because the proposal creates potential constitutional problems or violations of civil rights laws or equal protection requirements. The Department seeks proposals which preserve and enhance beneficiary access to quality services. Within this overall policy framework, the Department is prepared to—

- Grant waivers to test the same or related policy innovations in multiple States, (replication is a valid mechanism by which the effectiveness of policy changes can be assessed);
- Approve demonstration projects ranging in scale from reasonably small to state-wide or multi-state, and
- Consider joint Medicare-Medicaid demonstrations, such as those granted in the Program for All-Inclusive Care for the Elderly (PACE) and Social Health Maintenance Organization (SHMO) demonstrations, and Aid to Families with Dependent Children (AFDC)-Medicaid waivers.

III. Duration

The complex range of policy issues, design methodologies, and unanticipated events inherent in any research or demonstration makes it very difficult to establish a single Department policy on the duration of 1115 waivers. However, the Department is committed, through negotiations with State applicants, to—

- Approve waivers of at least sufficient duration to give new policy approaches a fair test. The duration of waiver approval should be congruent with the magnitude and complexity of the project (for example, large-scale statewide reform programs will typically require waivers of five years);
- Provide reasonable time for the preparation of meaningful evaluation results prior to the conclusion of the demonstration; and
- Recognize that new approaches often involve considerable start-up time and allowance for implementation delays.

The Department is also committed, when successful demonstrations provide an appropriate basis, to working with State governments to seek permanent statutory changes incorporating those results. In such cases, consideration will be given to a

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reasonable extension of existing waivers.

IV. Evaluation

As with the duration of waivers, the complex range of policy issues, design methodologies, and unanticipated events also makes it very difficult to establish a single Department policy on evaluation. This Department is committed to a policy of meaningful evaluations using a broad range of appropriate evaluation strategies (including true experimental, quasi-experimental, and qualitative designs) and will be flexible and project-specific in the application of evaluation techniques. This policy will be most evident with health care waivers. Within-site randomized design is the preferred approach for most AFDC waivers. The Department will consider alternative evaluation designs when such designs are methodologically comparable. The Department is also eager to ensure that the evaluation process be as unintrusive as possible to the beneficiaries in terms of implementing and operating the policy approach to be demonstrated, while ensuring that critical lessons are learned from the demonstration.

V. Cost Neutrality

The Department's fiduciary obligations in a period of extreme budgetary stringency require maintenance of the principle of cost neutrality, but the Department believes it should be possible to apply that principle flexibly.

- The Department will assess cost neutrality over the life of a demonstration project, not on a year-by-year basis, since many demonstrations involve making "up-front" investments in order to achieve out-year savings.
- The Department recognizes the difficulty of making appropriate baseline projections of Medicaid expenditures, and is open to development of a new methodology in that regard.
- In assessing budget neutrality, the Department will not rule out consideration of other cost neutral arrangements proposed by States.
- States may be required to conform, within a reasonable period of time, relevant aspects of their demonstrations to the terms of national health care reform legislation, including global budgeting requirements, and to the terms of national welfare reform legislation.

VI. Timeliness and Administrative Complexity

The Department is committed to minimizing the administrative burden on the States and to reducing the processing time for waiver requests. In order to accomplish this the Department has adopted a number of procedures, including—

- Expanding pre-application consultation with States;
- Setting, and sharing with applicants, a well-defined schedule for each application, with established target dates for processing and reaching a decision on the application;
- Maintaining, to the extent feasible, a policy of one consolidated request for further information;
- Sharing proposed terms and conditions with applicants before making final decisions;
- Establishing concurrent, rather than sequential, review of waivers by all relevant units of the Department and with other relevant Departments and the Office of Management and Budget;
- Expanding technical assistance activities to the States; and
- Developing multi-state waiver solicitations in areas of priority concern, including integrated long-term care system development, services for adolescents, and services in rural areas.

The Department will continue to follow and develop procedures, and commit internal resources to reviewing demonstration proposals, necessary for a sound and expeditious review process.

VII. State Notice Procedures

The Department recognizes that people who may be affected by a demonstration project have a legitimate interest in learning about proposed projects and having input into the decision-making process prior to the time a proposal is submitted to the Department. A process that facilitates public involvement and input promotes sound decision-making.

There are many ways that States can provide for such input. In order to allow for public input into the proposals, the Department expects States to ordinarily follow one (or more if the State desires) of the processes described in this section.

1. At any time prior to submitting a section 1115 demonstration proposal to the Department of Health and Human Services, a State may provide to the Department a written description of the process the State will use for receipt of public input into the proposal prior to its submission to the Department.

Within 15 days of receipt of such description, the Department will notify the State whether the described process provides adequate opportunity for public input. The Department will accept any process that—

- Includes the holding of one or more public hearings, at which the most recent working proposal is described and made available to the public, and time is provided during which comments can be received; or
- Uses a commission or other similar process, where meetings are open to members of the public, in the development of the proposal; or
- Results from enactment of a proposal by the State legislature prior to submission of the demonstration proposal, where the outline of such proposal is contained in the legislative enactment; or
- Provides for formal notice and comment in accordance with the State's administrative procedure act; provided that such notice must be given at least 30 days prior to submission; or
- Includes notice of the intent to submit a demonstration proposal in newspapers of general circulation, and provides a mechanism for receiving a copy of the working proposal and an opportunity, which shall not be less than 30 days, to comment on the proposal; or,
- Includes any other similar process for public input that would afford an interested party the opportunity to learn about the contents of the proposal, and to comment on its contents.

The State shall include in the demonstration proposal it submits to the Department a statement (a narrative of several sentences) briefly describing the process that it followed in implementing the process previously presented to the Department. The Department may find a proposal incomplete if the process has not been followed.

2. A State that has not followed the procedures described in paragraph 1. must submit a description of the process that was used in the State to obtain public input, at the time it submits its demonstration proposal. The Department will notify the State if the process was adequate within 15 days after the application is submitted, applying the same criteria as in paragraph 1. If the process was not adequate, the State can cure the inadequacy by—

Posting a notice in the newspaper of widest circulation in each city with a population of 100,000 or more, or in the newspaper of widest circulation in the State if there is no city with a population of 100,000, indicating that a demonstration proposal has been submitted. Such notice shall describe the major elements of the proposed demonstration and any changes in benefits, payments, eligibility, responsibilities, or provider selection requested in the proposal. The notice shall indicate how interested persons can obtain copies of the proposal and shall specify that written comments will be accepted by the State for a period of thirty days. If a State follows such a procedure, the State should respond to requests for copies of the proposal within seven days. The State should maintain a record of all comments received through this process.

All HHS commitments with respect to times for responding to demonstration proposals shall be tolled until this process is completed.

VIII. Federal Notice

The Department of Health and Human Services intends to publish a monthly notice in the **Federal Register** of all new and pending proposals submitted pursuant to section 1115. The notice will indicate that the Department accepts written comments regarding all demonstration project proposals.

The Department will maintain a list of organizations that have requested notice that a demonstration proposal has been received and will notify such organizations when a proposal is received.

IX. Comments

The Department will not approve or disapprove a proposal for at least 30 days after the proposal has been received, in order to receive and consider comments. The Department will attempt, if feasible, to acknowledge receipt of all comments, but the Department will not provide written responses to comments.

X. Findings

The Department will prepare a decision memorandum at the time a demonstration proposal is granted or denied, discussing why the Department granted or denied the proposal and how an approved demonstration meets the criteria established by statute.

XI. Administrative Record

The Department will maintain an administrative record which will generally consist of: the formal demonstration application from the State; issue papers sent to the State and State responses; public and Congressional comments sent to the Department and any Department responses; the Department's decision memorandum regarding the granting or denial of a proposal; and the final terms and conditions, and waivers, sent to the State and the State acceptance of them.

XII. Sub-state Demonstrations

When a demonstration is to be implemented in only part of a State, the State will be required to provide information on the likely demographic composition of populations subject to and not subject to the demonstration in the State. When relevant, the Department will require that the evaluation component of a project address the impact of the project on particular subgroups of the population.

XIII. Implementation Reviews

As part of the terms and conditions of any demonstration proposal that is granted, the Department may require periodic evaluations of how the project is being implemented. The Department will review, and when appropriate investigate, documented complaints that a State is failing to comply with requirements specified in the terms and conditions and implementing waivers of any approved demonstration.

XIV. Legal Effect

This notice is intended to inform the public and the States regarding procedures the Department ordinarily will follow in exercising the Secretary's discretionary authority with respect to State demonstration proposals under section 1115. This notice does not create any right or benefit, substantive or procedural, enforceable at law or equity, by any person or entity, against the United States, its agencies or instrumentalities, the States, or any other person.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations and Experiments.)

Dated: September 16, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: September 16, 1994.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Dated: September 19, 1994

Donna E. Shalala,

Secretary.

[FR Doc. 94–23960 Filed 9–26–94; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Outer Continental Shelf Advisory Board; Notice of Renewal/Revision

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix). Notice is hereby given that the Secretary of the Interior is renewing the Outer Continental Shelf (OCS) Advisory Board Charter and revising it to reflect the Minerals Management Service's royalty management mandate, and renaming it the Minerals Management Advisory Board.

The purpose of the OCS Advisory Board is to provide advice to the Secretary of the Interior and other officers of the Department in the performance of discretionary functions of the OCS Lands Act, as amended, including all aspects of leasing, exploration, development, and protection of the resources of the OCS. The charter is being revised to allow the Board to advise the Department on discretionary functions under the Federal Oil and Gas Royalty Management Act of 1982, the Geothermal Steam Act of 1970, the mineral leasing laws for coal and other solid mineral leases, as well as the OCS Lands Act.

Further information regarding the Committee may be obtained from the Chief, Office of Advisory Board Support, Minerals Management Service, Department of the Interior, 381 Elden Street, Herndon, Virginia 22070.

Certification

I hereby certify that the renewal and renaming/revision of the Outer Continental Shelf Advisory Board Charter is in the public interest in connection with the performance of duties imposed on the Department of the Interior by 43 U.S.C. 1331 *et seq.*, 30 U.S.C. 1701 *et seq.*, and 30 U.S.C. 1001 *et set.*

Dated: September 9, 1994.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 94–23803 Filed 9–26–94; 8:45 am]

BILLING CODE 4310–MR–M

Bureau of Land Management

[NV–930–4210–05; N–57459]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-Competitive Sale of Public Lands in Nye County, Nevada.

SUMMARY: The following described public land in Pahrump, Nye County, Nevada has been examined and found suitable for classification for sale utilizing non-competitive procedures, at not less than the fair market value.

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Authority for the sale is Section 203 and Section 209 of P.L. 94–579, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 43 U.S.C. 1719).

Mount Diablo Meridian, Nevada

T. 21 S., R. 54 E.,
Sec. 31, E½NE¼NW¼SE¼.
Containing 5 acres, more or less.

This parcel of land, situated in Pahrump is being offered as a non-competitive FLMPA sale to Mr. Edward E. Wheeler. This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests. The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, sodium, potassium and saleable minerals, and will be subject to:

1. An easement for roads, public utilities and flood control purposes in accordance with the transportation plan for Nye County/the City of Pahrump. Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P. O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Public Law 94–579, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: September 14, 1994.

Gary Ryan,

Acting District Manager, Las Vegas, NV.

[FR Doc. 94–23520 Filed 9–26–94; 8:45 am]

BILLING CODE 4310–HC–M

Bureau of Indian Affairs

Tribal Consultation on Indian Education Topics

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Correction to Notice of Tribal Consultation Meetings.

SUMMARY: By publication in the **Federal Register** on September 8, 1994, the Bureau of Indian Affairs gave Notice of Tribal Consultation Meetings concerning potential issues in Indian Education Programs.

This Notice corrects the above mentioned Notice by changing the location of the meeting which was specified by the September 8 publication for October 19, 1994, in Tulsa, Oklahoma. The location of the meeting is changed to Oklahoma City, Oklahoma. The October 19, 1994 date remains unchanged. All other information published in the September 8, 1994 Notice also remains unchanged.

DATES: Effective on publication.

FOR FURTHER INFORMATION CONTACT: Mr. Jimmy Baker, may be contacted for information regarding the specific address and other details for the Oklahoma City meeting. Mr. Baker may be contacted at (405) 945–6051.

Dated: September 15, 1994.

Ada E. Deer

Assistant Secretary—Indian Affairs.

[FR Doc. 94–23587 Filed 9–26–94; 8:45 am]

BILLING CODE 4310–02–P

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the American Chaffseed for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Recovery Plan for the American chaffseed (*Schwalbea americana*). The American chaffseed, which historically occurred in all the coastal states from Massachusetts to Louisiana as well as the inland states of Kentucky and Tennessee, is now limited to New Jersey, North Carolina, South Carolina, Georgia, and Florida. The species was listed as endangered in 1992 due to its extirpation from over half of its historical range and a decline in known occurrences. Although the number of known populations has increased substantially since the time of its listing, threats to the survival of the American chaffseed remain, primarily due to fire suppression and concomitant vegetational succession of the fire-maintained ecosystems where the species occurs. The recovery objective for this species is to be able to reclassify it to threatened status by protecting at least 50 distinct, self-sustaining American chaffseed populations. The Service solicits review and comment from the public on this draft Plan.

DATES: Comments on the draft Recovery Plan must be received December 27, 1994, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, New Jersey Field Office, 927 North Main Street, Building D–1, Pleasantville, New Jersey 08232, telephone 609–646–0620. Comments should be sent to this address, to the attention of Dana Peters.

FOR FURTHER INFORMATION CONTACT: Dana Peters (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft American Chaffseed (*Schwalbea americana*) Recovery Plan. This perennial member of the figwort family, a montypic genus, is primarily a coastal plain species of the Atlantic and Gulf coasts. The few inland exceptions to its coastal distribution are historic records. Although the number of known extant occurrences of the American chaffseed has increased three-fold since the species' listing in 1992 (due mainly to intensive searches in South Carolina), its range has undergone a significant contraction since the species was first recognized in 1935: where it used to be found in 13 states from Massachusetts in the North to Texas in the South, it now occurs in 5 states, from New Jersey to Florida.

Its decline is attributed primarily to development and succession of its habitat, and these threats to the species' survival persist. Sandy pineland communities where the species exists have proven to be especially vulnerable to development because soils are level, deep, and suitable for building sites. Remaining American chaffseed sites are threatened primarily by activities or management practices that result in restriction or suppression of fire, which is apparently needed to maintain the open subclimax ecosystem inhabited by the species. Other continuing threats to American chaffseed include inadvertent disturbance to plants, discontinuation of game management and the consequent cessation of burning, conversion of the fire-maintained flatwoods and savannas to commercial pine plantations, commercial pine straw raking, and the increasing restrictions on prescribed burning of forest tracts.

Reclassification of the American chaffseed is the primary objective of the draft Recovery Plan. Reclassification to threatened status will be considered when at least 50 geographically distinct American chaffseed populations are permanently protected and managed as needed to ensure long-range viability, and the species is established or found at four additional sites in the northern portion of its range. A delisting objective is not being defined at this time.

Recovery of the American chaffseed will be achieved through a combination of habitat protection and management, reintroduction of the species in portions of its former range, research aimed at better understanding the species' biology in order to predict viability of populations, and research to determine the best techniques to maintain the species and its habitat.

The draft Recovery Plan is being submitted for agency review. After consideration of comments received during the review period, the Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 20, 1994.

Ronald E. Lambertson,

Regional Director.

[FR Doc. 94–23809 Filed 9–26–94; 8:45 am]

BILLING CODE 4310–55–M

Availability of a Draft Recovery Plan for the Maguire Daisy (Erigeron Maguirei) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Maguire daisy (*Erigeron maguirei*). The Maguire daisy occurs in Emery and Wayne Counties, Utah. The Service solicits review and comment from the public on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before October 27, 1994 to ensure they receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, Lincoln Plaza, Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115. Written comments and materials regarding this plan should be sent to the Field Supervisor at the Salt Lake City address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England, Botanist (see **ADDRESSES** above), at telephone 801/524–5001.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies also will take these comments into account in the course of implementing approved recovery plans

The Maguire daisy is a perennial, herbaceous plant in the composite family (Asteraceae). The plant's stems are up to 18 cm (7 inches) tall. One to three flower heads are borne at the end of each stem. Each floral head has 15 to 20 pinkish white ray flowers and orange disk flowers. The species range is in the San Rafael Swell in Emery County and in Capitol Reef in Wayne County, Utah. Currently 25 locations representing 5 separate populations are known with a total population of approximately 3,000 individuals.

The Maguire daisy (*Erigeron maguirei* var. *maguirei*) was listed as an endangered species under the authority of the Act, as amended, on September 5, 1985 (50 FR 36089). The species (*Erigeron maguirei*) was proposed for reclassification as threatened on September 7, 1994 (59 FR 46219). This species was listed due to its small population size and to current and potential threats from grazing and surface disturbing activities of the

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species habitat. The goal of the recovery plan is to maintain viable populations to ensure the species survival and to guide recovery efforts to facilitate delisting the species. Recovery efforts will focus on protecting the species population and habitat from habitat destroying activities through the section 6, 7, and 9 prohibitions of the Act for plant species. Biological and ecological research of the species' biology and its relationship and interaction with its environment is necessary to guide future management of the species population and habitat to ensure its continued survival and the preservation of the species ecosystem. Additional recovery efforts will focus on inventory of potential habitat and minimum viable population studies of its known populations.

Public Comments Solicited

The Service solicits written comments on the recovery plan described above. All comments received by the date specified in the **DATES** section above will be considered prior to approval of the recovery plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 15, 1994

Terry T. Terrell,

Acting Regional Director, Region 6, Denver.

[FR Doc. 94–23720 Filed 9–21–94; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Outer Continental Shelf (OCS) Policy Committee of the Minerals Management Advisory Board; Notice and Agenda for Meeting

AGENCY: Minerals Management Service, Interior.

SUMMARY: The OCS Policy Committee of the Minerals Management Advisory Board will meet at the Mclean Hilton in Mclean, Virginia.

The agenda will cover the following principal subjects:

Tuesday, November 1, 1994

—The 5-Year Program 1997–2002
—The Secretary's Science Inititaitve—Erasing Bureau Lines for Research
—Gulf of Mexico Issues:
- The Gulf of Mexico Program
- The Air Quality Study

—Updates
- OCS Oil and Gas Legislative Subcommittee
- Hard Minerals Subcommittee

Wednesday, November 2, 1994

—Safety and Environmental Management Program:
- Update of MMS and Industry's Progress with the Program
- U.S.C.G. and International Initiatives

—New Technological Developments Drilling Fluids
—Committee Roundtable

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the OCS Policy Committee. Such requests should be made no later than October 14, 1994, to the Office of Advisory Board Support, Minerals Management Service, 381 Elden Street, MS–4110, Herndon, Virginia, 22070, Attention: Terry Holman.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, call Terry Holman at (703) 787–1211.

Minutes of the OCS Policy Committee meeting will be available for public inspection and copying at the Minerals Management Service in Herndon, Virginia.

DATES: Tuesday, November 1 and Wednesday, November 2, 1994.

ADDRESSES: Mclean Hilton, 7920 Jones Branch Drive, Mclean, Virginia, (703) 847–5000.

FOR FURTHER INFORMATION CONTACT: Terry Holman, Office of Advisory Board Support, Minerals Management Service, 381 Elden Street, MS–4110, Herndon, Virginia, 22070 or call 703–787–1211.

Authority: Federal Advisory Committee Act, P.L. No. 92-463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: September 16, 1994.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 94–23804 Filed 9–26–94; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

General Management Plan/ Environmental Impact Statement for Mount Rainier National Park, WA

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for the General Management Plan for Mount Rainier National Park, Washington.

SUMMARY: The National Park Service will prepare a General Management Plan/Environmental Impact Statement (GMP/EIS) for Mount Rainier National Park, Washington. The GMP/EIS will describe and analyze a proposal and alternatives for the future management of the park for approximately 15 years past approval of the plan.

A Master Plan was completed for Mount Rainier National Park in 1974; however, this plan is outdated and does not address current issues. In recent years, visitor use in the park has increased substantially, resulting in traffic circulation and parking problems, as well as degradation of vegetation and erosion of soil from off-trail use. External encroachments and adverse impacts along the park boundaries are also increasing. Current projects and plans that are addressing some immediate needs of the park include a gateway community assistance initiative, a transportation study and a Natural Resource Management Plan. The results of these projects will provide vital information for the GMP.

Issues to be addressed in the GMP/EIS include, but are not limited to: Traffic and circulation patterns, impacts of land uses outside the park, geological and hydrologic hazards and natural resources and visitor use management. Visitor density and distribution in the park and methods to mitigate impact on park resources while ensuring a quality visitor experience will also be considered. Alternatives to address these issues will be developed in cooperation with the public and will include a no-action alternative. Additionally, the EIS will provide a comprehensive analysis of impacts, taking into account cumulative effects.

Representatives of federal, state and local agencies, private organizations and individuals from the general public who may be interested in or affected by the proposed GMP/EIS are invited to participate in the scoping process by responding to this Notice with written comments. The scoping process will help define issues, concerns, and potential impacts related to the plan. Public scoping meetings are expected to be held in November 1994. The time and location of these meetings will be announced prior to that time through the local media and the park's mailing list.

The draft GMP/EIS is expected to be available for public review in 1997 and the final GMP/EIS and Record of Decision completed one year later.

The responsible official is Charles H. Odegaard, Regional Director, Pacific Northwest Region, National Park Service.

DATES: Written comments about the scope of issues and impact topics to be analyzed in the GMP/EIS should be received no later than 60 days from the date of publication of this Notice.

ADDRESSES: Written comments concerning the GMP/EIS should be sent to the Superintendent, Mount Rainier National Park, Ashford, Washington 98304–9751.

FOR FURTHER INFORMATION CONTACT: Eric Walkinshaw, Chief of Planning and Professional Services, Mount Rainier National Park at the above address or at telephone number (206) 569–2211, extension 3362.

Dated: September 15, 1994.

William C. Walters,

Deputy Regional Director, Pacific Northwest Region, National Park Service.

[FR Doc. 94–23787 Filed 9–26–94; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 17, 1994. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by October 12, 1994.

Carol D. Shull,

Chief of Registration, National Register.

GEORGIA

Talbot County

Lockhart—Cosby Plantation, GA 208, 7 mi. E of Talbotton, Talbot vicinity, 94001215

LOUISIANA

Rapides Parish

Lamourie Lock, Jct. of Lamourie Rd. and US 71, Lecompte vicinity, 94001218

MARYLAND

Baltimore Independent City

Sanitory Laundry Company Building (Cast Iron Architecture of Baltimore MPS), 118–120 N. Paca St., Baltimore, 94001213

NEW JERSEY

Essex County

Vreeland Homestead, 216 Chesnut St., Nutley, 94001217

NORTH DAKOTA

McHenry County

Norway Lutheran Church and Cemetery, 10 mi. S of Denbigh, S of the Souris R., Denbigh vicinity, 94001216

OREGON

Marion County

Shipley, U.G., House and Garden, 260 Washington St., S. Salem, 94001219

PUERTO RICO

Ponce Municipality

Hacienda Buena Vista, PR 10 N of Corral Viejo, Barrio Magueyes vicinity, 94001214

[FR Doc. 94–23869 Filed 9–26–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–103 (Sub-No. 8X)]

The Kansas City Southern Railway Company—Abandonment Exemption—In Le Flore and Haskell Counties, OK

The Kansas City Southern Railway Company (KCS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon two intersecting rail lines totaling approximately 29.65 miles in Le Flore and Haskell Counties, OK, as follows: (1) approximately 9.50 miles of the Midland Valley Branch extending between the point of connection with KCS's main line at milepost 20.80 in Panama and milepost 30.30 near Bokoshe; and (2) approximately 20.15 miles of the Fort Smith and Van Buren Railway Company line extending between the point of connection with KCS's main line at milepost 20.12 in Coal Creek, and the end of the line at milepost 40.27 in McCurtain.[1]

KCS has certified that: (1) no local traffic has moved over the lines for at least 2 years; (2) overhead traffic has been rerouted; (3) no formal complaint filed by a user of rail service on the lines (or a State or local government entity acting on behalf of such user) regarding cessation of service over the lines either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.[2]

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 27, 1994 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file OFAs under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 17, 1994.[5] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 27, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Jay M. Nadlman, 114 West Eleventh St., Kansas City, MO 64105–1804.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

The Rails to Trails Conservancy (RTC) supports the abandonment and seeks issuance of a notice of interim trail use/rail banking (NITU) under 16 U.S.C. 1247(d) covering the involved lines. RTC has submitted a statement of willingness to assume financial responsibility for the trail in compliance with 49 CFR 1152.29. KCS consents to this request and is willing to negotiate with RTC.

While expressions of interest in interim trail use need not be filed until 10 days after the date the notice of exemption is published in the **Federal Register** [49 CFR 1152.29(b)(2)], the provisions of 16 U.S.C. 1247(d) (Trails Act) are applicable, and all of the criteria for imposing trail use/rail

[1] KCS was authorized to acquire The Fort Smith and Van Buren Railway Company (FSVB) in 1939 in Finance Docket No. 12475. FSVB no longer exists as a separate legal entity; it was merged into KCS on July 6, 1992.

[2] This notice has been delayed to allow KCS to comply with the filing requirements of 49 CFR 1152.50(d)(1), to clarify the status of FSVB, and to confirm that the proposed transaction is abandonment and not merely service discontinuance.

[3] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environ-mental issues (whether raised by a party or by the Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay based on environmental concerns should file its request as soon as possible to permit Commission review and action before the exemption's effective date.

[4] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[5] The Commission will accept late-filed trail use statements so long as it retains jurisdiction.

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banking have been met. Accordingly, based on KCS's willingness to enter into negotiations with RTC, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If a mutually acceptable final agreement is reached, further Commission approval is not necessary. If no agreement is reached within 180 days, KCS may fully abandon the lines. *See* 49 CFR 1152.29(d)(1).

Issuance of this NITU does not preclude other parties from filing interim trail use/rail banking requests. Nor does it preclude KCS from negotiating with other parties in addition to RTC during the NITU negotiating period. If additional trail use requests are filed, KCS is directed to respond to them. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the OFA process under 49 U.S.C. 10905. As stated in *Rail Abandonments—Use of Rights-of-Way as Trails*, 2 I.C.C.2d 591 (1986) (*Trails*), OFA's to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use conditions.[6] Accordingly, if a formal expression of intent to file an OFA is timely filed under 49 CFR 1152.27(c)(2), the effective date of this notice will be postponed 10 days beyond the effective date indicated here. In addition, the effective date may be further postponed at later stages in the OFA process. *See* 49 CFR 1152.27 (e)(2) and (f). Finally, if the line is sold under the OFA procedures, the notice for abandonment exemption will be dismissed and trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use may proceed.

KCS has filed an environmental report addressing the effects of the abandonment, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) issued an environmental assessment (EA) on September 9, 1994, and comments were due on September 21, 1994. The EA recommended that an historic condition be imposed found that the right-of-way may be suitable for other public use. Because we are now issuing this notice, we will give interested persons an additional 15 days, to October 12, 1994, to file comments to the EA. Interested persons may obtain a copy of the EA from SEA by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEA at (202) 927–6248.

Environmental, historic preservation, or public use conditions will be imposed, where appropriate, in a subsequent decision.

It is ordered:

1. Subject to the conditions set forth above, KCS may discontinue service, cancel tariffs for the lines on not less than 10 days' notice to the Commission, and salvage track and material consistent with interim trail use/rail banking after the effective date of this notice of exemption and NITU. Tariff cancellations must refer to this notice by date and docket number.

2. If an interim trail use/rail banking agreement is reached, then with respect to the right-of-way it must require the trail user to assume, for the term of the agreement, full responsibility for management, for any legal liability arising out of transfer or use (unless the user is immune from liability, in which case it need only indemnify the railroad for any potential liability), and for the payment of any and all taxes that may be levied or assessed.

3. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right of-way.

4. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Commission a copy of this notice of exemption and NITU and request that it be vacated on a specified date.

5. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this notice of exemption and NITU, interim trail use may be implemented. If no agreement is reached by that time, KCS may fully abandon the lines.

Decided: September 21, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–23874 Filed 9–26–94; 8:45 am]

BILLING CODE 7035–01–P

[6] The statement in *Trails* that section 10905 does not apply to abandonment or discontinuance exemptions has since been superseded by the adoption of rules allowing OFAs in these exemption proceedings. *See* 49 CFR 1152.27.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Controlled Substances: Established Revised 1994 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration (DEA).

ACTION: Interim notice establishing a 1994 aggregate production quota and request for comments.

SUMMARY: This interim notice establishes a revised 1994 aggregate production quota for methylphenidate, a Schedule II controlled substance, as required under the Controlled Substances Act of 1970.

DATES: This is effective on September 27, 1994. Comments must be submitted on or before October 27, 1994.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994).

The DEA established initial 1994 aggregate production quotas for controlled substances in Schedules I and II, including methylphenidate, in a **Federal Register** notice published on October 8, 1993 (58 FR 52508). DEA revised some of the aggregate production quotas, including that for methylphenidate, on June 22, 1994 (59 FR 32223) in accordance with 21 CFR 1303.13.

Since publication of the revised 1994 aggregate production quotas, DEA has received information which necessitates an increase in methylphenidate's 1994 aggregate production quota. Because this increase is immediately required to meet the 1994 year-end medical needs of the United States, an interim rule is being established.

Based on a review of 1993 year-end inventories, 1994 manufacturing quotas, 1994 sales, export requirements and other information available to the DEA, the Deputy Administrator of the DEA, under the authority vested in the Attorney General by section 306 of the CSA of 1970 (21 U.S.C. 826), delegated to the Administrator by section 0.100 of title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994), hereby establishes the following revised 1994 aggregate production quota for methylphenidate, expressed in grams of anhydrous base:

Basic Class—Established Revised Schedule II—1994 Quotas
Methylphenidate—8,189,000

All interested persons are invited to submit their comments in writing regarding this interim notice.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that his action does not require a regulatory flexibility analysis.

Dated: September 20, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–23788 Filed 9–26–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Council; Notice of Meetings and Agenda

The regular Fall meetings of the Board and Committee of the Business Research Advisory Council will be held on October 19 and 20, 1994. All of the meetings will be held in the Conference Center of the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

The Business Research Advisory Board and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda for the meetings are as follows:

Wednesday, October 19, 1994

10:00–12:00 p.m.—Committee on Productivity and Foreign Labor Statistics

1. Election of Chair and new Vice-Chair
2. Brief report on recent developments in the productivity office
3. Productivity, unit labor costs, and international competitiveness in manufacturing
4. Report on the Federal Productivity Measurement Program

2:00–4:00 p.m.—Committee on Price Indexes

1. The Consumer Price Index (CPI) and the CPI Revision
2. The Producer Price Indexes (PPI) Program
3. Election of new Vice-Chair

6:00 p.m.–Committee on Economic Growth

Delphi exercise addressing the following key issues that underlie forthcoming BLS projections:

1. Female labor force participation
2. Health care reform
3. Savings and investment
4. Industrial restructuring
5. Personnel supply services

Thursday, October 20, 1994

8:00–9:30 a.m.—Committee on Employment and Unemployment Statistics

1. Proposal for a National Wage Record Database
2. Need for Job Vacancy Statistics
3. Updates:
   a. Status of response to the American Statistical Association report on the establishment survey
   b. Standard Industrial Classification revision
   c. Secretary's Job Search Assistance Project
4. Other business

10:00–12:00 p.m.—Board Meeting

1. Chairperson's opening remarks
2. Commissioner Abraham's address and discussion
3. Business session
4. Chairperson's closing remarks

1:30–3:00 p.m.—Committee on Compensation and Working Conditions

1. Report on the Academic Conference of Employee benefits Survey/ Employment Cost Index (EBS/ECI) Integration
2. New union/nonunion data from the Employee Benefits Survey
3. New cost level data from the Employment Cost Index
4. Other business

The meetings are open to the public Persons with disabilities wishing to attend should contact Constance B. DiCesare, Liaison, Business Research Advisory Council, at (202) 606–5887, for appropriate accommodations.

Signed at Washington, D.C. the 20th day of September 1994.

Katherine G. Abraham,

Commissioner.

[FR Doc. 94–23865 Filed 9–26–94; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

[TA–W–29,841]

Season-All Industries Indiana, Pennsylvania; Affirmative Determination Regarding Application for Reconsideration

On August 10, 1994, Local #611 of the International Union of Electrical Workers (IUE) requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on July 12, 1994 and published in the **Federal Register** on July 26, 1994 (59 FR 37996).

The union claims that Season-All's customers are now importing from Canada.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 16th day of September 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–23862 Filed 9–26–94; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

TA–W–30,089 Sara Lee Knit Products, Cleveland Avenue, Martinsville, Virginia
TA–W–30,089A Sara Lee Knit Products, Gretna, Virginia
TA–W–30,090 Sara Lee Knit Products, Midway, Georgia Plant, Midway, Georgia

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TA–W–30,091 Sara Lee Knit Products, Cloverleaf Knitting, Martinsville, Virginia
TA–W–30,092 Sara Lee Knit Products, Central Distribution, Martinsville, Virginia

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the, Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance applicable to workers of Sara Lee Knit Products at the Cleveland Avenue plant in Martinsville, Virginia; Midway, Georgia; Cloverleaf Knitting in Martinsville, Virginia; and the Distribution Center in Martinsville, Virginia. The certification notice was issued on August 26, 1994 and will soon be published in the Federal Register.

At the request of the company, the Department reviewed the certification for workers producing men's, women's and children's fleecewear at the subject firm. The findings show that production at Sara Lee Knit Products in Gretna, Virginia was integrated with that of the Martinsville, Virginia plant. The Gretna plant will close by the end of September, 1994.

The amended notice applicable to TA–W–30,089 through TA–W–30,092 is hereby issued as follows:

All workers of Sara Lee Knit Products, Martinsville, Virginia (TA–W–30,089) Gretna, Virginia (TA–W–30,089A) Midway, Georgia (TA–W–30,090); Cloverleaf Knitting, Martinsville, Virginia (TA–W–30,091) and the Central Distribution Center, Martinsville, Virginia (TA–W–30,092), respectively, who were engaged in employment related to the production of men's, women's and children's fleecewear and provided administrative, office, warehousing and distribution services who became totally or partially separated from employment on or after June 27, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of September 1994.

Victor J. Trunzo,

Program Director, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–23860 Filed 9–26–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,858]

Wetterau/Supervalu, Bloomington, IN; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated August 11, 1994, the AFL–CIO Community Services on behalf of the workers requested administrative reconsideration of the subject petition for trade adjustment assistant (TAA). The denial notice was published in the **Federal Register** on July 19, 1994 (59 FR 36793).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation files show that the workers do not produce an article within the meaning of Section 222(3) of the Trade Act and this issue was fully addressed in the Department's negative determination. The workers performed wholesale and retail services.

Only in very limited instances are service workers certified for TAA, namely, the worker separations must be caused by a reduced demand for their services from a parent or controlling firm whose workers produce an article and whose workers are currently under a certification for TAA. These conditions were not met for the subject workers.

All other considerations which the union makes, i.e., declining net earnings and opening more stores to carry imported food, are moot because the workers do not produce an article and as such are outside the scope of the Trade Act.

The Trade Act was not intended to provide TAA benefits to everyone who is in some way affected by foreign competition but only to those who experienced a decline in sales or production and employment and an increase in imports of like or directly competitive articles (not services) which contributed importantly to declines in sales or production and employment at the workers' firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 15th day of September 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Service, Office of Trade Adjustment Assistance.

[FR Doc. 94–23859 Filed 9–26–94; 8:45 am]

BILLING CODE 4510–30–M

Notice of Changes in Status of Extended Benefit (EB) Periods for the States of Alaska, Rhode Island, and Washington

This notice announces changes in benefit period eligibility under the Extended Benefit (EB) Program for the States of Alaska, Rhode Island, and Washington.

Summary

The following changes have occurred since the publication of the last notice regarding States' EB status:

- August 6, 1994 Alaska's 13-week insured unemployment rate for the week ending July 16, 1994 fell below 6.0 percent and was less than 120 percent of the average for the corresponding period for the prior two years, causing the State to trigger "off" EB effective August 6, 1994.
- August 13, 1994 Rhode Island triggered "off" EB. The EB trigger mechanisms for Rhode Island had been below the thresholds necessary to be triggered "on" to EB since the week beginning June 5, 1994. However, Section 203(b)(1)(A) of the Federal-State Extended Unemployment Compensation Act of 1970 specifies that no EB period shall last for less than 13 consecutive weeks, regardless of whether or not the necessary thresholds are met. That 13-week period ended for Rhode Island on August 13, 1994.
- August 27, 1994 The State of Washington triggered "off" EB. The EB trigger mechanisms for the State had been below the thresholds necessary to be triggered "on" to EB since the week beginning June 12, 1994. However, as stated above, Section 203(b)(1)(A) of the Federal-State Extended Unemployment Compensation Act of 1970 specifies that no EB period shall last for less than 13 consecutive weeks, regardless of whether or not the necessary thresholds are met. That 13-week period ended for Washington on August 27, 1994.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the States by the U.S. Department of Labor. In the case of a State ending an EB period, the State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits informing them of the ending of the EB period and its effect on the individual's right to Extended Benefits (20 CFR 615.13(c)(4)).

Persons who believe they may be entitled to EB benefits, or who wish to inquire about their rights under the programs, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, D.C., on September 21, 1994.

Doug Ross,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 94–23864 Filed 9–26–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,504]

Alsco Amerimark Building Products Gnadenhutten, OH, Notice of Negative Determination Regarding Application for Reconsideration

By an application dated August 12, 1994, the United Steelworkers of America (USW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on June 20, 1994 and published in the **Federal Register** on June 30, 1994 (59 FR 33786).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers produce coated or painted aluminum coil.

Investigation findings show that the plant melted scrap aluminum cans and rolled the aluminum into coils which were then painted. The smelter and rolling mill closed in December 1993. Currently the plant is painting only domestically purchased coil.

Its claimed that imports of Russian aluminum ingots and coil affected the pricing of aluminum coil.

The articles produced by the subject workers is coated aluminum coil, not aluminum ingots or aluminum coil. Accordingly, the Department must look at imports of coated aluminum coil. Granted, the price of domestic aluminum may have been affected by imports of Russian aluminum. Price, however, is not one of the worker group criteria necessary for a worker group certification. The Department's survey of Amerimark's customers shows that none of them reported increased import purchases of coated aluminum coil while reducing their purchases from Amerimark during the period applicable to the petition. Customer comments from the Department's survey indicated there were non-trade reasons for Amerimark's customers reducing their purchases from Amerimark.

Other findings show that Amerimark did not purchase ingots (foreign or domestic) for use in its production process for coated aluminum coil but purchased scrap aluminum cans. The scrap market is a different market from the London Metals Exchange (LME).

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 16th day of September 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–23861 Filed 9–26–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,290]

BP Exploration (Alaska) Incorporated Anchorage, AK; Notice of Termination of Investigation

Pursuant to Section 211 of the Trade Act of 1974, an investigation was initiated on August 23, 1994 in response to a worker petition which was filed on September 6, 1994 on behalf of workers at BP Exploration (Alaska) Incorporated, Anchorage, Alaska.

An active certification covering the petitioning group of workers remains in effect (TA–W29,861A), under the company name BP Exploration and Oil Incorporated with operations in Alaska. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 19th day of September, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–23858 Filed 9–26–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 7, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 7, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, D.C. this 12th day of September, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

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APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Scrab Rock Feeders, Inc (Wkrs)	Othello, WA	09/12/94	08/29/94	30,301	Beef cattle.
McDonnell Douglas Aerospace (Wkrs)	Huntington Beach, CA.	09/12/94	08/05/94	30,302	Aerospace station, research and design.
Pathfinder Mines Corp (Co)	Shirley Basin, WY	09/12/94	08/30/94	30,303	Uranium oxide.
Paulsen Wire Rope Corp (Wkrs)	Sunbury, PA	09/12/94	09/01/94	30,304	Steel wire rope.
Fishing Vessel Hawk (Wkrs)	Fairhaven, MA	09/12/94	08/29/94	30,305	Sea scallops.
MASX Energy Services, Inc (Co)	Houston, TX	09/12/94	08/25/94	30,306	Oil and gas drilling, production tools
General Electric Consumer Service (IBEW).	Elk Grove, IL	09/12/94	08/30/94	30,307	TV's and VCR's repair.
Wilgrig (USA) (Co)	Lafayette, LA	09/12/94	09/06/94	30,308	Oil drilling.
Centrilift (Co)	Claremore, OK	09/12/94	08/30/94	30,309	Electrical submersible pumps.
Niagara Mohawk Power Corp (IBEW)	Syracuse, NY	09/12/94	08/29/94	30,310	Electric power generation.
Monasco Aerosystems (Wkrs)	Burbank, CA	09/12/94	08/17/94	30,311	Commercial and military landing gears.
Carr Well Service (Wkrs)	Odessa, TX	09/12/94	08/30/94	30,312	Oil drilling.
ITT Rayonier, Inc (AWPPW)	Port Angeles, WA	09/12/94	07/18/94	30,313	Sulfite pulps.
Copes-Vulcan, Inc (Wkrs)	Lake City, PA	09/12/94	09/02/94	30,314	Administrative services.
Mascotech Industrial Components (Wkrs).	Mesick, MI	09/12/94	08/29/94	30,315	Automotive components.
Electric Apparatus Service (Wkrs)	Philadelphia, PA	09/12/94	08/29/94	30,316	Metal sprays.
Exxon Co. U.S.A. (Wkrs)	New Orleans, LA	09/12/94	08/30/94	30,317	Crude oil.
Carmen Dress Co., Inc (ILGWU)	Luzerne, PA	09/12/94	08/31/94	30,318	Ladies' dresses.
Baker Performance Chemicals, Inc (Co).	Houston, TX	09/12/94	08/29/94	30,319	Oil field production chemicals.
Amerada Hess Corp (Wkrs)	Midland, TX	09/12/94	09/01/94	30,320	Crude oil, natural gas.
AGH Trimsurce Inc. (Wkrs)	New York, NY	09/12/94	08/01/94	30,321	Shoulder pads for garments.

[FR Doc. 94–23856 Filed 9–26–94; 8:45 am]
BILLING CODE 4510–30–M

[NAFTA–00202]

Slaks Fifth Avenue USA Enterprises New York, NY; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on August 9, 1994 in response to a petition filed on behalf of the workers at Slaks Fifth Avenue, USA Enterprises, New York, New York. The workers are engaged in administrative and marketing functions.

In a letter transmitted on August 10, 1994, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 16th day of September 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–23863 Filed 9–26–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,974]

Vic Manufacturing Company Minneapolis, MN; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Vic Manufacturing Company, Minneapolis, Minnesota. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–29,974; Vic Manufacturing Company Minneapolis, Minnesota (September 19, 1994)

Signed at Washington, D.C. this 19th day of September, 1994

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–23857 Filed 9–26–94; 8:45 am]
BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Defined Contribution Plans of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 9:30 a.m. until 12:00 noon, Wednesday, October 5, 1994, in Suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

This work group was formed by the Advisory Council to study issues relating to defined contribution plans covered by ERISA.

The purpose of the October 5 meeting is to discuss the group's preliminary findings, conclusions and recommendations concerning the educational aspects, coverage and participation and the adequacy of defined contribution plans. The work group will also take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written request on or before October 3, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 3, 1994.

Signed at Washington, D.C. this 21st day of September, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits, Administration.

[FR Doc. 94–23837 Filed 9–26–94; 8:45 am]
BILLING CODE 4510–29–M

Advisory Council on Employee; Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Healthcare Reform of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 9:30 a.m. until noon, Tuesday, October 4, 1994, in Suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This work group was formed by the Advisory Council to study issues relating to healthcare reform for employee benefit plans covered by ERISA.

The purpose of the October 4 meeting is to have a hearing on and discussion of healthcare reform and the Employee Retirement Income Security Act of 1974, as amended (ERISA). The work group will also take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written request on or before October 3, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 3, 1994.

Signed at Washington, DC this 21st day of September, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–23838 Filed 9–26–94; 8:45 am]
BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Reporting and Disclosure of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 1:00 p.m. until 3:30 p.m., Tuesday, October 4, 1994, in Suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington DC 20210.

This work group was formed by the Advisory Council to study issues relating to reporting and disclosure requirement for employee benefit plans covered by ERISA.

The purpose of the October 4 meeting is to (1) review witness testimony of prior meetings, (2) review public comments received from a request for information regarding summary plan description and individual benefit reporting and recordkeeping and (3) compilation of a first draft report to the Council. The work group will also take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written request on or before October 3, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 3, 1994.

Signed at Washington, DC this 21st day of September, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–23839 Filed 9–26–94; 8:45 am]
BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Power Authority of the State of New York; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR part 50, Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," Section III.G.3, to the Power Authority of the State of New York (the licensee) for the Indian Point Nuclear Generating Unit No. 3 (IP3), located at the licensee's site in Westchester County, New York.

Environmental Assessment

Identification of Proposed Action

Section III.G.3 of the 10 CFR Part 50, Appendix R, specifies requirements to ensure that the alternate shutdown system is independent of shutdown equipment that does not meet the requirements of Section III.G.2 of Appendix R. Section III.G.2 of Appendix R specifies requirements to ensure that one train of redundant equipment necessary to achieve and maintain hot shutdown remains free of fire damage.

During a programmatic review of the Fire Protection Program and Appendix R compliance strategy at Indian Point Nuclear Generating Unit No. 3, the Power Authority of the State of New York identified that the alternate shutdown system did not meet the requirements of 10 CFR Part 50, Appendix R, Section III.G.3. Specifically, components in the alternate shutdown system were located in the same fire area as redundant shutdown instrumentation cables which did not meet the requirements of Section III.G.2 of Appendix R.

The licensee has, therefore, requested exemption from the requirements of 10

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CFR part 50, Appendix R, Section III.G.3, to allow an operator to enter the fire area to perform manual actions.

Need for the Proposed Action

The proposed exemption is needed to permit the licensee to operate the plant without being in violation of the Commission's regulations and to obviate the need for modifications. Physical modification of the plant to achieve compliance with 10 CFR Part 50, Appendix R, Section III.G.3, would require design changes, for example: wrapping one redundant train of instrumentation cables in a 1 hour fire wrap, or relocation of the instrument isolation cabinets out of fire area ETN–4 or the construction of the fire barriers to make the upper penetration area a separate fire area. The detailed development and implementation of such design changes would result in a significant expenditure of engineering and financial resources without a significant safety benefit.

Environmental Impacts of the Proposed Action

Section III.G.3 of 10 CFR Part 50, Appendix R, specifies requirements to ensure that the alternate shutdown system is independent of shutdown equipment that does not meet the requirements of Section III.G.2 of Appendix R. Section III.G.2 of Appendix R specifies requirements to ensure that one train of redundant equipment necessary to achieve and maintain hot shutdown remains free of fire damage. The licensee has determined that the alternate shutdown system does not meet these requirements because components in the alternate shutdown system were located in the same fire area as redundant shutdown instrumentation cable which did not meet the requirements of Section III.G.2 of Appendix R. The licensee has, therefore, requested exemption from the requirements of 10 CFR Part 50, Appendix R, Section III.G.3, to allow an operator to enter the fire area to perform manual actions.

Safe shutdown, during a postulated fire in the entryway tunnel, would be accomplished through use of the alternate safe shutdown system. Process monitoring information to support use of the alternate shutdown system is routed to the alternate safe shutdown locations through instrument isolation cabinets located in the upper electrical penetration area. These cabinets provide the operators with the ability to interrupt the normal signal paths routed to the central control room and reconfigure the instrument loops to provide instrument loop indication at the alternate safe shutdown panels located outside of the control room. The instrument loops cannot be remotely reconfigured, necessitating operator action in the fire affected area.

The fire hazard incurred by the operator during this action is minimal for several reasons. Because of the glass and asbestos braid construction of the cables in these areas, fire is not expected to propagate along the cables to any significant degree. A postulated fire in the entryway would be detected and extinguished, through manual or automatic means, before the fire became extensive. Additionally, the distance from the fire to the cabinets is approximately 165 feet and, while in the fire affected area, an operator would not be in the immediate vicinity of the fire. Furthermore, the operator would not be in the affected area for more than a few minutes and would access the area via the primary auxiliary building, avoiding the vicinity of the fire. A smoke analysis has shown that the amount of smoke in the area would not inhibit the necessary operator actions. Therefore, the proposed exemption would not affect the licensee's ability to implement alternate safe shutdown procedures.

Based on the considerations discussed above, the Commission concludes that the proposed exemption would not affect radiological plant effluents, nor result in any significant occupational exposure. In addition, the exemption does not affect nonradiological plan effluents and has no other environmental impact.

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

As an alternative to the proposed action, the Commission considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar. The alternative would also result in a significant expenditure of engineering and financial resources, without a significant safety benefit.

Alternate Use of Procedures

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement for the Indian Point Nuclear Generating Station Unit No. 3," dated February 1975.

Agencies and Persons Consulted

The Commission consulted with the State of New York regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the exemption under consideration.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated November 17, 1993, as supplemented September 6, 1994. This document is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the White Plains Public Library, 100 Martino Avenue, White Plains, New York.

Dated at Rockville, Maryland, this 21st day of September 1994.

For the Nuclear Regulatory Commission.

Michael J. Case,

Acting Director, Project Directorate I–1 Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 94–23820 Filed 9–26–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

September 21, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Cali Realty Corp.
Common Stock, $.01 Par Value (File No. 7–12923)
Citicorp
Depositary Shares (rep. 1/10 sh. Adj. Rate Cum. Pfd., Ser. 19, without Par Value) (File No. 7–12924)
Consolidated Papers, Inc.
Common Stock, $1.00 Par Value (File No. 7–12925)
Evans Withycombe Residential, Inc.

Common Stock, $.01 Par Value (File No. 7–12926)
Enron Capital Resources, L.P.
9% Cum. Pfd., Ser. A (File No. 7–12927)
Empresa Nacional Electricdad, S.A. (Chile)
American Depositary Shares (rep. 30 sh. of Common Stock without Par Value) (File No. 7–12928)
Ford Holdings, Inc.
Depositary Shares (rep. 1/4000 sh. of Ser. D Cum. Pfd., $1.00 Par Value) (File No. 7–12929)
Home Properties of New York, Inc.
Common Stock, $.01 Par Value (File No. 7–12930)
John Hancock Bank & Thrift Opportunity Fund
Common Shares of Beneficial Interest, No Par Value (File No. 7–12931)
Loewen Group Capital, L.P.
9.45% Cum. Mo. Inc. Pfd. Sec. (MIPS), Series A (File No. 7–12932)
Morgan Stanley Asia-Pacific Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12933)
Niagara Mohawk Power Corp.
Pfd. Stock, Ser. 9½%, $25.00 Par Value (File No. 7–12934)
Peco Energy Capital L.P.
9% Cum. Mo. Inc. Pfd. Sec. (MIPS), Ser. A (File No. 7–12935)
Rightchoice Managed Care, Inc.
Class A Common Stock, $.01 Par Value (File No. 7–12936)
Shandong Huaneng Power Development Co. Ltd.
American Depositary Shares (rep. 50 Ord. N sh. RMB 1.00 Par Value) (File No. 7–12937)
Storage Equities, Inc.
Cum. Pfd. Ser. D (File No. 7–12938)
Trigen Energy Co.
Common Stock, Without Par Value (File No. 7–12939)
TVX Gold, Inc.
Common Shares, Without Par Value (File No. 7–12940)
U.S. Surgical Corp.
$2.20 Depositary Shares (rep. 1/50 sh. Ser. A Cv. Pfd. Stock, $5.00 Par Value, DECS) (File No. 7–12941)
Weeks Corp.
Common Stock, $.01 Par Value (File No. 7–12942)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 13, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–23791 Filed 9–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34690; File No. SR–NASD–94–38]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Addition of Listing Requirements to Prohibit Immediate Withdrawal of Units From Inclusion on Nasdaq

September 20, 1994.

On July 28, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change [1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b–4 Thereunder.[3] The rule change amends the listing requirements found in Parts II and III of Schedule D to the NASD By-Laws to include additional requirements for units.

Under the rule as amended, in order to be included on the National Association of Securities Dealers Automated Quotation Service ("Nasdaq"), units included for quotation on Nasdaq must continue to be included for a minimum period of 30 days from the first day of inclusion, barring suspension or withdrawal for regulatory purposes. The rule also requires those issuers or underwriters seeking to withdraw units from inclusion to provide the NASD with notice of their intent at least 15 days prior to withdrawal. In addition, an issuer of units will be required to include in its prospectus or other offering document a statement disclosing any intention to withdraw the units immediately after the minimum inclusion period.

Notice of the proposed rule change, together with its terms of substance was provided by issuance of a Commission release [4] and by publication in the **Federal Register**.[5]

No comments were received in response to the notice. This order approves the proposed rule change.

The new listing requirements have been proposed in response to the concerns of the NASD related to issuers that list and then almost immediately thereafter withdraw units from inclusion after trading has commenced.[6] As the NASD indicated in its rule filing, problems have arisen in instances where, shortly after certain units had been included for quotation and trading had commenced, the issuers or their underwriters suddenly withdrew their units from inclusion without any prior disclosure of their intention or advance notice to investors, market makers, or Nasdaq. Because active trading in these securities had commenced with the expectation that the units would continue to be included on Nasdaq, the sudden withdrawal from quotation significantly and adversely affected the market makers and investors who traded in these securities.

The practice of immediate withdrawal of units from inclusion without adequate disclosure clearly poses harm to traders and investors in these securities and adversely affects the integrity of the Nasdaq Stock Market. The practice leads to confusion because market participants who have purchased the units are left without a liquid market in which to trade these securities.

Moreover, if the lead underwriter involved in an offering also dominates or controls the market in the units, concerns regarding manipulation of the security may arise. A sudden withdrawal may cause difficulties for investors and market makers alike who may have established short positions in the units. These traders may be unable to cover their short positions after the withdrawal has occurred, and are likely to be required to cover these short positions by purchasing the components of the unit separately, frequently at a premium to the price originally being quoted prior to the withdrawal. In fact, in situations where warrants have not been issued separately from the unit, it may be impossible to "recreate" the unit so as to cover the short position.

To address these concerns, the NASD's proposal makes three changes to its inclusion criteria for units. As noted, for both Nasdaq Small Cap℠

[1] The proposed rule change was initially submitted on June 21, 1994, and was amended twice prior to the publication of the Notice; once on July 22, 1994, and again on July 28, 1994.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] Securities Exchange Act Rel. No. 34515 (August 10, 1994).

[5] 59 FR 42626 (August 18, 1994).

[6] Generally, units are created by combining common stock of a corporation already quoted on Nasdaq with warrants for the same common stock.

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units and National Market units, the proposal will impose a minimum 30-day period within which the units may not be withdrawn, absent a legitimate regulatory interest in so doing. In addition, the amendment will require issuers and underwriters seeking to withdraw units from inclusion to provide the NASD with at least 15 days notice of their intention to withdraw, so that the NASD may provide adequate notice to investors and market makers before the withdrawal occurs. Issuers having any intention to withdraw the units immediately after the minimum inclusion period also will have to disclose their intention in the prospectus or other offering document.

The Commission has determined to approve the NASD's proposal. The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Section 15A(b)(6) of the Act.[7] Section 15A(b)(6) requires, in part, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change addresses concerns regarding the trading and inclusion process for units and enhances the integrity of Nasdaq listings. With the minimum inclusion requirement of 30 days for units, the amendment enhances the likelihood that an orderly trading market in these securities will exist. Similarly, requiring both a 15-day advance notice of withdrawal and an adequate disclosure of an issuer's intention to withdraw its units from inclusion promotes proper disclosure of information of use to all market participants.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-94-38 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-23843 Filed 9-26-94, 8:45 am]

BILLING CODE 8010-01-M

[7] 15 U.S.C. 78o-3(b)(6).

[8] 17 CFR 200.30-3(a)(12).

[Release No. 34-34691; File No. SR-NYSE-94-14]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Health Care Portfolio Market Index Target-Term Securities ("MITTS").

I. Introduction

September 20, 1994.

On April 12, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to list and trade Market Index Target-Term Securities ("MITTS"),[3] the return on which is based upon a portfolio of securities of health care companies ("Health Care Portfolio").[4] Notice of the proposal appeared in the **Federal Register** on April 28, 1994.[5] No comment letters were received on the proposed rule change. On August 9, 1994, the NYSE filed Amendment No. 1 to the proposed rule change.[6] This order approves the proposal, as amended.

II. Description of the Proposal

Under Section 703.19 of the Exchange's Listed Company Manual ("Manual"), the NYSE may approve for listing securities which can not be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, and warrants.[7] The NYSE is now proposing under Section 703.19 of the Manual to list for trading MITTS based on the Health Care Portfolio ("Health Care Portfolio MITTS").[8]

As with the other MITTS products, the Health Care Portfolio MITTS will conform to the listing guidelines under Section 703.19 of the Manual, which provides that: (1) Issues must have a minimum public distribution of one million securities; (2) a minimum of 400 shareholders; (3) a minimum duration of one year; (4) a market value of at least $4 million; and (5) otherwise comply with the NYSE's initial listing criteria.[9] In addition, the Exchange will monitor the Health Care Portfolio MITTS to verify compliance with the Exchange's continued listing criteria.[10] MITTS are non-callable senior hybrid debt securities of Merrill Lynch that provide for a single payment at maturity, and will bear no periodic payments of interest. Health Care Portfolio MITTS will entitle the owner at maturity to receive an amount based upon the percentage change between the "Original Portfolio Value" and the "Ending Average Portfolio Value,"

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1992).

[3] "MITTS" and "Market Index Target-Term Securities" are service marks of Merrill Lynch & Co., Inc. ("Merrill Lynch").

[4] The Health Care Portfolio is a static portfolio consisting of 22 equity securities listed as common shares in the United States. The components of the portfolio represent companies that offer a variety of goods and services in the health care industry.

[5] See Securities Exchange Act Release No. 33933 (April 20, 1994), 59 FR 22030 (April 28, 1994).

[6] Amendment No. 1 to the proposed rule change provides that the value of the Health Care Portfolio will be calculated continuously and disseminated to the Options Price Reporting Authority ("OPRA") no less frequently than once every minute throughout the trading day. See Letter from James Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated August 9, 1994 ("Amendment No. 1").

[7] See Securities Exchange Act Release Nos. 29229 (May 23, 1991), 56 FR 24852 (May 31, 1991); and 28217 (July 18, 1990), 55 FR 30056 (July 24, 1990") ("Hybrid Approval Orders").

[8] The Commission recently approved the listing and trading on the Exchange of MITTS based upon (1) a global portfolio of securities representing telecommunications companies, and (2) a portfolio of European companies. See Securities Exchange Act Release Nos. 32840 (September 2, 1993), 58 FR 47485 (September 9, 1993); and 33368 (December 22, 1993), 58 FR 68975 (December 29, 1993) ("MITTS Approval Orders").

[9] The hybrid listing standards in Section 703.19 of the Manual are intended to accommodate listed companies in good standing, their subsidiaries and affiliates, and non-listed equities which meet the Exchange's original listing standards. Domestic issuers must also meet the earnings and net tangible assets criteria set forth in Sections 102.01 and 102.02 of the Manual. Specifically, the minimum original listing criteria requires that issuers have: (1) 2,000 holders holding 100 shares or more or have 2,200 holders with an average monthly trading volume of 100,000 shares; (2) a public float of 1.1 million shares; (3) an aggregate public market value of $18 million or total net tangible assets of $18 million; and (4) earnings before taxes of $2.5 million in the latest fiscal year and earnings before taxes of $2 million in each of the preceding two fiscal years, or earnings before taxes of $6.5 million in the aggregate for the last three fiscal years with a $4.5 million minimum in the most recent fiscal year (all three years are required to be profitable).

[10] The continued listing criteria for capital or common stock requires that: (1) The number of holders of 100 shares or more is equal to or greater than 1,200; (2) the number of publicly-held shares is equal to or greater than 600,000; (3) the aggregate market value of publicly-held shares is equal to or greater than $5 million; (4) the aggregate market value of shares outstanding (excluding treasury stock) is equal to or greater than $8 million and average net income after taxes for the past three years is equal to or greater than $600,000; and (5) net tangible assets available to common stock are equal to or greater than $8 million and average net income after taxes for the past three years is equal to or greater than $600,000. In addition, the continued listing standards for bonds require that outstanding publicly-held bonds have an aggregate market value or principal amount equal to or greater than $1 million. See Section 802 of the Manual.

subject to a minimum repayment amount. The "Original Portfolio Value" is the value of the Health Care Portfolio on the date on which the issuer prices the Health Care Portfolio MITTS issue for the initial offering to the public. The "Ending Average Portfolio Value" is the average of the values of the Health Care Portfolio at the end of the five calendar quarters preceding the expiration of the Health Care Portfolio MITTS on December 31, 1999.[11] The Ending Average Portfolio Value will be used in calculating the amount owners will receive upon maturity.[12]

If the market value of the portfolio has declined, the owner will receive not less than a specified percentage of the principal amount of the security. (For instance, if the market value of the portfolio used to calculate the amount payable at maturity has declined more than 10%, the owners of the Health Care Portfolio MITTS will receive 90% of the principal amount of the securities.) The payment at maturity is based on changes in the value of the portfolio, but does not reflect the payment of dividends on the securities that comprise the portfolio. Health Care Portfolio MITTS are cash-settled in that they do not give the holder any right to receive a portfolio security or any other ownership right or interest in the portfolio securities, although the return on the investment is based on the aggregate portfolio value of the Health Care Portfolio securities.

According to the NYSE, Health Care Portfolio MITTS will allow investors to combine the protection of a portion of the principal amount of the MITTS with a potential additional payment based upon the performance of a portfolio of securities representing 22 highly capitalized health care companies. Health Care Portfolio MITTS will mature on December 31, 1999.

The Health Care Portfolio consists of securities of 22 health care companies that have significantly different levels of market capitalization, ranging from a high of approximately $28.0 billion (Bristol Meyers Squibb Co.) to a low of approximately $311 million (Living Centers of America, Inc.).[13] Nineteen of the securities in the Health Care Portfolio are traded on the NYSE and the remainder are National Market securities traded through NASDAQ. The average daily trading volume for the components of the Health Care Portfolio for the period from November 5, 1992, through March 7, 1994, ranged from a high of approximately 1.03 million shares (Abbott Laboratories), to a low of approximately 20,335 shares (Living Centers of America, Inc.).

At the outset, each of the securities in the Health Care Portfolio will have equal representation. Specifically, each security included in the portfolio will be assigned a multiplier on the date of issuance so that the security represents an equal percentage of the value of the entire portfolio on the date of issuance. The multiplier indicates the number of shares (or fraction of one share) of a security, given its market price on an exchange or through NASDAQ, to be included in the calculation of the portfolio. Accordingly, each of the 22 companies included in the Health Care Portfolio will represent approximately 4.54 percent of the total portfolio at the time of issuance.

The multiplier for each security in the Health Care Portfolio will generally remain unchanged except for limited adjustments that may be necessary as a result of stock splits or stock dividends.[14] There will be no adjustments to the multipliers to reflect cash dividends paid with respect to a portfolio security. In addition, no adjustments of any multiplier of a portfolio security will be made unless such adjustment would require a change of at least 1% in the multiplier then in effect.

If the issuer of a security included in the Health Care Portfolio no longer exists, whether for reason of a merger, acquisition or similar type of corporate control transaction, then Merrill Lynch will assign to that security a value equal to the security's final value for the purposes of calculating portfolio values. For example, if a company included in the portfolio is acquired by another company, Merrill Lynch shall thereafter assign a value to the shares of the acquired company's securities equal to the value per share at which time the acquisition takes place.

If the issuer of a portfolio security is in the process of liquidation or subject to a bankruptcy proceeding, insolvency or other similar adjudication, such security will continue to be included in the Health Care Portfolio so long as a market price on an exchange or through NASDAQ for such security is available. If such a market price is no longer available for a portfolio security, including, but not limited to, liquidation, bankruptcy, insolvency, or any other similar proceeding, then the value of the portfolio security will be assigned a value of zero in connection with calculating the daily portfolio value and the closing portfolio value of the Health Care Portfolio, for so long as no such market price exists for that security.[15]

The value of the Health Care Portfolio will be calculated by an independent third party and will be disseminated through OPRA at least one each minute throughout the trading day.[16] The portfolio value will equal the sum of the products of the most recently available market prices and the applicable multipliers for the portfolio securities.

Like other issues of MITTS listed on the NYSE, Health Care Portfolio MITTS may not be redeemed prior to maturity and are not callable by the issuer. Holders of Health Care Portfolio MITTS will be able to cash-out of their investment by selling the security on the NYSE. The Exchange anticipates that the trading value of the security in this secondary trading market will depend in large part on the value of the securities comprising the Health Care Portfolio and also on such other factors as the level of interest rates, the volatility of the value of the Health Care Portfolio, the time remaining to maturity, dividend rates, and the credit worthiness of the issuer, Merrill Lynch.[17]

Because Health Care Portfolio MITTS are linked to a portfolio of equity securities, the NYSE'S existing equity floor trading rules will apply to the trading of Health Care Portfolio MITTS.

[11] Specifically, the Ending Average Portfolio Value will equal average of the quarterly values of the Health Care Portfolio beginning in the calendar quarter ending December 31, 1998. The quarterly value for each of the first four of the final five calendar quarters shall be the Health Care Portfolio value on the last scheduled Exchange trading day on which there is no market disruption event. The quarterly value for the final calendar quarter shall be the Health Care Portfolio Value on the seventh scheduled Exchange trading day preceding maturity of the Health Care MITTS unless there is a market disruption event in which case the sixth trading dey preceding maturity shall be used.

[12] The Health Care Portfolio MITTS will entitle a holder at maturity to receive for each $10 principal amount of MITTS an amount equel to the Ending Average Portfolio Value of the Health Care Portfolio divided by 10, but in any event no less than $9 per each $10 principal amount of Health Care Portfolio MITTS.

[13] These values are as of March 7, 1994.

[14] Merrill Lynch will adjust the multiplier of any portfolio security if the security is subject to a stock split or reverse split to equal the product of the number of shares issued with respect to one share of the portfolio security and the prior multiplier. In the case of a stock dividend, the multiplier will be adjusted so that the new multiplier will equel the former multiplier plus the product of the number of shares of such portfolio security issued with respect to one share of the portfolio security and the prior multiplier.

[15] Merrill Lynch will not attempt to find a replacement stock or to compensate for the extinction of a security due to bankruptcy or a similar event.

[16] See Amendment No. 1, *supra* note 6.

[17] Merrill Lynch will deposit registered securities representing Health Care Portfolio MITTS with its depository, the Depository Trust Company ("DTC"), so as to permit book-entry settlement of transactions by participants in DTC.

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First, pursuant to NYSE Rule 405, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading Health Care Portfolio MITTS.[18] Second, consistent with NYSE Rule 405, the Exchange will further require that a member or member firm specifically approve a customer's account for trading Health Care Portfolio MITTS prior to, or promptly after, the completion of the transaction. Third, Health Care Portfolio MITTS will be subject to the equity margin rules of the Exchange. Fourth, in accordance with the NYSE's Hybrid Approval Orders, the Exchange will, prior to trading Health Care Portfolio MITTS, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in Health Care Portfolio MITTS and highlighting the special risks and characteristics of the Health Care Portfolio MITTS.[19]

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5). Specifically, the Commission believes that providing for exchange-trading of Health Care Portfolio MITTS will offer a new and innovative means of participating in the market for health care securities. In particular, the Commission believes that Health Care Portfolio MITTS will permit investors to gain equity exposure in health care companies, while at the same time, limiting the downside risk of the original investment. For the reasons discussed in the MITTS Approval Orders, the Commission finds that the listing and trading of Health Care Portfolio MITTS is consistent with the Act.[20]

As with other MITTS products, Health Care Portfolio MITTS are not leveraged instruments, however, their price will still be derived and based upon the underlying linked security. Accordingly, the level of risk involved in the purchase or sale of a Health Care Portfolio MITTS is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, because the final rate of return of a MITTS is derivatively priced, based on the performance of a portfolio of securities, the Commission has several specific concerns regarding the trading of this type of product.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to Health Care Portfolio MITTS. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of Health Care Portfolio MITTS. Moreover, the Exchange will distribute a circular to its membership calling attention to the specific risks associated with Health Care Portfolio MITTS.

The Commission realizes that Health Care Portfolio MITTS are dependent upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the Exchange's continued listing standards which require issuers to maintain an aggregate market value of $5 million for its publicly-held shares.[21] In addition, the Exchange's hybrid listing standards further require that Health Care Portfolio MITTS have at least $4 million in market value. In any event, financial information regarding Merrill Lynch, in addition to the information on the issuers of the underlying securities comprising the Health Care Portfolio, will be publicly available.[22]

The Commission also has a systemic concern, however, that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. As discussed in the MITTS Approval Orders, the Commission believes this concern is minimal given the size of Health Care Portfolio MITTS issuance in relation to the net worth of Merrill Lynch.[23]

The Commission also believes that the listing and trading of Health Care Portfolio MITTS should not unduly impact the market for the underlying securities comprising the Health Care Portfolio. First, as discussed above, the underlying securities comprising the portfolio are well-capitalized, highly liquid stocks. Second, because all of the components of the Health Care Portfolio will initially be equally weighed, no single stock or group of stocks dominates the Health Care Portfolio. Finally, the issuers of the underlying securities comprising the Health Care Portfolio, are subject to reporting requirements under the Act, and all of the portfolio securities are either listed or traded on, or traded through the facilities of U.S. securities markets.[24] Additionally, the NYSE's surveillance procedures will serve to deter as well as detect any potential manipulation.

Finally, the Commission notes that the value of the Health Care Portfolio will be disseminated at least once every minute throughout the trading day. The Commission believes that this result is appropriate because, unlike previously approved MITTS products which contain foreign components, the Health Care Portfolio is comprised solely of securities traded in the U.S. for which real-time price information is available. The Commission believes that providing access to the value of the Health Care Portfolio at least once every minute throughout the trading day is extremely important and will provide benefits to investors in the product.[25]

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. As discussed above, the Commission believes that investors and market participants will benefit from having the value of the Health Care Portfolio calculated and disseminated as frequently as possible throughout the trading day. The Commission believes that Amendment No. 1 provides this benefit without unduly burdening either the Exchange or the issuer of the Health Care Portfolio MITTS. Additionally, the Commission notes that Amendment No 1 provides for significantly greater access by investors and market participants to current values of the Health Care Portfolio than did the original proposal which was noticed for the full 21-day comment period without any comments being received by the Commission. Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

[18] NYSE Rule 405 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

[19] See Hybrid Approval Orders, *supra* note 7

[20] See MITTS Approval Orders, *supra* note 8

[21] See *supra* note 10.

[22] The companies that comprise the Health Care Portfolio are reporting companies under the Act

[23] See MITTS Approval Orders, *supra* note 8

[24] The Commission notes that 19 of the component securities are traded on the NYSE and the remainder are National Market securities traded through Nasdaq.

[25] In this regard, the Commission believes that it is useful and beneficial for all investors and market participants to have access to the value of the Health Care Portfolio as frequently as possible and encourages the NYSE and Merrill Lynch to further explore the possibilities in this area, *i.e.*, calculating and disseminating the value of the portfolio at least once every 15 seconds as is done with other derivative products.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–14 and should be submitted by October 18, 1994.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (File No. SR–NYSE–94–14), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23793 Filed 9–26–94; 8:45 am]

BILLING CODE 8010–01–M

[26] 15 U.S.C. 78s(b)(2) (1988).

[27] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34692; File No. SR–NYSE–94–15]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Restructuring Companies Portfolio Market Index Target-Term Securities ("MITTS")

September 20, 1994.

I. Introduction

On April 12, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to list and trade Market Index Target-Term Securities ("MITTS"),[3] the return on which is based upon a portfolio of securities of companies that have restructured or are in the process of restructuring ("Restructuring Companies Portfolio").[4] Notice of the proposal appeared in the Federal Register on April 28, 1994.[5] No comment letters were received on the proposed rule change. On August 9, 1994, the NYSE filed Amendment No. 1 to the proposed rule change.[6] This order approves the proposal, as amended.

II. Description of the Proposal

Under Section 703.19 of the Exchange's Listed Company Manual ("Manual"), the NYSE may approve for listing securities which can not be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, and warrants.[7] The NYSE is now proposing under Section 703.19 of the Manual to list for trading MITTS based on the Restructuring Companies Portfolio ("Restructuring Companies Portfolio MITTS").[8]

As with the other MITTS products, the Restructuring Companies Portfolio MITTS will conform to the listing guidelines under Section 703.19 of the Manual, which provide that: (1) Issues must have a minimum public distribution of one million securities; (2) a minimum of 400 shareholders; (3) a minimum duration of one year; (4) a market value of at least $4 million; and (5) otherwise comply with the NYSE's initial listing criteria.[9] In addition, the Exchange will monitor the Restructuring Companies Portfolio MITTS to verify compliance with the Exchange's continued listing criteria.[10] MITTS are non-callable senior hybrid debt securities of Merrill Lynch that provide for a single payment at maturity, and will bear no periodic payments of interest. Restructuring Companies Portfolio MITTS will entitle the owner at maturity to receive an amount based upon the percentage change between the "Original Portfolio Value" and the "Ending Average Portfolio Value," subject to a minimum repayment amount. The "Original Portfolio Value" is the value of the Restructuring Companies Portfolio on the date on which the issuer prices the Restructuring Companies Portfolio MITTS issue for the initial offering to the public. The "Ending Average Portfolio Value" is the average of the values of the Restructuring Companies Portfolio at the end of the five calendar quarters preceding the expiration of the Restructuring Companies Portfolio

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] "MITTS" and "Market Index Target-Term Securities" are service marks of Merrill Lynch & Co., Inc. ("Merrill Lynch").

[4] The Restructuring Companies Portfolio is a static portfolio consisting of 17 equity securities listed as common shares in the United States. The components of the portfolio represent companies which are generally perceived to have recently experienced declines in earnings as compared to historical levels and/or other adverse developments which have required some form of restructuring by such companies.

[5] See Securities Exchange Act Release No. 33934 (April 20, 1994), 59 FR 22040 (April 28, 1994).

[6] Amendment No. 1 to the proposed rule change provides that the value of the Restructuring Companies Portfolio will be calculated continuously and disseminated to the Options Price Reporting Authority ("OPRA") no less frequently than once every minute throughout the trading day. See Letter from James Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated August 9, 1994 ("Amendment No. 1").

[7] See Securities Exchange Act Release Nos. 29229 (May 23, 1991), 56 FR 24852 (May 31, 1991); and 28217 (July 18, 1990), 55 FR 30056 (July 24, 1990) ("Hybrid Approval Orders").

[8] The Commission recently approved the listing and trading on the Exchange of MITTS based upon (1) A global portfolio of securities representing telecommunications companies, and (2) a portfolio of European companies. See Securities Exchange Act Release Nos. 32840 (September 2, 1993), 58 FR 47485 (September 9, 1993); and 33368 (December 22, 1993), 58 FR 68975 (December 29, 1993) ("MITTS Approval Orders").

[9] The hybrid listing standards in Section 703.19 of the Manual are intended to accommodate listed companies in good standing, their subsidiaries and affiliates, and non-listed equities which meet the Exchange's original listing standards. Domestic issuers must also meet the earnings and net tangible assets criteria set forth in Sections 102.01 and 102.02 of the Manual. Specifically the minimum original listing criteria requires that issuers have: (1) 2,000 holders holding 100 shares or more or have 2,200 holders with an average monthly trading volume of 100,000 shares; (2) a public float of $1.1 million shares; (3) an aggregate public market value of $18 million or total net tangible assets of $18 million; and (4) earnings before taxes of $2.5 million in the latest fiscal year and earnings before taxes of $2 million in each of the preceding two fiscal years, or earnings before taxes of $6.5 million in the aggregate for the last three fiscal years with a $4.5 million minimum in the most recent fiscal year (all three years are required to be profitable)

[10] The continued listing criteria for capital or common stock requires that: (1) The number of holders of 100 shares or more is equal to or greater than 1,200; (2) the number of publicly-held shares is equal to or greater than 600,000; (3) the aggregate market value of publicly-held shares is equal to or greater than $5 million; (4) the aggregate market value of shares outstanding (excluding treasury stock) is equal to or greater than $8 million and average net income after taxes for the past three years is equal to or greater than $600,000; and (5) net tangible assets available to common stock are equal to or greater than $8 million and average net income after taxes for the past three years is equal to or greater than $600,000. In addition, the continued listing standards for bonds require that outstanding publicly-held bonds have an aggregate market value or principal amount equal to or greater than $1 million. See Section 802 of the Manual

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MITTS on December 31, 1999.[11] The Ending Average Portfolio Value will be used in calculating the amount owners will receive upon maturity.[12]

If the market value of the portfolio has declined, the owner will receive not less than a specified percentage of the principal amount of the security. (For instance, if the market value of the portfolio used to calculate the amount payable at maturity has declined more than 10%, the owners of the Restructuring Companies Portfolio MITTS will receive 90% of the principal amount of the securities.) The payment at maturity is based on changes in the value of the portfolio, but does not reflect the payment of dividends on the securities that comprise the portfolio. Restructuring Companies Portfolio MITTS are cash-settled in that they do not give the holder any right to receive a portfolio security or any other ownership right or interest in the portfolio securities, although the return on the investment is based on the aggregate portfolio value of the Restructuring Companies Portfolio securities.

According to the NYSE, Restructuring Companies Portfolio MITTS will allow investors to combine the protection of a portion of the principal amount of the MITTS with a potential additional payment based upon the performance of a portfolio of securities representing 17 highly capitalized companies that either have restructured or are in the process of restructuring. Restructuring Companies Portfolio MITTS will mature on December 31, 1999.

The Restructuring Companies Portfolio consists of securities of 17 companies that have significantly different levels of market capitalization, ranging from a high of approximately $30.2 billion (IBM) to a low of approximately $328 million (Arkis, Inc.).[13] Sixteen of the securities in the Restructuring Companies Portfolio are traded on the NYSE and one is a National Market security traded through Nasdaq. The average daily trading volume for the components of the Restructuring Companies Portfolio for the period from November 5, 1992, through March 7, 1994, ranged from a high of approximately 3.7 million shares (Eastman Kodak), to a low of approximately 93,008 shares (The Columbia Gas System, Inc.).

At the outset, each of the securities in the Restructuring Companies Portfolio will have equal representation. Specifically, each security included in the portfolio will be assigned a multiplier on the date of issuance so that the security represents an equal percentage of the value of the entire portfolio on the date of issuance. The multiplier indicates the number of shares (or fraction of one share) of a security, given its market price on an exchange or through NASDAQ, to be included in the calculation of the portfolio. Accordingly, each of the 17 companies included in the Restructuring Companies Portfolio will represent approximately 5.88 percent of the total portfolio at the time of issuance.

The multiplier for each security in the Restructuring Companies Portfolio will generally remain unchanged except for limited adjustments that may be necessary as a result of stock splits or stock dividends.[14] There will be no adjustments to the multipliers to reflect cash dividends paid with respect to a portfolio security. In addition, no adjustments of any multiplier of a portfolio security will be made unless such adjustment would require a change of at least 1% in the multiplier then in effect.

If the issuer of a security included in the Restructuring Companies Portfolio no longer exists, whether for reason of a merger, acquisition or similar type of corporate control transaction, then Merrill Lynch will assign to that security a value equal to the security's final value for the purposes of calculating portfolio values. For example, if a company included in the portfolio is acquired by another company, Merrill Lynch shall thereafter assign a value to the shares of the acquired company's securities equal to the value per share at which time the acquisition takes place.

If the issuer of a portfolio security is in the process of liquidation or subject to a bankruptcy proceeding, insolvency, or other similar adjudication, such security will continue to be included in the Restructuring Companies Portfolio so long as a market price on an exchange or through NASDAQ for such security is available. If such a market price is no longer available for a portfolio security, including, but not limited to, liquidation, bankruptcy, insolvency, or any other similar proceeding, then the value of the portfolio security will be assigned a value of zero in connection with calculating the daily portfolio value and the closing portfolio value of the Restructuring Companies Portfolio, for so long as no such market price exists for that security.[15]

The value of the Restructuring Companies Portfolio will be calculated by an independent third party and will be disseminated through OPRA at least once each minute throughout the trading day.[16] The portfolio value will equal the sum of the products of the most recently available market prices and the applicable multipliers for the portfolio securities.

Like other issues of MITTS listed on the NYSE, Restructuring Companies Portfolio MITTS may not be redeemed prior to maturity and are not callable by the issuer. Holders of Restructuring Companies Portfolio MITTS will be able to cash-out of their investment by selling the security on the NYSE. The Exchange anticipates that the trading value of the security in this secondary trading market will depend in large part on the value of the securities comprising the Restructuring Companies Portfolio and also on such other factors as the level of interest rates, the volatility of the value of the Restructuring Companies Portfolio, the time remaining to maturity, dividend rates, and the creditworthiness of the issuer, Merrill Lynch.[17]

Because Restructuring Companies Portfolio MITTS are linked to a portfolio of equity securities, the NYSE's existing equity floor trading rules will apply to the trading of Restructuring Companies Portfolio MITTS. First, pursuant to NYSE Rule 405, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading Restructuring Companies Portfolio MITTS.[18] Second, consistent with NYSE Rule 405, the Exchange will further require that a member or member firm specifically approve a customer's account for trading Restructuring Companies Portfolio MITTS prior to, or promptly after, the completion of the transaction. Third, Restructuring Companies Portfolio MITTS will be subject to the equity margin rules of the Exchange. Fourth, in accordance with the NYSE's Hybrid Approval Orders, the Exchange will, prior to trading Restructuring Companies Portfolio MITTS, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in Restructuring Companies Portfolio MITTS and highlighting the special risks and characteristics of the Restructuring Companies Portfolio MITTS.[19]

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5). Specifically, the Commission believes that providing for exchange-trading of Restructuring Companies Portfolio MITTS will offer a new and innovative means of participating in the market for securities of companies that have either recently restructured or are in the process of restructuring. In particular, the Commission believes that Restructuring Companies Portfolio MITTS will permit investors to gain equity exposure in such companies, while at the same time, limiting the downside risk of the original investment. For the reasons discussed in the MITTS Approval Orders, the Commission finds that the listing and trading of Restructuring Companies Portfolio MITTS is consistent with the Act.[20]

As with other MITTS products, Restructuring Companies Portfolio MITTS are not leveraged instruments, however, their price will still be derived and based upon the underlying linked security. Accordingly, the level of risk involved in the purchase or sale of a Restructuring Companies Portfolio MITTS is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, because the final rate of return of a MITTS is derivatively priced, based on the price performance of a portfolio of securities, the Commission has several specific concerns regarding the trading of this type of product.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to Restructuring Companies Portfolio MITTS. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of Restructuring Companies Portfolio MITTS. Moreover, the Exchange will distribute a circular to its membership calling attention to the specific risks associated with Restructuring Companies Portfolio MITTS.

The Commission realizes that Restructuring Companies Portfolio MITTS are dependent upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the Exchange's continued listing standards which require issuers to maintain an aggregate market value of $5 million for its publicly-held shares.[21] In addition, the Exchange's hybrid listing standards further require that Restructuring Companies Portfolio MITTS have at least $4 million in market value. In any event, financial information regarding Merrill Lynch, in addition to the information on the issuers of the underlying securities comprising the Restructuring Companies Portfolio, will be publicly available.[22]

The Commission also has a systemic concern, however, that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. As discussed in the MITTS Approval Orders, the Commission believes this concern is minimal given the size of Restructuring Companies Portfolio MITTS issuance in relation to the net worth of Merrill Lynch.[23]

The Commission also believes that the listing and trading of Restructuring Companies Portfolio MITTS should not unduly impact the market for the underlying securities comprising the Restructuring Companies Portfolio. First, as discussed above, the underlying securities comprising the portfolio are well-capitalized, highly liquid stocks. Second, because all of the components of the Restructuring Companies Portfolio will initially be equally weighted, no single stock or group of stocks dominates the Restructuring Companies Portfolio. Finally, the issuers of the underlying securities comprising the Restructuring Companies Portfolio, are subject to reporting requirements under the Act, and all of the portfolio securities are either listed or traded on, or traded through the facilities of, U.S. securities markets.[24] Additionally, the NYSE's surveillance procedures will serve to deter as well as detect any potential manipulation.

Finally, the Commission notes that the value of the Restructuring Companies Portfolio will be disseminated at least once every minute throughout the trading day. The Commission believes that this result is appropriate because, unlike previously approved MITTS products which contain foreign components, the Restructuring Companies Portfolio is comprised solely of securities traded in the U.S. for which real-time price information is available. The Commission believes that providing access to the value of the Restructuring Companies Portfolio at least once every minute throughout the trading day is extremely important and will provide benefits to investors in the product.[25]

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. As discussed above, the Commission believes that investors and market participants will benefit from having the value of the

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[11] Specifically the Ending Average Portfolio Value will equal the average of the quarterly values of the Restructuring Companies Portfolio beginning in the calendar quarter ending December 31, 1998. The quarterly value for each of the first four of the final five calendar quarters shall be the Restructuring Companies Portfolio value on the last scheduled Exchange trading day on which there is no market disruption event. The quarterly value for the final calendar quarter shall be the Restructuring Companies Portfolio Value on the seventh scheduled Exchange trading day preceding maturity of the Restructuring Companies MITTS unless there is a market disruption event in which case the sixth trading day preceding maturity shall be used.

[12] The Restructuring Companies Portfolio MITTS will entitle a holder at maturity to receive for each $10 principal amount of MITTS an amount equal to the Ending Average Portfolio Value of the Restructuring Companies Portfolio divided by 10, but in any event no less than $9 per each $10 principal amount of Restructuring Companies Portfolio MITTS.

[13] These values are as of March 7, 1994.

[14] Merrill Lynch will adjust the multiplier of any portfolio security if the security is subject to a stock split or reverse split to equal the product of the number of shares issued with respect to one share of the portfolio security and the prior multiplier. In the case of a stock dividend, the multiplier will be adjusted so that the new multiplier will equal the former multiplier plus the product of the number of shares of such portfolio security issued with respect to one share of the portfolio security and the prior multiplier.

[15] Merrill Lynch will not attempt to find a replacement stock or to compensate for the extinction of a security due to bankruptcy or a similar event.

[16] See Amendment No. 1, *supra* note 6.

[17] Merrill Lynch will deposit registered securities representing Restructuring Companies Portfolio MITTS with its depository, the Depository Trust Company ("DTC"), so as to permit book-entry settlement of transactions by participants in DTC.

[18] NYSE Rule 405 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

[19] See Hybrid Approval Orders, *supra* note 7.

[20] See Mitts Approval Orders, *supra* note 8.

[21] See supra note 10.

[22] The companies that comprise the Restructuring Companies Portfolio are reporting companies under the Act.

[23] See MITTS Approval Orders, *supra* note 8

[24] The Commission notes that 16 of the component securities are traded on the NYSE and one is a National Market security traded through Nasdaq.

[25] In this regard, the Commission believes that it is useful and beneficial for all investors and market participants to have access to the value of the Restructuring Companies Portfolio as frequently as possible and encourages the NYSE and Merrill Lynch to further explore the possibilities in this area, *i.e.*, calculating and disseminating the value of the portfolio at least once every 15 seconds as is done with other derivative products.

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Restructuring Companies Portfolio calculated and disseminated as frequently as possible throughout the trading day. The Commission believes that Amendment No. 1 provides this benefit without unduly burdening either the Exchange or the issuer of the Restructuring Companies Portfolio MITTS. Additionally, the Commission notes that Amendment No. 1 provides for significantly greater access by investors and market participants to current values of the Restructuring Companies Portfolio than did the original proposal which was noticed for the full 21-day comment period without any comments being received by the Commission. Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–15 and should be submitted by October 18, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (File No. SR–NYSE–94–15), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23792 Filed 9–26–94; 8:45 am]

BILLING CODE 8010–01–M

[26] 15 U.S.C. 78s(b)(2) (1988).

[27] 17 CFR 200.30–3(a)(12) (1993).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Pacific Stock Exchange, Incorporated

September 21, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Consorcio G Grupo Dina
Series L American Depository Shares, No Par Value (File No. 7–12949)
Fedders Corporation
Class A Common Stock, $.01 Par Value (File No. 7–12950)
Fund American Enterprises Holdings, Inc.
Common Stock, $1.00 Par Value (File No. 7–12951)
Grupo Tribasa
Common Stock, No Par Value (File No. 7–12952)
Merry Land & Investment Company
Common Stock, No Par Value (File No. 7–12953)
Rouge Steel Company
Common Stock, $.01 Par Value (File No. 7–12954)
UAL Corporation
Common Stock, $.05 Par Value (File No. 7–12955)
Valero Energy Corporation
$3.125 Cum. Cv. Pfd. (File No. 7–12956)
Weirton Steel Corporation
Common Stock, $.10 Par Value (File No. 7–12957)
Newbridge Networks Corporation
Common Stock, No Par Value (File No. 7–12958)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 13, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–23790 Filed 9–26–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Eagle Financial Corp., Common Stock, $0.01 Par Value) File No. 1–9901

September 21, 1994.

Eagle Financial Corp. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolutions on August 23, 1994, to withdraw the Company's Common Stock from listing on the Amex and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotation/National Market System ("NASDAQ/NMS"). According to the Company, the decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to its stockholders than the present listing on the Amex because:

(1) The Company believes that the NASDAQ/NMS system of competing market-makers will result in increased visibility and sponsorship for the Common Stock than is presently the case with the single specialist assigned to the stock on the Amex;

(2) The Company believes that the NASDAQ/NMS system will offer the Company's stockholders more liquidity than is presently available on the Amex and less volatility in quoted prices per share when trading volume is slight;

(3) The Company believes that the NASDAQ/NMS system will offer the opportunity for the Company to secure its own group of market-makers and, in doing so, expand the capital base available for trading in its Common Stock; and

(4) The Company believes that firms making a market in the Company's Common Stock on the NASDAQ/NMS system will be included to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before October 13, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–23842 Filed 9–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20566; 811–8136]

Nuveen Premium Income Municipal Fund 7; Notice of Application

September 20, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Premium Income Municipal Fund 7.

RELEVANT ACT SECTION: Order requested under Section 8(f).

SUMMARY OF APPLICATION: Applicate seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on September 2, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 530 p.m. on October 15, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606–1286.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Law Clerk, at (202) 942–0654, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is registered as a closed-end, diversified management company under the Act and organized as a business trust under the laws of the Commonwealth of Massachusetts. On November 5, 1993, Applicant filed a registration statement on Form N–2 under section 8(b) of the Act and under the Securities Act of 1933. Applicant's registration statement was not declared effective. Applicant has neither made a public offering of its shares, nor sold any securities.

2. Applicant has no shareholders; no assets, debts, or liabilities; and is not a party to any litigation or administrative proceeding.

3. Applicant is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23794 Filed 9–26–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (LSB Industries, Inc., Common Stock, $.10 Par Value) File No. 1–7677

September 21, 1994.

LSB Industries, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its Common Stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's Common Stock commenced trading on the NYSE at the opening of business on August 31, 1994 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its Common Stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its securities on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its Common Stock and believes that dual listing would fragment the market for its Common Stock.

Any interested person may, on or before October 13, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–23841 Filed 9–26–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2740]

Alaska; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on September 13, 1994, I find that the Norwest Artic Borough and the Yukon Koyukuk Educational Region in the State of Alaska constitute a disaster area as a result of damages caused by severe storms and flooding beginning on August 8, 1994 and continuing.

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Applications for loans for physical damage may be filed until the close of business on November 14, 1994, and for loans for economic injury until the close of business on June 13, 1995, at the address listed below:

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 274006 and for economic injury the number is 834400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 19, 1994.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 94–23883 Filed 9–26–94; 8:45 am]

BILLING CODE 8025–01–M

Interest Rates

The interest rate on Section 7(a) Small Business Administration direct loans (as amended by PL 97–35) and the SBA share of immediate participation loans is 8⅛ percent for the fiscal quarter beginning September 1, 1995.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8–4 (d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the September–December quarter of FY 95, this rate will be 7⅜ percent.

Dated: September 22, 1994.

John R. Cox,

Associate Administrator for Financial Assistance.

[FR Doc. 94–23830 Filed 9–26–94; 8:45 am]

BILLING CODE 8025–01–M

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Order of the United States District Court for the Northern District of California, dated July 15, 1994, the United States Small Business Administration hereby revokes the license of NSS Investment, Inc., a Nevada corporation, to function as a small business investment company under the Small Business Investment Company License No. 09/09–0235, issued to NSS Investments, Inc. on April 5, 1979, and said license is hereby declared null and void as of September 8, 1994.

Dated: September 20, 1994

Darryl Hairston,

Deputy Associate Administrator for Investment.

[FR Doc. 94–23884 Filed 9–26–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Order Proposing Clarification of Contract Bulk Fare Exemption Authority

SUMMARY: We are publishing the order in its entirety as an appendix to this document.

DATES: Issued in Washington, DC., September 21, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia Thomas, Office of Aviation Analysis, Room 6401, 202–366–9721, or William J. Wagner, Office of Assistant General Counsel for Aviation Enforcement and Proceedings, Room 4116, 202–366–9342, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 205590.

John V. Coleman,

Director, Office of Aviation Analysis

[Docket 44369; Order 94–9–31]

Exemption of Persons Who Contract for the Purchase of Blocks of Seats on Scheduled Service Pursuant to Applicable Tariffs for Resale to the Public

Order to Show Cause

Summary

By this order, we are proposing to clarify the extent to which activities by contract bulk fare operators are covered by the exemption granted to such persons by Order 88–9–2.

Background

By Order 81–7–109, the Civil Aeronautics Board (the Board) granted to persons who contract for blocks of seats with U.S. and foreign direct air carriers a blanket exemption from the requirements of sections 401, 402, and 403 of the Federal Aviation Act (the Act)[1] and of part 221 of the Board's regulations to the extent necessary to allow such persons, commonly referred to as "contract bulk fare operators," to resell the seats without filing tariffs or themselves having to obtain a certificate of public convenience and necessity or a foreign air carrier permit, as applicable.[2] By Order 88–9–2, the Department continued this exemption.

Traditionally, the marketing arrangement authorized by this exemption has been utilized by direct air carriers as an additional tool to enhance their marketing efforts but which is incidental to their overall scheduled service operations. The blanket exemption allows these direct air carriers to contract to sell a portion of their seats to middlemen (contract bulk fare operators). These contractors are then free to sell individual tickets to customers, either with or without a ground package, at whatever price their

[1] Pub. L. 103–272, enacted July 5, 1994, revised and recodified the Federal Aviation Act within Subtitle VII of Title 49 United States Code (Transportation) (the statute). For convenience in this order, we will refer both to the old section numbers in the Act and the new section numbers in the statute. The applicable provisions of sections 401, 402, and 403 are now contained in Subpart II (Economic Regulation) of Subtitle VII.

[2] Under 49 U.S.C. 40102(a)(2) (see former section 101(3) of the Act), any person who engages, either directly or indirectly, in air transportation operations is deemed to be an air carrier. 49 U.S.C. 40109 (see former section 101(3)) provides that air carriers not directly engaged in the operation of aircraft (*i.e.*, "indirect" air carriers) may be relieved from certain provisions of the statute to the extent and for such periods as the Secretary of Transportation decides are in the public interest.

business judgments dictate. The contractors generally pay for the seats in advance and are sometimes subject to cancellation penalties for returning unsold seats.[3] The direct air carrier continues to market seats on these flights on its own behalf through the normal air transportation distribution system.

The exemption is subject to certain disclosure and consumer protection provisions, specifically (a) that any direct air carrier implementing such marketing programs shall file tariff rules that clearly describe the relationship that exists between the direct air carrier and the passenger and that establish that, upon payment by the passenger, the direct air carrier bears the responsibility for safeguarding the passenger's money; (b) that any direct air carrier and any contractor operating under the exemption shall insure that consumers receive clear and conspicuous notice before payment of any special contractual conditions imposed either by the contractor or by the direct air carrier that are applicable to the passenger,[4] and (c) that any direct air carrier implementing these marketing programs in foreign air transportation must file tariffs that state the prices to be charged to the contractor.[5]

Current Usage

We have recently been faced with two novel situations in which U.S. direct air carriers and their contractors are attempting to avail themselves of this exemption.

In the first, the contractor uses the exemption to sell scheduled service in conjunction with an existing U.S. direct air carrier pending Department action on the contractor's own application for certificate or commuter authority. Indeed, the relationship between the contractor-applicant and the direct air carrier, while portrayed as a contract bulk fare arrangement, in fact can be substantially more. The contractor-applicant may provide the ground handling, may be involved in hiring personnel to staff the operation, and may even arrange for the aircraft to be used in the service. The contract operations may also be in markets that are geographically distinct from the "regular" scheduled operations of the direct air carrier. The situation is compounded by the fact that the direct air carrier may also register with the Department to use the trade name of the contractor-applicant for these services.[6] Typically, all of these arrangements are scheduled to terminate upon the contractor-applicant's receipt of its own operating authority.

In the second situation, the U.S. direct air carrier and contractor seek to convert an existing Public Charter program in which they are parties to scheduled service through use of the contract bulk fare exemption. Often, the direct air carrier holds charter-only authority and files an application with the Department seeking scheduled authority in order to operate under a contract bulk fare arrangement. In some cases, the operations represented by the contract bulk fare arrangement constitute most, if not all, of the scheduled operations proposed by the direct air carrier. In general, these operations are indistinguishable from charter flights, except that the contractor and direct air carrier are not subject to the consumer protection requirements applicable to Public Charter flights contained in 14 CFR part 380. Those rules require, among other things, the establishment of escrow accounts and surety arrangements for the protection of passenger funds, and the signing of operator-participant contracts that detail the rights and obligations of the passenger, charter operator, and direct air carrier.

Common to both situations is the fact that, in markets covered by the bulk fare contract, the contractor has agreed to buy the entire, or virtually the entire, capacity of the aircraft and is responsible for all of the marketing of that capacity. Normally, the direct air carrier does not perform any marketing function and does not sell air transportation on its own behalf in the markets covered by the contract. Rather, its sole function is to operate the aircraft for which it is paid a set price.

Discussion

The statute establishes a regulatory framework for conducting air transportation operations that balances a liberal entry policy for new air carriers, both direct and indirect, with Congress' concern for operational safety and consumer protection. Under the statute, a person who wants to engage in air transportation of passengers has two choices; either be found fit as an airline (*i.e.*, direct air carrier) or qualify as an indirect air carrier. In the case of the person who seeks to operate as a U.S. direct air carrier, that person has to meet a three-part test of demonstrating that it has the managerial competence, financial capability, and compliance disposition to operate the proposed airline safely and without imposing an undue risk on the public.[7] Until the Department finds that the applicant is fit to operate and it is issued appropriate direct air carrier authority, it is prohibited from advertising or otherwise holding out its services to the public (*see* 14 CFR 201.5). The intent of this rule is to prevent companies who have not or cannot meet the Department's rigorous fitness test from collecting money from potential passengers, thus exposing them to financial risks. While ultimately many applicants may be found fit and given U.S. direct air carrier authority, often this is not before a number of substantive changes have been made in the management team, ownership structure, or financial arrangements undertaken by the applicant. To allow such applicants to commence operations under the guise of a contract bulk fare arrangement prior to being found fit poses a potentially serious risk to consumers that we believe is not in the public interest.

In the case where an entity does not want to operate as a direct air carrier or its agent, but still wants to market air transportation on its own behalf, it is not subject to a fitness review, but must comply with the requirements that the Department has established to ensure that consumer funds and expectations are protected. This means complying

[3] *See* Orders 80–2–112 and 81–7–109.

[4] These conditions include the following: the terms and amount of any cancellation penalties, fees for reservation changes, or other special charges; limits on voluntary refunds—specifically, notice that clearly informs the passenger of risks in the event of voluntary cancellation by stating the exact amount of the applicable refund for such cancellation; limits on involuntary refunds, rerouting or ticket reissuance rights; limits on ticket endorsability or special ticket purchase; check-in or reconfirmation requirements; if true, the fact that the passenger may be assessed price increases after ticket purchase; if true, the fact that flight dates and times are not guaranteed at the time of purchase; and information on the allocation of responsibility between the contractor and direct air carrier for the passenger's funds and transportation. See Orders 86–9–61 and 88–9–2.

[5] Originally, the exemption granted by Order 81–7–109 also required that direct air carriers file with the Board the names and addresses of each contractor. This condition was eliminated by Order 88–9–2.

[6] Part 215 of the Department's Regulations (14 CFR part 215) establishes a regulatory system of registration and notification by air carriers who propose to use a trade name. Upon compliance with these requirements, use of the trade name is typically allowed. However, the Department will not register a trade name when it is certain that use of such name would constitute an unlawful holding out under 49 U.S.C. 41101(a) (see former section 401(a) of the Act) or there is a significant potential for, or actual, public confusion or other unfair or deceptive practices prohibited by 49 U.S.C. 41712 (see former section 411 of the Act). If the registration of an air carrier trade name will help effectuate an arrangement that will unlawfully circumvent our fitness standards, we have the authority to reject the name registration.

[7] The applicant must also demonstrate that it is a U.S. citizen as defined in 49 U.S.C. 40102(a)(15) (see former section 101(16) of the Act).

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with the consumer protection provisions of the Public Charter rules (14 CFR part 380) or, in limited circumstances, the conditions of the contract bulk fare exemption.

In our view, the fundamental characteristic that distinguishes the typical contract bulk fare marketing arrangement contemplated in the exemption from the two situations described above lies in who is the true "operator" of the services in an economic sense—who has control. In the typical contract bulk fare arrangement, that control rests with the direct air carrier. Although the contractor assumes the risk for those seats that it has purchased from the direct air carrier, the direct air carrier has control over the scheduling of the flights involved, allocation of seat inventory, and ultimate responsibility for safeguarding the passengers' money. Moreover, since a contract bulk fare arrangement is merely one of a number of marketing tools used by a direct air carrier, that arrangement would be incidental to the overall scheduled operations of the direct air carrier. The risk of exposure to the direct air carrier from one contractor would therefore also be limited.

On the other hand, in the contractor-applicant and charter-conversion situations, the contractor is the "true" operator in an economic sense, and the purported contract bulk fare arrangements are the driving force behind the operation. Although the direct air carrier is responsible for the operation of the flight, the contractor controls the scheduling, allocation of inventory, and price, and bears that risk for marketing most, if not the total capacity, of the aircraft. Under these circumstances, it is difficult to distinguish these operations from those performed by a direct air carrier under a wet lease arrangement or by a charter operator under the Public Charter rules. More importantly, if the contract bulk fare operator should for any reason fail to remit collected funds, the direct air carrier nevertheless ultimately bears the responsibility to the passengers for either providing the air transportation or paying refunds. While this may not pose any undue risk in the case of a carrier with other substantial operations, in the situations described above, the amount of monies for which the direct air carrier could be held liable may be so great as to endanger its own economic viability and ultimately adversely affect its other customers.

Decision

We continue to believe that the contract bulk fare concept can be a valuable marketing tool for direct air carriers, and, where properly used, that the conditions imposed in our exemption orders provide adequate protection for consumers. However, when the Board originally granted—and we continued—the contract bulk fare exemption, it was envisioned that this authority would be used by existing scheduled carriers as a tool to expand their marketing capabilities, and that such contracts would be incidental to their other scheduled operations. It was not envisioned that applicants for direct air carrier authority could use the contract bulk fare mechanism as a means of "jump-starting" their proposed operations prior to being found fit, or that these arrangements would be used as a means of avoiding the Public Charter consumer protection requirements. Thus, it is our view that the two situations described above were not intended to be covered by the exemption granted by Orders 81–7–109 and 88–9–2. More importantly, the arrangements have the potential to create great risks for consumers, since they could be used to circumvent our fitness requirements or the consumer protection provisions of our charter rules.

Therefore, we have tentatively decided to amend the exemption to require that the direct air carrier be, as discussed above, the "true" operator of the service in an economic sense and the contract bulk fare arrangement be incidental to that carrier's overall scheduled operations. The direct air carrier may not use a contract bulk fare arrangement as the only means of holding out its scheduled services, but must, in fact, be holding out on its own behalf the scheduled air services that are also being sold under the contract bulk fare arrangement. Practically speaking, this means that the direct air carrier would be responsible for holding out scheduled service in its own name through the traditional marketing mechanisms of the industry, such as listing its flights in the Official Airline Guides or major computer reservations systems, or using travel agents or advertisements.

We do not wish to preclude the customary use by direct air carriers of the contract bulk fare exemption in the many resort or vacation markets in which they currently use it as an additional tool to expand the marketing of their scheduled service by selling seats to tour or cruise operators for packaging and resale. The direct air carriers involved in the these situations typically have extensive scheduled service operations elsewhere and the particular services involved in the contract bulk fare arrangement are under the ultimate economic control of the direct air carrier. We would consider these operations to be incidental to the overall scheduled operations of the direct air carrier even if it were to result in the sale of a large portion or even a majority of the seats in a particular market. In such circumstances, the contract bulk fare operations would not pose an undue risk to consumers or to the direct air carrier.

While we have been considering a clarification of the existing exemption, we have taken no action against contract bulk fare arrangements in which contractors could sell up to 85 percent of the seats on each flight in the markets in question. [8] However, such arrangements would not be permitted in the future to the extent that they are inconsistent with the policies we are proposing here. We will, however, consider requests for individual exemptions in specific cases. Moreover, in reviewing applications to register trade names and for new scheduled authority, we propose to apply the policies expressed in this order. Thus, if we are convinced that the use by a direct air carrier of the trade name of a contractor would constitute an unlawful holding out under section 41101(a) or should there be a significant potential for, or actual, public confusion or other unfair or deceptive practices prohibited by section 41712, we would not register the trade name for the direct air carrier. Nor would we approve an initial scheduled service application for U.S. certificate or commuter authority which relies primarily on a contract bulk fare arrangement as the underlying basis for the proposed scheduled operations.

Objections

We will give interested persons 15 days following the date of issuance of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers to objections will be due within 10 days thereafter. We expect such persons to direct their objections, if any, to the policies proposed in this order. We will not entertain general, vague, or unsupported objections. If no objections are filed, we will issue an order that will make final our tentative findings and conclusions.

Accordingly,

[8] See, e.g., Orders 94–5–39, Mahalo Air, Inc., and 94–3–38, Great American Airways, Inc. In those orders, we also noted our concerns over the use of contract bulk fare arrangements as the primary means of marketing specific scheduled services, and indicated our intent to re-examine and clarify our policies with regard to such arrangements.

1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above to amend the exemption granted by Order 88–9–2, that permits the use of contract bulk fare arrangements, to provide that the use of such arrangements for scheduled services must be incidental to the overall scheduled services of the direct air carrier, and that the direct air carrier must hold out the same scheduled service as its own and exercise ultimate economic control over the service.

2. We direct any interested persons having objections to the issuance of an order making final the tentative findings and conclusions stated above to file them with the Documentary Services Division, Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590, in Docket 44369, no later than 15 days after the date of issuance of this order; answers to objections shall be filed no later than 10 days thereafter.

3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.

4. In the event that no objections are filed, we will consider all further procedural steps to be waived and we will enter an order making final our tentative findings and conclusions.

5. We will publish a copy of this order in the **Federal Register**.

By:

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–23789 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–62–P–M

Coast Guard

[CGD 94–071]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Towing Safety Advisory Committee (TSAC) and its work groups will meet to discuss various issues. Agenda will include working group reports and discussion of possible changes to Coast Guard licensing regulations. The meetings will be open to the public.

DATES: Meetings of the TSAC work groups will be held on Tuesday, November 8, 1994. These meetings are scheduled to run from 8 a.m. to 4 p.m. The Towing Safety Advisory Committee meeting will be held on Wednesday, November 9, 1994, from 8 a.m. to 12 noon.

ADDRESSES: The TSAC work groups will meet collectively at the U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, in Room 2415 at 8 a.m., and then proceed to rooms 1103, 3317, 5303, and 6303 for individual work group sessions. The TSAC Committee meeting will be held at U.S. Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, in Room 4440.

FOR FURTHER INFORMATION CONTACT: Assistant Executive Director, LTJG Pat DeShon, Commandant (G–MTH–4), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267–2997.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 1 *et seq.* The agenda for the Committee meeting follows:

1. Work group reports:
   a. Licensing
   b. Navigation equipment
   c. Casualty reporting
   d. Inland radar
   e. Model company concept
   f. Horsepower guidelines
2. Other topics of discussion:
   a. Proposed changes to Coast Guard licensing requirements
   b. Draft NVIC for Entry Level Training
   c. Endorsement for the QAT report
   d. Review regulatory efforts
3. Proposed tasking:
   a. The Committee will consider undertaking additional tasking associated with Towing Equipment (Winch, and Hawsers), and other tasking proposals.
   b. With advance notice, and at the discretion of the Chairman, members of the public may present oral statements during the meeting. Persons wishing to make oral presentations should notify the TSAC Assistant Executive Director no later than November 2, 1994. Written materials may be submitted for presentation to the Committee any time; however, to ensure distribution to each Committee member, 20 copies of the written material should be submitted to the Assistant Executive Director by October 26, 1994.

Dated: September 16, 1994.

J.F. McGowan,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–23893 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–14–M

[CGD 94–077]

Differential Global Positioning System, Gulf Intercoastal Region; Environmental Assessment

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard has prepared a Programmatic Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for implementing a Differential Global Positioning System (DGPS) Service in the Gulf Intercoastal Corridor Region of the United States. The EA concluded that there will be no significant impact on the environment and that preparation of an Environmental Impact Statement will not be necessary. This notice announces the availability of the EA and FONSI and solicits comments on them.

DATES: Comments must be received on or before October 27, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

Copies of the EA and FONSI may be obtained by contacting LCDR George Privon at (202) 267–0297 or faxing a request at (202) 267–4427. A copy of the EA (less enclosures) is also available on the Electronic Bulletin Board System (BBS) at the GPS Information Center (GPSIC) in Alexandria, VA, (703) 313–5910. For information on the BBS, call the GPSIC watchstander at (703) 313–5900.

FOR FURTHER INFORMATION CONTACT: LCDR George Privon, Radionavigation Division, (202) 267–0297.

SUPPLEMENTARY INFORMATION:

Request for Comments

Copies of the Programmatic Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) are available as described under **ADDRESSES.** The Coast Guard encourages interested persons to comment on these documents. The Coast Guard may revise these documents in view of the comments. If revisions are warranted, availability of the revised documents will be announced by a later notice in the **Federal Register.**

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Background

As required by Congress, the Coast Guard is preparing to install the equipment necessary to implement a Differential Global Positioning System (DGPS) services in the Gulf Intercoastal Corridor area of the United States. DGPS is a new radionavigation service that improves upon the 100 meter accuracy of the existing Global Positioning System (GPS) to provide an accuracy of better than 10 meters. For vessels, this degree of accuracy is critical for precise electronic navigation in harbors and harbor approaches and will reduce the number of vessel grounding, collisions, personal injuries, fatalities, and potential hazardous cargo spills resulting from such incidents.

After extensive study, the Coast Guard has selected five sites along the Gulf Intercoastal Corridor coastline for the DGPS equipment. The sites are in the vicinity of Aransas Pass, TX; Galveston, TX; English Turn, LA; Mobile Point, AL; and Egmont Key, FL. The sites are already used for related purposes and were chosen, in part, because their proposed use is consistent with their past and present use, thus minimizing further impact on the environment. DGPS signal transmissions will be broadcast in the marine radiobeacon frequency band (283.5 to 325 KHz) using less than 50 watts (effective radiated power). Signal transmissions at these low frequency and power levels have not been found to be harmful to the surrounding environment.

Proposed Installations at Each Site

(a) Radiobeacon Antenna—The Coast Guard proposes to use either an 80 foot whip antenna or install a 90 foot guyed antenna with an accompanying ground plane. A ground plane for these antenna's consists of approximately 120 copper radials (6 gauge copper wire) installed 6 inches (or less) beneath the soil and projecting outward from the antenna base. The optimum radial length is between 200–300 feet, but this length may be shortened to fit within property boundaries. Wherever possible, a cable plow method will be used in the radial installation to minimize soil disturbance. Installation of the ground plane may require some clearing of trees and bushes on the site.

(b) DGPS Antennas—Each site will require two 10 foot masts to support four small (4 inches by 18 inches diameter) receiving antennas. The masts will be installed on a concrete foundation measuring approximately 3 feet by 3 feet by 15 inches. These masts are needed to support the primary and backup reference receivers and integrity monitors. The location of the two masts will be in the vicinity of the electronic equipment building or but, but at least 50 feet to 100 feet from existing structures. (At Mobile Point, AL, mast height must be increased from 10 feet to approximately 20 feet to ensure the visibility of satellites is not blocked by existing structures. The mast foundations will be 5 feet 3 inches by 5 feet 3 inches by 4 feet and will be mounted right next to the transmitter building to minimize disturbance to the area.)

(c) Equipment shelter—Existing radiobeacon equipment shelters will be used at each site to house the DGPS equipment.

(d) Utilities—The Coast Guard proposes to use available commercial power as the primary source for the electronic equipment. However, existing diesel generators are available and may be utilized if backup power is needed. Telephone service is required at each site for remote monitoring and operation.

Description of Each Site

Aransas Pass, TX—This is the site of an existing marine radiobeacon. It is collocated with Coast Guard Station Port Aransas in Port Aransas, TX. This site has previously been partially upgraded and is transmitting prototype DGPS signals for test and evaluation purposes.

Galveston, TX—This is the site of an existing marine radiobeacon. It is located on East Beach near the South Jetty of Galveston Bay. This site has previously been partially upgraded and is transmitting prototype DGPS signals for test and evaluation purposes.

English Turn, LA—The site is collocated at the USCG Communication Station, which is approximately 10 miles Southeast of New Orleans. This site has previously been partially upgraded and is transmitting prototype DGPS signals for test and evaluation purposes.

Mobile Point, AL—The site is collocated at the Mobile Point Light, which is adjacent to Fort Morgan. Fort Morgan is listed in the National Register of Historic Places. The Coast Guard and AL State Historic Preservation Officer (SHPO) agree that the proposed project will have no effect on the adjacent fort.

Egmont Key, FL—Located approximately 5 miles Southwest of St. Petersburg at the entrance to Tampa Bay. This radiobeacon transmitting site is collocated at the Egmont Key Lighthouse, which is listed on the National Register of Historic Places. This site has previously been partially upgraded and is transmitting prototype DGPS signals for test and evaluation purposes in conjunction with the State of Florida. The Coast Guard and FL State Historic Preservation Officer (SHPO) agree that the proposed project will have no effect on the adjacent lightstation.

Implementation of a DGPS service in the Gulf Intercoastal Corridor Region is determined to have no significant effect on the quality of the human environment or require preparation of an Environmental Impact Statement.

Dated: September 19, 1994.

R.C. Houle,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94–23894 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Child Restraint Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Aviation Administration (FAA) is announcing the availability of a study entitled "The Performance of Child Restraint Devices in Transport Airplane Passenger Seats" (the study). Because of the FAA's concern that some child restraint systems that work well in automobiles may not provide the level of protection desirable in airplanes, the FAA conducted a study to evaluate the adequacy and effectiveness of child restraint devices on airplanes. The FAA is continuing to study child restraint systems and when further studies are completed, they will be made available to the public.

ADDRESSES: Copies of the study may be obtained by contacting: Mr. Jeffrey H. Marcus, AAM–630, Protection and Survival Laboratory, Civil Aeromedical Institute, 6500 South MacArthur, Oklahoma City, OK 73125, (405) 954–5555, fax (405) 954–4813.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey H. Marcus, AAM–630, Protection and Survival Laboratory, Civil Aeromedical Institute, 6500 South MacArthur, Oklahoma City, OK 73125, (405) 954–5555, fax (405) 954–4813.

SUPPLEMENTARY INFORMATION: In 1992, the FAA set forth in §§ 91.107(a), 121.311(b), 125.211(b), and 135.128(a) the child restraint systems acceptable for use in aircraft by listing labeling requirements and certain use requirements. The FAA's 1992 determination as to which child restraint systems would be approved for use aboard aircraft was based on many years of work by both the FAA and the National Highway Traffic Safety Administration (NHTSA). In the mid 1980's, the FAA and NHTSA undertook an effort to develop a common approach to the approval of child restraints. NHTSA Standard 213 was amended to provide criteria for the certification of child restraints that were appropriate for both aircraft and automobiles.

NHTSA Standard 213, as revised, is the current U.S. standard, and has allowed hundreds of models of seats to be approved. The current FAA child restraint rules do not specifically refer to NHTSA Standard 213. However, NHTSA Standard 213 is the basis for the labels required under the FAA rules.

Because of the FAA's concern that some child restraint systems that work well in automobiles may not provide the level of protection desirable in airplanes, the FAA conducted a study to evaluate the adequacy and effectiveness of child restraint devices on airplanes, to respond to questions from the Air Transport Association concerning which child restraint systems were approved for aircraft, and to respond to comments received from child restraint manufacturers, private testing organizations, the National Transportation Safety Board, foreign regulatory organizations, and consumer activists. The FAA is continuing to study child restraint systems and when further studies are completed, they will be made available to the public.

Issued in Washington, DC on September 20, 1994.

Jon L. Jordan,

Federal Air Surgeon.

[FR Doc. 94–23880 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number LI–93–13) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received before, October 31, 1994, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Northeast Illinois Railroad Corporation (Metra)

Waiver Petition Docket Number LI–93–13

Metra seeks a temporary waiver of compliance with certain provisions of the Locomotive Safety Standards (49 CFR Part 229) for Electric MU Locomotives and Non-MU Control Cab Locomotives. Metra is seeking relief from the requirements of Section 229.135 that all trains operating over 30 mph shall be equipped with an event recorder by May 5, 1995. Metra requests that the compliance date be extended to July 1, 1996.

The Locomotive Safety Standards were revised on July 8, 1993, to require each lead locomotive of trains operating over 30 mph to be equipped with an event recorder by May 5, 1995. The railroad states that event recorders will be installed on existing equipment by retrofit and by an outside rebuilding program. In addition, new cars to be delivered will be equipped when built. The schedule for these activities extend to July 1, 1996, making the May 5, 1995, compliance date unattainable.

Southeastern Pennsylvania Transportation Authority (SEPTA)

Waiver Petition Docket Number LI–94–7

SEPTA seeks a permanent waiver of compliance with certain provisions of the Locomotive Safety Standards (49 CFR Part 229). SEPTA is seeking relief from the requirement of § 229.5(g) that: Event recorders monitor and record data: over the most recent 48 hours of operation of the electrical system of the locomotive on which it is installed.

SEPTA states that a railroad supervisor can get to the scene of any accident on their system within one hour. They feel that 8 hours of recorded information is sufficient for any accident investigation on their railroad. SEPTA's event recorders are solid state devices which record each change in state. With their present recorder system a printed copy of the stored information fills about 73 pages. To accommodate 48 hours of recorded information would result in a very extensive printed copy with no additional useful information. FRA has previously "grandfathered" event recorders which were in service on July 8, 1993, and which recorded only 8 hours of data.

Southeastern Pennsylvania Transportation Authority (SEPTA)

Waiver Petition Docket Number LI–94–8

SEPTA seeks a temporary waiver of compliance with certain provisions of the Locomotive Safety Standards (49 CFR Part 229) for Electric MU Locomotives. SEPTA is seeking relief from the requirements of Section 229.135 that all trains operating over 30 mph shall be equipped with an event recorder by May 5, 1995. SEPTA requests the compliance date be extended to December 7, 1995.

The Locomotive Safety Standards were revised on July 8, 1993, to require each lead locomotive of trains operating over 30 mph to be equipped with an event recorder by May 5, 1995. The railroad states that off-the-shelf event recorders will be installed on conventional (non-MU locomotives) locomotives within the specified time, however, new design event recorders will be required for the Electric MU Locomotives. SEPTA is requesting seven additional months for the design, manufacture and installation of event recorders on their MU locomotive fleet.

Metro-North Commuter Railroad (MNCW)

Waiver Petition Docket Number LI–94–10

MNCW seeks a temporary waiver of compliance with certain provisions of the Locomotive Safety Standards (49 CFR Part 229) for their locomotives. MNCW is seeking relief from the requirements of Section 229.135 that all trains operating over 30 mph shall be equipped with an event recorder by May 5, 1995. MNCW requests the compliance date be extended to December 5, 1997.

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The Locomotive Safety Standards were revised on July 8, 1993, to require each lead locomotive of trains operating over 30 mph to be equipped with an event recorder by May 5, 1995. The railroad states that off-the-shelf event recorders will be installed on conventional (non-MU locomotives) locomotives within the specified time, however, new design event recorders will be required for the Electric MU Locomotives. MNCW is requesting two years additional time for the design, procurement, manufacture and installation of event recorders on their locomotive fleet of 413 units to be equipped. The railroad cites funding, FRA and State-mandated purchasing practices, non-availability of off-the-shelf event recorders for electric rail cars, impact on car availability, limited physical plant and energy conservation/cost savings as the justification for the delay. MNCW estimates that 43 percent of their fleet will be equipped with event recorders by May 5, 1995.

The Western Railway Museum (WRM)

(Waiver Petition Docket Number RSGM-94-9)

The WRM, of Suisun City, California, seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one caboose. The caboose is used for educational purposes only and is operated at speeds of 15 mph or less in a rural area with no history of vandalism.

The Ohio Central Railroad Company (OHCR)

Waiver Petition Docket Number RSGM-94-10

The OHCR on behalf of their affiliate Ohio Southern Railroad, Incorporated (OSRR), seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one caboose. The caboose, OHCR 553, a former New York Central all-steel caboose was rebuilt in the 1960's by the Pittsburgh and Lake Erie Railroad and is not equipped with FRA certified glazing. The OSRR operates between South Zanesville and Glass Rock, a distance of approximately 19 miles. An out of service line extends 14 miles from East Fultonham Junction to New Lexington, Ohio. The railroad states there is no record of vandalism regarding train movements. Train speed is limited to 5 mph in this rural area. Two trains are operated per week and mostly in day light hours.

Owego Harford Railway (OHRY)

Waiver Petition Docket Number RSGM 94-11

The OHRY seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The locomotive, an EMD Model GP-9, is equipped with FRA certified glazing in the front and rear locations but not in the side windows. The railroad states there has been no vandalism in this rural area. The OHRY operates between Owego and Harford, New York, a distance of approximately 30 miles.

Providence and Worcester Railroad Company (PW)

Waiver Petition Docket Numbers RSGM-94-12 and SA-94-6

The PW seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. Locomotive PW 150 is a 25-ton diesel electric industrial switcher built by General Electric which was recently purchased to provide service on an industrial track which cannot accommodate a full size locomotive. This operation is on one-half mile of track at the end of the Bell Dock Railroad at New Haven Terminal, Connecticut. In addition, PW is restoring a section of track for a customer in South Providence, Rhode Island, and the locomotive will be used at that location. The locomotive is now equipped with new laminated safety glass.

PW seeks a permanent waiver of compliance with certain provisions of the Railroad Safety Appliance Standards (49 CFR Part 231) for Locomotive PW 150. Section 231.30 specifies requirements for locomotives used in switching service. PW requests relief from the requirements of this section since the locomotive was built without corner stairway openings and switching steps. The railroad states that a crew member would be either in the locomotive cab, on the cars or walking next to the equipment when in the street. Thus, safety is not compromised by non-compliance with Section 231.30.

Nash County Railroad (NCYR)

Waiver Petition Docket Number RSGM 94-13

The NCYR seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for four locomotives. The NCYR operates over approximately 20 miles of track between Spring Hope and Rocky Mount, North Carolina.

River Terminal Railway Company (RT)

Waiver Petition Docket Number RSGM 94-14

The RT seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for 17 locomotives. The railroad provides switching service for Republic Steel in their steel mill in Cleveland, Ohio Present glazing is 1/4-inch laminated safety glass. The railroad states there have been no incidents or vandalism involving glazing. The RT feels the burden of installing certified glazing is excessive when considering the minimal risks.

Atlantic and Gulf Railroad (AGLF)

Waiver Petition Docket Number RSGM 91-25

The AGLF seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for three locomotives. The railroad operates between Sylvester and Albany, Georgia, a distance of 18 miles and between Albany and Thomasville, Georgia, a distance of 54 miles. The area is primarily rural. The AGLF was granted a waiver for one locomotive in 1992.

Wiregrass Central Railroad Company, Incorporated (WGCR)

Waiver Petition Docket Number RSGM 91-27

The WGCR seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for five locomotives. The WGCR operates over approximately 18 miles of track between Enterprise and Waterford, Alabama. The area is primarily rural with several miles being within Fort Rucker army base. WGCR was granted a waiver for four locomotives in 1993.

Laurinburg Southern Railroad Company (LRS)

Waiver Petition Docket Number RSGM 90-4

The LRS seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for five locomotives. The LRS was granted a waiver for 36 locomotives on February 23, 1994, and have now purchased five additional locomotives. LRS 136 and LRS 140–143 are SW-1 switchers and LRS 139 is an NW-2 switcher locomotive.

Minnesota Commercial Railway Company (MNNR)

Waiver Petition Docket Number RSGM 89-31

The MNNR seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives. The MNNR was granted a waiver for three locomotives on August 16, 1993. Two of these locomotives (MNNR 303 and 304) have been sold and replaced by MNNR 110 and 200 for which the waiver is requested. These locomotives will operate under the same conditions as their predecessors.

Issued in Washington, D.C. on September 21, 1994

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 94-23867 Filed 9-26-94; 8:45 am]

BILLING CODE 4910-6-P

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Block Signal Application (BS-AP)—No. 3318

Applicant: Burlington Northern Railroad Company, Mr. William G. Peterson, Director Signal Engineering, 9401 Indian Creek Parkway, Overland Park, Kansas 66210–2007.

The Burlington Northern Railroad Company seeks approval of the proposed discontinuance and removal of the traffic control system, on the two main track, between Emerson, Nebraska, milepost 365.9 and East Alliance, Nebraska, milepost 364.4, Central Corridor, Alliance Division, Butte and Sand Hills Subdivision; including the relocation of East Alliance CTC station and the supervision and direction of train movement operations by the yardmaster.

The reason given for the proposed changes is to make better use of the signals in a traffic congested area.

BS-AP-No. 3319

Applicant: Grand Trunk and Western Railroad Incorporated, Mr. Kenneth J. Bagby, Engineer, Communications and Signals, 1333 Brewery Park Boulevard, Detroit, Michigan 48207–2699.

The Grand Trunk and Western Railroad Incorporated seeks approval of the proposed discontinuance and removal of the traffic control system, on the single main track, Dearborn Branch, between Fordhaven, milepost 2.3 and Park, milepost 9.2, Wayne County, Michigan, and operate under Yard Limit Rule.

The reason given for the proposed changes is permanent reduction of operating speeds to 20 mph

BS-AP-No. 3320

Applicant: Atchison, Topeka and Santa Fe Railway Company, Mr W S Seery, Director Signal Systems, Communications and Signal, 4515 Kansas Avenue, Kansas City, Kansas 66106–1199.

The Atchison, Topeka and Santa Fe Railway Company seeks approval of the proposed discontinuance and removal of controlled signals 128L and 130L, on the two main tracks, milepost 382.9, near Woodward, Oklahoma, Panhandle Division, Panhandle Subdivision.

The reason given for the proposed changes is that the signals are no longer required due to the permanent retirement of the railroad crossing at grade.

BS-AP-No. 3321

Applicant: CSX Transportation, Incorporated, Mr. D.G. Orr, Chief Engineer—Train Control, 500 Water Street (S/C J-350), Jacksonville, Florida 32202.

CSX Transportation, Incorporated seeks approval of the proposed discontinuance and removal of two controlled interlockings, at E.E. Huntington, milepost CA502.4 and W. E. Huntington, milepost CA504.6, near Huntington, West Virginia, C&O Business Unit, Kanawha; consisting of the discontinuance and removal of 12 controlled signals, the conversion of 8 power-operated switches to hand operation, and the elimination of Interlocking Rules as the method of operation.

The reason given for the proposed changes is the interlockings are no longer needed for present day operation.

BS-AP-No. 3322

Applicant: CSX Transportation, Incorporated, Mr. D.G. Orr, Chief Engineer—Train Control, 500 Water Street (S/C J-350), Jacksonville, Florida 32202.

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control system, on the single main track, between N.E. Lilly, Georgia, milepost ANB710.6 and S.E. Dooling, Georgia, milepost ANB716.3, Atlanta Division, Fitzgerald Subdivision; consisting of the discontinuance and removal of one automatic signal and the relocation of two automatic signals.

The reason given for the proposed changes is to improve operations and increase efficiency

BS-AP-No. 3323

Applicant CSX Transportation, Incorporated, Mr D.G. Orr, Chief Engineer—Train Control, 500 Water Street (S/C J-350), Jacksonville, Florida 32202.

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control system, on the single main track, between N.E. Ideal, Georgia, milepost ANB737.6 and S.E. Rupert, Georgia, milepost ANB745.0, Atlanta Division, Fitzgerald Subdivision; consisting of the relocation of four automatic signals.

The reason given for the proposed changes is to improve operations and increase efficiency.

BS-AP-No. 3324

Applicants: Consolidated Rail Corporation, Mr. J. F. Noffsinger, Chief Engineer—C&S, 2001 Market Street, P.O. Box 41410, Philadelphia, Pennsylvania 19101–1410.

Norfolk Southern Railway Company, Mr. J.W. Smith, Chief Engineer—C&S, Communication and Signal Department, 99 Spring Street, SW., Atlanta, Georgia 30303.

The Consolidated Rail Corporation (Conrail) and Norfolk Southern Corporation (NS) jointly seek approval of the proposed discontinuance and removal of "Red Key" Automatic Interlocking, milepost 124.9, Red Key, Indiana, Indianapolis Division, Frankfort District, of Conrail, where a single secondary track of Conrail crosses at grade a single track of the NS. The proposed changes consist of the discontinuance and removal of four interlocking signals and four associated approach signals, and the installation of four stop boards and four approach signs.

The reason given for the proposed changes is to retire facilities no longer required for present operations.

BS-AP-No. 3325

Applicant: CSX Transportation, Incorporated, Mr. D.G. Orr, Chief Engineer—Train Control, 500 Water Street (S/C J-350), Jacksonville, Florida 32202.

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CSX Transportation, Incorporated seeks approval of the proposed modification of the automatic block signal system, on the single main track, between Lafayette Junction, Indiana, milepost Q121.0 and Romney, Indiana, milepost Q132.6, Chicago Division, Monon Subdivision; consisting of the discontinuance and removal of three automatic signals and relocation of two automatic signals.

The reason given for the proposed changes is to improve operations and increase efficiency by installing electronic coded track circuits.

BS–AP–No. 3326

Applicant: Atchison, Topeka and Santa Fe Railway Company, Mr. W.S. Seery, Director Signal Systems, Communications and Signal, 4515 Kansas Avenue, Kansas City, Kansas 66106–1199.

The Atchison, Topeka and Santa Fe Railway Company seeks approval of the proposed discontinuance and removal of the traffic control system, on the yard lead tracks, between milepost 897 and milepost 897.5, near Belen, New Mexico, New Mexico Division, Clovis Subdivision.

The reason given for the proposed changes is that the signal system is no longer required due to changes in railroad operating procedures.

BS–AP–No. 3327

Applicant: Chicago and North Western Transportation Company, Mr. D. E. Waller, Senior Vice President Engineering and Equipment, 165 N. Canal Street, Chicago, Illinois 60606.

The Chicago and North Western Transportation Company seeks approval of the proposed modification of the automatic block signal system, on the single main track, between Rock Siding, Wisconsin, milepost 41.7 and Wyeville, Wisconsin, milepost 28.8, on the Adams Subdivision; consisting of the relocation of 38 automatic block signals, the discontinuance and removal of 15 automatic block signals, and the installation of 2 absolute signals.

The reason given for the proposed changes is to maximize efficiency and safety of train operations by replacing aging pole line with modern solid state coded track circuitry.

Rules Standards & Instructions Application (RS&I–AP) No. 1093

Applicant: Norfolk Southern Corporation, Mr. B.L. Sykes, General Manager Signal and Electrical, 99 Spring Street, S.W., Atlanta, Georgia 30303.

The Norfolk Southern Corporation (NS) seeks relief from the requirements of the Rules, Standard and Instructions, 49 CFR, Part 236, Section 236.377, 236.378, 236.379, 236.380, and 236.381, to the extent that NS not be required to perform the associated locking tests if a plug-in type relay is replaced with another relay and the following requirements are met:

1. The replacing relay is of the same drawing number as the relay being replaced;
2. The contacts of the replacing relay are verified to be of the correct arrangement for the drawing number;
3. Registration plates for the correct drawing number are in place and functional on both the plug board and the replacing relay;
4. If the relay is a biased type, voltage of the incorrect polarity must be applied to the coil to verify that the relay will not operate; and
5. Replacing relay is correctly mounted on the plug board.

The applicant's justification for relief is that a fail-safe device has been built to enable a simple test/verification procedure of a relay to be performed accurately and quickly. This will enable the signal system to be restored to service quickly in the event of a relay failure without disarrangement.

RS&I–AP No. 1094

Applicant: Florida East Coast Railway Company, Mr. M.E. Deputy,Vice President Transportation, One Malaga Street, P.O. Box 1048, St. Augustine, Florida 32085–1048.

The Florida East Coast Railway Company (FEC) seeks relief from the requirements of the Rules, Standard and Instructions, 49 CFR, part 236, § 236.566, to the extent that FEC be permitted to operate foreign line non-equipped locomotives, in automatic train control (ATC) territory, in accordance with Centralized Traffic Control System rules as defined by FEC Operating Rules and 49 CFR, part 236, § 236.567.

The applicant's justification for relief is that it is not economically feasible to equip run-through foreign power with ATC equipment, and it will improve train handling and customer satisfaction.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on September 21, 1994.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 94–23832 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

[Docket No. 94–62; Notice 2]

Decision That Nonconforming 1991 Mercedes-Benz 230CE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1991 Mercedes-Benz 230CE passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1991 Mercedes-Benz 230CE passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1991 Mercedes-Benz 300CE, and they are capable of being readily altered to conform to the standards.

DATES: The decision is effective as of September 27, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to decide whether 1991 Mercedes-Benz 230CE passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on July 22, 1994 (59 FR 37528) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 84 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1991 Mercedes-Benz 230CE (Model ID 124.043) is substantially similar to a 1991 Mercedes-Benz 300CE originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 22, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–23873 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–77; Notice 1]

Notice of Receipt of Petition for Decision that Nonconforming 1988 Volvo 740 Sedans Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1988 Volvo 740 Sedans are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1988 Volvo 740 Sedan that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) It is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is October 27, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The egency then publishes this decision in the **Federal Register.**

Western Cascade of Seattle, Washington (Registered Importer 94–23) has petitioned NHTSA to decide whether 1988 Volvo 740 Sedans are eligible for importation into the United States. The vehicle which Western Cascade believes is substantially similar is the 1988 Volvo 740 Sedan that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1988 Volvo 740 Sedan to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Western Cascade submitted information with its petition intended to demonstrate that the non-U.S. certified 1988 Volvo 740 Sedan, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1988 Volvo 740 Sedan is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 111 *Rearview Mirror,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 118 *Power Window Systems,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head*

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Restraints, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 214 *Side Door Strength*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model sealed beam headlamps; (b) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 114 *Theft Protection:* installation of a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Additionally, the petitioner states that shock absorbers must be installed behind the bumpers on the non-U.S. certified 1988 Volvo 740 Sedan to comply with the Bumper Standard found in 49 CFR Part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8, delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 22, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–23872 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–76; Notice 1]

Notice of Receipt of Petition for Decision that Nonconforming 1971 Iso Grifo Lusso Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1971 Iso Grifo Lusso passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1971 Iso Grifo Lusso that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is October 27, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm].

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer 90–007) has petitioned NHTSA to decide whether 1971 Iso Grifo Lusso passenger cars are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1971 Iso Grifo Lusso that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Iso Automotoveicoli, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1971 Iso Grifo Lusso to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the non-U.S. certified 1971 Iso Grifo Lusso, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1971 Iso Grifo Lusso is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence. . . .*, 103 *Defrosting and Defogging Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 108 *Lamps, Reflective Devices and Associated Equipment*, 109 *New Pneumatic Tires*, 110 *Tire Selection and Rims*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, and 301 *Fuel System Integrity*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) placement of a hazard symbol on the hazard warning signal switch.

Standard No. 114 *Theft Protection:* installation of a warning device to be activated when the key is left in the steering lock assembly and the driver's door is opened.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extend possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 22, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–23871 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–59–M

Denial of Motor Vehicle Petition

This notice sets forth the reasons for denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under Section 30162 of Chapter 301, Title 49, United States Code (formerly Section 124 of the National Traffic and Motor Vehicle Safety Act of 1966 (the Act)).

Mr. Lawrence J. Hutchens, an attorney representing Ms. Gloria Ody-Costello, petitioned the Administrator of NHTSA with respect to the automatic transmission dipstick and dipstick tube on all 1994 Mercury Cougar model vehicles. The petitioner maintains that when the subject vehicle is brought to a sudden stop, transmission fluid spills out of the dipstick tube and ignites on the catalytic converter located below the tube. The petitioner requests that NHTSA order the recall of all 1994 Mercury Cougars for the installation of a clamp to be installed on the subject dipstick to retain the dipstick in the dipstick tube in a more positive manner and "look into" relocating or increasing the length of the dipstick tube.

Mr. Hutchens' petition specifically calls for the recall of all 1994 Mercury Cougars vehicles. According to the Vehicle Identification Number (VIN) provided by Mr. Hutchens, Ms. Ody-Costello owns a 1993 Mercury Cougar, which is equipped with an automatic transmission and 5.0 liter V–8 engine. Mr. Hutchens states in his letter that Ms. Ody-Costello took her vehicle into a Ford dealer for unspecified transmission repairs. When the vehicle was returned to Ms. Ody-Castello, the transmission dipstick was allegedly not pushed completely into the top of the dipstick tube, which left the top of the dipstick tube partially open. Also, according to Mr. Hutchens, this condition allowed automatic transmission fluid to spill onto the catalytic converter during sudden braking and ignite. There is no mention of any damage to the vehicle as a result of such ignition. As the vehicle owned by Ms. Ody-Costello is actually a 1993 model, this model was also included in the NHTSA analysis.

Mr. Hutchens suggests three corrective actions in his letter:

1. Install a clamp on the dipstick tube to hold the dipstick in a more positive manner.

2. Relocate the dipstick tube, so that the opening of the tube is not above the catalytic converter.

3. Increase the length of the tube, to raise the opening of the tube into a higher location in the engine compartment.

The 1993 and 1994 Mercury Cougar are available with two engine options, either a 5.0 liter V–8 or a 3.8 liter V–6. Both the 1993 and 1994 models are equipped with the same dipstick and have the same dipstick tube location, regardless of engine size. The dipstick tube runs upward from the transmission to a location near the rear corner of the right side engine valve cover, where the dipstick is inserted into the tube. The opening of the tube is located about 12 inches above the heat shield that surrounds one of the engine's catalytic converters.

The upper end of the dipstick is fitted with a metal cap that fits over the top of the dipstick tube. This cap is about ½ inch deep. Inside the cap and extending about ½ inch from the opening of the cap is a rubber seal that closes the opening of the dipstick tube. This seal is basically a rubber plug that fits snugly into the opening. The plug portion is tapered for the first ¼ inch to facilitate its entry into the opening of the tube. According to Ford Motor Company (Ford), when the dipstick is inserted into the dipstick tube properly, so that the metal cap seats over the end of the tube, the rubber plug will provide a seal that will prevent any transmission fluid from spilling from the tube under all foreseeable driving conditions, including sudden or panic stops. Instructions in the Cougar owner's manual, contained in the glove compartment of all new vehicles, advise the owner to make sure the dipstick is fully seated when checking transmission fluid. The owner's manual also warns against overfilling of the transmission and instructs the owner to have any excess fluid removed from the transmission if the fluid ever exceeds the recommended level.

A search of the Office of Defects Investigation's (ODI) consumer complaint file disclosed no other reports of fluid spilling from the automatic transmission dipstick tube in either 1993 or 1994 Mercury Cougars. As the automatic transmission dipstick in the 1993 and 1994 Cougar is identical or very similar to the dipstick is most other Fords products, a search of ODI's consumer complaint file was also conducted involving all Ford vehicles from 1990 through 1994. Again, no complaints of transmission fluid spilling from the automatic transmission dipstick tubes were located. Ford was also contacted and reported that Ms. Ody-Costello's complaint was the only one it has received involving the subject transmission dipstick.

Mr. John R. Jackson, represented by Mr. Hutchens as an expert witness, was retained by Mr. Hutchens to inspect the Ody-Costello vehicle. According to Mr. Jackson's report, a one-page letter, when he first inspected the Ody-Costello vehicle, the transmission was overfilled. In spite of this overfilled condition, when Mr. Jackson examined the underside of the vehicle and the area

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surrounding the transmission dipstick tube, he reported that there was no evidence that any oil had spilled or was spilling from the dipstick tube. With the transmission in the overfilled condition, the owner pulled the dipstick out, so that the opening of the dipstick tube was "partially" open. When the vehicle was brought to two sudden stops in this condition, transmisslon fluid reportedly spilled from the dipstick tube on both occasions and was ignited by the exhaust system. This test was repeated two more times, after the excess transmission fluid was removed (with the dipstick tube still partially open), with the same result.

After the four previously described tests, a final test was conducted. According to Mr. Jackson's report, "the dipstick was then properly installed and the test repeated." In the final test, there was no ignition, although Mr. Jackson did report that there were "several spots of fluid along that path traveled by the decelerating vehicle. Mr. Jackson did not explain in his report, whether these spots could have come from residual oil that had possibly leaked during the four previous tests, when the dipstick tube was intentionally left partially open, nor did he indicate that the vehicle was inspected for the presence of any residual oil or that the area around and under the dipstick tube was cleaned after any of the previous tests. There was also no indication in the report that these spots were verified actually to be transmission fluid from Ms. Ody-Costello's vehicle.

Ms. Ody-Costello also demonstrated the problem for Mr. David Horowitz, the host of a syndicated television show, that deals with consumer issues. During the test conducted for Mr. Horowitz, the transmission dipstick also was not seated into the transmission dipstick tube. This condition resulted in a partial opening of the dipstick tube, although this fact was not mentioned by Mr. Horowitz in his broadcast (Mr. Hutchens submitted a video tape of the segment of Mr. Horowitz's show dealing with the Ody-Costello vehicle).

In an effort to better understand petitioner's allegations and particularly to verify Mr. Jackson's testing, ODI conducted an informal test program involving four 1993/1994 Mercury Cougar vehicles.

All four vehicles were randomly selected from the inventory of two large metropolitan dealership. Two were new vehicles with less than 50 miles recorded on the odometer and two were used vehicles. The vehicles were first inspected both in the engine compartment and under the vehicle for any evidence of oil spillage from the transmission dipstick tube. None of the vehicles showed any signs of oil leakage or spillage and were clean and free from any oil residue in the area beneath and surrounding the transmission dipstick tube. All four vehicles were then driven for approximately 30 minutes to bring the transmission up to normal operating temperature. Each vehicle was then inspected and the transmission fluid levels checked according to the manufacturer's instructions from the vehicle owner's manual. The dipstick has a crosshatched area, not quite ¾ inches long, near its lower extremity. The manufacturer recommends that the fluid level fall within this area when the transmission fluid is at operating temperature. The fluid level in all four vehicles fell within ⅛ inch of the uppermost limit of the crosshatched area of the dipstick. All were topped off as necessary to bring the fluid level to the top of the crosshatched area. It is also noted that there is a warning stamped into the dipstick immediately above the crosshatched area reading "DON'T ADD."

With the transmission dipsticks in place and seated into the dipstick tube according to the manufacturer's instructions, the uppermost area of the transmission dipstick tube, from 3 inches below the opening of the tube, was next loosely wrapped with paper toweling. This wrap extended above the top of the tube and around the handle portion of the dipstick above the cup containing the dipstick tube seal. The toweling was retained in position with masking tape.

Each vehicle was then driven for approximately 15 miles in stop and go traffic and for a second 15 miles at highway speeds of 55 to 65 mph. The vehicles were then subjected to braking in a large, level parking lot. The asphalt surface of the lot was dry and the ambient temperature was 87 degrees F. Each vehicle was driven along a straight path and brought up to a speed of 50 mph, at which time the brakes were applied as firmly as possibly, bringing the vehicle to a sudden panic-type stop. (Although the test vehicles were not equipped with anti-lock brakes, as was the Ody-Costello vehicle, the deceleration was so severe that the valence panel under the front bumper of the test vehicles contacted the road surface during four of the test stops.) This was repeated three times with each vehicle. After each of the three tests of each vehicle, the area underhood and under the vehicle was inspected for any evidence of fluid spillage. Each time, the paper toweling was removed and replaced with fresh toweling prior to the next test.

NHTSA found no evidence of any transmission fluid escaping from any of the dipstick tubes in any of the 12 braking tests nor any of the "stop and go" or highway tests. There were no oil spots on the testing surface, nor any evidence of any oil on any of the paper towels used around the dipstick tubes.

ODI maintains a library of owner's manuals for all passenger vehicles sold in the United States. Currently, the manuals cover all model years from 1989 through 1994. These manuals were reviewed and no passenger vehicle was located that was fitted with any original equipment device or clamp to retain the transmission dipstick into the dipstick tube. In addition, almost all transmission dipsticks are located near the rear of the engine compartment on the passenger side. In all cases where the vehicles are equipped with either V–8 or V–6 engines, this places the opening of the dipstick tube above the exhaust manifold and exhaust pipe for the right bank of cylinders. Although a few vehicles were located with the transmission dipstick tube opening located a few inches higher than the subject Cougars, the height of the opening of the Cougar dipstick tube is typical.

There has been one safety recall involving a transmission dipstick (recall #93V016). This recall involved 1988 through 1990 full-sized Chevrolet trucks. It was determined that when these vehicles were towing heavy trailers in overdrive, pressure could build up in the automatic transmission and transmission fluid would be forced from the transmission dipstick tube. A special dipstick was supplied to owners with a locking seal. There is no evidence to indicate that pressure build up occurs in the subject Cougar vehicles.

The construction of the Cougar dipstick and the method used to seal the top of the dipstick tube with the dipstick are also typical of peer vehicles. Dipsticks were examined for several model vehicles manufactured by Chrysler and General Motors, and the dipsticks and seals were all found to be of the same style and very similar in both construction and design. The location and the method by which the dipstick is inserted into the transmission tube are also very similar.

The petitioner's primary request ("suggestion") is that the agency require the manufacturer to install a clamp to hold the dipstick into the dipstick tube in a more positive manner. This suggestion implies that the petitioner recognizes that if the dipstick is seated into the dipstick tube according to the manufacturer's recommendations, no fluid will escape. The petitioner also suggests that NHTSA might want to look into the possibility of raising or relocating the dipstick tube so that if the dipstick is not properly installed into the dipstick tube, transmission fluid will be less likely to escape or come in contact with exhaust system components.

Both ODI and the manufacturer have searched their files and the petitioner's reported incident is the only recorded occurrence that has been located. The petitioner states that the problem originally occurred when a dipstick was improperly installed by a mechanic in a Ford dealership, after transmission repairs. The dipstick is not in a unique location, nor does proper insertion of the dipstick appear to be difficult, even for owners that are not mechanically inclined. It appears that the dipstick was inadvertently left loose, or not fully seated after repairs. In order to duplicate the original incident, the petitioner has had to leave the dipstick unseated, so that the opening of the dipstick tube is partially open. The Ford dipstick tube height is typical of peer vehicles. In fact, most vehicles on the road have their transmission dipsticks in similar locations and also seal the top of the transmission dipstick tube with a rubber seal located on the dipstick.

In summary, a review of all the pertinent information leads to the following conclusions:

1. The petitioner's allegation appears to be an isolated incident.
2. The alleged problem appears to be the result of improper maintenance and repair, rather than a manufacturing defect.
3. The Cougar transmission dipstick, dipstick tube, and sealing system are typical of other peer vehicles.
4. If an owner uses reasonable care and follows the manufacturer's instructions in the vehicle's owner manual, the seal on the transmission dipstick will prevent spillage or escape of transmission fluid.
5. There is no evidence that the transmission dipstick will not stay in place once properly inserted into the tube. However, the dipstick could be left loose by an inattentive owner or mechanic, regardless of the presence of a retaining device.

In consideration of the available information, it is concluded that there is not a reasonable possibility that an order concerning the notification and remedy of a safety-related defect in relation to the petitioner's allegations would be issued at the conclusion of an investigation. Further commitment of resources to determine whether a safety-related defect trend exists does not appear to be warranted. Therefore, the petition is denied.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 22, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–23870 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

[Treasury Order Number 140–01]

Federal Law Enforcement Training Center; Authority Delegation

Dated: September 20, 1994.

1. By virtue of the authority vested in the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b) and the Government Employees Training Act (5 U.S.C. 4101–4118), as implemented by Executive Order 11348 of April 20, 1967, the Federal Law Enforcement Training Center (FLETC), as a bureau within the Department with a Director as the bureau head, shall provide interagency training facilities and programs.

2. *The Functions of the FLETC shall be to:*

a. Provide training to participating Federal organization personnel and serve as an interagency law enforcement training center for Federal agencies as well as an intergovernmental law enforcement training organization for State, local and international agencies, and private security personnel;

b. Provide the facilities, equipment, and support services necessary for conducting basic and advanced training for law enforcement personnel, including food, lodging, recreation programs and administrative services for students;

c. Provide support, administrative, and training personnel for common training programs to:

(1) Consolidate requirements of participating agencies and develop training curricula;

(2) Develop course content and instructional methodologies to ensure that materials are designed to meet objectives; and

(3) Instruct and evaluate students;

d. Conduct research in law enforcement training methods and curriculum content to maintain state-of-the-art expertise in adult learning methodology; and

e. Provide advice and technical assistance to the participating organizations, State and local law enforcement organizations, and international organizations in determining their needs for law enforcement training, in developing curriculum and course content, and in teaching methods and techniques for the advanced training which they provide at the FLETC.

3. *The Director, FLETC, shall provide:*

a. Executive direction and overall management to the FLETC's training sites, programs and support activities while ensuring that organizational program goals and priorities are administered in the most sound, effective, efficient, and economical fashion;

b. Impetus for establishing and monitoring long-range and strategic FLETC plans and goals;

c. Overall managerial direction for the effective and efficient performance of the functions of the FLETC, including evaluation of students and removal of students from training for such matters as deficiency in training, health, or conduct; and

d. Advice to the Under Secretary (Enforcement) and Assistant Secretary (Enforcement) relative to executive level policy and program administration of Federal law enforcement activities.

4. *The Director, FLETC, shall have the authority to:*

a. Appoint uniformed personnel as special policemen;

b. Make all rules and regulations; and

c. Annex to such rules and regulations such reasonable penalties (not to exceed those prescribed in 40 U.S.C. 318[c]) as will ensure their enforcement for the protection of persons and property at the Federal Law Enforcement Training Centers, Brunswick, Georgia, and Artesia, New Mexico, and such other FLETC sites as may be appropriate. This authority shall be exercised in accordance with the Act of June 1, 1948, as amended (62 Stat. 281; 40 U.S.C. 318–318[c]).

5. *FLETC Operations.* The Department of the Treasury is the executive agency for operating the FLETC and serves as the established point of authority for implementation of Federal regulations and policies having governmentwide application. Within this concept:

a. All employees of the FLETC staff will either be appointed under the authority of the Secretary of the Treasury and shall be employees of the Department of the Treasury, or they will be detailed from their respective agencies for a specific period of time to the FLETC; and

b. FLETC operations will be financed by separate appropriations to the Department of the Treasury to be used to pay costs of salaries, equipment, and other expenses.

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6. *Cancellation.* Treasury Order 140–01, "Federal Law Enforcement Training Center", dated January 13, 1987, is superseded.

Lloyd Bentsen,

Secretary of the Treasury.

[FR Doc. 94–23868 Filed 9–26–94; 8:45 am]

BILLING CODE 4810–25–P

Office of Thrift Supervision

Cobb Federal Savings Association, Marietta, GA; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Cobb Federal Savings Association, Marietta, Georgia ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 12, 1994.

Dated: September 21, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–23850 Filed 9–26–94; 8:45 am]

BILLING CODE 6720–01–M

Dryades Savings and Loan Association, a Federal Association, New Orleans, LA; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Dryades Savings and Loan Association, A Federal Association, New Orleans, Louisiana ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 8, 1994.

Dated: September 21, 1994.

By the Office of Thrift Supervision

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–23853 Filed 9–26–94; 8:45 am]

BILLING CODE 6720–01–M

Hollywood Federal Savings Bank, Hollywood, FL; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Hollywood Federal Savings Bank, Hollywood, Florida ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 19, 1994.

Dated: September 21, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–23849 Filed 9–26–94; 8:45 am]

BILLING CODE 6720–01–M

Oak Tree Federal Savings Bank, New Orleans, LA; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Oak Tree Federal Savings Bank, New Orleans, Louisiana ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 26, 1994.

Dated: September 21, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–23852 Filed 9–26–94; 8:45 am]

BILLING CODE 6720–01–M

Second National Federal Savings Association, Salisbury, MD; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Second National Federal Savings Association, Salisbury, Maryland ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 16, 1994.

Dated: September 21, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–23854 Filed 9–26–94; 8:45 am]

BILLING CODE 6720–01–M

Western Federal Savings Bank, Marina del Rey, CA; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Western Federal Savings Bank, Marina del Rey, California ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 8, 1994.

Dated: September 21, 1994.

By the Office of Thrift Supervision.

Kimberly M. White.,

Corporate Technician.

[FR Doc. 94–23851 Filed 9–26–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–58; OTS No. 06420]

Cecil Federal Savings Bank, Elkton, MD; Approval of Conversion Application

Notice is hereby given that on September 12, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Cecil Federal Savings Bank, Elkton, Maryland, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE, Atlanta, Georgia 30309.

Dated: September 21, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–23847 Filed 9–26–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–56; OTS No. 02518]

First Federal FSB, Hutchinson, MN; Approval of Conversion Application

Notice is hereby given that on August 12, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal FSB, Hutchinson, Minnesota, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: September 21, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–23845 Filed 9–26–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–57; OTS Nos. H–2017 and 05329]

Home Financial Corporation, M.H.C., Hollywood, FL; Approval of Conversion Application

Notice is hereby given that on August 15, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Home Financial Corporation, M.H.C., Hollywood, Florida, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE, Atlanta, Georgia 30309.

Dated: September 21, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–23846 Filed 9–26–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–53; OTS No. 04521]

Sulphur Springs Loan and Building Association, Sulphur Springs, TX; Approval of Conversion Application: Correction

In notice document relating to the approval of the conversion application of the Sulphur Springs Loan and Building Association, Sulphur Springs, TX, dated August 17, 1994, and published at 59 FR 43381, August 23, 1994, OTS No. 00707 was incorrectly carried in the heading. The correct OTS No. is "04521" as set forth above.

Dated: September 22, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–23844 Filed 9–26–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–59; OTS No. 05329]

First Federal Savings and Loan Association of Sylacauga, Sylacauga, AL; Approval of Conversion Application

Notice is hereby given that on September 16, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Sylacauga, Sylacauga, Alabama, to convert to the stock form of organization. Copies of the application are available for inspection at the information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

Dated: September 21, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–23848 Filed 9–26–94; 8:45 am]

BILLING CODE 6720–01–M

VOL 59 ISS 186 SEP 27 1994 UMI

Sunshine Act Meetings

Federal Register
Vol. 59, No. 186
Tuesday, September 27, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, September 29, 1994.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Steel Branch Mining*, Docket No. WEVA 92-953. (Continuation of consideration of issues which include whether the judge correctly concluded that Steel Branch Mining violated 30 C.F.R. § 77.404(a), and that the violation was significant and substantial, and whether the judge assessed an appropriate civil penalty.)

2. *Drillex, Inc.*, Docket No. SE 92-130-M. (Issues include whether the judge correctly concluded that Drillex's operation was subject to Mine Act jurisdiction.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay/800-877-8339 Toll Free.

Dated: September 22, 1994.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 94-24031 Filed 9-23-94; 3:41 pm]

BILLING CODE 6735-01-M

INTER-AMERICAN FOUNDATION BOARD MEETING

TIME AND DATE: October 4, 1994, 11:30 a.m.-3:00 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

STATUS: Open except for the portions specified as closed session as provided in 22 CFR part 1004.4(b).

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the April 19, 1994, Meeting of the Board of Directors.
2. President's Report.
3. Staff Program Presentations.
4. Amendment of Board Bylaws.
5. Executive Session to Discuss Personnel Issues (closed)
6. Audit Committee Report.
7. Program Allocations by Country.
8. Old Business.
9. New Business.

CONTACT PERSON FOR MORE INFORMATION: Adolfo A. Franco, Secretary to the Board of Directors, (703) 841-3894.

Dated: September 26, 1994.

Adolfo A. Franco,

Sunshine Act Officer.

[FR Doc. 94-23918 Filed 9-22-94; 4:58 pm]

BILLING CODE 7025-01-M

LEGAL SERVICES CORPORATION

Board of Directors; Audit and Appropriations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Audit and Appropriations Committee will meet on September 30, 1994. The meeting will commence at 9:00 a.m.

PLACE: Legal Services Corporation, 750 First Street, N.E., Board Room, 11th Floor, Washington, D.C. 20002, (202) 336-8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of August 5-6, 1994 Meeting.
3. President's Report.
4. Review of Budget and Expenses for the Period Ending August 31, 1994.
5. Consider and Act on the Consolidated Operating Budget for Fiscal Year 1995, Including the Preliminary Allocation of Fiscal Year 1994 Fund Balances.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336-8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336-8800.

Date issued: September 22, 1994

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94-23929 Filed 9-23-94; 9:15 am]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION

Board of Directors; Provision for the Delivery of Legal Services Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Provision for the Delivery of Legal Services Committee will meet on September 30, 1994. The meeting will commence at 2:30 p.m.

PLACE: Legal Services Corporation, 750 First Street, N.E., BOARD ROOM, 11th Floor, Washington, D.C. 20002, (202) 336-8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of July 15, 1994 Meeting.
3. President's Report.
4. Consideration of Status Report on Issues Related to Performance Evaluation and Program Improvement.
6. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336-8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336-8800.

Date issued: September 22, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94-23930 Filed 9-23-94; 8:45 am]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION

Board of Directors meeting

TIME AND DATE: The Legal Services Corporation Board of Directors will meet on October 1, 1994. The meeting will commence at 9:00 a.m.

PLACE: Legal Services Corporation, 750 First Street, NE., Board Room, 11th Floor, Washington, DC 20002, (202) 336-8800.

STATUS OF MEETING: *Open*, except that a portion of the meeting may be closed pursuant to a vote of a majority of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board will consult with the President and General Counsel on the matter of *Wilkinson* v. *LSC*. Further, the Board will be briefed by the Inspector General on Office of the Inspector General Activities.[2] The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(h)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, NE., Washington, DC 20002, in its eleventh floor reception area, and will otherwise be available upon request.

[2] Briefings do not constitute "meetings" as defined by the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of July 16, 1994 Meeting.
3. Approval of Minutes of July 16, 1994 Executive Session.
4. Chairman's and Members' Reports.
5. President's Report.
6. Consider and Act on Operations and Regulations Committee Report.
   a. Consider and Act on Committee Recommendation Regarding Proposed Changes to Part 1607 of the Corporation's Regulations.
   b. Ratification of Notational Vote Taken September 19-20, 1994, Approving Withdrawal of Proposed Changes to Part 1602 of the Corporation's Regulations As Published in the **Federal Register** on October 13, 1994.

OPEN SESSION: (Continued)

7. Consider and Act on Provision for the Delivery of Legal Services Committee Report.
8. Consider and Act on Audit and Appropriations Committee Report.
   a. Consider and Act on the Consolidated Operating Budget for Fiscal Year 1995, Including the Preliminary Allocation of Fiscal Year 1994 Fund Balances.
   b. Consider and Act on Proposed Fiscal Year 1996 Budget Mark and Allocation of Funds to Specific Line Items, New Initiatives, and Management and Administration.
9. Inspector General's Report.
10. Public Comment.

CLOSED SESSION:

11. Briefing of Board by the Inspector General on Office of the Inspector General Activities.
12. Consult with the President and General Counsel on the Matter of *Wilkinson* v. *LSC*.

OPEN SESSION: (Resumed)

13. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336-8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336-8800.

Date issued: September 22, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94-23931 Filed 9-23-94; 9:15 am]

BILLING CODE 7050-01-M

Notice of this briefing is being provided solely as a courtesy to the public.

LEGAL SERVICES CORPORATION

Board of Directors; Operations and Regulations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Operations and Regulations Committee will meet on September 30, 1994. The meeting will commence at 1:30 p.m.

PLACE: Legal Services Corporation, 750 First Street, N.E., Conference Room, 10th Floor, Washington, D.C. 20002, (202) 336-8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of September 16-17, 1994 Meeting.
3. Executive Vice President's Report.
4. Consider and Act on Proposed Changes to Part 1607 of the Corporation's Regulations.
5. Consider and Act on Proposed Changes to Part 1610 of the Corporation's Regulations.
6. Public Comment.
7. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336-8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336-8800.

Date issued: September 22, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94-23932 Filed 9-23-94; 9:15 am]

BILLING CODE 7050-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 26, October 3, 10, and 17, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 26

There are no meetings scheduled for the Week of September 26.

Week of October 3—Tentative

There are no meetings scheduled for the Week of October 3.

Week of October 10—Tentative

Thursday, October 13

9:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 17—Tentative

Thursday, October 20

10:00 a.m.
Briefing on Medical Use Program and Meeting with Advisory Committee on Medical Use of Isotopes (ACMUI) (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: Dr. Andrew Bates (301) 504-1963.

Dated: September 23, 1994.

Andrew L. Bates,

Chief, Operations Branch, Office of the Secretary.

[FR Doc. 94-24015 Filed 9-23-94; 2:24 pm]

BILLING CODE 7590-01-M

UNITED STATES POSTAL SERVICE

Board of Governors; Notice of Vote to Close Meeting

By telephone vote, a majority of the members contacted and voting, the Board of Governors voted to add to the agenda of its meeting closed to public observation on October 3, 1994, in Seattle, Washington, consideration of an incentive compensation plan (See 59 FR 46084, September 6, 1994).

The Board determined that pursuant to section 552b(c)(2) of title 5, United States Code, and section 7.3(b) of title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information relating to internal personnel practices.

The Board further determined that the public interest did not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal

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Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(2) of title 5, United States Code; and section 7.3(b) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 94–24029 Filed 9–23–94; 3.28 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of September 26, 1994.

An open meeting will be held on Tuesday, September 27, 1994, at 2:30 p.m., in Room 6059. A closed meeting will be held on Tuesday, September 27, 1994, following the open meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session, and determined that this was the earliest practicable time to provide notice of the open meeting.

The subject matter of the open meeting scheduled for Tuesday, September, 27, 1994, at 2:30 p.m., will be:

1. The Commission will consider whether to amend Rule 10b—10 and adopt Rule 11Acl–3 under the Securities Exchange Act of 1934 generally requiring disclosure by broker-dealers of the practice of payment for order flow. In addition, the Commission will consider whether to delegate the authority to grant exemptions from Rule 11Ac1–3 to the Director of the Division of Market Regulation. For further information, please contact Jill W. Ostergaard at (202) 942–0169.

2. The Commission will consider whether to issue a release proposing and soliciting comment on rule 15c5–1. The rule would prohibit a market maker in a NASDAQ/NMS security from trading for its own account, directly or indirectly, at a price at which the market maker could execute a customer limit order that it is holding, without executing the customer limit order at such price or a price more favorable to the customer, under the specific terms and conditions by which the order is accepted by the market maker. There are certain itemized exceptions to the rule as well as specific provisions governing the type of orders and the class of persons eligible for protection under the rule. For further information, please contact Scott C. Kursman at (202) 942–0168.

The subject matter of the closed meeting scheduled for Tuesday, September 27, 1994, following the open meeting will be:

Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: September 23, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–23988 Filed 9–23–94; 12:47 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register

Vol. 59, No. 186

Tuesday, September 27, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 940549-4149]

Computer Systems Laboratory Cooperative Agreement Program -- Availability of Funds

Correction

In notice document 94-22759 beginning on page 47304 in the issue of Thursday, September 15, 1994 make the following correction:

On page 47306, in the second column, under the paragraph heading *Evaluation Criteria*, in the fifth line from the bottom, "19%" should read "10%".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Public Meetings on National Energy Policy

Correction

In notice document 94-21776 beginning on page 45670 in the issue of Friday, September 2, 1994, make the following correction:

On page 45671, in the second column, in the fourth line, after Hotline:"(615)214–2545." should read "(615)241–2545."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

Animal Drugs Feeds; and Related Products; Ketamine Hydrochloride Injection, USP

Correction

In rule document 94-20066 beginning on page 41975 in the issue of Tuesday, August 16, 1994, make the following correction.

§ 522.1222a [Corrected]

On page 41976, in the third column, in amendatory instruction 2., in the second line, paragraph "(c)" should read "(c)(1)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94F-0257]

Betz Laboratories; Filing of Food Additive Petition

Correction

In notice document 94-20450 appearing on page 42837 in the issue of Friday, August 19, 1994, make the following correction:

In the 3d column, under **SUPPLEMENTARY INFORMATION**, in the 2d paragraph, in the 13th line remove "*(insert date 30 days after date of publication in the* Federal Register" and insert "September 19, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

RIN 0960-AC22

Supplemental Security Income for the Aged, Blind, and Disabled; Continuation of Benefits and Special Eligibility for Certain Severely Impaired Recipients Who Work

Correction

In rule document 94-19712 beginning on page 41400 in the issue of Friday, August 12, 1994, make the following corrections:

1. On page 41401, in the first column, in the penultimate line insert "2" between "section" and "of".

§ 416.265 [Corrected]

2. On page 41404, in § 416.265, in the second column, in paragraph (d), in the third line from the bottom "§ 416.269(d)" should read "§ 416.269(d))".

§ 416.269 [Corrected]

3. On the same page, in § 416.269, in the third column, in paragraph (b)(1) in the third line from the bottom "vary" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 58 and 92

[Docket No. R-94 1735; FR 3716-1-01]

RIN 2501-AB77

HOME Investment Partnerships Program

Correction

In rule document 94-20866 appearing on page 44258 in the issue of August 26, 1994, in the first column, line 3 under **DATES**, the effective date reads "October 26, 1994 through June", the date should read September 26, 1994 through June".

BILLING CODE 1505-01-D

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THE PRESIDENT

3 CFR

Presidential Determination No. 94–46 of September 8, 1994

Extension of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Correction

The billing code to Presidential Determination No. 94–46, on page 47229 in the issue of Thursday, September 15, 1994 is incorrect. The correct billing code should have read 4810-31-M.

BILLING CODE 1505–01–D

Federal Register

Tuesday
September 27, 1994

Part II

Department of Transportation

Coast Guard

46 CFR Parts 10 and 12
Five-Year Term of Validity for Certificates of Registry and Merchant Mariner's Documents; Final Rule

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 12

[CGD 91–211]

RIN 2115–AD92

Five-Year Term of Validity for Certificates of Registry and Merchant Mariner's Documents

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rulemaking establishes Coast Guard regulations which implement the provisions of the Oil Pollution Act of 1990 (OPA 90) that require certificates of registry (CORs) and merchant mariner's documents (MMDs) to be renewed every 5 years. A 5-year renewal period allows the Coast Guard to ensure that vessel personnel continue to be qualified to safely serve aboard a vessel. This rulemaking includes requirements for renewing CORs and MMDs, a schedule for renewing existing CORs and MMDs, and the associated user fees.

EFFECTIVE DATE: This rule is effective October 27, 1994, except for 46 CFR 10.811 and 46 CFR 12.02–29 which are effective January 1, 1995.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mrs. Justine Bunnell, Merchant Vessel Personnel Division (G–MVP–1), Office of Marine Safety, Security, and Environmental Protection, (202) 267–0238.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. James W. Cratty, Project Manager, and Ms. Jacqueline L. Sullivan, Project Counsel, OPA 90 Staff.

Regulatory History

On September 16, 1993, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Five-Year Term of Validity for Certificates of Registry and Merchant Mariner's Documents in the **Federal Register** (58 FR 48572). The 60-day comment period closed on November 15, 1993. The NPRM discussed the background and statutory requirements of section 4102 (b) and (c) of OPA 90 which amended 46 U.S.C. 7107 and 7302. It also discussed the requirements of the Omnibus Budget Reconciliation Act of 1990 which amended 46 U.S.C. 2110. The Coast Guard received 13 letters commenting on the proposal from mariners, unions, and marine industry representatives. A public hearing was not requested, and one was not held.

After careful review of these comments and the NPRM, the Coast Guard has finalized the requirements for renewal of Certificates of Registry and Merchant Mariner's Documents. The Coast Guard finds that the regulations provide the maximum flexibility practicable in establishing requirements for a 5-year term of validity for CORs and MMDs.

Background and Purpose

The Coast Guard issues certificates of registry (CORs) under the authority of 46 U.S.C. chapters 71 and 75. CORs are issued to provide registry of staff officers for service in positions such as purser, medical doctor, and professional nurse. The Coast Guard issues merchant mariner's documents (MMDs) under the authority of 46 U.S.C. chapters 73 and 75. MMDs authorize individuals to work in different capacities on deck, and in the engine and steward's departments, on seagoing vessels over 100 gross tons. MMDs, with an appropriate endorsement, also identify qualified tankermen.

Section 4102(b) of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) amended 46 U.S.C. 7107 by limiting the term of a COR to 5 years. Section 4102(c) of OPA 90 amended 46 U.S.C. 7302 by establishing the same limited term for MMDs. The Conference Report on OPA 90 (H.R. Conf. Rep. No. 101–653) explains that a 5-year renewal period will allow the Coast Guard to ensure that vessel personnel continue to be qualified to operate a vessel safely.

Section 4102(d) of OPA 90 limits the term of validity of all existing CORs and MMDs and provides for staggered expirations over a 5-year span. The statutory language provides that CORs and MMDs issued before August 18, 1990 expire on the day they would have expired if they had been issued for a term of 5 years and been renewed at the end of each succeeding 5-year period. This avoids the problems that would have been encountered if all CORs and MMDs expired at the same time. If this language is interpreted so that the 5-year period began on August 18, 1990, the date OPA 90 was enacted, documents would have expired at a time when no review and renewal procedures were in place. Mariners with such an expired document could not continue working, placing a tremendous burden on both individual mariners and the maritime industry. The Coast Guard interprets the statutory language to include an additional 5-year renewal cycle to avoid such a harsh result. The Coast Guard has modified the tables in 46 CFR 10.811 and 12.02–29 to commence the mandatory 5-year renewal period beginning on January 1, 1995. This will allow merchant mariners sufficient time to comply with the regulation's requirements.

Pending the development of these proposed procedures for renewal of CORs and MMDs, the Coast Guard has been issuing CORs and MMDs that are valid for a period of 5 years since March 1991.

The Omnibus Budget Reconciliation Act of 1990 amended 46 U.S.C. 2110 to require the Coast Guard to establish and collect user fees for services it provides under subtitle II of 46 U.S.C., including the issuance and renewal of CORs and MMDs.

Sections 4101 (a) and (b) of OPA 90 amend 46 U.S.C. 7101 and 7302, respectively, to require every person who applies for the issuance or renewal of a license, COR, or MMD to have a chemical test for dangerous drugs. On March 4, 1994, the Coast Guard published an NPRM in the **Federal Register** entitled "Chemical Testing for Dangerous Drugs of Applicants for Issuance or Renewal of Licenses, Certificates of Registry, or Merchant Mariner's Documents" (59 FR 10544) (CGD 91–223). The Coast Guard originally intended to merge the chemical testing requirements and the regulations for terms of validity into one final rule. However, the Coast Guard has decided to publish these rules separately in order to facilitate public participation.

As required by OPA 90, the Coast Guard is also developing a rulemaking which addresses how review of information in the National Driver Register and a criminal record review will become part of the license, COR, and MMD renewal process (CGD 91–212).

Discussion of Comments and Changes

Thirteen letters were received in response to the NPRM. The Coast Guard has reviewed all of the comments and, in some instances, revised the proposed regulations as appropriate. The comments have been grouped by issue, and are discussed as follows.

1. User Fees

Several comments objected to the proposed Coast Guard user fees for renewals of MMDs and CORs. As stated in the NPRM, the Omnibus Budget Reconciliation Act of 1990 amended 46 U.S.C. 2110 to require the Coast Guard to establish and collect user fees for services it provides under 46 U.S.C., subtitle II. The Coast Guard has no discretion in the decision to establish fees for these services. The fee amounts for issuance of CORs and MMDs and for issuance and renewal of licenses were set by a final rule entitled "User Fees for Marine Licensing, Certification of Registry and Merchant Mariner Documentation" (58 FR 15228; March 19, 1993) (CGD 91–002). These rules became effective April 19, 1993. At that time, CORs and MMDs were not being renewed so that rule did not establish fee amounts for COR and MMD renewals. Therefore, fee amounts for COR and MMD renewals are set in this final rule.

The regulatory evaluation in this final rule discusses the fee amounts. For a summary of how the fee amounts were set, see the "Regulatory Evaluation" section of this rule.

2. Concurrent Renewals

One comment suggested a reduced fee for mariners who renew more than one merchant mariner credential at the same time. This approach was outlined in the NPRM and remains unchanged in the final rule. The Coast Guard encourages concurrent renewal of merchant mariner credentials whenever possible. However, all renewal requirements for each license, COR, or MMD must be met.

Renewal Evaluation Fees. When CORs or MMDs are renewed in conjunction with the renewal of a license, the Coast Guard will charge only the license renewal evaluation fee, since the evaluation for a license encompasses all factors considered in evaluating applicants for MMDs. When CORs or MMDs are renewed in conjunction with one another, but not in conjunction with a license, the Coast Guard will charge only the MMD renewal evaluation fee, if applicable, since there is no COR renewal evaluation fee.

Renewal Exercise Fees. When an MMD is renewed concurrently with a license and the applicant must take an open-book exercise for each renewal, the applicant need only pay the license exercise fee. If a license and MMD are renewed concurrently and the only open-book exercise is for an MMD, then the applicant will pay the MMD exercise fee.

Renewal Issuance Fees. It should be noted that a separate issuance fee will always be charged for each license, COR or MMD issued, regardless of whether the credential(s) are issued concurrently or individually.

3. Physical Requirements

The Merchant Marine Personnel Advisory Committee recommended to the Coast Guard that individuals holding MMDs with qualified ratings be required to undergo physical examinations when renewing MMDs. The Coast Guard has included such a requirement in this rulemaking.

Two comments addressed the physical requirements for renewal of MMDs with endorsements. The comments stated that the physical standards for renewal of MMDs with endorsements should not be the same as the physical standards for the original issuance of MMDs with endorsements. In response to these comments, the Coast Guard revised the physical examination section for MMD renewal, making it consistent with the physical examination section for license renewal. The physical examination for renewal of a license does not require the applicant to be tested for color sensitivity; however, the physical examination for original issuance of a license does require a color sensitivity test. This is the only difference in physical requirements between original issuance and renewal of licenses. The Coast Guard has revised the physical examination section for renewal of MMDs with endorsements to no longer require a color sensitivity test.

It should be noted that while the examination requirements are slightly different, the medical standards the Coast Guard applies to determine if a mariner is qualified for a license or document are the same regardless of whether the license or document is an original or a renewal. The Coast Guard believes that these standards are the minimum necessary to ensure safe service under a license or document and are therefore appropriate for both originals and renewals.

4. Professional Requirements

One comment suggested that individuals holding MMDs with qualified ratings, who serve as officials for unions in positions closely related to the training and servicing of active seamen should be required to show only 1 year of employment to meet the professional requirements for renewing an MMD. The professional requirements are intended to ensure that mariners maintain their professional knowledge and keep abreast of current technology. The NPRM proposed 3 years of employment in a position closely related to the operation, construction, or repair of vessels (either deck or engineer, as appropriate) as a substitute for 1 year of sea service. The Coast Guard believes that 1 year in a position of closely related maritime service, including training and servicing of active seamen, does not provide experience equivalent to 1 year of actual sea service. Therefore, the final rule retains the 3 year time requirement for all forms of closely related service.

One comment expressed concern about using an open-book "examination" as a substitute for sea service when renewing an MMD with an endorsement. The open-book renewal exercise will provide a means for those individuals who are not actively sailing or involved in the industry to maintain a working familiarity with the skills necessary to work in the industry. The renewal exercise contains general subject matter pertaining to the various endorsement(s) of the MMD and requires a 90 percent passing grade. The Coast Guard has concluded that this is an acceptable means of ensuring that endorsement holders continue to maintain their professional knowledge.

5. Continuity Endorsement

In response to several comments, the Coast Guard has included in the final rule a provision to renew MMDs "For Continuity Purposes Only." This provision follows the same procedures as the renewal policy for license holders. Individuals renewing MMDs with qualified ratings who cannot meet the professional or physical requirements will have the endorsement "Continuity only; service under document prohibited" placed on the MMD. Holders with this continuity endorsement may have the service prohibition rescinded at any time by satisfying the renewal requirements not previously met and paying the appropriate renewal fees.

6. Other Comments

Another comment addressed the renewal of Continuous Discharge Books (CDB) which the Coast Guard issues to merchant mariners for a chronological record of seagoing employment. Regulations listed in 46 CFR 12.02 cover issuing additional CDBs. Because OPA 90 does not address CDBs and because CDBs alone do not allow employment on a merchant ship, no change to the regulations is required.

Another comment stated that the NPRM did not address the grace period provision for MMD expiration dates determined by Table 12.02–29. The

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grace period explained under § 12.02–27(e) applies to all MMD expiration dates including MMD expiration dates specified in Table 12.02–29. For example, an MMD issued on January 1, 1966, would expire on January 1, 1996 under Table 12.02–29. The holder of that MMD will have a 12 month period of grace, running until January 1, 1997, in which he or she may renew the document.

One comment pointed out that the description of the procedures for renewal of MMDs by mail was not detailed enough. The Coast Guard has provided additional detail in § 12.02–27(e)(3) of the regulations.

Additional Changes

To correct minor errors and to reflect renewal requirements for certificates of registry, the Coast Guard is updating the table in 46 CFR 10.203. Additionally, numerous non-substantive editorial changes have been made to the final rule in order to improve its clarity, and to ensure that the public understands the requirements set forth.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

A final Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES.** The Evaluation is summarized as follows

1. *Government/Coast Guard cost.* Government and Coast Guard costs attributable to implementing renewal requirements for merchant mariner credentials will be primarily incurred by the 17 Coast Guard Regional Examination Centers (RECs). Cost incurring activities will consist of evaluating renewal applications, administering examinations, and issuing renewed CORs and MMDs. Projections of costs and impacts for renewal of CORs and MMDs are based upon a calculation of the current merchant marine licensing and documentation program costs. Data used in this calculation included: information from a workload analysis study; hourly standard rates provided in the Coast Guard Standard Rate Instruction (COMDTINST 7310); and the Coast Guard Staffing Standards Manual (COMDTINST M5312.11A).

The Coast Guard calculates the projected personnel and associated infrastructure costs for COR and MMD renewal activities to be approximately $1.23 million annually, which will be offset by approximately $1.16 million annually in user fees. User fee receipts will be deposited in the general fund of the U.S. Treasury as offsetting receipts of the Department of Transportation and ascribed to Coast Guard activities.

2. *Costs to the public.* The Coast Guard estimates a total pool of 1,500 active staff officers and 88,500 active MMD holders who may seek renewal of CORs or MMDs respectively. One-fifth of the total pool is expected to renew each year, resulting in 300 COR and 17,700 MMD renewals annually. Because the renewal process occurs once every 5 years, total costs can be divided by 5 to determine an annualized cost. Costs incurred by merchant mariners seeking renewal of CORs or MMDs will consist of user fees, photographs for MMDs, physical examinations, and time spent in the renewal process itself. This aggregate cost represents the highest average amount a mariner may expect to pay. However, variations in fees and renewal requirements will result in significantly lower costs for many mariners. The cost estimates are as follows:

		Total cost	Annualized
Individual Mariner	=	$278.84	$55.77
Whole Pool Impact	=	25,095,600	5,019,120

3. *Benefits.* Direct and societal benefits resulting from periodic renewal of CORs and MMDs may be substantial. The renewal process will eventually include three additional regulatory initiatives to implement OPA 90, and to ensure continuing qualification of merchant mariners. These initiatives are: (1) criminal record reviews, (2) national driver register checks, and (3) chemical drug testing.

Licensed, certificated, or documented merchant mariners play crucial and responsible roles in the safe operation of vessels, and they have important responsibilities during vessel emergencies. It is imperative that merchant mariners know that they are going to sea with a competent crew and that other vessels are operated by equally competent mariners. This rule will protect employees, employers, the marine environment, and the general public. Some of the direct benefits will include the following:

a. Employment protections and preferences, identification, proof of citizenship, proof of physical and other competency qualifications. Merchant mariners get employment benefits and know that shipmates to whom they entrust their lives at sea are qualified; and

b. Potentially fewer personal injuries.

In addition, society may benefit indirectly through potentially fewer groundings, accidents, losses of property, and releases of oil and hazardous materials into the marine environment. There is insufficient historical data to quantify the benefits of the regulations. However, should this program manage to save even two lives per year at $2.6 million per statistical life saved (which recent research shows is a reasonable estimate of people's willingness-to-pay for safety), its benefits would exceed its cost. If maritime accidents were reduced even by a small percentage, savings would accrue to the maritime industry through lower repair and medical costs and to the public through environmental protection.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Individual applicants are responsible for payment of issuance and renewal fees of CORs and MMDs to the Coast Guard. However, some firms in the maritime industry now voluntarily pay their employees' fees for obtaining CORs and MMDs. Some firms may choose to pay part or all of their employees' additional fees which will result from this rulemaking. However, the regulations do not require firms to pay for document issuance or document renewal fees for any applicant in whom the final rule vests responsibility. Consequently, small entities—for example, the 355 inland barge operators with fleets of 10 or fewer barges—are not, and will not be required to incur costs for applicant renewals of CORs and MMDs. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection-of-information requirements. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The section numbers are 10.209 and 12.02–27 and the corresponding OMB Control Number is 2115–0514.

Federalism

The Coast Guard has analyzed these regulations under the principles and criteria contained in Executive Order 12612 and has determined that the regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of these regulations and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, the regulations are categorically excluded from further environmental documentation. Section 2.B.2.1 of that instruction excludes administrative actions and procedural regulations and policies which clearly do not have any environmental impact. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

46 CFR Part 10

Fees, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Fees, Reporting and recordkeeping requirements, Seamen.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR parts 10 and 12 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for part 10 is revised to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2103, 7101, 7106, 7107; 49 CFR 1.45, 1.46; Section 10.107 also issued under the authority of 44 U.S.C. 3507.

2. Section 10.109 is amended by adding paragraph (d)(3) to read as follows:

§ 10.109 Fees.

* * * * *

(d) * * *

(3) For renewal of a Certificate of Registry:

(i) For evaluation for renewal of a certificate of registry, no fee.

(ii) For issuance of a renewed certificate of registry, $35.

* * * * *

3. Section 10.202 is amended by revising the section heading and paragraphs (a), (b), and (c) to read as follows:

§ 10.202 Issuance of licenses and certificates of registry.

(a) Applications for original licenses, original certificates of registry, raises of grade, extensions of route, or endorsements must be current and up-to-date with respect to service and the physical examination, as appropriate. Physical examinations and approved applications are valid for 12 months.

(b) Any person who is found qualified under the requirements set forth in this part is issued an appropriate license or certificate of registry valid for a term of 5 years from date of issuance. Any license or certificate of registry which is renewed or upgraded prior to its expiration date automatically becomes void upon issuance of the replacement license or certificate of registry.

(c) A license or certificate of registry is not valid until signed by the applicant and the OCMI (or the OCMI's designated representative).

* * * * *

4. Section 10.203 is revised to read as follows:

§ 10.203 Quick reference table for license and certificate of registry requirements.

Table 10.203 provides a guide to the requirements for various licenses and certificates of registry. Provisions in the reference section are controlling.

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TABLE 10.203

License category	Minimum age	Citizenship requirement	Physical required	Experience requirements	Recommendations and character check	Firefighting certificate	Professional exam requirements	Recency of Service	First aid and CPR requirements
Masters/mates and operators of uninspected passenger vessels (original license)	21, 10.201(f), Note: exceptions	Yes, 10.201(e), Note: exception	Yes, 10.205(d), Note: (d)(2).	Yes, 10.205(e); subpart D.	Yes, 10.205(f)	Yes, 10.205(g); Note: exceptions.	Yes, 10.205(i), 10.910; Note 10.903(b)	Yes, 3 months past 36 months, 10.202(e).	Yes, in 10.205(h).
Engineers (original license)	21, 10.201(f), Note: exceptions.	Yes	Yes, 10.205(d), Note: (d)(3).	10.205(e), subpart E	Yes, 10.205(f).	Yes, 10.205(g)	Yes, 10.205(i) 10.950.	Yes, 3 months in past 36 months, 10.202(e).	Yes, 10.205(h)
All raises of grade	21, 10.201(f), Note: exceptions	Yes	10.207(e), Note (e)(1)	10.207(c), subparts D & E	N/A	Yes, Note: 10.207(f)	10.207(d) 10.910. 10.920. 10.950.	Yes, 3 months in past 36 months 10.202(e).	N/A
License renewals	N/A	Yes	10.209(d)	10.209(c)	N/A	N/A	10.209(c)	10.209(c)	N/A
COR renewals	N/A	Yes	No	10.209(c)(5)	N/A	N/A	N/A	N/A	N/A
Pilot	21	Yes	Yes, 10.709	10.703, 10.706(a), 10.715.	Yes, 10.205(f)	N/A	10.707, 10.910	Yes, 10.703, 10.705(e), 10.713.	Yes, 10.205(h).
Uninspected fishing industry vessels.	21, 10.201(f), Note: exceptions.	Yes	Yes, 10.205(d); Note: (d)(2) or (d)(3)	Deck: 10.462, Eng: 10530, 10.205(f).	Yes, 10.205(f)	Yes, 10.205(g)	Yes, 10.205(i). 10.910. 10.950(oral).	Yes, 3 months in past 36 months 10.202(e).	Yes, 10.205(h).
Uninspected towing vessels	Operator: 21, 2/c operator: 19	Yes	Yes, 10.205(d), Note: (d)(2).	10.464	Yes, 10.205(f)	Yes, 10.205(g) oceans	Yes, 10.205(i). 10.910	Yes, 3 months in past 36 months, 10.202(e).	Yes, 10.205(h).
Radio officer	19	Yes	Yes, 10.205(d), Note (d)(3)	10.603	Yes, 10.205(f)	N/A	N/A	N/A	Yes 10.205(h)
Staff officer	21	Yes	No	10.807	Yes, 10.205(f)	N/A	N/A	N/A	N/A
Offshore installation manager, barge supervisor, ballast control operator	21, 10201(f), Note: exceptions	Yes	Yes, 10.205(d), Note: (d)(3).	Deck: 10.468, Eng: 10.540.	Yes, 10.205(f)	Yes, 10.205(g)	Yes, 10.205(i) 10.920.	Yes, 3 months in past 36 months, 10.202(e).	Yes 10.205(h).

5. Section 10.209 is revised to read as follows:

§ 10.209 Requirements for renewal of licenses and certificates of registry.

(a) *General.* Except as provided in paragraph (g) of this section, an applicant for renewal of a license or certificate of registry shall establish possession of all of the necessary qualifications before the license or certificate of registry is issued.

(1) Each application must be on a Coast Guard furnished form and be accompanied by the evaluation fee set out in § 10.109. An approved application is valid for 12 months.

(2) The applicant may apply in person at any Regional Examination Center listed in § 10.105 or may renew the license or certificate of registry by mail under paragraph (e)(3) of this section.

(3) The applicant shall submit the original or a photocopy of the license or certificate of registry to be renewed. A photocopy will include the back and all attachments. If requested, the old license or certificate of registry will be returned to the applicant.

(b) *Fitness.* No license or certificate of registry will be renewed if it has been suspended without probation or revoked as a result of action under part 5 of this chapter, or facts that would render a renewal improper have come to the attention of the Coast Guard.

(c) *Professional requirements.* (1) In order to renew a license as master, mate, engineer, pilot, or operator, the applicant shall:

(i) Present evidence of at least 1 year of sea service during the past 5 years;

(ii) Pass a comprehensive, open-book exercise covering the general subject matter contained in appropriate sections of subpart I of this part;

(iii) Complete an approved refresher training course; or

(iv) Present evidence of employment in a position closely related to the operation, construction or repair of vessels (either deck or engineer as appropriate) for at least 3 years during the past 5 years. An applicant for a deck license with this type of employment must also demonstrate knowledge on an applicable Rules of the Road exercise.

(2) The qualification requirements for renewal of *radar observer* endorsement are in § 10.480.

(3) Additional qualification requirements for renewal of a license as pilot are contained in § 10.713.

(4) An applicant for renewal of a radio officer's license shall, in addition to meeting the requirements of paragraphs (a) and (b) of this section, present a currently valid license as first- or second-class radiotelegraph operator issued by the Federal Communications Commission. This license will be returned to the applicant.

(5) An applicant for renewal of a medical doctor or professional nurse certificate of registry shall, in addition to meeting the requirements of paragraphs (a) and (b) of this section, present evidence that he or she holds a currently valid appropriate license as physician, surgeon, or registered nurse issued under the authority of a state or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia.

(d) *Physical requirements.* (1) An applicant for renewal of a license shall submit a certification by a licensed physician or physician assistant that he or she is in good health and has no physical impairment or medical condition which would render him or her incompetent to perform the ordinary duties of that license. This certification must address visual acuity and hearing in addition to general physical condition and must have been completed within 12 months of the date of application.

(2) If the OCMI has reason to believe that an applicant for renewal of a license suffers from some physical impairment or medical condition which would render the applicant incompetent to perform the ordinary duties of that license, the applicant may be required to submit the results of an examination by a licensed physician or physician assistant that meets the requirements for original license.

(3) An applicant who has lost the sight of one eye may obtain a renewal of license, provided that the applicant is qualified in all other respects and that the visual acuity in the one remaining eye passes the test required under § 10.205(d).

(4) Physical examinations are not required for renewal of certificates of registry.

(e) *Special circumstances*—(1) *Period of grace.* Except as provided herein, a license may not be renewed more than 12 months after it has expired. To obtain a reissuance of the license, an applicant must comply with the requirements of paragraph (f) of this section. When an applicant's license expires during a time of service with the Armed Forces and there is no reasonable opportunity for renewal, including by mail, this period may be extended. The period of military service following the date of license expiration which precluded renewal may be added to the 12 month period of grace. The 12 month period of grace, and any extension, do not affect the expiration date of the license. A license is not valid for use after the expiration date.

(2) *Renewal in advance.* A license or certificate of registry may not be renewed more than 12 months before expiration unless it is being renewed in conjunction with a merchant mariner's document which is either due for renewal or being endorsed, or unless the OCMI is satisfied that special circumstances exist to justify renewal.

(3) *Renewal by mail.* (i) Applications for renewal by mail of licenses or certificates of registry may be sent to the Coast Guard office that issued the license or certificate of registry or holds the applicant's file. The following documents must be submitted:

(A) A properly completed application on a Coast Guard furnished form and the evaluation fee required by § 10.109.

(B) The expired license or certificate of registry to be renewed; or, if it has not expired, a photocopy of the license or certificate, including the back and all attachments.

(C) A certification from a licensed physician or physician assistant in accordance with paragraph (d) of this section for the renewal of a license.

(D) If the applicant desires to renew a license with a radar observer endorsement, either the radar observer certificate or a certified copy.

(E) Evidence of, or acceptable substitute for, sea service for the renewal of a license.

(F) For a certificate of registry as a medical doctor or professional nurse, evidence that he or she holds a currently valid, appropriate license as physician, surgeon, or registered nurse, issued under the authority of a state or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia.

(ii) The open-book exercise, if required, may be administered through the mail.

(iii) Upon receipt of the renewed license or certificate of registry, the applicant shall sign it in order to validate the license or certificate.

(4) *Concurrent renewal of licenses, certificates of registry, and merchant mariner's documents.* An applicant for concurrent renewal of more than one merchant mariner credential shall satisfy the individual renewal requirements and pay the applicable fees required by §§ 10.109 and 12.02–18 of this chapter for each license, certificate of registry, or merchant mariner's document being renewed.

(f) *Reissuance of expired license or certificate of registry.* (1) Whenever an applicant applies for reissuance of a license more than 12 months after expiration, in lieu of the requirements of

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paragraph (c) of this section, the applicant shall demonstrate continued professional knowledge by completing a course approved for this purpose, or by passing the complete examination for that license. The examination may be oral-assisted if the expired license was awarded on an oral exam. The fees listed in § 10.109 apply to these examinations. In the case of an expired radio officer's license, the license may be issued upon presentation of a valid first- or second-class radiotelegraph operator license issued by the Federal Communications Commission.

(2) A certificate of registry that has been expired for more than 12 months shall be renewed in the same way as a current certificate of registry. There are no additional requirements for reissuing certificates of registry that have been expired for more than 12 months.

(g) *Inactive license renewal.* (1) Applicants for renewal of licenses who are unwilling or otherwise unable to meet the requirements of paragraphs (c) or (d) of this section may renew their licenses, with the following restrictive endorsement placed on the back of the license: "License renewed for continuity purposes only; service under the authority of this license is prohibited." Holders of licenses with this *continuity endorsement* may have the prohibition rescinded at any time by satisfying the renewal requirements in paragraphs (c) and (d) of this section.

(2) Applications for renewal of a license with the continuity endorsement must include:

(i) The license to be renewed, or, if it is unexpired, a photocopy of the license including the back and all attachments; and,

(ii) A signed statement from the applicant attesting to an awareness of the restriction to be placed on the renewed license, and of the requirements for rescinding the continuity endorsement.

6. Section 10.805 is amended by adding paragraph (f) to read as follows:

§ 10.805 General requirements.

* * * * *

(f) A certificate of registry is valid for a term of 5 years from the date of issuance. Procedures for renewing certificates of registry are found in § 10.209. The expiration date of a certificate of registry issued without an expiration date shall be determined in accordance with § 10.811.

7. Section 10.811 and Table 10.811 are added to read as follows:

§ 10.811 Expiration of existing certificates of registry.

The expiration year of a certificate of registry issued without an expiration date is calculated by adding 5-year increments to the issuance date of the certificate of registry, up to first applicable year falling between 1995 and 1999, inclusive. The day and month of expiration are the same as that of issuance. Table 10.811 is provided as an aid for calculating the expiration date of a certificate of registry issued without an expiration date. A certificate of registry is not valid for use after the expiration date calculated under this section, but may be renewed in accordance with the requirements of § 10.209.

TABLE 10.811.—EXPIRATION OF CERTIFICATES OF REGISTRY ISSUED WITH NO EXPIRATION DATE [1]

Expiration year				
1999	1998	1997	1996	1995
Issue Year				
1994	1993	1992	1991	1990
1989	1988	1987	1986	1985
1984	1983	1982	1981	1980
1979	1978	1977	1976	1975
1974	1973	1972	1971	1970
1969	1968	1967	1966	1965
1964	1963	1962	1961	1960
1959	1958	1957	1956	1955
1954	1953	1952	1951	1950
1949	1948	1947	1946	1945
1944	1943	1942	1941	1940
1930	1938	1937		

[1] Find the year in which the certificate of registry was issued (Issue Year), then move up the column to find the Expiration Year. Month and day of expiration correspond to the month and day of issue.

PART 12—CERTIFICATION OF SEAMEN

8. The authority citation for part 12 is revised to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2103, 2110, 7301, 7302; 49 CFR 1.46.

9. Section 12.02–9 is amended by adding paragraph (e) to read as follows:

§ 12.02–9 Application for documents.

* * * * *

(e) Approved applications are valid for 12 months.

10. Section 12.02–15 is revised to read as follows:

§ 12.02–15 Oath requirement.

Applicants for a merchant mariner's document for any rating shall take an oath before an Officer in Charge, Marine Inspection, or other official authorized to give such oath, or a commissioned officer of the Coast Guard authorized to administer oaths under 10 U.S.C. 936 or 14 U.S.C. 636, that they will faithfully and honestly perform all the duties required of them by law and carry out all lawful orders of superior officers on shipboard. Such an oath remains binding for all subsequent merchant mariner's documents issued to a person until the document is surrendered to the Officer in Charge, Marine Inspection.

11. Section 12.02–17 is amended by revising paragraph (b) to read as follows:

§ 12.02–17 Rules for the preparation and issuance of documents.

* * * * *

(b) Upon determining that the applicant satisfactorily meets all requirements for the document and any endorsements requested, the Officer in Charge, Marine Inspection, shall issue the appropriate document to the applicant. A merchant mariner's document is valid for a term of 5 years from the date of issuance. Any document which is renewed or reissued prior to its expiration date automatically becomes void upon issuance of the replacement document.

* * * * *

12. Section 12.02–18 is amended by adding paragraph (a)(7) to read as follows:

§ 12.02–18 Fees.

(a) * * *

(7) For renewal of a merchant mariner's document:

(i) For evaluation for renewal of a merchant mariner's document endorsed with a qualified rating, $45.

(ii) For evaluation for renewal of a merchant mariner's document when submitted with a license where a renewal evaluation fee already applies, no fee.

(iii) For evaluation for renewal of a merchant mariner's document without qualified rating endorsement, no fee.

(iv) For administration of open-book exercises required by § 12.02–27, $40.

(v) For administration of MMD open-book exercises when required in addition to license open-book exercises for concurrent renewal of these documents, only the license exercise fee in § 10.109(c)(2) will apply.

(vi) For issuance of a renewal of a merchant mariner's document including those issued for continuity purposes only, $35.

* * * * *

13. Section 12.02–27 is added to read as follows:

§ 12.02–27 Requirements for renewal of a merchant mariner's document.

(a) *General.* Except as provided in paragraph (g) of this section, an applicant for renewal of a merchant mariner's document shall establish possession of all of the necessary qualifications before a merchant mariner's document is issued.

(1) Each application must be on a Coast Guard furnished form and accompanied by the evaluation fee established in § 12.02–18. An approved application is valid for 12 months.

(2) The applicant may apply in person at any Regional Examination Center listed in § 12.01–7 or may renew the merchant mariner's document by mail under paragraph (e)(3) of this section.

(3) The applicant shall submit the original or a photocopy of the merchant mariner's document to be renewed. A photocopy must include the front and back of the merchant mariner's document. If requested, the old document will be returned to the applicant.

(4) The expiration date of a merchant mariner's document that was issued without an expiration date is determined in accordance with § 12.02–29.

(5) Each applicant shall comply with § 12.02–09(b)(1) of this part.

(b) *Fitness.* No merchant mariner's document will be renewed if it has been suspended without probation or revoked as a result of action under part 5 of this chapter, or facts which would render a renewal improper have come to the attention of the Coast Guard.

(c) *Professional requirements.* (1) In order to renew a merchant mariner's document endorsed with a qualified rating, the applicant shall comply with one of the following:

(i) Present evidence of at least 1 year of sea service during the past 5 years;

(ii) Pass a comprehensive, open-book exercise covering the general subject matter required by this part for the applicable endorsement or pass an open-book license exercise that covers the same subject matter required for the MMD endorsement;

(iii) Complete an approved refresher training course; or,

(iv) Present evidence of employment in a position closely related to the operation, construction, or repair of vessels (either deck or engineer as appropriate for the endorsement) for at least 3 years during the past 5 years.

(2) There are no professional requirements for renewal of a merchant mariner's document that is not endorsed with any qualified ratings.

(d) *Physical requirements.* (1) An applicant for renewal of a merchant mariner's document endorsed with a qualified rating other than lifeboatman, shall submit a certification by a licensed physician or physician assistant that he or she is in good health and has no physical impairment or medical condition which would render him or her incompetent to perform the ordinary duties of that qualified rating(s). This certification must address visual acuity and hearing in addition to general physical condition, and must have been completed within the previous 12 months.

(2) If the Officer in Charge, Marine Inspection has reason to believe that an applicant suffers from some physical impairment or medical condition which would render the applicant incompetent to perform the duties of the qualified rating(s) (other than lifeboatman), the applicant may be required to submit the results of an examination by a licensed physician or physician assistant that meets the requirements for originally obtaining the rating(s).

(3) An applicant who has lost sight in one eye may renew a merchant mariner's document with qualified ratings, provided the applicant is qualified in all other respects and that the visual acuity in the remaining eye passes the test required in § 10.205(d) of this chapter.

(e) *Special circumstances*—(1) *Reissuance after expiration, Period of grace.* Except as provided in this paragraph, a merchant mariner's document may not be renewed more than 12 months after it has expired. To obtain a reissuance of a merchant mariner's document expired more than 12 months, an applicant shall comply with the requirements of paragraph (f) of this section. When an applicant's merchant mariner's document expires during a time of service with the Armed Forces and there is no reasonable opportunity for renewal, including by mail, this 12-month period of grace may be extended. The period of military service following the date of merchant mariner's document expiration which precluded renewal may be added to the 12 month period of grace. The 12 month period of grace, and any extension, do not affect the expiration date of the document. A merchant mariner's document, and any endorsements that it contains, are not valid for use after the expiration date.

(2) *Renewal in advance.* A merchant mariner's document may not be renewed more that 12 months before expiration unless it is being renewed in conjunction with a license or certificate of registry which is either due for renewal or being upgraded, or unless the Officer in Charge, Marine Inspection is satisfied that special circumstances exist to justify renewal.

(3) *Renewal by mail.* (i) Applications for renewal of merchant mariner's documents by mail may be sent to any Coast Guard Regional Examination Center. The following documents must be submitted:

(A) A properly completed application on a Coast Guard furnished form, and the evaluation fee required by § 12.02–18.

(B) The document to be renewed, or, if it has not expired, a photocopy of the document, including the back.

(C) A certification from a licensed physician or physician assistant in accordance with paragraph (d) of this section.

(D) Evidence of, or acceptable substitute for, sea service in accordance with paragraph (c) of this section.

(ii) The open-book exercise, if required, may be administered through the mail.

(4) *Concurrent renewal of merchant mariner's documents, and licenses, or certificates of registry.* An applicant for concurrent renewal of more than one merchant mariner credential shall satisfy the individual renewal requirements and pay the applicable

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fees required by §§ 12.02–18 and 10.109 of this chapter for each merchant mariner's document, license, or certificate of registry being renewed.

(f) *Reissuance of expired merchant mariner's documents.* (1) Whenever an applicant applies for reissuance of a merchant mariner's document endorsed with qualified rating(s) more than 12 months after expiration, in lieu of the requirements of paragraph (c) of this section the applicant shall demonstrate continued professional knowledge for each qualified rating for which reissuance is sought by completing a course approved for this purpose or, by passing the complete examination for each rating, or by passing the examination for a related license required by § 10.209(f)(1) of this chapter. The fees listed in §§ 12.02–18 and 10.109 apply to these examinations.

(2) A merchant mariner's document without any qualified rating endorsements that has been expired more than 12 months shall be reissued in the same manner as a current merchant mariner's document. There are no additional requirements for reissuing merchant mariner's documents without qualified ratings that have been expired more than 12 months.

(g) *Inactive document renewal.* (1) Applicants for renewal of merchant mariner's documents that are endorsed with qualified ratings, who are unwilling or otherwise unable to meet the requirements of paragraphs (c) or (d) of this section may renew the merchant mariner's document, with the following restrictive endorsement placed on the document: "Continuity only; service under document prohibited." Holders of merchant mariner's documents with this *continuity endorsement* may have the prohibition rescinded at any time by satisfying the renewal requirements in paragraphs (c) and (d) of this section.

(2) Applications for renewal of a document with the continuity endorsement must include:

(i) The document to be renewed, or, if it is unexpired, a photocopy of the document including the back and,

(ii) A signed statement from the applicant attesting to an awareness of the restriction to be placed on the renewed document and of the requirements for rescinding the continuity endorsement.

14. Section 12.02–29 and Table 12.02–29 are added to read as follows:

§ 12.02–29 Expiration of existing merchant mariner's documents.

The expiration year of a merchant mariner's document issued without an expiration date is calculated by adding 5-year increments to the issuance date of the document, up to the first applicable year falling between 1995 and 1999, inclusive. The day and month of expiration are the same as that of issuance. Table 12.02–29 is provided as an aid for calculating the expiration date of a document issued without an expiration date. A merchant mariner's document is not valid for use after the expiration date calculated under this section, but may be renewed in accordance with the requirements of § 12.02–27.

TABLE 12.02–29.—EXPIRATION OF MERCHANT MARINER'S DOCUMENTS ISSUED WITH NO EXPIRATION DATE [1]

Expiration year				
1999	1998	1997	1996	1995
Issue Year				
1994	1993	1992	1991	1990
1989	1988	1987	1986	1985
1984	1983	1982	1981	1980
1979	1978	1977	1976	1975
1974	1973	1972	1971	1970
1969	1968	1967	1966	1965
1964	1963	1962	1961	1960
1959	1958	1957	1956	1955
1954	1953	1952	1951	1950
1949	1948	1947	1946	1945
1944	1943	1942	1941	1940
1939	1938	1937		

[1] Find the year in which the merchant mariner's document was issued (Issue Year), then move up the column to find the Expiration Year. Month and day of expiration correspond to the month and day of issue.

Dated: September 19, 1994.

J.F. McGowan,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–23655 Filed 9–26–94, 8:45 am]

BILLING CODE 4910–14–P

Federal Register

Tuesday
September 27, 1994

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations; Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AA24

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final late-season frameworks from which States may select season dates, limits, and other options for the 1994–95 migratory bird hunting season. These late seasons include most waterfowl seasons, the earliest of which generally commence on or about October 1, 1994. The effects of this final rule are to facilitate the selection of hunting seasons by the States to further the annual establishment of the late-season migratory bird hunting regulations. State selections will be published in the Federal Register as amendments to §§ 20.104 through 20.107 and § 20.109 of title 50 CFR part 20.

EFFECTIVE DATE: September 27, 1994.

ADDRESSES: Season selections from States are to be mailed to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received are available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1994

On April 7, 1994, the Service published for public comment in the Federal Register (59 FR 16762) a proposal to amend 50 CFR part 20, with comment periods ending July 21 for early-season proposals and September 2 for late-season proposals. The deadline for late-season proposals was subsequently extended to September 9 in the September 7 Federal Register (58 FR 46320). These regulations would be proposed for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons), Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). These species are designated as "migratory game birds" in conventions between the United States and several foreign nations for the protection and management of these birds. All other birds designated as migratory (under 10.13 of Subpart B of 50 CFR Part 10) in the aforementioned conventions may not be hunted. On June 8, 1994, the Service published for public comment a second document (59 FR 29700) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks. On June 23, 1994, a public hearing was held in Washington, DC, as announced in the April 7 and June 8 Federal Registers, to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons. On July 12, 1993, the Service published in the Federal Register (59 FR 35566) a third document in the series of proposed, supplemental, and final rulemaking documents which dealt specifically with proposed early-season frameworks for the 1994–95 season. On August 4, 1994, a public hearing was held in Washington, DC, as announced in the April 7, June 8, and July 12 Federal Registers, to review the status of waterfowl. Proposed hunting regulations were discussed for these late seasons. On August 17, 1994, the Service published a fourth document (59 FR 42474) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits for 1994–95. The fifth document in the series, published August 24, 1994 (59 FR 43684), dealt specifically with proposed frameworks for the 1994–95 late-season migratory bird hunting regulations. On September 1, 1994, the Service published in the Federal Register a sixth document consisting of a final rule amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons. On September 7, 1994, the Service published in the Federal Register a seventh document announcing an extension of the closing date for the comment period on late-season regulations from September 2 to September 9. This document, which establishes final frameworks for late-season migratory bird hunting regulations for the 1994–95 season, is the eighth in the series.

Review of Comments and the Service's Response

Public-hearing and written comments received through September 9, 1994, relating to proposed late-season frameworks are discussed and addressed here. Ten individuals presented statements at the August 4, 1994, public hearing. Individuals and the organizations represented were: Dr. Rollin Sparrowe, Wildlife Management Institute; Walter Sikes, California Waterfowl Association; Brian Cavey, Office of Senator Max Baucus; Bruce Barbour, National Audubon Society; K.L. Cool, Central Flyway Council; Scott Sutherland, Ducks Unlimited; Congressman Jay Dickey, 4th Congressional District in Arkansas; Congressman Tim Petrie, 6th Congressional District in Wisconsin; Dr. Gary Will, Pacific Flyway Council; and Congressman Steve Gunderson, 3rd Congressional District in Wisconsin. The Service received 504 written comments that specifically addressed late-season issues. These late-season comments are summarized and discussed in the subject order used in the April 7, 1994, Federal Register. Only the numbered items pertaining to late seasons for which comments were received are included. Flyway Council recommendations shown below include only those involving changes from the 1993–94 late-season frameworks. For those topics where a Council recommendation is not shown, the Council supported continuing the same frameworks as in 1993–94.

General

Public-Hearing Comments: Dr. Rollin Sparrowe, Mr. Brian Cavey, Mr. Bruce Barbour, Mr. K. L. Cool, and Mr. Scott Sutherland expressed optimism for the recovery of duck populations this year due to the return of good water and improved upland habitat conditions. They noted that a variety of circumstances likely contributed to this improvement but praised the Conservation Reserve Program (CRP) and the cooperative efforts of private landowners, State and Federal wildlife agencies, and conservation organizations for having played a significant role. However, Mr. Sutherland stated that several species, including the mallard, black duck, pintail, American wigeon, blue-winged teal, canvasback, and scaup are still below the North American Waterfowl Management Plan goals. He stressed the need to expand and improve population surveys and banding program databases which would allow the development of refined regional and flyway management plans.

Written Comments: The California Waterfowl Association urged the Service to consider the link between hunting opportunities and hunter support of habitat programs when formulating regulations. They believe that the current sizes of waterfowl populations justify a relaxation of restrictions.

An individual from California requested that waterfowl harvests be managed on a flyway basis.

Dr. Robert McLandress, Director of the Waterfowl and Wetland Program of the California Waterfowl Association, expressed his concern for the 65 percent decrease in California waterfowl hunters during the past two decades and the impact of such losses on wetland habitat preservation and maintenance. He noted that the number of California waterfowl hunters was more highly correlated with pintail harvests and pintail breeding populations than with harvests and populations of other ducks.

Mr. Walter R. Sikes, representing the California Waterfowl Association, noted that 1994 would be the second year of good production for Pacific Flyway duck populations which should provide relief to the existing regulations restrictions. He commented that reduced waterfowl populations and hunting opportunities had discouraged support for habitat restoration efforts in California; but nonetheless, California waterfowlers have spent millions of dollars on waterfowl habitat improvement programs in that State. He further indicated that historical data supported relaxation of regulations, noting that during years with similar duck populations, seasons were 31 percent longer, bag limits were 75 percent higher, and hunter numbers were at least 35 percent greater than in 1993.

Two local sportsmen's organizations from Massachusetts requested threshold figures for all species of waterfowl defining when seasons shall be opened or closed.

The Fund for Animals expressed concern that many States are establishing late-season migratory bird hunting dates prior to the publication of the final frameworks by the Service. They contend that such premature action by State agencies, regardless of the time constraint the agencies may face, conflict with the notice and comment requirements of the Administrative Procedures Act. The purpose of publishing the Federal Register proposed rulemaking document and allowing a subsequent comment period is to provide opportunity for interested parties to submit data and facts and to present their views. They maintain that this scenario places the Service in a difficult situation and compromises its ability to make changes. As a result, they believe that the Service does not seriously consider comments received and thus does not involve the public in the decision-making process.

The New York State Department of Environmental Conservation expressed concern regarding the timing of the process required to establish final frameworks for setting migratory game bird regulations and asked that the Service modify the administrative process. They suggested that regulations should be finalized a month earlier in order to establish season dates and provide information to hunters in an orderly and timely manner.

The Humane Society of the United States (hereinafter the Humane Society) expressed concern that the public was not well represented in the regulations-establishment process. They requested establishment of a system directly involving the non-hunting public. They also requested that the Service undertake efforts to obtain population estimates for all hunted species.

Service Response: When the preliminary proposed rulemaking document was published in the Federal Register on April 7, 1994, the Service announced the comment periods for the early-season and late-season proposals and gave notice that the process of promulgating hunting regulations "must, by its nature, operate under time constraints". Ample time must be given to gather and interpret survey data, consider recommendations and develop proposals, and to receive public comment. Scheduled dates are set to give the greatest possible opportunity for public input. If States do take action to establish their seasons prior to the final decisions on the frameworks, they risk having to withdraw and modify those actions. The Service is obligated to, and does, give serious consideration to all information received as public comment. The Service has long recognized the problems associated with the length of time necessary to establish the final frameworks, and in conjunction with States, Flyway Councils, and the public, continues to seek new ways to streamline and improve the regulatory process.

Regarding population estimates, the long-term objectives of the Service include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Annually, the status of populations are evaluated and the potential impacts of hunting are considered. The Service believes that hunting seasons are consistent with the current status of waterfowl populations and long-term population goals.

1. Ducks

A. General Harvest Strategy

Council Recommendations: The Pacific Flyway Council recommended seasons and limits similar to those in effect during 1985–87 (with the exception of pintail), when significant reductions in bag and season length were imposed to protect certain declining duck populations. The Council presented information on duck populations, hunter numbers, and duck harvest in support of their recommendations.

Public-Hearing Comments: Dr. Rollin Sparrowe indicated that while a recovery of duck populations appears to be underway, a single year does not represent an upward trend. He noted that some liberalization may be warranted this year, but added that the major question was how much and how fast should these liberalizations be implemented. Mr. Bruce Barbour advised a cautious restraint and suggested that our goal should be to return as many breeding pairs as possible next spring to take full advantage of the likely excellent nesting conditions. Mr. Walter Sikes and Mr. Brian Cavey commented that with the increased breeding populations and improved fall flight of ducks, some liberalization in the hunting regulations was justified this year. Tim Petrie believed that Wisconsin hunters were deserving of additional hunting opportunities because of their support and participation in habitat programs. Mr. Walter Sikes accused the Service of imposing restrictions based on a trend towards continental waterfowl management and a desire to simplify regulations. He believed such restrictions were unnecessary on healthy populations and inconsistent with the status of populations and habitat conditions within a flyway.

Written Comments: The Louisiana Department of Wildlife and Fisheries expressed their dissatisfaction with the decision by the Service to offer an option package on duck seasons this year. They indicated that most optional regulations regarding waterfowl hunting were abandoned years ago.

The Florida Game and Fresh Water Fish Commission commented that regulations changes should ideally

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result in measurable responses to those changes and that "tinkering" should be avoided. They maintained that the hybrid option proposed by the Service this year will further complicate evaluations and impede our capabilities to learn about the effects of those regulation changes.

The Nebraska Game and Parks Commission asked the Service to explain the basis of information used to change the proposed frameworks from those presented at the public hearing on August 4, 1994, to those published in the **Federal Register** on August 24, 1994. Further, they indicated that they were unaware of the opportunity to provide comments regarding the regulations frameworks prior to the publication of the proposed late-season rulemaking document in the **Federal Register**.

The Texas Parks and Wildlife Department was critical of the regulations-development process this year and questioned the partnership between the Service, States, and Flyway Councils. They indicated that certain perceptions or politics were driving the decision process rather than constructive compromise based on sound biology. They advocated the need for greater focus on population biology, current and projected habitat conditions, and concerns of those who still hunt ducks. They believe this will build the base of knowledge on which sound decisions should be made.

The Central Flyway Council commented that the Service's proposal of one additional bird or 10 additional days was overly conservative, penalized hunters, and was inconsistent with our biological knowledge. They stated that it appeared as if biologically-based action had been overridden by risk-aversive conservatism and clearly amounted to "tinkering", which would impede learning.

The Delta Waterfowl Foundation expressed concern that the increase in the spring population survey represented a redistribution of ducks from unsurveyed areas, and raised concerns about the reliability of short-term population projections in justifying significant changes in harvest strategies. Given the fact that 1994 was only the first year of good production and considering the uncertain variability in the fall-flight index, they maintained that a conservative framework was justified. They further recommended allowing populations to rebuild during these potentially short-lived years of good cover and water conditions.

The Federation of State Waterfowl Associations expressed concern that the Service was moving towards a continental waterfowl-management approach and a simplification of regulations rather than using the flyway concept to tailor regulations to specific populations and to promote habitat management.

Two individuals asked that shooting hours be returned to sunrise rather than one-half hour before sunrise to reduce crippling loss and aid in species identification and management.

Service Response: During most of the past decade, drought conditions on the principal duck breeding grounds have resulted in depressed duck populations, with numbers of some species reaching all-time lows. This situation necessitated restrictions in hunting regulations to reduce harvest rates commensurate with the status of ducks. This year, habitat conditions were much improved and breeding-population indices for many duck species and fall-flight indices for both mallards and all ducks combined increased substantially. Further, the continuation of good habitat conditions into mid-summer this year increases the likelihood that breeding habitat conditions may again be favorable for good production in 1995.

As a result of the increases observed in breeding-population and production surveys this year, the Service believed that some relaxation of the harvest restrictions that have been in place in recent years was warranted. The question was how much relaxation should occur in this first year of improvement. Several alternatives were available, including: (1) to continue harvest restraints one more year by making little or no change in regulations in an attempt to provide maximum population growth and potentially be in a better position to capitalize, in terms of duck production, on the prospects for good habitat conditions next year, or (2) to increase harvest opportunity to a greater extent this year and have a lesser chance for continued growth in duck populations. The Service felt that the first alternative offered the greatest opportunity for long-term benefit for both duck populations and harvest opportunity.

Flyway Councils felt that more liberalization in the hunting regulations was justified and recommended increases in both season length and bag limits for the duck season. In the Service's view, these changes would significantly increase harvests and were more in line with the second alternative identified above. Consequently, the Service opted for increases in bag limits similar to those recommended by the Councils, but preferred to retain last year's season lengths. The Service felt that this approach would provide additional harvest opportunity for hunters but would have a lesser impact on overall harvest than longer seasons.

At the public hearing for late-season regulations on August 4, 1994, in Washington, DC, the Service proposed duck-season frameworks consisting of the same season length as last year and an increase of one bird in the overall daily bag limit. In response to numerous comments received after the public hearing, the proposed frameworks published in the **Federal Register** on August 24, 1994, were changed to include an option for States to select either the same season length as last year with a larger bag limit or a season length 10 days longer than last year with essentially the same bag limit.

The Service recognizes the wide divergence of views concerning an appropriate harvest strategy for ducks during this first year of significant improvement in the status of ducks. However, 1 year of significant growth does not constitute a full recovery and several years of growth are needed to rebuild the principal stocks in the surveyed area that were depressed during the 1980s. The Service remains committed to this goal and believes that in order to reach these desired population levels, we must take full advantage of the much-improved habitat conditions and prudently manage harvest rates. The Service welcomes this challenge and asks that States, Flyway Councils, hunters and the general public join in this effort.

In regard to shooting hours, the Service has received considerable support for the proposed shooting hours. The Service has compiled information which demonstrates that shooting hours beginning at one-half hour before sunrise do not contribute significantly to the harvest of nontarget species. Consistent with the Service's long-term strategy for shooting hours, published in the September 21, 1990, **Federal Register** (55 FR 38898), the frameworks herein provide for shooting hours of one-half hour before sunrise to sunset, unless otherwise specified.

B. Framework Dates

Council Recommendations: The Central Flyway Council recommended that the hunting-season frameworks for ducks, coots, and mergansers begin on the Saturday nearest October 1 (October 1, 1994) and extend until the Sunday nearest January 20 (January 22, 1995).

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended framework opening and closing dates of the Saturday nearest October 1 to January 20. The Lower-Region Regulations Committee also recommended that opening and closing dates be established as a basic regulation and not fluctuate annually.

The Pacific Flyway Council recommended outside season dates of the Saturday nearest October 1 to the Sunday nearest January 20. Floating framework dates are recommended because (1) the flyway has traditionally been offered Saturday openings and Sunday closing for most migratory game birds, (2) fixed calendar dates will further restrict hunting opportunity in those States that traditionally open hunting on Saturday and close on Sunday, (3) departure from this traditional format will be confusing and unnecessarily restrictive, (4) there are no biological consequences to floating frameworks since we are dealing with only plus or minus 3 days in opening and closing dates, (5) a Saturday opening allows participation by school-age hunters and those that have a traditional work week, (6) there are no biological or political justifications which warrant a change from previous outside framework dates.

Written Comments: The Nebraska Game and Parks Commission requested the Service to consider the use of floating framework dates, rather than the proposed fixed dates.

The Humane Society recommends that all seasons open on Wednesday in order to reduce the high level of harvest associated with traditional Saturday season openings.

Service Response: The use of floating framework dates automatically allows earliest opening and latest closing dates to vary by almost a full week over a period of years. These kinds of annual variations tend to confound assessment of the impact of hunting regulations on duck populations. As the Service has previously stated in the **Federal Register** (58 FR 50190), a State may choose to delay its opening date to correspond with a particular day of the week or to close earlier to maximize the number of weekends that hunting is allowed. Regarding the consideration of framework dates as "basic" rather than "annual" regulations, the Service has previously stated its policy to retain the use of framework dates as a harvest-management tool.

C. Season Lengths

Council Recommendations: The Atlantic Flyway Council and the Upper-Region and Lower- Region Regulations Committees of the Mississippi Flyway Council recommended a 40-day duck season.

The Central Flyway Council recommended that the season length in the High Plains Mallard Management Unit be 69 days, 16 of which must begin no earlier than the Saturday nearest December 10 (December 10, 1994). For the remainder of the Flyway, the Council recommended a season length of 53 days.

The Pacific Flyway Council recommended a season length of 79 days, with 7 additional days in the Columbia Basin Mallard Management Unit.

Public-Hearing Comments: Mr. Walter Sikes, Mr. Brian Cavey, Mr. K. L. Cool, and Mr. Scott Sutherland supported the Flyway Councils' recommendations to expand season lengths and allow hunters to have more opportunity. Mr. Jay Dickey supported a 10-day season extension in Arkansas to allow families additional time to spend together. Congressman Steve Gunderson (Wisconsin) commented on the inequity of an additional 9-day teal season in "non-production" States without making some additional duck harvest opportunity available to "production" States.

Written Comments: The Federation of State Waterfowl Associations supported the adoption of recommendations by the Flyway Councils. They believe that the recommendations provide an incentive to duck hunters to maintain and enhance waterfowl habitat under their control.

An individual from California asked that the Service consider allowing 86 days of duck hunting in the Pacific Flyway.

The Nebraska Low Plains Waterfowlers' Association urged the Service to allow 46 days of duck hunting in the Low Plains portion of the Central Flyway.

The Wisconsin Department of Natural Resources endorsed the recommendations of the Mississippi Flyway Council's Upper-Region Regulations Committee and requested that the Service reconsider its proposal for a 30-day duck season with a 4-bird daily bag limit. They suggested that if the Service feels a more conservative season is necessary this year, a 40-day season with a 3-bird daily bag limit would be more acceptable. They also expressed concern that "non-production" States are offered a 9-day special teal season while production States are not offered some type of compensatory opportunity.

Two local sportsmen's organizations in Massachusetts requested a 35-day season for duck hunting in the Atlantic Flyway.

The Illinois Department of Conservation urged the Service to consider a 40-day season framework with a 3-bird daily bag limit.

Congressman Steve Gunderson of Wisconsin expressed concern about the Service's proposal to allow a 30-day season and asked that consideration be given to a 40-day season with a 3-bird daily bag limit to provide more recreational opportunity for hunters.

Both the Wisconsin Wildlife Federation and the Wisconsin Conservation Congress asked the Service to consider a 40-day season with a 3-bird daily bag limit.

The Michigan Department of Natural Resources expressed concern that the Service did not support the Mississippi Flyway Council proposal for a 40-day season with a 4-bird daily bag limit and suggested that if further protection was warranted, they would prefer a 40-day season with a 3-bird daily bag limit.

The Indiana Department of Natural Resources disagreed with the Service's proposal and asked for reconsideration of a 40-day season with a 4-bird daily bag limit, but they indicated they would accept a 3-bird daily bag limit and a 40-day season, if necessary.

The Kentucky Department of Fish and Wildlife Resources indicated preference for an increase in the season length rather than an increase in the daily-bag limit, but stated that they may support the decisions of the Service, if conservative measures were necessary, based on additional information.

The Ohio Department of Natural Resources asked for a season of 40 days with a 4-bird bag limit, but if not acceptable to the Service, they would opt for a longer season over an expanded bag limit.

The South Carolina Department of Natural Resources felt that input from the States was being disregarded and that the Service's restrictive proposal did not show support for hunting and would be difficult to explain to sportsmen.

The Massachusetts Division of Fisheries and Wildlife recommended a 35-day to 40-day season in the Atlantic Flyway with a 3-bird daily bag limit, stating that an additional 5 to 10 days of hunting is an appropriate response to the improved situation of the past 3 years.

The Maryland Department of Natural Resources supported a 40-day season with a 3-bird daily bag limit.

The Alabama Department of Conservation and Natural Resources, the Arkansas Game and Fish Commission, the Florida Game and Fresh Water Fish Commission, the Louisiana Department of Wildlife and Fisheries, the Minnesota

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Department of Natural Resources, the Mississippi Department of Wildlife, Fisheries, and Parks, the Missouri Department of Conservation, the New York Department of Environmental Conservation, the North Carolina Wildlife Resources Commission, the Ohio Department of Natural Resources, the South Carolina Department of Natural Resources, and the Tennessee Wildlife Resources Agency supported the recommendations of the Atlantic and Mississippi Flyway Councils for a 40-day season and a 4-bird daily bag limit.

The New York Department of Environmental Conservation stated that a 40-day season with a 4 bird daily bag limit would help biologists evaluate harvest under regulations comparable to 1985–87. Further, they would support implementation of these recommendations in 1995 to help future evaluations.

The Missouri Department of Conservation expressed concern that the frameworks did not adequately reflect the substantial input from the Flyway Councils. Further, they stated that the recommendation to return to hunting seasons similar to those in 1985–87 was justified when considered in the context of existing management plans, the current and expected improvement in breeding populations, and the status of breeding habitat.

The Tennessee Wildlife Resources Agency believed the recommendation of the Mississippi Flyway Council was biologically justified.

The Louisiana Department of Wildlife and Fisheries stated that the breeding-pair and production survey information clearly supported reasonable upward adjustments in the bag limit and season length for the Mississippi Flyway.

The Alabama Department of Conservation and Natural Resources commented that they see no biological reason why the season should not be 40 days and the requested increase was modest at best. However, they stated that if 10 additional days is deemed to be inappropriate, 7 additional days would be acceptable.

The Florida Game and Fresh Water Fish Commission commented that a 40-day season and a 4-bird daily bag limit represented a reasonable response to improved duck population status.

The Mississippi Department of Wildlife, Fisheries, and Parks, while supporting the Flyway's recommendation, believed that there was abundant information to support a 40-day season and a 5-bird daily bag limit.

Senators David Pryor and Dale Bumpers of Arkansas expressed support for the recommendations of the Mississippi Flyway Council for a 40-day season and a 4-bird daily bag limit. Senator Bumpers commented that it appears that the scientific recommendations of the Mississippi Flyway Council were ignored.

The Congressional Sportsmen's Caucus, composed of over 180 House Members and 35 Senators, supported the recommendations of the Flyway Councils for expanded seasons and bag limits and felt that maintaining a 30-day season with a daily bag limit of 3 birds sets a dangerous precedent of ignoring sound scientific information in making management decisions.

Congressman G.V. Montgomery and Congresswoman Blanche Lambert of Arkansas; Congressmen Don Sundquist, John Tanner, James Quillen, Jim Cooper, Bart Gordon, Bob Clement, and John Duncan, Congresswoman Marilyn Lloyd, and Senators Jim Sasser and Harlan Matthews of Tennessee; and Senators J. Bennett Johnston and John Breaux, Congressmen Robert Livingston, W.J. Tauzin, Jimmy Hayes, William Jefferson, Richard Baker, Jim McCrery, and Cleo Fields of Louisiana supported the recommendations of the Mississippi Flyway Council for a 40-day season with a daily bag limit of 4 birds.

Congressman John Dingell of Michigan expressed support for the Michigan Department of Natural Resources' recommendation for a 40-day season with a 3-bird daily bag limit.

Governor Jim Guy Tucker of Arkansas, State Senators James Scott and Jay Bradford of Arkansas, and State Senator Joe McPherson of Louisiana expressed support for a 40-day season and a 4-bird daily bag limit.

Other organizations supporting Flyway Council recommendations for a 40-day season and a 4-bird daily bag limit included the North Carolina Wildlife Federation, Arkansas Ducks Unlimited, the North Carolina Wildlife Habitat Foundation, the Alliance for Wetlands, the Southern Illinois Quotazone Waterfowl Association, the South Shore Waterfowlers Association of New York, the Sabine Chapter (Texas) of Ducks Unlimited, Migratory Waterfowl Hunters, Inc. of Illinois, and the Illinois Federation of Outdoor Resources.

The Delta Waterfowl Foundation supported the proposal for a 30-day season and stated that they did not believe this was the time to liberalize duck hunting regulations. Stating that now was the time for patience and to build for the future, they further commented that limiting the liberalization to the increase in bag limits and not days was appropriate and should be the final decision for the late-season frameworks.

The National Wildlife Federation concurred with the Service's proposal of either a 10-day increase in the season or an additional bird, but not both. They commented that it was critical to err on the side of conservation in the interest of ensuring the long-term well-being of waterfowl populations.

One hundred and eighty individuals in Arkansas, Florida, Georgia, Illinois, Indiana, Louisiana, Mississippi, Missouri, New Jersey, New York, Tennessee, Texas, and Wisconsin expressed support for a 40-day season with a 4-bird daily bag limit.

One hundred and forty-nine individuals from Arkansas, Florida, Illinois, Indiana, Louisiana, Maryland, Minnesota, Missouri, Pennsylvania, Tennessee and Wisconsin expressed support for a 40-day season with a 3-bird daily bag limit.

Three hundred and thirty-one individuals, including one petition containing 237 names, from Arkansas, Connecticut, Georgia, Illinois, Louisiana, Minnesota, Mississippi, New Jersey, and Tennessee requested a 40-day season.

Thirteen individuals from Arkansas, Connecticut, Florida, Minnesota, South Carolina, and Texas expressed support for a daily bag limit of 4 birds and a 30-day season.

Twelve individuals from Illinois, Minnesota, Texas, and Wisconsin supported the rejection of a 40-day season.

Twenty-three individuals from Arkansas, Iowa, Florida, Minnesota, Tennessee, Texas, and Wisconsin were opposed to any increase in either the daily bag limit or season length.

The Central Flyway Council urged the Service to reconsider and grant the original Central Flyway proposal for a modest liberalization in the 1994 season.

The Texas Parks and Wildlife Department supported the recommendations of the Central Flyway Council for a 49-day season with a daily bag limit of 4 birds. They believed these proposals were warranted and would not jeopardize continued expansion of the duck population.

The Kansas Department of Wildlife and Parks urged support for a 53-day season and a daily bag limit of 4 birds, stating that this expansion would not threaten the continued recovery of our duck resources.

The Oklahoma Department of Wildlife Conservation urged the Service to reconsider additional hunting days in all Flyways with an additional 10–14 days provided in the Central Flyway.

They further pointed out that in mid-latitude States, additional season length is very important, since duck availability can be very variable.

The Montana Department of Fish, Wildlife, and Parks encouraged the Service to consider adopting regulations more typical of those in the early 1980s. They stated that their information supported modest increases in both bag and season length and would not jeopardize continued increases in duck populations from habitat areas on the northern plains.

Congressman Martin Frost of Texas supported the Flyway Council's recommendation to expand the season length and bag limits in the Central Flyway.

The Wetland Habitat Alliance of Texas supported a 5-bird daily bag limit and 49-day season.

The Sportsmen Conservationists of Texas, the Texas Handicapped Sportsman, and Hunt County (Texas) Ducks Unlimited expressed support for a 49-day season and a 4-bird daily bag limit.

Thirty individuals from Texas expressed support for the recommendations of the Central Flyway Council for an extended season and a larger daily bag limit.

In the Pacific Flyway, the California Department of Fish and Game and the Nevada Division of Wildlife supported the recommendations of the Pacific Flyway Council. As an alternative to the proposed framework, the California Department of Fish and Game requested that an additional 8 days of hunting be considered. Both the California Department of Fish and Game and the Nevada Division of Wildlife believed that the 1994 duck population status justifies the seasons and bag limits proposed by the Pacific Flyway Council.

Congressmen Calvin Dooley, Vic Fazio, Richard Lehman, Robert Matsui, and George Miller of California, the California Waterfowl Association, and the California Rice Industry Association also expressed their support for the recommendations of the Pacific Flyway Council and for the California Department of Fish and Game's request for an additional 8 days of hunting.

The Westside Associated Duck Clubs and Wildlife Refuge of Utah urged the addition of more hunting days.

Southern California Ducks and twelve individuals from Utah and California supported the recommendations of the Pacific Flyway Council.

Seven individuals from Utah and California and the Grassland Water District of California expressed support for the California Department of Fish and Game recommendation for an additional 8 days of hunting.

An individual from Utah urged that the season be lengthened at the expense of the additional bird in the daily bag limit.

The Nebraska Low Plains Waterfowlers' Association requested liberalizations in duck hunting frameworks this year. They requested that, if both season length and bag limits cannot be increased, season length alone should be liberalized. They believe it is time to reward sportsmen for their support of waterfowl management.

The Minnesota Department of Natural Resources urged the Service to liberalize season length rather than bag limits if both could not be liberalized this year.

Service Response: At the public hearing for late-season regulations on August 4, 1994, in Washington, DC, the Service proposed duck-season frameworks consisting of the same season length as last year and an increase of 1 bird in the daily bag limit. In response to numerous comments received after the public hearing, the proposed frameworks published in the **Federal Register** on August 24, 1994, included an option for States to select either the same season length as last year with a larger daily bag limit or a season length 10 days longer than last year with essentially the same bag limits as last year. Recommendations from Flyway Councils and numerous comments included increases in both season length and daily bag limits; however, the Service believes that increasing both season length and daily bag limits for ducks is not appropriate this first year of substantial improvement in the status of ducks. Therefore, the frameworks herein contain the same options as those in the proposed frameworks. Regarding comments on the inequity of the special teal seasons in "non-production States," the Service previously responded to this issue in the August 17, 1994, **Federal Register** (59 FR 42474).

E. Bag Limits

Council Recommendations: The Atlantic Flyway Council recommended a 4-bird daily bag limit for the regular duck season, which would include no more than 1 canvasback, 1 black duck, 1 pintail; 2 wood ducks, 2 redheads; and 3 mallards (of which only 1 could be a hen).

The Central Flyway Council requested that the Service review its policy for the use of the point-system bag-limit option that requires that it be no more liberal than the conventional bag limit.

The Central Flyway Council recommended that with respect to duck, coot and merganser hunting regulations, States selecting the High Plains Mallard Management Unit season option of additional late hunting opportunity may select either the point system or the conventional bag limit for establishing daily possession limits in the entire State.

The Central Flyway Council recommended that for those States where the daily bag and possession limits are established by the conventional bag limit, the daily bag would be 4 birds with species and sex restrictions as follows: hen mallard, pintail, redhead, mottled duck, and canvasback, 1 bird; wood duck, 2 birds; all other species and sexes not mentioned above, 4 birds. The possession limit would be twice the daily bag limit.

The Central Flyway Council recommended that for those States where the daily bag and possession limits are established by the point-system bag limit, point values for species and sexes would be as follows: redhead, canvasback, hen mallard, pintail, hooded merganser and mottled duck, 100 points each; wood duck, 50 points each; mallard drake, gadwall, wigeon, green-winged teal, blue-winged teal, cinnamon teal, shoveler, whistling duck, common and red-breasted merganser, 20 points each; all other species and sexes of ducks, 35 points each. The possession limit under the point system would be the maximum number of birds that legally could be taken in 2 days.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended a point-system bag-limit option that would provide, for several species, 1 more bird in the daily bag limit than the conventional bag limit.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council requested that the Service review its current point-system bag-limit policy. They feel that at least 1 more bird should be allowed in the point system than in the conventional bag limit.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the overall duck bag limit be increased from 3 to 4, that the number of male mallards allowed be increased from 2 to 3, and that 1 canvasback be allowed daily. The Lower-Region Regulations Committee also recommended a restriction of 3 mottled ducks in the 4-bird daily limit. Other species/sex restrictions would be the same as last year.

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The Pacific Flyway Council recommended that the Service: (1) review its current point-system policy, (2) work with both Pacific and Central Flyway Technical Committees to interpret available data, and (3) consider all available new information and evaluate the point system against other bag-limit systems. The Council also recommended a daily bag limit of 5 ducks, including no more than 4 mallards (only 1 of which may be a hen), 2 pintails (only 1 of which may be a hen), 2 redheads, and 1 canvasback.

Public-Hearing Comments: Mr. K. L. Cool stated that he could not support the elimination of the point system because of its success in directing harvest pressure toward abundant species and away from species and sexes of concern. Dr. Gary Wills argued that an increase in the pintail bag limit was biologically sound and would not greatly increase harvest pressure from its current low level.

Written Comments: The Minnesota Department of Natural Resources supported the Mississippi Flyway Council's Upper-Region Regulations Committee recommendation for a daily bag limit of 4 ducks.

An individual from California requested that the Service consider increasing the total-duck daily bag limit to 5, the mallard limit to 5, and the pintail limit to 2 in the Pacific Flyway.

The Nebraska Low Plains Waterfowlers' Association urged the Service to allow a daily bag limit of 3 mallards in the Low Plains portion of the Central Flyway.

An individual from California requested that the duck daily bag limit be increased to 6, with a daily bag limit of 1 or 2 for mallards, or no mallards at all as an acceptable alternative. He also requested increasing the daily bag limit of pintails to 2.

Dr. Robert McLandress presented historical information on regulations and harvests of pintails and believed that an increase in the pintail daily bag limit to at least 3 birds was warranted and would provide much-needed encouragement for hunters and habitat management in California. He believed bag-limit restrictions for mallards in California were inappropriate given evidence of a preponderance of California-produced mallards in the harvest, consistently high nesting success and good brood survival. He believed the breeding population decline in California in 1994 was caused by the elimination of set-aside rice lands, favored by nesting mallards; however, there were significant increases elsewhere in the State. In addition to increased limits of mallards and pintails, he recommended an addition of 1 duck to the daily bag limit and 8 additional days.

Senator Lauch Faircloth of North Carolina commented that in light of the favorable data this year on duck populations, the Service should raise the limit to promote reasonable hunting privileges.

The Oklahoma Department of Wildlife Conservation requested that the Service work with the Flyway Councils to cooperatively review its policy on the use of the point system for determining daily bag limits for ducks. It was pointed out that the Central Flyway Council believes that the 1990 point-system review contained misinterpretations and omissions that should be cooperatively resolved prior to any decision on the use of this important harvest-management tool. Further, they stated that the process used for the handling of the updated review of the point system appeared to be a breach of the cooperative spirit and partnership approach to migratory bird management programs in the Central Flyway.

The Colorado Division of Wildlife questioned the objectivity of the Service's review and analysis of the point system. They stated that illogical conclusions were drawn from inconsistent reasoning. They also criticized the Service for failing to work cooperatively with States on the point-system issue.

The Texas Parks and Wildlife Department urged the Service and Flyway Councils to develop a cooperative approach to review the point system and strengthen Federal/State partnerships.

The Nebraska Game and Parks Commission expressed concern about the elimination of the point system without thorough consultation with the Flyway Councils and asked that it be offered to States as a bag-limit option.

An individual from Georgia requested that the point system be revisited to reward knowledgeable hunters and to penalize those hunters who shoot group limits.

An individual from Wyoming commented on the value of the point system to protect hen mallards and asked the Service to reconsider the point system for the 1995 hunting season.

The Humane Society expressed support for abandoning the point system as a bag-limit option. They cited strong evidence that many hunters are reordering their bag limits to achieve higher harvests and many are unable to distinguish ducks by species. As a regulatory tool, they claim that the point system is highly vulnerable to abuse. Further, they supported no increase in daily bag limits from the 1993–94 season.

The California Department of Fish and Game asked that the Service consider adding a second pintail, of which no more than one could be a hen, to the daily bag limit in the Pacific Flyway.

The Idaho Fish and Game Department and the Nevada Division of Wildlife expressed support for California's request to add a second pintail to the daily bag limit.

Congressmen Calvin Dooley, Vic Fazio, Richard Lehman, Robert Matsui, and George Miller of California recommended adding a second pintail (no more than 1 hen) to the daily bag limit of 5 ducks in the Pacific Flyway.

Several individuals from California asked that the Service support the Pacific Flyway Council's recommendation for a second pintail in the daily bag limit.

Several individuals from California requested that the daily bag limit on hen mallards be increased to 2, as many hens are being thrown away in the field.

An individual from Illinois requested a 4-bird daily bag limit including 2 drake mallards, allowing no hens, and a 2-scaup bag limit.

Service Response: The Service, with input from the Flyway Councils, completed a comprehensive review of the point system in 1990, and established a policy that the point system should be restricted to a maximum daily bag no greater than that allowed under the conventional daily bag limit. In 1994, the Flyway Councils asked the Service to review this policy. The Service's review was completed in July 1994 and sent to all Flyway Councils. The 1990 review indicated that (1) there was little evidence that the point system was more effective than the conventional bag at redirecting harvest (2) major problems remained with determining appropriate species- and sex-specific point values (3) species closures eliminated the bird-in-hand identification advantage of the point system (4) reordering of point values in the field was an incentive under the point system and enforceability remained a major concern and (5) most problems with the point system were in application and not concept.

In the 1994 review, the Service considered additional information that has been gathered since the 1990 review, and concluded that the point-system alternative to the conventional bag limit should be discontinued. Over the years, the Flyway Councils and States have had substantial opportunity

to provide input into the review of scientific studies and analysis of this information. The completion of the 1990 and 1994 reviews and the decision to discontinue the point system have considered input from all entities. The Service has worked with the Flyway Councils on this issue several times in an effort to resolve differences.

Three of the four Flyway Councils recommended retaining the 1-pintail limit. Pintail breeding populations have not increased above levels of the mid-1980s, when major restrictions were first implemented, and winter population indices for the pintail in the Pacific Flyway remain at record low levels. While the production outlook has improved over the last 2 nesting seasons, the Service believes that, until more evidence of a sustained recovery is available, additional liberalization of the pintail in the daily bag limit is not warranted.

F. Zones and Splits

Council Recommendations: The Pacific Flyway Council recommended continuation of the Southern San Joaquin Valley Waterfowl Zone in California in 1994 and that this zone be made permanent. About 3,500 acres of Tulare Basin wetlands are managed as duck clubs, compared to about 5,000 acres of managed wetlands in 1971. About 200 additional acres of wetlands had been flooded for waterfowl and other wetland-dependent wildlife in response to the creation of the zone. During 1991–93, this zone has allowed for a month delay in the opening date from the surrounding Balance-of-the-State and Southern California zones. This delay allows private wetland owners to take advantage of reduced electric pumping rates which become effective November 1, as well as reduced evapotranspiration rates which occur as temperatures decline. This results in an approximate 20 percent reduction in the cost of flooding. Any reductions in water cost provide an incentive for the continued flooding of private wetlands. The situation is not relieved by improvements in rainfall, because although surface water availability improves somewhat, ground water pumping costs are still high.

Establishment of the zone has not affected harvest. Estimated harvest of ducks from Kern, Kings and Tulare Counties constituted between 3.0 and 5.6 percent of the Statewide harvest in the periods 1961–1990. Since implementation of the zone in 1991, 2.5 percent of the State duck harvest has occurred in the zone. Pintail harvest in the zone declined from a high of 4.5 percent of the State harvest to 2.5 percent.

Written Comments: Two local sportsmen's organizations from Massachusetts requested continuation of zoning for their State.

Two individuals from Texas requested a third zone in Texas between the Mallard High Plains Management Area and the Eastern Zone, due to the size of the State.

The Humane Society urges the Service to discontinue all split and special seasons and recommends that any State establishing such seasons reduce the total number of hunting days by a minimum of 10 days.

Mr. Boyd Gibbons, Director, California Department of Fish and Game, provided information on wetland habitat and waterfowl harvests in the Southern San Joaquin Valley Duck Zone and requested that the temporary zone be made permanent. Twenty percent of the remaining Tulare Basin wetlands are managed as private clubs, with most relying on costly, pumped groundwater. Allowing this zone to set a late, straight season which typically differs from adjacent zones would allow clubs to flood later when evaporative rates were lower and pumping costs significantly reduced. Estimated harvests of pintails and total ducks during 2 years with the zone (1991–92) were 16 percent less and 5 percent more, respectively, than during the 2 years prior (1989–90).

An individual from Minnesota expressed support for a straight (non-split) season due to cold weather onset at the first of November in the extreme northern portions of the State.

Service Response: The Service acknowledges that the Southern San Joaquin Valley Zone in California appears to provide economic incentives for maintaining privately-managed wetlands, especially during recent years when season lengths have been relatively short. The Service will allow this zone to continue on a temporary basis for this year. With longer seasons, such as currently offered as an option to larger limits, the necessity and advantages for such a zone diminish. Regarding comments about zoning in Massachusetts and Texas, current zoning arrangements will continue until 1996, at which time States will have the opportunity to modify zone configurations in accordance with Service guidelines previously established. In reference to split seasons in Minnesota, the State has the option to change from 3-way splits to continuous seasons or 2-way splits if it wishes to do so.

G. Special Seasons/Species Management

i. Canvasback

Council Recommendations: The Atlantic Flyway Council recommended that an open season for canvasbacks be allowed with a 1-bird daily bag limit throughout the length of the 1994 season in the Atlantic Flyway.

The Central Flyway Council recommended that the Service adopt the alternative canvasback harvest-management strategy developed by State representatives on the Adaptive Harvest Management Working Group from all four Flyways.

The Central Flyway Council recommended that an open season for canvasbacks throughout the regular duck season be allowed for all four Flyways with a 1-bird daily bag limit beginning in 1994, contingent upon breeding population and habitat conditions.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that an open season for canvasbacks be allowed in the Mississippi Flyway with a 1-bird daily bag limit throughout the regular duck season.

The Pacific Flyway Council recommended adoption of an interim canvasback strategy that would allow harvest of that species throughout the regular duck season in all four Flyways, with a daily bag limit of 1 canvasback (either sex), when the 3-year running average of the estimated May breeding population is at or above 480,000 birds. No season should be allowed when the average index is below that level.

Public-Hearing Comments: Mr. Bruce Barbour expressed support for the Service's proposed canvasback harvest strategy but cautioned that the Service should consider the use of closures in specific areas where canvasback concentrate and may be especially vulnerable. Congressman Steve Gunderson supported the opening of the canvasback season Flyway-wide with certain restrictions recommended by the Upper-Region Regulations Committee of the Mississippi Flyway Council.

Written Comments: The Michigan Department of Natural Resources supported the Service's strategy for canvasback harvest management. They recommended allowing a canvasback season in 1994 and continuing the season for at least 3 years.

The Wisconsin Department of Natural Resources opposed the reestablishment of closed areas for canvasback hunting, preferring instead that the season be open Flyway-wide.

The Massachusetts Division of Fisheries and Wildlife recommended

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that 1 canvasback be allowed in the daily bag limit and the New York Department of Environmental Conservation supported the canvasback daily bag limit of 1 bird throughout the duck season.

The Ohio Department of Natural Resources commented that if canvasback numbers were a concern, they would not oppose removing canvasbacks from the daily bag limit.

The Alabama Department of Conservation and Natural Resources, the Texas Parks and Wildlife Department, and the Florida Game and Fresh Water Fish Commission supported the opening of canvasback season.

The National Wildlife Federation agreed with the Service proposal to open the canvasback season nationwide and restrict the daily bag limit to 1 bird.

The Sportsmen Conservationists of Texas supported the allowance of 1 canvasback per day in the daily bag limit.

An individual from Wisconsin opposed the opening of a season for canvasbacks, stating that the population is still rebuilding. If, however, the season were to be opened, options considered should be 1) a drake-only season, 2) issuance of 1 to 2 tags per hunter, and 3) only a 1 to 2-week season.

Several individuals from Wisconsin and Minnesota disagreed with the proposal to open the canvasback season and allow 1 canvasback in the daily bag limit.

An individual from Minnesota supported the addition of a canvasback in the daily bag limit.

Service Response: The Service concurs with recommendations to open the hunting season on canvasbacks during the 1994–95 season. Based on current population levels, expected production, and projected harvest estimates, the Service believes that a season in all Flyways with a 1-bird daily bag limit is warranted. Area closures designed to protect key migrational and wintering concentrations from heavy harvest pressure and to reduce enforcement problems are not being considered at this time, but, some States may opt to close local areas that are problematic. The Service is aware of the high harvest potential for this species and will closely monitor this season's canvasback harvest and the population status next spring. As an interim strategy, the Service will annually assess several population parameters to manage future harvests of canvasbacks.

3. Mergansers

Council Recommendations: The Central Flyway Council recommended point-value changes under the point-system bag-limit option that involve mergansers. See item **1. Ducks, E. Bag Limits.**

Service Response: No point-system option is provided in the 1994–95 frameworks. See item **1. Ducks, E. Bag Limits.**

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the Service amend the criteria for late special Canada goose seasons to require a 2-year data-collection period for proposal submission. They also recommended a 3-year late experimental season in northeastern New Jersey for 1995–97. The Council also requested that the late special Canada goose season in Long Island, New York, be discontinued.

Written Comments: The South Carolina Department of Natural Resources requested that the frameworks for their resident Canada goose season be expanded to 8 days, occurring between December 1 and February 15.

The Minnesota Department of Natural Resources asked that the Criteria for Special Canada Goose Seasons be modified to allow harvest of both resident and migrant birds in metropolitan areas where their occurrence causes problems and should be discouraged. Further, they believe it is unreasonable and an unnecessary burden to require the experimental period to continue for 3 more years in order to evaluate the impacts of adding 2 hunting days beyond September 10.

Service Response: The Service concurs with the expanded season frameworks on resident geese in South Carolina, the addition of an experimental season in New Jersey, and discontinuing the season in Long Island. The Service asks that evaluations of these seasons continue in accordance with the criteria that have been established. These criteria are subject to periodic review and may be modified upon agreement and consensus of the Service and Flyway Councils. The Service will request input from the other Flyways regarding expanding from 1 to 2 years the data–collection period required prior to proposal submission for a late special season. The Service requests that Minnesota provide a biological rational for their contention that migrant geese harvested in metropolitan areas during special goose season not be subject to the special Canada goose season criteria. The Service also notes that Minnesota has the option of not extending their special season 2 days and thus avoiding further evaluation if, in their judgement, such an extension does not warrant the additional evaluation costs.

B. Regular Seasons

Council Recommendations: The Central Flyway Council recommended that the dark goose hunting regulations in the east-tier States (Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas [Eastern Goose Zone]) be 86 days with a bag limit of 2 in North Dakota and 2 with no more than 1 white-fronted goose in Kansas, Nebraska, Oklahoma, South Dakota and the eastern goose zone of Texas. The white-fronted goose season in Texas should not exceed 72 days, and during the remaining 14 days of the season, the bag limit will be no more than 2 Canada geese.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended several changes in Canada goose quotas, season lengths, etc., based on population status and population management plans and programs. The Upper-Region Regulations Committee also recommended that the Service allow seasons for geese to be split into 3 segments.

The Pacific Flyway Council recommended allowing cackling Canada geese to be taken outside their normal range in California, Oregon, and Washington as part of the prevailing limit on Canada geese. Within their normal range, the Council recommended that the bag limit include not more than 1 cackling Canada goose. The 1-cackler limit would apply to the Southwestern Washington Goose Quota Area, all of Oregon, and a majority of California where the season would be concurrent with the restricted white-fronted goose season.

The Pacific Flyway Council also recommended that for Oregon, the Malheur County Zone be incorporated into a Harney, Klamath, Lake, and Malheur Counties Zone, thereby allowing the season on dark geese to end on the Saturday nearest January 20 instead of the first Sunday in January. The dark goose limit would be increased from 3 to 4, including not more than 2 whitefronts. The adjacent Southwestern Zone in Idaho would be permitted frameworks similar to those recommended for Malheur County.

The Pacific Flyway Council sought a limited resumption of cackling Canada goose hunting throughout the population's range and recommended that the Service provide an expedited

Section 7 Consultation review of their recommended changes in cackling Canada goose regulations for possible impacts on Aleutian Canada geese.

Public-Hearing Comments: Congressman Steve Gunderson of Wisconsin endorsed a procedure recommended by the Mississippi Flyway Council to manage Canada goose harvest in the Mississippi River Subzone in southwest Wisconsin.

Written Comments: The Delaware Division of Fish and Wildlife requested that the Service review the Federal frameworks for hunting Canada geese on the DelMarva Peninsula. They believe that the existing frameworks are more liberal than can be justified based on the size of the population. They maintained that high harvest rates on adult birds are suppressing the population and preventing a recovery. During the 1993–94 hunting season, Delaware voluntarily restricted their seasons, but because these Canada goose populations move about the Peninsula, they believe that harvest pressure should be reviewed in parts of Delaware, Maryland, and Virginia and appropriate action taken to reduce harvest and protect these migrant Canada geese.

Congressman Steve Gunderson (Wisconsin) requested that the Mississippi River Subzone in Wisconsin be declared a giant Canada goose harvest area and removed from Canada goose harvest-quota considerations for the State.

The Minnesota Department of Natural Resources requested a change in the boundary of their West-Central Goose Zone, as required by State legislation. They indicated that they had requested endorsement of the proposed change by the Upper-Region Regulations Committee of the Mississippi Flyway Council; however, the Committee did not endorse it.

An individual from Wisconsin commented that Wisconsin's goose harvest quota should be more than the allotted 60,000 geese since the Mississippi Valley Population has increased from 1993.

The Texas Parks and Wildlife Department, the Sportsmen Conservationists of Texas, and the Wetland Habitat Alliance of Texas expressed their support for the Service's proposal to extend the framework for dark geese to 86 days with a 2-bird daily bag limit.

Service Response: The Service generally concurs with recommendations from the Flyway Councils for the 1994–95 frameworks. However, the Service does not endorse 3-way splits for Canada goose seasons at this time. The use of 3-way splits as a harvest-management tool may have merit, but a more detailed proposal, including plans for a Flyway-wide evaluation and projections of potential impacts, should be prepared prior to implementing such a change. The Service is willing to work with the Mississippi Flyway Council to investigate the desirability of this option during the coming year.

Regarding the Mississippi River Subzone in southwest Wisconsin, the Service concurs with the Mississippi Flyway Council recommendation to assign a reasonable portion of the State's Canada goose quota to the Subzone and remove the monitoring requirement.

In reference to season frameworks for the Delmarva Peninsula, the Service believes that a departure from the Flyway Council's recommended 3-year harvest strategy is not warranted at this time, since this is the third year of that period. The Service suggests that Delaware work with other concerned Flyway States during the coming year to develop appropriate harvest strategies for this important wintering area of the Atlantic Flyway Population of Canada geese.

Regarding the recommendation by Minnesota for a boundary change in the West-Central Goose Zone, the Service believes that such changes should be made in cooperation with other Flyway States involved in the management of the Eastern Prairie Canada Goose Population. Since the Upper-Region Regulations Committee of the Mississippi Flyway Council did not endorse the Minnesota proposal, the Service does not concur with the recommended change.

Concerning Canada goose harvest quotas in Wisconsin, recommendations for the annual allocation of allowable harvests among harvest areas are developed cooperatively by Flyway States involved in the management of the various Canada goose populations. The Service endorses this procedure, and notes that the Wisconsin quota provided in the following frameworks is larger than 60,000.

5. White-fronted Geese

Council Recommendations: The Central Flyway Council recommendations regarding dark geese involve white-fronted geese. See item **4. Canada Geese.**

The Pacific Flyway Council recommended that: for Washington, the special bag-limit restriction on white-fronted geese be removed, allowing them to be included in the overall 4-dark-goose limit; for Oregon, the season on white-fronted geese would open at the same time as the dark-goose season, approximately 1 week earlier than currently allowed; and for California, the white-fronted goose season would be extended by 2 weeks within the Sacramento Valley special goose-closure portion of the "Balance-of-the-State" Zone.

Public-Hearing Comments: Dr. Gary Will recommended allowing modest liberalization of the take of white-fronted geese in California, Oregon, and Washington, which would still allow a 5–10 percent increase in annual growth. He indicated that the population would likely be at the objective level this fall and that the Service's request for a long-term harvest strategy would be completed.

Written Comments: The Association of Village Council Presidents, representing Native American interests in the Yukon-Kuskokwim Delta area of Alaska, supported modest liberalizations of white-fronted goose seasons in Alaska and Washington. However, they did not support further liberalizations in Oregon or California, noting that liberalizations occurred during each of the preceding years and that it was difficult to measure the effects of these incremental changes.

Service Response: The Service concurs with the Flyway Council recommendations for season frameworks, except the changes recommended by the Pacific Flyway Council for Washington, Oregon, and California. Although the Flyway's population of white-fronted geese is increasing, it remains below the management objective endorsed by the Council. The Flyway harvest strategy for this population of geese has not been completed, and some members of the Native American Community in Alaska have not endorsed portions of this recommendation. Further, changes in white-fronted seasons made last year have not yet been fully evaluated. For these reasons, the Service believes the recommended changes are not warranted at this time.

6. Brant

Council Recommendations: The Atlantic Flyway Council recommended a 2-bird daily bag limit and a 50-day season length for brant.

The Central Flyway Council recommendations regarding dark geese involve brant. See item **4. Canada Geese.**

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the daily bag limit for brant be reduced to 2 birds to better conform with limits in other Flyways.

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Written Comments: The New York Department of Environmental Conservation supported the increase in season length to 50 days in the Atlantic Flyway.

Service Response: The Service concurs with the recommendations regarding Brant seasons.

7. Snow and Ross' (Light) Geese

Council Recommendations: The Central Flyway Council recommended that the framework dates for light geese be from the Saturday nearest October 1 (October 1, 1994) through the Sunday nearest February 15 (February 12, 1995), except in Colorado, New Mexico, Texas, Oklahoma, and Kansas where the closing framework date would be extended to February 28, 1995. The Council also recommended that the State of Kansas be allowed to modify its boundary for Zone 1 (light goose) to include that portion of Kansas east of the Kansas Highway 99, and Zone 2 include the remainder of the State west of Highway 99.

The Mississippi Flyway Council recommended that the season length for light geese be increased from 80 to 107 days.

The Pacific Flyway Council recommended a season framework adjustment to extend the light-goose closing date for Malheur County of Oregon and southwest Idaho from the first Sunday in January to the Sunday nearest January 20. Malheur County would become part of a Harney, Klamath, Lake, and Malheur Counties Zone. This adjustment aligns the framework of the affected area with the remainder of the Flyway.

Written Comments: The Texas Parks and Wildlife Department supported a change in the Federal frameworks that would extend the framework closing date for light geese until February 28. This change would allow for increased harvest of the Mid-continent Population of lesser snow geese which are at record-high levels and, because of these levels, may be threatening their own breeding habitat.

The Texas Parks and Wildlife Department, the Sportsmen Conservationists of Texas, and the Wetland Habitat Alliance of Texas agreed with the Service's proposal to extend the framework for light geese to February 28.

Service Response: The Service concurs with the above recommendations.

8. Tundra swans

Council Recommendations: The Central Flyway Council recommended that the experimental tundra swan season in North Dakota be granted an additional year of experimental status with a final report due on June 1, 1995.

The Pacific Flyway Council recommended that the number of permits in Utah authorizing the take of 1 tundra swan per season be increased from 2,500 to 2,800 to compensate for lost hunting opportunity from a State-imposed early season closure. As an informational item, the Council recommended that Montana, Nevada, and Utah implement a monitoring program to assess the number of trumpeter swans, if any, taken accidentally during the tundra swan season. The Council also recommended that Utah be more restrictive than the Federal frameworks by ending its season on or before December 15 and closing the Green River Area to swan hunting. The 3-year-average midwinter population index of 79,406 tundra swans is well above the Flyway objective level of 38,000. Proposed frameworks will result in harvest levels within those prescribed in the 1989 Tundra Swan Hunt Plan endorsed by the Pacific Flyway Council. The changes are premised on the implementation of the State-Federal cooperative program for hazing trumpeter swans from winter concentration areas near Harriman State Park in Idaho to more favorable sites.

Public-Hearing Comments: Dr. Gary Will reemphasized the Council's support for restrictions on tundra swan hunting in portions of the Pacific Flyway to minimize the accidental take of trumpeter swans and encouraged the Service to continue to cooperate with the Council and participating States in the management of the Rocky Mountain Population (RMP) of trumpeter swans. He recommended that a reasonable harvest of tundra swans be continued while also accommodating the range expansion of trumpeter swans to resolve winter bottleneck problems in southeastern Idaho.

Written Comments: Mr. D. C. Carlton, representing the Biodiversity Legal Foundation (Foundation), commented on the management of the RMP of trumpeter swans. He detailed the status and perceived threats to these swans, reviewed past and current management actions, and concluded that leadership, actions, and funding by the Service are inadequate to assure the population's recovery and believes they warrant listing under the Endangered Species Act. Among many recommendations directed at improving the effectiveness of range-expansion efforts directed at benefiting these swans, those germane to hunting regulations included: (1) not allowing either a permitted or incidental take of trumpeter swans during a tundra swan season, (2) having no open seasons for hunting tundra swans in the most critical trumpeter swan range-expansion areas, including all of Utah and Nevada, (3) modifying hunting regulations on National Wildlife Refuges in Montana, Utah, and Nevada to provide sanctuary for resting, reproduction, and rearing of cygnets, and (4) ending waterfowl hunting after October 20 at two sites on the Snake River in Idaho, at a site on the Green River, including Seedskadee National Wildlife Refuge in Wyoming, and in unspecified areas within the Tristate Yellowstone region.

Ms. Heidi Prescott, on behalf of The Fund for Animals, Inc., highlighted recent survey reports, reviewed portions of the Pacific Flyway Council's management plan and a report by Ms. Ruth Shea, a Service employee, and presented the group's views regarding management action pertaining to RMP trumpeter swans. The Fund for Animals, Inc., concurred with the recommendations of the Foundation pertaining to migratory game bird hunting contained in the aforementioned letter from Mr. D. C. Carlton of the Foundation.

Mr. D. J. Schubert, also on behalf of the Fund for Animals, Inc., reiterated certain concerns and needed actions deemed necessary for successful range expansion of RMP trumpeter swans. He believed that a mandatory check of swans taken by hunters in Utah and Nevada is necessary to measure the level of accidental take. While the purposeful hazing of trumpeter swans to more favorable winter sites has merit, it put more trumpeter swans at risk in tundra swan hunt areas; and he therefore recommended a new management strategy. The Fund for Animals believes there are two possible management strategy changes that would minimize excessive killing of trumpeter swans and still be consistent with the Migratory Bird Treaty Act: (1) prohibit hunting of tundra swans in Utah and Nevada; or, although less preferred, (2) prohibit hunting in certain critical areas in Utah. Under both options, security areas should be established in Idaho, and recreational activities such as waterfowl hunting and boating should be evaluated for possible negative impacts on trumpeter swan behavior and habitat use. Should intensive hazing be pursued to disperse birds to more favorable wintering sites, and if law enforcement policy is to be changed to facilitate the collection of information on the accidental take of trumpeter swans during the tundra swan season, the Fund for Animals recommended that: (1) both Idaho and Wyoming Game and Fish Departments provide sanctuaries in designated areas; (2) the Utah Division of Wildlife Resources, at the maximum, not allow swan hunting or, at the minimum, not allow swan hunting in Box Elder, Cache, and Rich Counties; (3) the Nevada Division of Wildlife close Stillwater Wildlife Management Area to swan hunting; (4) the Service close all National Wildlife Refuges in Utah and Nevada to the hunting of tundra swans; and (5) should the aforenamed States not exercise the recommended action, the Service should do so. Additionally, all States should enhance their hunter-education programs to emphasize proper identification of swans and waterfowl to minimize the accidental take of trumpeter swans as a result of other hunting seasons.

Mr. D. J. Schubert, in comments representing both The Fund for Animals, Inc., and the Foundation, reiterated and elaborated upon previous recommendations from those two organizations for curtailing tundra swan hunting and waterfowl hunting to enhance RMP trumpeter swan winter-range expansion (see above and 59 FR 43691–43692) and made specific comments on the proposed frameworks. At a minimum, Mr. Schubert recommends prohibiting tundra swan hunting and restricting waterfowl hunting on all Federal lands in south-central Montana, southern Idaho, western Wyoming, Utah, and Nevada. He believes that the Service is negligent in not using to the fullest extent various management provisions afforded and mandated by the Migratory Bird Treaty Act of 1918, the National Wildlife Refuge Administration Act, and the Refuge Recreation Act to protect RMP trumpeter swans. He described the historic RMP trumpeter swan populations, probable causes for their current restricted winter distribution, and past and current management efforts aimed at restoring the population; he offered management solutions to restore the population; and he argued in support of a petition for listing the RMP trumpeter as a threatened species which had been dismissed by the Service. He insists that the Service is obligated by law to restore the trumpeter swan to its native range. He contends that the Service is operating under an unpublished policy of nonenforcement of the Migratory Bird Treaty Act with respect to tundra swan hunters who might accidentally shoot a trumpeter swan. He recanted his previous recommendation for measuring the level of accidental take, by saying that there was sufficient information to know that it occurred.

Mr. Michael Roy, on behalf of the National Wildlife Federation, expressed concern about the successful continuation of the RMP trumpeter swan range-expansion program, in part because of a perceived ineffective and confusing management structure that is not adequately represented by all interested parties, and in part by accidental take of trumpeter swans during tundra swan seasons in Utah. He believes certain recommendations provided by Ms. Ruth Shea, a Service employee, were reasoned and practical and, if implemented, would enhance range-expansion efforts. Premised on Ms. Shea's recommendations, he recommended that tundra swan hunting in Utah be discontinued from the southern boundary of the Bear River National Wildlife Refuge north and east to the Idaho and Wyoming borders for an initial 5-year period. This closure would be intended to minimize the accidental take of trumpeter swans during translocation activities and, hopefully, tundra swan hunting could be reinstated afterwards.

Ms. Louisa Willcox, representing the Greater Yellowstone Coalition, raised questions regarding the Service's role in managing RMP trumpeter swans and funding efforts to increase their numbers and expand their distribution. She asked how the Service will monitor the accidental take of trumpeter swans during tundra swan hunting seasons in Montana, Nevada, North Dakota, South Dakota, and Utah and what measures will be taken to minimize the potential losses. She also asked why the Service has not sought establishment of trumpeter swan wintering sites outside the Montana-Idaho-Wyoming region. She requested that the Service develop a long-term strategy to prevent wintering waterfowl, including trumpeter swans, from damaging vegetation and fish habitat at Harriman State Park in Idaho.

The Humane Society recommended that all tundra swan seasons be closed.

Service Response: The Service concurs with the recommendation to extend the experimental tundra swan season in North Dakota one additional year, with a final report due by June 1, 1995.

In conjunction with a larger Federal-State-Flyway effort to enhance and monitor both winter and summer distribution of RMP trumpeter swans, the Service believes that modification of tundra swan hunting seasons in the Pacific Flyway portion of Montana, in Utah, and in Nevada is warranted to minimize the accidental killing of trumpeter swans by tundra swan hunters. Accordingly, final frameworks require: (1) States to collect and report information on the accidental take of trumpeter swans in conjunction with tundra swan seasons, and (2) in Utah, the season must end on or before December 15 and four counties would be closed to swan hunting. The Pacific Flyway Council's request for additional permits to compensate for lost hunting opportunities in Utah is not without merit from the standpoint of tundra swan management; however, the Service denied the Council's request and believes a conservative approach is warranted because of the possibility of trumpeter swans moving into the general hunting area. Further, there has been no change in either policy or law regarding enforcement of migratory game bird hunting regulations as they apply to the illegal take of trumpeter swans. Monitoring of the winter distribution of trumpeter swans will provide the Service with additional opportunities to further modify hunt programs if warranted.

Trumpeter swans are expected to number about 17,000–20,000 individuals during the next range-wide survey scheduled for 1995 and have been increasing at about 6 percent per year during 1968–90 (1990 was the last year in which a range-wide survey was conducted). Populations such as the RMP warrant additional attention, which the Service continues to give with considerable assistance from State and other Federal agencies and moral, if not financial, support from several non-governmental organizations.

Regarding closure of all tundra swan seasons, the Service believes that the status of tundra swan populations does not warrant such closures.

23. Other

Council Recommendations: The Atlantic Flyway Council recommended that the Service provide compensatory days for State-imposed Sunday-hunting prohibitions.

Written Comments: Two local sportsmen's organizations from Massachusetts suggested compensatory days for those days lost due to State-imposed Sunday-hunting prohibitions.

The Humane Society supported the closure of hunting on Sundays.

Service Response: The Service is not aware of any biological basis for prohibiting hunting on Sundays and therefore neither promotes nor condones prohibition of Sunday hunting. Sunday-hunting closures are established by State or local law. The Service has stated previously in the September 24, 1993, **Federal Register** (58 FR 50188) that it believes this problem is an individual State issue and

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can best be resolved by each State removing its self-imposed restrictions.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)," filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). However, this programmatic document does not prescribe year-specific regulations; those are developed annually. The annual regulations and options are being considered in the Environmental Assessment, "Waterfowl Hunting Regulations for 1994," which is available upon request.

Endangered Species Act Consideration

In August 1994, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultation under Section 7 are considered public documents and are available for inspection in the Division of Endangered Species and the Office of Migratory Bird Management.

Regulatory Flexibility Act; Executive Order 12866; and the Paperwork Reduction Act

In the **Federal Register** dated April 7, 1994 (59 FR 16762), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing an Analysis of Regulatory Effects and an updated Final Regulatory Impact Analysis, under the Regulatory Flexibility Act (5 U.S.C. 601 et seq), and publication of a summary of the latter. This information is included in the present document by reference. This action was not subject to review by the Office of Management and Budget under E.O. 12866. This rule does not contain any information collection requiring approval by the Office of Management and Budget under 44 U.S.C. 3504.

Authorship

The primary author of this proposed rule is Robert J. Blohm, Office of Migratory Bird Management.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select season dates and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from these officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 1994–95 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1994–95 hunting season are authorized under the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711); the Fish and Wildlife Improvement Act of 1978 (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a—d and e—j).

Dated: September 22, 1994.

Robert P. Davison,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 1994–95 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Director has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 1994, and March 10, 1995.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Definitions: For the purpose of hunting regulations listed below, the collective terms "dark" and "light" geese include the following species:

Dark geese - Canada geese, white-fronted geese, and brant.

Light geese - lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by flyway.

Atlantic Flyway

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Ducks, Mergansers, and Coots

Outside Dates: Between October 1 and January 20.

Hunting Seasons and Duck Limits: Either (a) 30 days and daily bag limit of 4 ducks, including no more than 3 mallards (no more than 1 of which may be a female), 2 wood ducks, 2 redheads, 1 canvasback, 1 black duck, 1 mottled duck, 1 pintail, and 1 fulvous whistling duck or (b) 40 days and daily bag limit of 3 ducks, and the other restrictions shown above.

Closures: The season on harlequin ducks is closed.

Sea Ducks: In all areas outside of special sea duck areas, sea ducks are included in the regular duck daily bag and possession limits. However, during the regular duck season within the special sea duck areas, the sea duck daily bag and possession limits may be in addition to the regular duck daily bag and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Zoning and Split Seasons: Delaware, Maryland, North Carolina, Rhode Island, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone; while Florida, Georgia, and South Carolina may split their Statewide seasons into two segments.

Canada Geese

Season Lengths, Outside Dates, and Limits: Unless specified otherwise, seasons may be split into two segments. Seasons in States, and in independently described goose management units within States, may be as follows:

Connecticut: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening. In addition, a special experimental season may be held in the South Zone between January 15 and February 15, with 5 geese per day.

Delaware: 60 days between November 16 and January 20, with 1 goose per day for the first 20 days; 2 geese per day thereafter.

Florida: Closed season.

Georgia: In specific areas, an 8–day experimental season may be held between November 15 and February 5, with a limit of 5 Canada geese per day.

Maine: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Maryland: 60 days between November 16 and January 20, with 1 goose per day for the first 20 days and 2 geese per day thereafter.

Massachusetts: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening. In addition, a special 16–day season for resident Canada geese may be held in the Coastal and Central Zones during January 21 to February 5, with 5 geese per day.

New Hampshire: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

New Jersey: 70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16. In addition, an experimental special season may be held in a designated area of Northeastern New Jersey from January 28 to February 11, 1995, with 5 geese per day.

New York:

Northeastern Zone - 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Remainder of State - 70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16.

North Carolina:

East Zone - Suspended.

West Zone - Suspended.

Pennsylvania:

South Zone - 70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16. In addition, an experimental season may be held in the Susquehanna/Juniata Zones from January 20 to February 5 with 5 geese per day.

Erie, Mercer, and Butler Counties - 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Crawford County - 35 days between October 1 and January 20; with 1 goose per day.

Remainder of State - 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Rhode Island: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

South Carolina: Suspended regular season. An 8–day special season may be held in the Central Piedmont, Western Piedmont, and Mountain Hunt Units during December 1 to February 15, with a daily bag limit of 5 Canada geese per day.

Vermont: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Virginia:

Back Bay - Suspended.

Remainder - 60 days between November 16 and January 20, with 1 goose per day for the first 20 days; 2 geese per day thereafter.

West Virginia: 70 days between October 1 and January 20, with 3 geese per day.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107–day season between October 1 and February 10, with 5 geese per day. States may split their seasons into two segments.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 50–day season between October 1 and January 20, with 2 brant per day.

Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Ducks, Mergansers, and Coots

Outside Dates: Between October 1 and January 20.

Hunting Seasons and Duck Limits: Either (a) 30 days and daily bag limit of 4 ducks, including no more than 3 mallards (no more than 1 of which may be a female), 3 mottled ducks, 1 black

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duck, 1 pintail, 2 wood ducks, 1 canvasback, and 1 redhead or (b) 40 days and daily bag limit of 3 ducks, including no more than 2 mallards (no more than 1 of which may be a female), and the other restrictions shown above.

Merganser Limits: The daily bag limit is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Mississippi, the season may be split into two segments.

In Arkansas and Minnesota, the season may be split into three segments.

Pymatuning Reservoir Area, Ohio: The seasons, limits, and shooting hours shall be the same as those selected in the adjacent portion of Pennsylvania (Northwest Zone).

Geese

Split Seasons: Seasons for geese may be split into two segments.

Season Lengths, Outside Dates, and Limits: States may select seasons for geese not to exceed 70 days for dark geese between the Saturday nearest October 1 (October 1) and January 31, and 107 days for light geese between the Saturday nearest October 1 (October 1), and February 14. The daily bag limit is 7 geese, to include no more than 2 Canada geese, 2 white-fronted geese, and 2 brant. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Alabama: In the SJBP Goose Zone, the season for Canada geese may not exceed 35 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: The season for Canada geese may extend for 23 days in the East Zone. In the West Zone, an experimental season for Canada geese of up to 14 days may be selected. In both zones, the season may extend to February 15. The daily bag limit is 2 Canada geese. In the remainder of the State, the season for Canada geese is closed.

Illinois: The total harvest of Canada geese in the State will be limited to 109,600 birds.

(a) Southern Illinois Quota Zone - The season for Canada geese will close after 51 days or when 39,800 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 10 in possession. All harvested Canada geese in excess of twice the daily bag limit that are transported outside the zone must be tagged with tags containing the name and signature of the hunter and the date and location where the birds were taken. If any of the following conditions exist after December 20, the State, after consultation with the Service, will close the season by emergency order with 48 hours notice:

1. 10 consecutive days of snow cover, 3 inches or more in depth.
2. 10 consecutive days of daily high temperatures less than 20 degrees F.
3. Average body weights of adult female geese less than 3,200 grams as measured from a weekly sample of a minimum of 50 geese.
4. Starvation or a major disease outbreak resulting in observed mortality exceeding 5,000 birds in 10 days, or a total mortality exceeding 10,000 birds.

(b) Rend Lake Quota Zone - The season for Canada geese will close after 51 days or when 11,400 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 10 in possession. All harvested Canada geese in excess of twice the daily bag limit that are transported outside the zone must be tagged with tags containing the name and signature of the hunter and the date and location where the birds were taken.

(c) Northern Illinois Quota Zone - The season for Canada geese will close after 51 days or when 13,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(d) Central Illinois Quota Zone - The season for Canada geese will close after 51 days or when 22,400 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(e) Remainder of the State - The season for Canada geese may extend for 51 days in the respective goose zones. The daily bag limit is 2 Canada geese.

Indiana: The total harvest of Canada geese in the State will be limited to 61,900 birds.

(a) Posey County - The season for Canada geese will close after 53 days or when 4,550 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Remainder of the State - The season for Canada geese may extend for 70 days in the respective duck-hunting zones, except in the SJBP Zone, where the season may not exceed 35 days. The daily bag limit is 2 Canada geese.

Iowa: The season may extend for 55 days in the respective duck-hunting zones and may open no earlier than October 8. The daily bag limit is 2 Canada geese.

Kentucky:

(a) Western Zone - The season for Canada geese may extend for 53 days (66 days in Fulton County), and the harvest will be limited to 21,900 birds. Of the 21,900–bird quota, 14,300 birds will be allocated to the Ballard Reporting Area and 4,200 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 53–day season, the season in that reporting area will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 53 days (66 days in Fulton County). The season in Fulton County may extend to February 13. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone - The season may extend for 35 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State - The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: Louisiana may hold 107-day seasons for light geese and 70-day seasons for white-fronted geese and brant between the Saturday nearest October 1 (October 1) and February 14 in the respective duck-hunting zones. The daily bag limit is 7 geese, to include no more than 2 white-fronted geese and 2 brant, except as noted below. In the Southwest Zone, a 9-day season for Canada geese may be held. During the Canada goose season, the daily bag limit for Canada and white-fronted geese in the Southwest Zone is 2, no more than 1 of which may be a Canada goose. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan: The total harvest of Canada geese in the State will be limited to 63,100 birds.

(a) North Zone - The framework opening date for all geese is September 24 and the season for Canada geese may extend for 23 days. The daily bag limit is 2 Canada geese.

(b) Middle Zone - The season for Canada geese may extend for 23 days. The daily bag limit is 2 Canada geese.

(c) South Zone

(1) Allegan County GMU - The season for Canada geese will close after 50 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(2) Muskegon Wastewater GMU - The season for Canada geese will close after 53 days or when 400 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(3) Saginaw County GMU - The season for Canada geese will close after 40 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(4) Tuscola/Huron GMU - The season for Canada geese will close after 40 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(5) Remainder of South Zone - The season for Canada geese may extend for 30 days. The daily bag limit is 1 Canada goose.

(d) Southern Michigan GMU - An experimental special Canada goose season may be held between January 7 and February 5. The daily bag limit is 2 Canada geese.

Minnesota:

(a) West Zone

(1) West Central Zone - The season for Canada geese may extend for 30 days. In the Lac Qui Parle Zone the season will close after 30 days or when a harvest index of 4,000 birds has been reached, whichever occurs first. Throughout the West Central Zone, the daily bag limit is 1 Canada goose.

(2) Remainder of West Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(b) Northwest Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(c) Southeast Zone - The season for Canada geese may extend for 70 days, except in the Twin Cities Metro Zone and Olmsted County, where the season may not exceed 80 days. The daily bag limit is 2 Canada geese.

(d) Remainder of the State - The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(e) Fergus Falls/Alexandria Zone - An experimental special Canada goose season of up to 10 days may be held in December. During the special season, the daily bag limit is 2 Canada geese.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Missouri:

(a) Swan Lake Zone - The season for Canada geese will close after 40 days or when 5,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Schell-Osage Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese.

(c) Central Zone - The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese. An experimental special season of up to 10 consecutive days prior to October 15 may be selected in addition to the regular season. During the special season, the daily bag limit is 3 Canada geese.

(d) Remainder of the State - The season for Canada geese may extend for 50 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Ohio: The season may extend for 70 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 30 days and the daily bag limit is 1 Canada goose. In the Pymatuming Reservoir Area, the seasons, limits, and shooting hours for all geese shall be the same as those selected in the adjacent portion of Pennsylvania.

Tennessee:

(a) Northwest Zone - The season for Canada geese will close after 75 days or when 8,100 birds have been harvested, whichever occurs first. The season may extend to February 15. All geese harvested must be tagged. The daily bag limit is 2 Canada geese.

(b) Southwest Zone - The season for Canada geese may extend for 59 days, and the harvest will be limited to 1,000 birds. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone - The season for Canada geese will close after 50 days or when 1,800 birds have been harvested, whichever occurs first. All geese harvested must be tagged. The daily bag limit is 2 Canada geese.

(d) Remainder of the State - The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The total harvest of Canada geese in the State will be limited to 76,800 birds.

(a) Horicon Zone - The framework opening date for all geese is September 24. The harvest of Canada geese is limited to 41,000 birds. The season may not exceed 80 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose and the season limit will be the number of tags issued to each permittee.

(b) Collins Zone - The framework opening date for all geese is September 24. The harvest of Canada geese is limited to 1,300 birds. The season may not exceed 61 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese and the season limit will be the number of tags issued to each permittee.

(c) Exterior Zone - The framework opening date for all geese is October 1. The harvest of Canada geese is limited to 30,000 birds, with 500 birds allocated to the Mississippi River Subzone. The season may not exceed 70 days and the daily bag limit is 1 Canada goose. In the Mississippi River Subzone, the season for Canada geese may extend for 70 days in each duck zone. In that portion of the Exterior Zone outside the Mississippi River Subzone, the progress of the harvest must be monitored, and the season closed, if necessary, to ensure that the harvest does not exceed 29,500 birds.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, Southern Illinois, and Rend Lake Quota Zones in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan, the Lac Qui Parle Zone in Minnesota, the Swan Lake Zone in Missouri, and the Northwest and Kentucky/Barkley Lakes Zones in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Ducks, Mergansers, and Coots

Outside Dates: October 1 through January 20.

Hunting Seasons and Duck Limits:

(1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): Either (a) 51 days and daily bag limit of 4 ducks, including no more than 1 of which may be a female mallard, 1 mottled duck, 1 pintail, 1 redhead, 1 canvasback and 2 wood ducks or (b) 61 days and daily bag limit of 3, and the other restrictions shown above. Under both options, the last 12 days may start no earlier than the Saturday nearest December 10 (December 10).

(2) Remainder of the Central Flyway: Either (a) 39 days and daily bag limit of

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4 ducks, including no more than 1 female mallard, 1 mottled duck, 1 pintail, 1 redhead, 1 canvasback and 2 wood ducks or (b) 49 days and daily bag limit of 3 ducks, and the other restrictions shown above.

Merganser Limits: The daily bag limit of 5 mergansers may be taken, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), and South Dakota (Low Plains portion) may select hunting seasons by zones.

In Montana, Nebraska (Low and High Plains portions), New Mexico, North Dakota (Low Plains portion), Oklahoma (Low and High Plains portions), South Dakota (High Plains portion), and Texas (Low Plains portion), the season may be split into two segments.

In Colorado, Kansas (Low and High Plains portions), North Dakota (High Plains portion), and Wyoming, the season may be split into three segments.

Geese

Season Lengths, Outside Dates, and Limits: Seasons may be split into two segments. The Saturday nearest October 1 (October 1), through January 31, for dark geese and the Saturday nearest October 1 (October 1), through the Sunday nearest February 15 (February 12), except in Colorado, Kansas, New Mexico, Oklahoma, and Texas, where the closing date is February 28, for light geese. Seasons in States, and independently in described goose management units within States, may be as follows:

Colorado: No more than 107 days, with a daily bag limit of 5 light and 3 dark geese.

Kansas: For dark geese, no more than 86 days, with a daily bag limit of 2, including no more than 1 white-fronted goose.

For light geese, no more than 107 days, with a daily bag limit of 10.

Montana: No more than 107 days, with daily bag limits of 2 dark and 5 light geese in Sheridan County and 4 dark and 5 light geese in the remainder of the Central Flyway portion.

Nebraska: For dark geese, no more than 86 days, with a daily bag limit of not more than 2, which may include no more than 1 white-fronted goose.

For light geese, no more than 107 days, with a daily bag limit of 10.

New Mexico: No more than 107 days, with a daily bag limit of 5 light and 3 dark geese, except in the Middle Rio Grande Valley where the daily bag limit of light geese is 10.

North Dakota: For dark geese, no more than 86 days, with a daily bag limit of 2.

For light geese, no more than 107 days, with a daily bag limit of 10.

Oklahoma: For dark geese, no more than 86 days, with a daily bag limit of 2, including no more than 1 white-fronted goose.

For light geese, no more than 107 days, with a daily bag limit of 10.

South Dakota: For dark geese, no more than 86 days, with a daily bag limit of not more than 2, including no more than 1 white-fronted goose.

For light geese, no more than 107 days, with a daily bag limit of 10.

Texas: For the West Unit, no more than 107 days, with a daily bag limit of 5 light and 3 dark geese.

For dark geese in the East Unit, no more than 86 days. The daily bag limit is 2, including no more than 1 white-fronted goose during the first 72 days; during the last 14 days, the season is closed on white-fronted geese and the daily bag limit is 2 Canada geese.

For light geese in the East Unit, no more than 107 days, with a daily bag limit of 10.

Wyoming: No more than 107 days, with a daily bag limit of 5 light and 3 dark geese.

Pacific Flyway

Ducks, Mergansers, Coots, and Common Moorhens

Hunting Seasons and Duck Limits: Either (a) Concurrent 59 days and daily bag limit of 5 ducks, including no more than 4 mallards (no more than 1 of which may be a female), 1 pintail, 2 redheads and 1 canvasback or (b) Concurrent 69 days and daily bag limit of 4 ducks, including no more than 3 mallards, and the other restrictions shown above.

In the Columbia Basin Mallard Management Unit, the seasons may be an additional 7 days. The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 93 days.

Coot and Common Moorhen Limits: The daily bag and possession limits of coots and common moorhens are 25, singly or in the aggregate.

Outside Dates: Between October 1 and January 20.

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may split their seasons into two segments either Statewide or in each zone.

Colorado, Montana, New Mexico, and Wyoming may split their duck seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits: Except as subsequently noted, 100–day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 1), and the Sunday nearest January 20 (January 22), and the basic daily bag limits are 3 light geese and 3 dark geese, including no more than 2 white-fronted geese.

Brant Season - A 16–consecutive-day season may be selected in Oregon and Washington, and a 30–consecutive day season may be selected in California. In only California, Oregon, and Washington, the daily bag limit is 2 brant and is additional to dark goose limits, and the open season on brant in those States may differ from that for other geese.

Closures: There will be no open season on Aleutian Canada geese in the Pacific Flyway. The States of California, Oregon, and Washington must include a statement on the closure for that subspecies in their respective regulations leaflet. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

Arizona: The daily bag limit for dark geese is 2 geese.

California:

Northeastern Zone - White-fronted geese and cackling Canada geese may be taken only during the first 23 days of the goose season. The daily bag limit is 3 geese and may include no more than 2 dark geese; including not more than 1 cackling Canada goose.

Colorado River Zone - The seasons and limits must be the same as those selected in the adjacent portion of Arizona (South Zone).

Southern Zone - The daily bag and possession limits for dark geese is 2 geese, including not more than 1 cackling Canada goose.

Balance-of-the-State Zone - A 79–day season may be selected, except that white-fronted geese and cackling Canada geese may be taken during only the first 65 days of such season. Limits may not include more than 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2, provided that they are Canada geese other than cackling Canada geese for which the daily limit is 1.

Three areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the Counties of Del Norte and Humboldt, there will be no open season for Canada geese.

(2) In the Sacramento Valley Area, the season on white-fronted geese and cackling Canada geese must end on or before November 30, and, except in the Western Canada Goose Hunt Area, there will be no open season for Canada geese.

(3) In the San Joaquin Valley Area, the hunting season for Canada geese will close no later than November 23.

Colorado: The daily bag limit for dark geese is 2 geese.

Idaho:

Northern Unit - The daily bag limit is 4 geese, including 4 dark geese, including not more than 2 white-fronted geese, and 3 light geese.

Southwest Unit - The daily bag limit on dark geese is 4, including not more than 2 white-fronted geese.

Southeastern Unit - The daily bag limit is 3 geese, including not more than 2 white-fronted geese.

Montana:

West of Divide Zone - The daily bag limit on dark geese is 4, including not more than 2 white-fronted geese.

Nevada:

Clark County Zone - The daily bag limit of dark geese is 2 geese.

New Mexico: The daily bag limit for dark geese is 2 geese.

Oregon: Except as subsequently noted, the dark goose limit is 4, including not more than 2 white-fronted geese and 1 cackling Canada goose.

Harney, Lake, Klamath, and Malheur Counties Zone - The season length may be 100 days. White-fronted geese may not be taken before October 17 during the regular goose season.

Western Zone - In the Special Canada Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 210 dusky Canada geese. See section on quota zones. In those designated areas, the daily bag limit of dark geese is 3, including not more than 2 white-fronted geese and 1 cackling Canada goose.

Utah: The daily bag limit for dark geese is 2 geese.

Washington: The daily bag limit is 4 geese, including 4 dark geese, but not more than 2 white-fronted geese, and 3 light geese.

West Zone - In the Lower Columbia River Special Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 90 dusky Canada geese. See section on quota zones.

Wyoming: In Lincoln, Sweetwater, and Sublette Counties, the combined special September Canada goose seasons and the regular goose season shall not exceed 100 days.

Quota Zones: Seasons on Canada geese must end upon attainment of individual quotas of dusky Canada geese allotted to the designated areas of Oregon and Washington. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of Aleutian Canada geese. The daily bag limit of Canada geese may not include more than 1 cackling Canada goose.

Tundra Swans

In Montana, Nevada, New Jersey, North Carolina, North Dakota, South Dakota, Utah, and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States and will authorize each permittee to take no more than 1 tundra swan per season. The States must obtain harvest and hunter participation data. These seasons will be subject to the following conditions:

In the Atlantic Flyway

—The season will be experimental.

—The season may be 90 days, must occur during the light goose season, but may not extend beyond January 31.

—In New Jersey, no more than 200 permits may be issued.

—In North Carolina, no more than 6,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the Central Flyway

—The season may be 107 days and must occur during the light goose season.

—In the Central-Flyway portion of Montana, no more than 500 permits may be issued.

—In North Dakota, no more than 2,000 permits may be issued during the experimental season.

—In South Dakota, no more than 1,500 permits may be issued during the experimental season.

In the Pacific Flyway

—Except as subsequently noted, a 100–day season may be selected between the Saturday nearest October 1 (October 1), and the Sunday nearest January 20 (January 22). Seasons may be split into 2 segments. The States of Montana, Nevada, and Utah must implement a harvest-monitoring program to measure the extent of accidental harvest of trumpeter swans.

—In Utah, no more than 2,500 permits may be issued. The season must end on or before December 15.

—In Nevada, no more than 650 permits may be issued.

—In the Pacific-Flyway portion of Montana, no more than 500 permits may be issued.

Area, Unit and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I–95.

South Zone: That portion of the State south of I–95.

Maine

North Zone: Game Management Zones 1 through 5.

South Zone: Game Management Zones 6 through 8.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Coastal Zone: That portion of the State east of a line extending west from Maine border in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I–95 (New Hampshire Turnpike) in Hampton, and south along I–95 to the Massachusetts border.

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Inland Zone: That portion of the State north and west of the above boundary.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York border in Raritan Bay and extending west along the New York border to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware border in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania border in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: The remaining portion of Vermont.

West Virginia

Zone 1 : That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I–64; I–64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I–79, I–79 north to U.S. 48; U.S. 48 east to the Maryland border; and along the border to the point of beginning.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

Central Zone: That portion of the State between the North and South Zone boundaries.

South Zone: That portion of the State south of a line extending east from the Missouri border along the Modoc Ferry route to Randolph County Highway 12, north along County 12 to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, then east along I–70 to the Indiana border.

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Kentucky

West Zone: That portion of the State west of a line extending north from the Tennessee border along Interstate Highway 65 to Bowling Green, northwest along the Green River Parkway to Owensboro, southwest along U.S. Bypass 60 to U.S. Highway 231, then north along U.S. 231 to the Indiana border.

East Zone: The remainder of Kentucky.

Louisiana

West Zone: That portion of the State west of a line extending south from the Arkansas border along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to Houma, then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm. See State regulations for additional information.

Michigan

North Zone: The Upper Peninsula.

South Zone: That portion of the State south of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and east and south along the south shore of, Stony Creek to Webster Road, east and south on Webster Road to Stony Lake Road, east on Stony Lake and Garfield Roads to Michigan Highway 20, east on Michigan 20 to U.S. Highway 10B.R. in the city of Midland, east on U.S. 10B.R. to U.S. 10, east on U.S. 10 and Michigan 25 to the Saginaw River, downstream along the thread of the Saginaw River to Saginaw Bay, then on a northeasterly line, passing one-half mile north of the Corps of Engineers confined disposal island offshore of the Carn Power Plant, to a point one mile north of the Charity islands, then continuing northeasterly to the Ontario border in Lake Huron.

Middle Zone: The remainder of Michigan.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois border along Interstate Highway 70 to U.S. Highway 54, south along U.S. 54 to U.S. 50, then west along U.S. 50 to the Kansas border.

South Zone: That portion of Missouri south of a line running west from the Illinois border along Missouri Highway 34 to Interstate Highway 55; south along I–55 to U.S. Highway 62, west along U.S. 62 to Missouri 53, north along Missouri 53 to Missouri 51, north along Missouri 51 to U.S. 60, west along U.S. 60 to Missouri 21, north along Missouri 21 to Missouri 72, west along Missouri 72 to Missouri 32, west along Missouri 32 to U.S. 65, north along U.S. 65 to U.S. 54, west along U.S. 54 to Missouri 32, south along Missouri 32 to Missouri 97, south along Missouri 97 to Dade County NN, west along Dade County NN to Missouri 37, west along Missouri 37 to Jasper County N, west along Jasper County N to Jasper County M, west along Jasper County M to the Kansas border.

Middle Zone: The remainder of Missouri.

Ohio

North Zone: The Counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking (excluding the Buckeye Lake Area), Muskingum, Guernsey, Harrison and Jefferson and all counties north thereof.

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Ohio River Zone: The Counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs.

South Zone: That portion of the State between the North and Ohio River Zone boundaries, including the Buckeye Lake Area in Licking County bounded on the west by State Highway 37, on the north by U.S. Highway 40, and on the east by State 13.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending northerly from the Minnesota border along the center line of the Chippewa River to State Highway 35, east along State 35 to State 25, north along State 25 to U.S. Highway 10, east along U.S. 10 to its junction with the Manitowoc Harbor in the city of Manitowoc, then easterly to the eastern State boundary in Lake Michigan.

South Zone: The remainder of Wisconsin.

Central Flyway

Kansas

High Plains: That area west of U.S. 283.

Low Plains: That area east of U.S. 283.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Daniels, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Richland, Roosevelt, Sheridan, Stillwater, Sweetgrass, Valley, Wheatland, and Yellowstone.

Zone 2: The Counties of Big Horn, Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure, and Wibaux.

Nebraska

High Plains: West of Highways U.S. 183 and U.S. 20 from the northern State line to Ainsworth, NE 7 and NE 91 to Dunning, NE 2 to Merna, NE 92 to Arnold, NE 40 and NE 47 through Gothenburg to NE 23, NE 23 to Elwood, and U.S. 283 to the southern State line.

Low Plains: East of the High Plains boundary.

Zone 1: Those portions of Burt, Dakota, and Thurston Counties north and east of a line starting on NE 51 on the Iowa border to U.S. 75, north on U.S. 75 to U.S. 20, west on U.S. 20 to NE 12; west on NE 12 to the Boyd County line; to include those portions of Cedar, Dakota, Dixon, and Knox Counties north of NE 12; all of Boyd County; Keya Paha County east of U.S. 183. Where the Niobrara River forms the southern boundary of Keya Paha and Boyd Counties, both banks of the river shall be included in Zone 1.

Zone 2: The area bounded by designated highways and political boundaries starting on NE 2 at the State line near Nebraska City; west to U.S. 75; north to U.S. 34; west to NE 63; north and west to U.S. 77; north to NE 92; west to U.S. 81; south to NE 66; west to NE 14; south to U.S. 34; west to NE 2; south to I–80; west to U.S. 34; west to U.S. 136; east on U.S. 136 to NE 10; south to the State line; west to U.S. 283; north to NE 23; west to NE 47; north to U.S. 30; east to NE 14; north to NE 52; northwesterly to NE 91; west to U.S. 281, north to NE 91 in Wheeler County; west to U.S. 183; north to northerly boundary of Loup County; east along the north boundaries of Loup, Garfield, and Wheeler Counties; south along the east Wheeler County line to NE 70; east on NE 70 from Wheeler County to NE 14; south to NE 39; southeast to NE 22; east to U.S. 81; southeast to U.S. 30; east to the State line; and south and west along the State line to the point of beginning.

Zone 3: The area, excluding Zone 1 north of Zone 2.

Zone 4: The area south of Zone 2

New Mexico (Central Flyway Portion)

North Zone: The Central-Flyway portion of New Mexico north of I–40 and U.S. 54.

South Zone: The remainder of the Central-Flyway portion of New Mexico.

North Dakota

High Plains: That portion of North Dakota west of a line extending north from the South Dakota border on U.S. 83 and I–94 to ND 41, north to ND 53, west to U.S. 83, north to ND 23, west to ND 8, north to U.S. 2, west to U.S. 85, north to the Canadian border.

Low Plains: The remainder of North Dakota.

Oklahoma

High Plains: Beaver, Cimarron, and Texas Counties.

Low Plains

Zone 1: That portion of northwestern Oklahoma, except the Panhandle, bounded by the following highways: starting at the Texas border, OK 33 to OK 47, OK 47 to U.S. 183, U.S. 183 to I–40, I–40 to U.S. 177, U.S. 177 to OK 33, OK 33 to I–35, I–35 to U.S. 60, U.S. 60 to U.S. 64, U.S. 64 to OK 132, and OK 132 to the Kansas border.

Zone 2: The remainder of the Low Plains portion of Oklahoma.

South Dakota

High Plains: West of highways and political boundaries starting at the State line north of Herreid; U.S. 83 and U.S. 14 to Blunt, Blunt-Canning Road to SD 34, a line across the Missouri River to the northwestern corner of the Lower Brule Indian Reservation, the Reservation Boundary and Lyman County Road through Presho to I–90, and U.S. 183 to the southern State line.

Low Plains

North Zone: That portion of northeastern South Dakota bounded by the following highways: starting at the North Dakota border, U.S. 83 south to

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U.S. 212, U.S. 212 east to I–29, I–29 north to SD 15, SD 15 east to Hartford Beach, due east of Hartford Beach to the Minnesota border.

South Zone: Charles Mix County south of SD 44 to the Douglas County line, south on SD 50 to Geddes, East on Geddes Highway to U.S. 281, south on U.S. 281 and U.S. 18 to SD 50, south and east on SD 50 to the Bon Homme County line, the Counties of Bon Homme, Yankton, and Clay south of SD 50, and Union County south and west of SD 50 and I–29.

Middle Zone: The remainder of the Low Plains portion of South Dakota.

Texas

High Plains: West of highways U.S. 183 from the northern State line to Vernon, U.S. 283 to Albany, TX 6 and TX 351 to Abilene, U.S. 277 to Del Rio, and the Del Rio International Toll Bridge access road.

Low Plains: The remainder of Texas.

Pacific Flyway

Arizona—Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 11, 12B, 13B, and 14–45.

North Zone: GMUs 1–5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 10, 12A, and 13A.

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I–5 at the town of Weed; south along I–5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1: Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following counties or portions of counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of ID 75, south and east of U.S. 93, and between ID 75 and U.S. 93 north of U.S. 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Ada includes the Counties of; Blaine between ID 75 and U.S. 93 south of U.S. 20 and that additional area between ID 75 and U.S. 93 north of U.S. 20 within the Silver Creek drainage; Boise; Canyon; Cassia except that portion within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada

Clark County Zone: All of Clark County.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon

Zone 1: Statewide, except Deschutes, Klamath, and Lake Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: Deschutes, Klamath, and Lake Counties.

Utah

Zone 1: All of Box Elder, Cache, Davis, Morgan, Rich, Salt Lake, Summit, Utah, Wasatch, and Weber Counties and that part of Toole County north of I–80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Geese

Atlantic Flyway

Connecticut

Same zones as for ducks.

Georgia

Special Area for Canada Geese: The Counties of Baldwin, Hancock, Harris, Jones, McDuffie, Meriwether, Monroe, Richmond, Upson, Warren, and all Counties north thereof; and Decatur and Seminole Counties and all of Lake Seminole within the State of Georgia.

Massachusetts

Same zones as for ducks.

New Hampshire

Same zones as for ducks.

New Jersey

Special Area for Canada Geese: That portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with the Pennsylvania State boundary; then north along the Pennsylvania boundary in the Delaware River to its intersection with the New York State boundary.

New York

Same zones as for ducks.

North Carolina

Canada Geese

East Zone: That portion of North Carolina east of I–95.

West Zone: That portion of North Carolina west of I–95.

Pennsylvania

Erie, Mercer, and Butler Counties: All of Erie, Mercer, and Butler Counties.

North Zone: That portion of the State north of a line extending east from the Ohio border along I–80 to U.S. 220, U.S. 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Susquehanna/Juniata—See State regulations for detailed description.

South Carolina

Canada Goose Area: The Central Piedmont, Western Piedmont, and Mountain Hunt Units. These designated areas include: Abbeville, Anderson, Cherokee, Chester, Edgefield, Fairfield, Greenville, Greenwood, Kershaw, Lancaster, Laurens, Lexington, McCormick, Newberry, Oconee, Pickens, Saluda, Spartanburg, Union, and York Counties.

Virginia

Back Bay Area

Defined for Canada geese as those portions of the cities of Virginia Beach and Chesapeake east of U.S. 17 and I–64.

Defined for white geese as the waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

West Virginia

Same zones as for ducks.

Mississippi Flyway

Alabama

Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas

East Zone: Arkansas, Ashley, Chicot, Clay, Craighead, Crittenden, Cross, Desha, Drew, Greene, Independence, Jackson, Jefferson, Lawrence, Lee, Lincoln, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, St. Francis, White, and Woodruff Counties.

West Zone: Baxter, Benton, Boone, Carroll, Cleburne, Conway, Crawford, Faulkner, Franklin, Fulton, Izard, Johnson, Madison, Marion, Newton, Pope, Searcy, Sharp, Stone, Van Buren, and Washington Counties, and those portions of Logan, Perry, Sebastian, and Yell Counties lying north of a line extending east from the Oklahoma border along State Highway 10 to Perry, south on State 9 to State 60, then east on State 60 to the Faulkner County line.

Illinois

North Goose Zone: Same as for ducks.

Northern Illinois Quota Zone: The Counties of McHenry, Lake, Kane, DuPage, and those portions of LaSalle and Will Counties north of Interstate Highway 80.

Central Goose Zone: That portion of the State between the North and South Goose Zone boundaries.

Central Illinois Quota Zone: The Counties of Grundy, Woodford, Peoria, Knox, Fulton, Tazewell, Mason, Cass, Morgan, Pike, Calhoun, and Jersey, and those portions of LaSalle and Will Counties south of Interstate Highway 80.

South Goose Zone: That portion of the State south of a line extending east from the Missouri border along the Modoc Ferry route to Randolph County Highway 12, north along County 12 to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I-70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I-70, then east along I-70 to the Indiana border.

Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

Indiana

Same zones as for ducks, but in addition:

SJBP Zone: Jasper, LaGrange, Lake, LaPorte, Newton, Porter, Pulaski, Starke, and Steuben Counties.

Iowa

Same zones as for ducks.

Kentucky

Western Zone: That portion of the state west of a line beginning at the Tennessee border at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana border.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: That portion of the state between the Western Zone and a line described as follows: From the Indiana border south along U.S. Highway 231 to the Green River Parkway, southeast along the Green River Parkway to Interstate Highway 65, then south along I–65 to the Tennessee border.

Louisiana

Same zones as for ducks, but in addition:

Southwest Zone: That portion of the State encompassed by a line extending east from the Texas border along Louisiana Highway 12 to Ragley, east along U.S. Highway 190 to Interstate Highway 49 near Opelousas, south along I–49 to U.S. 167 near Lafayette, south along U.S. 167 to Louisiana 82 at Abbeville, south and west along Louisiana 82 to the Intercoastal Waterway at Forked Island, westerly along the Intercoastal Waterway to the Calcasieu Ship Channel, south along the west side of the Calcasieu Ship Channel to Louisiana 82 at Cameron, westerly along Louisiana 82 to the Texas border. All open waters of Lake Arthur and the Mermentau River from the Louisiana 14 bridge southward are closed.

Michigan

Same zones as for ducks, but in addition:

South Zone

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bayport Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in

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Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly 1/2 mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons:

Michigan

Upper Peninsula Zone—That portion of the Upper Peninsula outside the AuTrain Basin Waterfowl Project in Alger County (described below) and east of a line described as follows: Beginning at the point where the meridian line 87°30' intersects the United States-Canada border, then south along the 87°30' meridian line to the 47°00' parallel, west along the 47°00' parallel to a point directly north of County Road 550 in the village of Big Bay in Marquette County, southerly along this line and County 550 through Big Bay to County 510, southerly along County 510 to Michigan Highway 28/U.S. Highway 41, westerly along M-28/U.S. 41 to M-35, southerly along M-35 to the Delta County line, westerly and southerly along the Delta County line to the Lake Michigan shoreline, then southeasterly along the Central-Eastern time zone boundary to the Wisconsin border in Green Bay. The AuTrain Basin Waterfowl Project is bounded on the north by M-94, on the south by Trout Lake Road, on the east by County 509 (Rapid River Truck Trail), and on the west by M-67.

Northern Lower Peninsula Zone—Bay, Isabella, Mecosta, Midland, Newaygo, and Oceana Counties and all counties north thereof.

Southern Lower Peninsula Zone—The remainder of the Lower Peninsula, excluding Huron, Saginaw, and Tuscola Counties.

Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Interstate Highway 94 to I–69, westerly along I–69 to Michigan Highway 21, westerly along Michigan 21 to I–96, northerly along I–96 to I–196, westerly along I–196 to Lake Michigan Drive (M–45) in Grand Rapids, westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake Michigan Drive to the Wisconsin border.

Minnesota

West Zone: That portion of the state encompassed by a line beginning at the junction of U.S. Highway 71 and the Iowa border, then north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border.

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to County Road 70 in Lac qui Parle County, west along County 70 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Lac qui Parle Zone: That area encompassed by a line beginning at the intersection of U.S. Highway 212 and County State Aid Highway (CSAH) 27 in Lac qui Parle County and extending north along CSAH 27 to CSAH 20 in Lac qui Parle County, west along CSAH 20 to State Trunk Highway (STH) 40, north along STH 40 to STH 119, north along STH 119 to CSAH 34 in Lac qui Parle County, west along CSAH 34 to CSAH 19 in Lac qui Parle County, north and west along CSAH 19 to CSAH 38 in Lac qui Parle County, west along CSAH 38 to U.S. 75, north along U.S. 75 to STH 7, east along STH 7 to CSAH 6 in Swift County, east along CSAH 6 to County Road 65 in Swift County, south along County 65 to County 34 in Chippewa County, south along County 34 to CSAH 12 in Chippewa County, east along CSAH 12 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 7, southeast along STH 7 to Montevideo and along the municipal boundary of Montevideo to U.S. 212; then west along U.S. 212 to the point of beginning.

Northwest Zone: That portion of the state encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Southeast Zone: The Counties of Anoka, Carver, Chisago, Dakota, Dodge, Fillmore, Freeborn, Goodhue, Hennepin, Houston, Isanti, Mower, Olmsted, Ramsey, Rice, Scott, Steele, Wabasha, Washington, and Winona.

Special Canada Goose Seasons

Fergus Falls/Alexandria Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 55 and STH 28 and extending east along STH 28 to County State Aid Highway (CSAH) 33 in Pope County, north along CSAH 33 to CSAH 3 in Douglas County, north along CSAH 3 to CSAH 69 in Otter Tail County, north along CSAH 69 to CSAH 46 in Otter Tail County, east along CSAH 46 to the eastern boundary of Otter Tail County, north along the east boundary of Otter Tail County to CSAH 40 in Otter Tail County, west along CSAH 40 to CSAH 75 in Otter Tail County, north along CSAH 75 to STH 210, west along STH 210 to STH 108, north along STH 108 to CSAH 1 in Otter Tail County, west along CSAH 1 to CSAH 14 in Otter Tail County, north along CSAH 14 to CSAH 44 in Otter Tail County, west along CSAH 44 to CSAH 35 in Otter Tail County, north along CSAH 35 to STH 108, west along STH 108 to CSAH 19 in Wilkin County, south along CSAH 19 to STH 55, then southeast along STH 55 to the point of beginning.

Fergus Falls/Benson Zone: That area encompassed by a line beginning on State Trunk Highway (STH) 55 at the Minnesota border, then south along the Minnesota border to a point due south of the intersection of STH 7 and County State Aid Highway (CSAH) 7 in Big Stone County, north to the STH 7/CSAH 7 intersection and continuing north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21

in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. Highway 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to the Swift County border, east along the south border of Swift County and north along the east border of Swift County to the south border of Pope County, east along the south border of Pope County and north along the east border of Pope County to STH 28, west along STH 28 to CSAH 33 in Pope County, north along CSAH 33 to CSAH 3 in Douglas County, north along CSAH 3 to CSAH 69 in Otter Tail County, north along CSAH 69 to CSAH 46 in Otter Tail County, east along CSAH 46 to the east border of Otter Tail County, north along the east border of Otter Tail County to CSAH 40 in Otter Tail County, west along CSAH 40 to CSAH 75 in Otter Tail County, north along CSAH 75 to STH 210, west along STH 210 to STH 108, north along STH 108 to CSAH 1 in Otter Tail County, west along CSAH 1 to CSAH 14 in Otter Tail County, north along CSAH 14 to CSAH 44 in Otter Tail County, west along CSAH 44 to CSAH 35 in Otter Tail County, north along CSAH 35 to STH 108, west along STH 108 to CSAH 19 in Wilkin County, south along CSAH 19 to STH 55, then west along STH 55 to the point of beginning.

Southwest Canada Goose Zone - All of Blue Earth, Cottonwood, Faribault, Jackson, LeSueur, Lincoln, Lyon, Martin, McLeod, Murray, Nicollet, Nobles, Sibley, Waseca, and Watonwan Counties; that portion of Brown County lying south and west of the following described line: beginning at the junction of U.S. Highway 14, and the east of Brown County line; thence west on U.S. Highway 14 to Cobden; thence due west one mile on U.S. Highway 14 and the township road to the Brown County line; thence due west 12 miles along the county line to the west Brown County line; that portion of Renville County east of State Trunk Highway 4 (STH); that portion of Meeker County south of U.S. Highway 12; in Scott County, the Townships of Belle Plaine, Blakeley, and Helena, including the municipalities located therein; and that portion of Carver County lying west, of the following described line: beginning at the northeast corner of San Francisco Township, thence west along the San Francisco Township line to the east boundary of Dahlgren Township, thence north on the Dahlgren Township line to U.S. Highway 212, thence west on U.S. Highway 212 to STH 284, thence north on STH 284 to County State Aid Highway (CSAH) 10, thence north and west on CSAH 10 to CSAH 30, thence north and west on CSAH 30 the STH 25, thence east and north on STH 25 to CSAH 10, thence north on CSAH 10 to the Carver County line.

Twin Cities Metro Zone: All of Hennepin and Ramsey Counties.

In Anoka County; the municipalities of Andover, Anoka, Blaine, Centerville, Circle Pines, Columbia Heights, Coon Rapids, Fridley, Hilltop, Lexington, Lino Lakes, Ramsey, and Spring Lake Park; that portion of Columbus Township lying south of County State Aid Highway (CSAH) 18; and all of the municipality of Ham Lake except that portion described as follows:

Beginning at the intersection of CSAH 18 and U.S. Highway 65, then east along CSAH 18 to the eastern boundary of Ham Lake, north along the eastern boundary of Ham Lake to the north boundary of Ham Lake, west along the north boundary of Ham Lake to U.S. 65, and south along U.S. 65 to the point of beginning.

In Carver County; the municipalities of Carver, Chanhassen, Chaska, and Victoria; the Townships of Chaska and Laketown; and those portions of the municipalities of Cologne, Mayer, Waconia, and Watertown and the Townships of Benton, Dahlgren, Waconia, and Watertown lying north and east of the following described line:

Beginning on U.S. 212 at the southwest corner of the municipality of Chaska, then west along U.S. 212 to State Trunk Highway (STH) 284, north along STH 284 to CSAH 10, north and west along CSAH 10 to CSAH 30, north and west along CSAH 30 to STH 25, west and north along STH 25 to CSAH 10, north along CSAH 10 to the Carver County Line, and east along the Carver County Line to the Hennepin County Line.

In Dakota County; the municipalities of Apple Valley, Burnsville, Eagan, Farmington, Hastings, Inver Grove Heights, Lakeville, Lilydale, Mendota, Mendota Heights, Rosemont, South St. Paul, Sunfish Lake, and West St. Paul; and the Township of Nininger.

In Scott County; the municipalities of Jordan, Prior Lake, Savage and Shakopee; and the Townships of Credit River, Jackson, Louisville, St. Lawrence, Sand Creek, and Spring Lake.

In Washington County; the municipalities of Afton, Bayport, Birchwood, Cottage Grove, Dellwood, Forest Lake, Hastings, Hugo, Lake Elmo, Lakeland, Lakeland Shores, Landfall, Mahtomedi, Marine, Newport, Oakdale, Oak Park Heights, Pine Springs, St. Croix Beach, St. Mary's Point, St. Paul Park, Stillwater, White Bear Lake, Willernie, and Woodbury; the Townships of Baytown, Denmark, Grant, Gray Cloud Island, May, Stillwater, and West Lakeland; that portion of Forest Lake Township lying south of STH 97 and CSAH 2; and those portions of New Scandia Township lying south of STH 97 and a line due east from the intersection of STH 97 and STH 95 to the eastern border of the State.

Missouri

Same zones as for ducks but in addition:

North Zone

Swan Lake Zone: That area bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri 240 and U.S. 65 on the south, and U.S. 65 on the west.

Central Zone: Boone County and that portion of Callaway County west of U.S. Highway 54.

Middle Zone

Schell-Osage Zone: That portion of the State encompassed by a line extending east from the Kansas border along U.S. Highway 54 to Missouri Highway 13, north along Missouri 13 to Missouri 7, west along Missouri 7 to U.S. 71, north along U.S. 71 to Missouri 2, then west along Missouri 2 to the Kansas border.

Ohio

Same zones as for ducks but in addition:

North Zone

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Lake Erie SJBP Zone: That portion of the state encompassed by a line extending south from the Michigan border along Interstate Highway 75 to I–280, south along I–280 to I–80, and east along I–80 to the Pennsylvania border.

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama border to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky border.

East Tennessee Zone—Anderson, Blount, Campbell, Claiborne, Knox,

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Loudon, Monroe, Roane, and Union Counties and those portions of Meigs and Rhea Counties north of Highway 68.

Wisconsin

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to U.S. Highway 16, westerly along U.S. 16 to Weyh Road, southerly along Weyh Road to County Highway O, southerly along County O to the west boundary of Section 31, southerly along the west boundary of Section 31 to the Sauk/Columbia County boundary, southerly along the Sauk/Columbia County boundary to State 33, easterly along State 33 to Interstate Highway 90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly and southerly along Poplar Grove Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern Railway and the Illinois border in Grant County and extending northerly along the Burlington Northern Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota border.

Rock Prairie Subzone: That area encompassed by a line beginning at the intersection of the Illinois border and Interstate Highway 90 and extending north along I-90 to County Highway A, east along County A to U.S. Highway 12, southeast along U.S. 12 to State Highway 50, west along State 50 to State 120, then south along 120 to the Illinois border.

Early-Season Goose Subzone: That area encompassed by a line beginning at Lake Michigan in Port Washington and extending west along State Highway 33 to State 175, south along State 175 to State 83, south along State 83 to State 36, southwest along State 36 to State 120, south along State 120 to U.S. Highway 12, then southeast along U.S. 12 to the Illinois border.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All lands in Adams, Boulder, Clear Creek, Denver, Gilpin, Jefferson, Larimer, and Weld Counties west of I–25 from the Wyoming border south to I–70; west on I–70 to the Continental Divide; north along the Continental Divide to the Jackson-Larimer County Line to the Wyoming border.

South Park Area: Chaffee, Custer, Fremont, Lake, Park, and Teller Counties.

San Luis Valley Area: Alamosa, Conejos, Costilla, and Rio Grande Counties and the portion of Saguache County east of the Continental Divide.

North Park Area: Jackson County.

Arkansas Valley Area: Baca, Bent, Crowley, Kiowa, Otero, and Prowers Counties.

Remainder: Remainder of the Central-Flyway portion of Colorado.

Kansas

Light Geese

Unit 1: That portion of Kansas east of KS 99.

Unit 2: The remainder of Kansas.

Dark Geese

Marais des Cygne Valley Unit: The area is bounded by the Missouri border to KS 68, KS 68 to U.S–169, U.S. 169 to KS 7, KS 7 to KS 31, KS 31 to U.S. 69, U.S. 69 to KS 239, KS 239 to the Missouri border.

South Flint Hills Unit: The area is bounded by Highways U.S. 50 to KS 57, KS 57 to U.S. 75, U.S. 75 to KS 39, KS 39 to KS 96, KS 96 to U.S. 77, U.S. 77 to U.S. 50.

Central Flint Hills Unit: That area southwest of Topeka bounded by Highways U.S. 75 to I–35, I–35 to U.S. 50, U.S. 50 to U.S. 77, U.S. 77 to I–70, I–70 to U.S. 75.

Southeast Unit: That area of southeast Kansas bounded by the Missouri border to U.S. 160, U.S. 160 to U.S. 69, U.S. 69 to KS 39, KS 39 to U.S. 169, U.S. 169 to the Oklahoma border, and the Oklahoma border to the Missouri border.

Montana (Central Flyway Portion)

Sheridan County: Includes all of Sheridan County.

Remainder: Includes the remainder of the Central-Flyway portion of Montana.

Nebraska

North Unit: Keya Paha County east of U.S. 183 and all of Boyd County, including the boundary waters of the Niobrara River, all of Knox County and that portion of Cedar County west of U.S. 81.

East Unit: The area east of a line beginning at U.S. 183 at the northern State line; south to NE 2; east to U.S. 281; south to the southern State line, excluding the North Unit.

West Unit: All of Nebraska west of the East Unit.

New Mexico (Central Flyway Portion)

Light Geese

Middle Rio Grande Valley Unit: The Central-Flyway portions of Socorro and Valencia Counties.

Remainder: The remainder of the Central-Flyway portion of New Mexico.

North Dakota

Dark Geese

Missouri River Zone: That area encompassed by a line extending from the South Dakota border north on U.S. 83 and I–94 to ND 41, north to ND 53, west to U.S. 83, north to ND 23, west to ND 37, south to ND 1804, south approximately 9 miles to Elbowoods Bay on Lake Sakakawea, south and west across the lake to ND 8, south to ND 200, east to ND 31, south to ND 25, south to I–94, east to ND 6, south to the South Dakota border, and east to the point of origin.

Statewide: All of North Dakota.

South Dakota

Dark Geese

Missouri River Unit: The Counties of Bon Homme, Brule, Buffalo, Campbell, Charles Mix, Corson (east of SD 65), Dewey, Gregory, Haakon (north of Kirley Road and east of Plum Creek), Hughes, Hyde, Lyman (north and east of I–90 and U.S. 183), Potter, Stanley, Sully, Tripp (east of U.S. 183), Walworth, and Yankton (west of U.S. 81).

Remainder: The remainder of South Dakota.

Dark Geese

Texas

West Unit: That portion of the State lying west of a line from the international toll bridge at Laredo; north along I-35 and I-35W to Fort Worth; northwest along US 81 and US 287 to Bowie; and north along US 81 to the Oklahoma border.

East Unit: Remainder of State.

Wyoming (Central Flyway Portion)

Area 1: Albany, Campbell, Carbon, Crook, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties east of the Continental Divide.

Area 2: The Counties of Converse and Natrona.

Area 3: The Counties of Bighorn, Fremont, Hot Springs, Park, and Washakie.

Area 4: Goshen County.

Area 5: Platte County.

Pacific Flyway

Arizona

GMU 22 and 23: Game Management Units 22 and 23.

Remainder of State: The remainder of Arizona.

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I–5 at the town of Weed; south along I–5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Area: That area bounded by a line beginning at Willows in Glenn County proceeding south on I–5 to Hahn Road north of Arbuckle in Colusa County; easterly on Hahn Road and the Grimes Arbuckle Road to Grimes on the Sacramento River; southerly on the Sacramento River to the Tisdale Bypass to O'Banion Road; easterly on O'Banion Road to CA 99; northerly on CA 99 to the Gridley-Colusa Highway in Gridley in Butte County; westerly on the Gridley-Colusa Highway to the River Road; northerly on the River Road to the Princeton Ferry; westerly across the Sacramento River to CA 45; northerly on CA 45 to CA 162; northerly on CA 45–162 to Glenn; westerly on CA 162 to the point of beginning in Willows.

Western Canada Goose Hunt Area: That portion of the above described Sacramento Valley Area lying east of a line formed by Butte Creek from the Gridley-Colusa Highway south to the Cherokee Canal; easterly along the Cherokee Canal and North Butte Road to West Butte Road; southerly on West Butte Road to Pass Road; easterly on Pass Road to West Butte Road; southerly on West Butte Road to CA 20; and westerly along CA 20 to the Sacramento River.

San Joaquin Valley Area: That area bounded by a line beginning at Modesto in Stanislaus County proceeding west on CA 132 to I–5; southerly on I–5 to CA 152 in Merced County; easterly on CA 152 to CA 165; northerly on CA 165 to CA 99 at Merced; northerly and westerly on CA 99 to the point of beginning.

Colorado (Pacific Flyway Portion)

Browns Park Area: The Browns Park portion of Moffatt County.

Delta/Montrose Area: All of Delta and Montrose Counties.

Gunnison/Saguache Area: Gunnison County and that portion of Saguache County west of the Continental Divide.

Dolores/Montezuma Area: All of Dolores and Montezuma Counties.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho

Zone 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Zone 2: The Counties of Ada; Adams; Boise; Canyon; those portions of Elmore north and east of I–84, and south and west of I–84, west of ID 51, except the Camas Creek drainage; Gem; Owyhee west of ID 51; Payette; Valley; and Washington.

Zone 3: The Counties of Blaine; Camas; Cassia; those portions of Elmore south of I–84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51; Power within the Minidoka National Wildlife Refuge; and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Bonneville, Butte; Caribou except the Fort Hall Indian Reservation; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; Power west of ID 37 and ID 39 except the Minidoka National Wildlife Refuge; and Teton.

Zone 5: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

In addition, goose frameworks are set by the following geographical areas:

Northern Unit: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Southwestern Unit: That area west of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border (except the Northern Unit and except Custer and Lemhi Counties).

Southeastern Unit: That area east of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border, including all of Custer and Lemhi Counties.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific-Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific-Flyway portion of Montana.

Nevada

Clark County Zone: Clark County.

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion)

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North Zone: The Pacific-Flyway portion of New Mexico located north of I–40.

South Zone: The Pacific-Flyway portion of New Mexico located south of I–40.

Oregon

Western Zone: All counties west of the summit of the Cascades, excluding Klamath and Hood River Counties.

Special Canada Goose Management Area: Those portions of Coos, Curry, Douglas, and Lane Counties west of U.S. 101; and that portion of western Oregon west and north of a line starting at the Columbia River at Portland, south on I–5 to OR 22 at Salem, east on OR 22 to the Stayton Cutoff, south on the Stayton Cutoff to Stayton and straight south to the Santiam River, west (downstream) along the north shore of the Santiam River to I–5, south on I–5 to OR 126 at Eugene, west on OR 126 to OR 36, north on OR 36 to Forest Road 5070 at Brickerville, west and south on Forest Road 5070 to OR 126, west on OR 126 to the Pacific Coast.

Northwest Oregon Special Permit Goose Area: Includes Sauvie Island Wildlife Area, only in designated areas but excluding North Unit and Columbia River Beaches, private lands of Sauvie Island, and including Scappoose Flat and Deer Island, lower Columbia River Area, Ankeny National Wildlife Refuge, private lands adjacent to William L. Finley National Wildlife Refuge, and private lands adjacent to Baskett Slough National Wildlife Refuge.

Lower Columbia River Early-Season Canada Goose Zone: Those portions of Clatsop, Columbia, and Multnomah Counties within the following boundary: beginning at Portland, Oregon, at the south end of the Interstate 5 Bridge; south on I–5 to Highway 30; west on Highway 30 to the town of Svensen; south from Svensen to Youngs River Falls; due west from Youngs River Falls to the Pacific Ocean coastline; north along the coastline to a point where Clatsop Spit and the South Jetty meet; due north to the Oregon-Washington border; east and south along the Oregon-Washington border to the I–5 Bridge; south on the I–5 Bridge to the point of beginning.

Northwest Oregon Early-Season Canada Goose Zone: All of Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties; except for the Lower Columbia River Zone.

Eastern Zone: All counties east of the summit of the Cascades, including all of Klamath and Hood River Counties.

Columbia Basin Goose Area: Gilliam, Morrow, Sherman, Umatilla, Union, Wallowa, and Wasco Counties.

Harney, Klamath, Lake and Malheur Counties Zone: All of Harney, Klamath, Lake, and Malheur Counties.

Utah

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Early-Season Canada Goose Area: Cache County.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Goose Area: Adams, Benton, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Counties and east of Satus Pass (U.S. 97) in Klickitat County.

West Zone: All areas west of the East Zone.

Lower Columbia River Area: Clark, Cowlitz, Pacific and Wahkiakum Counties.

Skagit Area: Island, Skagit, Snohomish, and Whatcom Counties.

Lower Columbia River Early-Season Canada Goose Zone: Beginning at the Washington-Oregon border on the I–5 Bridge near Vancouver, Washington; north on I–5 to Kelso; west on Highway 4 from Kelso to Highway 401; south and west on Highway 401 to Highway 101 at the Astoria-Megler Bridge; west on Highway 101 to Gray Drive in the City of Ilwaco; west on Gray Drive to Canby Road; southwest on Canby Road to the North Jetty; southwest on the North Jetty to its end; southeast to the Washington-Oregon border; upstream along the Washington-Oregon border to the point of origin.

Wyoming (Pacific Flyway Portion): See State Regulations.

Bear River Area: That portion of Lincoln County described in State regulations.

Salt River Area: That portion of Lincoln County described in State regulations.

Eden-Farson Area: Those portions of Sweetwater and Sublette Counties described in State regulations.

Swans

Central Flyway

South Dakota: Brown, Campbell, Clark, Codington, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Marshall, McPherson, Potter, Roberts, Spink, and Walworth.

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Hill, Liberty, Pondera, Teton, and Toole Counties.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah:

Open Area: Statewide, except Cache, Daggett, Rich and Uintah Counties.

[FR Doc. 94–23945 Filed 9–26–94, 8:45 am]

BILLING CODE 4310–55–F

Tuesday
September 27, 1994

Part IV

The President

Proclamation 6724—Gold Star Mother's Day, 1994

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The President

Proclamation 6724 of September 23, 1994

Gold Star Mother's Day, 1994

By the President of the United States of America

A Proclamation

Americans owe a lasting debt of gratitude to those who pledged their lives to secure for us the blessings of liberty. We, therefore, set aside certain days during the year to honor their distinguished service—Veterans Day, for all who have served in our Armed Forces, and Memorial Day, for those who lost their lives in that service. But perhaps the greatest sacrifice of all in protecting our way of life was made by another group—women whose sons and daughters lost their lives in service to our country. These are the Gold Star Mothers of America, and they have earned a special place in our hearts.

These women once experienced the anxiety of watching their sons or daughters go off to war, not knowing whether they would return. These mothers felt the anguish of waiting for word of their loved ones. It is a drama that has been played out throughout our Nation's history. Sadly, in each generation, there are mothers who have been called on to accept the terrible truth that their son or daughter will not return. There can be no doubt that these brave women—our courageous Gold Star Mothers—are due our utmost respect.

This year, the 50th anniversary of the D-Day invasion at Normandy, we remember especially those whose sons and daughters served so valiantly during World War II. Half a century later, we recall the courage, spirit, and determination of those who went ashore to fight against tyranny. We celebrate D-Day because there, on the windswept beaches of Normandy, the first beach-head for freedom was won in the most epic of all American conflicts.

Inscribed in the chapel in the American cemetery in Normandy are the proud words:

> "These endured all and gave all that justice among nations might prevail, and that mankind might enjoy freedom and inherit peace."

At the same time, our Gold Star Mothers endured all—and their deeply felt personal loss did not end in one day. Today, as we enjoy the peace and security our Nation has achieved through the sacrifices of American citizens, Gold Star Mothers can take solace in knowing that their sons and daughters left all humanity a legacy of invaluable meaning.

In respect and recognition of the sacrifices our Gold Star Mothers have made, the Congress, by Senate Joint Resolution 115 on June 23, 1936 (49 Stat. 1895), has designated the last Sunday in September as "Gold Star Mother's Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 25, 1994, as Gold Star Mother's Day. I invite the American people to join with me in a fitting salute to our Gold Star Mothers. I also call upon all government officials to display the United States flag on government buildings on this solemn day. I additionally urge the American people to display the flag and to hold appropriate

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meetings in their homes, places of worship, or other suitable places, as public expression of the sympathy and the respect that our Nation holds for its Gold Star Mothers.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of September, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94-24093
Filed 9-26-94; 11:26 am]
Billing code 3195-01-P

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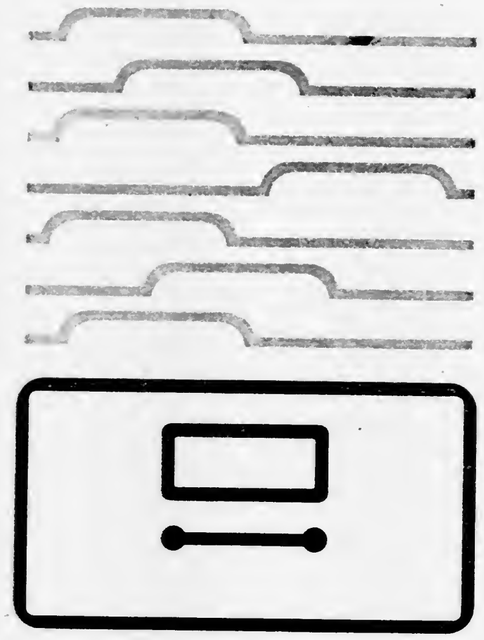
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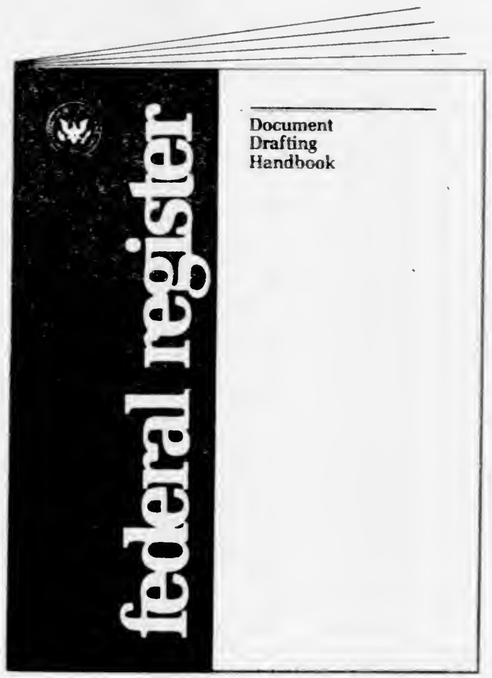
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9–28–94
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9-28-94
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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 59, No. 187
Wednesday, September 28, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

5 CFR Chapter LIX

14 CFR Part 1207

RINs 2700–AB44, 2700–AB48, and 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the National Aeronautics and Space Administration

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The National Aeronautics and Space Administration, with the concurrence of the Office of Government Ethics (OGE), is issuing a regulation for employees of NASA that supplements the executive branch-wide Standards of Ethical Conduct (Standards) issued by OGE and codified at 5 CFR part 2635. NASA is also repealing those sections of its existing standards of conduct regulations that are now superseded by the new Standards and by the executive branch financial disclosure regulations at 5 CFR part 2634, also issued by OGE, and is adding a cross-reference to the current provisions.

EFFECTIVE DATE: These regulations are effective September 28, 1994.

FOR FURTHER INFORMATION CONTACT: James L. Hoffman, NASA, (202) 358–2465.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch that are now codified at 5 CFR part 2635. See 57 FR 35006–35067, as corrected at 57 FR 48557 and 52583, with an additional grace period extension at 59 FR 4779–4780. The Standards became effective February 3, 1993, and established uniform ethical conduct standards applicable to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations that are necessary to properly implement their respective ethics programs. NASA, with OGE's concurrence, has determined that the following supplemental regulations, being codified in new chapter LIX of 5 CFR, are necessary for successful implementation of NASA's ethics program, in light of NASA's unique programs and operations.

II. Analysis of the Regulations

Section 6901.101 General

Section 6901.101 explains that the regulations apply to NASA employees and supplement the Standards at 5 CFR part 2635.

Section 6901.102 Designation of Responsible Officials

Although some sections of NASA's existing rules at 14 CFR part 1207 have been temporarily "grandfathered" by the new OGE Standards, and others were not affected, 14 CFR part 1207 will eventually be totally superseded by a combination of the new Standards, the new financial disclosure regulation, the NASA supplemental regulation, NASA internal directives, and a future OGE regulation on regulatory waivers issued under 18 U.S.C. 208(b)(2). Therefore, the designation of NASA Agency Ethics Officials currently at 14 CFR 1207.104 is being modified to include and identify "Agency designees" and is restated at section 6901.102 of the NASA supplemental regulation.

Section 6901.103 Outside Employment

5 CFR 2635.802 and 2635.803, respectively, authorize individual agencies, by supplemental regulation, to prohibit conflicting outside employment and to require employees to obtain approval before engaging in other outside employment or activities. The current NASA rules prohibiting outside employment with certain entities and requiring administrative approval for other particular employment activities have been in effect for many years and have served NASA well in avoiding violations of the standards of conduct and conflict of interest statutes and, thus, in ensuring public confidence in the integrity of NASA personnel and programs. Accordingly, the rules at 14 CFR 1207.300–1207.306 have been modified form as § 6901.103 of the NASA supplemental regulation.

As permitted by 5 CFR 2635.802, NASA is issuing § 6901.103(c) which sets forth prohibitions on non-Government employment that are substantially similar to those found in 14 CFR 1207.302(f). Prohibited employment listed in § 6901.103(c) includes employment with a NASA contractor, subcontractor, or grantee, in connection with work performed by that entity for NASA, and employment with parties to certain classes of agreements to which NASA is a party, if the employment would be in connection with work to be performed under such an agreement. NASA has determined, in accordance with the standard set forth in 5 CFR 2635.403(a), that such outside employment by employees, other than special Government employees, would cause reasonable persons to question the impartiality and objectivity with which NASA programs are administered.

As permitted by 5 CFR 2635.803, and based on its finding that the long-standing requirements for prior approval for certain categories of outside employment at 14 CFR 1207.306 has helped to ensure that employees' outside activities conform to applicable statutes and regulations, NASA has determined to continue to require prior approval for those outside employment activities that, by their nature, tend to raise questions under the Standards. Before engaging in specified categories of outside employment, with or without compensation, § 6901.103(d) requires a NASA employee, other than a special Government employee, to obtain written approval from an appropriate agency official.

"Outside Employment" is broadly defined at § 6901.103(b)(2) to cover any form of non-Federal employment or business relationship involving the provision of personal services, including writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of nonprofit charitable, religious, professional, social, fraternal, and similar organizations, unless the

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organization is a prohibited source as defined in 5 CFR 2635.203(d), or unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement for expenses. Sections 6901.103(f) and (g) set forth the requirements for submission and processing of a written request for approval.

To ensure that section 6901.103 is not itself construed as authority to deny permission to engage in any outside employment activity, § 6901.103(g)(3) states that approval will be granted unless it is determined that the prospective outside employment is expected to involve conduct prohibited by statute or Federal regulations, including 5 CFR part 2635 and this supplemental regulation.

III. Repeal of NASA Standards of Conduct

Most of NASA's standards of conduct at 14 CFR part 1207 were superseded by the executive branch-wide financial disclosure regulations at 5 CFR part 2634 and by the ethical conduct standards at 5 CFR part 2635. NASA is, therefore, repealing those portions of its existing standards of conduct regulation at 14 CFR part 1207 which were superseded by 5 CFR parts 2634 and 2635 or which will be superseded on the date of the current rulemaking by this NASA supplemental regulation. In the place of the superseded regulations, NASA is substituting cross-references to the new executive branch-wide regulations on ethical conduct and financial disclosure, the Office of Personnel Management provisions on employee responsibilities and conduct at 5 CFR part 735, and the NASA supplemental regulation. Consistent with 5 CFR 2635.402(d)(1), existing § 1207.403 of 14 CFR is being preserved and redesignated as § 1207.102, pending issuance by OGE of superseding regulatory waivers. Similarly, existing sections 1207.800 and 1207.801 of 14 CFR, which provide guidance to former NASA employees who desire to communicate with NASA to provide scientific or technical information in accordance with 18 U.S.C. 207(j)(5), have no counterpart in the new Standards and are being retained and redesignated, with a couple of modifications to reflect the current post-Government employment law, as §§ 1207.201 and 1207.202 of 14 CFR.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

As Administrator of NASA, I have found that good cause exists under 5 U.S.C. 553(b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these rules and repeals. The supplemental regulations are essentially similar to rules previously contained in NASA's standards of conduct, and I believe that it is important to a smooth transition from NASA's prior ethics rules to the new executive branch-wide Standards and financial disclosure regulations that these rulemaking actions take place as soon as possible. Furthermore, this rulemaking is related to NASA's organization, procedures, and practices.

Executive Order 12866

In promulgating this final rule, NASA has adhered to the regulatory philosophy and the applicable principles of regulation set forth in Executive Order 12866, Regulatory Planning and Review. This regulation has been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

As Administrator of NASA, I have determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant impact on small business entities because it affects only NASA employees.

Paperwork Reduction Act

As Administrator of NASA, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects

5 CFR Part 6901

Conflict of interests, Executive branch standards of conduct, Government employees.

14 CFR Part 1207

Conflict of interests, Executive branch standards of conduct, Government employees.

Dated: September 16, 1994.

Daniel S. Goldin,

Administrator, National Aeronautics and Space Administration.

Approved: September 20, 1994.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the National Aeronautics and Space Administration, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and title 14, chapter V, of the Code of Federal Regulations, as follows:

TITLE 5—[AMENDED]

1. A new chapter LIX, consisting of part 6901, is added to title 5 of the Code of Federal Regulations to read as follows:

5 CFR CHAPTER LIX—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

PART 6901—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Sec.

6901.101 General.
6901.102 Designation of responsible officials.
6901.103 Outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 42 U.S.C. 203(c)(1); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.802(a), 2635.803.

§ 6901.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the National Aeronautics and Space Administration (NASA) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the standards in 5 CFR part 2635 and this part, employees are subject to the executive branch financial disclosure regulations contained in 5 CFR part 2634, and to additional regulations regarding their conduct contained in 5 CFR part 735 and 14 CFR part 1207.

§ 6901.102 Designation of responsible officials.

(a) *Designated Agency Ethics Official.* The General Counsel of NASA is the Designated Agency Ethics Official (DAEO) and as such has the responsibilities, authorities, and duties set forth in 5 CFR 2638.203.

(b) *Alternate Designated Agency Ethics Official.* The Associate General Counsel (General) shall serve as the Alternate Designated Agency Ethics Official in accordance with 5 CFR 2638.202(b).

(c) *Deputy Ethics Officials.* (1) The following officials are designated as NASA Deputy Ethics Officials pursuant to 5 CFR 2638.202(b)(7):

(i) Deputy General Counsel;

(ii) Associate General Counsel (General);

(iii) Senior Ethics Attorney assigned to the Associate General Counsel (General); and

(iv) Chief Counsel at each NASA Field or Component Installation.

(2) Deputy Ethics Officials may carry out responsibilities delegated to them through designated subordinates, but shall retain ultimate responsibility for the ethics functions assigned to them.

(d) *Agency Designee.* As used in 5 CFR part 2635, the term "Agency Designee" at NASA refers to the following:

(1) For employees at NASA Headquarters, the DAEO, the Alternate DAEO, or the Associate Administrator for Human Resources and Education; and

(2) For employees at Field or Component Installations, the Director of the Installation, who may delegate specific responsibilities of the Agency Designee to the Installation's Chief Counsel or to another official who reports directly to the Director.

§ 6901.103 Outside employment.

(a) *General.* A NASA employee shall not engage in outside employment prohibited by paragraph (c) of this section and shall obtain approval before engaging in the outside employment activities specified in paragraph (d) of this section.

(b) *Definitions.* For purposes of this section:

(1) *Key official* means an officer or employee, other than a special Government employee, who is required, in accordance with 5 CFR part 2634, to file a public financial disclosure report or who holds a position as astronaut, astronaut candidate, procurement officer, or chief counsel.

(2) *Outside employment* means any form of compensated or uncompensated non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless the organization is a prohibited source or unless such activities involve the provision of professional services or advice, or are for compensation other than reimbursement of expenses.

(3) *Profession* has the meaning set forth in 5 CFR 2636.305(b)(1).

(4) *Prohibited source* has the meaning set forth in 5 CFR 2635.203(d).

(c) *Prohibited outside employment.* A NASA employee, other than a special Government employee, shall not engage in outside employment with the following:

(1) A NASA contractor, subcontractor, or grantee in connection with work performed by that entity for NASA; or

(2) A party to a Space Act agreement, Commercial Launch Act agreement, or other agreement to which NASA is a party pursuant to specific statutory authority, if the employment is in connection with work performed under that agreement.

(d) *Prior approval for outside employment.* A NASA employee, other than a special Government employee, shall request and obtain administrative approval before engaging in the following outside employment activities:

(1) Teaching, speaking, writing, or editing, unless the subject matter pertains to the private interests of the employee, such as a hobby, cultural activity, or nonwork related professional pursuit;

(2) The practice of a profession or the rendering of professional consulting services;

(3) The management or conduct of a business in which the employee or the employee's spouse has an ownership interest;

(4) Holding a State or local public office, whether by election or appointment;

(5) Employment with a NASA contractor, subcontractor, or grantee;

(6) Employment with a party to a Space Act agreement, Commercial Launch Act agreement, or other agreement to which NASA is a party pursuant to specific statutory authority;

(7) Serving as an officer, trustee, or member of a board, directorate, or other such body of a for profit organization or of a nonprofit organization that is a prohibited source; or

(8) Employment which involves the practice of a NASA-owned invention.

(e) *Prior approval requested by employee.* Even when not required by paragraph (d) of this section, a NASA employee who is in doubt as to the propriety of outside employment or another outside activity may request prior approval using the procedures set forth in this section.

(f) *Form of request for approval.* (1) A request for administrative approval of outside employment shall be in writing and shall include the following:

(i) The employee's name and occupational title;

(ii) The nature of the employment, including a full description of the specific duties or services to be performed;

(iii) The name and address of the person or organization for which work will be done;

(iv) The estimated total time that will be devoted to the activity. If the employment is on a continuing basis, indicate the estimated number of hours per year; for other employment, indicate the anticipated beginning and ending date;

(v) A statement as to whether the work can be performed entirely outside of the employee's regular duty hours and, if not, the estimated number of hours of absence from work that will be required;

(vi) The amount of compensation, if any, to be received; and

(vii) A statement that the employee currently has no official duties involving a matter that affects the outside employer and will disqualify from future participation in matters that could directly affect the outside employer.

(2) Locally prepared forms providing for collection of the information required by paragraph (f)(1) of this section may be used for submission of the request and subsequent approval or disapproval.

(g) *Approval of requests*—(1) *Key Officials.* The Headquarters Associate Administrator for Human Resources and Education has authority to approve requests for approval of outside employment submitted by NASA Key Officials. Prior to approval or disapproval, Key Official requests shall be submitted to the appropriate Official-in-charge of the Headquarters Office or to the Director of the appropriate Field or Component Installation, who shall add a recommendation and forward the request through the General Counsel to the Associate Administrator.

(2) *Employees other than Key Officials.* The appropriate Official-in-Charge of a Headquarters Office, or the Director of a Field or Component Installation, or a person designated to act for the Director, has authority to approve requests for approval of outside employment submitted by employees other than NASA Key Officials. Prior to approval or disapproval:

(i) Requests by NASA Headquarters personnel shall be submitted to and reviewed by the employee's supervisor and by the Office of the Associate General Counsel (General); and

(ii) Requests by Field or Component Installation personnel shall be

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submitted to and reviewed by the employee's supervisor and by a Deputy Ethics Official or designee.

(3) *Standard for approval.* Approval will be granted unless a determination is made that the prospective outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

(4) *Scope of approval.* Approval will be for a period not to exceed 3 years. Upon a significant change in the nature or scope of the outside employment or in the employee's NASA position, the employee shall submit a revised request for approval.

(5) *Notification of approval or disapproval.* Employees will be notified in writing of the action taken on their requests.

(6) *Records of requests.* All requests for approval will be maintained in the local Human Resources/Personnel Office for the duration of the requester's NASA employment.

14 CFR CHAPTER V—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

PART 1207—STANDARDS OF CONDUCT

2. The authority citation for part 1207 is revised to read as follows:

Authority: 5 U.S.C. 7301; 42 U.S.C. 203(c)(1).

3. Subpart A of part 1207 is amended by removing §§ 1207.100 and 1207.102 through 1207.104, redesignating § 1207.403 as § 1207.102 and revising § 1207.101 to read as follows:

§ 1207.101 Cross-references to ethical conduct, financial disclosure, and other applicable regulations.

Employees of the National Aeronautics and Space Administration (NASA) should refer to the executive branch-wide Standards of Ethnical Conduct at 5 CFR part 2635, the NASA regulation at 5 CFR part 6901 which supplements the executive branch-wide standards with respect to prohibitions and prior approval requirements applicable to certain outside employment activities, the Office of Personnel Management provisions on employee responsibilities and conduct at 5 CFR part 735, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

4. In part 1207, subpart B, consisting of §§ 1207.200 through 1207.203; subpart C, consisting of §§ 1207.300 through 1207.306; subparts E and F; and subpart G, consisting of §§ 1207.700 through 1207.704, are removed.

5. In part 1207, subpart D, consisting of §§ 1207.400 through 1207.402, 1207.404, and 1207.405, is removed.

6. In part 1207, subpart H, consisting of §§ 1207.800 and 1207.801 is redesignated as subpart B, consisting of §§ 1207.201 and 1207.202 respectively, and paragraph (a) of newly designated § 1207.202 is amended by revising the reference in the introductory text to "section 207(f)" to read "section 207(j)(5)", and by revising the citation in paragraph (a)(1) to "18 U.S.C. 207(a), (b), or (c)" to read "18 U.S.C. 207(a), (c), or (d)".

[FR Doc. 94-23735 Filed 9-27-94; 8:45 am]
BILLING CODE 7510-01-P-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV-92-303]

Apricots: Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the United States Standards for Grades of Apricots. The revision specifies definitions that do not appear in the standard but are described in the inspection instructions and brings up to date any obsolete terms and definitions. In addition, the revision will provide metric equivalents for dimensions given in terms of U.S. Customary units and contains conforming and editorial changes.

EFFECTIVE DATE: October 28, 1994.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington D.C. 20090-6456, (202) 720-2185.

SUPPLEMENTARY INFORMATION: This rule is exempt from Executive Order 12866 review.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities. This final rule for the revision of U.S. Standards for Grades of Apricots will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the use of these standards is voluntary.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Agencies periodically review existing regulations. An objective of the review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The United States Standards for Grades of Apricots became effective on May 25, 1928, and has not been revised since then. In June 1992, the Washington Apricot Marketing Committee (WAMC) requested the USDA to revise the standard. Consisting of producers from various districts throughout the State, the WAMC recommends minimum size, pack, and grade requirements each year for the Federal Marketing Order on Washington State grown apricots. Specifically, the WAMC requested that skin breaks (cuts and stem punctures), and stem pulls be changed from "free from" defects to "free from damage" or "serious damage" defects in the U.S. No. 1 and U.S. No. 2 grades, respectively. Such changes would have the effect of allowing these defects on fruit in various degrees without being scored against the grade (versus "free from" which means they are scored on sight). According to the WAMC, "This will provide the industry with the opportunity to expand markets into Canada." WAMC also suggested that the Department should make any other revisions deemed necessary.

AMS reviewed these issues to ascertain the need for the change proposed by WAMC as well as other technical changes or updates that the Agency believed may be helpful. Many suggestions and comments were received pertaining to an informal market survey by AMS. These comments reinforced that updating changes were necessary to bring the standard in line with today's marketing practices.

These changes as well as the request by the WAMC pertaining to skin breaks were incorporated in the proposed rule. United States Standards for Grades of

Apricots [7 CFR 51.2925-51.2934], which was published in the **Federal Register** on January 11, 1994 [59 FR 1490]. The 60-day comment period ended March 14, 1994, and a total of fourteen comments were received concerning the proposal.

Six of these comments were in favor of the proposal. Four of these commentors were shippers/packers/growers from Washington State, one from Idaho, and one from California. One commentor who felt that the standard should allow some skin breaks asserted that, "We felt that these were very good quality apricots and would have been received by our Canadian customers and they would have been very well satisfied with our quality just like our customers in the United States." Another commentor stated that "This injury is slight, and does not detract from the quality or appearance of the fruit, but under present U.S. grade standards it can not be marketed."

A comment from a grower in Idaho suggested extending the definition to hail damage. The proposal considers a broken skin due to hail to be considered as serious damage. However, the grower suggested providing a 3/16 inch aggregate surface area and 1/16 inch depth maximum allowance to broken skins due to hail injury.

Also, a grower/packer/shipper from California commented that although they intended to maintain their current level of quality, they did not object to the proposal to lower the grade standards. "If Washington state apricot shippers perceive a market for their apricots with reduced grade standards, then they must be allowed to access that market. Lowering the export grade standard does not require export buyers to purchase product with more defects. It does, however, provide them with an option for access to possibly more product at a potentially more attractive price to consumers. Although this may result in reduced market share for California apricot shippers, it must not be the intent of grade standards to grant favor to one shipping region over another. The dynamics of the marketplace must prevail without the intervention of excessive grade standards that prohibit a mutually beneficial transaction between a buyer and seller."

Eight comments were received which were against the proposed changes regarding skin breaks. Six of these comments were from grower/packer/shippers in the State of California, one comment from the California Apricot Advisory Board (CAAB), and one comment from the National Association of Perishable Agricultural Receivers (NAPAR).

One grower from California commented, "My experience with skin breaks (cuts and stem punctures) on mature apricots is not good. Discoloration and rot begin to form almost immediately after a skin break occurs at harvest time. This severely shortens the already short shelf life of the damaged apricot. Neither the retailer nor the consumer benefit in such a situation."

Another grower commented, "We feel that if growers and shippers such as those in Washington are allowed to ship lower quality and potentially disease-vulnerable fruit the opportunity to build a growing and reliable export market will be severely retarded."

The CAAB noted in its comment three reasons for objecting to the skin break changes: (1) "Increasing the size and depth of skin breaks, stem pulls and bruises will further reduce the grocery trade's confidence in U.S. Apricots * * * Questionable and erratic quality of apricots is still one of this industry's serious problems." (2) "The next several years will see a substantial increase in the production of apricots both in California and Washington. This means that export potential will be needed to absorb this volume growth. Fruit that has greater damage tolerances at present will severely threaten our ability to utilize this vitally needed outlet. Export markets take longer to reach increasing the danger of fruit spoilage from wounds." (3) "It can't be stressed enough that the risk of infected fruit spreading to entire containers and even loads by the time they reach their destination is a potential problem far beyond that of approving just a few damaged apricots at point of inspection."

NAPAR's comment summarized its viewpoint with the following statement, "We oppose the removal of fresh cuts, stem puncture and stem pulls from the FREE FROM defects clause in both grades, U.S. No. 1 and U.S. No. 2. These defects will permit pathogenic microorganisms to enter the product at shipping point, developing during transit, distant terminal markets, storage and or at retail outlets and develop into decay or serious discolorations resulting in great losses to the receivers and retailers. Additionally and not of lesser importance, if we allow the marketing of apricots in a world wide produce marketing system, we can expect other countries to request to import into the United States fruits of the same poor quality or otherwise unsalable product. To prevent foreign countries from requesting to import to the United States product of this quality and condition, we should maintain a strict U.S. Standards for Grades of all commodities grown in the United States of America."

AMS has considered these comments and agrees that skin breaks should remain as a "free from" defect for both grades. The agency also believes that the other changes proposed to update and modernize the standard are important and will be incorporated as a result of this final rule.

The rationale for this decision is two-fold: First, the record supports maintaining the definition of skin breaks as it now exists in the standard. As indicated above, the stronger case is made for not allowing greater damage tolerances. Second, most comments in favor of the proposed change were based on the belief that this would allow shipment of more apricots into Canada.

Canadian Import Requirements state that apricots must meet a U.S. grade to be shipped to Canada. If apricots fail to grade based on skin breaks, then the lot cannot be shipped to Canada. The Canadian government generally defines its import requirements in terms of U.S. standards for the convenience of U.S. shippers, but that does not mean the U.S. standards have to be the terms of regulation for the Canadian government's import requirements. Ultimately, inclusion of skin breaks in the U.S. standard may only prompt the Canadian government to specify their requirements for no skin breaks outside the standard.

The Agricultural Marketing Service (AMS) develops and improves standards of quality, condition, grade, and packaging to enhance the marketing of agricultural commodities by fostering consistency in commercial practices. The Agency has determined this final rule will enhance the marketing of apricots. The provisions of this final rule are the same as those in the proposed rule except for skin breaks as previously mentioned and for the editorial changes made for clarity.

Accordingly, this revision shall become effective 30 days after publication in the **Federal Register**.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

PART 51—[AMENDED]

For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

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PART 51—[AMENDED]

1. The authority citation for 7 CFR Part 51 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. In Part 51, Subpart—United States Standards for Apricots is revised to read as follows:

Subpart—United States Standards for Grades of Apricots

Grades

Sec.
51.2925 U.S. No. 1.
51.2926 U.S. No. 2.

Marking and Packing Requirements

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Subpart—United States Standards for Grades of Apricots

Grades

§ 51.2925 U.S. No. 1.

"U.S. No. 1" shall consist of apricots of one variety which are mature but not soft, overripe, or shriveled and which are well formed, free from decay, cuts, skin breaks, and worm holes and free from damage caused by limbrubs, russeting, growth cracks, dirt, scab, scale, hail, bruises, disease, insects, or mechanical or other means. For tolerances see § 51.2928.

§ 51.2926 U.S. No. 2.

"U.S. No. 2" shall consist of apricots of one variety which are mature but not soft, overripe or shriveled and which are free from decay, cuts, skin breaks, and worm holes and free from serious damage caused by limbrubs, growth cracks, dirt, scale, hail, bruises, disease, insects, or mechanical or other means. For tolerances see § 51.2928.

Marking and Packing Requirements

§ 51.2927 Marking and packing requirements.

The minimum size or numerical count of the apricots in any package shall be plainly labeled, stenciled, or otherwise marked on the package.

(a) *Numerical count.* When the numerical count is used the fruit in any sample shall not vary more than one-fourth inch in diameter. See § 51.2928(b) Size for tolerances.

(b) *Minimum size.* "Minimum size" refers to the diameter of the smallest apricot in the package. It shall be stated in terms of whole and eighth inches, as 1½ inches min., 1⅜ inches min., etc., in accordance with the facts.

Tolerances

§ 51.2928 Tolerances.

In order to allow for variations incident to proper grading and handling the following tolerances are provided as specified:

(a) *Defects*—(1) *U.S. No. 1 grade.* Not more than 10 percent, by count, of any lot may be below the requirements of this grade and provided that not more than 5 percent, shall be allowed for defects causing serious damage and further provided that not more than 1 percent, shall be allowed for decay.

(2) *U.S. No. 2 grade.* Not more than 10 percent, by count, of any lot may be below the requirements of this grade, and not more than 1 percent shall be allowed for decay.

(b) *Size.* (1) If packages are marked with numerical count: Not more than 10 percent of the samples in a lot may fail the one-quarter inch variation requirement designated in § 51.2927 paragraph (a).

(2) If packages are marked with minimum size: Not more than 10 percent, by count, of the apricots in any sample may be below the minimum size specified.

Application of Tolerances

§ 51.2929 Application of tolerances.

Individual samples are subject to the following limitations: Provided, that the averages for the entire lot are within the tolerances specified for the grade.

(a) For a tolerance of 10 percent or more; individual samples in any lot may contain not more than one and one-half times the tolerance specified, except that 1 decayed or 1 seriously damaged specimen may be permitted in any sample.

(b) For a tolerance of less than 10 percent, individual samples in any lot may contain not more than double the tolerance specified, except that 1 decayed specimen may be permitted in any sample.

Definitions

§ 51.2930 Mature.

Mature means having reached the stage of development which will insure a proper completion of the ripening process.

§ 51.2931 Well formed.

Well-formed means having the shape characteristic of the variety.

§ 51.2932 Damage.

Damage means any specific defect defined in this section; or an equally objectionable variation of any one of these defects, any other defect, or a combination of defects, which materially detracts from the appearance, or the edible or shipping quality of the apricot. The dimensions given for these defects are based on an apricot with a diameter of 1⅞ inches (4.8 cm). Correspondingly larger or smaller dimensions are allowed on larger or smaller apricots. The following specific defects shall be considered as damage:

(a) *Growth Cracks* which are unhealed or when well healed and over three-eighths of an inch (9.5 mm) in length.

(b) *Limbrubs* which are smooth and shallow and are more than one-fourth inch (6.4 mm) in diameter.

(c) *Russeting* which is reddish to brown in color and exceeds 10 percent of the surface or thick, rough, and very dark and exceeds 5 percent of the surface.

(d) *Dirt* including spray residue appearing to the extent that it is readily apparent.

(e) *Scab* spots when cracked or aggregating more than three-eighths inch (9.5 mm) in diameter.

(f) *Scale* occurring as scale insects, scale marks, or similar marks which are heavily concentrated or are scattered and aggregating more than one-fourth inch (6.3 mm) in diameter.

(g) *Hail* when the skin has been broken or when not shallow and superficial or more than three-eighths inch (9.5 mm) in diameter in the aggregate.

(h) *Bruises* when: (1) The flesh is discolored deeper than one-eighth of an inch (3.1 mm); or

(2) Any bruise causing discoloration exceeding the area of a circle three-eighths inch (9.5 mm) in diameter; or

(3) An aggregate of lesser bruises detracting from the appearance, edible or shipping quality of the apricot as much as paragraph (h) (1) or (2) of this section.

§ 51.2933 Serious damage.

Serious Damage means any specific defect defined in this section; or an equally objectionable variation of any one of these defects, any other defect, or a combination of defects, which seriously detracts from the appearance, or the edible or shipping quality of the apricot. The dimensions given for these defects are based on an apricot with a diameter of 1⅞ inches (4.8 cm). Correspondingly larger or smaller dimensions are allowed on larger or smaller apricots. The following specific defects shall be considered as serious damage:

(a) *Growth Cracks* which are unhealed or when well healed and over one-half inch (12.7 mm) in length.

(b) *Limbrubs* which are smooth and shallow and are more than one-half inch (12.7 mm) in diameter.

(c) *Russeting* which is reddish to brown in color and exceeds one-third of the surface or thick, rough, and very dark and exceeds 15 percent of the surface.

(d) *Dirt* including spray residue which is readily apparent and seriously affects the appearance.

(e) *Scab* spots when cracked or when well healed and aggregating more than one inch (2.5 cm) in diameter.

(f) *Scale* occurring as scale insects, scale marks, or similar marks aggregating more than one-half inch (12.7 mm) in diameter.

(g) *Hail* when the skin has been broken or when more than three sixteenths (4.8 mm) of an inch deep or more than one-half inch (12.7 mm) in diameter in the aggregate.

(h) *Bruises* when: (1) The flesh is discolored deeper than three-sixteenths of an inch (4.8 mm); or

(2) Any bruise causing discoloration exceeding the area of a circle five-eighths inch (15.9 mm) in diameter; or

(3) An aggregate of lesser bruises detracting from the appearance, edible or shipping quality of the apricot as much as paragraph (h)(1) or (2) of this section.

§ 51.2934 Diameter.

Diameter means the greatest diameter, measured through the center of the apricot, at right angles to a line running from the stem to the blossom end.

Dated: September 22, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94-23920 Filed 9-27-94; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Parts 922, 923, and 924

[Docket No. FV94-922-2IFR]

Expenses and Assessment Rates for the 1994-95 Fiscal Year for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of the interim final rule which authorized expenses and established assessment rates for the 1994-95 fiscal year for Marketing Orders (M.O.) No.'s 922 and 923, covering apricots and sweet cherries grown in designated counties in Washington, and M.O. No. 924 covering fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. Authorization of these budgets enables the Washington Apricot Marketing Committee, the Washington Cherry Marketing Committee, and the Washington-Oregon Fresh Prune Marketing Committee (Committees) established under these marketing orders to incur expenses that are reasonable and necessary to administer the programs. Funds to administer the programs are derived from assessments on handlers.

EFFECTIVE DATE: April 1, 1994, through March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456; telephone: (202) 720-5127; or Teresa Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326-2724.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreements and Marketing Order No. 922 [7 CFR part 922] regulating the handling of apricots grown in designated counties in Washington; Marketing Order No. 923 [7 CFR part 923] regulating the handling of sweet cherries grown in designated counties in Washington; and Marketing Order No. 924 [7 CFR part 924] regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, apricots and sweet cherries grown in designated counties in Washington, and fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon are subject to assessments. It is intended that the assessment rates specified herein will be applicable to all assessable apricots, sweet cherries, and fresh prunes handled during the 1994-95 fiscal year, which began April 1, 1994, through March 31, 1995. This final rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 55 handlers of Washington apricots, 55 handlers of Washington sweet cherries, and 30 handlers of Washington-Oregon fresh prunes subject to regulation under their respective marketing orders. In addition, there are about 190 Washington apricot producers, 1,100 Washington sweet cherry producers, and 350 Washington-Oregon fresh prune producers in the respective production areas. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these handlers and producers may be classified as small entities.

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An annual budget of expenses is prepared by each marketing order committee and submitted to the Department for approval. The members of the Committees are handlers and producers of the regulated commodities. They are familiar with the Committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each Committee is derived by dividing anticipated expenses by the tons of fresh fruit expected to be shipped under the order. Because the rates are applied to actual shipments, they must be established at rates which will produce sufficient income to pay the Committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the Committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Committees will have funds to pay their expenses.

The Washington Apricot Marketing Committee met on May 16, 1994, and unanimously recommended 1994–95 expenses of $13,602, which is $1,216 more in expenses than the $12,386 amount that was recommended for the 1993–94 fiscal year.

The Committee also unanimously recommended an assessment rate of $0.00 per ton of fresh apricots, which is a decrease of $2.50 in the assessment rate. In comparison, the 1993–94 assessment rate was $2.50 per ton. The Committee unanimously recommended bringing forward its reserve fund of $22,170 to pay budgeted expenses for the 1994–95 fiscal year as an alternative to charging handlers an assessment rate. Shipments of fresh apricots are estimated at 5,200 tons.

Funds in the reserve at the end of the 1994–95 fiscal year, estimated at $8,568, will be within the maximum permitted by the order of one fiscal year's expenses.

The Washington Cherry Marketing Committee met on May 17, 1994, and unanimously recommended 1994–95 expenses of $100,213 and an assessment rate of $1.00 per ton of sweet cherries. In comparison, 1993–94 budgeted expenses were $139,313, with an approved assessment rate of $3.00 per ton. This represents a $39,100 decrease in expenses and a $2.00 decrease in the assessment rate from the amounts recommended for the current fiscal year.

The assessment rate, when applied to anticipated shipments of 40,000 tons of cherries, would yield $40,000 in assessment income. Adequate funds exists in the Committee's reserve to cover additional expenses.

Funds in the reserve at the end of the 1994–95 fiscal year, estimated at $74,695, will be within the maximum permitted by the order of one fiscal year's expenses.

The Washington-Oregon Fresh Prune Marketing Committee met on June 1, 1994, and recommended 1994–95 expenses of $18,760, which represents a $8,042 decrease in expenses from the $26,802 that was recommended for 1993–94 fiscal year.

The Committee also unanimously recommended an assessment rate of $1.00 per ton of fresh prunes. In comparison, this is $2.00 less than the $3.00 per ton assessment rate that was approved for the previous fiscal year. Shipments of fresh prunes for 1994 are estimated at 6,500 tons, which would yield $6,500 in assessment income. Adequate funds exists in the Committee's reserve to cover additional expenses.

Funds in the reserve at the end of the 1994–95 fiscal year, estimated at $22,800, will be within the maximum permitted by the order of one fiscal year's expenses.

Major expense categories for the Committees are for the administration of these marketing orders and for fresh prune research and sweet cherry market development activities. Administrative expenses include those for salaries, travel, and office operations. The stone fruit marketing Committees share office expenses, based on an agreement among the Committees.

An interim final rule was published in the **Federal Register** [59 FR 39415, August 3, 1994] and provided a 30-day comment period for interested persons. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the Committees need to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994–95 fiscal year for the program began April 1, 1994. The marketing orders require that the rates of assessment apply to all assessable apricots, sweet cherries, and prunes handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committees at a public meeting and published in the **Federal Register** as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change.

List of Subjects

7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 924

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Parts 922, 923, and 924 are amended as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

The interim final rule amending 7 CFR Part 922 which was published at 59 FR 39415 on August 3, 1994, is adopted as a final rule without change.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

The interim final rule amending 7 CFR Part 923 which was published at 59 FR 39415 on August 3, 1994, is adopted as a final rule without change.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

The interim final rule amending 7 CFR Part 924 which was published at 59 FR 39415 on August 3, 1994, is adopted as a final rule without change.

Dated: September 22, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–23922 Filed 9–27–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1004

[DA–94–19]

Milk in the Middle Atlantic Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends certain provisions of the Middle Atlantic Federal milk marketing order for the months of September 1994 through February 1995. The suspension reduces the percent of receipts that must be disposed of as Class I disposition by pool distributing plants, provides automatic pool plant status for supply plants and reserve processing plants that were pool plants during the preceding months of September through February, and suspends the limit on the amount of milk that may be diverted to nonpool plants by cooperative associations and by pool plant operators. The suspension was requested by several Middle Atlantic cooperatives and handlers. The suspension is necessary to assure that producer milk historically associated with the market will continue to be pooled and priced under the order without incurring unnecessary and uneconomic movements solely for the purpose of maintaining pool status.

EFFECTIVE DATE: September 1, 1994, through February 28, 1995.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1366.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 8, 1994; published August 12, 1994 (59 FR 41413).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Middle Atlantic marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 12, 1994 (59 FR 41413) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. No opposing comments were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of September 1, 1994, through February 28, 1995, the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1004.7(a), the words "40 percent in the months of September through February, and" and "in the months of March through August".

2. In § 1004.7(e), the word "immediately" and the words "for each of the following months of March through August,".

3. In the introductory text of § 1004.12(d), the words "in accordance with the conditions of paragraphs (d)(1) and (d)(2) of this section."

4. In § 1004.12, paragraphs (d)(1) and (d)(2).

Statement of Consideration

This suspension reduces the total Class I disposition standard for pool distributing plants, provides automatic pool plant status for supply plants and reserve processing plants that were pool plants during each of the preceding months of September through February, and suspends the limit on the amount of milk that may be diverted to nonpool plants by cooperative associations and pool plant operators.

The first provision suspended reduces the percentage of a distributing plant's receipts that have to be disposed of as Class I milk to meet the order's pooling standards. With the suspension, a pool distributing plant will have to use at least 30 percent, rather than 40 percent, of its monthly milk receipts as Class I milk during September 1994 through February 1995.

The second provision suspended permits supply plants and reserve processing plants that have met the order's pooling standards during the months of September 1993 through February 1994 to retain pool status for the months of September 1994 through August 1995. The shipping requirements that normally would have applied to such plants during the months of September 1994 through February 1995 are eliminated under the suspension.

The third provision included in the suspension removes the limit on the percentage of milk that may be diverted to nonpool plants by a cooperative association or a pool plant operator for the period of September 1994 through February 1995.

The suspension was requested by Pennmarva Dairymen's Federation, Inc., Atlantic Processing, Inc., Dairylea, Eastern Milk Producers Cooperative, and Lehigh Valley Dairies. Together these organizations market over 90 percent of the market's producer milk.

As the proponents contended, producer receipts between 1991 and 1993 on Order 4 increased while the percentage of the market's producer milk used for Class I purposes consistently decreased. A comparison of monthly Class I percentages for the months of September through February of 1991, 1992, and 1993 show the

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continuing decline. For example, the Class I use percentage for September 1991 was 56.2, while in September 1993 it was 51.4 percent. The reduction in Class I use results in an increase in diversions to nonpool plants, making it increasingly difficult for cooperatives and pool plant operators to maintain the pool status of the milk of producers who have historically been associated with the market.

In addition to the decline in Class I use, two large Order 4 distributing plants with which large volumes of Order 4 diverted milk had been associated became regulated under the New York-New Jersey order, another Order 4 distributing plant closed, and two additional Order 4 distributing plants have changed their product mix, causing a reduction of pool plant deliveries for the cooperatives supplying milk to these plants. These changes have caused cooperatives and pool plants under the order to experience difficulty in associating all of their diverted producer milk with the remaining distributing plants now regulated under the Middle Atlantic order because the additional diverted milk is reducing the Class I use percentage of the plants from which it is diverted, thereby jeopardizing their status as pool plants.

The suspension is found to be necessary to reduce uneconomic movements of milk solely for the purpose of meeting pool qualifications, and will reflect current marketing conditions without causing the milk of producers long associated with the Middle Atlantic marketing area to become depooled.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No opposing comments were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1004

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in Title 7, Part 1004 are amended as follows effective September 1, 1994 through February 28, 1995:

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. The authority citation for 7 CFR Part 1004 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1004.7 [Suspended in part]

2. In § 1004.7(a), the words "40 percent in the months of September through February, and" and "in the months of March through August," are suspended.

3. In § 1004.7(e), the word "immediately" and the words "for each of the following months of March through August," are suspended.

§ 1004.12 [Suspended in part]

4. In the introductory text of § 1004.12(d), the words "in accordance with the conditions of paragraphs (d)(1) and (d)(2) of this section." are suspended.

5. In § 1004.12, paragraphs (d)(1) and (d)(2) are suspended.

Dated: September 22, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–23919 Filed 9–27–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1036

[DA–94–20]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Temporary Revision of Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rule.

SUMMARY: This document temporarily revises the supply plant shipping standards under the Eastern Ohio-Western Pennsylvania Federal milk order (Order 36) for the months of September 1994 through February 1995. Required shipping percentages for pool supply plants are reduced by 10 percentage points for each of the affected months. This action is necessary to prevent the uneconomic and inefficient movements of milk to qualify plants for pooling.

EFFECTIVE DATE: September 1, 1994, through February 28, 1995.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Temporary Revision: Issued August 22, 1994; published August 26, 1994 (59 FR 44088).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the provisions of § 1036.7(f) of the Eastern Ohio-Western Pennsylvania order.

Notice of proposed rulemaking was published in the **Federal Register** (59 FR 44088) concerning a proposed temporary relaxation of the supply plant shipping standards under the Eastern Ohio-Western Pennsylvania milk order. The revisions were proposed to be effective for the months of September 1, 1994, through February 28, 1995. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by September 2, 1994. One comment supporting the proposed revision was received. No opposing comments were received.

Statement of Consideration

Currently, the order provides that for a supply plant to be considered a pool plant, a minimum percentage of the total quantity of milk received at the supply plant must be transferred or diverted to and physically received at pool distributing plants regulated under the order or disposed of as route disposition in the marketing area. This provision is subject to the following two conditions: (1) Not less than 45,000 pounds of Grade A fluid milk must be shipped from the supply plant to a pool distributing plant during either September, October, or November; and (2) shipments used to determine qualifying percentages must be milk transferred or diverted to and physically received by pool distributing plants, less any transfers or diversions of bulk fluid milk products from such distributing pool plants.

This rule temporarily revises the minimum requirement from 40 percent to 30 percent for the months of September through November 1994, from 30 percent to 20 percent for the month of December 1994, and from 35 percent to 25 percent for the months of January and February 1995.

The Eastern Ohio-Western Pennsylvania milk order provides authority for the Director of the Dairy Division to increase or decrease the required shipping percentages for supply plants by up to 10 percentage points if such a revision is necessary to obtain needed shipments or to prevent uneconomic shipments.

The temporary revision was requested by Brewster Dairy, Inc. (Brewster), a proprietary handler who operates a pool supply plant regulated under the order. Brewster contends that in Fall 1993 the plant was unable to accept surplus distributing plant milk associated with Order 36 and still meet supply plant qualifications. Consequently, milk from a distributing plant located 10 miles from Brewster had to be diverted to a manufacturing facility 92 miles away. At the same time, Brewster had to procure surplus milk from greater distances to fulfill manufacturing obligations. Brewster contends that this situation represents inequitable and inefficient movements of milk for both supply and distributing plants, undertaken to meet order shipping requirements. Brewster asserts that the same inequitable and inefficient movements of milk are expected again for Fall 1994. Thus, Brewster contends, a reduction of supply plant shipping percentages is necessary to prevent uneconomic and inefficient shipments of milk.

Milk Marketing Inc. (MMI), a dairy farmer cooperative representing 1,350 dairy farmers whose milk is pooled under Order 36, supported Brewster's request for reducing shipping percentages for pool supply plants. MMI's comment stated the cooperative supports Brewster's request for the same reasons MMI gave in a recent continued reduction of shipping requirements for cooperative association reserve processing plants (59 FR 48557) in the Eastern Ohio-Western Pennsylvania milk order. In this continued reduction, MMI's comments included a description of milk marketing conditions for June 1994 that show milk production for the market increased over 4 percent from the same month of the previous year, representing 12 million additional pounds of milk in the Order 36 pool. For the same month, Class I sales decreased by nearly 2.5 percent from June 1993, representing a reduction of approximately 3.4 million pounds of Class I sales. As a result of the market's increasing production and declining Class I use, nearly 15.5 million more pounds of milk had to be used in manufactured products than in the same month the previous year.

In view of the current supply and demand relationship for the market, the supply plant shipping percentages should be reduced for the months of September 1994 through February 1995. A reduction of the shipping percentages will contribute to orderly marketing in that costly and inefficient shipments of milk from distant supply plants will not be necessary. Thus, dairy farmers who have supplied the market will continue to have their milk pooled under the order.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found and determined that the supply plant shipping percentage set forth in § 1036.7(b) should be reduced to 30 percent for the months of September, October, and November 1994, reduced to 20 percent for the month of December 1994, and reduced to 25 percent for the months of January and February 1995.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of September 1994 through February 1995;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision. One comment supporting the proposed temporary revision was received, with no comments opposing.

Therefore, good cause exists for making this temporary revision effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1036

Milk marketing orders.

For the reasons set forth in the preamble, the following provision in Title 7, Part 1036, is amended as follows:

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. The authority for 7 CFR part 1036 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1036.7 [Amended]

2. In § 1036.7(b), the introductory text is temporarily revised for the months of September 1, 1994, through February 28, 1994, by changing the "40 percent" to "30 percent", the "35 percent" to "25 percent", and the "30 percent" to "20 percent".

Dated: September 22, 1994.

Richard M. McKee,

Director, Dairy Division.

[FR Doc. 94–23921 Filed 9–27–94; 8:45 am]

BILLING CODE 3410–02–P

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Farmers Home Administration

7 CFR Part 1944

Cost Containment and Vulnerability—Corrections

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; correction.

SUMMARY: The Farmers Home Administration (FmHA) corrects errors on the final rule published on February 14, 1994 (59 FR 6869–6897) concerning cost containment. The intended effect of this action is to correct errors in the final rule.

EFFECTIVE DATE: September 28, 1994.

FOR FURTHER INFORMATION CONTACT: Gail McCowan, Rural Rental Housing Branch, Multi-Family Housing Processing Division, Farmers Home Administration, USDA, room 5337, South Agriculture Building, Washington, DC 20250, telephone (202) 720–1623.

SUPPLEMENTARY INFORMATION: FmHA published its final rule on February 14, 1994 (59 FR 6869) which encompassed numerous additions and changes intended to reduce fraud, waste, and abuse in the Section 515 program, as well as to reduce costs associated with construction and related amentities.

(1) FmHA inadvertently included dishwashers as an acceptable feature in elderly unit design. Dishwashers are acceptable only for central kitchens in congregate and group home projects. As stated, allowing dishwashers in elderly projects when they are not even acceptable in individual congregate living units is contradictory and will lead to higher construction costs. The results of this error would significantly conflict with the Agency's current emphasis on cost containment.

(2) A discrepancy exists in the language of Exhibit A–8 between the introductory page and paragraph IV Housing demand forecasts. The word "person" referred to in "Persons Living in Substandard Rental Units" and "Persons Experiencing Rent Overburden" outlined in paragraph IV should read "Households" as outlined in the introductory page. In addition, paragraph IV Housing demand forecast requires the market analyst to subtract "Comparable Rental Units" from the overall demand figure. These words were erroneously included in the housing demand calculation and are being removed to prevent miscalculation of housing need and demand.

List of Subjects in 7 CFR Part 1944

Administrative practice and procedure, Low- and moderate-income housing—rental, Rural housing.

Accordingly, the final rule published on February 14, 1994 (59 FR 6869) amending Chapter XVIII, Title 7, Code of Federal Regulations, is corrected as follows:

PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

2. Section 1944.215 is corrected by revising paragraph (a)(13) to read as follows:

§ 1944.215 Special conditions.

(a) * * *

(13) The following is a list of allowable amenities according to the type of units:

	Family	Elderly	Congregate	Group home
Active outdoor recreation	Yes	No	No	Yes.
Carpet	Yes	Yes	Yes	Yes.
Central laundry facilities	Yes	Yes	Yes	Yes.
Community rooms	No	Yes	Yes	Yes.
Dishwashers	No	No	Yes[1]	[1] Yes.
Drapes/blinds/shades	Yes	Yes	Yes	Yes.
Elevators for 2-story elderly	No	Yes	Yes	No.
Garbage disposals	No	No	Yes[1]	[1] Yes.
Lawn sprinklers—financing will depend on geographic area.				

[1] In central kitchens only.

. . . . .

3. In Exhibit A–8 of subpart E, paragraph IV is corrected to read as follows:

Exhibit A–8 of Subpart E—Outline of Professional Market Study

. . . . .

IV. Housing Demand Forecasts

The analyst must give a projection of the housing needs for a specified forecast period. The information should include the following as a minimum:

Sources of demand	Town renter	Market area renter
New Households (from the most recent census year plus 2-year projection)	_____	_____
.20 of Households in Substandard Rental Units	+_____	+_____
Plus Demolition of Rental Stock	+_____	+_____
.20 of Households Experiencing Rent Overburden	+_____	+_____
Plus Vacancy (.05 of New Household Growth)	+_____	+_____
Total demand	_____	_____
Number of Total Demand Determined Income Eligible (tax credit eligible, if applicable)	_____	_____
Less Number of Units in Planning Stage (FmHA/HUD)	–_____	–_____
Net Demand	_____	_____

If a penetration percentage is used in the study analysis, explain how that particular percentage was chosen.

RECOMMENDED NUMBER BY UNIT

Size	One	Two	Three	Four
	____	____	____	____

Names and positions of individuals in the community who provided information for the study:

_____

_____

_____

_____

Dated: August 31, 1994.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 94–23925 Filed 9–27–94; 8:45 am]

BILLING CODE 3410–07–U

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 286

[INS No. 1392–93]

RIN 1115–AA–30

Immigration User Fee; Remittance Requirements

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule publishes changes to requirements related to the Immigration User Fee Account (IUFA). The rule amends existing regulations to comply with the 1991 and 1994 Department of Justice Appropriations Acts. In addition, this rule changes where remittances shall be sent; requires additional information in the remittance and statement procedures for fees; clarifies how remittances shall be paid; and makes a nomenclature change. Two minor technical corrections are also being made to correct errors in the text of the regulations.

EFFECTIVE DATE: October 28, 1994.

FOR FURTHER INFORMATION CONTACT: Michael Natchuras, Budget Analyst, Fee Analysis and Operations Branch, Office of Finance, Office of Budget, Immigration and Naturalization Service (INS), 425 I Street NW., Room 6307, Washington, DC 0536–0002, telephone (0) (202) 616–2754.

SUPPLEMENTARY INFORMATION:

I. Introduction

The INS published a proposed rule on February 15, 1994, at 59 FR 7227, making changes to requirements related to the Immigration User Fee Account. The proposed rule was published with a 60-day comment period. The public had the opportunity to comment on the proposed rule through April 18, 1994.

Changes in current regulations are needed to make the regulations consistent with current law, and establish requirements for fee collection data and remittance information. In addition, the final rule implements a nomenclature change throughout 8 CFR 86 to remove the word "Comptroller" and to put in its place the words "Associate Commissioner, Finance," and makes two other technical corrections.

Comments were received from seven commenters, including three industry associations. All the comments were carefully considered before preparing this final rule. Following is a discussion of the comments.

II. Summary of Comments

A. Monthly Summary Statement Requirement

Five commenters expressed dissatisfaction with this reporting requirement. One commenter expressed agreement in principal with the proposed submission of monthly information related to the Immigration User Fees collected.

The commenters who expressed dissatisfaction with the reporting requirement indicated that the monthly requirement would add an additional and costly reporting burden which would duplicate a quarterly remittance statement, and would require carrier-ticketing information which is considered to be "commercially confidential." One commenter indicated that there would be timing difficulty in reporting information as required in the proposed rule, given the dates airlines receive domestic and international sales reports. Along these same lines, another commenter suggested that carriers be given at least 1 month to submit a report. Further, two commenters noted that the universal scope of the requirement should be limited if the reporting requirement is published as a final rule. One of these suggested that the requirement apply to high-volume carriers; the other suggested that it be applicable to carriers who consistently fail to remit fees. Another of the comments suggested that, should the monthly reporting requirement be implemented, it should include a "sunset" provision to discontinue the requirement after 2 years subject to evaluation of the benefits in relation to the costs.

The commenter that supported the requirement believed that the monthly submission of a summary report for each month's collections would assist the INS in developing more accurate budgets and in allocating funds for staff and equipment as traffic patterns change.

The INS continues to believe that, in order to improve its financial management of the IUFA, it must have some indication of fee remittances in advance of their receipt. Therefore, a report of net monthly collections will be required. As a result of the type and timing of remittance data available, there has been difficulty in making resource estimates. Remittances to INS represent passengers who purchased tickets during the remittance period, which is not necessarily the same period in which the passenger will travel. The INS data are limited to the number of persons inspected and actual remittances. Since the remittances are made on a quarterly basis, there is not timely information with which to make accurate collection projections. For example, even though the fiscal year starts on October 1, the first remittances for the fiscal year are not due until January 31 of each year. Historically, the bulk of these collections are received in February and accounting records report them in March. Hence, it is mid-March before any picture of actual collections comes into focus. The mid-point of the year is very late in the fiscal year to be making program and budget changes.

Concerning the comment which suggested that the monthly reporting requirement and the statement which accompanies remittances are duplicative, INS believes that there is a misunderstanding concerning the purpose of each document. The monthly report is to serve as a predictor of the amount of funds to be received, while the remittance statement provides detailed information pertaining to a specific actual remittance. Each document has a separate, unique, and identifiable purpose.

However, in response to the public's comments, INS is making the following changes. The INS will not require a reporting of the number of ticket sales, given issues related to commercial confidentiality. In addition, in order to ease the reporting burden, a report of remittances will be required only for carriers or ticket-selling agents whose fee collections exceed $50,000 a month. Further, in response to the issue of duplication of reporting requirements, INS is making an additional change. Since the quarterly remittance statement includes information for the last month in a given quarter, a separate monthly

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report will not be required for those months. This means that monthly reporting will be required for the months of October, November, January, February, April, May, July, and September. In order to allow more reporting time, the report will be due to INS on the last business day of the following month.

Finally, with regard to the suggestion to "sunset" the monthly reporting requirement, INS seriously considered this comment. However, INS believes this to be an ongoing requirement which is needed to adequately manage the account. Should the information become available from other sources, or should some other matters arise, INS will reevaluate the requirement and modify the regulations as appropriate.

B. Record Retention Period

Three commenters addressed the proposed 5-year record-retention period. Each commenter indicated the extended retention period was burdensome and costly, and that it exceeded the requirements of other Federal agencies. In view of the comments received, the current 2-year retention period will remain in effect.

One commenter noted that the proposed rule did not specify the type of records and documents which must be kept. In response to this comment, INS provides the following guidance. Each collector and remitter should maintain records necessary for the carrier to demonstrate to the INS the accuracy of fees collected and remitted, and to otherwise determine compliance with applicable statutes and regulations. Modern technology available to achieve this result may be utilized.

C. Fourth Quarter Remittance of Fees

Two commenters addressed the remittance deadline for fourth quarter immigration user fees. One commenter objected to the September 20 due date for the remittance of fourth quarter fees. A second suggested that the final rule clarify that the fourth quarter remittance should include collections from the months of July and August for that year.

The rule establishes the fourth quarter remittance due dates in order to make the regulation consistent with a statutory change. The 1991 Department of Justice Appropriations Act (Public Law 101–515, November 5, 1990), as amended by section 309(a)(2)(b) of Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (Pub. L. 102–232, December 12, 1991), changed the remittance schedule for the fourth quarter.

D. Change in the Immigration User Fee

One commenter urged that the Immigration User Fee not be raised from $5.00 to $6.00 per passenger.

The change in the User Fee is mandated by statute. The 1994 Department of Justice Appropriations Act (Pub. L. 103–121, October 27, 1993) increased the fee to $6.00 per passenger. The regulation is being changed to be consistent with the law.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities because of the following factors. Most of the regulation updates the CFR to conform with current law. The reporting requirement is constructed so that only major entities are required to report. Further, the information required under this rule should be readily available from business records which must be maintained as a routine business practice.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations adopted herein will not have substantial direct effects on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB Clearance number is 1115–0142.

List of Subjects in 8 CFR Part 286

Air carriers, Immigration, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, part 286 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 286—IMMIGRATION USER FEES

1. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1103, 1356; 8 CFR part 2.

2. Section 286.2 is revised to read as follows:

§ 286.2 Fee for arrival of passengers aboard commercial aircraft or commercial vessels.

(a) Under the provisions of section 286(b) of the Act, a $6.00 fee per individual is charged and collected by the Commissioner for the immigration inspection of each passenger aboard a commercial aircraft or commercial vessel, arriving at a Port-of-Entry in the United States, or for the preinspection of a passenger in a place outside the United States prior to such arrival, except as provided in § 286.3.

(b) Each commercial aircraft and vessel carrier or ticket-selling agent whose monthly collections in any month exceed $50,000 shall submit a summary statement showing the amount of user fees collected that month. The summary statement is due on the last business day of the following month. This information shall be forwarded to the Immigration and Naturalization Service, Chief, Fee Analysis and Operations Branch, 425 I Street, NW., Room 6307, Washington, DC 20536. For the months of December, March, June, and August, the quarterly remittance and statement required by § 286.5 will serve as the monthly report for those months. Therefore, a monthly report is required for all other months in which monthly collections exceed $50,000.

3. In § 286.3 paragraph (a) is revised to read as follows:

§ 286.3 Exceptions.

* * * * *

(a) Persons, other than aircraft passengers, whose travel originated in Canada, Mexico, the adjacent islands, and territories or possessions of the United States;

* * * * *

4. In § 286.5 paragraphs (b), (c) and (d) are revised to read as follows:

§ 286.5 Remittance and statement procedures.

* * * * *

(b)(1) Fee remittances shall be sent to the Immigration and Naturalization Service, at a designated Treasury depository, for receipt no later than 31 days after the close of the calendar quarter in which the fees are collected, except the fourth quarter payment for fees collected shall be made on the date that is 10 days before the end of the U.S. Government's fiscal year, and the first quarter payment shall include any collections made in the preceding quarter that were not remitted with the previous payment. The fourth quarter payment shall include collections for the months of July and August. The fiscal year referenced is the U.S. Government's fiscal year which begins on October 1 and ends on September 30.

(2) Late payments will be subject to interest, penalty, and handling charges as provided in the Debt Collection Act of 1982 (31 U.S.C. 3717). Refunds by a remitter of fees collected in conjunction with unused tickets or documents for transportation shall be netted against the next subsequent remittance.

(c) Along with the remittance, as set forth in paragraph (b) of this section, each remitter making such remittance shall attach a statement which sets forth the following:

(1) Name and address;

(2) Taxpayer identification number;

(3) Calendar quarter covered by the payment;

(4) Interest and penalty charges; and

(5) Total amount collected and remitted.

(d) Remittances shall be made in U.S. dollars by check or money order through a U.S. bank, to Associate Commissioner, Finance, INS.

* * * * *

§§ 286.1(e), 286.4(c), 286.5(e), and 286.6 [Amended]

5. §§ 286.1(e), 286.4(c), 286.5(e), and 286.6, are amended by removing the word "Comptroller" and adding in its place "Associate Commissioner, Finance" wherever it appears.

§ 286.5(e) [Amended]

6. In § 286.5(e), the first sentence, is amended by removing the word "*Auditing*" in the title "*Statement on Auditing Standards for Attestation Engagement.*"

§ 286.5(g) [Amended]

7. In § 286.5(g), the first sentence, is amended by removing the citation "§ 28.4" and adding "§ 287.4."

Dated: September 22, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–23954 Filed 9–27–94; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–234–AD; Amendment 39–9018; AD 94–18–05]

Airworthiness Directives; Saab Model SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in the above-captioned airworthiness directive (AD), applicable to certain Saab Model SF340A and SAAB 340B series airplanes. That AD currently requires inspections to detect discrepancies of certain main landing gear (MLG) retract actuator bracket retaining bolts; replacement of discrepant parts; installation of washers, if necessary; and eventual replacement of certain MLG retract actuator bracket retaining bolts and certain nose landing gear (NLG) trunnion pin cross bolts. This action corrects terms in the compliance time specified for the requirement to remove the NLG trunnion pin cross bolts. This action is necessary to ensure that operators are not required to perform actions at a time that does not correspond with scheduled maintenance.

DATES: Effective October 11, 1994.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of October 11, 1994 (59 FR 46543, September 9, 1994).

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, Product Support, S581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: On August 24, 1994, the FAA issued AD 94–18–05, amendment 39–9018 (59 FR 46543, September 9, 1994), to require inspections to detect discrepancies of certain main landing gear (MLG) retract actuator bracket retaining bolts; replacement of discrepant parts; installation of washers, if necessary; and eventual replacement of certain MLG retract actuator bracket retaining bolts and certain nose landing gear (NLG) trunnion pin cross bolts. That action was prompted by reports of extension and retraction problems on the MLG, due to loose retract actuator brackets on the MLG shock struts. The actions required by that AD are intended to prevent a loose retract actuator bracket from interfering with the MLG shock strut trunnion support, which could result in the inability of the MLG to extend or retract.

Recently, the FAA has become aware of a typographical error that appeared in paragraph (c) of the published final airworthiness directive, which would incorrectly require operators to replace the NLG trunnion pin cross bolts at a time that may not correspond with scheduled maintenance for the NLG. The compliance time for paragraph (c) was incorrectly published as, "At the next MLG overhaul, or within 12,000 landings after the effective date of this AD, whichever occurs earlier * * *" However, the correct compliance time for that requirement should have referred to "* * * at the next NLG overhaul."

Since it is essential that operators perform the replacement in a timely manner and at a time when the NLG is normally serviced, this document corrects the compliance terms of paragraph (c) of AD 94–18–05, amendment 39–9018, to read as follows:

"(c) At the next NLG overhaul, or within 12,000 landings after the effective date of this AD, whichever occurs earlier, remove the existing nose landing gear trunnion pin cross bolt, P/N NAS 1305–54D, and replace it with a new bolt, P/N NAS 1305–50D, in accordance with Paragraphs C. through F. of the Accomplishment Instructions of Saab Service Bulletin 340–32–094, dated October 29, 1993, or Revision 1, dated March 4, 1994."

The effective date of the rule remains October 11, 1994.

Since no other portion of the regulatory information has been changed, the final rule is not being republished.

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Issued in Renton, Washington, on September 21, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-23815 Filed 9-27-94; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 77N-0094]

RIN 0905-AA06

Drug Products for the Treatment and/or Prevention of Nocturnal Leg Muscle Cramps for Over-The-Counter Human Use; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of August 22, 1994 (59 FR 43234). The document established that any over-the-counter (OTC) drug product for the treatment and/or prevention of nocturnal leg muscle cramps is not generally recognized as safe and effective and is misbranded. The document was published with some typographical errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF-27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

In FR Doc. 94-20449, appearing on page 43234, the following corrections are made:

1. On page 43239, in the third column, in reference 3, line 5, and in reference 4, line 2, the word "Q-VELR" is corrected to read "Q-VEL®".

2. On page 43242, in the second column, line 21, and in the first full paragraph, line 19, the number "106" is corrected to read "10⁶".

3. On page 43245, in the second column, in reference 4, line 2, and in reference 5, line 4, the word "Q-VELR" is corrected to read "Q-VEL®".

4. On page 43249, in the second column, in reference 1, line 2, and in reference 2, line 4, the word "Q-VELR" is corrected to read "Q-VEL®".

5. On page 43250, in the third column, in reference 1, line 2, and in reference 2, line 4, the word "Q-VELR" is corrected to read "Q-VEL®".

6. On page 43252, in the first column, in the second paragraph, in line 2, "regulatuion" is corrected to read "regulation"; and in line 7, the word "agencies" is corrected to read "agency's"; and in line 8, the word "substances" is corrected to read "substance".

Dated: September 21, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94-24014 Filed 9-27-94; 8:45 am]

BILLING CODE 4160-01-F

21 CFR Parts 600, 610, 630, and 640

[Docket No. 93N-0392]

Biologics; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations by substituting the term "supplement" for "amendment" when referring to the submission of a change to an approved establishment license or product license application. This action is being taken to harmonize the regulations with terminology used in the Prescription Drug User Fee Act of 1992.

DATES: Effective September 28, 1994; written comments by December 12, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM-635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-594-3074.

SUPPLEMENTARY INFORMATION: The Prescription Drug User Fee Act of 1992 (Pub. L. 102-571) (section 735 (21 U.S.C. 379g)) defines the term "supplement" as "a request to the Secretary to approve a change in a human drug application which has been approved." Also in section 735 of the Prescription Drug User Fee Act, a "human drug application" includes "an application for licensure of a biological product under section 351 of the Public Health Service Act." FDA is amending the biologics regulations by substituting the term "supplement" for "amendment." This change is being made to harmonize the regulations with the terminology used in the Prescription Drug User Fee Act of 1992.

Prior to this announced change in terminology, the term "amendment" was used for all changes to both approved and unapproved license applications and amendments. In general, FDA intends to use the term "supplement" when referring to the submission of a change to an approved license application, and the term "amendment" when referring to the submission of a change to an unapproved license application or amendment. This change will not affect pending supplements (amendments) to establishment or product license applications.

This final rule contains only a minor change that is necessary to clarify terminology in the regulations. The rule change will not affect the way a license amendment or supplement to an application should be submitted to the agency, except in the way it is identified; nor will the change affect the way a license amendment or supplement will be reviewed by FDA. Therefore, FDA finds that there is good cause to dispense with a notice of proposed rulemaking as unnecessary, pursuant to the Administrative Procedure Act (5 U.S.C. 553) and FDA's administrative practices and procedures regulations (21 CFR 10.40(e)). FDA also finds, in accordance with the Administrative Procedure Act, that there is good cause to make this final rule effective on the date of publication in the **Federal Register**. FDA, however, is allowing 75 days for public comment on this final rule, in accordance with 21 CFR 10.40(e)(1).

Interested persons may, on or before December 12, 1994, submit to the Dockets Management Branch (address above) written comments regarding this rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will consider any comments submitted to determine if any additional changes to the regulations are necessary.

List of Subjects

21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 630

Biologics, Labeling.

21 CFR Part 640

Blood, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 600, 610, 630, and 640 are amended as follows:

PART 600—BIOLOGICAL PRODUCTS: GENERAL

1. The authority citation for 21 CFR part 600 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 519, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

§ 600.15 [Amended]

2. Section 600.15 *Temperotures during shipment* is amended in paragraph (b) by removing the words "an amendment" and by adding in their place the words "a supplement".

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

3. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

§ 610.9 [Amended]

4. Section 610.9 *Equivalent methods and processes* is amended in the first sentence of paragraph (a) by removing the word "amendment" and adding in its place the word "supplement".

§ 610.11 [Amended]

5. Section 610.11 *General safety* is amended in the third sentence of the introductory text by removing the words "an amendment" and adding in their place the words "a supplement".

§ 610.53 [Amended]

6. Section 610.53 *Dating periods for licensed biological products* is amended in paragraph (d) by removing the words "an amendment" and by adding in their place the words "a supplement".

PART 630—ADDITIONAL STANDARDS FOR VIRAL VACCINES

7. The authority citation for 21 CFR part 630 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

§ 630.10 [Amended]

8. Section 630.10 *Poliovirus Vaccine Live Oral Trivalent* is amended in paragraph (c)(3) by removing the word "amendment" and by adding in its place the word "supplement".

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

9. The authority citation for 21 CFR part 640 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

§ 640.6 [Amended]

10. Section 640.6 *Modifications of Whole Blood* is amended in the introductory text by removing the words "an amendment" and adding in their place the words "a supplement".

§ 640.21 [Amended]

11. Section 640.21 *Suitability of donors* is amended in paragraph (c) by removing the words "an amendment" and adding in their place the words "a supplement".

§ 640.22 [Amended]

12. Section 640.22 *Collection of source material* is amended in paragraph (c) by removing the words "an amendment" and adding in their place the words "a supplement".

§ 640.64 [Amended]

13. Section 640.64 *Collection of blood for Source Plasma* is amended in the second sentence of paragraph (c) by removing the words "an amendment" and adding in their place the words "a supplement".

§ 640.74 [Amended]

14. Section 640.74 *Modification of Source Plasma* is amended in paragraph (a) by removing the words "an amendment" and by adding in their place the words "a supplement".

Dated: September 15, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94-23899 Filed 9-27-94; 8:45 am]

BILLING CODE 4160-01-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300362; FRL-4912-5]

RIN 2070-AB78

Neomycin Phosphotransferase II; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of neomycin phosphotransferase II (NPTII) and the genetic material necessary for its production when used as a plant pesticide inert ingredient. Monsanto Co. petitioned EPA for this exemption.

EFFECTIVE DATE: This regulation becomes effective September 28, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP-300362], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (tolerance fees), P.O. Box 36027M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM 18), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC. Office location and telephone number: Rm. 213, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 8, 1993 (58 FR 64582, 64583), EPA issued notices which announced that Monsanto Co., 700 Chesterfield Parkway North, St. Louis, MO 63193, had submitted a pesticide petition (PP 3F4273) to EPA proposing to amend 40 CFR part 180 to establish an exemption

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from the requirement of a tolerance for neomycin phosphotransferase II (NPTII), and the genetic material necessary to produce NPTII when produced in plants as a plant pesticide inert ingredient. The Agency did not receive any comments on the notices. Selectable markers such as NPTII are considered inert ingredients by the Agency when they are introduced into a plant in order to ensure or confirm the presence of a plant pesticide. The genetic material necessary to produce NPTII (the NPTII gene) is also considered part of the inert ingredient; therefore, the NPTII gene is also addressed in this final rule.

Neomycin phosphotransferase II (NPTII) is uniquely different from other types of inert ingredients because it is a selectable marker used to identify plant cells early in the product development that had been successfully transformed to express the active ingredient.

The data submitted in the petition and other relevant material have been evaluated and deemed sufficient to support the tolerance. The rationale for this decision is described below.

Assessment of Data

The Agency has evaluated the toxicology data, information on product identity, equivalence of microbially and plant produced NPTII, and other information provided by the petitioner. The information showed that the plant and microbially produced protein are similar with respect to the protein characteristics of amino acid sequence, enzyme activity, electrophoretic mobility, lack of glycosylation, and specific antibody recognition. These findings justified the use of microbial protein in the toxicity studies. The registrant provided the following studies: Acute Oral Toxicity of NPTII in Mice and an In Vitro Digestion of the NPTII Protein. A single oral exposure dose of 5 g/kg NPTII protein produced no adverse effects in mice. The In Vitro Digestion study showed that the protein was rapidly degraded in simulated gastric or intestinal digestive fluids to fragments that were no longer recognized by specific antibodies to NPTII. These results suggest the NPTII protein will not survive passage through the gastrointestinal tract. Therefore, the Agency concluded that the information provided was sufficient to assess the acute toxicity of NPTII when used as a marker gene in transgenic plants expressing plant pesticides and to justify an exemption from the requirement for a food tolerance for residues of the inert. The Agency recognizes that alternative information could be used to indicate the lack of mammalian toxicity and to justify a tolerance exemption.

Since no toxicity was indicated, residue chemistry data were not required. Residue data are necessary only if the submitted toxicity studies indicate that additional toxicology data were needed. These additional data were not needed. Therefore, no residue data are required in order to grant an exemption from the requirement of a tolerance for the plant pesticide inert ingredient neomycin phosphotransferase II when used as a plant pesticide inert ingredient, as expressed in plant cells.

The exemption from a tolerance for the genetic material which encodes for production of NPTII is based on the fact that the nucleic acids which form the genetic material are found in all foods and have not, by themselves, been associated with toxic or pathogenic effects in animals and humans. None of the constituents of nucleic acids are known to be acute toxicants by themselves but, like proteins and other normal constituents in food, may cause indirect, adverse metabolic effects if consumed exclusively at high doses over a long period of time in the absence of a normal diet. The NPTII gene will not occur at these high amounts in plants. Thus, EPA does not believe there is a potential for adverse health effects related to the consumption of plants containing the NPTII gene.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition because the data/information submitted demonstrate that this plant-pesticide inert ingredient (NPTII) and the NPTII gene are not toxic to mammalian species. No enforcement actions are expected based upon the level of residue for NPTII and the genetic material necessary for its production. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption.

Based on the above information and review of its use, EPA has found that when used in accordance with good agricultural practice, this ingredient is useful for the purpose for which the tolerance exemption is sought. Based on the information considered, EPA concludes that a tolerance is not necessary to protect the public health. Therefore, the exemption from the requirement of a tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic effect on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (49 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 19, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1134, to read as follows:

§ 180.1134 Neomycin phosphotransferase II and genetic material necessary for its production; exemption from the requirement of a tolerance.

The neomycin phosphotransferase II (NPTII) and the genetic material necessary for the production of this protein are exempted from the requirement of a tolerance in or on all raw agricultural commodities when used as a plant-pesticide inert ingredient.

[FR Doc. 94–23762 Filed 9–27–94; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7603]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR.

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1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region II				
New York: Hamburg, town of, Erie County	360244	May 23, 1974 Emerg; Nov. 19, 1980, Reg.; Oct. 4, 1994, Susp.	10–4–94	Oct. 4, 1994.
Region V				
Indiana:				
Ellettsville, town of, Monroe County	180170	April 14, 1974 Emerg; July 18, 1985, Reg.; Oct. 4, 1994, Susp.	10–4–94	Do.
Steuben County, unincorporated areas	180243	Aug. 26, 1975, Emerg.; July 3, 1986, Reg.; Oct. 4, 1994, Susp.	7–3–86	Do.
Jasper, city of, DuBois County	180055	June 24, 1971, Emerg.; June 1, 1982, Reg.; Oct. 18, 1994, Susp.	10–18–94	Oct. 18, 1994.
Minnesota: Argyle, city of, Marshall County	270268	April 24, 1974, Emerg.; Dec. 15, 1982, Reg.; Oct. 18, 1994, Susp.	10–18–94	Do.
Ohio: South Lebanon, village of, Warren County	390563	Jan. 23, 1975, Emerg.; Sep. 1, 1978, Reg.; Oct. 18, 1994, Susp.	10–18–94	Do.
Region X				
Idaho: Gooding, city of, Gooding County	160064	Feb. 7, 1975, Emerg.; June 19, 1985, Reg.; Oct. 18, 1994, Susp.	10–18–94	Do.

Code for reading third column: Emerg.- Emergency; Reg.- Regular; Rein.- Reinstatement; Susp.- Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: September 21, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–24001 Filed 9–27–94; 8:45 am]

BILLING CODE 6718–21–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–50; RM–8458]

Radio Broadcasting Services; Galatia, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 255A to Galatia, Illinois, as that community's first local FM service, at the request of Michael Scott Clem. See 59 FR 32177, June 22, 1994. Channel 255A can be allotted to Galatia in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.8 kilometers (0.5 miles) northwest, in order to avoid a short-spacing to the licensed site of Station WKDQ(FM), Channel 258C, Henderson, Kentucky. The coordinates for Channel 255A at Galatia, Illinois, are North Latitude 37–50–53 and West Longitude 88–37–10. With this action, this proceeding is terminated.

DATES: Effective Nov. 7, 1994. The window period for filing applications for Channel 255A at Galatia, Illinois, will be open on November 8, 1994, and close on Dec. 8, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 94–50, adopted Sept. 14, 1994, and released Sept. 21, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Galatia, Channel 255A.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–23786 Filed 9–27–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–12; RM–8419]

Radio Broadcasting Services; Sebastian, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 240C3 to Sebastian, Florida, as that community's first local aural transmission service, at the request of T & M Communications, See 59 FR 10605, March 7, 1994. Channel 240C3 can be allotted to Sebastian in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for Channel 240C3 at Sebastian are North Latitude 27–49–00 and West Longitude 80–28–12. With this action, this proceeding is terminated.

DATES: Effective Nov. 7, 1994. The window period for filing applications for Channel 240C3 at Sebastian, Florida, will be open on November 8, 1994, and close on December 8, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 94–12, adopted September 14, 1994, and released Sept. 21, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Sebastian, Channel 240C3.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–23783 Filed 9–27–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

RIN 2127–AE36

[Docket No. 92–33; Notice 3]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Technical amendment.

SUMMARY: This notice reinstates Figures 1a, 1b, and 1c of 49 CFR 571.108, Federal Motor Vehicle Safety Standard No. 108, which were inadvertently omitted from Title 49 Code of Federal Regulations Parts 400–999 as of October 1, 1993.

EFFECTIVE DATE: The rule is effective September 28, 1994.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202–366–5263).

SUPPLEMENTARY INFORMATION: On March 3, 1993, NHTSA published a final rule which, among other things, revised and redesignated certain paragraphs of S5.1 of Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment* (58 FR 12183).

Before the final rule, paragraph S5.1.1.11 contained internal references to Figures 1a and 1b, and paragraph S5.1.1.12 an internal reference to Figure 1c. The final rule redesignated S5.1.1.11 as S5.1.1.6, and revised it to incorporate the substance of S5.1.1.12, including the reference to Figure 1c. (Further amendments adopted a new paragraph S5.1.1.11, removed S5.1.1.12, and redesignated S5.1.1.32 as S5.1.1.12.)

NHTSA has been informed by the **Federal Register** that, because the amendatory language of the final rule did not contain instructions where to place Figures 1a, 1b, and 1c within the text of Standard No. 108, the figures were removed from the Code of Federal Regulations. This document reinstates those figures, to follow the text of S5.1.1.6.

Effective Date

Because this amendment is corrective in nature and imposes no additional burden upon any person, notice and comment upon are not required under the Administrative Procedure Act, and it is found, for good cause shown, that an effective date earlier than 180 days after issuance is in the public interest. The amendment will become effective upon publication in the **Federal Register**.

List of Subjects in 49 CFR part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.108 is amended by adding Figures 1a, 1b and 1c, as set forth below, to follow paragraph S5.1.1.6.

§ 571.108 Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment.

* * * * *

S5.1.1.6 * * *

FIGURE 1a.—REQUIRED PERCENTAGES OF MINIMUM CANDLEPOWER OF FIGURE 1b

Test points (deg)		Turn signal	Stop	Parking	Tail
10U, 10D	5L, 5R	20	20	20	20
5U, 5D	20L, 20R	12.5	12.5	10	15
	10L, 10R	37.5	37.5	20	40
	V	87.5	87.5	70	90
H	10L, 10R	50	50	35	40
	5L, 5R	100	100	90	100
	V	100	100	100	100

Note—Minimum design candlepower requirements are determined by multiplying the percentages given in this Figure by the minimum allowable candlepower values in Figure 1b. The resulting values shall be truncated after one digit to the right of the decimal point.

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FIGURE 1b.—MINIMUM AND MAXIMUM ALLOWABLE CANDLEPOWER VALUES

Lamp	Lighted sections		
	1	2	3
Stop	80/300	95/360	110/420
Tail [1]	2/18	3.5/20	5.0/25
Parking [2]	4.0/125		
Red turn signal	80/300	95/360	110/420
Yellow turn signal rear	130/750	150/900	175/1050
Yellow turn signal front	200/–	240–	275/–
Yellow turn signal front [3]	500/–	600/–	650/–

[1] Maximum at H or above.
[2] The maximum candlepower value of 125 applies to all test points at H or above. The maximum allowable candlepower value below H is 250.
[3] Values apply when the optical axis (filament center) of the front turn signal is at a spacing less than 4 in. (10 cm.) from the lighted edge of the headlamp unit providing the lower beam, or from the lighted edge of any additional lamp installed as original equipment and which supplements the lower beam.

FIGURE 1c.—SUM OF THE PERCENTAGES OF GROUPED MINIMUM CANDLEPOWER

Group and test points	Turn signal	Stop	Parking	Tail
1 10U–5L, 5U–20L, 5D–20L, 10D–5L	65	65	60	70
2 5U–10L, H–10L, 5D–10L	125	125	75	120
3 H–5L, 5U–V, H–V, 5D–V, H–5R	475	475	420	480
4 5U–10R, H–10R, 5D–10R	125	125	75	120
5 10U–5R, 5U–20R, 5D–20R, 10D–5R	65	65	60	70

* * * * *

Issued on: September 22, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–23908 Filed 9–27–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 940536–4202; I.D. 041994B]

RIN 0648–AG28

Reef Fish Fishery of the Gulf of Mexico; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This rule corrects the final rule to implement Amendment 9 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, which was published on August 2, 1994. This correction also extends the effective date of certain amendments previously published.

EFFECTIVE DATE: July 27, 1994. See paragraph 1, which corrects the effective date of rules published on June 15, 1993, and December 27, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813–570–5305.

SUPPLEMENTARY INFORMATION: The final rule to implement Amendment 9, among other things, extended the red snapper endorsement system and its associated trip and landing limits from their scheduled expiration on December 31, 1994, through as late as December 31, 1995. Changes to the regulatory text clearly stated this extended effectiveness regarding the endorsement system.

The intent to extend the effectiveness of the associated trip and landing limits, and associated prohibitions, which originally appear at 58 FR 33027, June 15, 1993, and 58 FR 68326, December 27, 1993, was stated in the preamble of the final rule to implement Amendment 9, but was inadvertently omitted from the **EFFECTIVE DATE** section.

In the final rule, the telephone numbers of the Regional Director and of the Regulations and Permits Branch, Southeast Region, NMFS, are incorrect. The address of the Southeast Region as published under the definition of "Regional Director" requires a revision.

Accordingly, the publication on August 2, 1994 (59 FR 39301), of the final regulations (I.D. 041994B), which were the subject of FR Doc. 94–18683, is corrected as follows:

1. On page 39301, in the third column, under the **EFFECTIVE DATE** heading, add the following sentence to the end: "In addition, 50 CFR 641.7 (u), (v), and (w) and 50 CFR 641.21(d), which were to expire December 31, 1994, are extended through December 31, 1995."

§ 641.2 [Corrected]

2. On page 39304, in the first column, in § 641.2, in the definition of *Regional Director*, in line 3, the address is corrected by inserting "N." after "Drive" and in line 4, the telephone number is corrected to read "813–570–5301".

§ 641.10 [Corrected]

3. On page 39304, in the third column, in § 641.10(b)(3), in the next to last line, the telephone number is corrected to read "813–570–5326".

Dated: September 22, 1994.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–24009 Filed 9–27–94; 8:45 am]

BILLING CODE 3510–22–W

50 CFR Part 642

[Docket No. 930791–3191; I.D. 092294B]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure of a commercial fishery for king mackerel.

SUMMARY: NMFS closes the commercial fishery in the exclusive economic zone (EEZ) for king mackerel from the western zone of the Gulf migratory group. This closure is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: September 24, 1994, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5306.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 642, under the authority of the Magnuson Fishery Conservation and Management Act.

Catch limits recommended by the Councils and implemented by NMFS for the Gulf of Mexico migratory group of king mackerel set the commercial quota at 0.77 million lb (0.35 million kg) for the western zone.

Under § 642.26(a), NMFS is required to close any segment of the king mackerel commercial fishery when its allocation or quota has been reached, or is projected to be reached, by publishing a document in the **Federal Register**. NMFS has determined that the commercial quota of 0.77 million lb (0.35 million kg) for the western zone of the Gulf migratory group of king mackerel was reached on September 23, 1994. Hence, the commercial fishery for Gulf group king mackerel from the western zone is closed effective 12:01 a.m., local time, September 24, 1994, through June 30, 1995, the end of the fishing year. The boundary between the eastern and western zones is a line directly south from the Florida/Alabama boundary (87°31′06″ W. long.).

Except for a person aboard a charter vessel, during the closure, no person aboard a vessel permitted to fish under a commercial allocation may fish for, retain, or have in possession in the EEZ, king mackerel from the western zone. A person aboard a charter vessel may continue to fish for king mackerel in the western zone under the bag limit set forth in § 642.24(a)(1)(i), provided the vessel is under charter and the vessel has an annual charter vessel permit, as specified in § 642.4(a)(2). A charter vessel with a permit to fish on a commercial allocation is under charter when it carries a passenger who fishes for a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the western zone taken in the EEZ, including those harvested under the bag limit, may not be purchased, bartered, traded, or sold. This prohibition does not apply to trade in king mackerel from the western zone that were harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 642.26(a) and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 22, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–23989 Filed 9–23–94; 1:19pm]

BILLING CODE 3510–22–F

50 CFR Part 695

[Docket No. 940956–4256; I.D. 081594D]

RIN 0648–AD31

Vessels of the United States Fishing in Colombian Treaty Waters

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations that govern fishing by vessels of the United States in certain waters of the Caribbean Sea covered by a treaty between the United States and the Government of Colombia (GOC). This rule requires that such vessels in treaty waters display their official numbers and that fish and lobster traps used in treaty waters have degradable panels. The intended effect of this rule is to implement conservation and management measures agreed to in consultations between the United States and the GOC.

EFFECTIVE DATE: October 28, 1994.

FOR FURTHER INFORMATION CONTACT: W. Perry Allen, 813–570–5326.

SUPPLEMENTARY INFORMATION: Fishing by vessels of the United States in certain waters of the Caribbean Sea is governed under the Treaty Between the Government of the United States of America and the Government of the Republic of Colombia Concerning the Status of Quita Sueno, Roncador and Serrana (treaty). Under the terms of the treaty, vessels of the United States may fish in the waters of Quita Sueno, Roncador, and Serrana (treaty waters), but are subject to reasonable conservation measures applied by the GOC, provided that such measures are nondiscriminatory and no more restrictive than those applied to Colombian or other fishermen.

NMFS published proposed and final rules on September 18, 1990 (55 FR 38365) and January 4, 1991 (56 FR 377), respectively, that implemented regulations for treaty waters. Included in the proposed rule were requirements that (1) U.S. vessels display their official numbers when in treaty waters, and (2) nonwooden fish and lobster traps in treaty waters have degradable panels. These requirements were not included in the final rule because a necessary exchange of notes between the United States and the GOC regarding the requirements had not occurred. Such exchange of notes was made at a meeting of representatives of the two governments on May 17–18, 1994, at Cartagena, Colombia. Accordingly, the requirements are added to the regulations. Rationale for the requirements was included in the proposed rule and is not repeated here.

This final rule also corrects the address of the Director, Southeast Region, NMFS ("Regional Director"); and adds a prohibition on making a false statement to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of fish. The added prohibition is necessary for effective enforcement and conforms the regulations to current standards.

Changes From the Proposed Rule

Minor language changes are made to clarify the regulations and conform them to current standards.

Classification

This rule is necessary to implement agreements between the United States and the GOC. Because it pertains to a foreign affairs function of the United States, it is exempt from the provisions of E.O. 12866, and from the requirement to provide notice and an opportunity for public comment pursuant to authority at 5 U.S.C. 553(a)(1).

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List of Subjects in 50 CFR Part 695

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: September 23, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 695 is amended as follows:

PART 695—VESSELS OF THE UNITED STATES FISHING IN COLOMBIAN TREATY WATERS

1. The authority citation for part 695 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 695.2, the definition of "Regional Director" is revised to read as follows:

§ 695.2 Definitions.

* * * * *

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702, telephone 813–570–5301; or a designee.

* * * * *

3. In § 695.6, text is added to read as follows:

§ 695.6 Vessel identification.

(a) *Official number.* A vessel with a permit issued pursuant to § 695.4, when in treaty waters, must display its official number—

(1) On the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in length and at least 10 inches (25.4 cm) in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number from an enforcement vessel or aircraft.

4. In § 695.7, paragraphs (f), (k), and (s) are added to read as follows:

§ 695.7 Prohibitions.

* * * * *

(f) Falsify or fail to display and maintain vessel identification, as required by § 695.6.

* * * * *

(k) Use or possess in treaty waters a lobster trap or fish trap without a degradable panel, as specified in § 695.21(d).

* * * * *

(s) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of fish.

5. In § 695.21, text is added to paragraph (d) to read as follows:

§ 695.21 Vessel and gear restrictions.

* * * * *

(d) *Trap requirements.* A lobster trap or fish trap used or possessed in treaty waters that is constructed of material other than wood must have an escape panel located in the upper half of the sides or on top of the trap that, when removed, will leave an opening no smaller than the throat or entrance of the trap. Such escape panel must be constructed of or attached to the trap with wood, cotton, or other degradable material.

* * * * *

[FR Doc. 94–23996 Filed 9–27–94; 8:45 am]
BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 187
Wednesday, September 28, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–CE–15–AD]

Airworthiness Directives; American General Aircraft Corporation Models AA–5, AA–5A, AA–5B, and AG–5B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to American General Aircraft Corporation (American General) Models AA–5, AA–5A, AA–5B, and AG–5B airplanes. The proposed action would require inspecting (one-time) the wing attach shoulder bolts for fretting, scoring, wear, excessive clearance, or enlarged or elongated mounting holes (known as damage from hereon), replacing any damaged parts and repairing any damaged areas, and reporting to the Federal Aviation Administration (FAA) the results of the inspection. Four reports of wing attach shoulder bolt failure prompted the proposed action. The actions specified by the proposed AD are intended to prevent wing attach shoulder bolt failure, which could lead to structural damage of the wing/fuselage to the point of failure.

DATES: Comments must be received on or before December 9, 1994.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–15–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Fletch Air, Inc., 9000 Randolph Street, Houston, Texas 77061; telephone (713) 649–8700 or (800) 329–4647; facsimile (713) 643–0070. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Ozzie Lopez, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991–2910; facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–CE–15-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–15–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received four reports (three in England and one in the United States) of wing attach shoulder bolt failure on American General Models AA–5, AA–5A, AA–5B, and AG–5B airplanes. Investigation reveals that excessive wing to center spar clearance could have contributed to the bolt failures; however, in each of the four instances, the bolts failed prior to reaching the service life of 7,250 hours time-in- service (TIS). The FAA has determined that, in order to assure the safety of these airplanes, the established service life of these bolts needs review.

American General has issued Critical Service Bulletin SB–185, dated July 6, 1994, which specifies procedures for inspecting the wing attach shoulder bolts and the mounting holes in the wing spar and the center section spar on American General Models AA–5, AA–5A, AA–5B, and AG–5B airplanes.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that, in order to determine whether the established service life of the wing attach shoulder bolts is adequate, (1) a one-time inspection should be accomplished to reveal the condition of these bolts on the American General Models AA–5, AA–5A, AA–5B, and AG–5B airplane fleet; and (2) AD action should be taken to prevent wing attach shoulder bolt failure, which could lead to structural damage of the wing/fuselage to the point of failure.

Since an unsafe condition has been identified that is likely to exist or develop in other American General Models AA–5, AA–5A, AA–5B, and AG–5B airplanes of the same type design, the proposed AD would require inspecting (one-time) the wing attach shoulder bolts for fretting, scoring, wear, excessive clearance, or enlarged or elongated mounting holes (known as damage from hereon), replacing any damaged parts and repairing any damaged areas, and reporting to the FAA the results of the inspection. The proposed inspections would be accomplished in accordance with American General Critical Service Bulletin SB–185, dated July 6, 1994.

The FAA will examine the inspection results and determine whether further rulemaking action is needed.

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The FAA estimates that 3,700 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 10 workhours per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,035,000 ($550 per airplane X 3,700 airplanes). This figure is based upon the assumption that no affected airplane operator has accomplished the proposed inspection, and does not take into account the cost for replacement if damaged bolts are found. The FAA has no way of determining the number of bolts that may need to be replaced based upon the results of the inspections.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

American General Aircraft Corporation: Docket No. 94–CE–15–AD.

Applicability: Models AA–5, AA–5A, AA–5B, and AG–5B airplanes (all serial numbers), certificated in any category.

Compliance: Required within the next 100 hours time-in- service (TIS) after the effective date of this AD, unless already accomplished.

To prevent wing attach shoulder bolt failure, which could lead to structural damage of the wing/fuselage to the point of failure, accomplish the following:

(a) Inspect the wing attach shoulder bolts (4) for fretting, scoring, wear, excessive clearance, or enlarged or elongated mounting holes (known as damage from hereon) in accordance with all the procedures included in the *INSPECTION* section of American General Critical Service Bulletin SB–185, dated July 6, 1994. Prior to further flight, replace any damaged parts and repair any damaged areas in accordance with the applicable maintenance manual.

(b) Send the results of the inspection required by paragraph (a) of this AD within 10 calendar days after the inspection to the Manager, Atlanta Aircraft Certification Office (ACO), 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. Include the airplane serial number, and the condition and number of hours TIS of each bolt at the time of inspection. (Reporting approved by the Office of Management and Budget under OMB no. 2120–0056.)

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta ACO at the address specified in paragraph (b) of this AD. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to Fletch Air, Inc., 9000 Randolph Street, Houston, Texas 77061; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 22, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–23944 Filed 9–27–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 91

[Docket No. 26242, Notice No. 94–28A]

RIN 2120–AF30

Suspension of Certain Aircraft Operations From the Transponder With Automatic Pressure Altitude Reporting Capability Requirement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This notice announces an extension of the comment period for Notice 94–28, "Suspension of Certain Aircraft Operations From the Transponder With Automatic Pressure Altitude Reporting Capability Requirement" (59 FR 43994; August 25, 1994). This comment period is extended from October 11, 1994 to November 25, 1994. The extension responds to a request from the Aircraft Owners and Pilots Association (AOPA) to allow additional time for specific comments responsive to Notice No. 94–28.

DATES: The comment period is being extended from October 11, 1994 to November 25, 1994.

ADDRESSES: As stated in Notice No. 94–28, comments should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Airspace Docket No. 26242, 800 Independence Avenue, SW., Washington DC 20591.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Crum, Air Traffic Rules Branch (ATP–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On August 25, 1994, the FAA published Notice No. 94–28, "Suspension of Certain Aircraft Operations From the Transponder With Automatic Pressure Altitude Reporting Capability Requirement." This notice invites comments on issues related to the reinstatement and modification of the expired Special Federal Aviation Regulation (SFAR) No. 62, which suspended certain provisions of the regulations that require the installation of use of automatic altitude reporting (Mode C) transponders.

Because the comment period originally established in Notice 94–28 would not provide sufficient time for AOPA to notify its members before the close of the comment period, AOPA forwarded a written request to the FAA for a 45-day extension of the comment period. This extension would provide the required 45-day lead time for AOPA to publish this information in its magazine and provide sufficient time for the submission of meaningful comments from its members.

In order to give all interested persons additional time to be notified of the issues, and submit their specific comments, the FAA finds that it is in the public interest to extend the comment period. Accordingly, the comment period for Notice No. 94–28 is extended to November 25, 1994.

Issued in Washington, DC on September 23, 1994.

Harold W. Becker,

Manager, Airspace Rules and Aeronautical Information Division, Air Traffic Rules & Procedures Service.

[FR Doc. 94–24002 Filed 9–27–94; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA–64–1–6504; FRL–5080–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of California; Approval of the Maintenance Plan for the San Francisco Bay Area and Redesignation of the San Francisco Bay Area Ozone Nonattainment Area to Attainment; Approval of Emissions Inventory; Approval of NO_x RACT Exemption Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPR).

SUMMARY: On November 12, 1993 the California Air Resources Board (CARB) submitted a maintenance plan and a request to redesignate the San Francisco Bay Area ozone nonattainment area from nonattainment to attainment. The ozone nonattainment area includes the following counties: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano (part), and Sonoma (part). Under the Clean Air Act, nonattainment areas may be redesignated to attainment if sufficient data are available to warrant the redesignation and the area meets the other Clean Air Act redesignation requirements.

In today's action, EPA is proposing to approve the State of California's submittal because it meets the maintenance plan and redesignation requirements. In addition, EPA is proposing to approve the nitrogen oxides (NO_x) Reasonably Available Control Technology (RACT) exemption petition submitted by the Bay Area Air Quality Management District (BAAQMD) on April 15, 1994 under section 182(f). Finally, EPA is proposing to expedite the approval of the annual and peak season 1990 inventory of actual ozone precursor emissions required by section 182(a)(1) by parallel processing the emissions inventory.

DATES: Comments must be received by December 27, 1994.

ADDRESSES: Written comments should be addressed to: David P. Howekamp, Director, Air and Toxics Division (A–1), United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California, 94105.

Copies of the redesignation request, State submittal and the EPA's technical support document (TSD) are available for public review at the above address and at the California Air Resources Board, 2020 L Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Wallace Woo, Chief, Plans Development Section (A–2–2), Air Planning Branch, United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, (415) 744–1207.

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I. Background

The Clean Air Act, as amended in 1977 (1977 Act) required areas that were designated nonattainment based on a failure to meet the ozone national ambient air quality standard (NAAQS) to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. The San Francisco Bay Area was designated under section 107 of the 1977 Act as nonattainment with respect to the ozone NAAQS on March 3, 1978 (40 CFR 81.305). In accordance with section 110 of the 1977 Act, the California Air Resources Board (CARB) submitted an ozone SIP as required by part D of the 1977 Act on July 25, 1979, which EPA took final action to approve in part, disapprove in part (lack of legal authority and legislation to implement an inspection and maintenance (I/M) program) and conditionally approve in part (resource and extension requirements for transportation control measures with respect to part D) on March 19, 1982 (47 FR 11866) with respect to the requirements of section 110 and part D of the 1977 Act. On July 26, 1983, CARB submitted the legislation and implementation schedule for an I/M program which EPA fully approved on November 25, 1983 (48 FR 53114). This approval rescinded EPA's earlier disapproval of the San Francisco Bay Area's SIP. On February 4, 1983, CARB submitted a SIP revision for the San Francisco Bay Area which projected attainment of the ozone and carbon monoxide NAAQS by 1987. EPA published final approval of this SIP revision and removed the earlier conditional approval for the San Francisco Bay Area on December 28,

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1983 (48 FR 57130). In its SIP, CARB projected that the San Francisco Bay Area nonattainment area would attain the ozone standard by 1987. The area failed to attain the standard.

In a May 26, 1988 letter, EPA issued a finding under section 110(a)(2)(H) of the Clean Air Act (the 1988 SIP-Call) that California's SIP for the San Francisco Bay Area was substantially inadequate to attain and maintain the NAAQS for ozone and carbon monoxide. This finding called on California to begin a two phase process which would lead to the revision of the plans. The first phase consisted of updating the emissions inventory, making certain corrections to the area's existing stationary source rules, and beginning to gather other pertinent data by August 1988. The second phase consisted of submitting a revised SIP containing changes necessary to attain the NAAQS. On June 13, 1989, EPA notified California that the deadline for the second phase of this SIP-Call was September 30, 1991.

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The ozone nonattainment designation for the San Francisco Bay Area continued by operation of law according to section 107(d)(1)(C)(i) of the Clean Air Act, as amended in 1990; furthermore, the area was classified by operation of law as moderate for ozone under section 181(a)(1). See 56 FR 56694 (Nov. 6, 1991), codified at 40 CFR 81.305. In a September 5, 1991 letter, EPA notified California that earlier deadlines for the SIP-Call were revised to conform with the requirements of the Clean Air Act Amendments of 1990.

The BAAQMD more recently has collected ambient monitoring data that show no violations of the ozone NAAQS (See discussion in Section III.1 below). Accordingly, on November 12, 1993 California requested redesignation of the area to attainment with respect to the ozone NAAQS and submitted an ozone maintenance SIP for the San Francisco Bay Area. The three co-lead agencies in the San Francisco Bay Area under section 174 of the Act, the BAAQMD, the Metropolitan Transportation Commission (MTC), and the Association of Bay Area Governments (ABAG), delegated authority to the Joint Air Quality Policy Committee (JAQPC), which is composed of representative board members from the three co-lead agencies, to hold a joint agency public hearing on the redesignation request and maintenance plan. On August 18, 1993, JAQPC held a public hearing on the redesignation request and maintenance plan. The plan and redesignation request were subsequently adopted by the BAAQMD, MTC and ABAG on September 1, 1993, September 22, 1993 and September 16, 1993, respectively, at regularly scheduled agency board meetings.

All SIP submittals to EPA must meet certain minimum administrative and technical criteria as set forth in 40 CFR part 51, appendix V (the "completeness" criteria) in order for the Administrator to review and take action on the submittal. Section 110(k)(1) of the Act describes the mandatory timeframe for EPA's determination of completeness and rulemaking action on plan submissions. In accordance with section 110(k)(1)(B) of the Act, the San Francisco Bay Area's ozone redesignation request and maintenance plan was deemed complete by operation of law on May 12, 1994. Thus, the submittal is considered complete as of November 12, 1993, the date it was submitted.

On July 21, 1994, CARB sent a letter to EPA requesting "parallel processing" of certain revisions to the San Francisco Bay Area's ozone maintenance plan and SIP, including new contingency measures in the maintenance plan, a 1990 emissions inventory, emission statement rule, new source review rule, and amendments to various VOC RACT regulations. The parallel processing request contained draft copies of the SIP revisions that the BAAQMD will adopt this year. The parallel processing provision of 40 CFR part 51, appendix V allows EPA to propose action on the draft revisions prior to submission of the locally adopted SIP revision by the State. At the time of final EPA action, the complete revisions must be submitted to EPA by the State.

II. Evaluation Criteria

The 1990 Amendments revised section 107(d)(1)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment: (1) The area must have attained the applicable NAAQS; (2) the area has met all relevant requirements under section 110 and part D of the Act; (3) the area has a fully approved SIP under section 110(k) of the Act; (4) the air quality improvement must be permanent and enforceable; and, (5) the area must have a fully approved maintenance plan pursuant to section 175A of the Act. Section 107(d)(3)(D) allows a Governor to initiate the redesignation process for an area to apply for attainment status.

III. Review of State Submittal

The California redesignation request for the San Francisco Bay Area meets the five requirements of section 107(d)(3)(E), noted above. Following is a brief description of how the State has fulfilled each of these requirements. EPA's technical support document (TSD) contains a more detailed analysis of the submittal with respect to certain of these evaluation criteria.

1. Attainment of the Ozone NAAQS

A. The Ozone Standard

Attainment of the ozone NAAQS is determined based on the expected number of exceedances in a calendar year. The method for determining attainment of the ozone NAAQS is contained in 40 CFR 50.9 and appendix H to that section. The simplest method by which expected exceedances are calculated is by averaging actual exceedances at each monitoring site over a three year period. An area is in attainment of the standard if this average results in expected exceedances for each monitoring site of 1.0 or less per calendar year. When a valid daily maximum hourly average value is not available for each required monitoring day during the year, these missing days must be accounted for when estimating exceedances for the year. Appendix H provides the formula used to estimate the expected number of exceedances for each year.

B. The BAAQMD Monitoring Data

The State of California's request is based on an analysis of quality-assured ozone air quality data which is relevant to both the maintenance plan and to the redesignation request. This data comes from the BAAQMD State and Local Air Monitoring Station (SLAMS) network which is comprised of 23 monitoring stations. The request is based on ambient air ozone monitoring data for calendar years 1990 through 1992. This data clearly shows an expected exceedance rate for the ozone standard of less than 1.0 per year for 22 of the 23 monitors, including each of the monitors on which the nonattainment designation was based. The exception is the Alum Rock monitor, discussed below, which is a monitoring site that was established during the 1992 ozone season. As described below, the Alum Rock monitoring site recorded one exceedance of the ozone NAAQS in 1992, but EPA believes that due to the circumstances of the timing of the establishment of the site, the best estimate of the expected exceedance rate for this monitoring site leads to the conclusion that the San Francisco Bay

Area achieved the ozone NAAQS during the 1990–1992 period.

C. The Alum Rock Monitor

The original Alum Rock monitoring site was located at a fire station in the northeast portion of San Jose. The BAAQMD lost its lease to this monitoring site in October 1990. Prior to its forced closure, the site had not recorded any exceedances of the standard since 1987. A new Alum Rock monitoring location was established in August 1992. This monitor recorded an exceedance of the ozone NAAQS on September 26, 1992. The actual monitored value was 0.125 ppm, the lowest possible measured value which would be considered an exceedance of the ozone NAAQS.

Because the site was operated for only five months during 1992, there is a large gap in data for the new site for 1992. Appendix H contains a formula for estimating the number of exceedances for a year when there is missing data. Normally, for an established site with two previous years of monitoring data, this number would be added to the number of exceedances for the two previous years and averaged to yield an expected exceedance per year. However, because the new site was established at a nearby but different location, it must be considered to be a different site. For this reason, the estimated exceedances for 1992 cannot be averaged over the three year period from 1990 through 1992. Therefore, while an expected annual exceedance rate can be calculated for the Alum Rock site, the lack of three complete years of data introduces uncertainties into the calculation using the formula contained in appendix H.

Appendix H does not explicitly address the situation where a new site starts up and collects data for only a portion of the calendar year. However, this situation has been addressed in an EPA memorandum, "Ozone and Carbon Monoxide Design Value Calculations," William Laxton, Director, Technical Support Division, OAQPS, June 18, 1990 (Laxton memo). The memo recognizes the disincentive created by applying the estimated exceedance calculation for missing data to new sites. The missing data penalty created by the calculation is designed to encourage prompt repair or replacement of monitors, rather than to discourage air pollution control agencies from installing new monitoring sites in excess of the number required by 40 CFR part 58. For this reason, the Laxton memo essentially allows an agency which installs a new monitoring site to base the estimated exceedance calculation for the initial year on the portion of the year following start-up of the monitor. Based on the underlying reasoning of the Laxton memo and the fact that there were no exceedances at any of the 22 established monitoring sites during June, July and August of 1992, EPA calculated expected exceedances for the new Alum Rock site using data from August 24, 1992, the date on which the new Alum Rock monitoring site was established, through the end of December 1992. That calculation results in an estimated expected exceedance calculation of 1.0 exceedances for 1992. EPA believes that, in light of the uncertainties attendant to the lack of three full years of data from the Alum Rock monitor, this calculation represents the "best estimate" of the expected exceedance rate for the Alum Rock monitor in 1992 and leads to the conclusion that, in all likelihood, the San Francisco Bay Area achieved attainment during the 1990–1992 period. The lack of any monitored exceedances at any of the other monitors in the San Francisco Bay Area's extensive SLAMs network during the June-August 1992 period provides additional support for EPA's belief that this calculation represents the best estimate of expected exceedances at the Alum Rock site.

EPA notes that monitoring at Alum Rock following the end of 1992 continues to show attainment. This provides further support for the conclusion that the best estimate of expected exceedances at the Alum Rock site for 1992 is 1.0.

D. Demonstration of Attainment

In sum, while some uncertainty attaches to the monitoring data from the Alum Rock site established in August 1992, EPA believes that the data submitted by the BAAQMD provides an adequate demonstration that the San Francisco Bay Area attained the ozone NAAQS during the 1990–1992 period. Moreover, monitoring data from all sites in the Bay Area SLAMs network continues to show attainment in 1993 and so far in 1994.

In order for EPA to take final action approving the San Francisco Bay Area redesignation request, monitoring data from all 23 sites in the BAAQMD's SLAMs network must continue to demonstrate attainment up to the time of final action. Thus, EPA proposes to approve the San Francisco Bay Area redesignation only if the monitoring data from the entire SLAMs network continues to demonstrate attainment. If the monitoring data records a violation of the NAAQS before final action is taken on this proposal, the proposed approval of the redesignation will be withdrawn and a proposed disapproval substituted for the proposed approval.

In addition to the demonstration discussed above, EPA required completion of air network monitoring requirements set forth in 40 CFR part 58. This included a quality assurance plan revision and a monitoring network review to determine the adequacy of the ozone monitoring network. The BAAQMD fulfilled these requirements to complete documentation for the air quality demonstration. The BAAQMD has also committed to continue monitoring in this area in accordance with 40 CFR part 58.

EPA agreed with the BAAQMD recommendation in its network review concerning the need for one additional ozone monitor in the area south of San Jose. As a result, the BAAQMD established an additional State and Local Air Monitoring Site (SLAMS) at the San Martin site in Santa Clara County in April 1994. EPA will review data from this new monitoring station as part of its review of the 1994 ozone season.

2. Meeting Applicable Requirements of Section 110 and Part D

On December 28, 1983 (48 FR 57130), EPA fully approved California's SIP for the San Francisco Bay Area as meeting the requirements of section 110(a)(2) and part D of the 1977 Act, with the exception of the I/M program which was approved on November 25, 1983 (48 FR 53114) and committed to specific implementation schedules for the San Francisco Bay Area. The amended Act, however, modified section 110(a)(2) and, under part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the Act, EPA has reviewed the SIP to ensure that it contains all measures that were due under the amended Act prior to or at the time the State submitted its redesignation request, as set forth in EPA policy.[1] EPA interprets section

[1] "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992.

"State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," John Calcagni, Director, Air Quality Management Division, October 28, 1992.

"State Implementation Plan (SIP) Requirements for Areas Submitted Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993.

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107(d)(3)(E)(v) of the Act to mean that, for a redesignation request to be approved, the State must have met all requirements that applied to the subject area prior to or at the same time as the submission of a complete redesignation request. Requirements of the Act that come due subsequently continue to be applicable to the area at later dates (see section 175A(c)) and, if redesignation of any of the areas is disapproved, the State remains obligated to fulfill those requirements. These requirements are discussed below.

As discussed earlier in this document, all of the SIP requirements must be met by the BAAQMD and approved by EPA into the SIP prior to final action on the redesignation request. In the event that these requirements are not met, EPA proposes in the alternative to disapprove the redesignation request. Based on CARB's July 21, 1994 letter to EPA, EPA is "parallel processing" certain SIP revisions in this document (contingency measures and 1990 emission inventory) and will address the other requirements (VOC RACT regulations, emission statement rule, new source review) in a separate **Federal Register** document prior to final action on this revision. EPA's decision to parallel process the locally adopted contingency measures and 1990 emissions inventory reflect EPA's positive technical and administrative review. An EPA letter dated August 25, 1994 (Howekamp, EPA, to Boyd, CARB) finds the revised baseyear inventory complete (for parallel processing purposes) and rescinds the April 13, 1993 finding of incompleteness for the emission inventory. An approvability review was performed separately by EPA.

A. Section 110 Requirements

Although section 110 was amended in 1990, the San Francisco Bay Area SIP meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. As to those requirements that were amended, see 57 FR 27936 and 23939 (June 23, 1993), many are duplicative of other requirements of the Act. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2). The SIP contains enforceable emission limitations, requires monitoring, compiling, and analyzing ambient air quality data, requires preconstruction review of new major stationary sources and major modifications to existing ones, provides for adequate funding, staff, and associated resources necessary to implement its requirements, and requires stationary source emissions monitoring and reporting.

B. Part D Requirements

Before the San Francisco Bay Area may be redesignated to attainment, it also must have fulfilled the applicable requirements of part D of the Act. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a)(1) or table 3 of section 186(a). The San Francisco Bay Area was classified under table 1 of section 181(a)(1) as a moderate ozone nonattainment area (See 56 FR 56694, codified at 40 CFR 81.305). Therefore, in order to be redesignated to attainment, the State must meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176, as well as the applicable requirements of subpart 2 of part D.

B.1. Subpart 1 of part D—Section 172(c) Plan Provisions. Under section 172(b), the Administrator established that States containing nonattainment areas shall submit a plan or plan revision meeting the applicable requirements of section 172(c) no later than three years after an area is designated as nonattainment, i.e., unless EPA establishes an earlier date. EPA has determined that the section 172(c)(2) reasonable further progress (RFP) (with parallel requirements for a moderate ozone nonattainment area under subpart 2 of part D, due November 15, 1993) was not applicable at the time the State of California submitted the San Francisco Bay Area redesignation request on November 12, 1993. Also, the 172(c)(9) contingency measures and additional 172(c)(1) non-RACT reasonable available control measures (RACM) beyond what may already be required in the SIP are no longer necessary, since no earlier date was set for these measures and as RFP was not due until November 15, 1993. As discussed below in section B3., subpart 2 of part D, the BAAQMD is in the process of revising certain VOC RACT rules to meet the Clean Air Act requirements.

The 172(c)(3) emissions inventory requirement has been met by the submission and proposed approval of the 1990 base year inventory required under subpart 2 of part D, section 182(a)(1).

As for the 172(c)(5) NSR requirement, once an area is redesignated to attainment, this requirement is no longer applicable. The area then becomes subject to prevention of significant deterioration (PSD) requirements in lieu of the NSR program (57 FR 13564). Currently, the San Francisco Bay Area is amending its NSR rule to comply with the provisions of the 1990 Clean Air Act amendments. Prior to final action on the redesignation request and maintenance plan, EPA will take final rulemaking action on the BAAQMD's NSR program with respect to the ozone requirements of sections 182(a)(2)(C) and 182(b)(5) in a separate **Federal Register** document. Upon redesignation to attainment, BAAQMD will continue with NSR permitting until such time as BAAQMD requests delegation of the PSD program for VOC. At that time, the nonattainment area requirements of the BAAQMD's NSR program will be placed in the contingency plan. See the TSD accompanying this notice for a detailed discussion of the NSR requirements and deficiencies in the current regulation.

Finally, for purposes of redesignation, the San Francisco Bay Area SIP was reviewed to ensure that all requirements of section 110(a)(2), containing general SIP elements, under the Act were satisfied. Title 40 CFR 52.220 evidences that the San Francisco Bay Area SIP was approved under section 110 of the Act, and further that it satisfies all applicable part D, title I requirements with the exception of the outstanding part D requirements for the ozone SIP, mentioned above.

B.2. Subpart 1 of Part D— Section 176 Conformity Plan Provisions. Section 176(c) of the Act requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 further provides that the conformity revisions to be submitted by the States must be consistent with Federal conformity regulations that the Act required EPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, EPA's General Preamble for the Implementation of title I informed the State that its conformity regulations would establish a submittal date (*see* 57 FR 13498, 13557, (April 16, 1992)).

The EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62118) and general conformity regulations on November 30, 1993 (58 FR 63214).

These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to 40 CFR 51.396 of the transportation conformity rule and 40 CFR 51.851 of the general conformity rule, the State of California is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, California is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Because the deadlines for these submittals have not yet come due, they are not applicable requirements under section 107(d)(3)(E)(v) and, thus, do not affect approval of this redesignation request.

Moreover, the BAAQMD has committed to revise its SIP to be consistent with the final Federal regulations on conformity by the applicable November 1994 deadlines (see 40 CFR 51.396(a) and 51.851(a), November 24, 1993 (58 FR 62218) and November 30, 1993 (58 FR 63247), respectively).

B.3. Subpart 2 of Part D—Section 182(o) and 182(b) Requirements. The San Francisco Bay Area is a moderate ozone nonattainment area. Under subpart 2 of part D, such areas must meet the requirements for marginal areas under section 182(a)(1) as well as the requirements for moderate areas contained in section 182(b). As discussed in section 2.B.2. above, for purposes of section 107(d)(3)(E)(v), the San Francisco Bay Area must meet only those requirements of sections 182 (a) and (b) which were due prior to or at the time of the submittal of a complete redesignation request. The BAAQMD has met the requirements of section 182 with the exception of VOC RACT rule corrections, the emissions statement rule, and the NSR rule corrections.

At the request of the CARB, EPA will parallel process the SIP revisions required pursuant to section 182(a) and (b) in a separate **Federal Register** notice before final action on the redesignation request and maintenance plan (See letter dated July 21, 1994 from James D. Boyd, Executive Officer, CARB to Felicia Marcus, Regional Administrator, EPA).

The CARB submitted a 1990 emissions inventory of ozone precursors as required by section 182(a)(1) on November 12, 1992. On November 18, 1993 the CARB submitted a revised 1990 emissions inventory of ozone precursors which EPA found incomplete on April 13, 1994 because the emissions inventory had not gone through an adequate public notice and hearing process. To correct the deficiency, the BAAQMD held a public hearing on July 29, 1994 (which was the maintenance plan 1990 attainment inventory submitted on November 12, 1993) and will submit the appropriate documentation to EPA. Through this document, EPA also proposes to approve the 1990 emissions inventory as required by section 182(a)(1).

Currently, the BAAQMD is in the process of amending certain VOC RACT regulations required by sections 182(a)(2)(A) and 182(b)(2) which EPA must fully approve into the SIP prior to final action on the redesignation request and maintenance plan.[2] The following is a list of the deficient VOC RACT regulations:

Rule No.	Rule title
8–1	General Provisions.
8–2	Miscellaneous Operations.
8–4	General Solvent & Surface Coating Operations.
8–7	Gasoline Dispensing Facilities.
8–8	Wastewater (Oil-Water) Separators.
8–11	Metal Container Closure and Coil Coating.
8–12	Paper, Fabric, and Film Coating.
8–13	Light and Medium Duty Motor Vehicle Assembly Plants.
8–14	Surface Coating of Large Appliance and Metal Furniture.
8–15	Emulsified and Liquid Asphalts.
8–16	Solvent Cleaning Operations.
8–19	Surface Coating of Miscellaneous Metal Parts and Products.
8–20	Graphic Arts Printing and Coating Operations.
8–22	Valves and Flanges at Chemical Plants.
8–23	Coating of Flat Wood Paneling and Wood Flat Stock.
8–24	Pharmaceutical and Cosmetic Manufacturing Operations.
8–25	Pump and Compressor Seals at Petroleum Refineries, Chemical Plants, Bulk Plants, and Bulk Terminals.
8–28	Pressure Relief Valves at Petroleum Refineries and Chemical Plants.
8–29	Aerospace Assembly and Component Coating Operations.
8–30	Semiconductor Manufacturing Operations.
8–31	Surface Coating of Plastic Parts and Products.
8–32	Wood Product Coatings.
8–33	Gasoline Bulk Terminals and Gasoline Delivery Vehicles.
8–34	Solid Waste Disposal Sites.
8–35	Coating, Ink, and Adhesive Manufacturing.
8–38	Flexible and Rigid Disk Manufacturing.
8–39	Gasoline Bulk Plants and Gasoline Delivery Vehicles.
8–40	Aeration of Contaminated Soil.
8–41	Vegetable Oil Manufacturing Operations.
8–42	Large Commercial Bakeries.
8–43	Surface Coating of Marine Vessels.
8–45	Motor Vehicle and Mobile Equipment Coating Operations.
8–47	Air Stripping and Soil Vapor Extraction Operations.
8–50	Polyester Resin Operations.

[2] EPA has received all of the VOC RACT rules required by section 182(a), but the rules do not meet all of EPA requirements for full approval. EPA has met extensively with the BAAQMD to discuss specific revisions to correct RACT deficiencies. EPA is unable to make a definitive determination on the approvability of these rules until EPA receives and reviews the formal SIP revision from the CARB.

Upon EPA's final approval of these rules and the other corrections noted above, the BAAQMD will have met the applicable requirements of the Act.

B4. Section 182(f) NO_x RACT Exemption Petition—a. Section 182(f) Requirements and Exemption Provisions. Section 182(f) of the Act requires that the same ozone provisions that apply to major stationary sources of VOC under subpart 2 of Part D also apply to major stationary sources of NO_x. Areas designated nonattainment of the NAAQS for ozone, and classified as moderate nonattainment or above, are required to adopt RACT rules for major stationary sources of NO_x and to provide for nonattainment area new source review (NSR) for new sources and modifications that are major for NO_x. Section 182(f) provides further that these requirements do not apply if EPA determines that additional NO_x reductions would not contribute to attainment of the NAAQS, for areas outside the ozone transport region (OTR). Any person (including a state) may petition EPA to make such a finding. EPA guidance interpreting the section 182(f) exemption provisions provides that a state may submit an exemption petition based on three consecutive years of air quality monitoring data showing attainment of the ozone NAAQS.

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EPA's NO_X exemption policy is contained in several memoranda[3] providing that under section 182(f)(1)(A), an exemption from the NO_X requirements may be granted for nonattainment areas outside the OTR if EPA determines that additional reductions of NO_X would not contribute to attainment of the NAAQS for those areas. In cases where a nonattainment area is demonstrating attainment with three consecutive years of air quality monitoring data, without having implemented the section 182(f) NO_X provisions, it is clear that the "contribute to attainment" test is met. Thus, a State may submit a petition for a section 182(f) exemption based on air quality monitoring data.

Pursuant to section 182(f)(1) of the Act, the exemption guidance outlines circumstances under which EPA would determine whether the new NO_X requirements would be limited or would not apply. For areas that did not implement the section 182(f) NO_X requirements but did attain the ozone standard, as demonstrated by ambient monitoring data, it is clear that the additional NO_X reductions required by section 182(f) would not contribute to attainment, although they might contribute to maintenance. In addition, EPA has not received a demonstration that the NO_X exemption would interfere with attainment or maintenance in downwind areas. (See discussion below in IV. Potential Impact of California Federal Implementation Plan and State Implementation Plan.)

EPA's conformity rules[4,5] also reference the section 182(f) exemption process as a means for exempting affected areas from NO_X conformity requirements. Therefore, ozone nonattainment areas that are granted areawide section 182(f) exemptions under this approach will also be exempt from the NO_X conformity requirements.

b. BAAQMD NO_X RACT Exemption Petition. On April 21, 1993, EPA notified the Governor of California of a finding that the State failed to submit the NO_X RACT provisions by November 15, 1992 as required by section 182(f). On April 15, 1994, the BAAQMD submitted a petition to EPA requesting that the San Francisco Bay Area ozone nonattainment area be exempted from the requirement to implement NO_X RACT controls pursuant to section 182(f) of the Act. A successful exemption demonstration or a complete submittal of the NO_X RACT rules would cure this deficiency.

The BAAQMD has not implemented NO_X RACT and has submitted monitoring data as part of its redesignation request to demonstrate attainment of the standard. As discussed above, the BAAQMD has monitoring data showing that the area attained the ozone NAAQS since the 1990–1992 timeframe. See section III.1. of this notice for a detailed discussion of the ozone air quality monitoring data.

c. Proposed Action. The EPA proposes to grant the BAAQMD section 182(f) NO_X RACT exemption petition based upon the evidence provided by the BAAQMD and the BAAQMD's compliance with the requirements outlined in EPA's section 182(f) exemption guidance. The final approval of this proposed action would exempt the San Francisco Bay Area from the requirements to implement the NO_X RACT requirements and the applicable general and transportation conformity provisions for NO_X. However, the NO_X RACT control measures are included as contingency measures in the San Francisco Bay Area's maintenance plan (See discussion below, 5E. Contingency Plan).

3. Fully Approved SIP Under Section 110(k) of the Act

In order for EPA to take final action approving the redesignation request and maintenance plan, the San Francisco Bay Area must have a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and Part D. As discussed in Section 2.A. above, EPA approved numerous provisions of the San Francisco Bay Area SIP under the pre-amended Act and finds that these provisions meet the requirements of section 110(a)(2). In addition, EPA will take action on the following SIP revisions prior to taking final action on the redesignation request and maintenance plan: VOC RACT rules, NSR rule, and the emission statement rule. Also, EPA is proposing to approve the emissions inventory as required by section 182(a)(1) through this document. Assuming that these SIP revisions meet all requirements for approval, EPA will undertake rulemaking to approve them. Once EPA approves these revisions, the San Francisco Bay Area will have fulfilled the requirement to have a fully approved SIP under section 110(k).

The proposed approval of the redesignation request is contingent upon the BAAQMD fulfilling the requirements of sections 173 and 182 discussed above prior to final rulemaking. In the alternative, if the requirements are not fulfilled, EPA must disapprove the redesignation request for the San Francisco Bay Area.

4. Improvement in Air Quality Due to Permanent and Enforceable Measures

Under the pre-amended Act, EPA approved California's SIP control strategy for the San Francisco Bay Area nonattainment area, satisfied that the rules and the emission reductions achieved as a result of those rules were enforceable. Since enactment of the amended Act, the State has made additional submittals as identified in section 182(b) above. In addition, EPA finds that the measures listed below contribute to the permanence and enforceability of reductions in ambient ozone levels in the San Francisco Bay Area.

Selected control measures[1]	BAAQMD reg 8 rule #	Emission reductions 1987–1990 VOC (TPD)
Stationary Sources:		
Architectural Coatings	3	1.8
Emulsified and Liquid Asphalts	15	2.0
Solvent Cleaning Operations	16	0.8
Valves and Flanges at Petroleum Refinery Complexes	18	1.4
Graphic Arts Printing and Coating Operations	20	0.7
Pump and Compressor Seals at Petroleum Refineries	25	1.1
Solid Waste Disposal Sites	34	3.1
Natural Gas and Crude Oil Production Refineries	37	0.6

[1] Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, issued on September 17, 1993, entitled "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992", and, "Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f)," from John Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Division Directors, December 16, 1993, and a subsequent revision to portions of these memoranda from John S. Seitz, Director of EPA's Office of Air Quality Planning and Standards, issued on May 27, 1994, entitled, "Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria".

[4] "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans or Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act", November 24, 1993 (58 FR 62188).

[5] "Determining Conformity of General Federal Actions to State or Federal Implementation Plans, Final Rule", November 30, 1993 (58 FR 63214).

Selected control measures[1]	BAAQMD reg 8 rule #	Emission reductions 1987–1990 VOC (TPD)
Motor Vehicles and Mobile Equipment Coating Operations	45	0.6
Marine Tank Vesset to Marine Tank Vessel Loading	46	0.5
Aerosol Paint Coatings	49	0.8
Stationary Sources Subtotal	.....	13.4
Mobile Sources: ARB Motor Vehicle Program (including Basic I/M)	n/a	56
Total	.....	69

[1] Control Measures achieving at least 0.5 TPD reduction of VOC between 1987 and 1990.

The actual reduction in VOC emissions from 1987 to 1990 was 61 TPD which reflects growth in emissions from some sources and reductions in emissions due to all control measures.

In association with its emission inventory discussed in Section 5.A. below, the State demonstrated that point source VOC emissions were not artificially low due to local economic downturn. The BAAQMD included trend data for vehicle miles traveled (VMT) and employment in the maintenance plan to demonstrate that attainment was not due to economic downturn. These trend data indicate that neither VMT growth nor daily VMT actually decreased during the attainment period. In addition, using employment data as an indicator for stationary source emissions, the BAAQMD demonstrated a modest decrease during the calendar years 1991 and 1992. The overall effect on the stationary source inventory should have been less than a 2% reduction, not enough to significantly affect the San Francisco Bay Area's attainment of the ozone NAAQS. EPA finds that the combination of existing EPA-approved SIP and Federal measures contribute to the permanence and enforceability of reductions in ambient ozone levels that have allowed the area to attain the NAAQS.

5. Fully Approved Maintenance Plan Under Section 175A

In today's document, EPA is proposing approval of the State's maintenance plan for the San Francisco Bay Area because EPA finds that the BAAQMD's submittal meets the requirements of section 175A. If EPA determines after public notice and comment that it should give final approval to the maintenance plan, the San Francisco Bay Area nonattainment area will have a fully approved maintenance plan in accordance with section 175A. Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems. Each of the section 175A plan requirements is discussed below.

5.A. Emissions Inventory—Base Year Inventory. The BAAQMD adopted comprehensive inventories of VOC, NO_X, and CO emissions from area, stationary, and mobile sources using 1990 as the base year for calculations to demonstrate maintenance of the ozone NAAQS. EPA has determined that 1990 is an appropriate year on which to base attainment level emissions because EPA policy allows States to select any one of the three years in the attainment period as the attainment year inventory.[6]

CARB originally submitted the annual and peak ozone season 1990 comprehensive inventories of actual emissions as a SIP revision on November 12, 1992, and revised them in a submission dated November 18, 1993. CARB also submitted the San Francisco Bay Area's ozone maintenance plan on November 12, 1993 which contained a comprehensive 1990 emission inventory. EPA policy (September 29, 1992, Calcagni and Laxton) allows the public hearing and adoption of the 1990 base year inventories to occur with the first related regulatory submittal. CARB developed the inventories to meet the requirements of sections 172(c)(3) and 182(a)(1), in accordance with EPA guidance.

The State submittal contains the detailed inventory data and summaries by county and source category. The BAAQMD provided the stationary source estimates, based on source test and mass balance computations, as required for annual permit renewal. The CARB and BAAQMD generated area source emissions for each source category based on emission and activity factors for each county in the nonattainment area. These factors are cited or their sources referenced in Methods for Assessing Area Source Emissions in California, California Air Resources Board, September 1991.

CARB based on-road mobile source emission and activity estimates on CARB's EMFAC7F and BURDEN7C models, respectively. Different emission factors and activity rates apply to each type of vehicle, roadway, and road condition. Vehicle mix and age data from vehicle registration vary within each county. Off-road engine estimates were derived from both State and local sources, as cited in the area source document, referenced above. The CARB derived VMT estimates from a mix of the California "Highway Performance Monitoring System" (HPMS) and local surveys. Actual, as opposed to allowable, emission estimates were used for all source categories.

The comprehensive base year emissions inventory discussed above has been entered into the Aerometric Information Retrieval System (AIRS). AIRS is EPA's computerized data storage system for air quality and emission source data. EPA, under contract with Radian Corporation, has entered the base year emissions inventory of stationary sources into AIRS and has also prepared computer software to convert the California Emission Data System stationary source data to AIRS/AFS format for entry into AIRS. California is responsible for entering 1990 area and mobile source (AMS) data into AIRS by October 1994, according to a fiscal year 1994 Clean Air Act section 105 air program grant agreement. EPA's TSD contains a more detailed analysis of the base year inventory for the San Francisco Bay Area.

On April 13, 1994, EPA found the 1990 base year inventory submission incomplete for lack of adequate public notice and adoption. Instead of adopting the November 12, 1992 and November 18, 1993 base year inventories as submitted by CARB, the BAAQMD held a public hearing on a revised 1990 base year inventory on July 29, 1994 which was the attainment inventory submitted as part of the maintenance plan. The State requested parallel processing of this revised emissions inventory to fulfill section 182(a)(1). Based on the State's parallel processing request and

[6] "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992.

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submission of associated documentation, EPA rescinded the finding of incompleteness in an EPA letter dated August 25, 1994 to CARB (Howekamp, EPA to Boyd, CARB).

Following is a table of the revised average peak ozone season weekday VOC and NO_x emissions for the biogenic and major anthropogenic source categories for 1990 (the attainment year inventory, 1995, 2000, and 2005.

VOC EMISSION INVENTORY SUMMARY [1]
(TONS PER DAY)

	1990	1995	2000	2005
Point	78	73	75	77
Area	173	154	141	141
Mobile On-Road	300	204	142	104
Mobile Non-Road	81	85	82	84
Anthropogenic Total	631	515	440	406
Biogenics	300	300	300	300
Total	931	815	740	706

[1] Entries are rounded to the nearest whole number. Totals may not equal to sum of column entries.

NO_x EMISSION INVENTORY SUMMARY [1]
(TONS PER DAY)

	1990	1995	2000	2005
Point	131	130	141	146
Area	15	16	17	18
Mobile On-Road	251	194	166	158
Mobile Non-Road	159	164	176	186
Total	557	504	499	508

[1] Entries are rounded to the nearest whole number, totals may not equal to sum of column entries.

The BAAQMD provided EPA with the appropriate documentation for technical (Base Year 1990 Emission Inventory—Source Category Methodologies) and administrative requirements. The revised VOC and NO_x inventories are 3.4 and 13.5 percent lower, respectively, than the reactive organic compound (ROG) and NO_x inventories previously submitted by the State. The primary reason for the difference between the inventories is the use of the BURDEN7F model in place of the BURDEN7C model to estimate vehicular emissions. In addition, ROG inventories include ethane, which are approximately 4 percent higher than VOC inventories.

5.B. Demonstration of Maintenance—Projected Inventories. The BAAQMD developed projected VOC and NO_x emissions inventories for the years 1990, 1995, 2000 and 2005 by applying growth factors in accordance with EPA guidance. The CARB included these 1990 emissions inventories for VOC, NO_x and CO in the maintenance plan submission. These 1990 emission inventories will be entered into AIRS.

The projected inventories show that the ozone standard will be maintained and that emissions are not expected to exceed the level of the 1990 inventory during the maintenance period. EPA's TSD contains a detailed analysis of the projected emission inventories for the San Francisco Bay Area.

5.C. Verification of Continued Attainment. Continued attainment of the ozone NAAQS in the San Francisco Bay Area depends, in part, on the State's efforts to track indicators of continued attainment during the maintenance period. The BAAQMD will analyze annually the three most recent consecutive years of air quality monitoring data to verify continued attainment of the national ozone standard, in accordance with 40 CFR part 50, appendix H. The BAAQMD will submit to EPA an annual report by July 1 of each year for data collected from the previous calendar year. This information in conjunction with the reports from the previous two years will provide adequate information for determining continued compliance with the ozone NAAQS. The BAAQMD has chosen a violation of the NAAQS as the trigger for the contingency plan.

5.D. Contingency Plan. The level of VOC and NO_x emissions in the San Francisco Bay Area will largely determine its ability to stay in compliance with the ozone NAAQS in the future. Despite best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, as required pursuant to section 175A, the BAAQMD has provided contingency measures with a schedule for implementation in the event of a future ozone air quality problem.

At the time of local adoption of the redesignation request and maintenance plan, the BAAQMD identified the enhanced vehicle inspection and maintenance program (I/M), required for serious and above ozone nonattainment areas, as the contingency measure which would be triggered in the event of a violation during the maintenance period. Since that time, the State of California has passed legislation for an enhanced I/M program which restricts the implementation of the test-only program to nonattainment areas which are required to implement the program under the Clean Air Act. Thus, BAAQMD is prohibited from opting into the test-only portion of the enhanced I/M program. However, the BAAQMD has selected new measures to fulfill the contingency plan requirements of section 175A(d) which are discussed below.

On April 15, 1994, the BAAQMD, MTC, and ABAG sent a letter to the CARB Executive Officer, James Boyd, which committed to adopt basic improvements to the I/M program and NO_x control measures as the new contingency provisions for the maintenance plan. In this letter, the BAAQMD, MTC and ABAG, have proposed to implement the basic improvements to the I/M program beginning in January 1995 in order to ensure continued maintenance of the NAAQS. The emission reductions associated with this program go beyond the necessary emission reductions required for maintenance and the reductions are not included in the BAAQMD's projected inventories in the maintenance plan. These improvements yield approximate emission reductions in the amount of 8 tons per day (TPD) VOC and 7 TPD NO_x. The early implementation of this contingency provision provides an additional margin of safety for the area in maintaining the NAAQS. In addition, in the event of a violation during the maintenance period, the BAAQMD will meet with EPA within 30 days following the violation to determine which additional measures would be appropriate to implement. The additional measures contained in the proposal include numerous NO_x RACT control measures which yield additional NO_x reductions through the year 2001. The chart below lists the additional measures and their associated emission reductions. The TSD contains detailed information concerning the basic improvements to the I/M program and the NO_x RACT control measures.

BAAQMD NO_x RULES AS CONTINGENCY MEASURES

Title regulation 9	Adopted	Implementation year(s)	NO_x Reductions (TPD)
NO_x and CO from Industrial, Institutional and Commercial Boilers, Steam Generators (rule 7)	9/16/92	1/1/96	14.9

BAAQMD NO_x RULES AS CONTINGENCY MEASURES—Continued

Title regulation 9	Adopted	Implementation year(s)	NO_x Reductions (TPD)
NO_2 and CO_2 Emissions from Stationary Internal Combustion Engines (rule 8)	1/20/93	1/1/97	8.3
NO_x from Stationary Gas Turbines (rule 9)	5/5/93	1/1/97	7/0
Refinery Boilers, Steam Generators and Process Heaters (rule 10)	1/5/94	5/31/95	n/a
NO_x and CO from Utility Electric Power Generating Boilers (rule 11)	2/16/94	5/31/95	1–2.6
NO_x from Glass Melting Furnaces (rule 12)	1/19/94	1/1/97–1/1/2001	1.2

[1] Sources already meet RACT standards.

At the request of CARB, the changes to the contingency plan are being parallel processed in accordance with 40 CFR part 51, appendix V in order to expedite the approval of the redesignation request and maintenance plan. The BAAQMD, MTC and ABAG held a public hearing on the new contingency plan on July 29, 1994.

The contingency measures proposed by the BAAQMD meet the requirements of section 175A(d) of the Act.

5E. Subsequent Maintenance Plan Revisions. In accordance with section 175A(b) of the Act, the State has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years (See letter dated April 15, 1994 from Milton Feldstein, BAAQMD to James Boyd, CARB attached to the TSD).

IV. Potential Impact of California Federal Implementation Plans and State Implementation Plans

EPA is under court order to promulgate final federal implementation plans (FIPs) for ozone for Los Angeles-South Coast Air Basin Area, the Sacramento Metro Area, and the Ventura County Area and for carbon monoxide for Los Angeles-South Coast Air Basin Area by February 15, 1995. EPA discusses the phenomenon of pollutant transport within air basins in the proposed FIPs (59 FR 23393, May 5, 1994). EPA acknowledges that future modeling analyses could eventually result in revisions to the FIP, which may impose additional FIP controls for areas not covered by the proposed FIPs, such as the San Francisco Bay Area, which is upwind of Sacramento. EPA's proposed action to redesignate the San Francisco Bay Area to an attainment area does not exclude the possibility of future FIP controls in the area.

In addition, States are responsible for developing and submitting demonstrations which show that the standard will be attained by the applicable date for areas where the demonstration of attainment is complicated by transport between two areas of different classifications (See General Preamble to title I of the Clean Air Act (57 FR 13528, April 16, 1992)). Thus, EPA expects the ozone modeling demonstrations due by November 15, 1994 required by section 182(c)(2) to address transport and to demonstrate attainment for all areas within California.

A recent report released by CARB, "Preliminary Assessment of Transport on San Joaquin Valley Ozone," discusses recent simulations to assess the impact of transported emissions in the San Joaquin Valley. It should be noted that the results discussed in the report are based on an extreme scenario in which anthropogenic emissions for the San Francisco Bay Area and the Sacramento area are set to zero. In this scenario, the report indicates that there would be a decrease in ozone measurements of 27% in the Northern San Joaquin Valley, ten percent in the Central San Joaquin Valley and seven percent in Southern San Joaquin Valley. The results discussed in this report are preliminary. EPA will review the final report when it is available.

EPA is soliciting comment on whether transport has any impact on EPA's proposed redesignation of the San Francisco Bay Area to attainment.

V. Conclusion

EPA is soliciting public comments on this document and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the person and address listed in the ADDRESSES section at the beginning of this notice.

Proposed Action

In today's document, EPA proposes to approve the San Francisco Bay Area's ozone maintenance plan because it meets the requirements of section 175A. In addition, the Agency is proposing approval of the redesignation request for the ozone nonattainment area, subject to final approval of the maintenance plan and provided the hearing notice and adoption documentation are submitted for the amendments to the contingency plan, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. Finally, EPA proposes to approve the emissions inventory as meeting the requirements of section 182(a)(1), provided the hearing notice and adoption documentation are submitted, and the NO_x exemption petition which fulfills the requirements of section 182(f). Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Ozone State implementation plans (SIP's) are designed to satisfy the requirements of part D of the Clean Air Act and to provide for attainment and maintenance of the ozone NAAQS. This proposed redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the VOC or NO_x emission limitations and restrictions contained in the approved ozone SIP. Changes to ozone SIP VOC regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation (section 173(b) of the Clean Air Act) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the Clean Air Act.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant

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impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have any economic impact on any small entities. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities.

Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. Accordingly, I certify that the approval of the redesignation request will not have an impact on any small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 31, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94–23983 Filed 9–27–94, 8:45 am]

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40 CFR Part 180

[PP 8F3649, 9F3703, 0F3880/P590; FRL–4913–2]

RIN 2070–AC18

Pesticide Tolerances for Abamectin B_1 and Its Delta-8,9-Isomer

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish tolerances for residues of the insecticide abamectin B_1 and its delta-8,9-isomer in or on the raw agricultural commodities celery, tomatoes, and strawberries. The proposed regulation to establish maximum permissible levels for residues of the insecticide was requested in petitions submitted by the Merck Sharp & Dohme, Division of Merck & Co.

DATES: Comments, identified by document control number [PP 8F3649, 9F3703, 0F3880/P590], must be received on or before October 28, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. In person, bring objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as comments concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business" (CBI). Information marked so will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Second Floor, Crystall Mall #2, Rm. 204, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Registers** of October 12, 1988 (53 FR 39783), February 22, 1989 (54 FR 7596), and January 16, 1991 (56 FR 1631), which announced that Merck Sharp & Dohme, Division of Merck & Co., Hillsborough Rd., Three Bridges, NJ 08887, had submitted pesticide petitions (PP 8F3649 for celery, PP 9F3703 for tomatoes, and PP 0F3880 for strawberries) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish tolerances for residues of the pesticide abamectin B_1 and its delta-8,9-isomer (a mixture of abamectin containing greater than or equal to 80 percent abamectin B_{1b} (5-0-demethyl abamectin A_{1a}) and less than or equal to 20 percent abamectin B_{1a} (5-0-demethyl-25-di(1-methylpropyl)-25-(1-methylethyl) abamectin A_{1a})) in or on the raw agricultural commodities (RACs) celery at 0.035 part per million (ppm); tomatoes at 0.005 ppm; and strawberries at 0.02 ppm and a feed additive petition (FAP 9H5570) proposing to amend 40 CFR 186.300 by establishing a feed additive regulation under section 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.348) for abamectin B_1 and its delta-8,9-isomer in or on tomato wet pomace at 0.01 ppm and tomato dry pomace at 0.07 ppm.

On January 31, 1990, Merck Sharp & Dohme, Division of Merck & Co. requested that the pesticide petitions be amended by increasing the proposed tolerances for the RACs tomatoes (PP 9F3703) and celery (PP 8F3649) to 0.01 and 0.05 ppm, respectively, and by deleting the proposed tolerance on wet tomato pomace (9H5570) since there is no distinction between wet and dry pomace, and the higher proposed feed additive tolerance of 0.07 ppm for tomato pomace is adequate.

Subsequent to the initial notices of filing, EPA established import tolerances for residues of abamectin B_1 and its delta-8,9 isomer on the RAC fresh tomatoes at 0.01 ppm and established a feed additive regulation for tomato pomace at 0.07 ppm for tomatoes imported from Mexico. (See the **Federal Register** of December 13, 1991 (56 FR 6503)). Although the tolerance level proposed for tomatoes is the same as that established in December 13, 1991, that tolerance was limited to fresh tomatoes only. The current proposed tolerance is for all tomatoes. Since the tolerance level proposed for tomato pomace is the same as that established in December 13, 1991, FAP 9H5570 is being administratively withdrawn.

The data submitted in support of these tolerances and other relevant material have been reviewed. The toxicological and metabolism data and analytical methods for enforcement purposes considered in support of these tolerances are discussed in detail in related documents published in the **Federal Registers** of May 31, 1989 (54 FR 23209, cottonseed) and August 2, 1989 (54 FR 31836, citrus).

The Agency used a two-generation rat reproduction study with an uncertainty factor of 300 to establish a Reference Dose (RfD). The 300-fold uncertainty factor was utilized for (1) inter- and intra-species differences, (2) the extremely serious nature (pup death) observed in the reproduction study, (3) maternal toxicity (lethality) no-observable-effect level (NOEL) (0.05 mg/kg/day), and (4) cleft palate in the mouse developmental toxicity study with isomer (NOEL = 0.06 mg/kg/day). Thus, based on a NOEL of 0.12 mg/kg/day from the two-generation rat reproduction and an uncertainty factor of 300, the RfD is 0.0004 mg/kg/body weight (bwt)/day.

A chronic dietary exposure/risk assessment has been performed for abamectin using the above RfD. Available information on anticipated residues and 100% crop treated was incorporated into the analysis to estimate the Anticipated Residue Contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on tolerance-level residues. The ARC from established tolerances and the current action is estimated at 0.000106 mg/kg bwt/day and utilizes 26.5 percent of the RfD for the U.S. population. The ARC for children, aged 1 to 6 years old, and nonnursing infants (subgroups most highly exposed) utilizes 64.2 and 95.1 percent of the RfD, respectively. Generally speaking, the Agency has no cause for concern if anticipated residues contribution for all published and proposed tolerances is less than the RfD.

Because of the developmental effects seen in animal studies, the Agency used the mouse teratology study (with a NOEL of 0.06 mg/kg/day for developmental toxicity for the delta-8,9 isomer) to assess acute dietary exposure and determine a margin of exposure (MOE) for the overall U.S. population and certain subgroups. Since the toxicological end point pertains to developmental toxicity, the population group of interest for this analysis is women aged 13 and above, the subgroup which most closely approximates women of child-bearing age. The MOE is calculated as the ratio of the NOEL to the exposure. For this analysis, the Agency calculated the MOE for high-end exposures for women ages 13 and above. The MOE for the high-end exposure is 167. Generally speaking, MOEs greater than 100 for developmental toxicity are acceptable to the Agency.

The metabolism of the chemical in plants and livestock for this use is adequately understood. Any secondary residues occurring in meat, meat byproducts, or milk will be covered by existing tolerances for those commodities. There is no reasonable expectation of finite residues in poultry and swine commodities; therefore, no tolerances are necessary at this time. Adequate analytical methodology (HPLC-Fluorescence Methods) is available for enforcement purposes.

Prior to publication in the Pesticide Analytical Manual, Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from: Calvin Furlow, Public Reponse and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703)-304-5232.

The tolerances established by amending 40 CFR part 180 will be adequate to cover residues in or on celery, strawberries, and tomatoes. There are presently no actions pending against the continued registration of this chemical. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 16, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—AMENDED

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.449, by amending paragraph (b) by revising the table therein, to read as follows:

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§ 180.449 Abamectin B_1 and its delta-8,9-isomer; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
Celery	0.05
Strawberry	0.02
Tomatoes	0.01

[FR Doc. 94-23760 Filed 9-27-94; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300359; FRL-4909-7]

RIN 2070-AC18

Polystyrene; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish an exemption from the requirement of a tolerance for residues of polystyrene (CAS Reg. No. 9003-53-6) when used as an inert ingredient (suspending agent, thickener) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, or animals. Dow Chemical Co. requested this proposed regulation.

DATES: Comments, identified by the document control number [OPP-300359], must be received on or before October 28, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver to: Rm. 1132, Crystal Mall Bldg. #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: Dow Chemical Co., 1320 Waldo Ave., Suite 300, Midland, MI 48674, submitted pesticide petition (PP) 4E04371 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), propose to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of polystyrene (CAS Reg. No. 9003-53-6) when used as an inert ingredient (suspending agent, thickener) in pesticide formulations applied to growing crops, to raw agricultural commodities after harvest, or to animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellents in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients, published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for polystyrene will need to be submitted. The rationale for this decision is described below:

In the case of certain chemical substances that are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Polystyrene conforms to the definition of a polymer given in 40 CFR 723.250 (b)(11) and meets the following criteria that are used to identify low risk polymers:

1. The minimum number-average molecular weight of polystyrene is 50,000. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through skin or GI tract generally are incapable of eliciting a toxic response.
2. Polystyrene is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.
3. Polystyrene does not contain less than 32.0 percent by weight of the atomic element carbon.
4. Polystyrene contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.
5. Polystyrene does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250 (d)(3)(ii).
6. Polystyrene is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or a modification of a biopolymer that is substantially intact.
7. Polystyrene is not manufactured from reactants containing, other than impurities, halogen atoms or cyano groups.
8. Polystyrene does not contain a reactive functional group that is intended or reasonably anticipated to undergo further reaction.
9. Polystyrene is not designed or reasonably anticipated to substantially degrade, decompose, or depolymerize.

Based on the information above and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, that contains any of the ingredients listed herein, may request within 30 days after the publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [OPP-300359]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have an economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: September 14, 1994.

Stephen L. Johnson,
Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001 paragraphs (c) and (e) are amended in the tables therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
Polystyrene (CAS Reg. No. 9003-53-6), minimum number average molecular weight 50,000..		Suspending agent, thickener.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
Polystyrene (CAS Reg. No. 9003-53-6), minimum number average molecular weight 50,000..		Suspending agent, thickener.

[FR Doc. 94-23889 Filed 9-27-94; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 745

[OPPTS-62134C; FRL-4910-7]

RIN 2070-AC21

Lead Fishing Sinkers; Response to Citizens' Petition and Proposed Ban; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of comment period.

SUMMARY: EPA is reopening the comment period for a proposed rule to prohibit the manufacture, processing, and distribution in commerce of certain lead- and zinc-containing fishing sinkers which was published in the **Federal Register** of March 9, 1994.

DATES: Comments must be received on or before November 9, 1994.

ADDRESSES: All comments should be submitted in triplicate to: TSCA Docket Receipt (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-G99, 401 M St., SW., Washington, DC 20460, Attention: Docket No. 62134C.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E-545, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: 202-554-0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 9, 1994 (59 FR 11122), EPA issued a proposed rule under section 6(a) of the Toxic Substances Control Act to prohibit the manufacture, processing, and distribution in commerce of certain lead- and zinc-containing fishing sinkers. Written comments on the proposed rule were to be received on or before May 9, 1994. EPA received requests seeking a 60-day extension of the public comment period because of additional time needed to provide EPA with information it requested in the proposed rule. EPA believed that providing an additional 60-day

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comment period to prepare written comments was reasonable, and extended the comment period until July 8, 1994. The Agency has continued to receive numerous comments from the public although the public comment period has closed. Therefore, in order to give all interested persons the opportunity to comment fully, EPA has decided to reopen the public comment period. Written comments must now be received by EPA on or before November 9, 1994.

A person may assert a claim of business confidentiality for any comments submitted to EPA in connection with the proposed rule. Any person who submits a comment that contains information claimed as confidential, must also submit a nonconfidential version. Any claim of confidentiality must accompany the information when it is submitted to EPA. Persons may claim information confidential by circling, bracketing, or underlining it, and marking it with "CONFIDENTIAL" or some other appropriate designation. EPA will disclose information subject to a claim of business confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information in comments at the time it is submitted to EPA, the Agency will put the comments in the public docket without further notice to that person.

List of Subjects in 40 CFR Part 745

Environmental protection, Lead, Recordkeeping and reporting requirements.

Dated: September 20, 1994

Mark Greenwood,

Director, Office of Pollution Prevention and Toxics

[FR Doc. 94–23982 Filed 9–27–94; 8:45 am]

BILLING CODE 6560–60–F

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 28

[Docket No. (49783)]

Nondiscrimination on the Basis of Disability in Department of Transportation Conducted Programs: Review of Department Facilities

AGENCY: Department of Transportation.

ACTION: Notice and request for comment.

SUMMARY: This notice provides an opportunity to interested persons to participate in the self-evaluation process and development of transition plans for structural changes in departmental facilities by submitting comments (either oral or written) to the Department of Transportation in accordance with Section 504 of the Rehabilitation Act, as amended, and the Department's implementing regulations.

DATES: General comments concerning this notice are requested by October 28, 1994. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Written or oral comments concerning specific facilities should be provided to the appropriate operating administration contact listed below.

U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590

Attention:

Office of the Secretary, Mr. Brian Kerr (M–442), Tele: (202) 366–0030.

Federal Highway Administration, Mr. Lyle Hayhurst (HMS–31), Tele: (202) 366–0550.

Federal Railroad Administration, Ms. Marie Savoy (RAD–30), Tele: (202) 366–0083.

National Highway Transportation Safety Administration, Mr. John Ogas (NAD–51), Tele: (202) 366–2597.

Federal Transit Administration, Mr. Wayne Hirst (TAD–12), Tele: (202) 366–4865.

Maritime Administration, Mr. Edward Telfair (MAR–310), Tele: (202) 366–2812.

Research and Special Programs Administration, Mr. Jesse Dobbs (DMA–11), Tele: (202) 366–0894.

Office of the Inspector General, Ms. Dottie Bowie (JP–20), Tele: (202) 366–6908.

Federal Aviation Administration, 800 Independence Avenue, SW.,Washington, DC 20591.

Attention:

Mr. Murry Camp (ASU–5), Tele: (202) 267–8246.

United States Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001.

Attention:

Mr. Bill Logan (G-ECV), Tele: (202) 267–1936.

St. Lawrence Seaway Development Corp., 180 Andrews Street, Massena, New York 13662–1763.

Attention:

Ms. Rhonda Worden, Tele: (315) 764–3208.

FOR FURTHER INFORMATION CONTACT: General comments concerning this notice should be submitted to Rita Martin (M–44), Office of the Assistant Secretary for Administration, Department of Transportation, 400 7th Street SW., Washington, DC 20590, telephone number 202/366–0815. Persons with impaired hearing or speech may provide comments through the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Under Section 504 of the Rehabilitation Act, as amended (29 U.S.C. 794), and the Department's implementing regulations (49 CFR part 28), the Department of Transportation must ensure that individuals with disabilities are not excluded from or discriminated against under programs or activities that the Department conducts. To comply with the law, the Department must review its facilities to determine if they meet the program accessibility standards of Section 504, make modifications, and develop a transition plan for structural changes.

Under the implementing regulations (49 CFR part 28), the Department is required to provide an opportunity to interested persons, including individuals with disabilities, DOT employees with disabilities, and organizations representing individuals with disabilities to participate in the self-evaluation process and development of transition plans by submitting comments (either oral or written) to the Department of Transportation.

To comply with this requirement, the Department is posting two public notices at each facility being evaluated to request comments from interested persons. A "Facility Review" notice requesting comments from interested persons is posted in the facility fifteen days prior to the scheduled review. A "Transition Plan" notice requesting comments from interested persons is posted in the facility for thirty days after the development of a transition plan.

Dated: September 22, 1994.

Jon H. Seymour,

Assistant Secretary for Administration.

[FR Doc. 94–23912 Filed 9–27–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Railroad Administration

49 CFR Part 215

[FRA Docket No. RSFC–7, Notice No. 2]

RIN 2130–AA58

Freight Car Safety Standards; Maintenance-of-Way Equipment

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Extension of comment period.

SUMMARY: FRA is extending the comment period on its notice of proposed rulemaking to amend the Freight Car Safety Standards. The NPRM proposed changing the provisions in 49 CFR Part 215, by making all maintenance-of-way vehicles subject to the Standards with the exception of stenciled cars not used in revenue service and restricted to a speed of less than 20 miles per hour. The extension is necessary to clarify initial comments received from interested parties.

DATES: Written comments must be received no later than November 28, 1994. Comments received after that date will be considered to the extent practicable without incurring additional expense or delay.

ADDRESSES: Written comment should identify the docket number and the notice number and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate the date on which the comments were received and will return the postcard to the addressee. Written comments will be available for examination during regular business hours in room 8201 of the Nassif Building located at the above address.

FOR FURTHER INFORMATION CONTACT: Phil Olekszyk, Acting Deputy Associate Administrator for Safety Compliance and Program Implementation, Office of Safety, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: 202–366–0897), or Cedestra L. Jordan, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: 202–366–0628).

SUPPLEMENTARY INFORMATION: FRA published a notice of proposed rulemaking (NPRM) on March 10, 1994 (59 FR 11238) to amend its Freight Car Safety Standards. The Freight Car Safety Standards, at 49 CFR 215.3(c)(3), exclude maintenance-of-way equipment from the requirements of Part 215, "if that equipment is not used in revenue service and is stenciled in accordance with § 215.305." The proposed amendment would add to the present regulation an additional condition which must be met before a freight car in maintenance-of-way service can be operated without complying with the Freight Car Safety Standards: the equipment must be operated at a speed of less than 20 mph. FRA has received comments from the Brotherhood of Maintenance of Way Employees; The American Short Line Railroad Association; the Brotherhood Railway Carmen Division, Transportation Communication International Union; the Duluth, Missabe and Iron Range Railway Company; and the Association of American Railroads (AAR). In light of comments received, particularly from the AAR, FRA is preparing a request for clarification on some issues presented in the AAR's comments. FRA's written request as well as any written response will be included in the docket and made available for review. Based on the comments received, FRA believes it would be beneficial to extend the comment period, so that all interested parties will have ample opportunity to comment. For these reasons, FRA has determined that an extension to November 28, 1994, is appropriate. In addition, FRA has not received any requests, formal or informal, for a hearing on this matter; therefore a hearing will not be scheduled.

Donald M. Itzkoff,

Federal Railroad Deputy Administrator.

[FR Doc. 94–23967 Filed 9–27–94; 8:45 am]

BILLING CODE 4910–06–P–M

49 CFR Part 225

[FRA Docket No. RAR–4, Notice No. 7]

RIN 2130–AA58

Railroad Accident Reporting

AGENCY: Federal Railroad Administration (FRA).

ACTION: Announcement of change in location for public hearing.

SUMMARY: By notice of proposed rulemaking (NPRM) published on August 19, 1994 (59 FR 42880), FRA scheduled a public hearing for November 3, 1994, at the Delta King Hotel in Old Sacramento, California, to allow interested parties the opportunity to comment on issues addressed in the NPRM. The location for this public hearing has been changed to Portland, Oregon at the following address: Portland Inn, 1414 S.W. Sixth Avenue, Portland, Oregon.

DATES: The hearing will take place on Thursday, November 3, 1994, from 9:30 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Robert Finkelstein, Chief, Systems Support Division, Office of Safety Analysis, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–366–2760); or Marina C. Appleton, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–366–0628).

Issued in Washington, D.C., on September 22, 1994.

Donald M. Itzkoff,

Federal Railroad Deputy Administrator.

[FR Doc. 94–23911 Filed 9–27–94; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Petition for rulemaking; denial.

SUMMARY: This notice for rulemaking to amend Standard No. 208, *Occupant Crash Protection*, to disallow the use of the word "WARNING" as an alternative to the word "CAUTION" at the heading of an air bag information label on the sun visors of an air bag equipped vehicle. NHTSA is denying this petition because the agency believes that, in common usage, the words "caution" and "warning" are synonymous and that either word properly achieves the intended effect.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen, Chief, Frontal Crash Protection Division, Office of Vehicle Safety Standards, NRM–12, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–2264.

SUPPLEMENTARY INFORMATION: On September 2, 1993, NHTSA published a final rule (58 FR 46551) requiring that manufacturers install air bags to satisfy automatic crash protection requirements for the front outboard seating positions in certain motor vehicles, beginning on September 1, 1996. The final rule also requires that three labels bearing specified information related to air bags be placed in air bag-equipped vehicles. S4.5.1(b)(1) of the rule requires one label to be permanently affixed to the sun visor of each front seating position with an air bag. This label would have read:

Caution

To Avoid Serious Injury:

For maximum safety protection in all types of crashes, you must always wear your safety belt.

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Do not install rearward-facing child seats in any front passenger seat position.
Do not sit or lean unnecessarily close to the air bag.
Do not place any objects over the air bag or between the air bag and yourself.
See the owners manual for further information and explanations.

On October 29, 1993, American Suzuki Motor Corporation (Suzuki) submitted a "request for interpretation" regarding the wording of the sun visor label. Suzuki requested that manufacturers be permitted to use the signal word "WARNING" as an alternative to the signal word "CAUTION" in the heading. Suzuki pointed out that the American National Standards Institute (ANSI) had issued a standard (Z535.4–1991) for signal words on product safety signs and labels. The standard contains a hierarchy of signal words signifying different degrees of potential personal injury. In this hierarchy, "caution" signifies a potential for "minor or moderate injury," and "warning" indicates the possibility of "death or serious injury." Since accommodating Suzuki's request would require a change in the wording permitted by the regulation, instead of an interpretation of the existing wording, it was treated by NHTSA as a petition for rulemaking.

On March 10, 1994, NHTSA published a notice (59 FR 11200) responding to two petitions for reconsideration of the September 2 rule and three requests for interpretation of that rule (including Suzuki's). In response to Suzuki's request, the agency stated:

> NHTSA added the phrase "CAUTION, TO AVOID SERIOUS INJURY" in the final rule to "attract occupants' attention to the label and provide a brief statement of the risks of improper use and consequences." NHTSA concluded that substitution of the word "WARNING" would also achieve these goals, and is therefore permitting its use.

NHTSA therefore amended S4.5.1(b)(1) of Standard 208 to permit manufacturers to use either word in the required air bag label.

In a petition dated May 12, 1994, Advocates for Highway and Auto Safety (Advocates) requested that NHTSA reverse its decision to permit the word "WARNING" as a substitute for the word "CAUTION." Advocates styled its petition as a "petition for reconsideration of an interpretation." However, the challenged action was a regulatory amendment, rather than an interpretation. Advocates' petition was received too late to be treated as a petition for reconsideration of a regulation under 49 CFR § 553.35. Therefore, NHTSA is treating the letter as a petition for rulemaking.

The petition sets forth substantial and procedural objections to the March 10 amendment. As to substance, Advocates believes that the word "WARNING" will cause vehicle occupants to be unnecessarily concerned. It disagrees with NHTSA's conclusion that "CAUTION" and "WARNING" are equivalent, citing the stronger nature of the word "WARNING" in the ANSI hierarchy of signal words. Advocates added that it thought the entire label concept was unnecessary, but that it reluctantly accepted the September 2 final rule's use of the word "CAUTION" because it was less aggressive than the word "WARNING." It believes that "[t]he message now conveyed is clearly one of *danger* of likely serious injury" (emphasis added).

The agency did not rely on the ANSI standards when deciding to permit the use of the word "WARNING." In fact, Suzuki's petition was granted based on the conclusion that the words "WARNING" and "CAUTION" would achieve the same results since they have similar meanings. This similarity is evident in the following dictionary definitions:

Random House Dictionary of the English Language (unabridged):
caution a warning against danger or evil; anything serving as a warning
warning that which serves to warn, give notice or caution
Webster's Third International Dictionary (unabridged):
caution a warning or admonishment especially in counselling vigilance, due attention or consideration, safety or reservation
warning a notice, bulletin or signal that serves to caution of the approach of danger

Moreover, the latter dictionary lists the two words as synonyms.

The agency believes that it is more appropriate to base its decision about these two words on the similarity of their dictionary definitions than on the ANSI standard. The public is presumptively familiar with the common usage and meaning of these words, as reflected in their dictionary definitions. Conversely, all but an extremely small portion of the public is likely unaware of the ANSI standards.

Given the similarity of the dictionary definitions, the agency believes that the public will not have any greater reaction to the use of "WARNING" than to "CAUTION." Either word choice provides an appropriate attention-getting visual cue. However, it is worth noting that, if the ANSI distinctions were to be applied in determining the appropriate word, the stronger work, "WARNING," would be preferable to "CAUTION" because it more accurately describes the potential degree of injury.

NHTSA also notes that S5.5.2 of Standard 213, *Child Restraint Systems*, requires that each rear-facing child seat bear a label that contains the signal work "WARNING," advising that the seat should not be used in air bag-equipped seating positions. NHTSA has difficulty understanding Advocates' strong reaction to the word "WARNING" on the sun visor label given that it did not object to requiring that the same signal word be placed on the child safety seat itself.

Advocates also is particularly concerned about the possibility that the word "WARNING" will cause some people to want to deactivate the air bag. NHTSA is considering a request from the American Association of Automobile Manufacturers for a rulemaking that would permit a manual cutoff switch for the passenger side air bag in vehicles with no rear seat. The purpose of the cutoff switch would be to allow drivers to deactivate the air bag in that passenger seating position when a rear-facing infant safety seat is placed there. Advocates speculates that the two rules would have a detrimental synergistic effect. It believes that some passengers in these vehicles would use the cutoff switch to disable their air bags, not for the intended purpose of protecting an infant in a safety seat, but because they are frightened by the word "WARNING."

Advocates' concern is premature, speculative, and addressed to the wrong forum. NHTSA has not made any judgment about what, if any, kind of cutoff switch it might eventually permit. When NHTSA issues an NPRM, it will provide Advocates and other members of the public with an opportunity to submit comments to the rulemaking docket for that rule.

Advocates also posed a procedural objection to the agency's permitting the use of "WARNING." It believes that it had the right to submit its views on the use of the word "WARNING." Advocates states that it relied to its detriment on what it said was NHTSA's representation in the final rule that only the term "CAUTION" would be used. It stated that the choice of terminology should be determined through rulemaking instead of interpretation. Advocates believes that, as part of that rulemaking, the ANSI scheme should have been presented to the public for comment. Advocates apparently did not realize that the Suzuki request was treated as a petition for rulemaking, even though the March 10 rule stated that the September 2 rule was being amended, something that cannot be done through an interpretation.

While the Administrative Procedure Act requires notice and comment procedures for most substantive rules, such procedures are not needed for minor technical amendments, such as permitting the use of a synonym on an information label. Since "CAUTION" and "WARNING" are synonyms in common usage, the addition of "WARNING" will have no practical impact on the public's understanding of and reaction to the label. Thus, the amendment allowing the word "WARNING" was essentially technical in nature. Further, the agency had already obtained public comment on essentially the same issue as a result of the December 14, 1992 notice of proposed rulemaking regarding the wording of the label. Accordingly, an additional opportunity for comment was not required.

Based on the foregoing, there is no reasonable possibility that the order requested in the petition will be issued at the conclusion of a rulemaking proceeding. Therefore, this petition is denied.

Authority: 49 U.S.C. 322, 30111, 30162; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on September 22, 1994.

Barry Felrice,

Associate Administrator for Rulemaking

[FR Doc. 94–23910 Filed 9–27–94; 8:45 am]

BILLING CODE 4910–59–P–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 638

[Docket No. 940873–4273; I.D. 082394A]

RIN 0648–AF85

Coral and Coral Reefs of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 2 to the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and South Atlantic (FMP). Amendment 2 would prohibit the taking of wild live rock in the exclusive economic zone (EEZ) off the southern Atlantic states (South Atlantic) from the North Carolina/Virginia boundary to the Dade/Broward County line in Florida and in the EEZ of the Gulf of Mexico (Gulf), except off Florida north of Monroe County; phase out wild live rock harvests in the South Atlantic EEZ south of the Dade/Broward County line by 1996; phase out wild live rock harvests in the Gulf EEZ off Florida north of Monroe County by 1997; establish restrictions on live rock harvesting and possession and require permits and reporting during the phase-out periods; and allow and facilitate live rock aquaculture. In addition, NMFS proposes changes to the regulations to correct and conform them to current standards.

DATES: Written comments must be received on or before November 7, 1994.

ADDRESSES: Requests for copies of Amendment 2, which includes a regulatory impact review (RIR)/initial regulatory flexibility analysis (IRFA) and a final supplemental environmental impact statement (FSEIS), should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609–2486, FAX 813–225–7015, or to the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407–4699, FAX 803–769–4520.

Comments on the proposed rule, Amendment 2, the RIR/IRFA, and the FSEIS must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–570–5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Gulf of Mexico Fishery Management Council (Gulf Council) and the South Atlantic Fishery Management Council (South Atlantic Council) and is implemented through regulations at 50 CFR part 638 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Live rock consists of living marine organisms, or an assemblage thereof, attached to a hard substrate, including dead coral or rock (excluding individual mollusk shells). Live rock is collected by scuba divers and sold to the marine aquarium industry, which markets it as the basis for minireef aquaria. Live rock is a nonrenewable resource providing essential fishery habitat in the South Atlantic and Gulf.

In the recent public review process during the development of Amendment 2, the Gulf and South Atlantic Councils received testimony concerning serious damage to reefs, ledges, and other hard bottom habitats from live rock harvesting activities. At the request of the Gulf Council, NMFS published an emergency interim rule on May 16, 1994 (59 FR 25344), effective May 16 through August 14, 1994, and extended the rule, with modifications, through November 12, 1994 (59 FR 42533, August 18, 1994). At the request of the South Atlantic Council, NMFS published an emergency interim rule on June 27, 1994 (59 FR 32938), effective through September 26, 1994, and extended the rule through December 25, 1994 (59 FR 47563, September 16, 1994). These rules were intended to slow the rate of harvest, prevent serious damage to habitat, and prevent geographical extension of harvest until permanent measures could be implemented through Amendment 2.

In the South Atlantic EEZ, Amendment 2 would: (1) Prohibit the harvest and possession of wild live rock north of the Dade/Broward County line in Florida; (2) south of the Dade/Broward County line, phase out harvesting of wild live rock by January 1, 1996, establish an annual quota on harvests of wild live rock of 485,000 lb (219,992 kg) for calendar years 1994 and 1995, and prohibit the taking of wild live rock by chipping during those years; and (3) provide for a permit system for the harvest and possession of live rock from aquaculture operations that will be implemented when appropriate criteria are developed through a subsequent amendment.

In the Gulf EEZ, Amendment 2 would: (1) Prohibit the harvest and possession of wild live rock off Texas, Louisiana, Mississippi, Alabama, and south of the Monroe/Collier County line in Florida; (2) from the Monroe/Collier County line to the Florida/Alabama boundary, phase out harvesting of wild live rock by January 1, 1997, contingent upon development of a Federal aquaculture permitting system; (3) from the Pasco/Hernando County line in Florida to the Florida/Alabama boundary, prohibit the taking of wild live rock by chipping during the phase-out period; (4) from the Pasco/Hernando County line to the Monroe/Collier County line, limit the taking of wild live rock by chipping to nonpower-assisted,

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hand-held hammers and chisels during the phase-out period; (5) from the Monroe/Collier County line to the Florida/Alabama boundary, establish a daily vessel possession limit for wild live rock during the phase-out period; (6) require a permit to harvest or possess live rock from aquaculture operations; and (7) provide an exception to the taking of prohibited corals as part of the aquaculture permit.

For both the South Atlantic and Gulf, Amendment 2 would: (1) Define live rock and add it to the fishery management unit; (2) redefine allowable octocorals to ensure that individual colonies and not whole rocks are taken under the octocoral quota; (3) establish a Federal permit and reporting system for wild live rock harvesting during harvest phase-out periods; (4) allow and facilitate live rock aquaculture; (5) require a permit to harvest and possess live rock in the EEZ for scientific, educational, or restoration purposes; and (6) provide for separate management of coral and coral reef resources by each Council in its geographical area of authority.

A description of the fishery and the rationale and effects of live rock harvesting restrictions during the phase-out periods in the Gulf EEZ off Florida and prohibitions on harvesting in the EEZ off Alabama and in the South Atlantic north of the Dade/Broward County line in Florida were contained in the emergency interim rules and are not repeated here. Rationales for prohibitions on harvest and possession in other areas, the phaseout of harvesting in remaining areas off Florida, permits and reporting, the redefinition of allowable octocorals, and separation of management between the Councils are discussed below.

To prevent effort shifting from the current areas of harvest, Amendment 2 would prohibit wild live rock harvesting and possession in the EEZ off Texas, Louisiana, and Mississippi, in addition to areas closed under the emergency interim rules. No landings of live rock have been reported from these areas. Coral habitats are at such a premium in the northern Gulf that local governments and private organizations are considering construction of artificial reefs to supplement scarce natural hard bottom habitats. Amendment 2 would close the Gulf EEZ off Monroe County to all harvest and possession in order to prevent effort shifting from the South Atlantic EEZ following closures in that adjoining jurisdiction.

About 99 percent of reported live rock landings are from the Gulf EEZ off Florida north of Monroe County and from the South Atlantic EEZ south of the Dade/Broward County line. All landings of live rock to date have been of "wild" live rock, that is, non-aquacultured live rock. The Councils propose to phase out these landings and replace them with aquacultured products from either state or EEZ waters. The delay in implementation of a harvest and possession prohibition in these areas is designed to allow live rock harvesters additional time and resources to make the transition to aquaculture.

The Councils propose to redefine allowable octocorals to close a potential loophole that could allow harvest of live rock as part of the 50,000 colony annual quota for allowable octocorals. The revised definition would include as allowable octocoral only a limited amount of the attached substrate—one inch (2.54 cm) in the South Atlantic EEZ and 3 inches (7.62 cm) in the Gulf EEZ.

Currently, a Federal permit for prohibited coral is issued only when the prohibited coral is for a scientific or educational purpose. The Councils propose to add restoration to the purposes for which these permits are available. This addition recognizes the benefits of habitat restoration following ship groundings and other environmental perturbations. The Councils also propose to allow the harvest of live rock under a Federal permit issued for a scientific, educational, or restoration purpose.

The Councils propose to require permits for and reporting of wild live rock harvest during the phase-out periods in the Gulf EEZ off Florida north of Monroe County and in the South Atlantic EEZ south of the Dade/Broward County line. Permits would be limited to persons who legally participated in the fishery on or prior to February 3, 1994, and to the number of vessels that operated in the commercial fishery for live rock on or prior to February 3, 1994, as documented on trip tickets received by the Florida Department of Environmental Protection prior to March 15, 1994. The date of February 3, 1994, was published in the **Federal Register** (59 FR 5179, February 3, 1994) as the control date for entry into the commercial fishery for live rock. All commercial landings of live rock have been permitted and reported under Florida's permitting and reporting requirements. Those requirements include a Saltwater Products License with a Restricted Species Endorsement and a Marine Life Endorsement, and the submission of trip tickets. These limitations on permits are intended to stabilize harvest during the phase-out period to near the 1992 level and to limit participants to those already in the fishery. To accomplish these intended effects, NMFS finds it necessary to identify owners with the requisite permit history and the number of vessels, by owner, that operated in the commercial fishery on or prior to the control date. Vessel permits would be issued to such owners in corresponding numbers.

The Councils intend to allow and facilitate live rock aquaculture to replace the wild harvest. Amendment 2 proposes to require an aquacultured live rock permit for the harvest and possession of live rock from aquaculture operations in the Gulf EEZ, under specific criteria designed to protect natural hard bottom areas as specified in this rule. The aquaculture permit would also authorize an exception to the prohibition on taking and possession of otherwise prohibited corals. Otherwise, an aquaculturist could be prevented from harvesting the aquaculture product if small polyps of such species are detected on the rocks.

Amendment 2 would establish a permit requirement for the harvest and possession of live rock from aquaculture operations in the South Atlantic EEZ, but aquaculture permits for this area will be issued only after appropriate criteria are developed and implemented through a subsequent rulemaking.

Both Councils have agreed that management of coral, coral reefs, live rock, and any other part of the management unit in the FMP will be the responsibility of the Council in whose jurisdiction it occurs. Under this arrangement, Amendment 2 proposes to eliminate the current requirement that both Councils approve all measures in any FMP amendment submitted for agency review. This requirement exists because the FMP was designated by NMFS as a joint management plan prepared by the two Councils.

Additionally, the South Atlantic Council has requested designation of a separate FMP for the South Atlantic because it believes (1) the habitats in the Gulf and South Atlantic are different, (2) the resource does not move between the South Atlantic and the Gulf, (3) it should have authority to coordinate all habitat concerns and policies in the South Atlantic, (4) there are additional management needs in the South Atlantic, (5) the Councils have different management philosophies, and (6) a separate FMP will improve timeliness of management adjustments and reduce constituent costs. The Gulf Council concurs in the South Atlantic's request. NMFS requests comments on the proposal to separate the FMP into an FMP for the South Atlantic and an FMP for the Gulf of Mexico.

Additional background and rationale for the measures discussed above are contained in Amendment 2, the availability of which was announced in the **Federal Register** on August 29, 1994 (59 FR 44398).

Additional Measures Proposed by NMFS

This proposed rule would eliminate unnecessary language; change the scientific names of corals to conform to current standards of the American Fisheries Society; add definitions of additional terms; correct the address and telephone number of the Regional Director, Southeast Region, NMFS; clarify that all coral in a habitat area of particular concern (HAPC), including allowable octocoral, is prohibited coral; require identification markings on vessels in the live rock fishery; prohibit the use or possession of a toxic chemical in the EEZ; prohibit the possession of coral in the Flower Garden Banks HAPC; prohibit the use of dredges in the Flower Garden Banks HAPC; prohibit making a false statement to an authorized officer concerning the taking of coral, coral reefs, or live rock; and prohibit interference with an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act. The requirement for identification markings and the added prohibitions are necessary for effective enforcement of existing and added management measures and would conform the regulations to current standards applicable to other federally-managed fisheries in the Gulf of Mexico and off the southern Atlantic states.

NMFS proposes to simplify the existing permitting and reporting requirements. Specifically, this rule proposes to remove the requirement for Federal permits for and reports on taking allowable octocoral that are landed in Florida and for taking fish with an allowable chemical that are landed in Florida. Florida requires permits and reports for these activities, whether or not the allowable octocoral or fish are harvested in the EEZ or State waters. Currently, all but one of the Federal permits for these activities involve landings in Florida. Duplicate Federal/State permitting and reporting serve no useful purpose.

NMFS proposes to broaden the ban on the use of power- assisted tools. Amendment 2 proposes to ban the use of power- assisted tools for the taking of aquacultured live rock, wild live rock in the Gulf EEZ during the phase-out period, and allowable octocoral. Since chipping of wild live rock would be banned in the South Atlantic EEZ during the phase-out period, power-assisted tools implicitly would be banned in the EEZ in that area. Amendment 2 does not explicitly address prohibited coral in either area or allowable octocoral in the South Atlantic EEZ. NMFS believes the rationale for the ban on power-assisted tools is equally applicable to prohibited coral and allowable octocoral throughout the EEZ—extension of the ban to those species and additional areas is necessary to enhance enforcement.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires the Secretary of Commerce (Secretary) to publish regulations proposed by a council within 15 days of receipt of an amendment and regulations. At this time the Secretary has not determined that Amendment 2 is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Councils prepared an FSEIS for Amendment 2 that will be filed with the Environmental Protection Agency for public review and comment; a notice of its availability for public comment for 30 days will be published in the **Federal Register**. According to the FSEIS, the proposed actions would benefit the natural environment by phasing out activities that result in damage to live bottom habitat areas. Potential adverse economic impacts on fishermen would be mitigated by the harvest of aquacultured live rock.

The Councils prepared an IRFA as part of the RIR which describes the impact this proposed rule would have on small entities, if adopted. The IRFA concludes that this proposed rule, if adopted, may have a significant economic impact on a substantial number of small entities. Specifically, the required change from harvest of wild live rock to aquaculture may result in significant increases in the operating and capital costs to fishermen. An unknown number of current participants may be forced to cease business as live rock harvesters. All current participants are small entities. A copy of this analysis is available (see **ADDRESSES**).

This rule contains five new collection-of-information requirements subject to the Paperwork Reduction Act—namely, applications for permits to take wild live rock, applications for permits to take aquacultured live rock, site evaluation reports for aquacultured live rock, reports of live rock harvests, and notification of intent to harvest aquacultured live rock. These requirements have been submitted to the Office of Management and Budget (OMB) for approval. The public reporting burdens for these collections of information are estimated to average 15, 15, 45, 15, and 2 minutes per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This rule also revises a collection-of-information requirement subject to the Paperwork Reduction Act—namely, applications for prohibited coral, allowable chemical, and allowable octocoral permits. This collection of information is estimated to average 15 minutes per response and was previously approved by OMB under OMB control number 0648–0205. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 638

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 22, 1994.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 638 is proposed to be amended as follows:

PART 638—CORAL AND CORAL REEFS OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for part 638 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 638.1 is revised to read as follows:

§ 638.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for Coral and Coral Reefs off the Southern Atlantic States and the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico developed under the Magnuson Act by the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council, respectively.

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(b) This part governs conservation and management of coral, coral reefs, and live rock in the EEZ off the southern Atlantic states and in the Gulf of Mexico. "EEZ" in this part 638 refers to the EEZ in those geographical areas, unless the context clearly indicates otherwise.

3. In § 638.2, the definition of "Scientific and educational purpose" is removed; in the definition of "Allowable chemical", paragraphs (a) and (b) are redesignated as paragraphs (1) and (2), respectively; the definitions of "Allowable octocoral", "HAPC", "Prohibited coral", and "Regional Director" are revised; and new definitions of "Aquacultured live rock", "Chipping", "Gulf of Mexico", "Live rock", "Off the southern Atlantic states", "Scientific, educational, or restoration purpose", "Trip", and "Wild live rock" are added in alphabetical order to read as follows:

§ 638.2 Definitions.

* * * * *

Allowable octocoral means an erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*, plus the attached substrate—

(1) Within 1 inch (2.54 cm) of an allowable octocoral in or from the EEZ off the southern Atlantic states; and

(2) Within 3 inches (7.62 cm) of an allowable octocoral in or from the Gulf of Mexico EEZ.

Aquacultured live rock means live rock that is harvested under an aquacultured live rock permit issued pursuant to § 638.4.

Chipping means breaking up reefs, ledges, or rocks into fragments, usually by means of a chisel and hammer.

* * * * *

Gulf of Mexico means the waters off the southern states from the boundary between the Atlantic Ocean and the Gulf of Mexico, as specified in § 601.11(c) of this chapter, to the Texas/Mexico border.

HAPC means habitat area of particular concern.

Live rock means living marine organisms, or an assemblage thereof, attached to a hard substrate, including dead coral or rock (excluding individual mollusk shells).

Off the southern Atlantic states means the waters off the east coast from 36°34'55" N. lat. (extension of the Virginia/North Carolina boundary) to the boundary between the Atlantic Ocean and the Gulf of Mexico, as specified in § 601.11(c) of this chapter.

Prohibited coral means—

(1) Coral belonging to the Class Hydrozoa (fire corals and hydrocorals);

(2) Coral belonging to the Class Anthozoa, Subclass Hexacorallia, Orders Scleractinia (stony corals) and Antipatharia (black corals);

(3) A seafan, *Gorgonia flabellum* or *G. ventalina*;

(4) Coral in a coral reef, except for allowable octocoral; or

(5) Coral in an HAPC, including allowable octocoral.

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone 813–570–5301; or a designee.

* * * * *

Scientific, educational, or restoration purpose means the objective of gaining knowledge for the benefit of science, humanity, or management of coral or returning a disturbed habitat as closely as possible to its original condition.

* * * * *

Trip means a fishing trip, regardless of number of days duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

Wild live rock means live rock other than aquacultured live rock.

4. In § 638.3, in paragraph (a), the reference to "paragraph (b) of this section" is revised to read "paragraphs (b) and (c) of this section"; and paragraph (c) is added to read as follows:

§ 638.3 Relation to other laws.

* * * * *

(c) If a state has a catch, landing, or gear regulation that is more restrictive than a catch, landing, or gear regulation in this part, a person landing in such state allowable octocoral taken from the EEZ must comply with the more restrictive state regulation.

5. Section 638.8 is redesignated as § 638.9; § 638.6 is redesignated as § 638.8; §§ 638.4, 638.5, and 638.7 are revised, and new § 638.6 is added to read as follows:

§ 638.4 Permits and fees.

(a) *Applicability.* (1) *Federal permits.* Federal permits are required for specified activities in the EEZ as follows:

(i) *Prohibited coral.* A Federal permit is required for an individual to take or possess prohibited coral and will be issued only when the prohibited coral will be used for a scientific, educational, or restoration purpose.

(ii) *Allowable chemical.* A Federal permit is required for an individual to take or possess fish or other marine organisms with an allowable chemical in a coral area, other than fish or other marine organisms that are landed in Florida.

(iii) *Allowable octocoral.* A Federal permit is required for an individual to take or possess allowable octocoral, other than allowable octocoral that is landed in Florida.

(iv) *Wild live rock.* (A) A Federal permit is required for a vessel to take or possess wild live rock. A wild live rock vessel permit will not be issued unless the current owner of the vessel for which the permit is requested had the required Florida permit and endorsements for live rock on or before February 3, 1994, and a record of landings of live rock on or before February 3, 1994, as documented on trip tickets received by the Florida Department of Environmental Protection before March 15, 1994. For landings other than in Florida, equivalent state permits/endorsements, if required, and landing records may be substituted for the Florida permits/endorsements and trip tickets. An owner will not be issued permits in numbers exceeding the number of vessels for which the owning entity had the requisite reported landings. An owner of a permitted vessel may transfer the vessel permit to another vessel owned by the same person by returning the existing permit with an application for a vessel permit for the replacement vessel.

(B) A Federal permit is required for an individual to take or possess wild live rock for a scientific, educational, or restoration purpose and an individual permit will be issued only for such purpose. Such individual wild live rock permit may authorize the taking and possession of wild live rock in or from areas not otherwise allowed by the regulations in this part.

(v) *Aquacultured live rock.* A Federal permit is required for a person to take or possess aquacultured live rock. Each aquacultured live rock permit will be issued for a specific site, which may not exceed 1 acre (0.4 ha). Aquacultured live rock permits are available only for harvests in the Gulf of Mexico.

(2) *Florida permits.* Appropriate Florida permits and endorsements are required for the following activities, without regard to whether they involve activities in the EEZ or Florida's waters:

(i) Landing in Florida fish or other marine organisms taken with an allowable chemical in a coral area.

(ii) Landing allowable octocoral in Florida.

(iii) Landing live rock in Florida.

(b) *Application.* An application for a Federal permit must be signed and submitted by the applicant on an appropriate form, which may be obtained from the Regional Director.

The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. Information must be provided as follows:

(1) *Basic information.* (i) Name, mailing address including zip code, telephone number, social security number, and date of birth of the applicant.

(ii) Name and address of any affiliated company, institution, or organization.

(iii) Information concerning vessels and harvesting gear/methods requested by the Regional Director.

(iv) Any other information that may be necessary for the issuance or administration of the permit.

(2) *Scientific, educational, or restoration purpose.* An applicant for a prohibited coral permit or a wild live rock permit for a scientific, educational, or restoration purpose must specify the amount and size of prohibited coral or wild live rock to be harvested, by species, its intended use, and proposed locations and periods of fishing.

(3) *Allowable chemical.* An applicant for an allowable chemical permit must specify the type of chemical to be used, species to be harvested and their intended use, and proposed locations and periods of fishing.

(4) *Aquacultured live rock.* An applicant for an aquacultured live rock permit must identify each vessel that will be depositing material on or harvesting aquacultured live rock from the proposed aquacultured live rock site, must specify the port of landing of aquacultured live rock, and must provide a site evaluation report that—

(i) Provides accurate coordinates of the proposed harvesting site so that it can be located using LORAN or Global Positioning System equipment;

(ii) Shows the site on a chart in sufficient detail to determine its size and allow for site inspection;

(iii) Discusses possible hazards to safe navigation or hindrance to vessel traffic, traditional fishing operations, or other public access that may result from aquacultured live rock at the site;

(iv) Describes the naturally occurring bottom habitat at the site; and

(v) Specifies the type and origin of material to be deposited on the site and how it will be distinguishable from the naturally occurring substrate.

(c) *Change in application information.* An individual, the owner of a vessel, or a person with a permit must notify the Regional Director within 30 days after any change in the application information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

(d) *Fees.* A fee is charged for each permit application submitted under paragraph (b) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application.

(e) *Issuance.* (1) The Regional Director will issue a permit at any time to an applicant if the application is complete. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified at § 638.5.

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the Regional Director's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 or the permitted vessel is sold.

(g) *Transfer.* A permit issued pursuant to this section is not transferable or assignable, except as provided under paragraph (a)(1)(iv)(A) of this section for a wild live rock vessel permit. An individual or person who desires to conduct an activity for which a permit is required must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of a signed bill of sale or equivalent acquisition papers if the application involves a current permit for aquacultured live rock.

(h) *Display.* (1) An individual permit issued pursuant to this section must be available when the permitted activity is being conducted, including the landing of species taken as a result of that activity.

(2) A vessel permit for wild live rock issued pursuant to this section must be carried on board the vessel and such vessel must be identified as required by § 638.6.

(3) An aquacultured live rock permit issued pursuant to this section, or a copy, must be carried on board a vessel depositing or possessing material on an aquacultured live rock site or harvesting or possessing live rock from an aquacultured live rock site, and such vessel must be identified as provided for in § 638.6.

(4) The operator of a vessel or an individual must present the permit for inspection upon the request of an authorized officer.

(i) *Sanctions and denials.* A permit issued pursuant to this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(j) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(k) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application. A fee, the amount of which is stated with the application form, must accompany each request for a replacement.

§ 638.5 Recordkeeping and reporting.

(a) An individual with a Federal prohibited coral or wild live rock permit for a scientific, educational, or restoration purpose must submit a report of harvest to the Regional Director. Specific reporting requirements will be provided with the permit.

(b) An individual with a Federal allowable octocoral permit must submit a report of harvest to the Science and Research Director. Specific reporting requirements will be provided with the permit.

(c) A person with an aquacultured live rock permit must report to the Regional Director each deposition of material on a site. Such reports must be postmarked not later than 7 days after deposition and must contain the following information:

(1) Permit number of site and date of deposit.

(2) Geological origin of material deposited.

(3) Amount of material deposited.

(4) Source of material deposited, that is, where obtained, if removed from another habitat, or from whom purchased.

(d) The owner of a vessel that takes wild live rock, and a person who takes aquacultured live rock that is landed in Florida, must submit Florida trip tickets as required by Florida statutes and regulations.

(e) A person who takes aquacultured live rock that is landed other than in Florida must submit a report of harvest to the Regional Director. Specific reporting requirements will be provided with the permit.

(f) Additional data will be collected by authorized statistical reporting

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agents, as designees of the Science and Research Director, and by authorized officers. An owner or operator of a fishing vessel, an individual or person with a coral permit issued pursuant to § 638.4, and a dealer or processor are required upon request to make prohibited coral, fish or other marine organisms taken with an allowable chemical, allowable octocoral, or live rock available for inspection by the Science and Research Director or an authorized officer.

§ 638.6 Vessel identification.

(a) *Official number.* A vessel with a Federal permit for wild live rock or operating under an aquacultured live rock permit, issued pursuant § 638.4, must display its official number—

(1) On the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in length and at least 10 inches (25.4 cm) in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number from any enforcement vessel or aircraft.

§ 638.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Without a Federal permit, take or possess in the EEZ—

(1) Prohibited coral,

(2) Fish or other marine organisms with an allowable chemical in a coral area,

(3) Allowable octocoral,

(4) Wild live rock, or

(5) Aquacultured live rock—as specified in § 638.4(a)(1).

(b) Falsify information specified in § 638.4(b) on an application for a permit.

(c) Fail to display or present a permit, as specified in § 638.4(h).

(d) Falsify or fail to submit required reports or trip tickets, as specified in § 638.5(a), (b), (c), (d), and (e).

(e) Fail to make prohibited coral, fish or other marine organisms taken with an allowable chemical, allowable octocoral, or live rock available for inspection, as specified in § 638.5(f).

(f) Falsify or fail to display and maintain vessel identification, as required by § 638.6.

(g) Fail to return immediately to the sea prohibited coral, allowable octocoral, or live rock taken as incidental catch, or, in fisheries in which the entire catch is landed unsorted, sell, trade, or barter, or attempt to sell, trade, or barter prohibited coral, allowable octocoral, or live rock, as specified in § 638.21.

(h) Use or possess a toxic chemical in a coral area in the EEZ, as specified in § 638.22(a).

(i) Use a power-assisted tool in the EEZ to take prohibited coral, allowable octocoral, or live rock, or possess in the EEZ such coral or live rock taken with a power-assisted tool, as specified in § 638.22(b).

(j) Fish for or possess prohibited coral or allowable octocoral in the West and East Flower Garden Banks HAPC or the Florida Middle Grounds HAPC, except as authorized by a permit, as specified in § 638.23(a)(1) and (b)(1).

(k) Use prohibited fishing gear in an HAPC, as specified in § 638.23(a)(2), (b)(2), and (c).

(l) After the fishery for allowable octocoral is closed, harvest or possess allowable octocoral in the EEZ, or purchase, barter, trade, or sell allowable octocoral so harvested or possessed, or attempt any of the foregoing, as specified in § 638.24(b).

(m) Harvest or possess wild live rock in the EEZ off the southern Atlantic states north of 25°58.5′ N. lat., or in the Gulf of Mexico EEZ west of 87°31′06″ W. long. or south of 25°20.4′ N. lat., as specified in §§ 638.25(a) and 638.26(a).

(n) Harvest wild live rock by chipping or possess wild live rock taken by chipping in the EEZ off the southern Atlantic states south of 25°58.5′ N. lat. or in the Gulf of Mexico EEZ from 87°31′06″ W. long. east and south to 28°26′ N. lat., as specified in §§ 638.25(b) and 638.26(b)(1).

(o) After the fishery for wild live rock is closed in the EEZ off the southern Atlantic states, harvest or possess wild live rock in that area, or purchase, barter, trade, or sell wild live rock so harvested or possessed, or attempt any of the foregoing, as specified in § 638.25(c).

(p) Harvest wild live rock other than by hand or by chipping with a nonpower-assisted, hand-held hammer and chisel in the Gulf of Mexico EEZ from 28°26′ N. lat. to 25°20.4′ N. lat. or possess in that area wild live rock taken otherwise, as specified in § 638.(b)(2).

(q) Exceed the daily vessel harvest and possession limit applicable to the harvest or possession of live rock in or from the Gulf of Mexico EEZ, as specified in § 635.26(c).

(r) Fail to comply with the restrictions applicable to aquacultured live rock sites specified in § 638.27(b).

(s) Mechanically dredge or drill, or otherwise disturb, aquacultured live rock or harvest live rock other than by hand, as specified in § 638.27(c).

(t) Falsify or fail to provide information 24 hours prior to harvesting aquacultured live rock, as specified in § 638.27(d).

(u) Harvest live rock from a site for which the person does not have an aquacultured live rock permit, as specified in § 638.27(e).

(v) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of allowable octocoral, prohibited coral, or live rock.

(w) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

6. Subpart B of part 638 is revised to read as follows:

Subpart B—Management Measures

638.20 Fishing years.
638.21 Harvest limitations.
638.22 Gear restrictions.
638.23 Habitat areas of particular concern.
638.24 Octocoral quota and closure.
638.25 Wild live rock off the southern Atlantic states.
638.26 Wild live rock in the Gulf of Mexico.
638.27 Aquacultured live rock.
638.28 Specifically authorized activities.

Subpart B—Management Measures

§ 638.20 Fishing years.

The fishing year for live rock begins on January 1 and ends on December 31. The fishing year for prohibited coral and allowable octocoral begins on October 1 and ends on September 30.

§ 638.21 Harvest limitations.

Except as authorized by a permit issued pursuant to § 638.4, prohibited coral, allowable octocoral, and live rock taken as incidental catch must be returned immediately to the sea in the general area of fishing. In fisheries where the entire catch is landed unsorted, such as the scallop and groundfish fisheries, unsorted prohibited coral, allowable octocoral, and live rock are exempt from the requirement for a Federal permit and may be landed; however, no person may sell, trade, or barter or attempt to sell, trade, or barter such prohibited coral, allowable octocoral, or live rock.

§ 638.22 Gear restrictions.

(a) A toxic chemical may not be used or possessed in a coral area in the EEZ.

(b) A power-assisted tool may not be used in the EEZ to take prohibited coral, allowable octocoral, or live rock, and the possession in the EEZ of such corals or live rock taken with a power-assisted tool is prohibited.

§ 638.23 Habitat areas of particular concern.

The following areas are designated as HAPCs:

(a) *West and East Flower Garden Banks.* The West and East Flower Garden Banks are geographically centered at 27°52′14.21″ N. lat., 93°48′54.79″ W. long. and 27°55′07.44″ N. lat., 93°36′08.49″ W. long., respectively. On each bank, the HAPC extends from its geographical center to the 50-fathom (300-ft) (91.4-m) isobath. The following restrictions apply in the HAPC:

(1) Fishing for or possessing prohibited coral or allowable octocoral is prohibited, except as authorized by a permit issued pursuant to § 634.4; and

(2) Fishing with bottom longlines, traps, pots, dredges, or bottom trawls is prohibited.

(b) *Florida Middle Grounds.* The Florida Middle Grounds is bounded by rhumb lines connecting the following points:

Point	Latitude	Longitude
A	28°42.5′ N.	84°24.8′ W.
B	28°42.5′ N.	84°16.3′ W.
C	28°11.0′ N.	84°00.0′ W.
D	28°11.0′ N.	84°07.0′ W.
E	28°26.6′ N.	84°24.8′ W.
A	28°42.5′ N.	84°24.8′ W.

The following restrictions apply in the HAPC:

(1) Fishing for or possessing prohibited coral or allowable octocoral is prohibited, except as authorized by a permit issued pursuant to § 634.4; and

(2) Fishing with bottom longlines, traps, pots, dredges, or bottom trawls is prohibited.

(c) *Oculina Bank.* The Oculina Bank is located approximately 15 nautical miles east of Fort Pierce, FL, at its nearest point to shore, and is bounded on the north by 27°53′ N. lat., on the south by 27°30′ N. lat., on the east by 79°56′ W. long., and on the west by 80°00′ W. long. In the HAPC, fishing with bottom longlines, traps, pots, dredges, or bottom trawls is prohibited. See § 646.26(d) of this chapter for prohibitions on fishing for snapper-grouper in the Oculina Bank HAPC.

§ 638.24 Octocoral quota and closure.

(a) The quota for allowable octocoral from the EEZ is 50,000 colonies per fishing year.

(b) When the quota specified in paragraph (a) of this section is reached, or is projected to be reached, the Assistant Administrator will file notification to that effect with the Office of the Federal Register. On and after the effective date of such notification, for the remainder of the fishing year, allowable octocoral may not be harvested or possessed in the EEZ and the purchase, barter, trade, or sale, or attempted purchase, barter, trade, or sale, of allowable octocoral in or from the EEZ is prohibited. The latter prohibition does not apply to allowable octocoral that was harvested and landed prior to the effective date of the notification in the Federal Register.

§ 638.25 Wild live rock off the southern Atlantic states.

(a) *Closed area.* No person may harvest or possess wild live rock in the EEZ off the southern Atlantic states north of 25°58.5′ N. lat. (extension of the Dade/Broward County, Florida, boundary).

(b) *Gear limitation.* In the EEZ off the southern Atlantic states south of 25°58.5′ N. lat., no person may harvest wild live rock by chipping and no person may possess in that area wild live rock taken by chipping.

(c) *Quota and closure.* (1) The quota for wild live rock from the EEZ off the southern Atlantic states is 485,000 lb (219,992 kg) per fishing year during the fishing years that begin January 1, 1994, and January 1, 1995. Commencing with the fishing year that begins January 1, 1996, the quota is zero.

(2) When the quota specified in paragraph (c)(1) of this section is reached, or is projected to be reached, the Assistant Administrator will file notification to that effect with the Office of the Federal Register. On and after the effective date of such notification, for the remainder of the fishing year, wild live rock may not be harvested or possessed in the EEZ off the southern Atlantic states and the purchase, barter, trade, or sale, or attempted purchase, barter, trade, or sale, of wild live rock in or from the EEZ off the southern Atlantic states is prohibited. The latter prohibition does not apply to wild live rock that was harvested and landed prior to the effective date of the notification in the Federal Register.

§ 638.26 Wild live rock in the Gulf of Mexico.

(a) *Closed areas.* No person may harvest or possess wild live rock in the Gulf of Mexico EEZ—

(1) West of 87°31′06″ W. long. (extension of the Alabama/Florida boundary); or

(2) South of 25°20.4′ N. lat. (extension of the Monroe/Collier County, Florida boundary).

(b) *Gear limitations.* (1) In the Gulf of Mexico EEZ from 87°31′06″ W. long. east and south to 28°26′ N. lat. (extension of the Pasco/Hernando County, FL, boundary), no person may harvest wild live rock by chipping and no person may possess in that area wild live rock taken by chipping.

(2) In the Gulf of Mexico EEZ from 28°26′ N. lat. to 25°20.4′ N. lat., wild live rock may be harvested only by hand, without tools, or by chipping with a nonpower-assisted, hand-held hammer and chisel, and no person may possess in that area wild live rock taken otherwise.

(c) *Harvest and possession limits.* Through December 31, 1996, a daily vessel limit of twenty-five 5-gallon (19–L) buckets, or volume equivalent (16.88 ft3 (478.0 L)), applies to the harvest or possession of wild live rock in or from the Gulf of Mexico EEZ from 87°31′06″ W. long. east and south to 25°20.4′ N. lat., regardless of the number or duration of trips. Commencing January 1, 1997, the daily vessel limit is zero.

§ 638.27 Aquacultured live rock.

(a) Aquacultured live rock may be harvested from the Gulf of Mexico EEZ only under a permit issued pursuant to § 638.4. A person harvesting aquacultured live rock is exempt from the prohibition on taking prohibited coral for such prohibited coral as attaches to aquacultured live rock.

(b) The following restrictions apply to individual aquaculture activities:

(1) No aquaculture site may exceed 1 acre (0.4 ha) in size.

(2) Material deposited on the aquaculture site must be geologically or otherwise distinguishable from the naturally occurring substrate or be indelibly marked or tagged; may not be placed over naturally occurring reef outcrops, limestone ledges, coral reefs, or vegetated areas; must be free of contaminants; and must be nontoxic.

(3) A minimum setback of at least 50 ft (15.2 m) must be maintained from natural vegetated or hard bottom habitats.

(c) Mechanically dredging or drilling, or otherwise disturbing, aquacultured live rock is prohibited, and

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aquacultured live rock may be harvested only by hand.

(d) Not less than 24 hours prior to harvest of aquacultured live rock, the owner or operator of the harvesting vessel must provide the following information to the NMFS Law Enforcement Office, Southeast Area, St. Petersburg, FL, telephone (813) 570-5344:

(1) Permit number of site to be harvested and date of harvest.

(2) Name and official number of the vessel to be used in harvesting.

(3) Date, port, and facility at which aquacultured live rock will be landed.

(e) Live rock on a site may be harvested only by the person, or his or her employee, contractor, or agent, who has been issued the aquacultured live rock permit for the site.

§ 638.28 Specifically authorized activities.

The Regional Director may authorize, for the acquisition of information and data, activities otherwise prohibited by the regulations in this part.

[FR Doc. 94-23900 Filed 9-22-94; 3:50 pm]

BILLING CODE 3510-22-P

50 CFR Parts 638, 642, and 659

[I.D. 091994A]

South Atlantic Fishery Management Council; Intent to Prepare Supplemental Environmental Impact Statements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Intent to prepare supplemental environmental impact statements (SEISs); request for comments.

SUMMARY: NMFS announces that the South Atlantic Fishery Management Council (Council) intends to prepare SEISs to assess potential effects on the human environment from management changes for coral, rock shrimp, and king and Spanish mackerel.

The Council intends to determine the scope of issues to be addressed in the SEISs and to identify the significant issues related to the management of these species. The public may participate in this process by submitting written comments.

DATES: Written comments on the scope of the SEISs must be submitted by October 28, 1994.

ADDRESSES: Scoping comments and requests for additional information should be sent to Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699 (FAX: 803-769-4520).

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, 803-571-4366.

SUPPLEMENTARY INFORMATION: An announcement of a public meeting, public hearings, and a public scoping meeting was published in the **Federal Register** on September 8, 1994 (59 FR 46387) to solicit comments on coral-related issues, developing regulations for the rock shrimp fishery, and a scoping meeting on controlled access options for Atlantic group Spanish mackerel and proposed Amendment 8 to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic. This document serves as an addendum to that announcement.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 22, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-24010 Filed 9-27-94; 8:45 am]

BILLING CODE 3510-22-F

Notices

Federal Register

Vol. 59, No. 187

Wednesday, September 28, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 23, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 690-2118.

Revision

- Food and Nutrition Service

Food Stamp Program Application to Accept and Redeem Food Stamps—FSP Regulations Part 278—(Addendum)
FNS-252 and FNS 252A
On occasion
Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 78,823 responses; 32,546 hours
Preston Mears (703) 305-2419

- Animal and Plant Health Inspection Service

Request for Reimbursable Overtime Services
APHIS Form 192
On occasion
Individuals or households; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 3,000 responses; 750 hours
Donna Ford (301) 436-5752

- Agricultural Marketing Service

Tomatoes Grown in Florida, Marketing Order No. 966—(Addendum)
Recordkeeping; On occasion; Weekly; Monthly; Annually; Daily
Farms; Businesses or other for-profit; Small businesses or organizations; 12,711 responses; 1064 hours
Shoshana Avrishon (202) 720-3610

New Collection—(Expedited Approval Requested)

- Agricultural Marketing Service

Exporter Customer Information Survey
One-time survey
Small businesses or organizations; 3,750 responses; 563 hours
Robert Neenan (202) 690-0334

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 94-23978 Filed 9-27-94; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

[TMD-94-00-3]

Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) announces a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES AND TIMES: October 11, 1994 through October 14, 1994 from 8 a.m. to 5 p.m., for the NOSB.

PLACE: Red Lion Hotel, 1 Red Lion Drive, Rohnert Park, California 94928 (Sonoma County). Phone (707) 584-5466. All meetings of the NOSB for the week will be held at that address.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, Staff Director, NOSB, Room 4006 South Building, U.S. Department of Agriculture, AMS, Transportation and Marketing Division, P.O. Box 96456, Washington, DC. 20090-6456. Phone (202) 720-2704.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act), as amended (7 U.S.C. Section 6501 et seq.), requires establishment of a NOSB. The purpose of the NOSB is to assist in the development of standards for substances to be used in organic production and to advise the Secretary of Agriculture on any other aspects of the implementation of Title XXI of the FACT Act. The NOSB met for the first time in Washington, DC., in March 1992 and currently has five committees to work on various aspects of the program. The committees are: Crops Standards; Processing, Labelling and Packaging; Livestock Standards; Accreditation; and International Issues. At its last meeting, the NOSB approved a number of recommendations for submission to the Secretary regarding the implementation of the national organic program.

PURPOSE AND AGENDA: The main focus of this meeting is to discuss certain substances that should be considered for recommendation for inclusion on the National List as allowed synthetic substances and certain substances that should be considered for recommendation on the National List as prohibited natural substances in regard to the organic production and processing of organic foods. The main emphasis will be on the review of botanical materials that the Act indicates should be reviewed.

Additional topics to be covered in the full NOSB meeting include mushroom and greenhouse standards, good manufacturing practices for organic processors and handlers, and livestock healthcare issues.

A final agenda will be available on September 12, 1994. Persons requesting copies should contact Ms. Faith Ashton at the above address or phone number.

TYPE OF MEETING: All meetings will be open to the public. Individuals and organizations wishing to provide written comments on these issues or to comment orally on any organic issues should send the request to Dr. Harold S. Ricker at the above address or FAX it to (202) 690-0338 by September 30, 1994, in order to be scheduled. The NOSB has scheduled time for public input on

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Tuesday, October 11, 1994, beginning at 1 p.m. and continuing until 5:30 p.m. While people may sign up to speak at the door, advance scheduling assures an opportunity in the time allowed and helps the NOSB plan its activities. Each individual or organization will be allocated 10 minutes for presenting orally the key issues of concern, and should provide copies of written material elaborating on those issues for the committees.

Dated: September 22, 1994

Lon Hatamiya,

Administrator.

[FR Doc. 94-23923 Filed 9-27-94; 8:45 am]

BILLING CODE 3410-02-P

Soil Conservation Service

Upper French Broad River Watershed, Transylvania County, North Carolina

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Soil Conservation Service Regulations (7 CFR Part 650); the Soil Conservation Service, US Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Upper French Broad River Watershed, Transylvania County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Richard A. Gallo, State Conservationist, Soil Conservation Service, 4405 Bland Road, Suite 205, Raleigh, North Carolina, 27609, telephone (919) 790-2888.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Richard A. Gallo, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is flood damage reduction. The planned works of improvement include various nonstructural measures including floodproofing, elevations, floodwalls, and acquisition.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Richard A. Gallo.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under NO. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Richard A. Gallo,

State Conservationist.

[FR Doc. 94-23926 Filed 9-27-94; 8:45 am]

BILLING CODE 3410-16-M

ARMS CONTROL AND DISARMAMENT AGENCY

Announcement of the Hubert H. Humphrey Fellowship Competition for the 1995-96 School Year

The United States Arms Control and Disarmament Agency will conduct a competition in 1995 for one-year Hubert H. Humphrey Fellowships in support of unclassified doctoral dissertation research in arms control, nonproliferation and disarmament studies. Law candidates for the Juris Doctor or any higher degree are also eligible if they are writing a substantial paper in partial fulfillment of degree requirements. The fellowship stipends for the Ph.D. candidates will be $5,000 plus applicable tuition and fees up to a maximum of $3,400. Stipends and tuition for law candidates will be prorated according to the credits given for the research paper. Fellows must be citizens of the United States and degree candidates at a U.S. college or university. The application deadline for the awards in March 15, 1995. Candidates are asked to submit an application, a five-page thesis abstract with bibliography, three letters of reference, transcripts of all graduate course work, and proof of the acceptance of dissertation proposal. Awards will be for a twelve month period beginning in September 1995 or January 1996. For information and application materials please write: Hubert H. Humphrey Doctoral Fellowship Program, Office of Operations Analysis and Information Management, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451 or call on (703) 302-7714.

Dated: September 16, 1994.

Alfred Lieberman,

Chief of Operations Analysis and Information Management.

[FR Doc. 94-23977 Filed 9-27-94; 8:45 am]

BILLING CODE 6820-32-M

Announcement of the William C. Foster Fellows Visiting Scholars Program for the 1995-96 School Year

The U.S. Arms Control and Disarmament Agency (ACDA) will conduct a competition for selection of visiting scholars to participate in ACDA's activities during the 1995-96 academic year.

Section 28 of the Arms Control and Disarmament Act (22 U.S.C. 2568) provides that "A program for visiting scholars in the field of arms control, nonproliferation, and disarmament shall be established by the Director in order to obtain the services of scholars from the faculties of recognized institutions of higher learning." The law states that "The purpose of the program will be to give specialists in the physical sciences and other disciplines relevant to the Agency's activities an opportunity for active participation in the arms control, nonproliferation, and disarmament activities of the Agency and to gain for the Agency the perspective and expertise such persons can offer * * * Fellows shall be chosen by a board consisting of the Director, who shall be the chairperson, and all former Directors of the Agency." Scholars are known as William C. Foster Fellows, in honor of the first Director of ACDA, William C. Foster, who served from the inception of ACDA in 1961 until 1969.

ACDA began this program by competitively selecting six visiting scholars for the 1984-85 academic year. The competition has continued each subsequent academic year until the present. One-year assignments will begin at a mutually agreeable time after successful completion of all employment requirements.

Positions are available in the Bureau of Strategic and Eurasian Affairs (SEA), the Bureau of Multilateral Affairs (MA), the Bureau of Intelligence, Verification and Information Support (IVI), and the Bureau of Nonproliferation Policy and Regional Arms Control (NP). A brochure is available describing these positions in detail. Evaluation of applicants for appointments to these positions will focus upon the scholar's potential for providing expertise or performing services needed by ACDA, rather than

on the scholar's previously displayed interest in arms control. While pursuit of the scholar's own line of research may sometimes be possible, support of such activity is not the purpose of the program.

Visiting scholars will be detailed to ACDA by their universities; the universities will be compensated for the scholar's salary and benefits in accordance with the Intergovernmental Personnel Act and within Agency limitations. Visiting scholars will also receive reimbursement for travel to and from the Washington, DC area for their one-year assignment and either a per diem allowance during the one-year assignment or relocation costs.

Visiting scholars must be citizens of the United States, on the faculty of a recognized institution of higher learning, and tenured or on a tenure track or equivalent; they also must have served as a permanent career employee of the institution for at least ninety days before selection for the program. ACDA is an equal opportunity employer. Selections will be made without regard to race, color, religion, sex, national origin, age, or physical handicap that does not interfere with performance of duties. Prior to appointment applicants will be subject to a full-field background security investigation for a Top Secret security clearance, as required by Section 45 of the Arms Control and Disarmament Act. Visiting scholars will also be subject to applicable Federal conflict of interest laws and standards of conduct.

To apply, candidates are asked to submit a letter outlining their interests and qualifications, a curriculum vitae, copies of two publications, and additional supporting material such as letters of reference. The application deadline for assignments for the 1995-1996 academic year is January 31, 1995, subject to extension at ACDA's discretion. ACDA expects to announce tentative selections in the spring of 1995.

To request an information brochure, please write to: Visiting Scholars Program, Office of Operations Analysis and Information Management, Room 5726, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW, Washington, DC 20451 or call on (703) 302-7714.

Dated: September 16, 1994.

Alfred Lieberman,

Chief of Operations Analysis and Information Management.

[FR Doc. 94-23976 Filed 9-27-94; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

International Trade Administration, Commerce

Export Trade Certificate of Review

ACTION: Notice of application for an amendment to an Export Trade Certificate of Review, Application No. 89-3A005.

SUMMARY: The Department of Commerce has received an application to amend an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to determining whether the Certificate should be amended. An original and five (5) copies should be submitted not later than 30 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89-3A005."

Summary of the Application

The original Certificate of Review was issued on May 26, 1989 (54 FR 24928, June 12, 1989). An amendment to the Certificate (89-A0005) was issued on October 20, 1989 (54 FR 43982, October 30, 1989). This application seeks to amend Certificate of Review 89-A0005.)

Applicant: CherreX Corporation ("CherreX"), 2220 University Park Drive, Okemos, Michigan 48864. Contact: C. Richard Johnston, Managing Director, Cherry Marketing Institute, 2220 University Park Drive, Suite 200, Okemos, Michigan 48864, Telephone: (517) 347-0010.

Application No.: 89-3A005.

Date Deemed Submitted: September 16, 1994.

Proposed Amendment: CherreX seeks to amend its Certificate to:

1. Add each of the following companies as a "Member" of the Certificate within the meaning of section 325.2(l) of the Regulations (15 C.F.R. 325.2(l)): Peterson Farms, Inc., Shelby, Michigan; and Seaquist Orchards, Inc., Sister Bay, Wisconsin.

2. Delete each of the following companies as a "Member" of the Certificate: Burnette Foods, Inc.; Buskirk Processing, Inc.; DeRuiter Farms; Smeltzer Orchard Co.; Stanek & Sons, Inc.; Utah Finer Fruits; Ludington Fruit Exchange, Inc.; and Larson-Seaquist Processing, Inc.

3. Add the following product: sweet cherries. Members market sweet cherries in the following forms: fresh, canned, IQF (individually quick frozen and stored in freezer), and other (includes jams, jellies and specialty products.)

Dated: September 22, 1994.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 94-23897 Filed 9-27-94; 8:45 am]

BILLING CODE 3510-DR-P

National Institute of Standards and Technology

Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Prospective Grant of Exclusive Patent License.

SUMMARY: This is a notice in accordance with 35 USC 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce, is contemplating the grant of a field of use exclusive license in the United States to practice the inventions embodied in U.S. Patent 5,221,825, titled, "Sensing of Gas-Metal-Arc Welding Process Characteristics For Welding Process Control" and U.S. Patent Application 08/065,393, titled, "Arc Length And

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Droplet Detachment Sensor System For Gas Metal Arc Welding" to Morrow Tech Industries, Inc., having a place of business in Northglenn, Colorado. The patent rights in this invention have been assigned to the United States of America.

FOR FURTHER INFORMATION CONTACT: Bruce E. Mattson, National Institute of Standards and Technology, Technology Development and Small Business Program, Building 221, room B–256, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7 The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent 5,221,825 and U.S. Patent Application 08/065,393 relate to methods of sensing gas-metal-arc welding process characteristics and correcting flaws indicated by the detected process characteristics.

NIST may enter into a Cooperative Research and Development Agreement ("CRADA") to perform further research on the invention for purposes of commercialization. The CRADA may be conducted by NIST without any additional charge to any party that licenses the patent. NIST may grant the licensee an option to negotiate for royalty-free exclusive licenses to any jointly owned inventions which arise from the CRADA as well as an option to negotiate for exclusive royalty-bearing licenses for NIST employee inventions which arise from the CRADA.

The availability of U.S. Patent 5,221,825 was published in the **Federal Register**, Vol. 59, No. 132 (July 12, 1994). The availability of U.S. Patent Application 08/065,393 was published in the **Federal Register**, Vol. 59, No. 75 (April 19, 1994). A copy of the patent and patent application may be obtained from NIST at the foregoing address.

Dated: September 22, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–24008 Filed 9–27–94; 8:45 am]

BILLING CODE 3510–13–M

Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Prospective Grant of Exclusive Patent License.

SUMMARY: This is a notice in accordance with 35 USC 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce, is contemplating the grant of a field of use exclusive license in the United States to practice the invention embodied in U.S. Patent 5,307,680, titled, "Method and Apparatus For Visualization Of Internal Stresses In Solid Non-Transparent Materials By Elastoacoustic Technique" to ND Resources, Inc., having a place of business in Cincinnati, Ohio. The patent rights in this invention have been assigned to the United States of America.

FOR FURTHER INFORMATION CONTACT: Bruce E. Mattson, National Institute of Standards and Technology, Technology Development and Small Business Program, Building 221, Room B–256, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 C.F.R. 404.7 The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent 5,307,680 relates to a process for the detection and mapping of internal stresses in the interior of bulk materials by scanning acoustic technique.

NIST may enter into a Cooperative Research and Development Agreement ("CRADA") to perform further research on the invention for purposes of commercialization. The CRADA may be conducted by NIST without any additional charge to any party that licenses the patent. NIST may grant the licensee an option to negotiate for royalty-free exclusive licenses to any jointly owned inventions which arise from the CRADA as well as an option to negotiate for exclusive royalty-bearing licenses for NIST employee inventions which arise from the CRADA.

The availability of the invention for licensing was published in the Federal Register, Vol. 58, No. 49 (March 16, 1993). A copy of the patent may be obtained from NIST at the foregoing address.

Dated: September 22, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–24007 Filed 9–27–94; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act 44 U.S.C. Chapter 35).

Title: Evaluation of the DoD Student Testing Program.

Type of Request: Expedited processing—approval date requested 30 days after publication in the **Federal Register**.

Number of Respondents: 1,828.

Responses per Respondent: 1.62.

Annual Responses: 2,968.

Average Burden per Response: .27 hours.

Annual Burden Hours: 815.1.

Needs and Uses: Data will be collected from high school students and guidance staff to permit an evaluation of the DoD Student Testing Program (also known as Career Exploration Program) and recommendations for improvements. About 1,000,000 students participate in this program each year. Additionally, expert counselors will review the program and input will be solicited from other involved stakeholders.

Affected Public: Individuals or households; State or local Governments.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: September 21, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–23907 Filed 9–27–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a closed meeting of the Department of Defense Wage Committee will be held on October 4, 1994; October 11, 1994; October 18, 1994; and October 25, 1994, at 10:00 a.m. in Room 800, Hoffman Building #1, Alexandria, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close the meeting to the public because the matters considered are related to internal rules and practices of the Department of Defense and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: September 21, 1994.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–23906 Filed 9–27–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Air Force Academy Board of Visitors; Meeting

Pursuant to Section 9355, Title 10, United States Code, the Air Force Academy Board of Visitors will meet at the U.S. Air Force Academy, Colorado, 10–12 November 1994. The purpose of the meeting is to consider morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

A portion of the meeting will be open to the public on the morning of November 11, 1994. Other portions of the meeting will be closed to the public to discuss matters listed in subsections (2), (4), and (6) of section 552b(c), Title 5, United States Code. These closed sessions will include attendance at cadet training programs and discussions with cadets, military staff, and faculty officers involving personal information and opinion, the disclosure of which would result in a clearly unwarranted invasion of personal privacy. Closed sessions will also include executive sessions involving discussions of personal information, including financial information, and information relating solely to internal personnel rules and practices of the Board of Visitors and the Academy. Meeting sessions will be held in various facilities throughout the cadet area.

For further information, contact Ms. Donna Stauss, Policy, Plans, & Programs, HQ USAFA/XPP, 2304 Cadet Drive, USAF Academy, CO 80840–5002, at (719) 472–3933.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–23927 Filed 9–27–94; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF94–1011–000, et al.]

Alaska Power Administration, et al.; Electric Rate and Corporate Regulation Filings

September 21, 1994

Take notice that the following filings have been made with the Commission:

1. Alaska Power Administration

[Docket No. EF94–1011–000]

Take notice that on September 16, 1994, the Deputy Secretary of the Department of Energy, by Rate Order No. APA–12, confirmed and approved on an interim basis effective October 1, 1994, Rate Schedules A–F11, A–N12, and A–W3 applicable to power from and wheeling by Alaska Power Administration's (APA) Eklutna Project. The rate schedules which are being adjusted were previously confirmed and approved by FERC on January 25, 1991, for a period of four years, Docket No. EF91–1011–000.

Current rates in effect are 17 mills per kilowatthour for firm energy; 10 mills per kilowatt-hour for non-firm energy; and .3 mills per kilowatt-hour for wheeling. APA proposes to increase the rate for firm energy to 18.7 mills per kilowatthour, an increase of 10 percent. Rates for non-firm energy and wheeling would remain the same.

The Department requests the approval of the Commission of the adjusted rates for a period not to exceed five years with the understanding that the rates can be adjusted at an earlier date if needed to comply with the cost recovery criteria. The rate schedules are submitted for confirmation and approval of a final basis pursuant to authority vested in the Commission by Amendment No. 3 to Delegation Order No. 0204–108.

Comment date: October 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Electric and Gas Company

[Docket No. ER94–1294–000]

Take notice that on August 23, 1994, Public Service Electric and Gas Company tendered for filing a Notice of Withdrawal of its proposed Interruptible Transmission Service Tariff in the above-referenced docket.

Comment date: September 30, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Dartmouth Power Associates Limited Partnership

[Docket No. ER94–1643–000]

Take notice that on September 12, 1994, Dartmouth Power Associates Limited Partnership, tendered for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, proposed changes in its FERC Electric Service Tariff No. 1 for sales to Commonwealth Electric Company, whereby certain discontinued price indices referenced therein would be replaced with currently available indices.

Copies of the filing were served upon Commonwealth Electric Company and the Massachusetts Department of Public Utilities.

Comment date: October 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Boston Edison Company

[Docket No. ER94–1644–000]

Take notice that on September 12, 1994, Boston Edison Company (Edison) tendered for filing for informational purposes the 1993 true-up to actual for the Substation 509 Agreement (FPC Rate No. 101) between Edison and Cambridge Electric Light Company (Cambridge). This filing is made pursuant to the terms of the 1987 Settlement Agreement between Edison, Cambridge and the Town of Belmont, Massachusetts in Docket No. ER86–468–002.

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Edison states that it has served the filing on Cambridge, Belmont and the Massachusetts Department of Public Utilities.

Comment date: October 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. New York State Electric & Gas Corporation

[Docket No. ER94–1655–000]

Take notice that on September 16, 1994, New York State Electric & Gas Corporation (NYSEG) tendered for filing proposed changes in its FERC Rate Schedules for borderline sales to Pennsylvania Electric Co., Massachusetts Electric Co., Niagara Mohawk Power Corp., Rochester Gas & Electric Co., Central Hudson Gas & Electric Co., Orange & Rockland Utilities, Inc., Consolidated Edison Company of New York, Inc., and Connecticut Light & Power Co., (Rate Schedule FERC Nos. 20, 27, 28, 30, 32, 33, 35 and 105, respectively). NYSEG is filing the information pursuant to Section 35.13 of the Commission's Rules of practices and Procedure, 18 CFR 35.13 (1993). NYSGE is requesting an effective date of August 1, 1994, for the tariff rate changes. Accordingly, NYSEG has also requested a waiver of Commission's notice requirements for good cause shown.

NYSEG has sent a copy of this filing to Central Hudson Gas & Electric Corp.; Consolidated Edison Company of New York, Inc.; Niagara Mohawk Power Corp.; Orange & Rockland Utilities, Inc.; Rochester Gas & Electric Corp.; New York State Public Service Commission; Pennsylvania Electric Co.; Pennsylvania Public Utility Commission; Massachusetts Electric Co.; Massachusetts Dept. of Public Utilities; Connecticut Light & Power Co.; and the Connecticut Dept. of Public Utility Control.

Comment date: October 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.

[Docket No. ER94–1654–000]

Take notice that on September 14, 1994, Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc. (Montana-Dakota) tendered for filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's regulations, Supplement No. 1 to Joint Transmission Facility Agreement between Montana-Dakota and Mid-Yellowstone Electric Cooperative, Inc. (Mid Yellowstone).

Montana-Dakota asserts that the filing has been served on Mid-Yellowstone and on interested state regulatory commissions.

Comment date: October 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Boston Edison Company

[Docket No. ER94–1656–000]

Take notice that on September 15, 1994, Boston Edison Company (Edison) filed a letter agreement between itself and thirteen Massachusetts municipal electric systems further extending the deadline for the Municipals' submission of objections to Edison's 1992 bills for services rendered under each municipal system's Pilgrim power purchase contract in 1992. On September 2, 1994, Boston Edison filed a letter agreement in Docket No. ER94–1619–000 extending that deadline from September 7, 1994, until September 19, 1994. The new letter agreement extends that deadline from September 19, 1994, until September 27, 1994. The letter agreement makes no other changes to the rates, terms and conditions of the affected Pilgrim contracts.

Edison states that it has served copies of this filing upon each of the affected customers and upon the three other Pilgrim power purchasers: Reading Municipal Light Department, Montaup Electric Company and Commonwealth Electric Company; as well as the Massachusetts Department of Public Utilities.

Comment date: September 30, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Company

[Docket No. ER94–1657–000]

Take notice that on September 16, 1994, Southern California Edison Company (Edison) tendered for filing the following power sale agreement:

1994–1999 Power Sale Agreement Between Southern California Edison Company and Sacramento Municipal Utility District

The Agreement provides the terms and conditions whereby Edison shall make available and Sacramento Municipal Utility District shall purchase Contract Capacity ranging from 50 MW to 200 MW, to be made available during the term of the Agreement. During the months when Contract Capacity is not provided, SMUD may request Short-Term Capacity on an as-available basis. Edison is requesting waiver of the Commission's prior notice requirements and an effective date of October 1, 1994.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: October 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Maine Public Service Company

[Docket No. ER94–1562–000]

Take notice that on September 1, 1994, Maine Public Service Company (Maine) tendered for filing an amendment to its August 17, 1994, filing in the above-referenced docket.

Comment date: September 30, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of Colorado

[Docket No. ER94–1658–000]

Take notice that on September 16, 1994, Public Service Company of Colorado, tendered for filing amendments to its FERC Electric Service Rate Schedule, FERC No. 47. Under the proposed amendments Public Service is submitting its annual revisions to Exhibits B and D, which set forth points of delivery and levels of power and energy transmitted by the Western Area Power Administration and Public Service Company of Colorado, respectively. These amendments will have no impact on the rates for service under this agreement.

Public Service requests an effective date of October 1, 1994, for the proposed amendments.

Copies of the filing were served upon the Western Area Power Administration Loveland Area Office, and state jurisdictional regulators which include the Public Utilities Commission of the State of Colorado and the State of Colorado Office of Consumer Counsel.

Comment date: October 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. West Penn Power Company

[Docket No. ER94–1659–000]

Take notice that on September 16, 1994, West Penn Power Company, tendered for filing proposed changes in its FERC Electric Tariff, First Revised Volume No. 1. The proposed changes would increase revenues from jurisdictional sales and service by $2,082,000 based on the twelve-month period ending December 31, 1995. The proposed effective date for the increased rates is December 1, 1994.

The changes proposed are for the purpose of recovering increased costs incurred by the Company, to add new connection points and to update language in the existing tariff.

Copies of the filing were served upon the jurisdictional customers and the Pennsylvania Public Utility Commission.

Comment date: October 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Atlantic City Electric Company

[Docket No ER94–1660–000]

Take notice that on September 16, 1994, Atlantic City Electric Company (ACE) tendered for filing an Agreement for Short-Term Energy Transactions between ACE and New York State Electric & Gas Corporation. ACE requests that the Agreement be accepted to become effective September 19, 1994.

Copies of the filing were served on the New Jersey Board of Regulatory Commissioners and the New York Public Service Commission.

Comment date: October 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Ohio Edison Company

[Docket No. ER94–1661–000]

Take notice that on September 16, 1994, Ohio Edison Company (Ohio Edison) tendered for filing:

(1) A Revised Exhibit A to the Agreement, dated as of June 20, 1968, between Ohio Power Company (Ohio Power) and Ohio Edison (the Buckeye Agreement), and Ohio Power's concurrence to such filing;
(2) A construction agreement dated December 22, 1993, between Ohio Edison and Hancock-Wood Electric Cooperative, Inc. (Hancock-Wood);
(3) An O&M Agreement between Ohio Edison and Hancock-Wood, dated August 30, 1994, and
(4) A request for approval under Section 203 for the sale of distribution facilities.

The filings and request for approval all relate to the construction of new delivery facilities that Ohio Edison will use to deliver power and energy under the Buckeye Agreement. Ohio Edison requests an effective date of September 17, 1994, for the filings.

Comment date: October 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 94–24018 Filed 9–27–94; 8:45 am]
BILLING CODE 6717–01–P

[Project No. 2347–001 Wisconsin]

Wisconsin Power & Light Company; Notice of Availability of Final Environmental Assessment

September 21, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380, the Office of Hydropower Licensing has reviewed the application for a subsequent license for the existing Janesville Central Hydroelectric Project, located on the Rock River in Rock County, Wisconsin, in the city of Janesville, and has prepared a final environmental assessment (EA) for the project.

On April 25, 1994, staff issued and distributed to all parties a draft EA, and requested that comments on the draft EA be filed with the Commission within 30 days. Comments were filed by the city of Janesville and are addressed in the final EA.

In the final EA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protective or enhancement measures, would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the final EA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,
Secretary.

[FR Doc. 94–23916 Filed 9–27–94; 8:45 am]
BILLING CODE 6717–01–M

Texas Eastern Transmission Corporation and NorAm Gas Transmission Corporation, et al.; Natural Gas Certificate Filings

September 20, 1994.

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corporation; NorAm Gas Transmission Company

[Docket No. CP94–778–000]

Take notice that on September 14, 1994, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, and NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002 (jointly referred to as Applicants), filed in Docket No. CP94–778–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and §§ 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission and approval to abandon a natural gas exchange service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that they propose to abandon an exchange service initiated pursuant to an agreement dated November 10, 1975. Applicants indicate that the agreement was subsequently amended on July 12, 1976, and on March 18, 1980. Applicants further indicate that Texas Eastern provides its service under its Rate Schedule X–77, and NGT provides its service under its Rate Schedule XE–46, respectively. Applicants further state that the service was authorized in Texas Eastern Docket No. CP76–215, *et al.* and NGT Docket No. CP76–261, *et al.*, respectively. It is indicated that the exchange is provided by and between Applicants at various points of interconnection in Shelby, Marion, and Harrison Counties, Texas. Applicants aver that the purchase obligations under the purchase contracts associated with such exchange service have been terminated. Applicants state that they have agreed to the termination of the exchange service by letter dated July 15, 1994. It is also indicated that no facilities are proposed to be abandoned.

Comment date: October 11, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Southern Natural Gas Company

[Docket No. CP94–785–000]

Take notice that on September 16, 1994, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama, 35202–2563 filed in Docket No. CP94–785–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a new point of delivery in Effingham

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County, Georgia, under Southern's blanket certificate issued in Docket No. CP82–406–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Southern proposes to construct and operate certain measurement and other appurtenant facilities at or near Mile Post 95 on its Wrens-Savannah Lines in Effingham County, George in order to provide transportation service to Atlanta Gas Light Company (Atlanta) so that Atlanta may provide natural gas service for peaking purposes to Savannah Electric and Power Company.

Southern estimates the cost of the proposed facilities to be constructed by Southern to be $1,801,209 and it advises that Atlanta has agreed to reimburse Southern for the cost of the construction.

Additionally, Southern states that it will provide service to Atlanta at the new deliver point, the AGL-Plant McIntosh, under Atlanta's existing Service Agreements with Southern pursuant to Southern's Rate Schedules FT and IT. Southern also states that Atlanta does not propose to add any transportation demand to its firm service as a result of the addition of the delivery point. Southern further advises that, because the gas will be delivered primarily in the summer, the installation of the proposed facilities will have no adverse effect on Southern's ability to provide its peak day or annual deliveries.

Comment date: November 4, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Colorado Interstate Gas Company and MIGC, Inc.

[Docket No. CP94–780–000]

Take notice that on September 15, 1994, Colorado Interstate Gas Company ("CIG"), Post Office Box 1087, Colorado Springs, Colorado 80944, and MIGC, Inc. ("MIGC"), 12200 N. Pecos Street, Denver, Colorado 80234, filed a joint abbreviated application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon the transportation and exchange of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG and MIGC state that they propose to abandon the Gas Transportation and Exchange Agreement ("Agreement") dated May 28, 1981, as amended, constituting CIG's Rate Schedule X–48 of its FERC Gas Tariff, Original Volume No. 2, and MIGC's Rate Schedule TE–1 of its FERC Gas Tariff, First Revised Volume No. 1. These rate schedules provide for the transportation and exchange of natural gas supplies which are remote from one Party's system, but proximate to the other Party's system. CIG and MIGC both have open access certificates and operate under Order No. 636. Therefore, the certificate for the above transportation and exchange service, previously authorized by the Commission (21 FERC ¶ 61,203), is no longer required.

CIG and MIGC further state that they do not propose to abandon any facilities as a result of the authorization requested.

Comment date: October 11, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24016 Filed 9–27–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–402–000]

Algonquin Gas Transmission Co.; Proposed Changes In FERC Gas Tariff

September 22, 1994.

Take notice that on September 19, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1994:

Original Sheet No. 98G
Seventeenth Revised Sheet No. 20A

Algonquin states that the purpose of this filing is to provide for the recovery of certain transition costs associated with upstream capacity retained by Algonquin. Specifically, Algonquin seeks to recover Account No. 858 stranded costs billed to Algonquin by Texas Eastern Transmission Corporation in Docket No. RP94–378–000. Algonquin requests that the Commission waive Section 154.22 of the Commission's regulations to the extent that may be necessary to place these tariff sheets into effect as requested.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 29, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23942 Filed 9–27–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TC94–2–000]

Columbia Gas Transmission Corporation; Proposed Changes in FERC Gas Tariff

September 22, 1994.

Take notice that on September 15, 1994 Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following proposed tariff sheets to become effective November 1, 1994.

First Revised Sheet Nos. 657–666

Columbia states that the listed tariff sheets set forth the revised Index of Entitlements and are filed pursuant to 281.204(b)(2) of the Commission's Regulations and § 32.1(f) of the General Terms and Conditions of Columbia's FERC Gas Tariff, Second Revised Volume No. 1.

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before September 29, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's rules. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24017 Filed 9–27–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–187–000, et al.]

Equitrans, Inc.; Informal Settlement Conference

September 22, 1994.

Take notice that an informal conference will be convened in this proceeding on Wednesday, September 28, 1994, at 10:00 a.m., for the purpose of exploring the possible settlement of the above-referenced docket. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Hollis J. Alpert at (202) 208–0783 or Arnold H. Meltz at (202) 208–2161.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23938 Filed 9–27–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–120–000]

Koch Gateway Pipeline Co.; Informal Settlement Conference

September 22, 1994.

Take notice that Commission Staff will convene an informal settlement conference in this proceeding on October 11, 1994, at 10:00 a.m. The conference will be held in a hearing room at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), may attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Donald A Heydt at (202) 208–0740 or Warren C. Wood at (202) 208–2091

Lois D. Cashell,

Secretary.

[FR Doc. 94–23936 Filed 9–27–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP91–47–006, RP91–47–009, TM91–4–16–002, TM91–5–16–001, TM92–2–16–002, TM92–5–16–001, and TM94–4–16–001]

National Fuel Gas Supply Corp.; Notice of Conference

September 22, 1994.

Take notice that a conference has been scheduled for Tuesday, October 4, 1994 at 10:00 a.m., pursuant to the Commission's July 28, 1994 order issued in the above-captioned dockets, addressing National Fuel Gas Supply Corporation's (National Fuel) compliance filing reflecting a revised allocation methodology for the flowthrough of its upstream pipeline supplier fixed take-or-pay charges. The conference will be held in Room 3400–C of the offices of the Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426.

All interested persons are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23940 Filed 9–27–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–105–000 Phase II]

Ozark Gas Transmission System; Notice of Rescheduled Informal Settlement Conference

September 22, 1994.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding at 10:00 a.m. on October 6, 1994, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE, Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets. The informal settlement conference scheduled for September 26, 1994, has been *cancelled.*

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulation (18 CFR 385.214).

For additional information please contact Michael D. Cotleur, (202) 208–

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1076, or Russell B. Mamone (202) 208–0744.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23937 Filed 9–27–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP94–292–000; CP94–654–000]

Riverside Gas Storage Co. and Texas Eastern Transmission Corp.; Notice of Site Visit

September 22, 1994

On September 28, 1994, the Office of Pipeline Regulation staff will conduct a site visit with representatives of Riverside Gas Storage Company for the facilities proposed in the Riverside Gas Storage Field Project. The proposed facilities are near the towns of Carmichaels and Nemacolin in Greene County, Pennsylvania.

On September 29 and 30, 1994, the Office of Pipeline Regulation staff will conduct a site visit with representatives of Texas Eastern Transmission Corporation for the facilities proposed in the Riverside Transportation Project. The proposed facilities are loops or replacement sections of Texas Eastern's mainline in Greene, Fayette, Bedford, and Bucks County, Pennsylvania. The facilities also include a new meter and regulator station in Bucks County, Pennsylvania.

Parties to the proceeding may attend. Those planning to attend must provide their own transportation. For further information, call Steven G. Grape, (202) 208–1046.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23943 Filed 9–26–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–72–008]

Texas Eastern Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

September 22, 1994

Take notice that pursuant to and in compliance of the "Joint Stipulation and Agreement", filed May 3, 1994 in Docket Nos. RP91–72, *et al.*, (Settlement), and the Commission's "Order Approving Uncontested Settlements", issued on August 4, in Koch Gateway Pipeline Company, Docket Nos. RP85–209–000, *et al.* ("Order"), Texas Eastern Transmission Corporation (Texas Eastern) on September 19, 1994, submits as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 136
First Revised Sheet No. 137
First Revised Sheet No. 138
First Revised Sheet Nos. 139–155
First Revised Sheet No. 668
First Revised Sheet Nos. 669–679

Texas Eastern states that in accordance with Article IV, Section 4.2 of the Settlement, such tariff sheets supersede Original Sheet Nos. 136–155 and 668–679 of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. As stated in Article IV, Section 4.1, such tariff sheets listed above shall be deemed approved without refund condition. The proposed effective date of the tariff sheets is September 6, 1994, consistent with the Settlement and the Order in this proceeding.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions. Copies were also served on all parties to Docket Nos. RP85–209–000, *et al.*

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Section 385.214 of the Commission's Rules and Regulations. All such protests should be filed on or before September 29, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23939 Filed 9–27–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–24–000]

Texas Eastern Transmission Corp., Notice of Proposed Changes in FERC Gas Tariff

September 22, 1994.

Take notice that on September 16, 1994 Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A of the filing. Texas Eastern states that these revised tariff sheets are being submitted in response to Commission Order No. 566.[1]

Texas Eastern states that on September 1, 1994, in Docket No. MT94–22–000, it filed sheets in response to Order No. 566. Subsequently, the Commission Staff notified Texas Eastern that there was a technical error on the tariff sheets as filed. The error did not affect the proposed language or the pagination, but was simply a spacing error. In light of such error, Texas Eastern withdrew its September 1, 1994 filing. This filing replaces the withdrawn filing.

Texas Eastern states that these tariff sheets (1) modify Section 2.4 and delete Section 16.3 of the General Terms and Conditions, which relate to information on the availability of capacity, (2) revise Section 3.2 of the General Terms and Conditions, which refers to the information required for a valid request for transportation service, and (3) update Section 16 of the General Terms and Conditions. The proposed effective date of the tariff sheets is October 1, 1994.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 29, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23941 Filed 9–27–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5081–2]

Acid Rain Program: Draft Acid Rain Permits; Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Draft Permits and Public Comment Period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment draft, five-year Acid Rain permits to 16 utility plants in accordance with the Acid Rain Program regulations (40 CFR part 72).

DATES: Comments on each draft permit must be received on or before October 28, 1994 or the date of publication of a similar notice in a local newspaper, whichever is later.

ADDRESSES: Administrative Records. The administrative record for each draft permit, except information protected as confidential, may be viewed during normal operating hours at EPA Region 5, Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions concerning a draft permit to EPA Region 5 (A–18)), Air and Radiation Division, Attn: David Kee, Director (address above).

Submit all comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units covered by the permit. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 or issues not relevant to the permit.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting the draft permit.

FOR FURTHER INFORMATION CONTACT: Contact the following persons for more information about the draft permits for plants: in Illinois, Cecilia Mijares, (312) 886–0968; in Indiana, Genevieve Nearmyer, (312) 353–4761; in Minnesota, Allan Batka, (312) 886–7316; and in Ohio, Franklin Echevarria, (312) 886–9653.

SUPPLEMENTARY INFORMATION: EPA proposes to approve a permit for each affected utility plant that specifies sulfur dioxide emission allowances and compliance plans as set forth in the notices of final permits cited below. An allowance is a limited authorization by EPA to emit up to one ton of sulfur dioxide during or after a specified calendar year. As explained in the notice of withdrawal of final permits (published elsewhere in today's **Federal Register**), these final permits were issued as direct final actions and are withdrawn because of the submission of significant, adverse comments objecting to the issuance of the final permits.

The draft permits set forth in this notice are based on and consistent with the Partial Settlement Agreement in *Environmental Defense Fund* v. *Carol M. Browner*, No. 93–1203 (D.C. Cir. 1993), which the Administrator determined to be a reasonable resolution of certain litigation issues concerning the Acid Rain regulations, and which was signed on behalf of the Administrator on May 4, 1994. Further, the draft permit for Petersburg is consistent with other provisions of the Acid Rain regulations (e.g., 40 CFR 72.42) issued on January 11, 1993, that were challenged in the permit proceeding and in a petition for review. The Administrator finds, under section 307(b)(1) of the Clean Air Act, that the draft permits are based on a determination of nationwide scope and effect. In the absence of such a finding, appeals of the permits or appeals encompassing issues raised in the instant proceeding would involve petitions for review before more than one Circuit of the U.S. Courts of Appeals.

The following permits (See 59 FR 39339–39341, August 2, 1994 or 59 FR 39767–39768, August 4, 1994) are issued for public comment:

Collins in Illinois.
Crawford in Illinois.
Fisk in Illinois.
Joliet 9 in Illinois.
Joliet 29 in Illinois.
Powerton in Illinois.
State Line in Illinois.
Waukegan in Illinois.
Will County in Illinois.
Petersburg in Indiana.
Allen S. King in Minnesota.
Black Dog in Minnesota.
High Bridge in Minnesota.
Riverside in Minnesota.
Sherburne County in Minnesota
Poston in Ohio.

Dated: September 21, 1994

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94–23979 Filed 9–27–94; 8:45 am]

BILLING CODE 6560–60–P

[FRL–5081–3]

Acid Rain Program: Withdrawal of Direct Final Acid Rain Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft permits and permit modification.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is withdrawing direct final Acid Rain permits for 16 utility plants listed in the **Federal Register** at 59 FR 39339 (Aug. 2, 1994) and 59 FR 39767 (Aug. 4, 1994). The permits are withdrawn because of the submission of significant, adverse comments objecting to issuance of these permits. The withdrawn permits are being issued as draft permits for public comment. The notice of draft permits and public comment period (published elsewhere in today's **Federal Register**) provides more detailed information, including a list of the plants affected by this action.

Dated: September 21, 1994

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94–23980 Filed 9–27–94; 8:45 am]

BILLING CODE 6560–60–P

[OPP–38510; FRL–4910–2]

Alfred Waldner Co.; Notice and Order of Revocation of Registrations and Final Determination Governing Sale and Use of Existing Stocks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On October 29, 1990, EPA issued registrations for Insecticidal 2000 Concentrate, EPA Reg. No. 66410-1, and Insecticidal 2000 Ready to Use, EPA Reg. No. 66410-2. The original registrant certified that acute toxicity data submitted in support of these registration applications were obtained using a test substance identical to the Insecticidal 2000 Concentrate and representative of both insecticides. EPA subsequently determined that the tests were conducted on a substance which differed in concentration from the registered insecticides and that the tests were willfully misrepresented to EPA. By this notice, EPA announces and orders the revocation of registrations No. 66410-1 and No. 66410-2. EPA also announces that no sale or use of existing stocks of these insecticides will be permitted.

EFFECTIVE DATE: September 28, 1994

FOR FURTHER INFORMATION CONTACT: By mail: Richard F. Mountfort, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number

[1] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, 59 FR 32885 (June 27, 1994, III FERC Stats. & Regs. Preambles Paragraph 30,997 (June 17, 1994).

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Rm. 713, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703-305-5446.

SUPPLEMENTARY INFORMATION: On October 29, 1990, EPA issued registrations to Microft Systems International for the insecticides Insecticidal 2000 Concentrate, EPA Reg. No. 62212-1, and Insecticidal 2000 Ready To Use, EPA Reg. No. 62212-2. On September 10, 1992, the registrations were transferred to Alfred Waldner Co. under new registration numbers 66410-1 and 66410-2, respectively.

These registrations were originally issued after a review of acute effects toxicity data submitted with the Insecticidal 2000 Concentrate. Microft Systems certified that the tests were conducted with a test substance identical to Insecticidal 2000 Concentrate. Insecticidal 2000 Concentrate and Insecticidal 2000 Ready To Use each contain two active ingredients: Permethrin and Bioresmethrin. The Ready To Use product is a dilution of the concentrate.

The acute toxicity data submitted with the 2000 Concentrate were conducted by RCC-Research and Consulting Co. AG of Basel, Switzerland. The following five studies were submitted:

Project No.	Study Type	EPA Identification No.
#064383	Oral	MRID 41110401
#064394	Dermal	MRID 41110402
#064372	Inhalation	MRID 41110403
#064416	Eye irritation	MRID 41110404
#064405	Skin irritation	MRID 41110405

EPA's review of these studies indicated that they were adequate to support registration of a concentrate identical to the proposed concentrate and indicated a classification for acute effects in Toxicity Category 3: a caution label and associated precautions (40 CFR 156.10(h)).

On October 24, 1991, the Agency issued a registration to Bio-Environmental Products Corp. for the insecticide BEP Insecticide, EPA Reg. No. 64321-1. This insecticide is a dilution of a concentrate containing the single active ingredient permethrin. The same five acute studies described above were submitted by Bio-Environmental Products Corp. to support that application.

It has subsequently been established that the studies referred to above were sponsored by Jesmond, Ltd. BioEnvironmental Products Corp. is a wholly owned subsidiary of Jesmond, Ltd. The test substance in these studies contained the single active ingredient permethrin. It did not include bioresmethrin and is not identical to the Insecticidal 2000 Concentrate. EPA has concluded that the registrations for Insecticidal 2000 Concentrate and Insecticidal 2000 Ready To Use are not supported by the acute toxicity data that were submitted with the registration applications and that the precautionary labeling cannot be confirmed to be adequate for these insecticides.

This notice is organized into two parts. Part I describes the basis for the revocation of registrations for Waldner's Insecticidal 2000 Concentrate and Insecticidal 2000 Ready To Use. Part II describes the procedures which will be followed in implementing the regulatory actions set forth in this notice, including the treatment of existing stocks.

I. Basis For Revocation

Section 558 of the Administrative Procedure Act (APA) (5 U.S.C. 558) spells out the procedural requirements agencies must follow when terminating a license. Section 558 states:

> Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefore, the licensee has been given—(1) notice by the agency in writing of the facts or conduct which may warrant the action; and (2) opportunity to demonstrate or achieve compliance with all lawful requirements.

Courts have interpreted willfulness to mean "an intentional misdeed or such gross neglect of a known duty as to be the equivalent thereof." *Hutto Stockyard, Inc.* v. *USDA* (903 F.2d 299, 304 (4th Cir. 1990) (quoting *Capitol Packing* v. *United States*, 350 F.2d 67, 78-79 (10th Cir. 1965); *Capital Produce Co.* v. *United States*, 930 F.2d 1077, 1079 (4th Cir. 1991). To establish willfulness, one need only show that an act or failure to act was intentional, as opposed to accidental, and proof of an evil motive is unnecessary. *Emil Lawrence* v. *Commodity Futures Trading Commission*, 759 F.2d 767, 769 (9th Cir. 1985).

In this case, the original registrants submitted data which were developed using a product with one active ingredient when, in fact, their product contained two active ingredients. Registrants certified that the information submitted was accurate. That certification and submission of data which did not represent the registered product was an intentional act, not an accidental one; therefore, it falls squarely within the definition of "willful." Because the registrations were obtained through misrepresentation and a willful violation of the provisions of FIFRA, the registrations were not valid when granted and the procedural requirements for revocations in APA section 558 do not apply.

Although not required in this case, the Agency did provide registrants written notice as well as an opportunity to respond to the allegations against them. Registrants did not respond to that notice. These procedures go beyond what is required by the APA in cases of willful violations of law.

II. Order

This notice announces EPA's decision and order revoking Alfred Waldner's registrations for Insecticidal 2000 Concentrate and Insecticidal 2000 Ready To Use. It is also notification that the Agency will not permit sale, distribution, or use of any existing stocks of either insecticide in the United States.

Dated: September 16, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 94-23763 Filed 9-27-94; 8:45 am]
BILLING CODE 6560-50-F

[PF-607; FRL-4911-3]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions (PP) proposing the establishment of tolerances and/or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities. It also announces two amended petitions.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/telephone number:

Product Manager	Office location/telephone number	Address
George LaRocca (PM 13)	Rm. 204, CM #2, 703-305-7690	1921 Jefferson Davis Hwy., Arlington, VA
Rob Forrest (PM 14)	Rm. 219, CM #2, 703-305-6600	Do.
Dennis Edwards (PM 19)	Rm. 207, CM #2, 703-305-6386	Do.
Steve Robbins (PM 21)	Rm. 227, CM #2, 703-305-6900	Do.
Cynthia Giles-Parker (PM 22)	Rm. 229, CM #2, 703-305-5540	Do.
Joanne Miller (PM 23)	Rm. 237, CM #2, 703-305-7830	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows that propose establishment and/or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 4F4351.* Ecogen, Inc., 2005 Cabot Blvd. West, Langhorne, PA 19047, proposes to amend 40 CFR 180.1001(c) and (d) by establishing an exemption from the requirement of a tolerance for residues of the insecticide *Candida oleophila* isolate I-182 in or on all raw agricultural commodities. (PM 21)

2. *PP 4F4352.* Agrolinz, Inc., 6825 Quail Hollow, Suite 107, Memphis, TN 38120-1309, proposes to amend 40 CFR 180.462 by establishing a tolerance to permit residues of the herbicide pyridate, O-(6-chloro-3-phenyl-4-pyridazinyl)-S-octyl-carbonothioate, in or on sorghum (grain, forage, fodder, silage, and hay) at 0.03 ppm. (PM 22)

3. *PP 4F4353.* Abott Laboratories Chemical & Agricultural Products Division, 1401 Sheridan Rd., North Chicago, IL 60064, proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for the plant growth regulator N6-Benzyladenine, in or on apples when applied at 30 grams AI/Acre or less. (PM-22)

4. *PP 4F4354.* Merck & Co., Inc., P.O. Box 450, Three Bridges, NJ 0887-0450, proposes to amend 40 CFR part 180 by establishing a tolerance regulation to permit residues of the herbicide abamectin and its 8,9 isomer in or on cucurbits (melons, cucumbers, and squashes). (PM 13)

5. *PP 4F4356.* PMC Specialties Group, 501 Murray Rd., Cincinnati, OH 45217, proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for the insecticide methyl anthranilate in or on all food crops. (PM 14)

6. *PP 4F4357.* Nor-Am Chemical Co., Little Falls Centre One, 2711 Centerville Rd., Wilmington, DE 19880, porposes to amend 40 CFR 180.276 by establishing a regulation to permit residues of the insecticide formetanate hydrochloride (m-[[(dimethylene]amino]phenyl methylcarbamate hydrochloride) in or on alfalfa (fresh) at 10 ppm and alfalfa hay at 20 ppm. (PM 19).

7. *PP 4F4360.* Crop Genetics International, 10150 Old Columbia Rd., Columbia, MD 21045-1704, proposes to amend 40 CFR 180.1027 by establishing an exemption from the requirement of a tolerance for the microbial pest control agent helicoverpa zea (also known as heliothis zea) nuclear polyhedrosis virus in or on all raw agricultural commodities. (PM 18)

8. *PP 4F4367.* E.I. Du Pont de Nemours & Co., Inc., Agricultural Products, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of the herbicide bensulfuron methyl (methyl 2[[[[[(4,6-dimethoxy pyrimidin-2-yl]amino]-carbonyl] amino]sulfonyl] methyl]benzoate) in or on crayfish at 0.05 ppm. (PM-23)

9. *PP 4F4368.* W.R. Grace & Co., 7379 Route 32, Columbia, MD 21044, proposes to amend 40 CFR 180.1001 by establishing an exemption from the requirement of a tolerance to include use of *Glioclodium virens* GL-21 on terrestrial food crops grown outdoors (PM 21)

10. *PP 4F4379.* DowElanco, 9330 Zionville Rd., Indianapolis, IN 46268-1054, proposes to amend 40 CFR 180.431 to establish tolerances for residues of clopyralid, 3,6-dichloro-2-pyridinecarboxylic acid, in or on corn, sweet at 1.0 ppm and corn, pop at 1.0 ppm. The proposed method for determining residues is gas chromatography. (PM 21)

11. *PP 4F4415.* Gustafson, Inc., proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine, and its metabolites containing the 6-chlorpyridinyl moiety in or on sorghum at 0.05 ppm. (PM 19)

Amended Filings

12. *PP 3F4169.* Miles, Inc., Agricultural Division, P.O. Box 4913 Kansas City, MO 64120, is revising proposed tolerances for imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine, and its metabolites containing the 6-chloropyridinyl moiety by increasing the proposed tolerance on cottonseed from 3.5 ppm to 6.0 ppm, increasing milk from 0.05 ppm to 0.1 ppm, increasing meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep from 0.2 ppm to 0.3 ppm, and increasing meat, fat, and meat byproducts of poultry from 0.02 ppm to 0.5 ppm. The original notice of filing appeared in the Federal Register of October 21, 1993 (58 FR 54353). (PM 19)

13. *FAP 3H5655.* Miles, Inc., Agricultural Division, P.O. Box 4913, Kansas City, MO 64120, is revising proposed food/feed tolerances for

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imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine, and its metabolites containing the 6-chlorpyridinyl moiety by increasing the proposed tolerance for apples, pomace (wet) from 2.0 ppm to 3.0 ppm, increasing cotton seed meal from 5.5 ppm to 9.0 ppm, and adding potatoes, wastes at 0.9 ppm. The original notice of filing appeared in the **Federal Register** of October 21, 1993 (58 FR 54353). (PM 19)

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Authority: 7 U.S.C. 136a

Dated: September 19, 1994

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs

[FR Doc. 94-23761, Filed 9-27-94, 8:45 am]

BILLING CODE 6560-60-F

[OPP-180950; FRL-4909-4]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 12 States as listed below. Three crisis exemptions were initiated by various States. These exemptions, issued during the month of June 1994, except for the one in May 1994, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied seven specific exemption requests from various States. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703-308-8417).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arizona Department of Agriculture for the use of bifenthrin on melons to control the sweet potato, or silverleaf whitefly; June 6, 1994, to July 10, 1994. A request for this use was initially denied on April 15, 1994. The denial was based on the fact that an exemption issued for this pest problem for another chemical, imidacloprid, was expected to reduce whitefly populations to a level controllable with the registered alternatives. However, at the time of issuance of the imidacloprid exemption, some melons were too far along in their development in order to use imidacloprid once, at or near planting, according to use directions. Therefore, EPA issued this exemption for use of bifenthrin only on those melons that could not be treated under the exemption for imidacloprid. (Andrea Beard)

2. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of myclobutanil on tomatoes to control powdery mildew; June 18, 1994, to June 17, 1995. (Susan Stanton)

3. Delaware Department of Agriculture for the use of clomazone on cucumbers to control weeds and grasses; June 24, 1994, to August 20, 1994. (Margarita Collantes)

4. Maryland Department of Agriculture for the use of clomazone on cucumbers to control weeds and grasses; June 24, 1994, to August 20, 1994. (Margarita Collantes)

5. Minnesota Department of Agriculture for the use of triclopyr on aquatic sites to control purple loopestrife; June 1, 1994, to September 30, 1994. (Libby Pemberton)

6. Nebraska Department of Agriculture for the use of bifenthrin on corn to control mites; June 24, 1994, to September 15, 1994. (Andrea Beard)

7. New Mexico Department of Agriculture for the use of bifenthrin on corn to control mites; June 24, 1994, to September 15, 1994. (Andrea Beard)

8. Oregon Department of Agriculture for the use of bifenthrin on strawberries to control weevils; June 16, 1994, to August 31, 1994. (Andrea Beard)

9. Oregon Department of Agriculture for the use of bifenthrin on raspberries to control weevils; June 7, 1994, to August 15, 1994. (Andrea Beard)

10. Texas Department of Agriculture for the use of bifenthrin on corn to control mites; June 24, 1994, to September 15, 1994. (Andrea Beard)

11. Texas Department of Agriculture for the use of esfenvalerate on sorghum to control sorghum midge; June 28, 1994, to September 30, 1994. Texas had initiated a crisis exemption this use. (Libby Pemberton)

12. Texas Department of Agriculture for the use of imidacloprid on broccoli, cauliflower, and cabbage to control the silverleaf whitefly; June 28, 1994, to June 27, 1995. A notice of receipt published in the **Federal Register** of June 8, 1994 (59 FR 29604); no comments were received. The situation was determined to be urgent and nonroutine. The silverleaf whitefly is a relatively new pest, and adequate control is not being achieved with the registered materials. Significant economic losses were expected. (Andrea Beard)

13. Virginia Department of Agriculture and Consumer Services for the use of clomazone on cucumbers to control weeds and grasses; June 24, 1994, to August 20, 1994. (Margarita Collantes)

14. Washington Department of Agriculture for the use of bifenthrin on raspberries to control weevils; June 7, 1994, to August 10, 1994. Washington had initiated a crisis exemption for this use. (Andrea Beard)

15. Washington Department of Agriculture for the use of bifenthrin on strawberries to control weevils; June 16, 1994, to September 30, 1994. (Andrea Beard)

16. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of vinclozolin on snap beans to control white mold; June 24, 1994, to September 15, 1994. (Libby Pemberton)

17. Wisconsin Department of Agriculture for the use of metolachlor on spinach to control weeds and grasses; June 1, 1994, to July 1, 1994. (Margarita Collantes)

Crisis exemptions were initiated by the:

1. Colorado Department of Agriculture on May 28, 1994, for the use of chlorpyrifos on barley to control the Russian wheat aphid. This program has ended. (Andrea Beard)

2. Texas Department of Agriculture on June 1, 1994, for the use of esfenvalerate on grain sorghum to control sorghum midge. This program is expected to last until September 30, 1994. (Libby Pemberton)

3. Washington Department of Agriculture on June 6, 1994, for the use of bifenthrin on raspberries to control weevils. This program has ended. (Andrea Beard)

EPA has denied a specific exemption request from the:

1. Alabama Department of Agriculture and industries for the use of Pirate insecticide on cotton to control beet armyworms. A notice of receipt published in the **Federal Register** of May 25, 1994 (59 FR 27017). This specific exemption was denied because the proposed use poses an unreasonable risk to nontarget birds and aquatic organisms, including several endangered species. Although some growers may incur significant economic losses, the expected statewide losses do not justify the use of this unregistered pesticide on cotton. (Susan Stanton)

2. California Environmental Protection Agency (CEPA), Department of Pesticide Regulations, for the use of acephate on leaf lettuce to control green peach aphids. This specific exemption was denied because CEPA failed to demonstrate that an emergency condition exists. They claimed that an emergency resulted due to the development of resistance to registered alternatives; however, no data were submitted to document CEPA's claims. (Larry Fried)

3. Colorado Department of Agriculture for the use of permethrin on wheat and barley to control cutworms. This specific exemption was denied because of concerns regarding potential dietary risk from permethrin exposure and inadequate progress toward registration. (Andrea Beard)

4. Georgia Department of Agriculture for the use of permethrin on southern peas to control cowpea curculio. This specific exemption was denied because of concerns regarding potential dietary risk from permethrin exposure and inadequate progress toward registration. (Andrea Beard)

5. Mississippi Department of Agriculture for the use of Pirate insecticide on cotton to control beet armyworms. A notice of receipt published in the **Federal Register** of May 25, 1994 (59 FR 27018). This specific exemption was denied because the proposed use poses a risk of unreasonable adverse effects on nontarget birds and aquatic organisms, including several endangered species. An emergency condition does not exist in Mississippi. (Susan Stanton)

6. Montana Department of Agriculture for the use of permethrin on small grains to control cutworms. This specific exemption was denied because of concerns regarding potential dietary risk from permethrin exposure and inadequate progress toward registration. (Andrea Beard)

7. New Hampshire Department of Agriculture for the use of clomazone on winter squash to control weeds. This specific exemption was denied because it has been 6 years that the use of clomazone on winter squash has been requested under section 18 of FIFRA, and it was expected that clomazone would be registered for use in New Hampshire by this growing season 1994; however, FMC Corporation has not yet submitted an application to add this use to its commercial label. (Margarita Collantes)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: September 9,1994

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94-23606 Filed 9-27-94, 8:45 am]

BILLING CODE 6560-60-F

[OPP-30354A; FRL-4909-9]

Ciba-Geigy Corp.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Ciba-Geigy Corporation, to conditionally register the pesticide products Dividend Fungicide and Technical CGA-169374, containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703-305-5540).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 21, 1993 (58 FR 54351), which announced that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, had submitted applications to register the pesticide products Dividend Fungicide and Technical CGA-169374 (EPA File Symbols 100-TUN and 100-TGO) containing the active ingredient difenoconazole [(2S,4R) /.(2R,4S)] / [2R,4R/2S,4S)] 1-(2-[4-(4-chlorophenoxy)-2-chlorophenyl]-4-methyl-1,3-dioxolan-2-yl-methyl)-1*H*-1,2,4-triazole at 32 and 92 percent respectively, an active ingredient not included in any previously registered products.

These applications were approved on August 4, 1994, as Dividend Fungicide (EPA Registration Number 100-740) as a seed treatment for control of diseases on wheat and Technical CGA-169374 (EPA Registration Number 100-739) for formulation into end-use fungicide products.

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects on the environment; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of difenoconazole and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of difenoconazole during the period of conditional registration is not expected to cause any unreasonable adverse effect on the environment, and that use of the pesticide is in the public interest.

Adequate chemistry, toxicological, ecological effects, and environmental fate data have been submitted and reviewed to support the conditional registration of difenoconazole for use as a seed treatment fungicide of wheat. The terms of the conditional registration will require Ciba-Geigy to submit Stability of the Technical Grade Active Ingredient (TGAI) to Metal Ions Study [Guideline Number 63-13], Storage Stability of difenoconazole in other Raw Agricultural Commodities [171-4(e)], and additional Wheat Field Residue Trials [171-4(k)].

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in an EPA Pesticide Fact Sheet on difenoconazole.

A copy of the fact sheet, which provides a summary description of the chemical, use patterns and

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formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager listed above. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Production registration.

Dated: September 9, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–23607 Filed 9–27–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–36140B; FRL–4872–5]

Inert Ingredients in Pesticide Products; List of Minimal Risk Inerts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is issuing a list of inert ingredients considered to be of minimal risk in pesticide products (List 4A). In addition, EPA is announcing that substances commonly consumed as food will also be considered minimal risk. List 4A, even if they have previously not been used in pesticide products and are therefore not currently on the list. Substances commonly consumed as foods will be considered acceptable for use in all pesticide products, both food and nonfood use, and will not require a specific exemption from tolerance.

EFFECTIVE DATE: September 28, 1994.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP-36140B] to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal Mall Bldg. #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: EPA announced its policy on toxic inert ingredients in pesticide products in the **Federal Register** of April 22, 1987 (52 FR 13305). Through this policy, EPA encourages the use of the least toxic inert ingredients available and requires the development of data necessary to determine the conditions of safe use of products that contain toxic inert ingredients. In developing this policy, EPA categorized inert ingredients into the following four lists according to toxicity:

List 1—Inerts of toxicological concern.

List 2—Potentially toxic inerts, with high priority for testing.

List 3—Inerts of unknown toxicity.

List 4—Inerts of minimal concern.

In the **Federal Register** of November 22, 1989 (58 FR 48314), EPA issued a notice announcing some modifications to the previously published Lists 1 and 2. In that notice, EPA also noted that List 4 was being divided into two parts. The original List 4 became List 4A, representing minimal risk inert ingredients. List 4B was created to represent inert ingredients for which EPA has sufficient information to conclude that their current use patterns in pesticide products will not adversely affect public health and the environment. List 4B will be developed as EPA works through the inerts strategy and reviews the current inerts on Lists 2 and 3.

EPA is issuing List 4A to provide guidance to formulators of active ingredients being proposed for deregulation under section 25(b) of the Federal Insecticide, Fungicide and Rodenticide Act. The substances included on List 4A can be added to such active ingredients without jeopardizing their deregulated status. These minimum risk inert ingredients are recognized as safe for use in pesticide products based upon their known properties.

In reviewing List 4 inert ingredients for the proposed section 25(b) rule, many inerts on the original List 4 were moved from List 4A to List 4B. In particular, acutely toxic inerts were moved to 4B because, although the testing of products for acute toxicity ensures low concern for these inerts in registered products, without such regulatory oversight there may be unacceptable acute risks. In addition, many of the inerts on the original List 4 received little review for environmental fate and ecological effects. Those inerts have been moved to List 4B while EPA further assess their environmental risks. EPA also plans soon to move inert ingredients now on List 3 to Lists 4A and 4B. The Food and Drug Administration has considered these inerts for use as direct food additives and in pharmaceuticals, and they are undergoing additional review by the FDA and the Office of Water before final disposition.

Many of the inerts on List 4A are commonly consumed foods. There may be other foods useful as inert ingredients in pesticide products that are not included in this list because they have not been used in pesticide products up to now. EPA is announcing a policy that, as a general matter, it will consider all commonly consumed foods as List 4A, inerts of minimal concern. Although some commonly consumed foods are currently exempted from the requirement of a tolerance by virtue of their listing in the 40 CFR 180.1001, EPA generally will no longer list common foods in this way. EPA generally considers substances that are commonly consumed as food to fall into the category of "generally recognized as safe" substances. EPA will not require a specific listing for commonly consumed foods in this subpart unless specific information suggests that categorization of "generally recognized as safe" is inappropriate.

List 4A—Minimum Risk Inerts

Acetic acid
Agar
Alfalfa
Alfalfa meal
Almond hulls
Almond shells
Alpha cellulose
Apple pomace
Attapulgite-type clay
Beef fat
Beeswax
Beet powder
Bentonite
Bone meal
Bran
Bread crumbs
Calcareous shale
Calcite
Calcium carbonate
Canary seed
Cane syrup
Carbon dioxide
Cardboard
Carrageenan
Carrots
Casein
Cheese
Chlorophyll
Cinnamon
Citric acid
Citrus meal
Citrus pectin
Citrus pulp
Clam shells
Cloves
Cocoa
Cocoa shells
Coco shell flour
Cod liver oil
Coffee grounds
Cookies
Cork
Corn
Corn cobs
Corn flour
Corn meal
Corn oil
Cornstarch
Corn syrup
Cotton
Cottonseed meal
Cottonseed oil
Cracked oats
Cracked wheat
Dextrin
Dextrose
Dolomite
Douglas-fir bark, ground
Eggs
Egg shells
Edible fish meal
Edible fish oil
Flour
Fuller's earth
Gelatin
Glue, as depolymerized animal collagen
Glycerin
Granite
Grape pomace
Graphite
Ground oats
Guar gum
Gum arabic
Gum tragacanth
Gypsum
Hearts of corn flour
Hydrogenated vegetable oils
Honey
Invert sugar
Invert syrup
Kaolinite-type clay
Lactose
Lanolin
Lard
Latex
Lecithin
Lime
Limestone
Linseed oil
Malt flavor
Meat meal
Meal scraps
Medicated feed
Mica
Milk
Millet seed
Mineral oil, U.S.P.
Molasses
Montmorillonite-type clay
Nitrogen
Nutria meat
Nylon
Oatmeal
Oats
Olive oil
Onions
Orange pulp
Oyster shells
Paper
Paprika
Paraffin wax
Peanut butter
Peanut oil
Peanuts
Peanut shells
Peat moss
Pecan shell flour
Pectin
Polyethylene film
Polyethylene pellets
Potatoes
Pumice
Raisins
Red cedar chips
Red dog flour
Rice
Rice hulls
Rubber
Rye flour
Safflower oil
Sawdust
Seaweed, edible
Shale
Soapstone
Sodium bicarbonate
Sodium chloride
Sorbitol
Soybean hulls
Soybean meal
Soybean oil
Soy flour
Soy protein
Sucrose
Sugarbeet meal
Sunflower seeds
Tallow
Vanillin
Vermiculite
Vitamin C
Vitamin E
Walnut flour
Walnut shells
Water
Wheat
Wheat germ oil
Whey
Wintergreen oil
Wool
Xanthan gum
Yeast

List of Subjects

Environmental protection, Agricultural commodities, Administrative practice and procedure, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 136a.

Dated: June 14, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–23890 Filed 9–27–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Adjustment of Disaster Grant Amounts

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) gives notice that the maximum amounts for Individual and Family Grants and grants to State and local governments and private nonprofit facilities are adjusted for disasters declared on or after October 1, 1994.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, prescribes that grants made under Section 411, Individual and Family Grant Program, and grants made under Section 422, Simplified Procedure, relating to the Public Assistance program, shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

Notice is hereby given that the maximum amount of any grant made to an individual or family for disaster-related serious needs and necessary

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expenses under Section 411 of the Act, with respect to any single disaster, is increased to $12,600.00 for all disasters declared on or after October 1, 1994.

Notice is also hereby given that the amount of any grant made to the State, local government, or to the owner or operator of an eligible private nonprofit facility, under Section 422 of the Act, is increased to $43,600.00 for all disasters declared on or after October 1, 1994.

The increase is based on a rise in the Consumer Price Index for All Urban Consumers of 2.9 percent for the prior 12-month period. The information was published by the Department of Labor during September 1994.

(Catalog of Federal Domestic Assistance No 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 94-24000 Filed 9-27-94; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-7340)

Final approval under OMB delegated authority of the extension without revision of the following report(s):

1. *Report title:* Weekly and Monthly Money Market Mutual Fund Asset Reports.

Agency form number: FR 2051a, b, c, and d

OMB Docket number: 7100-0012

Frequency: Weekly and Monthly

Reporters: Money market mutual funds

Annual reporting hours: 6,027

Estimated average hours per response: 0.05 (each for FR 2051a and FR 2051d); 0.25 (FR 2051b); 0.15 (FR 2051c)

Number of respondents: 1000 (each for FR 2051a and FR 2051b); 52 (FR 2051c); 8 (FR 2051d).

Small businesses are affected.

General description of report: This information collection is voluntary [12 U.S.C. 353 et seq.] and is given confidential treatment [5 U.S.C. 552(b)(4)].

SUMMARY: These reports provide information on the assets of money market mutual funds which the Federal Reserve System uses in the construction of the monetary aggregates.

Final approval under OMB delegated authority of the extension with revision of the following report(s):

1. *Report title:* Monthly Survey of Selected Deposits and the Annual Supplement to the Monthly Survey of Selected Deposits.

Agency form number: FR 2042 and FR 2042a

OMB Docket number: 7100-0066

Frequency: Monthly and annually

Reporters: Commercial and savings banks

Annual reporting hours: 6,825

Estimated average hours per response: 1.00

Number of respondents: 525

Small businesses are affected.

General description of report: This information collection is voluntary [12 U.S.C. § 248(a)(2)]. The individual respondent data on amounts outstanding and on interest expense for the various deposit categories are given confidential treatment [5 U.S.C. § 552(b)(4)]. Data on interest rates paid on deposits are made available to the public on request.

SUMMARY: The reports collect detailed information on amounts, offering rates, interest expense, and fees on various types of retail deposits from a stratified sample of BIF-insured commercial and savings banks. The revisions are designed in part to make the data collected more accurately reflect deposit pricing. In addition, other changes eliminate items no longer deemed necessary to conducting monetary policy. The Federal Reserve uses data from the FR 2042 and FR 2042a in a number of ways, including construction and interpretation of the monetary aggregates, measuring elasticities in money demand equations, and assessing the changing behavior of banks in pricing deposit accounts.

Board of Governors of the Federal Reserve System, September 22, 1994.

William W. Wiles,

Secretary of the Board

[FR Doc. 94-23963 Filed 9-27-94; 8:45 am]

BILLING CODE 6210-01-P

Benjamin Franklin Bancorp, M.H.C., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 21, 1994.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Benjamin Franklin Bancorp, M.H.C., Franklin, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Benjamin Franklin Savings Bank, Franklin, Massachusetts.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Regions Financial Corporation and Regions Corporation, both of Birmingham, Alabama; to acquire 100 percent of the voting shares of Regions Bank of Louisiana, Baton Rouge, Louisiana. Regions Financial Corporation's second-tier thrift subsidiary, Secor Bank, F.S.B., Birmingham, Alabama, will convert to a state-nonmember bank and change its name to Regions Bank of Louisiana, Baton Rouge, Louisiana.

In connection with this application, Regions Corporation also has applied to become a bank holding company by acquiring 100 percent of the voting shares of Regions Bank of Louisiana, Baton Rouge, Louisiana.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Fishback Financial Corporation (formerly Fishback Insurance Agency, Inc.), Brookings, South Dakota; to acquire at least 95 percent of the voting shares of First National Bank of White, White, South Dakota, and 100 percent of the voting shares of Community State Bank (formerly Community State Bank of Stockholm), Stockholm, South Dakota.

2. Village Bancshares, Inc., St. Francis, Minnesota; to become a bank holding company by acquiring 100 percent of Village Bank, St. Francis, Minnesota.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Yoakum National Bancshares, Inc., Yoakum, Texas, has applied to become a bank holding company by acquiring 100 percent of Yoakum National Bancshares-Delaware, Inc., Wilmington, Delaware, and thereby indirectly acquire Yoakum National Bank, Yoakum, Texas.

In connection with this application, Yoakum National Bancshares-Delaware, Inc., Wilmington, Delaware, to become a bank holding company by acquiring 100 percent of the voting shares of Yoakum National Bank, Yoakum, Texas.

Board of Governors of the Federal Reserve System, September 22, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-23965 Filed 9-27-94; 8:45 am]

BILLING CODE 6210-01-F

Huxley Bancorp; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 18, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Huxley Bancorp, Huxley, Iowa; to engage *de novo* through its subsidiary First State Bank, Huxley, Iowa, in making and servicing loans through the participation in a one year revolving line of credit overline, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 22, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board

[FR Doc. 94-23964 Filed 9-27-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 090694 AND 091694

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Radio Associates, L.P., Gordon Gray Irrevocable Living Trust, Summit Subsidiary Three, Inc	94-1944	09/06/94
Itochu Corporation, Louis N. Goldring, Franklin Equity Leasing Co	94-1991	09/06/94
US Foodservice Inc., Don J. Hindman, Clark Food Service, Inc. & Daniel's Food Service, Inc	94-1995	09/06/94
Beverly Enterprises, Inc., Merck & Co., Inc., Dunnington Drug, Inc	94-2017	09/06/94
Oakwood Homes Corporation, Golden West Homes, Golden West Homes	94-2033	09/06/94
Mariner Health Group, Inc., Ronald E. Hayes, Regency Health Care Centers, Inc	94-2034	09/06/94
Mariner Health Group, Inc., Farrell B. Jones, Regency Health Care Centers, Inc	94-2035	09/06/94
UCB S.A., Ethyl Corporation, Whitby, Inc	94-2039	09/06/94
Joseph Littlejohn & Levy Fund, L.P., Mervyn E. Griffin, Greater Connecticut Broadcasting, Inc	94-2042	09/06/94
Quantum Realty Trust, Quantum Realty Trust, Banyan Mortgage Investors L.P. III	94-2044	09/06/94
Siemens Aktiengesellschaft, Pyramid Technology Corporation, Pyramid Technology Corporation	94-2046	09/06/94
IR Partners, Integrated Resources, Inc., Integrated Resources, Inc	94-2051	09/06/94

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TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 090694 AND 091694—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Fabri-Centers of America, Inc., Brown Group, Inc., Cloth World, Inc. and the Cloth World division of Brown	94-2058	09/06/94
Equifax Inc., Transamerica Corporation, Osborn Laboratories, Inc	94-2060	09/06/94
Motorola, Inc., International Business Machines Corporation, ARDIS Holding Company, a partnership	94-2062	09/06/94
Whitehall Street Real Estate Limited Partnership V, The Travelers Inc., The Travelers Insurance Company	94-2063	09/06/94
Hubert Perrodo, British Gas plc, BG Gabon, Inc	94-2066	09/06/94
Fiserv, Inc., AT&T Corp., AT&T Global Information & Solutions Company	94-2067	09/06/94
Motorola, Inc., Motorola, Inc., ARDIS Holding Company	94-2068	09/06/94
MEDIQ Incorporated, James R. Leininger, M.D., KCI Therapeutic Services, Inc	94-2046	09/09/94
CSS Industries, Inc., Smith Corona Corporation, Histacount Corporation	94-1988	09/11/94
Johnson & Johnson, Alliance Pharmaceutical Corp., Alliance Pharmaceutical Corp	94-2022	09/12/94
Ingram Industries Inc., MascoTech, Inc., Foster Valve Corporation	94-2023	09/12/94
Stewart Enterprises, Inc., Darryl J. Roberts and Ann K. Roberts, Legacy One, Inc	94-2032	09/12/94
Loral Corporation, Siemens Aktiengesellschaft, Siemens Gammasonics, Inc	94-2054	09/12/94
Thrifty Foods Acquisition Co., Consumer Choice, Inc. Employee Stock Ownership Plan, Consumers Choice, Inc	94-2056	09/12/94
Oklahoma Health System, Inc., SMC Health Services Corporation, Southwest Medical Center of Oklahoma, Inc	94-2011	09/13/94
Lincoln National Corporation, Oscar Jack Gomez, Ezon, Inc	94-2070	09/14/94
Pierre Alain Blum, Ronald L. Wolfgang, Ebel USA, Inc	94-2072	09/14/94
Electro Rent Corporation, Genstar Rental Electronics, Inc., Genstar Rental Electronics, Inc	94-2078	09/14/94
Intrawest Corporation, Victoria Co., Ltd., Stratton Ski Corporation	94-2084	09/14/94
Cemex, S.A. de C.V., Lone Star Industries, Inc., Lone Star Falcon Partnership	94-2086	09/14/94
Beatrice Foods Holdings Corp., Jack E. Elliott, Mrs. Alison's Cookie Company, Incorporated	94-2087	09/14/94
Cemex S.A. de C.V., Concorde Finance and Investments Inc., Lone Star Falcon Partnership	94-2094	09/14/94
American Manufacturing Corporation, Mr. Steven J. Sheffel, Crawford Products, Inc	94-2097	09/14/94
NationsBank Corporation, Express America Holding Corporation, Express America Mortgage Corporation	94-2098	09/14/94
Stichting Administratiekantoor ABN AMRO Holding, CoreStates Financial Corp., Wasco Funding Corp	94-2108	09/14/94
Fluor Corporation, Hanson plc (a British company), Peabody Coal Company & Peabody COALSALES Co	94-2109	09/14/94
Australian National Industries Limited, Palmer Tube Mills Limited, Palmer Tube Mills Limited	94-2111	09/14/94
New York Life Insurance Company, Stephen A. Gregg, The ETHIX Corporation	94-2113	09/14/94
Motorola, Inc., NEXTEL Communications, Inc., NEXTEL Communications, Inc	94-2121	09/14/94
The Williams Companies, Inc., JVD Holdings, Inc., JVD Holdings, Inc	94-2129	09/14/94
Adam Young, Nationwide Mutual Insurance Company, WATE-TV, WBAY-TV and WRIC-TV	94-2133	09/14/94
Mid-America Dairymen, Inc., GEV Corporation, Land-O-Sun Dairies, Inc	94-1700	09/16/94
Mid-America Dairymen, Inc., Dairymen, Incorporated, Dairymen, Incorporated	94-1701	09/16/94
Affiliated Foods Cooperative, Inc., United A.G. Cooperative, Inc., Affiliated Foods Cooperative, Inc	94-2028	09/16/94
Ochsner Clinic, Ochsner/Sisters of Charity Health Plan, Inc., Ochsner/Sisters of Charity Health Plan, Inc	94-2040	09/16/94
Alton Ochsner Medical Foundation, Ochsner/Sisters of Charity Health Plan, Inc., Ochsner/Sisters of Charity Health Plan, Inc	94-2041	09/16/94
Sisters of Charity of the Incarnate Word, Ochsner/Sisters of Charity Health Plan, Inc., Ochsner/Sisters of Charity Health Plan, Inc	94-2043	09/16/94
Century Communications Corp., a New Jersey corporation, George L. Schrenk, Mega Comm, Inc	94-2080	09/16/94
American Ecology Corporation, Quadrex Corporation, Quadrex Recycle Center	94-2110	09/16/94
E.W. Blanch Holdings, Inc., Elton G. and Leslie J. George, Elton George and Company, et al	94-2117	09/16/94
Apache Corporation, Trust FBO Harold Hunter Whiter, III, SW Production Company	94-2123	09/16/94
Donald H. Gales, Griffith Consumers Company Voting Trust, Griffith Consumer Company	94-2127	09/16/94
Noel Group, Inc., The Dun & Bradstreet Corporation, Plan Services, Inc	94-2139	09/16/94

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326-3100.

By Direction of the Commission

Donald S. Clark,

Secretary.

[FR Doc. 94-23957 Filed 9-27-94; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Meetings

In accordance with section 10(a) of the Federal Advisory Committee Act (Title 5, U.S.C., Appendix 2) announcement is made of the following advisory committees scheduled to meet during the month of October 1994:

Name: Health Services Developmental Grants Review Subcommittee.

Date and Time: October 12-13, 1994, 8:00 a.m.

Place: Holiday Inn Crowne Plaza, Conference Room (TBA), Rockville, Maryland 20852.

Open October 12, 8:00 a.m. to 9:00 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing experimental, analytical and theoretical research on costs, quality, access, effectiveness, and efficiency of the delivery of health services for the research grant program administered by the Agency for Health Care Policy and Research (AHCPR).

Agenda: The open session of the meeting on October 12 from 8:00 a.m. to 9:00 a.m. will be devoted to a business meeting covering administrative matters and reports. During the closed session, the Subcommittee will be reviewing research and demonstration grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Elizabeth A. Breckinridge, M.S., Scientific Review Administrator, Scientific Review Branch, Agency for Health Care Policy and Research, Suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594-1452.

Name: Health Services Research Review Subcommittee.

Date and Time: October 19-20, 1994, 8:00 a.m.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Conference Room (TBA) Rockville, Maryland 20852.

Open October 19, 8:00 a.m. to 8:45 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by AHCPR.

Agenda: The open session of the meeting on October 19 from 8:00 a.m. to 8:45 a.m. will be devoted to a business meeting covering administrative matters and reports. During the closed sessions, the Subcommittee will be reviewing analytical and theoretical research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Patricia G. Thompson, Ph.D., Scientific Review Administrator, Scientific Review Branch, Agency for Health Care Policy and Research, Suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594-1451.

Name: Health Care Technology Study Section.

Date and Time: October 24-25, 1994, 8:30 a.m.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Conference Room (TBA), Rockville, Maryland 20852.

Open October 24, 8:00 a.m. to 9:00 a.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with conducting the initial review of health services research grant applications concerned with medical decisionmaking, computers in health care delivery, and the utilization and effects of health care technologies and procedures.

Agenda: The open session on October 24 from 8:30 a.m. to 9:30 a.m. will be devoted to a business meeting covering administrative matters and reports. The closed sessions of the meeting will be devoted to a review of health services research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Karen Rudzinski, Ph.D., Scientific Review Administrator, Scientific Review Branch, Agency for Health Care Policy and Research, Suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594-1437.

Name: Health Services Research Dissemination Study Section.

Date and Time: October 27-28, 1994, 8:00 a.m.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Conference Room (TBA), Rockville, Maryland 20852.

Open October 27, 8:00 a.m. to 8:30 a.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with the review of and making recommendations on grant applications for Federal support of conferences, workshops, meetings, or projects related to dissemination and utilization of research findings, and AHCPR liaison with health care policy makers, providers, and consumers.

Agenda: The open session of the meeting on October 27 from 8:00 a.m. to 8:30 a.m. will be devoted to general business matters. During the closed portions of the meeting, the Study Section will be reviewing grant applications relating to the dissemination of research on the organization, costs, and efficiency of health care. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Mrs. Linda Blankenbaker, Scientific Review Administrator, Scientific Review Branch, Agency for Health Care Policy and Research, Suite 602, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594-1438.

Agenda items for all meetings are subject to change as priorities dictate.

Dated: September 20, 1994.

Richard J. Greene,

Acting Administrator.

[FR Doc. 94-23956 Filed 9-27-94; 8:45 am]

BILLING CODE 4160-90-P

Centers for Disease Control and Prevention

Establishment of Disease, Disability, and Injury Prevention and Control Special Emphasis Panel

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. App. 2), the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the establishment by the Secretary of Health and Human Services (HHS), on September 18, 1994, of the following Federal advisory committee:

Designation: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel.

Purpose: The Disease, Disability, and Injury Prevention and Control Special Emphasis Panel will provide advice and guidance to the Secretary, the Assistant Secretary for Health, the Director of CDC, and the Administrator of ATSDR, regarding the scientific and technical merit of grant and cooperative agreement assistance applications relating to the causes, prevention, and control of diseases, disabilities, injuries, and impairments of public health significance; exposure to hazardous substances in the environment; health promotion and education; and other related activities that promote health and well being.

Authority for this committee will expire September 18, 1996, unless the Secretary of HHS, with the concurrence of the Committee Management Secretariat, General Services Administration, formally determines that continuance is in the public interest.

Dated: September 22, 1994

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-23953 Filed 9-27-94; 8:45 am]

BILLING CODE 4163-18-M

Advisory Committee for Energy-Related Epidemiologic Research: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease

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Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee for Energy-Related Epidemiologic Research.

Times and Dates: 9 a.m.–5 p.m., October 13, 1994. 8 a.m.–12 noon, October 14, 1994.

Place: Sheraton Suites Hotel, 801 North St. Asaph Street, Alexandria, Virginia 22314.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This committee is charged with providing advice and recommendations to the Secretary of Health and Human Services (HHS); the Assistant Secretary for Health; the Director, CDC; and the Administrator, Agency for Toxic Substances and Disease Registry (ATSDR), on the establishment of a research agenda and the conduct of a research program pertaining to energy-related analytic epidemiologic studies. The committee will take into consideration information and proposals provided by the Department of Energy (DOE), the Advisory Committee for Environment Safety and Health which was established by DOE under the guidelines of a Memorandum of Understanding between HHS and DOE, and other agencies and organizations, regarding the director HHS should take in establishing the research plan and in the development of a research plan.

Matters to be discussed: The National Center for Environmental Health (NCEH), the National Institute for Occupational Safety and Health, and ATSDR will make brief presentations on the progress of current studies. Additional agenda items will include: CDC/ATSDR issues, declassification/access issues, public involvement activities, and working group recommendations.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information. Nadine Dickerson, Program Analyst, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 404/488–7040.

Dated: September 22, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–23952 Filed 9–27–94; 8:45 am]

BILLING CODE 4163–18–M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority; Office of Quality Improvement programs

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 59, No. 60, pp. 14659–14660, dated Tuesday, March 29, 1994) is amended to reflect changes in the organizational title and structure of the Office of Peer Review (OPR), Health Standards and Quality Bureau, Associate Administrator for Operations and Resource Management. OPR is being reorganized to properly meet the Health Care Quality Improvement Initiative which is part of a new initiative to improve care for Medicare beneficiaries. OPR is being retitled the Office of Quality Improvement Programs.

The specific amendments to Part F are as follows:

• Section F.10.D.7.b. (Organization) is amended to read as follows:

b. Office of Quality Improvement Programs

(1) Division of Program Operations
(2) Division of Program Development
(3) Division of Contract Operations
(4) Division of Quality Measurement and Improvement

• Section F.20.D.7.b. (Functions) Office of Peer Review is amended by deleting the statement and substructure in their entirety and replacing them with the new functional statements. The new functional statements read as follows:

b. Office of Quality Improvement Programs (FLE3)

• Directs the Medicare Health Care Quality Improvement Program (HCQIP).

• Oversees the development and implementation of a variety of performance measurement and quality management/improvement efforts to assess/improve quality of care activities in all health care settings.

• Develops and interprets policies, regulations and legislation to support the HCQIP.

• Develops and implements operational procedures and instructions for the award, management and validation of the HCQIP related contracts.

• Develops and manages a program effectiveness strategy and reporting system.

• Develops, implements, and maintains Informational Resources Management (IRM) activities in support of HCQIP including development and oversight of ADP systems, e.g., technical and management information systems.

• Provides direction to, and coordinates activities with, the HCFA regional offices' HCQIP activities.

• Maintains liaison with other HCFA, HHS and Executive Branch components, Congress, and external professional and medical organizations.

(1) Division of Program Operations (FLE31)

• Manages day-to-day operations of HCQIP systems activities.

• Oversees HCQIP systems support contracts.

• Designs, operates, documents, and maintains system applications used in the administration of the HCQIP.

• Coordinates with HCFA regional offices and other HHS/HCFA components regarding Informational Resources Management (IRM) and systems/operational issues.

• Designs, develops, and monitors HCQIP management reports to support effective and efficient operation of HCQIP systems and tracking of contractor deliverables.

• Provides technical assistance in implementing and maintaining program-related ADP systems.

• Oversees training, evaluating, budgeting, and planning to support HCQIP contractor proposals, as well as establishing procedures regarding systems operations and security.

• Provides internal ADP support, e.g., investigates, develops and implements new office automation technology.

• Manages Data Abstraction Contracts.

• Maintains liaison with other HCFA and HHS components, Congress, and external professional organizations.

(2) Division of Program Development (FLE32)

• Develops, implements, and interprets program policy and guidance pertaining to the implementation of the HCQIP in all health care settings.

• Monitors legislative, regulatory and operational developments related to the HCQIP, and develops/amends related regulations and legislative proposals.

• Coordinates with other HHS/HCFA components and appropriate private/public sector organizations regarding the development of HCQIP program policy, regulations, and legislative proposals.

• Develops program manual issuances and policy guidance.

• Develops and manages program approaches to apply HCQIP strategies to health care provided in all health care settings.

• Develops and implements quality improvement/management feedback/dissemination mechanisms.

• Processes and responds to inquiries from the public, Congress and other entities regarding HCQIP.

(3) Division of Contract Operations (FLE33)

Maintains responsibility for the following activities in support of HCQIP contracts, accounts and support activities:

• Formulates contract and administrative budgets.

• Maintains fund control systems.

• Develops and manages the procurement planning process.

• Coordinates contract development, evaluation and negotiations.

• Provides program guidance, technical assistance and training to HCFA central and regional office staff and contractor personnel on program evaluation and financial management activities.

• Develops, implements and manages a comprehensive system for assessing contractor performance and for measuring the overall effectiveness of HCQIP.

• Conducts liaison with HCFA central and regional office staff and the contractor community concerning contract and financial management and evaluation issues.

(4) Division of Quality Measurement and Improvement (FLE34)

• Oversees a variety of performance measurement and quality improvement efforts to assess/improve quality of care activities in health care settings.

• Direct and monitor the development of HCQIP projects to improve quality of care for Medicare beneficiaries.

• Analyzes clinical, claims, and demographic data and develops models to measure patterns and outcomes of care.

• Directs and monitors the development, assessment, compilation, preparation, and dissemination of information on the quality and patterns of care.

• Develops data and information dissemination protocols to provide feedback to the public and medical community on the quality of care provided to Medicare beneficiaries.

• Promotes participation of public and private sector individuals and groups in the development of performance measures and quality improvement strategies of mutual benefit and interest.

Dated: September 9, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94–23962 Filed 9–27–94; 8:45 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month October 1994:

Name: Council on Graduate Medical Education

Time: October 26, 1994, 1:30 p.m.–5:00 p.m. October 27, 1994, 8:30 a.m.–4:00 p.m.

Place: Quality Hotel, Capitol Hill, 415 New Jersey Avenue, SW., Washington, DC 20024.

Open for entire meeting.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: There will be a panel discussion on the status of health care reform. The Council will be discussing approval of the interim draft, generalist and specialist supply and requirements and COGME goals; discussions and action on Women in Medicine findings and recommendations; and a status report on managed care impact on the physician workforce and medical education.

Reports and updates will be given on the 1995 work plan; commission structure and function; Council on Graduate Medical Education Primary Care Workforce Workgroup and National Advisory Council on Nurse Education and Practice Primary Care Workforce Workgroup; medical licensure workgroup; minorities in medicine; and underserved areas.

Anyone requiring information regarding the subject Council should contact Marc L. Rivo, M.D., M.P.H., Executive Secretary, telephone (301) 443–6190; or F. Lawrence Clare, M.D., M.P.H., Deputy Executive Secretary, telephone (301) 443–6326, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Nome: HRSA Aids Advisory Committee

Time: October 26–27, 1994, 8:00 a.m.

Place: Washington Room, Ramada Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

The meeting is open to the public.

Purpose: The Committee advises the Secretary with respect to health professional education, patient care/health care delivery to HIV-infected individuals, and research relating to transmission, prevention and treatment of HIV infection.

Agenda: The topics to be discussed include the AIDS Clinical Trial Group 076, evaluation of HRSA's AIDS programs, and the Ryan White Comprehensive AIDS Resources and Emergency Act Reauthorization.

Anyone requiring information regarding the subject Committee should contact Pearl Katz, Ph.D., AIDS Program Office, Health Resources and Services Administration, Room 14A–21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–4588.

Agenda Items are subject to change as priorities dictate.

Dated: September 23, 1994.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 94–23955 Filed 9–27–94; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Demonstration and Education Research Grant Applications.

Date: October 26–27, 1994.

Time: 9:00 a.m.

Place: Stouffer Concourse Hotel, Arlington, Virginia.

Contact Person: Louise Corman, Ph.D., 5333 Westbard Avenue, Room 548, Bethesda, Maryland 20892, (301) 594–7452.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

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Dated: September 20, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-23970 Filed 9-27-94; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institutes; Notice of Meeting of the Sickle Cell Disease Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institutes, October 28, 1994. The meeting will be held at the National Institutes of Health, Building 31, Conference room 9, C-Wing, 9000 Rockville, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to adjournment, to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institutes, Building 31, Room 4A21, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Clarice D. Reid, Executive Secretary, Sickle Cell Disease Advisory Committee, Division of Blood Diseases and Resources, NHLBI, Federal Building, Room 508, Bethesda, Maryland 20892, (301) 496-6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.839, Blood Diseases and Resources Research, National Institutes of Health).

Dated: September 21, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-23971 Filed 9-27-94; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Notice of Meeting of the National Advisory Board on Medical Rehabilitation Research

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Board on Medical Rehabilitation Research, National Institute of Child Health and Human Development, October 31-November 1, 1994, Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The meeting will be open to the public from 9 a.m. to 5 p.m. on October 31 and 9 a.m. to adjournment on November 1. Attendance by the public will be limited to space available. The Board will (1) develop methods for insuring dissemination of NCMRR activities to people with disabilities and the research and clinical communities; (2) review the need for clinical research; (3) develop a process for revising the Research Plan; and (4) introduce new members.

Ms. Mary Plummer, Committee Management Specialist, NICHD, 6100 Building, Room 5E03, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496-1485, will provide a summary of the meeting and a roster of Advisory Board members as well as substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer.

Dated: September 21, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-23972 Filed 9-27-94; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panels (SEPs) meetings:

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.
Name of SEP: Multidisciplinary Sciences.
Date: October 7, 1994.
Time: 8:00 a.m.
Place: Holiday Inn, National Airport, VA.
Contact Person: Dr. Harish Chopra, Scientific Review Admin., 5333 Westbard Ave., Room 2A18A, Bethesda, MD 20892, (301) 594-7342.

Name of SEP: Multidisciplinary Sciences.
Date: October 20-21, 1994.
Time: 1:00 p.m.
Place: Ritz-Carlton, Tysons Corner, VA.
Contact Person: Dr. Melvin Ketchel, Scientific Review Admin., 5333 Westbard Ave., Room 2A14, Bethesda, MD 20892, (301) 594-7391.

Name of SEP: Multidisciplinary Sciences.
Date: October 24, 1994.
Time: 8:00 a.m.
Place: Holiday Inn, National Airport, VA.
Contact Person: Dr. Harish Chopra, Scientific Review Admin., 5333 Westbard Ave., Room 2A18A, Bethesda, MD 20892, (301) 594-7342.

Name of SEP: Multidisciplinary Sciences.
Date: October 24-25, 1994.
Time: 9:00 a.m.
Place: Holiday, Inn, Chevy Chase, MD.
Contact Person: Dr. Houston Baker, Scientific Review Admin., 5333 Westbard Ave., Room 2A15A, Bethesda, MD 20892, (301) 594-7374.

Name of SEP: Multidisciplinary Sciences.
Date: November 1-3, 1994.
Time: 8:00 a.m.
Place: Holiday Inn, Bethesda, MD.
Contact Person: Dr. Dharam Dhindsa, Scientific Review Admin., 5333 Westbard Ave., Room 2A15A, Bethesda, MD 20892, (301) 594-7683.

Name of SEP: Multidisciplinary Sciences.
Date: November 7-9, 1994.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. N.A. Vydelingum, Scientific Review Admin., 5333 Westbard Ave., Room 2A07B, Bethesda, MD 20892, (301) 594-7350.

Name of SEP: Multidisciplinary Sciences.
Date: November 14, 1994.
Time: 8:00 a.m.
Place: McLean, VA.
Contact Person: Dr. Eileen Bradley, Scientific Review Admin., 5333 Westbard Ave., Room 2A10, Bethesda, MD 20892, (3010 594-7188.

Name of SEP: Multidisciplinary Sciences.
Date: November 14-15, 1994.
Time: 9:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Houston Baker, Scientific Review Admin., 5333 Westbard Ave., Room 2A15B, Bethesda, MD 20892, (301) 594-7374.

Purpose/Agenda: To review individual grant applications.
Name of SEP: Multidisciplinary Sciences.
Date: October 27, 1994.
Time: 2:00 p.m.
Place: NIH, Westwood Building, Room 2A14, Telephone Conference.
Contact Person: Dr. Melvin Ketchel, Scientific Review Admin., 5333 Westbard Ave., Room 2A14, Bethesda, MD 20892, (301) 594-7391.

Name of SEP: Clinical Sciences.
Date: November 2, 1994.
Time: 2:00 p.m.
Place: NIH, Westwood Building, Room 219B, Telephone Conference.
Contact Person: Dr. Priscilla B. Chen, Scientific Review Admin., 5333 Westbard Ave., Room 219B, Bethesda, MD 20892, (301) 594-7287.

Name of SEP: Clinical Sciences.
Date: November 14, 1994.
Time: 9:30 a.m.
Place: Holiday Inn, Old Town Alexandria, VA.
Contact Person: Dr. Priscilla B. Chen, Scientific Review Admin., 5333 Westbard Ave., Room 219B, Bethesda, MD 20892, (301) 594-7287.

Name of SEP: Multidisciplinary Sciences.
Date: November 20-22, 1994.
Time: 7:30 p.m.
Place: Crowne Plaza, Rockville, MD.
Contact Person: Dr. N. A. Vydelingum, Scientific Review Admin., 5333 Westbard Ave., Room 2A07B, Bethesda, MD 20892, (301) 594-7350.

Name of SEP: Multidisciplinary Sciences.
Date: December 7, 1994.
Time: 8:00 a.m.
Place: Holiday Inn, Bethesda, MD.
Contact Person: Dr. Dharam Dhindsa, Scientific Review Admin., 5333 Westbard Ave., Room 2A15A, Bethesda, MD 20892, (301) 594-7683.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of privacy.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 20, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-23969 Filed 9-27-94; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Notice of Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Biomedical Sciences Study Section, Division of Research Grants, November 14-16, 1994, which was published in the **Federal Register** on August 22, 1994, 59 FR 43129.

Due to scheduling and workload problems this meeting has been canceled.

Dated: September 21, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-23973 Filed 9-27-94; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panels (SEPs) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Microbiological and Immunological Sciences.
Date: October 3, 1994.
Time: 2:00 p.m.
Place: NIH, Westwood Building, Room A19 Telephone Conference.
Contact Person: Dr. Howard Berman, Scientific Review Administrator, 5333 Westbard Ave., Room A19, Bethesda, MD 20892, (301) 594-7234.

Name of SEP: Chemistry and Related Sciences.
Date: October 19, 1994.
Time: 11:00 a.m.
Place: NIH, Westwood Building, Room 435.
Contact Person: Dr. Marcelina Powers, Scientific Review Admin., 5333 Westbard Ave., Room 435, Bethesda, MD 20892, (301) 594-7120.

Name of SEP: Multidisciplinary Sciences.
Date: October 19, 1994.
Time: 12:00 noon.
Place: NIH, Westwood Building, Room 2A04 Telephone Conference.
Contact Person: Dr. Nabeeh Mourad, Scientific Review Admin., 5333 Westbard Ave., Room 2A04, Bethesda, MD 20892, (301) 594-7213.

Name of SEP: Multidisciplinary Sciences.
Date: October 25, 1994.
Time: 8:00 a.m.
Place: Georgetown Holiday Inn, Washington, DC.
Contact Person: Dr. Bill Bunnag, Scientific Review Administrator, 5333 Westbard Ave., Room 2A07A, Bethesda, MD 20892, (301) 594-7360.

Name of SEP: Multidisciplinary Sciences.
Date: October 31-November 1, 1994.
Time: 9:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Houston Baker, Scientific Review Administrator, 5333 Westbard Ave., Room 2A15B, Bethesda, MD 20892, (301) 594-7374.

Name of SEP: Chemistry and Related Sciences.
Date: November 3-4, 1994.
Time: 8:30 a.m.
Place: Albuquerque, NM.
Contact Person: Dr. Paul Strudler, Scientific Review Administrator, 5333 Westbard Ave., Room 328, Bethesda, MD 20892 (301) 594-7152.

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.
Name of SEP: Multidisciplinary Sciences.
Date: October 13, 1994.
Time: 10:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 5333 Westbard Ave., Room 2A11B, Bethesda, MD 20892, (301) 594-7276.

Name of SEP: Multidisciplinary Sciences.
Date: November 1-3, 1994.
Time: 7:00 p.m.
Place: Georgetown Inn, Washington, DC.
Contact Person: Dr. Richard Panniers, Scientific Review Admin., 5333 Westbard Ave., Room 2A17, Bethesda, MD 20892, (301) 594-7348.

Name of SEP: Multidisciplinary Sciences.
Date: November 6-9, 1994.
Time: 7:00 p.m.
Place: River Inn, Washington, DC.
Contact Person: Dr. Richard Panniers, Scientific Review Admin., 5333 Westbard Ave., Room 2A17, Bethesda, MD 20893, (301) 594-7348.

The meetings will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 20, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-23966 Filed 9-23-94; 11:48 am]

BILLING CODE 4140-01-M

Social Security Administration

Supplemental Security Income Program; Notice of Title XVI Continuing Disability Reviews

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Title XVI Continuing Disability Reviews.

SUMMARY: The Commissioner of Social Security announces that continuing disability reviews of persons receiving payments under title XVI because of disability or blindness will begin October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Anne Fulmer, Social Security Administration, 3-A-10 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (410) 965-9053.

SUPPLEMENTARY INFORMATION: Section 221(i) of the Social Security Act (the Act) requires that the eligibility of all persons with nonpermanent impairments receiving benefits because of disability must generally be reviewed at least once every three years. Section 221(i) also requires that the eligibility of persons having permanent impairments be reviewed at such times as the Secretary determines to be appropriate.

In the preamble to the final regulations on "Supplemental Security

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Income for the Aged, Blind, and Disabled; Determining Disability and Blindness Frequency and Notice of Continuing Eligibility Reviews," published May 7, 1986 (51 FR 16818), we stated on page 16819 that, although section 221(i) of the Act does not mandate periodic eligibility review of persons receiving Supplemental Security Income (SSI) payments under title XVI because of disability or blindness, the final regulations extended the periodic continuing disability review procedures to title XVI blind and disabled recipients. This extension was within the Secretary's regulatory authority under title XVI of the Act, sections 1631(d)(1) and 1633, and was in accord with the legislative history of the 1980 Amendments to the Act which added section 221(i). Report No. 96–408 of the Senate Committee on Finance at page 61 states:

> The committee believes that such [periodic review] procedures should be applied on the same basis to the DI and SSI programs.

We stated in the preamble to the final regulations published on May 7, 1986, that we would review the eligibility of persons receiving payments solely under title XVI because of disability or blindness with the same frequency as we review the eligibility of persons receiving disability benefits under title II. We also stated that this would establish consistency in the operation of the SSI and Social Security disability programs. We announced that when we began the periodic review of these cases would depend on such considerations as the backlog of pending reviews, the projected number of new applications, and the availability of resources needed to ensure careful and accurate reviews. We further stated on page 16820 of the preamble that before we began the periodic reviews of SSI cases, we would notify the public of the beginning date of the review program by publication of a notice in the **Federal Register**.

In accordance with this statement, this notice is to inform the public that the periodic continuing disability reviews of persons receiving SSI payments under title XVI because of disability or blindness will begin October 1, 1994. These reviews will be conducted under regulations codified at 20 C.F.R. 416.989 *et seq.* When we begin a review of a recipient's continuing eligibility to SSI payments, we will notify the recipient of the review pursuant to these regulations.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income)

Dated: September 22, 1994

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 94–23968 Filed 9–27–94; 8:45 am]

BILLING CODE 4190–29–P

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Substance Abuse Prevention Conference Review Committee of the Center for Substance Abuse Prevention (CSAP) for October 1994.

The Substance Abuse Prevention Conference Review Committee will include discussion of announcements and reports of administrative, legislative, and program developments. The initial review group will also be performing review of applications for Federal assistance; therefore, a portion of this meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and roster of committee members may be obtained from: Ms. D. Herman, Committee Management Officer, CSAP, Rockwall II Building, Suite 630, 5600 Fishers Lane, Rockville, MD 20857 Telephone: 301–443–4783.

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: Substance Abuse Prevention Conference Review Committee.

Meeting Date(s): October 17–20, 1994.

Place: Residence Inn—Bethesda, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: October 17, 8:30 a.m.–9:30 a.m.

Closed: Otherwise.

Contact: Ferdinand W. Hui, Ph.D., Rockwall II, Building, Suite 630, Telephone: (301) 443–9912.

Dated: September 22, 1994

Peggy W. Cockrill,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–23898 Filed 9–27–94; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R–94–1698; FR–3555; N–05]

Government National Mortgage Association; Multiclass Securities Program; Notice of Proposed Information Collection Requirements to OMB

AGENCY: Government National Mortgage Association, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for expedited review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposal.

DATES: Comments due date: October 11, 1994.

ADDRESSEES: Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development (HUD), 451 7th Street, SW., Room 4178, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Government National Mortgage Association (GNMA) has submitted to OMB an information collection package with respect to a Notice for the GNMA Multiclass Securities Program. GNMA is requesting an expedited review of this information collection by September 30.

The annual burden of the information collections involved in the application process, annual certifications furnished by participants, and the selection process for trustees is estimated as follows: *Reporting burden:* 166 respondents; one response per respondent; 166 total annual responses; 10 hours per response; and a total burden of 1,660 hours; *Recordkeeping burden:* 166 recordkeepers; 1 hour per recordkeeper; 166 hours total of recordkeeping hours.

The information collection approval request to OMB, required by the Paperwork Reduction Act (44 USC Chapter 35), contains the following:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submission will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including the number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 USC 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 USC 3535(d).

Dated: September 22, 1994.

Dwight P. Robinson,

President, Government National Mortgage Association.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Supplemental Notice for GNMA Multiclass Securities Program (FR–3555).

Office: Government National Mortgage Association.

Description of the Need for the Information and its Proposed Use: This information is required in connection with the implementation of the Government National Mortgage Association Multiclass Securities Program Full Participation Stage. The Full Participation Stage will expand the opportunity to participate in the program to a greater number of qualified participants.

Form: None.

Respondents: Business or other for-profit.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	=	Hours per response	=	Burden hours
Application Development	166		1		10		1660
Recordkeeping	166		1		1		166

Total Estimated Burden Hours: 1826.

Status: New.

Contact: Joseph F. Lackey, Jr., OMB (202) 395–7316; Guy S. Wilson, GNMA (202) 401–8970.

Date: September 22, 1994.

Supporting Statement for Information Collection—GNMA Multiclass Securities Program

A. Justification

1. This information collection is required in connection with the implementation of the full participation stage of GNMA's Multiclass Program. GNMA's authority to guarantee Multiclass instruments in contained in section 306(g)(1) of the National Housing Act ("NHA") (12 U.S.C. 1721(g)(1)), which authorizes GNMA to guarantee "securities * * * based on or backed by a trust or pool composed of mortgages * * *." The Multiclass securities will be based on or backed by mortgages since GNMA Mortgage-Backed Securities ("MBS") will serve as the collateral. This position is consistent with the FNMA and FHLMC REMIC programs which are authorized by substantially similar statutory provisions. Further, GNMA's authority to operate a Multiclass program has recently been recognized in section 3004 of the Omnibus Budget Reconciliation Act of 1993 ("OBRA") which amended section 306(g)(3) of the NHA (12 U.S.C. 1721(g)(3)) to provide GNMA with greater flexibility for the Multiclass program regarding fee structure, contracting, industry consultation and program implementation. Congress annually sets GNMA's commitment authority to guarantee MBS pursuant to section 306(g)(2) of the NHA (12 U.S.C. 1721(g)(2)). Since the Multiclass securities will be backed by GNMA MBS, GNMA has already guaranteed the collateral for the Multiclass instruments.

The Multiclass Program had an initial stage and GNMA is now implementing a full participation stage. During the initial stage, GNMA guaranteed Multiclass instruments that were issued by a small number of participants, consisting of sponsors, co-sponsors, trustees, trust counsel and accounting firms, selected by GNMA through the use of Competitive Application Proposals ("CAPS"). At the conclusion of the initial stage, participation in the GNMA-guaranteed Multiclass Program will be expanded. GNMA is requiring information from entities that wish to participate as sponsor, co-sponsor, accountant, trust counsel and minority and women-owned law firms in the full participation stage.

Each participant is required to certify annually that neither the participant nor any employee, partner or officer working on the GNMA Multiclass Securities Program has been convicted of or has been found liable in a civil action for fraud, forgery, bribery, falsification or destruction of records, making false statements or any other indicating a lack of business integrity that seriously and directly affects the present responsibility of the officer, partner or professional, and is not currently suspended or debarred by a state or the Federal government. Each sponsor is required to certify that the sponsor has developed and implemented a plan for minority and women-owned law firm participation and the extent to which the plan was achieved.

To secure trustee services, GNMA is requesting applications from qualified institutions under a CAP. Trustees approved pursuant to the CAP will be authorized to serve with respect to securities issued during the period specified in the CAP.

2. The information provided by the participants will be submitted to GNMA. GNMA requires the information requested in order to assure the financial integrity of the program.

3. It is impractical and would be inefficient to design improved technology to collect this information.

4. There will be no duplication of information.

5. There is no similar information already available which could be used or modified for this purpose.

6. We have attempted to minimize the burden on the participants by requiring the minimum amount of information needed to ensure the integrity of the Multiclass Program.

7. The information will be collected on an annual basis to demonstrate that the participant continues to meet the eligibility requirements.

8. There are no specific circumstances that require the information collection to be conducted in a manner which is inconsistent with guidelines in 5 CFR 1320.6.

9. There has been no outside consultation on this information collection. The Notice will call for public comments after it is published.

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10. No assurances of confidentiality are provided.

11. There is no sensitive information requirements in the application process.

12. GNMA does not estimate that there will be any additional cost to the Federal Government. The information will be reviewed in accordance with GNMA's existing review and monitoring procedures. Annual cost to the participants is established to be minimal.

13. We estimate that the information collection will have the following reporting burdens:

Reference hours	Number of respondents	Estimate average response time	Estimate annual burden (Hrs)
Trustee "CAPS"	16	10	160
Sec. II Full Part. Stage	150	10	1500

14. Not applicable.

15. GNMA does not plan to use the collection of this information for any published statistical use.

Excerpts From GNMA Supplemental Notice for Multiclass Securities Program That Contain the Paperwork Provisions:

B. Sponsors

. . . . .

GNMA requires entities wishing to participate in this program as Sponsors to provide GNMA with certain information and meet certain requirements. Currently, a Sponsor must have minimum capital assets of $250 million in shareholders' equity, evidenced by the Sponsor's most recent audited financial statements. GNMA also requires that Sponsors have had at least one REMIC transaction with the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC"). If an entity that wishes to sponsor GNMA guaranteed transactions has not had this experience, GNMA requires an alternative demonstration of experience, as GNMA determines appropriate. A computer bulletin board, gREX, will be used to announce revisions to this policy.

Entities that would like to obtain application forms or obtain further information should contact Chemical New York, Inc., 1325 G St., N.W., Suite 640, Washington, D.C. 20005.

C. Selection of Trustee

. . . . .

To secure trustee services, GNMA has requested applications from qualified institutional trustees under a CAP. In the meantime, the trustees approved for the initial stage will continue to serve as trustees for multiclass securities transactions. Trustee services must include tax administration as well as customary securities administrative and payment functions. Trustees approved pursuant to the CAP will be authorized to serve with respect to securities issued during the period (not more than five years) specified in the request for applications. Once a trustee is assigned to a specific transaction, it will continue to act as trustee for the life of the security, unless removed in accordance with the Trust Agreement. Sponsors will use trustees approved pursuant to the CAP. Trustees will be paid from funds related to the transaction.

D. Trust Counsel and Accounting Firms

Trust counsel selected by the Sponsor will provide customary securities and tax opinions on the transactions, in accordance with GNMA's requirements.

Accounting firms selected by the Sponsor will perform customary procedures with respect to financial information included in the offering documents and as part of the closing process, in accordance with GNMA's requirements. GNMA currently requires entities wishing to participate in GNMA guaranteed transactions to submit certain information to GNMA. Interested parties may obtain the appropriate forms from Chemical New York, Inc. ("Chemical Bank") at the address set out in section II.B. above.

. . . . .

C. Certification

Sponsors are required to provide GNMA with two annual certifications:

1. With respect to Co-sponsors:

a. Certification that the Sponsor has developed and implemented a plan that sets goals for meaningful participation by Co-sponsors, and

b. Certification of the extent to which MWOBs have been participants in the Sponsor's transactions as Co-sponsors.

2. With respect to Co-trust Counsel:

a. Certification from trust counsel used for transactions by the Sponsor that the trust counsel has developed and implemented a plan that sets goals for meaningful participation by MWOLFs, and

b. Certification from such trust counsel of the extent to which MWOLFs have been participants in the transactions for the Sponsor.

. . . . .

VII. Terms and Conditions for Participants

As a condition of participation in the program, each participant must agree to the conditions set out below.

A. Participant Certifications

Each Sponsor, Co-sponsor, all participating trust counsel and accounting firms, and other persons or entities designated by GNMA from time to time in the Multiclass Securities Guide, must certify as of January 1 each year that neither the corporate nor partnership entity, nor any officer, partner or professional presently employed and who will work on the subject matter of this Notice, has been convicted of, or found liable in a civil action for, fraud, forgery, bribery, falsification or destruction of records, making false statements or any other offense indicating a lack of business integrity that seriously and directly affects the present responsibility of the officer, partner or professional, and no entity or individual to which this certification is applicable is currently suspended or debarred by a State or the Federal government. Participants must report any event which would necessitate a change in this certification to GNMA within 60 days of its occurrence.

Material adverse changes in status, including voluntary and non-voluntary terminations, defaults, fines, and agency findings of material non-compliance or non-conformance with agency rules and policies with state and federal agencies and government sponsored enterprises must be reported to GNMA within 60 business days of their occurrence.

[End of Excerpts From GNMA Supplemental Notice on Multiclass Securities Program]

Example of Procedure Involving Information Collection

Request for Competitive Application Proposals To Act as Trustee to the Government National Mortgage Association (GNMA) During the Full Participation Stage of the New GNMA Multiclass Securities Program

To Interested Parties:

Enclosed is Request for Competitive Application Proposals (CAP) GNMA–94–R–01. The purpose of this CAP is to solicit from qualified parties (applicants) detailed and comprehensive applications to serve as trustee for transactions during the full participation stage of the GNMA Multiclass Securities program.

For over two decades, GNMA has operated a single class mortgage-backed securities (MBS) program, under which GNMA guarantees, with the full faith and credit of the United States, the timely payment of principal and interest on securities issued by

private firms approved as GNMA issuers. GNMA has recently initiated a Multiclass Securities program, which began with an initial stage that includes a limited number of participants who assisted in developing the program and in closing transactions to date. GNMA is now moving toward implementation of the full participation stage of the Multiclass Securities program. Henry Cisneros, Security of the Department of Housing and Urban Development, has approved a GNMA Multiclass Securities program, which will be operated to meet the requirements of the Real Estate Mortgage Investment Conduit (GNMA REMIC securities) provisions of the Internal Revenue Code of 1986. In addition, GNMA is considering implementing a Grantor Trust (STRIPs) and possibly other multiclass programs. GNMA's existing single class MBS program also will continue in operation.

Sincerely yours,

Susan M. Taylor,

Contracting Officer, Director, Contracting Division.

Enclosure

I. Background

The Government National Mortgage Association (GNMA) was created in 1968 through amendment of Title III of the National Housing Act (12 U.S.C. Sections 1716 *et seq*). GNMA is a wholly-owned government corporation within the Department of Housing and Urban Development and supports Federal housing initiatives by providing liquidity to the secondary mortgage market and attracting funds from national and international capital markets into the U.S. residential mortgage market. The operations of GNMA are overseen by the Secretary of Housing and Urban Development and by the President of GNMA, both of whom are appointed by the President of the United States and confirmed by the United States Senate.

Through its MBS program, GNMA guarantees the timely payment principal and interest on securities issued by private institutions and backed by pools of Federally insured or guaranteed mortgage loans. The GNMA guarantee is backed by the full faith and credit of the United States. Each year, GNMA guaranteed securities provide the financing for approximately 95% of all loans insured or guaranteed by the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA) or the Farmers Home Administration (FmHA) (Government mortgages).

As of July 1994, more than one trillion dollars in securities have been issued assisting an estimated 15 million families to obtain financing. In excess of $440 billion of GNMA guaranteed securities are outstanding, of which more than $429 billion are based on single family (1–4 unit) residential mortgage loans. The GNMA guarantee lowers the cost of home ownership by attracting the substantial amounts of investor funds necessary to allow low- and moderate-income borrowers to acquire housing with Government mortgages.

GNMA's Current Single Class Program

Prior to the development of single class MBS, investments in residential mortgages were largely illiquid. Beginning in 1970, GNMA pioneered the creation and orderly maintenance of a secondary mortgage market by guaranteeing, with the full faith and credit of the United States, privately issued certificates backed by pools of mortgages provided for the purchase of single family, multifamily, and manufactured housing.

Holders of GNMA MBS receive monthly payments of principal and interest made on the underlying mortgage loans. The amount of interest "passed through" to security holders is reduced by payment of a fee to cover servicing of the mortgages (in the case of single family mortgages, at an annual rate of 44 basis points on the unpaid principal balance of the mortgage) and a fee to GNMA for its guarantee (for single family mortgages, at an annual rate of 6 basis points).

Under the "modified pass-through" approach used by GNMA, the issuer of the MBS is initially responsible for advancing scheduled but delinquent principal and interest payments to security holders. That is, if mortgagors fail to make timely payments of principal and interest, the issuer of the GNMA MBS promises to advance the necessary funds so that scheduled payments can be made to the security holders. If the issuer fails to advance or pass through payments, GNMA pays pursuant to its guarantee.

The MBS guaranteed by GNMA have a single class of ownership interests. Each security bears the same coupon rate of interest, has the same scheduled maturity, and has the same expected weighted average life.

Evidence of ownership of GNMA securities takes two forms: physical securities or book entry securities. Beginning in July of 1990, all GNMA MBS, except for serial notes and construction loan securities, were issued in book entry depository form. More than 90 percent of GNMA securities are currently held in book entry form. The Participants Trust Company (PTC) is the depository that holds GNMA securities in book entry form. The PTC collects and disburses principal and interest (P&I) payments to its participants for all deposited MBS.

II. Operating a GNMA Multiclass Securities Program

The GNMA Multiclass Securities program will be operated in a manner consistent with the traditional GNMA approach of relying upon the private sector to the greatest extent possible, maintaining GNMA in the position of a guarantor rather than an issuer.

The GNMA REMIC program

The MBS making up the corpus of the trust will be assembled by a knowledgeable and financially sound firm (the Sponsor) that also takes the initiative in forming the trust, in developing the structure for the REMIC Securities (i.e., how many tranches with what characteristics), in preparing the description and disclosure for the offering documents and in marketing the securities. The principal responsibility for initiating and carrying out GNMA REMIC Securities transactions will rest not with GNMA but with the sponsor and with the Trustee of the issuing trust, assisted by trust counsel.

A separate trust will be used for each series of securities. A Trustee of proven reliability and competence must ensure that amounts owed to the trust are collected by it, that the correct amounts are distributed in a timely manner to the right persons, and that accurate records and reports are prepared and furnished to security holders, auditors, the Internal Revenue Service (the IRS), GNMA and its agents. Rules and procedures governing the trust and its operation, including detailed rules about the timing and amounts to be distributed to security holders will be spelled out in trust documents drafted by experienced trust counsel based on documents prepared by GNMA and its legal advisor (the "LA"), and incorporated in the GNMA Multiclass Securities program Guide.

The sponsor will guarantee to GNMA that payments on the MBS held by a trust will be sufficient to support all amounts due on the securities under all circumstances (assuming no default on the MBS themselves). The sponsor's guarantee of "structural integrity" will be confirmed by an approved accounting firm and GNMA's financial advisor (the "FA").

The GNMA Strips Program

GNMA anticipates a Grantor Trust (Strip) securities program. For each Strip securities transaction, a grantor trust would be formed to issue the Strip securities. The sponsor would provide the MBS collateral which was combined into a larger GNMA Platinum security (a mega MBS), which in turn is the collateral for the Strip securities. Interest Only (IO), Principal Only (PO) classes (completely stripped) and partially stripped classes (synthetics) would be issued by the grantor trust. The Strip securities would be sold directly to investors or may be used as collateral for REMICs. An investor would combine an IO and PO and swap the recombined IO/OP for an interest in the Platinum security that has the same aggregate principal balance and same interest payment. Various other recombinations may also be allowed as the program progresses.

The GNMA Strip program in general will work the same way as a GNMA REMIC trust. The transfer agent, Chemical Bank and PTC will perform the same functions except that provisions will have to be made for the recombinations and exchanges. An accounting firm must provide a comfort letter and trust counsel must opine on the validity of the securities and that the transaction will not be subject to double taxation because it qualifies as a grantor trust under the Tax Code.

Other GNMA Multiclass Securities Programs

From time to time, GNMA may introduce additional multiclass products for which the Trustee would provide similar services.

Fees and Expenses

GNMA will have no liability for payment of any fees or expenses, such as those of the FA, trust counsel and accounting firms. These will be payable by the sponsor.

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Trustee's fees will be payable as provided in Section IV, below.

III. Scope of Services To Be Provided By Trustee

Trustee functions are critical to the successful operation of the GNMA Multiclass Securities program. Therefore, the selected trust firms will provide general Trustee services in accordance with the GNMA Multiclass Securities guide and other operative documents. This guide may be obtained by calling (800) 234I–REX. These guidelines and documents are subject to amendment and modification. The equivalent documents for the Grantor Trust (Strips) program are not available at this time. The general Trustee functions include, but are not limited to:

A. For each Multiclass Securities transaction to which a Trustee is retained by a Sponsor, that Trustee shall provide all services and documents customarily provided by Trustees in similar transactions and necessary or helpful to establish the trust and issue the Multiclass Securities, including:

1. Execute the documents under which the trust shall receive GNMA MBS from the sponsor in exchange for Multiclass Securities and under which the trust shall operate for its term, and fulfill all appropriate responsibilities thereunder. Enclosed as exhibits are the Operational Guidelines (Exhibit I), the current form of Trust Agreement (Exhibit II), the Trust Provisions (Exhibit III), and the Tax Administration Guidelines (Exhibit IV). These exhibits are for information purposes and are subject to change.

2. Verify ownership of the MBS backing the multiclass securities and ensure that all of the MBS meet the requirements of the relevant Multiclass Securities program.

3. Administer physical securities as necessary.

B. For each multiclass securities transaction the Trustee shall provide all necessary ongoing Trustee services to the trust for the life of the trust, including:

1. Calculate distributions of principal and interest to multiclass security holders; ensure that amounts owed to the trust are collected by it, that the correct amounts are paid out timely by the trust to the proper security holders, and that accurate records and reports are prepared and furnished to security holders, auditors, and IRS, GNMA and its agents.

2. Properly maintain, report on and, if necessary, access the variance account, which is a separate holding account used to maintain overages/shortages of funds in the Multiclass Securities program. Variance issues arise when cash received from MBS issuers differs from cash payable to Multiclass Security holders, usually because of missing or incorrect information on the factor tape used to calculate multiclass payment factors (the R–7 tape). To the extent that cash actually received from the issuers is greater than the multiclass distribution amount, that amount will be held in the variance account for payment in the following month and a "prepayment interest shortfall" (the Multiclass Security rate less the reinvestment rate) difference will likely be created. The variance account must be established by the Trustee. Losses caused by the prepayment interest shortfall will be paid by GNMA as part of its guarantee obligation.

To Illustrate the variance process, assume the Trustee receives MBS payments of $100 more than is required to be distributed on the Multiclass Securities for that month. This $100 must be deposited In the variance account by the Trustee until the next month before it is distributed to the investor. Meanwhile, the $100 is earning interest at the reinvestment rate while the Trust owes the investors the multiclass coupon rate, creating negative arbitrage. The Trustee must calculate the prepayment interest shortfall and notify GNMA, which will make the funds available to the Trustee, and/or PTC, prior to payment to the Investors.

Subsequent to the monthly distributions to the investors, PTC will reconcile the MBS payments received from issuers with distributions made to the trust. This may result in PTC distributing additional cash to the trust or the trust being required to refund overpayments to PTC. Should insufficient funds be available to pay such "refunds" from the trust's accounts, then the Trustee will be required to advance such refund until the next distribution date when the Trustee will be reimbursed from funds available in the accounts or from GNMA.

The Trustee will establish all accounts needed for each Trust. These currently include the Depository Account at PTC, the Certificated Securities Account for payment of non-book entry distributions, if applicable, and the Variance Account. The variance process will consider all three accounts and therefore, all three accounts will be included in the monthly reconciliation and reporting process. Reporting for the variance process will involve determining any shortfalls prior to the distribution date and notifying GNMA and its agent thereof, as well as subsequent detail reconciliations of payment differences in accordance with procedures and forms prescribed by GNMA.

Differences between MBS payments received and amounts distributable to multiclass security holders (MBS factor errors) may also arise because of errors in the computation of tranche factors by the Trustee. In that case, the Trustee is responsible for funding the difference.

3. Indemnify and hold harmless GNMA (including each official, officer and agent of GNMA) from and against any and all losses, claims, demands, liabilities, or expenses (including, without limitation, all attorneys' fees and related charges and expenses) resulting, directly or indirectly, from any Trustee default or other failure to perform under their agreements with or for the benefit of GNMA. Without limiting the foregoing, GNMA's right to indemnification shall include the right to reimbursement of any and all amounts paid by GNMA to any holder of any certificate, security, or pass-through interest as a result of any failure of the Trustee to properly calculate the amount of any required distribution to any such holder or to cause the proper distributions to be made to any such holder, together with interest thereon at a rate equal to the yield on three month treasury securities.

4. All initial and ongoing tax administration with respect to the trusts and, in the case of REMIC transactions, the REMICs. The Trustee may subcontract its tax administration duties, but, if it does so, (i) it must retain the subcontractor for the duration of the Trustee's engagement (unless the subcontractor fails to perform its duties in a satisfactory manner), (ii) the Trustee will retain liability for the proper performance of all tax administration duties and (iii) GNMA must approve the successor tax administrator.

Various of the documents in the GNMA multiclass securities program Guide set forth duties of a "Tax Administrator" with respect to each Series of securities. The Trustee will be responsible for all of the duties assigned to the Tax Administrator in the GNMA Multiclass Program Guide, as that Guide may be in effect from time to time. Those duties include, but are not limited to the following:

a. *Startup.* Computing the yields, amounts of original issue discount ("OID") and other information required to be set forth in the OID legends on the securities. The Tax Administrator shall confirm that information with the results of the sponsor, which independently is responsible for producing the same information. The Tax Administrator shall be responsible for supplying such information to trust counsel, which will be responsible for the preparation of the text of the legends.

b. *Ongoing Accounting.* Preparing the federal, state, and local tax returns of the trust and any related REMICs (including the computation of all necessary underlying information), computing the information concerning OID, market discount, premium, interest, and other reportable items on the securities, and forwarding that information to (or otherwise making that information available to) security holders and the IRS. Income tax accounting and reporting shall be done in accordance with the law, tax administration guidelines for accounting set forth in the GNMA Multiclass program Guide or other instructions distributed by GNMA (as those may be in effect from time to time), and accepted industry practice, in that order of priority. The Tax Administrator shall consult with GNMA on any significant tax accounting issues that arise.

c. *Controversy.* The Tax Administrator shall represent the trust and any related REMIC in any inquiry or assessment of liability by the IRS or state or local tax authorities. The Tax Administrator shall keep GNMA and the LA informed of the initiation of any inquiry or assessment of liability and of any significant related development.

5. Rebate—Transfer in a timely manner to GNMA any amounts from PTC as a result of investment earnings on funds received by PTC on the MBS from the date these funds are received to the date the funds are distributed on the Multiclass Securities. These amounts are commonly called the PTC rebate and are distributed quarterly by PTC at this time.

6. If another approved Trustee is no longer permitted by GNMA to act as a Trustee or fails to perform in the Multiclass Securities Program, all other Trustees must be willing to assume the ongoing administration of any Trust formerly held by a Trustee which is no longer approved to participate in the program.

7. *Cross Default Provision*—GNMA shall have the right to terminate a Trustee's approved status for cause. If a Trustee fails to properly administer a trust, which results in a finding of cause by GNMA, all trusts administered by the Trustee may be transferred to another GNMA approved Trustee.

C. For the strip securities, the Trustee will perform all of the services outlined in paragraphs A and B above, as necessary. The Trustee must also provide all services necessary for recombining the IO/PO securities into Platinum securities and must accurately track all securities through the recombination process.

IV. Trustee Fee

During the initial stage of the Multiclass Securities program, the Trustee fee was paid as a "strip" out of monthly interest collections, based on the aggregate remaining principal balance of the Multiclass Securities outstanding at the beginning of the month. However, this method created a general awkwardness of having security classes bearing interest at, for instance, 7.99%, which is not favorably received in the market place.

In the full participation stage, the Trustee's fee will be paid initially through the creation of an interest bearing REMIC Class which would only be transferrable to a successor Trustee.

This so-called "T Class" would be structured to receive a pro rata share of principal of the underlying MBS and interest at the certificate rate of the underlying MBS. The Class would be designated as a class of securities in the offering circular and the underlying documents; however it would not be tradeable and would not carry any voting rights or other substantive rights associated with the other regular interests in the REMIC trusts. The principal amount of the T Class would be negotiated between sponsors and Trustees with no involvement by GNMA.

To pay a Trustee in the GNMA Strip program it is expected that IO and PO classes will be delivered and immobilized at the Trustee to replicate the REMIC fee structure.

These fee arrangements may be changed at any time only at the option of GNMA. Such a change would only occur with extensive consultation with GNMA Trustees and Sponsors.

V. Period of Performance

The selections to be made under this CAP will be for an initial period of two years and will provide for three one-year extension periods at GNMA's option. Trustees will have an ongoing obligation to administer for the life of all trusts received during that time period.

VI. Evaluation Factors

The criteria for evaluation will be based on overall responsiveness to the CAP with respect to three broad categories—technical abilities, experience and knowledge, and personnel qualifications (as described below). Proposals shall not exceed 50 pages of 8½" by 11" paper in total length (excluding resumes of proposed team members and financial statements). The Proposal shall not merely offer to perform work in accordance with the statement of work, but shall outline the actual work proposed as specifically as is practical. No monetary cost information is to be included in the Proposal. Those firms selected will negotiate their fees with the Sponsor. Sponsors will select their own Trustees without regard to a rotation.

A. Technicol Abilities (40%)

1. The extent to which the proposal shows an understanding of the services described in Section III and an ability to provide these required services. (10 points)

2. The degree to which knowledge of the systems and procedures necessary to perform this award are demonstrated. (10 points)

3. The extent to which the proposal includes a complete description and justification of the proposed approach and methodology. (10 points)

4. The extent to which adequacy of financial resources is demonstrated. Explain your firm's financial strength and staying power, taking into consideration the length of the obligations to be incurred hereunder. No firm will be regarded as being responsive to this CAP, despite its technical qualifications, if it does not demonstrate that its performance and assurances are backed by meaningful capital. In order to demonstrate this qualification, please provide copies of audited financial statements for the prior two years as well as evidence of your firm's credit rating or other institutional evaluations. (10 points)

B. Experience and Knowledge (35%)

1. The extent to which your firm has experience and knowledge in providing services of a similar nature, specifically including (a) GNMA's current MBS program; (b) Multiclass Securities programs of the Department of Veterans Affairs, Fannie Mae, Freddie Mac, the Resolution Trust Corporation, and other large issuers (including private issuers); (c) past experience as Trustee in mortgage-backed pass-through and Multiclass Securities transactions. Provide a brief description of significant Multiclass Securities (REMICs and Strips) transactions for which you currently serve as Trustee, and demonstrate your firm's ability to accomplish tasks within adequate time frames. (10 points)

2. The extent to which your firm demonstrates its philosophy of crisis management. (10 points)

3. The extent to which your firm is experienced and knowledgeable in providing comprehensive tax administration functions. If your firm contracts out this responsibility, then you must provide complete information regarding the subcontractor, discussing the experience and knowledge of the firm and provide assurance that the subcontractor relationship will be established and maintained throughout the course of Trustee's engagement. (5 points)

4. The extent to which your firm demonstrates experience and knowledge in providing bond administration duties. If your firm contracts out this responsibility, then you must provide complete information regarding the subcontractor, discussing the experience and knowledge of the firm, and provide assurance that the subcontractor relationship will be established and maintained throughout the course of Trustee's engagement. (5 points)

5. The extent to which the firm is experienced and knowledgeable in providing general Trustee functions as they relate to Strips. (5 points)

C. Personnel Qualifications and Staffing (25%)

1. The extent to which your firm identifies the personnel that would be assigned to this project, and includes resumes detailing their skills, qualifications, years of experience in similar projects, formal education and training, and ability to perform all aspects of the work described in the statement of work. Include professional references for all personnel and explain the organization of the team or teams, including the individual who will be the lead contact with GNMA, as well as which persons would be assigned lead responsibility for which tasks. (15 points)

2. The extent to which adequacy of the proposed management plan is demonstrated to assure compliance with all requirements of this solicitation. (10 points)

In addition to responding to the above criteria, in order to be considered responsive to this CAP your firm must certify its willingness to provide the indemnification referred to in Section III above and indicate this by signing below.

Further, you are required to certify for your firm that neither the corporate nor partnership entity, nor any officer, partner or professional presently employed and who will work on the GNMA Multiclass Securities Program has been convicted of, or found liable in a civil action for, fraud forgery, bribery, falsification or destruction of records, making false statements or any other offense indicating a lack of business integrity that seriously and directly affects the present responsibility of the officer, partner or professional, and is not currently suspended or debarred by state or the Federal government.

I hereby certify and agree to the above indemnification and certifications.

By _____

Title _____

VII. Organizational Conflicts of Interest

The applicant must warrant that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest, which is defined as a situation in which the nature of the work herein and the organization's financial, contractual or other interests are such that unfair competitive advantage would result or objectivity in performing the work may be impaired. If after award it discovers an organizational conflict of interest with respect to this work, an immediate and full disclosure will be made in writing to the contracting officer, which shall include a description of the action which will be taken to eliminate or neutralize the conflict.

VIII. Submission Procedures

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Each applicant must submit an original and seven copies of its application, which shall consist of the technical and management submittal for the proposed work. The material must be submitted and arrive at GNMA at the address and room below no later than September 23, 1994. Washington, D.C. time.

Government National Mortgage Association, Department of Housing and Urban Development, Attn: Susan M. Taylor, 451 7th Street SW., Suite 6151, Washington, D.C. 20410–9000, Telephone: 202/401–8787.

To prevent opening by unauthorized individuals, your application must be clearly identified on the envelop or wrapper as follows:

Application Submitted in Response to CAP GNMA 94–R–1

DUE DATE September 23, 1994

Potential offerors should be aware that the HUD building is a secure building. All visitors will be required to walk through a metal detector, have all belongings screened by an x-ray system, show valid picture identification, and sign the visitor's log. Guards will telephone the visitors HUD contact to announce their arrival and receive verification to permit the visitor into the building prior to allowing entry. These procedures will require extra time. Offerors must therefore ensure that any commercial delivery service or company employee has appropriate identification, and should allow extra time for any hand carried deliveries. Delays experienced at the guard desk or refusal of admission DO NOT constitute excusable delays. Any applications that arrive at Suite 6151 after the date and time specified will be rejected and will be returned to the applicant.

No Applications Will Be Accepted by FAX

All questions pertaining to this CAP should be sent to the FAX number (202) 401–8857 no later than September 23, 1994. No questions will be accepted after that time. All questions and responses will be mailed or faxed to all parties who requested a copy of the CAP and will be made available to all other parties.

GNMA reserves the right to make an award either on the basis of proposals as originally submitted or, following discussions with the offerors in the competitive range, on the basis of the respective best and final offers.

[FR Doc. 94–23985 Filed 9–27–94; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. 94–3818; FR–3784–N–01]

Notice of Debenture Recall

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice announces a debenture recall of certain Federal Housing Administration debentures, in accordance with authority provided in the National Housing Act.

FOR FURTHER INFORMATION CONTACT: Richard Keyser, Room B133, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC. 204510, telephone (202) 755–7510. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Pursuant to section 207(j) of the National Housing Act, 12 U.S.C. 1713(j), and in accordance with HUD regulations at 24 CFR 207.259(e)(3), the Federal Housing Commissioner, with approval of the Secretary of the Treasury, announces the call of all Federal Housing Administration debentures with coupon rates of 7.5 percent or higher, except for those debentures subject to "debenture lock agreements," that have been registered on the books of the Federal Reserve Bank of Philadelphia, and are, therefore, "outstanding" as of September 30, 1994. The date of the call is January 1, 1995. To insure timely payment, debentures should be presented to the Federal Reserve Bank of Philadelphia by December 1, 1994.

The debenture will be redeemed at par plus accrued interest. Interest will cease to accrue on the debentures as of the call date. Final interest on any called debentures will be paid with the principal at redemption.

During the period from the dates of this notice to the call date, debentures that are subject to the call may not be used by the mortgagee for a special redemption purchase in payment of a mortgage insurance premium.

No transfer or denominational exchanges of debentures covered by the foregoing call will be made on the books maintained by the Treasury Department on or after October 1, 1994. This does not affect the right of the holder of a debenture to sell or assign the debenture on or after this date. Payment of final principal and interest due on January 1, 1995, will be made to the registered holder or assignee.

Instructions for the presentation and surrender of debentures for redemption will be provided to holders by the Department.

Dated: September 20, 1994.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing-Federol Housing Commissioner.

[FR Doc. 94–23986 Filed 9–27–94; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–920–94–4120–03; COC 56520]

Colorado; Notice of Invitation for Coal Exploration License Application, Mountain Coal Company

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with Mountain Coal Company in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Gunnison County, Colorado:

T. 13 S., R. 90 W., 6th P.M.
Sec. 10, SE¼SE¼;
Sec. 11, lots 9 to 12, inclusive and SW¼SW¼;
Sec. 14, lots 3 to 6, and 11 to 14, inclusive;
Sec. 15, lots 1 to 4, inclusive.

The area described contains approximately 642.75 acres.

The application for coal exploration license is available for public inspection during normal business hours under serial number COC 56520 at the Bureau of Land Management (BLM), Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401.

Written Notice of Intent to Participate should be addressed to the attention of the following persons and must be received by them within 30 days after publication of the Notice of Invitation in the **Federal Register**.

James E. Edwards, Jr., Management Team, Resource Services, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215

and

Mark W. Scanlon, Sr. Geologist, Mountain Coal Company, P.O. Box 591, Somerset, Colorado 81434

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to participate.

Dated: September 19, 1994.

James E. Edwards, Jr.,

Management Team Resource Services.

[FR Doc. 94–23934 Filed 9–27–94; 8:45 am]

BILLING CODE 4310–JB–M

[AZ 054–04–4350–01; AZA 28488]

Arizona: Realty Action; Classification of Public Lands for Lease or Conveyance for Recreation and Public Purposes in Bullhead City, Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following public land in Bullhead City, Mohave County, Arizona, has been examined and found suitable for classification for lease or conveyance to the Bullhead City Fire Department under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, et seq.). The land will be used for a fire station and ambulance substation.

Gila and Salt River Meridian, Arizona

T. 20 N., R. 21 W.,
Sec. 20, N½N½NW¼NW¼SW¼ (within).

The area described contains 2.33 acres, more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with the current Bureau land use planning and would be in the public interest.

The lease or conveyance, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Right-of-way to Citizens Utilities Rural Company for a water storage tank (AZA 18636).

5. Right-of-way to Mohave County Board of Supervisors for a road (Silver Creek Wash Road) (AZA 20912).

6. Right-of-way to City of Bullhead City for a road (Bullhead Parkway) (AZA 24554).

DATES: On or before November 14, 1994, interested persons may submit comments regarding the proposed lease or conveyance or classification of the lands to the Area Manager, Bureau of Land Management, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406. Any adverse comment will be reviewed by the District Manager. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Karen Montgomery, Realty Specialist, Bureau of Land Management, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406, (602) 855–8017.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a fire station. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directed related to the suitability of the land for a fire station.

Dated: September 19, 1994.

Maureen A. Merrell,

Acting District Manager.

[FR Doc. 94–23933 Filed 9–27–94; 8:45 am]

BILLING CODE 4310–32–P

[AZ–055–04–4210–03; AZA 25991]

Arizona; La Paz County, Notice of Realty Action Lease/Conveyance, Yuma District, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action Recreation and Public Purposes Act Classification in La Paz County, Arizona.

SUMMARY: The following public lands in the town of Quartzsite, Arizona, have been examined and found suitable for classification for lease or conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.):

Gila and Salt River Meridian, Arizona

T. 3N., R. 19 W.,
Sec. 28, N½NW¼NW¼NW¼;

T. 4 N., R. 19 W.,
Sec. 19, E½, NW¼, E½SW¼, NW¼SW¼, N½SW¼SW¼;
Sec. 17, all;
Sec. 20, all;
Sec. 21, W½NE¼, N½NW¼, N½SW¼NW¼, NE¼SE¼NW¼, S½S½SW¼ excluding 23.969 acres under recreation and public purposes classification and lease AZA–22501;
Sec. 22, NE¼, E½SE¼, E½E½NW¼SE¼, SW¼SE¼;
Sec. 23, N½, N½S½, S½NE¼SW¼SW¼, NW¼SW¼SW¼, SE¼SW¼SW¼, N½SE¼SW¼, SW¼SE¼SW¼, N½S½SE¼, N½SW¼SW¼SE¼, SE¼SW¼SE¼SE¼, SE¼SE¼SW¼SE¼, E½SW¼SE¼SE¼, W½SE¼SE¼SE¼;
Sec. 26, S½NE¼NE¼NE¼NE¼, NW¼NE¼NE¼NE¼, S½NE¼NE¼NE¼, E½NW¼NE¼NE¼, S½NW¼NW¼NE¼NE¼, SW¼NW¼NE¼NE¼, S½NE½NE¼, NE¼NE¼NW¼NE¼, S½NE¼NW¼NE¼, NE¼NW¼NW¼NE¼, S½NW¼NW¼NE¼, S½NW¼NE¼, S½NE¼, S½NE¼NE¼NW¼, NW¼NE¼NW¼, S½NE¼NW¼, SE¼NW¼;
Sec. 28, NW¼SE¼;
Sec. 29, NW¼NE¼, N½NW¼, S½SW¼.

The areas described aggregate 3,463.531 acres, more or less.

SUPPLEMENTARY INFORMATION: This action is a motion by the Bureau of Land Management to make lands available to support community expansion. These lands were identified in the Yuma District Resource Management Plan, as amended, as having potential for disposal. Lease or conveyance of the lands for recreational or public purposes would be in the public interest.

Lease or conveyance of the lands will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. Rights-of-way for ditches and canals constructed by the authority of the United States.

3. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

4. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

5. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this notice in the Federal Register, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws,

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except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws, and the mineral material disposal laws.

DATES: On or before November 14, 1994, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365, (602) 726–6300. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Upon the effective date of classification, the lands will be open to the filing of an application under the Recreation and Public Purposes Act by any interested, qualified applicant. If, after 18 months following the effective date of classification, an application has not been filed, the segregative effect of the classification shall automatically expire and the lands classified shall return to their former status without further action by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365.

Dated: September 19, 1994

Judith I. Reed,

District Manager

[FR Doc. 94–23935 Filed 9–27–94; 8:45 am]

BILLING CODE 4310–32–M

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Mobile River Basin Aquatic Ecosystem for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Mobile River Basin aquatic ecosystem, an area in Alabama with portions extending into east Mississippi and northwest Georgia. This plan specifically addresses the recovery objectives, criteria, and tasks for 1 fish (goldline darter, *Percina aurolineata*), 11 mussels (Alabama moccasinshell, *Medionidus acuitissiumus;* orange-nacre mucket, *Lampsilis perovalis;* fine-line pocketbook, *Lampsilis altilis;* southern acornshell, *Epioblasma othcaloogensis;* upland combshell, *Epioblasma metastriata;* Coosa moccasinshell, *Medionidus parvulus;* ovate clubshell, *Pleurobema perovatum;* southern clubshell, *Pleurobema decisum;* dark pigtoe, *Pleurobema furvum;* southern pigtoe, *Pleurobema georgianum;* triangular kidneyshell, *Ptychobrachus greenii*), and 1 aquatic snail *(Tulotoma magnifica).* Additionally, it complements recovery plans previously developed for another 17 listed aquatic species within the Mobile River Basin. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before December 1, 1994, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Hartfield at the above address (601/965–4900, ext. 25).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The species considered in this draft recovery plan are the goldline darter *(Percina aurolineata),* Alabama moccasinshell *(Medionidus acutissimus),* orange-nacre mucket *(Lampsilis perovalis),* fine-lined pocketbook *(Lampsilis altilis),* southern acornshell *(Epioblasma othcaloogensis),* upland combshell *(Epioblasma metastriata),* Coosa moccasinshell *(Medionidus parvulus),* ovate clubshell *(Pleurobema perovatum),* southern clubshell *(Pleurobema decisum),* dark pigtoe *(Pleurobema furvum),* southern pigtoe *(Pleurobema georgianum),* triangular kidneyshell *(Ptychobranchus greenii),* and the tulotoma snail *(Tulotoma magnifica).* The goldline darter was listed as threatened in 1992 due to a suspected decline in historic range, population fragmentation and isolation, and existing threats to extant populations due to water quality degradation. In 1993, eight of the 11 mussels were listed as endangered, and three as threatened due to habitat loss and fragmentation resulting from impoundment and their vulnerability to existing sources of habitat and water quality degradation. The tulotoma snail was listed as endangered in 1991 due to the loss of more than 90 percent of its historic habitat, and the isolation and vulnerability of surviving populations.

The recovery objective of the draft plan is to protect the Basin's native aquatic fauna and flora by achieving ecosystem stabilization. Specific recovery objectives include reclassification and eventual delisting of the tulotoma snail; delisting of the goldline darter; and preventing the extinction of the eight endangered mussels and the continued decline of the three threatened mussels. Actions needed for ecosystem stabilization will require protection of habitat integrity and water quality by full and appropriate implementation of Federal and State regulatory authorities; development and implementation of Best Management Practices and Water Quality Plans for construction, agriculture, urban, and suburban activities that affect aquatic ecosystems; development and implementation of Drainage Management Plans that address problems specific to drainages occupied by listed species; development, funding, and implementation of programs that

educate and directly involve the general public in ecosystem recovery; and basic research on life history, ecology, anatomy, taxonomy, contaminant sensitivities, and propagation technology of listed and candidate species.

This Plan is being submitted for technical/agency review. After consideration of comments received during the review period, it will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 21, 1994.

Robert Bowker,

Field Supervisor.

[FR Doc. 94–23902 Filed 9–27–94; 8:45 am]

BILLING CODE 4310–55–M

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: World Center for Exotic Birds, Las Vegas, NV, PRT–794818.

The applicant requests a permit to purchase in interstate commerce a pair of wild caught Andean Condors (*Vultur gryphus*) from the Buffalo Zoological Gardens, Buffalo, New York, to enhance the survival of the species through propagation.

Applicant: Panamerican Marketing, Inc., San Antonio, TX, PRT–794810.

The applicant requests a permit to export a pair of South American tapirs (*Tapirus terrestris*) to the museum park "La Venta", Villahermosa, Tabasco, Mexico for the enhancement of the survival of species through propagation and education.

Applicant: Rex B. Shafer, Richfield, MN, PRT–794627.

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. M.G. Weinand, Longwood, Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 23, 1994.

Caroline Anderson,

Acting Chief, Bronch of Permits, Office of Management Authority.

[FR Doc. 94–23961 Filed 9–27–94; 8:45 am]

BILLING CODE 4310–55–P

Minerals Management Service

Meetings of the Federal Gas Valuation Negotiated Rulemaking Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The Secretary of the Department of the Interior (Department) has established a Federal Gas Valuation Negotiated Rulemaking Committee (Committee) to develop specific recommendations with respect to Federal gas valuation pursuant to its responsibilities imposed by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* (FOGRMA). The Department has determined that the establishment of this Committee is in the public interest and will assist the Agency in performing its duties under FOGRMA.

DATES: The Committee will have meetings as shown below:

Monday, October 24, 1994, 10:00 a.m.–5:00 p.m.

Tuesday, October 25, 1994, 8:00 a.m.–5:00 p.m.

Wednesday, October 26, 1994, 8:00 a.m.–12:00 p.m.

ADDRESSES: The meetings will be held in the auditorium of building 85 on the Denver Federal Center, West Sixth Avenue and Kipling Street, Lakewood, Colorado.

Written statements may be submitted to Ms. Deborah Gibbs Tschudy, Chief, Valuation and Standards Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3150, Denver, CO 80225–0165.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Gibbs Tschudy, Chief, Valuation and Standards Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3150, Denver, Colorado, 80225–0165, telephone number (303) 275–7200, fax number (303) 275–7227.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register**.

The meeting will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration.

Written statements should be submitted to the address listed above. Minutes of Committee meetings will be available for public inspection and copying 10 days following each meeting at the same address. In addition, the materials received to date during the input sessions are available for inspection and copying at the same address.

Dated: September 22, 1994.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 94–23946 Filed 9–27–94; 8:45 am]

BILLING CODE 4310–MR–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 494X)]

CSX Transportation, Inc.—Discontinuance of Trackage Rights Exemption—Vanderburgh, Warrick, Gibson, and Pike Counties, IN

CSX Transportation, Inc. (CSXT), has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuances of Trackage Rights* to discontinue its trackage rights over approximately 26.9 miles of rail line owned by Indiana Southern Railroad, Inc. (ISRR) (1) Extending from milepost 163.9, at Straight Line Junction near Evansville, to milepost 140.2, at Gray Junction, and (2) extending from milepost 0.0, at Gray Junction, to milepost 3.2, at Oakland City Junction, in Vanderburgh, Warrick, Gibson and Pike Counties, IN.[1] CSXT

[1] Under 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least

Continued

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indicates that ISRR will continue to provide rail service over the line.

CSXT has certified with respect to the trackage rights involved here that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[2]

As a condition to use of this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 28, 1994, unless stayed pending reconsideration. Petitions to stay must be filed by October 11, 1994. Petitions to reopen must be filed by October 18, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.[3]

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M Rosenberger, 500 Water Street, J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void ab initio

Decided: September 20, 1994

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–24028 Filed 9–27–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–55 (Sub-No. 492X)]

CSX Transportation Inc.—Abandonment Exemption—In Atlanta, Fulton County, GA

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a portion of its line of railroad between milepost ANB–862.9 near Bankhead Avenue and milepost ANB–863.4 at the end of the track, a distance of approximately 0.5 miles, in Atlanta, Fulton County, GA.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 28, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by October 7, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 18, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., J150, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by October 3, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 22, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–24027 Filed 9–27–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours)
(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(1) Notice To Student or Exchange Visitor.
(2) I–515, Immigration and Naturalization Service.
(3) On Occasion.
(4) Individuals or households. The Form I–515 is used to notify students or exchange visitors admitted to the United States as nonimmigrants that they have been admitted without required forms and that they have 30 days to present the required forms and themselves to the appropriate office for correct processing.
(5) 3,000 respondents @ .083 hours per response.
(6) 249 annual burden hours.
(7) Not applicable under Section 3504(h).

Public comment on this item is encouraged.

Dated: September 22, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–23903 Filed 9–27–94; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(1) Application For Voluntary Departure Under The Family Unity Program.
(2) I–817, Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. The Family Unity Program provides benefits for the spouse and unmarried children under 18 years of age who are not eligible for the same status of the alien they are related to; they are eligible for voluntary departure and employment authorization.
(5) 30,000 respondents @ 2.583 hours per response.
(6) 77,490 annual burden hours.
(7) Not applicable under section 3504(h).

Public comment on this item is encouraged.

Dated: September 22, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–23904 Filed 9–27–94; 8:45 am]

BILLING CODE 4410–10–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 6, 1994, Nycomed Production Inc., formerly Sanofi Winthrop L.P., DBA Sterling Organics, 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Meperidine (9230).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 28, 1994.

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[2] No environmental or historical documentation is required here under 49 CFR 1105.6(b)(3).

[3] Because this is only a discontinuance proceeding and ISRR will continue to provide service over the line, the routine provisions for trail use/rail banking or public use conditions provided for in abandonment proceedings are not appropriate here.

[1] 50 days before the abandonment or discontinuance is to be consummated. The applicant, in its verified notice tendered for filing August 24, 1994, indicated a proposed consummation date of October 17, 1994. Because the original filing fee was not received with that filing, a new filing date of September 8, 1994, was entered when a replacement check was received. Now the earliest possible consummation date is October 28, 1994. Applicant's representative has confirmed that the correct consummation date is on or after October 28, 1994.

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Dated: September 21, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration

[FR Doc. 94-23974 Filed 9-27-94; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Interdisciplinary Section) to the National Council on the Arts will beheld on October 6, 1994 form 10.00 a.m. to 5:30 p.m. in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 10:00 a.m. to 10:30 a.m., for introductions and from 5:00 p.m. to 5:30 p.m. on, 1994 for a policy discussion.

The remaining portion of this meeting from 10:30 a.m. to 5.00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained form Ms. Yvonee Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Dated: September 22, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94-23914 Filed 9-27-94; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Advancement Phase II Grant Section) to the National Council on the Arts will be held on October 12-13, 1994. The panel will meet from 10 a.m. to 5:30 p.m. on October 12, 1994 and from 9 a.m. to 3 p.m. on October 13, 1994. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 2 p.m. to 3 p.m. on October 13, 1994 for a policy discussion.

The remaining portions of this meeting from 10 a.m. to 5:30 p.m. on October 12, 1994 and from 9 a.m. to 2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Dated: September 22, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94-23915 Filed 9-27-94; 8:45 am]

BILLING CODE 7537-01-M

Literature Advisory Panel; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that meeting of the Literature Advisory Panel (Creative Writers Fellowships: Poetry Section) to the National Council on the Arts will be held on October 5-7, 1994 from 9:00 a.m. to 5:30 p.m. on October 5, 1994, from 9:00 a.m. to 6:30 p.m. on October 6, 1994, and from 9:00 a.m. to 5:00 p.m. on October 7, 1994. This meeting will be held in Room M-07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3:00 p.m. to 5:00 p.m. on October 7, 1994 for a policy discussion.

The remaining portions of this meeting from 9:00 a.m. to 5:30 p.m. on October 5, 1994, from 9:00 a.m. to 6:30 p.m., on October 6, 1994, and from 9:00 a.m. to 3:00 p.m. on October 7, 1994 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Dated: September 22, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94-23913 Filed 9-27-94; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Working Group Meeting on Groundwater Dating; Meeting

The ACNW Working Group on Groundwater Dating will hold a meeting on October 21, 1994, at the Hotel San Remo, 115 E. Tropicana Avenue, Las Vegas, Nevada.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, October 21, 1994-8:30 a.m. until the conclusion of business

The purpose of this Working Group meeting on groundwater dating is to examine current methods for dating natural groundwater, including their underlying assumptions, reliabilities, limitations and time scales for application. The Working Group will also assess new or emerging methods that may be applicable to the Yucca Mountain site; and review current results of dating methods used at Yucca Mountain to discern patterns and rates of groundwater flow. In addition, the Working Group will compare those results for consistency, and review the implications of these results to groundwater travel time requirements. The Working Group will bring together experts dealing with different aspects of groundwater dating including those working on aspects of groundwater issues at Yucca Mountain.

Oral statements may be presented by members of the public with the concurrence of the ACNW Working Group Chairman; written statements will be accepted and made available to the Working Group. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Working Group, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW staff member named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the ACNW Working Group, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The ACNW Working Group will then hear presentations by and hold discussions with representatives of the NRC staff and their consultants, national laboratories, State officials, and other interested parties, as appropriate.

Further information regarding the agenda for this meeting, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACNW staff member, Ms. Lynn Deering (telephone 301/415-6887) between 8:15 a.m. and 6:00 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: September 20, 1994.

R.K. Major,

Chief, Nuclear Waste Branch.

[FR Doc. 94-23947 Filed 9-27-94; 8:45 am]

BILLING CODE 7590-01-M

Public Workshop To Exchange Information and Lessons Learned in Site Characterization for Decommissioning of Radioactively Contaminated Sites

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: This notice is to inform the public of a workshop to exchange information and review lessons learned in the characterization of radioactively contaminated decommissioning sites. The workshop will discuss the NRC draft guidance on site characterization for decommissioning and address generic issues related to NRC's decommissioning sites, such as characterization of sites and associated environmental media, types and extent of contamination, and environmental impacts.

DATES AND LOCATION: The workshop will be held on November 29-30, 1994. The first day sessions of the workshop will begin at 8:30 a.m. and continue until 5:30 p.m. The sessions will be held in the main auditorium located at the NRC Headquarters Building, Two White Flint North (TWFN), 11545 Rockville Pike, Rockville, MD 20852-2738, telephone (301) 415-5811. It should be noted that parking at the TWFN building is very limited. The second day sessions will begin at 8:30 a.m. and continue until 5 p.m. These sessions will be held at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852 (1 mile north of TWFN). For a reservation at the Holiday Inn Crowne Plaza, call the toll free number 1-800-638-5963. Rooms have been reserved at a special group rate (Group GLB) at the Holiday Inn Crowne Plaza and will be held until November 8, 1994.

Background

In 1990 the NRC developed the Site Decommissioning Management Plan (SDMP) to identify and resolve issues associated with the timely remediation of radiologically contaminated sites. In April 1992 the NRC developed an "Action Plan" (57 FR 13389) to ensure timely remediation of SDMP sites. In the action plan, NRC staff identified inadequate site characterization as one of the technical issues that has delayed the timely approval and implementation of site-specific decommissioning actions.

The main objectives of the site characterization for decommissioning include:

- To quantify the physical and chemical characteristics of radiological contamination and to assess the extent of contaminant distribution including the rate(s) of migration.
- To quantify environmental parameters that significantly affect potential human exposure from existing and potential future radiological contamination under unrestricted use conditions.
- To support evaluation of alternative decommissioning actions and detailed planning of a preferred approach for decommissioning, decontamination, and waste management.

The NRC's Office of Nuclear Material Safety and Safeguards (NMSS) has coordinated two public workshops to exchange information and discuss issues identified in the Action Plan. The first workshop was convened on November 19, 1992, and dealt with the overall SDMP and the SDMP Action Plan implementation. The second SDMP workshop was held on June 1, 1994, on the issue of final radiological surveys at SDMP sites. A large number of attendees of the June 1 workshop requested NRC to conduct a similar workshop on site characterization. NRC is now planning to conduct a workshop to exchange information and discuss issues associated with site characterization for decommissioning.

CONDUCT OF THE WORKSHOP: The workshop will be held for two days on November 29-30, 1994. The purpose of the workshop is to discuss site characterization of the SDMP sites, to promote direct interaction among NRC staff, licensees and contractors, federal agencies, states, other interested parties, and members of the public, and to exchange information on site characterization for decommissioning.

The first day of the workshop will comprise plenary sessions that include presentations by speakers from NRC management responsible for

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establishing decommissioning policy and those responsible for implementation of the SDMP. NRC speakers will also include technical staff responsible for developing the NRC draft guidance on "Site Characterization for Decommissioning" and those frequently conducting the technical reviews of SDMP site characterization. The workshop will also include key speakers from other federal agencies (e.g., the U.S. Environmental Protection Agency, the U.S. Department of Energy, and the U.S. Department of the Army), NRC licensees, and the Agreement States. The first day's session will address the following topics:

1. NRC's policy on site characterization for decommissioning,
2. The coordinated Federal Manual on Radiological Surveys,
3. EPA, DOE, the U.S. Army and Agreement States views on site characterization,
4. NRC licensees views and experience with site characterization, and
5. NRC guidance and staff experience with SDMP site characterization.

Copies of the NRC's draft guidance "Branch Technical Position On Site Characterization For Decommissioning" will be available at the workshop or may be requested in advance by contacting Boby Eid at (301) 415–5811.

The second day of the workshop will consist of breakout discussion groups. Each attendee should select, in advance, two discussion groups to attend (one from category A and another from category B of the groups listed below) There will be four concurrent discussion groups in two series (A & B) to discuss the following issues:

Group A1 The role of historical site data collection, review, and analysis in optimizing site characterization efforts,

Group A2 Background characterization, sampling, and sample averaging of contaminated media,

Group A3 Groundwater/surface water and associated media characterization,

Group A4 The use of models and codes in site characterization and demonstration of compliance with regulatory guidelines,

Group B1 Prioritization of site characterization activities,

Group B2 Approaches to selection of radiological techniques and methods in site characterization,

Group B3 Significance of direct interaction between licensees, contractors, and the regulators, and

Group B4 The Coordinated Federal Manual on Environmental Radiological Surveys.

After the breakout discussion sessions, all attendees will meet in a final general session where discussion group leaders will summarize any conclusions or observations reached by the discussion groups. All attendees are encouraged to participate in the discussions after each presentation and in the breakout discussion sessions.

REGISTRATION AND FURTHER INFORMATION: Persons interested in attending the workshop should register in advance. For registration and further information, contact Boby Eid at (301) 415–5811 or Mary Hood at (301) 415–6644, from the Low-level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, MD, this 21st day of September, 1994.

For the U.S. Nuclear Regulatory Commission.

John H. Austin,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–23951 Filed 9–27–94; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 2, 1994, through September 16, 1994. The last biweekly notice was published on September 14, 1994 (59 FR 47163).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By October 28, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The Nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (*Project Director*): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: August 25, 1994.

Description of amendment request: The proposed amendment would revise Technical Specification Table 2.2–1, Reactor Trip System Instrumentation Trip Setpoints, and Table 3.3–4, Engineered Safety Actuation System Instrumentation Trip Setpoints, to reflect a revised steam generator (water) level process measurement accuracy. The steam generator level trip setpoints are not affected by the proposed amendment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

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1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Technical Specification Tables 2.2–1 and 3.3–4 which document Total Allowable Z, and S values are being revised to reflect additional Process Measurement Error uncertainties based upon enhanced knowledge of steam generator performance provided by the Nuclear Steam Supply System (NSSS) vendor. There will be no physical changes to plant equipment, logic, or control as a result of the proposed amendment. The safety-related trip setpoints are not being changed. Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The propose amendment does not introduce any new equipment, logic, or control functions. The steam generator water level protective setpoints are not being changed. No new common mode failure mechanism is being introduced. Therefore the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed amendment revises Technical Specification Tables 2.2–1 and 3.3–4 to more accurately reflect PMA uncertainties based upon enhanced knowledge of the steam generator performance provided by the NSSS vendor. The margin of safety as defined in the Technical Specifications is not reduced by the proposed changes to the Tables. Calculations demonstrate that this requirement is still satisfied with the new values based upon the enhanced understanding of PMA terms. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: David B. Matthews.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: August 25, 1994.

Description of amendment request: The requested amendments allow the testing interval for auxiliary feedwater (AFW) system pumps to be increased from monthly to quarterly on a staggered test basis. The proposed amendments are consistent with NRC staff recommendations and guidance contained in NUREG–1366, "Improvements to Technical Specifications Surveillance Requirements" and Generic Letter 93–05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation."

In addition, the requested amendments incorporate a note from Surveillance Requirement 3.7.5.2 of NUREG–1431, "Revised Standard Technical Specifications, Westinghouse Plants" into the existing McGuire Technical Specifications governing AFW system pump testing. This note clarifies that the turbine-driven AFW pump cannot be tested until the required pressure exists in the secondary side of the steam generator.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

As required by 10 CFR 50.91, this analysis is provided concerning whether the requested amendments involve significant hazards considerations, as defined by 10 CFR 50.92. Standards for determination that an amendment request involves no significant hazards considerations are if operation of the facility in accordance with the requested amendment would not: 1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or 2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or 3) Involve a significant reduction in a margin of safety.

The requested amendments decrease from monthly to quarterly the frequency at which the motor-driven and turbine-driven AFW pumps must be demonstrated operable as specified in TS . 4.7.1.2 (McGuire). They also incorporate a note of clarification from the new Westinghouse STS [Standard Technical Specifications] into the existing... McGuire specification concerning when the pump head or discharge pressure versus flow verification for the turbine-driven pump is required to be performed.

In 48 FR 14870, the Commission has set forth examples of amendments that are considered not likely to involve significant hazards considerations. Example vii describes a change to make a license conform to changes in regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations. The requested amendments are similar to example vii in that they result in minor changes to plant surveillance requirements and are consistent with the existing NRC position and guidance contained in NUREG–1366 and Generic Letter 93–05, as well as NUREG–1431. While the issuance of NUREG–1366 and Generic Letter 93–05, as well as NUREG–1341 does not constitute a change in existing regulations, it nevertheless establishes the NRC staff's position concerning the acceptability of decreasing the surveillance frequency of AFW pumps from monthly to quarterly and concerning the acceptability of adopting all or part of the new STS. The requested amendments are consistent with the position of NUREG–1366 and with the guidance of Generic Letter 93–05, as well as with NUREG–1431.

Criterion 1

The requested amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. Decreasing the frequency of AFW pump testing as specified in TS from monthly to quarterly will have no impact upon the probability of any accident, since the AFW pumps are not accident initiating equipment.

Also, since... McGuire's AFW pump performance histories support making the proposed change, system response following an accident will not be adversely affected. Therefore, the requested amendments will not result in increased accident consequences. ***Incorporating the new STS note will only serve to clarify when the turbine-driven pump is required to be tested and will not have any impact upon either the probability or consequences of any accident. The pump will still be tested as before and its acceptance criteria will be unaffected.

Criterion 2

The requested amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, the AFW pumps are not accident initiating equipment. No new failure modes can be created from an accident standpoint. The plant will not be operated in different manner.

***Incorporating the clarifying note from the new STS will not result in any new accident sequences, since plant operation will be unaffected.

Criterion 3

The requested amendments will not involve a significant reduction in a margin of safety. Plant safety margins will be unaffected by the proposed changes. The AFW pumps will still be capable of fulfilling their required safety function, since plant operating experience supports the proposed change. The availability of the AFW pumps will be increased as a result of the proposed amendments because they will not have to be made unavailable for testing as frequently. Finally, the proposed amendments are consistent with the NRC position and guidance set forth in NUREG–1366 and Generic Letter 93–05. ***Incorporating the note from the new STS will not impact any safety margins.

Based upon the preceding analyses, Duke Power Company concludes that the requested amendments do not involve a significant hazards consideration.

The proposed technical specification amendment has been reviewed against the criteria of 10 CFR 51.22 for environmental considerations. The proposed amendment does not involve a significant hazards consideration, nor increase the types and amounts of effluents that may be released offsite, nor increase individual or cumulative occupational radiation exposures. Therefore, the proposed amendment meets the criteria given in 10 CFR 51.22(c)(9) for a categorical exclusion from the requirement for an Environmental Impact Statement.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charolotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: Herbert N. Berkow.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: June 13, 1994.

Description of amendment request: The proposed amendment would modify Clinton Power Station Technical Specification 3/4.6.1.8, "Containment Building Ventilation and Purge Systems," which includes a requirement to perform a leak rate measurement at least once per 92 days on each 36-inch supply and exhaust containment ventilation isolation valve with a resilient seal. The proposed modification would require a leak test at least once per 18 months provided the valves remain closed during that period.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed change does not involve a change in plant design. Failure of or leakage through a containment barrier cannot itself create an accident; therefore, this change would not increase the probability of any accident previously evaluated. Failure of or leakage through a containment barrier can, however, increase the consequences of those accidents previously evaluated. The proposed change merely revises the frequency at which the local leak rate test is performed on the containment building HVAC 36-inch supply and exhaust penetrations. The containment isolation valves for these penetrations are normally only opened during refueling outages. The stroke testing for the isolation valves has been changed to a cold shutdown frequency and, as a result, there is no mechanism present to degrade the seals and cause increased leakage through the penetration. Based on past penetration leak rate measurements, it has been determined that leak rate testing on an 18-month frequency is sufficient to identify seal degradation if the valves are not opened. However, should the valves be opened during the 18-month interval, the proposed change would require that a leak rate test be performed within 92 days. This will ensure that the leak rate for the given penetration has not exceeded the specified limit as a result of stroking the valve. Penetration leakage will continue to be measured at sufficient intervals to identify seal degradation in the 36-inch containment isolation valves. In addition, the same leakage limits will be imposed. Therefore, the proposed change will not result in a significant increase in the probability or the consequences of any accident previously evaluated.

(2) This request does not result in any change to the plant design nor does it involve a change in current plant operation. The proposed change will not change the design basis for the valves being leak tested. The valves will continue to be verified to meet the required leak rate and the safety function of the subject valves remains unchanged. Furthermore, any potential leakage through the containment building HVAC 36-inch supply exhaust and supply penetrations cannot create an accident. As a result, the proposed change cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The only margin of safety that could potentially be impacted by the proposed change to the surveillance requirement frequency is the margin concerning the offsite dose consequences of postulated accidents (which is directly related to the containment leak rate). As discussed above, this request does not result in a significant increase in the consequences of any accident previously evaluated. It has been demonstrated that the penetration leakage does not change appreciably when the valves are not stroked. Therefore, since the valves are normally only opened during refueling outages, leakage through the penetrations is not expected to change during the proposed 18-month interval between leak rate tests. Should the valves be opened during the 18-month interval, a local leak rate test will be performed within 92 days. The proposed leak rate test frequency will provide sufficient indication of seal degradation to allow the opportunity for repair before gross leakage failures develop. In addition, the proposed change involves no change to the currently established leak rate test acceptance criteria. As a result, the proposed changes do not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Leah Manning Stetzner, Vice President, General Counsel, and Corporate Secretary, 500 South 27th St., Decatur, IL 62525.

NRC Project Director: John N. Hannon.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50–461, Clinton Power Station, Unit No 1, DeWitt County, Illinois

Date of amendment request: August 12, 1994.

Description of amendment request: The proposed amendment would modify Clinton Power Station Technical Specification 3/4.6.2.2, "Drywell Bypass Leakage," to allow drywell by pass leakage rate tests (DBLRTs) to be performed at intervals as long as ten years based on the demonstrated performance of the drywell structure. DBLRTs are currently required to be performed once every 18 months.

Basis of proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that contribute to initiation of any accidents previously evaluated. Thus, the proposed change cannot increase the probability of any accident previously evaluated.

The proposed change potentially affects the leak tight integrity of the drywell, a structure used to mitigate the consequences of a loss of coolant accident (LOCA). The function of the drywell is to channel the steam released from the LOCA through the suppression pool, limiting the amount of steam released to the primary containment atmosphere. This limits the containment pressurization due to the LOCA. The leakage of the drywell is limited to ensure that the primary containment does not exceed its design limits of 185 °F and 15 psig. Because the proposed change does not alter the plant design, only the frequency of measuring the

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drywell leakage, the proposed change does not directly result in an increase in the drywell leakage. However, decreasing the test frequency can increase the probability that a large increase in drywell bypass leakage could go undetected for an extended period of time. There are several potential sources of steam bypass leakage paths. These include potential cracks in drywell concrete structure, the drywell vacuum breakers, and various penetrations through the drywell structure. Based on the results of the structural integrity test conducted as part of the preoperational test program, additional cracking of the drywell is not expected during the remaining life of the plant. Ventilation and piping penetrations (including the drywell vacuum breaker penetrations) are designed to ASME Code Class 2 and Seismic Category 1 requirements. These penetrations are designed with two isolation valves in series with one valve in the drywell and another either outside primary containment or in the wetwell. High energy lines that extend into the wetwell, such as the main steam lines and feedwater lines, are encapsulated by guard pipes to direct energy to the drywell in case of a piping rupture. Electrical penetrations are sealed with a high strength/density material that will prevent leakage as well as provide radiation shielding. Operational experience has shown that the leak tightness of the drywell has maintained well below the allowable leakage limits. In fact, the calculated drywell bypass leakage area is of such a small magnitude that containment design pressure could not be exceeded even if containment spray and heat sinks were not available. The technical specification limit of 10% of the maximum allowable leakage path area provides margin for degradation. Drywell performance data to date suggest that drywell degradation, even during a ten-year interval between tests, will not exceed this margin.

Further, an analysis was conducted to determine the potential risk to the public from unacceptable drywell bypass leakage going undetected as a result of the proposed change. Based on this analysis, under several different accident scenarios, the risk of radioactivity release from containment was found to be negligible, about 10^{-9} per year.

Based on the above, Illinois Power has concluded that the proposed change will not result in a significant increase in the consequences of any accident previously evaluated.

(2) The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that could contribute to initiation of any accidents. Thus, the proposed change cannot create the possibility of an accident not previously evaluated.

(3) The proposed change only affects the frequency of measuring the drywell leakage and does not change the bypass leakage limit for the drywell. However, the proposed change can increase the probability that a large increase in drywell bypass leakage could go undetected for an extended period of time. Operational experience has shown that the leak tightness of the drywell has been maintained well below the allowable leakage limits. In fact, the calculated drywell bypass leakage area is of such a small magnitude that containment design pressure could not be exceeded even if containment spray and heat sinks were not available. Further, an analysis was conducted to determine the potential risk to the public from the proposed change. Based on this analysis, under several different accident scenarios, the risk of radioactivity release from containment was found to be negligible, about 10^{-9} per year. As a result, Illinois Power has concluded that the proposed change will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Leah Manning Stetzner, Vice President, General Counsel, and Corporate Secretary, 500 South 27th St., Decatur, IL 62525.

NRC Project Director: John N. Hannon.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: August 12, 1994.

Description of amendment request: The proposed amendment would modify Clinton Power Station Technical Specifications 3/4.3.1, "Reactor Protection System Instrumentation," 3/4.3.2, "Containment and Reactor Vessel Isolation Control System," 3/4.3.3, "Emergency Core Cooling System Actuation Instrumentation," 3/4.3.4.2, "End-of-Cycle Recirculation Pump Trip System Instrumentation," 3/4.3.5, "Reactor Core Isolation Cooling System Actuation Instrumentation," 3/4.4.2.1, "Safety/Relief Valves," and 3/4.4.2.2, "Safety/Relief Valves Low-Low Set Function." These technical specifications contain requirements to perform manual testing of the associated solid-state logic at least once every four fuel cycles. This testing is in addition to the automatic testing performed by the self-test system. Due to the negative impact on plant safety caused by the need to remove systems from service to prevent unwanted actuations and the increased potential for unintended equipment actuation during manual testing, Illinois Power is proposing that the requirement to perform manual testing of the solid-state logic independently from the self-test system be eliminated.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed change does not involve a change to the plant design. The proposed change involves only testing of the solid-state Nuclear Systems Protection System (NSPS) utilizing the self-test system (STS). As identified in Supplement No. 2 to the Clinton Power Station (CPS) Safety Evaluation Report (SSER 2), use of the STS to perform certain surveillance testing required by the plant Technical Specifications is acceptable. However, as noted in SSER 6, portions of the NSPS logic must also be manually tested during each refueling outage independently from the STS such that all NSPS trip/actuation functions are tested independently of the STS at least once every four fuel cycles. The change proposed in this request consists of the elimination of this manual testing of the NSPS logic independently from the STS.

As identified in SSER 6, the purpose of the currently required manual tests is to provide a means to verify operability of the NSPS functional circuits independent of the STS, and thereby (1) detect any failures undetected by the STS and take corrective action to restore proper operation of the NSPS and STS and (2) assuming that no additional failures beyond those identified by the STS are detected during independent logic testing, confirm the validity of the STS test results. The ability of the STS to detect functional failures of the NSPS logic as designed was verified as part of General Electric's independent design verification. In addition, this capability was also verified by testing as part of the preoperational test program as described in Section 14.2.12.1.62 of the CPS Updated Safety Analysis Report (USAR) and during testing performed during the first four refueling outages in accordance with the current Technical Specification testing requirements. Thus, Illinois Power (IP) has concluded that all functional failures undetectable by the STS have been identified and the aforementioned objectives have been satisfied.

Since the proposed change does not alter the plant design or operation, it cannot increase the probability of any accident previously evaluated. This proposed change does involve the NSPS logic which is utilized to actuate systems needed to mitigate the consequences of accidents previously evaluated, however, the proposed change merely eliminates the currently required manual testing independently from the STS once every four fuel cycles. Since the proposed change does not alter the NSPS logic, does not impact operation of the STS, and continues to require adequate testing of the NSPS logic on a frequency sufficient to maintain the operability of the associated NSPS logic, the proposed change cannot impact the reliability of the associated actuation instrumentation and therefore

cannot increase the consequences of any accident previously evaluated.

(2) Adequate testing of the NSPS logic will continue to be required. The proposed change continues to allow us of the STS in performing surveillance tests as documented by the NRC in SSER 2. However, additional manual tests independently from the STS will no longer be required. Since the proposed change does not add additional testing configurations or operating modes nor does it alter the plant design, it will not introduce any new failure modes. Thus, this proposed change cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Performance of the currently required manual testing of the NSPS logic independently from the STS system involves actuation logic for the reactor protection system, emergency core cooling systems (ECCS), reactor core isolation cooling system, automatic depressurization system, nuclear steam supply shutoff system, and the residual heat removal (RHR) system, including the shutdown cooling mode of operation. Performance of these tests requires these systems to be disabled to prevent unwanted system actuations. Thus, these systems are rendered inoperable during this testing. This also results in extensive temporary reconfiguration of systems and actuation instrumentation, including logic card removal, installation of signal simulators, disconnecting load drivers, etc. The removal of these safety systems from service to perform this testing results in reduced availability of RPS, ECCS, and RHR shutdown cooling systems during the plant outage. In addition to the intentional disabling of equipment to perform this testing, this testing has in the past led to safety system unavailability due to equipment damage caused by bending pin connectors and burning circuit cards out due to electrical shorting. Further, CPS has experienced unintentional equipment actuations resulting in unnecessary challenges to safety systems and the need to file licensee event reports with the NRC. IP has concluded that elimination of this currently required manual testing of the NSPS will have a positive impact on overall plant safety.

The only margin of safety that could be negatively impacted by this proposed change is the potential for a functional failure in the NSPS logic going undetected. The manual tests proposed for deletion are only required to be performed at least once every four fuel cycles. In addition, the ability of the STS to detect functional failures of the NSPS logic as designed was verified as part of General Electric's independent design verification. Further, this capability was also verified as part of the preoperational test program as described in Section 14.2.12.1.62 of the CPS Updated Safety Analysis Report (USAR) and subsequently during testing performing during the first four refueling outages. These manual tests did not identify any functional failures of the NSPS logic which would be expected to be detected by the STS per its design. All other functional failures undetectable by the STS have been identified as Untested Islands (UTIs). Thus, the original objectives of this testing have been satisfied.

The proposed change will continue to require testing at refueling outage intervals. As identified in USAR Section 7.2.1.1.4.8 and SSER 6, circuits which are not capable of being tested by the STS are identified as UTIs. General Electric and IP have identified, via analysis and manual testing, all UTIs in the functional NSPS logic and have established procedures for testing these UTIs. Periodic verification of the operability of these UTIs will continue to be performed at the frequencies recommended by the manufacturer as accepted by the NRC in SSER 6. These frequencies were established by the manufacturer based on mean time between failure analyses for the components in the associated circuits and may be as long as six years. Based on the above, the functional operability of the NSPS logic is adequately assured.

From the above, IP has concluded that the proposed change will result in a net increase in the overall margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Leah Manning Stetzner, Vice President, General Counsel, and Corporate Secretary, 500 South 27th St., Decatur, IL 62525.

NRC Project Director: John N. Hannon.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald D. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: April 6, 1994.

Description of amendment requests: The proposed amendments would remove the license condition reference to Table 1 of the Fire Protection Safety Evaluation Report (SER) for Cook Nuclear Plant, approved on June 4, 1979, and issued under a cover letter dated July 31, 1979. Table 1 of the 1979 First Protection SER is a schedule for completion of 23 modifications which have since been completed. Three of the modifications (Nos. 7C, 9, & 20) have been changed since the 1979 Fire Protection SER.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

This update of the fire protection modifications contained in Table 1 of the July 31, 1979, fire protection SER does not involve a significant increase in the probability or consequences of an accident previously analyzed as follows:

Item 7C—The use of an air compressor rather than the cascade recharging stations does not adversely impact the ability to supply breathing air for the fire brigade and is acceptable under BTP APCSB 9.5–1.

Item 9—the use of unrated metal batches has been accepted by the NRC in a SER date June 17, 1988.

Item 20—The new fire pumps have already been accepted by the NRC in the SER dated March 31, 1993, Amendment Nos. 171 and 154. The retirement of the old screenhouse diesel driven fire pumps is based on the availability of another supply of "backup" fire suppression water.

Criterion 2

This update of the fire protection modifications contained in Table 1 of the July 31, 1979, fire protection SER does not create the possibility of a new or different kind of accident from any accident previously evaulated as follows:

Item 7C—The use of the an air compressor rather than the cascade recharging stations does not adversely impact the ability to supply breathing air for the fire brigade and is acceptable under BTP APCSB 9.5–1

Item 9—The use of unrated metal batches has been accepted by the NRC in a SER dated June 17, 1988.

Item 20—The new fire pumps have already been accepted by the NRC in the SER dated March 31, 1993, Amendment Nos. 171 and 154. The retirement of the old screenhouse diesel driven fire pumps is based on the availability of another supply of "backup" fire suppression water.

Criterion 3

This update of the fire protection modifications contained in Table 1 of the July 31, 1979, fire protection SER does not involve a significant reduction in a margin of safety as follows:

Item 7C—The use of an air compressor rather than the cascade recharging stations does not adversely impact the ability to supply breathing air for the fire brigade and is acceptable under BTP APCSB 9.5–1. Filled spare breathing air bottles are on-site and the local municipal department will provide assistance as needed.

Item 9—The use of unrated metal batches has been accepted by the NRC in a SER dated June 17, 1988.

Item 20—The new fire pumps have already been accepted by the NRC in the SER dated March 31, 1993, Amendment Nos. 171 and 154. The retirement of the old screenhouse diesel driven fire pumps is based on the availability of another supply of "backup" fire suppression water.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

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amendment requests involve no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Ledyard B Marsh

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: July 19, 1994

Description of amendment request: The proposed amendments would revise the technical specifications by removing the specific scheduling requirements for Types A, B, and C tests and replacing these requirements with a requirement to perform Types A, B, and C testing in accordance with Appendix J to 10 CFR 50.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

This amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes to the T/Ss do not affect the assumptions, parameters, or results of any UFSAR accident analysis. The proposed changes do not modify the response of the containment during a design basis accident. The proposed amendment does not add or modify any existing equipment. The proposed Types A, B, and C testing schedules will be consistent with Appendix J to 10 CFR 50. Based on these considerations, it is concluded that the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

The proposed changes do not involve physical changes to the plant or changes in plant operating configuration. The proposed changes only remove the restrictive schedular requirements for conducting Type A testing from the T/Ss and substitute the schedule specified in Appendix J to 10 CFR 50. For Types B and C testing, the schedular requirements are removed from T/Ss because they are already specified in Appendix J to 10 CFR 50. Thus, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

The margin for safety presently provided is not reduced by the proposed change in the schedular requirements for Type A tests. Types B and C schedular requirements are not changed by removing them from T/Ss. Although the changes allow more flexibility in scheduling Type A tests, the proposed amendment continues to ensure reactor containment system reliability by periodic testing in full compliance with 10 CFR 50, Appendix J. Based on these considerations, it is concluded that the changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Ledyard B. Marsh.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: July 26, 1994.

Description of amendment request: The proposed amendments would modify the technical specifications such that the requirement to measure the moderator temperature coefficient near the end of the cycle will become conditional. The test will not be performed if specified core performance benchmark criteria are met for the operating cycle, and the revised predicted moderator temperature coefficient is less negative than the moderator temperature coefficient surveillance limit presented in the Core Operation Limits Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

Does the EOL MTC measurement conditional exemption involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The conditional exemption of the most negative MTC measurement does not change the most negative MTC surveillance and LCO limits in the T/Ss. Since these MTC values are unchanged, and since the basis for the derivation of these values from the safety analysis MDC is unchanged, the constant MDC assumed for the FSAR safety analyses will also remain unchanged. Therefore, no change in the modeling (i.e., probabilities) of the accident analysis conditions or response is necessary in order to implement the change to the conditional exemption methodology. In addition, since the constant MDC assumed in the safety analyses is not changed by the conditional exemption of the most negative MTC surveillance measurement, the consequences of an accident previously evaluated in the FSAR are not increased. The dose predictions presented in the FSAR for a SGTR remain valid such that more severe consequences will not occur. Additionally, since mass and energy releases for LOCA and steamline break are not increased as a result of the unchanged MDC, the dose predications for these events presented in the FSAR also remain bounding.

Criterion 2

Does the EOL MTC measurement conditional exemption create the possibility of a new or different kind of accident from any accident previously evaluated?

No. Since the EOL MTC is not changed by the conditional exemption methodology of Reference 1, the possibility of an accident which is different than any already evaluated in the FSAR has not been created. No new or different failure modes have been defined for any system or component nor has any new limiting single failure been identified. Conservative assumptions for MDC have already been modeled in the FSAR analyses. These assumptions will remain valid since the conditional exemption methodology documented in Reference 1 does not change the safety analysis MDC nor the T/S values of the MTC.

Criterion 3

Does the EOL MTC measurement conditional exemption involve a significant reduction in a margin of safety?

No. The evaluation of the conditional exemption methodology documented in Reference 1 has taken into account the applicable Cook Nuclear Plant Units 1 and 2 T/Ss and has bounded the conditions under which the specifications permit operation. The applicable T/Ss are surveillance 4.1.1.4, and reference "e" is added to the list of references in Specification 6.9.1.11.2. An additional specification 6.9.1.12 is added to define the requirements for the "Most Negative Moderator Temperature Coefficient Limit Report," which is described in Appendices A, C, and D of Reference 1. The COLR has also been modified as described in Appendix B of Reference 1. The analyses which support these T/Ss have been evaluated. The results, as presented in the FSAR, remain bounding since the MDC assumed in the safety analyses and the LCO and surveillance requirement MTCs in the T/Ss remain unchanged. Therefore, the margin of safety, as defined in the bases to these T/Ss, is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Ledyard B. Marsh.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: August 26, 1994

Description of amendment request: The proposed amendment to Technical Specification 4.3.3.c(1) would allow a one-time extension of the 10 year service period for the Primary Containment Integrated Leakage Rate (Type A) Test. Specifically, the proposed one-time only change would extend the 10-year service interval requirement for performance of the Type A test to correspond with the end of the current inservice inspection interval (ISI). The interval extension would avoid the necessity of performing an additional Type A test only 22 months after the previous test. This would result in an extension of the second interval from 10 years to approximately 14 years and 46 months between the second and third test.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed extension of the Type A test 10-year service interval does not increase the chances for a previously analyzed accident to occur. Containment integrity is required for the mitigation of accident consequences. Furthermore, containment leakage is not the precursor to any analyzed event. Extension of the Type A test surveillance interval will not affect the containment's ability to maintain leakage below that assumed in the safety analysis. The previous Type A test was completed successfully and no plant modifications have been made or are planned (other than those that require Type B or C testing) since the last test which could directly affect the test results. Type B and C testing of individual penetrations has been satisfactory and will continue to be performed in accordance with the Technical Specifications. There have been no pressure or temperature excursions in the containment which could have adversely affected containment integrity. Hence, the ability of containment to maintain leakage within the Type A test limits be maintained.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed one-time extension of the Type A test 10-year service interval will not affect the test methodology or acceptance criteria nor does it alter the physical containment structure or boundary in any way. There will be no addition or removal of plant hardware. No new plant operating modes are being introduced. Results of the previous Type A tests are well below allowable limits, and there have been no plant modifications (other than those that require Type B or C testing) since the last test nor are any planned, that could directly impact the previous Type A test results.

Therefore, the proposed change will not create the possibility of a new or different accident from any previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

Safety margins are established through the Nine Mile Point Unit 1 safety analyses as reflected in the Technical Specification Limiting Conditions for Operation. Containment leak rates assumed in the safety analyses are not increased by the proposed change to the Type A test 10-year service interval. The acceptance criteria which must be met to verify that leak rates remain within assumed values will not be changed.

Although the test frequency will be relaxed for the one-time extension, no plant modifications have been made or are planned which would invalidate the last Type A leak test results which confirm acceptable containment integrity. Furthermore, Type B and C testing of individual penetrations has been satisfactory and will continue to be performed in accordance with the Technical Specifications to assure that containment integrity is maintained.

Therefore, the proposed change will not involve a significant reduction in a margin of a safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, NY 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: Michael J. Case.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: August 26, 1994.

Description of amendment request: The proposed change would revise Technical Specification (TS) Section 3/4.6.1.3, "Primary Containment Air Locks." Specifically, TS 3/4.6.1.3 would be revised to allow continued plant operation if an interlock becomes inoperable as long as an operable door is locked shut and periodically checked as being locked shut.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The primary containment and containment air locks are not initiators or precursors to an accident. Primary containment integrity ensures that the release of radioactive materials from the containment will be restricted to those leakage paths and associated leak rates assumed in the accident analyses. Therefore, the proposed changes to the air lock ACTION statements cannot affect the probability of a previously evaluated accident.

The purpose of a primary containment air lock interlock is to allow only one door to be opened at a time in each penetration. This provision ensures that a gross breach of primary containment does not exist when primary containment is required to be operable. Closure of a single door in each air lock is sufficient to provide a leak tight barrier following postulated events. If an air lock interlock is inoperable, the proposed ACTION requires that an operable door be locked shut and periodically verified locked and shut. This assures that at least one air lock door is closed, which provides the function of the interlock, thereby assuring containment integrity is maintained. Therefore, the proposed change will not significantly increase the consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the primary containment air lock specification will allow

Specifications revises the total POS water

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contained plant operation with an inoperable interlock as long as an operable door is locked closed and periodically verified to be locked closed. The changes do not introduce any new accident precursors and do not involve any alterations to plant configurations which could initiate a new or different kind of accident. The change provides an alternate means of ensuring that only one primary containment air lock door is opened at a time in each penetration. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated.

The operation of Nine Mile Point Unit 2 in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed changes to the primary containment air lock ACTION statements will not affect the ability of the containment to respond to an accident and limit releases to within 10 CFR Part 100 and GDC [General Design Criterion] 19 guidelines. The changes do not affect the design or performance characteristics of the containment or containment air locks but simply provide an alternative means of ensuring that only one air lock door is opened at a time. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: Michael J. Case.

Niagara Mohawk Power Corporation, Docket Nos. 50–220 and 50–410, Nine Mile Point Nuclear Station, Unit Nos. 1 and 2, Oswego County, New York

Date of amendments request: June 9, 1994.

Description of amendments request: The proposed change would revise Section 3.4, "Response Force Capabilities," of the Nine Mile Point Nuclear Station Physical Security Plan with regard to the number of armed Security Force Members comprising the Response Force for each shift.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Units 1 and 2 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment to the Physical Security Plan involves a change in the armed response force size for Units 1 and 2. Nuclear Security's ability to meet the response requirements of 10 CFR [subsection] 73.55(h) will not be significantly affected as was determined utilizing NUREG–0907 while taking into consideration several Security Program enhancements implemented since 1986 when response force size was last reviewed.

The change does not affect the design, function, operation, maintenance or testing of structures, systems and components at Unit 1 or Unit 2. It does not affect safety analysis or any Technical Specification that preserves a safety analysis assumption. Therefore, the proposed amendment will neither increase the probability nor the consequences of an accident previously evaluated.

The operation of Nine Mile Point Units 1 and 2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment to the Physical Security Plan involves a change in the size of the response force for Units 1 and 2. Design, function, operation, maintenance and testing of structures, systems and components at Units 1 and 2 are not affected. Also, as demonstrated using NUREG–0907, Nuclear Security will continue to meet the requirements of 10 CFR [subsection] 73.55(h). Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Units 1 and 2 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed amendment to the Physical Security Plan involves a change in the size of the armed response force for Units 1 and 2. The proposed change has no impact on the physical design of the plants nor on the function or operation of their structures, systems and components. The proposed amendment does not impact and therefore does not reduce the margin of safety as defined in the basis for any Unit 1 or Unit 2 Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: Michael J. Case.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: September 1, 1994.

Description of amendment request: The proposed amendment would revise Technical Specifications concerning the Reactor Coolant System Volume (RCS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

* * * The proposed change does not involve an SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Section 5.4.2 of the Millstone Unit No. 2 Technical Specifications revises the total RCS water and steam volume to reflect the installation of new steam generators. Section 5.0 of the Millstone Unit No. 2 Technical Specifications delineates design features for Millstone Unit No. 2. The proposed change does not modify a limiting condition for operation, action statement, or surveillance requirement. Additionally, the proposed change does not revise the manner in which the plant is operated. It simply revises the value delineated for the total RCS water and steam volume.

The steam generator replacement modifications were addressed in a plant design change request performed in accordance with the requirements of 10 CFR 50.59. NNECO concluded that the replacement of the steam generators did not involve an unreviewed safety question. This proposed change is a result of those modifications.

Based on the above, the proposed change to Section 5.4.2 of the Millstone Unit No. 2 Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change to Section 5.4.2 of the Millstone Unit No. 2 Technical Specifications simply revises the total RCS water and steam volume to reflect the installation of new steam generators. It does not modify the manner in which any plant equipment or systems are operated. Thus, the proposed change to Section 5.4.2 of the Millstone Unit No. 2 Technical Specifications does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

The proposed change to Section 5.4.2 of the Millstone Unit No. 2 Technical Specifications revises the total RCS water and steam volume to reflect the installation of new steam generators. The steam generator replacement modifications were addressed in a plant design change request performed in accordance with the requirements of 10 CFR 50.59. NNECO concluded that the replacement of the steam generators did not involve an unreviewed safety question.

Based on the above, the proposed change to Section 5.4.2 of the Millstone Unit No. 2 Technical Specifications does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L.M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141–0270.

NRC Project Director: John F. Stolz

Pennsylvania Power and Light Company, Docket Nos. 50–387 and 50–388 Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: August 22, 1994.

Description of amendment request: The proposed amendment would change Technical Specifications 3/4.1.3: to extend the scram discharge volume (SDV) vent or drain valve restoration time from the current time period of 24 hours to 7 days; to permit the SDV vent and drain valves operability check to be performed at shutdown conditions instead of at least once per 18 months; and to delete the SDV float switch response surveillance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. This proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Technical Specification 3.1.3.1.d, which extends the restoration time for one inoperable vent and/or drain valve from 24 hours to 7 days, does not significantly increase the probability or consequences of an accident previously evaluated. A 7 day restoration time, as identified in NUREG 1433, is reasonable given the level of redundancy in the lines and the low probability of a scram occurring while the valve is inoperable and the line is not isolated. If the inoperable valve fails open, the redundant valve in the line allows for leakage from the CRD [control rod driveline] to be drained out and also allows for the line to be isolated if necessary. If the valve fails closed, the line becomes isolated. However, float switches and pressure sensors will notify operators of water buildup in the instrument volume. A review of the surveillance data indicates the vent and drain valves rarely fail the initial operability test and require rework. The low failure rate combined with the redundancy of the valves makes for a highly reliable system. Therefore, the proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

Changing Surveillance Requirement 4.1.3.1.4.a from requiring demonstration of the SDV vent and drain valve operability during a scram at less than or equal to 50% rod density to a requirement to perform the testing at shutdown conditions does not significantly increase the probability or consequences of an accident previously evaluated. The purpose of the 50% rod density requirement is to provide a test environment having typical reactor coolant pressure and temperature conditions. However, the closure time of the vent and/or drain valves is not affected by pressure and any variations due to temperature are relatively insignificant. Therefore, testing from shutdown conditions ensures the safety functions of the vent and drain valves are met. Also, the proposed change does not affect system design or operation. Therefore, the proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

The deletion of Surveillance Requirement 4.1.3.1.4.b, requiring proper float switch response by verifying float switch actuation after a scram, does not significantly increase the probability or consequences of an accident previously evaluated. Design changes eliminated the high differential pressure experienced by the float switches after a scram and provide redundant level measuring instrumentation. Differential pressure gauges were added in addition to the float switches to provide the RPS [reactor system protection] logic with a diverse and redundant means of measuring SDIV [SDV] level. The changes have resulted in no crushed ball floats at SSES after a scram. The proposed change will have a negligible effect [on] the reliability of the system and therefore, does not significantly increase the probability or consequences of an accident previously evaluated.

II. This proposal does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to Technical Specification 3.1.3.1.d, which extends the restoration time for one inoperable vent and/or one inoperable drain valve from 24 hours to 7 days, does not create the possibility of a new or different kind of accident from any accident previously evaluated. Extending the restoration time to 7 days does not change the design purpose or operation of the SDV valves. Therefore, the change is bounded by the existing accident analysis.

Changing Surveillance Requirement 4.1.3.1.4.a from requiring demonstration of the SDV vent and drain valve operability during a scram at less than or equal to 50% rod density to a requirement to perform the testing at shutdown conditions does not create the possibility of a new or different kind of accident from any accident previously evaluated. Performing the surveillance from shutdown conditions, as recommended in NUREG 1366, ensures that the operability of the SDV is maintained. No new failure modes are introduced by the change and the change is bounded by the existing accident analysis.

The deletion of Surveillance Requirement 4.1.3.1.4.b, requiring proper float switch response by verifying float switch actuation after a scram, does not create the possibility of a new or different kind of accident from any accident previously evaluated. The role of the ball floats to sense increases in SDV water level is not affected by the change. In the unlikely event that crushing of the ball float were to occur, redundant level measuring devices would maintain system function and the existing 92 day surveillance activity would identify a ball float failure.

III. This change does not involve a significant reduction in a margin of safety.

The proposed change to Technical Specification 3.1.3.1.d, which extends the restoration time for one inoperable vent and/or one inoperable drain valve from 24 hours to 7 days, does not involve a significant reduction in a margin of safety. A 7 day completion time, as identified in NUREG 1433, is reasonable given the level of redundancy in the lines and the low probability of a scram occurring while the valve is inoperable and the line is not isolated. Also, a separate Technical Specification (3.1.3.1.e) addresses the potential for two inoperable vent or drain valves in the same line.

Changing Surveillance Requirement 4.1.3.1.4.a from requiring demonstration of the SDV vent and drain valve operability during a scram at less than or equal to 50% rod density to a requirement to perform the testing at shutdown conditions does not involve a significant reduction in a margin of safety. The change maintains the intent of S.R. 4.1.3.1.4.a by performing equivalent testing at the same frequency. The change increases the margin of safety by eliminating potential future scrams taken to meet S.R. 4.1.3.1.4.a., thus reducing the potential for safety challenges.

The deletion of Surveillance Requirement 4.1.3.1.4.b, requiring proper float switch response by verifying float switch actuation after a scram does not involve a significant reduction in a margin of safety. Design changes have enhanced the SDV design and provide a redundant and diverse means of monitoring SDV level. Also, a 92-day surveillance (S.R. 4.3.1.1) ensures the operability of the float switch.

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The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Mohan Thadani (Acting).

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: December 30, 1993, June 3, 1994, and August 25, 1994.

Description of amendment requests: The licensee proposes to replace the current Technical Specifications (TS) with a set of TS based on the CE Owners Group Improved Standard Technical Specifications issued by the NRC staff as NUREG–1432 in September 1992. The adoption of Owners Group-approved TS is part of an industry-wide initiative to standardize and improve TS. San Onofre, Units 2 and 3, is the lead plant for adoption of the CE Owners Group standardized TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change relocates requirements and surveillances for structures, systems, components or variables which did not meet the criteria for inclusion in Technical Specifications. The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components or variables will be relocated from the Technical Specifications to the Licensee Controlled Specifications or the UFSAR [updated final safety analysis report]. These operability requirements and surveillances will continue to be maintained pursuant to 10 CFR 50.59. In addition, the affected structures, systems, components or variables are addressed in existing surveillance procedures which are controlled by 10 CFR 50.59. The reformatting and rewording process involves no technical changes to plant design or operations. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will not impose any different requirements and adequate control of information will be maintained. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety because it has no impact on any safety analyses assumptions. In addition, the affected structure, system, component or variable requirements and surveillances are the same as the existing Technical Specifications. Since any future changes to these requirements in the Licensee Controlled Specifications or UFSAR in the surveillance procedures will be evaluated per the requirements of 10 CFR 50.59, no significant reduction in a margin of safety will be allowed. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Attorney for licensee: T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770.

NRC Project Director: Theodore R. Quay.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: August 17, 1994.

Description of amendments request: The proposed amendment would modify Surveillance Requirement 4.3.1.2, Reactor Trip System Instrumentation, and Surveillance Requirement 4.3.2.1, Engineered Safety Feature Actuation System Instrumentation, to eliminate the periodic pressure sensor response time testing requirements. The Surveillance Requirements would indicate that the total channel response time will be periodically "verified" instead of "tested".

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change to the Technical Specifications does not result in a condition where the design, material, and construction standards that were applicable prior to the change are altered. The same RTS and ESFAS instrumentation is being used; the time response allocations/modeling assumptions in the FSAR Chapter 15 analyses are still the same; only the method of verifying time response is changed. Periodic calibration of these pressure and differential pressure instruments will detect significant degradation in the sensor response characteristic and assure equipment operability. Flushing of selected sensing lines during each refueling outage as recommended by NUREG/CR5851, "Long Term Performance and Aging Characteristics of Nuclear Plant Pressure Transmitters," will mitigate sensing line response time degradation due to blockage that noise analysis testing techniques would have previously detected. The proposed change will not modify any system interface and could not increase the likelihood of an accident since these events are independent of this change. The proposed activity will not change, degrade or prevent actions or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the FSAR. Therefore, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change does not alter the performance of the pressure and differential pressure transmitters and switches used in the plant protection systems. All sensors will still have response time verified by test before placing the sensors in operational service and after any maintenance that could affect response time. Changing the method of periodically verifying instrument response for certain sensors from time response testing to calibration will not create any new accident initiators or scenarios. Implementation of the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendment does not involve a significant reduction in margin of safety.

This change does not affect the total system response time assumed in the safety analysis. The periodic system response time verification method for selected pressure and differential pressure sensors is modified to allow use of actual test data or engineering data. The method of verification combined with sensing line preventative maintenance provides assurance that the total system response is within the time limit defined in the safety analysis, since calibration tests will detect any degradation which might significantly affect pressure sensor response time and periodic sensing line flushing will minimize the potential for long-term buildup of contaminants which may impact sensing line response. Based on the above, it is concluded that the proposed license amendment request does not result in a reduction in margin with respect to plant safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302.

Attorney for licensee: James H. Miller, III, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Project Director: David B. Matthews.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: March 30, 1994 (TS 318).

Description of amendment request: The proposed amendment consists of six parts, which the licensee has designated "A" through "F" in the analysis of no significant hazards considerations presented below. The six parts are:

A. Mechanical pressure and differential pressure indicating switches in the Reactor Protection System (RPS) and Emergency Core Cooling System (ECCS) are being replaced with an Analog Transmitter/Trip System (ATTS) for the Browns Ferry Nuclear Plant (BFN) Unit 3.

B. The BFN Units 1 and 3 reactor vessel water level safety limit is being revised to reflect the analytical limit provided by General Electric and the Level 1 Low Reactor Vessel Water Level setpoint is being revised to provide a more conservative limit.

C. For BFN Unit 2, RPS and ECCS instrument identifiers are being added or corrected to enhance useability of the Technical Specifications. These changes do not reflect a change in equipment, operation of the associated system, or the safety function of that system.

D. For BFN Unit 2, Reactor High Water Level, Reactor Core Isolation Cooling (RCIC) and High Pressure Coolant Injection (HPCI) Turbine Steam Line High Flow, and Drywell Pressure instrumentation calibration frequencies and functional test descriptions are being revised to reflect current calculations and test methods. These changes do not reflect a change in equipment, operation of the associated system, or the safety function of that system.

E. For BFN Units 1, 2, and 3, the differential pressure instrumentation, which actuates the pressure suppression chamber-reactor building vacuum breakers, calibration frequency is being revised. In addition, tables that specify the minimum number of instrument channels per trip system, function, trip level setting, actions required, remarks, functional test, and instrument check are being added.

F. Corrects the capitalization of terms used on the affected BFN Units 1, 2, and 3 TS pages in order to conform with the current TS Definitions section. This part also corrects spelling and capitalization of other words on the same pages.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Part A: The Unit 3 modification, which involves the installation of an Analog Transmitter/Trip System (ATTS), replaces older devices with devices of more modern design that perform the same function.

The initiation of control rod insertion to mitigate a design basis accident is contained in Chapter 14 of the BFN Final Safety Analysis Report (FSAR). There is no change in design bases, protective function (initiation of control rod insertion), redundancy, setpoints, or logic associated with the installation of the ATTS. The consequences of a failure of this equipment are no different than that of the original equipment. Since there is no change in any protective functions, nor the creation of any new operational conditions, the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Part B: The revision to the Units 1 and 3 reactor vessel water level safety limit and the Level 1 low reactor vessel water level setpoint do not reflect any change in plant equipment. The safety limit is being changed to reflect the actual analytical safety limit calculated by General Electric.

The Level 1 low reactor vessel water level trip initiates the Core Spray and Low Pressure Coolant Injection Systems and isolates the Main Steam lines. These actions are taken to mitigate the consequences of a Loss of Coolant Accident. The change in the setpoint affects the timing of the operation of equipment necessary to mitigate the consequences of an accident. A setpoint calculation has been generated which ensures these safety functions are initiated in accordance with the design basis accident analysis presented in Chapter 14 of the Browns Ferry FSAR. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Part C: The addition or correction of Unit 2 instrument identifiers is administrative in nature and does not reflect any modification to plant equipment. These administrative changes do not reflect any change to any precursor for the design basis events or operational transients analyzed in the Browns Ferry FSAR. There is also no change to any protective function or mitigating action for the design basis events or operational transients analyzed in the Browns Ferry FSAR. Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

Part D: The change in Unit 2 reactor high water level and Reactor Core Isolation Cooling (RCIC) instrumentation functional test descriptions reflects the equipment currently installed and the functional tests currently being performed.

The changes in calibration frequencies are being made to reflect current setpoint calculations. There are no modifications to plant equipment or changes in instrument setpoints associated with these changes. The calibration frequencies specified by the current setpoint calculations ensure that the associated safety functions are initiated in accordance with the design basis accident analysis presented in Chapter 14 of the Browns Ferry Final Safety Analysis Report (FSAR). Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

Part E: The changes in Units 1, 2, and 3 calibration frequency for the differential pressure instrumentation, which actuates the pressure suppression chamber-reactor building vacuum breakers, is being made to reflect current setpoint calculations. The specified minimum number of instrument channels per trip system, function, trip level setting, actions required, remarks, functional test, and instrument check reflect current operational requirements. There are no modifications to plant equipment or changes in instrument setpoints associated with these changes. The calibration frequencies specified by the current setpoint calculations ensure that the associated safety functions are initiated in accordance with the design basis accident analysis presented in Chapter 14 of the Browns Ferry Final Safety Analysis Report (FSAR). Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

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Part F: The proposed correction of the capitalization of terms in order to conform with the current TS Definitions section is administrative in nature and does not reflect any modification to plant equipment. The correction of spelling and capitalization of other words on the same pages is also administrative in nature and does not reflect any modification to plant equipment. These administrative changes do not reflect any change to any precursor for the design basis events or operational transients analyzed in the Browns Ferry FSAR. There is also no change to any protective function or mitigating action for the design basis events or operational transients analyzed in the Browns Ferry FSAR. Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Part A: The installation of the ATTS replaces older devices with devices of more modern design that perform the same function. No new control functions are added. No credible equipment failure modes or single failure are introduced which could result in the inability of redundant safety components or systems to perform their safety functions in accordance with the design basis accident analysis presented in Chapter 14 of the Browns Ferry FSAR. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Part B: The revision to the Units 1 and 3 reactor vessel water level safety limit and the Level 1 low reactor vessel water level setpoint do not reflect any change in plant equipment. The safety limit is being changed to reflect the actual analytical safety limit calculated by General Electric.

The change in the Level 1 low reactor vessel water level setpoint affects the timing of the operation of equipment necessary to mitigate the consequences of an accident. No new failure modes or system interactions are introduced. The same protection functions will still occur at the Level 1 low reactor water level setpoint. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Part C: The addition or correction of Unit 2 instrument identifiers is administrative in nature and does not reflect any modification to plant equipment. The correction of instrument identifiers does not require new system alignments, modifications, or changes in operating procedures. Therefore, no new external threats, system interactions, release pathways, equipment failure modes, or types of operator errors are created. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Part D: The change in Unit 2 reactor high water level and RCIC instrumentation functional test descriptions reflects the equipment currently installed and the functional tests currently being performed. The changes in calibration frequencies are being made to reflect current setpoint calculations. There are no modifications to plant equipment or changes in instrument setpoints associated with these changes. No new failure modes or system interactions are introduced. The same protection functions will still occur at the same setpoints. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Part E: The changes in Units 1, 2, and 3 calibration frequency for the differential pressure instrumentation, which actuates the pressure suppression chamber-reactor building vacuum breakers, is being made to reflect current setpoint calculations. The specified minimum number of instrument channels per trip system, function, trip level setting, actions required, remarks, functional test, and instrument check reflect current operational requirements. There are no modifications to plant equipment or changes in instrument setpoints associated with these changes. No new failure modes or system interactions are introduced. The same protection functions will still occur at the same setpoints. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Part F: The proposed correction of the capitalization of terms in order to conform with the current TS Definitions section is administrative in nature and does not reflect any modification to plant equipment. The correction of spelling and capitalization of other words on the same pages is also administrative in nature and does not reflect any modification to plant equipment. The correction of spelling and capitalization does not require new system alignments, modifications, or changes in operating procedures. Therefore, no new external threats, system interactions, release pathways, equipment failure modes, or types of operator errors are created. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

Part A: The installation of the ATTS replaces older devices with devices of more modern design that perform the same function. The replacement equipment will improve reliability, accuracy and response times. There are no changes in the systems' design basis, protective function, or logic arrangement. Instrument setpoints and calibration frequencies are supported by Unit 3 specific calculations. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

Part B: The revision to the Units 1 and 3 reactor vessel water level safety limit and the Level 1 low reactor vessel water level setpoint do not reflect any change in plant equipment. The safety limit is being changed to reflect the actual analytical safety limit calculated by General Electric.

The change in the Level 1 low reactor vessel water level setpoint is supported by a Unit 3 specific setpoint calculation that has been performed in accordance with the methodology endorsed by Regulatory Guide 1.105, Instrument Setpoints for Safety Related Systems. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

Part C: The addition or correction of Unit 2 instrument identifiers is administrative in nature and does not reflect any modification to plant equipment. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

Part D: The change in Unit 2 reactor high water level and RCIC instrumentation functional test descriptions reflects the equipment currently installed and the functional tests currently being performed. The changes in calibration frequencies are being made to reflect Unit 2 specific setpoint calculations. These calculations have been performed in accordance with the methodology endorsed by Regulatory Guide 1.105. There are no modifications to plant equipment or changes in instrument setpoints associated with these changes. No new failure modes or system interactions are introduced. The same protection functions will still occur at the same setpoints. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Part E: The changes in Units 1, 2, and 3 calibration frequency for the differential pressure instrumentation, which actuates the pressure suppression chamber-reactor building vacuum breakers, is being made to reflect current setpoint calculations. The specified minimum number of instrument channels per trip system, function, trip level setting, actions required, remarks, functional test, and instrument check reflect current operational requirements. The setpoint calculations have been performed in accordance with the methodology endorsed by Regulatory Guide 1.105. There are no modifications to plant equipment or changes in instrument setpoints associated with these changes. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

Part F: The proposed correction of the capitalization of terms in order to conform with the current TS Definitions section is administrative in nature and does not reflect any modification to plant equipment. The correction of spelling and capitalization of other words on the same pages is also administrative in nature and does not reflect any modification to plant equipment. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: March 31, 1994 (TS 339).

Description of amendment request: The proposed amendment consists of five parts, which the licensee has designated "A" through "E" in the discussion of no significant hazards considerations, below. These five parts are:

A. For the Browns Ferry Nuclear Plant (BFN) Units 1 and 3, improve operating flexibility by expanding the allowable operating domain. This expansion is accomplished by revising the equations for the flow-biased Average Power Range Monitor (APRM) flux scram trip setting and the APRM rod block trip setting.

B. Revises the Rod Block Monitor (RBM) limiting conditions for operation (LCOs) to require two RBM channels to be operable if the plant is operating with low thermal margins.

C. Miscellaneous editorial changes to the BFN Units 1, 2, and 3 technical specifications (TS).

D. Revises the BFN Units 1, 2, and 3 TS to delete the specific value for the rated loop recirculation flow rate.

E. Revises the BFN Units 1, 2, and 3 TS to relocate the specific equations for the APRM rod block and RBM upscale setpoint equations from the TS to the Core Operating Limits Report (COLR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Part A: The proposed change will permit expansion of the current allowable power/flow operating region to allow operation in the extended load line limit (ELLL) region. Operation of BFN Units 1 and 3 in the ELLL region will not increase the probability of any accident previously evaluated since the Average Power Range Monitor (APRM) system and flow-biased scram setpoint are not identified as initiators of any design basis accidents or transients. Additionally, no credit is taken for the APRM flow biased scram in any accident or transient analyses. Therefore, the proposed change can not significantly increase the probability of an accident previously evaluated.

TVA's analysis of operation in the ELLL region verified that the consequences of previously evaluated accidents are within the acceptance criteria of the licensing basis. Therefore, the proposed change does not involve an increase in the consequences of an accident previously evaluated.

Part B: The proposed change does not increase challenges or create any new challenges to safety-related systems or equipment, or other equipment whose failure could cause an accident. The proposed change does not change the function of the rod block monitor (RBM) subsystem. The RBM subsystem will continue to block control rod withdrawal to ensure that fuel safety limits are protected. The revised RBM limiting conditions for operation and surveillance requirements provide increased assurance that the RBM will function to ensure that fuel safety limits are protected. Therefore, the proposed change does not involve an increase in the probability of an accident previously evaluated.

The revised RBM operability and surveillance requirements provide increased assurance that the RBM will block control rod withdrawal to ensure that fuel safety limits are protected. Accordingly, operation of BFN Units 1 and 3 with the revised RBM upscale setpoint does not involve an increase in the consequences of an accident previously evaluated.

Part C: The miscellaneous editorial changes do not affect any plant operations, equipment, or any safety-related activity. These changes increase the probability that the specifications will be correctly interpreted by adding clarifying information and/or correcting errors. Therefore, these editorial changes do not involve an increase in the probability or consequences of an accident previously evaluated.

Part D: The proposed change will delete the specific value for the rated loop recirculation flow rate found in the limiting safety system settings. This flow rate is in the TS to provide additional information, and is not a TS requirement. The proposed change does not change the limiting safety system settings or alter the method for calculating the settings. The proposed change does not affect or change operation of the plant, plant equipment, or any safety-related equipment. The proposed change does not change the APRM rod block or trip settings, the method or frequency of calibration of the APRM flow biased network, or any other operational features of the APRM system. The proposed change will only delete an incorrect flow rate from the TS. Therefore, the proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

Part E: The proposed change will remove specific equations for the APRM rod block and RBM upscale trip setpoints from the TS and relocate them to the Core Operating Limits Report (COLR). Removing these equations from the TS does not affect or change the APRM and RBM subsystems or the functions of these systems. The proposed change does not affect or change operation of the plant, plant equipment, or any safety-related equipment. Accordingly, the proposed change does not involve an increase in the probability of an accident previously evaluated.

Removing the specific rod block equations from the TS does not change the requirements to comply with the limits of these equations during plant operations, since the TS will reference the COLR as the source of the equations. The actions to be taken in the event of noncompliance with the COLR-specified equations will also remain unchanged. Both the APRM rod block and RBM subsystems will continue to block control rod withdrawal to prevent reactor power from increasing to excess levels and to ensure that applicable limits of the plant safety analysis are met. Additionally, in accordance with the requirements of TS 6.9.1.7, these equations will continue to be developed using NRC-approved methodologies and will continue to ensure that applicable safety limits are protected. Therefore, the proposed change does not involve an increase in the consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Part A: Operation of BFN Unit 1 and 3 in the ELLL region does not create any new failure mode or sequence of events that can lead to an accident of a different type than any previously evaluated. Operation in the ELLL region does not increase challenges or create any new challenges to safety-related systems or equipment, or other equipment whose failure could cause an accident Changing the equation for the flow-biased APRM scram trip setpoint does not change the function of the APRM subsystem. The APRM scram trip setpoint will continue to initiate a scram to ensure that the fuel safety limit is not exceeded. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Part B: The proposed change to the RBM operability and surveillance requirements does not create any new failure mode or sequence of events that can lead to an accident of a different type than any previously evaluated. The proposed change does not increase challenges or create any new challenges to safety-related systems or equipment, or other equipment whose failure could cause an accident. The proposed change does not change the function of the RBM subsystem. The RBM subsystem will continue to block control rod withdrawal to ensure that fuel safety limits are protected. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Part C: The miscellaneous editorial changes do not affect any plant operations, equipment, or any safety-related activity. These changes increase the probability that the specifications will be correctly interpreted by adding clarifying information and/or correcting errors. Therefore, these editorial changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Part D: The proposed change will delete the specific value for the rated loop recirculation flow rate found in a factor used to calculate limiting safety system settings for the APRM rod block and trip settings. The

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proposed change does not change the limiting safety system settings or alter the method for calculating the settings. The proposed change does not affect or change operation of the plant. The proposed change does not change the APRM rod block or trip settings, the method or frequency of calibration of the APRM flow biased network, or any other operational features of the APRM system. The proposed change will only delete an incorrect flow rate that is required to be calculated and maintained outside of the TS.

Since there will be no change in plant operations, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Part E: Removal of the APRM rod block and RBM upscale setpoint equations does not change or affect any safety-related plant equipment or its functions; or any equipment, systems, or setpoints designed to prevent or mitigate accidents. Removing these rod block equations does not create any new challenges to safety-related systems or equipment, or other equipment whose failure could cause an accident; and does not change the function and manner of operation of the APRM or RBM subsystems. The APRM and RBM subsystems will continue to block control rod withdrawal to prevent reactor power from increasing to excess levels and to ensure that fuel safety limits are protected. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

Part A: Operation of BFN Units 1 and 3 in the ELLL region does not affect the ability of the plant safety-related trips or equipment to perform their intended functions. Operation in the ELLL region will not cause any significant increase in offsite radiation doses resulting from any analyzed event. Although this change increases the APRM flow-biased scram equation, no credit is taken for this equation in the accident analyses. These analyses assume that transient events initiated from less than rated conditions are terminated by the fixed 120% flux scram or other safety-grade scram signals. These signals are not affected by the proposed change. Additionally, as noted above, TVA's analysis of operation in the ELLL region determined that the consequences of previously evaluated accidents remain within the acceptance criteria of the licensing basis. Therefore, this change does not involve a reduction in a margin of safety.

Part B: The proposed change does not change the function of the RBM system. The RBM system will continue to block control rod withdrawal to ensure that fuel safety limits are protected. The proposed change does not affect plant operation, design, or any safety-related activity or equipment. The proposed change does not affect or change any margin of safety. The proposed change will actually increase the margin of safety by providing more conservative operability and surveillance requirements for the RBM subsystem. Therefore, the proposed change does not involve a reduction in a margin of safety.

Part C: The miscellaneous editorial changes do not affect plant operation, design, or any safety-related activity or equipment. These changes increase the probability that the specifications will be correctly interpreted by adding clarifying information and/or correcting errors. Therefore, these changes do not involve a reduction in a margin of safety.

Part D: The proposed change will delete the specific value for the rated loop recirculation flow rate found in the limiting safety system settings. The proposed change does not change the limiting safety system settings or alter the method for calculating the settings. The proposed change does not affect or change any margin of safety. The proposed change does not alter the APRM rod block or trip settings, nor does it change the combinations of power and flow conditions which could produce the APRM flow biased rod block and scram trips. Furthermore, the value for rated loop recirculation flow rate will continue to be contained in plant procedures which are controlled by the 10 CFR 50.59 process. Therefore, the proposed change does not involve a reduction in a margin of safety.

Part E: The proposed change to remove the APRM rod block and RBM upscale setpoint equations does not change the equations or alter the method for calculating the equations. The proposed change does not change or affect any safety-related plant equipment or its functions; or any equipment, systems, or setpoints designed to prevent or mitigate accidents. Removing these rod block equations does not create any new challenges to safety-related systems or equipment, or other equipment whose failure could cause an accident; and does not change the function and manner of operation of the APRM or RBM subsystems. The requirements of TS 6.9.1.7 will continue to ensure that these equations are developed using NRC-approved methodology, and are consistent with applicable limits of the plant safety analysis. Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: August 9, 1994.

Brief description of amendments: The proposed amendments would revise the technical specifications by eliminating the high negative neutron flux rate trip function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The deletion of the High Negative Neutron Flux Rate trip does not adversely affect the probability of any accident. In fact, the deletion of this reactor trip is expected to reduce the probability of inadvertent reactor trips during surveillance testing.

The only previously evaluated accidents whose consequences could be potentially affected by this change are the dropped rod events. Presently the High Negative Neutron Flux Rate trip function responds to these events by initiating a reactor trip. Analyses of these events, using currently licensed analysis methodologies have demonstrated that this trip function is not necessary. Although the scenarios for the various rod drop events without this trip function differ from the existing event scenarios, the unit will either be safely shutdown or return to an acceptable reactor power level, and as before, DNB does not occur. Therefore, the proposed changes would not have a significant effect on the consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes remove a feature from the Reactor Trip System that is a potential source of inadvertent or unnecessary reactor trips. While the changes delete an accident mitigation feature, they do not add new hardware to the units and do not change plant operations; consequently, no new failure modes are introduced. Therefore, the removal of this trip function cannot create the possibility of an [sic] new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

Because the changes only delete an unnecessary reactor trip and do not actually alter the plant, the proposed changes do not affect the failure values for any system or component. Accident analyses have shown that all relevant, existing event acceptance criteria have been satisfied without taking credit for the deleted reactor trip; therefore, the event acceptance criteria are not being revised. Because neither the failure values nor the acceptance criteria are affected, the proposed changes have no affect on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036.

NRC Project Director: William D. Beckner.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: August 12, 1994.

Brief description of amendments: The proposed amendments would revise the Administrative Controls section of the technical specifications to reflect changes to the licensee's organization, change the submittal due date for the Monthly Operating Report, and delete provisions that will be relocated to other controlled documents.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature and reflect new organizational position titles, reassigned managerial responsibilities, a change in the required submittal due date of the Monthly Operating Report, and the relocation of selected Technical Specification Administrative Controls to licensee controlled documents. The proposed organizational changes include manager position title updates as follows: "Group Vice President, Nuclear Engineering and Operations" changed to "Group Vice President, Nuclear Production"; "Vice President, Nuclear Operation" changed to "Vice President of Nuclear Operations"; and "Shift Supervisor" changed to "Shift Manager". Manager responsibilities remain unchanged except the annual management directive concerning the Shift Supervisor's control room command function which is reassigned to the Group Vice President, Nuclear Production. Additionally, responsibilities of the Vice President, Nuclear Operations and Plant Manager are proposed for reassignment to either the Vice President of Nuclear Operations or the Plant Manager. In all cases, responsibilities will continue to be assigned to appropriately qualified individuals.

The proposed change in the submittal due date of the Monthly Operating Report is to provide additional time to facilitate data compilation and report preparation, review and approval for two operating units. This change does not alter any data or information already reported.

The proposed administrative control relocations include details of minimum shift operations crew staffing, method of onsite and offsite review and audit, selected reportable event actions, review of security and emergency plans and associated implementing procedures, requirements for record retention, and program elements for radiation protection, process control and radiological environmental monitoring. These administrative controls are addressed by other regulatory requirements and are relocated to other licensee documents (i.e., Final Safety Analysis Report, Emergency Plan, Security Plan, Offsite Dose Calculation Manual) which have adequate change control to ensure that intended plant design/safety functions will be maintained. No design basis accidents are affected by these proposed administrative changes as they do not impact nor affect accident analysis assumptions. Therefore, accident analyses assumptions are preserved and there is no change in the probability or consequences of any previously evaluated accident.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to update organizational position titles and reassign responsibilities will not delete any responsibility/function already designated in the Technical Specifications. All given management activities will continue to be performed by qualified individuals. The proposed change in the submittal due date of the Monthly Operating Report does not alter any data or information already reported. The administrative control relocations retain adequate regulatory basis to ensure that intended plant design/safety functions will be maintained. These changes are administrative in nature and do not affect the design or operation of any system, structure, or component in the plant. Accordingly, no new failure modes have been defined for any plant system or component important to safety, nor have any new initiating events been identified as a result of the proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes involve the Administrative Controls Section of the CPSES Units 1 and 2 Technical Specifications and provide for updating organizational position titles, reassigning managerial responsibilities/functions, changing the required submittal due date for the Monthly Operating Report, and relocating administrative controls to other controlled licensee documents. These changes are administrative in nature and do not directly affect any protective boundaries nor impact the safety limits for the protective boundaries. The relocated requirements retain adequate regulatory basis for continued proper administrative review and plant configuration control to ensure that actions prescribed in plant operating procedures are maintained so as not to impact the plant's margin of safety. Therefore, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036.

NRC Project Director: William D. Beckner.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: August 4, 1994.

Description of amendment request: This proposed amendment would reflect changes in the boron dilution accident analysis to address Boron Dilution Mitigation System (BDMS) time delays, the BDMS actuation setpoint uncertainty, and concerns regarding the applicability of the assumed inverse count rate ratio (ICRR) curve. The Technical Specifications include:

a. Changing Bases page 2–8, note** of Table 3.3–1, and note 12 of Table 4.3–1 to reflect "flux multiplication" rather than "flux doubling;"

b. Revising note 9 of Table 4.3–1 to reflect the revised setpoint;

c. Revising Bases page 3/4 4–1 to reflect new analysis assumptions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

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The actuation setpoint decrease and administrative controls to isolate dilution sources if no reactor coolant loop is in operation during Modes 3–5 reflect the new analysis assumptions. The initiating events are presented in FSAR Section 15.4.6. The proposed changes affect only the time required for BDMS to mitigate the event and do not affect the probability of any event initiators.

Overall protection system performance will remain within the bounds of the accident analyses documented in FSAR Chapter 15, WCAP–10961–P, and WCAP–11883 since no hardware changes are proposed.

The BDMS will continue to function in a manner consistent with the above analysis assumptions and the plant design basis. As such, there will be no degradation in the performance of nor an increase in the number of challenges to equipment assumed to function during an accident situation.

These Technical Specification revisions do not involve any hardware changes nor do they affect the probability of any event initiators. There will be no change to normal plant operating parameters or accident mitigation capabilities. Therefore, there will be no increase in the probability of any accident occurring due to the revised analysis.

The results of this new analysis indicate that there is sufficient time for BDMS action to prevent a loss of plant shutdown margin. Since plant shutdown margin is not lost, the minimum DNBR remains well above the safety analysis limit values, no overpressurization occurs and, therefore, there are no fuel failures. The Technical Specification limits on shutdown margin in Modes 3–5 will be met. The conclusions of NRC Generic Letter 85–05 and NSAC–183 remain valid (i.e., that gradual boron dilution events are self-limiting due to inherent reactivity feedback mechanisms). Given the above, there will be no increase in the consequences of any accident.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

As discussed above, there are no hardware changes associated with these Technical Specification revisions nor are there any changes in the method by which any safety-related plant system performs its safety function. The normal manner of plant operation is unaffected.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes. Therefore, the possibility of a new or different type of accident is not created.

(3) Involve a significant reduction in a margin of safety.

The results of the new analysis show that there is sufficient time for BDMS action to prevent a loss of plant shutdown margin. Since plant shutdown margin is not lost, the minimum DNBR remains well above the safety analysis limit values. The Technical Specification limits on shutdown margin in Modes 3–5 will be met. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on DNBR limits, F_Q, F-delta-H, LOCA PCT, peak local power density, or any other margin of safety.

Based upon the preceding information, it has been determined that the proposed changes to the Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety. Therefore, it is concluded that the proposed changes meet the requirements of 10CFR50.92(c) and does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N Hannon.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: August 4, 1994.

Description of amendment request: The proposed amendment would replace Technical Specification (TS) 3/4.6.2.2, Spray Additive System, with a new TS 3/4.6.2.2 entitled Recirculation Fluid pH control (RFPC) System. The associated TS Surveillance Requirements and the Bases would be revised. In addition, the Bases for the Refueling Water Storage Tank (RWST) System will be revised.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the accident analyses documented in FSAR Chapter 15, WCAP–10961–P, and WCAP–11883.

The accidents evaluated in the FSAR that could be affected by this proposed change are those involving the pressurization of the containment and associated flooding of the containment and recirculation of this fluid within the ECCS or the Containment Spray System (i.e., large break LOCA, main steam line break inside containment, and feedwater line break inside containment). The TSP–C will dissolve in the containment sump fluid resulting from these accidents raising the pH of the fluid, which would initially be greater than or equal to 4.0 but less than 7.0 during the injection phase of containment spray operation. The equilibrium spray pH during the recirculation phase resulting from this change will be greater than or equal to 7.1. The pH range for the spray will be bounded by the range of 4.0 to 11.0 in the current FSAR Section 3.11(B) for the postulated spray solution environment. Since the resulting pH level will be closer to neutral using the TSP–C instead of NaOH, post–LOCA corrosion of containment components will not be increased. The results of the current, post–LOCA hydrogen generation calculation will remain bounding. There will not be an adverse radiation dose effect on any safety-related equipment. Thus, the potential for failures of the ECCS or safety-related equipment following a LOCA will not be increased as a result of the proposed change. The radiological consequences of changing from NaOH to TSP–C were reanalyzed using the current NRC methodology presented in Revision 2 of the Standard Review Plan (NUREG–0800) Section 6.5.2. This reanalysis indicates that the proposed change would result in reduced control room doses. Offsite doses would remain less than those currently reported in FSAR Table 15.6–8. The offsite and control room doses will continue to meet the requirements of 10 CFR 100, 10 CFR 50 Appendix A GDC 19, SRP 15.6.5.II, and SRP 6.4.II. The dose reanalysis, combined with knowledge gained from recent studies on the behavior of iodine in the post–LOCA environment, demonstrates that the deletion of the Spray Additive System and replacement with a sump pH control system using TSP–C will not increase the reported radiological consequences of a postulated LOCA. The proposed new pH control system will provide satisfactory retention of iodine in the sump water, as well as provide adequate pH control to minimize the potential of chloride-induced stress corrosion cracking of austenitic stainless steel components.

The Containment Spray System will continue to function in a manner consistent with the plant design basis. There will be no degradation in the performance of nor an increase in the number of challenges to equipment assumed to function during an accident situation.

These Technical Specification revisions do not affect the probability of any event initiators. There will be no change to normal plant operating parameters, ESF actuation setpoints, or accident mitigation capabilities. Therefore, these changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

The new Recirculation Fluid pH Control System is a passive system, i.e., no operator or automatic action is required to actuate the system. There are no active components being added whose failure could prevent the new system from functioning. The only new components being added are the TSP–C storage baskets. Seismic requirements have been included in the design to ensure the structural integrity of the baskets will be maintained during a seismic event.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes. The use of dry sodium phosphates is allowed for adjustment of the post–LOCA sump solution pH as discussed in SRP 6.1.1. Trisodium phosphate has a dissolution rate of 0.7 lbm/ft²-min in water at 160°F (given in WCAP–12477, based on trisodium phosphate in the form of a solid block with no agitation of the solution). The quantity of trisodium phosphate chosen will provide a minimum equilibrium sump pH of 7.1 following dissolution and mixing. No new equipment performance burdens are imposed' however, there is the potential for an unlikely, but possible, event in which an initially concentrated solution of TSP–C occupies the stagnant volume of an inoperable sump. This situation would not last for long since, as the recirculated sump fluid is cooled in the RHR heat exchangers, sufficient buoyancy-driven circulation within containment will result to displace the stagnant solution and eventually yield a uniform, equilibrium solution. Therefore, the possibility of a new or different type of accident is not created.

(3) Involve a significant reduction in a margin of safety.

The radiological analysis performed for this proposed change, as discussed above, shows that there would be no impact on the doses reported in FSAR Table 15.6–8.

There will be no change to the DNBR Correlation Limit, the design DNBR limits, or the safety analysis DNBR limits discussed in Bases Section 2.1.1.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on DNBR limits, F_Q, F–delta–H, LOCA PCT, peak local power density, or any other margin of safety.

Based upon the preceding information, it has been determined that the proposed changes to the Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety. Therefore, it is concluded that the proposed changes meet the requirements of 10 CFR 50.92(c) and do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Washington Public Power Supply System, Docket No. 50–397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: January 6, 1994.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to (1) modify a table notation which would allow reactor protection channels to be placed in an inoperable status for a defined period of time to allow conduct of surveillance testing without requiring entry into the associated limiting condition for operation (LCO) action requirements, and (2) delete the channel check requirements for the "Reactor Steam Dome—High" TS surveillance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

Regarding the proposed modifications to the Instrumentation Section table notations:

1. *Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?*

The proposed revised notations to the TS Instrumentation Section tables clarify the current intent of the table notations by allowing the conduct of surveillance testing without declaring the affected channels inoperable for a limited period of time. In addition, the proposed changes make the wording of the table notations consistent with the Improved Technical Specifications (ITS). The proposed changes do not affect the time that the current notations allow a channel to be placed in an inoperable status, and thus do not affect the probability of an accident previously evaluated. In addition, the proposed changes do not affect the current requirement that redundant instrumentation be operable to accomplish the required function for the channel placed in an inoperable status. Thus, the proposed changes do not affect the consequences of an accident previously evaluated.

2. *Does the amendment create the possibility of a new or different kind of accident from any accident previously evaluated?*

The proposed changes do not affect the operation or availability of equipment from the current TS, and therefore do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. *Does the amendment involve a significant reduction in a margin of safety?*

The margin of safety affected by the proposed changes is the time that instrumentation required for plant protection is unavailable to perform its required function(s). The proposed changes do not affect the time that the instrumentation is allowed to be in an inoperable status during surveillance testing, and thus does not affect the availability of required instrumentation. In addition, the proposed changes do not affect the current requirement that redundant instrumentation remains operable, ensuring the required safety function remains operable during surveillance testing. Thus, the margin of safety is not affected by the proposed changes.

Regarding the proposed removal of the channel check requirement for the "Reactor Vessel Steam Dome Pressure—High" instrumentation:

1. *Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?*

The proposed removal of this channel check requirement would not affect the availability of the trip function associated with the "Reactor Vessel Steam Dome Pressure—High" instrument, since the status of the channels is monitored by existing annunciators. This ensures the instruments remain capable of performing their intended function.

2. *Does the amendment create the possibility of a new or different kind of accident from any accident previously evaluated?*

The proposed change does not involve a physical modification to the facility or its equipment, nor does it result in a change in the reliability of the equipment. The proposed change does not, therefore, create the possibility of a new or different kind of accident from any accident previously evaluated.

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3. *Does the amendment involve a significant reduction in a margin of safety?*

The margin of safety associated with not performing channel checks on the "Reactor Vessel Steam Dome Pressure—High" instrument is defined by the plant response to accidents that depend on this instrument, which in turn is dependent on the likelihood of availability of the trip function associated with this instrument. The proposed change does not affect the availability of this instrument, since the operators have continuous indication of the instrument's availability. Thus, the amendment does not affect the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Attorney for licensee: M. H. Philips, Jr., Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: Theodore R. Quay.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request. April 11, 1994.

Description of amendment request: The proposed amendment would revise Kewaunee Nuclear Power Plant (KNPP) Technical Specification (TS) 3.1.f, "Minimum Conditions for Criticality," in preparation for the licensee's extension of the fuel cycle from 12 to 18 months. The proposed amendment would revise TS 3.1.f to specify that the moderator temperature coefficient (MTC) shall be no greater than 5.0 pcm/°F when at or below 60% rated thermal power and shall be zero or negative when above 60% rated thermal power. The proposed amendment also incorporates required actions to be implemented if the MTC specification is not met.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Significant Hazards Determination for Proposed Changes to TS 3.1.f

This change is being proposed in accordance with the provisions of 10 CFR 50.92 to show that no significant hazards exist. The proposed change will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Moderator temperature coefficient (MTC) is a physical characteristic of the reactor core which affects the reactor's response to transients. The MTC is not an accident initiator, therefore changing the allowed MTC to 5.0 pcm/°F at or below 60% power, does not increase the probability of an accident previously evaluated.

To verify that an increased MTC would not increase the consequences of a previously evaluated accident, Wisconsin Public Service Corporation (WPSC) reanalyzed the bounding MTC-related events found in Kewaunee's Updated Safety Analysis Report (USAR). Those events are:

1. Uncontrolled Rod Withdrawal at Intermediate Power (USAR Section 14.1.2)
2. Rod Ejection at Hot Zero Power, Beginning of Cycle (USAR Section 14.2.6)
3. Loss of External Electrical Load, Beginning of Cycle (USAR Section 14.1.9)
4. Uncontrolled Boron Dilution (USAR Section 14.1.4)
5. Loss of Reactor Coolant Flow, Locked Rotor (USAR Section 14.1.8)
6. Loss of Reactor Coolant Flow, Both Pumps Trip (USAR Section 14.1.8)

Events numbered 1, 3, 4, 5, and 6 above were reanalyzed to verify that the departure from nuclear boiling ratio (DNBR) would not fall below the acceptance criterion of 1.300. In all five cases, an assumed MTC value of 5.0 pcm/°F at or below 60% power increased the calculated DNBR value from the current USAR analyses. Therefore the existing analyses associated with DNBR remain bounding.

Event number 2 above was reanalyzed to ensure Kewaunee's peak clad temperature (PCT) would not exceed the required acceptance criterion of 2700°F. When this accident was reanalyzed using the positive MTC value of 5.0 pcm/°F, the calculated PCT exceeded 2700°F. Therefore it was necessary to decrease the allowable hot channel factor (FQ) from 9.0 to 8.2. This change in allowable FQ reduces a bounding value for future Kewaunee core designs and does not have an adverse effect on plant safety limits or settings. This FQ limit reduction for the accident of Rod Ejection at Hot Zero Power, Beginning of Cycle, will be incorporated into the WPSC Reload Safety Methodology and Kewaunee's USAR. The results of the analysis using a FQ of 8.2 and a MTC value of 5.0 pcm/°F indicate a lower PCT than the previously bounding case.

In addition, WPSC reviewed the effects of this change on Kewaunee's anticipated transient without scram (ATWS) analysis. This review demonstrated that the ATWS analysis was found to include assumptions bounding Kewaunee's proposed MTC limits.

The reanalyses of the six most limiting MTC-related transients and review of the ATWS event demonstrate that this proposed change does not involve an increase in the potential consequences of any accidents previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The MTC is a physical characteristic of the reactor core and is not an accident initiator. A changed MTC changes the reactor's response to the postulated transients in chapter 14 of Kewaunee's USAR. Therefore an MTC of 5.0 pcm/°F at or below 60% rated thermal power does not create the possibility of a new or different type of accident from any accident previously evaluated.

(3) Involve a significant reduction in the margin of safety.

The six most limiting MTC-related transients in chapter 14 of the KNPP USAR were reanalyzed. Five of the six were reanalyzed to verify the DNBR would not go below the DNBR acceptance criterion of 1.300. The results of these five DNBR-related analyses demonstrate that the reanalyzed DNBR value is greater than the DNBR from the currently bounding safety analyses. The sixth transient was reanalyzed to verify the PCT limit of 2700°F would not be exceeded. Reanalysis of this sixth accident, Rod Ejection at Hot Zero Power and Beginning of Cycle, indicated a need to lower the allowable hot channel factor (FQ). Reanalysis incorporating this more restrictive FQ value resulted in a calculated PCT value of 2504°F, which is less than the previous PCT value of 2585°F. The new FQ limit will be incorporated into the next USAR revision, which will be submitted in accordance with 10 CFR 50.71.

In addition, WPSC reviewed the effects of this change on Kewaunee's anticipated transient without scram (ATWS) analysis. This review demonstrated that the ATWS analysis was found to include assumptions bounding Kewaunee's proposed MTC limits.

The reanalyses of the six most bounding transients and review of the ATWS event demonstrate that restricting the MTC value to 5.0 pcm/°F at or below 60% power does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O Box 1497, Madison, Wisconsin 53701–1497.

NRC Project Director: John N. Hannon.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: May 20, 1994.

Description of amendment request: The proposed amendment would revise Kewaunee Nuclear Power Plant (KNPP) Technical Specification (TS) 3.4, "Steam and Power Conversion System," by modifying and clarifying the operability requirements for the main steam safety valves (MSSVs), auxiliary feedwater system (AFW), and the condensate storage tank system. The proposed amendment would eliminate inconsistencies within Technical Specification Section 3.4 and would provide the basis for operation of the AFW system below 15% reactor power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Significant Hazards Determination for Proposed Changes to Technical Specification (TS) 3.4.a "Main Steam Safety Valves"

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Currently, TS 3.4.a.1.A.2 requires five MSSV's to be operable prior to heating the reactor > 350°F. The proposed change requires a minimum of two MSSVs per steam generator to be operable prior to heating the reactor coolant system > 350 °F, and five MSSVs per steam generator to be operable prior to reactor criticality. If these conditions cannot be met within 48 hours, within 1 hour action shall be initiated to achieve hot standby within 6 hours, achieve hot shutdown within the following 6 hours, and achieve and maintain the reactor coolant system temperature < 350°F within an additional 12 hours.

The MSSVs are relied upon to function in each of the following USAR analyzed accidents: Reactor Coolant Pump Locked Rotor, Loss of External Electrical Load, Loss of Normal Feedwater, Uncontrolled Rod Cluster Control Assembly Withdrawal at Power, Uncontrolled Rod Cluster Control Assembly Withdrawal From a Subcritical Condition, Steam Generator Tube Rupture, and Anticipated Transients without Scram.

The initial conditions in the analysis of a Loss of External Electrical Load Accident, Loss of Normal Feedwater Accident, Uncontrolled Rod Withdrawal at Power Accident, Uncontrolled Rod Cluster Control Assembly Withdrawal from a Subcritical Condition Accident and an Anticipated Transients without Scram Accident assume critical conditions. Because this proposed TS requires all MSSVs to be operable prior to reactor criticality, there will be no adverse effect on the health and safety of the public.

Two operable MSSVs are capable of relieving the maximum steam generated during a Reactor Coolant Pump Locked Rotor Accident or a Steam Generator Tube Rupture from a subcritical condition. The maximum required steam relief rate resulting from a Steam Generator Tube Rupture is 270,000 lbm/hr, well below the relief capacity of 1,532,076 lbm/hr of two MSSVs on a single steam generator. Also, this condition results in no increase in the radiological dose to the public. Two MSSVs on one steam generator are capable of relieving the steam generated corresponding to approximately 20% reactor power. This relief capacity is well above the maximum steam generation rate resulting from a Reactor Coolant Pump Locked Rotor Accident from a subcritical condition.

In all cases, the relieving capacity of the MSSVs exceeds the maximum steam generation rate, and reactor criticality is not permitted unless all MSSVs are operable. Therefore, there is no adverse effect on the health and safety of the public and no significant increase [in the probability or] consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, operating setpoints, or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in the margin of safety.

The USAR safety analysis assumes five MSSVs per steam generator are operable. However, as shown above, this change results in no steam generator overpressure event or increase in the radiological dose. Therefore, this change will not involve a reduction in the margin of safety.

Significant Hazards Determination for Proposed Changes to Technical Specification (TS) 3.4.b "Auxiliary Feedwater System"

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Current TS 3.4.a.1.A.1 and TS 3.4.b governing auxiliary feedwater flow to the steam generators are being combined and titled, "Auxiliary Feedwater System." This change is consistent with the format of "Westinghouse Standard Technical Specifications," NUREG–1431. In addition to the formatting changes, a number of technical changes are being proposed. These are:

—The correction of an inconsistency between current TS 3.4.a.1.A.1 and current TS 3.4.6.2.A.

—The addition of a seven (7) day Limiting Condition for Operation (LCO) for one steam supply to the turbine driven auxiliary feedwater pump.

—An addition to allow the AFW control switches located in the control room to be placed in the "pull out" position and valves AFW–2A and AFW–2B to be in a throttled position when below 15% reactor power without declaring the corresponding AFW train inoperable.

An inconsistency currently exists between current TS 3.4.a.1.A.1 and current TS 3.4.b.2.A. TS 3.4.a.1.A.1 requires the system piping and valves directly associated with providing auxiliary feedwater flow to the steam generators to be operable, with a corresponding 48 hour limiting condition for operation (LCO) action statement if this requirement is not met. TS 3.4.b.2.A allows one auxiliary feedwater pump to be inoperable for 72 hours. This arrangement can cause a conflict regarding which TS is applicable depending on which component in the auxiliary feedwater flowpath to the steam generators is inoperable. By moving all TS action statements to TS 3.4.b, the inconsistency between TS 3.4.a.1.A.1 and TS 3.4.b.2.A will be eliminated. The requirement to maintain the operability of the system piping and valves directly associated with providing auxiliary feedwater flow to the steam generators remains, but is being modified to prevent removing both AFW supply headers from service for 48 hours.

Proposed TS 3.4.b.2.A is being added to allow one steam supply to the turbine driven auxiliary feedwater pump to be inoperable for seven days. This addition is consistent with "Westinghouse Standard Technical Specifications," NUREG–1431. The seven day completion time is reasonable based on the redundant steam supplies to the pump, the availability of the redundant motor-driven AFW pumps, and the low probability of an event occurring that requires the inoperable steam supply to the turbine driven AFW pump. For these reasons, this change will have no adverse affect on the health and safety of the public.

Proposed TS 3.4.b.5 permits the AFW Pump control switches located in the control room to be placed in the "pull out" position and valves AFW–2A and AFW–2B to be in a throttled position when below 15% reactor power without declaring the corresponding AFW train inoperable. This change is proposed to resolve concerns regarding the cycling of the AFW pumps and the throttling of valves AFW–2A and AFW–2B during plant startups and shutdowns. Analysis shows that control room operators have a minimum of ten minutes to initiate auxiliary feedwater flow after a design basis accident with no steam generator dryout or core damage.

All accidents which rely on AFW flow for mitigation were reanalyzed to support this change. These analyses were completed assuming an initial power of 100%. However, a 15% reactor power restriction has been implemented on placing the AFW pump control switches located in the control room in the "pull out" position and throttling valves AFW–2A and AFW–2B. This restriction in effect limits use of TS 3.4.b.5 to plant start-ups, shutdowns and other low power operating conditions.

This change alters the assumptions of the safety analysis for the Small-Break Loss of Coolant Accident, the Steam Generator Tube Rupture and the Loss of Normal Feedwater due to their dependence on the AFW system to start and supply AFW for heat removal. To support this change, the Westinghouse Electric Corporation performed an analysis of the Small-Break Loss-of-Coolant Accident using the NOTRUMP code assuming ten minutes for operator action to initiate auxiliary feedwater. This analysis resulted in a Peak Cladding Temperature (PCT) of 1053°F from an initial power level of 100%. All other acceptance criteria of 10 CFR 50.46 were [also] met. This large margin to the

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2200°F PCT limit supports ten minutes for operator action to initiate auxiliary feedwater.

Furthermore, WPSC has analyzed the Loss of Normal Feedwater and the Steam Generator Tube Rupture Accident assuming delays in the initiation of auxiliary feedwater. The Loss of Normal Feedwater Accident with a ten minute delay in the initiation of Auxiliary Feedwater does not result in any adverse condition in the core. It does not result in water relief from the pressurizer safety valves, nor does it result in uncovering the tube sheets of the steam generators. Also, at all times the Departure from Nucleate Boiling Ratio (DNBR) remained greater than 1.30. The Steam Generator Tube Rupture Accident with no auxiliary feedwater flow was also analyzed. The results of this analysis indicate that neither steam generator empties of liquid and at least 20°F of reactor coolant system subcooling is maintained throughout the transient. Also, there is no increase in the radiological dose to the public.

Ten minutes is an acceptable time for operator action because four independent alarms in the control room would initiate operator action to place the AFW pump control switches to the "auto" position and initiate AFW flow to the steam generators when necessary. These include two steam generator lo level alarms (one per steam generator), and two steam generator lo-lo level alarms (one per steam generator). Provisions also exist to add additional low level alarms on the plant process computer. In addition to these alarms, control room operators have twelve other indications of insufficient, or no, AFW flow to the steam generators. These indications include three auxiliary feedwater pump low discharge pressure alarms (one per AFW pump), two auxiliary feedwater flow meters (one per steam generator), two AFW pump motor amp meters (one per motor-driven AFW pump), two "ESF in Pullout" alarms (one per Engineered Safety Features train) and three pump running lights (one per AFW pump). The ten minutes for operator action was discussed in a telephone conversation between WPSC and Mr. R. Laufer (NRR). Ten minutes for operator action is further supported by Branch Technical Position EISCB 18. Scenarios have been completed on the KNPP simulator to support ten minutes for operator initiation of AFW flow. In all cases, operators manually initiated AFW flow within the allowed ten minutes.

For these reasons, this change will have no adverse affect on the health and safety of the public or significantly increase the probability or consequences of an accident previously evaluated in the USAR.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, operating setpoints, or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in the margin of safety.

This change alters the assumptions of the safety analysis for the Small-Break Loss of Coolant Accident, the Steam Generator Tube Rupture and the Loss of Normal Feedwater due to their dependence on the AFW system to start and supply AFW flow for heat removal. To support this change the Westinghouse Electric Corporation has performed an analysis of the Small-Break Loss-of-Coolant Accident using the NOTRUMP code assuming ten minutes for operator action to initiate auxiliary feedwater. This analysis resulted in a Peak Cladding Temperature (PCT) of 1053°F from an initial power level of 100%. All other acceptance criteria of 10 CFR 50.46 were [also] met. This large margin to the 2200°F PCT limit supports ten minutes for operator action to initiate auxiliary feedwater.

Furthermore, WPSC has analyzed the Loss of Normal Feedwater and the Steam Generator Tube Rupture Accident assuming delays in the initiation of auxiliary feedwater. The Loss of Normal Feedwater Accident with a ten minute delay in the initiation of Auxiliary Feedwater does not result in any adverse condition in the core. It does not result in water relief from the pressurizer safety valves, nor does it result in uncovering the tube sheets of the steam generators. Also, at all times the Departure from Nucleate Boiling Ratio (DNBR) remained greater than 1.30. The Steam Generator Tube Rupture Accident with no Auxiliary Feedwater flow was also analyzed. The results of this analysis indicate that neither steam generator empties of liquid and at least 20°F of reactor coolant system subcooling is maintained throughout the transient. Also, there is no increase in the radiological dose to the public.

For these reasons, these changes will not adversely effect the health and safety of the public or involve a significant reduction in the margin of safety.

Significant Hazards Determination for Proposed Administrative Changes to Section TS 3.4 "Steam and Power Conversion System"

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or

(3) Involve a significant reduction in the margin of safety.

The proposed changes are administrative in nature and do not alter the intent or interpretation of the TS. Therefore, no significant hazards exist.

Additionally, the proposed change is similar to example C.2.e(i) in 51 FR 7751. Example C.2.e.(i) states that changes which are purely administrative in nature; i.e., to achieve consistency throughout the Technical Specifications, correct an error, or a change in nomenclature, are not likely to involve a significant hazard.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701–1497.

NRC Project Director: John N. Hannon.

Previously Published Notices of Consideration of Issuance of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendment: August 18, 1994.

Brief description of amendment request: The proposed amendment would add the analytical method supplement entitled "Calculative Methods for the CE Large Break LOCA Evaluation Model for the Analysis of CE and W Designed NSSS," CENPD–132, Supplement 3–P-A, dated June 1985, to the list of analytical methods in TS Section 6.9.1.10 used to determine the PVNGS core operating limits. Additionally, further administrative changes are proposed to the list of analytical methods.

Date of individual notice in **Federal Register**: September 6, 1994 (59 FR 46069).

Expiration date of individual notice: October 6, 1994.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendment: August 29, 1994.

Brief description of amendment request: The proposed amendment would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to specify an alternate method of determing water and sediment content for new diesel fuel oil as specified in TS 3/4.8.1.1, "A.C. Sources - Operating."

Date of individual notice in **Federal Register**: September 8, 1994 (59 FR 46453).

Expiration date of individual notice: October 7, 1994.

Local Public Document Room location: California Polytechnical State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Notice of Issuance of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: January 4, 1994.

Brief description of amendments: The amendments would implement recommended changes from Generic Letter (GL) 93–05, "Line-Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operation." Specifically, the amendments implement changes to Technical Specifications corresponding to the following GL 93–05 line numbers: 4.1.2, 5.8, 5.14, 6.1, 7.5, 8.1, 9.1, and 12. Proposed changes to line number 14 were reviewed and deemed unnecessary because the changes are already in the Technical Specifications.

Date of issuance: September 2, 1994.

Effective date: September 2, 1994.

Amendment Nos.: 79, 66, and 51.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 22, 1994 (59 FR 37513). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 2, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529 and STN 50–530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2 and 3, Maricopa County, Arizona

Date of application for amendments: October 27, 1993.

Brief description of amendments: The amendments would revise TS 6.9.1.8 to change the frequency for submitting the Radioactive Effluent Release Report from semiannual to annual, as allowed by the revised Title 10, Code of Federal Regulation, section 50.36a requirements. In addition, the references to this report would be changed from semiannual to annual to ensure consistency throughout the TS.

Date of issuance: September 12, 1994.

Effective date: September 12, 1994.

Amendment No.: 80, 67, 52.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: Amendment revised the Technical Specifications.

Date of initial notice in Federal **Register**: January 19, 1994 (59 FR 2861). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: June 8, 1994.

Brief description of amendments: The amendments revise the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Technical Specification 4.8.1.1.1.b to extend the alternate 69 kV offsite power circuit surveillance frequency to accommodate the 24-month fuel cycles currently in use at Calvert Cliffs. As requested in Generic Letter 91–04, "Changes In Technical Specification Surveillance Intervals To Accommodate a 24-month Fuel Cycle," the licensee provided an evaluation in support of the change which concludes the effect on safety is small and does not invalidate any assumption in the plant licensing basis.

Date of issuance: September 6, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 195 and 172.

Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 20, 1994 (59 FR 37063). The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated September 6, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: June 8, 1994.

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Brief description of amendments: The amendments revise the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Technical Specification 4.6.2.2.b to extend the Containment Air Cooling System surveillance frequency to accommodate the 24-month fuel cycle currently in use at Calvert Cliffs.

Date of issuance: September 6, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 196 and 173.

Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 20, 1994 (59 FR 37063). The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated September 6, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: October 14, 1993.

Brief description of amendment: The amendment revises TS 4.2.2 to remove the schedule for withdrawal of reactor vessel material surveillance specimens.

Date of issuance: September 6, 1994.

Effective date: September 6, 1994.

Amendment No. 150.

Facility Operating License No. DPR–23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: November 10, 1993 (58 FR 59745). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 6, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: March 3, 1993, as supplemented on October 22, 1993, and August 12, 1994.

Brief description of amendment: The amendment will (1) add ANF–88–133(P)(A), "Qualification of Advanced Nuclear Fuels' PWR Design Methodology for Rod Burnups of 62 Gwd/MTU," to the approved methodologies list of Section 6.9.3.3.b, (2) clarify the wording in Sections 3.10.2.1 and 3.10.2.2.2 by describing more precisely how measurement uncertainty and engineering factors are considered, (3) correct the licensee's typographical error in Section 3.10.2.2, and (4) correct a reference to Section 6.9.3.3.b on page 3.10–16a of the TS basis.

Date of issuance: September 16, 1994.

Effective date: September 16, 1994.

Amendment No. 151.

Facility Operating License No. DPR–23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: April 14, 1993 (58 FR 19472). The letter dated October 22, 1993, and August 12, 1994, provided clarifying information that did not affect the published notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 16, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: January 19, 1994.

Brief description of amendments: The amendments increase the minimum reactor coolant system temperature required for criticality from 500 degrees Fahrenheit to 530 degrees Fahrenheit and delete other requirements and bases discussions that no longer apply to the facility.

Date of issuance: September 8, 1994.

Effective date: September 8, 1994.

Amendment Nos.: 156 and 144.

Facility Operating License Nos. DPR–39 and DPR–48. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 20, 1994 (59 FR 37065). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 8, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: The original submittal was incorrectly dated March 31, 1993. The **Federal Register** notice reflected the correct date of March 31, 1994. The licensee's submittal dated April 15, 1994, superseded the first submittal in its entirety. The submittal was further supplemented on July 26, 1994.

Brief description of amendments: The amendments change the Engineered Safeguards Features Actuation System (ESFAS) Technical Specifications (TS) sections to provide allowed outage times for Automatic Actuation Channel surveillance testing and restoration time for an inoperable ESFAS Automatic Actuation Channel.

Date of issuance: September 8, 1994.

Effective date: September 8, 1994.

Amendment Nos.: 157 and 145.

Facility Operating License Nos. DPR–39 and DPR–48. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 12, 1994 (59 FR 24748) The April 15 and July 26, 1994, submittals did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 8, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: July 13, 1994.

Brief description of amendments: The amendments revise Technical Specification 4.6.2 by changing the testing interval for the air or smoke flow test through each containment spray header from 5 to 10 years, and remove an obsolete footnote.

Date of issuance: September 6, 1994.

Effective date: To be implemented within 30 days from the date of issuance.

Amendment Nos.: 147 and 129.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 3, 1994 (59 FR 39583)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 6, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: July 13, 1994.

Brief description of amendments: The amendments revise Technical Specification 4.6.2 by changing the testing interval for the air or smoke flow test through each containment spray header from 5 to 10 years.

Date of issuance: September 6, 1994.

Effective date: To be implemented within 30 days from the date of issuance.

Amendment Nos.: 123 and 117.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 3, 1994 (59 FR 39583) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 6, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: June 9, 1994.

Brief description of amendments: These amendments revise the Appendix A TSs relating to new fuel oil for emergency diesel generators. The amendments replace the qualitative examination of new fuel oil for water/sediment and particulate contamination with a quantitative examination for these properties.

Date of issuance: September 8, 1994.

Effective date: As of date of issuance to be implemented within 60 days of issuance.

Amendment Nos.: 182 and 63.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 6, 1994 (59 FR 34662) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 8, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: April 14, 1994.

Brief description of amendments: The amendments revise Technical Specification 5.3.1, "Fuel Assemblies," to permit fuel assembly reconstitution to restore the usefulness of fuel assemblies containing damaged or leaking fuel rods.

Date of issuance: September 2, 1994.

Effective date: September 2, 1994.

Amendment Nos.: Unit 1—Amendment No. 65; Unit 2—Amendment No. 54.

Facility Operating License Nos. NPF–76 and NPF–80. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 8, 1994 (59 FR 29628) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 2, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: April 18, 1994.

Brief description of amendment: License Amendment No. 81, issued on July 15, 1993, changed the numbering of Surveillance Requirement 4.1.3.2, "Control Rod Maximum Scram Insertion Times," but failed to renumber multiple references made to this surveillance. This amendment renumbers those references previously overlooked.

Date of issuance: September 2, 1994.

Effective date: Date of issuance.

Amendment No.: 92.

Facility Operating License No. NPF–62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 12, 1994 (59 FR 24749) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 2, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: August 5, 1994.

Brief description of amendment: The amendment modifies the Clinton Power Station Technical Specification Table 4.8.1.1.2–1, "Diesel Generator Test Schedule," to exclude three valid failures of the Division 1 diesel generator from contributing towards an accelerated test schedule.

Date of issuance: September 2, 1994.

Effective date: September 2, 1994.

Amendment No.: 93.

Facility Operating License No. NPF–62. The amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (59 FR 42080 dated August 16, 1994). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice published August 16, 1994, also provided for an opportunity to request a hearing by September 15, 1994, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 2, 1994.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: November 11, 1992, as supplemented December 17, 1993, and March 29, 1994.

Brief description of amendments: The amendments revise the Technical Specifications to increase the main steam safety valve setpoint tolerance for both units to plus or minus 3 percent and revise the emergency core cooling system section for Unit 2 to reflect a thermal power limitation resulting from the small break loss-of-coolant accident

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analysis when a safety injection cross-tie is closed.

Date of issuance: September 9, 1994.
Effective date: September 9, 1994.
Amendment Nos.: 182 and 167.
Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register**: March 3, 1993 (58 FR 12262). The December 17, 1993, letter corrected errors in the Small Break Loss of Coolant Accident analysis, and the March 29, 1994, letter modified the requested amendment to include the requirement to reset the MSSV setpoints to plus 1 percent whenever they are found outside that range. These letters were responding to NRC staff concerns, and provided clarifying information which did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 9, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: January 6, 1994.
Brief description of amendment: The amendment revises Technical Specification (TS) Tables 3.2.7, 3.6.2a, 4.6.2a, 3.6.2b, and 4.6.2b to delete the automatic reactor scram and main steam line isolation functions of the Main Steam Line Radiation Monitor. Conforming changes are also being made to the Bases for these TSs and to the Bases for TS 2.1.2. The changes are consistent with the NRC's Improved Standard Technical Specifications (NUREG–1433) and with NRC-approved Boiling Water Reactor Owners Group Licensing Topical Report NEDO–31400A, dated July 9, 1987 (safety evaluation dated May 15, 1991).
Date of issuance: September 9, 1994.
Effective date: As of the date of issuance to be implemented within 30 days.
Amendment No.: 149.
Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** February 16, 1994 (59 FR 7692). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: August 10, 1993.
Brief description of amendment: The amendment involves several changes to the radiological effluents portion of the Technical Specifications. One of the changes provides clarification of sampling and analysis requirements prior to venting or purging of the containment. A second portion of the change updates liquid effluent sampling and analysis requirements to reflect improvements in sample technology. The remaining changes are editorial in nature.
Date of issuance: September 7, 1994.
Effective date: September 7, 1994.
Amendment No.: 90.
Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register**: October 27, 1993 (58 FR 57855).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 7, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: March 28, 1994.
Brief description of amendment: The proposed amendment would change the reactor vessel level setpoint for initiation of secondary containment isolation and standby gas treatment system from the "low" setpoint to the "low-low" setpoint.
Date of issuance: September 9, 1994.
Effective date: September 9, 1994.
Amendment No.: 91.
Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register**: May 12, 1994 (59 FR 24750).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Dates of application for amendment: January 3, 1994 and August 29, 1994.
Brief description of amendment: The proposed amendment would revise the requirements of Technical Specification (TS) 4.6.E.1.a, which currently specifies that a minimum of seven safety/relief valves shall be bench checked or replaced with a bench checked valve each refueling outage. The proposed amendment would change this specification to require the valves to be tested in accordance with the Section XI inservice testing requirements of the ASME Boiler and Pressure Vessel Code. The proposed change is consistent with the Improved Standard Technical Specifications, NUREG–1433.

Date of issuance: September 15, 1994.
Effective date: September 15, 1994.
Amendment No.: 92.
Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register**: March 2, 1994 (59 FR 10011).

The August 29, 1994, letter submitted by the licensee provided historical test data related to the components involved in the TS amendment and did not affect the staff's initial no significant hazards determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Northern States Power Company, Docket No. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Unit No. 1, Goodhue County, Minnesota

Date of application for amendments: January 29, 1993, as revised June 15, 1994.
Brief description of amendments: The amendments reflect changes to core exit thermocouple action statements.
Date of issuance: September 7, 1994.
Effective date: September 7, 1994.
Amendment Nos.: 112 and 105.
Facility Operating License Nos. DPR-42 and DPR-60. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register**: August 3, 1994 (59 FR 39594). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 7, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: May 7, 1993 (Reference LAR 93–01).
Brief description of amendments: The amendments revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to modify TS 3/4.3.3.5, "Remote Shutdown Instrumentation," to add remote shutdown control functions, to increase the Allowed Outage Time (AOT) for an inoperable remote shutdown Function (instrumentation and control) from 7 days to 30 days, to add an Action Statement that clarifies that separate entry is permitted for each function listed in Table 3.3–9, and to revise the associated TS Bases.
Date of issuance: September 2, 1994.
Effective date: September 2, 1994.
Amendment Nos.: 94 and 93.
Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register**: July 21, 1993 (58 FR 39057).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 2, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room Location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: April 27, 1994.
Brief description of amendments: These amendments delete TS Surveillance Requirement 4.4.1.1.1, which requires that the reactor recirculation pump discharge valve be demonstrated operable by performing a full-stroke test of the valve prior to reactor thermal power exceeding 25 percent of rated reactor thermal power.
Date of issuance: September 7, 1994.
Effective date: September 7, 1994.
Amendment Nos. 76 and 37.
Facility Operating License Nos. NPF-39 and NPF-85. These amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 8, 1994 (59 FR 29628). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 7, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: June 30, 1994.
Brief description of amendments: The amendments relocate selected recirculation and control rod block instrumentation setpoints from Technical Specifications (TS) Table 3.3.6–2, and Section 3/4.4.1 to the Core Operating Limits Report (COLR), thereby revising TS Section 6.9.1.9 to document relocation of these items into the COLR.
Date of issuance: September 8, 1994.
Effective date: September 8, 1994.
Amendment Nos. 77 and 38.
Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** September 2, 1994 (59 FR 39595). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 8, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: March 28, 1994.
Brief description of amendments: These amendments increase the surveillance interval for the functional test of the Reactor Protection System electrical power monitoring channels from every 6 months to each time the plant is in cold shutdown for a period of 24 hours, unless the test was performed in the previous six months.
Date of issuance: September 8, 1994.
Effective date: September 8, 1994
Amendment Nos. 78 and 39.
Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 25, 1994 (59 FR 27062). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 8, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: May 13, 1994, as supplemented by letter dated July 20, 1994.
Brief description of amendments: These amendments revise TS

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Surveillance Requirement 4.8.1.1.2e.8, which requires diesel generator be retested within 5 minutes after completing a 24–hour endurance run, to incorporate requirements containeed in NUREG–1433.

Date of issuance: September 12, 1994.
Effective date: September 12, 1994.
Amendment Nos. 79 and 40.
Facility Operating License Nos. NPF–39 AND NPF–85. The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 22, 1994 (59 FR 32234). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 12, 1994.
No significant hazards consideration comments received: No.
Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania.

Date of application for amendments: May 10, 1994, and supplemented by letters dated August 19, 1994 and September 13, 1994; these supplements provided clarifying information that did not change the initial proposed no significant hazards consideration determination.
Brief description of amendments: These amendments revise the minimum low pressure cooling availability requirements in accordance with the staff's recommendations in NUREG–1433, "Standard Technical Specifications General Electric Plants, BWR/4."
Date of issuance: September 16, 1994.
Effective date: September 16, 1994.
Amendments Nos.: 195 and 199.
Facility Operating License Nos. DPR–44 and DPR–56: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register**: July 20, 1994 (59 FR 37079).The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 16, 1994.
No significant hazards consideration comments received: No.
Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: June 17, 1994 and supplement dated July 13, 1994.
Brief description of amendments: The amendments changed the requirements to perform the Channel Functional Test of the Power Operated Relief Valve (PORV) position indication from quarterly to every 18 months and to exempt the PORV Block Valve position indication from performance of the Channel Functional Test if the PORV Block Valve is shut as required to isolate a PORV that cannot be manually cycled.
Date of issuance: September 8, 1994.
Effective date: As of date of issuance and shall be implemented within 60 days of the date of issuance.
Amendment Nos. 155 and 136.
Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 3, 1994 (59 FR 39596). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 8, 1994.
No significant hazards consideration comments received: No.
Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: April 12, 1994 as supplemented by letter dated July 15, 1994.
Brief description of amendments: The amendments eliminate the required loss of offsite power plus an engineered safety feature actuation signal test following the 24-hour endurance test, revise the 5-minute emergency diesel generator (EDG) hot restart test by separating it from the 24-hour endurance test and add a new surveillance requirement of a simple hot restart test following a 2-hour loaded run of the EDG.
Date of issuance: September 8, 1994.
Effective date: Unit 1, effective as of its date of issuance and shall be implemented within 90 days of the date of issuance and; Unit 2, effective as of its date of issuance and shall be implemented before restart from the eighth refueling outage currently scheduled to begin on October 15, 1994.
Amendment Nos. 156 and 137.
Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register**: May 25, 1994 (59 FR 27066). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 8, 1994.
No significant hazards consideration comments received: No.
Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: May 25, 1994.
Brief description of amendments: These amendments would modify the table associated with 3/4 3.3.1, Radiation Monitoring Instrumentation; 3/4 3.3.3.8, Radioactive Liquid Effluent Monitoring Instrumentation; and 3/4 3.3.9, Radioactive Gaseous Effluent Monitoring Instrumentation by relocating the specific radiation monitor numbers from the table to a cross reference in the Bases.
Date of issuance: September 8, 1994.
Effective date: September 8, 1994.
Amendment Nos. 157 and 138.
Facility Operating License Nos. DPR–70 and DPR–75. These amendments revised the Technical Specifications.
Date of initial notice in **Federal Register**: July 6, 1994 (59 FR 34668).
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 8, 1994.
No significant hazards consideration comments received: No.
Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: February 25, 1994.
Brief description of amendment: The amendment changes the Technical Specifications to permit the submittal of the Radioactive Effluent Release Report on an annual rather than a semiannual basis; allow changes to the Offsite Dose Calculation Manual to be submitted in the Radioactive Effluent Release Report rather than in the monthly operating report; remove the title of Executive Vice President Operations from the TS; remove the list of audit frequencies from the TS and place them under Quality Systems management; change the title of Associate Manager, Health Physics to Radiation Protection Manager; remove references to specific letters; remove TS 6.4 on training; and correct various typographical errors and include items omitted in previous amendments.
Date of issuance: September 6, 1994.
Effective date: September 6, 1994.
Amendment No.: 117.
Facility Operating License No. NPF–12. Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register**: May 12, 1994 (59 FR 24752).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 6, 1994.
No significant hazards consideration comments received: No
Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: February 16, 1994, as revised August 4, 1994.
Brief Description of amendments: The amendments change the fuel description in the TS to allow fuel reconstitution, to permit the use of ZIRLO™ clad fuel, and to remove unnecessary detailed descriptions of fuel and control rod assemblies.
Date of issuance: September 8, 1994.
Effective date: September 8, 1994.
Amendment Nos.: 110 and 101.
Facility Operating License Nos. NPF–2 and NPF–8. Amendments revise the Technical Specifications.
Date of initial notice in **Federal Register**: March 16, 1994 (59 FR 12366).
The August 4, 1994, submittal reformatted Section 5.6.1 and restored and relocated to Section 5.6.1 the maximum enrichment limits deleted in the February 16, 1994 amendment request, but did not change the no significant hazards consideration as published in the **Federal Register**.
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 8, 1994.
No significant hazards consideration comments received: No
Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee.

Date of application for amendments: September 28, 1993 (TS 93–10).
Brief description of amendments: The amendments clarify the operability requirements for the fire suppression system flow path and incorporate additional guidance into an action statement requirement for spray and/or sprinkler systems inside containment.
Date of issuance: September 13, 1994.
Effective date: September 13, 1994.
Amendment Nos.: 186 and 178.
Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.
Date of initial notice in **Federal Register**: November 10, 1993 (58 FR 59757). The Commission's related evaluation of the amendments are contained in a Safety Evaluation dated September 13, 1994.
No significant hazards consideration comments received: None.
Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: January 27, 1993, clarified on April 20, 1994.
Brief description of amendment: The amendment revises the Technical Specification 6.3.1.2 to allow either the Health Physics Superintendent or the Health Physics, Operations Supervisor to be designated as Radiation Protection Manager (RPM).
Date of issuance: September 6, 1994.
Effective date: September 6, 1994.
Amendment No.: 92.
Facility Operating License No. NPF–30. Amendment revised the Technical Specification 6.3.1.2.
Date of initial notice in **Federal Register**: April 14, 1993 (58 FR 19490).
The clarifying information did not change the initial proposed no significant hazards consideration.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 6, 1994.
No significant hazards consideration comments received: No.
Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: March 30, 1994.
Brief description of amendments: The amendments revise the NA–1&2 TS High Head Safety Injection (HHSI) surveillance requirements by removing explicit numerical values and replacing them with broader non-numerical requirements.
Date of issuance: September 6, 1994.
Effective date: September 6, 1994.
Amendment Nos.: 188 and 169.
Facility Operating License Nos. NPF–4 and NPF–7. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register**: April 28, 1994 (59 FR 22017)
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 6, 1994.
No significant hazards consideration comments received: No.
Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.
Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.
For exigent circumstances, the Commission has either issued a **Federal**

Register notice providing opportunity

Document Room, the Gelman Building

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Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By October 28, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (*Project Director*): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 9, 1994, as supplemented by letters dated September 9 and September 16, 1994.

Description of amendment request: The amendment revises the Technical Specifications (TS) by adding a footnote to Surveillance Requirement 4.8.1.1.2.d to allow operation of the emergency train AB bus with alternative operability testing in lieu of integrated testing required to confirm operability for loss of offsite power or in conjunction with safety injection. The footnote will remain in effect until shutdown following refuel 7.

Date of issuance: September 16, 1994.

Effective date: As of the date of issuance.

Amendment No.: 98.

Facility Operating License No. NPF–38. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated September 16, 1994.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Project Director: William D. Beckner.

Indiana Michigan Power Company, Docket No. 50–316, Donald C. Cook, Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of application for amendment: August 18, 1994.

Brief description of amendment: The amendment revises the Technical Specifications to extend the 18-month battery charger and battery service test from their present required date of September 7, 1994, until just prior to core reload in the upcoming Unit 2 refueling outage.

Date of issuance: September 6, 1994.

Effective date: September 6, 1994.

Amendment No.: 166.

Facility Operating License No. DPR–74. Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated September 6, 1994.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Local Public Document Room locotion: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: September 2, 1994.

Brief description of amendment: The amendment revises Technical Specifications (TSs) 4.7.1.1.1.d.4, 4.7.1.1.1.d.5, 4.7.1.2.1.d.4, and 4.7.1.2.1.d.5 to delete the requirement that the surveillance requirements for demonstrating service water system pump performance and for verifying the integrity of the deicing heaters be performed during shutdown. The amendment only deletes the requirement for performing these surveillances during shutdown; the revised TSs continue to require that these surveillances be performed at least once per 18 months. The revised TSs permit these surveillances to be performed during any operational condition.

Date of issuance: September 13, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 57.

Facility Operating License No. NPF–69: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated September 13, 1994.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 21st day of September 1994.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–23819 Filed 9–27–94; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–206, 50–361, and 50–362]

Southern California Edison Company, et al.; San Onofre Units 1, 2, and 3; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by letter of August 10, 1994, Ted Dougherty requested that the U.S. Nuclear Regulatory Commission (Commission) shut down and dismantle the San Onofre Nuclear Generating Station. As basis for the request, the Petitioner encloses (1) His recent letter to the Governor of California wherein he expresses his concerns regarding the vulnerability of the San Onofre Nuclear Generating Station to earthquakes due to the existence of nearby fault lines and (2) a recent Los Angeles Times article concerning the threat of vehicle bombs and the Commission's recent rule requiring nuclear generating plants to install anti-terrorist barriers within 18 months.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. As provided by § 2.206, appropriate action will be taken on this request within a reasonable time.

A copy of the Petition is available for inspection in the Commission's Public

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Document Room at 2120 L Street, NW., Washington, D.C. 20555–0001 and local public document room at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland this 22nd day of September 1994.

For the Nuclear Regulatory Commission.

William Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94–23948 Filed 9–27–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Company; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (the licensee), for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The proposed amendment would revise various technical specification sections and the associated Bases sections to reflect the changes to the shutdown margin requirement for Modes 4 and 5 and the boron dilution setpoint to assure that the required margin for operator action in a boron dilution accident is met.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By Oct. 27, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, CT 06457. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ms. L.M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141–0270, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in

accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated September 7, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, CT 06457.

Dated at Rockville, Maryland, this 21st day of September 1994.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Acting Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–23950 Filed 9–27–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–285]

In the Matter of Omaha Public Power District (Fort Calhoun Station, Unit 1); Exemption

I

The Omaha Public Power District (OPPD/the licensee) is the holder of Facilify Operating License No. DPR–40, which authorizes operation of the Fort Calhoun Station, Unit 1 (the facility), at steady state reactor core power levels not in excess of 1500 megawatts thermal. This facility is a pressurized water reactor located in Washington County, Nebraska. The license provides, among other things, that Fort Calhoun Station, Unit 1 is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

II

The proposed action would exempt the licensee from the filing time requirements of 10 CFR 50.36a(a)(2) regarding the submission of the report of annual radioactive liquid and gaseous effluents released to unrestricted areas during the previous calendar year. By letter dated May 25, 1994, the licensee requested an exemption from 10 CFR 50.36a(a)(2) to allow the licensee to change the date specified in the technical specifications for submitting this report from March 1 to before May 1, starting in 1995. These reports are required by 10 CFR 50.36a(a)(2) to be submitted at intervals no greater than 12 months. Because of the change, the interval between the 1994 and the 1995 reports will be greater than 12 months.

III

The Commission has reviewed the licensee's rationale for a one-time exemption from 10 CFR 50.36a(a)(2) in order to allow for the submittal date in the technical specifications (TS) to be changed to May 1.

Based on its review, the Commission finds the licensee has shown good cause for the requested exemption from 10 CFR 50.36a(a)(2). The proposed exemption is needed to allow the licensee to take advantage of the new date that the report would be due, under the guidance of a draft generic letter regarding the new 10 CFR part 20. The previous TS 5.9.4.a was based on the old requirement that the report be submitted within 60 days after January 1 of each year (March 1). Approval of the new TS will require this one time exemption to change the date of submission from March 1 to any date prior to May 1. This exemption will not affect the information required to be submitted for the time period the report covers (the previous calendar year's data); only the date the report is to be submitted would be changed. The special circumstances required by 10 CFR 50.12(a)(2)(ii) are present since the application of the submittal time requirement of 10 CFR 50.36a(a)(2) to the Annual Radioactive Effluent Release Report is not required to achieve the underlying purpose of the rule. Therefore, the request to extend the time requirement for submission of the annual report is acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security; and that special circumstances are present as set forth above. Therefore, the Commission hereby grants an exemption from the time requirements of 10 CFR 50.36a(a)(2).

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the Exemption will have no significant impact on the environment (59 FR 39579).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 22nd day of September 1994.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–23949 Filed 9–27–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Reclearance of Form OPM 1530

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. OPM Form 1530, Report of Medical Examination of Person Electing Survivor Benefit (CSRS), is used to collect sufficient information from the required medical examination regarding an annuitant's health. This information is then used to determine whether the insurable interest survivor benefits election can be allowed.

Approximately 500 OPM 1530 forms are completed annually. It takes approximately 90 minutes to complete this form. The total annual burden is 750 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received on or before October 28, 1994.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Forms Analysis & Design, (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–23816 Filed 9–27–94; 8:45 am]

BILLING CODE 6325–01–M

PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS

Mid-Year Meeting of Commissioners

AGENCY: President's Commission on White House Fellowships.

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ACTION: Notice of Mid-Year Meeting of the President's Commission on White House Fellowships. Closed to the Public.

SUMMARY: Notice is hereby given that the mid-year meeting of the President's Commission on White House Fellowships will be held at the White House Conference Center, Washington, DC, on October 3, 1994, beginning at 8:30 a.m.

The mid-year meeting is convened for one day to review the progress of members of the current class of White House Fellows.

It has been determined by the Director of the Office of Personnel Management that because of the confidential nature of the meeting, where the progress of members of the current class of White House Fellows is discussed, which, if revealed to the public would constitute a clear invasion of the individual's personal privacy, the content of this meeting falls within the provisions of Section 552b(c) of Title 5 of the United States Code. Accordingly, this meeting is closed to the public.

DATES: The date of the mid-year meeting of the President's Commission on White House Fellowships, which is closed to the public, is October 3, 1994.

FOR FURTHER INFORMATION CONTACT: Janet Kelliher, Administrative Officer, President's Commission on White House Fellowships, 712 Jackson Place, NW., Washington, DC 20503, (202) 395–4522.

Dated: September 21, 1994.

Brooke L. Shearer,

Director, President's Commission on White House Fellowships.

[FR Doc. 94–24026 Filed 9–23–94; 3:57 pm]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Incorporated

September 22, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 123f–1 thereunder for unlisted trading privileges in the following securities:

CALI Realty Corporation
Common Stock, $.01 Par Value (File No. 7–12959)
Cardinal Health, Inc.
Common Stock, No Par Value (File No. 7–12960)
Citizens, Inc.
Class A Common Stock, No Par Value (File No. 7–12961)
John Hancock Bank & Thrift Opportunity Fund
Common Stock, No Par Value (File No. 7–12962)
Kelly Oil & Gas Partners
Common Stock, No Par Value (File No. 7–12963)
Senior High Income Portfolio
Common Stock, $.10 Par Value (File No. 7–12964)
Sports & Recreation, Inc.
Common Stock, $.01 Par Value (File No. 7–12965)
Viacom
Warrants C Common Stock, No Par Value (File No. 7–12966)
Viacom
Warrants E Common Stock, No Par Value (File No. 7–12967)
Weeks Corporation
Common Stock, $.01 Par Value (File No. 7–12968)
Newbridge Networks Corporation
Common Stock, No Par Value (File No. 7–12969)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 14, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–23993 Filed 9–27–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20568; File No. 812–8170]

The Equitable Life Assurance Society of the United States

September 22, 1994.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: The Equitable Life Assurance Society of the United States ("Equitable").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Section 9(a).

SUMMARY OF APPLICATION: Applicant seeks an order exempting itself and its affiliates, in their respective capacities as investment advisers, principal underwriters and depositors, from the disqualification provisions of Section 9(a) with respect to Equitable's separate accounts organized as unit investment trusts ("UITs") that derive assets from the sale of variable annuity contracts. The exemptions, subject to certain conditions, would apply to Equitable's (and its affiliates') officers, directors and employees who do not participate directly in the management or administration of the separate accounts or their underlying management investment companies, or in the sale of their variable annuity contracts.

FILING DATE: The application was filed on December 18, 1992, and amended on November 5, 1993 and August 30, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing the Secretary of the SEC and serving Applicant with a copy of the request, personally or by mail. Hearing requests may be received by the Commission by 5:30 p.m. on October 17, 1994 and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW. Washington, DC 20549. Applicant: The Equitable Life Assurance Society of the United States, 787 Seventh Avenue, New York, N.Y. 10019, Attn: Naomi Friedland-Wechsler, Vice President and Senior Counsel.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. Equitable is a New York Stock life insurance company that is authorized to sell life insurance and annuities in all fifty states, the District of Columbia, Puerto Rico and the Virgin Islands. Equitable is a wholly-owned subsidiary of The Equitable Companies Incorporated, ("Holding Company"), a publicly-traded holding company. AXA, a French insurance holding company, is the largest stockholder of the Holding Company. Equitable is registered under the Securities Exchange Act of 1934 (the "1934 Act") as a broker-dealer and under the Investment Advisers Act of 1940 as an investment adviser. Equitable is the depositor of two separate accounts that fund variable annuity contracts (the "Separate Accounts").

2. The Separate Accounts are organized as UITs and are registered under the Securities Act of 1933 and the 1940 Act. The Separate Accounts fund benefits under certain group and individual variable annuity contracts. The assets of the Separate Accounts are invested exclusively in shares of the Hudson River Trust, a registered open-end investment company.

3. Equico Securities, Inc. ("Equico"), an indirect wholly-owned subsidiary of Equitable, is the principal underwriter of the Separate Accounts. Equico is also registered as a broker-dealer and as an investment adviser.

4. Alliance Capital Management L.P., an indirectly majority-owned subsidiary of Equitable, provides administrative and advisory services to the Hudson River Trust.

Applicant's Legal Analysis

1. Section 9(a) automatically disqualifies a company from serving as an adviser, depositor or principal underwriter to a registered investment company if the company or an affiliate has an employee, officer or director who has been convicted of a securities-related offense or enjoined by a court from serving in a securities-related position. The purpose of Section 9(a) is to prevent persons of questionable character from occupying positions of influence over registered investment companies.

2. Rules 6e–2 and 6e–3(T) provide certain exemptions from the automatic disqualification provisions of Section 9(a). Paragraphs (b)(4) and (b)(15) of Rules 6e–2 and 6e–3(T) restrict the applicability of Section 9(a) to persons who participate directly in the management or administration of the separate account and the underlying fund, or in the sale of the variable life contracts funded by the separate account.

3. There is no rule affording similar relief with respect to insurance company separate accounts funding variable annuity contracts, such as the Separate Accounts.

4. Equitable has approximately 5,200 non-officer employees and 8,000 insurance agents who are registered representatives, in addition to its officers and directors. Section 9(a) applies to Equitable, as depositor and principal underwriter of the Separate Accounts, and to its affiliates, as investment advisers and principal underwriters of registered investment companies.

5. Section 9(a) would automatically disqualify Equitable and its affiliates from serving as depositor, principal underwriter or investment adviser if any one of their employees became disqualified under Section 9(a), even if the employee worked in one of Equitable's businesses not regulated under the 1940 Act and did not participate in the management or administration of the Separate Accounts or the Hudson River Trust, or in the sale of variable annuity contracts.

6. Equitable seeks an order limiting the automatic disqualification provisions of Section 9(a) with respect to the Separate Accounts to the same basis available to separate accounts funding variable life insurance contracts by Rules 6e–2 and 6e–3(T). Equitable asserts that the intended focus of Section 9(a) is on the operation of investment companies and not on ancillary businesses unrelated to investment company operations and management. Equitable states that its requested relief is consistent with the purpose of Section 9(a).

7. Equitable contends that the Commission already has recognized the appropriateness of limiting the disqualification provisions of Section 9(a) with respect to variable annuity operations by granting applications permitting "mixed funding." [1] As a result, underlying management investment companies that will be used to fund both variable annuity contracts and variable life insurance contracts have been required to file applications under Section 6(c). The Commission has granted numerous such exemptive orders under delegated authority.[2]

8. Presently, whenever an officer, director or employee of Equitable is subject to the automatic disqualification provisions of Section 9(a), Equitable must apply for a Commission order pursuant to Section 9(c) of the 1940 Act to exempt the person and Equitable from the disqualification provisions of Section 9(a).

The circumstances under which the Commission has limited the disqualification provisions of Section 9(a) pursuant to Section 9(c) have become standardized.[3] These conditions include a requirement that, in cases where the disqualification arises solely because an applicant employs a person who is disqualified under Section 9(a)(1) or (2), the disqualified employee will not be involved in investment company or investment advisory activities. The requirement to submit such applications places an undue burden on both Equitable and the Commission without any public benefit if the individual does not participate in the operations or management of a registered investment company or in the sale of variable insurance contracts.

9. Equitable currently maintains monitoring procedures to identify any insurance agent subject to a statutory disqualification. Similar monitoring procedures will remain in effect for officers, directors, and employees of Equitable who do not function as insurance agents or registered representatives. These procedures include:

a. Insurance agents of Equitable are required to complete the disciplinary questions on Form U–4 (Uniform Application for Securities Industry Registration or Transfer) before entering into a contract with Equitable; and

[1] The use of a common underlying investment management company to fund both variable life insurance contracts and variable annuity contracts is known as "mixed funding." In order to qualify for exemptions from the requirements of Section 9(a), Rule 6e–2(b)(15) prohibits mixed funding and Rule 6e–3(T)(b)(15) permits mixed funding only if several conditions are met. The conditions are that the underlying management investment company's board of directors, a majority of whom are not interested persons of the company, will monitor for the existence of any material irreconcilable conflict between the interests of variable annuity contractholders and variable life scheduled or flexible contractholders investing in such company. The life insurer must agree to report any potential or existing conflicts to the directors. If a conflict arises, the life insurer must, at its own cost, remedy such conflict up to and including establishing a new registered management investment company and segregating the assets underlying the variable annuity contracts and the variable life scheduled or flexible contracts.

[2] *E.g., The Quest for value Accumulation Trust, et al.*, Investment Company Act Release Nos. 19670 (Sept. 1, 1993) (Notice) and 19749 (Sept. 29, 1993) (Order); *Maxim Series Fund, Inc., et al.*, Investment Company Act Release Nos. 19616 (Aug. 6, 1993) (Notice) and 19676 (Sept. 2, 1993) (Order); *New York Life MFA Series Fund, Inc.*, Investment Company Act Release Nos. 19010 (Oct. 8, 1992) (Notice) and 19069 (Oct. 30, 1993) (Order).

[3] Delegation of Authority to Director of Division of Investment Management, Investment Company Act Release No. 18055 (Mar. 20, 1991).

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b. If the response to any question on page 3 of Form U–4 is affirmative, a copy of the response is sent to Equitable's compliance department. Equitable then determines whether the insurance agent is subject to statutory disqualification under Section 15(b) of the 1934 Act or Section 9(a) of the 1940 Act and whether to proceed with the hiring process.

Conditions for Relief

Equitable agrees that if the requested exemptions are granted, Equitable will maintain its current monitoring procedures to identify officers, directors and employees subject to disqualification. Equitable will maintain a list of its officers, directors and employees who participate directly in the management or administration of any variable annuity separate account of Equitable and any registered investment company underlying Equitable's variable annuity separate accounts. Equitable also will maintain a list of its agents who, as registered representatives of Equico, offer and sell variable annuity contracts. These lists will be available to the staff of the Commission. The individuals named on the lists will remain subject to the automatic disqualification provisions of Section 9(a).

Conclusion

Applicant submits that, for all of the reasons stated herein, the requested exemptions from Section 9(a) of the 1940 Act meet the standards set out in Section 6(c) of the 1940 Act. Applicant asserts that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23991 Filed 9–27–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20567; No. 812–9032]

Jefferson-Pilot Life Insurance Company, et al.

September 21, 1994.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Jefferson-Pilot Life Insurance Company ("Jefferson Pilot") and Jefferson-Pilot Separate Account A ("Separate Account") (collectively, "Applicants").

RELEVANT 1940 ACT SECTION: Order requested under Section 26(b) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order authorizing the substitution of shares of the Variable Insurance Products Fund's ("VIP Fund") Money Market Portfolio ("VIP Money Market Portfolio") for shares of the Jefferson-Pilot Money Market Fund, Inc. ("J–P Money Market Fund"). The VIP Money Market Portfolio, together with other VIP Fund portfolios and certain other registered mutual funds, will serve as the eligible funding vehicles for certain individual variable annuity contracts and other forms of variable annuity contracts that may in the future be offered by Jefferson Pilot through the Separate Account.

FILING DATE: The application was filed on June 30, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 17, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o J. Gregory Poole, Esq., Jefferson-Pilot Life Insurance Company, 100 North Greene Street, Greensboro, North Carolina 27401.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Ifunold, Senior Counsel, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Jefferson-Pilot, a stock life insurance company, is a wholly-owned subsidiary of Jefferson-Pilot Corporation, a publicly held corporation.[1] Jefferson-Pilot is licensed to sell insurance and annuities in 44 states, the District of Columbia, the Virgin Islands, and Puerto Rico.

2. The Separate Account is a separate account organized by Jefferson-Pilot and registered under the 1940 Act as a unit investment trust for the purpose of funding certain individual variable annuity contracts ("Contracts"). The Separate Account consists of nine sub-accounts ("Subaccounts"), each investing in shares of a corresponding fund or series of funds available under the Contracts, including shares of the J–P Money Market Fund.

3. The J–P Money Market Fund is an open-end diversified management investment company registered under the 1940 Act. Share of the J–P Money Market Fund are purchased, without any sales charge, hy the Money Market Subaccount at net asset value. Shares are redeemed without any charge or fee to the Separate Account. At May 31, 1994, 26.27% and 73.73% of the J–P Money Market Fund's outstanding shares were owned beneficially and of record, respectively, by the Contract owners through the Separate Account and by Jefferson-Pilot. Jefferson-Pilot's shares represent its "seed money" investment held directly in its General Account.

4. The VIP Fund is a Massachusetts business trust registered under the 1940 Act as an open-end, diversified management investment company. The VIP Fund is divided into separate investment portfolios, including the VIP Money Market Portfolio.

5. On March 31, 1994, J–P Money Market Fund had $21,116,199 in net assets and the VIP Money Market Portfolio had $572 million in net assets. For the year ended March 31, 1994, total expenses for the J–P Money Market Fund and the VIP Money Market Portfolio were .65% and .27% of average net assets, respectively. For the year ended March 31, 1994, the VIP Money Market Portfolio had a management fee of .19% of average net assets, and the J–P Money Market Fund had an annual investment advisory and management fee of .50% of average daily net assets.

6. The primary investment objective of the J–P Money Market Fund is maximum current income consistent with liquidity and stability of principal. The VIP Money Market Portfolio seek to obtain as high a level of current income as is consistent with preserving capital and providing liquidity through investment in high-quality U.S. dollar-denominated money market securities of domestic and foreign issuers.

7. JP Investment Management Company ("JP Management") provides investment advice and management services to the J–P Money Market Fund. JP Management is a registered investment adviser and wholly-owned subsidiary of Jefferson-Pilot Corporation and is an affiliate of Jefferson-Pilot. JP Management receives an annual investment advisory and management fee on an annual basis of .50% of the J–P Money Market Fund's average daily net assets.

8. Fidelity Management & Research Company ("Fidelity Management"), a registered investment adviser, is the investment adviser for the VIP Fund, including the VIP Money Market Portfolio. Fidelity Management is a wholly-owned subsidiary of FMR Corporation, which is not an affiliate of Jefferson-Pilot.

Prior to January 1, 1994, Fidelity Management's advisory fee was based on the VIP Money Market Portfolio's gross income, as follows: (a) Monthly gross income equivalent to an annualized yield of 5% or less was subject to an annual fee rate of 4% of the Portfolio's gross income; (b) monthly gross income in excess of an annualized yield of 5% was subject to an annual rate of 6% of that excess; and (c) the management fee was limited to a weighted average of a graduated series of annual limitation rates ranging from 0.5% of its average monthly net assets up to $1.5 billion to 0.4% of its average monthly net assets in excess of $6 billion.

As of January 1, 1994, Fidelity Management's advisory fee for the VIP Money Market Portfolio is comprised of: (a) A basic fee rate, and (b) an income-based component. The basic fee rate is the sum of two parts: (a) a group fee rate based on the monthly average net assets of all funds advised by Fidelity Management, and (b) an individual fund fee rate of .03%. The group fee rate ranges from a maximum of .37% to a marginal rate of .1325% if total assets in all of the funds advised by Fidelity Management rise. One-twelfth of the combined annual fee rate is applied to the VIP Money Market Portfolio's net assets averaged over the most recent month, giving a dollar amount which is the fee for that month. If the VIP Money Market Portfolio's gross yield is 5% or less, the basic fee is the total management fee. The income-based component is added to the basic fee only when the VIP Money Market Portfolio's yield is greater than 5%. The income-based fee is 6% of that portion of the VIP Money Market Portfolio's yield that represents a gross yield of more than 5% per year. The maximum income-based component is .24%.

9. Applicants propose to substitute shares of the VIP Money Market Portfolio for all outstanding shares of the J–P Money Market Fund attributable to the Contracts ("Substitution") as soon as practicable following the issuance of the Commission's order. Applicants state that Jefferson-Pilot will supplement the prospectus for the Separate Account to reflect the proposed Substitution.

10. At the close of business on the date of the Substitution, Jefferson-Pilot will redeem for cash all shares of the J–P Money Market Fund it currently holds on behalf of the Separate Account. On the business day following the Substitution, Jefferson-Pilot will redeem for cash all shares of the J–P Money Market Fund that it currently owns, representing its "seed money" investment held directly in its General Account. The J–P Money Market Fund will process a redemption request and, simultaneously, the VIP Money Market Portfolio will process a purchase order for the exact amount of the redemption proceeds. The redemption request and the purchase order will be at prices based on the current net assets values per share next computed after receipt thereof and, therefore, in a manner consistent with Rule 22c-1 under the 1940 Act. Monies attributable to Contract owners currently invested in the J–P Money Market Fund will be fully invested at all times. The full net asset value of and number of redeemed J–P Money Market Fund shares held by the Separate Account will be reflected in the Contract owner's accumulation unit values following the Substitution.

11. All expenses and transaction costs of the Substitution, including applicable brokerage commissions, will be assumed by Jefferson-Pilot and reflected in the redemption proceeds.

12. Within five days after the Substitution, Contract owners will be sent a written notice of the Substitution ("Notice"), the prospectus for the VIP Fund, and the supplement to the prospectus for the Separate Account describing the Substitution. The Notice will advise Contract owners that for a period of thirty days from the mailing of the Notice ("Free Transfer Period"), Contract owners may transfer all assets, as substituted, to any other available Subaccount, without limitation and without charge. Following the Substitution, Contract owners will be afforded the same contract rights, including surrender and other transfer rights, with regard to amounts they have currently invested under the Contracts. There are no currently applicable surrender fees or redemption charges under the Contracts. Applicable deferred sales charges, however, will be imposed.

Applicants' Legal Analysis

1. The Applicants request that the Commission issue an order under Section 26(b) of the 1940 Act to the extent necessary to permit the substitution of shares of the VIP Money Market Portfolio for the shares of the J–P Money Market Fund held by Separate Account.[2] Thereafter, the VIP Money Market Portfolio will serve as one of the eligible funding vehicles for the Contracts.

2. Section 26(b) of the 1940 Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer "* * *" to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title."

3. Applicants state that the purposes, terms, and conditions of the Substitution are consistent with the principals and purposes of Section 26(b), do not entail any of the abuses that Section 26(b) is designed to prevent, including costly forced redemptions, and are consistent with the protection of investors and the purposes fairly intended by the 1940 Act. Applicants further state that the Substitution has been determined by Jefferson-Pilot to be in the best interests of Contract owners for the following reasons.

4. Applicants state that the objectives, policies and restrictions of the J–P Money Market Fund and the VIP Money Market Portfolio are substantially similar—both are money market funds that seek to comply with Rule 2a–7 under the 1940 Act. Further, given Rule 2a–7 requirements, the credit quality, maturity and diversification requirements applicable to each Fund are identical.

5. Applicants state that, due to the J–P Money Market Fund's relatively insignificant total net assets

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[1] Delcor, Inc. ("Delcor"), a wholly-owned subsidiary of Golden Eagle Industries, Inc. ("Golden Eagle"). Golden Eagle, C.D. Spangler, Jr., a director of Golden Eagle, and W.D. Cornwell, Jr., a director and officer of Delcor and Golden Eagle, together own beneficially and of record 6.35% of Jefferson-Pilot Corporation's outstanding stock.

[2] Applicants state that to the extent that any aspect of the Substitution may be deemed to require approval under Section 11 of the 1940 Act, they intend to rely on the exemptive provisions of Rule 11a–2 under the 1940 Act.

($21,116,119 at March 31, 1994), J–P

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($21,116,119 at March 31, 1994). J–P Management has had greater difficulty making appropriate investments than it would have had if that Fund had greater assets. Applicants submit that, due to the VIP Money Market Portfolio's larger asset size, it is not expected to experience the type of difficulties experienced by the J–P Money Market Fund with its smaller asset base in adhering to diversification requirements applicable to money market funds under Rule 2a–7. Additionally, Fidelity Management, the VIP Money Market Portfolio's investment adviser, has specialized in the management of mutual funds since 1946 and is a widely recognized expert in money management.

6. Applicants state that the expense ratio of the VIP Money Market Portfolio (.27%) is lower than that of the J–P Money Market Fund (.65%), which has remained relatively high for this type of fund. Further, because a large portion of the J–P Money Market Fund expenses is fixed and the size of the Fund is relatively small and unlikely to grow significantly, these fixed expenses currently represent, and may continue to represent, a relatively large percentage of the Fund's average daily net assets. In contrast, the expense ratio of the VIP Money Market Portfolio has remained at or near the .27% level for many years and is likely to continue to be lower because of the Portfolio's larger asset base. Consequently, Applicants assert that, following the Substitution, Contract owners will not be exposed to higher expenses and should benefit from the VIP Money Market Portfolio's lower expense ratio. Additionally, lower expense ratios generally indicate higher possible investment returns for Contract owners. For the seven days ended May 31, 1994, the yield and effective yield were 3.338% and 3.43%, respectively, for the J–P Money Market Fund, and 4.09% and 4.18%, respectively, for the VIP Money Market Portfolio.

7. Applicants states that the assets of the J–P Money Market Fund on March 31, 1994 were $21,118,119, and that the Fund has not exceeded a $25 million asset level during the past ten years ended March 31, 1994, a level that the Fund is not expected to exceed in the future. In comparison, the VIP Money Market Portfolio's assets at March 31, 1994 were $572 million and are expected to increase. Further, while shares of the VIP Money Market Portfolio are offered to separate accounts of insurance companies, whether or not affiliated with Fidelity Management, shares of the J–P Money Market Fund are actively marketed only to Jefferson-Pilot. Applicants thus submit that the VIP Money Market Portfolio is more likely to increase in size than the J–P Money Market Fund.

8. Applicant state that the Contracts reserve Jefferson-Pilot the right to replace shares of the J–P Money Market Fund held by the Separate Account with shares of another registered investment company, such as the VIP Fund, if (i) shares of the J–P Money Market Fund are no longer available for investment by the Separate Account, or (ii) in Jefferson-Pilot's judgment, subject to Commission approval, further investment in the J–P Money Market Fund should become inappropriate. Jefferson-Pilot represents that further investment in shares of the J–P Money Market Fund is no longer appropriate in view of the purposes of the Contracts.

9. Contract owners will incur no transfer fees in connection with the Substitution. Applicants represent that the Substitution will have no adverse federal income tax consequences for the Contract owners. Additionally, the Substitution will in no way alter the insurance benefits to Contract owners or the contractual obligations of Jefferson-Pilot. Contract owners will continue to look to Jefferson-Pilot with regard to their rights under the Contracts.

10. Applicants consent to the following terms of and conditions to the issuance of an order granting an exemption under Section 26(b):[3]

(a) The Substitution is of shares of the J–P Money Market Fund, which is a money market fund whose objectives, policies and restrictions and substantially similar to those of the VIP Money Market Portfolio so as to continue fulfilling Contract owners' objectives and risk expectations;

(b) If a Contract owner requests, during the Free Transfer Period, asserts will be reallocated for investment in a Contract owner selected Subaccount. The Free Transfer Period is sufficient time for Contract owners to reconsider the Substitution;

(c) The Substitution will, in all cases, be at net asset value of the respective shares, without the imposition of any transfer or similar charges;

(d) Jefferson-Pilot will assume all expenses and transaction costs, including, among others, legal and accounting fees and any brokerage commissions, relating to the Substitution in a manner that attributes all transaction costs to Jefferson-Pilot;

(e) The Substitution in no way will alter the insurance benefits to the Contract owners, the contractual obligations of Jefferson-Pilot;

(f) The Substitution in no way will alter the tax benefits to Contract owners;

(g) Contract owners may choose to withdraw amounts credited to them following the Substitution under conditions that currently exist under the Contracts, subject to any applicable deferred sales charge; and

(h) The Substitution is expected to confer certain modest economic benefits to Contract owners by virtue of the enhanced asset size of the VIP Money Market Portfolio.

[3] Counsel for Applicants represents that an amended application consenting to the terms and conditions will be filed during the notice period.

Conclusion

Applicants submit that the exemptive relief requested under Section 26(b) of the 1940 Act is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Accordingly the Applicants request that the Commission grant the necessary exemptions and approvals pursuant to Section 26(b) of the 1940 Act permitting the Substitution.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23992 Filed 9–27–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; General Aviation Maintenance Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of General Aviation Maintenance Working Group.

SUMMARY: Notice is given of the establishment of the General Aviation Maintenance Working Group of the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of the ARAC on air carrier/general aviation maintenance issues.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick J. Leonelli, Assistant Executive Director for Air Carrier/General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee, Flight Standards Service (AFS–300), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–3546; FAX: (202) 267–5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230, February 19, 1993). One area the ARAC deals with is air carrier/general aviation maintenance issues. These issues involve mechanic certification and approved training schools outlined in parts 65 and 147 and the maintenance standards for parts 23, 25, 27, 29, 31, 33, and 35 aircraft, engines, propellers, and their component parts and parallel provisions in parts 21, 43, 91, 121, 125, 127, 129, 133, 135, and 137 of the Federal Aviation Regulations (FAR), which are the responsibility of the FAA Director, Flight Standards Service.

Task

Specifically, the working group's task is the following:

Review Title 14 Code of Federal Regulations, parts 43 and 91, and supporting policy and guidance material for the purpose of determining the course of action to be taken for rulemaking and/or policy relative to the issue of general aviation aircraft inspection and maintenance, specifically section 91.409, part 43, and Appendices A and D of part 43. In your review, consider any inspection and maintenance initiatives underway throughout the aviation industry affecting general aviation with a maximum certificated takeoff weight of 12,500 pounds or less. Also consider ongoing initiatives in the areas of: maintenance recordkeeping; research and development; the age of the current aircraft fleet; harmonization; the true cost of inspection versus maintenance; and changes in technology.

If deemed appropriate, draft for ARAC a notice of proposed rulemaking for the task proposing new or revised requirements, a supporting economic analysis and other required analysis, advisory and guidance material, and any other collateral documents the working group determines to be needed.

Reports

A. Recommend time line(s) for completion of the task, including rationale, for consideration at the meeting of the ARAC to consider air carrier/general aviation maintenance issues held following publication of this notice.

B. Give a detailed conceptual presentation on the task to the ARAC before proceeding with the work stated under item C below.

C. Give a status report on the task at each meeting of ARAC held to consider air carrier/general aviation maintenance issues.

The General Aviation Maintenance Working Group will be comprised of experts from those organizations having an interest in the task assigned. A working group member need not necessarily be a representative of one of the member organizations of ARAC. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption FOR FURTHER INFORMATION CONTACT expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the working group. The request will be reviewed with the Assistant Chair of the ARAC for air carrier/general aviation maintenance issues and the Chair of the General Aviation Maintenance Working Group, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the ARAC are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the ARAC to consider air carrier/general aviation maintenance issues will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the General Aviation Maintenance Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on September 23, 1994.

Frederick J. Leonelli,

Assistant Executive Director for Air Carrier/General, Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–24003 Filed 9–27–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 183, Second Meeting; Standards for Airport Security Access Control Systems

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. Appendix I), notice is hereby given for Special Committee 183 meeting to be held November 1–2, 1994. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036.

Please Note the Different Times: First Day—Designated Working Groups @12:00; Plenary @1:00. Second Day—Plenary @9:00.

Agenda will be as follows: (1) Administrative remarks; (2) General introductions; (3) Approval of agenda; (4) Report by System Scope and Configuration Working Group; (5) Report by User Requirements Working Group; (6) Identify goals, develop work program and examine milestones; (7) Assign tasks; (8) Other business; (9) Establish agenda for next meeting; (10) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on September 22, 1994.

David W. Ford,

Designated Officer.

[FR Doc. 94–24004 Filed 9–27–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 162; Twenty-Third Meeting; Aviation Systems Design Guidelines for Open Systems Interconnection (OSi)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 162 meeting to be held November 7–9, 1994, starting at 9:00 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

Agenda will be as follows: (1) Chairman's introductory remarks; (2) Approval of the summary of the twenty-second meeting held August 17–19, 1994; (3) Reports of related activities being conducted by other organizations; (4) Discussion of router discovery and routing initiation development activities; (5) Discussion of issues related to "ATN Router MOPS" development; (6) Other business; (7) Date and place of next meeting.

Please Note: The Agenda items above will be addressed the first day, November 7. The following two days will be dedicated to further development of the "ATN router mops".

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 22, 1994.

David W. Ford,

Designated Officer.

[FR Doc. 94–24005 Filed 9–27–94; 8:45 am]

BILLING CODE 4910–13–M

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Federal Highway Administration

Environmental Impact Statement: Clatsop County, Oregon

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Clatsop County, Oregon. The Oregon Department of Transportation (ODOT) prepared and published a Draft Environmental Impact Statement (DEIS) in September 1993 and held a Public Hearing in October 1993. Originally, this project was planned for Access Oregon Highway funding. Because of an unanticipated shortage of State funds, ODOT is now requesting federal-aid participation in the proposed project. As a result, FHWA is reviewing the DEIS, public hearing testimony and comments received on the DEIS to determine if all federal requirements have been met to allow us to approve the DEIS for circulation in accordance with requirements in 23 CFR 771.

FOR FURTHER INFORMATION CONTACT: Elton Chang, Environmental Engineer, Federal Highway Administration, Equitable Center, Suite 100, 530 Center Street NE., Salem, Oregon 97301, Telephone (503) 399–5749, FAX (503) 399–5838.

SUPPLEMENTARY INFORMATION: The FHWA is currently reviewing the DEIS, public hearing testimony and written comments. FHWA, in cooperation with the ODOT, will prepare a Draft 4(f) evaluation which will accompany the DEIS. FHWA and ODOT will determine whether a supplemental environmental document is necessary and prepare a Final Environmental Impact Statement for the project.

The proposed project would realign about a 9.66 kilometer (6 mile) segment of the Lower Columbia River Highway (US 30) from the John Day River Bridge, over new alignment through the Clatsop State Forest, to connect with the existing Nehalem Highway (OR 202) at Williamsport Road, and then to join US 101 on the west side of Astoria near the north end of the Youngs Bay bridge. The improvements would include an interchange at the existing Williamsport Road-Nehalem Highway intersection, upgrading of the US 101/OR 202 intersection, improving access to the Port of Astoria, and widening of the existing OR 202 and US 101 segments of the project.

The purpose of the proposed project is to provide an improved and safe route for traffic to and from the Port of Astoria, to reduce the truck traffic, improve safety and overall congestion in downtown Astoria, and provide a second east-west route in and out of Astoria. The No-Build and the one Build Alternative are under consideration.

The ODOT DEIS indicates that approximately 31.6 hectares (78 acres) of additional right-of-way would be required for the project. This includes 23.1 ha (57 acres) of forest land, 3.2 ha (8 acres) of residential land, 2.8 ha (7 acres) of undeveloped land, and 2.4 ha (6 acres) of various other uses. The project would displace an estimated 35–40 residences in which about 75–90 persons lived in late 1992. In addition, it would displace approximately 6 businesses which employ about 25 workers. The project will affect and use right-of-way from four historic properties. It is estimated that the project may impact about 6.5 ha (16 acres) of wetlands. Threatened and endangered species have been identified in the project corridor as well as a great blue heron rookery and habitat used by Roosevelt elk and blacktail deer.

Information describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies. Public meetings and a public hearing have been held on the proposed project. Additional public meetings will be held if needed. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: September 19, 1994.

Elton Chang,

Environmental Engineer, Federal Highway Administration.

[FR Doc. 94–23928 Filed 9–27–94; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 94–75; Notice 1]

Automobili Lamborghini; Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 214

Automobili Lamborghini S.p.A. of Sant'Agata Bolognese, Italy, ("Lamborghini") has applied for a temporary exemption from the dynamic side impact protection requirements of Federal Motor Vehicle Safety Standard No. 214 *Side Impact Protection*. The basis of the application is that compliance would cause substantial economic hardship to a company that has tried to comply with the standard in good faith.

Notice of receipt of the application is published in accordance with the statutory requirements of 49 U.S.C. § 30113(b)(2) and does not represent any judgment of the agency on the merits of the application.

On May 16, 1994, Lamborghini petitioned NHTSA to permit Chrysler Corporation to include Lamborghini vehicles in its vehicle fleet for the purpose of compliance with Standard No. 214's phase-in calculation for enhanced side protection. In the alternative, it petitioned NHTSA to grant the company a temporary exemption from the side impact standard's new performance requirements until September 1, 1996. On August 5, 1994, NHTSA denied Lamborghini's request to be included in Chrysler's fleet because Chrysler had sold its interest in Lamborghini on January 31, 1994, to a group of investors led by MegaTech Ltd., a Bermuda corporation. At the same time, NHTSA informed Lamborghini that it would proceed to consider the question of temporary exemption. Lamborghini supplemented its application on August 22, 1994.

Lamborghini has manufactured only 1,475 motor vehicles over the past five years, approximately 25% of which have been sold in the United States. Denial of its petition would therefore mean loss of the important U.S. market until compliance could be achieved, an estimated 250 sales of 670 produced between January 1, 1995 and August 31, 1996. The applicant had operating losses in 1993 of approximately $5,000,000, and in 1992 of approximately $28,000,000. For 1991 it had an operating profit of almost $5,000,000.

While it was owned by Chrysler, Lamborghini vehicles were scheduled to be modified during the last year of the phase-in period which ends with vehicles produced on August 31, 1996, because of the low number of vehicles produced and the lead time necessary for engineering and tooling modifications. Chrysler's sale of Lamborghini, therefore, has placed the applicant in a difficult position since, before the sale, "Lamborghini had a good faith basis for believing that it would not need to meet the requirements of Standard 214 until the production year beginning September 1, 1996 * * *." Lamborghini was left without sufficient lead time to comply 100% of its production by either September 1, 1994 or September 1, 1995, and, since it produces only a single model, cannot avail itself of the phase-in requirement.

Accordingly, it has begun the preliminary work required to effect compliance in production vehicles manufactured beginning July 1996. During that time, it estimates that it will spend between $500,000 and $900,000 on research, development, and tooling changes.

Lamborghini argues that an exemption would be in the public interest and consistent with the objectives of motor vehicle safety because it is "one of the last small, pioneering and independent automobile manufacturers * * * precisely the type of small manufacturer that the * * * temporary exemption authority is intended to assist." Its vehicles "are used predominantly for shorter pleasure, rather than commuting or longer, trips" so that an exemption "would have an imperceptible impact on motor vehicle safety." It points out that the livelihoods of its workers in U.S. distributorships and dealerships would be affected by a denial.

Interested persons are invited to submit comments on the application described above. Comments should refer to the docket number and the notice number, and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered.

Notice of final action on the application will be published in the **Federal Register** pursuant to the authority indicated below. *Comment closing date:* October 28, 1994.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50, 501.8)

Issued on September 22, 1994.

Barry Felrice

Associate Administrator for Rulemaking.

[FR Doc. 94–23909 Filed 9–27–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

September 22, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request

In order to conduct the survey described below in a timely manner, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approve this information collection by October 4, 1994. All public comments must be received by close of business September 29, 1994.

Internal Revenue Service (IRS)

OMB Number: 1545–1432
Survey Project Number: IRS PC:V 94–008
Type of Review: Revision
Title: Business Assistance Center
Description: The Internal Revenue Service Office in Buffalo, New York opened an assistance center for business owners in October 1993. This center is the first IRS walk-in office set up for business owners and has part-time support and staff from several other federal, state, and local governmental agencies. This is a three-year test to extract data on a one-stop assistance for small business taxpayers in order to increase compliance and reduce burden.
Respondents: Small businesses or organizations
Estimated Number of Respondents: 9,600
Estimated Burden Hours Per Respondent:
Respondents—9,600
Time/interview—1 minute
Frequency of Response: Varies
Estimated Total Reporting Burden: 160 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue, Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 94–23997 Filed 9–27–94; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

September 21, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request

In order to conduct the survey described below in a timely manner, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approve this information collection by September 23, 1994. All public comments must be received by close of business September 23, 1994.

Internal Revenue Service (IRS)

OMB Number: 1545–1432
Survey Project Number: IRS PC:V 94–007
Type of Review: Revision
Title: Early Intervention Contact Interview
Description: The Internal Revenue Service is looking at ways to encourage and assist taxpayers to more promptly resolve their tax liabilities. To this end, the Collection function is currently conducting a major test to examine the strategy of interrupting the notice stream to make contact with delinquent taxpayers. The strategy employed is to make personal telephone calls in place of third notice correspondence on a sample of balance due and return delinquency cases.
Respondents: Individuals or households
Estimated Number of Respondents: 1,000
Estimated Burden Hours Per Respondent:
Respondents—1,000
Time/interview—3 minutes

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Frequency of Response: Varies
Estimated Total Reporting Burden: 50 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 94–23998 Filed 9–27–94; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

September 22, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0162
Form Number: IRS Form 4136
Type of Review: Revision
Title: Credit for Federal Tax Paid on Fuels
Description: Internal Revenue Code (IRC) Section 34 allows a credit for Federal excise tax for certain fuel uses. This form is used to figure the amount of income tax credit. The data is used to verify the validity of the claim for the type of exempt use.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/Recordkeepers: 700,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—10 hr., 17 min.
Preparing and sending the form to the IRS—10 min.
Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 7,315,000 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 94–23999 Filed 9–27–94; 8:45 am]

BILLING CODE 4830–01–P

Sunshine Act Meetings

Federal Register
Vol. 59, No. 187
Wednesday, September 28, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 11:00 a.m., Monday, October 3, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 23, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–24053 Filed 9–23–94; 4:43 pm]

BILLING CODE 6210–01–P

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Corrections

Federal Register
Vol. 59, No. 187
Wednesday, September 28, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

10 CFR Part 810

Assistance to Foreign Atomic Energy Activities

Correction

In proposed rule document 94-21261 beginning on page 44381 in the issue of Monday, August 29, 1994, make the following correction:

On page 44381, in the second column, under **SUMMARY**, in the second line insert "amend" between "to" and "its".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-5027-7]

Standards of Performance for New Stationary Sources, Supplemental Delegation of Authority to the Commonwealth of Kentucky

Correction

In rule document 94-19165 beginning on page 40258 in the issue of Monday, August 8, 1994, make the following correction:

On page 40259, in the first column, in the first full paragraph, in the eighth line, the word "not" should read "now".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 94-45; FCC 94-110]

Revision of the Rules Regarding Marketing and Equipment Authorizations

Correction

In proposed rule document 94-14915 beginning on page in the issue of Tuesday, June 21, 1994, make the following corrections:

On page 31966, in the first column, under **DATES**:

(a) In the penultimate line "5" should read "6".

(b) In the last line "4" should read "6".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34647; International Series Release No. 712; File No. SR-PSE-94-15]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to a Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Listing of Options and Long-Term Options on the Telegraph Ltd. Israel Index

Correction

In notice document 94-22731 beginning on page 47193 in the issue of Wednesday, September 14, 1994, the release number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94-AEA-09]

Modification of Class D Airspace and Establishment of Class E Airspace; Various Locations, State of Pennsylvania

Correction

In rule document 94-21976 beginning on page 46165, in the issue of Wednesday, September 7, 1994, make the following corrections:

§ 71.1 [Corrected]

On page 46166, in the second column, in the third full paragraph, in the second line from the bottom, "long. 76°48'23"W.," should read "76°48'37"W.,".

On page 46167, in the first column, in the third full paragraph, in the fourth line, "west" should read "east".

BILLING CODE 1505-01-D

federal register

Wednesday
September 28, 1994

Part II

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430
Energy Conservation Program for Consumer Products; Final and Proposed Rules

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–94–220–IF]

RIN: 1904–AA61

Energy Conservation Program for Consumer Products

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Interim final rule.

SUMMARY: The Department of Energy (the Department) gives notice of an Interim Final Rule to establish test procedures for fluorescent and incandescent lamps, incorporating by reference test procedures adopted by the Illuminating Engineering Society (IES), American National Standards Institute (ANSI) and the International Commission on Illumination (CIE). The Energy Policy Act of 1992 requires the Department of Energy to administer an energy conservation program for certain major household appliances and commercial equipment. Among other program elements, the law requires that standard methods of testing be prescribed for each covered product. Today's Interim Final Rule will put lighting test procedures in effect so that lighting manufacturers can meet the testing requirements imposed by the Energy Policy Act of 1992.

DATES: This rule is effective October 28, 1994. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 28, 1994.

Written comments (eight copies) in response to this notice must be received by December 12, 1994.

ADDRESSES: Written comments (eight copies) are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Interim Final Test Procedures for Fluorescent Lamps and Incandescent Lamps, Docket No. EE–RM–94–220–IF, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Copies of the public comments received may be read at the Department of Energy Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

The Department is incorporating by reference several test standards from the Illuminating Engineering Society (Illuminating Engineering Society), the American National Standards Institute (ANSI), and the International Commission on Illumination (CIE). These standards are listed below:

1. American National Standards Institute C78.1–1991, "for Fluorescent Lamps—Rapid-Start Types—Dimensional and Electrical Characteristics"
2. American National Standards Institute C78.2–1991, "for Fluorescent Lamps—Preheat-Start Types—Dimensional and Electrical Characteristics"
3. American National Standards Institute C78.3–1991, "for Fluorescent Lamps—Instant-Start and Cold-Cathode Types—Dimensional and Electrical Characteristics"
4. American National Standards Institute C78.375–1991, "for Fluorescent Lamps—Guide for Electrical Measurements"
5. American National Standards Institute C82.3–1983 "for Reference Ballasts for Fluorescent Lamps"
6. International Commission on Illumination Publication No. 13.2 1974, corrected reprint 1993, "Method of Measuring and Specifying Color Rendering Properties of Light Sources," ISBN 3 900 734 39 9
7. Illuminating Engineering Society LM–9–88, "Illuminating Engineering Society Approved Method for the Electrical and Photometric Measurements of Fluorescent Lamps"
8. Illuminating Engineering Society LM–16–84, "Illuminating Engineering Society Practical Guide to Colorimetry of Light Sources"
9. Illuminating Engineering Society LM–20–1982, "Illuminating Engineering Society Approved Method for Photometric Measuring and Reporting Tests on Reflector Type Lamps"
10. Illuminating Engineering Society LM–45–91, "Illuminating Engineering Society Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps"
11. Illuminating Engineering Society LM–58–83, "Illuminating Engineering Society Guide to Spectroradiometric Measurements"
12. Illuminating Engineering Society LM–66–1991, "Illuminating Engineering Society Approved Method for the Electrical and Photometric Measurements of Single-Ended Compact Fluorescent Lamps"

Copies of these standards may be viewed at the Department of Energy Freedom of Information Reading Room at the address stated above. Copies of the American National Standards may be obtained from ANSI, 1430 Broadway, New York, NY 10018, (212) 642–4900. Copies of the Illuminating Engineering Society Standards may be obtained from the Illuminating Engineering Society, Publications Department, 345 E. 47th Street, New York, NY 10017, (212) 705–7925. Copies of the International Commission on Illumination Standard may be obtained from the Bureau Central De La CIE, 4 AV. Du Recteur-Poincare, 75 782 Paris, Cedex 16, France.

For more information concerning public participation in this rulemaking proceeding, see Section IX., "Public Comment," of SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT:

Terrence L. Logee, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1689.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

I. Introduction

Part B of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619, the National Appliance Energy Conservation Act (NAECA) of 1987, Pub. L. 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100–357, and the Energy Policy Act of 1992 (EPACT), Pub. L. 102–486, created the Energy Conservation Program for Consumer Products other than Automobiles (Program).[1] The consumer and commercial products currently subject to this Program (often referred to hereafter as "covered products") include general service fluorescent lamps and general service incandescent lamps, the subject of today's notice.

[1] Part B of Title III of EPCA, as amended, is referred to in this Interim Final Rule as the "Act." Part B of Title III is codified at 42 U.S.C. 6291–6309.

Under the Act, the Program consists essentially of three parts: testing, labeling, and Federal energy conservation standards. The Department, in consultation with the National Institute of Standards and Technology, is required to amend or establish new test procedures as appropriate for each of the covered products. Section 323. Test procedures shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. Section 323(b)(3). A test procedure is not required if the Department of Energy determines by rule that one cannot be developed. Section 323(d)(1). One hundred and eighty days after a test procedure for a product is adopted, no manufacturer may represent the energy consumption or cost of energy consumed by the product except as reflected in tests conducted according to the Department of Energy procedure. Section 323(c)(2).

However, the 180-day period referred to in section 323(c)(2) may be extended for an additional 180 days if the Secretary determines that the requirements of section 323(c)(2) would impose undue burden. Section 323(c)(3). Test procedures appear at 10 CFR Part 430, subpart B.

Labeling rules for household appliances and certain commercial products are administered by the Federal Trade Commission.

Section 323(b)(6) of the Act also specifies that the Secretary shall prescribe test procedures for fluorescent lamps and incandescent reflector lamps taking into consideration the applicable standards of the Illuminating Engineering Society or American National Standards Institute. These test procedures have all been reviewed by the National Institute of Standards and Technology in consultation with the National Electrical Manufacturers Association. DOE has determined that these test procedures will meet its needs. Therefore, today's Interim Final Rule incorporates by reference: The test methods found in Illuminating Engineering Society test procedure LM–9–88 for testing and measuring the performance of general service fluorescent lamps; Illuminating Engineering Society test procedures LM–58–1983, and LM–16–1984 and the International Commission on Illumination publication number 13.2–1974 for measuring the color rendering index of general service fluorescent lamps which is incorporated by reference in the Illuminating Engineering Society publication number LM–16–1984; and Illuminating Engineering Society test procedure LM–20–1982 for testing and measuring the performance of incandescent reflector lamps. Additionally, today's Interim Final Rule incorporates by reference the test methods found in Illuminating Engineering Society test procedure LM–66–1991 for testing and measuring the performance of medium base compact fluorescent lamps and Illuminating Engineering Society test procedure LM–45–91 for testing and measuring the performance of general service incandescent lamps.

The above test procedures do not provide for a measurement of annual energy consumption and annual operating cost which are needed to comply with the Act. Therefore, the Department's test procedures include a method of calculating the estimated annual energy consumption and the estimated annual operating cost. The Department is publishing elsewhere in this issue a Proposed Rule amending part 430 to define colored fluorescent and incandescent lamps and to define the exemption from energy conservation standards for a rough or vibration service incandescent reflector lamp.

II. Discussion

By this notice, the Department is adding a new section to establish test procedures for general service fluorescent and incandescent lamps. These test procedures will apply to those products covered by sections 322(a)(14) and 325(i)(1) of the Act.

A. Covered Product

The definitions of covered products are found in section 322 of the Energy Policy and Conservation Act as amended. For lamps, covered products in section 322(a)(14) include only specified fluorescent lamps, i.e., 4-foot medium bi-pin, 2-foot U-shaped, 8-foot slimline and 8-foot high output, and incandescent reflector lamps. The Department believes that covered lamps in section 322(a)(14) of the Act should also include general service fluorescent lamps, medium base compact fluorescent lamps, and general service incandescent lamps as defined in § 430.2 of this notice, *infra*. Adding these lamps to the covered products would be consistent with section 324(a)(2)(C)(i) of the Act, which requires the Federal Trade Commission to label general service fluorescent lamps, medium base compact fluorescent lamps, and general service incandescent lamps.

B. Test Procedure

The Department is establishing test procedures in appendix R to subpart B of 10 CFR part 430 by reference to American National Standards Institute standards C78.1–1991, C78.2–1978, C78.3–1991, C78.375–1991, C82.3–1983, Illuminating Engineering Society standards LM–9–1988, LM–16–1984, LM–20–1982, LM–45–1991, LM–58–1983, LM–66–1991 and International Commission on Illumination publication 13.2–1974 which is incorporated by reference in the Illuminating Engineering Society publication number LM–16–1984. Any subsequent amendment to this standard by the standard-setting organizations, American National Standards Institute, the Illuminating Engineering Society, or the International Commission on Illumination, will not affect the Department of Energy test procedures, which can be amended only by the Department of Energy. This test procedure will provide, *inter alia*, results suitable for determining whether the covered lamps comply with the standard levels established by the Act.

Although the Department's authority to prescribe test procedures under section 323(b)(6) is limited to fluorescent lamps and incandescent reflector lamps, the Department is incorporating by reference test procedures for general service incandescent lamps and medium base compact fluorescent lamps by authority of section 323(b)(2) of the Act. Data from these test procedures can also be used in the labeling program administered by the Federal Trade Commission.

The test procedure for general service fluorescent lamps is a method for measuring the lumen output of a seasoned lamp (the lamp is initially burned for 100 hours) in an integrating sphere or alternatively, by intensity distribution measurements (Illuminating Engineering Society LM–9–1988). Requirements for test conditions, equipment, instrumentation, procedures, and test report are included.

The test procedure for general service incandescent lamps (Illuminating Engineering Society LM–45–1991) is a method for determining the luminous output of general service incandescent lamps based upon measurement. Three methods are described in LM–45–1991, an integrating sphere, a goniometer, and substitution measurements, but the Department is incorporating only the integrating sphere and goniometer test methods because they are more accurate. Lamps shall be tested at 60 Hz

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and 120 volts regardless of their voltage rating.

The test procedure for incandescent reflector lamps (Illuminating Engineering Society LM–20–1982) is a method for determining the luminous output of incandescent reflector lamps based upon measurement. Two methods are described in LM–20–1982, one using an integrating sphere, and the other using intensity distribution measurements. The Department of Energy test procedures incorporate only the intensity distribution measurement procedure because it is more accurate and measurements on similar lamps are more consistent. Requirements for test conditions, equipment, instrumentation, procedures and test report are included.

The test procedure for medium base compact fluorescent lamps is a method for measurement of the lumen output of a seasoned lamp (100 hours burn-in) in an integrating sphere or by intensity distribution measurements (Illuminating Engineering Society LM–66–1991). The test procedure requires measurement of the lamp and ballast combination. Therefore, only section 4, reference ballasts, section 5, circuits, and section 6, lamp connections, are incorporated from Illuminating Engineering Society LM–66–1991. Because measurements without a reference ballast may exhibit greater variance in the lumen output and watt input measurements, the Department of Energy invites comments addressing the appropriate confidence bounds and sample size for these lamps.

C. Basic Model

The Department is including in today's rulemaking definitions of "basic models" of general service fluorescent lamp, and general service incandescent lamp in § 430.2. These definitions will separate the various types of general service fluorescent lamps by electrical and photometric characteristics, e.g., lamp efficacy, wattage, and color rendering index. General service incandescent lamps are distinguished by their wattage and lamp efficacy. Each unit within a basic model must have the same electrical characteristics. Furthermore, each unit within a given basic model cannot have any differing physical or functional characteristics that affect energy consumption.

D. Measures of Energy Consumption

The Department of Energy in today's notice is adopting three measures of energy consumption: (a) Estimated annual operating cost, (b) lamp efficacy, and (c) estimated annual energy consumption. These measures are to be included in § 430.22(r). The estimated annual operating cost, lamp efficacy, and estimated annual energy consumption will provide the consumer with three means of evaluating the energy efficiency of fluorescent and incandescent reflector lamps. The Department has based the calculations of the measures of energy consumption for general service fluorescent lamps on the use of Illuminating Engineering Society Standard LM–9–1988, for general service incandescent lamps on Illuminating Engineering Society Standard LM–45–1991, for incandescent reflector lamps on Illuminating Engineering Society Standard LM–20–1982 and for medium base compact fluorescent lamps on Illuminating Engineering Society Standard LM–66–1991.

- The estimated annual operating cost is expressed in dollars per year. It is the product of the Department of Energy representative unit energy cost for electricity, the input power, and the representative average use cycle.
- The estimated annual energy consumption is expressed in kilowatt-hours per year. It is the product of the input power and the representative average use cycle.
- The lamp efficacy is a ratio of lamp lumen output to total input wattage as determined by the use of the measurement procedures in Illuminating Engineering Society LM–9–1988, LM–20–1982, LM–45–1991 or LM–66–1991.

E. Color Rendering Index (CRI)

The Color Rendering Index is referenced in Illuminating Engineering Society LM–16–1984 which the Department is incorporating by reference. This guide discusses several techniques for assessing light source color appearance. The relationship between color appearance and light source spectral power distribution is discussed, along with the systems for classifying color appearance. The basics of spectroradiometry and colorimetry are covered.

The Color Rendering Index is determined by measuring the degree of color shift objects undergo when illuminated by a light source as compared with the color of those same objects when illuminated by a reference source of comparable color temperature. This index is determined pursuant to the International Commission on Illumination Publication 13.2–1974 which the Department is incorporating by reference. The method uses spectroradiometric measurements and a detailed calculation procedure. It is applicable to most general purpose lamp types including general service fluorescent and incandescent lamps, incandescent reflector lamps and compact fluorescent lamps.

Spectroradiometric measurements and equipment setup follow the guidance in Illuminating Engineering Society LM–58–1983 which is being incorporated by reference. This guide describes the equipment used in making spectroradiometric measurements, the procedures to be followed in using the equipment, and the precautions that should be taken to obtain consistently valid results. The methods are applicable to all lamp types, and are based on the measurement of the complete spectral power distribution of the source. Data presentation and error analysis are discussed.

F. Number of Units to be Tested

The Act specifies that applicable fluorescent and incandescent reflector lamps shall meet the standard. Furthermore, the Act requires that the certification report include the lumen output and wattage consumption for each lamp type as an average of measurements taken over the preceding 12 months. The Department believes that the sampling plan for fluorescent and incandescent reflector lamps provides a sound statistical basis for measurements.

The Department is adopting at § 430.23(r) a sampling plan based on a 99 percent confidence level for testing general service fluorescent lamps, general service incandescent lamps, incandescent reflector lamps, and medium base compact fluorescent lamps. The sampling provisions the Department of Energy is adopting today require testing a minimum sample of 20 lamps. The manufacturer must randomly select three lamps per month for any 7 of the 12 months required to determine the average. If there are less than 7 months' production, the manufacturer may divide the minimum sample of 20 as evenly as possible into each month of production. The provision for less than 7 month's production is to cover production runs of special or limited lamps which are subject to regulation.

The same sample of 20 lamps which were used for lamp efficacy testing shall be used for measurement of the Color Rendering Index. The Department believes that this testing requirement will satisfy the standard which calls for lamp efficacy and color rendering index measurements.

The Department believes these provisions promote the objectives of the Act while minimizing the burden on manufacturers. Manufacturers and other interested persons are encouraged to comment on this sampling approach, as well as the underlying assumptions.

G. Laboratory Accreditation

The Act at section 323(b)(6), directs DOE to prescribe test procedures which must be carried out by accredited test laboratories. The Department herein defines an accredited laboratory as one which meets the standards and requirements of the National Voluntary Laboratory Accreditation Program, a division of the National Institute of Standards and Technology of the United States Department of Commerce. Test laboratory accreditation by the National Voluntary Laboratory Accreditation Program is based on conformance with criteria published in 15 CFR part 285 and in the National Voluntary Laboratory Accreditation Program Handbook 150–01, "Energy Efficient Lighting Products, Lamps and Luminaires," August 1993. The National Voluntary Laboratory Accreditation Program Handbook 150–01 is available for inspection in the DOE reading room from 9 to 4, Monday through Friday or may be ordered from the National Voluntary Laboratory Accreditation Program, Building 411, Room A162, Gaithersburg, MD 20899.

The National Voluntary Laboratory Accreditation Program has mutual recognition agreements with the following countries: Canada, New Zealand, Australia and Great Britain. These agreements, with the aforesaid countries, allow foreign test laboratories to be recognized by the National Voluntary Laboratory Accreditation Program. The National Voluntary Laboratory Accreditation Program will also directly accredit foreign test laboratories. Costs for laboratory accreditation are borne by the test laboratory.

H. Certification Data

The Department is adding a new paragraph for lamp certification data at § 430.62(a)(2). The lamp manufacturers' certification report must include the National Voluntary Laboratory Accreditation Program identification number, production date codes, lamp efficacy, Color Rendering Index, where applicable, lamp wattage, brand names and model designation. Since lamps manufactured prior to the effective date of the standards may be in the distribution system for some time, lamp manufacturers should advise DOE on how to interpret their production date coding system in the certification report. All other requirements of § 430.62 and Appendix A, Compliance Statement, also apply to general service fluorescent lamps and incandescent reflector lamps.

I. Energy Conservation Standards

The Act prescribes, and today's notice includes in § 430.32, energy conservation standards for general service fluorescent and incandescent reflector lamps. There are no standards for general service incandescent lamps or medium base compact fluorescent lamps.

J. Definitions

By this notice, the Department of Energy is amending the definition of "Act" as it appears in § 430.2. The amended definition will include the Energy Policy Act of 1992 (Pub. L. 102–486). The legislated definitions for incandescent lamp, general service incandescent lamp, fluorescent lamp, general service fluorescent lamp, and medium base compact fluorescent lamp are included in § 430.2. Note that there is an inconsistency in the Act between the definition for "fluorescent lamp" and the definition for "medium base compact fluorescent lamp." The definition for "fluorescent lamp" *only* includes four lamp types and *does not* include a medium base compact fluorescent lamp. Faced with this conflict, the Department has included the definition of "medium base compact fluorescent lamp" and has included test procedures as noted above. The Department has also defined cold temperature lamp in § 430.2 from an industry standard.

The Act provides for an exemption from the standards for lamps specifically designed for cold temperature installations. See § 321(30)(B)(ii). The Department is defining "cold temperature" lamps as those lamps specifically designated and marketed for outdoor or cold temperature use and that are designed to start at −20°F when used with a ballast conforming to the requirements of American National Standards Institute standard C78.1.

Lamps that meet these requirements would not be subject to standards. In order to qualify for the exemption, the lamps must be "specifically" designed for cold temperature installations and must be specifically designated and marketed as such in catalogs, sales literature and other promotional material.

K. Prohibited Acts and Penalties

Since the Energy Policy Act of 1992 (EPAct) amends the Energy Policy and Conservation Act (EPCA), the enforcement provisions may not be apparent. Therefore, the following statements reiterate the provisions from the Energy Policy and Conservation Act in section 332 and the regulations at 10 CFR Section 430.61. The statute prohibits the following actions:

(1) For any manufacturer or private labeler to distribute in commerce any new covered product to which a rule under section 324 applies, unless such covered product is labeled in accordance with such rule;

(2) For any manufacturer, distributor, retailer, or private labeler to remove from any new covered product or render illegible any label required to be provided with such product under a rule under section 324;

(3) For any manufacturer to fail to permit access to, or copying of, records required to be supplied under this part, or fail to make reports or provide other information required to be supplied under this part;

(4) For any person to fail to comply with an applicable requirement of section 326(a), (b)(2), (b)(3), or (b)(5); or

(5) for any manufacturer or private labeler to distribute in commerce any new covered product which is not in conformity with an applicable energy conservation standard established in or prescribed under this part.

The maximum penalties are $100 for each violation. Each violation of (1), (2) and (5), above, shall constitute a separate violation with respect to each covered product, and each day of violation of (3) and (4), above, shall constitute a separate violation.

III. Environmental Review

Pursuant to section 7(c)(2) of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency for comment concerning the impact of this proposal on the quality of the environment.

Since test procedures are used to standardize the measurement of energy usage, and will not affect the quality or distribution of energy usage, prescribing test procedures will not result in any environmental impacts. The Department of Energy, therefore, has determined that prescribing test procedures under the Program is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

This Rulemaking, which amends existing part 430 of title 10, will not change the environmental effect of such regulation, and is an item which is "categorically excluded (A6)" by the Department of Energy's regulations on National Environmental Policy Act Implementing Procedures (10 CFR part 1021) (57 FR 15122, April 24, 1992)

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(Appendix A to subpart D, Categorical Exclusion A6.). Consequently, neither an Environmental Impact Statement nor an Environmental Assessment is required for this rule.

IV. Regulatory Planning and Review

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–345) (5 U.S.C. 601–612) requires that an agency prepare an initial regulatory flexibility analysis and that it be published at the time the Interim Final Rule is published. This requirement (which appears in section 603) does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." This rule affects manufacturers of general service fluorescent and incandescent lamps. As previously discussed, the test procedures would not have significant economic impact, but rather, would provide common testing methods. Therefore, the Department of Energy certifies that this rule, if promulgated, would not have a "significant economic impact on a substantial number of small entities."

VI. Federalism Review

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

The Department of Energy has identified a substantial direct effect that today's Interim Final Rule would have on State governments. It would initially preempt inconsistent State regulations. However, the Department of Energy has concluded that such effect is not sufficient to warrant preparation of a federalism assessment for the following reason: The Act provides for subsequent State petitions for exemption. Thus, a determination as to whether a State law prevails must be made on a case-by-case basis using criteria set forth in the Act. When the Department of Energy receives such a petition, it will then be appropriate to consider preparing a federalism assessment consistent with the criteria in the Act.

VII. Review Under Section 32 of the Federal Energy Administration Authorization Act

This notice of interim final rulemaking incorporates by reference Illuminating Engineering Society, American National Standards Institute and International Commission on Illumination commercial test procedures to measure the efficiency of general service fluorescent and incandescent lamps and the color rendering index of fluorescent lamps. The commercial standards are Illuminating Engineering Society LM–9–1988, Illuminating Engineering Society LM–16–1984, Illuminating Engineering Society LM–20–1983, Illuminating Engineering Society LM–45–1991, Illuminating Engineering Society LM–58–1982, Illuminating Engineering Society LM–1991, American National Standards Institute C78.1–1991, American National Standards Institute C78.2–1978, American National Standards Institute C78.3–1991, American National Standards Institute C78.375–1991, American National Standards Institute C82.3–1983, and International Commission on Illumination Publication No. 13.2.-1974.

Pursuant to section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy is required to comply with section 32 of the Federal Energy Administration Act of 1974, as amended by section 9 of the Federal Energy Administration Authorization Act of 1977. 15 U.S.C. 788.

The findings required of the Department of Energy by section 32 serve to alert the public regarding the use and background of commercial standards in a proposal and through the rulemaking process. They allow interested persons to make known their views regarding the appropriateness of the use of any particular commercial standard in a notice of proposed rulemaking.

The Department of Energy has evaluated Illuminating Engineering Society LM–9, LM–16, LM–20, LM–45, LM–58, LM–66, American National Standards Institute C78.1, C78.2, C78.3, C78.375, C82.3, and International Commission on Illumination Publication No. 13.2 with regard to compliance with Section 32(b). The Department is unable to conclude whether these standards fully complied with the requirements of section 32(b), i.e., that they are developed in a manner which fully provided for public participation, comment, and review.

As required by section 32(c), the Department of Energy will consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of these standards on competition, prior to issuing a notice of Final Rulemaking.

VIII. Interim Final Effect

The Interim Final Rule establishes the Department of Energy test procedures for general service fluorescent lamps, general service incandescent lamps, incandescent reflector lamps, and medium base compact fluorescent lamps incorporating by reference industry standards. This Interim Final Rule allows the Department of Energy to promulgate test procedures so that lamp manufacturers can meet the schedule imposed by the Energy Policy Act of 1992. Section 123(f)(2). The normal rulemaking process would be impracticable and contrary to the public interest because the process would not allow for promulgation of a final rule in time for manufacturers to complete testing for certification.

The Energy Policy Act of 1992 requires manufacturers to test lamps for a 12-month period preceding the date standards are to take effect in order to certify that the lamps meet the standard. Section 123(f)(2). For two lamp types, the Energy Policy Act specifies that the effective date for standards to take effect is April 30, 1994 and for others the effective date is October 31, 1995. Section 123(f). Until a test procedure is prescribed, compliance with the standard cannot be determined. This interim final rule will allow manufacturers to begin the 12-month testing period to determine compliance with the standards. The Department could not practicably facilitate such a result if a proposed rule were necessary. It is in the public interest to facilitate that result and therefore to issue this interim final regulation without providing for public comment prior to giving them final effect. 5 U.S.C. 553. However, the Department of Energy is providing for a post-publication public comment period and expects to respond to relevant comments in a notice of Final Rulemaking.

IX. Public Comment

A. Written Comment Procedures

Interested persons are invited to participate in the rulemaking by submitting data, comments, or information with respect to the test procedures set forth in this notice to the address indicated at the beginning of the notice.

Comments should be identified both on the envelope and on the documents as "Test Procedures for Fluorescent and Incandescent Lamps, Docket No. EE-RM–94–220–IF." Eight (8) copies are requested to be submitted. If possible, the Department would appreciate an electronic copy of the comments on a 3.5" diskette. The Department is currently using WordPerfect™ 5.1. All submittals received by the date specified at the beginning of this notice will be considered by the Department of Energy before final action is taken on the Interim Final Rule.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and seven copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to the Department of Energy when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the items; (2) an indication as to whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by, or available from, other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

B. Issues for Public Comment

The Department of Energy is interested in receiving comments and data concerning the accuracy and workability of these test procedures. Also, the Department of Energy welcomes discussion on improvements or alternatives to these approaches. In particular, the Department of Energy is interested in gathering comments on the following:

- Number of lamps tested in 12 months.
- Frequency of sampling, i.e., by production lot, by month, etc.
- Definition of cold temperature fluorescent lamp.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances, Incorporation by reference.

Issued in Washington, D.C., August 10, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

2. Section 430.2 is amended by adding paragraphs (15) and (16) in the definition "Basic model"; adding definitions for "Lamp Efficacy," "Fluorescent Lamp," "General Service Fluorescent Lamp," "Incandescent Lamp," "General Service Incandescent Lamp," "Color Rendering Index," "Cold Temperature Fluorescent Lamp," and "Medium Base Compact Fluorescent Lamp," in alphabetical order and revising the definition of "Act" to read as follows:

§ 430.2 Definitions.

* * * * *

Act means the Energy Policy and Conservation Act (Pub. L. 94–163), as amended by the National Energy Policy Conservation Act (Pub. L. 95–619), the National Appliance Energy Conservation Act of 1987 (Pub. L. 100–12), the National Appliance Energy Conservation Amendments of 1988 (Pub. L. 100–357), and the Energy Policy Act of 1992 (Pub. L. 102–486).

* * * * *

Basic Model

* * * * *

(15) With respect to general service fluorescent lamps which have photometric and electrical characteristics, including lumens per watt and Color Rendering Index (CRI) which are essentially identical, and which do not have any differing physical or functional characteristics that affect energy consumption.

(16) With respect to general service incandescent lamps which have photometric and electrical characteristics, including lumens per watt, which are essentially identical, and which do not have any differing physical or functional characteristics that affect energy consumption.

* * * * *

Cold Temperature Fluorescent Lamp means a fluorescent lamp specifically designed to start at -20°F when used with a ballast conforming to the requirements of American National Standards Institute standard C78.1.

Color Rendering Index or CRI means the measured degree of color shift objects undergo when illuminated by a light source as compared with the color of those same objects when illuminated by a reference source of comparable color temperature.

* * * * *

Fluorescent Lamp means a low pressure mercury electric-discharge source in which a fluorescing coating transforms some of the ultraviolet energy generated by the mercury discharge into light, including the following:

(1) Any straight-shaped lamp (commonly referred to as 4-foot medium bi-pin lamps) with medium bi-pin bases of nominal overall length of 48 inches and rated wattage of 28 or more.

(2) Any U-shaped lamp (commonly referred to as 2-foot U-shaped lamps) with medium bi-pin bases of nominal overall length between 22 and 25 inches and rated wattage of 28 or more.

(3) Any rapid start lamp (commonly referred to as 8-foot high output lamps) with recessed double contact bases of nominal overall length of 96 inches and 0.800 nominal amperes, as defined in ANSI C78.1–1991. (See Incorporation by Reference § 430.22(a))

(4) Any instant start lamp (commonly referred to as 8-foot slimline lamps) with single pin bases of nominal overall length of 96 inches and rated wattage of 52 or more, as defined in ANSI C78.3–1991. (See Incorporation by Reference § 430.22(a))

* * * * *

General Service Fluorescent Lamp means any fluorescent lamp which can be used to satisfy the majority of fluorescent lighting applications, but does not include any lamp designed and marketed for the following nongeneral applications:

(1) Fluorescent lamps designed to promote plant growth.

(2) Fluorescent lamps specifically designed for cold temperature applications.

(3) Colored fluorescent lamps.

(4) Impact-resistant fluorescent lamps.

(5) Reflectorized or aperture lamps.

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(6) Fluorescent lamps designed for use in reprographic equipment.

(7) Lamps primarily designed to produce radiation in the ultra-violet region of the spectrum.

(8) Lamps with a Color Rendering Index of 82 or greater.

General Service Incandescent Lamp means any incandescent lamp (other than a miniature or photographic lamp) that has an E26 medium screw base, a rated voltage range at least partially within 115 to 130 volts, and which can be used to satisfy the majority of lighting applications, but does not include any lamps specifically designed for:

(1) Traffic signal, or street lighting service;

(2) Airway, airport, aircraft, or other aviation service;

(3) Marine, or marine signal service;

(4) Photo, projection, sound reproduction, or film viewer service;

(5) Stage, studio, or television service;

(6) Mill, saw mill, or other industrial process service;

(7) Mine service;

(8) Headlight, locomotive, street railway, or other transportation service;

(9) Heating service;

(10) Code beacon, marine signal, lighthouse, reprographic, or other communication service;

(11) Medical or dental service;

(12) Microscope, map, microfilm, or other specialized equipment service;

(13) Swimming pool, or other underwater service;

(14) Decorative or showcase service;

(15) Producing colored light;

(16) Shatter resistance which has an external protective coating; or

(17) Appliance service.

* * * * *

Incandescent Lamp means any lamp in which light is produced by a filament heated to incandescence by an electric current, including only the following:

(1) Any lamp (commonly referred to as lower wattage nonreflector general service lamps, including any tungsten halogen lamp) that has a rated wattage between 30 and 199 watts, has an E26 medium screw base, has a rated voltage or voltage range that lies at least partially within 115 and 130 volts, and is not a reflector lamp.

(2) Any lamp (commonly referred to as a reflector lamp) which is not colored or designed for rough or vibration service applications that contains an inner reflective coating on the outer bulb to direct the light, an R, PAR or similar bulb shapes (excluding ER or BR) with an E26 medium screw base, a rated voltage or voltage range that lies at least partially within 115 to 130 volts, a diameter which exceeds 2.75 inches, and is either—(I) a low(er) wattage reflector lamp which has a rated wattage between 40 and 205 watts; or (II) a high(er) wattage reflector lamp which has a rated wattage above 205 watts.

(3) Any general service incandescent lamp (commonly referred to as a high- or higher-wattage lamp) that has a rated wattage above 199 watts (above 205 watts for a high wattage reflector lamp).

* * * * *

Lamp Efficacy (LE) means the measured lumen output of a lamp in lumens divided by the measured lamp electrical power input in watts expressed in units of lumens per watt (LPW).

* * * * *

Medium Base Compact Fluorescent Lamp means an integrally ballasted fluorescent lamp with a medium screw base, a rated input voltage range of 115 to 130 volts and which is designed as a direct replacement for a general service incandescent lamp.

* * * * *

3. Sections 430.22 and 430.23 are redesignated as §§ 430.23 and 430.24 and a new § 430.22, is added to read as follows:

§ 430.22 Reference Sources.

(a) *Materials Incorporated by Reference*—(1) *General.* The following standards which are not otherwise set forth in this part 430 are incorporated by reference. The material listed in paragraph (a)(3) of this section has been approved for incorporation by reference by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE test procedures unless and until amended by DOE. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**.

(2) *Availability of standards.* The standards incorporated by reference are available for inspection at:

(i) Office of the Federal Register Information Center, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(ii) U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, "Test Procedures for Fluorescent and Incandescent Lamps," Docket No. EE–RM–94–220–IF, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

(3) Standards incorporated by reference may be obtained from the following sources:

(i) American National Standards Institute, 1430 Broadway, New York, NY 10018, (212) 642–4900.

(ii) Illuminating Engineering Society of North America, Publications Department, 345 E. 47th Street, New York, NY 10017, (212) 705–7925.

(iii) International Commission on Illumination, Bureau Central De La CIE, 4 AV. Du Recteur-Poincare, 75 782 Paris, Cedex 16, France.

(4) *List of standards incorporated by reference.*

1. ANSI C78.1–1991, "for Fluorescent Lamps—Rapid-Start Types—Dimensional and Electrical Characteristics"
2. ANSI C78.2–1991, "for Fluorescent Lamps—Preheat-Start Types—Dimensional and Electrical Characteristics"
3. ANSI C78.3–1991, "for Fluorescent Lamps—Instant-Start and Cold-Cathode Types—Dimensional and Electrical Characteristics"
4. ANSI C78.375–1991, "for Fluorescent Lamps—Guide for Electrical Measurements"
5. ANSI C82.3–1983 "for Reference Ballasts for Fluorescent Lamps"
6. International Commission on Illumination (CIE), Publication No. 13.2 1974, corrected reprint 1993, "Method of Measuring and Specifying Color Rendering Properties of Light Sources," ISBN 3 900 734 39 9
7. Illuminating Engineering Society of North America (IES) LM–9–88, "IES Approved Method for the Electrical and Photometric Measurements of Fluorescent Lamps"
8. Illuminating Engineering Society of North America LM–16–84, "IES Practical Guide to Colorimetry of Light Sources"
9. Illuminating Engineering Society of North America LM–20–1982, "IES Approved Method for Photometric Measuring and Reporting Tests on Reflector Type Lamps"
10. Illuminating Engineering Society of North America LM–45–91, "IES Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps"
11. Illuminating Engineering Society of North America LM–58–83, "IES Guide to Spectroradiometric Measurements"
12. Illuminating Engineering Society of North America LM–66–1991, "IES Approved Method for the Electrical and Photometric Measurements of Single-Ended Compact Fluorescent Lamps"

(b) *Reference materials*—(1) *General.* The references listed in paragraph (b)(2) of the section are referred to in the DOE test procedures and elsewhere in 10 CFR part 430 but are not incorporated by reference. These sources are given here for information and guidance.

(2) *List of References.*

1. National Voluntary Laboratory Accreditation Program Handbook 150–01, "Energy Efficient Lighting Products, Lamps and Luminaires, August 1993." National Voluntary Laboratory Accreditation Program, NIST, Gaithersburg, MD.

2. "Illuminating Engineering Society Lighting Handbook," 8th Edition, New York, NY 1993.

4. Newly redesignated § 430.23 is amended by adding paragraph (r) to read as follows:

§ 430.23 Test procedures for measures of energy consumption.

* * * * *

(r) *General Service Fluorescent Lamps and General Service Incandescent Lamps.* (1) The Estimated Annual Energy Consumption for lamps defined in § 430.2, expressed in kilowatt-hours per year, shall be the product of:

(i) The input power in kilowatts as determined in accordance with section 4 of Appendix R to this subpart and

(ii) The representative average use cycle of 1,000 hours per year, the resulting product then being rounded off to the nearest kilowatt-hour per year.

(2) The Lamp Efficacy for general service fluorescent lamps and medium base compact fluorescent lamps defined in section 430.2 shall be the quotient of the average lumen output and the average lamp wattage as determined in section 4 of Appendix R of this subpart with the resulting quotient rounded off to the nearest lumen per watt.

(3) The Lamp Efficacy for general service incandescent lamps and incandescent reflector lamps shall be the quotient of the average lumen output and the average lamp wattage as determined in section 4 of Appendix R of this subpart with the resulting quotient rounded off to the nearest tenth of a lumen per watt.

(4) The Estimated Annual Operating Cost for lamps defined in § 430.2, expressed in dollars per year, shall be the product of: (i) The representative average unit energy cost of electricity in dollars per kilowatt-hour as provided by the Secretary, (ii) The representative average use cycle of 1,000 hours per year, and (iii) The input power in kilowatts as determined in accordance with section 4 of Appendix R to this subpart, the resulting product then being rounded off to the nearest dollar per year.

(5) The Color Rendering Index of a general service fluorescent lamp shall be tested and determined in accordance with section 4.5 of Appendix R of this subpart and rounded off to the nearest unit.

5. Newly redesignated § 430.24 is amended by adding paragraph (r) to read as follows:

§ 430.24 Units to be tested.

* * * * *

(r)(1) For each basic model of general service fluorescent lamp and general service incandescent lamp as those terms are defined in paragraphs (15) and (16) of the definition for "basic model" in § 430.2, samples of production lamps shall be tested and the results for all samples shall be averaged for a 12-month period. A minimum sample of 20 lamps shall be tested. The manufacturer shall randomly select 3 lamps from each month of production for 7 out of the 12 months required for the average. In the instance where a basic model of general service fluorescent lamp or general service incandescent lamp has been manufactured for less than 7 of the preceding 12 months, the number of lamps selected shall be divided as evenly as possible among the months of production to attain a minimum sample of 20 lamps. The lamp efficacy of the sample lamps shall be the quotient of the average of the lumen output and watts input measurements to insure that any represented value of lamp efficacy or other measure of the energy consumption of a basic model for which consumers would favor a higher value shall be no greater than the lower of (i) The mean of the sample or (ii) The lower 99 percent confidence limit of the true mean divided by 0.99.

(2) For each basic model of general service fluorescent lamp except for medium base compact fluorescent lamps, as defined in paragraph (15) of § 430.2, random samples of production lamps from 12 months of production shall be selected for testing the Color Rendering Index (CRI). The CRI shall be represented as the average of a minimum sample of 20 lamps from the same production lots which were chosen for measurement in § 430.24(r)(1), i.e., the manufacturer shall measure all lamps for lumens, watts input, and CRI. The 20 CRI measurements shall be averaged to insure that any represented value of CRI of a basic model for which consumers would favor a higher value shall be no greater than the lower of (i) The mean of the sample or (ii) The lower 99 percent confidence limit of the true mean divided by 0.99.

6. Section 430.25 is added to read as follows:

§ 430.25 Laboratory Accreditation Program.

(a) To comply with the testing requirements in section 323(b) of the Act, test procedures for certain products given below shall be carried out by accredited test laboratories. The accrediting body shall be the National Voluntary Laboratory Accreditation Program (NVLAP) or a foreign organization recognized by NVLAP. NVLAP is under the auspices of the National Institute of Standards and Technology which is part of the U.S. Department of Commerce. NVLAP accreditation is granted on the basis of conformance with criteria published in 15 CFR part 285 "The National Voluntary Laboratory Accreditation Program Procedures and General Requirements."

(b) The test procedures for general service fluorescent lamps, general service incandescent lamps, incandescent reflector lamps, and medium base compact fluorescent lamps, as specified in Appendix R to this subpart, shall be conducted by test laboratories accredited by NVLAP or an accrediting organization recognized by NVLAP. NVLAP standards for lamps and luminaires are given in handbook 150–01, "Energy Efficient Lighting Products, Lamps and Luminaires," August 1993. A manufacturer's or importer's own laboratory, if accredited, may conduct the applicable test procedures.

7. Section 430.32 is amended by adding paragraph (n) to read as follows:

§ 430.32 Energy conservation standards and effective dates.

* * * * *

(n) *General service fluorescent lamps and incandescent reflector lamps.* (1) Each of the following general service fluorescent lamps manufactured after the effective dates specified in the table shall meet or exceed the lamp efficacy and CRI standards shown in the table below:

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FLUORESCENT LAMPS

Lamp type	Nominal lamp wattage	Minimum CRI	Minimum average lamp efficacy (LPW)	Effective date
4-foot medium bi-pin	>35W	69	75.0	Nov. 1, 1995.
	≤35W	45	75.0	Nov. 1, 1995.
2-foot U-shaped	>35W	69	68.0	Nov. 1, 1995.
	≤35W	45	64.0	Nov. 1, 1995.
8-foot slimline	>65W	69	80.0	May 1, 1994.
	≤65W	45	80.0	May 1, 1994.
8-foot high output	>100W	69	80.0	May 1, 1994.
	≤100W	45	80.0	May 1, 1994.

(2) Each of the following incandescent reflector lamps manufactured after November 1, 1995, shall meet or exceed the lamp efficacy standards shown in the table in this paragraph:

INCANDESCENT REFLECTOR LAMPS

Nominal lamp wattage	Minimum average lamp efficacy (LPW)
40–50	10.5
51–66	11.0
67–85	12.5
86–115	14.0
116–155	14.5
156–205	15.0

7. Section 430.62 is amended by adding the following at the end of paragraph (a)(2):

§ 430.62 Submission of data.

(a) * * *

(2) * * * For each basic model of general service fluorescent and incandescent reflector lamps, the certification report shall include the laboratory's NVLAP identification number or other NVLAP-approved accreditation identification, basic model tested, production date codes (and accompanying decoding scheme), the 12-month average lamp efficacy and lamp wattage, brand names and model designation. The certification report shall also include the 12-month average Color Rendering Index for general service fluorescent lamps.

* * * * *

8. Subpart B of Part 430 is amended by adding Appendix R—Uniform Test Method for Measuring Average Lamp Efficacy (LE) and Color Rendering Index (CRI) of General Service Fluorescent and Incandescent Lamps, Incandescent Reflector Lamps, and Medium Base Compact Fluorescent Lamps as follows:

Appendix R to Subpart B of Part 430—Uniform Test Method for Measuring Average Lamp Efficacy (LE) and Color Rendering Index (CRI) of Electric Lamps

1. *Scope:* This appendix applies to the determination of the lamp efficacy (LE) and Color Rendering Index (CRI) for fluorescent lamps and to the determination of the lamp efficacy for incandescent lamps. The scope of this appendix shall also include that specified in section 1.1 of IES LM–9, section 1 of IES LM–16, section 2.0 of IES LM–20, section 1 of IES LM–45, section 1 of IES LM–58, section 1.1 of IES LM–66 and section II.2 of CIE Publication No. 13.2. (See § 430.22) References in the text of this Appendix R are undated but are understood to be dated as specified in the list of Incorporated by Reference materials at § 430.22.

2. *Definitions*

2.1 Definitions shall include the definitions specified in section 1.2 of IES LM–9, section 3.0 of IES LM–20, section 2 of IES LM–45, section 2 of IES LM–58, section 1.2 of IES LM–66 and section IV of CIE Publication No. 13.2. (See § 430.22)

2.2 *ANSI Standard* means a standard developed by a committee accredited by the American National Standards Institute (ANSI).

2.3 *CIE* means the International Commission on Illumination.

2.4 *CRI* means Color Rendering Index as defined in Section 430.2.

2.5 *IES* means the Illuminating Engineering Society of North America.

2.6 *Lamp efficacy* means the ratio of measured lamp lumen output in lumens to the measured lamp electrical power input in watts, rounded to the nearest whole number, in units of lumens per watt.

2.7 *Lamp lumen output* means the total luminous flux produced by the lamp at the measured reference condition, in units of lumens.

2.8 *Lamp electrical power input* means the total electrical power input to the lamp, including both arc and cathode power where appropriate, at the measured reference condition, in units of watts.

2.9 *Reference condition* means the test condition specified in IES LM–9 for general service fluorescent lamps, in IES LM–20 for incandescent reflector lamps, in IES LM–45 for general service incandescent lamps and in IES LM–66 for medium base compact fluorescent lamps. (See § 430.22)

3.0 *Test Conditions*

3.1 *General Service Fluorescent Lamps:* Test ambient conditions, electrical circuits, reference ballasts, stabilization requirements, instruments and detectors shall be as described in the relevant sections of IES LM–9. The photometric test procedure and test report shall conform to sections 11 and 13 of IES LM–9. (See § 430.22)

3.2 *General Service Incandescent Lamps:* The selection and seasoning of the test lamps, the equipment and instrumentation, and the test conditions shall conform to sections 3, 4, 5 and 6 of IES LM–45. (See § 430.22)

3.3 *Incandescent Reflector Lamps:* The selection and seasoning of the test lamps, and the test conditions shall conform to sections 4.0 and 5.0 of IES LM–20. (See § 430.22)

3.4 *Medium Base Compact Fluorescent Lamps:* The selection, seasoning and. stabilization of the test lamps, and the test conditions, shall be as described in sections 1, 2, 3, and 7 of IES LM–66. (See § 430.22)

4. *Test Methods and Measurements*

4.1 *General Service Fluorescent Lamps*

4.1.1 The measurement procedure shall be as described in IES LM–9, except as noted below. Lamps shall be operated at the appropriate voltage and current conditions as described in ANSI C78.375 and ANSI C78.1, C78.2 or C78.3. Lamps shall be operated using the appropriate reference ballast as described in ANSI C82.3. (See § 430.22)

4.1.2 Lamp lumen output (lumens) and lamp electrical power input (watts) at the reference condition shall be measured and recorded. Lamp efficacy shall be determined by computing the ratio of the measured lamp lumen output and lamp electrical power input at equilibrium for the reference condition.

4.2 *General Service Incandescent Lamps*

4.2.1 The measurement procedure shall be as described in IES LM–45, except as noted below. Lamps shall be operated at 120 volts and 60 hertz regardless of the rated lamp voltage. (See § 430.22)

4.2.2 The test procedure shall follow section 7 and lamp lumen output determined in accordance with sections 4.2a or b of IES LM–45 at the reference condition. Lamp electrical power input in watts shall also be measured and recorded. Lamp efficacy shall be determined by computing the ratio of the measured lamp lumen output and lamp electrical power input at equilibrium for the reference condition. The test report shall conform to section 8 of IES LM–45. (See § 430.22)

4.3 *Incandescent Reflector Lamps*

4.3.1 The measurement procedure shall be as described in IES LM–20, except as noted below. Lamps shall be operated at 120 volts and 60 hertz regardless of the rated lamp voltage. (See § 430.22)

4.3.2 Lamp intensity distribution shall be measured in accordance with section 6.0 and lamp lumen output, or total flux, shall be determined in accordance with section 7.3 of IES LM–20, at the reference condition. The integrating sphere measurement method, section 7.1, shall not be used. Lamp electrical power input in watts shall also be measured and recorded. (See § 430.22)

4.3.3 Lamp efficacy shall be determined by computing the ratio of the measured lamp lumen output and lamp electrical power input at equilibrium for the reference condition. The test report shall conform to section 10.0 of IES LM–20. (See § 430.22)

4.4 *Medium Base Compact Fluorescent Lamps*

4.4.1 The measurement procedure shall be as described in IES LM–66, as it pertains to lamps with integral ballasts. Lamps shall be operated at 120 Volts and 60 Hertz. Lamp lumen output shall be measured according to section 11 of IES LM–66 at the reference condition. Lamp electrical power input in watts shall also be measured and recorded. (See § 430.22)

4.4.2 Lamp efficacy shall be determined by computing the ratio of the measured lamp lumen output and lamp electrical power input at equilibrium for the reference condition. The test report shall conform to section 13 of IES LM–66. (See § 430.22)

4.5 *Determination of Color Rendering Index (CRI)*

4.5.1 The CRI shall be determined in accordance with the method specified in CIE Publication 13.2 for general service fluorescent lamps. The required spectroradiometric measurement and characterization shall be conducted in accordance with the methods given in IES LM–58 and IES LM–16. (See § 430.22)

4.5.2 The test report shall include a description of the test conditions, equipment, and measured lamps, spectroradiometric measurement results and CRI determination.

[FR Doc. 94–23748 Filed 9–27–94; 8:45 am]
BILLING CODE 6450–01–P

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–94–220–NOPR]

RIN: 1904–AA70

Energy Conservation Program for Consumer Products

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy

ACTION: Notice of Proposed Rule and Public Hearing.

SUMMARY: The Department of Energy (the Department) gives notice of a proposed rulemaking to define colored fluorescent and incandescent lamps and to define the exemption from energy conservation standards for a rough or vibration service incandescent reflector lamp. The Energy Policy Act of 1992 requires the Department of Energy to administer an energy conservation program for certain major household appliances and commercial equipment, including fluorescent and incandescent lamps. Today's proposed rule will clarify definitions for colored fluorescent and incandescent lamps and will clarify the exemption for rough or vibration service incandescent reflector lamps.

DATES: Written comments (eight copies) in response to this notice must be received by December 12, 1994.

Oral views, data, and arguments may be presented at the public hearing to be held in Washington, DC., on November 15, 1994. Requests to speak at the hearing must be received by the Department no later than 4:00 p.m. Copies of statements to be given at the public hearing must be received by the Department no later than 4 p.m. The length of each presentation is limited to 15 minutes.

ADDRESSES: Written comments (eight copies) and requests to speak at the public hearing are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Proposed Definitions for Certain Fluorescent Lamps and Incandescent Lamps, Docket No. EE–RM–94–220–NOPR, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7140.

The hearing will begin at 9:30 a.m. on November 15, 1994 and will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC.

Copies of the transcript of the public hearing and public comments received may be read at the Department of Energy Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

For more information concerning public participation in this rulemaking proceeding, see Section VII., "Public Comment," of SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT:

Terrence L. Logee, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–1689

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION:

I. Introduction

Part B of Title III of the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, the National Appliance Energy Conservation Act (NAECA) of 1987, Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPACT), Public Law 102–486, created the Energy Conservation Program for Consumer Products other than Automobiles (Program).[1] The consumer and commercial products currently subject to this Program (often referred to hereafter as "covered products") include general service fluorescent lamps and general service incandescent lamps, the subject of today's notice. The Department is publishing elsewhere in this issue an Interim Final Rule amending part 430 to establish test procedures for flourescent and incandescent lamps, incorporating by reference test procedures adopted by the Illuminating Engineering Society (IES), American National Standards Institute (ANSI) and the International Commission on Illumination (CIE).

II. Discussion

By this notice, the Department is proposing definitions for colored fluorescent and incandescent lamps. The Department is also proposing to clarify the exemption for rough or vibration service incandescent reflector lamps by requiring a C–17 or C–22 filament or by requiring a vibration test. The proposed definitions will apply to those products covered by sections 322(a)(14) and 325(i)(1) of the Act.

A. Definitions

By this notice, the Department is defining colored fluorescent and colored incandescent lamps because section 321(a)(30)(B)(iii) and section 321(a)(30)(C)(ii) of the Act contain exemptions for these lamps without defining them. After a meeting with lamp manufacturers and the National Electrical Manufacturers Association, the Department believes that a colored lamp can be defined by using a suitable minimum value of the Color Rendering Index (CRI) or a correlated color temperature. The National Institute of Standards and Technology personnel have researched CRI values and correlated color temperatures for many different colored fluorescent and incandescent lamps. The National Institute of Standards and Technology recommends and the Department agrees that either CRI or color temperature will sufficiently define colored lamps. The Department is proposing that a CRI value less than 30 and a lamp color correlated temperature either below 2,500°K for red and yellow colors or above 7,000°K for blue and green colors will allow an exemption for bona-fide colored fluorescent lamps while requiring all of the "white" lamps to meet the standards. Likewise, colored incandescent lamps must have CRI values below 50 and a lamp color correlated temperature either below 2,500°K for red and yellow colors or above 7,000°K for blue and green colors to be exempt from standards. The Department further proposes that these lamps be designed, designated and marketed specifically as colored lamps. DOE requests comments on the two proposals for definitions of colored fluorescent and incandescent lamps. The Department also invites manufacturer's to send data on CRI measurements and color correlated temperatures for colored fluorescent and incandescent lamps.

The Department believes that the measurements required to determine if a lamp is colored by the above

[1] Part B of Title III of EPCA, as amended, is referred to in this proposed rule as the "Act." Part B of Title III is codified at 42 U.S.C. 6291–6309.

definition are minimal. The CRI is a required measurement for fluorescent lamps and manufacturers would only have to make a CRI measurement for lightly tinted incandescent lamps such as "jeweler's blue." The color temperature is derived from spectroradiometric measurements correlated to a blackbody and the spectroradiometric data for most lamps already exists so manufacturers use a chart to determine the correlated color temperature.

Note that the "jeweler's blue" lamp may require a heavier tint to pass the proposed incandescent CRI cutoff so the Department is advising the manufacturers to evaluate the CRI of any lightly tinted incandescent lamps. However, the Department believes that if the CRI for incandescent lamps is raised, that could allow a manufacturer to circumvent the standards with lightly tinted lamps.

Today's proposed rule also contains a definition of an exempt rough or vibration service incandescent reflector lamp. Section 321(a)(30)(C)(ii) of the Act contains an exemption for "rough or vibration service applications" of incandescent reflector lamps without defining this term. After several meetings with lamp manufacturers and the National Electrical Manufacturers Association, the Department has determined that there is no industry-wide accepted agreement on a definition for a rough or vibration service incandescent reflector lamp. Also, it appears that there are very few incandescent reflector lamps which are marketed solely for rough or vibration service applications. From a study, "Findings on Incandescent Reflector Lamps," conducted by Lawrence Berkeley Laboratories, DOE has determined that sales data for long-life or vibration service applications are not collected separately and that approximately 20 percent of the present incandescent reflector lamp market is comprised of lamps marketed for those purposes. The Department was unable to separate the long-life reflector lamp market and the vibration service reflector lamp market. However, most lamps designated as "Long-life" rather than "Vibration Service" have a C–9 filament with 4-supports. Additionally, three large lamp manufacturers use a C–17 filament with 12 supports to characterize their rough service incandescent reflector lamp. The Department believes that lamps labeled and marketed for rough or vibration service should either meet a design standard (a C–17 or C–22 filament) or a performance standard (pass a vibration test). Only such lamps would qualify for a rough or vibration service exemption from the standards.

Since reflector lamps with C–9 filaments are marketed for long life and since there is no industry consensus for the C–9 filament as a vibration design, the Department is proposing to define a rough or vibration service application lamp as an incandescent lamp designated and marketed specifically for rough or vibration service. Additionally, this lamp must have either 6 support wires with a C–17 or C–22 filament configuration or the lamp must meet a vibration test. The 6 support wires were proposed by one of the manufacturers and the Department believes that they will provide enough additional vibration resistance while maintaining better lamp efficacy than the 12 support wires normally used in a rough or vibration service lamp. The proposed vibration test is a modified Naval test specification[2] for ruggedness of large tungsten filament lamps and consists of a vibration frequency test going from 5 to 33 Hz in 1 Hz increments and a 2 hour vibration endurance test at 33 Hz. The Department requests comments on this proposal.

III. Environmental Review

Pursuant to section 7(c)(2) of the Federal Energy Administration Act a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency for comment concerning the impact of this proposal on the quality of the environment.

Since test procedures are used to standardize the measurement of energy usage, and will not affect the quality or distribution of energy usage, prescribing test procedures will not result in any environmental impacts. The Department of Energy, therefore, has determined that prescribing test procedures under the Program is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

This Rulemaking, which amends existing part 430 of Title 10, will not change the environmental effect of such regulation, and is an item which is "categorically excluded (A6)" by the Department of Energy's regulations on National Environmental Policy Act Implementing Procedures (10 CFR part 1021) (57 FR 15122, April 24, 1992) (appendix A to subpart D, Categorical Exclusion A6.). Consequently, neither an Environmental Impact Statement nor an Environmental Assessment is required for this rule.

[2] Correspondence to the Office of Codes and Standards from Osram Sylvania, Report #E–3727, Proposed Naval Test Specification for Ruggedness of Large Tungsten Filament Lamps (Shipboard Use), December 3, 1970.

IV. Regulatory Planning and Review

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–345) (5 U.S.C. 601–612) requires that an agency prepare an initial regulatory flexibility analysis and that it be published at the time the proposed rule is published. This requirement (which appears in section 603) does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." This rule affects manufacturers of general service fluorescent and incandescent lamps. As previously discussed, the rule would not have significant economic impact, but rather, would provide common definitions and test methods. Therefore, the Department of Energy certifies that this rule, if promulgated, would not have a "significant economic impact on a substantial number of small entities."

VI. Federalism Review

Executive Order 12612 (52 FR 41685, Oct. 30, 1987) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

The Department of Energy has identified a substantial direct effect that today's proposed rule would have on State governments. It would initially preempt inconsistent State regulations. However, the Department of Energy has concluded that such effect is not sufficient to warrant preparation of a federalism assessment for the following reason: the Act provides for subsequent State petitions for exemption. Thus, a determination as to whether a State law prevails must be made on a case-by-case basis using criteria set forth in the Act. When the Department of Energy

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receives such a petition, it will then be appropriate to consider preparing a federalism assessment consistent with the criteria in the Act.

VII. Public Comment

A. Written Comment Procedures

Interested persons are invited to participate in the rulemaking by submitting data, comments, or information with respect to the definitions set forth in this notice to the address indicated at the beginning of the notice.

Comments should be identified both on the envelope and on the documents as "Definitions for Certain Fluorescent and Incandescent Lamps, Docket No. EE-RM-94-220-NOPR." Eight (8) copies are requested to be submitted. If possible, the Department would appreciate an electronic copy of the comments on a 3.5" diskette. The Department is currently using WordPerfect™ 5.1. All submittals received by the date specified at the beginning of this notice will be considered by the Department of Energy before final action is taken on the proposed rule.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and seven copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to the Department of Energy when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the items; (2) an indication as to whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by, or available from, other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

B. Public Hearing

1. Procedures for Submitting Requests to Speak

The time and place of the public hearing are indicated at the beginning of this notice. The Department of Energy invites any person who has an interest in today's proposed rule, or who is a representative of a group or class of persons that has an interest in these definitions, to make a request for an opportunity to make an oral presentation. Such requests should be directed to the address or telephone number indicated at the beginning of this notice. Requests should be labeled "Definitions for Certain Fluorescent and Incandescent Lamps, Docket No. EE-RM-94-220-NOPR," both on the document and on the envelope.

The person making the request should briefly describe the interest concerned and state why he or she, either individually or as a representative of a group or class of persons that have such an interest, is an appropriate spokesperson, and give a telephone number where he or she may be contacted.

2. Conduct of Hearing

The Department of Energy reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 15 minutes.

A Department of Energy official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 533 and section 336 of the Act. At the conclusion of all initial oral statements at each day of the hearing, each person who has made an oral statement will be given the opportunity to make a clarifying rebuttal statement, subject to time limitations. The rebuttal statement will be given in the order in which the initial statements were made.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made, and the entire record of this rulemaking, including the transcript, will be retained by the Department of Energy and made available for inspection at the Department of Energy Freedom of Information Reading Room as provided at the beginning of this notice. Any person may purchase a copy of the transcript from the transcribing reporter.

C. Issues for Public Comment

The Department of Energy is interested in receiving comments and data concerning the accuracy and workability of these definitions. Also, the Department of Energy welcomes discussion on improvements or alternatives to these approaches. In particular, the Department of Energy is interested in gathering comments on the following:

- Color temperature ranges for colored fluorescent and incandescent lamps.
- Appropriateness of the prescribed filaments for the rough or vibration service incandescent reflector lamp.
- Applicability of the proposed vibration test to determine the rough or vibration service exemption for incandescent reflector lamps.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, August 10, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, part 430 of chapter II of title 10, Code of Federal Regulations, is proposed to be amended as set forth below

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

2. Section 430.2 is proposed to be amended by adding definitions for "Colored Fluorescent Lamp," "Colored Incandescent Lamp," and Rough or Vibration Service Exemption" in alphabetical order to read as follows:

§ 430.2 Definitions.

* * * * *

Colored Fluorescent Lamp means a lamp designed and designated with a CRI less than 30, as determined according to the method given in CIE Publication 13.2 (as incorporated by reference in 10 CFR 430.22) or which has a lamp correlated color temperature either below 2500°K or above 7,000°K.

Colored Incandescent Lamp means a lamp designed and designated with a CRI less than 50, as determined according to the method given in CIE Publication 13.2 (as incorporated by reference in 10 CFR 430.22) or which has a lamp correlated color temperature either below 2500°K or above 7,000°K.

* * * * *

Rough or Vibration Service Incandescent Reflector Lamp means either an incandescent lamp in which a C–17 or C–22 filament is mounted with no less than six supports not including the lead wires or an incandescent lamp which meets the requirements of the vibration test in Appendix R(4.3.4) to Subpart B of Part 430. The filament configurations are depicted in chapter six of the *Illuminating Engineering Society Lighting Handbook*, 8th Edition, New York, 1993. Additionally, these lamps must be designated and marketed specifically for rough or vibration service applications.

* * * * *

3. Section 430.25, paragraph (b) is amended by revising the first sentence to read as follows:

§ 430.25 Laboratory Accreditation Program.

* * * * *

(b) The test procedures for general service fluorescent lamps, general service incandescent lamps, incandescent reflector lamps, medium base compact fluorescent lamps, and rough or vibration service incandescent reflector lamps as specified in Appendix R to this subpart, shall be conducted by test laboratories accredited by NVLAP or an accrediting organization recognized by NVLAP. * * *

8. Appendix R to Subpart B of Part 430—Uniform Test Method for Measuring Average Lamp Efficacy (LE) and Color Rendering Index (CRI) of General Service Fluorescent and Incandescent Lamps, Incandescent Reflector Lamps, and Medium Base Compact Fluorescent Lamps is amended by adding paragraphs 4.3.4, 4.3.4.1, 4.3.4.2, 4.3.4.3, 4.3.4.4, and 4.3.4.5 to read as follows:

Appendix R to Subpart B of Part 430—Uniform Test Method for Measuring Average Lamp Efficacy (LE) and Color Rendering Index (CRI) of Electric Lamps

* * * * *

4. *Test Methods and Measurements*

* * * * *

4.3 *Incandescent Reflector Lamps*

* * * * *

4.3.4 The following vibration test shall be used to determine whether an incandescent lamp qualifies for a rough or vibration service application.

4.3.4.1 The vibration frequency test consists of vibrating an illuminated lamp with a sinusoidal wave shape from 5 to 33 Hz in discrete frequency intervals of 1 Hz, at the amplitudes shown in the table below. At each integral frequency, the vibration shall be maintained for five minutes.

AMPLITUDES OF VIBRATION (½ TOTAL EXCURSION)

Frequency range (Hz)	Amplitude ± inch
5 to 15	0.030 ± 0.006
16 to 25	0.020 ± 0.004
26 to 33	0.010 ± 0.002

4.3.4.2 The endurance test consists of a two hour vibration test of an illuminated lamp using a sinusoidal wave shape at a frequency of 33 HZ and an amplitude of 0.010 ± .002 inches.

4.3.4.3 The vibration frequency and endurance tests shall be performed with the direction of vibration along the lamp stem and in two directions perpendicular to the stem.

4.3.4.4 A sample of five lamps shall be randomly chosen from a production lot: no failures are permitted.

4.3.4.5 The test report shall list the testing company, date, place and test engineer/technician. It shall also list the lamp manufacturer, type of lamp, production date code, and pass or fail for the vibration frequency and endurance tests for each lamp.

* * * * *

[FR Doc. 94-23749 Filed 9-27-94; 8:45 am]

BILLING CODE 6450-01-P

VOL
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ISS
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SE
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federal register

Wednesday
September 28, 1994

Part III

Environmental Protection Agency

40 CFR Part 721
Significant New Uses of Lead; Advance Notice of Proposed Rulemaking

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50618; FRL–4766–6]

RIN 2070–AC37

Significant New Uses of Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: EPA is exploring the possibility of issuing significant new use rules (SNURs) for certain uses of elemental lead (Pb) and lead compounds under section 5(a)(2) of the Toxic Substances Control Act (TSCA). The SNURs would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of lead and lead compounds for uses identified by the Agency as significant new uses. The significant new use notice (SNUN) would provide EPA with the opportunity to evaluate the intended use and associated activities and to prevent potentially unreasonable risk of injury to human health and the environment from occurring. EPA is issuing this ANPR to: (1) Communicate its intention to regulate significant new uses of elemental lead and lead compounds; (2) identify components of its proposed regulatory approach; (3) request comment on issues related to this approach; and (4) request comment and information on existing uses of lead that would help support EPA's selection of proposed criteria for defining significant new uses of lead. The Agency is particularly concerned with products the use of which may pose unreasonable risks to children. The information submitted in response to this ANPR will help EPA design an effective and efficient strategy for regulating significant new uses of lead.

DATES: Written and electronic comments in response to this ANPR must be received on or before November 28, 1994.

ADDRESSES: All written data and comments should be submitted in triplicate to OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. All written data and comments should be identified by the docket number OPPTS–50618.

Comments and data may also be submitted electronically by any of three different mechanisms: by sending electronic mail (e-mail) to: Docket-OPPTS@epamail.epa.gov; by sending a "Subscribe" message to listserver@unixmail.rtpnc.epa.gov and once subcribed, send your comments to RIN-2070-AC37; or through the EPA Electronic Bulletin Board by dialing 202–488–3671, enter selection "DMAIL," user name "BB—USER" or 919–541–4642, enter selection "MAIL," user name "BB—USER." Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form should be identified by the docket number OPPTS–50618. Electronic comments on this ANPR, but not the complete record, may be viewed or new comments filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit VII. of this document.

Data and comments in written form containing information claimed as confidential business information (CBI) should be submitted in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Attention: OPPTS–50618. A sanitized copy of the comments that can be included in the public docket must be provided in triplicate to the OPPT Document Control Officer. Further information on submitting comments containing information claimed as CBI is provided in Unit VIII. of this document. No CBI should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: For general information contact: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–554–1404, TDD: 202–554–0551. For technical information contact: Jonathan Jacobson, Chemical Management Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–3779, Internet: jacobson.jonathan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Reducing human exposure to lead and lead contamination of the environment continue to be priority issues for EPA. Exposure to lead can result in a variety of adverse human health effects in both children and adults. Recent research and scientific evidence indicate that human health effects (e.g., impaired neurological development) occur at low exposure levels. Lead contamination of the environment is causing degradation of habitat and lead products have been implicated in the death of individual animals from several species.

In response to these problems, EPA has undertaken a variety of regulatory, programmatic, and research efforts to evaluate and address the environmental impacts of lead. Since 1991, Agency activities have been coordinated through the *Strategy for Reducing Lead Exposures*. This strategy includes regulatory and pollution prevention activities, a lead abatement program for "in-place" lead, and a research program. The promulgation of SNURs for elemental lead and lead compounds is part of EPA's multi-faceted strategy for reducing unacceptable lead exposures.

EPA's efforts are designed to reduce exposure to lead by: (1) Preventing new uses and phasing out current uses of lead that pose unreasonable risks; (2) controlling lead emissions; (3) managing the disposal of lead-containing wastes; (4) addressing in-place lead; and (5) supporting research to improve EPA's ability to assess and reduce lead-related risks.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." The Agency must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Section 5(a)(2) factors generally relate to the extent to which a use changes the volume of a chemical's production or the type, form, magnitude, or duration of exposure to it. Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use.

Persons subject to a SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission provisions of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. The premanufacture notification process provides EPA the opportunity to review the particular use of the chemical substance and make a reasonable risk determination prior to the use's commercial introduction. Following its review, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUN. If EPA does not take action, section (5)(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who import a substance identified in a final SNUR must certify that they are in compliance with TSCA, which includes the SNUR requirements. The EPA import certification requirements appear at 40 CFR part 707.

II. Uses of Lead

Lead is a soft, gray metallic element mined from rock and found in its natural state all over the world. It is virtually indestructible and non-biodegradable. Its malleability, low melting point, ease of processing, abundance, low cost, density, lubricant properties, and durability give it good functional value.

In 1992, the U.S. Bureau of Mines reported that U.S. industries consumed over 1.24 million tons of lead. Of this quantity, nearly 81 percent was used to manufacture storage batteries and 5 percent was used in the ammunition industry. Other uses include: Glass and ceramics; lead chemical products; cable coverings; lead sheet; lead solder; casting lead; pigments; pipes, traps, and other extruded products; brass and bronze; other metal products; heat stabilizers; and bearing metals. Manufacturers use lead in its elemental form, in compounds including lead oxides and lead chromate, and in alloys (e.g., brass and solder).

III. Human Health Effects

Exposure to lead can produce a spectrum of human health effects across a wide range of exposure levels. Recent studies indicate that these toxic effects may occur at exposure levels considerably lower than previously recognized. Accordingly, the Centers for Disease Control and Prevention (CDC) has established the threshold of concern for blood lead (PbB), the most common index of lead exposure, at 10 µg/dL.

Young children and fetuses are especially vulnerable to lead: the nervous systems are developing and lead is absorbed into the blood stream more easily than in adults. High PbB levels (>40–60 µg/dL) in children are associated with anemia, mental retardation, and encephalopathy. At extremely high levels (>100 µg/dL), death may occur. There is also a concern that high lead exposure might play a role in spontaneous abortions. At lower exposure levels, lead has been linked to impaired cognitive performance, delayed neurological and physical development, decreased birth weight, and interference with heme synthesis and Vitamin D metabolism.

Recent research indicates that deficits in IQ and other measures of cognitive functions have been associated with PbB levels of 10 µg/dL (Bellinger, D.C., Stiles, K.M., and Needleman, H.L.; "Low-Level Lead Exposure, Intelligence and Academic Achievement: A Long-Term Follow-up Study"; *Pediotrics*; 1992; vol. 90; pp. 855–861). EPA, in its *Air Quality Criteria for Lead, Volumes I–IV and Addendum* (USEPA, 1986) and its *Air Quality Criteria for Lead, Supplement to 1986 Addendum* (USEPA, 1990), has identified the following relationships between lead exposure and human health:

1. Deficits in mental indices have been found in infants with maternal or umbilical cord PbB levels as low as 6–7 µg/dL.
2. Low birth weights and decreased gestation age, factors that may influence early neurological development have been associated with infants born to women with PbB levels above 12–14 µg/dL and possibly as low as 7 µg/dL.
3. Early childhood growth reductions have been associated with PbB levels from 5–35 µg/dL.

In its study *Measuring Lead Exposure in Infants, Children, and Other Sensitive Populations*, the National Academy of Sciences documented a similar range of effects (NAS, 1993). The Academy noted that PbB concentrations around 10 µg/dL are associated with disturbances in early physical and mental growth and in later intellectual functioning and academic achievement.

Although Federal government interest in lead poisoning has primarily focused on children, there is substantial evidence that lead exposures can produce adverse health effects in adults. Of great concern is evidence that elevated PbB levels have been associated with slight increases in blood pressure. Because lead is stored in bone, it may be mobilized during periods of stress or greater metabolic demands for calcium (e.g., pregnancy).

IV. Environmental Effects

Lead is one of the most common toxic substances found in large and small animals. Lead poisoning is the most frequently diagnosed toxicological problem in veterinary medicine; its occurrence has been reported in all domestic species and in several species of zoo animals. Lead poisoning has also affected many major species of waterfowl in North America and has been reported in many birds elsewhere in the world. Sources of these exposures have typically included lead wastes, lead paint, spent lead shot, fishing sinkers, and contaminated forage near smelters and roadways.

Laboratory and field data show that at high concentrations, lead can affect certain plants and inhibit photosynthesis, reduce growth, and alter species composition. Other studies indicate that high lead concentrations alter the composition of soil microbial communities and inhibit invertebrate activity resulting in delayed decomposition of organic matter, reduced nutrient supply, and altered soil properties, such as lower organic content.

Lead is toxic to many phyla of aquatic biota. Water lead concentrations as low as 19 to 30 µg/L have been associated with increased mortality and impaired reproduction in aquatic invertebrates. Aquatic vertebrates (e.g., fish) appear to be even more sensitive. Studies have shown that freshwater aquatic organisms are more sensitive to lead in soft than hard water.

V. Controlling Lead Exposure

Over the last two decades EPA has taken a number of actions to control exposure to lead. Most notable of these actions has been the virtual removal of lead from gasoline. As a result of this action and the phase-out of lead solder in food cans by domestic manufacturers, it is estimated that the average PbB level in children has declined by 75 percent (from about 17 µg/dL to 4 µg/dL) over the past 15 years.

Despite this progress, several factors have prompted EPA to identify other sources of on-going lead exposure, especially exposure among children, and initiate additional actions. First, the level of concern at which lead may adversely affect human health continues to decrease. CDC revised its level of concern from 25 µg/dL to 10 µg/dL in 1990. Second, nearly nine percent of children continue to have PbB levels in excess of CDC's level of concern, with a higher incidence of elevated PbB reported for minorities living in urban areas (CDC, 1994). Third, other sources of lead (e.g., lead-based paint and drinking water) are the primary sources of exposure for segments of the population.

To coordinate EPA's lead activities, the Agency published the *Strategy for Reducing Lead Exposures* in February 1991, the goal of which is to reduce lead exposures to the fullest extent practicable. Two objectives have been used to set program priorities and gauge

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program success: (1) Reduce significantly the incidence of PbB levels above 10 μg/dL in children while taking into account the associated costs and benefits; and (2) reduce significantly, through voluntary and mandatory actions, unacceptable lead exposures that are anticipated to pose risks to children, the general public, or the environment. EPA plans to achieve the strategy's goal and objectives through implementation of research, abatement, and regulatory and pollution prevention programs.

A. Research Program

The purposes of the research program are to: (1) Locate and assess, in terms of geography and media, the most serious lead risks; and (2) develop methods and tools to reduce these risks cost-effectively. Examples of accomplishments and on-going efforts include evaluation of low-cost lead-based paint (LBP) abatement techniques, development of LBP abatement sampling techniques and protocols, studies to analyze the effectiveness of corrosion control technologies in small public water supply systems to reduce lead levels, and continued development and review of the Integrated Environmental Uptake/Biokinetic (UBK) Model to assess the relationship between environmental lead exposure and PbB levels.

B. Abatement Program

1. *Lead-based point.* EPA's abatement program for "in-place" lead focuses on two major sources of exposure: LBP and lead-contaminated soil. LBP is the most serious source of children's lead exposure. The Agency for Toxic Substances and Disease Registry (ATSDR) estimates that 12 million children are exposed to LBP at home and that nearly 6 million are exposed in homes with the highest concentrations of lead (houses built prior to 1940). Under a Memorandum of Understanding, EPA works closely with the U.S. Department of Housing and Urban Development (HUD) to address the LBP problem. EPA's efforts in this area have intensified with the enactment of Title X, "The Residential Lead-Based Paint Hazard Reduction Act of 1992" (the Act). Subtitle B of the Act, which amended TSCA by creating Title IV, provides for a comprehensive national approach to dealing with LBP in the nation's housing stock. One of the purposes of the Act is to reorient the Federal program from abatement of all residential LBP to abatement and in-place management of priority LBP hazards.

To date, EPA's LBP program has successfully implemented several initiatives. The Agency has established regional training and information centers and implemented a nationwide public outreach and education campaign. The outreach and education campaign consists of the National Lead Information Center, which operates the Lead Hotline and the Lead Clearinghouse. In addition, the National Lead Poisoning Prevention Education Campaign disseminates important information on residential LBP hazards through radio and television public service announcements.

The Act also directs EPA to develop several regulations designed to address residential LBP exposures. Under TSCA section 402(a)(1), EPA is developing training and certification requirements for individuals and contractors engaged in LBP activities (e.g., risk assessment, inspection, and abatement). These regulations will establish standards for performing LBP activities. This rulemaking also includes procedures for State and Indian Tribe program authorization under TSCA section 404(a) and a Model State Program under TSCA section 404(d). EPA issued proposed regulations under TSCA sections 402(a)(1), 404(a), and 404(d) in the **Federal Register** of September 2, 1994 (59 FR 45872).

Under TSCA section 403, EPA is developing health-based standards for identifying lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil, and on July 14, 1994, issued guidance on this subject. EPA is developing regulations under TSCA section 406 and section 1018 of the Act requiring the disclosure of potential LBP hazards prior to renovation of target housing and the disclosure of known LBP and LBP hazards prior to the sale or lease of target housing.[1] The Notice of Proposed Rulemaking for TSCA section 406 was published on March 9, 1994 (59 FR 11108). In conjunction with this rulemaking, the Agency made a pamphlet on LBP hazards available to the public for review and comment (March 9, 1994; 59 FR 11119). EPA expects to issue a proposed rule under section 1018 of the Act later in 1994.

Under TSCA section 405(b), EPA has established the National Lead Laboratory Accreditation Program (NLLAP) and developed protocols, criteria, and minimum performance standards for laboratories that analyze paint chip, dust, and soil samples for lead. The purpose of this program is to ensure that reliable laboratory services are available to support lead hazard detection and abatement activities. The Agency, in the first phase of the NLLAP program, is publishing proficiency test results for laboratories on a state-by-state basis. To implement the second phase of the program, EPA has executed Memoranda of Understanding with the American Industrial Hygiene Association (memorandum from Scott McMoran, USEPA to Gordon Banks, AIHA, December 10, 1993) and the American Association for Laboratory Accreditation (memorandum from Scott McMoran, USEPA to John Locke, AALA, December 1, 1993) establishing these institutions as laboratory accrediting organizations. The NLLAP program will recognize laboratories accredited by these organizations as capable of analyzing paint chip, dust, and soil samples for lead.

2. *Lead-contaminated soil.* The other major area of focus for EPA's abatement program for "in-place" lead is lead-contaminated soil. The Agency has completed a review draft of the Urban Soil Lead Abatement Demonstration Project (Three City Study) (USEPA, 1993). In addition, the Agency issued revised guidance on soil lead screening levels for Comprehensive Environmental Response, Compensation, and Liability Act and Resource Conservation and Recovery Act (RCRA) sites on July 14, 1994.

The Three City Study, authorized by section 111(a)(6) of the Superfund Amendments and Reauthorization Act (SARA), evaluated the effectiveness of soil lead abatement for reducing PbB levels in inner city children. The project, which analyzed data from Baltimore, Boston, and Cincinnati, demonstrated a clear relationship between environmental lead and PbB. Analysis of the data (peer review to be completed in 1994) indicates that lead in dust and paint were major contributors to elevated PbB levels in children and that PbB levels responded to remedial activity. Furthermore, analytical results from the three cities suggest that strategies to reduce overall lead exposure at a site and protect human health need to consider an array of sources including lead in soil, dust, and paint.

[1] Target housing is defined by section 1004 of Title X to be "any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0–bedroom dwelling. In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, the Secretary (of Housing and Urban Development), at the Secretary's discretion, may designate an earlier date."

C. Regulatory and Pollution Prevention Program

The third component of EPA's lead strategy is the regulatory and pollution prevention program. This program, which primarily focuses on existing and new uses and releases of lead, addresses lead exposures that are amenable to regulatory control or, in some cases, voluntary measures. These controls include waste management requirements, emissions restrictions, and limits on lead in products. Under its lead regulatory and pollution prevention program, EPA has completed a major rulemaking and initiated several other important actions.

The Agency published final regulations, promulgating maximum contaminant level goals and national primary drinking water regulations for controlling lead and copper in drinking water (40 CFR parts 141 and 142) on June 7, 1991 (56 FR 26460). These regulations established a maximum contaminant level goal at 0 μg/l for lead and an action level of 15 μg/l for lead. Public water supply systems failing to meet the action level based on sampling methods prescribed in the rule must initiate treatment actions that may include corrosion control, source water treatment, lead service line replacement, and public education. To date, EPA has received sampling data reports from three rounds of sampling: Round one covered large public water supply systems; round two covered large and medium-sized systems; and round three covered medium and small systems.

In an action to protect wildlife, EPA proposed regulations under section 6(a) of TSCA, limiting the manufacture, processing, and distribution in commerce in the United States, of certain size lead fishing sinkers on March 9, 1994 (59 FR 11122). Granting a section 21 petition by the Environmental Defense Fund, EPA proposed this regulatory action in response to information submitted in the petition which indicated that common loons, trumpeter swans, and birds from other avian species had died of lead poisoning after ingesting lead fishing sinkers. This proposed rulemaking also includes sinkers containing zinc because studies and other information obtained by EPA suggests that zinc adversely affects waterbirds and can cause mortality in avian species.

The Agency's regulatory efforts are complemented by initiatives to achieve voluntary compliance with lead exposure reduction goals. For example, EPA is currently participating in efforts by National Sanitation Foundation International to develop a voluntary lead leaching standard for kitchen, bar, and lavatory faucets. The objective of this standard is to reduce the quantity of lead that leaches from brass faucets. Products that meet the standard based on test samples and analysis would be certified and appropriately labeled, indicating to consumers that the product contributes less lead to drinking and cooking water than faucets that fail to meet the certification requirements.

VI. Review and Control of New Uses of Lead

A. Rationale

To date, EPA's programmatic efforts have focused on existing uses of lead, because there is substantial evidence that exposure to lead has adverse human health and environmental impacts. The Agency, however, is also concerned about new uses of lead, because they may result in new or increased exposures which may present an unreasonable risk of injury to human health and the environment. New or increased exposure to lead may arise from: (1) Increases in the volume of lead consumed; (2) increases in the concentration of lead in products; (3) new products containing lead; and (4) changes in product design that increase the amount of lead released from a product.

EPA believes that its concern about new uses is justified in light of lead's physical properties and low cost, attributes which make it an attractive raw material for a broad variety of commercial and consumer products. Consequently, the Agency believes that the regulation of existing uses alone may not be sufficient to reduce lead exposures to the greatest extent practicable. EPA should also evaluate and, if necessary, regulate new uses of lead before opportunities for exposure occur. The Agency further believes that addressing risks prior to commercial use is more effective than responding to exposures and risks after the use is introduced commercially. Because children are especially vulnerable to the impacts of lead, EPA is particularly concerned about new uses that could present risks to children. Consistent with the Agency's overall lead risk reduction program, EPA is also seeking to address risks to adults and the environment from new uses of lead. The Agency, therefore, is exploring the possibility of issuing significant new use rules for certain uses of elemental lead and lead compounds under section 5(a) of TSCA.

B. The SNUR Process

Section 5(a) of TSCA provides EPA with the authority to screen new uses of a chemical substance to determine whether these uses should be regulated. This screening function is accomplished through the SNUR process. EPA may issue a SNUR for a chemical substance after considering relevant factors, including: (1) The projected volume of manufacturing and processing of a chemical substance; (2) the extent to which a use changes the type or form of human or environmental exposure to a chemical substance; (3) the extent to which a use increases the magnitude and duration of human or environmental exposure to a chemical substance; and (4) the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

Having considered all the relevant factors, EPA can then issue a SNUR that identifies the chemical substance and specifies one or more uses as significant new uses. EPA also has the option to publish a SNUR that defines any use meeting specified criteria as a significant new use. Under a third option, EPA may list all past and existing uses of the substance and define any use not on that list as a significant new use.

After EPA promulgates a SNUR for a chemical substance, TSCA requires that a SNUN be submitted to the Administrator at least 90 days before the start of manufacturing or processing of the significant new use(s). Based on the information provided in the SNUN and other relevant data submitted, the Agency will evaluate the risk that the use presents to human health and the environment. EPA can, for good cause, extend the review period for a maximum of 90 days.

If, based on its review, the Agency determines that the significant new use may present an unreasonable risk of injury to human health or the environment but lacks the information necessary to make a definitive finding, it can issue an order to prohibit or limit the manufacturing, processing, or distribution in commerce of the use while it continues its risk evaluation. Once EPA has made its risk finding, it can either: (1) Take long-term action to prohibit or limit the manufacturing, processing, or distribution in commerce of the use if the use presents or will present unreasonable risk of injury to human health and the environmentm, or (2) take no action if it finds that there is no unreasonable risk. When making a determination of unreasonable risk, EPA

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considers the risks of the use to human health and the environment, the benefits of the use, the availability of substitutes, and the economic consequences of any limits on the use.

In short, section 5 of TSCA gives EPA the authority to promulgate a SNUR based on factors related to exposure and volume. A SNUR requires notification of the significant new use(s). Following notification, the Agency evaluates the risk of the use(s) to determine whether it should limit or prohibit the use(s). EPA solicits comment on the effectiveness of using this approach for lead, as well as alternative approaches to protect human health and the environment from lead exposures.

C. Formulating an Approach for Lead

To date, EPA has promulgated SNURs for substances where existing use is limited to a few applications and products. These SNURs typically identify all existing uses of the substance that is the subject of the SNUR. Lead, however, is used in hundreds of products and processes across many industries, due to its physical properties and low cost. The widespread use of lead makes the complete identification of all existing uses of lead extremely difficult. The traditional approach of first identifying all existing uses of a chemical substance, therefore, may not be appropriate for development of a lead SNUR.

To regulate new uses of lead in a sensible and protective manner, EPA intends to establish an alternative approach that can be used to identify significant new uses. This approach consists of two components: a targeting strategy and criteria for defining significant new uses.

1. *Targeting strategy.* The widespread use of lead in commerce has prompted EPA to develop a strategy that targets new lead uses where exposure to lead could reasonably be expected to occur as a result of the designed or anticipated use of the product. For example, the Agency would be concerned about a new use of lead in a product where lead could be inadvertently ingested by children (e.g., use of lead-based artists paints in home studios contributing lead to household dust). The strategy also targets new uses of lead that could result in adult and environmental exposure (e.g., heated lead solder for household electrical repairs that could produce inhalable vapors, spent lead shot that could contaminate habitat adjacent to shooting ranges). In contrast, EPA does not currently plan to focus on uses where human and/or environmental exposure would be less likely to occur (e.g., new circuit boards used in computers and other electronics products, solder designed for industrial use in the electronics industry, batteries).

The Agency believes that using exposure to target new uses of lead is an appropriate tool and consistent with the SNUR authority under section 5 of TSCA. If, in response to a SNUR that EPA promulgates for specific lead uses, the Agency receives a SNUN, section 5 requires EPA to determine if further regulatory action is warranted by assessing whether the use presents or will present an unreasonable risk of injury to human health or the environment. By using exposure as the criterion for identifying new uses that would be subject to a SNUR, EPA intends to limit the SNUR and its notification requirements to those new uses where exposure is likely and thus have the potential to present unreasonable risk. Furthermore, this targeting strategy would eliminate from the requirements new uses where exposure is less likely and the potential for unreasonable risk may not exist.

Currently, EPA also does not plan to focus on classes of uses where other types of regulatory controls may be more appropriate than the SNUR approach or where existing controls are sufficient. In many industries, for example, lead compounds may be used during new or modified manufacturing processes (changes in manufacturing processes can be a factor in defining a significant new use), possibly resulting in occupational exposures. Similarly, improperly managed disposal of lead-containing products could result in exposure through releases to groundwater (landfilling) or the air (incineration). Although EPA is concerned about such exposures, the Agency believes that other regulatory mechanisms (e.g., Occupational Safety and Health Act, Clean Air Act, and RCRA authorities) are available, and in some cases in place, to address these problems.

Other uses of lead are exempt from regulation as "chemical substances" by EPA under section 3(2)(B) of TSCA. For example, exposure to lead through contamination of food and water from crystalware, ceramicware, and other housewares is regulated by the Food and Drug Administration (FDA) under authorities granted by the Federal Food, Drug, and Cosmetic Act and other statutes. The FDA, using its authorities, has established action levels for lead in ceramic foodware, including flatware, holloware, cups, mugs, and pitchers. The FDA has also issued a public advisory on the storage of alcoholic beverages in crystalware, provided enforcement guidance for lead in wine, and has proposed a total ban on the use of tin-coated lead capsules on wine bottles.

EPA is currently examining five priority classes of use for identification of possible candidates for lead SNURs. Each class is defined in terms of a distinct exposure and/or environmental release scenario. These classes reflect the Agency's focus on health risks to children that may result from lead exposure.

The five use classes are:

1. Products used in water conveyance systems that come in contact with drinking water. The Agency has substantial evidence that lead leaches from components of water distribution systems and household plumbing (e.g., fixtures, fittings, solder, valves, pumps, meters, and tanks).

2. Products commonly used in and/or around the home where ordinary use (e.g., manipulation, grinding, sanding, heating) could result in release of lead to the residential environment. For example, the use of products such as home hobbyist supplies may contribute lead to household dust; lead vapors from products that are designed to be heated could be inhaled.

3. Products that could be mouthed by children where the lead-containing component in the product is reasonably accessible to children. Children could ingest lead by mouthing the lead-containing component (e.g., plastic toys where lead is used as a pigment or stabilizer and textiles with lead-based dyes).

4. Products that can release lead to the environment through exposure to weathering elements during use. Lead could be released through leaching or through deterioration of the product, contaminating dust and soil (e.g., sheet lead for roofing, lead caulk, traffic paint).

5. Products intended for non-residential (e.g. recreational, transportation, commercial, and industrial) use, where use necessarily results in uncontrolled release of lead to the environment. Examples include lead-containing products where use involves: (1) Combustion such as motor fuel additives, resulting in deposition of lead in the environment and (2) dispersal of the product in the environment such as fishing sinkers and ammunition containing lead shot.

For each of these five use classes, the following Table 1 provides examples of both the uses and the lead compounds or elemental forms of lead.

Table 1.—Illustrative Uses of Lead

Use Class	Uses	Lead Compounds/Forms of Lead
Products used in water conveyance systems that come in contact with drinking water	plumbing fixtures and fittings, joints, seals, solder, meters, pumps, valves, tanks	cast brass, wrought brass, lead solder
Products commonly used in and around the home where ordinary use could result in release of lead to the residential environment	stained glass, gold pencil, mosaic gold, photographic chemicals, water color pigments, lead solder for home repairs and home hobbyist use	lead came, lead iodide, lead oxides, lead bromide, lead fluoride, chromic acid, lead biscarbinato, lead solder
Products that could be mouthed by children where the lead-containing component in the product is reasonably accessible to children	plastic toys, textile dyes, lead toy soldiers, toys painted with lead-based paint	lead oxides, lead nitrates, lead acetate, tribasic lead sulfate, dibasic lead stearate, lead dichloride
Products that can release lead to the environment through exposure to weathering elements during use	roofing, flashing, siding, gutters, eaves, seams, paint/varnish driers, industrial paint pigments, traffic paint	terne metal, lead sheet, caulking lead, lead solder, lead oxide, lead salts, lead arsenate, lead chromate
Products intended for nonresidential (e.g. recreational, transportation, commercial, industrial) use where use necessarily results in uncontrolled release to the environment	motor fuel (aviation gasoline, racing car fuel) additives, motor fuel odor modifier, fishing sinkers, lead shot for ammunition	tetra methyl, tetraethyl, triethylmethyl, diethyl, dimethyl, plumbate, disodium, lead weight, lead shot, lead styphnate

The purpose of Table 1 is to provide further clarification and understanding of these five use classes. Specific uses included in Table 1 are presented as illustrative examples and are not intended to represent an exhaustive list. Furthermore, these uses may be existing uses that would not be subject to the SNUR, depending on the final definition of "significant new uses."

Given the importance of this targeting scheme in regulating new uses of lead, the Agency is seeking comment on this approach. Specifically, EPA would like commenters to address the following issues: (1) The appropriateness of using the targeting approach described above to design lead SNURs, (2) whether the definition of any of the five use classes is particularly unclear with respect to the types of uses or products that might be covered, (3) whether any use classes listed in Table 1 should not be included in the targeting strategy and why, and (4) whether any use classes not listed in Table 1 should be included in the targeting strategy and why. EPA is particularly interested in relevant data that commenters may possess which suggest that SNURs are or are not appropriate for specific use classes.

2. *Criteria for identifying significant new uses.* The second element of EPA's approach for regulating new uses of lead is criteria for defining significant new uses of lead. These criteria may include the development of a new product/use (i.e., product model or line), change in concentration of lead in a product/use, change in surface area and other factors that affect the amount of lead released from a product, and/or change in total volume of lead for a product/use. Because lead is used in a broad range of products involving numerous industries, it is likely that the Agency will develop criteria that are specific to particular products/uses rather than one set of criteria that would be applied uniformly.

When selecting criteria, EPA will endeavor not to define, as significant new uses, products or processes that have been developed specifically to reduce lead exposures. EPA does not wish and does not intend that any SNUR for lead impede innovations that would reduce risks to human health and the environment.

To aid in developing these criteria, EPA plans to establish a baseline inventory of existing uses in the five use classes identified in Table 1. The baseline inventory will include at least the following data elements for each identified product/use: Product/use identification, product/use description; lead compound (and CAS number) or form of elemental lead; median lead concentration; range of lead concentration; other design factors associated with the level of lead released from the product; the frequency with which the design of the use/product changes; and total volume of lead consumed annually for the product/use. These data will serve several purposes. First, they will enable EPA to identify existing uses of lead. Only significant new uses will be subject to regulation under section 5 of TSCA. Second, these data will improve the Agency's understanding of existing uses and help EPA select appropriate criteria for effectively identifying and controlling significant new uses of lead.

The Agency invites commenters to submit information of the type described in the preceding paragraph for any lead-containing product/use belonging to one of the five priority use classes identified in Table 1. For purposes of this Notice, EPA defines a lead-containing use/product as a use/product where lead is intentionally introduced at any stage of manufacturing or processing. EPA is not currently examining uses/products that contain lead merely as an inadvertent contaminant. EPA is also interested in data that commenters may possess on human and environmental exposure, bioavailability, and risks associated with any such products or uses. Although the Agency does not normally

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consider the costs and/or availability of substitutes when defining new uses for a SNUR, commenters with this kind of information are welcome to submit the information if they feel that this information might be useful to the Agency. Data provided by commenters will help the Agency to compile a baseline inventory of existing lead-containing products and uses and will help in the selection of criteria for defining significant new uses of lead.

Currently, EPA is not interested in receiving information for uses/products that are not described by any of the five priority class definitions unless the use/product relates to an additional use class that the commenter believes EPA should consider when developing a SNUR. Commenters who are uncertain (1) if a specific use/product fits into any of the five classes and/or (2) about the type of use/product data that EPA would like commenters to submit should address their questions to the technical contact listed under "FOR FURTHER INFORMATION CONTACT" in this document.

VII. Rulemaking Record and Electronic Filing of Comments

A record has been established for this ANPR under docket number "OPPTS–50618" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI (*see Unit VIII. of this document*), is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC) (also known as the TSCA Public Docket Office), Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

As part of an interagency "streamlining" initiative, EPA is experimenting with submission of public comments on selected rulemaking actions electronically through the Internet in addition to accepting comments in traditional written form. This ANPR is one of the first rulemaking actions selected by EPA for this experiment. From the experiment, EPA will learn how electronic commenting works, and any problems that arise can be addressed before EPA adopts electronic commenting more broadly in its rulemaking activities. Electronic commenting through posting to the EPA Bulletin Board or through the Internet using the ListServe function raise some novel issues that are discussed below in this Unit.

To submit electronic comments, persons can either "subscribe" to the Internet ListServe application or "post" comments to the EPA Bulletin Board. To "Subscribe" to the Internet ListServe application for this ANPR, send an e-mail message to: listserver@unixmail.rtpnc.epa.gov that says "Subscribe RIN–2070–AC37 <first name> <last name>." Once you are subscribed to the ListServe, comments should be sent to:

RIN–2070–AC37@unixmail.rtpnc.epa.gov.

For online viewing of submissions and posting of comments, the public access EPA Bulletin Board is also available by dialing 202–488–3671, enter selection "DMAIL," user name "BB—USER" or 919–541–4642, enter selection "MAIL," user name "BB—USER." When dialing the EPA Bulletin Board type <Return> at the opening message. When the "Notes>" prompt appears, type "open RIN–2070–AC37" to access the posted messages for this document. To get a listing of all files, type "dir/all" at the prompt line. Electronic comments can also be sent directly to EPA at:

Docket–OPPTS@epamail.epa.gov.

To obtain further information on the electronic comment process, or on submitting comments on this ANPR electronically through the EPA Bulletin Board or the Internet ListServe, please contact John A. Richards (Telephone: 202–260–2253; FAX: 202–260–3884; Internet: *richards.john@epamail.epa.gov*).

Persons who comment on this ANPR, and those who view comments electronically, should be aware that this experimental electronic commenting is administered on a completely public system. Therefore, any personal information included in comments and the electronic mail addresses of those who make comments electronically are automatically available to anyone else who views the comments. Similarly, since all electronic comments are available to all users, commenters should not submit electronically any information which they believe to be CBI. Such information should be submitted only directly to EPA in writing as described in Unit VIII. of this document.

Commenters and others outside EPA may chose to comment on the comments submitted by others using the RIN–2070–AC37 ListServe or the EPA Bulletin Board. If they do so, those comments as well will become part of EPA's record for this rulemaking. Persons outside EPA wishing to discuss comments with commenters or otherwise communicate with commenters but not have those discussions or communications sent to EPA and included in the EPA rulemaking record should conduct those discussions and communications outside the RIN–2070–AC37 ListServe or the EPA Bulletin Board.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically in the RIN–2070–AC37 ListServe or the EPA Bulletin Board, in accordance with the instructions for electronic submission, into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. All the electronic comments will be available to everyone who obtains access to the RIN–2070–AC37 ListServe or the EPA Bulletin Board; however, the official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document. (Comments submitted only in written form will not be transferred into electronic form and thus may be accessed only by reviewing them in the TSCA Nonconfidential Information Center as described above.)

Because the electronic comment process is still experimental, EPA cannot guarantee that all electronic comments will be accurately converted to printed, paper form. If EPA becomes aware, in transferring an electronic comment to printed, paper form, of a problem or error that results in an obviously garbled comment, EPA will attempt to contact the comment submitter and advise the submitter to resubmit the comment either in electronic or written form. Some commenters may choose to submit identical comments in both electronic and written form to ensure accuracy. In that case, EPA requests that commenters clearly note in both the electronic and written submissions that the comments are duplicated in the other medium. This will assist EPA in processing and filing the comments in the rulemaking record.

As with ordinary written comments, EPA will not attempt to verify the identities of electronic commenters nor to review the accuracy of electronic comments. EPA will take such commenters and comments at face value. Electronic and written comments will be placed in the rulemaking record without any editing or change by EPA except to the extent changes occur in the process of converting electronic comments to printed, paper form.

If it chooses to respond officially to electronic comments on this ANPR, EPA will do so either in a notice in the **Federal Register** or in a response to comments document placed in the rulemaking record for this ANPR. EPA will *not* respond to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or conversion to printed, paper form as discussed above. Any communications from EPA employees to electronic commenters, other than those described in this paragraph, either through Internet or otherwise are not official responses from EPA.

VIII. Confidential Business Information

A person may assert a claim of confidentiality for any information, including all or portions of written comments or data, submitted to EPA in connection with this advanced notice of proposed rulemaking. Information claimed as confidential should not be submitted electronically as described in Unit VII. of this document. Any person who submits a comment or data subject to a claim of confidentiality must also submit a nonconfidential version. Any claim of confidentiality must accompany the information when it is submitted to EPA. Persons must mark information claimed as confidential by circling, bracketing, or underlining it, and marking it with "CONFIDENTIAL" or some other appropriate designation. EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person. Any information submitted electronically as described in Unit VII. will be available to the public immediately without restriction.

IX. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, OMB has determined that this ANPR is a "significant regulatory action" because a lead SNUR may raise novel legal or policy issues. As such, this action was submitted to OMB for a 10–day review, and any comments or changes made in response to OMB suggestions or recommendations have been documented in the public record.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: September 20, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 94–23981 Filed 9–27–94; 8:45 am]

BILLING CODE 6560–50–F

VOL
59
ISS
187
SE
28
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UMI

Federal Register

Wednesday
September 28, 1994

Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 888
Section 8 Housing Assistance Payments Program; Fair Market Rents; Final Rule

VOL
59
ISS
187
SEP
28
1994
UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 888

[Docket No. N-94-3754; FR-3699-N-03]

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules for Use in the Rental Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Rental Voucher Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of final fair market rents.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents (FMRs) annually to be effective on October 1 of each year. FMRs are used for the Section 8 Rental Certificate program (part 882, subparts A and B), including space rentals by owners of manufactured homes under the Section 8 Rental Certificate program (part 882, subpart F) and project-based Certificate assistance (part 882, subpart G); the Section 8 Moderate Rehabilitation program (part 882, subparts D and E); Section 8 housing assisted under part 886, subparts A and C (Section 8 Loan Management and Property Disposition programs); and to determine payment standard schedules in the Rental Voucher program (part 887).

HUD published the proposed Fiscal Year (FY) 1995 FMRs in the **Federal Register** on June 23, 1994 (59 FR 32492), and in another publication on July 13, 1994 (59 FR 35739), announced that the public comment period was extended to October 14, 1994. The public comment period was extended to give Public Housing Agencies (PHAs) the opportunity to use the new rental housing survey guide that HUD had recently developed for smaller, nonmetropolitan areas.

Two separate sets of proposed FMRs were published on June 23—one based on the 45th percentile rent standard and the other based on the 40th percentile rent standard. The authorization bill now moving through Congress establishes FMRs at the 45th percentile rent standard. This notice, therefore, makes effective the final FY 1995 FMRs at the 45th percentile level.

As announced in the **Federal Register** on July 13, there will be two final FY 1995 FMR publications. Today's notice makes effective final FMRs for all areas on October 1, 1994. The FMRs in this notice are based on the proposed FMRs included in the June 23 notice for all areas except eight with RDD and AHS surveys that will have proposed reductions in their FMRs postponed pending the outcome of the review of comments submitted (see AHS and RDD surveys). A second publication later this year will announce revised final FMRs for the areas for which HUD makes a determination that the rental housing surveys submitted as public comments provided a sufficient basis for such revision.

EFFECTIVE DATE: The FMRs published in this notice are effective on October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Shirley C. Stone, Rental Assistance Division, Office of Elderly and Assisted Housing, telephone (202) 708-0477. (TDD: (202) 708-0850). For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Michael R. Allard, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708-0577 (TDD: (202) 708-0770). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes housing assistance to aid lower income families in renting decent, safe, and sanitary housing. Assistance payments are limited by FMRs established by HUD for different areas. In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.

Method Used to Develop FMRs

FMR Standard: The FMRs are gross rent estimates; they include shelter rent and the cost of utilities, except telephone. HUD sets FMRs to assure that a sufficient supply of rental housing is available to program participants. To accomplish this objective, FMRs must be both high enough to permit a selection of units and neighborhoods and low enough to serve as many families as possible. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units. The current definition used is the 45th percentile rent, the dollar amount below which 45 percent of the standard quality rental housing units rent. The 45th percentile rent is drawn from the distribution of rents of units which are occupied by recent movers (renter households who moved into their unit within the past 15 months). Public housing units and newly built units less than two years old are excluded.

Data Sources: HUD used the most accurate and current data available to develop the FMR estimates. Three sources of survey data were used for the base-year estimates. They are: (1) The 1990 Census; (2) RDD telephone surveys conducted of individual FMR areas since the 1990 Census; and (3) the post-1990 Census American Housing Surveys (AHSs) available at the time the FMR estimates were prepared. The base-year FMRs were then updated using Consumer Price Index (CPI) data for rents and utilities or the HUD regional rent change factors developed from RDD surveys. Annual average CPI data are available individually for 103 metropolitan FMR areas. RDD Regional rent change factors are developed annually for the metropolitan and nonmetropolitan parts of each of the 10 HUD regions (a total of 20 separate factors). The RDD factors are used to update the base year estimates for all FMR areas that do not have their own local CPI survey.

The decennial Census provides statistically reliable rent data for use in establishing base-year FMRs. AHSs are conducted by the Bureau of the Census for HUD and have accuracy comparable to the decennial Census. These surveys enable HUD to develop between-census revisions for the largest metropolitan areas on a revolving schedule. The RDD telephone survey technique is based on a sampling procedure that uses computers to select random samples of rental housing, dial and keep track of the telephone numbers and tabulate the responses.

Manufactured Home Space FMRs: The final manufactured home space FMRs are established at 30 percent of the applicable Section 8 Rental Certificate program two-bedroom FMR. HUD accepts public comments requesting modifications of manufactured home space FMRs. To be accepted for approval, such comments must contain statistically valid survey data that show the 45th percentile space rent (excluding the cost of utilities) for the FMR area. This program uses the same FMR area definitions as the Section 8 Rental Certificate program. All manufactured home space FMR revisions approved will be published as final FMRs in Schedule D. In addition HUD has retained all of the modifications approved since 1990 because they are based on recent survey data that HUD had determined to be valid.

New Metropolitan Area

This publication makes final the FMRs for the newly designated Hattiesburg, Mississippi Metropolitan Statistical Area (MSA), which was defined by OMB on July 1, 1994 (OMB Bulletin 94-07) to include Forrest and Lamar Counties. HUD has determined that the new metropolitan area definition is appropriate for use as an FMR area definition.

AHS and RDD Surveys

The eight areas identified in the proposed FMR notice with reduced FMRs resulting from RDD and AHS surveys will continue to use the FY 1994 FMRs, which are republished in this notice. Final FY 1995 FMRs for these areas, including any revisions resulting from public comments, will be included in the second publication later this year. The eight areas are:

RDD AREAS
- Gage County, NE
- Holmes County, FL
- Jamestown, NY, MSA
- Las Cruces, NM, MSA
- Reading, PA, MSA
- Washington County, FL

AHS AREAS
- Memphis, TN-AR-MS, MSA
- Oklahoma City, OK, MSA

HUD Rental Housing Survey Guides

HUD continues to recommend use of professionally-conducted Random Digit Dialing (RDD) telephone surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of $10,000–$12,000. Areas with 500 or more units usually meet this criterion, and areas with fewer units may meet it if the actual two-bedroom FMR rent standard is significantly different than that proposed by HUD. In addition, HUD has developed a simplified version of the RDD survey methodology for smaller, non-metropolitan PHAs. This methodology is designed to be simple enough to be done by the PHA itself, rather than by professional survey organizations, at a cost of around $5,000. The smallest PHAs may, in certain circumstances, do surveys of clusters of counties. All clustered surveys must be approved in advance by HUD. PHAs are cautioned that the resultant FMRs will not be identical within the cluster—e.g., each individual FMR area will have a separate FMR based on its relationship to the combined rent of the cluster of FMR areas. HUD does not mandate the use of either the RDD telephone survey or the modified RDD telephone survey methodology. Other survey methodologies are acceptable as long as they provide statistically reliable unbiased estimates of the 45th percentile gross rent. All survey results must be fully documented.

Because it takes two months to obtain survey estimates, interested organizations concerned about FMR accuracy may wish to begin their FMR surveys in the next few months to assure that the results will be available in time to be incorporated into the FY 1996 FMRs. The starting point is to carefully review one of the two following publications, both obtainable from HUD USER at 1-800-245-2691. Larger PHAs should obtain "Random Digit Dialing Surveys; A Guide to Assist Larger Public Housing Agencies in Preparing Fair Market Rent Comments." Smaller PHAs should obtain "Rental Housing Surveys; A Guide to Assist Smaller Public Housing Agencies in Preparing Fair Market Rent Comments."

FMRs for Flood Damaged Areas in the Southeast and Midwest

Under the authority granted in 24 CFR part 899, the Secretary finds good cause to waive the regulatory requirements that govern requests for geographic area FMR exceptions for the flood-impacted areas in the midwest and southeast that have been declared Federal disaster areas. The FMR areas eligible for exceptions are those declared Federal disaster areas. Recognizing that the substantial losses resulting from the floods will have a direct effect on local rent levels, HUD is prepared to grant FMR exceptions up to 10 percent above the final FY 1995 FMRs for single-county FMR areas and for individual county parts of multi-county FMR areas. The flood-related FMR exceptions will be approved by the HUD field office with jurisdiction for: (1) Counties that qualify as disaster areas under the Robert T. Stafford Disaster Relief and Emergency Assistance Act; if (2) the PHA certifies that damage to the rental housing stock is so substantial that it has increased the prevailing rent levels. Such exceptions must be requested in writing by the responsible PHAs. Once approved by HUD, they will remain in effect until superseded by final FY 1996 FMRs.

Other Matters

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321-4374) is unnecessary, since the Section 8 Rental Certificate program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(d).

The undersigned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities, because FMRs do not change the rent from that which would be charged if the unit were not in the Section 8 program.

The General Counsel, as the Designated Official under Executive Order No. 12606, The Family, has determined that this notice will not have a significant impact on family formation, maintenance, or well-being. The notice amends Fair Market Rent schedules for various Section 8 assisted housing programs, and does not affect the amount of rent a family receiving rental assistance pays, which is based on a percentage of the family's income.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, *Federalism*, has determined that this notice will not involve the preemption of State law by Federal statute or regulation and does not have Federalism implications. The Fair Market Rent schedules do not have any substantial direct impact on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibility among the various levels of government.

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (section 8).

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR Part 888, are amended as follows:

Dated: September 20, 1994.

Henry G. Cisneros,

Secretary.

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules for Use in the Rental Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Rental Voucher Program

Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. The FMRs shown in Schedule B incorporate the Office of Management and Budget's (OMB) most current definitions of metropolitan areas (with the exceptions discussed in paragraph b). HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for FMR areas because they closely correspond to housing market area definitions. FMRs are housing

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market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental housing units are in direct competition.

b. The exceptions are counties which have been deleted from seven large metropolitan areas whose revised OMB definitions were determined by HUD to be larger than the housing market areas. The FMRs for the following counties (shown by the metropolitan area) are calculated separately and are shown in Schedule B within their respective States under the "Metropolitan FMR Areas" listing:

Metropolitan Area and Counties Deleted

Atlanta, GA—Carroll, Pickens, Spalding, and Walton Counties.
Chicago, IL—DeKalb, Grundy and Kendall Counties.
Cincinnati-Hamilton, OH–KY–IN—Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana.
Dallas, TX—Henderson County.
Lafayette, LA—St. Landry and Acadia Parishes.
New Orleans, LA—St. James Parish.
Washington, DC—Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren counties in Virginia.

c. FMRs also are established for nonmetropolitan counties and for county equivalents in the United States, for nonmetropolitan parts of counties in the New England states and for FMR areas in Puerto Rico, the Virgin Islands and the Pacific Islands.

d. FMRs for the areas in Virginia shown in the table below were established by combining the Census data for the nonmetropolitan counties with the data for the independent cities that are located within the county borders. Because of space limitations, the FMR listing in Schedule B includes only the name of the nonmetropolitan county. The full definitions of these areas including the independent cities are as follows:

VIRGINIA NONMETROPOLITAN COUNTY FMR AREA AND VIRGINIA INDEPENDENT CITIES INCLUDED WITH COUNTY

County	Cities
Allegheny	Clifton Forge and Covington.
Augusta	Staunton and Waynesboro.
Carroll	Galax.
Frederick	Winchester.
Greensville	Emporia.
Halifax	South Boston.
Henry	Martinsville.
Montgomery	Radford.
Rockbridge	Buena Vista and Lexington.
Rockingham	Harrisonburg.
Southhampton	Franklin.
Wise	Norton.

e. FMRs for Section 8 manufactured home spaces are established at 30 percent of the two-bedroom Section 8 Rental Certificate program FMRs, with the exception of the areas listed in Schedule D whose FMRs have been modified on the basis of public comments. The FMR area definitions used for manufactured home spaces are the same as for the Section 8 Certificate program.

2. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each State. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by State.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one State can be identified by consulting the listings for each applicable State.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan part of a county are listed immediately following the county name.

e. The FMRs are listed by dollar amount on the first line beginning with the FMR area name.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

A L A B A M A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Anniston, AL MSA	211	283	358	498	564
Birmingham, AL MSA	340	384	447	605	672
Colbert, AL MSA	329	368	438	574	623
Decatur, AL MSA	317	320	404	522	624
Dothan, AL MSA	297	304	370	518	526
Florence, AL MSA	274	285	381	499	533
Gadsden, AL MSA	236	299	335	437	551
Huntsville, AL MSA	332	390	482	640	761
Mobile, AL MSA	318	355	407	547	641
Montgomery, AL MSA	367	393	463	631	760
Tuscaloosa, AL MSA	314	336	448	615	650

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Barbour	161	230	294	408	482
Bullock	175	191	221	277	363
Chambers	169	272	308	392	506
Chilton	249	252	324	406	454
Clarke	226	228	300	396	493
Cleburne	165	227	303	406	425
Conecuh	148	202	269	337	377
Covington	218	247	278	383	452
Cullman	238	284	336	452	550
Dekalb	170	249	309	386	496
Fayette	216	239	293	376	410
Geneva	212	214	269	374	441
Hale	148	239	269	337	377
Jackson	263	277	334	417	548
Lee	251	351	450	585	739
Macon	263	295	393	492	551
Marion	148	202	269	374	377
Monroe	163	223	297	414	416
Pickens	231	234	311	390	437
Randolph	210	213	285	356	466
Talladega	220	246	319	444	448
Walker	196	304	357	461	587
Wilcox	155	202	269	374	377

Calhoun	185	251	336	460	551
Blount, Jefferson, St. Clair, Shelby	184	229	301	390	423
Russell	162	247	295	405	454
Lawrence, Morgan	160	228	269	342	377
Dale, Houston	150	198	263	341	432
Colbert, Lauderdale	238	335	434	603	678
Etowah	164	226	300	406	421
Limestone, Madison	202	226	269	337	377
Baldwin, Mobile	234	247	331	442	462
Autauga, Elmore, Montgomery	227	236	288	401	404
Franklin	225	260	304	381	426
Greene	166	188	211	294	298
Henry	232	235	312	391	439
Lamar	148	202	269	374	377
Lowndes	160	259	291	364	411
Marengo	212	239	269	374	431
Marshall	275	282	347	483	570
Perry	175	239	269	374	395
Pike	246	285	334	417	514
Sumter	225	227	299	374	420
Tallapoosa	242	258	318	400	446
Washington	148	239	269	374	377
Winston	173	236	315	394	442

Note: The FMRS for unit sizes larger than 4 BRS are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.
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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

A L A S K A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anchorage, AK MSA	466	548	730	1012	1227	Anchorage

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aleutian East	493	555	625	781	1024
Bethel	635	796	1007	1260	1411
Dillingham	615	624	831	1039	1164
Haines	458	568	647	879	905
Kenai Peninsula	369	471	568	789	931
Kodiak Island	662	727	944	1181	1530
Matanuska-Susitna	354	481	540	735	866
North Slope	735	754	931	1294	1508
Pr.Wales-Outer Ketchikan	345	545	627	871	922
Skagway-Yakutat-Angoon	421	428	554	694	777
Valdez-Cordova	515	629	700	894	1064
Wrangell-Petersburg	374	552	670	854	938

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aleutian West	417	470	528	661	740
Bristol Bay	509	588	663	921	1000
Fairbanks North Star	385	523	684	940	1110
Juneau	603	697	886	1180	1225
Ketchikan Gateway	503	616	825	1147	1205
Lake & Peninsula	393	636	715	894	1002
Nome	648	801	899	1251	1412
Northwest Arctic	777	876	983	1368	1613
Sitka	541	643	722	1004	1185
Southeast Fairbanks	432	453	546	683	766
Wade Hampton	367	554	624	780	874
Yukon-Koyukuk	491	553	623	779	902

A R I Z O N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Las Vegas, NV-AZ MSA	465	551	656	911	1077	Mohave
Phoenix-Mesa, AZ MSA	344	416	522	725	855	Maricopa, Pinal
Tucson, AZ MSA	329	399	531	739	872	Pima
Yuma, AZ MSA	340	404	539	750	755	Yuma

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Apache	250	282	316	431	519
Coconino	403	436	566	759	912
Graham	268	296	365	508	560
La Paz	299	338	379	527	622
Santa Cruz	328	390	482	602	727
Cochise	320	355	439	603	720
Gila	253	329	437	548	717
Greenlee	189	259	344	433	509
Navajo	260	306	365	508	541
Yavapai	366	382	509	709	781

A R K A N S A S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fayetteville-Springdale-Rogers, AR MSA	265	330	435	588	608	Benton, Washington
Fort Smith, AR-OK MSA	285	290	381	510	534	Crawford, Sebastian
Little Rock-North Little Rock, AR MSA	356	394	469	648	756	Faulkner, Lonoke, Pulaski, Saline
Memphis, TN-AR-MS MSA	337	392	462	642	674	Crittenden
Pine Bluff, AR MSA	271	323	425	535	695	Jefferson
Texarkana, TX-Texarkana, AR MSA	293	357	436	576	610	Miller

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

A R K A N S A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Arkansas	255	258	344	480	502
Baxter	220	300	399	511	623
Bradley	213	225	301	419	494
Carroll	270	296	342	445	554
Clark	253	266	354	443	561
Cleburne	262	265	331	459	526
Columbia	192	262	348	440	488
Craighead	295	321	378	521	551
Dallas	172	235	314	418	440
Drew	173	237	316	436	443
Fulton	238	241	306	382	499
Grant	239	285	319	444	524
Hempstead	185	252	337	447	498
Howard	189	258	344	431	483
Izard	171	229	306	407	429
Johnson	227	247	309	428	451
Lawrence	174	265	316	395	518
Lincoln	249	267	356	477	498
Logan	241	255	306	382	429
Marion	173	237	316	440	519
Monroe	234	237	316	395	519
Nevada	214	260	345	481	484
Ouachita	268	272	347	484	570
Phillips	198	234	313	417	483
Poinsett	187	255	340	425	476
Pope	216	301	380	528	608
Randolph	168	264	306	391	496
Scott	168	267	306	385	502
Sevier	252	256	341	426	478
Stone	216	220	292	407	481
Van Buren	192	262	348	449	573
Woodruff	221	229	306	382	429

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Ashley	187	251	335	433	550
Boone	267	272	361	502	592
Calhoun	168	273	306	425	502
Chicot	170	231	309	393	433
Clay	209	238	306	382	502
Cleveland	165	226	302	377	495
Conway	209	285	380	476	533
Cross	239	302	340	472	555
Desha	199	248	331	459	463
Franklin	241	269	306	389	496
Garland	216	294	393	548	646
Greene	242	246	319	419	481
Hot Spring	192	262	348	436	488
Independence	242	281	316	440	519
Jackson	238	241	322	436	451
Lafayette	241	273	306	425	444
Lee	256	260	345	432	484
Little River	196	266	355	493	581
Madison	264	267	356	444	498
Mississippi	263	285	380	501	563
Montgomery	168	229	306	425	502
Newton	168	273	306	382	429
Perry	168	229	306	382	502
Pike	168	229	306	382	502
Polk	202	256	311	423	435
Prairie	165	226	302	420	446
St. Francis	187	279	341	475	557
Searcy	164	227	300	417	420
Sharp	175	239	319	441	447
Union	292	307	370	496	606
White	193	260	345	481	484
Yell	239	272	339	424	475

C A L I F O R N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bakersfield, CA MSA	381	430	536	745	827	Kern
Chico-Paradise, CA MSA	315	401	534	733	878	Butte
Fresno, CA MSA	386	433	516	717	826	Fresno, Madera

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

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C A L I F O R N I A continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Los Angeles-Long Beach, CA PMSA	580	695	880	1188	1416	Los Angeles
Merced, CA MSA	375	421	511	705	833	Merced
Modesto, CA MSA	432	465	567	790	930	Stanislaus
Oakland, CA PMSA	548	663	830	1137	1361	Alameda, Contra Costa
Orange County, CA PMSA	655	716	885	1231	1371	Orange
Redding, CA MSA	354	393	492	684	806	Shasta
Riverside-San Bernardino, CA PMSA	469	521	635	883	1043	Riverside, San Bernardino
Sacramento, CA PMSA	448	505	631	878	1034	El Dorado, Placer, Sacramento
Salinas, CA MSA	552	644	778	1080	1134	Monterey
San Diego, CA MSA	483	553	691	960	1132	San Diego
San Francisco, CA PMSA	624	808	1022	1401	1482	Marin, San Francisco, San Mateo
San Jose, CA PMSA	696	793	979	1342	1507	Santa Clara
San Luis Obispo-Atascadero-Paso Robles, CA PMSA	487	550	696	967	1141	San Luis Obispo
Santa Barbara-Santa Maria-Lompoc, CA MSA	603	670	849	1181	1334	Santa Barbara
Santa Cruz-Watsonville, CA PMSA	604	719	960	1335	1565	Santa Cruz
Santa Rosa, CA PMSA	552	626	812	1129	1333	Sonoma
Stockton-Lodi, CA MSA	415	470	602	837	987	San Joaquin
Vallejo-Fairfield-Napa, CA PMSA	520	592	722	1003	1185	Napa, Solano
Ventura, CA PMSA	629	720	913	1214	1415	Ventura
Visalia-Tulare-Porterville, CA MSA	350	374	486	676	773	Tulare
Yolo, CA PMSA	451	515	635	884	1042	Yolo
Yuba City, CA MSA	313	358	460	640	644	Sutter, Yuba

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alpine	275	443	499	695	699
Calaveras	364	421	562	781	921
Del Norte	302	414	551	766	903
Humboldt	308	426	560	779	921
Inyo	306	413	529	694	741
Lake	337	427	570	718	934
Mariposa	318	406	521	682	804
Modoc	321	327	435	544	609
Nevada	381	520	695	965	1118
San Benito	443	521	652	908	1064
Siskiyou	310	339	450	585	739
Trinity	332	336	436	559	715

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Amador	408	449	598	832	929
Colusa	321	327	435	574	714
Glenn	293	360	444	570	623
Imperial	331	413	508	707	713
Kings	339	392	491	682	804
Lassen	36	365	476	638	685
Mendocino	41,	501	617	858	864
Mono	451	539	718	998	1178
Plumas	325	349	464	637	650
Sierra	269	394	487	677	798
Tehama	308	327	435	605	714
Tuolumne	331	450	600	835	985

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C O L O R A D O

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boulder-Longmont, CO PMSA	425	511	655	910	1073	Boulder
Colorado Springs, CO MSA	329	380	507	705	833	El Paso
Denver, CO PMSA	354	435	580	805	950	Adams, Arapahoe, Denver, Douglas, Jefferson
Fort Collins-Loveland, CO MSA	371	457	563	783	925	Larimer
Greeley, CO PMSA	318	396	497	690	815	Weld
Pueblo, CO MSA	257	323	429	554	679	Pueblo

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alamosa	255	334	376	485	615
Baca	227	230	307	428	504
Chaffee	291	295	393	539	595
Clear Creek	350	417	473	658	776
Costilla	208	336	378	526	571
Custer	208	333	378	521	620
Dolores	205	331	370	463	519
Elbert	395	440	500	626	821
Garfield	390	418	528	660	866
Grand	429	434	550	687	831
Hinsdale	336	379	425	592	595
Jackson	208	283	378	473	529
Kit Carson	216	294	392	492	550
La Plata	395	436	575	800	944
Lincoln	299	336	404	504	661
Mesa	234	334	416	578	681
Moffat	195	306	356	495	583
Montrose	290	360	428	595	702
Otero	238	283	378	473	568
Park	283	396	516	717	815
Pitkin	537	734	979	1292	1467
Rio Blanco	280	283	378	526	578
Routt	336	433	571	794	936
San Juan	217	350	393	548	564
Sedgwick	166	227	303	379	478
Teller	311	424	566	786	792
Yuma	201	274	365	507	510

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Archuleta	276	393	441	609	719
Bent	208	284	379	483	530
Cheyenne	208	284	379	474	623
Conejos	174	282	316	396	492
Crowley	174	273	316	421	519
Delta	280	283	378	506	529
Eagle	49[illegible]	541	722	1005	1185
Fremont	23[illegible]	305	407	566	667
Gilpin	333	477	604	797	883
Gunnison	321	339	434	604	713
Huerfano	222	283	378	488	620
Kiowa	195	316	356	452	508
Lake	333	337	450	562	702
Las Animas	301	382	430	599	707
Logan	208	283	378	506	529
Mineral	262	294	332	419	545
Montezuma	277	364	439	611	671
Morgan	293	305	397	538	651
Ouray	258	353	469	596	760
Phillips	232	236	314	419	459
Prowers	264	267	358	486	586
Rio Grande	208	283	378	503	529
Saguache	204	299	369	462	536
San Miguel	659	951	1045	1307	1684
Summit	420	503	645	897	1059
Washington	264	310	378	473	620

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CONNECTICUT

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bridgeport, CT PMSA	547	711	855	1070	1335	Fairfield county towns of Bridgeport town, Easton town Fairfield town, Monroe town, Shelton town Stratford town, Trumbull town New Haven county towns of Ansonia town, Beacon Falls town Derby town, Milford town, Oxford town, Seymour town
Danbury, CT PMSA	648	774	967	1278	1472	Fairfield county towns of Bethel town, Brookfield town Danbury town, New Fairfield town, Newtown town Redding town, Ridgefield town, Sherman town Litchfield county towns of Bridgewater town New Milford town, Roxbury town, Washington town
Hartford, CT PMSA	453	562	720	900	1094	Hartford county towns of Avon town, Berlin town Bloomfield town, Bristol town, Burlington town Canton town, East Granby town, East Hartford town East Windsor town, Enfield town, Farmington town Glastonbury town, Granby town, Hartford town Manchester town, Marlborough town, New Britain town Newington town, Plainville town, Rocky Hill town Simsbury town, Southington town, South Windsor town Suffield town, West Hartford town, Wethersfield town Windsor town, Windsor Locks town Litchfield county towns of Barkhamsted town Harwinton town, New Hartford town, Plymouth town Winchester town Middlesex county towns of Cromwell town, Durham town East Haddam town, East Hampton town, Haddam town Middlefield town, Middletown town, Portland town New London county towns of Colchester town, Lebanon town Tolland county towns of Andover town, Bolton town Columbia town, Coventry town, Ellington town Hebron town, Mansfield town, Somers town, Stafford town Tolland town, Vernon town, Willington town Windham county towns of Ashford town, Chaplin town Windham town
New Haven-Meriden, CT PMSA	532	653	807	1034	1196	Middlesex county towns of Clinton town, Killingworth town New Haven county towns of Bethany town, Branford town Cheshire town, East Haven town, Guilford town Hamden town, Madison town, Meriden town, New Haven town North Branford town, North Haven town, Orange town Wallingford town, West Haven town, Woodbridge town
New London-Norwich, CT-RI MSA	483	584	710	889	1016	Middlesex county towns of Old Saybrook town New London county towns of Bozrah town, East Lyme town Franklin town, Griswold town, Groton town, Ledyard town Lisbon town, Montville town, New London town North Stonington t, Norwich town, Old Lyme town Preston town, Salem town, Sprague town, Stonington town Waterford town Windham county towns of Canterbury town, Plainfield town

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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CONNECTICUT continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Stamford-Norwalk, CT PMSA	805	943	1149	1540	1702	Fairfield county towns of Darien town, Greenwich town New Canaan town, Norwalk town, Stamford town Weston town, Westport town, Wilton town
Waterbury, CT MSA	412	555	686	857	959	Litchfield county towns of Bethlehem town, Thomaston town Watertown town, Woodbury town New Haven county towns of Middlebury town, Naugatuck town Prospect town, Southbury town, Waterbury town Wolcott town
Worcester, MA-CT	466	564	704	880	986	Windham county towns of Thompson town
NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Hartford	346	559	630	875	1032	Hartland town
Litchfield	401	546	729	911	1036	Canaan town, Colebrook town, Cornwall town, Goshen town Kent town, Litchfield town, Morris town, Norfolk town North Canaan town, Salisbury town, Sharon town Torrington town, Warren town
Middlesex	594	673	899	1250	1475	Chester town, Deep River town, Essex town Westbrook town
New London	504	617	701	904	1148	Lyme town, Voluntown town
Tolland	346	559	630	875	881	Union town
Windham	397	486	630	788	989	Brooklyn town, Eastford town, Hampton town Killingly town, Pomfret town, Putnam town, Scotland town Sterling town, Woodstock town

DELAWARE

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Dover, DE MSA	415	460	525	681	774	Kent
Wilmington-Newark, DE-MD PMSA	413	546	635	863	1040	New Castle

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Sussex	369	392	501	656	701

DIST OF COLUMBIA

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Washington, DC-MD-VA	638	725	851	1158	1396	District of Columbia

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F L O R I D A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Daytona Beach, FL MSA	353	437	560	744	789	Flagler, Volusia
Fort Lauderdale, FL PMSA	494	581	717	997	1176	Broward
Fort Myers-Cape Coral, FL MSA	418	482	580	808	843	Lee
Fort Pierce-Port Lucie, FL MSA	427	469	610	791	853	Martin, St. Lucie
Fort Walton Beach, FL MSA	357	397	451	628	741	Okaloosa
Gainesville, FL MSA	319	383	496	681	803	Alachua
Jacksonville, FL MSA	391	437	527	697	774	Clay, Duval, Nassau, St. Johns
Lakeland-Winter Haven, FL MSA	334	376	459	587	674	Polk
Melbourne-Titusville-Palm Bay, FL MSA	356	445	557	746	869	Brevard
Miami, FL PMSA	489	613	766	1050	1219	Dade
Naples, FL MSA	400	564	679	943	1053	Collier
Ocala, FL MSA	318	377	443	609	714	Marion
Orlando, FL MSA	454	517	616	808	987	Lake, Orange, Osceola, Seminole
Panama City, FL MSA	323	348	426	591	634	Bay
Pensacola, FL MSA	335	381	428	589	696	Escambia, Santa Rosa
Punta Gorda, FL MSA	351	424	562	784	926	Charlotte
Sarasota-Bradenton, FL MSA	376	478	606	780	848	Manatee, Sarasota
Tallahassee, FL MSA	384	424	558	731	881	Gadsden, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	380	452	559	743	899	Hernando, Hillsborough, Pasco, Pinellas
West Palm Beach-Boca Raton, FL MSA	495	581	718	955	1179	Palm Beach

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Baker	212	344	387	485	573
Calhoun	161	220	294	406	482
Columbia	264	292	335	464	549
Dixie	235	264	297	414	488
Gilchrist	198	274	360	451	591
Gulf	208	284	379	475	530
Hardee	238	387	434	542	608
Highlands	308	342	454	570	637
Indian River	348	467	600	751	841
Jefferson	187	249	333	455	546
Levy	264	268	335	418	542
Madison	232	261	294	408	455
Okeechobee	247	401	450	563	631
Sumter	300	329	381	477	534
Taylor	292	295	393	492	626
Wakulla	188	284	342	476	560
Washington	161	256	294	368	412

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bradford	199	318	361	489	539
Citrus	305	329	437	554	610
Desoto	314	318	420	550	587
Franklin	220	353	402	558	562
Glades	345	389	437	547	610
Hamilton	211	220	294	367	482
Hendry	315	406	478	597	669
Holmes	213	217	290	402	475
Jackson	161	261	294	391	482
Lafayette	242	245	328	408	536
Liberty	171	280	312	391	439
Monroe	535	603	776	1070	1272
Putnam	275	308	347	467	532
Suwannee	277	281	351	439	491
Union	250	255	340	444	476
Walton	198	314	355	466	583

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G E O R G I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany, GA MSA	276	293	389	541	545	Dougherty, Lee
Athens, GA MSA	345	370	481	653	787	Clarke, Madison, Oconee
Atlanta, GA	467	521	606	807	977	Barrow, Bartow, Cherokee, Clayton, Cobb, Coweta, Dekalb Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry Newton, Paulding, Rockdale
Augusta-Aiken, GA-SC MSA	330	395	465	633	750	Columbia, Mcduffie, Richmond
Carroll County, GA	312	317	423	588	694	Carroll
Chattanooga, TN-GA MSA	321	376	451	582	664	Catoosa, Dade, Walker
Columbus, GA-AL MSA	329	368	438	574	623	Chattahoochee, Harris, Muscogee
Macon, GA MSA	341	381	442	612	628	Bibb, Houston, Jones, Peach, Twiggs
Pickens County, GA	218	296	396	550	555	Pickens
Savannah, GA MSA	343	428	497	668	696	Bryan, Chatham, Effingham
Spalding County, GA	339	343	459	577	642	Spalding
Walton County, GA	327	353	454	631	743	Walton

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Appling	176	263	321	428	450
Bacon	176	273	321	402	450
Baldwin	231	344	420	537	587
Ben Hill	179	250	321	402	527
Bleckley	176	240	321	414	492
Brooks	237	240	321	414	527
Burke	213	216	289	403	405
Calhoun	164	179	219	275	307
Candler	252	286	321	446	450
Chattooga	187	279	340	425	536
Clinch	169	231	307	428	431
Colquitt	237	240	321	414	450
Crawford	268	272	340	431	476
Dawson	259	353	470	588	726
Dodge	237	240	321	446	469
Early	237	240	321	421	473
Elbert	248	281	315	394	517
Evans	252	267	321	433	450
Floyd	263	311	405	535	566
Gilmer	257	260	347	434	487
Glynn	384	428	487	651	798
Grady	252	273	321	417	527
Habersham	295	324	373	519	600
Hancock	202	297	367	459	537
Hart	195	307	354	442	496

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Atkinson	219	246	277	368	388
Baker	177	218	269	374	384
Banks	186	297	338	470	554
Berrien	176	240	321	446	450
Brantley	191	261	348	436	488
Bulloch	335	340	436	562	714
Butts	251	345	459	614	643
Camden	377	426	478	663	783
Charlton	258	261	348	436	519
Clay	155	212	283	371	395
Coffee	176	257	321	408	527
Cook	176	286	321	446	527
Crisp	252	286	321	446	527
Decatur	176	286	321	408	450
Dooly	177	209	279	387	389
Echols	252	286	321	446	450
Emanuel	247	280	312	432	439
Fannin	179	240	321	446	450
Franklin	195	251	336	437	551
Glascock	150	204	273	341	446
Gordon	325	331	413	533	678
Greene	219	298	397	498	558
Hall	285	433	509	637	712
Haralson	260	263	352	482	510
Heard	261	264	353	441	494

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

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G E O R G I A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Jackson	288	293	390	488	640
Jeff Davis	176	286	321	448	527
Jenkins	176	286	321	446	527
Lamar	215	323	372	474	610
Laurens	279	307	357	446	586
Lincoln	176	286	321	446	450
Lowndes	280	337	410	572	633
McIntosh	178	289	325	407	455
Marion	173	236	315	394	517
Miller	176	286	321	446	450
Monroe	201	292	365	508	511
Morgan	215	295	393	492	551
Oglethorpe	221	286	321	446	498
Pike	304	330	416	579	583
Pulaski	242	273	306	427	502
Quitman	165	270	303	422	425
Randolph	226	230	305	425	501
Screven	213	272	340	425	476
Seminole	268	272	361	500	539
Sumter	220	333	399	503	559
Taliaferro	14/	237	267	334	438
Taylor	225	252	285	395	400
Terrell	177	272	323	417	530
Tift	221	287	342	457	533
Towns	179	245	328	454	536
Troup	247	374	421	526	589
Union	231	314	418	524	586
Ware	266	298	336	420	551
Washington	252	286	321	421	527
Webster	252	286	321	446	527
White	202	328	367	511	602
Wilcox	162	262	295	372	485
Wilkinson	180	292	329	410	522
Worth	200	277	364	455	510

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

H A W A I I

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Honolulu, HI MSA	788	943	1109	1498	1621

Honolulu

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Kauai	588	878	1071	1415	1531

I D A H O

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Boise City, ID MSA	362	414	503	700	825

Ada, Canyon

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bannock	219	298	386	535	631
Benewah	166	264	303	391	424
Blaine	408	450	599	835	984
Bonner	303	377	464	646	743
Boundary	199	288	352	440	492
Camas	166	244	302	376	421
Cassia	193	259	329	441	517
Clearwater	226	263	309	415	437
Elmore	247	250	316	440	519
Fremont	171	269	303	396	496
Gooding	194	230	304	407	498
Jefferson	272	306	344	478	539
Kootenai	333	391	513	712	841
Lemhi	179	261	324	406	515
Lincoln	186	229	306	383	487
Minidoka	232	251	308	428	504
Oneida	265	268	357	450	565
Payette	227	229	306	425	501
Shoshone	191	256	312	391	493
Twin Falls	249	305	400	528	562
Washington	236	266	299	401	418

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I D A H O continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Idaho Falls, ID MSA	276	280	373	519	552

Bonneville, Jefferson

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	166	268	302	392	421
Bear Lake	178	244	325	452	534
Bingham	284	300	359	499	589
Boise	212	343	385	481	538
Bonneville	267	337	459	619	755
Butte	166	226	302	419	421
Caribou	161	221	295	409	482
Clark	171	274	312	433	437
Custe	184	253	336	453	550
Franklin	171	253	312	430	510
Gem	227	229	306	403	483
Idaho	244	296	328	411	460
Jerome	176	252	319	428	504
Latah	224	295	380	515	621
Lewis	227	230	307	384	491
Madison	260	264	347	482	525
Nez Perce	272	302	386	497	540
Owyhee	231	258	294	393	451
Power	180	287	330	412	461
Teton	288	293	385	535	632
Valley	276	280	373	519	552

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I L L I N O I S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Bloomington, IL MSA	283	283	340	468	525

McLean

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Ford	176	286	321	446	450
Livingston	176	286	321	446	450
Logan	176	286	321	446	450
Mason	176	286	321	446	450
Piatt	176	286	321	446	450
Woodford	176	286	321	446	450

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Champaign-Urbana, IL MSA	283	283	340	468	525

Champaign, Ford, Piatt

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Douglas	176	286	321	446	450
Edgar	176	286	321	446	450
Iroquois	176	286	321	446	450
Vermilion	176	286	321	446	450

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Chicago, IL PMSA	362	414	503	700	825

Cook, Du Page, Grundy, Kane, Kendall, Lake, McHenry, Will

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Danville, IL MSA	176	286	321	446	450

Vermilion

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Decatur, IL MSA	176	286	321	446	450

Macon, Piatt

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Kankakee, IL PMSA	176	286	321	446	450

Kankakee

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Peoria-Pekin, IL MSA	176	286	321	446	450

Peoria, Tazewell, Woodford

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Rockford, IL MSA	176	286	321	446	450

Boone, Winnebago

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Springfield, IL MSA	176	286	321	446	450

Menard, Sangamon

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
St. Louis, MO-IL MSA	176	286	321	446	450

Clinton, Jersey, Madison, Monroe, St. Clair

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Davenport-Moline-Rock Island, IA-IL MSA	176	286	321	446	450

Henry, Rock Island

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Evansville-Henderson, IN-KY MSA	176	286	321	446	450

Henderson, Posey

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Lafayette, IN MSA	176	286	321	446	450

Clinton, Tippecanoe

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Louisville, KY-IN MSA	176	286	321	446	450

Clark, Floyd

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I N D I A N A continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Terre Haute, IN MSA	176	286	321	446	450

Clay, Vigo

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Gary, IN PMSA	176	286	321	446	450

Lake, Porter

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Indianapolis, IN MSA	176	286	321	446	450

Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, Shelby

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Kokomo, IN MSA	176	286	321	446	450

Howard, Tipton

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Lafayette, IN MSA	176	286	321	446	450

Benton, Carroll, White

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Muncie, IN MSA	176	286	321	446	450

Delaware

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Terre Haute, IN MSA	176	286	321	446	450

Sullivan, Vermillion

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Anderson, IN MSA	176	286	321	446	450

Madison

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Bloomington, IN MSA	176	286	321	446	450

Monroe

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Columbus, IN MSA	176	286	321	446	450

Bartholomew

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Elkhart-Goshen, IN MSA	176	286	321	446	450

Elkhart

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Fort Wayne, IN MSA	176	286	321	446	450

Allen, De Kalb, Whitley

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Gary, IN PMSA	176	286	321	446	450

Jasper, Newton

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Indianapolis, IN MSA	176	286	321	446	450

Hamilton, Hancock, Johnson

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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ILLINOIS

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA	300	368	492	683	722	Mclean
Champaign-Urbana, IL MSA	324	396	513	704	843	Champaign
Chicago, IL	501	602	716	895	1003	Cook, Dupage, Kane, Lake, Mchenry, Will
Davenport-Moline-Rock Island, IA-IL MSA	253	351	433	559	606	Henry, Rock Island
Decatur, IL MSA	254	329	423	570	593	Macon
De Kalb County, IL	386	449	568	790	915	Dekalb
Grundy County, IL	337	389	519	685	727	Grundy
Kankakee, IL PMSA	303	368	490	626	687	Kankakee
Kendall County, IL	465	529	638	887	894	Kendall
Peoria-Pekin, IL MSA	313	347	463	615	756	Peoria, Tazewell, Woodford
Rockford, IL MSA	304	389	474	597	696	Boone, Ogle, Winnebago
St. Louis, MO-IL MSA	300	367	476	619	685	Clinton, Jersey, Madison, Monroe, St. Clair
Springfield, IL MSA	294	362	484	642	731	Menard, Sangamon

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	199	271	361	452	593
Bond	247	251	335	419	468
Bureau	240	318	374	473	524
Carroll	173	244	318	407	445
Christian	267	270	360	472	505
Clay	239	241	318	404	521
Crawford	179	251	325	453	456
De Witt	258	261	348	484	494
Edgar	188	252	323	405	453
Effingham	218	293	362	457	536
Ford	179	249	324	452	455
Fulton	190	282	345	434	517
Greene	229	255	318	407	521
Hancock	235	239	319	399	447
Henderson	173	239	318	397	448
Jackson	307	308	388	552	617
Jefferson	253	298	372	507	521
Johnson	222	234	312	435	512
La Salle	218	296	395	534	598
Lee	283	291	387	485	545
Logan	281	298	396	496	623
Macoupin	220	278	356	456	498
Marshall	195	261	331	412	462
Massac	248	280	315	437	441
Montgomery	196	248	332	424	463

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alexander	173	239	318	397	521
Brown	179	244	325	407	534
Calhoun	153	247	279	387	390
Cass	255	259	345	432	483
Clark	173	239	318	436	445
Coles	264	314	419	557	657
Cumberland	185	258	318	443	478
Douglas	270	277	342	475	479
Edwards	235	239	318	397	521
Fayette	210	258	318	443	445
Franklin	182	251	331	440	462
Gallatin	163	243	296	412	431
Hamilton	173	283	318	397	445
Hardin	173	239	318	414	445
Iroquois	218	269	336	437	470
Jasper	169	276	310	432	496
Jo Daviess	281	303	356	448	498
Knox	192	261	348	456	551
Lawrence	180	237	293	403	411
Livingston	224	306	408	525	572
Mcdonough	224	290	350	456	575
Marion	259	276	337	461	472
Mason	183	248	333	453	546
Mercer	193	262	350	438	511
Morgan	244	316	422	561	591

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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ILLINOIS continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Moultrie	210	267	356	492	498
Piatt	220	308	400	546	561
Pope	145	199	265	332	434
Putnam	193	285	321	447	450
Richland	242	245	315	393	441
Schuyler	187	285	321	422	473
Shelby	191	259	345	432	496
Stephenson	267	306	386	484	542
Vermilion	229	321	403	503	564
Warren	267	270	360	454	511
Wayne	165	234	300	384	493
Whiteside	262	298	396	496	557

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Perry	236	257	299	407	473
Pike	208	214	284	375	412
Pulaski	163	222	296	371	440
Randolph	239	273	342	468	479
Saline	234	244	325	424	456
Scott	18	251	335	419	468
Stark	173	237	317	441	444
Union	180	232	306	425	429
Wabash	191	270	346	460	568
Washington	222	303	404	505	655
White	173	260	306	397	429
Williamson	205	279	371	516	523

INDIANA

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington, IN MSA	308	398	531	737	870	Monroe
Cincinnati, OH-KY-IN	288	372	495	665	718	Dearborn
Elkhart-Goshen, IN MSA	352	402	509	652	749	Elkhart
Evansville-Henderson, IN-KY MSA	273	333	433	542	606	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	303	388	480	618	672	Adams, Allen, De Kalb, Huntington, Wells, Whitley
Gary, IN PMSA	321	422	527	659	737	Lake, Porter
Indianapolis, IN MSA	346	433	522	652	731	Boone, Hamilton, Hancock, Hendricks, Johnson, Madison Marion, Morgan, Shelby
Kokomo, IN MSA	281	332	432	558	605	Howard, Tipton
Lafayette, IN MSA	303	384	511	712	840	Clinton, Tippecanoe
Louisville, KY-IN MSA	273	351	427	592	624	Clark, Floyd, Harrison, Scott
Muncie, IN MSA	279	348	411	558	659	Delaware
Ohio County, IN	193	279	350	485	503	Ohio
South Bend, IN MSA	304	403	532	664	744	St. Joseph
Terre Haute, IN MSA	243	320	407	509	570	Clay, Vermillion, Vigo

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bartholomew	379	409	493	617	809
Blackford	221	302	402	502	562
Carroll	243	266	354	478	495
Crawford	180	245	328	409	510
Decatur	223	318	406	523	568
Fayette	215	292	390	488	590
Franklin	207	282	375	470	617

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Benton	188	300	342	460	479
Brown	25	358	472	656	680
Cass	227	286	354	459	551
Daviess	222	279	371	465	520
Dubois	241	286	377	494	567
Fountain	259	262	337	422	472
Fulton	298	312	377	523	528

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I N D I A N A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Gibson	206	267	338	456	474
Greene	250	263	335	419	468
Jackson	311	325	403	531	571
Jay	258	265	328	455	458
Jennings	283	287	373	500	522
Kosci sko	253	357	431	560	603
La Porte	278	337	449	575	630
Marshall	322	328	436	550	610
Miami	225	277	346	432	498
Newton	283	286	382	479	536
Orange	251	255	328	432	463
Parke	202	290	367	468	575
Pike	180	268	328	432	458
Putnam	294	342	421	563	568
Ripley	242	276	367	510	576
Spencer	183	259	333	462	511
Steuben	331	374	446	558	624
Switzerland	184	277	334	463	484
Wabash	222	295	348	484	529
Washington	194	265	353	469	497
White	270	289	370	462	607

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Grant	289	293	391	509	549
Henry	227	274	340	472	475
Jasper	217	328	367	499	513
Jefferson	270	302	343	476	480
Knox	281	303	403	504	564
Lagrange	276	316	405	525	611
Lawrence	241	286	382	505	536
Martin	184	247	328	455	484
Montgomery	315	332	414	524	580
Noble	309	314	391	505	557
Owen	260	264	352	454	576
Perry	180	247	328	455	513
Pulaski	217	299	344	430	482
Randolph	248	292	340	448	476
Rush	279	282	354	492	576
Starke	236	296	375	470	525
Sullivan	195	266	355	444	532
Union	180	251	328	455	461
Warren	179	283	325	453	534
Wayne	248	291	378	473	549

I O W A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cedar Rapids, IA MSA	256	363	465	647	693	Linn
Davenport-Moline-Rock Island, IA-IL MSA	253	351	433	559	606	Scott
Des Moines, IA MSA	348	442	543	703	740	Dallas, Polk, Warren
Dubuque, IA MSA	269	330	424	541	659	Dubuque
Iowa City, IA MSA	310	400	512	712	840	Johnson
Omaha, NE-IA MSA	293	400	506	662	743	Pottawattamie
Sioux City, IA-NE MSA	299	357	446	557	633	Woodbury
Waterloo-Cedar Falls, IA MSA	234	328	408	544	639	Black Hawk

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I O W A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	201	286	367	459	514
Allamakee	202	277	314	450	514
Audubon	174	263	316	396	464
Boone	255	335	393	507	601
Buchanan	270	309	382	478	536
Butler	263	286	342	440	479
Carroll	213	297	386	492	541
Cedar	199	320	363	454	508
Cherokee	215	247	311	404	435
Clarke	264	286	375	495	527
Clayton	229	288	345	432	528
Crawford	237	254	334	435	468
Decatur	203	268	357	446	500
Des Moines	231	325	419	524	587
Emmet	201	255	311	416	510
Floyd	278	307	390	489	547
Fremont	281	284	373	466	585
Grundy	231	268	328	445	526
Hamilton	291	330	401	501	561
Hardin	211	275	357	456	503
Henry	226	323	411	514	583
Humboldt	187	290	339	432	475
Iowa	204	307	373	477	523
Jasper	226	323	410	512	573
Jones	243	246	325	429	460
Kossuth	205	281	375	470	525
Louisa	204	314	371	495	519
Lyon	169	246	308	419	429
Mahaska	228	298	380	495	532
Marshall	259	307	388	485	544
Mitchell	183	262	332	415	465
Monroe	217	332	393	493	585
Muscatine	246	315	419	557	587
Osceola	210	286	380	475	532
Palo Alto	174	257	317	403	462
Pocahontas	233	263	351	438	491
Ringgold	183	250	333	417	466
Shelby	197	284	359	462	502
Story	332	404	475	660	755
Taylor	208	284	379	474	558

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	207	303	377	471	528
Appanoose	251	299	358	466	558
Benton	264	268	357	447	503
Bremer	211	290	367	475	585
Buena Vista	27[illegible]	307	393	492	551
Calhoun	237	250	334	418	468
Cass	200	288	365	456	511
Cerro Gordo	232	334	414	552	579
Chickasaw	183	249	333	421	466
Clay	205	293	374	468	523
Clinton	231	301	402	502	562
Davis	196	268	357	447	500
Delaware	196	284	357	447	506
Dickinson	211	287	382	478	536
Fayette	193	284	352	462	493
Franklin	264	295	369	461	516
Greene	186	254	339	472	475
Guthrie	191	276	350	475	572
Hancock	227	298	376	475	526
Harrison	205	297	374	473	524
Howard	201	301	366	442	579
Ida	264	303	362	453	507
Jackson	220	312	399	499	558
Jefferson	236	322	429	559	706
Keokuk	174	237	317	406	445
Lee	225	307	409	511	572
Lucas	202	268	343	477	533
Madison	227	309	412	527	577
Marion	236	351	429	537	601
Mills	242	342	403	504	564
Monona	200	307	364	455	509
Montgomery	281	317	373	495	522
O'Brien	171	262	309	386	432
Page	21[illegible]	260	333	428	466
Plymouth	228	312	414	517	579
Poweshiek	271	335	429	537	601
Sac	202	230	297	415	456
Sioux	233	270	339	449	500
Tama	240	287	382	477	537
Union	205	305	374	477	585

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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I O W A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Van Buren	201	251	331	461	464
Washington	221	275	357	456	585
Webster	222	301	402	504	563
Winneshiek	206	289	375	469	525
Wright	201	305	367	459	514
Wapello	235	319	404	505	565
Wayne	171	231	309	420	442
Winnebago	206	321	379	474	531
Worth	205	301	374	468	563

K A N S A S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kansas City, MO-KS MSA	324	408	489	677	750	Johnson, Leavenworth, Miami, Wyandotte
Lawrence, KS MSA	331	396	508	707	812	Douglas
Topeka, KS MSA	314	362	469	633	715	Shawnee
Wichita, KS MSA	307	371	495	668	723	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allen	220	224	282	393	463
Atchison	194	267	356	448	583
Barton	184	257	333	440	479
Brown	181	246	329	412	541
Chautauqua	181	292	329	458	541
Cheyenne	215	218	279	384	389
Clay	181	246	329	412	461
Coffey	270	283	346	432	567
Cowley	278	281	375	500	538
Decatur	181	246	329	412	461
Doniphan	183	249	332	415	465
Elk	156	230	283	385	440
Ellsworth	237	240	321	447	450
Ford	279	329	411	517	584
Geary	317	333	416	538	584
Graham	198	219	251	351	413
Gray	181	264	329	412	461
Greenwood	181	246	329	458	461
Harper	177	248	322	449	500
Hodgeman	181	246	329	412	461
Jefferson	213	289	385	510	541
Kearny	289	292	389	523	574
Kiowa	243	246	329	451	541
Lane	160	263	293	409	412
Linn	212	246	329	458	461
Lyon	218	278	370	485	585

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Anderson	181	246	329	458	461
Barber	173	236	315	436	440
Bourbon	217	246	329	454	498
Chase	181	292	329	424	461
Cherokee	179	259	327	427	458
Clark	196	282	358	448	501
Cloud	228	258	289	362	406
Comanche	151	224	276	356	385
Crawford	219	292	389	489	547
Dickinson	242	262	347	434	486
Edwards	181	246	329	458	501
Ellis	243	246	329	458	541
Finney	318	340	435	566	715
Franklin	282	287	382	477	597
Gove	172	278	312	433	436
Grant	239	307	373	518	564
Greeley	181	292	329	458	461
Hamilton	181	246	329	412	541
Haskell	190	301	346	443	499
Jackson	181	289	329	448	461
Jewell	145	197	264	329	376
Kingman	184	260	333	445	467
Labette	242	262	347	434	486
Lincoln	156	214	283	356	398
Logan	223	250	281	374	442
Mcpherson	264	268	357	489	500

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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K A N S A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Marion	246	249	329	412	461
Meade	242	245	328	439	539
Montgomery	213	262	347	472	520
Morton	194	267	356	445	498
Neosho	181	282	329	454	464
Norton	181	282	329	412	461
Osborne	133	189	240	334	396
Pawnee	181	246	329	458	541
Pottawatomie	186	278	339	427	556
Rawlins	168	248	289	362	416
Republic	152	210	278	347	453
Riley	319	352	468	586	708
Rush	156	214	283	367	412
Saline	285	292	389	538	545
Seward	292	319	424	531	595
Sherman	181	249	329	442	461
Stafford	171	231	309	396	432
Stevens	187	295	340	473	558
Thomas	181	246	329	451	541
Wabaunsee	243	246	329	458	461
Washington	153	211	280	388	393
Wilson	178	248	323	450	530

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Marshall	192	237	317	412	519
Mitchell	172	233	311	388	446
Morris	181	246	329	414	461
Nemaha	173	244	315	393	440
Ness	242	246	329	458	461
Osage	243	246	329	438	461
Ottawa	197	275	323	404	453
Phillips	181	260	329	412	541
Pratt	206	282	376	498	527
Reno	200	273	364	492	597
Rice	241	260	306	424	429
Rooks	151	206	277	366	454
Russell	188	276	335	466	470
Scott	212	268	358	498	571
Sheridan	144	225	262	363	427
Smith	159	218	290	396	407
Stanton	181	265	330	459	502
Sumner	201	275	367	510	513
Trego	181	246	329	458	461
Wallace	174	280	316	438	517
Wichita	215	292	389	489	605
Woodson	193	246	329	412	461

K E N T U C K Y

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cincinnati, OH-KY-IN	288	372	495	665	718	Boone, Campbell, Kenton
Clarksville-Hopkinsville, TN-KY MSA	313	352	411	560	576	Christian
Evansville-Henderson, IN-KY MSA	273	333	433	542	606	Henderson
Gallatin County, KY	218	326	397	497	651	Gallatin
Grant County, KY	212	291	387	539	636	Grant
Huntington-Ashland, WV-KY-OH MSA	265	310	382	487	534	Boyd, Carter, Greenup
Lexington, KY MSA	309	382	470	641	725	Bourbon, Clark, Fayette, Jessamine, Madison, Scott Woodford
Louisville, KY-IN MSA	273	351	427	592	624	Bullitt, Jefferson, Oldham
Owensboro, KY MSA	276	287	377	505	528	Daviess
Pendleton County, KY	245	283	377	473	529	Pendleton

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

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K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	185	299	336	466	469
Anderson	269	276	369	461	517
Barren	245	296	341	426	477
Bell	196	266	355	443	497
Brack n	164	225	299	416	420
Breckinridge	190	257	344	429	482
Caldwell	149	222	271	371	433
Carlisle	233	236	298	373	451
Casey	157	255	286	358	401
Clinton	151	244	275	344	384
Cumberland	157	246	277	371	387
Elliott	198	200	267	334	438
Fleming	166	228	304	380	427
Franklin	237	351	432	558	704
Garrard	226	266	299	397	468
Grayson	154	247	281	374	444
Hancock	184	250	334	460	546
Harlan	157	250	285	371	438
Hart	163	256	298	371	416
Hickman	148	203	270	367	434
Jackson	157	223	285	356	399
Knott	147	237	267	371	422
Larue	155	212	283	354	395
Lawrence	203	248	289	400	405
Leslie	198	200	267	334	373
Lewis	148	202	269	358	441
Livingston	282	285	380	528	532
Lyon	177	242	322	403	451
Mccreary	141	199	258	358	360
Magoffin	147	221	267	334	438
Marshall	187	291	339	425	548
Mason	233	269	333	455	465
Menif e	147	208	267	371	373
Metcalfe	147	230	267	334	373
Montgomery	244	247	331	430	462
Muhlenberg	218	245	276	383	452
Nicholas	189	258	344	430	489
Owen	176	239	319	444	525
Perry	273	276	367	459	514
Powell	162	256	296	385	499

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allen	170	264	310	405	436
Ballard	147	201	268	372	407
Bath	163	264	296	370	415
Boyle	288	292	389	487	546
Breathitt	171	233	313	389	449
Butler	147	214	267	334	373
Calloway	189	259	344	452	477
Carroll	239	270	303	379	498
Clay	160	233	292	365	409
Crittenden	147	200	267	371	373
Edmonson	151	243	283	343	383
Estill	185	253	336	420	469
Floyd	264	319	359	500	574
Fulton	243	257	343	429	500
Graves	186	252	337	422	479
Green	189	258	343	429	480
Hardin	305	312	391	525	623
Harrison	199	286	361	451	559
Henry	22	224	298	415	490
Hopkins	212	252	311	393	512
Johnson	186	272	337	433	472
Knox	188	259	331	414	506
Laurel	246	277	330	444	461
Lee	147	238	268	335	376
Letcher	219	221	288	360	404
Lincoln	182	247	337	414	462
Logan	194	263	352	464	492
Mccracken	282	305	380	487	624
Mclean	147	200	267	371	381
Marion	150	242	273	379	446
Martin	165	226	301	402	496
Meade	252	314	361	478	594
Mercer	185	279	335	464	467
Monroe	207	233	262	334	385
Morgan	185	251	335	419	468
Nelson	268	272	363	453	508
Ohio	236	239	318	415	510
Owsley	154	211	282	352	394
Pike	263	300	363	454	538
Pulaski	265	276	357	452	478

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Robertson	147	200	267	353	373
Rowan	240	255	333	446	532
Shelby	246	322	361	503	506
Spencer	190	291	346	450	485
Todd	161	220	294	408	482
Trimble	157	252	285	395	400
Warren	232	316	422	527	608
Wayne	159	217	289	378	405
Whitley	182	284	330	439	461
Rockcastle	203	226	301	379	422
Russell	165	255	301	376	422
Simpson	197	307	357	456	500
Taylor	24	288	323	431	490
Trigg	16	264	297	414	488
Union	239	243	323	450	452
Washington	214	289	325	407	455
Webster	233	236	315	394	442
Wolfe	147	230	267	371	373

L O U I S I A N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Alexandria, LA MSA	267	331	418	579	588	Rapides
Acadia Parishes, LA	214	288	323	404	469	Acadia
Baton Rouge, LA MSA	285	355	439	610	720	Ascension, East Baton Rouge, Livingston, West Baton Rouge
Houma, LA MSA	251	307	393	547	646	Lafourche, Terrebonne
Lafayette, LA MSA	289	335	400	549	649	Lafayette, St. Martin
Lake Charles, LA MSA	296	344	436	571	714	Calcasieu
Monroe, LA MSA	288	323	430	580	602	Ouachita
New Orleans, LA	341	390	488	664	802	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles St. John the Baptist, St. Tammany
St. James Parish, LA	222	302	403	503	564	St. James
St. Landry Parish, LA	176	249	319	400	485	St. Landry
Shreveport-Bossier City, LA MSA	304	347	435	582	713	Bossier, Caddo, Webster

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allen	228	230	308	429	444
Avoyelles	202	204	273	379	447
Bienville	242	247	329	456	539
Cameron	169	275	308	429	432
Claiborne	176	240	321	403	450
De Soto	169	272	308	429	506
East Feliciana	184	251	334	419	468
Franklin	182	275	308	429	506
Iberia	274	287	354	442	496
Jackson	169	230	307	384	431
La Salle	169	240	308	429	506
Madison	161	261	292	407	413
Natchitoches	275	282	363	503	507
Red River	169	230	308	429	506
Assumption	282	301	358	447	501
Beauregard	313	341	406	528	581
Caldwell	169	275	308	429	432
Catahoula	175	230	308	429	432
Concordia	237	240	321	403	450
East Carroll	118	175	214	296	306
Evangeline	205	251	282	353	410
Grant	230	234	308	429	473
Iberville	249	258	315	404	518
Jefferson Davis	247	273	318	397	511
Lincoln	301	304	380	521	624
Morehouse	226	253	338	422	473
Pointe Coupee	203	250	333	417	547
Richland	169	230	308	404	506

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

LOUISIANA continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Sabine	176	287	322	448	529
St. Mary	257	274	345	469	489
Tensas	203	206	275	382	384
Vermilion	242	259	311	402	436
Washington	158	215	287	399	402
West Feliciana	246	335	447	560	628
St. Helena	162	264	295	399	416
Tangipahoa	276	287	368	483	514
Union	228	230	308	385	506
Vernon	292	327	371	480	567
West Carroll	170	231	309	388	433
Winn	169	230	308	429	432

MAINE

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bangor, ME MSA	345	421	539	702	755	Penobscot county towns of Bangor city, Brewer city Eddington town, Glenburn town, Hampden town, Hermon town Holden town, Kenduskeag town, Milford town Old Town city, Orono town, Orrington town Penobscot Indian I, Veazie town Waldo county towns of Winterport town
Lewiston-Auburn, ME MSA	271	384	492	615	689	Androscoggin county towns of Auburn city, Greene town Lewiston city, Lisbon town, Mechanic Falls tow Poland town, Sabattus town, Turner town, Wales town
Portland, ME MSA	404	522	686	858	961	Cumberland county towns of Cape Elizabeth tow, Casco town Cumberland town, Falmouth town, Freeport town Gorham town, Gray town, North Yarmouth tow Portland city, Raymond town, Scarborough town South Portland cit, Standish town, Westbrook city Windham town, Yarmouth town York county towns of Buxton town, Hollis town Limington town, Old Orchard Beach
Portsmouth-Rochester, NH-ME PMSA	443	532	683	875	1073	York county towns of Berwick town, Eliot town Kittery town, South Berwick town, York town

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Androscoggin	294	381	507	634	711	Durham town, Leeds town, Livermore town Livermore Falls to, Minot town
Aroostook	269	320	426	533	598	
Cumberland	454	481	614	836	959	Harpswell town, Harrison town, Naples town New Gloucester tow, Pownal town, Sebago town
Franklin	317	360	439	586	617	
Hancock	333	409	505	636	708	
Kennebec	323	401	483	805	676	
Knox	284	398	517	688	725	
Lincoln	402	449	509	709	836	
Oxford	256	359	450	562	630	
Penobscot	292	337	450	586	630	Alton town, Argyle unorg., Bradford town, Bradley town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

MAINE continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
						Burlington town, Carmel town, Carroll plantation Charleston town, Chester town, Clifton town Corinna town, Corinth town, Dexter town, Dixmont town Drew plantation, East Central Penob, East Millinocket t Edinburg town, Enfield town, Etna town, Exeter town Garland town, Greenbush town, Greenfield town Howland town, Hudson town, Kingman unorg., Lagrange town Lakeville town, Lee town, Levant town, Lincoln town Lowell town, Mattawamkeag town, Maxfield town Medway town, Millinocket town, Mount Chase town Newburgh town, Newport town, North Penobscot un Passadumkeag town, Patten town, Plymouth town Prentiss plantatio, Seboeis plantation, Springfield town Stacyville town, Stetson town, Twombly unorg. Webster plantation, Whitney unorg., Winn town Woodville town
Piscataquis	238	355	433	541	607	
Sagadahoc	435	498	614	817	1007	
Somerset	325	369	438	548	699	
Waldo	252	362	459	574	651	Belfast city, Belmont town, Brooks town, Burnham town Frankfort town, Freedom town, Islesboro town Jackson town, Knox town, Liberty town, Lincolnville town Monroe town, Montville town, Morrill town Northport town, Palermo town, Prospect town Searsmont town, Searsport town, Stockton Springs t Swanville town, Thorndike town, Troy town, Unity town Waldo town
Washington	244	334	446	556	624	
York	381	438	586	732	820	Acton town, Alfred town, Arundel town, Biddeford city Cornish town, Dayton town, Kennebunk town Kennebunkport town, Lebanon town, Limerick town Lyman town, Newfield town, North Berwick town Ogunquit town, Parsonsfield town, Saco city Sanford town, Shapleigh town, Waterboro town, Wells town

MARYLAND

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Baltimore, MD	414	506	617	815	933	Anne Arundel, Baltimore, Carroll, Harford, Howard Queen Anne's, Baltimore city
Columbia, MD	532	716	833	1100	1374	Columbia
Cumberland, MD-WV MSA	232	292	381	502	551	Allegany
Hagerstown, MD PMSA	263	363	478	597	707	Washington
Washington, DC-MD-VA	638	725	851	1158	1396	Calvert, Charles, Frederick, Montgomery, Prince George's
Wilmington-Newark, DE-MD PMSA	413	546	635	863	1040	Cecil

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MARYLAND continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Caroline	328	346	444	581	622
Garrett	251	344	387	483	633
St. Mary's	480	569	657	914	1045
Talbot	416	440	588	734	963
Worcester	263	382	479	666	670
Dorchester	298	399	465	581	651
Kent	318	392	522	653	787
Somerset	344	388	436	605	714
Wicomico	353	410	527	670	737

MASSACHUSETTS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Barnstable-Yarmouth, MA MSA	457	612	817	1022	1144	Barnstable county towns of Barnstable town, Brewster town Chatham town, Dennis town, Eastham town, Harwich town Mashpee town, Orleans town, Sandwich town, Yarmouth town
Boston, MA-NH PMSA	571	643	804	1005	1181	Bristol county towns of Berkley town, Dighton town Mansfield town, Norton town, Taunton city Essex county towns of Amesbury town, Beverly city Danvers town, Essex town, Gloucester city, Hamilton town Ipswich town, Lynn city, Lynnfield town, Manchester town Marblehead town, Middleton town, Nahant town Newbury town, Newburyport city, Peabody city Rockport town, Rowley town, Salem city, Salisbury town Saugus town, Swampscott town, Topsfield town Wenham town Middlesex county towns of Acton town, Arlington town Ashland town, Ayer town, Bedford town, Belmont town Boxborough town, Burlington town, Cambridge city Carlisle town, Concord town, Everett city Framingham town, Holliston town, Hopkinton town Hudson town, Lexington town, Lincoln town Littleton town, Malden city, Marlborough city Maynard town, Medford city, Melrose city, Natick town Newton city, North Reading town, Reading town Sherborn town, Shirley town, Somerville city Stoneham town, Stow town, Sudbury town, Townsend town Wakefield town, Waltham city, Watertown town Wayland town, Weston town, Wilmington town Winchester town, Woburn city Norfolk county towns of Bellingham town, Braintree town Brookline town, Canton town, Cohasset town, Dedham town Dover town, Foxborough town, Franklin town Holbrook town, Medfield town, Medway town, Millis town Milton town, Needham town, Norfolk town, Norwood town Plainville town, Quincy city, Randolph town, Sharon town Stoughton town, Walpole town, Wellesley town Westwood town, Weymouth town, Wrentham town Plymouth county towns of Carver town, Duxbury town Hanover town, Hingham town, Hull town, Kingston town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

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MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Marshfield town, Norwell town, Pembroke town Plymouth town, Rockland town, Scituate town Wareham town Suffolk county towns of Boston city, Chelsea city Revere city, Winthrop town Worcester county towns of Berlin town, Blackstone town Bolton town, Harvard town, Hopedale town, Lancaster town Mendon town, Milford town, Millville town Southborough town, Upton town
Brockton, MA PMSA	421	556	680	848	966	Bristol county towns of Easton town, Raynham town Norfolk county towns of Avon town Plymouth county towns of Abington town, Bridgewater town Brockton city, East Bridgewater t, Halifax town Hanson town, Lakeville town, Middleborough town Plympton town, West Bridgewater t, Whitman town
Fitchburg-Leominster, MA MSA	376	527	684	883	957	Middlesex county towns of Ashby town Worcester county towns of Ashburnham town, Fitchburg city Gardner city, Leominster city, Lunenburg town Templeton town, Westminster town, Winchendon town
Lawrence, MA-NH PMSA	434	524	657	822	1012	Essex county towns of Andover town, Boxford town Georgetown town, Groveland town, Haverhill city Lawrence city, Merrimac town, Methuen town North Andover town, West Newbury town
Lowell, MA-NH PMSA	439	568	686	859	962	Middlesex county towns of Billerica town, Chelmsford town Dracut town, Dunstable town, Groton town, Lowell city Pepperell town, Tewksbury town, Tyngsborough town Westford town
New Bedford, MA MSA	404	494	561	701	786	Bristol county towns of Acushnet town, Dartmouth town Fairhaven town, Freetown town, New Bedford city Plymouth county towns of Marion town, Mattapoisett town Rochester town
Pittsfield, MA MSA	335	476	588	735	911	Berkshire county towns of Adams town, Cheshire town Dalton town, Hinsdale town, Lanesborough town, Lee town Lenox town, Pittsfield city, Richmond town Stockbridge town
Providence-Fall River-Warwick, RI-MA PMSA	402	547	659	825	1016	Bristol county towns of Attleboro city, Fall River city North Attleborough, Rehoboth town, Seekonk town Somerset town, Swansea town, Westport town
Springfield, MA MSA	395	488	617	770	945	Franklin county towns of Sunderland town Hampden county towns of Agawam town, Chicopee city East Longmeadow to, Hampden town, Holyoke city Longmeadow town, Ludlow town, Monson town Montgomery town, Palmer town, Russell town Southwick town, Springfield city, Westfield city West Springfield t, Wilbraham town Hampshire county towns of Amherst town, Belchertown town Easthampton town, Granby town, Hadley town

Note The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

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M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Worcester, MA-CT	466	564	704	880	986	Hatfield town, Huntington town, Northampton city Southampton town, South Hadley town, Ware town Williamsburg town Hampden county towns of Holland town Worcester county towns of Auburn town, Barre town Boylston town, Brookfield town, Charlton town Clinton town, Douglas town, Dudley town East Brookfield to, Grafton town, Holden town Leicester town, Millbury town, Northborough town Northbridge town, North Brookfield t, Oakham town Oxford town, Paxton town, Princeton town, Rutland town Shrewsbury town, Southbridge town, Spencer town Sterling town, Sturbridge town, Sutton town Uxbridge town, Webster town, Westborough town West Boylston town, West Brookfield to, Worcester city

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Barnstable	440	603	803	1004	1124	Bourne town, Falmouth town, Provincetown town Truro town, Wellfleet town
Berkshire	363	442	520	714	854	Alford town, Becket town, Clarksburg town, Egremont town Florida town, Great Barrington t, Hancock town Monterey town, Mount Washington t, New Ashford town New Marlborough to, North Adams city, Otis town Peru town, Sandisfield town, Savoy town, Sheffield town Tyringham town, Washington town, West Stockbridge t Williamstown town, Windsor town
Dukes	583	592	788	985	1104	
Franklin	391	485	621	776	937	Ashfield town, Bernardston town, Buckland town Charlemont town, Colrain town, Conway town Deerfield town, Erving town, Gill town, Greenfield town Hawley town, Heath town, Leverett town, Leyden town Monroe town, Montague town, New Salem town Northfield town, Orange town, Rowe town, Shelburne town Shutesbury town, Warwick town, Wendell town Whately town
Hampden	395	538	718	956	1178	Blandford town, Brimfield town, Chester town Granville town, Tolland town, Wales town
Hampshire	553	560	749	936	1049	Chesterfield town, Cummington town, Goshen town Middlefield town, Pelham town, Plainfield town Westhampton town, Worthington town
Nantucket	700	936	1249	1561	1749	
Worcester	440	459	612	765	857	Athol town, Hardwick town, Hubbardston town New Braintree town, Petersham town, Phillipston town Royalston town, Warren town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6.BR unit is 1.30 times the 4 BR FMR. 092294

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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M I C H I G A N

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ann Arbor, MI PMSA	440	533	658	864	968	Lenawee, Livingston, Washtenaw
Benton Harbor, MI MSA	357	362	475	595	667	Berrien
Detroit, MI PMSA	349	476	574	718	804	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
Flint, MI PMSA	333	380	475	607	665	Genesee
Grand Rapids-Muskegon-Holland, MI MSA	368	429	525	657	735	Allegan, Kent, Muskegon, Ottawa
Jackson, MI MSA	261	376	475	595	667	Jackson
Kalamazoo-Battle Creek, MI MSA	330	397	501	628	702	Calhoun, Kalamazoo, Van Buren
Lansing-East Lansing, MI MSA	352	415	533	698	806	Clinton, Eaton, Ingham
Saginaw-Bay City-Midland, MI MSA	324	357	475	595	667	Bay, Midland, Saginaw

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alcona	267	290	386	515	542
Alpena	202	311	366	465	600
Arenac	256	302	371	465	547
Barry	274	344	458	573	642
Branch	322	331	408	556	572
Charlevoix	338	343	434	590	611
Chippewa	240	303	387	485	594
Crawford	306	309	412	562	586
Dickinson	232	343	423	528	592
Gladwin	277	281	374	491	548
Grand Traverse	369	395	527	660	738
Hillsdale	212	304	379	505	530
Huron	193	307	349	454	490
Iosco	264	312	381	507	626
Isabella	315	337	449	606	737
Keweenaw	188	262	342	437	479
Leelanau	378	411	479	626	785
Mackinac	265	298	368	460	515
Marquette	271	307	393	508	595
Mecosta	268	317	406	564	667
Missaukee	294	309	372	473	521
Montmorency	214	291	387	485	568
Oceana	298	317	377	480	528
Ontonagon	220	258	315	437	459
Oscoda	264	309	347	447	546
Presque Isle	270	277	346	446	484
St. Joseph	248	324	402	525	562
Schoolcraft	248	256	342	454	479
Tuscola	300	328	436	546	610

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alger	280	283	378	473	529
Antrim	217	338	380	513	563
Baraga	171	251	314	392	463
Benzie	292	295	389	542	546
Cass	280	309	411	560	576
Cheboygan	291	307	369	509	605
Clare	290	298	368	475	522
Delta	239	299	352	488	527
Emmet	312	374	441	578	617
Gogebic	248	266	342	428	488
Gratiot	295	300	394	494	554
Houghton	215	286	342	428	580
Ionia	342	346	433	541	606
Iron	188	256	342	434	479
Kalkaska	267	308	405	525	664
Lake	283	286	372	518	532
Luce	280	283	378	473	529
Manistee	193	282	349	450	490
Mason	240	290	358	448	587
Menominee	267	270	356	495	498
Montcalm	287	308	394	494	554
Newaygo	320	344	405	506	568
Ogemaw	291	318	369	512	517
Osceola	209	295	379	485	530
Otsego	284	342	432	599	696
Roscommon	309	312	395	495	555
Sanilac	222	328	389	525	584
Shiawassee	278	350	422	586	629
Wexford	278	324	422	553	653

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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MINNESOTA

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Duluth-Superior, MN-WI MSA	252	339	434	578	675	St. Louis
Fargo Moorhead, ND-MN MSA	281	389	467	650	696	Clay
Grand Forks, ND-MN MSA	294	350	461	635	709	Polk
La Crosse, WI-MN MSA	249	344	436	582	707	Houston
Minneapolis-St. Paul, MN-WI MSA	377	483	615	834	943	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey Scott, Sherburne, Washington, Wright
Rochester, MN MSA	295	413	537	746	837	Olmsted
St. Cloud, MN MSA	317	409	483	610	779	Benton, Stearns

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aitkin	260	336	448	561	628
Beltrami	246	324	433	568	606
Blue Earth	311	376	468	599	763
Carlton	248	299	383	480	537
Chippewa	168	231	308	422	435
Cook	303	307	409	557	578
Crow Wing	229	312	416	520	653
Douglas	230	292	357	485	556
Fillmore	183	248	332	441	464
Goodhue	249	330	440	561	617
Hubbard	262	291	369	473	517
Jackson	221	261	308	412	432
Kandiyohi	243	328	396	496	601
Koochiching	310	315	420	523	687
Lake	182	273	330	411	540
Le Sueur	217	312	393	492	610
Lyon	226	273	365	482	598
Mahnomen	197	270	359	449	503
Martin	186	252	337	422	554
Mille Lacs	273	298	396	553	650
Mower	220	306	364	458	510
Nicollet	320	343	457	604	640
Norman	198	309	360	450	504
Pennington	210	285	380	528	534
Pipestone	171	234	312	422	512
Red Lake	202	322	367	459	514
Renville	239	276	336	419	469
Rock	168	231	308	384	481
Sibley	231	234	300	418	433
Stevens	301	380	429	536	600
Todd	193	261	316	420	443

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Becker	234	371	417	521	584
Big Stone	186	274	339	424	475
Brown	205	331	371	464	520
Cass	210	285	381	478	533
Clearwater	210	286	381	477	533
Cottonwood	184	249	334	418	467
Dodge	239	307	355	444	541
Faribault	182	256	312	406	441
Freeborn	224	307	409	536	573
Grant	199	273	364	455	542
Itasca	328	332	432	540	604
Kanabec	229	321	418	521	584
Kittson	177	284	322	440	443
Lac qui Parle	172	235	315	393	441
Lake of the Woods	194	264	352	440	492
Lincoln	142	195	259	323	425
Mcleod	242	331	439	549	614
Marshall	180	238	317	395	445
Meeker	265	280	363	454	508
Morrison	267	275	367	459	514
Murray	170	233	311	414	436
Nobles	210	280	368	460	515
Otter Tail	208	279	378	473	529
Pine	284	287	374	498	559
Pope	168	231	308	384	432
Redwood	185	234	312	390	437
Rice	268	366	488	610	684
Roseau	310	315	414	533	580
Steele	277	319	426	532	596
Swift	228	271	308	396	432
Traverse	168	261	309	386	433

Note The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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MINNESOTA continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Wabasha	203	277	368	486	515
Waseca	284	289	384	482	538
Wilkin	169	232	310	391	435
Yellow Medicine	168	231	308	394	432

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Wadena	21	248	308	404	459
Watonwan	168	256	308	429	444
Winona	268	347	440	586	617

MISSISSIPPI

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Biloxi-Gulfport-Pascagoula, MS MSA	326	384	441	613	724	Hancock, Harrison, Jackson
Hattiesburg, MS MSA	236	297	363	490	583	Forrest, Lamar
Jackson, MS MSA	359	410	499	664	700	Hinds, Madison, Rankin
Memphis, TN-AR-MS MSA	337	392	462	642	674	Desoto

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	215	281	359	460	586
Amite	206	277	310	402	510
Benton	170	277	310	432	436
Calhoun	170	251	310	389	436
Chickasaw	212	256	287	400	403
Claiborne	180	280	329	410	459
Clay	197	270	317	409	522
Copiah	194	275	340	425	476
Franklin	245	277	310	432	436
Greene	170	233	310	417	436
Holmes	170	233	310	389	436
Issaquena	257	351	466	584	654
Jasper	161	262	294	408	444
Jefferson Davis	208	233	310	389	469
Kemper	245	277	312	432	444
Lauderdale	231	314	395	512	554
Leake	170	261	310	432	460
Leflore	239	257	334	456	548
Lowndes	304	328	389	487	550
Marshall	236	239	319	444	525
Montgomery	170	233	310	389	510
Newton	196	234	264	367	371
Oktibbeha	299	311	380	528	624
Pearl River	257	260	343	462	480
Pike	248	281	315	436	517
Prentiss	234	263	296	385	459

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alcorn	177	247	322	442	451
Attala	234	250	300	418	476
Bolivar	279	282	376	469	537
Carroll	162	221	295	368	434
Choctaw	178	243	324	406	454
Clarke	170	245	310	402	510
Coahoma	283	287	382	479	535
Covington	170	277	310	414	436
George	189	264	344	430	505
Grenada	195	290	354	489	516
Humphreys	173	227	303	401	425
Itawamba	236	239	310	430	436
Jefferson	170	277	310	432	469
Jones	231	233	310	432	436
Lafayette	250	342	455	571	638
Lawrence	17	268	310	427	501
Lee	309	332	400	499	560
Lincoln	170	277	310	432	436
Marion	224	236	310	424	510
Monroe	175	284	318	414	446
Neshoba	215	223	296	396	415
Noxubee	198	223	249	337	409
Panola	251	258	318	443	446
Perry	170	261	310	432	510
Pontotoc	199	251	310	432	436
Quitman	170	233	310	432	460

Note The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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M I S S I S S I P P I continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Scott	170	277	310	392	436
Simpson	245	256	310	432	474
Stone	170	277	310	389	510
Tallahatchie	204	208	277	346	432
Tippah	173	268	298	373	418
Tunica	170	233	310	432	466
Walthall	187	256	310	432	436
Washington	261	310	414	534	588
Webster	233	263	295	383	413
Winston	230	233	309	431	508
Yazoo	248	266	343	429	480

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Sharkey	208	234	263	335	432
Smith	231	276	310	389	510
Sunflower	269	293	341	429	549
Tate	209	329	381	477	626
Tishomingo	147	238	268	358	375
Union	170	277	310	389	436
Warren	220	318	397	548	656
Wayne	227	233	310	389	436
Wilkinson	231	233	310	397	510
Yalobusha	236	243	299	374	420

M I S S O U R I

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Columbia, MO MSA	247	346	450	626	739	Boone
Joplin, MO MSA	241	278	370	486	522	Jasper, Newton
Kansas City, MO-KS MSA	324	408	489	677	750	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA	211	282	377	476	528	Andrew, Buchanan
St. Louis, MO-IL MSA	300	367	476	619	685	Crawford-Sullivan (part), Franklin, Jefferson, Lincoln St. Charles, St. Louis, Warren, St. Louis city
Springfield, MO MSA	253	320	413	570	594	Christian, Greene, Webster

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	225	290	386	484	582
Audrain	248	251	335	466	539
Barton	171	220	292	367	479
Benton	264	267	356	445	498
Butler	188	243	325	416	456
Callaway	275	278	371	471	608
Cape Girardeau	237	291	387	516	633
Carter	216	242	273	380	382
Chariton	199	204	273	377	415
Cole	225	307	409	546	572
Crawford	257	308	346	456	509
Dallas	218	250	312	389	508
Dekalb	241	244	327	454	458
Douglas	226	228	292	408	410
Gasconade	183	261	334	447	465
Grundy	215	240	320	432	500

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Atchison	214	244	284	364	399
Barry	184	274	336	426	467
Bates	176	239	319	445	523
Bollinger	158	240	287	359	402
Caldwell	191	262	349	435	489
Camden	303	307	409	567	666
Carroll	152	210	278	386	456
Cedar	185	220	293	409	481
Clark	153	211	280	351	412
Cooper	174	239	316	438	486
Dade	150	242	273	364	449
Daviess	166	227	303	420	495
Dent	221	245	308	412	490
Dunklin	186	206	273	374	402
Gentry	153	212	281	369	394
Harrison	205	211	279	350	389

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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M I S S O U R I continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Henry	267	271	361	452	593
Holt	150	205	275	381	384
Howell	217	263	312	396	436
Johnson	279	313	407	540	637
Laclede	197	264	331	452	464
Lewis	213	232	287	368	460
Livingston	216	241	322	449	473
Macon	188	257	341	426	477
Maries	161	233	293	377	411
Mercer	201	204	273	380	449
Mississippi	159	219	291	406	409
Monroe	166	227	303	420	422
Morgan	197	262	319	445	475
Nodaway	243	293	362	460	555
Osage	159	219	291	406	409
Pemiscot	219	223	284	397	399
Pettis	252	295	396	498	596
Pike	215	246	329	412	541
Pulaski	225	322	362	479	535
Ralls	165	238	297	415	418
Reynolds	202	205	275	371	451
St. Clair	159	218	290	377	407
St. Francois	243	307	387	486	637
Schuyler	212	217	289	402	420
Scott	279	282	376	508	585
Shelby	151	205	276	383	394
Stone	271	287	357	456	500
Taney	260	284	373	502	593
Vernon	199	249	332	459	465
Wayne	211	214	283	367	465
Wright	183	206	277	384	454

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hickory	17	240	320	401	449
Howard	214	236	315	403	515
Iron	169	252	306	406	466
Knox	152	211	279	387	389
Lawrence	246	275	328	447	450
Linn	171	232	310	429	508
Mcdonald	223	225	288	401	423
Madison	186	260	318	398	454
Marion	197	238	318	442	479
Miller	257	308	344	452	532
Moniteau	213	225	298	408	422
Montgomery	184	250	334	422	468
New Madrid	221	240	321	402	450
Oregon	205	228	263	343	367
Ozark	150	204	273	380	382
Perry	271	275	367	489	513
Phelps	239	285	366	497	539
Polk	187	270	339	435	539
Putnam	153	211	280	351	393
Randolph	184	258	334	419	500
Ripley	156	214	284	359	467
Ste. Genevieve	195	276	356	456	576
Saline	193	265	354	449	512
Scotland	165	224	297	415	426
Shannon	150	204	273	359	382
Stoddard	211	223	295	370	465
Sullivan	201	204	273	359	382
Texas	183	218	290	374	407
Washington	273	328	369	461	516
Worth	141	214	264	366	431

M O N T A N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Billings, MT MSA	265	326	435	583	708	Yellowstone
Great Falls, MT MSA	230	314	419	536	654	Cascade

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

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MONTANA continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Beaverhead	246	279	357	493	587
Blaine	222	279	370	463	519
Carbon	233	310	364	477	509
Chouteau	207	282	376	493	557
Daniels	208	337	379	500	623
Deer Lodge	186	253	339	430	510
Fergus	204	278	369	462	606
Gallatin	265	331	442	570	726
Glacier	219	299	399	498	559
Granite	198	283	358	449	502
Jefferson	292	296	395	521	554
Lake	271	284	343	475	513
Liberty	179	244	327	454	536
Mccone	190	308	347	483	486
Meagher	208	337	379	527	530
Missoula	309	362	483	623	792
Park	222	293	390	489	641
Phillips	212	284	379	474	623
Powder River	194	299	353	440	500
Prairie	164	229	297	415	430
Richland	175	310	341	444	477
Rosebud	270	292	379	474	623
Sheridan	236	238	317	420	521
Stillwater	281	284	379	527	623
Teton	193	268	351	489	493
Treasure	208	303	379	527	530
Wheatland	156	217	286	384	401

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Big Horn	202	276	368	461	604
Broadwater	229	313	418	534	684
Carter	167	272	305	424	500
Custer	205	262	342	440	477
Dawson	198	270	359	470	561
Fallon	165	225	300	412	482
Flathead	264	318	425	591	697
Garfield	192	262	349	437	572
Golden Valley	183	295	333	417	465
Hill	284	288	379	524	538
Judith Basin	208	337	379	474	530
Lewis and Clark	269	315	419	584	690
Lincoln	299	314	379	519	530
Madison	28	284	379	500	530
Mineral	21	300	400	500	655
Musselshell	255	259	345	433	483
Petroleum	200	273	364	455	509
Pondera	192	311	349	486	572
Powell	265	270	359	450	590
Ravalli	208	284	379	527	588
Roosevelt	273	276	359	489	503
Sanders	208	284	379	474	530
Silver Bow	208	284	379	477	530
Sweet Grass	247	260	316	440	462
Toole	281	284	379	527	530
Valley	172	262	312	433	437
Wibaux	249	337	379	527	623

NEERASKA

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Lincoln, NE MSA	276	351	467	618	720	Lancaster
Omaha, NE-IA MSA	293	400	506	662	743	Cass, Douglas, Sarpy, Washington
Sioux City, IA-NE MSA	299	357	446	557	633	Dakota

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 ti es the 4 BR FMR. 092294

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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NEBRASKA continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	227	312	412	515	617
Arthur	208	282	376	471	527
Blaine	108	148	198	248	278
Box Butte	243	268	339	470	555
Brown	178	265	323	404	519
Burt	171	232	310	403	476
Cedar	171	205	275	360	384
Cherry	187	304	340	473	558
Clay	183	248	331	445	464
Cuming	178	289	324	425	454
Dawes	237	254	337	470	555
Deuel	162	221	294	404	452
Dodge	214	291	388	511	543
Fillmore	200	262	347	438	486
Frontier	221	224	297	394	418
Gage	188	259	336	427	470
Garfield	155	213	283	373	433
Grant	190	262	347	434	486
Hall	223	305	406	533	600
Harlan	190	268	347	481	486
Hitchcock	184	250	333	418	467
Hooker	190	309	347	481	486
Jefferson	188	257	341	426	477
Kearney	190	288	347	462	569
Keya Paha	190	262	347	434	486
Knox	144	230	263	330	389
Logan	165	225	298	374	492
Mcpherson	190	262	347	481	486
Merrick	188	281	342	428	479
Nance	157	238	285	358	401
Nuckolls	167	228	305	380	425
Pawnee	160	246	293	409	412
Phelps	257	262	347	481	569
Platte	212	283	377	525	541
Red Willow	192	264	351	479	557
Rock	159	251	289	393	421
Saunders	194	267	356	462	533
Seward	284	288	384	480	540
Sherman	156	241	283	356	465
Stanton	190	262	347	455	486

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Antelope	139	226	254	354	357
Banner	190	262	347	481	486
Boone	167	251	304	379	498
Boyd	151	245	277	346	387
Buffalo	233	337	423	528	638
Butler	189	258	343	429	480
Chase	171	276	310	386	508
Cheyenne	257	262	347	459	486
Colfax	218	267	304	418	424
Custer	235	270	318	398	520
Dawson	252	308	377	485	529
Dixon	246	250	334	425	525
Dundy	190	262	347	434	486
Franklin	153	217	281	392	394
Furnas	168	197	264	336	431
Garden	140	225	255	356	419
Gosper	193	264	352	470	555
Greeley	159	242	289	362	463
Hamilton	184	279	333	464	467
Hayes	148	241	271	376	446
Holt	199	272	342	439	472
Howard	190	260	346	434	485
Johnson	190	297	347	434	486
Keith	192	291	350	458	547
Kimball	190	284	347	481	569
Lincoln	235	308	364	470	539
Loup	125	171	227	283	372
Madison	233	307	404	523	639
Morrill	19	269	317	424	519
Nemaha	190	262	347	434	504
Otoe	214	282	350	454	572
Perkins	212	260	346	458	530
Pierce	178	243	324	412	454
Polk	177	243	321	402	468
Richardson	180	245	328	410	460
Saline	229	309	368	481	515
Scotts Bluff	233	307	388	478	569
Sheridan	188	257	341	426	538
Sioux	190	262	347	462	569
Thayer	166	268	301	375	421

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

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NEBRASKA continued

NONMI ROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Thomas	190	265	347	434	486
Valley	190	262	347	434	486
Webster	159	218	290	363	435
York	211	287	382	477	537

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Thurston	158	236	288	361	453
Wayne	252	257	333	461	547
Wheeler	190	262	347	481	486

NEVADA

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Las Vegas, NV-AZ MSA	465	551	656	911	1077	Clark, Nye
Reno, NV MSA	441	512	656	913	1079	Washoe

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Churchill	420	425	568	784	931
Elko	382	435	580	767	952
Eureka	305	494	556	695	777
Lander	243	377	442	554	726
Lyon	303	363	465	647	765
Pershing	429	435	580	726	829
White Pine	308	422	562	758	797

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Douglas	381	556	695	964	1075
Esmeralda	34	434	488	610	683
Humboldt	45~	477	574	752	805
Lincoln	215	321	391	490	549
Mineral	313	428	570	747	935
Storey	435	441	580	807	952
Carson City	327	446	595	827	977

NEW HAMPSHIRE

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston, MA-NH PMSA	571	643	804	1005	1181	Rockingham county towns of Seabrook town South Hampton town
Lawrence, MA-NH PMSA	434	524	657	822	1012	Rockingham county towns of Atkinson town, Chester town Danville town, Derry town, Fremont town, Hampstead town Kingston town, Newton town, Plaistow town, Raymond town Salem town, Sandown town, Windham town
Lowe'., MA-NH PMSA	439	568	686	859	962	Hillsborough county towns of Pelham town
Manchester, NH PMSA	350	499	623	780	873	Hillsborough county towns of Bedford town, Goffstown town Manchester city, Weare town Merrimack county towns of Allenstown town, Hooksett town Rockingham county towns of Auburn town, Candia town Londonderry town
Nashua, NH PMSA	417	580	720	980	1167	Hillsborough county towns of Amherst town, Brookline town Greenville town, Hollis town, Hudson town Litchfield town, Mason town, Merrimack town Milford town, Mont Vernon town, Nashua city New Ipswich town, Wilton town
Portsmouth-Rochester, NH-ME PMSA	443	532	683	875	1073	Rockingham county towns of Brentwood town East Kingston town, Epping town, Exeter town Greenland town, Hampton town, Hampton Falls town

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NEW HAMPSHIRE continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Kensington town, New Castle town, Newfields town Newington town, Newmarket town, North Hampton town Portsmouth city, Rye town, Stratham town Strafford county towns of Barrington town, Dover city Durham town, Farmington town, Lee town, Madbury town Milton town, Rochester city, Rollinsford town Somersworth city
NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Belknap	416	480	631	852	1035	
Carroll	348	476	634	793	990	
Cheshire	430	511	654	851	1007	
Coos	273	356	413	562	678	
Grafton	381	461	614	793	1002	
Hillsborough	408	509	673	897	1080	Antrim town, Bennington town, Deering town Francestown town, Greenfield town, Hancock town Hillsborough town, Lyndeborough town, New Boston town Peterborough town, Sharon town, Temple town Windsor town
Merrimack	428	512	639	818	914	Andover town, Boscawen town, Bow town, Bradford town Canterbury town, Chichester town, Concord city Danbury town, Dunbarton town, Epsom town, Franklin city Henniker town, Hill town, Hopkinton town, Loudon town Newbury town, New London town, Northfield town Pembroke town, Pittsfield town, Salisbury town Sutton town, Warner town, Webster town, Wilmot town
Rockingham	446	521	697	967	1115	Deerfield town, Northwood town, Nottingham town
Strafford	393	534	714	893	1000	Middleton town, New Durham town, Strafford town
Sullivan	415	421	546	717	765	

NEW JERSEY

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Atlantic-Cape May, NJ PMSA	517	587	782	978	1118	Atlantic, Cape May
Bergen-Passaic, NJ PMSA	648	788	926	1232	1521	Bergen, Passaic
Jersey City, NJ PMSA	599	706	822	1042	1149	Hudson
Middlesex-Somerset-Hunterdon, NJ PMSA	702	769	961	1306	1509	Hunterdon, Middlesex, Somerset
Monmouth-Ocean, NJ PMSA	584	698	885	1177	1381	Monmouth, Ocean
Newark, NJ PMSA	561	716	863	1088	1372	Essex, Morris, Sussex, Union, Warren
Philadelphia, PA-NJ PMSA	459	565	697	872	1094	Burlington, Camden, Gloucester, Salem
Trenton, NJ PMSA	467	651	794	1073	1295	Mercer
Vineland-Millville-Bridgeton, NJ PMSA	445	542	653	816	916	Cumberland

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NEW MEXICO

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albuquerque, NM MSA	349	413	519	714	843	Bernalillo, Sandoval, Valencia
Las Cruces, NM MSA	279	350	417	571	673	Dona Ana
Santa Fe, NM MSA	393	558	690	925	1048	Los Alamos, Santa Fe

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Catron	192	303	347	484	570
Cibola	238	261	303	421	497
Curry	233	298	392	491	550
Eddy	266	269	359	482	589
Guadalupe	200	274	363	454	576
Hidalgo	192	268	347	435	487
Lincoln	295	301	400	525	656
Mckinley	257	328	415	518	580
Otero	224	288	374	521	525
Rio Arriba	303	311	383	481	537
San Juan	291	312	389	540	639
Sierra	215	262	347	484	487
Taos	366	361	482	601	791
Union	200	317	364	455	570

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Chaves	255	296	391	536	549
Colfax	218	273	313	435	513
Debaca	192	296	348	484	487
Grant	239	272	358	469	565
Harding	158	216	288	397	404
Lea	239	262	347	484	544
Luna	268	272	347	484	570
Mora	186	255	339	424	475
Quay	257	377	424	530	593
Roosevelt	243	262	333	453	535
San Miguel	289	292	390	488	547
Socorro	197	293	358	497	587
Torrance	286	308	363	453	536

NEW YORK

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany-Schenectady-Troy, NY MSA	387	474	586	732	820	Albany, Montgomery, Rensselaer, Saratoga, Schenectady Schoharie
Binghamton, NY MSA	300	378	484	616	679	Broome, Tioga
Buffalo-Niagara Falls, NY PMSA	338	420	505	632	707	Erie, Niagara
Dutchess County, NY PMSA	511	649	801	1041	1218	Dutchess
Elmira, NY MSA	295	381	476	601	719	Chemung
Glens Falls, NY MSA	331	446	543	680	762	Warren, Washington
Jamestown, NY MSA	226	331	397	513	557	Chautauqua
Nassau-Suffolk, NY PMSA	702	846	1032	1435	1537	Nassau, Suffolk
New York, NY PMSA	664	740	840	1052	1177	Bronx, Kings, New York, Putnam, Queens, Richmond Rockland
Westchester County, NY	631	822	1001	1302	1552	Westchester
Newburgh, NY-PA PMSA	508	662	808	1026	1172	Orange
Rochester, NY MSA	369	479	585	748	817	Genesee, Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	354	427	528	676	749	Cayuga, Madison, Onondaga, Oswego
Utica-Rome, NY MSA	327	368	459	574	643	Herkimer, Oneida

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NEW YORK continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allegany	245	302	372	468	520
Chenango	364	369	436	558	618
Columbia	430	453	581	761	813
Delaware	329	379	445	589	731
Franklin	290	353	425	537	601
Greene	334	441	530	685	835
Jefferson	371	437	515	644	721
Otsego	319	403	464	599	762
Schuyler	373	398	471	656	773
Steuben	356	406	451	608	685
Tompkins	450	485	623	866	1022
Wyoming	254	355	418	522	585

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Cattaraugus	245	300	389	486	600
Clinton	287	379	506	633	709
Cortland	281	408	510	638	755
Essex	268	389	486	609	681
Fulton	250	358	455	569	637
Hamilton	342	415	476	595	667
Lewis	292	373	450	562	629
St. Lawrence	270	345	451	563	647
Seneca	365	392	473	610	663
Sullivan	456	511	624	861	873
Ulster	423	588	708	920	1160
Yates	333	378	458	572	621

NORTH CAROLINA

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Asheville, NC MSA	281	347	452	588	634	Buncombe, Madison
Charlotte-Gastonia-Rock Hill, NC-SC MSA	406	459	516	681	815	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union
Fayetteville, NC MSA	348	393	442	612	726	Cumberland
Goldsboro, NC MSA	202	305	368	511	604	Wayne
Greensboro--Winston-Salem--High Point, NC MSA	346	393	469	647	657	Alamance, Davidson, Davie, Forsyth, Guilford, Randolph Stokes, Yadkin
Greenville, NC MSA	343	347	451	606	741	Pitt
Hickory-Morganton, NC MSA	363	394	458	575	684	Alexander, Burke, Caldwell, Catawba
Jacksonville, NC MSA	326	382	430	597	706	Onslow
Norfolk-Virginia Beach-Newport News, VA-NC MSA	416	466	555	772	906	Currituck
Raleigh-Durham-Chapel Hill, NC MSA	387	469	552	740	872	Chatham, Durham, Franklin, Johnston, Orange, Wake
Rocky Mount, NC MSA	306	319	388	531	586	Edgecombe, Nash
Wilmington, NC MSA	368	406	496	680	810	Brunswick, New Hanover

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alleghany	230	278	325	407	508
Ashe	164	267	299	405	492
Beaufort	258	313	368	472	516
Bladen	221	267	299	374	420
Carteret	321	352	429	596	663
Cherokee	236	267	299	374	483
Clay	164	267	299	416	420
Columbus	242	276	309	402	433
Dare	295	466	537	736	752
Gates	164	225	299	416	420

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Anson	203	331	371	501	519
Avery	266	298	364	455	510
Bertie	192	258	299	374	426
Camden	269	366	489	610	684
Caswell	178	244	325	407	455
Chowan	196	315	355	493	498
Cleveland	222	345	405	545	573
Craven	237	358	432	566	604
Duplin	236	267	299	397	420
Graham	163	264	296	369	485

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

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NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Granville	303	325	383	533	601
Halifax	275	309	348	436	488
Haywood	291	297	387	539	542
Hertford	263	267	356	445	499
Hyde	198	295	359	450	503
Jackson	248	255	338	422	551
Lee	233	359	425	551	595
Mcdowell	182	275	331	451	533
Martin	193	295	350	437	490
Montgomery	287	291	373	466	523
Northampton	158	257	288	401	404
Pasquotank	332	353	441	612	619
Perquimans	195	307	354	492	496
Polk	277	363	408	510	572
Robeson	246	339	380	483	532
Rutherford	284	293	368	460	515
Scotland	207	311	377	504	527
Surry	245	294	342	473	515
Transylvania	318	340	429	570	609
Vance	301	341	382	482	535
Washington	244	247	331	455	462
Wilkes	267	302	340	470	527
Yancey	172	279	313	427	502

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Greene	214	327	390	424	574
Harnett	282	286	381	514	564
Henderson	334	343	424	566	651
Hoke	201	304	366	474	513
Iredell	345	354	467	584	654
Jones	178	288	324	406	454
Lenoir	197	318	358	447	501
Macon	270	343	385	492	539
Mitchell	197	312	358	489	510
Moore	291	353	421	577	691
Pamlico	191	308	347	448	487
Pender	245	347	390	488	633
Person	231	328	430	563	657
Richmond	246	284	378	474	529
Rockingham	276	298	388	486	542
Sampson	256	259	341	426	477
Stanly	242	301	403	545	563
Swain	236	261	299	397	429
Tyrrell	175	239	318	400	446
Warren	177	243	323	405	452
Watauga	314	377	477	648	781
Wilson	300	305	407	509	571

NORTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bismarck, ND MSA	288	323	429	597	704	Burleigh, Morton
Fargo-Moorhead, ND-MN MSA	281	389	467	650	696	Cass
Grand Forks, ND-MN MSA	294	350	461	635	709	Grand Forks

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	164	237	299	395	492
Benson	243	247	329	412	507
Bottineau	169	232	310	431	433
Burke	232	262	294	377	484
Dickey	232	252	294	391	413
Dunn	163	263	295	369	414
Emmons	129	208	233	324	382
Golden Valley	201	274	365	456	510

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barnes	197	268	357	466	510
Billings	232	262	294	410	413
Bowman	162	244	294	410	430
Cavalier	201	275	366	457	564
Divide	192	224	299	395	420
Eddy	163	264	296	413	428
Foster	192	261	348	435	487
Grant	140	208	253	354	366

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NORTH DAKOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Griggs	163	265	297	371	484
Kidder	162	220	294	375	413
Logan	148	204	272	378	440
Mcintosh	165	236	301	376	422
Mclean	226	236	294	397	484
Mountrail	237	255	300	415	472
Oliver	162	229	294	368	482
Pierce	183	249	333	462	509
Ransom	217	242	323	404	453
Richland	229	270	359	450	531
Sargent	163	222	296	377	417
Sioux	126	204	228	286	320
Stark	172	235	313	435	513
Stutsman	255	259	346	482	567
Traill	224	285	335	425	473
Ward	212	290	387	523	624
Williams	193	236	306	425	503

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hettinger	167	220	294	384	477
Lamoure	232	262	294	368	413
Mchenry	162	220	294	410	460
Mckenzie	144	214	263	366	417
Mercer	173	242	315	438	518
Nelson	162	220	294	368	484
Pembina	187	261	340	455	542
Ramsey	219	293	391	490	639
Renville	247	249	324	452	533
Rolette	231	294	355	443	497
Sheridan	162	262	294	377	484
Slope	162	262	294	389	413
Steele	156	214	285	388	454
Towner	244	274	365	456	599
Walsh	284	303	377	472	527
Wells	227	230	304	380	498

OHIO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Akron, OH PMSA	333	406	521	652	731	Portage, Summit
Brown County, OH	269	294	385	511	539	Brown
Canton-Massillon, OH MSA	255	349	448	560	627	Carroll, Stark
Cincinnati, OH-KY-IN	288	372	495	665	718	Clermont, Hamilton, Warren
Cleveland-Lorain-Elyria, OH PMSA	331	418	517	658	740	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH MSA	324	385	493	626	719	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway
Dayton-Springfield, OH MSA	357	399	510	659	740	Clark, Greene, Miami, Montgomery
Hamilton-Middletown, OH PMSA	290	412	528	660	740	Butler
Huntington-Ashland, WV-KY-OH MSA	265	310	382	487	534	Lawrence
Lima, OH MSA	258	322	424	539	594	Allen, Auglaize
Mansfield, OH MSA	224	322	410	511	572	Crawford, Richland
Parkersburg-Marietta, WV-OH MSA	284	339	388	503	518	Washington
Steubenville-Weirton, OH-WV MSA	201	296	367	463	516	Jefferson
Toledo, OH MSA	336	409	499	643	699	Fulton, Lucas, Wood
Wheeling, WV-OH MSA	301	327	396	495	555	Belmont
Youngstown-Warren, OH MSA	282	332	416	524	595	Columbiana, Mahoning, Trumbull

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OHIO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	185	267	333	416	465
Athens	319	362	426	559	686
Clinton	228	344	414	575	580
Darke	295	300	400	500	561
Erie	242	353	441	595	722
Gallia	192	261	348	435	487
Hancock	340	344	435	557	608
Harrison	177	249	322	444	507
Highland	264	267	356	459	498
Holmes	235	284	347	434	496
Jackson	187	278	340	448	475
Logan	314	318	412	555	576
Meigs	192	242	304	394	498
Monroe	177	242	323	411	453
Morrow	209	305	380	476	536
Noble	233	262	349	437	573
Paulding	253	260	330	435	540
Pike	190	307	345	453	483
Putnam	279	282	377	475	528
Sandusky	242	344	441	556	617
Seneca	267	285	366	505	512
Tuscarawas	231	319	420	525	588
Van Wert	212	321	386	484	542
Wayne	253	355	436	555	610
Wyandot	244	274	366	457	512

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashland	237	314	419	522	585
Champaign	231	323	421	525	588
Coshocton	260	267	330	411	460
Defiance	281	315	420	528	587
Fayette	292	314	375	496	525
Guernsey	213	290	386	514	572
Hardin	185	298	335	442	468
Henry	290	320	401	516	587
Hocking	265	300	372	476	536
Huron	311	337	422	557	591
Knox	280	307	394	510	564
Marion	24[illegible]	312	381	496	554
Mercer	209	285	380	506	582
Morgan	197	322	359	468	523
Muskingum	260	290	367	459	513
Ottawa	251	396	456	621	662
Perry	256	292	345	479	534
Preble	285	289	366	494	560
Ross	308	320	390	488	547
Scioto	198	294	356	445	498
Shelby	244	334	445	557	623
Union	266	368	484	605	702
Vinton	220	283	349	436	489
Williams	289	301	367	494	514

OKLAHOMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Enid, OK MSA	281	285	380	528	603	Garfield
Fort Smith, AR-OK MSA	285	290	381	510	534	Sequoyah
Lawton, OK MSA	345	348	441	613	672	Comanche
Oklahoma City, OK MSA	305	331	430	598	670	Canadian, Cleveland, Logan, Mcclain, Oklahoma Pottawatomie
Tulsa, OK MSA	309	372	485	676	796	Creek, Osage, Rogers, Tulsa, Wagoner

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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OKLAHOMA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	218	221	294	411	425
Atoka	162	251	294	389	454
Beckham	242	250	333	417	467
Bryan	234	257	320	446	494
Carter	201	277	346	483	524
Choctaw	154	216	281	391	393
Coal	226	237	287	399	472
Craig	184	251	334	464	549
Delaware	225	240	321	447	528
Ellis	177	266	324	405	454
Grady	261	265	352	480	578
Greer	186	267	311	388	476
Harper	162	263	294	389	413
Hughes	218	221	294	369	413
Jefferson	159	206	275	343	442
Kay	269	285	374	521	610
Kiowa	162	221	294	389	413
Le Flore	218	234	313	435	438
Love	189	258	344	431	483
Mcintosh	172	235	314	392	478
Marshall	184	251	335	423	470
Murray	162	221	294	369	413
Noble	231	235	314	436	440
Okfuskee	218	221	294	369	413
Ottawa	227	238	294	397	443
Payne	275	324	414	572	641
Pontotoc	188	265	331	416	494
Roger Mills	160	218	291	405	409
Stephens	242	269	329	444	539
Tillman	220	248	278	386	456
Washita	233	241	294	411	484
Woodward	173	273	316	440	443

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alfalfa	162	221	294	369	425
Beaver	171	277	312	433	511
Blaine	162	221	294	411	484
Caddo	168	238	306	389	429
Cherokee	250	282	320	415	526
Cimarron	140	227	256	340	420
Cotton	227	230	307	428	470
Custer	227	258	344	480	554
Dewey	147	238	268	372	376
Garvin	174	238	318	415	523
Grant	162	263	294	411	484
Harmon	170	231	309	386	433
Haskell	233	235	294	404	484
Jackson	206	308	376	493	557
Johnston	158	257	288	400	473
Kingfisher	192	281	347	455	487
Latimer	169	230	307	409	503
Lincoln	256	265	322	443	495
Mccurtain	233	238	294	411	484
Major	187	286	340	473	476
Mayes	205	279	372	469	522
Muskogee	261	293	342	476	480
Nowata	172	235	314	392	481
Okmulgee	247	250	333	417	467
Pawnee	270	274	356	458	498
Pittsburg	22[illegible]	239	319	444	524
Pushmataha	215	237	316	395	443
Seminole	218	227	294	411	448
Texas	200	283	327	453	456
Washington	221	330	402	531	623
Woods	225	228	305	409	428

OREGON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Eugene-Springfield, OR MSA	311	427	556	775	898	Lane
Medford-Ashland, OR MSA	298	392	523	728	811	Jackson
Portland-Vancouver, OR-WA PMSA	362	444	548	762	829	Clackamas, Columbia, Multnomah, Washington, Yamhill

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

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OREGON continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Salem, OR PMSA	335	394	505	697	731	Marion, Polk

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Baker	266	299	398	553	557
Clatsop	268	350	458	619	701
Crook	225	307	409	510	573
Deschutes	361	416	555	773	895
Gilliam	238	372	433	541	606
Harney	187	303	341	469	522
Jefferson	241	330	440	589	661
Klamath	288	338	450	620	739
Lincoln	358	363	485	674	732
Malheur	266	326	398	513	577
Sherman	188	306	344	478	481
Umatilla	264	274	361	501	530
Wallowa	218	333	371	517	561
Wheeler	172	236	314	393	440

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Benton	309	399	506	762	809
Coos	278	360	479	666	671
Curry	294	401	533	682	839
Douglas	283	321	414	570	744
Grant	224	307	409	511	646
Hood River	325	365	498	647	763
Josephine	254	358	461	621	727
Lake	237	323	363	486	595
Linn	26:	331	435	592	644
Morrow	225	295	367	507	540
Tillamook	228	338	419	567	617
Union	293	302	395	548	648
Wasco	272	338	380	516	577

PENNSYLVANIA

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Allentown-Bethlehem-Easton, PA MSA	361	490	583	758	852	Carbon, Lehigh, Northampton
Altoona, PA MSA	274	339	387	484	561	Blair
Erie, PA MSA	253	351	414	518	580	Erie
Harrisburg-Lebanon-Carlisle, PA MSA	327	418	536	676	751	Cumberland, Dauphin, Lebanon, Perry
Johnstown, PA MSA	242	303	356	445	499	Cambria, Somerset
Lancaster, PA MSA	354	436	544	708	761	Lancaster
Newburgh, NY-PA PMSA	508	662	808	1026	1172	Pike
Philadelphia, PA-NJ PMSA	459	565	697	872	1094	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA PMSA	317	389	469	588	656	Allegheny, Beaver, Butler, Fayette, Washington Westmoreland
Reading, PA MSA	290	428	528	661	745	Berks
Scranton--Wilkes-Barre--Hazleton, PA MSA	254	375	446	557	674	Columbia, Lackawanna, Luzerne, Wyoming
Sharon, PA MSA	295	322	375	468	547	Mercer
State College, PA MSA	388	475	587	770	824	Centre
Williamsport, PA MSA	231	348	418	523	586	Lycoming
York, PA MSA	297	408	505	632	706	York

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

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PENNSYLVANIA continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	264	362	482	623	790
Bedford	181	289	328	426	473
Cameron	243	284	333	416	466
Clearfield	224	308	355	452	505
Crawford	254	304	365	497	511
Forest	202	263	343	428	480
Fulton	229	314	369	461	517
Huntingdon	186	285	339	422	474
Jefferson	194	299	343	441	494
Lawrence	214	325	391	516	547
Mifflin	299	319	376	480	526
Montour	319	328	430	600	708
Potter	217	273	350	437	528
Snyder	325	343	413	533	538
Susquehanna	323	336	409	513	635
Union	273	360	451	564	630
Warren	248	312	380	475	532

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Armstrong	275	361	411	520	674
Bradford	218	311	390	508	547
Clarion	270	322	365	456	519
Clinton	197	290	345	480	483
Elk	225	327	401	501	561
Franklin	234	339	417	572	584
Greene	208	264	298	414	464
Indiana	310	345	393	492	550
Juniata	202	290	349	436	488
Mc Kean	248	345	379	474	530
Monroe	430	514	634	868	970
Northumberland	286	360	440	585	651
Schuylkill	235	337	426	532	597
Sullivan	205	280	374	469	524
Tioga	267	294	338	448	472
Venango	250	335	384	479	537
Wayne	27:	419	494	627	806

RHODE ISLAND

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
New London-Norwich, CT-RI MSA	483	584	710	889	1016	Washington county towns of Hopkinton town, Westerly town
Providence-Fall River-Warwick, RI-MA PMSA	402	547	659	825	1016	Bristol county towns of Barrington town, Bristol town Warren town Kent county towns of Coventry town, East Greenwich tow Warwick city, West Greenwich tow, West Warwick town Newport county towns of Jamestown town Little Compton tow, Tiverton town Providence county towns of Burrillville town Central Falls city, Cranston city, Cumberland town East Providence ci, Foster town, Glocester town Johnston town, Lincoln town, North Providence t North Smithfield t, Pawtucket city, Providence city Scituate town, Smithfield town, Woonsocket city Washington county towns of Charlestown town, Exeter town Narragansett town, North Kingstown to, Richmond town South Kingstown to

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RHODE ISLAND continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Newport	538	626	803	1004	1124	Middletown town, Newport city, Portsmouth town
Washington	598	673	756	976	1075	New Shoreham town

SOUTH CAROLINA

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Augusta-Aiken, GA-SC MSA	330	395	465	633	750	Aiken, Edgefield
Charleston-North Charleston, SC MSA	371	430	494	657	766	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC MSA	406	459	516	681	815	York
Columbia, SC MSA	398	438	504	666	766	Lexington, Richland
Florence, SC MSA	304	339	440	551	617	Florence
Greenville-Spartanburg-Anderson, SC MSA	316	380	431	544	638	Anderson, Cherokee, Greenville, Pickens, Spartanburg
Myrtle Beach, SC MSA	391	397	509	636	713	Horry
Sumter, SC MSA	318	354	401	551	651	Sumter

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Abbeville	183	247	331	439	541
Bamberg	175	238	317	396	444
Beaufort	403	494	569	710	795
Chester	191	260	347	434	493
Clarendon	213	325	387	485	542
Darlington	206	281	373	486	523
Fairfield	236	378	430	537	601
Greenwood	283	287	382	479	535
Jasper	258	261	348	436	572
Lancaster	296	331	376	492	566
Lee	257	260	347	434	570
Marion	246	249	334	463	548
Newberry	191	308	347	434	487
Orangeburg	226	301	347	434	541
Union	188	299	341	449	477

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allendale	173	281	315	394	442
Barnwell	297	300	402	502	562
Calhoun	210	246	330	456	460
Chesterfield	191	275	347	457	570
Colleton	196	316	355	444	497
Dillon	249	282	316	415	443
Georgetown	221	358	403	503	611
Hampton	191	308	347	444	506
Kershaw	209	285	380	476	532
Laurens	199	300	361	492	506
Mccormick	209	286	381	477	626
Marlboro	258	299	353	441	494
Oconee	274	318	358	488	501
Saluda	185	251	335	419	476
Williamsburg	257	311	366	457	512

SOUTH DAKOTA

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Rapid City, SD MSA	303	360	480	652	788	Pennington
Sioux Falls, SD MSA	288	396	502	636	730	Lincoln, Minnehaha

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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SOUTH DAKOTA continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aurora	148	240	271	376	408
Bennett	215	311	365	507	552
Brookings	218	300	383	516	608
Brule	189	285	345	461	566
Butte	214	292	389	507	599
Charles Mix	167	251	289	361	404
Clay	218	297	397	500	652
Corson	161	218	291	374	408
Davison	250	298	397	532	576
Deuel	187	255	342	427	477
Douglas	228	232	310	424	433
Fall River	271	274	365	460	599
Grant	201	274	365	500	510
Haakon	201	324	365	507	599
Hand	173	228	305	402	430
Harding	201	324	365	456	510
Hutchinson	166	236	291	369	477
Jackson	183	295	333	432	481
Jones	194	264	353	476	494
Lake	209	282	316	440	488
Lyman	189	259	346	432	485
Mcpherson	188	224	299	417	420
Meade	259	291	388	507	599
Miner	151	246	276	369	439
Perkins	174	238	316	440	519
Roberts	163	248	295	369	414
Shannon	173	280	314	437	440
Stanley	201	324	365	507	529
Todd	264	270	358	449	502
Turner	169	247	308	404	432
Walworth	237	324	365	504	599
Ziebach	201	274	365	456	599

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Beadle	233	306	365	500	599
Bon Homme	241	244	327	454	536
Brown	215	293	390	514	593
Buffalo	207	282	376	469	615
Campbell	187	255	342	440	521
Clark	177	242	322	405	453
Codington	202	276	367	504	514
Custer	202	276	368	512	604
Day	242	246	328	456	512
Dewey	204	311	370	462	526
Edmunds	201	274	365	507	510
Faulk	229	314	419	524	587
Gregory	221	251	332	415	464
Hamlin	168	229	306	382	432
Hanson	243	333	443	556	623
Hughes	265	314	419	553	652
Hyde	185	299	336	443	541
Jerauld	147	238	269	371	439
Kingsbury	221	257	304	380	467
Lawrence	215	311	391	536	605
Mccook	155	221	284	395	465
Marshall	225	242	289	369	411
Mellette	259	291	327	429	457
Moody	197	267	322	429	529
Potter	197	312	357	483	500
Sanborn	201	292	365	456	510
Spink	262	303	405	505	566
Sully	174	268	317	411	445
Tripp	193	263	351	450	493
Union	244	262	350	438	490
Yankton	201	314	365	497	599

TENNESSEE

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Chattanooga, TN-GA MSA	321	376	451	582	664	Hamilton, Marion
Clarksville-Hopkinsville, TN-KY MSA	313	352	411	560	576	Montgomery
Jackson, TN MSA	243	319	427	592	596	Madison

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TENNESSEE continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Johnson City-Kingsport-Bristol, TN-VA MSA	250	291	369	480	546	Carter, Hawkins, Sullivan, Unicoi, Washington
Knoxville, TN MSA	284	351	438	585	702	Anderson, Blount, Knox, Loudon, Sevier, Union
Memphis, TN-AR-MS MSA	337	392	462	642	674	Fayette, Shelby, Tipton
Nashville, TN MSA	354	422	520	708	797	Cheatham, Davidson, Dickson, Robertson, Rutherford Sumner, Williamson, Wilson

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bedford	202	301	367	463	514
Bledsoe	165	226	301	378	424
Campbell	236	239	303	422	425
Carroll	175	284	319	400	447
Claiborne	178	262	301	420	496
Cocke	175	242	301	405	496
Crockett	165	252	301	378	450
Decatur	213	230	305	382	501
Dyer	292	296	394	493	614
Franklin	245	267	342	476	560
Giles	202	298	368	461	515
Greene	188	269	341	426	477
Hamblen	212	274	380	480	505
Hardeman	187	259	325	428	455
Haywood	246	285	380	476	532
Henry	185	244	308	428	499
Houston	224	226	301	387	424
Jackson	165	226	301	378	424
Johnson	159	216	289	391	426
Lauderdale	191	261	348	439	488
Lewis	163	266	298	415	418
Mcminn	210	257	330	456	460
Macon	173	258	314	393	440
Maury	336	342	454	570	637
Monroe	185	226	301	407	424
Morgan	171	268	311	390	437
Overton	165	244	301	378	496
Pickett	138	224	251	314	352
Putnam	284	287	388	505	546
Roane	251	257	342	464	560
Sequatchie	165	269	301	387	424
Stewart	224	265	301	395	496
Van Buren	152	208	277	380	388

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Benton	251	287	321	434	473
Bradley	215	295	393	532	646
Cannon	167	230	305	382	428
Chester	169	258	307	384	496
Clay	238	262	301	378	496
Coffee	201	325	366	509	579
Cumberland	247	269	358	499	502
Dekalb	184	249	334	417	501
Fentress	220	237	315	415	418
Gibson	183	266	332	415	464
Grainger	238	269	301	387	496
Grundy	149	242	272	378	418
Hancock	146	216	264	367	434
Hardin	165	269	301	407	441
Henderson	171	243	311	390	437
Hickman	275	279	371	490	519
Humphreys	218	285	336	420	470
Jefferson	256	266	354	442	585
Lake	230	260	302	420	432
Lawrence	225	228	304	380	427
Lincoln	192	262	349	437	490
Mcnairy	186	214	281	390	424
Marshall	274	300	391	493	548
Meigs	167	230	305	425	501
Moore	233	236	315	439	442
Obion	270	274	351	465	491
Perry	169	275	308	424	506
Polk	187	255	340	425	476
Rhea	183	292	332	460	466
Scott	165	226	301	378	424
Smith	178	249	324	406	454
Trousdale	210	287	382	479	627
Warren	261	264	353	441	494

Note. The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and tne FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

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TENNESSEE continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Wayne	164	268	300	393	421
White	238	272	305	410	496

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Weakley	252	262	324	444	475

TEXAS

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Abilene, TX MSA	279	301	402	541	658	Taylor
Amarillo, TX MSA	264	335	418	582	687	Potter, Randall
Austin-San Marcos, TX MSA	395	477	636	883	1044	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	300	363	442	585	621	Hardin, Jefferson, Orange
Brazoria, TX PMSA	409	456	570	794	935	Brazoria
Brownsville-Harlingen-San Benito, TX MSA	314	394	493	617	768	Cameron
Bryan-College Station, TX MSA	351	408	516	719	848	Brazos
Corpus Christi, TX MSA	306	377	482	655	773	Nueces, San Patricio
Dallas, TX	395	454	583	806	952	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX MSA	372	414	491	682	805	El Paso
Fort Worth-Arlington, TX PMSA	379	411	534	743	877	Hood, Johnson, Parker, Tarrant
Galveston-Texas City, TX PMSA	415	427	534	742	875	Galveston
Henderson County, TX	282	335	408	558	669	Henderson
Houston, TX PMSA	393	439	570	793	935	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller
Killeen-Temple, TX MSA	337	352	445	619	680	Bell, Coryell
Laredo, TX MSA	305	352	462	578	648	Webb
Longview-Marshall, TX MSA	302	342	419	570	624	Gregg, Harrison, Upshur
Lubbock, TX MSA	286	362	471	655	726	Lubbock
Mc Allen-Edinburg-Mission, TX MSA	261	371	425	531	595	Hidalgo
Odessa-Midland, TX MSA	286	330	441	614	712	Ector, Midland
San Angelo, TX MSA	234	336	408	559	660	Tom Green
San Antonio, TX MSA	351	404	523	728	858	Bexar, Comal, Guadalupe, Wilson
Sherman-Denison, TX MSA	258	363	438	561	671	Grayson
Texarkana, TX-Texarkana, AR MSA	293	357	436	576	610	Bowie
Tyler, TX MSA	332	367	448	624	659	Smith
Victoria, TX MSA	331	335	425	590	665	Victoria
Waco, TX MSA	290	355	467	622	654	Mclennan
Wichita Falls, TX MSA	320	357	430	573	675	Archer, Wichita

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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T E X A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Anderson	320	361	406	564	569
Angelina	292	339	380	528	624
Armstrong	222	303	404	505	565
Austin	213	275	367	510	569
Bandera	287	308	364	505	509
Bee	208	272	358	497	554
Borden	171	278	313	435	438
Brewster	261	275	367	502	601
Brooks	158	208	233	324	327
Burleson	215	301	391	528	643
Calhoun	286	304	371	515	609
Camp	361	366	456	572	640
Cass	230	292	329	435	513
Cherokee	298	309	378	495	529
Clay	195	314	353	492	580
Coke	175	240	320	402	526
Collingsworth	174	238	318	397	475
Comanche	230	234	313	417	456
Cooke	290	294	392	531	589
Crane	209	275	367	458	513
Crosby	247	278	313	425	513
Dallam	195	265	353	463	495
Deaf Smith	235	288	352	489	578
Dewitt	242	253	320	402	448
Dimmit	215	262	304	423	425
Duval	247	263	313	435	473
Edwards	178	282	325	407	455
Falls	218	240	321	403	450
Fayette	255	258	344	434	564
Floyd	239	242	324	405	481
Franklin	202	275	367	510	513
Frio	230	234	313	435	503
Garza	163	248	298	373	418
Glasscock	171	278	313	391	438
Gonzales	225	234	313	396	500
Grimes	203	276	368	502	592
Hall	150	204	273	379	447
Hansford	267	285	356	495	584
Hartley	175	240	320	446	448
Hemphill	212	343	385	536	540

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Andrews	228	304	341	475	560
Aransas	240	329	438	609	613
Atascosa	183	250	333	463	547
Bailey	171	278	313	435	438
Baylor	171	266	313	391	438
Blanco	217	295	394	549	577
Bosque	202	296	367	485	551
Briscoe	195	265	353	467	495
Brown	250	305	373	500	612
Burnet	209	285	379	527	618
Callahan	241	246	322	445	451
Carson	200	302	364	454	509
Castro	268	292	340	461	558
Childress	248	279	314	392	514
Cochran	205	233	263	365	431
Coleman	162	206	275	382	450
Colorado	206	234	313	435	513
Concho	178	243	327	453	456
Cottle	161	221	293	409	483
Crockett	247	261	313	435	438
Culberson	174	278	313	413	438
Dawson	171	278	313	435	513
Delta	196	316	356	444	498
Dickens	175	221	293	388	483
Donley	189	260	345	481	484
Eastland	247	278	313	391	513
Erath	276	313	406	524	569
Fannin	270	280	360	500	569
Fisher	229	260	291	405	409
Foard	173	268	315	393	441
Freestone	213	250	333	463	497
Gaines	272	278	347	466	487
Gillespie	262	337	436	598	611
Goliad	182	275	331	424	544
Gray	293	298	396	497	588
Hale	241	275	363	493	507
Hamilton	247	278	313	435	510
Hardeman	171	234	313	435	513
Haskell	164	258	300	417	420
Hill	243	269	359	478	502

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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T E X A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hockley	272	318	363	503	554
Houston	185	269	337	468	472
Hudspeth	321	363	407	509	667
Irion	213	306	344	431	483
Jackson	253	309	348	464	549
Jeff Davis	201	300	366	457	511
Jim Wells	193	285	351	488	576
Karnes	198	252	304	423	498
Kenedy	171	278	313	391	438
Kerr	255	345	432	600	708
King	192	262	348	436	488
Kleberg	324	337	411	572	673
Lamar	260	329	386	538	636
Lampasas	200	287	364	505	596
Lavaca	166	227	303	416	459
Leon	211	342	384	487	631
Lipscomb	183	249	332	460	464
Llano	251	343	457	573	751
Lynn	171	257	313	432	513
Mcmullen	171	278	313	391	438
Marion	198	287	359	474	589
Mason	164	224	300	374	492
Maverick	249	267	356	444	498
Menard	230	234	313	435	438
Mills	178	288	323	405	500
Montague	230	234	313	435	513
Morris	187	301	339	423	474
Nacogdoches	282	340	441	551	649
Newton	184	251	335	430	550
Ochiltree	176	287	322	448	529
Palo Pinto	201	280	365	485	591
Parmer	188	275	343	449	481
Polk	298	325	378	510	620
Rains	228	345	417	579	583
Real	171	258	312	433	438
Reeves	171	278	313	423	438
Roberts	192	311	348	436	488
Runnels	247	257	313	435	498
Sabine	235	238	318	397	515
San Jacinto	280	315	355	483	581

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hopkins	308	332	390	544	583
Howard	285	289	361	502	506
Hutchinson	238	305	385	536	633
Jack	169	230	308	429	506
Jasper	262	300	379	505	622
Jim Hogg	171	234	313	423	513
Jones	174	238	318	402	446
Kendall	240	390	438	609	719
Kent	147	237	267	371	420
Kimble	223	305	406	508	569
Kinney	171	234	313	435	510
Knox	165	248	302	404	423
Lamb	247	266	313	420	476
La Salle	168	247	305	424	500
Lee	302	340	382	532	597
Limestone	255	302	339	472	475
Live Oak	171	278	313	435	510
Loving	171	234	313	391	438
Mcculloch	274	278	369	462	518
Madison	196	317	357	496	586
Martin	171	278	313	435	438
Matagorda	308	338	417	579	583
Medina	242	288	339	454	555
Milam	189	304	343	469	554
Mitchell	171	278	313	435	513
Moore	228	313	352	489	578
Motley	171	278	313	425	513
Navarro	319	337	405	513	566
Nolan	274	278	370	470	552
Oldham	222	303	404	505	590
Panola	239	314	353	477	534
Pecos	206	272	361	502	592
Presidio	229	260	290	364	407
Reagan	340	345	459	576	754
Red River	210	340	381	477	533
Refugio	246	278	328	435	537
Robertson	237	352	395	494	553
Rusk	278	281	352	489	535
San Augustine	186	255	339	424	475
San Saba	15.	239	282	393	465

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Scurry	213	290	386	538	636
Shelby	246	277	311	388	435
Somervell	305	343	385	528	540
Stephens	182	258	331	459	544
Stonewall	171	237	313	435	513
Swisher	171	278	313	435	513
Terry	183	294	332	460	505
Titus	281	348	395	547	554
Tyler	218	298	397	498	653
Uvalde	186	286	321	447	450
Van Zandt	286	290	386	526	636
Ward	247	278	313	435	513
Wharton	253	305	368	497	514
Wilbarger	265	268	358	497	587
Winkler	231	235	314	409	514
Wood	247	289	385	536	633
Young	261	264	351	488	576
Zavala	165	217	290	404	477

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Provo-Orem, UT MSA	332	352	434	603	712
Salt Lake City-Ogden, UT MSA	315	366	465	646	757

Utah

Counties of FMR AREA within STATE

Davis, Salt Lake, Weber

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Box Elder	307	335	401	557	625
Carbon	297	303	376	523	617
Duchesne	187	286	340	470	557
Garfield	248	271	360	451	505
Iron	277	377	469	587	691
Kane	218	296	396	496	556
Morgan	217	295	393	548	646
Rich	187	255	342	437	477
Sanpete	187	296	342	446	514
Summit	411	505	632	852	1035
Uintah	220	309	402	557	6581
Washington	342	420	559	745	914

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

V E R M O N T

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Burlington, VT MSA	399	490	654	890	1073

Components of FMR AREA within STATE

Chittenden county towns of Burlington city
Charlotte town, Colchester town, Essex town
Hinesburg town, Jericho town, Milton town, Richmond town
St. George town, Shelburne town, South Burlington c
Williston town, Winooski city
Franklin county towns of Fairfax town, Georgia town
St. Albans city, St. Albans town, Swanton town
Grand Isle county towns of Grand Isle town
South Hero town

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Addison	377	457	531	739	830
Bennington	352	443	569	723	843
Caledonia	320	380	426	545	598
Chittenden	326	528	594	826	973
Essex	311	355	422	528	592
Franklin	335	378	424	591	679
Grand Isle	240	360	435	544	622
Lamoille	312	432	516	710	812
Orange	276	410	504	665	746
Orleans	212	308	384	480	622
Rutland	351	457	557	699	781
Washington	335	419	561	702	786
Windham	376	436	580	734	809
Windsor	404	456	570	730	867

Towns within non metropolitan counties

Bolton town, Buels gore, Huntington town, Underhill town
Westford town

Bakersfield town, Berkshire town, Enosburg town
Fairfield town, Fletcher town, Franklin town
Highgate town, Montgomery town, Richford town
Sheldon town

Alburg town, Isle La Motte town, North Hero town

V I R G I N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Charlottesville, VA MSA	383	452	579	771	863
Clarke County, VA	288	405	525	720	735
Culpeper County, VA	355	517	601	793	950
Danville, VA MSA	268	325	377	470	527
Johnson City-Kingsport-Bristol, TN-VA MSA	250	291	369	480	546
King George County, VA	352	467	525	730	735
Lynchburg, VA MSA	323	354	409	521	605
Norfolk-Virginia Beach-Newport News, VA-NC MSA	416	466	555	772	906

Counties of FMR AREA within STATE

Albemarle, Fluvanna, Greene, Charlottesville city
Clarke
Culpeper
Pittsylvania, Danville city
Scott, Washington, Bristol city

King George
Amherst, Bedford, Campbell, Bedford city, Lynchburg city
Gloucester, Isle of Wight, James City, Mathews, York
Chesapeake city, Hampton city, Newport News city
Norfolk city, Poquoson city, Portsmouth city

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

W A S H I N G T O N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Bellingham, WA MSA	311	355	452	579	771
Bremerton, WA PMSA	335	419	561	702	786
Clarkston-Lewiston, ID-WA MSA	276	410	504	665	746
Longview-Kelso, WA MSA	276	410	504	665	746
Olympia, WA PMSA	335	419	561	702	786
Richland-Kennewick-Pasco, WA MSA	276	410	504	665	746
Seattle-Bellevue-Everett, WA PMSA	335	419	561	702	786
Spokane, WA MSA	276	410	504	665	746
Tacoma, WA PMSA	335	419	561	702	786
Yakima, WA MSA	276	410	504	665	746

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	276	410	504	665	746
Asotin	276	410	504	665	746
Benton	276	410	504	665	746
Chelan	276	410	504	665	746
Clallam	276	410	504	665	746
Columbia	276	410	504	665	746
Cowlitz	276	410	504	665	746
Douglas	276	410	504	665	746
Ferry	276	410	504	665	746
Franklin	276	410	504	665	746
Garfield	276	410	504	665	746
Grant	276	410	504	665	746
Grays Harbor	276	410	504	665	746
Island	276	410	504	665	746
Jefferson	276	410	504	665	746
Kittitas	276	410	504	665	746
Klickitat	276	410	504	665	746
Lewis	276	410	504	665	746
Lincoln	276	410	504	665	746
Mason	276	410	504	665	746
Okanogan	276	410	504	665	746
Pacific	276	410	504	665	746
Pend Oreille	276	410	504	665	746
San Juan	276	410	504	665	746
Skagit	276	410	504	665	746
Skamania	276	410	504	665	746
Stevens	276	410	504	665	746
Wahkiakum	276	410	504	665	746
Walla Walla	276	410	504	665	746
Whatcom	276	410	504	665	746
Whitman	276	410	504	665	746
Yakima	276	410	504	665	746

Counties of FMR AREA within STATE

Whatcom
Clallam, Jefferson
Island, San Juan, Skagit
Grays Harbor, Mason, Pacific
Lewis, Skamania, Wahkiakum
Cowlitz
Thurston
Kitsap
Pend Oreille, Stevens
Asotin, Garfield, Whitman
Columbia, Walla Walla
Adams, Franklin
Benton
Chelan, Douglas, Okanogan
Ferry, Lincoln
Grant
Kittitas
Klickitat
Yakima

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

W E S T V I R G I N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR
Charleston, WV MSA	276	410	504	665	746
Cumberland, MD-WV MSA	276	410	504	665	746
Hagerstown, MD MSA	276	410	504	665	746
Huntington-Ashland, WV-KY-OH MSA	276	410	504	665	746
Parkersburg-Marietta, WV-OH MSA	276	410	504	665	746
Weirton-Steubenville, WV-OH MSA	276	410	504	665	746
Wheeling, WV-OH MSA	276	410	504	665	746

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Barbour	276	410	504	665	746
Berkeley	276	410	504	665	746
Boone	276	410	504	665	746
Braxton	276	410	504	665	746
Brooke	276	410	504	665	746
Calhoun	276	410	504	665	746
Clay	276	410	504	665	746
Doddridge	276	410	504	665	746
Fayette	276	410	504	665	746
Gilmer	276	410	504	665	746
Grant	276	410	504	665	746
Greenbrier	276	410	504	665	746
Hampshire	276	410	504	665	746
Hancock	276	410	504	665	746
Hardy	276	410	504	665	746
Harrison	276	410	504	665	746
Jackson	276	410	504	665	746
Jefferson	276	410	504	665	746
Lewis	276	410	504	665	746
Lincoln	276	410	504	665	746
Logan	276	410	504	665	746
Marion	276	410	504	665	746
Marshall	276	410	504	665	746
Mason	276	410	504	665	746
McDowell	276	410	504	665	746
Mercer	276	410	504	665	746
Mineral	276	410	504	665	746
Mingo	276	410	504	665	746
Monongalia	276	410	504	665	746
Monroe	276	410	504	665	746
Morgan	276	410	504	665	746
Nicholas	276	410	504	665	746
Ohio	276	410	504	665	746
Pendleton	276	410	504	665	746
Pleasants	276	410	504	665	746
Pocahontas	276	410	504	665	746
Preston	276	410	504	665	746
Putnam	276	410	504	665	746
Raleigh	276	410	504	665	746
Randolph	276	410	504	665	746
Ritchie	276	410	504	665	746
Roane	276	410	504	665	746
Summers	276	410	504	665	746
Taylor	276	410	504	665	746
Tucker	276	410	504	665	746
Tyler	276	410	504	665	746
Upshur	276	410	504	665	746
Wayne	276	410	504	665	746
Webster	276	410	504	665	746
Wetzel	276	410	504	665	746
Wirt	276	410	504	665	746
Wood	276	410	504	665	746
Wyoming	276	410	504	665	746

Counties of FMR AREA within STATE

Kanawha, Putnam
Mineral
Berkeley, Jefferson
Cabell, Wayne
Brooke, Hancock
Calhoun, Clay, Roane
Doddridge, Gilmer, Lewis, Taylor, Upshur
Fayette, Raleigh, Summers
Grant, Hardy, Pendleton
Greenbrier, Monroe, Pocahontas
Hampshire, Morgan
Harrison, Marion, Monongalia
Jackson, Mason, Ripley
Logan, McDowell, Mingo, Wyoming
Marshall, Wetzel
Nicholas, Webster
Ohio, Marshall
Preston, Tucker
Randolph, Barbour, Tucker
Ritchie, Pleasants, Wirt, Wood
Tyler

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SCHEDULE B FAIR MARKET RENTS FOR EXISTING HOUSING

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V I R G I N I A continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Richmond-Petersburg, VA MSA	410	463	539	749	885	Suffolk city, Virginia Beach city, Williamsburg city Charles City, Chesterfield, Dinwiddie, Goochland, Hanover Henrico, New Kent, Powhatan, Prince George Colonial Heights city, Hopewell city, Petersburg city Richmond city
Roanoke, VA MSA	277	339	447	573	716	Botetourt, Roanoke, Roanoke city, Salem city
Warren County, VA	287	392	523	686	857	Warren
Washington, DC-MD-VA	638	725	851	1158	1396	Arlington, Fairfax, Loudoun, Prince William, Spotsylvania Stafford, Alexandria city, Fairfax city Falls Church city, Fauquier, Fredericksburg city Manassas city, Manassas Park city

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Accomack	328	353	415	519	581
Amelia	186	301	339	471	530
Augusta	247	358	433	572	697
Bland	172	279	314	394	440
Buchanan	207	289	323	407	453
Caroline	392	397	529	704	742
Charlotte	244	275	309	428	507
Cumberland	242	378	440	550	616
Essex	252	390	460	639	754
Franklin	268	282	340	424	475
Giles	219	263	343	428	480
Greensville	220	357	401	523	659
Henry	266	296	374	469	577
King and Queen	245	397	447	558	643
Lancaster	346	389	438	582	710
Louisa	244	360	444	616	622
Madison	278	413	464	580	761
Middlesex	270	350	393	546	550
Nelson	213	345	388	486	637
Northumberland	197	319	359	499	503
Orange	307	418	558	775	910
Patrick	218	220	279	350	392
Pulaski	200	288	363	491	508
Richmond	226	368	414	526	679
Rockingham	266	382	484	665	777
Shenandoah	364	373	461	636	723
Southampton	191	309	384	495	556
Sussex	200	292	364	456	598

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alleghany	289	324	365	497	512
Appomattox	266	269	341	447	476
Bath	213	345	388	501	544
Brunswick	213	289	324	452	455
Buckingham	264	292	335	418	469
Carroll	243	269	324	425	455
Craig	177	243	323	451	530
Dickenson	177	289	323	451	530
Floyd	236	240	320	445	497
Frederick	374	431	520	713	854
Grayson	165	268	301	394	494
Halifax	191	278	323	440	453
Highland	177	289	323	427	453
King William	234	378	425	531	656
Lee	243	245	323	405	530
Lunenburg	176	287	321	401	495
Mecklenburg	215	274	360	451	537
Montgomery	286	373	439	610	720
Northampton	199	272	362	464	507
Nottoway	276	279	363	454	508
Page	321	362	407	509	585
Prince Edward	310	350	393	546	550
Rappahannock	280	454	509	709	835
Rockbridge	215	311	394	548	551
Russell	181	246	329	458	540
Smyth	235	237	298	414	488
Surry	288	323	363	454	508
Tazewell	257	290	326	453	534

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

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V I R G I N I A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Westmoreland	274	373	498	623	808
Wythe	290	301	366	459	514

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Wise	256	288	384	480	613

W A S H I N G T O N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bellingham, WA MSA	372	482	641	886	1053	Whatcom
Bremerton, WA PMSA	385	442	574	775	943	Kitsap
Olympia, WA PMSA	370	454	565	778	918	Thurston
Portland-Vancouver, OR-WA PMSA	362	444	548	762	829	Clark
Richland-Kennewick-Pasco, WA MSA	454	519	622	864	1015	Benton, Franklin
Seattle-Bellevue-Everett, WA PMSA	434	528	668	929	1097	Island, King, Snohomish
Spokane, WA MSA	306	422	510	692	774	Spokane
Tacoma, WA PMSA	358	427	568	791	892	Pierce
Yakima, WA MSA	344	421	522	700	732	Yakima

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	260	280	346	450	501
Chelan	232	325	421	549	590
Columbia	180	294	330	458	461
Douglas	350	369	450	575	664
Garfield	180	248	330	412	461
Grays Harbor	305	353	470	634	731
Kittitas	214	292	387	530	628
Lewis	267	317	417	549	608
Mason	282	349	429	563	605
Pacific	238	294	391	524	546
San Juan	369	504	672	887	1055
Skamania	274	324	364	482	569
Wahkiakum	216	300	365	457	555
Whitman	293	332	443	617	728

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Asotin	219	281	370	506	586
Clallam	304	377	481	618	674
Cowlitz	333	372	479	664	673
Ferry	215	332	391	488	546
Grant	321	356	416	566	680
Jefferson	261	388	475	644	665
Klickitat	244	307	395	493	552
Lincoln	187	248	330	442	525
Okanogan	209	286	352	465	493
Pend Oreille	215	301	391	515	640
Skagit	402	493	579	724	810
Stevens	212	292	388	504	543
Walla Walla	277	337	448	622	736

W E S T V I R G I N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Berkeley County, WV	357	379	452	565	633	Berkeley
Charleston, WV MSA	228	328	415	570	624	Kanawha, Putnam
Cumberland, MD-WV MSA	232	292	381	502	551	Mineral
Huntington-Ashland, WV-KY-OH MSA	265	310	382	487	534	Cabell, Wayne
Jefferson County, WV	353	390	483	627	711	Jefferson

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

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WEST VIRGINIA continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Parkersburg-Marietta, WV-OH MSA	284	339	388	503	518	Wood
Steubenville-Weirton, OH-WV MSA	201	296	367	463	516	Brooke, Hancock
Wheeling, WV-OH MSA	301	327	396	495	555	Marshall, Ohio

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Barbour	182	247	330	413	463
Braxton	159	246	290	394	475
Clay	237	268	301	376	447
Fayette	164	264	298	414	448
Grant	177	257	322	403	452
Hampshire	192	262	350	462	491
Harrison	270	331	382	477	573
Lewis	166	225	302	416	422
Logan	250	276	324	452	533
Marion	228	310	381	491	564
Mercer	199	255	338	421	519
Monongalia	309	342	417	573	678
Morgan	302	341	382	479	535
Pendleton	165	234	301	388	420
Pocahontas	169	288	309	386	432
Raleigh	253	286	320	439	525
Ritchie	228	257	290	365	405
Summers	213	217	290	403	475
Tucker	159	217	290	403	438
Upshur	243	292	350	439	490
Wetzel	278	282	375	469	594
Wyoming	214	234	312	390	437

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Boone	219	248	323	405	453
Calhoun	159	217	290	362	405
Doddridge	253	271	321	402	450
Gilmer	270	285	342	427	479
Greenbrier	235	339	361	451	505
Hardy	177	264	322	403	452
Jackson	189	306	343	476	491
Lincoln	20	217	290	403	414
Mcdowell	163	211	282	352	395
Mason	183	276	334	416	537
Mingo	176	244	321	437	527
Monroe	167	278	312	390	462
Nicholas	212	253	338	421	472
Pleasants	252	262	342	426	534
Preston	242	315	341	425	476
Randolph	187	280	334	427	488
Roane	213	217	290	403	405
Taylor	300	324	353	441	494
Tyler	201	275	368	459	514
Webster	203	244	291	363	407
Wirt	170	233	311	431	436

WISCONSIN

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Appleton-Oshkosh-Neenah, WI MSA	296	366	464	586	674	Calumet, Outagamie, Winnebago
Duluth-Superior, MN-WI MSA	252	339	434	578	675	Douglas
Eau Claire, WI MSA	291	317	417	534	601	Chippewa, Eau Claire
Green Bay, WI MSA	325	357	458	637	641	Brown
Janesville-Beloit, WI MSA	327	413	510	639	715	Rock
Kenosha, WI PMSA	340	422	518	710	798	Kenosha
La Crosse, WI-MN MSA	249	344	436	582	707	La Crosse
Madison, WI MSA	401	505	609	847	999	Dane

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 time the 4 BR FMR. 092294

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WISCONSIN continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Milwaukee-Waukesha, WI PMSA	345	451	566	708	792	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul, MN-WI MSA	377	483	615	834	943	Pierce, St. Croix
Racine, WI PMSA	303	376	497	640	700	Racine
Sheboygan, WI MSA	284	365	446	557	689	Sheboygan
Wausau, WI MSA	346	360	450	611	679	Marathon

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	192	289	348	484	564
Barron	205	279	371	472	531
Buffalo	209	262	349	437	490
Clark	168	242	307	415	473
Crawford	210	260	334	421	467
Door	237	329	410	524	636
Florence	243	265	353	491	494
Forest	177	244	322	404	452
Green	271	305	381	530	533
Iowa	276	291	383	518	537
Jackson	209	261	328	425	458
Juneau	272	282	345	458	483
Lafayette	270	274	366	461	512
Lincoln	245	262	350	487	558
Marinette	209	261	348	466	487
Menominee	232	235	314	392	440
Oconto	177	265	322	436	484
Pepin	175	240	320	440	524
Portage	322	341	442	553	684
Richland	249	284	343	462	480
Sauk	311	320	428	533	598
Shawano	271	279	371	465	520
Trempealeau	214	264	338	426	527
Vilas	247	296	375	470	542
Washburn	262	266	355	450	497
Waushara	212	295	348	438	487

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Ashland	290	320	377	472	528
Bayfield	187	269	341	433	476
Burnett	257	305	367	459	513
Columbia	248	315	415	545	609
Dodge	336	341	448	561	628
Dunn	265	306	407	542	668
Fond du Lac	268	363	431	584	603
Grant	269	272	354	443	495
Green Lake	229	294	364	466	523
Iron	171	239	307	418	504
Jefferson	265	352	457	590	645
Kewaunee	180	245	329	410	459
Langlade	25	256	341	466	504
Manitowoc	268	291	340	431	519
Marquette	187	284	340	472	536
Monroe	265	304	383	525	537
Oneida	217	311	393	508	606
Polk	244	302	402	502	562
Price	190	271	344	433	558
Rusk	180	247	328	442	458
Sawyer	262	294	355	444	497
Taylor	236	277	338	443	474
Vernon	196	243	316	440	443
Walworth	278	389	506	659	738
Waupaca	212	290	386	503	596
Wood	289	330	411	513	575

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

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W Y O M I N G

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Casper, WY MSA	228	318	401	558	658	Natrona
Cheyenne, WY MSA	305	381	509	651	789	Laramie

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Albany	287	359	480	666	786
Campbell	295	300	385	535	632
Converse	183	275	332	461	545
Fremont	193	262	350	465	568
Hot Springs	241	275	366	509	601
Lincoln	241	303	384	526	537
Park	208	283	378	526	620
Sheridan	249	283	378	506	620
Sweetwater	284	289	385	535	632
Uinta	286	294	392	534	645
Weston	253	261	348	449	554

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Big Horn	183	249	333	459	465
Carbon	220	259	345	478	566
Crook	272	306	345	431	493
Goshen	235	289	345	478	566
Johnson	255	259	345	478	527
Niobrara	188	257	343	428	552
Platte	189	261	345	431	483
Sublette	303	342	384	495	537
Teton	364	463	617	827	901
Washakie	202	276	367	460	603

P A C I F I C I S L A N D S

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Pacific Islands	657	790	935	1171	1317

P U E R T O R I C O

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Aguadilla, PR MSA	225	275	325	405	455	Aguada Municipio, Aguadilla Municipio, Moca Municipio
Arecibo, PR PMSA	330	400	470	590	660	Arecibo Municipio, Camuy Municipio, Hatillo Municipio
Caguas, PR PMSA	275	330	390	490	545	Caguas Municipio, Cayey Municipio, Cidra Municipio Gurabo Municipio, San Lorenzo Municipio
Mayaguez, PR MSA	225	275	325	405	455	Anasco Municipio, Cabo Rojo Municipio Hormigueros Municipio, Mayaguez Municipio Sabana Grande Municipio, San German Municipio
Ponce, PR MSA	320	390	460	575	645	Guayanilla Municipio, Juana Diaz Municipio Penuelas Municipio, Ponce Municipio, Villalba Municipio Yauco Municipio
San Juan-Bayamon, PR PMSA	320	390	460	575	645	Aguas Buenas Municipio, Barceloneta Municipio Bayamon Municipio, Canovanas Municipio Carolina Municipio, Catano Municipio, Ceiba Municipio Comerio Municipio, Corozal Municipio, Dorado Municipio Fajardo Municipio, Florida Municipio, Guaynabo Municipio Humacao Municipio, Juncos Municipio Las Piedras Municipio, Loiza Municipio Luquillo Municipio, Manati Municipio, Morovis Municipio

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

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P U E R T O R I C O continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
						Naguabo Municipio, Naranjito Municipio Rio Grande Municipio, San Juan Municipio Toa Alta Municipio, Toa Baja Municipio Trujillo Alto Municipio, Vega Alta Municipio Vega Baja Municipio, Yabucoa Municipio

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adjuntas Municipio	215	265	310	390	435
Arroyo Municipio	215	265	310	390	435
Ciales Municipio	215	265	310	390	435
Culebra Municipio	215	265	310	390	435
Guayama Municipio	215	265	310	390	435
Jayuya Municipio	215	265	310	390	435
Lares Municipio	215	265	310	390	435
Maricao Municipio	215	265	310	390	435
Orocovis Municipio	215	265	310	390	435
Quebradillas Municipio	330	400	470	590	660
Salinas Municipio	215	265	310	390	435
Santa Isabel Municipio	215	265	310	390	435
Vieques Municipio	215	265	310	390	435

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aibonito Municipio	215	265	310	390	435
Barranquitas Municipio	215	265	310	390	435
Coamo Municipio	215	265	310	390	435
Guanica Municipio	215	265	310	390	435
Isabela Municipio	225	275	325	405	455
Lajas Municipio	215	265	310	390	435
Las Marias Municipio	215	265	310	390	435
Maunabo Municipio	215	265	310	390	435
Patillas Municipio	215	265	310	390	435
Rincon Municipio	215	265	310	390	435
San Sebastian Municipio	215	265	310	390	435
Utuado Municipio	215	265	310	390	435

V I R G I N I S L A N D S

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Virgin Islands	492	598	704	879	984

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092294

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SCHEDULE D - 45th PERCENTILE FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES

STATE/FMR AREA	SPACE RENT
DELAWARE	
Dover, DE MSA	$162
Sussex County	116
MARYLAND	
Hagerstown, MD MSA	211
St. Marys County	251
MINNESOTA	
Minneapolis, MN MSA	245
NEW YORK	
Dutchess, NY PMSA	318
Jamestown, NY MSA	168
Newburgh, NY MSA	302
Tompkins County, NY	200
VERMONT	
Washington County	201
WEST VIRGINIA	
Berkeley County	135
Jefferson County	135
Morgan County	135

[FR Doc. 94-23987 Filed 9-27-94; 8:45 am]
BILLING CODE 4210-32-C

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Wednesday
September 28, 1994

Part V

Federal Trade Commission

16 CFR Part 305

Rule Concerning Disclosure Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule"); Rule

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FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission") adds pool heaters, instantaneous water heaters, and heat pump water heaters to the list of products covered by the Commission's Appliance Labeling Rule ("Rule"). This action is being taken because amendments to the Energy Policy and Conservation Act ("EPCA") added pool heaters to the list of covered products for which the Commission must consider labeling requirements, and because the Department of Energy ("DOE") promulgated final test procedures for the two types of water heaters at issue that triggered an obligation under EPCA for the Commission to consider labeling requirements for them.

EFFECTIVE DATE: December 29, 1994.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority for Labeling Pool Heaters, Instantaneous Water Heaters, and Heat Pump Water Heaters

The National Appliance Energy Conservation Act ("NAECA 87")[1] amended EPCA[2] by, among other things, adding pool heaters (which include spa and hot tub heaters and heaters for similar applications—for convenience, the Commission will refer to these products as "pool heaters") to the list of appliances for which DOE must establish minimum efficiency standards and testing procedures. EPCA requires the Commission to consider labeling requirements for any covered products for which DOE has prescribed a final test procedure.[3]

NAECA 87 also amended EPCA by adding definitions, in section 321,[4] for some of the products enumerated as "covered products" in section 322,[5] including a definition for water heaters that subdivided the category into three subcategories—storage-type units, instantaneous units, and heat pump units.[6] In 1989, DOE amended its definition for water heaters to be consistent with the NAECA 87 amendments,[7] and, in 1990, refined its test procedure for water heaters so it would apply to some (but not all) of the different kinds of instantaneous water heaters and heat pump water heaters that are currently being produced, as well as to storage-type units.[8] Previously, DOE's definition (and test procedure) for water heaters applied only to conventional storage-type heaters. The Commission's current labeling Rule, like the previous version of the DOE rule, defines water heaters only as storage-type units.[9] Thus, these other products did not come within the Rule's definition of water heater.

EPCA provides that, after DOE prescribes a final test procedure applicable to a product category covered under EPCA,[10] the Commission must initiate a proceeding to consider labeling requirements for that category. Because of DOE's publication of a final test procedure for pool heaters, the Commission commenced a proceeding to consider labeling rules for pool heaters. Further, because DOE amended its definition for water heaters in section 430.2 of Subpart A (General Provisions) of its rules,[11] to include instantaneous water heaters and heat pump water heaters, and amended Appendix E to Subpart B of Part 430—the test procedure for these products—so the energy usage of most of these new products can be determined, the Commission also initiated a proceeding to consider requiring labeling for these water heaters.

B. Regulatory History

On February 9, 1993, the Commission published a Notice of Proposed Rulemaking ("NPR") in the Federal Register soliciting comment on a proposal to require EnergyGuide labels on pool heaters, instantaneous water heaters, and heat pump water heaters.[12] As required by EPCA,[13] this rulemaking was conducted pursuant to section 553 of the Administrative Procedure Act ("APA").[14] Section 553(b)(3) of the APA provides the Commission with the option of publishing the substance of a proposed rule instead of specific proposed rule language. The Commission exercised this option and sought comment on the substance of the proposed amendments to the Rule, except for specific definitions for each of the proposed new product categories.

In accordance with EPCA,[15] the NPR afforded interested persons the opportunity to present their views in writing and orally at a public hearing. The Presiding Officer did not receive any requests for an oral presentation, so no hearing was held. During the comment period, which extended from February 9 through April 26, 1993, the Commission received eight comments.[16] These comments are from two appliance manufacturers, one appliance industry trade association, two public utilities, one utility trade association, one state energy office, and one public interest group.[17] Part II, below, discusses the issues on which comments were sought, the comments received, and the amendments the Commission is adopting today in response to them. The amended Rule sections appear in "Text of Amendments."

In the NPR, the Commission initially concluded that the provisions of the Regulatory Flexibility Act relating to an initial Regulatory Flexibility Act analysis were not applicable to the proceeding and that a regulatory analysis was not necessary because the amendments, if promulgated, would not have a significant economic impact on a substantial number of small entities. The NPR sought comment, however, on the effects of the proposed amendments on small businesses to assist the Commission in determining whether a final Regulatory Flexibility Act analysis was necessary.[18] The Commission also initially concluded that, although the proposed amendments would expand the Rule's existing recordkeeping and reporting requirements to include manufacturers of products not covered before, the effect would be *de minimis* because so few companies would be affected and the resulting increase in burden hours would be so small. The Commission decided, therefore, not to ask the Office of Management and Budget to adjust the clearance for the Rule under the Paperwork Reduction Act. To substantiate the accuracy of its reporting burden estimate, however, the Commission requested comment on the extent of the reporting burden associated with these amendments.[19] Parts III and IV, below, discuss the comments on these issues and the Commission's final determinations with respect to the requirements of the Regulatory Flexibility Act and the Paperwork Reduction Act, respectively.

[1] Pub. L. 100–12, 101 Stat. 103 (1987).

[2] Pub. L. 94–183, 89 Stat. 871, 42 U.S.C. 6291 *et seq.* (Dec. 22, 1975).

[3] 42 U.S.C. 6294(b)(1)(B).

[4] 42 U.S.C. 6291.

[5] 42 U.S.C. 6292.

[6] 42 U.S.C. 6291 (27).

[7] 54 FR 6062, 6075 (Feb. 7, 1989).

[8] 55 FR 42162, 42169–77 (Oct. 17, 1990).

[9] 16 CFR 305.3(d).

[10] 42 U.S.C. 6293(b) gives DOE the authority (1) to prescribe test procedures for new products, and (2) to amend existing test procedures if amended test procedures would more accurately or fully measure energy consumption.

[11] The applicable DOE rules are codified at 10 CFR Part 430 (1994). The language in § 305.3 of the Commission's Rule ("Description of covered products to which this part applies) is based on the definitions in § 430.2 of Subpart A of DOE's rules.

[12] 58 FR 7852.

[13] 42 U.S.C. 6306(a)(1).

[14] 5 U.S.C. 553.

[15] 42 U.S.C. 6306(a)(1).

[16] The comments are found on the Public Record at the FTC in Washington, D.C. under Rulemaking Record Number R611004 (Appliance Labeling Rule). They are grouped under Category E (Pool and Water Heater Proceeding—Industry Comments) and Category EE (Pool and Water Heater Proceeding—Comments from Other Sources). Other material submitted to the Public Record in this proceeding can be found under Category A (Public Notices and Petitions).

[17] The commenters were: Thermo-Dynamics Boiler Company ("Thermo"), E–1; Paloma Industries, Inc. ("Paloma"), E–2; The Gas Appliance Manufacturers Association ("GAMA"), E–3; Washington Gas, EE–1; The California Energy Commission ("CEC"), EE–2; The American Council for an Energy Efficient Economy ("ACEEE"), EE–3; The American Gas Association ("AGA"), EE–4; Arkansas Louisiana Gas Company ("ALG"), EE–5.

II. Discussion of Comments and Disposition of Issues

As discussed in more detail in Parts II.A and B, below, the NPR proposed definitions for each of the three product categories that are based on EPCA and/or Part 430 of the Code of Federal Regulations ("CFR"), which is the section of CFR in which DOE's test procedures are codified. In addition, the NPR solicited comment with respect to each category regarding: the feasibility of labeling the product; the appropriateness of the proposed definition; what energy usage descriptor to require on the labels; what subcategories, if any, to establish for purposes of ranges of comparability; and, what format to require for the labels.[20]

A. Pool Heaters

1. Feasibility of Labeling

The Commission is required to prescribe a labeling rule for the categories of products listed in EPCA,[21] which now include pool heaters, unless it determines that labeling the product is "not technologically or economically feasible."[22] The NPR asked for comment on this issue, emphasizing that the question was whether *labeling* pool heaters would be economically or technologically infeasible (as distinct from testing, which manufacturers and importers must do in order to comply with DOE's minimum efficiency standards program).[23]

Three comments addressed this issue. CEC stated that labeling these products is both economically and technologically feasible and that the value to consumers of the label information greatly outweighs the labeling cost to industry. CEC pointed out that manufacturers currently provide energy efficiency information on pool heaters to DOE and CEC, but not to the purchaser.[24] ACEEE and ALG also supported labeling requirements for pool heaters without elaboration.[25] The record does not indicate that labeling of pool heaters would be technologically or economically infeasible. Accordingly, the Commission has determined to amend the Rule to include labeling requirements for the pool heater category.

2. Definition for "Pool Heater"

The NPR explained that the EPCA/DOE definition of pool heaters is not limited to products of any particular fuel type.[26] The DOE test, however, covers only gas- and oil-fired products.[27] Although the majority of pool heaters are currently gas-fired (with some oil-fired), electric resistance and heat pump pool heaters are also being manufactured. Because the DOE test covers only gas- and oil-fired pool heaters, the NPR proposed amending the Rule to cover only these two types of products. The Rule's coverage is necessarily limited by the definitions and test procedures in Subpart B of DOE's rules (*i.e.*, in the absence of a DOE test procedure for determining energy usage, compliance with the Rule is impossible). The NPR proposed, therefore, adopting the EPCA/DOE definition of "pool heater" along with a proviso stating that the Rule's scope is limited to those products within the definition for which there is a DOE-prescribed test for measuring energy usage.

Two comments addressed the proposed definition. ACEEE stated that the Commission's adoption of the definition in section 430.2 of DOE's rule with the proposed proviso would be acceptable.[28] CEC agreed that the Rule should be amended to include the language in section 430.2, but opposed the addition of the proviso, stating that DOE has developed, but not yet published, an all-inclusive test method, and that the American Society of Heating, Refrigerating and Air-Conditioning Engineers ("ASHRAE") has appointed a committee to develop a test for gas, oil, electric, and heat pump pool heaters.[29]

The Commission has determined to amend the Rule to include the definition of pool heaters as that term is defined in EPCA and by DOE (in section 430.2 of Subpart A). The definition is followed by a proviso stating that the Rule's application is limited to those products for which there is a DOE-prescribed test. See section 305.3(o) in "Text of Amendments," below. The Commission recognizes, as CEC pointed out, that there may eventually be a test procedure for all types of these products. However, the Commission's authority here to require labels is limited to products for which DOE has published final test procedures. If DOE amends the test procedure to include electric resistance and/or heat pump pool heaters, the Commission will then initiate a rulemaking proceeding to consider whether the Rule should be amended to cover those products.

3. Energy Usage Descriptor

EPCA requires that labels on covered products disclose estimated annual operating cost, as determined by DOE test procedures, unless DOE determines that disclosure of estimated annual operating costs is not technologically feasible, or the Commission determines that such disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible. In this event, the Commission shall require disclosure of a different useful measure of energy consumption, again determined in accordance with

[18] See 58 FR 7855.

[19] *Id.*

[20] As is discussed in the sections below on each category, the NPR also solicited comment on some issues that were specific to one category only.

[21] 42 U.S.C. 6294(a)(1) and (b)(5); 42 U.S.C. 6292(a).

[22] 42 U.S.C. 6294(a)(1). During the original rulemaking, the Commission determined that clothes dryers, television sets, kitchen ranges and ovens, humidifiers and dehumidifiers, and home heating equipment other than furnaces should be exempted from the requirements of the Rule on this basis and, in some cases, because labeling them would not assist consumers in making purchasing decisions. 44 FR 66466, 66467–69 (Nov. 19, 1979). This second criterion for exemption provided by EPCA relates only to a few products. Pool heaters are not among them. 42 U.S.C. 6294(a)(2).

[23] See 10 CFR 430.62.

[24] CEC, EE–2, 2.

[25] ACEEE, EE–3, 1; ALG, EE–5, 1.

[26] See 58 FR 7853. Section 321(a)(25) of EPCA (42 U.S.C. 6291(a)(25)) defines "pool heater" as follows: "The term 'pool heater' means an appliance designed for heating nonpotable water contained at atmospheric pressure, including heating water in swimming pools, spas, hot tubs and similar applications."

[27] Although DOE uses the EPCA definition of pool heater in its regulations at 10 CFR 430.2, and in its test procedure for pool heaters (Appendix P to Part 430 of 10 CFR), the procedure pertains only to gas- and oil-fired heaters.

[28] ACEEE, EE–3, 1.

[29] CEC, EE–2, 2, 4.

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DOE test procedures.[30] Labels also must disclose the range of estimated annual operating costs, or the alternate measure of energy consumption required for those covered products.[31]

A disclosure of estimated annual operating cost is not appropriate, however, for all product categories. For example, three product categories (room air conditioners, furnaces, central air conditioners) have usage cycles that depend on disparate climate conditions across the United States. In past rulemaking proceedings, the Commission has determined for these products that "average" energy cost would not be likely to assist consumers in making purchasing decisions. Therefore, the required disclosure on labels for these products is an energy efficiency rating ("EER").[32] The corresponding cost information also must be disclosed on the label for room air conditioners, and on fact sheets or in an industry directory for furnaces and central air conditioners.

The energy efficiency measurement in EPCA that applies to pool heaters is "thermal efficiency."[33] This measurement is also the energy usage descriptor that is derived from the DOE test procedure.[34] The current DOE test has no methodology for deriving estimated annual operating cost or any energy usage measurement other than thermal efficiency. To obtain information about what possible current or future disclosures may be appropriate for labels on pool heaters, the NPR solicited comment on whether the measure of energy consumption to be disclosed on pool heater labels should be thermal efficiency, without additional cost information, or whether it should be some other disclosure. Because DOE might amend its test procedure to include a way to measure annual energy consumption (and, therefore, cost), the NPR also asked whether it would be technically or economically feasible to disclose estimated annual operating cost, and whether operating cost information would be likely to assist consumers in making purchasing decisions.[35]

There was little agreement on these issues among the four comments that addressed them. Washington Gas stated that estimated annual operating cost is difficult to measure because the usage of pool heaters varies from region to region and depends on consumers' preferences. It recommended requiring a disclosure of hourly energy consumption along with thermal efficiency for comparison with other heaters.[36] CEC recommended requiring a disclosure of both thermal efficiency and estimated annual operating cost. AGA and ALG favored the disclosure of estimated annual operating cost.[37] Both expressed concern that thermal efficiency alone could mislead consumers because the different costs of operation between fuels would not appear on the label.[38]

As noted above, the DOE test for pool heaters does not currently contain a final procedure for measuring estimated annual operating cost for these products, so the Commission cannot now require disclosure of operating cost. In the absence of such a procedure, the Commission determines that the most useful information available for consumers is thermal efficiency. Accordingly, the Commission amends the Rule to require that thermal efficiency be disclosed as the energy usage descriptor for these products. See sections 305.2(i) and 305.11(a)(5)(ii)(C)–(E) and (G) of "Text of Amendments," below. If, and when, DOE amends its test procedure to contain provisions for the determination of estimated annual operating cost, the Commission might consider amending the Rule to require the disclosure of estimated annual operating cost.

4. Sub-Categories for Ranges of Comparability

Under the Rule, each required label on a covered appliance must show, in addition to the energy usage of the appliance itself, a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. To accomplish this, the Rule contains appendices that list sub-categories for each product category divided by fuel type and capacity groupings.[39]

NAECA 87 established a minimum efficiency standard for pool heaters, but it did not create any size or capacity sub-category beyond "pool heaters."[40] The DOE standard also does not create sub-categories.[41] The NPR solicited information on whether, for purposes of ranges of comparability under the Commission's Rule, there should be one category encompassing both fuel types, or two categories, one for each of the two fuel types—oil-fired and gas-fired models—for which there is currently an applicable DOE test procedure.

One comment addressed this question. CEC suggested that gas- and oil-fired pool heaters are sufficiently similar to be included in one group.[42] The Commission agrees that gas- and oil-fired pool heaters are similar from a minimum efficiency standards perspective (the standard is the same for both—a thermal efficiency of no less than 78%). However, since 1980, the Commission has grouped products by different fuel types for purposes of the ranges of comparability. The Commission finds that this is the clearest and most informative way of presenting the ranges to consumers. Accordingly, the Commission amends the Rule to include separate ranges of comparability for gas-fired and oil-fired pool heaters. See revised Appendices J1 and J2 in "Text of Amendments," below.

[30] 42 U.S.C. 6294(c). For most product categories, the Rule originally required that estimated annual operating costs in dollars, and related information, be disclosed on labels and in retail sales catalogues. The Commission recently amended the Rule, however, to require an energy consumption figure (KWH per year for electrically-fueled products, therms per year for gas-fueled products, and gallons per year for oil- and propane-fired products) for the products that originally had to bear labels disclosing estimated annual operating cost. See 59 FR 34014 (July 1, 1994).

[31] 42 U.S.C. 6294(c)(1)(B).

[32] See 44 FR 66466, 66470 (Nov. 19, 1979: furnaces and room air conditioners); 52 FR 46888, 46889 (Dec. 10, 1987: central air conditioners). When promulgating the test procedures, DOE, as required by EPCA, developed two measures of energy consumption for each appliance category: (1) Estimated dollar cost of operation, and (2) the energy factor, a measure of the useful output of an appliance's services divided by the energy input. For climate control equipment, under the Commission's Rule, the energy factor must be an energy efficiency rating. The acronyms used in the DOE tests and by the industry ("EER" for room air conditioners, "SEER" for central air conditioners and the cooling function of heat pumps, "AFUE" for furnaces, and "HSPF" for the heating function of heat pumps) must be used in advertising and on fact sheets and labels.

[33] 42 U.S.C. 6291(a)(26). "The term 'thermal efficiency of pool heaters' means a measure of the heat in the water delivered at the heater outlet divided by the heat input of the pool heater as measured under test conditions specified in section 2.8.1 of the American National Standard for Gas Fired Pool Heaters, Z21.56–1986, or as may be prescribed by the Secretary [of DOE]." The thermal efficiency rating is expressed as a percent.

[34] See Appendix P to Part 430 of 10 CFR

[35] On August 23, 1993, DOE proposed amending Appendix P to Part 430 of 10 CFR [the pool heater test procedure] to include procedures to measure annual energy consumption. An annual energy consumption figure would enable manufacturers to calculate estimated annual operating cost. See 58 FR 44538 at 44571. See also 59 FR 10464, 10519 (March 4, 1994).

[36] Washington Gas, EE–1, 1.

[37] CEC, EE–2, 3.

[38] AGA, EE–4, 2–4; ALG, EE–5, 1.

[39] For example, water heaters are divided into four sub-categories by fuel—natural gas, propane, electric, and oil. Each of these sub-categories is further divided into increments of capacity expressed in first hour ratings. Thus, a label on a gas-fired water heater with a first hour rating of 37 gallons will disclose the range of energy usage of all gas-fired water heaters with first hour ratings of between 35 and 40 gallons.

[40] See 42 U.S.C. 6295(e)(2).

[41] See 10 CFR 430.32(k).

[42] CEC, EE–2, 2–3.

5. Label Format

The Commission recognizes that pool heaters are sometimes not seen by consumers before purchase. They are often purchased as the result of a pool installation professional's recommendation and are ordered from industry brochures or specification sheets. The NPR, therefore, solicited comment on whether amendments requiring labels for pool heaters should require a "conventional" product-specific label approach for these products or another labeling format. "Conventional" product-specific labels contain all the required energy use information and are used for refrigerators, refrigerator-freezers and freezers, water heaters, dishwashers, clothes washers, and room air conditioners.[43] The NPR also asked for comment on whether it would be more useful to require that pool heaters be labeled with a label like the one required for central air conditioners. For these products, the Commission requires a product-specific label, but with only some of the required energy usage information. Other required information must be disclosed on separate fact sheets or in an industry-produced directory.[44]

Two comments addressed the issue of label type and format. CEC favored a conventional label for pool heaters.[45] ACEEE suggested a simplified label with a requirement for disclosure of comprehensive information on a fact sheet, in an industry directory, or in marketing materials.[46] As discussed in Part II.A.3, above, the only measure of energy usage that can be derived through the current DOE test for these products is thermal efficiency. Therefore, requiring manufacturers to disclose "other information" through other formats would be inappropriate. Moreover, without a method for determining estimated annual operating cost, the Commission cannot require the "Operating Cost Statement" that is standard on "conventional" labels. Consequently, the Commission is amending the Rule to require that labels for pool heaters disclose the thermal efficiency of the product in the format of the "conventional" label for room air conditioners, but without the "Operating Cost Statement." See the Sample Label for pool heaters in "Text of Amendments," below.

B. Instantaneous Water Heaters and Heat Pump Water Heaters

Instantaneous water heaters heat water as it is needed, rather than heating it in a tank and keeping it hot while storing it. An advantage to this approach to water heating is that there is no standby loss with the associated increased cost and loss of efficiency.[47] Instantaneous water heaters can heat water by means of oil, natural gas, or electric resistance, although there are few, if any, oil-fired instantaneous water heaters in production. The DOE test procedure presently contains test methodologies only for gas- and oil-fired models and not for electric.[48]

Heat pump water heaters are similar to small room air conditioners. They extract heat from the air around them but, instead of exhausting it to the outside, they use the heat to increase the temperature of the water in a conventional storage tank. They exhaust the resulting cool air into the surrounding area.

1. Feasibility of Labeling

The NPR asked whether labeling (as distinct from testing) instantaneous and heat pump water heaters would be economically or technologically infeasible.[49] Five comments addressed this issue. Washington Gas recommended deferring consideration of labeling heat pump water heaters until more information is available on the effects that the climate conditioning of the space around the heat pump water heater have on the product's energy consumption.[50] The other four comments favored requiring EnergyGuide labels on both types of water heaters.[51] GAMA repeated its consistent position that labeling of all water heaters, including instantaneous water heaters and heat pump water heaters, is not technologically infeasible, but is of little benefit to consumers because water heaters are not usually purchased off a showroom floor. GAMA acknowledged, however, that if the requirement to label storage water heaters is to continue, then instantaneous water heaters and heat pump water heaters also should be labeled.[52] CEC, ACEEE, and ALG all favored a labeling requirement for both types of water heaters without qualification.[53]

The record does not indicate that labeling for these products is technologically or economically infeasible. Most comments instead favored treating these water heaters like the type already covered by the Rule. Accordingly, the Commission amends the Rule to require EnergyGuide labels for instantaneous water heaters and heat pump water heaters. See section 305.3(d) of "Text of Amendments," below.

2. Revised Definition of "Water Heater," Including Definitions for Instantaneous Water Heaters and Heat Pump Water Heaters

The NPR proposed amending the Rule to include the definitions for instantaneous water heater and heat pump water heater that appear in section 430.2 of DOE's rule, but with a proviso, like the one proposed for pool heaters, stating that the Rule's requirements are limited to those products for which there are DOE-prescribed test procedures.[54] The definition in section 430.2 of DOE's rule is supplemented in the test procedure portions of DOE's rule (Appendix E to Subpart B of 10 CFR Part 430). In the NPR, the Commission reasoned that the proposed approach would allow the

[43] See 16 CFR 305.11(a)(5). The required information includes: the name of the manufacturer, the model number and capacity of the product, the energy consumption of the product, the appropriate range of energy usage for similarly sized products, a statement that the information is based on U.S. government tests, and a statement disclosing cost of operation based on a national average utility rate.

[44] 16 CFR 305.11(a)(5)(iii) and (c). The label on the product discloses the energy efficiency of the labeled unit and the range of efficiencies for all similar products, and it directs consumers to ask for further information on fact sheets or in directories. The fact sheets and directories must disclose information on cost of operation. In recent amendments to the Rule the Commission also adopted this disclosure approach for furnaces. See 58 FR 34014, 34016 (July 1, 1994).

[45] CEC, EE–2, 3.

[46] ACEEE, EE–3, 1.

[47] Standby loss refers to the energy that is used to keep water hot in the storage tank of a storage type water heater while hot water is not being used.

[48] See 10 CFR Part 430, Subpart B, Appendix E. If DOE were to prescribe a test procedure for electric instantaneous water heaters, the Commission would initiate a rulemaking proceeding to consider labeling them.

[49] See 58 FR 7856.

[50] Washington Gas, EE–1, 1. Because the DOE test is conducted in a controlled environment that requires a constant temperature for the space in which the heat pump water heater operates, this consideration, while relevant to the issue of the product's energy usage in actual service, is not relevant to the values that will appear on the EnergyGuide labels, which are for comparing the energy usage of competing products, not disclosing actual energy usage in the home.

[51] GAMA, E–3, 2, 3; CEC, EE–2, 4, 6; ACEEE, EE–3, 2; ALG, EE–5, 1.

[52] GAMA, E–3, 2, 3. In its recent review of the Rule, the Commission considered and rejected GAMA's suggestion to repeal labeling of water heaters. See 58 FR 34014, 24 (July 1, 1994).

[53] CEC, EE–2, 4, 6; ACEEE, EE–3, 2; ALG, EE–5, 1. CEC said, "Labeling of [instantaneous water heaters and heat pump water heaters] is both economically and technologically feasible. It has been done for storage water heaters for many years. It is only fair for it to be required for other types of water heaters."

[54] See 58 FR 7853–54. The proposed definition would replace the definition of "water heater" currently in the Commission's Rule at 16 CFR 305.3(d)(1–3).

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Commission to avoid repeating the definition limitations in DOE's Appendix E to Subpart B, as well as limitations inherent in the way the test procedure itself is written (for example, by the fact that the DOE test procedure presently does not contain a procedure for measuring the energy usage of electric instantaneous water heaters.)[55]

Five comments addressed the proposed definition. ACEEE stated that the Commission's adoption of the definition in section 430.2 of DOE's rule with the proposed proviso would be acceptable.[56] GAMA also favored adopting the section 430.2 definition and proviso.[57] CEC stated that the Rule should be amended to include the language in section 430.2, but opposed the addition of the proviso, stating that DOE has developed, but not yet published, an all-inclusive test method.[58] Paloma requested the Commission to adopt the definition for gas instantaneous water heaters from Appendix E rather than from section 430.2, because the Appendix E definition limits the size of the products to be covered.[59] Washington Gas stated that instantaneous water heaters are used with and without a storage tank, and that the minimum flow rate of an instantaneous water heater should be defined if it is to be used without a storage tank.[60]

As with pool heaters, the Commission finds that the EPCA/DOE definition for these products appropriately describes the product to be covered by the labeling requirements. Therefore, the Commission amends the Rule to include the definition of water heaters as they are defined in EPCA and by DOE (in § 430.2 of Subpart A). The definition is followed by a proviso stating that the Rule's application is limited to those products for which there is a DOE-prescribed test. See section 305.3(d) in "Text of Amendments," below.

As with pool heaters, the Commission believes that a proviso of this type is more efficient than repeating, in the Rule's product definition, the further exceptions and limitations in the Appendix E definitions and/or the test procedure.[61] Products not covered by the DOE test because of the limitations in the Appendix E definitions cannot be tested. To comply with the Commission's Rule, a manufacturer must be able to measure a product's energy usage in accordance with the appropriate DOE test procedure.[62] Identifying specific limitations to the general definition in the Commission's Rule based on section 430.2 of DOE's rule is not necessary because manufacturers are on notice that water heaters excluded from DOE test coverage do not have to be labeled under the Commission's Rule.

3. Energy Usage Descriptor

The NPR asked whether the energy usage of instantaneous and heat pump water heaters should be expressed as an estimated annual operating cost, as it was at that time for conventional water heaters, or whether their energy usage should be expressed as an energy factor. The NPR also asked whether it would be technically or economically feasible to disclose estimated annual operating cost, or whether operating cost would not be likely to assist consumers in making purchasing decisions.[63]

Six comments addressed the issue of which energy usage descriptor to require on labels for these two types of water heaters. Paloma, commenting only on instantaneous water heaters, recommended that the Rule require the disclosure of an energy factor for gas instantaneous water heaters.[64] Washington Gas suggested the disclosure of estimated annual operating cost for both types of water heaters, but with special considerations that are not contemplated by the DOE test procedure.[65]

The four other comments addressed both categories. GAMA and ACEEE stated that the same descriptor should be required for instantaneous water heaters and heat pump water heaters that is required for storage water heaters.[66] AGA commented that, if pool heaters, instantaneous water heaters, and heat pump water heaters are to be labeled, the required disclosure should be the estimated annual operating cost.[67] CEC recommended that the Commission require energy factor, annual energy consumption, and annual cost of operation disclosures. CEC stated that the energy factor is needed because this is the measure upon which utility incentive programs are based, and that annual energy consumption and annual cost of operation are needed "to fulfill FTC's Congressional mandate."[68]

The Commission agrees with GAMA and ACEEE that the energy usage of instantaneous and heat pump water heaters should be expressed with the same descriptor (estimated annual energy consumption) that is used to disclose the energy usage of the storage-type water heaters currently covered by the Rule. This permits consumers to compare the energy usage of the various types of water heaters that could fulfill their needs. Accordingly, today's amendments will incorporate instantaneous water heaters and heat pump water heaters into the existing requirements to disclose estimated annual energy consumption. See section 305.3(d) of "Text of Amendments," below.

4. Sub-categories for Ranges of Comparability

The NPR solicited comment about whether to include instantaneous water heaters in the three existing water heater ranges (one range each for electric, gas (including propane) and oil water heaters), or to establish a separate range category. The current ranges of comparability for water heaters are categorized on the basis of first-hour rating.[69] Under the DOE test, there is a method for calculating the equivalent of a first-hour rating for instantaneous water heaters. Therefore, these products could be included in the existing ranges and could be considered with conventional water heaters for range purposes. Because they have no storage tanks, however, and are different from conventional water heaters, the NPR sought public comment on whether a separate category would be more helpful to consumers than including these products in the existing water heater ranges.

The DOE test also contains a provision by which a first-hour rating for heat pump water heaters can be calculated. Like instantaneous water heaters, therefore, heat pump water heaters could be included in the conventional water heater ranges. The NPR sought comment on whether it would be more helpful to consumers to include heat pump water heaters with conventional water heaters or to create a separate range category for them.

Four commenters addressed the issue of range subcategories for these products. Paloma contended that gas instantaneous water heaters are so different from storage-type water heaters that they should be in a separate range category.[70] GAMA and ACEEE stated, without elaboration, that instantaneous water heaters should be in the same range category as conventional storage water heaters.[71] ACEEE thought that heat pump water heaters should be in the same range category as storage-type water heaters, but GAMA and CEC disagreed, recommending that they be in a separate range category.[72]

The Commission is creating separate sub-categories for each of these two types of water heaters, rather than including them in the existing ranges of comparability for water heaters. As noted in the comments, the technology of instantaneous and heat pump water heaters is different from that of storage-type water heaters. In addition, it is not likely that homeowners would substitute these new types of products "one-to-one" for conventional, storage-type units.[73] The Commission has determined that it would be helpful for consumers looking for alternatives to conventional storage-type water heaters to have products using different technologies grouped separately. Accordingly, the Commission has determined to amend the Rule to create three new range sub-categories—one each for gas instantaneous water heaters (natural gas and propane), oil instantaneous water heaters, and heat pump water heaters. See Appendices D4–D6 in "Text of Amendments," below.

5. Label Size and Format for Instantaneous Water Heaters

The NPR noted that, because the physical size of gas-fired instantaneous water heaters (they are often no larger than one to three cubic feet) is usually significantly smaller than most storage-type water heaters, the currently required 5 and 5/16 inches by 7 and 3/8 inches label could be too large to fit on some of the smaller models.[74] There is also the possibility that the surface temperature of the products could affect label adhesion. The NPR requested comment on whether the EnergyGuide label currently required for water heaters is appropriate for instantaneous water heaters and, if not, what would be better.[75]

Four comments responded to this request. Paloma contended that labeling on the front jacket of instantaneous water heaters is impossible because of the room taken up by other required labels and is, therefore, technologically infeasible. Paloma also contended that, because of the product's surface temperature, a paper label would be inappropriate. Paloma concluded that, under the circumstances, an aluminum label with special adhesive would be necessary, which would be an economic burden. Paloma recommended, therefore, a tag-type label.[76] GAMA and CEC stated that the conventional label that is currently required would be appropriate for most models. Both commented that the issue of surface temperature is irrelevant because EnergyGuides are required on products only until they are sold, which would be before the water heater was fired for the first time. GAMA recommended allowing a hang-tag type label, as did Washington Gas.[77]

The Commission agrees with the comments that both conventional label types (*i.e.*, paper, rather than aluminum) and hang-tag type labels will be appropriate for instantaneous water heaters. Hang-tags may be preferable in some instances, such as when the instantaneous heater is too small to accommodate conventional labels. Section 305.11(a)(7) of the Rule currently allows for the use of hang-tags as long as they are affixed in such a way that they will be prominent to a consumer examining the product. Therefore, the Rule permits manufacturers of instantaneous and heat pump water heaters to exercise the hang-tag option.

6. Disclosure of Tank Size on Label for Heat Pump Water Heaters

Heat pump water heaters are marketed in two ways. They can be sold as an integral unit that includes the heat pump and the storage tank, or they can be sold without a tank and hooked up

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[55] 58 FR 7854.

[56] ACEEE, EE–3, 2.

[57] GAMA, E–3, 1.

[58] CEC, EE–2, 2, 4. The referenced proposed test method was announced by DOE on August 23, 1993, at 58 FR 44538, 44547–48, 44571, along with proposed modifications to the test procedures for furnaces and vented home heating equipment. DOE sought comment on a new "annual efficiency" energy descriptor, which would be in addition to the current thermal efficiency descriptor and which would measure pilot light usage and electrical consumption. DOE also sought comment on procedures that would facilitate an estimation of annual operating cost for pool heaters (see also note 35). These proposed modifications to the DOE test procedure for pool heaters were referenced in a subsequent DOE proposal to amend the minimum efficiency standard for pool heaters. 59 FR 10464, 10519–21 (March 4, 1994).

[59] Paloma, E–2, 1.

[60] Washington Gas, EE–1, 1. Because instantaneous water heaters are not tested under the DOE test procedure with a storage tank, the Rule will not address this issue.

[61] Again, because the definitions that create the further limitations in the test procedures are revised by DOE more often than the § 430.2 definitions, the Commission definitions may become obsolete and the Commission would have to amend the Rule frequently to comport with any DOE revisions.

[62] See 42 U.S.C. 324(c)(1)(A).

[63] 58 FR 7856. Since the NPR was published, the Commission, in a recent proceeding involving comprehensive amendments to the Rule, amended the disclosure requirements for water heaters from a disclosure of estimated annual operating cost and a cost grid to a disclosure of estimated annual energy consumption with an "operating cost disclosure statement." See 58 FR 34014, 34022–23 (July 1, 1994).

[64] Paloma, E–2, 3–4. Paloma explained that its gas-fired instantaneous water heaters could be operated with a continuously-burning pilot or with the consumer igniting the pilot each time hot water is required. Paloma requested that the Rule allow for disclosure on labels of the product's energy factor when the pilot is left on and when the pilot burns continuously. According to DOE engineering staff, the DOE water heater test is set up to provide only one measurement of energy usage—the energy usage of the product when it is set up to operate. For the test to measure energy usage of a water heater in both of two possible modes of operation, DOE would have to consider an amendment proceeding. The Commission's Rule can only require disclosure of DOE-test-derived information. Therefore, the Commission does not have the discretion to adopt Paloma's suggestion.

[65] Washington Gas, EE–1, 1. Stating that instantaneous water heaters are used with and without a storage tank, Washington Gas recommended requiring disclosure of the estimated annual operating cost for these products for use with and without a storage tank. Because the DOE test for instantaneous water heaters is not conducted with storage tanks, however, the Commission cannot require this type of disclosure. See note 60, above. Washington Gas also suggested that the estimated annual operating cost of heat pump water heaters be adjusted according to the change in the energy consumed in conditioning the space around the product. Again, because the DOE test is conducted in a constant environment and does not allow for this type of measurement, the Commission does not have the discretion to adopt this suggestion. See note 50, above.

[66] GAMA, E–3, 2, 3–4. At the time the NPR was published, energy usage descriptor for water heaters was estimated annual operating cost. The NPR proposed the disclosure of either estimated annual operating cost or energy factor for instantaneous water heaters. GAMA, therefore, envisioned the choice as between energy factor and estimated annual operating cost. ACEEE, EE–3, 2, 3. ACEEE assumed that heat pump water heaters would be disclosing estimated annual-operating cost in this case, but did not make this assumption for instantaneous water heaters. As of December 28, 1994, however, the required disclosure of energy usage for water heaters will be the estimated annual energy consumption with an "operating cost disclosure statement." See Note 63, above.

[67] AGA, EE–4, 2–4.

[68] CEC, EE–2, 5, 7.

[69] The DOE test defines "First Hour Rating" as the amount of hot water the water heater can supply in one hour of operation. See 10 CFR part 430, subpart B, Appendix E, 1.5.

[70] Paloma, E–2, 4.

[71] GAMA, E–3, 2; ACEEE, EE–3, 2.

[72] ACEEE, EE–3, 3; GAMA, E–3, 3–4; CEC, EE–2, 7.

[73] For example, heat pump water heaters do not recover (reheat water after being drained of heated water) as quickly as comparably-sized storage-type models, and instantaneous water heaters are more limited than comparable storage-type models as to how much hot water they can provide per unit of time (*e.g.*, gallons per minute). Moreover, an instantaneous water heater which would (be gas-fired) that would be large enough to serve a small house would be disproportionately expensive to purchase when compared to comparable storage-type models. Thus, it is not likely that homeowners would substitute these new types of products "one-to-one" for conventional, storage-type units. This approach to ranges of comparability for the newly covered water heaters is consistent with the separate range groupings the Commission currently uses for home heating equipment; *i.e.*, forced-air furnaces and boilers are separate sub-categories within the furnace category. See 59 FR 34014, 34042–49 (July 1, 1904).

[74] Gas-fired instantaneous water heaters are usually larger than electric models, and some larger models could be used for whole-house applications in small houses. Electric instantaneous water heaters (for which labeling rules were not proposed in the NPR) are usually small and for limited point-of-use, as for a particular sink or shower.

[75] 58 FR 7854.

[76] Paloma, E–2, 2.

[77] GAMA, E–3, 2 (GAMA also recommended allowing the option of hang-tags for heat pump water heaters); CEC, EE–2, 5; Washington Gas, EE–1, 1.

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with an existing water heater with the conventional heating system shut off. For those instances in which the heat pump water heater is sold without a tank, the DOE test calls for measurement of energy use with the heat pump water heater connected to a 47-gallon capacity storage tank. Thus, even when no tank is to be sold with the heat pump water heater, manufacturers will be able to determine the energy use figure to put on the label for comparative shopping purposes. The product's efficiency, however, could be affected by the size of the tank with which it is coupled. The NPR solicited comment, therefore, on whether the label should include a statement that determination of the heat pump water heater's efficiency is based on use with a 47-gallon tank and that its efficiency in the home may vary according to the size of the storage tank to which it is connected.

Two comments addressed this issue. CEC stated that the statement that the efficiency of heat pump water heaters could be affected by the size of the tank with which it is coupled is only necessary in the case where the manufacturer does not supply the tank. CEC recommended that, in this case, the label should identify the size of the tank assumed for purposes of determining the energy factor.[78] GAMA stated that the *standby loss* of the tank, not its *size*, is what is relevant. Thus, heat pump water heater labels should not state that the efficiency of the water heater could be affected by the size of the tank with which it is coupled. GAMA also contended that, given the limited ranges of sizes and standby losses of tanks coupled with heat pump water heaters, such a statement on the EnergyGuide would not be worthwhile from a consumer benefit standpoint.[79]

The Commission agrees with GAMA that the effect on energy consumption will not be significant enough to require a disclosure on the EnergyGuide label. Thus, the Commission has determined not to require the statement described above concerning tank size.

III. Regulatory Flexibility Act

In the NPR, the Commission concluded that the provisions of the Regulatory Flexibility Act relating to an initial Regulatory Flexibility Act analysis are not applicable because the Commission has determined that the amendments "will not have a significant economic impact on a substantial number of small entities."[80] In the NPR, the Commission initially concluded that not many companies produce pool and spa heaters. The Commission stated that it had learned that most producers are not "small entities" as that term is defined in section 601 of the Regulatory Flexibility Act and in the regulations of the Small Business Administration, found in 13 CFR 121.[81] The Commission also stated that the market for heat pump water heaters is small, and that only a few companies, two of which are large entities, produce these products at present.[82] The Commission noted that most instantaneous water heaters are produced abroad, and are imported by a very small number of small-sized importing firms.[83]

Because it appeared to the Commission that the amendments were not likely to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act and the rules implementing it, the Commission concluded that a regulatory analysis was not necessary. The Commission, however, requested information in the NPR about the impact of the amendments on small entities to determine whether a final regulatory analysis was necessary.[84]

No comments provided information about the effect of the amendments on small entities. Two comments, however, provided information on the numbers of entities involved in the manufacture or importation of pool heaters, instantaneous water heaters, and heat pump water heaters.[85] According to these comments, there are six companies that produce pool heaters, twelve that either manufacture (at least three are foreign) or import instantaneous water heaters, and four that produce heat pump water heaters. Two of these companies make products in more than one category, so there are 20 companies in all. The Commission has determined that four of these 20 entities are "small," as defined in the Small Business Administration's Size Standards.[86] Of the other 16, the Commission has determined that seven are not "small." The Commission has not been able to determine the size of the remaining nine.[87]

The Commission has no reason to believe that the amendments will have a substantial impact on a significant number of small entities. In light of this, the Commission concludes that the preparation of a final regulatory flexibility analysis is not necessary. Accordingly, the Commission certifies, under Section 605 of the Regulatory Flexibility Act,[88] that the amendments announced today will not have a significant impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The Rule contains reporting and recordkeeping requirements that constitute "recordkeeping" requirements as defined by 5 CFR 1320.7(c), the regulation that implements the Paperwork Reduction Act ("PRA").[89] The NPR stated that the proposed amendments would expand the Rule's existing recordkeeping and reporting requirements to include manufacturers of products not previously covered. The NPR noted, however, that manufacturers would not have to maintain records beyond what they must already do in the ordinary course of business to comply with the reporting and recordkeeping requirements of DOE's minimum efficiency standards program. In addition, although the affected companies would have to report annually to the Commission the energy usage of the covered products they manufacture or import, the Commission estimated that no more than 50 companies would be affected, and that it would take each company fewer than 10 hours to comply. Because the resulting increase in burden hours would be *de minimis*, the NPR stated that the Commission would not request that the Office of Management and Budget ("OMB") adjust the existing clearance for the Rule under the Paperwork Reduction Act. To substantiate the accuracy of the Commission's reporting burden estimate, however, the NPR requested comment on the extent of the reporting burden associated with these amendments.

The only comment in response to this request was from CEC. CEC stated that manufacturers currently provide details of all models they sell to CEC, and that CEC is prepared to act as third-party certifier to the Commission at no charge to manufacturers. CEC therefore contended that manufacturers would not have to incur additional time or cost in reporting to the Commission.[90]

Since the NPR was published, the Commission initiated a proceeding to determine the manner and form of labeling plumbing products to disclose their water usage.[91] In the section of the **Federal Register** notice in that proceeding discussing the applicability of the Paperwork Reduction Act to the proposed amendments, the Commission stated that the recordkeeping and reporting requirements of the Rule and the proposed amendments were being submitted to OMB and referred to a Notice of Application to OMB under the Paperwork Reduction Act that accompanied the notice.

In the referenced Notice of Application, the Commission requested OMB clearance for the plumbing products amendments and for the amendments proposed in the NPR in the instant proceeding as well. This clearance request was published in the **Federal Register** for comment.[92] This notice stated that the Commission estimated in the NPR that no more than 50 companies would be affected. Further, whatever amendments the Commission adopted would increase the information collection burden by no more than 500 hours. Adding this figure to the estimated additional burden resulting from the plumbing products amendments, the Commission estimated that the total increase in the information collection burden of the Appliance Labeling Rule would be 1,000 hours.

Neither the Commission nor OMB received comments on the application. On July 1, 1993, OMB approved the request and assigned control number 3084–0068 to the information requirements.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 16 CFR is amended as follows:

PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCES AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT ("APPLIANCE LABELING RULE")

1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Section 305.2(i) is revised to read as follows:

§ 305.2 Definitions.

* * * * *

(i) *Energy efficiency rating* means the following product-specific energy usage descriptors: *annual fuel utilization efficiency (AFUE)* for furnaces; *energy efficiency ratio (EER)* for room air conditioners; *seasonal energy efficiency ratio (SEER)* for the cooling function of central air conditioners and heat pumps; *heating seasonal performance factor (HSPF)* for the heating function of heat pumps; and, *thermal efficiency (TE)* for pool heaters, as these descriptors are determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293). These product-specific energy usage descriptors shall be used in satisfying all the requirements of this part.

* * * * *

3. In § 305.3, paragraph (d) is revised and paragraph (o) is added, to read as follows:

§ 305.3 Description of covered products to which this part applies.

* * * * *

(d)(1) *Water heater* means a product which utilizes oil, gas, or electricity to heat potable water for use outside the heater upon demand, including—

(i) Storage type units which heat and store water at a thermostatically controlled temperature, including gas storage water heaters with an input of 75,000 Btu per hour or less, oil storage water heaters with an input of 105,000 Btu per hour or less, and electric storage water heaters with an input of 12 kilowatts or less;

(ii) Instantaneous type units which heat water but contain no more than one gallon of water per 4,000 Btu per hour of input, including gas instantaneous water heaters with an input of 200,000 Btu per hour or less, oil instantaneous water heaters with an input of 210,000 Btu per hour or less, and electric instantaneous water heaters with an input of 12 kilowatts or less; and

(iii) Heat pump type units, with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, which are products designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all ancillary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function.

(2) The requirements of this Part are limited to those water heaters for which the Department of Energy has adopted and published test procedures for measuring energy usage.

* * * * *

(o) *Pool heater* means an appliance designed for heating nonpotable water contained at atmospheric pressure, including heating water in swimming pools, spas, hot tubs and similar applications. The requirements of this part are limited to those pool heaters for which the Department of Energy has adopted and published test procedures for measuring energy usage.

* * * * *

4. In § 305.4, paragraphs (e)(2) and (3) are revised to read as follows:

§ 305.4 Prohibited acts.

* * * * *

(e) * * *

(2) Any covered product, other than central air conditioners, pulse combustion and condensing furnaces, fluorescent lamp ballasts, showerheads, faucets, water closets, urinals, pool heaters, instantaneous water heaters, or heat pump water heaters, if the manufacture of the product was completed prior to May 19, 1980. Any central air conditioner or any pulse combustion or condensing furnace if its manufacture was completed prior to June 7, 1988. Any fluorescent lamp ballast if its manufacture was completed prior to January 1, 1990. Any showerhead, faucet, water closet, or urinal if its manufacture was completed prior to October 25, 1994. Any pool heater, instantaneous water heater, or heat pump water heater if its manufacture was completed prior to December 29, 1994.

(3) Any catalog or point-of-sale printed material distributed prior to May 19, 1980, pertaining to any covered products, other than central air conditioners, pulse combustion and condensing furnaces, fluorescent lamp ballasts, showerheads, faucets, water closets, urinals, pool heaters, instantaneous water heaters, or heat pump water heaters; any catalog or point-of-sale printed material distributed prior to June 7, 1988, pertaining to any central air conditioners or pulse combustion or condensing furnaces; any catalog or

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[78] CEC, EE–2, 7.
[79] GAMA, E–3, 3.
[80] U.S.C. 603–605.
[81] See 58 FR 7855.
[82] *Id.*
[83] *Id.*
[84] *Id.*
[85] GAMA, E–3, Appendices; CEC, EE–2, 3–4, 6, 7.
[86] 13 CFR 121.601.
[87] To estimate the size of the companies, the Commission's staff researched the companies in standard reference materials, such as Dun and Bradstreet Information Services, Dun and Bradstreet Million Dollar Directory, Series A–F, G–O, P–Z (1993); Dun and Bradstreet, The Dun and Bradstreet Reference Book of American Business, Vol. 1–4 (July-Aug. 1993); National Register Publishing, 1993 Directory of Corporate Alliance, Vol. 4 Who Owns Whom International and Private Companies (1993); and conducted informal inquiries with staff of the California Energy Commission.
[88] 5 U.S.C. 605(b).
[89] 44 U.S.C. 3501–3520.
[90] CEC, EE–2, 4, 6, 7. The comments also indicate that the number of companies affected by the amendments is far fewer that the 50 the Commission initially estimated would be affected. See Part III, above.
[91] 58 FR 26715 (May 5, 1993).
[92] 58 FR 26786 (May 5, 1993).

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point-of-sale printed material distributed prior to January 1, 1990, pertaining to any fluorescent lamp ballasts; any catalog or point-of-sale printed material distributed prior to October 25, 1994, pertaining to any showerheads, faucets, water closets, or urinals; and, any catalog or point-of-sale printed material distributed prior to December 29, 1994, pertaining to any pool heaters, instantaneous water heaters, or heat pump water heaters; except that any representations respecting the energy consumption, energy efficiency, or water use of any covered product or other consumer appliance product, or the cost of energy consumed or water used by such product, are subject to the requirements of paragraph (d) of this section.

* * * * *

5. In § 305.5, paragraph (a)(9) is redesignated as (a)(10), and a new paragraph (a)(9) is added, to read as follows:

§ 305.5 Determinations of estimated annual energy consumption, estimated annual operating cost, and energy efficiency rating, and of water use rate.

(a) * * *

(9) Pool heaters—§ 430.22(p).

* * * * *

6. In § 305.7, paragraphs (e) through (j) are redesignated as (f) through (k), and a new paragraph (e) is added, to read as follows:

§ 305.7 Determinations of capacity.

* * * * *

(e) *Pool heaters.* The capacity shall be the heating capacity in Btu's per hour, rounded to the nearest 1,000 Btu's per hour, as determined according to Appendix P to 10 CFR Part 430, Subpart B.

* * * * *

7. In § 305.8, paragraphs (a)(1) and (b) are revised to read as follows:

§ 305.8 Submission of data.

(a)(1) Each manufacturer of a covered product (except manufacturers of fluorescent lamp ballasts, showerheads, faucets, water closets, or urinals) shall submit annually to the Commission a report listing the estimated annual energy consumption (for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, and water heaters) or the energy efficiency rating (for room air conditioners, central air conditioners, heat pumps, furnaces, and pool heaters) for each basic model in current production, determined according to § 305.5 and statistically verified according to § 305.6. The report must also list, for each basic model in current production: the model numbers for each basic model; the total energy consumption, determined in accordance with § 305.5, used to calculate the estimated annual energy consumption or energy efficiency rating; the number of tests performed; and, its capacity, determined in accordance with § 305.7. For those models that use more than one energy source or more than one cycle, each separate amount of energy consumption or energy cost, measured in accordance with § 305.5, shall be listed in the report. Appendix K illustrates a suggested reporting format. Starting serial numbers or other numbers identifying the date of manufacture of covered products shall be submitted whenever a new basic model is introduced on the market.

* * * * *

(b) All data required by § 305.8(a), except serial numbers, shall be submitted to the Commission annually, on or before the following dates:

Products	Deadline for data submission
Refrigerators	Aug. 1.
Refrigerator-freezers	Aug. 1.
Freezers	Aug. 1.
Central air conditioners	July 1.
Heat pumps	July 1.
Dishwashers	June 1.
Water heaters	May 1.
Pool heaters	May 1.
Room air conditioners	May 1.
Furnaces	May 1.
Clothes washers	Mar. 1.
Fluorescent lamp ballasts	Mar. 1.
Showerheads	Mar. 1.
Faucets	Mar. 1.
Water closets	Mar. 1.
Urinals	Mar. 1.

All revisions to such data (both additions to and deletions from preceding data) shall be submitted to the Commission as part of the next annual report period.

* * * * *

8. In § 305.11(a)(5)(ii), the heading and paragraphs (a)(5)(ii)(C) through (a)(5)(ii)(G) are revised to read as follows:

§ 305.11 Labeling for covered products.

(a) * * *

(5) * * *

(ii) *Labels for furnaces and pool heaters.*

* * * * *

(C) The annual fuel utilization efficiency for furnaces and the thermal efficiency for pool heaters are determined in accordance with § 305.5.

(D) Each furnace and pool heater label shall contain a generic range consisting of the lowest and highest annual fuel utilization efficiencies (for furnaces) or thermal efficiencies (for pool heaters) for all furnaces or pool heaters that utilize the same energy source.

(E) Placement of the labeled product on the scale shall be proportionate to the lowest and highest annual fuel utilization efficiency ratings or thermal efficiency ratings forming the scale.

(F) The following statement shall appear on furnace labels beneath the range(s) in bold print:

Federal law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information regarding the efficiency and operating cost of this equipment. Ask for this information.

(G) A statement that the annual fuel utilization efficiency ratings or thermal efficiency ratings are based on U.S. Government standard tests is required on all labels.

* * * * *

9. Section 305.14(a)(3) is revised to read as follows:

§ 305.14 Catalogs.

(a) * * *

(3) The energy efficiency rating for room air conditioners, central air conditioners, furnaces, and pool heaters.

* * * * *

10. The headings for Appendices D1 through D3 are revised and new Appendices D4 through D6 are added, to read as follows:

Appendix D1 to Part 305—Water Heaters—Gas

* * * * *

Appendix D2 to Part 305—Water Heaters—Electric

* * * * *

Appendix D3 to Part 305—Water Heaters—Oil

* * * * *

APPENDIX D4 TO PART 305—WATER HEATERS—INSTANTANEOUS—GAS

Range Information:

Capacity: First hour rating	Range of estimated annual energy consumption (Therms/yr. and Gallons/yr.): Natural gas therms/Yr. Low	Natural gas therms/Yr. High	Propane gallons/Yr. Low	Propane gallons/Yr. High
Less than 21				
21 to 24				
25 to 29				
30 to 34				
35 to 40				
41 to 47				
48 to 55				
56 to 64				
65 to 74				
75 to 86				
87 to 99				
100 to 114				
115 to 131				
Over 131				

Appendix D5 to Part 305—Water Heaters—Instantaneous—Oil

Range Information:

Capacity: First hour rating	Range of estimated annual energy consumption (Gallons/yr.): Low	High
Less than 21		
21 to 24		
25 to 29		
30 to 34		
35 to 40		
41 to 47		
48 to 55		
56 to 64		
65 to 74		
75 to 86		
87 to 99		
100 to 114		
115 to 131		
Over 131		

Appendix D6 to Part 305—Water Heaters—Heat Pump

Range Information:

Capacity: First hour rating	Range of estimated annual energy consumption (kWh/yr.): Low	High
Less than 21		
21 to 24		
25 to 29		
30 to 34		
35 to 40		
41 to 47		
48 to 55		
56 to 64		
65 to 74		
75 to 86		
87 to 99		
100 to 114		
115 to 131		
Over 131		

Appendices J and K to Part 305 [Redesignated as K and L]

11. Appendices J and K to Part 305 are redesignated K and L, and new Appendices J1 and J2 are added, to read as follows:

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Appendix J1 to Part 305—Pool Heaters—Gas

Range Information:

Manufacturer's rated heating capacities	Range of thermal efficiencies (percent)			
	Natural gas		Propane	
	Low	High	Low	High
All Capacities	.....	.....	.....	.....

Appendix J2 to Part 305—Pool Heaters—Oil

Range Information:

Manufacturer's rated heating capacities	Range of thermal efficiencies (percent)	
	Low	High
All Capacities	.....	.....

Newly Redesignoted Appendix L to Port 305 [Amended]

12. Newly redesignated Appendix L to Part 305 is amended by the addition of a new Sample Label 10, to read as follows:

. . . . . .

BILLING CODE 6750-01-P-M

Based on standard U.S. Government tests

ENERGYGUIDE

Pool Heater
Natural Gas

ABC Corporation
Model 1428

Compare the Energy Efficiency of this Pool Heater with Others Before You Buy.

This Model's Efficiency
80 Thermal Efficiency

Energy efficiency range of all similar models

Least Efficient 78

Most Efficient 97

The **Thermal Efficiency** (expressed as a percent) is the measure of energy efficiency for pool heaters Only pool heaters fueled by natural gas are used in this scale.

Natural gas pool heaters that have higher Thermal Efficiencies are more energy efficient.

Important: Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302)

Sample Label 10

BILLING CODE 6750-01-P

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94-23958 Filed 9-27-94; 8:45 am]

BILLING CODE 6750-01-P

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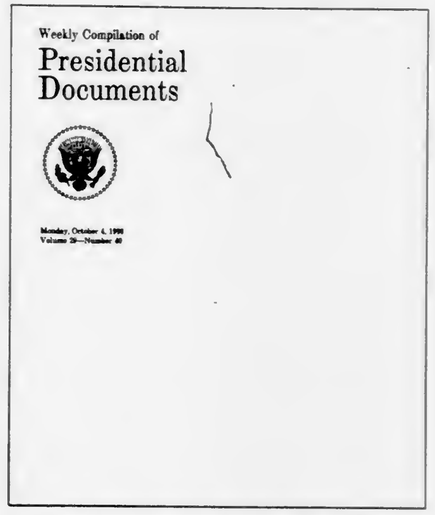
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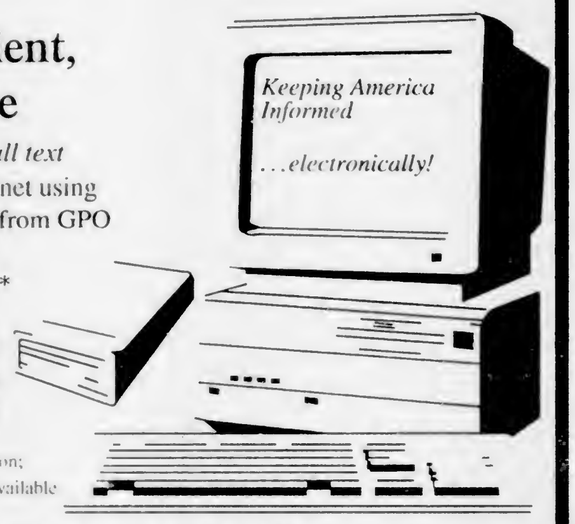
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9–29–94
Vol. 59 No. 188

federal register

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VOL
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9-29-94
Vol. 59 No. 188
Pages 49569-49780

federal register

Thursday
September 29, 1994

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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 6725 of September 26, 1994

National Legal Services Week, 1994

By the President of the United States of America

A Proclamation

The preamble to the Constitution reminds us that our great Nation was founded "to establish Justice . . . and secure the Blessings of Liberty. . . ." The very nature of justice demands that it be available to all. True justice cannot be rationed—it cannot be accorded to some while others are denied the full benefit of their rights. Our Founders understood that privilege and responsibility are inextricably linked. The words "Equal Justice under the Law," inscribed over the portal of our highest court, represent a solemn promise made to every American.

Twenty years ago, the Legal Services Corporation was created to help keep that promise, promoting equal access to justice by making high-quality legal assistance in civil matters available to those who would otherwise be unable to attain it.

In designing the Legal Services Corporation the Congress recognized the need for an independent entity, protected from political interference, to support local programs that would be accountable to their own communities. Legal Services was designed to ensure that all Americans needing assistance are provided with legal representatives whose responsibility is to fully protect and defend their clients' best interests according to the highest standards of professional obligation.

For two decades, the Legal Services Corporation has fulfilled that mandate. It supports local legal services programs that operate under the auspices of their own Boards of Directors, which are made up of clients and representatives of the local bar. Today, the Corporation supports 323 programs operating in over 900 neighborhood offices across the Nation. In addition, more than 130,000 private attorneys volunteer their time and energy toward activities associated with local legal services projects.

Legal Services programs extend assistance to more than 1.5 million people every year, vindicating their rights, resolving their disputes, and offering a means of improving their lives. Dedicated attorneys, paralegals, staff, Board members, and volunteers have worked with unflinching commitment, often under adverse conditions, to serve those whose rights and interests they represent. Legal Services has won the respect of the judiciary, the organized bar, and the client community. For many Americans, the existence of legal services has renewed their faith in our government of laws.

On the 20th anniversary of the Legal Services Corporation, I reaffirm our national commitment to equal access to justice, to decency, to fair play. I voice my deep respect for those who have given so much to keep those principles alive over the years.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of September 26 through October 2, 1994, as "National Legal Services Week." I urge all Americans to join me in recognizing the contributions that the Legal Services Corporation and the local programs that it supports have made in fulfilling the promise of equal justice under the law, and I call upon

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the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of September, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94-24310
Filed 9-27-94; 4:32 pm]
Billing code 3195-01-P

Rules and Regulations

Federal Register
Vol. 59, No. 188
Thursday, September 29, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AF90

Prevailing Rate Systems; Change of Lead Agency Responsibility for Cleveland, OH, Wage Area for Pay-Setting Purposes

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to change the lead agency responsibility for the Cleveland, Ohio, Federal Wage System (FWS) wage area from the National Aeronautics and Space Administration (NASA) to the Department of Veterans Affairs (VA) for pay-setting purposes. This change recognizes the fact that VA is now the major employer of FWS employees in the Cleveland, Ohio, FWS wage area.

EFFECTIVE DATE: October 31, 1994.

FOR FURTHER INFORMATION CONTACT: Mark Allen, (202) 606-2848.

SUPPLEMENTARY INFORMATION: On June 14, 1994, OPM published a proposed rule (59 FR 30533) to change the lead agency responsibility for the Cleveland, Ohio, wage area for pay-setting purposes. The proposed rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the proposed rule is being adopted as a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, OPM is amending 5 CFR part 532 as follows:

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix A to subpart B is amended for Cleveland, Ohio, by removing the lead agency "NASA" and adding in its place "VA".

U.S. Office of Personnel Management.

James B. King,

Director.

[FR Doc. 94-24030 Filed 9-28-94; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 967

[Docket No. FV94-967-2FIR]

Handling Regulation for Celery Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which established the quantity of Florida celery which handlers may ship to fresh markets during the 1994-95 marketing season at 6,712,910 crates or 100 percent of producers' base quantities. The 1994-95 marketing season covers the period August 1, 1994, through July 31, 1995. This final rule is intended to lend stability to the industry, and help provide consumers with an adequate supply of the product. As in past marketing seasons, the limitation on the quantity of Florida celery handled for fresh shipment is not expected to restrict the quantity of Florida celery actually produced or shipped to fresh markets, because production and shipments are anticipated to be less than the marketable quantity. This action was unanimously recommended by the Florida Celery Committee (Committee), the agency responsible for local administration of the order.

EFFECTIVE DATE: October 31, 1994.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883-2276; telephone, (813) 299-4770; or Mark Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone, (202) 205-2830, or FAX (202) 720-5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 967 (7 CFR part 967), both as amended, regulating the handling of celery grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule continues in effect an action which established the quantity of Florida celery (at 6,712,910 crates or 100 percent of producers' base quantities) which handlers may ship to fresh markets during the 1994-95 marketing season which covers the period August 1, 1994, through July 31, 1995. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal

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place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately seven producers of celery in the production area and seven handlers of celery grown in Florida subject to regulation under the celery marketing order. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of celery producers and handlers may be classified as small entities.

This rule is based upon a recommendation and information submitted by the Committee and upon other available information. The Committee met on June 15, 1994, and unanimously recommended a marketable quantity of 6,712,910 crates of fresh celery for the 1994–95 marketing season beginning August 1, 1994. Additionally, a uniform percentage of 100 percent was recommended which will allow each producer, registered pursuant to § 967.37(f) of the order, to market 100 percent of such producer's base quantity. These recommendations were based on an appraisal of expected 1994–95 supply and demand.

As required by § 967.37(d)(1) of the order, a reserve of 6 percent (402,775 crates) of the 1993–94 total base quantities was made available to new producers and for increases for existing producers. The deadline for requesting changes in base quantities was May 1, 1994. No applications for additional base quantities were received.

This rule will limit the quantity of Florida celery which handlers may purchase from producers and ship to fresh markets during the 1994–95 marketing season to 6,712,910 crates. This marketable quantity is the same as the 1993–94 marketable quantity, and is more than the average number of crates marketed fresh during the 1987–88 through 1992–93 seasons. It is expected that such quantity will be more than actual shipments for the 1994–95 season. Thus, the 6,712,910 crate marketable quantity is not expected to restrict the amount of Florida celery which growers produce or the amount of celery which handlers ship. For these reasons, this rule should lend stability to the industry, and help provide consumers with an adequate supply of the product.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

An interim final rule was published in the **Federal Register** on July 27, 1994 (59 FR 38108). That interim final rule added § 967.329 to establish the quantity of Florida celery which handlers may ship to fresh markets during the 1994–95 marketing season. That rule provided that interested persons could file comments through August 26, 1994. No comments were filed.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, is found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 967

Celery, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 967 is amended as follows:

PART 967—CELERY GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 967 which was published at 59 FR 38108, on July 27, 1994, is adopted as a final rule without change.

Dated: September 26, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–24100 Filed 9–28–94; 8:45 am]

BILLING CODE 3410–02–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–7094; 34–34708; 35–26129; 39–2323; IC–20569]

RIN 3235–AG10

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting an updated edition of the EDGAR Filer Manual and is providing for its incorporation by reference into the Code of Federal Regulations.

EFFECTIVE DATE: The amendment to Regulation S–T will be effective on October 31, 1994. The new edition of the EDGAR Filer Manual (Release 4.0) will be effective on October 31, 1994. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of October 31, 1994.

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, David T. Copenhafer at (202) 942–8800; in the Division of Corporation Finance, Barbara C. Jacobs or James R. Budge at (202) 942–2910; in the Division of Investment Management, Anthony A. Vertuno at (202) 942–0591 or Ruth Armfield Sanders at (202) 941–0633.

SUPPLEMENTARY INFORMATION: The Commission today announces the adoption of an updated EDGAR Filer Manual ("Filer Manual"), which sets forth the technical formatting requirements governing the preparation and submission of electronic filings through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system.[1] Compliance with the provisions of the Filer Manual is required in order to assure the timely acceptance and processing of filings made in electronic format.[2] Filers should consult the Filer Manual in conjunction with the Commission's rules governing mandated electronic filing when preparing documents for electronic submission.[3] In this update, electronic filers will be required to identify for the EDGAR system the national securities exchanges or national securities associations on or through which the issuer's securities are traded. A number of new form types also will be made available, including several that will allow more flexibility in filing proxy materials. Rule 301 of Regulation S–T also is being amended to provide for the incorporation by reference of the Filer Manual into the Code of Federal Regulations, which incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The revised Filer Manual and the amendment to Rule 301 will be effective on October 31, 1994.

Paper copies of the updated Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1–2, 450 Fifth Street, N.W., Washington D.C. 20549. Electronic format copies will be available on the EDGAR electronic bulletin board. Copies also may be obtained from Disclosure Incorporated, the paper and microfiche contractor for the Commission, at (800) 638–8241.

Since the Filer Manual relates solely to agency procedure or practice, publication for notice and comment is not required under the Administrative Procedure Act.[4] It follows that the requirements of the Regulatory Flexibility Act[5] do not apply.

Statutory Basis

The amendment to Regulation S–T is being adopted under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[6] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[7] Section 20 of the Public Utility Holding Company Act of 1935,[8] Section 319 of the Trust Indenture Act of 1939,[9] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[10]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Investment companies, Registration requirements, Reporting and recordkeeping requirements, Securities.

[1] The Filer Manual originally was adopted on April 1, 1993, and became effective on April 26, 1993. See Release No. 33–6986 (April 1, 1993) (58 FR 18638). Updates to the Filer Manual were adopted on July 8, 1994. See Release No. 33–7073 (July 8, 1994) (59 FR 36262).

[2] See Rule 301 of Regulation S–T (17 CFR 232.301).

[3] See Release Nos. 33–6977 (February 23, 1993) (58 FR 14628), IC–19284 (February 23, 1993) (58 FR 14848), 35–25746 (February 23, 1993) (58 FR 14999), and 33–6980 (February 23, 1993) (58 FR 15009) for a comprehensive treatment of the rules adopted by the Commission governing mandated electronic filing.

[4] 5 U.S.C. 553(b).

[5] 5 U.S.C. 601–612.

[6] 15 U.S.C. 77f, 77g, 77h, 77j and 77s(a).

[7] 15 U.S.C. 78c, 78l, 78m, 78n, 78o, 78w and 78ll.

[8] 15 U.S.C. 79t.

[9] 15 U.S.C. 77sss.

[10] 15 U.S.C. 80a–8, 80a–29, 80a–30 and 80a–37.

Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a-8, 80a-29, 80a-30 and 80a-37.

2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Electronic filings shall be prepared in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The September 1994 edition of the *EDGAR Filer Manual: Guide for Electronic Filing with the U.S. Securities and Exchange Commission (Release 4.0)* is incorporated into the Code of Federal Regulations by reference, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Compliance with the requirements found therein is essential to the timely receipt and acceptance of documents filed with or otherwise submitted to the Commission in electronic format. Paper copies of the EDGAR Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1–2, 450 5th Street, NW., Washington, DC 20549. They also may be obtained from Disclosure Incorporated by calling (800) 638–8241. Electronic format copies are available through the EDGAR electronic bulletin board. Information on becoming an EDGAR E-mail/electronic bulletin board subscriber is available by contacting CompuServe Inc. at (800) 848–8199.

By the Commission.

Dated: September 23, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24045 Filed 9–28–94; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–004; Order No. 563–C]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

Issued September 23, 1994.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; Order Accepting Modifications to the Transaction Point Common Code Data Base.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order making changes to the transaction point common code data base. The Commission's order revises its "Standardized Data Sets and Communication Protocols," available at the Commission's Public Reference and Files Maintenance Branch, to add three additional fields to improve the clarity of the data and the management of the data base.

DATES: This order was issued on September 23, 1994.

ADDRESSES: Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2294

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1283

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0292

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

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Order Accepting Modifications to the Transaction Point Common Code Data Base

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F Santa, Jr.

On July 29, 1994, the Electronic Bulletin Board (EBB) Working Group submitted proposed modifications to the transaction point common code data base that the Commission had accepted in Order No. 563.[1] The Commission hereby adopts the proposed modifications, with one exception discussed below.

On December 23, 1993, the Commission issued a Final Rule in this proceeding requiring pipelines to implement standards and protocols relating to the electronic dissemination of information. The standards and protocols accepted by the Commission reflected agreements reached by industry Working Groups consisting of members from all segments of the gas industry. The standards and protocols are described in a document entitled "Standardized Data Sets and Communication Protocols," available at the Commission's Public Reference and Files Maintenance Branch.

In the Final Rule, the Commission accepted a consensus approach for developing a common code data base that would identify pipeline transaction points, such as receipt and delivery points. Under the accepted approach, pipelines were required to provide the Petroleum Information Corporation (PI) with information on their transaction points, and PI then would prepare a computerized data base cross-referencing the pipelines' proprietary codes for identifying transaction points with a discrete common code assigned to each point. The data base is to be available by November 1, 1994.[2] The data sets summarizing the information to be included in the common code data base were included in the Standardized Data Sets and Communication Protocols adopted by the Commission.

In the Final Rule, the Commission recognized that the EBB standardization efforts would be an on-going process that required a flexible procedure for making timely revisions or modifications to the standards and protocols as the industry obtained experience with them and at the same time preserved the opportunity for the industry to comment on proposed changes. The Commission adopted a process in which the industry Working Groups would file their proposed changes with the Commission, and the filing would then be noticed with an opportunity for the industry to file comments.

On July 29, 1994, the industry Working Group filed a consensus proposal to modify the data sets for the common code data base by adding three new fields: "facility type," which provides a standard text description of the facility; "transaction code," which informs users whether a record is an addition, change, or deletion; and "data reference number," which is a unique number that identifies each data base record. The Working Group states that the addition of these fields will improve the clarity of the data and the management of the data base.

Public notice of the Working Group filing was issued on August 4, 1994, with comments due by August 15, 1994. The notice further provided that issues relating to these proposed changes could be raised at an EBB conference to be held on August 11, 1994.

No comments have been received regarding the proposed changes, and the Commission will accept them to be implemented according to the schedule established in Order Nos. 563 and 563–A.[3] The "Standardized Data Sets and Communication Protocols" will be modified accordingly and made available at the Commission's Public Reference and Files Maintenance Branch.

The Commission orders:

The data sets in Appendix A are accepted to be implemented according to the schedule established in Order Nos. 563 and 563–A.

By the Commission.

Lois D. Cashell,

Secretary.

Appendix A

COMMON CODE DATA SET FOR GAS TRANSACTION POINTS

[I. Data Elements of the Gas Transaction Point Common Code Record]

Line No.	Field name	Description of field	Status	Data type and explanation
1.	Owner/operator name	The legal name of entity that owns and/or operates the transaction point.	M	A Text field provided by the owner/operator that is responsible for conducting business at the point.
2.	Owner/Operator Company Code.	The company code of the entity that owns/operates the gas transaction point.	M	An alpha-numeric field containing a code that uniquely identifies the owner/operator of the point.
3	Point Code	The code assigned by the owner/operator to the transaction point.	M	An alpha-numeric field containing the point code for the gas transaction point that is used by the owner/operator.

[1] Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994), III FERC Stats. & Regs. Preambles ¶30,988 (Dec. 23, 1993), *order on reh'g*, Order No. 563–A, 59 FR 23624 (May 6, 1994), III FERC Stats. & Regs. Preambles ¶30,994 (May 2, 1994), *reh'g denied*, Order No. 563–B, 68 FERC ¶61,002 (1994).

[2] The Commission, however, did provide that pipelines that do not maintain the geographic location of receipt points in an easily accessible form may request an extension until May 1, 1995, to complete the process of confirming their points to PI.

[3] The complete data set is contained in Appendix A. The Commission notes that, for informational purposes, the Working Group attached to its July 29, 1994 report a copy of Table 1 of its October 12, 1993 filing showing the data sets it initially proposed. That table lists the point locator field as optional. However, in Order No. 563, the Commission required the point locator field to be mandatory. Order No. 563, III FERC Stats. & Regs. Preambles at 31,014; Order No. 563–A, III FERC Stats. & Regs. Preambles at 31,046. Accordingly, the point locator field in the attached appendix is listed as mandatory in conformity with the requirements of Order Nos. 563 and 563–A.

COMMON CODE DATA SET FOR GAS TRANSACTION POINTS—Continued

[I. Data Elements of the Gas Transaction Point Common Code Record]

Line No.	Field name	Description of field	Status	Data type and explanation
4.	Point type Indicator	An indicator for the type of facility at the point. For example, "01" could indicate an interconnect.	M	A positive integer field containing codes to identify the type of facilities located at gas transaction points. (These codes will be developed on a consensus basis between the Code Assignor and the Data Provider).
5.	Flow indicator	An indicator to determine the direction of gas flow in the case of interconnects and storage: R=receipt or flow into the pipeline only D=delivery or flow out of the pipeline only B=both receipt and delivery.	C	A single position alpha field that would be completed only if the point type indicator of the facility is either an interconnect or storage facility.
6.	Point name	The name assigned to the point by the owner/operator.	M	A text field provided by the owner/operator of the gas transaction point.
7.	State	The state in which the gas transaction point is located.	M	A text field containing the name of the state.
8.	County	The county in which the gas transaction point is located.	M	A text field containing the name of the county.
9.	Point Locator	A unique locator for the transaction point	M	An alpha-numeric field containing the geographic coordinates, survey coordinates or pipeline line number and mile marker.
10.	Up/downstream entity name.	The name of the entity that controls capacity upstream or downstream of the point, e.g., at an interconnect.	O	A text field containing the legal name of the entity that owns/operates the facility that is either upstream or downstream from the point. This field would be completed only if the information is available.
11.	Up/downstream point name.	The point name as assigned by the entity that controls capacity upstream or downstream of the gas transaction point, e.g., at an interconnect.	O	A text field provided by the owner/operator of the gas transaction point. This field would be completed only if the information is available.
12.	Up/downstream point code.	The point code as assigned by the entity that controls capacity upstream or downstream of the gas transaction point, e.g., at an interconnect.	O	An alpha-numeric/numeric code assigned by the up/downstream owner/operator that uniquely defines the gas transaction point. This field would be completed only if the information is available.
13.	Joint ownership indicator.	An indicator to determine if the point has joint owners: Y=yes N=no.	M	A single-position alpha field to alert the common Code Assignor that other Data Providers might be reporting this point.
14.	Non-operator point	An indicator to determine if the point is operated by another party, other than the Data Provider: Y=yes, N=no.	M	An alpha-numeric field to indicate whether the gas transaction point is operated by a party other than Data Provider.
15.	Point common Code	A standard common code to be assigned by the Code Assignor to uniquely identify the gas transaction point.	M	An alpha-numeric field containing the common code that is assigned by the Code Assignor.
16.	Confirmation code	A code to indicate the current status of the common code. The code would be "Pending" (P) if the transaction point data is waiting for verification by the owner/operator providing the data; "Verified" (V) after the verification process has been completed; "Declined To Verify" (D) if the owner/operator has declined to verify the data; or "Rejected" (R) if the owner/operator rejects to verify the data because it is not a valid transaction point.	M	A single-position alpha field that contains either a P="Pending," V="Verified," D="Declined To Verify," or R="Rejected" to indicate the status of the common code and its data record.
17.	Date active	The date on which the transaction point becomes or became active. A default value equivalent to January 1, 1960 would be used for all points that are currently active.	M	A date field in a format that is machine-processable. The owner/operator would use this field to notify the Code Assignor of date the data based record representing the proprietary/common code cross-reference becomes active.
18.	Date inactive	The date on which the transaction point is, will be, or became inactive. The owner/operator would use this field to notify the Code Assignor of points that will be permanently inactive on a future date. This is not intended to be used to indicate temporary closure due to such factors as maintenance.	C	A date field in format that is machine-processable. The owner/operator would use this field to notify the Code Assignor of date the data base record representing the proprietary/common code cross-reference becomes inactive. This data element is conditional, based on whether the owner/operator changes, whether the proprietary code or name changes, whether other data elements change, or whether the point is permanently removed from service.

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COMMON CODE DATA SET FOR GAS TRANSACTION POINTS—Continued

[I. Data Elements of the Gas Transaction Point Common Code Record]

Line No.	Field name	Description of field	Status	Data type and explanation
19.	Facility type	A standard facility type name assigned by the Code Assignor which also indicates flow direction.	M	A text field containing a standard facility type assigned by the Code Assignor.
20.	Last update	The date on which the transaction point common code record has been changed.	M	A date field in a format that is machine-processable. The Code Assignor would use this field to indicate either when the record was created, modified, or made inactive.
21.	Transaction code	A code assigned by the Code Assignor to indicate whether the record is an (A)dd, (C)hange, or (D)elete.	M	A single-position alpha field assigned by the Code Assignor for transactional purposes.
22.	Data reference number	A random, non-intelligent number assigned by the Code Assignor. In conjunction with "Date active" and "Date inactive" this acts as a file key.	M	A positive integer field assigned by the Code Assignor to help process transactions.

[FR Doc. 94–24120 Filed 9–28–94; 8:45 am]
BILLING CODE 8717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name of approved applications from Pitman-Moore, Inc., to Mallinckrodt Veterinary, Inc.

EFFECTIVE DATE: September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

SUPPLEMENTARY INFORMATION: Pitman-Moore, Inc., Mundelein, IL 60060, has informed FDA of a change of sponsor name to Mallinckrodt Veterinary, Inc. Accordingly, FDA is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor name.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Pitman-Moore, Inc." and by alphabetically adding a new entry for "Mallinckrodt Veterinary, Inc."; and in the table in paragraph (c)(2) in the entry for "011716" by removing the sponsor name "Pitman-Moore, Inc." and adding in its place "Mallinckrodt Veterinary, Inc."

Dated: September 21, 1994.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 94–24147 Filed 9–28–94; 8:45 am]
BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Agri-Bio Corp. The supplemental NADA provides for expanding the use of a currently approved Type A medicated article containing salinomycin in order to make Type C medicated quail feeds for the prevention of coccidiosis in quail.

EFFECTIVE DATE: September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Agri-Bio Corp., P.O. Box 897, Gainesville, GA 30503, is the sponsor of currently approved NADA 128–686. The NADA provides for use of a Type A medicated article containing 30 grams (g) of salinomycin sodium activity per pound to make Type C medicated feeds containing 40 to 60 g of the drug per ton (g/ton) for the prevention of coccidiosis in broiler chickens caused by certain *Eimeria* species. The firm has filed a supplemental NADA which provides for expanding the use of the above-mentioned Type A medicated article to make Type C medicated quail feeds at a drug concentration of 50 g/ton for the prevention of coccidiosis in quail caused by *E. dispersa* and *E. lettyae*. The supplemental NADA is approved as of September 1, 1994, and the regulations are amended in 21 CFR 558.550(b) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food-producing animals does not qualify for marketing exclusivity because the application does not contain reports of new clinical or field investigations (other than bioequivalence or residue studies) and new human food safety studies (other than bioequivalence or residue studies) essential to the approval of the supplement and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 558

Animal drugs, animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.550 is amended by adding new paragraph (b)(2) to read as follows:

§ 558.550 Salinomycin.

* * * * *

(b) * * *

(2) *Quail*—(i)(*a*) *Amount per ton.* Salinomycin 50 grams.

(*b*) *Indications for use.* For the prevention of coccidiosis caused by *E. dispersa* and *E. lettyae*.

(*c*) *Limitations.* Feed continuously as sole ration. Not approved for use with pellet binders. May be fatal if accidentally fed to adult turkeys or horses.

(ii) [Reserved]

* * * * *

Dated: September 21, 1994.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 94–24148 Filed 9–28–94; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8564]

RIN 1545–AR59

Computation of Equity Base

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the determination of the equity base for purposes of computing the differential earnings amount and recomputed differential earnings amount, which are used in determining the deduction for policyholder dividends of a mutual life insurance company. The final regulations provide that the equity base includes the amount of any asset valuation reserve and the amount of any interest maintenance reserve reported on the annual statement prescribed by the National Association of Insurance Commissioners (NAIC) for filing with the insurance regulatory authorities of a state. The regulations affect life insurance companies.

DATES: These final regulations are effective September 29, 1994.

These final regulations are applicable for taxable years beginning after December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Katherine Ann Hossofsky, (202) 622–3477 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 7, 1993, temporary regulations (TD 8484) relating to the determination of the equity base of a life insurance company under section 809 of the Internal Revenue Code (Code) were published in the **Federal Register** (58 FR 47060). A notice of proposed rulemaking (FI–29–93) cross-referencing the temporary regulations was published in the **Federal Register** (58 FR 47089) on the same day. The proposed and temporary regulations provide that the equity base includes the amount of any asset valuation reserve and the amount of any interest maintenance reserve reported on the annual statement prescribed by the NAIC for filing with the insurance regulatory authorities of a state.

Three comments on the proposed regulations were received, and a public hearing on the regulations was held on December 3, 1993. After consideration of the comments, the proposed regulations are adopted without change by this Treasury decision.

Explanation of Provision

Section 809(a) of the Code provides that, in the case of any mutual life insurance company, the amount of the deduction allowable under section 808 for policyholder dividends is reduced (but not below zero) by the differential earnings amount. For purposes of the computations under section 809, a life insurance company must determine its equity base. The equity base of a life insurance company includes the capital and surplus of the company as well as any mandatory securities valuation reserve, deficiency reserve, and voluntary reserve or similar liability.

The mandatory securities valuation reserve is the first reserve listed in section 809(b)(5). From the time section 809 was enacted through 1991, the mandatory securities valuation reserve was required to be reported on the NAIC annual statement filed by all life insurance companies. During these years, the NAIC annual statement required insurers to allocate surplus to fund the mandatory securities valuation reserve. Though shown as a liability account on the annual statement, the mandatory securities valuation reserve was not an actual liability in the sense of a debt to another party; rather, it represented a fund of allocated surplus, earmarked as a contingency reserve against fluctuations in the values of a company's investments in stocks and bonds.

For NAIC annual statements covering 1992 and later years, the NAIC replaced the mandatory securities valuation reserve with the asset valuation reserve and interest maintenance reserve. This change reflected the recognition by the NAIC that life insurance companies need to protect against fluctuations in value in mortgages, real estate, and other investments as well as fluctuations in value in stocks and bonds and that interest-related changes in asset values might appropriately be differentiated from other changes. Accordingly, the new reserves cover an expanded class of assets and differentiate between (1) equity and credit-related capital gains and losses, and (2) interest-related capital gains and losses.

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The asset valuation reserve reflects changes in the value of equity investments and also changes in the value of debt investments where the changes are credit-related. Both realized and unrealized capital gains and losses are reflected in the asset valuation reserve.

The interest maintenance reserve reflects realized capital gains and losses from bonds, mortgages, and other fixed-income obligations to the extent that they are interest-related. Because the value of U.S. Government securities, together with the value of securities of agencies backed by the full faith and credit of the U.S. Government, are safe from credit-related risks and are subject only to interest-related risks, the capital gains and losses on those securities are allocated solely to the interest maintenance reserve.

The proposed and temporary regulations provide that the equity base includes the amount of any asset valuation reserve and the amount of any interest maintenance reserve reported on the NAIC annual statement. Three comments were received on the proposed regulations.

The first commentator agreed that inclusion of the asset valuation reserve and the interest maintenance reserve in the section 809 equity base is consistent with Congress' decision to include the mandatory securities valuation reserve in the equity base. The commentator stated that, by providing in section 809(b)(5)(A) that the equity base includes the amount of the mandatory securities valuation reserve, Congress determined that the allocation of surplus represented by this reserve, which included credit-related capital gains as well as interest-related capital gains, was properly part of the equity base. The commentator concluded that, absent a legislative change, allocated surplus should continue to be included in the equity base notwithstanding the change in the name of the reserve or the method of allocating surplus to the reserve. Alternatively, the commentator stated that the unaccrued market value increase or decrease in an insurer's liabilities as reflected in the interest maintenance reserve should be included in the equity base because the Conference Report underlying section 809 indicates that Congress intended the equity base to include any reserve for potential or unaccrued liabilities. H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1058 (1984).

This commentator also requested that the final regulations clarify that both positive and negative interest maintenance reserves are included in computing the equity base. Finally, while noting that the proposed regulations do not address the treatment of interest-related capital gains and losses in computing the section 809 earnings of a life insurance company, the commentator indicated that for calendar years prior to 1992 interest-related capital gains or losses have been included in section 809 earnings no later than the year in which the gains or losses were realized for tax purposes. The commentator stated that this treatment should be continued in the absence of a legislative change.

The second commentator did not take a position regarding the inclusion of the amount of any interest maintenance reserve in the section 809 equity base. Rather, this commentator noted that the regulations deal with the determination of the equity base but are silent on the extent to which interest-related capital gains are to be included in section 809 earnings. If the current inclusion approach of the proposed and temporary regulations is adopted in the final regulations, then this commentator indicated that interest-related capital gains and losses should be included currently in section 809 earnings. In addition, the commentator stated that there should be consistency between the calculations of the equity base made on Form 1120L, U.S. Life Insurance Income Tax Return, and on Form 8390, Information Return for Determination of Life Insurance Company Earnings Rate Under Section 809.

The third commentator agreed that the interest maintenance reserve must be treated consistently for equity base and earnings purposes. However, this commentator urged that the interest maintenance reserve not be included in the section 809 equity base. Instead, interest-related capital gains and losses would be amortized into equity and earnings over the remaining life of the asset sold. The commentator stated that inclusion of the interest maintenance reserve in equity: (1) Is inconsistent with the substance and theory of the interest maintenance reserve, which is to treat interest-related realized capital gains and losses as a substitute for future unearned income; (2) fails to reduce the volatility of the life insurance companies' earnings rates; (3) is inconsistent with the requirement under section 809 that all determinations generally be made on the basis of the amounts required to be set forth on the annual statement; and (4) is inconsistent with § 1.809–9(a), which provides that neither the differential earnings rate nor the recomputed differential earnings rate may be negative.

No changes are being made to the regulations in response to these comments. Inclusion of the interest maintenance reserve in the equity base is consistent with the historical treatment of interest-related capital gains and losses under section 809. By providing in section 809(b)(5)(A) that the equity base includes the amount of the mandatory securities valuation reserve, Congress demonstrated its intent to include interest-related capital gains and losses in the equity base. Modification of the annual statement by the NAIC to eliminate and replace the mandatory securities valuation reserve cannot override the specific inclusion that Congress required for these gains and losses. Section 809(g)(3) provides the regulatory authority to adjust under section 809(b)(5) amounts set forth on the annual statement to continue the inclusion of these gains and losses in the equity base. Since the interest maintenance reserve represents an allocation of surplus from interest-related capital gains and losses for which Congress made clear its intentions and provided regulatory authority to preserve its intentions, the inclusion of the interest maintenance reserve in the equity base is appropriate.

The final regulations require any interest maintenance reserve (whether positive or negative) to be included in an insurer's equity base. The reduction of the equity base for any interest-related capital losses reflected in a negative interest maintenance reserve is consistent with the treatment of those losses prior to the replacement of the mandatory securities valuation reserve with the asset valuation reserve and the interest maintenance reserve. Before the change, any interest-related capital losses reduced the amount of net income added to capital and surplus. Thus, any negative interest maintenance reserve should be included as a reduction to the equity base, consistent with the treatment of interest-related capital losses prior to the change.

Under the final regulations, the asset valuation reserve and the interest maintenance reserve must be included in the calculation of the equity base for purposes of section 809. This requirement is reflected on both Form 1120L and Form 8390. See Announcement 93–117, 1993–29 I.R.B. 85. Thus, there is consistency between the calculations of the equity base on Form 1120L and on Form 8390. Finally, although the final regulations do not specifically address this issue, interest-related capital gains and losses continue to be included in section 809 earnings by virtue of section 809(g)(1)(C).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact of small business.

Drafting Information

The principal author of these regulations is Katherine Ann Hossofsky of the Office of the Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.809–10 also issued under 26 U.S.C. 809(b)(2) and (g)(3). * * *

§ 1.809–10T [Redesignated as § 1.809–10]

Par. 2. Section 1.809–10T is redesignated as § 1.809–10 and the word "(temporary)" is removed from the section heading.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: September 9, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–24012 Filed 9–28–94; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AG82

Transitional Housing Loan Program

AGENCY: Veterans Health Administration.

ACTION: Final rule.

SUMMARY: This document establishes application provisions and selection criteria for loans to non-profit organizations for use in initial startup costs for transitional housing for veterans who are in (or have recently been in) a program for the treatment of substance abuse. This new program is intended to increase the amount of transitional housing available for such veterans who need a period of supportive housing to encourage sobriety maintenance and reestablishment of social and community relationships.

EFFECTIVE DATE: September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Christine Woods, Administrative Officer, Office of Deputy Associate Director for Psychiatric Rehabilitation Services, at (804) 722–9961 x3628. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

In a document published in the **Federal Register** on August 1, 1994, (59 F.R. 38947) the VA proposed to establish Transitional Housing Loan Program regulations. Comments were solicited for a period of 30 days. No comments were received. The rationale presented in the proposed rule still provides the basis for this final rule. Therefore, based on the rationale set forth in the proposed rule, the VA hereby adopts the provisions of the proposed rule as a final rule without change.

E.O. 12866

This action is exempt from OMB review under E.O. 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that the provisions of this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that in all likelihood, only similar entities that are small entities would seek loans under this program. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, the VA has found good cause for making this final rule effective upon publication in light of the critical need to provide transitional housing to veterans.

List of Subjects

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Daycare, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veteran, Healthcare, Health facilities, Health professionals, Health records, Loans, Medical and dental schools, Medical devices, Medical research, Medical health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans, Veterans Affairs Department.

Approved: September 23, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is amended as set out below:

PART 17—MEDICAL

1. The authority citation for Part 17 is revised to read as follows:

Authority: 38 U.S.C. 501, 38 U.S.C. 7721, unless otherwise noted.

2. Part 17 is amended by adding §§ 17.800 through 17.805 and an undesignated center heading preceding section 17.800 to read as follows:

Transitional Housing Loan Program

§ 17.800 Purpose.

The purpose of the Transitional Housing Loan Program regulations is to establish application provisions and selection criteria for loans to non-profit organizations for use in initial startup costs for transitional housing for veterans who are in (or have recently been in) a program for the treatment of substance abuse. This program is intended to increase the amount of transitional housing available for such veterans who need a period of supportive housing to encourage sobriety maintenance and reestablishment of social and community relationships.

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§ 17.801 Definitions.

(a) *Applicant:* A non-profit organization making application for a loan under this program.

(b) *Non-profit organization:* A secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must include a voluntary board and must either maintain or designate an entity to maintain an accounting system which is operated in accordance with generally accepted accounting principles. If not named in, or approved under Title 38 U.S.C. (United States Code), Section 5902, a non-profit organization must provide VA with documentation which demonstrates approval as a non-profit organization under Internal Revenue Code, Section 501.c(3).

(c) *Recipient:* A non-profit organization which has received a loan from VA under this program.

(d) *Veteran:* A person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

(Authority: Sec. 8 of Pub. L. 102–54, 105 Stat 271, 38 U.S.C. 501)

§ 17.802 Application provisions.

(a) To obtain a loan under these Transitional Housing Loan Program regulations, an application must be submitted by the applicant in the form prescribed by VA in the application package. The completed application package must be submitted to the Deputy Associate Director for Psychiatric Rehabilitation Services, (302/111C), VA Medical Center, 100 Emancipation Drive, Hampton, VA 23667. An application package may be obtained by writing to the proceeding address or telephoning (804) 722–9961 x3628. (This is not a toll-free number)

(b) The application package includes exhibits to be prepared and submitted, including:

(1) Information concerning the applicant's income, assets, liabilities and credit history,

(2) Information for VA to verify the applicant's financial information,

(3) Identification of the official(s) authorized to make financial transactions on behalf of the applicant,

(4) Information concerning:

(i) The history, purpose and composition of the applicant,

(ii) The applicant's involvement with recovering substance abusers, including:

(A) Type of services provided,

(B) Number of persons served,

(C) Dates during which each type of service was provided,

(D) Names of at least two references of government or community groups whom the organization has worked with in assisting substance abusers,

(iii) The applicant's plan for the provision of transitional housing to veterans including:

(A) Means of identifying and screening potential residents,

(B) Number of occupants intended to live in the residence for which the loan assistance is requested,

(C) Residence operating policies addressing structure for democratic self-government, expulsion policies for nonpayment, alcohol or illegal drug use or disruptive behavior,

(D) Type of technical assistance available to residents in the event of house management problems,

(E) Anticipated cost of maintaining the residence, including rent and utilities,

(F) Anticipated charge, per veteran, for residing in the residence,

(G) Anticipated means of collecting rent and utilities payments from residents,

(H) A description of the housing unit for which the loan is sought to support, including location, type of neighborhood, brief floor plan description, etc., and why this residence was selected for this endeavor.

(iv) The applicant's plans for use of the loan proceeds.

(Authority: Sec. 8 of Pub. L. 102–54, 105 Stat. 271, 38 U.S.C. 501)

§ 17.803 Order of consideration.

Loan applications will be considered on a first-come-first-serve basis, subject to availability of funds for loans and awards will be made on a first-come-first-serve basis to applicants who meet the criteria for receiving a loan. If no funds are available for loans, applications will be retained in the order of receipt for consideration as funds become available.

(Authority: Sec. 8 of Pub. L. 102–54, 105 Stat. 271, 38 U.S.C. 501)

§ 17.804 Loan approval criteria.

Upon consideration of the application package, loan approval will be based on the following:

(a) Favorable financial history and status,

(1) A minimum of a two-year credit history,

(2) No open liens, judgments, and no unpaid collection accounts,

(3) No more than two instances where payments were ever delinquent beyond 60 days,

(4) Net ratio: (monthly expenses divided by monthly cash flow) that does not exceed 40%,

(5) Gross ratio: (total indebtedness divided by gross annual cash flow) that does not exceed 35%,

(6) At least two favorable credit references,

(b) Demonstrated ability to successfully address the needs of substance abusers as determined by a minimum of one year of successful experience in providing services, such as, provision of housing, vocational training, structured job seeking assistance, organized relapse prevention services, or similar activity. Such experience would involve at least twenty-five substance abusers, and would be experience which could be verified by VA inquiries of government or community groups with whom the applicant has worked in providing these services.

(c) An acceptable plan for operating a residence designed to meet the conditions of a loan under this program, which will include:

(1) Measures to ensure that residents are eligible for residency, i.e., are veterans, are in (or have recently been in) a program for the treatment of substance abuse, are financially able to pay their share of costs of maintaining the residence, and agree to abide by house rules and rent/utilities payment provisions,

(2) Adequate rent/utilities collections to cover cost of maintaining the residence,

(3) Policies that ensure democratic self-run government, including expulsion policies, and

(4) Available technical assistance to residents in the event of house management problems.

(d) Selection of a suitable housing unit for use as a transitional residence in a neighborhood with no known illegal drug activity, and with adequate living space for number of veterans planned for residence (at least one large bedroom for every three veterans, at least one bathroom for every four veterans, adequate common space for entire household)

(e) Agreements, signed by an official authorized to bind the recipient, which include:

(1) The loan payment schedule in accordance with the requirements of Pub. L. 102–54, with the interest rate being the same as the rate the VA is charged to borrow these funds from the U.S. Department of Treasury and with a penalty of 4% of the amount due for each failure to pay an installment by the date specified in the loan agreement involved, and

(2) The applicant's intent to use proceeds of loan only to cover initial startup costs associated with the residence, such as security deposit, furnishings, household supplies, and any other initial startup costs.

(Authority: Sec. 8 of Pub. L. 102–54, 105 Stat. 271, 38 U.S.C. 501)

§ 17.805 Additional terms of loans.

In the operation of each residence established with the assistance of the loan, the recipient must agree to the following:

(a) The use of alcohol or any illegal drugs in the residence will be prohibited;

(b) Any resident who violates the prohibition of alcohol or any illegal drugs will be expelled from the residence;

(c) The cost of maintaining the residence, including fees for rent and utilities, will be paid by residents;

(d) The residents will, through a majority vote of the residents, otherwise establish policies governing the conditions of the residence, including the manner in which applications for residence are approved;

(e) The residence will be operated solely as a residence for not less than six veterans.

(Authority: Sec. 8 of Pub. L. 102–54, 105 Stat. 271, 38 U.S.C. 501)

[FR Doc. 94–24066 Filed 9–28–94; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–5081–5]

Standards of Performance for New Stationary Sources, Supplemental Delegation of Authority to Knox County, TN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On June 2, 1994, the Knox County Department of Air Pollution Control requested that EPA delegate authority for implementation and enforcement of additional categories of New Source Performance Standards (NSPS). Since EPA's review of Knox County's pertinent laws, rules, and regulations showed them to be adequate and effective procedures for the implementation and enforcement of these Federal standards, EPA has made the delegation as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is July 28, 1994.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection during normal business hours at the following locations.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30365.

Knox County Department of Air Pollution Control, City-County Building, Room 339, 400 West Main Avenue, Knoxville, Tennessee 37902.

Effective immediately, all requests, applications, reports and other correspondence required pursuant to the newly delegated standards should not be submitted to the Region IV office, but should instead be submitted to the following address: Knox County Department of Air Pollution Control, City-County Building, Room 339, 400 West Main Avenue, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Karen C. Borel, Regulatory Planning and Development Section, Air Programs Branch, United States Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, (404) 347–3555, x4197.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with Sections 110 and 111(c)(1) of the Clean Air Act as amended November 15, 1990, authorizes EPA to delegate authority to implement and enforce the standards set out in 40 CFR part 60, New Source Performance Standards (NSPS).

On May 20, 1977, EPA initially delegated the authority for implementation and enforcement of the NSPS programs to Knox County. A subsequent delegation followed on December 13, 1985, in which Knox County requested an update of its delegation of authority for previously delegated NSPS regulations. On June 2, 1994, Knox County requested a delegation of authority for implementation and enforcement of the following NSPS categories found in 40 CFR part 60.

1. Standard of Performance for Metal Coil Surface Coating Operations, as specified in 40 CFR 60, Subpart TT, as amended by 51 FR 22938, June 24, 1986, as adopted May 25, 1994, except § 60.466(d).

2. Standard of Performance for Petroleum Dry Cleaners, as specified in 40 CFR 60, Subpart JJJ, as amended by 50 FR 49026 (November 27, 1985), as adopted May 25, 1994.

3. Standard of Performance for Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes, as amended by 58 FR 45948 (August 31, 1993), as specified in 40 CFR 60, Subpart RRR, and as adopted May 25, 1994, except § 60.703(e).

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for this source category with the conditions set forth in the original delegation letter of May 20, 1977. Knox County sources subject to the requirements of this subpart will now be under the jurisdiction of Knox County.

Since review of the pertinent Knox County laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned category of NSPS, the EPA hereby notifies the public that it has delegated the authority for the source category listed above on July 28, 1994. The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Authority: This notice is issued under the authority of sections 101, 110, 111, 112, and 301 of the Clean Air Act, as Amended (42 U.S.C. 7401, 7410, 7411, 7412, and 7601).

Dated: September 1, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94–24121 Filed 9–28–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7111]

Changes In Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the

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Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Citrus	City of Inverness	July 25, 1994, August 1, 1994, *Citrus County Chronicle.*	The Hon. O.J. Humphries, Mayor of the City of Inverness, 212 West Main Street, Inverness, Florida 34450.	July 18, 1994	120348 B
Illinois: DuPage and Will Counties.	City of Naperville	July 13, 1994, July 20, 1994, *Naperville Sun.*	The Hon. Samuel T. Macrane, Mayor of the City of Naperville, 400 South Eagle Street, Naperville, Illinois 60566–7020.	June 30, 1994	170213 C
Minnesota: Olmsted County.	City of Rochester	July 29, 1994, August 5, 1994, *Post Bulletin.*	The Hon. Chuck Hazama, Mayor of the City of Rochester, City Hall, Room 200, Rochester, Minnesota 55902.	July 21, 1994	275246 C
North Carolina: Wake County.	Town of Cary	February 9, 1994, February 16, 1994, *The Cary News.*	The Hon. Koka E. Booth, Mayor of the Town of Cary, P.O. Box 1147, Cary, North Carolina 27512–1147.	July 1, 1993	370238

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Tennessee: Cheatham	Unincorporated areas	January 19, 1994, January 26, 1994, *Ashland City Times.*	Ms. Linda Fizer, Executive for Cheatham County, 100 Public Square, Suite 105, Ashland City, Tennessee 37015.	December 17, 1993	470026
Virginia: Unincorporated areas of Rockingham County.	Rockingham County	July 19, 1994, July 26, 1994, *Daily News Record.*	Mr. William G. O'Brien, Rockingham County Administrator, 20 East Gay Street, Harrisonburg, Virginia 22801.	July 12, 1994	510133 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: September 20, 1994.

Robert F. Shea,

Acting Associate Director for Mitigation.

[FR Doc. 94–24118 Filed 9–28–94; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below. The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
GEORGIA	
Augusta (city), Richmond County (FEMA Docket No. 7079)	
Savannah River:	
Approximately 1.35 miles downstream of the confluence of Butler Creek	*122
Approximately 1.35 miles upstream of Interstate 20	*151
Maps available for inspection at the City-County Municipal Building, 530 Greene Street, Augusta, Georgia.	
Richmond County (Unincorporated Areas) (FEMA Docket No. 7079)	
Savannah River:	
Approximately 0.6 mile upstream of its confluence with McBean Creek	*108
Approximately 0.9 mile upstream of Sandbar Ferry Road (at City of Augusta corporate limits)	*133
Spirit Creek:	
At confluence with Savannah River	*118
Approximately 400 feet downstream of State Route 56	*125
Maps available for inspection at the City-County Municipal Building, 530 Greene Street, Augusta, Georgia.	
OKLAHOMA	
Osage County (Unincorporated Areas) (FEMA Docket No. 7091)	
Arkansas River:	
Approximately 2.0 miles downstream of U.S. Route 60	*922
At Kaw Lake Dam	*951
Bird Creek:	
Approximately 1.3 miles upstream of State Route 20	*637
Approximately 1.5 miles upstream of U.S. Route 60 and State Route 11	*823
Sand Creek:	
At county boundary approximately 0.9 mile downstream of State Route 123	*670
Approximately 1.6 miles upstream of confluence with Panther Creek	*690
Hominy Creek:	
Approximately 600 feet downstream of Texas and Pacific Railroad	*624
At confluence of Quapaw Creek	*642
Clear Creek:	
At the downstream corporate limits approximately 0.3 mile upstream of U.S. Highway 60 and State Highway 11	*820
At the upstream corporate limits approximately 0.35 mile upstream of U.S. Highway 60 and State Highway 11	*820
Delaware Creek:	
At county boundary approximately 3.7 miles downstream of County Road	*619
Approximately 5 miles upstream of county boundary at the most upstream crossing of County Road	*637
Flat Rock Creek:	
Approximately 1,200 feet downstream of confluence of Flat Rock Creek Tributary B	*648
Approximately 1,500 feet upstream of Osage Drive	*717
Quapaw Creek:	
At confluence with Hominy Creek	*643
Approximately 1.5 miles upstream of confluence of East Prong Creek	*701
Butler Creek:	
At Sunset Boulevard	*677
Approximately 5.4 miles upstream of Sunset Boulevard	*707
Rock Creek:	
At confluence with Hominy Creek	*625
Approximately 2.5 miles upstream of County Road	*643
Javine Creek:	
Approximately 600 feet downstream of 144th Street	*641
Approximately 0.7 mile upstream of 144th Street	*655
Penn Creek:	
Approximately 300 feet downstream of corporate limits	*781
Approximately 0.5 mile upstream of confluence of "B" Creek	*791
Claremore Creek:	
Approximately 150 feet downstream of Missouri-Kansas-Texas Railroad (abandoned)	*782
At upstream corporate limits	*793
Euchee Creek:	
At downstream county boundary	*691
At confluence of Euchee Creek Tributary	*699
Euchee Creek Tributary:	
At confluence with Arkansas River	*699
Approximately 950 feet upstream of Willow Street	*719
Eliza Creek:	
At downstream county boundary	*670
At U.S. Route 60	*715
B-Creek:	
At confluence with Penn Creek	*784
Approximately 0.9 mile upstream of confluence with Penn Creek	*794
Flat Rock Creek Tributary C:	
At confluence with Flat Rock Creek Tributary B	*653
Approximately 1.3 miles upstream of confluence with Flat Rock Creek Tributary B	*689
Flat Rock Creek Tributary B:	
At confluence with Flat Rock Creek	*649
Approximately 1.5 miles upstream of confluence of Flat Rock Creek Tributary C	*696
Flat Rock Creek Tributary D:	
At confluence with Flat Rock Creek	*675
Approximately 1.6 miles upstream of confluence with Flat Rock Creek	*727
Maps available for inspection at the Osage County Soil and Land Conservation Office, 628 Kihekah, Pawhuska, Oklahoma.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: September 20, 1994.

Robert F. Shea,

Acting Associate Director for Mitigation.

[FR Doc. 94-24119 Filed 9-28-94; 8:45 am]

BILLING CODE 6718-03-P

LEGAL SERVICES CORPORATION

45 CFR Part 1602

Procedures for Disclosure of Information Under the Freedom of Information Act

AGENCY: Legal Services Corporation.

ACTION: Final rule; withdrawal of rule.

SUMMARY: This document withdraws the amendments to the Legal Services Corporation's ("LSC" or "Corporation") regulation implementing the Freedom of Information Act ("FOIA"), which were to become effective on October 2, 1994, to allow apportunity for further consideration by the LSC Boards.

EFFECTIVE DATE: Effective September 29, 1994, the amendments to 45 CFR part 1602 published at 58 FR 52918 are withdrawn.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, 202-336-8810.

SUPPLEMENTARY INFORMATION: A final rule amending 45 CFR Part 1602 was published in the **Federal Register** on October 13, 1993, with an effective date of November 12, 1993. 58 FR 52918. Because the Corporation's fiscal year 1994 appropriations act (Pub. L. 103-121, 107 Stat. 1184)—which became law prior to the original effective date of November 12, 1993—operated to delay the effective date of the rule until after October 1, 1994, the Corporation published a notice in the **Federal Register** announcing that the effective date of the final rule was delayed to October 2, 1994, absent superseding action by the Corporation's Board of Directors. 58 FR 65291.

On September 20, 1994, the Corporation's Board voted by notational vote to withdraw the final rule amending 45 CFR Part 1602 so that the rule would not become effective before the Board had an opportunity for further consideration.

Dated: September 22, 1994.

Victor M. Fortuno,

General Counsel.

[FR Doc. 94-23994 Filed 9-28-94; 8:45 am]

BILLING CODE 7050-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94-37; RM-8449]

Radio Broadcasting Services; Lihue Kauai, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 251C to Lihue Kauai, Hawaii, as that community's third local FM service, at the request of Linohau Entertainment, *See* 59 FR 27525, May 27, 1994. Channel 251C can be allotted to Lihue Kauai in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for Channel 251C at Lihue Kauai are North Latitude 21-58-48 and West Longitude 159-22-30. With this action, this proceeding is terminated.

DATES: Effective Nov. 7, 1994. The window period for filing applications for Channel 251C at Lihue Kauai, Hawaii, will be open on November 7, 1994, and close on December 8, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 94-37, adopted September 14, 1994, and released Sept. 21, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Channel 251C at Lihue.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94-23785 Filed 9-28-94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 382 and 391

RIN 2125-AA79, 2125-AC85, 2125-AD06, 2125-AC81

Federal Motor Carrier Safety Regulations; Technical Amendments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendments.

SUMMARY: This document makes technical amendments to indicate that the Office of Management and Budget (OMB) has approved the recordkeeping requirements in the final rules for controlled substances and alcohol use and testing.

EFFECTIVE DATE: September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Rombro, Office of Motor Carrier Standards, (202) 366-5615, or Mr. David Sett, Office of Chief Counsel, (202) 366-1392, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On December 23, 1993, and February 15, 1994, the FHWA published final rules on controlled substances and alcohol use and testing of commercial motor vehicle drivers (58 FR 68220 and 59 FR 7484). This document makes technical amendments to parts 382 and 391 to indicate that the Office of Management and Budget has approved the recordkeeping requirements of these final rules.

Rulemaking Analyses and Notices

Because this final rule simply provides notice to the public that the OMB has approved the information collection requirements of two FHWA rulemakings and does not change these rules in any way, the FHWA believes that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B), and that good cause exists to dispense with the 30-day delay in effective date ordinarily required under 5 U.S.C. 553(d). In this purely technical action, the FHWA is not exercising discretion in a way that could be meaningfully affected by public comment.

In addition, due to the technical nature of this final rule, the FHWA has determined that prior notice and opportunity for comment are not required under the Department of Transportation's regulatory policies and procedures, as it is not anticipated that such action would result in the receipt of useful information. Therefore, the FHWA is proceeding directly to a final rule which is effective upon its date of publication.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this regulatory action is not significant under Executive Order 12866 or the regulatory policies and procedures of the DOT. This rulemaking action does not impose any new requirements; it merely provides notice of OMB acceptance of the paperwork requirements of previously published rules. Because it does not amend these rules in any way, this rule will not have any economic impact. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-162), the FHWA has evaluated the effects of this rule on small entities. The FHWA believes that this rule, in simply technically amending the FMCSRs,

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would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

The FHWA has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and certifies that this action does not have sufficient federalism implications to warrant the preparation of a separate federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This technical amendment provides information collection numbers approved by the Office of Management and Budget for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. In §§ 382.101 and 391.87, the OMB has assigned control number 2125–0543, which expires on March 1, 1997.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 382 and 391

Alcohol testing, Controlled substances testing, Highways and roads, Motor carriers, Motor vehicle safety.

Issued on: September 23, 1994.

Theodore A. McConnell,
Chief Counsel.

In consideration of the foregoing, the FHWA hereby amends title 49, Code of Federal Regulations, chapter III, subchapter B, as set forth below.

PART 382—[AMENDED]

1. The authority citation for part 382 is revised to read as follows:

Authority: 49 U.S.C. 31136 and 31302 *et seq.*; 49 U.S.C. 31502; 49 CFR 1.48.

§ 382.101 [Amended]

2. Section 382.101 is amended by adding the following parenthetical language at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 2125–0543)

PART 391—[AMENDED]

3. The authority citation for part 391 is revised to read as follows:

Authority: 49 U.S.C. 504, 31136, and 31502; 49 CFR 1.48.

§ 391.87 [Amended]

4. Section 391.87 is amended by adding the following parenthetical language at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 2125–0543)

[FR Doc. 94–24079 Filed 9–28–94; 8:45 am]
BILLING CODE 4910–22–P

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–31, Notice 02]

RIN 2127–AE78

Federal Motor Vehicle Safety Standards; Warning Devices

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends Federal Motor Vehicle Safety Standard No. 125, *Warning Devices*. As amended, the standard applies only to those warning devices that do not have self-contained energy sources and that are designed to be carried in buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 lbs. Previously, the standard applied to all warning devices that do not have self-contained energy sources and that are designed to be carried in motor vehicles. This final rule provides warning device manufacturers with greater design flexibility and regulatory relief.

DATES: The amendments made by this final rule are effective October 31, 1994. Petitions for reconsideration of this final rule must be filed by October 31, 1994.

ADDRESSES: Petitions for reconsideration of this final rule should refer to the docket and notice number cited in the heading of this final rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. It is requested, but not required, that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth O. Hardie, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Mr. Hardie's telephone number is: (202) 366–6987.

SUPPLEMENTARY INFORMATION:

Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 125, *Warning Devices*, specifies requirements for warning devices that do not have self-contained energy sources (nonpowered warning devices) and that are designed to be carried in motor vehicles and placed on the roadway to warn approaching traffic of the presence of a stopped vehicle. The standard does not apply to devices designed to be permanently affixed to the vehicle. The purpose of the standard is to reduce deaths and injuries due to rear-end collisions between moving traffic and disabled or stopped vehicles. The standard specifies that the warning devices are to be triangular, open in the center, covered with orange fluorescent and red reflex reflective material, and capable of being erected on the roadway. The characteristics are intended to assure that the warning device can be readily observed during daytime and nighttime lighting conditions, have a standardized shape for quick message recognition, and perform properly when deployed.

Standard No. 125 proscribes manufacturers from marketing other nonpowered warning devices with physical or performance characteristics differing from the standard's specifications. Some, including P.C.S. Safety Corporation, that petitioned for rulemaking to amend Standard No. 125, have contended that the standard is too design restrictive since it prohibits other nonpowered warning devices which may adequately warn approaching drivers of a disabled vehicle.

Notice of Proposed Rulemaking

On May 10, 1993, NHTSA published in the **Federal Register** a notice of proposed rulemaking (NPRM) (See 58 FR 27514). In the NPRM, NHTSA proposed to amend Standard No. 125 by making the standard applicable only to those warning devices that do not have self-contained energy sources and that are designed to be carried in buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 lbs. As a rationale for the proposed change, NHTSA tentatively concluded that no longer applying Standard No. 125 to nonpowered warning devices designed to be carried in vehicles with a GVWR of 10,000 pounds or less would provide greater freedom for manufacturers in designing nonpowered warning devices for the general public and would relieve an unnecessary regulatory burden on industry. NHTSA also tentatively concluded that Standard No. 125 should continue to apply to nonpowered warning devices for use in vehicles subject to Federal Highway Administration (FHWA) regulations and to any comparable state regulations, since the FMVSS and FHWA's regulations complement one another. The Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR parts 350–399) of the Federal Highway Administration (FHWA) are applicable to commercial motor vehicles (vehicles that have a GVWR greater than 10,000 pounds) and their operators.

NHTSA further noted that although it regulated nonpowered warning devices designed to be carried in a motor vehicle, the agency has not required that vehicles be equipped with such warning devices. In the May 1993 NPRM, NHTSA also cited two NHTSA-funded studies of warning device efficacy in support of its tentative conclusion that nonpowered warning triangles may not be effective in reducing disabled vehicle-related accident rates. Neither study addressed vehicles stopped on the road. The studies addressed vehicles stopped on the road. The studies addressed vehicles stopped on the shoulder of the road. (Since many public comments addressed the studies' findings, the studies are more fully discussed below in the section on NHTSA's response to public comments.) In the NPRM, NHTSA further stated its belief that additional data on the efficacy of the nonpowered warning triangles could be collected only after significant expenditure of agency resources. Even if NHTSA devoted its resources to collecting data, it believed the findings resulting from the data might not demonstrate a safety benefit.

NHTSA also acknowledged concern about problems that might occur if nonpowered warning devices designed for use in passenger cars were no longer subject to Standard No. 125. NHTSA invited comments and supporting technical information about any potential problems which commenters might envision.

This rulemaking also responds to a petition for rulemaking from P.C.S. Safety Corporation. P.C.S. apparently wishes to market a nonpowered warning device that does not meet Standard No. 125 specifications. P.C.S. petitioned NHTSA to amend Standard No. 125 to permit the marketing of its device.

Public Comments and NHTSA Response

In response to the NPRM, NHTSA received comments from 16 commenters. Two commenters supported the proposal. One supporter was Dr. Andrew Huang, an inventor of an alternate warning device, without a self-contained energy source, that is designed to be carried in motor vehicles. If the proposal becomes final, Dr. Huang's device would be permitted to be produced for use in vehicles that have a GVWR of 10,000 lbs. or less. Ford Motor Company, the other supporter, stated that the proposal would potentially benefit motor vehicle safety by removing design restrictions that may result in warning devices whose designs and costs are more suitable for purchase and use by drivers of light duty vehicles. Another inventor, Mr. Carl Monk, wrote in favor of changes to specifications for Standard No. 125, since "no one can read the required instructions for assembly at night without lights" and in emergencies, nighttime assembly may be necessary.

Thirteen commenters opposed the proposal to make Standard No. 125 applicable only to nonpowered warning devices designed to be carried in buses and trucks that have a GVWR greater than 10,000 pounds. Most commenters provided reasons for their opposition. Although the comments varied, the commenters' reasons for opposing the proposal can generally be categorized as follows:

1. Studies show Standard No. 125's equilateral triangle design provides the most effective warning of a disabled vehicle.

2. Greater design freedom will dilute the distinctiveness of the warning triangle, and will result in increased motorist confusion, with a potential for increased collisions.

3. NHTSA's not regulating nonpowered warning devices designed to be carried in vehicles with a GVWR of 10,000 lbs. or less would result in state regulation of such warning devices. Motorists would be discouraged from using warning devices, for fear that the use of a particular device would be permitted in one state, but not in other states.

The three issues raised by opposing commenters, additional minor issues, and NHTSA's response to each issue are discussed below.

1. Studies On Efficacy of the Standard No. 125 Warning Triangle as o Warning Device

Federal Mogul Corporation, K.D. Lamp Company, Sate-Light Manufacturing, Transportation Safety Equipment Institute (TSEI), Dr. Merrill Allen of Indiana University, and Dr. Helmut Zwahlen of Ohio University, all disagreed with NHTSA's conclusion that studies did not show efficacy of the Standard No. 125 warning device (warning triangles). Sate-Lite and TSEI, in particular, disagreed with NHTSA's position that two NHTSA-funded studies support the conclusion that warning triangles may not be effective in reducing disabled-vehicle related accident rates.

The two studies at issue are: *Study of Safety-Related Devices—Emergency Warning Devices for Disabled Vehicles*, of August 19, 1986 (prepared by NHTSA's Office of Crash Avoidance Research); and *Analysis of the Dismounted Motorist and Road-Worker Model Pedestrian Safety Regulation*, August 1982 (prepared by Ulmer, Leaf, and Blomberg). Among other subjects, both studies discussed field experiments conducted by M.J. Allen, S.D. Miller, and J.L. Short of Indiana University. The field experiments simulated disabled vehicles that were parked on the shoulder of a roadway whose speed limit was 65 mph. The experiments tried to evaluate the responses of passing motorists to a stopped vehicle and warning devices, including warning triangles and flares.

The experiments were based on the assumptions that if warning devices were effective, they would induce measurable decreases in passing vehicle speed and increases in lateral separation between the moving and disabled vehicle and that such measurable changes would signify a decrease in accident potential. In a 1971 Allen, Miller and Short experiment, it was determined that at night, the warning triangles induced a reduction in passing vehicle speed of only 1.5 mph on average. During the day, none of the emergency warning device configurations (i.e., flares alone, flares and triangles, triangles alone, etc.) induced any reduction in passing vehicle speed or any increase in lateral separation, when compared to the situation when no warning devices were placed behind the disabled vehicle. The 1971 Allen *et al* experiment showed that although flares and triangles were about equally effective, the single most effective daytime condition for reducing

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speed was three triangles placed at 2, 48, and 100 paces behind the vehicle. This condition, however, only induced a speed reduction of 3–4 mph compared to the disabled vehicle-only condition.

In Standard No. 125, NHTSA does not specify the number of triangles that should be deployed with a stopped vehicle. Figure 2 of Standard No. 125 depicts only one triangle deployed behind the stopped vehicle. At no time during the history of Standard No. 125, has NHTSA ever considered the use of more than one triangle for vehicles with a GVWR of 10,000 lbs. or less.

In 1975, Miller performed a follow-up study along the same roadway. As in the earlier field experiment, disabled vehicles, parked on the shoulder of the roadway, were simulated. Miller's experiment tried to evaluate the responses of passing motorists to a stopped vehicle and warning devices, including triangles and flares. In his follow-up study, Miller added a four-way flasher activation (on the disabled vehicle) as a condition. Miller concluded that during the day, the use of four-way flashers or warning triangles generally had no effect on speed. The 1975 Miller study also indicated that at night, four-way flashers were more effective than warning triangles in inducing a reduction in passing vehicle speed and an increase in lateral separation in the disabled vehicle situation.

In their comments, both TSEI and Sate-Lite cited the August 1986 and August 1982 studies as showing efficacy of the warning triangles. Both TSEI and Sate-Lite appeared to believe that NHTSA believes powered warning devices are more effective than nonpowered warning triangles because the powered devices may induce greater speed reductions and greater lateral separations with respect to passing vehicles. NHTSA has no position on the efficacy of warning devices with self-contained energy sources, since it has no data regarding their effectiveness.

In the NPRM, NHTSA stated that the 1986 and 1982 studies about warning devices evaluated the response of passing motorists to such devices, based on the assumption that measurable changes in passing vehicle speed and lateral separation between the moving and the disabled vehicle signify a decrease in accident potential. While studies based on this assumption may not fully evaluate warning device effectiveness, they do evaluate the response of some drivers when confronted with a warning device.

Sate-Lite in its defense of retaining warning triangle applicability for vehicles with a GVWR of 10,000 lbs. or less, stated that the effectiveness or primary function of the warning triangle is not necessarily to halt traffic, reduce speed or alter driving activity such as lateral movement, as suggested by NHTSA's discussion of the field experiments' data on the two studies at issue. Sate-Lite stated that the purpose of the warning triangle is to impart awareness to the approaching driver of the presence of a parked or disabled vehicle. Sate-Lite in its discussion of this issue adopted the perspective that the passing motorists may, in fact, have reacted to the warning triangle, assessed the situation, and proceeded past the test site without adjusting speed or separation because the drivers judged that no hazard was involved (or that the motorist reacted well before the site and then resumed normal course and speed). Sate-Lite suggested that an apparently normal parked vehicle that is off the roadway would not be considered hazardous and would cause no overt driving response (although it might prompt changes in visual search behavior or in readiness to respond; changes not detectable by remote measurement).

NHTSA does not find Sate-Lite's interpretation of the field experiments' data to favor use of the warning triangle. Sate-Lite's interpretation does not indicate whether the drivers may have slowed down in advance of the vehicle because they saw just the stopped vehicle or the warning triangle and the stopped vehicle. If it cannot be shown that the Standard No. 125 warning triangle changes driver behavior any more than just the presence of the stopped vehicle, there does not appear to be any demonstrable safety benefit in using the warning triangle.

Dr. Helmut Zwahlen also disagreed that speed reduction and lateral displacement correctly measure accident reduction potential of a warning device. He asserted that more guidance about the roadway conditions ahead, such as that provided in a warning triangle, provides more comfort in driving. However, Dr. Zwahlen provided no criteria for measuring a warning device's accident reduction potential, and except for data showing that the triangle shape is the one most recognizable from a distance, provided no data on the Standard No. 125 warning triangle's efficacy in accident avoidance or reduction.

Dr. Merrill Allen (one of the Indiana University researchers cited in the NHTSA-funded studies) expressed concern that NHTSA has interpreted his research as not supportive of warning triangles. Dr. Allen commented that in reviewing "hundreds" of accident cases with vehicles stopped in the lane of traffic, he had never seen a case where an accident occurred with the warning triangles in place. Dr. Allen did not specify the number of instances where he observed triangles in place.

NHTSA notes that the Indiana University experiments, with Dr. Allen as a participant, observed a different situation, where warning triangles were used in association with a vehicle on the shoulder of the road. Dr. Allen in his comments, acknowledged that his research (involving vehicles on the shoulder of the road) was "not representative of the major purpose of the warning, namely place a vehicle and triangles or flares in the lane of travel." Dr. Allen offered no references to studies or other evidence of efficacy in using warning triangles for vehicles stopped in the lane of travel. NHTSA is aware of no reliable quantitative statistics relating to the effectiveness of emergency warning devices in preventing accidents with disabled vehicles on or off the roadway. The most meaningful studies that NHTSA is aware of are similar to Dr. Allen's experiments of measuring changes in passing vehicle speed and lateral separation. It continues to be NHTSA's belief that these studies are not supportive of warning triangles' efficacy in reducing disabled vehicle related accident rates.

Apparently in the belief that a FHWA rulemaking concerning fusees/flares is related to NHTSA's proposal to amend Standard No. 125, some commenters described in detail the superiority of warning triangles over fusees/flares as warning devices. Several commenters, including TSEI, Sate-Lite, Federal Mogul, Cortina Tool and Molding, and Dr. Zwahlen, cited a April 1992 *Consumer Reports* article that favorably compared the warning triangle with several powered warning devices. NHTSA, however, has no comment on *Consumer Reports'* research, or other evidence comparing warning triangles with flares, fusees, or other powered warning devices. The agency does not believe that the information about powered warning devices has any bearing upon this rulemaking, which addresses only nonpowered warning devices.

NHTSA does not disagree with commenters that state the equilateral triangle may be the most effective warning device. However, after reviewing the public comments, which did not offer new, probative research information, NHTSA still is not convinced that using the warning triangle is effective either in giving

motorists advance warning of a stopped vehicle or in reducing accidents.

2. Greater Design Flexibility

Federal Mogul, Mr. Jerry Wachtel, K.D. Lamp, Sate-Lite, Cortina Tool and Molding, TSEI, James King and Co., Inc., Dr. Helmut Zwahlen, and Advocates for Highway and Auto Safety each commented that greater flexibility in warning device design, permitting warning devices other than the Standard No. 125 device, will lessen the recognizability of the warning triangle as a symbol of a stopped vehicle. They appeared to state that less recognizability will result in increased motorist confusion, possibly resulting in more collisions.

James King stated that it has manufactured Standard No. 125 warning devices since 1989. James King commented that regulation to ensure uniformity is necessary because the general public cannot assess warning device effectiveness, and that "ineffective reflectors" do not look significantly different from effective ones. James King's comment, favoring Standard No. 125's specification of a nonpowered warning device in a triangular shape, appears to presume that the Standard No. 125 warning device is effective, and warning devices that do not comply with Standard No. 125 are ineffective. However, no data is available to NHTSA that supports the view that warning devices that do not conform to Standard No. 125 will be less effective in preventing accidents than warning devices that do conform to Standard No. 125. NHTSA is conducting this rulemaking to relieve an unnecessary regulatory burden on industry because of the design restrictive nature of Standard No. 125, and because research data suggest that the standard has produced no benefits. Additionally, this final rule will result in greater design freedom for manufacturers to provide the public with warning devices, should the public so desire, without an adverse effect on safety.

James King also appears to believe that because it would manufacture nonpowered Standard No. 125 warning devices designed to be carried on motor vehicles subject to the Federal Highway Administration's regulations, it would face unfair competition from devices that (to the layperson) appear to comply with Standard No. 125, but really do not. For the following reasons, NHTSA does not believe James King would be at such a disadvantage. When this final rule becomes effective, James King would have more flexibility, since it could then manufacture any nonpowered warning device designed to be carried in vehicles with a GVWR of 10,000 lbs. or less. If it decides to manufacture nonpowered warning devices designed to be carried in buses and trucks that have a GVWR greater than 10,000 lbs., James King, and its competitors, must manufacture devices to Standard No. 125 specifications. Anyone manufacturing a nonpowered device designed to be carried in buses and trucks that have a GVWR greater than 10,000 lbs., that does not meet Standard No. 125 specifications may be subject to an enforcement action by NHTSA. Further, section 393.95 of title 49 of the Code of Federal Regulations is enforced by the FHWA. Section 393.5 states that all bidirectional emergency reflective triangles deployed by commercial motor vehicle operators must satisfy the requirements of Standard No. 125.

Dr. Zwahlen commented that the safety device industry should be kept within a narrow band of performance, physical specifications and test procedures. Dr. Zwahlen stated that he had conducted independent research that showed that the triangle shape was the most recognizable from a distance, comparing the triangle with five other shapes, each with an area of 18 sq. inches. NHTSA does not dispute Dr. Zwahlen's contention that the triangular shape may be the most recognizable shape from a distance. However, Dr. Zwahlen's research appears to presume that drivers use warning devices. Dr. Zwahlen has not shown that drivers are carrying and using warning devices of any type. A 1993 NHTSA survey (discussed below) indicates that few, if any, passenger car and light truck drivers, in fact, use any warning devices when their vehicles are stopped. If drivers do not carry and use warning devices, there is limited practical significance to the fact that the triangular shape is the most recognizable.

Although Standard No. 125 applies to devices designed to be carried in all vehicles, the standard does not require that new vehicles be equipped with them. Further, the agency cannot require that the device be carried in used motor vehicles. As a result, since there is no NHTSA requirement that they carry and use the devices, drivers of passenger cars and light trucks rarely use Standard No. 125 devices when their vehicles are stalled.

That the warning devices are rarely used by passenger car and light truck drivers was indicated in a 1993 survey by two NHTSA engineers. Traveling on approximately 700 miles of highway in the Washington, DC area and between DC and Newport News, Virginia, the engineers counted a total of 74 stopped vehicles. Based on personal observation, the engineers classified each vehicle type. Of the 74 vehicles, the engineers determined 65 stopped vehicles were passenger cars or light trucks. The engineers observed that no warning device of any type was used for 62 of these, flares were used for 2, and two orange cones were used for the remaining one. None of the drivers of the stopped passenger cars or light trucks used the Standard No. 125 warning device. All of the remaining 9 vehicles were heavy trucks. No device was used for 6 of them; the Standard No. 125 device was used for the other 3 vehicles.

Since it appears use of the warning devices is infrequent with vehicles with a GVWR of 10,000 lbs or less, NHTSA does not believe permitting additional types of nonpowered warning devices will result in motorist confusion or in more collisions. If the usage rate suggested in the NHTSA survey is typical, there would appear to be no possibility of a significant adverse effect on safety if Standard No. 125 were amended to apply only to devices designed to be carried in buses and trucks that have a GVWR greater than 10,000 lbs. In fact, as suggested in Ford Motor Company's comment, if there were no standards for devices designed to be carried in motor vehicles under 10,000 pounds GVWR, nonprofessional drivers, having a greater variety of nonpowered items to choose from, may be motivated to carry a warning device of some sort when they have none now.

3. Potential State Regulation of Warning Devices

TSEI and the American Trucking Associations (ATA) commented that the NPRM, if made final, might result in each state regulating warning devices, since there would no longer be a Federal standard regulating nonpowered devices. TSEI expressed a belief that state regulation would discourage customers from using warning devices, for fear of purchasing a device whose use is permitted in one state, but prohibited in another. ATA favors an NHTSA-promulgated uniform standard for warning devices designed to be carried in vehicles not subject to the Federal Highway Administration's regulations, in order to preclude states from issuing "differing and conflicting standards." It urged no changes in the applicability of Standard No. 125 until NHTSA develops a standard applicable to warning devices designed to be carried in vehicles with a GVWR of 10,000 lbs. or less.

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In response to the TSEI and ATA comments, the issue of state regulation of warning devices was indirectly addressed above in section 2, *Greater Design Flexibility*. As noted in section 2, it appears that use of the Standard No. 125 warning device is infrequent. Since driver use of the devices is infrequent in the absence of state regulation, it does not appear that the presence of such regulation would have any significant effect.

4. Other Issues Raised by Commenters

Two commenters, Dr. Allen and Dr. Zwahlen, recommended that NHTSA amend Standard No. 125 to require the warning triangles be carried in and used with motor vehicles. These recommendations are outside the scope of the NPRM. Further, as explained in the NPRM, NHTSA has not required that vehicles be equipped with Standard No. 125 warning triangles because NHTSA has never conclusively determined that the warning triangles are effective. Since NHTSA believes obtaining data on warning triangle efficacy (necessary to support rulemaking to mandate carrying of warning devices) would be expensive and very likely would not result in findings that conclusively support a safety benefit in using triangles, it has not conducted research on warning triangle efficacy. Without such data, the agency is not inclined to require that vehicles be equipped with Standard No. 125 warning triangles.

The Advocates for Highway and Auto Safety commented that NHTSA should focus more on traffic control functions that Standard No. 125 warning triangles provide under emergency conditions, rather than on design features of the warning triangle. They offered several suggestions for how the warning triangles can be improved to better serve traffic control functions. The Advocates' comments address issues that go beyond the scope of the current rulemaking. Thus, NHTSA has not adopted the Advocates' suggestions.

Finally, TSEI asserts that a regulatory flexibility analysis of the effect of this rulemaking on small businesses should have been conducted. TSEI objected to NHTSA's proposal to make Standard No. 125 applicable only to devices designed to be carried in buses and trucks that have a GVWR greater than 10,000 lbs. TSEI's point appeared to be that it was inequitable for NHTSA to propose not to regulate warning devices designed to be carried in passenger cars, after the industry (mainly small manufacturers) tried, "at great cost" to make its devices meet Standard No. 125 specifications. Thus, TSEI requested a regulatory flexibility analysis (pursuant to 5 U.S.C. §§ 603 and 604) to assess the economic impact of this rulemaking on small entities.

For the following reasons, NHTSA believes this rulemaking may have a slight beneficial effect on small warning device manufacturers, but will not have a significant economic impact on a substantial number of small entities. First, not regulating warning devices designed to be carried in vehicles with a GVWR of 10,000 lbs. or less potentially creates a market for new types of nonpowered warning devices. Because of their expertise in Standard No. 125 devices, warning device manufacturers should be able to take advantage of this lessening of regulations and manufacture comparable devices that drivers of vehicles with a GVWR of 10,000 lbs. or less will buy. However, because use of any warning devices for drivers of vehicles with a GVWR of 10,000 lbs. or less is not mandated, NHTSA does not anticipate significant market demand for these devices.

Second, it appears that there is limited potential for significant loss of sales. Based on its 1993 road survey, NHTSA believes that the current demand for Standard No. 125 devices among drivers of vehicles with a GVWR of 10,000 lbs. or less is apparently very small. Further, the simple fact that other types of nonpowered warning devices may now be manufactured for those vehicles does not mean that sales of those devices will come at the expense of the triangular nonpowered warning devices. Additionally, although a recent Federal Highway Administration final rule (FHWA Docket No. MC–93–19), gives fusees and liquid burning flares equal status with triangles for use as emergency warning devices (with exceptions), this NHTSA final rule does nothing to change the FHWA's requirements for use of bidirectional reflective triangles with commercial motor vehicles that have a GVWR greater than 10,000 lbs. Thus, there appears to be no significant economic impact on small warning device manufacturers as a result of this rulemaking.

Effective Date

In the NPRM, NHTSA proposed that if the proposed rule were made final, the effective date for the final rule would be 30 days after the final rule is published. NHTSA received no comments on the proposed early effective date. This rule relieves a restriction in Standard No. 125. The Standard no longer specifies any restriction on warning devices designed to be carried in motor vehicles with a GVWR of 10,000 lbs. or less. The lessening of the regulatory restriction will provide drivers of vehicles with a GVWR of 10,000 lbs. or less with greater choices of warning devices to be purchased, and permit manufacturers more flexibility in designing and selling warning devices designed for vehicles with a GVWR of 10,000 lbs. or less. Since this rule relieves a regulatory restriction, NHTSA has concluded that the rule should take effect sooner than 120 days after the issuance of the rule. The agency finds for good cause that this rule should become effective 30 days after it is published.

As earlier noted, this rulemaking responds to a petition for rulemaking from P.C.S. Safety Corporation. On the rule's effective date, if P.C.S.'s nonpowered warning device is designed to be carried in motor vehicles with a GVWR of 10,000 lbs. or less, the P.C.S. device will be permitted to be manufactured and sold.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This action was not reviewed under E.O. 12866, Regulatory Planning and Review. NHTSA has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures and determined that it is not "significant." This action relieves a regulatory restriction by narrowing the application of the safety standard on nonpowered warning devices so that it is applicable only to devices designed to be carried in motor vehicles that have a GVWR greater than 10,000 lbs. Previously, the standard applied to all nonpowered warning devices designed to be carried in motor vehicles. The net economic impact of this action on manufacturers of nonpowered warning devices designed to be carried in motor vehicles with a GVWR of 10,000 lbs. or less is expected to be slight. The final rule imposes no new or additional requirements. For these reasons, the agency has determined that the economic effects of this rule are so minimal that a full regulatory evaluation is not required.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that by permitting alternative warning devices designed to be carried in vehicles with a GVWR of 10,000 lbs. or less, small warning device manufacturers will have an opportunity to sell these alternative devices, as well as the triangular nonpowered warning devices, to the owners of those vehicles. At the same time, since Standard No. 125 specifies warning devices for buses and trucks that have a GVWR greater than 10,000 lbs., and operators of such vehicles are required to carry the devices, manufacturers of Standard No. 125 devices will continue to have a market for their devices. Accordingly, the agency has not prepared a regulatory flexibility analysis.

Executive Order 12612 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

The agency has also considered the environmental implications of this final rule in accordance with the National Environmental Policy Act of 1969 and has determined that the rule will not significantly affect the human environment.

Paperwork Reduction Act

This rule specifies that the warning devices be marked with certain information, that are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. The information collection requirements for 49 CFR Part 571.125 have been submitted to and approved by the OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S:C. 3501 *et seq.*). This collection of information has been assigned OMB Control No. 2127–0506, (Warning Devices (Labeling)) and has been approved for use through March 31, 1994. A request for an extension of this collection of information is pending at OMB.

Executive Order 12866 (Civil Justice Reform)

This final rule will not have any retroactive effect. Under 49 U.S.C. section 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. section 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is amended to read as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, delegation of authority at 49 CFR 1.50.

2. In § 571.125, S3 is revised to read as follows:

§ 571.125 Standard No. 125; Warning devices.

* * * * *

S3. *Application.* This standard applies to devices, without self-contained energy sources, that are designed to be carried in buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 pounds. These devices are used to warn approaching traffic of the presence of a stopped vehicle, except for devices designed to be permanently affixed to the vehicle.

Issued on: September 23, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–24055 Filed 9–28–94; 8:45 am]

BILLING CODE 4910–59–P–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 9312335–4107; I.D. 092294A]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes notice of this inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of Pacific halibut stocks in order to help sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

DATES: Area 4A and 4B were reopened effective September 12, 1994, 12:00 noon, Alaska Daylight Time (ADT), through September 14, 1994, 12:00 noon, ADT. Area 4D was closed effective 3 p.m. ADT August 6, 1994 through December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, telephone 907–586–7221; William W. Stelle, Jr., telephone 206–526–6140; or Donald McCaughran, telephone 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery (50 CFR 301.4). The regulations have been approved by the Secretary of State (59 FR 22522, May 2, 1994). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1994 Halibut Landing Report No. 15

Commercial Fishery Update In Area 4

The IPHC estimates the following catches for the mid-August fishing periods in Area 4.

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Area	August catch (000's lb)	Season catch (000's lb)	Remaining catch limit (000's lb)
4A	1,541	1,672	128
4B	1,679	2,008	92
4D	692	710	0

Area 4D Closed to Halibut Fishing

The catch limit in Area 4D was reached and Area 4D is now closed to halibut fishing for the remainder of 1994.

Area 4A and 4B Reopened on September 12

Although only a small amount of catch limit remains for Areas 4A and 4B, the IPHC anticipates very little fishing effort if these areas are opened concurrently with Area 3 during September. Therefore, Areas 4A and 4B will be reopened to halibut fishing on September 12 at 12:00 noon ADT, and close on September 14 at 12:00 noon ADT. Fishing period limits (identical to those in Area 3) will be required for both Areas 4A and 4B, to avoid exceeding the catch limit, and are shown in the following table.

Vessel class: Length	Letter	Fishing period limits (lb, dressed, heads off): Area 4A	Area 4B
0–25	A	600	600
26–30	B	900	900
31–35	C	2,700	2,700
36–40	D	3,500	3,500
41–45	E	5,600	5,600
46–50	F	7,900	7,900
51–55	G	11,600	11,600
56+	H	20,000	20,000

Vessel operators are reminded that vessel clearances are required prior to fishing, and prior to unloading and/or departure from Area 4. The required clearances for Area 4A may be obtained at designated fish processors in Akutan and Dutch Harbor. The required clearances for Area 4B may only be obtained at the city office in Atka Village, located at Nazan Bay on Atka Island.

Dated: September 22, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–24006 Filed 9–28–94; 8:45 am]

BILLING CODE 3510–22–P

50 CFR Part 672

[Docket No. 931199–4042; I.D. 091694A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central and Western Regulatory Areas in the Gulf of Alaska (GOA). This action is necessary to fully utilize the allocation of the total allowable catch (TAC) of Pacific cod by the offshore component in the Central and Western Regulatory Areas of the GOA.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), September 30, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the annual TAC for Pacific cod was established by the final 1994 specifications (59 FR 7647, February 16, 1994), as 3,125 metric tons (mt) for the Central Regulatory Area and 1,663 mt for the Western Regulatory Area. At the same time, the directed fishery for Pacific cod in the GOA by vessels catching Pacific cod for processing by the offshore component was closed under § 672.20(c)(2)(ii) in order to reserve amounts anticipated to be needed for incidental catch by other fisheries (59 FR 7647, February 16, 1994).

The Director, Alaska Region, NMFS, has determined that, as of September 10, 1994, 2,450 mt for the Central Regulatory Area and 1,423 mt for the Western Regulatory Area remain unharvested by vessels catching Pacific cod for processing by the offshore component. These amounts are in excess of those necessary as incidental catch for other groundfish fisheries. Therefore, NMFS is terminating those closures and is opening directed fishing for Pacific cod in the Central and Western GOA by vessels catching Pacific cod for processing by the offshore component effective at 12 noon, A.l.t., September 30, 1994, until 12 midnight, A.l.t., December 31, 1994.

All other closures remain in full force and effect.

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C 1801 *et seq.*

Dated: September 23, 1994

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–24135 Filed 9–28–94; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 931100–4043; I.D. 092194D]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch and the "other red rockfish" species group in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to utilize fully the total allowable catches (TACs) of Pacific ocean perch and the "other red rockfish" species group in that subarea.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), September 30, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The directed fisheries for Pacific ocean perch and the "other red rockfish" species group were closed under § 675.20(a)(8) in the final 1994 initial specifications of groundfish harvest (59 FR 7656, February 16, 1994) in order to reserve amounts anticipated to be needed for incidental catch by other fisheries.

The Director, Alaska Region, NMFS, has determined that the remaining 1994 TACs for Pacific ocean perch and the "other red rockfish" species group in the BS are in excess of the amounts necessary as incidental catch for other groundfish fisheries. Therefore, NMFS is terminating those closures and is opening directed fishing for Pacific ocean perch and the "other red rockfish" species group in the BS, effective from 12 noon, A.l.t., September 30, 1994, until 12 midnight, A.l.t., December 31, 1994.

All other closures remain in full force and effect.

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 23, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–24134 Filed 9–28–94; 8:45 am]

BILLING CODE 3510–22–F

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Proposed Rules

Federal Register
Vol. 59, No. 188
Thursday, September 29, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1718

RIN 0572–AB06

Loan Security Documents for Electric Borrowers

AGENCY: Rural Electrification Administration.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) hereby proposes new policies and requirements for the standard form of mortgage ordinarily required of electric distribution borrowers. This proposed rule is intended to continue to provide adequate security for loans made to distribution borrowers, to update and clarify the provisions of the mortgage, to generally confine the scope of the mortgage primarily to basic issues of collateral and loan security, and to support borrower access to other credit sources.

DATES: Written comments must be received by REA or carry a postmark or equivalent by January 26, 1995.

ADDRESSES: Written comments should be addressed to Mr. F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, U.S. Department of Agriculture, Rural Electrification Administration, room 2234–S, 14th Street and Independence Avenue, SW., Washington, DC 20250–1500. REA requires a signed original and 3 copies of all comments (7 CFR 1700.30 (e)). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Mr. Alex M. Cockey, Jr., Acting Assistant Administrator—Electric, U.S. Department of Agriculture, Rural Electrification Administration, room 4037–S, 14th Street & Independence Avenue, SW., Washington, DC 20250–1500. Telephone: 202–720–9547.

SUPPLEMENTARY INFORMATION: This proposed rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB). The Administrator of REA has determined that the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) does not apply to this rule. The Administrator of REA has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Therefore, this action does not require an environmental impact statement or assessment. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA electric loans and loan guarantees from coverage under this Order. This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Will not have any retroactive effect; and (3) Will not require administrative proceedings before any parties may file suit challenging the provisions of this rule.

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Information Collection and Recordkeeping Requirements

The existing recordkeeping and reporting burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), under control numbers 0572–0017, 0572–0032, and 0572–0103. Additional information collection and recordkeeping requirements contained in this proposed rule have been submitted to OMB for review.

Send questions or comments regarding these burdens or any other aspect of these collections of information, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, room 3201, NEOB, Washington, DC 20503. Attention: Desk Officer for USDA.

Background

Starting in February 1991 with the publication of its proposed rule on pre-loan policies and procedures for electric loans, REA has undertaken a major effort to update, clarify, and simplify its policies and procedures relating to electric borrowers. As part of this overall effort, REA has been working on updating its mortgage and loan contract with electric borrowers, and its policies and procedures governing the granting of an accommodation or subordination of the government's lien on electric borrowers' systems.

Because of the magnitude and complexity of the task, the effort was divided into several phases. The first phase concentrated on updating and streamlining REA's policies and procedures for granting a lien accommodation or subordination under the current mortgage.

On December 2, 1991, REA published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** (56 FR 61201) inviting comments on possible changes to REA's loan security documents and its policies and procedures governing lien accommodations and subordinations. Comments were received from 42 organizations, including comments filed on behalf of the G&T Manager's Association proposing a form of Mortgage Bond and Note Indenture. That proposal was modeled closely on the American Bar Foundation Mortgage Bond Indenture Form published in 1981 (the "Model Indenture") but also included features contained in mortgage indentures previously used by REA assisted borrowers.

On June 30, 1992, REA held a public meeting on REA's loan security documents and its policies and procedures for granting lien accommodations and subordinations under the electric mortgage. Eighteen organizations gave testimony and responded to questions from representatives of REA and the Department of Agriculture's Office of General Counsel. Written comments were also received following the public meeting from several participants and 14 other organizations, mostly borrowers.

On March 5, 1993, REA published a proposed rule on lien accommodations and subordinations of REA mortgages in the **Federal Register**, at 58 FR 12552. Comments were received from 32 individuals and organizations. After considering the comments, the final rule was published in the **Federal Register** on October 19, 1993 at 58 FR 53835. A significant feature of that new rule is the granting of advance approval for lien accommodations for additional secured notes and refunding notes when specified objective criteria are met.

The proposed rule published here is the result of continuing efforts to update REA's loan security documents, policies and procedures. In addition to reviewing the Model Indenture and the proposed form filed in response to the 1991 ANPR, REA has reviewed numerous other mortgage documents in developing the form being published for comment as part of this proposed rule. These resources included three separate instruments issued by three unrelated, former REA borrowers, namely Chugach Electric Association (Alaska-1991), Guadalupe Valley Electric Cooperative, Inc. (Texas-1991), and Old Dominion Electric Cooperative (Virginia-1992). REA also reviewed mortgage documentation currently being used by the National Rural Utilities Cooperative Finance Corporation ("CFC") and CoBank in securing loans made by them to former REA electric borrowers in various states. In June of 1993, the National Rural Electric Cooperative Association ("NRECA"), a trade association to which most REA electric borrowers belong, proposed to REA a form of distribution mortgage that had been developed by an ad hoc committee sponsored by NRECA. That proposal was also reviewed and considered in developing the form of mortgage included in this proposed rule.

The proposed new form of mortgage for distribution borrowers is intended to achieve the following objectives:

- To continue to provide adequate security for loans made or guaranteed by REA and other mortgagees;
- To update and clarify the provisions of the mortgage;
- To limit the scope of the multi-party mortgage document primarily to basic issues of collateral and loan security, leaving lenders and borrowers the flexibility to address other issues in their respective loan contracts or other documents, which in the case of REA also includes REA regulations; and
- To support borrower access to other credit sources, including lenders that have no prior lending history with rural electric systems, by adopting provisions used in other modern mortgage indentures to the extent possible.

The proposed mortgage published today does not include several "operational controls" that are included in the current mortgage, such as mortgagee approval of extensions or additions to plant. After REA has had an opportunity to evaluate responses to this proposal, it intends to develop and publish for comment an updated form of loan contract for distribution borrowers that correlates with the new form of mortgage and more accurately reflects contemporary REA practices and policies. Although it seems likely that some of these existing operational controls will be updated and included in a new form of REA loan contract, it is anticipated that others will not.

The proposed mortgage published here is for distribution borrowers. REA also intends to develop in the near future proposed standard forms of the mortgage and loan contract for power supply borrowers.

The rest of this discussion addresses the more significant provisions of the proposed mortgage. The discussion focuses on changes from the current mortgage and other significant provisions. For the sake of brevity, provisions are characterized in terms of their primary content and thrust, without attempting to cover every legal detail.

Excepted Property

As with the current mortgage, the proposed mortgage would place a first mortgage lien on most of the borrower's assets, whether currently existing or acquired after the effective date of the mortgage. However, certain types of property covered by the broad conveyancing language used in the current mortgage would be expressly excepted from the lien of the proposed mortgage. Important examples include all cash on hand or in banks; most contracts and contract rights, with some exceptions; shares of stock; bonds; notes; repurchase agreements; and other securities. However, a borrower may choose to subject excepted property to the lien of the mortgage, and in certain circumstances such as upon a default, the mortgagees can compel the excepted property to be placed under the lien of the mortgage. The proposed approach is suggested by the Model Indenture. It is intended to address impracticalities associated with perfecting and administering liens on certain classes of collateral otherwise included in a "blanket" lien on all assets. The proposed form more closely reflects the longstanding view that electric plant serves as the primary security for secured loans to electric distribution borrowers.

Permitted Encumbrances

The list of permitted encumbrances in the proposed mortgage is somewhat longer compared to the current mortgage but is typical of more contemporary practices. This has been done to alleviate practical problems in obtaining opinions of counsel to the effect that the mortgage is a valid first lien on all of the mortgaged property. These problems have been exacerbated in recent years as developments in the legal profession generally caused the borrowers' attorneys to be less willing to provide approving legal opinions in mortgage transactions without going into great detail in qualifying the application of their opinions to certain types of property (most of which has now been excepted) and routine encumbrances. Experience in the program has shown that the vast majority of such encumbrances are primarily technical in nature and do not materially affect the security value of the collateral. It is expected that those loan settlement delays associated with negotiating legal opinions will be reduced or eliminated by this proposal and that the protection REA has traditionally derived from such opinions will be preserved.

Section 2.01. Additional Notes

Under the current mortgage, REA prior approval is required for a borrower to issue additional notes secured under the mortgage. Under section 2.01 of the proposed mortgage, a borrower not in default under the mortgage may issue additional notes to finance mortgageable property for its utility system, without the approval of REA or other mortgagees, if the following criteria are met:

- The borrower has achieved for each of the 2 calendar years immediately preceding the issuance of the notes a Times Interest Earning Ratio (TIER) of at least 1.35 and a Debt Service Coverage Ratio (DSC) of at least 1.35, on a pro forma basis, after taking into account the effect of the new notes.
- The borrower will have equity greater than or equal to 27% of total assets after taking into account the effect of the additional notes.
- The ratio of the borrower's net utility plant to its long-term debt will be greater than or equal to 1.1 after taking into account the effect of the additional notes.

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• Transaction costs included in the additional notes do not exceed 3.5% of the face amount of the notes.

• The maturity of the loan evidenced by the notes must not be less than 5 years and must not exceed the weighted average of the expected remaining useful lives of the assets being financed.

• The principal of the loan evidenced by the notes must be amortized at a rate that will yield a weighted average life not greater than the weighted average life that would result from level payments of principal and interest.

• The principal amount of outstanding notes issued to finance community infrastructure (namely water and waste systems, solid waste disposal facilities, telecommunications and other electronic communications systems, and natural gas distribution systems located in the borrower's service territory) will not be greater than 20% of the principal amount of all outstanding notes, after taking into account the effect of the additional notes.

TIER and DSC are defined in terms of "Modified" TIER and "Modified" DSC, that is, generation and transmission and other capital credits are excluded from margins in calculating the ratios. These measures reflect current revenues and cash flows better than straight TIER and DSC, and thus they better reflect a borrower's ability to meet on-going expenses. In this modified form, the level for TIER has been reduced to 1.35 from the 1.5 currently required in 7 CFR 1710.114. The 1.35 level proposed for this modified form of DSC is the same as that required for the pledging of borrowers' notes under the indenture for issuing collateral trust bonds of CFC.

In calculating TIER, the annual interest expense of the additional notes issued, based on the full face amount of the notes, would be added to the interest expense for each of the two test years. Similarly, in calculating DSC, interest expense, depreciation and amortization expense, and debt service billed for the two test years would be increased respectively by the annual interest expense, annual depreciation and amortization expense, and the annual debt service expense associated with the additional notes and facilities.

In calculating equity as a percentage of total assets, regulatory created assets would be deducted from both equity and total assets as they appear on a borrower's balance sheet. Regulatory created assets are current period expenses that have been deferred by the borrower, and they should be deducted to provide a more accurate picture of a borrower's current equity to assets ratio. Under REA's Uniform System of Accounts, regulatory created assets equal the sum of amounts properly recordable in Accounts 182.2 Unrecovered Plant and Regulatory Study Costs, and 182.3 Other Regulatory Assets. This same adjustment is used in REA's lien accommodation rule and other regulations.

The proposed requirement of a net utility plant to long-term debt ratio of 1.1 is used in lieu of the more complicated bondable additions tests usually used in utility indentures securing publicly offered debt. This ratio is used in REA's lien accommodation rule (1717.854) as one of the criteria for determining eligibility for advance approval for lien accommodations under the current mortgage, and it is also used by CoBank, set at a higher level, in its 100 percent mortgage. Comments are invited on whether a more traditional bondable additions test would be preferable to the proposed net utility plant to long-term debt ratio.

The proposed criteria that would control the amount of transaction costs financed by a note, the maximum maturity of the note, and the rate of note amortization are intended to help ensure that each note will be supported by adequate collateral throughout the life of the note. The proposed minimum maturity of 5 years is intended to reserve the security of the mortgage to financing that meets the long-term credit needs of borrowers. Shorter term loans generally do not face the same kind of uncertainty and risks involved in long-term loans, and offering them security under the mortgage should be subject to approval by the mortgagees under proposed section 2.03. All four of these criteria are currently used by REA, along with others, to determine eligibility for a lien accommodation (see 7 CFR 1717.852 and 1717.853).

REA estimates that about 64 percent of distribution borrowers would be able to meet the criteria for issuing additional notes under proposed section 2.01. This estimate is based on 1991–92 data for TIER and DSC and 1992 data for equity, total assets, net utility plant, and long-term debt, and assumes that the average note issued will equal 13.5% of a borrower's total assets (the average size of a combined REA-supplemental loan in 1992–93). Borrowers failing to meet the proposed criteria under section 2.01 would need to get the approval of each mortgagee, under proposed section 2.03, to issue additional notes.

As indicated above, issuance of additional notes under section 2.01 would be limited to the financing of mortgageable property for the electric system and the four named community infrastructure purposes. The aggregate outstanding principal balance of notes issued for community infrastructure would be limited for notes issued under section 2.01 to 20% of the outstanding principal balance of all notes. Borrowers wishing to issue notes in excess of this amount for community infrastructure would need to obtain approval from each mortgagee.

Section 2.02. Refunding or Refinancing Notes

As in issuing additional notes, the current mortgage also requires the approval of the mortgagees for borrowers to refund or refinance existing notes. Under proposed section 2.02 of the new mortgage, borrowers that are not in default under the mortgage could refund or refinance existing notes if the following conditions are met:

• The total amount of outstanding indebtedness evidenced by the new notes is not greater than 103.5% of the then outstanding principal balance of the notes being refunded or refinanced.

• The weighted average life of the new notes in not greater than the weighted average remaining life of the notes being refunded or refinanced.

• The present value of the cost of the refunding or refinancing notes, including all transaction costs and any required investments in the lender, is less than the present value of the cost of the notes being refunded or refinanced.

A lien accommodation would be automatic for notes issued under sections 2.01 and 2.02. The borrower's loan contract with the lender would not be subject to the approval of the other mortgagees. REA expects to propose corresponding amendments to its lien accommodation rule and loan contracts to take the requirements of the new mortgage into account, once the final form of the distribution mortgage has been determined.

Section 2.05. Form of Supplemental Mortgage

It is contemplated that a provision will be developed for inclusion either at this point or as an appendix in the final form of the Mortgage. The provision would set out a succinct form of amendment to be used to facilitate borrowings that do not require consent of the Mortgagees. The parties would be free to agree to other forms of amendment on a case-by-case basis but obviously such a process would be more time consuming and the outcome less certain. REA is specifically soliciting comments on this approach and would welcome suggestions on what would be an appropriate form for a supplemental mortgage.

Section 3.04. Environmental Obligations

Under this proposed section, the borrower would expressly agree to comply with all applicable water and air pollution control standards and other environmental requirements imposed by Federal or state statutes, regulations, licenses or permits as related to the mortgaged property. The borrower would also agree to defend, indemnify, and hold harmless the mortgagees from and against all liabilities, losses, costs, etc. related to existing or future hazardous waste or hazardous chemical substances on the mortgaged property, any lien or claim related thereto, and any failure of the borrower to comply with the terms of any government agency having any regulatory authority over environmental matters regarding the mortgaged property. The inclusion of this section reflects the trend in modern loan documentation to allocate environmental risks to the borrower since that is the party that manages and controls the day to day operations.

Section 3.08. Restrictions on Additional Permitted Debt

Compared to the current mortgage, proposed section 3.08 would raise the threshold on restricted rentals allowed without the approval of the mortgagees, and also allow certain "permitted debt", in addition to notes issued under proposed Article 2, without the mortgagees' approval. Restricted rentals without mortgagees' approval would be allowed in an amount not to exceed 5% of equity during any 12 consecutive calendar month period, versus 2% currently. The following permitted debt would also be allowed without mortgagees' approval if the borrower is not in default under its mortgage:

• Purchase money indebtedness in non-utility system property in an amount not exceeding 10% of net utility plant.

• Unsecured lease obligations incurred in the ordinary course of business except restricted rentals.

• Unsecured indebtedness for borrowed money in an aggregate amount not exceeding 15% of net utility plant.

• Debt represented by dividends declared but not paid.

• Indebtedness of other operating electric companies acquired by the borrower not exceeding 90% of the net utility plant of the acquired company.

Section 3.10. Limitations on Consolidations and Mergers

Proposed section 3.10 would make certain changes in the conditions under which the borrower may consolidate or merge with another corporation. Significant among these changes is that the successor corporation would have to meet on a pro forma basis the same TIER, equity to assets ratio, and net utility plant to long-term debt ratio as required under section 2.01 for issuing additional notes.

Section 3.11. Limitations on Transfers of Property

This proposed section would raise the limits under which a borrower could sell, lease or transfer assets for fair market value without the approval of the mortgagees. The current mortgage sets the limits at $25,000 for each individual asset, and $100,000 for any 12 month period. Proposed section 3.11 would drop the limit for each individual asset and raise the limit for any 12 month period to 10 % of net utility plant.

Section 3.12. Maintenance of Mortgaged Property

Several changes to existing mortgage requirements on property maintenance would be made under this section.

The proposed mortgage would eliminate the current requirement that borrowers expend for maintenance, renewals and replacements during each three-year period 10 % of the difference between gross operating revenues and the cost of power during the period. REA has come to believe that requiring a fixed percentage expenditure on maintenance is not an effective approach for ensuring that its collateral is adequately maintained. Comments are invited on this question.

Borrowers would still be required to adequately maintain their systems. Mortgagees would continue to have access to inspect the mortgaged property. As a corollary to the more generalized maintenance standard, it is proposed that any mortgagee could direct the borrower to provide to all mortgagees an initial certification by an independent professional engineer acceptable to the mortgagees, as to the condition of the mortgaged property. Such a certification could be requested only once every 3 years.

If the independent engineer certifies that the borrower needs to make repairs or replacements to comply with the maintenance requirements of the mortgage, any mortgagee could request that such recommendations be followed and the borrower would be obligated to comply with them promptly. A year after such request, a second independent certification would be required as to the condition of the property. If deficiencies remain, any mortgagee could so notify the borrower, who would then be required to cure the deficiencies within 60 days. REA believes that such certifications by independent professional engineers would provide each mortgagee with an effective mechanism to ensure that the mortgaged property is being adequately maintained.

Section 3.13. Insurance; Restoration of Damaged Mortgaged Property

Under this section several changes are proposed to the insurance provisions of the existing mortgage. The borrower, for example, would be required to have insurance coverage in conformance with generally accepted utility industry standards for utilities of the size and character of the borrower. Specific dollar-amount coverage limits would be eliminated from the mortgage. Insurance policies would be required to remain in force for 30 days after written notice to each mortgagee, instead of the current 10 days. REA plans to review its existing regulation on fidelity and insurance requirements (7 CFR part 1788) to determine whether changes are needed.

Section 3.16. Limitation on Dividends, Patronage Refunds and Other Cash Distributions

It is proposed that the controls on distributions in the current mortgage be retained with only minor changes.

Section 3.18. Compliance With Loan Agreements; Notice of Amendments to and Defaults Under Loan Agreements

This section proposes two changes to provisions in the current mortgage. First, borrowers would be required to supply a copy of a loan agreement with another lender, and amendments thereto, only when requested by a mortgagee. Second, the provision in the current mortgage that the terms of the mortgage govern if they are inconsistent with the terms of a loan contract, would be deleted. This is proposed to ensure that a mortgagee could enforce terms in its loan contract agreed to by the borrower, even though they may be more demanding on the borrower than the terms in the mortgage.

Section 3.20. Rates to Provide Revenue Sufficient to Meet TIER and DSC Requirements.

This section proposes requirements that are similar to those in 7 CFR 1710.114, except that the threshold levels set for (modified) TIER and (modified) DSC are set at 1.35, the same as in proposed section 2.01, rather than 1.5 for TIER and 1.25 for DSC as in § 1710.114.

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If a borrower fails to achieve a (modified) TIER and (modified) DSC of 1.35 based on the average of the two best years out of the three most recent years, then it would be required to provide each mortgagee with a written plan of remedial action setting forth the actions the borrower shall take to achieve the required TIER and DSC levels on a timely basis. If requested by a mortgagee, the plan would have to be prepared by an independent consultant acceptable to the mortgagees. The mortgagor would be required to take all actions included in its written plan approved by the mortgagees.

If a state regulatory authority having jurisdiction will not approve rates sufficient to achieve the required TIER and DSC levels, the borrower would be required to provide documentation to that effect, along with a modified plan taking the state authority's determination into account. Such modified plan would be subject to the approval of each mortgagee.

Section 4.01. Events of Default

The proposed events of default are patterned after those commonly contained in modern mortgage indentures. There are two notable differences with the current mortgage. First, a default in payment on the notes would not be an event of default unless it lasted for more than 5 business days after the payment is due. Second, defaults with respect to other covenants and conditions contained in the mortgage, loan contracts, or notes would not be an event of default unless they continued for a period of 30 days after a mortgagee has given written notice of default directing the mortgagor to remedy the default.

Section 4.02. Acceleration of Maturity; Rescission and Annulment

This proposed section differs in several respects from the provisions of the current mortgage. A basic difference is that each mortgagee would have equal rights in accelerating its notes, in contrast to the current mortgage where other mortgagees must wait 30 days for REA to act before they can accelerate.

It is proposed that in the event of a default in payment on a mortgagee's notes, that mortgagee may accelerate its notes and so notify the other mortgagees. Upon receipt of actual knowledge of or any notice of acceleration by such mortgagee, any other mortgagee would be able to accelerate its notes.

If any other event of default occurs under the mortgage and is continuing, any mortgagee would be able to accelerate its notes and notify the others to that effect. Any mortgage could also accelerate if an event of default occurs and is continuing under its loan contract or note. Upon receipt of actual knowledge of or any notice of acceleration by a mortgagee, any other mortgagee would be able to accelerate its notes. After acceleration, if all payment defaults have been cured and all other defaults have been cured to the satisfaction of mortgagees representing at least 80% of the aggregate outstanding principal balance of the notes, then said mortgagees would be able to annul the acceleration.

Section 4.03. Remedies of Mortgagees

Under this section it is proposed that any mortgagee may, upon an event of default, take possession of the property, manage and operate the property, protect and enforce the rights of all of the mortgagees, appoint a receiver, and sell the mortgaged property. Any other mortgagee would be able to join in these proceedings. If the mortgagees do not agree on the method or manner of enforcement of remedies, mortgagees representing a majority of the outstanding principal balance of the notes would be able to direct the method and manner of the remedial actions.

Section 5.03. Special Defeasance

Under this section, in certain circumstances a borrower could deposit funds with a trustee for the benefit of a mortgagee in an amount sufficient to discharge the note. Such a note would no longer be considered to be "outstanding" under the mortgage. The borrower would obtain a release from the lien of the mortgage and the mortgagee would have the trust as security for the payments on the note as they come due. This section has been adapted from the Model Indenture.

Accounting Requirements

So long as REA is on the mortgage, it is proposed that borrowers would be required to follow REA's Uniform System of Accounts. If REA is paid off and is no longer on the mortgage, Generally Accepted Accounting Principals would prevail. This is set forth in proposed section 1.01 in the definition of "Accounting Requirements."

Current Mortgage Provisions Not Included

A number of "operational controls" and other provisions contained in the current mortgage are not included in this proposed mortgage. As indicated above, some of these controls may be retained in REA's new loan contract. The more significant provisions not included in the proposed mortgage are as follows:

- Mortgagee approval of extensions or additions to the borrower's system.
- Mortgagee approval of sales of electric power and energy in excess of 1,000 Kw.
- Mortgagee approval of contracts for the operation or maintenance or use by others of all or a substantial part of the borrower's property.
- Mortgagee approval of contracts to purchase electric power or energy.
- Mortgagee approval of expenditures for legal, engineering, supervisory, accounting or similar services, other than reasonable, routine expenses.
- Requirement that funds of the borrower be deposited in a Federal Reserve Bank or in depositaries that are members of the Federal Deposit Insurance Corporation.
- Mortgagee approval of compensation for members of the borrower's board of directors.
- Mortgagee approval of the borrower's manager and the manager's employment contract.
- Mortgagee approval of investments, loans, and guarantees made by the borrower. For several reasons, including the restrictions imposed on REA (but not other lenders) by section 312 of the Rural Electrification Act of 1936, REA believes it is preferable that such approval rights be included in the loan contract of each mortgagee as each sees fit.
- The requirement in article II, section 4 of the current mortgage that any prepayment of a concurrent (contemporaneous) loan made by REA or the supplemental lender be accompanied by a pro rata prepayment of the other concurrent loan. Since this provision relates only to loans made concurrently with REA, while the mortgage covers both concurrent loans and loans made independently of other loans, REA believes it is appropriate to shift this provision to its loan contract.

Inter-Creditor Agreement

As noted above, shares of stock and other securities, including those held in lenders secured under the proposed mortgage, would be excepted from the lien of the mortgage. It is REA's view that, in the event any notes are accelerated, all such assets, revenues, and other proceeds obtained from the mortgagor by any mortgagee should be shared equally and ratably among all mortgagees along with the mortgaged property. Also, whether or not any notes are accelerated, if a borrower pays only a portion of the aggregate principal and interest due on the notes as a whole, REA believes such payments should also be shared equally and ratably among the mortgagees. It is REA's intention to try to reach agreement with the other existing mortgagees on a mutually acceptable inter-creditor agreement before the proposed new mortgage is published in final form.

As stated above, the foregoing discussion focuses on the more significant provisions of the proposed mortgage, especially where they differ with provisions in the current mortgage. In addition to receiving written comments, REA stands ready to meet with interested individuals and organizations to discuss their comments and recommendations. Such meetings would be open to any interested person, and they would be "informal", as opposed to a formal hearing. Although any such meetings will not be transcribed, REA will include a summary of any such meeting in the file for this rulemaking. To facilitate scheduling, it would be better for individuals, especially the large number of borrowers affected by this proposed rule, to form one or more groups to represent their interests at such meetings.

List of Subjects in 7 CFR Part 1718

Administrative practice and procedure, Electric power, Electric utilities, Loan programs—energy, Loan security documents, Reporting and recordkeeping requirements, Rural areas.

For the reasons set out in the preamble, REA proposes to amend chapter XVII of title 7 of the Code of Federal Regulations by adding a new part 1718 to read as follows:

PART 1718—LOAN SECURITY DOCUMENTS FOR ELECTRIC BORROWERS

Subpart A—General

Sec.

1718.1–1718.49 [Reserved]

Subpart B—Mortgage for Distribution Borrowers

1718.50 Definitions.
1718.51 Policy.
1718.52 Existing mortgages.
1718.53 Rights of other mortgagees.
1718.54 Availability of forms.

Appendix A to Subpart B of Part 1718—Standard Form of Mortgage for Electric Distribution Borrowers

Authority: 7 U.S.C. 901–950b; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72, unless otherwise noted.

Subpart A—General

§§ 1718.1–1718.49 [Reserved]

Subpart B—Mortgage for Distribution Borrowers

§ 1718.50 Definitions.

Unless otherwise indicated, terms used in this subpart are defined as set forth in 7 CFR 1710.2.

§ 1718.51 Policy.

(a) Adequate loan security must be provided for loans made or guaranteed by REA. The loans are required to be secured by a first mortgage lien on most of the borrower's assets substantially in the form set forth in Appendix A of this subpart. At the discretion of REA, this standard form of mortgage may be adapted to satisfy different legal requirements among the states and individual differences in lending circumstances, provided that such adaptations are consistent with the policies set forth in this subpart.

(b) Some borrowers, such as certain public power districts, may not be able to provide security in the form of a first mortgage lien on their assets. In these cases REA will consider accepting other forms of security, such as resolutions and pledges of revenues.

(c) REA may require supplemental and amending mortgages to protect its security, or in connection with additional loans.

(d) REA may also require such other security instruments (such as loan contracts, security agreements, financing statements, guarantees, and pledges) as it deems appropriate.

(e) All distribution borrowers that receive a loan or loan guarantee from REA on or after [Date 30 days after the final rule is published in the **Federal Register**] will be required to enter into a mortgage with REA that meets the requirements of this subpart. Distribution borrowers that refinance debt secured under their existing mortgage have the option of staying with their existing mortgage or entering into a new mortgage that meets the requirements of this subpart. In the case of either a new loan or refinancing loan, the concurrence of any other lenders secured under the borrower's existing mortgage may be required before the borrower can enter into a new mortgage.

§ 1718.52 Existing mortgages.

Nothing contained in this subpart invalidates, terminates or rescinds any existing mortgage entered into between the borrower and REA and any other mortgagees.

§ 1718.53 Rights of other mortgagees.

Nothing contained in this subpart is intended to alter or affect any rights of any other mortgagee that is a party to an existing mortgage between a borrower and REA.

§ 1718.54 Availability of forms.

Single copies of the mortgage are available from the Administrative Services Division, Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250–1500. This form may be reproduced.

Appendix A to Subpart B—Standard Form of Mortgage for Electric Distribution Borrowers

RESTATED MORTGAGE AND SECURITY AGREEMENT

Made By And Between _____, Mortgagor and United States of America and _____, Mortgagee. Dated as of

This instrument grants a security interest by a transmitting utility.

This instrument contains future advance provisions.

This instrument contains after-acquired property provisions.

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Restated Mortgage and Security Agreement, dated as of _____, 19_____, (hereinafter sometimes called this "Mortgage") is made by and between _____ (hereinafter called the "Mortgagor"), a corporation existing under the laws of the State of_____, and the UNITED STATES OF AMERICA acting by and through the Administrator of the Rural Electrification Administration (hereinafter called the "Government"), _____ (Supplemental Lender) _____, (hereinafter called "_____") a _____ existing under the laws of _____, and is intended to confer rights and benefits on both the Government and _____ as well as any and all other lenders pursuant to Article II of this Mortgage that enter into a supplemental mortgage in accordance with section 2.04 of Article II hereof (the Government and any such other lenders being herein sometimes collectively referred to as the "Mortgagees").

Recitals

Whereas, the Mortgagor, the Government and _____ are parties to that certain _____ Mortgage and Security Agreement dated as of _____, 19_____, as supplemented, amended or restated (the "Original Mortgage" identified in Schedule "A" of this Mortgage) originally entered into between the Mortgagor, the Government acting by and through the Administrator of the Rural Electrification Administration (the "REA") and _____; and

Whereas, the Mortgagor deems it necessary to borrow money for its corporate purposes and to issue its promissory notes and other debt obligations therefor from time to time in one or more series, and to mortgage and pledge its property hereinafter described or mentioned to secure the payment of the same;

Whereas, the Mortgagor desires to enter into this Mortgage pursuant to which all secured debt of the Mortgagor hereunder shall be secured on parity;

Whereas, this Mortgage restates and consolidates the Original Mortgage while preserving the priority of the Lien under the Original Mortgage securing the payment of Mortgagor's outstanding obligations secured under the Original Mortgage, which indebtedness is described more particularly by listing the Original Notes in Schedule "A" hereto; and

Whereas, all acts necessary to make this Mortgage a valid and binding legal instrument for the security of such notes and obligations, subject to the terms of this Mortgage, have been in all respects duly authorized;

Now, Therefore, This Mortgage Witnesseth: That to secure the payment of the principal of (and premium, if any) and interest on the Original Notes and all Notes issued hereunder according to their tenor and effect, and the performance of all provisions therein and herein contained, and in consideration of the covenants herein contained and the purchase or guarantee of Notes by the guarantors or holders thereof, the Mortgagor has mortgaged, pledged and granted a continuing security interest in, and by these presents does hereby grant, bargain, sell, alienate, remise, release, convey, assign, transfer, hypothecate, pledge, set over and confirm, pledge, and grant a continuing security interest in for the purposes hereinafter expressed (other language may be required under various state laws), unto the Mortgagees all property, rights, privileges and franchises of the Mortgagor of every kind and description, real, personal or mixed, tangible and intangible, of the kind or nature specifically mentioned herein or any other kind or nature, except any Excepted Property, now owned or hereafter acquired by the Mortgagor (by purchase, consolidation, merger, donation, construction, erection or in any other way) wherever located, including (without limitation) all and singular the following:

Granting Clause First

A. all of those fee and leasehold interests in real property set forth in Schedule "B" hereto, subject in each case to those matters set forth in such Schedule;

B. all of the Mortgagor's interest in fixtures, easements, permits, licenses and rights-of-way comprising real property, and all other interests in real property, comprising any portion of the System (as herein defined) located in the Counties listed in Schedule "B" hereto;

C. all right, title and interest of the Mortgagor in and to those contracts of the Mortgagor (i) relating to the ownership, operation or maintenance of any generation, transmission or distribution facility owned, whether solely or jointly, by the Mortgagor, (ii) for the purchase of electric power and energy by the Mortgagor and having an original term in excess of 3 years, (iii) for the sale of electric power and energy by the Mortgagor and having an original term in excess of 3 years, and (iv) for the transmission of electric power and energy by or on behalf of the Mortgagor and having an original term in excess of 3 years, including in respect of any of the foregoing, any amendments, supplements and replacements thereto;

D. all the property, rights, privileges, allowances and franchises particularly described in the annexed Schedule "B" are hereby made a part of, and deemed to be described in, this Granting Clause as fully as if set forth in this Granting Clause at length; and

Also All Other Property, real estate, lands, easements, servitudes, licenses, permits, allowances, consents, franchises, privileges, rights of way and other rights in or relating to real estate or the occupancy of the same; all power sites, storage rights, water rights, water locations, water appropriations, ditches, flumes, reservoirs, reservoir sites, canals, raceways, waterways, dams, dam sites, aqueducts, and all other rights or means for appropriating, conveying, storing and supplying water; all rights of way and roads; all plants for the generation of electric and other forms of energy (whether now known or hereafter developed) by steam, water, sunlight, chemical processes and/or (without limitation) all other sources of power (whether now known or hereafter developed); all power houses, gas plants, street lighting systems, standards and other equipment incidental thereto; all telephone, radio, television and other communications, image and data transmission systems, air conditioning systems and equipment incidental thereto, water wheels, waterworks, water systems, steam and hot water plants, substations, lines, service and supply systems, bridges, culverts, tracks, ice or refrigeration plants and equipment, offices, buildings and other structures and the equipment thereto all machinery, engines, boilers, dynamos, turbines, electric, gas and other machines, prime movers, regulators, meters, transformers, generators (including, but not limited to, engine-driven generators and turbogenerator units), motors, electrical, gas and mechanical appliances, conduits, cables, water, steam, gas or other pipes, gas mains and pipes, service pipes, fittings, valves and connections, pole and transmission lines, towers, overhead conductors and devices, underground conduits, underground conductors and devices, wires, cables, tools, implements, apparatus, storage battery equipment, and all other fixtures and personalty; all municipal and other franchises, consents, certificates or permits; all emissions allowances; all lines for the transmission and distribution of electric current and other forms of energy, gas, steam, water or communications, images and data for any purpose including towers, poles, wires, cables, pipes, conduits, ducts and all apparatus for use in connection therewith, and (except as hereinbefore or hereinafter expressly excepted) all the right, title and interest of the Mortgagor in and to all other property of any kind or nature appertaining to and/or used and/or occupied and/or employed in connection with any property hereinbefore described;

Granting Clause Second

All other property, real, personal or mixed, of whatever kind and description and wheresoever situated, including without limitation goods, accounts, money held in a trust account pursuant hereto or to a Loan Agreement, and general intangibles now owned or which may be hereafter acquired by the Mortgagor, but excluding Excepted Property, now owned or which may be hereafter acquired by the Mortgagor, it being the intention hereof that all property, rights, privileges, allowances and franchisees now owned by the Mortgagor or acquired by the Mortgagor after the date hereof (other than Excepted Property) shall be as fully embraced within and subjected to the lien hereof as if such property were specifically described herein.

Granting Clause Third

Also any Excepted Property that may, from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien hereof by the Mortgagor or by anyone in its behalf; and any Mortgagee is hereby authorized to receive the same at any time as additional security hereunder for the benefit of all the Mortgagees. Such subjection to the lien hereof of any Excepted Property as additional security may be made subject to any reservations, limitations or conditions which shall be set forth in a written instrument executed by the Mortgagor or the person so acting in its behalf or by such Mortgagee respecting the use and disposition of such property or the proceeds thereof.

Granting Clause Fourth

Together with (subject to the rights of the Mortgagor set forth on Section 5.01) all and singular the tenements, hereditaments and appurtenances belonging or in anywise appertaining to the aforesaid property or any part thereof, with the reversion and reversions, remainder and remainders and all the tolls, earnings, rents, issues, profits, revenues and other income, products and proceeds of the property subjected or required to be subjected to the lien of this Mortgage, and all other property of any nature appertaining to any of the plants, systems, business or operations of the Mortgagor, whether or not affixed to the realty, used in the operation of any of the premises or plants or the System, or otherwise, which are now owned or acquired by the Mortgagor, and all the estate, right, title and interest of every nature whatsoever, at law as well as in equity, of the Mortgagor in and to the same and every part thereof (other than Excepted Property with respect to any of the foregoing).

Excepted Property

There is, however, expressly excepted and excluded from the lien and operation of this Mortgage the following described property of the Mortgagor, now owned or hereafter acquired (herein sometimes referred to as "Excepted Property"):

A. all cash on hand or in banks (excluding amounts deposited or required to be deposited in a trust account pursuant to this Mortgage), choses in action and judgments, contracts and contract rights (except to the extent set forth in Granting Clause First), shares of stock (including without limitation any interest of the Mortgagor in the National Rural Utilities Cooperative Finance Corporation and in the National Bank for Cooperatives), bonds, notes, repurchase agreements, evidences of indebtedness and other securities, bills, patents, patent licenses and other patent rights, patent applications, trade names and trademarks, other than any securities pledged under this Mortgage, and any other property referred to in this Subdivision which is specifically described in Granting Clause First or is by the express provisions of the Mortgage subjected or required to be subjected to the lien hereof;

B. all rolling stock (except mobile substations), automobiles, buses, trucks, truck cranes, tractors, trailers and similar vehicles and movable equipment, and all tools, accessories and supplies used in connection with any of the foregoing;

C. all vessels, boats, ships, barges and other marine equipment, all airplanes, airplane engines and other flight equipment, and all tools, accessories and supplies used in connection with any of the foregoing;

D. all office furniture, equipment and supplies, including (without limitation) all data processing, accounting and other computer equipment, software and supplies;

E. all leasehold interests for office purposes;

F. all leasehold interests of the Mortgagor under leases for an original term (including any period for which the Mortgagor shall have a right of renewal) of less than five (5) years;

G. all timber and crops (both growing and harvested) and all coal, ore, gas, oil and other minerals (both in place or severed);

H. all electric energy, gas, steam, water, ice, and other materials, forms of energy or products generated, manufactured, produced, or purchased by the Mortgagor for sale, distribution or use in the ordinary course of its business;

I. the last day of the term of each leasehold estate (oral or written) and any agreement therefor, now or hereafter enjoyed by the Mortgagor and whether falling within a general or specific description of property herein: *Provided, However*, that the Mortgagor covenants and agrees that it will hold each such last day in trust for the use and benefit of all of the Mortgagees and Noteholders and that it will dispose of each such last day from time to time in accordance with such written order as the Mortgagee in its discretion may give;

J. all permits, licenses, franchises, contracts, agreements, contract rights and other rights not specifically subjected or required to be subjected to the lien hereof by the express provisions of this Mortgage, whether now owned or hereafter acquired by the Mortgagor, which by their terms or by reason of applicable law would become void or voidable if mortgaged or pledged hereunder by the Mortgagor or which cannot be granted, conveyed, mortgaged, transferred or assigned by this Mortgage without the consent of other parties whose consent is not secured, or without subjecting any Mortgagee to a liability not otherwise contemplated by the provisions of this Mortgage, or which otherwise may not be, hereby lawfully and effectively granted, conveyed, mortgaged, transferred and assigned by the Mortgagor; and

K. the property identified in Schedule "C" hereto.

Provided, However, that (i) if, upon the occurrence of an Event of Default, any Mortgagee, or any receiver appointed pursuant to statutory provision or order of court, shall have entered into possession of all or substantially all of the Mortgaged Property, all the Excepted Property described or referred to in the foregoing Subdivisions A through H, inclusive, then owned or thereafter acquired by the Mortgagor shall immediately, and, in the case of any Excepted Property described or referred to in Subdivisions I through J, inclusive, upon demand of any Mortgagee or such receiver, become subject to the lien hereof to the extent permitted by law, and any Mortgagee or such receiver may, to the extent permitted by law, at the same time likewise take possession thereof, and (ii) whenever all Events of Default shall have been cured and the possession of all or substantially all of the Mortgaged Property shall have been restored to the Mortgagor, such Excepted Property shall again be excepted and excluded from the lien hereof to the extent and otherwise as hereinabove set forth.

However, pursuant to Granting Clause Third, the Mortgagor may subject to the lien

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of this Mortgage any Excepted Property, whereupon the same shall cease to be Excepted Property.

Habendum

To Hove and To Hold all said property, rights, privileges and franchises of every kind and description, real, personal or mixed, hereby and hereafter (by supplemental mortgage or otherwise) granted, bargained, sold, aliened, remised, released, conveyed, assigned, transferred, mortgaged, encumbered, hypothecated, pledged, setover, confirmed, or subjected to a continuing security interest as aforesaid, together with all the appurtenances thereto appertaining (said properties, rights, privileges and franchises, including any cash and securities hereafter deposited with any Mortgagee ((other than any such cash which is specifically stated herein not to be deemed part of the Mortgaged Property)), being herein collectively called the "Mortgaged Property") unto the Mortgagees and the respective assigns of the Mortgagees forever, to secure equally and ratably the payment of the principal of (and premium, if any) and interest on the Notes, according to their terms, without preference, priority or distinction as to interest or principal (except as otherwise specifically provided herein) or as to lien or otherwise of any Note over any other Note by reason of the priority in time of the execution, delivery or maturity thereof or of the assignment or negotiation thereof, or otherwise, and to secure the due performance of all of the covenants, agreements and provisions herein and in the Loan Agreements contained, and for the uses and purposes and upon the terms, conditions, provisos and agreements hereinafter expressed and declared.

Subject, However, to Permitted Encumbrances (as defined in Section 1.01).

Article I

Definitions & Other Provisions of General Application

Section 1.01. *Definitions.* In addition to the terms defined elsewhere in this Mortgage, the terms defined in this Article I shall have the meanings specified herein and under the UCC, unless the context clearly requires otherwise. The terms defined herein include the plural as well as the singular and the singular as well as the plural.

Accounting Requirements shall mean the requirements of any system of accounts prescribed by REA so long as the Government is the holder, insurer or guarantor of any Notes, or, in the absence thereof, the requirements of generally accepted accounting principles applicable to businesses similar to that of the Mortgagor.

Additional Notes shall mean any Notes issued by the Mortgagor to the Government or any other lender pursuant to Article II of this Mortgage including any refunding, renewal, or substitute Notes which may from time to time be executed and delivered by the Mortgagor pursuant to the terms of Article II.

Board shall mean either the Board of Directors or the Board of Trustees, as the case may be, of the Mortgagor.

Business Day shall mean any day that the Government is open for business.

Debt Service Coverage Ratio ("DSC") shall mean the ratio determined as follows: for each calendar year add (i) Patronage Capital or Margins of the Mortgagor, after deducting generation and transmission capital credits and other capital credits, (ii) Interest Expense (as computed in accordance with the principles set forth in the definition of Times Interest Earned Ratio herein) of the Mortgagor and (iii) Depreciation and Amortization Expense of the Mortgagor, and divide the total so obtained by an amount equal to the sum of all payments of principal and interest required to be made on account of Total Long-Term Debt during such calendar year increasing said sum by any addition to interest expense on account of Restricted Rentals as computed with respect to the Times Interest Earned Ratio herein; *provided, however,* that in the event that any Long-Term Debt (being any amount included in Total Long-Term Debt computed as provided above) has been refinanced during such year the payments of principal and interest required to be made during such year on account of such Long-Term Debt shall be based (in lieu of actual payments required to be made on such refinanced Debt) upon the larger of (i) an annualization of the payments required to be made with respect to the refinancing debt during the portion of such year such refinancing debt is outstanding or (ii) the payment of principal and interest required to be made during the following year on account of such refinancing debt.

Depreciation and Amortization Expense shall mean an amount constituting the depreciation and amortization of the Mortgagor as computed pursuant to Accounting Requirements.

Distributions shall have the meaning specified in Section 3.16 hereof.

Electric System shall mean, and shall be broadly construed to encompass and include, all of the Mortgagor's interests in all electric production, transmission, distribution, conservation, load management, general plant and other related facilities, equipment or property and in any mine, well, pipeline, plant, structure or other facility for the development, production, manufacture, storage, fabrication or processing of fossil, nuclear or other fuel of any kind or in any facility or rights with respect to the supply of water, in each case for use, in whole or in major part, in any of the Mortgagor's generating plants, now existing or hereafter acquired by lease, contract, purchase or otherwise or constructed by the Mortgagor, including any interest or participation of the Mortgagor in any such facilities or any rights to the output or capacity thereof, together with all additions, betterments, extensions and improvements to such Electric System or any part thereof hereafter made and together with all lands, easements and rights-of-way of the Mortgagor and all other works, property or structures of the Mortgagor and contract rights and other tangible and intangible assets of the Mortgagor used or useful in connection with or related to such Electric System, including without limitation a contract right or other contractual arrangement referred to in Granting Clause First, Subclause (C).

Environmental Law and *Environmental Laws* shall mean all federal, state, and local laws, regulations, and requirements related to protection of human health or the environment, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), the Clean Water Act (33 U.S.C. 1251 *et seq.*) and the Clean Air Act (42 U.S.C. 7401 *et seq.*), and any amendments and implementing regulations of such acts.

Equity shall mean the aggregate of all of the Mortgagor's equities and margins computed pursuant to Accounting Requirements, but excluding any regulatory created assets.

Event of Default shall have the meaning specified in Section 4.01 hereof.

Excepted Property shall have the meaning stated in the Granting Clauses.

Government shall mean the United States of America acting by and through the Administrator of REA and shall include its successors and assigns.

Government Notes shall mean the Original Notes, and any Additional Notes, issued by the Mortgagor to the Government, or guaranteed or insured as to payment by the Government.

Independent shall mean when used with respect to any specified person or entity means such a person or entity who (1) is in fact independent, (2) does not have any direct financial interest or any material indirect financial interest in the Mortgagor or in any affiliate of the Mortgagor and (3) is not connected with the Mortgagor as an officer, employee, promoter, underwriter, trustee, partner, director or person performing similar functions.

Interest Expense shall mean an amount constituting the interest expense of the Mortgagor as computed pursuant to Accounting Requirements.

Lien shall mean any statutory or common law consensual or non-consensual mortgage, pledge, security interest, encumbrance, lien, right of set off, claim or charge of any kind, including, without limitation, any conditional sale or other title retention transaction, any lease transaction in the nature thereof and any secured transaction under the UCC.

Loan Agreement shall mean any agreement executed by and between the Mortgagor and the Government or any other lender in connection with the execution and delivery of any Notes secured hereby.

Long-Term Debt shall mean any amount included in Total Long-Term Debt pursuant to Accounting Requirements.

Long-Term Lease shall mean a lease having an unexpired term (taking into account terms of renewal at the option of the lessor, whether or not such lease has previously been renewed) of more than 12 months.

Margins shall mean the sum of amounts recorded as operating margins and non-operating margins as computed in accordance with Accounting Requirements.

Maximum Debt Limit, if any, shall mean the amount more particularly described in Schedule "A" hereof.

Mortgage shall mean this Restated Mortgage and Security Agreement, including any amendments or supplements thereto from time to time.

Mortgageable Property shall mean all Property Additions, and all property owned by the Mortgagor on the date of this instrument which would constitute Property Additions if acquired after that date, but Mortgageable Property shall not include any Excepted Property.

Mortgaged Property shall have the meaning specified as stated in the Habendum to the Granting Clauses.

Mortgagee or Mortgagees shall mean the Government, _____ (the supplemental lender), their successors and assigns as well as any and all other lenders pursuant to Article II of this Mortgage that enter into a supplemental mortgage in accordance with Section 2.04 of Article II hereof, their successors and assigns. The term "Mortgagee" is used herein collectively except where the context clearly indicates otherwise.

Net Utility Plant shall mean the amount constituting the total utility plant of the Mortgagor less depreciation computed in accordance with Accounting Requirements.

Note or Notes shall mean one or more of the Government Notes, and any other Notes which may, from time to time, be secured under this Mortgage.

Noteholder or Noteholders shall mean one or more of the holders of Notes secured by this Mortgage; PROVIDED, however, that in the case of any Notes that have been guaranteed or insured as to payment by REA, as to such Notes Noteholder or Noteholders shall mean REA, exclusively, regardless of whether such notes are in the possession of REA.

Original Mortgage means the instrument(s) identified as such in Schedule "A" hereof.

Original Notes shall mean the Notes listed on Schedule "A" hereto as such , such Notes being instruments evidencing outstanding indebtedness of the Mortgagor (i) to the Government (including indebtedness which has been issued by the Mortgagor to a third party and guaranteed or insured as to payment by the Government) and (ii) to each other Mortgagee on the date of this Mortgage.

Outstanding Notes shall mean as of the date of determination, (i) all Notes theretofore issued, executed and delivered to any Mortgagee and (ii) any Notes guaranteed or insured as to payment by the Government, *except* (a) Notes referred to in clause (i) or (ii) for which the principal and interest have been fully paid and which have been canceled by the Noteholder, and (b) Notes the payment for which has been provided for pursuant to Section 5.03.

Permitted Debt shall have the meaning specified in Section 3.08.

Permitted Encumbrances shall mean:

(1) as to the property specifically described in Granting Clause First, the restrictions, exceptions, reservations, conditions, limitations, interests and other matters which are set forth or referred to in such descriptions and each of which fits one or more of the clauses of this definition, PROVIDED, such matters do not in the aggregate materially detract from the value of the Mortgaged Property taken as a whole and do not materially impair the use of such property for the purposes for which it is held by the Mortgagor;

(2) liens for taxes, assessments and other governmental charges which are not delinquent;

(3) liens for taxes, assessments and other governmental charges already delinquent which are currently being contested in good faith by appropriate proceedings; PROVIDED the Mortgagor shall have set aside on its books adequate reserves with respect thereto;

(4) mechanics', workmen's, repairmen's, materialmen's, warehousemen's and carriers' liens and other similar liens arising in the ordinary course of business for charges which are not delinquent, or which are being contested in good faith and have not proceeded to judgment; PROVIDED the Mortgagor shall have set aside on its books adequate reserves with respect thereto;

(5) liens in respect of judgments or awards with respect to which the Mortgagor shall in good faith currently be prosecuting an appeal or proceedings for review and with respect to which the Mortgagor shall have secured a stay of execution pending such appeal or proceedings for review; PROVIDED the Mortgagor shall have set aside on its books adequate reserves with respect thereto;

(6) easements and similar rights granted by the Mortgagor over or in respect of any Mortgaged Property, PROVIDED that in the opinion of the Board or a duly authorized officer of the Mortgagor such grant will not impair the usefulness of such property in the conduct of the Mortgagor's business and will not be prejudicial to the interests of the Mortgagees, and similar rights granted by any predecessor in title of the Mortgagor;

(7) easements, leases, reservations or other rights of others in any property of the Mortgagor for streets, roads, bridges, pipes, pipe lines, railroads, electric transmission and distribution lines, telegraph and telephone lines, the removal of oil, gas, coal or other minerals and other similar purposes, flood rights, river control and development rights, sewage and drainage rights, restrictions against pollution and zoning laws and minor defects and irregularities in the record evidence of title, PROVIDED that such easements, leases, reservations, rights, restrictions, laws, defects and irregularities do not materially affect the marketability of title to such property and do not in the aggregate materially impair the use of the Mortgaged Property taken as a whole for the purposes for which it is held by the Mortgagor;

(8) liens upon lands over which easements or rights of way are acquired by the Mortgagor for any of the purposes specified in Clause (7) of this definition, securing indebtedness neither created, assumed nor guaranteed by the Mortgagor nor on account of which it customarily pays interest, which liens do not materially impair the use of such easements or rights of way for the purposes for which they are held by the Mortgagor;

(9) leases existing at the date of this instrument affecting property owned by the Mortgagor at said date which have been previously disclosed to the Mortgagees in writing and leases for a term of not more than two years (including any extensions or renewals) affecting property acquired by the Mortgagor after said date;

(10) terminable or short term leases or permits for occupancy, which leases or permits expressly grant to the Mortgagor the right to terminate them at any time on not more than six months' notice and which occupancy does not interfere with the operation of the business of the Mortgagor;

(11) any lien or privilege vested in any lessor, licensor or permittor for rent to become due or for other obligations or acts to be performed, the payment of which rent or performance of which other obligations or acts is required under leases, subleases, licenses or permits, so long as the payment of such rent or the performance of such other obligations or acts is not delinquent;

(12) liens or privileges of any employees of the Mortgagor for salary or wages earned but not yet payable;

(13) the burdens of any law or governmental regulation or permit requiring the Mortgagor to maintain certain facilities or perform certain acts as a condition of its occupancy of or interference with any public lands or any river or stream or navigable waters;

(14) any irregularities in or deficiencies of title to any rights-of-way for pipe lines, telephone lines, telegraph lines, power lines or appurtenances thereto, or other improvements thereon, and to any real estate used or to be used primarily for right-of-way purposes, PROVIDED that in the opinion of counsel for the Mortgagor, the Mortgagor shall have obtained from the apparent owner of the lands or estates therein covered by any such right-of-way a sufficient right, by the terms of the instrument granting such right-of-way, to the use thereof for the construction, operation or maintenance of the lines, appurtenances or improvements for which the same are used or are to be used, or PROVIDED that in the opinion of counsel for the Mortgagor, the Mortgagor has power under eminent domain, or similar statues, to remove such irregularities or deficiencies;

(15) rights reserved to, or vested in, any municipality or governmental or other public authority to control or regulate any property of the Mortgagor, or to use such property in any manner, which rights do not materially impair the use of such property, for the purposes for which it is held by the Mortgagor;

(16) any obligations or duties, affecting the property of the Mortgagor, to any municipality or governmental or other public authority with respect to any franchise, grant, license or permit;

(17) any right which any municipal or governmental authority may have by virtue of any franchise, license, contract or statute to purchase, or designate a purchaser of or order the sale of, any property of the Mortgagor upon payment of cash or reasonable compensation therefor or to terminate any franchise, license or other rights or to regulate the property and business of the Mortgagor;

(18) as to properties of other operating electric companies acquired after the date of this Mortgage by the Mortgagor as permitted by Section 3.10 hereof, reservations and other matters as to which such properties may be subject as more fully set forth in such Section;

(19) any lien required by law or governmental regulations as a condition to

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the transaction of any business or the exercise of any privilege or license, or to enable the Mortgagor to maintain self-insurance or to participate in any fund established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements;

(20) liens arising out of any defeased mortgage or indenture of the Mortgagor; or

(21) the undivided interest of other owners, and liens on such undivided interests, in property owned jointly with the Mortgagor as well as the rights of such owners to such property pursuant to the ownership contracts.

(22) any lien or privilege vested in any lessor, licensor or permittor for rent to become due or for other obligations or acts to be performed, the payment of which rent or the performance of which other obligations or acts is required under leases, subleases, licenses or permits, so long as the payment of such rent or the performance of such other obligations or acts is not delinquent;

(23) purchase money mortgages permitted by Section 3.08; and

(24) the Original Mortgage.

Property Additions shall mean property as to which the Mortgagor shall provide Title Evidence and which shall be (or, if retired, shall have been) subject to the lien of this Mortgage, which shall be properly chargeable to the Mortgagor's fixed plant accounts under Accounting Requirements (including property acquired to replace property retired and credited to such accounts) and which shall be:

(1) acquired (including acquisition by merger, consolidation, conveyance or transfer) by the Mortgagor after the date hereof, including property in the process of construction, insofar as not reflected on the books of the Mortgagor with respect to periods on or prior to the date hereof, and

(2) used or useful in the business of the Mortgagor conducted with the properties described in the Granting Clauses of this Mortgage, even though separate from and not physically connected with such properties.

"Property Additions" shall also include:

(3) easements and rights-of-way that are useful for the conduct of the business of the Mortgagor, and

(4) property located or constructed on, over or under public highways, rivers or other public property if the Mortgagor has the lawful right under permits, licenses or franchises granted by a governmental body having jurisdiction in the premises or by the law of the State in which such property is located to maintain and operate such property for an unlimited, indeterminate or indefinite period or for the period, if any, specified in such permit, license or franchise or law and to remove such property at the expiration of the period covered by such permit, license or franchise or law, or if the terms of such permit, license, franchise or law require any public authority having the right to take over such property to pay fair consideration therefor.

"Property Additions" shall not include:

(a) good will, going concern value, contracts, agreements, franchises, licenses or permits, whether acquired as such, separate and distinct from the property operated in connection therewith, or acquired as an incident thereto, or

(b) any shares of stock or indebtedness or certificates or evidences of interest therein or other securities, or

(c) any plant or system or other property in which the Mortgagor shall acquire only a leasehold interest, or any betterments, extensions, improvements or additions (other than movable physical personal property which the Mortgagor has the right to remove), of, upon or to any plant or system or other property in which the Mortgagor shall own only a leasehold interest unless (i) the term of the leasehold interest in the property to which such betterment, extension, improvement or addition relates shall extend for at least 75% of the useful life of such betterment, extension, improvement or addition and (ii) the lessor shall have agreed to give the Mortgagee reasonable notice and opportunity to cure any default by the Mortgagor under such lease and not to disturb any Mortgagee's possession of such leasehold estate in the event any Mortgagee succeeds to the Mortgagor's interest in such lease upon the any Mortgagee's exercise of any remedies under this Mortgage so long as there is no default in the performance of the tenant's covenants contained therein, or

(d) any property of the Mortgagor subject to the Permitted Encumbrance described in clause (23) of the definition thereof.

REA shall mean the Rural Electrification Administration of the United States Department of Agriculture or if at any time after the execution of this Mortgage REA is not existing and performing the duties of administering a program of rural electrification as currently assigned to it, then the entity performing such duties at such time.

Restricted Rentals shall mean all rentals required to be paid under finance leases and charged to income, exclusive of any amounts paid under any such lease (whether or not designated therein as rental or additional rental) for maintenance or repairs, insurance, taxes, assessments, water rates or similar charges. For the purpose of this definition the term "finance lease" shall mean any lease having a rental term (including the term for which such lease may be renewed or extended at the option of the lessee) in excess of 3 years and covering property having an initial cost in excess of $250,000 other than aircraft, ships, barges, automobiles, trucks, trailers, rolling stock and vehicles; office, garage and warehouse space; office equipment and computers.

Security Interest shall mean any assignment, transfer, mortgage, hypothecation or pledge.

Subordinated Indebtedness shall mean secured Indebtedness of the Mortgagor, payment of which shall be subordinated to the prior payment of the Notes in accordance with the provisions of Section 3.08 hereof by subordination agreement in form and substance satisfactory to each Mortgagee which approval will not be unreasonably withheld.

Supplemental Mortgage shall mean an instrument of the type described in Section 2.04.

Times Interest Earned Ratio ("TIER") shall mean the ratio determined as follows: for each calendar year: add (i) Patronage Capital or Margins of the Mortgagor after deducting generation and transmission capital credits and other capital credits, (ii) Interest Expense on Total Long-Term Debt of the Mortgagor and (iii) taxes paid, if any, based upon income during the year and divide the total so obtained by Interest Expense on Total Long-Term Debt of the Mortgagor, *provided, however*, that in computing interest Expense on Total Long-Term Debt, there shall be added, to the extent not otherwise included, an amount equal to 33⅓% of the excess of Restricted Rentals paid by the Mortgagor over 2% of the Mortgagor's Equities and Margins.

Title Evidence, with respect to any property, shall mean

(1) an opinion of counsel to the effect that the Mortgagor has title, whether fairly deducible of record or based upon prescriptive rights (or, as to personal property, based on such evidence as counsel shall determine to be sufficient), as in the opinion of counsel is satisfactory for the use thereof in connection with the operations of the Mortgagor, and counsel in giving such opinion may disregard any irregularity or deficiency in the record evidence of title which, in the opinion of such counsel, can be cured by proceedings within the power of the Mortgagor or does not substantially impair the usefulness of such property for the purpose of the Mortgagor and may base such opinion upon his own investigation or upon affidavits, certificates, abstracts of title, statements or investigations made by persons in whom such counsel has confidence or upon examination of a certificate or guaranty of title or policy of title insurance in which he has confidence; or

(2) a mortgagee's policy of title insurance in the amount of the cost to the Mortgagor of the land included in Property Additions, as such cost is determined by the Mortgagor, issued in favor of the Mortgagees by an entity authorized to insure title in the states where the Mortgaged Property is located, showing the Mortgagor as the owner of the subject property and insuring the lien of this Mortgage.

Total Assets shall mean an amount constituting total assets of the Mortgagor as computed pursuant to Accounting Requirements, but excluding any regulatory created assets.

Total Long-Term Debt shall mean an amount constituting the long-term debt of the Mortgagor as computed pursuant to Accounting Requirements.

Total Utility Plant shall mean the amount constituting the total utility plant of the Mortgagor computed in accordance with Accounting Requirements.

Uniform Commercial Code or *UCC* shall mean the UCC of the state referred to in Section 1.04, and if Mortgaged Property is located in a state other than that state, then as to such Mortgaged Property UCC refers to the UCC in effect in the state where such property is located.

Utility System shall mean the Electric System and all of the Mortgagor's interest in

community infrastructure located within its service territory, namely water and waste systems, solid waste disposal facilities, telecommunications and other electronic communications systems, and natural gas distribution systems.

Section 1.02. General Rules of Construction:

a. Accounting terms not referred to above are used in this Mortgage in their ordinary sense and any computations relating to such terms shall be computed in accordance with the Accounting Requirements.

b. Any reference to "directors" or "board of directors" shall be deemed to mean "trustees" or "board of trustees," as the case may be.

Section 1.03. Special Rules of Construction if REA is a Mortgagee: During any period that REA is a Mortgagee, the following additional provisions shall apply:

a. In the case of any Notes that have been guaranteed or insured as to payment by REA, as to such Notes REA shall be considered to be the Noteholder, exclusively, regardless of whether such Notes are in the possession of REA.

b. In the case of any prior approval rights conferred upon REA by Federal statutes, including (without limitation) Section 7 of the Rural Electrification Act of 1936, as amended, with respect to the sale or disposition of property, rights, or franchises of the Mortgagor, all such statutory rights are reserved except to the extent that they are expressly modified or waived in this Mortgage.

Section 1.04. Governing Law: This Mortgage shall be construed in and governed by Federal law to the extent applicable, and otherwise by the laws of the State of _____.

Section 1.05 Notices: All demands, notices, reports, approvals, designations, or directions required or permitted to be given hereunder shall be in writing and shall be deemed to be properly given if sent by registered or certified mail, postage prepaid, or delivered by hand, or sent by facsimile transmission, receipt confirmed, addressed to the proper party or parties at the following address:

As to the Mortgagor:

_____

_____

_____

_____

As to the Mortgagee:

United States of America, Department of Agriculture, Rural Electrification Administration, Washington, DC 20250–1500

_____

_____

_____

_____

and as to any other person, firm, corporation or governmental body or agency having an interest herein by reason of being a Mortgagee, at the last address designated by such person, firm, corporation, governmental body or agency to the Mortgagor and the other Mortgagees. Any such party may from time to time designate to each other a new address to which demands, notices, reports, approvals, designations or directions may be addressed, and from and after any such designation the address designated shall be deemed to be the address of such party in lieu of the address given above.

Article II

Additional Notes

Section 2.01. Additional Notes: Without the prior consent of any Mortgagee or any Noteholder, the Mortgagor may issue Additional Notes to the Government or to another lender or lenders for the purpose of acquiring or constructing new or replacement Mortgageable Property which Notes will thereupon be secured equally and ratably with the Notes if the following requirements are satisfied:

(1) As evidenced by a certificate of an Independent accountant delivered to each Mortgagee:

(a) The Mortgagor shall have achieved for each of the two calendar years immediately preceding the issuance of such additional Notes, a TIER of not less than 1.35 and a DSC of not less than 1.35 on a pro forma basis after taking into account the maximum effect of such additional Notes on annual Interest Expense, annual Depreciation and Amortization Expense, and annual payments of principal and interest (for purpose of this calculation, the interest rate assumed in the case of Notes having a variable interest rate shall be the greater of (i) interest rate in effect with respect to such Notes on the date of such calculation or (ii) the average interest rate with respect to any such Notes Outstanding during the preceding 12 months); and

(b) After taking into account the effect of such additional Notes, the Mortgagor shall have Equity greater than or equal to 27% of Total Assets on a pro forma basis; and

(c) After taking into account the effect of such additional Notes, the ratio of the Mortgagor's Net Utility Plant to its Long Term Debt shall be greater than or equal to 1.1 on a pro forma basis;

(d) The aggregate principal amount of such Additional Notes (if any) not related to the Electric System when added to the aggregate principal amount of all Outstanding Notes (if any) not related to the Electric System will be not more than 20% of the Outstanding Notes on a pro forma basis;

(e) The maturity of the loan evidenced by the notes must not exceed the weighted average of the expected remaining useful lives of the assets being financed;

(f) The principal of the loan evidenced by the Notes must be amortized at a rate that will yield a weighted average life not greater than the weighted average life that would result from level payments of principal and interest; and

(g) The principal of the loan evidenced by the Notes must have a maturity of not less than 5 years.

(2) No Event of Default has occurred and is continuing hereunder, or any event which with the giving of notice or lapse of time or both would become an Event of Default has occurred and is continuing.

(3) The Mortgageable Property being constructed or replaced is part of the Mortgagor's Utility System.

Section 2.02. Refunding or Refinancing Notes: The Mortgagor shall also have the right without the consent of any Mortgagee or any Noteholder to issue Additional Notes for the purpose of refunding or refinancing any Notes so long as: (a) the total amount of Outstanding indebtedness evidenced by such Additional Note or Notes is not greater than 103.5 percent of the then outstanding principal balance of the Note or Notes being refunded or refinanced; (b) the weighted average life of any such additional Note or Notes is not greater than the weighted remaining life of the Note or Notes being refinanced; (c) the present value of the cost of the refinancing, including all transaction costs and any required investments in the lender, is less than the present value of the cost of the Note or Notes being refinanced. PROVIDED, HOWEVER, that the Mortgagor may not exercise its rights under this Section if an Event of Default has occurred and is continuing, or any event which with the giving of notice or lapse of time or both would become an Event of Default has occurred and is continuing. Additional Notes issued pursuant to this Section 2.02 will thereupon be secured equally and ratably with the Notes.

Section 2.03. Other Additional Notes. With the prior written consent of each Mortgagee, the Mortgagor may issue Additional Notes to the Government or any lender or lenders which, Notes will thereupon be secured equally and ratably with Notes without regard to whether any of the requirements of Sections 2.01 or 2.02 are satisfied.

Section 2.04. Additional Lenders Entitled to the Benefits of This Mortgage: Without the prior consent of any Mortgagee or any Noteholder, each lender designated as a payee in any Additional Notes issued by the Mortgagor pursuant to Section 2.01 or 2.02 of this Mortgage shall become a Mortgagee hereunder upon the execution and delivery by the Mortgagor and such lender of a supplemental mortgage hereto designating such lender as a Mortgagee hereunder. Such lender shall be entitled to the benefits of this Mortgage without further act or deed. Each Mortgagee and each person or entity that becomes a lender pursuant to Section 2.01 or 2.02 of this Mortgage shall, upon the request of the Mortgagor to do so, execute and deliver a supplement to this Mortgage in substantially the form set forth in Section 2.05. Such request shall be accompanied by an opinion of counsel and a certificate of the general manager or other duly authorized officer of the Mortgagor showing in reasonable detail that the issuance of the Additional Note or Notes which qualify the specified additional lender to become a Mortgagee under this Mortgage were or will be issued in compliance with the provisions of sections 2.01 or 2.02 hereof. The failure of any Mortgagee to enter into such supplemental mortgage shall not deprive the lender of its rights under this Mortgage; provided that such additional indebtedness otherwise conforms in all respects with the requirements for issuing Additional Notes under this Mortgage.

Section 2.05. Form of Supplemental Mortgage: [Here insert the shell of a simple mortgage supplement. The new lender should be able to set amortization terms and loan contract details in separate instruments.

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but not modify the substance of the shell or the master mortgage if it expects to take advantage of § 2.04.]

Article III

Particular Covenants of the Mortgagor

Section 3.01. Payment of Debt Service on Notes: The Mortgagor will duly and punctually pay the principal, premium, if any, and interest on the Notes in accordance with the terms of the Notes, the Loan Contracts, this Mortgage and any Supplemental Mortgage authorizing such Notes.

Section 3.02. Warranty of Title: At the time of the execution and delivery of this Instrument, the Mortgagor has good and marketable title in fee simple to the real property specifically described in Granting Clause First as owned in fee and good and marketable title to the interests in real property specifically described in Granting Clause First, subject to no mortgage, lien, charge or encumbrance except as stated therein, and has full power and lawful authority to grant, bargain, sell, alien, remise, release, convey, assign, transfer, mortgage, pledge, set over and confirm said real property and interests in real property in the manner and form aforesaid.

The Mortgagor lawfully owns and is possessed of the other property specifically described in Granting Clause First, subject to no mortgage, lien, charge or encumbrance except as stated therein, and has full power and lawful authority to mortgage, assign, transfer, deliver, pledge and grant a continuing security interest in said property in the manner and form aforesaid.

The Mortgagor hereby does and will forever warrant and defend the title to the property specifically described in Granting Clause First against the claims and demands of all persons whomsoever.

Section 3.03. After-Acquired Property; Further Assurances; Recording: All property of every kind, other than Excepted Property, acquired by the Mortgagor after the date hereof, shall, immediately upon the acquisition thereof by the Mortgagor, and without any further mortgage, conveyance or assignment, become subject to the lien of this Mortgage; Subject, However, to Permitted Encumbrances and the exceptions, if any, to which all of the Mortgagees consent. Nevertheless, the Mortgagor will do, execute, acknowledge and deliver all and every such further acts, conveyances, mortgages, financing statements and assurances as any Mortgagee shall require for accomplishing the purposes of this Mortgage.

The Mortgagor will cause this Mortgage and all Supplemental Mortgages and other instruments of further assurance, including all financing statements covering security interests in personal property, to be promptly recorded, registered and filed, and will execute and file such financing statements and cause to be issued and filed such continuation statements, all in such manner and in such places as may be required by law fully to preserve and protect the rights of all of the Mortgagees and Noteholders hereunder to all property comprising the Mortgaged Property. The Mortgagor will furnish to each Mortgagee:

A. Promptly after the execution and delivery of this instrument and of each Supplemental Mortgage or other instrument of further assurance, an Opinion of Counsel stating that, in the opinion of such Counsel, this instrument and all such Supplemental Mortgages and other instruments of further assurance have been properly recorded, registered and filed to the extent necessary to make effective the lien intended to be created by this Mortgage, and reciting the details of such action or referring to prior Opinions of Counsel in which such details are given, and stating that all financing statements and continuation statements have been executed and filed that are necessary fully to preserve and protect the rights of all of the Mortgagees and Noteholders hereunder, or stating that, in the opinion of such Counsel, no such action is necessary to make the lien effective; and

B. Within 30 days after _____ in each year beginning with the year _____, an Opinion of Counsel, dated as of such date, either stating that, in the opinion of such Counsel, such action has been taken with respect to the recording, registering, filing, re-recording, re-registering and re-filing of this instrument and of all Supplemental Mortgages, financing statements, continuation statements or other instruments of further assurances as is necessary to maintain the lien of this Mortgage (including the lien on any property acquired by the Mortgagor after the execution and delivery of this instrument and owned by the Mortgagor at the end of preceding calendar year) and reciting the details of such action or referring to prior Opinions of Counsel in which such details are given, and stating that all financing statements and continuation statements have been executed and filed that are necessary to fully preserve and protect the rights of all of the Mortgagees and Noteholders hereunder, or stating that, in the opinion of such Counsel, no such action is necessary to maintain such lien.

Section 3.04. Environmental Obligations: (a) The Mortgagor shall, with respect to all facilities which may be part of the Mortgaged Property, comply with all Environmental Laws.

(b) The Mortgagor shall defend, indemnify, and hold harmless each Mortgagee, its successors and assigns, from and against any and all liabilities, losses, damages, costs, expenses (including but not limited to reasonable attorneys' fees and expenses), causes of actions, administrative proceedings, suits, claims, demands, or judgments of any nature arising out of or in connection with any matter related to the Mortgage Property and any Environmental Law, including but not limited to:

(1) The past, present, or future presence of any hazardous substance, contaminant, pollutant, or hazardous waste on or related to the Mortgaged Property;

(2) Any failure at any time by the undersigned to comply with the terms of any order related to the Mortgaged Property and issued by any federal, state, or municipal department or agency (other than REA) exercising its authority to enforce any Environmental Law; and

(3) Any lien or claim imposed under any Environmental Law related to clause (1).

(c) Within 3 (three) days after receiving knowledge of any liability, losses, damages, costs, expenses (including but not limited to reasonable attorneys' fees and expenses), cause of action, administrative proceeding, suit, claim, demand, judgment, lien, reportable event including but not limited to the release of a hazardous substance, or potential or actual violation or non-compliance arising out of or in connection with the Mortgaged Property and any Environmental Law, the Mortgagor shall provide each Mortgagee with written notice of such matter. With respect to any matter upon which it has provided such notice, the Mortgagor shall immediately take any and all appropriate actions to remedy, cure, defend, or otherwise affirmatively respond to the matter.

Section 3.05. Payment of Taxes: The Mortgagor will pay or cause to be paid as they become due and payable all taxes, assessments and other governmental charges lawfully levied or assessed or imposed upon the Mortgaged Property or any part thereof or upon any income therefrom, and also (to the extent that such payment will not be contrary to any applicable laws) all taxes, assessments and other governmental charges lawfully levied, assessed or imposed upon the lien or interest of the Noteholders or of the Mortgagees in the Mortgaged Property, so that (to the extent aforesaid) the lien of this Mortgage shall at all times be wholly preserved at the cost of the Mortgagor and without expense to the Mortgagees or the Noteholders; PROVIDED, HOWEVER, that the Mortgagor shall not be required to pay and discharge or cause to be paid and discharged any such tax, assessment or governmental charge to the extent that the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and the Mortgagor shall have established and shall maintain adequate reserves on its books for the payment of the same.

Section 3.06. Authority to Execute and Deliver Notes, Loan Agreements and Mortgage; All Action Taken; Enforceable Obligations: The Mortgagor is authorized under its articles of incorporation and bylaws (or code of regulations) and all applicable laws and by corporate action to execute and deliver the Notes, any Additional Notes, the Loan Agreements and this Mortgage. The Notes, the Loan Agreements and this Mortgage are, and any Additional Notes and Loan Agreements when executed and delivered will be, the valid and enforceable obligations of the Mortgagor in accordance with their respective terms.

Section 3.07. Restrictions On Further Encumbrances on Property: Except to secure Additional Notes, the Mortgagor will not, without the prior written consent of each Mortgagee, create or incur or suffer or permit to be created or incurred or to exist any Lien, charge, assignment, pledge, mortgage on any of the Mortgaged Property inferior to, prior to, or on a parity with the Lien of this Mortgage except for the Permitted Encumbrances. Subject to the provisions of Section 3.08, or unless approved by each of the Mortgagees, the Mortgagor will purchase all materials, equipment and replacements to

be incorporated in or used in connection with the Mortgaged Property outright and not subject to any conditional sales agreement, chattel mortgage, bailment, lease or other agreement reserving to the seller any right, title or Lien.

Section 3.08. Restrictions On Additional Permitted Debt: The Mortgagor shall not incur, assume, guarantee or otherwise become liable in respect of any debt for borrowed money and Restricted Rentals (including Subordinated Debt) other than the following: ("Permitted Debt")

(1) Additional Notes issued in compliance with Article II hereof;

(2) Purchase money indebtedness in non-Utility System property, in an amount not exceeding 10% of Net Utility Plant;

(3) Restricted Rentals in an amount not to exceed 5% of Equity during any 12 consecutive calendar month period;

(4) Unsecured lease obligations incurred in the ordinary course of business except Restricted Rentals;

(5) Unsecured indebtedness for borrowed money in an aggregate amount not exceeding 15% of Net Utility Plant;

(6) Debt represented by dividends declared but not paid;

(7) Subordinated Indebtedness approved by each Mortgagee; and

(8) Indebtedness of other operating electric companies hereafter acquired by the Mortgagor not exceeding 90% of the Net Utility Plant of the acquired company.

Provided, However, that the Mortgagor may incur Permitted Debt without the consent of the Mortgagee only so long as there exists no Event of Default hereunder and there has been no continuing occurrence which with the passage of time and giving of notice could become an Event of Default hereunder.

Provided, Further, by executing this Mortgage any consent of REA that the Mortgagor would otherwise be required to obtain under this Section is hereby deemed to be given or waived by REA by operation of law to the extent, but only to the extent, that to impose such a requirement of REA consent would clearly violate existing federal laws or government regulations.

Section 3.09. Preservation of Corporate Existence and Franchises: The Mortgagor will, so long as any Outstanding Notes exist, take or cause to be taken all such action as from time to time may be necessary to preserve its corporate existence and to preserve and renew all franchises, rights of way, easements, permits, and licenses now or hereafter to be granted or upon it conferred the loss of which would have a material adverse affect on the Mortgagor's financial condition or business. The Mortgagor will comply with all laws, ordinances, regulations, orders, decrees and other legal requirements applicable to it or its property the violation of which could have a material adverse affect on the Mortgagor's financial condition or business.

Section 3.10 Limitations on Consolidations and Mergers: The Mortgagor shall not consolidate or merge with any other corporation or convey or transfer the Mortgaged Property substantially as an entirety unless: (1) Such consolidation, merger, conveyance or transfer shall be on such terms as shall fully preserve the lien and security hereof and the rights and powers of the Mortgagees hereunder; (2) the entity formed by such consolidation or with which the Mortgagor is merged or the corporation which acquires by conveyance or transfer the Mortgaged Property substantially as an entirety shall execute and deliver to the Mortgagees a mortgage supplemental hereto in recordable form and containing an assumption by such successor entity of the due and punctual payment of the principal of and interest on all of the Outstanding Notes and the performance and observance of every covenant and condition of this Mortgage; (3) immediately after giving effect to such transaction, no default hereunder shall have occurred and be continuing; (4) the Mortgagor shall have delivered to the Mortgagees a certificate of its general manager or other officer and an opinion of counsel for the Mortgagor, each of which shall state that such consolidation, merger, conveyance or transfer and such supplemental mortgage comply with this subsection and that all conditions precedent herein provided for relating to such transaction have been complied with; and (5) the entity formed by such consolidation or with which the Mortgagor is merged or the corporation which acquires by conveyance or transfer the Mortgaged Property substantially as an entirety shall be an entity—(A) having Equity equal to at least 27% of its Total Assets on a pro forma basis after giving effect to such transaction, (B) having a pro forma TIER of not less than 1.35 for the preceding calendar year, and (C) having Net Utility Plant equal to or greater than 1.1 times its long-term debt. Upon any consolidation or merger or any conveyance or transfer of the Mortgaged Property substantially as an entirety in accordance with this subsection, the successor entity formed by such consolidation or with which the Mortgagor is merged or to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Mortgagor under this Mortgage with the same effect as if such successor entity had been named as the Mortgagor herein.

Section 3.11 Limitations on Transfers of Property: The Mortgagor may not, except as provided in Section 3.10 above, without the prior written approval of each Mortgagee, sell, lease or transfer any Mortgaged Property to any other person or entity (including any subsidiary or affiliate of the Mortgagor), unless (1) there exists no Event of Default or occurrence which with the passing of time and the giving of notice would be an Event of Default, (2) fair market value is obtained for such property, (3) the aggregate value of assets so sold, leased or transferred in any 12-month period is less than 10% of Net Utility Plant, and (4) the proceeds of such sale, lease or transfer, less ordinary and reasonable expenses incident to such transaction, are immediately (i) applied as a prepayment of all Notes equally and ratably, (ii) in the case of dispositions of equipment, materials or scrap, applied to the purchase of other property useful in the Mortgagor's business, not necessarily of the same kind as the property disposed of, which shall forthwith become subject to the Lien of the Mortgage, or (iii) applied to the acquisition or construction of other Mortgageable Property.

Section 3.12. Maintenance of Mortgaged Property: (a) So long as the Mortgagor holds title to the Mortgaged Property, the Mortgagor will at all times maintain and preserve the Mortgaged Property which is used or useful in the Mortgagor's business and each and every part and parcel thereof in good repair, working order and condition, ordinary wear and tear and acts of God excepted, and in compliance with good utility practice and in compliance with all applicable laws, regulations and orders, and will from time to time make all needed and proper repairs, renewals and replacements, and useful and proper alterations, additions, betterments and improvements, and will, subject to contingencies beyond its reasonable control, at all times use all reasonable diligence to furnish the consumers served by it through the Mortgaged Property, or any part thereof, with an adequate supply of electric power and energy. If any substantial part of the Mortgaged Property is leased by the Mortgagor to any other party, the lease agreement between the Mortgagor and the lessee shall obligate the lessee to comply with the provisions of subsections (a) and (b) of this Section in respect of the leased facilities and to permit the Mortgagor to operate the leased facilities in the event of any failure by the lessee to so comply.

(b) The Mortgagor further agrees upon reasonable written request of any Mortgagee, which request together with the requests of any other Mortgagees shall be made no more frequently than once every three years, to supply promptly to each Mortgagee an initial certification (hereinafter called the "Initial Certification"), in form satisfactory to the requestor, prepared by an Independent professional engineer, who shall be satisfactory to the Mortgagees, as to the condition of the Mortgaged Property. If in the sole judgment of any Mortgagee such Initial Certification discloses the need for improvements to the condition of the Mortgaged Property or any other operations of the Mortgagor, such Mortgagee may send to the Mortgagor a written report of such improvements and the Mortgagor will upon receipt of such written report promptly undertake to accomplish such of these improvements as are required by such Mortgagees. One year after receipt of such written report, the Mortgagor shall submit to each Mortgagee a second certification (herein called the "Second Certification"), in form satisfactory to the Mortgagees, prepared by an Independent professional engineer, who shall be satisfactory to the Mortgagees, as to the condition of the Mortgaged Property and the other operations of the Mortgagor. If in the sole judgment of any Mortgagee such Second Certification discloses inadequacies in the condition of the Mortgaged Property or the other operations of the Mortgagor, any Mortgagee may send to the Mortgagor written notice of these inadequacies, and the Mortgagor shall cure such inadequacies, within sixty (60) days of receipt of such notice.

Section 3.13. Insurance; Restoration of Damaged Mortgaged Property: (a) The

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Mortgagor will take out, as the respective risks are incurred, and maintain the classes and amounts of insurance in conformance with generally accepted utility industry standards for such classes and amounts of coverages of utilities of the size and character of the Mortgagor.

(b) The foregoing insurance coverage shall be obtained by means of bond and policy forms approved by regulatory authorities having jurisdiction, and, with respect to insurance upon any part of the Mortgaged Property, shall provide that the insurance shall be payable to the Mortgagees as their interests may appear by means of the standard mortgagee clause without contribution. Each policy or other contract for such insurance shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least 30 days after written notice to each Mortgagee of cancellation.

(c) In the event of damage to or the destruction or loss of any portion of the Mortgaged Property which is used or useful in the Mortgagor's business and which shall be covered by insurance, unless each Mortgagee shall otherwise agree, the Mortgagor shall replace or restore such damaged, destroyed or lost portion so that such Mortgaged Property shall be in substantially the same condition as it was in prior to such damage, destruction or loss, and shall apply the proceeds of the insurance for that purpose. The Mortgagor shall replace the lost portion of such Mortgaged Property or shall commence such restoration promptly after such damage, destruction or loss shall have occurred and shall complete such replacement or restoration as expeditiously as practicable, and shall pay or cause to be paid out of the proceeds of such insurance all costs and expenses in connection therewith.

(d) Sums recovered under any policy or fidelity bond by the Mortgagor for a loss of funds advanced under the Notes or recovered by any Mortgagee or any Noteholder for any loss under such policy or bond shall, unless applied as provided in the preceding paragraph or otherwise be used to finance construction of facilities secured or to be secured by this Mortgage, or unless otherwise directed by the Mortgagees, be applied to the prepayment of the Notes pro rata according to the unpaid principal amounts thereof (such prepayments to be applied to such Notes and installments thereof as may be designated by the respective Mortgagee at the time of any such prepayment), or be used to construct or acquire facilities which will become part of the Mortgaged Property. At the request of any Mortgagee, the Mortgagor shall exercise such rights and remedies which they may have under such policy or fidelity bond and which may be designated by such Mortgagee, and the Mortgagor hereby irrevocably appoints each Mortgagee as its agent to exercise such rights and remedies under such policy or bond as such Mortgagee may choose, and the Mortgagor shall pay all costs and reasonable expenses incurred by the Mortgagee in connection with such exercise.

Section 3.14. Mortgagee Right to Expend Money to Protect Mortgaged Property: The Mortgagor agrees that any Mortgagee from time to time hereunder may, in its sole discretion, after having given 5 Business days prior written notice to Mortgagor, but shall not be obligated to, advance funds on behalf of Mortgagor, in order to insure the Mortgagor's compliance with any covenant, warranty, representation or agreement of the Mortgagor made in or pursuant to this Mortgage or any of the Loan Agreements, to preserve or protect any right or interest of the Mortgagees in the Mortgaged Property or under or pursuant to this Mortgage or any of the Loan Agreements, including without limitation, the payment of any insurance premiums or taxes and the satisfaction or discharge of any judgment or any Lien upon the Mortgaged Property or other property or assets of Mortgagor; *provided, however*, that the making of any such advance by or through any Mortgagee shall not constitute a waiver by any Mortgagee of any Event of Default with respect to which such advance is made nor relieve the Mortgagor of any such Event of Default. The Mortgagor shall pay to a Mortgagee upon demand all such advances made by such Mortgagee with interest thereon at a rate equal to that on the Note having the highest interest rate but in no event shall such rate be in excess of the maximum rate permitted by applicable law. All such advances shall be included in the obligations and secured by the security interest granted hereunder.

Section 3.15. Time Extensions for Payment of Notes: Any Mortgagee may, at any time or times in succession without notice to or the consent of the Mortgagor, or any other Mortgagee, and upon such terms as such Mortgagee may prescribe, grant to any person, firm or corporation who shall have become obligated to pay all or any part of the principal of (and premium, if any) or interest on any Note held by or indebtedness owed to such Mortgagee or who may be affected by the lien hereby created, an extension of the time for the payment of such principal, (and premium, if any) or interest, and after any such extension the Mortgagor will remain liable for the payment of such Note or indebtedness to the same extent as though it had at the time of such extension consented thereto in writing.

Section 3.16. Limitation on Dividends, Patronage Refunds and Other Cash Distributions: The Mortgagor will not, in any calendar year, without the prior written consent of the Mortgagees, declare or pay any dividends, or pay or determine to pay any patronage refunds, or retire any patronage capital or make any other cash distributions (such dividends, refunds, retirements and other distributions being hereinafter collectively called "Distributions"), to its members, stockholders or consumers if after giving effect to any such Distribution the total Equity of the Mortgagor will not equal or exceed 40% of its total assets and other debits; *provided, however*, that in any event the Mortgagor may make Distributions to the estates of natural patrons who are deceased to the extent required or permitted by its articles of incorporation and bylaws, and, if such Distributions to such estates do not exceed 25% of the patronage capital and margins received by the Mortgagor in the next preceding year, make such additional Distributions in any year as will not cause the total Distributions in such year to exceed 25% of the patronage capital and margins so received, and *provided, further, however*, that in no event will the Mortgagor make any Distributions if there is unpaid when due any installment of principal of (and premium, if any) or interest on the Notes, if the Mortgagor is otherwise in default hereunder or if, after giving effect to any such Distribution, the Mortgagor's total current and accrued assets would be less than its total current and accrued liabilities. For the purpose of this section a "cash distribution" shall be deemed to include any general cancellation or abatement of charges for electric energy or services furnished by the Mortgagor, but not the repayment of a membership fee upon termination of a membership.

Section 3.17. Application of Proceeds from Condemnation: (a) In the event that the Mortgaged Property or any part thereof, shall be taken under the power of eminent domain, all proceeds and avails therefrom may be used to finance construction of facilities secured or to be secured by this Mortgage. Any proceeds not so used shall forthwith be applied by the Mortgagor: first, to the ratable payment of any indebtedness secured by this Mortgage other than principal of or interest on the Notes; second, to the ratable payment of interest which shall have accrued on the Notes and be unpaid; third, to the ratable payment of or on account of the unpaid principal of the Notes, to such installments thereof as may be designated by the respective Mortgagee at the time of any such payment; and fourth, the balance shall be paid to whomsoever shall be entitled thereto.

(b) If any part of the Mortgaged Property shall be taken by eminent domain, each Mortgagee shall release the property so taken from the Mortgaged Property and shall be fully protected in so doing upon being furnished with:

(1) A certificate of a duly authorized officer of the Mortgagor requesting such release, describing the property to be released and stating that such property has been taken by eminent domain and that all conditions precedent herein provided or relating to such release have been complied with; and

(2) an opinion of counsel to the effect that such property has been lawfully taken by exercise of the right of eminent domain, that the award for such property so taken has become final or an appeal therefrom is not advisable in the interests of the Mortgagor, the Mortgagees or the Noteholders and that all conditions precedent herein provided for relating to such release have been complied with.

Section 3.18. Compliance with Loan Agreements; Notice of Amendments to and Defaults under Loan Agreements: The Mortgagor will observe and perform all of the material covenants, agreements, terms and conditions contained in any Loan Agreement entered into in connection with the issuance of any of the Notes, as from time to time amended. The Mortgagor will send promptly to each Mortgagee notice of any default by the Mortgagor under any Loan Agreement and notice of any amendment to any Loan Agreement. Upon request of any Mortgagee, the Mortgagor will furnish to such Mortgagee single copies of such Loan Agreements and amendments thereto as such Mortgagee may request.

Section 3.19. Rights of Way, etc., Necessary in Business: The Mortgagor will use its best efforts to obtain all such rights of way, easements from landowners and releases from lienors as shall be necessary or advisable in the conduct of its business, and, if requested by any Mortgagee, deliver to such Mortgagee evidence satisfactory to such Mortgagee of the obtaining of such rights of way, easements or releases.

Section 3.20. Rates to Provide Revenue Sufficient to Meet TIER and DSC Requirements: The Mortgagor shall design and implement rates for electric power and energy and for other utility services furnished by it that are designed [when combined with other revenue available to the Mortgagor] (i) to provide sufficient revenue to pay all fixed and variable expenses when and as due, (ii) to provide and maintain reasonable working capital, and (iii) to maintain, on an annual basis, a TIER of not less than 1.35 and a DSC of not less than 1.35. The Mortgagor shall give thirty (30) days prior written notice of any proposed change in its general rate structure to any Mortgagee who has requested in writing that it be notified in advance of such changes. Within ninety (90) days following the end of each calendar year, the Mortgagor shall report, in writing, to each of the Mortgagees the TIER and DSC levels which were achieved during that calendar year. If the average of the two (2) largest annual levels achieved by the Mortgagor out of the three (3) then most recent calendar years results in a TIER of less than 1.35 or a DSC of less than 1.35, the Mortgagor shall within ninety (90) days following the end of the calendar year, provide to each of the Mortgagees a written plan of remedial action, proposed by an independent consultant acceptable to each of the Mortgagees, for the approval of each Mortgagee. Such plan shall set forth the actions that the Mortgagor shall take in order to achieve the required TIER and DSC levels on a timely basis. The Mortgagor shall take all actions provided for in its written plan approved by the Mortgagees. In the event that any state regulatory authority having jurisdiction decides to disapprove rates sufficient to meet TIER and DSC ratios prescribed in this Mortgage, the Mortgagor will provide appropriate documentation to that effect along with a request that the Mortgagees approve the plan as modified to take the determination of such state authority into account. If each of the Mortgagees consents to such modifications, then the plan as so modified shall constitute the plan required by this section.

The Mortgagor will not furnish or supply or cause to be furnished or supplied any use, output, capacity, or service of the Utility System free of charge to any person, firm or corporation, public or private, and the Mortgagor will enforce the payment of any and all amounts owing to the Mortgagor by reason of the ownership and operation of the Utility System by discontinuing such use, output, capacity, or service, or by filing suit therefor within 90 days after any such accounts are due, or by both such discontinuance and by filing suit.

Section 3.21. Keeping Books; Inspection by Mortgagee: The Mortgagor will keep proper books of records and account, in which full and correct entries shall be made of all dealings or transactions of or in relation to the Notes and the Utility Systems, properties, business and affairs of the Mortgagor in accordance with the Accounting Requirements. The Mortgagor will at any and all times, upon the written request of any Mortgagee and at the expense of the Mortgagor, permit such Mortgagee by its representatives to inspect the Utility Systems and properties, books of account, records, reports and other papers of the Mortgagor and to take copies and extracts therefrom, and will afford and procure a reasonable opportunity to make any such inspection, and the Mortgagor will furnish to each Mortgagee any and all such information as such Mortgagee may request, with respect to the performance by the Mortgagor of its covenants under this Mortgage, the Notes and the Loan Agreements.

Article IV

Events of Default and Remedies

Section 4.01. Events of Default: Each of the following shall be an "Event of Default" under this Mortgage:

(a) default shall be made in the payment of any installment of or on account of interest on or principal of (or premium, if any associated with) any Note or Notes for more than five (5) Business Days after the same shall be required to be made;

(b) default shall be made in the due observance or performance of any other of the covenants, conditions or agreements on the part of the Mortgagor, in any of the Notes, Loan Agreements or in this Mortgage, and such default shall continue for a period of thirty (30) days after written notice specifying such default and requiring the same to be remedied and stating that such notice is a "Notice of Default" hereunder shall have been given to the Mortgagor by any Mortgagee; PROVIDED, HOWEVER that in the case of a default on the terms of a Note or Loan Agreement of a particular Mortgagee, the "Notice of Default" required under this paragraph may only be given by that Mortgagee;

(c) the Mortgagor shall file a petition in bankruptcy or be adjudicated a bankrupt or insolvent, or shall make an assignment for the benefit of its creditors, or shall consent to the appointment of a receiver of itself or of its property, or shall institute proceedings for its reorganization or proceedings instituted by others for its reorganization shall not be dismissed within sixty (60) days after the institution thereof;

(d) a receiver or liquidator of the Mortgagor or of any substantial portion of its property shall be appointed and the order appointing such receiver or liquidator shall not be vacated within sixty (60) days after the entry thereof;

(e) the Mortgagor shall forfeit or otherwise be deprived of its corporate charter or franchises, permits, easements, or licenses required to carry on any material portion of its business;

(f) a final judgment for an amount of more than $_____ shall be entered against the Mortgagor and shall remain unsatisfied or without a stay in respect thereof for a period of sixty (60) days; or,

(g) any material representation or warranty made by the Mortgagor herein, in the Loan Agreements or in any certificate or financial statement delivered hereunder or thereunder shall prove to be false or misleading in any material respect at the time made.

Section 4.02. Acceleration of Maturity; Rescission and Annulment:

(a) If an Event of Default described in Section 4.01(a) has occurred and is continuing, any Mortgagee upon which such default has occurred may declare the principal of all its Notes secured hereunder to be due and payable immediately by a notice in writing to the Mortgagor and to the other Mortgagees (failure to provide said notice to any other Mortgagee shall not effect the validity of any acceleration of the Note or Notes by such Mortgagee), and upon such declaration, all unpaid principal (and premium, if any) and accrued interest so declared shall become due and payable immediately, anything contained herein or in any Note or Notes to the contrary notwithstanding. Upon receipt of actual knowledge of or any notice of acceleration by any Mortgagee, any other Mortgagee may declare the principal of all of its Notes to be due and payable immediately by a notice in writing to the Mortgagor and upon such declaration, all unpaid principal (and premium, if any) and accrued interest so declared shall become due and payable immediately, anything contained herein or in any Note or Notes or Loan Agreements to the contrary notwithstanding.

(b) If any other Event of Default shall have occurred and be continuing, any Mortgagee may declare the principal (and premium, if any) and accrued interest on all its Notes secured by this Mortgage due and payable and upon such declaration, all unpaid principal (and premium, if any) and interest so declared shall become due and payable immediately, anything contained herein, in any Loan Agreement or in any Note to the contrary notwithstanding.

(c) If at any time after the unpaid principal of (and premium, if any) and accrued interest on any of the Notes shall have been so declared to be due and payable, all payments in respect of principal and interest which shall have become due and payable by the terms of such Note or Notes (other than amounts due as a result of the acceleration of the Notes) shall be paid to the respective Mortgagees, and all other defaults under the Loan Agreements, the Notes and this Mortgage shall have been made good and secured to the satisfaction of the Mortgagees representing at least 80% of the aggregate unpaid principal balance of all of the Notes then Outstanding, then in every such case such Mortgagees, may by written notice to the Mortgagor, annul such declaration and waive such default and the consequences thereof, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

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Section 4.03. Remedies of Mortgagees: If one or more of the Events of Default shall occur and be continuing, any Mortgagee personally or by attorney, in its or their discretion, may, in so far as not prohibited by law:

(a) take immediate possession of the Mortgaged Property, collect and receive all credits, outstanding accounts and bills receivable of the Mortgagor and all rents, income, revenues, proceeds and profits pertaining to or arising from the Mortgaged Property, or any part thereof, whether then past due or accruing thereafter, and issue binding receipts therefor; and manage, control and operate the Mortgaged Property as fully as the Mortgagor might do if in possession thereof, including, without limitation, the making of all repairs or replacements deemed necessary or advisable by such Mortgagee in possession;

(b) proceed to protect and enforce the rights of all of the Mortgagees by suits or actions in equity or at law in any court or courts of competent jurisdiction, whether for specific performance of any covenant or any agreement contained herein or in aid of the execution of any power herein granted or for the foreclosure hereof or hereunder or for the sale of the Mortgaged Property, or any part thereof, or to collect the debts hereby secured or for the enforcement of such other or additional appropriate legal or equitable remedies as may be deemed necessary or advisable to protect and enforce the rights and remedies herein granted or conferred, and in the event of the institution of any such action or suit the Mortgagee instituting such action or suit shall have the right to have appointed a receiver of the Mortgaged Property and of all proceeds, rents, income, revenues and profits pertaining thereto or arising therefrom, whether then past due or accruing after the appointment of such receiver, derived, received or had from the time of the commencement of such suit or action, and such receiver shall have all the usual powers and duties of receivers in like and similar cases, to the fullest extent permitted by law, and if application shall be made for the appointment of a receiver the Mortgagor hereby expressly consents that the court to which such application shall be made may make said appointment; and

(c) sell or cause to be sold all and singular the Mortgaged Property or any part thereof, and all right, title, interest, claim and demand of the Mortgagor therein or thereto, at public auction at such place in any county (or its equivalent locality) in which the property to be sold, or any part thereof, is located, at such time and upon such terms as may be specified in a notice of sale, which shall state the time when and the place where the sale is to be held, shall contain a brief general description of the property to be sold, and shall be given by mailing a copy thereof to the Mortgagor at least fifteen (15) days prior to the date fixed for such sale and by publishing the same once in each week for two successive calendar weeks prior to the date of such sale in a newspaper of general circulation published in said locality or, if no such newspaper is published in such locality, in a newspaper of general circulation in such locality, the first such publication to be not less than fifteen (15) days nor more than thirty (30) days prior to the date fixed for such sale. Any sale to be made under this subparagraph (c) of this Section 4.03 may be adjourned from time to time by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and without further notice or publication the sale may be had at the time and place to which the same shall be adjourned; *provided, however,* that in the event another or different notice of sale or another or different manner of conducting the same shall be required by law the notice of sale shall be given or the sale be conducted, as the case may be, in accordance with the applicable provisions of law. The expense incurred by any Mortgagee (including, but not limited to, receiver's fees, counsel fees, cost of advertisement and agents' compensation) in the exercise of any of the remedies provided in this Mortgage shall be secured by this Mortgage.

(d) In the event that a Mortgagee proceeds to enforce remedies under this Section, any other Mortgagee may join in such proceedings. In the event that the Mortgagees are not in agreement with the method or manner of enforcement chosen by any other Mortgagee, the Mortgagees representing a majority of the aggregate unpaid principal balance on the then Outstanding Notes may direct the method and manner in which remedial action will proceed.

Section 4.04. Application of Proceeds from Remedial Actions: Any proceeds or funds arising from the exercise of any rights or the enforcement of any remedies herein provided after the payment or provision for the payment of any and all costs and expenses in connection with the exercise of such rights or the enforcement of such remedies shall be applied first, to the ratable payment of indebtedness hereby secured other than the principal of or interest on the Notes; second, to the ratable payment of interest which shall have accrued on the Notes and which shall be unpaid; third, to the ratable payment of or on account of the unpaid principal of the Notes; and the balance, if any, shall be paid to whomsoever shall be entitled thereto.

Section 4.05. Remedies Cumulative; No Election: Every right or remedy herein conferred upon or reserved to the Mortgagees or to the Noteholders shall be cumulative and shall be in addition to every other right and remedy given hereunder or now or hereafter existing at law, or in equity, or by statute. The pursuit of any right or remedy shall not be construed as an election.

Section 4.06. Waiver of Appraisement Rights; Marshalling of Assets Not Required: The Mortgagor, for itself and all who may claim through or under it, covenants that it will not at any time insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any appraisement, valuation, stay, extension or redemption laws now or hereafter in force in any locality where any of the Mortgaged Property may be situated, in order to prevent, delay or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property, or any part thereof, or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser or purchasers thereat, and the Mortgagor, for itself and all who may claim through or under it, hereby waives the benefit of all such laws unless such waiver shall be forbidden by law. Under no circumstances shall there be any marshalling of assets upon any foreclosure or to other enforcement of this Mortgage.

Section 4.07. Notice of Default: The Mortgagor covenants that it will give immediate written notice to each Mortgagee of the occurrence of any Event of Default or in the event that any right or remedy described in Sections 4.02 and 4.03 hereof is exercised or enforced or any action is taken to exercise or enforce any such right or remedy.

Article V

Possession Until Default-Defeasance Clause

Section 5.01. Possession Until Default: Until some one or more of the Events of Default shall have happened, the Mortgagor shall be suffered and permitted to retain actual possession of the Mortgaged Property, and to manage, operate and use the same and any part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the rents, revenues, issues, earnings, income, products and profits thereof or therefrom, subject to the provisions of this Mortgage.

Section 5.02. Defeasance Generally: If the Mortgagor shall pay or cause to be paid the whole amount of the principal of (and premium, if any) and interest on the Notes at the times and in the manner therein provided, and shall also pay or cause to be paid all other sums payable by the Mortgagor hereunder or under any Loan Agreement and shall keep and perform, all covenants herein required to be kept and performed by it, then and in that case, all property, rights and interest hereby conveyed or assigned or pledged shall revert to the Mortgagor and the estate, right, title and interest of the Mortgagee so paid shall thereupon cease, determine and become void and such Mortgagee, in such case, on written demand of the Mortgagor but at the Mortgagor's cost and expense, shall enter satisfaction of the Mortgage upon the record. In any event, each Mortgagee, upon payment in full to such Mortgagee by the Mortgagor of all principal of (and premium, if any) and interest on any Note held by such Mortgagee and the payment and discharge by the Mortgagor of all charges due to such Mortgagee hereunder or under any Loan Agreement, shall execute and deliver to the Mortgagor such instrument of satisfaction, discharge or release as shall be required by law in the circumstances.

Section 5.03. Special Defeasance: Other than any Notes excluded by the foregoing Sections 5.01 and 5.02 and Notes which have become due and payable, the Mortgagor may cause the Lien of this Mortgage to be defeased with respect to any Note for which it has deposited or caused to be deposited in trust solely for the purpose an amount sufficient to pay and discharge the entire indebtedness on such Note for principal (and premium, if any) and interest to the date of maturity thereof; PROVIDED, HOWEVER, that the depositary serving as trustee for such trust must first be accepted as such by the

Mortgagee whose Notes are being defeased under this section. In such event, such a Note will no longer be considered to be an Outstanding Note for purposes of this Mortgage and the Mortgagee shall execute and deliver to the Mortgagor such instrument of satisfaction, discharge or release as shall be required by law in the circumstances.

Article VI

Miscellaneous

Section 6.01. Property Deemed Real Property: It is hereby declared to be the intention of the Mortgagor that any electric generating plant or plants and facilities and all electric transmission and distribution lines, or other Electric System or Utility System facilities, embraced in the Mortgaged Property, including (without limitation) all rights of way and easements granted or given to the Mortgagor or obtained by it to use real property in connection with the construction, operation or maintenance of such plant, lines, facilities or systems, and all other property physically attached to any of the foregoing, shall be deemed to be real property.

Section 6.02. Mortgage to Bind and Benefit Successors and Assigns: All of the covenants, stipulations, promises, undertakings and agreements herein contained by or on behalf of the Mortgagor shall bind its successors and assigns, whether so specified or not, and all titles, rights and remedies hereby granted to or conferred upon the Mortgagees shall pass to and inure to the benefit of the successors and assigns of the Mortgagees and shall be deemed to be granted or conferred for the ratable benefit and security of all who shall from time to time be a Mortgagee. The Mortgagor hereby agrees to execute such consents, acknowledgements and other instruments as may be reasonably requested by any Mortgagee in connection with the assignment, transfer, mortgage, hypothecation or pledge of the rights or interests of such Mortgagee hereunder or under the Notes or in and to any of the Mortgaged Property.

Section 6.03. Headings: The descriptive headings of the various articles and sections of this Mortgage and also the table of contents were formulated and inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

Section 6.04. Separability Cause: In case any provision of this Mortgage or in the Notes or in the Loan Agreements shall be invalid or unenforceable, the validity, legality and enforceability of the remaining provisions thereof shall not in any way be affected or impaired, nor, nor shall any invalidity or unenforceability as to any Mortgagee hereunder affect or impair the rights hereunder of any other Mortgagee.

Section 6.05. Mortgage Deemed Security Agreement: To the extent that any of the property described or referred to in this Mortgage is governed by the provisions of the UCC this Mortgage is hereby deemed a "security agreement" under the UCC, and, if so elected by any Mortgagee, a "financing statement" under the UCC for said security agreement. The mailing addresses of the Mortgagor as debtor, and the Mortgagees as secured parties are as set forth in section 6.04 hereof. If any Mortgagee so directs the Mortgagor to do so, the Mortgagor shall file as a financing statement under the UCC for said security agreement and for the benefit of all of the Mortgagees, an instrument other than this Mortgage. In such case, the instrument to be filed shall be in a form customarily accepted by the filing office as a financing statement.

Section 6.06. Indemnification by Mortgagor of Mortgagees: The Mortgagor agrees to indemnify and save harmless each Mortgagee against any liability or damages which any of them may incur or sustain in the exercise and performance of their rightful powers and duties hereunder. For such reimbursement and indemnity, each Mortgagee shall be secured under this Mortgage in the same manner as the Notes and all such reimbursements for expense or damage shall be paid to the Mortgagee incurring or suffering the same with interest at the rate specified in Section 3.14 hereof.

In Witness Whereof, _____ as Mortgagor, has caused this Restated Mortgage and Security Agreement to be signed in its name and its corporate seal to be hereunto affixed and attested by its officers thereunto duly authorized, and UNITED STATES OF AMERICA, as Mortgagee, and _____, as Mortgagee, has caused this Restated Mortgage and Security Agreement to be signed in its name by duly authorized persons, all as of the day and year first above written.

(SEAL)
By: _____
President
Attest: _____
Title: _____
Executed by the Mortgagor in the presence of:

_____

Witnesses
UNITED STATES OF AMERICA
By: _____
Director, of the Rural Electrification Administration
Executed by the United States of America, Mortgagee, in the presence of:

_____

Witnesses

By: _____
(SEAL)
Attest: _____
Title: _____
Executed by the above-named Mortgagee in the presence of:

_____

Witnesses

Schedule A—Maximum Debt Limit and Other Information

1. The Maximum Debt Limit is _____.

2. The Original Mortgage as described in the first WHEREAS clause above is _____.

3. The outstanding secured indebtedness described in the fourth WHEREAS clause above as evidenced by the Original Notes is as follows:

Schedule B—Property Schedule

The fee and leasehold interests in real property referred to in Section Subclause (a) of Granting Clause One are _____.

The counties referred to in Subclause (b) of Granting Clause One are _____.

Schedule C—Excepted Property

[List of all Excepted Property.]

Schedule D—Notary Public Certification

STATE OF _____)
COUNTY OF _____)

On this _____ day of _____, 19_____, before me appeared _____ and _____ personally known, by me and having been duly sworn by me, did say that they are the President and Secretary, respectively, of _____, a _____ corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board, and said _____ and _____ acknowledged that the execution of said instrument was a free act and deed of said corporation.

IN WITNESS whereof, I have hereunto set my hand and official seal the day and year last above written.

_____
Notary Public
(Notarial Seal)
My commission expires:

DISTRICT OF COLUMBIA) SS

The foregoing instrument was acknowledged before me this _____ day of 19_____, by _____ Director, _____ Regional Division of the Rural Electric Administration, acknowledging an agency of the United States of America, on behalf of the Rural Electrification Administration, United States of America.

_____
Notary Public
(Notarial Seal)
My Commission expires:

Dated: September 21, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94-23924 Filed 9-28-94; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Ch. VII

[Docket No. 940959-4259]

Request for Comments on Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Export Administration (BXA) is reviewing the foreign policy-based export controls in

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the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To help make these determinations, BXA is seeking comments on how existing foreign policy-based export controls have affected exporters and the general public.

DATES: Comments must be received by October 31, 1994, to assure full consideration in the formulation of export control policies as they relate to foreign policy-based controls.

ADDRESSES: Written comments (three copies) should be sent to Patricia Muldonian, Regulations Branch (Room 4054), Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: John Bolsteins, Foreign Policy Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 482–4252. Copies of the current 1994 Annual Foreign Policy Report to the Congress can also be requested.

SUPPLEMENTARY INFORMATION: The current foreign policy controls maintained by the Bureau of Export Administration (BXA) are set forth in the Export Administration Regulations (EAR). Parts 776 (Special Commodity Policies and Provisions), 778 (Proliferation Controls), and 785 (Special Country Policies and Provisions). These controls apply to: supercomputers (§ 776.11); crime control and detection commodities (§ 776.14); regional stability commodities and equipment (§ 776.16); equipment and related technical data used in the design, development, production, or use of missiles capable of delivering nuclear weapons (§ 778.7); chemical precursors and biological agents, associated equipment, technical data, and software related to the production of chemical and biological agents (§ 778.8); activities of U.S. persons in transactions related to missile technology or chemical or biological weapons proliferation in named countries (§ 778.9); embargoed countries (§ 785.1); countries designated as supporters of acts of international terrorism (§ 785.4(d)); and, Libya (§ 785.7). Attention is also given in this context to the controls on nuclear-related commodities and technical data (§ 778.2), although they are not foreign policy-based controls in the exact sense.

Effective January 21, 1994, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy controls then in effect.

To assure maximum public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy controls for another year. Among the criteria the Departments of Commerce and State consider in determining whether to continue or revise U.S. foreign policy controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;
2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;
3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;
4. The reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;
5. The effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology, or the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives; and
6. The ability of the United States to enforce the controls effectively.

BXA is particularly interested in the experience of individual exporters in complying with the proliferation controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BXA is also interested in comments relating to the effects of foreign policy controls on exports of replacement and other parts.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BXA in reviewing the controls and developing the report to Congress.

BXA will consider requests for confidential treatment. The information for which confidential treatment is requested should be submitted to BXA separate from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information." BXA will either accept the submission in confidence, or if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information accepted by BXA as confidential will be protected from public disclosure to the extent permitted by law. Communications between agencies of the United States Government or with foreign governments will not be made available for public inspection.

All other information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BXA requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record concerning these comments will be maintained in the Freedom of Information Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about inspection and copying of records at this facility may be obtained from Edward J. Linglebach, BXA Freedom of Information Officer, at the above address or by calling (202) 482–5653.

Section 6 of the Export Administration Act of 1979, as amended (EAA), requires a report to congress whenever foreign policy-based export controls are extended. Although the EAA expired on August 20, 1994, the President, invoking the International Emergency Powers Act (IEEPA), continued in effect the provisions of the Act and the Export Administration Regulations, to the extent permitted by law, in Executive Order 12924 of August 19, 1994. Under a policy of conforming actions under the Executive Order to those under the EAA, the Department of Commerce, insofar as appropriate, is following the provisions of section 6 in reviewing foreign policy-based export controls and requesting comments on such controls.

Dated: September 23, 1994.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 94–24083 Filed 9–28–94; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[GL–0548–87]

RIN 1545–AE30

Presumptions Where Owner of Large Amount of Cash Is Not Identified

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document contains proposed regulations regarding the presumptions that arise where the owner of a large amount of cash or its equivalent is not identified. The proposed regulations reflect changes to the law made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Technical and Miscellaneous Revenue Act of 1988, and incorporate the rules of current § 301.6867–1T, relating to cash, cash equivalents, specific cash equivalents and the value of cash equivalents. In addition, several new items have been added to the list of specific cash equivalents. The proposed regulations affect individuals who are found in possession of a large amount of cash or its equivalent and the true owners of that cash or its equivalent.

DATES: Written comments and requests for a public hearing must be received by November 28, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (CC:GL–0548- 87), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (GL–0548–87), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula, (202) 622–3640 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 6867 of the Internal Revenue Code of 1986 (Code). The regulations reflect the enactment of section 6867 by section 330(a) of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248), and the amendment made by section 1001(a)(1) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647).

Explanation of Provisions

Section 330(a) of the Tax Equity and Fiscal Responsibility Act of 1982 amended the Code by adding section 6867, designed to be used in making jeopardy or termination assessments, as appropriate, when there is no known owner of large amounts of cash. Section 6867 provides that if an individual in physical possession of cash in excess of $10,000 does not claim the cash as belonging to that individual or as belonging to another person whose identity is readily ascertainable and who acknowledges ownership of the cash to the IRS, it is presumed that the cash represents gross income of a single individual for the taxable year in which the possession occurs and that the collection of tax will be jeopardized by delay. Section 6867, as originally enacted, made the entire amount of the cash subject to a 50 percent tax rate. Section 1001(a)(1) of the Technical and Miscellaneous Revenue Act of 1988 amended section 6867, effective for taxable years beginning after December 31, 1986, to provide that the tax rate is to be the highest rate of tax for an individual specified in section 1.

Under section 6867, the possessor of cash is treated (solely with respect to the cash) as the taxpayer for the purposes of chapters 63 and 64 of the Code, relating to assessment and collection, and for the purposes of section 7429(a)(1), entitling that individual to a written statement of information concerning the assessment provided for by that section. Because section 6867 does not treat the possessor as the taxpayer for the purposes of sections 7429(a)(2) and 7429(b), relating to administrative and judicial review of termination and jeopardy assessments, the proposed regulations do not permit the possessor of cash to maintain an action under section 7429 for such review.

The possessor of cash may petition the United States Tax Court to challenge the notice of deficiency issued to the possessor solely in that person's capacity as possessor of cash. In lieu thereof, the possessor of cash, solely in that person's capacity as possessor of cash, may institute a suit for refund in district court after the deficiency has been collected.

The true owner of cash may maintain an action under section 7429 for administrative and judicial review of the deficiency notice issued to the possessor. However, the true owner may only institute the section 7429 action concerning the notice of deficiency issued to the possessor by making a request for review within 30 days from the date the possessor is given the written statement of information required under section 7429(a)(1). After the deficiency asserted against the possessor of cash has been levied upon, the true owner of cash may bring an action in federal district court, within the time frame specified in section 6532(c), to recover the cash, as provided in section 7426, relating to civil actions by persons other than taxpayers. In addition, the true owner of cash, with the permission of the court, may appear before the United States Tax Court in any proceeding that may be filed by the possessor of the cash challenging the notice of deficiency issued to the possessor as possessor of the cash.

Section 301.6867–1(f) of the proposed regulations incorporates the definitions contained in current § 301.6867–1T, relating to cash, cash equivalents, specific cash equivalents and the value of cash equivalents. In addition, several other items have been identified and added to the list of specific cash equivalents. Section 301.6867–1T will be removed on the date final regulations are filed with the **Federal Register**.

Proposed Effective Date

The regulations are proposed to be effective on and after the date final regulations are filed with the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations,

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consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Jerome D. Sekula of the General Litigation Division of the Office of Chief Counsel, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6867–1 is added to read as follows:

§ 301.6867–1 Presumptions where owner of large amount of cash is not identified.

(a) *General rule.* For purposes of section 6851 (relating to termination assessments) and section 6861 (relating to jeopardy assessments), if cash in excess of $10,000 is found in the physical possession of an individual who does not claim either ownership of that cash or ownership by some other person whose identity the Commissioner can readily ascertain and who acknowledges ownership of that cash as of the date the cash was found, then, it shall be presumed that—

(1) The cash represents gross income of an unknown single individual; and

(2) That the collection of tax on that income will be jeopardized by delay.

(b) *Rules for assessment.* The Commissioner may make an assessment pursuant to section 6851 or section 6861, as appropriate, using the rules for assessment specified in this paragraph. In the case of any assessment resulting from the application of paragraph (a) of this section—

(1) The entire amount of cash is treated as taxable income for the taxable year in which the cash is found;

(2) The income is treated as taxable at the highest rate of tax specified in section 1 of the Internal Revenue Code; and

(3) Except as provided in paragraph (c), the possessor of the cash is treated (solely with respect to that cash) as the taxpayer for purposes of chapters 63 and 64 and section 7429(a)(1) of the Internal Revenue Code.

(c) *Effect of later substitution of true owner*—(1) *In general.* If an assessment resulting from the application of paragraph (a) of this section is later abated and replaced by an assessment against the true owner of the cash, the later assessment is treated for purposes of all laws relating to lien, levy, and collection as relating back to the date of the original assessment. Notwithstanding the preceding sentence, any notice and review provided for by section 7429 and the notice of deficiency issued to the true owner relative to the later assessment are to be made within the prescribed time limits, using the actual date of the later assessment against the true owner.

(2) *Example.* The provisions of paragraph (c)(1) of this section may be illustrated by the following example:

Example. On June 5, 1994, A is found in possession of a bag, containing $200,000, which A claims he was holding for a friend whose name A cannot remember. Because A does not claim ownership of the cash and does not provide the name of the true owner so that the Commissioner can identify the true owner and have that person acknowledge ownership of the cash, it is presumed that the cash represents gross income of an individual for calendar year 1994, and that the collection of tax on that gross income will be jeopardized by delay. Accordingly, on June 17, 1994, a termination assessment under section 6851 is made against A, in his capacity as possessor of the cash. On June 21, 1994, the written statement of information provided for by section 7429(a)(1) is given A. No request for review under section 7429(a)(2) is made by the true owner within 30 days after the day on which A was furnished the written statement provided for in section 7429(a)(1). Subsequently, individual B comes to the Service and states that he is the owner of the cash. On September 2, 1994, the Service determines that B was the true owner of the cash on June 5, 1994. On September 9, 1994, the Service abates the termination assessment made against A solely as possessor of cash and, after determining that jeopardy exists, replaces it with a termination assessment under section 6851 against B. The lien against B that arises under section 6321 is treated as arising on June 17, 1994. However, within 5 days after September 9, 1994, the Service must give B the written statement of information required by section 7429(a)(1). In addition, a notice of deficiency must be sent to B within 60 days after the later of the due date or the actual filing of B's tax return for 1994, as required by section 6851(b).

(d) *Rights of possessor of cash*—(1) *Actions permitted.* Section 6867 provides that the possessor of cash is treated as the taxpayer for purposes of chapter 63 (relating to assessment) and chapter 64 (relating to collection). Accordingly, the possessor of cash may file a petition with the United States Tax Court, within the applicable time limits, challenging the notice of deficiency issued to the possessor solely in that person's capacity as possessor of cash. In lieu thereof, the possessor of cash may, after the deficiency has been collected, file a refund claim solely in that person's capacity as possessor of cash and, if the refund claim is denied or not timely acted upon by the Service within six months, institute a suit for refund in the appropriate court.

(2) *Actions not permitted.* Section 6867 provides that the possessor of cash is treated as the taxpayer solely for purposes of section 7429(a)(1), and is entitled to the written statement of information provided for by that section. The possessor of cash is not treated as the taxpayer for purposes of sections 7429(a)(2) and 7429(b), relating to administrative and judicial review of termination and jeopardy assessments, and may not maintain an action under section 7429 for such review.

(e) *Rights of true owner of cash*—(1) *Actions permitted.* The true owner of cash may request administrative review under section 7429(a)(2) and may maintain a civil action under section 7429(b) for judicial review of an assessment under section 6851 or section 6861 made against the possessor solely in that person's capacity as possessor of cash. Such an action, however, must be preceded by a request for review under section 7429(a)(2) made by the true owner within 30 days after the day on which the possessor is furnished the written statement provided for in section 7429(a)(1). In addition, after the deficiency asserted against the possessor of cash has been levied upon, the true owner of cash may bring an action in federal district court to recover the cash, as provided in section 7426, relating to civil actions by persons other than taxpayers. See, however, section 6532(c), relating to the 9-month statute of limitations for suits under section 7426. In addition, the true owner of cash, with the permission of the court, may appear before the United States Tax Court in any proceeding that may be filed by the possessor of the cash challenging the notice of deficiency issued to the possessor solely in that person's capacity as possessor of the cash.

(2) *Actions not permitted.* The true owner of cash may not file a petition with the United States Tax Court challenging the notice of deficiency issued to the possessor solely in that person's capacity as possessor of cash. Notwithstanding the preceding sentence, the true owner of cash may file a petition with the United States Tax Court challenging any notice of deficiency issued to the true owner following the abatement of the assessment made against the possessor of cash.

(f) *Definitions.* For the purposes of this section and section 6867—

(1) *Cash.* The term cash includes any cash equivalents.

(2) *Cash equivalent*—(i) *In general.* The term *cash equivalent* includes foreign currency, any bearer obligation, and any medium of exchange that is of a type that has been frequently used in illegal activities, as listed in paragraph (f)(2)(ii) of this section.

(ii) *Specific cash equivalents.* For purposes of paragraph (f)(2)(i), the following are also cash equivalents—

(A) Coins;

(B) Precious metals;

(C) Jewelry;

(D) Precious stones;

(E) Postage stamps;

(F) Traveler's checks in any form;

(G) Negotiable instruments (including personal checks, business checks, official bank checks, cashier's checks, notes, and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery;

(H) Incomplete instruments (including personal checks, business checks, official bank checks, cashier's checks, notes, and money orders) signed but with the payee's name omitted; and

(I) Securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery.

(iii) *Value of cash equivalents.* A cash equivalent is taken into account at its fair market value except in the case of a bearer obligation, in which case it is taken into account at its face value.

(3) *Possessor of cash.* An individual is considered to be the possessor of cash if the cash is found on that individual's person or in that individual's possession or is found in any object, container, vehicle, or area under that individual's custody or control.

(4) *True owner of the cash.* The true owner of cash is the individual who beneficially owns the cash on the date such cash is found in the physical possession of the individual described in paragraph (f)(3) of this section. An agent, bailee, or other custodian of the cash is not the true owner of cash. A true owner of cash does not include an individual who, subsequent to the date on which the cash is found in the physical possession of the individual described in paragraph (f)(3) of this section, obtains ownership of the cash by purchase, subrogation, descent, or other means.

(g) *Effective date.* This section is effective with respect to cash found in the physical possession of an individual on the date final regulations are published in the **Federal Register**.

§ 301.6867–1T [Removed]

Par. 3. Section 301.6867–1T is removed.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–24011 Filed 9–28–94; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Arkansas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Arkansas regulatory program (hereinafter, the "Arkansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for Arkansas' proposed statutes pertain to the entities performing permitting activities that are eligible for assistance under the small operator's assistance program (SOAP), costs relating to permitting activities that may be funded under SOAP, Arkansas' responsibility to assume training costs, and operator reimbursement of Arkansas for the cost of services rendered under SOAP. The amendment is intended to revise the Arkansas program to be consistent with SMCRA, as amended.

DATES: Written comments must be received by 4:00 p.m., c.d.t. October 14, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Arkansas program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, Oklahoma 74135–6548

Surface Mining & Reclamation Division, Arkansas Department of Pollution Control & Ecology, P.O. Box 8913, 8001 National Drive, Little Rock, Arkansas 72219–8913, Telephone: (501) 562–6533

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. General background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Arkansas program can be found in the November 21, 1980, **Federal Register** (45 FR 77003). Subsequent actions concerning Arkansas' program and program amendments can be found at 30 CFR 904.12 and 904.15.

II. Submission of Proposed Amendment

By letter dated March 31, 1993 (administrative record No. AR–496), Arkansas submitted a proposed amendment to its program pursuant to SMCRA. Arkansas, at its own initiative, submitted the proposed amendment with the intent of making its statute consistent with sections 507 (c) and (h) of SMCRA, as revised by the Energy Policy Act of 1992 (Pub. L. 102–486). Arkansas proposed to amend the Arkansas Surface Coal Mining and Reclamation Act of 1979 relating to financial assistance under SOAP. The amendment (1) redefined "small operator" to include those operators producing up to 300,000 tons of coal during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit and (2) expanded the costs of certain permitting activities eligible for payment under SOAP.

OSM published a notice in the April 22, 1993, **Federal Register** (58 FR 16634) announcing receipt of the amendment and inviting public comment on its adequacy

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(administrative record No. AR–500). The public comment period ended May 25, 1993.

During its review of the amendment, OSM identified concerns relating to the authority to implement regulations for SOAP, the costs related to gathering information for a permit application that can be funded under SOAP, and the liability of the permit applicant for reimbursement of the cost of services if the operator exceeds the allowable production within 12 months of permit issuance. OSM notified Arkansas of the concerns by letter dated June 23, 1993 (administrative record No. AR–507).

By letter dated July 22, 1993, Arkansas responded by submitting additional explanatory information and a revised amendment to address the concerns identified above (administrative record No. AR–505).

During its review of the revised amendment, OSM identified concerns relating to (1) Arkansas' use of the phrase "cross-section maps or plans" and (2) reimbursement of costs if the operator exceeds the allowed actual and attributed annual production of coal. OSM notified Arkansas of the concerns by letter dated October 19, 1993 (administrative record No. AR–513).

Arkansas responded in a letter dated August 26, 1994, by submitting additional revisions to its amendment (administrative record No. AR–521). Arkansas proposes to revise the Arkansas Surface Coal Mining and Reclamation Act of 1979 at section 13 by (1) designating existing paragraph (c)(2) as (c)(2)(A); (2) revising paragraph (c)(2)(A) to specify that the permitting activities eligible for assistance under SOAP must be performed by a qualified public or private laboratory or other public or private entity designated by Arkansas; (3) adding paragraphs (c)(2)(A) (i) through (vi), which specify additional permitting activities for which an operator may receive assistance under SOAP; (4) adding paragraph (c)(2)(B), which pertains to Arkansas' responsibility to assume the cost of training small operators in the preparation of permit applications and compliance with the regulatory program and of the assistance available under SOAP; and (5) adding paragraph (c)(2)(C), which pertains to the operator's responsibility to reimburse Arkansas for the cost of the services rendered under SOAP if the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Arkansas program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provision of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Arkansas program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and hes determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 23, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 94–24130 Filed 9–28–94; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 904

Arkansas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Arkansas regulatory program (hereinafter, the "Arkansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of the deletion of the statutory provision authorizing the Arkansas Commission on Pollution Control and Ecology to either regulate or not regulate surface coal mining operations affecting 2 acres or less, and the addition of statutory provisions pertaining to violations and revegetation performance standards for remining permits. This amendment is intended to revise the Arkansas program to be consistent with SMCRA.

DATES: Written comments must be received by 4:00 p.m., c.d.t. October 31, 1994. If requested, a public hearing on the proposed amendment will be held on October 24, 1994. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.d.t. on October 14, 1994. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Arkansas program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135

Arkansas Department of Pollution Control and Ecology, P.O. Box 8913, 8001 National Drive, Little Rock, Arkansas 72219–8913, Telephone: (501) 562–6533

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. General background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Arkansas program can be found in the November 21, 1980 **Federal Register** (45 FR 77003). Subsequent actions concerning Arkansas's program and program amendments can be found at 30 CFR 904.12 and 904.15.

II. Proposed Amendment

By letter dated August 26, 1994, Arkansas submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. AR–522). Arkansas submitted the proposed amendment at its own initiative with the intent of making its coal mining statute consistent with SMCRA. Arkansas proposes to revise the Arkansas Surface Coal Mining and Reclamation Act of 1979 at (1) Section 5, jurisdiction and powers for rules and regulations, (2) section 13, surface coal mining permits, and (3) section 15, environmental protection performance standards.

Specifically, Arkansas proposes to revise section 5(b)(1) by deleting the provision that authorizes the Arkansas Commission on Pollution Control and Ecology to promulgate rules either exempting or regulating surface coal mining operations that affect 2 acres or less; adding section 13(k) indicating that violations incurred under a remining permit as the result of an unanticipated event or condition shall not disqualify the holder of that permit from obtaining subsequent surface coal mining permits; and adding section 15(d)(1) indicating that remining operations are responsible for successful revegetation for a period of 2 years after the last year of augmented seeding, fertilizing, irrigation or other work to assure compliance with the applicable standards.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Arkansas program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m. c.d.t., on October 14, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of

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30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 22, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 94–24131 Filed 9–28–94; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 913

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Illinois regulatory program (hereinafter the "Illinois program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Illinois Surface Coal Mining Land Conservation and Reclamation Act (State Act) pertaining to small operator assistance, vegetation requirements for lands eligible for remining, and fees and civil penalties. The proposed amendment is intended to incorporate the additional flexibility afforded by SMCRA, as amended, and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m. on October 31, 1994. If requested, a public hearing on the proposed amendment will be held on October 24, 1994. Requests to speak at the hearing must be received by 4:00 p.m. on October 14, 1994.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. James F. Fulton, Director, at the address listed below.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Copies of the Illinois program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Springfield Field Office.

James F. Fulton, Director, Springfield Field Office, Office of Surface Mining Reclamation and Enforcement, 511 West Capitol, Suite 202, Springfield, Illinois 62704, Telephone: (217) 492–4495

Illinois Department of Mines and Minerals, 300 West Jefferson Street, Suite 300, Springfield, Illinois 62791, Telephone: (217) 782–4970

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office, Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 913.15, 913.16, and 913.17.

II. Description of the Proposed Amendment

By letter dated September 9, 1994, (Administrative Record No. IL–1550) Illinois submitted a proposed amendment to its program pursuant to SMCRA. Illinois submitted the proposed amendment at its own initiative. The proposed amendment incorporates statutory changes to the State Act at 225 ILCS 720/2.02, Contents of Permit Application; 3.15, Vegetation; and 9.07, Fees and Forfeitures. The revised statutes were enacted through Public Act 88–599 (HB 2349), and they were signed into law by the Governor of Illinois on September 1, 1994.

Public Act 88–599 amended 225 ILCS 720/2.02(b) of the State Act concerning small operator assistance for consistency with Section 507(c) of SMCRA, as amended by Section 2513 of the Energy Policy Act of 1992. At subsection (b), Illinois proposes raising the annual coal production cap from 100,000 to 300,000 tons at all locations for eligibility for its small operator assistance program (SOAP). Subsection (b) is also amended by deleting reference to the current services and adding the following new or enhanced services: (1) the determination of probable hydrologic consequences, including the engineering analyses and designs necessary for the determination; (2) the development of cross-section maps and plans; (3) the geologic drilling and statement of results of test borings and core samplings; (4) the collection of archaeological information and any other archaeological and historical information required by the Department, and the preparation of plans necessitated thereby; (5) pre-blast surveys; and (6) the collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the Department under this Act. Subsection (b) if further amended by adding the following SOAP assistance reimbursement requirement: A coal operator that has received assistance pursuant to this subsection shall reimburse the regulatory authority for the cost of the services rendered if the program administrator finds that the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit.

Public Act 88–599 amended 225 ILCS 720/3.15 of the State Act by adding new subsection (e) concerning vegetation requirements for lands eligible for remining. Subsection (e) was added for consistency with Section 515(b) of SMCRA, as amended by the Energy Policy Act of 1992.

Proposed subsection (e) reads as follows: On lands eligible for remining, the operator shall assume the responsibility for successful revegetation for a period of 2 full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with the applicable standards of the Act. This does not preclude responsible land management practices on portions of the total area as deemed necessary and approved by the Department.

Public Act 88–599 added 30 ILCS 105/6z–36 to the State Finance Act to establish the Coal Mine Regulatory Fund. It also amended 225 ILCS 720/9.07 of the State Act by requiring all fees and civil penalties collected under the State Act be deposited into the Coal Mine Regulatory Fund. Section 6z–36 specifies that moneys in the Fund shall be annually appropriated to the Department of Mines and Minerals for the enforcement of coal mining regulatory laws and rules adopted by the Department under those laws.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Springfield Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m. on October 14, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(b)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the state. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 913

Intergovernmental relations. Surface mining. Underground mining.

Dated: September 23, 1994

Tim L. Dieringer,

Acting Assistant Director Eastern Support Center.

[FR Doc. 94–24132 Filed 9–28–94; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 948

West Virginia Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed Rule; Extension of Public Comment Period.

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SUMMARY: OSM is announcing the receipt of additional revisions to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional revisions pertain to a previously proposed amendment (WV–074) to West Virginia's Surface Mining Reclamation Regulations. The proposed revisions concern the transfer, assignment or sale of permit rights; permitting requirements for a shared facility or structure; reporting of changes in ownership and control information; waiver of permit renewal requirements; permit revocation; prospecting roads; contemporaneous reclamation; disposal of coal processing waste and noncoal mine waste; utility installations; small operator assistance; and other matters. The amendment is intended to improve operational efficiency and revise the West Virginia program to be consistent with the corresponding Federal regulations and SMCRA.

DATES: Written comments must be received on or before 4:00 p.m. on October 31, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to James C. Blankenship, Director, Charleston Field Office at the address listed below.

Copies of the proposed amendment, the West Virginia program, and the administrative record on the West Virginia program are available for public review and copying at the addresses below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Charleston Field Office.

James C. Blankenship, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347–7158

West Virginia Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0515

In addition, copies of the proposed amendments are available for inspection during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265

Office of Surface Mining Reclamation and Enforcement, Logan Area Office, 313 Hudgins Street, 2nd Floor, P.O. Box 506, Logan, West Virginia 25601, Telephone: (304) 752–2851

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office; Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia Program. Background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 21, 1981, **Federal Register** (46 FR 5915). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 948.10, 948.13, 948.15, and 948.16.

II. Discussion of the Proposed Amendment

By letter dated June 28, 1993, the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved permanent regulatory program (Administrative Record Nos. WV 888, WV 889 and WV 893). The amendment contains revisions to the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA § 22A–3–1 *et seq.*) and the West Virginia Surface Mining Reclamation Regulations (CSR § 38–2–1 *et seq.*). OSM announced receipt of the proposed amendment in the August 12, 1993, **Federal Register** (58 FR 42903) and invited public comment on its adequacy. The public comment period closed on September 7, 1993.

By letter dated April 1, 1994 OSM informed the WVDEP of more than 100 probable deficiencies in the proposed amendment (Administrative Record No. WV–916). The WVDEP and OSM held meetings on April 25, May 5, June 20, and August 5, 1994, in an effort to resolve these issues. During this time, WVDEP submitted to OSM technical studies, policy statements, legal opinions and explanations in support of the amendment. OSM provided the WVDEP with technical evaluations of the proposed amendment completed by OSM's Eastern Support Center. These documents and a summary of the meetings, including proposed resolutions of the issues, have been included in the Administrative Record (see Record Nos. WV–916 through 933) and are available for review at the addresses listed above.

In order to resolve several issues, the WVDEP submitted as a revision to the June 28, 1993, amendment, portions of House Bill 4065 which was passed by the West Virginia legislature on March 12, 1994 (Administrative Record No. WV 933). House bill 4065 concerns the establishment of the Division of Environmental Protection and the Surface Mine Board, and revisions to the Abandoned Mine Lands Act and Surface Coal Mining and Reclamation Act.

OSM announced receipt of House Bill 4065 in the August 31, 1994, **Federal Register** (59 FR 44953) and reopened the public comment period for 30 days.

On September 1, 1994, the WVDEP also submitted as part of the June 28, 1993, amendment, additional proposed revisions to the State's Surface Mining Reclamation Regulations (Administrative Record No. WV–937). Many of these revisions are in response to OSM's April 1, 1994, and August 30, 1994, letters to the WVDEP that identified program deficiencies (Administrative Record No's. WV–916 and WV–934). Other revisions have been proposed at the State's initiative. OSM is extending the current public comment period on proposed amendment WV–074 to allow sufficient time for comment on the adequacy of revisions proposed on September 1, 1994. These revisions include the following:

1. CSR 38–2–2.92 Definitions

The WVDEP proposes to add a definition of the word "principals" as it relates to Section 9 of the WVSCMRA.

2. CSR 38–2–3.1(o) Ownership and Control File

The WVDEP proposes to add a provision which will allow permittees, upon request and with the approval of the Director, to submit and maintain a centralized ownership and control file.

3. CSR 38–2–3.4(d)(23) Explosive Storoge Facility

The WVDEP proposes to revise its rules to clarify that explosive storage and handling facilities which will remain in place for an extended period of time during the life of the operation must be located on preplan mining maps.

4. CSR 38–2–3.8(a) Support Facilities

The WVDEP proposes to add a provision requiring that each permit application contain a description, plans, and drawings for each support facility to be constructed, used or maintained within the proposed permit area.

5. CSR 38–2–3.8(d) Shared Facilities or Structures

The WVDEP proposes to add a provision which will provide for the permitting and bonding of a facility or structure that is to be shared by two or more separately permitted mining operations.

6. CSR 38–2–3.25(e) Transfer, Assignment or Sale of Permit Rights

The WVDEP proposes to add a paragraph requiring each assignee who will function as an operator to update and furnish on an annual basis ownership and control information.

7. CSR 38–2–3.26 Ownership and Control Changes

The WVDEP proposes to add provisions governing the reporting of name changes, replacements, and additions to the ownership and control information for any surface mining operation or permittee.

8. CSR 38–2–3.27(a) Permit Renewals

The WVDEP proposes to add a provision which will allow the director to waive the requirements for permit renewal if the permittee certifies in writing that all coal extraction is completed, that all backfilling and regrading will be completed within 120 days prior to the exploration date of the permit and that an application for Phase I bond release will be filed within 30 days following completion of backfilling and regrading.

9. CSR 38–2–3.31(a) Exemption for Government Financed Highway or Other Construction

The WVDEP proposes to revise its rules to allow exemptions from the requirements of the WVSCMRA for county, municipal or other local government-financed highway or other construction.

10. CSR 38–2–3.34(b)(4) Improvidently Issued Permits

The WVDEP proposes to add a provision providing that a permit shall be determined to have been improvidently issued when the permittee had a permit revoked or bond forfeited and has not been reinstated, or the permittee was linked to a permit revocation or bond forfeiture through ownership or control, at the time the permit was issued and an ownership or control link between the permittee and the person whose permit was revoked or whose bond was forfeited still exists, or when the link was severed the permittee continues to be responsible for the permit revocation or bond forfeiture.

11. CSR 38–2–3.34(d)(1)(E) Recission of Improvidently Issued Permit

The WVDEP proposes to add a provision that provides for automatic suspension and recission unless the permittee or other person responsible for the permit revocation or bond forfeiture has been reinstated pursuant to subsection (c), Section 18 of the WVSCMRA.

12. CSR 38–2–3.34(g) Time of Permit Issuance

The WVDEP proposes to add a provision to clarify that a permit is issued when it is originally approved, as well as when a transfer, assignment, or sale of permit rights is approved.

13. CSR 38–2–4.1(a) Road Classification System

The WVDEP proposes to include haulageways and access roads under its road classification system.

14. CSR 38–2–4–2(a)(7) Design Certification

The WVDEP proposes to clarify that road designs are to be certified as meeting the requirements of the WVSCMRA and implementing rules.

15. CSR 38–2–4.3 Stream Crossings

The WVDEP proposes to reorganize its rules to clarify that the prohibition of roads in stream channels applies to all roads.

16. CSR 38–2–4.4 Infrequently Used Access Roads

The WVDEP proposes to add a provision requiring infrequently used access roads to be designed to ensure environmental protection appropriate for their planned duration and use, and to be constructed in accordance with current prudent engineering practices and any necessary design criteria established by the Director.

17. CSR 38–2–4.69(a)(10)(D) Drainage Design

The WVDEP proposes to revise the requirements for culvert installation so that culverts shall be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation and the weight of the vehicles using the road.

18. CSR 38–2–4.7(b) Sediment Control Structures

The WVDEP proposes to revise its rules governing sediment storage volume and detention time as applied to drainage from roads to clarify that the Director may approve lesser storage values than 0.125 acre/feet if compliance with the applicable effluent limits and the general performance standards for roads can be achieved.

19. CSR 38–2–5.4(c)(6)(D) Design Assumptions and Calculations

The WVDEP proposes to add a requirement for permit applicants to include a description of each engineering design assumption and calculation that is used for structures which impound water at an elevation of five feet or more above the upstream toe of the structure and can have a storage volume of 20 acre-feet or more; or which present a hazard to coal miners as determined by an MSHA District Manager.

20. CSR 38–2–5.5 Permanent Impoundments

The WVDEP proposes to clarify that sediment or water retention or impounding structures left in place after final bond release must be authorized by the Director as part of the permit application or a revision to a permit, and that sound future maintenance of the structure must be provided by the landowner.

21. CSR 38–2–11.3(b) Bond Instruments

The WVDEP proposes to require that all collateral bonds be negotiable and guaranteed. Bonds of the Federal land bank or homeowners loan corporation do not satisfy this criteria and, therefore, are no longer acceptable under the proposal.

22. CSR 38–2–11.3(b)(8) Bond Instruments

The WVDEP proposes to clarify that in no case shall the market value of a collateral bond be less than the required bond value.

23. CSR 38–2–11.4(a)(3) Incremental Bonding

The WVDEP proposes to require that independent increments be of sufficient size and configuration so as to provide for efficient and contemporaneous reclamation operations.

24. CSR 38–2–11.6 Site-Specific Bonding

The WVDEP proposes to establish a time limit of ten years of the date of surface mine application (SMA) approval when determining conversion factors for setting site-specific bonds.

25. CSR 38–2–12.3 Bond Adjustments

The WVDEP proposes to add a provision which provides, that upon the

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receipt of a permit revision, the Director may review the bond adequacy and, if necessary, increase the amount of the bond.

26. CSR 38–2–12.4(c) Forfeiture of Bonds

The WVDEP proposes to clarify that bond forfeiture sites will be reclaimed in accordance with the approved reclamation plan or modification thereof.

27. CSR 38–2–13.6 Prospecting Roads

The WVDEP proposed to delete its existing performance standards for prospecting roads at CSR 38–2–13.5(b) and establish new requirements at CSR 38–2–13.6.

28. CSR 38–2–14.12(a)(6) Variances from Approximate Original Contour

The WVDEP proposes to revise its criteria for granting variances from approximate original contour to find that a watershed will be considered to be improved if the amount of total suspended solids or other pollutants discharged to ground or surface water from the permit area will be reduced and the total volume of flow from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water.

29 CSR 38–2–14.14(e)(10) Volley Fills

The WVDEP proposes to limit the maximum grade from the outslope of a valley fill toward the rock core to three percent.

30. CSR 38–2–14.15(o) General contemporoneous Reclamation

The WVDEP propose to clarify that backfilling and grading of all disturbed area be done in a manner which eliminates spoil piles and depressions, returns all slopes to the angle of repose or such lesser slopes so as to achieve a static safety factor of 1.3 or greater, minimizes erosion and water pollution both off and on the site, supports the postmining land use, and covers all coal seams, acid-producing or toxic-forming materials, and combustible material with non-toxic and non-combustible material.

31. CSR 38–2–14.15(M) Coal Processing Waste Disposal

The WVDEP proposes add provisions governing the placement of coal processing waste in the backfill. Disposal facilities must be designed using current prudent engineering practices and must meet any design criteria established by the regulatory authority. Designs must be certified by a qualified registered professional engineer.

32. CSR 38–2–14.18 Utility Installations

WVDEP proposes to add a provision requiring that all surface mining operations be conducted in a manner that minimizes damage destruction, or disruption of services provided by utilities.

33. CSR 38–2–14.19 Disposal of Noncoal Waste

WVDEP proposes to add provisions to regulate the disposal of noncoal waste such as grease, lubricants, garbage, abandoned machinery, lumber and other materials generated during mining activities. Under the proposal, final disposal of noncoal waste will be in accordance with a permit issued pursuant to Chapter 22, Article 15 of the Code of West Virginia (Solid Waste Management Act).

34. CSR 38–2–17 Small Operator Assistance

WVDEP proposes to increase the production limit of those operators eligible for assistance under the Small Operator Assistance Program (SOAP) from 100,000 to 300,000 tons and to provide for payment of additional services as authorized under the Energy Policy Act of 1992. WVDEP is also proposing to establish application information requirements for those persons requesting assistance.

35. CSR 38–2–17.6(c) Qualified Laboratories

The WVDEP is proposing to require that a qualified laboratory or contractor be capable of making a determination of the proposed operations probable hydrological consequences.

36. CSR 38–2–17.79(b) Liability of SOAP Operators

The WVDEP proposes to require SOAP applicants to submit written statements which sufficiently demonstrate that the applicant has acted in good faith at all times in order for the Director to waive the applicant's reimbursement obligation.

37. CSR 38–2–20.2(b)(3) Notice of Violations

The WVDEP proposes to revise the initial period allowed for abatement of violations from 15 to 30 days so that its regulations will be consistent with Section 22–3–17(a) of the WVSCMRA.

38. CSR 38–2–20.5(b) Cessation Order Assessments

The WVDEP proposes to delete the words "or modified" to clarify that only remedial measures in the cessation order and not the cessation order itself can be modified.

39. CSR 38–2–20.69(c) Notice of Assessment

The WVDEP proposes to clarify that the Director shall provide a copy of the proposed assessment to the operator within 30 days of the date the Assessment Officer receives the findings of an inspection of the violation.

40. CSR 38–2–22.4(g) Spillway Design

The WVDEP proposes to add the requirement that all impoundments meeting size or other criteria of 30 CFR 77.216(a) must be designed and constructed to safely pass the probably maximum precipitation of a 24 hour storm event.

41. CSR 38–2–22.79(a) Inspection Frequencies

The WVDEP proposes to clarify that inspections of impounding refuse piles will occur during the placement and compaction of coal refuse waste and during critical construction periods.

III. Public Comment Procedures

OSM is extending the comment period on West Virginia program amendment WV–074 to provide the public an opportunity to comment on the proposed revisions in the States regulations. In accordance with 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the West Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Notional Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 21, 1994.

Richard J. Seibel,

Acting Assistant Director, Easter Support Center.

[FR Doc. 94–24133 Filed 9–28–94: 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF EDUCATION

34 CFR Part 685

Federal Direct Student Loan Program

RIN 1840–AC05

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking: correction.

SUMMARY: On August 18, 1994, the Department of Education published in the **Federal Register** a notice of proposed rulemaking (NPRM) for the Federal Direct Student Loan Program (59 FR 42646). The Internet address was listed incorrectly under the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Edelstein, telephone: (202) 708–9406. (Internet address: direct____loans@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m., and 8 p.m., Eastern time, Monday through Friday.

Correction

On page 42646, under **ADDRESSES**, the correct Internet address is: "(Internet address: direct____loans@ed.gov)." The remainder of the paragraph following the Internet address is corrected to read as follows: "All comments will be available for public review on the Department's Student Financial Assistance Bulletin Board. The access number for the bulletin board for individuals with communications software and modems is 1–800–429–9933. In addition, Internet users may access the bulletin board by using the TCP/IP telenet command facility (Internet address: directloan.ope.ed.gov)."

Dated: September 22, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–24019 Filed 9–28–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 432

RIN 1006–AA34

Fish and Wildlife Service

50 CFR Chapter 1

Central Valley Project—Purposes, Uses, and Allocation of Water Supplies

AGENCIES: Department of the Interior, Bureau of Reclamation and Fish and Wildlife Service.

ACTION: Notice to extend comment period.

SUMMARY: The Bureau of Reclamation and Fish and Wildlife Service are extending the comment period published in 59 FR 39316, Aug. 2, 1994, to provide the public with additional time to prepare comments concerning the need for rules and regulations to implement certain provisions of the Central Valley Project Improvement Act.

DATES: The deadline for receiving written comments is extended to October 18, 1994.

ADDRESSES: Written comments should be sent to Gary Sackett, Attention: MP–400, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Gary Sackett at the above address, telephone (916) 978–4933 or TDD (916) 978–4417.

Dated: September 23, 1994.

Roger K. Patterson,

Regional Director, Mid-Pacific Region, U.S. Bureau of Reclamation.

Dated: September 23, 1994.

Michael J. Spear,

Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 94–24069 Filed 9–28–94; 8:45 am]

BILLING CODE 4310–94–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7112]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the

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proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646-2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base (100-year) flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
OHIO	
Gilboa (Village), Putnam County	
Blanchard River:	
Approximately 1,050 feet downstream of Pearl Street	*742
Approximately 1,100 feet upstream of Pearl Street	*744
Maps available for inspection at the Municipal Council Room, 206 West Main Street, Gilboa, Ohio.	
Send comments to The Honorable Richard McCullough, Mayor of the Village of Gilboa, 122 Franklin Street, Gilboa, Ohio 45875.	
Glenford (Village), Perry County	
Jonathan Creek:	
At downstream corporate limits, approximately 550 feet downstream of Main Street	*844
At upstream corporate limits, approximately 1,200 feet upstream of Main Street	*848
Maps available for inspection at the Village Clerk's Residence, 123 Mill Street, Glenford, Ohio.	
Send comments to The Honorable Nolan P. Henderson, Mayor of the Village of Glenford, P.O. Box 22, Glenford, Ohio 43739.	
Malvern (Village), Carroll County	
Big Sandy Creek:	
Approximately 600 feet downstream of downstream corporate limit	*994
Approximately 600 feet upstream of upstream corporate limit	*998
Maps available for inspection at the Village Hall, 116 West Main Street, Malvern, Ohio.	
Send comments to The Honorable Dale E. Lewis, Mayor of the Village of Malvern, 116 West Main Street, Malvern, Ohio 44644.	
Bluffton (Village), Allen County	
Riley Creek:	
Approximately 350 feet downstream of corporate limit	*812
Approximately 100 feet upstream of Norfolk and Western Railway	*827
Little Riley Creek:	
At confluence with Riley Creek	*813
Approximately 175 feet upstream of Columbus Grove-Bluffton Road	*822
Maps available for inspection at the Bluffton Village Offices, 100 East Elm Street, Bluffton, Ohio.	
Send comments to The Honorable Roger Edwards, Mayor of the Village of Bluffton, P.O. Box 63, Bluffton, Ohio 45817.	
PENNSYLVANIA	
Seward (Borough), Westmoreland County	
Conemaugh River:	
Downstream corporate limits of the Borough of Seward	*1,099
Upstream corporate limits of the Borough of Seward	*1,102
Maps available for inspection at Ms. Rose Bouch's Home, Corner of Washington Street and Hedges Street, Seward, Pennsylvania.	
Send comments to Mr. Thomas Mulligan, President of the Seward Borough Council, R.D. #2, Box 338 A, Seward, Pennsylvania 15954.	

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Existing	Modified
Florida	Taylor County (Unincorporated Areas).	Woods Creek	Approximately 350 feet upstream of confluence with Spring Creek.	*30	*31
			Approximately 100 feet upstream of U.S. Route 221 and State Route 55.	None	*50
Maps available for inspection at the Courthouse Basement, 108 North Jefferson Street, Perry, Florida.					
Send comments to Mr. Vance R. Howell, Chairman of the Taylor County Board of Commissioners, P.O. Box 620, Perry, Florida 32347.					
Kentucky	Taylor Mill (City) Kenton County.	Banklick Creek	Approximately 0.5 mile downstream of State Highway 16.	*503	*499
			Approximately 1,300 feet upstream of State Highway 16.	*503	*499
Maps available for inspection at the City Hall, 5225 Taylor Mill Road, Taylor Mill, Kentucky.					
Send comments to The Honorable Mark Kreimborg, Mayor of the City of Taylor Mill, Kenton County, 5225 Taylor Mill Road, Taylor Mill, Kentucky 41015.					
Maine	Farmington (Town) Franklin County.	Sandy River	Approximately 0.5 mile downstream of State Route 41.	*338	*340
			Approximately 2.6 miles upstream of State Route 4 bridge (corporate limits).	*385	*389
		Wilson Stream	At confluence with Sandy River	*343	*345
			Approximately 0.4 mile upstream of State Route 133 bridge (corporate limits).	*376	*377
		Temple Stream	At confluence with Sandy River	*359	*355
			Approximately 0.9 mile above Russels Mill Road Bridge (corporate limits).	*454	*457
		Barker Stream	At confluence with Sandy River	*365	*368
			Approximately 600 feet upstream of State Route 27.	None	*533
		Cascade Brook	At confluence with Sandy River	*347	*352
			Approximately 180 feet above State Route 43 bridge (Allens Mill Road).	None	*484
		Beaver Brook	At confluence with Sandy River	*360	*357
			Upstream side of Middle Street bridge	*394	*395
		Clear Water Pond	Entire shoreline within community	None	*563
Maps available for inspection at the Farmington Municipal Building, 147 Lower Main Street, Farmington, Maine.					
Send comments to Ms. Francis Hardy, First Selectman of the Town of Farmington, 147 Lower Main Street, Farmington, Maine 04938.					
New Hampshire	Freedom (Town) Carroll County.	West Branch	At confluence with Ossipee Lake	None	*414
			Upstream side of Ossipee Lake Road	None	*446
		Ossipee Lake	Entire shoreline within community	None	*414
		Broad Bay	Entire shoreline within community	None	*414
		Leavitt Bay	Entire shoreline within community	None	*414

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State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Town Office Building, Old Portland Road, Freedom, New Hampshire.					
Send comments to Mr. William O. Cutler, Chairman of the Town of Freedom Board of Selectmen, P.O. Box 227, Freedom, New Hampshire 03836.					
New Hampshire ...	Ossipee (Town) Carroll County	Lovell River	Approximately 0.5 mile upstream of confluence with Ossipee Lake.	*414	*415
			Approximately 1,000 feet upstream of State Route 16/25	None	*434
		West Branch	Approximately 0.6 mile upstream of confluence with Ossipee Lake	None	*414
			At upstream corporate limits.	None	*446
Maps available for inspection at the Town Hall, Main Street, Center Ossipee, New Hampshire.					
Send comments to Mr. John P. Picard, Chairman of the Town of Ossipee Board of Selectmen, Carroll County, P.O. Box 67, Center Ossipee, New Hampshire 03814.					
New York	Windham (Town) Greene County.	Batavia Kill	Approximately 0.7 mile downstream of County Route 12 (South Street).	None	*1,467
			Approximately 1.6 miles upstream of County Route 56.	None	*2,345
Maps available for inspection at the Town Hall, Route 296, Hensonville, New York.					
Send comments to Mr. Patrick P. Meehan, Jr., Supervisor of the Town of Windham, Town of Windham, Greene County, P.O. Box 96, Hensonville, New York 12439.					
Pennsylvania	Allegheny (Township) Westmoreland County.	Pine Run (Lower Reach)	At the CONRAIL	None	*789
			Approximately 700 feet upstream of State Route 56 (Bypass).	None	*815
Maps available for inspection at the Allegheny Community Building, 136 Community Building Road, Leechburg, Pennsylvania.					
Send comments to Mrs. Rapheala Stoner, Chairperson of the Allegheny Board of Supervisors, 136 Community Building Road, Leechburg, Pennsylvania 15656.					
Pennsylvania	Avalon (Borough) Allegheny County.	Ohio River	Approximately 0.95 mile downstream of Divergence of Ohio River Back Channel.	None	*723
			Approximately 750 feet upstream of Divergence of Ohio River Back Channel.	None	*724
Maps available for inspection at the Borough Hall, 640 California Avenue, Avalon, Pennsylvania.					
Send comments to Ms. Joan Welsh, Manager for the Borough of Avalon, 640 California Avenue, Avalon, Pennsylvania 15202.					
Pennsylvania	Baldwin (Borough) Allegheny County.	Monongahela River	At confluence of Becks Run	*733	*734
			Approximately 0.42 mile downstream of Glenwood Bridge.	*734	*735
Maps available for inspection at the Zoning Office, 3344 Churchview Avenue, Baldwin, Pennsylvania.					
Send comments to Mr. Robert P. Bittle, President of the Borough of Baldwin Council, 3344 Churchview Avenue, Pittsburgh, Pennsylvania 15227.					
Pennsylvania	Bellevue (Borough) Allegheny County	Ohio River	Approximately 750 feet upstream of Divergence of Ohio River Back Channel.	None	*724
			Approximately 0.43 mile downstream of McKees Rocks Bridge.	None	*724
Maps available for inspection at the Borough Hall, 537 Bayne Avenue, Bellevue, Pennsylvania.					
Send comments to Mr. Robert T. Grimm, Manager of the Borough of Bellevue, 537 Bayne Avenue, Bellevue, Pennsylvania 15202.					
Pennsylvania	Braddock (Borough) Allegheny County	Monongahela River	At a point approximately 550 feet upstream of Rankin Bridge.	*738	*739
			At a point approximately 0.29 mile downstream of Lock & Dam No. 2.	*739	*740
Maps available for inspection at the Code Enforcement Street, 415 Sixth Street, Braddock, Pennsylvania.					
Send comments to Ms. Mildred Devich, President of the Borough of Braddock Council, 415 Sixth Street, Braddock, Pennsylvania 15104.					
Pennsylvania	California (Borough) Washington County.	Monongahela River	Approximately 1.3 miles downstream of confluence of Pike Run.	*766	*769

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 2.9 miles upstream of the confluence of Pike Run.	*770	*773
Maps available for inspection at the Municipal Building, 114 5th Street, California, Pennsylvania.					
Send comments to The Honorable Joseph Dochinez, Mayor of the Borough of California, 218 Pennsylvania Avenue, California, Pennsylvania 15419.					
Pennsylvania	Clairton (City) Allegheny County.	Monongahela River	Approximately 0.51 mile downstream of Glassport Bridge.	*747	*748
			Approximately 500 feet downstream of confluence of Wylie Run.	*748	*750
Maps available for inspection at the City Engineer's Office, 551 Ravensburg Boulevard, Clairton, Pennsylvania.					
Send comments to Mr. Bruce E. Jenkins, Engineering Assistant, 551 Ravensburg Boulevard, Clairton, Pennsylvania 15025–1297.					
Pennsylvania	Coal Center (Borough) Washington County.	Monongahela River	Approximately 1,650 feet downstream of confluence of Pike Run.	*767	*770
			Approximately 200 feet upstream of confluence of Pike Run.	*767	*770
Maps available for inspection at the Coal Center Borough Building, 132 Water Street, Coal Center, Pennsylvania.					
Send comments to The Honorable James Roberts, Mayor of the Borough of Coal Center, P.O. Box 174, Coal Center, Pennsylvania 15423.					
Pennsylvania	Collier (Township) Allegheny County.	Robinson Run	Approximately 1.09 miles downstream of Union Avenue.	None	*887
			Approximately 1.25 miles downstream of Union Avenue.	None	*888
		Chartiers Creek	Just downstream of Painters Run Road	*795	*797
			Approximately 0.39 mile upstream of State Route 519 (Washington Pike).	*802	*801
Maps available for inspection at the Zoning Office, 2418 Hilltop Road, Collier, Pennsylvania.					
Send comments to Mr. Nick Mamula, Chairman of the Township of Collier Board of Commissioners, 2418 Hilltop Road, Presto, Pennsylvania 15142.					
Pennsylvania	Coraopolis (Borough) Allegheny County.	Montour Run	At the upstream side of Montour Railroad	*718	*719
			Approximately 750 feet downstream of Coraopolis Boulevard.	*718	*719
Maps available for inspection at the Borough Hall, 1012 Fifth Avenue, Coraopolis, Pennsylvania.					
Send comments to The Honorable Orlando Falcione, Mayor of the Borough of Coraopolis, 1012 Fifth Avenue, Coraopolis, Pennsylvania 15108.					
Pennsylvania	Crafton (Borough) Allegheny County.	Chartiers Creek	Approximately 1.5 miles upstream of Ingram Avenue.	None	*754
			At Chartiers Avenue	None	*759
Maps available for inspection at the Borough Hall, 100 Stotz Avenue, Crafton, Pennsylvania.					
Send comments to Mr. Alvin Handelsman, Engineer for the Borough of Crafton, 1011 Alcon Street, Pittsburgh, Pennsylvania 15220.					
Pennsylvania	Cumberland (Township) Greene County.	Monongahela River	Approximately 500 feet downstream of confluence of New Run (downstream corporate limits).	None	*786
			At confluence of Little Whitley Creek (upstream corporate limits).	None	*794
		Muddy Creek	0.8 mile downstream of Township Route 634.	None	*1,005
			Approximately 470 feet upstream of Legislative Route 30102.	None	*1,031
Maps available for inspection at the Cumberland Township Building, 100 Municipal Road, Carmichaels, Pennsylvania.					
Send comments to Mr. Philip A. Donaldson, Zoning Officer, Cumberland Township Building, 100 Municipal Road, Carmichaels, Pennsylvania 15320.					
Pennsylvania	Delmont (Borough) Westmoreland County.	Turtle Creek (Upper Reach).	Approximately 400 feet downstream of Old William Penn Highway.	None	*1,054
			Approximately 350 feet upstream of Old William Penn Highway.	None	*1,063

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State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Delmont Borough Office, 77 Greensburg Street, Delmont, Pennsylvania.					
Send comments to Ms. Sarah Jane Lamont, President of the Delmont Borough Council, 77 Greensburg Street, Delmont, Pennsylvania 15626.					
Pennsylvania	Dravosburg (Borough) Allegheny County.	Monongahela River	Approximately 0.75 mile downstream of Mansfield Bridge.	*745	*746
			Approximately 0.25 mile downstream of Mansfield Bridge.	*745	*746
Maps available for inspection at the Borough Hall, 226 Maple Avenue, Dravosburg, Pennsylvania.					
Send comments to Mr. Art Page, President of the Borough of Dravosburg Council, P.O. Box 37, Dravosburg, Pennsylvania 15034.					
Pennsylvania	Dunkard (Township) Greene County	Monongahela River	At confluence of Dunkard Creek	None	*805
			Approximately 0.68 mile upstream of Point Marion Lock and Dam.	None	*809
Maps available for inspection at the Dunkard Township Building, Corner of Grant Street and Taylortown Road, Bobtown, Pennsylvania.					
Send comments to Mr. Jerome K. Wiley, Chairman of the Township of Dunkard Board of Supervisors, Box 369, Bobtown, Pennsylvania 15315.					
Pennsylvania	Duquesne (City) Allegheny County.	Monongahela River	At a point approximately 0.27 mile upstream of Lock and Dam No. 2.	*740	*741
			At a point approximately 1,200 feet upstream of McKeesport-Duquesne Bridge.	*743	*744
Maps available for inspection at the Building Inspector's Office, 12 South Second Street, Duquesne, Pennsylvania.					
Send comments to The Honorable George F. Matt II, Mayor of the City of Duquesne, 12 South Second Street, Duquesne, Pennsylvania 15110.					
Pennsylvania	East Huntingdon (Township) Westmoreland County.	Belson Run	Approximately 350 feet upstream of Sunny Lane.	None	*1,138
			Approximately 625 feet upstream of Sunny Lane.	None	*1,139
Maps available for inspection at the East Huntingdon Municipal Building, Route 981, Alverton, Pennsylvania.					
Send comments to Mr. Joel B. Suter, Supervisor for the Township of East Huntingdon, P.O. Box 9, Alverton, Pennsylvania 15612.					
Pennsylvania	East Pittsburgh (Borough) Allegheny County.	Turtle Creek	Backwater reach from Monongahela River up to Westinghouse Bridge at Lincoln Highway.	None	*741
Maps available for inspection at the Borough Hall, 516 Bessemer Avenue, East Pittsburgh, Pennsylvania.					
Send comments to Mr. James Geric, President of the Borough of East Pittsburgh Council, 516 Bessemer Avenue, East Pittsburgh, Pennsylvania 15112.					
Pennsylvania	Elizabeth (Borough) Allegheny County.	Monongahela River	Approximately 0.21 mile downstream of confluence of Fallen Timber Run.	*748	*750
			At confluence of Smiths Run	*749	*750
		Fallen Timber Run	At confluence with Monongahela River	*749	*750
			Approximately 400 feet downstream of Rothey Street (Pennaman Avenue).	None	*752
Maps available for inspection at the Borough Hall, 206 Third Avenue, Elizabeth, Pennsylvania.					
Send comments to The Honorable Gerald M. LaFrankie, Mayor of the Borough of Elizabeth, 206 Third Avenue, Elizabeth, Pennsylvania 15037.					
Pennsylvania	Elizabeth (Township) Allegheny County	Monongahela River	Approximately 100 feet upstream of confluence of Wylie Run.	*747	*750
			Approximately 0.43 mile downstream of State Route 51.	*747	*750
		Wylie Run	At confluence with Monongahela River	*747	*750
			Approximately 150 feet downstream of Glassport Road (McKeesport Road)	*747	*750

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Township Hall, 522 Rock Run Road, Township of Elizabeth, Pennsylvania.					
Send comments to Mr. Charles Carlock, Chairman of the Township of Elizabeth Board of Supervisors, 522 Rock Run Road, Buena Vista, Pennsylvania 15018.					
Pennsylvania	Fairfield (Township) Westmoreland County.	Tubmill Creek	At Tubmill Dam	None	*1,295
			Approximately 550 feet downstream of Tubmill Dam.	None	*1,289
Maps available for inspection at the Fairfield Township Municipal Building, S.R. 1011, Midget Camp Road, Bolivar, Pennsylvania.					
Send comments to Mr. Paul J. Altimus, Chairman for the Township of Fairfield, R.D. #1, Box 231A, Bolivar, Pennsylvania 15923.					
Pennsylvania	Forward (Township) Allegheny County.	Monongahela River	At confluence of Smiths Run	*749	*750
Maps available for inspection at the Township Municipal Building, River Road, Forward, Pennsylvania.					
Send comments to Mr. Louis Majoris, Chairman of the Township Board of Supervisors, R.D. #3, Box 40–A, Monongahela, Pennsylvania 15063.					
Pennsylvania	Franklin Park (Borough) Allegheny County.	Bear Run	Approximately 0.51 mile upstream of Mount Nebo Road.	None	*950
Maps available for inspection at the Borough Hall, 2428 Rochester Road, Franklin Park, Pennsylvania.					
Send comments to Mr. Gerald L. Reichart, Manager of the Borough of Franklin Park, 2428 Rochester Road, Sewickley, Pennsylvania 15143					
Pennsylvania	Glassport (Borough) Allegheny County.	Monongahela River	Approximately 0.34 mile upstream of confluence of Harrison Hollow Stream.	*746	*747
			Approximately 0.37 mile upstream of Glassport Bridge.	*747	*748
Maps available for inspection at the Borough Hall, Fifth & Monongahela, Glassport, Pennsylvania.					
Send comments to Mr. Anthony Pepe, President of the Borough of Glassport Council, Fifth & Monongahela, Glassport, Pennsylvania 15045					
Pennsylvania	Greensboro (Borough) Greene County.	Monongahela River	Approximately 900 feet downstream of downstream corporate limits.	*799	*800
			At the upstream corporate limits	*800	*801
Maps available for inspection at the Greensboro Borough Building, Main Street, Greensboro, Pennsylvania.					
Send comments to Mr. Peter O. Everly, President of the Borough of Greensboro Council, P.O. Box 152, Greensboro, Pennsylvania 15338.					
Pennsylvania	Hamilton (Township) Monroe County.	McMichael Creek	At upstream corporate limits	None	*623
			Approximately 150 feet downstream of Turkey Hill Road.	*465	*466
Maps available for inspection at the Township Building, Fenner Street, Hamilton, Pennsylvania.					
Send comments to Mr. Alan Everett, Chairman of the Township of Hamilton Board of Supervisors, P.O. Box 285, Sciota, Pennsylvania 18354.					
Pennsylvania	Harmar (Township) Allegheny County.	Little Deer Creek	Approximately 150 feet downstream of Jacoby Road.	None	*763
			Approximately 700 feet upstream of Bessemer and Lake Erie Railroad.	None	*815
Maps available for inspection at the Township Hall, 701 Freeport Road, Harmar, Pennsylvania.					
Send comments to Mr. Frederick Domaratz, Chairman of the Township of Harmar Board of Supervisors, 701 Freeport Road, Cheswick, Pennsylvania 15024.					
Pennsylvania	Heidelberg (Borough) Allegheny County.	Tributary A to Chartiers Creek.	At confluence with Chartiers Creek to approximately 0.49 mile upstream of confluence.	None	*787

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Maps available for inspection at the Borough Hall, 1631 East Railroad Street, Heidelberg, Pennsylvania.					
Send comments to Ms. Denise Breen, President of the Borough of Heidelberg Council, 1631 East Railroad Street, Heidelberg, Pennsylvania 15106.					
Pennsylvania	Homestead (Borough) Allegheny County.	Monongahela River	Approximately 600 feet downstream of Pittsburgh Homestead Bridge.	None	*737
			Approximately 4,000 feet upstream of Pittsburgh Homestead Bridge.	None	*737
Maps available for inspection at the Borough Hall, 1705 Maple Street, Homestead, Pennsylvania.					
Send comments to Mr. John Cornelius, Manager of the Borough of Homestead, P.O. Box 448, Homestead, Pennsylvania 15120.					
Pennsylvania	Jefferson (Borough) Allegheny County.	Lick Run	Approximately 400 feet upstream of Cochrans Mill Road.	None	*963
			At downstream side of Curry Hollow Road.	None	*985
		Monongahela River	Approximately 3,700 feet downstream of Glassport Highway Bridge.	None	*747
			At confluence of Perry Mill Run	*751	*752
		Lobbs Run	At confluence with Monongahela River	*751	*752
			Approximately 100 feet upstream of Walton Road.	*751	*752
Maps available for inspection at the Borough Hall, 925 Old Clairton Road, Jefferson, Pennsylvania.					
Send comments to Mr. Pat Capolupo, President of the Borough of Jefferson Council, 925 Old Clairton Road, Clairton, Pennsylvania 15025.					
Pennsylvania	Kilbuck (Township) Allegheny County.	Lowries Run	Approximately 3,300 feet downstream of the approximate center of the multiple lanes of Interstate 279.	None	*798
			Approximately 2,600 feet downstream of the approximate center of the multiple lanes of Interstate 279.	None	*802
Maps available for inspection at the Township Hall, 343 Eicher Road, Kilbuck, Pennsylvania.					
Send comments to Mr. Timohy Frew, Chairman of the Township of Kilbuck Board of Supervisors, 343 Eicher Road, Kilbuck, Pennsylvania 15237–1012.					
Pennsylvania	Leetsdale (Borough) Allegheny County.	Big Sewickley Creek	At a point approximately 250 feet downstream of Ohio River Boulevard.	*712	*711
			At a point approximately 250 feet upstream of Beaver Road.	*715	*711
Maps available for inspection at the Borough Hall, 85 Broad Street, Leetsdale, Pennsylvania.					
Send comments to Mr. James F. Shaughnessy, President of the Borough of Leetsdale Council, 85 Broad Street, Leetsdale, Pennsylvania 15056–1109.					
Pennsylvania	Lincoln (Borough) Allegheny County.	Monongahela River	Approximately 0.23 mile upstream from the Glassport Highway Bridge.	*747	*748
			At the confluence with Wylie Run	*749	*750
		Boston Hollow River	Approximately 0.56 mile upstream of Pitt Street Tributary.	None	*866
			Approximately 0.59 mile upstream of Pitt Street Tributary.	None	*868
		Wylie Run	At confluence with the Monongahela River.	*748	*750
			Approximately 0.25 mile upstream of Mill Hill Road.	None	*859
Maps available for inspection at the Borough Hall, Port View Road, Lincoln, Pennsylvania.					
Send comments to The Honorable Florence Swamtack, Mayor of the Borough of Lincoln, R.D. #4, Box 120–B, Elizabeth, Pennsylvania 15037.					
Pennsylvania	Luzerne (Township) Fayette County.	Monongahela River	Approximately 1.8 miles downstream of confluence of Rush Run (at downstream corporate limits).	*773	*775
			Approximately 3.6 miles upstream of confluence of Hereford Hollow (at upstream corporate limits).	*787	*789

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Existing	Modified
Maps available for inspection at the Luzerne Township Building, 415 Hopewell Road, Brownsville, Pennsylvania.					
Send comments to Mr. William Baker, Chairman of the Luzerne Township Board of Supervisors, 415 Hopewell Road, Brownsville, Pennsylvania 15417.					
Pennsylvania	McCandless (Town) Allegheny County.	Girty's Run	Approximately 0.67 mile upstream of Three Degree Road.	None	*1,092
Maps available for inspection at the Town Hall, Zoning and Planning Office, 9955 Grubbs Road, McCandless, Pennsylvania.					
Send comments to Mr. Tobias M. Cordek, Manager of the Town of McCandless, 9955 Grubbs Road, Wexford, Pennsylvania 15090.					
Pennsylvania	McKeesport (City) Allegheny County.	Monongahela River	At McKeesport-Duquesne Bridge	*743	*744
			Approximately 0.45 mile downstream of Mansfield Bridge.	*745	*746
		Youghiogheny River	At confluence with Monongahela River	*744	*745
			Approximately 500 feet upstream of 15th Avenue.	*744	*745
Maps available for inspection at the Building Inspector's Office, 201 Lysle Boulevard, McKeesport, Pennsylvania.					
Send comments to The Honorable Lou Washowich, Mayor of the City of McKeesport, 201 Lysle Boulevard, McKeesport, Pennsylvania 15132.					
Pennsylvania	Monessen (City) Westmoreland County.	Monongahela River	Approximately 0.5 mile upstream of the Donora-Monessen bridge.	*759	*760
			Approximately 1,025 feet upstream of North Charleroi bridge.	*760	*762
Maps available for inspection at the City Hall, 100 Third Street, Monessen, Pennsylvania.					
Send comments to The Honorable Robert H. Leone, Mayor of the City of Monessen, 100 Third Street, Monessen, Pennsylvania 15062					
Pennsylvania	Monongahela (City) Washington County.	Monongahela River	Approximately 1.1 miles downstream of Monongahela City bridge.	*754	*755
			Approximately 0.9 mile upstream of Monongahela Highway.	*755	*756
		Digeon Creek	At confluence with Monongahela River	*755	*756
			Upstream corporate limit	*755	*756
Maps available for inspection at the Monongahela City Hall, 449 West Main Street, Monongahela, Pennsylvania.					
Send comments to The Honorable John Moreschi, Mayor of the City of Monongahela, 449 West Main Street, Monongahela, Pennsylvania 15063.					
Pennsylvania	Monroeville (Municipality) Allegheny County.	Turtle Creek	At the confluence of Lyons Run	None	*832
			Approximately 1.48 miles upstream of confluence of Abers Creek.	None	*866
Maps available for inspection at the Engineering Office, 2700 Monroeville Boulevard, Monroeville, Pennsylvania.					
Send comments to Ms. Mary Ann Nau, Manager of the Municipality of Monroeville, 2700 Monroeville Boulevard, Monroeville, Pennsylvania 15146.					
Pennsylvania	Moon (Township) Allegheny County.	McClarens Run	At confluence with Montour Run	None	*867
			Approximately 0.34 mile upstream of Hilton Inn Drive.	None	*920
		Montour Run	Approximately 500 feet upstream of Montour Railroad.	None	*719
			At confluence of McClarens Run	None	*867
Maps available for inspection at the Building Inspector's Office, 1000 Beaver Grade Road, Moon, Pennsylvania.					
Send comments to Mr. George Semich, Chairman of the Township of Moon Board of Supervisors, Municipal Center, 1000 Beaver Grade Road, Moon, Pennsylvania 15108.					
Pennsylvania	Munhall (Borough) Allegheny County.	Monongahela River	At a point approximately 0.76 mile upstream of Pittsburgh Homestead Bridge.	None	*737
			At a point approximately 1,250 feet downstream of Rankin Bridge.	None	*739

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Maps available for inspection at the Borough Hall, 1900 West Street, Munhall, Pennsylvania.					
Send comments to Mr. Robert C. Eberhart, Manager of the Borough of Munhall, 1900 West Street, Munhall, Pennsylvania 15120.					
Pennsylvania	New Stanton (Borough) Westmoreland County	Belson Run	At downstream corporate limits with Hempfield.	None	*1,043
			At upstream corporate limits with Hempfield (near Sandworks Road).	None	*1,133
Maps available for inspection at the Borough Municipal Building, 451 West Center Avenue, New Stanton, Pennsylvania.					
Send comments to Mrs. Sally J. Taubken, New Stanton Council President, P.O. Box 237, New Stanton, Pennsylvania 15672.					
Pennsylvania	Nicholson (Township) Fayette County.	Monongahela River	At the confluence of Cats Run	*797	*798
			Approximately 1,100 feet downstream of the confluence of Georges Creek.	*801	*800
Maps available for inspection at the Nicholson Township Building, R.D. 2, Smithfield, Pennsylvania.					
Send comments to Mr. John Black, Chairman of the Township of Nicholson Board of Supervisors, Township Building, R.D. 2, Box 95, Smithfield, Pennsylvania 15478.					
Pennsylvania	North Braddock (Borough) Allegheny County	Monongahela River	At a point approximately 700 feet downstream of Lock & Dam No. 2.	None	*740
			At a point approximately 250 feet downstream of Port Perry Bridge.	None	*741
Maps available for inspection at the Borough Hall, 600 Anderson Street, North Braddock, Pennsylvania.					
Send comments to The Honorable Raymond L. McDonough, Mayor of the Borough of North Braddock, 600 Anderson Street, North Braddock, Pennsylvania 15104.					
Pennsylvania	North Huntingdon (Township) Westmoreland County.	Brush Creek	Just upstream of confluence of Bushy Run.	None	*917
			Upstream side of second crossing of CONRAIL.	None	*929
Maps available for inspection at the North Huntingdon Township Hall, 11279 Center Highway, North Huntingdon, Pennsylvania.					
Send comments to Mr. Eugene Walczyk, Chairman of the Board of Commissioners for the Township of North Huntingdon, 11279 Center Highway, North Huntingdon, Pennsylvania 15642.					
Pennsylvania	North Versailles (Township) Allegheny County.	Monongahela River	At a point approximately 0.55 mile upstream of Port Perry Bridge.	*741	*742
			At a point approximately 0.70 mile downstream of McKeesportDuquesne Bridge.	*742	*743
Maps available for inspection at the Township Municipal Center, 1401 Greensburg Avenue, North Versailles, Pennsylvania.					
Send comments to Mr. Edward McGuire, Chairman of the Township of North Versailles, Board of Supervisors, 1401 Greensburg Avenue, North Versailles, Pennsylvania 15137.					
Pennsylvania	Penn Hills (Municipality) Allegheny County.	Thompson Run	Approximately 0.46 mile downstream of South McCully Drive.	None	*839
			Approximately 600 feet upstream of Union Railroad culvert opening (upstream side).	None	*962
Maps available for inspection at the Planning Department, 12245 Frankstown Road, Penn Hills, Pennsylvania.					
Send comments to The Honorable William DeSantis, Mayor of the Municipality of Penn Hills, 12245 Frankstown Road, Pittsburgh, Pennsylvania 15235.					
Pennsylvania	Penn (Township) Westmoreland County.	Lyons Run	At Pleasant Valley Road (L.R. 64089)	None	*915
			Approximately 1.1 miles upstream of Pleasant Valley Road.	None	*981
		Brush Creek	Upstream side of most upstream crossing of State Route 766.	None	*1,100

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Existing	Modified
			Approximately 125 feet upstream of the most upstream crossing of State Route 766.	None	*1,101
Maps available for inspection at the Township Building, Municipal Court, Harrison City, Pennsylvania.					
Send comments to Mr. Bill Schaffer, Chairman of the Township of Penn, P.O. Box 452, Harrison City, Pennsylvania 15636.					
Pennsylvania	Pittsburgh (City) Allegheny County.	Monongahela River	Approximately 200 feet downstream of South Tenth Street bridge.	*730	*731
			Approximately 1.11 miles upstream of Pittsburgh Homestead bridge.	*737	*738
		Spring Garden Run	Approximately 0.29 mile downstream of Beech Street (Mount Pleasant Road).	None	*906
		Becks Run	At the confluence with the Monongahela River.	*733	*734
			Approximately 0.32 mile upstream of Beck Run Road (most upstream crossing).	None	*819
Maps available for inspection at the Department of City Planning, 4th Floor Civic Building, 200 Ross Street, Pittsburgh, Pennsylvania.					
Send comments to The Honorable Tom Murphy, Mayor of the City of Pittsburgh, 512 City County Building, Pittsburgh, Pennsylvania 15219.					
Pennsylvania	Port Vue (Borough) Allegheny County.	Youghiogheny River	Approximately 0.12 mile upstream of West 5th Avenue.	*744	*745
			Approximately 500 feet upstream of 15th Avenue.	*744	*745
Maps available for inspection at the Borough Hall, 1191 Romine Avenue, Port Vue, Pennsylvania.					
Send comments to Mr. Orlando DiMarco, President of the Borough of Port Vue Council, 1191 Romine Avenue, Port Vue, Pennsylvania 15133.					
Pennsylvania	Plum (Borough) Allegheny County.	Pucketa Creek	Just upstream of State Route 366	None	*784
			At county boundary	None	*852
Maps available for inspection at the Planning Department, 4575 New Texas Road, Plum, Pennsylvania.					
Send comments to Mr. Al Flickinger, President of the Borough of Plum Council, 4575 New Texas Road, Plum, Pennsylvania 15239.					
Pennsylvania	Rankin (Borough) Allegheny County.	Monongahela River	At Rankin Bridge	*738	*739
Maps available for inspection at the Borough Hall, 320 Hawkins Avenue, Rankin, Pennsylvania.					
Send comments to Mr. Pete Veltre, President of the Borough of Rankin Council, 320 Hawkins Avenue, Rankin, Pennsylvania 15104.					
Pennsylvania	Salem (Township) Westmoreland County.	Crab Tree Creek	Approximately 0.3 mile downstream of U.S. Route 119.	None	*990
			Approximately 130 feet upstream of L.R. 64054.	None	*1,037
Maps available for inspection at the Township Municipal Building, Congruity Road, Greensburg, Pennsylvania.					
Send comments to Mr. Frank Pavlovich, Chairman of the Township of Salem Board of Supervisors, Municipal Building, R.D. #4, Greensburg, Pennsylvania 15601.					
Pennsylvania	Scottdale (Borough) Westmoreland County.	Jacob's Creek (Lower Reach).	Approximately 0.5 mile upstream of 5th Avenue.	*1,030	*1,031
			Upstream Borough of Scottdale corporate limits.	*1,035	*1,036
		Stauffer Run	Confluence with Jacob's Creek	*1,035	*1,036
			Approximately 100 feet downstream of Chestnut Street.	*1,035	*1,036
Maps available for inspection at the Scottdale Borough Hall, 10 Mt. Pleasant Road, Scottdale, Pennsylvania.					
Send comments to The Honorable Eugene J. Beran, Mayor of the Borough of Scottdale, 600 Eleanor Avenue, Scottdale, Pennsylvania 15683.					
Pennsylvania	Sewickley (Township) Westmoreland County.	Youghiogheny River Tributary.	At the corporate limits with Borough of Sutersville.	None	*864

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State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 100 feet downstream of corporate limits with Borough of Sutersville.	None	*860
Maps available for inspection at the Municipal Building, Marshill Road, Irwin, Pennsylvania.					
Send comments to Mr. F. Regisvanyo, Chairman of the Board of Supervisors, P.O. Box 28, Herminie, Pennsylvania 15637.					
Pennsylvania	South Fayette (Township) Allegheny County.	Robinson Run	Approximately 1.13 miles downstream of Union Avenue.	None	*888
			At the downstream side of Mevey Street .	None	*922
Maps available for inspection at the Township Municipal Building, 515 Millers Run Road, South Fayette, Pennsylvania.					
Send comments to Mr. C. Kenneth Chambon, President of the Township of South Fayette Board of Commissioners, 515 Millers Run Road, Morgan, Pennsylvania 15064.					
Pennsylvania	Swissvale (Borough) Allegheny County.	Monongahela River	Approximately 1.11 miles upstream of Pittsburgh Homestead Bridge.	None	*738
			Approximately 0.61 mile downstream of Rankin Bridge.	None	*738
Maps available for inspection at the Borough Hall, 7560 Roslyn Street, Swissvale, Pennsylvania.					
Send comments to Mr. Thomas J. Esposito, Manager of the Borough of Swissvale, 7560 Roslyn Street, Swissvale, Pennsylvania 15218.					
Pennsylvania	Tarentum (Borough) Allegheny County.	Bull Creek	Approximately 50 feet downstream of State Route 28.	None	*758
			Approximately 0.57 mile upstream of State Route 28.	None	*74
Maps available for inspection at the Borough Building, 304 Lock Street, Tarentum, Pennsylvania.					
Send comments to Mr. Larry Yeasted, President of the Borough of Tarentum Council, 304 Lock Street, Tarentum, Pennsylvania 15084.					
Pennsylvania	Unity (Township) Westmoreland County.	Slate Creek	Approximately 1,700 feet upstream of U.S. Route 30.	*1,141	*1,142
			Approximately 1,200 feet upstream of U.S. Route 30.	*1,135	*1,142
Maps available for inspection at the Unity Township Municipal Building, R.D. 3, Latrobe, Pennsylvania.					
Send comments to Mr. Merle L. Musick, Code Enforcement Officer for the Township of Unity, R.D. 3, Box 526K, Latrobe, Pennsylvania 15650.					
Pennsylvania	Upper St. Clair (Township) Allegheny County.	Painters Run	Approximately 200 feet downstream of Power Hill Road.	None	*846
			Approximately 400 feet upstream of Painters Run Road.	None	*869
Maps available for inspection at the Township Municipal Building, 1820 McLaughlin Run Road, Upper St. Clair, Pennsylvania.					
Send comments to Mr. Charles Molzer, President of the Township of Upper St. Clair Board of Commission, 1820 McLaughlin Run Road, Upper St. Clair, Pennsylvania 15241.					
Pennsylvania	Washington (Township) Fayette County.	Monongahela River	At downstream corporate limits	*763	*765
			At upstream corporate limits (approximately 0.6 mile upstream of the confluence of Little Redstone Creek).	*765	*767
		Little Redstone Creek	At confluence with Monongahela River	*764	*767
			Approximately 670 feet downstream of State Route 206 bridge.	*766	*767
Maps available for inspection at the Washington Township Offices, 1390 Fayette Avenue, Belle Vernon, Pennsylvania.					
Send comments to Mr. Earnest Legg, Chairman of the Washington Township Board of Supervisors, 229 Long Avenue, Belle Vernon, Pennsylvania 15012.					
Pennsylvania	Washington (Township) Westmoreland County.	Pucketa Creek	Approximately 725 feet downstream of State Route 380.	None	*919

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 0.4 mile upstream of Ashbaug Road.	None	*1,071
		Pine Run (Upper Reach) ..	Approximately 0.6 mile upstream of Chamber Road (Pine Run Road).	None	*987
Maps available for inspection at the Washington Township Municipal Building, 285 Pine Run Church Road, Apollo, Pennsylvania.					
Send comments to Mr. Herbert J. Coulter, Chairperson of the Board of Supervisors, 285 Pine Run Church Road, Apollo, Pennsylvania 15613.					
Pennsylvania	West Brownsville (Borough) Washington County.	Monongahela River	Approximately 20 feet downstream of confluence of Lily Run.	*769	*773
			Approximately 1,300 feet downstream of the Brownsville bridge.	*771	*775
Maps available for inspection at the West Brownsville Borough Building, 235 Main Street, West Brownsville, Pennsylvania, or at the home of Mr. Jack J. Sabo, West Brownsville Secretary, 615 Woodlawn Avenue, West Brownsville, Pennsylvania.					
Send comments to The Honorable Joseph A. DeSalvo, Mayor of the Borough of West Brownsville, 625 Middle Street, West Brownsville, Pennsylvania 15417.					
Pennsylvania	West Elizabeth (Borough) Allegheny County.	Monongahela River	At State Route 51	*749	*750
			Approximately 0.76 mile upstream of State Route 51.	*749	*750
Maps available for inspection at the Borough Building, Corner of 5th & Lincoln, West Elizabeth, Pennsylvania.					
Send comments to Mr. John Nikolic, President of the Borough of West Elizabeth Council, 308 Border Street, West Elizabeth, Pennsylvania 15088.					
Pennsylvania	West Homestead (Borough) Allegheny County.	Monongahela River	Approximately 650 feet upstream of Glenwood Bridge.	*735	*736
			Approximately 600 feet downstream of Pittsburgh Homestead Bridge.	*736	*737
Maps available for inspection at the Borough Engineer's Office, 401 West 8th Avenue, West Homestead, Pennsylvania.					
Send comments to Mr. William Stasko, President of the Borough of West Homestead Council, 401 West 8th Avenue, West Homestead, Pennsylvania 15120.					
Pennsylvania	West Mifflin (Borough) Allegheny County.	Monongahela River	Approximately 0.29 mile upstream of Rankin Bridge.	*738	*739
			Approximately 0.78 mile downstream of Glassport Bridge.	*746	*747
		Streets Run	Approximately 840 feet downstream of Tributary No. 1.	None	*807
			Approximately 1.34 miles upstream of Tributary No. 2.	None	*977
Maps available for inspection at the Borough Hall, 4733 Greenspring Avenue, West Mifflin, Pennsylvania.					
Send comments to Mr. Kenneth Ruffing, President of the Borough of West Mifflin Council, 4733 Greenspring Avenue, West Mifflin, Pennsylvania 15122.					
Pennsylvania	Whitaker (Borough) Allegheny County.	Monongahela River	At a point approximately 0.24 mile downstream of Rankin Bridge.	None	*739
			At a point approximately 0.29 mile upstream of Rankin Bridge.	None	*739
Maps available for inspection at the Borough Hall, 125 Grant Street, Whitaker, Pennsylvania.					
Send comments to Mr. Eugene Ratay, President of the Borough of Whitaker Council, 125 Grant Street, Whitaker, Pennsylvania 15120.					
Pennsylvania	White Oak (Borough) Allegheny County.	Crooked Run	Approximately 250 feet downstream of Pennsylvania Avenue.	None	*788
			At 5th Avenue	None	*799
Maps available for inspection at the Borough Municipal Building, 2280 Lincoln Way, White Oak, Pennsylvania.					
Send comments to Ms. Margaret Kadar, President of the Borough of White Oak Council, 2280 Lincoln Way, White Oak, Pennsylvania 15131.					
Pennsylvania	Wilkins (Township) Allegheny County.	Thompson Run	At downstream side of Factory Entrance Drive.	*754	*755

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Existing	Modified
			At downstream side of Union Railroad	*766	*767

Maps available for inspection at the Township Hall, 110 Peffer Road, Wilkins, Pennsylvania.

Send comments to Mr. Michael Madden, President of the Township of Wilkins Board of Commission, 110 Peffer Road, Turtle Creek, Pennsylvania 15145.

South Carolina	Lexington County (Unincorporated Areas).	Senn Branch	Approximately 200 feet downstream of Epharata Drive.	*225	*224
			Just upstream of Hebron Drive	None	*301
		Tributary SM-3	A point approximately 100 feet downstream of Edmund Highway (Route 302).	*175	*175
			Approximately 0.4 mile upstream of dam at Lexington Drive.	None	*214
		Stoop Creek	Approximately 70 feet upstream of Fairway Lane.	*201	*200
			Approximately 200 feet downstream of Interstate Highway 26.	*211	*210

Maps available for inspection at the Lexington County Administration Building, Planning and Development Office, 212 South Lake Drive, Lexington, South Carolina.

Send comments to Mr. Ed Parlar, Lexington County Administrator, 212 South Lake Drive, Lexington, South Carolina 29072.

Tennessee	Decherd (City) Franklin County.	Wagner Creek	Approximately 800 feet upstream of Sharp Springs Road.	*893	*894
			At confluence of Bluespring Branch	None	*960
		Bluespring Branch	At confluence with Wagner Creek	None	*960
			Approximately 1.59 miles upstream of confluence with Wagner Creek.	None	*994

Maps available for inspection at the Decherd City Hall, 1301 West Main Street, Decherd, Tennessee.

Send comments to Mr. Michael Foster, Decherd City Administrator, P.O. Box 488, Decherd, Tennessee 37324.

Tennessee	Franklin County (Unincorporated Areas).	Wagner Creek	At upstream side of Old Cowan Road	None	*950
			Approximately 2.2 miles upstream of Old Cowan Road.	None	*993
		Bluespring Branch	At confluence with Wagner Creek	None	*960
			Approximately 2.2 miles upstream of confluence with Wagner Creek.	None	*1,008
		Sink Hole Area	Near the City of Decherd (north of Floyd Street).	None	*948

Maps available for inspection at the Franklin County Courthouse Annex, 110 South High Street, Winchester, Tennessee.

Send comments to Mr. George Fraley, Franklin County Executive, One North Jefferson Street, Winchester, Tennessee 37398.

Tennessee	Lynchburg-Moore County Metropolitan Government.	East Fork Mulberry Creek	Approximately 200 feet downstream of Louse Creek Road.	None	*738
			Approximately 0.5 mile upstream of Tennessee Highway 55.	None	*828
		Pnce Branch	At confluence with East Fork Mulberry Creek.	None	*775
			Approximately 1.85 miles upstream of confluence with East Fork Mulberry Creek.	None	*825

Maps available for inspection at the Metro Courthouse, Public Square, Lynchburg, Tennessee.

Send comments to Mr. Carl B. Payne, Lynchburg-Moore County Metropolitan Executive, Lynchburg-Moore County Metropolitan Government, P.O. Box 206, Lynchburg, Tennessee 37352.

Tennessee	Polk County (Unincorporated Areas).	Hiwassee River	Approximately 1.8 miles downstream of Chestvee Creek confluence.	None	*711
			Approximately 0.42 mile upstream of CSX Transportation bridge.	None	*714
		Ocoee River	Approximately 100 feet upstream at the confluence with Hiwassee River.	None	*714

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Existing	Modified
			Immediately downstream of Ocoee Dam #1.	None	*742

Maps available for inspection at the Polk County Courthouse, Main Street, Benton, Tennessee.

Send comments to Mr. Hoyt T. Firestone, Polk County Executive, P.O. Box 128, Benton, Tennessee 37307.

Tennessee	Winchester (City) Franklin County.	Wagner Creek	Approximately 800 feet upstream of Sharp Springs Road.	*893	*894
			Approximately 1,300 feet upstream of Old Winchester-Decherd Road.	*919	*918

Maps available for inspection at the Winchester City Hall, 7 South High Street, Winchester, Tennessee.

Send comments to The Honorable David Bean, Mayor of the City of Winchester, 7 South High Street, Winchester, Tennessee 37398.

West Virginia	Rivesville (Town) Marion County.	Monongahela River	A point approximately 0.49 mile downstream of Prickett Run (downstream corporate limit).	*867	*866
			Approximately 600 feet upstream of confluence of Prickett Run.	*857	*868

Maps available for inspection at the Town Hall, 142 Main Street, Rivesville, West Virginia.

Send comments to The Honorable Richard Valentine, Mayor of the Town of Rivesville, Town Hall, 142 Main Street, Box 45, Rivesville, West Virginia 26588.

West Virginia	Mercer County (Unincorporated Areas).	Brush Creek	Approximately 0.4 mile downstream of the U.S. Route 460 bridge.	*2,396	*2,395
			At the downstream side of County Route 19/33.	*2,413	*2,414
		South Fork	Approximately 900 feet upstream of County Route 71/6.	*2,416	*2,415
			Approximately 600 feet downstream of confluence of Middle Fork.	*2,442	*2,443

Maps available for inspection at the Mercer County Courthouse, Courthouse Square, Princeton, West Virginia.

Send comments to Mr. John Rapp, President of the Mercer County Commission, P.O. Box 5469, Princeton, West Virginia 22740.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 676

[Docket No. 940845-4245; I.D. 081794A]

RIN 0648-AG98

Limited Access Management of Federal Fisheries In and Off of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement a regulatory amendment affecting the Pacific halibut and sablefish fisheries in and off the State of Alaska (Alaska or State). This action explains the methodology used to calculate Community Development Quota (CDQ) compensation for the Pacific halibut and sablefish individual fishing quota (IFQ) program and would codify a systematic procedure for CDQ compensation.

DATES: Comments must be received no later than November 14, 1994.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief; Fisheries Management Division, Alaska Region, NMFS, 709 W. 9th, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of this proposed rule and the Regulatory Impact Review (RIR) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The Pacific halibut and sablefish CDQ program was designed to assist in the revitalization of rural communities in Western Alaska by providing those communities with access to fishery resources within their geographical proximity. The CDQ program was developed under the authority, and is consistent with the management objectives, of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and the Northern Pacific Halibut Act (Halibut Act).

CDQ Compensation Formula

The CDQ compensation formula would compensate persons for reductions in the amount of Pacific halibut and sablefish available for harvest with IFQ in CDQ areas resulting from allocations of those fishery resources to the CDQ program. Compensated persons would be those who are initially issued quota share (QS) in CDQ areas. This one-time compensation adjustment would be in

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: September 20, 1994

Robert F. Shea,

Acting Associate Director for Mitigation.

[FR Doc. 94-24117 Filed 9-28-94; 8:45 am]

BILLING CODE 6718-03-P

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the form of QS in each of the non-CDQ areas.

The CDQ compensation formula would affect all persons who are initially issued QS, including those persons who did not participate historically in the Pacific halibut or sablefish fisheries in CDQ areas. The North Pacific Fishery Management Council (Council) intended that all persons who are initially issued QS share the burden of compensating persons for reductions in the amount of Pacific halibut and sablefish available for harvest with IFQ in CDQ areas. This would be accomplished by distributing the compensation burden among all persons who would be initially issued QS by reducing their harvest privilege by a fixed percentage. Even persons who receive compensation would share the burden.

The amount of compensation QS a person receives would equal the reduction in the QS amount of harvestable fishery resources that person would receive in a CDQ area, minus the fixed percentage reduction shared by all persons who would be initially issued QS. Persons eligible for compensation would receive a portion of the total amount of compensation QS in each non-CDQ area. The compensation QS in each non-CDQ area would be proportional to the size of the QS pool of that area. For example, a person who would be eligible for compensation QS for halibut would receive the greatest amount of compensation QS in area 3A, which has the largest QS pool, and the least amount in area 4A, which has the smallest QS pool.

CDQ Compensation Formula Methodology

The following describes how the CDQ compensation formula operates. All total allowable catch (TAC) amounts are the TAC average for the years 1988–1994. First, (1) add the CDQ, based on the TAC average, from all management areas for that species to calculate total CDQ for that species, (2) add the TAC from all management areas for that species to calculate total TAC for that species, and (3) divide the total CDQ by the total TAC. This provides the proportion (percentage) of the total TAC going to the CDQ program for each species.

Second, multiply the proportion (percentage) of the total TAC going to the CDQ program (calculated above) by the TAC for each management area. This provides the total pounds of fish that will be used for CDQ compensation in that management area.

Third, divide the original QS (quota share pool) for each management area by the part of the TAC that will not be used for compensation in that area. This provides the QS per pound of non-compensating TAC.

Fourth, multiply the part of the TAC in each area that will be used for compensation by the QS per pound of noncompensating TAC for that area. This provides the QS created and used for compensation in that area.

Fifth, for each person with QS in a CDQ area, (1) total the IFQ lost by that person to CDQ in all areas and then (2) multiply that total by the quantity one minus the sum of the proportion of the total TAC going to the CDQ program for each species. This provides the pounds used to determine the amount of compensation QS a person will receive for that species.

Sixth, sum the pounds used to determine the amount of compensation QS each person will receive for that species. This provides the total pounds used to determine the compensation QS for all persons for that species.

Seventh, divide the pounds used to determine the amount of compensation QS each person will receive for a species (from step 5) by the total pounds used to determine the compensation QS for all persons for a species (from step 6). This provides the proportion of new QS in each area that a person should receive as compensation.

Eighth, and finally, multiply the proportion of the new QS in each area that the person should receive as compensation by the new QS available for compensation in each area (calculated in step 4). This provides the QS a person would receive as compensation in each area.

Example

If a person was initially issued 5,000 QS for Pacific halibut in regulatory Area 4E, that person would have all 5,000 QS transferred into CDQ compensation QS. This is because 100 percent of the TAC of Pacific halibut in regulatory Area 4E is allocated to the CDQ program. To calculate how much CDQ compensation QS the person would receive in one of the non-CDQ areas (Area 2C is used in this example):

1. Add CDQ from all areas for Pacific halibut (based on the 1988–1994 TAC average). The resulting sum is 1,038,571 lb (471.09 mt).

2. Add the TAC from all areas for Pacific halibut (based on the 1988–1994 average). The resulting sum is 50,581,429 lb (22,943.35 mt).

3. Divide the resulting sum from step 1 by the resulting sum in step 2. The resulting quotient is 0.0205 (or 2.05 percent) and is the proportion of the total TAC allocated to the CDQ program for Pacific halibut.

4. Multiply the resulting quotient in step 3 by the 1988–1994 TAC average for Pacific halibut in area 2C, which is 9,700,000 lb (4,399.85 mt). The resulting product is 198,850 lb (90.20 mt) and is the total pounds of Pacific halibut that will be used as CDQ compensation from area 2C.

5. Divide the QS pool for area 2C, 57,575,315, by the TAC in that area that will not be used as compensation, 9,501,150 lb (4,309.65 mt). The resulting quotient, 6.06, is the QS per pound of noncompensating TAC.

6. Multiply the total pounds of Pacific halibut that will be used as compensation from area 2C, 198,850 lb (90.2 mt), by the QS per pound of non-compensating TAC, which is 6.06. The resulting product, 1,205,031, is how many QS will be created in area 2C to use as compensation.

7. Multiply the proportion of the total TAC going to the CDQ program for Pacific halibut, 0.0205, by the amount of IFQ the person loses to the CDQ program in area 4E, which is 3,239 lb (1.5 mt). The resulting product is 66.

8. Subtract the resulting product in step 7 from the amount of IFQ the persons loses to the CDQ program in area 4E, which is 3,239 lb (1.5 mt). The resulting difference is 3,173 lb (1.4 mt).

9. Multiply the proportion of the total TAC going to the CDQ program for Pacific halibut, 0.0205, by the total lost IFQ to CDQ in all areas for Pacific halibut, which is 1,038,571 lb (471.1 mt). The resulting product is 21,291 lb (9.7 mt).

10. Subtract the resulting product in step 9 from the total lost IFQ to CDQ in all areas for Pacific halibut, which is 1,038,571 lb (471.1 mt). The resulting difference is 1,017,280 lb (9.7 mt).

11. Divide the resulting difference in step 8 by the resulting difference in step 10. The resulting quotient, 0.0031, is the proportion of new QS in area 2C the person will receive as compensation.

12. Multiply the resulting quotient in step 11 by the amount of new QS created in area 2C to be used as compensation, which is 1,205,031. The resulting product, 3,736, is the amount of QS the person will receive as compensation in area 2C.

This process would be repeated for each non-CDQ area by using the appropriate numbers for that area. (NOTE: This example uses data that may be changed before the CDQ compensation QS adjustment. For example, the QS pools, and therefore the resulting CDQ compensation QS, may be different than in this calculation once all applications have been received by NMFS and the initial QS pool is set on October 17, 1994. Although the eventual calculation may employ different numbers, the methodology of the calculation is accurately demonstrated.)

The CDQ compensation formula would be included in the regulations for the IFQ program at § 676.24(i)(3). The formula would replace the current language contained in this paragraph that established January 31 of the first year of fishing under the IFQ program as the date for determining the QS pool for purposes of establishing compensation for CDQ allocations. Eliminating January 31 from this paragraph would permit the issuance of compensation QS at an earlier date. Furthermore, under proposed regulations implementing Amendment 31 to the Fishery Management Plan (FMP) for the Groundfish Fisheries of the Bering Sea and Aleutian Islands Area and Amendment 35 to the FMP for Groundfish of the Gulf of Alaska, October 17, 1994, is being established as the specific date to determine the quota share pools. Proposed regulations to implement Amendments 31 and 35 were published in the **Federal Register** June 28, 1994 (59 FR 33272). Using October 17, 1994, rather than January 31, as the date to establish the QS pools would relieve a restriction by allowing persons who are initially issued QS more time to transfer QS prior to the first IFQ season. Also, using a specific date ensures that all persons are treated in a similar manner. NMFS would be particularly interested in receiving public comment on relieving this restriction.

Classification

The RIR prepared for this rule incorporates by reference the final regulatory flexibility analysis (FRFA) prepared for the IFQ program, the program for which the CDQ compensation formula was designed. The FRFA supports the determination that the IFQ program may have a significant impact on a substantial number of small entities. Further information on the FRFA can be obtained by referring to the final rule for the IFQ program, published in the **Federal Register** November 9, 1993 (58 FR 59375). The RIR and the FRFA are available for review (see **ADDRESSES**).

A collection of information for the IFQ program was approved by the Office of Management and Budget, OMB control number 0648–0272. This action will not affect the collection-of-information requirements already approved for the IFQ program.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 676

Fisheries, Reporting and recordkeeping requirements.

Dated: September 23, 1994.

Samuel W. McKeen,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 676 is proposed to be amended as follows:

PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

1. The authority citation for 50 CFR part 676 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

2. Section 676.24 is amended by revising paragraph (i)(3) to read as follows:

§ 676.24 Western Alaska Community Development Quota Program.

* * * * *

(i) * * *

(3) Compensation of halibut and sablefish QS foregone due to the CDQ program will occur only in the first year of fishing under the IFQ program and will be calculated for each CDQ area using the following formula:

$$Q_N = (Q_C \times QSP_N \times RATE) / \{SUM_{CDQ} - [RATE \times SUM_{TAC}]\}\{[1 - RATE] - TAC\}\{QSP_C \times [CDQ_{PCT} - RATE]\}$$

where:

Q_N=quota share in non-CDQ area
Q_C=quota share in CDQ area
QSP_N=quota share pool in non-CDQ area
$RATE=SUM_{CDQ}$/total allowable catch for all CDQ and non-CDQ areas
TAC=total allowable catch (average of the TAC for 1988–1994) for CDQ area
QSP_C=quota share pool in CDQ area
CDQ_{PCT}=CDQ percentage for CDQ area
SUM_{CDQ}=sum [total allowable catch for CDQ area$\times CDQ_{PCT}$] (based on average TAC)
SUM_{TAC}=sum [total allowable catch for CDQ area] (based on average TAC)

* * * * *

[FR Doc. 94–24136 Filed 9–28–94; 8:45 am]

BILLING CODE 3510–22–W

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Notices

Federal Register
Vol. 59, No. 188
Thursday, September 29, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Kerry and Caren Kennedy Road Right-of-Way; San Bernardino National Forest San Bernardino County, California; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) for the proposed road right-of-way for Kerry and Caren Kennedy. Two environmental assessment (EA) documents were prepared; the first dated August 4, 1993, and the second dated December 23, 1993. There were four alternatives considered but none could be selected because of impacts on California spotted owls. The mitigation measures considered in the documents left uncertainty as to whether a finding of no significant impacts could be made.

PROPOSED ACTION: The land, for which permanent access is sought, is owned by the proponents, Kerry and Caren Kennedy. This project and their land are located within the San Gorgonio Ranger District of the San Bernardino National Forest. The Kennedy's require this access to enable them to build three to four residences on their land. The project involves approximately ¾-mile of road reconstruction and less than ⅛-mile of new road construction across National Forest System lands. The Kennedy's property lies in the upper end of a box canyon with steep side walls. Generally, the developable portion of the property lies in and adjacent to the flood plain of Mill Creek. The only reasonable access is via National Forest System lands. Currently, the Kennedy's have a temporary right-of way permit. A portion of the roadbed covered by the temporary permit is in the flood plain. The range of alternatives will consider the level of road improvements necessary to provide permanent access for residential development. The EIS will be prepared pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C., Sec. 4332(2)(C), the National Forest Management Act (NFMA), 16 U.S.C., Sec. 1604(i), Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. Sec. 3210, and applicable regulations implementing these laws.

POSSIBLE ALTERNATIVES: Four alternatives were developed for detailed consideration. Alternative 1, was the "no action" alternative, which is no change in the existing road. Alternative 2, is the proposed action of upgrading and realigning Falls Road. Alternative 3, considers grading and paving the existing road without widening or otherwise improving it. Alternative 4, is similar to Alternative 2, in that it would also relocate segments of the existing road and widen it, but would only use a gravel, not paved, roadbed.

ISSUES IDENTIFIED: Environmental issues which will be analyzed will be limited to the individual and cumulative impacts of the proposed development on the habitat of California spotted owls. The other previously considered issues outlined in the environmental assessment will not be reconsidered during this analysis, except as they are associated with the impacts on spotted owls.

The Draft EIS is expected to be available for public review by November 30, 1994. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of its availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3. The final Environmental Impact Statement is expected to be available about March 15, 1995.

DATES: Comments are requested on this notice concerning the scope of analysis of the draft SEIS. Comments must be received on or before October 31, 1994.

PUBLIC SCOPING: The Forest Service has previously conducted public scoping on this proposal and no additional public scoping, beyond this notice, is planned.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis for the Kerry and Caren Kennedy road right-of-way proposal to Gene Zimmerman, Forest Supervisor, San Bernardino National Forest, 1824 S. Commercenter Circle, San Bernardino, CA 92408–3430.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and preparation of the EIS of Hal Seyden, Planning Program Leader, San Bernardino National Forest, 1824 South Commercenter Circle, San Bernardino, CA 92408–3430 or call (909) 884–6634, extension 3160.

RESPONSIBLE OFFICIAL: Because the proposed action may violate regional direction to protect all spotted owls, the responsible official is Regional Forester G. Lynn Sprague, Pacific Southwest Region, 630 Sansome Street, San Francisco, CA 94111.

Dated: September 21, 1994.

Gene Zimmerman,
Forest Supervisor.

[FR Doc. 94–24090 Filed 9–28–94; 8:45 am]
BILLING CODE 3410–11–M

Boundary Modification of Butte Valley National Grassland

AGENCY: Forest Service, USDA.

ACTION: Notice of Boundary Modification of Butte Valley National Grassland.

SUMMARY: On September 13, 1994, the Chief, U.S. Forest Service, modified the boundary of the Butte Valley National Grassland, located in Siskiyou County, California. Currently this grassland comprises 18,425 acres of land purchased under the authority of the Bankhead-Jones Farm Tenant Act of 1937, administered by the Goosenet Ranger District of the Klamath National Forest. This boundary modification allows for the inclusion of 1,280 acres of land transferred from the Farmers Home Administration to be administered as a part of this Grassland. A copy of the Chief's Boundary Modification document which includes the legal description of the lands within the addition appears at the end of this notice.

EFFECTIVE DATE: The effective date of this addition was September 13, 1994.

ADDRESSES: A copy of the map showing this boundary modification is on file and available for public inspection in the Office of the Director of Lands, Forest Service, Auditor's Building, 201 14th Street, SW., Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: David Sherman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1248.

Dated: September 20, 1994.

Sterling J. Wilcox,
Acting, Deputy Chief, NFS.

Boundary Modification

Butte Valley National Grassland, Siskiyou County, California

Pursuant to the authority of Title 16, United States Code, sections 1010–1012 and Title 36, Code of Federal Regulations, § 213.2, the boundary of the Butte Valley National Grassland in Siskiyou County, State of California, is hereby modified to add the following lands:

Mt. Diablo Meridian:

T. 47 N., R. 1 E.,
Section 30, All.
T. 47 N., R. 1 W.,
All of sections 1, 2, 11–14, 22–26, 34 and 35.
T. 46 N., R. 1 W.,
Section 2, All.

Said federal lands will be administered as part of the Butte Valley National Grassland subject to all laws, rules and regulations applicable to the National Forest System. The nonfederal lands within the boundary modification will not be affected by this action.

Dated: September 13, 1994.

Jack Ward Thomas,
Chief, U.S. Forest Service.

[FR Doc. 94–24056 Filed 9–28–94; 8:45 am]
BILLING CODE 3410–11–M

Soil Conservation Service

Buck Hollow Watershed, Sherman and Wascow Counties, Oregon

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding Of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Soil Conservation Service Regulations (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Buck Hollow Watershed, Sherman and Wasco Counties, Oregon.

FOR FURTHER INFORMATION CONTACT: Robert J. Graham, State Conservationist, Soil Conservation Service, 1220 SW. Third Avenue, Room 1640, Portland, Oregon 97204–2881, telephone (503) 326–2751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert J. Graham, State Conservationist, has determined that preparation and review of an environmental impact statement are not needed for this project.

The project purposes are conservation and proper utilization of land (watershed protection) to rectify water quality problems, specifically related to salmonid fisheries on privately owned lands. The planned works of improvement include grazing management systems on 60,000 acres, fish stream improvement on 25 miles and cropland management systems on 10,500 acres.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Russell A. Collett at the above address.

No administrative action on implementation of the proposed will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Robert J. Graham,
State Conservationist.

[FR Doc. 94–24091 Filed 9–28–94; 8:45 am]
BILLING CODE 3410–16–M

Middle Branch Park River Watershed Supplement No. 2, Cavalier, Pembina, and Walsh Counties, ND

AGENCY: Department of Agriculture, Soil Conservation Service.

ACTION: Notice of a Finding Of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the council on Environmental Quality Regulations (40 CFR Part 1500); and the Soil Conservation Service Regulations (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Middle Branch Park River Watershed, Cavalier, Pembina, and Walsh Counties, North Dakota.

DATES: Comment Deadline—October 31, 1994.

ADDRESSES: USDA Soil Conservation Service, 220 E. Rosser Avenue, Bismarck, ND 58501.

FOR FURTHER INFORMATION CONTACT: Ronnie L. Clark, State Conservationist, 701–250–4421.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates the

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project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ronnie L. Clark, State Conservationist, has determined the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are flood prevention and watershed protection. The planned works of improvement include an earthfill dam (426,000 cubic yards) with a principal spillway and a reinforced concrete spillway. The recommended plan also includes 3,900 acres of associated land treatment measures on cropland and rangeland fields, and the development of animal waste systems above the dam site.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ronald D. Sando, Assistant State Conservationist (Water Resources), 701–250–4441.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372, which requires Intergovernmental consultation with state and local officials.)

William J. Hartman,

Deputy State Conservationist.

[FR Doc. 94–24082 Filed 9–28–94; 8:45 am]

BILLING CODE 3410–16–M

Rattlesnake Creek Watershed, OH

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service, U.S. Department of Agriculture, gives notice of the intent to deauthorize Federal funding for the Rattlesnake Creek Watershed, Clinton, Fayette, Madison, and Greene Counties, Ohio.

FOR FURTHER INFORMATION CONTACT: Lawrence E. Clark, State Conservationist, Soil Conservation Service, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone (614) 469–6962. Rattlesnake Creek Watershed, Ohio, Notice of intent to deauthorize Federal funding.

SUPPLEMENTARY INFORMATION: A determination has been made by Lawrence E. Clark that the proposed works of improvement for the Rattlesnake Creek Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Lawrence Clark, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management of Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: September 20, 1994.

Lawrence E. Clark,

State Conservationist.

[FR Doc. 94–24033 Filed 9–28–94; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Vida Shahamat

In the Matter of: Vida Shahamat, 6318 Green Spring Avenue, Apartment 208, Baltimore, Maryland 21209, Respondent.

Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having notified Vida Shahamat (Shahamat) of its intention to initiate an administrative proceeding against her pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. sections 2401–2420 (1991, Supp. 1993, and Pub. L. 103–277, July 5, 1994)) (the Act),[1] and Part 788 of the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1994)) (the Regulations), based on allegations that, on or about February 26, 1993, Shahamat ordered, bought, and financed U.S.-origin computer equipment that she intended to export to Iran without obtaining the validated licensee that she knew was required by the Regulations, and that, on or about March 10, 1993, Shahamat attempted to export that computer equipment to Iran without obtaining the validated license required by § 772.1(b) of the Regulations;

The Department and Shahamat having entered into a Consent Agreement whereby the Department and Shahamat have agreed to settle this matter in accordance with the terms and conditions set forth therein and the terms of the Consent Agreement having been approved by me;

It Is Therefore Ordered, That First, a civil penalty of $20,000 is assessed against Shahamat. Payment of the $20,000 civil penalty shall be suspended in its entirety for a period of three years beginning on the date of entry of this Order, and shall thereafter be waived provided that, during the period of suspension, Shahamat has committed no violation of the Act or any regulation, order, or license issued under the Act.

Second, Vida Shahamat, 6318 Green Spring Avenue, Apartment 208, Baltimore, Maryland 21209, shall, for a period of three years from the date of entry of this Order, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States and subject to the Regulations.

A. All outstanding individual validated export licenses in which Shahamat appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all Shahamat's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

C. After notice and opportunity for comment as provided in § 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to Shahamat by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

D. As provided by § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (1) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

Third, the proposed Charging Letter, the Consent Agreement and this Order shall be made available to the public, and this Order shall be published in the **Federal Register**.

This Order is effective immediately.

Entered this 21st day of September, 1994.

John Despres,

Assistant Secretary, for Export Enforcement.

[FR Doc. 94–24032 Filed 9–28–94; 8:45 am]

BILLING CODE 3510–DT–M

[1] The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

International Trade Administration

Intent to Revoke the Antidumping Finding

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of intent to revoke the antidumping finding.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty finding listed below. Domestic interested parties who object to these revocations must submit their comments in writing no later than the last day of October 1994.

EFFECTIVE DATE: September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Duty Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty order for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Duty Proceeding

Japan
Steel Wire Rope
38 FR 28571
October 15, 1973
A–588–045
Contact: Divina Friedman at (202) 482–3813

If an interested party does not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke pursuant to this notice, we shall conclude that the antidumping finding is no longer of interest to interested parties and shall proceed with the revocation. However, if an interested party does request an administrative review in accordance with the Department's notice of opportunity to request an administrative review, or a domestic interested party objects to the Department's intent to revoke pursuant to this notice, the Department may continue the finding without further notice to the public.

Opportunity to Object

Domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding by the last day of October 1994. Any submission objecting to revocation must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k) (3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203. This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: September 22, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–24137 Filed 9–28–94; 8:45 am]

BILLING CODE 3510–DS–M

[C–614–701]

Certain Steel Wire Nails From New Zealand; Intent To Revoke Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Intent to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the countervailing duty order on certain steel wire nails from New Zealand. Domestic interested parties who object to this revocation must submit their comments in writing not later than the last day of October 1994.

EFFECTIVE DATE: September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Brian Albright, or Mercedes Fitchett, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department

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of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202)482–2786.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke a countervailing duty order if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 355.25(d)(4) (19 CFR 355.25(d)(4) (1993)) of the Department's regulations, we are notifying the public of our intent to revoke the countervailing duty order on certain steel wire nails from New Zealand (52 FR 37196; October 5, 1987) for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months.

In accordance with § 355.25(d)(4)(iii) of the Department's regulations, if no domestic interested party (defined in § 355.2 (i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to the Department's intent to revoke this order pursuant to this notice, and no interested party (defined in § 355.2(i) of the regulations) requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, we shall conclude that the countervailing duty order is no longer of interest to interested parties and proceed with the revocation. However, if an interested party does request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or a domestic interested party objects to the Department's intent to revoke pursuant to this notice, the Department will continue the duty order without further notice to the public.

Opportunity To Object

Not later than the last day of October 1994, domestic interested parties may object to the Department's intent to revoke this countervailing duty order. Any submission objecting to revocation must contain the name and case number of the order and a statement that explains how the objecting party qualifies as a domestic interested party under §§ 355.2 (i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: September 21, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–24138 Filed 9–28–94; 8:45 am]

BILLING CODE 3510–DS–P

Argonne National Laboratory, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–065. *Applicant:* Argonne National Laboratory, Argonne, IL 60439. *Instrument:* Rapid Scanning Diode Array. *Manufacturer:* Hi-Tech Scientific Limited, United Kingdom. *Intended Use:* See notice at 59 FR 31208, June 17, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an existing instrument purchased for the use of the applicant.

The accessory is pertinent to the intended uses and we know of no domestic accessory which can be readily adapted to the existing instrument.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–24139 Filed 9–28–94; 8:45 am]

BILLING CODE 3510–DS–F

University of California et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–080. *Applicant:* University of California, Los Alamos, NM 87545. *Instrument:* Electron Microscope, Model JEM 2010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 59 FR 34412, July 5, 1994. *Order Date:* November 19, 1993.

Docket Number: 94–089. *Applicant:* University of California, Los Alamos, NM 87545. *Instrument:* Electron Microscope, Model JEM-3000F. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 59 FR 38585, July 29, 1994. *Order Date:* August 10, 1993.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–24140 Filed 9–28–94; 8:45 am]

BILLING CODE 3510–DS–F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–097. *Applicant:* University of Vermont, Purchasing Department (for Cardiology), Waterman Building, Burlington, VT 05405. *Instrument:* Cardiac Monitor, Model Leycom Sigma 5-DF. *Manufacturer:* Cardio Dynamics, The Netherlands.

Intended Use: The instrument will be used to measure left ventricular heart chamber volume changes during the study of heart performance in research animals. *Application Accepted by Commissioner of Customs:* July 28, 1994.

Docket Number: 94–098. *Applicant:* University of Georgia, Cedar Street, Athens, GA 30602-2556. *Instrument:* Mass Spectrometer, Model API-1. *Manufacturer:* PE Sciex, Canada. *Intended Use:* The instrument will be used to measure the molecular weight of pure samples of peptides and proteins and the components of sample mixtures separated by on-line microbore high performance liquid chromatography. *Application Accepted by Commissioner of Customs:* July 28, 1994.

Docket Number: 94–099. *Applicant:* National Institutes of Health, NIAID, Laboratory of Viral Diseases, 9000 Rockville Pike, Building 4, Room 229, Bethesda, MD 20892. *Instrument:* Electron Microscope and Accessories, Model CM-100. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used to investigate aspects of the biology of vaccinia virus including virus replication and assembly. This work will entail the use of cell and virus samples which have been fixed and stained using a variety of techniques. *Application Accepted by Commissioner of Customs:* August 1, 1994.

Docket Number: 94–100. *Applicant:* University of Massachusetts Dartmouth, Department of Chemistry, N. Dartmouth, MA 02747. *Instrument:* Pneumatic Drive Accessory for stopped-flow kinetics apparatus, Model Opt.12P. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used for the study of the halogen oxidation of uric acid, allantoin and other metabolic waste products. Specifically, the research will involve studying the mechanistic processes and rates of the reactions of chlorine and iodine with uric acid and other similar compounds. In addition, the instrument will be used in course Physical Chemistry Laboratory II in experiments designed to introduce students to the techniques for the study of rates of very fast chemical reactions. *Application Accepted by Commissioner of Customs:* August 2, 1994.

Docket Number: 94–101. *Applicant:* Stanford University, CMR, 105 McCullough, Stanford, CA 94306. *Instrument:* Reflection High Energy Electron Diffraction System, Model EK-2035-R. *Manufacturer:* Staib Instrumente, Germany. *Intended Use:* The instrument will be used for in situ surface investigation of thin film processes, indicating whether the film growth is crystalline, what crystal structure is formed and whether surface reconstruction occurs. It will also be used to determine the film thickness in situ in the nanometer range. The materials are oxides which require elevated oxygen partial pressures (10^{-2}mbar) in the growth chamber and the use of electrically insulating oxide substrates. *Application Accepted by Commissioner of Customs:* August 4, 1994.

Docket Number: 94–102. *Applicant:* The Scripps Research Institute, 10666 Torrey Pines Road, La Jolla, CA 92037. *Instrument:* NMR Spectrometer, Model Avance DMX750. *Manufacturer:* Bruker, Germany. *Intended Use:* The instrument will be used to study the structure, dynamics and interactions of biomolecules such as proteins and nucleic acids. Investigations of several proteins and oligonucleotides in progress address fundamental biophysical questions related to various aspects of protein and nucleic acid structure, dynamics and function. *Application Accepted by Commissioner of Customs:* August 4, 1994.

Docket Number: 94–103. *Applicant:* North Carolina State University, Campus Box 7212, Raleigh, NC 27695-7212. *Instrument:* Digital Oxygen Electrode. *Manufacturer:* Rank Brothers Ltd., United Kingdom. *Intended Use:* The instrument will be used to measure oxygen uptake in plant tissue, plant mitochondria, intact plant organelle and *E. coli*. *Application Accepted by Commissioner of Customs:* August 4, 1994.

Docket Number: 94–104. *Applicant:* University of California, San Diego, La Jolla, CA 92093. *Instrument:* Imaging Plate X-ray Detector for Protein Crystallography. *Manufacturer:* Mar Research, Germany. *Intended Use:* The instrument will be used to collect data at very high resolution (1.0-1.2Å) from small protein crystals. The aim of this system is to collect data to solve the three-dimensional structure of proteins or enzymes using X-ray diffraction methods at very high resolution. In addition, the instrument will be used on a one-to-one basis in the training of graduate students. *Application Accepted by Commissioner of Customs:* August 31, 1994.

Docket Number: 94–105. *Applicant:* National Institute for Arthritis and Musculoskeletal and Skin Diseases, Building 6, Room 425, Bethesda, MD 20892-2755. *Instrument:* Electron Microscope, Model CM 120. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used to perform cryoelectron microscopy of biological macromolecules and supramolecular assemblies, including native virus particles, their components, and related sub-viral assemblies. The studies will include analysis of capsid structures of herpes simplex virus type 1, the archetypal herpes virus; the L-A virus of yeast; bacteriophages HK97 and T4; and hepatitis B virus nucleocapsids. *Application Accepted by Commissioner of Customs:* August 31, 1994.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–24142 Filed 9–28–94; 8:45 am]

BILLING CODE 3510–DS–F

West Virginia University et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 94–075. *Applicant:* West Virginia University, Morgantown, WV 26505-6315. *Instrument:* Atom/Radical Source, Model CARS25. *Manufacturer:* Oxford Applied Research, United Kingdom. *Intended Use:* See notice at FR 59 34411, July 5, 1994. *Reasons:* The foreign instrument provides atomic nitrogen or hydrogen in appreciable quantities while minimizing ion production to decrease formation of point defects in the growth and doping of wide band gap semiconductors. *Advice Received From:* National Aeronautics and Space Administration. August 10, 1994.

Docket Number: 94–076. *Applicant* The Georgia Institute of Technology, Atlanta, GA 30322. *Instrument:* High-Shear Mixing Bleach Reactor, Model CRS1015. *Manufacturer:* CRS Reactor Engineering, Sweden. *Intended Use:* See notice at FR 59 34411, July 5, 1994. *Reasons:* The foreign instrument provides: (1) high shear mixing with medium consistency (10 - 25%) pulp samples, (2) precise, programmable control of oxygen and ozone pressure

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and (3) a special impeller for high and for low consistency samples. *Advice Received From:* Forest Service, U.S.D.A., August 10, 1994.

Docket Number: 94–081. *Applicant:* University of Minnesota, Minneapolis, MN 55455. *Instrument:* Fabry-Perot Interferometer System. *Manufacturer:* JRS Instruments, Switzerland. *Intended Use:* See notice at FR 59 38438, July 28, 1994. *Reasons:* The foreign instrument provides: (1) an active isolation system to minimize vibration, (2) a common translation stage to synchronize scanning of the interferometers and (3) maximum jitter during scanning at 10.0 nm. *Advice Received From:* National Institute of Standards and Technology, August 22, 1994.

The National Aeronautics and Space Administration, Forest Service, U.S.D.A. and National Institute of Standards and Technology advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–24141 Filed 9–28–94; 8:45 am]

BILLING CODE 3510–DS–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 94–C0016]

KIDS II, INC., (Formerly Pansy Ellen Products, Inc.) A Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(f). Published below is a provisionally-accepted Settlement Agreement with KIDS II, INC., (formerly Pansy Ellen Products, Inc.) a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by October 14, 1994.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 94–C0016, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: William J. Moore, Jr., Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: September 22, 1994.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between KIDS II, INC. (formerly Pansy Ellen Products, Inc.), a corporation, (hereinafter "KIDS II"), and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

I. The Parties

2. The "staff" is the staff of the Consumer Product Safety Commission (hereinafter, "Commission"), which is an independent federal regulatory agency of the United States of America, established by Congress pursuant to Section 4 of the Consumer Product Safety Act (CPSA), as amended, 15 U.S.C. 2053.

3. KIDS II is a corporation organized and existing under the laws of the State of Georgia, with its principal corporate offices located at 1245 Old Alpharetta Road, Alpharetta, Georgia.

II. Jurisdiction

4. KIDS II manufactured and distributed a juvenile product known as "Graduate Booster Seat I," models 4155 and 4156, (hereinafter "Booster Seat"). The Booster Seat is a "consumer product" within the meaning of section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1).

5. KIDS II manufactured and distributed the Booster Seat for sale to consumers throughout the United States. KIDS II is a "manufacturer" and "distributor" of a "consumer product" which is "distributed in commerce," as those terms are defined in sections 3(a)(1), (4), (5), and (11) of the CPSA, 15 U.S.C. 2052(a) (1), (4), (5) and (11).

III. The Product

6. KIDS II manufactured approximately 680,000 Booster Seats from 1987 through 1991. The Booster Seat is a children's product which, when placed on an adult sized chair, brings toddlers and young children closer to a table, counter or other eating or play surface while seated. The KIDS II Booster Seat features a detachable, adjustable seat that allows consumers to adjust the seat to any one of four heights.

IV. Staff Allegations

7. The staff alleges KIDS II failed to meet its obligations to report information to the Commission under Section 15(b) of the CPSA, 15 U.S.C. 2064(b). Certain Booster Seats manufactured from 1987 through 1991 provide insufficient engagement between the adjustable seat and the base. When occupied by a child, this condition allows the seat either to slide forward and out of the base or to fall straight down onto the chair or other surface upon which the Booster Seat is placed.

Between 1988 and 1992, KIDS II received complaints from consumers alleging Booster Seat failure in the manner explained above, but never reported that information to the Commission. Some of the reported incidents have resulted in bumps, cuts and bruises to the children.

8. The staff contends that KIDS II obtained information which reasonably supported the conclusion that its Booster Seats contained defects which could create a substantial product hazard but failed to report that information to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

V. Response of KIDS II

9. KIDS II denies each and all of the staff's allegations with respect to its Booster Seat, including that KIDS II at any time possessed information which reasonably supported the conclusion that its Booster Seats contained defects which could create a substantial product hazard within the meaning of Section 15(a) of the CPSA, 15 U.S.C. 2064(a); and therefore, denies that it failed to meet its obligation to report the information concerning the Booster Seats to the Commission under Section 15(b) of the CPSA, 15 U.S.C. 2064(b).

VI. Agreement of the Parties

10. KIDS II and the staff agree the Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement and Order.

11. KIDS II knowingly, voluntarily and completely waives any rights it may have (1) to an administrative or judicial hearing with respect to the staff allegations cited herein, (2) to judicial review or other challenge or contest of the validity of the Commissions Order, (3) to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, and (4) to a statement of findings of fact and conclusion of law with regard to the staff allegations.

12. Nothing in this Settlement Agreement and Order shall be deemed by the Commission as an admission by KIDS II of any fault, liability, or statutory violation.

13. KIDS II agrees to pay the Commission a civil penalty in the amount of $85,000 within 10 days after service of the Final Order upon KIDS II. This payment is made in full settlement of the staff's allegations that KIDS II knowingly violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), by failing to notify the Commission of the allegedly defective Booster Seat. The Commission specifically waives its right to pursue any further payment from KIDS II and its shareholders, partners, officers, directors, employees, and agents with respect to the matters covered by this Settlement Agreement and Order.

14. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with 16 C.F.R. 1118.20(f).

15. The Settlement Agreement and Order becomes effective upon final acceptance by the Commission and its service upon KIDS II.

16. Upon final acceptance of this Settlement Agreement by the Commission, the Commission will issue a press release to advise the public of the Settlement Agreement and Order.

17. This Settlement Agreement is binding upon the Commission and KIDS II, and the assigns or successors of KIDS II.

18. The parties further agree that the incorporated Order be issued under the CPSA, 15 U.S.C. 2051 *et. seq.* KIDS II shall comply with the provisions of the Settlement Agreement and Order and a violation of the Order will subject KIDS II to appropriate legal action. In the event of a default of payment, which default continues for ten (10) calendar days beyond the due date of the payment, KIDS II agrees it shall pay the Commission interest on the $85,000 owing at a rate computed pursuant to 28 U.S.C. 1961(a). In addition, in the event of a default, KIDS II agrees that it shall raise no defense or objection to such collection action as the Commission deems appropriate and shall pay all costs incurred in such action.

19. The requirements of the Settlement Agreement and Order are in addition to, and not to the exclusion of, other remedies of laws administered by the Commission.

20. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

Dated: July 19, 1994.

KIDS II, INC.

J. Dwaine Clarke,

Vice President, Finance.

The Consumer Product Safety Commission.

David Schmeltzer,

Associate Executive Director, Office of Compliance and Enforcement.

Eric L. Stone,

Acting Director, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated: June 29, 1994.

William J. Moore, Jr.,

Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Order

Upon consideration of the Settlement Agreement of the parties, it is hereby

Ordered, that KIDS II shall pay, within 10 days of final acceptance of this Settlement Agreement and service of this order, civil penalty in the amount of $85,000 to the Consumer Product Safety Commission.

Provisionally accepted on the 22nd day of September 1994.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–24025 Filed 9–28–94; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Investigative Capability Advisory Board; Meetings

AGENCY: Department of Defense, Advisory Board on the Investigative Capability of the Department of Defense.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Advisory Board on the Investigative Capability of the Department of Defense. The purpose of the meeting is to discuss the second draft report of the Advisory Board and issues that remain to be addressed in the report. This meeting is open to the public.

DATE AND TIME: October 7, 1994 from 9:00 a.m.–5:00 p.m.

ADDRESSES: 1700 N. Monroe Street, Suite 1425, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Mary B. DeRosa, Acting Deputy Staff Director, Advisory Board on the Investigative Capability of the Department of Defense, 1700 N. Moore Street, Suite 1420, Arlington, VA 22209; telephone (703) 696–6055.

Dated: September 22, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–24021 Filed 9–28–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Logistics Agency

Privacy Act of 1974; Delete a Record System.

AGENCY: Defense Logistics Agency, DOD

ACTION: Delete a Record System.

SUMMARY: The Defense Logistics Agency proposes to delete an existing system of records in the DLA inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The deletion is effective September 29, 1994.

ADDRESSES: Send comments to the Privacy Act Officer, Administrative Management Branch, Planning and Resource Management Division, Defense Logistics Agency, Room 5A120, Cameron Station, Alexandria, VA 11304–6100.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Christensen at (703) 617–7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, can be obtained from the address listed above.

The deleted system is not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which requires the submission of an altered system report.

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Dated: September 23, 1994.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.51 TPDC

SYSTEM NAME:

Training Cohort Data Base *(February 22, 1993, 58 FR 10879).*

Reason: The Defense Logistics Agency no longer has a requirement to collect or maintain this information. The entire data base has been destroyed.

[FR Doc. 94-24023 Filed 9-28-94; 8:45 am]
BILLING CODE 5000-04-F

Department of the Navy

Privacy Act of 1974; Alteration of a record system.

AGENCY: Department of the Navy, DoD
ACTION: Alteration of a record system.

SUMMARY: The Department of the Navy proposes to alter an existing system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The Department of the Navy proposes to add an additional routine use for the system as follows: 'Information relating to professional qualifications of chaplains may be provided to civilian certification boards and committees, including, but not limited to, state and federal licensing authorities and ecclesiastical endorsing organizations.'' Other minor administrative amendments are being made.

DATES: The alteration will be effective without further notice on October 31, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Acting Head, PA/FOIA Branch, Office of the Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350-2000.

FOR FURTHER INFORMATION CONTACT: Mrs Doris Lama at (703) 614-2004 or DSN 224-2004.

SUPPLEMENTARY INFORMATION: The complete inventory of the Department of the Navy record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and may be obtained from the address above.

An altered system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on September 19, 1994, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994). The specific changes to the record system are set forth below followed by the system notice as altered in its entirety.

Dated: September 23, 1994.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01070-3

SYSTEM NAME:

Navy Personnel Records System *(February 22, 1993, 58 FR 10696).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete first paragraph and replace with 'Active duty records are located at the Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370-5001; Naval Reserve Personnel Center, New Orleans, LA 70149-7800; and local activity to which individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add the following 'Information relating to professional qualifications of chaplains may be provided to civilian certification boards and committees, including, but not limited to, state and federal licensing authorities and ecclesiastical endorsing organizations.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370-5001; Commanding Officers, Officers in Charge, and Heads of Department of the Navy activities. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.'

NOTIFICATION PROCEDURE:

Delete first paragraph and replace with 'Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370-5001 or contact the personnel officer were assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.'

RECORD ACCESS PROCEDURES:

Delete first paragraph and replace with 'Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370-5001 or contact the personnel officer were assigned.'

* * * * *

N01070-3

SYSTEM NAME:

Navy Personnel Records System.

SYSTEM LOCATION:

Active duty records are located at the Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370-5001; Naval Reserve Personnel Center, New Orleans, LA 70149-7800; and local activity to which individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

Secondary systems are located at the Department of the Navy Activities in the chain of command between the local activity and the headquarters level; Federal Records Storage Centers; National Archives. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy military personnel: officers, enlisted, active, inactive, reserve, fleet reserve, retired, midshipmen, officer candidates, and Naval Reserve Officer Training Corps personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel service jackets and service records, correspondence and records in both automated and non-automated form concerning classification, assignment, distribution, promotion, advancement, performance, recruiting, retention, reenlistment, separation, training, education, morale, personal affairs, benefits, entitlements, discipline and administration of naval personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To assist officials and employees of the Navy in the management, supervision and administration of Navy personnel (officer and enlisted) and the operations of related personnel affairs and functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the National Research Council in Cooperative Studies of the National History of Disease; of Prognosis and of Epidemiology. Each study in which the records of members and former members of the naval service are used must be approved by the Chief of Naval Personnel.

To officials and employees of the Department of Health and Human Services, Department of Veteran Affairs, and Selective Service Administration in the performance of their official duties related to eligibility, notification and assistance in obtaining benefits by members and former members of the Navy.

To officials and employees of the Department of Veteran Affairs in the performance of their duties relating to approved research projects.

To officials and employees of Navy Relief and the American Red Cross in the performance of their duties relating to the assistance of the members and their dependents and relatives, or related to assistance previously furnished such individuals, without regard to whether the individual assisted or his/her sponsor continues to be a member of the Navy.

To duly appointed Family Ombudsmen in the performance of their duties related to the assistance of the members and their families.

To state and local agencies in the performance of their official duties related to verification of status for determination of eligibility for Veterans Bonuses and other benefits and entitlements.

To officials and employees of the Office of the Sergeant at Arms of the United States House of Representatives in the performance of their official duties related to the verification of the active duty naval service of Members of Congress.

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual the United States Government will be liable for the losses the facility may incur.

To federal, state, local, and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with litigation, law enforcement, or other matters under the jurisdiction of such agencies.

Information relating to professional qualifications of chaplains may be provided to civilian certification boards and committees, including, but not limited to, state and federal licensing authorities and ecclesiastical endorsing organizations.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper file folders, microfiche or microfilm.

RETRIEVABILITY:

Automated records may be retrieved by name and Social Security Number. Manual records may be retrieved by name, Social Security Number, enlisted service number, or officer file number.

SAFEGUARDS:

Computer facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Records are retained one year past retirement, removal, or resignation of the member and then transferred to the National Personnel Records Center (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132-5101 for permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel (Pers 06), Washington, DC 20370-5000; Commanding Officers, Officers in Charge, and Heads of Department of the Navy activities. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370-5000 or contact the personnel officer where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

The individual may visit the Chief of Naval Personnel, Arlington Annex, Federal Office Building 2, Washington, DC, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370-5000 or contact the personnel officer where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

The individual may visit the Chief of Naval Personnel (Pers 06), Arlington Annex, Federal Office Building 2, Washington, DC, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally

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maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence; educational institutions; federal, state, and local court documents; civilian and military investigatory reports; general correspondence concerning the individual; official records of professional qualifications; Navy Relief and American Red Cross requests for verification of status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94-24022 Filed 9-28-94; 8:45 am]

BILLING CODE 5000-04-F

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Korea concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer of fuel elements from the Republic of Korea to Atomic Energy of Canada, Ltd. for repair. These fuel elements contain 51.9552 kilograms of uranium containing 10.2508 kilograms of the isotope uranium-235 (19.73 percent enrichment). Retransfer document RTD/CA(KO)-2 has been assigned to this retransfer.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, D.C. on September 23, 1994.

Salvador N. Ceja,

Acting Director, International and Regional Security Division, Office of Arms Control and Nonproliferation.

[FR Doc. 94-24125 Filed 9-28-94; 8:45 am]

BILLING CODE 6450-01-M

Alaska Power Administration

Eklutna Project—Notice of Order Confirming and Approving an Adjustment of Power Rates on an Interim Basis

AGENCY: Alaska Power Administration, DOE.

ACTION: Notice of adjustment of power rates—Eklutna Project, rate schedules A-F11, A-N12, and A-W3.

SUMMARY: Notice is hereby given that the Deputy Secretary approved on September 14, 1994, Rate Order No. APA 12 which adjusts the present power rates for the Eklutna Project. This is an interim rate action effective October 1, 1994, for a period of 12 months. This rate is subject to final confirmation and approval by the Federal Energy Regulatory Commission (FERC) for a period of up to five years.

FOR FURTHER INFORMATION CONTACT: Mr. Lloyd Linke, Director, Power Division, Alaska Power Administration, 2770 Sherwood Ln., Suite 2B, Juneau, AK 99801, (907) 586-7405.

SUPPLEMENTARY INFORMATION: On May 3, 1994, the Alaska Power Administration (APA) published a **Federal Register** notice of its intention to adjust current power rates for the Eklutna Project for a period of up to five years. The present rates are 17 mills per kilowatthour for firm energy, 10 mills per kilowatthour for non-firm energy, and 0.3 mills per kilowatthour for wheeling. These rates were approved by FERC Order, Docket No. EF91-1011-000 issued January 25, 1991, for the period October 1, 1990, through September 30, 1994.

Based on comments received during the public information process, APA now proposes that rates be adjusted beginning October 1, 1994, for a period of up to five years. The new rates would be 18.7 mills per kilowatthour for firm energy, 10 mills per kilowatthour for non-firm energy, and 0.3 mills per kilowatthour for wheeling. The **Federal Register** notice also indicated APA's intention to seek interim approval of the proposed rates by the Deputy Secretary of Energy pending final confirmation and approval of the rates by FERC.

Following review of APA's proposal within the Department of Energy, on September 14, 1994, I approved on an interim basis Rate Order No. APA-12 which adjusts the present Eklutna Rates for period of up to five years beginning October 1, 1994, subject to final confirmation and approval by FERC.

Issued at Washington, DC on September 14, 1994.

William H. White,

Deputy Secretary.

In the Matter of: Alaska Power Administration—Eklutna Project Power Rates.

Rate Order No. APA-12

Order Confirming and Approving Power Rates on an Interim Basis

September 14, 1994.

This is an interim rate action subject to review and approval of the Federal Energy Regulatory Commission. It is made pursuant to the authorities delegated in DOE Delegation Order No. 0204-108, Amendment No. 3 to that Order.

Background

The Eklutna Project was completed by the U.S. Bureau of Reclamation in 1955. The Alaska Power Administration has operated and maintained the project since 1967. The Eklutna Project is a single-purpose project comprised of a dam, reservoir, 30,000-kw hydroelectric plant, 45 miles of 115-kV transmission lines, and three substations serving the Anchorage and Palmer areas. All project costs are allocated to power. The entire output of the project is under contract to three preference customers in the Anchorage-Palmer area on a take-or-pay basis.

Rate Schedules A-F10, A-N11 and A-W2 now in effect for the Eklutna Project were confirmed and approved by order of the Federal Energy Regulatory Commission, Docket No. EF91-1011-000 issued January 25, 1991 for a period ending September 30, 1994.

Discussion

System Repayment

Studies prepared by the Alaska Power Administration, as required by DOE Policy No. RA 6120.2, demonstrate that the present firm rate must be increased to provide sufficient revenue to meet requirements for the rate period and meet project repayment criteria by the end of the repayment period. On that basis, the Alaska Power Administration proposes an adjustment of the firm rate for a period not to exceed five years. The Administrator of Alaska Power Administration has certified that the new rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

Alaska Power Administration has concluded with Departmental concurrence that this rate action will have no significant environmental impact within the meaning of the Environmental Policy Act of 1969. It is the Alaska Power Administration's determination that the rate adjustment does not exceed the rate of inflation and therefore is categorically excluded from the NEPA process as defined in 40 CFR 1508.4 and is listed as a categorical exclusion for DOE in 10 CFR 1021, Appendix B4.3. The proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding this rate action, including studies and other supporting material, is available for public review in the offices of the Alaska Power Administration, 2770 Sherwood Lane, Suite 2B, Juneau, Alaska.

Public Notice and Comment

Opportunity for public review and comment on the rate action was announced by notice in the **Federal Register** on May 3, 1994, and in three paid advertisements of newspapers in the market area on May 1, 5, and 8, 1994. The notice provided for a comment period of 90 days following publication in the **Federal Register**. A public information and comment forum was scheduled in Anchorage, Alaska on June 14, 1994, with public comment period ending August 2, 1994. The public information and comment forum was canceled on June 7, 1994, due to lack of interest, in accordance with 10 CFR 903.15(b), 10 CFR 903.15(c) and the Alaska Power Administration's prior notices of the public forum.

Submission to FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 1994, attached Wholesale Power Rate Schedules A-F11 A-N12, and-A-W3. These rate schedules shall remain in effect on an interim basis for a period of 12 months unless such period is extended or until the Federal Energy Regulatory Commission confirms and approves them or substitute rate schedules on a final basis.

Issued at Washington, DC, this 14th day of September 1994.

William H. White,

Deputy Secretary.

Schedule A-F11

UNITED STATES

DEPARTMENT OF ENERGY

Alaska Power Administration

Eklutna Project, Alaska

Schedule of Rates for Wholesale Firm Power Service

Effective:
- October 1, 1994 for a maximum of five years.

Available:
- In the area served by the Eklutna Project, Alaska

Character and Conditions of Service:
- Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

Monthly Rate:
- Capacity charge: None
- Energy charge: All energy at 18.7 mills per kilowatt-hour

Minimum Annual Capacity Charge:
- None

Billing Demand:
- Not applicable

Adjustments:
- For transformer losses: If delivery is made at the high-voltage side of the customer's substation but metered at the low-voltage side, the meter readings will be increased 2 percent to compensate for transformer losses.
- For power factor: None. The customer will normally be required to maintain power factor at the point of delivery of between 90 percent lagging and 90 percent leading.
- For auxiliary power service: Auxiliary power supplies may be used in conjunction with the service hereunder if the parties hereto, prior to the Contractor's utilization of any such auxiliary power supply, have entered into a written operating agreement defining the procedure by which the amount of power and energy will be determined.

Schedule A-N12

UNITED STATES

DEPARTMENT OF ENERGY

Alaska Power Administration

Eklutna Project, Alaska

Schedule of Rates for Wholesale Nonfirm Power Service

Effective:
- October 1, 1994 for a maximum of five years.

Available:
- In the area served by the Eklutna Project, Alaska

Applicable:
- To firm power customers normally maintaining generating facilities or other sources of energy sufficient to supply their requirements.

Character and Conditions of Service:
- Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

Monthly Rate:
- Capacity charge: None
- Energy Charge: All energy at 10.0 mills per kilowatt-hour

Minimum Charge:
- None

Billing Demand:
- Not applicable

Adjustments:
- For character and conditions of service: None
- For transformer losses: If delivery is made at the high-voltage side of the customer's substation but metered at the low-voltage side, the meter readings will be increased 2 percent to compensate for transformer losses.

Schedule A-W3

UNITED STATES

DEPARTMENT OF ENERGY

Alaska Power Administration

Eklutna Project, Alaska

Schedule of Rates for Wholesale Wheeling Service

Effective:
- October 1, 1994 for a maximum of five years.

Available:
- In the area served by the Eklutna Project, Alaska

Applicable:
- To all non-federal power transmitted over Eklutna Project transmission facilities for the benefit of Project customers.

Character and Conditions of Service:
- Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

Monthly Rate:
- Capacity charge: None
- Energy Charge: All energy wheeled for others at .3 mills per kilowatt-hour.

Minimum Charge:
- None

Billing Demand:
- Not applicable

Adjustments:
- For character and conditions of service: None
- For transformer and transmission losses: As specified in wheeling contracts.

[FR Doc. 94-24126 Filed 9-28-94; 8:45 am]

BILLING CODE 6450-01-P

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Federal Energy Regulatory Commission

[Docket No. EF94–4021–000, et al.]

Southwestern Power Administration, et al.; Electric Rate and Corporate Regulation Filings

September 22, 1994.

Take notice that the following filings have been made with the Commission:

1. Southwestern Power Administration

[Docket No. EF94–4021–000]

Take notice that the Deputy Secretary, U.S. Department of Energy, on September 14, 1994, submitted to the Federal Energy Regulatory Commission (Commission) for confirmation and approval on a final basis, pursuant to the authority vested in the Commission by Delegation Order No. 0204–108, as amended November 10, 1993, 58 FR 59717, an annual power rate of $2,168,136 for the sale of power and energy by the Southwestern Power Administration (Southwestern) from the Sam Rayburn Dam Hydroelectric Project (Rayburn) to the Sam Rayburn Dam Electric Cooperative, Inc. (SRDEC). The rate was confirmed and approved on an interim basis by the Deputy Secretary in Rate Order No. SWPA–31 for the period October 1, 1994, through September 30, 1998, and has been submitted to the Commission for confirmation and approval on a final basis for the same period. The rate supersedes the annual power rate of $2,076,444, which the Commission approved on a final basis August 11, 1993, under Docket No. EF93–4021–000 for the period April 1, 1993, through September 30, 1997. The annual rate of $2,168,136 is based on the 1994 Revised Power Repayment Study for Rayburn and represents an annual increase in revenue of $91,692, or 4.4 percent, to satisfy repayment criteria.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Southwestern Power Administration

[Docket No. EF94–4081–000]

Take notice that the Deputy Secretary, U.S. Department of Energy, on September 14, 1994, submitted to the Federal Energy Regulatory Commission (Commission) for confirmation and approval on a final basis, pursuant to the authority vested in the Commission by Delegation Order No. 0204–108, as amended November 10, 1993, 58 FR 59717, an annual power rate of $294,312 for the sale of power and energy by the Southwestern Power Administration (Southwestern) from the Robert D. Willis Hydroelectric Project (Willis) to the Sam Rayburn Municipal Power Agency (SRMA). The rate was confirmed and approved on an interim basis by the Deputy Secretary in Rate Order No. SWPA–30 for the period October 1, 1994, through September 30, 1998, and has been submitted to the Commission for confirmation and approval on a final basis for the same period. The rate supersedes the annual power rate of $284,580, which the Commission approved on a final basis August 11, 1993, under Docket No. EF93–4081–000 for the period April 1, 1993, through September 30, 1997. The annual rate of $294,312 is based on the 1994 Revised Power Repayment Study for Willis and represents an annual increase in revenue of $9,732, or 3.4 percent, to satisfy repayment criteria.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Wartsila Diesel Dominicana, S.A.

[Docket No. EG94–97–000]

Wartsila Diesel Dominicana, S.A. ("Dominicana") (c/o Lee M. Goodwin, Reid & Priest, 701 Pennsylvania Avenue, NW., Washington, DC 20004) filed with the Federal Energy Regulatory Commission an application on September 20, 1994 for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Dominicana is a Dominican Republic company formed to develop, own, and/or operate eligible facilities. Dominicana will operate two diesel electric generating facilities in the Dominican Republic. Dominicana states that it also may engage in project development activities associated with its development or acquisition of operating or ownership interests in additional as-yet unidentified eligible facilities and/or exempt wholesale generators that meet the criteria in Section 32 of the Public Utility Holding Company Act.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. New York State Electric & Gas Corporation

[Docket No. ER94–960–000]

Take notice that New York Electric & Gas Corporation (NYSEG) on September 12, 1994, tendered for filing an amendment to its February 8, 1994 filing in the above-referenced docket. NYSEG's filings in this docket pertain to an Agreement between NYSEG and Baltimore Gas & Electric Company (BG&E), under which NYSEG may sell and BG&E may purchase energy only or electric generating capacity and associated energy, as the parties may mutually agree from time to time. The current filing is being made at Commission Staff's request and explains various aspects of the agreement.

NYSEG requests that February 9, 1994 be allowed as an effective date of this filing and requests waiver of the 60-day notice requirement for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission, the Maryland Public Service Commission and BG&E.

Comment date: October 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Rochester Gas and Electric Corporation

[Docket No. ER94–1640–000]

Take notice that Rochester Gas and Electric Corporation (RG&E), on September 8, 1994, tendered for filing a Service Agreement for acceptance by the Federal Energy Regulatory Commission (Commission) between RG&E and North American Energy Conservation, Inc. The terms and conditions of service under this Agreement are made pursuant to RG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1279. RG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: October 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Duquesne Light Company

[Docket No. TX94–10–000]

Take notice that on September 16, 1994, Duquesne Light Company filed an application requesting that the Commission order the Allegheny Power System to provide 300 MW of firm transmission service for a twenty-year term. Duquesne has requested firm transmission service that provides flexibility in changing receipt and delivery points, and also has requested non-firm service to the extent Duquesne is not using its full firm reservation. Duquesne has requested that service commence no later than the date any facilities upgrades necessary to provide the service are installed.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24123 Filed 9–28–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2614–021 Kentucky]

City of Hamilton, Ohio; Availability of Environmental Assessment

September 23, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for amendment of license for the Greenup Project, located on the Ohio River, in Greenup County, Kentucky, and has prepared an Environmental Assessment (EA) on an change made to the project's transmission line. In the EA, the Commission staff concluded that the change to the transmission line should be approved with modification. Further, the Commission staff concluded that approval of the proposed amendment would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, DC 20426.

Please submit any comments within 30 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Please affix Project No. 2614–021 to all comments. For further information, please contact Mr. Jon Cofrancesco at (202) 219–0079.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24049 Filed 9–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–282–000]

Northwest Pipeline Corporation; Availability of the Environmental Assessment for the Proposed Hood River Pipeline Loop and Extension Project

September 23, 1994.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas facilities proposed by Northwest Pipeline Corporation (Northwest) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed Hood River Pipeline Loop and Extension Project in Klickitat County, Washington, including:

- 3.7 miles of loop of 6-inch-diameter pipeline,
- 1.6 miles of new 6-inch-diameter pipeline, and
- a new meter station.

The purpose of the proposed project would be to provide up to 11,000 million British thermal units per day of natural gas to the planned Klickitat Energy Partners cogeneration facility.

The staff has recommended an alternative to the proposed route in the Columbia River Gorge National Scenic Area's agriculturally designated General Management Area. The discussion of the alternatives begins on page 11 of the EA.

The EA has been placed in the public files on the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Division of Public Information, 941 North Capitol Street NE., Room 3104, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Mr. Bob Kopka, Environmental Project Manager, Environmental Review and Compliance Branch I, Office of Pipeline Regulation, Room 7215, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0282.

Any person wishing to comment on the EA may do so. Written comments must reference Docket No. CP94–282–000, and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Comments should be filed as soon as possible, but must be received no later than October 24, 1994, to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should also be sent to Mr. Bob Kopka, Environmental Project Manager.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about this project is available from Mr. Bob Kopka, Environmental Review and Compliance Branch I, Office of Pipeline Regulations, at (202) 208–0282.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24048 Filed 9–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP93–618–000 and CP93–618–001]

Pacific Gas Transmission Company; Availability of the Environmental Assessment for the Proposed PGT Expansion II Project

September 23, 1994.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this environmental assessment (EA) on the natural gas pipeline facilities proposed by Pacific Gas Transmission Company (PGT) in the above dockets.

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The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed PGT Expansion II Project, including two laterals off PGT's existing mainline system:

- Medford Extension: 86.5 miles of new 12-inch-diameter natural gas pipeline;
- Coyote Springs Extension: 18.5 miles of new 12-inch-diameter natural gas pipeline;
- Two new meter stations: the Medford Meter Station and the Coyote Springs Meter Station; and
- Two new service taps and appurtenant facilities.

The purpose of the proposed facilities would be to:

(1) Provide about 16,400 million British thermal units per day (MMBtu/d) of firm annual transportation service and additional 15,000 MMBtu/d of firm winter transportation service through the Medford Extension; and

(2) Provide about 41,000 MMBtu/d of firm transportation service through the Coyote Springs Extension. The EA also evaluates alternatives to PGT's proposal.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Division of Public Information, 941 North Capitol Street NE., Room 3104, Washington, DC 20426, (202) 208–1371.

Copies have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Ms. Alisa Lykens, Environmental Project Manager, Environmental Review and Compliance Branch I, Office of Pipeline Regulation, Room 7312, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0766.

Any person wishing to comment on the EA may do so. Written comments must reference Docket Nos. CP93–618–000 and CP93–618–001. Comments should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Comments should be filed as soon as possible, but must be received no later than October 28, 1994, to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should also be sent to Ms. Alisa Lykens, Environmental Project Manager.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Additional information about this project is available from Ms. Alisa Lykens, Environmental Review and Compliance Branch I, Office of Pipeline Regulation, at (202) 208–0766.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24046 Filed 9–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–109–000]

Transcontinental Gas Pipe Line Corporation; Availability of the Environmental Assessment for the Proposed 1995/1996 Southeast Expansion Project

September 23, 1994

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an Environmental Assessment (EA) on the natural gas pipeline facilites proposed by Transcontinental Gas Pipe Line Corporation (Transco) in the above-reverenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed 1995/1996 Southeast Expansion Project. The project involves construction of about 15.1 miles of 42-inch-diameter natural gas pipeline loop in Chilton and Autauga Counties, Alabama; 69,700 hp of new compression at four existing compressor stations; and equipment modifications to allow increased annual operating hours at one existing compressor station. In addition, Georgia Power Company (Georgia Power) plans to construct an electric substation and a 2.4 mile-long power transmission line to serve Compressor Station 120.

The locations of the compressor stations are as follows:

- Compressor Station 90, Marengo County, Alabama.
- Compressor Station 100, Chilton County, Alabama.
- Compressor Station 110, Randolph County, Alabama.
- Compressor Station 120, Henry County, Georgia.
- Compressor Station 150, Iredell County, North Carolina.

The purpose of the proposed project would be to provide additional transportation capacity of 165,000 thousand cubic feet per day (Mcfd) of natural gas to Transco's Southeastern market.

The specific issue addressed in the EA include:

- Noise from the compressor stations;
- Construction near residences;
- Protection of groundwater resources;
- Erosion control;
- Stream and wetland crossings;
- Threatened and endangered species; and
- Cultural resources.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Division of Public Information, 941 North Capitol Street NE., Room 3104, Washington, DC 20426; (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Ms. Laura Turner, Environmental Project Manager, Environmental Review and Compliance Branch II, Office of Pipeline Regulation, Room 7312, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0916.

Any person wishing to comment on the EA may do so. Written comments must reference Docket No. CP94–109–000 and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

Comments should be filed as soon as possible, but must be received no later than October 24, 1994, to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should also be sent to Ms. Laura Turner, Environmental Project Manager.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

The date of filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your commets considered.

Additional information about this project is available from Ms. Laura Turner, Environmental Review and Compliance Branch II, Office of Pipeline Regulation, at (202) 208–0916.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24047 Filed 9–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–779–000, et al.]

Natural Gas Pipeline Company of America, et al.; Natural Gas Certificate Filings

September 22, 1994.

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Company of America

[Docket No. CP94–779–000]

Take notice that on September 15, 1994, Natural Gas Pipeline Company of America (Natural) filed an application in Docket No. CP94–779–000 pursuant to section 7(c) of the Natural Gas Act, and Subpart A of Part 157 of the Federal Energy Regulatory Commission's regulations for a certificate of public convenience and necessity authorizing it to construct and operate a new 4,000 HP electric compressor motor as a replacement for an existing 3,000 HP electric compressor at its North Lansing storage field located in Harrison and Gregg Counties, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that the existing motor has experienced maintenance problems and is less efficient than the proposed new motor. Also, the existing compression facilities, to which the new motor will be attached, can operate effectively with a 4,000 HP unit. The incremental cost of the additional 1,000 HP is only about $50,000 to $60,000. The total estimated cost of this replacement is approximately $400,000. Natural further states that the increase in horsepower will allow Natural to inject more gas at North Lansing on a daily basis. According to Natural, this increase in injection capability will benefit all of Natural's customers who want to take advantage of price savings in their natural gas purchases. Natural states that it is not proposing any changes in its certificated storage inventory or peak day deliverability levels at North Lansing.

Comment date: October 13, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. East Tennessee Natural Gas Company

[Docket No. CP94–781–000]

Take notice that on September 16, 1994, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94–781–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point for Smelter Service Corp. (Smelter Service) under East Tennessee's blanket certificate issued in Docket No. CP82–412–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

East Tennessee proposes to construct and operate a two-inch hot tap, interconnect piping and measurement facilities located near M.P.3203A–301+1.5 in Maury County, Tennessee. East Tennessee states that these facilities, costing $37,020, would be paid for by Smelter Service. East Tennessee also states that Smelter Service has requested delivery capability of 800 Dekatherms of natural gas per day which would be used for various sales agreements. East Tennessee asserts that this service would be covered by an Operational Balancing Agreement pursuant to the terms and of its Rate Schedule LMS–MA. Finally, East Tennessee states that it has sufficient capacity to accomplish this delivery without harming its other customers.

Comment date: November 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP94–782–000]

Take notice that on September 16, 1994, Northwest Pipeline Corporation (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP94–782–000 a request pursuant to Sections 157.205, 157.2ll, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.216) for authorization to upgrade its Meridian and Mountain Home Meter Stations in Ada and Elmore Counties, Idaho, respectively, by partially abandoning existing regulator facilities and appurtenances and construction and operating appropriate replacement facilities to accommodate a request by Intermountain Gas Company (intermountain) for additional delivery capabilities at these points to accommodate significant growth in both areas. The proposed request is being made under Northwest's blanket certificate authority issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Northwest proposes to remove and retire the two existing 2-inch regulators from the secondary meter run and relocate one of the 4-inch regulators from the primary meter run at the Meridian Meter Station. Northwest states that the existing 4-inch regulator will be re-installed in the secondary meter run which will result in the station not being operated in a monitor configuration. It is stated that this proposed change will increase the maximum design delivery capacity of the Meridian Meter Station from 40,500 Dt per day at 350 psig to approximately 60,097 Dt per day at 390 psig.

Northwest further proposes to remove and retire one existing 2-inch regulator from each meter run at the Mountain Home Meter Station which will result in the station not being run in a monitor configuration, and to modify various appurtenances. It is stated that this change will increase the maximum design delivery capacity of the Mountain Home Meter Station from 5,560 Dt per day at 250 psig to approximately 11,466 Dt per day at 300 psig.

Northwest states that the total costs of the proposed facility upgrades at the Meridian and Mountain Home Meter Stations are estimated to be approximately $43,700 and $54,800, respectively. Northwest avers that pursuant to a Facilities Agreement dated August 31, 1994, as amended, Intermountain has agreed to reimburse Northwest for the cost of upgrading the Meridian and Mountain Home Meter Stations in accordance with and pursuant to the facilities reimbursement provisions of Northwest's tariff.

Comment date: November 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

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4. Northwest Pipeline Corporation

[Docket No. CP94–783–000]

Take notice that on September 16, 1994, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP94–783–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a meter station in King County, Washington under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to construct and operate a meter station in King County, Washington to provide firm service to Washington Natural Gas Company. It is stated that the cost would be $652,600 which would be reimbursed by Washington Natural Gas Company, except for the right-of-way cost.

Comment date: November 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. Columbia Gas Transmission Corporation

[Docket No. CP94–786–000]

Take notice that on September 20, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed a prior notice request with the Commission in Docket No. CP94–786–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new delivery point for interruptible transportation service to Ohio Edison Company (Ohio Edison) in Lorain County, Ohio, under Columbia's blanket certificates issued in Docket Nos. CP83–76–000 and CP86–240–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request that is open to the public for inspection.

Columbia proposes to construct and operate a new delivery point to serve Ohio Edison in Lorain County. Columbia's proposed facilities would consist of a 12-inch tap, flow control instrumentation, electronic measurement (to be owned by Ohio Edison), approximately 60 feet of station piping, separator, and associated valves. Columbia states that Ohio Edison would reimburse Columbia approximately $197,000, which includes gross-up for income tax purposes, for the construction costs for the new delivery point. Columbia would deliver up to 74,250 dekatherms per day and 5,000,000 dekatherms annually under its FERC Rate Schedule ITS and within certificated entitlements to Ohio Edison.

Comment date: November 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

6. Koch Gateway Pipeline Company

[Docket No. CP94–788–000]

Take notice that on September 20, 1994, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP94–788–000 a request pursuant to Sections 157.205 and 157.211(a)(2) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to install a one-inch tap under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway proposes to install the one-inch tap through which Koch Gateway will deliver natural gas for West Wilmer, Alabama, a community to be served by South Alabama Utility District in Mobile County, Alabama. Koch Gateway currently supplies South Alabama's natural gas requirements under Koch Gateway's No Notice Service rate schedule. No change in the existing service level is proposed.

Comment date: November 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24124 Filed 9–28–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–86–000, et al.]

CNG Transmission Corporation; Informal Settlement Conference

September 23, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on October 5, 1994, at 10:00 a.m., and if necessary, October 6, 1994, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, contact David R. Cain at (202) 208–0917 or Neil L. Levy at (202) 208–5705.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24059 Filed 9–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER94–1330–000, ER94–1363–000, ER94–1364–000, ER94–1398–000]

Pennsylvania Power & Light Co.; Notice of Filing

September 23, 1994.

Take notice that on September 22, 1994, Pennsylvania Power & Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission supplemental material relating to the above dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24060 Filed 9–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER92–776–000]

Public Service Electric & Gas Co.; Notice of Filing

September 23, 1994.

Take notice that on September 19, 1994, Public Service Electric and Gas Company (PSE&G), tendered for filing an unexecuted Second Supplement to the Interruptible Transmission Service Agreement between PSE&G and Continental Energy Associates (CEA), a Limited Partnership (Second Supplement).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24061 Filed 9–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–254–006]

Southern Natural Gas Co.; Notice of GSR Revised Tariff Sheets

September 23, 1994.

Take notice that on September 20, 1994, Southern Natural Gas Company (Southern) submitted as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to reflect an increase in GSR billing units effective September 1, 1994, due to new transportation commitments under rate schedule FT:

First Sub. Eleventh Revised Sheet No. 15
First Sub. Eleventh Revised Sheet No. 17
First Sub. Ninth Revised Sheet No. 29
First Sub. Ninth Revised Sheet No. 30
First Sub. Ninth Revised Sheet No. 31

Additionally, Southern hereby amends its tariff filing of August 31, 1994, in Docket No. RP94–264, et al. by withdrawing therefrom the following tariff sheets:

Eleventh Revised Sheet No. 15
Eleventh Revised Sheet No. 17
Ninth Revised Sheet No. 29
Ninth Revised Sheet No. 30
Ninth Revised Sheet No. 31

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before September 30, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24062 Filed 9–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–299–000]

Texas Eastern Transmission Corp.; Notice of Technical Conference

September 23, 1994.

Take notice that a technical conference has been scheduled in the above-captioned proceeding for Wednesday, October 5, 1994 at 1:00 p.m., in a hearing room at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

This conference is limited to the discussion of issues related to storage, the retention of upstream capacity, and segmented capacity rights for small customers.

All interested persons and staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24063 Filed 9–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–177–005]

Texas Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

September 23, 1994.

Take notice that on September 20, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 the following revised tariff sheets:

Second Revised Sheet No. 1
First Revised Sheet Nos. 24 through 36
First Revised Sheet No. 145
Second Revised Sheet No. 207
First Revised Sheet No. 208
First Revised Sheet No. 218

Texas Gas states that the revised tariff sheets are being filed to comply with Article IV of Texas Gas's Stipulation and Agreement (Settlement) filed on May 16, 1994, which requires the sheets be filed within fifteen (15) days of the effective date of the Settlement. The Settlement was approved by Commission Order on August 4, 1994, in conjunction with several related settlements and resolves a number of long-standing issues, including the allocation of take-or-pay costs pursuant to Order Nos. 500 and 528. The revised

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tariff sheets are identical to the pro forma sheets contained in Appendix B of Texas Gas's Settlement and show the refunds and allocation factors consistent with the Settlement. Texas Gas seeks an effective date of September 6, 1994, to correspond with the effective date of the Settlement.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected customers, interested state commissions, and those who are parties on the official service lists of the referenced dockets listed above.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 925 North Capitol Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before September 30, 1994.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24064 Filed 9-28-94, 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Efficiency and Renewable Energy

[Case No. CD-001]

Energy Conservation Program for Consumer Products; Denial of Miele Appliance Inc.'s Application for Interim Waiver and Publishing of the Company's Petition for Waiver From the Existing Department of Energy Clothes Dryer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter denying an Interim Waiver to Miele Appliance Inc. (Miele) from the existing Department of Energy (DOE or Department) clothes dryer test procedure for its clothes dryer models T1515A, T1520, T1565CA; and T1570C with a reverse tumble feature which Miele contends allows it to use a smaller capacity drum for a larger clothes dryer load. The existing clothes dryer test procedure does not have any recognition of the reverse tumble design feature.

Today's notice also publishes a "Petition for Waiver" from Miele. Miele's Petition for Waiver requests DOE to grant relief from the DOE clothes dryer test procedure relating to its clothes dryer models T1515A, T1520, T1565CA, and T1570C. The appendices to Miele's letter were not suitable for publication in the **Federal Register** and are available upon request from the contact person listed below.

Miele seeks to revise the definitions of compact and standard size clothes dryers in the test procedure. DOE is soliciting comments and information regarding the Petition for Waiver. Specifically, the Department is seeking technical information/data on how the reverse tumble feature affects test load capacity.

DATES: DOE will accept comments, data, and information not later than October 31, 1994.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. CD-001, Mail Stop EE-431, Room 5E-066, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, 20585 (202) 586-7140.

FOR FURTHER INFORMATION CONTACT:

P. Marc LaFrance U.S. Department of Energy, Appliance Standards Division, Office of Codes and Standards, Office of Building Technologies, Office of Energy Efficiency and Renewable Energy, Mail Stop EE-431, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-8423

Eugene Margolis, Esq. U.S. Department of Energy, Office of General Counsel, Mail Stop GC-72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-9507

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Program Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, and the Energy Policy Act of 1992, Public Law 102-486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of covered consumer products, including clothes dryers. The clothes dryer test procedure, among other things, provides a means of calculating an energy factor, a measure of energy efficiency, which is used to determine if a product is compliant with the minimum energy conservation standards. The Department imposed amended energy conservation standards requiring minimum energy factors for four of the five classes of clothes dryers in a final rule (56 FR 22279) issued May 14, 1991, and which is effective for products manufactured on or after May 14, 1994. These test procedures appear at 10 CFR Part 430, Subpart D.

DOE amended the prescribed test procedure by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process (45 FR 64108). Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures (51 FR 42823, November 26, 1986).

The waiver process allows the Assistant Secretary to temporarily waive the test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Miele filed a Petition for Waiver and an Application for Interim Waiver on April 5, 1994 which was amended on April 20, 1994 and April 22, 1994, regarding its clothes dryers models T1515A, T1520, T1565CA, and T1570C with a reverse tumble feature. Miele states in its April 5, 1994 submission that "The specific design characteristics [reverse tumble feature] of the Miele clothes dryer make the classification of the product as 'compact' totally unrepresentative of the products' true energy consumption characteristics and provides materially inaccurate comparative data." The existing clothes dryer test procedure does not have any recognition of the reverse tumble design feature in determining dryer size or class.

Miele has informed the Department (telephone conversation with Miele's representative, Mr. John A. Hodges, early April, 1994) that if its clothes dryers were tested as a compact (3 pound test load), they would not meet the minimum energy conservation standard for the class of 120 volt, electric, compact capacity clothes dryers. However, the Miele clothes dryers have been tested as standard (7 pound test load) and exceeded the minimum energy conservation standard for the class of electric, standard capacity clothes dryers.

On April 27, 1994, the Department received a letter, dated April 22, 1994, from the Whirlpool Corporation (Whirlpool) opposed to Miele's Petition for Waiver and Application for Interim Waiver. On April 29, 1994, the Department received a letter from the General Electric Company (GE) also opposed to Miele's Petition for Waiver and Application for Interim Waiver. On May 13, 1994, the Department received a letter dated May 5, 1994, from the Speed Queen Company (Speed Queen) opposed to Miele's Petition for Waiver. On May 13, 1994, Miele provided rebuttal comments.

On May 20, 1994, Miele provided additional information on the impact of reverse tumble action on drying large loads. The Department has reviewed all the comments and believes that the majority of these comments relate to engineering issues which should be fully debated during the Petition for Waiver comment period. The Department is interested in the maximum load capability of compact clothes dryers and any data regarding energy consumption with larger loads. Additionally, the Department is interested in seeking technical information/data on how the reverse tumble feature affects load capacity.

Miele states in its initial submission to the Department that "Miele Appliance, Inc. is a small company with under 50 employees and will suffer great and irreparable economic hardship if it cannot sell its line of clothes dryers as standard." Miele further states that since its clothes dryer is intended to be sold with its standard size front loading clothes washer, "an inability to sell the clothes dryer as standard will cripple sales of washing machines as well." Miele also states that "since the revenue from the sale of laundry products is essential to the financial well being of the company, the regulatory prohibition of sales of the clothes dryers as standard will jeopardize the company and result in loss of employment."

To grant an Interim Waiver, one of three criteria, *supra*, must be met. First, in regards to "economic hardship," Miele has indicated that failure to sell its clothes dryers as "standard size" will impact the sale of its laundry products and result in loss in employment. However, Miele did not specify any historical nor future anticipated revenue loss from these particular models in question. Furthermore, Miele did not provide any financial data relative to its company nor the financial affiliation of its parent company. The Department agrees that the loss of sales of any product will financially affect a company, however, the Department does not believe that Miele has demonstrated that it would cause economic hardship.

Second, in regards to "it appears likely that the Petition for Waiver will be granted," the Department questions whether the Petition for Waiver will be granted. A waiver can be granted for either one of two reasons. The first is if a product has design features which the test procedure is not capable of testing, and the second is if the test procedure provides results which are unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Miele certainly can test its products with the Department's test procedure. However, in regards to the test procedure providing materially inaccurate comparative data, the Department has concern. This concern is primarily raised by the appearance that Miele is actually submitting the Petition for Waiver to allow its products to meet the minimum energy conservation standard versus the test procedure providing results which are materially unrepresentative. The Department believes that Miele has not demonstrated that the results will provide "materially inaccurate comparative data," even though Miele contends its dryers are more efficient with larger loads. The Department hopes to receive additional data in response to today's publication of the Miele Petition for Waiver.

Third, in regards to "it would be desirable for public policy reasons," Miele has indicated that denial of the Waiver would be destructive to the company and anticompetitive. The Department does not believe that either conclusion was demonstrated by Miele. Further, Miele indicated that denial of the Waiver blocks innovative, improved designs. The company is seeking through the waiver process to meet the minimum standard level by having its machine reclassified as a "standard" clothes dryer rather than a "compact" clothes dryer. With the reverse tumble feature, the Miele clothes dryer does not meet the 120v, *compact*, electric, clothes dryer minimum energy efficiency standard. Innovative improved designs are not being blocked. The technical merits of the reverse tumble feature must be fully developed in the Petition for Waiver procedure.

Therefore, for the reasons stated above, the Department denies Miele's Application for Interim Waiver for its clothes dryers models T1515A, T1520, T1565CA, and T1570C. Pursuant to paragraph (e) of § 430.27 of Title 10 Code of Federal Regulations Part 430, the following letter denying the Application for Interim Waiver to Miele was issued.

Pursuant to paragraph (b) of 10 CFR part 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The Petition contains no confidential information. DOE would appreciate comments, data and other information regarding the Petition, discussed above.

Issued in Washington, DC, September 21, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Department of Energy, Washington, DC 20585, September 21, 1994

Mr. Nick Ord,
Vice-President and General Manager,
Miele Appliances Inc.,
22D Worlds Fair Drive,
Somerset, NJ 08873

Dear Mr. Ord:

This is in response to your Petition for Waiver and Application for Interim Waiver of April 5, 1994, amended on April 20, 1994, and April 22, 1994, from the Department of Energy (DOE or Department) test procedure regarding Miele Appliances Inc. (Miele) clothes dryer models T1515A, T1520, T1565CA, and T1570C.

You have indicated that your clothes dryers have a reverse tumble feature which allows them to use a smaller capacity drum for a larger clothes dryer load. You further stated, "The specific design characteristics of the Miele clothes dryer make the

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classification of the product as 'compact' totally unrepresentative of the product's true energy consumption characteristics and provides materially inaccurate comparative data."

For the reasons stated *infra*, the Department denies Miele's Application for Interim Waiver for its clothes dryers models T1515A, T1520, T1565CA, and T1570C.

In order for the Department to be able to grant Miele an Interim Waiver, it must be determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver.

In regards to "economic hardship," Miele has indicated that failure to sell its clothes dryers as "standard size" will impact the sale of its laundry products and result in loss in employment. However, Miele did not specify any historical nor future anticipated revenue loss from these particular models in question. Furthermore, Miele did not provide any financial data relative to its company nor the financial affiliation of its parent company. The Department agrees that the loss of sales of any product will financially affect a company, however the Department does not believe that Miele has demonstrated that it would cause economic hardship.

Second, in regards to "it appears likely that the Petition for Waiver will be granted," the Department questions whether the Petition for Waiver will be granted. A waiver can be granted for either one of two reasons. The first is if a product has design features which the test procedure is not capable of testing, and the second is if the test procedure provides results which are unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Miele certainly can test its products with the Department's test procedure. However, in regards to the test procedure providing materially inaccurate comparative data, the Department has concern. This concern is primarily raised by the appearance that Miele is actually submitting the Petition for Waiver to allow its products to meet the minimum energy conservation standard versus the test procedure providing results which are materially unrepresentative. The Department believes that Miele has not demonstrated that the results will provide "materially inaccurate comparative data," even though Miele contends its dryers are more efficient with larger loads. The Department hopes to receive additional data in response to the publication of the Miele Petition for Waiver.

Third, in regards to "it would be desirable for public policy reasons," Miele has indicated that denial of the Waiver would be destructive to the company and anticompetitive. The Department does not believe that either conclusion was demonstrated by Miele. Further, Miele indicated that denial of the Waiver blocks innovative, improved designs. The company is seeking through the waiver process to meet the minimum standard level by having its machine reclassified as a "standard" clothes dryer rather than a "compact" clothes dryer. With the reverse tumble feature, the Miele clothes dryer does not meet the 120v, *compact*, electric, clothes dryer minimum energy efficiency standard. Innovative improved designs are not being blocked. The technical merits of the reverse tumble feature must be fully developed in the Petition for Waiver procedure.

The Department will publish the Petition for Waiver in the **Federal Register** and conduct a formal rulemaking so that the technical merits of the submission can be fully developed.

If there are any questions, please contact Mr. Michael McCabe of my staff at (202)–586–9155

Sincerely,

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy

April 5, 1994

Assistant Secretary, Energy Efficiency and Renewable Energy, United States Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585

Re: Application for Interim Waiver and Petition for Waiver, 10 C.F.R., Subpart B, Appendix D—Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers

Dear Assistant Secretary:

Miele Appliances, Inc. hereby submits this Application for Interim Waiver and Petition for Waiver pursuant to Title 10 C.F.R. § 430.27. This section provides for waiver of test methods on the grounds that a basic model contains design characteristics that either prevent testing according to the prescribed test procedure or produce data so unrepresentative of a covered product's true energy consumption characteristics as to provide materially inaccurate comparative data.

Miele Appliances, Inc., a Delaware corporation, is a small business with under 50 employees. It currently markets highly efficient, advanced-design vented and condenser (non-vented) clothes dryers to complement its front-loading, horizontal axis washing machines. These products perform as standard size products and handle standard capacity loads. They are marketed as standard capacity products. Integral to the design of Miele's clothes dryers is an advanced drum design that handles a standard load capacity with a drum size of 3.54 cu.ft.

Despite the fact that the Miele clothes dryer has a standard load capacity, the DOE test procedure classifies it as "compact." According to the DOE test method for measuring the energy consumption of clothes dryers, 10 C.F.R. Subpart, B, Appendix D, the Miele clothes dryers are classified as "compact" (*id.* § 1.3) since their drum size of 3.54 cu.ft. is less than the DOE definition of "standard." The definition of "standard" is equal to or greater than 4.4 cubic feet (*id.* § 1.9). The definitions of "standard" and "compact" were adopted by DOE many years ago[1] and to not take into account the advanced Miele design.

The specific design characteristics of the Miele clothes dryers make the classification of the products as "compact" totally unrepresentative of the products' true energy consumption characteristics and provide materially inaccurate comparative data. This treatment essentially locks Miele out of the market for standard clothes dryers in the United States, which would be manifestly unfair and discriminatory.

To remedy this unfairness and discrimination, Miele Appliances, Inc. urgently requests an Interim Waiver and a Waiver to permit its clothes dryers to be treated as "standard size" for purposes of the test procedure and to determine compliance with the related federal efficiency standard.

Miele clothes dryers are clearly designed to operate as "standard size" dryers. They are designed to pair with Miele's standard clothes washer. They handle a standard load. When tested as "standard size," the clothes dryer easily exceeds the minimum DOE energy requirements for "standard size" clothes dryers (10 C.F R. § 430.32(h)). More specifically:

- The Miele clothes dryers are designed to complement Miele's front-loading washing machines, Models W1918 and W1930. (See product literature, attached hereto as Appendix 1.) These washing machines are classified by DOE as being of "standard" capacity, since their drum capacity exceeds the 1.6 cubic feet minimum capacity required for classification as "standard". (See independent ETL testing verification, Appendix 2.)
- When the Miele clothes dryers are tested as "standard" appliances according to the prescribed DOE requirements, all models easily comply with the energy consumption requirements. (See independent ETL testing verification, Appendix 3.)
- Miele clothes dryers are able to achieve these "standard" energy efficient rating despite their drum size, because of specific design characteristics, namely:

—Miele clothes dryers have reverse tumble action. Unlike conventional drum dryers, Miele dryers rotate clockwise (60 seconds), stop and then rotate counterclockwise (60 seconds). This procedure is continued through all aspects of the drying cycle. The purpose of this reverse tumble action is to be able to dry a standard load of fabrics evenly, since by rotating in both directions the fabrics cannot roll up a ball. This avoids having the fabrics being dry on the outside and wet/damp on the inside, as would otherwise happen in a product with this drum size.

—Miele clothes dryers have a lower amperage than do larger drum dryers. Miele clothes dryers are rated at 15 amps in contrast to 30 amps to larger drum dryers. Miele clothes dryers also have lower heat output, *i.e.*, the clothes are dried at lower temperatures than conventional 30 amp dryers.

Miele's line of condenser dryers have additional special design characteristics. Miele condenser dryers do not vent the exhaust air to the outside, but rather convert the hot, humid air to water inside the appliance. This technology benefits those dwellers of high-rise apartments, who in many cases have no way to vent to the outside, or at least not without considerable remodelling/construction expense. This advantageous design characteristic produces a more complex drying process than the regular vented dryer, yet when tested as a "standard" appliance, complies with the DOE energy efficiency standard.

The Miele clothes washer and clothes dryer are marketed and intended to be used as a standard laundry pair. If the clothes dryer were forced to be classified as "compact," it would jeopardize the market for both the clothes washer and clothes dryer. Compact clothes dryers are perceived in the marketplace as being very different from a standard clothes dryer. Compact clothes dryers are perceived as having fewer features and therefore less desirable than standard clothes dryers.

In light of the foregoing, Miele requests an Interim Waiver and Waiver that will make the following amendments to 10 C.F.R., Subpart B, Appendix D, with respect to Miele clothes dryers Models T1515A, T1520, T1565CA, and T1570C (additions underlined):

1.3 "Compact" or "compact size" means a clothes dryer with a drum capacity of less than 4.4 cubic feet, *except that a clothes dryer with a drum capacity meeting the requirements of Section 1.9 shall be deemed to be a "standard size" clothes dryer and shall be tested pursuant to the testing conditions and test procedures for "standard size" clothes dryers.*

* * * * *

1.9 "Standard size" means a clothes dryer with a drum capacity of 4.4 cubic feet or greater, *except that a clothes dryer with a drum capacity of 3.50 cubic feet or greater with reverse tumble action that alternately rotates the drum clockwise and counterclockwise during the drying cycle to dry a standard size drying load shall be deemed to be "standard size" clothes dryer and shall be tested pursuant to the testing conditions and test procedures for "standard size" clothes dryers.*

Miele Appliances, Inc. requests immediate relief by grant of the proposed Interim Waiver. Grant of an Interim Waiver is fully justified:

Economic Hardship—Miele Appliances, Inc. is a small company with under 50 employees and will suffer great and irreparable economic hardship if it cannot sell its line of clothes dryers as standard. If Miele clothes dryers are not treated as standard, they will in effect be denied effective access to the United States market. Beyond that, since the Miele clothes dryer is intended to be sold as a pair with one of the Miele energy and water efficient standard size front-loading washing machines discussed above (and depicted in Appendix 1), an inability to sell the clothes dryer as standard will cripple sales of the washing machine as well. Since the revenue from the sale of laundry products is essential to the financial well-being of the company, the regulatory prohibition of sales of the clothes dryer as standard will jeopardize the company and result in loss of employment.

Significant investment has already been made in developing Miele clothes dryers that comply with recognized United States safety testing standards. An inability to sell the products as standard size due to regulatory action would not allow Miele to recoup these significant investments, the financial consequences of which would further jeopardize the company.

To comply with the DOE definition of a "standard" clothes dryer, *i.e.*, a drum size equal to or greater than 4.4 cubic feet, Miele would have to initiate great manufacturing and tooling changes in order to produce such a product. The huge investments needed to accomplish this would result in a significant increase in the manufacturing cost of the clothes dryers, which would not benefit consumers and would simply result in substantially higher cost to the consumer. This would render Miele products totally uncompetitive. Consequently, the financial well-being of the company would rapidly deteriorate.

Likely Approval of Waiver—The Petition for Waiver is likely to be granted, because the design characteristics of the clothes dryers are intended to allow the products to function as energy-efficient "standard" clothes dryers. In addition, it is manifestly unfair to classify the Miele clothes dryer as being "compact" even though it performs as a "standard" clothes dryer and is designed to complement the matching Miele clothes washer, which is classified by DOE as being of "standard" capacity. An independent testing company has verified that when tested according to DOE testing procedures as a "standard" clothes dryer, Miele dryers easily comply with the consumption requirements.

Only a relatively small number of clothes dryers will be sold by Miele Appliances, Inc. in the time period between Interim Waiver and Waiver. During this time, whether the clothes dryers are classified as "compact" or "standard," this would have a negligible impact on energy consumed or consumer decisions. Any such impact would be beneficial.

Public Policy Merits—Miele clothes dryers, when classified as "standard" capacity appliances, comply with DOE energy consumption requirements. Therefore, consumers should not be denied access to these energy-efficient appliances, and this is an additional reason why the requested Interim Waiver should receive prompt approval. The basic purpose of the Energy Policy and Conservation Act, as amended by the National Appliance Energy Conservation Act, is to foster purchase of energy-efficient appliances, not hinder such purchases. The granting of the Waiver and Interim Waiver will promote this policy and will result in increased energy savings.

Miele clothes dryers have been shown to be highly energy efficient. These space-saving products provide an energy efficient solution to families living in city dwellings where space for laundry products is limited. The dryer can energy-efficiently dry a "standard" load size, yet take up a small amount of floor space. The condenser dryer also makes a dryer available to households where for physical, structural reasons a vented dryer could otherwise not be installed. Miele clothes dryers thus offer benefits in the public interest. To encourage and foster the availability of these energy-efficient products is in the public interest.

Standards should not be used as a means to block innovative, improved designs.[2] Miele's design is an innovative and improved way to dry a standard load of laundry and provides substantial benefits to the public. DOE's rules should accommodate and encourage—not act to block—such a product.

Granting the Interim Waiver and Waiver will also eliminate a non-tariff trade barrier.

Furthermore, the success of small business has wide-reaching public policy benefits. In the case of Miele Appliances, Inc., continued employment creation and ongoing investments in its marketing, sales and servicing activities will be fostered by approval of the requested Interim Waiver. Conversely, denial of the requested Waiver and Interim Waiver would be destructive to the company and would be anticompetitive.

Thank you for your timely attention to this request for Interim Waiver and Waiver. We hereby certify that all clothes dryer manufacturers of domestically marked units known to Miele Appliances, Inc. have been notified by letter of this application, copies of which are attached (Appendix 4).

Sincerely,

Nick Ord,

Vice-President and General Manager Miele Appliances, Inc.

Enclosures (Appendices 1–4)

[FR Doc. 94–24127 Filed 9–28–94; 8:45 am]

BILLING CODE 6450–01–P

[1] The DOE test procedure was adopted in 1981, 46 Fed. Reg. 27326 (May 19, 1981). The definitions of "standard" and "compact" in the test procedure were carried over from definitions adopted in 1977 by the predecessor agency to DOE, the Federal Energy Administration.

[2] *See* FTC Advisory Opinion No. 457, TRR ¶ 1718.20 (1977 Transfer Binder); 49 Fed. Reg. 32214 (Aug. 13, 1984); 52 Fed. Reg. 49141, 49147–48 (Dec. 30, 1987).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5081–4]

Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractor Dynamac

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.301(h) and 40 CFR 2.310(h) for authorization to disclose to its contractor, Dynamac of Rockville, Maryland, cost recovery support documentation for the Hastings

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Ground Water Contamination Superfund Site. This disclosure includes Confidential Business Information (CBI) which has been submitted to EPA Region 7, Waste Management Division, Superfund Branch. Dynamac's principal office is 2275 Research Boulevard, Suite 500, Rockville, Maryland 20850.

FOR FURTHER INFORMATION CONTACT: Glenn Curtis, Superfund Branch, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7726.

SUPPLEMENTARY INFORMATION:

Notice of Required Determinations, Contract Provisions and Opportunity to Comment

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended (commonly known as "Superfund"), requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA also requires the maintenance of many other records. EPA has entered into ESS contract No. 68–W4–0039 for management of those records. EPA Region 7 has determined that disclosure of CBI to Dynamac is necessary in order that the contractor may carry out the work requested under the above contract with EPA. The contract complies with all requirements of 40 CFR 2.301(h)(2)(ii) and 40 CFR 2.310(h). EPA Region 7 will require that each Dynamac employee working on cost recovery work sign a written agreement that he or she:

(1) Shall use the information only for the purpose of carrying out the work required by the contract;

(2) Shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA regional office; and

(3) Shall return to EPA all copies of the information and any contracts or extracts therefrom (a) upon completion of the contract, (b) upon request of the EPA, or (c) whenever the information is no longer required by Dynamac for performance of work requested under the contract. These non-disclosure statements shall be maintained on file with the EPA Region 7 Project Officer for Dynamac. Dynamac employees will be provided technical direction from their respective EPA contract management staff.

EPA hereby advises affected parties that they have ten (10) working days to comment pursuant to 40 CFR 2.301(h)(2)(ii) and 40 CFR 2.310(h). Comments should be sent to: Glenn Curtis, Environmental Protection Agency, Region 7, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Dated: September 22, 1994.

William Rice,

Acting Regional Administrator.

[FR Doc. 94–24122 Filed 9–28–94; 8:45 am]

BILLING CODE 6560–50–M

[PP OG3916/T666; FRL 4902–2]

Deltamethrin; Renewal of a Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed a temporary tolerance for the combined residues of the insecticide Deltamethrin and its metabolites in or on the raw agricultural commodity cottonseed at 0.02 part per million (ppm).

DATES: This temporary tolerance expires June 1, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6100.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of November 24, 1993 (58 FR 62122), stating that a temporary tolerance had been established for the combined residues of the insecticide Deltamethrin (1*R*,3*R*)-3 (2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylic acid (*s*)-α-cyano-3-phenoxybenzyl ester and its metabolite, *trans*-deltamethrin: (1*S*,3*R*)-3 (2,2-dibromovinyl)-2,2-dimethylcyclopropane-carboxylic acid (*S*)-alpha-cyano-3-phenoxybenzyl ester and alpha-*R*-deltamethrin: (1*R*,3*R*)-3 (2,2-dibromovinyl)-2,2-dimethylcyclopropane-carboxylic acid (*R*)-alpha-cyano-3-phenoxybenzyl ester in or on the raw agricultural commodity cottonseed at 0.02 part per million (ppm). This tolerance is renewed in response to pesticide petition (PP) 0G3916, submitted by Hoechst-Roussel Agri-Vet Co., Route 202–206, P.O. Box 2500, Somerville, NJ 08876–1258.

The company has requested a 1–year renewal of a temporary tolerance for residues of the insecticide to permit the continued marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 34147–EUP–3, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Hoechst-Roussel Agri-Vet Co., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires June 1, 1995. Residues not in excess of this amount remaining in or on the above raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 21, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–24128 Filed 9–28–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30373; FRL–4913–5]

Receipt of an Application for Pesticide Registration for a Transgenic Plant Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received an application from Monsanto Company for a transgenic plant pesticide for conditional registration containing the new active ingredient *Bacillus thuringiensis var. kurstaki* delta endotoxin protein as produced by the Cry1A(c) gene and it controlling sequences. The EPA File Symbol for this application is 524–UTI, and the associated tolerance petition number is PP 4F 4331. This is the second application for registration of a transgenic plant pesticide under section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, in which a plant has been genetically altered to produce a pesticide. Because of its uniqueness the Agency has determined that this application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be submitted by October 31, 1994.

ADDRESSES: By mail submit comments identified by the document control number [OPP–30373] and the (File Symbol 524–UTI) to: Public Response and Program Resources Branch, Field Operations Division (7506C), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 213, CM #2, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–7690).

SUPPLEMENTARY INFORMATION: On February 11, 1994, an application to conditionally register a transgenic plant pesticide *Bacillus thuringiensis var. kurstaki* (B.t.k.) Insect Control Protein (Cry1A(c)), containing the new active ingredient *Bacillus thuringiensis var. kurstaki* delta endotoxin protein as produced by the Cry1A(c) gene and it controlling sequences at 100 percent was received from Monsanto Company, 700 Chesterfield Village Parkway, St. Louis, MO 63198. The application was assigned EPA File Symbol 524–UTI.

Through the genetic modification of cotton, Monsanto has developed an environmentally compatible alternative for controlling many of the lepidopteran caterpillars which feed on this crop. This Insect Resistant Cotton (IRC) cotton produces the insect control protein derived from the common soil bacterium *Bacillus thuringiensis var. kurstaki* (B.t.k.). The protein produced is nearly identical in structure and activity to that found in nature and in commercial B.t.k formulations, registered by EPA.

The commericialization and use of IRC offers several significant benefits to the grower, the public, and environment. Results from field experiments conducted in the past 4 years throughout the cotton growing regions have demonstrated that IRC is protected season long from the major lepidopteran pests which feed on the foliage and bolls of the cotton plant, while nontarget organisms, including beneficial insects, mammals, and birds are unaffected. Growers planting IRC may not require additional insecticide applications to control these pests. Such a substantial reduction in insecticide use will enhance biological control and the implementation of other pest management strategies for other cotton insect pests. The purpose of Monsanto's application for pesticide registration and exemption from the requirement of a tolerance, is to acquire a registration so that commercialization of their innovative product can be available for commercial use in control of the pest, the lepidopteran caterpillars on cotton.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division (FOD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 22, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–24129 Filed 9–28–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0604.

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Title: Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Third Report and Order and Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, PP Docket No. 93–253 (47 CFR Part 24).

FCC Forms: FCC 401, 489, 490, 405, 430, 854.

Expiration Date: 05/31/97.

Estimated Annual Burden: 45,654 total hours; .50–20 hours per response; 10–17,770 respondents.

Description: In the Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking (Third MO&O), the Commission clarified, modified and supplemented the original rules governing the auction of narrowband PCS licenses. For example, the Commission has modified its original definition of small business to include larger concerns, and has codified principles for attributing the interests of various affiliates of the applicant to that applicant. The Commission also has modified the various preferential measures that are available to certain entities designated by Congress, such as increasing the available bidding credits to 40% from 25% in some cases. In order to better ensure that applicants claiming these preferences are entitled to them and to aid the Commission's enforcement efforts, winning bidders are now required to supply additional information on the ownership of the applicant. The Commission has also relaxed its rules pertaining to amendment of FCC Form 175, now permitting applicants to amend their FCC Form 175 applications to reflect ownership changes that do not result in a change in control of the applicant.

OMB Control No.: 3060–0068.

Title: Application for Consent to Assignment of Radio Station Construction Permit or License (For Stations in Services Other Than Broadcast)

FCC Form No.: FCC 702.

Expiration Date: 08/31/97.

Estimated Annual Burden: 5000 total hours; 5 hour per response; 1000 respondents.

Description: FCC Form 702 is used to request Commission approval of assignment of radio station construction authorization or license under 47 C.F.R. parts 21, 23 and 25. The form is reviewed by Commission staff to determine the financial, legal and technical qualifications of the applicant. The form is being revised to display the 08/31/97 expiration date and to incorporate the certification required by 47 C.F.R. part 1, section 1.2002 implementing Section 5301 of the Anti-Drug Abuse Act of 1988. The current October 1991 edition of the form may be used through March 1995.

OMB Control No.: 3060–0485.

Title: Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket No. 90–6.

Expiration Date: 12/31/94.

Estimated Annual Burden: 80 total hours; 2 hours per response; 40 respondents.

Description: Title III of the Communications Act of 1934, as amended governs the licensing of all communications services which operate through the use of radio frequencies. Part 22 of the FCC Rules contains the technical and legal requirements for mobile radio stations. Generally, information collections contained in Part 22 are used by the Commission to determine whether the applicant is qualified legally, technically, and/or financially to be licensed or to remain a licensee.

OMB Control No.: 3060–0508.

Title: Rewrite and Update of Part 22 of the Public Mobile Service Rules (CC Docket No. 92–115) and FNPRM

Expiration Date: 05/31/95.

Estimated Annual Burden: 10,600 total hours; 5 hours per response; 2120 respondents

Description: OMB approved the proposals contained in the Further Notice of Proposed Rulemaking (FNPRM) issued in CC Docket 92–115. The FNPRM contained several new and modified requirements including, a proposal to require licensees notifying the Commission of minor modifications to their systems on FCC Form 489, which include Service Area Boundary (SAB) extensions into the adjacent market, to specify whether the 5 year fill-in period for the market has expired and, if so, to state that the SAB extension does not cover any unserved area; a proposal to revise the scale of the maps required to be filed by the Commission's rules from 1:250,000 to 1:500,000; and, also a proposal to require all cellular licenses to submit the certain information regarding the external cell sites.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–24077 Filed 9–28–94; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 2030]

Petition for Reconsideration and Clarification of Actions in Rulemaking Proceedings

September 26, 1994.

Petition for reconsideration and clarification have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed October 14, 1994. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject:

Amendment of Section 73:202(b), Table of Allotments, FM Broadcast Stations. (Clewiston, Key Colony, Key Largo and Marathon, Florida) (MM Docket No. 93–136, RMs No. 8161, 8309 and 8310).

Number of Petitions Filed: 2.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–24078 Filed 9–28–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before November 28, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Donald Arbuckle, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: New Collection.

Title: Write Your Own (WYO) Company Participation Criteria; New Applicants.

Abstract: Under the WYO program, private sector insurance companies may offer flood insurance to eligible property owners. The Federal Government is a guarantor of flood insurance coverage for WYO companies, issued under the WYO Arrangement. To determine eligibility for participation in the WYO program, the Federal Insurance Administration, National Flood Insurance Program is requiring a one-time submission of information required by FEMA interim rule 44 CFR part 62, published at FR 38571, dated Friday, July 29, 1994.

Type of Respondents: Businesses or other for-profit.

Estimate of Total Annual Reporting and Recordkeeping Burden: 68 hours.

Number of Respondents: 10.

Estimated Average Burden Time per Response: 6.8 hours.

Frequency of Response: One-time.

Dated: September 22, 1994.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 94–24116 Filed 9–28–94; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL RESERVE SYSTEM

Delhi Bank Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 24, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Delhi Bank Corp., Delhi, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The Delaware National Bank of Delhi, Delhi, New York.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. KeyCorp, Cleveland, Ohio; to acquire 100 percent of the voting shares of First Citizens Bancorp of Indiana, Anderson, Indiana, and thereby indirectly acquire Citizens Banking Company, Anderson, Indiana.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Amcore Financial, Inc., Rockford, Illinois; to acquire 100 percent of the voting shares of NBA Holding Company, Aledo, Illinois, and thereby indirectly acquire Bank of Aledo, Aledo, Illinois.

2. Pinnacle Banc Group, Inc., Oak Brook, Illinois; to merge with Acorn Financial Corporation, Oak Park, Illinois, and thereby indirectly acquire Suburban Trust & Savings Bank, Oak Park, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community First Bankshares, Inc., Fargo, North Dakota; to acquire 24.75 percent of the voting shares of Bank of Colorado Holding Company, Vail, Colorado, and thereby indirectly acquire Vail Bank, Vail, Colorado.

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Regency Bancorp, Fresno, California; to become a bank holding company by acquiring 100 percent of the voting shares of Regency Bank, Fresno, California.

Board of Governors of the Federal Reserve System, September 23, 1994

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–24071 Filed 9–28–94; 8:45 am]

BILLING CODE 6210–01–F

Aaron Kaufman, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 19, 1994.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Aaron Kaufman, Dallas, Texas; Charles Kaufman, Austin, Texas; and Harold Kaufman, Charlotte, North Carolina; all to acquire 15 percent, for a total of 24.99 percent, of the voting shares of Texas Community Bancshares, Inc., Dallas, Texas, and thereby indirectly acquire Texas Community Bank, N.A., Dallas, Texas.

Board of Governors of the Federal Reserve System, September 23, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–24072 Filed 9–28–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Administration on Aging, HHS.

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The Administration on Aging (AoA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511):

Title of Information Collection: State Performance Report: Reporting Requirements for Titles III and VII of the Older Americans Act;
Type of Request: Extension and Revision;
Use: To revise an existing information collection form to conform to the newly-developed National Aging Program Information System (NAPIS) resulting from amendments to the Older Americans Act which directed the Administration on Aging to improve State reporting requirements;
Frequency: Annually;
Respondents: State Agencies on Aging;
Estimated Number of Responses: 57;
Total Estimated Burden Hours: 293,721.
Additional Information or Comments: Written comments and recommendations for the proposed information collections should be sent within 10 days of the publication of this notice directly to the following address: OMB Reports Management Branch, Attention: Allison Eydt, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: September 23, 1994.

William F. Benson,

Deputy Assistant Secretary for Aging.

A. Justification

1. Explanation of Necessity

The Older Americans Act (OAA) requires annual program performance reports from the States. The 1992 reauthorization of the (OAA) directed the Administration on Aging to develop reporting procedures for use by States to correct deficiencies in current reporting practices. In response to this mandate, AoA has developed a new reporting system known as the National Aging Program Information System (NAPIS) which necessitates as revised form 0980–0199. The current Form 0980–0199 will be divided into two separate forms. The first form will be known as the State Performance Report (SPR) and will require an accounting of performance under Title III and the newly established Title VII. The SPR component of the NAPIS which we are submitting is intended to be phased in over a three year period with levels of detail increasing annually (except for states that elect faster implementation), beginning with program information collected in FY 1995. The second form, which in the past was included in the SPR, will be known as the State Annual Ombudsman Report to the Administration on Aging and will be the basis for the National Ombudsman Reporting System (NORS).

AoA will test both the SPR and the State Annual Ombudsman Report in FY 1995. The test of the new SPR will focus on the new requirements for registration and data on client characteristics. AoA will seek out the test states through an open solicitation process. the pilot sites will include both states which have the capacity to fully implement all reporting requirements in FY 1995 as well as states that are not as far along in the development of their reporting system capacities. AoA will use the test results to evaluate the feasibility of the proposed reporting specifications. Based on the test results AoA will consider revision of the timing and the substance of the specifications, as appropriate. Approval for such final changes will be requested form OMB by June 30, 1995. However, at this time we fully intend to implement the reporting system on the proposed schedule.

The revised State Annual Ombudsman Report is to be implemented in FY 1995 *at state option*, and required for information collected in FY 1996. Therefore, we ask that OMB extend, also, approval for AoA to use Part V, Long Term Care Ombudsman Program, of our current Form 0980–0199 through FY 1995.

2.Use of Information and Consequence of Not Collecting

The information will be used to meet existing and new statutory requirements under the (OAA) which includes evaluation of program operations; preparation of reports for the Congress and the Office of Management and Budget; policy analysis; response to other Federal agencies; and to other public and private sector agencies and organizations.

If the revised form 0980–0199 is not approved, the Assistant Secretary for Aging will not be able to comply with (OAA) statutory requirements for state program performance information in FY 1995 due to lack of State-by-State data. Introduction of the revised system during FY 1995 would be prohibited. The current form 0980–0199 expires on 12/31/94.

3. Information technology and Reducing Burden

State and Area Agencies on Aging (AAAs) are rapidly automating the collection, processing, and transmission of data. This has a profound effect on estimates of time and cost to produce program service data. A few States have limited ADP capacity, but virtually all States will, within a very short time, have ADP capacity that was rare 10 years ago. In the past, a large State with many AAAs using a "paper and pencil reporting system" might have used several thousands of hours to produce an annual report. Furthermore, the burden would be much the same each year a similar report was developed. Currently, States that have commonplace and relatively inexpensive ADP capacity perform these tasks in a fraction of the time needed with a paper system. Beyond this, the burden is greater in the first year of reporting than in any subsequent year, because ADP costs load on the front end. AoA has consulted extensively with States in the development of these requirements and has limited the burden to the extent practical and allowable under the OAA.

4. Efforts to Identify Duplication

The information specified for this report is not available form other collection source.

5. Availability of Similar Information

Similar information is not available from any other source.

6. Small Business or other Small Entities—N/A

7. Consequences of Less Frequent Collection

State performance reports are required on an annual basis by statute.

8. Guidelines in 5 CFR 1320.6

The existing State Program Report is consistent with 5 CFR 1320 and this request for extension would have no adverse effect.

9. Outside Consultation

Outside consultation with the aging network on the proposed reporting specifications has been extensive:

1991

AoA issued an Information Memorandum 91–17 (January, 1991) to States indicating a need to improve the State Program Report (SPR). States were provided an opportunity to comment on improvements on the current SPR. 41 States wrote comments and nearly all wanted substantial changes in the SPR, including improvements to the taxonomy, computerization, and changes to facilitate greater accuracy. AoA held a meeting (June, 1991) with a group of State and Area Agency on Aging personnel to discuss major issues.

Dimensions International Report (September, 1992–March, 1993)

AoA funded a contractor, Dimensions International (DI), to develop comprehensive information, analyze program issues and provide recommendations on a reporting system for (OAA) funded programs. DI engaged a Policy Committee and a Technical Committee each of which met twice in Washington, D.C. to provide aging network input to the recommendations. An executive summary of the findings and recommendations is attached.

NORS Work Group Activities (1991–1993)

AoA staff worked with numerous state Long-Term Care (LTC) Ombudsman over a period of two years to develop an improved reporting system for the Ombudsman Program—the National Ombudsman Reporting System (NORS), which is currently proposed. At AoA's invitation, State Directors on Aging reviewed the product of this extensive work by program staff. Of thirty-two State responses, twenty-five states concurred with the new system, one state did not concur, and six states provided an ambivalent response.

Technical Review Meeting (August, 1993)

AoA convened a two day technical work group with State and Area Agency on Aging Staff from the NY, WA, NC, NY City and Prince Georges County, MD to review a draft of the reporting requirements which AoA submitted to OMB in March of 1994.

Information Memoranda

AoA provided States and AAAs a copy and an opportunity to comment on the DI recommendations in an Information Memorandum (June, 1993).

In March of 1994, an Information Memorandum with a copy of AoA's Previous submission to OMB was provided to States and AAAs. Three major areas of concern were identified in the public comments: (1) timing of the implementation; (2) cost of implementation; and (3) level of reporting detail. In light of these concerns, AoA proposed the following revisions to the previous OMB submission:

- PSA level reporting was eliminated;
- Performance measures were eliminated;
- Client registration has been delayed to FY 1996;
- Services in the three clusters were rearranged;
- Nutritional risk screening was limited to four services—case management, home delivered and congregate meals and nutrition counseling;
- A number of client descriptors and expenditure related data requirements were dropped; and
- SPR reports will be required to be submitted to AoA electronically. (AoA will provide software specifications to assist States in transmitting the required files.)

State Governors and State Agency on Aging Comments (June, 1994)

AoA, in consultation with OMB, provided proposed reporting specifications to State Governors and Directors of State Agencies on Aging and requested comments.

Nine Governors made comments on the reporting specifications. Most governors that responded indicated support for accurate and useful information gathering; the need for more administrative funds to pay for information gathering; and, that only necessary information be gathered. One Governor said that AoA should collect information on the impact of the services on elderly clients instead of the information which AoA proposes to collect.

37 State Units on Aging and 11 AAAs provided comments. These comments were very diverse and often dealt with technical issues related to services reporting. The more general comments from this group were similar to the comments received from Governors. A more detailed account of the comments is included in the enclosed analysis.

Based on this set of comments, AoA has revised the implementation dates for key components of this reporting system to allow states the option of a phased implementation over a 3 year period. Moreover, the collection of information on transfers between parts of Titles III–B and C and information on modified meals has been dropped. We have again included a required estimate of the percentage of Title III funds in expenditures for certain services, based on comments received. The definition of "new persons served" has been simplified and other definitions were modified to make reporting easier.

10. Confidentiality

To assure confidentiality, CFR 45, Part 1321.19 states "The State Agency on Aging must have procedures to protect the confidentiality of information about older persons collected in the delivery of services." Further regulations, under the U.S. Code, governing Programs for Older Persons require that information may not be disclosed by the service provider or agency in a manner which identifies the person without the informed consent of the person.

11. Questions of a Sensitive Nature

The State program report as applicable to this request for revision contains no questions of a sensitive nature.

12. Estimated Cost to Federal Government and Respondent

The (OAA) provides funds to States for administration (including ADP and reporting). Most States use for administrative costs approximately five percent of the total funds allocated to them by the OAA. Therefore, large states, such as California and New York State are provided state administrative funds of $3.7 million and $3 million respectively, not including required matching funds or administrative funds from other programs which they administer. AAAs are permitted under the (OAA) to use approximately 10% of OAA funds they administer for administrative purposes. In large states, such as California and New York State, AAAs are provided about $6 million annually for administrative activities such as providing information on services provided. Service providers include the costs of administrative activities in budgets which they negotiate with AAAs. AAAs will continue to limit the administrative costs of service providers. However, the mechanism to allocate additional funds to meet legitimate increased costs for reporting at the services provider level are in place currently. Most of any increase in reporting burden caused by these proposed reporting specifications falls outside state administrative budgets.

AoA has made one-time grants to State Agencies on Aging in FY–94 to assist States with the start-up costs of meeting the NAPIS requirements which we propose to OMB. The one-time state grants are $45,000 for states, with lesser amounts for some of the territories.

AoA has spent approximately $640,000 on staff, expenses, and contracts to develop the reporting system proposed. it is estimated that AoA will spend an additional $900,000 in the rest of FY 1994 combined with FY 1995 on staff, expenses, and contracts to implement the revised reporting system. After FY 1995, the reporting system is estimated to require $150,000 in AoA staff and expenses each year to maintain and operate, if no major changes are made in the reporting system.

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13. Burden of Collection Information

AoA has determined through consultation with states that some states wish to implement all of the proposed reporting requirements in FY 1995. Other states advise us that they must have the option of implementing the system in stages. AoA proposes reporting standards that will permit, at state option, some of the more complicated reporting requirements to be deferred to FY 1996 and a few requirements to FY 1997. This optional phased approach to implementation complicates the estimation of burden hours per year. We are basing our estimate on the burden an average state might encounter if all of the reporting requirements are implemented in the first year. However, we assume that a state that implements the components of the reporting system over a three year period will have a lower first year burden, but annual effort may not substantially decline until the fourth year that the system is employed.

The first year (FY–1995) national reporting burden on the respondents is estimated to be 294,000 hours. The burden will drop to 70,000 hours in each subsequent year in which these reporting components are used.

14. Reasons for Changes in Burden

The estimates of burden reflect an increase in reporting required by 1992 Amendments to the OAA and adjustments to the estimate of the burden required by the existing AoA reporting requirements for these programs.

15. Collection of Statistical Information for Publication and Collection of Information Employing Statistical Methods—N/A.

State Performance Report for Title III and VII of the Older Americans Act (Excluding LTC Ombudsman Report)

For Implementation In Fiscol Year 1995 by the National Network on Aging

Report Sections

Section I: Estimated Unduplicated Counts of Clients Served
Section II. Utilization Profile
Section III: Expenditure Profile
Section IV: Other Services Profile (Optional)
Section V: Developmental Accomplishments
Section VI: Profile of Community Focal Points and Senior Centers
Section VII: Staffing Profile
Revised Requirements as of: September 20, 1994

Title III and VII Performance Reporting Requirements

Introduction

The Older Americans Act calls for annual performance reporting by the National Network on Aging. In the 1992 reauthorization of the Older Americans Act, the Administration on Aging (AoA) was directed to develop refined reporting procedures for use by state agencies on aging which correct deficiencies in current reporting practices. As a response to these mandates, AoA is issuing new reporting guidelines for Titles III and VII, to be effective in FY95 with the exception of client registration which will not be required until FY96. As a result, a number of data elements will be delayed until FY96 and in two cases, nutritional risk data for congregate meals and new clients data, until FY97.

This document summarizes the new requirements for the State Program Performance Report (SPR) for Titles III and VII.

The sections of the new SPR include:

Section I: Estimated Unduplicated Counts of Clients Served

A. Unduplicated Client Count By Type of Service
B. Unduplicated Client Count By Characteristic

Section II: Utilization Profile

A. Service Use
B. Detailed Client Profile for Registered Services (1–6)
C. Summary Client Profile for Other Registered Services (7–9)

Section III: Service Expenditures Profile

A. Title III Expenditures By Part And Service
B. Title VII Expenditures By Chapter

Section IV. Other Services Profile (Optional)

Section V: Developmental Accomplishments

A. For Home and Community Based Programs
B. For A System of Elderly Rights

Section VI: Profile of Community Focal Points/Senior Centers

Section VII: Staffing Profile

A. State Unit on Aging
B. Area Agency on Aging

On the following pages, the SPR format is exhibited through a series of data tables corresponding with the sections of the SPR listed above. The tables are for presentation purposes only. AoA is requiring electronic transmittal of the annual SPR data. The SPR data will be transmitted in several data files organized around logical groupings of performance data—clients, units, expenditures and the like. AoA will provide software which can be used by state units on aging to create the required transmittal files. Following the forms, SPR instructions are provided and the specifications for the data files which will be used to electronically transmit the SPR data to AoA.

While the state long term care ombudsman program is now part of Title VII of the Older Americans Act, there are distinct reporting requirements which exist for the ombudsman program. As a result, the state long term ombudsman report format and related instructions are described in a separate package.

Legislative Requirements for Reporting

The SPR is designed, first and foremost, to respond to legal requirements of the Act, while expanding the performance data available to support management and advocacy by AoA and the National Network on Aging.

Section 202(a)(19) of the Older Americans Act outlines the principal requirement for performance reporting, directing AoA to "Collect for each fiscal year, for fiscal years beginning after September 30, 1988, directly or by contract, statistical data regarding programs and activities carried out with funds provided under this Act, including:

(A) with respect to each type of service provided with such funds:

(i) The aggregate amount of such funds expended to provide such service;

(ii) the number of individuals who received such service; and

(iii) the number of units of such service provided;

(B) the number of senior centers which received such funds; and

(C) the extent to which each area agency on aging designated under Section 305(a) satisfied the requirements related to adequate proportions and the giving of preference to those services to older individuals with the greatest economic or social needs, with particular attention to low income minority individuals."

Section 207(a)(4) of the Act requires that AoA prepare and submit a report to the President and to the Congress which includes "statistical data and an analysis of information regarding the effectiveness of the State agency and area agencies on aging in targeting services to older individuals with greatest economic need and older individuals with greatest social need, with particular attention to low income minority individuals, low-income individuals, and frail individuals (including individuals with any physical or mental functional impairment)* * *"

Congress, during the 1992 reauthorization process, expressed strong reservations and concerns about the quality of reporting related to Older Americans Act programs. In response to these concerns, Congress placed new mandates on AoA in section 202(b)(29) to design and implement, for purposes of compliance with Section 202(a)(19) performance reporting requirements listed above, uniform data collection procedures for use by State agencies, including:

(A) uniform definitions and nomenclature:

(B) standardized data collection procedures;

(C) a participant identification and description system;

(D) procedures for collecting information on gaps in services needed by older individuals, as identified by service providers in assisting clients through the provision of the supportive services; and

(E) procedures for the assessment of unmet needs for services under this Act.

Likewise, in the Older Americans Act reauthorization, Congress inserted language requiring the creation of a National Aging Information Center. Among the requirements for the Center is the collection of information, biennially, on the functions, staffing patterns and funding sources of state agencies and area agencies on aging.

Framing a Strategy for Future Reporting

Three specific goals have guided the development of the SPR. They respond to the basic mandates raised by Congress, the information needs of AoA and capacities of the Aging Network to meet federal reporting requirements. The goals are:

1. Integrate performance data for Older Americans Act programs into a broader information acquisition and analysis framework to be developed and supported by AoA. AoA is developing a three-pronged information framework which will include: 1) performance data on OAA funded programs; 2) data on the broader infrastructure of state administered home and community based services for the elderly; and, 3) data on the needs and unmet needs of the elderly population.

2. Improve accuracy and quality of information being reported. This is being accomplished by introducing standard definitions/nomenclature and the requirement of client registration for selected services. Both steps are designed to address basic concerns raised by Congress about the quality of past performance data submitted by AoA.

3. Focus and expanded the collection of data on clients and their characteristics in ways which help AoA determine if basic targeting provisions of the Act are being met. Additional data on clients are now required for nine services requiring client registration. These additional data items are designed to give Congress, AoA and the rest of the Aging Network a clearer picture of persons being helped by a core set of home and community based services. Statistical reporting priorities include:

- Low income status of persons served (to be defined in the SPR as persons with incomes at or below poverty).
- Minority status of persons served.
- Frailty status of persons served—defined in the Older Americans Act as individuals unable to perform at least two activities of daily living (ADL) with substantial human assistance or due to a cognitive or mental impairment. (Note, the Act allows states the option of defining frailty based on impairments in at least three activities of daily living).

Because of the Congressional requirement for information on the frailty status of persons served, AoA now requires the determination of ADL (activities of daily living) status and IADL (instrumental activities of daily living) status for clients of six services.

While the scope and procedures for reporting has been expanded and strengthened, it must be reiterated that clients may freely refuse to provide the requested information and still participate in the program or receive a needed service without restriction. Specifically, while information is requested on the number of persons whose income is at or below the poverty threshold, the Older Americans Act bars means testing. In no way has the eligibility or participation requirements of the Act been changed. The new SPR procedures make allowances for clients' refusal to provide selected information.

An incremental approach to upgrading reporting capacities has been adopted. In FY94, states will use the current SPR and follow the current data collection guidelines. Beginning in FY95, selected data elements of the new SPR will be implemented, such as information on developmental accomplishments and a profile of state unit on aging and area agency on aging staffing. In FY96 client registration for nine services will be required along with specific counts of unduplicated clients served for each of the nine services requiring client registration. In FY97 nutrition risk screening for congregate meals will be required along with information on new clients served.

Key features of the revised SPR include the following:

Adoption of Uniform Definitions and Nomenclature—After extensive consultation, AoA has identified *fourteen services* which will be the focus of annual reporting. There are standard nomenclature and definitions for all fourteen services. They are organized into 3 clusters, each with distinctive reporting requirements:

Cluster 1—Requies client registration and collection of an expanded set of client characteristics information, notably information on the ADL and IADL status. Services in this cluster include:

1. Personal Care
2. Homemaker
3. Chore
4. Home Delivered Meals
5. Adult Day Care/Health
6. Case Management

Cluster 2—Requires client registration and collection of basically the same information at cluster 1 services except for ADL and IADL status. Services in this cluster include:

7. Congregate Meals
8. Nutrition Counseling
9. Assisted Transportation

Cluster 3—Requries collection of information on units of services, expenditures and providers, but does not require client registration or a profile of client characteristics. The services in this cluster are:

10. Transportation
11. Legal Assistance
12. Nutrition Education
13. Information and Assistance
14. Outreach

As can be seen, the level and type of information to be collected on the services varies by cluster. More client information is required on the services in the first cluster, less on the services in the second cluster and very limited information on the services in the last cluster.

For all other services supported by the OAA, summary expenditure information is required. State units may *optionally* provide information on *each* of the "other" services related to the mission/purposes of the service, service expenditures, estimated unduplicated persons served and service units. See Section IV. of the SPR.

Participant Identification and Description System—For nine of the fourteen services included in the new SPR performance report format, client

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registration is required. It should be noted that states are still required to make *estimates* of clients served through services where client registration is not required.

In the client registration process, it is expected that clients will be assigned a unique client identification number. For registered clients, a uniform set of data on client characteristics will be collected, either at intake or some time during the course of the year. Area agencies must be able to aggregate client data across providers, by service, to produce unduplicated client counts and an accurate profile of the characteristics of the registered clients.

The use of a master client registry does not mean state and area agencies will need to implement a full scale client tracking system. In client tracking systems, clients are uniquely identified *and* service utilization data are routinely linked or assigned to individual clients. Under the new SPR data collection procedures, neither service providers nor area agencies on aging will be required to track units of service by individual client. However, area agencies on aging will need to maintain a master client registry which is a list of client names accompanied by a unique client identifier, a set of descriptive information on their characteristics and a list of what services the client is currently receiving. In most cases, a computerized client index or registry will be required in order to generate the required PSA level data subsequently compiled into the annual SPR by the state unit on aging.

While area agencies are likely to require computer capacities to maintain the client registry, it is assumed that providers without computers can meet the SPR requirements through manual data collection procedures. However, in such case, area agencies on aging will need to develop the capacity to enter client data into a client registry and assist providers determine if new clients are already registered.

Standardized Data Collection Procedures—AoA has tried to balance the Congressional mandate for standardized data collection procedures with the need to provide the National Network on Aging flexibility in the reporting systems used to collect data. AoA encourages states to refine or modify existing reporting systems to comply with the new requirements, where appropriate. To assure standardization across states, AoA will require the following:

- The requirement for client registration for selected services.
- Standardization of information describing the characteristics of clients served for nine services related to:

—Age, sex, race/ethnicity
—Income status/rural status/living alone

- For a subset of the nine services requiring registration, the requirement for collection of additional information on:

—ADL/IADL Status
—Nutritional risk status

State units on aging will have considerable flexibility in setting up these procedures and methods for data collection. As feasible, AoA will make resources available to assist SUAs and AAAs in meeting the reporting specifications.

Testing

The proposed changes in the SPR requirements will be phased in. For FY94, states will submit performance data using the current SPR. For FY95, states will implement those elements of the new reporting guidelines, which are either the same as the old requirements or a relatively small change. For FY96, states will be asked to implement a client registration process and, through client registration, collect additional information on clients of nine selected services. In FY97, two additional date elements will be added.

The introduction of client registration data and the collection of additional data on client characteristics in FY96 represent the largest change in requirements. Congress requires a test of the proposed reporting requirements and a report to Congress not later than 1 year after developing the data collection procedures.

The test of the new SPR requirements will occur in FY95, focusing on the new requirements for registration and data on client characteristics. Two basic questions will be addressed in the test: 1) the feasibility of collection of the data elements to be included in the SPR, focusing on client related data; and 2) the implementation tasks and timetable for implementing reporting systems which can satisfy the SPR requirements.

AoA will seek out, through an open solicitation process, a total of six states to test the SPR requirements in FY95. The six pilot states will represent a cross-section of state characteristics, reflecting variations in the size of the program, number of area agencies on aging in place (including at least one single PSA state), existing reporting system capacities, geographic diversity and the breadth of services and clients supported by OAA funding.

Three of the six test states will be selected based on their capacities to implement all elements of the SPR data requirements in FY95. Specifically, they must be able to test the introduction of client registration and the collection of descriptive information on clients served which complies with SPR specifications.

The other three test states will be selected because they do not have reporting systems in place currently responsive to the requirement of client registration and reporting data on client characteristics. AoA will follow the progress of these states in terms of implementation planning, reporting systems development and training of the Aging Network to meet the SPR requirements. The experience of these states will help AoA determine how states are preparing to meet the FY96 reporting requirements in the context of their other responsibilities.

Participating sites will be asked to designate a state unit on aging staff member to serve as a liaison between the state and AoA. An initial baseline profile will be established for each of the six test states, at the beginning of FY95. AoA will review the progress in each test state on a bi-monthly basis, by phone and possibly teleconferences with all six test sites including information on the reporting system design which emerges, implementation tasks and timetables, how the SPR requirements were introduced to the Aging Network within the state, and what issues/difficulties arose in building the reporting systems required to meet the SPR specifications. In all six states, input will be sought from state unit on aging staff and selected staff from area agencies on aging an provider personnel on SPR implementation issues.

In April-May, 1995, AoA will compile the experiences of the test sites to use a basis for reporting to Congress and finalizing the reporting requirements scheduled to go into effect in FY96. Any revisions to the reporting requirements will be made by June 30, 1995 with states notified of the changes at that time. It should be indicated that AoA will not introduce any new data elements in FY96 or FY97 as a result of the testing process. There will be insufficient time for states to incorporate any such additions and still comply with the FY96 timetable for SPR reporting.

Use of SPR Data

Right now, AoA finds it difficult to meaningfully analyze performance of OAA programs relative to fundamental mandates of the Older Americans Act.

The data currently being collected are too limited and inaccurate. For example, the Older Americans Act provides clear guidance on targeting services to older individuals in greatest social need, including such conditions as physical and mental disabilities, and cultural, social, or geographic isolation, with particular attention to low income minority older individuals. In the absence of specific, accurate descriptive information on clients, AoA cannot determine if this fundamental Congressional mandate is being met. By requiring additional descriptive information on clients served through selected services. AoA will be better able to determine when the basic targeting provisions are being met. Additional client data will also allow AoA to sharpen its program policies, target technical assistance efforts and help shape future discretionary grant programs.

With the added emphasis on greater accountability for the use of federal funds, AoA is now required to include performance indicators as part of the AoA budget justification for the annual budget appropriation for aging programs administered by AoA. Reliable, accurate performance data is proving to be increasingly important to AoA in acting as an advocate for aging programs and services and the critical role of the National Network on Aging.

In 1993 Congress passed the Government Performance and Results Act (GPRA) which calls for the federal government to establish strategic planning and performance measurement in the federal government. By 1997, departments must prepare and transmit to the Office of Management and Budget a strategic plan for program activities. Performance plans will be required for specific program activities. Where possible, the plans will include performance measures to be used in measuring or assessing the relevant outputs, service levels, and outcomes of each program activity; provide a basis for comparing actual program results with established performance goals; and describe the means to be used to verify and validate measured values.

AoA has been designated as one of the agencies to test these new requirements. To comply with GPRA, AoA must begin now to transform its internal capacities to plan and assess program performance. That means a new data base capacity must be developed in AoA to collect and analyze a diverse array of data. Considering the GPRA requirements and AoA's national leadership role on aging issues, the Administration on Aging must be able to collect and analyze data responsive to three basic AoA responsibilities:

1. Assuring Compliance With the Older Americans Act—For example:
   - What services/activities were supported and how many service units were provided?
   - What level of expenditures were incurred?
   - What type of clients were served and how many, focusing on target populations cited by the Older Americans Act?
   - Did the Network comply with the assurances required in the State Plan by the Older Americans Act?
2. Strategic Planning and Performance/Results Oriented Management—For example:
   - How did actual performance comply with planned performance?
   - Was the Network effective in meeting targeting priorities?
   - Were the services of acceptable quality?
   - Did the Network serve clients cost effectively?
3. Ongoing Advocacy and Program Development—For example:
   - Do the Network programs, supported in whole or part, make a difference in clients' lives?
   - How are client needs changing?
   - To what extent is the Network keeping up with unmet needs?
   - Which needs and services will become future priorities?

Over time the SPR must be able to supply accurate data which can be used to help respond to the basic questions in all three areas of responsibility. In the near term, the SPR will become an important vehicle for collecting performance data pertinent to basic compliance and results oriented management questions. In its current form, the SPR does not include information on clearly defined outcomes or results. However, the new SPR requirements represent the first step toward building improved data to support AoA strategic planning and advocacy. Accurate information on clients, units and expenditures for selected services is considered by AoA to be the first building block toward a results oriented approach to strategic planning and performance measurement at the federal and state level of the Aging Network.

Summary

The new SPR to be implemented in FY95 provides a vehicle for improving the accuracy and utility of performance data submitted by SUAs. The new requirements are designed to focus reporting on selected clients and services and obtain accurate, complete information about these clients and services. Through the issuance of the new SPR, AoA is embarking on a multi-year effort designed to enhance the capacities of the National Network on Aging and AoA to effectively use performance data in support of compliance, management and advocacy responsibilities. AoA is committed to building its own analytic capacities in ways which will assure the submitted SPR data will be put to good use. New data bases are being designed by AoA to process the data. At the same time, AoA is designing related data bases which will be compatible with the SPR data sets and also provide a broader information framework for review of OAA supported programs and services.

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SECTION I. ESTIMATED UNDUPLICATED COUNTS OF CLIENTS SERVED

State ID ____
Fiscal Year ____

A. Unduplicated Client Count By Type of Service	Total
1. Unduplicated Persons Served For Registered Services *	Deferred until FY96
2. Unduplicated Count of Persons Served For Other Services Supported by the OAA	Deferred until FY96
3. Total Unduplicated Count of Persons Served **	

B. Unduplicated Client Count By Characteristic	Registered Services	Other Services	Total
1. Clients By Minority Status:			
African American	Deferred until FY96	Deferred until FY96	
Hispanic Origin	"	"	
American Indian/Native Alaskan	"	"	
Asian American/Pacific Islander	"	"	
Non-Minority	"	"	
2. Rural Clients	"	"	
3. Clients In Poverty	"	"	
4. Clients In Poverty/Minority	"	"	

* Registered services include personal care, homemaker, chore, home delivered meals, adult day care/health, case management, congregate meals, nutrition counseling and assisted transportation.

** A summary total of the estimated unduplicated client count, considering all services supported by the OAA.

Note: This table is for presentation purposes only. SPR data will be transmitted electronically using AoA specified file formats. Since client registration is not required until FY96, complete only the total columns in FY95.

SECTION II. UTILIZATION PROFILE
A. SERVICE USE

State ID ____
Fiscal Year: _____

For Selected Services	Total Number Of Providers	Number Of Minority Providers	# of AAAs Direct Svcs. Provision	Total Unduplicated Persons Served	New Persons Served This Year	# of Persons Served - At High Nutrition Risk	Total Service Units
Cluster 1. Registered Services Requiring Detailed Client Profile (See Section II.B.)							
1. Personal Care				Use registration FY96 and after	Required in FY97 and after		
2. Homemaker				"	"		
3. Chore				"	"		
4. Home Delivered Meals				"	"	Required for FY96	**
5. Adult Day Care/Health				"	"		
6. Case Management				"	"	Required for FY96	
Cluster 2. Registered Services Requiring Summary Client Profile (See Section II.C.)							
7. Congregate Meals				"	"	Required for FY97	**
8. Nutrition Counseling				"	"	Required for FY96	
9. Assisted Transport				"	"		
Total Unduplicated Registered Clients ---------->				*		** USDA eligible meals	
Cluster 3. Non-Registered Services (10 -14) No Client Profile Required For Non-Registered Services							
10. Transportation							
11. Legal Assistance							
12. Nutrition Education							
13. Info. and Assistance							
14. Outreach							
Undupl. Count of Providers			Note: This table for presentation purposes only.				

** Note: This client total should match the total reported in I.A.1.*

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State ID ____
Fiscal Year _____

SECTION II. SERVICE UTILIZATION
B. DETAILED CLIENT PROFILE FOR REGISTERED SERVICES (1-6)
FOR SERVICE: _____
FOR: ___ African American ___ American Indian/Native Alaskan
___ Hispanic ___ Asian/Pacific Islander
___ Non-Minority

	Total Age 60-64				Total Age 65-74				Total Age 75-84				Total Age 85+			
	0 ADL	1 ADL	2 ADLs	3+ ADLs	0 ADL	1 ADL	2 ADLs	3+ ADLs	0 ADL	1 ADL	2 ADLs	3+ ADLs	0 ADL	1 ADL	2 ADLs	3+ ADLs
Total Clients																
No IADL																
With 1 IADL																
With 2 IADLs																
With 3+ IADLs																
Female																
Male																
Rural																
Live Alone																

	Total Age 60-64				Total Age 65-74				Total Age 75-84				Total Age 85+			
	0 ADL	1 ADL	2 ADLs	3+ ADLs	0 ADL	1 ADL	2 ADLs	3+ ADLs	0 ADL	1 ADL	2 ADLs	3+ ADLs	0 ADL	1 ADL	2 ADLs	3+ ADLs
Poverty Clients																
No IADL																
With 1 IADL																
With 2 IADLs																
With 3+ IADLs																
Female																
Male																
Rural																
Live Alone																

Missing Information By Data Element *	Total Clients	Poverty Clients
Income		
Age		
ADL Status		
IADL Status		
Sex		
Rural Status		
Live Alone Status		

Total Clients Served (For the Racial/Ethnic Group)	

The information in this table is not required to be reported until FY96. States may voluntarily report the data in FY95.

Note: This table is only for presentation purposes. SPR data will be transmitted electronically using AoA specified file formats. See Appendix I for definitions.

* Provide counts of clients whose records do not contain the data elements requested in SPR, either because the data are missing or the client refused to furnish the information

State ID ____
Fiscal Year _____

SECTION II. SERVICE UTILIZATION
C. SUMMARY CLIENT PROFILE FOR OTHER REGISTERED SERVICES (7-9)
FOR SERVICE: _____
FOR: __ African American __ American Indian/Native Alaskan
__ Hispanic __ Asian/Pacific Islander
__ Non-Minority

Total Clients	Age 60-64	Age 65-74	Age 75-84	Age 85+
Total				
Female				
Male				
Rural				
Live Alone				

Clients In Poverty	Age 60-64	Age 65-74	Age 75-84	Age 85+
Total				
Female				
Male				
Rural				
Live Alone				

Total Clients Served (For the Racial/Ethnic Group)	

Missing Information By Data Element *	Total Clients	Clients In Poverty
Income		
Age		
Sex		
Rural Status		
Live Alone Status		

* Provide counts of clients whose records do not contain the data elements requested in SPR, either because the data are missing or the client refused to furnish the information.

Note: This table is for presentation purposes only. SPR data will be transmitted electronically using AoA specified file formats.

The information in this table is not required to be reported until FY96. States may voluntarily report the data in FY95.

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SECTION III. SERVICE EXPENDITURES PROFILE

State ID ____ Fiscal Year ____

A. Title III Expenditures By Part And Service	Total Title III Expenditure	% of Total Service Expenditure	Total Program Income	OAA Title III Expenditures By Part: Part B	Part C1	Part C2	Part C3	Part D	Part E	Part F	Part G
1. Personal Care											
2. Homemaker											
3. Chore											
4. Home Del. Meals											
5. Adult Day Care/Health											
6. Case Management											
7. Congregate Meals											
8. Nutrition Counseling											
9. Assisted Transport											
10 Transportation											
11 Legal Assistance											
12. Nutrition Education											
13. Info and Assistance											
14. Outreach											
15. Other Services Supported by Title III											

Note: This table is for presentation purposes only. SPR data will be transmitted electronically using AoA file formats.

B. Title VII Expenditures By Chapter	Total Title VII Expenditure	% of Total Service Expenditure
Chapt 2. Ombudsman		
Chapt 3. Elder Abuse		
Chapt 4. Legal Assist.		
Chapt 5. Benefits Assist.		

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SECTION IV. OTHER SERVICES PROFILE (Optional)

State ID ____
Fiscal Year ____

	Service Name (Up to 30 characters)	Service Unit Name (Up to 15 characters)	Mission/ Purpose Category	OAA Service Expenditure Amount	% of Total Service Expenditure	Estimated Unduplicated Persons Served	Estimated Service Units
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							
10.							
11.							
12.							
13.							
14.							
15.							
16.							
17.							
18.							
19.							
20.							
21.							
22.							
23.							
24.							
25.							

Mission/Purpose Codes:
A. Services which address functional limitations
B. Services which maintain health
C. Services which protect elder rights
D. Services which promote socialization/participation
E. Services which assure access and coordination
F. Services which support other goals/outcomes

• There are no restrictions on the number of "other" services which may be reported.

For any "other" service being reported, please provide all the data elements -- name, unit name, mission code, expenditure data, persons served and service units.

Note. This table is for presentation purposes only. SPR data will be transmitted electronically using AoA specified file formats.

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SECTION V. DEVELOPMENTAL ACCOMPLISHMENTS
A. FOR HOME AND COMMUNITY BASED PROGRAMS

State ID ____
Fiscal Year ____

Identification Of Three Top Accomplishments		
1.		
Type of Development:		Enter Code(s)
2.		
Type of Development:		Enter Code(s)
3.		
Type of Development:		Enter Code(s)

Development Type Codes:			
1. Public education/awareness	3. Training/education	5. Policy development	7. Other
2. Resource development	4. Research and development	6. Legislative development	

Note: This table is for presentation purposes only. This information will be transmitted as a text file, electronically

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SECTION V. DEVELOPMENTAL ACCOMPLISHMENTS
B. FOR A SYSTEM OF ELDER RIGHTS

State ID ____
Fiscal Year ____

Identification Of Three Top Accomplishments		
1.		
Type of Development:		Enter Code(s)
2.		
Type of Development:		Enter Code(s)
3.		
Type of Development:		Enter Code(s)

Development Type Codes:			
1. Public education/awareness	3 Training/education	5. Policy development	7. Other
2. Resource development	4 Research and development	6. Legislative development	

Note: This table is for presentation purposes only This information will be transmitted as a text file, electronically

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SECTION VI. PROFILE OF COMMUNITY FOCAL POINTS AND SENIOR CENTERS

State ID ____
Fiscal Year ____

	Number
1. Total Number of Focal Points Designated Under Section 306(a)(3) of the Act in Operation in the Past Year	
2. Of the Total Number of Focal Points in 1., the Number That Were Senior Centers.	
3. Total Number of Senior Centers in the PSA in the Past Fiscal Year.	
4. Total Number of Senior Centers in 3, That Received Funds During the Past Fiscal Year.	

Note: This table is for presentation purposes only. SPR data will be transmitted electronically using AoA specified file formats

SECTION VII. STAFFING PROFILE
A. STATE UNIT ON AGING

State ID ____
Fiscal Year ____

SUA Personnel Categories	Number Of FTEs	# Of Minority FTEs	# Of FTEs Paid With OAA Funds
1. Agency Executive/ Management Staff			
2. Other Paid Professional Staff (By Functional Responsibility)			
A. Planning			
B. Development			
C. Administration			
D. Service Delivery			
E. Access/Care Coordination			
F. Other			
3. Clerical/Support Staff			
4. Total SUA Staff			

Functional Responsibilities:

A. Planning -- Includes needs assessment, plan development, budgeting/resource analysis, service inventories, standards development and policy analysis.
B. Development -- Includes public education, resource development, training and education, research and development and legislative activities.
C. Administration -- Includes bidding, contract negotiation, reporting, reimbursement, accounting, auditing, monitoring and quality assurance.
D. Access/Care Coordination -- Includes outreach, screening, assessment, case mgt. and I&R.
E. Service Delivery -- Includes those activities associated with the direct provision of a service which meets the needs of an individual older person and/or caregiver.

Note: This table is for presentation purposes only. SPR data will be transmitted electronically using AoA specified file formats.

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SECTION VII. STAFFING PROFILE
B. AREA AGENCY ON AGING

State ID ____
PSA ID ____
Fiscal Year ____

AAA Personnel Categories	Number Of FTEs	# Of Minority FTEs	# Of FTEs Paid With OAA Funds
1. Agency Executive/ Management Staff			
2. Other Paid Professional Staff (By Functional Responsibility)			
A. Planning			
B. Development			
C. Administration			
D. Service Delivery			
E. Access/Care Coordination			
F. Other			
3. Clerical/Support Staff			
4. Volunteers			
5. Total AAA Staff			

Functional Responsibilities:

A. Planning -- Includes needs assessment, plan development, budgeting/resource analysis, service inventories, standards development and policy analysis.

B. Development -- Includes public education, resource development, training and education, research and development and legislative activities.

C. Administration -- Includes bidding, contract negotiation, reporting, reimbursement, accounting, auditing, monitoring and quality assurance.

D. Access/Care Coordination -- Includes outreach, screening, assessment, case mgt. and I&R

E. Service Delivery -- Includes those activities associated with the direct provision of a service which meets the needs of an individual older person and/or caregiver

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BILLING CODE 4150-04-C

Instructions for Completion of the Annual State Performance Report

General Instructions

Development and submission of the Annual State Performance Report (SPR) by state units on aging in compliance with the provisions of the Older Americans Act (OAA) should be guided by the following provisions:

Submission Date—The new SPR will be due November 30 of the federal fiscal year, beginning November 30, 1995.

FY95 Phase-in—Delays in gaining approval of the reporting requirements means that states are not likely to have the final reporting requirements in hand until after FY95 has begun. For that reason, AoA is prepared to accept, for FY95, estimated performance data based on implementation of new data collection and reporting procedures for a portion of FY95, for example, six months, four months, etc.

As background to implementation planning, it is important to remember that many of the new SPR data elements will require implementation of data collection and reporting procedures in FY95. The following data elements must be reported for FY95:

- Estimate of the total unduplicated clients served through Title III and VII.
- Number of providers (and minority providers) for fourteen listed service categories.
- Number of AAAs directly providing each of the fourteen listed service categories.
- Number of persons estimated to have been served for each of nine registered services.
- Number of service units for each of fourteen listed services.
- Title III and VII expenditures by service and also by part, for Title III, plus program income data.
- Developmental accomplishments—home and community based programs plus elder rights.
- Focal point/senior center profile data.
- SUA and AAA staffing profile data.

For FY95, AoA is deferring submission, *except on a voluntary basis*, of the following data elements:

- Unduplicated client counts broken down for registered services versus services which did not require registration (See SPR Section I.)
- Client characteristics associated with the unduplicated client counts for registered and unregistered services (See SPR Section I.)
- Counts of new persons served (See SPR Section II.A.)
- Breakdown of registered clients for services in cluster 1 by client characteristic (See SPR Section II.B.)
- Breakdown of registered clients for services in cluster 2 by client characteristic (See SPR Section II.C.)
- Count of persons served at high nutritional risk (See SPR Section II.A.)

Transmittal—SUAs should submit the SPR data, on diskette, using the data entry and file creation software provided by AoA. Alternatively, SUAs may generate the required transmittal files using their own applications software in conjunction with the standardized file transmittal specifications developed by the Administration on Aging. File transmittal specifications are provided in Appendix II for states electing to develop the data files using their own systems software.

Level of Reporting—Performance data will be reported for the state as a whole. The only exception is the requirement for a staffing profile for each area agency on aging.

Scope of Reporting—The revised SPR is designed to provide information on all clients, service units and expenditures for services which are funded in whole *or in part* by Older Americans Act funding. Include performance data (clients, providers, units of service, program income etc.) related to the service as a "whole", even if the OAA funding is one of several funding sources used to support the service. This is based on the assumption that all the units of service and persons served etc. are attributable to the presence of the OAA funding.

Instructions for Completion of Individual Sections of the SPR

Completion of Section I: Estimated Unduplicated Count of Clients Served

Section I of the SPR is designed to provide a summary profile of the clients served, through programs funded, in whole or in part, by the Older Americans Act. There are two parts to Section I: (A) Unduplicated Client Count By Type of Service; and (B) Unduplicated Client Count By Characteristic.

Section I.A. Unduplicated Client Count by Type of Service

In Section I.A., enter summary counts of the unduplicated persons served through programs supported by Older Americans Act funding. To increase the reliability and validity of these unduplicated counts, three separate counts should be furnished: (1) Unduplicated counts of persons receiving services where client registration is required (not required until FY96); (2) an estimate of unduplicated clients receiving non registered services (not required until FY96); and (3) an estimate of the total clients receiving services, which takes into account the two counts/estimates of clients served which are entered on lines 1 and 2.

Line 1—Enter the unduplicated count of persons served for the first nine services listed in Section II.A. (cluster 1 and 2 services). It is expected the count of unduplicated clients for the nine services requiring client registration will be very accurate. The counts entered in line 1 should correspond with the unduplicated client count, *across* the nine registered services.

Line 2—Enter a best estimate of unduplicated persons served through transportation, legal assistance, nutrition education, information and referral and outreach plus all other services which are supported by OAA Title III and VII funds.

Line 3—Enter a best estimate of the total unduplicated persons served in the state through OAA supported programs. There will, in all likelihood, be an overlap of clients included in lines 1 and 2. A single client may receive a registered service(s) and also be assisted through unregistered services. As a result, line 3 is not simply a sum of lines 1 and 2.

Section I.B. Summary Estimate by Selected Client Characteristics

In Part B. show the characteristics of the persons served. The breakdown of data of client characteristics, by registered services and other services, will not be required until FY96. [Note: see Appendix I for definitions of the client descriptors used in this section of the SPR.]

Completion of Section II: Utilization Profile

Servie utilization will be examined in several ways. The focus is on units of service and clients served. Three different sections are included in the utilization profile. See Sections II.A., B. and C.

Section II.A. Service Utilization

Section II.A. should be completed using the following guidelines.

(1) Provide utilization data for any or all of the 14 listed services, for which OAA Title III and Title VII funds were used to support services provision.

Many states may need to develop a cross-walk between the service names used for in-state reporting and those used in the SPR. For example, if a service called Home Aide II is funded in the state which, in practice, matches the definition of Personal Care [See Appendix I Service Definitions], then

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report the performance data for Home Aide II as Personal Care. Feel free to send AoA any explanations which clarify how services funded in the state relate to the SPR listed services.

[Note: some states support what is called respite care. Where possible, include respite care data in the service category which best defines what type of respite is typically provided; for example, personal care, adult day care, homemaker/chore services, etc.]

(2) Include performance data related for the service "as a whole", even if the OAA Title III and VII funding is one of several funding sources used to support the service. For example, document all service units provided and clients served by a service provider, even if the OAA funds only 25% of the total cost of the service. Treat OAA Title V and Title VI funding as other sources of funding in the SPR.

The fourteen services listed in Section II.A. are organized into three clusters. [Note: see Appendix I for service definitions for these fourteen services.] Each cluster has distinctive reporting requirements.

Cluster 1: Registered Services Requiring Detailed Client Profile

All six services included in cluster 1 require registration of clients. For each service, provide the following information:

Total Number of Providers—Enter a count of the number of providers who provide each listed service in the state using OAA Title III or Title VII funding, in whole or part. If an area agency on aging (AAA) provides the service directly, include the AAA in the count of providers.

Also provide the unduplicated number of providers supported with OAA funding across all fourteen services, taking into account that provider organizations are likely to provide multiple services.

Number of Minority Providers—Of the total providers listed in the first column, identify how many are minority organizations. [See Appendix I, for a definition of a minority provider.]

of AAAs Direct Services Provision—Enter the number of AAAs providing each listed service directly, using AAA paid and/or volunteer personnel.

Total Unduplicated Persons Served—Provide an unduplicated count of persons served in the state. The total count should include all persons served during the course of the year, regardless of how many services units individual clients receive.

Provide an unduplicated count of persons served, *across the nine registered services.* See the box below the Cluster 2 services on Section II.A.. Beginning no later than FY96, the count of unduplicated persons served should be based upon the use of a master client registry of persons served through the nine registered services in each PSA or the state as a whole. The registry will, in most states, be maintained by area agencies on aging (or SUAs in single PSA states).

New Persons Served This Year—By service, identify how many persons were newly registered for the service during the course of the year. Also, provide an unduplicated count of persons served, *across the nine registered services.* See the box below the Cluster 2 services on Section II.A.

[Note: a "new client" is any client who has never been previously registered as a client for the service, either in the current fiscal year or a prior fiscal year by any provider funded with Older Americans Act funds.]

This data item is designed to help AoA learn more about the extent of client turnover. *Submission of data on new clients will not be required to be reported until FY97.* Voluntary reporting prior to that point is encouraged.

The count of new persons served should be based upon the use of a master client registry of persons served through the nine registered services.

of Persons Served-At High Nutritional Risk—For four listed services [home delivered meals, case management, congregate meals and nutrition counseling], identify the unduplicated number of persons served who were determined to be at high nutritional risk. To assure uniformity of the responses, please use the Nutrition Screening Checklist. High nutritional risk is defined as a score of 6 or higher using the Checklist. See Appendix III for the checklist and related instructions.

Provision of information on clients who are at high nutritional risk will be required for home delivered meals, nutrition counseling and case management services beginning in FY96 and in FY97 for congregate meals.

Total Service Units—Enter a total count of service units provided during the year. If there are multiple service providers for the same service, the total is a sum of the service units provided by all providers to all clients. Report all service units, even if the OAA funding and related match funds are not the exclusive source of funding for the provider.

[Note: in the case of meals, enter the number of USDA eligible meals.]

Cluster 2. Registered Services Requiring Summary Client Profile

For services 7–9 on Section II.A., please follow the same directions provided for Cluster 1 services.

Cluster 3. Non-Registered Services

For cluster 3 services, AoA is requesting a more limited set of data: 1) an unduplicated count of providers; 2) a count of minority providers; 3) the number of AAAs directly providing the service; and 4) a count of service units. For these services, it is difficult or inappropriate to require client registration. As a result, the provision of client specific information is not required for cluster 3 services.

Section II.B. Detailed Client Profile for Registered Services (1–6)

For the six services in cluster 1, the SPR requires a "detailed" profile of client characteristics. The profile is a breakdown of the unduplicated count of persons served (by service) by client characteristics. The six services requiring a detailed client profile are:

1. Personal Care
2. Homemaker
3. Chore
4. Home Delivered Meals
5. Social Adult Day Care/Adult Day Health
6. Case Management

Required data elements include:

- Minority status, by individual minority group.
- Age group.
- ADL/IADL status.
- Sex.
- Rural.
- Live alone.
- Poverty status.

To complete Section II.B., the following guidelines apply:

1. Section II.B. Should be completed for *each of the six services* requiring a detailed client profile.

2. For each cluster 1 service, identify how many persons in each of five racial/ethnic groups were served:

- African American.
- Hispanic.
- American Indian/Native Alaskan.
- Asian/Pacific Islander.
- Non-Minority.

A separate profile will be developed for each racial/ethnic group, *whose members were served.* The transmittal guidelines provide for a -9 code for records where the racial/ethnic status of the client is missing.

3. Provide for each minority group a count of total clients and total clients in poverty.

[Note: the profile of Non-Poverty Clients will be computed using the counts for Total Clients and Total Clients In Poverty.]

4. Within the Total Clients category and Total Clients in Poverty category for each racial/ethnic group, provide a breakdown by age and ADL status; then document how many persons in each age/ADL sub-group have no IADLS, 1IADL, 2IADLs etc., how many persons were female or male, how many live in rural areas and how many live alone.

Remember, a separate record is prepared for *each* minority group served for each of the six services.

5. Document missing data. Indicate for each client data element how many client records, by minority group, which do not contain a valid response for the data element, either because of data collection problems or the client refused to provide the required information. See Section II.B. *Missing Information By Data Element* for the client data elements for which a count of missing data is sought. Note that the counts for missing data are specific to Total Clients and Total Clients In Poverty.

In the transmittal guidelines, the data files make provision for reporting the counts of client records with missing data elements. See Appendix II.

Section II.C. Summary Client Profile for Other Registered Services

A summary client profile is required for three services—congregate meals, nutrition counseling and assisted transportation. The client characteristics to be documented for these services include:

- Minority status.
- Age group.
- Sex.
- Rural.
- Live alone.
- Poverty status.

The following guidelines should be used for completion of this Section:

1. For each Cluster 2 service supported with OAA Title III and/or VII funds, identify, by individual racial/ethnic group, the total number of persons served by each of four age groups. Then, for each age group total, indicate how many of the total clients are female or male, live in rural areas and how many live alone.

2. Provide a comparable profile as developed for Total Clients for Clients In Poverty.

3. Document missing data. Follow the same procedures as described for Section II.B. above.

Completion of Section III. Service Expenditures Profile

Section III calls for OAA expenditure data by service and Title III Part and Title VII Chapter. Fourteen services are highlighted for data collection and analysis. In addition, this section calls for summary expenditure data on the other services supported with OAA funding.

The information to be reported is organized into two segments: A) Title III Expenditures by Part and Service and B) Title VII Expenditures By Chapter. Guidelines for completion of each segment are provided below:

Section III.A. Title Expenditures by Part and Service

Section III.A. is organized by service and Title III part. All Title III parts included in the Act are listed. The columns for Title III Parts currently without an appropriation are shaded. No data should be entered in the shaded columns. To complete this portion of Section III, please follow these guidelines:

(1) Complete this Section for the fourteen listed services and the total of "other" services supported by OAA funds.

(2) Enter the appropriate data on the following information items for the fourteen listed services.

Total Title III Expenditure—Enter the total amount of Title III expenditures for the service in the state. Do not include match in this total, only the federal portion.

[Note, Total Title III expenditures are defined as "outlays/payments made by the AAA or SUA using OAA Title III funds in the form of an advance or a reimbursement for a payment request submitted by a provider for the service.]

Percent of Total Service Expenditure—Indicate the percent of total service expenditures represented by or attributable to OAA Title III federal funding.

Note: Total Service Expenditures are defined as expenditures for the service "contractually linked" to Title III funds through an award of funds (contract or grant) which includes federal OAA Title III funds. When other funding sources and amounts are included in the award, including Title VII funding, then the total expenditures attributable to the multiple sources of funding should be reported. Other sources of funding which may be linked to the OAA funding are match resources, overmatch, program income or other federal and state program funds.

Total Program Income—Enter the estimate of total program income derived as a result of service provision.

OAA Title III Expenditures By Part—Allocate the OAA Title III expenditures by Title III Part. This should be based on fund accounting data or an allocation algorithm in states where OAA funds are bundled and awarded across Title III parts or bundled with other funding sources.

(3) Provide, on line 15, summary data on the aggregate of expenditures for other services supported with OAA Title III funds.

Section III.B. Title VII Expenditure Summary

In Part B. please report total Title VII expenditures, exclusive of match, by individual chapter. Also, indicate how much of the total service expenditures for the Title VII services were covered by Title VII funding. See the definition of total service expenditures cited above. Include any Title III expenditures used for the Title VII supported services (federal and match) as part of the total service expenditure.

[Note, for Chapter 4, there is no OAA appropriation at this time, so this box is shaded out. Do not enter any expenditure data in this box.]

Completion of Section IV. Other Services Profile (Optional)

In Section IV. state units on aging, *at their option,* may provide descriptive information on other services supported by the OAA.

For each "other" service, SUAs are asked to provide a service name (up to 30 characters), service unit name (up to 15 characters), identify the purpose/mission of the service, total Title III expenditures for the year, the percent of total service expenditures represented by OAA Title III and Title VII funding, as well as an estimate of persons served (unduplicated) and service units.

If other services are individually reported in this Section, please complete all data elements. Note: do not include ombudsman as an other service. A separate set of reporting requirements have been developed for the long term care ombudsman program.

To identify the mission or purpose of the service, use one code (A–F) from the list below which best fits the purpose of the service.

A. Services Which Address Functional Limitations
B. Services Which Maintain Health
C. Services Which Protect Elder Rights
D. Services Which Promote Socialization/Participation
E. Services Which Assure Access and Coordination
F. Services Which Support Other Goals and Purposes

When assigning the services to the mission/purpose categories, consider the following "other" services as potentially falling in each mission/purpose category:

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A. Services Which Address Functional Limitations

- Home Modification.
- Home Repair.
- Alternative Living Arrangements/ Supportive services.

B. Services Which Maintain Health

- Medical Alert.
- Health Screening.
- Exercise/Physical Fitness.
- Wellness.

C. Services Which Protect Elder Rights

- Adult Protective Services, Guardianship.
- Consumer Protection Services.
- Crime Prevention Services.
- Protective Payee Services.

D. Services Which Promote Socialization/Participation

- Recreation.
- Friendly Visiting.
- Telephone Reassurance.
- Letter Writing.
- Interpreting/Translation.
- Volunteer Development/ Opportunities.

E. Services Which Assure Access and Coordination

- Counseling.
- Screening.
- Geriatric assessment.
- Home or Roommate Matching.
- Placement services.

F. Services Which Support Other Goals/ Outcomes

- Employment Assistance.
- Utility Assistance.
- Financial Assistance/Material Aid (including discounts).

Completion of Section V. Developmental Accomplishments

This section of the SPR is designed to provide a narrative summary of developmental accomplishments in the state by the SUA and/or AAAs in two areas: 1) development of home and community based programs (Section V.A.) and 2) development of system of elder rights (Section V.B.).

Guidelines for completion of these two sub-sections are as follows:

Section V.A. Developmental Accomplishments for Home and Community Based Programs

State units on aging are requested to identify and describe three key accomplishments during the year which enhanced the array of home and community based services which meet the health and long term care needs of non-institutionalized older persons.

1. In each of the three accomplishment narratives, describe the result, the potential impact on older persons, the process/steps followed and what organization(s) were primarily responsible for the accomplishment.

2. For each accomplishment, identify the type of development activities which were undertaken. Use one or more of the following development type codes and place the codes at the conclusion of each accomplishment narrative:

a. Public education/awareness
b. Resource development
c. Training/education
d. Research and development
e. Policy development
f. Legislative development
g. Other

Section V.B. Developmental Accomplishments for a System of Elder Rights

Follow the same guidelines as outlined in Section V.A.

Completion of Section VI. Profile of Community Focal Points and Senior Centers

This section is used to document the status of focal point designations and the use of senior centers by the National Network on Aging. The data elements are self-explanatory.

Completion of Section VII. Staffing Profile

In Section VII, two staffing profiles are required, one for the state unit on aging and one for each area agency on aging. Guidelines for completion of each profile are provided below:

Section VII.A. State Unit on Aging

To complete this section, follow these steps:

1. Categorize all paid SUA staff by the categories listed on lines 1–3. The definitions for each personnel category are provided in Appendix I.

2. Develop the staffing profile based on a snapshot taken on any given day during the fiscal year. The SUA should select what day(s) during the year is appropriate.

3. Determine the total number of full time equivalents (FTEs) for each position category. The number of FTEs should reflect filled or staffed positions at the time of the survey. Do not include authorized but unfilled positions. Add the FTE totals for lines 1, 2 and 3 to create an agency total in line 4.

[Note, full time equivalents (FTEs) should be based on a state definition of what constitutes a full time employee.]

4. For each personnel category, identify how many FTEs are filled by minority staff. Enter this number in the column titled (Number of Minority FTEs).

5. Identify, by personnel category, how many FTEs are paid for, in full or in part, using OAA funds.

Section VII.B. Area Agency on Aging

Follow the same guidelines as outlined for Section VII.A. Make sure Section VII.B. is completed for each area agency on aging in the state.

[Note: this section includes a count of the volunteers who assist the area agency in carrying out its responsibilities either in direct service provision or any of its planning, development, administration, access/ care coordination roles. Include volunteers in the count of Total AAA staff on line 5.]

Summary

Remember the SPR data will be transmitted electronically, The specifications for the data files to be sent by SUAs to AoA are included in Appendix II to this document. These transmittal guidelines take precedence over the SPR forms as a basis for actually submitting the performance data to AoA.

Remember, the ombudsman annual report is submitted separately, using a special report format and set of instructions.

Appendix I. Definitions

The following definitions should be used when completing the SPR.

A. Client Descriptors

1. Minority Status—Minority older persons are confined to the following designations:

- African American, Not of Hispanic Origin—A person having origins in any of the black racial groups of Africa.
- Hispanic Origin—A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- American Indian or Alaskan Native—A person having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.
- Asian American/Pacific Islander—A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, Samoa and the Hawaiian Islands.
- Non-Minority—Any person who is not considered a minority.

2. Activities of Daily Living—States may use their own definition of activities of daily living (ADL) when reporting the number of ADL impairments. AoA will continue to explore options for a standard definition of ADLs working with the Aging Network and other federal agencies. If long term care reform occurs, any definitions of disability used for eligibility determination will be considered in framing a standardized definition of ADLs.

3. Instrumental Activities of Daily Living—States may use their own definition of instrumental activities of daily living (IADL) when reporting the number of IADL impairments. AoA will continue to explore options for a standard definition of IADLs working with the Aging Network and other federal agencies.

4. Poverty—Persons considered to be in poverty are those whose income is at or below the official poverty guideline (as defined each year by the Office of Management and Budget, and adjusted by the Secretary (DHHS) in accordance with subsection 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

5. Living alone—A one person household (using the Census definition of household) where the householder lives by his or herself in an owned or rented place of residence in an non-institutional setting, including board and care facilities, assisted living units and group homes.

B. Service Definitions

Standardized names, definitions, and service units are provided for the fourteen services which are singled out in the SPR for reporting.

1. Personal Care (1 Hour)—Providing personal assistance, stand-by assistance supervision or cues for persons having difficulties with one or more of the following activities of daily living: eating, dressing, bathing, toileting, and transferring in and out of bed.

2. Homemaker (1 Hour)—Providing assistance to persons having difficulty with one or more of the following instrumental activities of daily living: preparing meals, shopping for personal items, managing money, using the telephone or doing light housework.

3. Chore (1 Hour)—Providing assistance to persons having difficulty with one or more of the following instrumental activities of daily living: heavy housework, yard work or sidewalk maintenance.

4. Home Delivered Meals (1 Meal)—Provision, to an eligible client or other eligible participant at the client's place of residence, a meal which:

(a) complies with the Dietary Guidelines for Americans (published by the Secretaries of the Department of Health and Human Services and the United States Department of Agriculture;

(b) provides, if one meal is served, a minimum of 33 and ⅓ percent of the current daily Recommended Dietary Allowances (RDA) as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences;

(c) provide, if two meals are served, together, a minimum of 66 and ⅔ percent of the current daily RDA; although there is no requirement regarding the percentage of the current daily RDA which an individual meal must provide, a second meal shall be balanced and proportional in calories and nutrients; and,

(d) provides, if three meals are served, together, 100 percent of the current daily RDA; although there is no requirement regarding the percentage of the current daily RDA which an individual meal must provide, a second and third meals shall be balanced and proportional in calories and nutrients.

5. Adult Day Care/Adult Day Health (1 hour)—Provision of personal care for dependent adults in a supervised, protective, congregate setting during some portion of a twenty-four hour day. Services offered in conjunction of adult day care/adult health typically include social and recreational activities, training, counseling, meals for adult day care and services such as rehabilitation, medications assistance and home health aid services for adult day health.

6. Case Management (1 Case)—Assistance either in the form of access or care coordination in circumstances where the older person and/or their caregivers are experiencing diminished functioning capacities, personal conditions or other characteristics which require the provision of services by formal service providers. Activities of case management include assessing needs, developing care plans, authorizing services, arranging services, coordinating the provision of services among providers, follow-up and reassessment, as required.

7. Congregate Meals (1 Meal)—Provision, to an eligible client or other eligible participant at a nutrition site, senior center or some other congregate setting, a meal which:

(a) complies with the Dietary Guidelines for Americans (published by the Secretaries of the Department of Health and Human Services and the United States Department of Agriculture;

(b) provides, if one meal is served, a minimum of 33 and ⅓ percent of the current daily Recommended Dietary Allowances (RDA) as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences;

(c) provides, if two meals are served, together, a minimum of 66 and ⅔ percent of the current daily RDA; although there is no requirement regarding the percentage of the current daily RDA which an individual meal must provide, a second meal shall be balanced and proportional in calories and nutrients; and,

(d) provides, if three meals are served, together, 100 percent of the current daily RDA; although there is no requirement regarding the percentage of the current daily RDA which an individual meal must provide, a second and third meals shall be balanced and proportional in calories and nutrients.

8. Nutrition Counseling (1 Hour)—Provision of individualized advice and guidance to individuals, who are at nutritional risk, because of their health or nutritional history, dietary intake, medications use or chronic illnesses, about options and methods for improving their nutritional status, performed by a health professional in accordance with state law and policy.

9. Assisted Transportation (1 One Way Trip)—Provision of assistance, including escort, to a person who has difficulties (physical or cognitive) using regular vehicular transportation.

10. Transportation (1 One Way Trip)—Provision of a means of transportation for a person who requires help in going from one location to another, using a vehicle. Does not include any other activity.

11. Legal Assistance (1 Hour)—Provision of legal advice, counseling and representation by an attorney or other person acting under the supervision of an attorney.

12. Nutrition Education (1 Session)—A program to promote better health by providing accurate and culturally sensitive nutrition, physical fitness, or health (as it relates to nutrition) information and instruction to participants or participants and caregivers in a group or individual setting overseen by a dietitian or individual of comparable expertise.

13. Information and assistance (1 Contact)—A service for older individuals that (A) provides the individuals with current information on opportunities and services available to the individuals within their communities, including information relating to assistive technology; (B) assesses the problems and capacities of the individuals; (C) links the individuals to the opportunities and services that are available; (D) to the

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maximum extent practicable, ensures that the individuals receive the services needed by the individuals, and are aware of the opportunities available to the individuals, by establishing adequate follow-up procedures.

14. Outreach (1 Contact)—Interventions initiated by an agency or organization for the purpose of identifying potential clients and encouraging their use of existing services and benefits.

[Note: respite care services which offer temporary, substitute supports or living arrangements for older persons in order to provide a brief period of relief or rest for family members or other caregivers, should be assigned to the service which best matches the form of respite being offered—such as home health aide or personal care. If the respite care service is designed to offer a temporary, alternative living arrangement, do not assign the respite care service to any of the fourteen services. In SPR IV., list this activity as institutional respite care and also include the expenditure/resource data for this service as part of the total for "other service" in Section III.]

C. Other Definitions

A variety of other terms are used in the SPR. Definitions for these terms are as follows:

Agency Executive/Management Staff—Personnel such as SUA director, deputy directors, directors of key divisions and other positions which provide overall leadership and direction for the state agency.

Other Paid Professional Staff—Personnel who are considered professional staff who are not responsible for overall agency management or direction setting but carry out key responsibilities or tasks associated with the SUA in the following areas:

- *Planning*—Includes such responsibilities as needs assessment, plan development, budgeting/resource analysis, inventory, standards developmental and policy analysis.
- *Development*—Includes such responsibilities as public education, resource development, training and education, research and development and legislative activities.
- *Administration*—Includes such responsibilities as bidding, contract negotiation, reporting, reimbursement, accounting, auditing, monitoring, and quality assurance.
- *Access/Care Coordination*—Includes such responsibilities as outreach, screening, assessment, case management, information and referral.
- *Service Delivery*—Includes those activities associated with the direct provision of a service which meets the needs of an individual older person and/or caregiver.

Clerical/Support Staff—All paid personnel who provide support to the management and professional staff.

Minority Provider—A business concern that (a) is at least 51 percent owned by one or more individuals who are either an African American, Hispanic origin, American Indian/Native Alaskan/Native Hawaiian, Asian American/Pacific Islander minority or a publicly owned business having at least 51 percent of its stock owned by one or more minority individuals and (b) has its management and daily business controlled by one or more minority individuals.

New Persons Served—Any client who has never been previously registered as a client for the service, either in the current fiscal year or a prior fiscal year by any provider funded with Older Americans Act funds.

Total OAA Expenditures—Outlays/payments made by the AAA or SUA using OAA federal funds in the form of an advance or a reimbursement for a payment request submitted by a provider for the service.

Percent of Total Service Expenditures—The portion of total service expenditures for the year which were covered by the federal portion of the Older Americans Act funding.

Rural—States may use their own definition of rural until such time as AoA adopts, by rule, a uniform definition of rural.

Appendix II. Title III/VII SPR Transmittal Requirements

To ensure compatibility of State Program Report (SPR) data across states, AoA has developed a standard set of guidelines for transmittal of the Title III and VII SPR data, exclusive of the LTC Ombudsman Program by state units on aging.

AoA will provide software to states which will allow entry of the SPR data and creation of the required data files. Those states with their own data systems may wish to create the data files directly, eliminating the need to reenter summary data into the AoA software package. In such cases, this section of the SPR guidelines provides file transmittal specifications. [Note: *only* those states choosing to use their own systems software to generate the transmittal files will need to use the specifications outlined in this Appendix.]

The transmittal specifications are organized around a set of data files to be forwarded by states using diskettes or a modem. Each submitted file must be in the format specified below. It must incorporate the codes for selected data files specified by AoA as well.

General Guidelines

When preparing the files, please observe the following:

1. AoA is requesting that state agencies provide SPR data in a machine readable format, conveyed either by diskette or by modem. The data files can be transmitted as ASCII files, or .DBF files. AoA prefers .DBF for data oriented files but will accept ASCII files which comply with the specifications addressed in this document. In the case of selected narrative information requested in Title III and VII reporting requirements, please provide text files.

2. Use the file names included in the file descriptions provided below.

3. Please embed the state ID in the name of data file submitted by the state. The naming convention should place the state ID as the first two characters of the file name, as a substitute for the XX which is included in each generic file name. For example, Alabama when submitting expenditure data by Part will submit a file named *ALEXPTYP.DBF*.

4. Submit the files no later than 60 days following the end of the federal fiscal year, beginning November 30, 1995;

5. Please use the following codes to denote individual services in the services ID field:

01—Personal Care
02—Homemaker
03—Chore
04—Home Delivered Meals
05—Adult Day Care/Health
06—Case Management
07—Congregate Meals
08—Nutrition Counseling
09—Assisted Transportation
10—Transportation
11—Legal Assistance
12—Nutrition Education
13—Information and Assistance
14—Outreach
99—Other Services

6. Please use the following codes to denote racial/ethnic groups:

1—African-American
2—Hispanic Origin
3—American Indian/Native Alaskan
4—Asian/Pacific Islander
5—Non-Minority (White, not of Hispanic origin)
9—Missing

7. Round all expenditure data to the nearest dollar;

For Title III and Title VII SPR, excluding ombudsman, 10 data files are required along with one optional file.

The record layout is provided for each file including the field number, field name, field type and field width. The field types are coded as follows:

C = Character
D = Date
L = Logical
N = Numeric

The transmittal files should fit on a single diskette.

1. Unduplicated Client Count File—XXUNDUPL.DBF

This file will contain the summary data on unduplicated clients served through services and programs supported by the Older Americans Act. See SPR Section I, for the table which includes the data requested in this file. The record layout for the file is:

Field No.	Field name	Type
1	State ID	C2
2	Fiscal Year	N4
3	Registered Services—Total undup..	N7
4	Other Services—Total unduplicated.	N7
5	Total Unduplicated (All services).	N8
6	Registered Svcs—African American.	N7
7	Registered Svcs—Hispanic-origin.	N7
8	Registered Svcs—American Indian.	N7
9	Registered Svcs—Asian Amer./PI.	N7
10	Registered Svcs—Non-Minority.	N7
11	Registered Svcs—Rural	N7
12	Registered Svcs—Clients in poverty.	N7
13	Registered Svcs—In poverty/minority.	N7
14	Other Svcs—African American.	N7
15	Other Svcs—Hispanic-origin.	N7
16	Other Svcs—American Indian.	N7
17	Other Svcs—Asian Amer./PI.	N7
18	Other Svcs—Non-Minority.	N7
19	Other Svcs—Rural	N7
20	Other Svcs—Clients in poverty.	N7
21	Other Svcs—In poverty/minority.	N7
22	Total—African American	N7
23	Total—Hispanic-origin	N7
24	Total—American Indian	N7
25	Total—Asian American/PI.	N7
26	Total—Non-Minority	N7
27	Total—Rural	N7
28	Total—Clients in poverty	N7
29	Total—In poverty/minority.	N7

2. Abbreviated Client Profile Date File—XXCLBREV.DBF

This file will contain records which contain descriptive information on each client served by five different services which require client registration and an abbreviated set of client characteristics (congregate meals, nutrition counseling, transportation, assisted transportation and legal assistance). See SPR II.C. for the data elements.

Field No.	Field name	Type
1	State ID	C2
2	Fiscal Year	N4
3	Service ID	N2

Please use the following codes to denote individual services:
07—Congregate Meals
08—Nutrition Counseling
09—Assisted Transportation

4	Race/ethnicity ID	N1

(Data fields 5–44 are numeric and 7 positions in width)

5	Total Clients, Age 60–64	N7
6	Total Clients, Age 60–64, Female	
7	Total Clients, Age 60–64, Male	
8	Total Clients, Age 60–64, Rural	
9	Total Clients, Age 60–64, Alone	
10–14	Repeat for Poverty Clients, Age 60–64	
15–19	Repeat for Total Clients, Age 65–74	
20–24	Repeat for Poverty Clients, Age 65–74	
25–29	Repeat for Total Clients, Age 75–84	
30–34	Repeat for Poverty Clients, Age 75–84	
35–39	Repeat for Total Clients, Age 85+	
40–44	Repeat for Poverty Clients, Age 85+	
45	Total Clients Served (For the Service).	N8

In fields 46—56 of this file, please provide the count of client records with missing data elements, by type. The format for these fields is numeric and 6 positions wide

46	Total Clients—Income data missing.	N6
47	Total Clients—Age data missing	
48	Total Clients—Sex data missing	
49	Total Clients—Rural status data missing	
50	Total Clients—Live alone status data missing	
51	Poverty Clients—Age data missing	
52	Poverty Clients—Sex data missing	
53	Poverty Clients—Rural status data missing	
54	Poverty Clients—Live alone data missing	
55	New Clients (Optional FY95/96; required FY97).	N8
56	# High Nutr. Risk (Required FY97 for Cong Meals and FY96 for Nutr. Counseling).	N8

3. Detailed Client Profile Data File—XXCLDET.DBF

States will use this file format to transmit data which satisfy the requirements for data contained in SPR Section II.B. The record description for this file includes the following:

Field No.	Field name	Type
1	State ID	C2
2	Fiscal Year	N4
3	Service ID	N2

Please use the following codes to denote individual services:
01—Personal Care
02—Homemaker
03—Chore
04—Home Delivered Meals
05—Adult Day Care/Health
06—Case management

4	Race/ethnicity ID	N1

(Data fields 5–301 are all numeric and 7 positions wide.)

5	Total Clients, Age 60–64, Total	
6	Total Clients, Age 60–64, with 0 ADL, Total	
7	Total Clients, Age 60–64, with 0 ADL, No IADLs	
8	Total Clients, Age 60–64, with 0 ADL, 1 IADL	
9	Total Clients, Age 60–64, with 0 ADL, 2 IADLs	
10	Total Clients, Age 60–64, with 0 ADL, 3+IADLs	
11	Total Clients, Age 60–64, with 0 ADL, Female	
12	Total Clients, Age 60–64, with 0 ADL, Male	
13	Total Clients, Age 60–64, with 0 ADL, Rural	
14	Total Clients, Age 60–64, with 0 ADL, Live Alone	
15	Total Clients, Age 60–64, with 1 ADLs, Total	
16	Total Clients, Age 60–64, with 1 ADLs, No IADLs	
17	Total Clients, Age 60–64, with 1 ADLs, 1 IADL	

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Field No.	Field name	Type
18	Total Clients, Age 60–64, with 1 ADLs, 2 IADLs	
19	Total Clients, Age 60–64, with 1 ADLs, 3+IADLs	
20	Total Clients, Age 60–64, with 1 ADLs, Female	
21	Total Clients, Age 60–64, with 1 ADLs, Male	
22	Total Clients, Age 60–64, with 1 ADLs, Rural	
23	Total Clients, Age 60–64, with 1 ADLs, Live Alone	
24	Total Clients, Age 60–64, with 2 ADLs, Total	
25	Total Clients, Age 60–64, with 2 ADLs, No IADLs	
26	Total Clients, Age 60–64, with 2 ADLs, 1 IADL	
27	Total Clients, Age 60–64, with 2 ADLs, 2 IADLs	
28	Total Clients, Age 60–64, with 2 ADLs, 3+IADLs	
29	Total Clients, Age 60–64, with 2 ADLs, Female	
30	Total Clients, Age 60–64, with 2 ADLs, Male	
31	Total Clients, Age 60–64, with 2 ADLs, Rural	
32	Total Clients, Age 60–64, with 2 ADLs, Live Alone	
33	Total Clients, Age 60–64, with 3+ADLs, Total	
34	Total Clients, Age 60–64, with 3+ADLs, No IADLs	
35	Total Clients, Age 60–64, with 3+ADLs, 1 IADL	
36	Total Clients, Age 60–64, with 3+ADLs, 2 IADLs	
37	Total Clients, Age 60–64, with 3+ADLs, 3+IADLs	
38	Total Clients, Age 60–64, with 3+ADLs, Female	
39	Total Clients, Age 60–64, with 3+ADLs, Male	
40	Total Clients, Age 60–64, with 3+ADLs, Rural	
41	Total Clients, Age 60–64, with 3+ADLs, Live Alone	
42–78	Repeat for Poverty Clients, Age 60–64	
79–115	Repeat for Total Clients, Age 65–74	
116–152.	Repeat for Poverty Clients, Age 65–74	
153–189.	Repeat for Total Clients, Age 75–84	
190–226.	Repeat for Poverty Clients, Age 75–84	
227–263.	Repeat for Total Clients, Age 85+	
264–300.	Repeat for Poverty Clients, Age 85+	
301	Total Clients Served	

(In the following data fields of this file, please provide the count of missing data elements, by type. The format for the fields is numeric and 6 positions wide)

302	Total Clients—Income Missing.	N6
303	Total Clients—Age Missing	
304	Total Clients—ADL Status Missing	
305	Total Clients—IADL Status Missing	
306	Total Clients—Sex Missing	
307	Total Clients—Rural Status Missing	
308	Total Clients—Live Alone Status Missing	
309	Total Poverty Clients—Age Missing	
310	Total Poverty Clients—ADL Status Missing	
311	Total Poverty Clients—IADL Status Missing	
312	Total Poverty Clients—Sex Missing	
313	Total Poverty Clients—Rural Status Missing	
314	Total Poverty Clients—Live Alone Missing	
315	New Clients (Optional FY95/96; req. FY97).	N8
316	# At High Nutr. (Req. FY96 Case Mgt. HDM).	N8

Because of the number of variables, this file may be segmented into two subfiles, labeled XXCLDET1.DBF and XXCLDET2.DBF. Please indicate in a ReadMe file which variables are in each sub-file. Remember that the first four data elements uniquely identify each record in each subfile

4. Expenditure Data by Type of Resource File—XXEXPTYP.DBF

This file will be used to transmit expenditure data for 14 listed services and aggregate expenditure data for all other services supported by OAA funds. See SPR Section III form for the data elements. Remember, expenditure data should be rounded to the nearest dollar. Use code 99 to denote the information on "other" services. The record layout for each service is defined below:

Field No.	Field name	Type
1	State ID	C2
2	Fiscal Year	N4
3	Service ID	N2
4	Total OAA Expenditure	N8
5	% of Total Serv Exp.	N2
6	Total Progam Income $	N7
7	Part B $	N8
8	Part C1 $	N8
9	Part C2 $	N8
10	Part D $	N7
11	Part F $	N7

5. Other Expenditures File—XXOTHEXP.DBF

This file is used to report expenditures on other services or activities not associated with the listed 14 services in the SPR requirements. The record layout for this file is as follows:

Field No.	Field name	Type
1	State ID	C2
2	Fiscal Year	N4
3	Title VII Ombudsman $	N8
4	Title VII Elder Abuse $	N8
5	Title VII Benefit Assist $	N8
6	Ombudsman % of Total Serv Exp.	N2
7	Elder Abuse % of Total Serv Exp.	N2
8	Benefits Asst % of Tot Serv Exp.	N2

6. Service Units Data File—XXUNITS.DBF

This file will contain records containing information on service units organized around one or more of fourteen listed services. The record layout is:

Field No.	Field name	Type
1	State ID	C2
2	Fiscal Year	N4
3	Personal Care Units	N6
4	Homemaker Units	N6
5	Chore Units	N6
6	Home Delivered Meals Units.	N6
7	Adult Day Care/Health Units.	N6
8	Case Management Units	N6
9	Congregate Meals Units	N6
10	Nutrition Counseling Units.	N6
11	Assisted Transport Units	N6
12	Transportation Units	N6
13	Legal Assistance Units	N6
14	Nutrition Education Units	N6
15	Info and Assistance Units.	N6
16	Outreach Units	N6

7. Provider Profile File—XXPROVDR.DBF

Field No.	Field name	Type
1	State ID	C2
2	Fiscal Year	N4
3	Personal Care—Total Providers.	N4
4	Personal Care—# Minority Provdrs.	N4
5	Personal Care—# of AAA Providers.	N4
6	Homemaker—Total	N4
7	Homemaker—# Minority	N4
8	Homemaker—# of AAA Providers.	N4
9	Chore—Total	N4
10	Chore—# Minority	N4
11	Chore—# of AAA Providers.	N4
12	Home Del. Meals—Total	N4
13	Home Del. Meals—# Minority.	N4
14	Home Del. Meals—# of AAA Providers.	N4
15	Adult Day Care/Hlth—Total.	N4
16	Adult Day Care/Hlth—# Minority.	N4
17	Adult Day Care/Hlth—# of AAA Prov..	N4
18	Case Management—Total.	N4
19	Case Management—# Minority.	N4
20	Case Management—# of AAA Providers.	N4
21	Congregate Meals—Total.	N4
22	Congregate Meals—# Minority.	N4
23	Congregate Meals—# of AAA Providers.	N4
24	Nutrition Counseling—Total.	N4
25	Nutrition Counseling—# Minority.	N4
26	Nutrition Counseling—# of AAA Providers.	N4
27	Transportation—Total	N4
28	Transportation—# Minority.	N4
29	Transportation—# of AAA Providers.	N4
30	Assist. Transportation—Total.	N4
31	Assist. Transportation—# Minority.	N4
32	Assist. Transportation—# of AAA Providers.	N4
33	Legal Assistance—Total	N4
34	Legal Assistance—# Minority.	N4
35	Legal Assistance—# of AAA Providers.	N4
36	Nutrition Education—Total.	N4
37	Nutrition Education—# Minority.	N4
38	Nutrition Education—# of AAA Providers.	N4
39	Info and Assistance—Total.	N4
40	Info and Assistance—# Minority.	N4
41	Info and Assistance—# of AAA Providers.	N4
42	Outreach—Total	N4
43	Outreach—# Minority	N4
44	Outreach—# of AAA Providers.	N4
45	Total Providers (14 svcs).	N4
46	Total Minority Providers (14 svcs).	N4

8. Development Accomplishments Data File—XXDEVLOP.TXT (DOS Text file)

This file will contain brief narratives describing the developmental accomplishments in the state related to the development of home and community based programs and a system of elder rights. Please furnish the data in a DOS text file, making sure to include at the end of text describing each narrative the codes identifying the type of developmental activities involved:

1. Public education/awareness
2. Resource development
3. Training/education
4. Research and development
5. Policy development
6. Legislative development
7. Other

9. Focal Point Data File—XXFOCAL.DBF

This file is used to transmit data on focal points required to be reported by states under provisions of the Older Americans Act.

Field No.	Field name	Type
1	State ID	C2
2	Fiscal Year	N4
3	Total # of Focal Points Designated Under Section 306(a)(3) of the Act in Operation in the Past Year.	N4
4	Of the Total # of Focal Points Designated Under Section 306(a)(3) of the Act in Operation in the Past Year, the Number That Were Senior Centers.	N4
5	Total Number of Senior Centers in the PSA in the Past Fiscal Year.	N4
6	Total Number of Senior Centers in the PSA in the Past Fiscal Year That Received Funds During the Past Fiscal Year.	N4

10. Staffing Profile Data File—XXSTAFF.DBF

Use one file to transmit both the state unit staffing profile and area agency staffing profiles. Identify the state unit on aging record by placing a -99 in the PSA ID field. To further identify the PSAs/AAAs, please include a ReadMe file with the PSA names and IDs.

Field No.	Field name	Type
1	State ID	C2
2	PSA ID	C6
3	Fiscal Year	N4
4	# of Agency Executive/Mgt Staff FTEs.	N4
5	# of Agency Executive/Mgt Staff Minority FTEs.	N4
6	# of Agency Executive/Mgt Staff FTEs -Pd w/OAA funds.	N4
7	# of Paid Prof. Staff With Planning Resp. FTEs.	N4
8	# of Paid Prof. Staff With Planning Resp. Minority FTEs.	N4
9	# of Paid Prof. Staff FTEs W/Plan. Resp.-Pd w/OAA funds.	N4
10	# of Paid Professional Staff with Development Resp. FTSs.	N4
11	# of Paid Professional Staff With Development Resp. Minority FTEs.	N4
12	# of Pd Profess. Staff FTEs W/Development Resp.-Pd w/OAA funds.	N4
13	# of Paid Professional Staff With Admin. Resp. FTEs.	N4
14	# of Paid Professional Staff With Admin. Resp. Minority FTEs.	N4
15	# of Pd Profess. Staff FTEs With Admin. Resp.—Paid with OAA funds.	N4
16	# of Paid Professional Staff With Serv. Del. Resp. FTEs.	N4
17	# of Paid Professional Staff With Serv. Del Resp. Minority FTEs.	N4
18	# of Paid Profess. Staff FTEs With Serv. Del. Resp.—Paid with OAA funds.	N4
19	# of Paid Professional Staff With Access Resp. FTEs.	N4
20	# of Paid Professional Staff With Access Resp. Minority FTEs.	N4
21	# of Paid Profess. Staff FTEs With Access Resp.—Paid with OAA funds.	N4

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Field No.	Field name	Type
22	# of Paid Professional Staff With Other Resp. FTEs.	N4
23	# of Paid Professional Staff With Other Resp. Minority FTEs.	N4
24	# of Paid Profess. Staff FTEs With Other Resp.—Paid with OAA funds.	N4
25	# of Clencal Staff FTEs .	N4
26	# of Clerical Staff Minority FTEs.	N4
27	# of Clerical Staff FTEs paid with OAA funds.	N4
28	# of Volunteer FTEs (AAAs only).	N4
29	# of Volunteer Minority FTEs (AAAs only).	N4
30	Total Staff FTEs (All)	N4
31	Total Minority Staff FTEs—All.	N4
32	Total Staff FTEs—Pd with OAA funds.	N4

11. Other Services Profie (Optional)—XXOTHSER.DBF

States units on aging may, at their option, submit a file containing information on other services supported by OAA funds. The format for this file will be as follows:

Field No.	Field name	Type
1	State ID	C2
2	Fiscal Year	N4
3	# of Other Services Being Reported.	N2

(Field #3 is used as check to make sure all "other" services are included in the file.)

4	Service Name	C30
5	Service Unit Name	C15
6	Service Purpose	C1

Please use the following codes to identify the purpose:

A—Services which address functional limitations
B—Services which maintain health
C—Services which protect elder rights
D—Services which promote socialization/participation
E—Services which assure access and coordination
F—Services which support other goals/outcomes

7	OAA Expenditures	N8
8	% of Total Serv. Exp.	N2
9	Persons Served	N8
10	Service Units	N8

Repeat the above format for additional services

Appendix III. Nutritional Risk Status Screen

The Nutrition Screening Checklist was developed as part of the Nutrition Screening Initiative jointly sponsored by The American Academy of Family Physicians, The American Dietetic Association and the National Council on the Aging, Inc. The Checklist appears on the next page. It will be used as a tool to determine which clients are at high nutritional risk.

BILLING CODE 4150-04-M

The Warning Signs of poor nutritional health are often overlooked. Use this checklist to find out if you or someone you know is at nutritional risk.

DETERMINE YOUR NUTRITIONAL HEALTH

Read the statements below. Circle the number in the yes column for those that apply to you or someone you know. For each yes answer, score the number in the box. Total your nutritional score.

	YES
I have an illness or condition that made me change the kind and/or amount of food I eat.	2
I eat fewer than 2 meals per day.	3
I eat few fruits or vegetables, or milk products.	2
I have 3 or more drinks of beer, liquor or wine almost every day.	2
I have tooth or mouth problems that make it hard for me to eat.	2
I don't always have enough money to buy the food I need.	4
I eat alone most of the time.	1
I take 3 or more different prescribed or over-the-counter drugs a day.	1
Without wanting to, I have lost or gained 10 pounds in the last 6 months.	2
I am not always physically able to shop, cook and/or feed myself.	2
TOTAL	

Total Your Nutritional Score. If it's —

0-2 **Good!** Recheck your nutritional score in 6 months.

3-5 **You are at moderate nutritional risk.** See what can be done to improve your eating habits and lifestyle. Your office on aging, senior nutrition program, senior citizens center or health department can help. Recheck your nutritional score in 3 months.

6 or more **You are at high nutritional risk.** Bring this checklist the next time you see your doctor, dietitian or other qualified health or social service professional. Talk with them about any problems you may have. Ask for help to improve your nutritional health.

BILLING CODE 4150-04-C

These materials developed and distributed by the Nutrition Screening Initiative, a project of:

AMERICAN ACADEMY OF FAMILY PHYSICIANS
THE AMERICAN DIETETIC ASSOCIATION
NATIONAL COUNCIL ON THE AGING, INC.

Remember that warning signs suggest risk, but do not represent diagnosis of any condition. Turn the page to learn more about the Warning Signs of poor nutritional health.

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Instructions for Completing the State Long Term Care Ombudsman Program Reporting Form for The National Ombudsman Reporting System (NORS)

Part I—Cases, Complainants and Complaints

A. Cases Opened.

Provide the total number of cases opened during the reporting period. Use definition of case provided on form.

B. Complainants/Case Closed.

For all cases closed during the reporting period, provide the number of complainants, by type of facility/setting. Refer to discussion of type of facility or other setting under D.1, below.

Use definition of case closed provided on the form. A case is closed when all complaints which are part of the case have been resolved and/or no further ombudsman action can be taken for reasons listed in Part I. E.2.

(A word about the definition of closed cases: Ombudsman sometimes must refer complaints to another agency for resolution. The ombudsman should follow up on these complaints and record the outcome under the appropriate category in Part I, E.2, Complaint Disposition. Disposition categories d. (1) and (2) in Part I, E.2 are for use only in those instances when the agency to which the case was referred fails to act on a complaint or provide a response to the ombudsman's attempts to follow up, or follow-up is otherwise not possible. Since this outcome, although undesirable, occasionally occurs with complaints, it is included in the definition of closed case.)

A complainant is an individual or a party (i.e., husband and wife; siblings) who files one or more complaints with the ombudsman program. A referring agency is not a complainant, but staff of another agency may be aware of a situation and file a complaint about it, thus qualifying as a complainant. The number of complainants will equal the number of cases filed.

If more than one person or party independently file separate complaints about the same situation in the same facility, or the same problem outside of any facility, count as separate cases. If more than one person jointly file complaint(s) about the same situation in the same facility or outside the facility, count as one complainant and one case.

Clarification of selected categories (self-evident categories not repeated):

2. Relative/friend or resident includes relatives who are also guardians or legal representatives but not friends who are also guardians/legal representatives. For friends, use category 3.

6. Physician, other medical staff includes physicians and staff of hospitals, hospices, clinics, visiting nurse programs and similar programs, which are primarily oriented toward medical/health care.

7. Representative of other social services agency or program includes individuals other than ombudsmen or ombudsman volunteers who file complaints (not merely refer other complainants) and are affiliated with such agencies as area agencies on aging, facility licensure and certification, homemaker agencies and similar agencies which are primarily oriented toward social services.

9. Other includes any complainant whose identity is known but who does not fit easily into a listed category. Examples: banker, law enforcement officer. If you report complainants in this category, indicate in the space on the form the types included.

C. Total Complaints

For all cases closed during the reporting period, provide the total number of complaints received. This will be the same number as the combined total from Part I, D, Types of Complaints, including complaints from nursing facilities, board and care and similar types of facilities and other settings. (Do not report complaints in cases which are still open at the end of the reporting period. Save those for the next reporting period, after the case is closed.)

D. Type of Complaints

1. General Instructions for Complaint Categories

For all cases closed during the reporting period, provide the total number of complaints received by the statewide ombudsman program in each of the complaint categories listed. Use the definition of complaint provided in Part I, C, page 1 on the form.

Type of Facility. For each type of complaint, place in the first column the number received involving a skilled nursing facility as defined in section 1819 of the Social Security Act or a nursing facility as defined in section 1919(a) of the Social Security Act.

Place in the second column totals of complaints received from facilities termed board and care homes, adult congregate living facilities, assisted living facilities, foster care facilities and other similar group facility which: provides room, board and personal care services to older individuals and which the ombudsman program is authorized to serve under Section 102(34) (C) and (D) of the Older Americans Act and includes within its purview.

Place in the last section, Q, numbers of ombudsman complaints involving settings other than nursing or board and care or similar facilities, such as home care, hospitals, hospices, shelters, or congregate housing where personal care to residents is not provided. (The categories in Section Q are provided for documenting numbers of complaints only; the form does not include types of complaints for these settings, as such settings are not included within the purview of the Ombudsman Program in the Older Americans Act.)

The first four major headings (Residents Rights, Resident Care, Quality of Life and Administration) are for complaints involving acts of commission or omission by staff or management of the facility, or problems which staff or management has the responsibility to resolve. The fifth major heading is for complaints against individuals or agencies outside the facility, or problems which can be resolved only by outside agencies or individuals.

As stated in the definitions of case and complaint, each case may have more than one complaint. However, each problem, or complaint, will have only one code. Use only one category for each type of problem (i.e., do not check both A.3 and D.26 for the same staff behavior—determine which category is most appropriate to the particular problem) and report only the primary complaint or complaints, not problems which are incidental to, or even causal to, the primary complaint.

For example: A resident complains of lack of fresh water by her bedside and odors in the bathroom. Both problems may be due to any one of the problems listed under M. Staffing, but only the codes for the primary problems reported—lack of water (category J.70) and odors (category K.83)—should be entered on the intake form. (The narrative section on the ombudsman intake form will, of course, reflect the ombudsman's assessment of why the problems occurred and what is required to solve them; but if all of these concerns were coded as complaints, the purpose and value of the complaint categories would be eroded.)

For each other category, list in the space provided on the form other types of complaints included in the number listed.

2. Clarification and Definitions of Selected Complaint Categories

Complaint categories provide only the identification of the problem area, not a statement of the problem. The assumption is that the complaint is about a problem of commission or omission. Otherwise, there would be no problem and thus no complaint.

Each category has been assigned its own number in order to avoid confusion and aid in aggregating the data by computer. (If States wish to add other categories for their own use, they can place these at the end of the NORS list. However, these must be included in the annual report under one of the 133 categories; i.e., at the end of the year, they must be "folded" into one of the NORS categories, which may include the "other" category listed for each group of types of complaints.)

Many of the categories are self-explanatory. The following definitions/explanations are for those major complaint headings and specific categories where further interpretation is required.

Residents Rights

A. Abuse, Gross Neglect, Exploitation

Use categories in this section for serious complaints of willful mistreatment of residents by facility staff, management, other residents (use category 6) or unknown or outside individuals who have gained access to the resident through negligence or lax security on the part of the facility. (Use P.117 and P.121 for complaints of abuse, exploitation by family members, friends and others whose actions the facility could not reasonably be expected to oversee or regulate.)

For all categories in this part, use the broad definitions of abuse, neglect and exploitation in the Older Americans Act and Paragraph 483.13(b) of the Health Care Financing Administration's Survey Forms and Interpretive Guidelines for the Long Term Care Survey Process, April 1992:

The term abuse means the willful (A) infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain or mental anguish; or (B) deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness. (Older Americans Act, Section 102 [13])

The term (financial) exploitation means the illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit or gain. (Older Americans Act, Section 102[26])

In addition to the above broad definitions, use the following specific definitions from the HCFA Interpretive Guidelines:

Physical abuse (A.1) includes hitting slapping, pinching, kicking, etc. It also includes controlling behavior through corporal punishment.

Examples of effects of abuse include, but are not limited to, substantial or multiple skin bruising, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, suffocation. (from Colorado adult protection statute)

Sexual abuse (A.2) includes, but is not limited to, sexual harassment, sexual coercion, or sexual assault.

Verbal abuse (A.3) refers to any use of oral, written or gestured language that includes disparaging and derogatory terms to residents or their families, or within their hearing distance, to describe residents, regardless of their age, ability to comprehend, or disability. (Use D.3 for less severe forms of staff rudeness or insensitivity; use M.5 if staff is unavailable, unresponsive to residents' needs.)

Mental abuse (A.3) includes, but is not limited to, humiliation, harassment, threats of punishment or deprivation.

Involuntary seclusion (A.3) means separation of a resident from other residents or from his or her room against the resident's will or the will of the resident's legal representative. Emergency or short term monitored separation will not be considered involuntary seclusion * * * if used for a limited period of time as a therapeutic intervention to reduce agitation. * * *

For financial exploitation (A.4) and gross neglect (A.5), use the definitions of exploitation and deprivation (Part B of abuse definition) in the Older Americans Act, provided above. Use A.5 only for the most extreme forms of willful neglect. Use the appropriate categories under Resident Care, Quality of Life or, in some cases, Administration for less severe forms or manifestations of resident neglect. Use resident-to-resident physical or sexual abuse (A.6) only for complaints of abuse by a resident against one or more other residents which meet the definitions of abuse provided above. For less severe forms of resident-to-resident conflict, use I.66 if conflict is with a roommate or other appropriate category (such as F.51) if it is with a resident other than a roommate.

B. Access to Information

Use the appropriate category for complaints involving access to information or assistance made by or on behalf of the resident or the resident's representative. Use B.9 if ombudsman is denied access in response to a complaint. If there is a general problem with ombudsman access to one or more particular facilities or types of facilities, but no complaint has been filed, do not use complaint categories. Describe the access problem under Part III, B—Statewide Coverage.

C. Admission, Transfer, Discharge, Eviction

Use the appropriate category for complaints involving placement, whether into, within or outside of the facility. If resident requests assistance in transferring to another facility and there is no stated problem (complaint), record as "information and assistance to individuals," Part III, F.5 on page 13.

D. Autonomy, Choice, Exercise of Rights, Privacy

Use the appropriate category for any complaint involving the resident's right, as stated in the category. If it is a related problem, but not one specific to this heading, use a category under another heading. For example, if the resident is permitted to choose her personal physician but that physician is unavailable, use P.125. Use D.29 if the resident has a communication or language barrier. Use M.96 if staff have the communication or language barrier. Use D.27 for right to smoke. Use K.77 for smoke-polluted air.

E. Financial, Property (Except for Financial Exploitation)

Use the appropriate category for complaints involving non-criminal mismanagement or carelessness with residents' funds and property and billing problems. Use A.4 for complaints involving willful financial exploitation, including, but not limited to, possible criminal activity.

F. Care

Use the appropriate category for complaints involving negligence, lack of attention and poor quality in the care of residents. If the care situation is so poor that the resident is in a condition of overall neglect which is threatening to health and/or life, use A.5, gross neglect.

G. Rehabilitation or Maintenance of Function

Use the appropriate category for complaints involving failure to provide needed rehabilitation or services necessary to resident to maintain the expected level of function.

H. Restraints

Use the appropriate category for any complaint involving the use of physical or chemical restraint.

I. Activities and Social Services

Use categories under this heading for complaints involving social services for

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and/or social interaction of residents. Note that transportation is included in category I.65 because community interaction is sometimes (not always) dependent upon transportation. Use I.65 for any complaint involving the resident's need for transportation, for whatever reason.

J. Dietary

Use the appropriate category for complaints involving food and fluid intake. Use J.74 for failure to follow special/therapeutic diet. Use J.75 for inadequate nutrition. Use the appropriate category under A (either 1 or 5) for severe cases of food deprivation.

K. Environment

Use the appropriate category for complaints involving the physical environment of the facility and resident's space. Use K.77 for smoke-polluted air. For lack of supplies, including nursing supplies, use K.85.

L. Policies, Procedures, Attitudes, Resources

Categories under this heading are for acts of commission or omission by facility managers, operators or owners in areas other than staffing or the specific problems included in previous sections, such as policies on advance directives; fair and due process on admissions, transfers and discharges; billing; management of residents' funds. Use L.90 for complaints involving falsification of records.

M. Staffing

Use appropriate categories under this heading for complaints involving staff unavailability, training, turnover, and supervision. Use M.96 for staff language or other communication barrier. (Use D.29 if problem involves resident inability to communicate.) Use M.100 if staff is unresponsive or unavailable. (Use D.26 if staff is available but rude or otherwise disrespectful to resident; use A.3 or other category under A if rudeness or disrespect is so severe that it qualifies as abuse.)

N. Certification/Licensing Agency

Use categories under this heading for all complaints involving decisions, policies, actions or inactions by the agency in the State which licenses nursing facilities and certifies them for participation in Medicaid and Medicare. Use any category which also may apply to decisions, policies, actions or inactions by the agency which licenses board and care or similar facilities, using the board and care/similar column. (If the problem is failure to license and regulate such facilities, or inadequate regulation, use P.119.) Use N.106 if appropriate intermediate sanctions are required and have not been applied, if intermediate sanctions which are applied are not appropriate, or if intermediate sanctions negatively impact on residents.

O. State Medicaid Agency

Categories in this section are for complaints about Medicaid coverage, benefits and services.

P. System/Others

Use appropriate categories in this section to document the range of complaints against or involving individuals who are not managers/staff of facilities or of the State's licensing and certification or Medicaid agency. Use P.124 for problems involving implementation of the Preadmission Screening and Annual Resident Review (PASSAR) requirements of the Nursing Home Reform Amendments of the Omnibus Budget Reconciliation Act (OBRA) of 1987. Use P.126 for complaints involving the agency in the State charged with investigating reports of adult abuse and exploitation and providing protective services for victims of abuse and exploitation.

Q. Complaints in Other Than Nursing Facility or Board and Care/Similar Settings

Use categories in this section to document any complaints accepted and acted upon by the ombudsman involving individuals living in (1) private residences, (2) hospitals or in hospice care, (3) congregate and/or shared housing not providing personal care, or (4) shelters.

Add totals in both columns, sections A through P, to total for Section Q. Place grand total at Total Complaints on page 7 and in box at C on page 1.

Part I, E. Action on Complaints

1. Verification: Provide, for cases closed during the reporting period, the total number of complaints which were verified, by type of facility. Use the definition of verified on the form. Complaints not included are considered unverified.

(Note: Some States investigate complaints which cannot be verified; other States do not. For this reason, the definition of "case closed" on page 1 of the form includes "complaint cannot be verified" as a reason for closing a case. However, the disposition categories in Part I, E. 2 do not include "complaint unverified." States which do not investigate unverified complaints should use 2.e or another category which best describes the disposition of a particular unverified complaint.)

2. Disposition: Provide, for cases closed during the reporting period, the total number of complaints, by type of facility or setting, for each disposition category. Where there are two possible choices, the ombudsman must choose the one category which best describes the outcome of the complaint. See note above for documentation of unverified complaints. Total must be same as total number of complaints received, as provided on page 7 and in box at C on page 1.

Part I, F. Optional Discussion of Legal Assistance/Remedies: Instruction Provided on Form

Part I, G. Optional Complaint Description: Instruction Provided on Form

Part II—Major Issues: Instruction Provided on Form

Part III—Program Information and Activities

A. Facilities and Beds

Provide, for both nursing facilities and licensed board and care and similar adult care facilities, as instructed on form, the number of facilities which were licensed in the State during the reporting period and the number of beds in those facilities.

B. Program Coverage

Instruction provided on form.

C. Local Programs

Provide, according to type of host organization, the number of regional or local entities which were geographically located outside of the State Office of the Ombudsman and where one or more paid staff and/or volunteers were designated by the State Ombudsman to investigate complaints and represent the State Ombudsman Program. As indicated on form, include regional offices of the State Ombudsman Office.

D. Staff and Volunteers

Instruction provided on form; include all volunteers who worked for the program during the reporting period except those who served only as members of advisory or policy committees.

E. Program Funding

Provide funds expended during the reporting period on the Ombudsman Program as it is defined under Section 712 of the Older Americans Act. Do not include amounts which were budgeted or obligated but not expended. Do not include amounts which were expended on ombudsman activities not authorized under Section 712 (i.e., ombudsman activity in settings other than long-term care facilities, as defined in the Act). Provide on the third line Title III expenditures for State or local ombudsman activity made by the State from Title III funding under Section 304(d)(1)(B) of the Act. Provide on the fourth line Title III expenditures for local ombudsman activity made by area agencies on aging from Title III funding provided under Section 304(d)(1)(D) of the Act. Provide other funding, by source, as specified on form.

F. Other Ombudsman Activities

Provide the information requested in the appropriate column. Use the State column for activities performed by the State Office of the Ombudsman. Use the local column for activities performed by local or regional designated ombudsman programs or regional offices of the State Ombudsman Program. Provide exact numbers wherever possible; where not possible, provide your best estimate of the numbers requested. Please be sure to record each activity only once, under the most appropriate heading. Do not, for example, count a media interview under both items 10 and 11.
Clarification of items listed on chart:

1. Training for Ombudsman Staff and Volunteers

In the State Office column, give the number of training sessions (meetings) and total hours provided or otherwise arranged by staff of the State Office of the Ombudsman for State or local program staff and volunteers, whether the meetings were held in the State capital or elsewhere in the State. In the local program column give the total number of sessions and total hours provided or otherwise arranged by staff of local ombudsman entities or regional offices for staff and volunteers of the local program. For each, provide the total number of people trained (not an unduplicated count of individuals) during the reporting year. For this item, a session is a meeting, whether it lasts for three hours, all day or all week.

2. Technical Assistance to Local Ombudsman and/or Volunteers

Provide in the State column an estimate of the percentage of total staff time which paid staff of the State Office of the Ombudsman (i.e., State Ombudsman, plus other staff) devote to developing and assisting local programs, whether in person or by telephone. Provide in the local column an estimate of the percentage of total staff time which local program paid staff devote to developing volunteers programs and supporting other staff and volunteers. Include staff time spent in developing and delivering training as well as in providing informal assistance.

3. Training for Facility Staff

Give the number of sessions provided at both State and local levels and the three most frequent topics of training at each level. (Hours are not requested. It is assumed that most sessions for facility staff are would last for 45 minutes to an hour. If sessions are two hours, count as two sessions; three hours, three sessions, etc.)

4. Consultation to Facilities

Ombudsman often provide information and assistance to facility managers and staff. To capture the extent of this important activity, report the number of such consultations provided during the year. If there are repeated consultations to the same facility, count each consultation separately. Do not count training sessions, documented in F.3. Provide the three most frequent subject areas of consultation.

5. Information and Consultation to Individuals

Provide the number of individuals assisted by telephone or in person on a one-to-one basis on needs ranging from how to select a nursing home to residents' rights to understanding Medicaid. Count each separate request for information or assistance (but not each call related to the same request), whether made by someone who requested assistance earlier in the year or by a new caller. Do not include here participants in community education sessions documented in F.10. Document the three most frequent topics/areas of requests or needs.

6. Resident Visitation

Document the number of facilities (unduplicated count) covered on a regular basis (weekly, bi-weekly, monthly or quarterly) in any ombudsman visitation program established in the State. If there is no visitation program, write N.A.

7. Participation in Facility Survey

Provide the number of facility surveys in which the Ombudsman or designated ombudsman representatives participated, including participation in exit interviews. Do not count survey team contacts to the ombudsman regarding complaints against the facility. (HCFA survey procedure requires surveyors to contact the ombudsman to inquire whether complaints have been received about the facility and obtain information about any complaints. If surveyors fail to make this contact, document as an ombudsman-filed complaint under complaint category N.108.)

8./9. Work With Resident and Family Councils

Provide the total count of all resident and family council meetings attended by designated ombudsman representatives during the reporting period, for both State and local levels.

10. Community Education

Provide the total number of presentations made to and or other meetings with community groups, students, churches, etc.

11. Work With Media

Provide the information requested at both State and local levels.

12. Monitoring/Work on Laws, Regulations, Government Policies and Actions

Provide, for both state and local levels, a best estimate of the percentage of total paid staff time spent working with other agencies and individuals, both inside and outside of government, on laws, regulations, policies and actions to improve the health, welfare, safety and rights of long-term care residents.

State: _____
Fiscal Year: 199_____

State Annual Ombudsman Report to the Administration on Aging

Agency or organization which sponsors the State Ombudsman Program:

_____

Part I—Cases, Complainants and Complaints

A. Provide the total number of cases opened during reporting period.

Case: Each inquiry brought to, or initiated by, the ombudsman on behalf of a resident or group of residents involving one or more complaints or problems which requires opening of a case file and includes ombudsman investigation, fact gathering, setting of objectives and/or strategy to resolve, and follow-up.

B. Provide the number of cases closed, by type of facility/setting, which were received from the types of complainants listed below.

Closed: Ombudsman activity on a case has stopped for any of the following reasons: (1) resolution or partial resolution, (2) by request of complainant, (3) complaint(s) unresolvable, (4) complaint(s) not verified, (5) resident died and no further investigation was required or (6)

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complaint(s) referred to other agency for resolution and final disposition was not obtained and/or reported to ombudsman.

Complainants	Nursing facility	Board and care (or similar)	Other settings
1. Resident			
2. Relative/friend of resident			
3. Non-relative guardian, legal representative			
4. Ombudsman/ombudsman volunteer			
5. Facility administrator/staff			
6. Other medical: physician/staff			
7. Representative of other social service agency or program			
8. Unknown/anonymous			
9. Other; specify types			
Total number of cases closed during the reporting period:			

C. For cases which were closed during the reporting period (those counted in B above), provide the total number of complaints received:

Complaint: A concern brought to, or initiated by, the ombudsman for investigation and action by or on behalf of one or more residents of a long-term care facility relating to health, safety, welfare or rights of a resident. One or more complaints constitute a case.

D. Types of Complaints, by Type of Facility.

Below and on the following pages provide the total number of complaints for each specific complaint category, for nursing facilities and board and care or similar type of adult care facility. The first four major headings are for complaints involving action or inaction by staff or management of the facility. The last major heading is for complaints against others outside the facility. See Instructions for additional clarification and definitions of types of facilities and selected complaint categories.

OMBUDSMAN COMPLAINT CATEGORIES

Residents' rights	Nursing facility	Board and care (or similar)
A Abuse, Gross Neglect, Exploitation:		
1. Abuse, physical (including corporal punishment)		
2. Abuse, sexual		
3. Abuse, verbal/mental (including involuntary seclusion)		
4. Financial exploitation (use E for less severe forms of financial complaints)		
5. Gross neglect (use categories under Resident Care for less severe forms of neglect)		
6. Resident-to-resident physical or sexual abuse		
7. Other—specify		
B. Access to Information:		
8. Access to own records		
9. Access to ombudsman/visitors		
10. Access to facility survey		
11. Information regarding advance directive		
12. Information regarding medical condition, treatment and any changes		
13. Information regarding rights, benefits, services		
14. Information communicated in understandable language		
Other—specify		
C Admission, Transfer, Discharge, Eviction:		
16. Admission contract and/or procedure		
17. Appeal process—absent, not followed		
18. Bed hold—written notice, refusal to readmit		
19. Discharge/eviction—planning, notice, procedure		
20. Discrimination in admission due to condition, disability		
21. Discrimination in admission due to Medicaid status		
22. Room assignment/room change/intrafacility transfer		
Other—specify		
D Autonomy, Choice, Exercise of Rights, Privacy:		
24. Choose personal physician, pharmacy		
25. Confinement in facility against will (illegally)		
26. Dignity, respect—staff attitudes		
27. Exercise choice and/or civil rights (includes right to smoke)		
28. Exercise right to refuse care/treatment		
29. Language barrier in daily routine		
30. Participate in care planning by resident and/or designated surrogate		
31. Privacy—telephone, visitors, couples, mail		
32. Privacy in treatment, confidentiality		
33. Response to complaints		

OMBUDSMAN COMPLAINT CATEGORIES—Continued

Residents' rights	Nursing facility	Board and care (or similar)
34. Reprisal, retaliation		
35. Other—specify		
E. Financial, Property (Except for Financial Exploitation):		
36. Billing/charges—notice, approval, questionable, accounting wrong or denied (includes overcharge of private pay residents)		
37. Personal funds—mismanaged, access denied, deposits and other money not returned (report criminal-level misuse of personal funds under A.4)		
38. Personal property lost, stolen, used by others, destroyed		
39. Other—specify		
Resident Care:		
F. Care:		
40. Accidents, improper handling		
41. Call lights, requests for assistance		
42. Care plan/resident assessment—inadequate, failure to follow plan or physician orders (put lack of resident/surrogate involvement under D.30)		
43. Contracture		
44. Medications—administration, organization		
45. Personal hygiene (includes oral hygiene)		
46. Physician services		
47. Pressure sores		
48. Symptoms unattended, no notice to others of change in condition		
49. Toileting		
50. Tubes—neglect of catheter, NG tube (use D.28 for inappropriate/forced use)		
51. Wandering, failure to accommodate/monitor		
52. Other—specify		
G Rehabilitation or Maintenance of Function:		
53. Assistive devices or equipment		
54. Bowel and bladder training		
55. Dental services		
56. Mental health, psychosocial services		
57. Range of motion/ambulation		
58. Therapies—physical, occupational, speech		
59. Vision and hearing		
60. Other—specify		
H. Restraints—Chemical and Physical:		
61. Physical restraint—assessment, use, monitoring		
62. Psychoactive drugs—assessment, use, evaluation		
63. Other—specify		
Quality of Life:		
I. Activities and Social Services:		
64. Activities—choice and appropriateness		
65. Community interaction, transportation		
66. Roommate conflict		
67. Social services—availability/appropriateness/ (use G.56 for mental health, psychosocial counseling/service)		
68. Other—specify		
J. Dietary:		
69. Assistance in eating or assistive devices		
70. Fluid availability/hydration		
71. Menu—quantity, quality, variation, choice		
72. Snacks, time span between meals		
73. Temperature		
74. Therapeutic diet		
75. Weight loss due to inadequate nutrition		
76. Other—specify		
K. Environment:		
77. Air temperature and quality (heating, cooling, ventilation, smoking)		
78. Cleanliness, pests		
79. Equipment/building—disrepair, hazard, poor lighting, fire safety		
80. Furnishings, storage for residents		
81. Infection control		
82. Laundry—lost, condition		
83. Odors		
84. Space for activities, dining		
85. Supplies and linens		
86. Other—specify		
Administration:		
L. Policies, Procedures, Attitudes, Resources (See other complaint headings, of above, for policies on advance directive, due process, billing, management residents' funds):		
87. Abuse investigation/reporting		
88. Administrator(s) unresponsive, unavailable		

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OMBUDSMAN COMPLAINT CATEGORIES—Continued

Residents' rights	Nursing facility	Board and care (or similar)
89. Grievance procedure (use C for transfer, discharge appeals)		
90. Inadequate record-keeping		
91. Insufficient funds to operate		
92. Operator inadequately trained		
93. Offering inappropriate level of care (for B&C's/similar)		
94. Resident or family council/committee interfered with, not supported		
95. Other—specify		
M. Staffing:		
96. Communication, language barrier (use D.29 if problem involves resident inability to communicate)		
97. Shortage of staff		
98. Staff training, lack of screening		
99. Staff turn-over, over-use of nursing pools		
100. Staff unresponsive, unavailable		
101. Supervision		
102. Other—specify		
N. Certification/Licensing Agency:		
103. Access to information (including survey)		
104. Complaint, response to		
105. Decertification/closure		
106. Intermediate sanctions		
107. Survey process		
108. Survey process—ombudsman participation		
109. Transfer or eviction hearing		
110. Other—specify		
O. State Medicaid Agency:		
111. Access to information, application		
112. Denial of eligibility		
113. Non-covered services		
114. Personal Needs Allowance		
115. Services		
116. Other—specify		
P. System/Others:		
117. Abuse/abandonment by family member/friend/guardian or, while on visit out of facility, any other person		
118. Bed shortage—placement		
119. Board and care/similar facility licensing, regulation		
120. Family conflict		
121. Financial exploitation by family or other not affiliated with facility		
122. Legal—guardianship, conservatorship, power of attorney, wills		
123. Medicare		
124. PASARR		
125. Resident's physician not available		
126. Protective Service Agency		
127. SSA, SSI, VA, Other Benefits		
128. Other—specify		
Total, categories A through P		
Q. Complaints in Other Than Nursing or Board and Care/Similar Settings:		
129. Home care		
130. Hospital or hospice		
131. Public or other congregate housing not providing personal care		
132. Shelters		
133. Other—specify		
Total, Heading Q		
Total Complaints [1]		

[1] (Add total of nursing facility complaints, board and care/similar complaints and complaints in Q, above. Place this number in Part I, C).

E. Action on Complaints: Provide for cases closed during the reporting period the total number of complaints, by type of facility or other setting, for each item listed below.

	Nursing facility	Board and care (or similar)	Other settings
1. Complaints which were verified:			
Verified: It is determined after work [interviews, record inspection, observation, etc.] that the circumstances described in the complaint are substantiated or generally accurate.			
2. Disposition: Provide for all complaints reported in C and D, whether verified or not, the number:			
a. For which government policy or regulatory change or legislative action was required to resolve (this may be addressed in the issues section)			
b. Which were not resolved [1] to satisfaction of resident or complainant			
c. Which were withdrawn by the resident or complainant			
d. Which were referred to other agency for resolution and:			
(1) report of final disposition was not obtained			
(2) other agency failed to act on complaint			
e. For which no action was needed or appropriate			
f. Which were partially resolved [1] but some problem remained			
g. Which were resolved [1] to the satisfaction of resident or complainant			
Total			
Grant Total (Same number as that for total complaints on pages 1 and 7)			

[1] Resolved: The complaint/problem was addressed to the satisfaction of the resident or complainant.

F. Legal Assistance/Remedies (Optional) Discuss on an attached sheet the types and percentages of total complaints for which (a) legal consultation was needed and/or used; (b) regulatory enforcement action was needed and/or used; (c) an administrative appeal or adjudication was needed and/or used; and (d) civil legal action was needed and/or used.

G. Complaint Description (Optional): Provide on an attached sheet a concise description of the most interesting and/or significant individual complaint your program handled during the reporting period. State the problem, how the problem was resolved and the outcome.

Part II—Major Long-Term Care Issues

Describe on attached sheets the priority long-term care issues which your program identified and/or worked on during the reporting period. For each issue, briefly state: (a) The problem, (b) barriers to resolution, and (c) recommendations for system-wide changes needed to resolve the issue, or how the issue was resolved in your State.

Part III—Program Information and Activities

A. Facilities and Beds

1. How many nursing facilities are licensed and operating in your State?

2. How many beds are there in these facilities?

3. Provide the type-name(s) and definition(s) of the types of board and care facilities and any other adult care home similar to a nursing or board and care facility for which your ombudsman program provides services, as authorized under Section 102(19) and [34), 711(6) and 712(a)(3)(A)(i) of the Older Americans Act:

(Continue on back of sheet if insufficient space.)

(a) How many of the board and care and similar adult care facilities described above are licensed in your State?

(b) How many beds are there in these facilities?

B. Program Coverage

In the space below describe how your program provides statewide ombudsman coverage for nursing facilities and board and care or similar adult care facilities, described in Part III, A.3 above. If you are not able to provide statewide coverage, what are the barriers and what do you plan to do to overcome the barriers? Use additional sheet if needed.

Statewide coverage: Residents of both nursing homes and a board and care homes (and similar adult care facilities) and their friends and families throughout the State have access to knowledge of the ombudsman program and how to contact it, and complaints received from any part of the State are investigated and documented and steps are taken to resolve problems in a timely manner, in accordance with Federal and State requirements.

Nursing Facilities

Board and Care/Similar Adult Care Facility

C. Local Programs

Provide for each type of host organization the number of local or regional ombudsman entities (programs) designated by the State Ombudsman to participate in the statewide ombudsman program:

Local entities hosted by:	
Area agency on aging	
Other local government entity	
Legal services provider	
Social services non-profit agency	
Free-standing ombudsman program	
Regional office of State ombudsman program	
Other; specify	
Total Designated Local Ombudsman Entities	

D. Staff and Volunteers

Provide numbers of staff and volunteers, as requested, at State and local levels.

Type of staff	Measure	State office	Local programs
Paid program staff	FTE's		
	Number people working full-time on ombudsman program.		
Paid clerical staff	FTE's		

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Type of staff	Measure	State office	Local programs
Volunteer ombudsmen certified to address complaints	Number volunteers.		
Certified Volunteer: An individual who has completed a training course prescribed by the State Ombudsman and is approved by the State Ombudsman to participate in the statewide Ombudsman Program.			
Other volunteers	Number volunteers		

E. Program Funding

Provide the amount of funds expended from each source for your statewide program:

Federal—Older Americans Act (OAA) Title VII, Chapter 2	$
Federal—Older Americans Act (OAA) Title VII, Chapter 3	$
Federal—OAA Title III provided at State level	$
Federal—OAA Title III provided at AAA level	$
Other Federal; specify:	$
State funds	$
Local; specify	$
Total Program Funding	$

F. Other Ombudsman Activities

Provide below and on the next page information on ombudsman program activities other than work on complaints.

Activity	Measure	State	Local
1. Training for ombudsman staff, and volunteers	Number sessions Number hours Total number of trainees		
2. Technical assistance to local ombudsmen and/or volunteers.	Estimated percentage of total staff time		
3. Training for facility staff	Number sessions 3 most frequent topics for training		
4. Consultation to facilities (Consultation: providing information and technical assistance, often by telephone).	3 most frequent areas of consultation Number of consultations		
5. Information and consultation to individuals (usually by telephone).	3 most frequent requests/needs	State Local	
6. Resident visitation (other than in response to complaint)	Number of consultations Number Nursing Facilities visited (unduplicated) Number Board and Care (or similar) facilities visited (unduplicated).		
7. Participation in Facility Surveys	Number of surveys		
8. Work with resident councils	Number of meetings attended		
9 Work with family councils	Number of meetings attended		
10. Community Education	Number of sessions		
11. Work with media	Number of interviews/discussions Number of press releases		
12. Monitoring/work on laws, regulations, government policies and actions.	Estimated percentage of total paid staff time		

State Annual Ombudsman Report; File Transmittal Requirements

To ensure compatibility of data submitted as part of the State Annual Ombudsman Report across states, AoA has developed a standard set of guidelines for transmittal of the State Annual Ombudsman Report data by state units on aging.

These specifications are organized around a set of seven data files to be forwarded by states using diskettes or a modem. Each submitted file must be in the format specified below.

General Guidelines

When preparing the files, please observe the following:

1. AoA is requesting that state agencies provide annual report data in a machine readable format, conveyed either by diskette or by modem. The data files can be transmitted as ASCII files, or .DBF files. AoA prefers .DBF for data oriented files but will accept ASCII files which comply with the specifications addressed in this document. In the case of narrative information, please provide text files.

2. Use the file names included in the file descriptions provided below.

3. Please embed the state ID in the name of data file submitted by the state. The naming convention should place the state ID as the first two characters of the file name, replacing the XX in each file name. For example, Alabama when submitting ombudsman program summary data will submit a file named *ALOMBSUM*.DBF.

4. Submit the files no later than 60 days following the end of the federal fiscal year, beginning November 30, 1995.

5. Round all expenditure data to the nearest dollar.

Like the Title III data sets, AoA has developed transmittal guidelines designed to encourage the use of electronic media. As a reminder, the ombudsman report is only for the state aggregate, not by PSA or other local program component. The files should be transmitted in .DBF format, where possible. The layout for each transmittal file is as follows:

1. Summary Performance Data—XXOMBSUM.DBF

This file summarizes data contained in Part I.A. B. and C. of the Ombudsman Report format. Please refer to the Ombudsman Report format and instructions for further definitions and explanations of the data elements to be reported in this file. The file format for this single record file is as follows:

1. State ID	C2
2. Fiscal Year	N4
3. Name of Agency/Organization Sponsor	C30
4. Total Cases Opened During Year	N6

The remaining fields all are numeric and 5 positions wide.

5. Number Cases Closed—NF, Resident	
6. Number Cases Closed—NF, Relative/friend of Resident	
7. Number Cases Closed—NF, Non-relative Guardian, Legal Representative	
8. Number Cases Closed—NF, Ombudsman/Ombudsman Volunteer	
9. Number Cases Closed—NF, Facility Administrator/Staff	
10. Number Cases Closed—NF, Other Medical: Physician/staff	
11. Number Cases Closed—NF, Representative of Other Agency	
12. Number Cases Closed—NF, Unknown/Anonymous	
13. Number Cases Closed—NF, Other (In a separate text file describe Other)	
14. Number Cases Closed—B&C, Resident	
15. Number Cases Closed—B&C, Relative/friend of Resident	
16. Number Cases Closed—B&C, Non-relative Guardian, Legal Representative	
17. Number Cases Closed—B&C, Ombudsman/Ombudsman Volunteer	
18. Number Cases Closed—B&C, Facility Administrator/Staff	
19. Number Cases Closed—B&C, Other Medical: Physician/staff	
20. Number Cases Closed—B&C, Representative of Other Agency	
21. Number Cases Closed—B&C, Unknown/Anonymous	
22. Number Cases Closed—B&C, Other (In a separate text file, describe Other)	
23. Number Cases Closed—Other Settings, Resident	
24. Number Cases Closed—Other Settings, Relative/friend of Resident	
25. Number Cases Closed—Other Settings, Non-relative Guardian, Legal Representative	
26. Number Cases Closed—Other Settings ,Ombudsman/Ombudsman Volunteer	
27. Number Cases Closed—Other Settings, Facility Administrator/Staff	
28. Number Cases Closed—Other Settings, Other Medical: Physician/staff	
29. Number Cases Closed—Other Settings, Representative of Other Agency	
30. Number Cases Closed—Other Settings, Unknown/Anonymous	
31. Number Cases Closed—Other Settings, Other (In a separate text file, describe Other)	

2. Nursing Home and Other Settings Complaint File—XXNFCPL.DBF

This single record file is used to transmit the information on the types of complaints. See Part I.D. of the Ombudsman Report format. In this file the nursing facility complaints are reported along with the information on complaints related to "other settings"; see page 7 of the Ombudsman Report format. Note, the complaint data for board and care/similar facilities are included in a separate file.

The data elements and format for this file are organized around the individual complaint categories.

1. State ID	C2
2. Complaint Category A.1	N6
3. Complaint Category A.2	N6
Through	
128. Complaint Category P.128. Other	N6

The balance of the data elements in this file pertain to complaints in other settings of care.

129. Complaints in Home Care settings	N6
130. Complaints in Hospital or Hospice	N6
131. Public/Other Congregate Hsg. Not Providing Personal Care	N6
132. Shelters	N6
133. Other	N6

3. Board and Care Facility Complaint File—XXBCCMPL.DBF

The data elements and format for this single record file are organized around the individual complaint categories.

1. State ID	C2
2. Complaint Category A.1	N6
3. Complaint Category A.2	N6
Through	
128. Complaint Category P.128. Other	N6

4. Action on Complaints File—XXCMPLAC.DBF

This single record file is used to transmit data describe in Part I. E of the Ombudsman Report. The data elements and format are as follows.

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1. State ID	C2
2. NF, Verified Complaints	N7
3. NF, Disposition—a	N6
4. NF, Disposition—b	N6
5. NF, Disposition—c	N6
6. NF, Disposition—d.1	N6
7. NF, Disposition—d.2	N6
8. NF, Disposition—e	N6
9. NF, Disposition—f	N6
10. NF Dispoisition—g	N6
1. B&C, Verified Complaints	N7
12. B&C, Disposition—a	N6
13 B&C, Disposition—b	N6
14. B&C-Disposition—c	N6
15. B&C, Disposition—d.1.	N6
16. B&C, Disposition—d.2	N6
17. B&C, Disposition—e	N6
18. B&C, Disposition—f	N6
19. B&C, Disposition—g	N6
20. Other Settings, Verified Complaints	N7
21. Other Settings, Disposition—a	N6
22. Other Settings, Disposition—b	N6
23. Other Settings, Disposition—c	N6
24. Other Settings Disposition—d.1	N6
25. Other Settings, Disposition—d.2	N6
26. Other Settings, Disposition—e	N6
37. Other Settings, Disposition—f	N6
28. Other Settings, Disposition—g	N6

5. Profile Data File—XXPROFLE.DBF

This single record file is used to transmit a variety of descriptive data which helps describe the circumstances and characteristics of the LTC Ombudsman Program in each state. The data elements are as follows:

1. State ID	C2
2. Fiscal Year	N4
3. # of NFs Licensed/Operating in State	N6
4. # of Beds in Lic. NFs	N7
5. # of B&C/Similar Licensed Facilities	N6
6. # of Beds in Lic. B&C/Similar Facilities	N7
7. # of Local/Reg. Ombuds Prog. Hosted By Area Agencies on Aging	N4
8. # of Local/Reg. Ombuds Prog. Hosted By Other Local Govt. Entity	N4
9. #of Local/Reg. Ombuds Prog. Hosted By Legal Services Provider	N4
10. # of Local/Reg. Ombuds Prog. Hosted By Social Services Non-Profit Agency	N4
11. # of Local/Reg. Ombuds Prog. Hosted By Free-standing Ombudsman Prog.	N4
12. # of Local/Reg. Ombuds Prog. Hosted By Reg. Office of State Ombuds Program	N4
13. # of Local/Reg. Ombuds Prog. Hosted By Other Type(s) of Local Entities	N4 [1]
14. # of State office Pd Program Staff FTEs	N4
15. # of State Office Pd Program Staff Working Full Time on Ombudsman Prog.	N4
16. # of State Office Pd Clerical Staff FTEs	N4
17. # of State Office Volunteers Certified To Address Complaints	N4
18. # of State Office Other Volunteers	N4
19. # of Local Program Pd Program Staff FTEs	N5
20. # of Local Program Pd Program Staff Working Full Time on Ombuds Program	N5
21. # of Local Program Paid Clerical Staff FTEs	N6
22. # of Local Program Volunteers Certified to Address Compliants	N5
23. # of Local Programs, Other Volunteers	N5
24. Federal—OAA Title VII, Chapter 2 Funding For Statewide Program	N8
25. Federal—OAA Title VII, Chapter 3 Funding For Statewide Program	N8
26. Federal—OAA Title III Funding (At State Level) For Statewide Program	N8
27. Federal—OAA Title III Funding (At AAA Level) For Statewide Program	N8
28. Other Federal Funding For Statewide Prog	N8
29. State Funding For Statewide Program	N8
30. Local Funding	N8 [2]
31. Total Statewide Program Funding	N8

[1] In separate text file, describe other.
[2] In separate text file, describe local.

6. Ombudsman Activity File—XXOMBACT.DBF

This single record file will be used to transmit required information on Ombudsman activities at the state and local level. See Part III.F. of the Ombudsman Report. The data elements and file layout are as follows:

1. # of Trning Sess for State Ombuds Staff/Volunteers	N5
2. # of Trning Sess for Local Ombuds Staff/Volunteers	N5
3. # of Trning Hrs for State Ombuds Staff/Volunteers	N5
4. # of Trning Hrs for Local Ombuds Staff/Volunteers	N5

5. # of Trainees—State Ombuds Staff/Volunteers	N5
6. # of Trainees—Local Ombuds Staff/Volunteers	N5
7. % of State Staff Time on TA to Local Ombudsmen/Volunteers	N2
8. % of Local Staff Time on TA to Local Ombudsmen/Volunteers	N2
9. # of Trning Sess by State Prog. For Facility Staff	N2
10. # of Trning Sess by Local Prog. For Facility Staff	N5
11. # of State Prog Consults To Facilities	N5
12. # of Local Prog Consults To Facilities	N5
13. # of State Prog Consults To individuals	N5
14. # of Local Prog Consults To Individuals	N5
15. # of NFs Visited by State Program	N5
16. # of NFs Visited by Local Programs	N5
17. # of B&C Facilities Visited by State Programs	N5
18. # of B&C Facilities Visited by Local Programs	N5
19. # of Fac. Surveys Participated In by State Programs	N5
20. # of Fac. Surveys Participated In by Local Programs	N5
21. # of Mtg. W/Res. Councils Attended By State Prog	N5
22. # of Mtg. W/Res. Councils Attended By Local Prog	N5
23. # of Mtg. W/Fam. Councils Attended By State Prog	N5
24. # of Mtg. W/Fam. Councils Attended By Local Prog	N5
25. # of Comm. Ed. Sessions Sponsored By State Prog	N5
26. # of Comm. Ed. Sessions Sponsored By Local Prog	N5
27. # of Interviews/Disc. With Media by State Prog	N5
28. # of Interviews/Disc. With Media by Local Prog	N5
29. # of Press Releases By State Programs	N5
30. # of Press Releases By Local Programs	N5
31. % of Total Pd State Staff Time Spent on Monitoring/Work On Laws, Regulations, Government Policies and Actions	N5
32. % of Total Pd Local Staff Time Spent on Monitoring/Work On Laws, Regulations, Government Policies and Actions	N5

4. Narrative Summaries—XXOMBNAR.WP

In addition to the data files, SUAs should prepare an exportable text file. It should contain narrative responses to the open-ended questions in the Ombudsman Report. Specifically provide a narrative for each of the following:

- Part I. F. Legal Assistance/Remedies (Optional submission)
- Part I. G. Complaint Description (Optional submission)
- Part II. Major Long Term Care Issues
- Part III. A. Facilities and Beds, Item 3—Type, name and definitions of the types of board and care facilities and any other adult care home similar to a nursing or board and care facility for which your ombudsman program provides services.
- Part III. C. Program Coverage—Nursing Facilities and board and care/similar adult care facilities
- Part III. F. Other Ombudsman Activities:

—Three most frequent topics for training of facility staff
—Three most frequent areas of consultation to facilities
—Three most frequent requests/needs encountered in the provision of consultation to individuals—by state programs and separately by local programs.

- Explanation or responses to data elements in the Ombudsman Report where "Other" data are reported or states have been added to specify/further describe a response, specifically:

—Number of cases closed—NF, Other
—Number of cases closed—B&C, Other
—Number of cases closed—Other, Other
—Other types of local entities hosting ombudsman programs
—Other federal funding sources
—Local funding sources

[FR Doc. 94-24050 Filed 9-28-94; 8:45 am]
BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-010-04-7122-02-5746; CACA 31588]

Realty Action—Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Correction.

SUMMARY: This notice supplements the notice published in the Federal Register on August 12, 1993 at 58 FR 42982 for land exchange CACA 31588. This notice describes additional lands that may be acquired by the Bureau of Land Management in the above exchange. These lands are similar in habitat to the BLM lands being exchanged. The additional lands that may be acquired are within the following sections:

San Benito County, Silver Creek Area

Mt. Diablo Meridian, California

T.15S., R.11E.
Secs. 22, 26, 27, and 32 to 36
T.16S., R.11E.
Secs. 1 to 6, 8 to 13, and 16
T.16S., R.12E.
Secs. 7, 16, 22, 27, 35 and 36

Kern County, Lokern Area

T.28S., R.22E.
Secs. 19 to 21, 28 to 30, and 32 to 34
T.29S., R.21E.
Secs. 24 and 25
T.29S., R.22E.
Secs. 1 to 4, 10 to 17, and 19 to 36
T.29S., R.23E.
Secs. 7, 17 to 21, and 27 to 36
T.30S., R.22E.
Secs. 1 to 5 and 8 to 11
T.30S., R.23E.
Secs. 1 to 6, 7, 9, and 11 to 13
T.30S., R.24E.
Secs. 6 to 9, 15 to 16, 22, 23, and 25

Interested parties may submit written comments concerning these lands to the BLM Area Manager at the following address until November 14, 1994. For further information contact: Bureau of Land Management, Attn: Dan Vaughn, 3801 Pegasus Drive, Bakersfield, California 93308; (805) 391-6125

Dated: September 9, 1994.

James Wesley Abbott,
Area Manager.

[FR Doc. 94-23469 Filed 9-28-94; 8:45 am]
BILLING CODE 4310-40-M

[CA-010-4210-04; CACA 30076]

Realty Action; Exchange of Timber Interest in Public Land in Yuba County, CA

Notice document 92-13116, page 23595, issue of Thursday, June 4, 1992, is hereby amended with the statement that the Bureau of Land Management is proposing to exchange Federal timber interests (only in T. 17N., R. 7 E., MDM, Sec 2: E½E½.

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ADDRESSES: For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments specific to the above described land to the District Manager, c/o Area Manager, Folsom Resource Area Office, 63 Natoma St., Folsom, CA 95630.

FOR ADDITIONAL INFORMATION: Contact Mike Kelley at the above address or by phone at (916) 985–4474.

Rick Cooper,

Acting Area Manager.

[FR Doc. 94–24051 Filed 9–28–94, 8:45 am]

BILLING CODE 4310–40–M

[AZ–050–04–4380–03]

Arizona: Long-Term Visitor Area Program for 1994–1995 and Subsequent Use Seasons; Revision to Existing Supplementary Rules, Yuma District, Arizona, and California Desert District, California and Revision of Long-Term Visitor Area Boundaries Within the California Desert District, El Centro Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Publication of supplementary rules and revision of Long-Term Visitor Area boundaries within the California Desert District, El Centro Resource Area.

SUMMARY: The Bureau of Land Management (BLM) Yuma District and California Desert District announce revisions to the Long-Term Visitor Area Program. The program, which was instituted in 1983, established designated long-term visitor areas and identified an annual long-term use season from September 15 to April 15. During the long-term use season, visitors who wish to camp on public lands in one location for extended periods must stay in the designated long-term visitor areas and purchase a long-term visitor area permit.

EFFECTIVE DATE: September 15, 1994.

FOR FURTHER INFORMATION CONTACT: Todd Suess, Outdoor Recreation Planner, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, telephone (602) 726–6300; or John Butz, Outdoor Recreation Planner, California Desert District, 6221 Box Springs Boulevard, Riverside, California 92507–0714, telephone (909) 697–5394.

SUPPLEMENTARY INFORMATION: The purpose of the Long-Term Visitor Area program is to provide areas for long-term winter camping use. The sites designated as long-term visitor areas are, in most cases, the traditional use areas of long-term visitors. Designated sites were selected using criteria developed during the land management planning process, and environmental assessments were completed for each site location.

The program was established to safely and properly accommodate the increasing demand for long-term winter visitation and to provide natural resource protection through improved management of this use. The designation of long-term visitor areas assures that specific locations are available for long-term use year after year and that inappropriate areas are not used for extended periods.

Visitors may camp without a long-term visitor area permit outside of long-term visitor areas, on public lands not otherwise posted or closed to camping, for up to 14 days in any 28-day period.

Authority for the designation of long-term visitor areas is contained in Title 43, Code of Federal Regulations, Subpart 8372, Sections 0–3 and 0–5(g). Authority for the establishment of a Long-Term Visitor Area program is contained Title 43, Code of Federal Regulations, Subpart 8372, Section 1, and for the payment of fees in Title 36, Code of Federal Regulations, Subpart 71.

The Authority for establishing supplementary rules is contained in Title 43, Subpart 8365, Section 1–6. The long-term visitor area supplementary rules have been developed to meet the goals of individual resource management plans. These rules will be available in each local office having jurisdiction over the lands, sites, or facilities affected and will be posted near and/or within the lands, sites, or facilities affected. Violations of supplementary rules are punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

The following are the supplemental rules for the designated long-term visitor areas and are in addition to rules of conduct set forth in Title 43, Code of Federal Regulations, Subpart 8365, Section 1–6.

The following supplemental rules apply year long to all public land users who enter the Long-Term Visitor Areas (LTVAs).

1. THE PERMIT. A permit is required to camp in a designated LTVA between September 15 and April 15. The permit authorizes the permittee to camp within any designated LTVA using those camping or dwelling unit(s) indicated on the permit between the period September 15 the April 15. There are two types of permits: Long-Term and Short-Visit. The Long-Term permit fee is $50.00 for the entire season and any part of the season. The Short-Visit permit is $10.00 for seven consecutive days. The Short-Visit permit may be renewed an unlimited number of times for the cost of $10.00 for seven (7) consecutive days. *No refunds are made on permit fees.*

2. THE PERMIT. To be valid, the Short-Visit permit or Long-Term permit decal must be affixed at the time of purchase, with the adhesive backing, to the camping unit (i.e., trailer, camper, or motor home) in a clearly visible location. A maximum of two (2) secondary vehicles are permitted.

3. PERMIT TRANSFERS. If you sell, trade, or exchange camping vehicles during the use season, remove the permit from your old vehicle before turning it over to the new owner. Present your permit to a BLM officer authorized to sell permits or a BLM office which administers an LTVA. The permit will be revised to cover the new camping unit or you will receive a replacement permit for your new vehicle at no cost. The permit may not be reassigned or transferred by permittee.

4. PERMIT REVOCATION. An authorized BLM officer may revoke without reimbursement any LTVA permit issued to any person when the permittee violates any BLM rule or regulation, or when the permittee, permittee's family, or guests' conduct is inconsistent with the goals of BLM's LTVA Program. Failure to return any LTVA permit to any authorized BLM officer upon demand is a violation of this supplemental rule. Any permittee whose permit is revoked must remove all property and leave the LTVA system within 12 hours of notice. The revoked permittee will not be allowed into any other LTVA in Arizona or California for the remainder of the LTVA season.

5. UNOCCUPIED CAMPING UNITS. Camping or dwelling unit(s) must not be left unoccupied within any LTVA for periods of greater than 5 days unless approved in advance by an authorized BLM officer.

6. PARKING. For your safety and privacy, maintain a minimum of 15 feet of space between dwelling units.

7. REMOVAL OF WHEELS AND CAMPERS. Campers, trailers, and other dwelling units must remain mobile. Wheels must remain on all wheeled vehicles. Pickup campers may be set on jacks manufactured for that purpose.

8. QUIET HOURS. Quiet hours are from 10 p.m. to 6 a.m. in accordance with applicable state time zone standards.

9. NOISE. Operation of audio devices or motorized equipment, including generators, in a manner that makes unreasonable noise that disturbs other visitors is prohibited. Within La Posa and Imperial Dam LTVAs, amplified music is allowed only in locations designated by BLM or when approved in advance by an authorized BLM officer.

10. ACCESS. Do not block roads or trails commonly in public use with your parked vehicles, stones, wooden barricades, or by any other means.

11. STRUCTURES AND LANDSCAPING. Fixed structures of any type are restricted and must conform to posted policies. This includes but is not limited to fences, dog runs, storage units, and windbreaks. Alterations to the natural landscape are not allowed. Painting rocks or defacing or damaging any natural or archaeological feature is prohibited.

12. LIVESTOCK. Boarding of livestock (horses, cattle, sheep, goats, etc.) within LTVA boundaries is permitted only when approved in advance by an authorized BLM officer.

13. PETS. Pets must be kept on a leash at all times. Keep an eye on your pets. Unattended and unwatched pets may fall prey to coyotes or other desert predators. Pet owners are responsible for cleanup and sanitary disposal of pet waste.

14. CULTURAL RESOURCES. Do not disturb any archaeological or historical values including, but not limited to, petroglyphs, ruins, historic buildings, and artifacts that may occur on public lands.

15. TRASH. Place all trash in designated receptacles. Public trash facilities are shown in the LTVA brochure. Depositing trash or holding tank sewage in vault toilets is prohibited. An LTVA permit is required for trash disposal within all LTVA campgrounds except for the Imperial Dam and Mule Mountain LTVAs.

16. DUMPING. Absolutely no dumping of sewage, gray water, or garbage on the ground. This includes motor oil and any other waste products. The changing of motor oil, vehicular fluids or disposal and possession of these used substances within an LTVA is strictly prohibited. Federal, state, and county sanitation laws and county ordinances specifically forbid these practices. Sanitary dump station locations are shown in the LTVA brochure. LTVA permits are required for dumping within all LTVA campgrounds except for the Imperial Dam and Midland LTVAs.

17. SELF-CONTAINED VEHICLES. In Pilot Knob, Dunes Vista, Midland, Tamarisk, and Hot Springs LTVAs, camping is restricted to self-contained camping units only. Self-contained units must have a permanent affixed waste water holding tank of 10-gallon minimum capacity. Port-a-potty systems, or systems which utilize portable holding tanks, or permanent holding tanks of less than 10-gallon capacity are not considered to be self-contained. The La Posa, Imperial Dam, and Mule Mountain LTVAs are restricted to self contained camping units, except within 500 feet of a vault or restroom.

18. CAMPFIRES. Campfires are permitted in LTVAs subject to all local, state and federal regulations. Comply with posted rules.

19. WOOD COLLECTION. No wood collection is permitted within the boundaries of Mule Mountain, Imperial Dam, and La Posa LTVAs. Outside these LTVAs and in all other LTVAs, only dead, down, and detached wood may be collected for firewood or hobby purposes. Collection and possession of ironwood is regulated to three pieces, not to exceed 10 pounds total in weight. A maximum of 50 pounds of natural firewood will be allowed per individual or group campfire at any one time. Please contact the nearest BLM office for current regulations concerning firewood collection.

20. SPEED LIMIT. The speed limit in LTVAs is 15 m.p.h. or as otherwise posted.

21. OFF-HIGHWAY VEHICLE USE. Motorized play is prohibited. Motorized vehicles should be used in LTVAs only for access to and from campsites.

22. VEHICLE USE. It is prohibited to operate any vehicle in violation of state or local laws and regulations relating to use, standards, registration, operation, and inspection.

23. FIREARMS. The discharge and use of firearms or weapons is prohibited inside or within ½ mile of the LTVAs.

24. VENDING PERMITS. The LTVA permit is not a vending permit. Please contact the nearest BLM office for information on vending or concession permits.

25. AIRCRAFT USE. Landing or taking off of aircraft, including ultralights, is prohibited in LTVAs.

26. HOT SPRING LTVA. Overnight occupancy is prohibited between old Highway 80 and Interstate 8.

27. HOT SPRING LTVA. Food, beverages, glass containers, and soap are prohibited within 50 feet of the hot springs facility in Hot Springs LTVA.

28. MULE MOUNTAIN LTVA. All camping within Wiley's Well and Coon Hollow campgrounds is restricted to designated sites only and is limited to one (1) camping or dwelling unit per site.

29. IMPERIAL DAM AND LA POSA LTVAs. Overnight occupancy is prohibited in desert washes in Imperial Dam and La Posa LTVAs.

30. LA POSA LTVA. Access to La Posa LTVA is restricted to legal access roads along U.S. Highway 95. Construction and use of other access points are prohibited. This includes removal and modification of barricades such as fences, ditches, and berms.

31. POSTED RULES. Observe all posted rules. Individual LTVAs may have additional specific rules. If posted rules differ from these supplemental rules, the posted rules take precedence.

32. OTHER LAWS. LTVA permit holders are required to observe all federal, state, and local laws and regulations applicable to the LTVA and shall keep the LTVA and, specifically, their campsite in a neat, orderly, and sanitary condition.

33. LENGTH OF STAY. Length of stay in a LTVA between April 16 and September 14 is limited to 14 days in a 28-day period. After the 14th day of occupation, campers must move outside of a 25-mile radius of the previous location.

The following are the revised boundaries for the Long-Term Visitor Areas (LTVA) located within the California Desert District, El Centro Resource Area.

Dunes Vista LTVA

San Bernardino Base Meridian,

T. 16 S., R. 20 E.,
Sec. 14, S½SW¼SE¼SW¼, SW¼SE¼SE¼SW¼, E½SE¼SE¼SW¼SW¼.
Sec. 23, NW¼NE¼NE¼NW¼, N½NW¼NE¼NW¼, W½NE¼NE¼NE¼NW¼.
17.5 Acres.

Tamarisk LTVA

San Bernardino Base Meridian,

T. 17 S., R. 18 E.,
Sec. 4., NW¼NW¼NE¼, W½NE¼NW¼NE¼.
15 Acres.

Pilot Knob LTVA

San Bernardino Base Meridian,

T. 16 S., R. 21 E.,
Sec. 28., NE¼.
160 Acres.

Hot Springs LTVA

San Bernardino Base Meridian,

T. 16 S., R. 16 E.,
Sec. 12., W½NW¼NE¼, SW¼NE¼, NE¼NW¼, E½SE¼NW¼, W½SE¼.
Sec. 13., E½SW¼NW¼NE¼, S½SE¼NW¼NE¼, SW¼NE¼, W½SE¼NE¼, W½NE¼SE¼, E½NW¼SE¼, E½W½NW¼SE¼, N½SW¼SE¼, NW¼SE¼SE¼.
355 Acres.

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This notice is published under the authority of Title 43, Code of Federal Regulations, Subpart 8365, Section 1–6

Ed Hastey,

State Director, California

Bruce Conrad,

Acting State Director, Arizona

[FR Doc. 94–24014 Filed 9–28–94; 8:45 am]

BILLING CODE 4310–32–M

[CA–066–02–4410–08]

South Coast Resource Management Plan and Record of Decision, California

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of Availability, South Coast Resource Management Plan and Record of Decision.

SUMMARY: In accordance with Section 202 of the Federal Land Policy and Management Act of 1976 (43 CFR 1601–1610) and the National Environmental Policy Act of 1969 (40 CFR 1500–1508), the BLM completed the Resource Management Plan (RMP) and Record of Decision (ROD) for the South Coast Planning Area, dated May 26, 1994.

The South Coast RMP/ROD provides guidance and identifies land use decisions to be implemented for management of 129,000 acres of public land and the associated natural resources scattered over Los Angeles, Orange, southwestern San Bernardino, and western San Diego and Riverside Counties. The South Coast RMP/ROD also provides guidance for managing 167,000 acres of federal mineral ownership (where the surface is privately owned).

The South Coast RMP/ROD is the result of a five year planning process with significant public participation. The decisions described in the South Coast RMP/ROD constitute final agency action for the Department of the Interior in accordance with 43 CFR 1610.5–2(b) and are not appealable. Citizens are invited to participate during implementation of these decisions. Copies of the South Coast RMP/ROD are available upon request.

FOR FURTHER INFORMATION CONTACT: Julia Dougan, Area Manager, U.S.D.I. Bureau of Land Management, Palm Springs-South Coast Resource Area, 63–500 Garnet Avenue; P.O. Box 2000, North Palm Springs, CA 92258–2000.

SUPPLEMENTARY INFORMATION: Land use decisions include the designation of eight Areas of Critical Environmental Concern (ACEC): Cedar Canyon ACEC, Potrero ACEC, Santa Ana River Wash ACEC and the Santa Margarita Ecological Reserve ACEC for the protection of sensitive plant and animal species; the Kuchamaa ACEC for the protection of Native American religious values; the Million Dollar Spring ACEC protects important watershed and riparian values; Johnson Canyon ACEC protects unique vegetation resources and research opportunities; the California Rocks and Islands ACEC will continue for use as a wildlife sanctuary and research field site.

Three Special Recreation Management Areas (SRMA) were identified: the Soboba SRMA, Beauty Mountain SRMA, and the Border Mountains SRMA (Highway 94 corridor). Two segments of the Santa Margarita River are identified as eligible for inclusion in the National Wild and Scenic Rivers System. Use of off-highway vehicles on lands adjacent to Canyon Lake is limited.

Lands identified for disposal will primarily be used as an exchange base to acquire lands within special management areas. When fully implemented, the pattern of public ownership will change from 296 scattered parcels to 15 manageable blocks of public land.

Dated: September 20, 1994

Julia Dougan,

Area Manager

[FR Doc. 94–24094 Filed 9–28–94; 8:45 am]

BILLING CODE 4310–40–P

[ID–942–04–332A–02]

Idaho: Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., September 20, 1994.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 11, Township 4 North, Range 1 East, Boise Meridian, Idaho, Group No. 892, was accepted August 5, 1994.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: September 20, 1994

Duane E. Olsen,

Chief, Cadastral Surveyor for Idaho.

[FR Doc. 94–24038 Filed 9–28–94; 8:45 am]

BILLING CODE 4310–GG–M

[CA–940–4210–10; CAS 058318, CACA 7831, CACA 7834, CACA 7835, CACA 7850]

Notice of Proposed Continuation of Withdrawals; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has proposed to continue withdrawals on 424.99 acres for 20 years within the Sequoia, Inyo, and Sierra National Forests and 140.00 acres within the Sequoia National Forest. The segregative effect on these withdrawals remains unchanged.

DATES: Comments should be received on or before December 28, 1994.

ADDRESSES: Comments should be sent to the California State Director, BLM, 2800 Cottage Way, Room E–2845, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Marcia Sieckman, BLM California State Office, 916–978–4820.

SUPPLEMENTARY INFORMATION:

1. CAS 058318

The land is described as follows:

Mount Diablo Meridian, T. 27 S., R. 32 E.,
Sec. 15, SE¼SW¼, NE¼SW¼SW¼, N½SW¼SE¼, SW¼SW¼SE¼

The area described contains 80.00 acres in Kern County. The purpose of this withdrawal is to protect the Hobo Hot Springs Administrative and Public Service Site

2. CACA 7831

The land is described as follows:

Mount Diablo Meridian, T. 25 S., R. 31 E.,
Sec. 29, W½SW¼NW¼, W½NW¼SW¼;
Sec. 30, E½SE¼NE¼, E½NE¼SE¼

The area described contains 80.00 acres in Kern County. The purpose of this withdrawal is to protect the Fulton Ranger Station

3. CACA 7834

Mount Diablo Meridian, T. 26 S., R. 31 E.,
Sec. 25, NE¼NE¼, T. 28 S., R. 32 E.,
Sec. 10, E½SE¼NE¼.

The area described contains 60.00 acres in Kern County. The purpose of the withdrawal is to protect the Evans Flat and Havilah Administrative Sites.

4. CACA 7835

Mount Diablo Meridian, T. 24 S., R. 33 E.,
Sec. 13, SW¼SE¼, S½NW¼SE¼

The area described contains 60.00 acres in Tulare County. The purpose of the withdrawal is to protect the Cannell Meadow Administrative Site.

Mount Diablo Meridian, T. 21 S., R. 34 E.,
Sec. 3, E½NE¼SW¼, W½NW¼SE¼.

The area described contains 40.00 acres in Tulare County. The purpose of the withdrawal is to protect the Beach Meadow Administrative Site.

Mount Diablo Meridian, T. 22 S., R. 34 E.,

Sec. 5, NE¼SW¼.

The area described contains 40.00 acres in Tulare County. The purpose of the withdrawal is to protect the Bonita Meadow Administrative Site.

5. CACA 7850

Mount Diablo Meridian, T. 2 S., R. 26 E.,
Sec. 14, Portion of Lot 3, NE¼NE¼SW¼, SW¼SW¼NE¼SW¼, E½SW¼NE¼SW¼, SE¼NE¼SW¼.

The area described contains 44.99 acres in Mono County. The purpose of the withdrawal is to protect the June Lake Ranger Station.

Mount Diablo Meridian, T. 6 S., R. 30 E.,
Sec. 12, SW¼NE¼, SE¼NW¼.

The area described contains 80.00 acres in Inyo County. The purpose of the withdrawal is to protect the Wells Meadow Ranger Station.

Mount Diablo Meridian, T. 9 S., R. 25 E.,
Sec. 35, NE¼SE¼.

The area described contains 40.00 acres in Fresno County. The purpose of the withdrawal is to protect Station #35 (also known as Baldy Administrative Site).

Mount Diablo Meridian, T. 6 S., R. 22 E.,
Sec. 3, SE¼NE¼.

The area described contains 40.00 acres in Madera County. The purpose of the withdrawal is to protect the Kelty Meadows Station.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: September 20, 1994.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 94–24035 Filed 9–28–94; 8:45 am]

BILLING CODE 4310–40–M

[MT–930–4210–06; NDM 83168]

Proposed Withdrawal and Opportunity for Public Meeting; North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service proposes to withdraw 1,108.60 acres of public land to protect waterfowl production areas. This notice closes the lands for up to 2 years from the general land laws and mining. The lands will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by December 28, 1994.

ADDRESSES: Comments and meeting requests should be sent to the Montana State Director, BLM, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Dick Thompson, BLM Montana State Office, 406–255–2829.

SUPPLEMENTARY INFORMATION: On August 25, 1994, a petition was approved allowing the U.S. Fish and Wildlife Service to file an application to withdraw the following described public lands from location and entry under the general land laws, including the mining laws, subject to valid existing rights:

Fifth Principal Meridian

T. 130 N., R. 68 W.,
Sec. 24, lot 6, SW¼NE¼, and NW¼SE¼.
T. 132 N., R. 68 W.,
Sec. 20, NE¼NE¼.
T. 135 N., R. 69 W.,
Sec. 28, N½NE¼.
T. 135 N., R. 70 W.,
Sec. 8, NE¼SW¼SW¼SW¼.
T. 141 N., R. 81 W.,
Sec. 26, lots 1 and 2, NE¼SE¼, and SW¼SE¼.
T. 142 N., R. 75 W.,
Sec. 12, S½SW¼;
Sec. 14, S½SW¼ and E½SE¼;
Sec. 22, N½NE¼;
Sec. 26, NW¼NE¼ and NE¼NW¼.
T. 143 N., R. 81 W.,
Sec. 6, lots 1 and 2;
Sec. 18, lot 3.
T. 144 N., R. 83 W.,
Sec. 30, lot 4.
T. 144 N., R. 84 W.,
Sec. 8, lots 1, 2, and 3.
T. 145 N., R. 84 W.,
Sec. 34, lots 3 and 4.
T. 146 N., R. 84 W.,
Sec. 32, lots 1, 4, 5, and 8.
T. 153 N., R. 75 W.,
Sec. 31, lots 2 and 4.

The areas described aggregate 1,108.60 acres in Burleigh, Logan, McHenry, McIntosh, and McLean Counties.

The purpose of the proposed withdrawal is for waterfowl production management for threatened and endangered and neotropical species.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Montana State Director of the Bureau of Land Management at the address specified above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Montana State Director at the address specified above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Temporary uses which are compatible with the intended uses of the proposed withdrawal will be permitted during this segregative period.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the Fish and Wildlife Service.

Dated: September 21, 1994.

John E. Moorhouse,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 94–24092 Filed 9–28–94; 8:45 am]

BILLING CODE 4210–06–P

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permits.

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C., *et seq.*).

Permit No. PRT–745284

Applicant: Pruett, Lawrence & Associates, Bakersfield, California

The applicant requests amendment of their current permit to take (live-trap and release) the Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) and the giant kangaroo rat (*Dipodomys ingens*) to include the range of each species within Kern County, California,

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to determine the presence or absence of the species for the purpose of enhancement of the survival of the species.

Permit No. PRT-751345

Applicant: Baxter Consulting Services, Lake Mathews, California

The applicant requests amendment of their current permit to include take (live-trap and release) of the Pacific pocket mouse (*Perognathus longimembris pacificus*) in Los Angeles, Orange, and San Diego Counties, California, to determine the presence or absence of the species for the purpose of enhancement of the survival of the species.

Permit No. PRT-794782

Applicant: Dr. James Deacon, Las Vegas, Nevada

The applicant requests a permit to take (collect, maintain at differing oxygen concentrations, in situ) eggs and larvae of the Devil's Hole pupfish (*Cyprinodon diabolis*) in Devil's Hole National Monument, Nye County, Nevada to investigate the effects of oxygen levels on the development of the species.

DATES: Written comments on the permit applications must be received on or before October 31, 1994.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents, within 30 days of the date of publication of this notice, to the following office: Division of Consultation and Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181. Telephone: 503-231-2063; FAX: 503-231-6243. Please refer to the respective permit number for each application when requesting copies of documents.

(Notice: Receipt of Applications for Permits under Section 10(a)(1)(A) of the Endangered Species Act.)

Dated: September 23, 1994.

Cynthia U. Barry,

Associate Manager-Endangered Species, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 94-24068 Filed 9-28-94; 8:45 am]

BILLING CODE 4310-55-P

Availability of a Draft Recovery Plan for the Kanab Ambersnail (Oxyloma Haydeni kanabensis) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Kanab ambersnail (*Oxyloma haydeni kanabensis*). Three populations of the species are known, two in southern Utah and the other within the Grand Canyon of Arizona. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 28, 1994 to ensure they receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, Lincoln Plaza, Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115. Written comments and materials regarding this plan should be sent to the Field Supervisor at the Salt Lake City address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England, Botanist (see ADDRESSES above), at telephone 801/524-5001.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies also will take these comments into account in the course of implementing approved recovery plans.

The Kanab ambersnail is a terrestrial snail in the family Succineidae. The empty shell is a light amber color. The live snail has a mottled grayish-amber to yellowish-amber color. The species' shell is thin walled with a right handed, elevated spire and a broad expanded opening. Mature individuals are up to 19 mm (0.75 inch) long, 9 mm (0.33 inch) in diameter, with 3.25 to 3.75 whorls in a drawn out spire. Three populations of the species are known, two in southern Utah and the other within the Grand Canyon of Arizona. The two Utah populations are near the Utah-Arizona border in Kane County. The larger Utah population occurs in Three Lakes Canyon about 10 kilometers (6 miles) northwest of the town of Kanab, Utah. The smaller Utah population is adjacent to the main stem of Kanab Creek in Kanab Creek Canyon. The Arizona population occurs in a spring-fed wetland at Vasey's Paradise about 92 kilometers (57 miles) southeast of the two Utah populations.

The Kanab ambersnail was listed as an endangered species under the authority of the Endangered Species Act (Act), as amended, on April 17, 1993. Critical habitat was proposed on November 15, 1992, for the species' largest Utah population. This species was listed due to loss of historical populations and past and threatened destruction of its limited habitat. Initial recovery efforts will focus on protecting the species population and habitat from habitat destroying activities through the section 6, 7, and 9 prohibitions of the Act for animal species. Biological and ecological research of the species biology and its relationship and interaction with its environment is necessary to guide future management of the species population and habitat to ensure its continued survival and the preservation of the species ecosystem. Additional recovery efforts will focus on inventory of potential habitat and minimum viable population studies of its known populations. Given the species vulnerability and lack of suitable habitat, it is doubtful that recovery and delisting of the species can occur in the foreseeable future.

Public Comments Solicited

The Service solicits written comments on the recovery plan described above. All comments received by the date specified in the DATES section above will be considered prior to approval of the recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 21, 1994.

Terry T. Terrell,

Regional Director.

[FR Doc. 94-24067 Filed 9-28-94; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Golden Gate National Recreation Area, The Presidio of San Francisco, CA: Revision of Park Boundary

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: This notice announces a revision of the boundaries of the Golden Gate National Recreation Area to include within the boundaries the former Public Health Service Hospital complex.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Chandler, General Manager, Presidio of San Francisco, (415) 556-0245.

SUPPLEMENTARY INFORMATION: Notice is hereby provided that the boundaries of the Golden Gate National Recreation Area (GGNRA), established October 27, 1972, pursuant to Public Law 92-589, 86 Stat. 1299, as amended, are revised, effective as of the date of publication of this notice, to include the Public Health Service Hospital (PHSH) complex which comprises approximately 36.5 acres, more or less, and is located on the southwest corner of the Presidio of San Francisco. This complex is also known as the former Marine Hospital Property.

This administrative boundary change is made pursuant to the statutory authority contained in Section 2 of Public Law 92-589 and facilitates inclusion of the PHSH site as a part of the transfer of the Presidio to the GGNRA from the jurisdiction of the United States Army to the jurisdiction of the National Park Service.

The area added to the revised boundaries of the GGNRA is identified as all that certain real property situated in the County of San Francisco, State of California, described as follows:

Commencing at an 8-inch square granite monument at an angle point in the general southerly boundary line of said Presidio of San Francisco Military Reservation, said monument being located 342.71 feet northerly from, measured at right angles to, the monument line of Lake Street, distant thereon 22.31 feet easterly from the city monument at the southeast corner of 12th Avenue and Lake Street; Thence along said general southerly line, north 1°11'24" east, 151.13 feet to an angle point therein; Thence continuing along said general southerly line, south 77°12'03" west, 395.97 feet to the southeasterly corner of said Marine Hospital Property, said southeasterly corner being also the southeasterly corner of that certain parcel of land described in the Quitclaim Deed to the State of California recorded September 26, 1938, in Book 3331 at page 460, official records of the City and County of San Francisco;

Thence along the southerly line of said parcel (3331 OR 460), south 77°12'03" west, 53.52 feet to the southwesterly corner thereof, said corner being the *Actual Point of Beginning* of this description;

Thence along the westerly line of said parcel (3331 OR 460), the following two courses:

(1) Northeasterly along the arc of a 2039.84 foot radius curve to the right, the center of which curve bears south 72°04'02" east, through a central angle of 13°57'36", an arc distance of 497.00 feet; and

(2) North 31°53'34" east, 86.72 feet to the easterly line of said Marine Hospital Property;

Thence along said easterly line, and along the northerly line of said Marine Hospital Property, the following seven courses:

(1) North 3°55'56" west, 102.23 feet to the center of a 4-inch round concrete monument;

(2) North 11°22'35" east, 170.44 feet to the center of a 4-inch round concrete monument;

(3) North 25°07'37" east, 184.90 feet to a 1-inch iron pipe the center of set in a 6-inch square concrete monument;

(4) North 68°50'08" west, 307.34 feet to a 1-inch iron pipe with lead and copper pin set in a 6-inch square concrete monument;

(5) North 2°34'10" east, 225.08 feet to a 1-inch iron pipe with lead and copper pin set in a 6-inch square concrete monument;

(6) North 52°46'59" east, 209.01 feet to the center of a 1-inch iron pipe set in a 6-inch square concrete monument; and

(7) South 82°10'01" west, 263.98 feet;

Thence leaving said northerly line, south 82°06'18" west, 639.24 feet to a point on the northerly extension of the westerly line of said Marine Hospital Property, distant thereon, north 2°21'26" west, 269.18 feet from the northwesterly corner of said Marine Hospital Property;

Thence along said northerly extension, south 2°21'26" east, 269.18 feet to said northwesterly corner of said Marine Hospital Property;

Thence along said westerly line of said Marine Hospital Property, south 2°21'26" east, 1113.32 feet to a 1-inch iron pipe with lead and copper pin set in a 6-inch square concrete monument;

Thence leaving said westerly line, north 87°53'30" east, 360.47 feet to a point on the northerly extension of the center line of 15th Avenue;

Thence along said northerly extension of the center line of 15th Avenue, south 2°04'04" east, 57.10 feet to a line which bears south 77°12'03" west from the actual point of beginning;

Thence north 77°12'03" east, 572.98 feet to the *Actual Point of Beginning.*

Containing 36.456 acres more or less.

The bearings and distances included herein are based on the California Coordinate System, NAD 1927, Zone 3. To obtain ground level distance multiply distance shown by 1.0000708

Revised boundary maps may be obtained from the following offices: General Manager, Presidio of San Francisco, Presidio Project Office, National Park Service, Building 102, The Presidio of San Francisco, California 94129-0022; and Regional Director, Western Regional Office, National Park Service, 600 Harrison Street, San Francisco, California 94107

Dated: September 27, 1994.

Roger Kennedy,

Director, National Pork Service.

[FR Doc. 94-24189 Filed 9-28-94; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-668 (Final)]

Phthalic Anhydride from Venezuela

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (the Act),[2] that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Venezuela of phthalic anhydride,[3] that have been

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 19 U.S.C. 1673d(b).

[3] For purposes of this investigation, phthalic anhydride is defined as an aromatic synthetic organic chemical usually produced from a primary petrochemical called orthoxylene, although it is sometimes produced from naphthalene. Phthalic anhydride is predominantly used in the production of plasticizers, unsaturated polyester resins, and alkyd resins, which in turn are generally used to produce plastics and paints. This investigation covers phthalic anhydride sold in either flaked or molten form. Phthalic anhydride is provided for in

Continued

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found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective May 25, 1994, following a preliminary determination by the Department of Commerce that imports of phthalic anhydride from Venezuela were being sold at LTFV within the meaning of section 733(b) of the Act.[4] Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 22, 1994.[5] The hearing was held in Washington, DC, on August 9, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 21, 1994. The views of the Commission are contained in USITC Publication 2809 (September 1994), entitled "Phthalic Anhydride from Venezuela: Investigation No. 731–TA–668 (Final)."

By order of the Commission.

Issued: September 23, 1994

Donna R. Koehnke,

Secretary.

[FR Doc. 94–24024 Filed 9–28–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203 or (202) 927–6246.

Comments on the following assessment are due 15 days after the date of availability:

AB–8 (SUB–NO. 29X), The Denver and Rio Grande Western Railroad Company—Discontinuance of Service Exemption—on 173.25 Miles of Trackage in Dickinson, Morris, Lyon, Osage, Franklin, Miami and Johnson Counties, Kansas, and Jackson County, Missouri.

EA available 9/23/94.

AB–401 (SUB–NO. 1), Oregon Pacific & Eastern Railway Company—Abandonment—in Lane County, Oregon. EA available 9/23/94.

Comments on the following assessment are due 30 days after the date of availability:

AB–397 (SUB–NO. 3X), Tulare Valley Railroad Company—Abandonment—in Tulare and Fresno Counties, CA. EA available 9/19/94.

AB–12 (SUB–NO. 172X), Southern Pacific Transportation Company—Discontinuance of Service Exemption—2.40 Miles in Los Angeles County, California—and—AB–409 (SUB–NO. 4X), Los Angeles County Transportation Authority—Notification of Abandonment Under Continuing Exemption—2.40 Miles in Los Angeles County, California. EA available 9/23/94.

AB–422X, Kelley's Creek and Northwestern Railroad Company—Abandonment in Kanawha County, WV. EA available 9/23/94.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–24098 Filed 9–28–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States and State of Arizona v. Magma Copper Co.*, Civ. No. 94–639–TUC–RMB, was lodged with the United States District Court for the District of Arizona, on September 8, 1994. That action was brought against defendant pursuant to the Clean Water Act ("the Act") for penalties and injunctive relief as a result of unauthorized discharges from three of the defendant's copper mining facilities located near Globe, Arizona. This decree requires the settlor to pay $625,000 in civil penalties to the United States and State of Arizona and $50,000 to the United States Forest Service to improve fish habitat in streams in the area, and to perform measures at Magma's Pinto Valley Operations to bring it into compliance with the Act. In addition, Magma is required to perform a Supplemental Environmental Project, which consists of remediating contamination at the abandoned Old Dominion Mine Site in Globe, Arizona.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States and State of Arizona v. Magma Copper Co.*, D.J. Ref. 90–5–1–1–3975.

The proposed consent decree may be examined at the office of the United States Attorney for the District of Arizona, 4000 United States Courthouse, 230 North First Avenue, Phoenix, Arizona 85025, at the Region IX office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105, and at the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $12.25 for the decree (25 cents per page reproduction costs) payable to the Consent Decree Library. When requesting a copy, please refer to *United States and State of Arizona v. Magma Copper Co.*, D.J. Ref. 90–5–1–1–3975.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–24095 Filed 9–28–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Consistent with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Town of North Hempstead*, Civil Action No. CV 90–3486, was lodged on September 16, 1994 with the United States District Court for the Eastern District of New York. Defendant Town of North Hempstead (Town) is the owner and operator of the Port Washington Landfill Site. As a result of the Landfill's operation, the Site became contaminated with hazardous substances and the Site was placed on the National Priorities List. The Environmental Protection Agency performed a remedial investigation and feasibility study (RI/FS) to identify the nature and extent of the contamination at the Site and the examine how best to remediate the Site.

Under the terms of the proposed decree, the Town will pay the Untied States the sum of $2.64 million of the total $3.5 million in costs incurred in performing the RI/FS as well as for other past costs the United States incurred at the Site. The $2.64 million will be paid in two equal installments, with the first installment being paid within thirty (30) days of the entry of the decree and the second installment being paid, along with interest, within two years of the entry of the decree. Under an earlier decree entered in 1991, the Town agreed to remediate the Site at an estimated cost of $45 million, and to reimburse EPA 100% of all future costs EPA incurs in overseeing the remediation of the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Town of North Hempstead*, D.J. reference #90–11–2–514.

The proposed consent decree may be examined at the Office of the United States Attorney for the Eastern District of New York, One Pierrepont Plaza, 14th floor, Brooklyn, New York; the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C., 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W. 4th Floor, Washington, D.C. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–24039 Filed 9–28–94, 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (94–076)]

Intent To Grant a Contingent Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant EyeDentify, Inc., of Baton Rouge, Louisiana, a contingent exclusive, royalty-bearing, revocable license to practice the invention described and claimed in U.S. Patent No. 5,125,730, entitled "Portable Dynamic Fundus Instrument," which was issued on June 30, 1992. The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR part 1245, subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless within 60 days of the date of this notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written objects to the grant and than recommend to the Associate General Counsel (Intellectual Property) whether to grant the exclusive license.

DATES: Comments to this notice must be received by November 28, 1994.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 358–2041.

Dated: September 14, 1994.

Edward A. Frankle,

General Counsel.

[FR Doc. 94–24102 Filed 9–28–94; 8:45 am]

BILLING CODE 7510–01–M

[Notice (94–075)]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a exclusive patent license.

SUMMARY: NASA intends to grant Rotordynamics-Seal Research (RSR), a corporation of the State of California, having its headquarters in North Highlands, California, an exclusive, royalty-bearing, revocable license to practice U.S. Patent No. 4,545,586, entitled "Damping Seal for Turbomachinery." U.S. Patent No. 4,545,586 is for damping rotor vibrations in turbomachinery. The patent license will be for a limited number of years and will contain appropriate terms and conditions in accordance with the NASA Patent Licensing Regulations, 14 C.F.R. 1245.200 *et seq.* NASA will grant the patent license in accordance with its licensing regulations unless the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation, within 60 days of the date of this notice. The

[Notice (94–077)]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent To Grant a Patent License.

SUMMARY: NASA hereby gives notice of intent to grant Krug Life Sciences, Inc., of Houston, Texas, an exclusive, royalty-bearing, revocable license to practice the invention described and claimed in U.S. Patent No. 5,125,730, entitled "Portable Dynamic Fundus Instrument," which was issued on June 30, 1992. The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR part 1245, subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the Date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written objects to the grant and than recommend to the Associate General Counsel (Intellectual Property) whether to grant the exclusive license.

DATES: Comments to this notice must be received by November 28, 1994.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 358–2041.

Dated: September 14, 1994.

Edward A. Frankle,

General Counsel.

[FR Doc. 94–24101 Filed 9–28–94; 8:45 am]

BILLING CODE 7510–01–M

subheading 2917.35.00 of the Harmonized Tariff Schedule of the United States (HTS).

[4] 19 U.S.C. § 1673b(b).

[5] 59 F.R. 32220.

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Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the exclusive license.

DATES: Written objections to this proposed license grant must be received by November 28, 1994.

ADDRESSES: Written objections should be sent to: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 358–2041.

Dated: September 14, 1994

Edward A. Frankle,

General Counsel.

[FR Doc. 94–24103 Filed 9–28–94; 8:45 am]

BILLING CODE 7510–01–M

[Notice (94–074)]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant a Patent License.

SUMMARY: NASA hereby gives notice of intent to grant Tecnico Corporation, of Chesapeake, Virginia, an exclusive, royalty-bearing, revocable license to practice the invention described and claimed in NASA Case No. LAR–15,217–1 entitled "Molding of Complex Composite Parts Utilizing Modified Silicon Dubber Tooling," which was filed on August 12, 1994. The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR part 1245, subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the Date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the exclusive license.

DATES: Comments to this notice must be received by November 28, 1994.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 358–2041.

Dated: September 14, 1994.

Edward A. Frankle,

General Counsel.

[FR Doc. 94–24104 Filed 9–28–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biochemistry and Molecular Structure and Function; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Advisory Panel for Biochemistry and Molecular Structure and Function in the Division of Molecular and Cellular Biosciences, Panel C

Name: Advisory Panel for Biochemistry and Molecular Structure and Function

Date and Time: Thursday and Friday October 20 and 21, 1994, 8:30 a.m. to 5 p.m.

Place: The Inn At Foggy Bottom, 824 New Hampshire Avenue, NW., Washington, DC. 20037.

Type of Meeting: Closed.

Contact Persons: Dr. Robert L. Uffen, Program Director and Brenda Flam, Program Manager for Metabolic Biochemistry, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22201. Telephone: (703) 306–1443.

Purpose of Meeting: To provide advice and recommendations concerning research proposals submitted to the Metabolic Biochemistry Program of the Division of Molecular and Cellular Biosciences at NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Metabolic Biochemistry Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 26, 1994

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 94–24113 Filed 9–28–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Cognitive, Psychological & Language Sciences; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following three meetings for the Advisory Panel for Cognitive, Psychological & Language Sciences (#1758).

Name: Advisory Panel for Cognitive, Psychological & Language Sciences (#1758).

Date & Time: October 20–21, 1994; 8:30 a.m.–6:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 390, Arlington, VA 22230.

Contact Person: Paul G. Chapin, Program Director for Linguistics, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1731.

Agenda: To review and evaluate Linguistics proposals as part of the selection process for awards.

Name: Advisory Panel for Cognitive, Psychological & Language Sciences (#1758).

Date & Time: November 8–10, 1994, 8:30 a.m.–6:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 340, Arlington, VA 22230.

Contact Person: Merry Bullock, Program Director for Human Cognition and Perception, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1732.

Agenda: To review and evaluate Human Cognition and Perception proposals as part of the selection process for awards.

Name: Advisory Panel for Cognitive, Psychological & Language Sciences (#1758).

Date & Time: November 14–15, 1994; 8:30 a.m.–6:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 380, Arlington, VA 22230.

Contact Person: Leslie Zebrowitz, Program Director for Social Psychology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1728.

Agenda: To review and evaluate Social Psychology proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 26, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–24109 Filed 9–28–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Developmental Mechanisms; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Developmental Mechanisms.

Date and Time: October 19–21, 1994, 8:30 am to 5:00 pm.

Place: Room 360, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Judith Verbeke, Program Director, Developmental Mechanisms, Room 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 306–1417

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support

Agenda: To review and evaluate Developmental Mechanism proposals as part of the selection process for awards

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 26, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–24112 Filed 9–28–94; 8:45 am]

BILLING CODE 7555–01–M

Earth Sciences Proposal Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Earth Sciences Proposal Review Panel (#1569).

Date and Time: October 19–21, 1994; 8:30 a.m. to 6 p.m.

Place: UNAVCO–UCAR, 3450 Mitchell Lane, Boulder, CO 80301.

Type of Meeting: Closed.

Contact Person: Dr. Daniel F. Weill, Program Director, Instrumentation & Facilities Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA 22230, (703) 306–1558.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Instrumentation & Facilities proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 26, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–24108 Filed 9–28–94; 8:45 am]

BILLING CODE 7555–01–M

Committee on Equal Opportunities in Science and Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (CEOSE) (1173).

Date and Time: October 20, 1994; 8:30 a.m.–5 p.m. (Open). October 21, 1994; 8:30 a.m.–12 Noon (Open).

Place: Room 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Wanda E. Ward, Executive Secretary, CEOSE, National Science Foundation, 4201 Wilson Boulevard, Room 805, Arlington, VA 22230. Telephone: (703) 306–1604.

Summary Minutes: May be obtained from the Executive Secretary at the above address.

Purpose of Meeting: To discuss national policy issues, including human resource development and the human capital initiative; to review issues about and assessments of participation rates of all segments of society in science and engineering; and planning of the Report to Congress.

Summary Agenda:

October 20: 8:30 a.m. to 12 Noon—Discussion of national policy issues, including human resource development and the human capital initiative;

1:30 p.m. to 5 p.m.—Discussion of issues about and assessments of the participation rates of all segments of society in science and engineering, and planning of the Report to Congress;

5 p.m—Recess and Reception

October 21: 8:30 a.m. to 12 Noon—Discussion of equity considerations in effective intervention programs to increase the participation of women, minorities and persons with disabilities in science and engineering; future directions.

Dated: September 26, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–24105 Filed 9–28–94; 8:45 am]

BILLING CODE 7555–01–M

Federal Networking Council Advisory Committee

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Federal Networking Council Advisory Committee (#1177).

Date and Time: October 18, 1994; 9:00 a.m. to 5:30 p.m. and October 19, 1994; 9:00 a.m. to 1:00 p.m.

Place: Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Ms. Lynn Behnke, Assistant Coordinator, Federal Networking Council DynCorp. 4001 N. Fairfax Drive, Suite 200, Arlington, VA 22203–1614, Telephone: (703) 522–6410. Fax: (703) 522–7161. Internet: behnke@arpa.mil.

Purpose of Meeting: The purpose of this meeting is for the Advisory Committee to provide the Federal Networking Council (FNC) with technical, tactical, and strategic advice, concerning policies and issues raised in the implementation and deployment of the National Research and Education Network (NREN) Program.

Agenda: Migration to the New Architecture, Federal Internet Umbrella Security Plan, Next Generation IP, International Networking, Education and Library Issues.

Luncheon: There will be a charge to attendees wishing to purchase a box lunch either one or both days. To obtain a registration form, contact Ms. Behnke by

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telephone, fax, or electronic mail at the numbers above. Forms must be received by October 12, 1994.

Dated: September 26, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-24107 Filed 9-28-94; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 21, 1994; 8:30 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Howard Moraff, Acting Deputy Division Director, Robotics and Intelligence Systems, Rm. 1115, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306-1928.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Information Technology and Organizations proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 26, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-24114 Filed 9-28-94; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel in Long Term Projects in Environmental Biology; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Long-Term Projects in Environmental Biology.

Date and Time: October 17 & 18, 1994.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 320, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. James R. Estes, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1483.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Collections in Systematics and Ecology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 26, 1994

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-24111 Filed 9-28-94; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Neuroscience; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Neuroscience (1158)

Date and Time: October 20-21, 1994; 9:00 a.m. to 5:00 p.m.

Place: Room 365, 4201 Wilson Boulevard, Arlington, VA

Type of Meeting: Part-Open

Contact Person: Dr. Karen Sigvardt, Program Director, Neuroendocrinology, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306-1424

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: October 21; 11:00 a.m. to 12:00 p.m., to discuss goals and assessment procedures. Closed Session: October 20; 9:00 a.m. to 5:00 p.m., and October 21, 9:00 a.m. to 11:00 a.m. and 12:00 p.m. to 5:00 p.m. To review and evaluate Neuroendocrinology proposals as part of the select process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 26, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-24106 Filed 9-28-94; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Nuclear Safety Research Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The Nuclear Safety Research Review Committee (NSRRC) will hold its next meeting on November 7-8, 1994. The location of the meeting will be Room T-2B3, Two White Flint North (TWFN) Building, 11545 Rockville Pike, Rockville, MD.

The meeting will be held in accordance with the requirements of the Federal Advisory Committee Act (FACA) and will be open to public attendance. The NSRRC provides advice to the Director of the Office of Nuclear Regulatory Research (RES) on matters of overall management importance in the direction of the NRC's program of nuclear safety research. The main purpose of this meeting is to review plans for confirmatory research in support of certification review of the CANDU 3 nuclear power plant design. Participants in the discussions will include representatives of the applicant (AECL Technologies Inc.) as well as NRC staff.

The planned schedule is as follows:

Monday, November 7

8:30-8:45 Opening remarks by the NSRRC Chairman and by the Director of RES

8:45-2:45 Applicant's presentation of CANDU 3 design and supporting research. (Applicant) (Break 10:30-10:45; lunch break 12-1:15)

3-3:30 Presentation of technical issues identified by the NRC Office of Nuclear Reactor Regulation (NRC staff)

3:30-4:15 NRC's confirmatory research plan overview (NRC staff)

4:15-5:30 Issue-by-issue presentation and discussion of NRC research plans. (The issues tentatively scheduled for discussion during this period are thermal hydraulics, reactor physics, and fuel behavior.) (NRC staff)

Tuesday, November 8

8:30-10:45 Issue-by-issue presentation and discussion of NRC research plans, continued. (The issues tentatively scheduled for discussion during this period are severe accidents, source terms, materials and structures, instrumentation and control, and probabilistic risk assessment.) (NRC staff)

11-11:30 Recapitulation (Director, RES)

11:30-5 Committee discussion (including further questions for staff and applicant and deliberations toward formulation of advice). (NSRRC) (Lunch break 12:15-1:30; break 3-3:15)

Members of the public may file written statements regarding any matter to be discussed at the meeting. Members of the public may also make requests to speak at the meeting, but permission to speak will be determined by the Committee chairperson in accordance with procedures established by the Committee. A verbatim transcription will be made of the NSRRC meeting and a copy of the transcript will be placed in the NRC's Public Document Room in Washington, DC.

Any inquiries regarding this notice, any subsequent changes in the status and schedule of the meeting, the filing of written statements, requests to speak at the meeting, or for the transcript, may be made to the Designated Federal Officer, Mr. George Sege (telephone: 301/415-6593), between 8:15 a.m. and 5 p.m.

Dated at Rockville, Maryland, this 23d day of September 1994.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 94-24076 Filed 9-28-94; 8:45 am]

BILLING CODE 7590-01-M

Petitions Filed Under 10 CFR 2.206; Improved Reviewing Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Petitions Under 10 CFR 2.206; Implementation of Improved Reviewing Procedures.

SUMMARY: The Nuclear Regulatory Commission has improved the primary mechanism available to the public for raising potential safety issues involving NRC-licensed facilities under the provisions of 10 CFR 2.206.

The § 2.206 petition process, contained in Part 2 of NRC's regulations, provides members of the public with the means to request evaluation and resolution of potential health and safety issues associated with facilities that have been licensed by the NRC. Consistent with current efforts to enhance public participation in the decisionmaking process, the Commission undertook a review of the § 2.206 process to make it more effective, understandable, and as credible as possible.

As a result, the NRC has adopted procedures to increase meaningful participation of the petitioner in the § 2.206 process and to improve communications between the NRC and the petitioners. In addition to being kept informed of the status of the petition and being provided with a copy of the licensee's response to the petition, petitioners will be given an opportunity to participate in NRC-licensee meetings on the petition.

There will also be a provision for offering an informal public hearing at an open meeting on petitions with present new information on, or a new approach to evaluating, a significant safety issue. This provision and the associated criteria will be applicable also to petitions that allege violations of NRC requirements. The informal public hearings will be transcribed. If warranted, the NRC will take action to resolve a public health or safety problem before resolution of the § 2.206 petition.

A formal Director's Decision, signed by the director of the appropriate program office, will continue to set forth results of staff reviews governing § 2.206 petitions. However, for qualifying petitions, the director now will have the additional benefit of information elicited from the informal public hearing.

A new Management Directive and Handbook 8.11 have been prepared to ensure agency-wide implementation of the improved § 2.206 petition process.

A pamphlet describing the new practice and procedures has been prepared for public information. Copies of the pamphlet may be obtained from the Government Printing Office, telephone (202) 512-2249.

To further enhance meaningful participation by the petitioners and the public in the § 2.206 petition process, an electronic bulletin board system (BBS) has been established to provide information on the status of all pending petitions. The status of each pending petition will be updated monthly. The BBS can be accessed directly by a toll free number, (800) 303-9672, at modem speeds up to 9600 Baud with communication parameters set at 8 data bits, no parity, 1 stop bit, full duplex, and ANSI terminal emulation. Select the "Subsystem/Databases" option from the "NRC Main Menu" and then the "Public Petitions" option. The BBS can also be accessed from the FedWorld by using Internet and Telnet access: fedworld.gov (192.239.92.3); FTP site access: ftp.fedworld.gov (192.239.92.205); and World Wide Web (Home Page): www.fedworld.gov (this is the URL). If assistance is needed, contact the Public Petitions BBS Operator, Tom Dunning, by calling (301) 504-1189, between 8:00 a.m. and 4:30 p.m. eastern standard time.

FOR FURTHER INFORMATION CONTACT: Mohan Thadani, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-1430.

Dated at Rockville, Maryland, this 23rd day of September 1994.

For the Nuclear Regulatory Commission.

James L Milhoan,

Acting Executive Director for Operations.

[FR Doc. 94-24073 Filed 9-28-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-11119, License No. 48-04193-03 EA 94-074]

John L. Doyne Hospital, Milwaukee, WI; Order Imposing Civil Monetary Penalty

I

John L. Doyne Hospital, previously, Milwaukee County Medical Complex (Licensee), is the holder of Byproduct Material License No. 48-04193-03 issued by the Nuclear Regulatory Commission (NRC or Commission) on May 5, 1975. The license was amended in its entirety on January 8, 1993, was due to expire on November 30, 1993, and is currently in timely renewal status pursuant to 10 CFR 2.109. The license authorizes the Licensee to possess Cobalt-60 sealed teletherapy sources for treatment of humans, human research, irradiation of biological materials including animals and non-biological materials (excluding flammable and explosive materials), and for Licensee instrument calibrations.

II

An inspection of the Licensee's activities was conducted on March 21 through April 14, 1994. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated June 23, 1994. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice in two letters, both dated July 20, 1994. In its

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response, the Licensee requested 100 percent mitigation of the civil penalty based on its view of the proper application of the civil penalty adjustment factors in the areas of identification, corrective action, and licensee performance.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in Appendix A to this order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered* That:

The Licensee pay a civil penalty in the amount of $3,750 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

Whether on the basis of Violations I.A. and I.B., admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland, this 20th day of September 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix A

Evaluation and Conclusion Regarding Violations Assessed a Civil Penalty

On June 23, 1994, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for two violations identified during an NRC inspection on March 21 through April 14, 1994. John L. Doyne Hospital responded to the Notice in two letters, both dated July 20, 1994. In its response, the Licensee requests 100 percent mitigation of the civil penalty based on its disagreement with the NRC Staff's application of the civil penalty adjustment factors in the areas of identification, corrective action, and licensee performance. The NRC's evaluation and conclusions regarding the Licensee's request are as follows:

Restatement of the Violations

Violation I.A

10 CFR 20.101(a) limits the whole body radiation dose of an individual in a restricted area to 1.25 rems per calendar quarter, except as provided by 10 CFR 20.101(b). Paragraph (b) allows a whole body radiation dose of 3.0 rems per calendar quarter provided specified conditions are met.

Contrary to the above, an individual working in a restricted area received a whole body radiation dose of 1.33 rem during the first calendar quarter of 1993 and the conditions of paragraph (b) were not met.

Violation I.B

10 CFR 20.201(b) requires that each licensee make such surveys as (1) may be necessary for the licensee to comply with the regulations in Part 20, and (2) are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a) "survey" means an evaluation of the hazards associated with the presence of radioactive materials under a specific set of conditions.

Contrary to the above, on February 3, 1993, the licensee did not make a survey (evaluation) of a radiation hazard to assure compliance with 10 CFR 20.101(a) in that two individuals entered a teletherapy room, while the cobalt-60 source was in an exposed position and did not evaluate the radiation hazard by surveying the radiation field or by observing the warning light on the control panel.

Summary of Licensee's Request for Mitigation

1. Identification

The Licensee contends that the incident surrounding the alleged violations was self identified and self evident. The Licensee also notes that the NRC described the incident as a self-disclosing event in the cover letter of the Notice of Violation.

2. Corrective Action

The Licensee quotes the NRC's statement from the June 23, 1994 letter that, "The staff recognizes that immediate corrective action was taken." According to the Licensee, the corrective action included an improved console light, an additional light at the entry door at eye level, an indicator light in the entry way, a radiation monitor with two visual and one audio alarms, and a policy and procedure that requires a person to be stationed near the door to prevent inadvertent entry to the room when the door interlock has been defeated and the source is in the exposed position. The Licensee notes that the incident was discussed at the February and May 1993 Radiation Safety Committee meetings demonstrating the involvement of the management of the Licensee. The Licensee disagrees with the NRC statement in the June 23, 1994 letter that the Licensee was not aggressive in publicizing the event to other staff members to help prevent similar events from recurring. The Licensee states that within hours of the incident, individuals directly involved with both cobalt-60 teletherapy units and most of the persons who work in the department knew of the incident. According to the Licensee, the incident was a unique situation that happened during initial acceptance testing and final stages of installation of the teletherapy unit with the room entrance door interlock defeated. The Licensee further claims that this is a very unique set of circumstances and given this situation it is not likely that a similar event could occur.

The Licensee also notes that its internal information notice, the "Surveyor" is used to disseminate information to authorized users and handlers of unsealed sources of radioactive materials in research applications on an individual basis. According to the Licensee, the "Surveyor" was not intended, nor ever expressed in the enforcement conference, to be exclusively devoted to this event, and the scope of the "Surveyor" was to be the results of the NRC inspection as it related to unsealed radioactive materials use in research applications. The Licensee states that the "Surveyor" was not published at the time of the enforcement conference because the Licensee did not receive the apparent violations letter until May 17, 1994, only four working days prior to the enforcement conference.

3. Licensee Performance

The Licensee believes that the violations assessed a civil penalty represent an isolated failure and suggests that mitigation of the civil penalty is appropriate to recognize and encourage good or improving Licensee performance.

NRC Evaluation of Licensee's Request for Mitigation

1. Identification

The NRC Enforcement Policy, Section VI.B.2(a), states that the base civil penalty may be escalated up to 50 percent if the NRC identifies a violation. Although the Licensee was aware of the self-disclosing event in February 1993, it did not conclude that a violation had occurred. The NRC identified the violations during the inspection conducted in March 1994. Specifically, the NRC identified to the Licensee that it violated 10 CFR 20.101 when an individual received a whole body dose of 1.33 rem in the first calendar quarter of 1993, an amount in excess of the 1.25 rem quarterly dose limit. The quarterly dose limit was 1.25 rem instead of 3 rem because the Licensee did not have a Form NRC–4 on file for the individual prior to the event. After the NRC identified the violation, the Licensee reported it to NRC in a written report dated April 15, 1994. That report should have been submitted to NRC in March of 1993 as required by 10 CFR 20.405. The NRC also identified, during the inspection in March 1994, that the Licensee had violated 10 CFR 20.201(b) when the two individuals entered a teletherapy room in February 1993, while the cobalt-60 source was in an exposed position, and did not evaluate the radiation hazard by surveying the radiation field or by observing the warning light on the control panel.

Based on the above, the NRC concludes that 50 percent escalation of the base civil penalty is warranted for NRC identification.

2. Corrective Action

The Enforcement Policy, Section VI.B.2(b), states that the purpose of the corrective action factor is to encourage licensees to (1) take the immediate actions necessary upon discovery of a violation that will restore safety and compliance with the license, regulation(s), or other requirements, and (2) develop and implement (in a timely manner) the lasting actions that will not only prevent recurrence of the violation at issue, but will be appropriately comprehensive, given the significance and complexity of the violation to prevent occurrence of similar violations. The Licensee's corrective actions to be considered under this factor generally begin after the Licensee clearly understands the scope of the violation.

NRC acknowledges the corrective actions described by the Licensee in its letters, both dated July 20, 1994. However, according to the Enforcement Policy, some corrective actions are always expected; therefore, corrective action that is considered average but acceptable will normally result in no adjustment to the base civil penalty. Additionally, the corrective actions described by the Licensee were narrowly focused on preventing an entry into the teletherapy room when the source is exposed and do not comprehensively address the larger issues of preventing personnel exposures that occur as a result of the failure to make surveys during actual or suspected off-normal conditions.

The NRC acknowledges the Licensee's clarification that the "Surveyor" is an information notice for matters concerning unsealed radioactive materials use in research applications and is not applicable to the teletherapy units. Nevertheless, the NRC is concerned with the Licensee's lack of certain corrective actions following the identification of the violations in March 1994. First, relative to Violation I.A, the Licensee had not, as late as its July 20, 1994 response, recognized that the Form NRC–4 was required by regulation to be completed and on file prior to allowing an individual to exceed the 1.25 rem quarterly dose limit. Second, relative to Violation I.B, the Licensee's July 20, 1994 response fails to propose any corrective actions for preventing inadequate surveys in the future. The NRC's June 23, 1994 letter highlighted significant NRC concerns about the event in that it involved two of the Licensee's experienced personnel, the physicist and the Radiation Safety Officer. Both individuals entered the teletherapy room with the source exposed. The physicist had no radiation detection survey instruments, and the Radiation Safety Officer had a survey meter with the audible alarm turned off; he also did not immediately look at the meter itself and only recognized that the sources was exposed after they were inside the room. This concern was not addressed by the Licensee in its corrective actions.

Based on the above, the NRC concludes that no mitigation is warranted for the corrective action factor.

3. Licensee Performance

The NRC Enforcement Policy, Section VI.B.2(c), states that the licensee performance factor should not be applied for those cases where the licensee has not been in existence long enough to establish a prior performance or inspection history. Similarly, mitigation based on this factor is not normally appropriate where the area of concern has not been previously inspected, unless overall performance is good. The NRC had not inspected the teletherapy license since 1986 because of its inactive status for medical use, and therefore, the NRC had no recent history upon which to judge the Licensee's performance. Moreover, there has been a decline in overall performance, as evidenced by the 14 violations in Section II of the Notice of Violation that were not assessed a civil penalty.

Based on the above, the NRC concludes that no mitigation is warranted for the licensee performance factor.

NRC Conclusion

Based on its evaluation of the Licensee's response, the NRC staff concludes that an adequate basis for mitigation of the civil penalty has not been provided by the Licensee. Accordingly, NRC concludes that a civil monetary penalty of $3,750 should be imposed by order.

Appendix B

Evaluation and Conclusion Regarding Violations Not Assessed a Civil Penalty

Of the violations not assessed a civil penalty, the Licensee admitted Violations II.A, II.B, and II.D through II.M, and denied Violations II.C and II.N.

Restatement of Violation II.C

Condition 16B of License 48–04193–03 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in a letter dated December 11, 1992.

The section entitled "Safety Device Checks" of that letter states, in part, that the electrical stops will be tested for proper operation before each patient or monthly, whichever is greater.

Contrary to the above, the electrical stops were not tested for proper operation monthly or before a patient was treated in November 1993.

Summary of the Licensee's Response to Violation II.C

The Licensee indicates that the electrical stops were tested after completing the installation of the unit in April 1993. Documentation of this testing was submitted to the NRC in a letter dated May 5, 1993. The Licensee, therefore, concludes that Condition 16B of License No. 48–04193 was met because the electrical stops were tested prior to the patient being treated in November 1993.

NRC Evaluation of the Licensee's Response to Violation II.C

Licensee Condition 16 specifically states that the NRC regulations shall govern unless the statements, representations, and procedures in the licensee's application and correspondence are more restrictive than the regulations. 10 CFR 35.634(d)(3) requires that a licensee authorized to use a teletherapy unit for medical use shall perform safety spot-checks of each teletherapy facility once in each calendar month that assure proper operation of the electrical stops. The Licensee's commitment as referenced in License Condition 16B cannot be less restrictive than the regulation unless an exemption is obtained. The test of the electrical stops following installation of the unit in April 1993 does not meet the minimum regulatory requirement to test once per month. Therefore, the NRC concludes that Violation II.C did occur as stated.

Restatement of Violation II.N

10 CFR 35.32(a)(1) requires, in part, that the licensee establish and maintain a written quality management program which must include written policies and procedures to meet the objectives that, prior to the administration, a written directive is prepared for any brachytherapy radiation dose.

Item 3 of the licensee's quality management program states, in part, that a written directive will be used for every brachytherapy patient and will include specific information, including the isotope, total number of sources, and the total time or dose to be delivered.

10 CFR 35.2 defines a written directive as an order in writing for a specific patient, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation and containing certain other specific information. As described in Item (6) of the QMP all other brachytherapy shall include the following specific information:

(i) Prior to implantation: the radioisotope, number of sources, and source strength and;

(ii) After implantation, but prior to completion of the procedure: the radioisotope, treatment site, and total source strength and exposure time (or equivalently, the total dose).

Contrary to the above, the written directive for a brachytherapy patient did not contain all the required information. For example, the written directive for the iridium-192 implant on January 19, 1993 specified the number of ribbons rather than the number of seeds.

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Summary of the Licensee's Response to Violation II.N

The Licensee references 10 CFR 35.400 which states, in part, that "a licensee shall use the following sources * * * Iridium-192 as seeds encased in nylon ribbon," and concludes that a ribbon is a source. The licensee asserts that sources of iridium-192 as seeds encased in nylon ribbon cannot be directly compared to sources such as cesium-137 because cesium-137 sources as needles or applicator cells are readily identifiable and only a few are used at one time for patient treatment, in comparison to the potential use of hundreds of seeds per treatment utilizing iridium-192 seeds encased in nylon ribbon. According to the Licensee, counting the number of cesium-137 sources takes only a relatively short time since few are used and they are large enough to be seen from a distance; whereas counting the number of seeds encased in a nylon ribbon would take significantly longer due to the small size and the handling necessary to be able to accurately determine several hundred seeds contained in 10, 20 or more ribbons. According to the Licensee, this would add to hand exposure, and some whole body exposure, with no benefit to the source preparer or the patient, and would be contrary to ALARA principles.

NRC Evaluation of the Licensee's Response to Violation II.N

10 CFR 35.2, "Definitions," states that brachytherapy source means an individual sealed source or a manufacturer-assembled source train *that is not designed to be disassembled by the user.* A nylon ribbon containing iridium-192 seeds is not a brachytherapy source because it can be cut by the user to contain any given number of iridium seeds. An iridium-192 seed is an individual sealed source because it is not designed to be disassembled by the user. Therefore, the NRC concludes that Violation II.N occurred as stated.

Appendix B

NRC acknowledges that the requirement involves some exposure, which should be minimized through training and the use of proper equipment. The requirement benefits the patient because it helps to assure that the radiation dose delivered is the dose intended by the prescribing physician.

NRC Conclusion

The Licensee has not provided an adequate basis for withdrawal of Violations II.C and II.N. Therefore, the NRC concludes that Violations II.C and II.N occurred as stated in the Notice.

[FR Doc. 94–24075 Filed 9–28–94; 8:45 am]
BILLING CODE 7590–01–M

[Docket No.: 40–8027]

Applications, Hearings, Determinations, etc.; Sequoyah Fuels Corp.

AGENCY: Nuclear Regulatory Commission.

ACTION: Sequoyah Fuels Corporation, Gore, Oklahoma Consideration of Amendment to Source Material License and Opportunity for a Hearing.

This is a notice to inform the public that the U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Source Material License No. SUB–1010, issued to Sequoyah Fuels Corporation (SFC), at the Sequoyah Facility, Gore, Oklahoma. The licensee requested the amendment in a letter dated July 19, 1994 for changes to implement the new 10 CFR Part 20 and other administrative changes at SFC. These changes include changes in nomenclature to conform with the SI standards, and deletion of reference to production-related activities that ceased with the 1993 shutdown.

The NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the NRC's rules of practice for domestic licensing proceedings in 10 CFR Part 2" (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requester in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Sequoyah Fuels Corporation, to the attention of Mr. John H. Ellis, President, P.O. Box 610, Gore, OK 74435; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Any hearing that is requested and granted will be held in accordance with the NRC's "Informal Hearing Procedures for Adjudications in Material Licensing Proceedings" in 10 CFR Part 2, subpart L.

For further details with respect to this action, see the application for amendment dated May 6, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Stanley Tubbs Memorial Library, 101 E. Cherokee, Sallisaw, Oklahoma 74955.

Dated at Rockville, Maryland, this 21st day of September, 1994.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–24074 Filed 9–28–94; 8:45 am]
BILLING CODE 7590–01–M

OFFICE OF SPECIAL COUNSEL

Agency Forms Submitted for Office of Management and Budget (OMB) Review Notice

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, as amended (44 U.S.C. Chapter 35), the U.S. Office of Special Counsel (OSC) has submitted a proposal for the collection of information to OMB for review and approval.

(1) *Collection title*: OSC Customer Surveys.

(2) *Forms submitted*: OSC Forms 48–48c.

(3) *OMB Number*: New Information Collection.

(4) *Expiration date of current OMB clearance*: Three years from date of OMB approval.

(5) *Type of request*: New collection.

(6) *Frequency of response*: Once per matter completed by OSC (maximum).

(7) *Respondents*: Federal employees will be the primary respondents. State or local government employees, businesses or other for-profit entities, non-profit institutions, and small businesses or organizations may be respondents on an occasional, infrequent basis.

(8) *Estimated annual number of respondents*: 2,320 (maximum).

(9) *Total annual responses*: 2,230 (maximum).

(10) *Averge time per response*: .2708 hours.

(11) *Total annual reporting hours*: 628.256.

(12) *Collection description*: Four written surveys seeking qualitative information in completed cases from individuals who have (a) alleged prohibited personnel practices; (b) alleged prohibited personnel practices or Hatch Act violations resolved after full field investigation by OSC; (c) received written Hatch Act advisory opinions, or alleged Hatch Act violations resolved without field investigation; and (d) disclosed possible wrongdoing by federal agencies to OSC.

ADDRESSES: Comments regarding the information collection should be addressed to Erin M. McDonnell, Associate Special Counsel for Planning and Advice, U.S. Office of Special Counsel, 1730 M Street, NW., Suite 300, Washington, DC 20036–4505, and the OMB reviewer, Joseph F. Lackey, Office of Management and Budget, New Executive Office Building, Room 10235, 1725–17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Erin M. McDonnell, Associate Special Counsel for Planning and Advice, U.S. Office of Special Counsel, 1730 M Street, NW., Suite 300, Washington, DC 20036–4505, (202) 653–8971 [phone], (202) 653–5151 [fax].

SUPPLEMENTARY INFORMATION: Copies of the forms and supporting documents can be obtained from Erin M. McDonnell, Associate Special Counsel for Planning and Advice, at the address shown above.

Dated: September 22, 1994.

James A. Kahl,

Deputy Special Counsel.

U.S. Office of Special Counsel; Generic Clearance Request for Approval of Customer Survey Activities

Date: September 22, 1994.

Contact: Erin M. McDonnell, (202) 653–8971.

I. Introduction

The U.S. Office of Special Counsel (OSC) requests that the Office of Management and Budget (OMB) issue a generic clearance of customer surveys that OSC intends to send to individuals who seek the agency's assistance. In developing these customer surveys. OSC was guided by OMB's "Resource Manual for Customer Surveys" (October 1993 edition).

While OSC is not subject to the requirements of Executive Order 12862,[1] OSC is placing increased emphasis on customer service activities consistent with the principles and objectives of the executive order. In the spirit of the order, OSC provided an update on current and planned customer services activities to the National Performance Review on September 8, 1994.

A. Overview of OSC's Activities

The U.S. Office of Special Counsel is an independent agency responsible for:

- The investigation of allegations of prohibited personnel practices defined by law at 5 U.S.C. 2302(b) (including reprisal for whistleblowing), and other activities prohibited by civil service law, rule or regulation, and the initiation of corrective and disciplinary actions when such remedial actions are warranted;
- The interpretation and enforcement of Hatch Act provisions on political activity in Chapters 15 and 73 of Title 5 of the U.S. Code; and
- The provision of a secure channel through which federal employees may make disclosures of information evidencing violations of law, rule or regulation, gross waste of funds, gross mismanagement, abuse of authority, or a substantial and specific danger to public health or safety, without disclosure of the employee's identity (except with the employee's consent).

Allegations of prohibited personnel practices and other activities prohibited by civil service law, rule or regulation, and allegations of Hatch Act violations are initially reviewed by OSC's Complaints Examining Unit (CEU). After a thorough initial investigation, CEU refers matters stating a potentially valid statutory claim to the Investigation Division for full field investigation. Finally, the Prosecution Division reviews completed field investigations to determine whether the inquiry has established any violation of law, rule or regulation, and whether the matter warrants corrective or disciplinary action, or both. If such action is appropriate, matters may be resolved through negotiation with the parties involved or, if those efforts are unsuccessful, through litigation before the U.S. Merit Systems Protection Board. In Fiscal Year (FY) 1993, OSC received 2,256 new matters containing allegations of prohibited personnel practices, Hatch Act violations or other allegations of wrongdoing, and we completed actions in 1,951 such matters.

In addition to the Hatch Act activities described above, OSC also interprets and provides advice about that Act. During FY 1993, OSC's Hatch Act Unit issued 219 written advisory opinions, provided 1,109 oral advisory opinions in response to telephone inquiries, and responded to an additional 718 telephone inquiries requesting general information.

Finally, OSC's Disclosure Unit (the agency's secure channel for whistleblower disclosures) receives and evaluates disclosures from federal employees about violations of law, rules or regulations, or other wrongdoing involving federal agencies. In some instances, OSC is required to refer these allegations to the head of the agency involved for an investigation and a report. In other cases, OSC may require the agency head to review the matter and inform OSC of what actions, in any, will be taken. In FY 1993, OSC's Disclosure Unit received and considered 209 disclosure matters, and resolved 78 such matters.

B. OSC's Proposed Customer Survey Efforts

OSC plans to use four different written surveys to elicit qualitative information from customers served by the agency. The surveys will be sent to—

- Individual's alleging prohibited personnel practices whose cases have been completed by OSC after review by the Complaints Examining Unit (Attachment A);
- Individuals alleging prohibited personnel practices or Health Act violations whose cases have been completed by OSC (regardless of the disposition) after a full field investigation and review by the Prosecution Division (Attachment B);
- Individuals who have received written advisory opinions about allowable and unallowable political activity under the Hatch Act, or whose Hatch Act complaints have been resolved without a full field investigation (Attachment C); and

[1] Pursuant to discussions with Mr. Greg Wood at the National Performance Review, we understand that OSC is not subject to the executive order because, with limited exceptions, OSC's direct customers are employees of the federal government.

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• Individuals whose disclosures of possible wrongdoing by federal agencies have been acted on by the OSC Disclosure Unit (regardless of the disposition of the case) (Attachment D).

OSC plans to distribute the four survey forms on a trial basis to approximately 180 customers, selected from OSC computer lists of matters completed in FY 1994. These customers will represent a stratified cross-section of individuals in each of the four customer groups to which the surveys relate. Based upon feedback from these customers, OSC will make necessary revisions to the survey forms and will determine the scope and frequency of survey activity planned for the balance of the three-year authorization period sought by this request.

Attachment E details OSC's customer survey efforts (with projected burden hours if it adopts the most comprehensive strategy—*i.e.*, surveys of customers in all completed OSC cases for calendar years 1995–97. Of course, OSC will notify OMB of the surveying strategy it adopts after the trial period. Similarly, to the extent that the survey forms need to be significantly revised or supplemented due to intervening developments, such as amendments to OSC's statutory authority, we will also notify OMB.[2]

OSC agrees to prepare and submit annual progress reports on its customer survey efforts as necessary at the end of calendar years 1995–1997. Any reports submitted will include the number of burden hours used, a summary of activities undertaken and the results achieved, and will address any revisions required in the clearance.

OSC plans to continue to draw upon the experience of other government agencies with customer survey plans, and to exchange information about best practices and successes with those plans and survey activities. Funds permitting, we also hope to make use of training opportunities offered by the Joint Program in Survey Methodology and other sources to assist us in refining our survey methodologies.

While OSC cannot promise particular results in advance in any given case, the Special Counsel has made it a priority of the agency to do as much as we legally can for individuals who seek the agency's assistance. This emphasis on customer service encompasses many things, including providing timely responses, treating customers courteously and respectfully, and resolving reasonable doubts in favor of persons who come to OSC for help. Consistent with the priority the Special Counsel has placed on customer service, she has appointed a senior official, Associate Special Counsel for Planning and Advice Erin M. McDonnell, to oversee and direct the agency's customer surveying efforts. All of these endeavors reflect OSC's commitment to provide the highest quality of service to its customers.

[2] For example, enactment of new authorizing legislation pending in Congress, under which OSC would be given jurisdiction to investigate complaints from employees of government corporations alleging reprisal for whistleblowing, would increase the numbers of individuals subject to OSC's proposed survey activity.

II. Supporting Statement

A. Justification

1. *Circumstances of information collection.* OSC is requesting generic approval to conduct qualitative customer satisfaction surveys over the next three years, which are designed to determine federal employees' and other customers' satisfaction with OSC's current services. (See Attachment E.) These surveys are voluntary and they do not solicit information that is required by law or regulation.

2. *Purposes of collective/consequences of not collecting the information.* Approval of this information collection will enable OSC management and staff to obtain information necessary to:

• Explore customer perceptions, expectations and experience with OSC;
• Assess levels of customer satisfaction;
• Identify areas where improvements can be made;
• Link results with management planning and other agency operations;
• Establish customer service standards and actionable measures;
• Improve external relations with customers; and
• Build customer awareness at all levels of the organization.

As indicated in the introduction to this request, it is an agency priority to ensure the efficiency and effectiveness of the service provided by OSC to individuals seeking its assistance. Failure to pursue the collection of the information sought will deprive the agency of information necessary to perform the functions listed above. OSC will make all survey results to Congress and other requestors in accordance with applicable laws and regulations.

3. *Use of improved information technology to reduce burden, or technical or legal obstacles to reducing burden:* Improved information technology will be used whenever practicable to reduce the burden on the public. There are no technical or legal obstacles to reducing this burden.

4. *Efforts to identify duplication:* Duplication of effort or information collected will be avoided by surveying a customer only once for each matter he or she submits to OSC. OSC's customer survey program will also include training of staff involved in survey activities by the senior agency official responsible for coordinating the program. Such training will alert the staff to implementation issues, including duplication of effort or information collected.

5. *Reason(s) for inability to use or modify similar information already available for intended purposes:* OSC is not aware of any prior survey of all categories of its customers. Indeed, the most recent General Accounting Office review of OSC operations (dated November 1993) focused only on the agency's handling of whistleblower reprisal cases. Moreover, that GAO survey did not reflect new procedures implemented by the Special Counsel (the head of the agency) over the past two years.

6. *Methods used to minimize burden on small businesses or other entities:* Very few small businesses or other small entities will be affected by these efforts. To the extent that a small business may be a customer (*e.g.*, by making a Hatch Act complaint), the burden will be kept to a minimum by asking for opinions on a voluntary basis, and by asking for only the information needed to obtain opinions on OSC's performance in areas of concern.

7. *Consequence to federal program or policy activities of less frequent collections:* Failure to conduct a trial distribution of surveys to the four customer categories identified by OSC would deprive the agency of an effective tool for refinement of the surveys as necessary to improve their utility and minimize the burden on respondents. In making its decision about the scope and frequency of survey activity after the trial distribution, OSC will take appropriate steps to assure that the collections of information are the least burdensome necessary to accomplish agency functions and achieve program objectives.

8. *Special circumstances that require collection to be conducted in a manner inconsistent with the guidelines in 5 C.F.R. 1320.6:* These collections will be conducted in accordance with the guidelines in 5 C.F.R. 1320.6.

9. *Efforts to consult with persons outside the agency:* OSC's survey plan was developed after review of the OMB Resource Manual for Customer Surveys. we have also consulted with several federal agencies—including the Departments of Justice and Commerce, and the Office of Personnel Management—and will continue these efforts. Moreover, survey recipients will be invited to comment on the surveys during the test period.

10. *Assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation or agency policy:* Individuals and organizations contacted will be assured of the confidentiality of their replies under 5 U.S.C. 1212(g) and 1213(h)–(i), 5 U.S.C. 552 (Freedom of Information Act), and 5 U.S.C. 552a, (Privacy Act of 1974) A Privacy Act notice will appear on the surveys or the accompanying cover letters. Moreover, survey respondents are not required to provide their names or other identifying information on the survey form. If this information is not supplied, the respondent cannot be identified.

11. *Justification for questions of a sensitive nature:* No sensitive information will be collected.

12. *Estimates of annualized cost to the federal government and respondents, and description of method:* The costs to the federal government of OSC's customer survey efforts are expected to consist of mailing charges for surveys and any follow-up notices, pre-paid return envelopes, and the associated overhead costs of document preparation, mailing and analysis. The cost to respondents will consist of their time in reading and responding to the survey, the value of which is unknown.

13. *Estimates of burden of collection of information:* After the trial period, if OSC decides to survey all customers in all completed cases, the total burden on the public for completion of the four types of surveys under this generic clearance is estimated to be 1,849 hours. This is based upon an estimated review and completion time of 15 minutes each for three of the surveys (Attachments A, C and D) and 20 minutes for the fourth (Attachment B). Under this type of surveying, the annual burden (rounded to the next higher whole number) is estimated to be 620 hours in FY 1995; 599 hours in FY 1996; and 630 hours in FY 1997.

14. *Reasons for changes in burden:* Not applicable.

15. *Collections of information for statisticol use.* Not applicable.

B. Collections of Information Employing Statisticol Methods

As discussed above, OSC will distribute the four surveys (Attachments A–D) on a trial basis. Based on OSC's assessment of the results of this trial mailing, we will determine the scope and frequency of survey activity planned for the balance of the three-year authorization period.

OSC may determine after the trial distribution to survey all OSC customers in cases closed between FY 1995–1997, or to survey selected samples of customers in one (and possibly more) categories, depending upon workload, cost, and other relevant factors. Should any of the four surveys use statistical methods to select respondents, OSC will supply the information specified in Items 1–5 of OMB's guidelines on preparation of supporting statements for requests for OMB approval of collections of information under the Paperwork Reduction act.

Attachments

Attachment A

OSC Form 48 (9/94)
OMB Control No. _____.
Expiration_____

Office of Special Counsel Customer Survey

The Office of Special Counsel (OSC) recently completed action on your complaint alleging that your agency committed a prohibited personnel practice. We closed our file in this matter for the reasons expressed in the OSC closure letter. In order to better serve you and other federal employees, we hope that you will take a few minutes to answer this questionnaire and return it in the postage paid envelope.

For each question below, please *circle* the most appropriate response.

1. How did you hear about OSC?
   a. Friend/co-worker
   b. Employee relations/personnel office
   c. Inspector General's office
   d. Congressional office
   e. Newspaper, television or radio
   f. Other (please explain) _____
2. How long after you filed your complaint did you receive a letter acknowledging receipt of your complaint by OSC?
   a. Less than one month
   b. More than one month
   c. I never received an acknowledgement letter from OSC
3. How long after you filed your complaint did a member of OSC's complaint examination staff contact you?
   a. Less than one month
   b. More than one month
   c. I was never contacted by OSC complaint examination staff
4. Did OSC's complaint examination staff member explain to you the types of prohibited personnel practices that might apply to your case, and OSC's authority to seek corrective action in your case?
   a. Yes
   b. No
   c. Don't recall
5. Please describe the amount of time it took OSC to complete its consideration of your complaint:
   a. Three months or less
   b. Six months
   c. Nine months
   d. More than nine months
   e. Don't recall
6. The time it took OSC to complete its consideration of your complaint was:
   a. Longer than you expected
   b. Shorter than you expected
   c. About the length of time your expected
7. Enclosed with this survey is a letter from OSC explaining why we closed your case. Do you believe this letter clearly explains why we were unable to take further action in your case?
   a. Yes
   b. No

   If not, how could we make it clearer? (Please explain).

   _____
   _____
   _____

Please indicate your response to the statements in Questions 8–11 by *circling* the number from 1 to 5 that best describes your response.

1=Strongly Disagree
2=Disagree
3=No Opinion
4=Agree
5=Strongly Agree

8. The OSC complaint examination staff was courteous and professional.
   1 2 3 4 5
9. The OSC complaint examination staff clearly explained the role of OSC and the OSC complaint process.
   1 2 3 4 5
10. The OSC complaint examination staff kept me informed of the status of my case.
    1 2 3 4 5
11. The OSC complaint examination staff was available to answer additional questions and accept further information from me while my complaint was pending.

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1
2
3
4
5

12. If you were *satisfied* with the service you received from OSC, please tell us why.

13. If you were *dissatisfied* with the service you received from OSC, please tell us why.

14. We invite your comments or suggestions on specific ways in which we could improve our service.

15. *OPTIONAL.* You may provide your name and case number so that OSC can look into any concerns that you raised in this survey.

Your name: _____
OSC case number: _____

Thank you for contacting OSC and for taking the time to complete this questionnaire. If you have any questions or need additional information about our services, please call us at (800) 872–9855. Any of our representatives will be pleased to help you.

Enclosure

Survey Comments/Suggestions (Optional)

We would be pleased to receiver any comments you may have about this survey, including any suggestions on changes needed to make specific questions clearer, or to otherwise improve the overall survey for future recipients. If your comment or suggestion pertains to a particular survey question or item, please specify the question/item number under the column provided. Thank you.

Question Item No.	Comment suggestion

Attachment B

OSC Form 48a (9/94)
OMB Control No. _____
Expiration _____

Office of Special Counsel Customer Survey

The Office of Special Counsel (OSC) recently completed action on your complaint alleging a violation of the Hatch Act or that your agency committed a prohibited personnel practice. In order to better serve you and other federal employees, we hope that you will take a few minutes to answer this questionnaire and return it in the enclosed paid envelope.

For each question below, please *circle* the most appropriate response.

1. How did you hear about OSC?
   a. Friend/co-worker
   b. Employee relations/personnel office
   c. Inspector General's office
   d. Congressional office
   e. Newspaper, television or radio
   f. Other (please explain) _____
2. Please indicate the subject matter of your case.
   a. A prohibited personnel practice involving whistleblowing
   b. A prohibited personnel practice not involving whistlelbowing
   c. A combination of whistleblowing and other prohibited personnel practices
   d. Freedom of Information Act
   e. Hatch Act
3. What was the final action taken by OSC in your case?
   a. My case was investigated and closed
   b. My case was investigated and settled
   c. My case was investigated and brought before the U.S. Merit Systems Protection Board
4. How long after you were notified that your case had been referred for a full field investigation did OSC investigative staff contact you?
   a. One month or less
   b. More than a month
   c. I was never contacted by OSC investigative staff
   d. I was never notified that my case had been referred for investigation
5. Did an OSC investigative staff member explain the role of OSC and how the investigation would be conducted?
   a. Yes
   b. No
   c. Don't recall

   If the explanation was unclear, how could he/she have made the explanation clearer? (Please explain).

6. Did an OSC investigative staff member explain OSC's investigation process and what OSC's procedures would be after the investigation was completed?
   a. Yes
   b. No
   c. Don't recall

   If the explanation was unclear, how could he/she have made the explanation clearer? (Please explain).

7. Did an OSC investigative staff member ask you what your expectations were for corrective action?
   a. Yes
   b. No
   c. Don't recall

Please indicate your response to the statements in Questions 8–10 by *circling* the number from 1 to 5 that best describes your response.

1=Strongly Disagree
2=Disagree
3=No Opinion
4=Agree
5=Strongly Agree

8. The OSC investigative staff was courteous and professional.
   1
   2
   3
   4
   5
9. The OSC investigative staff kept me informed of the status of the investigation.
   1
   2
   3
   4
   5
10. The OSC investigative staff was available to answer additional questions and accept information from me while my case was being investigated.
    1
    2
    3
    4
    5
11. Were you ever contacted by an OSC legal staff member by letter or by telephone about your case?
    a. Yes
    b. No (Skip to Question 13)
    c. Don't recall (Skip to Question 13)
12. When you were contacted by the OSC legal staff, were you given an explanation of the action OSC would take in your case, the reasons for OSC's decision to take that action, or the options available to you in pursuing a resolution of your case?
    a. Yes
    b. No
    c. Don't recall
    d. Not applicable

    If the explanation was unclear, how could it have been made clearer? (Please explain).

13. Did you receive periodic notification from the OSC legal staff on the status of your case?
    a. Yes
    b. No
    c. Don't recall

    If yes, did these notifications provide adequate information about the status of your case? (Please explain).

14. If you received a letter from OSC informing you of the closure of your case, do you believe that the letter (copy enclosed) clearly explains why OSC was unable to take further action in your case?
    a. Yes
    b. No
    c. I did not receive a closure letter from OSC.

    If the explanation was unclear, how could we make it clearer?

Please indicate your response to the statements in Questions 15–18 by *circling* the number from 1 to 5 that best describes your response.

1=Strongly Disagree
2=Disagree
3=No Opinion
4=Agree
5=Strongly Agree

15. The OSC legal staff treated me in a courteous and professional manner.
    1
    2
    3
    4
    5
16. The OSC legal staff clearly explained OSC's litigation process and procedures.
    1
    2
    3
    4
    5
17. The OSC legal staff was available to answer additional questions and accept further information from me while he/she was handling my case.
    1
    2
    3
    4
    5
18. If your case was brought before the U.S. Merit Systems Protection Board by OSC, please indicate your response to the following statements by *circling* the number from 1 to 5 that best describes your response. (Please skip any question that is inapplicable to your case.)

    (a) The OSC legal staff adequately prepared me for my deposition.
    1
    2
    3
    4
    5

    (b) The OSC legal staff adequately prepared me for my direct examination at the hearing.
    1
    2
    3
    4
    5

    (c) The OSC legal staff adequately prepared me for my cross-examination at the hearing.
    1
    2
    3
    4
    5

    If you were *satisfied* with the preparation you received from the OSC legal staff, please tell us why.

    If you were *dissatisfied* with the preparation you received from the OSC legal staff, please tell us why.

19. If your case was settled before a hearing at the U.S. Merit Systems Protection Board, were you satisfied with the settlement OSC negotiated?
    a. Yes
    b. No.
    c. My case was not settled

    If you were *satisfied* with the settlement, please tell us why.

    If you were *dissatisfied* with the settlement, please tell us why.

20. If you were *satified* overall with the service you received from OSC, please tell us why.

21. If you were *dissatisfied* overall with the service you received from OSC, please tell us why.

22. We invite any comments or suggestions on specific ways in which we could improve our service.

23. *OPTIONAL:* You may provide your name and case number so that OSC can look into any concerns that you raised in this survey.

Your name: _____
OSC case number: _____

Thank you for contacting OSC and for taking the time to complete this questionnaire. If you have any questions or need additional information about our services, please call us at (800) 872–9855. Any of our representatives will be pleased to help you.

Enclosure

Survey Comments/Suggestions (Optional)

We would be pleased to receive any comments you may have about this survey, including any suggestions on changes needed to make specific questions clearer, or to otherwise improve the overall survey for future receipients. If your comment or suggestion pertains to a particular survey question or item, please specify the question/item number under the column provided. Thank you.

Question/Item No.	Comment/Suggestion

Attachment C

OSC Form 48b
OMB Control No. _____
Expiration _____

Office of Special Counsel Customer Survey

The Office of Special Counsel (OSC) recently completed its review of your Hatch Act complaint, or sent you a written Hatch Act advisory opinion. In order to better serve you and others, we hope that you will take a few minutes to answer this questionnaire and return it in the enclosed envelope.

For each question below, please *circle* the most appropriate response.

1. How did you hear about OSC?
   a. Friend/co-worker
   b. Employee relations/personnel office
   c. Inspector General's office
   d. Congressional office
   e. Newspaper, television or radio
   f. Other (please explain) _____
2. How long after you filed your written inquiry or complaint did you receive a letter acknowledging receipt of your inquiry or complaint by OSC?
   a. Less than one month
   b. More than one month
   c. I never received an

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acknowledgement letter from OSC
3. How long after you sent your written inquiry or complaint did an OSC Hatch Act staff member contact you?
a. Less than one month
b. More than one month
c. I was never contacted by OSC Hatch Act staff
4. Before you contacted OSC, did you have any knowledge of the Hatch Act?
a. Yes
b. No
c. Don't recall
If yes, where did you get your knowledge of the Hatch Act (circle all that apply)?
a. Agency training
b. Hatch Act booklet
c. Newspapers, television or radio
d. Other (please explain) _____
5. Please describe the amount of time it took OSC to complete its consideration of your written inquiry or complaint:
a. Three months or less
b. Six months
c. Nine months
d. More than nine months
e. Don't recall
6. The time it took OSC to complete its consideration of your written inquiry or complaint was:
a. Longer than you expected
b. Shorter than you expected
c. About the length of time you expected.
7. Enclosed with this survey is a letter from OSC explaining how the Hatch Act applies to your particular inquiry or complaint. Do you believe this letter clearly explains the law and answers your questions?
a. Yes
b. No
If not, how could we make it clearer? (Please explain). _____

Please indicate your response to the statements in Questions 8–11 by circling the number from 1 to 5 that best describes your response.
1=Strongly Disagree
2=Disagree
3=No Opinion
4=Agree
5=Strongly Agree
8. The OSC Hatch Act staff was courteous and professional.
1
2
3
4
5
9. The OSC Hatch Act staff clearly explained the role of OSC and its process for reviewing written inquiries or complaints.
1
2
3
4
5
10. The OSC Hatch Act staff responded promptly to questions about the status of my written inquiry or complaint.
1
2
3
4
5
11. The OSC Hatch Act staff was available to answer additional questions and accept information from me while my written inquiry or complaint was pending
1
2
3
4
5
12. If you were *satisfied* with the service you received from OSC, please tell us why.

13. If you were *dissatisfied* with the service you received from OSC, please tell us why.

14. We invite any comments or suggestions on specific ways in which we could improve our service.

15. *OPTIONAL:* You may provide your name and case number so that OSC can look into any concerns that you raised in this survey.
Your name: _____
OSC case number: _____

Thank you for contacting OSC and for taking the time to complete this questionnaire. If you have any questions or if you need additional information about our services, please call us at (800) 85–HATCH. Any of our representatives will be pleased to help you

Enclosure

Survey Comments/Suggestions (Optional)

We would be pleased to receive any comments you may have about this survey, including any suggestions on changes needed to make specific questions clearer, or to otherwise improve the overall survey for future recipients. If your comment or suggestion pertains to a particular survey question or item, please specify the question/item number under the column provided. Thank you.

Question/Item No.	Comment/Suggestion

Attachment D

OSC Form 48c
OMB Control No. _____
Expiration_____

Office of Special Counsel Customer Survey

The Office of Special Counsel (OSC) recently completed its review of your disclosure alleging a violation of law, rule, or regulation, or that your agency committed fraud, waste, or abuse. We closed our file in this matter for the reasons expressed in the enclosed letter. In order to better serve you and other federal employees, we hope that you will take a few minutes to answer this questionnaire and return it to us in the enclosed postage paid envelope.

For each question below, please *circle* the most appropriate response.
1. How did you hear about OSC?
a. Friend/co-worker
b. Employee relations/personnel office
c. Inspector General's office
d. Congressional office
e. Newspaper, television or radio
f. Other (Please explain) _____
2. How long after you made your disclosure did you receive a letter acknowledging receipt of the information you provided to OSC?
a. Less than one month
b. More than one month
c. I never received an acknowledgement letter from OSC
3. How long after you made your disclosure did a member of the OSC disclosure review staff contact you?
a. Less than one month
b. More than one month
c. I was never contacted by OSC disclosure review staff
4. Did an OSC disclosure review staff member inform you that OSC's authority to act on your disclosure was limited by law to facilitating between you and the agency, requiring the agency to investigate your concerns, and making any agency improprieties public?
a. Yes
b. No
c. Don't recall
5. Enclosed with this survey is a letter from OSC explaining the disposition of your case. Do you believe this letter clearly explains the actions that were taken in your case?
a. Yes
b. No
If not, how could we make it clearer? (Please explain).

Please indicate your response to statements in Questions 6-9 by *circling* the number from 1 to 5 that best describes your response.
1=Strongly Disagree
2=Disagree
3=No Opinion
4=Agree
5=Strongly Agree
6. The OSC disclosure review staff was courteous and professional.
1
2
3
4
5
7. The OSC disclosure review staff clearly explained the role of OSC and the OSC disclosure process.
1
2
3
4
5
8. The OSC disclosure review staff kept me informed of the status of my case.
1
2
3
4
5
9. The OSC disclosure review staff was available to answer additional questions and accept further information from me while my case was pending.
1
2
3
4
5
10. If you were *satisfied* with the service you received from OSC, please tell us why.

11. If you were *dissatisfied* with the service you received from OSC, please tell us why.

12. We invite any comments or suggestions on specific ways in which we could improve our service.

13. *OPTIONAL:* You may provide your name and case number so that OSC can look into any concerns that you raised in this survey.
Your name: _____
OSC case number: _____
Thank you for contacting OSC and for taking the time to complete this questionnaire. If you have any questions or if you need additional information about our services, please call us at (800) 572-2249. Any of our representatives will be pleased to help you.

Enclosure

Survey Comments/Suggestions (Optional)

We would be pleased to receive any comments you may have about this survey, including any suggestions on changes needed to make specific questions clearer, or to otherwise improve the overall survey for future recipients. If your comment or suggestion pertains to a particular survey question or item, please specify the question/item number under the column provided. Thank you.

Question/Item No.	Comment/Suggestion

Attachment E

Estimated Burden Hours for OSC Collections of Information: FY 1995–1997

A. Trial Distribution of Written Customer Satisfaction Surveys (Qualitative Data)

FY 1995:

• The survey at Attachment A will be sent on a trial basis to approximately 40 individuals[1] whose cares containing allegations of prohibited personnel practices were completed by the Complaints Examining Unit in FY 1994. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection will be 10 hours.

• The survey at Attachment B will be sent on a trial basis to approximately 50 individuals[2] whose cases containing allegations of prohibited personnel practices or hatch Act violations were completed in FY 1994 after full field investigations and review by the Prosecution Division. The survey package will take an estimated 20 minutes to complete. The total annual burden for this collection will be 17 hours.

• The survey at Attachment C will be sent on a trial basis to approximately 50 individuals[3] who received written Hatch Act advisory opinions, or whose Hatch Act complaints were resolved without a full field investigation, in FY 1994. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection will be 13 hours.

• The survey at Attachment D will be sent to approximately 40 individuals[4] whose disclosures of possible wrongdoing by federal agencies were acted upon hy the Disclosure Unit In FY 1994. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection will be 10 hours.

B. Written Customer Satisfaction Surveys (Qualitative Data)

Following analysis of the results of the trial distribution of surveys described above, OSC will decide on the scope and frequency of surveys to be sent to the four categories of customers listed above in cases completed by the agency during FY 1995–1997. The scope and frequency of OSC's customer service activity will be decided after consideration of workload, cost, and other relevant factors.

Note: The following projections represent maximum annual burdens for OSC customer survey efforts (rounded to the next higher whole number). They have been projected using the assumption that OSC surveys all customers in each of the four categories.

FY 1994:

• The survey at Attachment A will be sent to individuals whose cases containing allegations of prohibited personnel practices have been completed by the Complaints Examining Unit in FY 1995. Approximately 1,365 such matters are expected to be completed in FY 1995. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection is expected to be 342 hours.

• The survey at Attachment B will be sent to individuals whose cases containing allegations of prohibited personnel practices or Hatch Act violations have been completed in FY

[1] Ten federal employees at each of the following four grade levels, randomly selected from OSC computer listings of matters completed in FY 1994: (1) technical/support/clerical (1–8); (2) professional/administrative/clerical (9–11); (3) mid-level (12–14); and (4) managerial (15–SES).

[2] Same as Fn. 3, with 10 additional individuals selected from matters involving provisions of the Hatch Act applicable to state and local governments.

[3] See Fn. 4.

[4] See Fn. 3.

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1995 after full field investigations and review by the Prosecution Division. Approximately 252 such matters are expected to be completed in FY 1995. The survey package will take an estimated 20 minutes to complete. The total annual burden for this collection is expected to be 84 hours.

• The survey at Attachment C will be sent to individuals who have received written Hatch Act advisory opinions, or whose Hatch Act complaints have been resolved without a full field investigation, in FY 1995. Approximately 417 such matters are expected to be completed in FY 1995. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection is expected to be 105 hours.

• The survey at Attachment D will be sent to individuals whose disclosures of possible wrongdoing by federal agencies have been acted upon by the Disclosure Unit in FY 1995. Approximately 154 such matters are expected to be completed in FY 1995. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection is expected to be 39 hours.

FY 1996:

• The survey at Attachment A will be sent to individuals whose cases containing allegations of prohibited personnel practices have been completed by the Complaints Examining Unit in FY 1996. Approximately 1,435 such matters are expected to be completed in FY 1996. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection is expected to be 359 hours.

• The survey at Attachment B will be sent to individuals whose cases containing allegations of prohibited personnel practices or Hatch Act violations have been completed in FY 1996 after full field investigations and review by the Prosecution Division. Approximately 265 such matters are expected to be completed in FY 1996. The survey package will take an estimated 20 minutes to complete. The total annual burden for this collection is expected to be 89 hours.

• The survey at Attachment C will be sent to individuals who have received written Hatch Act advisory opinions, or whose Hatch Act complaints have been resolved without a full field investigation, in FY 1996. Approximately 438 such matters are expected to be completed in FY 1996. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection is expected to be 110 hours.

• The survey at Attachment D will be sent to individuals whose disclosures of possible wrongdoing by federal agencies have been acted upon by the Disclosure Unit in FY 1996. Approximately 162 such matters are expected to be completed in FY 1996. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection is expected to be 41 hours.

FY 1997:

• The survey at Attachment A will be sent to individuals whose cases containing allegations of prohibited personnel practices have been completed by the Complaints Examining Unit in FY 1997. Approximately 1,510 such matters are expected to be completed in FY 1997. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection is expected to be 378 hours.

• The survey at Attachment B will be sent to individuals whose cases containing allegations of prohibited personnel practices or Hatch Act violations have been completed in FY 1997 after full field investigations and review by the Prosecution Division. Approximately 280 such matters are expected to be completed in FY 1997. The survey package will take an estimated 20 minutes to complete. The total annual burden for this collection is expected to be 94 hours.

• The survey at Attachment C will be sent to individuals who have received written Hatch Act advisory opinions, or whose Hatch Act complaints have been resolved without a full field investigation, in FY 1997. Approximately 460 such matters are expected to be completed in FY 1997. The survey package will take an estimated 15 minutes to complete. The total annual burden for this collection is expected to be 115 hours.

• The survey at Attachment D will be sent to individuals whose disclosures of possible wrongdoing by federal agencies have been acted upon by the Disclosure Unit in FY 1997. Approximately 171 such matters are expected to be completed in FY 1997. The survey package will taken an estimated 15 minutes to complete. The total annual burden for this collection is expected to be 43 hours.

C. Yearly Total Burden Estimates For OSC Information Collections

FY 1995: 620 hours
FY 1996: 599 hours
FY 1997: 630 hours
Total: 1,849 hours

[FR Doc. 94-24099 Filed 9-28-94; 8:45 am]
BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Incorporated

September 23, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Grupo Embotellador de Mexico S.A. de C.V.
Dep. Shares, No Par Value (File No. 7-12888)
Grupo Industrial Durango S.A. de C.V.
(American Depositary Shares, No Par Value (File No. 7-12889)
Grupo Sidek S.A. de C.V.
American Depositary shares, No Par Value (File No. 7-12890)
Hyperion 2002 Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7-12891)
Income Opportunities Fund 1999, Inc.
Common Stock, $.01 Par Value (File No. 7-12892)
Pakistan Investment Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-12893)
Clark Automotive Products Corp.
Common Stock, $.01 Par Value (File No. 7-12894)
Duke Realty Investment, Inc.
Income Shares, $.01 Par Value (File No. 7-12895)
Exide Corp.
Common Stock, $.01 Par Value (File No. 7-12896)
Factory Stores of America, Inc.
Common Stock, $.01 Par Value (File No. 7-12897)
IRT Property Co.
Common Stock, $1.00 Par Value (File No. 7-12898)
Premier Industrial Corp.
Common Stock, No Par Value (File No. 7-12899)
WCI Steel, Inc.
Common Stock, No Par Value (File No. 7-12900)
Western Gas Resources, Inc.
Common Stock, $.10 Par Value (File No. 7-12901)
Arbor Property Trust
Shares of Beneficial Interest, No Par Value (File No. 7-12902)
Oneita Industries, Inc.
Common Stock, $.25 Par Value (File No. 7-12903)
Robert Half International, Inc.
Common Stock, $1.00 Par Value (File No. 7-12904)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 7, 1994,[1] written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 94-24042 Filed 9-28-94; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and To Withdraw Unlisted Privileges in an Over-the-Counter Issue

September 22, 1994.

On September 19, 1994, the Chicago Stock Exchange, Inc. ("CHX"), submitted an application for unlisted trading privileges ("UTP") pursuant to Section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under Section 12(b) of the Act.

File No	Symbol	Issuer
7-12921 ...	MEOHF	Methanex Corporation, Common Stock, no par value.

The above-referenced issue is being applied for as a replacement for the following security, which forms a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The CHX also applied to withdraw UTP pursuant to Section 12(f)(4) of the Act for the following issue:

File No.	Symbol	Issuer
7-12922 ...	MCAWA	McCaw Cellular Communication, Inc., Common Stock, $.01 par value.

A replacement issue is being requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before October 13, 1994, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP as well as the withdrawal of UTP would be consistent with Section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress and has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94-24044 Filed 9-28-94; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-34702; File No. SR-PSE-94-18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Expansion of the Exchange's Auto-Ex System Capacity to 20 Contracts

September 22, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 20, 1994, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend PSE Rule 6.87, "Automatic Execution System," to allow the Options Floor Trading Committee ("OFTC") to be authorized to increase, on an issue-by-issue basis, the size of the equity option orders that may be eligible to be executive through the Exchange's Automatic Execution System ("Auto-Ex") up to a maximum of 20 contracts.

The text of the proposed rule change is available at the Office of the Secretary, PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulotory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed rule change is to enhance the Exchange's ability to compete for options order flow. Accordingly, the Exchange is proposing to increase the maximum size of equity option orders eligible for Auto-Ex and to provide the OFTC with the authority to designate such changes on an issue-by-issue basis. Under the proposal, the OFTC would be authorized to increase the size of orders eligible for an execution on Auto-Ex to a size of up to 20 contracts without prior approval from the Commission.[1]

[1] Because this notice never appeared in the **Federal Register** it is being republished to permit an opportunity for comment.

[1] The Commission recently approved an Exchange proposal to allow the OFTC to increase the size of Auto-Ex-eligible orders in one or more classes of multiply traded equity options to the extent that other options exchanges permit such larger-size orders to be entered into their own automated execution systems. The rule provides that if the OFTC intends to increase the Auto-Ex size eligibility pursuant to the rule, the Exchange will notify the Commission pursuant to Section 19(b)(3)(A) under the Act. See Securities Exchange

Continued

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The Commission approved the Pacific Options Exchange Trading System ("POETS") and its Auto-Ex feature as a pilot program in January 1990.[2] On July 30, 1993, the Commission approved the POETS pilot program on a permanent basis.[3] The Auto-Ex system permits eligible market or marketable limit orders sent from member firms to be executed automatically at the displayed bid or offering price. Participating market makers are designated as the contra side to each Auto-Ex order.[4] Participating market makers are assigned by Auto-Ex on a rotating basis, with the first market maker selected at random from the list of signed-on market makers. Auto-Ex preserves public Limit Order Book ("Book") priority in all options. If Auto-Ex determines that the Book price is at or better than the market quote, the Auto-Ex order is executed against the Book. Automatic executions through Auto-Ex are currently available for public customer orders of 10 contracts or less in all series of options traded on the PSE's options floor.

The proposal would permit the OFTC to change the order size parameter for Auto-Ex to a maximum size of 20 contracts pursuant to an OFTC determination made on an issue-by-issue basis.[5] The PSE believes that any implementation of the proposal by the OFTC will not impose any significant additional burdens on the operation and capacity of the POETS system in general or on the Auto-Ex system in particular. In that regard, the Exchange has submitted a separate capacity statement to the Commission setting forth the basis for this contention.[6] The Exchange also represents that the OFTC will determine that adequate market making capacity exists prior to increasing Auto-Ex order size eligibility. The OFTC will make such a determination notwithstanding the fact that floor officials may require market makers who are members of a trading crowd to which a particular option class is assigned to log onto Auto-Ex in the event that there is inadequate participation in that options class.

(b) Statutory Basis

The PSE believes that the proposal is consistent with Section 6(b) of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to facilitate transactions in securities and to promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal offices of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 20, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

[FR Doc. 94-24040 Filed 9-28-94; 8:45 am]

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Act Release No. 34111 (May 27, 1994), 59 FR 29316 (June 6, 1994).

[2] See Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 (order approving File No. SR-PSE-89-26).

[3] See Securities Exchange Act Release No. 32701 (July 30, 1993), 58 FR 42117 (August 6, 1993) ("POETS Approval Order"). Pursuant to the POETS Approval Order, the PSE was approved to designate equity option orders of 10 contracts or less as eligible for automatic execution through the Auto-Ex feature of POETS. With regard to index options, the Commission previously approved a request by the Exchange to permit customer orders of up to 20 contracts on the Wilshire Small Cap Index to be executed through Auto-Ex. See Securities Exchange Act Release No. 31397 (November 3, 1992), 57 FR 53368, 53372 (November 9, 1992).

[4] The Commission recently approved an Exchange proposal setting forth certain standards for market makers participating on Auto-Ex. The standards include restrictions on the number of Auto-Ex trading posts at which market makers may participate and mandatory log-on requirements to assure that market makers do not withdraw from the system during volatile market conditions. See Securities Exchange Act Release No. 32908 (September 15, 1993), 58 FR 49076 (September 21, 1993), ("Market Maker Participation Order").

[5] The Commission approved a similar provision in the POETS Approval Order, *supra* note 3.

[6] See Letter from Michael D. Pierson, Senior Attorney, PSE, to Richard L. Zack, Branch Chief, Options Regulation, Commission, dated December 20, 1993 (File No. SR-PSE-93-26).

[7] 17 CFR 200.30-3(a)(12) (1993).

[Release No. 34-34701; File No. SR-PTC-94-03]

Self-Regulatory Organizations; Participants Trust Company; Order Approving Proposed Rule Change Eliminating Deliverer's Security Interest and Adding Participant's Intraday Collateral Lien

September 22, 1994.

On June 23, 1994, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-PTC-94-03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change amends PTC's rules and procedures to eliminate the Deliverer's Security Interest ("DSI") and to add the Participant's Intraday Collateral Lien ("PICL"). The Commission published notice of the proposed rule change in the **Federal Register** on August 1, 1994.[2] The Commission received one comment letter which supported the proposal.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

[1] 15 U.S.C. §78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 34439 (July 25, 1994), 59 FR 39004.

[3] Letter from Allen B. Clark, Senior Vice President, Chemical Bank, to Jonathan G. Katz, Secretary, Commission (August 23, 1994). The comment letter is discussed in Section II of this order.

I. Description

The proposed rule change amends PTC's rules and procedures by deleting provisions providing for DSI and adding a new Section 2A to Rule 3 of Article II of PTC's rules providing for PICL. Under PTC's processing system, each participant holds its securities on deposit at PTC in one or more master accounts. Each master account is comprised of one or more processing subaccounts. The processing subaccounts can include a proprietary account, a proprietary seg account, an agency account, an agency seg account, a pledgee account, and a limited purpose account. Each proprietary, agency, and pledgee processing subaccount has a PTC transfer account associated with it for the intraday receipt of securities delivered or pledged versus payment. Securities are held in the transfer accounts pending transfer to the intended receiving account at settlement. Securities in the transfer accounts are owned by PTC intraday pending settlement and may be liquidated or pledged by PTC if at settlement the intended recipient defaults on the payment of its end-of-day debit balance.

DSI was in essence a lien on securities which were transferred versus payment granted in favor of the delivering participant.[4] The delivering participant which delivered or pledged securities versus payment from one of its processing accounts was granted a DSI in the securities.[5] The DSI was extinguished upon settlement at which time the securities were transferred from the transfer account to the appropriate account of the receiving participant.

The DSI also was extinguished with respect to securities that subsequently were redelivered free or were withdrawn but was not extinguished in prefundings associated with free redeliveries or withdrawals. With respect to securities that were redelivered versus payment from a transfer account, the DSI continued in favor of the initial delivering participant. The redelivering participant was not granted a DSI and did not acquire any rights in the securities other than the right to redirect their delivery subject to PTC's rules. The securities continued to be owned by PTC, subject to the delivering participant's DSI, so long as they remained in a transfer account.

Under the proposed rule change, DSI has been eliminated. In order to provide appropriate protection to participants with intraday credit balances with respect to their intraday credit exposure, such participants now will be granted a security interest in securities in transfer accounts (*i.e.*, "PICL"). PICL secures a participant's PICL credit balance which is the amount by which the participant's credit balances exceed its debit balances adjusted to eliminate the amount of any credits made with respect to principal and interest payments and certain funds transfers.

PICL is restricted in application to an "event of default" which is defined in PTC's rules as the concurrence of (1) PTC's failure to achieve the cash settlement of all transactions processed through PTC and (2) either (a) any government agency which regulates PTC determining that PTC is insolvent or (b) a court with competent jurisdiction entering an order or decree adjudging PTC to be insolvent, ordering the liquidation of PTC, or approving a petition filed by a party other than PTC for the reorganization of PTC. PTC's rules governing PICL do not permit PTC itself to trigger an insolvency proceeding.

The PICL terminates upon PTC's achieving settlement which occurs upon the payment by a participant of all of its debit balance. PICL also terminates with respect to securities that are pledged pursuant to the procedures set forth in PTC's rules by PTC to finance the settlement of a defaulting participant. In addition, PICL terminates with respect to securities that are transferred free, are withdrawn intraday, or are delivered to participants after an event of default. In such situations, PICL continues in prefunding amounts or in other amounts paid in connection therewith as proceeds.[6]

Upon an event of default by PTC, participants whose credit balances equal or exceed their debit balances ("credit Ps") will have an intraday security interest in all securities in PTC transfer accounts in the amount of their PICL credit balances as such balances exist from time to time during the day. Participants whose debit balances exceed their credit balances ("debit Ps") are credited with their security deliveries if they pay the amount of such excess. If they do not so pay, such securities will remain in the transfer accounts for the benefit of credit Ps. Credit Ps will receive: (1) their securities deliveries; and (2) their *pro rata* share of (a) cash proceeds from debit Ps which pay their debits and prefunding payments with respect to securities which were in a transfer account and were transferred free or withdrawn intraday and (b) proceeds from the sale of securities in the transfer accounts (*i.e.*, the proceeds of securities delivered to debit Ps which do not pay their net debit to PTC). P&I will be distributed to participants net of any debit balances owing to PTC.

II. Discussion

The Commission believes that PTC's proposed rule change is consistent with Section 17A of the Act[7] and in particular with Sections 17A(b) (A) and (F) of the Act.[8] Sections 17A(b) (3) (A) and (F) require, among other things, that a clearing agency and its rules be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible. The Commission believes that PTC's proposal to eliminate DSI and to add PICL is consistent with this obligation.

The Board of Governors of the Federal Reserve System ("Fed"), the Federal Reserve Bank of New York ("FRBNY"), and the Commission have expressed reservations about DSI since PTC's inception. In its letter dated March 27, 1989, approving PTC's application for membership in the Federal Reserve System, the Fed required as a condition of approval that PTC undertake to "(i) evaluate the impact of its DSI on its loss allocation and netting policies and (ii) propose modifications to the FRBNY to insure that the DSI does not impede the operation of these policies or of the policies of the Board of Governors of the Federal Reserve System concerning loss allocation and netting." In addition, in its order temporarily approving PTC as a clearing agency under Section 17A of the Act, the Commission stated, "Furthermore, PTC will make a number

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[4] DSI was a basic element of PTC's clearing and settlement mechanism as formulated by the Mortgage Backed Securities Clearing Corporation ("MBSCC"), which was the predecessor of PTC. PTC purchased the Depository Division of MBSCC from the Midwest Stock Exchange in March 1989. Refer to Securities Exchange Act Release No. 26671 (March 31, 1989), 54 FR 13266 (order granting PTC temporary registration as a clearing agency).

[5] A participant which redelivered securities from transfer accounts associated with processing accounts was not granted a DSI.

[6] PICL is structured as a perfected security interest under Sections 8-313(1)(i) and 8-321 of the New York Uniform Commercial Code. For purposes of such perfected security interests, PTC's Rules and Participants Agreements are the required security agreements, PTC's records are the description of the collateral, and participants' transfers of securities versus payment to the receivers' transfer accounts or retransfers of securities out of transfer accounts against a PTC credit constitute the value given by the secured party. PICL will have comparable results under the revisions to UCC Articles Eight and Nine as promulgated by the National Conference of Commissioners on Uniform State Laws and the American Law Institute.

[7] 15 U.S.C. §78q-1 (1988).

[8] 15 U.S.C. §§ 78q-1(b) (3) (A) and (F) (1988).

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of operational and procedural changed—[T]hose changes include—[e]liminating the deliverer's security interest and replacing it with a substitute—"[9]

PTC has been engaged in discussions with the staff of the FRBNY and the Commission on the DSI issue since March 1989, and various proposals for the modification or replacement of DSI have been made. PICL is the result of the continued discussions between PTC and its regulators, and the Commission believes that PICL addresses the past concerns of the FRBNY and the Commission.

As previously stated, under PICL, participants with credit balances will have a security interest in the securities in the PTC transfer accounts and upon an event of default by PTC will be able to receive their securities deliveries and certain proceeds from those deliveries. PICL will have no effect on PTC's settlement process. PICL will be extinguished upon a participant's settlement or upon application of the default provisions of PTC's rules in the event of a participant's default.[10]

PICL will allow PTC to protect the interest of participants receiving securities. In the event that PTC is unable to effect settlement, PICL will enable net credit participants to receive their securities deliveries and be secured for their net credit balances. This should allow PTC to minimize intraday credit risk which in turn facilitates PTC's safe operation.

One comment letter was received with regard to the proposed rule change from Chemical Bank.[11] In its letter supporting the proposed rule change, Chemical Bank stated that they consider PICL to be a suitable replacement for DSI and that PICL will provide appropriate protection to participants with intraday credit balances and to clearing banks providing intraday liquidity for the PTC system and its participants.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, and in particular with Section 17A of the Act, and with the rules and regulations thereunder.

[9] Securities Exchange Act Release No. 26671 (March 31, 1989), 54 FR 13266.

[10] Article II, Rule 6 ("Failure of Participants to Meet Cash Settlement Obligations") and Procedure IV of PTC's Rules and Procedures ("Procedure for Financing Settlement Defaults").

[11] Letter from Allen B. Clark, Senior Vice President, Chemical Bank, to Jonathan G. Katz, Secretary, Commission (August 23, 1994).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–PTC–94–03) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

[FR Doc. 94–24043 Filed 9–28–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

September 23, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

IES Industries, Inc.
Common Shares, $.01 Par Value (File No. 7–12943)

ECC International Corporation
Common Stock, $.01 Par Value (File No. 7–12945)

Newbridge Networks Corporation
Common Stock, $.01 Par Value (File No. 7–12946)

Washington Natural Gas Co.
8.50 Pc Pfd Stock, $25 Par Value (File No. 7–12947)

Sports & Recreation, Inc.
Common Stock, $0.01 Par Value (File No. 7–12948)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 17, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz.

Secretary.

[FR Doc. 94–24041 Filed 9–28–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20571; 812–8930]

The Brinson Funds, et al.; Notice of Application

September 23, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Brinson Funds (the "Trust"), Brinson Partners, Inc. (the "Adviser"), Fund/Plan Broker Services, Inc. (the "Underwriter"), and any other future open-end investment company advised by the Adviser, or any person directly or indirectly controlling, controlled by, or under common control with the Adviser (such other investment companies and any series thereof individually, a "future Fund" and collectively, "future Funds").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit certain open-end management investment companies to issue multiple classes of securities representating interests in the same investment portofolio and to assess and, under certain circumstances, waive or reduce a contingent deferred sales charge ("CDSC") on certain redemptions of shares.

FILING DATE: The application was filed on April 8, 1994 and amended on July 12, 1994. By letters dated September 14, 1994 and September 20, 1994, applicants' counsel stated that an amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or my mail. Hearing requests should be received by the Commission by 5:30 p.m., on October 18, 1994 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service.

Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 209 South LaSalle Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942–0563, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Delaware Business Trust registered as an open-end management investment company. The Trust currently consists of eight series of shares (each, together with all series subsequently established, a "Series").

2. The Adviser is an investment management firm controlled indirectly by Brinson Associates, L.P., a limited partnership whose sole general partner is Gary P. Brinson, the Chairman of the Board of Trustees of the Trust. The Adviser manages each Series' investments.

3. The Underwriter is a registered broker-dealer. The Underwriter was engaged for the limited purpose of acting as principal underwriter to facilitate the registration of shares of each Series under state securities laws and to assist in the sale of shares.

4. Fund/Plan Services, Inc. (the "Administrator") provides the Trust with administrative, fund accounting, dividend disbursing, and transfer agency services.

5. Existing shares of each Series ("Class A Shares") are sold and redeemed daily at net asset value without a sales or redemption charge, do not charge a rule 12b–1 fee, and are designed primarily for institutional and high net worth individual investors.

6. Applicants propose that the Trust issue additional, separate classes of shares with characteristics designed for a particular market ("New Shares"). The Trust or a future Fund may establish additional classes of New Shares either in connection with a Shareholder Services Plan as discussed below and/or a distribution plan adopted pursuant to rule 12b–1 (a "12b–1 Plan") or without any of such Plans. In addition, such additional classes may have differing load structures which incorporate classes with no load, classes with front-end loads and classes with CDSCs.

7. In addition to the current Class A Shares, the Trust currently proposes to offer Class B Shares in connection with a 12b–1 Plan. It is contemplated that the Class B Shares will be designed to capture a portion of the retail market, and there will be a lower minimum initial investment associated with such shares.

8. Under the 12b–1 Plan relating to the Class B Shares, the rule 12b–1 fee may be used to reimburse the Adviser or the Underwriter for, or will be used for the Trust to pay directly, expenses incurred in the promotion and distribution of the shares of the class, including but not limited to, the printing of prospectuses and reports used for sales purposes, expenses of preparing and distributing sales literature, advertisements, and other distribution-related expenses, as well as any distribution or service fees paid to banks, credit unions, securities dealers or others ("Service Organizations") who have executed a servicing agreement ("Service Agreement") with the Trust on behalf of a Series' class or with the Underwriter. It is contemplated that, in accordance with such Service Agreements, the Service Organizations will provide certain account administration services to the customers of the Service Organizations that beneficially own shares of a Series. In addition, Service Agreements under the 12b–1 Plan may provide for an asset-based sales charge to be paid to such Service Organizations.

9. Because the Trust or a future Fund may sell its shares to a broad range of institutions, including banks, it is possible, as a result of legal constraints imposed on certain banks, which constraints preclude receipt of rule 12b–1 payments in connection with the distribution of shares, that the Trust may, at some point in the future, adopt a shareholder services plan ("Shareholder Services Plan") with respect to a separate class of New Shares of the Series. The Shareholder Services Plan (and any Service Agreements related thereto) would be used with respect to Service Organizations authorized to provide only personal and account maintenance services under a Shareholder Services Plan.

10. Under the proposal, each New Share or existing share in a particular Series, regardless of class, would represent an interest in the same Series and would have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations, and terms and conditions, except that: (1) Each class of New Shares would have a different class designation; (2) each class of New Shares offered in connection with a 12b–1 Plan or Shareholder Services Plan would bear the expenses associated with such Plans and, where relevant, any incremental transfer agency fees associated with that class ("Class Expenses"); (3) only the holders of the shares of the class or classes involved would be entitled to vote on matters pertaining to a 12b–1 Plan or Shareholder Services Plan and any related agreements relating to such class or classes except as provided in condition 16 below [1]; (4) the fact that only certain classes will have a conversion feature; and (5) each class would have different exchange privileges.

11. Expenses of the Trust that cannot be attributed directly to any one Series ("Trust Expenses") will be allocated to each Series based on the relative net assets of such Series.[2] Trust Expenses could include, for example, Trustees' fees and expenses, unallocated audit and legal fees, insurance premiums, expenses relating to shareholder reports, and printing expenses.

12. Certain expenses may be attributable to a particular Series, but not a particular class ("Series Expenses"). All such Series Expenses will be allocated to each class of shares in a Series on the basis of the relative net asset values of the classes of that Series. Series expenses may include, for example, advisory fees, custodian fees, and fees related to preparation of separate documents of a particular Series, such as an annual report for such Series.

13. Except as noted below, each class of shares may be exchanged only for shares of the same class in another Series and in all events will be limited to within the same "group of investment companies" as that term is defined in rule 11a–3 of the Act. Exchanges will comply with all applicable provisions of rule 11a–3 under the Act.

14. It is contemplated that at some point in the future an additional class of shares ("Class C Shares") may be

[1] Shares offered in connection with a Shareholder Services Plan would not necessarily be accorded the voting rights specified in rule 12b–1, although the Trustees may approve a Shareholder Services Plan with such rights in order to give holders of such Shareholder Services Plan shares rights identical to holders of shares subject to a 12b–1 Plan.

[2] From time to time, the Trust may allocate expenses among Series using alternative methods, including allocations based on the number of shares of each Series.

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offered, which shares will be subject to deferred charges consisting of a distribution fee and a CDSC.

15. Any CDSC will not be imposed on redemptions of shares which were purchased more than a fixed number of years prior to the redemptions (the "CDSC Period") or on shares derived from reinvestment of distributions. Furthermore, no CDSC will be imposed on an amount which represents an increase in the value of a shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC Period. The amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents such percentage of the net asset value of the shares at the time of redemption. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing reinvestment of dividends and capital gain distributions and then of other shares held by the shareholder for the longest period of time. However, any portion of the value of such shares representing capital appreciation will not bear a charge.

16. Applicants request relief to permit each Fund to waive or reduce the CDSC in certain circumstances. Any waiver or reduction will comply with the conditions in paragraphs (a) through (d) of rule 22d–1 of the Act.

17. Applicants state that it is likely that to the extent that Class C Shares are offered in connection with a rule 12b-1 fee, upon termination of the CDSC Period, the Class C Shares will convert to a class of shares with a lower rule 12b–1 fee or without such a fee.

18. If shares of a class are offered with a conversion feature, shares of one class (the "Purchase Class") will automatically convert at their net asset value to shares of another class with different features (the "Target Class") after the expiration of a specified period. For purposes of the conversion, all Purchase Class shares in a shareholder's Fund account that were acquired through reinvestment of dividends and other distributions paid in respect of such shares (and which had not yet converted) will be considered to be held in a separate sub-account. Each time any Purchase Class shares in the shareholder's Fund account are converted, an equal portion of shares then in the sub-account also will convert, and will no longer be considered held in the sub-account.

19. Any conversion of shares will be subject to the continuing availability of an opinion of counsel or a private letter ruling from the Internal Revenue to the effect that the conversion of shares will not constitute a taxable event under federal income tax law. Conversion of shares will be suspended if such an opinion or ruling were no longer available.

20. Any front-end load, asset-based sales charge, service fee, or contingent deferred sales load will comply with Section 26(d), Article III of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. ("NASD").

Applicants' Legal Analysis

1. The proposed issuance and sale of New Shares, including the allocation of voting rights thereto, might be deemed to result in a "senior security" within the meaning of Section 18(g) and be prohibited by section 18(f)(1) and also to violate the requirement in section 18(i) that every share of stock issued by a registered management investment company shall have equal voting rights with every other share of outstanding voting stock.

2. Applicants believe that the proposed allocation of expenses and voting rights relating to a 12b-1 Plan or a Shareholder Services Plan (each a "Plan") in the manner described is equitable and would not discriminate against any group of shareholders. Although investors purchasing shares offered in connection with a Plan would bear the costs associated with the related services, they would also enjoy the benefits of those services and exclusive shareholder voting rights with respect to matters affecting the Plan. Conversely, investors purchasing shares that are not covered by a Plan would not be burdened with such expenses or enjoy such voting rights. Moreover, because with respect to any Series the rights and privileges of shares would be substantially identical, the possibility that the interests of the various classes of shareholders would ever conflict would be remote. In any event, the interests of each class of shareholders would be adequately protected since the Plans and any related agreements or payments would conform to the requirements of rule 12b–1 or the protections described in the application, including the requirement that they be approved by the Board of Trustees of the Trust or a future Fund.

3. The abuses that section 18 of the Act are intended to redress are set forth in section 1(b) of the Act which declares that the interests of investors are adversely affected when investment companies, by excessive borrowing and the issuance of excessive amounts of senior securities, increase the speculative character of the other securities, or when investment companies operate without adequate reserves. The proposed arrangement does not involve borrowings and does not affect the Trust's existing assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares in a Series, since each class of shares in a Series will participate in all of such Series's appreciation (if any), income and expenses (with the exception of the proposed Class Expenses) on the basis of the applicable net assets of such class.

4. Applicants are also requesting an exemption from the provisions of Section 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and rule 22c–1 thereunder, to the extent necessary to permit the Series to assess a CDSC on certain redemptions of classes of shares of the Trust to be created in the future, and to permit the Series to waive or reduce the CDSC with respect to certain types of redemptions. The proposal would permit shareholders to have the advantage of greater investment dollars working for them from the time of their purchase of shares than if a sales load were imposed at the time of purchase.

Applicants' Conditions

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions:

1. Each class of shares of a Series will represent interests in the same portfolio of investments and be identical in all respects, except as set forth below. The only differences among the classes of shares of a Series will relate solely to one or more of the following: (a) Class Expenses; (b) the fact that the classes will vote separately with respect to the Trust's 12b–1 Plan, except as proved in condition 16 below; (c) the different exchange privileges of the classes of shares; (d) the fact that certain classes will have a conversion feature; and (e) the designation of each class of shares of the Series. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated unless and until approved by the Commission by amended order.

2. The Trustees of the Trust, including a majority of the independent Trustees, will approve the offering of additional classes of New Shares (the "Multi-Class System"). The minutes of the meeting of the Trustees regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the Trustees' determination that the proposed Multi-Class System is in the best interest of both the Trust and its shareholders.

3. On an ongoing basis, the Trustees of the Trust, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Trust for the existence of any material conflicts among the interests of the classes of shares. The Trustees, including a majority of the Independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Underwriter and the Adviser will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Underwriter and the Adviser, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

4. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the Board of Trustees including a majority of the independent Trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by the Trust to meet Class Expenses shall provide to the Board of Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

5. The Trustees will receive quarterly and annual statements concerning the amounts expended under any Shareholder Services Plans and the 12b–1 Plans complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Trustees in the exercise of their fiduciary duties.

6. If any class will be subject to a Shareholder Services Plan, such Shareholder Services Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditure made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

7. Dividends paid by the Trust on behalf of a Series with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount per outstanding share, except that payments made by a class under a 12b–1 Plan or any Shareholder Servicing Plan and any incremental transfer agency costs relating to a specific class will be borne exclusively by that class.

8. The methodology and procedures for calculating the net asset value and dividends and distributions of the classes and the proper allocation of expenses among the classes have been reviewed by an expert (the "Expert") who has rendered a report to applicants, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations would be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Trust that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the Commission pursuant to section 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Trust (which the Trust agrees to provide), will be available for inspection by the Commission staff upon written request to the Trust for such work papers by a senior member of the Division of Investment Management or a regional office of the Commission. Authorized staff members would be limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate or Assistant Administrators. The initial report of the Expert is a "Report on Policies and Procedures Placed in Operation," and the ongoing reports will be "Reports on Policies and Procedures Placed in Operation and Tests of Operating Effectiveness," as defined and described in SAS No. 70 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition (8) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (8) above. Applicants will take immediate corrective action if this representation is not concurred in by the Expert or appropriate substitute Expert.

10. The prospectuses of each class of shares will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing shares of the Trust may receive different compensation with respect to one particular class of shares over another in the Trust.

11. The Underwriter will adopt compliance standards as to when each class of shares may be sold to particular investors. Applicants will require all persons selling shares of the Trust to agree to conform to such standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees with respect to the Multi-Class System will be set forth in guidelines which will be furnished to the Trustees.

13. The Trust will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus relating to a Series, regardless of whether all classes of shares of the Series are offered through each prospectus. The Trust will disclose the respective expenses and performance data applicable to each class of shares of a Series in every shareholder report relating to such Series. The shareholder reports relating to each Series will contain in the statement of assets and liabilities and statement of operations, information related to the Series as a whole and not on a per class basis. Each Series' per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Series. To the extent that any advertisement or sales literature describes the expenses or performance data applicable to any class of shares of a Series, it will also disclose the respective expenses and/or performance data applicable to all classes of shares

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of such Series. The information provided by applicants for publication in any newspaper or similar listing of the Trust's net asset value or public offering price will present each class of shares separately.

14. Applicants acknowledge that the grant of the exemptive order requested by the Application will not imply Commission approval, authorization of or acquiescence in any particular level of payments that the Series may make pursuant to its 12b–1 Plan or any Shareholder Services Plan in reliance on the exemptive order.

15. Any Purchase Class shares will convert into Target Class shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

16. If the Trust implements any amendment to its 12b–1 Plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under the Plan, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The Trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into the Target Class. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class (the "New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class shares will convert into New Target Class shares. The New Target Class and New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Trustees reasonably believe will not be subject to federal taxation. In accordance with condition (3), any additional cost associated with the creation, exchange, or conversion of the New Target Class or New Purchase Class shall be borne solely by the Administrator, the Underwriter, and the Adviser. The Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

17. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24089 Filed 9–28–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2742]

Florida; Declaration of Disaster Loan Area

Leon and Wakulla Counties and the contiguous counties of Franklin, Gadsden, Jefferson, and Liberty in the State of Florida and Grady and Thomas Counties in the State of Georgia constitute a disaster area because of damages caused by heavy rains and subsequent flooding on August 15, 1994 resulting from Tropical Storm Beryl. Applications for loans for physical damage may be filed until the close of business on November 21, 1994 and for economic injury until the close of business on June 20, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elswhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 274206 for Florida and 274306 for Georgia. For economic injury the numbers are 834600 for Florida and 834700 for Georgia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 20, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–24149 Filed 9–28–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2741]

Pennsylvania; Declaration of Disaster Loan Area

Lycoming and Tioga Counties and the contiguous counties of Brandford, Clinton, Columbia, Montour, Northumberland, Potter, Sullivan, and Union in the State of Pennsylvania constitute a disaster area because of damages caused by heavy rains and flooding on August 18, 1994 resulting from the remnants of Tropical Storm Beryl. Applications for loans for physical damage may be filed until the close of business on November 18, 1994 and for economic injury until the close of business on June 19, 1995 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303, or other locally announced locations.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared under a separate declaration for the same occurrence.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses with non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 274106 and for economic injury the number is 834500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 19, 1994.

Erskine B. Bowles

Administrator.

[FR Doc. 94–24150 Filed 9–28–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Economic Injury Disaster Loan Area #8348]

Washington; Declaration of Disaster Loan Area

Chelan County and the contiguous counties of Douglas, King, Kittitas, Okanogan, Skagit, and Snohomish in the State of Washington constitute an economic injury disaster loan area as a result of wildfires which began on July 25, 1994 and continued through September 1, 1994. Eligible small business without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on June 21, 1995 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento CA 95853–4795, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: September 21, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–24152 Filed 9–28–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Economic Injury Disaster Loan Area #8320; Amendment #1]

Washington; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended to include San Juan County in the State of Washington as an economic injury disaster loan area due to the effects of the warm water currents known as El Nino on the 1994 salmon harvest. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until May 26, 1995 at the previously designated location.

All other information remains the same, i.e., the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: September 22, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–24151 Filed 9–28–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2084]

United States International Telecommunications Advisory Committee (ITAC); Study Group C Meeting

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC) Telecommunications Standardization Sector Study Group C will meet on Thursday, October 20, 1994, in room 1406 from 9:30 am to 4:30 pm at the U.S. Department of State, 2201 "C" Street, NW., Washington, DC 20520.

The agenda for Study Group C will include a consideration of contributions on optical fiber issues for Study Group 15. Please submit proposed contributions to the Chairman of Study Group C on or before September 23, 1994 to allow time for mailing and review prior to the meeting. Contributions should be mailed to: Dennis K. Thovson, AT&T—5A256, 900 Rt. 202/206, P.O. Box 752, Bedminster, NJ 07921–0752.

Alternately, contributions endorsed by a U.S. standards body can be brought in for consideration and approval. Persons presenting contributions should bring 40 copies to the meeting. For agenda planning purposes, please notify Madeleine Mendex on 908–234–8624 if you plan to attend this meeting. PLEASE NOTE: Persons intending to attend the above U.S. Study Group Meeting must announce this not later than 5 days before the meeting to the Department of State, 202–647–0201 (fax: 202–647–7407). The announcement must include name, social security number, and date of birth. The above includes government and non-government attendees. All attendees must use the "C" Street entrance. A picture ID will be required for admittance.

Dated: September 19, 1994.

Earl S. Barbely,

Chairman, U.S. ITAC for ITU–T Telecommunications, Standardization Sector.

[FR Doc. 94–24037 Filed 9–28–94; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice 2085]

Shipping Coordinating Committee, Subcommittee for the Prevention of Marine Pollution; Notice of Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on October 26, 1994, 9:30 AM in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC.

The purpose of this meeting will be to review the agenda items to be considered at the thirty-sixth session of the Marine Environment Protection Committee (MEPC 36) of the International Maritime Organization (IMO) to be held from October 31–November 4, 1994. Proposed U.S. positions on the agenda items for MEPC 36 will be discussed. The major items for discussion will be the following:

a. Prevention of oil pollution. Work will continue on guidelines for implementation of Regulations 13F and 13G to Annex I of The International Convention for the Prevention of Pollution from Ships (MARPOL 73/78). This will include guidelines for structural and operational requirements for existing ships, equivalences for double-hulls for new ships, and guidelines for enhanced inspections.

b. Implementation of the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC). An IMO working group will address topics such as guidelines for the use and application of dispersants, the redraft of the contingency planning portion of the IMO Oil Pollution Manual.

c. Follow-up action to the United Nations Conference on Environment and Development (UNCED). An MEPC working group will examine IMO's role in implementation of UNCED and discuss the results of a correspondence group on use of the precautionary principle.

d. Unwanted aquatic organisms in ballast water. A working group will discuss a possible technical annex to MARPOL 73/78 to prevent the introduction of exotic species through discharge of ballast water.

e. Enforcement of Pollution Conventions. A working group will

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consider refuse recordkeeping amendments to Annex V of MARPOL 73/78 proposed by the United States.

f. The future work program of the MEPC.

Members of the public may attend these meetings up to the seating capacity of the room.

For further information or documentation pertaining to the SPMP meeting, contact Lieutenant Commander Ray Perry, U.S. Coast Guard Headquarters (G–MEP–3), 2100 Second Street, S.W., Washington, D.C. 20593–0001, Telephone: (202) 267–0423.

Dated: September 16, 1994.

Marie Murray,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 94–24036 Filed 9–28–94; 8:45 am]

BILLING CODE 4710–07–M

TENNESSEE VALLEY AUTHORITY

Patton Island Bridge and Approaches Crossing the Tennessee River and Connecting the Cities of Florence and Muscle Shoals, Colbert and Lauderdale Counties, AL

AGENCY: Tennessee Valley Authority.

ACTION: Issuance of Record of Decision.

SUMMARY: Notice is hereby given in accordance with the National Environmental Policy Act and Section 5.4.9 of TVA's implementing procedures, 45 FR 54, 111–115 (1980), that TVA has decided to adopt the "build" alternative identified in the "Final Environmental Impact Statement and Section 4(f) Determination" prepared by the U.S. Department of Transportation, Federal Highway Administration and Alabama Highway Department in cooperation with the U.S. Army Corps of Engineers, the U.S. Coast Guard, and TVA, dated August 6, 1991. TVA has decided to: (1) Provide a permanent easement over 63.7 acres of TVA land for construction, operation, and maintenance of a new highway and bridge approaches on the Muscle Shoals Reservation, Patton Island (Tract XPR–82PT), and Pickwick Reservoir (Tract XPR–81PT), and (2) provide Section 26a approval of the bridge over the Tennessee River at Tennessee River Mile 258.0.

FOR FURTHER INFORMATION CONTACT: Dale V. Wilhelm, Manager, National Environmental Policy Act Department, Environmental Management, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone (615) 632–6693.

SUPPLEMENTARY INFORMATION: From 1987 to 1991, TVA cooperated with the Alabama Highway Department in evaluating bridge routings, navigational impacts, impacts on TVA's Rockpile National Recreation Trail, and other environmental impact analyses necessary to support the EIS. TVA has now received a request for a permanent easement which would allow the Department to build the project. The proposed bridge and multi-lane highway project would connect Muscle Shoals with Florence and eventually with the proposed Memphis to Atlanta Interstate Highway. Upon receipt of the permanent easement and 26a permit, construction work would likely begin on the project.

Alternatives Considered

The following alternative corridors were considered by the Alabama Highway Department and cooperating agencies and were evaluated in the final EIS.

1. Corridor East of Wilson Dam
2. Corridor from Wilson Dam Road Near TVA to Wilson Dam Road near the Corps of Engineers Lock System
3. Seven Mile Island Corridor
4. O'Neal Corridor
5. Patton Island Corridor

Based upon comparison of the corridors, the Patton Island and O'Neal Corridors were chosen for detailed review, and the Patton Island Corridor was chosen as the preferred routing.

The following Alternatives for the Patton Island Corridor were evaluated in the EIS:

1A. Build along a corridor designated "Alternative A." South of the Tennessee River on the Muscle Shoals Reservation, this route is to the east of Pond Creek.

1B. Build along a corridor designated "Alternative B." South of the Tennessee River on the Muscle Shoals Reservation, this route is along Pond Creek.

2. The No Action Alternative, in which the bridge, approaches, and highway project would not be built.

The EIS discussed but did not consider in detail two other alternatives for the Patton Island Corridor: alternate modes of transportation and postponing the action. Alternate transportation systems such as mass transit do not currently exist in the area, and postponing the action would increase the impacts associated with building the project when action is taken.

TVA concurs with the determination that the Patton Island corridor offers the most benefits, and that the Alternative A route is the appropriate build alternative across TVA lands south of the Tennessee River. The Alternative B route north of the river in the city of Florence is the appropriate build alternative.

BASIS FOR DECISION: Alternative A across TVA lands is chosen because it would minimize the need to relocate several miles of Pond Creek, allow improved transportation and economic growth, and enhance safety. The major recreational impact would be the relocation of 800 feet of the Rockpile National Recreation Trail. Alternative A would require 29 acres of upland habitat out of the 1,200 acres on Muscle Shoals Reservation.

The O'Neal corridor across TVA land would result in greater upland habitat loss, more impacts on potential archaeological sites, greater impacts on TVA recreational facilities, and would require 75 acres of upland habitat.

Alternative B would require the relocation of several miles of Pond Creek on the Muscle Shoals Reservation and has not been chosen as the preferred alternative across TVA land. However, north of TVA land in Florence, Alternative B was found to be more practical given the topography of the Florence area, and the fact that it would create less traffic congestion on Florence Boulevard. Also, Alternative A north of the river would require a retaining wall at the Cherry Hills Housing Project playground, which representatives of the project have said is not desirable. The No Action alternative is not desirable because it would result in increasing traffic congestion as the area grows.

Environmental Consequences and Commitments

Implementation of the proposed project is not expected to have substantial land use impacts and would not result in substantial loss of prime farmland. It would not disrupt neighborhoods or communities, but would change travel patterns in the area and relocate part of a low income housing project. Many of the displaced residences are low income; however, there would be financial assistance available to those who would be required to relocate.

The proposed project would generate 350–375 full-time construction jobs, resulting in some need for temporary housing for workers brought in from outside the area, and increased job opportunities for area residents. By improving the transportation network in the area, local businesses would be able to serve regional markets rather than just local ones.

Environmental analysis on the proposed project suggests that there would not be substantial air emissions, noise, or water quality impacts on the proposed project. Two endangered mussels inhabiting the Tennessee River in the vicinity of the bridge would be relocated to a suitable area prior to placement of bridge piers. As part of its approval, TVA would require best management practices to control erosion and sedimentation to prevent adverse aquatic impacts. These conditions include:

1. Removal of vegetation will be minimized.
2. All disturbed areas will be stabilized as soon as possible. In slow germination conditions and on steep slopes, erosion control netting will be utilized to facilitate revegetation.
3. Both temporary (fast germinating) and permanent ground cover will be established.
4. Native woody vegetation, to include trees, will be used (versus riprap) wherever practicable as permanent stabilization.
5. Silt fences will be used around material stockpile areas.
6. Any riprap needed (e.g., at immediate streambank/water interface) will be applied in such a manner as to avoid stream sedimentation or disturbance.
7. Cement and other pollutants will not be spilled into streams.
8. Equipment will be kept off of streambanks to the degree practicable.

Soils within the corridor could contain some toxic materials; however, no environmental impacts are expected to result from the minute amounts of existing toxics.

Although construction of the bridge would occur within the floodplain of the Tennessee River, it would not constrict or impede the flow of the Tennessee River and no unacceptable increases in flood elevations are expected. One archaeological site could possibly be impacted by bridge piers. Data recovery will take place at this site if it is necessary to disturb it.

Dated: September 20, 1994.

Ralph H. Brooks,

Acting Senior Vice President, Resource Group, Tennessee Volley Authority.

[FR Doc. 94–24096 Filed 9–28–94; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Herzog Contracting Corporation (Herzog)

Docket Number RSGM–94–15

Herzog seeks a permanent waiver of compliance with certain provisions of the Railroad Safety Glazing Standards (49 CFR Part 223) for its Rail King Model SS 4400 railcar movers leased to various railroads. Herzog Railroad Division offers numerous types of equipment for lease to railroads either with or without operators and maintenance. Herzog has leased mobile railcar movers to railroads for use in track maintenance projects for 17 years without safety related incident.

The Rail King Model SS 4400 is defined as a locomotive and must comply with § 223.11(a), which requires Type 1 test certified glazing in the frontward and rearward facing windows, and Type II test certified glazing in the side facing windows. The Rail King SS 4400 glazing material is made to specification AS1 Safety Laminated. Herzog was granted a waiver, RSGM–88–29, to operate Tracmobile car movers without certified glazing. The glazing material in Tracmobile car movers is either laminated and/or tempered.

Herzog is requesting this waiver for the following reasons:

1. Machines are used only for Maintenance of Way projects.
2. They do not handle revenue freight or passenger.
3. Speed is less than 20 mph.
4. They handle approximately 10 cars.
5. FRA glazing is very expensive and delivery time is approximately 4 months.
6. The cabs are not constructed to accommodate the extra weight.
7. The existing waiver, RSGM–88–29, has been in use for approximately 5 years without any glass related incidents.

Interested parties are invited to participate in these proceedings by submitting written reviews, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSGM–94–15) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received before November 2, 1994 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) in Room 8201, Nassif Building, 400 Seventh Street S.W., Washington, D.C. 20590.

Issued in Washington, D.C. on September 23, 1994.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 94–24057 Filed 9–28–94; 8:45 am]

BILLING CODE 4910–06–P

Research and Special Programs Administration

[Docket No. P–93–2W; Notice 1]

Interstate Natural Gas Association of America; Filing of Gas Pipeline Facility Waiver Petition

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The Interstate Natural Gas Association of America (INGAA), on behalf of 28 INGAA member pipeline companies and their subsidiaries, has petitioned the Research and Special Programs Administration (RSPA) for a waiver from compliance with the requirements of 49 CFR 192.713(a) and 192.485 to allow the installation of a proprietary composite reinforced (CR) sleeve material (Clock Spring™ manufactured by Clock Spring Company of North America, Long Beach, CA) as a full encirclement wrapped sleeve for the repair of imperfections and damages that impair the serviceability of steel transmission pipelines operating at or above 40 percent of specified minimum yield strength (SMYS). RSPA intends to grant a waiver to each of the parties represented in the petition because the use of this technology provides at least the same level of integrity as replacement pipe or installation of a full encirclement welded split sleeve.

FOR FURTHER INFORMATION CONTACT: G. Joseph Wolf, Office of Pipeline Safety (DPS–13), Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590, 202–366–4560.

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SUPPLEMENTARY INFORMATION: Federal pipeline safety regulations (49 CFR 192.713(a)) require that a full encirclement welded split sleeve be applied over an imperfection or damage that impairs the serviceability of a segment of a steel gas transmission line operating at or above 40 percent of SMYS if it is not feasible to take the segment out of service for repair. Previously, RSPA granted a waiver (58 FR 13823; March 15, 1993) to the Panhandle Eastern Corporation (Panhandle) for the installation of CR sleeves as an alternative to this requirement. The Panhandle waiver applied to six locations on its line #2 in Fayette County, Ohio.

The INGAA petition additionally requests a waiver from § 192.485, requiring each segment of a transmission line with general corrosion and a remaining wall thickness less than that required for the pipeline's maximum allowable operating pressure be replaced, or the operating pressure be reduced commensurate with the strength of the pipe based on the actual remaining wall thickness. The petition for waiver requests that pipeline operators be permitted to use CR sleeve material for the repair of imperfections and damages that impair the serviceability of steel transmission pipelines operating at and above 40 percent of SMYS. Currently, § 192.485 does not permit the repair of an area of general corrosion, unless the area is small.

Proposal and Rationale Submitted by INGAA

The INGAA waiver request cites the Panhandle waiver and supporting documents, and proposes to conform to the Panhandle waiver except for deviations cited below. The proprietary repair method proposed by INGAA and Panhandle consists of installing CR sleeve material in coil form held in place by an adhesive. The adhesive adheres both to the pipe surface and to the adjacent layers of the coiled composite reinforcement. The composite reinforcement is an isophthalic polyester resin reinforced with fiberglass. The adhesive is a methacrylate. Both the composite reinforcement and the adhesive have histories of suitable performance in other applications described in documents in the docket.

In the Panhandle petition, the suitability of a standard CR sleeve for repair of a measured defect is determined using a computer program developed by the Gas Research Institute (GRI). Panhandle reported that destructive tests of pipe with standard CR sleeves installed over manufactured defects repeatedly burst in the adjacent steel pipe, demonstrating the adequacy of the CR sleeves. The CR sleeve does not require pretesting, as there is no replacement pipe, nor are there any welds to be tested as required for welded split sleeves.

Panhandle described the following advantages of using CR sleeves:

(1) CR sleeve material is relatively easy to install.

(2) CR sleeve material is furnished in standard widths and thicknesses. The length of the repair to be made determines the number of sleeve units to be used. Multiple units can be brought to the job site at the time of excavation. Therefore, there is no delay between determining the extent of the repair and procuring materials for repair.

(3) The crew performing the investigation can make the repair without calling for pipe handling equipment or welders.

(4) In most circumstances, there will be no need to take the line out of service, eliminating interruptions to, or curtailments of, customer service; CR sleeve repairs can be made while the line is operated at full or reduced pressure.

(5) The use of CR sleeve material would substantially reduce cost as compared to the repair methods currently required under § 192.713(a).

Panhandle estimated that the average cost of a repair would be reduced from $26,000 for a pipe cutout or $16,000 for a welded split sleeve to $9,000 for a CR sleeve. The result would be a maximum savings of $17,000 per replacement repair or a minimum of $7,000 per welded split sleeve repair.

In commenting on the notice of the Panhandle waiver (Docket No. P–90–1W), the American Gas Association estimated that the industry could save $6,500,000 annually by using CR sleeves in the manner proposed by Panhandle. By requesting a waiver of § 192.485 to use CR sleeves under broader conditions than those proposed by Panhandle, INGAA's proposal has the potential for even greater savings.

RSPA granted Panhandle the waiver on the conditions that Panhandle install the CR sleeves using the procedure described in the documents supporting its petition, perform the inspections described in the petition, report promptly to RSPA the results of the inspections and any unfavorable performance of the CR sleeves, and determine and report to RSPA the cause of any unfavorable performance.

INGAA's waiver petition proposes that operators participating in the petition agree to certain additional and alternative conditions from those instituted in the Panhandle waiver. INGAA's waiver requires parties to the waiver petition to comply with all of the conditions of the Panhandle waiver for which deviations have not been requested. Details of INGAA's requested deviations from the conditions of the Panhandle waiver are presented and discussed in the following paragraphs.

Deviations From Panhandle Waiver

The Panhandle waiver provided that an analysis for serviceability of corroded areas would be determined using ANSI/ASME B31G "Manual for Determining the Remaining Strength of Corroded Pipelines." INGAA proposes that the analysis for serviceability may alternatively be based on the RSTRENG User's Manual, March 1993. RSPA incorporated by reference both B31G and RSTRENG into Part 195 (59 FR 33389; June 28, 1994). RSPA proposed the incorporation of B31G in Part 192 (57 FR 39577; August 31, 1992). Comments on the proposal suggested incorporation by reference of RSTRENG into Part 192 in addition to B31G. RSPA considers that either B31G or RSTRENG is suitable for determining the serviceability of steel pipe.

INGAA reports that, since the Panhandle waiver was granted, GRI has developed an enhanced model called GRI WRAP for calculating the efficacy of a composite repair. INGAA proposes using GRI WRAP in lieu of the model used by Panhandle. RSPA proposes to accept INGAA's decision to use the GRI WRAP model.

INGAA proposes that only those pipeline operators included in it's petition be allowed to us the CR sleeve repair method. INGAA's understanding that RSPA will not accept individual pipeline operator waiver petitions for using this repair method is misguided. RSPA must consider all waiver applications.

INGAA proposes that installation of CR sleeves by the participating pipeline operators be coordinated with GRI to ensure sufficient operational and geographic diversity is achieved to obtain a representative data set to support any further change to the pipeline safety regulations. GRI will assist companies to evaluate the installations, record the results, and provide the data to RSPA upon request. A statistical sampling of sites will be excavated and evaluated within two years of installation.

INGAA proposes that installations of CR sleeves will be reported by the operator to RSPA or a designated state agent office within thirty days of installation. RSPA considers that it is more appropriate that the notification be made to both RSPA and its designated state agent, and that the notification be made prior to installation to afford RSPA and the state agent the opportunity to witness the installation.

INGAA proposes that operator personnel using the CR sleeve (Clockspring™) repair method be trained and certified in standard installation procedures by the Clock Spring Company LP. RSPA considers that such training and certification is appropriate and should be supplemented by a commitment to periodic refresher training and recertification of installers of CR sleeves.

INGAA proposes that records of CR sleeve installations will be maintained in accordance with § 192.709. RSPA considers that the proposal regarding records is appropriate.

Proposed Action on Waiver Request

In addition to the advantages cited by INGAA and Panhandle, RSPA considers that the ability to make a repair without welding eliminates the possibility of cracking and pipeline failure attributable to residual stresses from, and to hydrogen induced cracking associated with, welding. Also eliminated is the possibility of burning through the pipe wall while welding. Overall, RSPA considers the CR sleeve repair procedure to be a safe alternative to either the welded split sleeve repair procedure or the pipe replacement procedure, both currently permitted by § 192.713(a). While RSPA considers that the use of the CR sleeve repair procedure in an area of general corrosion is an acceptable alternative to replacing the corroded pipe or reducing the operating pressure commensurate with the strength of the steel pipe based on the actual remaining wall thickness under § 192.485(a), comments are requested on this aspect of the waiver request.

RSPA believes that 49 CFR 192.713(a) and .485(a) should be waived to permit the parties represented by the petitioner to install CR sleeves as a permanent repair of imperfections and damages that impair the serviceability of steel transmission pipelines operating at or above 40 percent of SMYS. RSPA believes that the use of this technology provides at least the same level of integrity as replacement of pipe or installation of a full encirclement welded split sleeve. Although RSPA believes that there is no practical limit to the extent of a corroded area repairable using CR sleeves, RSPA proposes that repairs using CR sleeves in accordance with the proposed waiver be limited to 10 feet of sleeve length.

A waiver would be granted to each of the parties represented in the petition for the purpose of evaluating the performance of CR sleeves. RSPA intends to review the performance evaluations of CR sleeves applied under the proposed waiver and consider a termination of the waiver three years after it is granted.

Information submitted by INGAA is available in the docket. The information cited by INGAA in the grant of waiver to Panhandle is available in docket P–90–1W.

Interested persons are invited to comment on the proposed waiver by submitting in duplicate such data, views, or judgments as they may desire. Communications should identify the Docket and Notice numbers in the heading of this document, and be submitted to: Dockets Unit, Room 8421, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001, (202) 366–5046.

All comments received before [30 days after publication of this notice] will be considered before final action is taken. Late filed comments will be considered so far as practicable. All comments will be available for viewing between the hours of 8:30 a.m. to 5 p.m., before and after the closing date for comments.

No public hearing is contemplated, but one may be held at a time and place set in a Notice in the **Federal Register** if requested by an interested person desiring to comment at a public hearing and raising a genuine issue.

Dated: September 19, 1994.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety, Research and Special Programs Administration.

[FR Doc. 94–24081 Filed 9–28–94; 8:45 am]

BILLING CODE 4910–60–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit, "Exploration in the North Pacific 1741–1805." (see list [1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition of the objects at the Anchorage Museum of History and Art in Anchorage, Alaska from on or about October 13, 1994, to on or about November 20, 1994, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: September 23, 1994.

Les Jin,

General Counsel.

[FR Doc. 94–24143 Filed 9–28–94; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Department of Veterans Affairs' Advisory Committee on Prosthetics and Special-Disabilities Programs has been renewed for a 2-year period beginning August 15, 1994, through August 15, 1996.

Dated: September 16, 1994.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–24084 Filed 9–28–94; 8:45 am]

BILLING CODE 8320–01–M

Veterans' Advisory Committee on Rehabilitation, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Department of Veterans Affairs' Veterans' Advisory Committee on Rehabilitation has been renewed for a 2-year period beginning September 15, 1994, through September 15, 1996.

Dated: September 16, 1994.

[1] A copy of this list may be obtained by contacting Ms. Nella Sheahan of the Office of the General Counsel of USIA. The telephone number is 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

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By direction of the Secretary.
Heyward Bannister,
Committee Management Officer.
[FR Doc. 94-24085 Filed 9-28-94; 8:45 am]
BILLING CODE 8320-01-M

Advisory Committee on Cemeteries and Memorials, Meeting

The Department of Veterans Affairs gives notice that a meeting of the Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 2401, will be held at the office of the U.S. Department of Veterans Affairs, Room 730, 810 Vermont Avenue, NW., DC, on November 14 and 15, 1994.

The meeting will convene at 1:00 p.m. (EST) on November 14 to conduct routine business and will adjourn at 5:00 p.m. (EST) November 15. The meeting will be open to the public up to the seating capacity which is about 20 persons. Those wishing to attend should contact Ms. Dina Wood, Special Assistant to the Director, National Cemetery System, [phone (202) 273-5235] not later than 12 noon, EST October 1, 1994.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to the Director, National Cemetery System (40) at 810 Vermont Avenue, NW., Washington, DC 20420. In any such letters, the writers must fully identify themselves and state the organization or association or person they represent. Also, to the extent practicable, letters should indicate the subject matter they want to discuss. Oral presentations should be limited to 10 minutes in duration. Those wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver, them to the Director, National Cemetery System.

Letters and written statements as discussed above must be mailed or delivered in time to reach the Director, National Cemetery System, by 12 noon EST October 1, 1994. Oral statements will be heard only between 1:30 p.m. and 2 p.m. EST, November 15, 1994.

Dated: September 14, 1994.
By Direction of the Secretary.
Heyward Bannister,
Committee Management Officer.
[FR Doc. 94-24086 Filed 9-28-94; 8:45 am]
BILLING CODE 8320-01-M

Persian Gulf Expert Scientific Committee, Notice of Meeting

The Department of Veterans Affairs, (VA), in accordance with Pub. L. 92-463, gives notice that meetings of the VA Persian Gulf Expert Scientific Committee will be held on:

Monday, November 14, 1994, at 9 a.m.-5 p.m.

Tuesday, November 15, 1994, at 8:30 a.m.-12:01 p.m.

The location of the meeting will be 801 I Street, NW; Washington, DC; room 1105.

The Committee's objectives are to advise the Under Secretary for Health, about medical findings affecting Persian Gulf era veterans.

At this meeting the Committee will review all aspects of patient care and medical diagnoses and will provide professional consultation as needed. The Committee may advise on other areas involving research and development, veterans benefits and/or training aspects for patients and staff.

All portions of the meeting will be open to the public except from 4 p.m. until 5 p.m. on November 14, 1994, and 11 a.m. until 12:01 p.m. on November 15, 1994. During these executive sessions discussions and recommendations will deal with medical records of specific patients and individually identifiable patient medical histories. The disclosure of this information would constitute a clearly unwarranted invasion of personal privacy. Closure of these portions of the meetings is in accordance with subsection 10(d) of Pub. L. 92-463, as amended by Pub. L. 94-409, and as cited in 5 U.S.C. 552b(c)(6).

Additional information concerning these meetings may be obtained from the Chairperson, Office of Environmental Medicine and Public Health, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: September 16, 1994.
By Direction of the Secretary.
Heyward Bannister,
Committee Management Officer.
[FR Doc. 94-24087 Filed 9-28-94; 8:45 am]
BILLING CODE 8320-01-M

Wage Committee, Notice of Meetings

The Department of Veterans Affairs (VA), in accordance with Pub. L. 92-463, gives notice that meetings of the VA Wage Committee will be held on:

Wednesday, October 19, 1994, at 2:00 p.m.
Wednesday, November 2, 1994, at 2:00 p.m.
Wednesday, November 16, 1994, at 2:00 p.m.
Wednesday, November 30, 1994, at 2:00 p.m.
Wednesday, December 14, 1994, at 2:00 p.m.
Wednesday, December 28, 1994, at 2:00 p.m.

The meetings will be held in Room 1225, Department of Veterans Affairs, Tech World Plaza, 801 I Street, NW., Washington, DC 20001.

The Committee's purpose is to advise the Under Secretary for Health on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Public Law 92-463, as amended by Public Law 94-409, and as cited in 5 U.S.C.b(c) (2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, Room 1225, 801 I Street, NW, Washington, DC 20001.

Dated: September 20, 1994.
By Direction of the Secretary.
Heyward Bannister,
Committee Management Officer.
[FR Doc. 94-24088 Filed 9-28-94; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 188
Thursday, September 29, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 29, 1994, from 2:00 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444, or Floyd Fithian, at (703) 883-4000.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. New Business

1. Regulations

a. Financially Related Services [12 CFR Part 618] (Proposed).

2. Corporate Prior Approval

a. Coleman PCA in Receivership—Charter Cancellation.

Dated: September 23, 1994.
Floyd Fithian,
Acting Secretary, Farm Credit Administration Board.
[FR Doc. 94-24241 Filed 9-27-94; 1:15 pm]
BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:11 a.m. on Tuesday, September 27, 1994, the Corporation's Board of Directors determined, on motion of Acting Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a personnel matter.

The Board also determined, by the same majority vote, that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum and resolution regarding proposed amendments to Part 362 of the Corporation's rules and regulations, entitled "Activities and Investments of Insured State Banks," which would revise the Corporation's definition of equity investment to exclude treasury stock from the definition, thereby allowing institutions, in accordance with applicable Federal and state law, to acquire such stock and hold it for no longer than one year.

By the same majority vote, the Board further determined that no earlier notice of the changes in the subject matter of the meeting was practicable.

Dated: September 27, 1994.
Federal Deposit Insurance Corporation.
Leneta G. Gregorie,
Acting Assistant Executive Secretary.
[FR Doc. 94-24282 Filed 9-27-94; 3:26 pm]
BILLING CODE 6714-0-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 94-23634.
PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, September 29, 1994 at 10:00 a.m., Meeting Open to the Public.

The following item was added to the agenda:

Advisory Opinion 1994-27: Karen A. McCarthy on behalf of Consumers Power Company Employees for Better Government (continued from meeting of September 22, 1994).

DATE AND TIME: Tuesday, October 4, 1994 at 10:00 a.m.
PLACE: 999 E Street NW., Washington, DC.
STATUS: This Meeting Will Be Closed to the Public.
ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

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DATE AND TIME: Wednesday, October 5, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Open to the Public.

ITEM TO BE DISCUSSED: Wilder for President Committee—Oral Presentation.

DATE AND TIME: Thursday, October 6, 1994 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1994–30: Edward D. Feigenbaum on behalf of Conservative Concepts, Inc
Regulation:
MCFL Rulemaking: Summary of Comments and Draft Final Rules
Fiscal Year 1995 Management Plan
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,
Administrative Assistant.

[FR Doc. 94–24278 Filed 9–27–94; 3:12 pm]

BILLING CODE 6715–01–M

Federal Register

Thursday
September 29, 1994

Part II

Department of Education

Office of Educational Research and Improvement—Library Programs; Inviting Applications for New Awards for Fiscal Year 1995; Notice

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DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement—Library Programs

Invitation To Apply for New Awards for Fiscal Year 1995

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1995.

SUMMARY: The Secretary invites applications for new awards for fiscal year 1995 and announces closing dates for the transmittal of applications under five discretionary grant programs for libraries: the Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants, Library Literacy Program, Library Education and Human Resource Development Program—Fellowships and Institutes, and Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants.

These programs support the National Education Goals by seeking to improve library services, to enhance the skills of library staff, to increase the quality and availability of library holdings, and other activities. The National Education Goals specifically call for:

- All children to start school ready to learn;
- The high school graduation rate to increase to at least 90 percent;
- Students to demonstrate competency in challenging subject matter and to learn to use their minds well;
- U.S. students to be first in the world in science and mathematics achievement;
- Adult Americans to be literate and to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship;
- Every school to be free of drugs and violence and to offer a disciplined environment conducive to learning;
- The Nation's teaching force to have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century; and
- Every school to promote partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.

In developing this combined application notice the Department has sought to ensure that programs awarding grants during FY 1995 will further the National Education Goals. The Secretary encourages applicants under these programs to consider the National Education Goals in developing their applications.

DATES: The closing dates for transmitting applications under this notice are listed in Section I of this notice.

ADDRESSES: *For Applications or Further Information:* The addresses for obtaining applications for, or further information about, individual programs or competitions are in the respective announcements for those programs contained in Section II of this notice.

For Users of TDD or FIRS: Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

For Electronic Assess to Information: Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

SUPPLEMENTARY INFORMATION: All programs announced in this notice, with the exception of the Library Services to Indian Tribes and Hawaiian Natives Program, including both Basic Grants and Special Projects Grants, are subject to the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs. Information regarding applicable procedures under this order will be included in the application packages.

Organization of Notice

This notice contains two sections. Section I includes a chart listing closing dates in chronological order, and other pertinent information about programs covered by this notice. Section II consists of the individual application announcement for each program.

SECTION I.—PROGRAMS AND CLOSING DATES FOR LIBRARY PROGRAMS

Title of Program and CFDA Number	Applications available	Application deadline date	Deadline for Intergovernmental review	Tentative award date	Estimated available funds[1]	Estimated range of awards[1]	Estimated avg. size of awards[1]	Estimated number of awards[1]
Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (84.163A)	10/14/94	12/02/94	NA	03/27/95	[2]$906,000 [3]$604,000	NA	$4,500	240
Library Education and Human Resource Development Program—Institutes (84.036A)	10/27/94	12/02/94	02/02/95	04/24/95	1,500,000–35,000	125,000	66,000	23
Library Education and Human Resource Development Program—Fellowships (84.036B)	10/27/94	12/02/94	02/02/95	05/12/95	3,500,000	22,000–332,000	78,000	45
Library Literacy Program (84.167A)	10/14/94	12/02/94	[4]02/02/95	06/01/95	8,026,000	5,000–35,000	32,000	250
Library Services to Indian Tribes and Hawaiian Natives Program—Special Grants (84.163B)	03/06/95	05/08/95	NA	09/08/95	[2]906,000	38,000–106,000	74,600	12

[1] The Department is not bound by any estimates in this notice.
[2] Indian Tribes.
[3] Hawaiian Natives.
[4] This deadline also applies to comments from State Library Administrative agencies.

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Section II—Application Notices

CFDA Nos. 84.036 A & B—Library Education and Human Resource Development Program—Fellowships and Institutes (Higher Education Act, Title II, Part B).

Purpose of Program

Promotes high quality library and information science education and provides fellowship, institute or traineeship grants to institutions of higher education and library organizations or agencies to recruit, educate, and train persons, and to establish, develop, or expand programs, through courses of study or staff development in library and information science.

Eligible Applicants

Eligible applicants are institutions of higher education, library organizations, and library agencies.

Project Periods

For fellowship grants: A new fellowship grant at the master's level must be at least one academic year; a new fellowship at the doctoral level must be at least one academic year and may be planned for up to two additional annual budget periods to be awarded on a noncompetitive continuation basis.

For Institute grants: A long-term institute project must provide at least one academic year but no more than 12 months of training; a short-term institute project must provide at least one week but no more than six weeks of training.

Applicable Regulations

(a) The regulations for this program as published in the **Federal Register** on August 26, 1993 (58 FR 45210) and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86.

Priorities

CFDA No. 84.036A—Institute Projects

Absolute Priorities 1

Under 34 CFR 75.105(c)(3) and 34 CFR 776.5 the Secretary gives an absolute preference to applications that meet one or more of the following priorities. The Secretary funds under this competition only applications that meet one or more of these absolute priorities:

Absolute Priority 1

To recruit, educate, train, retrain and retain minorities in library and information sciences.

Absolute Priority 2

To educate, train or retrain library personnel in areas of library specialization where there are currently shortages, such as school media, children's services, young adult services, science reference, and cataloging.

Absolute Priority 3

To educate, train or retrain library personnel to serve the information needs of the elderly, the illiterate, the disadvantaged, or residents of rural America.

Absolute Priority 4

To educate, train or retrain library personnel in new techniques of information acquisition, transfer, and communication technology.

Invitational Priority

Within absolute priorities 2 and 3 specified in this notice under institute projects, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Applications for institutes that place particular emphasis on libraries and their contributions to achieving one or more of the National Education Goals as listed in the Summary section of this notice.

Note: Applicants interested in the invitational priority addressing libraries and their contributions to achieving the National Education Goals may request from the program office the complete text of the eight goals, including the objectives supporting each individual goal.

For Applications or Information Contact

Louise V. Sutherland, Acting Director, Discretionary Library Programs Division, Library Programs, U.S. Department of Education, 55 New Jersey Avenue, N.W., Room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

CFDA No 84.036B—Fellowship Projects

For FY 1995, only Master's and new Doctoral degree level applications will be accepted. Grantees that were awarded doctoral grants in FY 1994 that continue in FY 1995 will be contacted separately.

Absolute Priorities

Under 34 CFR 75.105(c)(3) and 34 CFR 776.5 the Secretary gives an absolute preference to applications for fellowships that meet one or more of the following priorities. The Secretary funds under this competition only applications for fellowships that meet one or more of the following priorities:

Absolute Priority 1

To recruit, educate, train, retrain and retain minorities in library and information science.

Absolute Priority 2

To educate, train or retrain library personnel in areas of library specialization where there are currently shortages, such as school media, children's services, young adult services, science reference, and cataloging.

Absolute Priority 3

To increase excellence in library education by encouraging study in library and information science and related fields at the doctoral level.

Absolute Priority 4

To educate, train or retrain library personnel in new techniques of information acquisition, transfer, and communication technology.

For Applications or Information Contact

Louise V. Sutherland, Acting Director, Discretionary Library Programs Division, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, N.W., Room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

Program Authority

20 U.S.C. 1021, 1032

CFDA No. 84.163A—Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (Library Services and Construction Act, Title IV).

Purpose of Program

Provides noncompetitive basic grants to eligible Indian tribes and to eligible Hawaiian native organizations to establish or improve public library services for Indian tribes and Hawaiian natives.

Eligible Applicants

(a) Indian tribes recognized by the Secretary of the Interior to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians; (b) Alaska Native villages or regional or village corporations as defined in or established under the Alaska Native Claims Settlement Act (however, two or more Alaska Native villages, regional corporations, or village corporations may not receive basic grant allocations to serve the same population); and (c) Organizations primarily serving and representing Hawaiian natives and recognized by the Governor of Hawaii.

Applicable Regulations

(a) The Basic Grants to Indian Tribes and Hawaiian Native Program Regulations in 34 CFR Part 771; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74 and 82 (for grants to Hawaiian native organizations); 80 (for grants to Indian tribes); and 75, 77, 81, and 85 (for grants to both Hawaiian natives and Indian tribes).

For Applications or Information Contact

Beth Fine, Program Officer, Discretionary Library Programs Division, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, N.W., Room 404, Washington, D.C. 20208–5571. Telephone (202) 219–1315.

Program Authority

20 U.S.C. 351c(c)(1), 351c(d), 361(c), 363.

CFDA No. 81.167A—Library Literacy Program (Library Services and Construction Act, Title VI).

Purpose of Program

Provides grants to State and local public libraries to support adult literacy projects. Grants may not exceed $35,000 in any fiscal year.

Eligible Applicants

State and local public libraries.

Length of Application

The applicant must limit the application narrative to no more than 25 pages, including any charts, graphs, or other documentation that are inserted in the body of the narrative. The narrative must be double-spaced, using 8½×11" paper (on one side only) with one-inch margins. If using a proportional computer font, use no smaller than a 12-point font. If using a nonproportional computer font or a typewriter, do not use more than 10 characters to the inch. Pursuant to this Department's regulatory authority to establish instructions governing the form of application (34 CFR 75.101(a)(1)), proposal narratives that exceed this page limit, or narratives using a smaller print size or spacing that makes the narrative exceed the equivalent of this limit, will not be considered for funding.

Applicable Regulations

(a) The Library Literacy Program Regulations in 34 CFR Part 769; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, and 85.

For Applications or Information Contact

Barbara Humes, Program Officer, Discretionary Library Programs Division, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, N.W., Room 404, Washington, D.C. 20208–5571. Telephone: (202) 219–1315.

Program Authority

20 U.S.C. 375.

CFDA No. 84.163B—Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants (Library Services and Construction Act, Title IV).

Purpose of Program

Makes competitive awards to eligible Indian tribes to establish or improve public library services. All available funds for library services to Hawaiian natives are awarded through the Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (CFDA No. 84.163A).

Eligible Applicants

Indian Tribes and Alaska Native villages or regional or village corporations that have met eligibility requirements for the Library Services to Indian Tribes Program—Basic Grants (CFDA No. 84.163A) and received such Basic Grants in the same fiscal year as the year of application.

Priorities

The Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications.

Invitational Priority 1

To assess and plan for tribal library needs.

Invitational Priority 2

To train or retrain Indians as library personnel.

Invitational Priority 3

To purchase library materials.

Invitational Priority 4

To conduct special library programs for Indians such as summer reading programs for children, outreach programs for elders, literacy tutoring, and training in computer use.

Applicable Regulations

(a) The Special Projects Grants to Indian Tribes and Hawaiian Natives Program Regulations in 34 CFR Part 772, and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 80, 81, and 85.

For Applications or Information Contact

Beth Fine, Program Officer, Discretionary Library Programs Division, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

Program Authority

20 U.S.C. 351c(c)(2), 361(d), 364.

Dated: September 23, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–24020 Filed 9–28–94; 8:45 am]

BILLING CODE 4000–01–P

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federal register

Thursday
September 29, 1994

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Pacific Pocket Mouse; Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC39

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Pacific Pocket Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines the Pacific pocket mouse (*Perognathus longimembris pacificus*) to be an endangered species throughout its range in coastal southern California, pursuant to the Endangered Species Act of 1973, as amended (Act). Critical habitat is not being designated. This small rodent is an obligate resident of river and marine alluvium and coastal sage scrub plant communities in the immediate vicinity of the coast. Although the Pacific pocket mouse formerly occurred at a minimum of 8 general locales encompassing some 29 sites from Los Angeles County south to San Diego County, the only known, confirmed population extant occurs on the Dana Point Headlands in Orange County, California. A maximum of 36 confirmed, individual Pacific pocket mice has been detected on 3.75 acres of identified occupied habitat during the last 20 years. The Pacific pocket mouse is threatened with extinction due to documented depredation by domestic cats and habitat loss and fragmentation as a result of past and continuing land development projects. This rule implements and guarantees continued Federal protection provided by the Act for the Pacific pocket mouse, which was emergency listed as endangered on January 31, 1994 for a period of 240 days.

EFFECTIVE DATE: September 26, 1994.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008.

FOR FURTHER INFORMATION CONTACT: Mr. Gail C. Kobetich, Field Supervisor, at the address listed above (telephone 619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

The Pacific pocket mouse (*Perognathus longimembris pacificus*) is one of 19 recognized subspecies of the little pocket mouse (*Perognathus longimembris*) (Hall 1981). This species is one of the smallest members of the family Heteromyidae, which consists of spiny pocket mice (*Heteromys* and *Liomys*), pocket mice (*Perognathus* and *Chaetodipus*), kangaroo rats (*Dipodomys*), and kangaroo mice (*Microdipodops*). Virtually all (if not all) members of this family are nocturnal, granivorous and have external, deep, fur-lined cheek pouches (Ingles 1965; Dr. P. Brylski, consulting mammalogist, pers. comm., 1993).

Perognathus longimembris ranges in size from about 110 to 151 millimeters (mm) (4.3 to 5.9 inches) from nose to tip of tail (Hall 1981) and weighs 7 to 9 grams (¼ to ⅓ oz.) (Burt and Grossenheider 1976). The body pelage is spineless, bristle-free, and predominately brown, pinkish buff or ochraceous buff above and light brown, pale tawny, buff, or whitish below. There are typically two small patches of lighter hairs at the base of the ear. The tail can be either distinctly or indistinctly bicolored. The little pocket mouse exhibits a high degree of geographic variation in pelage color (Hall 1981; see also Ingles 1965). Vocalizations of this species include a high-pitched squeal.

The Pacific pocket mouse is the smallest subspecies of the little pocket mouse, ranging up to 131 mm (5.2 inches) in length from nose to tip of the long tail. The tail, hind foot, and skull structures of Pacific pocket mice are also the smallest of all little pocket mouse subspecies (Huey 1939). Stephens (1906) labeled the species an "* * * exceedingly small [p]ocket [m]ouse * * *" The Pacific pocket mouse is one of the smallest rodents in the world.

The Los Angeles pocket mouse (*Perognathus longimembris brevinasus*), which occurs mostly northeast of, and well inland from, the Pacific pocket mouse, is the only other subspecies of little pocket mouse that occurs in southern California west of the deserts. Individual Los Angeles pocket mice range in size from 125 to 145 mm (4.9 to 5.7 inches) long. Overall, Los Angeles pocket mice have longer tails, hind feet, skulls, and nasal bones than Pacific pocket mice (Huey 1939).

The Pacific pocket mouse was originally described by Mearns (1898) as a distinct species, *Perognathus pacificus*, based on the type specimen that was collected on the shore of the Pacific Ocean at Mexican Boundary Monument 258 in San Diego County, California. Although von Bloeker (1931a,b) initially recognized the Pacific pocket mouse as a distinct species, he subsequently concluded that *P. pacificus* represented two subspecies of the little pocket mouse, *P. longimembris pacificus* and *P. l. cantwelli*, after examining additional specimens (von Bloeker 1932). Subsequent to a biometric analysis of 331 specimens of the little pocket mouse, Huey (1939) recognized *P. l. pacificus* to be inclusive of the two subspecies described by von Bloeker (1932). Subsequent taxonomic treatments (e.g., Hall 1981; Williams et al. 1993) have retained the Pacific pocket mouse as a distinct subspecies. Although a taxonomic review of *P. longimembris* may be appropriate, the Pacific pocket mouse has been described as distinct from related forms (Dr. D. Williams, mammalogist, *in litt*, 1993).

Under section 3(15) of the Act (16 U.S.C. 1531 *et seq.*), the term "species" is defined to include recognized subspecies. Therefore, throughout the remainder of this rule, *Perognathus longimembris pacificus* (hereafter referred to as the Pacific pocket mouse), is treated as a "species".

The Pacific pocket mouse is endemic to the immediate coast of southern California from Marina del Rey and El Segundo in Los Angeles County, south to the vicinity of the Mexican border in San Diego County (Hall 1981, Williams 1986, Erickson 1993). The species has not been recorded outside of California (Williams et al. 1993; Erickson 1993). Erickson (1993) noted further that the Pacific pocket mouse has not been reliably recorded more than approximately 2 miles (3 kilometers) inland from the coast or above 600 feet (180 meters) in elevation.

The habitat requirements of the Pacific pocket mouse are not well understood, but they are known to occur on fine-grain, sandy substrates in the immediate vicinity of the Pacific Ocean (Mearns 1898, von Bloeker 1931; Grinnell 1933; Bailey 1939). The Pacific pocket mouse is or was known to inhabit coastal strand, coastal dunes, river alluvium, and coastal sage scrub growing on marine terraces (Grinnell 1933; Meserve 1972; Erickson 1993). Stephens (1906) trapped a female "* * * on a dry mesa a short distance back from the seashore." von Bloeker (1931a) reported that Pacific pocket mice detected near San Diego were found only in open patches of ground that were otherwise surrounded by weedy growth. M'Closkey (1972) and Meserve (1972, 1976b) detected the Pacific pocket mouse on sandy substrates in coastal sage scrub habitats in the San Joaquin Hills in Orange County, California. Brylski (1993) detected the only known, confirmed population extant on the Dana Point Headlands on loose sand substrates in a coastal sage scrub community dominated by California buckwheat (*Eriogonum fasiculatum*) and California sage (*Artemisio californica*). Brylski (1993) commented that the Pacific pocket mouse's preferred habitat "* * * appears to be open coastal sage scrub on fine, sandy soil."

Little quantitative information is available on the ecology and life history of the Pacific pocket mouse. However, the attributes of the little pocket mouse and the available data that pertain to the Pacific pocket mouse subspecies suggest that this small rodent is facultatively or partially fossorial, relatively sedentary, primarily granivorous, and able to become torpid, estivate, or hibernate in response to adverse environmental conditions (e.g., Ingles 1965; Kenagy 1973; Dr. P. Meserve, academic mammalogist, pers. comm., 1994; Dr. R. MacMillan, academic mammalogist, pers. comm., 1994).

During those periods that they are not active on the surface of preferred substrates or in preferred habitats, Pacific pocket mice apparently dwell in underground burrows. Erickson (1993) noted that "[n]umerous small burrows revealed the presence of some colonies to early collectors." Kenagy (1973) observed that little pocket mice may stay in their burrows continuously for up to five months in winter, alternating between periods of dormancy and feeding on stored seeds. Periods of dormancy apparently may be induced by, or correlated with, food shortage (Kenagy 1973). Ingles (1965) noted that "[t]he ability of the little pocket mouse to become dormant for only a few bad nights is an important factor in its survival."

While active and above ground, little pocket mice have ranged up to 1,000 feet (320 meters) from their burrows in a 24-hour period (Burt and Grossenheider 1976). However, based on his study from 1969–1973 in the Owens Valley, California, Kenagy (1973) concluded that "* * * the maximum distance moved during the night by this little mouse was undoubtedly much less than 50 m." Reported little pocket mouse home ranges ranged in size from 0.12 to 0.56 hectares (0.30 to 1.4 acres) and populations ranged in density from 1 to 5.5 individuals/hectare (0.4 to 2.2 individuals/acre) in Joshua Tree National Monument, California (Chew and Butterworth 1964). Adult density at Dana Point Headlands was estimated to be 5.9/hectare (2.4/acre) by Brylski (1993).

Pacific pocket mice primarily eat the seeds of grasses and forbs (von Bloeker 1931; Meserve 1972, 1976a). Meserve (1976a) observed further that other plant materials were consumed, albeit in comparatively smaller quantities. P. Brylski (pers. comm., 1993) observed that "Pacific pocket mice foraged mainly on the seeds of grasses and, to a lesser degree, on leafy vegetation." Jameson and Peeters (1988) reported that little pocket mice, like other pocket mice species, also eat soil-dwelling insects.

Relatively little is known of the breeding biology of Pacific pocket mice. Erickson (1993), relying largely on data provided by Meserve (1972), noted that "[p]regnant and lactating females have been found from April through June with immatures noted from June through September." P. Brylski (pers. comm., 1993) observed lactating females in July and noted that two litters were produced that year. Limited reproduction was attributed to juveniles in the Dana Point Headlands population (P. Brylski, pers. comm., 1993). Jameson and Peeters (1988) described the little pocket mouse as "rather prolific" and indicated that "[p]regnancies occur in spring and fall with a summer lull."

Historical records indicate that the Pacific pocket mouse occurred in 8 general areas encompassing some 29 separate trapping sites. Approximately 80 percent of all Pacific pocket mouse records are from 1931 or 1932 (Erickson 1993). The following summary of records is organized by county:

Los Angeles County. The Pacific pocket mouse historically was detected in three areas—Marina del Rey/El Segundo, Wilmington, and Clifton. One hundred and eighteen specimens or live captures were recorded for the Marina Del Rey/El Segundo area from 1918 to 1938, with most (86) of these records coming from "Hyperion"; see Erickson (1993). Three specimens were collected in Wilmington in 1865 (voucher specimens on deposit at the Museum of Vertebrate Zoology, University of California, Berkeley) and four were collected in "Cliffton" (sic) in 1931. Four specimens from San Fernando in 1932 that were originally labeled as *P. pacificus/P. cantwelli* were referred to as *P. l. brevinasus* by von Bloeker (1932); see Erickson (1993). There have been no records of Pacific pocket mice from Los Angeles County since 1938 (Erickson 1993; P. Brylski, *in litt*, 1993).

Orange County. The Pacific pocket mouse has been confirmed at two locales in Orange County: the San Joaquin Hills and Dana Point. The species was found in Buck Gully (P. Meserve, pers. comm., 1994) and nearby "Spyglass Hill" in the San Joaquin Hills from 1968 to 1971 (M'Closkey 1972; Meserve 1972; R. MacMillan, pers. comm., 1994). Forty-four specimens or live captures from "Spyglass Hill" were recorded from 1968–1971 (see Erickson 1993). The only known, confirmed population extant of the Pacific pocket mouse was rediscovered in July of 1993 on the Dana Point Headlands in Orange County, California (Brylski 1993). G. Cantwell had previously collected 10 specimens of this species at this locale in May of 1932 (voucher specimens on deposit at the Natural History Museum of Los Angeles County).

Possible, recent records from Crystal Cove State Park (approx. 16 km (10 mi) NW Dana Point) resulting from pitfall trapping (see R. MacMillan, pers. comm., 1994) await confirmation given the uncertainty expressed by the observer and the negative results of recent walk-over and trapping surveys there (see P. Brylski, *in litt*, 1994 and J. Webb, *in litt*, 1994).

San Diego County. The Pacific pocket mouse historically was confirmed at three general locales in San Diego County—the San Onofre Area, Santa Margarita River Estuary, and the lower Tijuana River Valley. One specimen was obtained at San Onofre in 1903 and two others were secured at that locale in 1931. Seventy-one specimens or live captures were recorded for the Santa Margarita River mouth area between 1931 and 1936, with the majority (50) of these reported for "Oceanside". One hundred and thirty-four specimens or live captures have been recorded from the lower Tijuana River Valley, including the type specimen. There has not been a confirmed Pacific pocket mouse record at these locales or elsewhere in San Diego County since 1932 (see Erickson 1993).

However, there have been three recent, unconfirmed reports of the Pacific pocket mouse from San Diego County. A document released by the California Department of Fish and Game (Mudie et al. 1986) pertaining to the wildlife resources at the San Dieguito Lagoon, Del Mar, and at least one subsequent environmental "baseline study" pertaining to that locale (see S. Montgomery, consulting biologist, *in litt*, 1994 and R. Erickson, consulting biologist, pers. comm., 1994) provide species lists that contain the little pocket mouse (*Perognathus longimembris*). Given the location of the survey effort, it seems almost certain that any and all little pocket mice recorded at this locale would be Pacific pocket mice. However, it was subsequently ascertained that none of the surveyors or report authors could

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recall capturing a little pocket mouse on the site or reporting same (e.g., Montgomery *in litt*, 1994; R. Erickson, consulting biologist, pers. comm., 1994). Subsequent walk-over surveys of the area in 1992 did not reveal the presence of the Pacific pocket mouse (Dr. P. Behrends, consulting mammalogist, pers. comm., 1994).

A single Pacific pocket mouse was reported from Lux Canyon, Encinitas, in June 1989. The record is now considered only probable by the observer (Erickson 1993).

Most recently and since the publishing of the proposed and emergency rules, Mr. S. Tremor (*in litt*, 1994) reported what he believes to be a single Pacific pocket mouse from a locale in Del Mar, California. However, the animal escaped before photographs or a pelage description could be obtained. Given these considerations, the Service concludes, in the present absence of definitive or additional information, that the Del Mar observation, although certainly deserving of further attention and investigation, remains unconfirmed until such time that a positive species identification can be made. P. Brylski (pers. comm., 1994) independently has arrived at the same conclusion.

Accordingly, the only known, recently confirmed population of the Pacific pocket mouse extant remains on the Dana Point Headlands. Between 25 to 36 individual Pacific pocket mice were detected there by Brylski (1993) during trapping surveys that extended into August. Prior to this recent rediscovery of the Pacific pocket mouse at the Dana Point Headlands, the Pacific pocket mouse had not been positively observed since 1971 (see Erickson 1993). Numerous, relatively recent small-mammal survey and trapping efforts within the potential range of the Pacific pocket mouse (e.g., Salata 1981; Jones and Stokes 1990; Taylor and Tiszler 1991; D. Erickson, pers. comm. 1993; P. Brylski, *in litt*, 1993; P. Behrends, pers. comm., 1994; Dr. P. Kelly, mammalogist, pers. comm., 1994; R. MacMillan, pers. comm., 1994; Dr. R. Dingman, mammalogist, pers. comm., 1994; Dr. J. Webb, biologist, *in litt*, 1994; S. Montgomery, consulting biologist, *in litt*, 1994; P. Brylski, *in litt*, 1994; United States Fish and Wildlife Service 1994a; United States Fish and Wildlife Service 1994b) have failed to locate additional extant populations.

From a species perspective, the persistence of the Pacific pocket mouse is important, perhaps essential, in preserving an important and unique portion of the historic habitat of the little pocket mouse and in preserving potentially unique genetic stock. The Pacific pocket mouse's adaptation to, and dependence on, coastal dune and coastal alluvium substrates and coastal sage scrub habitats have probably contributed to a genetic divergence from other subspecies of the little pocket mouse. Maintaining a broad genetic stock may be critically important to the species ability to adapt to changing environmental conditions. The apparent sedentary nature of the Pacific pocket mouse (Meserve 1972; Meserve, pers. comm., 1994) and the fragmentation of this species' potential habitat increase the probability that localized extirpations caused by the destruction of habitat or movement corridors will be permanent. This could significantly reduce the extent of any possible introgression between subpopulations and reduce genetic heterozygosity and the overall fitness of the species. Such perturbations could result in a permanent loss of genetic stock or, at the extreme, result in the extinction of the Pacific pocket mouse.

Previous Federal Action

The Pacific pocket mouse was designated by the Service as a category 2 candidate species for Federal listing as an endangered or threatened species in 1985 (50 FR 37966). It was retained in this category in subsequent notices of review published by the Service in the **Federal Register** in 1989 and 1991 (54 FR 554 and 56 FR 58804, respectively). Category 2 comprises taxa for which information now in the possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support proposed rules.

Largely because of documented, imminent threats to the only known population of the Pacific pocket mouse, the Service published an emergency rule to list the species as endangered on February 3, 1994 (59 FR 5306). Interim protection afforded the Pacific pocket mouse as the result of the promulgation of the emergency rule expires on September 28, 1994. A proposed rule to list the Pacific pocket mouse was concurrently published with the emergency rule (59 FR 5311).

Summary of Comments and Recommendations

In the proposed rule and associated news release announcing the promulgation of the proposed rule and emergency rule, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The news release was provided to media throughout southern California and to the national media. In addition, 3 Federal agencies, 3 state agencies, 15 county and city governments, and 6 other potentially affected or interested parties were individually notified of the promulgation of the emergency and proposed rules. Representatives of Marine Corps Base, Camp Pendleton; the County of Orange; the City of Dana Point; and the Dana Point Headlands landowner, among others, were personally contacted by Service personnel. Newspaper articles in the *Los Angeles Times* and *Orange County Register* announcing the emergency listing of the Pacific pocket mouse and scheduled public hearing appeared in February and March 1994.

The Service held a public hearing on the proposed rule on March 24, 1994, in San Clemente, Orange County, California. Notification of the hearing was published in the **Federal Register** on March 1, 1994 (59 FR 9720). Newspaper notices specifically announcing the hearing and inviting general public comment on the proposal additionally were published in the *Orange County Register* and *San Diego Union Tribune*. Approximately 25 people attended the hearing and seven of these provided oral comments.

A total of 71 comments was received. Although the comment period technically closed on April 4, 1994, the Service considered all comments received through June 20, 1994. (Five comments were received by the Carlsbad Field Office after the deadline, including one from an interested and potentially affected municipal jurisdiction.) Multiple comments whether written or oral from the same party are regarded as one comment.

Of the comments received, 48 persons or organizations (68 percent) supported listing; 10 (14 percent) urged the protection of the only confirmed, occupied habitat of the Pacific pocket mouse on the Dana Point Headlands; 3 (4 percent) were against the listing; 3 (4 percent) were in favor of the development of the Dana Point Headlands; 4 (6 percent) urged the application of sound science to the listing process; and 3 (4 percent) were noncommittal.

Two Federal agencies and the sole city government responding were neutral on the issue of listing. The California Department of Fish and Game previously had gone on record as supporting a proposal to list the Pacific pocket mouse (K. Berg, *in litt*, 1992). No citizens groups or organizations opposed the proposed listing. Attorneys

for one landowner voiced opposition to both the emergency listing and proposed listing.

The Service has reviewed all of the written and oral comments described above including those that were received outside of the formal comment periods. Based on this review, 11 relevant issues have been identified and are discussed below. The Service considers these issues to be representative of the comments questioning or opposing the proposed listing action.

Issue 1: One commenter noted that the listing action should not occur because the Pacific pocket mouse subspecies is not a valid taxon and the subject of taxonomic controversy. The commenter quotes a letter from Mr. P. Collins, Associate Curator of the Santa Barbara Museum of Natural History, to D. Erickson, in which it is stated that "* * * I think that it is imperative that the taxonomic status of the various subspecies of *Perognathus longimembris* in central and southern California be reevaluated using modern systematic techniques such as electrophoresis and multivariate morphometrics. The systematic questions will need to be answered before any population of this species can be proposed for possible listing status." The commenter further noted that "* * * Service officials appeared to have significant concerns regarding the appropriateness of listing the PPM [Pacific pocket mouse] in the absence of sufficient data on the taxonomy issue—even as recently as November 1993. (Exhibit J)" The Service is obliged to consider available data pertaining to the genetic relationship between the Pacific pocket mouse and other groups of little pocket mice as provided by Patton et al. (1981). The commenter added that the subspecies designation is controversial and that "* * * alleged morphological characteristics could be the product of seasonal or ecological variation among pocket mice. A proper resolution of the resolution of the PPM's true status is required before the Service can act to list the PPM as a subspecies. * * *"

Service Response: Although the Service initially and independently reviewed all available information relating to the taxonomy, ecology, biology, status and distribution of the Pacific pocket mouse, the Service also solicited comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, and any other interested party on these and all other aspects of the proposed rule. In particular, the Service has made a concerted effort to obtain the best available scientific information regarding the taxonomy of the Pacific pocket mouse.

Despite a recent taxonomic treatment of the rodent family Heteromyidae published by the American Society of Mammalogists (Society), the Service nonetheless solicited the expert opinions and input of, among others, the President of the Society and the principal author of the published taxonomy (Williams et al. 1993) regarding the taxonomic validity of *Perognathus longimembris pacificus*. The Service considers the Society to be a recognized authority on the taxonomy and biology of North American mammals.

As is suggested by the commenter, the Service does have significant concerns regarding the appropriateness of listing any species and carefully considers its mandate in that regard as set forth by section 4 of the Act. In the present case, however, the Service cannot agree that there is, as suggested by the commenter, an absence of sufficient data pertaining to the taxonomy of the Pacific pocket mouse.

The Pacific pocket mouse was originally described by Mearns (1898) as a distinct species, *Perognathus pacificus*. Subsequent to several intervening taxonomic treatments or investigations (e.g., Stephens 1906; von Bloeker 1932; Grinnell 1933; Huey 1939), Hall (1981) and others have recognized the Pacific pocket mouse as a distinct subspecies of the little pocket mouse. Although the taxonomical history of this species spans some 90 years and there is a current, peer-reviewed, published classification of the heteromyid rodents inclusive of the pocket mice taxa (Williams et al. 1993), the Service nevertheless contacted Dr. Williams to insure that there was no doubt as to the current, correct taxonomic treatment of the subject subspecies (see D. Williams, *in litt*, 1993, which is identical to the commenter's Exhibit J). Dr. Williams (*in litt*, 1993) confirmed the taxonomic validity and distinctness of the Pacific pocket mouse.

Although it is recognized that a "* * * modern revision of the *longimembris* complex might cause a re-evaluation of the various subspecies of this taxon", the Service presently has no information or scientific basis to refute a recognized authority's assertion that "* * * there is certainly every reason to consider *pacificus* valid with current information" (Dr. J. L. Patton, President of the American Society of Mammalogists, *in litt*, 1994). Patton et al. (1981) did not address the biochemical systematics of perognathine pocket mice (which include the little pocket mouse and Pacific pocket mouse).

Mr. Collins has informed the Service (pers. comm., 1994) that he has no alternative taxonomy to propose and is not now, and will not be in the foreseeable future, investigating the taxonomy of *Perognathus longimembris*. By contrast, P. Brylski has indicated (*in litt*, 1993) that he and others are currently investigating the systematics of *Perognathus longimembris* utilizing sequencing regions of mitochondrial DNA and morphology. To date, no results from these studies have been published or are otherwise forthcoming. In the interim, P. Brylski (*in litt*, 1994) has most recently indicated that "[a]t this time, there is no evidence that contradicts the taxonomic distinctiveness of *P. longimembris pacificus*."

The traditional scientific approach to defining vertebrate subspecies has been based almost exclusively on the identification of morphological differences in body measurements and other morphometric characters between geographically distinct populations of a species. Given its apparent, current rarity, limited mobility, and distance from other subspecies of the little pocket mouse (see, for instance, Meserve 1972; Hall 1981; P. Brylski, *in litt*, 1993; Erickson 1993) and the definition and expected course of speciation, it seems reasonable to assume that the Pacific pocket mouse is now, or will be, a de facto "full" species or genetically-isolated taxonomic entity unto itself.

In the absence of current, definitive information to the contrary from an expert (or any other) source, the Service presently concludes that the Pacific pocket mouse subspecies constitutes a valid taxon.

Issue 2: The same commenter concluded that the proposed rule must be withdrawn because the Service improperly and secretly elevated the species to a category 1 candidate status on the basis of new information that was obtained in 1993.

Service Response: The three candidate levels (1–3) used by the Service are administratively defined to periodically advise the public on the status of various taxa that might come under the protection of the Act. The terms "candidate" or "category 1" do not appear in the Act or implementing regulations in 50 CFR. The Service had previously notified the public in its candidate notices of review (e.g., 56 FR 58805) that when sufficient information was available, a proposed rule might result. Section 4(b)(7) of the Act

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specifically authorizes the Service to promulgate emergency rules when the well-being of a species is at significant risk. A species need not be a previously declared category 1 candidate species to meet the criteria for threatened or endangered status and to be proposed accordingly or to have an emergency rule promulgated. For reasons that are fully explored in the "Summary of Factors" portions of the February 3, 1994, emergency rule (59 FR 5306) and this rule, the Service concludes that the Pacific pocket mouse fully met and still meets the criteria necessary to promulgate a rule listing the species as endangered.

The new information obtained in 1993 consists of all materials and data that became available to the Service pertaining to, in part, the status, distribution, ecology, and biology of the Pacific pocket mouse. Included in these submittals was an updated manuscript by R. Erickson (1993). Accompanying this manuscript were records of Pacific pocket mouse museum or collection specimens and related documentation, raw data and notes reflecting searches for additional Pacific pocket mice records, peer-review correspondence, communications with experts in the field, an updated bibliography, and other, relevant materials. Also received in 1993 were Brylski's (1993) report and additional correspondence (P. Brylski, *in litt*, 1993) that confirmed the rediscovery of the Pacific pocket mouse on the Dana Point Headlands. During the prescribed public comment period, the commenter viewed and photographed or otherwise received all such materials.

Subsequent to an examination of all pre-existing information and important, additional data received in 1993, the Service concluded that sufficient data and information existed to list the Pacific pocket mouse on an emergency basis pursuant to section 4 of the Act and implementing regulations pertaining thereto. Given the information and data that has been forthcoming since that time, the Service concludes that the emergency listing was appropriate and that the species continues to meet the criteria as an endangered species.

Issue 3: The same commenter observed that the "* * *[p]roposed rule should be withdrawn because the Service lacks scientific data to support a listing of the PPM as threatened or endangered." The Service currently has insufficient information to assess the status and distribution of the Pacific pocket mouse. Specifically, the commenter argued "* * *that a substantial number of trap nights—perhaps a minimum of roughly 500—must be employed in any survey effort deemed to have any relevance for reaching conclusions on presence/absence. Consistent with this need for reliable data, the M.H. Sherman Company conducted 643 trap nights during its survey efforts at the Dana Headlands site." The commenter further argued that the majority of other recent surveys either were conducted "* * *when the PPM can be expected to be dormant* * *" (e.g., Taylor and Tiszler 1991) or at "[s]ites for which no survey dates are provided (and thus cannot be considered to provide reliable presence or absence data)* * *" (e.g., the Santa Margarita River Mouth). "An examination of the data for just the eight (8) locations historically known to have occupied habitat* * *reveals a similar lack of information upon which to draw a conclusion about the appropriateness of listing. The Service's own document indicates that a live trapping program is needed before the appropriateness of any listing can be made." Another commenter encouraged the Service "* * *to fully investigate all remaining historic habitats as well as potential habitat areas for the Pacific pocket mouse before making a final determination on its status." One commenter concluded that "[t]he Service's failure to establish and publish the accepted survey protocol for the PPM prior to the close of the public comment period renders this rule-making process invalid."

Service Response: In response to similar comments regarding the proposed listing of three Gulf Coast beach mice species (*Peromyscus*), the Service (June 6, 1985, 50 FR 23874) argued that "[i]t is not necessary to have precise population numbers to determine that the beach mice are endangered; indeed, it would probably be impossible to obtain such numbers." In that instance, the Service concluded that the three beach mice were endangered after a thorough review of adequate, relevant population data and documentation of habitat loss or perturbation, documented depredation, and other factors affecting the species.

In consistent fashion, the Service has made every attempt to obtain the best scientific information and data relating to the status of the Pacific pocket mouse and the factors affecting that species. Subsequent to a thorough consideration of these data and information, the Service concludes that said data and information are adequate and collectively support a listing as endangered. In particular, a composite of the relevant data summarized and reported by Hall (1981), Williams (1986), Williams et al. (1993), and Erickson (1993), the specimen records at institutions throughout California, and the additional data, references, and records summarized herein demonstrates that there in not a paucity of relevant information on the Pacific pocket mouse or the small rodent species of southern California in general.

An analysis of this very same information reveals that credible determinations of presence/absence of the Pacific pocket mouse (and many other small rodent species) depend on a number of factors that are not a function of the number of survey trap nights. Legitimate small mammal trappers in California are all licensed by the California Department of Fish and Game and many possess endangered species permits from the Service. These scientific surveyors are professionally obligated and charged with knowing the conditions and circumstances that will maximize the chances of detecting the Pacific pocket mouse during focused surveys or otherwise result in an adequate characterization of the rodent community at any given locale. An adequate assessment of the appropriate number of trap nights and number of trapping bouts during a given survey should reflect the experience of the surveyor and will certainly incorporate, at a minimum, the results of walk-over surveys for small rodent sign and burrows, analyses of the size and physical characteristics of the area being surveyed, the adjudged, current trappability of the target species, apparent suitability or "quality" of site habitat(s), time of year, phase of the moon, and the climatic conditions. Thus, a given focused survey for the Pacific pocket mouse may appropriately require far less than, or far greater than, five hundred trap nights.

All of the above considerations are factored into the Service's guidelines for surveying the Pacific pocket mouse (U.S. Fish and Wildlife Service 1994c) and it is likely that the protocol will evolve pursuant to the recommendations of permitted surveyors and expert sources. Although the Service has stipulated a minimum of five trapping bouts at each site to reflect the rarity and possible difficulty in locating or trapping the Pacific pocket mouse (e.g., Erickson 1993; Behrends, *in litt*, 1994), it is further stated that "[a] lesser effort may be approved by the Carlsbad Field Office on a case by case basis." (U.S. Fish and Wildlife Service 1994c). If, for instance, the objective is to merely establish presence/absence at a given locale, then a lesser effort may well be justified if Pacific pocket mice are detected in the first four trapping bouts. The recent, successful trapping survey at the Dana Point Headlands is a case in point. Although the Service concedes that the 643 trap-night effort at that locale in 1993 was justified, in that particular instance, to establish the approximate range and extent of the local Pacific pocket mouse population, it is nonetheless true that 9 Pacific pocket mice were discovered during the first night of trapping subsequent to the placement of 60 "effective" live traps at the site (Brylski 1993).

Even though it is apparent that Pacific pocket mice have not been recorded in December, January, or February of any given year (see Erickson 1993) and that the species apparently is most detectable from April to August (e.g., Meserve 1972), it cannot be assumed that the species is entirely undetectable during winter months. Subsequent to his long-term (1969–1973) study of the little pocket mouse at an elevation of approximately 1,220 meters (4,000 feet) in the Owens Valley, California, Kenagy (1973) observed that "[t]he extent of winter activity in the population of *P. longimembris* was different in each of the three winters, ranging from zero to 5 months of activity.* * *" Thus, the Service cannot automatically assume that trapping surveys during winter months are of no value in determining the presence/absence of the Pacific pocket mouse. If Pacific pocket mice are active during a given period in winter, however, surface sign should be visible. In any case, a review of the methodology employed by Taylor and Tiszler (1991) reveals that "[t]rapping began in November of 1988 and was completed May 1989." Thus, these authors did conduct trapping in at least portions of 4 calendar months during which Pacific pocket mice have been recorded (Taylor and Tiszler 1991; see also Erickson 1993).

In the emergency rule, R. Zembal, U.S. Fish and Wildlife Service (pers. comm., 1993), is cited as a source to corroborate the statement that recent small trapping efforts at the Santa Margarita River Mouth have failed to detect the presence of the Pacific pocket mouse (59 FR 5307). As is reflected in the Pacific pocket mouse species file at the Carlsbad Field Office, the referenced communication was "[t]he Service has looked repeatedly and intensively for the Pacific pocket mouse at the Santa Margarita River Mouth in recent years with no success."

This statement is borne out by records of recent survey and trapping efforts at that locale. Salata (1981) failed to detect the Pacific pocket mouse at the Santa Margarita River Mouth on Marine Corps Base, Camp Pendleton, in dune, pickleweed/saltgrass, pickleweed, and glasswort/upland grassland habitats during a survey effort in March 1981 that included 188 trap nights. Similarly, the Service (1994a) reported no captures of the Pacific pocket mouse from June 1986 intermittently to August 1990, during a study of the Santa Margarita River Mouth that involved a total of 11,380 trap nights and included surveys of coastal strand, maritime scrub, salt pan, *Salicornia* upland, *Salicornia/Distichlis* habitats, and *Salicornia* plots. Repeated trapping bouts at optimum times and in documented Pacific pocket mice habitats maximized the possibility of detecting the species. From 1986 to 1987, for instance, coastal strand habitats were surveyed in June, May, and then again in August for a total of 240 trap nights. In addition, potential habitat in maritime scrub, *Salicornia* upland, *Salicornia/Distichlis* dominated areas, and *Salicornia* plots were surveyed during the same calendar months for a total of 2,040 trap nights. Trapping bouts in all of the above-mentioned habitats during October of 1986 and February of 1987 resulted in additional 1,320 trap nights of survey data.

The Service document referenced by the commenter, a draft proposal calling for a live trapping program, is not on letterhead, not dated, and not signed by a Service Field Supervisor or person acting on his or her behalf. Although the date of the document is unknown, Service staff recall that this document has been in the files since at least November 1991. Thus, this draft document predates the receipt or filing of all of the substantive data and scientific papers that were received in 1993 and 1994.

Given all of the information that was received in 1993 and the additional information and materials that have been received since, the Service concludes that sufficient, adequate data are available to assess the likely status and distribution of Pacific pocket mice at the remaining historic locales and elsewhere throughout its historic range. The known present and past status and distribution of the Pacific pocket mouse at these historic locales are again individually reviewed below in the "Summary of Factors Affecting the Species" section of this rule.

Issue 4: The data used by the Service to estimate the remaining potential habitat of the Pacific pocket is inadequate. In particular, "* * *the Service's data for San Diego County, Oberbauer and Vanderwier (1991), turns out, upon inspection, to consist of nothing more than unsubstantiated speculation on the part of two individuals."

Service Response: The Service considers Oberbauer and Vanderwier's (1991) published evaluation of the present, depleted status of vegetation communities in San Diego County to be amongst the best available scientific information on the subject. Given the data base and expertise at the disposal of The Department of Planning and Land Use for the County of San Diego, the Service has no reason to doubt the validity of the presented data. No data or analysis have been submitted to refute their findings. By contrast, the data, analyses, and conclusions presented by Soule et al. (1992), summarized by the Service (March 30, 1993; 58 FR 16742), and the relevant references cited therein are corroborative.

The Service further concludes that the reported, extreme reduction in the potential range and extirpation of the Pacific pocket mouse in Los Angeles County is corroborated by a recent assessment of the land use status of low-elevation lands therein. In the final rule listing the coastal California gnatcatcher (*Polioptila californica californica*) as threatened (March 30, 1993; 58 FR 16742), it was reported that over 96 percent of the habitat below 250 meters (800 feet) that might have supported the gnatcatcher have been largely or entirely developed. Although the coastal California gnatcatcher is sympatric with the only known, confirmed population of Pacific pocket mouse on the Dana Point Headlands (EDAW 1993), the latter species has not been documented above approximately 180 meters (600 feet) (Erickson 1993) and apparently does not extend nearly as far inland as the former species (summarized March 30, 1993; 58 FR 16742). Thus, given the intense, almost complete development of the immediate coast in Los Angeles County, the Service believes that it is reasonable to predict that the past reduction in the range of the Pacific pocket mouse there exceeds the corresponding reduction in the Los Angeles County range of the coastal California gnatcatcher.

Issue 5: "The Service should explain that with only 8 known historic locations of the PPM and considering the available data on the animal, the PPM may never have been abundant in either the number of populations in the United States or the number of individuals in those populations, at least for the last hundred years." In support of this position, the commenter also notes that Stephens (1906) described the Pacific pocket mouse as "one of the rarest animals." The

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commenter additionally indicates that "[t]he Service should also explain that the PPM may be much more abundant and widespread than suggested in the [p]roposed [r]ule."

Service Response: Because the Pacific pocket mouse range-wide has been variously described as "exceedingly difficult to catch" with snap traps (von Bloeker 1931a) or "quite trappable" once located (R. M'Closkey, pers. comm., 1994; P. Meserve, pers. comm., 1994; R. MacMillan, pers. comm., 1994), the Service concludes that this anomaly is generated as a result of the patchy distribution of the species and its ecological requirements (e.g., M'Closkey 1972; Meserve 1976b; P. Meserve, pers. comm., 1994; R. M'Closkey, pers. comm., 1994; R. MacMillan, pers. comm., 1994; P. Brylski, *in litt*, 1994). Apparently, the "* * * rareness of the Pacific pocket mouse is not an artifact of low trappability * * *" (P. Brylski, *in litt*, 1994). Even in an area (the San Joaquin Hills) where the Pacific pocket mouse was repeatedly located and studied during two research investigations of the ecology of the local rodent community, the species was described there as rare (M'Closkey 1972) or present in relatively low numbers (P. Meserve, pers. comm., 1994).

Accordingly, given a composite of the available information and data, the Service concludes that there are no data, substantive or otherwise, that support the hypothesis that the Pacific pocket mouse is much more abundant and widespread than suggested in the proposed rule. Although the persistence of the Pacific pocket mouse on 45 acres of occupied or potentially-occupied habitat (Brylski 1993) suggests the real possibility that populations of the species exist elsewhere, confirmed extant populations away from the Dana Point Headlands have not been found or rediscovered in over 20 years. Thus, given the range-wide survey data and all other relevant information now available, the Service concludes that the Pacific pocket mouse is a patchily distributed species that has been described as locally abundant (Bailey 1939) to rare on carefully studied plots. Further, this mouse has become increasingly rare as a result of human-induced, direct impacts that are presented and discussed in the "Summary of Factors Affecting the Species" section of this rule.

Issue 6: The same commenter observed that "[t]he Service mischaracterizes the threat to the Dana Headlands PPM population because the development of the site is not imminent and any threat posed by feral or domestic cats cannot be effectively ameliorated by a listing; accordingly, the [e]mergency [r]ule is improper."

Service Response: The Service acknowledges that the development of the Dana Point Headlands currently is not as imminent now as it appeared in February of 1994. Since the publishing of the emergency and proposed rules, the citizens of Dana Point have forced a referendum on the proposed project that apparently will be decided in November of 1994. The referendum and subsequent possible City of Dana Point actions could result in the delayed implementation of, or modifications to, the proposed project. The commenter has agreed, however, that "* * * the Dana Headlands site is the only location recently shown to contain PPM" and that the landowners are requesting approval of a specific plan that includes "* * * development on and near the area where the PPM was trapped in 1993."

The Service disagrees that the documented predation by domestic and feral cats cannot be effectively ameliorated by a listing. The mission and mandate of the Service is to recover listed species utilizing the funds and authority that Congress provides. A recovery plan for the Pacific pocket mouse will almost certainly provide for means and measures to prevent or reduce the depredation of the species. The Service hopes and trusts that it will be able to enlist the cooperation of all landowners and cat owners in or near occupied or suspected Pacific pocket mouse habitat to prevent the continuing endangerment or extinction of the species.

Issue 7: The same commenter concluded that listing of the Pacific pocket mouse is not warranted because a comprehensive survey for the species has not been done in Baja California, Mexico.

Service Response: The Service finds no scientific basis for concluding or speculating that a possible population or populations of Pacific pocket mice in Mexico preclude the need to list the species. Although the range map in Hall (1981) suggests that the range of the Pacific pocket mouse may extend into northwestern Baja California, Mexico, there are no known records of the species outside of California and, thus, the United States as a whole (Hall 1981; Erickson 1993; Williams et al. 1993). By contrast, an analysis of species limits maps (Hall 1981) and composite of documented records (Hall 1981; Williams et al. 1993) reveals that at least 12 small rodent species have been historically recorded on the coast of northwestern Baja California in San Quintin, Ensenada, or their environs, to wit: *Perognathus baileyi, Perognothus arenarius, Perognathus fallax, Dipodomys agilis, Dipodomys merriami, Dipodomys gravipes, Reithrodontomys megalotis, Onochomys torridus, Peromyscus californicus, Peromyscus maniculatus, Microtus californicus, and Neotoma fuscipes*. Consequently, the best available data does not support the conclusion that the Pacific pocket mouse may occur in Mexico. Delaying listing until surveys outside of the known range had been completed would not be in keeping with the purposes of the Act.

Even if the Pacific pocket mouse occurs in coastal Baja California, it is likely that the species does not occur south of 30° north latitude, which represents an important transition zone for various birds, plants, land mammals, and other animal taxa. If, in an extreme case, it is true that the species is patchily distributed southward to 30° north latitude, the Service, pursuant to analyses and subsequent conclusions reached prior to the listing of the coastal California gnatcatcher, presently concludes that the United States historic distribution of the Pacific pocket mouse would represent a significant portion of the species' overall (hypothetical) range (see 58 FR 16742).

Issue 8: "Although the Pacific pocket mouse is not one of the identified species in the State's [Natural Communities Conservation Planning] program, it may be included in the subregional NCCP for this area." The County of Orange has been provided with updated habitat information and the subregional plan is currently being prepared. Therefore, "* * * the characterization of the NCCP program as 'inadequate' may be premature."

Service Response: The only use of the word "inadequate" in the proposed or emergency rules (59 FR 5306) refers to the previously proposed program to control domestic cat predation on the Dana Point Headlands and not to the State's NCCP program. As currently proposed, the NCCP program may, in fact, eventually result in the conservation of the Pacific pocket mouse or the species' potential habitat. At the present time, however, it remains true that Pacific pocket mouse is not an NCCP target species and no subregional plans or individual plans have been completed or implemented that would provide for the protection of the only known, confirmed population or the conservation of the species as a whole.

Issue 9: The proposed relocation of the only confirmed population extant is not a viable conservation alternative for the species.

Service Response: Given the apparent rarity of the Pacific pocket mouse and the experimental nature of relocation programs, the Service would carefully review any proposal to relocate—in whole or in part—any population of the Pacific pocket mouse. It remains true that one of the central purposes of the Act is to protect the natural habitat of the listed species. However, if and when Pacific pocket mouse population levels allow, the Service likely will investigate the possibility and feasibility of translocating animals to historically-occupied locales or other areas with suitable habitat and attributes to affect the recovery of the species or, in an extreme case, prevent extinction. Pursuant to the requirements of the purpose and section 7 of the Act, the Service likely would solicit the cooperation and participation of all Federal agencies and landowners in this regard.

Issue 10: The listing of the Pacific pocket mouse may be in conflict with Federal statutory authority (22 U.S.C. 277d–32) and important Federal, international wastewater treatment and flood control projects along the Tijuana River that will diminish threats to public health and safety.

Service Response: Several recent surveys conducted in the Tijuana River Valley (e.g., U.S. Fish and Wildlife Service 1994b) have not resulted in detections of the Pacific pocket mouse. Therefore, given the best scientific information available, the listing of the Pacific pocket mouse apparently will not conflict with the proposed projects. Even if the Pacific pocket mouse is rediscovered in the Tijuana River Valley or found elsewhere in Federal project "action areas," as defined at 50 CFR 402.02, the Act provides, under prescribed circumstances involving public health and safety, for expedited emergency consultations.

Issue 11: The Service must comply with Executive Order No. 12630 and conduct a takings analysis before reaching any final decision on listing the Pacific pocket mouse. The commenter noted that the executive order "* * * requires the preparation and consideration of a Takings Implication Assessment ('TIA') by a United States executive agency before that agency takes actions which may result in a taking of private property for which compensation may be due under the Fifth Amendment of the Constitution."

Service Response: In accordance with 16 U.S.C. 1533(b)(1)(A) and 50 CFR 424.11(b), listing decisions are made solely on the basis of the best scientific and commercial data available.

In adding the word "solely" to the statutory criteria for listing a species, Congress specifically addressed this issue in the 1982 amendments to the Act. The addition of the word "solely" was intended to remove from the process of the listing or delisting of species any factor not related to the biological status of the species. It was determined by a congressional committee that economic considerations have no relevance to determinations regarding the status of species. The application of economic criteria to the analysis of these alternatives and to any phase of the species listing process is applying economics to the determinations made under section 4 of the Act and was specifically rejected by the inclusion of the word "solely" in the legislation (see H.R. Report No. 567, part I, 97th Congress, 2d Session 20 [1982]).

Therefore, the Service concludes that it cannot consider a "TIA" until a final decision has been made whether or not to list a proposed species. However, with the signing and publication of this rule in the Federal Register, the Service will complete and consider a TIA.

Summary of Factors Affecting the Species

After a thorough review and consideration of all available information, the Service has determined that the Pacific pocket mouse should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Pacific pocket mouse (*Perognathus longimembris pacificus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Pacific pocket mouse historically was recorded and confirmed at eight locales encompassing some 29 specific trapping stations or sites (see Erickson 1993). Currently, however, the Pacific pocket mouse is known to exist at only one site on the Dana Point Headlands, City of Dana Point, Orange County, California. Although the Dana Point Headlands have not been developed or significantly altered since the Pacific pocket mouse was detected at this locale, the "* * * landowners are requesting approval on a specific plan from the City of Dana Point, which plan envisions development on and near the area where PPM were trapped in 1993" (A. Hartzell, Attorney-at-Law *in litt*, 1994; see also EDAW 1993 and City of Dana Point, *in litt*, 1994).

The recent status of the Pacific pocket mouse and its habitat has been summarized by Erickson (1993) based on a comprehensive search for museum specimens and capture records and conversations with pocket mice researchers and recognized expert sources. Other records and information have been obtained by the Service and made part of the public record pertaining to this action. A composite of this information is arranged by county and summarized below:

Los Angeles County. The Pacific pocket mouse historically was detected in three areas—Marina del Rey/El Segundo, Wilmington, and Clifton. Two of the three historic locales for the Pacific pocket mouse (Clifton and Wilmington) in Los Angeles County have been developed (Erickson 1993). The Service is unaware of potential Pacific pocket mice habitat at these two locales; none was disclosed or revealed as a result of the Service's request for information. The third historic locale (Marina del Rey/El Segundo) apparently has been substantially altered since the species was last detected there (Erickson 1993; P. Brylski, *in litt*, 1993). The Hyperion area, which formerly contained relatively large expanses of coastal strand and wetland habitats, has been extensively developed. Although potential habitat remains at the El Segundo Dunes, walk-over and trapping surveys by J. Maldonado and P. Brylski, including a 366-trap-night effort in July of 1993, have caused the latter surveyor to conclude that is "unlikely" that the Pacific pocket mouse occurs there (P. Brylski, *in litt*, 1993).

Elsewhere in Los Angeles County, a focused survey for the Pacific pocket mouse in Culver City consisting of 600 trap nights over three nights in June of 1991 in remnants of appropriate habitat resulted in no detections of Pacific pocket mice (P. Kelly, pers. comm., 1994). Although patches of suitable habitat apparently remain on the Palos Verdes Peninsula and trapping surveys of at least two sites are recommended, walk-over surveys of two other areas with suitable habitat by P. Brylski and S. Dodd revealed no pocket mouse burrows or diggings (P. Brylski, *in litt*, 1993).

It remains true that there have been no records of the Pacific pocket mouse in Los Angeles County since 1938 (Erickson 1993; see also Brylski, *in litt*, 1993). Given the available information at that time, Williams (1986) concluded that it was probable that all populations north of the San Joaquin Hills in Orange County were extirpated.

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Orange County. The Pacific pocket mouse has been confirmed at two locales in Orange County: the San Joaquin Hills and Dana Point. Development of the "Spyglass Hill" area in the San Joaquin Hills began in 1972 and has resulted in the destruction of the site where the Pacific pocket mouse and a number of other small rodent species were studied for a three-year period (P. Meserve, pers. comm., 1994; R. M'Closkey, pers. comm., 1994; R. MacMillan, pers. comm., 1994; see also M'Closkey 1972 and Meserve 1972). Prior to the rediscovery of the Pacific pocket mouse in 1993 on the Dana Point Headlands (Brylski 1993), the last record of the species was from "Spyglass Hill" in the San Joaquin Hills in 1971 (see Erickson 1993). Recent June to October trapping efforts totaling 1197 trap nights in the San Joaquin Hills and adjacent Laguna Canyon were unsuccessful in detecting the Pacific pocket mouse (Erickson, pers. comm., 1993).

Elsewhere, extensive, recent small mammal surveys of the coast of Orange County away from the Dana Point Headlands have not resulted in the detection of the Pacific pocket mouse. For instance, no Pacific pocket mice were detected during 54 trapping bouts conducted from 1979 to 1994 during calendar months from March to October at a total of 24 different locales in coastal Orange County, including areas in or near Corona del Mar, Crystal Cove State Park, Laguna Beach, and San Clemente (J. Webb, *in litt*, 1994). Additional trapping efforts during late fall or winter months at some of these same locales resulted in the capture of a variety of other native small rodent species but no Pacific pocket mice.

A focused trapping survey of appropriate habitats involving a total effort of 558 trap nights during April of 1990 did not result in the detection of the Pacific pocket mouse along Aliso Creek (Jones and Stokes 1990). R. MacMillan (pers. comm., 1994) also did not detect the Pacific pocket mouse during a June, 60-trap night, survey of suitable habitat in South Laguna Beach and mentioned that an additional survey in Alta Laguna conducted for the City of Laguna Beach was unsuccessful. Surveys contributing to a total effort of 1067 trap nights conducted elsewhere within the potential Orange County range of the Pacific pocket mouse during calendar months from April through November resulted in no detections of the species (Erickson, pers. comm., 1993).

The only known population of the Pacific pocket mouse has persisted on the Dana Point Headlands in southern, coastal Orange County. Given the data and analysis presented by Brylski (1993), it is apparent that 25 to 36 Pacific pocket mice occupied approximately 3.75 acres of habitat within a coastal sage scrub community at that locale in 1993. As is discussed above, this population is located on land that is under consideration for development (City of Dana Point, *in litt*, 1994; EDAW 1994).

San Diego County. The Pacific pocket mouse historically has been detected at three general locales in San Diego County: the San Onofre area, Santa Margarita River Estuary, and the lower Tijuana River Valley. Although portions of the San Onofre area are relatively undisturbed and deserving of further attention (e.g., P. Brylski, *in litt*, 1994), recent small mammal trapping efforts at the locale failed to detect the presence of the Pacific pocket mouse (Erickson 1993; R. Erickson, pers. comm., 1993).

As is reflected in the Service's response to "Issue 3" in the "Summary of Comments and Recommendations" section of this rule, recent, intense survey efforts at the Santa Margarita River Mouth similarly have not resulted in any Pacific pocket mouse detections (Salata 1981; U.S. Fish and Wildlife Service 1994a; see also Zembal 1984). Although the relatively undisturbed coastline of Marine Corps Base Camp Pendleton "* * * probably provides the best chance for the survival of the subspecies" (Erickson 1993), the Base Environmental and Natural Resources Management Office has indicated that "[o]ther than the recorded documentation of this species in the vicinity of San Onofre and the Santa Margarita Estuary in the 1930's * * * we have no information regarding the occurrence of this species aboard Marine Corps Base Camp Pendleton. To date, none of the environmental studies which have occurred aboard the Base since that time have identified this species." (L. Armas, *in litt*, 1994).

During the 1930's, Camp Pendleton Marine Corps Base did not exist and the city of Oceanside was immediately adjacent to the Santa Margarita River Estuary. Much of the southern half of the Santa Margarita River Estuary was destroyed in the early 1940's during the establishment of Marine Corps Base Camp Pendleton and the related construction of a boat basin and harbor facilities. In addition, the Oceanside area has been extensively developed since the Pacific pocket mouse was last recorded there in 1931 and the Service is aware of little, if any, remaining suitable habitat in that jurisdiction.

The lower Tijuana River Valley, which accounts for approximately 35 percent of all specimen records (Erickson 1993), evidently supported a relatively large population of the Pacific pocket mouse in historic times (e.g., von Bloeker 1931b). Citing two recent, unsuccessful trapping efforts (Taylor and Tiszler 1991; R.T. Miller, pers. comm., 1993), Erickson (1993) commented that the remaining habitat there is possibly insufficient to support the species. Most recently, the U.S. Fish and Wildlife Service (1994b) conducted a focused survey for the Pacific pocket mouse in the Tijuana River Valley from April 18, 1994 to May 13, 1994. Despite walk-over surveys of the area, four or five trapping bouts in each of eight separate locales, and a total of 4,242 trap nights of survey effort, no Pacific pocket mice were detected.

Elsewhere in San Diego County, a small mammal trapping program that began in 1987 is continuing at Torrey Pines State Park in habitats that have ranged from maritime chaparral to open (barren) areas as a result of two prescribed burns in the project area. Since 1988, 88 traps have been set every other week from mid-March to October during the study period. Despite an effort that now exceeds 7,500 trap nights, no Pacific pocket mice have been detected (R. Dingman, pers. comm., 1994).

Analysis of the relevant data reveals that the habitat and potential range of the Pacific pocket mouse apparently have been significantly reduced in the recent past. Opportunities to find additional populations of the Pacific pocket mouse apparently are limited as a result of the extent of land development in coastal southern California (Service files).

Based on the best available scientific information, the Service considers the historic, known range of the Pacific pocket mouse to encompass a 3.2-km (2-mile) wide band along the immediate coast of Los Angeles, Orange, and San Diego Counties from Marina Del Rey/El Segundo south to the international border. Most native habitats within 3 km (2 miles) of the coast in Los Angeles, Orange and San Diego counties have been converted to urban and agricultural uses (Service files).

Specifically, less than 400 hectares (1,000 acres) or 1 percent of approximately 28,000 hectares (69,000 acres) that encompass the projected range of the Pacific pocket mouse in Los Angeles County are undeveloped (Service files). In Orange County, about 17,600 hectares (43,500 acres) or 81 percent of approximately 21,600 hectares (53,500 acres) encompassing the projected range of the species have been developed (Service files).

Oberbauer and Vanderwier (1991) reported that 72 percent of the original coastal sage scrub, 94 percent of native grasslands, 88 percent of coastal mixed chaparral, 88 percent of coastal salt marsh, 100 percent of coastal strand, and 92 percent of maritime sage scrub habitats in San Diego County had been converted to urban and agricultural uses by 1988.

Although the historic distribution of the coastal sage scrub element of Pacific pocket mouse habitat was undoubtedly patchy to some degree, this condition evidently has been greatly exacerbated by urban and agricultural development. All of the published literature on the status of coastal sage scrub vegetation in California supports the conclusion that this plant community is one of the most depleted habitat types in the United States (Service files). In a broader context, the California floristic province, which is recognized as a separate evolutionary center by botanists, is identified by Wilson (1992) as one of the recognized world "hot spots," which are defined to be "* * * habitats with many species found nowhere else and in greatest danger of extinction from human activity." The California floristic province is the only designated "hot spot" in North America and Mexico (Wilson 1992).

The available information further suggests that the quantity of potential Pacific pocket mouse river alluvium substrates have significantly declined since the species was last recorded in numbers in the 1930's. With few exceptions (such as the Santa Margarita River), essentially all of the rivers and creeks within its historic range are now partially or completely channelized. In many cases (e.g., Los Angeles River, San Gabriel River, Santa Ana River) stream and sediment flows are regulated or inhibited by dams, reservoirs or other water conservation or impoundment facilities (see also Erickson 1993).

Although some suitable Pacific pocket mouse habitat apparently remains in San Onofre and contiguous coast of Marine Corps Base Camp Pendleton, the San Joaquin Hills, the Palos Verdes Peninsula, the El Segundo Dunes and at scattered locales elsewhere in the historic range of the species, this habitat is becoming increasingly scarce and likely will continue to be destroyed, disturbed or otherwise impacted as a manifest result of human activities. Williams (1986) concluded that habitat losses resulting from off-road vehicle activities, highways, and urbanization likely were extensive. Erickson (1993) observed that industrial and agricultural development likely were additional factors contributing to the decline of the species. More recently, the Service (1994b) reported that habitats or lands in a historically-occupied Pacific pocket mouse locale apparently have been impacted by artificial lighting, disking or blading, the presence of non-native rodent species (see also Soule et al. 1992), and pedestrian and horse traffic. The Pacific pocket mouse, as a representative heteromyid rodent, may be more susceptible to the adverse effects of the human presence than cricetid rodents (R. MacMillan, pers. comm., 1994).

Although it is possible that fire may intermittently create or sustain Pacific pocket mouse habitat mosaics, it has been reported that increased fire frequency may contribute to the type conversion of coastal sage scrub to grassland habitats (Service files). In addition, the Service acknowledges that the protection of lives and property may require fire prevention strategies that do not necessarily result in the maintenance or creation of potential Pacific pocket mouse habitat. Accordingly, the Service concludes that fire prevention measures and unnaturally high fire frequencies resulting from anthropogenic ignitions may directly or indirectly impact the Pacific pocket mouse.

Equally, if not more, problematical than habitat disturbance or destruction, however, has been an increasing degree of habitat fragmentation in coastal southern California (e.g., Soule et al. 1992; Service files), which is known generally to reduce habitat quality and promote increased levels of local extinction (e.g., Terborgh and Winter 1980; Wilcox 1980; Ehrlich and Ehrlich 1981; Wilson 1992; Bolger et al. 1994 *in press*). Given the location of the research areas and thrust and direction of the investigations, the research and findings of Soule et al. (1992) are particularly relevant to a discussion of fragmentation effects on the Pacific pocket mouse.

Based on studies of native bird, rodent and flowering plant species persistence in chaparral and coastal sage scrub habitat remnants in coastal San Diego County, California, Soule et al. (1992) concluded that "[t]he effects of fragmentation in a scrub habitat in California on three taxa (plants, birds, and rodents) are concordant. Extinctions within the habitat remnants occur quickly and the sequence of species disappearances of birds and rodents is predictable based on population density in undisturbed habitat." Terborgh and Winter (1980) observed previously that "[r]arity proves to be the best index of vulnerability."

Bolger et al. (1994, *in press*) concluded that "[f]ragments support fewer species [of native rodents] than equivalently sized plots in large plots of unfragmented chaparral indicating that local extinctions have occurred following insularization." Given a composite of the available data on the local status and distribution of select species within the study area in coastal San Diego County, Soule et al. (1992) remarked that it was possible to assess with reasonable accuracy the date that a particular habitat remnant became isolated.

Soule et al. (1992) further noted that "* * * urban barriers including highways, streets, and structures, impose a very high degree of isolation." Similarly, Ehrlich and Ehrlich (1981) observed that "smaller animals may also suffer fragmentation of their populations by highways, railways, canals, etc., changing population structures and making the remaining populations smaller and more subject to random extinction. One study has indicated that a four-lane divided highway may be a barrier to the movement of small forest mammals equivalent to a river twice as wide." (Ehrlich and Ehrlich 1981). Although not a forest animal, the Pacific pocket mouse must be now considered rare by any standard and, therefore, particularly vulnerable to the effects of continuing habitat destruction and fragmentation (see Terborgh and Winter 1980).

Largely on the bases of significant habitat loss and fragmentation in coastal California, the Service has listed several other species of plants and animals as endangered or threatened, including the California least tern (*Sterna antillarum browni*), light-footed clapper rail (*Rallus longirostris levipes*), the Palos Verdes blue butterfly (*Glaucopsyche lygdamus palosverdesensis*), El Segundo blue butterfly (*Euphilotes battoides allyni*), and, most recently, the coastal California gnatcatcher (58 FR 16742; Service files). The Service listed the coastal California gnatcatcher, because of, in part, the significant and ongoing destruction, perturbation, or fragmentation of that species' coastal sage scrub habitat (58 FR 16742).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although the existing information and data are not conclusive, P. Brylski (pers. comm., 1994) has commented that scientific collecting in the 1930's may have substantially impacted the Pacific pocket mouse population in the El Segundo area. Erickson (1993) reported the existence of 78 specimens collected in "Hyperion" (now Marina del Rey/El

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Segundo) during the fall of 1931 and spring of 1932. Otherwise, there is no substantive information that this factor is applicable.

C. *Disease or predation.* The expressed, perhaps synergistic effects of habitat fragmentation and the proximity of urban environments to Pacific pocket mouse habitats are likely to increase the rate of depredation on that species. Most recently, Soule et al. (1992) has confirmed earlier conclusions by noting that "[t]here is evidence that large predators retard the biotic collapse of these [habitat] remnants by controlling populations of smaller, semi-commensal predators, including domestic cats * * *."

Several species have been reported as potential or documented predators of the Pacific pocket mouse, including the red fox (*Vulpes vulpes*). The explosive proliferation of non-native populations of red foxes in coastal southern California is well documented (e.g., Lewis et al., 1993). Given the relative abundance of the red fox in coastal southern California (Lewis et al. 1993) and the fact that descriptions of the diet of red foxes invariably include mice (Ingles 1965; Jameson and Peeters 1988; Burkett and Lewis 1992; Lewis et al. 1993), it seems reasonable to assume that "feral" foxes similarly could substantially impact populations of Pacific pocket mice if and when the species overlap. Erickson (1993) has commented that the red fox "* * * may have hastened the demise of *pacificus*" in the El Segundo area, a locale that previously and historically accommodated the Pacific pocket mouse in numbers.

In addition, feral and domestic cats (*Felis catus*) are known to be formidable predators of native rodents (e.g., Hubbs 1951; George 1974; Frank 1992). Pearson (1964) concluded that the removal of 4,200 mice from a 14-hectare (35-acre) test plot was accomplished largely by 6 cats over 8 months.

Feral or domestic cats are threatening the only known, confirmed population of Pacific pocket mouse. Specifically, a resident living immediately adjacent to the Dana Point Headlands population reported that domestic cats had recently and repeatedly brought in a number of "tiny gray mice." One such specimen was retrieved and confirmed to be a Pacific pocket mouse (P. Brylski, *in litt*, 1993).

D. *The inadequacy of existing regulatory mechanisms.* Should protection afforded the Pacific pocket mouse pursuant to the emergency rule under the Act (59 FR 5306) lapse or otherwise be removed, other select existing regulatory or conservation mechanisms could possibly provide some protection for the species. These include—(1) the Act if the species were to occur sympatrically with a listed species, (2) the California Natural Community Conservation Planning effort, (3) the California Environmental Quality Act, (4) land acquisition and management by Federal, State, or local agencies or by private groups and organizations, and (5) local laws and regulations.

The Pacific pocket mouse is currently recognized as a Species of Special Concern "Of Highest Priority" by the California Department of Fish and Game. If emergency protection afforded the Pacific pocket mouse pursuant to the Act were to be removed prior to the promulgation of a final rule listing the species as endangered, the species would retain its status as a proposed species under the Act.

The only known, confirmed population of the Pacific pocket mouse does occur sympatrically with a population of the threatened coastal California gnatcatcher (Brylski 1993; EDAW 1993). Under provisions of section 10(a) of the Act, the Service may permit the incidental take of the coastal California gnatcatcher during the course of an otherwise legal activity, provided that the species' survival and recovery in the wild is not precluded. The issuance of section 10(a) permit to take the coastal California gnatcatcher on the Dana Point Headlands could result in the extinction of the Pacific pocket mouse.

In 1991, the State of California commenced the Natural Communities Conservation Planning (NCCP) program to address the conservation needs of natural ecosystems throughout the State. The initial focus of that program is the coastal sage scrub community, which is occupied, in part, by the Pacific pocket mouse. At the present time, however, no program plans have been completed or implemented, and no protection is currently in place or proposed to reduce or eliminate possible, future impacts to habitat occupied in 1994 by the Pacific pocket mouse on the Dana Point Headlands, which is the only known, confirmed refugium for the species.

In many instances, land-use planning decisions in southern California have been made and continue to be made on the basis of environmental review documents prepared in accordance with California Environmental Quality Act and the National Environmental Policy Act. Although impacts to sensitive species and habitats must be disclosed pursuant to these statutes, the protection or conservation of the species or their habitats are at the discretion of the decision makers. Given a composite of the best available scientific information, it is clear that these statutes have not adequately protected the Pacific pocket mouse or its habitat.

Prior to the emergency-listing of the Pacific pocket mouse as endangered, a relocation program and predator management program were proposed to mitigate impacts to the Pacific pocket mouse on the Dana Point Headlands (EDAW 1993). More recently, the City of Dana Point (City) (*in litt*, 1994) has indicated that the project applicant must, if the Pacific pocket mouse is listed, obtain a take permit for the Pacific pocket mouse prior to the issuance of any city permits "* * * that would allow activity that would harm or harass the Pacific pocket mouse * * *"

Because the Service has not received a formal, detailed mitigation proposal from the City or project proponent, the Service cannot presently assess the merits of said proposal or render a judgment as to whether or not the proposed impact avoidance and mitigation measures will prevent jeopardy to the Pacific pocket mouse. Although the Service notes and appreciates the fact that it would be given the opportunity to review the relocation program if the Pocket mouse is not listed (City of Dana Point, *in litt*, 1994), the Service has concluded that the potential effects of translocation are not relevant to a decision on whether to list a species. Under section 4 of the Act, if data warrant listing, the Service must proceed to list the species. The Service (59 FR 5308) and the California Department of Fish and Game (*in litt*, 1993) both have independently concluded that the relocation program previously outlined (EDAW 1993) is inadequate.

E. *Other natural or man-made factors affecting its continued existence.* Considering the extremely small population size and current range of the Pacific pocket mouse (no more than 36 individuals have been detected in the last 22 years), the current extent of the coastal strand, coastal dune, river alluvium, and coastal sage scrub habitats upon which it depends, further losses of habitat will have significant adverse effects on any extant populations of this species. Given all relevant data and considerations, it is apparent that the species is highly susceptible to extinction as a result of environmental or demographic factors alone (e.g., Mace and Lande 1991).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the Service finds that the Pacific pocket mouse warrants protection under the Act on the basis of continuing threats to the species, which include substantial habitat loss and fragmentation and depredation. Therefore, the preferred and only possible action is to list the Pacific pocket mouse as endangered, which is defined in section 3(6) of the Act as a species "which is in danger of extinction throughout all or a significant portion of its range * * *."

As provided by 5 U.S.C. 553(d), the Service has determined that good cause exists to make the effective date of this rule immediate. Delay in implementation of the effective date would place the remaining Pacific pocket mice and habitat of the species at risk (see relevant discussion below under the heading of "Critical Habitat").

Critical habitat is not being designated at this time for the reasons discussed below.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, requires critical habitat to be designated to the maximum extent prudent and determinable at the time a species is listed as endangered or threatened. The Service has concluded that designation of critical habitat is not prudent for the Pacific pocket mouse at this time. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

In the case of the Pacific pocket mouse, both criteria are met. A communication has been received by the Service that effectively threatens the only known, confirmed population of the species. This threat was received from an individual who was apparently incensed at the emergency and proposed listings of the species. On the basis of this kind of activity, the Service finds that publication of critical habitat descriptions and maps would likely make the species more vulnerable to activities prohibited under section 9 of the Act.

Secondly, the only known, confirmed population of the Pacific pocket mouse is found on private property where Federal involvement in land-use activities is not expected to occur. Protection resulting from critical habitat designation is largely achieved through the Federal consultation process pursuant to section 7 of the Act and the implementing regulations pertaining thereto (50 CFR 402). Because section 7 would not apply to many, if any, of the majority of land-use activities occurring within the species' known habitat, its designation would not appreciably benefit the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal agencies that may be involved through activities they authorize, fund, or carry out that may affect the Pacific pocket mouse or its historical habitat include the Army Corps of Engineers, Federal Highway Administration, the Department of the Navy (including Marine Corps Base Camp Pendleton).

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or attempt any such conduct), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. The term "harm" as it applies to the take prohibition is defined in 50 CFR 17.3 to include an act that actually kills or injures listed wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22, and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Permits Branch, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6241, facsimile 503/231–6243).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental

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Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section (4)(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the U.S. Fish and Wildlife Service, Carlsbad Field Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Loren R. Hays, U.S. Fish and Wildlife Service, Carlsbad Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by revising and making permanent the entry for the "Mouse, Pacific pocket" under MAMMALS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals							
Mouse, Pacific pocket.	*Perognathus longimembris pacificus.*	U.S.A. (CA)	Entire	E	526, 554	NA	NA

Dated: September 23, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–24065 Filed 9–26–94; 11:01 am]

BILLING CODE 4310–55–P

federal register

Thursday
September 29, 1994

Part IV

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AC13

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions regulations by revising subpart B and adding a new subpart K. The proposed regulations would govern the management of funds an institution receives under the Federal Pell Grant, Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Work-Study (FWS), Federal Perkins Loan, Federal Family Education Loan (FFEL), Federal Direct Student Loan (Direct Loan), and Presidential Access Scholarship (PAS) programs authorized by title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs). The purpose of the proposed regulations is to promote sound cash management practices by institutions that participate in the title IV, HEA programs by strengthening and making uniform the cash management rules for those programs. In so doing, the Secretary expects to reduce the cost to the Federal government of making title IV, HEA program funds available to students and institutions under these programs.

DATES: Comments must be received on or before October 31, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to John Kolotos, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4318, ROB–3, Washington, D.C. 20202–5244. (Internet address: cash___management@ed.gov).

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: John Kolotos or Kim Goto. Telephone: (202) 708–7888. (Internet address: cash___management@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The rules and procedures under which an institution requests, maintains, disburses, and otherwise manages funds that the institution receives under each title IV, HEA program in which it participates are currently codified in those program regulations, or described in Department of Education publications. In this notice of proposed rulemaking, the Secretary proposes to consolidate, in a new subpart K of the Student Assistance General Provisions regulations, most of the current cash management requirements in the title IV, HEA program regulations. Also, the Secretary proposes to codify in subpart K existing cash management policies and procedures currently specified in subregulatory guidance. Lastly, the Secretary proposes new requirements and proposes to amend some existing requirements to promote sound cash management practices by institutions.

The Secretary wishes to make clear that while proposed subpart K would establish a common set of cash management rules and procedures, subpart K would not contain all of the rules and procedures that an institution would follow with regard to managing title IV, HEA program funds. An institution would continue to follow other cash management rules and procedures particular to a title IV, HEA program.

The Secretary intends to amend the appropriate sections of each of the title IV, HEA program regulations on or before December 1, 1994 to eliminate conflicting requirements between the program regulations and proposed subpart K of the General Provisions regulations and to otherwise harmonize the proposed subpart K requirements with other Federal cash management requirements. In this regard, the Secretary has identified throughout the following discussion the major sections of the title IV, HEA program regulations and sections of other relevant Federal regulations that would be amended and consolidated in subpart K.

Provisions Proposed by the Regulations

The following discussion reflects the proposed provisions under which an institution would request, maintain, disburse, and otherwise manage title IV, HEA program funds. The provisions are discussed in the order in which they appear in the proposed regulations. If a provision applies to more than one section, it is discussed the first time it appears and with an appropriate cross-reference to its other appearances.

Proposed § 668.161 Scope and Purpose

The purpose of these regulations is to promote sound cash management practices by institutions and to minimize the financing costs to the Federal Government of making available title IV, HEA program funds to students and institutions. To achieve these objectives, the Secretary proposes new requirements, proposes to amend existing regulations, and proposes to establish in this subpart uniform rules and procedures under which an institution requests, maintains, disburses, and otherwise manages funds that it receives under each title IV, HEA program in which it participates. To establish uniformity in title IV, HEA program requirements, the Secretary proposes to consolidate in this subpart the cash management rules that are now in each of title IV, HEA program regulations and to codify existing departmental cash management policies and practices.

In proposed § 668.161(b), the Secretary would adopt the provision in § 668.18 that specifies that funds received by an institution under the title IV, HEA programs are held in trust for the intended student beneficiaries and the Secretary and that as a trustee of Federal funds, the institution may not use or hypothecate those funds for any other purpose.

In addition, the Secretary wishes to make clear the rules and procedures that apply to an institution under this subpart would also apply to a third-party servicer.

Proposed § 668.162 Definitions

Disburse: The Secretary proposes to define the term *disburse* to encompass all the methods by which an institution pays title IV, HEA program funds to a student or parent. Accordingly, under this proposal, these methods would be (1) Crediting the student's account at the institution, (2) issuing a check or cash to the student or a parent borrower under the Direct Loan or FFEL programs, and (3) initiating an electronic funds transfer (EFT) to a bank account designated by the student or by a parent borrower under the Direct Loan or FFEL programs.

The Secretary acknowledges that the term *disburse* has a different meaning under the FFEL programs (34 CFR 682.200). Under those programs, a disbursement is defined as "The transfer of loan proceeds by a lender to a borrower, a school, or an escrow agent by issuance of a check or by electronic funds transfer." Because the Secretary does not intend to change the definition of the term *disbursement* under the FFEL programs, the Secretary wishes to make clear that solely for the purposes of these proposed regulations that the term *disburse* would correspond to the concept of the *delivery* of proceeds under the FFEL programs.

Issue checks. The Secretary proposes to define very broadly the term *issue checks* to include any means by which an institution pays a student or parent by check. Under the proposed definition, an institution would be considered to have issued a check to a student or parent when the institution has released, distributed, or otherwise made that check available to the student or parent. Although the Secretary does not wish to regulate the mechanisms that an institution may use to issue checks, the Secretary intends to enforce rigorously the liability provisions described in proposed § 668.166 on any institution that does not issue checks to students shortly after the institution writes those checks.

Proposed 668.163 Requesting Funds

In proposed § 668.163, the Secretary would codify existing policy and practice under which the Secretary provides title IV, HEA program funds, other than FFEL program funds, to institutions. The Secretary provides title IV, HEA program funds to institutions under either the advance payment method or the reimbursement payment method.

Under the advance payment method, the Secretary accepts an institution's request for cash and transfers the amount requested to a bank account designated by the institution. The amount of the institution's request for cash may not exceed the institution's "immediate need." Since 1986 the Secretary has required an institution to limit the amounts of its cash requests to the amounts needed to make disbursements to students within 3 business days. The Department's current policy regarding the meaning of the term "immediate need" is articulated in the following publications:

(1) OMB Circular A–110, as contained in the Education Department General Administrative Regulations (EDGAR), July 6, 1994, 34 CFR 74.22(b);

(2) The *Recipient's Guide for the Department of Education Payment Management System* (EDPMS), October 1993, Chapter 5;

(3) The Audit Guide, U.S. Department of Education, Office of the Inspector General, March 1990, Section II;

(4) The Blue Book, U.S. Department of Education, December 22, 1988, Chapter 5; and

(5) The Department of the Treasury regulations, September 24, 1992, 31 CFR part 205.

As noted in these publications, an institution on the advance payment method must limit the amount of its request for cash to the amount needed to make disbursements to students and must time its request for cash to be in accordance with its actual and immediate cash requirements.

In proposed § 668.163(b), the Secretary would codify this longstanding 3-day immediate-need standard for the following reasons. First, the Department can deliver reliably by EFT title IV, HEA program funds to institutions. Second, the Secretary believes that 3 business days provides an institution sufficient time to make disbursements to students. Moreover, the Secretary believes that the 3-day immediate-need standard furthers the objective of minimizing the financing costs to the Treasury of making title IV, HEA program funds available to students and institutions.

In proposed § 668.163(c), the Secretary would merely codify existing procedures under which the Secretary provides title IV, HEA program funds to an institution on the reimbursement payment method. Under those procedures, an institution must first disburse funds to eligible students before the institution may submit a request for cash. The amount of the institution's request for cash may not exceed the amount of the actual disbursements the institution made to those students. The Secretary approves the institution's request for cash if the Secretary determines that the institution (1) Determined properly the eligibility for title IV, HEA program funds of each student identified in its request for cash, (2) made disbursements for the correct amounts of title IV, HEA program funds to those students, and (3) submitted any documentation required by the Secretary to substantiate the information provided by the institution on its request for cash.

Proposed § 668.164 Maintaining Funds

In proposed § 668.164, the Secretary would consolidate and amend, as noted below, several requirements that are currently in § 674.19 of the Federal Perkins Loan Program, § 675.19 of the FWS Program, § 676.19 of the FSEOG Program, § 690.81 of the Federal Pell Grant Program, and proposed § 685.308 of the Direct Loan Program regulations regarding the account into which an institution deposits and otherwise maintains Federal funds.

First, the Secretary proposes to consolidate in one place, with a minor modification, current provisions that require an institution to maintain a bank account into which the Secretary transfers or the institution deposits Federal funds (other than FFEL program funds) that the institution receives from the title IV, HEA programs. Under current regulations, an institution must either (1) Ensure that the name of the account discloses clearly that Federal funds are deposited into that account, or (2) notify the bank of the accounts that contain Federal funds and retain a record of that notice in its recordkeeping system. Under proposed § 668.164(a), an institution would have to comply with both of these requirements. The Secretary notes that this proposal is consistent with the requirements under § 685.308(h) of the proposed Direct Loan Program regulations.

Second, the Secretary proposes to incorporate in § 668.164(b) the current provisions that require an institution to maintain an interest-bearing account for the deposit of Federal Perkins Loan Program funds. Specifically, the account must be (1) An interest-bearing account that is either federally insured or secured by collateral of value reasonably equivalent to the amount of funds in the account, or (2) an investment account consisting predominantly of low-risk, income-producing securities.

The Secretary believes, however, that where it is cost-effective an institution should be required to maintain all title IV, HEA program funds (except FFEL program funds) it receives in a federally insured, interest-bearing account. Therefore, in proposed § 668.164(b), the Secretary would require an institution to maintain in any award year an interest-bearing account if the institution drew down in the prior award year a total amount greater than $1 million from the title IV, HEA programs. The Secretary notes that this requirement does not preclude an institution that is below the proposed $1 million threshold from choosing to maintain title IV, HEA program funds in an interest-bearing account.

Under section 487 of the HEA and 34 CFR 668.14(b)(1), an institution must use interest earned on funds it receives under the title IV, HEA programs solely for purposes of those programs. In proposed § 668.164(b)(4), the institution would have to remit at least annually to the Federal government interest earned on all title IV, HEA program funds except Federal Perkins Loan Program funds (see, 34 CFR 674.18, 34 CFR 674.19, and section 463 of the HEA). In proposing the $1 million threshold, the Secretary weighed the benefits to the Federal government of recovering the interest earned on title IV, HEA program funds maintained in interest-bearing accounts against the cost to, and administrative burden on, institutions of maintaining those accounts. The Secretary wishes to make clear that, except for Federal Perkins Loan Program funds, the proposed interest-bearing

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account would be merely a temporary holding account for title IV, HEA program funds, and that any interest earned on funds maintained in that account, including interest earned on funds pending the clearance of checks, would be remitted to the Federal government.

The Secretary notes, however, that under the referenced EDGAR and OMB provisions (see 34 CFR 74.22 and OMB Circular A–110, subpart C, respectively) an institution must maintain Federal funds in an interest-bearing account unless: (1) The institution receives less than $120,000 in Federal funds per year (other than title IV, HEA program funds), (2) the best reasonably available interest-bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances, or (3) the bank would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources. In addition, the EDGAR and OMB provisions allow an institution to retain interest earnings in an amount up to $250 per year for the administrative expense of maintaining an interest-bearing account. (The Secretary proposes to adopt this allowance.)

The Secretary especially invites comment on the appropriateness of the requirement for a $1 million threshold and on the extent to which the Secretary should adopt the EDGAR and OMB provisions described above regarding interest-bearing accounts.

In proposing a requirement for interest-bearing accounts, the Secretary does not wish to imply that the Secretary is in any way encouraging an institution to maintain Federal funds in excess of its immediate need solely to earn interest on those funds. To the contrary, the Secretary simply recognizes that an institution may not always be able to disburse title IV, HEA program funds to students immediately upon receiving those funds, and wishes only to recover for the Treasury the interest earned on those funds while the funds are in the institution's account.

Third, in § 668.164(c), the Secretary proposes to require an institution to maintain a separate bank account for title IV, HEA program funds if the Secretary finds that the institution is unable to account adequately for the receipt, disbursement, or use of those funds. These requirements are consistent with current title IV, HEA program regulations and with the standards described in OMB Circular A–110 and 34 CFR 74.22 that govern the use of banks as depositories of Federal funds.

Finally, because the Secretary has proposed that institutions maintain an interest-bearing account for all title IV, HEA program funds (except FFEL program funds), the Secretary clarifies that an institution must exercise the level of care and diligence required of a fiduciary with regard to depositing and investing Federal funds (see 34 CFR 668.82).

Proposed § 668.165 Disbursing Funds

The Secretary proposes to consolidate and amend, as noted below, several requirements that are currently in § 674.16 of the Federal Perkins Loan Program, § 675.16 of the FWS Program, § 676.16 of the FSEOG Program, § 690.78 of the Federal Pell Grant Program, and proposed § 685.303 of the Direct Loan Program regulations under which an institution disburses title IV, HEA program funds to eligible students.

In proposed § 668.165(a) the Secretary would consolidate the provisions common to all the program regulations, except the FWS Program, with respect to paying a student. An institution must continue to follow the disbursement procedures contained in 34 CFR 675.16 for paying a student his or her wages under the FWS Program. To encourage the use of more efficient methods of payment than issuing checks, the Secretary proposes to allow an institution to make a payment to a student by EFT. Under this proposal, the institution would have to obtain once each award year written authorization from a student or parent to make EFT payments to the student's or parent's bank account, as applicable.

In proposed § 668.165(b), the Secretary would clarify and make uniform the procedures under which an institution credits a student's account. For example, the campus-based program regulations (see, for example, 34 CFR 676.16(c)) require only that an institution may credit a student's account or pay the student directly. (The campus-based programs are the Federal Perkins Loan, FSEOG, and FWS programs.) Under the Federal Pell Grant Program regulations (see 34 CFR 690.78(a)(2)), an institution may credit a student's account only for specified institutional charges. Assuming that the institution drew down the entire amount of the student's award, the institution would pay the student directly any amount of his or her Federal Pell Grant award in excess of the specified institutional charges. However, under current policy the Secretary allows an institution, for accounting purposes and for administrative convenience, to apply to a student's account his or her entire award, and if that amount exceeds allowable institutional charges, directly pay the student that balance. The proposed procedures would codify existing policy and specify the period of time within which an institution would pay a student any balance on his or her account.

Under the proposed procedures, an institution would credit a student's account by applying the student's title IV, HEA program funds to allowable institutional charges. (However, consistent with current policy, the institution would not be permitted to credit the student's account for charges the institution assessed the student in a prior award year.) If the amount of title IV, HEA program funds the institution applies to the student's account exceeds the amount of allowable institutional charges, the Secretary proposes to require the institution to pay the balance remaining on the account directly to the student as soon as possible but within the later of (1) 7 days after the date that balance occurs, (2) 14 days after the first day of classes of the payment period or period of enrollment, as applicable (the Secretary intends this provision to apply also to second disbursements of Direct Loan and FFEL program funds), or (3) 7 days after the date the student rescinds his or her permission regarding the charges for which the institution may credit the student's account. The Secretary believes that these procedures strike an appropriate balance between the institution's obligation to provide title IV, HEA program funds to students in a timely manner and the administrative needs of an institution.

However, the Secretary is concerned over findings by the Office of Inspector General and other offices within the Department that some institutions maintain for long periods, and use for their own purposes, title IV, HEA program funds in excess of allowable institutional charges. Those funds belong to students and to the Secretary. The Secretary believes it is imperative that institutions, as stewards of Federal funds, request funds only when needed and provide those funds to their students as expeditiously as possible. On the other hand, the Secretary recognizes that it does not make sense to require an institution immediately to pay a student the balance on his or her account if the student will incur within a short period of time additional institutional charges as a result of adding classes to his or her schedule. Consequently, in proposed § 668.165(b)(2)(ii), an institution would be permitted to maintain the balance on a student's account for up to 14 days after the student's first day of classes. The Secretary particularly invites comments on this 14-day credit balance provision. In addition, the Secretary seeks comments on alternative approaches that would provide administrative relief to institutions for dealing with situations where students incur additional institutional charges by adding classes, while still requiring prompt payment for the majority of students who do not incur those charges.

In proposed § 668.165(b)(3), the Secretary would adopt for all title IV, HEA programs, the Federal Pell Grant Program and Direct Loan Program statutory provisions, sections 401(e) and 455(j) of the HEA, respectively, under which an institution may credit a student's account only for allowable institutional charges. Those charges are (1) Tuition and fees and (2) room and board, if the student contracts with the institution for room and board. In addition, the Secretary proposes to adopt the Federal Pell Grant Program requirement that an institution must obtain permission from a student to credit his or her account for other cost-of-attendance charges (but no other charges), as defined in section 472 of the HEA. Implicit in this requirement, and consistent with current policy, a student may at any time withdraw that permission and request the institution to pay him or her the remaining balance on his or her account.

In proposed § 668.165(b)(4), the Secretary would adopt for all title IV, HEA programs, the procedures in the Direct Loan and FFEL program regulations (see, proposed § 685.303(c)(3), and 34 CFR 682.604(d), respectively) under which an institution holds title IV, HEA program funds for the benefit of the student. Under those procedures, a student may request an institution to hold funds in excess of allowable institutional charges to assist him or her in managing those funds during an award year. If the institution chooses to hold those funds for the student, it must maintain those funds in a separate account established solely for that purpose. In addition, the institution may not commingle those funds with other funds or use those funds for any other purpose. The Secretary wishes to make clear that the account into which an institution deposits student funds under this provision may be an interest-bearing or a noninterest-bearing account. If the account is interest-bearing the interest would accrue to the institution and the institution may rebate that interest to students.

In addition, the Secretary proposes to amend and make uniform the early payment requirements common to the title IV, HEA programs governed under this subpart (see, for example, 34 CFR 676.16(d) and 690.78(b)). Under those requirements, the earliest an institution may credit a student's account is 21 days before the first day of a payment period or period of enrollment. The 21-day requirement was established at a time when the Federal government provided to institutions title IV, HEA program funds by Treasury check. Under the standards of that time, an institution requested cash for an amount the institution anticipated it needed to meet its disbursement needs for 30 days. Because it usually took several weeks for the Treasury to deliver the check to the institution, the institution could not determine with certainty when it would receive that check. However, with the advent of EFT, the Federal government can reliably transmit within 3 business days title IV, HEA program funds to an institution. Therefore, in proposed § 668.165(c), the Secretary would provide that the earliest an institution may credit a student's account is 10 days before the first day of a payment period or period of enrollment. The Secretary believes that under this proposal an institution will not be financially burdened, as it may have been under the 30-day need standard with Treasury checks, because the institution may request funds as often as needed and the Federal government is able to provide those funds quickly and reliably. Moreover, sound financial management supports the conclusion that the Department of Treasury should not make available Federal funds to institutions for such extended periods.

Finally, the Secretary recognizes that a student may incur educational expenses before he or she starts classes, and therefore has decided to adopt for all title IV, HEA programs the current requirement in the Federal Pell Grant, campus-based, FFEL, and Direct Loan program regulations under which the earliest an institution may directly pay a student is 10 days before the first day of a payment period or period of enrollment.

The Secretary notes that under section 428G(b)(1) of the HEA and proposed § 685.303(b)(4) of the Direct Loan Program regulations, an institution must delay releasing for 30 days the first installment of a FFEL or Direct Loan program loan, as applicable, to a first-year, first-time borrower.

Proposed § 668.166 Excess Cash

In proposed § 668.166(a), the Secretary would define excess cash as any amount of title IV, HEA program funds, other than FFEL or Federal Perkins Loan Program funds, that an institution does not disburse to students by the end of the 3rd business day following the date the institution received those funds. As discussed previously, the selection of 3 business days is consistent with departmental guidance in the Blue Book, a publication setting out the procedures for "Accounting, Recordkeeping, and Reporting By Postsecondary Educational Institutions for Federally-Funded Student Financial Aid Programs," with audit guidelines issued by the Department of Education Office of Inspector General, and with requirements from the Department of the Treasury. Except as discussed below, an institution must return promptly to the Secretary any excess funds in its account.

The Secretary realizes that an institution may be unable to disburse title IV, HEA program funds within 3 business days because of circumstances beyond the institution's control (for example, changes in student enrollment status, failure of a student to attend classes as scheduled, changes in a student's award as a result of verification). Although the Secretary does not intend to prescribe the methods by which an institution determines its 3-day immediate cash needs, the Secretary expects the institution to take into consideration the circumstances identified above, and any other circumstances the institution knows of, to determine more accurately its actual cash needs. Therefore, in proposed § 668.166(b), the Secretary would merely as practical matter allow an institution to maintain nominal excess cash balances under certain conditions and only on an exception basis. First, an institution would not have to return excess cash for amounts of $5,000 or less. In making this proposal, the Secretary expects the institution to eliminate its excess cash balance by reducing the amount of its next request for cash by that amount. Second, an institution would not have to return immediately an excess cash balance if (1) The amount of that excess cash is less than one-half of 1 percent of its total prior-year drawdowns where such prior annual drawdowns exceeded $1 million and (2) the institution makes within 7 calendar days a cash request greater than the amount of its excess cash. Although the Secretary believes that these excess-cash thresholds are reasonable, the Secretary seeks comment on the level and appropriateness of the proposed thresholds.

Finally, because the Secretary expects institutions to establish procedures that

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minimize the potential for excess cash, in proposed § 668.166(b)(3) the Secretary would require an institution to return immediately any amount of excess cash that the institution would otherwise be able to maintain under the thresholds discussed above if the institution routinely maintained excess cash balances at or below the threshold levels.

The Department has also established a policy of reviewing institutions to determine where excess cash balances have been maintained and to seek recovery from those institutions of the losses to the government caused by having made those funds available to institutions in advance of their immediate needs. In proposed § 668.166(c), upon a finding of excess cash, including a finding that an institution maintained routinely excess cash balances at or below the threshold levels, the Secretary would require an institution to reimburse the Department for the costs, as those costs would be calculated under proposed § 668.166(c)(2), that the government incurred in making those excess funds available to the institution. In addition, where the excess cash balances are disproportionately large to the size of the institution or represent a continuing problem with the institution's responsibility to administer efficiently the title IV, HEA programs, the Secretary may initiate a proceeding to fine, limit, suspend, or terminate the institution's participation in one or more of those programs under subpart G of this part.

In proposed § 668.166(c)(2), in calculating whether an institution has excess cash, the Secretary would consider the institution to have issued a check on the date that check cleared the institution's bank account, unless the institution demonstrates to the satisfaction of the Secretary that it issued the check to the student shortly after the institution wrote that check. Finally, the Secretary proposes to assess against an institution that maintains excess cash balances a liability that is equal to the difference between the earnings those cash balances would have yielded under a Treasury-derived rate and the actual interest earned on those cash balances.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1980.*

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, 668.161 *Scope and purpose.*) (4) Is the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW., (Room 5121, FB10), Washington, DC 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are small institutions of higher education. These regulations would safeguard Federal funds and reduce potential abuse in the title IV, HA programs. These changes would not significantly increase institutions' workloads or costs associated with administering the title IV, HEA programs. In the case of institutions that are required to maintain interest-bearing accounts, those institution may retain interest earnings to offset the costs of maintaining those accounts. Therefore, these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

Section 668.164 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

These proposed regulations contain information collection requirements regarding the bank account that all participating institutions must maintain for the deposit of title IV, HEA program funds. Specifically, institutions must notify their bank of the accounts into which they deposit Federal funds and must maintain a record of that notice in their recordkeeping system. In addition, institutions that draw down more than $1 million in title IV, HEA program funds must deposit those funds in interest-bearing accounts and keep records for any interest earned on those funds. Institutions may retain annually interest earnings on title IV, HEA program funds for an amount up to $250, must keep records for the amount retained, and must return to the Department any interest earnings greater than the amount retained. The Department needs and uses this information to determine whether institutions have complied with these requirements.

For approximately 8500 institutions, a one-time public reporting burden for this collection of information is estimated at 5610 hours for institutions to notify banks of the accounts that contain title IV, HEA program funds and maintain a record of that notice in their recordkeeping system. In addition, the annual public reporting burden for this collection of information is estimated at 4250 hours for those institutions to account for the interest earned on title IV, HEA program funds and return to the Federal government any interest earnings in excess of $250.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4318, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority in the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Number: 84.007 Federal Supplemental Education Opportunity Grant Program; 84.032 Federal Family Educational Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 Federal State Student Incentive Grant Program; 84.268 Federal Direct Student Loan Program; and 84.272 National Early Intervention Scholarship and Partnership Program. Catalog of Federal Domestic Assistance Number for the Presidential Access Scholarship Program has not been assigned.)

Dated: September 15, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend Part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. The Table of Contents of Part 668 is amended by adding subpart K to read as follows:

Subpart K—Cash Management

668.161 Scope and purpose.
668.162 Definitions.
668.163 Requesting funds.
668.164 Maintaining funds.
668.165 Disbursing funds.
668.166 Excess cash.

§ 668.18 [Removed]

3. Section 668.18 is removed and reserved.

4. Subpart K is added to Part 668 to read as follows:

Subpart K—Cash Management

§ 668.161 Scope and purpose.

(a) *General.* (1) This subpart establishes uniform rules and procedures under which a participating institution requests, maintains, disburses, and otherwise manages funds that the institution receives under any title IV, HEA program. An institution must also follow rules and procedures for managing title IV, HEA program funds under each program in which it participates.

(2) For purposes of this subpart, the title IV, HEA programs include only the Federal Pell Grant, PAS, FSEOG, Federal Perkins Loan, FWS, Direct Loan, and FFEL programs.

(3) The rules and procedures that apply to an institution under this subpart also apply to a third-party servicer.

(b) *Federal interest in title IV, HEA program funds.* Funds received by an institution under the title IV, HEA programs are held in trust for the intended student beneficiaries and the Secretary. Except for funds received by an institution for administering those programs, the institution, as a trustee of Federal funds, may not use or hypothecate (i.e., use as collateral) title IV, HEA program funds for any other purpose.

(Authority: 20 U.S.C. 1094)

§ 668.162 Definitions.

The following definitions apply to terms used in this subpart:

Check: A negotiable demand draft or warrant.

Credit an account: To post a payment of funds to an account maintained for a student by an institution.

Day: A calendar day unless otherwise specified.

Disburse: To make a payment of title IV, HEA program funds, or deliver the proceeds of a loan under the FFEL programs, to or on behalf of a student by—

(1) Crediting the student's account at the institution;

(2) Issuing a check or cash to—

(i) The student; or

(ii) In the case of a parent borrower under the Direct Loan or FFEL programs, the student's parent; or

(3) Initiating an electronic funds transfer to a bank account designated by the student, or in the case of a parent borrower under the Direct Loan or FFEL programs, to a bank account designated by the parent.

Drawdown: A process whereby an institution requests and receives Federal funds. The phrase "draw down" is used as a verb form of this word.

Issue checks: To release, distribute, or make available checks to students or parents.

Period of enrollment: (1) With respect to the Direct Loan Program, a period of enrollment as defined in 34 CFR 685.102;

(2) With respect to the FFEL Program, a period of enrollment as defined in 34 CFR 682.200.

Request for cash: A solicitation for cash that is completed and submitted in accordance with procedures contained in the *Recipient's Guide for the Department of Education Payment Management System.* This guide is published by the Department of Education, 600 Independence Avenue, SW., Room 3321, FB10, Washington, DC 20202–4331, and contains the procedures institutions use to request, report, and account for Federal funds.

(Authority: 20 U.S.C. 1094)

§ 668.163 Requesting funds.

(a) *General.* The Secretary pays an institution in advance, or by reimbursement, for the institution to disburse title IV, HEA program funds, other than FFEL program funds, to students who qualify to receive those funds.

(b) *Advance payment method.* (1) Under the advance payment method, the Secretary accepts an institution's request for cash and transfers

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electronically the amount requested into a bank account designated by the institution.

(2) An institution's request for cash must not exceed the amount of funds the institution needs immediately to make disbursements to students. The institution must make the disbursements as soon as administratively feasible, but no later than 3 business days following the date the institution received those funds.

(c) *Reimbursement payment method.* (1) To receive payment of title IV, HEA program funds under the reimbursement method, an institution must first make disbursements to eligible students before it submits a request for cash.

(2) The amount of the institution's request for cash may not exceed the amount of the actual disbursements the institution made to students included in that request.

(3) The Secretary may require the institution to submit documentation that each student included in the request was eligible to receive, and received, payment for the title IV, HEA program funds for which the institution is seeking reimbursement.

(4) The Secretary approves the amount of the institution's request and transfers electronically that amount into a bank account designated by the institution if the Secretary determines that the institution—

(i) Determined properly the eligibility of each student for title IV, HEA program funds;

(ii) Made disbursements for the correct amounts of title IV, HEA program funds to the students included in its request; and

(iii) Submitted any documentation required under paragraph (c)(3) of this section.

(Authority: 20 U.S.C. 1094)

§ 668.164 Maintaining funds.

(a) *General.* (1) Other than for funds an institution receives under the FFEL programs, an institution must maintain an account at a bank into which the Secretary transfers or the institution deposits Federal funds that the institution receives from the title IV, HEA programs. Except as provided in paragraph (c) of this section, an institution is not required to open or maintain a separate account for depositing Federal funds.

(2) An institution must notify the bank in which it deposits Federal funds of the account into which those funds are deposited by—

(i) Ensuring that the name of the account discloses clearly that Federal funds are deposited into that account; and

(ii) Notifying the bank of the account into which the institution deposits Federal funds.

(3) The institution must retain in its recordkeeping system a record of the notice required under paragraph (a)(2) of this section.

(b) *Interest-bearing account.* (1) Except as provided in paragraph (b)(2) of this section, for any award year, an institution must ensure that the account into which it deposits Federal funds is an interest-bearing account that is federally insured, if the institution, during the prior award year, drew down a total amount greater than $1 million from the title IV, HEA programs.

(2) For any award year, an institution that participates in the Federal Perkins Loan Program must deposit Federal Perkins Loan Program funds in—

(i) An interest-bearing account that is—

(A) Federally insured; or

(B) Secured by collateral of value reasonably equivalent to the amount of funds in the account; or

(ii) An investment account consisting predominantly of low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(3) Except as provided in paragraphs (b)(3) (i) and (ii) of this section, an institution must remit at least annually to the Secretary the interest earned on title IV, HEA program funds maintained in an interest-bearing account.

(i) Pursuant to 34 CFR part 674, an institution must retain for the purposes of the Federal Perkins Loan Program all interest or investment revenue earned on Federal Perkins Loan Program funds maintained in an interest-bearing or investment account.

(ii) Other than interest or investment revenue earned on Federal Perkins Loan Program funds, an institution may retain for administrative expense up to $250 per year of the interest earned on title IV, HEA program funds maintained in an interest-bearing account.

(c) *Separate account.* The Secretary may require an institution to maintain title IV, HEA program funds in a separate bank account that contains no other funds if the Secretary determines that—

(1) The institution's accounting and internal control systems do not—

(i) Identify the cash balances of title IV, HEA program funds maintained in the institution's bank account as readily as if those funds were maintained for each program in a separate account; or

(ii) Identify adequately the interest or investment revenue earned on title IV, HEA program funds maintained in its bank account;

(2) The institution's financial records—

(i) Are not maintained on a current basis;

(ii) Do not reflect accurately all title IV, HEA program transactions; or

(iii) Are not reconciled at least monthly; or

(3) The institution has otherwise failed to comply with the recordkeeping and reporting requirements in subpart B of this part or in the regulations that govern each title IV, HEA program in which the institution participates.

(d) *Standard of conduct.* An institution must exercise the level of care and diligence required of a fiduciary with regard to depositing and investing Federal funds.

(Authority: 20 U.S.C. 1094)

§ 668.165 Disbursing funds.

(a) *Method of payment.* (1) An institution must notify a student of the amount of title IV, HEA program funds the student can expect to receive and how that amount will be paid.

(2) If the institution chooses to disburse to the student or the student's parent by initiating an electronic funds transfer to the bank account designated by the student or parent, as applicable, the institution must obtain each award year written authorization from the student or parent, as applicable, to disburse by that method.

(3) An institution must follow the disbursement procedures in 34 CFR 675.16 for paying a student his or her wages under the FWS Program.

(b) *Crediting a student's account.*—(1) *General.* An institution may disburse to a student by crediting the student's account. In crediting the student's account with title IV, HEA program funds, the institution may apply those funds only to allowable charges described under paragraph (b)(3) of this section, except that the institution may not apply the student's title IV, HEA program funds to any charges the institution assessed the student in a prior award year.

(2) *Student account balances.* Except as provided in paragraph (b)(4) of this section, if the amount of title IV, HEA program funds the institution applies to a student's account exceeds the amount of allowable charges, the institution must pay the balance remaining on the student's account directly to the student as soon as possible but within the later of—

(i) 7 days after the date that balance occurs;

(ii) 14 days after the first day of classes of the payment period or period of enrollment, as applicable; or

(iii) 7 days after the date the student rescinds his or her permission under paragraph (b)(3)(ii) of this section.

(3) *Allowable charges.* For the purpose of determining a student's account balance under paragraph (b)(2) of this section, allowable charges include—

(i) Only—(A) Tuition and fees;

(B) Board, if the student contracts with the institution for board; and

(C) Room, if the student contracts with the institution for room; and

(ii) Other cost-of-attendance charges, as provided under section 472 of the HEA, for which the institution obtains the student's permission. The institution must obtain from the student each award year permission to use his or her title IV, HEA program funds to pay for these cost-of-attendance charges. The institution—

(A) May not require the student to grant that permission; and

(B) Must allow the student to rescind that permission at any time.

(4) *Holding student funds.* An institution, as a fiduciary for the benefit of a student, may hold student funds from the title IV, HEA programs in excess of institutional charges included in paragraph (b)(3) of this section, if the student requests in writing that the institution retain those excess funds to assist the student in managing his or her funds for an award year. The institution must maintain these funds in a separate account established solely for the purpose of holding excess student funds and may not commingle these funds with other funds or use these funds for any other purpose.

(c) *Early payments.* (1) An institution may not make a payment to a student for a payment period or period of enrollment, as applicable, until the student is enrolled for classes for that period.

(2) Except as provided in paragraph (c)(3) of this section, the earliest an institution may pay directly, or credit the account of, an enrolled student is 10 days before the first day of a payment period or period of enrollment, as applicable.

(3) Pursuant to 34 CFR 682.604(c) and 34 CFR 685.303(b)(4), if a student is enrolled in the first year of an undergraduate program of study and the student has not previously received an FFEL or Direct Loan Program loan, the institution may not release to the student for endorsement the first installment of his or her FFEL or Direct Loan Program loan, as applicable, until 30 days after the first day of the student's classes.

(Authority: 20 U.S.C. 1094)

§ 668.166 Excess cash.

(a) *General.* The Secretary considers excess cash to be any amount of title IV, HEA program funds, other than FFEL or Federal Perkins Loan Program funds, that an institution does not disburse to students by the end of the 3d business day following the date the institution received those funds. Except as provided in paragraph (b) of this section, an institution must return promptly to the Secretary any amount of excess cash in its account.

(b) *Excess cash tolerances.* If an institution draws down title IV, HEA program funds in excess of its immediate cash needs, the institution may maintain the excess cash in its account only if—

(1) The amount of that excess cash is less than $5,000; or

(2)(i) In the award year preceding that drawdown, the institution drew down more than $1 million of title IV, HEA program funds, and the amount of that excess cash is less than one-half of 1 percent of its total prior-year drawdowns; and

(ii) The institution makes within 7 days a cash request greater than the amount of its excess cash; and

(3) The institution does not maintain routinely in its account the excess cash balances described in paragraph (b)(1) or (b)(2) of this section.

(c) *Consequences for maintaining excess cash balances.* (1) If the Secretary finds that an institution maintains in its account excess cash balances greater than those allowed under paragraph (b) of this section or maintains routinely excess cash balances allowed under paragraph (b) of this section, the Secretary—

(i) As provided in paragraph (c)(2) of this section, requires the institution to reimburse the Secretary for the costs the Secretary deems to have incurred in making those excess funds available to the institution; and

(ii) May initiate a proceeding to fine, limit, suspend, or terminate the institution's participation in one or more title IV, HEA programs under subpart G of this part.

(2) For the purposes of this section, upon a finding that an institution has maintained excess cash, the Secretary—

(i) Considers the institution to have issued a check to a student on the date that the check cleared the institution's bank account, unless the institution demonstrates to the satisfaction of the Secretary that it issued the check shortly after the institution wrote the check; and

(ii) Calculates, or requires the institution to calculate, a liability for maintaining excess cash balances in accordance with procedures established by the Secretary. Under those procedures, the Secretary assesses a liability that is equal to the difference between the earnings that the excess cash balances would have yielded if invested under the applicable current value of funds rate and the actual interest earned on those balances. The current value of funds rate is an annual percentage rate, published in a Treasury Financial Manual (TFM) bulletin, that reflects the current value of funds to the Department of the Treasury based on certain investment rates. The current value of funds rate is computed each year by averaging investment rates for the 12-month period ending every September. The TFM bulletin is published annually by the Department of the Treasury. Each annual bulletin identifies the current value of funds rate and the effective date of that rate.

(Authority: 20 U.S.C. 1094)

[FR Doc. 94-24115 Filed 9-28-94; 8:45 am]
BILLING CODE 4000-01-P

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Part V

The President

Proclamation 6726—Placing Into Full Force and Effect the Compact of Free Association With the Republic of Palau

Proclamation 6727—Energy Awareness Month, 1994

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Presidential Documents

Title 3—

The President

Proclamation 6726 of September 27, 1994

Placing into Full Force and Effect the Compact of Free Association With the Republic of Palau

By the President of the United States of America

A Proclamation

Since July 18, 1947, the United States has administered the United Nations Trust Territory of the Pacific Islands ("Trust Territory"), which has included the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau.

On November 3, 1986, a Covenant between the United States and the Northern Mariana Islands came into force. This Covenant established the Commonwealth of the Northern Mariana Islands as a self-governing Commonwealth in political union with and under the sovereignty of the United States.

On October 21, 1986, in the case of the Republic of the Marshall Islands, and on November 3, 1986, in the case of the Federated States of Micronesia, Compacts of Free Association with the United States became effective. Under the Compacts, the Federated States of Micronesia and the Republic of the Marshall Islands became self-governing sovereign states, in free association with the United States. Following the changes in political status of the Northern Mariana Islands, the Marshall Islands, and the Federated States of Micronesia, the Trusteeship Agreement ceased to be applicable to those entities and only Palau remained as the Trust Territory of the Pacific Islands.

On January 10, 1986, the Government of the United States and the Government of Palau concluded a Compact of Free Association similar to those that the United States entered into with the Republic of the Marshall Islands and with the Federated States of Micronesia. As in those instances, it was specified that the Compact with Palau would come into effect upon (1) mutual agreement between the Government of the United States, acting in fulfillment of its responsibilities as Administering Authority of the Trust Territory of the Pacific Islands, and the Government of Palau; (2) the approval of the Compact by the two Governments, in accordance with their constitutional processes; and (3) the approval of the Compact by plebiscite in Palau.

In Palau the Compact has been approved by the Government in accordance with its constitutional processes and by a United Nations-observed plebiscite on November 9, 1993, a sovereign act of self-determination. In the United States the Compact was approved by Public Law 99–658 of November 14, 1986, and Public Law 101–219 of December 12, 1989.

On May 25, 1994, the Trusteeship Council of the United Nations concluded that the Government of the United States had satisfactorily discharged its obligations as the Administering Authority under the terms of the Trusteeship Agreement and that the people of Palau had freely exercised their right to self-determination and considered that it was appropriate for the Trusteeship Agreement to be terminated. The Council asked the United States to consult with the Government of Palau and to agree on a date, on or about October 1, 1994, for entry into force of their new status agreement.

On July 15, 1994, the Government of the United States and the Government of the Republic of Palau agreed, pursuant to section 411 of the Compact of Free Association, that as between the United States and the Republic of Palau, the effective date of the Compact shall be October 1, 1994.

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As of this day, September 27, 1994, the United States has fulfilled its obligations under the Trusteeship Agreement with respect to the Republic of Palau. On October 1, 1994, the Compact will enter into force between the United States and the Republic of Palau, and Palau will thereafter be self-governing and no longer subject to the Trusteeship. In taking these actions, the United States is implementing the freely expressed wishes of the people of Palau.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, including sections 101 and 102 of the Joint Resolution to approve the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes, approved on November 14, 1986 (Public Law 99–658), and section 101 of the Joint Resolution to authorize entry into force of the Compact of Free Association between the United States and the Government of Palau, and for other purposes, approved on December 12, 1989 (Public Law 101–219), and pursuant to section 1002 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and consistent with sections 101 and 102 of the Joint Resolution to approve the "Compact of Free Association" and for other purposes, approved on January 14, 1986 (Public Law 99–239), do hereby find, declare, and proclaim as follows:

Section 1. I determine that the Trusteeship Agreement for the Pacific Islands will be no longer in effect with respect to the Republic of Palau as of October 1, 1994, at one minute past one o'clock p.m. local time in Palau. This constitutes the determination referred to in section 1002 of the Covenant with the Northern Mariana Islands (Public Law 94–241).

Sec. 2. The Compact of Free Association with the Republic of Palau will be in full force and effect as of October 1, 1994, at one minute past one o'clock p.m. local time in Palau.

Sec. 3. I am gratified that the people of the Republic of Palau, after 47 years of Trusteeship, have freely chosen to establish a relationship of Free Association with the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of September, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94–24346
Filed 9–28–94; 11:12 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 6727 of September 27, 1994

Energy Awareness Month, 1994

By the President of the United States of America

A Proclamation

We have become increasingly aware in recent decades that our sources of energy are finite. America's economy continues to expand, generating new jobs, increased production, and an even higher demand for energy. At the same time, the changing needs of our people and the fragile nature of our environment teach us that we must use our resources wisely. The long-term health of our Nation and of our world require that we continually reexamine the ways we produce and consume energy.

As we celebrate Energy Awareness Month this year, the United States is leading the world in that effort, improving energy efficiency and exploring the possibilities of renewable resources. Through programs developed by both business and government, Americans are using energy in wiser and less costly ways. High technology applied to vehicles, appliances, and buildings has enabled us to save money, become less reliant on foreign imports, and protect our planet's precious natural resources. Yet much remains to be done.

The "Greening of the White House" initiative sets an important example. A cooperative project combining the best efforts of the public and private sectors, it utilizes the latest technologies in lighting, heating, air conditioning, cooking, and refrigeration and serves as a model of progress for buildings across the country. This project will be a challenge to countries around the globe to protect the Earth's environment and to achieve sustainable economic growth.

The theme of Energy Awareness Month, 1994, "Energy—Our Future Is Today!" recognizes that we must view our energy consumption from the perspective of the generations to come. I encourage all Americans to join in this crucial mission to conserve Earth's resources for our children and grandchildren by participating in activities that further our understanding and appreciation of the energy issues we face. Our work today will help to safeguard the strength of our economy, the well-being of our citizens, and the unique beauty of our world.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 1994 as "Energy Awareness Month."

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of September, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94–24347
Filed 9–28–94; 11:13 am]
Billing code 3195–01–P

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Vol. 59 No. 189

federal register

Friday
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VOL
59
ISS
189
SE
30
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UMI

9–30–94
Vol. 59 No. 189
Pages 49781–50152

Federal Register

Friday
September 30, 1994

VOL
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Presidential Documents

Title 3—

The President

Presidential Determination No. 94–50 of September 19, 1994

Determination To Authorize the Furnishing of Emergency Military Assistance to Countries Participating in the Multinational Coalition To Restore Democracy to Haiti Under Section 506(a)(1) of the Foreign Assistance Act

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(1) (the "Act"), I hereby determine that:

(1) an unforeseen emergency exists, which requires immediate military assistance to countries participating in the multinational coalition to restore democracy to Haiti; and

(2) the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except section 506 of the Act.

Therefore, I hereby authorize the furnishing of up to $50,000,000 in defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training to the countries participating in the multinational coalition to restore democracy to Haiti.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, September 19, 1994.

[FR Doc. 94–24391
Filed 9–28–94; 2:55 pm]
Billing code 4710–10–M

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Presidential Documents

Presidential Determination No. 94–51 of September 21, 1994

Presidential Determination Under Subsections 402(a) and 409(a) of the Trade Act of 1974, as Amended—Emigration Policies of the Russian Federation

Memorandum for the Secretary of State

Pursuant to the authority vested in me by sections 402(a) and 409(a) of the Trade Act of 1974 (19 U.S.C. 2432(a) and 2439(a) (the "Act")), I determine the Russian Federation is not in violation of paragraph (1), (2), or (3) of subsection 402(a) of the Act, or paragraph (1), (2), or (3) of subsection 409(a) of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, September 21, 1994.

[FR Doc. 94–24425
Filed 9–28–94; 4:20 pm]
Billing code 4710–10–M

Editorial note: For the President's message to Congress transmitting the report on the Russian Federation's emigration policies, see volume 30, p. 1824 of the *Weekly Compilation of Presidential Documents.*

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 151

[Docket No. 94–057–2]

Recognized Breeds and Books of Record

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On August 18, 1994, the Animal and Plant Health Inspection Service published a direct final rule. (See 59 FR 42488–42489). The direct final rule notified the public of our intention to amend the "Recognition of Breeds and Books of Record of Purebred Animals" regulations by adding the following to the list of "recognized breeds and books of record": the Belgian Blue and Gelbvieh breeds of cattle, the Trakehner and Morab breeds of horses, the Herd Book of the Gelbvieh, the Trakehner Stud Book, and the Morab Stud Book. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

EFFECTIVE DATE: The effective date of the direct final rule is confirmed as October 17, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Andrea Morgan, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 763, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8383.

Authority: 19 U.S.C. 1202; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 26th day of September 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–24230 Filed 9–29–94; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–37–AD; Amendment 39–9032; AD 94–20–04]

Airworthiness Directives; Beech Aircraft Corporation 35 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 57–18–01 and AD 87–20–02 R1, which currently require several ruddervator checks and modifications on certain Beech Aircraft Corporation (Beech) 35 series airplanes. This action maintains the requirements of each of the superseded AD's and requires rebalancing the ruddervators (off the airplane) anytime the ruddervator is repaired or repainted (even if stripes are added). The required action imposes no new speed restrictions. Several incidents where empennage flutter occurred on the affected airplanes prompted this action. The actions specified by this AD are intended to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

DATES: Effective November 28, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 28, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: Several incidents involving certain Beech 35 series airplanes where empennage flutter occurred prompted the FAA to re-evaluate current airworthiness directives that relate to the same subject, and apply to the same airplane models. These AD's are:

- AD 57–18–01, Amendment 39–1759, which currently requires repetitively inspecting the fuselage bulkhead for cracks, buckles, or distortion on certain Beech 35 series airplanes, and also requires checking the ruddervator to ensure that the static balance is within acceptable limits. The inspections and checks are accomplished utilizing information in Beech Service Bulletin (SB) No. 35–26, dated May 20, 1953. The Bonanza Maintenance Manual 35–590073 also specifies information for the ruddervator checks; and
- AD 87–20–02 R1, Amendment 39–5944, which currently requires the following on certain Beech 35 series airplanes: (1) installing external stabilizer reinforcements; (2) inspecting the rear fuselage and bulkheads in the area of the empennage for cracks or distortion for those models equipped with an increased stabilizer chord length/overhang, and repairing or replacing any cracked or distorted parts and (3) checking the ruddervator static balance to ensure that the static balance is within acceptable limits, and correcting if necessary.

After examining all available information related to the incidents above, the FAA published a proposal in the **Federal Register** on October 27, 1993 (58 FR 57760) to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Beech 35 series airplanes. The document proposed to supersede AD 57–18–01 and AD 87–20–02 R1 with a new AD that would maintain the requirements of each of the current AD's, and would require rebalancing the ruddervators (off the airplane) anytime the ruddervator is repaired or repainted (even if stripes are

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added). The document does not propose any new speed restrictions.

Interested persons were afforded an opportunity to participate in the making of this amendment. Several comments were received on the proposed rule. These comments reference inadvertent mistakes made by the FAA in drafting the proposed rule and request additional time to comment on the proposed rule.

In order to allow the public additional time to comment on the proposed rule, the FAA reissued this document as a supplemental NPRM that corrected the inadvertent mistakes, and published it in the **Federal Register** on April 6, 1994 (59 FR 16151).

Due consideration has been given to the two comments received on the supplemental NPRM.

The Beech Aircraft Corporation states that reference to Beech Kit No. 35–4016–9 is referenced incorrectly as Beech Kit No. 39–4016–9 in paragraph (g)(3) of the proposed AD. The FAA concurs and has changed the AD accordingly.

The other commenter recommends deleting Figure 2 (Method No. 2) because of the expense and effort required to accomplish the tasks presented. The FAA concurs that Method No. 2 is expensive to accomplish and that the complete weighing procedure is accomplished more accurately using the other two methods. Method No. 2 of the AD has been deleted, thus changing the proposed Method No. 3 to Method No. 2.

After careful review, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed in the supplemental NPRM except for changes referenced above and minor editorial corrections. The FAA has determined that these minor changes and corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 10,200 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 40 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $500 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $27,540,000. This figure is based on the assumption that no affected owner/operator has accomplished the required action, and does not reflect repetitive inspections. The FAA has no way of determining how many repetitive inspections a particular owner/operator may incur.

In addition, AD 57–18–01 and AD 87–20–02 R1, which both are superseded by this action, require the same actions as specified by this AD. With the idea that all affected owners/operators are in compliance with the superseded AD's referenced above, this AD does not impose any initial cost impact over what is already required by AD 57–18–01 and AD 87–20–02 R1.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing both AD 57–18–01, Amendment 39–1759, and AD 87–20–02 R1, Amendment 39–5944, and by adding a new airworthiness directive to read as follows:

94–20–04 Beech Aircraft Corporation: Amendment 39–9032; Docket No. 93–CE–37–AD. Supersedes AD 57–18–01, Amendment 39–1759, and AD 87–20–02 R1, Amendment 39–5944.

Applicability

1. Models 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, and P35 airplanes (all serial numbers), certificated in any category;

2. Models S35, V35, V35A, and V35B airplanes (all serial numbers), certificated in any category, that do not have the straight tail conversion modification incorporated in accordance with Supplemental Type Certificate (STC) SA2149CE; and

3. Model Super V airplanes (all serial numbers), certificated in any category.

Compliance: Required initially within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter as indicated in the body of this AD.

To prevent structural failure of the V-tail, which could result in loss of control of the airplane, accomplish the following:

Note 1: Any of the actions specified by this AD may have already been accomplished in accordance with either AD 57–18–01 and AD 87–20–02 R1, which are superseded by this AD. The intent of this AD is to clarify, update, and incorporate the actions of those AD's into one AD while maintaining the repetitive inspections schedules already established by the superseded AD's.

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.
Level 4: (A), (B), (C), etc.

Level 2, Level 3, and Level 4 structures are designations of the Level 1 paragraph they immediately follow.

(a) For all airplane models, balance the elevator/rudder (ruddervator) control surfaces in accordance with Section 3 of Beech Shop Manual 35–590096B; and verify that the ruddervators are within the manufacturers specified limits as specified in the applicable shop or maintenance manual.

(1) If any ruddervator is found outside of the specified limits, prior to further flight, obtain manufacturer's modification instructions by contacting the Wichita Aircraft Certification Office (ACO) at the address specified in paragraph (k) of this AD, and modify the ruddervator in accordance with these instructions.

(2) Repeat these requirements any time the ruddervator is repaired or painted (even if stripes are added).

(b) For all airplane models, visually inspect the fuselage bulkheads at Fuselage Station (FS) 256.9 and FS 272 for damage (cracks, distortion, loose rivets, etc.) in accordance with the procedures in the instructions to Beech Kit 35–4017–1 "Kit Information Empennage & Aft Fuselage Inspection", as specified in Beech SB 2188, dated May 1987. Visually inspect the fuselage skin around the bulkhead for damage (wrinkles or cracks).

Prior to further flight, repair or replace any damaged parts. Repeat this inspection at each 100-hour TIS interval thereafter.

(c) For all Model Super V airplanes, check the static balance of the ruddervator in accordance with Beech Shop Manual 35–590096A, Section 3, pages 12A, 12B, and 13. Repeat this check anytime the ruddervator is removed or repainted. Prior to further flight, make applicable corrections if any of the following is not achieved:

(1) With the root weight removed and a tip weight attached, static balance of 19.80 (plus or minus 1.00) inch-pounds tail heavy; and

(2) With the root weight added to the condition specified in paragraph (c)(1) of this AD, static balance of 7.00 (plus or minus 1.00) inch-pounds tail heavy.

(d) The following placard, airspeed indicator markings, and POH/AFM requirements are retained from AD 87–20–02 R1, and are no longer mandatory when paragraphs (e) and (f) of this AD, as applicable, are accomplished:

(1) For Models 35, 35R, A35, B35, C35, D35, E35, F35, and G35 airplanes:

(i) Fabricate a placard (utilizing letters of at least .10-inch minimum height) with the words "Never exceed speed, Vne, 144 MPH (125 knots) IAS; Maximum structural cruising speed, Vno, 135 MPH (117 knots) IAS; Maneuvering speed, VA, 127 MPH (110 knots) IAS." Install this placard on the airplane instrument panel next to the airspeed indicator within the pilot's clear view.

(ii) Mark the outside surface of the airspeed indicator with lines of approximately 1/16-inch by 3/16-inch as follows:

(A) Red line at 144 MPH (125 knots);

(B) Yellow line at 135 MPH (117 knots); and

(C) A white slippage mark between the airspeed indicator glass and case to visually verify glass has not rotated.

(iii) Place a copy of this AD in the Pilot's Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM).

(2) For Models H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B:

(i) Fabricate a placard (utilizing letters of at least .10-inch minimum height) with the words "Never exceed speed, Vne, 197 MPH (171 knots) IAS; Maximum structural cruising speed, Vno, 177 MPH (154 knots) IAS; Maneuvering speed, VA, 132 MPH (115 knots) IAS." Install this placard on the airplane instrument panel next to the airspeed indicator within the pilot's clear view.

(ii) Mark the outside surface of the airspeed indicator with lines of approximately 1/16-inch by 3/16-inch as follows:

(A) Red line at 197 MPH (171 knots);

(B) Yellow line at 177 MPH (154 knots); and

(C) A white slippage mark between the airspeed indicator glass and case to visually verify glass has not rotated.

(iii) Place a copy of this AD in the Pilot's Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM).

(3) For all applicable model airplanes, fabricate a placard (utilizing letters of at least .10-inch minimum height) with the words "Normal Category Operation Only" and install this placard on the instrument panel within the pilot's clear view over the existing "Utility Category" placard.

(e) For Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, S35, V35, V35A, and V35B airplanes, accomplish the following:

(1) Visually inspect the empennage, aft fuselage, and ruddervator control system for damage in accordance with the instructions to Beech Kit 35–4017–1 "Kit Information Empennage & Aft Fuselage Inspection", as specified in Beech SB No. 2188, dated May 1987. Prior to further flight, accomplish the following in accordance with these instructions:

(i) Replace or repair any damaged parts; and

(ii) Set the elevator controls, rudder and tab system controls, cable tensions, and rigging.

(2) Remove all external stabilizer reinforcements installed during incorporation of either Supplemental Type Certificate (STC) SA845GL, STC SA846GL, STC SA1650CE, STC SA2286NM, or STC SA2287NM. Seal or fill any residual holes with appropriate size rivets.

(i) The internal stub spar incorporated through SA1649CE and SA1650CE may be retained.

(ii) The external angles incorporated through STC SA1649CE may also be retained by properly trimming the leading edge section to permit installing the stabilizer reinforcement referenced in paragraph (g)(3) of this AD.

(3) Install stabilizer reinforcements in accordance with the instructions to either Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, as applicable and specified in Beech SB No. 2188, dated May 1987. Set the elevator nose down trim in accordance with the instructions to either Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, as applicable and specified in Beech SB No. 2188, and replace ruddervator tab control cables with larger diameter cables in accordance with the service information.

(f) Ensure correct accuracy of the airplane basic empty weight and balance information by accomplishing either (1) or (2) below. Prior to further flight, correct any discrepancies in accordance with the applicable maintenance manual.

(1) Weight and Balance Information Accuracy Method No. 1:

(i) Review existing weight and balance documentation to assure completeness and accuracy of the documentation from the most recent FAA-approved weighing or from factory delivery to date of compliance with this AD.

(ii) Compare the actual configuration of the airplane to the configuration described in the weight and balance documentation; and

(iii) If equipment additions or deletions are not reflected in the documentation or if modifications affecting the location of the center of gravity (e.g., paint or structural repairs) are not documented, determine the accuracy of the airplane weight and balance data in accordance with Method No. 2; or

(2) Weight and Balance Information Accuracy Method No. 2: Determine the basic empty weight and center of gravity (CG) of the empty airplane using the Weighing Instructions in the Weight and Balance Section of the POH/AFM. Record the results in the airplane records, and use these new values as the basis for computing the weight and CG information as specified in the POH/AFM, Weight and Balances Section.

(g) Upon completion of the requirements of paragraphs (e) and (f) of this AD, remove the placards required by paragraph (d) of this AD (including all sub-paragraphs), as applicable, and observe the original limits.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita ACO, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(j) The inspections and installation required by this AD shall be done in accordance with the instructions to Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, and the instructions to Beech Kit 35–4017–1 "Kit Information Empennage & Aft Fuselage Inspection", as applicable and specified in Beech Service Bulletin No. 2188, dated May 1987. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(m) This amendment (39–9032) supersedes AD 57–18–01, Amendment 39–1759, and AD 87–20–02 R1, Amendment 39–5944.

(f) This amendment (39–9032) becomes effective on November 28, 1994.

Issued in Kansas City, Missouri, on September 16, 1994.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–23552 Filed 9–29–94; 8:45 am]

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14 CFR Part 39

[Docket No. 94-CE-19-AD; Amendment 39-9033; AD 94-20-05]

Airworthiness Directives; Beech Aircraft Corporation 1900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Beech Aircraft Corporation (Beech) 1900 series airplanes. This action requires inspecting the hot battery bus fuse assembly for proper wiring, correcting the wiring if incorrect, and modifying the wiring to add a redundant power source for the hot battery bus. This action results from a report of the hot battery bus bar wrongly installed on the lower (load) side of the hot battery bus fuse assembly on one of the affected airplanes. Correct installation is the upper (power) side of the circuit. The actions specified by this AD are intended to protect from overloads to either circuit connected to the hot battery bus from overloads, which, if not protected, could result in loss of certain emergency equipment.

DATES: Effective October 14, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 14, 1994.

Comments for inclusion in the Rules Docket must be received on or before December 12, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 94-CE-19-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Information that relates to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information may also be examined at the FAA at the address above; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey E. Nero, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946-4137; facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION: The FAA has received a report that the hot battery bus bar was wrongly installed on the lower (load) side of the hot battery bus fuse assembly on a Beech 1900 series airplane. Correct installation is the upper (power) side of the circuit. With the reported configuration, a single five amp fuse supplies electrical power to all the systems connected to the bus instead of (under the correct wiring configuration) the hot battery bus supplying each essential load independently through a fuse for each load. In normal conditions, an airplane operator would not notice the miswired hot battery bus bar until the single fuse is blown. This condition, if not detected and corrected, could result in the loss of electrical power to all emergency equipment connected to the hot battery bus. This equipment includes the left and right engine fire extinguisher bottles, the left and right fire wall shutoff valves, the cockpit emergency lighting, and the engine fire extinguisher indicator lights.

In addition, these airplanes currently are not equipped with a redundant power source for the emergency equipment receiving power from the hot battery bus. Under the present scenario, an internal battery problem could prevent the use of the emergency equipment because of no backup power sources for this equipment connected to the hot battery bus.

Beech has issued Service Bulletin (SB) No. 2562, dated August 1994, which specifies procedures for (1) inspecting the hot battery bus fuse assembly for proper wiring and correcting the wiring if incorrect, and (2) modifying the wiring to add a redundant power source for the hot battery bus.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken in order to protect either circuit connected to the hot battery bus from overloads, which, if not protected, could result in loss of certain emergency equipment.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech 1900 series airplanes of the same type design, this AD requires the inspection and modification specified in Beech SB No. 2562, dated August 1994.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94-CE-19-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

94-20-05 Beech Aircraft Corporation: Amendment 39-9033; Docket No. 94-CE-19-AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial Nos.
1900	UA-2 and UA-3.
1900C	UB-1 through UB-74 and UC-1 through UC-174.
1900D	UE-1 through UE-87.
C-12J (Military)	UD-1 through UD-6.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To protect either circuit connected to the hot battery bus from overloads, which, if not protected, could result in loss of certain emergency equipment, accomplish the following:

(a) Visually inspect the hot battery bus fuse assembly to ensure that the hot battery bus bar is mounted on the row of terminals located on top of the hot battery bus fuse assembly in accordance with paragraphs 1 through 3 in the Accomplishment Instructions section of Beech Service Bulletin (SB) No. 2562, dated August 1994. If not mounted correctly, prior to further flight, reinstall the hot battery bus bar and reattach the wire harness in accordance with Beech SB No. 2562.

(b) Modify the wiring to add a redundant power source for the hot battery bus by accomplishing paragraphs 1, 2, and 4 through 12 of the Accomplishment Instructions section of Beech SB No. 2562, dated August 1994.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(e) The inspection and modification required by this AD shall be done in accordance with the instructions to Beech Service Bulletin No. 2562, dated August 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39-9033) becomes effective on October 14, 1994.

Issued in Kansas City, Missouri, on September 21, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-23812 Filed 9-29-94; 8:45 am]

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14 CFR Part 39

[Docket No. 92-ANE-33; Amendment 39-9038; AD 93-19-02R1]

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT9D series turbofan engines, that currently requires eddy current inspection and modification of the diffuser case rear rail, and removal, if necessary, of the diffuser case. This amendment corrects an error in paragraph numbering in the compliance section and allows modification of diffuser cases in accordance with previous revisions of a PW Service Bulletin as an alternative means of compliance. This amendment is prompted by comments received after issuance of AD 93-19-02. The actions specified by this AD are intended to prevent diffuser case rupture and an uncontained engine failure.

DATES: Effective on October 17, 1994.

The incorporation by reference of certain publications listed in the regulations was approved by the Director of the Federal Register as of October 18, 1993 (58 FR 51212, October 1, 1993).

Comments for inclusion in the Rules Docket must be received on or before November 29, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ANE-33, 12 New England Executive Park, Burlington, MA 01803-5299.

The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel Kerman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7130, fax (617) 238-7199.

SUPPLEMENTARY INFORMATION: On September 16, 1993, the Federal Aviation Administration (FAA) issued AD 93-19-02, Amendment 39-8695 (58 FR 51212, October 1, 1993), as a final rule with request for comments that superseded AD 86-11-04, to define initial inspection requirements that will allow for transition to more stringent repetitive on-wing eddy current inspections of the diffuser case rear rail for cracking. AD 93-19-02 also requires ultrasonic and metallographic inspections of the shell wall, and ultrasonic inspection of the rear rail at the Boss 6 location to determine weld size. In the previous AD, 86-11-04, diffuser cases were allowed to remain in service with weld repairs of up to 4 inches in length. In AD 93-19-02, diffuser cases with weld repairs in the rear rail of greater than or equal to 1.5 inches in axial length at Boss 5 must be replaced. In addition, AD 93-19-02 requires a one-time X-ray inspection of

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the rear rail and sides of bosses for weld quality. This inspection is necessary since in the last two failures, weld defects were undetected by the inspections required by AD 86–11–04. Also, diffuser cases with rear rails that have been weld-repaired must incorporate the modifications described in PW SB No. 5805, Revision 6, dated September 15, 1993. Finally, an optional terminating action to the inspections and modifications of AD 93–19–02 is available with the installation of a new, improved diffuser case in accordance with PW SB No. 6105, Revision 2, dated May 14, 1993.

AD 93–19–02 was prompted by reports of 2 additional diffuser case failures. Both failures occurred within significantly shorter time intervals since last inspection than that specified in AD 86–11–04. In an effort to better understand the diffuser case failure mode, a rig test was performed. This test examined crack initiation and growth rates in weld-repaired versus non-weld-repaired diffuser cases. Results of the test established that cracks initiate and propagate more rapidly in weld-repaired diffuser cases. In addition, weld repairs at the Boss 6 location were determined to have even greater potential for rapid crack growth and resultant diffuser case failure. That condition, if not corrected, could result in diffuser case rupture and an uncontained engine failure.

Although AD 93–19–02 was issued as a final rule without prior notice and an opportunity for public comment, the FAA requested comment on the AD. Due consideration has been given to the comments received.

One commenter states that paragraph (c)(3) of AD 93–19–02 refers incorrectly to paragraphs (d) and (f), as those paragraphs are applicable to those diffuser cases that have been weld-repaired. The FAA concurs. Paragraph (c)(3) of this Revision to AD 93–19–02 has been changed to refer to paragraphs (e), (g), (h), (i), (j), (k), and (l). These paragraphs are applicable to those diffuser cases that have not been weld-repaired.

One commenter states that paragraph (o) of AD 93–19–02 requires modifications to the diffuser case in accordance with PW Service Bulletin (SB) No. 5805, Revision 6, dated September 15, 1993. The commenter maintains that modifications performed in accordance with the earlier revisions to this SB should be considered in compliance with this AD. The FAA concurs. All previous revisions of PW SB No. 5805 differ from Revision 6 only in editorial clarifications or corrections of typographical errors and do not impact the intent of the document. Modifications performed to the diffuser case in accordance with the previous revisions of PW SB No. 5805 constitute an acceptable alternate means of compliance to paragraph (o) of this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the revision of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA has reviewed and approved the technical contents of PW SB No. 5805, Revision 6, dated September 15, 1993, that describes procedures for modification of the rear rail by detaching the diffuser case rear rail from the strut boss, thus extending the serviceable life of the diffuser case by reducing crack initiation and propagation rates; PW Alert Service Bulletin (ASB) No. 6076, Revision 1, dated August 20, 1992, that describes ultrasonic and metallographic inspection of the shell wall, and ultrasonic inspection of the rear rail at the Boss 6 location to determine weld size; PW SB No. 6088, dated August 5, 1992, that describes an X-ray inspection of the rear rail and sides of bosses for detection of poor weld quality; PW SB No. 5591, Revision 7, dated August 25, 1992, that describe initial and repetitive on-wing eddy current inspections of the diffuser case rear rail; and PW SB No. 6105, Revision 2, dated May 14, 1993, that describes installation of a new, improved diffuser case.

Additional information regarding weld repair requirements for the diffuser case rear rail is contained in PW JT9D Engine Manual, Part Number 686028, dated September 1, 1993.

Since an unsafe condition has been identified that is likely to exist or develop on other PW JT9D series turbofan engines of this same type design, this AD revises AD 93–19–02 to correct an error in paragraph numbering in the compliance section and allow modification of diffuser cases in accordance with previous revisions of PW SB No. 5805 as an alternative means of compliance to paragraph (o) of this AD. The actions are required to be accomplished in accordance with the service bulletins described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ANE–33." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8695 (58 FR 51212, October 1, 1993) and by adding a new airworthiness directive, Amendment 39–9038, to read as follows:

93–19–02 R1 Pratt & Whitney: Amendment 39–9038. Docket 92–ANE–33. Revises AD 93–19–02, Amendment 39–8695.

Applicability: Pratt & Whitney (PW) JT9D–3A, –7, –7H, –7A, –7AH, –7F, –7J, –20, and –20J turbofan engines installed on but not limited to Boeing 747 series, Airbus A300 series, and McDonnell Douglas DC–10 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent diffuser case rupture and an uncontained engine failure, accomplish the following:

(a) For those diffuser cases that have not been inspected in accordance with PW Alert Service Bulletin (ASB) No. 6076, Revision 1, dated August 20, 1992, initially inspect the diffuser case for cracks in accordance with the intervals and requirements described in paragraphs (d), (f), (g), (i), (j), (k), or (l) of this AD, as applicable.

(b) For those diffuser cases that have not been inspected in accordance with PW ASB No. 6076, Revision 1, dated August 20, 1992, inspect the diffuser case rear rail along the shell wall at Boss 6 for weld repair size in accordance with PW ASB No. 6076, Revision 1, dated August 20, 1992, at the next M flange separation of the high pressure turbine case after the effective date of this AD. Diffuser cases with weld repairs in the rear rail along the shell wall of axial length greater than or equal to 1.5 inches at Boss 6 must not be returned to service. If the weld length is less than 1.5 inches, inspect in accordance with the new criteria, improved technique, intervals, and requirements defined in the Accomplishment Instructions of PW Service Bulletin (SB) No. 5591, Revision 7, dated August 25, 1992.

Note: Additional information regarding weld repair requirements for the diffuser case rear rail is contained in PW JT9D Engine Manual, Part Number 686028, dated September 1, 1993.

(c) For those diffuser cases that have been inspected in accordance with PW ASB No. 6076, Revision 1, dated August 20, 1992, accomplish the following:

(1) For diffuser cases that have weld repairs in the rear rail along the shell wall at Boss 6 of axial length greater than or equal to 1.5 inches, remove from service and replace with a serviceable part prior to further flight.

(2) For diffuser cases that have weld repairs in the rear rail along the shell wall at Boss 6 of axial length less than 1.5 inches, initially inspect the diffuser case for cracks in accordance with the intervals and requirements described in paragraphs (d), (f), (g), (i), (j), (k), or (l) of this AD, as applicable.

(3) For diffuser cases that have no weld repairs in the rear rail along the shell wall at Boss 6, initially inspect the diffuser case for cracks in accordance with the intervals and requirements described in paragraphs (e), (g), (h), (i), (j), (k), or (l) of this AD, as applicable.

(d) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, that contained rear rails with no cracks at any boss location at the last ECI, and have a weld repair in the rear rail along the shell wall at Boss 6, perform an initial ECI of the diffuser case rear rail for cracks in accordance with the new criteria and improved technique defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992, as follows:

(1) For diffuser cases with greater than 275 cycles in service (CIS) since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, on the effective date of this AD, perform an ECI in accordance with the new criteria and improved technique defined in the Accomplishment Instructions PW SB No. 5591, Revision 7, dated August 25, 1992, prior to accumulating 500 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, or prior to accumulating 75 CIS after the effective date of this AD, whichever occurs first.

(2) For diffuser cases with less than or equal to 275 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, on the effective date of this AD, perform an ECI in accordance with the new criteria and improved technique defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992, prior to accumulating 350 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986.

(e) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, that contained rear rails with no cracks at any boss location at the last ECI, and have no weld repairs in the rear rail along the shell wall at Boss 6, perform an ECI of the diffuser case rear rail for cracks in accordance with the new criteria and improved technique defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992, prior to accumulating 500 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986.

(f) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, that contained rear rails with "A" cracks at Boss 6 at the last ECI, and have a weld repair in the rear rail along the shell wall at Boss 6, perform an ECI of the diffuser case rear rail for cracks in accordance with the new criteria and improved technique defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992, prior to accumulating 300 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, or prior to accumulating 60 CIS after the effective date of this AD, whichever occurs first.

(g) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, that contained rear rails with "A" cracks at any boss location other than at Boss 6 at the last ECI, with or without weld repairs in the rear rail along the shell wall at Boss 6, perform an ECI of the diffuser case rear rail for cracks in accordance with the new criteria and improved technique defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992, prior to accumulating 300 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 16, 1986.

(h) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, that contained rear rails with "A" cracks at Boss 6 at last ECI, and have no weld repairs at Boss 6, perform an ECI of the diffuser case rear rail for cracks in accordance with the new criteria and improved technique defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992, prior to accumulating 300 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986.

(i) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, and contained rear rails with "B" cracks at Boss 6 at last ECI, with or without weld repairs in the rear rail along the shell wall at Boss 6, remove from service and replace with a serviceable part prior to accumulating 5 CIS after the effective date of this AD.

(j) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, and contained rear rails with "B" cracks at any boss location other than Boss 6 at last ECI, with or without weld repairs in the rear rail

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along the shell wall at Boss 6, perform an ECI of the diffuser case rear rail for cracks in accordance with the new criteria and improved technique defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992, prior to accumulating 75 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986.

(k) For those diffuser cases that have been inspected in accordance PW SB No. 5591, Revision 4, dated March 6, 1986, and contained rear rails with "C" cracks at Boss 6 at last ECI, with or without weld repairs in the rear rail along the shell wall at Boss 6, remove from service and replace with a serviceable part prior to further flight.

(l) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, and contain rear rails with "C" cracks at any boss location other than Boss 6 at last ECI, with or without weld repairs in the rear rail along the shell wall at Boss 6, remove from service and replace with a serviceable part as follows:

(1) For shell wall cracks of greater than or equal to 2 inches, remove from service and replace with a serviceable part prior to further flight.

(2) For shell wall cracks of less than 2 inches, remove from service and replace with a serviceable part within 5 CIS after the effective date of this AD.

(m) Thereafter, perform repetitive ECI of the diffuser case rear rail for cracks in accordance with the new criteria, improved technique, intervals, requirements, and removal from service criteria defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992.

(n) For those diffuser cases that have been weld repaired at any boss location, at the next K flange separation of the diffuser case after the effective date of this AD, perform a one-time x-ray inspection of the diffuser case rear rail and sides of all bosses for weld quality in accordance with PW SB No. 6088, dated August 5, 1992, prior to installation of the diffuser case. Remove any weld defects within the inspection zone in accordance with PW SB No. 6088, dated August 5, 1992, prior to installation of the diffuser case.

(o) For those diffuser cases with rear rails that have been weld repaired at any boss location, incorporate the modifications described in PW SB No. 5805, Revision 6, dated September 15, 1993, at the next removal of the diffuser case for repair after the effective date of this AD.

(p) Installation of an improved diffuser case in accordance with PW SB No. 6105, Revision 2, dated May 14, 1993, constitutes terminating action to the inspections and modifications required by this AD.

(q) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(r) Except for diffuser cases that have cracks that require removal prior to further flight, special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. For diffuser cases that have cracks that require removal prior to further flight, on aircraft that are eligible for an engine-inoperative ferry, special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished with one engine inoperative.

(s) The inspections and modifications shall be done in accordance with the following PW service bulletins:

Document No.	Pages	Revision	Date
SB No. 5591	1–3	7	Aug. 25, 1992.
	4–9	6	Aug. 14, 1992.
	10	7	Aug. 25, 1992.
	11–12	6	Aug. 14, 1992.
	13	7	Aug. 25, 1992.
	14–15	6	Aug. 14, 1992.
	16	7	Aug. 25, 1992.
	17–19	6	Aug. 14, 1992.
Total pages: 19			
SB No. 5805	1–4	6	Sept. 15, 1993.
	5	Original	Apr. 20, 1988.
	6–72	6	Sept. 15, 1993.
Total pages: 72			
ASB No. 6076	1–5	1	Aug. 20, 1992.
	6–19	Original	July 31, 1992.
Total pages: 19			
SB No. 6088	1–11	Original	Aug. 5, 1992.
Total pages: 11			
SB No. 6105	1	2	May 14, 1993.
	2–7	Original	Jan. 15, 1993.
	8	1	Apr. 14, 1993.
	9	2	May 14, 1993.
	10–15	Original	Jan. 15, 1993.
	16	2	May 14, 1993.
	17–18	Original	Jan. 15, 1993.
	19	2	May 14, 1993.
	20–46	Original	Jan. 15, 1993.
	47	1	Apr. 14, 1993.
	48	2	May 14, 1993.
	49–56	Original	Jan. 15, 1993.
Total pages: 56			

This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of October 18, 1993 (58 FR 51212, October 1, 1993). Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(t) This amendment becomes effective on October 17, 1994.

Issued in Burlington, Massachusetts, on September 22, 1994.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–24070 Filed 9–29–94; 8:45 am]

BILLING CODE 4910–3–P

Office of the Secretary

14 CFR Part 234

[Docket No. 48524; RIN 2137–AB94]

Amendments to the On-Time Disclosure Rule

AGENCY: Research and Special Programs Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule revises the on-time flight performance reporting requirements by: Eliminating the exclusion of flights delayed or canceled due to mechanical problems; adding the aircraft tail number, and wheels-off and wheels-on times for each flight reported; adding several definitions; clarifying the reporting requirements for a new flight; and deleting references to obsolete organizational offices.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Bernard Stankus or Jack Calloway, Office of Airline Statistics, DAI–10, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387 or 366–4383, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 4, 1992, the Research and Special Programs Administration ("RSPA") issued a Notice of Proposed Rulemaking ("NPRM") (57 FR 58755; December 11, 1992) seeking public comments on the proposal to improve the on-time flight performance reporting requirements in 14 CFR Part 234 *Airline Service Quality Performance Reports*. The Department proposed to eliminate the reporting exclusion for flights delayed or canceled due to mechanical problems; to add the aircraft tail number, and wheels-off and wheels-on time for each flight reported; to define "canceled flight," "discontinued flight," "diverted flight," and "extra-section flight"; to clarify the reporting requirement for a new flight; and, to delete references to obsolete offices.

Part 234 requires the largest U.S. air carriers to report their on-time departure and arrival performances for every domestic scheduled-passenger flight operated to or from a reportable airport, with the exception of flights that are delayed 15 minutes or more, or canceled, because of mechanical problems. A flight is considered on-time if the flight departs and arrives less than 15 minutes after its published scheduled times. The Department publishes separate listings for departure and arrival performances. The reporting system developed for the administration of these reporting requirements is called the On-Time Flight Performance System.

The U.S. carriers covered by the Part 234 requirements are those generating at least 1 percent of the U.S. domestic scheduled-passenger revenues on a yearly basis. Currently, there are ten carriers reporting the data. They are Alaska Airlines, Inc. (Alaska), America West Airlines, Inc. (America West), American Airlines, Inc. (American), Continental Air Lines, Inc. (Continental), Delta Air Lines, Inc. (Delta), Northwest Airlines, Inc. (Northwest), Southwest Airlines Co. (Southwest), Trans World Airlines, Inc. (TWA), United Air Lines, Inc. (United) and USAir, Inc. (USAir).

Reportable airports are those airports in the contiguous 48 states generating at least 1 percent of the domestic scheduled-passenger enplanements on an annual basis. There are 29 reportable airports in 1994. In practice, all reporting carriers are voluntarily submitting data for their entire domestic scheduled-passenger operations.

One of the main purposes of the rule is to create a market-based incentive for airlines to improve their service quality and schedule reliability for consumers. The public availability of comparative data on airline service quality creates this market-based carrier incentive.

The addition of wheels-off and wheels-on times, and the identification of aircraft by tail number, will enable the Federal Aviation Administration (FAA) to analyze air traffic operations and create system models for use in reducing enroute and ramp delays. Air traffic delays cost the public and the industry an estimated $8.5 billion in 1990, according to the FAA.

Public Comments

Comments on the NPRM were received from Alaska, American, Delta, Northwest, Southwest, the Air Transport Association of America (ATA), The Port Authority of New York and New Jersey (Port Authority), and America West which filed comments along with a motion for leave to file late comments.

The ATA is an airline trade association with 17 U.S. carrier members and two Canadian air carrier associate members. Of the ten carriers currently reporting on-time flight performance data, America West is the only non-ATA member. The ATA stated that Alaska, Northwest and Southwest did not join in ATA's comments to the NPRM.

The comments address safety, alternative data sources, the proprietary nature of aircraft tail number data, elimination of the rule in its entirety, the addition of new data items and definition changes. Each of these subjects is addressed under a separate caption.

Safety

Northwest, Southwest and America West opposed the elimination of the mechanical exclusion.

Northwest believes the existing rule balances the need for consumer information with safety, and gives carriers an incentive to engage in realistic scheduling. Northwest states it has placed a high priority on improving its on-time performance, and has developed a comprehensive system which includes employee training to assure flights are dispatched on time. However, Northwest also states that it has, and always will place safety ahead of on-time flight performance. Consequently, it has instructed its employees to ignore on-time flight performance when safety is an issue. Northwest believes the proposed change will make on-time flight performance an issue that employees may wrongly consider when making decisions that have major safety implications. Northwest states it does not want its employees to feel pressure to choose between safety and on-time flight performance. Northwest believes the current rule is an unqualified success, and should not be amended to include mechanical delays and mechanical cancellations.

Southwest believes the policy of each air carrier is "safety first." However, Southwest feels a carrier cannot guarantee that an employee's commitment to safety will not be affected by a desire to see the carrier do well in its on-time flight performance. Southwest contends including mechanical delays in the reported flight records will intensify the conflict between safety and on-time performance.

Southwest states the Research and Special Programs Administration (RSPA) did not reveal any need for the proposed change in the treatment of mechanical delays, other than the

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Inspector General's (IG) audit report which found minor discrepancies in some nonreported flights. After the IG audit, RSPA issued an accounting and reporting directive on the subject of nonreported mechanical delays and mechanical cancellations. Southwest asserts a follow-up audit has not been conducted, and concludes that there is no evidence that the problem continues to exist.

Southwest further states that in a 1990 internal DOT memorandum, RSPA expressed concern with the IG's suggestion that mechanical delays and mechanical cancellations should be collected with a suppression code to enable DOT to continue excluding those flights from the monthly consumer report. RSPA commented that collecting data on mechanical delays and mechanical cancellations would duplicate FAA's collection and would be counter to DOT's current policy. RSPA also questioned whether the data on mechanical delays and mechanical cancellations could be protected under the Freedom of Information Act (5 U.S.C. 552) (FOIA).

In response to Southwest's contention that the NPRM did not reveal any need for eliminating the mechanical exclusion, other than the IG's recommendation, RSPA notes that the NPRM specifically stated, "The improved modifications in the reporting system would result in improved consumer information . . ." (57 FR 58756).

As asserted by Southwest, the Department did not conduct a follow-up audit on the exclusion of flights impacted by mechanical problems. Southwest, therefore, concludes there is no evidence as to carrier reporting compliance after RSPA issued its accounting and reporting directive to clarify the reporting instructions. However, the Department's decision to propose eliminating the mechanical exclusion rendered a follow-up unnecessary.

Southwest also states that RSPA even had concerns about collecting data on mechanical delays and mechanical cancellations, as the collection would duplicate an existing FAA collection and be counter to Departmental policy. While RSPA did express concerns about the suggestion to collect mechanical delays and mechanical cancellations and suppress that information in the data base, RSPA's concerns were with its ability to withhold the mechanical data from public release. RSPA believed it would be required to release the mechanical data under the FOIA even if a suppression code were used. Also, RSPA questioned whether the reporting of specific mechanical data to RSPA and the FAA was duplicate reporting, which would be counter to the Paperwork Reduction Act (44 U.S.C. Chapter 35). This concern has been addressed because carriers would not, under this rule, report specific mechanical data to the Department. All flights would be reported, with no distinction between flights impacted by mechanical delays and those flights impacted by other delays.

America West requests the present exclusions for mechanical delays and mechanical cancellations be retained. The carrier believes DOT would be ill-advised to make any changes in the existing regulations, unless DOT can assure the change will not cause "one employee at one airline on one occasion to send out an aircraft in order to avoid having a 'late' flight and that an incident or accident occurs."

The Department does not believe reporting mechanical delays and mechanical cancellations would cause an employee to compromise safety to improve an airline's on-time performance. Under the present system, an employee could easily improve its employer's on-time performance by miscategorizing a delayed flight as a mechanical delay. The IG's report did not find a pattern of this type of behavior at any of the reporting carriers. Rather, some flights were reported as delayed flights that should have been excluded as mechanical delays, while other flights that were called mechanical delays were actually delayed for other reasons. In no case was a carrier's monthly on-time performance ranking affected by misclassification of flights. Given the fact employees did not attempt to improve on-time performance by intentionally misclassifying flights, the Department does not believe employees will violate FAA regulations, risk their own jobs, and threaten passenger safety by dispatching unairworthy aircraft to improve on-time performance.

Moreover, the Department believes the elimination of the exclusion for mechanical delays and mechanical cancellations will provide better consumer information since aircraft dispatch reliability will now be a factor in a carrier's on-time performance. For example, two carriers each ground one of their aircraft for a day because of mechanical problems. Carrier A fulfills its schedule using a backup aircraft. All of Carrier A's flights are on-time except for the last flight operated with the backup aircraft. Carrier B does not have a backup aircraft available, so it cancels eight flights that were to be operated with the disabled aircraft. Carrier B fulfills the rest of its schedule in a timely manner. Under the mechanical exclusion provision, Carrier B would have the better on-time flight performance for that day even though it was without a backup aircraft and cancelled eight flights.

The present system, in some circumstances, penalizes the carrier with the more reliable service. Elimination of the mechanical exclusion would end this inequity. If the previous example were based on the new rule, the carrier meeting its schedule with backup equipment would have the better on-time rating. The availability of this additional information would result in a more accurate portrayal of a carrier's flight operation, thereby enabling the consumer to make a more informed flight-selection decision. Furthermore, the elimination of the exclusion should benefit the on-time rankings of carriers with more effective preventive maintenance programs because such carriers would experience fewer mechanical delays and mechanical cancellations.

The Department intends for the airlines to continue to put safety first, and to train their employees accordingly. As Northwest stated, it too always places safety ahead of on-time performance and instructs its employees to do the same when there is a conflict between timeliness and safety. The Department is confident all carriers operate in the same manner as Northwest. The change in the reporting requirements in 14 CFR Part 234 does not affect the requirement under 14 CFR §§ 121.703 and 121.705 that carriers report equipment malfunctions to the FAA. It is important to remember the Department is not establishing a required level of performance that each carrier must meet. Rather, the Department merely discloses to the public the carriers' on-time performance by month. The public will be better informed when each carrier reports its complete schedule.

ATA, American and Delta filed in support of the proposed amendment. They contend the elimination of the exclusion would not compromise safety.

ATA does not believe the elimination of the exclusion will adversely affect reporting air carriers or the travelling public. The inclusion of mechanical-delay and mechanical-cancellation information will give those interested in air carrier flight performance a better picture of flight delay and cancellation activity. The safety of passengers and crew is the most important responsibility of air carriers. ATA states that carriers devote enormous resources and attention to fulfilling that responsibility. ATA does not believe the elimination of the mechanical-delay and mechanical-cancellation exclusion will induce ATA members to dispatch aircraft that are unairworthy, or have any other adverse effect upon aviation safety.

American believes that carriers would not risk safety for competitive reasons. Reporting all flights would "provide consumers with a more accurate picture of a carrier's overall on-time record, which is the reason for the rule in the first place."

Delta states that it has incurred considerable unnecessary expense to exclude the mechanical delays and mechanical cancellations, and argues that their inclusion will not have a negative effect on the safety of airline operations. Moreover, the existing rule "has the effect of punishing carriers with better dispatch reliability records relative to their competitors."

The Port Authority also believes safety would not be compromised by the inclusion of maintenance-related delays; and, the proposed changes would provide consumers with more useful information to make informed decisions.

Alternative Data Sources—Wheels-Off/On Times

While not objecting to the reporting of wheels-off and wheels-on data, ATA does not believe airlines should be required to submit data that the agency itself could compile.

Delta believes the wheels-off, wheels-on and tail number data could provide the FAA with valuable information for improving the air traffic control system. However, Delta also believes carriers are already providing much of this information to the FAA, and questions whether reporting the same data in a different format is cost justified.

The Port Authority believes the additional data items will significantly benefit the study and reduction of air traffic delays. By measuring wheels-off/on times against gate departure/arrival times, an airport operator can better assess the efficiency of its airfield layout and take action to improve traffic flow and reduce ground delays, which the authority estimates account for 70 percent of the total aircraft delay time at its airports.

Alaska believes carrier submission of wheels-off and wheels-on time data is unnecessary and unjustified. The proposed elements should be based on DOT's on-time flight performance needs rather than on FAA's air traffic control needs.

By collecting wheels-off and wheels-on times and tail numbers, the FAA will be able to use the on-time flight performance data base to track flight delays. It is cost efficient to add these data items to an existing data base rather than to create a new one.

The Department agrees with Alaska that wheels-off and wheels-on times are not needed for consumer information purposes, although consumers would benefit directly from reduced aircraft delays.

There is an existing company that is a potential data source for aircraft tail numbers, and wheels-off and wheels-on times. Through its tracking system, the company captures these data elements for all scheduled domestic flights for six of the ten reporting air carriers.

The Department would accept carrier data through any outside company, if the proper arrangements can be made for data transmittal. A carrier must give its permission to the outside company to provide the data to the government without cost to the government.

Proprietary Data—Aircraft Tail Number

The collection of tail number data will benefit the FAA directly, by giving the FAA the necessary information to track aircraft throughout the air traffic system. This tracking will enable the FAA to reduce aircraft delays, thereby benefiting the consumer.

ATA opposes collecting aircraft tail number information because it believes: (1) The information is proprietary and very sensitive; (2) there is an appreciable cost burden to the carrier, especially to one carrier that tracks its aircraft by nose numbers rather than tail numbers; and (3) consumers would not derive any benefits from the reporting of tail numbers.

ATA believes that the availability of tail-number data would enable a person to determine the way a carrier deploys its aircraft throughout its route system. Thus, the reporting would reveal basic management decisionmaking. ATA argues that such fundamental business decisions should not be required to be disclosed in monthly reports to the government.

The claim that data are proprietary in nature does not preclude the Department from collecting the data. FOIA provides safeguards from the public disclosure of proprietary information. Moreover, the Department has no plans for routine public release of tail-number data. A carrier objecting to public disclosure of tail-number data may file a motion under the Department's regulation 14 CFR § 302.39 *Objections to public disclosure of information*. Such a motion would be reviewed under the requirements of FOIA.

The adoption of the tail number requirement would not result in an "appreciable" cost to the carriers, since most of them already track their aircraft movements by tail number. While ATA states one of its member carriers tracks its aircraft by nose number instead of tail number, no individual carrier has stated it would have difficulty in supplying data by tail number. A carrier could easily program a bridge for converting its nose number to a tail number for Part 234 reporting purposes. If this is not feasible, the carrier may contact the Office of Airline Statistics (OAS) to make other arrangements for tracking aircraft through the carrier's system. Any air carrier may request a waiver under 14 CFR § 234.12 from the on-time flight performance reporting provisions.

Eliminate On-Time Flight Performance Reporting

Alaska stated the Department should initiate a rulemaking to see whether the existing on-time performance requirements should be eliminated, rather than imposing additional reporting requirements. Alaska believes the airline industry's condition is far too dire to permit the continuation of a reporting regulation which Alaska argues has no appreciable influence on consumer choice or industry scheduling conduct. Alaska does not adjust its schedules based on on-time performance ratings. Its scheduling practices are tied to its internal schedule monitoring system that uses departure times, in contrast to the Department's arrival-based reporting requirement.

Alaska believes that collection of additional data—mechanical delays and mechanical cancellations, wheels-off and wheels-on times, and aircraft tail numbers—is unnecessary and unjustified until the current reporting requirements are shown to have improved carrier scheduling conduct.

The Department disagrees with Alaska's position that carrier on-time performance is unaffected by the reporting requirements. In its answer to this rulemaking, Northwest stated it has made changes to its schedule to improve on-time performance. On May 17, 1993, Delta implemented a system-wide communication program to improve its on-time performance. Given the industry's improvement in on-time flight performance since the reporting requirement was instituted in 1987, the Department believes most carriers have made similar changes. Before the reporting regulations were in effect, a Department investigation into

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scheduling practices of selected air carriers at four major airports disclosed that 25 to 60 percent of those carriers' scheduled flights were more than 15 minutes late (52 FR 34056; September 9, 1987). Today, more than 80 percent of the reporting carriers' flights are on time. On-time flight disclosure helps to eliminate deceptive scheduling practices by carriers, to the benefit of consumers.

Alaska believes departure times, rather than arrival times, are a better indicator of a carrier's reliability. The Department disagrees. Consumers are more interested in arrival times, because they have meetings to attend or may have somebody meeting them at the destination airport. Consumers also consider elapsed flight time when selecting an air carrier. If arrival times were ignored, schedule times could be shaved to make them more appealing to consumers. If the flights departed on time, the carrier would have a 100 percent on-time record even if every flight arrived a half-hour late. Such information would be very deceptive to the consumer.

New Data

American suggested the Department collect aircraft-type data along with the other proposed data elements, as a means of increasing the utility of the data.

The Department agrees with American that aircraft-type data are useful for tracking the number of passengers affected by aircraft delays. However, the Department can convert tail-number information into aircraft-type data using the aircraft inventory data base maintained from the carriers' Schedule B–43 *Inventory of Airframes and Aircraft Engines* and B–7 *Airframe and Aircraft Engine Acquisitions and Retirements*. These schedules provide aircraft type by tail number. Thus, DOT does not need air carriers to supply aircraft-type information with its Part 234 submission.

Definitions

Delta suggested minor changes or clarifications to some of the definitions in the proposed rule. Delta recommended RSPA clarify whether days mean calendar days or twenty-four hour periods. Delta also recommended RSPA revise "diverted flight" to read: "A diverted flight means a flight which is not operated from the originating point(s) to each of the destinations set forth in the carrier's published schedule."

The Department agrees with Delta's comments concerning the definitions, and has amended the definitions in the final rule to show "days" mean calendar days; and "diverted flight" means a flight operated from the scheduled origin point to a point other than the scheduled destination point in accordance with the carrier's published schedule. Also, since the ensuing flight segment from the nonscheduled destination airport is not a scheduled departure, that flight segment is not reported under Part 234.

Technical Directive

A Technical Directive was issued with the original rule in 1987 (Appendix I-Reporting Directive-Office of Aviation Information Management, RSPA, 52 FR 34073, September 9, 1987), which instructed carriers on the proper reporting format. Since then, the Technical Directive has been updated by other accounting and reporting directives, which were issued by OAS. RSPA will reissue the Technical Directive to the industry concurrently with the publication of this rule in the **Federal Register**. The reissued Technical Directive includes the changes made in this rulemaking and other effective revisions made in previous Accounting and Reporting Directives. The major revision in the Technical Directive is in the ADP area.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was subject to review by the Office of Management and Budget.

This rule is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The purpose of the rule is to improve consumer information on carrier on-time flight performance while, at the same time, reducing carrier costs for providing such information and providing the FAA with the necessary data to reduce flight delays. These objectives will be achieved by amending 14 CFR Part 234. The savings would be derived from the decrease in air traffic delays, resulting from FAA's more efficient management of air traffic. The FAA estimated a mere 1 percent reduction in delays would produce a cost savings of $85 million to the public and industry. According to a study conducted by FAA's Information Systems Branch, the total cost of air traffic delays for calendar year 1990 was $8.5 billion. More recently, on May 27, 1993, in testimony before the National Commission to Ensure a Strong Competitive Airline Industry, Mr. Joseph M. Del Balzo, the FAA's Acting Administrator, stated the ATA estimates that air traffic delays impose annual costs of $8 billion on the nation's airlines and air travelers.

The industry-wide cost for adding the three data items at issue would be a one-time programming and testing cost of approximately $34,000, ten carriers at $3,400 per carrier. Once the programming is in place, the annual cost to the carriers would be approximately $1,000 per carrier. The economic benefits to the industry, as well as to the consumer, far outweigh the cost of supplying the data. Eliminating the exclusion of flights that are delayed by mechanical problems in the carriers' on-time performance reports should result in a net savings to the air carriers. Delta stated that the mechanical exclusion has caused it to incur unnecessary expenses. While the elimination of the mechanical exclusion will require carriers to report more data to DOT, the carriers will not be required to identify the cause of the delays and to filter out those flights delayed by mechanical problems. The end result will be better consumer information and a cost savings to the reporting air carriers. The NPRM estimated the elimination of the mechanical exclusion should save the airline industry at least $154,000. Although the Department encouraged carriers to comment on this estimate, Delta was the only carrier that did; however, Delta did not quantify costs. A regulatory evaluation has been prepared and placed in the rulemaking docket. In the notice of proposed rulemaking, the Department estimated there was a potential annual savings to the airline industry and to the general public of $85 million.

This rule is consistent with the objectives of the executive order because the rule creates market based incentives for carriers to improve their on-time flight performance by providing consumers with superior information with which to make informed choices.

The amendments to 14 CFR Part 234 enable the Department to readily verify that the carriers are in compliance with the reporting requirements. The Department will be able to match a carrier's reported flights with the carrier's scheduled flights as listed in the *Official Airline Guide*. Previously, such a matching was not possible, because carriers did not report qualifying mechanical delays and mechanical cancellations.

Title 14 CFR Part 234 does not specify an on-time flight performance standard which carriers must meet. Rather, the carriers' reports provide consumers with information on carrier performance, which the consumer may use in carrier selection.

On-time flight performance data are pertinent information for state or local airport operators. The Port Authority filed in support of the amendments to 14 CFR 234.

The amendments to 14 CFR Part 234 simplify carrier reporting by eliminating the special, and sometimes complicated, treatment of flights affected by mechanical delays.

The three new data items were added at the request of the FAA, who will now be able to use the existing data base as a more complete source of information for airport and enroute delay studies. This action negates the need for the FAA to create a data base of its own.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism") and DOT has determined the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

I certify this final rule will not have a significant economic impact on a substantial number of small entities. The amendments will affect only large certificated U.S. air carriers accounting for at least 1 percent of U.S. domestic scheduled passenger revenues (over $450 million annually for the 12 months ended March 31, 1993). The Department's economic regulations define "large certificated air carrier" to include U.S. air carriers holding a certificate issued under section 401 of the Federal Aviation Act of 1958, as amended, that operate aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds. Consequently, small carriers are not affected by this final rule.

Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this rule were sent at the NPRM stage to the Office of Management and Budget in accordance with 44 U.S.C. Chapter 35 under OMB NO: 2138–0041. The final rule adopts those requirements. OMB has approved 14 CFR Part 234 through July 31, 1995. ADMINISTRATION: Research and Special Programs Administration; TITLE: Airline Service Quality Performance Reports; NEED FOR INFORMATION: Consumer Information and Flight Data for Air Traffic Control; PROPOSED USE OF INFORMATION: Consumer Publications and Modeling for Studying and Reducing Air Traffic Delays; FREQUENCY: Monthly; BURDEN ESTIMATE: 1,780; AVERAGE BURDEN HOURS PER RESPONDENT 178. For further information contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590–0001, (202) 366–4735 or Transportation Desk Officer, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503.

Regulotion Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number 2137–AB94 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 14 CFR Part 234

Advertising, Air carriers, Consumer protection, Reporting requirements, Travel agents, Mishandled baggage reports.

Final Rule

Accordingly, RSPA amends 14 CFR Part 234 Airline *Service Quality Performance Reports* as follows:

PART 234—AIRLINE SERVICE QUALITY PERFORMANCE REPORTS—[AMENDED]

1. The authority for Part 234 is revised to read as follows:

Authority: 49 U.S.C. 40101, 40114, 41702, 41708 and 41712; 5 U.S.C. 553(e) and 14 CFR 302.38.

2. Section 234.2 Definitions is amended by revising the definitions of *reportable flight* and *reporting carrier*; removing the definitions of *mechanical delay* and *mechanical cancellation*; and adding new definitions in alphabetical order as follows:

§ 234.2 Definitions.

For the purpose of this part: *Cancelled flight* means a flight operation that was not operated, but was listed in a carrier's computer reservation system within seven calendar days of the scheduled departure.

Discontinued flight means a flight dropped from a carrier's computer reservation system more than seven calendar days before its scheduled departure.

Diverted Flight means a flight which is operated from the scheduled origin point to a point other than the scheduled destination point in the carrier's published schedule. For example, a carrier has a published schedule for a flight from A to B to C. If the carrier were to actually fly an A to C operation, the A to B segment is a diverted flight, and the B to C segment is a cancelled flight.

Extra-section flight means a flight conducted as an integral part of scheduled passenger service, that has not been provided for in published schedules and is required for transportation of traffic that cannot be accommodated on the regularly scheduled flight.

* * * * *

Reportable flight means any nonstop flight, including a mechanically delayed flight, to or from any airport within the contiguous 48 states that accounts for at least 1 percent of domestic scheduled-passenger enplanements in the previous calendar year, as reported to the Department pursuant to Part 241 of this title. Qualifying airports will be specified periodically in accounting and reporting directives issued by the Office of Airline Statistics.

Reporting carrier means an air carrier certificated under section 401 of the Federal Aviation Act of 1958 that accounted for at least 1 percent of domestic scheduled-passenger revenues in the 12 months ending March 31 of each year, as reported to the Department pursuant to Part 241 of this title. Reporting carriers will be identified periodically in accounting and reporting directives issued by the Office of Airline Statistics.

Wet-leased flight means a flight operated with a leased aircraft and crew.

3. Section 234.4 is amended by revising paragraphs (a) and (b), redesignating paragraphs (c) and (d) as (e) and (f), respectively, and adding new paragraphs (c) and (d) to read as follows:

§ 234.4 Reporting of on-time performance.

(a) Each reporting carrier shall file RSPA Form 234 "On-Time Flight Performance Report" with the Office of Airline Statistics on a monthly basis, setting forth the information for each of its reportable flights held out in the *Official Airline Guide* (OAG), in the computer reservations systems (CRS), or in other schedule publications. The reportable flights include, but are not limited to, cancelled flights, mechanically cancelled flights, diverted flights, new flights and wet-leased flights. The report shall be made in the form and manner set forth in accounting and reporting directives issued by the Director, Office of Airline Statistics, and shall contain the following information:

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(1) Carrier and flight number.
(2) Aircraft tail number.
(3) Origin and Destination airport codes.
(4) Published OAG departure and arrival times for each scheduled operation of the flight.
(5) CRS scheduled arrival and departure time for each scheduled operation of the flight.
(6) Actual departure and arrival time for each operation of the flight.
(7) Difference in minutes between OAG and CRS scheduled arrival times.
(8) Difference in minutes between OAG and CRS scheduled departure times.
(9) Actual wheels-off and wheels-on times for each operation of the flight.
(10) Date and day of week of scheduled flight operation.
(11) Scheduled elapsed time, according to CRS schedule.
(12) Actual elapsed time.
(13) Amount of departure delay, if any.
(14) Amount of arrival delay, if any.
(15) Amount of elapsed time difference, if any.

(b) When reporting the information specified in paragraph (a) of this section for a diverted flight, a reporting carrier shall use the *original* scheduled flight number and the *original* scheduled origin and destination airport codes.

(c) A reporting carrier shall report the information specified in paragraph (a) of this section for a new flight beginning with the first day of the new scheduled operation.

(d) A reporting carrier shall not report the information specified in paragraph (a) of this section for any discontinued or extra-section flight.

* * * * *

4. Section 234.5 is be revised to read as follows:

§ 234.5 Form of reports.

Except where otherwise noted, all reports required by this part shall be filed within 15 days of the end of the month for which data are reported. The reports must be submitted to the Office of Airline Statistics on ADP computer tape in the format specified in accounting and reporting directives issued by the Director of that office.

5. Section 234.6 is revised to read as follows:

§ 234.6 Baggage-handling statistics.

Each reporting carrier shall report monthly to the Department on a domestic system basis, excluding charter flights, the total number of passengers enplaned systemwide, and the total number of mishandled-baggage reports filed with the carrier. The information shall be submitted to the Department within 15 days of the end of the month to which the information applies and must be submitted with the transmittal letter accompanying the data for on-time performance in the form and manner set forth in accounting and reporting directives issued by the Director, Office of Airline Statistics.

6. Section 234.8 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 234.8 Calculation of on-time performance codes.

(a) Each reporting carrier shall calculate an on-time performance code in accordance with this section and as provided in more detail in accounting and reporting directives issued by the Director, Office Airline Statistics. The calculations shall be performed for each reportable flight, except those scheduled to operate three times or less during a month. In addition, each reporting carrier shall assign an on-time performance code to each of its single plane one-stop or multi-stop flights, or portion thereof, that the carrier holds out to the public through a CRS, the last segment of which is a reportable flight.

(b) The on-time performance code shall be calculated as follows:

(1) Based on reportable flight data provided to the Department, calculate the percentage of on-time arrivals of each nonstop flight. Calculations shall not include discontinued or extra-section flights for which data are not reported to the Department.

* * * * *

7. Section 234.12 is revised to read as follows:

§ 234.12 Waivers.

Any carrier may request a waiver from the reporting requirements of this part. Such a request, at the discretion of the Administrator, Research and Special Programs Administration, may be granted for good cause shown. The requesting party shall state the basis for such a waiver.

Issued in Washington, D.C. on September 23, 1994.

D.K. Sharma,

Administrator, Research and Special Programs Administration.

[FR Doc. 94-24169 Filed 9-29-94; 8:45 am]

BILLING CODE 6901-05-P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 778 and 799

[Docket No. 940975-4275]

Missile Technology Control Regime (MTCR); Revisions to the CCL

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) by revising certain entries of the Commerce Control List (CCL) to conform with changes to the Missile Technology Control Regime (MTCR) Equipment and Technology Annex. The MTCR is a multilateral forum; participating countries agree to control items contained on the Annex in order to limit proliferation of missiles capable of delivering weapons of mass destruction. Most of these revisions are based on technical consultations with MCTR countries held in September 1993, in London, and in December 1993, in Interlaken. Additionally, this rule makes other corrections and clarifications needed to make the CCL conform to the Annex. The revisions to the CCL made by this rule help to ensure that the items controlled by the United States in meeting its MTCR obligations are similar to those controlled by other MTCR participating countries.

EFFECTIVE DATE: This rule is effective September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Bruce Webb, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 482-3806.

SUPPLEMENTARY INFORMATION:

Background

This rule amends Part 778 to clarify missile technology licensing policy. Many of the changes to the Commerce Control List (CCL) made by this rule, directly reflecting changes in the MTCR Annex, consist of technical refinements that more precisely identify items controlled for missile technology reasons. The technical refinements in Category 1 either change certain paragraphs or add clarifying notes.

In other cases, the CCL has been brought into line where it had diverged from the Annex. In Category 3, 3A01.a.1.a replaces 3A01.a.1, and resulting changes occur in 3D21 and 3E01. As telemetering and telecontrol equipment (5A20) are the only items in Category 5 on the Annex, the missile technology designation was removed from the "Reason for Control" paragraph of any other Category 5 entries. The GLV value limit for 5A20 is now $0. Since 7A27 now specifically controls *airborne* passive sensors, the GLV limit for that entry becomes $0. "Specially designed components" have been added to some entries to conform to the Annex. Finally, typographical errors in the definitions supplement have been corrected.

Although the Export Administration Act of 1979 (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and determined that, to the extent permitted by law, the provisions of the EAA, as amended, shall be carried out under Executive Order 12924 of August 19, 1994, so as to continue in full force and effect and amend, as necessary, the export control system heretofore maintained by the Export Administration Regulations issued under the EAA.

Saving Clause

Shipments of items removed from general license authorizations as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before September 30, 1994 may be exported under the previous general license provisions up to and including October 28, 1994. Any such items not actually exported before midnight October 28, 1994, require a validated export license in accordance with this regulation.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E. O. 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005, 0694-0007, 0694-0010 and 0694-0023.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Hillary Hess, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements.

15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 778 and 799 of the Export Administration Regulations (15 CFR Parts 730-799) are amended as follows:

1. The authority citation for 15 CFR Part 778 continues to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; Pub. L. 102-484, 106 Stat. 2575 (22 U.S.C. 6004); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993); E.O. 12918 of May 26, 1994 (59 FR 28205, May 31, 1994); and E.O. 12924 of August 19, 1994 (59 FP 43437, August 23, 1994).

PART 778—[AMENDED]

3. Section 778.7 is amended by revising paragraphs (a)(1) and (d)(1) to read as follows:

§ 778.7 Equipment and related technical data used in the design, development, production or use of missiles.

* * * * *

(a) * * *

(1) *Items subject to missile delivery systems controls.* The items that require a validated license because they are subject to foreign policy controls on missile delivery systems are contained within ECCNs designated by "MT" in the Reason for Control paragraph. Exporters should consult that paragraph in each ECCN to determine the specific item subject to these foreign policy controls.

* * * * *

(d) *Licensing policy.* (1) Applications to export the items will be considered on a case-by-case basis to determine whether the export would make a material contribution to the proliferation of missiles. Applications for exports of items controlled for MT by CCL category 7A or by ECCN 9A21 will be considered more favorably if such exports are determined to be destined to a manned aircraft, satellite, land vehicle or marine vessel, in quantities appropriate for replacement parts for such applications. When an export is deemed to make a material contribution to the proliferation of missiles, the license will be denied.

* * * * *

4. In Supplement No. 1 to section 799.1 (the Commerce Control List), the following entries are revised as set forth below:

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A. In Category 1, Materials: ECCNs 1A22B, 1A27B, 1B01A, 1B21B, 1C27B, 1C31B and 1D02A;

B. In Category 2, Materials Processing: ECCN 2B50B;

C. In Category 3, Electronics: ECCNs 3A22B, 3D21B and 3E01A;

D. In Category 4, Computers: 4A21B;

E. In Category 5, Telecommunications and "Information Security": ECCNs 5D01A, 5D02A, 5E01A and 5A20B;

F. In Category 6, Sensors: ECCN 6A29B;

G. In Category 7, Avionics and Navigation: ECCNs 7A04A, 7A23B, 7A27B, and 7D24B; and

H. In Category 9, Propulsion Systems and Transport Equipment: ECCNs 9A21B, 9B26B and 9B27B.

The following entries are amended by revising the requirements section, as set forth below:

A. In Category 1, Materials, ECCN 1A02A;

B. In Category 3, Electronics: ECCN 3A01A;

C. In Category 5, Telecommunications and "Information Security": ECCNs 5A01A and 5D03A; and

D. In Category 7, Avionics and Navigation: ECCNs 7A01A, 7A03A, 7A21B, and 7A26B.

The following entries are amended by revising the heading and the requirements section, as set forth below:

In Category 7, Avionics and Navigation: ECCNs 7A06A, 7A24B, 7B03A and 7B22B.

The revisions and amendments read as follows:

1A02A "Composite" structures or laminates.

Requirements

Validated License Required: QSTVWYZ
Unit: Kilograms
Reason for Control: NS, MT (see **Note**)
GLV: $1,500
GCT: Yes, except MT (see **Note**)
GFW: No

Note: MT controls apply to composite structures that are specially designed for "missile" applications (including specially designed subsystems and components).

* * * * *

1A22B Other "composite" structures or laminates usable in "missile" systems.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: MT
GLV: $1,500
GCT: No
GFW: No

List of Items Controlled

a. Composite structures, laminates and manufactures thereof, including resin impregnated fiber prepregs and metal coated fiber preforms, made either with organic matrix or metal matrix utilizing fibrous or filamentary reinforcements having a specific tensile strength greater than 7.62×10^4 m (3 x 10^6 inches) and a specific modulus greater than 3.18×10^6 m (1.25×10^8 inches);

Note: The only resin impregnated fiber prepregs specified in 1A22.a are those using resins with a glass transition temperature (T_g), after cure, exceeding 145°C as determined by ASTM D4065 or national equivalents.

b. Resaturated pyrolized (i.e., carbon-carbon) materials designed for rocket systems.

1A27B Maraging steels (steels generally characterized by high nickel, very low carbon content and the use of substitutional elements or precipitates to produce age-hardening), other than those controlled by 1A47 below, having an Ultimate Tensile Strength of 1.5×10^9 N/m² (Pa) or greater measured at 20° C, in the form of sheet, plate, or tubing with a wall or plate thickness equal to or less than 5.0 mm (0.2 inch).

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: MT
GLV: $0
GCT: No
GFW: No

1B01A Equipment for the production of fibers, prepregs, preforms or composites controlled by 1A02 or 1C10, as follows, and specially designed components and accessories therefor:

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: NS, MT, NP (see **Notes**)
GLV: $0 for 1B01.a; $5,000 for all other items
GCT: Yes, except MT and NP (see **Notes**)
GFW: No
GNSG: No

Notes: 1. MT controls apply to all items described in this entry, except those in 1B01.d.4.

2. NP controls apply to the following items:

a. Filament winding machines described in 1B01.a that are capable of winding cylindrical rotors having a diameter between 75 mm (3 in.) and 400 mm (16 in.) and lengths of 600 mm (24 in.) or greater; and

b. Coordinating and programming controls and precision mandrels for these filament winding machines.

List of Items Controlled

a. Filament winding machines of which the motions for positioning, wrapping and winding fibers can be coordinated and programmed in three or more axes, specially designed for the manufacture of "composite" structures or laminates from "fibrous or filamentary materials";

b. Tape-laying or tow-placement machines of which the motions for positioning and laying tape, tows or sheets can be coordinated and programmed in two or more axes, specially designed for the manufacture of "composite" airframe or "missile" structures;

c. Multi-directional, multidimensional weaving machines or interlacing machines, including adapters and modification kits, for weaving, interlacing or braiding fibers to manufacture "composite" structures, *except* textile machinery not modified for the above end-uses;

d. Equipment specially designed or adapted for the production of "fibrous or filamentary materials", as follows:

d.1. Equipment for converting polymeric fibers (such as polyacrylonitrile, rayon, pitch or polycarbosilane) into carbon fibers or silicon carbide fibers, including special equipment to strain the fiber during heating;

d.2. Equipment for the chemical vapor deposition of elements or compounds on heated filamentary substrates to manufacture silicon carbide fibers;

d.3. Equipment for the wet-spinning of refractory ceramics (such as aluminum oxide);

d.4. Equipment for converting aluminum containing precursor fibers into alumina fibers by heat treatment;

e. Equipment for producing prepregs controlled by 1C10.e by the hot melt method;

f. Non-destructive inspection equipment capable of inspecting defects three dimensionally, using ultrasonic or X-ray tomography and specially designed for "composite" materials;

Related ECCNs: See 1B21B for MT controls on equipment, not controlled by 1B01A, for the production of fibers, prepregs, preforms, or composites. See 1B41B for NP controls on filament winding machines not controlled by 1B01A.

1B21B Other equipment for the production of fibers, prepregs, preforms or composites.

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: MT

GLV: $0
GCT: No
GFW: No

List of Items Controlled

Equipment for the production of structural composites usable in "missiles", as follows:

a. Equipment designed or modified for special fiber surface treatment or for producing prepregs and preforms, not controlled by 1B01.

b. Filament winding machines, not controlled by 1B01, of which the motions for positioning, wrapping and winding fibers can be coordinated and programmed in three or more axes, designed for the manufacture of "composite" structures or laminates from "fibrous or filamentary materials".

c. Tape-laying machines, not controlled by 1B01, of which the motions for positioning and laying tape or sheets can be coordinated and programmed in two or more axes, designed for the manufacture of "composite" airframe or "missile" structures.

d. Equipment designed or modified for the production of "fibrous or filamentary materials", not controlled by 1B01, as follows:

d.1. Equipment for converting polymeric fibers (such as polyacrylonitrile, rayon, or polycarbosilane) including special equipment to strain the fiber during heating;

d.2. Equipment for the chemical vapor deposition of elements or compounds on heated filament substrates; and

d.3. Equipment for the wet-spinning of refractory ceramics (such as aluminum oxide).

Note: Equipment covered by 1B21.a includes but is not limited to rollers, tension stretchers, coating equipment, cutting equipment, and clicker dies.

1C27B Other ceramic or graphite materials usable in "missile" systems.

Requirements

Validated License Required: QSTVWYZ
Unit: Kilograms
Reason for Control: MT
GLV: $5,000
GCT: No
GFW: No

List of Items Controlled

a. Fine grain recrystallized bulk graphites (with a bulk density of at least 1.72 g/cc measured at 15° C and having a particle size of 100×10^{-6} m (100 microns) or less), pyrolytic, or fibrous reinforced graphites usable for rocket nozzles and reentry vehicle nose tips.

b. Ceramic composite materials not controlled by 1C07 (dielectric constant less than 6 at frequencies from 100 Hz to 10,000 MHz) for use in missile radomes, and bulk machinable silicon-carbide reinforced unfired ceramic usable for nose tips.

1C31B Propellants, constituent chemicals, and polymeric substances for propellants.

Requirements

Validated License Required: QSTVWYZ
Unit: Kilograms
Reason for Control: MT
GLV: $0
GCT: No
GFW: No

List of Items Controlled

a. Propulsive substances:

a.1 Spherical aluminum powder, as follows:

a.1.a. Spherical aluminum powder with particles of uniform diameter less than 500×10^{-6} m (500 microns), but greater than 60×10^{-6} m (60 microns), and an aluminum content of 97 percent by weight or greater;

a.1.b. Spherical aluminum powder with particles of uniform diameter 60×10^{-6} m (60 microns) or less, and an aluminum content of 97 percent by weight or greater, but less than 99 percent;

a.2. Metal fuels containing beryllium, boron, magnesium, zirconium, or alloys of boron, magnesium, or zirconium, as follows:

a.2.a. Metal fuels in particle sizes less than 500×10^{-6} m (500 microns), but equal to or greater than 60×10^{-6} m (60 microns), whether spherical, atomized, spheroidal, flaked or ground, consisting of 97 percent by weight or more of beryllium, boron, magnesium, zirconium, and alloys of boron, magnesium, or zirconium;

a.2.b. Metal fuels in particle sizes less than 60×10^{-6} m (60 microns), whether spherical, atomized, spheroidal, flaked or ground, consisting of 97 percent by weight or more, but less than 99 percent, of beryllium, boron, magnesium, zirconium, and alloys of boron, magnesium, or zirconium;

a.3. Metal fuels in particle sizes less than 500×10^{-6} m (500 microns), whether spherical, atomized, spheroidal, flaked or ground, consisting of 97 percent by weight or more of misch metal, zinc, or alloys of beryllium or alloys of zinc;

a.4. Liquid oxidizers, as follows:

a.4.a. Dinitrogen trioxide;

a.4.b. Nitrogen dioxide/dinitrogen tetroxide;

a.4.c. Dinitrogen pentoxide.

b. Polymeric substances:

b.1. Carboxy-terminated polybutadiene (CTPB);

b.2. Commercial grade Hydroxy-terminated polybutadiene (HTPB);

Note: Military grade (i.e., Hydroxy-terminated polybutadiene (HTPB) with a hydroxyl functionality greater than or equal to 2.2 but less than or equal to 2.4, a hydroxyl value of less than 0.77 meq/g, and a viscosity at 30°C of less than 47 poise) is controlled by the Office of Defense Trade Controls, U.S. Department of State (see Category V of the USML (22 CFR part 121)).

b.3. Polybutadiene-acrylic acid (PBAA);

b.4. Polybutadiene-acrylic acid-acrylonitrile (PBAN).

c. Other propellant additives and agents:

c.1. Burning rate modifiers as follows: Butacene;

c.2. Nitrate esters and nitrato plasticizers as follows:

c.2.a. Triethylene glycol dinitrate (TEGDN);

c.2.b. Trimethylolethane trinitrate (TMETN);

c.2.c. Diethylene glycol dinitrate (DEGDN);

c.3. Stabilizers, as follows: 2-nitrodiphenylamine.

Note: The following materials are controlled by the U.S. Department of State, Office of Defense Trade Controls (DTC) (see Category V of the USML):

1. Spherical aluminum powder with particles of uniform diameter 60×10^{-6} m (60 microns) or less and an aluminum content of 99 percent or greater;

2. Metal fuels in particle sizes less than 60×10^{-6} m (60 microns), whether spherical, atomized, spheroidal, flaked or ground, manufactured from material consisting of 99 percent or more of the following:

a. Boron;

b. Magnesium;

c. Zirconium;

d. Alloys of boron, magnesium, or zirconium;

e. Beryllium; or

f. Iron powder with average particle size of 3×10^{-6} m (3 microns) or less produced by hydrogen reduction of iron oxide.

N.B.: The metals and alloys listed in paragraphs (1) and (2) of the above Note are controlled by DTC whether or not encapsulated in aluminum, beryllium, magnesium, or zirconium.

1D02A "Software" for the "development" of organic "matrix", metal "matrix" or carbon "matrix" laminates or "composites".

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: NS, MT
GTDR: No

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GTDU: No

Note: MT controls apply to "software" specially designed or modified for the "development" of "composites" controlled by 1A, 1B or 1C for Missile Technology reasons.

2B50B Spin-forming and flow-forming machines and precision rotor-forming mandrels, and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: Number; $ value for parts and accessories
Reason for Control: NP, MT (see Note)
GLV: $0
GCT: No
GFW: No
GNSG: Yes

Note: MT controls apply to items described by 2B50.a, except those that are not usable in the production of propulsion components and equipments (e.g., motor cases) for "missile" systems.

List of Items Controlled

a. Spin-forming and flow-forming machines, and specially designed components therefor, that:

a.1. According to the manufacturer's technical specifications, can be equipped with "numerical control" units or a computer control; *and*

a.2. Have two or more axes that can be coordinated simultaneously for "contouring control";

b. Precision rotor-forming mandrels designed to form cylindrical rotors of inside diameter between 75 mm (3 in.) and 400 mm (16 in.).

Note: The only spin-forming machines controlled by this ECCN 2B50B are those combining the functions of spin-forming and flow-forming.

3A01A Electronic devices and components.

Requirements

Validated License Required: QSTVWYZ
Unit: Number
Reason for Control: NS, MT, NP (see Notes)
GLV: $1,500: 3A01.c $3,000: 3A01.b.1 to b.3, 3A01.d to 3A01.f $5,000: 3A01.a, 3A01.b.4 to b.7
GCT: Yes, except 3A01.a.1.a. and 3A01.e.5 (see Notes)
GFW: Yes, except 3A01.a.1.a., 3A01.b.1 and b.3 to b.7, 3A01.c to f
GNSG: Yes, *except* Bulgaria, Romania, or Russia, for 3A01.e.5 only (see Notes)

Notes: 1. MT controls apply to 3A01.a.1.a.
2. NP controls apply to 3A01.e.5.

* * * * *

3A22B Accelerators capable of delivering electromagnetic radiation produced by "bremsstrahlung" from accelerated electrons of 2 MeV or greater and systems containing those accelerators, excluding that equipment specially designed for medical purposes.

Requirements

Validated License Required: QSTVWYZ
Unit: Number
Reason for Control: MT
GLV: $5,000
GCT: No
GFW: No

3D21B "Software" specially designed for the "development" or "production" of items controlled by 3A01.a.1.a.

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: MT
GTDR: No
GTDU: No

3E01A Technology according to the General Technology Note for the "development" or "production" of equipment or materials controlled by 3A01, 3A02, 3B01, 3C01, 3C02, 3C03, or 3C04.

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: NS and MT (see Notes)
GTDR: Yes, except 3A01.a.1.a. (see Notes)
GTDU: No

Notes: 1. MT controls apply to technology specially designed for the "development" or "production" of items described in 3A01.a.1.a.

2. 3E01 does not control technology for the "development" or "production" of:

a. Microwave transistors operating at frequencies below 31 GHz;

b. Integrated circuits controlled by 3A01.a.3 to a.11, having both of the following characteristics:

1. Using technology of one micrometer or more, *and*

2. Not incorporating multi-layer structures.

N.B.: This Note does not preclude the export of multilayer technology for devices incorporating a maximum of two metal layers and two polysilicon layers.

4A21B Analog computers, digital computers, or digital differential analyzers designed or modified for use in "missiles" not controlled by 4A01 and having either of the following characteristics: rated for continuous operation at temperatures from below −45° C to above +55° C; or designed as ruggedized or "radiation hardened".

Requirements

Validated License Required: QSTVWYZ
Unit: Number
Reason For Control: MT
GLV: $0
GCT: No
GFW: No

5A01A Any type of telecommunications equipment having any of the following characteristics, functions or features:

Requirements

Validated License Required: QSTVWYZ
Unit: Equipment in Number, Parts and Accessories in $ Value
Reason For Control: NS
GLV: $0
GCT: No
GFW: No

* * * * *

5D01A "Software" specially designed or modified for the "development", "production" or "use" of equipment or materials controlled by telecommunications entries 5A01, 5A02, 5A03, 5A04, 5A05, 5A06, 5B01, 5B02, or 5C01.

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason For Control: NS
GTDR: Yes
GTDU: No

5D02A "Software" specially designed or modified to support "technology" controlled by telecommunications entries 5E01 or 5E02.

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason For Control: NS
GTDR: Yes
GTDU: No

5D03A Specific "software" as described in this entry.

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason For Control: NS
GTDR: Yes
GTDU: No

* * * * *

5E01A Technology according to the General Technology Note for the "development", "production" or "use" (excluding operation) of equipment, systems, materials or "software" controlled by the telecommunications entries in 5A, 5B, 5C, or 5D.

Requirements

Validated License Required: QSTVWYZ
Reason For Control: NS
GTDR: Yes
GTDU: No

5A20B Telemetering and telecontrol equipment usable as launch support equipment for unmanned air vehicles or rocket systems.

Requirements

Validated License Required: QSTVWYZ
Unit: Equipment in Number
Reason For Control: MT
GLV: $0
GCT: No
GFW: No

6A29B Precision tracking systems.

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: MT
GLV: $5,000
GCT: No
GFW: No

List of Items Controlled

a. Tracking systems that use a code translator installed on the rocket or unmanned air vehicle in conjunction with either surface or airborne references or navigation satellite systems to provide real-time measurements of in-flight position and velocity;

b. Range instrumentation radars including associated optical/infrared trackers with the following capabilities:

b.1. Angular resolution better than 0.5 milliradians RMS;

b.2. A range of 30 km or greater, with a range resolution better than 10 meters RMS; and

b.3. Velocity resolution better than 3 meters per second.

7A01A Accelerometers designed for use in inertial navigation or guidance systems and having any of the following characteristics, and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: NS, MT (see Note)
GLV: $5,000
GCT: No
GFW: No

Note: MT controls do not apply to accelerometers that are specially designed and developed as MWD (Measurement While Drilling) Sensors for use in downhole well service applications.

* * * * *

7A03A Inertial navigation systems and inertial equipment for "aircraft", and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: NS, MT (see Note)
GLV: $5,000
GCT: No
GFW: No

Note: Inertial navigation systems and inertial equipment, and specially designed components therefor specifically designed, modified or configured for military use are controlled by the Office of Defense Trade Controls, U.S. Department of State (see the Munitions List, Category VIII).

* * * * *

7A04A Gyro-astro compasses, and other devices that derive position or orientation by means of automatically tracking celestial bodies or satellites, with an azimuth accuracy of equal to or less (better) than 5 seconds of arc; and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: MT
GLV: $5,000
GCT: No
GFW: No

Related ECCNs: See 7A24B for MT controls on gyro-astro compasses not controlled by 7A04A.

7A06A Airborne altimeters operating at frequencies other than 4.2 to 4.4 GHz inclusive, and specially designed components therefor, having either of the following characteristics:

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: NS, MT
GLV: $5,000
GCT: No
GFW: No

* * * * *

7A21B Accelerometers, designed for use in inertial navigation systems or in guidance systems of all types, having the characteristics of either 7A21.a or 7A21.b; and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: MT (see Note)
GLV: $5,000
GCT: No
GFW: No

Note: MT controls do not apply to accelerometers that are specially designed and developed as MWD (Measurement While Drilling) Sensors for use in downhole well service applications.

* * * * *

7A23B Inertial or other equipment using accelerometers or gyros described in 7A21B or 7A22B, and systems incorporating such equipment; and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: MT (see Note)
GLV: $5,000
GCT: No
GFW: No

Note: Inertial navigation systems and inertial equipment, and specially designed components therefor, specifically designed, modified or configured for military use are controlled by the Office of Defense Trade Controls, U.S. Department of State (see the Munitions List, Category VIII).

7A24B Other gyro-astro compasses and other devices, and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: MT
GLV: $5,000
GCT: No
GFW: No

* * * * *

7A26B Avionics equipment and components usable in "missile" systems.

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: MT
GLV: $5,000
GCT: No
GFW: No

* * * * *

7A27B Airborne passive sensors for determining bearing to specific electromagnetic sources (direction finding equipment) or terrain characteristics.

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: MT
GLV: $0
GCT: No
GFW: No

7B03A Equipment specially designed for the production of equipment controlled by 7A for national security reasons, and specially designed components therefor, including:

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: NS, MT
GLV: $3,000
GCT: No
GFW: No

* * * * *

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7B22B Reflectometers and specially designed test, calibration, and alignment equipment and "production equipment", and specially designed components therefor, for the production of items controlled by 7A and 7B for national security or missile technology reasons and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: MT
GLV: $3,000
GCT: No
GFW: No

* * * * *

7D24B Software "specially designed" for the "development," "production," or "use" of commodities controlled by 7A21B, 7A22B, 7A23B, 7A24B, 7A25B, 7A26B, 7A27B, 7B01A, 7B02A, 7B03A, and 7B22B for missile technology reasons.

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: MT
GTDR: No
GTDU: No

Note: Software for inertial navigation systems and inertial equipment, and specially designed components therefor, not certified for use on "civil aircraft" by civil aviation authorities of a COCOM country is controlled by the Office of Defense Trade Controls, U.S. Department of State (see the Munitions List, Category VIII).

9A21B Gas turbine aero engines not controlled by 9A01, uncertified or certified, having both a maximum thrust value greater than 1000N (achieved un-installed), excluding civil certified engines with a maximum thrust value greater than 8,890N (achieved un-installed), and specific fuel consumption of 0.13kg/N/hr or less (at sea level static and standard conditions).

Note: Engines designed or modified for "missiles" (except engines for non-military unmanned air vehicles [UAV's] or remotely piloted vehicles [RPV's]), regardless of thrust or specific fuel consumption, are controlled by the Office of Defense Trade Controls, U.S. Department of State.

Requirements

Validated License Required: QSTVWYZ
Unit: Number for engines, $ Value for parts and accessories.
Reason for Control: MT
GLV: $5,000
GCT: No
GFW: No

9B26B Other vibration test equipment, as follows:

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: MT
GLV: $3,000
GCT: No
GFW: No

List of Items Controlled

a. Vibration test systems and components therefor, as follows:

a.1. Vibration test systems employing feedback or closed loop techniques and incorporating a digital controller, capable of vibrating a system at 10 g RMS or more over the entire range 20 Hz to 2,000 Hz and imparting forces of 50 kN (11,250 lbs.), measured "bare table", or greater;

a.2. Digital controllers, combined with specially designed vibration test software, with a real-time bandwidth greater than 5 kHz and designed for use with vibration test systems described in 9B26.a.1;

a.3. Vibration thrusters (shaker units), with or without associated amplifiers, capable of imparting a force of 50 kN (11,250 lbs.), measured "bare table", or greater, and usable in vibration test systems described in 9B26.a.1;

a.4. Test piece support structures and electronic units designed to combine multiple shaker units into a complete shaker system capable of providing an effective combined force of 50 kN, measured "bare table", or greater, and usable in vibration test systems described in 9B26a.1.

Note: The term "digital control" refers to equipment, the functions of which are, partly or entirely, automatically controlled by stored and digitally coded electrical signals.

b. Environmental chambers and anechoic chambers

b.1. Environmental chambers and anechoic chambers capable of simulating the following flight conditions:

b.1.a. Altitude of 15,000 meters or greater; or

b.1.b. Temperature of at least minus 50 degrees C to plus 125 degrees C; and either

b.1.c. Vibration environments of 10 g RMS or greater between 20 Hz and 2,000 Hz imparting forces of 5 kN or greater, for environmental chambers; or

b.1.d. Acoustic environments at an overall sound pressure level of 140 dB or greater (referenced to 2×10^{-5} N per square meter) or with a rated power output of 4 kilowatts or greater, for anechoic chambers.

9B27B Test benches or stands that have the capacity to handle solid or liquid propellant rockets or rocket motors of more than 90 KN (20,000 lbs.) of thrust, or that are capable of simultaneously measuring the three axial thrust components.

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: MT
GLV: $5,000
GCT: No
GFW: No

5. In Supplement No. 3 to Section 799.1 (the Commerce Control List), the definition of "missiles" is amended by revising "30 kilometers" to read "300 kilometers."

6. In Supplement No. 3 to Section 799.1 (the Commerce Control List), the definition of "principle element" is revised to read as follows:

Supplement No. 3 to § 799.1

DEFINITIONS

* * * * *

Principal element (Cat 4)—An element is a "principal element" when its replacement value is more than 35% of the total value of the system of which it is an element. Element value is the price paid for the element by the manufacturer of the system, or by the system integrator. Total value is the normal international selling price to unrelated parties at the point of manufacture or consolidation of shipment.

* * * * *

Dated: September 27, 1994.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 94-24242 Filed 9-28-94; 11:07 am]

BILLING CODE 3510-DT-P

FEDERAL TRADE COMMISSION

16 CFR Part 230

Guides for Advertising Shell Homes

AGENCY: Federal Trade Commission.

ACTION: Elimination of Guides.

SUMMARY: The Commission's Guides for Advertising Shell Homes (the "Guides") address the marketing of certain factory-built homes that, on delivery, require further construction to be inhabitable. Due to lack of industry understanding of the term "shell homes" and other circumstances, many sellers of factory-built housing have not viewed the Guides as relevant to their sales practices. The Guides, to be made up-to-date, also would require extensive revision. Although the revision and reissuance of the Guides might be warranted if there were evidence of significant marketing abuses covered by the Guides, the Commission has no such evidence. It appears that likely abuses, if any, could be adequately addressed by state and local housing code enforcement authorities. Accordingly, the Commission has determined that the costs associated with revising and reissuing the Guides would outweigh the benefits, and the Guides should be repealed.

Although the Commission is eliminating the Guides, proceedings still may be brought against businesses under section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), for engaging in unfair or deceptive acts or practices in or affecting commerce in the advertising and sale of these products.

EFFECTIVE DATE: September 30, 1994.

ADDRESSES: Requests for copies of this document should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Joel N. Brewer, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, (202) 326-2967.

SUPPLEMENTARY INFORMATION:

I. Introduction

As a part of its ongoing project to review all rules and guides, on September 11, 1992, the Commission invited comment on the Guides for Advertising Shell Homes, 16 CFR Part 230.[1] The notice contained six questions relating to the economic impact and continuing relevance of the Guides, any burdens relating to adherence to them, any changes needed to minimize their economic impact, their relation to other federal or state laws or regulations, and any changed conditions since they were issued and the effect of these changes on them. The comment period ended on October 13, 1992. In response, one comment was received.[2]

To obtain additional information about shell homes, staff contacted representatives of the National Institute of Building Sciences, the Manufactured Housing Institute, the National Manufactured Housing Federation, and the National Association of Home Manufacturers.[3] Additionally, staff contacted nine randomly-selected manufacturers of factory-built housing from a directory of over 250 such businesses[4] and elicited comments and advertising materials from two manufacturers or sellers of factory-built houses or factory-built housing components.[5] On the basis of the information collected by the staff, it appeared that manufacturers of factory-built housing, including manufacturers of housing the Commission has characterized as "shell" homes, are not familiar with the Guides. This is because, in part, the term "shell" homes is not adequately defined in the Guides and is not a classification used by any segment of today's factory-built housing industry.

Thus, if unlawful practices are occurring, the current Guides cannot perform their intended purpose of informing industry of the Commission's views of the practices and providing the basis for their "voluntary and simultaneous abandonment" by industry members.[6] In order to provide adequate notice of the scope and applicability of the Guides to certain forms of factory-built residential housing, the Guides would have to be revised to inform the relevant members of the industry that the Guides apply to some of their marketing practices. However, under the circumstances this would be tantamount to issuing new guides.

In these circumstances, the Commission has determined that revising or reissuing the Guides is necessary only if there is reason to believe that unfair or deceptive practices are occurring in the relevant industry to some significant extent or are likely to occur in the absence of Commission guides. Based on the response to the request for comment and on the staff interviews with the responsible heads of the housing code authorities of California, Florida, Maryland, Missouri, New Jersey, Texas and Virginia, the Vice President of the National Foundation of Manufactured Home Owners and a Senior Analyst from the American Association of Retired Persons, the Commission has determined that the practices addressed by the Guides are not common and, to the extent they exist, are adequately handled by state or local housing code authorities. Accordingly, the Commission has determined to repeal the Guides.

II. Background

On April 12, 1962, the Commission adopted the Guides under the authority of sections 5(a) (1) and 6(g) of the FTC Act, 5 U.S.C. 45(a)(1) and 46(g).[7] The Guides address advertising claims relating to housing features that are material to consumers such as inhabitability upon delivery, dimensions, included items, savings, availability of financing, guarantees, time of delivery or installation, and whether the cost of delivery or installation is included in the advertised price. The Guides generally reflected the law previously developed by the Commission in cases involving advertising for shell homes,[8] factory-built homes,[9] and home improvements.[10]

There is no definition of shell homes in the Guides. Instead, section 230.1(a) states, "* * * the *typical* shell home does not include such features as wiring, plumbing, heating, interior trim and finish, or other requisite components * * *." (Emphasis added.) This and the cases brought before or around the time the Guides were formulated[11] indicate that the Commission intended the term "shell" to be interpreted in a generic sense—*i.e.*, structures assembled or installed in whole or in part by the seller that lack all the necessary components to make the building inhabitable when delivered to the buyer.[12]

[1] "Request for Comments Concerning Guides for Advertising Shell Homes," 57 FR 41707, P924219, A-1, p. 41707. The record in this proceeding has been designated P924219 in the Commission's Public Reference Branch. A copy of the Commission's request for comments originally appearing in 57 FR 41707 is designated document A-1, and is filed in a single volume labeled P924219. There are three categories, "A," "B," and "G" for the materials in this volume.

[2] Comment of Marjory Wood, Chesterton, IN, P924219, G-1 (Sept. 25, 1992). Ms. Wood stated that around the time of the Great Depression her father, a civil engineer, had invented portable, demountable houses for emergency use. She suggested that his plans be revived to cope with the losses of housing occasioned by recent natural disasters.

[3] Report of telephone interviews by John Dugan, P 924219, B-7 (June 1, 1992).

[4] A.M. Watkins, *Complete Guide to Factory-Made Houses*, P924219, B-2, pp. 152-74. The purpose of staff's inquiry was to determine if manufacturers of factory-built housing are currently making advertising claims that are addressed by the Guides.

[5] Bow House, Inc., Bolton, MA, P924219, B-4; and Kan-Build, Inc., Osage City, KS, P924219, B-5. Bow House, Inc. specializes in laminated bowed rafters and other "New-England look" components of production and stick-built housing. Kan-Build, Inc., produces modular housing.

[6] *See*, 16 CFR § 1.5.

[7] 27 FR 3917 (April 25, 1962); P924219, B-10 The Guides took effect immediately upon publication in the FR. Originally appearing as section 14.6 of the Commission's Administrative Interpretations, the guides were later recodified as 16 CFR Part 230, 32 FR 15531 (Nov. 8, 1967).

[8] *Monumental Engineering, Inc.*, 58 FTC 1093 (1961); and *Lifetime, Inc.*, 59 FTC 1231 (1961).

[9] *Main Line Lumber and Millwork Co.*, 56 FTC 17 (1959); *R.H. Best, Inc.*, 54 FTC 416 (1957); *Nomis Corp.*, 34 FTC 318 (1941).

[10] *Commerce Contracting Co.*, 59 FTC 473 (1961). *Crawford Industries, Inc.*, 59 FTC 398 (1961).

[11] Five pre-guide cases involved most of the acts or practices addressed by the Guides. Two cases, *Monumental Engineering, Inc.*, 58 FTC 1093 (consent decree, 1961); and *Lifetime, Inc.*, 59 FTC 1231 (1961), which were decided relatively contemporaneously with the Commission's adoption of the Guides, are the only pre-guide cases that refer to "shell" homes. Additionally, three other cases involving factory-built housing, *Main Line Lumber and Millwork Co.*, 56 FTC 17 (consent decree, 1959); *R.H. Best, Inc.*, 54 FTC 416 (consent decree, 1957); and *Nomis Corp.*, 34 FTC 318 (1941), involved additional practices addressed by the Guides.

[12] Some industry members may be familiar with another use of the term "shell" housing that differs from the Commission's use of the term in the

Continued

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Presently, it appears that other terms are now used in the industry to describe housing that the Commission characterized as "shell" housing.[13] For example, according to one source, a "shell" home is a "pre-cut" home under classifications established by the National Association of Home Manufacturers ("NAHM").[14] There are also other industry terms for factory-built housing, such as "panelized"[15] and "modular,"[16] where the degree of completeness varies, and that may not be inhabitable as sold.

III. Review of the Guides

No member of the factory-built housing industry responded to the Commission's request for comment on the Guides.[17] Part of the explanation for this may be that the term "shell" home as it is used by the Commission in the Guides is not familiar to most current members of the industry.[18]

Factory-built housing (including homes that are inhabitable upon delivery) constitutes a large segment of the new home market. At this time the Commission does not know what portion of the factory-built housing industry is comprised of structures erected in whole or in part by the seller that lack all the necessary components to make the building inhabitable when delivered to the buyer. Based on the information collected by staff, it is probable that some portion of the industry delivers structures that are not inhabitable.[19]

Since adopting the Guides, the Commission has brought a number of actions that, without expressly mentioning the Guides, reflect the principles articulated in them. Specifically, the Commission has prohibited manufacturers of shell, pre-cut or other factory-built housing from:

- Representing that housing was complete to a greater degree than it was (Guide 1);[20]
- Using pictorial advertising that confused higher-priced housing with prices of lower priced housing (Guide 3);[21]
- Representing that unskilled consumers will realize savings on labor, or making false and unsubstantiated claims with respect to the ease, economy or time involved in erecting the housing (Guide 4);[22]
- Offering financing without disclosing terms, or misleading consumers with respect to the terms of the financing available (Guide 5);[23]
- Using bait-and switch tactics (Guide 6);[24] and
- Representing that housing is guaranteed without disclosing the nature and duration of the guarantee, the identity of the guarantor and the manner in which the guarantor would perform (Guide 7).[25]

Additionally, manufacturers of factory-built housing continue to make claims addressed by the Guides. For example, the record reflects advertising claims with respect to inhabitability (Guide 1),[26] depictions of size or dimensions (Guide 2),[27] pictorial representations of features not included (Guide 3),[28] savings (guide 4),[29] guarantees (Guide 7),[30] and delivery and installation (Guide 9).[31] However, the Commission has no basis to believe that the advertising it has monitored is deceptive or unfair.

IV. Evidence of Unlawful Practices

In order to obtain some evidence relating to the prevalence of the unfair or deceptive practices in the pertinent industry staff interviewed the responsible heads of the housing code authorities of California, Florida, Maryland, Missouri, New Jersey, Texas and Virginia.[32] One interviewee, Bill Connolly, the Director of the Division of Codes and Standards in the New Jersey Department of Community Affairs, is also the present chairman of the Industrialized Building Commission (the "IBC"), the commissioners of which comprise the housing code enforcement authorities of New Jersey, Rhode Island, and Minnesota.[33] Additionally, staff interviewed representatives of the National Foundation of Manufactured Home Owners and the American Association of Retired Persons.[34]

According to Mr. Connolly, approximately 35 states have adopted codes providing for in-factory approval of closed construction residential structures (primarily modular housing). These codes contemplate a two-step process: (1) Plan review, which occurs in the state, and (2) inspections in the plant, including out-of-state plants. Almost universally, the states contract with third parties to conduct the out-of-state in-plant inspections. For open construction factory-built buildings (*i.e.*, most panelized or all pre-cut housing), normally the local code enforcement authority will inspect the work as it is assembled. As a result of these state and local enforcement activities, the sorts of problems consumers ordinarily will encounter from factory-built housing almost exclusively consist of cosmetic or workmanship problems, or problems arising in mounting the housing at the site. The other housing code authorities agreed.[35] Such problems are not covered by the Guides.

Staff's review indicates that, although relevant advertising exists and the affected industry is significant, the unlawful practices addressed by the Guides do not appear to be widespread and, to the extent they may exist, state or local housing code enforcement authorities can appropriately handle such problems. Although some problems of the sorts addressed by the Guides may arise in sparsely populated areas of the country where there are no local housing code authorities to inspect open construction factory-built buildings as they are assembled, the Commission has no reason to believe these problems are significant or involve significant consumer harm. Accordingly, the Commission has determined to repeal the Guides.

(Authority: 15 U.S.C. 41–58.)

List of Subjects in 16 CFR Part 230

Advertising, Factory-built homes, Trade practices.

PART 230—[REMOVED]

The Commission, under authority of sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends chapter I of title 16 of the Code of Federal Regulations by removing Part 230.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–24145 Filed 9–29–94; 8:45 am]

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Guides. According to Philip Schneider of the National Institute of Building Sciences, a "shell" home concept was part of HUD's so-called "Operation Breakthrough" program to provide affordable housing to Americans on a large scale. Housing without any plumbing, heating or wiring, was to be produced in the factory, transported to the site in one piece or in sections, and assembled or mounted on the foundation and fitted with utilities on-site. Schneider says Operation Breakthrough was formulated while George Romney was Secretary of HUD (1969 to 1972). The program accordingly postdated the Guides by nearly a decade and could not have been their inspiration. The vestiges of Operation Breakthrough that exist today are limited to housing produced and finished with "sweat equity" as part of a publicly subsidized housing program. Report of interview of Philip Schneider by John T. Dugan, P 924219, B–7, p. 4 (June 1, 1992); re-interviewed by Joel Brewer, P 924219, B–11 (May 10, 1994).

[13] P924219, B–7, p. 3. According to one industry spokesperson, in the final analysis, it is easier to define what is "inhabitable" than what is a "shell" home. Report of interview of Barbara Martin, Buildings Systems Council, National Association of Home Builders ("NAHB"), by John Dugan, P924219, B–7, p. 4 (May 27, 1992). NAHM is now part of the Building Systems Council of NAHB.

[14] Nutt-Powell, Thomas E., *Manufactured Homes. Making Sense of a Housing Opportunity*, pp. 2–3 (1982). Pre-cut housing contains all or most of the lumber and millwork for the main structure of the house, from floor to roof, plus exterior doors and windows, insulation, and roofing materials. The package may contain additional materials and supplies for the interior as well. Pre-cut housing requires the most on-site labor to finish the house and make it inhabitable after delivery.

[15] Panelized housing consists of complete walls that are factory-made in large sections and then shipped to the site. After set-down, the inhabitability of the dwelling depends on the extent to which the structure needs work such as installing a roof or panelized roof, installing a wet core (central plumbing, heating and wiring equipment), installing a floor or panelized floor, hanging doors and windows, installing utilities and insulation, closing the panel interiors, and hooking up the utilities.

[16] Modular or sectional housing is 95% complete when it comes off the assembly line. It is shipped in two or more sections for set-down at the site. After set-down, inhabitability depends on the extent to which the house needs work finishing the interior and hooking up the utilities.

[17] In addition to publishing the Commission's request for comments in the FR, staff sent copies of the FR notice and the guides to [among others] the trade associations whose members most likely included producers of factory built housing (*e.g.*, the National Institute of Building Science, the National Association of Home Builders, and the Manufactured Housing Institute).

[18] John Samples, President and C.E.O. of Kan-Build, Inc., Osage City, KS, responding to a staff questionnaire concerning the guides said, "I have been in this industry 20 years, and have never had knowledge of or questions pertaining to the Guide." P924219, B–5, p. 1 (Jan. 19, 1993).

[19] According to Curtis McGiver, Associate Director for Building Regulations, Virginia Department of Housing and Community Development, modular housing is sold that is unfinished when installed. He adds that in Virginia the advertising for this housing makes it clear that the price varies with the degree of completeness of the product, and that the consumer must pay a premium to receive a finished inhabitable module. Report of Interview by Joel Brewer, P 924219, B–12, p. 2 (July 20–22, 1994).

[20] *Best Homes*, 77 FTC 6 (1970); *H.B. Rieger Co.*, 75 FTC 168 (1969); *Hi-Line, Inc.*, 74 FTC 1174 (1968).

[21] *Id.*

[22] *Insilco Corp.* 91 FTC 706 (1978); *Lindal Cedar Homes, Inc.*, 87 FTC 8 (1976).

[23] *Insilco Corp.*, 91 FTC at 723; *Hi-Line, Inc.*, 74 FTC at 1181.

[24] *Best Homes*, 77 FTC at 13–14; *H.B. Rieger Co.*, 75 FTC at 172–73; *Hi-Line, Inc.*, 74 FTC at 1180.

[25] *Best Homes*, 77 FTC at 14; *H.B. Rieger Co.*, 75 FTC at 173; *Hi-Line, Inc.*, 74 FTC at 118.

[26] P924219, B–6, p. 5.

[27] P924219, B–5, pp. 7–9, 12–17, 21–39.

[28] *Id.*, p. 22.

[29] P924219, B–6, p. 1.

[30] P924219, B–5, pp. 10, 17, 20.

[31] P924219, B–6, pp. 1–2.

[32] Staff interviewed Richard Conrad, Executive Director, California Building Standards Commission; Larry Jordan, Planning Manager, Department of Community Affairs, Codes and Standards Section, Florida Division of Housing and Community Development; Jim Hannah, Director, Codes Administration, Maryland Department of Housing and Community Development; Jim Phillips, Director, Department of Manufactured Housing, Recreational Vehicles and Modular Units, Missouri Public Service Commission; Bill Connolly, Director, Division of Codes and Standards, New Jersey Department of Community Affairs; Jim Martin, Manager of Rules, Policies and Codes Section, Policies and Standards Division, Texas Department of Licensing and Regulation; and Curtis McGiver, Associate Director for Building Regulations, Virginia Department of Housing and Community Development. Report of Interviews by Joel Brewer, P 924219, B–12, pp. 2–5 (July 20–22, 1994).

[33] *Id.*, pp. 1, 5. At this time the IBC is comprised of the three states that have subscribed to an interstate compact on building code standards for manufactured housing (often referred to by code enforcement authorities as "industrialized" residential housing). The purpose of the IBC is to facilitate the interstate sale of factory-built housing by developing uniform housing code requirements in the subscribing states. Because it is anticipated that other states will join the IBC over time, the IBC has a Rules Development Committee to develop uniform codes to which most states could eventually subscribe. In order to assure the acceptability of the rules to other states, several state housing code officials from states other than the three Commission states (*e.g.*, Maryland and Virginia) represent them on the Rules Development Committee.

[34] Staff interviewed Leonard Wehrman, Vice President, National Foundation of Manufactured Home Owners; and George Gaberlavage, Senior Analyst, American Association of Retired Persons. *Id.*, pp. 1, 5–6. Mr. Wehrman made no specific comments, and instead advised staff to contact state housing code officials. Mr. Gaberlavage said that he believed that the best source of information on the subject of problems with factory-built housing is the state housing code authorities.

[35] *Id.* pp. 2–5. Although the state officials were unanimous in the view that the states afford consumers protection against the kinds of harms addressed by the Guides, Mr. Connolly advised that finding and preventing code violations for open factory-built structures depends on the existence of local code authorities. Although local code authorities exist in the most populous regions of the country, in sparsely populated area that is generally not the case. However, he could not tell how serious or widespread the problems were with factory-built housing in such areas.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Progesterone and Estradiol Benzoate in Combination

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Syntex Animal Health. The supplemental NADA provides for reimplantation of the drug combination progesterone/estradiol benzoate in steers fed in confinement for slaughter for additional improvement in rate of weight gain.

EFFECTIVE DATE: September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1638.

SUPPLEMENTARY INFORMATION: Syntex Animal Health, Division of Syntex Agribusiness, Inc., 3401 Hillview Ave., Palo Alto, CA 94304, filed a supplemental NADA 9–576, which provides for reimplantation of Synovex® S (200 milligrams (mg) of progesterone and 20 mg of estradiol benzoate per implant) at approximately day 70 in steers fed in confinement for slaughter for additional improvement in rate of weight gain. The supplemental NADA is approved as of August 19, 1994, and the regulations are amended in § 522.1940 (21 CFR 522.1940) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Section 522.1940(d)(2)(ii)) is revised to read "For increased rate of weight gain and improved feed efficiency," and paragraph (e) is redesignated as paragraph (d)(2)(iv), and it is amended by revising the first sentence and by removing the second paragraph because it has been superseded by enactment of the Generic Animal Drug and Patent Term Restoration Act of 1988.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cometic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning on August 19, 1994, because the supplemental NADA contains a report of new clinical investigations (other than bioequivalence or residue studies) essential to the approval of the application and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to the change in limitations (provides for the reimplantation of steers fed in confinement for slaughter for additional improvement in rate of weight gain) for which the application is being approved.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact

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on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.1940 is amended by revising paragraphs (b), (d)(2)(ii), and (d)(2)(iii); and by redesignating paragraph (e) as paragraph (d)(2)(iv) and revising it to read as follows:

§ 522.1940 Progesterone and estradiol benzoate in combination.

* * * * *

(b) *Sponsor.* See 000033 for use as provided in paragraphs (d)(1) and (d)(2) of this section; see 021641 for use as provided in paragraphs (d)(1) and (d)(2)(i) through (d)(2)(iii)(*a*) of this section.

* * * * *

(d) * * *

(2) * * *

(ii) *Indications for use.* For increased rate of weight gain and improved feed efficiency.

(iii) *Limitations.* (*a*) For animals weighing 400 pounds or more; for subcutaneous ear implantation, one dose per animal.

(*b*) For additional improvement in rate of weight gain in steers fed in confinement for slaughter, reimplant at approximately day 70.

(iv) *NAS/NRC status.* The conditions of use specified in paragraphs (d)(2)(i) through (d)(2)(iii)(*a*) are NAS/NRC reviewed and found effective.

Dated: September 20, 1994.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine

[FR Doc. 94-24013 Filed 9-29-94; 8:45 am]

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21 CFR Part 900

[Docket No. 93N-0351]

Quality Standards and Certification Requirements for Mammography Facilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim rule; opportunity for public comment.

SUMMARY: The Food and Drug Administration (FDA) is issuing regulations to implement the Mammography Quality Standards Act of 1992 (MQSA). The MQSA requires the establishment of a Federal certification and inspection program for mammography facilities; regulations and standards for accrediting bodies for mammography facilities; and standards for mammography equipment, personnel, and practices, including quality assurance. This regulation, which amends two previously published interim rules, modifies and adds to the definitions previously set forth. In addition, the interim rule provides a mechanism to request permission to meet alternative requirements, other than those previously set forth, if the proposed alternative requirement is at least as effective as the existing quality standards in achieving quality mammography services for women.

DATES: The interim regulation is effective October 1, 1994; written comments by December 29, 1994. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in 21 CFR 900.12(d)(1)(i), effective on September 30, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles K. Showalter, Center for Devices and Radiological Health (HFZ-240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-3332.

SUPPLEMENTARY INFORMATION:

I. Background

The MQSA (Pub. L. 102-539) was enacted to establish minimum, national quality standards for mammography. The MQSA requires that, to provide mammography services legally after October 1, 1994, all facilities, except facilities of the Department of Veterans Affairs, must be both accredited by an approved accrediting body and certified by the Secretary of Health and Human Services (HHS) (the Secretary). The authority to approve accreditation bodies and to certify facilities has been delegated by the Secretary to FDA.

The MQSA was passed on October 27, 1992, in response to statistics on the prevalence of breast cancer across the United States. Breast cancer is now the most common cancer, and the second leading cause of cancer deaths among women. According to the 1992 projections by the American Cancer Society, there would be 180,000 new cases of breast cancer among women in the United States in just that year. Of these new cases, it was estimated that approximately 46,000 of these women would die from the disease. The lifetime risk of developing breast cancer is increasing. In 1992, breast cancer affected 1 in 8 women in their lifetime as compared to 1 in 11 in 1980, 1 in 14 in 1960, and 1 in 20 in 1940.

Early detection of breast cancer, typically involving physical breast examination and mammography, is the best means of preventing deaths that result from breast cancer detected at an advanced stage. The value of undergoing mammography screening is that mammography can detect cancers that are too small to be felt through physical examination (palpation). Mammograms can detect breast cancer up to 2 years before a woman or her doctor can feel a lump. In addition, these early stage cancers can be 90 to 100 percent curable (Ref. 1).

However, according to the General Accounting Office (GAO), a mammogram is one of the most difficult radiographic images to read. It must have optimal clarity for the image to be interpreted correctly. If the image quality is poor or the interpretation is faulty, the interpreter may miss an incipient cancerous lesion. This could delay treatment and result in an avoidable death or mastectomy. Further, it is equally true that poor images or faulty interpretations can lead to a false positive diagnosis, which produces needless patient anxiety, costly additional testing, and painful biopsies when normal tissue is misread as abnormal.

The Senate Committee on Labor and Human Resources held hearings on the breast cancer issue and found a wide range of problems with the current mammography system: Poor quality equipment, the lack of quality assurance procedures, poorly trained technologists and physicians, false representation of accreditation by some mammography facilities, and the lack of inspections or consistent governmental oversight. The

MQSA addresses these specific concerns by establishing national minimum standards for all mammography facilities, except the Department of Veterans Affairs, in the areas of radiation dose, equipment, personnel, and practices, such as quality control and quality assurance. The MQSA replaces a patchwork of Federal, State, and private standards and guarantees sufficient oversight and enforcement to ensure that women will receive high quality mammography services.

II. Comments

To date, FDA has received 97 comments on the 2 interim rules that were published in the **Federal Register** of December 21, 1993 (58 FR 67558 and 58 FR 67565). These comments, which have been carefully reviewed and summarized, are under consideration as the final regulations are being developed. FDA will publish its response to the various comments in the **Federal Register** when the final rules are published.

III. Effective Date

The effective date of this regulation is October 1, 1994. Although the effective date of a final regulation ordinarily may not be less than 30 days after date of publication in the **Federal Register**, the Administrative Procedures Act and FDA's regulations permit exceptions to this timeframe when: (1) The regulation grants an exemption or relieves a restriction; (2) the regulation interprets rules and policy statements; or, (3) good cause exists and is published for the earlier date. This interim rule satisfies any one or all of the exemption criteria that permit an earlier effective date. (See 5 U.S.C. 553(d) and 21 CFR 10.40(c)(4).)

First, this interim rule exempts certain mammography devices and procedures from quality standards established under the MQSA. Second, the interim rule provides a means for proposing alternative standards that may relieve restrictions for certain mammography facilities. Third, the interim rule provides interpretive definitions and FDA policy statements to clarify essential terms in rules previously issued under the MQSA. Finally, failure to implement this interim rule by October 1, 1994, could inadvertently render critical mammography devices and procedures illegal that are not currently intended to be covered under the MQSA. Therefore, the agency finds good cause for an effective date fewer than 30 days after publication of this regulation. Accordingly, for all these reasons, this interim rule is made effective as of October 1, 1994.

IV. Legislative Authority

December 14, 1993, the President signed legislation (H. Rept. 2202) granting interim rule authority to the Secretary for promulgation of standards required by the MQSA. This authorization was provided in recognition of the fact that the certification deadline of October 1, 1994, could not be met without streamlining the process for initial promulgation of standards. Because of the perceived urgent public health need for Federal standards for mammography, it was decided that interim rule authority should be granted, rather than an extension of the deadline to develop standards.

Under the interim rule legislation, the Secretary is authorized to issue temporary, interim regulations setting forth standards for approving accrediting bodies and for quality standards for mammography, under section 354(e) and 354(f) of the Public Health Service Act (the PHS Act) (42 U.S.C. 263b(e) and 354(f)). Under the abbreviated process, the Secretary is required to adopt existing standards to the maximum extent feasible, such as those established by the Health Care Financing Administration (HCFA), private voluntary accreditation bodies, e.g., the American College of Radiology (ACR), and some States. Also, in developing the interim regulations, the Secretary is not required to consult with the National Mammography Quality Assurance Advisory Committee (Advisory Committee). However, after the interim standards are issued, Congress intended that the Secretary proceed with the more extensive rulemaking procedures envisioned by the original enactment of the MQSA, including the statutorily required consultation with the Advisory Committee.

FDA used this authority to issue interim requirements for accrediting bodies, quality standards, and certification on December 21, 1993. Those interim standards have been used to approve accreditation bodies and certify facilities before the October 1, 1994, deadline. However, since the interim regulations were published on December 1993, FDA's experience in applying those interim standards has convinced the agency that certain amendments to those interim rules are necessary in order to clarify the obligation that facilities have to meet under MQSA by the October 1, 1994, deadline. The regulations implemented by this interim rule add to and modify the interim rules issued on December 21, 1993, and will remain in effect until final regulations are proposed and promulgated in 1995.

V. Provisions of the Rule

A. Amended Definition

FDA's experience in developing standards and planning for implementation of the MQSA over the past year has made the agency aware that certain changes to its previously published interim definitions are necessary.

Section 900.2 (21 CFR 900.2) of the December 21, 1993, interim rule (58 FR 67558 at 67563) defines essential terms used throughout the interim rules. These definitions are intended to inform mammography facilities and consumers of the meaning of terminology used throughout the MQSA regulations. This interim rule amends and modifies certain terms defined in § 900.2.

In determining which facilities would be subject to the standards under the MQSA, Congress defined the term "facility" to include a hospital, outpatient department, clinic, radiology practice, or mobile unit, an office of a physician, or other facility, as determined by the Secretary, and, by delegation, FDA, that conducts breast cancer screening or diagnosis through mammography activities. The term does not include a facility of the Department of Veterans Affairs.

Congress further defined mammography "activities" to include the operation of equipment to produce a mammogram, the processing of film, the initial interpretation of the mammogram, and the (maintenance of) viewing conditions for that interpretation. However, Congress recognized that a mammogram may be performed in a place that is different from the facility that processes or interprets the x-ray film. In such a case, the MQSA requires the facility performing the mammogram to be responsible for meeting the MQSA quality standards.

Under this interim rule, FDA is amending the definition of "facility" under § 900.2 to clarify that it is the facility performing the mammogram that is responsible for obtaining accreditation by an FDA-approved accrediting body and certification by FDA to provide mammography services legally after October 1, 1994. The facility performing the mammogram must substantiate that the additional mammography activities of processing the x-ray film, interpreting the image, and maintaining viewing conditions, wherever performed, meet all quality

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standards required under the MQSA. Facilities that provide only partial services (e.g., film processing companies or interpreting radiologists) are not required at this time to apply for accreditation or certification under MQSA, although these partial providers will have to meet MQSA standards in order to be employed by any facility that performs mammograms. In the future, FDA may require facilities that perform any portion of the process required for a mammography evaluation to be directly subject to the accreditation and certification process.

In addition, although the MQSA excludes facilities of the Department of Veterans Affairs (VA) from the scope of the legislation, VA is working to establish standards consistent with this legislation. All other facilities that conduct the following screening or diagnostic mammography activities are subject to the standards issued under the MQSA.

B. New Definitions

This interim rule is adding the new terms "screening mammography" and "diagnostic mammography" to § 900.2 in order to clarify which breast cancer screening or diagnostic mammography activities conducted by a facility will render that facility subject to the provisions of and regulations issued under the MQSA, and which activities are excluded from regulation. Under the MQSA, Congress defined the term "mammography" as radiography of the breast, but provided no statutory definition for the terms "screening mammography" and "diagnostic mammography." This interim rule is adding the terms "screening mammography" and "diagnostic mammography" to the definition portion of the regulations in order to clarify the scope of the regulated mammography activities. These definitions are based on definitions developed by the Agency for Health Care Policy and Research (AHCPR) and the ACR, and have been modified as necessary for purposes of MQSA implementation.

The term "screening mammography" is being defined as mammography performed on an asymptomatic patient to detect the presence of breast cancer at an early stage. In screening mammography, the patient typically has not manifested any clinical signs, symptoms, or physical findings of breast cancer. The screening mammogram is performed to detect the presence of a breast abnormality in its incipient stage and to serve as a baseline film to which future screening or diagnostic mammograms may be compared.

The term "diagnostic mammography" is being defined as mammography performed on a patient with clinical signs, symptoms, or physical findings suggestive of breast cancer; an abnormal or questionable screening mammogram; a history of breast cancer with breast conservation surgery regardless of absence of clinical breast signs, symptoms, or physical findings; or, augmented breasts regardless of absence of clinical breast signs, symptoms, or physical findings. Diagnostic mammography is also called problem-solving mammography or consultative mammography. A diagnostic mammogram is performed because there is a reasonable articulable suspicion that an abnormality may exist in the breast. The diagnostic mammogram may confirm or deny the presence of an abnormality and, if confirmed, may assist in determining the nature of the problem.

FDA has further defined the terms screening and diagnostic mammography to exclude breast imaging performed in a research setting as part of a scientific study to evaluate experimental mammography devices conducted in accordance with FDA's investigational device exemption regulations in 21 CFR part 812. Science has not progressed to the point where effective quality standards may be written for every category of experimental mammography device. Therefore, at this time these investigational devices for breast radiography will not be subject to the quality standards issued under the MQSA. However, any conventional mammography device used as part of the scientific study to provide baseline data from which to evaluate the safety and efficacy of the experimental device would be subject to MQSA quality standards.

In addition, invasive interventions which employ breast radiography devices to produce radiographic images of the breast in association with localization or biopsy (e.g., stereotactic x-ray) procedures have also been excluded from the definitions of screening and diagnostic mammography activities.

In the future, when the science has advanced to a point where effective, national quality standards may be developed, FDA may regulate facilities that employ these invasive interventions or facilities that employ experimental devices for breast radiography to ensure their compliance under the act.

C. Alternative Standards

FDA recognizes that there may be alternative standards to the standards issued in § 900.12 (21 CFR 900.12) of the **Federal Register** of December 12, 1993 (58 FR 67565), that are at least as effective in delivering high quality mammography services to women. In the interest of improving the overall quality of mammography, FDA wants to provide an avenue by which safe and effective alternative standards may be implemented. Accordingly, the agency has created a mechanism for qualified applicants to request permission to meet an alternative standard rather than an existing quality standard. The request must be supported by such evidence as required by the agency to render a determination that the suggested alternative is at least as effective as the agency mandated standard in helping to achieve high quality mammography.

If the agency determines that the proposed alternative is acceptable, the agency will grant the request. The applicant will receive written notice of the approval of the alternative standard, including any limitations on use of the alternative, and the period of time that the alternative may be employed. The decision will be placed in the public docket file in the Dockets Management Branch (address above), after deletion of any patient identifiers or confidential commercial information, and may also be published in the form of a notice in the **Federal Register**.

Other entities that desire to use the alternative standard must also submit an application and receive approval by the agency before they may substitute the alternative for the agency mandated standard. FDA anticipates that "me-too" entities filing an application in accordance with the regulations typically would receive a prompt response to the request. This process is necessary to ensure that those other entities wishing to avail themselves of the alternative fully understand and appreciate the alternative procedure and its applicability so that the overall quality of mammography services is maintained. However, if a manufacturer of mammography equipment applies to the agency for approval of an alternative standard based on particular characteristics of that manufacturers's equipment, FDA approval of that alternative standard would apply to all facilities using that manufacturer's equipment.

VI. Quality Assurance Standards: Screen-Film

FDA is amending the quality assurance (QA) standard for screen-film systems. Section 900.12(d)(1)(i) (58 FR 67565 at 67572) requires the screen-film QA program for a mammography facility to be substantially the same as that described in the 1992 edition of "Mammography Quality Control: Radiologist's Manual, Radiologic Technologists Manual and Medical Physicist's Manual." Recently, the 1994 edition of the manual has been published. FDA has evaluated the revised QA screen-film program in this latest edition and determined that either the 1992 version or the 1994 version of the program can serve as the basis for a facility's screen-film QA program. FDA is amending § 900.12(d)(1)(i) to reflect this change.

VII. Paperwork Reduction Act of 1980

This interim rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Quality Standards and Certification Requirements for Mammography Facilities.

Description: FDA is issuing an interim rule to implement the certification and quality standards provisions of the MQSA. This regulation, which amends two previously published interim rules, modifies and adds to the definitions previously set forth. In addition, the interim rule provides a mechanism to request permission to meet alternative requirements, other than those previously set forth, if the proposed alternative requirement is at least as effective as the existing quality standards in achieving quality mammography services for women.

As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA is submitting a copy of this interim rule to OMB for its review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspects of these information collection requirements, including suggestions for reducing the burden, should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, rm. 3208, New Executive Office Bldg., Washington, D.C. 20503, Attention: Desk Officer for FDA.

ESTIMATED ANNUAL BURDEN FOR REPORTING

CFR section	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total hours
21 CFR 900.11(b)(2), 21 CFR 900.18[1]	25	1	25	2	50
Total					50

[1] FDA is unable to estimate the burden imposed by 21 CFR 900.18 at this time because there is insufficient information to determine how many requests for approval of an alternative standard will be submitted. This estimate will be provided when FDA has sufficient information on which to base an estimate.

ESTIMATED ANNUAL BURDEN FOR RECORDKEEPING

CFR section	No. of recordkeepers	Annual hours per recordkeeping	Total annual burden hours
21 CFR 900.11(c)(1)	1,000	1	1,000
21 CFR 900.12(e)(1), 21 CFR 900.18[1]	10,000	1	10,000
Total Annual Burden			11,050

[1] FDA is unable to estimate the burden imposed by 21 CFR 900.18 at this time because there is insufficient information to determine how many requests for approval of an alternative standard will be submitted. This estimate will be provided when FDA has sufficient information on which to base an estimate.

VIII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Economic Impact

FDA has examined the impacts of the interim rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this interim rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the interim rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because a request for an alternative requirement is a voluntary action by the applicant and the amended definitions limit the current applicability of these requirements, the agency certifies that the interim rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

X. References

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Report on the Mammography Quality Standards Act of 1992, U.S. Senate, Report 102–448, October 1, 1992.

XI. Request for Comments

Interested persons may, on or before December 29, 1994, submit to the

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Dockets Management Branch (address above) written comments regarding this interim rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Although these amendments to the interim regulations become effective October 1, 1994, FDA will consider and evaluate all comments it receives as part of its ongoing work on the final rules.

List of Subjects in 21 CFR Part 900

Electronic products, Incorporation by reference, Mammography, Medical devices, Radiation protection, Reporting and recordkeeping requirements, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 900 is amended as follows:

PART 900—MAMMOGRAPHY

1. The authority citation for 21 CFR part 900 continues to read as follows:

Authority: Secs. 519, 537, and 704(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i, 360nn, and 374(e)); sec. 354 of the Public Health Service Act (42 U.S.C. 263b).

2. Section 900.2 is amended by revising paragraph (e) and by adding new paragraphs (r) and (s) to read as follows:

§ 900.2 Definitions.

* * * * *

(e) *Facility* means a hospital, outpatient department, clinic, radiology practice, or mobile unit, office of a physician, or other facility that conducts breast cancer screening mammography activities or conducts diagnostic mammography activities, including the following: The operation of equipment to produce a mammogram, processing of film, initial interpretation of the mammogram, and maintaining viewing conditions for that interpretation. This term does not include a facility of the Department of Veterans Affairs.

* * * * *

(r) *Diagnostic mammography* means mammography performed on a patient with: clinical signs, symptoms, physical findings suggestive of breast cancer; an abnormal or questionable screening mammogram; a history of breast cancer with breast conservation surgery regardless of absence of clinical breast signs, symptoms, or physical findings; or, augmented breasts regardless of absence of clinical breast signs, symptoms, or physical findings. Diagnostic mammography is also called problem-solving mammography or consultative mammography. This definition excludes mammography performed during invasive interventions for localization or biopsy procedures. The definition further excludes mammography performed as part of a scientific study to evaluate an experimental mammography device conducted in accordance with FDA's investigational device exemption regulations in part 812 of this chapter.

(s) *Screening mammography* means mammography performed on an asymptomatic patient to detect the presence of breast cancer at an early stage. This definition excludes mammography performed as part of a scientific study to evaluate an experimental mammography device conducted in accordance with FDA's investigational device exemption regulations in part 812 of this chapter.

3. Section 900.12(d)(1)(i) is revised to read as follows:

§ 900.12 Quality standards.

* * * * *

(d) * * *

(1) * * *

(i) For film-screen systems, be substantially the same as that described in the 1992 or 1994 edition of "Mammography Quality Control: Radiologist's Manual, Radiologic Technologist's Manual, and Medical Physicist's Manual," prepared by the American College of Radiology, Committee on Quality Assurance in Mammography, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American College of Radiology, Mammography Accreditation Program, 1891 Preston White Dr., Reston, VA 22091–5431; and may be inspected at the Center for Devices and Radiological Health, Division of Mammography and Radiation Programs (HFZ–200), 5600 Fishers Lane, Rockville, MD 20857; or may be examined at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

* * * * *

4. Section 900.18 is added to subpart B to read as follows:

§ 900.18 Alternative requirements for MQSA quality standards.

(a) *Criteria for approval of alternative standards.* Upon application by a qualified party as defined under paragraph (b) of this section, the Director, Division of Mammography Quality and Radiation Programs (the Director), may approve an alternative to a quality standard under § 900.12, when the Director determines that:

(1) The proposed alternative standard will be at least as effective in assuring quality mammography as the standard it proposes to replace, and

(2) The proposed alternative:

(i) Is too limited in its applicability to justify amending the standard, or

(ii) Offers an expected benefit to public health which is so great that the time required for the processing of an amendment to the standard would present an unjustifiable risk to public health, and

(3) The granting of the alternative is in keeping with the purposes of the Mammography Quality Standards Act of 1992.

(b) *Applicants for alternatives.* (1) Mammography facilities and accreditation bodies may apply for alternatives to the quality standards of § 900.12.

(2) State governments that are not accrediting bodies may apply for alternatives to the standards of § 900.12(a).

(3) Manufacturers and assemblers of equipment used for mammography may apply for alternatives to the standards of § 900.12 (b), (c), and (d).

(c) *Application for approval of an alternative standard.* An application for approval of an alternative standard or for an amendment or extension of the alternative standard shall be submitted in an original and two copies to the Director, Division of Mammography Quality and Radiation Programs, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. The application for approval of an alternative standard shall include the following information:

(1) Identification of the original standard for which the alternative standard is being proposed and an explanation of why it is believed necessary to propose the alternative;

(2) A description of the manner in which the alternative is proposed to deviate from the original standard;

(3) A description, supported by data, of the advantages to be derived from such deviation;

(4) An explanation, supported by data, of how such a deviation would assure equal or greater quality of production, processing, or interpretation of mammograms than the original standard;

(5) The suggested period of time that the proposed alternative standard would be in effect; and

(6) Such other information required by the Director to evaluate and act on the application.

(d) *Ruling on applications.* (1) The Director may approve or deny, in whole or in part, a request for approval of an alternative standard or any amendment or extension thereof, and shall inform the applicant in writing of this action. The written notice will state the manner in which the requested alternative standard differs from the agency standard and a summary of the reasons for approval or denial of the request. If the request is approved, the written notice will also include the effective date and the termination date of the approval, a summary of the limitations and conditions attached to the approval, and any other information that may be relevant to the approved request. Each approved alternative standard will be assigned an identifying number.

(2) Notice of an approved request for an alternative standard or any amendment or extension thereof will be placed in the public docket file in the office of the Dockets Management Branch and may also be in the form of a notice published in the **Federal Register**. The notice will state the name of the applicant, a description of the published agency standard, and a description of the approved alternative standard, including limitations and conditions attached to approval of the alternative standard.

(3) Summaries of approved alternative standards, including information on their nature and number, will be provided to the National Mammography Quality Assurance Advisory Committee.

(4) All applications for approval of alternative standards and for amendments and extensions thereof and all correspondence (including written notices of approval) on these applications will be available for public disclosure in the Dockets Management Branch, excluding patient identifiers and confidential commercial information.

(e) *Amendment or extension of an alternative standard.* An application for amending or extending approval of an alternative standard shall include the following information:

(1) The approval number and the expiration date of the alternative standard;

(2) The amendment or extension requested and the basis for the amendment or extension; and

(3) An explanation, supported by data, of how such an amendment or extension would assure equal or greater quality of production, processing, or interpretation of mammograms than the original standard.

(f) *Applicability of the alternative standards.* Any approval of an alternative standard, amendment, or extension may be implemented only by the entity to which it was granted and under the terms under which it was granted, except that when an alternative standard is approved for a manufacturer of equipment, any facility using that equipment will also be covered by the alternative standard. Other entities interested in similar or identical approvals must file their own application by following the provisions of § 900.18(c).

(g) *Withdrawal of approval of alternative standards.* The Director shall amend or withdraw approval of an alternative standard whenever the Director determines that this action is necessary to protect the public health or otherwise is justified by § 900.12. Such action will become effective on the date specified in the written notice of the action sent to the applicant, except that it will become effective immediately upon notification of the applicant when the Director determines that such action is necessary to prevent an imminent health hazard.

Dated: September 26, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–24354 Filed 9–28–94; 12:40 pm]

BILLING CODE 4160–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing Federal Housing Commissioner

24 CFR Parts 200, 203, 207, 220, 221, 235, 236, 237, 241 and 242

[Docket No. R–94–1751; FR–3434–F–02]

RIN 2502–AG01

Payment of Insurance Claims by Book Entry Form of Debentures and Statute of Limitations on Payment of Distributive Shares

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule implements provisions in the Housing and Community Development Act of 1992 that authorize the Secretary to pay mortgage insurance claims with book entry forms of debentures and establish a statute of limitations on payments of Mutual Mortgage Insurance Fund distributive shares.

EFFECTIVE DATE: October 31, 1994.

FOR FURTHER INFORMATION CONTACT: Christopher Peterson, Director, Office of Mortgage Insurance Accounting and Servicing, Room 2108, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone: voice (202) 708–1046; the telecommunications device for the deaf (TDD) telephone number is (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This rule implements two provisions contained in the Housing and Community Development Act of 1992, Pub. L. 102–550, approved October 28, 1992 (the 1992 Act). Section 516 of the 1992 Act amends sections 204, 207, 220 and 221(g), of the National Housing Act to authorize the Secretary of HUD to pay virtually any mortgage insurance claim in book entry or other form of debentures an well as in the current certificated registered form. Section 508 of the 1992 Act establishes a 6-year statute of limitation on the payment of distributive shares from the Mutual Mortgage Insurance Fund.

Authority To Pay Mortgage Insurance Claims With Book Entry and Other Forms of Debentures

The rule amends parts 200, 203, 207, 220, 221, 235, 236, 237, 241 and 242 of title 24 of the Code of Federal Regulations to authorize payment of mortgage insurance claims with book entry or other forms of debentures.

Under HUD's mortgage insurance programs, when a mortgage goes into default, the mortgagee is entitled to receive insurance benefits that are payable in cash or debentures. HUD currently pays most, but not all, claims in cash. One notable exception is that, under section 221(g)(4) of the National Housing Act, holders of single family mortgages insured under section 221 that are current after 20 years from final endorsement may assign the mortgages to HUD and receive debentures in exchange. Holders of current section 221 multifamily mortgages may likewise assign such mortgages to HUD in exchange for debentures if the mortgage is not sold through the auction process mandated by section 221(g)(4)(C). HUD also issues debentures for the difference between the amount of redeemed debentures and the amount of the mortgage insurance premium due, when mortgagees pay their MIP and then exercise their right to send in the debentures for redemption.

Since 1938, the Department of the Treasury has acted as Fiscal Agent for the Federal Housing Administration and

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HUD with respect to debentures, and has carried out debenture processing functions on FHA's and HUD's behalf. Since 1988, Treasury has delegated much of the debenture processing functions to the Federal Reserve Bank of Philadelphia (FRBP) acting in its capacity as Fiscal Agent of the United States. The computer system used by FRBP is designed to accommodate use of book entry, as well as certificated debentures. Processing book entry debentures is considerably less costly than processing certificated debentures. Section 516 of the 1992 Act provides explicit statutory authority for HUD to convert to a book entry system.

Under current statutory authority, FRBP issues certificated debentures in multiples of $50, and issues a cash adjustment for the balance. The certificated debenture system is extremely cumbersome and expensive to administer, since FRBP must have the debenture stock printed, store and handle the debenture stock under secure conditions, process the issuance of debentures manually, transmit the debentures physically, and issue the cash adjustment separately. The certificated debentures are also cumbersome and expensive for holders to store and negotiate. Such debentures must be held under secure conditions, and the pledging and assignment through physical transfer could cause delays or lead to loss or theft.

Because of these considerations, Treasury and a number of Federal government agencies have switched from certificated to book entry securities, a shift paralleled in the equity and corporate and municipal bond markets. However, since Congress apparently contemplated the use of certificated debentures when it enacted the current provisions of sections 204, 207, and 220 of the National Housing Act, Section 516 of the 1992 Act was enacted to clarify HUD's authority to pay claims through the issuance of book entry debentures.

With enactment of section 516, the book entry system administered by FRBP can be put into operation. Effective with this rule, HUD will have authority to issue debentures in book entry form. HUD intends to implement this authority in the very near future with respect to issuance of all new debentures. An announcement of the implementation will be made prior to its effective date. Also, once this new authority is implemented, debentures issued for amounts remaining after payment of mortgage insurance premiums may also be in book entry form. In addition, holders of outstanding certificated debentures may, at their option, exchange such debentures for book entry securities. Debentures in book entry form will not thereafter be exchangeable for debentures in certificated form. Book entry debentures will be issued in a minimum amount of one dollar and increments of one cent. This will allow debentures to be issued in virtually the exact amount payable to the holder, with no cash adjustment. Interest and principal payments on book entry debentures will be made by direct deposit (electronic funds transfer) to the account and financial institution designated by the owners of the debentures. Considerable savings will accrue, both to the Federal government and to holders of debentures, by thus bringing the FHA debenture process into conformity with modern commercial practices.

Establish a Statute of Limitations on Payments of Distributive Shares

The rule also implements section 508 of the 1992 Act by amending 24 CFR Part 203 to establish a six-year statute of limitations within which an individual who is eligible for the payment of a distributive share could claim his or her distributive share. The amendment also transfers amounts no longer eligible for distribution because of the statute of limitations from the Participating Reserve Account to the General Surplus Account to help ensure the actuarial soundness of the Mutual Mortgage Insurance Fund.

Publication as Final Rule

It is the policy of the Department to publish rules for public comment before developing a rule for effect. However, in a particular case where notice and public comment are not required by statute, the procedure for advance public comment may be omitted if the Department determines that it is impracticable, unnecessary, or contrary to the public interest. In this case, revisions to the regulations are limited to those needed to reflect the clear Congressional mandate to effect a 6-year statute of limitations on claims for distributive shares and to provide authority to issue debentures in book entry form. The Department would not be able to change the minimal provisions it is setting forth in this rule in response to public comments because of the specificity of the statute being implemented. Consequently, we believe it unnecessary to accept and review public comments before putting into effect these statutory provisions.

Other Matters

Regulatory Flexibility

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does have a significant economic impact on a substantial number of small entities. The rule implements Congressional mandates which will prove cost beneficial for affected business entities both large and small.

NEPA

Under HUD regulations (24 CFR 50.20(k)), this rule is exempt from the requirements of the National Environmental Policy Act as set forth in 24 CFR Part 50. The rule relates to internal administrative procedures, the content of which does not involve development decisions, and does not affect the physical condition of project areas or building sites but only relates to the payment of insurance claims and distributive shares.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order. The rule does not effect any change in current relationships between HUD, the private sector and state and local governmental entities.

Executive Order 12606, The Family

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda. This rule was listed as item 1597 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20450) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 203

Mortgage insurance.

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 220

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 235

Condominiums, Cooperatives, Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 237

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance.

24 CFR Part 241

Energy conservation, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, in chapter II of title 24 Code of Federal Regulations, parts 200, 203, 207, 220, 221, 235, 236, 237, 241, and 242, are amended as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 is revised to read as follows:

Authority: 12 U.S.C. 1701–1715z–18, 1701s, and 1715z–11; 42 U.S.C. 3535(d), 3543, and 3544.

2. In § 200.157, paragraphs (b), (c), (d), (e), and (f)(1) are revised to read as follows:

§ 200.157 Provisions and characteristics of debentures.

* * * * *

(b) *Registration and denominations.* Debentures in certificated form are issued in denominations of $50, $100, $500, $1,000 and $10,000 with the name of the owner inscribed on the face of the certificate. Debentures in book entry form are issued in a minimum amount of one dollar and in increments of one cent with the name of the owner recorded in an account master record on the books of the Treasury.

(c) *Rate of interest and interchangeability.* Debentures carry a rate of interest prescribed by the Commissioner but not in excess of an annual rate determined by the Secretary of the Treasury in accordance with prescribed statutory formula involving yields or prices of outstanding marketable obligations of the United States. Debentures in certificated form of the same series bearing the same interest rate and having the same maturity date shall be freely interchangeable between the various authorized denominations and may be exchanged for similar debentures in book entry form. Debentures in book entry form cannot be exchanged for debentures in certificated form.

(d) *Negotiability and Redemption.* Debentures in certificated form are negotiable and, if in book entry form, are transferable in the manner described in applicable Treasury regulations. Debentures are fully guaranteed as to principal and interest by the United States. Debentures are redeemable on call issued by the Commissioner.

(e) *Payment of principal and interest.* Principal and interest on debentures shall be payable when due at the Department of the Treasury, Washington, DC, or any Government agency or agencies in the United States which the Secretary of the Treasury may from time to time designate for that purpose. The principal and interest shall be payable to the owner whose name shall be inscribed on the debenture in certificated form, to the owner designated as assignee as shown by executed assignments for maturing or called certificated debentures, or to the owner whose name shall be recorded in the account master record of the book entry debentures.

(f) *Transfer and use*—(1) *In general.* Debentures in certificated form are negotiable and, if in book entry form, are transferable in the manner described in applicable Treasury regulations. They may be used by approved mortgagees in lieu of cash for payment of FHA mortgage insurance premiums.

* * * * *

3. In § 200.158, the introductory text is revised and paragraphs (c) and (d) are removed, to read as follows:

§ 200.158 Applicability of Treasury regulations to debenture transactions.

The Department of the Treasury acts as fiscal agent for the Commissioner in connection with transactions and operations relating to debentures. Treasury's General Regulations Governing U.S. Securities (31 CFR Part 306) and its Supplemental Regulations Governing Federal Housing Administration Debentures (31 CFR Part 337) have been and are adopted as revised and amended, to the extent applicable, as the regulations of the Commissioner governing the issuance of, transactions in and redemption of debentures, including the payment of interest thereon with the following exceptions:

* * * * *

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

4. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1715b; 42 U.S.C. 3535(d).

5. Paragraph (r) of § 203.251 is revised to read as follows:

§ 203.251 Definitions.

* * * * *

(r) *Debentures* means registered, transferable securities in certificated or book entry form which are valid and binding obligations, issued in the name of the Mutual Mortgage Insurance Fund in accordance with the provisions of this part; such debentures are the primary liability of the Mutual Mortgage Insurance Fund and are unconditionally guaranteed as to principal and interest by the United States.

* * * * *

6. Section 203.408 is revised to read as follows:

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§ 203.408 Form and amounts of debentures.

Debentures issued under this part shall be in such form and amounts; and shall be subject to such term and conditions; and shall include such provisions for redemption, if any, as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury; and may be in book entry or certificated registered form, or such other form as the Secretary by regulation may prescribe.

7. Section 203.411 is revised to read as follows:

§ 203.411 Cash adjustment.

Any difference of less than $50 between the amount of debentures to be issued to the mortgagee and the total amount of the mortgagee's claim, as approved by the Commissioner, may be adjusted by the issuance of a check in payment thereof.

8. A new § 203.427 is added after § 203.426 and at the end of the undesignated center heading, "Mutual Mortgage Insurance Fund and Distributive Shares", to read as follows:

§ 203.427 Statute of limitations on payment of distributive shares.

The Commissioner shall not distribute any distributive share to an eligible mortgagor under § 203.423 beginning on the date which is six years after the date the Commissioner first transmitted written notification of eligibility to the last known address of the mortgagor, unless the mortgagor has applied in accordance with procedures prescribed by the Commissioner for payment of the share within the six-year period. The Commissioner shall transfer any amounts no longer eligible for distribution under this section from the Participating Reserve Account to the General Surplus Account.

9. Paragraph (f) of § 203.440 is revised to read as follows:

§ 203.440 Definitions.

* * * * *

(f) *Debentures* means registered, transferable securities in book entry or certificated form which are valid and binding obligations, unconditionally guaranteed as to principal and interest by the United States.

10. Section 203.483 is revised to read as follows:

§ 203.483 Forms and amounts of debentures.

Debentures issued under this part shall be in such form and amounts; and shall be subject to such terms and conditions; and shall include such provisions for redemption, if any, as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury; and may be in book entry or certificated registered form, or such other form as the Secretary by regulation may prescribe.

11. Section 203.487 is revised to read as follows:

§ 203.487 Cash adjustment.

Any difference of less than $50 between the amount of debentures to be issued to the lender and the total amount of the lender's claim, as approved by the Commissioner, may be adjusted by the issuance of a check in payment thereof.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

12. The authority citation for 24 CFR part 207 continues to read as follows:

Authority: 12 U.S.C. 1701z–11(e), 1713, and 1715b; 42 U.S.C. 3335(d).

13. Section 207.259 is amended by revising paragraph (e)(5), to read as follows:

§ 207.259 Insurance benefits.

* * * * *

(e) * * *

(5) Be issued in such forms and amounts; and be subject to such terms and conditions; and include such provisions for redemption, if any, as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury; and may be in book entry or certificated registered form, or such other form as the Secretary by regulation may prescribe.

* * * * *

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

14. The authority citation for 24 CFR part 220 continues to read as follows:

Authority: 12 U.S.C. 1713, 1715b, 1715k; 42 U.S.C. 3535(d).

15. Section 220.836 is revised to read as follows:

§ 220.836 Form and amounts of debentures.

Debentures issued under subpart D of this part shall be in such form and amounts; and shall be subject to such terms and conditions; and shall include such provisions for redemption, if any, as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury; and may be in book entry or certificated registered form, or such other form as the Secretary by regulation may prescribe.

16. Section 220.842 is revised to read as follows:

§ 220.842 Cash adjustment.

Any difference of less than $50 between the amount of debentures to be issued to the lender and the total amount of the lender's claim, as approved by the Commissioner, may be adjusted by the issuance of a check in payment thereof.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

17. The authority citation for 24 CFR part 221 is revised to read as follows:

Authority: 12 U.S.C. 1707(a), 1715b, and 1715*l*; 42 U.S.C. 3535(d).

18. Section 221.780 is revised to read as follows:

§ 221.780 Issuance of debentures.

Upon the exercise of the assignment option and the satisfactory performance of the requirements as to assignment set out in § 207.258 of this chapter, the Commissioner shall issue the assignor mortgagee debentures having a total par value equal to the amount of the original principal obligation of the mortgage which was unpaid on the date of the assignment, plus accrued interest to such date.

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

19. The authority citation for 24 CFR part 232 continues to read as follows:

Authority: 12 U.S.C. 1715(b), 1715w, 1715z(9); 42 U.S.C. 3535(d).

20. Section 232.893 is revised to read as follows:

§ 232.893 Cash adjustment.

Any difference of less than $50 between the amount of debentures to be issued to the lender and the total amount of the lender's claim, as approved by the Commissioner, may be adjusted by the issuance of a check in payment thereof.

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOMEOWNERSHIP AND PROJECT REHABILITATION

21. The authority citation for 24 CFR part 235 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z; 42 U.S.C. 3535(d).

22. Section 235.215 is revised to read as follows:

§ 235.215 Method of paying insurance benefits.

If the application for insurance benefits is acceptable to the Secretary, the insurance claim shall be paid in cash, unless the mortgagee files a written request with the application for payment in debentures.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

23. The authority citation for 24 CFR part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

24. Paragraph (a) of § 236.265 is revised to read as follows:

§ 236.265 Payment of insurance benefits.

* * * * *

(a) Insurance claims shall be paid in cash unless the mortgagee files a written request for payment in debentures.

* * * * *

PART 237—SPECIAL MORTGAGE INSURANCE FOR LOW AND MODERATE INCOME FAMILIES

25. The authority citation for 24 part 237 is revised to read as follows:

Authority: 12 U.S.C. 1709, 1715b, 1715z–2; 42 U.S.C. 3535(d).

26. Section 237.260 is revised to read as follows:

§ 237.260 Method of paying insurance benefits.

If the application for insurance benefits is acceptable to the Commissioner, the insurance claim shall be paid in cash, unless the mortgagee files a written request with the application for payment in debentures.

PART 241—SUPPLEMENTARY FINANCING FOR INSURED MULTIFAMILY PROJECTS

27. The authority citation for 24 CFR part 241 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–6; 42 U.S.C. 3535(d).

28. Section 241.893 is revised to read as follows:

§ 241.893 Cash adjustment.

Any difference of less than $50 between the amount of debentures to be issued to the lender and the total amount of the lender's claim, as approved by the Commissioner, may be adjusted by the issuance of a check in payment thereof.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

29. The authority citation for 24 CFR part 242 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715n(1), 1715z–7; 42 U.S.C. 3535(d).

30. Section 242.260 is revised to read as follows:

§ 242.260 Insurance benefits.

All of the provisions of § 207.259 of this chapter relating to insurance benefits apply to mortgages on hospitals insured under this subpart, except that in a case where the mortgage involves the financing or refinancing of an existing hospital pursuant to § 242.93 and the commitment for insuring such mortgage is issued on or after April 1, 1969, the insurance claim shall be paid in cash unless the mortgagee files a written request for payment in debentures.

Dated: September 21, 1994.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 94–24188 Filed 9–29–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 104 and 199

RIN 0720–AA24

[DoD 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Continued Health Care Benefit Program

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule establishes a Continued Health Care Benefit Program (CHCBP) for certain DoD and other Uniformed Services health care beneficiaries who lose eligibility for health care in the Military Health Services System (MHSS). It also provides for use of the CHAMPUS benefit structure and CHAMPUS rules and outlines procedures for the CHCBP.

EFFECTIVE DATES: October 1, 1994.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch; Aurora, Colorado 80045–6900.

FOR FURTHER INFORMATION CONTACT: Mr. Gunther J. Zimmerman, Office of the Assistant Secretary of Defense (Health Affairs), (703) 695–3331.

SUPPLEMENTARY INFORMATION:

1. Overview of the Final Rule

On April 6, 1994, an interim final rule regarding benefits and operational issues associated with implementation of the Continued Health Care Benefit Program (CHCBP) was published (59 FR 16136).

The CHCBP was directed by Congress in section 4408 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102–484, which amended title 10, United States Code, by adding section 1078a. This law directed the implementation of a program of temporary continued health benefits coverage for certain former beneficiaries of the Department of Defense, comparable to the health benefits provided for former civilian employees of the Federal government.

Congress also directed that the program start by October 1, 1994, and replace the conversion health care programs authorized in 10 U.S.C. 1086a and 1145(b). Conversion health care is provided via a DoD contract with Mutual of Omaha and is scheduled to end September 30, 1994.

The statute directs that the benefits offered by the CHCBP must be comparable to those offered to former civilian employees of the Federal government. As is the case for those employees, the costs will be borne by the beneficiary who will pay the entire premium charge. Additionally, the Department of Defense is permitted to charge up to an additional ten percent of the premium charge to cover administrative expenses.

Under section 4408(b), eligibility to enroll in the CHCBP includes members of the Uniformed Services who are discharged or released (voluntarily or involuntarily as long as not under adverse conditions) and their dependents; certain unremarried former spouses of a member or former member; and emancipated children.

Health care coverage in the CHCBP is for a specific time period, which varies by the category of beneficiary. Coverage periods are as follows: Former uniformed services members and their dependents—up to 18 months; unremarried former spouses—up to 36 months; emancipated children (age 21 if not in college or up to age 23 if in college)—up to 36 months. Eligible beneficiaries generally will have 60 days to elect coverage after they are notified of their opportunity to enroll.

The Department of Defense considered three alternatives to implement this program: First, integration of the program within the Federal Employee Health Benefit

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Program (FEHBP) health care plans under arrangement with the Office of Personnel Management (OPM); second, competitive procurement of a private insurer to administer this program; and lastly, continued CHAMPUS-type coverage, paid for by the beneficiary, with a third party administrator collecting the premiums and performing eligibility and verification functions. The first option was rejected based on the difficulties of making the transition from a DoD administered benefit to an OPM program. The second option was not selected based on the likelihood that an acquisition process involving a beneficiary group of such unpredictable size and characteristics would not result in a vendor willing to underwrite this program. Contractors would be wary that health care costs would exceed the capped premium. Thus, we elected to offer this program directly through the established mechanisms of CHAMPUS.

Under this approach, beneficiaries will continue to make use of existing CHAMPUS rules and administrative structures to receive their medical care and have medical claims paid. This feature will allow enrollees to make use of discounts and reduced copayments and provider arrangements already part of CHAMPUS in some locations. As previously noted, a third party administrator (TPA) will act as a central agent for the program. The functions of this TPA will be to: receive applications for enrollment of beneficiaries; verify eligibility and approve enrollment; notify the Defense Enrollment and Eligibility Reporting System (DEERS) of enrollment; collect premiums; and provide administrative services. CHCBP eligibles will obtain information concerning the program and the application process and other TPA functions at their local base transition office or through the nearest military treatment facility's (MTF) Health Benefits Advisor (HBA).

Congressional legislation caps premiums at a level equal to that of a comparable mid-range Health Maintenance Organization (HMO) program offered in the FEHBP. These premium rates were determined by category plan—either self or family and are not age/sex adjusted. (Similar to FEHBP premium schedules). Quarterly premium rates for fiscal year 1995 will be: $410 for self and $891 for family.

Following is a discussion of the comments we received regarding the Continued Health Care Benefit Program, and the action we are taking in response.

1. Quarterly Premium Rates

Interim Final Rule. The interim final rule states that the Department has contracted with a private sector actuarial firm to help develop premium rates.

Comment 1A. An organization has requested that the estimated rates be updated with the actual rates to be charged once they have been calculated.

Response. The following will be the FY95 quarterly premium rates for the CHCBP. Self—$410; Family—$891.

2. Transitional Health Care Coverage

Interim Final Rule. The interim final rule states the medical coverage for the Continued Health Care Benefit Program (CHCBP) will be offered via the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).

Comment 2A. An organization of the military coalition has recommended that DoD offer transitional health benefits coverage through the Federal Employees Health Benefit Program (FEHBP), not CHAMPUS.

Response. The Department requested the Office of Personnel Management (OPM) consider granting CHCBP beneficiaries authority to select health care from their list of FEHBP programs or to make CHCBP an FEHBP program. OPM opposed this request. Additionally, the requirement to cover preexisting conditions for new enrollees would make FEHBP private insurers unlikely to enroll CHCBP beneficiaries. Therefore, standard CHAMPUS was considered the most feasible means of ensuring entitled care.

On January 19, 1988, (53 FR 1343), the Department of Defense published a rule, "Voluntary Private Health Insurance Conversion Program." This subject has been incorporated into 32 CFR part 199, section 199.20. Therefore, 32 CFR part 104 is removed.

II. Rulemaking Procedures

Executive Order 12866 requires certain regulatory assessments for any "significant regulatory action," defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

The final rule will impose additional information collection requirements on the public under the Paperwork Reduction Act of 1980 (44 USC 3501–3511), because beneficiaries will be required to enroll. OMB has granted conditional approval based on their intention of reviewing the Application Form upon its completion.

List of Subjects in 32 CFR Parts 104 and 199

Claims, handicapped, health insurance, and military personnel.

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR Part 104 is removed and Part 199 is amended as follows:

PART 104—[REMOVED]

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 1079, 1086.

2. Section 199.20 is revised as follows:

§ 199.20 Continued Health Care Benefit Program (CHCBP).

(a) *Purpose.* The CHCBP is a premium based temporary health care coverage program that will be available to qualified beneficiaries (set forth in paragraph (d)(1) of this section). Medical coverage under this program will mirror the benefits offered via the basic CHAMPUS program. Premium costs for this coverage are payable by enrollees to a Third Party Administrator. The CHCBP is not part of the CHAMPUS program. However, as set forth in this section, it functions under most of the rules and procedures of CHAMPUS. Because the purpose of the CHCBP is to provide a continuation health care benefit for the Department of Defense and the other Uniformed Services (e.g., NOAA, PHS, and the Coast Guard) health care beneficiaries losing eligibility, it will be administered so that it appears, to the maximum extent possible, to be part of CHAMPUS.

(b) *General provisions.* Except for any provisions the Director, OCHAMPUS may exclude, the general provisions of section 199.1 shall apply to the CHCBP as they do to CHAMPUS.

(c) *Definitions.* Except as may be specifically provided in this section, to the extent terms defined in section 199.2 are relevant to the administration of the CHCBP, the definitions contained in that section shall apply to the CHCBP as they do to CHAMPUS.

(d) *Eligibility and enrollment.*—(1) *Eligibility.* Enrollment in the CHCBP is open to the following individuals:

(i) Members of Uniformed Services, who:

(A) Are discharged or released from active duty (or full time National Guard duty), whether voluntarily or involuntarily, under other than adverse conditions;

(B) Immediately preceding that discharge or release, were entitled to medical and dental care under 10 U.S.C. 1074(a) (except in the case of a member discharged or released from full-time National Guard duty); and,

(C) After that discharge or release and any period of transitional health care provided under 10 U.S.C. 1145(a) would not otherwise be eligible for any benefit under 10 U.S.C. chapter 55.

(ii) A person who:

(A) Ceases to meet requirements for being considered an unmarried dependent child of a member or former member of the armed forces under 10 U.S.C. 1072(2)(D);

(B) On the day before ceasing to meet those requirements, was covered under a health benefits plan under 10 U.S.C. chapter 55, or transitional health care under 10 U.S.C. 1145(a) as a dependent of the member or former member; and,

(C) Would not otherwise be eligible for any benefits under 10 U.S.C. chapter 55.

(iii) A person who:

(A) Is an unremarried former spouse of a member or former member of the armed forces;

(B) On the day before the date of the final decree of divorce, dissolution, or annulment was covered under a health benefits plan under 10 U.S.C. chapter 55, or transitional health care under 10 U.S.C. 1145(a) as a dependent of the member or former member; and,

(C) Is not a dependent of the member or former member under 10 U.S.C. 1072(2)(F) or (G) or ends a one-year period of dependency under 10 U.S.C. 1072(2)(H).

(2) *Effective date.* Except for the special transitional provisions in paragraph (r) of this section, eligibility in the CHCBP is limited to individuals who lost their entitlement to regular military health services system benefits on or after October 1, 1994.

(3) *Notification of eligibility.* (i) The Department of Defense and the other Uniformed Services (National Oceanic and Atmospheric Administration (NOAA), Public Health Service (PHS), Coast Guard) will notify persons eligible to receive health benefits under the CHCBP.

(ii) In the case of a member who becomes (or will become) eligible for continued coverage, the Department of Defense shall notify the member of their rights for coverage as part of pre-separation counseling conducted under 10 U.S.C. 1142.

(iii) In the case of a child of a member or former member who becomes eligible for continued coverage:

(A) The member or former member may submit to the Third Party Administrator a notice of the child's change in status (including the child's name, address, and such other information needed); and

(B) The Third Party Administrator, within 14 days after receiving such information, will inform the child of the child's rights under 10 U.S.C. 1142.

(iv) In the case of a former spouse of a member or former member who becomes eligible for continued coverage, the Third Party Administrator will notify the individual of eligibility for CHCBP when he or she declares the change in marital status to a military personnel office.

(4) *Election of coverage.* (i) In order to obtain continued coverage, written election by eligible beneficiary must be made, within a prescribed time period. In the case of a member discharged or released from active duty (or full time National Guard duty), whether voluntarily or involuntarily; an unremarried spouse of a member or former member; or a child emancipated from a member or former member, the written election shall be submitted to the Third Party Administrator before the end of the 60-day period beginning on the later of:

(A) The date of the discharge or release of the member from active duty or full-time National Guard duty;

(B) The date on which the period of transitional health care applicable to the member under 10 U.S.C. 1145(a) ends;

(C) In the case of an unremarried former spouse of a member or former member, the date the one-year extension of dependency under 10 U.S.C. 1072(2)(H) expires; or

(D) The date the member receives the notification of eligibility.

(ii) A member of the armed forces who is eligible for enrollment under paragraph (d)(1)(i) of this section may elect self-only or family coverage. Family members who may be included in such family coverage are the spouse and children of the member.

(5) *Enrollment.* Enrollment in the Continued Health Care Benefit Program will be accomplished by submission of an application to a Third Party Administrator (TPA). Upon submittal of an application to the Third Party Administrator, the enrollee must submit proof of eligibility. One of the following types of evidence will validate eligibility for care:

(i) A Defense Enrollment Eligibility Reporting System (DEERS) printout which indicates the appropriate sponsor status and the sponsor's and dependent's eligibility dates;

(ii) A copy of a verified and approved DD Form 1172, "Application for Uniformed Services Identification and Privilege Card";

(iii) A front and back copy of a DD Form 1173, "Uniformed Services Identification and Privilege Card" overstamped "TA" for Transition Assistance Management Program; or

(iv) A copy of a DD Form 214—"Certificate of Release or Discharge from Active Duty".

(6) *Period of coverage.* CHCBP coverage may not extend beyond:

(i) For a member discharged or released from active duty (or full time National Guard duty), whether voluntarily or involuntarily, the date which is 18 months after the date the member ceases to be entitled to care under 10 U.S.C. 1074(a) and any transitional care under 10 U.S.C. 1145.

(ii) In the case of an unmarried dependent child of a member or former member, the date which is 36 months after the date on which the person first ceases to meet the requirements for being considered an unmarried dependent child under 10 U.S.C. 1072(2)(D).

(iii) In the case of an unremarried former spouse of a member or former member, the date which is 36 months after the later of:

(A) The date on which the final decree of divorce, dissolution, or annulment occurs; or

(B) If applicable, the date the one-year extension of dependency under 10 U.S.C. 1072(2)(H) expires.

(iv) In the case of an unremarried former spouse of a member or former member, whose divorce occurred prior to the end of transitional coverage, the period of coverage under the CHCBP is unlimited, if:

(A) Has not remarried before the age of 55; and

(B) Was enrolled in the CHCBP as the dependent of an involuntarily separated member during the 18-month period before the date of the divorce, dissolution, or annulment; and

(C) Is receiving a portion of the retired or retainer pay of a member or former member or an annuity based on the retainer pay of the member; or

(D) Has a court order for payment of any portion of the retired or retainer pay; or

(E) Has a written agreement (whether voluntary or pursuant to a court order)

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which provides for an election by the member or former member to provide an annuity to the former spouse.

(v) For the beneficiary who becomes eligible for the Continued Health Care Benefit Program by ceasing to meet the requirements for being considered an unmarried dependent child of a member or former member, health care coverage may not extend beyond the date which is 36 months after the date the member becomes ineligible for medical and dental care under 10 U.S.C. 1074(a) and any transitional health care under 10 U.S.C. 1145(a).

(vi) Though beneficiaries have sixty-days (60) to elect coverage under the CHCBP, upon enrolling, the period of coverage must begin the day after entitlement to a military health care plan (including transitional health care under 10 U.S.C. 1145(a)) ends.

(e) *CHCBP benefits*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, the provisions of section 199.4 shall apply to the CHCBP as they do to CHAMPUS.

(2) *Exceptions.* The following provisions of section 199.4 are not applicable to the CHCBP:

(i) Paragraph (a)(2) of this section concerning eligibility:

(ii) All provisions regarding nonavailability statements or requirements to use facilities of the Uniformed Services.

(3) *Beneficiary liability.* For purposes of CHAMPUS deductible and cost sharing requirements and catastrophic cap limits, amounts applicable to the categories of beneficiaries to which the CHCBP enrollee last belonged shall continue to apply, except that for separating active duty members, amounts applicable to dependents of active duty members shall apply.

(f) *Authorized providers.* The provisions of section 199.6 shall apply to the CHCBP as they do to CHAMPUS.

(g) *Claims submission, review, and payment.* The provisions of section 199.7 shall apply to the CHCBP as they do to CHAMPUS, except that no provisions regarding nonavailability statements shall apply.

(h) *Double coverage.* The provisions of section 199.8 shall apply to the CHCBP as they do to CHAMPUS.

(i) *Fraud, abuse, and conflict of interest.* Administrative remedies for fraud, abuse and conflict of interest. The provisions of section 199.9 shall apply to the CHCBP as they do to CHAMPUS.

(j) *Appeal and hearing procedures.* The provisions of section 199.10 shall apply to the CHCBP as they do to CHAMPUS.

(k) *Overpayment recovery.* The provisions of section 199.11 shall apply to the CHCBP as they do to CHAMPUS.

(l) *Third Party recoveries.* The provisions of section 199.12 shall apply to the CHCBP as they do to CHAMPUS.

(m) *Provider reimbursement methods.* The provisions of section 199.14 shall apply to the CHCBP as they do to CHAMPUS.

(n) *Peer Review Organization Program.* The provisions of section 199.15 shall apply to the CHCBP as they do to CHAMPUS.

(o) *Preferred provider organization progroms available.* Any preferred provider organization program under this part that provides for reduced cost sharing for using designated providers, such as the "TRICARE Extra" option under section 199.17, shall be available to participants in the CHCBP as it is to CHAMPUS beneficiaries.

(p) *Special programs not applicable*—(1) *In general.* Special programs established under this Part that are not part of the basic CHAMPUS program established pursuant to 10 U.S.C. 1079 and 1086 are not, unless specifically provided in this section, available to participants in the CHCBP.

(2) *Examples.* The special programs referred to in paragraph (p)(1) of this section include:

(i) The Program for the Handicapped under section 199.5;

(ii) The Active Duty Dependents Dental Plan under section 199.13;

(iii) The Supplemental Health Care Program under section 199.16; and

(iv) The TRICARE Enrollment Program under section 199.17, except for TRICARE Extra program under that section.

(3) *Exemptions to the restriction.* In addition to the provision to make TRICARE Extra available to CHCBP beneficiaries, the following two demonstration projects are also available to CHCBP enrollees:

(i) Home Health Care Demonstration; and

(ii) Home Health Care-Case Management Demonstration.

(q) *Premiums*—(1) *Rates.* Premium rates will be established by the Assistant Secretary of Defense (Health Affairs) for two rate groups—individual and family. Eligible beneficiaries will select the level of coverage they require at the time of initial enrollment (either individual or family) and pay the appropriate premium payment. The rates are based on Federal Employee Health Benefit Program employee and agency contributions required for a comparable health benefits plan, plus an administrative fee. The administrative fee, not to exceed ten percent of the basic premium amount, shall be determined based on actual expected administrative costs for administration of the program. Premiums may be revised annually and shall be published annually for each fiscal year. Premiums will be paid by enrollees quarterly.

(2) Effects of failure to make premium payments. Failure by enrollees to submit timely and proper premium payments will result in denial of continued enrollment and denial of payment of medical claims. Premium payments which are late 30 days or more past the start of the quarter for which payment is due will result in the ending of beneficiary enrollment. Beneficiaries denied continued enrollment due to lack of premium payments will not be allowed to reenroll. In such a case, benefit coverage will cease at the end of the ninety day (90) period for which a premium payment was received. Enrollees will be held liable for medical costs incurred after losing eligibility.

(r) *Transitional provisions.* (1) There will be a sixty-day period of enrollment for all eligible beneficiaries (outlined in paragraph (d)(1) of this section) whose entitlement to regular military health services system coverage ended on or after August 2, 1994, but prior to the CHCBP implementation on October 1, 1994.

(2) Enrollment in the U.S. VIP program may continue up to October 1, 1994. Policies written prior to October 1, 1994, will remain in effect until the end of the policy life.

(3) On or after the October 1, 1994, implementation of the Continued Health Care Benefit Program, beneficiaries who enrolled in the U.S. VIP program prior to October 1, 1994, may elect to cancel their U.S. VIP policy and enroll in the CHCBP.

(4) With the exception of persons enrolled in the U.S. VIP program who may convert to the CHCBP, individuals who lost their entitlement to regular military health services system coverage prior to August 2, 1994, are not eligible for the CHCBP.

(s) *Procedures.* The Director, OCHAMPUS, may establish other rules and procedures for the administration of the Continued Health Care Benefit Program.

Dated: September 26, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94-24289 Filed 9-29-94; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01-94-136]

RIN 2115-AE46

Special Local Regulation; Head of the Connecticut Regatta

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The special local regulations for the Head of the Connecticut Regatta are being permanently revised to improve the control of vessels transiting the Connecticut River near the regulated area. This regulation is needed to better protect race participants from recreational and commercial vessel traffic.

EFFECTIVE DATE: This regulation is effective on September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) B.M. Algeo, Chief, Boating Affairs Branch, First Coast Guard District, (617) 223-8311.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this document are LTJG B.M. Algeo, Project Manager, First Coast Guard District, and LCDR S.R. Watkins, Project Attorney, First Coast Guard District Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. The Head of the Connecticut Regatta is an event of longstanding tradition. The local community is well aware of the conditions necessary to conduct the event in a safe manner. Last year, the provisions of this rule were used to temporarily amend the permanent regulation found in 33 CFR 100.105. Based on the positive experience with that temporary rule change, the Coast Guard believes this amended regulation will allow the race to be conducted in the safest manner possible while minimizing the impact on other boaters. Publishing a NPRM and delaying the event would be contrary to the public interest given the significant public participation in the regatta and the extensive planning which has taken place.

Background and Purpose

The permanent special local regulations for the Head of the Connecticut Regatta are found at 33 CFR 100.105. These regulations have become outdated insofar as section 100.105(b)(2) allows vessels less than 20 meters to transit the regulated area between each heat of the regatta. The number of racing shells and vessels transiting along the race course has grown to such a level that it is no longer safe to allow vessels to transit the regulated area between each heat. Regardless of the amount of planning and control in past years, racing shells have not followed the predetermined traffic patterns designed to allow vessels to transit the regulated area between heats. The race sponsor and the Coast Guard have developed a race and escort plan for the regatta which will allow vessels to transit the regulated area under escort throughout the race. Accordingly, section 100.105(b)(2) is being revised to allow vessel transits through the regulated area only at the discretion of, and under the escort of, the Coast Guard patrol commander. Based on the successful use of this provision during last year's race, the Coast Guard considers this permanent change to the regulation advisable in the interest of safety.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary.

Commercial traffic on the affected portion of the Connecticut River is sparse. The race is popular and is anticipated to draw business to the local community. Local commercial entities have been notified of the race schedule. Because of the short duration of the event and the advisories that will be made, commercial entities will be able to adjust to any disruptions. The permanent change should reduce the amount of time it takes for nonparticipants to transit through the regulated area, thus further limiting the impact of the rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons explained in the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this regulation in accordance with the principles and criteria contained in Executive Order 12612 and bas determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2.c of Commandant Instruction M16475.1B it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Final Regulation

In consideration of the foregoing, 33 CFR Part 100 is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.105 is amended by revising paragraph (b)(2) as follows:

§ 100.105 Head of the Connecticut Regatta.

* * * * *

(b) * * *

(2) Vessels less than 20 meters in length will be allowed to transit the regulated area only under escort and at

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the discretion of the Coast Guard patrol commander.

* * * * *

Dated: September 15, 1994.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 94-24156 Filed 9-29-94; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD05-94-046]

RIN 2115-AE47

Drawbridge Operation Regulations; Gallants Channel, Beaufort, NC

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule with request for comments.

SUMMARY: The Coast Guard is changing the regulations governing the U.S. 70 Bridge across Gallants Channel, mile 0.1, in Beaufort, North Carolina, by extending the hours of restricted openings from the current 7:30 a.m. to 7:30 p.m. timeframe to the hours of 6 a.m. to 10 p.m. This rule also further limits the number of openings required during the hours of restrictions. From 6 a.m. to 10 p.m., the bridge will open three times an hour; once on the hour, once twenty minutes past the hour and once forty minutes past the hour for all waiting vessels, commercial and recreational. From 10 p.m. to 6 a.m., the bridge shall open on signal. This rule is intended to provide for regularly scheduled drawbridge openings to reduce motor vehicle traffic delays and congestion resulting from bridge openings while still providing for the reasonable needs of navigation.

DATES: This rule is effective October 1, 1994. Comments must be received on or before December 29, 1994.

ADDRESSES: Comments may be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, or may be delivered to room 109 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (804) 398-6222. Comments will become part of this docket and will be available for inspection or copying at room 109, Fifth Coast Guard District.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, (804) 398-6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05-94-046) and the specific section of this rulemaking to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this rulemaking in view of the comments.

At this time, the Coast Guard plans no public hearing, however, if future public interest and new information warrants, a public hearing may be held. Persons may request a public hearing by writing to the Commander (ob) at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The drafters of this regulation are Bill H. Brazier, Project Officer, and LCDR C. Abel, Project Attorney, Fifth Coast Guard District.

Regulatory History

The Coast Guard published a Temporary Deviation from the regulations for the Beaufort U.S. 70 drawbridge across Gallant's Channel in the **Federal Register** (59 FR 38567) on July 29, 1994. The expiration date of the deviation is September 30, 1994. The purpose of the deviation was to evaluate a modification to the current published regulation. Comments on the temporary deviation were solicited through September 30, 1994. The Coast Guard also published the temporary deviation as a public notice (PN 5-834) on July 29, 1994. Comments were solicited through September 30, 1994. Two comments have been received.

Background and Purpose

The Carteret County Chamber of Commerce, through the North Carolina Department of Transportation, asked the Coast Guard to change the operating regulations governing the Beaufort U.S. 70 highway bridge by limiting required bridge openings for commercial boats to one opening at the top of each hour, and for recreational boats to one opening at the bottom of the hour. To supplement this request, they provide copies of bridge logs which showed the bridge opened as many as eight times an hour for the passage of vessels during the summer of 1993. The Coast Guard also obtained traffic counts from the North Carolina Department of Transportation which showed average annual vehicle traffic counts of 20,000 per day during the same period. The current Federal Regulation for this bridge requires that it open every hour on the half hour from 7:30 a.m. to 7:30 p.m. for the passage of pleasure craft. During these same hours, the bridge is required to open on signal for all other vessels. From 7:30 p.m. to 7:30 a.m., the bridge opens on signal for all vessels. The numerous random openings of the bridge under this regulation were causing vehicular traffic delays and traffic safety problems. At times, bridge openings backed traffic up through the downtown area of Beaufort to the east and west Morehead City across the channel. The intent of the requested change was to reduce the number of bridge openings and improve the flow of highway traffic.

The Coast Guard conducted an investigation into the operations of the bridge, consulting with the bridge tenders, the Mayor and City Council of Beaufort, North Carolina Department of Transportation officials and some of the local commercial waterway and highway users. The Coast Guard, in response to all comments received during our investigation, decided to pursue a more balanced approach than that originally requested by establishing a temporary deviation to the regulations and evaluating the results of that test schedule to determine if it resulted in a reasonable and beneficial compromise for both modes of transportation. The Coast Guard conducted the test for a sixty day period which provided three scheduled openings per hour for all vessels; the first at the top of the hour, the second at twenty minutes past the hour, and the third at forty minutes past the hour. The temporary deviation also extended the hours of restricted openings from the current 7:30 a.m. to 7:30 p.m. timeframe to include the hours of 6 a.m. to 10 p.m. This temporary deviation to the existing regulation was intended to establish a schedule that will meet the reasonable needs of the waterway users and at the same time reduce delays to and improve the flow of highway traffic crossing the bridge.

The Coast Guard anticipated the test would show that the total overall number of bridge openings would decrease during the trial period as compared to the same period in 1993. Data collected by the North Carolina Department of Transportation from August 1, through August 19, 1994 showed that under the temporary deviation, the number of bridge openings during the hours of restriction was reduced by over 100 compared to the number of openings during the same dates and hours in 1993. North Carolina Department of Transportation traffic officials also stated they noted no significant highway traffic backups as a result of bridge openings during the test period. Although the Coast Guard has not yet received the additional bridge opening and highway traffic data collected by the North Carolina Department of Transportation during the remainder of the test period, all indications are that results will continue to show a reduction in the number of bridge openings and on improvement in the flow of highway traffic across the bridge. Based on the lack of complaints received during the test period, the positive written and verbal comments received on the test schedule by concerned interest groups, the demonstrated positive results shown through data collected from August 1 through August 19, and the unanimous request of all who have contacted the Coast Guard not to revert to the previous opening schedule, the Coast Guard believes it is in the public interest to continue the opening schedule used during the test period without interruption by publishing this interim rule. For the reasons above, it would be contrary to the public interest to revert to the existing regulation upon expiration of the temporary deviation and therefore, good cause exists for publishing this rule without prior notice and opportunity for comment, and making it effective in less than the 30 days after publication normally required. This rule should be effective immediately because it is in the overall public interest to do so, and the Coast Guard is not aware of any reasons not to.

Discussion of Comments

The Coast Guard received two written comments in response to our public notice concerning the temporary deviation to the regulations for the Gallant's Channel drawbridge. Both comments were from Beaufort City Officials (the Mayor and the Town Administrator). Both comments were favorable and expressed the belief that the temporary deviation had improved the flow of highway traffic across the bridge and reduced highway traffic delays previously attributable to frequent, unscheduled openings of the bridge. Verbal comments received by the Coast Guard from State Highway Officials, bridgetenders, a local county chamber of commerce and a representative of the commercial marine industry all indicated the 60-day temporary deviation had improved the flow of highway traffic across the bridge and had a generally favorable effect on the Town of Beaufort. They also expressed the strong opinion that reverting to the existing published regulation upon expiration of the temporary deviation would have a detrimental effect on the flow of highway traffic across the bridge and would be extremely confusing to both motorists and boaters.

Regulatory Evaluation

This proposal is a not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the U.S. Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the regulatory flexibility requirements. Although exempt, the Coast Guard has reviewed this rule for potential impact on small entities.

Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this rule will have a significant economic impact on your business, please submit a comment (See **ADDRESSES**) explaining why you think your business qualifies and in what way and to what degree this rule will economically affect your business.

Collection of Information

This rule contains no collection of information requirements under the paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05.1(g).

2. In section 117.822 is revised to read as follows:

§ 117.822 Beaufort Channel, NC.

From 6 a.m. to 10 p.m., the draw shall open on signal for all vessels waiting to pass every hour on the hour, twenty minutes past the hour and forty minutes past the hour. From 10 p.m. to 6 a.m., the bridge shall open on signal.

Dated: September 23, 1994.

M.K. Cain,

Acting Captain, U.S. Coast Guard Commander, Fifth Coast Guard District

[FR Doc. 94-24154 Filed 9-29-94; 8:45 am]

BILLING CODE 4910-14-M

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 7F3521/R2079; FRL–4908–3]

RIN 2070–AB78

Tefluthrin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document extends tolerances for the combined residues of the synthetic pyrethroid tefluthrin [2,3,5,6-tetrafluoro-4-methylphenyl)methyl]-(1 *alpha*, 3 *alpha*)-(*Z*)-(±)-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate] and its metabolite (*Z*)-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylic acid in or on the raw agricultural commodities corn, grain, field, and pop; corn, forage and fodder, field and pop. Zeneca Ag Products (previously, ICI Americas, Inc.) requested this regulation to extend the effective date for tolerances for maximum permissible levels of residues of this insecticide in or on these commodities.

EFFECTIVE DATE: This regulation becomes effective September 30, 1994.

ADDRESSES: Written objections, identified by the document control number, [PP 7F3521/R2079], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 3, 1994 (59 FR 39502), EPA issued a proposed rule to extend to November 15, 1995, tolerances for the combined residues of the insecticide tefluthrin in or on the commodities corn, grain, field and pop; corn forage and fodder, field and pop. Because of the lack of certain data, these tolerances for tefluthrin had been established with an expiration date of July 31, 1994, by a rule published in the **Federal Register** of February 1, 1989 (54 FR 5080).

On October 20 and November 13, 1992, Zeneca Ag Products requested an extension of the conditional registration and extension of time to November 15, 1994. Zenaca also requested a waiver of the mesocosm study because of a change in Agency policy on the need for higher tiered fate and ecological effects data such as an aquatic field study. The Agency reexamined the existing ecological effects database and concluded that it had sufficient baseline data to characterize aquatic hazard for this pesticide, and the Agency waived the requirement for a mesocosm study. However, the Agency still concluded that this pesticide may pose aquatic risk from use on corn and agreed to an extension of the conditional registration until November 15, 1994, provided Zeneca submits risk reduction measures designed to reduce the potential for exposure to aquatic habitats of concern. Zeneca Ag Products agreed to these terms, and on June 14, 1993, the Agency extended the conditional registration for tefluthrin on corn to November 15, 1994. By November 15, 1994, the Agency intends to complete review of all data and other information submitted and to make Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) section 3(c)(5) or other appropriate regulatory decisions for corn use of tefluthrin.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance extension will protect the public health. Therefore, the tolerance extension is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 21, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.440, to read as follows:

§ 180.440 Tefluthrin; tolerances for residues.

Tolerances, to expire on November 15, 1995, are established for the combined residues of the insecticide tefluthrin (2,3,5,6 tetrafluroro-4-methylphenyl)methyl-(1 *alpha*, 3 *alpho*)-(*Z*)-(±)-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate) and its metabolite (*Z*)-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylic acid in or on the following commodities:

Commodity	Parts per million
Corn, grain, field, and pop	0.02
Corn, forage and fodder, field and pop	.06

[FR Doc. 94–24244 Filed 9–30–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 180, 185, and 186

[PP 7F3500, 8F3592, FAP 8H5650/R2080; FRL–4908–5]

RIN 2070–AB78

Pesticide Tolerances for Avermectin B_1 and its Delta-8,9-Isomer; Renewal of Time-Limited Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document renews time-limited tolerances for residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on certain raw agricultural commodities and food and feed commodities. Merck & Co., Inc., requested this regulation to renew tolerances for maximum permissible levels of residues of the insecticide in or on the commodities.

EFFECTIVE DATE: This regulation becomes effective September 30, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 7F3500, 8F3592, FAP 8H5650/R2080], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 3, 1994 (59 FR 39505), EPA issued proposed rules to renew time-limited tolerances, to expire on April 30, 1996, for the insecticide avermectin B_1 and its delta 8,9-isomer in or on various raw agricultural commodities under 40 CFR 180.449, food commodities under 40 CFR 185.300, and feed commodities under 40 CFR 186.300 to be consistent with conditional registrations granted to Merck & Co., Inc., for the insecticide.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the time-limited tolerances will protect the public health. Therefore, the time-limited tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the

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economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180, 185, and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 21, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.449, by revising paragraph (a), to read as follows:

§ 180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

(a) Tolerances, to expire on April 30, 1996, are established for the combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer (a mixture of avermectins containing ≥ 80 percent avermectin B_{1a} (5-O-demethyl avermectin B_{1a}) and < 20 percent avermectin B_{1a} (5-O-demethyl-25-di (1-methylpropyl)-25-1(1-methylethyl) avermectin A_{1a}) in or on the following commodities:

Commodity	Parts per million
Citrus, whole fruit	0.02
Cattle, meat	0.02
Cattle, mbyp	0.02
Cottonseed	0.005
Milk	0.005

* * * * *

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. By revising § 185.300, to read as follows:

§ 185.300 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

Tolerances, to expire on April 30, 1996, are established for the combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer (a mixture of avermectins containing ≥ 80 percent avermectin B_{1a} (5-O-demethyl avermectin B_{1a}) and < 20 percent avermectin B_{1a} (5-O-demethyl-25-di (1-methylpropyl)-25-1(1-methylethyl) avermectin A_{1a}) in or on the following commodity:

Commodity	Parts per million
Citrus oil	0.10

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.300, by revising paragraph (a) to read as follows:

§ 186.300 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

(a) Tolerances, to expire on April 30, 1996, are established for the combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer (a mixture of avermectins containing ≥ 80 percent avermectin B_{1a} (5-O-demethyl avermectin B_{1a}) and < 20 percent avermectin B_{1a} (5-O-demethyl-25-di (1-methylpropyl)-25-1(1-methylethyl) avermectin A_{1a}) in or on the following commodity:

Commodity	Parts per million
Dried citrus pulp	0.10

* * * * *

[FR Doc. 94-24249 Filed 9-29-94; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 410, 411, 413, and 494

[BPD-724-F]

RIN 0938-AF26

Medicare Program; Medicare Coverage of Screening Mammography

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises interim final regulations on Medicare coverage of screening mammography that were published in the **Federal Register** on December 31, 1990 (55 FR 53510). Those regulations implemented section 4163 of the Omnibus Budget Reconciliation Act of 1990, setting forth payment limitations and conditions for coverage of screening mammography. The conditions consist of quality standards to ensure the safety and accuracy of screening mammography services performed by qualified physicians and other suppliers of these services.

As a result of the implementation of the Mammography Quality Standards Act of 1992 (MQSA) by the Food and Drug Administration (FDA), we are conforming the conditions for coverage to the applicable FDA certification requirements that all Medicare suppliers of services must meet effective October 1, 1994. The revisions in this final rule also respond to certain comments we received on the interim final rule published on December 31, 1990; they provide clarification of certain of its provisions; and they establish conditions for coverage of diagnostic mammography that are similar to those we have established for screening mammography. In addition, this final rule reflects changes resulting from the final rule on the fee schedule for physicians' services, which was published in the **Federal Register** on December 2, 1993 (58 FR 63626).

DATES: These regulations are effective October 1, 1994.

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FOR FURTHER INFORMATION CONTACT: William Larson (Conditions for Coverage), (410) 966-4639. William Morse (Payment Limits), (410) 966-4520.

SUPPLEMENTARY INFORMATION:

I. Background

On December 31, 1990, we published interim final regulations concerning Medicare coverage of screening mammography in the **Federal Register** (55 FR 53510). These regulations implemented section 4163 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Public Law 101-508), which was enacted on November 5, 1990. Section 4163 amended sections 1833, 1834, 1861, 1862, 1863, 1864, 1865, 1902, and 1915 of the Social Security Act (the Act) to provide coverage of screening mammography (including a physician's interpretation of the images or films produced by the radiologic procedure) effective January 1, 1991, subject to frequency limitations, quality standards, and special payment rules.

Before we could follow up on the interim final rule and publish a final rule on Medicare coverage of screening mammography, the Mammography Quality Standards Act of 1992 (MQSA) (Public Law 101-539) was enacted on October 27, 1992, establishing new national quality standards for all mammography services. The MQSA amended part F of title III of the Public Health Service Act (the PHS Act) (42 U.S.C. 263b) to establish a comprehensive statutory mechanism for certification and inspection of all mammography facilities in the United States, except facilities of the Department of Veterans Affairs (VA). The authority to implement the provisions of the MQSA was delegated by the Secretary to the Food and Drug Administration (FDA), which published interim final regulations in this regard in the **Federal Register** (58 FR 67558 and 58 FR 67565) on December 21, 1993, with an effective date of February 22, 1994.

The MQSA did not explicitly repeal section 1834(c) of the Act, which contains the provisions governing Medicare standards for screening mammography. Furthermore, conforming provisions that would tie Medicare coverage for both screening and diagnostic mammography to MQSA standards were initially included in the Omnibus Budget Reconciliation Act of 1993 by the House of Representatives, but subsequently had to be dropped along with other nonbudget provisions in response to Senate procedural rules. These provisions were included again in a technical corrections bill that the Congress attempted to pass late in 1993, but did not pass for reasons unrelated to the substance of the bill.

The MQSA, however, as it was enacted, specifically provides that the standards under the PHS Act apply to all facilities in the country furnishing mammography, except VA facilities. Thus section 354(b) of the PHS Act, added by the MQSA, states that "No facility may conduct an examination or procedure * * * involving mammography * * * unless the facility obtains * * * a certificate issued * * * by the Secretary." Similarly, the MQSA defines a facility in the broadest terms: It includes "a hospital, outpatient department, clinic, radiology practice, or mobile unit, an office of a physician, or other facility * * * that conducts breast cancer screening or diagnosis through mammography activities."

The plain language of the PHS Act requires that facilities furnishing mammography to Medicare beneficiaries meet the standards promulgated under the MQSA. Moreover, we believe that the language of the law indicates that the Congress intended that all facilities furnishing mammography meet a consistent set of national standards. When the Congress wished to exclude facilities from these standards, it did so explicitly; thus, VA facilities are specifically not subject to the Federal standards under the MQSA. Finally, we have compared the requirements contained in the MQSA and quality standards in section 1834(c) of the Act and believe that the Medicare requirements are substantially subsumed in the PHS Act. For the reasons stated above, we believe that it was the Congress' intent that facilities have to meet only one set of Federal mammography standards and that the MQSA standards supersede the previous Medicare standards.

II. Provisions of the Interim Final Rule

The interim final rule, published in the **Federal Register** on December 31, 1990 (55 FR 53510), implemented section 4163 of OBRA '90 by setting forth Medicare payment limitations and establishing conditions for coverage of screening mammography to ensure the safety and accuracy of the screening process.

III. Discussion of Public Comments

We received 42 timely items of correspondence in response to the December 31, 1990 interim final rule. The comments were from professional organizations, State governments, hospitals, consumer organizations, suppliers of mammography equipment, and individual practitioners.

Of these 42 items, 30 of them dealt exclusively with the quality standards described in 42 CFR part 494, subpart B, and only 12 of them offered any comments on the other provisions of the interim regulations relating to the payment, coverage frequency, and other provisions. Since we are deleting the quality standards in subpart B and are replacing them with a cross-reference to the applicable FDA requirements, as discussed in section IV. of this preamble, it is no longer necessary to respond in this rule to the comments that were received on those standards. The other comments and our responses to those comments, however, are discussed below.

A. Payment Limitations

Comment: One commenter suggested that the allocation between the professional and technical components for the screening mammogram should be the same as for a diagnostic mammogram.

Response: In the interim final rule (55 FR 53512), we used the same allocation between the two components of a screening mammogram that we had in place under the Medicare radiologist fee schedule for diagnostic mammograms because it was the best information we had available at the time and because of the lack of a persuasive argument that there should be different allocations for the two types of mammograms. In this final rule, we are changing the apportionment between the professional component and the technical component, effective for services furnished beginning January 1, 1995, to reflect the relationship between the relative value units established for a diagnostic bilateral mammogram under the fee schedule for physicians' services

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for the year in question. We will not include the percentages for the professional component and the technical component in this final rule because the specificity requires a time-consuming rulemaking process when we modify the apportionment. We will announce the apportionment of the payment limits between the two components for 1995, and each year thereafter, at the same time as we announce the statutory payment limit in effect for that year. At this time, we anticipate that the apportionment of the payment limit in 1995 will be 32 percent professional component and 68 percent technical component.

Comment: One commenter objected to the discussion in the preamble of the interim final rule (55 FR 53513) of the difficulty rural hospitals have in furnishing the technical component of a screening mammogram within the payment limit because the rural hospitals may have a low volume of services. The commenter believed that, if a hospital and a radiologist entered into an agreement stating that the radiologist would accept a lower amount for the interpretation than Medicare would pay the radiologist directly for the interpretation, the agreement would constitute a "kickback" of a portion of the radiologist's fee to the hospital.

Response: We acknowledge that this agreement could constitute a kickback under the Medicare and Medicaid anti-kickback statute (42 U.S.C. 1320a–7b(b)). That statute makes it a felony to offer, pay, solicit, or receive remuneration with the intention of inducing the referral of Medicare, Medicaid, Maternal and Child Health Services Block Grant, or Social Services Block Grant program business. Activities that come within the purview of the statute are not subject to prosecution if they fit within specified safe harbors, as set forth in the regulation published in the **Federal Register** July 29, 1991 (56 FR 35952). Consequently, an organization or individual should enter into an agreement such as that referenced in the December 1990 interim final rule only if the agreement does not violate the anti-kickback statute.

Comment: Several commenters suggested that the rule should be modified so that a portion of the professional component of a screening mammogram be determined to represent the contribution of the primary care physician if the screening mammogram is taken in the primary care physician's office but interpreted by another physician. The commenters believed that the allocation of 37 percent of the payment limit to the interpreting physician's role overcompensates that physician and ignores the primary care physician's role in furnishing the mammogram. One commenter stated that the Physician Payment Reform Commission report entitled "The Costs of Providing Screening Mammography" allocates a flat $12 for the interpretation. As an alternative, the commenter suggested that the primary care physician be permitted to contract with the interpreting physician for payment at a rate less than 37 percent of the payment limit. Another commenter recommended that the interpretation represent 20 percent of the total fee.

Response: Medicare does not pay for referrals, and exacting a fee for referrals is against the law. A qualified physician who furnishes the interpretation of the screening mammogram receives payment for the professional component of the screening mammogram. If the primary care physician furnishes neither the professional component nor the technical component of the screening mammogram, he or she is entitled to no payment for the screening mammogram.

The apportionment of the screening mammography payment limit between the professional component and the technical component will reflect the payment split for the corresponding components for diagnostic mammography under the fee schedule for physicians' services. The weights of the factors reflect historical payment data, and we have no reason to believe that the apportionment is not appropriate for a screening mammography procedure.

Comment: One commenter stated that the purchased service limitation set forth in section 1842(n) of the Act should not apply to the technical component of a screening mammography procedure furnished in a primary care physician's office that customarily uses a temporary or leased technologist because—

- The technologist is under the direct control and supervision of the primary care physician and, as such, meets the common law rules for an employer/employee relationship applied under the Internal Revenue Code; and
- The screening mammography procedure is performed under the supervision of the primary care physician in conformance with the definition of "direct supervision" set forth in § 410.32(a).

Response: The purchased service limitation does not apply to screening mammography services because the procedures are not included in the definition of diagnostic tests under section 1861(s)(3) of the Act, as required by section 1842(n) of the Act, the statutory basis of the purchased service limitation. Section 1861(s)(13) of the Act provides for Part B coverage of screening mammography services, which are not subject to the requirements of section 1842(n) of the Act.

Comment: Two commenters stated that a "screening mammogram" is no different from a "diagnostic mammogram" and therefore should be paid at the same level.

Response: A screening mammogram and a diagnostic mammogram are similar in many respects, but the purposes of the two tests are distinctly different. A screening mammogram is a routine medical check; a diagnostic mammogram is made to diagnose a specific complaint or medical problem already identified by the patient or her attending physician. Section 1834(c)(4)(A) of the Act clearly establishes a $55 overall limit applicable to a screening mammography procedure in 1991 with increases in subsequent years limited to the percentage increase in the Medicare Economic Index for the subsequent year. Section 1834(b)(4)(B) of the Act authorizes the Secretary of the Department of Health and Human Services (the Secretary) to reduce this limit, after appropriate review, but does not authorize the Secretary to raise the limit. If we decide to establish the same payment for the two procedures, we might have to lower the payments for most diagnostic mammograms.

Comment: Two commenters recommended that the interim final rule be amended to waive the beneficiary's copayment liabilities so that older women will not have to bear out-of-pocket costs for the screening mammography procedure.

Response: A waiver of copayment liabilities would have to be authorized by the Congress. Section 1834(c)(1)(C) of the Act specifically limits Medicare payments to 80 percent of the least of the actual charge, the radiologist fee schedule or the physicians' fee schedule established under section 1848 of the Act as applicable, or the statutory limit for the service.

Comment: One commenter stated that insufficient payment levels should not be a deterrent to women having access to screening mammography services and that the relationship between current charges, payment levels, and access to the service should be taken into consideration in determining payment levels.

Response: We have to apply the overall payment limit established in section 1834(c)(4) of the Act. There is no provision for exceptions to ensure access to these services in special circumstances.

Comment: One commenter believed that it is critical that any changes to the Medicare Part B payment system not be counter to physician payment reform. The existence of an overall national payment limit concerned another commenter who believed that the limit is inconsistent with the premise of a resource-based relative value scale payment schedule adjusted for geographic cost variations.

Response: Section 1834(c)(1)(C) of the Act requires that the amount of payment for screening mammography services be equal to 80 percent of the least of the actual charge, the radiologist fee schedule, or the physicians' fee schedule established under section 1848 of the Act, as applicable, or the statutory limit for the service.

Comment: One commenter, while conceding that we had no choice under the statute in imposing an overall $55 limit, stated that a single national rate without any recognition of geographic variations is inappropriate. The commenter believed that we should establish a price for screening mammograms within the context of other radiology services and ask the Congress to repeal the separate limit for these procedures.

Response: If it becomes apparent that the statutory limit is inadequate, we may make the proposal.

Comment: One commenter stated that radiologists would charge $32 for their interpretation, leaving only about $23 for the hospital, an amount which would cover only the cost of the film.

Response: Under the statutory allocation methodology implemented in the interim final rule (55 FR 53512), the professional component of the procedure in 1991 was limited to $20.35 (37 percent of $55), while the technical component was limited to $34.63 (63 percent of $55). The 1991 limiting charges for nonparticipating physicians and suppliers were: $68.75 (global), $25.44 (professional component), and $43.31 (technical component). Therefore, payment to hospitals for the technical component of screening mammography services is not determined by subtracting the amount billed for the professional component charge from the overall limit, but rather on the basis of the allocation methodology described in the interim final rule (55 FR 53512).

Comment: One commenter stated that the payment limit in section 1834(c)(4) of the Act is lower than the costs for screening mammography services furnished by a mobile unit in rural areas. The commenter believed that the operating costs of a mobile unit are higher than those of a stationary unit. Another commenter expressed concern that the processing of Medicare claims will increase the costs of mobile facilities and other screening centers that previously have not handled Medicare claims.

Response: Section 1834(c)(4) of the Act does not provide for any exception to the overall limit. Nonparticipating physicians and suppliers may bill beneficiaries higher amounts for the procedure up to the limiting charge set forth in § 405.535.

B. Limitations on Screening Mammography Services

Comment: One commenter believed that the screening mammography radiologic procedure covered under the Medicare program should not be limited to the four-view procedure specified in § 410.34(b)(1) of the interim final rule, but that additional views should be allowed as necessary in the case of particular patients.

Response: As we indicated in the preamble to the interim final rule (55 FR 53513), the basis for specifying that the screening mammography service must be a bilateral four-view procedure (that is, cranio-caudal and a medial lateral oblique view of each breast) is congressional intent as expressed in the Report of the Committee of Conference that accompanied Public Law No. 100–360 (H.R. Rep. No. 100–661, 100th Congress, 2nd Sess. 171 (1988)). In that report, the conferees stated that they "understood that a bilateral four-view procedure is currently considered to be the standard of care in the United States for screening mammography * * * [and] therefore anticipate that this would be initially included in the quality standards to be developed by the Secretary as a requirement for coverage."

We recognize that it may be necessary in the case of some patients to perform more than a bilateral four-view procedure. In view of the possibility that more than four images will need to be taken in the case of a particular patient, we have revised § 410.34(b)(1) (redesignated in this final rule as § 410.34(d)(1)) to state that generally "the service must, at a minimum, be a four-view exposure * * *." The need to do additional images will not have any effect on the payment amount that will be allowed for the Medicare screening mammography services because the payment amount is prescribed by statute.

To accommodate postmastectomy screening of certain women, however, we will allow, at a minimum, a two-view exposure (that is, a cranio-caudal and a medial lateral oblique view) of the remaining breast for those individuals, and still permit the facility to meet the standard. We are setting that standard as a two-view exposure.

Comment: Several commenters expressed concern about the limitations on the frequency of coverage of mammography screenings.

Response: As explained in the interim final rule (55 FR 53513), the frequency limitations specified in § 410.34 reflect the provisions imposed by section 1834(c)(2) of the Act, except for the high risk factors that were identified in § 410.34(b)(4)(i) (redesignated in this final rule as § 410.34(d)(4)(i)). As provided in section 1834(c)(2)(B) of the Act, the frequency limitations may be revised by the Secretary in consultation with the National Cancer Institute (NCI). This matter is under consideration, and will be addressed in a later notice, as appropriate.

Comment: One commenter suggested that this final rule discuss the importance of women having a clinical breast examination performed by a physician that would supplement the preventive value of using the Medicare screening mammography benefit. The commenter acknowledged that Medicare law authorizing screening mammography coverage does not provide for coverage and payment for a clinical breast examination as part of the screening mammography benefit. However, the commenter suggested that this final rule, at a minimum, indicate that a supplementary clinical breast examination performed by a physician be recommended in conjunction with a screening mammography examination and related physician's interpretation of the results of that radiologic examination.

Response: The commenter is correct. We do not have the legal authority under the screening mammography benefit to provide for coverage and payment for a clinical breast examination performed by a physician in conjunction with the use of screening mammography services. We understand, however, that NCI, ACS, the American Medical Association (AMA), the American Society of Internal Medicine, the National Medical Association, the American Academy of Family Physicians, the American College of Radiology, and other specialty groups recommend that a combination of screening mammography and a clinical breast examination is necessary for a complete early breast cancer detection

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program. In this regard, NCI publishes public information brochures that explain screening mammography and strongly advise that a doctor also perform a clinical breast examination to supplement the value of the screening service. Information about breast cancer screening, including information regarding the importance of clinical breast examinations, can be obtained, free of charge, by calling the NCI-funded Cancer Information Service at 1–800–4–CANCER.

Comment: One commenter questioned the inclusion of "not given birth prior to age 30" as a factor indicating a high risk of developing breast cancer.

Response: We included "not given birth prior to age 30" as a factor indicating a high risk of developing breast cancer in the interim final rule based upon advice we received from NCI, and, in response to the comment, we have consulted further with NCI. NCI staff have advised us that the relative risk of women who have "not given birth prior to age 30" developing breast cancer is 1.4; that is, a woman who has not given birth prior to age 30 has a 40 percent higher chance of developing breast cancer over her lifetime than would otherwise be the case. This elevated risk applies over the age range of 40 to 49 that is subject to the high risk factor provision specified in the Medicare statute. Based on the advice of NCI, we have decided to retain in this final rule "not given birth prior to age 30" as a factor indicating a high risk of developing breast cancer.

Comment: One commenter believed that there is a need to clarify the meaning of the term "personal history of breast cancer" that is cited in § 410.34(b)(4) as one of the factors indicating a high risk of developing breast cancer. The commenter also requested clarification as to whether a biopsy that reveals a lump to be benign is reasonable evidence of "a history of breast cancer."

Response: The use of the term "a personal history of breast cancer" in § 410.34(b)(4) of the interim final rule was intended to mean that there is documented evidence in the woman's medical record that she has tested positive for breast cancer. Thus, a woman who has a biopsy of a lump in her breast that is determined to be benign would not be considered to have "a history of breast cancer."

Comment: One commenter expressed concern that the interim final rule made no reference to the possibility that the Medicare program may pay for certain medically necessary mammograms that are performed more often than the frequencies stated in the statute and the interim final rule for screening mammograms. The commenter suggested that we clarify this.

Response: The commenter is correct that the Medicare program may pay for certain medically necessary mammograms (also referred to as diagnostic mammograms as distinguished from screening mammograms) that are performed more frequently than the frequencies stated in the law and the interim final rule for screening mammograms. We stated this fact in the interim final rule (55 FR 53511). Under this policy, mammograms are covered if medically necessary to diagnose a specific complaint or medical problem that has been identified by the patient or her attending physician, including medical problems that may have been identified on the basis of a previous screening mammogram. This coverage is based on sections 1861(s)(1) and (s)(3) of the Act, which provide for Medicare coverage of interpretation of diagnostic X-ray tests by a physician.

Comment: Three commenters observed that a diagnostic mammogram requires essentially the same level of professional attention and professional expertise as does a screening mammogram, and one of these commenters suggested that similar quality standards be applied to both types of mammography services under the Medicare program.

Response: We agree. As we noted in response to a previous comment, a diagnostic mammogram and a screening mammogram are similar in many respects, and the Congress recognized this fact when it enacted the MQSA, which authorized the application of quality standards to both types of mammograms, effective October 1, 1994. Accordingly, we are including a condition for coverage in this rule at § 410.34(b)(2) that, in order to qualify for payment for diagnostic mammograms under the Medicare program, suppliers of these services must meet the same FDA certification requirements that we are adopting in this final rule for screening mammograms. (These certification requirements are set forth in section 354 of the PHS Act, implemented by 21 CFR part 900, subpart B.)

IV. Provisions of the Final Rule

In this final rule, we are deleting the conditions for coverage specified in 42 CFR part 494, subpart B, which screening mammography suppliers must meet to qualify for coverage of the services under the Medicare program. Instead, we are cross-referencing the applicable FDA certification requirements, published in the Federal Register on December 21, 1993 (58 FR 67558 and 58 FR 67565), that suppliers of the services must meet effective October 1, 1994.

Based on our analysis of section 354 of the PHS Act, as added by the MQSA, and the related FDA interim regulations, we believe that we have fulfilled our responsibility to establish quality standards under section 1834(c)(3) of the Act by adopting the quality standards and related certification requirements specified in the FDA regulations.

Section 1834(c)(3) of the Act requires the Secretary to establish standards to ensure the safety and accuracy of screening mammography services performed under Medicare Part B. The quality standards that must be established include: (1) Standards that require the use of equipment specifically designed for mammography and that meet other radiological standards established by the Secretary for mammography; (2) standards that require that the mammography be performed by individuals who are licensed by a State to perform radiological procedures, or who are certified as qualified to perform radiological procedures by an appropriate program as the Secretary specifies in regulations; (3) standards that require that the results of the mammography be interpreted by a physician who is certified as qualified to interpret radiological procedures by such an appropriate board (or program) as the Secretary recognizes in regulations; and (4) requirements that, with respect to a woman's first screening mammography performed for which payment is made under the program, the results of the mammography will be placed in the woman's permanent medical records.

In the FDA interim final rule, 21 CFR subpart B, § 900.11 ("Requirements for certification"), paragraph (a) provides that after October 1, 1994, "a certificate issued by FDA will be required for lawful operation of all facilities" and that in order to obtain a certificate from FDA, facilities "are required to meet the quality standards in § 900.12 and to be accredited by an accrediting body approved by FDA" as described in 21 CFR part 900, subpart A, §§ 900.1 through 900.7. In § 900.12 of the interim final rule, FDA established standards for mammography equipment, personnel, and practices. These standards are substantially the same as the Medicare interim quality standards that were published on December 31, 1990, but when they do differ from the existing Medicare standards, they still appear to be consistent with our mandate under section 1834(c)(3) of the Act. Thus, this final rule will remove the existing Medicare interim quality standards and, instead, will cross-refer to applicable interim FDA certification requirements for mammography services.

In addition, we are making several technical and other clarifying revisions in the remaining provisions of the existing interim regulations that we published in the **Federal Register** on December 31, 1990 (55 FR 53510). With the exception of two points of clarification, a technical change, and certain conforming changes to part 405, subpart E ("Criteria for Determination of Reasonable Charges; Payment for Services of Hospital Interns, Residents, and Supervising Physicians"), the rationale for these revisions is discussed in the "Discussion of Public Comments" in section III. of this rule.

In § 405.534 ("Limitation on payment for screening mammography services"), we are making technical changes to cross-refer to the fee schedule for physicians' services. The current § 405.534 refers to § 405.533. The latter was removed from the CFR on November 25, 1991, with the publication of the fee schedule for physicians' services in the **Federal Register** (56 FR 59622). We are also revising paragraphs (c) and (d) so that, effective for a screening mammography procedure furnished beginning January 1, 1995, the payment for the screening mammography procedure reflects the relationship between the relative value units for the professional and technical components established for a diagnostic mammography procedure under the physicians' fee schedule. Effective January 1, 1995, the apportionment of the payment limit between the professional and technical components will be changed to reflect the relationship of the two components for diagnostic bilateral mammograms under the fee schedule for physicians' services for 1995.

We are revising the title of § 405.535 to add the words "and suppliers." It will read, "Special rules for nonparticipating physicians and suppliers furnishing screening mammography services." We are also making technical changes in this section to cross-refer the reader to the fee schedule for physicians' services. Additionally, we are setting forth in § 405.535 requirements for the limiting charge if the screening mammography services are furnished by a nonparticipating physician or supplier who does not accept assignment.

Conditions for Coverage

In accordance with section 354 of the PHS Act, regarding coverage conditions for diagnostic and screening mammography, we are amending 42 CFR by revising § 410.34(a) to specify definitions of the terms (1) "diagnostic mammography," (2) "screening mammography," (3) "supplier of diagnostic mammography," (4) "supplier of screening mammography," (5) "certificate," (6) "provisional certificate," and (7) "meets the certification requirements of section 354 of the Public Health Services (PHS) Act."

In § 410.34, we are redesignating paragraph (b) as paragraph (d). We are adding a heading to paragraph (d), "Limitations on coverage of screening mammography services." In newly redesignated paragraph (d)(1) of § 410.34, we are clarifying that the current requirement that a mammogram "must, *at a minimum* [emphasis added], be a four-view exposure (that is, a cranio-caudal and a medial lateral oblique view of each breast)" is the minimum requirement that must be met, except in the case of a woman who is having a postmastectomy screening, when we will allow a two-view exposure (that is, a cranio-caudal and a medial lateral oblique view) of the remaining breast.

We are adding a new paragraph (b) to § 410.34 to set forth conditions for coverage of diagnostic mammography, which essentially cross-reference the same FDA certification requirements that suppliers of screening mammography must meet on October 1, 1994. Medicare Part B pays for diagnostic mammography services if the diagnostic mammography services are ordered by a doctor of medicine or osteopathy and if they are furnished by a supplier of diagnostic mammography services that meets the certification requirements of section 354 of the PHS Act, as described in 21 CFR part 900 ("Mammography"), subpart B ("Quality Standards and Certification").

We are also adding a new paragraph (c) to § 410.34 to set forth the conditions for payment of screening mammography. Medicare Part B pays for screening mammography services only if they are furnished by a supplier of screening mammography services that meets the certification requirements of section 354 of the PHS Act, as described in 21 CFR part 900, subpart B.

We are revising § 411.15 ("Particular services excluded from coverage") to replace the cross reference to subpart B of part 494 (which is being removed and reserved) with a reference to the certification requirements in section 354 of the PHS Act, as set forth in 21 CFR part 900, subpart B.

The current § 413.123(b) states that payment to hospitals for screening mammography services performed on an outpatient basis is determined in accordance with § 405.534(c). We are changing this to refer to § 405.534(d) to correct an error.

V. Information Collection Requirements

Due to the enactment of the MQSA and its implementation by FDA, we are requesting cancellation of the information collection requirements approved under OMB control number 0938–0608 for Medicare coverage of screening mammograms, effective October 1, 1994. The latter information collection document was previously required as a result of the enactment of section 4163 of OBRA '90.

In implementing section 4163 of OBRA '90, we published interim final regulations on December 31, 1990 (55 FR 53510), including certain minimum safety and accuracy standards set forth in 42 CFR subpart B, which suppliers of screening mammography services had to meet in order to participate under Medicare, effective January 1, 1991. With the enactment of the MQSA, however, all mammography facilities in the United States, except for VA facilities, will be required, effective October 1, 1994, to have a certificate issued by FDA regardless of their source of payment. Therefore, under its delegation of authority from the Secretary of the Department of Health and Human Services, FDA will replace HCFA on October 1, 1994, as the Federal agency responsible for surveying and certifying suppliers of screening mammography services in accordance with the new MQSA standards.

VI. Delay in the Effective Date

As required by the Administrative Procedure Act (APA), we generally provide for final rules not to be effective until 30 days after the date of publication unless we find good cause to waive the delay. As a result of the implementation of the MQSA by FDA, we are conforming the conditions for Medicare coverage of screening mammography services to the applicable FDA certification requirements, published in the Federal **Register** on December 21, 1993 (58 FR 67558 and 58 FR 67565), that all Medicare suppliers of services must meet effective October 1, 1994. We view the changes made by this rule as merely interpretative. The APA does not require that there be a delayed effective

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date for an interpretative rule. Accordingly, this rule will be effective October 1, 1994, the effective date of the FDA requirements on mammography services.

VII. Regulatory Impact Analysis

A. Introduction

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians and suppliers of screening mammography services and equipment are considered to be small entities.

This final rule revises interim regulations on Medicare coverage of screening mammography that were published in the **Federal Register** on December 31, 1990 (55 FR 53510). Those regulations implemented section 4163 of OBRA '90, setting conditions for coverage for and limitations on screening mammography.

In the interim final rule, we presented an analysis of the various effects that the screening mammography benefit would have on beneficiaries, physicians, and suppliers (55 FR 53518). We received no comments on the impact analysis. Below, we present revised estimates of projected Medicare costs and utilization rates and the effects, as far as they can be foreseen, of the changes we have adopted as a result of public comment. Our estimates of projected additional costs and services are lower than those we anticipated when the interim final rule was published in the **Federal Register**. One explanation for lower than anticipated costs and services for this service may be that physicians have been furnishing screening mammography services but have been billing for the services using the CPT code for diagnostic mammography.

We anticipate that Medicare coverage of screening mammography services will result in the following costs:

TABLE I.—PROJECTED BUDGET IMPACT AS A RESULT OF MEDICARE COVERAGE OF SCREENING MAMMOGRAPHY
[in millions]

	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
Benefit costs	$90	$95	$100	$110	$115

TABLE II.—PROJECTED NUMBER OF SCREENING MAMMOGRAPHIES PERFORMED AS A RESULT OF MEDICARE COVERAGE
[in millions]

CY 1995	CY 1996	CY 1997	CY 1998	CY 1999
1.4	1.4	1.5	1.6	1.6

Beginning October 1, 1994, FDA replaces HCFA as the Federal agency responsible for surveying and certifying suppliers of all mammography services, both diagnostic and screening. Beginning on that date, all facilities furnishing mammography services will be expected to meet only one set of national standards. This provision should benefit mammography facilities and help ensure the safety and accuracy of screening mammography services performed under Medicare Part B. The Medicare program will no longer be responsible for funding this cost.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

B. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We do not believe small rural hospitals will be required to make any operational changes to comply with this final rule. Therefore, we are not preparing a rural impact analysis because we have determined, and the Secretary certifies, that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

VII. List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 494

Medicare, Reporting and recordkeeping requirements, X-rays.

For the reasons set forth in the preamble and under the authority of 42 U.S.C. 1302 and 1395hh, 42 CFR chapter IV is amended as follows:

A. Part 405, subpart E is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart E—Criteria for Determination of Reasonable Charges; Payment for Services of Hospital Interns, Residents, and Supervising Physicians

1. The authority citation for subpart E, part 405, is revised to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1834(a), (b), and (c), 1842(b) and (h), 1848, 1861(b), (s), (v), (aa), and (jj), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395m(a), (b), and (c), 1395u(b) and (h), 1395w-4, 1395x(b), (s), (v), (aa), and (jj), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

2. In § 405.534, the introductory text of paragraphs (b), (c), and (d), and paragraphs (b)(2), (b)(3), (c)(2), (c)(3), (d)(2), and (d)(3) are revised to read as follows:

§ 405.534 Limitation on payment for screening mammography services.

* * * * *

(b) *Global or complete service billing representing both the professional and technical components of the procedure.* If a fee is billed for a global service, the amount of payment subject to the deductible is equal to 80 percent of the least of the following:

* * * * *

(2) The amount established for the global procedure for a diagnostic bilateral mammogram under the fee schedule for physicians' services set forth at part 414, subpart A.

(3) The payment limit for the procedure. For screening mammography services furnished in CY 1994, the payment limit is $59.63. On January 1 of each subsequent year, the payment limit is updated by the percentage increase in the Medicare Economic Index (MEI) and reflects the relationship between the relative value units for the professional and technical components of a diagnostic bilateral mammogram under the fee schedule for physicians' services.

(c) *Professional component billing representing only the physician's interpretation for the procedure.* If the professional component of screening mammography services is billed separately, the amount of payment for that professional component, subject to the deductible, is equal to 80 percent of the least of the following:

* * * * *

(2) The amount established for the professional component of a diagnostic bilateral mammogram under the fee schedule for physicians' services.

(3) The professional component of the payment limit for screening mammography services described in paragraph (b)(3) of this section.

(d) *Technical component billing representing other resources involved in furnishing the procedure.* If the technical component of screening mammography services is billed separately, the amount of payment, subject to the deductible, is equal to 80 percent of the least of the following:

* * * * *

(2) The amount established for the technical component of a diagnostic bilateral mammogram under the fee schedule for physicians' services.

(3) The technical component of the payment limit for screening mammography services described in paragraph (b)(3) of this section.

3. Section 405.535 is revised to read as follows:

§ 405.535 Special rules for nonparticipating physicians and suppliers furnishing screening mammography services.

If screening mammography services are furnished to a beneficiary by a nonparticipating physician or supplier that does not accept assignment, a limiting charge applies to the charges billed to the beneficiary. The limiting charge is the lesser of the following:

(a) 115 percent of the payment limit set forth in § 405.534(b)(3), (c)(3), and (d)(3) (limitations on the global service, professional component, and technical component of screening mammography services, respectively).

(b) The limiting charge for the global service, professional component, and technical component of a diagnostic bilateral mammogram under the fee schedule for physicians' services set forth at § 414.48(b)(3) of this chapter.

B. Part 410, subpart B is amended as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

Subpart B—Medical and Other Health Services

1. The authority citation for part 410 is revised to read as follows:

Authority: Secs. 1102, 1832, 1833, 1834, 1835, 1861(r), (s), (aa), (cc), (ff), and (mm), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395k, 1395l, 1395m, 1395n, 1395x(r), (s), (aa), (cc), (ff), and (mm), 1395hh, and 1395rr).

2. In § 410.10, the introductory text is republished, and paragraph (e) is revised to read as follows:

§ 410.10 Medical and other health services: Included services.

Subject to the conditions and limitations specified in this subpart, "medical and other health services" includes the following services:

* * * * *

(e) Diagnostic laboratory and X-ray tests (including diagnostic mammography that meets the conditions for coverage specified in § 410.34(b) of this subpart) and other diagnostic tests.

* * * * *

3. Section 410.34 is amended by revising the heading, removing the introductory text, revising paragraph (a), redesignating paragraphs (b)(1) through (b)(6) as paragraphs (d)(1) through (d)(6), adding a heading to newly redesignated paragraph (d), revising newly redesignated paragraph (d)(1), and adding new paragraphs (b) and (c) to read as follows:

§ 410.34 Mammography services: Conditions for and limitations on coverage.

(a) *Definitions.* As used in this section, the following definitions apply:

(1) *Diagnostic mammography* means a radiologic procedure furnished to a symptomatic woman for the purpose of detecting breast disease and includes a physician's interpretation of the results of the procedure.

(2) *Screening mammography* means a radiologic procedure furnished to an asymptomatic woman for the purpose of early detection of breast cancer and includes a physician's interpretation of the results of the procedure.

(3) *Supplier of diagnostic mammography* means a facility that is certified and responsible for ensuring that all diagnostic mammography services furnished to Medicare beneficiaries meet the conditions for coverage of diagnostic mammography services as specified in paragraph (b) of this section.

(4) *Supplier of screening mammography* means a facility that is certified and responsible for ensuring that all screening mammography services furnished to Medicare beneficiaries meet the conditions and limitations for coverage of screening mammography services as specified in paragraphs (c) and (d) of this section.

(5) *Certificate* means the certificate described in 21 CFR 900.2(b) that may be issued to, or renewed for, a facility that meets the requirements for conducting an examination or procedure involving mammography.

(6) *Provisional certificate* means the provisional certificate described in 21 CFR 900.2(m) that may be issued to a facility to enable the facility to qualify to meet the requirements for conducting an examination or procedure involving mammography.

(7) The term *meets the certification requirements of section 354 of the Public Health Service (PHS) Act* means that in order to qualify for coverage of its services under the Medicare program, a supplier of diagnostic or screening mammography services must meet the following requirements:

(i) Must have a valid provisional certificate, or a valid certificate, that has been issued by FDA indicating that the supplier meets the certification requirements of section 354 of the PHS Act, as implemented by 21 CFR part 900, subpart B.

(ii) Has not been issued a written notification by FDA that states that the supplier must cease conducting mammography examinations because the supplier is not in compliance with certain critical certification requirements of section 354 of the PHS

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Act, implemented by 21 CFR part 900, subpart B.

(iii) Must not employ for provision of the professional component of mammography services a physician or physicians for whom the facility has received written notification by FDA that the physician (or physicians) is (or are) in violation of the certification requirements set forth in section 354 of the PHS Act, as implemented by 21 CFR 900.12(a)(1)(i).

(b) *Conditions for coverage of diagnostic mammography services.* Medicare Part B pays for diagnostic mammography services if they meet the following conditions:

(1) They are ordered by a doctor of medicine or osteopathy (as defined in section 1861(r)(1) of the Act).

(2) They are furnished by a supplier of diagnostic mammography services that meets the certification requirements of section 354 of the PHS Act, as implemented by 21 CFR part 900, subpart B.

(c) *Conditions for coverage of screening mammography services.* Medicare Part B pays for screening mammography services if they are furnished by a supplier of screening mammography services that meets the certification requirements of section 354 of the PHS Act, as implemented by 21 CFR part 900, subpart B.

(d) *Limitations on coverage of screening mammography services.* The following limitations apply to coverage of screening mammography services:

(1) The service must be, at a minimum—

(i) A four-view exposure (that is, a cranio-caudal and a medial lateral oblique view of each breast); or

(ii) In the case of a postmastectomy patient, a two-view exposure (that is, a cranio-caudal and a medial lateral oblique view) of the remaining breast.

* * * * *

C. Part 411, subpart A is amended as set forth below:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

Subpart A—General Exclusions and Exclusion of Particular Services

1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102, 1834, 1842(l), 1861, 1862, 1866, 1871, 1877, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395m, 1395u(l), 1395x, 1395y, 1395cc, 1395hh, 1395nn, and 1395pp).

2. In § 411.15, the introductory text for the section is republished, and paragraph (a)(1) is revised to read as follows:

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage.

(a) Routine physical checkups such as—

(1) Examinations performed for a purpose other than treatment or diagnosis of a specific illness, symptom, complaint, or injury, except for screening mammography (including a physician's interpretation of the results) that meets the conditions for coverage and limitations on coverage of screening mammography specified at § 410.34 of this chapter and the certification requirements of section 354 of the PHS Act, as implemented by 21 CFR part 900, subpart B.

* * * * *

D. Part 413, subpart F is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

Subpart F—Specific Categories of Costs

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833 (a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l (a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

2. In § 413.123, paragraph (b) is revised to read as follows:

§ 413.123 Payment for screening mammography performed by hospitals on an outpatient basis.

* * * * *

(b) *Payment to hospitals for outpatient services.* Payment to hospitals for screening mammography services performed on an outpatient basis is determined in accordance with the technical component billing requirements in § 405.534(d) of this chapter.

PART 494—[REMOVED AND RESERVED]

E. Part 494 is removed and reserved.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance.)

Dated: August 3, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: September 8, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–24335 Filed 9–29–94; 8:45 am]

BILLING CODE 4120–01–P

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42 CFR Part 417

[OMC–009–FC]

RIN: 0938–AG92

Medicare Program; Qualified Health Maintenance Organizations: Technical Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This rule clarifies and updates portions of the HCFA regulations that pertain to Federal qualification and continued regulation of health maintenance organizations (HMOs), inclusion of qualified HMOs in employee health benefits plans, and the administration of outstanding loans and loan guarantees that were awarded before October 1, 1986, under the Public Health Service Act (PHS Act). This rule is part of a special project to clarify and update all of 42 CFR part 417, which contains the regulations applicable to all entities that provide prepaid health care, that is, HMOs, CMPs (competitive medical plans) and HCPPs (health care prepayment plans).

These are technical and editorial changes that do not affect the substance of the regulations. They are intended to make it easier to find particular provisions, to provide overviews of the different program aspects, and to better ensure uniform understanding of the rules.

DATES: *Effective Date:* These regulations are effective on October 31, 1994.

Comment Date: We will consider all comments received at the appropriate address as provided below no later than 5 p.m. on November 29, 1994.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: OMC–9–FC, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (an original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Due to staff limitations, we cannot accept facsimile (FAX) transmission of comments. Comments will be available for public inspection as they are received, beginning approximately 3 weeks from date of publication in the **Federal Register**, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Tracy Jensen, (202) 619–2158.

SUPPLEMENTARY INFORMATION:

A. Background

This rule revises subparts D, E, F, and V of part 417 of the HCFA rules as part of the special project noted in the **SUMMARY.**

The first two steps in the project to clarify and update part 417 were the publication of two final rules identified as OCC–22–F and OCC–15–FC. The first was published in the **Federal Register** on October 17, 1991, at 56 FR 51984; the second, on July 15, 1993, at 58 FR 38062.

The regulation identified as OCC–22–F—

- Removed most of the outdated content;
- Redesignated certain portions of part 417 to free section numbers needed so that new rules can be incorporated in logical order; and
- Designated the remaining text under subpart headings that identify the different program aspects so that it is easier to refer to those aspects and to find particular rules.

The second regulation, identified as OCC–15–F—

- Through nomenclature and definition changes, established certain terms to be used throughout part 417 with the aim of avoiding confusion, making clear that responsibility for the prepaid health care programs has been delegated to HCFA, and ensuring use of the most precise terms available.
- Established a separate subpart C with four sections to set forth the many requirements that apply to the organization and operation of HMOs, and that were previously compressed into a single section (§ 417.107).

As a result of the redesignations made by OCC–22–F and OCC–15–FC, §§ 417.107 through 417.119 are now available for new rules that are required because of statutory amendments that affect the furnishing of services by qualified HMOs or may be needed because of future changes in the statute.

B. Changes in the Regulations

In order to clarify and update subparts D, E, F, and V, this rule makes the following changes:

- Uses terminology established by OCC–15–FC or that reflects accepted usage in all HCFA regulations.
- Revises long unbroken columns of text to designate separate provisions and to provide headings that help the reader to get an overview and to find particular provisions.
- Uses the active voice and the present indicative (rather than the future tense) to describe what HCFA or its employees, agents, or contractors do, and uses the most precise terms available.

A specific goal is to complete the separation of the rules that pertain to assurances required of entities applying for Federal qualification from those that pertain to assurances given in applying for financial assistance (grants, loans, and loan guarantees) that was available under the PHS Act before October 1986. To achieve this goal, we have—

- Removed the portion of § 417.160 applicable to financial assistance that is no longer available; and
- Added a new § 417.940 in subpart V to reference § 417.163(g) as applicable to entities that have outstanding loans or loan guarantees, and that fail to comply with assurances they gave in applying for the loan or loan guarantee. (Section 417.163(g) provides that HCFA may bring civil action to enforce compliance with assurances.)

In addition, we have—

- Removed the definitions of the three types of "qualified" HMOs (§ 417.141) because definitions are not used for substantive content, and in this case simply constituted a partial duplication of the rules themselves;
- Incorporated paragraph (a) of § 417.143 into § 417.140 to set forth the scope of the whole subpart D; and
- Removed §§ 417.168 and 417.169 from subpart F because their content is being transferred to § 417.142(g) and (h).

Waiver of Proposed Rulemaking

With one exception, the changes made by this rule are technical and editorial in nature. Their aim is to simplify, clarify, and update subparts D, E, F, and V without substantive change.

We have removed from § 417.169 (now redesignated as § 417.142(h)), the words "for purposes of receiving assistance under this subpart." HCFA has consistently interpreted this language (which appears in section 1307(d) of the PHS Act) as applying to continued qualification of HMOs as well as to initial applications for assistance that was available under that Act before October 1986. This interpretation avoids what would be an unintended result: Now that the assistance is no longer available, HMOs that had qualified in connection with their requests for assistance would have to disenroll their Federal Employee Health Benefit Program (FEHBP) enrollees in order to retain qualification and to be able to take advantage of the requirement that employers include qualified HMOs in their employee health benefits plans. It was a mistake to include in § 417.169 the limiting language, which did not appear in the predecessor rule issued in 1974. We have deleted the language to achieve consistency between paragraphs (g) and (h) of § 417.142 and with HCFA's long-standing interpretation of the statute.

Given this justification, we find that there is good cause to waive proposed rule-making procedures as unnecessary. As previously indicated, however, we will consider timely comments from anyone who questions the deletion of the reference to "assistance" or believes that, in making the technical and editorial changes, we have altered the substance of the rules. Although we cannot respond to comments individually, if we revise these rules as a result of comments, we will discuss all timely comments in the preamble to the revised rules.

Paperwork Reduction Act

These regulations contain no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

Regulatory Impact Statement

Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act (RFA) and section 1102(b) of the Social Security Act, we prepare a regulatory flexibility analysis for each rule, unless the Secretary certifies that the particular rule will not have a significant economic impact on a substantial number of small entities, or a significant impact on the operation of a substantial number of small rural hospitals.

We have not prepared a regulatory flexibility analysis because we have determined, and the Secretary certifies, that these rules will not have a significant impact on a substantial number of small entities or on the

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operation of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 417

Administrative practice and procedure, Health maintenance organizations (HMOs), Medicare.

42 CFR Part 417 is amended as set forth below.

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

A. The authority citation for part 417 is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), Title XIII of the Public Health Service Act (42 U.S.C. 300e through 300e–17), and 31 U.S.C. 9701, unless otherwise noted.

B. Subpart D is amended as set forth below.

Subpart D—Application for Federal Qualification

1. Section 417.140 is revised to read as follows:

§ 417.140 Scope.

This subpart sets forth—

(a) The requirements for—

(1) Entities that seek qualification as HMOs under title XIII of the PHS Act; and

(2) HMOs that seek—

(i) qualification for their regional components; or

(ii) Expansion of their service areas;

(b) The procedures that HCFA follows to make determinations; and

(c) Other related provisions, including application fees.

§ 417.141 [Removed]

2. Section 417.141 is removed.

3. Section 417.142 is revised to read as follows:

§ 417.142 Requirements for qualification.

(a) *General rules.* (1) An entity seeking qualification as an HMO must meet the requirements and provide the assurances specified in paragraphs (b) through (f) of this section, as appropriate.

(2) HCFA determines whether the entity is an HMO on the basis of the entity's application and any additional information and investigation (including site visits) that HCFA may require.

(3) HCFA may determine that an entity is any of the following:

(i) An operational qualified HMO.

(ii) A preoperational qualified HMO.

(iii) A transitional qualified HMO.

(b) *Operational qualified HMO.* HCFA determines that an entity is an operational qualified HMO if—

(1) HCFA finds that the entity meets the requirements of subparts B and C of this part.

(2) The entity, within 30 days of HCFA's determination, provides written assurances, satisfactory to HCFA, that it—

(i) Provides and will provide basic health services (and any supplemental health services included in any contract) to its enrollees;

(ii) Provides and will provide these services in the manner prescribed in sections 1301(b) and 1301(c) of the PHS Act and subpart B of this part;

(iii) Is organized and operated and will continue to be organized and operated in the manner prescribed in section 1301(c) of the PHS Act and subpart C of this part;

(iv) Under arrangements that safeguard the confidentiality of patient information and records, will provide access to HCFA and the Comptroller General or any of their duly authorized representatives for the purpose of audit, examination or evaluation to any books, documents, papers, and records of the entity relating to its operation as an HMO, and to any facilities that it operates; and

(v) Will continue to comply with any other assurances that it has given to HCFA.

(c) *Preoperational qualified HMO.* (1) HCFA may determine that an entity is a preoperational qualified HMO if it provides, within 30 days of HCFA's determination, satisfactory assurances that it will become operational within 60 days following that determination and will, when it becomes operational, meet the requirements of subparts B and C of this part.

(2) Within 30 days after receiving notice that the entity has begun operation, HCFA determines whether it is an operational qualified HMO. In the absence of this determination, the entity is not an operational qualified HMO even though it becomes operational.

(d) *Transitional qualified HMO: General rules*—(1) *Basic requirements.* HCFA may determine that an entity is a transitional qualified HMO if the entity—

(i) Meets the requirements of paragraph (d)(2) through (d)(4) of this section; and

(ii) Provides the assurances specified in paragraphs (d)(5) through (d)(7) of this section within 30 days of HCFA's determination.

(2) *Organization and operation.* The entity is organized and operated in accordance with subpart C of this part, except that it need not—

(i) Assume full financial risk for the provision of basic health services as required by § 417.120(b); or

(ii) Comply with the limitations that are imposed on insurance by § 417.120(b)(1).

(3) *Range of services.* The entity is currently providing the following services on a prepaid basis:

(i) Physician services.

(ii) Outpatient services and inpatient hospital services. (The entity need not provide or pay for hospital inpatient or outpatient services that it can show are being provided directly, through insurance, or under arrangements, by other entities.)

(iii) Medically necessary emergency services.

(iv) Diagnostic laboratory services and diagnostic and therapeutic radiologic services.

These services must meet the requirement of § 417.101, but may be limited in time and cost without regard to the constraints imposed by § 417.101(a).

(4) *Payment for services*—(i) *General rule.* The entity pays for basic health services in accordance with § 417.104, except that it need not comply with the copayments limitations imposed by § 417.104(a)(4).

(ii) *Determination of payment rates.* In determining payment rates, the entity need not comply with the community rating requirements of §§ 417.104(b) and 417.105(b).

(5) *Contracts in effect on the dote of HCFA's determination.* The entity gives assurances that it will meet the following conditions with respect to its group and individual contracts that are in effect on the date of HCFA's determination, and which are renewed or renegotiated during the period approved by HCFA under paragraph (d)(6) of this section:

(i) Continue to provide services in accordance with paragraph (d)(3) of this section.

(ii) Continue to be organized and operated and to pay for basic health services in accordance with paragraphs (d)(2) and (d)(4) of this section, respectively.

(6) *Time-phased plan.* The entity gives assurances as follows:

(i) It will implement a time-phased plan acceptable to HCFA that—

(A) May not extend for more than 3 years from the date of HCFA's determination; and

(B) Specifies definite steps for meeting, at the time of renewal of each

group or individual contract, all the requirements of subparts B and C of this part.

(ii) Upon completion of this time-phased plan, it will—

(A) Provide basic and supplemental services to all of its enrollees; and

(B) Be organized and operated, and provide services, in accordance with subparts B and C of this part.

(7) *Contracts entered into after the date of HCFA's determination.* The entity gives assurances that, with respect to any group or individual contract entered into after the date of HCFA's determination, it will—

(i) Be organized and operated in accordance with subpart C of this part; and

(ii) Provide basic health services and any supplemental health services included in the contract, in accordance with subpart B of this part.

(e) *Failure to sign assurances timely.* If HCFA determines that an entity meets the requirements for qualification and the entity fails to sign its assurances within 30 days following the date of the determination, HCFA gives the entity written notice that its application is considered withdrawn and that it is not a qualified HMO.

(f) *Qualification of regional components.* An HMO that has more than one regional component is considered qualified for those regional components for which assurances have been signed in accordance with this section.

(g) *Special rules: Enrollees entitled to Medicare or Medicaid.* For an HMO that accepts enrollees entitled to Medicare or Medicaid, the following rules apply:

(1) The requirements of titles XVIII and XIX of the Act, as appropriate, take precedence over conflicting requirements of sections 1301(b) and 1301(c) of the PHS Act.

(2) The HMO must, with respect to its enrollees entitled to Medicare or Medicaid, comply with the applicable requirement of title XVIII or XIX, including those that pertain to—

(i) Deductibles and coinsurance;

(ii) Enrollment mix and enrollment practices;

(iii) State plan rules on copayment options; and

(iv) Grievance procedures.

(3) An HMO that complies with paragraph (g)(2) of this section may obtain and retain Federal qualification if, for its other enrollees, the HMO meets the requirements of sections 1301(b) and 1301(c) of the PHS Act and implementing regulations in this subpart D and in subparts B and C of this part.

(h) *Special rules: Enrollees under the Federal employee health benefits program (FEHBP).* An HMO that accepts enrollees under the FEHBP (Chapter 89 of title 5 of the U.S.C.) may obtain and retain Federal qualification if, for its other enrollees, it complies with the requirements of section 1301(b) and 1301(c) of the PHS Act and implementing regulations in this subpart D and subparts B and C of this part.

4. Section 417.144 is revised to read as follows:

§ 417.144 Evaluation and determination procedures.

(a) *Basis for evaluation and determination.* (1) HCFA evaluates an application for Federal qualification on the basis of information contained in the application itself and any additional information that HCFA obtains through on-site visits, public hearings, and any other appropriate procedures.

(2) If the application is incomplete, HCFA notifies the entity and allows 60 days from the date of the notice for the entity to furnish the missing information.

(3) After evaluating all relevant information, HCFA determines whether the entity meets the applicable requirements of §§ 417.142 and 417.143.

(b) *Notice of determination.* HCFA notifies each entity that applies for qualification under this subpart of its determination and the basis for the determination. The determination may be granting of qualification, intent to deny, or denial.

(c) *Intent to deny.* (1) If HCFA finds that the entity does not appear to meet the requirements for qualification and appears to be able to meet those requirements within 60 days, HCFA gives the entity notice of intent to deny qualification and a summary of the basis for this preliminary finding.

(2) Within 60 days from the date of the notice, the entity may respond in writing to the issues or other matters that were the basis for HCFA's preliminary finding, and may revise its application to remedy any defects identified by HCFA.

(d) *Denial and reconsideration of denial.* (1) If HCFA denies an application for qualification under this subpart, HCFA gives the entity written notice of the denial and an opportunity to request reconsideration of that determination.

(2) A request for reconsideration must—

(i) Be submitted in writing, within 60 days following the date of the notice of denial;

(ii) Be addressed to the HCFA officer or employee who denied the application; and

(iii) Set forth the grounds upon which the entity requests reconsideration, specifying the material issues of fact and of law upon which the entity relies.

(3) HCFA bases its reconsideration upon the record compiled during the qualification review proceedings, materials submitted in support of the request for reconsideration, and other relevant materials available to HCFA.

(4) HCFA gives the entity written notice of the reconsidered determination and the basis for the determination.

(e) *Information on qualified HMOs*—(1) **Federal Register** *notices.* In quarterly **Federal Register** notices, HCFA gives the names, addresses, and service areas of newly qualified HMOs and describes the expanded service areas of other qualified HMOs.

(2) *Listings.* A cumulative list of qualified HMOs is available from the following office, which is open from 8:30 a.m. to 5 p.m., Monday through Friday: Office of Managed Care, Room 4360, Cohen Building, 400 Independence Avenue SW., Washington, DC 20201.

C. Subpart E is amended as set forth below.

Subpart E—Inclusion of Qualified Health Maintenance Organizations in Employee Health Benefits Plans

1. Section 417.150 is amended to revise the introductory text, add definitions of "agreement," "contract," and "qualified HMO," remove the definition of "health benefits," and revise the definitions of "bargaining representative," "collective bargaining agreement," "eligible employee," "employer," "health benefits plan," "public entity," and "to offer a health benefits plan" to read as follows:

§ 417.150 Definitions.

As used in this subpart, unless the context indicates otherwise—

Agreement means a collective bargaining agreement.

Bargaining representative means an individual or entity designated or selected, under any applicable Federal, State, or local law, or public entity collective bargaining agreement, to represent employees in collective bargaining, or any other employee representative designated or selected under any law.

* * * * *

Collective bargaining agreement means an agreement entered into between an employing entity and the bargaining representative of its employees.

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Contract means an employer-employee or public entity-employee contract, or a contract for health benefits.

Eligible employee means an employee who meets the employer's requirements for participation in the health benefits plan.

* * * * *

Employer has the meaning given that term in section 3(d) of the Fair Labor Standards Act of 1938, except that it—

(1) Includes non-appropriated fund instrumentalities of the United States Government; and

(2) Excludes the following:

(i) The governments of the United States, the District of Columbia and the territories and possessions of the United States, the 50 States and their political subdivisions, and any agencies or instrumentalities of any of the foregoing, including the United States Postal Service and Postal Rate Commission.

(ii) Any church, or convention or association of churches, and any organization operated, supervised, or controlled by a church, or convention or association of churches that meets the following conditions:

(A) Is an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1954.

(B) Does not discriminate, in the employment, compensation, promotion or termination of employment of any personnel, or in the granting of staff and other privileges to physicians or other health personnel, on the grounds that the individuals obtain health care through HMOs, or participate in furnishing health care through HMOs.

Health benefits plan means any arrangement, to provide or pay for health services, that is offered to eligible employees, or to eligible employees and their eligible dependents, by or on behalf of an employing entity.

Public entity means the 50 states, Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands and American Samoa and their political subdivisions, the District of Columbia, and any agency or instrumentality of the foregoing, and *political subdivisions* include counties, parishes, townships, cities, municipalities, towns, villages, and incorporated villages.

Qualified HMO means an HMO that has in effect a determination, made under subpart D of this part, that the HMO is an operational, preoperational, or transitional qualified HMO.

To offer a health benefits plan means to make participation in a health benefits plan available to eligible employees, or to eligible employees and their eligible dependents regardless of whether the employing entity makes a financial contribution to the plan on behalf of these employees, directly or indirectly, for example, through payments on any basis into a health and welfare trust fund.

2. Sections 417.151 through 417.156 are revised to read as follows:

§ 417.151 Applicability.

(a) *Basic rule.* This subpart applies to any employer or public entity that offers a health benefits plan to its employees and meets the conditions specified in paragraphs (b) through (e) of this section.

(b) *Number of employees.* During any calendar quarter of the preceding calendar year, the employer or public entity employed an average of not less than 25 employees.

(c) *Minimum wage.* During any calendar quarter of the preceding calendar year, the employer was required to pay the minimum wage specified in section 6 of the Fair Labor Standards Act of 1938, or would have been required to pay that wage but for section 13(a) of that Act.

(d) *Federal assistance under section 317 of the PHS Act.* The public entity has a pending application for, or is receiving, assistance under section 317 of the PHS Act.

(e) *Request for inclusion of qualified HMO.* The employer or public entity has received, from at least one qualified HMO, a request to be included in the health benefits plan offered to employees, and the following conditions are met:

(1) The request is in writing and meets the requirements of § 417.152.

(2) At least 25 of the employees of the employer or public entity reside within the HMO's service area.

§ 417.152 Request for inclusion of the HMO in a health benefits plan; employing entity's response.

(a) *Time limitations.* (1) Unless otherwise agreed to by the HMO and the employing entity or its designee, an HMO's request for inclusion in a health benefits plan must be received by the employing entity or designee—

(i) Not more than 365 nor less than 180 days before the expiration or renewal date of—

(A) A health benefits contract or employing entity-employee contract; or

(B) A collective bargaining agreement; or

(ii) In the case of a public entity, any longer period prescribed by State law.

(2) For purposes of this paragraph, the dates are considered to be as follows:

(i) For a collective bargaining agreement that is automatically renewable or without fixed term, the expiration or renewal date is the earliest anniversary date of the agreement.

(ii) For a collective bargaining agreement that is for a fixed term of more than 1 year and provides that its health benefits terms may be renegotiated during the term of the agreement, the expiration date is the date provided by the agreement for discussion of health benefits changes.

(b) *To whom the request must be addressed.* The HMO must direct its written request for inclusion to—

(1) The employer's managing official at the employer site being solicited or the employer's designee; or

(2) The public entity's chief executive officer or designee.

(c) *Required information.* The request must include the following:

(1) Evidence showing that the HMO has been determined to be a qualified HMO in accordance with section 1310(d) of the PHS Act and subpart D of this part.

(2) A description of the HMO's service area or proposed service area and the dates when the HMO will furnish basic and supplemental health services in the area.

(3) Indication of whether the HMO furnishes the basic health services that are the services of health professionals—

(i) Through health professionals who are—

(A) Members of the HMO's staff;

(B) Members of one or more medical groups;

(C) Members of one or more individual practice associations (IPAs); or

(D) Under direct contract with the HMO; or

(ii) Through any combination of the foregoing.

(4) If the HMO provides health services through IPAs, a listing of member physicians by name, specialty, and whether they are accepting new patients from the HMO enrollment. This listing must be current within 90 days of the date of the request for inclusion.

(5) If the HMO provides health services other than through IPAs, for each ambulatory care facility the facility's address, days and hours of operation, a statement whether it is accepting new patients from the HMO enrollment, and the names and specialties of the facility's providers of basic and supplemental health services. This information must be current within 90 days of the date of the request for inclusion.

(6) A list of the hospitals where HMO enrollees will be provided basic and supplemental health services.

(7) Identification of the type of HMO entity specifying, for example, whether for profit or nonprofit, public or private, sole proprietorship, partnership or stock corporation; the members of the HMO's policymaking body; and the principal managing officer of the HMO.

(8) A statement of the HMO's capacity to accept new enrollees and the likelihood of any future limitations on enrollment.

(9) The HMO's most recently audited annual financial statement.

(10) Proposed implementing agreements between the HMO and the employer, public entity, or designee for the HMO offering.

(11) Sample copies of solicitation brochures and enrollment literature that will be used in the offer of the HMO option to employees.

(12) The HMO's current rates, including copayments, for basic and uniformly included supplemental health services and the dates these rates became effective; or the HMO's estimated rates for these services.

(d) *Employing entity's response*—(1) *Timing.* An employing entity or its designee must respond in writing to an HMO's request for inclusion no later than 60 days after receipt of the request.

(2) *Basic statement.* The response must state whether the employing entity has 25 or more employees who reside within the HMO's service area.

(3) *Additional information: Public entities only.* A public entity's response must specify the health benefits, including limitations and exclusions, that are required under State law or regulations for employees of the public entity.

(4) *Additional information: All employing entities.* If the employing entity has 25 or more employees who reside within the HMO's service area, the response must include the following:

(i) Expiration or renewal dates of contracts that cover those employees.

(ii) The amount of the employing entity's current contribution and, if applicable, the employee's contribution, for health benefits, and the dates when those contribution levels became effective.

(iii) The expiration dates of any collective bargaining agreements covering those employees.

(e) *Effect of inadequate request.* If the request for inclusion does not meet the requirements of paragraphs (a) through (c) of this section, the following rules apply:

(1) The employing entity is not required to include the HMO option in its employees' health benefits plan under § 417.154 until the HMO makes its request in accordance with those paragraphs.

(2) The employing entity or its designee must, within 60 days after receipt of the request, notify the HMO in writing of the basis for its conclusion that the request does not meet the requirements of paragraphs (a) through (c) of this section.

(f) *New request for inclusion.* (1) If an employing entity includes the HMO option in a health benefits plan in accordance with a request meeting the requirements of paragraphs (a) through (c) of this section, the employing entity must offer the HMO option to all the eligible employees who reside in the HMO's service area during the entire health benefits year.

(2) However, if no employees enroll during the health benefits year, the HMO seeking inclusion in the health benefits plan for subsequent enrollment periods must submit a new request in accordance with paragraphs (a) through (c) of this section.

§ 417.153 Offer of HMO option to employees.[1]

(a) *Basic rule.* An employing entity subject to this subpart must, at the time it offers a health benefits plan to its eligible employees, include in the plan the option of enrollment in qualified HMOs in accordance with this section.

(b) *Employees to whom the HMO option must be offered.* Each employing entity must offer the option of enrollment in a qualified HMO to each eligible employee and his or her eligible dependents who reside in the HMO's service area.

(c) *Manner of offering the HMO option.* (1) For employees who are represented by a bargaining representative, the option of enrollment in a qualified HMO——

(i) Must first be presented to the bargaining representative; and

(ii) If the representative accepts the option, must then be offered to each represented employee.

(2) For employees not represented by a bargaining representative, the option must be offered directly to those employees.

§ 417.154 HMOs that must be included in a health benefits plan.

(a) *HMOs of different models*—(1) *Categories of HMO models.* The following categories describe the manner in which an HMO furnishes the basic health services that are provided by physicians.

(i) A "staff/group model HMO" provides more than one-half of those services through members of the HMO's staff or of a medical group or groups.

(ii) An "IPA/direct contract model HMO" provides those services through——

(A) An IPA or IPAs; or

(B) A combination of IPAs, medical groups, staff, and individual physicians and other health professionals under contract with the HMO.

(2) *Requirement.* If at least one HMO from each category described in paragraph (a)(1) of this section requests inclusion in a health benefits plan, the employing entity must include at least one HMO from each category.

(3) *Terms.* For purposes of this paragraph (a), "health professionals under contract" does not include health professionals who are members of any of the following:

(i) The HMO's staff.

(ii) Medical groups.

(iii) Entities that would be medical groups if they met the following requirements:

(A) For the group members individually, the coordinated practice of their profession represents more than 50 percent of their professional activity.

(B) For the group as a whole, the delivery of health services to HMO enrollees represents more than 35 percent of their professional activity.

(b) *Additional HMOs that must be included.* An employing entity that is subject to this subpart must offer its eligible employees the option of enrollment in additional qualified HMOs if the HMOs demonstrate that at least 25 of those eligible employees reside in the HMO's service areas and meet either of the following conditions:

(1) They do not reside in the service areas of other HMOs already included in the employing entity's health benefits plan.

(2) They cannot enroll in any other HMO included in the plan because those HMOs have closed their enrollment to additional eligible employees of the employing entity.

(c) *Optional inclusion of alternative HMOs.* An employing entity may include in its health benefits plan, instead of an HMO that made a timely request for inclusion, one or more other HMOs that may not have made a request within the established time limits but are willing to be included, if the following conditions are met:

(1) The alternative HMOs are of the same type (as described in paragraph (a) of this section) as the HMO that submitted the timely request.

(2) All of the eligible employees who reside in the service area of the HMO

[1] The statutory requirement for the employing entity to include the HMO option has a sunset date of October 24, 1995. Accordingly, the statutory requirement expires on that date unless Congress extends it.

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that made the timely request reside in the service areas of the alternative HMOs.

§ 417.155 How the HMO option must be included in the health benefits plan.

(a) *HMO access to employees*—(1) *Purpose and timing.*

(i) *Purpose.* The employing entity must provide each HMO included in its health benefits plan fair and reasonable access to all employees specified in § 417.153(b), so that the HMO can explain its program in accordance with § 417.124(b).

(ii) *Timing.* The employing entity must provide access beginning at least 30 days before, and continuing during, the group enrollment period.

(2) *Nature of access.* (i) Access must include, at a minimum, opportunity to distribute educational literature, brochures, announcements of meetings, and other relevant printed materials that meet the requirements of § 417.124(b).

(ii) Access may not be more restrictive or less favorable than the access the employing entity provides to other offerors of options included in the health benefits plan, whether or not those offerors elect to avail themselves of that access.

(b) *Review of HMO offering materials* (1) The HMO must give the employing entity or designee opportunity to review, revise, and approve HMO educational and offering materials before distribution.

(2) Revisions must be limited to correcting factual errors and misleading or ambiguous statements, unless—

(i) The HMO and the employing entity agree otherwise; or

(ii) Other revisions are required by law.

(3) The employing entity or designee must complete revision of the materials promptly so as not to delay or otherwise interfere with their use during the group enrollment period.

(c) *Group enrollment period: prohibition of restrictions; effective date of HMO coverage*—(1) *Prohibition of restrictions.* If an employing entity or designee includes the option of enrollment in a qualified HMO in the health benefits plan offered to its eligible employees, it must provide a group enrollment period before the effective date of HMO coverage. The employing entity may not impose waiting periods as a condition of enrollment in the HMO or of transfer from HMO to non-HMO coverage, or exclusions, or limitations based on health status.

(2) *Effective date of coverage.* Unless otherwise agreed to by the employing entity, or designee, and the HMO, coverage under the HMO contract for employees selecting the HMO option begins on the day the non-HMO contract expires or is renewed without lapse.

(3) *Coordination of benefits.* Nothing in this subpart precludes the uniform application of coordination of benefits agreements between the HMOs and the other carriers that are included in the health benefits plan.

(d) *Continued eligibility for "free-standing" health benefits*—(1) *Basic requirement.* At the request of a qualified HMO, the employing entity or its designee must provide that employees selecting the option of HMO membership will not, because of this selection, lose their eligibility for free-standing dental, optical, or prescription drug benefits for which they were previously eligible or would be eligible if selecting a non-HMO option and that are not included in the services provided by the HMO to its enrollees as part of the HMO prepaid benefit package.

(2) *"Free-standing" defined.* For purposes of this paragraph, the term "free-standing" refers to a benefit which—

(i) Is not integrated or incorporated into a basic health benefits package or major medical plan, and

(ii) Is—

(A) Offered by a carrier other than the one offering the basic health benefits package or major medical plan; or

(B) Subject to a premium separate from the premium for the basic health benefits package or major medical plan.

(3) *Examples of the employing entity's obligation with respect to the continued eligibility.* (i) The health benefits plan includes a free-standing dental benefit. The HMO does not offer any dental coverage as part of its health services provided to members on a prepaid basis. The employing entity must provide that employees who select the HMO option continue to be eligible for dental coverage. (If the dental coverage is not optional for employees selecting the non-HMO option, nothing in this regulation requires that the coverage be made optional for employees selecting the HMO option. Conversely, if this coverage is optional for employees selecting the non-HMO option, nothing in this regulation requires that the coverage be mandatory for employees selecting the non-HMO option.)

(ii) The non-HMO option provides free-standing coverage for optical services (such as refraction and the provision of eyeglasses), and the HMO does not. The employing entity must provide that employees who select the HMO option continue to be eligible for optical coverage.

(iii) The non-HMO option includes dental coverage in its major medical package, with a common deductible applied to dental as well as non-dental benefits. The HMO provides no dental coverage as part of its pre-paid health services. Because the dental coverage is not free-standing, the employing entity is not required to provide that employees who select the HMO option continue to be eligible for dental coverage, but is free to do so.

(e) *Opportunity to select among coverage options: Requirement for affirmative written selection*—(1) *Opportunity other than during a group enrollment period.* The employing entity or designee must provide opportunity (in addition to the group enrollment period) for selection among coverage options, by eligible employees who meet any of the following conditions:

(i) Are new employees.

(ii) Have been transferred or have changed their place of residence, resulting in—

(A) Eligibility for enrollment in a qualified HMO for which they were not previously eligible by place of residence; or

(B) Residence outside the service area of a qualified HMO in which they were previously enrolled.

(iii) Are covered by any coverage option that ceases operation.

(2) *Prohibition of restrictions.* When the employees specified in paragraph (e)(1) of this section are eligible to participate in the health benefits plan, the employing entity or designee must make available, without waiting periods or exclusions based on health status as a condition, the opportunity to enroll in an HMO, or transfer from HMO coverage to non-HMO coverage.

(3) *Affirmative written selection.* The employing entity or designee must require that the eligible employee make an affirmative written selection in any of the following circumstances:

(i) Enrollment in a particular qualified HMO is offered for the first time.

(ii) The eligible employee elects to change from one option to another.

(iii) The eligible employee is one of those specified in paragraph (e)(1) of this section.

(f) *Determination of copayment levels and supplemental health services.* The selection of a copayment level and of supplemental health services to be contracted for must be made as follows:

(1) For employees represented by a collective bargaining representative, the selection of copayment levels and supplemental health services is subject to the collective bargaining process.

(2) For employees not represented by a bargaining representative, the selection of copayment levels and supplemental health services is subject to the same decisionmaking process used by the employing entity with respect to the non-HMO option in its health benefits plan.

(3) In all cases, the HMO has the right to include, with the basic benefits package it provides to its enrollees for a basic health services payment, on a non-negotiable basis, those supplemental health services that meet the following conditions:

(i) Are required to be offered under State law.

(ii) Are included uniformly by the HMO in its prepaid benefit package.

(iii) Are available to employees who select the non-HMO option but not available to those who select the HMO option.

§ 417.156 When the HMO must be offered to employees.

(a) *General rules.* (1) The employing entity or designee must offer eligible employees the option of enrollment in a qualified HMO at the earliest date permitted under the terms of existing agreements or contracts.

(2) If the HMO's request for inclusion in a health benefits plan is received at a time when existing contracts or agreements do not provide for inclusion, the employing entity must include the HMO option in the health benefits plan at the time that new agreements or contracts are offered or negotiated.

(b) *Specific requirements.* Unless mutually agreed otherwise, the following rules apply:

(1) *Collective bargaining agreement.* The employing entity or designee must raise the HMO's request during the collective bargaining process—

(i) When a new agreement is negotiated;

(ii) At the time prescribed, in an agreement with a fixed term of more than 1 year, for discussion of change in health benefits; or

(iii) In accordance with a specific process for review of HMO offers.

(2) *Contracts.* For employees not covered by a collective bargaining agreement, the employing entity or designee must include the HMO option in any health benefits plan offered to eligible employees when the existing contract is renewed or when a new health benefits contract or other arrangement is negotiated.

(i) If a contract has no fixed term or has a term in excess of 1 year, the contract must be treated as renewable on its earliest anniversary date.

(ii) If the employing entity or designee is self-insured, the budget year must be treated as the term of the existing contract.

(3) *Multiple arrangements.* In the case of a health benefits plan that includes multiple contracts or other arrangements with varying expiration or renewal dates, the employing entity must include the HMO option, in accordance with paragraphs (b)(1) and (b)(2) of this section,—

(i) At the time each contract or arrangement is renewed or reissued; or

(ii) The benefits provided under the contract or arrangement are offered to employees.

3. Sections 417.158 and 417.159 are revised to read as follows:

§ 417.158 Payroll deductions.

Each employing entity that provides payroll deductions as a means of paying employees' contributions for health benefits or provides a health benefits plan that does not require an employee contribution must, with the consent of an employee who selects the HMO option, arrange for the employee's contribution, if any, to be paid through payroll deductions.

§ 417.159 Relationship of section 1310 of the Public Health Service Act to the National Labor Relations Act and the Railway Labor Act.

The obligation of an employing entity subject to this subpart to include the HMO option in any health benefits plan offered to its eligible employees must be carried out consistently with the obligations imposed on that employing entity under the National Labor Relations Act, the Railway Labor Act, and other laws of similar effect.

D. Subpart F is amended as set forth below.

Subpart F—Continued Regulation of Federally Qualified Health Maintenance Organizations

1. The heading of subpart F is revised to read as set forth above.

2. Section 417.160 is revised to read as follows:

§ 417.160 Applicability.

This subpart applies to any entity that has been determined to be a qualified HMO under subpart D of this part.

3. Section 417.163 is revised to read as follows:

§ 417.163 Enforcement procedures.

(a) *Complaints.* Any person, group, association, corporation, or other entity may file with HCFA a written complaint with respect to an HMO's compliance with assurances it gave under subpart D of this part. A complaint must—

(1) State the grounds and underlying facts of the complaint;

(2) Give the names of all persons involved; and

(3) Assure that all appropriate grievance and appeals procedures established by the HMO and available to the complainant have been exhausted.

(b) *Investigations.* (1) HCFA may initiate investigations when, based on a report, a complaint, or any other information, HCFA has reason to believe that a Federally qualified HMO is not in compliance with any of the assurances it gave under subpart D of this part.

(2) When HCFA initiates an investigation, it gives the HMO written notice that includes a full statement of the pertinent facts and of the matters being investigated and indicates that the HMO may submit, within 30 days of the date of the notice, a written report concerning these matters.

(3) HCFA obtains any information it considers necessary to resolve issues related to the assurances, and may use site visits, public hearings, or any other procedures that HCFA considers appropriate in seeking this information.

(c) *Determination and notice by HCFA*—(1) *Determination.* (i) On the basis of the investigation, HCFA determines whether the HMO has failed to comply with any of the assurances it gave under subpart D of this part.

(ii) HCFA publishes in the **Federal Register** a notice of each determination of non-compliance.

(2) *Notice of determination: Corrective action.* (i) HCFA gives the HMO written notice of the determination.

(ii) The notice specifies the manner in which the HMO has not complied with its assurances and directs the HMO to initiate the corrective action that HCFA considers necessary to bring the HMO into compliance.

(iii) The HMO must initiate this corrective action within 30 days of the date of the notice from HCFA, or within any longer period that HCFA determines to be reasonable and specifies in the notice. The HMO must carry out the corrective action within the time period specified by HCFA in the notice.

(iv) The notice may provide the HMO an opportunity to submit, for HCFA's approval, proposed methods for achieving compliance.

(d) *Remedy: Revocation of qualification.* If HCFA determines that a qualified HMO has failed to initiate or to carry out corrective action in accordance with paragraph (c)(2) of this section—(1) HCFA revokes the HMO's qualification and notifies the HMO of this action.

(2) In the notice, HCFA provides the HMO with an opportunity for reconsideration of the revocation,

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including, at the HMO's election, a fair hearing.

(3) The revocation of qualification is effective on the tenth calendar day after the day of the notice unless HCFA receives a request for reconsideration by that date.

(4) If after reconsideration HCFA again determines to revoke the HMO's qualification, this revocation is effective on the tenth calendar day after the date of the notice of reconsidered determination.

(5) HCFA publishes in the **Federal Register** each determination it makes under this paragraph (d).

(6) A revocation under this paragraph (d) has the effect described in § 417.164.

(e) *Notice by the HMO.* Within 15 days after the date HCFA issues a notice of revocation, the HMO must prepare a notice that explains, in readily understandable language, the reasons for the determination that it is not a qualified HMO, and send the notice to the following:

(1) The HMO's enrollees.

(2) Each employer or public entity that has offered enrollment in the HMO in accordance with subpart E of this part.

(3) Each lawfully recognized collective bargaining representative or other representative of the employees of the employer or public entity.

(f) *Reimbursement of enrollees for services improperly denied, or for charges improperly imposed.* (1) If HCFA determines, under paragraph (c)(1) of this section, that an HMO is out of compliance, HCFA may require the HMO to reimburse its enrollees for the following—

(i) Expenses for basic or supplemental health services that the enrollee obtained from other sources because the HMO failed to provide or arrange for them in accordance with its assurances.

(ii) Any amounts the HMO charged the enrollee that are inconsistent with its assurances. (Rules applicable to charges for all enrollees are set forth in §§ 417.104 and 417.105. The additional rules applicable to Medicare enrollees are in § 415.454.)

(2) This paragraph applies regardless of when the HMO failed to comply with the appropriate assurances.

(g) *Remedy: Civil suit*—(1) *Applicability.* This paragraph applies to any HMO or other entity to which a grant, loan, or loan guarantee was awarded, as set forth in subpart V of this part, on the basis of its assurances regarding the furnishing of basic and supplemental services or its operation and organization, as the case may be.

(2) *Basis for action.* If HCFA determines that the HMO or other entity has failed to initiate or refuses to carry out corrective action in accordance with paragraph (c)(2) of this section, HCFA may bring civil action in the U.S. district court for the district in which the HMO or other entity is located, to enforce compliance with the assurances it gave in applying for the grant, loan, or loan guarantee.

4. Section 417.164 is revised to read as follows:

§ 417.164 Effect of revocation of qualifiers on inclusion in employee's health benefit plans.

When an HMO's qualification is revoked under § 417.163(d), the following rules apply:

(a) The HMO may not seek inclusion in employees health benefits plans under subpart E of this part.

(b) Inclusion of the HMO in an employer's health benefits plan—

(1) Is disregarded in determining whether the employer is subject to the requirements of subpart E of this part; and

(2) Does not constitute compliance with subpart E of this part by the employer.

5. Section 417.166 is revised to read as follows:

§ 417.166 Waiver of assurances.

(a) *General rule.* HCFA may release an HMO from compliance with any assurances the HMO gives under subpart D of this part if—

(1) The qualification requirements are change by Federal law; or

(2) The HMO shows good cause, consistent with the purposes of title XIII of the PHS Act.

(b) *Basis for finding of good cause.* (1) Grounds upon which HCFA may find good cause include but are not limited to the following:

(i) The HMO has filed for reorganization under Federal bankruptcy provisions and the reorganization can only be approved with the waiver of the assurances.

(ii) State laws governing the entity have been changed after it signed the assurances so as to prohibit the HMO from being organized and operated in a manner consistent with the signed assurances.

(2) Changes in State laws do not constitute good cause to the extent that the changes are preempted by Federal law under section 1311 of the PHS Act.

(c) *Consequences of waiver.* If HCFA waives any assurances regarding compliance with section 1301 of the PHS Act, HCFA concurrently revokes the HMO's qualification unless the waiver is based on paragraph (a)(1) of this section.

§§ 417.168 and 417.169 [Removed]

6. Sections 417.168 and 417.169 are removed.

E. Subpart V is amended as set forth below:

Subpart V—Administration of Outstanding Loans and Loan Guarantees

1. Section 417.910 is revised to read as follows:

§ 417.910 Applicability.

The regulations in this subpart apply, as appropriate, to public and private entities that have loans or loan guarantees that—

(a) Were awarded to them before October 1986 under section 1304 or section 1305 of the PHS Act; and

(b) Are still outstanding.

2. Section 417.911 is amended to remove the definitions of any *12-month period, health system agency* (including *State health planning and development agency*), and *nonprofit.*

§§ 417.912 through 417.919, 417.921 through 417.926, 417.932, 417.933, 417.935, and 417.936 [Removed]

3. Sections 417.912 through 417.919, 417.921 through 417.926, 417.932, 417.933, 417.935, and 417.936 are removed.

4. Sections 417.934 and 417.937 are revised to read as follows:

§ 417.934 Reserve requirement.

(a) *Timing.* Unless the Secretary approved a longer period, an entity that received a loan or loan guarantee under section 1305 of the PHS Act was required to establish a restricted reserve account on the earlier of the following:

(1) When the HMO's revenues and costs of operation reached the break-even point.

(2) At the end of the 60-month period following the Secretary's endorsement of the loan or loan guarantee.

(b) *Purpose and amount of reserve.* The reserve had to be constituted so as to accumulate, no later than 12 years after endorsement of the loan or loan guarantee, an amount equal to 1 year's principal and interest.

§ 417.937 Loan and loan guarantee provisions.

(a) *Disbursement of loan proceeds.* The principal amount of any loan made or guaranteed by the Secretary under this subpart was disbursed to the entity in accordance with an agreement entered into between the parties to the loan and approved by the Secretary.

(b) *Length and maturity of loans.* The principal amount of each loan or loan guarantee, together with interest thereon, is repayable over a period of 22 years, beginning on the date of endorsement of the loan, or loan guarantee by the Secretary. The Secretary could approve a shorter repayment period if he or she determined that a repayment period of less than 22 years is more appropriate to an entity's total financial plan.

(c) *Repayment.* The principal amount of each loan or loan guarantee, together with interest thereon is repayable in accordance with a repayment schedule that is agreed upon by the parties to the loan or loan guarantee and approved by the Secretary before or at the time of endorsement of the loan. Unless otherwise specifically authorized by the Secretary, each loan made or guaranteed by the Secretary is repayable in substantially level combined installments of principal and interest to be paid at intervals not less frequently than annually, sufficient in amount to amortize the loan through the final year of the life of the loan. Principal repayment during the first 60 months of operation could be deferred with payment of interest only during that period. The Secretary could set rates of interest for each disbursement at a rate comparable to the rate of interest prevailing on the date of disbursement for marketable obligations of the United States of comparable maturities, adjusted to provide for appropriate administrative charges.

5. A new § 417.940 is added, to read as follows:

§ 417.940 Civil action to enforce compliance with assurances.

The provisions of § 417.163(g) apply to entities that have outstanding loans or loan guarantees administered under this subpart.

F. Technical amendments.

1. In § 417.124, a new paragraph (e)(4) is added, to read as follows:

§ 417.124 Administration and management.

* * * * *

(e) *Conversion of enrollment.* * * *

(4) The HMO must offer the enrollment on the same terms and conditions that it makes available to other nongroup enrollees.

§ 417.150 [Amended]

2. In § 417.150, in the definitions of "carrier" and "designee", "membership" is revised to read "enrollment".

§ 417.400 [Amended]

3. In § 417.400, in paragraph (a), "as amended by section 114 of public law 97–248. Section 1876 of the Act," is removed and "which" is added in its place.

§ 417.436 [Amended]

4. In § 417.436, in paragraph (a)(11), "Advanced directives" is revised to read "Advance directives".

§ 417.460 [Amended]

5. In § 417.460, the heading of paragraph (a) is revised to read *"Disenrollment of Medicare beneficiaries."*

§ 417.801 [Amended]

6. In § 417.801, in paragraph (b)(2), ", a beneficiary," is removed, and "individual" is revised to read "enrollee" each time it appears.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773, Medicare Hospital Insurance Program; No. 93.774, Medicare Supplementary Medical Insurance Program)

Dated: June 23, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: September 7, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–23281 Filed 9–29–94; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7088

[CO–930–4210–06; COC–43908]

Withdrawal of National Forest System Land for Breckenridge Ski Area; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 280 acres of National Forest System land from mining for protection of recreational resources and facilities at the Breckenridge Ski Area. This withdrawal is an addition to the existing Breckenridge Ski Area. The land has been and remains open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), for protection of facilities at the Breckenridge Ski Area:

Sixth Principal Meridian

Arapaho National Forest

T. 6 S., R. 78 W.,
Sec. 34, Nominal W½W½ (Protraction Diagram No. 9, accepted April 26, 1965)

T. 7 S., R. 78 W.,
Sec. 3, Nominal N½NW¼ and N½S½NW¼ (Protraction Diagram No. 45, accepted August 20, 1986).

The area described contains approximately 280 acres in Summit County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire June 14, 2038, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land and Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: September 26, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–24266 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–JB–P

43 CFR Public Land Order 7089

[CO–930–4210–06; COC–54072]

Withdrawal of National Forest System Land for the Purgatory Ski Area; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 2,360.78 acres of National Forest System land from mining for 50 years to protect recreational resources and facilities at the Purgatory Ski Area. The land has been and remains open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State

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Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)) for protection of the Purgatory Ski Area:

New Mexico Principal Meridian

San Juan National Forest

T. 39 N., R. 9 W.,
- Sec. 22, lots 1 to 4, inclusive, S½NW¼ and S½;
- Sec. 23, lots 1 through 16, inclusive;
- Sec. 24, W½E½NE¼NW¼, W½E½NW¼, and W½NW¼;
- Sec. 25, lot 10.

A parcel described by metes and bounds within sec. 24, beginning at corner No. 1, being the southwest corner of sec. 24, T. 39 N., R. 9 W., described as follows:

From Corner No. 1, by metes and bounds,
- S. 89°25' E., 661.98 ft.;
- N. 1°03'05" W., 65.84 ft.;
- N. 89°24'28" W., 661.86 ft.;
- S. 1°00'37" E., 65.84 ft. to corner No. 1, the place of beginning.

A parcel described by metes and bounds within secs. 21, 26, 27, and 28; Beginning at corner No. 1, being the ¼-corner of secs. 21 and 22, T. 39 N., R. 9 W., described as follows:

From Corner No. 1, by metes and bounds,
- S. 88°50'23' W., 2481.30 ft. on the E–W centerline of sec. 21;
- S. 0°07' W., 1,282.19 ft.;
- S. 32°10' E., 3,132.00 ft.;
- S. 68°17' E., 2,585.32 ft.;
- N. 80°12' E., 2,343.21 ft.;
- S. 82°04' E., 1,723.00 ft.,
- S. 60°04' E., 1,939.00 ft.;
- S. 82°45' E., 2,070.00 ft.,
- N. 41°04' E., 3,350.00 ft.,
- N. 0°53' W., 1,903.12 ft. to the northeast corner of sec. 26;
- S. 84°27' W., 5,782.26 ft. to the northwest corner of sec. 26;
- S. 85°33' W., 5,767.74 ft. to the northwest corner of sec. 27;
- N. 0°05' W., 2,583.90 ft. to corner No. 1, the point of beginning.

The area described contains approximately 2,360.78 acres in La Plata County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: September 26, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–24267 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–JB–P

43 CFR Public Land Order 7090

[CO–932–4210–06; COC–39308]

Withdrawal of National Forest System Land for Keystone Ski Area; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 1,778 acres of National Forest System lands from mining for protection of recreational resources and facilities at the Keystone Ski Area. This withdrawal is an addition to the existing Keystone Ski Area. The lands have been and remain open to such forms of disposition as may by law be made of National Forest System lands and to mineral leasing.

EFFECTIVE DATE: September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), for protection of facilities at the Keystone Ski Area:

Sixth Principal Meridian

Arapaho National Forest

T. 5 S., R. 76 W.,
- Sec. 19, lots 19, 22, 25, 26, and 58;
- Sec. 20, lots 30, 31, and 46;
- Sec. 29, W½E½SW¼, W½NW¼, and W½E½NW¼ exclusive of patented land;
- Sec. 32, W½NE¼NW¼, SW¼NW¼, and W½SW¼.

T. 5 S., R. 77 W.,
- Sec. 24, lot 13 and E½SW¼;
- Sec. 25, SE¼NW¼, E½NE¼SW¼, and SW¼SE¼;
- Sec. 36, NE¼NE¼, NE¼SE¼ and E½NW¼SE¼.

T. 6 S., R. 76 W.,
- Sec. 5, S½ exclusive of patented land;
- Sec. 6, lots 2, 7, and 10;
- Sec. 7, SE¼SW¼ and SW¼SE¼;
- Sec. 8, N½ and N½N½SW¼ exclusive of patented land.

T. 6 S., R. 77 W.,
- Sec. 2, SE¼NE¼;
- Sec. 12, SW¼NW¼, NE¼SW¼, and S½SE¼.

The areas described aggregate approximately 1,778.03 acres in Summit County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire October 15, 2036, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land and Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: September 26, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–24268 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 94–008]

RIN 2115–AE83

Documentation of Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its vessel documentation regulations. The amendments clarify the vessel documentation regulations by restating the citizenship requirements for trusts to reflect the Coast Guard's policy; by correcting an existing cross-reference error regarding mortgagee consent for exchange of Certificates of Documentation; by implementing statutory requirements concerning the endorsements on Certificates of Documentation for dredges and towing vessels; and by making other minor technical amendments.

EFFECTIVE DATE: October 31, 1994.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Don M. Wrye, Vessel Documentation and Tonnage Survey Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection; (202) 267–1492.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Don M. Wrye, Project Manager, and C.G. Green, Project Counsel, Office of Chief Counsel.

Regulatory History

On June 20, 1994, the Coast Guard published a notice of proposed rulemaking entitled "Documentation of Vessels" in the **Federal Register** (59 FR 31580). The Coast Guard received one letter commenting on the proposal. No public hearing was requested, and none was held.

Background and Purpose

On November 15, 1993, the Coast Guard published a final rule in the **Federal Register** (58 FR 60256) which revised 46 CFR Part 67 to implement a number of statutory initiatives to simplify and streamline the documentation process, to implement user fees for vessel documentation services, and to clarify the regulations and present them in a more orderly fashion. The final rule was the subject of two correction documents which appeared in the **Federal Register** on December 13, 1993, at 58 FR 65130 and 58 FR 65243. That final rule became effective on January 1, 1994. The present rulemaking, among other things, corrects certain errors and omissions in the 1993 final rule. It also clarifies the citizenship requirements for a trust arrangement as a vessel-owning entity, and states the endorsements required for dredges and towing vessels.

On June 7, 1988, Congress amended 46 U.S.C. app. § 316 (Pub. L. 100–329) to require towing vessels to be documented with a coastwise or Great Lakes endorsement, as appropriate. On November 4, 1992, Congress amended 46 U.S.C. app. § 292 (Pub. L. 102–587) to require vessels of at least five net tons engaged in dredging in the navigable waters of the United States to be documented with a coastwise endorsement. Neither of these statutory requirements were included in the revision of Part 67. In order to state those requirements and to clarify the endorsement requirements for vessels employed in towing or dredging, the regulations need to be amended. This rule accomplishes that amendment.

Discussion of Comments and Changes

The Coast Guard received only one comment letter in response to the notice of proposed rulemaking. That comment addresses only the proposed amendment to redesignated § 67.36 regarding trusts.

Proposed § 67.36 set forth the citizenship requirements for trust arrangements as vessel-owning entities. In addition, the citizenship requirements for trust arrangements were described in detail, like those for corporations and partnerships, to specify the requirements for each endorsement. Paragraph (a) of proposed § 67.36 set forth the general requirements for a registry or recreational endorsement that each trustee and each beneficiary with an enforceable interest in the trust be citizens. This paragraph simply restated the current regulatory requirements for trusts found in § 67.37. Paragraphs (b) and (c) of proposed § 67.36 set forth the citizenship requirements for a fishery endorsement and a coastwise or Great Lakes endorsement, respectively. These requirements reflect the statutory citizenship requirements for these endorsements applicable to any business entity owning a documented vessel. The owner citizenship requirements for a coastwise or Great Lakes endorsement may be found in § 2 of the Shipping Act, 1916 (46 U.S.C. app. § 802) and 46 U.S.C. § 12107, respectively, and the owner citizenship requirements for a fishery endorsement may be found in 46 U.S.C. § 12108. None of the current citizenship requirements for trusts would have been changed by the proposal.

The comment raised three points concerning proposed § 67.36. First, the comment stated that the term "trust arrangement" is not a well defined or easily understood concept in law, and questioned how it should be distinguished from the term "trust", which is a well defined and understood concept. The Coast Guard recognizes that there are numerous kinds of trusts. Indeed, reference to "Black's Law Dictionary" (Fifth Edition) reveals some 75 kinds of defined trusts. One of the general definitions of a trust is, "Any arrangement whereby property is transferred with intention that it be administered by trustee for another's benefit." The Coast Guard's intention in using the term "trust arrangement" is to permit the use of as wide a range of trust types as vessel-owning entities as permissible. The Coast Guard disagrees that the term is confusing or that it need be distinguished from "trust". Therefore, the term will not be changed in the final rule.

The second point raised by the comment concerns the requirement that each beneficiary with an enforceable interest in the trust be a citizen. The comment notes that in some trusts the beneficiaries are often unborn persons. The comment noted that while such an unborn beneficiary has an enforceable interest in the trust, that same beneficiary, by virtue of being unborn, has no citizenship. The comment reasons that the effect of the requirement will be to preclude trusts with unborn beneficiaries from qualifying as a vessel-owning entity for documentation purposes.

An unborn beneficiary as described in the comment could have a vested interest in the trust. However, that interest would also be a contingent interest—with live birth being the minimum condition—which means that the interest is not a present interest. The Coast Guard's position is that the determinants of U.S. citizenship, even under circumstances of dual citizenship of infants, are sufficiently well settled that the citizenship of beneficiaries who hold present enforceable interests can be established. The Coast Guard never intended for the requirement of an enforceable interest to apply to mere contingent interests. Rather, the intent of the requirement is to permit the designation of discretionary or charitable beneficiaries who do not have to meet the citizenship requirement. Since the issue of the citizenship of beneficiaries holding the kinds of contingent future interests mentioned by the comment is not ripe for determination until the interest becomes a present interest, the Coast Guard sees no need to change the requirement.

The third point raised by the comment concerns the additional requirement in paragraph (c) of § 67.36 to obtain a coastwise or Great Lakes endorsement, that at least 75 percent of the equity interest in the trust be owned by citizens. The comment concluded that since paragraph (a), in effect, requires all beneficiaries to be citizens, the additional equity interest requirement is rendered absurd. The Coast Guard disagrees with the conclusion of the comment that paragraph (a) requires that all beneficiaries be citizens. Since those

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beneficiaries who do not have an enforceable interest do not have to meet the citizenship requirement, the additional requirement is needed to limit foreign equitable ownership to not more than 25 percent. The percentage parameters is consistent with all other citizen/foreign ownership interest parameters for a vessel qualified to engage in the coastwise trade.

The wording of proposed § 67.36, as well as other proposed amendments described in the notice of proposed rulemaking, are unchanged in this final rule.

Regulatory Evaluation

This rulemaking is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. As discussed earlier in this preamble, this rulemaking clarifies the citizenship requirements of a trust as a vessel-owning entity, corrects certain errors and omissions made in the 1993 final rule which revised 46 CFR part 67, clarifies a cross-reference with regard to calculation of fees for copies of instruments and documents, and addresses the statutorily required endorsements for vessels employed in towing and dredging. These matters are administrative in nature and do not have any economic impacts on the regulated public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rulemaking will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The Coast Guard expects the impact of this proposal to be minimal because it only clarifies the structure of a trust as a vessel-owning entity, corrects certain errors and omissions made in the 1993 final rule which revised 46 CFR part 67, clarifies a cross-reference with regard to calculation of fees for copies of instruments and documents, and addresses the statutorily required endorsements for vessels employed in towing or dredging. This proposal would bring the regulations into conformity with current policy and practice. These matters are administrative in nature and do not have any economic impacts on the regulated public. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rulemaking under the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rulemaking and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule has been determined to be categorically excluded because the changes are administrative in nature and clearly have no environmental impact. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 67

Fees, Incorporation by reference, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 67 as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 is revised to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110; 46 U.S.C. app. 841a, 876; 49 CFR 1.46.

2. In § 67.19, paragraphs (a) and (b) are revised to read as follows:

§ 67.19 Coastwise or Great Lakes endorsement.

(a) A coastwise endorsement entitles a vessel to employment in unrestricted coastwise trade, dredging, towing, and any other employment for which a registry, fishery, or Great Lakes endorsement is not required.

(b) A Great Lakes endorsement entitles a vessel to employment in the Great Lakes trade, towing in the Great Lakes, and any other employment for which a registry, fishery, or coastwise endorsement is not required.

* * * * *

3. Section 67.35 is revised to read as follows:

§ 67.35 Partnership.

A partnership is a citizen if all its general partners are citizens, and:

(a) For the purpose of obtaining a registry or recreational endorsement, at least 50 percent of the equity interest in the partnership is owned by citizens.

(b) For the purpose of obtaining a fishery endorsement, more than 50 percent of the equity interest in the partnership is owned by citizens.

(c) For the purpose of obtaining a coastwise or Great Lakes endorsement or both, at least 75 percent of the equity interest in the partnership is owned by citizens.

4. Section 67.37 is redesignated as § 67.36 and revised to read as follows:

§ 67.36 Trust.

(a) For the purpose of obtaining a registry or recreational endorsement, a trust arrangement is a citizen if:

(1) Each of its trustees is a citizen; and

(2) Each beneficiary with an enforceable interest in the trust is a citizen.

(b) For the purpose of obtaining a fishery endorsement, a trust arrangement is a citizen if:

(1) It meets all the requirements of paragraph (a) of this section; and

(2) More than 50 percent of the equity interest in the trust is owned by citizens.

(c) For the purpose of obtaining a coastwise or Great Lakes endorsement or both, a trust arrangement is a citizen if:

(1) It meets all the requirements of paragraph (a) of this section; and

(2) At least 75 percent of the equity interest in the trust is owned by citizens.

5. Section 67.37 is added to read as follows:

§ 67.37 Association or joint venture.

(a) An association is a citizen if each of its members is a citizen.

(b) A joint venture is a citizen if each of its members is a citizen.

6. In § 67.39, paragraphs (b), (c), and (d) are revised to read as follows:

§ 67.39 Corporation.

* * * * *

(b) For the purpose of obtaining a fishery endorsement, a corporation is a citizen if:

(1) It meets all the requirements of paragraph (a) of this section; and

(2) More than 50 percent of the stock interest in the corporation including a majority of voting shares in the corporation is owned by citizens.

(c) For the purpose of obtaining a coastwise or Great Lakes endorsement or both, a corporation is a citizen if:

(1) It meets all the requirements of paragraph (a) of this section; and

(2) At least 75 percent of the stock interest in the corporation is owned by citizens.

(d) A corporation which does not meet the stock interest requirement of paragraph (c) of this section may qualify for limited coastwise trading privileges by meeting the requirements of part 68 of this chapter.

7. In § 67.119, paragraph (e) is revised to read as follows:

§ 67.119 Hailing port designation.

* * * * *

(e) Until such time as a port of record assignment is required in accordance with § 67.115, or the owner elects to designate a new hailing port, the provisions of paragraph (c) of this section do not apply to vessels which were issued a Certificate of Documentation before July 1, 1982.

§ 67.145 [Amended]

8. In § 67.145, paragraph (a) is amended by removing the cross-reference to "§§ 67.167(a) or 67.167(b)(1) through (6)" and adding, in its place, "§§ 67.167(b) (1) through (6) or 67.167(c) (1) through (8)".

9. In § 67.171, paragraph (d) is revised to read as follows:

§ 67.171 Deletion; requirement and procedure.

* * * * *

(d) A certificate evidencing deletion from U.S. documentation will be issued upon request of the vessel owner to the vessel's port of record upon compliance with the applicable requirements of this subpart.

10. Section 67.321 is revised to read as follows:

§ 67.321 Requirement to report change of address of managing owner.

Upon the change of address of the managing owner of a documented vessel, the managing owner shall report the change of address to the documentation officer at the port of record of the vessel within 10 days of its occurrence.

11. Section 67.539 is revised to read as follows:

§ 67.539 Copies of instruments and documents.

The fee charged for furnishing a copy of any instrument or document is calculated in the same manner as described in 49 CFR 7.95.

Dated: September 23, 1994.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–24155 Filed 9–29–94; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–293; RM–8336]

Radio Broadcasting Services; Harrisburg, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 240C3 to Harrisburg, Arkansas, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of Harrisburg Broadcasting. See 58 FR 63318, December 1, 1993. Coordinates used for Channel 240C3 at Harrisburg are 35–31–23 and 90–39–42. With this action, the proceeding is terminated.

DATES: Effective November 14, 1994. The window period for filing applications on Channel 240C3 at Harrisburg, Arkansas, will open on November 15, 1994, and close on December 15, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process for Channel 240C3 at Harrisburg should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–293, adopted Sept. 21, 1994, and released September 27, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, N.W., Room 246, or 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Channel 240C3 at Harrisburg.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–24206 Filed 9–29–94; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1249

[Ex Parte No. MC–206]

Revision to Accounting and Reporting Requirements for Motor Carriers of Property

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule which was published Thursday, February 3, 1994, (59 FR 5110). In that final rule proceeding the Commission eliminated the Uniform System of Accounts for common and contract motor carriers of property.

EFFECTIVE DATE: The final rule became effective January 1, 1994. It will take effect for the reporting year beginning January 1, 1994. This correction becomes effective September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 927–6187. [TDD for the hearing impaired: (202) 927–5721.]

Accordingly, the publication on February 3, 1994 of the final rule [Ex Parte No. MC–206], which was the subject of FR Doc. 94–2430, is corrected as follows:

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§ 1249.2 [Corrected]

2. In § 1249.2, paragraph (a), the heading of the second "Class I" paragraph, referring to carriers with operating revenues of at least $3 million but less than $10 million, is corrected to read "Class II".

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94-24239 Filed 9-29-94; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AC95

Endangered and Threatened Wildlife and Plants; Reorganization and Republication of List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final Rule.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), announces a reorganization and republication of the list of endangered and threatened plants. Previously organized alphabetically by plant family, the plants will now be placed in the list in alphabetical order by scientific name under broad taxonomic groupings as follows: Flowering Plants, Conifers and Cycads, Ferns and Fern Allies, and Lichens and Fungi. The family name will be retained in a separate column in the list. This republication of the plant list includes all changes published in the **FEDERAL REGISTER** through August 19, 1994, but does not promulgate any new regulatory changes.

EFFECTIVE DATE: The list below includes all rules published through August 19, 1994, and is effective on that date.

ADDRESSES: Comments regarding this reorganization of the plant list may be submitted to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service (452 ARLSQ), Washington, DC 20240. The complete list, updated monthly, is also available on Internet:

R9IRMLIB@mail.fws.gov

(on "SUBJECT" line type one of following choices—SEND T&E LIST or SEND T&E LIST WP; first file is ASCII delimited, second is a WordPerfect 5.1 file).

FOR FURTHER INFORMATION CONTACT: Ms. Jamie Rappaport Clark, at the above address (telephone 703-358-2171).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 4(c)(1) of the Act, the Fish and Wildlife Service (Service) is required to maintain the lists of endangered and threatened wildlife and plants (50 CFR 17.11 and 17.12). Since the lists were first established, the Service has sequenced plants (§ 17.12) alphabetically by the name of the plant family and then alphabetically within each family by scientific name. Almost 500 species of plants are now listed, in nearly 100 families. In an effort to make this list more useful to the general public and other users, the Service is now reorganizing the sequence of the plants so that they are alphabetical by scientific name within each of four major groups (Flowering Plants, Conifers and Cycads, Ferns and Fern Allies, and Lichens and Fungi). Additional major groups may be added in the future as necessary (e.g., Mosses and Algae).

This reorganized and republished list incorporates no regulatory changes (e.g., addition or deletion of species, changes in endangered or threatened status) that have not been previously published in the **FEDERAL REGISTER**. As indicated at § 17.12(d), the Service may correct or update the spelling of names, historical range information, footnotes, references to certain other applicable portions of this title, synonyms, and more current names without public notice; such information is non-regulatory in nature and is provided for the benefit of the reader. Such changes are incorporated in this republication of the list, as they have been in the past annual codifications of this section.

Authority:

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by revising it to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h)The "List of Endangered and Threatened Plants" is provided below:

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
Abronia macrocarpa	Large-fruited sand-verbena	U.S.A. (TX)	Nyctaginaceae	E	331	NA	NA
Abutilon eremitopetalum	None	U.S.A. (HI)	Malvaceae	E	435	NA	NA
Abutilon menziesii	Ko'oloa'ula	do	do	E	243	NA	NA
Abutilon sandwicense	None	do	do	E	448	NA	NA
Acaena exigua	Liliwai	do	Rosaceae	E	467	NA	NA
Acanthomintha obovata ssp. duttonii	San Mateo thornmint	U.S.A. (CA)	Lamiaceae	E	204	NA	NA
Achyranthes splendens var. rotundata	Round-leaved chaff-flower	U.S.A. (HI)	Amaranthaceae	E	220	NA	NA
Aconitum noveboracense	Northern wild monkshood	U.S.A. (IA, NY, OH, WI)	Ranunculaceae	T	39	NA	NA
Aeschynomene virginica	Sensitive joint-vetch	U.S.A. (DE, MD, NC, NJ, PA, VA)	Fabaceae	T	470	NA	NA
Agalinis acuta	Sandplain gerardia	U.S.A. (CT, MA, MD, NY, RI)	Scrophulariaceae	E	325	NA	NA
Agave arizonica	Arizona agave	U.S.A. (AZ)	Agavaceae	E	147	NA	NA
Alectryon macrococcus	Mahoe	U.S.A. (HI)	Sapindaceae	E	467	NA	NA
Alsinidendron obovatum	None	do	Caryophyllaceae	E	448	NA	NA
Alsinidendron trinerve	None	do	do	E	448	NA	NA
Amaranthus pumilus	Seabeach amaranth	U.S.A. (DE, MA, MD, NC, NJ, NY, RI, SC, VA).	Amaranthaceae	T	498	NA	NA
Amorpha crenulata	Crenulate lead-plant	U.S.A. (FL)	Fabaceae	E	192	NA	NA
Amphianthus pusillus	Little amphianthus	U.S.A. (AL, GA, SC)	Scrophulariaceae	T	302	NA	NA
Amsinckia grandiflora	Large-flowered fiddleneck	U.S.A. (CA)	Boraginaceae	E	179	17.96(a)	NA
Amsonia kearneyana	Kearney's blue-star	U.S.A. (AZ)	Apocynaceae	E	343	NA	NA
Ancistrocactus tobuschii (=*Echinocactus t., Mammillaria t.*).	Tobusch fishhook cactus	U.S.A. (TX)	Cactaceae	E	80	NA	NA
Apios priceana	Price's potato-bean	U.S.A. (AL, IL, KY, MS, TN)	Fabaceae	T	373	NA	NA
Arabis mcdonaldiana	McDonald's rock-cress	U.S.A. (CA)	Brassicaceae	E	44	NA	NA
Arabis serotina	Shale barren rock-cress	U.S.A. (VA, WV)	do	E	352	NA	NA
Arctostaphylos hookeri var. ravenii (=*A. pungens ssp. r.*).	Presidio (=Raven's) manzanita	U.S.A. (CA)	Ericaceae	E	65	NA	NA
Arctomecon humilis	Dwarf bear-poppy	U.S.A. (UT)	Papaveraceae	E	78	NA	NA
Arenaria cumberlandensis	Cumberland sandwort	U.S.A. (KY, TN)	Caryophyllaceae	E	311	NA	NA
Arenaria paludicola	Marsh sandwort	U.S.A. (CA, OR, WA)	do	E	511	NA	NA
Argemone pleiacantha ssp. pinnatisecta.	Sacramento prickly-poppy	U.S.A. (NM)	Papaveraceae	E	360	NA	NA
Argyroxiphium kauense	Ka'u silversword	U.S.A. (HI)	Asteraceae	E	497	NA	NA
Argyroxiphium sandwicense ssp. macrocephalum.	'Ahinahina (=Haleakala silversword).	do	do	E	467	NA	NA
Argyroxiphium sandwicense ssp. sandwicense.	'Ahinahina (=Mauna Kea silversword).	do	do	E	219	NA	NA
Aristida chaseae	None	U.S.A. (PR)	Poaceae	E	501	NA	NA
Aristida portoricensis	Pelos del diablo	do	do	E	398	NA	NA
Asclepias meadii	Mead's milkweed	U.S.A. (IA, IL, IN, KS, MO, WI)	Asclepiadaceae	T	321	NA	NA
Asclepias welshii	Welsh's milkweed	U.S.A. (AZ, UT)	do	T	295	17.96(a)	NA
Asimina tetramera	Four-petal pawpaw	U.S.A. (FL)	Annonaceae	E	244	NA	NA
Astragalus applegatei	Applegate's milk-vetch	U.S.A. (OR)	Fabaceae	E	510	NA	NA
Astragalus bibullatus	Guthrie's ground-plum	U.S.A. (TN)	do	E	437	NA	NA
Astragalus cremnophylax var. cremnophylax.	Sentry milk-vetch	U.S.A. (AZ)	do	E	409	NA	NA
Astragalus humillimus	Mancos milk-vetch	U.S.A. (CO, NM)	do	E	187	NA	NA
Astragalus montii (=*A. limnocharis var. m.*).	Heliotrope milk-vetch	U.S.A. (UT)	do	T	298	17.96(a)	NA
Astragalus osterhoutii	Osterhout milk-vetch	U.S.A. (CO)	do	E	353	NA	NA
Astragalus phoenix	Ash Meadows milk-vetch	U.S.A. (NV)	do	T	181	17.96(a)	NA
Astragalus robbinsii var. jesupi	Jesup's milk-vetch	U.S.A. (NH, VT)	do	E	271	NA	NA

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	Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
	Scientific name	Common name						
+	*Astrophytum asterias (=Echinocactus a.).*	Star cactus	U.S.A. (TX), Mexico	Cactaceae	E	521	NA	NA
+	*Auerodendron pauciflorum*	None	U.S.A. (PR)	Rhamnaceae	E	531	NA	NA
	Banara vanderbiltii	Palo de Ramo1n	.....do	Flacourtiaceae	E	255	NA	NA
	Baptisia arachnifera	Hairy rattleweed	U.S.A. (GA)	Fabaceae	E	39	NA	NA
	Berberis sonnei (=Mahonia s.)	Truckee barberry	U.S.A. (CA)	Berberidaceae	E	78	NA	NA
	Betula uber	Virginia round-leaf birch	U.S.A. (VA)	Betulaceae	E	39	NA	NA
	Bidens cuneata	Cuneate bidens	U.S.A. (HI)	Asteraceae	E	141	NA	NA
	Bidens micrantha ssp. kalealaha	Ko'oko'olau	.....do	.....do	E	467	NA	NA
	Bidens wiebkei	.....do	.....do	.....do	E	480	NA	NA
	Blennosperma bakeri	Sonoma sunshine (=Baker's stickyseed).	U.S.A. (CA)	.....do	E	453	NA	NA
	Boltonia decurrens	Decurrent false aster	U.S.A. (IL, MO)	.....do	T	341	NA	NA
	Bonamia grandiflora	Florida bonamia	U.S.A. (FL)	Convolvulaceae	T	297	NA	NA
+	*Brighamia insignis*	'Olulu	U.S.A. (HI)	Campanulaceae	E	530	NA	NA
	Brighamia rockii	Pua 'ala	.....do	.....do	E	480	NA	NA
	Buxus vahlii	Vahl's boxwood	U.S.A. (PR, VI)	Buxaceae	E	197	NA	NA
	Caesalpinia kavaiense (=Mezoneuron k.).	Uhiuhi	U.S.A. (HI)	Fabaceae	E	238	NA	NA
	Callicarpa ampla	Capá rosa (=péndula cimarrona)	U.S.A. (PR)	Verbenaceae	E	461	NA	NA
	Callirhoe scabriuscula	Texas poppy-mallow	U.S.A. (TX)	Malvaceae	E	109, 112	NA	NA
	Calyptronoma rivalis	Palma de manaca or manac palm	U.S.A. (PR)	Arecaceae	T	375	NA	NA
+	*Calyptranthes thomasiana*	None	U.S.A. (PR, VI) British VI	Myrtaceae	E	529	NA	NA
	Camissonia benitensis	San Benito evening-primrose	U.S.A. (CA)	Onagraceae	T	172	NA	NA
	Campanula robinsiae	Brooksville (=Robins') bellflower	U.S.A. (FL)	Campanulaceae	E	356	NA	NA
	Canavalia molokaiensis	'Awikiwiki	U.S.A. (HI)	Fabaceae	E	480	NA	NA
	Cardamine micranthera	Small-anthered bittercress	U.S.A. (NC)	Brassicaceae	E	363	NA	NA
	Carex specuicola	Navajo sedge	U.S.A. (AZ, UT)	Cyperaceae	T	178	17.96(a)	NA
	Castilleja grisea	San Clemente Island Indian paint-brush.	U.S.A. (CA)	Scrophulariaceae	E	26	NA	NA
	Caulanthus californicus	California jewelflower	.....do	Brassicaceae	E	395	NA	NA
	Centaurium namophilum	Spring-loving centaury	U.S.A. (CA, NV)	Gentianaceae	T	181	17.96(a)	NA
	Centaurium sebaeoides	'Awiwi	U.S.A. (HI)	.....do	E	448	NA	NA
	Cereus eriophorus var. fragrans	Fragrant prickly-apple	U.S.A. (FL)	Cactaceae	E	208	NA	NA
	Chamaesyce celastroides var. kaenana.	'Akoko	U.S.A. (HI)	Euphorbiaceae	E	448	NA	NA
	Chamaesyce deltoidea ssp. deltoidea (=Euphorbia d. ssp. d.).	Deltoid spurge	U.S.A. (FL)	.....do	E	192	NA	NA
+	*Chamaesyce deppeana(=Euphorbia d.).*	'Akoko	U.S.A. (HI)	.....do	E	536	NA	NA
	Chamaesyce garberi (=Euphorbia g.)	Garber's spurge	U.S.A. (FL)	.....do	T	192	NA	NA
	Chamaecrista glandulosa var. mirabilis (=Cassia mirabilis).	None	U.S.A. (PR)	Fabaceae	E	379	NA	NA
	Chamaesyce halemanui	.....do	U.S.A. (HI)	Euphorbiaceae	E	464	NA	NA
	Chamaesyce kuwaleana	'Akoko	.....do	.....do	E	448	NA	NA
	Chamaesyce skottsbergii var. kalaeloana (=Euphorbia s. var. k.).	'Ewa Plains 'akoko	.....do	.....do	E	120	NA	NA
	Chionanthus pygmaeus	Pygmy fringe-tree	U.S.A. (FL)	Oleaceae	E	256	NA	NA
	Chorizanthe howellii	Howell's spineflower	U.S.A. (CA)	Polygonaceae	E	472	NA	NA
+	*Chorizanthe pungens var. hartwegiana.*	Ben Lomond spineflower	.....do	.....do	E	528	NA	NA
+	*Chorizanthe pungens var. pungens*	Monterey spineflower	.....do	.....do	T	528	NA	NA

+	*Chorizanthe robusta (incl.var. robusta & hartwegii.*	Robust spineflower	.....do	.....do	E	528	NA	NA
	Chorizanthe valida	Sonoma spineflower	.....do	.....do	E	472	NA	NA
	Chrysopsis floridana (=Heterotheca f.)	Florida golden aster	U.S.A. (FL)	Asteraceae	E	232	NA	NA
	Cirsium pitcheri	Pitcher's thistle	U.S.A. (IL, IN, MI, WI), Canada (Ont.)	.....do	T	315	NA	NA
	Cirsium vinaceum	Sacramento Mountains thistle	U.S.A. (NM)	.....do	T	276	NA	NA
	Clematis morefieldii	Morefield's leather-flower	U.S.A. (AL)	Ranunculaceae	E	468	NA	NA
	Clematis socialis	Alabama leather-flower	.....do	.....do	E	245	NA	NA
+	*Clermontia lindseyana*	'Oha wai	U.S.A. (HI)	Campanulaceae	E	532	NA	NA
	Clermontia oblongifolia ssp. brevipes	.....do	.....do	.....do	E	480	NA	NA
	Clermontia oblongifolia ssp. mauiensis	.....do	.....do	.....do	E	467	NA	NA
+	*Clermontia peleana*	.....do	.....do	.....do	E	532	NA	NA
+	*Clermontia pyrularia*	.....do	.....do	.....do	E	532	NA	NA
	Clitoria fragrans	Pigeon wings	U.S.A. (FL)	Fabaceae	T	500	NA	NA
+	*Colubrina oppositifolia*	Kauila	U.S.A. (HI)	Rhamnaceae	E	532	NA	NA
	Conradina brevifolia	Short-leaved rosemary	U.S.A. (FL)	Lamiaceae	E	507	NA	NA
	Conradina etonia	Etonia rosemary	.....do	.....do	E	507	NA	NA
	Conradina glabra	Apalachicola rosemary	.....do	.....do	E	507	NA	NA
	Conradina verticillata	Cumberland rosemary	U.S.A. (KY, TN)	.....do	T	452	NA	NA
	Cordylanthus maritimus ssp. maritimus.	Salt marsh bird's-beak	U.S.A. (CA), Mexico (Baja California)	Scrophulariaceae	E	44	NA	NA
	Cordylanthus palmatus	Palmate-bracted bird's-beak	U.S.A. (CA)	.....do	E	235	NA	NA
	Cornutia obovata	Palo de nigua (=capá jugüerilla)	U.S.A. (PR)	Verbenaceae	E	307	NA	NA
	Coryphantha ramillosa	Bunched cory cactus	U.S.A. (TX), Mexico (Coahuila)	Cactaceae	T	77	NA	NA
+	*Coryphantha scheeri var. robustispina*	Pima pineapple cactus	U.S.A. (AZ, Mexico (Sonora))	.....do	E	515	NA	NA
	Coryphantha sneedii var. leei (=Escobaria l., Mammillaria l.).	Lee pincushion cactus	U.S.A. (NM)	.....do	T	61	NA	NA
	Coryphantha sneedii var. sneedii (=Escobaria s., Mammillaria s.).	Sneed pincushion cactus	U.S.A. (NM, TX)	.....do	E	82	NA	NA
	Cranichis ricartii	None	U.S.A. (PR)	Orchidaceae	E	451	NA	NA
	Crescentia portoricensis	Higuero de Sierra	.....do	Bignoniaceae	E	301	NA	NA
	Crotalaria avonensis	Avon Park harebells	U.S.A. (FL)	Fabaceae	E	500	NA	NA
	Cryptantha crassipes	Terlingua Creek cats-eye	U.S.A. (TX)	Boraginaceae	E	439	NA	NA
	Cucurbita okeechobeensis ssp. okeechobeensis.	Okeechobee gourd	U.S.A. (FL)	Cucurbitaceae	E	507	NA	NA
+	*Cyanea asarifolia*	Haha	U.S.A. (HI)	Campanulaceae	E	530	NA	NA
+	*Cyanea copelandii ssp. copelandii*	.....do	.....do	.....do	E	532	NA	NA
+	*Cyanea grimesiana spp. obatae*	.....do	.....do	.....do	E	541	NA	NA
+	*Cyanea hamatiflora ssp. carlsonii*	.....do	.....do	.....do	E	532	NA	NA
	Cyanea lobata	.....do	.....do	.....do	E	467	NA	NA
	Cyanea macrostegia ssp. gibsonii	None	.....do	.....do	E	435	NA	NA
	Cyanea mannii	Haha	.....do	.....do	E	480	NA	NA
	Cyanea mceldowneyi	.....do	.....do	.....do	E	467	NA	NA
	Cyanea pinnatifida	.....do	.....do	.....do	E	448	NA	NA
	Cyanea procera	.....do	.....do	.....do	E	480	NA	NA
+	*Cyanea shipmannii*	.....do	.....do	.....do	E	532	NA	NA
+	*Cyanea stictophylla*	.....do	.....do	.....do	E	532	NA	NA
	Cyanea superba	None	.....do	.....do	E	467	NA	NA
+	*Cyanea truncata*	Haha	.....do	.....do	E	536	NA	NA
	Cyanea undulata	None	.....do	.....do	E	436	NA	NA
	Cycladenia humilis var. jonesii	Jones cycladenia	U.S.A. (AZ, UT)	Apocynaceae	T	229	NA	NA
+	*Cyrtandra crenata*	Ha'iwale	U.S.A. (HI)	Gesneriaceae	E	536	NA	NA
+	*Cyrtandra giffardii*	.....do	.....do	.....do	E	532	NA	NA
+	*Cyrtandra limahuliensis*	.....do	.....do	.....do	T	530	NA	NA
	Cyrtandra munroi	.....do	.....do	.....do	E	467	NA	NA
+	*Cyrtandra polyantha*	.....do	.....do	.....do	E	536	NA	NA
+	*Cyrtandra tintinnabula*	.....do	.....do	.....do	E	532	NA	NA
	Dalea foliosa (=Petalostemum f.)	Leafy prairie-clover	U.S.A. (AL, IL, TN)	Fabaceae	E	422	NA	NA
	Daphnopsis hellerana	None	U.S.A. (PR)	Thymelaeaceae	E	309	NA	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Deeringothamnus pulchellus	Beautiful pawpaw	U.S.A. (FL)	Annonaceae	E	244	NA	NA
Deeringothamnus rugelii	Rugel's pawpaw	do	do	E	244	NA	NA
+ *Delissea rhytidosperma*	None	U.S.A. (HI)	Campanulaceae	E	530	NA	NA
Delphinium variegatum ssp. kinkiense (=D. k.).	San Clemente Island larkspur	U.S.A. (CA)	Ranunculaceae	E	26	NA	NA
Dicerandra christmanii	Garrett's mint	U.S.A. (FL)	Lamiaceae	E	207, 362	NA	NA
Dicerandra cornutissima	Longspurred mint	do	do	E	207	NA	NA
Dicerandra frutescens	Scrub mint	do	do	E	207, 362	NA	NA
Dicerandra immaculata	Lakela's mint	do	do	E	180	NA	NA
Dodecahema leptoceras (=Centrostegia l.).	Slender-horned spineflower	U.S.A. (CA)	Polygonaceae	E	291	NA	NA
Dubautia herbstobatae	Na'ena'e	U.S.A. (HI)	Asteraceae	E	448	NA	NA
Dubautia latifolia	None	do	do	E	464	NA	NA
Dubautia pauciflorula	do	do	do	E	436	NA	NA
Dudleya traskiae	Santa Barbara Island liveforever	U.S.A. (CA)	Crassulaceae	E	39	NA	NA
Echinocereus chisosensis var. chisosensis (=E. reichenbachii var. c.).	Chisos Mountain hedgehog cactus	U.S.A. (TX)	Cactaceae	T	335	NA	NA
Echinocereus fendleri var. kuenzleri (=E. kuenzleri, E. hempelii of authors, not Fobe).	Kuenzler hedgehog cactus	U.S.A. (NM)	do	E	70	NA	NA
Echinocactus horizonthalonius var. nicholii.	Nichol's Turk's head cactus	U.S.A. (AZ)	do	E	71	NA	NA
Echinacea laevigata	Smooth coneflower	U.S.A. (GA, MD, NC, PA, SC, VA)	Asteraceae	E	481	NA	NA
Echinocereus lloydii (=E. roetteri var. l.).	Lloyd's hedgehog cactus	U.S.A. (TX)	Cactaceae	E	67	NA	NA
Echinocereus reichenbachii var. albertii (=E. melanocentrus).	Black lace cactus	do	do	E	68	NA	NA
Echinacea tennesseensis	Tennessee purple coneflower	U.S.A. (TN)	Asteraceae	E	49	NA	NA
Echinocereus triglochidiatus var. arizonicus (=E. arizonicus).	Arizona hedgehog cactus	U.S.A. (AZ)	Cactaceae	E	62	NA	NA
Echinocereus triglochidiatus var. inermis (=E. coccineus var. l., E. phoeniceus var. l.).	Spineless hedgehog cactus	U.S.A. (CO, UT)	do	D	93	NA	NA
Echinocereus viridiflorus var. davisii (=E. davisii).	Davis' green pitaya	U.S.A. (TX)	do	E	81	NA	NA
Enceliopsis nudicaulis var. corrugata	Ash Meadows sunray	U.S.A. (NV)	Asteraceae	T	181	17.96(a)	NA
Eremalche kernensis (=E. parryi ssp. k.).	Kern mallow	U.S.A. (CA)	Malvaceae	E	395	NA	NA
Eriastrum densifolium ssp. sanctorum	Santa Ana River woolly-star	do	Polemoniaceae	E	291	NA	NA
Eriastrum hooveri	Hoover's woolly-star	do	do	T	395	NA	NA
Erigeron maguirei var. maguirei	Maguire daisy	U.S.A. (UT)	Asteraceae	E	202	NA	NA
Erigeron rhizomatus	Zuni (=Rhizome) fleabane	U.S.A. (NM)	do	T	177	NA	NA
Eriogonum gypsophilum	Gypsum wild-buckwheat	do	Polygonaceae	T	110, 112	17.96(a)	NA
Eriogonum longifolium var. gnaphalifolium.	Scrub buckwheat	U.S.A. (FL)	do	T	500	NA	NA
Eriogonum ovalifolium var. williamsiae	Steamboat buckwheat	U.S.A. (NV)	do	E	237	NA	NA
Eriogonum pelinophilum	Clay-loving wild-buckwheat	U.S.A. (CO)	do	E	151	17.96(a)	NA
Eryngium aristulatum var. parishii	San Diego button-celery	U.S.A. (CA)	Apiaceae	E	512	NA	NA
Eryngium constancei	Loch Lomond coyote-thistle	do	do	E	194E, 249	NA	NA

Eryngium cuneifolium	Snakeroot	U.S.A. (FL)	do	E	256	NA	NA
Erysimum capitatum var. angustatum	Contra Costa wallflower	U.S.A. (CA)	Brassicaceae	E	39	17.96(a)	NA
Erysimum menziesii	Menzies' wallflower	do	do	E	472	NA	NA
+ *Erysimum teretifolium*	Ben Lomond wallflower	do	do	E	528	NA	NA
Erythronium propullans	Minnesota dwarf trout lily	U.S.A. (MN)	Liliaceae	E	221	NA	NA
Escobaria minima (=Coryphantha m., C. nellieae, Escobaria n., Mammillaria n.).	Nellie cory cactus	U.S.A. (TX)	Cactaceae	E	81	NA	NA
Escobaria robbinsorum (=Cochiseia r., Coryphantha r.).	Cochise pincushion cactus	U.S.A. (AZ), Mexico (Sonora)	do	T	214	NA	NA
+ *Eugenia koolauensis*	Nioi	U.S.A. (HI)	Myrtaceae	E	536	NA	NA
Euphorbia telephioides	Telephus spurge	U.S.A. (FL)	Euphorbiaceae	T	463	NA	NA
Eutrema penlandii	Penland alpine fen mustard	U.S.A. (CO)	Brassicaceae	T	509	NA	NA
+ *Exocarpos luteolus*	Heau	U.S.A. (HI)	Santalaceae	E	530	NA	NA
Frankenia johnstonii	Johnston's frankenia	U.S.A. (TX), Mexico (Nuevo Leon)	Frankeniaceae	E	155	NA	NA
Gahnia lanaiensis	None	U.S.A. (HI)	Cyperaceae	E	435	NA	NA
Galactia smallii	Small's milkpea	U.S.A. (FL)	Fabaceae	E	192	NA	NA
Gardenia brighamii	Na'u or Hawaiian gardenia	U.S.A. (HI)	Rubiaceae	E	198	NA	NA
Geocarpon minimum	None	U.S.A. (AR, MO)	Caryophyllaceae	T	275	NA	NA
Geranium arboreum	Hawaiian red-flowered geranium	U.S.A. (HI)	Geraniaceae	E	465	NA	NA
Geranium multiflorum	Nohoanu	do	do	E	467	NA	NA
Geum radiatum	Spreading avens	U.S.A. (NC, TN)	Rosaceae	E	381	NA	NA
Gilia tenuiflora ssp. arenaria	Monterey gilia	U.S.A. (CA)	Polemoniaceae	E	472	NA	NA
Goetzea elegans	Beautiful goetzea or matabuey	U.S.A. (PR)	Solanaceae	E	176	NA	NA
Gouania hillebrandii	None	U.S.A. (HI)	Rhamnaceae	E	165	17.96(a)	NA
Gouania meyenii	do	do	do	E	448	NA	NA
+ *Gouania vitifolia*	do	do	E	541	NA	NA	
Grindelia fraxino-pratensis	Ash Meadows gumplant	U.S.A. (CA, NV)	Asteraceae	T	181	17.96(a)	NA
Haplostachys haplostachya var. angustifolia.	None	U.S.A. (HI)	Lamiaceae	E	73	NA	NA
Harperocallis flava	Harper's beauty	U.S.A. (FL)	Liliaceae	E	57	NA	NA
Harrisia portoricensis (=Cereus p.)	Higo chumbo	U.S.A. (PR)	Cactaceae	T	397	NA	NA
Hedeoma apiculatum	McKittrick pennyroyal	U.S.A. (NM, TX)	Lamiaceae	T	118	17.96(a)	NA
Hedeoma todsenii	Todsen's pennyroyal	U.S.A. (NM)	do	E	110, 112	17.96(a)	NA
+ *Hedyotis cookiana*	'Awiwi	U.S.A. (HI)	Rubiaceae	E	530	NA	NA
Hedyotis coriacea	Kio'ele	do	do	E	467	NA	NA
Hedyotis degeneri	None	do	do	E	448	NA	NA
Hedyotis mannii	Pilo	do	do	E	480	NA	NA
Hedyotis parvula	None	do	do	E	448	NA	NA
Hedyotis purpurea var. montana	Roan Mountain bluet	U.S.A. (NC, TN)	do	E	381	NA	NA
Hedyotis st.-johnii	Na Pali beach hedyotis	U.S.A. (HI)	do	E	441	NA	NA
Helianthus schweinitzii	Schweinitz's sunflower	U.S.A. (NC, SC)	Asteraceae	E	424	NA	NA
Helonias bullata	Swamp pink	U.S.A. (DE, GA, MD, NC, NJ, NY, SC, VA).	Liliaceae	T	328	NA	NA
+ *Hesperomannia arborescens*	None	U.S.A. (HI)	Asteraceae	E	536	NA	NA
Hesperomannia arbuscula	do	do	do	E	448	NA	NA
Hesperomannia lydgatei	do	do	do	E	436	NA	NA
Hexastylis naniflora	Dwarf-flowered heartleaf	U.S.A. (NC, SC)	Aristolochiaceae	T	347	NA	NA
Hibiscus arnottianus ssp. immaculatus	Koki'o ke'oke'o	U.S.A. (HI)	Malvaceae	E	480	NA	NA
+ *Hibiscus clayi*	Clay's hibiscus	do	do	E	530	NA	NA
Hibiscadelphus distans	Kauai hau kuahiwi	do	do	E	225	NA	NA
Hoffmannseggia tenella	Slender rush-pea	U.S.A. (TX)	Fabaceae	E	209	NA	NA
+ *Howellia aquatilis*	Water howellia	U.S.A. (CA, ID, MT, OR, WA)	Campanulaceae	T	542	NA	NA
Hudsonia montana	Mountain golden heather	U.S.A. (NC)	Cistaceae	T	107	17.96(a)	NA
Hymenoxys herbacea (=H. acaulis var. glabra).	Lakeside daisy	U.S.A. (IL, OH) Canada (Ont.)	Asteraceae	T	310	NA	NA
Hymenoxys texana	Texas prairie dawn-flower (=Texas bitterweed).	U.S.A. (TX)	do	E	218	NA	NA

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	Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
	Scientific name	Common name						
	Hypericum cumulicola	Highlands scrub hypericum	U.S.A. (FL)	Hypericaceae	E	256	NA	NA
	Ilex cookii	Cook's holly	U.S.A. (PR)	Aquifoliaceae	E	277	NA	NA
	Ilex sintenisii	None	....do	....do	E	461	NA	NA
	Iliamna corei	Peter's Mountain mallow	U.S.A. (VA)	Malvaceae	E	230	NA	NA
+	*Ipomopsis sancti-spiritus*	Holy Ghost ipomopsis	U.S.A. (NM)	Polemoniaceae	E	535	NA	NA
	Iris lacustris	Dwarf lake iris	U.S.A. (MI, WI), Canada (Ont.)	Iridaceae	T	330	NA	NA
+	*Ischaemum byrone*	Hilo ischaemum	U.S.A. (HI)	Poaceae	E	532	NA	NA
	Isodendrion hosakae	Aupaka	....do	Violaceae	E	414	NA	NA
+	*Isodendrion pyrifolium*	Wahine noho kula	....do	....do	E	532	NA	NA
	Isotria medeoloides	Small whorled pogonia	U.S.A. (CT, DC, DE, GA, IL, MA, MD, ME, MI, MO, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT), Canada (Ont.).	Orchidaceae	E	122	NA	NA
	Ivesia kingii var. aramica	Ash Meadows ivesia	U.S.A. (NV)	Rosaceae	T	181	17.96(a)	NA
+	*Jacquemontia reclinata*	Beach jacquemontia	U.S.A. (FL)	Convolvulaceae	E	523	NA	NA
	Jatropha costaricensis	Costa Rican jatropha	Costa Rica	Euphorbiaceae	E	154	NA	NA
	Justicia cooleyi	Cooley's water-willow	U.S.A. (FL)	Acanthaceae	E	356	NA	NA
	Kokia cookei	Cooke's koki'o	U.S.A. (HI)	Malvaceae	E	74	NA	NA
	Kokia drynarioides	Koki'o (=hau-hele'ula or Hawaii tree cotton).	....do	....do	E	167	17.96(a)	NA
	Labordia lydgatei	Kamakahala	....do	Loganiaceae	E	436	NA	NA
	Lasthenia burkei	Burke's goldfields	U.S.A. (CA)	Asteraceae	E	453	NA	NA
	Layia carnosa	Beach layia	....do	....do	E	472	NA	NA
	Lembertia congdonii	San Joaquin wooly-threads	....do	....do	E	395	NA	NA
	Lepanthes eltoroensis	None	U.S.A. (PR)	Orchidaceae	E	451	NA	NA
	Lepidium barnebyanum	Barneby ridge-cress (=Peppercress)	U.S.A. (UT)	Brassicaceae	E	402	NA	NA
	Leptocereus grantianus	None	U.S.A. (PR)	Cactaceae	E	491	NA	NA
	Lespedeza leptostachya	Prairie bush-clover	U.S.A. (IA, IL, MN, WI)	Fabaceae	T	254	NA	NA
	Lesquerella congesta	Dudley Bluffs bladderpod	U.S.A. (CO)	Brassicaceae	T	374	NA	NA
	Lesquerella filiformis	Missouri bladderpod	U.S.A. (MO)	....do	E	253	NA	NA
	Lesquerella lyrata	Lyrate bladderpod	U.S.A. (AL)	....do	T	403	NA	NA
	Lesquerella pallida	White bladderpod	U.S.A. (TX)	....do	E	260	NA	NA
+	*Lesquerella tumulosa*	Kodachrome bladderpod	U.S.A. (UT)	....do	E	519	NA	NA
	Liatris helleri	Heller's blazingstar	U.S.A. (NC)	Asteraceae	T	300	NA	NA
	Liatris ohlingerae	Scrub blazingstar	U.S.A. (FL)	....do	E	356	NA	NA
	Limnanthes floccosa ssp. californica	Butte County meadowfoam	U.S.A. (CA)	Limnanthaceae	E	471	NA	NA
	Limnanthes vinculans	Sebastopol meadowfoam	....do	....do	E	453	NA	NA
	Lindera melissifolia	Pondberry	U.S.A. (AL, AR, FL, GA, LA, MO, MS, NC, SC).	Lauraceae	E	240	NA	NA
+	*Lipochaeta fauriei*	Nehe	U.S.A. (HI)	Asteraceae	E	530	NA	NA
	Lipochaeta kamolensis	....do	....do	....do	E	467	NA	NA
	Lipochaeta lobata var. leptophylla	....do	....do	....do	E	448	NA	NA
+	*Lipochaeta micrantha*	....do	....do	....do	E	530	NA	NA
	Lipochaeta tenuifolia	....do	....do	....do	E	448	NA	NA
	Lipochaeta venosa	None	....do	....do	E	73	NA	NA
+	*Lipochaeta waimeaensis*	Nehe	....do	....do	E	530	NA	NA
	Lobelia niihauensis	None	....do	Campanulaceae	E	448	NA	NA
+	*Lobelia oahuensis*	....do	....do	....do	E	536	NA	NA
	Lomatium bradshawii	Bradshaw's desert-parsley (=lomatium).	U.S.A. (OR)	Apiaceae	E	333	NA	NA
	Lotus dendroideus ssp. traskiae (=L. scoparius ssp. t.).	San Clemente Island broom	U.S.A. (CA)	Fabaceae	E	26	NA	NA
	Lupinus andorum	Scrub lupine	U.S.A. (FL)	....do	E	264	NA	NA
	Lupinus tidestromii	Clover lupine	U.S.A. (CA)	....do	E	472	NA	NA

	Lyonia truncata var. proctorii	None	U.S.A. (PR)	Ericaceae	E	501	NA	NA
	Lysimachia asperulaefolia	Rough-leaved loosestrife	U.S.A. (NC, SC)	Primulaceae	E	274	NA	NA
+	*Lysimachia filifolia*	None	U.S.A. (HI)	....do	E	530	NA	NA
	Lysimachia lydgatei	....do	....do	....do	E	467	NA	NA
	Macbridea alba	White birds-in-a-nest	U.S.A. (FL)	Lamiaceae	T	463	NA	NA
	Malacothamnus clementinus	San Clemente Island bush-mallow	U.S.A. (CA)	Malvaceae	E	26	NA	NA
	Manihot walkerae	Walker's manioc	U.S.A. (TX), Mexico	Euphorbiaceae	E	445	NA	NA
+	*Mariscus fauriei*	None	U.S.A. (HI)	Cyperaceae	E	532	NA	NA
	Marshallia mohrii	Mohr's Barbara's buttons	U.S.A. (AL, GA)	Asteraceae	T	324	NA	NA
+	*Melicope haupuensis*	Alani	U.S.A. (HI)	Rutaceae	E	530	NA	NA
+	*Melicope knudsenii*	....do	....do	....do	E	530	NA	NA
+	*Melicope lydgatei(=Pelea l.)*	....do	....do	....do	E	536	NA	NA
	Melicope mucronulata(=Pelea m.)	....do	....do	....do	E	467	NA	NA
+	*Melicope pallida*	....do	....do	....do	E	530	NA	NA
+	*Melicope quadrangularis*	....do	....do	....do	E	530	NA	NA
	Melicope reflexa	....do	....do	....do	E	480	NA	NA
	Mentzelia leucophylla	Ash Meadows blazing-star	U.S.A. (NV)	Loasaceae	T	181	17.96(a)	NA
	Mimulus glabratus var. michiganensis	Michigan monkey-flower	U.S.A. (MI)	Scrophulariaceae	E	392	NA	NA
	Mirabilis macfarlanei	MacFarlane's four-o'clock	U.S.A. (ID, OR)	Nyctaginaceae	E	66	NA	NA
+	*Munroidendron racemosum*	None	U.S.A. (HI)	Araliaceae	E	530	NA	NA
+	*Myrcia paganii*	....do	U.S.A. (PR)	Myrtaceae	E	529	NA	NA
	Neraudia angulata	....do	U.S.A. (HI)	Urticaceae	E	448	NA	NA
	Nitrophila mohavensis	Amargosa niterwort	U.S.A. (CA, NV)	Chenopodiaceae	E	181	17.96(a)	NA
	Nolina brittoniana	Britton's beargrass	U.S.A. (FL)	Agavaceae	E	500	NA	NA
+	*Nothocestrum breviflorum*	'Aiea	U.S.A. (HI)	Solanaceae	E	532	NA	NA
+	*Nothocestrum peltatum*	....do	....do	....do	E	530	NA	NA
	Nototrichium humile	Kulu'i	....do	Amaranthaceae	E	448	NA	NA
+	*Ochrosia kilaueaensis*	Holei	....do	Apocynaceae	E	532	NA	NA
	Oenothara avita ssp. eurekensis	Eureka Valley evening-primrose	U.S.A. (CA)	Onagraceae	E	39	NA	NA
	Oenothera deltoides ssp. howellii	Antioch Dunes evening-primrose	....do	....do	E	39	17.96(a)	NA
	Opuntia treleasei	Bakersfield cactus	....do	Cactaceae	E	395	NA	NA
+	*Orcuttia californica*	California Orcutt grass	....do	Poaceae	E	512	NA	NA
	Ottoschulzia rhodoxylon	Palo de rosa	U.S.A. (PR), Dominican Republic	Icacinaceae	E	385	NA	NA
	Oxypolis canbyi	Canby's dropwort	U.S.A. (DE, GA, MD, NC, SC)	Apiaceae	E	217	NA	NA
	Oxytropis campestris var. chartacea	Fassett's locoweed	U.S.A. (WI)	Fabaceae	T	329	NA	NA
	Panicum fauriei var. carteri	Carter's panicgrass	U.S.A. (HI)	Poaceae	E	133	17.96(a)	NA
	Paronychia chartacea (=Nyachia pulvinata).	Papery whitlow-wort	U.S.A. (FL)	Caryophyllaceae	T	256	NA	NA
	Pedicularis furbishiae	Furbish lousewort	U.S.A. (ME), Canada (N.B.)	Scrophulariaceae	E	39	NA	NA
	Pediocactus bradyi (=Toumeya b.)	Brady pincushion cactus	U.S.A. (AZ)	Cactaceae	E	63	NA	NA
	Pediocactus despainii	San Rafael cactus	U.S.A. (UT)	....do	E	286	NA	NA
	Pediocactus knowltonii (=P. bradyi var. k., Toumeya k.).	Knowlton cactus	U.S.A. (CO, NM)	....do	E	72	NA	NA
	Pediocactus peeblesianus var. peeblesianus (=Echinocactus p., Navajoa p., Toumeya p., Utahia p.).	Peebles Navajo cactus	U.S.A. (AZ)	....do	E	69	NA	NA
	Pediocactus sileri (=Echinocactus s., Utahia s.).	Siler pincushion cactus	U.S.A. (AZ, UT)	....do	E	64	NA	NA
	Penstemon haydenii	Blowout penstemon	U.S.A. (NE)	Scrophulariaceae	E	285	NA	NA
	Penstemon penlandii	Penland beardtongue	U.S.A. (CO)	....do	E	353	NA	NA
	Peperomia wheeleri	Wheeler's peperomia	U.S.A. (PR)	Piperaceae	E	255	NA	NA
+	*Peucedanum sandwicense*	Makou	U.S.A. (HI)	Apiaceae	T	530	NA	NA
	Phacelia argillacea	Clay phacelia	U.S.A. (UT)	Hydrophyllaceae	E	44	NA	NA
	Phacelia formosula	North Park phacelia	U.S.A. (CO)	....do	E	121	NA	NA
	Phlox nivalis ssp. texensis	Texas trailing phlox	U.S.A. (TX)	Polemoniaceae	E	440	NA	NA
	Phyllostegia glabra var. lanaiensis	None	U.S.A. (HI)	Lamiaceae	E	435	NA	NA
	Phyllostegia mannii	....do	....do	....do	E	480	NA	NA
	Phyllostegia mollis	....do	....do	....do	E	448	NA	NA
+	*Phyllostegia waimeae*	....do	....do	....do	E	530	NA	NA

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	Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
	Physaria obcordata	Dudley Bluffs twinpod	U.S.A. (CO)	Brassicaceae	T	374	NA	NA
	Pilosocereus robinii (=Cereus r.)	Key tree-cactus	U.S.A. (FL), Cuba	Cactaceae	E	153	NA	NA
	Pinguicula ionantha	Godfrey's butterwort	U.S.A. (FL)	Lentibulariaceae	T	507	NA	NA
	Pityopsis ruthii (=Heterotheca r., Chrysopsis r.).	Ruth's golden aster	U.S.A. (TN)	Asteraceae	E	191	NA	NA
+	*Plantago hawaiensis*	Laukahi kuahiwi	U.S.A. (HI)	Plantaginaceae	E	532	NA	NA
	Platanthera leucophaea	Eastern prairie fringed orchid	U.S.A. (AR, IA, IL, IN, ME, MI, MO, NE, NJ, NY, OH, OK, PA, VA, WI), Canada (Ont., N.B.).	Orchidaceae	T	368	NA	NA
	Platanthera praeclara	Western prairie fringed orchid	U.S.A. (IA, KS, MN, MO, ND, NE, OK, SD), Canada (Man.).	.....do	T	368	NA	NA
	Poa sandvicensis	Hawaiian bluegrass	U.S.A. (HI)	Poaceae	E	464	NA	NA
	Poa siphonoglossa	None	.....do	.....do	E	464	NA	NA
	Pogogyne abramsii	San Diego mesa mint	U.S.A. (CA)	Lamiaceae	E	44	NA	NA
+	*Pogogyne nudiuscula*	Otay mesa mint	U.S.A. (CA), Mexico (Baja California)	.....do	E	512	NA	NA
	Polygonella basiramia (=P. ciliata var. b.).	Wireweed	U.S.A. (FL)	Polygonaceae	E	256	NA	NA
	Polygala lewtonii	Lewton's polygala	.....do	Polygalaceae	E	500	NA	NA
	Polygonella myriophylla	Sandlace	.....do	Polygonaceae	E	500	NA	NA
	Polygala smallii	Tiny polygala	.....do	Polygalaceae	E	192	NA	NA
+	*Portulaca sclerocarpa*	Po'e	U.S.A. (HI)	Portulacaceae	E	532	NA	NA
	Potamogeton clystocarpus	Little Aguja pondweed	U.S.A. (TX)	Potamogetonaceae	E	450	NA	NA
	Potentilla robbinsiana	Robbins' cinquefoil	U.S.A. (NH, VT)	Rosaceae	E	104	17.96(a)	NA
	Primula maguirei	Maguire primrose	U.S.A. (UT)	Primulaceae	T	199	NA	NA
+	*Pritchardia affinis*	Loulu	U.S.A. (HI)	Arecaceae	E	532	NA	NA
	Pritchardia munroi	.....do	.....do	.....do	E	480	NA	NA
	Prunus geniculata	Scrub plum	U.S.A. (FL)	Rosaceae	E	256	NA	NA
+	*Pteralyxia kauaiensis*	Kaulu	U.S.A. (HI)	Apocynaceae	E	530	NA	NA
	Ptilimnium nodosum (= P. fluviatile)	Harperella	U.S.A. (AL, GA, MD, NC, SC, WV)	Apiaceae	E	332	NA	NA
	Purshia subintegra (=Cowania s.)	Arizona cliffrose	U.S.A. (AZ)	Rosaceae	E	148	NA	NA
	Quercus hinckleyi	Hinckley's oak	U.S.A. (TX)	Fagaceae	T	318	NA	NA
	Ranunculus acriformis var. aestivalis (=R. acris var. a.).	Autumn buttercup	U.S.A. (UT)	Ranunculaceae	E	355	NA	NA
	Remya kauaiensis	None	U.S.A. (HI)	Asteraceae	E	413	NA	NA
	Remya mauiensis	Maui remya	.....do	.....do	E	413	NA	NA
	Remya montgomeryi	None	.....do	.....do	E	413	NA	NA
	Rhododendron chapmanii	Chapman rhododendron	U.S.A. (FL)	Ericaceae	E	47	NA	NA
	Rhus michauxii	Michaux's sumac	U.S.A. (GA, NC, SC, VA)	Anacardiaceae	E	367	NA	NA
	Rhynchospora knieskernii	Knieskern's beaked-rush	U.S.A. (DE, NJ)	Cyperaceae	T	429	NA	NA
	Ribes echinellum	Miccosukee gooseberry	U.S.A. (FL, SC)	Saxifragaceae	T	190	NA	NA
+	*Rollandia crispa*	None	U.S.A. (HI)	Campanulaceae	E	536	NA	NA
	Rorippa gambellii	Gambel's watercress	U.S.A. (CA)	Brassicaceae	E	511	NA	NA
	Sagittaria fasciculata	Bunched arrowhead	U.S.A. (NC, SC)	Alismataceae	E	53	NA	NA
	Sagittaria secundifolia	Kral's water-plantain	U.S.A. (AL, GA)	.....do	T	386	NA	NA
	Sanicula mariversa	None	U.S.A. (HI)	Apiaceae	E	448	NA	NA
	Santalum freycinetianum var. lanaiense.	Lanai sandalwood or 'Iliahi	.....do	Santalaceae	E	215	NA	NA
	Sarracenia oreophila	Green pitcher-plant	U.S.A. (AL, GA, TN)	Sarraceniaceae	E	56, 89	NA	NA
	Sarracenia rubra ssp. alabamensis (=S. alabamensis ssp. alabamensis).	Alabama canebrake pitcher-plant	U.S.A. (AL)	.....do	E	346	NA	NA
	Sarracenia rubra ssp. jonesii (=S. jonesii).	Mountain sweet pitcher-plant	U.S.A. (NC, SC)	.....do	E	339	NA	NA
	Scaevola coriacea	Dwarf naupaka	U.S.A. (HI)	Goodeniaceae	E	231	NA	NA

	Schiedea adamantis	Diamond Head schiedea	.....do	Caryophyllaceae	E	141	NA	NA
	Schiedea apokremnos	Ma'oli'oli	.....do	.....do	E	441	NA	NA
	Schiedea haleakalensis	None	.....do	.....do	E	467	NA	NA
	Schiedea kaalae	.....do	.....do	.....do	E	448	NA	NA
	Schiedea lydgatei	.....do	.....do	.....do	E	480	NA	NA
+	*Schiedea spergulina var. leiopoda*	.....do	.....do	.....do	E	530	NA	NA
+	*Schiedea spergulina var. spergulina*	.....do	.....do	.....do	T	530	NA	NA
	Schoepfia arenaria	.....do	U.S.A. (PR)	Olacaceae	T	420	NA	NA
	Schoenocrambe argillacea	Clay reed-mustard	U.S.A. (UT)	Brassicaceae	T	457	NA	NA
	Schoenocrambe barnebyi	Barneby reed-mustard	.....do	.....do	E	457	NA	NA
	Schoenocrambe suffrutescens (=Glaucocarpum s.).	Shrubby reed-mustard (=Toad-flax cress).	.....do	.....do	E	293	NA	NA
	Schwalbea americana	American chaffseed	U.S.A. (AL, CT, DE, FL, GA, LA, MA, MD, MS, NC, NJ, NY, SC, TN, VA).	Scrophulariaceae	E	478	NA	NA
	Scirpus ancistrochaetus	Northeastern (=Barbed bristle) bulrush	U.S.A. (MA, MD, NH, NY, PA, VA, VT, WV).	Cyperaceae	E	425	NA	NA
	Sclerocactus glaucus (=Echinocactus g., E. subglaucus, E. whipplei var. g., Pediocactus g., S. franklinii, S. whipplei var. g.).	Uinta Basin hookless cactus	U.S.A. (CO, UT)	Cactaceae	T	59	NA	NA
	Sclerocactus mariposensis (=Echinocactus m., Echinomastus m., Neolloydia m.).	Lloyd's Mariposa cactus	U.S.A. (TX), Mexico (Coahuila)	.....do	T	77	NA	NA
	Sclerocactus mesae-verdae (=Coloradoa m., Echinocactus m., Pediocactus m.).	Mesa Verde cactus	U.S.A. (CO, NM)	.....do	T	75	NA	NA
	Sclerocactus wrightiae (=Pediocactus w.).	Wright fishhook cactus	U.S.A. (UT)	.....do	E	58	NA	NA
	Scutellaria floridana	Florida skullcap	U.S.A. (FL)	Lamiaceae	T	463	NA	NA
	Scutellaria montana	Large-flowered skullcap	U.S.A. (GA, TN)	.....do	E	234	NA	NA
	Sedum integrifolium ssp. leedyi	Leedy's roseroot	U.S.A. (MN, NY)	Crassulaceae	T	460	NA	NA
	Senecio franciscanus	San Francisco Peaks groundsel	U.S.A. (AZ)	Asteraceae	T	137	17.96(a)	NA
	Serianthes nelsonii	Hayun lagu (Guam), Tronkon guafi (Rota).	Western Pacific Ocean: U.S.A. (Guam, Rota).	Fabaceae	E	257, 259	NA	NA
	Sidalcea nelsoniana	Nelson's checker-mallow	U.S.A. (OR, WA)	Malvaceae	T	490	NA	NA
	Sidalcea pedata	Pedate checker-mallow	U.S.A. (CA)	.....do	E	158	NA	NA
	Silene alexandri	None	U.S.A. (HI)	Caryophyllaceae	E	480	NA	NA
+	*Silene hawaiiensis*	.....do	.....do	.....do	E	532	NA	NA
	Silene lanceolata	.....do	.....do	.....do	E	480	NA	NA
	Silene perlmanii	.....do	.....do	.....do	E	448	NA	NA
	Silene polypetala	Fringed campion	U.S.A. (FL, GA)	.....do	E	418	NA	NA
	Sisyrinchium dichotomum	White irisette	U.S.A. (NC)	Iridaceae	E	438	NA	NA
	Solanum drymophilum	Erubia	U.S.A. (PR)	Solanaceae	E	319	NA	NA
+	*Solanum sandwicense*	Popolo'aiakeakua	U.S.A. (HI)	.....do	E	530	NA	NA
	Solidago albopilosa	White-haired goldenrod	U.S.A. (KY)	Asteraceae	T	308	NA	NA
	Solidago houghtonii	Houghton's goldenrod	U.S.A. (MI, NY), Canada (Ont.)	.....do	T	314	NA	NA
	Solidago shortii	Short's goldenrod	U.S.A. (KY)	.....do	E	201	NA	NA
	Solidago spithamaea	Blue Ridge goldenrod	U.S.A. (NC, TN)	.....do	T	175	NA	NA
	Spigelia gentianoides	Gentian pinkroot	U.S.A. (FL)	Loganiaceae	E	406	NA	NA
	Spiranthes diluvialis	Ute ladies'-tresses	U.S.A. (CO, NV, UT, WY)	Orchidaceae	T	458	NA	NA
	Spiranthes parksii	Navasota ladies'-tresses	U.S.A. (TX)	.....do	E	116	NA	NA
	Spiraea virginiana	Virginia spiraea	U.S.A. (GA, KY, NC, OH, PA, TN, VA, WV).	Rosaceae	T	389	NA	NA
	Stahlia monosperma	Cóbana negra	U.S.A. (PR), Dominican Republic	Fabaceae	T	380	NA	NA
	Stenogyne angustifolia var. angustifolia.	None	U.S.A. (HI)	Lamiaceae	E	73	NA	NA
	Stenogyne bifida	.....do	.....do	.....do	E	480	NA	NA
	Stenogyne campanulata	.....do	.....do	.....do	E	464	NA	NA
	Stenogyne kanehoana	.....do	.....do	.....do	E	466	NA	NA

	Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
	Scientific name	Common name						
	Stephanomeria malheurensis	Malheur wire-lettuce	U.S.A. (OR)	Asteraceae	E	126	17.96(a)	NA
	Styrax portoricensis	Palo de jazmin	U.S.A. (PR)	Styracaceae	E	461	NA	NA
	Styrax texana	Texas snowbells	U.S.A. (TX)	....do	E	162	NA	NA
	Swallenia alexandrae	Eureka Dune grass	U.S.A. (CA)	Poaceae	E	39	NA	NA
	Ternstroemia luquillensis	Palo colorado	U.S.A. (PR)	Theaceae	E	461	NA	NA
	Ternstroemia subsessilis	None	....do	....do	E	461	NA	NA
+	*Tetramolopium arenarium*	....do	U.S.A. (HI)	Asteraceae	E	532	NA	NA
	Tetramolopium filiforme	....do	....do	....do	E	448	NA	NA
+	*Tetraplasandra gymnocarpa*	'Ohe'ohe	....do	Araliaceae	E	536	NA	NA
	Tetramolopium lepidotum ssp. lepidotum.	None	....do	Asteraceae	E	448	NA	NA
	Tetramolopium remyi	....do	....do	....do	E	435	NA	NA
	Tetramolopium rockii	....do	....do	....do	T	480	NA	NA
	Thalictrum cooleyi	Cooley's meadowrue	U.S.A. (FL, NC)	Ranunculaceae	E	344	NA	NA
	Thelypodium stenopetalum	Slender-petaled mustard	U.S.A. (CA)	Brassicaceae	E	158	NA	NA
	Thymophylla tephroleuca (=Dyssodia t.).	Ashy dogweed	U.S.A. (TX)	Asteraceae	E	152	NA	NA
	Townsendia aprica	Last Chance townsendia	U.S.A. (UT)	....do	T	200	NA	NA
	Trichilia triacantha	Bariaco (=guayabacón)	U.S.A. (PR)	Meliaceae	E	303	NA	NA
	Trifolium stoloniferum	Running buffalo clover	U.S.A. (AR, IL, IN, KS, KY, MO, OH, WV).	Fabaceae	E	270	NA	NA
	Trillium persistens	Persistent trillium	U.S.A. (GA, SC)	Liliaceae	E	39	NA	NA
	Trillium reliquum	Relict trillium	U.S.A. (AL, GA, SC)	....do	E	306	NA	NA
	Tuctoria mucronata (=Orcuttia m.)	Solano grass	U.S.A. (CA)	Poaceae	E	44	NA	NA
	Urera kaalae	Opuhe	U.S.A. (HI)	Urticaceae	E	448	NA	NA
	Vermonia proctorii	None	U.S.A. (PR)	Asteraceae	E	501	NA	NA
	Vicia menziesii	Hawaiian vetch	U.S.A. (HI)	Fabaceae	E	39	NA	NA
	Viola chamissoniana ssp. chamissoniana.	Pamakani	....do	Violaceae	E	448	NA	NA
	Viola helenae	None	....do	....do	E	436	NA	NA
	Viola lanaiensis	....do	....do	....do	E	435	NA	NA
	Warea amplexifolia	Wide-leaf warea	U.S.A. (FL)	Brassicaceae	E	266	NA	NA
	Warea carteri	Carter's mustard	....do	....do	E	256	NA	NA
	Wilkesia hobdyi	Dwarf iliau	U.S.A. (HI)	Asteraceae	E	473	NA	NA
	Xylosma crenatum	None	....do	Flacourtiaceae	E	464	NA	NA
	Xyris tennesseensis	Tennessee yellow-eyed grass	U.S.A. (AL, GA, TN)	Xyridaceae	E	430	NA	NA
+	*Zanthoxylum hawaiiense*	A'e	U.S.A. (HI)	Rutaceae	E	532	NA	NA
	Zanthoxylum thomasianum	St. Thomas prickly-ash	U.S.A. (PR, VI)	....do	E	213	NA	NA
	Zizania texana	Texas wild-rice	U.S.A. (TX)	Poaceae	E	39	17.96(a)	NA
	Ziziphus celata	Florida ziziphus	U.S.A. (FL)	Rhamnaceae	E	356	NA	NA
		CONIFERS AND CYCADS.						
	Abies guatemalensis	Guatemalan fir or pinabete	Mexico, Guatemala, Honduras, El Salvador.	Pinaceae	T	84	NA	NA
	Cupressus abramsiana	Santa Cruz cypress	U.S.A. (CA)	Cupressaceae	E	252	NA	NA
	Fitzroya cupressoides	Chilean false larch or alerce)	Chile, Argentina	....do	T	79	NA	NA
	Torreya taxifolia	Florida torreya	U.S.A. (FL, GA)	Taxaceae	E	140	NA	NA
		FERNS AND FERN ALLIES.						
	Adiantum vivesii	None	U.S.A. (PR)	Adiantaceae	E	504	NA	NA
	Asplenium scolopendrium var. americanum (=P. japonica ssp. a.).	American hart's-tongue fern	U.S.A. (AL, MI, NY, TN), Canada (Ont.).	Aspleniaceae	T	354	NA	NA
	Cyathea dryopteroides	Elfin tree fern	U.S.A. (PR)	Cyatheaceae	E	277	NA	NA
	Diellia falcata	None	U.S.A. (HI)	Aspleniaceae	E	448	NA	NA
+	*Diellia pallida (=laciniata)*	....do	....do	....do	E	530	NA	NA
+	*Diellia unisora*	....do	....do	....do	E	541	NA	NA
	Elaphoglossum serpens	....do	U.S.A. (PR)	Lomariopsidaceae	E	504	NA	NA
	Huperzia mannii (=Lycopodium m.)	Wawa'iole	U.S.A. (HI)	Lycopodiaceae	E	467	NA	NA
	Isoetes louisianensis	Louisiana quillwort	U.S.A. (LA)	Isoetaceae	E	482	NA	NA
	Isoetes melanospora	Black-spored quillwort	U.S.A. (GA, SC)	....do	E	302	NA	NA
	Isoetes tegetiformans	Mat-forming quillwort	U.S.A. (GA)	....do	E	302	NA	NA
+	*Lycopodium nutans*	Ha'iwale	U.S.A. (HI)	Lycopodiaceae	E	536	NA	NA
	Marsilea villosa	'Ihi'ihi	....do	Marsileaceae	E	474	NA	NA
	Polystichum aleuticum	Aleutian shield-fern (=Aleutian holly-fern).	U.S.A. (AK)	Dryopteridaceae	E	305	NA	NA
	Polystichum calderonense	None	U.S.A. (PR)	....do	E	504	NA	NA
	Tectaria estremerana	....do	....do	....do	E	504	NA	NA
	Thelypteris inabonensis	....do	....do	Thelypteridaceae	E	506	NA	NA
	Thelypteris pilosa var. alabamensis (=Leptogramma p. var.a.).	Alabama streak-sorus fern	U.S.A. (AL)	....do	T	476	NA	NA
	Thelypteris verecunda	None	U.S.A. (PR)	....do	E	506	NA	NA
	Thelypteris yaucoensis	....do	....do	....do	E	506	NA	NA
		LICHENS.						
	Cladonia perforata	Florida perforate cladonia	U.S.A. (FL)	Cladoniaceae	E	500	NA	NA

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Dated: September 27, 1994.
Mollie H. Beattie,
Director, U.S. Fish and Wildlife Service.
[FR Doc 94-24321 Filed 9-29-94; 8:45 am]
BILLING CODE 4310-55-P

50 CFR Part 17

RIN 1018-AB83

Endangered and Threatened Wildlife and Plants; Endangered Status for the Plant Tetramolopium capillare (Pamakani)

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the plant *Tetramolopium capillare* (pamakani). Two extant populations containing a total of 12 known individuals of the species remain in the southwestern portion of West Maui. The species and its habitat have been variously affected or are currently threatened by fire and by habitat degradation and competition from invasive alien plant species. Due to the small number of existing individuals and their very narrow distribution, this species is subject to reduced reproductive vigor and/or an increased likelihood of extinction from stochastic events. This final rule implements the Federal protection and recovery provisions provided by the Act. It also makes operative State regulations that will protect *Tetramolopium capillare* as an endangered species.

EFFECTIVE DATE: October 31, 1994.

ADDRESSES: The complete file for this final rule is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, Field Supervisor, at the above address (808/541-2749).

SUPPLEMENTARY INFORMATION:

Background

Tetramolopium capillare was first collected in 1819 on Maui by Charles Gaudichaud-Beaupre. He named this sterile specimen *Senecio capillaris*, choosing the specific epithet to refer to its very narrow involute leaves (with margins rolled under along the edges) (Gaudichaud-Beaupre 1830). Based on a fertile specimen collected on Maui in the 1830s, Sherff (1935) described and named *Tetramolopium bennettii*. After examining and comparing type specimens, St. John (1965) determined that Gaudichaud-Beaupre's *Senecio capillaris* and Sherff's *Tetramolopium bennettii* were actually the same species and that Sherff had placed the taxon in the correct genus; St. John (1965) subsequently made the new combination *Tetramolopium capillare*. Later, St. John (1974) described a new genus, *Luteidiscus*, for species of *Tetramolopium* with yellow disk florets, and formed the combination *Luteidiscus capillaris*. In the current treatment of the genus, Lowrey (1981, 1986, 1990) does not recognize St. John's division of the genus.

Tetramolopium capillare is a sprawling shrub with stems measuring 50 to 80 centimeters (cm) (20 to 31 inches (in)) long and covered with many glands when young. The very firm, stalkless leaves are involute and are usually 13 to 25 millimeters (mm) (0.5 to 1 in) long and 0.4 mm (about 0.01 in) wide. Flower heads are situated singly at the ends of stalks 1 to 3.5 cm (0.4 to 1.4 in) long. Located beneath each flower head are 45 to 50 bracts, arranged in a structure 3 to 4 mm (about 0.1 in) high and 7 to 10 mm (0.3 to 0.4 in) in diameter. In each flower head, 30 to 50 white, male ray florets, 3.5 to 4 mm (about 0.1 in) long and 0.6 to 8 mm (0.02 to 0.3 in) wide, surround 15 to 25 greenish yellow tinged with red, functionally female florets about 3.6 mm (0.1 in) long. The achenes (dry, one-seeded fruits) measure 2 to 2.6 mm (0.08 to 0.1 in) long and 0.7 to 0.8 mm (0.03 in) wide and are topped by a white pappus comprising a single series of bristles 1.9 to 2.1 mm (0.07 to 0.08 in) long. *Tetramolopium capillare* differs from other species of the genus by its very firm leaves with edges rolled under, its solitary flower heads, the color of its disk florets, and its shorter pappus. It differs from *Tetramolopium remyi*, with which it sometimes grows, by its more sprawling habit and the shorter stalks of its smaller flower heads (Lowrey 1990).

Historically, *Tetramolopium capillare* is known from Lahainaluna to Wailuku on West Maui (Lowrey 1981). This species is known to be extant near Halepohaku on State land (Hawaii Plant Conservation Center (HPCC) 1992a, 1992b). The two known populations, which are separated by 2.4 kilometers (km) (1.8 miles (mi)), contain a total of 12 known plants (Steve Perlman, HPCC, pers. comms., 1992). *Tetramolopium capillare* typically grows on rock substrates at elevations between 615 and 900 meters (m) (2,020 to 3,000 feet (ft)) in Lowland Dry Mixed Shrub and Grassland and in Montane Dry Shrubland. Plant species associated with the higher elevation population include *Dodonaea viscosa* ('a'ali'i), *Metrosideros polymorpha* ('ohi'a), and *Styphelia tameiameiae* (pukiawe). 'A'ali'i, *Heteropogon contortus* (pili grass), and *Myoporum sandwicense* (naio) are associates of the other population. The major threats to *Tetramolopium capillare* are fire; competition from alien plant species, particularly *Lantana camara* (lantana), *Leucaena leucocephala* (koa haole), and *Rynchelytrum repens* (Natal redtop); and reduced reproductive vigor and/or extinction from stochastic events due to the small number of existing populations and individuals (HPCC 1992a, 1992b).

Previous Federal Action

Federal action on this species began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. In that document, *Tetramolopium capillare* was considered to be extinct. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including *Tetramolopium capillare*. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, **Federal Register** publication. General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, including *Tetramolopium*

capillare, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In these notices, *Tetramolopium capillare* was treated as a Category 1* species. Category 1* species are those that are possibly extinct. Because the species was rediscovered in 1991, it is now being listed as endangered.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of *Tetramolopium capillare* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the proposed rule constituted the final one-year finding for this species.

On March 25, 1993, the Service published in the **Federal Register** (58 FR 16164) a proposal to list the plant *Tetramolopium capillare* as endangered. This proposal was based primarily on information from the Hawaii Plant Conservation Center and observations by botanists and naturalists. The Service now determines *Tetramolopium capillare* to be endangered with the publication of this rule.

Summary of Comments and Recommendations

In the March 25, 1993, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final listing decision. The public comment period ended May 24, 1993. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in the "Honolulu Star-Bulletin" on April 19, 1993. One letter of comment was received, supporting the listing of *Tetramolopium capillare*. The one issue raised in this letter is discussed below.

Issue: Over-collection of this species is not likely, and placing emphasis on this issue will make scientific research and horticultural conservation of the species more difficult.

Response: The Service feels that unrestricted collecting should not be allowed, since only two populations totaling 12 individuals are known. This should not adversely affect non-destructive scientific research and *ex situ* conservation efforts, since permits would still be available for these purposes.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR Part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Tetramolopium capillare* (Gaud.) St. John are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The habitat of *Tetramolopium capillare* has undergone extreme alteration because of past and present land management practices, including grazing and alien plant introductions. Cattle (*Bos taurus*), the wild progenitor of which was native to Europe, north Africa, and southwestern Asia, were introduced to the Hawaiian Islands in 1793. This animal eats native vegetation, tramples roots and seedlings, causes erosion, creates disturbed areas into which alien plants invade, and spreads seeds of alien plants (Cuddihy and Stone 1990). Feral cattle were formerly found on Maui and affected areas within the historic range of *Tetramolopium capillare* (Lowrey 1981).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Unrestricted collecting for scientific or horticultural purposes and substrate damage by individuals interested in seeing rare plants could result from increased publicity. This is a potential threat to *Tetramolopium capillare*, which has only two populations and a total of 12 known individuals. Any collection of whole plants of this species could cause an adverse impact on the gene pool and threaten the survival of the species.

C. *Disease or predation.* No evidence of disease or predation of *Tetramolopium capillare* has been reported.

D. *The inadequacy of existing regulatory mechanisms.* No State or Federal regulations currently protect *Tetramolopium capillare*. However, Federal listing will automatically invoke endangered species status under Hawaii's endangered species act.

E. *Other natural or manmade factors affecting its continued existence.* The small number of individuals and populations of *Tetramolopium capillare* increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or an entire population. Erosion due to natural weathering in areas where *Tetramolopium capillare* grows can result in the death of individual plants as well as habitat destruction. This process especially affects the continued existence of taxa or populations with limited numbers and/or narrow ranges, such as *Tetramolopium capillare*, and can be exacerbated by human disturbance and land use practices.

Erosion provides a suitable site for colonization by alien plants. Three alien plant taxa, naturalized in dry, disturbed areas on all the main Hawaiian islands, compete with *Tetramolopium capillare*. Natal redtop, an annual or perennial grass, is a major threat to both populations of *Tetramolopium capillare* (HPCC 1992a, 1992b; O'Connor 1990). Both koa haole, often the dominant species in dry, disturbed, low elevation areas, and lantana, an aggressive, thicket-forming shrub, have also invaded the habitat of *Tetramolopium capillare* (Geesnick *et al.* 1990; HPCC 1992a; S. Perlman, pers. comm., 1992). Because both populations of *Tetramolopium capillare* grow in dry areas, fire is considered a threat to the species (HPCC 1992a; S. Perlman, pers. comm., 1992).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in this final rule. Based on this evaluation, the preferred action is to list *Tetramolopium capillare* as endangered. This species numbers no more than about 12 individuals in two populations and is threatened by habitat degradation, competition from alien plants, fire, and lack of legal protection. Small population size and limited distribution make this species particularly vulnerable to reduced reproductive vigor and/or extinction from stochastic events. Because this species is in danger of extinction throughout all or a significant portion of

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its range, it fits the definition of endangered as defined in the Act.

Critical habitat is not being proposed for *Tetramolopium capillare* for reasons discussed in the "Critical Habitat" section of this final rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is listed endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for *Tetramolopium capillare*. The publication of a map and precise description of critical habitat in the **Federal Register** and local newspapers as required in a designation of critical habitat would increase the degree of threat to this species from take or vandalism and, therefore, could contribute to its decline and increase enforcement problems. The listing of this species as endangered publicizes the rarity of the plants and, thus, can make the species attractive to researchers, curiosity seekers, or collectors of rare plants. The species is found exclusively on State land. Interested parties and the State landowner have been notified of the importance of protecting the habitat of *Tetramolopium capillare*. Therefore, the Service finds that designation of critical habitat for this species is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities, and is unlikely to aid in conservation of the species.

Available Conservation Measures

Conservation measures provided to taxa listed as endangered under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any taxon that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No known Federal activities occur within the habitat of *Tetramolopium capillare*, which is found only on State land.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to *Tetramolopium capillare*, all of the prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued. The species is not common in the wild and is only rarely cultivated.

Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Office, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–2063; FAX 503/231–6243).

Tetramolopium capillare is not presently listed as an endangered species by the State of Hawaii. Both populations of this species occur on State land. Federal listing will automatically invoke listing under the State's endangered species act. Hawaii's Endangered Species Act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter • • •" (HRS, sect. 195D–4(a)). State law prohibits taking of endangered plants in the State and encourages conservation by State agencies (HRS, sect. 195D–4). State laws relating to the conservation of biological resources allow for the acquisition of land as well as the development and implementation of programs concerning the conservation of biological resources (HRS, sect. 195D–5(a)). The State also may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D–5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements).

Conservation district lands are regarded, among other purposes, as necessary for the protection of endemic biological resources and the maintenance or enhancement of the conservation of natural resources. Requests for amendments to district boundaries or variances within existing classifications can be made by government agencies and private landowners (HRS, sect. 205–4). The Hawaii Department of Land and Natural Resources is mandated to initiate changes in conservation district boundaries to include "the habitat of rare native species of flora and fauna within the conservation district" (HRS, sect. 195D–5.1). Hawaii environmental policy, and thus approval of land use, is required by law to safeguard "• • • the State's unique natural environmental characteristics • • •" (HRS, sect. 344–3(1)) and includes guidelines to "Protect endangered species of individual plants and animals • • •" (HRS, sect. 344–4(3)(A)). Federal listing, because it results in State listing, also triggers these other State regulations protecting *Tetramolopium capillare*. Listing under the Federal Act would also provide additional protection to this species by making it an offense for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author: The authors of this final rule are Marie M. Bruegmann and Zella E. Ellshoff, Pacific Islands Office (see ADDRESSES section), (808/541–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under the family indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

• • • • •

(h) • • •

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
• • • • • • •						
Asteraceae—Aster family:						
• • • • • • •						
Tetramolopium capillare	Pamakani	U.S.A. (HI)	E	556	NA	NA
• • • • • • •						

Dated: September 9, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–24280 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 931199–4042; I.D. 092194B]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment prohibiting retention of rockfish species of the genera *Sebastes* and *Sebastolobus* by vessels using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent overfishing of Pacific ocean perch (POP).

DATES: Effective 12 noon, Alaska local time (A.l.t.), September 30, 1994, until 12 midnight, A.l.t., December 31, 1994. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, October 15, 1994.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or be delivered to the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared

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by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The Magnuson Act requires that conservation and management measures prevent overfishing. The 1994 overfishing level for POP in the Central Regulatory Area of the GOA is established by the final 1994 specifications (59 FR 7647, February 16, 1994) as 1,100 metric tons (mt) and the acceptable biological catch as 850 mt. The final specifications closed directed fishing for POP in the Central Regulatory Area. As of September 30, 1994, NMFS anticipates that 880 mt of POP will have been caught.

NMFS prohibited retention of POP on August 24, 1994 (59 FR 44341). Substantial trawl fishing effort will be directed at remaining amounts of groundfish in the GOA during 1994. These fisheries can have significant bycatch of POP.

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.22(a)(1)(i) and (a)(4), that closing the season by prohibiting retention of rockfish species of the genera *Sebastes* and *Sebastolobus* by vessels using trawl gear is necessary to prevent overfishing of POP, and is the least restrictive measure to achieve that purpose. Without this prohibition of retention, significant incidental catch of POP would occur by operators of trawl vessels seeking to retain as much rockfish as possible under the standards for directed fishing § 672.20(g).

Therefore, NMFS is requiring that further catches of rockfish species of the genera *Sebastes* and *Sebastolobus* by vessels using trawl gear in the Central Regulatory Area of the GOA be treated as prohibited species under § 672.20(e) effective from 12 noon, A.l.t., September 30, 1994, until 12 midnight, A.l.t., December 31, 1994.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Without this inseason adjustment, POP in the Central Regulatory Area of the GOA will be overfished, jeopardizing the long-term capacity of that stock. Under § 672.22(c), interested persons are invited to submit written comments on this action to the above address until October 15, 1994.

Classification

This action is taken under § 672.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 26, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-24175 Filed 9-29-94; 8:45 am]

BILLING CODE 3510-22-F

50 CFR Part 675

[Docket No. 931100-4043; I.D. 092794A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

AGENCY: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the allowance of the total allowable catch (TAG) of pollock for the offshore component in the AI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), September 28, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The allowance of pollock TAC for vessels catching pollock for processing by the offshore component in the AI was established by the final 1994 initial groundfish specifications (59 FR 7656, February 16, 1994) and a subsequent reserve apportionment (59 FR 21673, April 26, 1994) as 34,031 metric tons (mt).

The Director of the Alaska Region, NMFS, (Regional Director) has determined, in accordance with § 675.20(a)(8), that the allowance of pollock TAC for the offshore component in the AI soon will be reached. Therefore, the Regional Director established a directed fishing allowance of 32,831 mt after determining that 1,200 mt will be taken as incidental catch in directed fishing for other species in the AI. Consequently, NMFS is prohibiting directed fishing for pollock by operators of vessels catching pollock for processing by the offshore component in the AI effective from 12 noon, A.l.t., September 28, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may befound in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 27, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-24224 Filed 9-27-94; 2:52 pm]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register
Vol. 59, No. 189
Friday, September 30, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 53, 71, 82, 92, 94, and 161

[Docket No. 87-090-2]

RIN 0579-AA22

Exotic Newcastle Disease in Birds and Poultry; Chlamydiosis in Poultry

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our proposed rule that would revise completely subpart A of part 82 of title 9, Code of Federal Regulations, concerning exotic Newcastle disease in birds and poultry, and psittacosis or ornithosis in poultry. The proposed rule also would amend parts 53, 71, 92, 94, and 161 of title 9, Code of Federal Regulations, to reflect the proposed amendments to part 82. This extension will provide interested persons with additional time in which to prepare comments on the proposed rule.

DATES: Consideration will be given only to written comments on Docket No. 87-090-1 that are received on or before November 29, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 87-090-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. C. M. Groocock, Senior Staff Veterinarian, Emergency Programs Staff, Veterinary Services, APHIS, USDA, room 746, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20872, (301) 436-8240.

SUPPLEMENTARY INFORMATION: On June 28, 1994, we published in the **Federal Register** (59 FR 33214-33233, Docket No. 87-090-1) a proposed rule that would revise completely 9 CFR part 82, subpart A, concerning exotic Newcastle disease in birds and poultry, and psittacosis or ornithosis in poultry. The proposed rule would also amend 9 CFR parts 53, 71, 92, 94, and 161 to reflect the proposed amendments to part 82. Comments on the proposed rule were required to be received on or before August 29, 1994. During the comment period, we received a request from a State Department of Agriculture that we extend the comment period. The commenter stated that additional time was necessary to allow interested parties and agencies within the State to evaluate fully and respond to the proposed rule. In response to this comment, and so that we may consider comments received after August 29, 1994, we are reopening and extending the public comment period on Docket No. 87-090-1 until 60 days after the date of publication of this notice in the **Federal Register**. This action will allow the requestor and all other interested persons additional time to prepare comments.

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450, and 1622; 15 U.S.C. 1828; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111-114, 114a, 114a-1, 115-117, 120-126, 134a, 134b, 134c, 134d, 134f, 135, 136, 136a, 612, and 613; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 26th day of September.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-24231 Filed 9-29-94; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-NM-113-AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require modification of the fixed engine cowling at the forward and aft crane beam attachment; and an inspection of the forward and aft crane beam to detect surface damage, and repair, if necessary. This proposal is prompted by several reports of rear cabin noise (engine rumble) during flight and while taxiing, which may have been caused by the interference between the forward and aft crane beams and the fasteners in the fixed engine cowling. The actions specified by the proposed AD are intended to prevent chafing due to normal engine vibration, which could result in structural damage to the engine mount and possible separation of the engine from the airplane.

DATES: Comments must be received by November 10, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-113-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM-113.

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FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–113–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–113–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that it has received several reports of rear cabin noise (engine rumble) experienced on these airplanes during flight and while taxiing. Investigation revealed that one possible cause was interference between the forward and aft crane beams and the fasteners in the fixed engine cowling. Such interference could result in chafing due to normal engine vibration. This condition, if not corrected, could result in structural damage to the engine mount and possible separation of the engine from the airplane.

Fokker has issued Service Bulletin SBF100–71–016, dated February 18, 1994, which describes procedures for modification of the fixed engine cowling at the forward and aft crane-beam attachment; and a visual inspection of the forward and aft crane beam to detect surface damage, and repair, if necessary. This modification entails replacing fasteners of the fixed engine cowling with fasteners of a different type. This modification will ensure the structural integrity of the engine mount. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA 94–038 (A), dated February 21, 1994, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the fixed cowl at the forward and aft crane-beam attachment; and performing a visual inspection of the forward and aft crane beam to detect surface damage, and repair, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 83 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 90 work hours per airplane to accomplish the proposed inspection and modification, and that the average labor rate is $55 per work hour. Required parts would cost approximately $75 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $417,075, or $5,025 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 94–NM–113–AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11244 through 11438 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural damage to the engine mount and possible separation of the engine from the airplane, accomplish the following:

(a) Prior to the accumulation of 15,000 total flight hours, or within 3 months after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Fokker Service Bulletin SBF100–71–016, dated February 18, 1994.

(1) Modify the fixed engine cowling at the forward and aft crane-beam attachment in accordance with the service bulletin.

(2) Perform a visual inspection of the forward and aft crane beam to detect surface damage, in accordance with the service bulletin.

(i) If no surface damage is found, no further action is required by paragraph (a)(2) of this AD.

(ii) If any surface damage is found, prior to further flight, repair the crane beam in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 26, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–24202 Filed 9–29–94; 8:45 am]

BILLING CODE 4910–13–U

Office of the Secretary

14 CFR Part 254

[Docket No. 49330; Notice 94–14]

RIN 2105–AC07

Domestic Baggage Liability

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Department is proposing to amend its rule governing the amount by which certain U.S. air carriers may limit their liability to passengers for lost, damaged, and delayed baggage. This action is in response to a petition by Public Citizen and Aviation Consumer Action Project to increase the minimum liability limit from $1,250 to $1,850 per passenger. The Department is also requesting comment on two alternate proposals: (1) to raise the minimum limit to $1,850 with a mechanism that automatically provides for periodic future increases, or (2) to raise the minimum liability limit to $2,000.

DATES: Comments are requested by November 29, 1994. Late-filed comments will be considered only to the extent practicable.

ADDRESSES: Comments should be sent, preferably in triplicate, to Docket Clerk, Docket No. 49330, Department of Transportation, 400 7th Street, SW, Room 4107, Washington, DC 20590. Comments will be available for inspection at this address from 9 a.m. to 5:30 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Diane Mobley or Joanne Petrie, Office of Regulation and Enforcement, Office of the General Counsel, U.S. Department of Transportation, 400 7th Street SW, Room 10424, Washington, DC 20590. (202) 366–9306.

SUPPLEMENTARY INFORMATION:

Background

Consumer baggage problems in air travel remain a common occurrence. Reports submitted to the Department by the major airlines indicate that over 2.2 million mishandled baggage reports were filed by passengers in 1993, although it is unknown how many of those reports resulted in claims for compensation. When baggage is lost, damaged, or delayed, the airlines are prohibited by federal regulation (14 CFR Part 254) from limiting their liability to less than $1,250 per passenger for provable damages.[1]

The amount of the minimum liability limit was last amended by a final rule effective April 10, 1984, issued by the Civil Aeronautics Board (CAB) before its "sunset" (ER–1374, 49 FR 5065, February 10, 1984). The $1,250 figure was calculated based upon the percentage increase in the Consumer Price Index for all Urban Consumers (CPIU) between the date of the previous amendment and September 1983. When setting the limit, the CAB attempted to balance the amount necessary to cover the value of most passengers' baggage while still allowing the airlines to protect themselves from extraordinary claims.

On December 22, 1993, the Department received a petition for rulemaking from Public Citizen and Aviation Consumer Action Project to increase the minimum liability limit in order to account for inflation since the 1984 amendment. The petitioners suggest that the limit should be raised to $1,850, calculated by increasing the current $1,250 limit proportionate with the increase in the CPIU from 1983 until the approximate time a new final rule would take effect (estimated to be one year from the date of the petition). A letter in support of the petition was filed by Mr. Michael Kees, a consumer who recently suffered a loss in excess of the liability limit, who asserts that a more realistic limit today would be $2,500.

The Bureau of Labor Statistics reports that in September 1983, the CPIU was 100.7 (using a 1982–84 = 100 reference base). As of April 1994, the CPIU had increased by 46.4 percent to 147.4. Stated differently, the purchasing power of a $1,250 maximum baggage claim award in 1983 had eroded to $854 in April 1994 dollars. To keep up with the 46.4 percent increase in the CPIU as of April 1994, the minimum liability limit would have to increase to $1,830. The Department believes that in addition to the direct monetary effect on consumers, an unrealistically low minimum liability limit invites the airlines simply to pay the claims rather than to address the causes of lost, damaged, and delayed baggage. The Department therefore proposes to raise the minimum liability limit to $1,850 as suggested in the petition, and seeks comment on this proposal. Carriers are requested to submit the following data on domestic baggage claims for calender year 1993 as well: (1) the total number of domestic[2] baggage claims for reimbursement and the total amount claimed (i.e., the amount that the claimants requested); (2) the total amount paid by the carrier in settling those claims; and (3) the number and total dollar amount of such claims that exceeded $1,250, and the number and total dollar amount that exceeded $1,850. This information will help the Department to assess the economic burden of the proposal on the affected airlines.

[1] The rule applies to flights on large aircraft (aircraft designed to carry more than 60 passengers), and to any flight segment included on the same ticket as a flight segment using large aircraft.

[2] A "domestic" claim for this purpose is one that is subject to Part 254. For example, a claim concerning a problem that occurred on a domestic segment of an international trip would not be included since such transportation is governed by the Warsaw Convention rather than by Part 254.

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In addition to the proposal to increase the minimum baggage liability limit to $1,850, the Department requests comment on two alternate proposals: (1) to raise the minimum limit to $1,850 with a mechanism that automatically provides for periodic future increases, or (2) to raise the minimum liability limit to $2,000.

The first alternate proposal is an automatic adjustment of the minimum liability limit every other year, calculated in proportion to any change in the CPIU. When the minimum liability limit was last amended in 1984, the CAB considered and rejected a rule that would automatically adjust the liability limit based on some specified economic measure. The CAB believed that such an approach might be unduly confusing for consumers and that it would be administratively burdensome on carriers to constantly revise tickets and internal guidance. The Department requests comment on whether, with the increasing sophistication of and reliance on computers, periodic adjustment of the minimum liability limit would pose less of a burden on the industry today. A more frequent adjustment would make the limit more responsive to changes in the economy. Comment is also requested on whether there would be a need to provide for additional public comment before each adjustment rather than simply announcing each new rate by publication in the **Federal Register**, and whether there is some other method that would be preferable to changes in the CPIU for calculating appropriate future changes in the minimum liability limit. As indicated above, the CPIU was the basis used by the CAB to calculate the 1984 increase to $1,250. Prior to 1984, the CPIU was considered, along with actual baggage claim data, to set the minimum liability limit. That data has not been collected since the deregulation of the airline industry.

The Department also requests comment on its second alternate proposal, to increase the minimum baggage liability limit to $2,000. Under the current system, which includes notice requirements, passengers are expected to be aware of the minimum limit and not pack any items of greater value in their luggage unless they desire to purchase excess valuation or are personally willing to incur the risk. This is not to say that carriers would automatically pay $2,000 to passengers claiming lost, damaged, or delayed baggage. We wish to make clear that, as is the case today, our proposal would set the amount below which carriers could not limit their potential liability for provable damages. Thus, carriers could still decline to pay unjustified claims or pay only for damages actually shown. A $2,000 limitation would have the advantages of covering most items passengers are likely to pack in baggage, and being easy for passengers to remember because it is a round number. A collateral benefit of a $2,000 minimum limit would be that, in the event of future inflation, the limit would not become obsolete soon after issuance. It would also allow longer-term planning than an $1,850 limit, which might reduce administrative costs to the airlines for training, ticket stock, and computer programming.

The Department recognizes that carriers will require some period of time to use up existing ticket stock, print new tickets, and implement other necessary changes under any of the alternatives. The Department seeks comment on whether 60 days from issuance of a final rule is a sufficient time for implementation. In the case that excess ticket stock poses a particular problem for the airlines, the Department requests comment on whether the use of a sticker or an addendum stuffed in the ticket envelope would provide adequate notice of the new limit. The Department also seeks comment on whether a bifurcated implementation would be feasible (e.g., new minimum dollar limit effective in 30 days; implementation of revised notice requirement effective in 60 days, or upon exhaustion of existing ticket stock). In the case that the automatically adjusting limit is selected, the Department requests comment on whether a 30-day implementation period would be sufficient for future adjustments under that proposal. In any event, in view of the publication of the instant proposal, the Department encourages carriers to exercise prudence in placing large orders for ticket stock or ticket jackets.

The notice requirement has been clarified to better explain that written notice of the liability limit must be provided whenever air transportation is sold, whether or not the airline actually issues a ticket to the passenger. This is in response to the recent switch to a ticketless system by a few carriers. Written notice must still be provided to the passenger in conjunction with the sale of the travel, even though there is no traditional "ticket" that the notice can be printed on.

Regulatory Analyses and Notices

The Department has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. A regulatory evaluation that examines the projected costs and impacts of the proposal has been placed in the docket. The Department certifies that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Few airlines are classified as small entities. However, since the rule could apply to small carriers to the extent that they interline with large carriers, the Department seeks comment on whether there are unidentified small entity impacts that should be considered. If comments provide information that there are significant small entity impacts, the Department will prepare a regulatory flexibility analysis at the final rule stage. The Department does not believe that there would be sufficient federalism implications to warrant the preparation of a federalism assessment.

List of Subjects in 14 CFR Part 254

Air carriers, Consumer protection, Freight, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department proposes to amend 14 CFR Part 254 as follows:

PART 254—[AMENDED]

1. The authority citation for Part 254 continues to read as follows:

Authority: Secs. 204, 403, 404, and 411, Pub. L. 85–726, as amended, 72 Stat. 743, 758, 760, 769; 49 U.S.C. 1324, 1373, 1374, 1381.

2. Section 254.4 would be revised to read as follows:

§ 254.4 Carrier liability.

On any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger's personal property, including baggage, in its custody to an amount less than $1850 for each passenger.

3. Section 254.5 would be revised to read as follows:

§ 254.5 Notice requirement.

On any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall provide to passengers, by conspicuous written material included on or with its ticket or other written notice that is issued in conjunction with the sale of the transportation, either:

(a) Notice of any monetary limitation on its baggage liability to passengers; or

(b) The following notice: "Federal rules require any limit on an airline's baggage liability to be at least $1850 per passenger."

Alternative Proposal 1

4. Section 254.4 would be revised to read as follows:

§ 254.4 Carrier liability.

On any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger's personal property, including baggage, in its custody to an amount less than the current Federal Minimum Liability Limit per passenger that is in effect on the date of the flight. The Federal Minimum Liability Limit will be re-calculated every other year, based on the percentage change in the Consumer Price Index for All Urban Consumers since the previous adjustment, and published in an announcement in the **Federal Register**.

5. Section 254.5 would be revised to read as follows:

§ 254.5 Notice requirement.

On any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall provide to passengers, by conspicuous written material included on or with its ticket or other written notice that is issued in conjunction with the sale of the transportation, either:

(a) Notice of any monetary limitation on its baggage liability to passengers; or

(b) The following notice: "Federal rules currently require any limit on an airline's baggage liability to be at least [insert the current Federal Minimum Liability Limit in effect on the date the notice is provided] per passenger." This limit is periodically revised by the Department of Transportation based on changes in the Consumer Price Index for All Urban Consumers. Therefore, a different limit may be in effect on the date of your flight.

Alternative Proposal 2

6. Section 254.4 would be revised to read as follows:

§ 254.4 Carrier liability.

On any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger's personal property, including baggage, in its custody to an amount less than $2000 for each passenger.

7. Section 254.5 would be revised to read as follows:

§ 254.5 Notice requirement.

On any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall provide to passengers, by conspicuous written material included on or with its ticket or other written notice that is issued in conjunction with the sale of the transportation, either:

(a) Notice of any monetary limitation on its baggage liability to passengers; or

(b) The following notice: "Federal rules require any limit on an airline's baggage liability to be at least $2000 per passenger."

Issued in Washington, DC on September 26, 1994.

Patrick Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–24168 Filed 9–29–94; 8:45 am]

BILLING CODE 4910–62–P

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14 CFR Part 255

[Docket No. 48805]

Computer Reservations System (CRS) Regulations

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Termination of proceeding on petition for rulemaking on rules governing computer reservations systems.

SUMMARY: The Department is granting a request by the American Society of Travel Agents (ASTA) that ASTA be allowed to withdraw its petition for a rulemaking to amend the Department's rules on computer reservations systems (CRSs). ASTA had asked the Department to amend its CRS rules (14 CFR Part 255) to include a prohibition against the inclusion of lost booking fees in the damages recoverable by a CRS vendor when a travel agency breaches its contract for CRS services before the end of the contract's term. ASTA is now asking the Department for leave to withdraw its petition on the ground that the largest CRS vendor has agreed to change its CRS contract practices in a way which will eliminate ASTA's need for a rulemaking.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. S.W., Washington, D.C. 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: In the United States travel agencies sell the great majority of all airline tickets. In selling air transportation (and other travel services) travel agencies primarily rely on computer reservations systems to find out what airline services and fares are available for their customers, to make bookings, and to issue tickets. Each of the CRSs operating in the United States is owned by one or more airlines or airline holding companies. The nature of the CRS and the airline businesses gives each operator of a CRS ("the vendor") a significant ability to prejudice the competitive position of other airlines and to limit the information on airline services given travel agencies and their customers. The Civil Aeronautics Board, the agency which had been responsible for airline economic regulation through 1984, therefore adopted rules regulating CRS operations under section 411 of the Federal Aviation Act ("the Act"), 49 U.S.C. 1381. Two years ago we revised those rules to further protect airline competition. 14 CFR Part 255, adopted by 57 FR 43780 (September 22, 1992).

One of the major issues in our rulemaking concerned the contract terms sought by CRS vendors from travel agencies using a CRS ("subscribers"), since several commonly-used contract terms restricted the subscribers' ability to add or switch systems. We revised our CRS rules to prohibit certain subscriber contract clauses that appeared to unreasonably interfere with a travel agency's ability to use more than one system, but we did not adopt other proposals for regulating subscriber contracts.

A number of parties in the rulemaking had complained that vendors made it difficult for subscribers to switch systems before the end of the term of their CRS contract by making a subscriber liable for substantial liquidated damages if it breached the contract. The liquidated damages formulas used by the vendors typically included an element for "lost booking fees." Booking fees—the fees paid by airlines and other travel suppliers whenever an agency uses a system to book a travel service—provide most of each vendor's CRS revenues. Lost booking fees are the amount of booking

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fees the vendor would have received if the subscriber had continued to use its system during the remaining term of the contract. In calculating lost booking fees the vendor typically assumed that the subscriber would have used its system for most of its bookings. The inclusion of lost booking fees in the damages due a vendor on a subscriber's breach of contract greatly increases the damages obtainable by the vendor from the subscriber and thereby makes it much more costly for an agency to breach its CRS contract.

While we decided not to adopt a prohibition against the inclusion of lost booking fees in liquidated damages, we stated that our rules were intended to give travel agencies the ability to use more than one system and that therefore no vendor should expect a subscriber to use its system for most of the agency's bookings during the term of the contract. No vendor could therefore reasonably expect that a subscriber contract would produce a substantial flow of booking fees. As a result, we concluded that the contract law principles governing liquidated damages would make unenforceable any contract that required a subscriber to pay damages based on lost booking fees. 57 FR 43827–43828.

ASTA, the nation's largest travel agency trade association, filed a petition for rulemaking. ASTA urged us to adopt an express prohibition against the inclusion of lost booking fees in liquidated damages clauses. ASTA alleged that American Airlines' Sabre system was continuing to use such contract clauses since American argued that its contract terms were consistent with our rules. ASTA proposed that we amend § 255.8 of our rules by adding a subsection that would prohibit a vendor from requiring a subscriber to pay liquidated damages to the extent that the damages enable the vendor to recover from the subscriber the booking fees that the vendor would have obtained from participating airlines.

Two vendors, Worldspan and System One Direct Access, filed answers supporting ASTA's petition, while American opposed it. American asserted that its contract provision was merely a means of enforcing its productivity pricing formula, that the Department determined in the rulemaking that productivity pricing (a form of pricing that reduces a subscriber's CRS fees when it increases its use of the CRS) was permissible, and that the American contract provision as a practical matter could not keep an agency from using another system.

The Department invited other persons to file comments on ASTA's petition. 58 FR 41068 (August 2, 1993). In response, System One, Worldspan, Delta Air Lines (a Worldspan partner), Air France, and three travel agencies (Hewins Travel Consultants, Travelbound, Inc., and WTT, Inc., d/b/a Woodside Travel Trust) filed comments supporting ASTA's proposal or similar restrictions on vendor subscriber contracts. American again opposed such proposals. Apollo Travel Services, the marketing arm of the second largest U.S. CRS, Galileo, stated it was taking no position on ASTA's proposal but took issue with WTT's alleged misdescription of Apollo's subscriber contracts. In its comments the Orient Airlines Association asked us to begin a rulemaking on other CRS issues.

However, ASTA has moved to withdraw its rulemaking petition on the ground that American had agreed with ASTA that in future subscriber contracts American would substitute an actual damages clause for a liquidated damages clause and that American would give its subscribers the option of replacing the liquidated damages clause in their existing contracts with an actual damages clause. American would take these steps within thirty days of our dismissal of ASTA's rulemaking petition. Since American's agreement had eliminated the cause of ASTA's request for a rulemaking, ASTA wishes to withdraw its petition.

Despite ASTA's request for withdrawal, System One and Worldspan contend that ASTA's agreement with American should not keep us from proposing new rules on subscriber contracts. They contend that American could demand lost booking fees as part of its actual damages and that American's productivity pricing formula requires subscribers to guarantee that American will receive booking fees during the term of their contracts. WTT, a consortium of very large travel agencies, initially filed a pleading opposing ASTA's motion to withdraw its petition. However, WTT later stated that it wished to withdraw that opposition. WTT, which prefers market solutions to business problems, has learned that American is willing to negotiate changes in its subscriber contracts with some agencies. In WTT's opinion, this means that regulatory action is no longer necessary.

We will grant ASTA's motion to withdraw its petition for rulemaking, and we will terminate this proceeding. We do not believe that we should begin a rulemaking of the kind sought by Worldspan, System One, Delta, and the two smaller agencies at this time, even though their comments have cited practices by American and Apollo that may be troublesome. However, we do not now have detailed knowledge on the effects of our revised CRS rules, which became effective less than two years ago, nor on other changes that may have affected the operation of the CRS and airline businesses. Rather than begin a rulemaking, we prefer to begin an informal investigation into these issues In that investigation we are seeking information from vendors, airlines, travel agency groups and individual agencies, and other persons with knowledge of CRSs and related airline marketing issues.

That investigation should give us sufficient knowledge to determine whether we should propose changes to the rules and, if so, what kind of changes, just as our last rulemaking relied heavily on the examination of the CRS business undertaken by the Secretary's Task Force on Competition in the Domestic Airline Industry. *Airline Marketing Practices: Travel Agencies, Frequent Flyer Programs, and Computer Reservation Systems* (February 1990), cited at 57 FR 43782. As part of that informal investigation, we are issuing an order requiring the vendors to provide us with certain information and inviting vendors, airlines, travel agencies, and other interested persons to meet with our staff to discuss the issues. Our dismissal of ASTA's petition, of course, will not prevent us from instituting a new rulemaking on CRS issues if we find one warranted.

Issued in Washington, D.C. on September 26, 1994.

Patrick V. Murphy,

Acting Assistant Secretary of Transportation for Aviation and International Affairs.

[FR Doc. 94–24167 Filed 9–29–94; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 24

[Notice No. 800]

RIN: 1512–AA89

Materials and Processes Authorized for the Production of Wine and for the Treatment of Juice, Wine and Distilling Material (93F–059P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice solicits comment from winemakers, consumers and other interested parties as to whether, pursuant to the provisions of Section 5382 of the Internal Revenue Code of 1986, the use of certain materials and processes is acceptable in "good commercial practice" in the production, cellar treatment, and finishing of wine. If these new materials and processes are found to be acceptable, then a final rule will be published adding these new materials/processes to the wine regulations.

DATES: Written comments to this document must be received by November 29, 1994.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 800). Copies of the proposed regulation and any written comments received will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert White, Coordinator, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

Several members of the wine industry have recently petitioned ATF for approval of the use of 3 wine treating processes and 1 wine treating material in the production, cellar treatment, and/or finishing of wine. Only one of the processes, the spinning cone column, is new and would be used to reduce the ethyl alcohol content of wine or to remove off flavors in wine. The other two processes are not new but either would be used in combination or would be used for a different purpose or at a different limitation than previously authorized. The processes to be used in combination are reverse osmosis and ion exchange and would be used to remove excess volatile acidity from wine. The process which would be used at a different limitation is ultrafiltration. And finally, the new wine treating material, urease enzyme, would be used to reduce urea in wine, thereby reducing the possibility of ethyl carbamate formation during wine storage.

Wine Treating Processes

Spinning Cone Column

The spinning cone column (SCC) is a gas-liquid contacting device which can process a wide range of products including slurries with very high solids contents. It is a multi-stage mass transfer device consisting of a series of alternating stationary and rotary truncated cones. During its operation the product is fed at the top of the column and then flows down the upper surface of the stationary cones under the influence of gravity and moves across the upper surface of the rotating cones in a thin film due to the applied centrifugal force. The stripping gas enters the bottom of the column and flows counter current to the liquid phase in the spaces between the fixed and rotating cones.

The petitioners who have requested ATF to approve the use of the SCC wish to use it in the production of low alcohol wine, as well as to remove off flavors in wine (e.g. volatile acidity, ethyl acetate, hydrogen sulfide, etc.).

In the production of low alcohol wine, the feed wine is initially run through the SCC to recover the volatile wine flavor essence. In the second stage of processing, the flavor essence reduced wine is run through the SCC to reduce the alcohol in the wine to the desired level. The essence, which has previously been removed, is then added back to the alcohol reduced wine to make a low alcohol wine which, according to the petitioners, retains much of its original flavor. The alcohol which has been removed from the wine can then either be used in accordance with law and regulations or be destroyed.

Treatment of wine utilizing the SCC to remove off flavors, or to reduce the alcohol content of the wine, may not alter the vinous character of the wine. Otherwise, the wine would no longer be considered standard wine.

Since the separation of alcohol from a fermented substance is considered to be a distilling process, SCC operations cannot be conducted at winery premises but must instead take place at distilled spirits plant premises.

In 1991, approval was given for several industry members to experiment with the SCC. Since then, a few industry members have been given permission, pending the final outcome of the rulemaking process, to commercially produce reduced alcohol wine and dealcoholized wine using the SCC process under the following conditions:

1. The SCC removal of any alcohol from the wine will be done on DSP premises.

2. Records will be maintained for each lot of wine put through the SCC and the fractions derived from such wine showing the date, quantity, and disposition of each fraction.

3. In the production of reduced alcohol standard wines using the SCC, the same amount of essence will be added back to any lot of wine as was originally removed.

4. Proprietors must contact their ATF Area Supervisor prior to the destruction of any alcohol or other fractions derived from the SCC process.

Other persons wishing to use the SCC technology to produce low alcohol and/or dealcoholized wines, or to remove off flavors from wine, should submit letter applications to ATF requesting permission to do so. If it is determined, through this rulemaking process, that the use of the SCC technology is in accordance with "good commercial practice," the SCC process will be added to 27 CFR 24.248 at which time no further letter applications will be required for its use.

Reverse Osmosis and Ion Exchange

One industry member requested ATF to approve the use of reverse osmosis and ion exchange in combination to remove volatile acidity (VA) from bulk wine. The process combines two technologies already widely in use in the wine industry.

The process involves utilizing reverse osmosis to separate wine into various components and then using ion exchange to remove VA. The wine components, minus the VA, would then be recombined in-line to form the original wine minus the VA. The whole process takes place in a closed system.

Regulations at 27 CFR 24.248 are currently broad enough to allow ion exchange to be used to remove volatile acidity from wine or from various components of wine. However, this section of regulations does not currently authorize reverse osmosis to be used for anything other than to reduce the ethyl alcohol content of wine. The regulation change that is being proposed in this document will allow reverse osmosis to also be used to remove off flavors in wine, which would enable it to be used as part of an overall process in a closed system to remove VA from wine.

Normally, reverse osmosis must be done on distilled spirits plant premises because it is considered a distilling process resulting in a distilled spirits by-product. However, in this case, the various components of wine will only be created temporarily in a closed system and will be immediately recombined in-line to reconstitute the original wine minus VA. ATF has concluded that this type of reverse osmosis may be conducted on bonded winery premises since no separate distilled spirits product is created as a final product or by-product.

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Absolutely no accumulation of ethyl alcohol outside the closed system will be allowed. Such accumulation of an ethanol solution on winery premises would subject the proprietor to the distilled spirits tax of $13.50 per proof gallon imposed by Section 5001 of the Internal Revenue Code.

ATF has approved the application from the industry member, pending the final outcome of the rulemaking process, to use these two processes in a closed system to remove VA from wine. Other persons wishing to use these two processes in a similar fashion should submit letter applications to ATF requesting permission to do so. If it is determined, through this rulemaking process, that the use of reverse osmosis and ion exchange in combination in a closed system to remove VA from wine is in accordance with "good commercial practice," this procedure will be authorized in 27 CFR 24.248 by amending the use column of reverse osmosis to state that it can be used to remove off flavors in wine. Once this change to the regulations is made, no further letter applications will be required to use these two processes in combination in a closed system to remove VA from wine.

The footnote concerning processes which must be done on distilled spirits plant premises, located at the end of 27 CFR 24.248, has been revised to state that under certain limited conditions, reverse osmosis may be used on bonded winery premises if ethyl alcohol is only temporarily created within a closed system.

Ultrafiltration

An industry member has requested that the limitation imposed on the use of ultrafiltration by 27 CFR 24.248 be changed to allow transmembrane pressures greater than 100 pounds per square inch (psi). The industry member states that they need to employ transmembrane pressures of up to approximately 200 psi rather than the current maximum of 100 psi which is provided for in § 24.248. The industry member indicates that their laboratory tests have shown an increase in throughput of 4 to 5-fold when the pressure is increased from 100 to 150 psi with no change in the character of the finished wine. Without this increase in throughput, the industry member states that the process is not economically viable since they can achieve the same result with other methods at a much lower cost.

The industry member states that they chose the less than 200 psi limitation as the upper limit in order to maintain a clear distinction between ultrafiltration and reverse osmosis in terms of pressure. The industry member points out that the two processes are also differentiated by the fact that the membranes specified for reverse osmosis have a much smaller pore size than those used in ultrafiltration.

The industry member submitted two samples of ultrafiltered apple wine to the ATF laboratory for analysis. The first sample was processed at 95 psi and the second sample was processed at 195 psi. The ATF laboratory analysis, based on the analytical data and on an organoleptic evaluation, showed there is no significant difference between the samples at these different pressure ratings. As a result of this analysis, the ATF laboratory stated that the basic character of the wine was not altered by increasing the authorized pressure rating from 100 psi to 195 psi.

Consequently, ATF approved the industry member's request to be allowed to use pressures of less than 200 psi when conducting operations using ultrafiltration. Other industry members wishing to use ultrafiltration at higher pressures may submit letter applications to ATF requesting permission to do so. ATF may require samples prior to giving such approval. If it is determined through the rulemaking process that ultrafiltration using pressures of less than 200 psi is considered "good commercial practice," then the regulations will be changed to incorporate this more liberal pressure limitation.

New Wine Treating Material

Urease Enzyme

An industry member has requested to be allowed to use urease enzyme derived from *Lactobacillus fermentum* to reduce levels of naturally occurring urea in wine to prevent the formation of ethyl carbamate during storage.

The enzyme is derived from the nonpathogenic, nontoxicogenic bacterium *Lactobacillus fermentum*. It contains the enzyme urease (CAS Reg. No. 9002–13–5) which facilitates the hydrolysis of urea to ammonia and carbon dioxide. It is produced by a pure culture fermentation process and by using materials that are generally recognized as safe (GRAS) or are food additives that have been approved for this use by the Food and Drug Administration (FDA).

Urease enzyme from *Lactobacillus fermentum* was approved for use in wine by FDA on December 21, 1992, effective January 21, 1993. The FDA regulation cite is 21 CFR 184.1924, Urease Enzyme Derived From *Lactobacillus fermentum*.

The manufacturer of the urease enzyme, Takeda Chemical Industries, Ltd., has also submitted several letters confirming that the urease enzyme preparation is derived from *Lactobacillus fermentum*. The company states that the enzyme is standardized with glucose syrup solids and the urease activity is adjusted to 3.5 units/mg. The company indicates that the urease enzyme meets the general and additional requirements for enzyme preparations in the "Food Chemicals Codex," 3rd edition (1981). In addition, the urease enzyme is used in food at levels not to exceed current good manufacturing practice as defined in 21 CFR 184.1924.

Takeda Chemical Industries, Ltd., states that the composition of the urease enzyme preparation is as follows:

Killed whole cells of *Lactobacillus fermentum*: 20–35%
Glucose Syrup Solids 65–80%

Takeda also states that they have confirmed that due to the low usage level (10–200 ppm) and objective of usage, addition of glucose syrup solids in this case is not considered "sweetening" of the beverage, which is prohibited in the State of California for table wine.

The industry member states that urease enzyme derived from *Lactobacillus fermentum* is economically self-limiting due to the high cost of the material. In addition, FDA, in their approval, did not set a specific numerical limit but rather limited its use to "good commercial practice." The industry member states that if a numerical limit needs to be set, it should be set no lower than 200 mg/L. The industry member also indicated that no water is required to use urease enzyme.

The industry member also submitted to the ATF laboratory two 750-milliliter samples of wine, one before and one after treatment, as well as a sample of the material. Based on an analysis of the samples and an organoleptic evaluation, the ATF laboratory concluded there were no significant differences between the control and experimental wine samples. The ATF laboratory stated that they have no objections to this enzyme preparation being used as a wine treating material at a maximum usage rate of 200 mg/L provided that the enzyme is filtered prior to final packaging of the wine as practiced in "good commercial practice."

Consequently, ATF approved the industry member's request to use urease enzyme derived from *Lactobacillus fermentum* to reduce levels of naturally occurring urea in wine to prevent the formation of ethyl carbamate during storage. This approval was given pending final action on urease enzyme as a result of the rulemaking process. This approval is also contingent upon the industry member using urease enzyme at a level not to exceed 200 mg/L and that the enzyme preparation is filtered prior to final packaging of the wine.

ATF is requesting all interested parties to comment on whether the use of this enzyme preparation in wine to reduce ethyl carbamate formation is in accordance with "good commercial practice." We are also requesting comments on whether the maximum usage rate of 200 mg/L is appropriate. Based on the comments received, we will determine whether the use of urease enzyme for the above stated purpose is in accordance with "good commercial practice." If so, we will add this new wine treating material to the authorized list in 27 CFR 24.246.

In the meantime, if other industry members wish to use urease enzyme in their wines at a maximum usage rate of 200 mg/L to prevent or reduce the formation of ethyl carbamate, they should submit a letter application to ATF requesting permission to do so.

Public Participation

Comments to this notice may address any one or all of the proposals. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material or comment as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The names of commenters are not exempt from disclosure.

Written comments will be available for public inspection during normal business hours at the following address: ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation is liberalizing in nature and will allow winemakers more flexibility when producing their wines with no negative impact on small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly this proposal is not subject to the analysis required by this Executive Order.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Drafting Information

The principal author of this document is Robert L. White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms. ATF Wine Technical Advisor Richard M. Gahagan and former ATF Chemist Randolph H. Dyer have provided significant technical assistance in the evaluation and review of data pertinent to the preparation of this document.

List of Subjects in 27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Warehouses, Wine and vinegar.

Authority and Issuance

27 CFR Part 24—Wine is amended as follows:

PART 24—WINE

Par. 1. The authority citation for Part 24 continues to read as follows:

Authority: 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356–5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Section 24.246 is amended in the table by revising the entry for enzymatic activity, by indenting the 13 enzyme entries immediately following enzymatic activity (ending with Protease (Trypsin)) to show that these entries all come under enzymatic activity, and by adding the new enzyme, urease, immediately after and directly under Protease (Trypsin), to read as follows:

§ 24.246 Materials authorized for treatment of wine and juice.

Materials and use	Reference or limitation
. . . . .	. . . . .
Enzymatic activity: Various uses as shown below	The enzyme preparation used shall be prepared from nontoxic and nonpathogenic microorganisms in accordance with good manufacturing practice and be approved for use in food by either FDA regulation or by FDA advisory opinion.
. . . . .	. . . . .
Urease: To reduce levels of naturally occurring urea in wine to help prevent the formation of ethyl carbamate.	The urease enzyme activity shall be derived from *Lactobacillus fermentum* per 21 CFR 184.1924. Use is limited to not more than 200 mg/L and must be filtered prior to final packaging of the wine.
. . . . .	. . . . .

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Par. 3. Section 24.248 is amended in the table by revising the entries for reverse osmosis and ultrafiltration, by adding the entry for spinning cone column, and by revising the footnote at the end of the section to read as follows:

§ 24.248 Processes authorized for the treatment of wine, juice, and distilling material.

Processes	Use	Reference or limitation
Reverse osmosis[1]	To reduce the ethyl alcohol content of wine and to remove off flavors in wine.	Permeable membranes which are selective for molecules not greater than 500 molecular off flavors in wine weight with transmembrane pressures of 200 psi and greater. The addition of water other than that originally present prior to processing will render standard wine "other than standard." Use shall not alter virous character.
Spinning cone[1]	To reduce the ethyl alcohol content of wine and to remove off flavors in wine.	Use shall not alter vinous character. For standard wine, the same amount of essense must be added back to any lot of wine as was originally removed.
Ultrafiltration	To remove proteinaceous material from wine; to reduce harsh tannic material from white wine produced from white skinned grapes; to remove pink color from blanc de noir wine; to separate red wine into low color and high color wine fractions for blending purposes..	Permeable membranes which are selective for molecules greater than 500 and less than 25,000 molecular weight with transmembrane pressures less than 200 psi. Use shall not alter vinuous character. 21 CFR 175.300, 177.1520, 177.1550, 177.1630, 177.2440, 177.2600, and 177.2910.

[1] This process must be done on distilled spirits plant premises. However, reverse osmosis, under certain limited conditions, may be used on bonded winery premises if ethyl alcohol is only temporarily created within a closed system.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5381, 5382, 5385, 5386, and 5387)).

August 9, 1994.

Daniel R. Black,

Acting Director.

Approved: August 24, 1994

Dennis M. O'Connell,

Acting Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement)

[FR Doc. 94–24219 Filed 9–29–94; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1926, 1928

[Docket No. H–122]

RIN 1218–AB37

Indoor Air Quality

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of Proposed Rulemaking; Schedule changes and hearing locations.

SUMMARY: OSHA is announcing schedule changes for the hearing and its location for the third and subsequent weeks.

DATES: The hearing will take place from September 20, 1994 through September 30, 1994, from October 11 through October 14, 1994, from October 24 through November 4, 1994, from November 14 through November 22, 1994 and from November 29 through December 16, 1994. The starting time is 9:30 a.m. The weeks of testimony scheduled for October 3–7, 1994 and November 7–10, 1994 have been postponed at the direction of the Administrative Law Judge and that testimony generally will be rescheduled between December 5 and December 16, 1994. A new schedule will be mailed to participants.

ADDRESSES: Starting On Tuesday, October 11 the hearings will be held in the Auditorium, U.S. Department of Labor, Frances Perkins Building, 3rd Street and Constitution Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Hall, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 219–8615 or 219–8618 for a recorded message on hearing changes, dates and location.

SUPPLEMENTARY INFORMATION: On April 5, 1994, OSHA issued a notice of proposed rulemaking addressing indoor air quality issues, including environmental tobacco smoke in the workplace. 59 FR 15968. On June 14, 1994 OSHA issued a supplemental notice giving parties until August 13, 1994 to submit comments; until August 5, 1994 to file notices of intention to appear; and until August 13, 1994 to submit testimony and evidence. The hearing was scheduled to start September 20, 1994. 59 FR 30560. These dates were *not* changed.

On September 16, OSHA announced in the **Federal Register**, (59 FR 47570) that the hearing in addition to running from September 20 through October 14, 1994, would also continue October 24 through November 22, 1994 and from November 29 into the week of December 5, 1994 because of the large number of participants who wished to testify. These dates are being modified.

On September 22, 1994 the Administrative Law Judge ordered the postponement of the hearings for the weeks of October 3–7, 1994 and November 7–10, 1994 to permit time to develop a better record. Those weeks are being rescheduled for December 5 through December 16, 1994. Witnesses scheduled for the two postponed weeks of October 3–7 and November 7–10 will generally be rescheduled for December 5–16, 1994. An updated schedule will be mailed to participants and will be available by calling the OSHA Office of Consumer Affairs.

The persons who had requests to testify filed by marketing firms had been scheduled to testify December 5, 1994. Their testimony will be rescheduled at a date to be announced later.

In this notice, OSHA is also announcing the location the hearing, for the third and subsequent weeks, the Auditorium of the U.S. Department of Labor, 3rd Street and Constitution Avenue, N.W., Washington, D.C.

Signed at Washington D.C., this 28th day of September, 1994.

Joseph A. Dear,

Assistant Secretary for Occupational Safety and Health.

[FR Doc. 94–24348 Filed 9–29–94; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–94–025]

RIN 2115–AE47

Drawbridge Operation Regulations; Sabine River, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Louisiana Department of Transportation and Development, the Coast Guard is considering a change to the regulation governing the operation of the swing span bridge on Route LA 12 over the Sabine River, mile 40.8 near Starks, between Calcasieu Parish, Louisiana and Newton County, Texas, by permitting the draw to remain closed to navigation at all times. The draw presently opens on call with 24 hours advance notice, however, there is no significant navigation on the waterway and there have been no requests to open the bridge for passage of marine traffic for 20 years.

DATES: Comments must be received on or before November 29, 1994.

ADDRESSES: Comments may be mailed to Commander(ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396 or may be delivered to Room 1313 at the same address between 8 a.m. and 3:30 p.m., Monday through Friday except Federal holidays. The comments and other materials referenced in this notice will be available for inspection and copying in room 1313 at this address. Normal office hours are between 8 a.m. and 3:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD08–94–025) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. David Frank at the address under **"ADDRESSES."** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Mr. David Frank, Project Officer and Lieutenant Elisa Holland, Project Attorney.

Background and Purpose

Upon request by the bridge owner, the Coast Guard is considering permitting the draw to remain permanently closed. Navigation requiring openings is non-existent and the bridge has not been opened for twenty years. There is no commercial navigation on the waterway in the vicinity of the bridge crossing. Vertical clearance of the bridge in the closed position is 6 feet above mean high water and 20 feet above low water. The occasional small recreational boat which uses the waterway can transit the bridge without requiring an opening. Permitting the permanent closure of the draw would result in a significant savings in maintenance costs with no effect on navigational traffic.

Regulatory Evaluation

This rule is not a significant regulatory action under Section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), The Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1 (series), this proposal is categorically excluded form further environmental documentation. An "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **"ADDRESSES."**

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List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46, 33 CFR 1.05–1(g).

2. Section 117.493 is revised to read as follows:

§ 117.493 Sabine River.

(a) The draws of the Southern Pacific railroad bridge, mile 19.3 near Echo, and the Kansas City Southern railroad bridge, mile 36.2 near Ruliff, shall open on signal if at least 24 hours notice is given.

(b) The draw of the S12 bridge, mile 40.8, at Starks, need not be opened for the passage of vessels.

Dated: September 21, 1994.

R.C. North,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 94–24157 Filed 9–29–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 940965–4265]

RIN: 0651–AA67

Revision of Affidavits Under 37 CFR 1.131

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (Office) proposes to amend the rules of practice relating to submission of affidavits or declarations under 37 CFR 1.131(a) to implement the relevant provisions of Public Law No. 103–182 and the GATT (General Agreement on Trade and Tariffs), and to provide relief in certain circumstances where a common assignee holds both an application and a patent claiming patentably indistinct, but not identical, inventions.

DATES: Written comments must be submitted on or before December 1, 1994. No oral hearing will be held.

ADDRESSES: Address written comments to the Commissioner of Patents and Trademarks, Washington, D.C. 20231, Attention: Charles E. Van Horn, Deputy Assistant Commissioner for Patent Policy and Projects, or by fax to (703) 305–8825.

FOR FURTHER INFORMATION CONTACT: Charles E. Van Horn by telephone at (703) 305–9054 or Hiram Bernstein by telephone at (703) 305–9282 or by mail marked to the attention of Charles E. Van Horn, Deputy Assistant Commissioner for Patent Policy and Projects, and addressed as above.

SUPPLEMENTARY INFORMATION: Public Law No. 103–182 (November 4, 1993) implementing the North American Free Trade Agreement (NAFTA), amended 35 U.S.C. 104 to provide that for the purpose of obtaining a patent, an applicant can show a date of invention in the United States, or in a NAFTA country which occurred after the date of implementation (i.e., December 8, 1993). Although GATT enabling legislation has not been passed, these proposed rule changes assume that it will be passed, and therefore changes to 37 CFR 1.131(a) similar to NAFTA would be required. See Article 27, paragraph 1, of the Agreement on Trade-related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods, of the GATT. In the event that the GATT enabling legislation is not enacted when the final rules are published, the proposed rule changes relative to the GATT will be withdrawn.

The Office proposes to amend 37 CFR 1.131(a), which is currently limited to facts showing a completion of the invention in the United States, to allow for a submission of facts in an affidavit or declaration that show completion of the invention in a NAFTA or a World Trade Organization (WTO) Member country. The WTO is established under the GATT agreement to resolve disputes between signatories to the agreement. The facts presented must demonstrate completion of the invention prior to the effective date of a reference thought to bar the grant of a patent or the patentability of a claim in a patent under reexamination.

Additionally, the Office recognizes that there is a potential conflict between existing 37 CFR 1.131(a) and 37 CFR 1.602(a). Section 1.131(a) prohibits affidavits or declarations thereunder when the same patentable invention as defined in 37 CFR 1.601(n) (i.e., patentably indistinct inventions) is claimed. An interference under 35 U.S.C. 135, rather than antedating under § 1.131(a), is generally the available remedy. However, 37 CFR 1.602(a) provides that when the applications or the application and patent are owned by a single party, interferences are not declared or continued unless good cause is shown. This can result in a hardship where there is an issued patent that can no longer be amended as by filing a continuation-in-part application. Where there are two or more pending applications, the conflict can be avoided by filing a continuation-in-part application incorporating the conflicting inventions in a single application.

The Office proposes to amend 37 CFR 1.131 to broaden its application to a single party where inventions of a pending application and a patent held by the party are patentably indistinct but not identical. Under the proposed additions to § 1.131, an affidavit or declaration could be filed by a party to avoid a 35 U.S.C. 103 rejection based on a 35 U.S.C. 102(a) or (e) patent owned by that party, where the patent claimed an invention that was patentably indistinct, but not identical to an invention claimed in an application or patent undergoing reexamination.

The proposed addition to § 1.131 would not affect the use of the issued patent in a rejection based on double patenting. However, where patentably indistinct but not identical inventions are claimed, a double patenting rejection can be avoided by filing an appropriate terminal disclaimer. In addition, petitions under § 1.183 will be entertained for waiver of § 1.131 *requirements in appropriate instances* where two pending applications claiming patentably indistinct but not identical inventions are held by a single party.

Discussion of Specific Rules

Section 1.131(a), if amended to (a)(1) as proposed, would allow a § 1.131 affiant or declarant to rely upon facts occurring in a NAFTA or a WTO Member country to show completion of the invention. The term "domestic" would be changed to "U.S." The section is proposed to be amended from a single sentence to three sentences.

Section 1.131(a)(2), if added as proposed, would limit the availability of acts showing completion of the invention in a NAFTA or WTO Member country to those acts occurring subsequent to the effective date of the agreements.

Section 1.131(a)(3), if added as proposed, would allow a showing of prior invention to be made in a pending application or a patent that is undergoing reexamination where a single party holds both the application or patent undergoing reexamination and another patent where the claimed

inventions were, at the time the later invention was made, both owned by the single party or subject to an obligation of assignment to that party. Further, in order to rely on proposed § 1.131(a)(3), the inventions claimed in the application or in the patent undergoing reexamination and in the other patent must not be identical as set forth in 35 U.S.C. 102.

Other Considerations

The proposed rule changes are in conformity with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., Executive Order 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The Office of Management and Budget has determined that the proposed rule changes are not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule changes will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)), because the proposed rules would affect only a small number of applications and would provide a streamlined and simplified procedure, eliminating the need for requesting waiver of the rules.

The Patent and Trademark Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These rule changes will not impose any additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and record keeping requirements.

For the reasons set forth in the preamble, and pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, the Office proposes to amend Title 37 of the Code of Federal Regulations as set forth below, with deletions indicated by brackets ([]) and additions indicated by arrows (><).

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR, Part 1, would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.131 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.131 Affidavit or declaration of prior invention to overcome cited patent or publication.

(a) >(1)< When any claim of an application or a patent under reexamination is rejected on reference to a [domestic] >U.S.< patent which substantially shows or describes but does not claim the same patentable invention, as defined in § 1.601(n), as the rejected invention, or on reference to a foreign patent or to a printed publication, [and] the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the person qualified under §§ 1.42, 1.43 or 1.47, [shall make] >may overcome the patent or publication by filing an appropriate< oath or declaration >.< [as to] >The oath or declaration must include< facts showing a completion of the invention in this country >or in a NAFTA or WTO Member country< before the filing date of the application on which the [domestic] >U.S.< patent issued, or before the date of the foreign patent, or before the date of the printed publication >.< [, then] >When an appropriate oath or declaration is made,< the patent or publication cited shall not bar the grant of a patent to the inventor or the confirmation of the patentability of the claims of the patent, unless the date of such patent or printed publication is more than one year prior to the date on which the inventor's or patent owner's application was filed in this country.

>(2) A date of completion of the invention may not be established under this section before December 8, 1993, in a NAFTA country, or before——in a WTO Member country other than a NAFTA country.

(3) Notwithstanding the provisions of paragraph (a)(1), a showing may be made under this section where the inventions defined by a claim in an application or a patent under reexamination and by a claim in another U.S. patent are not identical as set forth in 35 U.S.C. 102, and where the inventions were, at the time the later invention was made, owned by the same person or subject to an obligation of assignment to the same person.<

* * * * *

Dated: September 26, 1994.

Bradford R. Huther,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

[FR Doc. 94–24236 Filed 9–29–94; 8:45 am]

BILLING CODE 3510–16–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–4895–4]

Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of Acetone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to revise its definition of volatile organic compounds (VOC) for purposes of preparing State implementation plans (SIP's) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (Act) and for the Federal implementation plan for the Chicago ozone nonattainment area. The proposed revision would add acetone to the list of compounds excluded from the definition of VOC on the basis that these compounds have negligible contribution to tropospheric ozone formation.

DATES: Comments on this proposal must be received by November 29, 1994.

ADDRESSES: Comments should be submitted in duplicate (if possible) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–94–26, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments should be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at Research Triangle Park, North Carolina. Persons wishing to request a public hearing, wanting to attend the hearing or wishing to present oral testimony should notify Mr. William Johnson, Air Quality Management Division (MD–15), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5245. The EPA will publish notice of a hearing, if a hearing is requested, in the **Federal Register**. Any hearing will be strictly limited to the subject matter of the proposal, the scope of which is discussed below.

This action is subject to the procedural requirements of section

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307(d)(1) (B), (J), and (U) of the Act, and 42 U.S.C. 7607(d)(1) (B), (J), and (U). Therefore, EPA has established a public docket for this action, A–94–26, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Central Docket Section, room M–1500, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: William Johnson, Office of Air Quality Planning and Standards, Air Quality Management Division (MD–15), Research Triangle Park, NC 27711, phone (919) 541–5245.

SUPPLEMENTARY INFORMATION:

I. Background

Three petitions have been received by the EPA asking that acetone be added to the list of negligibly-reactive compounds in the definition of VOC at 40 CFR 51.100(s). These petitions were submitted by Eastman Chemical Company and Hoechst Celanese Corporation on April 26, 1993, Hickory Springs Manufacturing Company on May 6, 1993, and the Chemical Manufacturers Association on May 14, 1993. Along with their petitions and in supplemental submissions, these organizations submitted a variety of scientific materials which support the assertion that acetone is of negligible photochemical reactivity. These materials have been added to the docket for this rulemaking.

The petitioners based their request for the exclusion of acetone on a demonstration that the photochemical reactivity of acetone is not appreciably different from that of ethane, which is the most reactive compound on the current list of compounds which are named in the definition of VOC as being of negligible reactivity. Acetone's photochemical reactivity arises through two chemical pathways: through reaction with hydroxyl (OH) radicals (k_{OH} reactivity) and through photolysis. Data on the reaction of OH radicals with various organic compounds are reported in a review article (Atkinson, R. (1990), "Gas—Phase Tropospheric Chemistry of Organic Compounds: A Review." *Atmospheric Environment*, 24 A:1–41) which gives the following rate constants for reactions of ethane and acetone with OH:

Ethane: 2.68×10^{-13} cc/molecule/sec.
Acetone: 2.26×10^{-13} cc/molecule/sec.

Thus, if the k_{OH} reactivities alone are considered, acetone is less reactive than ethane. Unlike ethane, however, acetone undergoes photodecomposition, or photolysis, in the atmosphere to form radicals, which tend to cause increased rates of ozone formation. Total reactivity of acetone, considering both k_{OH} reactivity and photolysis, was the subject of a special study reported recently (Carter, W. P. L. et al., "An Experimental and Modeling Study of the Photochemical Ozone Reactivity of Acetone," University of California/ Riverside, December 10, 1993).

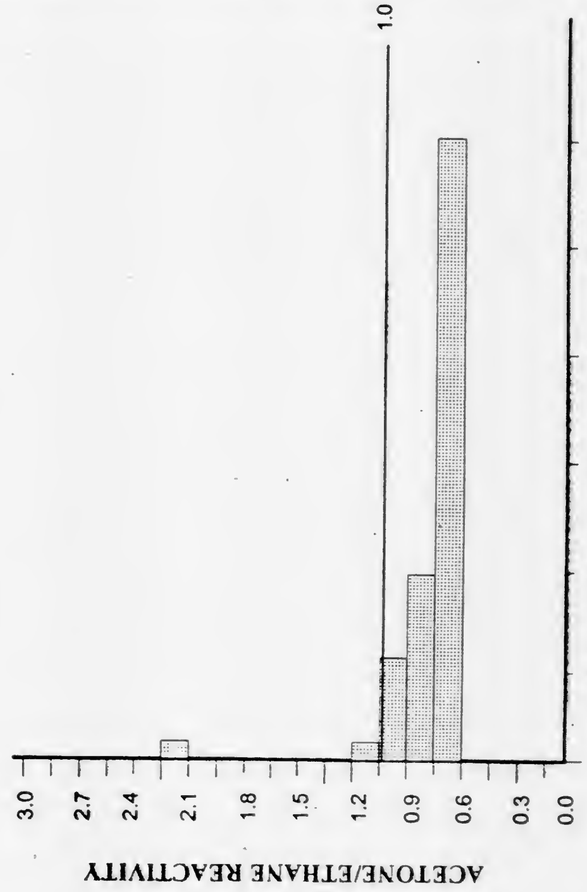
The Carter report describes a series of environmental chamber experiments and computer model simulations carried out to assess the tendency of acetone to promote ozone formation under atmospheric conditions, relative to that of ethane. This was done by calculating and comparing the "incremental reactivities" of acetone and ethane for a variety of atmospheric conditions representing ozone episodes in 39 urban areas throughout the United States.

"Incremental reactivity" is the most recently proposed quantitative measure of the degree to which a VOC contributes to ozone formation in a photochemical air pollution episode. It is defined as the amount of additional ozone formation resulting from the addition of a small amount of VOC to the urban emissions, divided by the amount of compound added. This measure of reactivity takes into account all of the factors by which a VOC affects ozone formation, including the effect of the environment where the VOC reacts The latter is important because the amount of ozone formation caused by the reactions of a VOC depends significantly on the conditions within the polluted atmosphere, such as VOC to nitrogen oxide (NO_X) ratio, VOC composition, and sunlight intensity. Figure 1 shows distribution plots of the reactivity of acetone relative to that of ethane for the 39 urban scenarios used, where reactivity is defined in terms of grams of ozone formed per gram of VOC emitted. (Use of the unit grams of ozone formed per gram of VOC emitted is significant. Another way of defining reactivity is in terms of grams of ozone formed per mole of VOC emitted, which would give different results. For practicality, the EPA has elected to adopt the grams ozone per gram VOC basis, since grams (or tons), rather than moles, is the mass unit used in regulations dealing with VOC emissions.) In Figure 1, acetone/ethane reactivity ratios less than 1.0 indicate scenarios where acetone is less reactive than ethane. The acetone/ethane reactivity ratio, as reported by Carter, appears to have widely varying values among the 39 urban scenarios and to reflect, with a few exceptions, slightly lower reactivity for acetone. For one scenario, which represents unusually high NO_X conditions, acetone was calculated to be over two times more reactive than ethane. This is due to the unusually low reactivity of ethane for that particular scenario, rather than to higher acetone reactivity. Figure 2 shows the variability of ethane reactivity relative to that of a "typical" urban VOC mix. Figure 2 also shows that the reactivity range of acetone falls entirely within the range for ethane.

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FIGURE 1

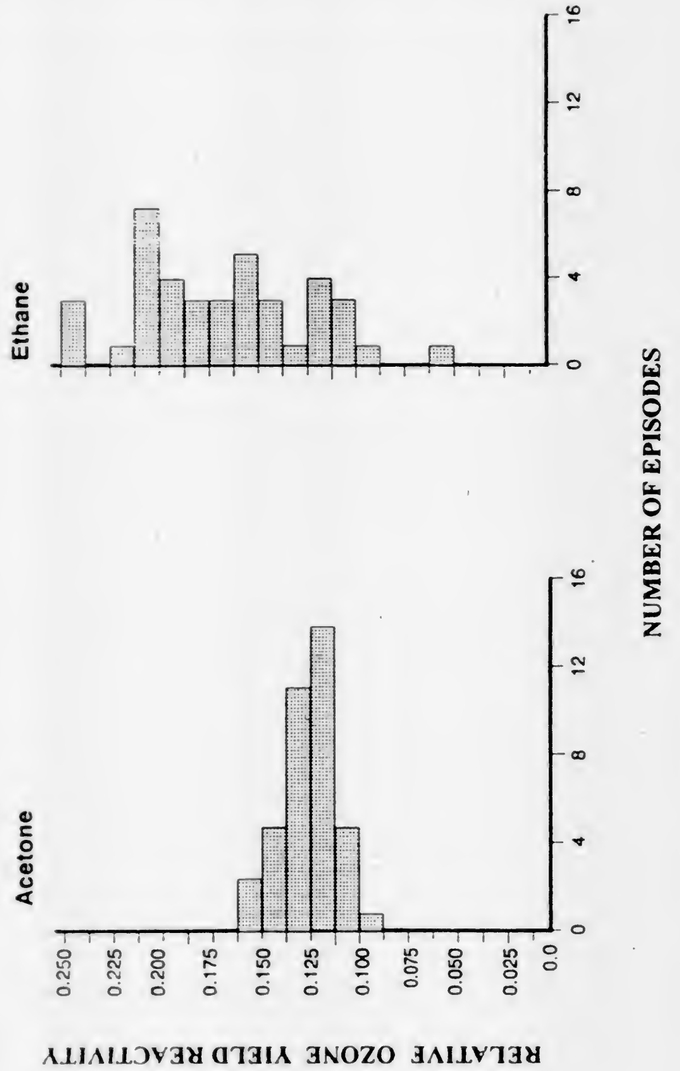
DISTRIBUTION PLOTS OF INCREMENTAL REACTIVITIES OF ACETONE RELATIVE TO ETHANE BASED ON OZONE YIELDS PER GRAM VOC



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FIGURE 2

RELATIVE DISTRIBUTION PLOTS OF REACTIVITIES OF ACETONE AND ETHANE RELATIVE TO THAT OF A "TYPICAL" URBAN VOC MIX BASED UPON OZONE YIELD PER GRAM VOC



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Although there are uncertainties in acetone's atmospheric photo-oxidation mechanism and in the other aspects of ozone-related atmospheric photochemistry, one can reasonably deduce, based on the Carter report, that acetone and ethane probably have nearly the same reactivity for most sets of environmental conditions.

Additional studies have been conducted on the relative reactivity of acetone in Europe. For example, R. G. Derwent and M. E. Jenkins (Hydrocarbons and the Long-range Transport of Ozone and PAN Across Europe, *Atmospheric Environment*, vol 24A, pp 1661–1678, 1991) used a chemical mechanism to calculate ozone impacts of acetone, ethane, and other VOC for three trajectories across Europe. The photochemical trajectory model the authors employed was developed at Harwell Laboratory (United Kingdom) and was used to calculate the photochemical ozone creation potential (POCP) values for 69 organic compounds, including acetone. The POCP values were assigned to VOC species according to a relative scale, with ethylene having a value of 100. Dr. Derwent reported in a letter (January 27, 1994) to EPA that: "A comparison of POCP's for ethane and acetone in the work of my colleagues at Harwell Laboratory, which incidentally updates the acetone entries in the VOC Protocol Annex, gives 8.2 ± 4.0 and 9.2 ± 2.0, respectively." The difference between these numbers is not considered to be statistically significant.

If acetone is accepted as having negligible photochemical reactivity, exempting acetone from regulation as an ozone precursor could contribute to the achievement of several important environmental goals. For example, acetone can be used as a substitute for several compounds that are listed as hazardous air pollutants (HAP) under section 112 of the Act. Methylene chloride and methyl chloroform are HAP that are used for metal cleaning and for flexible polyurethane foam blowing. Other HAP, such as toluene, are often used as solvents in paints and coatings. Acetone can substitute for these substances in some circumstances.

Acetone can also be used as a substitute for ozone depleting substances (ODS) which are active in depleting the stratospheric ozone layer. Under the London Amendments to the Montreal Protocol on substances that deplete the ozone layer ("Montreal Protocol"), the United States agreed to phase out production and consumption of certain chlorofluorocarbons (CFC) by the year 2000 and methyl chloroform by 2005 (see 58 FR 15016 (March 18, 1993)). In 1990, Congress added title VI to the Act in part to provide for the implementation of this phaseout (see 42 U.S.C. 7671 *et seq.*). The 1990 Amendments specified an initial list of Class I and Class II ODS, authorizing EPA to add compounds to both lists depending on a given compound's potential to contribute to stratospheric ozone depletion, (*Id.* § 7671a.) The 1990 Amendments further required phaseout of the production and consumption of Class I ODS by 2000, methyl chloroform by 2002, and Class II ODS by 2030 (see 42 U.S.C. 7671c, 7671d). At the fourth meeting, in 1992, of the parties to the Montreal Protocol in Copenhagen, Denmark, the parties adjusted the phaseout schedules for Class I substances under the Montreal Protocol to phase out Class I CFC and methyl chloroform by 1996. In 1993, EPA proposed to accelerate the phaseout of Class I CFC and methyl chloroform in order to discontinue use of these compounds after January 1, 1996 (see 58 FR 15022).

As a result of these phaseout deadlines, there is a need to develop substitutes for ODS. Allowing wider use of acetone will facilitate the transition away from ODS without adversely affecting efforts to control ground level ozone concentrations. For example, chlorofluorocarbon-11 and methyl chloroform have been used as foam-blowing agents in the manufacture of polyurethane foam. These compounds are also used in metal cleaning in the aircraft manufacturing industry. Both CFC–11 and methyl chloroform are listed as Class I substances under title VI of the Act, i.e., as substances that have the highest stratospheric ozone-depleting potential. Acetone may be able to be used as a foam-blowing agent and cleaning agent in place of these chemicals.

The EPA has already listed acetone as an acceptable ozone-depleting substance substitute under the program known as the "Significant New Alternatives Policy" (SNAP) program, (59 FR 13044, March 18, 1994). Within the context of the SNAP rule, substitutes are "acceptable" if they are technically feasible to be used as an alternative to an ODS for particular uses and give reduced overall risk to human health and the the environment compared to the ODS they replace. In the SNAP rule, EPA listed acetone as an acceptable substitute for flexible polyurethane foam blowing (59 FR 13132). The SNAP rule lists ketones (which include acetone) as an acceptable substitute for solvent cleaning in metal cleaning, electronics cleaning, and precision cleaning (59 FR 13134). Ketones are also listed in the SNAP rule as an acceptable substitute solvent for aerosols and for adhesives, coatings, and inks (59 FR 13145).

In each of these areas of concern, toxic air emissions and depletion of stratospheric ozone, adding acetone to the list of negligibly-reactive VOC will support the EPA's pollution prevention efforts. By enacting the Pollution Prevention Act of 1990, Congress established as a national policy that "pollution should be prevented or reduced at the source whenever feasible" (42 U.S.C. 13). An important part of EPA's pollution prevention strategy is encouraging companies to use substitutes in their production processes that are more environmentally benign than the substances they currently use. For example, in its blueprint for a comprehensive national pollution prevention strategy, (56 FR 7849 (February 26, 1991)), the EPA recognized that the definition of pollution prevention includes a "switch to non-toxic or less toxic substitutes" (*Id.* at 7854).

National air emissions of acetone from industrial sources were estimated to be 80,000 tons per year in 1991. It should be noted that due to the high volatility of acetone, increased use of acetone for metal cleaning will most likely increase emissions of the compound to the air.

II. The EPA Response to the Petition

Based on the scientific data presented in the material submitted by the petitioners, EPA accepts the conclusion that acetone is not appreciably different from ethane in terms of photochemical reactivity. The EPA is responding to the petitions by proposing in this notice to add acetone to the list of compounds appearing in 40 CFR 51.100(s) that are considered to be negligibly reactive and are thus excluded from the definition of VOC for ozone SIP and ozone control purposes. The revised definition will apply in the Chicago ozone nonattainment area pursuant to the 40 CFR 52.741(a)(3) definition of volatile organic material or volatile organic compound. States are not obligated to exclude from control as a VOC those compounds that EPA has found to be negligibly reactive. However, if this proposal is made final, EPA will not enforce measures controlling acetone as part of a federally-approved ozone SIP. In addition, once this proposal is made final, States should not include acetone in their VOC emissions inventories for determining reasonable further progress under the Act (e.g., section 182(b)(1)) and may not take credit for controlling acetone in their ozone control strategy. Further, after this proposal is made

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final, acetone may not be used for emissions netting (e.g., 40 CFR 51.166(b)(2)(c)), offsetting (40 CFR appendix S), or trading with reactive VOC (Emissions Trading Policy Statement, 51 FR 43814, December 4, 1986 and Economic Incentive Program Rules, 59 FR 16690, April 7, 1994).

Since acetone will no longer be treated as a VOC, a State should revise its base year inventory and plans that rely on that inventory (e.g., the 15 percent plan) to remove acetone and the VOC emissions reduction credit taken from controlling acetone. To avoid unnecessary work, however, States may account for the fraction of the VOC inventory that acetone comprises or the amount of reduction claimed for controlling acetone. If the acetone fraction in the inventory or the amount of control claimed is not significant for a particular area, EPA would not expect a State to revise its emissions inventory or a plan based on that inventory to account for the revised VOC definition.

In addition, corrections are made to the names of three compounds which have previously been exempted from the definition of VOC: 1,1,1-trichloro-2,2,2-trifluoroethane (CFC–113) is changed to 1,1,2-trichloro-1,2,2-trifluoroethane (CFC–113); chlorodifluoromethane (CFC–22) is changed to chlorodifluoromethane (HCFC–22); and trifluoromethane (FC–23) is changed to trifluoromethane (HFC–23). These changes are corrections to nomenclature only and are not substantive.

Pursuant to 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it relaxes current regulatory requirements rather than imposing new ones. The EPA has determined that this rule is not "significant" under the terms of Executive Order 12866 and is, therefore, not subject to Office of Management and Budget (OMB) review. This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Assuming this rulemaking is subject to section 317 of the Act, the Administrator concludes, weighing the Agency's limited resources and other duties, that it is not practicable to conduct an extensive economic impact assessment of today's action since this rule will relax current regulatory requirements. Accordingly, the Administrator simply notes that any costs of complying with today's action, any inflationary or recessionary effects of the regulation, and any impact on the competitive standing of small businesses, on consumer costs, or on energy use, will be less than or at least not more than the impact that existed before today's action.

List of Subjects in 40 CFR Part 51

Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 23, 1994.

Carol M. Browner,

Administrator.

For reasons set forth in the preamble, part 51 of Chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7410(a)(2), 7475(e), 7502(a) and (b), 7503, 7601(a)(1), and 7620.

2. Section 51.100 is amended by revising paragraph (s)(1) introductory text to read as follows:

§ 51.100 Definitions.

* * * * *

(s) * * *

(1) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC–113); trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); chlorodifluoromethane (HCFC–22); trifluoromethane (HFC–23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC–114); chloropentafluoroethane (CFC–115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC–123); 1,1,1,2-tetrafluoroethane (HFC–134a); 1,1-dichloro 1-fluoroethane (HCFC–141b); 1-chloro 1,1-difluoroethane (HCFC 142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC–124); pentafluoroethane (HFC–125); 1,1,2,2-tetrafluoroethane (HFC–134); 1,1,1-trifluoroethane (HFC–143a); 1,1-difluoroethane (HFC–152a); acetone; and perfluorocarbon compounds which fall into these classes:

* * * * *

[FR Doc. 94–24251 Filed 9–29–94; 8:45 am]
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40 CFR Part 70

[IL001; FRL–5081–9]

Clean Air Act Proposed Interim Approval Of Operating Permits Program; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the Operating Permits Program submitted by Illinois for the purpose of complying with Federal requirements which mandate that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by October 31, 1994.

ADDRESSES: Comments should be addressed to Jennifer Drury-Buzecky at the Region V address.

Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois, 60604. Please contact Jennifer Drury-Buzecky at (312) 886–3194 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Jennifer Drury-Buzecky, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886–3194.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under title V of the Clean Air Act ("the Act") as amended (1990), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. 40 CFR 70.4(e)(2), however, allows the Administrator to extend the review period of a State's submittal if the State's submission is materially altered during the one-year review period. This additional review period may not extend beyond one year following receipt of the revised submission. EPA received material changes to Illinois' submission on April 18, 1994, and July 18, 1994. In addition, the State requested on May 16, 1994, that EPA include the State's insignificant activities regulations, currently undergoing rulemaking at the state level, in EPA's final rulemaking on the State's submittal. 35 Illinois Administrative Code 201 (35 IAC 201). Because these material changes stopped EPA's final review clock, a final EPA action on the State's submittal may not occur by November 15, 1994. EPA will act expeditiously to promulgate a final notice on the State's revised submission after the publication of this proposal and formal adoption of all State rules.

The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993, date, or by the end of an interim program, it must establish and implement a Federal program.

II. Proposed Action and Implications

A. Analysis of State Submission

The EPA is proposing to grant interim approval to the operating permits program submitted by Illinois on November 15, 1993. While Illinois' program substantially meets the requirements of 40 CFR part 70, certain deficiencies must be corrected in the State's submittal before EPA can fully approve the State's submittal. This document will outline the corrections necessary for full approval.

For more detailed information on the analysis of the State's submission, please refer to the part 70 Operating Permits Program Review Checklist and technical support document accompanying this approval.

1. Support Materials

A letter from Jim Edgar, Governor of the State of Illinois, to Administrator Carol Browner, accompanying the State's submittal, names the Illinois Environmental Protection Agency (IEPA) as the state agency responsible for the administration of Illinois' title V operating permit program throughout the entire state. Since the State entitles its title V operating permit program the "Clean Air Act Permit Program (CAAPP)", CAAPP will be used throughout this document when referencing the State's program.

Also included in the State's submittal is a narrative description of the CAAPP summarizing how the State will meet the requirements of 40 CFR part 70 and a legal opinion fromRoland W. Burris, Attorney General of the State of Illinois, certifying that the legal authority exists for the State to administer and enforce the title V program. According to the narrative and a specific request from the State referenced above, the State intends to develop future regulations governing insignificant activities. The State anticipates that these regulations will be finalized by the time of EPA's final action on this submittal. The narrative also describes the existing federally enforceable state operating permit program (FESOP), previously approved by EPA, that the State will utilize to allow sources to limit their potential to emit through federally enforceable operating restrictions to avoid title V requirements.

The Illinois CAAPP submittal contains all the elements required by 40 CFR 70.4(b). Although the State's submittal does not include an Implementation Agreement, the State and EPA will soon develop an implementation agreement that accounts for the implementation issues unique to Illinois' CAAPP.

The majority of the State's program is found in section 39.5 of the Illinois Environmental Protection Act. 415 ILCS 5/39.5. Additional regulations are found in 35 IAC 270, 105, 106, 252, 253, and draft versions of both 201 and 211.

2. Regulations and Program Implementation

a. Applicability

The Illinois program meets the requirements of 40 CFR 70.2 and 70.3 for applicability.

b. Permit Applications

The Illinois program substantially meets the requirements of 40 CFR 70.5 for permit applications.

One permit application issue will require a legislative amendment before EPA can fully approve the State's program. The current State legislative provision concerning source certification of applications, 415 ILCS 5/39.5(5)(e), does not require the responsible official certifying a document to make a "reasonable inquiry" or that the statement be based upon "information and belief" according to 40 CFR 70.5(d) and 70.6(c)(1). The State must amend this provision in its legislation to ensure that certifications by responsible officials comply with all Federal requirements, namely that the official has made a reasonable inquiry and that the certification is based upon information and belief. EPA is, therefore, proposing interim approval until this deficiency is corrected.

Another potential deficiency in the State's program concerns insignificant activities. Illinois is currently developing regulations for insignificant activities in 35 IAC 201 and 211. The regulations propose insignificant emission limits for hazardous air pollutants (HAP), specific categories of insignificant activities or emission levels of all regulated pollutants, and provisions to allow sources to propose their own insignificant activities.

Insignificant activity thresholds which are considered to be acceptable by EPA for Illinois' program would fall in the range of 1–2 tons per year for criteria pollutants and the de minimis levels established under 112(g) or lower for HAPs. These insignificance levels are appropriate for the State's program because of the 25 ton per year major source threshold level established in the State's severe ozone nonattainment areas, and because of the overall major source threshold level for HAPs established at 10 tons per year of one HAP and 25 tons per year of any combination of HAPs. Illinois' insignificant activity regulations establish insignificance levels of no more than 1 lb/hr of any non-HAP (approximately 4 tons per year) and no more than .1 lb/hr of any HAP (approximately .4 tons per year) per emission unit. Because Illinois' insignificant activity regulations fail to comply with EPA's notion of acceptable thresholds, EPA could only propose interim approval for the State's 201 and 211 regulations. If EPA's concerns are addressed in the State's final regulations before final action on this notice, then EPA can fully approve the State's insignificant activities. Alternatively, if the State does not address EPA's concerns before final action on this notice, then EPA's final action will include an interim approval on this issue.

c. Permit Issuance, Renewal, Reopenings and Revisions

The Illinois program meets the requirements of 40 CFR 70.7(h) for public participation and 40 CFR 70.7(e)(2) minor modifications. Two interim approval issues exist, however, with respect to the State's definition of administrative permit amendment. 415 ILCS 5/39.5(13)(c)(vi) allows incorporation of revised limitations or

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other requirements resulting from the application of an approved economic incentives rule, a marketable permits rule or generic emissions trading rule into a CAAPP permit through the administrative amendment procedure. Since 40 CFR 70.7(d) does not allow the use of an administrative permit amendment to accomplish incorporation of emissions trades into a part 70 permit, the State's definition of administrative amendment is one basis for the EPA's proposal to grant interim approval of the State's program. The State must amend its legislation to require the use of the significant modification procedure to incorporate emission trades into a CAAPP permit before the EPA can fully approve the State's definition of administrative amendment.

The second interim approval issue is found in 415 ILCS 5/39.5(13)(c)(v). The State's program allows incorporation of requirements from preconstruction review permits authorized under an EPA-approved preconstruction permit program into a CAAPP permit through the administrative amendment procedure, provided that the permit meets procedural and compliance requirements substantially equivalent to those in the State's CAAPP permit issuance process (emphasis added). The EPA encourages the use of the administrative amendment procedure to incorporate preconstruction review permits into part 70 permits. Nevertheless, 40 CFR 70.7(d)(1)(v) allows such incorporation only when the State's preconstruction review program meets procedural and compliance requirements substantially equivalent to the requirements of 40 CFR 70.7 and 70.8 that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in 40 CFR 70.6. The EPA interprets 40 CFR part 70 to require that the State's part 70 regulations or preconstruction permit program detail the actual procedural and compliance requirements necessary to incorporate preconstruction permits into part 70 permits.

For full approval of the State's program, the State would need to develop regulations detailing the actual procedural and compliance requirements necessary for incorporation of preconstruction permits into part 70 permits. These regulations would need to supplement the State's title V submittal or be submitted as a revision to the State's preconstruction permit program state implementation plan.

d. Permit Content

Another major component of the State's program concerns the contents of a CAAPP permit. The State's CAAPP substantially meets the requirements of 40 CFR 70.6, including the requirements for operational flexibility. A CAAPP permit will incorporate applicable requirements of existing State Implementation Plans (SIP), as well as any future applicable requirements promulgated by EPA. Legislative authority exists in 415 ILCS 5/39.5(11) to develop general permits covering numerous similar sources, except for sources subject to the Acid Rain Program. These general permits are targeted for future development.

One issue of EPA concern with State programs is the ability of a part 70 source to obtain a waiver from any applicable requirement. The Illinois Pollution Control Board (IPCB) has the authority to issue a variance from requirements imposed by State law. 415 ILCS 5/35–38, previously approved into the State's SIP for non-part 70 sources, allows the IPCB discretion to grant relief from compliance with State rules and regulations. The EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently is proposing to take no action on this provision of State law. The EPA has no authority to approve provisions of State law, such as the variance provisions referred to, which are inconsistent with the CAA. The EPA does not recognize the ability of a permitting authority or other state entity to grant relief from the duty to comply with the terms of a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. For example, 40 CFR 70.6(g) defines the circumstances under which an affirmative defense can be raised when an action is brought against a source for noncompliance with a permit condition. The EPA reserves the right to enforce the terms of the part 70 permit where the permitting authority or other state entity purports to grant relief from the duty to comply with a part 70 permit in a manner inconsistent with part 70 procedures.

415 ILCS 5/39.5(5)(s) and 35 IAC 270.408 of the State's submittal incorporate previously approved SIP provisions into the CAAPP program (35 IAC 201.261 through 201.265) which allow an owner or operator of a CAAPP source to include within its CAAPP application a request for permission to operate during a startup, malfunction, or breakdown. These provisions appear to allow sources to exceed emission limits and standards of the State's SIP, but are not applicable to any other requirements of a title V permit. Since sources that request these exceedances must request them in their CAAPP applications, EPA will have the opportunity to review and comment on these different emission limits just as it would comment on any other permit provision. Since these provisions were previously approved into Illinois' SIP, the incorporation of these provisions into Illinois' part 70 regulations is not problematic for the approval of the State's program as long as these provisions never apply to other Federal requirements in a title V permit and do not diminish the State's authority to assure the source's compliance with all applicable requirements.

Another component of permit content is the length of time in which a source must notify the permitting authority to report a deviation from a permit condition. Part 70 of the operating permits regulations requires prompt reporting of deviations from the permit requirements. 40 CFR 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. Prompt reporting, however, must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under 40 CFR 70.6(a)(3)(iii)(A). Illinois addresses the issue of prompt reporting in 415 ILCS 5/39.5(7)(f)(ii) of its CAAPP legislation. Because Illinois did not actually define "prompt," EPA may veto permits that do not contain sufficiently prompt reporting requirements for deviations.

e. Enforcement

The Illinois program substantially meets the requirements of 40 CFR 70.11 with regard to enforcement authority. One issue, however, requires a change in existing State legislation to bring the State's enforcement authority completely in accord with the requirements of part 70. 415 ILCS 5/44(j)(4)(D) of the Illinois Environmental Protection Act prohibits the knowing tampering of any monitoring device or

record. 40 CFR 70.11(a)(3)(iii), however, prohibits the knowing tampering of any monitoring device or method. The State must amend its legislative provision to include a prohibition against knowing tampering of a monitoring method. The EPA, therefore, proposes interim approval of the State's program.

Another issue concerning title V enforcement authority is the ability of a source to request an alternative emission limit equivalent to that stated in a SIP. 415 ILCS 5/39.5(7)(q) allows a source to demonstrate in its CAAPP application that an alternative emission limit would be equivalent to that contained in the applicable IPCB regulations. The State submitted revised regulations that restricted the use of alternative emission limits in 35 IAC 270.401(e) to the situation where the applicable EPA-approved SIP allows for such determination. Since this revision to the State regulations adequately addresses EPA's concerns regarding the use of alternative equivalent emission limits, the State may utilize equivalent alternative emission limits in its CAAPP when the underlying SIP provision allows for such determination.

3. Permit Fee Demonstration

415 ILCS 5/39.5(18) of the State's legislation provides for the collection of fees in the amount of $13.50 per ton of allowable emissions. Sources allowed to emit less than 100 tons per year in the aggregate of all regulated air pollutants shall pay a flat fee of $1000 and no source shall be required to pay a fee in excess of $100,000. Since the State is not charging the presumptive minimum, 40 CFR 70.9 requires that the State collect fees sufficient to cover the permit program costs. Based upon the State's fee demonstration, EPA believes that the amount of fee revenue collected by the State is sufficient to run the State's program. Collection of fees based upon allowable emissions results in the collection of fees from tons of pollution not actually emitted. Monies collected from the program will be deposited in a special fund in the State Treasury known as the CAA Permit Fund and a board appointed by the State legislature will evaluate the State's fee structure to ensure that future collection of funds will be sufficient to run the program.

On July 18, 1994, the State submitted additional information clarifying its detailed fee demonstration. As a result of this additional information, the EPA believes the State's detailed fee demonstration meets the requirements of 40 CFR part 70. Please refer to the technical support document and letter dated June 21, 1994, from IEPA, included with the docket on this approval, for more information regarding the State's fee demonstration.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation

Illinois has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in Illinois' enabling legislation and in regulatory provisions defining "applicable requirements" and stating that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow Illinois to issue permits that assure compliance with all section 112 requirements.

The EPA is interpreting the above legal authority to mean that Illinois is able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Document accompanying this rulemaking and the April 13, 1993, guidance memorandum titled "Title V Program Approval Criteria for section 112 activities," signed by John Seitz.

b. Implementation of 112(g) Upon Program Approval

As a condition of approval of the part 70 program, Illinois is required to implement section 112(g) of the Act from the date of approval of the part 70 program. Imposition of case-by-case determinations of MACT or offsets under section 112(g) will require the use of a mechanism for establishing federally enforceable restrictions on a source-specific basis. The EPA is proposing to approve Illinois' preconstruction permitting program, found in 35 IAC 201–203, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. EPA believes this approval is necessary so that Illinois has a mechanism in place to establish federally enforceable restrictions for section 112(g) purposes from the date of part 70 approval. Although section 112(l) generally provides authority for approval of State air toxics programs, title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of section 110 or any other provision under the Act. If Illinois does not wish to implement section 112(g) through its preconstruction permit program and can demonstrate that an alternative means of implementing section 112(g) exists, the EPA may, in the final action approving Illinois' part 70 program, approve the alternative instead.

This proposed approval is for an interim period only, until such time as the State receives delegation of the section 112(g) rules. Accordingly, EPA is proposing to limit the duration of this approval to a reasonable time following promulgation of section 112(g) regulations so that Illinois, acting expeditiously, will be able to adopt rules consistent with the section 112(g) regulations.

Once EPA promulgates the section 112(g) rules, implementation of title V requires that Illinois adopt these rules within a reasonable period of time. EPA considers final adoption by the State 12 months after EPA promulgation a reasonable period of time. Once the State adopts the section 112(g) rules, the State will issue permits in accordance with the section 112(g) rules.

c. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) approval requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of Illinois' program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. Because the State of Illinois has historically accepted automatic delegation of section 112 standards and requirements, EPA proposes to approve the delegation of section 112 standards and requirements through automatic delegation. Therefore, once EPA promulgates a section 112 standard, the State of Illinois will automatically assume responsibility for collection and receipt of any information required by the standard, as well as any further activities agreed to by IEPA and EPA. The details of this delegation mechanism will be set forth in a Memorandum of Agreement between Illinois and EPA expected to be completed prior to approval of Illinois' section 112(l) program for straight delegations. This program applies to

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both existing and future standards, but is limited to sources covered by the part 70 program.

The EPA is proposing approval under section 112(l) of the Clean Air Act (CAA) of Illinois' state operating permits program for the purposes of creating federally enforceable limitations on the potential to emit of Hazardous Air Pollutants (HAPs) regulated under section 112 of the CAA. The EPA is approving this program as meeting the criteria articulated in the June 28, 1989, **Federal Register** notice for State operating permit programs to establish limits federally enforceable on potential to emit.

The June 28, 1989, notice provided that EPA would approve a state operating permit program into a SIP for the purpose of establishing federally enforceable limits on a source's potential to emit if the program met five specific requirements. This notice, because it was written prior to the 1990 amendments to section 112, addressed only SIP programs to control criteria pollutants. Federally enforceable limits on criteria pollutants (i.e., VOC's or PM–10) may have the incidental effect of limiting certain HAPs listed pursuant to section 112(b). This situation would occur when a pollutant classified as a HAP is also classified as a criteria pollutant.[1] As a legal matter, no additional program approval by EPA is required in order for these criteria pollutant limits to be recognized for this purpose.

EPA has determined that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989, **Federal Register** notice, are also appropriate for evaluating and approving the programs under section 112(l). The June 28, 1989, notice does not address HAP because it was written prior to the 1990 amendments to section 112 and not because it establishes requirements unique to criteria pollutants. Hence, the following five criteria are applicable to state operating permit program approvals under section 112(l): (1) The program must be submitted to and approved by EPA; (2) The program must impose a legal obligation on the operating permit holders to comply with the terms and conditions of the permit and that permits which do not conform to either the operating permit program requirements, the requirements of EPA's underlying regulations or the June 28, 1989, criteria may be deemed "not federally enforceable" by EPA; (3) The program must contain terms and conditions that are at least as stringent as any requirements contained in the SIP or enforceable under the SIP or any section 112 or other Clean Air Act standard or requirement; (4) Permits issued under the program must contain conditions that are permanent, quantifiable, and enforceable as a practical matter; and (5) Permits issued under the program must be subject to participation, including at a minimum advance notice of the permit in the form of a 30-day public comment period.

In addition to meeting the criteria in the June 28, 1989, notice, a state operating permit program must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

The EPA plans to codify the approval criteria for programs limiting potential to emit of HAP in Subpart E of part 63, the regulations promulgated to implement section 112(l) of the Act. The EPA currently anticipates that these criteria, as they apply to state operating permit programs, will mirror those set forth in the June 28, 1989, notice, with the addition that the State's authority must extend to HAP instead of or in addition to VOC's and PM–10. The EPA currently anticipates that state operating permit programs that are approved pursuant to section 112(l) prior to the subpart E revisions will have had to meet these criteria, and hence, will not be subject to any further approval action.

The EPA believes it has authority under section 112(l) to approve programs to limit potential to emit of HAPs directly under section 112(l) prior to this revision to subpart E. Section 112(l)(5) requires EPA to disapprove program that are inconsistent with guidance required to be issued under section 112(l)(2). This might be read to suggest that the "guidance" referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, the EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address all instances of approval under section 112(l). The EPA has already issued regulations under section 112(l) that would satisfy this requirement. Given the severe timing problems posed by impending deadlines set forth in MACT standards and for submittal of title V applications, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to issuance of a rule specifically addressing this issue. Accordingly, EPA is proposing approval of Illinois' program now so as to enable Illinois to begin issuing federally enforceable permits as soon as possible.

EPA proposes the approval of Illinois' federally enforceable state operating permit program (FESOP) program for the purpose of limiting potential to emit of HAP. The Illinois FESOP program was previously approved for the purpose of limiting potential to emit of criteria pollutants on December 17, 1992. 57 FR 59928. In that notice, EPA stated that the Illinois state operating permit program met the five criteria required for Federal approvability under the June, 1989, register notice. See 57 FR 59930–59931. Illinois' FESOP program: (1) Was submitted to and approved by EPA into the SIP; (2) provides that all sources are under a legal obligation to adhere to the terms and limitations of such permits and that permits which do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed "not federally enforceable" by EPA; (3) provides that the Illinois Environmental Protection Agency (IEPA) and Illinois Pollution Control Board must act in a manner consistent with all pertinent Federal statutes and regulations including the SIP; (4) ensures that all permit conditions are permanent, quantifiable and enforceable as a practical matter; and (5) ensures that all FESOP permits are issued subject to public participation, including advance notification in the form of at least a 30-day public comment period. By approving the Illinois FESOP program, EPA recognized the Illinois FESOP program as a federally enforceable method of limiting potential to emit of criteria pollutants. 415 ILCS 5/9.1(d)(2) provides the statutory authority for the State to include the requirements of section 111 and 112 of the Act, including any regulations promulgated thereunder, into state permits.

Regarding the statutory criteria under section 112(l), the EPA believes that Illinois' FESOP program contains authority to assure compliance with section 112 requirements since the third criteria of the June 28, 1989 notice is met, that is, since the program does not provide for waiving any section 112 requirement. Sources would still be required to meet section 112 requirements applicable to non-major sources. Regarding adequate resources, Illinois has included in its request for approval under section 112(l) a commitment to provide adequate resources to implement and enforce the program. This request is contained in a September 14, 1994, letter from Bharat Mathur, Chief of the Bureau of Air, IEPA, to Stephen Rothblatt, Chief, Regulation Development Branch, EPA Region 5. Fees will be collected from FESOP sources through both the title V and FESOP process. Sources that apply for FESOPs through the title V process will pay a fee of $1000. Sources applying through the FESOP program will be charged a fee based upon actual emissions. Since the processing of a FESOP permit consumes considerably less resources than the processing of a title V permit, the State believes that sufficient resources will be available to administer FESOP permits for those who request and qualify. The EPA believes this mechanism will be sufficient to provide for adequate resources to implement this program, and will monitor the State's implementation of the program to assure that adequate resources continue to be available.

Illinois' FESOP program also meets the requirement for an expeditious schedule for assuring compliance. A source seeking a voluntary limit on potential to emit is probably doing so to avoid a Federal requirement applicable on a particular date. Nothing in this program would allow a source to avoid or delay compliance with the Federal requirement if it fails to obtain the appropriate federally enforceable limit by the relevant deadline. Finally, Illinois' FESOP program is consistent with the objectives of the section 112 program since its purpose is to enable sources to obtain federally enforceable limits on potential to emit to avoid major source classification under section 112. The EPA believes this purpose is consistent with the overall intent of section 112.

The EPA recognizes that state operating permits may already exist that contain restrictions on the potential to emit of HAPs. As long as the State issued these permits in accordance with all State regulations and the criteria discussed above, EPA will consider these permits to be federally enforceable upon promulgation of this action.

d. Title IV

Illinois' program contains adequate authority to issue permits which reflect the requirements of title IV and its implementing regulations. Illinois' submittal letter contains a commitment to revise its regulations as necessary to accommodate Federal revisions and additions to title IV and the Acid Rain regulations once they are promulgated.

B. Options for Approval/Disapproval and Implications

The EPA is proposing to grant interim approval to the operating permits program submitted by Illinois on November 15, 1993. If this approval is promulgated, the State must make the following changes to receive full approval: (1) The State must amend 415 ILCS 5/39.5(5)(e) to ensure that certifications by responsible officials comply with all Federal requirements, namely that the official has made a reasonable inquiry and that the certification is based upon information and belief; (2) the State must amend 415 ILCS 5/39.5(13)(c)(vi) to require the use of the significant modification procedure to incorporate emission trades into a CAAPP permit; (3) for full approval of the State's program, the State must develop regulations detailing the actual procedural and compliance requirements necessary for incorporation of preconstruction permits into part 70 permits as a supplement to the State's title V submittal or submitted as a revision to the State's preconstruction permit program state implementation plan; (4) the State must amend 415 ILCS 5/44(j)(4)(D) to include a prohibition against knowing tampering of a monitoring method; and (5) the State must correct all deficiencies in its insignificant activities regulations currently under development. If finalized insignificant activities rules address EPA's concerns and these rules are submitted prior to final action on this notice, then EPA can grant full approval of these rules. If EPA's concerns are not addressed prior to final action, then the State's insignificant activities rules will receive interim approval.

Illinois' program is not fully approvable because of the deficiencies mentioned above. The program, however, substantially meets the requirements of part 70 because Illinois' CAAPP complies with all other part 70 requirements. This interim approval, which may not be renewed, extends for a period of up to 2 years. Because the interim approval automatically expires two years after promulgation of a final interim approval, the State may submit its interim corrections at any time, however, the State may not submit its corrections any later than 18 months after promulgation of final interim approval. The EPA will then have six months to promulgate a final action.

During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by October 31, 1994.

B. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysisassessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact

[1] The EPA intends to issue guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below section 112 major source levels.

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on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Operating permit program approvals under section 502 of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal operating permit program approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning operating permit programs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 21, 1994.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 94–24253 Filed 9–29–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 372

[OPPTS–400086; FRL–4773–6]

Acetone; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to delete acetone from the list of toxic chemicals subject to section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) in response to a petition filed by Eastman Chemical Company and Hoechst Celanese. Specifically, EPA is granting this petition by proposing to delist because the Agency believes that acetone does not meet any of the EPCRA section 313(d)(2) criteria for remaining on the list. Moreover, as published elsewhere in this issue of the **Federal Register**, EPA is proposing to add acetone to the list of compounds excluded from the definition of A Volatile Organic Compound (VOC) under the Clean Air Act. VOCs contribute to the formation of ozone in the lower atmosphere (troposphere), and ozone is known to cause significant adverse effects on human health and environment. EPA has previously determined that VOCs meet the criteria for listing under EPCRA section 313. Therefore, finalization of this proposed rule is contingent upon the finalization of the proposed rule to exclude acetone from EPA's definition of a VOC.

DATES: Written comments should be received by November 29, 1994.

ADDRESSES: Written comments should be submitted in triplicate to: OPPT Docket Clerk, TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE–B607, 401 M Street SW., Washington, DC 20460. Comments should include the document control number for this proposal, OPPTS–400086.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, 202–260–9592, for specific information on this proposed rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental protection Agency, Mail Code 5101, 401 M Street SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This proposed rule is issued under sections 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499).

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act of 1990, 42 U.S.C. 13106. Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. EPA has added and deleted chemical from the original statutory list. Under section 313(e), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. On May 23, 1991 (56 FR 23703), EPA published guidance regarding the recommended content of petitions to delete individuals members of the section 313 and metal compound categories.

II. Description of Petition

On September 24, 1991, EPA received a petition from Eastman Chemical Company and Hoechst Celanese to delete acetone from the EPCRA section 313 list of toxic chemicals. The petitioners contend that acetone should be deleted from the EPCRA section 313 list because it does not meet any of the EPCRA section 313(d)(2) criteria and because acetone's low photochemical reactivity does not present substantial concerns for formation of tropospheric ozone or other air pollutants.

Acetone is high volume chemical that is widely used as an industrial solvent and chemical intermediate, and which is regulated under several environmental statutes other than EPCRA. Acetone is on the list of hazardous substances (40 CFR 302.4) under section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602, with a reportable quantity of 5,000 pounds. Due to its ignitability acetone is regulated under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*, as a hazardous waste and its implementing regulations at 40 CFR 261.33.

A. Status of Acetone Under the CAA

Currently, acetone is considered a Volatile Organic Compound (VOC) and emissions of VOCs are managed under regulations (40 CFR parts 51 and 52) that implement Title I of the Clean Air Act, as amended (CAA), 42 U.S.C. 7401 et. seq. The CAA requires States to submit to EPA for approval State Implementation Plans (SIPs) that establish a strategy to reduce the emissions of a regulated pollutant to attain and maintain the National Ambient Air Quality Standards (NAAQS). Under the SIP program, the attainment of the NAAQS for ozone are dependent in part on the control of releases of VOCs. Section 182(a)(3)(B) of the CAA requires States to adopt regulations requiring sources of VOC (or oxides of nitrogen (NO_x)) emissions to provide the State reports showing the actual emissions of VOC and NO_x. This annual reporting of VOC emissions by the sources to their State air agencies has been required as of November 1993. Only facilities located in areas that are designated non-attainment for ozone or in attainment areas within ozone transport regions are required to report. EPA's definition of VOCs excludes certain listed chemicals that have been determined to be negligibly photochemically reactive (57 FR 3941, February 3, 1992). Elsewhere in this issue of the **Federal Register**, EPA is proposing to add acetone to the list of compounds excluded from the definition of a VOC, since it has been preliminarily determined that acetone has a negligible contribution to tropospheric ozone formation.

B. VOC Petitions Under EPCRA Section 313

This is the third petition that EPA has received to delist a VOC from the EPCRA section 313 list. EPA received on July 13, 1988, a petition to delist ethylene and propylene from the EPCRA section 313 list and on September 9, 1988, a petition to delist cyclohexane. Both petitions were denied due to concerns about chemical reactions in the troposphere that lead to the formation of ozone and other air pollutants such as formaladehyde (i.e., these chemicals clearly fit the definition of VOCs). Ozone is known to cause significant adverse affects on human health and the environment.

III. EPA's Technical Review of Acetone

The technical review of the petition to delete acetone included an analysis of the toxicological effects of acetone and the production and release values known for acetone. (Refs. 1, 5 and 6)

A. Toxicological Evaluation of Acetone

1. *Acute toxicity.* The acute oral LD_{50} of acetone in rats is about 6.7 grams/kilogram (g/kg). Lethal concentrations by inhalation are on the order of 40,000 to 46,000 parts per million (ppm) for 1 hour for rats, mice, and guinea pigs, and 21,000 ppm for 2 hours for rats. Acetone produced moderate corneal injury to the eye in rabbits and mild skin irritation.

In humans, eye, nose, and throat irritations have been observed at 500 and 1,000 ppm. Symptoms of accidental exposure may include slight intoxication, headache, lassitude, drowsiness, loss of appetite, nausea, vomiting, respiratory depression, and coma. Central nervous system depression and narcotic effects are likely to occur at concentrations in excess of 10,000 ppm. Liver and kidney damage have also been observed in humans exposed accidentally.

2. *Chronic toxicity.* Workers exposed chronically to 750 ppm acetone experienced irritation of mucous tissues of the eye, upper respiratory system, and gastrointestinal system. In another survey, workers also experienced respiratory tract irritation, dizziness, and loss of strength at concentrations of 1,000 ppm, 3 hours per day, over a period of 7 to 15 years.

3. *Subchronic toxicity.* A 90-day subchronic toxicity study in rats produced a no-observed-adverse-effect level (NOAEL) of 100 milligrams/kilogram/day (mg/kg/day) and a lowest-observed-adverse-effect level (LOAEL) of 500 mg/kg/day based on increased liver and kidney weights and nephrotoxicity. Based on these studies, EPA has developed a Reference Dose (RfD) of 0.1 mg/kg/day.•

4. *Carcinogenicity.* EPA has classified acetone as "not classifiable as to carcinogenicity" (Group D). There is currently no evidence to suggest a concern for carcinogenicity.

5. *Mutagenicity.* The weight of evidence indicates that acetone is not mutagenic in several mutagenicity assay systems.

6. *Developmentol toxicity.* A NOAEL of 2,200 ppm by inhalation has been reported for developmental toxicity of acetone in rats and mice.

7. *Neurotoxicity.* There are no data sufficient to support a chronic concern for significant irreversible neurotoxicity.

8. *Environmental effects.* Acetone is readily biodegradable in aquatic systems. Its octanol/water partition coefficient (−0.24) indicates a low potential for bioaccumulation, and its high water solubility indicates that acetone is not likely to biomagnify. The most sensitive aquatic species are probably the water flea (LC_{50} equals 10 milligrams/liter (mg/L)) and the flagellated protozoa (LC_{50} equals 28 mg/L). Also, a no-observed-effect concentration (NOEC) of 100 microliters/liter (ul/L) has been reported for higher plants.

B. Production, Use and Release of Acetone

For 1992, the United States (U.S.) production of acetone was 2.4 billion pounds. In addition, 96 million pounds of acetone were imported. Domestic consumption was 2.2 billion pounds. The majority of the domestic use of acetone was as an intermediate. Acetone is also used in the production of drugs, pharmaceuticals, cosmetics and specialty chemicals. Acetone also has numerous uses as a process solvent and in direct applications (Ref. 5).

The Toxic Release Inventory (TRI) reports that during 1992 a total of 138,728,984 pounds of acetone were released into the environment, the 7th highest amount of releases for EPCRA section 313 chemicals. Of that total, 133,989,435 pounds were released to air (4th highest on TRI); 999,584 pounds were released to surface waters (11th highest on TRI); 559,265 pounds were released to land; and 3,180,700 pounds were injected underground (15th highest on TRI). In addition, 88,666,077 pounds of acetone were transferred to Publicly Owned Treatment Works (POTWs) and other off-site locations.

C. Technical Summary

EPA's toxicological evaluation of acetone indicates that it exhibits acute toxicity only at levels that greatly exceed releases and resultant exposures. Based on EPA's hazard assessment, the Agency has determined that acetone: (1) Cannot reasonably be anticipated to cause cancer or neurotoxicity and is not mutagenic, and (2) cannot reasonably be anticipated to cause adverse developmental effects or other chronic effects except at relatively high dose levels. Acetone causes adverse environmental effects only at relatively high dose levels.

IV. Rationale for Granting

EPA is granting the petition by proposing to delete acetone from the EPCRA section 313 list. EPA believes that acetone does not meet the toxicity criteria of EPCRA section 313(d)(2)(A) because acetone exhibits acute toxicity only at levels that greatly exceed releases and resultant exposures. Specifically acetone cannot reasonably be anticipated to cause "* * * significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring releases."

Based on EPA's hazard assessment of acetone, the Agency has determined that acetone exhibits low toxicity in chronic studies. Therefore, EPA believes that acetone does not meet the toxicity criteria of EPCRA section 313(d)(2)(B).

EPA believes that acetone does not meet the toxicity criteria of EPCRA section 313(d)(2)(C) because acetone

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causes adverse environmental effects only at relatively high dose levels.

Elsewhere in this issue of the **Federal Register**, EPA is proposing to add acetone to the list of compounds excluded from the definition of a VOC since it has been preliminarily determined to have negligible contribution to tropospheric ozone formation. In addition to the findings discussed above, based on this proposal, EPA believes that acetone does not meet the toxicity criteria of EPCRA section 313(d)(2)(B) and (C) because acetone's contribution to the formation of tropospheric ozone and other air pollutants is negligible. VOCs contribute to the formation of ozone in the lower atmosphere (troposphere) and ozone is known to cause significant adverse effects on human health and the environment. EPA has previously determined that VOCs meet the criteria for listing under EPCRA section 313. Therefore, finalization of this proposed rule is contingent upon the issuance of a final rule to add acetone to the list of compounds excluded from the definition of a VOC.

Today's action is not intended, and should not be inferred to affect the status of acetone under any statute or program other than the Toxic Release Inventory reporting under EPCRA section 313 and the PPA section 6607. Specifically, the removal of acetone from the EPCRA section 313 list will not in any way alter its continued status under the Resource Conservation and Recovery Act or section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act. The petitioners, Eastman Chemical Company and Hoechst Celanese, do not request the removal of acetone from any other statute; moreover, the Agency feels such action at this time would be inappropriate. In support, the Agency notes that the three lists, and the three statutes under which they are maintained, serve relevantly different purposes. Furthermore, each statute prescribes different standards for adding or deleting chemicals or pollutants from its respective list.

V. Request for Public Comment

EPA requests public comment on this proposal to delete acetone from the list of chemicals subject to EPCRA section 313. Comments should be submitted to the address listed under the ADDRESSES unit. All comments should be received on or before November 29, 1994.

VI. Rulemaking Record

The record supporting this proposed rule is contained in the docket number OPPTS–400086. All documents, including an index of the docket, are available in the TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office, from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE–B607, 401 M Street SW., Washington, DC 20460.

VII. References

(1) IRIS. 1991. Integrated Risk Information System. U.S. Environmental Protection Agency, Washington, DC.

(2) USEPA, OPPTS, EAB. Cinalli, C., "Exposure Report for Acetone," dated April 13, 1994.

(3) USEPA, OPPTS, EAB. Nold, A. and Cinalli C., "Addendum to Exposure Report for Acetone," dated June 15, 1994.

(4) USEPA, OPPTS, ETD. Memorandum and attachment from Brian J. Evans to Daniel R. Bushman, Economics and Technology Division, "Section 313 Petition on Acetone Chemistry Report," dated November 27, 1991.

(5) USEPA, OPPTS, EETD. Memorandum and attachment from William Silagi to Tami McNamara, EAD, "Economic Report for TRI Acetone Petition," dated May 5, 1994.

(6) USEPA, OPPTS, HERD. Memorandum and attachment from Elbert L. Dage to Dan Bushman, ETD entitled "HERD Hazard Assessment of Acetone," dated December 19, 1991.

VIII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, it has been determined that this proposed rule is not "significant" and therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected by a proposed rule. Because this proposed rule eliminates an existing requirement, it would result in cost savings to facilities, including small entities.

C. Paperwork Reduction Act

This proposed rule does not have any information collection requirements under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: September 15, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore it is proposed that 40 CFR part 372 be amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 would continue to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

§ 372.65 [Amended]

2. Sections 372.65 (a) and (b) are amended by removing the entire entry for acetone under paragraph (a) and removing the entire CAS No. entry for 67–64–1 under paragraph (b).

[FR Doc. 94–24252 Filed 9–29–94; 8:45 am]

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40 CFR Part 745

[OPPTS–62128A; FRL–4914–4]

RIN 2070–AC64

Lead; Requirements for Lead-Based Paint Activities; Notice of Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Informal Hearing.

SUMMARY: On September 2, 1994, EPA published a proposed rule governing lead-based paint activities to ensure that individuals engaged in such activities are properly trained; that training programs are accredited; and that contractors engaged in such activities are certified. The proposed rule would also establish standards for performing lead-based paint activities and require that all lead-based paint activities be performed by certified individuals. When promulgated, the rule would fulfill the mandate of section 402(a)(1) of Title IV of the Toxic Substances Control Act (TSCA). Additionally, as part of the proposed rule, EPA has, in accordance with section 404(d) of TSCA, developed a proposed Model State Program. When promulgated, this program may be adopted by any State that seeks to administer and enforce a State program under Title IV of TSCA. In that notice, the Agency stated that it would hold an informal hearing. EPA will hold a 1–day public hearing.

DATES: The hearing will take place on October 26, 1994, from 1 p.m. until 5 p.m. Those persons interested in attending the hearing are requested to notify the Agency on or before October 20, 1994 by calling 202–554–1404. In addition, three copies of any request to participate must be forwarded to the EPA Docket.

ADDRESSES: The hearing will be held at the Crystal City Hyatt, 2799 Jefferson Davis Highway, Arlington, VA. Three copies of any request to participate in the informal hearing, identified with docket number OPPTS–62128A must be submitted to: TSCA Docket Receipt (7407), Office of Pollution Prevention and Toxics, Rm. E–G99, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551. For technical questions: Diane Sheridan, Telephone: (202) 260–0961.

SUPPLEMENTARY INFORMATION: Each person or organization desiring to participate in the informal hearing shall file a written request to participate with the TSCA Docket Receipts at the location listed under ADDRESSES. The request must be received by the Agency no later than October 20, 1994. The request shall include: (1) A brief statement of the interest of the person or organization in the proceeding; (2) a brief outline of the points to be addressed; (3) an estimate of the time required; and (4) if the request comes from an organization, a non-binding list of the persons to take part in the presentation. Organizations are requested to bring with them, to the extent possible, employees with individual expertise in and responsibility for each of the areas to be addressed.

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead, Recordkeeping and notification requirements.

Dated: September 26, 1994.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–24245 Filed 9–29–94; 8:45 am]

BILLING CODE 6560–50–F

LEGAL SERVICES CORPORATION

45 CFR Part 1608

Prohibited Political Activities

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would revise the Legal Services Corporation's ("Corporation" or "LSC") regulation relating to prohibited political activities. The proposed revisions both clarify existing law and substantively expand the scope of certain prohibitions. The proposal also includes a number of technical and structural revisions to make the rule easier to apply and use.

DATES: Comments should be received on or before November 29, 1994.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St., N.E., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Office of the General Counsel, (202) 336–8810.

SUPPLEMENTARY INFORMATION: On June 19 and July 15, 1994, the Operations and Regulations Committee ("Committee") of the LSC Board of Directors held public hearings on proposed revisions to 45 CFR Part 1608, LSC's regulation on electoral political activities. At the July 15 meeting in Washington, DC, the Committee approved a draft to be published in the **Federal Register** as a proposed rule for public comment and agreed to extend the customary 30-day comment period to 60 days.

The Committee recognizes that Congress is currently considering reauthorization legislation for the Corporation. Whenever Congress does pass a new LSC Act, the Corporation's regulations will be revisited and revised accordingly.

Authority

A technical correction has been made to the authority section. The reference to § 2996f(b)(2) is incorrect and has been replaced by reference to § 2996f(b)(4).

Section 1608.1 Purpose

No change is proposed for this section.

Section 1608.2 Definitions

The definition of "attorney" is based on the one found in Part 1600. It would apply to attorneys employed by a recipient as well as to PAI attorneys who are providing services to eligible clients referred by a recipient.

The definition of "political" in Part 1608 is intended to supersede the definition of "political" in 45 CFR Part 1600. The term applies only to restrictions in this part and needs revision to better reflect the scope of the statutory provisions implemented by this regulation. The definition is also revised from the definition in Part 1600 to delete references to "ballot measures" and "publicity and propaganda." Part 1608 implements several statutory restrictions on a variety of electoral political activities, so it is difficult to have a definition of political activities that is true to the meaning of the specific political activities regulated in each statutory restriction. Therefore, instead of a definition that refers to specific activities such as ballot measures, a more general definition is retained and "ballot measures" are dealt with in the section that sets out the restrictions on those activities. In addition, the term "publicity and propaganda" generally refers to grassroots lobbying activities which are not directly implicated by any of this part's restrictions and are better dealt with in the Corporation's regulations on lobbying, 45 CFR Part 1612.

The definition of "legal assistance activities" is proposed to be deleted. It has been difficult to interpret and is not based on any statutory language. The language is instead incorporated into the only provision (the proposed § 1608.7) that uses the phrase. Nothing in this part is intended to suggest that an employee may not use his or her own salary to make personal contributions to political organizations or campaigns.

A definition of "staff attorney" is added and is intended to supersede the definition of "staff attorney" currently found in 45 CFR Part 1600. The definition is modified to clarify that a "staff attorney" means an attorney who

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is a salaried employee of a recipient and not a private attorney who has contracts with a recipient to provide part-time legal services to program clients. Section 1608.3 Attorney-client relationship.

This section has been moved from § 1608.7 in the current regulation to make it clear that all of the restrictions and prohibitions contained in Part 1608 are subject to the exception for legal representation. This section would apply to PAI attorneys when they are engaged in legal assistance activities supported by a recipient.

Section 1608.4 Prohibitions Applicable to the Corporation and to Recipients

The only change to this section is the addition of language intended to better reflect the statutory prohibition. The revision clarifies that no resources of the Corporation or of a recipient may be used for political activities or purposes. Section 1608.5 Prohibitions applicable to all employees

The current § 1608.4, which applies to all Corporation and recipient employees, and most of the current § 1608.5, which applies to Corporation employees and staff attorneys, have been merged into § 1608.5 in the proposed rule. The Committee believes that the rule's prohibitions concerning the misuse of official authority and coercion should apply to all Corporation and recipient employees. Section 1608.6 Prohibition applicable to Corporation employees and to staff attorneys.

There is no substantive change in this section other than to accommodate the merger reflected in the proposed § 1608.5. The prohibition on candidacy for partisan elective public office is still applicable only to Corporation employees and staff attorneys.

Section 1608.7 Prohibitions Applicable to All Attorneys

This proposal incorporates the relevant language from the current definition of "legal assistance activities" deleted from § 1608.2 into paragraph (a). Further, paragraph (a), together with paragraph (b), makes explicit what is not restricted by the Act, both with respect to individual attorneys and recipients.

First, consistent with the provision of the LSC Act that restricts these activities, the proposal makes it clear that recipients' non-LSC resources are not restricted, so long as they are used by attorneys who receive no LSC funding.

Second, this section would apply to all attorneys employed by a recipient as well as PAI attorneys who are providing recipient supported legal assistance to the recipient's clients. However, an attorney may do the activities regulated by this section on "his or her own time." For an attorney employed by a recipient, that means any time outside of normal working hours (e.g., evenings, weekends, and leave time) so long as the attorney is not representing or providing legal assistance to the recipient's clients. Thus, an attorney employed by a recipient should not transport a recipient's clients to the polls on a workday, even if it is in the evening outside of normal working hours, if he or she could be presumed to be working for the recipient. But that same attorney could take leave to do so, or could do so if clearly identifying him or herself as a private citizen rather than as a legal services attorney, because the attorney would clearly be doing it on his or her own time.

For a PAI attorney, it means any time that the attorney is not actually working on PAI activities. Thus, a PAI attorney could participate in political activities as a regular part of his or her private practice, so long as the activity is not done while providing PAI services supported by the recipient. The restriction would not affect any other paid or pro bono work that the PAI attorney does.

Finally, paragraph (b) makes it clear that an attorney is free to contribute his or her own funds, including those derived from a salary from the recipient, to political activities.

Paragraph (c) is added to clarify the scope of the statutory restriction regarding voter registration activity. Clearly, Congress intended to prohibit legal services attorneys, while working on program time or using LSC resources, from participating directly in voter registration drives that could easily be tailored to achieve some partisan political purpose. However, the restriction applies only to attorneys and not to recipients specifically. Legal services programs are often requested by public officials to place nonpartisan information regarding voter registration procedures and qualifications in their waiting rooms to encourage voter registration among the clients. While many programs permit the materials in their offices, many others are hesitant to do so. In light of the developments such as the new "Motor Voter Registration" law and the fact that the LSC Act does not restrict voter registration activity by recipients, the regulation should state clearly that engaging in nonpartisan activities, such as making available nonpartisan voter registration information, is permissible.

Section 1608.8 Enforcement

This section is proposed to be deleted. The current language refers to the enforcement provisions in § 1612.5 However, the enforcement provisions of Part 1612 were removed from § 1612.5 and are currently found in § 1612.12. Regardless, the Committee believes that the enforcement procedures dealing with other matters are not appropriate for this part and has decided to deal with compliance issues outside the context of this rule.

List of Subjects in 45 CFR Part 1608

Legal services, Political activities.

For the reasons set forth in the preamble, LSC proposes to revise 45 CFR part 1608 to read as follows:

PART 1608—PROHIBITED POLITICAL ACTIVITIES

Sec.

1608.1 Purpose.
1608.2 Definitions.
1608.3 Attorney-client relationship.
1608.4 Prohibitions applicable to the Corporation and to recipients.
1608.5 Prohibitions applicable to all employees.
1608.6 Prohibitions applicable to Corporation employees and to staff attorneys.
1608.7 Prohibitions applicable to all attorneys.

Authority: 42 U.S.C. 2996(5), 2996d(b)(2), 2996e(b)(3), 2996(b)(5)(B), 2996e(d)(3), 2996e(d)(4), 2996e(e)(1), 2996e(e)(2), 2996f(a)(6), 2996f(b)(4).

§ 1608.1 Purpose.

This part is designed to ensure that the Corporation's resources will be used to provide high-quality legal assistance and not to support or promote political activities or interests. The part should be construed and applied so as to further this purpose without infringing upon the constitutional rights of employees or the professional responsibilities of attorneys to their clients.

§ 1608.2 Definitions.

As used in this part,

(a) *Attorney* means a person who provides legal assistance to eligible clients of, or referred by, a recipient and who is authorized to practice law in the jurisdiction where assistance is provided.

(b) *Political* means associated with a political party or the campaign of any candidate for elective public or party office, or engendering support for or opposition to any such political party or candidate.

(c) *Staff attorney* means an attorney who is employed by a recipient and more than one-half of whose annual professional salary is derived from the proceeds of a grant from or contract with the Legal Services Corporation or is received from a recipient that limits its activities to providing legal assistance to clients eligible for assistance under the Act.

§ 1608.3 Attorney-client relationship.

Nothing in this part is intended to prohibit an attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

§ 1608.4 Prohibitions applicable to the Corporation and to recipients.

(a) Neither the Corporation nor any recipient shall use any political test or qualification in making any decision, taking any action, or performing any function under the Act.

(b) Neither the Corporation nor any recipient shall contribute or make available any Corporation or recipient funds, personnel or equipment, regardless of source:

(1) To any political party or association;

(2) To the campaign of any candidate for public or party office; or

(3) For use in advocating or opposing any ballot measure, initiative or referendum.

§ 1608.5 Prohibitions applicable to all employees.

No employee of the Corporation or of any recipient shall—

(a) intentionally identify the Corporation or a recipient with any partisan or nonpartisan political activity, or with the campaign of any candidate for elective public or party office;

(b) use any Corporation funds for activities prohibited to attorneys under §§ 1608.6 or 1608.7; nor shall an employee intentionally identify or encourage others to identify the Corporation or a recipient with such activities;

(c) use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for elective public office, whether partisan or nonpartisan; or

(d) directly or indirectly coerce, attempt to coerce, command or advise any employee of the Corporation or of any recipient to pay, lend, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes.

§ 1608.6 Prohibition applicable to Corporation employees and to staff attorneys.

No Corporation employee and no staff attorney shall, at any time, be a candidate for partisan elective public office.

§ 1608.7 Prohibitions applicable to all attorneys.

(a) No attorney who is engaged in legal assistance activities supported in whole or in part by resources derived from a grant from or contract with the Corporation shall, during the hours the attorney is working for the recipient or while actually providing legal assistance to or representing clients of, or referred by, the recipient, engage in:

(1) any political activity;

(2) any activity to provide voters with transportation to the polls, or to provide similar assistance in connection with an election; or

(3) any voter registration activity.

(b) Nothing in this section shall prohibit any attorney from engaging in the activities prohibited in § 1608.7(a) on his or her own time or from contributing his or her personal funds or resources to support such activities.

(c) Nothing in this section shall prohibit a recipient from making available general, nonpartisan information on voter registration procedures or qualifications.

Dated: September 27, 1994.

Victor M. Fortuno,

General Counsel.

[FR Doc. 94-24275 Filed 9-29-94; 8:45 am]
BILLING CODE 7050-01-P

45 CFR Part 1621

Client Grievance Procedures

AGENCY: Legal Services Corporation.

ACTION: Proposed Rule.

SUMMARY: This proposed regulation would revise the Legal Services Corporation's ("Corporation" or "LSC") regulation relating to client grievance procedures. The proposed rule revises the procedural requirements for client grievances and conforms the rule to applicable rules of professional responsibility and the attorney-client privilege. The proposal also includes a number of technical and structural revisions to make the rule easier to apply.

DATES: Comments should be received on or before November 29, 1994.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002-4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Office of the General Counsel, (202) 336-8810.

SUPPLEMENTARY INFORMATION: On June 19 and July 15, 1994, in Washington, DC., the Operations and Regulations Committee ("Committee") of the LSC Board of Directors held hearings on proposed revisions to 45 CFR part 1621, LSC's regulation on client grievance procedures. At the July 15 meeting, the Committee approved a draft to be published in the **Federal Register** as a proposed rule for public comment and agreed to extend the customary 30-day comment period to 60 days.

The Committee recognizes that Congress is currently considering reauthorization legislation for the Corporation. Whenever Congress does pass a new LSC Act, the Corporation's regulations will be revisited and revised accordingly.

Section 1621.1 Purpose

The revisions to this section are intended to clarify that there is no statutory entitlement to legal services or to a particular type of legal assistance. The intent of this rule is to provide for a mechanism whereby applicants for service or clients may complain about the denial of service or the quality of services provided.

The proposed revisions to this section also make it clear that the rules regarding complaints about the quality and manner of service apply only to recipients that actually provide services to clients and not to those support centers and other recipients that do not offer direct intake. They also clarify that the "applicants for service" and the "clients" are not, for the purposes of these rules, local legal services programs, but rather, that they are the financially eligible clients represented by LSC-funded programs. Finally, the revisions are intended to clarify that a recipient is not accountable to the entire client community with regard to client grievances, but only to its actual clients and, to a limited extent, to those members of the community who actually apply for services.

Section 1621.2 Grievance Committee

The proposed revision to this section would allow a recipient to include more than a proportionate number of clients on a grievance committee. The current rule requires that the committee be composed of lawyer and client members in approximately the same proportion in which they serve on the governing body.

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However, there is no statutory requirement governing the composition of board committees and, for client grievance issues, it may be preferable in some situations to have more than one-third of the committee membership be clients. In any event, at least one lawyer must be on the committee.

Section 1621.3 Complaints About the Quality or Manner of Providing Services

Paragraph (a) is revised to clarify that the grievance procedure is available only to actual clients or their representatives, and not to opposing counsel or some other person who is disgruntled by the recipient's operations. It is also designed to address complaints not only about the quality of legal assistance, but also about a client's general treatment by the recipient's staff, including the receptionist, intake workers, or any other staff member who interacts with clients.

Paragraph (a) is also revised to require a program to establish procedures for complaints about PAI attorneys. These procedures need not be the same as they are for program staff. The Corporation has a strong interest in encouraging involvement of the private bar in its recipients' PAI projects and does not want the grievance procedures to act as a deterrent to such involvement. However, the Corporation also sees the value in providing some complaint mechanism for dissatisfied clients. Therefore, the Corporation is especially interested in receiving comments from the private bar on this issue. Such comments should address issues such as local ethical requirements to report malpractice on the part of attorneys, complaint procedures, and appropriate actions that should be taken when a complaint is found to have merit.

Paragraph (b) sets out the minimum requirements for a program's grievance procedures. It adds a requirement that complaints be in writing and retains the provision for transcription of oral complaints into writing, so that grievance committees would not have to respond to every oral statement made about a recipient. If a grievance committee does not satisfactorily resolve the matter based on the written complaint, the provision provides that the complainant then has an opportunity to address the committee in person or by teleconference. Although not required by the proposed rule, procedures may include a provision allowing a complainant to appeal the grievance committee's decision to the program's whole board of directors.

This provision also clarifies that there is no attorney-client relationship between the complainant and the board's grievance committee. Thus, in order for the grievance committee to investigate a complaint, the client would have to consent to disclose any necessary confidential information. It is important to require that the consent be explicit, rather than simply treating the filing of a complaint as an implied consent. The consent called for is limited to those disclosures to the committee or the board necessary to consider the grievance.

Paragraph (c) adds a provision setting out what a grievance committee may do in response to a complaint made pursuant to this Part. This is an effort to make it clear that the committee could recommend any action that is consistent with the applicable rules of professional responsibility, but it would be up to the executive director to determine what action is appropriate and to implement such action.

Paragraph (d) requires a recipient to maintain a file, separate from the client's case file, containing a copy or summary of every written complaint and a statement of its disposition. In view of the second sentence of this paragraph, the requirement in the current rule that the file be preserved for review by the Corporation has been deleted. The second sentence adds a provision that prohibits the recipient from disclosing any information in the file that would violate the attorney-client privilege or the applicable rules of professional responsibility. Keeping the information the Corporation may need to see in a file separate from the client's case file would make it easier for the Corporation to have access to complaint information in a manner that would be less likely to jeopardize the confidentiality of client information. The Committee believes that the provisions on access to client information should be consistent with the applicable rules of professional responsibility and with section 1006(b)(3) of the LSC Act, which prohibits LSC from abrogating the authority of states and local jurisdictions to enforce those rules.

The ABA's Standing Committee on Legal Aid and Indigent Defendants ("SCLAID") has expressed great concern about the protection of client confidences, secrets, and other information gained in the course of representation, and has urged the Committee to adopt rules that would permit LSC to have access to information only in a manner consistent with the applicable rules of professional responsibility. The Committee proposal makes it clear that complaint information disclosed by a client should not be disclosed to LSC or to any third party, except as permitted by applicable rules. Generally, that would mean that when the identity of a client is not known, information may be made available so long as it does not identify a client, either directly or indirectly. Thus, a client's name and any other information that could associate the document with a particular client, such as an address or the name of an employer, should be redacted.

Once a document has been purged of any information that could be used to identify a particular individual or that could be associated with a particular person, that document could be shared with LSC, consistent with the rules of professional responsibility. However, the Committee solicits comments as to whether other information than that which would identify a client may have to be withheld pursuant to local rules of professional responsibility. The comments should include specific examples of types of information that would have to be withheld.

In the event that LSC is investigating a specific complaint involving a previously identified client, unless the specific client has consented to the disclosure, the recipient may be under an obligation to withhold from LSC substantially more of the information provided by the client in order to ensure that secrets, confidences, and information gained in the course of the representation are not inappropriately revealed. Should the information thus provided prove insufficient to permit LSC to fulfill its obligation to ensure that recipients meet the requirements of this part, it is anticipated that the recipient and LSC will work together to devise an acceptable manner in which to proceed. Of course, if LSC is investigating a complaint at the request of a client, the client may consent to the disclosure of the information.

Section 1621.4 Complaints About Denial of Assistance

Paragraph (a) is revised to require recipients to establish simple procedures for the timely review of a complaint by an applicant for service regarding a decision to deny service.

Paragraph (b) sets out the requirements for such procedures, which should include instructions on how an applicant may obtain information on the reasons for a denial of service, including information on the recipient's priorities, eligibility guidelines, statutory restrictions on representation, and a recipient's case acceptance criteria. Case acceptance criteria would include, but would not be limited to, consideration of the merits of the applicant's case and any conflicts of interest that may exist. The Committee would like to hear comments on other items that should be included as case acceptance criteria. The procedures should also contain information on how a complainant can make a complaint and confer with a recipient's director or a member of the grievance committee regarding the denial of service.

Proposed paragraph (c) requires recipients to make reasonable and appropriate efforts to inform applicants about the complaint procedures. What is reasonable and appropriate would vary depending on the resources of a recipient and the volume of its applicants. There are a variety of ways, depending on the circumstances, in which the standard could be met. They include, but are not limited to: (1) Providing written information about the complaint procedure to all rejected applicants whose eligibility is determined in person; (2) providing written notification to rejected applicants whose determinations are routinely acknowledged in writing; (3) using voice mail or other available technology, if appropriate and economically feasible; or (4) providing oral descriptions of the complaint procedures for rejected applicants who express dissatisfaction with the determination. The standard would not include a practice that would overwhelm a program's telephone system or exact too high an administrative cost.

Paragraph (d) prohibits the recipient from disclosing any information maintained by the recipient regarding a complaint of denial of assistance to the Corporation or any third party in a manner that would violate the attorney-client privilege or the applicable rules of professional responsibility. This paragraph does not require the recipient to maintain a file on complaints of denial of assistance.

Although recipients are not required to do so by the rule, they should make reasonable and appropriate efforts to ensure that non-English speaking individuals and those with communicative disorders understand the complaint procedures, have the tools to adequately express their complaints, and receive appropriate explanations of why their applications for service were denied or what actions are being taken in response to their complaints.

List of Subjects in 45 CFR Part 1621

Legal services.

For reasons set forth in the preamble, part 1621 is proposed to be revised to read as follows:

PART 1621—CLIENT GRIEVANCE PROCEDURES

Sec.
1621.1 Purpose.
1621.2 Grievance Committee.
1621.3 Complaints about the quality or manner of providing services.
1621.4 Complaints about denial of assistance.

Authority: 42 U.S.C. 2996e(b)(3); 2996f(a)(1).

§ 1621.1 Purpose.

By providing an effective complaint mechanism for an applicant for service who believes that legal assistance has been denied improperly, or for a client who is dissatisfied with the quality or manner of services provided, this part seeks to insure that recipients treat every client and applicant for service fairly and with dignity and respect and provide each client with high quality legal services.

§ 1621.2 Grievance Committee.

The governing body of a recipient shall establish a grievance committee or committees, composed of lawyer and eligible client members of the governing body. One third or more of the members of each grievance committee shall be eligible client members of the governing body.

§ 1621.3 Complaints about the quality or manner of providing services.

(a) A recipient shall establish procedures for determining the validity of a complaint by a client about the manner or quality of services that have been provided to the client by members of the recipient's staff or by private attorneys under part 1614 of these regulations.

(b) The procedures shall provide at least:

(1) Information to a client at the time of the initial visit about how to make a complaint;

(2) Prompt consideration of each complaint by the director of the recipient, or the director's designee; and

(3) An opportunity for a complainant to submit a written complaint to a grievance committee established by the governing body pursuant to § 1621.2, if the director of the recipient or the director's designee is unable to resolve the matter to the complainant's satisfaction.

(i) Upon request, the recipient shall transcribe a brief written statement of the complaint, dictated by the complainant, for submission to the grievance committee.

(ii) Each written complaint shall include a signed statement by the complainant giving limited written consent to disclose client confidences, secrets or other information relating to the representation of the complainant necessary to investigate the matters and issues raised by the complaint.

(4) The procedures shall also provide an opportunity for the complainant to appear before the grievance committee, either in person or by teleconference, if the grievance committee is unable to resolve the matter to the complainant's satisfaction based on the written complaint. The complainant may be assisted by another person.

(c) The grievance committee may recommend that the director of the recipient take appropriate action to correct any problems that it finds as a result of a review of a complaint made under this section. No actions shall be taken that are inconsistent with the applicable rules of professional responsibility.

(d) The recipient shall maintain a file, separate from the case file, containing either a copy or, if appropriate, a complete and accurate summary of every written complaint made pursuant to § 1621.3 and a statement of its disposition. The recipient shall not disclose the contents of this file to the Corporation or to any other third party in a manner that would violate the attorney-client privilege or applicable rules of professional responsibility, without the express written consent of the client.

§ 1621.4 Complaints about denial of assistance.

(a) A recipient shall establish simple procedures for timely review of a complaint by an applicant for service regarding (1) a decision by the recipient to deny service and (2) the reasons for the denial.

(b) The procedures shall include instructions regarding how applicants for service can:

(1) obtain information necessary to explain why service was denied, including information describing the recipient's priorities, eligibility guidelines, applicable restrictions on representation contained in the Act and regulations, and case acceptance criteria. Such case acceptance criteria may include, but shall not be limited to, the merits of a client's claim and any conflicts of interest that may exist;

(2) make a complaint questioning the denial of assistance; and

(3) confer with the director of the recipient or the director's designee, and, to the extent practicable, with a member of a grievance committee established pursuant to § 1621.2 regarding the reasons for the decision denying service.

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(c) Recipients shall make reasonable and appropriate efforts to inform applicants who have been denied service about the complaint procedures set out in § 1621.4(b).

(d) A recipient shall not disclose to the Corporation or to any third party any documents maintained by the recipient regarding denials of assistance that would violate the attorney-client privilege or applicable rules of professional responsibility, without the express written consent of the applicants for service.

Dated: September 27, 1994.

Victor M. Fortuno,

General Counsel.

[FR Doc. 94-24276 Filed 9-29-94; 8:45 am]

BILLING CODE 7050-01-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

RIN 3137-AB71

[Docket No. PS-126; Notice 2]

Passage of Instrumented Internal Inspection Devices

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of Proposed Rulemaking; Response to Petitions for Reconsideration.

SUMMARY: On April 12, 1994, RSPA published a final rule requiring that new and replaced pipeline facilities be constructed to accommodate inspection by instrumented internal inspection devices commonly known as "smart pigs." RSPA has received two petitions for reconsideration of that rule as it applies to gas pipelines. In response to those petitions, this notice proposes to modify the rule with respect to: Replacements in gas transmission lines located in less populated areas; and replacements in gas transmission lines located offshore. In addition, in order to allow completion of rulemaking on these proposals, this notice proposes limited extension of the compliance dates for certain current requirements. Finally, this document announces RSPA's decision with respect to other matters raised in the petitions.

DATES: Comments on the limited extension of the compliance dates for current requirements are due October 31, 1994. Comments on other modifications of the rule are due November 29, 1994. Commenters should submit as part of their written comments all the material that is considered relevant to any statement of fact or argument made.

ADDRESSES: Comments may be mailed or hand delivered to the Dockets Unit [DHM-20], Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590-0001. Telephone: (202) 366-5046. Comments should identify the Docket No. and Regulatory Identification Number (RIN) stated in the heading of this document; the original and two copies should be submitted. Persons wishing to receive confirmation of receipt of their comments should include a self addressed stamped envelope. Public Dockets may be reviewed and copied between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Albert C. Garnett, (202) 366-2036, Office of Pipeline Safety, regarding the subject matter of this notice, or Dockets Unit, (202) 366-5046 for copies of this notice or other materials in the docket.

SUPPLEMENTARY INFORMATION:

Background

RSPA published a final rule under Docket No. PS-126 (Amendments 190-5, 192-72, 193-9, and 195-50) requiring operators of gas, hazardous liquid and carbon dioxide pipelines to design and construct new pipelines and portions of pipelines on which replacements are made to accommodate the passage of smart pigs (59 FR 17275; April 12, 1994). Among the provisions for gas transmission lines, 49 CFR 192.150(a) requires that:

> • • • each new transmission line and each line section of a transmission line where the line pipe, valve, fitting or other line component is replaced must be designed and constructed to accommodate the passage of instrumented internal inspection devices.

The term "line section" was defined (in § 192.3) as a continuous run of transmission line between adjacent compressor stations, between a compressor station and storage facilities, between a compressor station and a block valve, or between adjacent block valves. It was derived from a definition already in use for hazardous liquid and carbon dioxide pipelines (§ 195.2).

Several specific exceptions to the requirements in § 192.150(a) are provided, including one for offshore gas transmission lines less than 10 inches in nominal diameter that transport gas to onshore facilities. In addition, under § 192.150(b)(8) an operator may seek a specific exception to be based upon a RSPA finding that it would be impracticable to design and construct a transmission line for the passage of smart pigs.

Requests for Stay and Petitions for Reconsideration

The Interstate Natural Gas Association of America (INGAA) filed a "Request for a Stay of the Effective Date [May 12, 1994] of the Final Rule; Passage of Instrumented Internal Inspection Devices" dated May 4, 1994. INGAA requests that RSPA stay until at least January 1, 1995, that provision of the final rule requiring a line section, as defined in 49 CFR § 192.3, to be modified to accommodate smart pigs whenever a line pipe, valve, fitting, or other line component is replaced in a line section. To support their request for a stay, INGAA notes that the 1994 summer replacement/rehabilitation work is in progress and that funds for modification of line sections have not been allocated by operators. INGAA also argues that there was procedural error in the rulemaking process.

INGAA also filed a "Petition for Reconsideration of the Final Rule; Passage of Instrumented Internal Inspection Devices" dated May 10, 1994. INGAA asks that the definition of "line section" be deleted from 49 CFR § 192.3 and that all offshore gas transmission lines be exempt from the final rule. Issues raised by INGAA to support its request for deletion of "line section" are lack of authority to promulgate such a rule and procedural error. INGAA points to technical infeasibility and impracticability to support its request for exemption of offshore gas transmission lines.

The American Gas Association (AGA) filed a "Request for Administrative Stay of the May 12, 1994 effective date and Petition for Reconsideration of RSPA's Final Rule on Passage of Instrumented Internal Inspection Devices." Arguing that immediate implementation would harm public safety by diverting funds from other safety projects, AGA requests that RSPA immediately stay the effective date with respect to replacement of line sections. In addition, AGA requests that RSPA grant reconsideration of the final rule in order to address the costs, benefits, and practicability of the replacement requirement to modify the complete line section to accommodate smart pigs. To support this, AGA argues that RSPA failed to consider the standards for pipeline safety rules set out in 49 U.S.C. § 60102(b) (formerly section 3(a) of the Natural Gas Pipeline Safety Act); there was no opportunity for public comment on the definition of line section; the Technical Pipeline Safety Standards Committee (TPSSC) was not given opportunity to review relevant provisions; and the final rule was not reviewed by the Office of Management and Budget (OMB).

The three documents submitted by INGAA and AGA are in the docket.

Stay of Compliance With Line Section Replacement

In its request to stay application of the line section replacement provision of the final rule, INGAA explained that "almost all decisions, to include funding, for pipeline replacement and rehabilitation are made at least a year preceding the summer work season • • •" INGAA states that the one year lag time includes time required for "design work, obtaining bids for work, selecting contractors, ordering material, obtaining approval from FERC (Federal Energy Regulatory Commission), performing environmental analyses and obtaining Federal and State environmental and archaeological permits when necessary, and obtaining landowner approval for right-of-way work on their property." As a result, INGAA believes that it is "far too late to comply with a May 12, 1994, effective date to make 'line sections' piggable". AGA echoes this sentiment by stating that if the May 12, 1994, effective date of the final rule remains in place, "pipeline replacement projects currently in progress for 1994 would have to be canceled, since the administrative permits and plans for such projects were in place during the winter of 1993-94."

The concerns expressed by INGAA and AGA led RSPA to advise INGAA, AGA, and the American Petroleum Institute on May 12, 1994, that it was suspending enforcement, until further notice, of the final rule insofar as it requires making the entire line section accommodate smart pigs if the line pipe, valve, fitting or other component is replaced. The suspension did not effect the requirements that pipeline operators design and construct new onshore and offshore pipelines or the actual line pipe, valve, fitting or other line component being replaced to accommodate smart pigs. Furthermore, operators were encouraged to voluntarily modify any obstructions in the line section to accommodate smart pigs whenever any replacement is made.

This notice addresses INGAA's and AGA's request for a stay in a more formal manner. First, this notice proposes to extend the compliance date for replacements made in gas transmission pipelines to allow operators to continue replacing any line pipe, valve, fitting or other line component (with a replacement that accommodates smart pigs) without requiring that any other obstructions in the line section be designed and constructed to accommodate smart pigs. As discussed below, RSPA is proposing to partially grant reconsideration of the final rule as it applies to replacements in gas transmission pipelines. At the same time, we are proposing to extend compliance dates to allow for completion of rulemaking on the reconsideration. Second, the suspension of enforcement with respect to gas transmission pipelines will remain in effect until February 2, 1995, or until RSPA finalizes action with respect to compliance dates, whichever is earlier.

Effect on Hazardous Liquid and Carbon Dioxide Pipelines

The petitions for reconsideration and requests for administrative stay received addressed only gas transmission pipelines. However, because of the possibility that the issues raised could be equally applicable to hazardous liquid and carbon dioxide pipelines, the suspension of enforcement applied equally to hazardous liquid and carbon dioxide pipelines.

RSPA has considered whether the reconsideration granted in this notice with respect to aspects of the final rule as they apply to gas transmission lines should be expanded to hazardous liquid and carbon dioxide pipelines. RSPA has decided not to expand the reconsideration to include hazardous liquid and carbon dioxide pipelines. First, there has been no request to do so. Second, hazardous liquid pipelines pose environmental risks generally unrelated to the population surrounding the pipelines. The relief proposed below with respect to gas transmission lines arise from the nature of those pipelines and their location with respect to population. Finally, based on data collected by RSPA (below) in 1989, approximately 41.7% of (136,359 miles) of natural gas transmission lines were not able to accommodate a smart pig for reasons other than lack of launchers or receivers, while only 10.5% (16,275 miles) of hazardous liquid pipelines were similarly not piggable.

Because RSPA is not proposing any changes in the final rule with respect to hazardous liquid and carbon dioxide pipelines, the suspension of enforcement with respect to those lines is immediately (insert date of publication of this NPRM) lifted and compliance will be enforced.

Replacements

A. Authority for Requirement

INGAA argues that RSPA lacks the authority to promulgate a rule requiring operators to modify line sections to accommodate smart pigs when portions of the sections are replaced. INGAA bases its argument on the assumption that the statutory authority for the rule is the change to the basic authorities for requiring modification of existing pipelines to accommodate smart pigs that was made by sections 103 and 203 of the Pipeline Safety Act of 1992 (P.L. 102-508, Oct. 24, 1992). That change authorizes RSPA to require changes to existing lines whose basic construction would accommodate a smart pig. The 1992 authority would allow RSPA to require the installation of launchers and receivers in lines that already can be smart "pigged" should the decision be made in a future rulemaking that the line must be so inspected. INGAA's assumption that RSPA was relying on this 1992 amendment in this rulemaking is incorrect.

The requirement in the final rule for replacement of the line section is based upon authority enacted in 1988 that now reads:

> The Secretary shall prescribe minimum safety standards requiring that the design and construction of a new gas pipeline transmission facility or hazardous liquid pipeline facility, and the required replacement of an existing gas pipeline transmission facility, hazardous liquid pipeline facility, or equipment, be carried out, to the extent practicable, in a way that accommodates the passage through the facility of an instrumented internal inspection device (commonly referred to as a "smart pig").

49 U.S.C. 60102 (f). This section supports the final rule that requires any needed changes to the line section to accommodate smart pigs whenever one or more components must be replaced. A more narrow reading, one in which only the individual components must be made smart "piggable", would render the provision virtually meaningless. This is so because the factors that restrict "piggability" are often related to the geometry of the line (such as bends) rather than to an individual component (such as a valve). The use of valves that cannot accommodate smart pigs is largely in pipelines in which the geometry does not allow inspection by smart pigs. Thus a more narrow reading, in which only the single component being replaced must accommodate the internal inspection by smart pigs, would result in virtually no change in the "piggability" of existing pipelines.

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Congress clearly intended that change in the "piggability" occur.

Accordingly, RSPA has the authority to issue the final rule. However, as discussed below, RSPA agrees that there may be instances in which the final rule requires that modifications be made to the entire line section which may not be feasible.

B. Scope of the Notice

AGA and INGAA argue that both the definition of "line section" and the mandatory modification of line sections were not included in the proposed rule, effectively precluding meaningful comment. AGA and INGAA claim that the notice of proposed rulemaking was so inadequate as to violate the requirement of the Administrative Procedure Act (APA) for notice and comment in the informal rulemaking process.

The notice proposed that each "replacement transmission line" (or, for hazardous liquid pipelines, each "replacement pipeline") be made to accommodate smart pigs. Much of the comment on the issue of replacement questioned the scope of the terms "replacement transmission lines" and "replacement lines." Commenters speculated about the end points of the segments of lines that had to be made to accommodate smart pigs when a replacement was required. Under the proposed language, any replacement in a transmission line could require modification of the entire line to accommodate smart pigs. AGA itself expressed concern that the proposed rule would be read to require altering an entire transmission line.

Recommendations to narrow the terms for replacement used in the proposed rule by substituting the term "line section" came from comments to the proposed rule filed by a pipeline trade association and a pipeline operator. These two commenters favored the term because it was already defined in 49 CFR 195.2 and it clearly set out the length to be made to accommodate smart pigs. Other commenters suggested similar terms such as "replacement transmission section" (recommended by AGA), "segment", and "line segment". However, none of these terms was as clearly defined as "line section", and RSPA, on the basis of the comments, chose to adopt the more recognized term to clarify the intent of the rule. This solution to the concerns raised by the commenters is clearly within the scope of the broadly worded proposal.

Accordingly, RSPA provided an opportunity for meaningful comment, consistent with the APA.

C. Advisory Committee Review

Both petitioners complain that there was no opportunity for consideration by the Technical Pipeline Safety Standards Committee (TPSSC) of the requirement to modify replacement line sections to accommodate smart pigs because line section was not mentioned in the notice or in the summary of comments that was prepared by RSPA for the August 3, 1993 TPSSC meeting. Consistent with 49 U.S.C. 60115, RSPA presented the published Notice of Proposed Rulemaking to the TPSSC. In addition, RSPA passed out a draft summary of the comments. The TPSSC accepted the proposed rule as reasonable, feasible and practicable provided several changes were incorporated. Since the TPSSC reviews and advises on the proposed rule, it is understandable that the final rule may differ from the proposal considered or accepted by that committee. In this case, the final rule was drafted and published some eight months later. Although RSPA is required to consider the TPSSC's advice (but is not obligated to adopt any of the TPSSC's recommendations), several issues raised by the TPSSC were incorporated in the final rule.

Accordingly, RSPA considered the TPSSC recommendations in an appropriate manner.

D. Economic Impact

Both INGAA and AGA claim that RSPA failed to consider adequately the economic impact of the replacement aspect of the final rule. However, many of the changes RSPA incorporated into the final rule were done at least in part because of economic arguments advanced by commenters. For example, based on INGAA's and AGA's comments to the NPRM, RSPA incorporated the procedure to address unforeseen contingencies in replacements (§ 192.150(c)); a clear exception for gas gathering lines (§ 192.9); an exception for pipelines located in storage fields because of the small diameter piping configured in a grid-like pattern (§ 192.150(b)(3)); and an exception for transmission pipelines within a distribution system (§ 192.150(b)(6)). In addition, the definition of "line section" was developed in part to address AGA concerns that "pigging" a short segment is not economically feasible and that the proposed rule could be read to require modification of the entire transmission line. Each of these incorporated changes reduced the economic impact of the final rule.

INGAA points to the costs of obtaining needed approvals for replacement projects from the Federal Energy Regulatory Commission (FERC), Federal and state environmental and archaeological agencies, and property owners. INGAA claims that some of these may take a year or more to obtain. To the extent that approvals are needed before work on the line can be done, the final rule provides for delays. In response to INGAA and AGA comments, § 192.150(c) sets out a procedure to allow an operator to delay required modifications to the line section for up to one year should situations such as delays in needed approvals occur. However, many replacements will not require approvals. For example, FERC regulation 18 CFR § 2.55 does not require prior approval whenever the replacement is less than $6.6 million (1994 limit) and does not reduce service or change the capacity of the line. Certainly the replacement of certain obstructions such as reduced port valves and short radius bends will fall into this category and not require any approval from FERC.

Both INGAA and AGA argue that the requirement to modify other obstructions in the line section whenever a replacement is made will potentially increase the cost of compliance with the final rule to over $100 million per year. However, very little cost data was provided to support the argument. Moreover, based on information now available about numbers of gas transmission lines that will not accommodate smart pigs and the estimated frequency with which operators must install replacements in lines, RSPA believes the costs to be substantially less. The economic evaluation prepared for the final rule was based on available data relating to costs and frequency of replacements made in gas transmission lines. That evaluation estimated costs at $1.05 million per year. Now under the heading—Requests for Information from Commenters—this notice requests the operators to provide up-to-date information on the gas transmission lines that are the subject of this notice. Thus, gas operators and petitioners will have an opportunity to provide specific information on the length of affected lines that are currently unable to accommodate smart pigs (for reasons other than lack of launchers and receivers) and the extent of replacements made in recent years for reasons other than to accommodate smart pigs.

Accordingly, RSPA finds that the cost of compliance with the final rule would not exceed $100 million annually. In addition, the relief proposed in this notice will further reduce the cost of compliance.

E. Executive Order 12866

AGA argues additionally that RSPA violated Executive Order (E.O.) 12866, titled "Regulatory Planning and Review," since "the costs of compliance with this rule could potentially reach over $100 million annually" and the Office of Management and Budget (OMB) did not review the final rule. RSPA disagrees. In the first place, as already noted, RSPA believes the costs of the final rule to be well below $100 million annually. Second, E.O. 12866 provides for OMB review of only "significant regulatory actions" unless OMB declines to review such a significant action. The procedure for determining that a regulatory action is not "significant" and for obtaining the concurrence of OMB with that determination is laid out in Section 6(a)(3)(A) of E.O. 12866 and "Guidance for Implementing E.O. 12866." The latter is a memorandum from Sally Katzen, Administrator for the Office of Information and Regulatory Affairs, OMB, to the heads of executive departments and agencies dated October 12, 1993. RSPA routinely follows this procedure by submitting lists of planned regulatory actions to OMB and obtaining its concurrence in designations of "significant" and "nonsignificant." OMB concurred in the designation of this final rule as "nonsignificant" on February 23, 1994. Finally, RSPA notes that E.O. 12866 is an internal management tool of Executive branch of the Federal Government and does not create any right to OMB review enforceable by any person against RSPA.

Accordingly, the final rule complies with the requirements of E.O. 12866 and OMB, as explained above.

F. Reasonableness

Petitioners argue that the final rule is unreasonable in requiring modification of line sections when single components are replaced. Petitioners assert that such modifications result in minimal benefits and excessive costs. RSPA believes that significant benefits can accrue from inspections with smart pigs. Both the Colonial Pipeline Company's and the Texas Eastern Pipeline Company's experiences with pipeline failures caused by outside force damage demonstrate the benefits of internally inspecting pipelines using smart pigs. The Colonial failure on March 28, 1993 resulted in the release of an estimated 408,000 gallons of petroleum into Sugarland Run Creek, a tributary of the Potomac River. The Texas Eastern failure occurred on March 23, 1994 when a 36-inch gas transmission line exploded. The resulting fire leveled 128 condominium units in Edison, New Jersey and caused death, injury, and substantial property damage.

The failure in each case resulted from mechanical damage to the pipeline caused by external damage that occurred at an indeterminate time before the failure. Recent technological developments in smart pigs allow for internal inspections that identify dents, gouges, and other anomalies that could lead to failure on buried pipelines. Smart pig inspections done on each pipeline following these failures have resulted in the detection and removal of anomalies that could, over time, have led to additional failures.

In addition, smart pig inspections have long been used by pipeline operators concerned about corrosion.

In each of these cases, serious pipeline failures occurred in high density populated areas placing a significant portion of the population at risk. In each case, the "piggability" of the pipelines provided a more certain means to assure that similar incidents would not recur on those pipelines. Such "piggability" is the goal of the final rule. Requiring a pipeline operator to make necessary modifications in a line section whenever a replacement is made is not only reasonable, but also necessary for safety in high-density populated areas.

Accordingly, RSPA finds no reason to reconsider the final rule as it applies to replacements in line sections in Class 3 and 4 locations.

With respect to gas transmission pipelines in less populated areas, AGA argues that a requirement to modify the complete line section to accommodate smart pigs "will result in a risk to public safety by diverting limited funds for capital improvement projects—many of them safety related—to making pipelines accommodate smart pigs in rural areas where there would be little, if any, benefit to the public." After citing two examples of replacement projects that would have had large enormous increases under the line section modification requirement, AGA goes on to state that "this enormous increase in costs will result in the final rule having an economic impact of well over $100 million annually for the industry." While RSPA does not accept these costs as typical for modifying the obstructions to smart pigs in most line sections, we see the need to reconsider the resulting benefits in less populated areas.

Accordingly, as discussed below, we are proposing to modify the final rule as it applies to replacements in Class 1 and 2 locations.

Offshore Pipelines

INGAA requests that RSPA reconsider the final rule and except all new and replaced offshore transmission lines from compliance. INGAA argues that requiring offshore transmission lines to accommodate smart pigs is technically infeasible and impracticable and does not meet the special statutory criteria for pipeline safety standards. Those criteria, found in 49 U.S.C. 60102(b), require consideration of relevant available pipeline safety data, appropriateness of the standards for the particular type of pipeline transportation or facility, the reasonableness of the proposed standards, and the extent to which the standards will contribute to public safety and the protection of the environment.

To support its position, INGAA states generally that RSPA ignored technical material presented to show that offshore pipelines cannot be "smart pigged", including an assertion that most offshore gas pipelines are not constructed to accommodate smart pigs. RSPA disagrees strongly with this argument. The issue is not whether existing offshore lines can be "smart pigged" but whether new offshore transmission lines can be constructed or existing offshore gas transmission lines can be modified to accommodate smart pigs. RSPA considered technical material relating to problems such as tight bends, restrictive subsea connections, and limited space on platforms in deciding that they can be. No technical information has been submitted to RSPA that concludes that offshore gas transmission lines would be incapable of accommodating smart pigs if they are so designed and constructed. Their construction is not dissimilar from that of offshore hazardous liquid pipelines, many of which are already constructed in a manner that would accommodate smart pigs.

INGAA is incorrect in citing 1992 changes to the statutory authority as the basis for the final rule. As discussed above, that statutory change was not used to support the final rule. In addition, INGAA is incorrect that RSPA ignored recommendations of the TPSSC. As discussed above, RSPA is not obligated to adopt the recommendations of the advisory committee, only to consider them. Discussion of RSPA's consideration of those recommendations is included in the preamble to the final rule, but is commingled with the discussion of RSPA's response to commenters to the proposed rule. Furthermore, RSPA's consideration of

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the criteria contained in 49 U.S.C. 60102(b), the technical data, and recommendations of the TPSSC resulted in the exception provided in the final rule for offshore gas transmission lines less than 10 inches in nominal diameter that transport gas to onshore facilities.

INGAA also points to the lack of population around offshore lines and the periodic cleaning of the gas transmission lines that removes condensates as justification for exception from the rules for these pipelines. The rationale is that offshore gas transmission lines do not pose either serious safety or environmental concerns justifying the cost of assuring that the lines can accommodate smart pigs. RSPA agrees that we may not have fully considered these factors in applying the rules to offshore gas transmission pipelines and accordingly propose a change to the final rule.

INGAA asserts that most offshore gas pipeline operators use cleaning pigs to periodically sweep condensate to onshore separation facilities. This keeps the offshore pipelines free from condensate and greatly reduces the environmental impact of an offshore leak by eliminating the risk of a condensate sheen. RSPA agrees that a leak in an offshore gas transmission line, that is free of significant accumulations of condensate, poses minimal risk to the natural environment.

As noted, RSPA agrees that the offshore gas pipelines do not pose the same safety risk as onshore pipelines. The offshore safety risk is to workers on platforms and to vessels. The latter risk is extremely remote absent the possibility of a collision between a vessel and an underwater pipeline. This possibility has been minimized by the issuance of § 192.612, which required operators to conduct underwater inspections in shallow waters in the Gulf of Mexico to determine whether they pose a risk to navigation and to re-bury those pipelines. RSPA is working on a proposal addressing the need for similar periodic underwater inspections.

The accident reports for offshore incidents received by RSPA indicate that risk to workers on platforms comes from gas leaks in the risers. The leaks are the result of condensate with corrosive agents that is likely to collect in the riser's elbows and cause internal corrosion. Also, external corrosion at the riser's "splash zone" is caused by the degradation of protective contings from wave action. Both types of corrosion are detectible by smart pigs. However, as INGAA points out, modification of riser bends in order to accommodate smart pigs is costly. RSPA notes that there are alternative techniques of inspecting these risers for corrosion that are generally more effective (and less costly) than use of smart pigs that survey the entire pipeline. These include divers, remotely operated vehicles carrying ultrasonic thickness devices, or specially equipped tethered smart pigs.

Furthermore, it is important to note the recommendation contained in a 1994 study of marine pipeline safety by the National Research Council of the National Academy of Sciences titled—Improving The Safety Of Marine Pipelines. The study, co-sponsored by the Minerals Management Services and RSPA, had input from persons in industry, academia, and state and federal government who are experts in their fields and knowledgeable about the marine pipeline environment, suggested that:

> • • • marine pipelines already constructed be exempted from federal or state requirements for the use of currently available smart pigs for external or internal corrosion detection. New medium- to large-diameter pipelines running from platform to platform or platform to shore should be designed to accommodate smart pigs whenever reasonably practical.

Accordingly, RSPA denies INGAA's petition to except new offshore gas transmission lines. However, as discussed below, RSPA has reconsidered benefits associated with the offshore gas transmission lines and proposes to modify the requirement under § 192.150(b)(7) of the final rule with respect to replacements in these lines.

Proposed Rules

First, as discussed above in the section titled "Stay of compliance with line section replacement," RSPA proposes to extend to February 1, 1995, the compliance date with respect to replacements in gas transmission lines.

Second, RSPA proposes to modify § 192.150(b) to add a new exception for replacements in the line sections of existing gas transmission lines in Class 1 and 2 locations. This exception would be limited to those situations in which an operator, who wishes to avail itself of the exception, can demonstrate that modifying the line section to accommodate smart pigs is not feasible, and not needed for future safety.

The safety prong of this test requires consideration of the operating and maintenance history of the line section. RSPA expects that the operator will take into account such factors as the reason for the replacement, corrosion history, leak history, and the risk of outside force damage. For example, if the replacement that triggers the application of § 192.150(a) is required because of corrosion and the line section has a history of corrosion problems, or if external damage from earth movement is a concern, future safety considerations may require the line section to accommodate smart pigs.

A decision that modifying a line section is not feasible might be based on the nature and costs of the modification. For example, if (other than the replacement) the only modification on the line section needed to accommodate smart pigs is to replace a reduced port valve, and that modification will allow internal inspection of the entire line section, then the operator might reasonably conclude that the modification is feasible. However, if modification of the line section would require the acquisition of costly new right-of-way to straighten bends, the operator might reasonably conclude that modification is not feasible.

In reconsidering the benefits and costs of modifying line sections in these less populated areas, we have considered that we expect to promulgate, in the near future, a final rule in Docket No. PS–101, Excavation Damage Prevention Programs for Gas and Hazardous Liquid and Carbon Dioxide Pipelines. The notice for this rulemaking (53 FR 24747; June 30, 1988) proposed to require gas pipeline operators to expand their damage prevention programs to cover rural areas. Any such requirement that is in the resulting final rule would increase the safety of gas pipelines in Class 1 and 2 locations from failures caused by dig-ins.

Finally, with respect to existing offshore gas transmission lines, RSPA proposes to allow operators who (1) use cleaning pigs to remove condensate in offshore transmission lines and (2) inspect platform risers for corrosion to avoid modification of the complete line section when a replacement is made. The regular removal of condensates reduces the likelihood of internal corrosion and of the negative environmental impact of a large sheen in the event of a significant leak. The regular inspection of risers for corrosion by any of the effective methods available provides the necessary assurance of safety for personnel working on the platform.

Requests for Information From Commenters

The purpose of the questions posed below is to gather new or updated information relating to the issues in this rulemaking. Much of the data which RSPA has available were gathered in order to meet the requirement for a congressionally-mandated study on the feasibility of requiring the use of smart pigs. To obtain information for this study, RSPA solicited information from interested parties through a Federal Register notice titled "Instrumented Internal Inspection Devices" (54 FR 20948; May 15, 1989). The data were summarized in Table 1 of the study titled "Instrumented Internal Inspection Devices (A Study Mandated By P.L. 100–561)," published November 1992. Table 1 indicated that 136,359 miles of gas transmission lines and 16,275 miles of hazardous liquid pipelines would not accommodate instrumented pigs for reasons not relating to the absence of launchers or receivers. Since this rulemaking only responds to petitions for reconsideration received from the two gas pipeline trade associations, updating of the mileage figures for hazardous liquid and carbon dioxide pipelines is not relevant.

RSPA invites interested persons to forward comments to the docket as directed under **ADDRESSES**) that include up-to-date information on the following:

(1) What is the mileage, current to December 31, 1993, of the gas transmission lines that would not accommodate smart pigs for reasons other than lack of launchers and receivers?

(a) Indicate the mileage of onshore gas transmission lines affected by the final rule.

(b) Indicate the mileage of offshore gas transmission lines affected by the final rule.

(2) During the five calendar years, 1989 through 1993, what was the total length of replacements (actual length of replaced pipe, valves, fittings, or other line components), installed for reasons other than to accommodate smart pigs?

(a) Indicate the mileage of such replacements in onshore gas transmission lines affected by the final rule.

(b) Indicate the mileage of such replacements in offshore gas transmission lines affected by the final rule.

(3) When replacements are made in a gas transmission line affected by the final rule, are there alternatives to making the line section accommodate smart pigs that would ensure the entire transmission line would accommodate smart pigs in a reasonable number of years? Commenters are requested to support their alternatives with appropriate data.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. The notice is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979); because it does not impose additional requirements and has the effect of extending a compliance date. The original regulatory evaluation of the final rule has been modified because this proposed rule would reduce costs and is available for review in the docket for this notice.

Federalism Assessment

This proposed rule will not have substantial direct effects on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), RSPA has determined that this notice does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Flexibility Act

There are very few small entities that operate pipelines affected by this rulemaking. To the extent that any small entity is affected, the effect is minimal because it does not impose additional requirements and has the effect of extending a compliance date. Based on these facts, I certify that under section 605 of the Regulatory Flexibility Act that this proposed rule does not have a significant impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 192

Pipeline safety, Reporting and recording requirements. In consideration of the foregoing, RSPA proposes to amend title 49 of the Code of Federal Regulations part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 is revised to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60118; 49 CFR 1.53.

2. In § 192.150, the introductory text of paragraph (b) is republished without change, paragraph (b)(8) would be redesignated as paragraph (b)(9) and revised, paragraph (b)(7) would be redesignated as paragraph (b)(8) and revised, a new paragraphs (b)(7) and (d) would be added, to read as follows:

§ 192.150 Passage of internal inspection devices.

* * * * *

(b) This section does not apply to:

* * * * *

(7) Replacements in transmission lines in Class 1 or 2 locations (other than replaced line pipe, valve, fitting, or other line component) if the operator can demonstrate that modifying the line section to accommodate instrumented internal inspection devices:

(i) is not feasible; and

(ii) is not, based on an assessment of the operating and maintenance history of the line section, needed for future safety.

(8) Offshore transmission lines, other than new transmission lines 10¾ inches or greater in nominal diameter, if the operator can demonstrate:

(i) that cleaning pigs are regularly run to sweep condensate from the lines; and

(ii) that platform risers are regularly inspected for corrosion.

(9) Other piping that, under § 190.9 of this chapter, the Administrator finds in a particular case would be impracticable to design and construct to accommodate the passage of instrumented internal inspection devices.

* * * * *

(d) An operator replacing a line pipe, valve, fitting, or other line component in a transmission line in a Class 1 or 2 location need not comply, until February 2, 1995, with the requirement in paragraph (a) of this section that requires modification of the line section containing the component.

Issued in Washington, DC on September 23, 1994.

D.K. Sharma,

Administrator, Research and Special Programs Administration.

[FR Doc. 94–24080 Filed 9–29–94; 8:45 am]

BILLING CODE 4910–60–P

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91–49; Notice 04]

RIN [2127–AF43]

Federal Motor Vehicle Safety Standards for Electric Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

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ACTION: Request for Comments.

SUMMARY: The purpose of this notice is to solicit public comments to help NHTSA assess the need to regulate electric vehicles (EVs) with respect to battery electrolyte spillage in a crash or rollover, and electric shock hazard in a crash or rollover and during repair or maintenance. Comments are requested on the potential safety hazards associated with each, and possible regulatory solutions, for original equipment EVs and EV conversions.

DATES: Comments must be received by November 29, 1994.

ADDRESSES: Comments on the notice should refer to the docket number and notice number shown above, and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4949. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Gary R. Woodford, NRM–01.01, Special Projects Staff, Office of Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–4931).

SUPPLEMENTARY INFORMATION:

I. Introduction

A sizeable increase in the number of alternatively fueled motor vehicles, including electric vehicles (EVs), in the United States is expected. This expectation stems from initiatives by the President, Congress, State and local governments, and private interests, since these vehicles could help reduce air pollution and conserve petroleum fuel.

The Clean Air Act Amendments of 1990 include provisions that promote the use of alternative fuels in motor vehicles. Under these Amendments, fleet vehicles sold in geographic areas with the most serious air pollution problems will be subject to emission standards that will require the use of clean fuels, including methanol and ethanol, reformulated gasoline, natural gas, liquefied petroleum gas, and electric power.

In addition, the Energy Policy Act of 1992 (EPACT) requires Federal, State, and alternative fuel provider fleets to acquire increasing percentages of alternatively fueled vehicles. The Department of Energy is in the process of initiating a rulemaking, as required by EPACT, to determine if private fleets should also be required to purchase certain percentages of alternatively fueled vehicles as part of their new fleet acquisitions.

Executive branch initiatives will also encourage the increased use of alternatively fueled vehicles. Executive Order 12844, dated April 21, 1993, directs that purchases of alternatively fueled vehicles by the Federal government by substantially increased beyond the levels required by current law. It also established the Federal Fleet Conversion Task Force to accelerate the commercialization and market acceptance of alternatively fueled vehicles throughout the country.

A primary impetus for introduction of large numbers of EVs in the U.S. market is a regulation of the California Air Resources Board. Similar regulations are under consideration by other States. The California regulation requires that not less than two percent of a manufacturer's sales in the State (roughly 40,000 vehicles total) must be zero emission vehicles (ZEVs), beginning in model year 1998. This requirement will increase to 10 percent or roughly 200,000 vehicles beginning in model year 2003. The definition of a ZEV is a vehicle that emits no exhaust or evaporative emission of any kind. Currently, the EV is the only vehicle which meets these requirements.

The National Highway Traffic Safety Administration (NHTSA) is authorized by law (49 U.S.C. 30101–30169) to regulate the safety performance of motor vehicles and motor vehicle equipment through the issuance of Federal motor vehicle safety standards (FMVSSs). In addition, NHTSA has the authority to issue guidelines for States to use in state motor vehicle inspection programs.

Supplementing this authority in the area of alternatively fueled vehicle safety, the Energy Policy Act of 1992 requires that NHTSA must "within three years after enactment promulgate rules setting forth safety standards in accordance with [the agency's statutory authority] applicable to all conversions." In addition, the Clean Air Act Amendments of 1990 include a provision that NHTSA promulgate necessary rules regarding the safety of vehicles converted to run on clean fuels.

NHTSA wishes to assure the safe introduction of EVs and other alternatively fueled vehicles to the market without impeding technology development.

II. Background

On December 27, 1991, the agency published in the **Federal Register** an advance notice of proposed rulemaking (ANPRM) on EV safety (56 FR 67038). The purpose of the notice was to help NHTSA determine what existing FMVSSs may need modification to better accommodate the unique technology of EVs, and what new safety standards may need to be written to assure their safe introduction. The ANPRM requested comments on a broad range of potential EV safety issues including battery electrolyte spillage and electric shock hazard, and elicited widespread public interest. A total of 46 comments were received.

After reviewing all of the comments and information received in response to the ANPRM, NHTSA concluded in a November 18, 1992 notice (57 FR 54354) that it was premature to initiate rulemaking for new EV safety standards at that time. In the areas of battery electrolyte spillage and electric shock hazard in a crash, the agency concluded that further research was needed.

In 1993 NHTSA conducted research and testing on two converted EVs. The vehicles were tested relative to several FMVSSs, including a crash test in accordance with FMVSS No. 208, Occupant Crash Protection. The two vehicles were equipped with lead-acid batteries located in the front and rear (engine and luggage compartments). One veltricle was equipped with twelve 12-volt batteries (five in the front and seven in the rear). The second vehicle was equipped with ten 12-volt batteries (four in the front and six in the rear). The tests involved frontal crashes into a fixed barrier at 48 kilometers per hour (kph). In both crashes the front batteries sustained significant damage, spilling large quantities of electrolyte. On one vehicle 10.4 liters of electrolyte spilled from the front batteries as a result of the crash. On the other vehicle 17.7 liters of electrolyte spilled from the front batteries. In addition, several electrical arcs were observed under the hood of one vehicle during the crash.

Based on the results of this research and the increasing interest in using EVs to meet clean air requirements, the agency has decided to reexamine through this notice the safety issues involving EV battery-electrolyte spillage and electric shock hazard. NHTSA notes that the Society of Automotive Engineers (SAE) through its various committees is also exploring possible voluntary industry standards and guidelines in these two areas. The agency wishes to identify the magnitude of the potential safety hazards involved, as well as possible solutions for both original equipment EVs and EV conversions.

With respect to conversions, NHTSA's statutory authority distinguishes between two populations of vehicle conversions. The distinction is based on whether the vehicle is converted before

or after the first sale to the ultimate consumer.

When a vehicle is converted to an alternative fuel before the first sale to the ultimate consumer, the converter is in the same position as an original vehicle manufacturer. The converter must certify that the vehicle still complies with all applicable FMVSSs, including any fuel system integrity standards applicable to the alternative fuel. For example, if a converter before the first sale converted a gasoline powered vehicle to an EV, and if NHTSA has promulgated an electrolyte spillage standard applicable to that model year EV, the converter would need to certify that, among other requirements, the vehicle complied with the electrolyte spillage requirements. In the case of a noncompliance, the manufacturer or converter must recall and remedy the noncompliant vehicles by repair or replacement; in addition, NHTSA has the authority to impose a civil penalty of $1000 per violation up to a maximum of $800,000.

By contrast, if a vehicle is converted after the first sale to a consumer, different requirements apply. 49 U.S.C. 30122(b) provides that:

> A manufacturer, distributor, dealer, or motor vehicle repair business may not knowingly make inoperative any part of a device or element of design installed on or in a motor vehicle * * * in compliance with an applicable Federal motor vehicle safety standard.

This includes a vehicle's fuel system. (The prohibition only applies to a converter which is functioning as a "manufacturer, distributor, dealer, or motor vehicle repair business," not to an individual or to a commercial entity which converts a vehicle for its own purposes.) This provision differs from requirements before first sale in that the converter does not "certify" compliance with the standard, but instead must not "knowingly make inoperative."

Using the above example of conversion from gasoline to EV, if a converter after first sale to the consumer converted a gasoline-powered vehicle to an EV, and if NHTSA regulated electrolyte spillage for that model year vehicle, the converter need not certify compliance to the electrolyte spillage standard. However, the converter could not knowingly perform the conversion in such a way that the vehicle would fail to meet the requirements of the electrolyte spillage standard. If this standard was tested for compliance by means of crash tests, this might be impractical for converters. Therefore, for aftermarket conversions, NHTSA is exploring the promulgation of regulations which would define "make inoperative" in terms of design requirements as a surrogate for the FMVSS requirements. The penalty for noncompliance with Section 30122(b)'s make inoperative provision is $1000 per violation, up to a maximum of $800,000.

In addition to Federal motor vehicle safety standards, NHTSA has the statutory authority to issue vehicle safety inspection standards which can serve as guidelines for those States which conduct safety inspection programs. The agency could issue such inspection standards for EVs, which a State could voluntarily use if it opts to conduct vehicle inspections for converted EVs.

Thus, in this notice NHTSA seeks comments on a variety of possible approaches to address the potential safety hazards of EV battery electrolyte spillage and electric shock hazard. Among the possible options are:

(1) *Federal safety regulation for EVs and EVs converted before the first sale to a consumer.* These would most likely be primarily performance oriented requirements, such as in FMVSS No. 301, *Fuel System Integrity*, which limits the amount of allowable fuel leakage for liquid fuels after a barrier crash and rollover test. Although the agency's goal in establishing safety standards is to have performance oriented requirements, the agency does have some latitude to establish design oriented requirements when necessary or more appropriate.

(2) *Regulations to define the term "make inoperative" in Section 30122(b) as it applies to EVs converted after the first sale to a consumer.* These regulations would most likely be design oriented, since it may not be practical for a converter to crash test, and thereby destroy, the converted vehicle. Such regulations would help vehicle converters understand what constitutes "make inoperative" in converting a vehicle to electric power. An example of such regulations could be where to locate or how to protect the EV batteries so as to minimize battery damage and therefore minimize electrolyte spillage in a crash.

(3) *Vehicle safety inspection standards to serve as guidelines for those States which conduct motor vehicle safety inspection programs.* The agency could issue such inspection standards for EVs, which a State could voluntarily use if it chooses to conduct vehicle inspections of EVs, both original equipment and conversions.

III. Potential Problem Areas and Possible Solutions

In this section of the notice NHTSA requests comments on the potential safety hazards due to EV battery electrolyte spillage in a crash or rollover, and due to electric shock in a crash or rollover and during repair and maintenance. Information is also sought on possible means to address such hazards through performance and design requirements for original equipment EVs and EV conversions. Information is requested separately for (1) EVs with a GVWR of 4536 kg or less and all school buses, which is the population of vehicles NHTSA traditionally has regulated for fuel system integrity, and for (2) EVs with a GVWR greater than 4536 kg, excluding EV school buses, since there may be potential safety hazards and possible approaches which are unique to vehicles of this size and type. Finally, other information on EVs is requested, including current and projected EV populations and production, industry and State or local guidelines on EV safety, hybrid EVs, charging, batteries, and starter interlock performance.

This section of the notice is organized as follows:

A. Battery Electrolyte Spillage
—Potential Safety Problem
—Possible FMVSS Performance Requirements
—Possible Requirements for Conversions After First Sale to Consumers
—EVs With GVWR Greater Than 4536 Kilograms
B. Electric Shock Hazard
—Potential Safety Problem
—Possible FMVSS Performance Requirements
—Possible Requirements for Conversions After First Sale to Consumers
—EVs With GVWR Greater Than 4536 Kilograms
C. Other

A. Battery Electrolyte Spillage

Potential Safety Problem

Currently-produced EVs carry onboard the vehicle a relatively large number of batteries, and therefore a substantial amount of electrolyte solution. Because of the hazards of electrolyte, there is the potential in a crash or rollover for injury to vehicle occupants, bystanders, and emergency rescue and clean-up personnel. The agency requests comments on the potential safety hazards for EVs with a GVWR of 4536 kg or less, and all EV school buses regardless of weight.

1. Describe the different types of propulsion batteries which are expected to be used in EVs over the next five and ten years, including the form (liquid or gel), chemical properties, and

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temperatures of the various electrolyte solutions. Which of the electrolyte solutions are acidic, basic, or water reactive, and to what extent? How many batteries and what quantity of electrolyte are expected to be onboard EVs over the next five and ten years? Where will the batteries be located on EVs?

2. Is there a potential safety problem with electrolyte contacting occupants, bystanders, rescue teams, or clean-up personnel as a result of an EV crash or rollover? If so, what are the potential safety consequences? Can chemical or thermal burns result? Is there the potential for toxic or asphyxiant vapors? If so, from which electrolytes and due to what quantities of spillage?

3. What is the potential fire hazard of spilled or sprayed electrolyte in a crash or rollover? Could battery electrolyte ignite in the same way as a fuel? If so, which electrolytes and in what quantities, concentrations, or mixtures, and at what temperatures? What is the likelihood that leaking electrolyte at a crash scene could serve as an electrical conductor or short circuit, thereby creating a fire hazard?

4. The agency understands that sodium-sulphur batteries operate with liquid coolant at approximately 316 degrees C., which circulates around the batteries and through a heat exchanger onboard the EV. The temperature of liquid coolants for internal combustion engines on conventional vehicles is much lower, approximately 91 degrees C. Further, sodium-sulphur batteries require an extremely strong vacuum insulated container to retain the heat and prevent spillage in an accident. Sodium can explode if it comes into contact with water. Is there a potential safety problem with high temperature battery coolants contacting occupants, bystanders, rescue teams, or clean-up personnel as a result of an EV crash or rollover? If so, what are the safety concerns? Can burn injuries result? What types of coolants are used with EV batteries, and what are their corresponding temperature ranges during driving and charging operations?

5. Describe the likelihood and potential safety consequences of having spilled electrolyte from an EV crash mix with a different electrolyte or with other vehicle fluids, such as gasoline, diesel fuel, engine coolant, or oil. Could a chemical fire or explosion occur, and if so, with which electrolytes and fluids? Is there the potential for toxic or asphyxiant vapors? Please discuss.

6. Describe all EV crashes or rollovers or noncrash events involving spilled electrolyte, including the sequence of events, a description of the EV, and the type of electrolyte which spilled. Were there injuries or fatalities as a result of the spilled electrolyte? If so, please describe.

7. Discuss the need for federal regulation to address the potential safety hazards of battery electrolyte spillage in a crash or rollover, or noncrash event.

Possible FMVSS Performance Requirements

One approach which the agency could use to address electrolyte spillage in a crash or rollover is to limit the amount of allowable spillage through a performance test. This could be similar to the requirements in FMVSS No. 301, *Fuel System Integrity*, which limits the amount of allowable liquid fuel spillage after barrier crash and static rollover tests. FMVSS No. 303, *Fuel System Integrity of Compressed Natural Gas Vehicles*, contains similar crash test limitation requirements. FMVSS No. 301, for example, after barrier crash tests requires that there be no more than (1) One ounce (28 grams) by weight of liquid fuel loss from the time of barrier impact until vehicle motion has ceased, (2) five ounces (142 grams) during the next five minutes, and (3) one ounce (28 grams) per minute during the next 25 minutes. These requirements apply to vehicles of 10,000 pounds (4536 kg) GVWR or less when subjected to a 30 mph (48 kph) frontal fixed barrier crash test, or 20 mph (32 kph) lateral or 30 mph (48 kph) rear moving barrier crash test. For school buses with a GVWR greater than 10,000 pounds (4536 kg), FMVSS No. 301 requires a 30 mph (48 kph) moving barrier impact at any point from any angle on the bus with the same allowable fuel loss. FMVSS No. 301 has similar fuel spillage limitations during a static rollover test, following a crash test, for vehicles of 10,000 pounds (4536 kg) GVWR or less.

Comments are requested on possible approaches for addressing the safety hazards of electrolyte spillage in a crash or rollover for EVs with a GVWR of 4536 kg or less, and for all EV school buses regardless of weight.

8. Discuss the appropriateness of using an approach similar to that of FMVSS No. 301 to regulate the safe performance of EV electrolyte spillage in a crash or rollover.

9. What would be an appropriate amount of electrolyte spillage to allow after a crash or rollover test? Please discuss. Should it be based on the number or type of batteries onboard the EV, or whether spillage occurs inside or outside the passenger compartment or cargo areas? If so, how much should be allowed? For example, should a "level of hazard" be defined by battery type, which would allow spillage of larger quantities of less harmful electrolytes and smaller quantities of the more harmful electrolytes? Would it be appropriate to require no spillage? Is there an amount that would approximate the no-spillage condition?

10. Would it be appropriate to set similar requirements for the spillage of high temperature liquid coolants from EV batteries? If so, what should be the allowable amounts of spillage? What should be the threshold temperature above which spillage requirements are needed?

11. Are there other performance requirements that should be considered in addressing the safety hazards of EV battery electrolyte spillage in a crash or rollover? If so, please describe them.

Possible Requirements for Conversions After First Sale to Consumers

In the case of EVs converted after first sale to a consumer, where the "make inoperative" requirements apply, it may not be practical to test for the safe performance of electrolyte spillage through a crash test since this would destroy the converted vehicle. Design oriented requirements may be more appropriate, such as defining where to locate or how to protect the EV batteries in a crash or rollover. Comments are requested on possible approaches for EVs with a GVWR of 4536 kg or less, and all EV school buses regardless of weight.

12. For EVs converted after first sale to a consumer, would it be appropriate to define the term "make inoperative" as being not able to comply with the performance requirements of a crash standard? For example, would it be appropriate to require such EV conversions to be tested in accordance with any crash test requirements the agency may establish relative to battery electrolyte spillage? please discuss.

13. Alternatively, would it be appropriate to establish separate design requirements as a surrogate for performance requirements, to address electrolyte spillage in a crash or rollover for EV after-first-sale conversions? Please discuss. Would such requirements provide a level of performance comparable to that of a vehicle crash test? If so, please describe them.

14. Discuss the appropriateness of requiring that batteries be placed onboard the EV at locations which minimize their damage in a crash or rollover, or in a protective box. What locations would minimize battery damage? What requirements should be placed on battery box design, construction, or testing? Should the boxes be constructed with dual walls to allow some crush of the outer wall in a crash or rollover?

15. Would it be appropriate to require that all batteries be equipped with threaded vent/filler caps, rather than friction-fit caps, to minimize electrolyte spillage? Alternatively, should only sealed batteries be used—those without vent/filler caps?

16. Discuss the need for EV labeling with respect to electrolyte spillage. Should EVs be labeled with the type of battery electrolyte onboard the vehicle to assist emergency rescue teams at a crash scene?

17. Would such design requirements be appropriate for States to use as guidelines in conducting motor vehicle safety inspection programs: If not, what requirements would be more appropriate? Please describe them.

EVs With GVWR Greater Than 4536 Kilograms

In this section of the notice NHTSA requests comments in response to items 1 through 17 above, as they apply to original equipment EVs and EV conversions with GVWR greater than 4536 kilograms, excluding school buses. These include transit buses, intercity buses, trucks, and other heavy vehicles. NHTSA requests information on this group of vehicles separately, since there may be potential electrolyte spillage problems, and possible solutions, which are unique to such heavy vehicles.

18. Please provide the information requested in Questions 1–17 above, as it applies to EVs with a GVWR greater than 4536 kg, excluding school buses. Should these types of EVs be regulated for electrolyte spillage in a crash or rollover? Are there unique safety hazards among EVs of this size and type?

19. Should heavy EVs, other than school buses, be crash tested for electrolyte spillage in the same way as heavy school buses in FMVSS No. 301, *Fuel System Integrity*, where a contoured barrier traveling at 48 kph strikes the vehicle at any point and angle? Please discuss. Are there other approaches which would be more appropriate for addressing electrolyte spillage in heavy EVs? For example, what type of design standard or alternative approach would be necessary to provide a level of safety equivalent to that of FMVSS No. 301, and how would this be evaluated?

B. Electric Shock Hazard

Potential Safety Problem

The electric propulsion systems for current technology EVs operate at a relatively high level of electric power. In the case of the two EV conversions which the agency crash tested in 1993, the nominal voltage levels for the electric propulsion systems were 120 and 144 volts with a maximum battery system current limit (controlled by fuse) of 400 and 350 amps for the Sebring and Solectria vehicles, respectively. Current technology EVs have battery voltage levels up to 400 volts or more, and maximum current ratings up to 400 amps. Because of these high levels of electric power, there is the potential for electric shock to occupants and rescue teams as a result of an EV crash or rollover. There is also the potential for electric shock to persons performing EV repair and maintenance.

The agency requests information on the potential safety hazards of electric shock for EVs with a GVWR of 4536 kg or less, and all EV school buses regardless of weight.

20. What levels of voltage (volts) and current (amps) are expected to be used in EV propulsion systems over the next five and ten years? Do these levels depend on vehicle size or the type of electric drive system onboard the EV (AC or DC)? Please describe.

21. Describe the potential for electric shock to vehicle occupants and rescue teams as a result of an EV crash or rollover. How could electric shock be incurred by each? What technologies and designs are being incorporated by EV manufacturers to minimize or eliminate such hazard?

22. Describe the potential for electric shock to trained service personnel and "do-it-yourself" persons while performing EV repair and maintenance. How could electric shock be incurred by each? What technologies, designs, instructions or labeling are being incorporated by EV manufacturers and converters to minimize or eliminate such hazard?

23. Provide the minimum levels of electric shock to the human body in terms of current, time, and voltage (up to 600 volts), which can produce injuries and fatalities. Describe the types of injuries that can be incurred, along with the corresponding levels of current, time, and voltage. Can such injuries be related to the Abbreviated Injury Scale (AIS) for automotive medicine? What levels and time periods can cause fatal injury? Do these vary based on whether the current is AC or DC, or on the age, weight, and general health of the person? Please discuss.

24. Describe the potential for an electrical fire as a result of an EV crash or rollover. How could an electrical fire occur? Is it possible for a high power electrical connector or conductor onboard the EV to become short circuited to another object, become overheated, and thereby cause a fire? What is the likelihood of this?

25. Describe all incidents of electric shock to occupants or rescue teams as a result of an EV crash or rollover or noncrash event, or to persons performing EV repair or maintenance. Include a description of the circumstances, the vehicles and persons involved, and what type and severity of injury or fatality that occurred due to electric shock.

26. Discuss the need for federal vehicle regulation to address electric shock hazard as a result of an EV crash or rollover, noncrash event, or during EV repair or maintenance.

Possible FMVSS Performance Requirements

NHTSA requests comments on possible approaches for addressing the safety hazards of electric shock in a crash or rollover, and during repair and maintenance, for EVs with a GVWR of 4536 kg or less, and all EV school buses regardless of weight.

27. Would it be appropriate to require EV circuit interrupter performance in a crash or rollover, which would automatically disconnect the propulsion batteries from all other electrical circuits and thereby prevent high voltage and current flow to other parts of the vehicle? Such response would be similar in timing and deceleration level to that of an occupant protection airbag in a crash. Does the technology exist to require such performance of a circuit interrupter for EV propulsion batteries in a crash or rollover? Please discuss.

28. What time period, deceleration level, and vehicle attitude should be required for circuit interrupter performance of EV propulsion batteries in a crash or rollover? Should these be related to the minimum injury levels for electric shock discussed earlier, or whether the EV drive system is AC or DC? What types of circuit interrupter device should be required? Please discuss.

29. What is an appropriate method of compliance testing circuit interrupter performance of EV propulsion batteries in a crash or rollover? Would an EV crash test (front, side, or rear) and static rollover test, as in FMVSS No. 301, be appropriate, where performance of the circuit interrupter could be measured over time at a certain deceleration or vehicle attitude? Alternatively, could a component test of the circuit interrupter be conducted, which would eliminate the need for a vehicle crash test? Please discuss.

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30. Would it be appropriate to require that EV batteries, connectors, cables, and wiring be located, routed, and insulated so as to minimize or eliminate electric shock hazard due to a crash or rollover, or during repair and maintenance? Similarly, should there be a requirement for minimum wire size in EV circuits? For example, what should be the minimum wire sizes for AC and DC propulsion drive circuits ranging from 120 to 600 volts? Should there be a requirement that EV propulsion circuits not be grounded to the vehicle chassis (electrically isolated)? What standards and guidelines are being used by current EV manufacturers and converters? Please discuss.

31. Would it be appropriate to require EVs to have a means of manually disconnecting the propulsion batteries from other EV circuits for safety during repair or maintenance? Additionally, should circuit interruption performance be required of EV circuits through means such as fuses, circuit breakers, or ground fault interrupters? What types should be required? Are EV controllers typically equipped with capacitors which can remain energized even after the main power circuit has been disconnected? What technologies are available? Please discuss.

32. Would it be appropriate to require EV labeling and written instructions to minimize electric shock hazard as a result of a crash or rollover, or during repair or maintenance? Should an EV be labeled as "Electric Vehicle," along with labels or instructions on the location and method of manually disconnecting the propulsion batteries? Please discuss.

33. Should there be requirements for battery container dielectric strength? If so, what levels should be established and how should this be tested? What standards currently exist? Please discuss.

34. Are there other performance requirements that should be considered in addressing the safety hazards of electric shock in EVs as a result of a crash or rollover, or during repair or maintenance? If so, please describe them.

Possible Requirements for Conversions After First Sale to Consumers

In the case of EVs converted after first sale to a consumer, where the "make inoperative" requirements apply, it may not be practical to test for electric shock safety through a crash test since this would destroy the converted vehicle. Design oriented requirements may be more appropriate. Comments are requested on possible approaches for EVs with a GVWR of 4536 kg or less, and all EV school buses regardless of weight.

35. Please provide the information requested in Questions 27–34 above, as it applies to EVs converted after the first sale to a consumer.

36. Are there other design requirements that should be considered in addressing the safety hazards of electric shock in EV conversions as a result of a crash or rollover, or during repair or maintenance? If so, please describe them.

EVs With GVWR Greater Than 4536 Kilograms

In this section comments are requested in response to items 20 through 36 above, as they apply to original equipment EVs and EV conversions with GVWR greater than 4536 kilograms, excluding EV school buses. These include transit buses, intercity buses, trucks, and other heavy vehicles. NHTSA requests information on this group of vehicles separately, since there may be potential electric shock hazards, and possible solutions, which are unique to such heavy vehicles.

37. Please provide the information requested in Questions 20–36 above, as it applies to EVs with a GVWR greater than 4536 kg, excluding EV school buses.

38. Are there unique safety hazards among EVs of this size and type? Should these types of EVs be regulated for electric shock hazard in a crash or rollover, or during repair and maintenance? If so, how?

C. Other

Other information on EVs is requested for both original equipment EVs and EV conversions of all sizes, addressing hybrid electric vehicles, standards and guidelines, EV populations, charging, batteries, and starter interlock performance, as follows:

Hybrid Electric Vehicles

39. Are there unique safety problems presented by hybrid electric vehicles (HEV) relative to electrolyte spillage or electric shock? An HEV is one which can operate on electric power, another fuel such as gasoline, or both. Are there any unique safety problems which could occur when both fuel sources are being utilized? Are there other potential safety problems which should be considered relative to HEVs, or EVs equipped with range extenders? Please discuss.

Standards and Guidelines

40. Describe industry, State, or local standards or guidelines that could be used to address the safety hazards of EV battery electrolyte spillage or electric shock. Are there standards or guidelines for industrial or recreational vehicles, such as forklifts or golf carts, which could be applied to EVs? Please describe.

41. Which States require motor vehicle safety inspection of EVs, and what are the requirements? Please describe.

EV Populations

42. Provide estimates of the number of EVs in operation within the United States today, and the number expected within the next five and ten years. Please categorize by vehicle type. For vehicles with GVWR less than or equal to 4536 kg, categorize by passenger car, pickup truck, van, and other. For vehicles with GVWR greater than 4536 kg, categorize by school bus, transit bus, intercity bus, heavy truck, and other. What portions of these represent original equipment EVs, EV conversions before the first sale to a consumer, and EV conversions after first sale? Which types of EV propulsion batteries are expected to be used? Please describe.

43. What is the likelihood that there will be an EV conversion industry for used vehicles, i.e., those converted after first sale to a consumer? Please discuss.

Charging

44. Describe the technology and potential safety problems associated with EV recharging. Should there be federal safety requirements? Should these include requirements for battery box venting or flame arrestor performance, to protect against emissions of explosive battery gases during recharging and other times of vehicle operation? What standards, guidelines, or design practices are being followed by manufacturers and converters to assure EV safety in this area? Please discuss.

Batteries

45. Is there a potential safety hazard with EV batteries becoming projectiles in a crash or rollover? Should there be federal requirements for battery restraints? What standards, guidelines, design practices, or other requirements are currently being followed by manufacturers and converters? Please discuss.

46. What Federal, State, and local requirements currently exist for the disposal, recycling, and transport of EV batteries? Do the requirements distinguish between batteries which are damaged and leak, and those which do not leak? Please discuss.

Transmission Starter Interlock

47. The agency understands that some EVs have a forward, neutral, and reverse switch, while others have no neutral position or other means such as a clutch for disconnecting the drive train from the propulsion motor. Is there a potential safety problem with inadvertent starting and unwanted vehicle motion among those EVs which have no means of disconnecting the drive train? Please discuss.

48. What types of EV drive train designs are expected over the next five and ten years? Is there a need for requiring EV starter interlock performance, similar to that required on automatic transmissions in FMVSS No. 102, *Transmission Shift Level Sequence, Starter Interlock, and Transmission Braking Effect*? FMVSS No. 102 requires that the engine starter be inoperative when the transmission shift level is in a forward or reverse drive position. Please discuss.

Submission of Comments

The agency invites written comments from all interested parties. It is requested that 10 copies of each written comment be submitted.

No comment may exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to a comment without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit specified information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after the closing date.

To the extent possible, comments filed after the closing date will also be considered. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegations of authority at 49 CFR 1.50)

Issued on: September 26, 1994.

Stanley R. Scheiner,

Acting Associate Administrator for Rulemaking.

[FR Doc. 94–24165 Filed 9–29–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered Status for Delissea Undulata (No Common Name)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the comment period on the proposed rule to list *Delissea undulata* (No Common Name) is reopened through November 29, 1994. The Service has reopened the comment period to ensure that all parties have adequate time to provide comments on this proposed rule.

DATES: The comment period, which originally closed on August 26, 1994, now closes November 29, 1994. Public hearing requests which originally were to have been received by August 11, 1994, now must be received by November 14, 1994.

ADDRESSES: Comments, information, and questions should be sent to Robert P. Smith, Pacific Islands Ecoregion Manager, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Marie M. Bruegmann, at the above address (808–541–3441).

SUPPLEMENTARY INFORMATION:

Background

Delissea undulata is known only from one individual, which is located on the island of Hawaii. The greatest immediate threats to the survival of this species are habitat degradation and predation by domestic and feral animals, fire, and competition with alien plants. The small population size of one individual with its limited gene pool also poses a serious threat to this species. A rule proposing to *Delissea undulata* as endangered was published in the **Federal Register** (59 FR 32946) on June 27, 1994. The Service reopens the comment period to ensure that all parties have adequate time to provide comments on this proposed rule.

The Service solicits peer review of all interested parties and scientific specialists, particularly in regards to:

—Scientific data relating to the taxonomy of this species;

—Scientific or commercial data concerning the biology and ecology of this species.

All comments received on *Delissea undulata* will be summarized in the final decision document (final rule or notice of withdrawal) and will be included in the administrative record of the final decision.

Author

The primary author of this proposed rule is Marie M. Bruegmann, Pacific Islands Ecoregion, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808–541–3441).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: September 23, 1994.

Thomas Dwyer,

Acting Regional Director, Fish and Wildlife Service.

[FR Doc. 94–24193 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–65–M

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50 CFR Part 17

RIN 1018–AC48

Endangered and Threatened Wildlife and Plants; Notice of Public Hearings on Proposed Rule and Notice of Extension of Comment Period on Proposed Rule To Reclassify the Bald Eagle From Endangered to Threatened in Most of the Lower 48 States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearings and extension of comment period.

SUMMARY: The Service gives notice of the agency's intent to hold public hearings and extend the comment period on the proposed rule to reclassify the bald eagle. The public hearings are being held in response to written requests. The comment period will be extended to accommodate the public hearings and to allow appropriate time for the public to provide further comments.

DATES: The comment period on the proposed rule, which was originally scheduled to close on October 11, 1994, will be extended to November 9, 1994.

The first public hearing will be held from 7 p.m. to 9 p.m. on Tuesday, October 18, 1994. The second public hearing will be held from 6:30 p.m. to 9:30 p.m. on Tuesday, October 25, 1994.

ADDRESSES: The first public hearing will be held at the Somerset County Park Commission Environmental Education Center, 190 Lord Stirling Road, Basking Ridge, New Jersey 07920. The second public hearing will be held at St. Michael's Chapter House, Window Rock, Arizona 86515. Comments and materials concerning this proposal should be sent to Chief, Division of Endangered Species, Fish and Wildlife Service, Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Jody Gustitus Millar, Bald Eagle Recovery Coordinator, 309–793–5800.

SUPPLEMENTARY INFORMATION: The bald eagle (*Haliaeetus leucocephalus*) is listed as endangered under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq*.), in the lower 48 states, except Washington, Oregon, Minnesota, Wisconsin, and Michigan, where it is listed as threatened. The bald eagle also occurs in Alaska and Canada, where it is not at risk and is not protected under the Act; and in small numbers in northern Mexico. The Fish and Wildlife Service (Service) proposed to reclassify the bald eagle from endangered to threatened in the lower 48 states except in certain portions of the American Southwest and to classify those eagles in adjacent Mexico as endangered. The bald eagle would remain threatened in the five states where it is currently listed as threatened. The special rule for threatened bald eagles would be revised. This action would not alter those conservation measures already in force to protect the species and its habitats.

The **Federal Register** notice announcing the proposed rule was published on July 12, 1994 (59 FR 35584). The original comment period ended on October 11, 1994, and the deadline for receipt of public hearing requests was August 26, 1994. Eight requests for public hearings have been received within the deadline—three from within Rhode Island, three from Delaware, and two from within Arizona, including the Navajo Nation.

Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing. Oral statements may be limited to 5 or 10 minutes, if the number of parties present necessitates some limitation. There are no limits to the length of written comments presented at this hearing or mailed to the Service.

Dated: September 26, 1994.

Sam Marler,

Regional Director.

[FR Doc. 94–24194 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 654

[I.D. 092794B]

Stone Crab Fishery for the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 5 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP) for review by the Secretary of Commerce (Secretary). Written comments are requested from the public.

DATES: Written comments must be received on or before November 28, 1994.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702.

Requests for copies of Amendment 5, which includes an environmental assessment and a regulatory impact review, should be sent to the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 331, 5401 West Kennedy Boulevard, Tampa, FL 33069–2486, FAX: 813–225–7015.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, 813–570–5306.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that a fishery management plan or amendment prepared by fishery management council be submitted to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving an amendment, immediately publish notification stating that the amendment is available for public review and comment. The Secretary will consider public comment in determining approvability of the amendment.

Amendment 5 proposes to: (1) Place a 4-year moratorium, beginning July 1, 1994, on the issuance by the Director, Southeast Region, NMFS (Regional Director), of Federal numbers and color codes for use on stone crab vessels and gear; (2) establish a procedure whereby the Florida Marine Fisheries Commission (FMFC) may request the Regional Director to implement in the exclusive economic zone by regulatory amendment, with the Council's oversight, modification to certain gear and harvest limitations applicable to State waters that were proposed by the FMFC and approved by the Florida Governor and Cabinet; (3) add to the objectives of the FMP the following: "Provide for a more flexible management system that minimizes regulatory delay to assure more effective, cooperative state and Federal management of the fishery."

NMFS published notification of the proposed moratorium on July 1, 1994 (59 FR 33947), which advised fishermen that, if Amendment 5 is approved and implemented, any Federal numbers/

color codes issued between July 1, 1994, and the effective date of the implementing regulations would no longer be valid.

Proposed regulations to implement Amendment 5 are scheduled for publication within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 27, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–24243 Filed 9–27–94; 2:57 pm]

BILLING CODE 3510–22–F

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Notices

Federal Register
Vol. 59, No. 189
Friday, September 30, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Provincial Interagency Executive Committees (PIEC) Advisory Committees

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of intent to establish a Federal Advisory Committee.

SUMMARY: In response to the need of the United States Department of Agriculture and the United States Department of the Interior for advice on coordination and implementation of the Record of Decision of April 13, 1994 for management of habitat for late-successional and old-growth forest related species within the range of the Northern Spotted Owl, the Departments have agreed to establish twelve advisory committees. The purpose of the Advisory Committees is to provide advice on coordinating the implementation of the Record of Decision. The Advisory Committees will provide advice and recommendations to promote better integration of forest management activities among Federal and non-Federal entities to ensure that such activities are complementary.

FOR FURTHER INFORMATION CONTACT: Susan Yonts-Shepard, Staff Assistant for National Forest System Operations, Forest Service, USDA, (202) 205–1519.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the United States Department of Agriculture in consultation with the Department of the Interior intends to establish twelve Advisory Committees to the Provincial Interagency Executive Committees (PIECs) The purpose of the PIECs is to facilitate the coordinated implementation of the Record of Decision (ROD) of April 13, 1994. The PIECs consist of representatives of some or all of the following Federal Agencies: the Forest Service, Bureau of Land Management, Fish and Wildlife Service, National Marine Fisheries Service, National Park Service, Bureau of Indian Affairs, and Environmental Protection Agency. The purpose of the PIEC Advisory Committees is to advise the PIECs on coordinating the implementation of the ROD. Each PIEC Advisory Committee also will provide advice regarding implementation of a comprehensive ecosystem management strategy for Federal land within a province (provinces are defined in the ROD at E–19). The PIEC Advisory Committees will provide advice and recommendations to promote better integration of forest management activities among Federal and non-Federal entities to ensure that such activities are complementary.

The PIEC Advisory Committees are necessary and in the public interest in connection with the duties and responsibilities of the United States Department of Agriculture and of the United States Department of the Interior. The ROD provides direction to the Forest Service and the Bureau of Land Management for developing an ecosystem management approach that is consistent with statutory authority for land use planning. Ecosystem management at the province level requires improved coordination among governmental entities responsible for land management decisions and the public they serve.

The Chairperson of each PIEC Advisory Committee will alternate annually between the Forest Service representative and the Bureau of Land Management representative in provinces where both agencies administer land. When the Bureau of Land Management is not represented on the PIEC, the Forest Service representative will serve as Chairperson. The Chairperson will serve as the Executive Secretary and as the designated Federal official under sections 10 (e) and (f) of the Federal Advisory Committee Act (5 U.S.C. APP.).

Appointments to the PIEC Advisory Committees will be made by the Regional Forester, Pacific Northwest Region after consultation with the State Director, Bureau of Land Management, Oregon State Office, when appropriate (in provinces where the Bureau of Land Management administers land), and the Regional Interagency Executive Committee. The Regional Forester, Pacific Northwest Region, also shall consult with the Regional Forester, Pacific Southwest Region, when appropriate. The Bureau of Land Management State Director, Oregon State Office, shall consult with the Bureau of Land Management State Director, California State Office, when appropriate.

The action of establishing the Advisory Committees does not require amendment of Bureau of Land Management (BLM) and Forest Service planning documents because these explanatory statements that appear in the ROD (Attachment A, E–17) are not standards and guidelines or land allocations, which would require an amendment process to change. The BLM and Forest Service will provide further notices, as needed, for additional actions or adjustments when implementing interagency coordination, public involvement, and other aspects of the ROD.

Equal opportunity practices will be followed in all appointments to the Advisory Committee. To ensure that the recommendations of the Advisory Committee have taken into account the needs of the diverse groups served by the Departments, membership should include individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: September 8, 1994.

Wardell C. Townsend,

Assistant Secretary for Administration.

[FR Doc. 94–24172 Filed 9–29–94; 8:45 am]

BILLING CODE 3410–11–M

Intergovernmental Advisory Committee to the Regional Interagency Executive Committee

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of intent to establish a Federal Advisory Committee.

SUMMARY: In response to the need of the Secretaries of Agriculture and Interior for advice on coordination and implementation of the Record of Decision of April 13, 1994 for management of habitat for late-successional and old-growth forest related species within the range of the Northern Spotted Owl, the Secretaries have agreed to establish an advisory committee. The Intergovernmental Advisory Committee will provide advice and recommendations to the Regional Interagency Executive Committee to facilitate better integration of forest management activities among Federal and non-Federal governmental entities to ensure that such activities are complementary.

FOR FURTHER INFORMATION CONTACT: Susan Yonts-Shepard, Staff Assistant for National Forest System Operations, Forest Service USDA, (202) 205–1519.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture after consultation with the Secretary of the Interior intends to establish the Intergovernmental Advisory Committee (Advisory Committee) to the Regional Interagency Executive Committee (RIEC). The purpose of the RIEC, consisting of the Pacific Northwest Federal agency heads of the Forest Service, Bureau of Land Management, Fish and Wildlife Service, National Marine Fisheries Service, Bureau of Indian Affairs, National Park Service, and Environmental Protection Agency, is to facilitate the coordinated implementation of the Record of Decision (ROD) of April 13, 1994. The Advisory Committee to the RIEC will provide advice and recommendations to provide better integration of forest management activities among Federal and non-Federal governmental entities, to ensure that such activities are complementary. The Advisory Committee will also promote an exchange of views on ecosystem management among the land management agencies of the Federal, State, local, and tribal governments in the range of the northern spotted owl.

The Secretaries have determined that the work of the Advisory Committee is necessary and in the public interest and relevant to the duties of the Department of Agriculture and Department of the Interior. The duties of the Advisory Committee will be to provide advice and recommendations to the RIEC regarding the coordinated implementation of the ROD. No other advisory committee or agency of the Department of Agriculture or Department of the Interior can perform the tasks that will be assigned to the Advisory Committee.

The Chairperson of the Advisory Committee will alternate between the Regional Forester of the Pacific Northwest Region, Forest Service and the Oregon State Director, Bureau of Land Management. The Executive Director of the Regional Ecosystem Office will serve as the Executive Secretary and as the designated Federal official under sections 10 (e) and (f) of the Federal Advisory Committee Act (5 U.S.C. App.).

Appointments to the Advisory Committee will be made by the Secretary of Agriculture after consultation with the Secretary of the Interior.

The action of establishing the Advisory Committee does not require amendment of Bureau of Land Management (BLM) and Forest Service planning documents because the statements referring to interagency coordination in the ROD (Attachment A, E–15 to E–17) are not standards and guidelines or land allocations, which would require an amendment process to change. The BLM and Forest Service will provide further notices, as needed, for any additional actions or adjustments when implementing interagency coordination, public involvement, and other aspects of the ROD.

Equal opportunity practices will be followed in all appointments to the Advisory Committee. To ensure that the recommendations of the Advisory Committee have taken into account the needs of the diverse groups served by the Departments, membership should include individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: September 8, 1994.

Wardell C. Townsend, Jr.,

Assistant Secretary for Administration.

[FR Doc. 94–24173 Filed 9–29–94; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Proposed Posting of Stockyards

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

FL–135 Madison Livestock Market, Inc., Madison, Florida
MO–278 Wheeler & Sons Livestock Auction, Osceola, Missouri
NY–172 The Box W Ranch & Sales, Shushan, New York
PA–157 Smoketown Quality Dairy Sales Co., Lancaster, Pennsylvania

Pursuant to the authority under Section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Packers and Stockyards Administration, Room 3408–South Building, U.S. Department of Agriculture, Washington, DC 20250 by *October 6, 1994.* All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC, this 22d day of September 1994.

Merle E. Paulsen,

Acting Director, Livestock Marketing Division

[FR Doc. 94–24235 Filed 9–29–94; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

International Trade Administration

Articles of Quota Cheese; Quarterly Update to Annual Listing of Foreign Government Subsidies

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Quota Cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Karn Goff or Brian Albright, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as

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defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA.

Dated: September 26, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy	Net [2] subsidy
Austria	Export Restitution Payments	226.2¢/lb.	226.2¢/lb.
Belgium	European Community (EC) Restitution Payments	50.1¢/lb.	50.1¢/lb.
Canada	Export Assistance on Certain Types of Cheese	25.3¢/lb.	25.3¢/lb.
Denmark	EC Restitution Payments	50.2¢/lb.	50.2¢/lb.
Finland	Export Subsidy	94.3¢/lb.	94.3¢/lb.
France	EC Restitution Payments	52.8¢/lb.	52.8¢/lb.
Germany	EC Restitution Payments	56.6¢/lb.	56.6¢/lb.
Greece	EC Restitution Payments	0.0¢/lb.	0.0¢/lb.
Ireland	EC Restitution Payments	46.7¢/lb.	46.7¢/lb.
Italy	EC Restitution Payments	75.3¢/lb.	75.3¢/lb.
Luxembourg	EC Restitution Payments	56.9¢/lb.	56.9¢/lb.
Netherlands	EC Restitution Payments	37.6¢/lb.	37.6¢/lb.
Norway	Indirect (Milk) Subsidy	17.6¢/lb.	17.6¢/lb.
	Consumer Subsidy	39.0¢/lb.	39.0¢/lb.
		56.6¢/lb.	56.6¢/lb.
Portugal	EC Restitution Payments	36.3¢/lb.	36.3¢/lb.
Spain	EC Restitution Payments	43.06/lb.	43.06/lb.
Switzerland	Deficiency Payments	161.3¢/lb.	161.3¢/lb.
U.K	EC Restitution Payments	36.7¢/lb.	36.7¢/lb.

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 94-24274 Filed 9-29-94; 8:45 am]

BILLING CODE 3510-DS-P

[C-357-001]

Leather Wearing Apparel From Argentina; Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On May 17, 1994, the Department of Commerce (the Department) published the preliminary results of its administrative review of the countervailing duty order on leather wearing apparel from Argentina (59 FR 25611). We have now completed this review and determine the total net subsidy to be zero for all companies for the period January 1, 1991 through December 31, 1991.

EFFECTIVE DATE: September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Rick Herring, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202)482-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 1994, the Department published in the **Federal Register** (59 FR 25611) the preliminary results of its administrative review of the countervailing duty order on leather wearing apparel from Argentina (48 FR 11489, March 18, 1983). We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Therefore, there have been no changes in the analysis of programs between the preliminary results and these final results. We have now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of Argentine leather coats, jackets and other apparel including leather vests, pants and shorts for men, boys, women, girls and infants. Also included are outer shells and parts and pieces of leather wearing apparel. This merchandise is classifiable under item number 4203.10.40 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review period is January 1, 1991 through December 31, 1991. This review involves one company, Comercio Internacional S.A.C.I.F.I.A. (Comercio), which accounts for virtually all exports to the United States, and nine government programs.

Final Results of Review

As a result of our review, we determine the total net subsidy to be zero during the period January 1, 1991 through December 31, 1991.

Therefore, the Department will instruct the Customs Service not to assess countervailing duties on shipments of the subject merchandise from all companies, exported on or after January 1, 1991, and on or before December 31, 1991. Further, as provided by section 751(a)(1) of the Act, the Department will instruct Customs that the cash deposit rate on shipments of this merchandise from all companies, entered or withdrawn from warehouse for consumption on or after the date of publication of this notice is zero. This deposit instruction shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are being published in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22(c)(8).

Dated: September 17, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-24273 Filed 9-29-94; 8:45 am]

BILLING CODE 3510-DS-P

International Trade Administration

Exporters' Textile Advisory Committee; Notice of Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on October 20, 1994. The meeting will be from 10 a.m. to 3 p.m. in Room 4830, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

The Committee advises Department of Commerce officials on textile and apparel export issues.

Agenda: The agenda for the meeting will include a discussion of the various suggestions received by the Office of Textiles and Apparel from members since the first meeting and other subjects.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact William Dawson (202/482-5155).

Dated: September 26, 1994.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94-24205 Filed 9-29-94; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 31, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2-3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Hanger, Magnetic
- 5340-00-916-4206
- 5340-00-916-4207
- 5340-00-916-4208
- 5340-00-916-4209
- NPA: Pacesetters, Inc., Cookeville, Tennessee

Tray, Repositional Note Pad
- 7520-01-207-4351
- 7520-01-166-0878
- NPA: Royal Maid Association for the Blind, Inc., Hazlehurst, Mississippi

Services

Janitorial/Custodial
- U.S. Border Station, Customs Building and Truck Stop, 406 and 410 Virginia Street, San Diego, California
- NPA: Mental Health Systems, Inc., San Diego, California

Order Processing Service
- General Services Administration, Customer Supply and Industrial Products Center, Springfield, Virginia
- NPA: Virginia Industries for the Blind, Richmond, Virginia

Reproduction Service
- Lawrence Livermore National Laboratory, 7000 East Avenue, Livermore, California
- NPA: PRIDE Industries, Roseville, California

Switchboard Operation
- Veterans Administration Medical Center, San Francisco, California
- NPA: Project Hired, Inc., Sunnyvale California

Beverly L. Milkman,

Executive Director.

[FR Doc. 94-24260 Filed 9-29-94; 8:45 am]

BILLING CODE 6820-33-P

"Proposed Additions to the Procurement List" Correction

In the document appearing on page 45666, F.R. Doc. 94-21769, in the issue of September 2, 1994, in the third column, the NSN listed as 6508-00-997-8531 should read 6505-00-997-8531.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94-24259 Filed 9-29-94; 8:45 am]

BILLING CODE 6820-33-P

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Procurement List, Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 31, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 22, June 24 and July 22, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 19164, 32688 and 37465) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Holder, Soap
4510–00–965–1259
Tool Box, Portable
5140–01–010–4861

Service

Janitorial/Custodial
U.S. Army Reserve Center, Santa Rosa, California

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–24258 Filed 9–29–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 31, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 5, 1994, the committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 40010) of proposed addition to the Procurement List.

Comments were received from the current contractor for this service, which noted that most of the Government grounds maintenance contracts in its area have recently been combined into a small number of large contracts which small grounds maintenance companies are unable to perform. Consequently, the contractor claims its business has been reduced substantially, to the point where loss of the opportunity to provide the grounds maintenance service which is the subject of this Committee action may force the contractor out of business.

This grounds maintenance service constitutes a very small percentage of the contractor total sales. More importantly, the service is a new requirement, and the contractor was given a short-term interim contract to perform it while the Committee processed the service for addition to the Procurement List. Under these circumstances, the contractor could not have become so dependent on the contract that losing it would threaten its continued viability.

Government grounds maintenance services generally, and this one in particular, are not appreciably different from similar services performed for non-Government customers. The contractor has given the Committee no indications why it cannot seek additional opportunities in the commercial grounds maintenance market to replace the ones it believes it will lose because of the consolidation of Government grounds maintenance contracts in its area. As a result, the Committee does not believe the consolidation of Government contracts substantially increases the impact on the contractor of adding this service requirement to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Grounds Maintenance
Admiral Bakerfield U.S. Army Reserve Center
San Diego, California

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.

Deputy Executive Director.

[FR Doc. 94–24361 Filed 9–29–94; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Draft Environmental Impact Statement for Disposal and Reuse of Fort Devens, Massachusetts

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act and the President's Council on Environmental Quality, the Army has prepared a Draft Environmental Impact Statement (DEIS) for disposal of excess property at Fort Devens, Massachusetts. The DEIS also analyzes impacts on a range of potential reuse alternatives.

Copies of the DEIS have been forwarded to various federal agencies, state and local agencies, and predetermined interested organizations and individuals.

DATES: Written public comments and suggestions received by November 14, 1994 will be considered in preparing the Final Environmental Impact Statement and in preparing a Record of Decision for the Army action.

ADDRESSES: Copies of the Draft Environmental Impact Statement can be obtained by writing or calling Ms. Susan E. Brown, New England Division, U.S. Army Corps of Engineers, 424 Trapelo Road, Waltham, MA 02254–9149 or by calling (617) 647–8536. Ms. Brown may also be reached by telefax at (617) 647–8560. Questions about the DEIS and written comments may be sent to the same address.

Dated: September 22, 1994.

Raymond J. Fatz,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (IL&E).

[FR Doc. 94–23995 Filed 9–29–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Conduct of Employees; Waiver Pursuant to Section 602(c) of the Department of Energy Organization Act (Pub. L. No. 95–91)

Section 602(a) of the Department of Energy ("DOE") Organization Act (Pub. L. No. 95–91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases where the interest is a pension, insurance, or other similarly vested interest.

Mr. John Tyler Carslon has been appointed as Area Manager in the Phoenix Area Office of the Western Area Power Administration. As a result of his previous employment with Public Service Company of Colorado, Mr. Carlson has a vested pension interest, within the meaning of section 602(c) of the Act, in the Employees' Retirement Plan of Public Service Company of Colorado and Participating Subsidiaries. I have granted Mr. Carlson a waiver of the divestiture requirement of section 602(a) of the Act with respect to this vested pension interest for the duration of his employment with the Department as a supervisory employee.

Dated: September 8, 1994.

Hazel R. O'Leary,

Secretary of Energy.

[FR Doc. 94–24263 Filed 9–29–94; 8:45 am]

BILLING CODE 6450–01–M

Secretary of Energy Advisory Board Task Force on Strategic Energy Research and Development

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board Task Force on Strategic Energy Research and Development.

Date and Time: Wednesday, October 12, 1994, 9:00 am-12:15 pm.

Place: The Hotel Washington, The Washington Room, 515 15th Street, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Peter F. Didisheim, Acting Executive Director, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7092.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The Secretary of Energy Advisory Board Task Force on Strategic Energy Research and Development assist the Board in its top-level review of the Department's civilian energy research programs. The Board's Task Force will examine the Department's current research and development portfolio against its strategic goals policy priorities and national needs will examine the Departments research and development planning and management Process and the first research, development, demonstration, and commercialization management plan, required biennially by the Energy Policy Act of 1992

Tentative Agenda

9:00 AM–9:10 AM Opening Remarks
9:10 AM–10:00 AM Strategic Context Briefing—Department-wide Strategic Plan
10:00 AM–10:20 AM Policy Context Briefing—Energy Policy Act and other Policy Documents
10:20 AM–10:30 AM Break
10:30 AM–12:00 Panel Discussion of Program Strategic goals, priorities, planning process; Energy Efficiency and Renewable Energy; Fossil Energy; Nuclear Energy; and Energy Research
12:00–12:15 PM Public Comment
12:15 PM Adjourn

A final agenda will be available at the meeting.

Public Participation: The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to the Executive Director, Secretary of Energy of Advisory Board, AB–1, 1000 Independence Avenue, SW, Washington, DC 20585. In order to insure that Board members have the opportunity to review written comments prior to the meeting, comments should be received by Friday, October 7, 1993. Due to difficulty in locating a meeting space, this notice will be published less than fifteen days prior to meeting.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays.

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Issued at Washington, DC, on September 7, 1994.

Marcia Morris,

Advisory Committee Management Officer

[FR Doc. 94-24264 Filed 9-29-94; 8:45 am]

BILLING CODE 6450-01-M

Secretary of Energy Advisory Board Task Force on Radioactive Waste Management, Publication of Secretary of Energy Advisory Board Task Force on Radioactive Waste Management; Final Report

Pursuant to the Charter of the Secretary of Energy Advisory Board, notice is hereby given of the publication of the final report of the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management. The report contains the Task Force's recommendations to the Secretary of Energy on measures the Department of Energy might take to strengthen public trust and confidence in its radioactive waste management activities. It is composed of three parts: Volume 1—The Final Report with two Appendices; Volume 2—The Compilation of Papers and Reports Commissioned by the Task Force; and Volume 3—The Responses to Comments on the December 1992 and January 1993 Draft Final Reports.

The final report will be available for review and copying, within 30 days of this announcement, in the Public Reading Room, 1E-190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Single copies of the report will be available by requesting in writing which of the three volumes you would like to receive. Please forward your requests to: U.S. Department of Energy, Secretary of Energy Advisory Board (AB-1), Task Force on Radioactive Waste Management/Document Request, 1000 Independence Avenue, SW., Washington, DC 20585.

Contact: The Secretary of Energy Advisory Board, AB-1, 1000 Independence Avenue, SW., Washington DC 20585.

Issued: Washington, DC, on September 27, 1994.

Marcia Morris,

Advisory Committee Management Officer.

[FR Doc. 94-24265 Filed 9-29-94; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF83-333-002 and QF83-333-003]

Cal Ban Corp.; Notice of Amendment to Filing

September 26, 1994.

On September 20, 1994, Cal Ban Corp. tendered for filing a supplement to its filing in these dockets.

The supplement pertains to the technical aspects of the facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by October 14, 1994, and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24179 Filed 9-29-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-462-000, et al.]

Portland General Electric Company, et al.; Electric Rate and Corporate Regulation Filings

September 23, 1994.

Take notice that the following filings have been made with the Commission:

1. Portland General Electric Company

[Docket Nos. ER93-462-000, ER93-703-000 and ER94-1295-000]

Take notice that on September 16, 1994, Portland General Electric Company (PGE) tendered for filing an amendment to its original filings under Docket Nos. ER93-462-000, ER93-703-000, and ER94-1295-000. The nature of the amendment is a revision of tariff language. Copies of this filing have been served on the parties included in the distribution list contained in the filing letter.

Pursuant to 18 CFR 35.11 PGE requests that the Commission grant waiver of the notice requirements of 18 CFR 35.3 to allow PGE's FERC Electric Tariff, Original Volume No. 1 and the service agreements with Public Utility District No. 1 of Chelan County and City of Vernon to become effective May 20, 1993; to allow the service agreement with Louis Dreyfus Electric Power Incorporated to become effective July 10, 1993; and to allow the service agreements with Enron Power Marketing, Inc., and Electric Clearinghouse, Inc. to become effective May 24, 1994; consistent with the original filings in Docket Nos. ER93-462-000, ER93-703-000, and ER93-1295-000 respectively.

Comment date: October 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Continental Power Exchange, Inc.

[Docket No. ER94-1156-001]

Take notice that on September 15, 1994, Continental Power Exchange, Inc., tendered for filing its compliance filing in the above-referenced docket.

Comment date: October 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Louisville Gas and Electric Company

[Docket No. ER94-1380-001]

Take notice that on August 24, 1994, Louisville Gas and Electric Company tendered for filing revisions to LG&E Rate Schedules T and CT in the above-referenced docket number.

Comment date: October 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. ACME Power Marketing, Inc.

[Docket No. ER94-1530-000]

Take notice that on September 7, 1994, Acme Power Marketing, Inc. (ACME) tendered for filing with the Federal Energy Regulatory Commission an amendment to its Application for Order Accepting Blanket Market-Based Rate Schedule and Granting Waivers, Blanket Approvals and Disclaimer of Jurisdiction.

Comment date: October 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Iowa-Illinois Gas and Electric Company

[Docket No. ER94-1547-000]

Take notice that Iowa-Illinois Gas and Electric Company (Iowa-Illinois) on September 8, 1994, tendered for filing pursuant to § 35.12 of the Regulations under the Federal Power Act an amendment to the initial rate schedules tendered for filing in this proceeding by Iowa-Illinois on August 10, 1994. The amendment is in the form of a First Amendment, dated August 24, 1994, to Facilities Schedule No. 4 to Service Schedule C to the Interconnection Agreement dated June 13, 1983, between Iowa-Illinois and Central Iowa Power Cooperative (CIPCO).

Iowa-Illinois states that the First Amendment reduces the rate provided in Section 3.02 of Facilities Schedule No. 4 from $2.29/kW-month to $2/26/kW-month. Iowa-Illinois further states that the rate as provided in the Facilities Schedule was developed and agreed to by Iowa-Illinois and CIPCO using preliminary cost data and that actual cost data developed after entering into the Facilities Schedule resulted in the lower rate.

The First Amendment provides that it will become effective upon the later of the effective date of the Facilities Schedule, the effective date of the acceptance for filing of the First Amendment by the Commission or the effective date of the approval of the First Amendment by the Administrator of the Rural Electrification Administration, if such approval is required by law. Iowa-Illinois requests the Commission to accept the Facilities Schedule and the First Amendment for filing by November 30, 1994.

Copies of the amendment to the filing were served upon the Illinois Commerce Commission, the Iowa Utilities Board, CIPCO and all persons whose names appear on the official service list in this proceeding.

Comment date: October 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER94-1550-000]

Take notice that New England Power Company, on September 16, 1994, tendered an amendment to its filing in this proceeding.

Comment date: October 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Electric Power Company

[Docket No. ER94-1645-000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on September 13, 1994, tendered for filing a Reregulation Agreement between itself and the City of Norway, Michigan (City). The Agreement provides for the City to seek modification of its FERC license in order to regulate the Menominee River at the City's Sturgeon Falls hydro-electric project to reduce the daily fluctuations of water flow downstream from the project. To reimburse the City for the impact of less economic hydro-electric generation stemming from such changes, Wisconsin Electric proposes to reduce its demand charge for partial requirements service it provides to the City.

Wisconsin Electric respectfully requests waiver of the Commission's notice requirements to permit an effective date of July 1, 1994, in order to implement Article 8 of the Reregulation Agreement. In support of its request, Wisconsin Electric states that the Agreement would result in a revenue reduction. Wisconsin Electric is authorized to state that the City joins in the requested effective date.

Copies of the filing have been served on the City and the Michigan Public Service Commission.

Comment date: October 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Maine Public Service Company

[Docket No. ER94-1646-000]

Take notice that on September 13, 1994, Maine Public Service Company (Maine Public) filed an executed Service Agreement with The United Illuminating Company. Maine Public states that the service agreement is being submitted pursuant to its tariff provision pertaining to the short-term non-firm sale of capacity and energy which establishes a ceiling rate at Maine Public's cost of service for the units available for sale.

Maine Public requests that the service agreement become effective on September 1, 1994, and requests waiver of the Commission's regulations regarding filing.

Comment date: October 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Otter Tail Power Company

[Docket No. ER94-1650-000]

Take notice that on September 12, 1994, Otter Tail Power Company tendered for filing a Notice of Termination sent to the Municipality of Breckenridge for a contract under Docket No. ER89-137-000. The notice states that the contract will terminate on September 3, 1997.

Comment date: October 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Century Power Corporation

[Docket No. ES94-39-000]

Take notice that on September 14, 1994, Century Power Corporation (Century) filed an application under § 204 of the Federal Power Act seeking authorization to issue one or more promissory notes in the aggregate principal amount of $10 million, with a maturity date of March 1, 1996. Also, Century requests exemption from the Commission's competitive bidding and negotiated placement regulations.

Comment date: October 13, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24177 Filed 9-29-94; 8:45 am]

BILLING CODE 6717-01-P

[Project Nos. 2019-017, et al.]

Hydroelectric Applications [Pacific Gas and Electric Company, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. Type of Application: New License.

b. Project No.: 2019-017.

c. Date filed: May 3, 1994.

d. Applicant: Pacific Gas and Electric Company.

e. Name of Project: Utica.

f. Location: On the North Fork Stanislaus River, Silver Creek, Mill Creek, and Angels Creek in Alpine, Calaveras, and Toulumne Counties, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. Applicant Contact:

Shan Bhattacharya, Manager, Hydro Generation Department, Pacific Gas and Electric Company, 201 Mission Street, Room 1012, P.O. Box 770000, San Francisco, CA 94177, (415) 973-4603.

Annette Faraglia, Attorney, Law

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Department, Pacific Gas and Electric Company, 77 Beale Street, Room 3051, P.O. Box 7442, San Francisco, CA 94120–7442, (415) 973–7145.

Kathryn M. Petersen License Coordinator, Pacific Gas and Electric Company, 201 Mission Street, Room 1012, P.O. Box 770000, Mail P10A, San Francisco, CA 94177, (415) 973–4054.

i. FERC Contact: Hector M. Pérez at (202) 219–2843.

j. Comment Date: November 25, 1994.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time—see attached paragraph E.

l. Description of Project: The existing project consists of: (1) The 49-foot-high and 400-foot-long masonry/rock filled gunite faced Alpine dam; (2) LaKe Alpine with a surface area of 173 acres and a gross storage capacity of 4,117 acre-feet; (3) the 33-foot-high and 1,142-foot-long rock fill Union dam; (4) Union Reservoir with a surface area of 218 acres and gross storage capacity of 3,130 acre-feet; (5) the 59-foot-high and 308-foot-long rock fill concrete faced Utica dam; (6) Utica Reservoir with a surface area of 241 acres and a gross storage capacity of 2,334 acre-feet; (7) the Tunnel Tap which delivers water from the Collierville Tunnel (part of Project No. 2409) to the Upper Utica Conduit; (8) the 0.7-mile-long Upper Utica Conduit (an open channel); (9) the 58.5-foot-high and 389-foot-long concrete arch and gravity Hunters dam; (10) Hunters Reservoir with a surface area of 19 acres and a gross storage capacity of 253 acre-feet; (11) the 13.41-mile-long Lower Utica Conduit (a metal-lined wooden box flume and natural earth, and gunite canal sections); (12) the 2.8-acre surface area and 56.9-acre-feet gross storage capacity Murphys Forebay impounded by a 27-foot-high, 415-foot-long earthfill South dam and a 67-foot-high, 316-foot-long earthfill West dam; (13) the 24-inch to 48-inch and 4,048-foot-long shop welded steel Murphys Penstock; (14) the 33-foot-wide by 36-foot-long concrete Murphys Powerhouse housing a semi-enclosed vertical impulse turbine-generator unit with an installed capacity of 4 MW; (15) Murphys Afterbay with a surface area of 2.7 acres and a gross storage capacity of 31.3 acre-feet impounded by a 42-foot-high, 340-foot-long earthfill dam topped by a concrete parapet wall; and (16) other appurtenances.

m. This notice also consists of the following standard paragraph: B1 and E.

n. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., Room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in item h above.

2 a. Type of Application: Subsequent License.

b. Project No.: 2699–001.

c. Date filed: December 21, 1993.

d. Applicant: Pacific Gas and Electric Company.

e. Name of Project: Angels Hydroelectric Project.

f. Location: On Angels Creek in Calaveras County California.

g. Filed Pursuant to: Federal Power Act 16, U.S.C. §§ 791(a)–825(r).

h. Applicant Contact:

Shan Bhattacharya, Manager, Hydro Generation Department, Pacific Gas and Electric Company, 201 Mission Street, Room 1012, P.O. Box 770000, San Francisco, CA 94177, (415) 973–4603.

Annette Faraglia, Attorney, Law Department, Pacific Gas and Electric Company, 77 Beale Street, Room 3051, P.O. Box 7442, San Francisco, CA 94120–7442, (415) 973–7145.

Kathryn M. Petersen, License Coordinator, Pacific Gas and Electric Company, 201 Mission Street, Room 1012, P.O. Box 770000, Mail P10A, San Francisco, CA 94177, (415) 973–4054.

i. FERC Contact: Héctor M. Pérez at (202) 219–2843.

j. Comment Date: November 25, 1994.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time—see attached paragraph E.

l. Description of Project: The existing project consists of: (1) The 5.6-foot-high, 64-foot-long gunite faced rock-wall and concrete buttress Angels Diversion Dam; (2) the Upper Angels Canal, approximately 2.5 miles long, to Ross Reservoir; (3) the 100-acre-feet gross storage capacity Ross Reservoir and a 44-foot-high and 710-foot-long earthfill, masonry, and rock structure dam; (5) the Lower Angels Canal, approximately 3.3 miles long; (6) the Angels Forebay with a gross storage capacity of 2-acre-feet; (7) the 8,624-foot-long Angels Penstock; (8) a powerhouse with an installed capacity of 1,400 kW; and (9) other appurtenances.

m. This notice also consists of the following standard paragraph: B1 and E.

n. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in item h above.

3 a. Type of Application: License.

b. Project No.: 11452–000.

c. Date filed: December 28, 1993.

d. Applicant: Northern California Power Agency.

e. Name of Project: Angels.

f. Location: On Angels Creek in Calaveras County California.

g. Filed Pursuant to: Federal Power Act 16, U.S.C. §§ 791(a)–825(r).

h. Competing Application: Project No. 2699–001, filed December 21, 1993.

i. Applicant Contact: James Lynch, Environmental Liaison, Northern California Power Agency, 180 Cirby Way, Roseville, CA 95678, (916) 781–4275.

j. FERC Contact: Héctor M. Pérez at (202) 219–2843.

k. Comment Date: November 25, 1994.

l. Status of Environmental Analysis: This application is not ready for environmental analysis at this time—see attached paragraph E.

m. Description of Project: The existing project consists of: (1) The 5.6-foot-high, 64-foot-long gunite faced rock-wall and concrete buttress Angels Diversion Dam; (2) the Upper Angels Canal, approximately 2.5 miles long, to Ross Reservoir; (3) the 100-acre-feet gross storage capacity Ross Reservoir and a 44-foot-high and 710-foot-long earthfill, masonry, and rock structure dam; (5) the Lower Angels Canal, approximately 3.3 miles long; (6) the Angels Forebay with a gross storage capacity of 2 acre-feet; (7) the 8,624-foot-long Angels Penstock; (8) a powerhouse with an installed capacity of 1,400 kW; and (9) other appurtenances.

The Applicant proposes to remove the Angels Penstock and decommission power generation facilities in the existing powerhouse.

n. This notice also consists of the following standard paragraph: B1 and E.

o. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in item h above.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 11494–000.

c. Date Filed: August 19, 1994.

d. Applicant: Hydro Matrix Partnership, Ltd.

e. Name of Project: Newburgh Hydropower Project.

f. Location: On the Ohio River, Henderson County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Mr. James B. Price, W. V. Hydro, Inc., 120 Calumet Ct., Aiken, SC 29803, (803) 642–2749.

i. FERC Contact: Michael Dees (202) 219–2807.

j. Comment Date: November 22, 1994.

k. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Newburgh Locks and Dam and would consist of: (1) A proposed intake; (2) a proposed powerhouse housing two hydropower units with a total capacity of 30,000 kW; (3) a proposed tailrace; (4) a proposed 161 kV transmission line that is two miles long; and (5) appurtenant facilities. The applicant estimates that the annual energy generation would be 122 GWh and that the cost of the studies to be performed under the permit would be $100,000. The energy would be sold to a public utility company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

5 a. Type of Application: Subsequent License.

b. Project No.: P–11496–000.

c. Date Filed: August 29, 1994.

d. Applicant: The City of Oconto Falls, Wisconsin.

e. Name of Project: Oconto Falls Hydro Project.

f. Location: On the Oconto River in Oconto County, near Oconto Falls, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Honorable Lynn V. Heim, Mayor, 104 South Franklin Street, Oconto Falls, WI 54154, (414) 843–4505.

i. FERC Contact: Ed Lee (202) 219–2809.

j. Comment Date: November 14, 1994.

k. Description of Project: The existing run-of river project consists of: (1) a dam and reservoir; (2) a powerhouse containing three generatoring units for a total installed capacity of 1,320 kW; (3) a substation; and (4) appurtenant facilities. The applicant estimates that the total average annual generation would be 7,495 MWh.

l. With this notice, we are initiating consultation with the Wisconsin State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the issuance date of this notice and serve a copy of the request on the applicant.

6 a. Type of Application: Preliminary Permit.

b. Project No.: 11492–000.

c. Date Filed: July 27, 1994.

d. Applicant: Ted S. Sorenson.

e. Name of Project: Owsley Feeder Hydroelectric.

f. Location: On Birch Creek Hydroelectric Outfall Canal, in Clark and Jefferson Counties (about 20 miles Northwest of Terreton), Idaho; partially on U.S. lands administered by the Bureau of Land Management. Sections 1, 2, 6, 7, 18, 19, 20, 21, 25, 26, 34, & 35 in Townships 7 & 8 North, Ranges 31, 32, & 33 South; Boise Meridian.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)–825(r).

h. Applicant Contact: Mr. Ted S. Sorenson, 5203 South 11th Street, Idaho Falls, ID 83404, (208) 522–8069.

i. FERC Contact: Surender M. Yepuri, P.E. (202) 218–2847.

j. Comment Date: November 25, 1994.

k. Description of Project: The proposed project would utilize the outfall waters from the applicant's existing Birch Creek Hydroelectric Project (FERC No. 7194), and would consist of: (1) A 40-inch-diameter, 29,700-foot-long steel penstock; (2) a powerhouse containing a turbine generator unit with a rated capacity of 1,000 KW; (3) appurtenant facilities; and (4) a 12.5 kV, 0.5-mile-long transmission line.

The project would generate an estimated 5,500 GWh of energy annually. The estimated cost of the studies to be conducted under the preliminary permit is $35,000. No new roads would be needed for conducting studies under the preliminary permit.

l. Purpose of Project: Project power would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7 a. Type of Application: Amendment of License.

b. Project No.: 1051–008.

c. Dated filed: August 22, 1994.

d. Applicant: Alaska Power & Telephone Company.

e. Name of Project: Dewey Lakes.

f. Location: The project is located at the head of the Taiya Inlet in Southeast Alaska approximately ninety miles north of Juneau, Alaska.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. Applicant Contact: Robert S. Grimm, President, Alaska Power & Telephone Company, P.O. Box 222, Port Towsend, WA. 98368, Phone: (206)385–1733.

i. FERC Contact: Buu T. Nguyen, (202) 219–2913.

j. Comment Date: November 7, 1994.

k. Description of Amendment: Alaska Power & Telephone Company applied for an amendment of license to exclude the Snyder Creek Concrete Dam, and add an earth fill dam to the project. The Snyder Creek Dam was washed out about 10 years ago. A mud and rock slide created an earth fill diversion dam.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

8 a. Type of Application: Surrender of License.

b. Project No: 3013–022.

c. Date Filed: August 29, 1994.

d. Applicant: L2W, Inc.

e. Name of Project: Natick Hydro.

f. Location: Patuxent River, Kent County, Rhode Island.

g. Filed Pursuant to: Federal Power Act, 16 USC Sections 791(a)–825(r).

h. Applicant Contact: John N. Webster, Southern New Hampshire Hydroelectric Development Corporation, P.O. Box 178, South Berwick, ME 03908, (207) 384–5334.

i. FERC Contact: Patricia A. Massie, (202) 219–2681.

j. Comment Date: November 7, 1994.

k. Description of Surrender: The licensee states the reason for the surrender is: the current power purchase rates available in New England make this particular project uneconomical. Construction was begun June 25, 1986, but has not been completed.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

9 a. Type of Application: Surrender of License.

b. Project No: 5192–005.

c. Date Filed: August 15, 1994.

d. Applicant: Lind & Associates.

e. Name of Project: Upper Rock Creek.

f. Location: Upper Rock Creek, El Dorado County, near Placeville, California.

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g. Filed Pursuant to: Federal Power Act, 16 USC Sections 791(a)–825(r).

h. Applicant Contact: A. A. Lind, PE 15,782, Lind & Associates, P.O. Box 1633, Folsom, CA 95763–1633, (916) 985–0577 (Fax), (916) 768–5177 (Mobile).

i. FERC Contact: Patricia A. Massie, (202) 219–2681.

j. Comment Date: November 7, 1994.

k. Description of Surrender: The licensee states the reason for the surrender is: the project is not currently economically feasible. No ground-disturbing activities occurred at this project.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

10 a. Type of Application: Small Conduit Exemption.

b. Project No.: 11459–001.

c. Date filed: March 18, 1994.

d. Applicant: Washington County Water Conservancy District.

e. Name of Project: Quail Creek No. 2 Hydroelectric Facility.

f. Location: On the existing Quail Creek irrigation and water supply project on the Virgin River and Quail Creek in Washington County, Utah. Section 36, Township 41 South, Range 14 West, Salt Lake Base and Meridian.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Mr. Morgan S. Jensen, Planning and Environmental Coordinator, Washington County Water Conservancy District, 136 North 100 East, Suite 1, St. George, UT 84770, (801) 673–3617.

i. FERC Contact: James Hunter, (202) 219–2839.

j. Comment Date: November 28, 1994.

k. Description of Project: The proposed project would consist of: (1) a new pipeline connecting to the existing Quail Creek Reservoir supply pipeline; (2) a 40-foot-wide, 85-foot-long powerhouse containing two generating units rated at 1.8 MW and producing an average annual output of 3.08 GWH; (3) a tailrace discharging flows to Stratton Regulating pond; and (4) a new outlet from the regulating pond returning flows to the Virgin River at the same point as the existing Quail Creek Reservoir outlet.

l. Purpose of Project: Energy produced would be sold to Dixie/ Escalante Rural Electric Association and the City of Hurricane.

m. This notice also consists of the following standard paragraphs: A2, A9, B, and D4.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 11499–000.

c. Date Filed: September 6, 1994.

d. Applicant: Armstrong Energy Resources.

e. Name of Project: Laurel Branch Pumped Storage.

f. Location: On Laurel Branch and Dry Branch Creek near Dunlap in Bledsoe County, Tennessee.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. R.T. Hunt, Richard Hunt Associates, Inc., 738 Harbour Village Court, Suite 201, Annapolis, MD 21403, (410) 280–2770.

i. FERC Contact: Ms. Julie Bernt, (202) 219–2814.

j. Comment Date: November 28, 1994.

k. Description of Project: The proposed project would consist of: (1) An upper reservoir with a surface area of 587 acres at a maximum pool elevation of 2,040 feet m.s.l. and a reservoir capacity of 23,000 acre-feet; (2) three new embankment type dams, 110 feet, 50 feet, and 40 feet high, respectively, impounding the upper reservoir; (3) a new 180-foot-high embankment dam impounding the lower reservoir; (4) a lower reservoir with a surface area of 390 acres at a maximum pool elevation of 1,020 feet m.s.l. and a reservoir capacity of 23,000 acre-feet; (5) a 10,000-foot-long, 30-foot-diameter, rock-concrete lined water conveyance tunnel; (6) a new powerhouse containing four generating units with a total rated capacity of 1,000 MW; and, (7) a new one-mile-long transmission line. The applicant estimates the average annual energy production to be 1,560 GWh and the cost of the work to be performed under the preliminary permit to be $2,500,000. Limited core drilling will be carried out.

l. Purpose of Project: The power produced would be sold to the Tennessee Valley Authority.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 11500–000.

c. Date Filed: September 6, 1994.

d. Applicant: Armstrong Energy Resources.

e. Name of Project: Reynolds Creek Pumped Storage.

f. Location: On Reynolds Creek and Big Brush Creek near Dunlap in Sequatchie County, Tennessee.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. R.T. Hunt, Richard Hunt Associates, Inc., 738 Harbour Village Court, Suite 201, Annapolis, MD 21403, (410) 280–2770.

i. FERC Contact: Ms. Julie Bernt, (202) 219–2814.

j. Comment Date: November 28, 1994.

k. Description of Project: The proposed project would consist of: (1) A new 280-foot-high embankment dam impounding the upper reservoir; (2) an upper reservoir with a water surface area of 505 acres, a maximum pool elevation of 1,920 feet m.s.l. and a reservoir capacity of 40,000 acre-feet; (3) a new 340-foot-high embankment dam impounding the lower reservoir; (4) a lower reservoir with a surface area of 350 acres at a maximum pool elevation of 1,200 feet m.s.l. and a reservoir capacity of 38,000 acre-feet; (5) a 12,500-foot-long, 30-foot-diameter, rock-concrete lined water conveyance tunnel; (6) a new powerhouse containing six generating units with a total rated capacity of 1,500 MW; and, (7) a new one-mile-long transmission line. The applicant estimates the average annual energy production to be 1,340 GWh and the cost of the work to be performed under the preliminary permit to be $2,500,000. Limited core drilling will be carried out.

l. Purpose of Project: The power produced would be sold to the Tennessee Valley Authority.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

13 a. Type of Application: Amendment of License.

b. Project No.: 7186–026.

c. Date Filed: February 14, 1994.

d. Applicant: Missisquoi Associates.

e. Name of Project: Sheldon Springs Project.

f. Location: On the Missisquoi River in Franklin County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Mr. Wayne E. Nelson, Director, Environmental Affairs, Consolidated Hydro, Inc., RR#2, Box 690H, Industrial Ave., Sanford, ME 04073, (207) 490–1980.

i. FERC Contact: Robert Gwynn, (202) 219–2764.

j. Comment Date: November 10, 1994.

k. Description of Filing: Missisquoi Associates proposes to install a spillway gate at the dam, and construct a 175-foot-long rock spur dike in the river to divert flows to the turbines. The spur dike will reduce the effective width of the river channel from approximately 240 feet at the bridge to approximately 140 feet, and introduce a near 90-degree bend to the flow pattern.

l. This paragraph also consists of the following standard paragraphs: B, C1, and D2.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's must also be sent to the Applicant's representatives.

D4. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice . All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR

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385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

E. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will notify all persons on the service list and affected resource agencies and Indian tribes. If any person wishes to be placed on the service list, a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: September 26, 1994, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24178 Filed 9–29–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP93–36–000]

Natural Gas Pipeline Company of America; Notice of Informal Settlement Conference

September 26, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on Monday, October 3, 1994, at 1:00 p.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, DC, for the purpose of exploring the possible settlement of the rate design issues in the above-referenced docket. The conference will continue on Tuesday, October 4, 1994, if necessary.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact David R. Cain (202) 208–0917 or John P. Roddy (202) 208–1176.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24180 Filed 9–29–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–789–000]

Trunkline Gas Co., Notice of Application

September 26, 1994.

Take notice that on September 21, 1994, Trunkline Gas Company (Truckline), P.O. Box 1642, Houston, Texas 77251–1642, filed a request with the Commission in Docket No. CP94–789–000 pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale two 4-inch diameter liquid transmission laterals [1] located in Vermilion Block 26, offshore Louisiana, to Union Oil Company of California (UNOCAL), all as more fully set forth in the request which is open to the public for inspection.

Truckline proposes to sell its Laterals 210B–1700 (approximately 1,390 feet long) and 210B–1800 (approximately 1,540 feet long) in Vermilion Block 26 To UNOCAL. Following abandonment Truckline would permanently disconnect Lateral 210B–1700 (which runs between UNOCAL's Vermilion Block 26 B platform and Trunkline's Vermilion Block T–2 platform) and Lateral 210B–1800 (which runs between UNOCAL's Vermilion Block 26 C platform and Trunkline's Vermilion Block T–2 platform) from its system and connect the two laterals on the T–2 platform. Trunkline states that UNOCAL intends to use the laterals to move low pressure natural gas in conjunction with its production operations. Trunkline proposes to sell the laterals to UNOCAL for $25,000 and would not incur any expenses in connecting the laterals on the T–2 platform. Trunkline also states that it has not used these laterals since 1974.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 17, 1994, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is

[1] See orders at 21 FPC 704 (1959) and 23 FPC 640 (1960).

filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24181 Filed 9–29–94 ; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5082–4]

Federal Facilities Environmental Restoration Dialogue Committee; Notice of Renewal

AGENCY: U.S. Environmental Protection Agency.

ACTION: Renewal of Federal Facilities Environmental Restoration Dialogue Committee Charter.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2) and the General Services Administration rule on Federal Advisory Committee Management, 41 CFR part 101–6, and after consultation with GSA, the Administrator of the U.S. Environmental Protection Agency has determined that the renewal of the Federal Facilities Environmental Restoration Dialogue Committee is in the public interest

The Committee was first established in 1992 to advise the federal government on policies to improve the process by which federal facility environmental restoration decisions are made, such that these decisions reflect the priorities and concerns of all stakeholders. In renewing the Committee's charter, the Administrator has established the objective of refining and further developing issues related to environmental restoration activities at federal facilities.

The Committee will consist of 40–50 members to be appointed by the Administrator to assure a balanced representation among all stakeholders involved with federal facilities environmental restoration.

The Committee will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. Copies of the Committee's revised charter will be filed with appropriate committees of the Congress and with the Library of Congress.

Inquiries or comments may be directed to Ms. Marilyn Null, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency, Washington, D.C. 20460 or telephone: 202/260–5686.

Dated: September 22, 1994.

Timothy Fields, Jr.,

Deputy Assistant Administrator, U.S. EPA Office of Solid Waste and Emergency Response.

[FR Doc. 94–24256 Filed 9–29–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5082–7]

Clean Water Act; Contractor Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intended transfer of confidential business information to contractors.

SUMMARY: The Environmental Protection Agency (EPA) intends to transfer to EPA contractors and subcontractors, technical and financial confidential business information (CBI) collected from several metals forming, finishing, and fabricating industries including the metal products and machinery manufacturing, maintenance and rebuilding industry. Transfer of the information will allow the contractors and subcontractors to assist EPA in developing effluent limitations guidelines and standards under the Clean Water Act (CWA) for the metal products and machinery industry. The information being transferred was collected under the authority of section 308 of the Clean Water Act. Interested persons may submit comments on this intended transfer of information to the address noted below.

DATES: Comments on the transfer of data are due October 11, 1994.

ADDRESSES: Comments may be sent to Janet Goodwin, Engineering and Analysis Division (4303), Environmental Protection Agency, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Janet Goodwin at the above address or at (202) 260–7152.

SUPPLEMENTARY INFORMATION: EPA has previously transferred to its contractor Radian Corporation of Herndon, Virginia (and subcontractors) information, including confidential business information (CBI), concerning the metal products and machinery industry collected under the authority of the Clean Water Act section 308.

The information transferred included: Questionnaire data collected during a two phase survey of the metal products industry; the first phase consisted of the screener questionnaire or the "mini-data collection portfolio (mdcp) which was conducted in 1990 (OMB No. 2040–0148); the second phase was a more detailed questionnaire or data collection portfolio (dcp) that was sent in 1991 to a randomly selected sample identified through the responses to the mdcp (OMB No. 2040–0148). EPA also transferred site visit and field sampling data collected during 1990 through 1993. In addition, Radian has received similar records and data developed in support of the following effluent guidelines regulations:

- Porcelain Enameling (data collection 1977 through 1979),
- Coil Coating (data collection 1977 through 1979),
- Aluminum Forming (data collection 1978 through 1981),
- Battery Manufacturing (data collection 1978 through 1983),
- Copper Forming (data collection 1978 through 1979),
- Electroplating (data collection 1974 through 1979),
- Metal Finishing (data collection 1974 through 1979),
- Metal Molding and Casting (data collection 1977 through 1983),
- Nonferrous Metals Forming and Metal Powders (data collection 1983 through 1985),
- Nonferrous Metals Manufacturing, Phases I and II (data collection 1978 through 1985),
- Plastics Molding and Forming (data collection 1980 through 1987), and
- Hot Dip Coating Subcategory of the Iron and Steel regulation (data collection 1986).

Radian has also received files gathered during studies of the beryllium copper forming industry (data collection during 1986), the platemaking industry (data collection during 1984), and the printing and publishing industry (data collection 1977 through 1979). EPA determined that this transfer was necessary to enable the contractor and subcontractors to perform their work under EPA Contract No. 68–C0–0005 and related subcontracts by assisting EPA in developing effluent limitations guidelines and standards for the metal products and machinery industry. Notice to this effect was provided to the affected companies at the time the data

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was collected or through Federal Register notice.

Today, EPA is giving notice that it has entered into a new contract No. 68–C4–0024 with Radian Corporation of Herndon, VA and Radian Corp. has entered into additional contracts with its subcontractors: Westat, Inc. of Rockville, MD; Amendola Engineering, Inc. of Lakewood, OH; CAI Engineering of Oakton, VA; Information Systems Solutions International, Inc. of Vienna, VA and Marasco Newton Group, Inc. of Arlington, VA. to develop effluent limitations guidelines and standards for the metal products and machinery phase I industry. The effective date of the new contract is October 1, 1994. Radian Corp. will provide technical support such as completion of the public docket for the proposed rulemaking and completion of the work on the draft proposed technical development document. The contractor shall also provide support on post proposal efforts, including assisting with public meetings, responding to comments, filling data gaps that arise through comments on the proposed rule, and assisting with the assembly of the rulemaking record for the final rule.

The subcontractors will assist the prime by providing specific expertise. Westat, Inc. will assist with any surveys that may be required in future work, data management and statistical analysis. Amendola Engineering, Inc. will provide assistance in pollution prevention and water pollution control. CAI Engineering provides metal products industrial wastewater and hazardous waste engineering expertise, surface treatment process design and pollution prevention expertise and wastewater treatment system design expertise. Information Systems Solutions International, Inc. offers information and data management services and Marasco Newton Group, Inc. provides information management services.

In accordance with 40 CFR part 2, subpart B, the previously collected information described above (including confidential business information) will be transferred to Radian Corp. EPA has determined that this transfer is necessary to enable the contractor to perform their work under EPA Contract No. 68–C4–0024.

The metal products and machinery manufacturing, rebuilding and maintenance industry financial and economic data that were collected through the dcp survey in 1991 (OMB No. 2040–0148) was transferred to Abt Associates under Contract No. 68–C0–0080, which will expire September 30, 1994. In accordance with 40 CFR part 2, subpart B, the previously collected information described above (including confidential business information) will be transferred to ERG, Contract No. 68–C3–0302. ERG has subcontracted with Abt Associates to conduct the economic analysis for the metal products and machinery industry. EPA has determined that this transfer is necessary to enable the contractor to perform their work under EPA contract No. 68–C3–0302.

Anyone wishing to comment on the above matters must submit comments to the address given above by October 11, 1994.

Dated: September 26, 1994.

Mark A. Luttner,

Acting Deputy Assistant Administrator for Water.

[FR Doc. 94–24254 Filed 9–29–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5082–3]

Public Water Supply Supervision Program; Program Revision for the State of Alaska

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Alaska is revising its approved State Public Water Supply Supervision Primacy Program. Alaska has adopted drinking water regulations for total coliforms and the treatment of surface water. EPA has determined that these sets of State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for public hearing must be submitted by October 31, 1994 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by October 31, 1994, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective October 31, 1994.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Department of Environmental Conservation (DEC),410 Willoughby Avenue, suite 105, Juneau, Alaska 99801.

DEC South Central Regional Office, 3601 C Street, suite 1334, Anchorage, Alaska 99503.

DEC Northern Regional Office, 1001 Noble Street, suite 350, Fairbanks, Alaska 99701.

DEC Pipeline Corridor Regional Office, 411 West 4th Avenue, suite 2C, Anchorage, Alaska 99501.

Environmental Protection Agency, Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Wendy Marshall, EPA, Region 10, Ground Water and Drinking Water Branch, at the EPA address provided above, telephone (206) 553–1890.

Dated: September 22, 1994

Carol Rushin,

Acting Regional Administrator.

[FR Doc. 94–24257 Filed 9–29–94; 8:45 am]

BILLING CODE 6560–50–F

[ER–FRL–4715–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 12, 1994 through September 16, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Actlvities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 8, 1994 (59 FR 16807).

Draft EISs

ERP No. D–AFS–K65163–CA Rating EC2, Oregon Creek Ecosystem Management Project, Implementation, Tahoe National Forest, Downieville Ranger District, Yuba and Sierra Counties, CA.

Summary

EPA expressed environmental concerns regarding potential project impacts to water and air quality, as well as insufficient consideration in the document to mining activities and activities on non-Federal lands. EPA expressed particular concern regarding potential cumulative impacts from the proposed management proposals, mining activities, and actions on non-Federal lands.

ERP No. D–AFS–L65231–ID Rating EC2, Charlie Tyson Ecosystem Management Project, Implementation, Idaho Panhandle National Forests, St. Maries Ranger District, Charlie Creek, Benewah County, ID.

Summary

EPA expressed environmental concern about fish habitat and recommended that the preferred alternative adopt a combination of forest health measures proposed in Alternative B and C.

ERP No. D–COE–D28012–VA Rating EC2, Henrico County Water Treatment Plant (WTP), Construction and Operation, James River Water Supply Intake, Henrico, Goochland and Hanover Counties, VA.

Summary

EPA expressed environmental concern that the project was being developed prior to the completion of the James River Management Plan and recommended that any permit issued include appropriate conditions that would require the incorporation of the Plan into its design. A more detailed discussion of water needs, cumulative impacts, City of Richmond withdrawals, and canal diversions was requested. Conditions on withdrawals and wetland compensation were recommended.

ERP No. D–COE–K36110–CA Rating EC2, Petaluma River Flood Control Improvements, Implementation, City of Petaluma, Sonoma County, CA.

Summary

EPA expressed environmental concerns pertaining to proposed mitigation, potential water quality impacts, hazardous waste management, and cumulative impacts from proposed upstream projects. EPA urged the Army Corps to continue to explore flood control techniques which minimize impacts to the aquatic environment and enhance water quality and river resources.

ERP No. D–DOE–L09805–00 Rating EC1, Business Plan to Operate Electric Utility Market, Transmission Services and Fish and Wildlife Activities, Funding and Implementation, WA, OR, ID, CA, NV, AZ, MT, WY, UT, NM and British Columbia.

Summary

EPA recommended that BPA re-visit selection of market-driven alternative as proposed action and further evaluate compatibility of the alternative with conservation resource protection goals and policies.

ERP No. D–FHW–L40193–ID Rating LO, Sandpoint North and South (NH–IR–F–CM–5116(68)) Projects, Construction, US 95 (Milepost 466.8 to Milepost 4786), Funding and COE Section 404 Permit, City of Sandpoint, Bonner County, ID.

Summary

EPA agrees that substantial direct and indirect effects were avoided with the rejection of the "West" Alternative, therefore EPA had no objections with the proposed action.

Final EISs

ERP No. F–AFS–L65146–ID, Van Camp Timber Sales and Winter Range Improvements, Road Construction/Reconstruction, Implementation, Clearwater National Forest, Lochsa Ranger District, Idaho County, ID.

Summary

EPA provided no formal written comments. EPA had no objection to the preferred alternative as described in the EIS.

ERP No. F–APH–A82124–00, Logs, Lumber and Other Unmanufactured Wood Articles Importation, Improvements to the existing system to Prohibit Introduction of Plant Pests into the United States.

Summary

EPA was concerned that the rule, as proposed, does not specifically plan for the development of alternatives to methylbromide, a known ozone depleting substance currently planned to be phased out of use by the EPA.

ERP No. F–BLM–K60023–CA, Rail-Cycle-Bolo Station Class III Nonhazardous Waste Landfill Project, Construction and Operation, Federal Land Exchange and Right-of-Way Grants, San Bernardino County, CA.

Summary

The final EIS satisfactorily responded to EPA's prior comments, therefore EPA had no objection to the proposed action.

ERP No. F–DOE–L05205–00, PacifiCorp Capacity Power Sale Contract for 1100 Megawatts (MW) Long-Term Contract for Peaking Capacity, Implementation, WA, OR, ID, MT, WY, UT, CO, CA, NV, AZ, NM and British Columbia.

Summary

EPA provided no formal written comments and had no objection to the preferred alternative as described in the EIS.

ERP No. F–FHW–K40201–AZ, Red Mountain Freeway (Loop 202) Transportation Facility, Construction from Salt River between the Price Freeway on the west and AZ–87 on the east, COE Section 404 and NPDES Permits, Phoenix Metropolitan Area, Maricopa County, AZ.

Summary

Review of the final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. FS–COE–K32023–HI, Maalaea Harbor Improvements for Light-Draft-Vessels, Entrance Channel Realignment and Breakwater Modification, Updated Information, Island of Maui, Maui County, HI.

Summary

Review of the final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. FS–FHW–D40072–VA, VA–234 Bypass Corridor Transportation Improvement, VA–619 at Independent Hill to US 15 at Woolsey, Updated and New Information, Funding, City of Manassas, Prince William County, VA.

Summary

EPA expressed environmental concerns regarding traffic estimates and recommended further analysis be done. EPA also, requested additional noise and habitat terrestrial mitigation.

Dated: September 27, 1994.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 94–24277 Filed 9–29–94; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4715–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed September 19, 1994 Through September 23, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940388, Final EIS, FHW, NY, Long Island Expressway (I–495)/Seaford - Oyster Bay Expressway

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(NY–135) Interchange Project, Improvements between Exit 43 South Oyster Bay Road to Exit 46 Sunnyside Boulevard, Funding and NPDES Permit, Town of Oyster Bay, Nassau County, NY, Due: October 31, 1994, Contact: Howard J. Brown (518) 472–3616

EIS No. 940395, Final EIS, AFS, CA, Hamm—Hasloe Reforestation Project, Implementation, Stanislaus National Forest, Groveland Ranger District, Tuolumne and Mariposa Counties, CA, Due: October 31, 1994, Contact: Herb Hahn (209) 962–7825

EIS No. 940396, Draft EIS, DOA, MD, Beltsville Agricultural Research Center, Construction of Office Complex, Site Selection, Prince George's County, MD, Due: November 14, 1994, Contact: Michael Sazonov (202) 720–2804

EIS No. 940397, Final Supplement, NOA, NC, VA, FL, Coral and Coral Reefs Fishery Management Plan, Updated Information, Amendment 2 of the Gulf of Mexico and South Atlantic, Due: October 31, 1994, Contact: Rolland A. Schmitten (301) 713–2239

EIS No. 940398, Draft EIS, FHA, WV, Spring Hills Subdivision Housing Project, Construction, Funding, Charlestown, WV, Due: November 14, 1994, Contact: Robert D. Lewis (304) 291–4248

EIS No. 940399, Draft EIS, FHW, MO, US 160 Improvements, US 60/ Sunshine Street to the James River Freeway, Funding and COE Section 404 Permit, Greene County, MO, Due: November 14, 1994, Contact: Donald Newmann (314) 636–7104

EIS No. 940400, Final EIS, AFS/BLM/ NOA, AK, Exxon Valdez Oil Spill Restoration Plan Programmatic EIS, Implementation, Prince William Sound, Gulf of Alaska, AK, Due: October 31, 1994, Contact: Rod Kuhn (907) 278–8012

The US Department of Agriculture's Forest Service, US Department of the Interior's, Bureau of Land Management and the US Department of Commerce's, National Oceanic and Atmospheric Administration are Joint Lead Agencies for this project.

EIS No. 940401, Draft EIS, BLM, AZ, Cypus Tohono Open Pit Mine Expansion Project, Plan of Operation Approval and Drilling Permit, Implementation, Tohono O'odham Nation, Papago Indian Reservation, Pinal County, AZ, Due: November 30, 1994, Contact: Paul J. Buff (602) 780–8090

EIS No. 940402, Draft EIS, AFS, MT, Running Wolf Timber Sales, Implementation, Lewis and Clark National Forest, Judith Ranger District, Stanford, Judith Basin County, MT, Due: November 14, 1994, Contact: Rick M. Abt (406) 566–2292

EIS No. 940403, Final EIS, FHW, WY, US 14/16/20 Highway Improvements, Cody to Yellowstone National Park Highway, Funding and COE Section 404 Permit, Shoshone National Forest, Park County, WY, Due: October 31, 1994, Contact: Galen Hesterberg (307) 772–2101

EIS No. 940404, Draft EIS, FHW, PA, PA–0322 (Section B01) Transportation Corridor, Improvements from PA–0655 to Mt. Pleasant, Funding and COE Section 404 Permit, Mifflin County, PA, Due: November 23, 1994, Contact: Manuel A. Mark (717) 782–3461

EIS No. 940405, Draft EIS, UAF, MA, Fort Devens Army Installation Disposal and Reuse, Implementation, Worcester and Middlesex Counties, MA, Due: November 14, 1994, Contact: Lewis Walker (703) 695–7824

EIS No. 940406, Final EIS, COE, LA, West Bank of the Mississippi River Hurricane Protection Plan, Implementation, east of the Harvey Canal, New Orleans, LA, Due: October 31, 1994, Contact: Brett Herr (504) 862–2495

EIS No. 940407, Draft EIS, FTA, CA, South Sacramento Corridor, Transit Improvements, Funding, Sacramento, Yolo, EL Dorado and Placer Counties, CA, Due: November 14, 1994, Contact: Walter W. Strakosch (415) 744–3116

EIS No. 940408, Final EIS, AFS, AK, Ushk Bay Timber Sale, Availability of Timber to the Alaska Pulp Long-Term Timber Sale Contract, Timber Sale and Road Construction, Implementation, Tongass National Forest, Chichagof Island, AK, Due: October 31, 1994, Contact: Michael J. Weber (907) 747–6671

EIS No. 940409, Final EIS, DOE, NV, Pinon Pine Coal-Fired Power Project, Construction, Operation and Maintenance, Funding, Tracy Power Station, Storey County, NV, Due: October 31, 1994, Contact: Suellen Van Ooteghem (304) 284–5443

Amended Notices

EIS No. 940354, Draft EIS, COE, MO, ND, SD, NB, IA, KS, Missouri River Master Water Plan Operation, Multipurpose Project, SD, NB, IA, MO, Due: December 01, 1994, Contact: Lawrence Cieslik (402) 221–7360

Published FR—9–2–94—Due Date Correction.

Dated: September 27, 1994.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 94–24279 Filed 9–29–94; 8:45 am]

BILLING CODE 6560–50–U

[FRL 5082–7]

Clean Air Act Advisory Committee Notice of Meeting

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990 to provide independent advice and counsel to EPA on policy issues associated with the implementation of the Clean Air Act of 1990. The Advisory Committee shall be consulted on economic environmental, technical, scientific, and enforcement policy issues.

OPEN MEETING NOTICE: Pursuant to 5 U.S.C. 2 Section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Friday, October 14 from 8:30 a.m. to 3:30 p.m., at the Sheraton Grand Hotel, 2525 West Loop South in Houston, Texas. Seating will be available on a first come, first served basis. The three sub-committees of the CAAAC (Permits/NSR/Toxics Integration, Economic Incentives and Regulatory Innovation and Linking Energy, Transportation and Air Quality Concerns) will be conducting meetings at the Sheraton Grand Hotel on Thursday, October 13, beginning at 4:00 p.m.

The full committee meeting will include reports from the sub-committee meetings, as well as a discussion of EPA's toxics strategy for implementation and discussions on national environmental justice issues. Mayor Bob Lanier will welcome the committee to Houston at 8:45 a.m. on October 14, and Mr. John Hall, Chairman of the Texas Natural Resource Conservation Commission will address the committee at 12:30 p.m. that afternoon.

INSPECTION OF COMMITTEE DOCUMENTS: The committee agenda and any documents prepared for the meeting will be publicly available in Houston. Thereafter, these documents, together with the CAAAC meeting minutes will be available for public inspection in EPA Air Docket Number A–94–34 in Room 1500 of EPA Headquarters 401 M Street, S.W., Washington, D.C.

FOR FURTHER INFORMATION concerning this meeting of the CAAAC please contact Karen Smith, Office of Air and Radiation, US EPA (202) 260–6379, FAX (202) 260–5155, or by mail at US EPA, Office of Air and Radiation (Mail Code 6101), Washington, D.C. 20460.

Dated: September 23, 1994.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 94–24255 Filed 9–29–94; 8:45 am]

BILLING CODE 6560–50–M

[OPP–66201; FRL 4911–9]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by December 29, 1994, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This notice announces receipt by the Agency of requests to cancel some 40 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 2. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000059–00196	Atroban Insecticide Ear Tag X 20	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-
000100–00627	Dual 15G Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylphenyl)acetamid
000239–02416	Slug-Geta Snail & Slug Bait	4-(Methylthio)-3,5-xylyl methylcarbamate
000352–00421	1% Hexazinone Liquid Weed Killer	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*, 3*H*)-dione
000352–00422	1.25% Hexazinone Liquid Weed Killer	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*, 3*H*)-dione
000499–00276	Whitmire Mesurol PT 1700 Total Release Insecticide	4-(Methylthio)-3,5-xylyl methylcarbamate
000802–00584	Lilly/Miller Tomato Fruit Set	4-Chlorophenoxyacetic acid
000875–00160	Malacorse	*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate
000909–00097	Cooke Tomato Plus	4-Chlorophenoxyacetic acid
000935–00060	Convert-A-Clor Brominating Granules	Sodium bromide Sodium dichloroisocyanurate dihydrate
001624–00003	20 Mule Team Concentrated Borascu	Boron sodium oxide (B4Na2O7) (1330–43–4)
001624–00094	Borax for Fomes Annosus Control	Borax (B4Na2O7.10H2O) (1303–96–4)
001769–00315	Dual-Cide	(5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
001769–00357	Drop Dead	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl-*d*-trans-2,2-dimethyl- Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-
001769–00363	RF90064A	5-Bromo-3-sec-butyl-6-methyluracil
001769–00364	RF90064B	5-Bromo-3-sec-butyl-6-methyluracil
001769–00366	RF90358 (Germ Guard) Toilet Seat Disinfectant	Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14},30%C_{16}, 5%C_{18}, 5%C_{12}) Alkyl* dimethyl ethylbenzyl ammonium chloride*(50%C_{12}, 30%C_{14}, 17%C_{16}, 3%C_{18})
001839–00148	Douglas DC-2200 Bowl Cleaner	Hydrogen chloride Alkyl* dimethyl benzyl ammonium chloride *(50%C_{14}, 40%C_{12}, 10%C_{16})
001839–00153	Rolar Brand 34 Iodine Sanitizer	Nonylphenoxypolyethoxyethanol - iodine complex Phosphoric acid
001864–00005	Cen-Pe-Co Soothing Protective Face Fly Treatment	Dipropyl isocinchomeronate *N*-Octyl bicycloheptene dicarboximide

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TABLE 2. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
001864-00011	New Cen-Pe-Co Never-Lite Stock Spray	Dipropyl isocinchomeronate *N*-Octyl bicycloheptene dicarboximide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
001864-00012	Cen-Pe-Co New Cattle Oil	Dipropyl isocinchomeronate *N*-Octyl bicycloheptene dicarboximide *O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate
001864-00014	Cen-Pe-Co Super 100 Bran and Stock Spray	Dipropyl isocinchomeronate *N*-Octyl bicycloheptene dicarboximide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
005664-00018	Sanipor Porcelain Cleaner and Disinfectant	Hydrogen chloride Alkyl* dimethyl benzyl ammonium chloride *(50%C_{14}, 40%C_{12}, 10%C_{16})
007001-00292	Grass & Weed Killer	Sodium metaborate (NaBO2) 3-(3,4-Dichlorophenyl)-1,1-dimethylurea Sodium chlorate
007001-00340	Borocil IV A Granular Grass & Weed Killer	Sodium metaborate (NaBO2) 5-Bromo-3-sec-butyl-6-methyluracil
010370-00063	Ford's Bor-Kill Roach Powder	Boric acid
010370-00238	Superior Brand Roach & Ant Bait-Gel	Boric acid
010370-00266	Pharaoh Ant Piper	Boric acid
011694-00027	Dymon Bowl Kleen 200	Hydrogen chloride Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12}) Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C_{12}, 32%C_{14})
034704-00633	Butylate 10 G Selective Herbicide for Field, Sweet and	*S*-Ethyl diisobutylthiocarbamate
034704-00702	Clean Crop Butylate 6.7ec	*S*-Ethyl diisobutylthiocarbamate
044716-00001	Fearing Insecticide Ear Tags	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-
049074-00005	Michlin Malathion EC	*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate
050534-00040	Post-Emerge Grass & Weed Killer and Lawn Renovator	Cacodylic acid Cacodylic acid, sodium salt
050534-00123	Crop Rider 20% Aqua Granular	Acetic acid, (2,4-dichlorophenoxy)-2-ethylhexylester
050534-00124	Crop Rider "45"	Acetic acid, (2,4-dichlorophenoxy)-2-ethylhexylester
050534-00137	2,4-D 20% Terra G	Acetic acid, (2,4-dichlorophenoxy)-2-ethylhexylester
050534 MS-90-0014	Dacamine 4D Weed Killer	2,4-Dichlorophenoxyacetic acid *N*-Oleyl-1,3-propylenediamine 2,4-dichlorophenoxyacetate
064745-00001	Three Elephant Tronabor	Boron sodium oxide ($B_4Na_2O_7$), pentahydrate

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000059	Coopers Animal Health Inc., Director of Regulatory Affairs, 421 E. Hawley St, Mundelein, IL 60060.
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000239	Solaris Group, The A Div of The Agricultural Group of Monsa, Box 5006, San Ramon, CA 94583.
000352	E. I. Du Pont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
000499	Whitmire Research Laboratories, Inc., 3568 Tree Ct., Industrial Blvd, St Louis, MO 63122.
000802	Chas H. Lilly Co., 7737 N.E. Killingsworth, Portland, OR 97218.
000875	Diversey Corp., 12025 Tech Center Dr, Livonia, MI 48150.
000909	Cooke Laboratory Products, Subsidiary of The Chas. H. Lilly Co., 7737 N.E. Killingsworth, Portland, OR 97218.
000935	Occidental Chemical Corp., Development Center, V-81 Box 344, Niagara Falls, NY 14302.
001624	U.S. Borax Inc., Occupational Health & Product Safety, 26877 Tourney Rd, Valencia, CA 91355.
001769	NCH Corp., 2727 Chemsearch Blvd., Irving, TX 75062.
001839	Stepan Co., 22 W Frontage Rd., Northfield, IL 60093.
001864	Central Petroleum Co., 1449 W. 117th St, Cleveland, OH 44107.
005564	Cantol Inc., 2211 N. American Street, Philadelphia, PA 19133.
007001	J.R. Simplot Co., Box 198, Lathrope, CA 95330.
010370	Roussel UCLAF Corp., 95 Chestnut Ridge Rd, Montvale, NJ 07645.
011694	Dymon, Inc., 3401 Kansas Ave., Box 6267, Kansas City, KS 66106.
034704	Platte Chemical Co. Inc., c/o William M. Mahlburg, Box 667, Greeley, CO 80632.
044716	Fearing Mfg. Co Inc., 490 Villaume Ave, So., St. Paul, MN 55075.
049074	Michlin Diazo Products Corp., 10501 Haggerty St., Dearborn, MI 48126.
050534	ISK Biosciences Corp., 5966 Heisley Rd., Box 8000, Mentor, OH 44061.
064745	North American Chemical Co, 8300 College Blvd, Overland Park, KS 66210.

III. Loss of Active Ingredients

Unless the request for cancellation is withdrawn, one pesticide active ingredient will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrant to explore the possibility of their withdrawing the request for cancellation. This active ingredient is listed in the following Table 3, with the EPA Company Number.

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

Cas No.	Chemical Name	EPA Company No.
2212-59-1	*N*-Oley-1,3-propylenediamine 2,4-dichlorophenoxyacetate	050534

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before December 29, 1994. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 22, 1994

Daniel M. Barolo,

Director, Office of Pesticide Programs

[FR Doc. 94-24248 Filed 9-29-94, 8:45 am]

Billing Code 6560-50-F

[OPP-34065; FRL 4912-1]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

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ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on: December 29, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the Federal Register. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 16 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before [*insert date 90 days after date of publication*] to discuss withdrawal of the applications for amendment. This 90–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000464–00070	DOWICIDE 1 Antimicrobial	(o - Phenylphenol)	Postharvest use on apples, cantaloupes, carrots, cherries, cucumbers, kiwifruit, kumquats, nectarines, peppers (bell), peaches, pineapples, plums (fresh prunes), sweet potatoes, tomatoes
000829–00203	Insecticide Bait	(Trichlorfon)	Beans (dry & snap), beans (lima), corn, cowpeas (southern peas, blackeyed peas, crowder), brussel sprouts, cabbage, cauliflower, collards, lettuce, peanuts, pumpkins, table beets, tobacco, tomatoes
001021–01091	Evergreen Emulsifiable 60–6	(Pieronyl butoxide) (Pyrethrins)	Tarrow root, bulb vegetables, napa, french beans, boysenberry, subtropical fruits, tree nuts, cereal grains, grass, forage, fodder, hay, non-grass animal feeds, cilantaro, herbs & spices, artichoke, chayhote, coffee, cotton, hops, jojoba, ornamental turf grass, sesame, sunflower (leaves & seed), tea
001021–01110	Evergreen Growers Spray	(Pyrethrins)	Tarrow root, bulb vegetables, napa, french beans, boysenberry, subtropical fruits, tree nuts, cereal grains, grass, forage, fodder, hay, non-grass animal feeds, cilantaro, herbs & spices, artichoke, chayhote, coffee, cotton, hops, jojoba, ornamental turf grass, sesame, sunflower (leaves & seed), tea
001021–01340	Formula 7243	(Piperonyl butoxide) (Pyrethrins)	Tarrow root, bulb vegetables, napa, french beans, boysenberry, subtropical fruits, tree nuts, cereal grains, grass, forage, fodder, hay, non-grass animal feeds, cilantro, herbs & spices, artichoke, chayhote, coffee, cotton, hops, jojoba, ornamental turf grass, sesame, sunflower (leaves & seed), tea
001021–001612	Evergreen Growers Spray 7405	(Pyrethrins)	Tarrow root, bulb vegetables, napa french beans, boysenberry, subtropical fruits, tree nuts, cereal grains, grass, forage, fodder, hay, non-grass animal feeds, cilantro, herbs & spices, artichoke, chayhote, coffee, cotton, hops, jojoba, ornamental turf grass, sesame, sunflower (leaves & seed) tea

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
005905–00196	Cythion, The Premium Grade Malathion	(Malathion)	Almonds, apples, asparagus, bulk spray treatment (peanuts into storage), carrots, cranberries, melons, peanuts, peas & pea vines for storage, pears, plums & prunes (dormant and delayed dormant sprays), pumpkins, quinces, residual warehouse spray (before storing peanuts), safflower soybeans, stored grains, sugar beets, tobacco, soil incorporation instructions from strawberries
005905–00250	Cythion 8 Lb. Emulsion	(Malathion)	Asparagus, sugar beets, carrots, pumpkins, cranberries, safflower, strawberries (soil incorporation only), sorghum, seeds & rice from stored grains, grains (going into storage), grains (after storage), residual spray for bagged flour & packaged cereals, field & garden seed, peanuts, poultry, in buildings
009779–00005	Malathion 5	(Malathion)	Apples, grains going into storage, after grains are stored, stored peanuts, livestock and poultry, tobacco, asparagus, carrots (under root crop), stored grain bins, peanuts, soybeans, anise, indoors (in buildings), use in animal bedding, sheds, dairy barns, melons, pumpkins
010163–00200	Prefar 4-E	(Bensulide)	Cotton, grass seed crops, tomatoes
010404–00066	Horticultural Oil Insecticide	(Petroleum distillate, oils, solvent, or hydrocarbons)	Apples, pears, pecans, citrus, peaches, plums, prunes, sweet corn, field corn, sugar beets
034704–00003	Malathion 55 Insecticide Premium Grade	(Malathion)	Wheat, oats, rice, corn, rye, barley, grain sorghum, field and garden seeds, apples, cranberries, melons, pears, plums, prunes, domestic animal uses for beef cattle, non-lactating dairy cattle, hogs, sheep, goats, poultry, indoor animal premise uses for domestic animal & poultry
034704–00108	Clean Crop Malathion 57 EC	(Malathion)	Almonds, asparagus, apples, carrots, cowpea hay, filberts, melons, peanuts, pears, plums, prunes, pumpkins, quinces, safflower, soybeans, strawberries (as a soil application), sugar beets, tobacco, stored commodity treatment for wheat, oats, rice, corn rye, barley, grain sorghum, almonds, peanuts, field and garden seeds, bagged citrus pulp, domestic animal uses for beef cattle, non- lactating dairy cattle, hogs, sheep, goats, poultry, animal premise uses for poultry houses, pens and manure piles, wineries and processing plants
034704–00544	Cythion 5-E Insecticide	(Malathion)	Carrots, melons, safflower, pumpkins, sugar beets, hogs, sheep, goats, horses, beef cattle
045385–00021	Dursban 2E Insecticide	(Chlorpyrifos (ANSI))	Mosquito uses
SLN OR-800050 (Co. No. 000400)	Plantvax 75W	(Oxycarboxin)	Outdoor ornamental, turf

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

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TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000464	The Dow Chemical Company, 1803 Building, Midland, MI 48674.
000829	Southern Agricultural Insecticides, P.O. Box 218, Palmetto, FL 34220.
001021	McLaughlin Gormley King Co., 8810 Tenth Avenue North, Minneapolis, MN 55427.
005905	Helena Chemical Co., 6075 Poplar Ave., Suite 500, Memphis, TN 38119.
009779	Riverside/Terra Corp., 600 Fourth Street, Sioux City, IA 51101.
010163	Gowan, P.O. Box 5695, Yuma, AZ 85366.
010404	Lesco, Inc., 20005 Lake Road, Rocky River, OH 44116.
037404	Platte Chemical Co., P.O. Box 667, Greeley, CO 80632.
045385	Chem-Tox, Inc., 481 Scotland Road, McHenry, IL 60050.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: September 22, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94-24246 Filed 9-29-94; 8:45 am]

BILLING CODE 6560-50-F

[OPP-66202; FRL 4912-2]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by December 29, 1994, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This notice announces receipt by the Agency of requests to cancel some 39 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000264-00311	Sevin 20% Bait Carbaryl Insecticide	1-Naphthyl-*N*-methylcarbamate
000264-00312	Sevin Carbaryl 10% Bait Insecticide	1-Naphthyl-*N*-methylcarbamate
000264-00317	Sevin Brand 5% Granular Insecticide	1-Naphthyl-*N*-methylcarbamate
000264-00320	Sevin 5% Bait Carbaryl Insecticide	1-Naphthyl-*N*-methylcarbamate
000264-00323	Sevin 4 Oil Carbaryl Insecticide	1-Naphthyl-*N*-methylcarbamate
000264-00337	Sevin 4 Oil 41 Carbaryl Insecticide	1-Naphthyl-*N*-methylcarbamate
000264-00345	Sevin Fr Carbaryl Insecticide	1-Naphthyl-*N*-methylcarbamate
000264-00420	Sevin Brand Carbaryl Insecticide Spray Ready-To-Use	1-Naphthyl-*N*-methylcarbamate
000264-00423	Sevin Brand Fl Carbaryl Insecticide	1-Naphthyl-*N*-methylcarbamate
000264-00428	Sevin Brand RP4-A Carbaryl Insecticide	1-Naphthyl-*N*-methylcarbamate
000264-00503	Sevin Brand RP2-He Carbaryl Insecticide	1-Naphthyl-*N*-methylcarbamate
000499-00232	Whitmire PT 263 Knox Out	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
000499-00312	Whitmire PT 242 Boric Acid Bait	Boric acid

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000499-00327	Whitmire PT 243 Boric Acid Bait	Boric acid
001864-00005	Cen-Pe-Co Soothing Protective Face Fly Treatment	Dipropyl isocinchomeronate *N*-Octyl bicycloheptene dicarboximide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
001864-00011	New Cen-Pe-Co Never-Lite Stock Spray	Dipropyl isocinchomeronate *N*-Octyl bicycloheptene dicarboximide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
001864-00012	Cen-Pe-Co New Cattle Oil	Dipropyl isocinchomeronate *N*-Octyl bicycloheptene dicarboximide *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
001864-00014	Cen-Pe-Co Super 100 Bran and Stock Spray	Dipropyl isocinchomeronate *N*-Octyl bicycloheptene dicarboximide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
002935-00087	Malathion 4 Dust	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
002935 OR-84-0033	Malathion 5 Pyrethrum 0.1 Dust P.B.	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
002935 UT-81-0005	Red-Top Malathion 5 Pyrethrum 0.1 Dust	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate Pyrethrins
002935 UT-83-0014	Malathion 5 Pyrethrum 0.1 Dust. P.B.	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate Pyrethrins
003125-00234	Mesurol 2% Bait	4-(Methylthio)-3,5-xylyl methylcarbamate
003125-00257	Mesurol 75% Concentrate	4-(Methylthio)-3,5-xylyl methylcarbamate
003125-00258	Mesurol Technical Insecticide	4-(Methylthio)-3,5-xylyl methylcarbamate
003125-00288	Mesurol 75% Wettable Powder	4-(Methylthio)-3,5-xylyl methylcarbamate
003125-00387	Mesurol 2% Bait for Homeowner Use	4-(Methylthio)-3,5-xylyl methylcarbamate
004822-00080	Raid Room Guard Vaporizing Strip Insecticide	2,2-Dichlorovinyl dimethyl phosphate
005905-00324	57% Premium Grade Malathion	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
008590-00234	Agway Scale-Rid	*O,O,O',O'*-Tetraethyl *S,S'*-methylene bis(phosphorodithioate) Aliphatic petroleum hydrocarbons
009444-00133	Borid Turbo	Boric acid
035900-00010	Sal San 5 S	Phosphoric acid
035900-00011	Salt Nuggets with Resingard Water Softener Sanitizing F	Phosphoric acid
037425-00009	Adams Flea and Tick Dip	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
044716-00001	Fearing Insecticide Ear Tags	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-.
050534-00040	Post-Emerge Grass & Weed Killer and Lawn Renovator	Cacodylic acid Cacodylic acid, sodium salt
059639-00014	Dibrom 4 Dust	1,2-Dibromo-2,2-dichloroethyl dimethyl phosphate
059639-00025	Dibrom LVC 10	1,2-Dibromo-2,2-dichloroethyl dimethyl phosphate
059639-00073	Technical Naled	1,2-Dibromo-2,2-dichloroethyl dimethyl phosphate

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

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TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000499	Whitmire Research Laboratories, Inc., 3568 Tree Ct., Industrial Blvd, St Louis, MO 63122.
001864	Central Petroleum Co., 1449 W. 117th St, Cleveland, OH 44107.
002935	Wilbur Ellis Co., 191 W. Shaw Ave., Fresno, CA 93704.
003125	Miles Inc., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
004822	S.C. Johnson & Son Inc., 1525 Howe Street, Racine, WI 53403.
005905	Helena Chemical Co, 6075 Poplar Ave., Suite 500, Memphis, TN 38119.
008590	Agway Inc., c/o Universal Cooperatives Inc., Box 460, Minneapolis, MN 55440.
009444	Waterbury Companies Inc., Box 640, Independence, LA 70443.
035900	Ionics, Inc., 3039 Washington Pike, Bridgeville, PA 15017.
037425	Smithkline Beecham Animal Health, 1600 Paoli Pike, West Chester, PA 19380.
044716	Fearing Mfg. Co Inc., 490 Villaume Ave, So., St. Paul, MN 55075.
050534	ISK Biosciences Corp., 5966 Heisley Rd., Box 8000, Mentor, OH 44061.
059639	Valent U.S.A. Corp., 1333 N. California Blvd, Ste 600, Walnut Creek, CA 94596.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before December 29, 1994. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1-year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: September 22, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94-24247 Filed 9-29-94; 8:45 am]

BILLING CODE 6560-50-F02

[OPPTS-42052P; FRL-4756-5]

Notice of Opportunity to Initiate Negotiations for TSCA Section 4 Enforceable Consent Agreements; Solicitation of Testing Proposals for ATSDR Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice invites manufacturers and processors of certain chemical substances who wish to participate in testing negotiations for various chemicals to develop and submit testing program proposals to EPA. The chemicals are hazardous substances identified for data needs by the Agency for Toxic Substances and Disease Registry (ATSDR), National Toxicological Program (NTP) and EPA pursuant to section 104(i)(5) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA or Superfund)(42 U.S.C. 9601-9675). These 12 chemical substances are vinyl chloride, benzene, trichloroethylene, tetrachloroethylene, hydrogen cyanide, sodium cyanide, toluene, methylene chloride, chloroethane, mercury, chromium, and beryllium. These substances and associated data needs appear in Table 1 below. The specific forms of the metals mercury, chromium, and beryllium to be tested are yet to be determined; EPA will solicit testing proposals for the specific forms of these metals at a later date. Testing proposals should cover all identified data needs of a substance (or multiple substances) in order to be considered for Enforceable Consent Agreement (ECA) negotiation. If, after receiving testing proposals, EPA elects to pursue negotiations for one or more ECAs applicable to specific chemicals, EPA will solicit requests to be designated an interested party at that point. EPA has authority to require testing for these 12 chemical substances under section 4 of the Toxic Substances Control Act (TSCA)(15 U.S.C. 2601-2692) and if an ECA-based approach does not prove viable, EPA would proceed with rulemaking to require the needed testing.

DATES: Written testing proposals must be received by November 29, 1994. EPA may extend the deadline for receipt of testing proposals upon a showing of good faith efforts to develop testing proposals by the initial deadline.

ADDRESSES: Submit three copies of written testing proposals to TSCA Docket Receipts (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE B607, 401 M St., SW., Washington, DC 20460. Submissions should bear the document control number (OPPTS-42052P; FRL-4756-5). The public record supporting this action, including comments, is available for public inspection at the above address from 12 noon to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551. For specific information regarding this action or related activities, contact Brian P. Riedel, Project Manager, Chemical Testing and Information Branch (7405), Rm. NE-1606, 401 M St., SW., Washington, DC 20460, (202) 260-0321.

SUPPLEMENTARY INFORMATION:

I. Background

A. Solicitation for Testing Proposals

EPA's procedures for requiring the testing of chemical substances under section 4 of TSCA include the adoption of ECAs and the promulgation of test rules. On numerous occasions, chemical companies have approached EPA to negotiate ECAs for testing chemicals which are likely to become the subject of proposed test rules. EPA will follow the procedures outlined in unit II of this notice to develop ECAs.

B. Chemical Data Needs

The data needs which are the subject of this notice were determined in accordance with the requirements of the Superfund Amendments and Reauthorization Act (SARA) of 1986 which amended and extended CERCLA.

Section 104(i) of CERCLA requires ATSDR and EPA to prepare and revise a list of hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL) and which ATSDR and EPA, in their sole discretion, determine are posing the most significant potential threat to human health. The lists of these 275 hazardous substances were published in the **Federal Register** on April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43615); October 17, 1990 (55 FR 42067); October 17, 1991 (55 FR 52166); October 26, 1992 (57 FR 48801); and October 18, 1993 (58 FR 53739).

Section 104(i) of CERCLA also directs ATSDR to prepare toxicological profiles of each listed hazardous substance. Section 104(i)(3) outlines the content of these profiles. Each profile is required to include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations in order to ascertain the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. ATSDR has prepared 110 toxicological profiles covering 195 substances. (One toxicological profile may cover several related substances).

Under CERCLA, section 104(i)(5), when adequate information is not available on the health effects of each substance, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of a research program designed to determine such health effects (and techniques for developing methods to determine such health effects).

As the first step in developing its health effects research program, ATSDR identified data needs for each substance in the toxicological profiles. These data needs were reviewed by scientists from ATSDR, NTP, EPA and the Centers for Disease Control, peer reviewed by an external review panel, and made available for public comment. Prior to final publication of the toxicological profiles, ATSDR considered all public comments it received regarding identification of data needs for the substances.

The next step in the development of the health effects research program (or the substance-specific research program) involved the creation of the "Decision Guide for Identifying Substance-Specific Data Needs Related to Toxicological Profiles" (Decision Guide), published in the **Federal Register** on September 11, 1989 (54 FR 37618). Applying the principles discussed in the Decision Guide, ATSDR published the "Identification of Priority Data Needs for 38 Priority Hazardous Substances" in the **Federal Register** on October 17, 1991 (56 FR 52178). As required by CERCLA, section 104(i)(5), ATSDR considered recommendations from the Interagency Testing Committee (ITC), and, with EPA, coordinated development of these priority data needs with NTP and with programs of toxicological testing established under TSCA and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)(7 U.S.C. 136). The purpose of such coordination is to avoid duplication of effort and to assure that the listed hazardous substances are tested thoroughly at the earliest practicable date. ATSDR also considered public comments on identification of the priority data needs. On November 16, 1992, ATSDR published the "Announcement of Final Priority Data Needs for 38 Priority Hazardous Substances" in the **Federal Register** (57 FR 54150). Copies of the FR actions cited above are available in the docket established for this action (OPPTS-42052P; FRL-4756-5).

CERCLA, section 104(i)(5)(C) provides that TSCA authorities may be used to carry out the health effects research program. CERCLA, section 104(i)(5)(D) declares that:

> [i]t is the sense of the Congress that the costs of [conducting health effects research programs] be borne by the manufacturers and processors of the hazardous substances in question, as required in programs of toxicological testing under the Toxic Substances Control Act.

In October 1992, ATSDR requested that EPA test 38 substances using authorities under TSCA and FIFRA. EPA coordinated extensively with other Federal agencies (including the Occupational Safety and Health Administration, National Institute for Occupational Safety and Health, Mine Safety and Health Administration, and the Consumer Product Safety Commission) and among its own programs (including Office of Air and Radiation, Office of Water, Office of Solid Waste and Emergency Response, and Office of Research and Development) to evaluate ATSDR's request for testing. In addition, EPA, ATSDR, and the National Institute of Environmental Health Sciences (NIEHS) met as members of the Tri-Agency Superfund Applied Research Committee (TASARC) to discuss ATSDR's data needs and EPA's response. Copies of the minutes of the TASARC meetings are available in the docket established for this action.

In response to ATSDR's initial request to test 38 substances, EPA deleted substances from the initial list and deleted and added associated data needs based on various factors including, but not limited to, the appropriateness of using TSCA authority to require testing

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of certain substances and the needs of other Federal Agencies and EPA programs for certain test data. Relevant correspondence between EPA and ATSDR regarding these selections is available in the docket established for this action. In a letter dated November 9, 1993, EPA informed ATSDR that EPA would pursue testing of ATSDR substances under section 4 of TSCA. The ATSDR list of 38 substances was modified to contain the 12 substances shown in Table 1 below with a summary description of data needs. These substances will be added to the next edition of the Office of Pollution Prevention and Toxics' Master Testing List scheduled for release in FY '95. Further description of the data needs are available in the docket established for this action.

Note that TASARC has set up a workgroup to identify the specific forms of the metals mercury, chromium and beryllium to be tested. This workgroup will consider the needs of other Federal Agencies and EPA programs. In addition, EPA will solicit testing proposals for the specific forms of these metals at a later date. Note also that EPA has not yet developed testing guidelines for certain endpoints indicated in Table 1 below. EPA particularly encourages submission of testing guidelines for these endpoints which may be used as part of a testing proposal.

EPA realizes that under certain circumstances, as outlined below, route-to-route extrapolation based on valid pharmacokinetic (PK) data can offer a useful and less expensive alternative to retesting by another route of exposure to chemical substances that have already been tested by one route. Therefore, EPA will consider entering into ECAs for PK testing under protocols proposed by prospective test sponsors.

EPA will consider route-to-route extrapolation of toxicity data from routes other than those proposed in Table 1 below when it is scientifically reasonable to empirically derive the risk. Derivation of the risk is only reasonable when portal-of-entry effects and first-pass effects can be ruled out or adequately characterized. Regardless of the toxic endpoint considered, EPA's ability to perform quantitative route-to-route extrapolation is critically dependent on the amount and type of data available. The minimum information needed includes both the nature of the toxic effects and a description of the relationship between exposure and the toxic effect.

The preferred method for performing route-to-route extrapolation involves the development of a physiologically-based pharmacokinetic (PBPK) model that describes the disposition (deposition, absorption, distribution, metabolism, and elimination) of the chemical for the routes of interest. PBPK models must be used in conjunction with toxicity and mechanistic studies in order to relate the effective dose associated with an effect for the test species and conditions to other scenerios.

The primary purpose of this ASTDR/EPA health effects testing program is to meet the substance-specific information needs of the public and the scientific community, and, consistent with the guidelines discussed in the Decision Guide, this testing program will supply toxicity and exposure information which will assist in the development of Superfund health assessments by ASTDR. In addition, because of the involvement by other Federal Agencies and EPA offices in reviewing the testing needs identified for these chemicals, this testing program will supply test data which will also meet the needs of other Federal Agencies and EPA programs.

TABLE 1.—DATA NEEDS AND TESTING GUIDELINES

Chemical and CAS No.	Proposed Testing	Guideline (40 CFR)
Vinyl chloride (75–01–4)	Reproductive inhalation	R
	Developmental inhalation	D
	Neurotoxicity inhalation	N
Benzene (71–43–2)	Subchronic oral	798.2650
	Subchronic inhalation	798.2450
	Neurotoxicity inhalation	N
	Functional observational battery	
	Motor activity	
	Neuropathology	
	Reproductive inhalation	R
Trichloroethylene (79–01–6)	Acute oral	798.1175
	Subchronic oral	798.2650
	Immunotoxicity oral	I
Tetrachloroethylene (127–18–4)	Acute inhalation	A
	Reproductive inhalation	R
	Neurotoxicity subchronic inhalation	N
	Functional observational battery	
	Motor activity	
	Neuropathology	
	Developmental inhalation	D
	Immunotoxicity inhalation	I
Hydrogen cyanide (74–90–8)	Acute inhalation	A
	Subchronic inhalation	798.2450

TABLE 1.—DATA NEEDS AND TESTING GUIDELINES—Continued

Chemical and CAS No.	Proposed Testing	Guideline (40 CFR)
	Developmental inhalation	D
	Neurotoxicity subchronic inhalation	N
	Functional observational battery	
	Motor activity	
	Neuropathology	
Sodium cyanide (143–33–9)	Developmental oral	D
Toluene (108–88–3)	Comparative pharmacokinetic	PK
	Immunotoxicity oral	I
Methylene chloride (75–09–2)	Subchronic oral	798.2650
	Developmental oral	D
	Neurotoxicity subchronic oral	N
	Functional observational battery	
	Motor activity	
	Neuropathology	
	Immunotoxicity oral	I
Chloroethane* (Ethyl chloride) (75–00–3).	Comparative pharmacokinetic	PK
Mercury**(TBD)		
Chromium**(TBD)		
Beryllium**(TBD)		

Notes:

*Note that a soon-to-be-published proposed test rule on hazardous air pollutants (HAPs) will cover chloroethane.

**A workgroup set up by TASARC is in the process of identifying the specific forms of these metals.

TBD -- The Chemical Abstract Service Registry Number(s) for the chemical(s) to be tested is yet to be determined.

R -- Proposed revised EPA guidelines for reproductive toxicity testing are under development and are anticipated to be finalized in the near future. Copies of the latest draft to date are available in the docket established for this action.

D -- Proposed revised EPA guidelines for developmental toxicity testing are under development and are anticipated to be finalized in the near future. Copies of the latest draft to date are available in the docket established for this action.

N -- EPA intends for parties subject to neurotoxicity testing requirements under this rule to follow the 1991 Neurotoxicology Testing Guidelines which are available in the docket established for this action.

I -- A workgroup established by the Tri-Agency Superfund Applied Research Committee (TASARC) is developing immunotoxicity testing guidelines.

A -- Revised EPA guidelines for acute inhalation testing are under development and will soon be published with a proposed test rule on HAPs. Copies of the latest draft to date are available in the docket established for this action.

PK -- EPA has developed testing guidelines which may be used for conducting comparative pharmokinetic testing. These final guidelines are awaiting publication and are available in the docket established for this action.

II. Procedures for Development of ECAs

EPA will follow the procedures outlined below to develop ECAs for the chemical substances listed in Table 1 above.

1. *Submission of testing proposals for ECA negotiations.* Following publication of this Notice, manufacturers and processors have 60 days to develop testing proposals for the chemical substances listed in Table 1 above that they wish EPA to consider as candidates for ECA negotiations. EPA may extend the deadline for receipt of testing proposals upon a showing of good faith efforts to develop testing proposals by the initial deadline. The testing proposals should describe the testing to be performed in detail (test guideline or protocol, including route of administration, species, etc.) and explain in detail where there are deviations from tests proposed by EPA in Table 1 above. The Agency suggests as a model the testing proposal submitted on *N*-methylpyrrolidone (NMP) by the NMP Producers Group on September 11, 1992 found in the docket established for this action. In order for a testing proposal to be eligible for consideration, the proposal should cover all identified data needs of a substance (or multiple substances).

2. *Agency selection of most likely candidates for the ECA program.* EPA will review the submissions and select the most promising submissions as candidates for negotiation. Submissions which fully address EPA's concerns will have a higher chance of success than those which do not fully address all data needs issues.

3. *Formal solicitation of "interested parties" in the* **Federal Register**. If EPA selects a proposal as a candidate for negotiations, such negotiations will be conducted pursuant to procedures described in 40 CFR 790.28. Accordingly, EPA will publish a notice in the **Federal Register** soliciting persons interested in participating in or monitoring negotiations for the development of an ECA, to so notify the Agency in writing. Those individuals and groups who respond to EPA's notice by the deadline established in the notice will have the status of "interested parties" and will be afforded opportunities to participate in the negotiation process. Designation as an "interested party" will not incur any obligations. Submitters of testing proposals will be considered interested parties with regard to the subject(s) of their proposals and need not respond to the solicitation notice.

4. *Negotiation of testing program and development of an ECA.* Negotiations will be conducted in meetings open to

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the public. Notification of meetings will be given only to persons identified as interested parties. The first negotiation meeting will establish the period for negotiation. If agreement is not reached within this prescribed time limit and EPA chooses not to extend the negotiation period, negotiations will be terminated and testing will be required under a rule.

5. *Approval of the ECA by interested parties and EPA and publication of a notice in the* **Federal Register.** After EPA and interested parties have agreed in principle on the terms of the ECA, the ECA text will be sent for approval to interested parties who are actual participants in the negotiation. Subsequent to approval of the ECA, EPA will publish a notice in the **Federal Register** summarizing the testing program and announcing that in lieu of a test rule, the Agency has issued a testing Consent Order that incorporates the ECA.

III. Public Record

EPA has established a record for this action (docket control number OPPTS–42052P; FRL–4756–5). The record includes basic information considered by EPA in developing this action. EPA will supplement the record with additional information as it is received.

A public version of this record is available in the TSCA Nonconfidential Information Center (NCIC) from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The NCIC is located in Rm. NE–B607, Mail Code 7407, 401 M St., SW., Washington, DC, 20460. Written requests for copies of documents contained in this record may be sent to the above address or faxed to (202) 260–9555.

Authority: 15 U.S.C. 2603.

Dated: September 21, 1994.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–24250 Filed 9–29–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

September 27, 1994.

The Federal Communications Commission has submitted the following information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. Section 3507. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503, (202) 395–3561. For further information, contact Judy Boley, Federal Communications Commission, (202) 418–0214.

Please note: The Commission has requested expedited review of this collection by September 30, 1994, under the provisions of 5 CFR 1320.18.

Title: Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Second Report and Order and Second Memorandum Opinion and Order, PP Docket No. 93–253.

OMB Control Number: 3060–0600.

Action: Revised Collections.

Respondents: Individuals, State or local governments, Non-profit institutions, Business or other for-profit, including small businesses.

Frequency of response: On occasion and recordkeeping requirements

Estimated Annual Burden:

Section/forms	No. of Respondents	Estimated average hrs per response	Estimated annual burden
Section 1.2105	13,400	.50	6,700
Section 1.2107	10,000	1	10,000
Section 1.2108	2,350	20	47,000
Section 1.2110	1,000	2	2,000
Section 1.2110*	1,000	1	1,000
Section 1.2111	100	.50	50
Microfiche	13,400	2	26,800
FCC Form 175	13,400	.50	6,700
FCC Form 175–S	6,400	.25	675

*Recordkeeping requirement.
Total Annual Burden: 100,925 Hours.

Needs and Uses: In the Second Memorandum Opinion and Order the Commission modified and supplemented several of its generic rules governing the auctioning of all licenses subject to competitive bidding. Applicants are required to file certain information so that the Commission can determine whether the applicants are legally, technically and financially qualified to be licensed and also whether applicants are entitled to receive certain benefits. Affected public are any member of the public who wants to become or remain a licensee.

The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimates or any other aspect of the collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Branch, Paperwork Reduction Project, Washington, D.C. 20554 and to the Office of Management and Budget Paperwork Reduction Project, Washington, D.C. 20503.

Federal Communications Commission.

Williams F. Caton,

Acting Secretary.

Subpart Q—Competitive Bidding Proceedings

Authority: 47 U.S.C. 309(j).

General Procedures

Section 1.2101 Purpose

The provisions of this subpart implement Section 309(j) of the Communications Act of 1934, as added by the Omnibus Budget Reconciliation Act of 1993 (P.L. 103–66), authorizing the Commission to employ competitive bidding procedures to choose from among two or more mutually exclusive applications for certain initial licenses.

Section 1.2102 Eligibility of Applications for competitive Bidding

(a) Mutually exclusive initial applications in the following services or classes of services are subject to competitive bidding:

(1) Interactive Video Data Service (*see* 47 CFR Part 95, Subpart F). This subsection does not apply to applications which were filed prior to July 26, 1993;

(2) Marine Public Coast Stations (*see* 47 CFR Part 80, Subpart J);

(3) Multipoint Distribution Service and Multichannel Multipoint Distribution Service (*see* 47 CFR Part 21, Subpart K). This subsection does not apply to applications which were filed prior to July 26, 1993;

(4) Exclusive Private Carrier Paging above 900 MHz (*see* 47 CFR Part 90, Subpart P and the Private Carrier Paging Exclusivity Report and Order, 8 FCC Rcd 8318, 58 FR 62289 (Nov. 26, 1993));

(5) Public Mobile Services (*see* 47 CFR Part 22), except in the 800 MHz Air-Ground Radiotelephone Service, and in the Rural Radio Service. This subsection does not apply to applications in the cellular radio service, such as cellular unserved area applications, that were filed prior to July 26, 1993;

(6) Specialized Mobile Radio Service (SMR) (*see* 47 CFR Part 90, Subpart S) including applications based on finder's preferences for frequencies allocated to the SMR service (*see* 47 CFR Part 90.173);

(7) Personal Communications Services (PCS) (*see* 47 CFR Part 24); and

Note: To determine the rules that apply to competitive bidding in the foregoing services, specific service rules should be consulted.

(b) The following types of license applications are not subject to competitive bidding procedures;

(1) Applications for renewal of licenses;

(2) Applications for modification of license; provided, however, that the Commission may determine that applications for modification that are mutually exclusive with other applications should be subject to competitive bidding;

(3) Applications for subsidiary communications services. A "subsidiary communications service" is a class of service where the signal for that service is indivisible from that of the main channel signal and that main channel signal is exempt from competitive bidding under other provisions of these rules. *See, e.g.*, § 1.2102(c) (exempting broadcast services). Examples of such subsidiary communications services are those transmitted on subcarriers within the FM baseband signal (*see* 47 CFR § 73.295), and signals transmitted within the Vertical Blanking Interval of a broadcast television signal; and

(4) Applications for frequencies used as an intermediate link or links in the provision of a continuous, end-to-end service where no service is provided directly to subscribers over the frequencies. Examples of such intermediate links are (a) point-to-point microwave facilities used to connect a cellular radio telephone base station with a cellular radio telephone mobile telephone switching office and (b) point-to-point microwave facilities used as part of the service offering in the provision of telephone exchange or interexchange service.

(c) Applications in the following services or classes of services are not subject to competitive bidding:

(1) Alaska-Private Fixed Stations (*see* 47 CFR Part 80, Subpart O);

(2) Broadcast radio (AM and FM) and broadcast television (VHF, UHF, LPTV) under 47 CFR Part 73;

(3) Broadcast Auxiliary and Cable Television Relay Services (*see* 47 CFR Part 74, Subparts D, E, F, G, H and L and Part 73, Subpart B);

(4) Instructional Television Fixed Service (*see* 47 CFR Part 74, Subpart I);

(5) Maritime Support Stations (*see* 47 CFR Part 80, Subpart N);

(6) Marine Operational Fixed Stations (*see* 47 CFR Part 80, Subpart L);

(7) Marine Radiodetermination Stations (*see* 47 CFR Part 80, Subpart M);

(8) Personal Radio Services (*see* 47 CFR Part 95), except applications filed after July 26, 1993, in the Interactive Video Data Service (*see* 47 CFR Part 95, Subpart F);

(9) Public Safety, Industrial/Land Transportation, General and Business Radio categories above 800 MHz, including finder's preference requests for frequencies not allocated to the SMR service (*see* 47 CFR Section 90.173), and including until further notice of the Commission, the Automated Vehicle Monitoring Service (*see* 47 CFR § 90.239);

(10) Private Land Mobile Radio Services between 470–512 Mhz (*see* 47 CFR Part 90, Subparts B–F), including those based on finder's preferences, *see* 47 CFR Section 90.173;

(11) Private Land Mobile Radio Services below 470 MHz (*see* 47 CFR Part 90, Subparts B–F) except in the 220 MHz band (*see* 47 CFR Part 90, Subpart T), including those based on finder's preferences (*see* 47 CFR Section 90.173); and

(12) Private Operational Fixed Services (*see* 47 CFR Part 94).

Section 1.2103 Competitive Bidding Design Options

(a) The Commission will select the competitive bidding design(s) to be used in auctioning particular licenses or classes of licenses on a service-specific basis. The choice of competitive bidding design will generally be made pursuant to the criteria set forth in the Second Report and Order in PP Docket No. 93–253, FCC 94–61, 59 FR 22980 (May 4, 1994), adopted March 8, 1994, but the Commission may design and test alternative methodologies. The Commission will choose from one or more of the following types of auction designs for services or classes of services subject to competitive bidding:

(1) Single round sealed bid auctions (either sequential or simultaneous)
(2) Sequential oral auctions
(3) Simultaneous multiple round auctions

(b) The Commission may use combinatorial bidding, which would allow bidders to submit all or nothing bids on combinations of licenses, in addition to bids on individual licenses. The Commission may require that to be declared the high bid, a combinatorial bid must exceed the sum of the individual bids by a specified amount. Combinatorial bidding may be used with any type of auction.

(c) The Commission may use single combined auctions, which combine bidding for two or more substitutable licenses and award licenses to the highest bidders until the available licenses are exhausted. This technique may be used in conjunction with any type of auction.

Section 1.2104 Competitive Bidding Mechanisms

(a) *Sequencing.* The Commission will establish the sequence in which multiple licenses will be auctioned.

(b) *Grouping.* In the event the Commission uses either a simultaneous multiple round competitive bidding design or combinatorial bidding, the Commission will determine which licenses will be auctioned simultaneously or in combination.

(c) *Reservation Price.* The Commission may establish a reservation price, either disclosed or undisclosed, below which a license subject to auction will not be awarded.

(d) *Minimum Bid Increments.* The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms. The Commission may also establish suggested minimum opening bids on a service-specific basis.

(e) *Stopping Rules.* The Commission may establish stopping rules before or during multiple round auctions in order to terminate the auctions within a reasonable time.

(f) *Activity Rules.* The Commission may establish activity rules which require a minimum amount of bidding activity.

(g) *Withdrawal, Default and Disqualification Penalties.* As specified below, when the Commission conducts a simultaneous multiple round auction pursuant to § 1.2103, the Commission will impose penalties on bidders who withdraw high bids during the course of an auction, or who default on payments due after an auction closes or who are disqualified.

(1) Bid withdrawal prior to close of auction. A bidder who withdraws a high bid during the course of an auction will be subject to a penalty equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal penalty would be assessed if the subsequent winning bid exceeds the withdrawn bid. This penalty amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(2) Default or disqualification after close of auction. If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the penalty in subsection (1) plus an additional penalty equal to 3 percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent penalty will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission.

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When the Commission conducts single round sealed bid auctions or sequential oral auctions, the Commission may modify the penalties to be paid in the event of bid withdrawal, default or disqualification; provided, however, that such penalties shall not exceed the penalties specified above.

(h) The Commission will generally release information concerning the identities of bidders before each auction but may choose, on an auction-by-auction basis, to withhold the identity of the bidders associated with bidder identification numbers.

(i) The Commission may delay, suspend, or cancel an auction in the event of a natural disaster, technical obstacle, evidence of security breach, unlawful bidding activity, administrative necessity, or for any other reason that affects the fair and efficient conduct of the competitive bidding. The Commission also has the authority, at its sole discretion, to resume the competitive bidding starting from the beginning of the current or some previous round or cancel the competitive bidding in its entirety.

Section 1.2105 Bidding Application and Certification Procedures; Prohibition of Collusion

(a) *Submission of Short Form Application (FCC Form 175).* In order to be eligible to bid, an applicant must timely submit a short-form application (FCC Form 175), together with any appropriate filing fee set forth by Public Notice. Unless otherwise provided by Public Notice, the Form 175 need not be accompanied by an upfront payment (see Section 1.2106 of this part).

(1) All Form 175s will be due:

(i) On the date(s) specified by Public Notice; or

(ii) In the case of application filing dates which occur automatically by operation of law (see, e.g., 47 CFR Section 22.902), on a date specified by Public Notice after the Commission has reviewed the applications that have been filed on those dates and determined that mutual exclusivity exists.

(2) The Form 175 must contain the following information:

(i) Identification of each license on which the applicant wishes to bid;

(ii) The applicant's name, if the applicant is an individual. If the applicant is a corporation, then the short-form application will require the name and address of the corporate office and the name and title of an officer or director. If the applicant is a partnership, then the application will require the name, citizenship and address of all partners, and, if a partner is not a natural person, then the name and title of a responsible person should be included as well. If the applicant is a trust, then the name and address of the trustee will be required. If the applicant is none of the above, then it must identify and describe itself and its principals or other responsible persons;

(iii) The identity of the person(s) authorized to make or withdraw a bid;

(iv) If the applicant applies as a designated entity pursuant to § 1.2110 of these rules, a statement to that effect and a declaration, under penalty of perjury, that the applicant is qualified as a designated entity under § 1.2110 of the Commission's Rules;

(v) Certification that the applicant is legally, technically, financially and otherwise qualified pursuant to Section 308(b) of the Communications Act of 1934, as amended. The Commission will accept applications certifying that a request for waiver or other relief from the requirements of Section 310 is pending;

(vi) Certification that the applicant is in compliance with the foreign ownership provisions of Section 310 of the Communications Act of 1934, as amended;

(vii) Certification that the applicant is and will, during the pendency of its application(s), remain in compliance with any service-specific qualifications applicable to the licenses on which the applicant intends to bid including, but not limited to, financial qualifications. The Commission may require certification in certain services that the applicant will, following grant of a license, come into compliance with certain service-specific rules, including, but not limited to, ownership eligibility limitations;

(viii) An exhibit, certified as truthful under penalty of perjury, identifying all parties with whom the applicant has entered into partnerships, joint ventures, consortia or other agreements, arrangements or understandings of any kind relating to the licenses being auctioned, including any such agreements relating to the post-auction market structure.

(ix) Certification under penalty of perjury that it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties other than those identified pursuant to subsection (viii) regarding the amount of their bids, bidding strategies or the particular licenses on which they will or will not bid;

Note: The Commission may also request applicants to submit additional information for informational purposes to aid in its preparation of required reports to Congress.

(b) *Modification and Dismissal of Form 175.* (1) Any Form 175 that is not signed or otherwise does not contain all of the certifications required pursuant to this section is unacceptable for filing and cannot be corrected subsequent to any applicable filing deadline. The application will be dismissed with prejudice and the upfront payment, if paid, will be returned.

(2) The Commission will provide bidders a limited opportunity to cure defects specified herein (except for failure to sign the application and to make certifications) and to resubmit a corrected application. Form 175 may be amended or modified to make minor changes or correct minor errors in the application (such as typographical errors). The Commission will classify all amendments as major or minor, pursuant to rules applicable to specific services. An application will be considered to be a newly filed application if it is amended by a major amendment and may not be resubmitted after applicable filing deadlines.

(3) Applicants who fail to correct defects in their applications in a timely manner as specified by Public Notice will have their applications dismissed with no opportunity for resubmission.

(c) Prohibition of Collusion. (1) Except as provided in paragraphs (c)(2) and (c)(3) of this subsection, after the filing of short-form applications, all bidders are prohibited from cooperating, collaborating; discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other bidders until after the high bidder makes the required down payment, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application pursuant to Section 1.2105(a)(2)(viii).

(2) Applicants may modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided such changes do not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for the same license. Such changes will not be considered major modifications of the application.

(3) After the filing of short-form applications, applicants may make agreements to bid jointly for licenses, provided the parties to the agreement have not applied for the same license.

Section 1.2106 Submission of Upfront Payments

(a) The Commission may require applicants for licenses subject to competitive bidding to submit an upfront payment. In that event, the amount of the upfront payment and the procedures for submitting it will be set forth in a Public Notice. No interest will be paid on upfront payments.

(b) Upfront payments must be made either by wire transfer or by cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission.

(c) If an upfront payment is not in compliance with the Commission's Rule, or if insufficient funds are tendered to constitute a valid upfront payment, the applicant shall have a limited opportunity to correct its submission to bring it up to the minimum valid upfront payment prior to the auction. If the applicant does not submit at least the minimum upfront payment, it will be ineligible to bid, its application will be dismissed and any upfront payment it has made will be returned.

(d) The upfront payment(s) of a bidder will be credited toward any down payment required for licenses on which the bidder is the high bidder. Where the upfront payment amount exceeds the required deposit of a winning bidder, the Commission may refund the excess amount after determining that no bid withdrawal penalties are owed by that bidder.

(e) In accordance with the provisions of subsection (d), in the event a penalty is assessed pursuant to § 1.2104 for bid withdrawal or default, upfront payments or down payments on deposit with the Commission will be used to satisfy the bid withdrawal or default penalty before being applied toward any additional obligations that the high bidder may have.

Section 1.2107 Submission of Down Payment and Filing of Long-Form Applications

(a) After bidding has ended, the Commission will identify and notify the high bidder and declare the bidding closed.

Within five (5) business days after being notified that it is a high bidder on a particular license(s), a high bidder must submit to the Commission's lockbox bank such additional funds (the "down payment") as are necessary to bring its total deposits (not including upfront payments applied to satisfy penalties) up to twenty (20) percent of its high bid(s). (In single round sealed bid auctions conducted under § 1.2103, however, bidders may be required to submit their down payment with their bids.) This down payment must be made by wire transfer or cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission. Winning bidders who are qualified designated entities eligible for installment payments under § 1.2110(d) are only required to bring their total deposits up to ten (10) percent of their winning bid(s). Such designated entities must pay the remainder of the twenty (20) percent down payment within five (5) business days of grant of their application. See § 1.2110(e) (1) and (2) of this subpart. Down payments will be held by the Commission until the high bidder has been awarded the license and has paid the remaining balance due on the license, in which case it will not be returned, or until the winning bidder is found unqualified to be a licensee or has defaulted, in which case it will be returned, less applicable penalties. No interest will be paid on any down payment.

(c) A high bidder that meets its down payment obligations in a timely manner must, within ten (10) business days after being notified that it is a high bidder, submit an additional application (the "long-form application") pursuant to the rules governing the service in which the applicant is the high bidder (unless it has already submitted such an application, as contemplated by § 1.2105(a)(1)(b). For example, if the applicant is a high bidder for a license in the Interactive Video Data Service See 47 CFR Part 95, Subpart F), the long form application will be submitted on FCC Form 574 in accordance with Section 95.815 of the Rules. Notwithstanding any other provision in Title 47 of the Code of Federal Regulations to the contrary, high bidders need not submit an additional application filing fee with their long-form applications. Notwithstanding any other provision in Title 47 of the Code of Federal Regulations to the contrary, the high bidder's long-form application must be mailed or otherwise delivered to: Office of the Secretary, Federal Communications Commission, Attention: Auction Application Processing Section, 1919 M Street, NW., Room 222, Washington, DC 20554.

An applicant that fails to submit the required long-form application as required under this subsection, and fails to establish good cause for any late-filed submission, shall be deemed to have defaulted and will be subject to the penalties set forth in § 1.2104 of the Commission's Rules.

(d) As an exhibit to its long-form application, the applicant must provide a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement it had entered into relating to the competitive bidding process prior to the time bidding was completed. Such agreements must have been entered into prior to the filing of short-form applications pursuant to § 1.2105.

Section 1.2108 Procedures for Filing Petitions To Deny Against Long-Form Applications

(a) Where petitions to deny are otherwise provided for under the Act or the Commission's Rules, and unless other service-specific procedures for the filing of such petitions are provided for elsewhere in the Commission's Rules, the procedures in this section shall apply to the filing of petitions to deny the long-form applications of winning bidders.

(b) Within thirty (30) days after the Commission gives public notice that a long-form applications has been accepted for filing, petitions to deny that application may be filed. Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof.

(c) An applicant may file an opposition to any petition to deny, and the petitioner a reply to such opposition. Allegations of fact or denials thereof must be supported by affidavit of a person or persons with personal knowledge thereof. The times for filing such opposition and replies will be those provided in § 1.45 of these Rules.

(d) If the Commission determines that:

(1) An applicant is qualified and there is no substantial and material issue of fact concerning that determination, it will grant the application.

(2) An applicant is not qualified and that there is no substantial issue of fact concerning that determination, the Commission need not hold an evidentiary hearing and will deny the application.

(3) Substantial and material issues of fact require a hearing, it will conduct a hearing. The Commission may permit all or part of the evidence to be submitted in written form and may permit employees other than administrative law judges to preside at the taking of written evidence. Such hearing will be conducted on an expedited basis.

Section 1.2109 License Grant, Denial, Default, and Disqualification

(a) Unless otherwise specified in these rules, auction winners are required to pay the balance of their winning bids in a lump sum within five (5) business days following award of the license. Grant of the license will be conditioned on full and timely payment of the winning bid.

(b) If a winning bidder withdraws its bid after the Commission has declared competitive bidding closed or fails to remit the required down payment within five (5) business days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default penalty specified in § 1.12104(g)(2). In such event, the Commission may either re-auction the license to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. The down payment obligations set forth in § 1.2107(b) will apply

(c) A winning bidder who is found unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted and will be liable for the penalty set forth in § 1.2104(g)(2). In such event, the Commission will conduct another auction for the license, affording new parties an opportunity to file applications for the license.

(d) Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of their upfront payment, down payment of full bid amount, and may be prohibited from participating in future auctions.

Section 1.2110 Designated Entities

(a) Designated entities are small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies.

(b) Definitions. (1) Small businesses. The Commission will establish the definition of a small business on a service-specific basis, taking into consideration the characteristics and capital requirements of the particular service.

(2) Businesses owned by member of minority groups and/or women. Unless otherwise provided in rules governing specific services, a business owned by members of minority groups and/or women is one in which minorities and/or women who are U.S. citizens control the applicant, have at least 50.1 percent equity ownership and, in the case of a corporate applicant, a 50.1 percent voting interest. For applicants that are partnerships, every general partner either must be a minority and/or woman (or minorities and/or women) who are U.S. citizens and who individually or together own at least 50.1 percent of the partnership equity, or an entity that is 100 percent owned and controlled by minorities and/or women who are U.S. citizens. The interests of minorities and women are to be calculated on a fully-diluted basis; agreements such as stock options and convertible debentures shall be considered to have a present effect on the power to control an entity and shall be treated as if the rights thereunder already have been fully exercised. However, upon a demonstration that options or conversion rights held by non-controlled principals will not deprive the minority and female principals of a substantial financial stake in the venture or impair their rights to control the designated entity, a designated entity may seek a waiver of the requirement that the equity of the minority and female principals must be calculated on a fully-diluted basis. The term minority includes individuals of African American, Hispanic-surnamed, American Eskimo, Aleut, American Indian and Asian American extraction.

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(3) Rural telephone companies. A rural telephone company is any local exchange carrier, including affiliates (as defined in 1.2110(b)(4)), with 100,000 access lines or fewer.

(4) Affiliate. (1) An individual or entity is an affiliate of (a) an applicant or (b) a person holding an attributable interest in an applicant under § 24.709 (both referred to herein as "the applicant") if such individual or entity—

(i) Directly or indirectly controls or has the power to control the applicant, or

(ii) Is directly or indirectly controlled by the applicant, or

(iii) Is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant, or

(v) Has an "identity of interest" with the applicant.

(2) Nature of control in determining affiliation.

(i) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example. An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power to control.

(ii) Control can arise through stock ownership, occupancy of director, officer or key employee positions, contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(iii) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

Example. In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him or her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are persons with attributable interests in the applicant, the other entity will be deemed an affiliate of the applicant.

(3) Identity of interest between and among persons. Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or has the power to control a concern, persons with an identity of interest will be treated as though they were one person.

Example. Two shareholders in Corporation Y each have attributable interests in the same PCS application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. The two shareholders with these common investments (or identity in interest) are treated as though they are one person and Corporation Y would be deemed an affiliate of the applicant.

(i) Spousal Affiliation. Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States. In calculating their net worth, investors who are legally separated must include their share of interests in property held jointly with a spouse.

(ii) Kinship Affiliation. Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context "immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father or -mother, step-brother or -sister, step-son or -daughter, half brother or sister. This presumption may be rebutted by showing that (A) the family members are estranged, (B) the family ties are remote, or (C) the family members are not closely involved with each other in business matters. Example: A owns a controlling interest in Corporation X. A's sister-in-law, B, has an attributable interest in a PCS application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation X is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary sowing.

(4) Affiliation through stock ownership.

(i) An applicant is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock.

(ii) An applicant is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(iii) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(5) Affiliation arising under stock options, convertible debentures, and agreements to merge. Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are generally treated as though the rights held thereunder had been exercised. However, an affiliate cannot use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1. If company B holds an option to purchase a controlling interest in company A, who holds an attributable interest in a PCS application, the situation is treated as though company B had exercised its rights and had become owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

Example 2. If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds an attributable interest in a PCS application, and gives a third party, SmallCo, and option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company A, and thus the applicant, until SmallCo actually exercises its option to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule which requires such options to be considered on a fully diluted basis, the option is not considered to have present effective in this case.

Example 3. If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(6) Affiliation under voting trusts.

(i) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(ii) If a trustee has a familial, personal or extra-trust business relationship to the grantor of the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(iii) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(7) Affiliation through common management. Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(8) Affiliation through common facilities. Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(9) Affiliation through contractual relationships. Affiliation generally arises where one concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(10) Affiliation under joint venture arrangements.

(i) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(ii) The parties to a joint venture are considered to be affiliated with each other.

(c) The Commission may set aside specific licenses for which only eligible designated entities, as specified by the Commission, may bid.

(d) The Commission may permit partitioning of service areas in particular services for eligible designated entities.

(e) The Commission may permit small businesses (including small business owned by women, minorities, or rural telephone companies that qualify as small businesses) and other entities determined to be eligible on a service-specific basis, which are high bidders for licenses specified by the Commission, to pay the full amount of their high bids in installments over the term of their licenses pursuant to the following:

(1) Unless otherwise specified, each eligible applicant paying for its license(s) on an installment basis must deposit by wire transfer or cashier's check in the manner specified in § 1.2107(b) sufficient additional funds as are necessary to bring its total deposits to ten (10) percent of its winning bid(s) within five (5) business days after the Commission has declared it the winning bidder and closed the bidding. Failure to remit the required payment will make the bidder liable to pay penalties pursuant to § 1.2104(g)(2).

(2) Within five (5) business days of the grant of the license application of a winning bidder eligible for installment payments, the licensee shall pay another ten (10) percent of the high bid, thereby commencing the eligible licensee's installment payment plan. Failure to remit the required payment will make the bidder liable to pay penalties pursuant to § 1.2104(g)(2).

(3) Upon grant of the license, the Commission will notify each eligible licensee of the terms of its installment payment plan. Unless other terms are specified in the rules of particular services, such plans will:

(i) Impose interest based on the rate of U.S. Treasury obligations (with maturities closest to the duration of the license term) at the time of licensing;

(ii) Allow installment payments for the full license term;

(iii) Begin with interest-only payments for the first two years; and

(iv) Amortize principal and interest over the remaining term of the license.

(4) A license granted to an eligible entity that elects installment payments shall be conditioned upon the full and timely performance of the licensee's payment obligations under the installment plan.

(i) If an eligible entity making installment payments is more than ninety (90) days delinquent in any payment, it shall be in default.

(ii) Upon default or in anticipation of default of one or more installment payments, a licensee may request that the Commission permit a three to six month grace period, during which no installment payments need be made. In considering whether to grant a request for a grace period, the Commission may consider, among other things, the licensee's payment history, including whether the licensee has defaulted before, how far into the license term the default occurs, the reasons for default, whether the licensee has met construction build-out requirements, the licensee's financial condition, and whether the licensee is seeking a buyer under an authorized distress sale policy. If the Commission grants a request for a grace period, or otherwise approves a restructured payment schedule, interest will continue to accrue and will be amortized over the remaining term of the license.

(iii) Following expiration of any grace period without successful resumption of payment or upon denial of a grace period request, or upon default with no such request submitted, the license will automatically cancel and the Commission will initiate debt collection procedures pursuant to Part 1, Subpart O of the Commission's Rules.

(e) The Commission may award bidding credits (*et seq.*, payments discounts) to eligible designated entities. Competitive bidding rules applicable to individual services will specify the designated entities eligible for bidding credits, the licenses for which bidding credits are available, the amounts of bidding credits and other procedures.

(f) The Commission may establish different upfront payment requirement for categories of designated entities in competitive bidding rules of particular auctionable services.

(g) The Commission may offer designated entities a combination of the available preferences or additional preferences.

(h) Designated entities must describe on their long-form applications how they satisfy the requirements for eligibility for designated entity status, and must list and summarize on their long-form applications all agreements that effect designated entity status, such as partnership agreements, shareholder agreements, management agreements and other agreements, including oral agreements, which establish that the designated entity will have both *de facto* and *de jure* control of the entity. Such information must be maintained at the licensees' facilities or by their designated agents for the term of the license in order to enable the Commission to audit designated entity eligibility on an ongoing basis.

(i) The Commission may, on a service-specific basis, permit consortia, each member of which individually meets the eligibility requirements, to qualify for any designated entity provisions.

(j) The Commission may, on a service-specific basis, permit publicly-traded companies that are owned by members of minority groups or women to qualify for any designated entity provisions.

Section 1.2111 Assignment or Transfer of Control: Unjust Enrichment

(a) *Reporting requirement.* An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license within three years of receiving a new license through a competitive bidding procedure must, together with its application for transfer of control or assignment, file with the Commission a statement indicating that its license was obtained through competitive bidding. Such applicant must also file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would receive in return for the transfer or assignment of its license. This information should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration (*e.g.*, management or consulting contracts either with or without an option to purchase, below market financing).

(b) *Unjust enrichment payment, set-asides.* As specified in this subsection, an applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license acquired by the transferor or assignor pursuant to a set-aside for eligible designated entities under § 1.2110(c) of the Commission's Rules, or who proposes to take any other action relating to ownership or control that will result in loss of status as an eligible designated entity, must seek Commission approval and may be required to make an unjust enrichment payment (Payment) to the Commission by cashier's check or wire transfer before consent will be granted. The Payment will be based upon a schedule that will take account of the term of the license, any applicable construction benchmarks, and the estimated value of the set-aside benefit, which will be calculated as the difference between the amount paid by the designated entity for the license and the value of a comparable non-set-aside license in the free market at the time of the auction. The Commission will establish the amount of the Payment and the burden will be on the applicants to disprove this amount. No Payment will be required if:

(1) The license is transferred or assigned more than five years after its initial issuance, unless otherwise specified; or

(2) The proposed transferee or assignee is an eligible designated entity under

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§ 1.2110(c) of the Commission's Rules or the service-specific competitive bidding rules of the particular service, and so certifies.

(c) *Unjust enrichment payment: installment financing.* An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's rules) of a license acquired by the transferor or assignor through a competitive bidding procedure utilizing installment financing available to designated entities under § 1.2110(d) of the Rules will be required to pay the full amount of the remaining principal balance as a condition of the license transfer. No payment will be required if the proposed transferee or assignee assumes the installment payment obligations of the transferor or assignor, and if the proposed transferee or assignee is itself qualified to obtain installment financing under § 1.2110(d) of the Rules or the service-specific competitive bidding rules of the particular service, and so certifies.

(d) *Unjust enrichment payment: bidding credits.* An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license acquired by the transferor or assignor through a competitive bidding procedure utilizing bidding credits available to eligible designated entities under § 1.2110(e) of the Rules, or who proposes to take any other action relating to ownership or control that will result in loss of status as an eligible designated entity, must seek Commission approval and will be required to make an unjust enrichment payment (Payment) to the government by wire transfer or cashier's check before consent will be granted. The Payment will be the sum of the amount of the bidding credit plus interest at the rate applicable for installment financing in effect at the time the license was awarded. *See* § 1.2110(e). No payment will be required if the proposed transferee or assignee is an eligible designated entity under § 1.2110(e) of the Commission's Rules or the service-specific competitive bidding rules of the particular service, and so certifies.

[FR Doc. 94-24303 Filed 9-29-94; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Newport (U.S.A.) Shipping, Inc., 3232 Kennicott Ave., Arlington Heights, IL 60004
Officers: Helen Chung, President, In Thak Chung, Secretary

Janise Kae Disbrow, 10518 73rd Ave. East, Puyallup, WA 98373
Sole Proprietor

Worldwide Logistics, Inc., 2700 Broening Highway, #211, Dunmar Bldg., South, Baltimore, MD 21222
Officer: Joseph L. Amoriello, President

William Hom, 18 Oceanside Drive, Daly City, CA 94015
Sole Proprietor

Reymon Freight Corporation, 5567 NW 72nd Avenue, Miami, FL 33166
Officer: Alejandro Reyna, President

Caraval, Inc., 1120 SW 86th Court, Miami, FL 33144
Officers: Leslie Marie Diaz, President

Export of International Appliances, Inc., 8820 Monard Drive, Silver Spring, MD 20910
Officers: Mr. N.C. Jain, President, Bhadresh R. Dhila, Vice President, Santosh Jain, Secretary

Shippers, Inc., 10626 SW. 148th Avenue-Drive, Miami, FL 33196
Officer: Pablo R. Vinent, President

Antonio J. Pulido-Morales, 4705 NW. 7th Street, Apt. 405, Miami, FL 33126
Sole Proprietor

Edward M. Jones & Company, Inc., 7804 N.E. Airport Way, Portland, Oregon 97218
Officers: Edward M. Jones, President, Thomas M. Stanton, Vice President, Sharon Jones, Secretary

Sterling Cargo International, Inc., 3010 N. Airfield Dr., Bldg. 1, Ste. 2, DFW Airport, TX 75261
Officers: Charles R. Green, President, Patricia P. Chilton, Vice President, V. Ann Dodson

Bok Kun Chung dba, Exxel Express Line, 6 Latina, Irvine, CA 92714
Sole Proprietor

Indigo International, Inc., 1331 Wannamaker Drive, Summerville, SC 29485
Officer: Joe T. Owens, President

George H. Matthes, 1025 Dewitt Terrace, Linden, NJ 07036
Sole Proprietor

Flamingo Freight Forwarders, Inc., 9820 NW., #6-N, Hialeah Gardens, FL 33016
Officers: Norma O. Mesias, President, Manuel Mesias, Vice President

Blue Sky, Blue Sea Company dba, International Shipping Company (USA) 169 Frelinghuysen Avenue, Newark, New Jersey 07114
Officers: Asad Ferasat, President, Ali Aelaei, Vice President, Jalal Boloorchi, Treasurer

By the Federal Maritime Commission.

Dated: September 26, 1994.

Joseph C. Polking,

Secretary

[FR Doc. 94-24186 Filed 9-29-94; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

PNC Bank Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 24, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. PNC Bank Corp., Pittsburgh, Pennsylvania; to acquire Indian River Federal Savings Bank, Vero Beach, Florida, and thereby engage in permissible savings association activities pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 26, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-24204 Filed 9-29-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panels (SEPs) meetings:

Purpose/Agenda: To review individual grant applications
Name of SEP: Microbiological and Immunological Sciences
Date: October 11, 1994
Time: 3:00 p.m.
Place: NIH, Westwood Building, Room A19 Telephone Conference
Contact Person: Dr. Howard Berman, Scientific Review Admin., 5333 Westbard Ave., Room A19, Bethesda, MD 20892, (301) 594-7234

Name of SEP: Chemistry and Related Sciences
Date: October 27-28, 1994
Time: 1:00 p.m.
Place: Crowne Plaza, Rockville, MD
Contact Person: Dr. Marcia Litwack, Scientific Review Admin., 5333 Westbard Ave., Room 339A, Bethesda, MD 20892, (301) 594-7366

Name of SEP: Chemistry and Related Sciences
Date: October 27, 1994
Time: 1:00 p.m.
Place: NIH, Westwood Building, Room 326, Telephone Conference
Contact Person: Dr. Nancy Lamontagne, Scientific Review Admin., 5333 Westbard Ave., Room 326, Bethesda, MD 20892, (301) 594-7147

Name of SEP: Multidisciplinary Sciences
Date: November 7-9, 1994
Time: 7:30 p.m.
Place: Pittsburgh Airport Hotel, Pittsburgh, PA
Contact Person: Dr. Nabeeh Mourad, Scientific Review Admin., 5333 Westbard Ave., Room 2A04, Bethesda, MD 20892, (301) 594-7213

Name of SEP: Multidisciplinary Sciences
Date: November 30-December 2, 1994
Time: 6:00 p.m.
Place: Cold Spring Harbor, NY
Contact Person: Dr. Bill Bunnag, Scientific Review Administrator, 5333 Westbard Ave., Room 2A07A, Bethesda, MD 20892, (301) 594-7360

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 26, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-24313 Filed 9-29-94; 8:45 am]

BILLING CODE 4140-01-M

Centers for Disease Control and Prevention

[Announcement 502]

Cooperative Agreement for National Organizations' HIV/AIDS Prevention and Health Communications Programs; Health Communications/Behavioral and Social Science Evaluation; and Technical Assistance Efforts in Support of Social Marketing and Health Communications

Introduction

The Centers for Disease Control and Prevention (CDC) announces the anticipated availability of fiscal year (FY) 1995 funds for a cooperative agreement program with national organizations to support HIV/AIDS prevention and health communications programs; health communications/behavioral and social science evaluation; and technical assistance efforts—all in support of social marketing and health communications. These activities should be designed to increase the reach, effectiveness, and impact of HIV prevention efforts.

This announcement continues the HIV/AIDS prevention collaboration between CDC and national organizations that was initiated in 1989 under Announcement 904, Cooperative Agreements for National Organizations and Consortiums to Develop and Implement Effective AIDS Information, Education, and Programs among Constituents.

A cooperative agreement is a legal agreement between CDC and the recipient in which CDC provides financial and other assistance to, and has significant Federal programmatic involvement with, the recipient throughout the project.

For the Nation's HIV/AIDS prevention efforts to succeed, they must be focused on preventing and reducing behaviors that place individuals at risk for HIV infection. Among the significant behavioral objectives necessary for preventing HIV transmission, CDC has adopted the following three related to sexual behavior:

- Young people who are not engaging in any form of sexual activity will maintain this behavior.
- Sexually active people who use condoms consistently and correctly or are in a relationship with a mutually faithful relationship with an uninfected partner will maintain these behaviors.
- Sexually active people who are not in a mutually faithful relationship with an uninfected partner will refrain from sexual activity, choose nonpenetrative sex, or use condoms consistently and correctly.

These objectives cannot be met without the understanding, participation, and support of key sectors of the American public. Coordination, collaboration, and communication between and among all sectors are crucial for successful HIV prevention. These sectors include:

1. *Public* (e.g., health, social services, and education agencies);
2. *Voluntary* (e.g., civic, social, health and health services, and youth-serving organizations that deliver education and community services to the public);
3. *Professional and academic*, the health communications/behavioral and social science and social marketing disciplines that must provide a scientific basis for developing, implementing, refining, and evaluating HIV prevention efforts to ensure effective, behavior-focused HIV interventions.
4. *Religious;*
5. *Business and labor;* and
6. *Media*, including print, radio, television, and entertainment media.

CDC has initiated a number of programs that are intended to focus on and assist in, the development and implementation of successful HIV prevention strategies for promoting healthy behavior reducing or eliminating individual risky behaviors, and strengthening social norms that contribute to the prevention of HIV. These include the Prevention Marketing Initiative (PMI) and the Business and Labor Workplace HIV/AIDS Programs. Specific information regarding these two initiatives is included within the application package. To support these and other initiatives there is a need to build the capacity of the sectors

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addressed in this program announcement to strengthen HIV prevention efforts.

CDC has a number of other HIV-related grant programs. This cooperative agreement targeting national organizations is intended to complement these other programs and to include organizations essential for the development of a comprehensive national HIV prevention program.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV infection. (To order a copy of Healthy People 2000, see the section entitled WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under sections 301(a) and 317(a) of the Public Health Service Act, 42 U.S.C. 241(a) and 247b(a), as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligible applicants are national organizations (NOs), including national minority organizations (NMOs). All applicants must provide documentation proving that they meet the following criteria:

A. Be an established national (defined by charter or bylaws to operate nationally), nonprofit organization (a nongovernmental, nonprofit corporation or association whose net earnings in no part accrue to the benefit of private shareholders or individuals). Bylaws and/or charter must be furnished with the application. The following is acceptable evidence of nonprofit status:

*A copy of a currently valid Internal Revenue Service (IRS) tax exemption certificate.

B. A national minority organization must furnish a written statement that more than 50 percent of the board of directors of said organization are racial or ethnic minority members. Groups recognized as racial and ethnic populations are: African Americans, Alaskan Natives, American Indians, Asian Americans, Caribbean Americans, Latinos/Hispanics, and Pacific Islanders.

Proof of nonprofit and organizational status and other eligibility criteria *must* be submitted with the application for determination of eligibility. No application will be accepted without proof of nonprofit status.

Assistance will be provided only to national organizations and national minority organizations as described above. To help prevent the spread of HIV infection, CDC proposes to support such organizations which have existing networks and constituents and the capacity to serve communities across the nation. This ensures that all communities—urban, suburban, and rural—have both public and private sector resources to assist them in their prevention efforts.

Availability of Funds

Approximately $5 million is expected to be available in FY 1995 to fund approximately 20 awards. It is expected that the average award will be $125,000 per year, ranging from $100,000 to $200,000 per year. Awards to fund programs planned for national minority organizations may range between $250,000 and $300,000 per year. In addition, one award of up to $1,000,000 can be made to support a local condom availability social marketing demonstration project in three communities. It is expected that the awards will begin on or about March 1, 1995. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds. Grantees will be asked to submit yearly continuation applications, including verification of eligibility requirements.

Programmatic and budget justification are required for all applications. Applicants requesting funding as national minority organizations will be considered separately from non-minority applicants.

Subject to the availability of funds and the receipt of technically acceptable, fundable applications, at least twelve awards are expected to be made to national organizations that target business, and labor, religious, voluntary, media and other appropriate sectors (ranging from 2–5 awards per sector); at least two awards are expected to be made to national professional or academic organizations, specific to health communications and/or behavior and social sciences evaluation; at least one award is expected to be made to a national organization representing public health; at least one award to a national organization that is qualified to effectively reach and impact gay, bisexual, and lesbian audiences; at least two awards to national minority organizations for health communications; and at least one award to a national organization to develop and implement a condom accessibility demonstration project in at least three communities.

Awards will be made for a 12-month budget period within a 3-year project period. (*Budget period* is the interval of time into which the project period is divided for funding and reporting purposes. *Project period* is the total time for which a project has been programmatically approved.) Continuation awards for years 2 and 3 within an approved project period are made on the basis of satisfactory performance and the availability of funds.

These funds may not supplant or duplicate existing funding from any other public or private source. Although contracts with other organizations are allowable under these cooperative agreement awards, applicants themselves must perform a substantial portion of the activities for which funds are requested.

No funds will be provided for patient medical care or purchase of drugs or vaccines.

Purpose

The purpose of this cooperative agreement is to develop partnerships with and among national organizations to effectively extend the reach of CDC's HIV Prevention strategies (Prevention Marketing Initiative and the Business and Labor Workplace HIV/AIDS Program) into communities to strengthen social norms that contribute to the prevention of HIV.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities under B. (CDC Activities).

A. Recipient Activities

Applicant must develop a program plan based on realistic, specific, time-phased, and measurable objectives for proposed activities and services, including technical assistance, for their affiliates, constituents or members.

The most successful comprehensive social marketing/health communications programs make individual-level behaviors the central communications focus while addressing both the individual and the social systems and networks that influence (predispose, enable, and reinforce) the behaviors of individuals. Applicant may choose to conduct one, several, or all of the three Priority Activities listed below.

Programs developed under any Priority Activity area must be implemented at the national level, and must be designed to have an impact, ultimately, at the local level. All programs must be coordinated with CDC, national, regional, State, and existing social marketing/health communications programs to prevent duplication of efforts, i.e., the Prevention Marketing Initiative and the Business and Labor Workplace HIV/AIDS Program. In addition CDC is currently working with its national, State, and local HIV prevention partners to implement the HIV Prevention Community Planning Initiative. An outcome of this initiative is that each health department recipient of an HIV prevention cooperative agreement is to develop a comprehensive HIV prevention plan for its jurisdiction. Programs funded under Announcement 502 should be consistent with these State and local comprehensive HIV prevention plans.

This announcement includes provisions to fund national minority organizations to develop, produce, disseminate, and market health communications messages on HIV prevention. All such efforts must be culturally competent and linguistically appropriate for the intended audience segments.

Priority Activity 1

Participate in a comprehensive prevention marketing program targeted initially to persons 18 to 25 years of age designed to decrease HIV risk behaviors, and/or to the social systems and networks, including communities, that influence, support, and reinforce their sexual behaviors. Such efforts, including training and technical assistance, must be undertaken in direct support of, and coordinated with, CDC's existing Prevention Marketing Initiative.

Program activities may include the creation or utilization of systems, activities, and interventions that directly influence individual behavior (these behaviors are those that place individuals at risk for HIV transmission). They may also include activities designed to change or sustain individual behaviors by influencing social systems and networks in relevant sectors of society that will affect individual behavior. These programs should strengthen the abilities of public and private national, regional, State, and local organizations and consortia to provide information, training, and/or technical assistance to their members, affiliates, or constituencies, and to apply available resources creatively and effectively to reduce risk behaviors which contribute to the further spread of HIV.

A national program to demonstrate and evaluate the effectiveness of an established social marketing program relevant to CDC's Prevention Marketing Initiative may be undertaken. This program, must be undertaken in not less than three communities across the country and must be based upon an already established, on-going, or recently completed social marketing program.

An example of such a program would be one that uses proven methods for community engagement and collaboration to involve critical social/civic community leaders in promoting awareness of condom effectiveness in preventing disease.

Priority Activity 2

Build the capacity within relevant social systems and/or networks within a sector of society, and ultimately coordinate with these systems, to participate in HIV prevention efforts. This can be done by providing technical assistance, training, and/or information to organizations representing key sectors of society addressed in this program announcement (e.g., business and labor, religious, voluntary, and media).

Execution of this activity would involve the development and operation of HIV/AIDS technical assistance and training programs to assist national, regional, State, and/or local organizations within defined social systems to implement comprehensive, effective HIV prevention efforts.

Examples of Priority 2 activities would be participation in one or more of the following programs: (1) the Business and Labor Workplace HIV/AIDS Program, designed to assist the business and labor sector in developing and implementing comprehensive workplace HIV/AIDS programs and to assist business and labor leaders in supporting and participating in community HIV prevention efforts; (2) a broad effort to engage and develop the capacity of religious institutions to participate in HIV prevention and services at the community level; or (3) a broad effort by a national voluntary or media organization to educate its constituents, affiliates, and volunteers to participate in local HIV community planning, education, and service activities.

Priority Activity 3

Support national professional and academic organizations in transferring technology and information specific to health communications, social, and behavioral science research and evaluation to assist governmental and nongovernmental organizations in effective HIV prevention planning, intervention design, or evaluation.

Priority consideration will be given to applications which propose to collect, "translate," and disseminate research and evaluation findings for organizations and constituencies involved in HIV prevention efforts, including HIV Prevention Community Planning, social marketing, changing or influencing behaviors or social norms, and other types of HIV prevention interventions.

Examples of this type of program would include those which (a) systematically retrieve, analyze, and "translate" relevant (published and/or unpublished) research and evaluation findings for persons involved in planning programs and designing interventions; or (b) develop and implement systems for providing technical assistance and training on behavioral and communications science, and on programmatic interventions conducted by national, State, and community organizations (public and private); or (c) is an effort by a national professional organization of behavioral and social scientists to train and mobilize its membership to assist local organizations or communities in planning for HIV prevention and evaluating their local HIV community interventions.

B. CDC Activities

The Centers for Disease Control and Prevention (CDC) shall undertake the following activities in support of this announcement:

1. Provide information to, and collaborate with, funded organizations in developing and implementing short- and long-term plans for social marketing and health communications for HIV prevention.

2. Provide consultation, assistance, and guidance in planning and implementing program activities under this announcement including promotion and publicity related to the project.

3. Assist in identifying, acquiring, or developing appropriate educational materials to be used in programs.

4. To the extent that CDC has this information, provide up-to-date scientific information on the following:

- Risk factors for HIV/STD transmission

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- Current HIV infection trends and behavioral practices, including trends among populations of a specific age, sex, or race/ethnicity
- Prevention and program strategies that have been shown to be successful in preventing HIV infection
- Current knowledge, attitudes, beliefs, and behaviors related to HIV transmission
- Documented determinants of behavior and underlying factors influencing determinants

5. Provide technical assistance in developing and implementing evaluation strategies for the program.

6. Facilitate collaboration with other public and private sector agencies involved in HIV prevention efforts at the national, regional, State, and community levels.

7. Facilitate the exchange of program information and technical assistance among other public and private agencies at all levels.

8. Monitor the successful applicants' program activities and compliance with all programmatic, administrative, and budgetary requirements.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

I. Review and Evaluation of Application

A. Organizational Capability (30%)

The extent to which the applicant documents: (1) recent experience of at least 12 months in operating and centrally administering a coordinated health, health-related, or community-related program which is national in scope; (2) expertise about social marketing and health communications, and/or social and behavioral science and/or the extent to which the applicant documents other relevant expertise in conducting these types of programs; and (3) ability to access and influence a particular sector (public, voluntary, religious, business, labor, media) through a network of affiliates, chapters or constituents/members to provide HIV-related technical assistance and training on public health, or related social issues other than HIV, on a national level (throughout the U.S.) to appropriate target audiences (e.g., racial and ethnic minority populations, gay men, sexual partners of intravenous drug users, and youth).

B. Understanding of the Problem (15%)

The extent to which the applicant demonstrates and documents its understanding of the types, magnitude, and priority of the unmet prevention needs of the target audiences, organizations, and agencies that the proposed program will address.

C. Program Objectives (10%)

The extent to which the proposed objectives are specific, measurable, time-phased, and consistent with the program purpose, the proposed activities, and the applicant organization's overall mission.

D. Quality of Plan (25%)

The quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives.

E. Organizational Experience (10%)

The extent to which the applicant demonstrates support of, and intended collaboration on, the program plan and activities from Community Based Organizations (CBOs), health or education agencies, and other organizations and agencies serving target populations.

F. Evaluation Plan (10%)

The extent to which the evaluation plan measures the achievement of program objectives and monitors the implementation of proposed activities or the commitment to implement a collaboratively developed evaluation plan.

G. Budget Justification and Adequacy of Facilities (not scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

II. Pre-decisional Site Visits

A. Site visits may be conducted before CDC makes final funding decisions. Only the organizations with high-ranking applications may be visited. During the visit, CDC staff will meet with project staff, a representative of the board of directors, and other applicant principals to assess the applicant's ability to implement the proposed program, review the application and program plans for current or planned activities, and determine the special programmatic conditions and technical assistance requirements of the applicant.

B. Site visits may also include a recipient capability assessment by CDC staff, the HHS Inspector General, or an outside CPA audit firm to ascertain whether existing financial and management systems and controls are adequate to receive and administer Federal funds.

Funding Priorities

Priority consideration will be given to applications supporting CDC's HIV/AIDS initiatives in social marketing (i.e., prevention marketing); health communications; health education/risk reduction; business and labor, religious, voluntary, and media sector capacity building and technical assistance programs. These programs are intended to increase the effectiveness of HIV prevention efforts delivered by national, State, and local organizations to change the behavior of specific segments of target audiences.

Public comments are not being solicited regarding the funding priority because time does not permit solicitation and review prior to the funding date.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number is 93.939, *HIV Prevention Activities—Non-governmental Organization Based.*

Other Requirements

A. Recipients must comply with the document entitled *Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control (CDC) Assistance Programs* (June 1992). To meet the requirements for a program review panel, recipients are encouraged to use an existing program review panel, such as the one created by the State health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a State or local health department. The names of review panel members must be listed on the Assurance of Compliance Form CDC 0.1113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

B. Requirement for a Certified Public Accountant (CPA): The services of a CPA licensed by the State Board of Accountancy or equivalent must be retained throughout the budget period as a part of the recipient's staff or as a consultant to the recipient's accounting personnel. These services may include the design, implementation, and maintenance of an accounting system to record receipts and expenditures of Federal funds, in accordance with accounting principles, Federal regulations, and cooperative agreement terms.

Funds claimed by the recipient for reimbursement under this cooperative agreement must be audited by an independent CPA. This CPA for audit must be separate and independent of the consulting CPA in the above paragraph. This audit must be performed within 90 days after the budget period, or at the close of an organization's fiscal year. The audit must be performed in accordance with generally accepted auditing standards (established by the American Institute of Certified Public Accountants), governmental auditing standards (established by the General Accounting Office), applicable Office of Management and Budget (OMB) Circulars, and any other applicable Federal requirements.

C. Confidentiality of Records: All identifying information obtained in connection with the provision of services to any person in any program that is being carried out through a cooperative agreement made under this announcement shall not be disclosed unless required by a law of a State or political subdivision or unless written, voluntary informed consent is provided by persons who receive services.

D. OMB Review: Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Application and Submission Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 320, Mailstop E–15, Atlanta, GA 30305, on or before December 22, 1994.

1. *Deadline:* Applications meet the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement Number 502. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of the documents, business management technical assistance may be obtained from Ron Van Duyne, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 320, Mailstop E–15, Atlanta, GA 30305, telephone (404) 842–6575.

Programmatic technical assistance may be obtained from Pom Sinnock or Bob Kohmescher, Office of the Associate Director for HIV/AIDS, Centers for Disease Control and Prevention (CDC), CDC Headquarters, 1600 Clifton Road, NE., Mailstop E–25, Atlanta, GA 30333, telephone (404) 639–0975.

Please refer to Announcement Number 502 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the INTRODUCTION through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: September 26, 1994.

Deborah L. Jones,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–24192 Filed 9–29–94; 8:45 am]

BILLING CODE 4163–18–P

[Announcement Number 503]

Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus (HIV) Prevention

Introduction

The Centers for Disease Control and Prevention (CDC) announces the anticipated availability of fiscal year (FY) 1995 funds for the Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus (HIV) Prevention. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection. (To order a copy of Healthy People 2000 or CDC's Strategic Plan for Preventing Human Immunodeficiency Virus (HIV) Infection (July 8, 1992), see the Section Where to Obtain Additional Information.)

Authority

This program is authorized under Sections 301 [42 U.S.C. 241] and 310 [42 U.S.C. 242n] of the Public Health Service Act, as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligible applicants are non-governmental, nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private (e.g., national, regional) organizations, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- or women-owned businesses are eligible for these cooperative agreements. Current recipients of CDC HIV funding must provide the award number and title of the funded program (see the Section Program Requirements, C. Letter of Intent).

Availability of Funds

Approximately $250,000 is expected to be available in FY 1995 to fund approximately 10 to 15 awards. The awards will average $20,000 and will be

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funded for a 12-month budget and project period. The funding estimate may vary and is subject to change, based on availability of funds. Awards will initially be made on a contingency basis as described in the Purpose section.

The following are examples of the most frequently encountered costs that may or may not be charged to the cooperative agreement:

1. As approved, CDC funds may be used for direct cost expenditures: salaries, speaker fees, rental of conference related equipment, registration fees, and transportation cost (not to exceed economy class fares) for non-Federal employees.

2. CDC funds may not be used for the purchase of equipment, payments of honoraria, organizational dues, entertainment or personal expenses, cost of travel and payment of a full-time Federal employee, or per diem or expenses, other than mileage, for local participants.

3. CDC funds may not be used for reimbursement of indirect costs.

4. Although the practice of handing out novelty items at meetings is often employed in the private sector to provide participants with souvenirs, Federal funds cannot be used for this purpose.

5. CDC funds may be used for only those parts of the conference specifically supported by CDC as documented in the Notice of Cooperative Agreement (award document).

Recipient Financial Participation

CDC will not fund 100% of any conference proposed under this announcement.

Purpose

The purpose of the HIV-related conference support cooperative agreement is to provide partial support for non-Federal conferences to stimulate efforts to prevent the transmission of HIV. CDC will collaborate on conferences that specifically focus on preventing HIV transmission. Because conference support by CDC creates the appearance of CDC co-sponsorship, there will be active participation by CDC in the development and approval of those portions of the agenda supported by CDC funds. CDC funds may not be expended for unsupported portions of conferences. Contingency awards will be made allowing usage of only 25% of the total amount to be awarded until a final full agenda is approved by CDC. This will provide funds for costs associated with preparation of the agenda. The remainder of funds will be released only upon acceptance of the final full agenda. CDC reserves the right to terminate co-sponsorship if it does not approve the final agenda.

Program Requirements

CDC will provide support for conferences that are: (1) regional (more than one State), national, or international in scope and target professionals contributing to HIV prevention efforts; and (2) focused on the transfer of HIV prevention research and evaluation findings to intervention efforts or the application of these prevention efforts to service providers and health professional who provide service to individuals whose behaviors place them at increased risk for HIV infection.

Topics concerned with issues and areas other than HIV prevention should be directed to other public health agencies or in accordance with current **Federal Register** Notices (see **Federal Register** Notice 501 published on April 19, 1994, 59 FR 18561). Current recipients of CDC HIV funding must provide the award number and title of the funded program (see the Section Program Requirements, C. Letter of Intent).

The activities related to the development of HIV prevention conferences require substantial CDC collaboration and involvement. In conducting activities to achieve the purpose of the program, the recipient shall be responsible for conducting activities listed in section A, and CDC will be responsible for conducting activities listed in section B:

A. Recipient Activities

1. Manage all activities related to program content (e.g., objectives, topics, attenders, session design, workshops, special exhibits, speakers, fees, agenda composition, and printing). Many of these items may be developed in concert with assigned CDC project personnel.

2. Provide draft copies of the agenda and proposed ancillary activities to CDC for acceptance. Submit a copy of the final agenda and proposed ancillary activities to CDC for acceptance.

3. Determine and manage all promotional activities (e.g., title, logo, announcements, mailers, press). CDC must review and approve the use of any materials with reference to CDC involvement or support.

4. Manage all registration processes with participants, invitees, and registrants (e.g., travel, reservations, correspondence, conference materials and hand-outs, badges, registration procedures).

5. Plan, negotiate, and manage conference site arrangements, including all audio-visual needs.

6. Develop and conduct education and training programs on HIV prevention.

7. Collaborate with CDC staff in reporting and disseminating results and relevant HIV prevention education and training information to appropriate Federal, State, and local agencies, health-care providers, HIV/AIDS prevention and service organizations, and the general public.

B. CDC Activities

1. Provide technical assistance through telephone calls, correspondence, and site visits in the areas of program agenda development, implementation, and priority setting related to the cooperative agreement.

2. Provide scientific collaboration for appropriate aspects of the program, including selection of speakers, pertinent scientific information on risk factors for HIV infection, preventive measures, and program strategies for the prevention of HIV infection.

3. Review draft agendas and approve the final agenda and proposed ancillary activities prior to release of restricted funds.

4. Assist in the reporting and dissemination of research results and relevant HIV prevention education and training information to appropriate Federal, State, and local agencies, health-care providers, the scientific community, and HIV/AIDS prevention and service organizations, and the general public.

C. Letter of Intent

Potential applicants must submit a one-page, typewritten letter of intent (LOI) that briefly describes the title, location, and purpose of the meeting, its relationship to the CDC Funding Priorities (see the section Funding Priorities), the date of the proposed conference, and the intended audience (number and description). No attachments, booklets, or other documents accompanying the LOI will be considered. The letter should also include the estimated total cost of the conference and the percentage of the total cost (which must be less than 100%) being requested from CDC. Current recipients of CDC HIV funding must provide the award number and title of the funded program. LOIs will be reviewed by CDC program staff, and an invitation to submit a final application will be made based on the proposed conference's relationship to the CDC Funding Priorities and the availability of funds. An invitation to submit an application does not constitute a commitment by CDC to fund the applicant.

Note: To provide for adequate time to collaborate on the meeting agenda and content, applicants should allow a minimum of 3 months from the scheduled application due date to the planned date of the conference. (See the section Letter of Intent and Application Submission and Deadline.) Meetings which are scheduled to begin earlier than April 1, 1995, would not be routinely considered for funding.

Evaluation Criteria

LOIs will be reviewed by CDC program staff for consistency with CDC's HIV prevention goals and priorities and the purpose of this program. An invitation to submit a final application will be made on the basis of the proposed conference's relationship to the CDC topics of special interest, the timing of the meeting or conference that would allow for CDC input, and on the availability of funds. Applications will be reviewed and evaluated according to the following criteria (TOTAL POINTS AVAILABLE IS 100):

A. Proposed Program and Technical Approach: (50 Points)

Evaluation will be based on:

1. The applicant's description of the proposed conference as it relates to HIV prevention and education, including the public health need of the proposed conference and the degree to which the conference can be expected to influence public health practices, and the extent of the applicant's collaboration with other agencies serving the intended audience, including local health and education agencies concerned with HIV prevention.

2. The applicant's description of conference objectives in terms of quality and specificity and the feasibility of the conference based on the operational plan, and the extent to which evaluation mechanisms for the conference will be able to adequately assess increased knowledge, attitudes, and behaviors of the target attenders.

3. The quality of the proposed agenda in addressing the chosen HIV prevention/education topic.

4. The degree to which conference activities proposed for CDC funding strictly adhere to the prevention of HIV transmission.

B. APPLICANT CAPABILITY: (25 Points)

Evaluation will be based on:

1. The adequacy and commitment of institutional resources to administer the program.

2. The adequacy of existing and proposed facilities and resources for conducting conference activities.

3. The degree to which the applicant has established and used critical linkages with health and education agencies with the mandate for HIV prevention (letters of support from such agencies should demonstrate the linkages specific to the conference).

C. Qualifications of Program Personnel: (25 Points)

Evaluation will be based on:

1. The qualifications, experience, and commitment of the principal staff person, and his/her ability to devote adequate time and effort to provide effective leadership.

2. The competence of associate staff persons, discussion leaders, and speakers to accomplish conference objectives.

3. The degree to which the application demonstrates an appropriate knowledge level of all key personnel about the transmission of HIV, as well as nationwide information and education efforts currently underway that may affect, and be affected by, the proposed conference.

D. Budget Justification and Adequacy of Facilities: (Not Scored)

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, consistency with the intended use of cooperative agreement funds, and the extent to which the applicant documents financial support from other sources.

Funding Priorities

Funding priorities are established to ensure a balance of CDC HIV prevention funding and to address at risk populations that are underserved. CDC is especially interested in supporting meetings and conferences on the following topics:

1. Prevention of HIV infection among: (A) underserved populations (e.g., women of reproductive age, racial and ethnic minorities), (B) high risk populations, including both in-and out-of-school youth, or (C) populations in special settings (e.g., racial and ethnic minorities, out-of-school youth, incarcerated persons, men who have sex with men, and migrant workers). Particular interest will be given to populations who may be affiliated with multiple groups (e.g., gay men of color).

2. HIV prevention in health-care settings.

3. Development of HIV prevention strategies with a broad range of community partners including those who have not traditionally been involved with public health programs (e.g., business, religious leaders).

4. Development of prevention marketing strategies, including various behavior modification messages related to sexual practices (e.g., abstinence, condom use).

Public comments are not being solicited regarding funding priority because time does not permit solicitation and review prior to the funding date.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 93.118, Acquired Immunodeficiency Syndrome (AIDS) activities.

Other Requirements

HIV/AIDS Requirements

Recipients must comply with the document entitled "Content of HIV/AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Education Sessions in Centers for Disease Control Assistance Programs (June 15, 1992)," a copy is included in the application kit. In complying with the Program Review Panel requirements contained in this document, recipients are encouraged to use an existing Program Review Panel such as the one created by the State health department's AIDS/HIV prevention program. If the recipient forms its own Program Review Panel, at least one member must also be an employee (or a designated representative) of an appropriate health or education agency, consistent with the revised Content Guidelines. The names of review panel members must be listed on the Assurance of Compliance form (CDC Form 0.1113) which is also included in the application kit.

Letter of Intent and Application Submission and Deadline

The original and two copies of the LOI must be postmarked by the November 1, 1994, deadline date to be considered.

Following submission of a LOI, applications may be submitted only after CDC staff have reviewed the LOI

profit institutions. Small business or

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and the applicant has received a written invitation to submit an application for funding. An invitation to submit an application does not constitute a commitment to fund the applicant. Availability of funds may limit the number of LOIs, regardless of merit, that receive an invitation to submit an application.

The original and two copies of the invited application must be submitted on PHS Form 5161-1 by January 15, 1995. The earliest possible award date is March 1, 1995, and the earliest possible conference date is April 1, 1995.

Invited applications must be postmarked on or before the deadline date to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 320, Atlanta, GA 30305.

Deadline

Invited applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

Where to Obtain Additional Information

To receive additional written information, call (404) 332-4561. You will be asked to leave your name, address, and phone number, and will need to refer to Announcement Number 503. You will receive a complete program description, a list of the relevant Healthy People 2000 HIV objectives, and the addresses and phone numbers for the CDC contact personnel.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Mr. Kevin Moore, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 320, Atlanta, GA 30305, telephone (404) 842-6550.

Programmatic technical assistance may be obtained from Mr. Dave Brownell, Program Analyst, Office of the Associate Director for HIV AIDS, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E40, Atlanta, GA 30333, telephone (404) 639-2918. Please refer to Announcement Number 503 when requesting information and when submitting your application in response to the announcement.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 783-3238. Single copies of CDC's Strategic Plan for Preventing Human Immunodeficiency Virus (HIV) Infection (July 8, 1992) can be obtained by calling the CDC National AIDS Clearinghouse at 800-458-5231.

Dated: September 26, 1994.

Deborah L. Jones,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-24191 Filed 9-29-94; 8:45 am]

BILLING CODE 4163-18-P

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, September 2, 1994.

(Call PHS Reports Clearance Office on 202-690-7100 for copies of request).

1. 1994 and 1996 Updates of a National Survey of Prescription Drug Information Provided to Patients—0910-0279 (Reinstatement)—To provide information for HHS and the Food and Drug Administration policy initiatives and potential regulations, national surveys of adults will assess the nature and extent of prescription drug information received by patients from health professionals and other sources. These are a continuation of a tracking survey conducted in 1982, 1984, and 1992. *Respondents:* Individuals or households; *Number of Respondents:* 9,142; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .05 hour; *Estimated Annual Burden:* 467 hours.

2. A Study of Caregiving in Aging and Dementia: Honolulu Heart Program Cohort—0925-0374 (Revision)—The purpose of the project is to describe predictors and outcomes of caregiver burden and quality of life in caregivers of elderly men with dementia. Standard questionnaires will be used in an interview format to obtain information from caregivers and control groups. This revision will permit continuation of the project to include additional respondents, thereby increasing statistical power for longitudinal analyses and theoretical model testing. *Respondent:* Individuals or households; *Number of Respondents:* 200; *Number of Responses per Respondent:* 3; *Average Burden per Response:* .75 hour; *Estimated Annual Burden:* 450 hours.

3. Screener Round, National Nursing Home Expenditure Survey: National Medical Expenditure Survey—Pretest—New—This is the pretest of the Screener Round of the National Nursing Home Expenditure Survey (NNHES) National Medical Expenditure Survey (NMES 3). It will test procedures for screening and recruiting facilities eligible as nursing homes. *Respondents:* Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; *Number of Respondents:* 130; Number of *Responses per Respondent:* 1.1; *Average Burden per Response:* .084 hour; *Estimated Annual Burden:* 12 hours.

4. Cancer Prevention Awareness: The Black college as a Resource; Medical and Other Health Professional Schools—0925-0402—(Extension, no change)—This data collection will aid the National Cancer Institutes efforts to effectively utilize historically black institutions in health promotion activities, especially focusing on cancer prevention, developing further cancer prevention intervention research appropriate to the target population. *Respondent:* Individuals or households; Small businesses or organizations. *Number of Respondents:* 18,885; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .1765 hour; *Estimated Annual Burden:* 4661 hours.

5. Organ Procurement and Transplantation Network, (OPTN) Regulations—42 CFR Part 121—NPRM—New—This notice of proposed rulemaking provides a basis for establishing final policies governing the OPTN. These rules will regulate the operation of the OPTN in four major areas: membership requirements, patient listings, organ allocation and record maintenance. *Respondents:* Businesses or other for-profit, Non-profit institutions, Small business or organizations.

Recordkeeping: Consultation with transplant hospitals and OPO's established that the recordkeeping specified in these 3 requirements is integral to their operation and is not impacted by this regulation. Accordingly, no burden is considered to be imposed by this information collection language:

Organ refusal documentation—42 CFR 121.7(b)(3)

Documentation to accompany transported organs—42 CFR 121.7(c)(2)

OPO and hospital records on donors, organs retrieved and recipients transplanted—42 CFR 121.12(a)(2)

Title	Number of respondents	Number of responses per respondent	Average burden per response (hour)
Reporting:			
Final policies, procedures and issuances—42 CFR 121.3(a)(6)(ii)	1	4	.5
Membership application requirements—42 CFR 121.4(d)(1)*	2,774	1	.5
Copies of proposed and proposed final policies—42 CFR 121.7(b)(1) & (3)	1	4	1
Report of transplant to prevent wastage—42 CFR 121.7(e)	266	4	1
Transplant program application—42 CFR 121.8(b):			
a. Medicare/Medicaid approved program & eligible VA hos	308	1	
*Burden hours—154			
b. Other transplant programs	350	1	2
*Burden hours—700			
Information on transplant candidates, recipients & donors—42 CFR 121.12(b)(2)	721	352	.14
**Burden hours—35,070			

*This burden is expected to occur almost entirely in the first year; burden for years 2 and 3 is expected to be 36 hours per year.
**This burden is separately approved under OMB control number 0915-0157.
Estimated Annual Total Burden: 1 hour at NPRM stage.

6. Drug Abuse Treatment Outcome Study (DATOS)—0925-0393—(Extension, no change)—DATOS is needed to compile information on individuals entering drug abuse treatment programs to investigate treatment environments and to study the behavior and characteristics of drug abusers prior to, during and following treatment. Researchers, policy makers, and service providers will use the findings of DATOS to address drug treatment issues and to better understand treatment effectiveness and the rehabilitation of the drug abuser into the community. *Respondents:* Individuals or households, Businesses or other for-profit, Non-profit institutions; *Number of Respondents:* 5,265; *Number of Responses per Respondent:* 4.64; *Average Burden per Response:* 1.04 hours; *Estimated Annual Burden:* 25,407 hours.

7. NCHS Laboratory-based Questionnaire Research—0920-0222 Revision—Questionnaires for use in NCHS, CDC, and other Federal surveys developed using laboratory methods which combine the techniques of cognitive psychology and survey methodology to reduce measurement error. *Respondents:* Individuals or households: *Number of Respondents:* 500; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 1 hour; *Estimated Annual Burden:* 500 hours.

8. Nurse Education Loan Repayment Program Application—0915-0140 (Revision)—Nurses with education loans use the application to apply for repayment of the loans in return for service accepted into the program, their lenders must confirm the purpose and amount of the loans to be repaid. *Respondents:* Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hour)
Nurses Application	1000	1	1
Lender's Confirmation of the Loan	400	1	.25

Estimated Total Annual Burden: 1100 hours.

9. Reliability and Validity Assessment of the Use of Scales of Stressful Life Events in Black Women of Reproductive Age—New—The purpose of this study is to evaluate the reliability and validity of measurements of stressful life events among reproductive age black women, including pregnant black women. The data collected will help plan prevention and intervention strategies to reduce the incidence of poor pregnancy outcomes among black women. *Respondents:* Individuals or households; *Number of Respondents:* 600; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 3.33 hours; *Estimated Annual Burden:* 2028 hours.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 23, 1994.

James Scanlon,

Director, Division of Data Policy: Office of Health Planning and Evaluation.

[FR Doc. 94-24097 Filed 9-29-94; 8:45 am]

BILLING CODE 4160-17-M

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Announcement of Cooperative Agreements to the Minority Health Professions Foundation

The Public Health Service announces that certain of its components will enter into umbrella cooperative agreements with the Minority Health Professions Foundation (MHPF), the education arm of the Association of Minority Health Professions Schools (AMHPS). It is anticipated that the components of PHS listed below will negotiate an umbrella cooperative agreement with MHPF. These cooperative agreements will establish the broad programmatic framework within which specific projects can be funded as they are identified during the project period. The PHS components are: the Substance Abuse and Mental Health Services Administration; the Office of Minority Health, Office of the Assistant Secretary for Health; the Health Resources and Services Administration; and the Agency for Health Care Policy and Research.

The purpose of these cooperative agreements is to (1) foster cooperation and collaboration among the Minority Health Professions schools and (2) to assist the AMHPS member institutions in expanding and enhancing their educational and research opportunities, with the ultimate goal of improving the health status of minorities and disadvantaged people.

Eligible Applicant

Assistance will be provided only to MHPF. No other applications are solicited. MHPF is the only organization capable of administering these cooperative agreements because it is the only organization that has:

1. Established a comprehensive database related to teaching and other activities of all African-American medical, dental, pharmacy and veterinary schools;
2. Developed and evaluated an inventory of essential disease prevention and health promotion skills needed by all medical and health profession students;
3. Assessed the current education, research and disease prevention and health promotion activities for students and its member institutions;
4. Developed a national organization whose member institutions are all predominately minority health professions institutions with excellent professional performance records;
5. Developed an inventory of critical knowledge, skills and abilities related to instruction in medical and health professional preparation. Through the collective efforts of its member institutions, the MHPF has demonstrated (1) the ability to work with academic institutions and official health agencies on mutual education, service, and research endeavors and (2) the leadership necessary to attract minority health professionals into public health careers.

These cooperative agreements will be awarded in FY 1995 for a 12-month budget period within a project period of five years. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where to Obtain Additional Information

If you are interested in obtaining additional Information regarding this project, please contact Mr. Stuart Feldsott, Public Health Service, Parklawn Building, Room 17A–45, 5600 Fishers Lane, Rockville, MD 20857, telephone (310) 443–1832.

Dated: September 22, 1994.

Wilford J. Forbush,

Director, Office of Management, Office of the Assistant Secretary for Health.

[FR Doc. 94–24215 Filed 9–29–94; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–3819; FR–3783–N–01]

Notice of Extension of CDBG Direct Homeownership Assistance Eligibility

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of extension of eligibility.

SUMMARY: This Notice extends the termination date for the direct homeownership assistance provision at section 105(a)(25) of the Housing and Community Development Act of 1974.

DATES: This Notice extends the termination date from October 1, 1994, to October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Gordon McKay, Director, Office of Affordable Housing Programs, U.S. Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–2685, TDD (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Extension of Termination Date

In accordance with title IX, section 907(b)(2) of the National Affordable Housing Act of 1990 (NAHA), as amended by the Housing and Community Development Act of 1992, the Department has determined that extension of the termination date for the direct homeownership provision at section 105(a)(25) of the Housing and Community Development Act of 1974, as amended, is necessary to continue to provide homeownership assistance until homeownership assistance is available under title II of NAHA, the HOME Investment Partnerships Program. Therefore, the termination date is hereby extended from October 1, 1994, to October 1, 1995.

For CDBG entitlement communities, HUD-administered Small Cities grantees in Hawaii, and for Insular Area grantees, no CDBG funds may be expended for any activity eligible under the direct homeownership provision unless the funds are obligated to a homebuyer before October 1, 1995. For the State CDBG program, HUD-administered Small Cities program in New York, and the Indian CDBG program, no funds for homeowner assistance may be expended unless a grant for such activities was made by the State or by HUD, as appropriate, before October 1, 1995 to a unit of general local government, and then only for such amounts as are specifically approved.

II. Basis for Determination

The basis for the extension is the Department's determination that assistance to homebuyers would not be fully available under the HOME Investment Partnerships Program by October 1, 1994. The first-time homebuyer and resale restriction provisions of the HOME program have proven difficult for many participating jurisdictions (PJs) to implement. Recent amendments to the HOME regulations intended to facilitate funding homebuyer assistance under the HOME program have not yet been in effect long enough to be fully implemented by HOME PJs. Funding homebuyer assistance under the HOME program is especially difficult for CDBG grantees that are not HOME PJs.

The recent changes to the HOME homebuyer provisions are both statutory and regulatory. Statutory changes to the definition of eligible homebuyers and to the recapture provisions were enacted in section 203 of the Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 102–233, approved April 11, 1994). These changes were implemented by a memorandum dated May 10, 1994 and a rule published on August 26, 1994 (59 FR 44258), but PJs have not yet had time to redesign their HOME programs to reflect the amendments. Similarly, the April 19, 1994, interim rule for the HOME program (59 FR 18626) offers additional flexibility by changing the basis for determining the affordability period applicable to homebuyer units and provides additional guidance on recapture provisions. PJs have not yet had time to incorporate these changes into their programs. The Department is also still in the process of developing model documents that may be used by PJs for such activities.

The lack of time to implement the HOME program changes and the resulting limits on the availability of funds is especially problematic for CDBG entitlements that are not HOME PJs. Without CDBG funds available for direct homeownership assistance, these communities would have to wait for the next State HOME program funding rounds to get funding for this purpose. In most States, the next funding round following the above-referenced statutory and regulatory changes will not be until after October 31, 1994. This extension will allow smaller CDBG communities to provide continuous funding for direct homeownership activities until such CDBG entitlements have a reasonable chance of receiving State HOME funds.

In making this determination to extend the CDBG homeownership provision, the Department is acting in accord with its national initiative to increase homebuyer assistance, particularly for lower-income families. This initiative includes Departmental proposals to extend permanently the CDBG direct homeownership provision, bolster the HOPE programs, expand the Single Family Property Disposition Initiative, and develop additional homebuyer program models under the HOME program.

Dated: September 26, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development

[FR Doc. 94–24190 Filed 9–29–94; 8:45 am]

BILLING CODE 4210–29–P

[Docket No. N–94–1917; FR–3778–N–04]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact William Molster, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to William Molster at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Elaine Sims, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310–3862; (703) 355–3475; (This is not a toll-free number).

Dated: September 23, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM Federal Register REPORT FOR 09/30/94

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. 8913, Fort Rucker
7th Avenue
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219140025
Status: Unutilized
Comment: 3100 sq. ft., 1 story wood, most recent use—chaplain's conference room, off-site use only.

Bldg. 8914, Fort Rucker

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7th Avenue
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219140026
Status: Unutilized
Comment: 2250 sq. ft., 1 story wood, most recent use chaplain's headquarters, off-site use only.
Bldgs. TO3202–TO3203, TO3206–TO3208, TO3211, TO3213, TO3216
Cowboy & Crusader Street
Fort Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Numbers: 219210001–219210008
Status: Unutilized
Comment: 5310 sq. ft. each, two story wood structure, most recent use—barracks, presence of asbestos, offsite use only.
Bldg. T03214, Fort Rucker
Cowboy & Crusader Streets
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219230001
Status: Unutilized
Comment: 3306 sq. ft., 1-story wood structure, most recent use—storehouse, presence of asbestos, off-site use only.
Bldg. T03215, Fort Rucker
Cowboy & Crusader Streets
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219230002
Status: Unutilized
Comment: 3452 sq. ft., 1-story wood structure, most recent use—storehouse, presence of asbestos, off-site use only.
Bldgs. 3502, 3702–3704, 3707–3708, 3714, 3717, 3803
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Numbers: 219340181, 219340183–219340185, 219340188–219340192
Status: Unutilized
Comment: 5310 sq. ft. ea., 2 story wood frame, needs rehab, presence of asbestos, most recent use—instruction bldgs., off-site use only.
Bldg. 3507
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340182
Status: Unutilized
Comment: 2677 sq. ft., 1 story wood frame, needs rehab, most recent use—instruction bldgs., off-site use only.
Bldgs. 3705–3706
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Numbers: 219340186–219340187
Status: Unutilized
Comment: 2975 sq. ft. ea., 1 story wood frame, needs rehab, most recent use—general purpose, off-site use only.
Bldg. 3822
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340193
Status: Unutilized
Comment: 2677 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—admin/ supply, off-site use only.

Arizona

Bldgs. 70117–70120
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Numbers: 219120306–219120309
Status: Excess
Comment: 3434 sq. ft. each, 1 story wood structures, presence of asbestos, most recent use—general instructional.
Bldg. 70225—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120310
Status: Excess
Comment: 3813 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.
Bldg. 83006—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120311
Status: Excess
Comment: 2062 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.
Bldg. 83007—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120312
Status: Excess Comment: 2000 sq. ft., 2 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.
Bldg. 83008—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120313
Status: Excess
Comment: 2192 sq. ft., 2 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.
Bldg. 83015—Fort Huacbuca Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120314
Status: Excess
Comment: 2325 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.
Bldg. 81001
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240720
Status: Unutilized
Comment: 4386 sq. ft., 2 story wood frame, possible asbestos, most recent use—administrative, scheduled to become vacant in 6 months, off-site use only.
Bldg. 81020, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240722
Status: Unutilized
Comment: 4386 sq. ft., 2 story wood frame, possible asbestos, most recent use—administrative, scheduled to become vacant in 6 months, off-site use only.
Bldg. 67204, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240723
Status: Unutilized
Comment: 4332 sq. ft., 2 story wood frame, possible asbestos, most recent use—administration, off-site use only.
Bldg. 66151
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240728
Status: Unutilized
Comment: 4194 sq. ft., 2 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only.
Bldg. 72219
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240729
Status: Unutilized
Comment: 2730 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only.
Bldg. 72220
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240730
Status: Unutilized
Comment: 2879 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only.
Bldg. 72221
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240731
Status: Unutilized
Comment: 3736 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only.
Bldg. 67108
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240733
Status: Unutilized
Comment: 2403 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.
Bldg. 70226
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240734
Status: Unutilized
Comment: 1868 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.
Bldg. 71116
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240735
Status: Unutilized
Comment: 3470 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.
Bldg. 71215
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240736

Status: Unutilized
Comment: 4854 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.
Bldg. 70110
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240739
Status: Unutilized
Comment: 2675 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.
Bldg. 70111
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240740
Status: Unutilized
Comment: 2800 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.
Bldg. 70113
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240741
Status: Unutilized
Comment: 2800 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.
Bldg. 70114
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240742
Status: Unutilized
Comment: 2544 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.
Bldg. 70115
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240743
Status: Unutilized
Comment: 2544 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.
Bldg. 70123
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240744
Status: Unutilized
Comment: 3298 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.
Bldg. 70124
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240745
Status: Unutilized
Comment: 3298 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.
Bldg. 70126
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240746
Status: Unutilized
Comment: 3343 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.
Bldg. 70210
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240747
Status: Unutilized
Comment: 3258 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.
Bldg. 70211
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240748
Status: Unutilized
Comment: 2966 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.
Bldg. 70221
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240749
Status: Unutilized
Comment: 2526 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.
Bldg. 70222
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240750
Status: Unutilized
Comment: 1627 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.
Bldg. 71214
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240751
Status: Unutilized
Comment: 3779 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.
Bldg. 82013
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240752
Status: Unutilized
Comment: 2193 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.
Bldg. 90327
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240753
Status: Unutilized
Comment: 279 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.
Bldg. 71213
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240754
Status: Unutilized
Comment: 3779 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only.
Bldg. 82007
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240755
Status: Unutilized
Comment: 4386 sq. ft., 2 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only.
Bldg. 82009
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240756
Status: Unutilized
Comment: 2444 sq. ft., 2 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only.
Bldg. 70216, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310287
Status: Excess
Comment: 3725 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 70215, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310288
Status: Excess
Comment: 3706 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 70214, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310289
Status: Excess
Comment: 3142 sq. ft., 1-story wood structure, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 70212, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310290
Status: Excess
Comment: 3534 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 70220, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310291
Status: Excess
Comment: 1249 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.

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Bldg. 70218, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310292
Status: Excess
Comment: 3475 sq. ft., 1-story wood, presence of asbestos, most recent use—classroom, off-site use only.
Bldg. 70217, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310293
Status: Excess
Comment: 304 sq. ft., 1-story concrete block, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 80010, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310294
Status: Excess
Comment: 2318 sq. ft., 1-story wood, presence of asbestos, most recent use—admin.
Bldg. 84103, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310296
Status: Excess
Comment: 984 sq. ft., 1-story, presence of asbestos and lead paint, most recent use—admin.
Bldg. 67101, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310297
Status: Excess
Comment: 2216 sq. ft., 1-story wood, presence of asbestos and lead paint, most recent use—classroom
Bldg. 90012, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310298
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage
Bldg. 90328, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310299
Status: Excess
Comment: 144 sq. ft., 1-story wood, most recent use—storage
Bldg. S–120
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Landholding Agency: Army
Property Number: 219120202
Status: Underutilized
Comment: 6845 sq. ft., 1 story wood frame, presence of asbestos, most recent use—bowling center
Bldg. 67221
U.S. Army Intelligence Center
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219330235
Status: Unutilized
Comment: 1068 sq. ft., 1 story wood, presence of asbestos, most recent use—office, off-site use only
Bldg. 83102
U.S. Army Intelligence Center
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219330236
Status: Unutilized
Comment: 984 sq. ft., 1 story wood, presence of asbestos, most recent use—office, off-site use only.
Bldg. 84010
U.S. Army Intelligence Center
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219330237
Status: Unutilized
Comment: 2147 sq. ft., 1 story wood, presence of asbestos, most recent use—office, off-site use only.
Bldg. S–1005
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Landholding Agency: Army
Property Number: 219340198
Status: Unutilized
Comment: 176 sq. ft., 1 story, cold storage bldgs., need repairs, off-site use only
Bldg. 67116, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Number: 219410243
Status: Unutilized
Comment: 1784 sq. ft., 1 story, wood frame, most recent use administration, off-site use only.
Bldgs. 67205, 67207 Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Numbers: 219410244–219410245
Status: Unutilized
Comment: 2166 sq. ft. ea., 2 story, wood frame, most recent use—administration, off-site use only.
Bldg. 67213 Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Number: 219410246
Status: Unutilized
Comment: 2594 sq. ft., 1 story, wood frame, most recent use—administration, off-site use only.
Bldg. 73913 Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Number: 219410247
Status: Unutilized
Comment: 910 sq. ft., 2 story, wood frame, most recent use—administration, off-site use only.
Bldg. 80001 Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Number: 219410248
Status: Unutilized
Comment: 1958 sq. ft., 2 story, wood frame, most recent use—administration, off-site use only.
Bldg. 83027 Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Number: 219410249
Status: Unutilized
Comment: 1993 sq. ft., 2 story, wood frame, most recent use—administration, off-site use only.
Bldg. 84007 Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Number: 219410250
Status: Unutilized
Comment: 2000 sq. ft., 2 story, wood frame, most recent use—administration, off-site use only.
Bldg. 68320 Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Number: 219410251
Status: Unutilized
Comment: 1531 sq. ft., 1 story wood frame, most recent use—recreation center, off-site use only.
Bldg. 30126 Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Number: 219410252
Status: Unutilized
Comment: 9324 sq. ft., 1 story, wood frame, most recent use—maintenance, off-site use only.
Bldg. 84014 Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Number: 219410253
Status: Unutilized
Comment: 2260 sq. ft., 1 story, wood frame, most recent use—maintenance, off-site use only.
Bldg. S–106 Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365
Landholding Agency: Army
Property Number: 219420345
Status: Unutilized
Comment: 1101 sq. ft., 1 story, cold storage bldg., needs repair.
Bldg. S–306 Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365
Landholding Agency: Army
Property Number: 219420346
Status: Unutilized
Comment: 4103 sq. ft., 2 story, needs major rehab, sched. to be vacated on or about 2/95.
Bldg. 67210, 67217 Fort Huachuca
Sierra Vista Co: Cochise AZ 85365
Landholding Agency: Army
Property Number: 219420347
Status: Unutilized
Comment: 1165 sq. ft., 1 story wood frame presence of asbestos, most recent use—office, off-site use only.

Colorado

Bldg. T–3449, Fort Carson
Colorado Springs Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219320205
Status: Unutilized
Comment: 7528 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use—storage.
Bldg. T–740, Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219410254
Status: Unutilized
Comment: 2382 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—admin., off-site use only
Bldg. T–741, Fort Carson
Colorado Springs Co: El Paso CO 80913

Landholding Agency: Army
Property Number: 219410255
Status: Unutilized
Comment: 7528 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—admin., off-site use only.
Bldg. T–1817, Fort Carson
Colorado Springs Co: El Paso CO 80913
Bldg. T–2740, Fort Carson
Landholding Agency: Army
Property Number: 219410256
Status: Unutilized
Comment: 5310 sq. ft., 2 story wood frame, needs rehab, presence of asbestos, most recent use—admin., off-site use only.
Bldg. T–2740, Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219410257
Status: Unutilized
Comment: 1916 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—admin., off-site use only.
Bldg. T–106, Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219410259
Status: Unutilized
Comment: 25749 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—storage, off-site use only.
Bldg. S–6275, Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219410262
Status: Unutilized
Comment: 679 sq. ft., 1 story concrete block, needs rehab, most recent use—storage, off-site use only.

Georgia

Bldgs. 5390, 5392, 5391
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219010137, 219010151, 219010152
Status: Unutilized
Comment: 2432 sq. ft. ea; most recent use—dining room; needs rehab.
Bldg. 5362
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219010147
Status: Unutilized
Comment: 5559 sq. ft.; most recent use—service club; needs rehab.
Bldg. 4605
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011493
Status: Unutilized
Comment: 915 sq ft., building in poor condition, major construction needed to be made habitable.
Bldg. 4487
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011681
Status: Unutilized
Comment: 1868 sq. ft.; most recent use—telephone exchange bldg.; needs substantial rehabilitation; 1 floor.
Bldg. 4319
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011683
Status: Unutilized
Comment: 2584 sq. ft.; most recent use—vehicle maintenance shop; needs substantial rehabilitation; 1 floor.
Bldg. 3400
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011694
Status: Unutilized
Comment:
2570 sq. ft.; most recent use—fire station; needs substantial rehabilitation; 1 floor.
Bldg. 2285
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011704
Status: Unutilized
Comment: 4574 sq. ft.; most recent use—clinic; needs substantial rehabilitation; 1 floor.
Bldg. 4092
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011709
Status: Unutilized
Comment: 336 sq. ft.; most recent use—inflammable materials storage; needs substantial rehabilitation; 1 floor.
Bldg. 4089
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011710
Status: Unutilized
Comment: 176 sq. ft.; most recent use—gas station; needs substantial rehabilitation; 1 floor.
Bldgs. 1235, 1236
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219014887–219014888
Status: Unutilized
Comment: 9367 sq. ft.; 1 story building; needs rehab; most recent use—General Storehouse.
Bldg. 1251
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014889
Status: Unutilized
Comment: 18385 sq. ft.; 1 story building; needs rehab; most recent use—Arms Repair Shop.
Bldg. 4491
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014916
Status: Unutilized
Comment: 18240 sq. ft.; 1 story building; needs rehab; most recent use—Vehicle maintenance shop.
Bldg. 4633
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014919
Status: Unutilized
Comment: 5069 sq. ft.; 1 story building; needs rehab; most recent use—Training Building.
Bldg. 4649
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014922
Status: Unutilized
Comment: 2250 sq. ft.; 1 story building; needs rehab; most recent use—Headquarters Building.
Bldg. 2150
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120258
Status: Unutilized
Comment: 3909 sq. ft., 1 story, needs rehab, most recent use—general inst. bldg.
Bldg. 2409
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120263
Status: Unutilized
Comment: 9348 sq. ft., 1 story, needs rehab, most recent use—general purpose warehouse.
Bldg. 2590
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120265
Status: Unutilized
Comment: 3132 sq. ft., 1 story, needs rehab, most recent use—vehicle maintenance shop.
Bldg. 3828
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120266
Status: Unutilized
Comment: 628 sq. ft., 1 story, needs rehab, most recent use—general storehouse.
Bldgs. 3086, 3089, 3092
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220688–219220690
Status: Unutilized
Comment: 4720 sq. ft. ea., 2 story, most recent use—barracks, needs major rehab, off-site removal only.
Bldg. 1252, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220694
Status: Unutilized
Comment: 583 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.
Bldg. 1678, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220697
Status: Unutilized
Comment: 9342 sq. ft.; 1 story; most recent use—storehouse; needs major rehab, off-site removal only.
Bldg. 1733, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220698
Status: Unutilized
Comment: 9375 Sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.
Bldg. 3083, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220699
Status: Unutilized

Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220700
Status: Unutilized
Comment: 9375 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.
Bldgs. 4001, 4103 Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220701
Status: Unutilized
Comment: 4720 sq. ft. ea., 2 story, most recent use—barracks, needs major rehab, off-site removal only.
Bldg. 4102, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220702
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4104, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220703
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4105, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220704
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4106, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220705
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4107, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220706
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4108, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220707
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4109, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220708
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4110, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220709
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4111, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220710
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4112, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220711
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4113, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220712
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4114, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220713
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4115, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220714
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4116, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220715
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4117, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220716
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4118, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220717
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4119, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220718
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4120, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220719
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4121, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220720
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4122, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220721
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4123, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220722
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4124, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220723
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4125, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220724
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4126, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220725
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4127, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220726
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4128, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220727
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4129, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220728
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4130, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220729
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4131, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220730
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4132, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220731
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4133, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220732
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4134, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220733
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4135, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220734
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4136, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220735
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4137, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220736
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4138, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220737
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4139, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220738
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4140, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220739
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4141, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220740
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4142, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220741
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4143, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220742
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4144, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220743
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4145, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220744
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4146, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220745
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4147, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220746
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4148, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220747
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4149, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220748
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4150, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220749
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4151, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220750
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4152, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220751
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4153, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220752
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4154, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220753
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4155, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220754
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4156, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220755
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4157, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220756
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4158, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220757
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4159, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220758
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4160, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220759
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4161, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220760
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4162, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220761
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4163, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220762
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4164, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220763
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4165, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220764
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4166, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220765
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4167, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220766
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4168, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220767
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4169, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220768
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4170, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220769
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4171, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220770
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4172, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220771
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4173, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220772
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4174, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220773
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4175, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220774
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4176, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220775
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4177, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220776
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4178, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220777
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4179, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220778
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4180, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220779
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4181, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220780
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4182, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220781
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4183, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220782
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4184, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220783
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building.
Bldg. 4185, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220784
Status: Unutilized
Comment: 2250 sq. ft., 1 story building, needs major rehab, most recent use—Headquarters Building

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Comment: 1372 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 3856, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220703
Status: Unutilized
Comment: 4111 sq. ft , 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4881, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220707
Status: Unutilized
Comment: 2449 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4963, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220710
Status: Unutilized
Comment: 6077 sq. ft , 1 story, most recent use—storehouse, needs repair, off-site removal only.

Bldg. 2396, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220712
Status: Unutilized
Comment: 9786 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldgs. 3085, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220715
Status: Unutilized
Comment: 2253 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only

Bldg. 2537, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220726
Status: Unutilized
Comment: 820 sq. ft , 1 story, most recent use—storage, needs major rehab, off site removal only.

Bldgs. 4882, 4967, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220727–219220728
Status: Unutilized
Comment: 6077 sq. ft., 1 story most recent use—storage, needs repair, off-site removal only.

Bldg. 5396 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220734
Status: Unutilized
Comment: 10944 sq. ft., 1 story, most recent use—general instruction bldg , needs major rehab, off-site removal only.

Bldg. 247, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220735
Status: Unutilized
Comment: 1144 sq. ft., 1 story, most recent use—offices, needs major rehab, off-site removal only.

Bldgs. 4977, 4978 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220736–219220737
Status: Unutilized
Comment: 192 sq. ft. ea., 1 story, most recent use—offices, need repairs, off-site removal only.

Bldg. 4944, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220747
Status: Unutilized
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need repairs, off-site removal only.

Bldg. 4960, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220752
Status: Unutilized
Comment: 3335 sq. ft , 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 4969, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220753
Status: Unutilized
Comment: 8416 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 1758, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220755
Status: Unutilized
Comment: 7817 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 1680, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220756
Status: Unutilized
Comment: 9243 sq. ft , 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 3817, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220758
Status: Unutilized
Comment: 4000 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldgs. 4884, 4964, 4966 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220762–219220764
Status: Unutilized
Comment: 2000 sq. ft. ea., 1 story, most recent use—headquarters bldgs. need repairs, off-site removal only

Bldg. 4679, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220767
Status: Unutilized
Comment: 8657 sq. ft., 1 story, most recent use—supply bldg., needs major rehab, off-site removal only.

Bldg. 4883, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220768
Status: Unutilized
Comment: 2600 sq. ft., 1 story, most recent use—supply bldg.,
need repairs, off-site removal only.

Bldg. 4965, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220769
Status: Unutilized
Comment: 7713 sq. ft., 1 story, most recent use—supply bldg.,
need repairs, off-site removal only

Bldg. 2513, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220770
Status: Unutilized
Comment: 9483 sq. ft., 1 story, most recent use—training center, needs major rehab, off-site removal only.

Bldg. 2526, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220771
Status: Unutilized
Comment: 11855 sq. ft., 1 story, most recent use—training center,
needs major rehab, off-site removal only

Bldg. 2589, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220772
Status: Unutilized
Comment: 146 sq. ft., 1 story, most recent use—training bldg.,
needs major rehab, off-site removal only.

Bldg. 4976, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220778
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—gas station,
need repairs, off-site removal only

Bldg. 4945, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220779
Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station,
needs major rehab, off-site removal only

Bldg. 4979, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220780
Status: Unutilized
Comment: 400 sq. ft., 1 story, most recent use—oil house,
need repairs, off-site removal only.

Bldg. 4627, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220786
Status: Unutilized
Comment: 1676 sq. ft., 1 story, most recent use—sentry station,
needs major rehab, off-site removal only

Bldgs. 4114, 4117–4118, 4125–4126, 4129–4130, 4137–4138, 4140 Fort Benning

Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310407–219310416
Status: Unutilized
Comment: 4425 sq. ft. ea., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldgs. 4002, 4004, 4008–4010, 4012, 4015, 4020, 4106, 4115–4116, 4127–4128, 4139, 4149–4150
Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310417–219310432
Status: Unutilized
Comment: 4720 sq. ft. ea., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4017, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310435
Status: Unutilized
Comment: 7700 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldgs. 4112, 4119, 4124, 4141, 4136, 4131 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310436–219310441
Status: Unutilized
Comment: 1144 sq. ft. ea., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4108, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310442
Status: Unutilized
Comment: 1171 sq. ft., 1-story, needs rehab, most recent use—day
room, off-site use only.

Bldg. 1835, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310443
Status: Unutilized
Comment: 1712 sq. ft., 1-story, needs rehab, most recent use—day
room, off-site use only.

Bldgs. 4013, 4007 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310444
Status: Unutilized
Comment: 1884 sq. ft. ea., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4107, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310446
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—day
room, off-site use only.

Bldg. 3072, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310447
Status: Unutilized
Comment: 479 sq. ft., 1-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.

Bldgs. 4001, 4103 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310448–219310449
Status: Unutilized
Comment: 1635 sq. ft. ea., 1-story, needs rehab, most recent use—hdqtrs bldg., off-site use only.

Bldg. 3004, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310450
Status: Unutilized
Comment: 2794 sq. ft., 1-story, needs rehab, most recent use—hdqtrs bldg., off-site use only.

Bldgs. 4019, 4018, 3003, 3002 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310451–219310454
Status: Unutilized
Comment: 3270 sq. ft., 2-story, needs rehab, most recent use—hdqtrs bldg., off-site use only.

Bldg. 4109 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310455
Status: Unutilized
Comment: 2253 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4014, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310456
Status: Unutilized
Comment: 2794 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4006, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310457
Status: Unutilized
Comment: 3023 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldgs. 4135, 4123, 4111 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310458–219310460
Status: Unutilized
Comment: 3755 sq. ft. ea., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4023, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310461
Status: Unutilized
Comment: 2269 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.

Bldg. 4024, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310462
Status: Unutilized
Comment: 3281 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.

Bldg. 4040, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310463
Status: Unutilized
Comment: 1815 sq. ft., 1-story, needs rehab, most recent use admin., off-site use only

Bldg. 4026, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310464
Status: Unutilized
Comment: 2330 sq. ft., 1-story, needs rehab, most recent use admin., off-site use only

Bldg. 4067, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310465
Status: Unutilized
Comment: 4406 sq. ft., 1-story, needs rehab, most recent use admin., off-site use only

Bldg. 4025, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310466
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use admin., off-site use only

Bldgs. 4110, 4122, 4134 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310467–219310469
Status: Unutilized
Comment: 1017 sq. ft. ea., 1-story, needs rehab, most recent use storehouse, off-site use only.

Bldg. 4021, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310470
Status: Unutilized
Comment: 1416 sq. ft., 1-story, needs rehab, most recent use storehouse, off-site use only.

Bldg. 4113, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310473
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use storage, off-site use only.

Bldg. 10439, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310474
Status: Unutilized
Comment: 1010 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 10304, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310475
Status: Unutilized
Comment: 1040 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 10847, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310476
Status: Unutilized
Comment: 1056 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 10768, Fort Benning

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Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310477
Status: Unutilized
Comment: 1230 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 2683, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310478
Status: Unutilized
Comment: 1816 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 2504, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310479
Status: Unutilized
Comment: 729 sq. ft., 1-story, needs rehab, most recent use—snack bar, off-site use only.

Bldgs. 4121, 4133, 4143 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310487–219310489
Status: Unutilized
Comment: 1017 sq. ft. ea., 1-story, needs rehab, most recent use arms bldgs., off site use only.

Bldgs. 4105, 4005 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310490–219310491
Status: Unutilized
Comment: 1416 sq. ft. ea., 1-story, needs rehab, most recent use arms bldgs., off-site use only.

Bldgs. 13503, 14502
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320209–219320210
Status: Unutilized
Comment: 7036 sq. ft., 2 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use residential.

Bldg. 481
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320211
Status: Unutilized
Comment: 1325 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—offices.

Bldg. 10417
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320212
Status: Unutilized
Comment: 2668 sq. ft., 1 story wood frame, presence of asbestos, need repairs, off-site use only, most recent use—offices.

Bldg. 10502
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320213
Status: Unutilized
Comment: 1580 sq. ft., 1 story wood frame, presence of asbestos, need repairs, off-site use only, most recent use—offices.

Bldg. 10503
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320214
Status: Unutilized
Comment: 2516 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—offices.

Bldg. 10602
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320215
Status: Unutilized
Comment: 2000 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—offices.

Bldg. 14503
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320216
Status: Unutilized
Comment: 1075 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, most recent use—offices.

Bldg. 25304
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320223
Status: Unutilized
Comment: 2788 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, most recent use—office/storage.

Bldg. 26306
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320225
Status: Unutilized
Comment: 1272 sq. ft., 1 story wood frame, possible asbestos, need repairs, off-site use only, most recent use—storage.

Bldg. 29503
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320226
Status: Unutilized
Comment: 2456 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, most recent use—offices.

Bldg. 33406
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320227
Status: Unutilized
Comment: 3456 sq. ft., 1 story wood frame, presence of asbestos, needs roof repairs, off-site use only, most recent use offices.

Bldg. 33436
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320228
Status: Unutilized
Comment: 2632 sq. ft., 1 story wood frame, presence of asbestos, need repairs, off-site use only, most recent use offices.

Bldg. 33438
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320229
Status: Unutilized
Comment: 2668 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use storage.

Bldg. 39502
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320230
Status: Unutilized
Comment: 1316 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—offices.

Bldg. 45308
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320231
Status: Unutilized
Comment: 6044 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—community center.

Bldgs. 26301, 27301
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320234–219320235
Status: Unutilized
Comment: 2788 sq. ft., 1 story wood frame, presence of asbestos, needs roof repairs, off-site use only, most recent use storage.

Bldgs. 354–356, 376 Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330259–219330262
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 377, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330263
Status: Unutilized
Comment: 4768 sq. ft., 1-story wood, needs repair, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 13501, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330264
Status: Unutilized
Comment: 2516 sq. ft., 1-story wood, needs rehab, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 18704, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330265
Status: Unutilized
Comment: 4524 sq. ft., 2-story wood, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 18717, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330266
Status: Unutilized

Comment: 2468 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 19601, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330268
Status: Unutilized
Comment: 2132 sq. ft., 1-story wood, possible termite damage, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 19602, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330269
Status: Unutilized
Comment: 1555 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 24501, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330270
Status: Unutilized
Comment: 3580 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 25103, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330271
Status: Unutilized
Comment: 2100 sq. ft., 1-story wood, needs rehab, most recent use—offices, off-site use only.

Bldg. 25105, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330272
Status: Unutilized
Comment: 1025 sq. ft., 1-story wood, needs rehab, most recent use—offices, off-site use only.

Bldg. 25503, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330273
Status: Unutilized
Comment: 6816 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 31504, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330274
Status: Unutilized
Comment: 7036 sq. ft., 2-story wood, needs repair, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 33415, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905
Landholding Agency: Army
Property Number: 219330275
Status: Unutilized
Comment: 2036 sq. ft., 1-story wood, needs rehab, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 34502, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330276
Status: Unutilized
Comment: 7036 sq. ft., 2-story wood, needs rehab, most recent use—offices, off-site use only.

Bldg. 35503, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330277
Status: Unutilized
Comment: 2500 sq. ft., 1-story wood, needs rehab, most recent use offices, off-site use only.

Bldg. 37505, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330278
Status: Unutilized
Comment: 17370 sq. ft., 2-story wood, needs rehab, possible asbestos, most recent use—offices, off-site use only.

Bldg. 39503, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330279
Status: Unutilized
Comment: 1316 sq. ft., 1-story wood, needs rehab, possible asbestos, most recent use—offices, off-site use only.

Bldg. 18707, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330280
Status: Unutilized
Comment: 2468 sq. ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only.

Bldg. 18708, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330281
Status: Unutilized
Comment: 3772 sq. ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only.

Bldg. 18718, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330282
Status: Unutilized
Comment: 2468 sq. ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only.

Bldg. 18720, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330283
Status: Unutilized
Comment: 2632 sq. ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only.

Bldgs. 18721–18724, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330284–219330287
Status: Unutilized
Comment: 4524 sq. ft., 2-story wood, presence of asbestos, most recent use—classrooms, off-site use only.

Bldg. 12712, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330288
Status: Unutilized
Comment: 15500 sq. ft., 1-story concrete block, needs rehab, presence of asbestos, most recent use—gymnasium, off-site use only.

Bldgs. 332–333, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330289–219330290
Status: Unutilized
Comment: 5340 sq. ft., 1-story wood, needs repair, presence of asbestos, most recent use—laboratory, off-site use only.

Bldg. 334, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330291
Status: Unutilized
Comment: 4279 sq. ft., 1-story wood, possible termite damage, presence of asbestos, most recent use—medical admin., off-site use only.

Bldg. 335, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330292
Status: Unutilized
Comment: 4300 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—laboratory, off-site use only.

Bldg. 353, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330293
Status: Unutilized
Comment: 5157 sq. ft., 1-story wood, presence of asbestos, most recent use—laboratory, off-site use only.

Bldg. 352, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330294
Status: Unutilized
Comment: 560 sq. ft., 1-story metal, presence of asbestos, most recent use—equip. storage, off-site use only.

Bldg. 18703, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330295
Status: Unutilized
Comment: 4524 sq. ft., 2-story wood, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 18705, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905
Landholding Agency: Army
Property Number: 219330296
Status: Unutilized
Comment: 2632 sq. ft., 1-story wood, presence of asbestos, off-site use only

Bldg. 10501
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410264
Status: Unutilized
Comment: 2516 sq. ft., 1 story wood, needs rehab.; most recent use—office; off-site use only.

Bldg. 10601
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410265
Status: Unutilized

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Comment: 1334 sq. ft.; 1 story; wood; most recent use—office; offsite use only.
Bldg. 20303
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410266
Status: Unutilized
Comment: 2376 sq. ft.; 1 story; wood; needs rehab.; most recent use—office; off-site use only.
Bldg. 41504
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410267
Status: Unutilized
Comment: 2516 sq. ft.; 1 story; wood; needs rehab., most recent use—store; off-site use only.
Bldg. 963
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410268
Status: Unutilized
Comment: 18,471 sq. ft.; 1 story; wood; needs rehab.; most recent use—warehouse; off-site use only.
Bldg. 11813
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410269
Status: Unutilized
Comment: 70 sq. ft.; 1 story; metal, needs rehab.; most recent use storage; off-site use only.
Bldg. 21314
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410270
Status: Unutilized
Comment: 85 sq. ft.; 1 story; needs rehab.; most recent use storage; off-site use only.
Bldg. 951
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410271
Status: Unutilized
Comment: 17,825 sq. ft.; 1 story, wood; needs rehab.; most recent use—workshop, off-site use only.
Bldg. 12809
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410272
Status: Unutilized
Comment: 2788 sq. ft.; 1 story; wood; needs rehab.; most recent use—maintenance shop; off-site use only.
Bldg. 10306
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410273
Status: Unutilized
Comment: 195 sq. ft.; 1 story; wood; most recent use—oil storage shed; off-site use only.
Bldg. T–226
Hunter Army Airfield
Savannah, GA, Chatham, Zip: 31409–
Landholding Agency: Army
Property Number: 219420348
Status: Unutilized
Comment: 1842 sq. ft., 1-story, wood frame, needs major repair, most recent use—offices, off-site use only.
Bldg. T–419
Hunter Army Airfield
Savannah, GA, Chatham, Zip: 31409–
Landholding Agency: Army
Property Number: 219420349
Status: Unutilized
Comment: 3061 sq. ft., 1-story, wood frame, needs major repair, most recent use—offices, off-site use only.
Bldg. T–1008
Hunter Army Airfield
Savannah, GA, Chatham, Zip: 31409–
Landholding Agency: Army
Property Number: 219420350
Status: Unutilized
Comment: 1296 sq. ft., 1-story, wood frame, needs major repair, most recent use—offices, off-site use only.
Bldg. T–1263
Hunter Army Airfield
Savannah, GA, Chatham, Zip: 31409–
Landholding Agency: Army
Property Number: 219420351
Status: Unutilized
Comment: 2000 sq. ft., 1-story, wood frame, needs major repairs, most recent use—offices, off-site use only.
Bldg. T–417
Hunter Army Airfield
Savannah, GA, Chatham, Zip: 31409–
Landholding Agency: Army
Property Number: 219420352
Status: Unutilized
Comment: 1730 sq. ft., 1-story, wood frame, needs major repair, most recent use—admin., off-site use only.
Bldg. T–1022
Hunter Army Airfield
Savannah, GA, Chatham, Zip: 31409–
Landholding Agency: Army
Property Number: 219420353
Status: Unutilized
Comment: 5870 sq. ft., 1-story, wood frame, needs major repairs, most recent use—admin., off-site use only.
Bldg. T–1155A
Hunter Army Airfield
Savannah, GA, Chatham, Zip: 31409–
Landholding Agency: Army
Property Number: 219420354
Status: Unutilized
Comment: 660 sq. ft., 1-story, wood frame, needs major repairs, most recent use—storage, off-site use only.
Bldg. P–8582
Hunter Army Airfield
Savannah, GA, Chatham, Zip: 31409–
Landholding Agency: Army
Property Number: 219420355
Status: Unutilized
Comment: 5892 sq. ft., 2-story, steel, needs major repairs, most recent use—radar tower, off-site use only.
Bldg. T829, Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219420358
Status: Unutilized
Comment: 324 sq. ft., 1-story wood frame, needs repair, most recent use—storage, off-site use only.
Bldg. T901, Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219420359
Status: Unutilized
Comment: 2340 sq. ft., 1-story wood frame, needs repair, most recent use—offices, off-site use only.
Bldg. T–902, Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219420360
Status: Unutilized
Comment: 2990 sq. ft., 1-story wood frame, needs repair, most recent use—offices, off-site use only.
Bldg. T–948, Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219420361
Status: Unutilized
Comment: 1890 sq. ft., 1-story wood frame, needs repair, most recent use—storage, off-site use only.
Bldg. T–7713, Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219420362
Status: Unutilized
Comment: 2288 sq. ft., 1-story wood frame, needs repair, most recent use—admin., off-site use only.
Bldg. S–9982, Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219420363
Status: Unutilized
Comment: 704 sq. ft., 1-story concrete block, needs repair, most recent use—arms bldgs.

Hawaii

P–88
Aliamanu Military Reservation
Honolulu Co: Honolulu HI 96818
Location: Approx. 600 feet from Main Gate on Aliamanu Drive
Landholding Agency: Army
Property Number: 219030324
Status: Unutilized
Comment: 45216 sq. ft. underground tunnel complex, pres. of esbestos, clean-up required of contamination, use of respirator required by those entering property, use limitations.
Bldg. 302
Fort Shafter
Honolulu Co: Honolulu HI 96818
Landholding Agency: Army
Property Number: 219320236
Status: Unutilized
Comment: 39 sq. ft., most recent use—sentry station, off-site use only.

Indiana

Bldg. 703–1C
Indiana Army Ammunition Plant
Charlestown Co: Clark IN
Location: Gate 22 off Highway 22
Landholding Agency: Army
Property Number: 219013761
Status: Underutilized

Comment: 4000 sq. ft.; 2 story brick frame; possible asbestos; most recent use—exercise area.
Bldg. 1011 (Portion of)
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Location: East of State Highway 62 at Gate 3
Landholding Agency: Army
Property Number: 219013762
Status: Underutilized
Comment: 4040 sq. ft.; 1 story concrete block frame; possible asbestos; secured area with alternate access; most recent use—office.
Bldg. 1001 (Portion of)
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Location: South end of 3rd Street, East of Highway 62 at entrance gate.
Landholding Agency: Army
Property Number: 219013763
Status: Underutilized
Comment: 55630 sq. ft.; 1 story concrete block; possible asbestos; secured area with alternate access; most recent use—cloth bag manufacturing.
Bldg. 2542
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Landholding Agency: Army
Property Number: 219240717
Status: Unutilized
Comment: 1954 sq. ft., 1 story concrete block, secured area w/alternate access, asbestos, most recent use—heating facility.
Bldg. 2531
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Landholding Agency: Army
Property Number: 219240718
Status: Unutilized
Comment: 119746 sq. ft., 1 story concrete block, secured area w/alternate access, asbestos, most recent use—storage.
Bldgs. 7215, 7216
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Landholding Agency: Army
Property Number: 219330297
Status: Unutilized
Comment: roadside shelters, no utilities, located on Indiana State Highway Right of Way.

Kansas

Bldg. T–2549, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Number: 219310251
Status: Unutilized
Comment: 3082 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage.
Bldg. 166, Fort Riley
Ft. Riley Co: Geary KS 66442
Landholding Agency: Army
Property Number: 219410325
Status: Unutilized
Comment: 3803 sq. ft., 3 story brick residence, needs rehab, presence of asbestos, located within National Registered Historic District.

Kentucky

Bldg. 103
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410281
Status: Unutilized
Comment: 8962 sq. ft.; most recent use—barracks; off-site use only.
Bldg. 105
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410282
Status: Unutilized
Comment: 18,015 sq. ft.; most recent use—barracks; off-site use only.
Bldg. 5410
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410299
Status: Unutilized
Comment: 1000 sq. ft.; needs rehab.; most recent use—storage; offsite use only.
Bldg. 6550
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410300
Status: Unutilized
Comment: 25,701 sq. ft.; most recent use—storage; off-site use only.
Bldg. 7162
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410301
Status: Unutilized
Comment: 1256 sq. ft.; most recent use—storage; off-site use only.
Bldgs. 5406, 5413, 5417
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Numbers: 219410304, 219410307
Status: Unutilized
Comment: 8208 sq. ft. each; 1 story; presence of asbestos; needs rehab; most recent use—vehicle maintenance shop; off-site use only.
Bldgs. 5408, 5411; 5415
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Numbers: 219410305–219410306, 219410308
Status: Unutilized
Comment: 1350 sq. ft. each; 1 story; presence of asbestos; needs rehab; most recent use—vehicle maintenance shop; off-site use only.
Bldgs. 5418, 5419, 05624–05625, 05823, 5422–5423, 5426–5427, 5712, 5724
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Numbers: 219410310–219410311, 219410338–219410339, 219410347, 219410349–219410352, 219410354, 219410360
Status: Unutilized
Comment: 2732 sq. ft. each; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only.
Bldg. 05451, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410337
Status: Unutilized
Comment: 200 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—military vehicle gas station.
Bldg. 05711, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410340
Status: Unutilized
Comment: 10944 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop.
Bldg. 05713, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410341
Status: Unutilized
Comment: 10944 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop.
Bldg. 05811, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410342
Status: Unutilized
Comment: 1010 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—dispatch bldg.
Bldg. 05813, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410343
Status: Unutilized
Comment: 2700 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—vehicle shop.
Bldg. 05815, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410344
Status: Unutilized
Comment: 1350 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop.
Bldg. 05817, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410345
Status: Unutilized
Comment: 3108 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop.
Bldg. 05819, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410346
Status: Unutilized
Comment: 3376 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop.
Bldg. 05829, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410348
Status: Unutilized
Comment: 3376 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop.
Bldgs. 5715, 5717, 5723, 5725, 5727
Fort Campbell
Fort Campbell, KY, Christian, Zip: 422233
Landholding Agency: Army

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Property Numbers: 219410355, 219410357, 219410359, 219410361–219410362
Status: Unutilized
Comment: 10,944 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only.

Bldg. 5728
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410363
Status: Unutilized
Comment: 3108 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only

Bldg. 5730
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410364
Status: Unutilized
Comment: 9000 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only.

50 Bldgs.
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420365
Status: Unutilized
Location: #2750, 2752, 2754, 2758, 2943, 2945, 2947, 2970, 2972, 2974, 2976, 2978, 2980, 2982, 2984, 2986, 2988, 3111, 3113, 3115, 3119, 3121, 3123, 3125, 3127, 3129, 3138, 3140, 3150–3169, 3178, 3188
Comment: 5310 sq. ft. each, 2-story, presence of asbestos, most recent use—barracks and training, off-site use only.

13 Bldgs.
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420367
Status: Unutilized
Location: #2776, 2946, 3130–3131, 3136–3137, 3139, 3144–3147, 3176, 3186
Comment: 2750 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only.

Bldgs. 2778, 2786, 2939
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420368
Status: Unutilized
Comment: 3250 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only.

Bldg. 2941
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420369
Status: Unutilized
Comment: 2950 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only.

Bldg. 2944
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420370
Status: Unutilized
Comment: 3000 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only.

Bldgs. 2957, 2959
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Numbers: 219420371, 219420372
Status: Unutilized
Comment: 2500 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only.

Bldg. 2965
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420373
Status: Unutilized
Comment: 2505 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only.

Bldg. 2967
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223
Landholding Agency: Army
Property Number: 219420374
Status: Unutilized
Comment: 3000 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only.

Bldgs. 2774, 2940
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420375
Status: Unutilized
Comment: 2950 sq. ft., 1-story, presence of asbestos, most recent use—dining facilities, off-site use only.

Bldgs. 3134, 3148
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420376
Status: Unutilized
Comment: 2350 sq. ft., 1-story, presence of asbestos, most recent use—dining facilities, off-site use only.

Bldg. 2969
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420377
Status: Unutilized
Comment: 3340 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only.

Bldg. 3132
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420378
Status: Unutilized
Comment: 2200 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only.

Bldg. 3142
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420379
Status: Unutilized
Comment: 2310 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only.

Bldg. 3143
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420380
Status: Unutilized
Comment: 2750 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only.

Bldg. 3149
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420381
Status: Unutilized
Comment: 2365 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only.

Bldg. 2782
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420382
Status: Unutilized
Comment: 2950 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only.

Bldgs. 2907–2908
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420383
Status: Unutilized
Comment: 4800 sq. ft., 2-story, presence of asbestos, most recent use—training, off-site use only.

Bldg. 2938
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420384
Status: Unutilized
Comment: 3250 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only.

Bldg. 2942
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420385
Status: Unutilized
Comment: 2950 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only.

Bldg. 2953
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420386
Status: Unutilized
Comment: 1900 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only.

Bldg. 3182
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420387
Status: Unutilized
Comment: 2550 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only.

Bldg. 2948
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420388
Status: Unutilized
Comment: 2350 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 2961
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420389
Status: Unutilized
Comment: 1800 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 2955
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420390
Status: Unutilized
Comment: 1890 sq. ft., 1-story, presence of asbestos, most recent use—conf. room, off-site use only.

Maryland

Bldgs. E5878, E5879
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Numbers: 219012652, 219012653
Status: Unutilized
Comment: 213 sq. ft. each; structural deficiencies; possible abestos; and contamination.

Bldg. 10302
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012666
Status: Unutilized
Comment: 42 sq. ft.; possible asbestos; most recent use—pumping station.

Bldg. E5975
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012677
Status: Unutilized
Comment: 650 sq. ft.; possible contamination; structural deficiencies; most recent use—training exercises/chemicals and explosives; potential use—storage.

Bldg. 6687
Fort George G. Meade
Mapes and Zimborski Roads
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219220446
Status: Unutilized
Comment: 1150 sq. ft., presence of asbestos, wood frame, most recent use—veterinarian clinic, off-site removal only.

Bldgs. 303–308, 323–328, 333–337
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320293
Status: Unutilized
Comment: 4720 sq. ft. ea., 2 story wood frame, possible asbestos, most recent use—barracks/classrooms, fair to good condition, off-site use only.

Bldg. 309
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320294
Status: Unutilized
Comment: 2324 sq. ft., 1 story wood frame, possible asbestos, fair to good condition, off-site use only.

Bldgs. 312, 319
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320295
Status: Unutilized
Comment: 2594 sq. ft., 1 story wood frame, possible asbestos, most recent use—storage, fair condition, offsite use only.

Bldgs. 313–314, 317–318
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320296
Status: Unutilized
Comment: 1144 sq. ft., 1 story wood frame, possible asbestos, most recent use—storage, fair to good condition, off-site use only.

Bldgs. 302, 329, 332, 339
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320297
Status: Unutilized
Comment: 2208 sq. ft., 1 story wood frame, possible asbestos, most recent use—storage, fair condition, off-site use only.

Bldg. 2239
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320298
Status: Unutilized
Comment: 24528 sq. ft., 1 story concrete, poss. asbestos, most recent use—mess hall, needs rehab, off-site use only.

Bldg. 3036
Aberdeen Proving Ground
Harford County MD 21005–5001
Landholding Agency: Army
Property Number: 219320302
Status: Unutilized
Comment: 11016 sq. ft., 1 story, needs rehab, most recent use—gym, presence of asbestos.

Bldg. E4890
Aberdeen Proving Ground
Harford County MD 21005–5001
Landholding Agency: Army
Property Number: 219330434
Status: Unutilized
Comment: 6250 sq. ft., 1 story, needs rehab, presence of asbestos.

Michigan

Bldg. 300, Arsenal Acres
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Number: 219220448
Status: Unutilized
Comment: 52 sq. ft., sentry station, secured area w/alternate access.

Bldg. 301, Arsenal Acres
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Number: 219220449
Status: Unutilized
Comment: 3125 sq. ft., 2-story colonial style home, secured area w/alternate access.

Bldgs. 302, 303
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Numbers: 219220450–219220451
Status: Unutilized
Comment: 2619 sq. ft. ea., 2-story colonial style home, secured area w/alternate access.

Bldgs. 304, 305
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Numbers: 219220452–219220787
Status: Unutilized
Comment: 2443 sq. ft. ea., 2-story colonial style home, secured area w/alternate access.

Bldgs. 306, 307
Arsenal Acres
24140 Mound Road
Warren MI 48091
Landholding Agency: Army
Property Numbers: 219410326–219410327
Status: Unutilized
Comment: 2443 sq. ft., 2 story colonial style homes, secured area with alternate access.

Bldg. 308
Arsenal Acres
24140 Mound Road
Warren MI 48091
Landholding Agency: Army
Property Number: 219410328
Status: Unutilized
Comment: 205 sq. ft., 1 story brick, secured area w/alternate access.

Mississippi

Bldg. VB201
Vicksburg Reserve Center
Vicksburg MS 39180–0055
Landholding Agency: Army
Property Number: 219330308
Status: Unutilized
Comment: 15444 sq. ft., 1 story metal frame, most recent use—army reserve center, off-site use only.

Bldg. VB202
Vicksburg Reserve Center
Vicksburg MS 39180–0055
Landholding Agency: Army
Property Number: 219330309
Status: Unutilized
Comment: 800 sq. ft., 1 story metal frame, most recent use—admin., off-site use only.

Bldg. VB213
Vicksburg Reserve Center
Vicksburg MS 39180–0055
Landholding Agency: Army
Property Number: 219330310
Status: Unutilized
Comment: 180 sq. ft., 1 story concrete block, most recent use—storehouse, off-site use only.

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Missouri
Bldg. T3057
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219220580
Status: Underutilized
Comment: 2650 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, not handicapped accessible, most recent use—admin/general purpose.
Bldg. T2383
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230228
Status: Underutilized
Comment: 9267 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—general purpose.
Bldg. T1376
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230237
Landholding Agency: Army
Status: Underutilized
Comment: 1296 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—Hdqtrs building.
Bldg. T599
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230260
Status: Underutilized
Comment: 18270 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—storehouse.
Bldg. T1311
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230261
Status: Underutilized
Comment: 2740 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—storehouse.
Bldg. T1333
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230263
Status: Underutilized
Comment: 1144 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—storehouse.
Bldgs. T1270, T1329
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Numbers: 219320307, 219330300
Status: Unutilized
Comment: 1296 sq. ft., 1 story, most recent use—admin., possible asbestos, off-site use only.
Bldg. T427
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330299
Status: Underutilized
Comment: 10245 sq. ft., 1 story, presence of asbestos, most recent use—post office, off-site use only.
Bldg. T1688
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330301
Status: Unutilized
Comment: 4720 sq. ft., 2 story, presence of asbestos, most recent use—admin., off-site use only.
Bldg. T2206
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330302
Status: Unutilized
Comment: 1440 sq. ft., 1 story, presence of asbestos and contamination, most recent use—storage, offsite use only.
Bldg. T2209
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330303
Status: Unutilized
Comment: 288 sq. ft., 1 story, presence of asbestos, most recent use—storage, off-site use only.
Bldg. T2357
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330304
Status: Underutilized
Comment: 1296 sq. ft., 1 story, presence of asbestos, most recent use—hdqtrs bldg., off-site use only.
Bldgs. T2360, T2364
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330305
Status: Underutilized
Comment: 1144 sq. ft. each, 1 story, presence of asbestos, most recent use—admin., off-site use only.
Bldg. T2368
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330306
Status: Underutilized
Comment: 3663 sq. ft., 1 story, presence of asbestos, offsite use only.
Bldg. T3005
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330307
Status: Underutilized
Comment: 2220 sq. ft., 1 story, presence of asbestos, most recent use—motor repair shop, off-site use only.
Bldgs. T1338, T413, T1699, T1697
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Property Numbers: 219340207–219340208, 219340210, 219340216
Status: Unutilized
Comment: 4720 sq. ft. ea., 2 story wood frame, no handicap fixtures, off-site use only, most recent use—enlisted barracks or administration.
Bldg. T465
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219340209
Status: Unutilized
Comment: 5310 sq. ft., 2 story wood frame, no handicap fixtures, lead based paint, possible asbestos, off-site use only, most recent use—administration.
Bldg. T2110
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219340211
Status: Unutilized
Comment: 1600 sq. ft., 1 story wood frame, no handicap fixtures, lead based paint, off-site use only, most recent use—administration.
Bldg. T2171
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219340212
Status: Unutilized
Comment: 1296 sq. ft., 1 story wood frame, no handicap fixtures, lead based paint, off-site use only, most recent use—
Bldgs. T1258, T1369, T1478
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Property Numbers: 219340213–219340215
Status: Underutilized
Comment: 2360 sq. ft. ea., 1 story wood frame, no handicap fixtures, possible asbestos, lead based paint, off-site use only, most recent use—warehouses.
Bldg. T2312
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219340217
Status: Underutilized
Comment: 1403 sq. ft., 1 story wood frame, lead based paint, no handicap fixtures, off-site use only, most recent use—paint shop.
Bldg. T2370
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 2193402218
Status: Underutilized
Comment: 2284 sq. ft., 1 story wood frame, lead based paint, no handicap fixtures, off-site use only, most recent use—storehouse.
Bldg. T6822
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000

Landholding Agency: Army
Property Number: 219340219
Status: Underutilized
Comment: 4000 sq. ft., 1 story wood frame, no handicap fixtures, off-site use only, most recent use—storage.
Bldg. T1363
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420392
Status: Underutilized
Comment: 1296 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only.
Bldg. T1364
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420393
Status: Underutilized
Comment: 1144 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only.
Bldg. T1686
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420394
Status: Underutilized
Comment: 3012 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only.
Bldg. T1687
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420395
Status: Underutilized
Comment: 2646 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only.
Bldg. T2550
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420396
Status: Underutilized
Comment: 224 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only.
Bldg. T281
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420397
Status: Underutilized
Comment: 4230 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
Bldg. T282
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420398
Status: Underutilized
Comment: 15923 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
Bldg. T283
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420431
Status: Underutilized
Comment: 6163 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
Bldg. T407
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420432
Status: Underutilized
Comment: 2265 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
Bldg. T408
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420433
Status: Underutilized
Comment: 10296 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
Bldg. T409
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420434
Status: Underutilized
Comment: 2450 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
Bldg. T410
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420435
Status: Underutilized
Comment: 2664 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
Bldg. T411
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420436
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
Bldg. T412
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420437
Status: Underutilized
Comment: 1296 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
Bldg. T415
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420438
Status: Underutilized
Comment: 1144 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
Bldg. T429
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420439
Status: Underutilized
Comment: 2475 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
Bldg. T1100
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420440
Status: Underutilized
Comment: 3236 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
Bldg. T1497
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420441
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
Bldg. T2056
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420442
Status: Underutilized
Comment: 3600 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
Bldg. T2057
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420443
Status: Underutilized
Comment: 3200 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
Bldg. T2066
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420444
Status: Underutilized
Comment: 3307 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
Bldg. T2138
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420445

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Status: Underutilized
Comment: 1676 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
Bldg. T2139
Fort Leonard Wood
Ft. Leonard Wood, MO. Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420446
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Montana

USARC Bozeman Reserve Center
Bozeman Co: Gallatin MT
Landholding Agency: Army
Property Number: 219420391
Status: Unutilized
Comment: 15236 sq. ft., 3 story reserve center on .54 acres.
Bldg. on National Register of Historic Places, secured area w/alternate access.

Nebraska

Bldg. RG–1
Cornhusker Army Ammunition Plant
Old Potash Hwy
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210292
Status: Unutilized
Comment: 1080 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.
Bldg. RG–2
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210293
Status: Unutilized
Comment: 576 sq. ft., 1 story garage, secured area with alternate access.
Bldg. RG–3
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210294
Status: Unutilized
Comment: 936 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.
Bldg. RG–4
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210295
Status: Unutilized
Comment: 1040 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.
Bldg. RG–5
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210296
Status: Unutilized
Comment: 490 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.
Bldg. RG–6
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210297
Status: Unutilized
Comment: 510 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.

Nevada

Bldgs. 00425–00449
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Numbers: 219011946–219011952, 219011954, 219011956, 219011959, 219011961, 219011964, 219011968, 219011970, 219011974, 219011976–219011978, 219011980, 219011982, 219011984, 219011987, 219011990, 219011994, 219011996
Status: Unutilized
Comment: 1310–1640 sq. ft. each, one floor residential, semi/wood construction, good condition.

New Jersey

Bldg. 421, Fort Monmouth
Ft. Monmouth Co: Monmouth NJ 07703–
Landholding Agency: Army
Property Number: 219330435
Status: Unutilized
Comment: 4720 sq. ft., 2 story, most recent use—office.
Bldg. 2529, Fort Monmouth
Charles Wood Area
Landholding Agency: Army
Property Number: 219330436
Status: Unutilized
Comment: 4413 sq. ft., 2 story, needs rehab, most recent use—administration.

New Mexico

Bldgs. 108–109, 118–119
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Numbers: 219330327–219330328, 219330330–219330331
Status: Unutilized
Comment: 3561 sq. ft. ea., 2-story, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 117
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330329
Status: Unutilized
Comment: 1688 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.
Bldgs. 148–150
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Numbers: 219330332–219330334
Status: Unutilized
Comment: 3570 sq. ft. ea., 2-story, needs rehab, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 357
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330335
Status: Unutilized
Comment: 3600 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 1758
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330336
Status: Unutilized
Comment: 1620 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 1768
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330337
Status: Unutilized
Comment: 15333 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 28281
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330338
Status: Unutilized
Comment: 1666 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 28282
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330339
Status: Unutilized
Comment: 1850 sq. ft., 3-story, needs rehab, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 32980
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330340
Status: Unutilized
Comment: 451 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 34252
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330341
Status: Unutilized
Comment: 720 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 418
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330342
Status: Unutilized
Comment: 3690 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 420
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330343
Status: Unutilized
Comment: 2407 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 890
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330344
Status: Unutilized
Comment: 9011 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 1348
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330345
Status: Unutilized
Comment: 720 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 1738
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330346
Status: Unutilized
Comment: 1500 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 1765
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330347
Status: Unutilized
Comment: 600 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 21542
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330348
Status: Unutilized
Comment: 945 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 22118
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330349
Status: Unutilized
Comment: 1341 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 22253
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330350
Status: Unutilized
Comment: 216 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 28267
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330351
Status: Unutilized
Comment: 617 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 29195
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330352
Status: Unutilized
Comment: 56 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.
Bldgs. 34219, 34221
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Numbers: 219330353–219330354
Status: Unutilized
Comment: 720 sq. ft. ea., 1-story, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 145
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330355
Status: Unutilized
Comment: 2954 sq. ft., 1-story, presence of asbestos, most recent use—chapel, off-site use only.
Bldg. 1754
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330356
Status: Unutilized
Comment: 6974 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only.
Bldg. 19242
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330357
Status: Unutilized
Comment: 450 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only.
Bldg. 34227
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330358
Status: Unutilized
Comment: 675 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only.
Bldg. 34244
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330359
Status: Unutilized
Comment: 720 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only.
Bldg. 21105
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330360
Status: Unutilized
Comment: 239 sq. ft., presence of asbestos, most recent use—veterinarian facility, off-site use only.
Bldg. 21106
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330361
Status: Unutilized
Comment: 405 sq. ft., 1-story, presence of asbesetos, most recent use—veterinarian facility, off-site use only.
Bldg. 21310
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330362
Status: Unutilized
Comment: 1006 sq. ft., 1-story, presence of asbestos, most recent use—transmitter bldg., off-site use only.
Bldg. 29890
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330363
Status: Unutilized
Comment: 450 sq. ft., 1-story, presence of asbestos, most recent use—frequency monitoring station, off-site use only.
Bldg. 1868
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330364
Status: Unutilized
Comment: 41 sq. ft., 1-story, presence of asbestos, most recent use—scale house, off-site use only.
Bldg. 528
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330365
Status: Unutilized
Comment: 225 sq. ft., 1-story, presence of asbestos, most recent use—decontamination shelter, off-site use only
Bldg. 1834
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330366
Status: Unutilized
Comment: 150 sq. ft., 1-story, presence of asbestos, most recent use—animal kennel, off-site use only.
Bldg. 1300
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330367
Status: Unutilized
Comment: 1500 sq. ft., 1-story, presence of asbestos, most recent use—indoor small arms range, off-site use only.
Bldg. 23100
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002
Landholding Agency: Army
Property Number: 219330368
Status: Unutilized
Comment: 40 sq. ft., 1-story, presence of asbestos, most recent use—sentry station, off-site use only.
Bldg. 29196
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330369
Status: Unutilized

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Comment: 38 sq. ft., 1-story, presence of asbestos, most recent use—power plant bldg., off-site use only.

Bldg. 30774
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330370
Status: Unutilized
Comment: 176 sq. ft., 1-story, presence of asbestos, off-site use only.

Bldg. 33136
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330371
Status: Unutilized
Comment: 18 sq. ft., off-site use only.

New York

Bldg. 323
Fort Totten
Story Avenue
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012567
Status: Underutilized
Comment: 30000 sq ft., 3 floors, most recent use-barracks & mess facility, needs major rehab.

Bldg. 304
Fort Totten
Shore Road
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012570
Status: Underutilized
Comment: 9610 sq ft., 3 floors, most recent use-hospital, needs major rehab/utilities disconnected.

Bldg. 211
Fort Totten
211 Totten Avenue
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012573
Status: Underutilized
Comment: 6329 sq ft., 3 floors, most recent use-family housing, needs major rehab, utilities disconnected.

Bldg. 332
Fort Totten
Theater Road
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012578
Status: Underutilized
Comment: 6288 sq ft., 1 floor, most recent use-theater w/stage, needs major rehab, utilities disconnected.

Bldg. 322
Fort Totten
322 Story Avenue
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012583
Status: Underutilized
Comment: 30000 sq ft., 3 floors, most recent use-barracks, mess & administration, utilities disconnected, needs rehab.

Bldg. 326
Fort Totten
326 Pratt Avenue
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012586
Status: Underutilized
Comment: 6000 sq ft., 2 floors, most recent use-storage, offices & residential, utilities disconnected/needs rehab.

23 Residential Apartment Bldgs
Stewart Gardens, Stewart Army Subpost
Army Wherry Family Housing
New Windsor Co: Orange NY 12553
Location: Y and Garden Loop Streets
Landholding Agency: Army
Property Number: 219330315
Status: Unutilized
Comment: 2 story family housing, concrete block/wood, needs rehab, off-site use only.

5 Detached Garages
Stewart Gardens, Stewart Army Subpost
Army Wherry Family Housing
New Windsor Co: Orange NY 12553
Property Number: 219330316
Status: Unutilized
Comment: 1 story garages, concrete block/wood, needs rehab, off-site use only.

30 Storage Sheds
Stewart Gardens, Stewart Army Subpost
Army Wherry Family Housing
New Windsor Co: Orange NY 12553
Property Number: 219330317
Status: Unutilized
Comment: 1 story aluminum/wood storage sha ', good condition, off-site use only.

North Carolina

Bldg. O–9710
Fort Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219330312
Status: Unutilized
Comment: 974 sq. ft., metal trailer, need repairs, most recent use—living quarters, off-site use only.

Bldg. 4–2402, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219420447
Status: Unutilized
Comment: 1532 sq. ft., 1 story masonry block, needs rehab, possible asbestos, most recent use—auto rental facility, off-site use only.

Bldg. 8–4139, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219420448
Status: Unutilized
Comment: 3154 sq. ft., 1 story wood, needs repair, possible asbestos, most recent use—carpentry shop, educ. center, off-site use only.

Bldgs. 8–4343, 8–4546, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219420449–219420450
Status: Unutilized
Comment: 4720 sq. ft. ea., 2 story wood, needs repair, possible asbestos, off-site use only.

Bldg. M–5351, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219420452
Status: Unutilized
Comment: 4141 sq. ft., 1 story wood, needs repair, possible asbestos, most recent use—storage, off-site use only.

Bldg. 0–9025
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219420454
Status: Unutilized
Comment: 1964 sq. ft., metal, needs rehab, possible asbestos, most recent use—admin., off-site use only.

Ohio

15 Units—Military Family Housing
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219230354
Status: Excess
Comment: 3 bedroom (7 units)—1824 sq. ft. each, 4 bedroom (8 units)—2430 sq. ft. each, 2 story wood frame, presence of asbestos, off-site use only.

7 Units—Military Family Housing
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219230355
Status: Excess
Comment: 1 4-stall-garage and 6 3-stall garages, presence of asbestos, off-site use only.

Bldg. P–3
Doan U.S. Army Reserve Center
Portmonth Co: Scioto OH 45662
Landholding Agency: Army
Property Number: 219320311
Status: Unutilized
Coment: 10752 sq. ft., 1 story brick, most recent use—office, possible asbestos.

Bldg. P–4
Doan U.S. Army Reserve Center
Portmonth Co: Scioto OH 45662
Landholding Agency: Army
Property Number: 219320312
Status: Unutilized
Comment: 2508 sq. ft., 1 story brick, most recent use—vehicle maintenance shop.

Bldg. P–2
Hayes U.S. Army Reserve Center
Fremont Co: Sandusky OH 43420
Landholding Agency: Army
Property Number: 219320314
Status: Unutilized
Comment: 3956 sq. ft., 1 story brick, most recent use—office, possible asbestos.

Bldg. P–3
Hayes U.S. Army Reserve Center
Fremont Co: Sandusky OH 43420
Landholding Agency: Army
Property Number: 219320315
Status: Untilized
Comment: 1259 sq. ft., 1 story brick, most recent use—vehicle maintenance shop, possible asbestos.

Oklahoma

Bldg. T–2545, Fort Sill
2544 Sheridan Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011255
Status: Unutilized
Comment: 1994 sq. ft.; asbestos; wood frame; 2 floors, no operating sanitary facilities; most recent use—barracks.

Bldg. T–2606
Fort Sill
2606 Currie Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011273
Status: Unutilized
Comment: 2722 sq. ft.; possible asbestos, one floor wood frame; most recent use—Headquarters Bldg.

Bldg. T–3507
Fort Sill
3507 Sheridan Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011315
Status: Unutilized
Comment: 2904 sq. ft.; possible asbestos; potential heavy metal contamination; wood frame; most recent use—chapel.

Bldg. T–4919
Fort Sill
4919 Post Road
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219014842
Status: Unutilized
Comment: 603 sq. ft.; 1 story mobile home trailer; possible asbestos; needs rehab.

Bldg. T–4523, Fort Sill
4523 Wilson Road
Lawton Co: Comanche OK 73503
Landholding Agency: Army
Property Number: 219014933
Status: Unutilized
Comment: 1639 sq. ft., 1 story wood frame, needs rehab, possible asbestos, most recent use—storage.

Bldg. T–838, Fort Sill
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220609
Status: Unutilized
Comment: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).

Bldg. T–2702, Fort Sill
2702 Thomas Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240655
Status: Unutilized
Comment: 5520 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—admin.

Bldg. T–3311, Fort Sill
3311 Naylor Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240656
Status: Unutilized
Comment: 1468 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—admin.

Bldg. T–954, Fort Sill
954 Quinette Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240659
Status: Unutilized
Comment: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop.

Bldg. T–1050, T–1051 Fort Sill
1050 Quinette Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219240660–219240661
Status: Unutilized
Comment: 6240 sq. ft. ea., 2 story wood frame, needs rehab, off-site use only, most recent use—barracks.

Bldgs. T–2703, T–2704 Fort Sill
2703 Thomas Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219240667–219240668
Status: Unutilized
Comment: 5520 sq. ft. ea., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.

Bldg. T–2740, Fort Sill
2740 Miner Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240669
Status: Unutilized
Comment: 8210 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.

Bldg. T–2745, Fort Sill
2745 Miner Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240670
Status: Unutilized
Comment: 8288 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.

Bldg. T–2633, Fort Sill
2633 Miner Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240672
Status: Unutilized
Comment: 19455 sq. ft., 1 story wood frame, neds rehab, offsite use only, most recent use—enlisted mess.

Bldg. T–2701, Fort Sill
2701 Thomas Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240673
Status: Unutilized
Comment: 5520 sq. ft., 2 story wood frame, needs rehab, offsite use only, most recent use—storage.

Bldg. T–2907, Fort Sill
2907 Marcy Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240674
Status: Unutilized
Comment: 3861 sq. ft., 1 story wood frame, needs rehab, offsite use only, most recent use—storage.

Bldg. T–2928, Fort Sill
2928 Custer Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240675
Status: Unutilized
Comment: 2315 sq. ft., 1 story wood frame, needs rehab, offsite use only, most recent use—storage.

Bldg. T–4050, Fort Sill
4050 Pitman Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240676
Status: Unutilized
Comment: 3177 sq. ft., 1 story wood frame, needs rehab, offsite use only, most recent use—storage.

Bldg. P–3032, Fort Sill
3032 Haskins Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240678
Status: Unutilized
Comment: 101 sq. ft., 1 story wood frame, needs rehab, offsite use only, most recent use—general storehouse.

Bldg. T–3325, Fort Sill
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240681
Status: Unutilized
Comment: 8832 sq. ft., 1 story wood frame, needs rehab, offsite use only, most recent use—warehouse.

Bldg. T–260, Fort Sill
260 Corral Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240776
Status: Unutilized
Comment: 4838 sq. ft., 2 story wood frame, off-site use only, possible asbestos, most recent use—administration.

Bldg. T–3641, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 219320324
Status: Unutilized
Comment: 1255 sq. ft., 1 story wood frame, possible asbestos, off-site use only, needs rehab, most recent use day room.

Bldg. T–3644, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 2193320327
Status: Unutilized
Comment: 1-story wood frame, possible asbestos, off-site use only.

Bldg. T–5122, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Status: Unutilized
Comment:

Bldg. P–6220, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 219320335
Status: Unutilized
Comment: 848 sq. ft., 1 story wood frame, possible asbestos, most recent use—construction bldg., off-site use only.

Bldg. S–6228, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 219320336
Status: Unutilized
Comment: 352 sq. ft., 1 story wood frame, possible asbestos, most recent use—range house, off-site use only.

Bldg. P–2610, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330372
Status: Unutilized
Comment: 512 sq. ft., 1 story, possible asbestos, most recent use—classroom, off-site use only.

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Bldg. 4722, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330373
Status: Unutilized
Comment: 3375 sq. ft., 2 story, possible asbestos, most recent use—administration, off-site use only.
Bldg. T5015, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330374
Status: Unutilized
Comment: 1412 sq. ft., 1 story wood, possible asbestos, most recent use—administration/supply, off-site use only.
Bldg. T232, T236 Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Numbers: 219330377–219330378
Status: Unutilized
Comment: 2868 sq. ft. ea., 1 story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T312, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330379
Status: Unutilized
Comment: 1970 sq. ft., 2 story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T1652, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330380
Status: Unutilized
Comment: 1505 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T1665, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330381
Status: Unutilized
Comment: 1305 sq. ft., 1-story wood, possible asbestos, most recent
use—storage, off-site use only.
Bldg. T2034, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330383
Status: Unutilized
Comment: 401 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T2705, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330384
Status: Unutilized
Comment: 1601 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T2706, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330385
Status: Unutilized
Comment: 2156 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T2707, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330386
Status: Unutilized
Comment: 2148 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T2708, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330387
Status: Unutilized
Comment: 2153 sq. ft., 2-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T2709, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330388
Status: Unutilized
Comment: 2112 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T2713, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330389
Status: Unutilized
Comment: 114 sq. ft., iron/metal bldg., possible asbestos, most recent use—storage, off-site use only.
Bldgs. T2756, T2757 Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219330390–219330391
Status: Unutilized
Comment: 5172 sq. ft. ea., 1-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T3026, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330392
Status: Unutilized
Comment: 2454 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T3651, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330393
Status: Unutilized
Comment: 2770 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T3706, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330394
Status: Unutilized
Comment: 1947 sq. ft., 2-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T3710, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330396
Status: Unutilized
Comment: 1176 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T3712, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330397
Status: Unutilized
Comment: 1021 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T3713, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330398
Status: Unutilized
Comment: 1013 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T3714, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330399
Status: Unutilized
Comment: 1159 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T3718, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330400
Status: Unutilized
Comment: 1195 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T4035, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330401
Status: Unutilized
Comment: 867 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T4474, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330402
Status: Unutilized
Comment: 1159 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5011, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330403
Status: Unutilized
Comment: 1556 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5120, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330405
Status: Unutilized
Comment: 1471 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5123, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330406
Status: Unutilized
Comment: 1 story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5124, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330407
Status: Unutilized
Comment: 1287 sq. ft, 1 story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T5125, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330408
Status: Unutilized
Comment: 2101 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5126, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330409
Status: Unutilized
Comment: 1108 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only.
Bldgs. T5245 thru T5248, T5252 Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219330410–219330413, 219330417
Status: Unutilized
Comment: 3081 sq. ft. ea., 1 story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5249 Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330414
Status: Unutilized
Comment: 2920 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only.
Bldgs. T5250 thru T5251 Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219330415–219330416
Status: Unutilized
Comment: 3257 sq. ft. ea., 1 story, possible asbestos, most recent use—storage, site use only.
Bldg. T5628 Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330418
Status: Unutilized
Comment: 2016 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5637 Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330419
Status: Unutilized
Comment: 1606 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T–282, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 219410236
Status: Unutilized
Comment: 2420 sq. ft., 2 story wood frame, most recent use—admin., off-site use only.
Bldg. T–2937, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 219410237
Status: Unutilized
Comment: 3740 sq. ft., 1 story, wood frame, most recent use—admin., off-site use only.
Bldg. T–2908, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 219410238
Status: Unutilized
Comment: 3745 sq. ft., 1 story, wood frame, most recent use—classroom, off-site use only.

Pennsylvania

Bldgs. T–1–10, T–1–15, T–1–18
Fort Indiantown Gap Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420010–219420012
Status: Excess
Comment: 4503 sq. ft., 2 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks.
Bldgs. T–14–402, T–14–406, T–14–408, T–14–410, T–14–412, T–14–414
Fort Indiantown Gap Hospital Road & Clements Avenue Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420013–219420018
Status: Excess
Comment: 4247 sq. ft., 2 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks.
Bldgs. 4–71, 4–72, T–4–94
Fort Indiantown Gap Hospital Road & Clements Avenue Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420019–219420021
Status: Excess
Comment: 1220 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration bldgs.
Bldg. T–14–100
Fort Indiantown Gap Hospital Road & Clements Avenue Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420022
Status: Excess
Comment: 3070 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–14–102
Fort Indiantown Gap Hospital Road & Clements Avenue Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420023
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–14–110
Fort Indiantown Gap Hospital Road & Clements Avenue Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420024
Status: Excess
Comment: 3760 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–14–112
Fort Indiantown Gap Hospital Road & Clements Avenue Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420025
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–14–114
Fort Indiantown Gap Hospital Road & Clements Avenue Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420026
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldg. T–14–117
Fort Indiantown Gap Hospital Road & Clements Avenue Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420027
Status: Excess
Comment: 3320 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldgs. T–14–202, T–14–204, T–14–214, T–14–216
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420028–219420029, 219420034, 219420036
Status: Excess
Comment: 3840 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration bldgs.
Bldg. T–14–206
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420030
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.
Bldgs. T–14–206, T–14–208, T–14–210, T–14–212, T–14–215,
T–14–305, T–14–308
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420030–219420033, 219420035, 219420040, 219420042
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration bldgs.
Bldg. T–14–300
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army

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Property Number: 219420037
Status: Excess
Comment: 6445 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–302
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420038
Status: Excess
Comment: 1512 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–303
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420039
Status: Excess
Comment: 3340 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–307
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420041
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–310
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420043
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–415
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420044
Status: Excess
Comment: 3650 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–416
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420045
Status: Excess
Comment: 4172 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldgs. T–1–11, T–1–19, T–1–21, T–14–400
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420046–219420049
Status: Excess
Comment: 2242 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—enlisted personnel dining.

Bldg. T–1–8
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420050
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage.

Bldg. T–1–12
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420051
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage.

Bldg. T–4–124
Fort Indiantown Gap
Fisher Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420052
Status: Excess
Comment: 214 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage.

Bldg. T–14–122
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420053
Status: Excess
Comment: 2277 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (vehicle).

Bldg. T–14–200
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420054
Status: Excess
Comment: 3898 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–201
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420055
Status: Excess
Comment: 3630 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–203
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420056
Status: Excess
Comment: 3630 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldgs. T–14–205, T–14–207, T–14–209
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420057–219420059
Status: Excess
Comment: 3638 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldgs. T–14–211, T–14–213, T–14–217, T–14–309, T–14–311, T–14–314
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420060–219420062, 219420064–219420066
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–301
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420063
Status: Excess
Comment: 9662 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).

Bldg. T–14–315
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420067
Status: Excess
Comment: 3624 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–401
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420068
Status: Excess
Comment: 782 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).

Bldg. T–14–403
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420069
Status: Excess
Comment: 2685 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage.

Bldg. T–14–404
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420070
Status: Excess
Comment: 4247 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–405
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420071
Status: Excess
Comment: 480 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage.

Bldg. T–14–411
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420072
Status: Excess
Comment: 3045 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–413
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420073
Status: Excess
Comment: 3000 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–417
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420074
Status: Excess
Comment: 3633 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–419
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420075
Status: Excess
Comment: 3576 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–424
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420076
Status: Excess
Comment: 63 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).

Bldg. T–14–500
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420077
Status: Excess
Comment: 1071 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).

Bldgs. T–14–503, T–14–505, T–14–507
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420078–219420080
Status: Excess
Comment: 5217 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–508
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420081
Status: Excess
Comment: 1071 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).

Bldg. T–14–509
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420082
Status: Excess
Comment: 2638 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–511
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420083
Status: Excess
Comment: 2638 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldgs. T–14–113, T–14–115
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420084–219420085
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—medical supply warehouse.

Bldg. T–14–312
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420086
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldg. T–14–313
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420087
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldg. T–14–316
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420088
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldg. T–14–317
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420089
Status: Excess
Comment: 3623 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldg. T–14–407
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420090
Status: Excess
Comment: 3635 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldg. T–14–409
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420091
Status: Excess
Comment: 3635 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldg. T–14–502
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420092
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldgs. T–14–504, T–14–506
Fort Indiantown Gap
Hospital Road & Clements Avenue

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Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420093–219420094
Status: Excess
Comment: 3633 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospitals.

Bldg. T–14–304
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420095
Status: Excess
Comment: 4212 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—ADP bldg.

Bldg. T–14–306
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420096
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—ADP bldg.

Bldg. T–1–16
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420097
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—arms bldg.

Bldg. T–1–20
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420098
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—day room.

Bldg. 4–73
Fort Indiantown Gap
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420099
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—day room.

Bldg. T–9–1
Fort Indiantown Gap
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420100
Status: Excess
Comment: 2170 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—credit union.

Bldg. T–13–64
Fort Indiantown Gap
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420101
Status: Excess
Comment: 5747 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—maintenance shop.

Bldg. T–14–421
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420102
Status: Excess
Comment: 287 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—maintenance shop.

Bldg. T–14–423
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420103
Status: Excess
Comment: 1681 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—maintenance shop.

Bldg. T–16–149
Fort Indiantown Gap
Fisher Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420104
Status: Excess
Comment: 16045 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—vehicle maintenance shop.

Bldgs. T–14–561 thru T–14–572
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420105–219420116
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldgs.

Bldg. T–14–619
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420117
Status: Excess
Comment: 6122 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—covered walkway.

South Carolina

Bldg. 9608, Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219410200
Status: Unutilized
Comment: 4720 sq. ft., wood frame, 2 story, needs rehab, off-site use only, utilities upgrade, most recent use—enlisted quarters.

Bldg. 5492, Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219410207
Status: Unutilized
Comment: 2379 sq. ft., wood frame, 1 story, off-site use only, utilities upgrade, most recent use—information management office.

Bldg. 10–436, Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219410217
Status: Unutilized
Comment: 100 sq. ft., wood frame, 1 story, off-site use only, limited utilities, needs rehab, most recent use—shed.

Texas

Harlingen USARC
1920 East Washington
Harlingen, TX, Cameron, Zip: 78550–
Landholding Agency: Army
Property Number: 219120304
Status: Excess
Comment: 19440 sq. ft., 1 story brick, needs rehab, with approx. 6 acres including parking areas, most recent use—Army Reserve Training Center.

Bldg. P–3824,
Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220398
Status: Unutilized
Comment: 2232 sq. ft., 1-story concrete structure, within National Landmark Historic District, off-site removal only.

Bldg. 4168, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544
Landholding Agency: Army
Property Number: 219320350
Status: Unutilized
Comment: 2100 sq. ft., 1-story teel frame, most recent use—vehicle wash platform, needs rehab, off-site use only.

Bldg. 440, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219320355
Status: Unutilized
Comment: 1651 sq. ft., 1-story brick, most recent use—education facility, off-site use only.

Bldg. 1164, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219330420
Status: Unutilized
Comment: 2054 net sq. ft., 1 story wood, most recent use—admin. bldg., needs rehab, off-site use only.

Bldg. 512, Fort Hood
Ft. Hood, TX, Coryell, Zip: 76544–
Landholding Agency: Army
Property Number: 219330421
Status: Unutilized
Comment: 6733 sq. ft., 1 story wood, most recent use- commissary, off-site use only.

Bldg. P–293
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330441
Status: Unutilized

Comment: 442 sq. ft., 1 story brick, needs rehab, within National Landmark Historic District, off-site use only.

Bldg. P–298
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330442
Status: Unutilized
Comment: 3200 sq. ft., 1 story hollow tile, needs rehab, within National Landmark Historic District, off-site use only.

Bldg. P–371
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330443
Status: Unutilized
Comment: 18387 sq. ft., 2 story structural tile, off-site use only, most recent use—vehicle maintenance shop.

Bldg. P–377
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330444
Status: Unutilized
Comment: 74 sq. ft., 1 story brick, needs rehab, location in National Historic District, off-site use only, most recent use—scale house.

Bldg. S–1164
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330445
Status: Unutilized
Comment: 8629 sq. ft., 1 story wood frame, needs rehab, located in National Historic District, off-site use only.

Bldg. T–374
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330480
Status: Unutilized
Comment: 8640 sq. ft., 1 story wood frame, needs rehab, located in National Historic District, off-site use only.

Bldgs. T–1170, T–1468
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Numbers: 219330481–219330482
Status: Unutilized
Comment: 1144 sq. ft. ea., 1 story wood frame, needs rehab, off-site use only, most recent use—administration.

Bldg. T–1492
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330483
Status: Unutilized
Comment: 2284 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—administration.

Bldg. T–2066
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330484
Status: Unutilized
Comment: 4720 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—administration.

Bldg. T–2509
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330485
Status: Unutilized
Comment: 3147 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—administration.

Bldg. T–5901
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330486
Status: Unutilized
Comment: 742 sq. ft., 1 story wood frame, off-site use only, most recent use—administration.

Bldg. T–1464
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330487
Status: Unutilized
Comment: 3778 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—t-shirts and frame shop.

Bldg. T–1874
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330488
Status: Unutilized
Comment: 3108 sq. ft., 1 story wood frame, needs rehab, off-site use only.

Bldg. T–2011
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330489
Status: Unutilized
Comment: 150 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storehouse.

Bldg. T–2193
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330490
Status: Unutilized
Comment: 1800 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage shed.

Bldg. T–2507
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330491
Status: Unutilized
Comment: 224 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. T–2510
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330492
Status: Unutilized
Comment: 3210 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. T–4044
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330493
Status: Unutilized
Comment: 263 sq. ft., 1 story brick frame, needs rehab, off-site use only, most recent use—storage.

Bldgs. T–2511, T–2512
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Numbers: 219330494–219330495
Status: Unutilized
Comment: 18260 sq. ft. ea., 1 story wood frame, needs rehab, off-site use only, most recent use—vehicle maintenance shop.

Bldg. T–2513
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330496
Status: Unutilized
Comment: 13603 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—repair shop.

Bldg. S–2516
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330497
Status: Unutilized
Comment: 3008 sq. ft., 1 story steel, lead contaminants present, off-site use only, most recent use paint stripping plant

Bldg. T–2520
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330498
Status: Unutilized
Comment: 31296 sq. ft., 1 story wood frame, needs rehab, offsite use only, most recent use—physical fitness

Bldg. T–2183
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330499
Status: Unutilized
Comment: 3000 sq. ft., 1 story wood frame, needs rehab, offsite use only, most recent use—stable

Bldg. T–6231
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330500
Status: Unutilized
Comment: 600 sq. ft., 1 story wood frame, off-site use only, most recent use—firing range

Bldgs. T–6232, T–6236
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Numbers: 219330501–219330502
Status: Unutilized
Comment: 401 sq. ft. ea., 1 story wood frame, off-site use only, most recent use—firing range

Bldg. T–2508
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000

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Landholding Agency: Army
Property Number: 219330503
Status: Unutilized
Comment: 224 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use storage

Bldg. T–211
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340194
Status: Unutilized
Comment: 2284 sq. ft., 1-story wood frame, off-site use only, most recent use—instruction bldg.

Bldg. T–1031
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340195
Status: Unutilized
Comment: 4720 sq. ft., 2 story wood frame, off-site use only, most recent use—photo lab

Bldg. T–1126
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340196
Status: Unutilized
Comment: 4720 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—blood donor center

Bldg. P–5902
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340197
Status: Unutilized
Comment: 1157 sq. ft., 1 story wood frame, off-site use only, most recent use—warehouse

Bldg. 871, Fort Bliss
El Paso, TX, El Paso, Zip: 79916
Landholding Agency: Army
Property Number: 219420455
Status: Unutilized
Comment: 3540 sq. ft., 1-story wood, needs repair, most recent use—storage, off-site use only

Bldg. 1165, Fort Bliss
El Paso, TX, El Paso, Zip: 79916
Landholding Agency: Army
Property Number: 219420456
Status: Unutilized
Comment: 5263 sq. ft., 1-story wood, needs repair, most recent use—office, off-site use only

Bldg. 1675, Fort Bliss
El Paso, TX, El Paso, Zip: 79916
Landholding Agency: Army
Property Number: 219420457
Status: Unutilized
Comment: 3674 sq. ft., 1-story wood, needs repair, most recent use—office, off-site use only

Bldg. 4717, Fort Bliss
El Paso, TX, El Paso, Zip: 79916
Landholding Agency: Army
Property Number: 219420458
Status: Unutilized
Comment: 1081 sq. ft., 1-story wood, needs repair, most recent use—office, off-site use only

Bldg. 4718, Fort Bliss
El Paso, TX, El Paso, Zip: 79916
Landholding Agency: Army
Property Number: 219420459
Status: Unutilized
Comment: 899 sq. ft., 1-story wood, needs repair, most recent use—storage, off-site use only

Bldg. 4719, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219420460
Status: Unutilized
Comment: 519 sq. ft., 1-story wood, needs repair, most recent use—storage, off-site use only.

Bldg. 4105, Fort Hood
Ft. Hood, TX, Coryell, Zip: 76544–
Landholding Agency: Army
Property Number: 219420463
Status: Unutilized
Comment: 2535 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 128, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410312
Status: Unutilized
Comment: 2000 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 132, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410313
Status: Unutilized
Comment: 2000 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 240, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410314
Status: Unutilized
Comment: 2000 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 315, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410315
Status: Unutilized
Comment: 2400 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 316, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410316
Status: Unutilized
Comment: 1500 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 317, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410317
Status: Unutilized
Comment: 2000 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 3436, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410320
Status: Unutilized
Comment: 1080 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 3437, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410321
Status: Unutilized
Comment: 1080 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 4480, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410322
Status: Unutilized
Comment: 2160 sq. ft., 1-story, most recent use—storage, off-site use only.

Bldg. 57028, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410323
Status: Unutilized
Comment: 2798 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 57029, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410324
Status: Unutilized
Comment: 2798 sq. ft., 1-story, needs rehab, most recent use—

Virginia

Bldg. T–6015
U.S. Army Logistics Center & Fort Lee
Shop Road
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219012376
Status: Unutilized
Comment: 2124 sq. ft.; 2 story; most recent use—barracks; poor condition; needs major rehab.

Washington

Reserve Center, Longview
14 Port Way
Longview Co: Cowlitz WA 98632
Landholding Agency: Army
Property Number: 219320368
Status: Unutilized
Comment: 17304 sq. ft., 1 story training facility.

Wisconsin

Bldg. 7174, Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219320372
Status: Underutilized
Comment: 8466 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse.

Bldg. 7176, Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219320373
Status: Underutilized
Comment: 5415 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse.

Bldg. 7261, Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219320374
Status: Unutilized
Comment: 4800 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse.

Bldg. 556 Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219320386
Status: Underutilized
Comment: 3748 sq. ft. ea., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—unit chapel.

Bldg. 455, Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219320390
Status: Underutilized
Comment: 2750 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—admin/supply.

Land (by State)

Kansas

Parcel 1
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012333
Status: Underutilized
Comment: 14.4+ acres.

Parcel 3
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012336
Status: Underutilized
Comment: 261+ acres; heavily forrested; no access to a public right-of-way; selected periods are reserved for military/training exercises.

Parcel 4
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012339
Status: Underutilized
Comment: 24.1+ acres; selected periods are reserved for military/ training exercises; steep/wooded area.

Parcel 6
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Location: Extreme north east corner of installation in Flood Plain of the Missouri River.
Landholding Agency: Army
Property Number: 219012340
Status: Underutilized
Comment: 1280 acres; selected periods are reserved for military/ training exercises.

Parcel F
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012552
Status: Unutilized
Comment: 33.4 acres; area is land locked; heavily wooded; periodic flooding.

Minnesota

Land
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120269
Status: Underutilized
Comment: Approx. 25 acres, possible contamination, secured area with alternate access.

Montana

U.S. Army Reserve Center
Marcella Avenue
Lewistown Co: Fergus MT
Landholding Agency: Army
Property Number: 219420009
Status: Unutilized
Comment: 4.16 acres of bare land.

Nebraska

60 acres & bldgs.
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219340220
Status: Unutilized
Comment: 60 acres of land and structures (Bldg. A14), potential utilities.

Nevada

Parcel A
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: At Foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane.
Landholding Agency: Army
Property Number: 219012049
Status: Unutilized
Comment: 160 acres, road and utility easements, no utility hookup, possible flooding problem.

Parcel B
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: At foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane.
Landholding Agency: Army
Property Number: 219012056
Status: Unutilized
Comment: 1920 acres; road and utility easements; no utility hookup; possible flooding problem.

Parcel C
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at Western edge of State Route 359
Landholding Agency: Army
Property Number: 219012057
Status: Unutilized
Comment: 85 acres; road & utility easements, no utility hookup.

Parcel D
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at western edge of State Route 359.
Landholding Agency: Army
Property Number: 219012058
Status: Unutilized
Comment: 955 acres; road & utility easements; no utility hookup.

Ohio

5 acres
Doan U.S. Army Reserve Center
Portmonth Co: Scioto OH 45662
Landholding Agency: Army
Property Number: 219320313
Status: Unutilized
Comment: 5 acres including paved roads, parking, sidewalks, etc.

3 acres
Hayes U.S. Army Reserve Center
Fremont Co: Sandusky OH 43420
Landholding Agency: Army
Property Number: 219320316
Status: Unutilized
Comment: 3 acres including paved roads, parking, sidewalks, etc.

Tennessee

Milan Army Ammunition Plant
Milan Co: Carroll TN 38358–
Location: Plant boundary in the northeast corner of the plant & housing area
Landholding Agency: Army
Property Number: 219010547
Status: Excess
Comment: 17.2 acres; right of entry legal constraint.

Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012338
Status: Unutilized
Comment: 8 acres; unimproved; could provide access; 2 acres unusable; near explosives.

Land
Milan Army Ammunition Plant
NE corner of plant & housing area
Milan Co: Carroll TN 38358
Landholding Agency: Army
Property Number: 219240780
Status: Unutilized
Comment: 17.2 acres, secured area w/ alternate access, most recent use—buffer zone.

Texas

Vacant Land, Fort Sam Houston
All of Block 1800, Portions of Blocks 1900, 3100 and 3200
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219220438
Status: Unutilized
Comment: 250.33 acres, 85% located in floodplain, possibility of unexploded ordnance.

Old Camp Bullis Road
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219420461
Status: Unutilized
Comment: 7.16 acres, rural gravel road.

Camp Bullis, Tract 9
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219420462
Comment: 01.07 acres of undeveloped land.

Suitable/Unavailable Properties

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Buildings (by Stote)

Georgia

Bldg. T201, Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 219420357
Status: Unutilized
Comment: 2929 sq. ft., 1 story wood frame, needs repair, most recent use—offices, off-site use only.
Bldg. 704, Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 219420364
Status: Unutilized
Comment: 2028 sq. ft., 1 story, needs major repair, most recent use—admin.

Maryland

Bldgs. TMA4, TMA5, TMA8, TMA9
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320292
Status: Unutilized
Comment: approx. 800 sq. ft. steel plate, gravel base ammunition storage area, fair condition.

Nevada

U.S. Army Reserve Center
685 East Plumb Lane
Reno Co: Washoe NV 89502
Landholding Agency: Army
Property Number: 2 .9340180
Status: Unutilized
Comment: 11457 sq. ft., Reserve Center & 2611 sq. ft. vehicle repair shop on 4.29 acres, presence of asbestos, 1 story each, perpetual easement for road right of way 50 ft. from property.

Texas

Bldg. P–2000, Fort Sam Houston
San Antonio Co: Bexar TX 78234
Landholding Agency: Army
Property Number: 219220389
Status: Underutilized
Comment: 49542 sq. ft., 3 story brick structure, within National Landmark Historic District.
Bldg. P–2001, Fort Sam Houston
San Antonio Co: Bexar TX 78234
Landholding Agency: Army
Property Number: 219220390
Status: Underutilized
Comment: 16539 sq. ft., 4 story brick structure, within National Landmark Historic District.
Bldg. P–2007, Fort Sam Houston
San Antonio Co: Bexar TX 78234
Landholding Agency: Army
Property Number: 219220391
Status: Underutilized
Comment: 13058 sq. ft., 4 story brick structure, within National Landmark Historic District.
Bldg. T–189, Fort Sam Houston
San Antonio Co: Bexar TX 78234
Landholding Agency: Army
Property Number: 219220402
Status: Underutilized
Comment: 11949 sq. ft., 4 story brick structure, within National Landmark Historic District, possible lead contamination.
Bldg. T–2066, Fort Sam Houston
San Antonio Co: Bexar TX 78234
Landholding Agency: Army
Property Number: 219220424
Status: Underutilized
Comment: 4720 sq. ft., 1 story wood structure, within National Landmark Historic District, possible asbestos.

Virginia

Bldg. T3004, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310317
Status: Unutilized
Comment: 2350 sq. ft., 1-story wood frame, needs repair, most recent use—clinic.
Bldgs. T3022—T3024 Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Numbers: 219310318–219310320
Status: Unutilized
Comment: 5310 sq. ft. each, 2-story wood frame, needs repair, most recent use—barracks.
Bldg. T3026, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310321
Status: Unutilized
Comment: 3550 sq. ft., 1-story wood frame, needs repair, most recent use—dining room.
Bldg. T3025, T3040–T3041, T3049–T3050 Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Numbers: 219310322–219310326
Status: Unutilized
Comment: 2950 sq. ft. each, 1-story wood frame, needs repair, most recent use—dining room.
Bldgs. T3029–T3030, T3037–T3039, T3042–T3048, T3051–T3054, T3027–T3028 Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Numbers: 219310327–219310344
Status: Unutilized
Comment: 5310 sq. ft. each, 2-story wood frame, needs repair, most recent use—barracks.
Bldgs. T3031–T3036, T3057 Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Numbers: 219310345–219310351
Status: Unutilized
Comment: 2987 sq. ft. each, 1-story wood frame, needs repair, most recent use—admin./supply.
Bldg. T3055, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824
Landholding Agency: Army
Property Number: 219310352
Status: Unutilized
Comment: 2488 sq. ft., 1-story wood frame, needs repair, most recent use—admin./supply.
Bldg. TT3001, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310353
Status: Unutilized
Comment: 3302 sq. ft., 1-story wood frame, most recent use—chapel.
Bldg. TA3002, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310354
Status: Unutilized
Comment: 360 sq. ft., 1-story wood frame, most recent use—clinic.
Bldg. 178, Fort Monroe
Ft. Monroe, VA 23651
Landholding Agency: Army
Property Number: 219320357
Status: Unutilized
Comment: 1470 sq. ft., 1 story, need repairs, most recent use entomology facility, off-site use only.
Quarters 19201 & 19209
Fort Lee Co: Prince George VA 23801
Landholding Agency: Army
Property Number: 219410365
Status: Unutilized
Comment: 8370 sq. ft. ea., 2 story family quarters with 6 units each, off-site use only.
Quarters 19202, 19204, 19206, 19208, 19211 & 19213
Fort Lee Co: Prince George VA 23801
Landholding Agency: Army
Property Number: 219410366
Status: Unutilized
Comment: 8404 sq. ft. ea., 2 story family quarters with 6 units each, off-site use only.
Quarters 19203, 19205, 19207
Fort Lee Co: Prince George VA 23801
Landholding Agency: Army
Property Number: 219410367
Status: Unutilized
Comment: 9416 sq. ft. ea., 2 story family quarters with 8 units each, off-site use only.
Quarters 19210, 19214
Fort Lee Co: Prince George VA 23801
Landholding Agency: Army
Property Number: 219410368
Status: Unutilized
Comment: 7084 sq. ft. ea., 2 story family quarters with 6 units each, off-site use only.
Quarters 19212
Fort Lee Co: Prince George VA 23801
Landholding Agency: Army
Property Number: 219410369
Status: Unutilized
Comment: 14098 sq. ft., 2 story family quarters with 12 units, off-site use only.

Land (by State)

New Jersey

Land—Camp Kilmer
Plainfield Avenue
Edison Co: Middlesex NJ 08817
Landholding Agency: Army
Property number: 219230358
Status: Underutilized
Comment: approx. 10 acres in the southwest corner of site, most recent use—reserve training, wooded area.

Suitable/To Be Excessed

Buildings (by State)

Maryland

Bldg. 101
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery MD 20910–
Landholding Agency: Army
Property Number: 219012678
Status: Underutilized
Comment: 18438 sq. ft.; needs rehab; possible asbestos; building listed on National Historic Register.
Bldg. 104
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery MD 20910–
Landholding Agency: Army
Property Number: 219012679
Status: Underutilized
Comment: 12495 sq. ft.; needs rehab; possible asbestos; building listed on National Historic Register.
Bldg. 107
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery MD 20910–
Landholding Agency: Army
Property Number: 219012680
Status: Unutilized
Comment: 4107 sq. ft.; possible structural deficiencies; possible asbestos; historic property.
Bldg. 120
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery MD 20910–
Landholding Agency: Army
Property Number: 219012681
Status: Underutilized
Comment: 2442 sq. ft.; possible structural deficiencies; possible asbestos; historic property.

Land (by State)

Texas

Land-Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070
Landholding Agency: Army
Property Number: 219014814
Status: Unutilized
Comment: 43.08 acres, includes buildings/structures/parking and air strip.

Unsuitable Properties

Buildings (by State)

Alabama

77 Bldgs.
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 219014000, 219014009, 219014012, 219014015–219014051, 219014057, 219014060, 219014292, 219110109, 219120247–219120250, 219230190, 219330001–219330002, 219430265–219430290
Status: Unutilized
Reason: Secured Area.
Bldg. T00862
Fort McClellan
Off 21st Street between 2nd & 3rd Avenue
Fort McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219130019
Status: Unutilized
Reason: Extensive deterioration.
Two Bedroom Apt.
Anniston Army Depot
Wherry Housing—Terrace Homes Apt
Anniston Co: Calhoun AL 36201–
Landholding Agency: Army
Property Number: 219130108
Status: Excess
Reason: Extensive deterioration.
30 Bldgs., Fort Rucker
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219220341–219220344, 219310016, 219320001, 219330003–219330010, 219340114, 219340116–219340118, 219340120, 219340122–219340126, 219410016–219410019, 219410022–219410023, 219430260–219430264
Status: Unutilized
Reason: Extensive deterioration.
Bldgs. 25203, 25205–25207, 25209, 25501, 25503, 25505, 25507, 25510, 29101, 29103–29109
Fort Rucker
Stagefield Areas
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219410020–219410021, 219410024
Status: Unutilized
Reason: Secured area
27 Bldgs.
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220789–219220815
Status: Unutilized
Reason: Extensive deterioration.
14 Bldgs., Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219410001, 219410003–219410004, 219410011–219410014, 219420125–219420131
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 402–C
Alabama Army Ammunition Plant
Childersburg Co: Talladega AL 35044
Landholding Agency: Army
Property Number: 219420124
Status: Unutilized
Reason: Secured Area.

Alaska

16 Bldgs.
Fort Greely
Ft. Greely AK 99790–
Landholding Agency: Army
Property Number: 219210124–219210125, 219220319–219220332
Status: Unutilized
Reason: Extensive deterioration.
10 Bldgs., Fort Wainwright
Ft. Wainwright Co: Fairbanks AK 99505
Landholding Agency: Army
Property Number: 219230163–219230184, 219410025–219410032
Status: Unutilized
Reason: Extensive deterioration.(Some are in a secured area.)
Bldg. 1144, Fort Wainwright
Ft. Wainwright Co: Fairbanks/North AK 99703
Landholding Agency: Army
Property Number: 219240273
Status: Unutilized
Reason: Secured Area, Within airport runway clear zone.
Bldgs. 5001, 5002, Fort Wainwright
Ft. Wainwright Co: Fairbanks/North AK 99703
Landholding Agency: Army
Property Number: 219240274–219240275
Status: Unutilized
Reason: Secured area, Floodway.
Bldg. 1501, Fort Greely
Ft. Greely AK 99505
Landholding Agency: Army
Property Number: 219240327
Status: Unutilized
Reason: Secured Area.
Sullivan Roadhouse, Fort Greely
Ft. Greely AK
Landholding Agency: Army
Property Number: 219430291
Status: Unutilized
Reason: Extensive deterioration.

Arizona

32 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40.
Landholding Agency: Army
Property Number: 219014560–219014591
Status: Underutilized
Reason: Secured Area.
10 properties: 753 earth covered igloos; above ground standard magazines
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40.
Landholding Agency: Army
Property Number: 219014592–219014601
Status: Underutilized
Reason: Secured Area.
9 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–5000
Location: 12 miles west of Flagstaff on I–40
Landholding Agency: Army
Property Number: 219030273–219030274, 219120175–219120181
Status: Unutilized
Reason: Secured Area.
Bldgs. 84001, 68054
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635Landholding Agency: Army
Property Number: 219210017, 219430315
Status: Excess
Reason: Extensive deterioration.
Bldgs. T–2005, T–2006, S–2085, S–6078
Yuma Proving Ground
Yuma Co: Yuma/LaPaz AZ 85365–9104
Landholding Agency: Army
Property Number: 219320009–219320010, 219330020–219330021
Status: Unutilized
Reason: Extensive deterioration. (Some are in a secured area.)

Arkansas

Fort Smith USAR Center
Fort Smith
1218 South A Street
Fort Smith Co: Sebastian AR 72901–
Landholding Agency: Army
Property Number: 219014928
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

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Army Reserve Center
Hwy 79 North
Camden Co: Calhoun AR 71701–3415
Landholding Agency: Army
Property Number: 219220345
Status: Unutilized
Reason: Extensive deterioration.

97 Bldgs. Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340023–219340090, 219420132–219420137, 219430292–219430314
Status: Unutilized
Reason: Secured area. (Most are extensively deteriorated.)

5 Bldgs.
Pine Bluff Arsenal
Pine Bluff Co: Jefferson AR 71602–9500
Landholding Agency: Army
Property Number: 219420138–219420142
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

California

Bldgs. P–177, P–178, 325, S–308, S–308A, T–308B
Fort Hunter Liggett
Jolon Co: Monterey CA 93928–
Landholding Agency: Army
Property Number: 219012414–219012415, 219012600, 219240284–219240285, 219240287
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. (Some are in a secured area.)

Bldg. 18
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219012554
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

11 Bldgs., Nos. 2–8, 156, 1, 120, 181
Riverbank Army Ammunition Plant
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219013582–219013588, 219013590, 219240444–219240446
Status: Underutilized
Reason: Secured Area.

9 Bldgs.
Oakland Army Base
Oakland Co: Alameda CA 94626–5000
Landholding Agency: Army
Property Number: 219013903–219013906, 219120051, 219340008–219340011
Status: Unutilized
Reason: Secured Area. (Some are extensively deteriorated.)

Bldgs. S–108, S–290
Sharpe Army Depot
Lathrop Co: San Joaquin CA 95331–
Landholding Agency: Army
Property Number: 219014290, 219230179
Status: Underutilized
Reason: Secured Area.

Bldg. S–184
Fort Hunter Liggett
Ft. Hunter Liggett Co: Monterey CA 93928–
Landholding Agency: Army
Property Number: 219014602
Status: Underutilized
Reason: Secured Area.

12 Bldgs.
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219014713–219014717, 219014719–219014721, 219230181, 219320012
Status: Unutilized
Reason: Secured Area.

Bldg. P–88
Sierra Army Depot
Road Oil Storage
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219014707
Status: Unutilized
Reason: Oil Storage Tank.

Bldgs. 173, 177
Roth Road—Sharpe Army Depot
Lathrop Co: San Joaquin CA
Landholding Agency: Army
Property Number: 219014940–219014941
Status: Unutilized
Reason: Secured Area.

Bldgs. 13, 171, 178 Riverbank Ammun Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219120162–219120164
Status: Underutilized
Reason: Secured Area.

4 Bldgs., Sharpe Site
Lathrop Co: San Joaquin CA 95331–
Landholding Agency: Army
Property Number: 219240152–219240155
Status: Unutilized
Reason: Secured Area.

Bldg. T–187, Fort Hunter Liggett
Ft. Hunter Liggett Co: Monterey CA 93928
Landholding Agency: Army
Property Number: 219240321
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldgs. 25, 36, 224, 257, Tracy Facility
Tracy Co: San Joaquin CA 95376
Landholding Agency: Army
Property Number: 219330022–219330025
Status: Unutilized
Reason: Secured Area.

10 Bldgs., Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310
Landholding Agency: Army
Property Number: 219330026–219330035
Status: Unutilized
Reason: Secured Area, Extensive Deterioration.

23 Bldgs.
DDDRW Sharpe Facility
Tracy Co: San Joaquin CA 95331
Landholding Agency: Army
Property Number: 219430017–219430039, 219430317
Status: Unutilized
Reason: Secured Area.

US Army Reserve Center
Rio Vista Co: Sonoma CA 94571
Landholding Agency: Army
Property Number: 219430316
Status: Unutilized
Reason: Floodway.

Colorado

70 Bldgs.
Pueblo Army Depot
Pueblo Co: Pueblo CO 81001–
Location: 14 miles East of Pueblo City on Highway 50
Landholding Agency: Army
Property Number: 219012209, 219012211, 219012214, 219012216, 219012221, 219012223–219012224, 219012226–219012228, 219012230–219012231, 219012233, 219012235–219012237, 219012239–219012257, 219012260–219012275, 219012287, 219012290–219012298, 219012300, 219012743, 219012745, 219012747–219012748, 219120058–219120061
Status: Unutilized
Reason: Secured Area.

26 Bldgs., Pueblo Depot Activity
Pueblo CO 81001
Landholding Agency: Army
Property Number: 219240466–219240482
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldgs. T–317, T–412, 431, 433
Rocky Mountain Arsenal
Commerce Co: Adams CO 80022–2180
Landholding Agency: Army
Property Number: 219320013–219320016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area Extensive deterioration.

Bldg. 230
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219330036
Status: Unutilized
Reason: Secured Area

Bldgs. T–2741, T–2742, T–2743, T–2744, T–2745, T–200
Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219410033–219410037, 219420143
Status: Unutilized
Reason: Extensive deterioration.

Georgia

Fort Stewart
Sewage Treatment Plant
Ft. Stewart Co: Hinesville GA 31314–
Landholding Agency: Army
Property Number: 219013922
Status: Unutilized
Reason: Sewage treatment.

Facility 12304
Fort Gordon
Augusta Co: Richmond GA 30905–
Location: Located off Lane Avenue
Landholding Agency: Army
Property Number: 219014787
Status: Unutilized
Reason: Wheeled vehicle grease/inspection rack.

116 Bldgs.
Fort Gordon
Augusta Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219220269, 219220279, 219220281, 219220293, 219320020, 219320026–219320029, 219330050–219330060, 219410038–219410131, 219420144–219420145
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 11726–11727
Fort Gordon
Augusta Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219210138–219210139
Status: Unutilized
Reason: Secured Area.

4 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220334–219220337
Status: Unutilized
Reason: Detached lavatory.

Bldg. 1673, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220742
Status: Unutilized
Reason: Extensive deterioration.

9 Bldgs.
Fort Gillem
Forest Park Co: Clayton GA 30050
Landholding Agency: Army
Property Number: 219310091, 219310093–219310094, 219310098–219310099, 219310105, 219310107, 219320030, 219320033
Status: Unutilized
Reason: Extensive deterioration.

18 Bldgs., Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 219330041–219330043, 219420155–219420169
Status: Unutilized
Reason: Extensive Deterioration.

16 Bldgs., Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 219420146–219420153, 219430318–219430325
Status: Unutilized
Reason: Extensive deterioration.

Hawaii

PU–01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11
Schofield Barracks
Kolekole Pass Road
Wahiawa Co: Wahiawa HI 96786
Landholding Agency: Army
Property Number: 219014836–219014837
Status: Unutilized
Reason: Secured Area.

P–3384 East Range
Schofield Barracks
East Range Road
Wahiawa Co: Wahiawa HI 96786
Landholding Agency: Army
Property Number: 219030361
Status: Unutilized
Reason: Secured Area.

Bldg. T–1510, Fort Shafter
Honolulu Co: Honolulu HI 96819
Landholding Agency: Army
Property Number: 219320035
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 754–C, P–1519 A/B Schofield Barracks
Wahiawa Co: Wahiawa HI 96786
Landholding Agency: Army
Property Number: 219320034, 219420154
Status: Unutilized
Reason: Extensive deterioration.

Illinois

609 Bldgs. and Groups
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436
Landholding Agency: Army
Property Number: 219010153–219010317, 219010319–219010407, 219010409–219010413, 219010415–219010439, 219011750–219011879, 219011881–219011908, 219012331, 219013076–219013138, 219014722–219014781, 219030277–219030278, 219040354, 219140441–219140446, 219210146, 219240457–219240465, 219330062–219330094
Status: Unutilized
Reason: Secured Area; many within 2000 ft. of flammable or explosive materials; some within floodway.

Bldg. 725
Fort Sheridan
Highwood Co: Lake IL 60037–5000
Landholding Agency: Army
Property Number: 219013769
Status: Underutilized
Reason: Secured Area.

Bldgs. 58, 59 and 72, 69, 64, 105
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219110104–219110108
Status: Unutilized
Reason: Secured Area.

Bldg. 133, Rock Island Arsenal
Gillespie Avenue
Rock Island Co: Rock Island IL 61299
Landholding Agency: Army
Property Number: 219210100
Status: Underutilized
Reason: Extensive deterioration.

13 Bldgs. Savanna Army Depot Activity
Savanna Co: Carroll IL 61074
Landholding Agency: Army
Property Number: 219230126–219230127, 219430326–219430335, 219430397
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 103, 114, 417
Charles Melvin Price Support Center
Granite City Co: Madison IL 62040
Landholding Agency: Army
Property Number: 219420182–219420184
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Indiana

258 Bldgs.
Indiana Army Ammunition Plant (INAAP)
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219010913–219010920, 219010924–219010936, 219010952, 219010955, 219010957, 219010959–219010960, 219010962–219010964, 219010966–219010967, 219010969–219010970, 219011449, 219011454, 219011456–219011457, 219011459–219011464, 219013764, 219013848, 219014608–219014653, 219014655–219014661, 219014663–219014683, 219030315, 219120168–219120171, 219140425–219140440, 219210152–219210155, 219230034–219230037, 219320036–219320111, 219420170–219420181
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. (Most are within a secured area.)

61 Bldgs.
Newport Army Ammunition Plant
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219011584, 219011586–219011587, 219011589– 219011590, 219011592–219011627, 219011629–219011636, 219011638– 219011641, 219210149–219210151, 219220220, 219230032–219230033, 219430336–219430338
Status: Unutilized
Reason: Secured Area.

2 Bldgs.
Atterbury Reserve Forces Training Area
Edinburgh Co: Johnson IN 46124–1096
Landholding Agency: Army
Property Number: 219230030–219230031
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2635, Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Landholding Agency: Army
Property Number: 219240322
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Iowa

46 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219012605–219012607, 219012609, 219012611, 219012613, 219012615, 219012620, 219012622, 219012624, 219013706–219013738, 219120172–219120174
Status: Unutilized
Reason: Secured Area. (Some are within 2000 ft. of flammable or explosive material.)

28 Bldgs., Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638
Landholding Agency: Army
Property Number: 219230005–219230029, 219310017, 219330061, 219340091
Status: Unutilized
Reason: Extensive deterioration.

Kansas

37 Bldgs.
Kansas Army Ammunition Plant
Production Area
Parsons Co: Labette KS 67357–
Landholding Agency: Army
Property Number: 219011909–219011945
Status: Unutilized
Reason: Secured Area. (Most are within 2000 ft. of flammable or explosive material.)

222 Bldgs.
Sunflower Army Ammunition Plant
35425 W. 103rd Street
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219040039, 219040045, 219040048–219040051, 219040053, 219040055, 219040063–219040067, 219040072–219040080, 219040086–

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219040099, 219040102, 219040111–219040112, 219040118–219040119, 219040121–219040124, 219040126, 219040128–219040133, 219040136–219040137, 219040139–219040140, 219040143, 219040149–219040154, 219040156, 219040160–219040165, 219040168–219040170, 219040180, 219040182–219040185, 219040190–219040191, 219040202, 219040205–219040207, 219040208, 219040210–219040221, 219040234–219040239, 219040241–219040254, 219040256–219040257, 219040260, 219040262–219040267, 219040270–219040279, 219040282–219040319, 219040321–219040323, 219040325–219040327, 219040330–219040335, 219040349, 219040353, 219110073, 219140569–219140577, 219140580–219140591, 219140594, 219140599–219140601, 219140606–219140612, 219420185–219420187
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Floodway, Secured Area.

21 Bldgs.
Sunflower Army Ammunition Plant
35425 W. 103rd Street
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219040007–219040008, 219040010–219040012, 219040014–219040027, 219040030–219040031
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Floodway.

9 Bldgs.
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219240032, 219240080, 219310207, 219410132, 219420188–219420191, 219430040–219430041
Status: Unutilized
Reason: Extensive deterioration.

11 Latrines
Sunflower Army Ammunition Plant
35425 West 103rd
Desoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219140578–219140579, 219140593, 219140595–219140598, 219140602–219140605
Status: Unutilized
Reason: Detached Latrine.

226 Bldgs , Sunflower Army Ammunition Plant
DeSoto Co: Johnson KS 66018
Landholding Agency: Army
Property Number: 219240333–219240437, 219340001–219340007
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material, Extensive deterioration.

Kentucky

Bldg. 126
Lexington-Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles northeast of Lexington, Kentucky.
Landholding Agency: Army
Property Number: 219011661
Status: Unutilized
Reason: Secured Area, Sewage treatment facility.

Bldg. 12
Lexington—Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles Northeast of Lexington Kentucky.
Landholding Agency: Army
Property Number: 219011663
Status: Unutilized
Reason: Industrial waste treatment plant.

7 Bldgs., Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219320113–219320115, 219320121, 219320132–219320133, 219410146
Status: Unutilized
Reason: Extensive deterioration.

44 Bldgs., Fort Campbell
Ft. Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219320138, 219340242–219340253, 219410133–219410144, 219420192, 219420194, 219430042–219430058
Status: Unutilized
Reason: Extensive deterioration. (Some are in a secured area.)

Louisiana

42 Bldgs.
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219011668–219011670, 219011700, 219011714–219011716, 219011735–219011737, 219012112, 219013571–219013572, 219013863–219013869, 219110124, 219110127, 219110131, 219110135–219110136, 219120290, 219240137–219240150, 219420330–219420332
Status: Unutilized
Reason: Secured Area. (Most are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated)

Staff Residences
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219120284–219120286
Status: Excess
Reason: Secured Area.

10 Bldgs., Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219320282, 219340105–219340111, 219430339–219430340
Status: Unutilized
Reason: Extensive deterioration.

Maryland

56 Bldgs.
Aberdeen Proving Ground
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219011406–219011417, 219012608, 219012610, 219012612, 219012614, 219012616–219012617, 219012619, 219012623, 219012625–219012629, 219012631, 219012633–219012635, 219012637–219012642, 219012645–219012651, 219012655–219012664, 219013773, 219014711–219014712, 219030316, 219110140, 219240329
Status: Unutilized
Reason: Most are in a secured area. (Some are within 2000 ft. of flammable or explosive material) (Some are in a floodway)

Bldg. 1958
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219014789
Status: Unutilized
Reason: Secured Area.

Bldg. 10401
Aberdeen Proving Ground
Aberdeen Area
Harford Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219110138
Status: Unutilized
Reason: Sewage treatment plant.

Bldg. 10402
Aberdeen Proving Ground
Aberdeen Area
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219110139
Status: Unutilized
Reason: Sewage pumping station.

36 Bldgs. Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219130059, 219140458, 219140460–219140461, 219140465, 219140467, 219140510, 219210123, 219220142, 219220146, 219220153, 219220171–219220173, 219220190–219220192, 219220195–219220197, 219240121, 219310022, 219310026–219310027, 219310031–219310033, 219320144, 219330114– 219330118, 219340013, 219420333–219420334
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 132, 135 Fort Ritchie
Ft. Ritchie Co: Washington MD 21719–5010
Landholding Agency: Army
Property Number: 219330109–219330110
Status: Underutilized
Reason: Secured Area.

Bldg. T–116, Fort Detrick
Frederick Co: Frederick MD 21762–5000
Landholding Agency: Army
Property Number: 219340012
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 4900, Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219230089
Status: Unutilized
Reason: Within airport runway clear zone.

Massachusetts

Material Technology Lab
405 Arsenal Street
Watertown Co: Middlesex MA 02132–
Landholding Agency: Army
Property Number: 219120161
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Floodway, Secured Area.

Bldgs. T–102, T–110, T–111, Hudson Family Hsg

Natick RD&E Center
Bruen Road
Hudson Co: Middlesex MA 01749
Landholding Agency: Army
Property Number: 219220105–219220107
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 3462, Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 024620–5003
Landholding Agency: Army
Property Number: 219230095
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldgs. 3596, 1209–1211 Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 02462–5003
Landholding Agency: Army
Property Number: 219230096, 219310018–219310020
Status: Unutilized
Reason: Secured Area.

Michigan

Bldgs. 602, 604
US Army Garrison Selfridge
Mt. Clemens Co: Macomb MI 48043–
Landholding Agency: Army
Property Number: 219012355–219012356
Status: Unutilized
Reason: Within airport runway clear zone, Floodway, Secured Area.

Detroit Arsenal Tank Plant
28251 Van Dyke Avenue
Warren Co: Macomb MI 48090–
Landholding Agency: Army
Property Number: 219014605
Status: Underutilized
Reason: Secured Area.

Bldgs. 5755–5756
Newport Weekend Training Site
Carleton Co: Monroe MI 48166
Landholding Agency: Army
Property Number: 219310060–219310061
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

25 Bldgs.
Fort Custer Training Center
2501 26th Street
Augusta Co: Kalamazoo MI 49102–9205
Landholding Agency: Army
Property Number: 219014947–219014963, 219140447–219140454
Status: Unutilized
Reason: Secured Area.

Minnesota

170 Bldgs.
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120165–219120167, 219210014–219210015, 219220227–219220235, 219240328, 219310055–219310056, 219320145- 219320156, 219330096–219330108, 219340015, 219410159–219410189, 219420195–219420284, 219430059–219430064
Status: Unutilized
Reason: Secured Area. (Most are within 2000 ft. of flammable or explosive material.) (Some are extensively deteriorated)

Mississippi

Bldgs. 8301, 8303–8305, 9158
Mississippi Army Ammunition Plant
Stennis Space Center Co: Hancock MS 39529–7000
Landholding Agency: Army
Property Number: 219040438–219040442
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Missouri

Lake City Army Ammo. Plant
59, 59A, 59C, 59B
Independence Co: Jackson MO 64050–
Landholding Agency: Army
Property Number: 219013666–219013669
Status: Unutilized
Reason: Secured Area.

Bldg #1, 2, 3
St. Louis Army Ammunition Plant
4800 Goodfellow Blvd.
St. Louis Co: St. Louis MO 63120–1798
Landholding Agency: Army
Property Number: 219120067–219120069
Status: Unutilized
Reason: Secured Area.

19 Bldgs.
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219140422–219140423, 219430065–219430081
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material.

Nebraska

13 Bldgs.
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68802–
Location: 4 miles west (Potash Road)
Landholding Agency: Army
Property Number: 219013849–219013861
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

9 Bldgs.
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219230092–219230094, 219310238–219310239, 219340129–219340131, 219430003
Status: Unutilized
Reason: Extensive deterioration.

Bldg. A0002
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219310240
Status: Unutilized
Reason: Standby Generator Bldg.

Nevada

7 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Poperty Number: 219011953, 219011955, 219012061–219012062, 219012106, 219013614, 219230090
Status: Unutilized
Reason: Secured Area.

Bldg. 396
Hawthorne Army Ammunition Plant
Bachelor Enlisted Qtrs W/Dining Facilities
Hawthorne Co: Mineral NV 89415–
Location: East side of Decatur Street-North of Maine Avenue
Landholding Agency: Army
Number: 219011997
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area.

57 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219012009, 219012013, 219012021, 219012044, 219013615–219013651, 219013653–219013656, 219013658–219013661, 219013663, 219013665, 219340016–219340021
Status: Underutilized
Reason: Secured Area. (Some within airport runway clear zone; many within 2000 ft. of flammable or explosive material).

62 Concrete Explo. Mag. Stor.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: North Mag. Area
Landholding Agency: Army
Property Number: 219120150
Status: Unutilized
Reason: Secured Area.

259 Concrete Explo. Mag. Stor.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South & Central Mag. Areas
Landholding Agency: Army
Property Number: 219120151
Status: Unutilized
Reason: Secured Area.

Facility No. 00169, 00A38
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219240276, 219330119
Status: Unutilized
Reason: Extensive deterioration.

New Jersey

201 Bldgs.
Armament Res. Dev. & Eng. Ctr.
Picatinny Arsenal Co: Morris NJ 07806–5000
Location: Route 15 north
Landholding Agency: Army
Property Number: 219010440–219010474, 219010476, 219010478, 219010639–219010667, 219010669–219010721, 219012423–219012424, 219012426–219012428, 219012430–219012431, 219012433–219012466, 219012469–219012472, 219012474–219012475, 219012756–219012760, 219012763–219012767, 219013787, 219014306–219014307, 219014311, 219014313–219014321, 219030269, 219140617, 219230118–219230125
Status: Excess
Reason: Secured Area. (Most are within 2000 ft. of flammable or explosive material.)

24 Bldgs.
Fort Monmouth
Wall Co: Monmouth NJ 07719–
Landholding Agency: Army
Property Number: 219012829–219012833, 219012837, 219012841- 219012842, 219013786, 219230177,219230157, 219330129- 219330140, 219420335
Status: Unutilized

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Reason: Secured Area. (Some are extensively deteriorated).

11 Bldgs., Military Ocean Terminal
Bayonne Co: Hudson NJ 07002–
Location: Foot of 32nd Street and Route 169.
Landholding Agency: Army
Property Number: 219013890–219013896, 219330141–219330143, 219430001
Status: Unutilized
Reason: Floodway, Secured Area.

Bldgs. 820C, 3598
Armament Research, Dev & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219240315–219240316
Status: Unutilized
Reason: Secured Area, Extensive deteriorntion.

8 Bldgs.
Armament Research, Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219420001–219420008
Status: Underutilized
Reason: (Some are within 2000 ft. of flammable or explosive material). (Some are in the floodway). (Some are in secured area). (Some are extensively deteriorated).

9 Bldgs., Fort Dix
Ft. Dix Co: Burlington NJ 08640–
Landholding Agency: Army
Property Number: 219430087–219430092, 219430256–219430258
Status: Unutilized
Reason: Extensive deterioration.

New Mexico

Bldgs. 21384, 28358, 32010, 32984, 28730, 28830
White Sands Missile Range
White Sands Co: Dona Ana NM 88802–
Landholding Agency: Army
Property Number: 219330144–219330147, 219430126–219430127
Status: Unutilized
Reason: Extensive Deterioration.

New York

7 Bldgs. Fort Totten
Bayside Co: Queens NY 11357–
Landholding Agency: Army
Property Number: 219210130–219210131, 219430082–219430086
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 110, 143, 2084, 2105, 2110
Seneca Army Depot
Romulus Co: Seneca NY 14541–5001
Landholding Agency: Army
Property Number: 219240439, 219240440–219240443
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 124
U.S. Military Academy
West Point Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 219330148
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 3008, Stewart Gardens
Stewart Army Subpost
New Windsor Co: Orange NY 12553–
Landholding Agency: Army
Property Number: 219420285
Status: Unutilized
Reason: Extensive deterioration.

Bldg. P–4370, Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219430004
Status: Unutilized
Reason: Sewage pumping station.

9 Bldgs., Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219430005–219430012, 219430014
Status: Unutilized
Reason: (Some are within airport runway clear zone). (Some are extensively deteriorated).

5 Field Range Latrines
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Location: Bldgs. S–2565, S–2703, S–2714, S–2802, S–2822
Landholding Agency: Army
Property Number: 219430013
Status: Unutilized
Reason: Detached latrines.

North Carolina

18 Bldgs. Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219420288–219420303
Status: Unutilized
Reason: Extensive deterioration.

Ohio

63 Bldgs.
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219012476–219012507, 219012509–219012513, 219012515, 219012517–219012518, 219012520, 219012522–219012523, 219012525–219012528, 219012530–219012532, 219012534–219012535, 219012537, 219013670–219013677, 219013781, 219210148
Status: Unutilized
Reason:
Secured Area.

Bldgs. T–401, T–78, T–79, T–97, T–80, 309, 317 Page: 177
Defense Construction Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 219240331, 219310034–219310039
Status: Unutilized
Reason: Secured Area. (Some are extensively deteriorated.)

12 Bldgs., Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219320399–219320410
Status: Unutilized
Reason: Extensive deterioration.

Oklahoma

547 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–5000
Landholding Agency: Army
Property Number: 219011674, 219011680, 219011684, 219011687, 219012113, 219013792, 219013981–219013991, 219013994, 219014081–219014102, 219014104, 219014107–219014137, 219014141–219014159, 219014162, 219014165–219014216, 219014218–219014274, 219014336–219014559, 219030007–219030127, 219040004
Status: Underutilized
Reason: Secured Area. (Some are within 2000 ft. of flammable or explosive material)

14 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219130060, 219140524–219140525, 219140528–219140529, 219140535, 219140545–219140548, 219140550–219140551, 219320168, 219320337
Status: Unutilized
Reason: Extensive deterioration.

22 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–
Landholding Agency: Army
Property Number: 219310050–219310053, 219320170–219320171, 219330149–219330160, 219430122–219430125
Status: Unutilized
Reason: Secured Area.(Some are extensively deteriorated)

Oregon

11 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012174–219012176, 219012178–219012179, 219012190–219012191, 219012197–219012198, 219012217, 219012229
Status: Underutilized
Reason: Secured Area.

24 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012177, 219012185–219012186, 219012189, 219012195–219012196, 219012199–219012205, 219012207–219012208, 219012225, 219012279, 219014304–219014305, 219014782, 219030362–219030363, 219120032, 219320201
Status: Unutilized
Reason: Secured Area.

Pennsylvania

Hays Army Ammunition Plant
300 Miffin Road
Pittsburgh Co: Allegheny PA 15207–
Landholding Agency: Army
Property Number: 219011666
Status: Excess
Reason: Secured Area.

79 Bldgs.
Fort Indiantown GAP
Annville Co: Lebanon PA 17003–5011
Landholding Agency: Army
Property Number: 219140267–219140324, 219420118, 219420120–219420123, 219430106–219430121
Status: Unutilized
Reason: Extensive deterioration. (Some are detached latrines)

Bldg. 82001, Reading USARC
Reading Co: Berks PA 19604–1528
Landholding Agency: Army
Property Number: 219320173
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. P640, T–664
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–5002
Landholding Agency: Army
Property Number: 219420344, 219430132
Status: Unutilized
Reason: Extensive deterioration.

33 Bldgs.
Letterkenny Army Depot
Chambersburg Co: Franklin PA 17201–
Landholding Agency: Army
Property Number: 219420399–219420430, 219430098
Status: Unutilized
Reason: Secured Area. Extensive deterioration.

South Carolina

Bldgs. L7272, L7286, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410157–219410158
Status: Unutilized
Reason: Extensive deterioration.

Tennessee

45 Bldgs.
Volunteer Army Ammo. Plant
Chattanooga Co: Hamilton TN 37422–
Landholding Agency: Army
Property Number: 219010475, 219010477, 219010479–219010500, 219240127–219240136, 219420304–219420307, 219430099–219430105
Status: Unutilized/Underutilized
Reason: Secured Area. (Some are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated).

24 Bldgs.
Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012304–219012309, 219012311–219012312, 219012314, 219012316–219012317, 219012319, 219012325, 219012328, 219012330, 219012332, 219012334–219012335, 219012337, 219013789–219013790, 219030266, 219140613, 219330178
Status: Unutilized
Reason: Secured Area. (Some are within 2000 ft. of flammable or explosive material).

8 Bldgs.
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358–
Landholding Agency: Army
Property Number: 219240447–219240449, 219320182–219320184, 219330176–219330177
Status: Unutilized
Reason: Secured Area.

Bldg. Z–183A
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358–
Landholding Agency: Army
Property Number: 219240783
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Texas

Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76079–
Landholding Agency: Army
Property Number: 219011665
Status: Unutilized
Reason: Easement to city of Saginaw for sewer pipeline ending 5/15/2023.

18 Bldgs.
Lone Star Army Ammunition Plant
Highway 82 West
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219012524, 219012529, 219012533, 219012536, 219012539–219012540, 219012542, 219012544–219012545, 219030337–219030345
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldgs. 0021A, 0027A
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661–
Location: State highway 43 north
Landholding Agency: Army
Property Number: 219012546, 219012548
Status: Underutilized
Reason: Secured Area.

32 Bldgs., Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219120064, 219130002, 219140255, 219230109–219230115, 219320193–219320194, 219330163, 219420314–219420327, 219430093–219430097
Status: Unutilized
Reason: Secured Area. (Some are extensively deteriorated).

Bldg. T–5000
Camp Bullis
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219220100
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material.

Swimming Pools
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230108
Status: Unutilized
Reason: Extensive deterioration.

6 Bldgs., Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 219340022, 219340238, 219410149-219410151, 219430131
Status: Unutilized
Reason: Extensive deterioration.

13 Bldgs., Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330161–219330162, 219330473–219330474, 219340095–219340098, 219420309–219420313
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–2514
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330475
Status: Unutilized
Reason: Pump house.

Bldgs. T–2916, T–3180, T–3192, T–3398
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330476–219330479
Status: Unutilized
Reason: Detached latrines.

Utah

3 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012153, 219012166, 219030366,
Status: Unutilized
Reason: Secured Area.

11 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012143–219012144, 219012148–219012149, 219012152, 219012155, 219012156, 219012158, 219012742, 219012751, 219240267
Status: Underutilized
Reason: Secured Area.

12 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219013996–219013999, 219130008, 219130011- 219130013, 219130015–219130018
Status: Underutilized
Reason: Secured Area.

17 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219014693, 219130009–219130010, 219130014, 219220204–219220207, 219330179–219330185, 219420328–219420329
Status: Unutilized
Reason: Secured Area.

Bldg. 4520
Tooele Army Depot, South Area
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219240268
Status: Unutilized
Reason: Extensive deterioration.

164 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Location: State Highway 114
Landholding Agency: Army
Property Number: 219010833, 219010836, 219010839, 219010842, 219010844, 219010847–219010890, 219010892–219010912, 219011521- 219011577, 219011581–219011583, 219011585, 219011588, 219011591, 219013559–219013570, 219110142–219110143, 219120071, 219140618–219140633
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

13 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Location: State Highway 114

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Landholding Agency: Army
Property Number: 219010834–219010835, 219010837–219010838, 219010840–219010841, 219010843, 219010845–219010846, 219010891, 219011578–219011580
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Comment: Latrine, detached structure.

60 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219240084, 219240096, 219240103–219240105, 219240107–219240118, 219330191–219330228, 219340092–219340094, 219420340–219420342
Status: Unutilized
Reason: Extensive deterioration (Some are in a secured Area.)

13 Bldgs.
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219220210–219220218, 219230100–219230103
Status: Unutilized
Reason: Secured Area.

2 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801
Landholding Agency: Army
Property Number: 219220312, 219220314
Status: Underutilized
Reason: Extensive deterioration

2 Bldgs.,
Fort A.P. Hill
Bowling Co: Caroline VA 22427
Landholding Agency: Army
Property Number: 219240313–219240314
Status: Underutilized
Reason: Detached latrines

Bldg. B7103–01, Motor House
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219240324
Status: Unutilized
Reason: Secured Area Within 2000 ft. of flammable or explosive material Extensive deterioration

8 Bldgs., Fort Pickett
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 219310136, 219310138–219310139, 219310141–219310145
Status: Unutilized
Reason: Extensive deterioration

Bldg. 106, Fort Monroe
Ft. Monroe VA 23651
Landholding Agency: Army
Property Number: 219330186
Status: Unutilized
Reason: Extensive deterioration

Bldg. 919, Fort Story
Ft. Story Co: Princess Ann VA 23459
Landholding Agency: Army
Property Number: 219430015
Status: Unutilized
Reason: Floodway

Bldgs. 1058, 1061, Fort Story
Ft. Story Co: Princess Ann VA 23459
Landholding Agency: Army
Property Number: 219430016
Status: Unutilized
Reason: Extensive deterioration

56 Bldgs.
Red Water Field Office
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219430341–219430396
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Washington

24 Training Facilities
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–5000
Landholding Agency: Army
Property Number: 219430128
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 7518, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–5000
Landholding Agency: Army
Property Number: 219430129
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldgs. 524, 538, 539
Ft. Lawton
Seattle Co: King WA 98199
Landholding Agency: Army
Property Number: 219430130
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Wisconsin

6 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011094, 219011209–219011212, 219011217
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area
Comment: friable asbestos

154 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011104, 219011106, 219011108–219011113, 219011115–219011117, 219011119–219011120, 219011122–219011139, 219011141–219011142, 219011144, 219011148–219011208, 219011213–219011216, 219011218–219011234, 219011236, 219011238, 219011240, 219011242, 219011244, 219011247, 219011249, 219011251, 219011254, 219011256, 219011259, 219011263, 219011265, 219011268, 219011270, 219011275, 219011277, 219011280, 219011282, 219011284, 219011286, 219011290, 219011293, 219011295, 219011297, 219011300, 219011302, 219011304–219011311, 219011317, 219011319–219011321, 219011323
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Other environmental, Secured Area
Comment: friable asbestos

4 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013871–219013873, 219013875
Status: Underutilized
Reason: Secured Area

3 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013876–219013878
Status: Unutilized
Reason: Secured Area

Bldgs. 6513–27, 6823–2, 6861–4
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219210097–219210099
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

76 Bldgs., Fort McCoy
US Hwy. 21
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 219210115, 219240206–219240262, 219310208–219310225
Status: Unutilized
Reason: Extensive deterioration.

17 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219220295–219220311
Status: Unutilized
Reason: Secured Area.

Bldgs. 2845, 2860, Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 219430002
Status: Unutilized
Reason: Detached latrines.

Land (by State)

Alabama

23 acres and 2284 acres
Alabama Army Ammunition Plant
110 Hwy. 235
Childersburg Co: Talladega AL 35044–
Landholding Agency: Army
Property Number: 219210095–219210096
Status: Excess
Reason: Secured Area.

Alaska

Campbell Creek Range
Fort Richardson
Anchorage Co: Greater Anchorage AK 99507–
Landholding Agency: Army
Property Number: 219230188
Status: Unutilized
Reason: Inaccessible.

Illinois

Group 66A
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219010414

Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Parcel 1
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Location: South of the 811 Magazine Area, adjacent to the River Road.
Landholding Agency: Army
Property Number: 219012810
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Floodway.

Parcel No. 2, 3
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219013796–219013797
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Floodway.

Parcel No. 4, 5, 6
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219013798–219013800
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Floodway.

Homewood USAR Center
18760 S. Halsted Street
Homewood Co: Cook IL 60430–
Landholding Agency: Army
Property Number: 219014067
Status: Underutilized
Reason: Secured Area.

38,000 sq. ft. & 4,000 sq. ft. of Land Rock Island Arsenal
South Shore Moline Pool Miss. River
Moline Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219240317–219240318
Status: Unutilized
Reason: Floodway.

Indiana

Newport Army Ammunition Plant
East of 14th St. & North of S. Blvd.
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219012360
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Land—Plant 2
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219330095
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Maryland

Carroll Island, Graces Quarters
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012630, 219012632
Status: Underutilized
Reason: Floodway, Secured Area.

Nebraska

Land
Cornhusker Army Ammunition Plant
Potash Road
Grand Island Co: Hall NE 68802–
Location: 4 miles west of Grand Island.
Landholding Agency: Army
Property Number: 219013785
Status: Underutilized
Reason: Floodway.

New Jersey

Land
Armament Research Development & Eng. Center
Route 15 North
Picatinny Arsenal Co: Morris NJ 07806
Landholding Agency: Army
Property Number: 219013788
Status: Unutilized
Reason: Secured Area.

Oklahoma

McAlester Army Ammo. Plant
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501
Landholding Agency: Army
Property Number: 219014603
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material.

Pennsylvania

Lickdale Railhead
Fort Indiantown Gap
Lickdale Co: Lebanon PA 17038
Landholding Agency: Army
Property Number: 219012359
Status: Excess
Reason: Floodway.

Tennessee

Land
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN
Landholding Agency: Army
Property Number: 219013791
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Volunteer Army Ammo. Plant
Chattanooga Co: Hamilton TN
Location: Area around VAAP—outside fence in buffer zone.
Landholding Agency: Army
Property Number: 219013880
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Texas

Land—Approx. 50 acres
Lone Star Army Ammunition Plant
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219420308
Status: Unutilized
Reason: Secured Area.

Virginia

Fort Belvoir Military Reservation-5.6 Acres
South Post located West of Pohick Road
Fort Belvoir Co: Fairfax VA 22060–
Location: Rightside of King Road
Landholding Agency: Army
Property Number: 219012550
Status: Unutilized
Reason: Within airport runway clear zone Secured Area.

Wisconsin

Land
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Location: Vacant land within plant boundaries.
Landholding Agency: Army
Property Number: 219013783
Status: Unutilized
Reason: Secured Area.

[FR Doc. 94–24058 Filed 9–29–94; 8:45 am]
BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, ET SEQ.)

PRT–794593

Applicant: John B. Hendricks, Texas State Aquarium, Corpus Christi, TX.

The applicant requests a permit to take/receive salvaged specimens of endangered/threatened sea turtles that may occur along the Texas coast for scientific research and recovery purposes, rehabilitation and release back into the wild, and to permanently hold nonreleasable specimens for future scientific research aimed at enhancement of propagation or survival of the species. Species include Kemp's ridley (*Lepidochelys kempii*), Green (*Chelonia mydas*), and Hawksbill (*Eretmochelys imbricata*).

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Persons wishing to review the documents and other information submitted with this application may obtain a copy by submitting a written request within 30 days of the date of publication of this notice. (See **ADDRESS** above.)

James A. Young,

Acting Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 94–24197 Filed 9–29–94; 8:45 am]
BILLING CODE 4310–55–M

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50 CFR Part 17

Availability of Draft Recovery Plan for the Kauai Plant Cluster for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft Kauai Plant Cluster Recovery Plan. There are 37 taxa of plants included in this plan. All but seven of the taxa are or were endemic to the Hawaiian Island of Kauai. The plants that are not endemic to Kauai are or were also found on the islands of Niihau, Oahu, Molokai, Maui, and/or Hawaii.

DATES: Comments on the draft recovery plan must be received on or before November 29, 1994, to receive consideration by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, room 6307, 300 Ala Moana Blvd., P.O. Box 50167, Honolulu, Hawaii 96850 (phone 808/541–2749); U.S. Fish and Wildlife Service, Regional Office, Ecological Services, 911 N.E. 11th Ave., Eastside Federal Complex, Portland, Oregon 97232–4181 (phone 503/231–6131); the Kauai Public Library, 4344 Hardy Street, Lihue, Kauai 96766; and, the Wailuku Public Library, 251 High Street, Wailuku, Maui 96793. Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Brooks Harper, Field Supervisor, at the above Honolulu address.

FOR FURTHER INFORMATION CONTACT: Karen W. Rosa, Fish and Wildlife Biologist, at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The 37 plant taxa being considered in the draft Kauai Plant Cluster Recovery Plan are: *Brighamia insignis* ('olulu), *Chamaesyce halemanui* (no common name (NCN)), *Cyanea asarifolia* (haha), *Cyrtandra limahuliensis* (ha'iwale), *Delissea rhytidosperma* (NCN), *Diellia pallida* (NCN), *Dubautia latifolia* (NCN), *Exocarpos luteolus* (heau), *Hedyotis cookiana* ('awiwi), *Hedyotis st.-johnii* (na Pali beach hedyotis), *Hibiscus clayi* (Clay's hibiscus), *Lipochaeta fauriei* (nehe), *Lipochaeta micrantha* var. *exigua* (nehe), *Lipochaeta micrantha* var. *micrantha* (nehe), *Lipochaeta waimeaensis* (nehe), *Lysimachia filifolia* (NCN), Melicope haupuensis (alani), *Melicope knudsenii* (alani), *Melicope pallida* (alani), *Melicope quadrangularis* (alani), *Munroidendron racemosum* (NCN), *Nothocestrum peltatum* ('aiea), *Peucedanum sandwicense* (makou), *Phyllotegia waimeae* (NCN), *Poa mannii* (Mann's bluegrass), *Poa sandvicensis* (Hawaiian bluegrass), *Poa siphonoglossa* (NCN); *Pteralyxia kauaiensis* (kaulu), *Remya kauaiensis* (NCN), *Remya montgomeryi* (NCN), *Schiedea apokremnos* (Ma'oli'oli), *Schiedea spergulina* var. *leiopoda* (NCN), *Schiedea spergulina* var. *spergulina* (NCN), *Solanum sandwicense* (popolo' aiakeakua), *Stenogyne campanulata* (NCN), *Wilkesia hobdyi* (Dwarf 'ili' au) and *Xylosma crentaum* (NCN).

All but seven of the taxa are or were endemic to the Hawaiian island of Kauai; the exceptions are or were found on the Hawaiian Islands of Niihau, Oahu, Molokai, Maui, and/or the island of Hawaii as well as Kauai. The 37 plant taxa and their habitats have been variously affected or are currently threatened by one or more of the following: habitat degradation by feral and domestic animals (goats, pigs, axis and mule deer, cattle, and red jungle fowl); competition for space, light, water, and nutrients by introduced vegetation; erosion of substrate produced by human- or animal-caused disturbance; recreational and agricultural activities; habitat loss from fires; disease; loss of pollinators; and predation by animals (goats, rats and mice). Due to the small number of existing individuals and their very narrow distributions, these taxa and most of their populations are subject to an increased likelihood of extinction and/or reduced reproductive vigor from stochastic events.

The taxa included in this plan were historically distributed throughout the island of Kauai and grow in a variety of vegetation communities (grassland, shrubland, and forests), elevational zones (coastal to montane), and moisture regimes (dry to wet). Most of the taxa included in this plan persist on steep slopes, precipitous cliffs, valley headwalls, and other regions where unsuitable topography has prevented agricultural development or where inaccessibility has limited encroachment by alien animal and plant taxa.

The objective of this plan is to provide a framework for the recovery of these 37 taxa so that their protection by the Endangered Species Act (ESA) is no longer necessary. Immediate actions necessary for the prevention of extinction of these taxa include fencing for exclusion of ungulates, alien plant control, protection from fire, population and plant community monitoring and management, *ex situ* propagation, and augmentation of populations, as appropriate. Long-term activities necessary for the perpetuation of these taxa in their natural habitats additionally include baseline and long-term research regarding growth requirements, public education, maintenance of fenced areas, long-term monitoring and management of populations and communities, and re-establishment of populations within the historic ranges of some taxa. Further research current range, reproduction and reproductive status, pollinators, life history, limiting factors, habitat requirements, and minimum viable population sizes is needed to facilitate appropriate management decisions regarding the long-term perpetuation of each of these taxa.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of these plans.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 26, 1994.

Michael J. Spear,

Regional Director, U.S. Fish and Wildlife Service, Region 1.

[FR Doc. 94–24195 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Availability of Draft Recovery Plan for the Waianae Plant Cluster for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft Waianae Plant Cluster Recovery Plan. There are 31 taxa of plants included in this plan. Twenty-six taxa are either endemic to, or have their largest or best known populations in, the Waianae Mountain Range on the western side of the island of Oahu, Hawaii.

DATES: Comments on the draft recovery plan must be received on or before November 29, 1994, to receive consideration by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, room 6307, 300 Ala Moana Blvd., P.O. Box 50167, Honolulu, Hawaii 96850 (phone 808/541–2749); U.S. Fish and Wildlife Service, Regional Office, Ecological Services, 911 N.E. 11th Ave., Eastside Federal Complex, Portland, Oregon 97232–4181 (phone 503/231–6131). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Brooks Harper, Field Supervisor, at the above Honolulu address.

FOR FURTHER INFORMATION CONTACT: Karen W. Rosa, Fish and Wildlife Biologist, at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The draft Wainae Plant Cluster Recovery Plan addresses 31 plant taxa that have been listed as endangered under the Endangered Species Act of 1973, as amended (Act), in four listing actions between September 1991 and June 1994: *Abutilon sandwicense, Alsinidendron obovatum, Alsinidendron trinerve, Centaurium seboeoides* ('awiwi), *Chamaesyce celastroides* var. *Kaenana* ('akoko), *Chamaesyce kuwaleana* ('akoko), *Cyanea grimesiana* ssp. *obatae* (haha), *Cyanea pinnatifida* (haha), *Cyanea superba, Diellia falcata, Diellia unisora, Dubautia herbstobatae* (na'ena'e), *Gouania meyenii, Gouania vitifolia, Hedyotis degeneri, Hedyotis parvula, Hesperomannia arbuscula, Lipochaeta lobata* var. *leptophylla* (nehe), *Lipochaeta tenuifolia* (nehe), *Lobelia niihauensis, Neraudia angulata, Nototrichium humile* (kulu'i), *Phyllostegia mollis, Sanicula mariversa, Schiedea kaalae, Silene perlmanii, Stenogyne kanehoana, Tetramolopium filiforme, Tetramolopium lepidotum* ssp. *lepidotum Urera kaalae* (opuhe), and *Viola chamissoniana* ssp. *chamissoniana* (pamakani). Twenty-six taxa are either endemic to, or have their largest or best known populations in, the Waianae Mountain Range on the western side of the island of Oahu, Hawaii.

The 31 plant tasa and their habitats have been adversely threatened in various degrees by one or more of the following: trampling and predation by introduced ungulates (pigs, cattle, goats); habitat degradation and competition for space, light, water, and nutrients by naturalized, alien vegetation; and habitat loss from fires. A few of these taxa may have been subjected to overcollection and are subject to trampling by human beings along trails. Because of the small number of extant individuals and severely restricted distributions, populations of these tasa are subject to an increased likelihood of extinction from stochastic events.

The ultimate objective of this plan is to provide a framework for the eventual recovery of these 31 taxa, preferably so that their protection by the Endangered Species Act (ESA) is no longer necessary. Immediate actions necessary for the prevention of extinction of these taxa include fencing for exclusion of ungulates, alien plant control, protection from fire, population and plant community monitoring and management, *ex situ* propagation, and augmentation of populations, as appropriate. Long-term activities necessary for the perpetuation of these taxa in their natural habitats additionally include baseline and long-term research regarding growth requirements, public education, maintenance of fenced areas, long-term monitoring and management of populations and communities, and re-establishment of populations within the historic ranges of some taxa. Further research regarding current range, reproduction and reproductive status, pollinators, life history, limiting factors, habitat requirements, and minimum viable population sizes is needed to facilitate appropriate management decisions regarding the long-term perpetuation of each of these taxa.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of these plans.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

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Dated: September 26, 1994.

Michael J. Spear,

Regional Director, U.S. Fish and Wildlife Service, Region 1.

[FR Doc. 94–24196 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–55–M

Marine Mammal Annual Report Availability, Calendar Year 1991

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of calendar year 1991 marine mammal annual report.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has issued its 1991 annual report on administration of the marine mammals under its jurisdiction, as required by section 103(f) of the Marine Mammal Protection Act of 1972. The report covers the period January 1 to December 31, 1991, and was submitted to the Congress on August 25, 1994. By this notice, the public is informed that the 1991 report is available and that interested individuals may obtain a copy by written request to the Service.

ADDRESSES: Written requests for copies should be addressed to: Publications Unit, U.S. Fish and Wildlife Service, Mail Stop 130-Webb, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Horwath, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Mail Stop 820—Arlington Square, 1849 C Street, NW, Washington, DC 20240. (703) 358–1718.

SUPPLEMENTARY INFORMATION: The Service is responsible for eight species of marine mammals under the jurisdiction of the Department of the Interior, as assigned by the Marine Mammal Protection Act of 1972. These species are polar bear, sea and marine otters, walrus, manatees (three species) and dugong. The report reviews the Service's marine mammal-related activities during the report period. Administrative actions discussed include appropriations, marine mammals in Alaska, endangered and threatened marine mammal species, law enforcement activities, scientific research and public display permits, certificates of registration, research, Outer Continental Shelf environmental studies and international activities.

Dated: September 22, 1994.

Bruce Blanchard,

Deputy Director.

[FR Doc. 94–24226 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–55–M

Klamath Fishery Management Council; Notice of Meeting

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act. The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 10 a.m. to 5 p.m. on Thursday, October 20, 1994; and from 8:30 a.m. to 12 noon on Friday, October 21, 1994.

ADDRESSES: The meeting will be held at the Redwood National Park Hiouchi Visitor Center, Highway 199 (across from Jedediah Smith Camp Ground), Hiouchi, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main, Suite 212), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: The principal agenda items at this meeting will be a report on the 1994 salmon fishing season, a report on Klamath River flows and temperature, and a proposal from the National Biological Survey for estimating the economic benefits of restoring Klamath fish and fisheries. The Council will also consider actions that could be taken in 1995 to manage salmon ocean harvest and protect Klamath River salmon stocks.

For background information on the Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: September 23, 1994.

Thomas Dwyer,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–24198 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Minerals Management Advisory Board, Outer Continental Shelf (OCS), Scientific Committee (SC); Announcement of Plenary Session Meeting

This Notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C. Appendix I, and the Office of Management and Budget Circular A–63, Revised.

The Minerals Management Advisory Board OCS SC will meet in subcommittee session on Wednesday, November 9, 1994, and in plenary session on Thursday, November 10, 1994, at the Marriott Dulles Suites, 13101 Worldgate Drive, Herndon, Virginia 22070, telephone (703) 709–0400.

The OCS SC is an outside group of scientists which advises the Director, MMS, on the feasibility, appropriateness, and scientific value of the MMS' OCS Environmental Studies Program.

Below is a schedule of meetings that will occur.

The OCS SC will meet in subcommittee session on Wednesday, November 9, from 9 a.m. to 5 p.m., and in plenary session on Thursday, November 10, from 8:30 a.m. to 5 p.m.

Discussion will include the following subjects:

- Committee Business and Resolutions
- Environmental Studies Program Status Review
- MMS Goals and Objectives

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the plenary session.

A copy of the agenda may be requested from the MMS by writing Ms. Phyllis Clark at the address below.

Other inquiries concerning the OCS SC meeting should be addressed to Dr. Ken Turgeon, Executive Secretary to the OCS Scientific Committee, Minerals Management Service, 381 Elden Street, Mail Stop 4310, Herndon, Virginia 22070. He may be reached by telephone at (703) 787–1717.

Dated: September 22, 1994.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 94–24227 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Department of the Interior

ACTION: Notice of meeting of the Native American Graves Protection and Repatriation Review Committee.

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), that a meeting of the Native American Graves Protection and Repatriation Act Review Committee will be held on November 17, 18, and 19, 1994, in Albany, N.Y.

On Thursday and Friday The Committee will meet at the New York State Museum, Clark Auditorium, Madison Avenue, Albany, New York. On Saturday the meeting will be held in the New York State Museum's Members Lounge. Meetings will begin each day at 8:30 a.m. and conclude not later than 5:00 p.m.

The Native American Graves Protection and Repatriation Act Review Committee was established by Public Law 101–601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the statute.

The Committee is soliciting comments from members of the public regarding: 1) the disposition of culturally unidentifiable human remains in museum or Federal collections; and 2) the disposition of unclaimed human remains and cultural items from Federal or tribal lands.

Culturally unidentifiable human remains are those in museum or Federal agency collections for which, following the completion of inventories by November 16, 1995, no lineal descendants or culturally affiliated Indian tribe has been determined. Unclaimed human remains and cultural items are those intentionally excavated or inadvertently discovered on Federal or tribal lands after November 16, 1990, for which, after following the process outlined in section 3 of the statute (25 U.S.C. 3002), no lineal descendant or Indian tribe has made a claim. The Committee is responsible for recommending specific actions for developing a process for disposition of unidentified human remains and unclaimed human remains and cultural items.

The Committee may also review written evidence regarding a dispute referred to the Committee by the United States Marine Corps in Hawaii.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Francis P. McManamon, Departmental Consulting Archeologist.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Dr. Francis P. McManamon, Departmental Consulting Archeologist, Archeological Assistance Division, National Park Service, P.O. Box 37127–Suite 210, Washington, D.C. 20013–7127, Telephone (202) 343–4101. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Departmental Consulting Archeologist, room 210, 800 North Capital Street, Washington, D.C.

Dated: September 26, 1994

Francis P. McManamon,

Departmental Consulting Archeologist and Chief, Archeological Assistance Division.

[FR Doc. 24182 Filed 9–29–94; 8:45 pm]

BILLING CODE 4310–70–F

National Park Service

Keeper of the National Register of Historic Places

September 23, 1994.

The title of Keeper of the National Register of Historic Places is hereby assigned to the Chief of Registration, National Register of Historic Places effective as of September 23, 1994. Under 36 CFR 60 and 63 the Keeper is the individual who has been delegated the authority by the National Park Service to list properties and determine their eligibility for the National Register. The Keeper may further delegate this authority as he or she deems appropriate. Under 36 CFR 60 and 63 the decision of the Keeper is the final administrative action on listings and removals from the National Register and on determinations of eligibility. The authority to resolve appeals of decisions in which the Chief of Registration has already participated will remain with the Associate Director, Çultural Resources.

Sincerely,

Jerry L. Rogers,

Associate Director, Cultural Resources and Keeper of the National Register of Historic Places, National Park Service.

[FR Doc. 94–24214 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notices to the Commission of Intent to Perform Interstate Transportation for Certain Nonmembers

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. The rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP–102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquires and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) MFA Incorporated.
(2) 615 Locust Street, Columbia, MO 65201.
(3) 615 Locust Street, Columbia, MO 65201.
(4) Ann Simpson, 615 Locust Street, Columbia, MO 65201.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–24240 Filed 9–29–94; 8:45 am]

BILLING CODE 7035–01–P

Notice of Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Supervalu Inc. P.O. Box 990 Minneapolis, MN 55440.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of corporation:

	State of incorporation.
Hazelwood Farms Bakeries, Inc., Hazelwood, MO.	Missouri.
Max Club, Inc., Hunting Beach, CA.	Minnesota.
Moran Foods, Inc. Dba Sav A Lot, St. Louis, MO.	Missouri.
Preferred Products, Inc., Chaska, MN.	Minnesota.
Scott's Food Stores, Inc., Ft. Wayne, IN.	Indiana.
Shop 'N Save Warehouse Foods, Inc., Kirkwood, MO.	Missouri.

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	State of incorporation.
Springfield Sugar and Products Co. Dba Sweetlife, Northboro, MA.	Massachusetts.
Supervalu Holdings, Inc., Eden Prairie, MN.	Minnesota.
Supervalu Operations, Inc., Eden Prarie, MN.	Minnesota.
Supermarket Operations of American, Inc., Eden Prairie, MN.	Minnesota.
Supervalu Transportation Inc., Eden Prairie, MN.	Minnesota.
Twin Value Stores, Inc., Cuyahoga Falls, OH.	Minnesota.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–24238 Filed 9–29–94; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) how often the form must be filled out or the information is collected;

(4) who will be asked or required to respond, as well as a brief abstract;

(5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) an estimate of the total public burden (in hours) associated with the collection; and,

(7) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(1) Report of Theft or Loss of Controlled Substances. DEA Form 106.

(2) DEA Form 106. Drug Enforcement Administration.

(3) On occasion.

(4) Individuals or households, Businesses or other for-profit, Federal agencies or employees. The Code of Federal Regulations 21 CFR 1301.74(c) and 1301.76(b) require DEA registrants to complete and submit DEA Form 106 upon discovery of a theft or loss of controlled substances. Purpose: accurate accountability; monitor substances diverted into illicit markets and develop leads for criminal investigations.

(5) 6,460 annual respondents at .5 hours per response.

(6) 4,199 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: September 26, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–24176 Filed 9–29–94; 8:45 am]

BILLING CODE 4410–09–M

Antitrust Division

United States and State of Florida v. Morton Plant Health System, Inc. and Trustees of Mease Hospital, Inc.; Public Comments and Response on Proposed Final Consent Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States publishes below the comments received on the proposed Final Consent Judgment in United States and State of Florida v. Morton Plant Health System, Inc., and Trustees of Mease Hospital, Inc. Civil No. 94–748–CIV–T–23E, United States District Court for the Middle District of Florida, together with the United States' response to the comments.

Copies of the public comments and the response are available on request for inspection and copying in Room 3235 of the Antitrust Division, U.S. Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530, and at the Office of the Clerk of the United States District Court for the Middle District of Florida, United States Courthouse, 611 North Florida Avenue, Room B–100, Tampa, Florida 33602.

Joseph H. Widmar,

Deputy Assistant Attorney General, Antitrust Division.

The United States' Response To Public Comments

Pursuant to Section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the "APPA"), the United States hereby submits and responds to the public comments it has received regarding the proposed Final Consent Judgment ("Judgment") in this civil antitrust proceeding.

This action began on May 5, 1994, when the United States and the State of Florida filed a Verified Complaint alleging that the proposed consolidation of Morton Plant Health System, Inc. and Trustees of Mease Hospital, Inc. would tend to substantially lessen competition in the provision of acute inpatient hospital services in North Pinellas County, Florida in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. On June 17, 1994, the parties filed a Stipulation and a proposed Judgment, and on July 1, the United States filed a Competitive Impact Statement regarding the proposed Judgment.

As explained in the Competitive Impact Statement, the proposed Judgment permits Morton Plant and Mease to achieve cost savings by consolidating some hospital and administrative services, but it enjoins the proposed consolidation and requires Morton Plant and Mease to continue competing in the provision of inpatient hospital services as separate corporate entities, thus preserving that competition upon which consumers have relied to reduce the cost of hospital care.

The APPA requires a sixty-day period for the submission of public comments on the proposed Judgment [15 U.S.C. 16(b)]. The sixty-day comment period expired on September 12, 1994. The United States received two comments. The comments and the United States' response to these comments are being published with this notice.[1] What follows is a brief summary of the comments and the United States' response.

1. The Textile Rental Services Association criticized language in the proposed Judgment that, the Association claims, would authorize Morton Plant and Mease to establish a tax-exempt joint venture to provide hospital laundry services. Currently, such a venture would not be tax-exempt. The United States' response to this comment points out that, in drafting the proposed Judgment, the parties did not intend to create any new federal or state tax exemption. Morton Plant and Mease confirmed in writing that they neither intend, nor will they interpret, the proposed Judgment to provide them with any such tax-exemption.

In our view, the parties' written commitment that they will not interpret the proposed Judgment as creating or providing any new federal or state tax exemption fully meets the Textile Rental Services Association's concern that the Judgment could be read to provide such tax relief. A key point, however, is that the criticism about the tax consequences of the proposed Judgment is entirely unrelated to the key issue before the Court: the effectiveness of the Judgment in remedying the antitrust violation alleged in the Complaint.

2. Ms. Ann E. Castro, who represents an employment agency for temporary nurses, criticized provisions of the proposed Judgment that would permit Morton Plant and Mease to combine their purchases of temporary nursing services. She believes that the hospitals' joint venture might decide to purchase nursing services from foreign-born nurses, who, she claims, typically charge less than the nurses her client represents.

In response, the United States pointed out that purchasing nursing services at lower prices is a legitimate, pro-competitive goal. A reduction in Morton Plant's and Mease's costs for nursing services would likely translate into lower charges for hospital care, and hence, benefit health care consumers. Consequently, this criticism does not warrant rejecting the proposed Judgment, but instead underscores its salutory effect.

Dated: September 23, 1994.

Respectfully submitted,

Anthony E. Harris, Attorney, Antitrust Division U.S. Department of Justice, Washington, D.C. 20001 (202) 307–0951

[1] The comments and the individual responses are attached as Exhibit 1.

Exhibit 1

Galland, Kharasch Morse & Garfinkle, P.C.
Canal Square
1054 Thirty-First Street, NW.
Washington, DC. 20007–4496
(202) 342–5200
Telecopy: (202)342–5219, (202) 337–8787

August 9, 1994

VIA HAND DELIVERY

Ms. Gail Kursh
Chief, Professions and Intellectual Property Section
U.S. Department of Justice
Antitrust Division
555 4th Street, NW., Rm 9903
Washington, DC. 20001

Re: Public Comment on Proposed Final Consent Judgment, Stipulation and Competitive Impact Statement in the matter of *United States and State of Florida* v. *Morton Plant Health System, Inc. and Trustees of Mease Hospital, Inc.*, No. 94–748–CIV–T–23E (M.D. Fla., Filed May 5, 1994).

Dear Ms. Kursh:

This letter is filed on behalf of this firm's client, the Textile Rental Services Association ("TRSA") with respect to the above-captioned action (the "Stipulation"), in partial objection to the terms of the Stipulation.

TRSA is a nonprofit trade association. Its mission is to protect, promote, and professionalize the industry of its members, which are companies engaged in textile maintenance and provision of rental services to commercial, industrial and institutional accounts. Members of TRSA account for about 90 percent of the annual sales of the linen supply industry and about 75 percent of the sales of the industrial laundering industry. The combined textile rental industry had estimated 1993 sales of about $6 billion. Linen supply and industrial laundering companies employ 110,000 people.

Article II, paragraph (G), and Article V, paragraph (B) of the Stipulation, as published in the Wednesday, July 13, 1994 Federal Register (59 Fed. Reg. 35,752, 35754) provide that Morton Plant Health System ("Morton Plant") and Trustees of Mease Hospital ("Mease") may form a "nonprofit, tax-exempt organization" which "may own and operate any . . . Eligible Partnership Administrative Service and may provide such service to Morton Plan and Mease." The Stipulation defines "Eligible Partnership Administrative Service" to include, among other things, "housekeeping and laundry" services and "all miscellaneous services not related to patient care and not exceeding an expenditure of $250,000.00 annually."

As is discussed in greater detail below, the implication in the Stipulation that a tax-exempt organization may perform laundry services is *directly* contrary to law, and the open-ended grant of authority to perform "miscellaneous services" may be interpreted in a manner which is inconsistent with law. TRSA objects to the content and potential effect of these provisions.

The Supreme Court specifically ruled in *HCSC–Laundry* v. *United States*, 450 U.S. 1,101 S.Ct. 836, 67 L.ED.2d 1 (1981) that a "cooperative hospital service organization" formed for the express purpose of providing laundry services for two or more hospitals (which were themselves tax-exempt organizations under § 501(c)(3) of the Internal Revenue Code) was not eligible for tax exempt status. Section 501(e) of the Internal Revenue Code directly addresses the capacity of a hospital service organization to qualify for tax exempt status, and provides a list of services which such qualified organizations can perform. Laundry services are not expressly nor implicitly included in that list.[1]

The petitioner in *HCSC Laundry* asserted that the list of services in § 501(e) was not intended as an exclusive list, and that the service entity providing laundry services could qualify for tax-exempt status under the general qualification standards of § 501(c)(3) applied to other companies. The Supreme Court rejected the petitioner's argument, and upheld the Third Circuit's ruling that compliance with § 501(e) was, in fact, the only way for a hospital service organization to attain tax-exempt status. The Court noted that the omission of laundry services from § 501(e) by lawmakers in 1968 was not inadvertent, and that the inclusion of laundry services was expressly considered and rejected in 1968 (during original legislative action); and 1976 (when an effort was made to amend the law to include laundry services). 101 S. Ct. at 839.

We acknowledge that the issues before the District Court and the Department of Justice, and the compromises contained in the Stipulation, focus on antitrust and anticompetitive concerns and that the Stipulation is not necessarily cognizant of federal income tax implications. Nevertheless, the Stipulation implies a range of authority which is inconsistent with current law, and we urge you to revise the Stipulation to reflect current law on permissible tax-exempt activities for hospital service organizations.

TRSA requests the opportunity to submit further comments or to otherwise participate in any other proceeding concerning this subject. Please contact the undersigned if you have any questions regarding the foregoing, or if you need any further information.

Sincerely,

Steven John Fellman,

Counsel to the Textile Rental Services Association.

cc: Mr. John Burke,
Employee Plans and Exempt Organizations
Mr. J.C. Contney
Executive Director, Textile Rental Services Assn.

[1] Section 501(e) provides, in pertinent part, as follows (emphasis added):

For purposes of this title, an organization shall be treated as an organization organized and operated exclusively for charitable purposes if—(1) such organization is organized and operated solely—(A) to perform, on a centralized basis, one or more of the following services which, if performed on its own behalf by a hospital which is an organization described in [§ 501(c)(3)] and exempt from taxation under subsection (a), would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption: *data processing, purchasing, warehousing, billing and collection, food, clinical, industrial, engineering, laboratory, printing, communications, record center and personnel (including selection, testing, training, and education of personnel)*

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September 23, 1994
BY FACSIMILE AND U.S. MAIL
Steven John Fellman, Esquire
Galland, Kharasch, Morse & Garfinkle, P.C.
Canal Square
1054 31st Street, N.W.
Washington, D.C. 20007–4492

Re: Public Comment on Proposed Consent Decree in United States and State of Florida v. Morton Plant Health Systems, Inc., et al., No. 94–748–CIV–T–23E (M.D. Fla., filed May 5, 1994)

Dear Mr. Fellman:

This letter responds to your recent letter, submitted on behalf of the Textile Rental Service Association, commenting on the possible tax ramifications of the joint venture that Morton Plant Health System, Inc. and Trustees of Mease Hospital, Inc. are permitted to establish under the terms of the proposed consent decree in this case.

In your letter, your correctly point out that the proposed decree authorizes Morton Plant and Mease to form a "nonprofit, tax-exempt organization" that "may own and operate [and provide to Morton Plant and Mease] any * * * Eligible Partnership Administrative Service," and that such services may include *inter alia*, "housekeeping and laundry" services and "all miscellaneous services not related to patient care and not exceeding an expenditure of $250,000 annually." Final Consent Judgment ¶¶ II (G) and V(B). This language could be read to imply that the partnership organized under the decree can perform laundry services and other unspecified miscellaneous services and remain a "nonprofit, tax-exempt organization" under federal tax laws.

However, current federal tax statutes and court decisions interpreting them indicate that a "cooperative hospitals service organization" formed to provide laundry services for two or more non-profit hospital is *not* eligible for tax exempt status. *HCSC-Laundry v. United States*, 450 U.S. 1, 6–8 (1981). It is also quite possible that a joint venture formed by the hospitals to provide other "miscellaneous services not related to patient care"—and not specifically listed as a tax-exempt service in Section 501(e) of the Internal Revenue Code—would not be entitled to tax-exempt status.

The United States certainly does not view this consent decree as affording Morton Plant or Mease a new exemption from federal (or state) taxes. Moreover, Morton Plant and Mease have provided written assurances that they do not intend to interpret the consent decree as providing an amendment to or exemption under any tax law. (A copy of that written assurance from the hospitals' trial counsel is enclosed.)

In short, the proposed consent decree is clearly not intended, and should not be read, to alter or amend tax laws, rules, or regulations, or to create any new tax exemptions or loopholes. In order to qualify for tax-exempt status, the hospitals' joint venture must satisfy any applicable tax regulations, not simply rely upon the language of the proposed decree.

I trust that this responds to the concerns you have expressed. Thank you for your keen interest in the enforcement of our federal antitrust and tax laws.

Sincerely yours,
Anthony E. Harris,
Attorney, Professions & Intellectual Property Section.

Enclosure
cc: Mr. John Burke
Assistant Commissioner,
Employee Plans and Exempt Organizations
Internal Revenue Service.

Macfarlane Ausley Ferguson & McMullen
Attorneys and Counselors At Law

September 21, 1994
in reply refer to: Clearwater
ALSO SENT VIA FAX 1–202–514–1517

Anthony E. Harris, Esq.
Trial Counsel
U.S. Department of Justice
Antitrust Division
555–4th Street, N.W., Room 9901
Washington, DC 20001

Re: USA v. Morton Plant and Mease

Dear Tony:

It is my understanding that you requested written assurances in reference to one of the comments received in relation to the Consent Decree. In that regard, please accept this correspondence as my clients' written assurance that they do not intend to violate the tax laws in relation to implementation of this Consent Decree, nor do they intend to claim any exemption to which they are not entitled, nor did they intend, nor do they interpret the Consent Decree to give them any additional exemptions not provided for in the tax codes, federal or state. This matter has been reviewed by appropriate tax counsel who are advising the entities accordingly. If you have additional questions, please do not hesitate to call.

Sincerely,
James A. Martin, Jr.

JAM:knk
cc:
Mr. Frank V. Murphy
Mr. Phil Beauchamp
John P. Frazer, Esq.
Emil C. Marquardt, Jr., Esq.
Steve Kiess, Esq.
H:/DATA/ATY/JAM/MPH/MEASE/HARRIS LTR

Law Offices
Ann Elaine Castro P.A.

September 12, 1994

Ms. Gail Kursh
Chief, Professions and Intellectual Property Section
U.S. Department of Justice
Antitrust Division
555 4th Street, N.W.
Room 9903
Washington D.C. 20001

In Re: United States and State of Florida v. Morton Plant Health System, Inc. and Trustees of Mease Hospital, Inc. No. 94–748–CIV–T–23E (M.D., Fla., Filed May 5, 1994)

On behalf of my client, a nursing contractor doing business in Pinellas County Florida, this public comment is being submitted as there is considerable concern that the combination of Morton Plant and Mease may substantially lessen competition in the provision of health care services in North Pinellas County in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

Specifically, the gravamen of my client's concern lies in the suspicion that should the merger go forward, staff relief nurses and other health care professionals will be injured. At 59 Fed. Reg. 357555 (July 13, 1994), Part VI (B) Independent Activities, the Final Consent Judgment reads as follows:

Morton Plant and Mease shall each price and sell its services, both those owned and operated and operated separately and those purchased from the Partnership, in active competition with each other. Morton Plant and Mease shall each exercise its own independent judgment on how to market and price its patient care services and shall not discuss, communicate, or exchange with each other or any other hospital information relating to the marketing, pricing, negotiating, or contracting of any patient care services, including those purchased from the Partnership.

On information and belief Morton Plant has participated in predatory pricing. Morton Plant together with nineteen of twenty-three major hospitals in the Tampa Bay area previously engaged in activities which set forth a federal anti-trust investigation. This investigation was conducted in 1988–9 to look into alleged abuses by the hospitals. An organization by the name of SASSA alleged that the nineteen hospitals were acting in concert to attempt to eliminate competition in the staff relief nurse industry throughout the Tampa Bay area, and to drive prices below community standards for the relief nurses.

Although the federal investigation of the anti-trust activities ended when the hospitals dropped their plan, the hospitals have continued to act in concert to try to eliminate competition in the staff relief nurse industry and to drive prices below community standards for the relief nurses. A new alliance was formed after the 1988–9 investigation called the Bay Area Hospital Council. (BAHC). BAHC has actively recruited foreign nurses to supply area hospitals with cheaper temporary nurses, and this collective activity has further damaged the nursing contractor that this firm represents, as the foreign relief nurses have been working for wages well below community standards for temporary nurses.

Although Morton Plant has engaged in utilizing relief nurses on H–1A nurses, Mease has not. The nursing contractor this firm represents has been doing business with Mease, but had been doing no business at all with Morton Plant, until the contractor would agree to do business with Morton Plant at rates below community standards for relief workers. This demand for cheaper rates commanded by Morton Plant has still not translated into significant return of business to the contractor who had historically provided Morton Plant with a large portion of its staff relief nurses.

Should the merger go forward, there will certainly be an adverse affect on staff relief nurses desiring to work in north Pinellas County, in that their ability to work at Mease Hospital will be uncertain, should Mease be influenced by the practices that Morton Plant has adopted.

Further information has been supplied to Jerome Hoffman of the Florida Attorney General's Office in Tallahassee, Florida.

Sincerely,
Ann Elaine Castro P.A.

September 23, 1994
BY FACSIMILE AND U.S. MAIL
Ann Elaine Castro, Esquire
Griffin Professional Building
1455 Court Street
Clearwater, Florida 34616

Re: Public Comment on Proposed Consent Decree in United States and State of Florida v. Morton Plant Health System, Inc., et al., No. 94–748–CIV–T–23E (M.D. Fla., filed May 5, 1994)

Dear Ms. Castro:

This letter responds to your September 12, 1994 letter regarding the potential impact of the proposed consent decree on competition in the provision of temporary nursing services to Tampa Bay area hospitals.

As I understand your concerns, your client is an employment agency that supplies temporary nurses to hospitals in the Tampa Bay area, including Mease. Apparently, your client has had difficulty competing in the provision of nursing services because Morton Plant and 19 other area hospitals, acting through a trade association, Bay Area Hospital Association, actively recruit foreign-born nurses, who, you say, are willing to work at temporary positions at much cheaper rates than the nurses your client employs. You believe that if Morton Plant and Mease combine their purchases of nursing services, as they are permitted to do under the proposed consent decree, their joint venture may elect to purchase the services of foreign-born nurses, rather than continue doing business with your client.

In our view, the concerns you have expressed provide no justification for reconsidering the merits of the proposed decree. First, the factual premise of your argument—that Morton Plant favors the use of foreign-born temporery nurses—is suspect. There is no evidence that Morton Plant, in fact, routinely fills temporary nursing positions at its hospitals with lower-paid foreign-born nationals. The materials you submitted to the Florida Attorney General's Office in support of your complaint indicate that, as recently as 1992, Morton Plant did not hire a single foreign national as a temporary nurse.

Second, neither hospital is today precluded from hiring foreign-born nurses to fill temporary positions, and there is no proper basis for restricting the joint venture's hiring of foreign-born nurses. Indeed, such employment discrimination is likely unlawful.

Finally, even if Morton Plant routinely fills temporary nursing positions with lower-paid foreign nationals, and the hospital joint venture organized pursuant to the decree adopts that practice and expands it to Mease, paying less expensive rates for nursing services is likely to have significant procompetitive effects. This practice promises to reduce the cost of nursing care at these hospitals, and it has not been suggested that that will lead to any diminution in the quality of care. The reduction in nursing costs will likely lead to a reduction in prices paid for hospital-related services, precisely the pro-consumer result the parties anticipated when they agreed to the settlement now pending before the Court.

I trust this information will help you to understand the basis for the Department's action and the proposed settlement in this matter. Thank you for sharing your views with us.

Sincerely yours,
Anthony E. Harris,
Attorney, Professions & Intellectual Property Section.

[FR Doc. 94–24213 Filed 9–29–94; 8:45 am]
BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research and Production Act of 1993—the Frame Relay Forum

Notice is hereby given that, on June 23, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Frame Relay Forum ("FRF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notificaitons were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the additional members of FRF are: Advanced Computer Communications, Cupertino, CA; Advanced Compression Technology, Camarillo, CA; and Concert, Reston, VA. The following are no longer members of FRF: Digital Equipment; Cray Communications; Netcomm Limited; NEC; Telia; Financial Paradigms; BT North America; Bull; and Multi-Access.

No other changes have been made in either the membership or planned activities of FRF. Membership remains open, and FRF intends to file additional written notifications disclosing all changes in membership.

On April 10, 1992, FRF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 2, 1992 (57 FR 29537).

The last notification was filed with the Department on March 25, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 5, 1994 (59 FR 23234).

Constance K. Robinson,
Director of Operations, Antitrust Division.

[FR Doc. 94–24158 Filed 9–29–94; 8:45 am]
BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research and Production Act of 1993—Network Management Forum

Notice is hereby given that, on August 12, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Network Management Forum ("the Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members to the venture are as follows: Cincinnati Bell Information Systems, Cincinnati, CH; and NEC Corporation, Tokyo, Japan are Corporate Members. Oracle Corporation, Bracknell, Berkshire, United Kingdom; Prism Systems, Inc., Richmond, British Columbia, Canada; Sprint International, Overland Park, KS; Sterling Software, Reston, VA; Telefonica Sistemas, S.A., Madrid, Spain; Telefonos de Mexico, c/o Southwestern Bell Co., San Antonio, TX; and Unisource Business Networks, Ltd., Ittigen, Switzerland are Associate Members. Australian Department of Administrative Services, Canberra Act, Australia; The Coca-Cola Company, Atlanta, GA; DHL Systems, Inc., Burlingame, CA; EDS, Plano, TX; European Space Agency, Rome, Italy; Frensham Communications, Reading, England; ITCAL, Courbevoie, France; Japan Airlines Co., Ltd., Tokyo, Japan; McCaw Communications, Kirkland, WA; National Westminster Bank PLC, Kegworth, Derby, England; NIST, Gaithersburg, MD; Philips Research, Aachem, Germany; Royal Hong Kong Jockey Club, Happy Valley, Hong Kong; Shell Oil, Houston, TX; and SITA, Neuilly-sur-Seine, France are Affiliate Members.

No other changes have been made, since the last notification filed with the Department, in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

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The last notification was filed with the Department on June 6, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 21, 1994 (59 FR 37266).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–24159 Filed 9–29–94; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research and Production Act of 1993—The SQL Access Group, Inc.

Notice is hereby given that, on June 6, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the SQL Access Group, Inc. ("the Group"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following parties are no longer members of the Group: Apple Computer; Boeing Computer Services; British Telecom Research; Concom Systems; E.I. Dupont de Nemours & Co., Inc.; Hewlett Packard; Lotus Development Corp., Micro Decisionware; Novell; Retix; DB Access; Jyacc; Locus Computing; and Revelation Technologies. The following parties have become members of the Group: Svenska Handelsbanken, Stockholm, Sweden; and Samsung Advanced Institute, Kyung Ki-Do, Korea. The following companies have changed their names: Computer Corporation of America is now Praxis; and NCR/Teradata is now AT&T/Global Information Solutions.

On March 1, 1990, the Group filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 5, 1990 (55 Fed. Reg. 12,750).

The last notification was filed with the Department on April 6, 1993. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 30, 1994 (59 FR 33,783).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–24160 Filed 9–29–94; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated August 5, 1994, and published in the **Federal Register** on August 15, 1994, (59 FR 41785), Ciba-Geigy Corporation, Pharmaceutical Division, Regulatory Compliance, 556 Morris Avenue, Summit, New Jersey 07901, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: September 22, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–24161 Filed 9–29–94; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 94–17]

Jovencio Raneses, M.D.; Revocation of Registration

On August 12, 1993, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jovencio Raneses, M.D. The Order to Show Cause sought to revoke Dr. Raneses' (Respondent) DEA Certificate of Registration, AR2526171, and deny any pending applications for registration as a practitioner. The Order to Show Cause alleged that revocation of Respondent's DEA Certificate of Registration was proper pursuant to 21 U.S.C. 824(a) (1), (2), and (4).

In particular, the Order to Show Cause alleged that Respondent's continued registration was inconsistent with the public interest in light of his prescribing of controlled substances to individuals in the absence of a legitimate medical purpose, his felony conviction for issuance of a controlled substance prescription in violation of California law, and his material falsification of a new application for registration with the DEA. On that application, Respondent failed to acknowledge that he had been convicted of a crime in connection with controlled substances.

On December 13, 1993, Respondent requested a hearing on the issues raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was scheduled for June 9, 1994. On June 3, 1994, Government counsel filed a motion for summary disposition alleging that Respondent was without state authority to handle controlled substances.

In support of its motion, Government counsel produced a copy of the decision of the Division of Medical Quality, Medical Board of California (Board) dated November 16, 1993. Paragraph two of the decision provides that Respondent shall surrender his DEA Certificate of Registration and not reapply for a new DEA permit "without prior written consent of the [Board]." Government counsel also attached to its motion a statement from a Board Probation Officer who indicated that Respondent had not obtained written consent from the Board to reapply for his DEA Certificate.

On June 20, 1994, Respondent filed a letter which was treated by the administrative law judge as a cross-motion for summary disposition. Respondent's submission, however, failed to address the issue of state authorization raised in Government counsel's motion for summary disposition. The submission, rather, addressed the merits of the case. Government counsel filed a response to Respondent's letter on June 23, 1994, again urging the administrative law judge to revoke Respondent's registration and deny his application based on lack of state authorization.

On June 29, 1994, the administrative law judge granted the Government's motion for summary disposition and recommended that Respondent's DEA Certificate of Registration be revoked and that pending applications be denied. No exceptions were filed and on August 2, 1994, the administrative law judge transmitted the record to the Deputy Administrator. The Deputy Administrator now enters his final order in this matter pursuant to 21 CFR 1316.67.

It is well established that the Drug Enforcement Administration cannot register a practitioner who is not duly authorized to handle controlled substances in the state in which he does business. *See* 21 U.S.C. 823(i). DEA has consistently held that practitioners who lack state authorization to handle controlled substances cannot be registered with the Drug Enforcement Administration. *See Ramon Pla, M.D.*, 51 FR 41168 (1986); *George S. Heath, M.D.*, 51 FR 26610 (1986); *Dale D. Shahan, D.D.S.*, 51 FR 23481 (1986).

Consequently, the Deputy Administrator adopts the administrative law judge's opinion and decision recommending that Respondent's registration be revoked and his pending applications denied. This decision is appropriate in light of Respondent's lack of authorization to handle controlled substances in the State of California. The Deputy Administrator has determined that due to Respondent's lack of state authorization to handle controlled substances, it is not necessary to address whether Respondent's continued registration is inconsistent with the public interest pursuant to 21 U.S.C. 823(f) and 824(a)(4).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 (59 FR 23637), hereby orders that DEA Certificate of Registration, AR2526171, issued to Jovencio Raneses, M.D., be, and it hereby is, revoked, and that all pending applications for registration be, and they hereby are, denied. This order is effective October 31, 1994.

Dated: September 23, 1994.

Stephen H. Green,

Deputy Administrator.

[FR Doc. 94–24164 Filed 9–29–94; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on August 26, 1994, Sanofi Winthrop Inc., formerly Sanofi Winthrop L.P., DBA Sanofi Winthrop Pharmaceutical, 200 East Oakton Street, Des Plaines, Illinois 60018, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Hydromorphone (9150)	II
Meperidine (9230)	II
Morphine (9300)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 31, 1994.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: September 22, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–24162 Filed 9–29–94; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Registration

By Notice dated August 5, 1994, and published in the **Federal Register** on August 15, 1994, (59 FR 41791), Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
4-Bromo-2,5-dimethoxyphenethylamine (7392)	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7401)	I

No comments or objections have been received. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: September 22, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–24163 Filed 9–29–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Indian and Native American Employment and Training Programs; Final Designation Procedures for Grantees for Program Years 1995–96

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice of final designation procedures for grantees.

SUMMARY: This document contains the procedures by which the Department of Labor (DOL) will designate potential grantees to receive two-year grants for Indian and Native American Employment and Training Programs under the Job Training Partnership Act (JTPA), and to provide waivers from competition for current successful programs. The designations will be for JTPA Programs Years (PYs) 1995 and 1996 (July 1, 1995 through June 30, 1997). This notice provides necessary information to prospective grant applicants to enable them to submit appropriate requests for designation.

DATES: Optional Advance Notices of Intent must be postmarked no later than October 15, 1994. Final Notices of Intent must be postmarked no later than January 1, 1995.

ADDRESSES: Send an original and two copies of the Advance and Final Notices of Intent to Mr. Thomas Dowd, Chief, Division of Indian and Native American Programs, ATTN: Designation Desk.

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U.S. Department of Labor, Room N-4641 FPB, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION: The procedures are basically the same as the previous procedure used for PYs 1993 and 1994. Current successful grantees may receive waivers from competition, and all designations will be for a two-year grant. JTPA section 401 grantees who are presently operating under Pub. L. 102-477, Indian Employment, Training, and Related Services Demonstration Act of 1992, must apply for redesignation under this procedure in order to maintain their service area designation and eligibility for funds under this title, including any requests for a waiver under JTPA section 401(l).

Job Training Partnership Act: Indian and Native American Programs; Final Designation Procedures for Program Years 1995-96

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Introduction: Scope and Purpose of Notice

Section 401 of the Job Training Partnership Act (JTPA) authorizes programs to serve the employment and training needs of Indians and Native Americans.

Requirements for these programs are set forth in the JTPA and in the regulations at 20 CFR Part 632. The specific organization eligibility and application requirements for designation are set forth at 20 CFR 632.10 and 632.11. Pursuant to these requirements, the Department of Labor (DOL) selects entities for funding under section 401. It designates such entities as potential Native American section 401 grantees which will be awarded grant funds contingent upon all other grant award requirements being met. This notice describes how DOL will designate potential grantees who may apply for grants for Program Years 1995 and 1996. A designated entity may apply for grant funds for PY 1995 and PY 1996 without further competition.

The designation process has two parts. The Advance Notice of Intent (see Part III, below) is optional although strongly recommended. The final Notice of Intent (see Part IV, below) is mandatory for all applicants. Any organization interested in being designated as a Native American section 401 grantee should be aware of and comply with the procedures in these parts.

The amount of JTPA section 401 funds to be awarded to designated Native American section 401 grantees is determined under procedures described at 20 CFR 632.171 and not through this designation process. The grant application process is described at 20 CFR 632.18 through 632.20.

I. General Designation Principles

Based on JTPA and applicable regulations, the following general principles are intrinsic to the designation process:

(1) All applicants for designation shall comply with the requirements found at 20 CFR Part 632, Subpart B, regardless of their apparent standing in the preferential hierarchy (see Part V, Preferential Hierarchy For Determining Designations, below). The basic eligibility, application and designation requirements are found in 20 CFR Part 632, Subpart B.

(2) The nature of this program is such that Indians and Native Americans in an area are entitled to program services and are best served by a responsible organization directly representing them and designated pursuant to the applicable regulations. The JTPA and the governing regulations give clear preference to Native American-controlled organizations. That preference is the basis for the steps which will be followed in designating grantees.

(3) A State or federally recognized tribe, band or group *on its reservation* is given absolute preference over any other organization if it has the capability to administer the program and meets all regulatory requirements. This preference applies only to the area within the reservation boundaries. Such "reservation" organization which may have its service area given to another organization will be given a future opportunity to reestablish itself as the "preference" grantee.

In the event that such a tribe, band or group (including an Alaskan Native entity) is not designated to serve its reservation or geographic service area, the DOL will consult with the governing body of such entities when designating alternative service deliverers, as provided at 20 CFR 632.10(e). Such consultation may be accomplished in writing, in person, or by telephone, as time and circumstances permit. When it is necessary to select alternative service deliveries, the Grant Officer will continue to utilize input and recommendations from the Division of Indian and Native American Programs (DINAP).

(4) In designating Native American section 401 grantees for off-reservation areas, DOL will provide preference to Indian and Native American-controlled organizations as described in 20 CFR 632.10(f) and as further clarified in Part IX (1) *Indian or Native American-Controlled Organization* of this notice. As noted in (3) above, when vacancies occur, the Grant Officer will continue to utilize input and recommendations from DINAP when designating alternative service deliverers.

(5) Incumbent and non-incumbent applicants not granted waivers or seeking additional areas must submit evidence of significant support from other Native American-controlled organizations within the communities (geographic service areas) which they are currently serving or requesting to serve. See Part IV, Notice of Intent, below, for more details.

(6) The Grant Officer will make the designations using a two-part process:

(a) Those applicants described in Part V (1) of the Preferential Hierarchy For Determining Designations will be designated on a noncompetitive basis *if* all preaward clearances, responsibility reviews, and regulatory requirements are met.

(b) All applicants described in Part V, (2), (3), and (4) of the Preferential Hierarchy For Determining Designations will be *considered on a competitive basis* for such areas, unless a waiver is granted, and only information submitted with the Notice of Intent, as well as preaward clearances, responsibility reviews, and all regulatory requirements will be considered.

(7) Special employment and training services for Indian and Native American people have been provided through an established service delivery network for the past 18 years under the authority of JTPA section 401 and its predecessor, section 302 of the repealed Comprehensive employment and Training Act (CETA). The DOL intends to exercise its designation authority to preserve the continuity of such services and to prevent the undue fragmentation of existing geographic service areas. Consistent with the present regulations and other provisions of this notice, this will include preference for those Native American organizations with an existing capability to deliver employment and training services within an established geographic service area. Such preference will be determined through input and recommendations from the Chief of DOL's Division of Indian and Native American Programs (DINAP) and the Director of DOL's Office of Special Targeted Programs (OSTP), and through the use of the rating system described in this Notice. Unless a non-incumbent applicant in the same preferential hierarchy as an incumbent applicant grantee can demonstrate that it is significantly superior overall to the incumbent, the incumbent will be designated, if it otherwise meets all of the requirements for redesignation.

(8) In preparing application for designation, applicants should bear in mind that the purpose of JTPA, as amended, is "to establish programs to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased education and occupational skills, and decreased welfare dependency, thereby improving the quality of the work force and enhancing the productivity and competitiveness of the Nation."

II. Waiver Provision

In accordance with the JTPA Amendments of 1992, section 401(1) (designation to receive a 2-year grant) states:

> The competition for grants under this section shall be conducted every 2 years, except that if a recipient of such a grant has performed satisfactorily under the terms of the existing grant agreement, the Secretary may waive the requirement for such competition on receipt from the recipient of a satisfactory 2-year program plan for the succeeding 2-year grant period.

The Department is implementing this waiver provision for the next two-year designation period (PY 1995-96).

All incumbent grantees who have performed "satisfactorily" both programmatically and administratively under their present grant may receive a waiver for the next two-year designation period. The responsibility review criteria at 20 CFR 632.11(d) of the current regulations serves as the baseline instrument to determine "satisfactory" performance.

A waiver may be requested by submitting an Advance Notice of Intent (ANOI) by October 15, 1994. A list of grantees granted waivers will be published no later than November 15, 1994. Grantees, including tribes serving areas in addition to their reservations, NOT meeting the waiver requirements set forth in the above paragraph will be subject to the competitive process published in this solicitation.

Incumbent grantees receiving a waiver will be required to submit only a Standard Form (SF) 424 "Application for Federal Assistance" for currently designated service area(s) by January 1, 1995.

Nonincumbent applicants who qualify for Preferential Hierarchy Status 1 may apply by January 1, 1995 for and may be designated to serve their Hierarchy 1 service area(s).

Tribes and organizations participating in the employment and training demonstration project under Pub. L. 102-477 qualify for waiver consideration.

This is an initial approach to the waiver process. It is subject to change in the future resulting from experience and the Department's desire to make the process equitable.

III. Advance Notice of Intent

The purpose of the Advance Notice of Intent process is to provide section 401 applicants, prior to the submission of a final Notice of Intent, with information relative to potential competition. While DOL encourages the resolution of competitive request at the local level prior to final submission, the Advance Notice of Intent process also serves to alert those whose differences cannot be resolved of the need to submit a compete final Notice of Intent.

Although the Advance Notice of Intent process is not mandated by the regulations, participation in the advance process by prospective section 401 applicants is strongly recommended. The Advance Notice of Intent process allows the applicant to identify potential incumbent and non-incumbent competitors, to resolve conflicts if possible and to prepare a final Notice of Intent with advance knowledge of potential competing requests.

It should be emphasized, however, that the Advance Notice of Intent process does not ensure that all potential competitors have been identified. Some applicants may opt not to submit an Advance Notice of Intent; others may change geographic service area request in the final Notice of Intent. Therefore, as noted above, final submissions should be prepared with these possibilities in mind, unless a waiver has been granted. Although the regulations permit incumbents to submit no more than a Standard Form 424 "Application for Federal Assistance" (SF 424) for their existing geographic service areas, this choice may not be in the incumbent's best interests in the event of unanticipated competition.

The SF 424 is not to be used for the advance notification process. As in the PY 1993-1994 designation process, DOL will utilize the Advance Notice of Intent to expedite the identification of potentially competitive applicants in situations where waivers have NOT been granted.

All organizations interested in being designated as section 401 grantees should submit an original and two copies of an Advance Notice of Intent. The Advance Notice is to be postmarked no later than October 15, 1994, or 15 calendar days after the date of publication of this Federal Register Notice. An organization may submit only one Advance Notice of Intent for any and all areas for which it wants to be considered. The Advance Notice of Intent is to be sent to the Chief, Division of Indian and Native American Programs, at the address cited above.

Complete instructions for the Advance Notice of Intent process will be mailed to all current grantees on or about October 1, 1994. Incumbents will also receive a description of their present geographic service area at this time. New applicants may request copies of the Advance Notice of Intent instructions by writing to the Chief, Division of Indian and Native American Programs, at the address cited above.

DOL's first step in the designation process is to determine which areas have more than one potential applicant for designation, and whether any waivers have been granted. For those areas for which more than one organization submits an Advance Notice of Intent, each such organization will be notified of the situation, and will be apprised of the identity of the other organization(s) applying for that area. Such notification will consist of providing affected applicants (including incumbents who have not submitted Advance Notices of Intent) with copies of all Advance Notices submitted for their requested areas. The notification will state that organizations are encouraged to work out any conflicting requests among themselves, and that a final Notice of Intent should be submitted by the required postmark of January 1, 1995, deadline (see Part IV, Notice of Intent, below).

Under the Advance Notice of Intent process, it is DOL policy that, to the extent possible within the regulations, a geographic service area and the applicant that will operate a section 401 program in that area are to be determined by the Native American community to be served by the program. In the event the Native American community cannot resolve differences, applicants should take special care with their final Notices of Intent to ensure that they are complete and fully responsive to all matters covered by the

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preferential hierarchy and rating systems discussed in this notice.

Information provided in the Advance Notice of Intent process shall not be considered as a final submission as referenced at 20 CFR 632.11. The Advance Notice of Intent is a procedural mechanism to facilitate the designation process. The regulations do not provide for formal application for designation through the Advance Notice of Intent.

IV. Notice of Intent

Even though an ANOI has been submitted, all applicants must submit an original and two copies of a final Notice of Intent, postmarked not later than January 1, 1995, consistent with the regulations at 20 CFR 632.11. Final Notices of Intent may also be delivered in person not later than the close of business on the first business day of the designation year. Exclusive of charts of graphs and letters or support, the Notice of Intent should not exceed 75 pages of double-space unreduced type.

Final Notice of Intent are to be sent to the Chief, Division of Indian and Native American Programs (DINAP), at the address cited above.

Final Notice of Intent Contents: (as outlined at 20 CFR 632.11)

- A completed and signed SF–424, "Application for Federal Assistance";
- An indication of the applicant's legal status, including articles of incorporation or consortium agreement as appropriate;
- A clear indication of the territory being applied for, in the same format as the ANOI;
- Evidence of community support from Native American-controlled organizations; and
- Other relevant information relating to capability, such as service plans and previous experience which the applicant feels will strengthen its case, including information on any unresolved or outstanding administrative problems.

Final Notice of Intent must contain evidence of community support. Incumbent and non-incumbent State and Federally-recognized tribes need not submit such evidence regarding their own reservations. However, such entities are required to provide such evidence for any area which they wish to serve beyond their reservation boundaries.

The regulations permit current grantees requesting their existing geographic service areas to submit an SF 424 in lieu of a complete application, whether or not a waiver has been granted. As noted earlier in this notice, current grantees, other than tribes, bands or groups (including Alaskan Native entities) requesting their existing areas and NOT granted a waiver, are encouraged to consider submitting a full Notice of Intent (even if their geographic service area request has not changed) in the event that competition occurs. Tribes, bands or groups (including Alaskan Native entities) should consider submitting a full Notice of Intent if they currently serve areas beyond their reservation boundaries and have NOT been granted a waiver for these areas.

Applicants are encouraged to modify the geographic service area requests identified in their Advance Notice of Intent to avoid competition with other applicants. Applicants should not add territory to the geographic service area requests identified in the Advance Notice of Intent. Any organization applying by January 1, 1995, for non-contiguous geographic service areas shall prepare a separate, complete Notice of Intent for each such area unless currently designated for such areas.

It is DOL's policy that no information affecting the panel review process will be solicited or accepted past the regulatory postmarked or hand delivered deadlines (see Part VI, Use of Panel Review Procedure, below). All information provided before the deadline must be in writing.

This policy does not preclude the Grant Officer from requesting additional information independent of the panel review process.

V. Preferential Hierarchy for Determining Designation

In cases in which only one organization is applying for a clearly identified geographic service area and the organization meets the requirements at 20 CFR 632.10(b) and 632.11(d), DOL shall designate the applying organization as the grantee for the area. In cases in which two or more organizations apply for the same area (in whole or in part), and no waivers have been granted, DOL will utilize the order of designation preference described in the hierarchy below. The organization will be designated, assuming all other requirements are met. The preferential hierarchy is:

(1) Indian tribes, bands or groups on Federal or State reservations for their reservation; Oklahoma Indians only as specified in Part VIII, Special Designation Situations, below; and Alaskan Native entities only specified in Part VIII, Special Designation Situations, below.

(2) Native American-controlled, community-based organizations as defined in Part IX (1) of the glossary in this notice, with significant support from other Native American-controlled organizations within the service community. This includes tribes applying for geographic service areas other than their own reservations.

When a non-incumbent can demonstrate in its application, by verifiable information, that it is potentially significantly superior overall to the incumbent, and the incumbent has not been granted a waiver, a formal competitive process will be utilized which may include a panel review. Such potential will be determined by the consideration of such factors a the following: completeness of the application and quality of the contents; documentation of past experience, Native American-controlled organizational support; understanding of area training and employment needs and approach to addressing such needs; and the capability of the incumbent. If there is no incumbent, and therefore no waivers granted, new applicants qualified for this category would complete against each other.

(3) Organizations (private nonprofit or units of State or local governments) having a significant Native American advisory process, such as a governing body chaired by a Native American and having a majority membership of Native Americans.

(4) Non-Native American-controlled organizations without a Native American advisory process. In the event such an organization is designated, it must develop a Native American advisory process as a condition for the award of a grant.

The Chief, DINAP, will make determinations regarding hierarchy, geographic service areas, eligibility of new applicants and the timeliness of submissions. He may convene a task force to assist in making such determinations. The role of the task force is that of a technical advisory body.

The Chief, DINAP, will ultimately advise the Grant Officer in reference to which position an organization holds in the designation hierarchy. Within the regulatory time constraints of the designated process, the Chief, DINAP, will utilize whatever information is available.

The applying organization must supply sufficient information to permit the determination to be made. Organizations must indicate the category which they assume is appropriate and must adequately support that assertion.

VI. Use of Panel Review Procedure

A formal competitive process may be utilized under the following circumstances:

(1) The Chief, DINAP, advises that a new applicant qualified for the second category of the hierarchy appears to be potentially significantly superior overall to an incumbent Native American-controlled, community-based organization with significant local Native American community support, and the incumbent has not been granted a waiver.

(2) The Chief, DINAP, advises that more than one new applicant is qualified for the second category of the hierarchy, and the incumbent grantee has not reapplied for designation.

(3) The Chief, DINAP, advises that two or more organizations have equal status in the third or fourth categories of the hierarchy, when there are no applicants qualified for the first and second categories, and no waivers have been granted.

When competition occurs, the Grant Officer may convene a review panel of Federal Officials to score the information submitted with the Notice of Intent. The purpose of the panel is to evaluate an organization's capability, *based on its application*, to serve the area in question. The panel will be provided only the information described at 20 CFR 632.11 and submitted with the final Notice of Intent. The panel will not give weight to simple assertions. Any information must be supported by adequate and verifiable documentation, *e.g.*, supporting references must contain the name of the contact person, an address and telephone number.

The factors listed below will be considered in evaluating the capability of the applicant. In developing the Notice of Intent, the applicant should organize his documentation of capability to correspond with these factors.

(1) Operational Capability—40 points. (20 CFR 632.10 and 632.11)

(a) Previous experience in successfully operating an employment and training program serving Indians and Native Americans of a scope comparable to that which the organization would operate if designated—20 points.

(b) Previous experience in operating other human resources development programs serving Indians or Native Americans or coordinating employment and training services with such programs—10 points.

(c) Ability to maintain continuity of services to Indian or Native American participants with those previously provided under JTPA—10 points.

(2) Identification of the training and employment problems and needs in the requested area and approach to addressing such problems and needs—20 points. (20 CFR 632.2)

(3) Planning Process—20 points (20 CFR 632.11)

(a) Private sector involvement—10 points.

(b) Community support as defined in Part IX (1), Designation Process Glossary, and documentation as provided in Part I (5), General Designation Principles—10 points.

(4) Administrative Capability—20 points. (20 CFR 632.11)

(a) Previous experience in administering public funds under DOL or similar administrative requirements—15 points.

(b) Experience of senior management staff to be responsible for a DOL grant—5 points.

VII. Notification of Designation/ Nondesignation

The Grant Officer will make the final designation decision giving consideration to the following factors: the review panel's recommendation, in those instances where a panel is convened; input from DINAP, the Office of Special Targeted Programs, the DOL Employment and Training Administration's Office of Grant and Contracts Management and Office of Management Services, and the DOL Office of the Inspector General; and any other available information regarding the organization's financial and operational capability, and responsibility. The Grant Officer's decisions will be provided to all applicants by March 1, 1995, as follows:

(1) *Designation Letter.* The designation letter signed by the Grant Officer will serve as official notice of an organization's designation. The letter will include the geographic service area for which the designation is made. It should be noted that the Grant Officer is not required to adhere to the geographical service area requested in the Final Notice of Intent. The Grant Officer may make the designation applicable to all of the area requested, a portion of the area requested, or if acceptable to the designee, more than the area requested.

(2) *Conditional Designation Letter.* Conditional designations will include the nature of the conditions, the actions required to be finally designated and the time frame for such actions to be accomplished.

(3) *Nondesignation Letter.* Any organization not designated, in whole or in part, for a geographic service area requested will be notified formally of the Nondesignation and given the basic reasons for the determination. An applicant for designation that is refused such designation, in whole or in part, may file a Petition for Reconsideration in accordance with 20 CFR 632.13, and subsequently, may appeal the Nondesignation to an administrative law judge under the provisions of 20 CFR Part 636.

If an area is not designated for service through the foregoing process, alternative arrangements for service will be made in accordance with 20 CFR 632.12.

VIII. Special Designation Situations

(1) *Alaskan Native Entities.* DOL has established geographic service areas for Alaskan Native employment and training based on the following: (a) The boundaries of the regions defined in the Alaskan Native Claims Settlement Act (ANCSA); (b) the boundaries of major subregional areas where the primary provider of human resource development related services is an Indian Reorganization Act (IRA)-recognized tribal council, and (c) the boundaries of one Federal reservation in the State. Within these established geographic service areas, DOL will designate the primary Alaskan Native-controlled human resource development services provider or an entity formally designated by such provider. In the past, these entities have been regional nonprofit corporations, IRA-recognized tribal councils and the tribal government of the Metlakatla Indian Community. DOL intends to follow these principles in designating Native American Grantees in Alaska for Program Years 1995 and 1996.

(2) *Oklahoma Indians.* DOL has established a service delivery system for Indian employment and training programs in Oklahoma based on a preference for Oklahoma Indians to serve portions of the State. Generally, geographic service areas have been designated geographically as countywide areas. In cases in which a significant portion of the land area of an individual county lies within traditional jurisdiction of more than one tribal government, the service area has been subdivided to a certain extent on the basis of tribal identification information in the most recent Federal Decennial Census of Population. Wherever possible, arrangements mutually satisfactory to grantees in adjoining or overlapping geographic service areas have been honored by DOL. DOL intends to follow these principles in designating Native American grantees in Oklahoma for Program Years 1995 and

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1996 to preserve continuity and prevent unnecessary fragmentation.

IX. Designation Process Glossary

In order to ensure that all interested parties have the same understanding of the process, the following definitions are provided:

(1) *Indian or Native American-Controlled Organization.* This is defined as any organization with a governing board, more than 50 percent of whose members are Indians or Native Americans. Such an organization can be a tribal government, Native Alaskan or Native Hawaiian entity, consortium, or public or private nonprofit agency. For the purpose of hierarchy determinations, the governing board must have decision-making authority for the section 401 program.

(2) *Service Area.* This is defined as the geographic area described as States, counties, and/or reservations for which a designation is made. In some cases, it will also show the specific population to be served. The service area is defined by the Grant Officer in the formal designation letter. Grantees must ensure that all eligible population members have equitable access to employment and training services within the service area.

(3) *Community Support.* This is evidence of active participation and/or endorsement from Indian or Native American-controlled organizations within the geographic service area for which designation is requested.

While applicants are not precluded from submitting attestations of support from individuals, the business community, State and local government offices, and community organizations that are not Indian or Native American-controlled, they should be aware that such endorsements do not meet DOL's definitional criteria for community support.

Signed at Washington, DC, this 26th day of September 1994.

Thomas M. Dowd,

Chief, Division of Indian and Native American Programs.

Paul A. Mayrand,

Director, Office of Special Targeted Programs.

James C. Deluca,

Grant Officer, Office of Grants and Contracts Management, Division of Acquisition and Assistance.

[FR Doc. 94–24183 Filed 9–29–94; 8:45 am]

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Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedures thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State:

Volume I

Maine
ME940038 (Sep. 30, 1994)

Modification to General Wage Determinations Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Maine
ME940031 (Aug. 12, 1994)
ME940034 (Aug. 12, 1994)
ME940035 (Aug. 12, 1994)
New York
NY940003 (Feb. 11, 1994)
NY940013 (Feb. 11, 1994)
NY940043 (Feb. 11, 1994)
NY940060 (Apr. 01, 1994)

Volume II

District of Columbia
DC940001 (Feb. 11, 1994)
Maryland
MD940035 (Feb. 11, 1994)
MD940048 (Feb. 11, 1994)
Pennsylvania
PA940005 (Feb. 11, 1994)
PA940006 (Feb. 11, 1994)
PA940009 (Feb. 11, 1994)
PA940012 (Feb. 11, 1994)
PA940024 (Feb. 11, 1994)
PA940025 (Feb. 11, 1994)
PA940026 (Feb. 11, 1994)
PA940028 (Feb. 11, 1994)
Virginia
VA940025 (Feb. 11, 1994)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which included all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C. This 23rd Day of September 1994.

Alan L. Moss,

Director, Division of Wage Determination.

[FR Doc. 94–23984 Filed 9–29–94; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Coal Mine Respirable Dust Standard; Single-Shift and Noncompliance Determinations

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of comment period; close of record.

SUMMARY: The Mine Safety and Health Administration (MSHA) recently supplemented the record concerning the notices addressing changes to the Federal respirable dust program for coal mines. The mining community has requested additional time to review this information and to prepare their comments. MSHA is extending the period for the public to submit post-hearing comments on the February 18, 1994, notices which address: (1) The use of single, full-shift respirable dust measurements to determine noncompliance under the MSHA coal mine respirable dust program; and (2) the joint finding by the Secretary of Labor and the Secretary of Health and Human Services that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be measured accurately over a single shift.

DATES: All comments and information must be submitted on or before November 30, 1994. Commenters are encouraged to send comments on a computer disk with their original comments in hard copy.

ADDRESSES: Send comments to MSHA, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: On August 1, 1994, (59 FR 38988), MSHA published a notice in the **Federal Register** extending the time for post-hearing comments on the February 16, 1994, notices (59 FR 8356 and 8357), from August 5, 1994 to September 30, 1994.

In that notice, MSHA also stated that based on comments received at the public hearings held in July 1994, (59 FR 29348 and 59 FR 34868), and in response to specific requests, the Agency would supplement the record with additional information. On September 9, 1994, the Agency added several documents to the record. This additional information does not in any way change the proposed findings. Commenters have requested additional time to review this information.

Therefore, the Agency is extending the post-hearing comment period until November 30, 1994. Interested parties are encouraged to submit their comments on or before that date.

Dated: September 27, 1994.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 94–24281 Filed 9–29–94; 8:45 am]

BILLING CODE 4510–43–P

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Triton Coal Company

[Docket No. M–94–136–C]

Triton Coal Company, P.O. Box 3027, Gillette, Wyoming 82717–3027 has filed a petition to modify the application of 30 CFR 77.1607(u) (loading and haulage equipment; operation) to its Buckskin Mine (I.D. No. 48–01200) located in

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Campbell County, Wyoming. The petitioner requests a variance from the mandatory standard for towing of haul trucks and other large off highway surface mine equipment. The petitioner proposes to use a portable hydraulic unit to supply power to the necessary functions of disabled equipment in order to move it safely. The petitioner states that proper training would be provided to every miner responsible for using this equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Rosebud Mining Company

[Docket No. M–94–137–C]

Rosebud Mining Company, Box 324B, R.D. 2, Parker, Pennsylvania 16049 has filed a petition to modify the application of 30 CFR 75.333(b)(2) (ventilation controls) to its Rosebud No. 3 Mine (I.D. No. 36–07843) located in Armstrong County, Pennsylvania. The petitioner requests a modification of the mandatory standard to permit the use of temporary ventilation controls in the room necking procedure for rooms developed less than 600 feet. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. Ram Head Coal Company

[Docket No. M–94–138–C]

Ram Head Coal Company, 277 Main Street, Joliet, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Primrose Slope (I.D. No. 36–08454) located in Schuylkill County, Pennsylvania. Because of steep, frequently changing pitch and numerous curves and knuckles in the main haulage slope, the petitioner proposes to use the gunboat without safety catches in transporting persons. As an alternate, when using the gunboat to transport persons, the petitioner proposes to use an increased rope strength safety factor and secondary safety connections which are securely fastened around the gunboat and to the hoisting rope above the main connecting device. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Independent Aggregates

[Docket No. M–94–38–M]

Independent Aggregates, P.O. Box 519, Inglis, Florida 34449 has filed a petition to modify the application of 30 CFR 57.6306(b) (loading and blasting) to its I.A.C. Mine (I.D. No. 08–01035) located in Citrus County, Florida. The petitioner requests a modification of the mandatory standard to permit the drill to continue drilling the shot pattern while loading is in progress. The petitioner proposes to complete a drill hole and immediately load the hole while drilling new holes continues. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Akzo Nobel Salt, Inc.

[Docket No. M–94–39–M]

Akzo Nobel Salt, Inc., P.O. Box 6920, Cleveland, Ohio 44101 has filed a petition to modify the application of 30 CFR 57.19000(c) (personnel hoisting; application) to its Cleveland Mine (I.D. No. 33–01994) located in Cuyahoga County, Ohio. The petitioner requests a variance from the mandatory standard to permit the use of an approved escape hoist as a secondary escape hoist for persons underground, while upgrading its production hoist to increase its hoisting capability. The petitioner states that the escape hoisting equipment is capable of hoisting out 70 people in one hour; that working schedules would be modified to ensure that only 70 people would be underground when the escape hoist is in operation; and that a hoist operator would be available at all times while personnel are underground. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 31, 1994. Copies of these petitions are available for inspection at that address.

Dated: September 23, 1994

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances

[FR Doc. 94–24228 Filed 9–29–94; 8:45 am]

BILLING CODE 4510–43–P

Pension and Welfare Benefits Administration

[Application No. D–9767, et al.]

Proposed Exemptions; Del Monte Savings Plan; et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice

shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Del Monte Savings Plan, and Del Monte Certain Hourly Savings Plan (the Plans) Located in San Francisco, CA

[Application Nos. D–9767 & D–9768]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) The proposed extension of credit to the Plans (the Loan) by Del Monte Corporation (the Employer), the sponsor of the Plans, with respect to the Plans' interests in guaranteed investment contract No. CG01300B3A (the GIC) issued by Executive Life Insurance Company of California (Executive Life); and (2) the Plans' potential repayment of the Loan (the Repayments); provided that the following conditions are satisfied:

(A) All terms and conditions of such transactions are no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties;

(B) No interest or expenses are paid by the Plans;

(C) The Loan is made in lieu of amounts to be paid to the Plan under the plan of rehabilitation resulting from the bankruptcy of Executive Life (the Rehab Plan);

(D) The Repayments shall not exceed the principal amount of the Loan;

(E) The Repayments shall not exceed the amounts actually received by the Plans under the Rehab Plan; and

(F) Repayment of the Loan shall be waived to the extent that the amount of the Loan exceeds the amount of cash recovered by the Plans under the Rehab Plan.

Summary of Facts and Representations

1. The Employer is a New York corporation engaged in the business of processing and marketing canned vegetables and fruit, with its corporate headquarters in San Francisco, California. The Employer is a wholly-owned subsidiary of Del Monte Foods Company (DMFC), a Maryland corporation. On behalf of its employees and those of its affiliates, the Employer sponsors both of the Plans, which are defined contribution pension plans providing for individual participant accounts (the Accounts) and participant-directed investment of the Accounts. As of December 31, 1993, the Plans had approximately 3,730 participants.

2. The Plans' assets are held in a master trust (the Master Trust) of which the trustee is the Merrill Lynch Trust Company of California (the Trustee). The named fiduciary of each Plan is the Del Monte Investment Committee (the Committee), which consists of five employees of the Employer appointed by the Employer's board of directors. The Committee designates the investment options into which the Plans' participants may direct the investment of their Accounts. The Plans currently offer five investment options, one of which is the Interest Income Fund (the I Fund), which invests in, among other things, guaranteed investment contracts issued by insurance companies. As of December 31, 1993, the I Fund represented approximately 54 percent of the fair market value of the assets of the Master Trust. The assets of the I Fund include guaranteed investment contract No. CG01300B3A (the GIC). The GIC was issued to the Plans on or about December 1, 1990 by Executive Life Insurance Company of California (Executive Life) as part of an arrangement whereby Executive Life agreed to "clone" a contract previously held by the Plans' predecessor plans (the Predecessor Plans), in connection with the sale of the Employer to DMFC in 1990 and the Employer's agreement that the Plans would assume the assets and liabilities of the Predecessor Plans. The GIC is a benefit-responsive contract permitting withdrawals for plan benefits, loans, and participant-directed reallocations among investment options under the Plans, and was issued in the principal amount of $3,899,130.43, with a guaranteed simple annual interest rate of 9.22 percent (the Contract Rate) to the July 1, 1993 maturity date.

The Committee has designated Merrill Lynch Asset Management, Inc. (MLAM) as the investment manager for the I Fund. MLAM and the Trustee are both subsidiaries of Merrill Lynch & Co. In accordance with investment guidelines provided by the Committee, MLAM generally invests and manages the I Fund's assets, which consist of Plan contributions, participant reallocations of Account balances to the I Fund, and proceeds of maturing investments. MLAM represents that it is not an investment manager within the meaning of Section 3(38) of the Act with respect to any "cloned" contracts, including the GIC, which were issued to the Plans as part of the asset transfer from the Predecessor Plans.[1]

3. On April 11, 1991 (the Conservation Date), Executive Life was placed in conservatorship by the Commissioner of Insurance of the State of California.[2] As of that date, payments under the GIC were suspended, and no withdrawals or payments from the GIC have been made since the Conservation Date. As of the Conservation Date, the GIC had a book value of $3,766,668, representing total principal deposits under the GIC plus accrued interest at the Contract Rate less previous withdrawals, and constituting approximately 2.4 percent of the assets of the I Fund at that time. Effective April 30, 1991, the Committee froze a proportionate share of each of the 2,918 Accounts invested in the I Fund. With respect to the frozen portion of each Account, the Committee has prohibited the crediting of earnings, the making of distributions, withdrawals and loans, and the reallocation of the frozen Account portions to other investment options of the Plans. Printed Account

[1] In this proposed exemption, the Department expresses no opinion as to whether or not MLAM constitutes an investment manager within the meaning of Section 3(38) of the Act.

[2] The Department notes that the decision to acquire and hold the GIC is governed by the fiduciary responsibility requirements of Part 4 Subtitle B, Title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GI

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statements provided to the Plans participants have reported the frozen Account portions separately, indicating the frozen status.

4. In September 1993, the Employer entered into a written agreement for the sale of substantially all the assets of one of the Employer's business units to Silgan Containers Corporation (Silgan). Pursuant to that agreement, the Employer is required to transfer to one or more individual account plans maintained by Silgan (the Silgan Plans) the assets and liabilities of the Plans with respect to the Accounts of the Plans' participants who transferred employment from the Employer to Silgan as a result of the sale of the business unit. The parties agreed that the asset transfer is to be made in cash. The asset transfer includes 288 Accounts which are subject to the proportionate freeze resulting from the Executive Life conservatorship.

5. On August 13, 1993, the Los Angeles Superior Court approved the terms of the Rehabilitation/Liquidation Plan for Executive Life (the Rehab Plan) effective September 3, 1993. On or about December 29, 1993, each holder of an Executive Life contract was provided with an election form and summary of the Rehab Plan. Under the Rehab Plan, Executive Life's guaranteed investment contracts were reduced in value to approximately 79 percent of the book value as of the Conservation Date (the Rehab Value), and each holder of such contracts was paid an amount (the Interim Payment) for accumulated interest and fees for the period between the Conservation Date and September 3, 1993. Each contract holder, including the Plans, was informed that each contract holder could elect by February 12, 1994 to "opt in" or "opt out" of the Rehab Plan. The Employer represents that by "opting in", according to the Rehab Plan summary, a contract holder would be issued a new 5-year contract issued by Aurora National Life Assurance Company, the successor of Executive Life, in an amount equal to the Rehab Value less the amount of the Interim Payment, plus the right to receive possible distributions (Residual Payments) from certain trusts and settlements which may occur in the liquidation of Executive Life. The Employer states that, according to the Rehab Plan summary, "opting out" of the Rehab Plan results in a cash settlement, consisting of an immediate cash payment (the Initial Payment), and the right to receive any Residual Payments which become available. The Interim Payment was payable to all contract holders, whether they "opt in" or "opt out" of the Rehab Plan.

6. The Employer states that after review and consideration of the Rehab Plan summary and the reports of outside consultants retained for analysis and advice, the Committee determined that the Plans should "opt out" of the Rehab Plan. Accordingly, the Plans received the Initial Payment on the GIC on March 31, 1994. When combined with the Interim Payment, the Plans have received approximately 57 percent of the GIC's Conservation Date book value. The Employer states that the Residual Payments potentially available to the Plans, as a contract holder which "opts out" of the Rehab Plan, will consist of the net proceeds, if any, from the following: (a) An allocation holdback equal to approximately 11 percent of the GIC's Conservation Date book value; (b) liquidation of three trusts established under the Rehab Plan to liquidate Executive Life's non-investment grade securities and other assets, paid through an "Opt-Out Trust"; and (c) remaining proceeds from another trust established under the Rehab Plan to deal with bond indemnification obligations shared by contract holders. The Employer states that the summary of the Rehab Plan reported that some Residual Payments may be made annually but others could take a substantial period of time to realize. The Employer represents that under the Rehab Plan, neither the timing nor the amount of any Residual Payments can be determined with certainty. However, the Employer represents that on the basis of the Rehab Plan summary and the analysis conducted by consultants retained to assist the Committee, the Committee estimates that the Plans will receive total Residual Payments of $1,073,500.30 (the Estimated Residuals), or about 28.5 percent of the GIC's book value as of the Conservation Date.

7. In order that the frozen portions of the Accounts may be released without the delay and uncertainty of awaiting the Residual Payments, and in order to enable the transfer of assets from the Plans to the Silgan Plans, the Employer proposes to loan the Plans the amount of the Estimated Residuals (the Loan), and is requesting an exemption to permit the Loan under the terms and conditions described herein.[3] The Loan, pursuant to a written agreement, will be made in a lump sum in the amount of the Estimated Residuals less any Residual Payments which the Plans may have received prior to the Loan. The Loan will be made as soon as practicable after the Committee has obtained the exemption proposed herein, if granted, and a closing agreement with respect thereto has been consummated with the Internal Revenue Service. The repayment of the Loan (the Repayments) will be limited to the cash proceeds, if any, received by the Plan as Residual Payments after the date of the Loan. Repayments are due only as and when Residual Payments are received by the Plans. No interest will be paid on the Loan, and the Plans will incur no expenses with respect to the Loan. Under no circumstances will the Repayments exceed the Loan. At such time as the Trustee or Executive Life notifies the Employer that no further Residual Payments will be made, repayment of any outstanding Loan amount will be waived by the Employer.

8. If the proposed exemption is granted, the Committee intends to revalue the Plans' investment in the GIC (the Adjusted Value) to equal the sum of the Initial Payment, the Interim Payment, the Loan, and any Residual Payments received prior to the Loan. Each frozen Account will also be adjusted to reflect the Adjusted Value accordingly, reducing the Plans' recorded investment in the GIC from the Conservation Date book value to the Adjusted Value, and a proportional percent of each frozen Account will be recorded as a loss. After the Loan is made and the Accounts are adjusted, the Committee will remove the freeze on the Accounts invested in the GIC and the Plans will resume distribution, withdrawals, loans and interfund transfers with respect to Account portions previously subject to the freeze. Additionally, the Plans will be able to complete the transfer of assets to the Silgan Plans, in accordance with the agreement of sale of the Employer's business unit to Silgan, by transferring the previously frozen Account portions on the basis of the Adjusted Value and by utilizing the cash made available by the Loan.

9. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (a) All terms and conditions of the Loan will be no less favorable to the Plans than those which the Plans could obtain in an arm's-length transaction with an unrelated party; (b) The Loan will enable the Plans to resume normal operations with respect to the frozen portion of the Accounts; (c) The Loan will enable the completion of the transfer of assets to the Silgan Plan with respect to 288 frozen Accounts; (d) No interest or expenses will be paid by the Plans; (e) The Repayments will be restricted to the Residual Payments received by the Plans pursuant to the Rehab Plan; (f) The Repayment will not exceed the Loan or the Residual Payments received after the Loan is made; and (g) The Repayments will be waived to the extent the Loan exceeds Residual Payments received by the Plans after the Loan is made.

[3] The Department notes that this exemption, if granted, will not affect the ability of any participant or beneficiary to bring a civil action against Plan fiduciaries for breaches of section 404 of the Act in connection with any aspect of the GIC transactions.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Xerox Corporation Profit Sharing and Savings Plan (the PSSP); Xerox Corporation Retirement Income Guarantee Plan (the RIGP); Profit Sharing Plan of Xerox Corporation and the Xerographic Division, A.C.T.W.U, AFL–CIO (the Union PSP); and the Retirement Income Guarantee Plan of Xerox Corporation and the Xerographic Division, A.C.T.W.U, AFL–CIO (the Union RIGP; Collectively, the Plans) Located in Stamford, Connecticut

[Application Nos. D–9778 through D–9781]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed guarantees (the Guarantees) by the Xerox Corporation (the Employer), the sponsor of the Plans, of amounts payable to the Plans by the Aurora National Life Assurance Company (Aurora) with respect to five group annuity contracts (the GACs) originally issued by Executive Life Insurance Company of California (Executive Life); provided that the following conditions are satisfied:

(A) All terms and conditions of such transactions are no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties;

(B) The Guarantees are made solely with respect to the amounts which are due the Plans, but unpaid, with respect to the GACs; and

(C) The Settlement Agreement described in the Summary of Facts and Representations, below, is approved by the U.S. District Court, District of Connecticut.

Summary of Facts and Representations

Introduction: In 1994, the Xerox Corporation and other defendants to certain litigation entered into a settlement agreement which requires, among other things, that Xerox Corporation guarantee the Plans' receipt of certain payments in connection with the rehabilitation of Executive Life Insurance Company of California. Xerox Corporation also has undertaken to make a similar guarantee with respect to certain of the Plans' participants who were not parties to the litigation settlement agreement. Xerox Corporation is requesting an exemption to permit these guarantees, under the terms and conditions described herein.

1. Xerox Corporation (the Employer) is a publicly-held New York corporation engaged in the development, manufacture, marketing, and servicing of document processing technology, with its corporate headquarters in Stamford, Connecticut. The Employer maintains various qualified employee benefit plans for its employees, including the Plans, the assets of which are held in the Xerox Corporation Trust Agreement to Fund Retirement Plans (the Master Trust), which had total assets of approximately $4.6 billion as of December 31, 1993. The Union PSP and the Union RIGP (the Union Plans) are maintained pursuant to collective bargaining agreements between the Employer and the Xerographic Division of the Amalgamated Clothing and Textile Workers' Union, A.F.L.–C.I.O. (the Union). The trustee of the Master Trust is the State Street Bank and Trust Company of North Quincy, Massachusetts (the Trustee), serving as a directed trustee according to directions of a delegee of a committee of representatives of the Employer's board of directors (the Committee). The PSSP and the Union PSP are defined contribution plans (the DC Plans) which provide for individual participant accounts and participant-directed investment of such accounts among investment options in the Master Trust (the MT Funds). The RIGP and Union RIGP are hybrid defined benefit plans (the DB Plans) in which certain participants may accrue benefits measured in part by reference to individual accounts consisting of contributions made on the participant's behalf. The individual accounts of the DB Plans are invested among the MT Funds.

2. Included among the MT Funds as of April 1, 1991 was a guaranteed fund (the G Fund) which invested primarily in group annuity and guaranteed investment contracts issued by various insurance companies. As of April 1, 1991, the G Fund had approximately $65.6 million invested in group annuity contracts (the GACs) issued by Executive Life Insurance Company of California (ELIC), representing approximately 7.5 percent of the assets in the G Fund as of that date. On April 11, 1991, the Insurance Commissioner of the State of California (the Commissioner) ordered a conservatorship (the Conservatorship) of ELIC, and halted all payments on ELIC's guaranteed contracts, including the GACs.[4] The Employer represents that it took immediate protective action on behalf of the Plans' participants, by segregating the G Fund assets attributable to the GACs in a new segregated fund (the Segregated Fund), effective April 1, 1991. The account of each Plan participant with an interest in the G Fund as of April 1, 1991 was assigned an interest in the Segregated Fund, in proportion to the GACs' total value as of April 1, 1991.[5] The remaining G Fund assets were placed in a new fund designated as the Income Fund. The Plan was amended, effective April 1, 1991, to prohibit distribution, withdrawal, and transfer of any account balance attributable to the Segregated Fund.

3. The Employer represents that on September 3, 1993 the assets and restructured liabilities of ELIC were assigned to Aurora Life National Assurance Company (Aurora), pursuant to the Commissioner's court-approved rehabilitation plan (the Rehab Plan). Under the Rehab Plan, each ELIC contract holder was permitted to elect between (1) Opting in to the Rehab Plan, in which case Aurora would assume the ELIC contract, or (2) opting out of the Rehab Plan, in which case a cash settlement would be paid in exchange for the ELIC contract. A determination was made by a delegee of the Committee that the Plans would elect to opt out of the Rehab Plan, and the appropriate opt-out election forms were completed by the Trustee. Subsequently, the Plans received $37.9 million (the Initial Recovery), approximately 58 percent of

[4] The Department notes that the decision to acquire and hold the GACs are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GACs.

[5] Each participant's interest in the Segregated Fund was determined by multiplying his interest in the G Fund by a fraction, the numerator of which was the value of G Fund assets invested in the GACs as of April 1, 1991, and the denominator of which was the value of total assets in the G Fund as of April 1, 1991.

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the Segregated Fund, as part of the Rehab Plan's provisions for ELIC contract holders who opted out of the Rehab Plan. The Employer represents that the Commissioner has estimated that such holders of ELIC contracts can expect to recover a total of about 85 percent of the Conservatorship Date value of the contracts. Accordingly, the Employer states that the Plans can expect to recover from Aurora another $17.8 million on the contracts, approximately 27 percent of the Segregated Fund, over the remaining estimated four years of the Rehab Plan's operation.

4. However, on April 6, 1992, a class action (the 1992 Litigation) was commenced on behalf of affected participants and beneficiaries of the RIGP and PSSP (the Plaintiffs) against the Employer and members of the Committee (collectively, the Defendants), *Maureen Rose, et al.*, v. *Joan Ganz Cooney, et al.*, Civil Action No. 5:92–CV–208, Federal District Court, District of Connecticut (the Court). The Plaintiffs alleged that the Defendants' actions in connection with the Plans' purchase of the GACs violated various provisions of the Act. On July 15, 1994, Plaintiffs and Defendants executed an agreement in settlement of the 1992 Litigation (the Agreement), which provides as follows:

(A) Defendants are to make an initial cash payment of $13 million to an interest-bearing escrow account (the Escrow). Amounts in the Escrow, including interest, less attorney's fees and administrative costs approved by the Court, are to be transferred to the Master Trust for the benefit of Plaintiffs no sooner than 10 days after the Court enters a final order approving the Agreement, but only if the transactions contemplated by the Agreement are approved by the Department, in the exemption proposed herein, and by the Internal Revenue Service (the Service). The Employer represents that it is expected that the Escrow payment to the Master Trust on behalf of Plaintiffs, after payment of costs and fees, will be approximately $9 million, or about 15 percent of the Plaintiff's account balances in the Segregated Fund.

(B) In the event that payments after June 3, 1994, and before January 1, 1999, from Aurora (and any other source related to the rehabilitation of ELIC, other than any state insurance guaranty associations) to the Master Trust for the benefit of Plaintiffs with respect to the GACs are less than $16.1 million, approximately 27 percent of the Plaintiffs' account balances in the Segregated Fund, then the Employer shall pay the difference to the Master Trust on or before January 31, 1999. This undertaking by the Employer is referred to herein as the Settlement Guarantee. The Employer requests an exemption to permit the Settlement Guarantee under the terms and conditions of the Agreement and this proposed exemption.

Each Plaintiff will have a pro rata share of the amounts paid under the Agreement in proportion to the Plaintiff's account's share of the Segregated Fund. The Employer represents that when added to the amounts already received from Aurora, the Employer's payments under the Agreement are expected to ensure that Plaintiffs will recover 100 percent of their account balances in the Segregated Fund. The Agreement, after approval by the Court, will be in full satisfaction of all claims of Plaintiffs arising out of the subject matter of the 1992 Litigation, and the 1992 Litigation will be dismissed with prejudice. The Agreement will be effective only if approved by the Court and only if the Employer obtains the exemption proposed herein by the Department and a favorable ruling on the Agreement by the Service. The Employer represents that the Court entered a preliminary approval of the Agreement on July 22, 1994, and rendered its final approval of the Agreement in a hearing on September 8, 1994.[6]

5. Participants in the Union Plans were not parties to the 1992 Litigation. The Employer represents that since 1991, the Union has demanded that the Union Plans' participants with rights in the GACs (the Union Participants) be made whole for their losses on the GACs. On June 9, 1994, a class action lawsuit was filed against the Trustee (the 1994 Litigation) on behalf of the Plaintiffs in the 1992 Litigation and the Union Participants, alleging that the Trustees' actions in connection with the Plans' purchase of the GACs violated various provisions of the Act. Although the proposed Agreement will provide that the 1994 Litigation be dismissed with prejudice as to the 1992 Litigation Plaintiffs, it will provide that the 1994 Litigation be dismissed without prejudice as to the Union Participants. The terms of the Agreement do not require any payments by the Employer to the Segregated Fund on behalf of the Union Participants. In response to ongoing demands on behalf of the Union Participants, the Employer has agreed to make payments to the Master Trust with respect to the Union Participants in a manner similar to the Agreement's provisions for the 1992 Litigation Plaintiffs. Specifically, the Employer will make an initial cash payment to the Master Trust on behalf of the Union Participants equal to 15 percent of the Segregated Fund account balances of the Union Participants. The Employer also guarantees to make additional payments to the extent that amounts received by the Master Trust from Aurora for the benefit of Union Participants after June 3, 1994 and before January 1, 1999 are less than $1.8 million, or 27 percent of the Union Participants' account balances in the Segregated Fund. The Employer's guarantee to make such additional payments (the Union Guarantee) is included in the Guarantees for which the Employer requests an exemption, under the terms and conditions of the exemption proposed herein.[7] The Employer represents that, when added to amounts already received from Aurora, the initial payments and contingent additional payments by the Employer pursuant to the Union Guarantee will ensure that the Union Participants recover 100 percent of their account balances in the Segregated Fund. The Employer's initial and contingent additional payments to the Union Participants are conditioned upon the grant of the exemption proposed herein and a favorable ruling by the Service.

8. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (a) The Guarantees will protect the Plans participants and beneficiaries from losses on the GACs' value as of the commencement of the ELIC conservatorship; (b) The Guarantees will eliminate uncertainty with respect to the value of the GACs in the Segregated Fund; (c) The Settlement Guarantee will enable the settlement of Plaintiffs claims arising from the 1992 Litigation and the 1994 Litigation; and (d) the Union Guarantee will extend to the Union Participants the same protections with respect to the GACs as those extended to the Plaintiffs under the Settlement Guarantee.

[6] In this proposed exemption, the Department is proposing exemptive relief solely for the Guarantees, and not for any other aspects of the GAC transactions or the Agreement. The Department notes that this exemption, if granted, will not affect the rights of any participant or beneficiary of the Plans with respect to any civil action against Plan fiduciaries for breaches of section 404 of the Act in connection with any aspect of the GAC transactions.

[7] The Union Guarantee is not evidenced by a written agreement, like the Settlement Guarantee. Instead, the Employer's commitment to the Union Guarantee is evidenced in a public announcement by the Employer's chief executive officer, Paul A. Allaire, reported in the July 18, 1994 edition of a newsletter, Today at Xerox, which is published by the Employer.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Vaquero Farms, Inc. Profit Sharing Plan and Agri-Bis, Inc. Profit Sharing Plan (the Plans) Located in Stockton, California

[Application Nos. D–9711 and D–9712]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the past cash sale (the Sale) by the Plans of certain promissory notes (the Notes) to Vaquero Farms, Inc. (the Applicant) and Agri-Bis, Inc., a related company, provided that the following conditions were met at the time of the Sale: (1) The sales price of the Notes was not less than their aggregate fair market value on the date of the Sale; (2) the Sale was a one-time transaction for cash; (3) the Plans did not pay any fees or commissions in connection with the Sale; and (4) the Plans' independent fiduciary determined that the transaction was appropriate for and in the best interests of the Plans and their participants and beneficiaries.

EFFECTIVE DATE: If granted, this proposed exemption would be effective as of May 31, 1994, the date of the Sale.

Summary of Facts and Representations

1. The Applicant operates a farming enterprise in the San Joaquin Valley area of California. Agri-Bis, Inc. is related to the Applicant by common ownership. The Plans are both defined contribution plans. As of September 30, 1992, the Vaquero Farms, Inc. Profit Sharing Plan had 138 participants and total assets of approximately $4,531,364. As of January 31, 1993, the Agri-Bis, Inc. Profit Sharing Plan had 41 participants and total assets of approximately $2,039,764.

2. The Plans acquired their interests in the Notes in June of 1989 when each Plan loaned $250,000 to Triad Pacific 1987 Investors (Triad), a California limited partnership, unrelated to the Applicant. The Notes are secured by second deeds of trust on industrial leased real property located at 192–252 West Larch Road, Tracey, California (Drew Centre) and 3008 East Hammer Lane, Stockton, California (the Pavilion). The Applicant represents that, prior to investing Plan assets in Triad, the Plans' trustees conducted a thorough investigation of the potential investment, including an examination of the properties and the financial condition of Triad. According to the Applicant, the investment was consistent with the Plans' investment policies. The Applicant represents that the Plans have invested from time to time in other deeds of trust and that they learned of this investment opportunity directly from the principals of Triad. In accordance with the terms of the Notes, the principal amount of the loans became due in June of 1993. The principal amount plus accrued interest from June 1993 remains unpaid.[8] In July of 1993, the borrower, Triad, filed a voluntary petition under Chapter 11 of the Bankruptcy Act. Union Bank, which holds a first deed of trust on the Drew Centre property securing a promissory note in the principal amount of $3,301,132, has filed a motion for relief from the automatic stay seeking to foreclose on its security interest in the Drew Centre property. Appraisals of the Drew Centre property indicate a range of values between $2,750,000 and $3,900,000. Gentra Financial, which holds a first deed of trust on the Pavilion Property securing a promissory note in the amount of $3,800,000 has also sought relief from the automatic stay to enable it to foreclose on its security interest in the Pavilion property. Appraisals of the Pavilion property indicate a range of values between $2,366,000 and $3,125,000. Consequently, the Applicant represents that the Plans are in jeopardy of losing the security for their loans. The Applicant also represents that full repayment of the loans is very unlikely.

3. On May 31, 1994, the Applicant purchased the Notes from the Plans for their full face value, plus interest at the rate provided in the Notes, through the date of purchase.[9] The actual purchase price for each of the Notes was $269,823.91. The Applicant represents that the transaction was designed to protect the Plans' participants and beneficiaries from losses which would have resulted from the foreclosure of senior lienholders on the real property which secured the Plans' loans to Triad. The Applicant represents that it was necessary to purchase the Notes from the Plans prior to receiving an individual exemption for the transaction because foreclosure was imminent and the Notes would have been worthless to the Applicants if foreclosure had occurred prior to the purchase of the Notes.

4. Howard L. Seligman, an attorney licensed to practice in the State of California and a partner in the firm of Seligman and Willet, Inc., has agreed to serve as an independent fiduciary (the Independent Fiduciary) in connection with the transaction. The Independent Fiduciary has acknowledged his status as an ERISA fiduciary and represents that he understands and accepts his fiduciary duties, responsibilities and potential liabilities. The Independent Fiduciary maintains that he has no pre-existing business relationship with the Applicant or Agri-Bis, Inc. He also represents that, prior to the date the Sale took place, he reviewed the appraisals of the Pavilion and Drew Centre, the documents related to the outstanding security interests on those properties, and documents related to the pending Chapter 11 proceeding by Triad. Based on his review of these documents, the Independent Fiduciary represents that the ability of Triad to repay its obligation to the Plans was questionable. The Independent Fiduciary also represents that the purchase price for the Notes exceeded the fair market value of the Notes as of the date of the Sale. The Independent Fiduciary has determined that the purchase of the Notes by the Employer resulted in fully satisfying each of the obligations owed by Triad to the Plans, that the transaction was protective of the Plans' participants and beneficiaries, and that, therefore the transaction was in the best interests of the Plans' participants and beneficiaries.

5. In summary, the applicant represents that the transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) the Plans' independent fiduciary reviewed the terms and conditions of the exemption and determined that the purchase of the Notes for full face value plus interest was in the best interest of the Plans' participants and beneficiaries; (b) the Plans received a price which was not less than the fair market value of the Notes; (c) the Sale was a one-time sale for cash; and (d) the Plans did not pay

[8] The Department notes that the decisions to acquire and hold the Notes, and all decisions regarding collection on the Notes when due, are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this regard, the Department is not herein proposing relief for any violations of part 4 which may have arisen as a result of the acquisition and holding of the Notes.

[9] The Notes provided for interest at 2½ percentage points above the prime lending rate charged by the Bank of America.

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any expenses in connection with the Sale.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 27 day of September, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–24184 Filed 9–29–94; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 94–69; Exemption Application No. D–9679, et al.]

Grant of Individual Exemptions; Lake Dallas Telephone Company, Inc. Defined Benefit Pension Plan; et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Lake Dallas Telephone Company, Inc. Defined Benefit Pension Plan (Pension Plan) and Lake Dallas Telephone Company, Inc. 401(k) Profit Sharing Plan (P/S Plan; collectively, the Plans) Located in Lake Dallas, Texas

[Prohibited Transaction Exemption 94–69; Exemption Application Nos. D–9679 and D–9680]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale from the Plans of two interests (the Interests) in a certain partnership to Lake Cities Land and Development, Inc., an affiliate of the Plans' sponsor and a party in interest with respect to the Plans, provided that the following conditions are satisfied:

(1) the sale will be a one-time cash transaction;

(2) no commissions or fees will be paid by the Plans as a result of the sale; and

(3) the sale price will be the higher of: a) the aggregate fair market value of the Interests on the date of the sale; or b) the aggregate investment cost of the Interests to the Plans of $129,146.64.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 9, 1994 at 59 FR 40609/40611.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Berean Capital, Inc. (Berean) Located in Chicago, Illinois

[Prohibited Transaction Exemption 94–70; Exemption Application No. D–9745]

Exemption

I. Transactions

A. Effective June 27, 1994, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through

(D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective June 27, 1994, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) the plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective June 27, 1994, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) the pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective June 27, 1994, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

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obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) a certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) that is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) above for which Berean or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) either—

(a) secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2);

(f) fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) property which had secured any of the obligations described in subsection B.(1);

(3) undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) the investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) Berean;

(2) any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Berean; or

(3) any member of an underwriting syndicate or selling group of which Berean or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) each underwriter;

(2) each insurer;

(3) the sponsor;

(4) the trustee;

(5) each servicer;

(6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) such person is not an affiliate of that other person; and

(2) the other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) the fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) the servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) the ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) the amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(a) which is secured by equipment which is leased;

(b) which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) with respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(a) the trust holds a security interest in the lease;

(b) the trust holds a security interest in the leased motor vehicle; and

(c) the trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 9, 1994 at 59 FR 40617.

Effective Date: This exemption is effective for transactions occurring on or after June 27, 1994.

For Further Information Contact: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 27th day of September 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–24185 Filed 9–29–94; 8:45 am]

BILLING CODE 4510–29–P

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94-078]

NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Propulsion; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Propulsion meeting.

DATES: November 2, 1994, 8:30 a.m. to 5 p.m.; and November 3, 1994, 8:30 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, Lewis Research Center, Room 215, Administration Building, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Mr. Calvin L. Ball, National Aeronautics and Space Administration, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135, 216/433-3397.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—NASA Aeronautics Program Overview
—NASA Aeropropulsion Program Overview and Status
—New Initiatives
—Metrics
—National Laboratory Review

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: September 26, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 94-24187 Filed 9-29-94; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-277]

Philadelphia Electric Company, et al.; Peach Bottom Atomic Power Station Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to the Philadelphia Electric Company, et al. (the licensees) for the Peach Bottom Atomic Power Station (PBAPS), Unit 2, located in York County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from 10 CFR Part 50, Appendix J, Section III.D.1.(a). Section III.D.1.(a) requires a set of three Type A tests (i.e., Containment Integrated Leak Rate Test (CILRT)) to be performed at approximately equal intervals during each 10-year service period and specifies that the third test of each set shall be conducted when the plant is shut down for the performance of the 10-year inservice inspection (ISI). The request involves a one-time schedular exemption from the requirements of Section III.D.1.(a) that would extend the PBAPS, Unit 2 Type A service period and allow the three Type A tests in the current service period to be performed at intervals that are not approximately equal. Hence, this one-time exemption would allow the third, Unit 2, Type A test to be performed during refueling outage 11, scheduled to begin in September 1996, approximately 66 months after the last Unit 2 test, thereby coinciding with the 10-year plant ISI refueling outage.

The proposed action is in accordance with the licensee's application dated May 13, 1994.

Need for the Proposed Action

The proposed action is required in order to allow the third Type A test to be performed during the eleventh Unit 2 refueling outage scheduled to begin in September 1996, concurrent with the 10-year plant inservice inspections. Without the exemption, the licensee would be required to perform a Type A test during both refueling outage 10, scheduled to begin in September 1994 and refueling outage 11. Performing the Type A test during two consecutive refueling outages would result in increased personnel radiation exposure and increased cost to the licensee. With the exemption, the third Type A test would be performed during the eleventh Unit 2 refueling outage which would thus align the start of the third 10 CFR Part 50, Appendix J, 10-year service period with the start of the third 10-year ISI period.

Environmental Impact of the Proposed Action

The Commission has completed the evaluation to the action and concludes that this action would not significantly increase the probability or amount of expected primary containment leakage. The performance history of Type A leak tests at PBAPS, Unit 2, demonstrates adequate margin to acceptable leak rate limits. No time-based failure mechanisms were identified that would significantly increase expected leak rates over the proposed extended interval. The one historical Type A test failure at PBAPS, Unit 2, in June 1985, was determined to be an activity-related failure which would not be related to an extended test interval. Thus radiological release rates will not differ from those determined previously and would not be expected to result in undetectable leak rates in excess of the values established by 10 CFR Part 50, Appendix J.

Consequently, the probability of accidents would not be increased, nor would the post-accident radiological releases be greater than previously determined. The proposed action does not otherwise affect radiological plant effluents or increase occupational radiation exposures. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the action would be to deny the request. Such action would not reduce environmental impacts of plant operation and would result in increased radiation exposure to plant personnel.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Peach Bottom Atomic Power Station, Units 2 and 3, dated April 1973.

Agencies and Persons Consulted

The staff consulted with the Commonwealth of Pennsylvania regarding the environmental impact of the proposed action. The state official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this proposed action, see the licensee's letter dated May 13, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 26th day of September 1994.

For the Nuclear Regulatory Commission.

Mohan C. Thadani,

Acting Director, Project Directorate I-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94-24210 Filed 9-29-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-352/50-353]

Philadelphia Electric Company; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF-39 and NPF-85 issued to Philadelphia Electric Company (the licensee) for operation of the Limerick Generating Station, Units 1 and 2, located in Montgomery County, Pennsylvania.

The proposed amendment would extend the snubber functional testing interval from 18-months (+/- 25%) to 24 months (+/- 25%), and to increase the sample plan size from 10% to 13.3%.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes do not require any modifications to plant systems, snubbers, or other plant equipment. The snubber will continue to function as designed to mitigate the effects of earthquakes and other dynamic transients (e.g., main turbine trip). Extending the snubber functional testing interval from 18 months to 24 months ([greater than or equal to] 25%) and increasing the initial sample size from 10% to 13.3%, as proposed, will continue to maintain the same test scope ratio as that which currently exists (i.e. 1.5 yr./interval [at] 10% snubbers/interval and 2 yr./interval [at] 13.3% snubbers/interval results in approximately 100% of all snubbers of a given type being tested within 15 years). The proposed TS change will only affect the interval between functional tests and the initial sample size population. As previously stated, LGS currently uses the 10% plan for compensating struts only, and since there are less than 10 struts per Unit, this proposed change will have a negligible impact on the number of struts in the initial sample size to be tested during a particular interval (i.e., each refueling outage). All systems and equipment important to safety that rely on snubbers will continue to function as designed.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not involve any physical changes to plant systems or equipment. The snubbers will continue to function as designed to mitigate the effects of earthquakes and other dynamic transients (e.g., main turbine trip). Snubbers are not accident initiators, and function to mitigate the effects of an accident. The snubbers will continue to protect piping and equipment during dynamic events. Extending the snubber functional testing interval from 18 months to 24 months ([greater than or equal to] 25%) and increasing the initial sample size from 10% to 13.3%, as proposed, will continue to maintain the same test scope ratio as that which currently exists in the TS. The proposed TS changes will continue to ensure that approximately 100% of the snubbers of a given type are tested within a 15-year period.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The bases for the TS require that all snubbers whose failure could have an adverse effect on any safety-related systems, be operable. This ensures that the structural integrity of the reactor coolant system and other safety-related systems are maintained during and following a seismic or other event initiating dynamic loads. The bases also discuss clarification and grouping of the general snubber population, snubber listing requirements, visual inspection frequency, and visual acceptance criteria. The proposed TS changes will provide for the same confidence level as that which currently exists in TS for determining snubber operability. The proposed TS changes will continue to maintain the same test scope ratio as that currently provided in the TS. The 10% plan is used at LGS for compensating struts only, and increasing initial sample size to 13.3%, as proposed, will have a negligible effect on the number of struts functionally tested during each interval. No other aspects of the bases associated with snubber surveillance will be affected by these proposed TS changes.

Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

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Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 31, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mohan C. Thadani (Acting): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J.W. Durham, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 16, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Rockville, Maryland, this 26th day of September 1994.

For the Nuclear Regulatory Commission.

Frank Rinaldi,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–24211 Filed 9–29–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–286 and 50–333]

Power Authority of the State of New York; Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DRP–64 and DPR–59, issued to the Power Authority of the State of New York (the licensee), for operation of the Indian Point Nuclear Generating Unit No. 3 (Indian Point 3) located in Westchester County, New York, and the James A. FitzPatrick Nuclear Power Plant (FitzPatrick) located in Oswego County, New York, respectively.

The proposed amendments would revise Section 6.0 (Administrative Controls) of the Technical Specifications of both facilities to reflect, in part, licensee management changes. Specifically, the title of Executive Vice President—Nuclear Generation is being changed to Executive Vice President and Chief Nuclear Officer and a new position, Vice President Regulatory Affairs and Special Projects, which will report to the Executive Vice President and Chief Nuclear Officer, is being established. In addition, the list of Safety Review Committee (SRC) members is being deleted and replaced with a description of SRC membership requirements, including individual qualifications. Each SRC member, including the alternates, will have to be approved by the Executive Vice President and Chief Nuclear Officer.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick and Indian Point 3 nuclear power plants in accordance with the proposed amendment[s] would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change is purely administrative and does not involve plant equipment or operating parameters. There is no change to any accident analysis assumptions or other conditions which could effect previously evaluated accidents. The proposed change will not decrease the effectiveness of the organization's ability to respond to a design basis accident.

2. Create the possibility of a new or different kind of accident from those previously evaluated. Since the proposed change is administrative in nature and does not involve hardware design or operation, it cannot create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety. The authority and responsibilities of the Resident Managers and the Executive Vice President and Chief Nuclear Officer with respect to the safe operation and maintenance of the FitzPatrick and Indian Point 3 nuclear plant are not being reduced or otherwise changed.

The proposed changes do not reduce the effectiveness of the SRC as an oversight committee.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facilities, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 31, 1994, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document rooms located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601 and the Penfield Library, State University of New York, Oswego, New York 13126. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

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As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention which must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Michael J. Case: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated September 16, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document rooms located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601 and the Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland this 23rd day of September 1994.

For the Nuclear Regulatory Commission.

Michael J. Case,

Acting Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–24212 Filed 9–29–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–87 and NPF–89, for Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, located in Somervell County, Texas, operated by Texas Utilities Electric Company (the licensee).

The proposed amendment would change the technical specifications to review the 18-month surveillance requirements for certain emergency core cooling system, containment system, and plant systems to eliminate the restriction that these surveillances be performed during shutdown or during the refueling mode or cold shutdown.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

These proposed technical specification changes delete the restrictions that only tests which are performed "during shutdown" or "during REFUELING MODE or COLD SHUTDOWN" be used to comply with certain surveillance requirements. The tests of concern are equally valid whether they are performed during shutdown or if they are performed entirely or in part at power. "Testing at power" was never prohibited by the technical specifications although, for these surveillances, "testing while shutdown" was required. The testing which is performed at power is reviewed to ensure that the proper prerequisites are established, including the proper unit mode of operation and the proper circuit blocks. Significant portions of the testing needed to comply with these surveillance requirements, and in some cases the entire test, are already performed while at power as part of the test procedures which are used to comply with other surveillance requirements such as the Slave Relay Testing. In general, removing the "during shutdown" and "during REFUELING MODE or COLD SHUTDOWN" restrictions from these surveillance requirements will eliminate the need to reperform, while shutdown, those portions of the testing which are already routinely performed at power. Deleting such "retest" requirements does not reduce safety, cannot increase the probability or consequences of an accident previously evaluated, and is more likely to reduce the probability of a transient by eliminating duplicative testing.

In the future, it is possible that TU Electric may choose to perform additional portions of these tests at power. Since these portions are not being performed at power now, the net effect is not the deletion of a retest but a change in the required conditions for that portion of the test. Such a change would require a change in the test procedure and would only be allowed if technically and operationally acceptable and if the change did not constitute an unreviewed safety question per 10 CFR 50.59. These controls are adequate to ensure that any future changes in the test procedures as a result of these proposed technical specification changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated accident.

The elimination of the requirement to "retest" circuits or equipment which are already tested at power cannot create any failure modes which could result in a new or different kind of accident. The controls which presently exist on revisions to procedures and on testing will ensure that any revisions to test procedures which allow testing which is now performed while shutdown to be performed while operating, are technically and operationally acceptable and will not result in an unreviewed safety question and as such will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The "during shutdown" or "during the REFUELING MODE or COLD SHUTDOWN" restriction on these surveillance requirements was intended to provide a margin of safety by avoiding unnecessary unit transients and by avoiding placing the unit in an unanalyzed condition. This intention seems reasonable based on the knowledge that portions of the testing should not be performed at power and that doing the entire surveillance test while shutdown should not have an adverse impact. The proposed changes do not affect system performance or acceptance limits. Because a large portion of the testing, and in some cases the entire test, would be performed at power as a result of other requirements or expectations, the proposed technical specification changes eliminate duplicative testing and, as such, will not reduce the margin of safety.

The impact of revising existing test procedures, as a result of this technical specification change, to allow additional testing to be performed at power, would be properly addressed in the reviews performed as part of the procedure changes, including the required 10 CFR 50.59 review, and when considered along with the reduction in shutdown risk that could result from such changes, it is concluded that such procedure changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 31, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. As requested by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the

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results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William D. Beckner, Director, Project Directorate IV–1: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, NW., Suite 1000, Washington, D.C. 20336, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 19, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Dated at Rockville, Maryland, this 26th day of September 1994.

For the Nuclear Regulatory Commission.

Thomas A. Bergman,

Project Manager, Project Directorate IV–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–24207 Filed 9–29–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–87 and NPF–89, for the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, located in Somervell County, Texas, operated by Texas Utilities Electric Company (the licensee).

The proposed amendment would change the technical specifications to allow a one-time extension of emergency diesel generator and related surveillance testing from 18 to 24 months. These changes apply to Unit 2 only

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

These are a one-time extensions. The proposed changes only extend the surveillance test intervals and do not alter the function or operation of the equipment and are consistent with the philosophy of Generic Letter (GL) 91–04. The surveillances relate to mitigation features and have no impact on probability of an accident. The only impact on consequences would result from the component or system reliability. The reliability of the affected systems and components is not being affected since the same testing will be performed but with a one-time extended test interval.

Many features are tested more frequently by other surveillances and the ESF [emergency safety features] actuation surveillances (response time tests) have historically been successful, therefore, any increase in probability or consequences of a previously evaluated accident would be insignificant.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated accident.

These are one-time extensions. No new accident scenarios are being introduced because neither the testing nor the methodology itself are been affected. Only the interval between testing is being changed consistent with the intent of GL 91–04.

3. The proposed changes do not involve a significant reduction in the margin of safety.

These are one-time extensions. Margin of safety is not significantly affected because no test functions are being omitted and many attributes of the systems will continue to be verified in other surveillance tests. The increased time between surveillances, which could result in a slight decrease in assumed equipment reliability, is mitigated by the facts that many features are tested more frequently by other surveillances and by the relatively short duration of the extension. In addition, minimizing train outages during refueling outages and using demonstrated test procedures reduces the risk of events occurring during the outage and improves safety. Overall, because the potential impact on equipment reliability is small and because of the reduced shutdown risks, this license amendment request does not involve a significant reduction in margin of safety but potentially increases the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 31, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to

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relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William D. Beckner, Director, Project Directorate IV–1: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, NW., Suite 1000, Washington, D.C. 20336, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 19, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Dated at Rockville, Maryland, this 26th day of September 1994.

For the Nuclear Regulatory Commission

Thomas A. Bergman,

Project Manager, Project Directorate IV–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–24208 Filed 9–29–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34716; File No. SR–BSE–94–10]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Specialist Concentration

September 26, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 1994, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is granting accelerated approval and is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to obtain accelerated effectiveness as to a one-year extension of the Specialist Concentration Policy pilot program.[3] This will continue to permit the Exchange's Executive Committee to review proposed combinations that, in the Exchange's view, may lead to undue concentration within the specialist community. The Exchange therefore requests the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. Accelerated approval is hereby granted for the reasons stated below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the concentration policy pilot program, which establishes certain standards based on Consolidated Tape Association ("CTA") ranking[4] of specialist stocks for reviewing certain proposed mergers, acquisitions and other combinations between or among specialist units. The proposed policy would authorize the Executive Committee of the Board of Governors to review proposed combinations that, in the Exchange's view, may lead to undue concentration within the specialist community.

The Executive Committee will review any arrangement where previously separate specialist organizations would be operating under common control and would comprise:

(a) 15% or more of the 100 most actively traded CTA stocks; or,

(b) 15% or more of the second 100 most actively traded CTA stocks; or,

(c) 20% or more of the third 100 most actively traded CTA stocks; or,

(d) 15% or more of all the CTA stocks eligible for trading on the BSE where the Free List contains fewer than 100 issues.[5]

The Executive Committee shall approve or disapprove the proposed combination based on its assessment of the following considerations:

(a) Specialist performance and market quality in the stocks subjects to the proposed combination;

(b) The effects of proposed combination in terms of the following criteria:

(i) Strengthening the capital base of the resulting specialist organization;

(ii) Minimizing both the potential for financial failure and the negative consequences of any such failure on the specialist system as a whole; and

(iii) Maintaining or increasing operational efficiencies;

(c) Commitment to the Exchange market, focusing on whether the constituent specialist organizations engage in business activities that might detract from the resulting specialist organization's willingness or ability to act to strengthen the Exchange agency/auction market and its competitiveness in relation to other markets; and

(d) The effect of the proposed combination on overall concentration of specific organizations.

With respect to the criteria relating to the "commitment to the Exchange market", the Executive Committee would look to a variety of factors that extend beyond compliance with the Exchange's requirements for providing sufficient capital, talent and order handling services. For example, the Committee would review and assess each constituent unit's past performance on the Exchange relating to such matters as:

- Acceptance and cooperation in the development, implementation and enhancement to the Boston Exchange Automated Communications and Order-routing Network ("BEACON");
- Efforts at resolving problems concerning customer orders;
- Willingness to facilitate early openings in order to compete effectively with other exchanges; and
- Willingness to voluntarily provide Execution Guarantees beyond the minimum required under Rule 2039A.[6]

2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed policy is Section 6(b)(5) in that the policy enables the Exchange to monitor the tendencies toward concentration in the specialist community and to intervene to prevent undue concentration. As such, it is designed to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purpose of this title or the administration of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed policy will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–94–10 and should be submitted by October 21, 1994.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the BSE's proposal to extend its pilot program regarding specialist concentration for an additional one-year period is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 of the Act.[7] For the reasons set forth below, the Commission believes that the BSE proposal to extend its specialist concentration pilot furthers the objectives of Section 6 of the Act.

The Commission believes it is necessary to extend the pilot program's operation in order to afford both the Exchange and the Commission a further opportunity to evaluate the pilot's operation during the Commission's consideration of permanent approval of the concentration rules. Although the pilot has been in effect since February, 1990, only two proposed combinations have triggered an extensive Committee review by exceeding the concentration limits set forth in the policy. Consequently, the Commission believes that the Exchange, in conjunction with the SEC, needs additional time to fully evaluate the operation of the concentration policy and to determine whether the concentration rules are enhancing the quality of the markets that specialist units make and thus improve the standards of specialist performance. The Commission believes that allowing the Exchange an additional one-year period in which to implement the pilot will enable the Exchange and the Commission to adequately address the effectiveness of the pilot.

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[1] 15 U.S.C § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] On February 7, 1990, the Commission approved, on a six-month pilot basis ending August 7, 1990, a proposed rule change by the BSE to establish procedures for reviewing proposed combinations among specialist units on the Exchange. *See* Securities Exchange Act Release No. 27684 (February 7, 1990), 55 FR 5527 (approving File No. SR–BSE–89–05). The Commission later approved the renewal of the pilot program for additional one-year periods ending August 1, 1991, August 13, 1992, August 13, 1993, and August 13, 1994. *See* Securities Exchange Act Release Nos. 28327 (August 10, 1990), 55 FR 33794 (File No. SR–BSE–90–11); 29551 (August 13, 1991), 56 FR 41380 (File No. SR–BSE–91–06); 31037 (August 13, 1992), 57 FR 37854 (File No. SR–BSE–92–08); and 32753 (August 16, 1993), 58 FR 44707 (File No.SR–BSE–93–15).

[4] In March 1973, the CTA was formed and the consolidated tape was established to disseminate last sale transaction information for trades executed on any of the participant exchanges or through the National Association of Securities Dealers Automated Quotation ("NASDAQ") system. The current CTA participants include the New York Stock Exchange ("NYSE"), American Stock Exchange ("Amex"), Chicago Stock Exchange ("CHX"), Philadelphia Stock Exchange ("Phlx"), Pacific Stock Exchange ("PSE"), BSE, Chicago Board Options Exchange ("CBOE"), Cincinnati Stock Exchange ("CSE"), and the National Association of Securities Dealers ("NASD"). Each specialist stock is ranked according to the number of CTA trades in such stock. The ranking is based upon an average for the past four quarters.

[5] The Free List is made up of securities which are not registered to certain specialists and can be traded by any specialist.

[6] *See* BSE Rule 2039A. The Rule states that the BSE Execution Guarantee shall be available to each member firm in all issues traded through the Intermarket Trading System (ITS) registered to a member specialist of the Exchange. For example, the rule imposes an obligation upon specialists to guarantee executions on all agency orders from 100 up to and including 1,299 shares.

[7] 15 U.S.C. § 78f(b)(5) (1988).

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In its prior orders renewing and extending the pilot program,[8] the Commission requested that the BSE develop criteria to evaluate the effects of its concentration rules on the activities of specialists and to determine, for example, whether implementation of these rules is increasing the performance and effectiveness of specialists and aiding in the prevention of undue concentration. Specifically, the Commission requested that the BSE submit a report to the Commission addressing, among other things, the following issues: the number of proposed specialist combinations that have triggered an Executive Committee review since the inception of the pilot program and the circumstances surrounding these reviews; whether the existence of more firms has increased competition among specialists for new stock allocations; whether the concentration rules have increased incentives for quality markets and higher standards for performance; and the impact that the specialist combination rules have had upon the competitive environment necessary to maintain an orderly market.

In response to the Commission's request, the BSE submitted a letter[9] which addressed many of the issues the Commission outlined in previous orders. The BSE stated that, during the last pilot period, there have been no proposed specialist combinations that exceeded the concentration limits set forth in the policy.[10] The BSE reported that the last combination reviewed under the concentration policy was in February of 1993. The acquisition was discussed in the previous pilot extension approval order.

The Commission also asked the BSE to discuss various other issues, identical to the requests made during the previous one-year pilot periods. The BSE's responses were identical to those submitted pursuant to the previous pilot extension due to the absence of relevant data during the last year.

During the extended pilot period, as was requested during the previous one-year pilot periods, the Commission expects the Exchange to continue to develop criteria to evaluate the effects of its concentration rules on the activities of specialists. In this regard, the Commission expects the BSE to report to the Commission by May 1, 1995, the number of proposed specialist combinations that have triggered an Executive Committee review since the extension of the pilot program and the circumstances surrounding these reviews; whether competition among specialists for new stock allocations as well as specialists and specialist firms applying for those allocations since the inception of the pilot program;[11] and whether any of the specialist firms that have undergone Executive Committee review have demonstrated an improvement in specialist evaluation results or displayed a higher quality of markets. In addition, the Commission remains interested in whether the BSE finds that the concentration rules have assisted the Exchange in increasing order flow and if so, the reasons for this conclusion, as well as the impact that the specialist combination rules have had upon the competitive environment necessary to maintain an orderly market.[12]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the extension of the pilot program furthers the protection of investors and the public interest because it allows the Exchange additional time to evaluate the effectiveness of the pilot program on an uninterrupted basis during the Commission's consideration of the Exchange's request for permanent approval of its rules for reviewing proposed specialist combinations and because the BSE's concentration policy may result in higher quality markets and improved standards of specialist performance. Further, the substance of the proposal has been noticed previously in the **Federal Register** for the full statutory period and the Commission did not receive any comments on it.[13]

It Is Therefore Ordered, Pursuant to section 19(b)(2)[14] that SR–BSE–94–10 is hereby approved on a pilot basis through August 13, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24271 Filed 9–29–94; 8:45 am]

BILLING CODE 8010–01–M

[8] *See supra*, note 3.

[9] *See* letter from George Mann, Senior Vice President and General Counsel, Boston Stock Exchange, to Amy Ilibija, Commission, dated September 1, 1994.

[10] The BSE has had a total of two proposed combinations that exceeded the concentration limits since the inception of the pilot program. The first such proposed combination was discussed in Securities Exchange Act Release No. 29551 (August 13, 1991), 56 FR 41380 (File No. SR–BSE–91–06). The second such proposed combination was discussed in Securities Exchange Act Release No. 32753 (August 16, 1993), 58 FR 44707 (File No. SR–BSE–93–15).

[11] The Commission believes the BSE needs to more fully address and justify why the proposed concentration levels are set appropriately. In particular, the Commission expects the BSE to demonstrate that the Policy does not result in a decrease in competition for allocation and adversely affect the quality of the BSE's markets.

[12] In evaluating the effects of the pilot, the Commission expects the BSE to provide specific data to support its conclusions.

[13] *See supra* note 3.

[14] 15 U.S.C. § 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–34717; File No. SR–Phlx–91–20]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Equity Floor Procedure Advice E–A–1—Responsibility for Displaying Best Bid and Offer Prices

September 26, 1994.

On July 15, 1991, as subsequently amended on June 23, 1994,[1] and July 14, 1994,[2] the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[3] and Rule 19b–4 thereunder,[4] a proposed rule change to adopt Phlx Equity Floor Procedure Advice ("EFPA") E–A–1: Responsibility for Displaying Best Bid and Offer Prices Established on the Equity Floor (the "Advice").

The proposed rule change, including amendment no. 1, was published for comment in Securities Exchange Act Release No. 34342 (July 11, 1994), 59 FR 36244 (July 15, 1994). No comments were received on the proposal.

The Advice being adopted requires specialists to display the best bid and offer available in their assigned securities. The specialists' responsibility will be different for primary stock issues[5] and secondary stock issues.[6] For primary securities, specialists' will be responsible for ensuring that the best bid and offer voiced on the floor of the Exchange is properly and timely displayed for dissemination purposes. For securities in which the specialists make secondary markets, specialists will be responsible for ensuring proper and timely display of the best bid or offer so long as such bid or offer is equal to or superior to all other bids or offers reflected and disseminated at the time by the national securities exchanges.

In addition, the Advice will be included in the Exchange's minor rule plan.[7] The fine schedule below will be applied when an Exchange review identifies that five percent or more of the bids or offers have not been properly displayed in a timely fashion. The following schedule will be implemented on a three year running calendar basis:[8]

Floor Procedure Advice E–A–1

1st occurrence .	$100.00
2nd occurrence	250.00
3rd occurrence .	500.00
4th and thereafter.	Sanction is discretionary with Business Conduct Committee.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[9] In particular, the Commission believes the proposal is consistent with Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission has long believed that transparency plays a fundamental role in the fairness and efficiency of the secondary markets. Transparency may be defined as the extent to which trading information (*i.e.*, information regarding quotations, price, and volume of transactions) is made publicly available promptly after either the entry of a quotation or the completion of a transaction. As the Commission's Division of Market Regulation ("Division") stated in its Market 2000 Study,[10] at least three tangible benefits flow from transparency: (1) Transparency enhances investor protection because it makes it easier for investors to monitor the quality of executions they receive from their intermediaries, (2) transparency encourages investor participation in the market, and thereby promotes market liquidity, and (3) transparency fosters the efficiency of securities markets by facilitating price discovery and open competition, and thus counteracts the effects of fragmentation.[11]

The Division noted in the *Market 2000 Study* that the failure to display limit orders that are priced better than current quotes raises at least three regulatory concerns. First, the failure to display limit orders could artificially widen spreads, which raises the concern that investors are receiving unfair prices. Second, the failure to display limit orders raises fair competition concerns. If the quotes from a market or market maker do not fully represent the buying and selling interest, markets will lose incentives to compete based on quotes, and the price discovery process may be impaired. Third, with many markets offering automatic executions of small orders at the best displayed quotes, a failure to display the best quotes results in inferior executions for some small-order customers. The Division therefore recommended that the SROs encourage the display of all limit orders in listed stocks that are better than the best intermarket quotes (unless the ultimate customer expressly requests that an order not be displayed), noting that such a requirement would provide a more accurate picture of trading interest, result in tighter spreads, and contribute to improved price discovery.[12]

The Commission believes that the Phlx proposal will result in increased transparency to the benefit of investors. In particular, the Commission believes that the portion of Advice E–A–1 which requires specialists to display the best bid or offer price on the floor for primary stock issues will be beneficial because it should increase transparency and provide an indication of market interest for stocks in which Phlx is the primary market. For secondary issues, the requirements for the display of bids and offers will also be beneficial to market participants because it will provide to other market centers in the national market system all Phlx bids and offers that are equal to or superior to bids and offers displayed in the system. Such a standard is consistent with the discussion of limit order display in the *Market 2000 Study*, noted above.

The Commission also believes that it is appropriate to include Advice E–A–1 in the Phlx's minor rule plan because a violation of the dissemination requirements for the best bids or offers should not entail the complicated factual and interpretative inquiries associated with more sophisticated Exchange disciplinary actions under Phlx Rule 960. The Commission further believes that the fine schedule, which is graduated to account for repeat offenders and will be administered on a three-year rolling calendar basis under the Phlx's minor rule plan, should provide a prompt, effective and appropriate means to enforce compliance with the Advice. Moreover, under the Phlx's minor rule plan, a person fined under the Advice will be permitted to contest the fine pursuant to Phlx Rule 970 and will be entitled to full due process.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Phlx–91–20) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24272 Filed 9–29–94; 8:45 am]

BILLING CODE 8010–01–M

[1] See letter from Gerald D. O'Connell, First Vice President, Phlx, to Sharon Lawson, Assistant Director, SEC, dated June 23, 1994.

[2] See letter from Gerald D. O'Connell, First Vice President, Phlx, to Sandra Sciole, Special Counsel, SEC, dated July 14, 1994. This amendment, which is available in the Commission's Public Reference Room, changed "national exchanges" to "national securities exchanges" in the text of the Equity Floor Procedure Advice. This change was technical in nature and has no substantive impact on the original filing.

[3] 15 U.S.C. 78s(b)(1) (1988).

[4] 17 CFR 240.19b–4 (1993).

[5] A primary stock issue is any security listed on the Phlx which is not listed on any other national securities exchange or any issue dually listed with another exchange for which the Phlx has traded the majority of exchange volume over the previous six months.

[6] Secondary issues are all securities in which Phlx specialists make secondary markets, *i.e.*, all securities not classified as primary issues. *See* note 5, *supra*.

[7] *See* letter from Gerald D. O'Connell, First Vice President, Phlx, to Sandra Sciole, Special Counsel, SEC, dated August 18, 1994. The Exchange's minor rule plan is administered pursuant to Phlx Rule 970 (Floor Procedure Advices: Violations, Penalties, and Procedures). Under Phlx Rule 970, in lieu of commencing a disciplinary proceeding under Phlx Rule 960, the Exchange may impose a fine, not to exceed $2,500, for any violation of a Floor Procedure Advice if the Exchange has determined the violation is minor in nature.

[8] In November 1993, the commission approved a Phlx proposal to place nine Advices on a three-year rolling cycle for the imposition of fines. See Securities Exchange Act Release No. 33130 (November 2, 1993), 58 FR 59502 (November 9, 1993). Under the three-year rolling cycle, a violation of Advice E–A–1 that occurs within three years of the first violation of the Advice will be treated as a second occurrence, and any violation of the Advice within three years of the previous violation of the Advice will be subject to the next highest fine. Thus, a third violation of Advice E–A–1 within less than three years after a fine for a second violation of Advice E–A–1 will be treated as a third violation of that Advice, even though more than three years may have elapsed since the first violation of Advice E–A–1.

[9] 15 U.S.C. 78f(b) (1988).

[10] *See* Division of Market Regulation, *Market 2000: An Examination of Current Equity Market Developments* (January 1994).

[11] *Id.* at IV–2.

[12] *Id.* at IV–6.

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1993).

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[Rel. No. IC–20572; 812–9034]

Landmark Funds I et al.; Notice of Application

September 23, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Landmark Funds I, Landmark Funds II, Landmark Funds III, Landmark Fixed Income Funds, Landmark Tax Free Income Funds, Landmark Multi-State Tax Free Funds, Landmark Premium Funds, Landmark Institutional Funds I, Landmark Institutional Trust, Landmark Tax Free Reserves, and Landmark International Equity Fund, including all existing and future series thereof (the "Trusts"), and (i) Any future open-end management investment company (including all series thereof) for which Citibank, N.A. ("Citibank") or any company controlling, controlled by, or under common control with Citibank (a "Citibank Company") is the investment adviser or for which The Landmark Funds Broker-Dealer Services, Inc. ("LFBDS") or any company controlling, controlled by, or under common control with LFBDS (an "LFBDS Company") is the principal underwriter (as that term is defined in section 2(a)(29) of the Act), (ii) any existing open-end management investment company (and all existing and future series thereof) not currently advised by Citibank or a Citibank Company or underwritten by LFBDS or an LFBDS Company for which Citibank or a Citibank Company in the future serves as investment adviser or for which LFBDS or an LFBDS Company in the future serves as principal underwriter and (iii) any existing or future open-end management investment company (including all existing and future series thereof) not currently advised by Citibank or a Citibank Company that invests all of the investable assets of such company or any of its series in a management investment company for which Citibank or a Citibank Company is the investment adviser (the investment companies described in (i), (ii), and (iii), together with the Trusts, are referred to collectively as the "Funds"), Citibank, and LFBDS.

RELEVANT ACT SECTIONS: Order requested under section 6(c) for exemptions from section 18(f), 18(g), 18(i), 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order (i) To permit the Funds to issue multiple classes of shares representing interests in the same portfolio of securities (the "Multiple Distribution System"); and (ii) to permit the Funds to assess and, under certain circumstances, waive, defer, or reduce, a contingent deferred sales charges ("CDSC") on certain redemptions of their shares.

FILING DATE: The application was filed on June 6, 1994, and amended on July 20, 1994. By supplemental letter dated September 23, 1994, counsel, on behalf of applicants, agreed to file an amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 18, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. The Trusts and LFBDS, 6 St. James Avenue, Boston, Massachusetts 02116. Citibank, 153 East 53rd Street, New York, NY 10043.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 942–0582, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Trusts is a Massachusetts business trust registered under the Act as an open-end management investment company. Some of the Trusts consist of multiple series each of which has separate investment objectives and policies and segregated assets. Each Trust, and each Trust on behalf of its series, if any, has either: (i) Entered into an investment advisory agreement with Citibank, or (ii) invested all of the Investable assets of the Trust or series in another open-end management investment company that has entered into an investment advisory agreement with Citibank (such management investment company referred to herein as a "Hub℠ Portfolio"). Each of the Trusts has adopted an Administrative Services Plan that provides that the Trust may obtain the services of an administrator, a transfer agent, a custodian, a fund accounting agent (in the case of those Trusts for which the custodian does not act as fund accounting agent) and one or more shareholder servicing agents. Pursuant to the Administrative Services Plan, each Trust has entered into an Administrative Services Agreement with LFBDS, pursuant to which LFBDS provides non-investment management, administrative services. Citibank performs sub-administrative duties for each Trust pursuant to a Sub-Administrative Services Agreement with LFBDS. LFBDS, a registered broker-dealer, is the principal underwriter of the Trusts, and shares of each Trust are currently offered through LFBDS to customers of entities ("shareholder servicing agents") that have entered into shareholder servicing agreements ("Shareholder Servicing Agreements") with such Trust pursuant to the Trust's Administrative Services Plan.[1] Under the Shareholder Servicing Agreements, financial institutions including Citibank Companies and securities brokers provide various account and customer services in connection with the shares. For such services, each shareholder servicing agent receives a service fee[2] and a shareholder servicing fee[3] from the Trust.

[1] Each Administrative Services Plan under which a Trust has entered into a Shareholder Servicing Agreement has been adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, including the voting rights of shareholders specified therein. Applicants may, however, in the future, seek an amendment to a Fund's Administrative Services Plan to modify or eliminate the voting rights granted therein.

[2] Some of the fees paid pursuant to the Shareholder Servicing Agreements may be deemed to be "service fees" as that term is defined in Article III, Section 26 of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. (the "NASD rule"). For the purposes of the application, the term "service fees" refers to such fees paid by the Funds to their shareholder servicing agents for certain services rendered under the Shareholder Servicing Agreements, and has the meaning given that term in the NASD rule. The terms "distribution fee" and "rule 12b–1 fee" mean an "asset-based sales charge" as defined in the NASD rule.

[3] As used in the application, "shareholder servicing fees" means fees paid by the Funds to their shareholder servicing agents for providing subaccounting services for Funds shares held beneficially, providing beneficial owners with statements showing their positions in the Funds, forwarding shareholder communications, receiving, tabulating, and transmitting proxies and other similar services. "Shareholder servicing fees" does not refer to service fees as defined in the NASD Rule.

2. The shares of the Trusts, except for money market funds, are currently sold at net asset value ("NAV") subject to a conventional front-end sales charge. Each Trust has also adopted a distribution plan in accordance with rule 12b–1 authorizing it to pay LFBDS a distribution fee (the "Distribution Plan") (collectively, the Distribution Plans and the Administrative Services Plans are referred to herein as the "Plans").

3. Applicants propose to establish a Multiple Distribution system enabling each fund to offer investors the option of purchasing shares with either (a) A front-end sales load (which may vary among the Funds) (except for sales of $1 million or more which are subject to a CDSC for the twelve-month period following purchase and except in the case of the money market funds) and, in most cases, Plans providing for a distribution fee and/or service fee and/or shareholder servicing fee (the "Front-End Load Option" or "Class A shares"), (b) without a front-end sales load but subject to a CDSC (which may vary among the Funds) and Plans providing for a distribution fee and/or service fee and/or shareholder servicing fee (the "Deferred Option" or "Class B shares'), or (c) without a front-end sales load or CDSC, but subject to Plans providing for a distribution fee and/or service fee and/or shareholder servicing fee (the "Level Load Option" or "Class C shares"). It is presently intended that the money market funds other than Landmark Cash Reserves ("LCR"), a series of Landmark Funds III, will offer only one class of shares which will be sold without a front-end load or CDSC but subject to Plans providing for a distribution and/or service and/or shareholder servicing fee. Any distribution arrangement of a Fund, including distribution and service fees and front-end and deferred sales loads, will comply with the NASD rule.

4. Applicants also seek authority to create one or more additional classes of shares in the future, the terms of which differ from the Class A, Class B, and Class C shares only in the following respects: (i) Any such class may bear different distribution, service, and shareholder servicing fees (or may have no distribution, service, or shareholder servicing fees) and any other costs relating to implementing the Plans for such class or an amendment to such Plans (including obtaining shareholder approval of such Plans or any amendment thereto), (ii) any such class may bear any incremental difference in transfer agency fees, (iii) any such class may bear different class designations, (iv) voting rights on matters which pertain to the Plans, except as provided in condition 15, (v) any such class may bear any other incremental expenses subsequently identified that should be properly allocated to such class which shall be approved by the Commission pursuant to an amended order, (vi) any such class may have different conversion features, (vii) any such class may have different exchange privileges, and (viii) any such class will bear only those printing and postage expenses (not otherwise payable by a shareholder servicing agent) relating to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements (hereafter "Class Expenses") relating to that class of shares.

5. After a shareholder's Class B shares remain outstanding for a specified period of time (not to exceed eight years), they will automatically convert to Class A shares of the same Fund at the relative net asset values of each of the classes, and will thereafter be subject to the lower aggregate distribution, service, and shareholder servicing fees under the Class A Plans applicable to the Class A shares. For purposes of conversion to Class A, all shares in a shareholder's account purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares will considered to be held in the separate sub-account. Each time any Class B shares in the shareholder's account convert to Class A, a proportional amount of Class B shares in the sub-account will also convert to Class A.

6. Any other class of shares may provide that shares in that class (the "Purchase Class") will, after a period of time, automatically convert into another class of shares (the "Target Class") on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge, provided that, after conversion, the converted shares would be subject to an asset-based sales charge and/or service fee (as those terms are defined in the NASD rule) and/or a shareholder servicing fee, that in the aggregate are lower than the asset-based sales charge and service fee and shareholder servicing fee to which the Purchase Class shares were subject prior to the conversion. Such a conversion feature will be described in the relevant prospectus. (The term "Purchase Class" hereafter refers to any class of shares, including Class B shares, with a conversion feature).

7. Any conversion of shares of one class to shares of another class is subject to the continuing availability of a ruling of the Internal Revenue Service or an opinion of counsel to the effect that the conversion of shares does into constitute a taxable event under federal income tax law. Any such conversion may be suspended if such a ruling or opinion is no longer available.

8. Under the Multiple Distribution System, all expenses incurred by a Fund will be borne proportionately by each class based on the relative net assets attributable to each such class, except for the different: (a) Distribution, service, and shareholder servicing fees, and any other costs relating to implementing the Plans or an amendment to such Plans (including obtaining shareholder approval of a Plan or an amendment to such Plan); (b) Class Expenses; and (c) possibly transfer agency fees (and any other incremental expense properly attributable to a class which the Commission shall approve by amended order) attributable to a class, which will be borne directly by each respective class.

9. LFBDS or shareholder servicing agents may choose to reimburse or waive distribution, service, or shareholder servicing fees on certain classes of a Fund on a voluntary, temporary basis. The amount on such fees waived or reimbursed by LFBDS or shareholder servicing agents may vary from class to class. Such fees are by their nature specific to a given class and may vary from one class to another. Applicants believe that it is acceptable and consistent with shareholder expectations to reimburse or waive such fees at different levels for different classes of the same Fund.

10. In addition, LFBDS, Citibank, or other service contractors may waive or reimburse certain fees or expenses which do not vary from class to class but apply equally to all classes of a given Fund ("Fund expenses") provided that the same proportionate amount of Fund expenses are waived or reimbursed for each class of a Fund. Any Fund expenses that are waived or reimbursed would be credited to each class of a Fund based on the relative net assets of the classes.

11. To the extent exchanges are permitted, such exchanges will comply with all applicable provisions of rule 11a–3 under the Act.

12. Applicants also request relief to permit each of the Funds to assess a CDSC on certain redemptions of certain

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classes of shares of such Fund, and, from time to time, as described below, to permit such Fund to waive, reduce, or defer the CDSC with respect to certain types of redemptions of such shares. The amount of the CDSC to be imposed will depend on the amount of time since the investor purchased the shares being redeemed, as set forth in each Fund's prospectus. The amount of any applicable CDSC will be based upon the lower of the net asset value at the time of purchase or at the time of redemption as required by proposed rule 6c–10(a)(1)(i) under the Act. If a shareholder holding shares of more than one class does not specify which class of shares of a Fund are to be redeemed, the following order of redemption will apply: (a) Shares of a Fund not subject to a CDSC and subject to the highest distribution and/or service and/or shareholder servicing fees in effect on the date of redemption will be redeemed first (provided, however, that if such shares of the Fund are subject to the same distribution and/or service and/or shareholder servicing fees then shares of the Fund without a conversion feature will be redeemed before shares of the Fund with a conversion feature), then (b) shares of the Fund subject to the lowest CDSC will be redeemed, provided that if such shares of the Fund are subject to the same CDSC, shares of the Fund with the highest distribution and/or service and/or shareholder servicing fees in effect on the date of redemption will be redeemed first. If such shares of the Fund are subject to the same distribution and/or service and/or shareholder servicing fees, then shares of the Fund without a conversion feature will be redeemed before shares of the Fund with a conversion feature.

13. Applicants also propose to permit LFBDS from time to time to provide a credit (i.e., a reimbursement) for any CDSC paid by a redeeming shareholder in connection with a redemption of shares of a class followed by a reinvestment in any shares of the same class of the same Fund or, as permitted by LFBDS from time to time, the same class of another Fund, effected within such number of days of the redemption as may be specified, from time to time, in a Fund's prospectus (the "Reinstatement Privilege"). The CDSC credit will be paid by LFBDS. Upon redemption thereafter, when calculating the amount of the CDSC (if any), the shares will be deemed to have been held for one continuous period from purchase through redemption and reinvestment until such shares are finally redeemed.

14. If the Funds waive, defer, or reduce the CDSC for a particular class, such waiver, deferment, or reduction will be uniformly applied to all offerees in a class with similar qualifications. In waiving, deferring, or reducing a CDSC, the Funds will comply with the requirements of rule 22d–1. If a Fund that has been waiving, deferring, or reducing its CDSC for a particular class discontinues such waiver, deferment, or reduction, (a) such waiver, deferment, or reduction will continue to apply to shares of such Fund then outstanding, and (b) the disclosure in that Fund's prospectus relating to that class will be revised appropriately. No CDSC will be imposed on shares issued prior to the date of the requested order.

Applicants' Legal Conclusions

1. Applicants request an order under section 6(c) exempting the Funds' proposed issuance and sale of multiple classes of securities to the extent that such issuance and sale might be deemed to result in a "senor security" within the meaning of section 18(g) of the Act and be prohibited by section 18(f)(1), and to violate the equal voting provisions of section 18(i).

2. The creation of multiple classes does not present the concerns that section 18 was designed to address. The proposed arrangement does not involve borrowings, affect any Fund's existing assets or reserves, nor increase the speculative character of any Fund shares. The Funds' capital structures under the proposed arrangement will not induce any group of shareholders to invest in higher risk securities to the detriment of any other group of shareholders since the investment risks of each Fund will be borne equally by all of its shareholders.

3. Mutuality of risk will be preserved with respect to each class of shares in a Fund. Further, (a) Since each class of shares will be redeemable at all times, (b) since no class of shares will have any preference or priority over any other class in the Fund, and (c) since the similarities and dissimilarities of the classes of shares will be disclosed in the Funds' prospectuses, investors will not be given misleading impressions as to the safety or risk of any class of shares, and the nature of the shares will not be rendered speculative.

4. The Funds' capital structures under the proposed arrangement will not enable insiders to manipulate expenses and profits among the various classes of shares since all the expenses and profits of a particular Fund (except the different fees of any Plan applicable to a class of shares, any higher incremental transfer agency fees, Class Expenses attributable to a class of shares and any other incremental expense subsequently identified that should be properly allocated to a particular class which shall be approved by the Commission pursuant to an amended order) will be borne *pro rata* by all the shares of the Fund, irrespective of class, and all shareholders will have equal voting rights except with respect to matters pertaining to the Plans and related agreements. The concerns that a complex capital structure may facilitate control without equity or other investment and may make it difficult for investors to value the securities of the Funds are not present.

5. The proposed arrangement will permit the Funds to facilitate both the distribution of their securities and provide investors with a broader choice as to the method of purchasing shares without assuming excessive accounting and bookkeeping costs. Moreover, owners of each class of shares may be relieved of a portion of the fixed costs normally associated with investing in mutual funds since such costs would potentially be spread over a greater number of shares than they would otherwise.

Applicants' Multiple Class Conditions

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions:

1. Each class of shares of a Fund will represent interests in the same portfolio of investments of that Fund, and will be identical in all respects, except as set forth below. The only differences among the various classes of shares of the same Fund will relate solely to: (a) The impact of the different distribution, service, and shareholder servicing fee payments associated with any Plan relating to a particular class of shares and any other costs relating to the implementation of such Plan or any amendment thereto (including obtaining shareholder approval of such Plan or any amendment thereto) which will be borne solely by shareholders of such class, any incremental transfer agency fees attributable solely to a particular class of shares of the Fund, and any other incremental expenses subsequently identified that should be properly allocated to one class and which shall be approved by the Commission pursuant to an amended order, (b) voting rights on matters which pertain to the Plans, except as provided in Condition No. 15 below, (c) the different exchange privileges of each class of shares, (d) the designation of each class of shares of the Fund, (e) the differences in the conversion features of each class of shares, and (f) any differences in Class Expenses of each class of shares.

2. The Board of Trustees of each Fund, including a majority of the Independent Trustees, will approve the Multiple Distribution System for a particular Fund prior to its implementation by such Fund. The minutes of the meetings of the Trustees regarding their deliberations with respect to the approvals necessary to implement the Multiple Distribution System will reflect in detail the reasons for the Trustees' determination that the proposed Multiple Distribution System is in the best interests of both the Fund and its shareholders.

3. On an ongoing basis, the Boards of Trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of the various classes of shares. The Trustees, including a majority of the Independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflict that may develop. Citibank and LFBDS will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, Citibank and LFBDS, at their own cost, will take steps to remedy such conflict, up to and including establishing a new registered management investment company.

4. The Trustees of the Funds will receive quarterly and annual statements concerning distribution, service and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as amended from time to time. In these statements, only expenditures properly attributable to the sale of a particular class of shares or to the provision of services to holders of such shares will be used to justify any distribution or service or shareholder servicing fee attributable to such class. Expenditures not related to the sale or service of a particular class of shares or to services provided to holders of such shares will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Trustees of the Funds in the exercise of their fiduciary duties.

5. Dividends paid by a Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that (i) Distribution, service and shareholder servicing payments associated with any Plans relating to a particular class of shares (any other costs relating to implementing the Plans for such class or any amendment to such Plan including obtaining shareholder approval of the Plans for such class or any amendment to such Plans) will be borne exclusively by that class; (ii) any incremental transfer agency fees relating to a particular class will be borne exclusively by that class; (iii) Class Expenses relating to a particular class will be borne exclusively by that class; and (iv) any other incremental expenses subsequently identified that should be properly allocated to a particular class which shall be approved by the Commission pursuant to an amended order will be borne exclusively by such class.

6. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the various classes have been reviewed by an expert (the "Expert") who has rendered a report to the applicants, a copy of which has been filed as Exhibit D to the application, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30 (b)(1) of the Act. The workpapers of the Expert with respect to such reports, following request by the Funds (which the Funds agree to make), will be available for inspection by the Commission staff upon the written request to the Fund for such workpapers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "report on the policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

7. The applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among such classes of shares, and this representation has been concurred with by the Expert in the initial report referred to in condition no. 6 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition no. 6 above. Applicants agree to take immediate corrective measures if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

8. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class over another in the Fund.

9. LFBDS will adopt compliance standards regarding when a class of shares may appropriately be sold to particular investors. LFBDS will require its registered representatives and all broker-dealer firms with which it enters into selling agreements and all financial institutions with which it enters into agency agreements regarding the Funds to agree to conform to such standards.

10. The conditions pursuant to which the exemptive relief is granted and the duties and responsibilities of the Trustees of the Funds with respect to the Multiple Distribution System will be set forth in guidelines that will be furnished to the Trustees as part of the materials setting forth the duties and responsibilities of the Trustees.

11. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, contingent deferred sales loads, conversion features, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share

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data, however, will be prepared on a per class basis with respect to the classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering prices will present each class of shares separately.

12. The applicant acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to their Plans in reliance on the exemptive order.

13. Purchase Class shares will convert into Target Class shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice) and/or shareholder servicing fee, if any, that in the aggregate are lower than the asset-based sales charge and service fee and shareholder servicing fee to which they were subject prior to the conversion.

14. The initial determination of the Class Expenses, if any, that will be allocated to a particular class of a Fund and any subsequent changes thereto will be reviewed and approved by a vote of the Board of Trustees of the Fund, including a majority of the Independent Trustees. Any person authorized to direct the allocation and disposition of the monies paid or payable by the Fund to meet Class Expenses shall provide to the Board of Trustees, and the Board of Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

15. If a Fund implements any amendment to its Plans that would increase materially the amount that may be borne by the Target Class shares under the Plans, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The Trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into Target Class shares. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to the existing Purchase Class shares in all material respects except that New Purchase Class will convert into New Target Class. The New Target Class or the New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Trustees reasonably believe will not be subject to Federal taxation. In accordance with Condition No. 3, any additional cost associated with the creation, exchange, or conversion of the New Target Class or the New Purchase Class shall be borne solely by Citibank and LFBDS. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

16. The Administrative Services Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

Applicants' CDSC Condition

Applicants agree that any order granting the requested relief shall be subject to the condition that applicants will comply with the provisions of proposed rule 6c–10 under the Act (Release No. IC–16619 (Nov. 2, 1988)), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24170 Filed 9–29–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26130]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 23, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 17, 1994 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

General Public Utilities Corporation, et al. (70–7926)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, and its public-utility subsidiary companies Jersey Central Power & Light Company ("JCP&L"), 300 Madison Avenue, Morristown, New Jersey 07960, Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, P.O. Box 16001, Reading, Pennsylvania 19640 and Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907 (collectively, the "GPU Companies"), have filed a post-effective amendment under sections 6(a) and 7 of the Act and rules 53 and 54 thereunder to their declaration previously filed under sections 6(a) and 7 and rule 50(a)(5).

By order dated March 18, 1992 (HCAR No. 25493) ("Order"), the Commission authorized the GPU Companies from time to time through March 31, 1995 to: (1) Issue, sell and renew unsecured promissory notes ("Notes") in amounts up to $150 million outstanding at any one time and maturing not more than six months from the date of issue, to certain banks under the terms of a revolving credit agreement ("Credit Agreement") with Citibank, N.A. and Chemical Bank as co-agents and

Chemical Bank as the administrative agent; (2) issue, sell and renew their unsecured promissory notes, maturing not more than nine months from the date of issue, pursuant to loan participation arrangements and informal lines of credit ("Lines of Credit") in amounts up to the limitations on short-term indebtedness contained in their respective charters but, the case of GPU, $200 million; (3) incur other short-term unsecured debt ("Other Short-Term Debt"), from time to time, in amounts up to the limits permitted by their respective charters but, in the case of GPU, $200 million; and (4) in the case of JCP&L, Met-Ed and Penelec, issue and sell their respective unsecured promissory notes as commercial paper ("Commercial Paper") in amounts up to their respective charter limits. In no event, however, would the total amount of such unsecured debt of any GPU Company outstanding at any one time exceed the limitations on such indebtedness imposed by such company's charter but, in case of GPU, $200 million.

At June 30, 1994, the charter limits of JCP&L, Met-Ed and Penelec would have permitted them to have maximum short-term indebtedness outstanding at any one time of $275, $122 and $137 million, respectively.

The GPU Companies now propose to extend the term of the Credit Agreement and to provide for an increase in the amount of borrowings that the GPU Companies may make thereunder. They also propose to extend and increase their other short-term borrowing capability. Accordingly, the GPU Companies now request authority from the effective date of the authorization herein sought through December 31, 1997 from time to time (1) To issue, sell and renew their unsecured promissory notes ("New Notes") to certain banks ("Banks") under the terms of a new revolving credit agreement or an amendment to the existing agreement ("New Credit Agreement") in amounts up to $250 million outstanding at any one time, (2) to issue, sell and renew their unsecured promissory notes pursuant to loan participation arrangements and lines of credit ("New Lines of Credit") in amounts up to the limitations on short-term indebtedness contained in their respective charters and, in the case of GPU, $200 million, (3) in the cases of JCP&L, Met-Ed and Penelec to issue and sell their respective unsecured promissory notes as commercial paper ("New Commercial Paper") in amounts up to their respective charter limits, and (4) to incur other short-term unsecured debt from time to time in amounts up to the limits permitted by their respective charters and, in the case of GPU, $200 million. In no event, however, would the total amount of such unsecured debt of any GPU Company outstanding at any one time exceed the limitation on such indebtedness imposed by such Company's charter and, in the case of GPU, $200 million. Citibank, N.A. and Chemical Bank would serve as co-agents under the New Credit Agreement and Chemical Bank would also serve as administrative agent.

New Notes issued under the New Credit Agreement would mature not more than six months from their date of issue. The annual interest rate on each borrowing would be either (a) The Alternate Base Rate, as in effect from time to time, (b) the CD Rate, as in effect from time to time, plus an amount ranging from .375% to .625% depending upon the Debt Rating of the borrower and, in the case of GPU, the Debt Rating of JCP&L, or (c) the Eurodollar Rate, as in effect from time to time, plus an amount ranging from .25% to .50% depending upon the Debt Rating of the borrower and, in the case of GPU, the Debt Rating of JCP&L.

The New Credit Agreement will afford the GPU Companies the option of inviting competitive bids from the Banks for requested maturities of up to six months in such principal amounts as a GPU Company may request, subject to the $250 million limit of the New Credit Agreement ($200 million in the case of GPU). No Bank would be required to bid for any such loan and the GPU Companies would not be obligated to accept any bids received.

The GPU Companies propose to pay the Banks a facility fee ranging from .125% to .375% per annum, depending on the Debt Ratings of Met-Ed, JCP&L and Penelec, of the total amount of the commitment, and a competitive bid fee of $2,500 for each request for a competitive bid. In addition, an agency fee of $25,000 would be payable to each of the Co-Agents upon signing of the New Credit Agreement, and an annual administrative agent fee of $15,000 would be payable to Chemical Bank.

Issuance of the New Notes would be subject to certain conditions, and the New Notes would be subject to acceleration under certain circumstances. Borrowings bearing interest at the Alternate Base Rate would be prepayable at any time, without penalty; borrowings at the CD Rate or the Eurodollar Rate would also be prepayable, subject to payment of certain costs incurred by the Banks in connection with the prepayment; borrowings at a competitive bid rate would not be prepayable.

Each borrowing pursuant to an unsecured promissory note issued under New Lines of Credit will bear interest at a rate (after giving effect to any fees or compensating balance requirements) not exceeding 125% of the greater of (A) The lending bank's prime rate for commercial borrowing in effect from time to time, and (B) the Federal Funds Rate plus ½ of 1%, will mature not more than nine months from the date of issuance, will be prepayable only to the extent provided therein and will not be issued as part of a public offering. New Lines of Credit borrowings may include borrowings under which a GPU Company would execute a master unsecured promissory note. The principal amount outstanding under each such master note would increase or decrease depending upon the amount of borrowings. Such arrangements are often employed to facilitate the sale of loan participations by the lending bank.

Unsecured promissory notes sold as New Commercial Paper would be issued in denominations of $100,000 or multiples thereof with maturities of up to 270 days and would not be prepayable prior to maturity. New Commercial Paper would be sold directly to one or more commercial paper dealers at a discount rate prevailing at the date of issuance for commercial paper of comparable quality and of the particular maturity sold by other issuers of commercial paper. No fee or commission would be payable by JCP&L, Met-Ed or Penelec in connection with their issuances and sales of New Commercial Paper. The New Commercial Paper will be reoffered by the purchasing dealer or dealers to institutional investors at a discount of not more than ⅛ of 1% per annum less than the prevailing discount rate to JCP&L, Met-Ed or Penelec. The commercial paper dealers will offer and resell the New Commercial Paper to not more than a total of 200 of their respective customers, identified and designated in a non-public list ("Closed List") prepared by each such dealer in advance for this purpose.

JCP&L, Met-Ed and Penelec may also utilize the services of one or more commercial paper placement agents ("Placement Agent") through whom they would sell their New Commercial Paper directly to one or more institutional investors included on the Placement Agent's Closed List (as it may be amended) which would not exceed 200 such investors. The Placement Agent would arrange for the sale of New Commercial Paper and would be compensated for its services out of the discount on the sale. No fee or other

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commission would be otherwise payable by JCP&L, Met-Ed or Penelec in connection with the placement of their New Commercial Paper.

The GPU Companies further propose to issue, sell and renew from time to time their unsecured promissory notes evidencing short-term borrowings from lenders such as commercial banks, insurance companies or other institutions. Such notes would mature not later than nine months after the date of issue, bear interest at a rate (after giving effect to any fees and compensating balance requirements) not in excess of the greater of 125% of (A) Such lender's or other recognized prime rate and (B) the Federal Funds Rate plus ½ of 1%, would be prepayable only to the extent therein provided and would not be issued as part of any public offering.

The proceeds from the issuance and sale of the unsecured promissory notes as proposed herein will be used by the GPU Companies to finance their businesses, including, in the case of GPU, to finance the acquisition of securities of EWGs and FUCOs.

Central and South West Services, Inc., et al. (70–8459)

Central and South West Corporation ("CSW"), a registered holding company, and its service company subsidiary, Central and South West Services, Inc. ("CSWS"), both located at 1616 Woodall Rogers Freeway, Dallas, Texas 75202, have filed a declaration under Section 6(a), 7 and 12(b) of the Act and Rule 45 thereunder.

CSWS proposes, through December 31, 1996, to refinance certain of its long-term assets ("Assets"), including the CSW headquarters building located in Dallas, Texas ("Headquarters Building") by borrowing up to $60 million from one or more commercial banks and/or institutional lenders. The Assets, including the Headquarters Building, are currently financed primarily through the CSW Money Pool ("Money Pool").

CSWS and CSW propose to refinance the Assets either through a floating rate loan from a commercial bank or through a fixed rate private placement of securities to institutional lenders. Bank borrowings will be evidenced by secured or unsecured notes with maturities not exceeding 15 years and bear interest at not more than 100 basis points above the LIBOR or similar rate. In connection with such floating rate borrowing, CSWS requests authority to enter into interest rate swap agreements to obtain the benefits of fixed rate financing. Any swap agreements would provide that the prepayment of the notes would terminate CSWS' obligations to its counterparty under the swap agreement. Institutional borrowings will be evidenced by notes with maturities not exceeding 15 years and bear interest at a rate not expected to exceed the effective cost of money from unsecured prime commercial rate loans prevailing on the date of such borrowings. The choice between the financing alternatives will depend principally on market conditions.

Proceeds from the proposed borrowings will not be used to finance the acquisition of an exempt wholesale generator or a foreign utility company as defined in Section 32 and 33 of the Act.

As the sole holder of the outstanding common stock of CSWS and as an inducement to commercial banks or institutional lenders to make loans to CSWS, it is contemplated that CSW may be required to guarantee the obligations of CSWS to the lenders. Accordingly, CSW proposed to guarantee the payments due to lenders.

Alabama Power Company, et al. (70–8461)

Alabama Power Company, 600 North 18th Street, Birmingham, Alabama 35291 ("Alabama"), Georgia Power Company, 333 Piedmont Avenue, NE., Atlanta, Georgia 30308 ("Georgia"), Gulf Power Company, 500 Bayfront Parkway, Pensacola, Florida 32501 ("Gulf"), Mississippi Power Company, 2992 West Beach, Gulfport, Mississippi 39501 ("Mississippi"), and Savannah Electric and Power Company, 600 Bay Street, East, Savannah, Georgia 31401 ("Savannah") (collectively, "Operating Companies"), electric public utility subsidiaries of the Southern Company, a registered holding company, have filed an application-declaration under Sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45 and 54 thereunder.

Each Operating Company proposes to organize a separate special purpose subsidiary as either: (1) a limited liability company ("LLC") under the Limited Liability Company Act ("LLC Act"); or (2) a limited partnership ("LP") under the Revised Uniform Limited Partnership Act ("LP Act") of any state in which they respectively are organized to do business or are incorporated, or of the State of Delaware or other jurisdiction considered advantageous by any of the Operating Companies ("Special Purpose Subsidiaries"). In the event that any Operating Company organizes its Special Purpose Subsidiary as either an LLC or an LP, it may also organize a second special purpose subsidiary under the General Corporation Law of any state in which they respectively are organized to do business or are incorporated, or of the State of Delaware or other jurisdiction, as the case may be ("Investment Sub"), for the respective purpose of: (1) Acquiring and holding Special Purpose Subsidiary common stock so as to comply with the requirement under the applicable LLC Act that a limited liability company have at least two members; and (2) acting as the general partner of such Special Purpose Subsidiary and acquiring, either directly or indirectly through such Investment Sub, a limited partnership interest in such Special Purpose Subsidiary to ensure that such Special Purpose Subsidiary will at all times have a limited partner to the extent required by the applicable LP Act.

The Special Purpose Subsidiaries then will issue and sell their preferred securities ("Preferred Securities"), with a par or stated value or liquidation preference of up to $100 per security, at any time or from time-to-time, in one or more series through December 31, 1997. The Preferred Securities will be sold by the respective Special Purpose Subsidiaries in the following aggregate par or stated value or liquidation preference amounts: (1) Up to $175 million in the case of Alabama; (2) up to $300 million in the case of Georgia; (3) up to $15 million in the case of Gulf; (4) up to $15 million in the case of Mississippi; and (5) up to $10 million in the case of Savannah.

Each Operating Company and/or its respective Investment Sub will acquire all of the common stock or all of the general partnership interests, as the case may be, of its Special Purpose Subsidiary for an amount up to 21% of the total equity capitalization from time-to-time of such Special Purpose Subsidiary ("Equity Contribution"). Each Operating Company may issue and sell to its Special Purpose Subsidiary, at any time or from time-to-time in one or more series, subordinated debentures, promissory notes or other debt instruments ("Notes") governed by an indenture or other document, and the Special Purpose Subsidiary will apply both the Equity Contribution and the proceeds from the sale of Preferred Securities to purchase Notes of such Operating Company. Alternatively, each Operating Company may enter into a loan agreement or agreements with its Special Purpose Subsidiary under which it will loan to the Operating Company ("Loans") both the Equity Contribution and the proceeds from the sale of the Preferred Securities evidenced by Notes. Each Operating Company may also guarantee ("Guaranties") the payment of dividends or distributions on the

Preferred Securities, payments to the Preferred Securities holders of amounts due upon liquidation or redemption of the Preferred Securities and certain additional amounts that may be payable regarding the Preferred Securities.

Each Note will have a term, including extensions, of up to 50 years. Prior to maturity, each Operating Company will pay only interest on its Notes at a rate equal to the dividend or distribution rate on the related series of Preferred Securities. The dividend or distribution rate may be either fixed or adjustable, determined on a periodic basis by auction or remarketing procedures, in accordance with a formula or formulae based upon certain reference rates, or by other predetermined methods. Such interest payments will constitute each Special Purpose Subsidiary's only income and will be used by it to pay monthly dividends or distributions on the Preferred Securities issued by it and dividends or distributions on the common stock or the general partnership interests of such Special Purpose Subsidiary.

Dividend payments or distributions on the Preferred Securities will be made monthly, will be cumulative and must be made to the extent that funds are legally available. However, each Operating Company will have the right to defer payment of interest on its Notes for up to five years, provided that if dividends or distributions on the Preferred Securities of any series are not paid for up to 18 consecutive months, then the holders of the Preferred Securities of such series may have the right to appoint a trustee, special general partner or other special representative to enforce the Special Purpose Subsidiary's rights under the related Note and Guaranty. Each Special Purpose Subsidiary will have the parallel right to defer dividend payments or distributions on the related series of Preferred Securities for up to five years. The dividend or distribution rates, payment dates, redemption and other similar provisions of each series of Preferred Securities will be substantially identical to the interest rates, payment dates, redemption and other provisions of the related Note issued by the Operating Company.

The Notes and related Guaranties of each Operating Company will be subordinate to all other existing and future indebtedness for borrowed money of such Operating Company and will have no cross-default provisions with respect to their indebtedness of the Operating Company. However, each Operating company may not declare and pay dividends on its outstanding preferred or common stock unless all payments due under its Notes and Guaranties have been made.

It is expected that each Operating Company's interest payments on the Notes issued by it will be deductible for federal income tax purposes and that its Special Purpose Subsidiary will be treated as a partnership for federal income tax purposes. Consequently, holders of the Preferred Securities will be deemed to have received partnership distributions in respect of their dividends or distributions from the respective Special Purpose Subsidiary and will not be entitled to any "dividends received deduction" under the Internal Revenue Code.

The Preferred Securities are optionally redeemable by the Special Purpose Subsidiary at a price equal to their par or stated value or liquidation preference, plus any accrued and unpaid dividends or distributions, at any time after a specified date not later than 10 years from their date of issuance or upon the occurrence of certain events. The Preferred Securities of any series may also be subject to mandatory redemption upon the occurrence of certain events. Each Operating Company also may have the right in certain cases to exchange the Preferred Securities of its Special Purpose Subsidiary for the Notes or other junior subordinated debt of the Operating Company.

In the event that any Special Purpose Subsidiary is required to withhold or deduct certain amounts in connection with dividend distribution or other payments, it may also have the obligation to "gross up" such payments so that the holders of the Preferred Securities will receive the same payment after such withholding or deduction as they would have received if no such withholding or deduction were required. In such event, the related Operating Company's obligations under its Note and Guaranty may also cover such "gross up" obligation. In addition, if any Special Purpose Subsidiary is required to pay taxes on income derived from interest payments on the Notes, the related Operating Company may be required to pay additional interest equal to the tax payment. Each Operating Company, individually, expects to apply the net proceeds of the Loans to the repayment of outstanding short-term debt, for construction purposes, and for other general corporate purposes, including the redemption or other retirement of outstanding senior securities.

Columbus Southern Power Co, et al. (70–8463)

Columbus Southern Power Co. ("Columbus"), 215 North Front Street, Columbus, Ohio 43215, an electric utility subsidiary company of American Electric Power Co., Inc., a registered holding company, and Simco, Inc. ("Simco"), 215 North Front Street, Columbus, Ohio 43215, a non-utility subsidiary company of Columbus, have filed a declaration under Section 12(c) of the Act and Rule 42 thereunder.

Columbus and Simco request an authorization for Simco to return excess capital to Columbus through a declaration of dividends on its common shares of stock out of paid-in capital surplus to be paid on a periodic basis until the amount of dividends equals $500,000.

In an order dated June 5, 1987 (HCAR No. 24405), the Commission authorized Columbus to acquire a note from Peabody Coal Company ("Peabody") in connection with the sale of real property and fixed assets to Peabody. In consequence of this transaction, the coal mining activities of Simco were transferred and almost all of its business operations were discontinued.

In an order dated October 19, 1990 (HCAR No. 25174), the Commission authorized Simco to reduce the par value of its authorized shares of common stock to $0.10 per share, to reduce the stated capital of its common stock from $9,000,000 to $9,000, and to declare and pay to Columbus dividends out of paid-in capital up to $4.5 million.

Simco is a party to a May 1, 1991 agreement with Conesville Coal Preparation Co. ("Conesville"), a non-utility subsidiary company of Columbus. Under the agreement, Conesville has a non-exclusive right to the use of a coal conveyor beltline, through January 1, 2017, in exchange for a usage charge currently in the amount of approximately $38,000 per month.

In consequence of the above-described transactions and the cessation of all other business by Simco, Simco has cash in excess of its foreseeable capital requirements. Simco currently has 90,000 shares of common stock, par value $.10 per share. On June 30, 1994, Simco had retained earnings of $111,338, paid-in capital of $740,000, a stated capital of $9,000, and cash and temporary investments of $355,479.

Monthly usage charges under the agreement will continue for approximately twenty-two years. This amount together with the current capital of Simco is far in excess of foreseeable capital needs. Therefore, it is proposed that excess capital in an amount not to exceed $500,000 be distributed to Columbus.

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For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-24171 Filed 9-29-94; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 94-76]

Determination That Maintenance of Determination/Finding of July 7, 1992, Pertaining to Certain Tea Imported From the PRC is No Longer Necessary

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Determination that Merchandise is no longer subject to 19 U.S.C. 1307.

SUMMARY: On July 7, 1992, the Commission of Customs; with the approval of the Secretary of the Treasury issued a determination/finding that certain tea, described as Red Star Brand Tea, Red Star Tea Farm Brand Tea, and any other tea produced by the Red Star Tea Farm in Guangdong Province, People's Republic of China, with the use of convict labor and/or forced labor, and/or indentured labor, was being, or was likely to be imported into the United States. The Commissioner of Customs, pursuant to 19 CFR 12.42(f) has now determined, based upon additional Customs investigation, that such merchandise is no longer being, or is likely to be imported into the United States in violation of Section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307).

DATES: This determination shall take effect October 5, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas J. Tinger, Senior Special Agent, Office of Enforcement, Headquarters, U.S. Customs Service, 1301 Constitution Ave., N.W., Washington D.C. 20229 (202) 927-1510.

Determination

Pursuant to Section 12.42(f)), Customs Regulations (19 CFR 12.42(f), it is hereby determined that certain articles of the People's Republic of China are no longer being, or likely to be, imported into the United States, which are being mined, produced or manufactured with the use of convict, forced or indentured labor.

Articles schedule	Item number from the Harmonized Tariff (19 U.S.C. 1202)
Tea (manufactured by the Red Star Tea Farm).	0902.10.00 0902.30.00

Approved September 9, 1994.

George J. Weise,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary (Enforcement).

[FR Doc. 94-24237 Filed 9-29-94; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit "Treasures of the Czars" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition of the objects at The Florida International Museum from on or about January 11, 1995, to on or about June 11, 1995 and possibly thereafter at other venues within the United States yet to be determined, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: September 27, 1994.

Les Jin,

General Counsel.

[FR Doc. 94-24269 Filed 9-29-94; 8:45 am]

BILLING CODE 8230-01-M

Convention on Cultural Property Implementation Act (Pub. L. 97-446); Import Restriction on Maya Artifacts From the Peten Region, Guatemala

AGENCY: United States Information Agency.

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619-6084, and the address is U.S. Information Agency, 301 Fourth Street, SW., Room 700, Washington, DC 20547.

ACTION: Determination to Extend Emergency Restriction on Maya Artifacts from the Peten Region, Guatemala.

Pursuant to the authority vested in me under Executive Order 12555 and Delegation Order No. 86-3 of March 18, 1986 (51 FR 10137),

I find: Pursuant to the requirements of Section 304(c)(3) of the Act, 19 U.S.C. 2603(c)(3), with respect to the extension of an emergency import restriction on Maya artifacts from the Peten Region, Guatemala, and pursuant to the emergency provisions under Section 304(a)(3); and pursuant to a favorable recommendation from the Cultural Property Advisory Committee,—

(1) That the material is archaeological and is identifiable as part of the remains of the Maya civilization (approximately 1200 B.C.-1500 A.D) which developed a writing system and about which little is known except from limited scientific excavation of intact remains; that pillage continues to exist relative to these remains of the Maya culture, the record of which continues to be in jeopardy from pillage, dismantling, dispersal, or fragmentation which is, or threatens to be, of crisis proportions;

(2) That the application of the import restriction set forth on a temporary basis would continue, in whole or in part, to reduce the incentive for pillage.

Determination

Therefore, in accordance with the aforementioned authority vested in me, and pursuant to Section 304(c)(3) of the Act, 19 U.S.C. 2603(c)(3), and consistent with a favorable recommendation from the Cultural Property Advisory Committee, I determine:

(1) That the emergency condition continues to apply with respect to Maya artifacts from the Peten Region of Guatemala,

(2) That the emergency import restriction that went into effect on April 15, 1991, is extended for a period of three more years effective October 3, 1994.

Dated: September 23, 1994.

Penn Kemble,

Deputy Director, United States Information Agency.

[FR Doc. 94-24144 Filed 9-29-94; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 189

Friday, September 30, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10 a.m.—October 6, 1994.

PLACE: Hearing Room One—800 North Capitol St., NW., Washington, DC 20573-0001.

STATUS: Open.

MATTER(S) TO BE CONSIDERED:

1. Docket No. 94-06—Financial Responsibility Requirements for Nonperformance of Transportation—Consideration of Comments.
2. Docket No. 93-22—Coloading Practices by Non-Vessel-Operating Common Carriers; Shipper Affiliate Access to Service Contracts—Consideration of Comments.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 94-24383 Filed 9-28-94; 3:22 pm]

BILLING CODE 6730-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, October 5, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 28, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-24350 Filed 9-28-94; 3:22 pm]

BILLING CODE 6210-01-P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-94-31]

TIME AND DATE: October 4, 1994 at 3:00 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. FY 1995 Expenditure Plan and FY 1996 Budget Request.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

The Commission has a previously scheduled hearing on this date, which will begin at 9:30 a.m. If the hearing has not concluded by 3:00 p.m., the meeting to consider the 1995 Expenditure Plan and the 1996 Budget Request will immediately follow the hearing.

By order of the Commission.

Issued: September 26, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-24364 Filed 9-28-94; 3:22 pm]

BILLING CODE 7020-02-P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-94-32]

TIME AND DATES: October 5, 1994 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS:

1. Agenda for the future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 731-TA-670 (Final) (Certain Cased Pencils from Thailand)—briefing and vote.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: September 26, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-24366 Filed 9-28-94; 3:23 pm]

BILLING CODE 7020-02-P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-94-33]

TIME AND DATES: October 11, 1994 at 3:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 731-TA-719 (Preliminary) (Carbon Steel Pipe Nipples from Mexico)—briefing and vote.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: September 26, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-24367 Filed 09-28-94; 3:24 pm]

BILLING CODE 7020-02-P

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Part II

Environmental Protection Agency

40 CFR Parts 9, 86, and 88
Emission Standards for Clean-Fuel Vehicles and Engines, Requirements for Clean-Fuel Vehicle Conversions, and California Pilot Test Program; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 86 and 88

[AMS–FRL–5002–7]

Emission Standards for Clean-Fuel Vehicles and Engines, Requirements for Clean-Fuel Vehicle Conversions, and California Pilot Test Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The 1990 Clean Air Act Amendments require the establishment of two clean-fuel vehicle programs: a Clean Fuel Fleet Program and a California Pilot Test Program. Under the Clean Fuel Fleet Program, a percentage of new vehicles acquired by certain fleet owners located in covered areas will be required to meet clean-fuel fleet vehicle emission standards. Fleet owners can comply with this requirement by purchasing new clean-fuel fleet vehicles, by converting conventional vehicles to clean-fuel fleet vehicles, or by acquiring "credits" pursuant to a credits program. Affected states are required to revise their State Implementation Plans to implement the fleet program, including provisions to implement a credit program and exempt clean-fuel fleet vehicles from certain transportation control measures. Regulations have already been promulgated for the credit program and transportation control measures exemptions. Also, definitions of terms used with the Clean Fuel Fleet program have recently been finalized. The other Clean Air Act clean-fuel vehicle program is the California Pilot Test program. This program requires manufacturers to sell light-duty clean-fuel vehicles in the state of California. EPA has established a credit program for the California Pilot Test Program in a separate rulemaking.

This action promulgates the statutory requirements that have not been implemented to date. These include the emission standards for light-duty and heavy-duty clean-fuel vehicles, regulations for the conversion of conventional vehicles to clean-fuel fleet vehicles, manufacturer California clean-fuel vehicles sales requirements under the California Pilot Test Program, and a state opt-in program for the California Pilot Test Program. The part of the conversion provisions addressing the sales volume limit beyond which special small-volume manufacturer provisions will not apply, will not become effective sooner than 60 days after publication and then only if no adverse comment is received within 30 days of publication. If adverse comment is received within 30 days of publication, EPA will withdraw this part of the rule pending a full notice and comment process on this topic.

DATES: This regulation is effective October 31, 1994, except that 40 CFR 88.306–94(b)(3) will become effective on November 29, 1994, unless notice is received on or before October 31, 1994, that adverse or critical comments will be submitted. EPA will publish a timely document in the **Federal Register** if the effective date is delayed for this reason. The effective date may also be delayed if the information collection requirements contained in this section have not been approved by the Office of Management and Budget. In that case, EPA will publish a timely document in the **Federal Register** delaying the effective date. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 31, 1994, except as specified elsewhere in this **DATES** section. Sections 40 CFR 88.104–94 (b) and (d), 88.201–94 through 88.206–94, and 88.306–94(b) (1), (2), and (4) are not effective until the Office of Management and Budget approves the information collection requirements contained in them. EPA will publish a document in the **Federal Register** once the information collection requirements are approved.

ADDRESSES: Comments on 40 CFR 88.306–94(b)(3) may be submitted to Docket No. A–92–30 at the following address. Materials relevant to this proposal have been placed in Docket Nos. A–92–30 (Clean Fuel Fleet Program) and A–92–69 (California Pilot Test Program) by EPA. The docket is located at: Air and Radiation Docket and Information Center, Room M–1500, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. These dockets may be inspected between 8:30 a.m. and noon, and between 1:30 and 3:30 p.m. on weekdays. EPA may charge a reasonable fee for copying docket materials. In addition, copies of the Summary and Analysis of Comments document, which develops certain issues relevant to this final rulemaking, may be obtained by request from the contact person below. This document contains the Agency's response to the public comments received in regard to the two Notices of Proposed Rulemaking (NPRM).

Electronic copies of the preamble, regulations, Regulatory Impact Analysis, Regulatory Support Document for heavy-duty clean-fuel vehicles, and the Summary and Analysis of Comments for this rulemaking are available on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS). Instructions for accessing TTNBBS and downloading the above rulemaking files are described under **SUPPLEMENTARY INFORMATION** in section I.A.

FOR FURTHER INFORMATION CONTACT: Mr Bryan Manning, U.S. EPA (SRPB–12), Regulatory Development and Support Division, 2565 Plymouth Rd, Ann Arbor, MI 48105. Telephone (313) 741–7832.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Accessing Electronic Copies of Rulemaking Documents through the Technology Transfer Network Bulletin Board System (TTNBBS)

TTNBBS can be accessed using a dial-in telephone line (919–541–5742) and a 1200, 2400, 9600, or 14,400 bps modem. The parity of the modem should be set to N or none, the data bits to 8, and the stop bits to 1. When first signing on to the bulletin board, the user will be required to answer some basic informational questions to register into the system. After registering, proceed through the following options from a series of menus:

OMS;
Rulemaking and Reporting;
Alternative Fuels/Fleets;
Clean Fuel Fleets or California Pilot Program.

A list of ".ZIP" files will be displayed, all of which relate to the Clean Fuel Fleet or California Pilot Program rulemakings. The above five documents for the Emission Standards for Clean-Fuel Vehicles and Engines, Requirements for Clean-Fuel Vehicle Conversions, and California Pilot Test Program rulemaking will be listed in the form of ".ZIP" files and are identified by the following titles:

"CFF–PRE.ZIP" (Preamble)
"CFF–REG.ZIP" (Regulations)
"CFF–COM.ZIP" (Summary and Analysis of Comments)
"CFF–RIA.ZIP" (Regulatory Impact Analysis)
"CFF–RSD.ZIP" (Regulatory Support Document for heavy-duty CFVs)

To download these files, type the instructions below and transfer according to the appropriate software on your computer: <D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, <H>elp or <ENTER> to exit: D filename.ZIP

The user needs to choose a file transfer protocol appropriate for the user's computer from the options listed on the terminal. The user's computer is then ready to receive the file by invoking the user's resident file transfer software. Programs and instructions for de-archiving compressed files can be found under <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers.

TTNBBS is available 24 hours a day, 7 days a week except Monday morning from 8–12 EST, when the system is down for maintenance and backup. For help in accessing the system, call the systems operator at 919–541–5384 in Research Triangle Park, North Carolina, during normal business hours EST.

B. Background

The Clean Air Act (CAA) Amendments of 1990 (Public Law 101–549) added part C to Title II of the CAA entitled, "Clean Fuel Vehicles". Under part C, states are to establish clean fuel fleet programs (collectively called the Clean Fuel Fleet (or CFF) program) in certain nonattainment areas and EPA is to establish a clean-fuel vehicle (CFV) pilot program in the State of California (the California Pilot Test program or Pilot program).

The purpose of the Clean Fuel Fleet Program is to introduce light- and heavy-duty CFVs in specified "covered areas" with air quality problems. CAA section 246(a)(2) defines a "covered area" for purposes of the fleet program as an area having a 1980 population of 250,000 or more that is also (1) a serious, severe, or extreme ozone nonattainment area (based on 1987–1989 data), or (2) a carbon monoxide (CO) nonattainment area with a CO design value at or above 16.0 parts per million (based on 1988–1989 data). Currently, there are 22 such areas in 19 states (Table 1).

TABLE 1.—STATES AND AREAS AFFECTED BY THE CLEAN-FUEL FLEET PROGRAM

Affected area	State(s)
1. Atlanta	Georgia.
2. Baltimore	Maryland.
3. Baton Rouge	Louisiana.
4. Beaumont-Port Arthur	Texas.
5. Boston-Lawrence-Worcester (Eastern Massachusetts)	Massachusetts, New Hampshire.
6. Chicago-Gary-Lake County	Illinois, Indiana.
7. Denver-Boulder	Colorado.
8. El Paso	Texas.
9. Greater Connecticut	Connecticut.
10. Houston-Galveston-Brazoria	Texas.
11. Los Angeles-South Coast Air Basin	California.
12. Milwaukee-Racine	Wisconsin.
13. New York-Northern New Jersey-Long Island	Connecticut, New Jersey, New York.
14. Philadelphia-Wilmington-Trenton	Delaware, Maryland, New Jersey, Pennsylvania.
15. Providence (All Rhode Island)	Rhode Island.
16. Sacramento Metro	California.
17. San Diego	California.
18. San Joaquin Valley	California.
19. Southeast Desert Modified AQMA	California.
20. Springfield (Western Massachusetts)	Massachusetts.
21. Ventura County	California.
22. Washington (District of Columbia)	Maryland, Virginia, District of Columbia.

These states are required to revise their State Implementation Plans (SIPs) to ensure that "covered fleet" owners will include, through purchase or lease, a minimum percentage of CFVs among the new vehicles they purchase for their fleets. (A "covered fleet" is defined in CAA section 241 as a fleet of ten or more motor vehicles which are owned or operated, leased, or otherwise controlled by a single person.) Both private business and government (federal, state, and local) fleets are subject to the statute. However, certain fleets and vehicles are exempt from the regulations, including fleets with vehicles that cannot be fueled at a central location, vehicles that are normally garaged at a personal residence, or vehicles that belong to vehicle classes without applicable CFV standards. (See the Definitions Rule: 58 FR 64679, December 9, 1993). In their SIP revisions, states must include provisions to require that CFVs used in the clean fuel fleet program operate on fuels on which they comply with the CFV standards.

Covered fleet operaters can also meet the requirements by converting conventional vehicles to CFVs, or by obtaining credits. CAA section 246(a)(3) requires that all states containing all or part of an ozone and/or CO nonattainment area described above that is reclassified in the future as a serious, severe, or extreme ozone nonattainment area, or has a CO design value at or above 16.0 parts per million, must prepare revised SIPs implementing the CFF program within one year of reclassification.

Three vehicle classes are included in the CFF program: light-duty vehicles (LDVs) and light-duty trucks (LDTs) up to 8,500 lbs GVWR,[1] and heavy-duty vehicles (HDVs) between 8,500 lbs and 26,000 lbs GVWR.[2] To qualify as a CFV, a vehicle must meet one of three sets of increasingly stringent standards. These are referred to as low-emission vehicle (LEV) standards, ultra low-emission vehicle (ULEV) standards, and zero-emission vehicle (ZEV) standards.

CAA section 242(a) requires EPA to promulgate CFV emission standards for purposes of compliance with the CFF program and the Pilot program (LEV standards). In addition, section 246(f)(4) requires EPA to promulgate emission standards for purposes of the CFF program credit program (ULEV and ZEV standards). Under section 249(d)(3), the CFF credit program standards will also apply to the Pilot credit program. Therefore, vehicles that meet ULEV or ZEV standards are eligible for vehicle

[1] Gross Vehicle Weight Rating.

[2] HDVs over 26,000 lbs GVWR are not included in the mandatory program.

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purchase credits under the CFF program and for manufacturers' credits under the Pilot program.

The CAA Amendments of 1990 require EPA to promulgate a Pilot program for the sale of CFVs in the State of California. Whereas the CFF program will be run by individual states, the Pilot program is a federal program that will be administered in California. Manufacturers with motor vehicle sales in California are required to sell a minimum number of light-duty CFVs (CFVs up to 8,500 lbs. GVWR) in California on an annual basis. Manufacturers may meet their share of required sales by selling the required number of CFVs or by using earned credits or credits they have acquired from other manufacturers. (EPA established the credits program in a previous rulemaking (57 FR 60038; December 17, 1992)). To earn credits, a manufacturer may sell more CFVs than required or sell CFVs which meet stricter exhaust emission standards. Except for heavy LDTs, for model years 1996 through 2001, the compliance standards for the Pilot program are known as the TLEV standards and credits are available for LEV, ULEV and ZEV purchases. Beginning in 2001, the compliance vehicle shifts to the LEV standards, and credits are only available for ULEV and ZEV purchases. This provision commences in the 1998 model year for heavy LDTs.

The CAA also directs EPA to establish a voluntary opt in program for states that want to adopt the Pilot program. States which contain all or part of any ozone nonattainment areas classified under subpart D of Title II as serious, severe, or extreme are eligible to participate. To do so, states are to revise their state implementation plans (SIPs) to include incentives for the sale and use of CFVs as well as the production and distribution of clean alternative fuels. States may not establish CFV sales or production mandates, however.

The remainder of today's action covers light- and heavy-duty CFV exhaust emission standards, requirements for vehicle conversions to CFVs, and the Pilot program, as well as regulatory impacts of the CFF and Pilot programs. In addition, EPA has included several technical amendments and clarifications related to the Definitions rule (58 FR 64679) and the rulemaking for the CFF credits program and transportation control measure exemptions (58 FR 11888; March 1, 1993).

II. Description of Action

A. Clean-Fuel Vehicle Emission Standards

CAA section 242 requires EPA to promulgate regulations setting emission standards and other requirements for CFVs. For LDVs and LDTs, EPA is required to adopt the standards set forth in sections 242 and 243 unless it finds that the standards of the California Air Resources Board LEV program are, in the aggregate, at least as protective of public health and welfare as the federal standards that would apply to CFVs. EPA cannot make such a finding at this time so today's regulations adopt the standards set forth in the CAA.

1. Light-Duty Vehicle and Light-Duty Truck Clean-Fuel Vehicle Standards

a. *Requirements of the CAA.* Clean Air Act section 241(7) defines a CFV as a vehicle that meets the emission standards applicable under part C of Title II of the CAA. As discussed later in this preamble, CFVs will satisfy the requirements of both the Pilot program and the CFF program. The CFV emission standards for LDVs and LDTs are set forth in sections 242 and 243. (Standards for heavy-duty CFVs under section 245 of the Act are discussed in II.A.2 below.) Any LDV, LDT, or HDV that can operate on only one fuel and that meets these standards will be classified as a CFV regardless of the fuel that is used to meet the CFV standards. However, a CFV in the CFF program must operate on clean alternative fuels, as defined in section 241(2) of the Act, when operating in the covered area.

Subsections 243(a) through (d) specify LDV and LDT exhaust emission standards (50K and 100K miles)[3] for the following pollutants: non-methane organic gas (NMOG), carbon monoxide (CO), oxides of nitrogen (NO_X), diesel particulate matter (PM) (only for the 100,000 mile point), and formaldehyde (HCHO). These standards are prescribed in two phases for LDVs and light LDTs (up to 5,750 pounds loaded vehicle weight (LVW) and 6,000 pounds GVWR). Phase I applies only to the Pilot program and takes effect with the 1996 model year (MY), the first year of required sales under the Pilot program. These statutory Phase I standards are numerically identical to those which define the California Transitional Low Emission Vehicle (TLEV).[4] The Phase I standards apply to the Pilot program in MYs 1996 through 2001. Phase II standards are identical to those which define the California Low Emission Vehicle (LEV).[5] The Phase II standards apply to the CFF program in MY 1998 and to the Pilot program beginning in MY 2001. Only one set of exhaust emission standards applies to heavy LDTs (above 6,000 lbs. GVWR). These standards take effect in MY 1998 and apply to both the CFF and the Pilot program. Table 2 contains the TLEV and LEV standards for LDV and LDT CFVs.

CAA part C section 241 specifies that definitions contained in part A, section 216, shall apply to the CFV programs. The heavy LDT subcategories (i.e., above 6,000 lbs. GVWR) shown in Table 2 are based on test weight. CAA section 216(8) defines "test weight", or "TW", as the sum of the curb weight and the GVWR divided by two:

TW = (Curb weight + GVWR)/2 = ALVW

This definition was established in 40 CFR 86.129–94 by the federal Tier 1 rulemaking (56 FR 25724; June 5, 1991) and is referred to as "adjusted loaded vehicle weight", or "ALVW". The Agency chose to use ALVW, as opposed to TW, to minimize confusion with the term "equivalent test weight", which is used interchangeably with "test weight" throughout current EPA motor vehicle regulations and test procedures. Therefore, "test weight" defined in CAA section 216(8) is referred to as ALVW in this Final Rule, which is consistent with its definition established in the Tier 1 regulations.

[3] The intermediate useful life for LDV and LDTs is 50,000 (50K) miles. The full useful life for such vehicles is 100,000 (100K) miles.

[4] The California TLEV standards are effective in model years 1994 through 1996.

[5] The California LEV standards are effective in model years 1997 through 2003.

TABLE 2.— PHASE I AND II LDV AND LDT CLEAN FUEL VEHICLE EMISSION STANDARDS

Standards (Effective Dates)	Pollutant (grams/mile)				
	NMOG	CO	NO_X	HCHO	PM[1]
All LDVs; LDTs ≤3750 lbs LVW; ≤6000 lbs GVWR:					
Phase I (1996 MY):					
50,000 miles	0.125	3.4	0.4	0.015	...
100,000 miles	0.156	4.2	0.6	0.018	0.08
Phase II (1998 MY for CFFP; 2001 MY for Pilot program):					
50,000 miles	0.075	3.4	0.2	0.015	...
100,000 miles	0.090	4.2	0.3	0.018	0.08
LDTs >3750 and ≤K5750 lbs LVW; ≤6000 lbs GVWR:					
Phase I (1996 MY):					
50,000 miles	0.160	4.4	0.7	0.018	...
100,000 miles	0.200	5.5	0.9	0.023	0.08
Phase II (1998 MY for CFFP; 2001 MY for Pilot program):					
50,000 miles	0.100	4.4	0.4	0.018	...
100,000 miles	0.130	5.5	0.5	0.023	0.08
LDTs >6000 lbs GVWR (1998 MY):					
≤3750 lbs ALVW:					
50,000 miles	0.125	3.4	[2]0.4	0.015	...
120,000 miles	0.180	5.0	0.6	0.022	0.08
3750< LDTs ≤6575 lbs ALVW:					
50,000 miles	0.160	4.4	[2]0.7	0.018	...
120,000 miles	0.230	6.4	1.0	0.027	0.10
5750< LDTs ≤8500 lbs ALVW:[3]					
50,000 miles	0.195	5.0	[2]1.1	0.022	...
120,000 miles	0.280	7.3	1.5	0.032	0.12

[1] Applicable to diesel-fueled vehicles only.
[2] Standards not applicable to diesel-fueled vehicles.
[3] Option of certifying HDEs in vehicles up to 10,000 lbs GVWR using the LDT standards.

CAA section 242(c) lists the useful life and in-use testing limitations for purposes of determining in-use compliance with the standards in section 243. The useful life for CFVs is the same as adopted in EPA's regulations for 1994 and later model year LDVs and LDTs, commonly called Tier 1 standards (56 FR 25724, June 5, 1991). For LDVs and LDTs, the standards in section 243 are established at the intermediate useful life of five years or 50,000 miles (5/50,000), whichever occurs first, and a full useful life of 10 years or 100,000 miles (10/100,000), whichever occurs first (see Table 2). With respect to in-use testing, however, section 242(c) provides that such testing for these vehicle classes would not be done beyond seven years or 75,000 miles, whichever occurs first. The analogous intermediate and full useful life levels for heavy LDTs are 5/50,000 and 11/120,000, respectively (see Table 2). Similarly, section 242(c) provides that the in-use testing for these vehicles would not be done beyond seven years or 90,000 miles, whichever occurs first.

While the standards described above apply to single fuel CFVs, subsection 243(d) also establishes different CFV NMOG standards for dual and flexible fuel LDVs and LDTs.[6] These vehicles are to be certified to two sets of NMOG standards (Table 3). One set contains the same NMOG levels that apply to single fuel CFVs; dual and flexible fuel vehicles must meet this standard when operating on the clean alternative fuel on which they are certified (section 243(d)(2)). The second set of NMOG standards applies to flexible and dual fuel vehicles when operated on conventional fuel for which they are certified (section 243(d)(3)).[7] This second set of standards is, in effect, equivalent to the next less stringent set of standards for the applicable vehicle category and model year. For example, the Phase I NMOG standard for flexible or dual fuel CFVs using conventional fuel is equivalent to the Tier I non-methane hydrocarbon (NMHC) emissions standard.[8] The Phase II NMOG standard for flexible or dual fuel CFVs using conventional fuel is equivalent to the Phase I standard for single fuel CFVs. The NMOG standards for flexible and dual fuel vehicles are listed in Table 3. Flexible or dual fuel vehicles must comply with all other CFV exhaust standards shown in Table 2 and with all other applicable requirements of Title II.

[6] Dual fuel vehicle is defined as any motor vehicle or motor vehicle engine engineered and designed to be operated on two different fuels, but not on a mixture of the fuels. The term "bi-fuel" is often used for this type of design. Flexible fuel vehicle is defined as any motor vehicle or motor vehicle engine engineered and designed to be operated on any mixture of two or more different fuels. The term "variable-fuel" is often used for this type of design. These definitions are contained in section § 88.102–94 of the regulatory text.

[7] CAA section 241 requires that dual and flexible fuel vehicles are to operate on the fuels on which they are certified. As discussed in the CFF credit program and TCM exemptions rulemaking (58 FR 11888, March 1, 1993), dual and flexible fuel vehicles shall operate only on the clean alternative fuel on which they are certified to the CFV standards when operating in a covered area, as provided in section 246(a)(2).

[8] NMOG and NMHC emissions are essentially equivalent when the fuel combusted is conventional gasoline.

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TABLE 3.—NMOG STANDARDS FOR FLEXIBLE- AND DUAL-FUELED VEHICLES

Vehicle subclass	Standard[1] (g/mi)	
	50,000mi	100,000mi
LDVs, LDTs (≤6000 lbs GVWR):		
Beginning MY 1996 for Pilot program:		
LDTs (0–3,750 lbs. LVW), LDTs	0.125/0.25	0.156/0.31
LDTs (3,751–5,750 lbs. LVW)	0.160/0.32	0.200/0.40
Beginning MY 1998 for CFFP; MY 2001 for Pilot program:		
LDTs (0–3,750 lbs. LVW), LDVs	0.075/0.125	0.090/0.156
LDTs (3,751–5,750 lbs. LVW)	0.100/0.160	0.130/0.200
LDTs (>6,000 lbs GVWR):		
Beginning MY 1998:		
LDTs (0–3,750 lbs. ALVW)	0.125/0.25	0.180/0.36
LDTs (3,751–5,750 lbs. ALVW)	0.160/0.32	0.230/0.46
LDTs (>5,750 lbs. ALVW)	0.195/0.39	0.280/0.56

[1] The standards are presented for flexible- and dual-fueled CFVs when operating on clean alternative fuel and conventional fuel in the format "x/y" where x represents the NMOG standard when the vehicle is operated on a clean alternative fuel and y represents the NMOG standard when the vehicle is operated on a conventional fuel.

CAA section 246(f)(4) directs EPA to establish additional CFV standards for ULEVs and ZEVs (discussed earlier). These standards, shown in Table 4, should be more stringent than the CFV standards in section 243. Vehicles meeting these more stringent standards are eligible to earn credits which may be used toward compliance under the CFF program or the Pilot program, as specified in sections 246(f) and 249(d)(3), respectively. The Act requires EPA to set these more stringent standards for LDVs and LDTs so that they conform "as closely as possible" to the ULEV and ZEV standards established by California for vehicles in the same class. The California ULEV and ZEV standards are described below in section A.1.b. in this preamble.

TABLE 4.—LDV AND LDT CLEAN FUEL VEHICLE ULEV EMISSION STANDARDS

Vehicle category	Pollutant (grams/mile)				
	NMOG	CO	NO_x	HCHO	PM[1]
LDVs & LDTs ≤3750 lbs LVW; ≤6000 lbs GVWR					
50,000 miles	0.040	1.7	0.2	0.008	0.08
100,000 miles	0.055	2.1	0.3	.011	0.04
LDTs >3750 and ≤5750 lbs LVW; ≤6000 lbs GVWR:					
50,000 miles	0.050	2.2	0.4	0.009	0.08
100,000 miles	0.070	2.8	0.5	0.013	0.04
LDTs >6000 lbs GVWR (1998 MY):					
≤3750 lbs ALVW:					
50,000 miles	0.075	1.7	0.2	0.008	
120,000 miles	0.107	2.5	[2]0.3	0.012	0.04
3750< LDTs ≤5750 lbs ALVW:					
50,000 miles	0.100	2.2	0.4	0.009	
120,000 miles	0.143	3.2	[2]0.5	0.013	0.05
5750< LDTs ≤8500 lbs ALVW:[3]					
50,000 miles	0.117	2.5	0.6	0.011	
120,000 miles	0.167	3.7	[2]0.8	0.016	0.06

[1] Applies to diesel vehicles only.
[2] Does not apply to diesel vehicles.
[3] Option of certifying HDEs in vehicles up to 10,000 lbs GVWR using the LDT standards.

CAA section 242(b) states that CFVs up to 8,500 lbs. GVWR "shall comply with all motor vehicle requirements of this title (i.e., on-board diagnostics, evaporative emissions, etc.) which are applicable to conventional gasoline-fueled vehicles of the same category and model year, except as provided in section 244 with respect to administration and enforcement, and except to the extent that any such requirement is in conflict with the provisions of" part C. These include, but are not limited to, standards for cold temperature CO exhaust emissions (cold CO), on-board diagnostics (OBD), evaporative emission controls (evap), and onboard refueling vapor recovery (ORVR). Previous requirements such as crankcase controls and vehicle labeling also apply.

CAA section 243(e) directs EPA to apply the standards of the California Air Resources Board (CARB) LEV program in lieu of the standards otherwise applicable to CFVs under sections 242 and 243 if the CARB standards are, in the aggregate, at least as protective of public health and welfare as the federal standards that apply to CFVs. Section 243(e)(1) addresses the replacement of CAA standards if CARB promulgates a single set of standards while section 243(e)(2) addresses the replacement if CARB promulgates multiple sets of standards. CARB's LEV program contains multiple sets of standards to which vehicles can certify (i.e., LEV, ULEV, and ZEV); therefore, section

243(e)(2) is the appropriate language for consideration and is provided below:

Section 243(e)(2): If the State of California promulgates regulations establishing and implementing several different sets of standards applicable in California pursuant to a waiver approved under section 209 to any category of vehicles referred to in subsection (a), (b), (c), or (d) of this section and each of such sets of California standards is, in the aggregate, at least as protective of public health and welfare as the otherwise applicable standards set forth in section 242 and subsection (a), (b), (c), or (d) of this section, such standards shall be treated as 'qualifying California standards' for purposes of this paragraph. Where more than one set of qualifying standards are established and administered by the State of California, the least stringent set of qualifying California standards shall apply to the clean-fuel vehicles concerned in lieu of the standards otherwise applicable to such vehicles under section 242 and this section.

EPA believes that the required comparison between the federal and CARB standards is not limited to the CFV exhaust emission standards of sections 242 and 243 but must also include the other Title II standards referred to in CAA section 242 (i.e., OBD, evap, etc.) and any California counterparts. Thus, EPA is required to compare the standards in CAA sections 242(b) and 243 with the CARB standards to determine whether the CARB standards should replace the federal standards.

As is discussed below in Section II.c., EPA cannot at this time make the determination that each set of CARB standards is, in the aggregate, at least as protective as the federal standards that apply to CFVs. Therefore, this final rule promulgates the emission standards and requirements for CFVs found in sections 242 and 243 of the CAA. EPA's reasoning to support this conclusion is included in Section II.c.

Finally, CAA section 244 provides requirements regarding the administration and enforcement of CFV exhaust emission standards. In the event that numerical emission standards for CFVs up to 8,500 lbs. GVWR are the same under the federal and California LEV program, EPA is to administer and enforce those standards in the same manner and with the same flexibility as CARB does under the California LEV program. This requires utilizing the same interpretations and policy judgments including, but not limited to, requirements regarding certification, production-line testing, and in-use compliance. The application of California's administration and enforcement practices does not depend on whether EPA replaces federal requirements with California requirements under section 243(e). If the Administrator determines that adopting California's administration and enforcement approaches would not meet the criteria for a waiver under section 209, then federal administration and enforcement procedures and interpretations would apply.

b. *CARB's Low-Emission Vehicle Standards.* Pursuant to CAA section 209, the State of California applied to EPA for a waiver on October 4, 1991 for its "Low-Emission Vehicle and Clean Fuels Regulations". EPA granted the waiver on January 7, 1993 (58 FR 4166, January 13, 1993). (Although states are generally preempted by CAA section 209 from adopting their own motor vehicle standards, California may adopt its own standards provided that EPA waivers the preemption provision of section 209.)

California's regulations establish four new levels of vehicle emission standards, termed "vehicle emission categories", for LDVs, LDTs, and medium-duty trucks (MDTs).[9] These new standards are effective with 1994 model year vehicles.[10] The California emission categories are, in order of increasing stringency: TLEV (Transitional Low Emission Vehicle); LEV (Low Emission Vehicle); ULEV (Ultra Low Emission Vehicle); and ZEV (Zero Emission Vehicle). The TLEV exhaust emission standards for NMOG, CO, NO_x, PM, and HCHO are identical to the federal Phase I CFV standards described above. The LEV exhaust emission standards are identical to the federal Phase II CFV standards. The California ULEV and ZEV standards are the same as the federal ULEV and ZEV categories, established for purposes of the CFF and Pilot program credit programs. CARB defines a ZEV as:

• • • any vehicle which is certified • • • to produce zero emissions of any criteria pollutants under any and all possible operational modes and conditions. A ZEV may be equipped with a fuel fired heater provided that the fuel fired heater cannot be operated at ambient temperatures above 40 degrees Fahrenheit and the heater is demonstrated to have zero evaporative emissions under any and all possible operational modes and conditions.[11]

CARB is allowing the use of intermediate in-use compliance standards that are intended to facilitate compliance by vehicle manufacturers. These in-use standards are numerically half way between the certification standards of the new emission category and the old emission category (e.g., half way between TLEV and LEV standards). These intermediate standards will be effective through MY 1995 for TLEVs and through MY 1998 for LEVs and ULEVs.

c. *Comparison of CAA and CARB Requirements.* As discussed above, CAA section 243(e) provides that CARB's standards shall replace the federal CFV and other motor vehicle standards if the CARB standards are, in the aggregate, at least as protective of public health and welfare as the CAA standards. While EPA believes that Congress preferred that the statutory standards be replaced with the CARB standards, EPA cannot at this time make the determination that CARB standards are, in the aggregate, at least as protective as the federal standards. Therefore, as mentioned earlier, EPA is at this time establishing federal standards that will apply to CFVs in the CFF and Pilot program.

As stated in the proposal, EPA believes that section 243(e)(2) requires a separate comparison of federal Phase I and Phase II standards to CARB standards. For the least stringent set of federal CFV standards (the Phase I standards), the appropriate comparison is to the least stringent set of California CFV standards (the TLEV standards). Similarly, the appropriate comparison for the federal Phase II standards is with the California LEV standards.

The Phase I standards will apply to the Pilot program in the 1996 MY. The phase II standards will apply to the CFF program in the 1998 MY, and to the Pilot program in the 2001 MY. Therefore, the federal Phase I standards will not apply to any federal CFV program after MY 2001. For this reason, EPA considers the California LEV standards to be the least stringent set of qualifying California standards after MY 2001, and currently intends to apply the California LEV standard to the CFF and Pilot programs at that time if replacement of the federal Phase II standards is warranted under section 243(e)(2). EPA requested comment in the proposal on this interpretation of the CAA and no adverse comments were received.

EPA must also compare CARB standards to the following federal requirements that apply to CFVs to assess whether "each of such sets of California standards is, in the aggregate, at least as protective" as the federal standards: cold CO emissions, evaporative emissions, onboard refueling vapor recovery, on-board diagnostics, total hydrocarbons, and non-methane hydrocarbon standards.

[9] The medium-duty truck class is a vehicle class unique to CARB and includes trucks between 6,000 and 14,000 lbs GVWR.

[10] See CARB's Proposed Regulations for Low-Emission Vehicles and Clean Fuels, Staff Report, available in EPA Air Docket A-91-23.

[11] California Code of Regualtions, Title 13, Definitions Section, Paragraph 15.

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These standards are compared individually below.

i. *Cold CO emissions.* The currently waived California program does not have a cold CO standard which corresponds to the federal cold CO standard. It is not yet possible for EPA to consider CARB's cold CO standards in its comparison of the respective mobile source programs since California has not yet requested nor received a waiver.

In vehicles using liquid fuel, the difficult process of vaporizing cold liquid fuel for combustion contributes significantly to cold start emissions. Gasoline vehicles are most susceptible to this phenomenon in cold conditions. On July 17, 1992, EPA promulgated a cold CO standard (57 FR 31888, 40 CFR 86.201) in order to control CO emissions from gasoline-powered vehicles when operating in cold temperatures.[12] These regulations became effective for MY 1994. Although these regulations cover only gasoline-fueled vehicles, CAA section 242(b) extends the regulations to all CFVs regardless of fuel type by requiring that CFVs meet all federal requirements of Title II of the CAA that apply to gasoline vehicles of the same category and model year.

On January 14, 1993, CARB approved a cold CO standard which became effective in September 1993. CARB's regulations include gasoline-fueled, LPG, and alcohol-fueled vehicles, but do not cover other fuels. EPA is not able at this time to consider the CARB cold CO regulations because CARB has not requested nor received a waiver of federal preemption for its cold CO requirements.

ii. *Evaporative emissions.* The currently waived CARB evaporative emission standards and test procedures are not comparable to the recently promulgated federal evaporative emission standards and test procedures. Current federal regulations for evaporative emissions testing are effective through MY 1995, after which new federal regulations will be phased in. California has two sets of new evaporative emissions regulations: one set will be implemented only for 10 percent of California's MY 1995 vehicles and the second set, which CARB is in the process of finalizing at this time, will be phased in beginning in MY 1996. Indications are that CARB will seek a waiver for their 1996 evaporative emission regulations once they are finalized. EPA cannot yet consider CARB's revised evaporative emission regulations applicable to the 1995 and later model years because CARB has not yet received a waiver for them.

iii. *Refueling emissions.* Based on the currently waived California program, EPA cannot at this time conclude that CARB's refueling emission control regulations are as stringent as the federal onboard refueling vapor recovery (ORVR) standards. The currently waived California Program does not have a mobile source component which addresses refueling emissions. Federal Title II standards for ORVR will be required on certain vehicles beginning in MY 1998 (59 FR 16262; April 6, 1994).[13] CARB, which currently requires the use of Stage II vapor recovery equipment at most service stations in California, has held two workshops to discuss the proper application of refueling control (November 2, 1993 and March 15, 1994). CARB considered three options: adopting the federal ORVR regulations.; adopting a California-specific ORVR rule, test, or standard; or maintaining that California's current motor vehicle control program is, in the aggregate, at least as protective as the federal program notwithstanding the lack of ORVR controls. In a recent CARB mailout (94–27) dated May 27, 1994, ARB staff announced their proposal to allow the certification of ORVR-equipped vehicles for sale in California. However, the ARB staff did not address the equipped vehicles for sale in California. However, the ARB staff did not address the specific issue of whether ARB will require ORVR controls for certification. California's final determination regarding ORVR control must ultimately be approved by the Air Resources Board.

EPA is likely to consider California's lack of an ORVR aspect of its program in the next section 209 waiver proceeding for CARB regulations applicable to model years 1998 and later. EPA will likely decide in that context whether California's motor vehicle program absent ORVR is at least as protective of California as the federal program.

iv. *Volatile organic compound emissions.* EPA and California use different approaches to regulate emissions of volatile organic compounds (VOCs) from vehicles. Therefore, EPA believes it is useful to compare California VOC emission standards to the analogous federal standards on a fuel-by-fuel basis, as presented below. For gasoline- and diesel-fueled vehicles, EPA concludes that the CARB VOC emission standards are individually at least as stringent as the federal standards. However, EPA cannot make this comparison for gaseous and alcohol fuels at this time because CARB has not yet finalized RAFs (reactivity adjustment factors) for these fuels.

v. *Fuel-by-fuel comparison.* As stated above, EPA and CARB use different approaches to establish VOC emission standards. Traditionally, federal organic emissions controls have been based on total hydrocarbon (THC) emissions where mass of THC emissions is measured by a flame ionization detector (FID), implicitly assuming that all hydrocarbon emissions behave similarly with respect to ozone reactivity and FID response. This approach is not used for methanol-fueled vehicles because emissions from these vehicles consist primarily of methanol and formaldehyde, and a FID will only detect about 70 to 80 percent of the methanol and very little of the formaldehyde. For methanol-fueled vehicles, the methanol and formaldehyde emissions are sampled separately and measured chromatographically while other emissions are measured by a FID. The oxygen mass is factored out of the methanol and formaldehyde emissions resulting in "equivalent hydrocarbon emissions", which are then summed with the other FID-measured hydrocarbons to yield organic material (or total) hydrocarbon equivalent (OMHCE or THCE) mass. A third approach involves separately measuring methane and subtracting it from the THC to result in a non-methane hydrocarbon (NMHC) mass. For methanol-fueled vehicles, NMHC is equivalent to OMNMHCE (organic material non-methane hydrocarbon equivalent) or NMHCE (non-methane hydrocarbon equivalent).

The CAA has established THC and NMHC exhaust emission standards for conventional light-duty gasoline and diesel vehicles (0.41 g/mile for THC and 0.25 g/mile for NMHC). EPA has also established OMHCE and OMNMHCE standards for methanol-fueled vehicles (0.41 and 0.25 g/mile, respectively), an NMHC standard for CNG-fueled vehicles (0.25 g/mile), and THC and NMHC standards for LPG-fueled vehicles identical to the gasoline THC and NMHC standards.[14]

CARB measures VOC emissions as non-methane organic gases (NMOG). Under this approach, the mass of each organic compound except methane is measured and adjusted according to its ozone-forming reactivity relative to gasoline emissions. The sum of these adjusted masses is the amount of NMOG emitted from the vehicle. An alternative CARB NMOG method involves measuring the total mass of organic emissions and multiplying this mass by a single RAF for the particular fuel used. A RAF is equivalent to the ratio of the ozone-forming potential of emissions from a given fuel and the ozone-forming potential of conventional gasoline emissions. CARB determines a RAF for each fuel. Therefore, the relative stringency of the CARB and EPA standards for organic emissions should be compared for each fuel individually.

Gasoline and Diesel Fuel

For gasoline- and diesel-fueled vehicles, NMHC and NMOG standards are equivalent since CARB has established a RAF of 1.0 for these fuels. In addition, since the methane fraction of the THC emissions from these vehicles is very low,[15] and since CARB's TLEV and LEV NMOG standards (.125 and .075 g/mile, respectively) are well below the federal THC standard (0.41 g/mile), vehicles designed to meet the CARB NMOG standard will not exceed the federal THC standard. Thus, for gasoline- and diesel-fueled vehicles, the CARB NMOG standards are at least as stringent as the federal THC and NMHC standards.

CNG Fuel

The equivalency of CARB's NMOG standard with the federal NMHC standards cannot be strictly determined at this point for natural gas vehicles since CARB has not finalized a RAF for natural gas. Indications are that CARB may enact a CNG RAF between 0.5 and 0.6. If CARB adopts a RAF of 0.5 or more, then EPA expects that the CARB TLEV NMOG standard of 0.125 grams/mile (representing the least stringent set of CARB standards) will be at least as stringent as the 0.25 grams/mile federal NMHC standard. A RAF of 0.3 or more would make the CARB LEV NMOG standard of 0.075 grams/mile equivalent to the federal NMHC standard.

CNG vehicles being certified as CFVs for use in the CFF and Pilot program will not be subject to the federal THC standard, therefore, a comparison of the relative stringency between the federal THC and the CARB NMOG standard is not appropriate. In the Pilot program NPRM (58 FR 34727, June 29, 1993), EPA requested comment on the appropriateness of applying a THC standard to natural gas CFVs even though a THC standard is not applied to other natural gas vehicles. EPA believes that requiring CNG vehicles to meet the federal THC standard would exclude CNG vehicles from participating in the CFF and Pilot programs. CNG vehicles do produce high methane emissions; however, these emissions have a very low ozone reactivity and are therefore not a significant contributor to ozone formation, which is a primary objective of both programs.[16] In addition, CNG vehicles typically produce lower NMHC emissions than gasoline-fueled vehicles. Therefore, although a THC standard would strictly limit the amount of methane emissions a CNG vehicle could emit, this result would be contrary to the ozone-reduction goals of the programs when methane reactivity and lower NMHC emissions of CNG vehicles relative to gasoline-fueled vehicles are considered. A further consideration in deciding whether to apply a THC standard to CNG CFVs was the Agency's desire to maintain consistency with its Gaseous Fuels rule whenever possible; that rule also does not apply THC standards to CNG vehicles. Commenters were not supportive of CNG vehicles, including CFVs, being subject to a THC standard.

LPG Fuel

CARB has not finalized a RAF for LPG fuel. Therefore, EPA cannot at this time strictly compare the CARB NMOG standard to the federal NMHC standard for LPG vehicles. However, as with CNG, if CARB adopts a RAF of at least 0.5, EPA expects that the CARB TLEV and LEV NMOG standard will be individually at least as stringent as the federal NMHC standard.

Alcohol Fuels

CARB has finalized a RAF of 0.41 for M85 vehicles and EPA's analysis indicates that the CARB NMOG standard is individually as protective as the federal NMHC equivalent standard for M85 fuel. However, CARB has not established a RAF for E85 and M100 fuel. EPA thus cannot determine at this time whether the CARB NMOG standards are individually as protective of public health and welfare as the federal NMHC equivalent standards for all alcohol-fueled vehicles.

Regarding THC, methane emissions from alcohol-fueled vehicles, as with gasoline- and diesel-fueled vehicles, are generally low enough that vehicles meeting the CARB NMOG standards would also comply with the federal THC standards. Therefore, EPA concludes that the CARB NMOG standards are individually at least as stringent as the federal THC standard.

vi. *Onboard diagnostics.* The currently waived California onboard diagnostic I (OBD I) regulation is not comparable to the recently promulgated federal OBD regulation (58 FR 9468, February 19, 1993). The recently promulgated federal OBD regulation is comparable to the recently revised California OBD II regulation. In fact, EPA has decided that vehicles demonstrating compliance with CARB onboard diagnostic (OBD) regulations will be deemed to satisfy federal OBD requirements through the 1998 model year. However, EPA cannot properly consider California's OBD II regulations under section 243(e) of the CAA because California has not yet received a waiver of federal preemption for them. Thus, in subsequent model years after 1998, vehicle OBD systems must comply with the federal OBD requirements.

vii. *Summary.* While the basic CFV exhaust standards are identical to CARB standards, EPA is not able to find that each set of currently waived CARB standards are as protective as the federal standards. By comparison to the federal program established for CFVs today pursuant to section 242 and 243, the California program lacks comparable components for at least the federal cold CO standards, recently promulgated evaporative emission standards and on-board diagnostics, as well as mobile source control for vehicle refueling vapor recovery. Since EPA cannot at this time make the required determination under section 243(e)(2), EPA is promulgating federal standards and requirements in this final rule that will apply to CFVs. The CAA exhaust standards will apply to clean fuel vehicles, and will be administered and enforced according to CARB practices under CAA section 244, which is discussed later under "Administration and Enforcement".

Pursuant to section 242(b), federal requirements for cold CO, evaporative emissions, refueling emissions, OBD (onboard diagnostics), NMHC, and, with certain exceptions, THC will also apply to CFVs. As proposed, EPA is waiving

[12] CAA Section 202(j) contains provisions for cold CO requirements.

[13] The phase-in schedule requires that ORVR standards apply to 40 percent of each manufacturer's LDV sales volume in MY 1998, 80 percent in 1999, and 100 percent in MY 2000. The same phase-in schedule applies to LDTs up to 8,500 lbs. GVWR but will not begin until MY 2001 for LDTs up to 6,000 lbs. GVWR and in MY 2004 for LDTs between 6,001 and 8,500 lbs. GVWR. The requirements do not apply to vehicles above 8,500 lbs. GVWR.

[14] EPA Gaseous Fuels Rule: "Standards for Emissions from Natural Gas-Fueled, and Liquified Petroleum Gas-Fueled Motor Vehicles and Motor Vehicle Engines and Certification Procedures for Aftermarket Conversion Hardware." (Published in the **Federal Register** on September 21, 1994).

[15] U.S. Environmental Protection Agency, Office of Mobile Sources, "Specifications for S.A.I. Runs," Memorandum from Chris Lindhjem, Penny Carey, and Joe Somers to the Record, April 24, 1992.

[16] See CAA sections 246, 247, and 248.

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testing requirements for the cold CO standards for gaseous-fueled, diesel-fueled and electric CFVs when manufacturers demonstrate compliance with the cold CO standard through engineering analysis or test data.[17] EPA does not expect problematic cold temperature CO emissions from gaseous-fueled CFVs since they do not generally use fuel enrichment strategies to aid with cold starts. Because of efficient combustion in diesel-fueled vehicles and the minimal emissions inherent with electric vehicles, EPA does not expect problematic cold CO emissions from these vehicles either. Also as discussed above, EPA will not require CNG vehicles to meet the THC standard due to the conflict with provisions of part C of the Act and other factors.

In the NPRM, EPA had anticipated that the regulatory processes underway would allow EPA to conclude at the time of this final rule that each set of California standards is, in the aggregate, at least as protective of public health and welfare as the otherwise applicable standards set forth in section 242 and 243. The Agency still believes that such a conclusion may be possible in the future. EPA will continue to monitor developments on these issues and, if changing circumstances warrant, EPA intends to revisit this rule and propose replacing the federal CFV standards with CARB standards under section 243(e)(2). In such a situation, the Agency will supplement the record and provide an opportunity for comment as appropriate.

d. *Credit Generating Standards.* As mentioned previously, the CAA requires EPA to establish standards for Ultra-Low Emission Vehicles (ULEVs) and Zero Emission Vehicles (ZEVs) which are more stringent than the standards that otherwise apply to CFVs. Section 246(f)(4) of the CAA states that, "[t]he standards established by the Administrator under this paragraph for vehicles under 8,500 lbs. GVWR or greater shall conform as closely as possible to standards which are established by the State of California for ULEV and ZEV vehicles in the same class". As proposed, EPA is promulgating the ULEV and ZEV standards established by CARB in the California LEV program as the federal ULEV and ZEV standards. Section 249(d)(3) specifies that these and other requirements established for purposes of the credit program for the Clean Fuel Fleet program shall also apply for purposes of issuing credits in the Pilot Program.

A ZEV (e.g., an electric vehicle) is defined as a vehicle that complies with the applicable ZEV standards (40 CFR 88.101). Like CARB, EPA will determine compliance with the ZEV standard through engineering analysis rather than by testing. As per section 244 of the CAA, the federal ZEV standards will be administered and enforced in accordance with applicable CARB procedures for LDVs and LDTs.

Consistent with the CARB, EPA is establishing ZEV standards which require zero emissions of the following pollutants: NMOG, NO_x, CO, particulates, and HCHO. (Emissions from non-fuel sources, like tires, seats, paint, etc., will likely exist as they do for conventional vehicles and other CFVs.) Compliance with this requirement may be assessed through engineering analysis. This analysis will include a description and analysis of all primary or auxiliary equipment and engines which concludes that no emissions of the stated pollutants is possible. The engineering analysis will determine that the vehicle fuel system(s) does not contain either carbon or nitrogen compounds (including air) which, when burned, form the above regulated exhaust emissions. Such criteria will also assure that evaporative emissions will not occur. Emission testing will not be necessary. When applicable, compliance testing on ZEVs may be performed according to the testing requirements of CFR Part 86 and 88 (Federal Test Procedure) at EPA's discretion. As with other CFVs, ZEVs will be subject to the standards of part 88 which will be administered per CARB's procedures for LDVs and LDTs and which are incorporated by reference.

Like CARB, EPA will consider a vehicle with an auxiliary heater to be a ZEV if the heater will not operate at ambient temperatures above 40 degrees Fahrenheit and the heater's power and/or fuel source does not have any evaporative emissions in use. Commenters responding to this issue supported this definition, on which EPA requested comment in the NPRM. This auxiliary heater will not be subject to the cold CO standard (contained in 40 CFR Part 86.201–94) because the cold CO regulations do not require the testing of heaters. In addition, CARB has provided a specific exemption for ZEVs from the CARB cold CO requirements (whether or not the vehicle is equipped with an auxiliary heater); thus EPA's action on this issue is consistent with CARB's approach. EPA may reconsider subjecting ZEV auxiliary heaters to the federal cold CO requirement through regulation if circumstances warrant in the future. Any vehicle with additional power system(s) or auxiliary engine(s) that might produce regulated pollutants (e.g., a hybrid vehicle or electric vehicle with an auxiliary power source to run other vehicle systems) will be subject to the standards of 40 CFR Part 88 (administered per CARB procedures, which are incorporated by reference) or future applicable regulations and might not qualify as a ZEV. One respondent requested that EPA establish ZEV exhaust emission standards above zero such that hybrid electric vehicles may qualify as ZEVs. EPA has not promulgated a test procedure for such vehicles and therefore standards have not been established.

e. *Administration and Enforcement Per California Practice.* As proposed in the NPRM, EPA will administer and enforce the numerical CFV exhaust emission standards in the same manner as does the state of California. Section 244 of the Act directs EPA to administer and enforce the numerical CFV emission standards in the same manner as CARB does for vehicles less than 8,500 lbs. GVWR. Specifically, section 244 states that when the applicable CAA and CARB numerical standards are the same,

> Such standards shall be administered and enforced by the Administrator (1) in the same manner and with the same flexibility as the State of California administers and enforces corresponding standards * * *; and (2) subject to the same requirements, and utilizing the same interpretations and policy judgments, as are applicable in the case of such CARB standards, including, but not limited to, requirements regarding certification, production-line testing, and in-use compliance.

The application of California administration and enforcement procedures does not depend on whether EPA has replaced federal CFV standards with California standards under section 243(e). Section 246(f)(4) provides that the credit generating standards are to be administered and enforced in the same manner as the other CFV standards. Therefore, EPA will administer and enforce the ULEV and ZEV standards in the same manner as does CARB.

Section 244 states that EPA shall use California administration and enforcement procedures unless EPA determines that doing so will not meet the criteria for a waiver of preemption under section 209. EPA believes that the application of current California procedures would meet the criteria for a section 209 waiver. However, in a letter dated February 17, 1994, CARB requested that EPA waive preemption under section 209 for certain proposed amendments to California certification test procedures. EPA is currently analyzing this waiver request to determine whether these test procedure amendments meet the criteria for a waiver under section 209. For example, EPA must determine if the California enforcement procedures, as amended, are consistent with section 202(a) of the Act.

Until it has completed its analysis of the waiver request, EPA cannot present a determination that the amended California regulation, and thus California administration and enforcement, do not meet the criteria for a waiver under section 209. Given that section 244 directs EPA to adopt California's procedures unless it makes such a determination, EPA believes that it is required to adopt today California's administration and enforcement procedures. EPA believes this adoption is in accordance with the plain language of section 244. If EPA later determines that the California enforcement procedures do not meet the section 209 waiver criteria, it will propose to amend its regulation regarding enforcement of CFVs according to California procedures.

California procedures currently require certification testing of gasoline vehicles either on California reformulated gasoline or on the current federal gasoline test fuel called "indolene." EPA believes that adopting this requirement as a part of adopting California administration and enforcement procedures will allow manufacturers to certify vehicles both for California as well as the other 49 states. In most cases, EPA believes that vehicle designs likely to be certified on California reformulated gasoline to the CFV standards will be capable of being certified to those standards on indolene as well with no technological changes.

It is possible that some manufacturers may wish to certify vehicles on a gasoline formulation different from either California reformulated gasoline or indolene. For example, a manufacturer may wish to certify and market a CFV engine family for use by fleet operators only in areas where federal reformulated gasoline requirements apply, but where California reformulated gasoline is unavailable or expensive. A CFV engine family certified only on California reformulated gasoline would not be an attractive option to fleet operators in areas covered by federal reformulated gasoline requirements because the vehicles in that family will not have been demonstrated to comply with the CFV standards on federal reformulated gasoline. If certifying that family to the CFV standards on indolene would require additional emission control development effort over the California-fuel version, but certifying on a federal reformulated fuel would not, the manufacturer might prefer to certify on a fuel representative of federal reformulated gasoline. Thus, such a manufacturer might choose to market a line of CFVs which could use the local fuel (reformulated gasoline) instead of only marketing California-fuel versions. In this kind of situation, then, allowing manufacturers the option of certifying to the CFV standards on other gasoline formulations might provide fleets covered by the CFF program with an additional vehicle choice, one which may help them comply in a cost-effective manner with the requirement that they operate their CFVs in covered areas only on fuels on which the vehicles comply with the CFV standards.

While the California procedures adopted here do not appear to permit certification on gasoline different from California reformulated gasoline or indolene, EPA is considering whether it has the authority to propose and promulgate a provision which would permit manufacturers to request certification on a different gasoline formulation. Particularly if interest is shown in such a provision on the part of fleets, vehicle manufacturers, fuel producers, states, or other interested parties, EPA may issue a proposed rule to permit certification on any gasoline formulation.

With respect to the NMOG standard, CAA sections 241(3) and 241(4) provide definitions for NMOG and base gasoline to be used in determining reactivity adjustments for alternative fuels. Section 241(4) further provides that EPA is to modify these definitions and the method used for determining reactivity adjustment factors to conform to the definitions and method used by CARB, provided CARB's definitions are, in the aggregate, at least as protective of public health and welfare as the CAA definitions. CARB's definition of NMOG, contained in the "definitions" section of its LEV program regulations, is identical to the CAA definition. The CAA section 241(4) specifications for "base gasoline" for the most part fall within the specification ranges for CARB's "baseline", i.e., "conventional", gasoline used by CARB in establishing the RAF for methanol-fueled vehicles.[18] Thus, EPA concludes that CARB's regulatory definition of "conventional gasoline" is at least as protective as the CAA definition of base gasoline for determining RAFs.

To ensure that the administration and enforcement of the CFV exhaust emission standards is undertaken in conformance with section 244, EPA incorporates by reference CARB's test procedures and other regulatory provisions regarding administration and enforcement. (The California Regulatory Requirements Applicable to the Clean Fuel Fleet and California Pilot Programs, April 1, 1994, have been incorporated by reference in 40 CFR 88.104–94(k)(2).) Any vehicle certified by CARB in California to the same CFV exhaust emission standards promulgated today will be considered to satisfy the requirements for certification to the federal CFV exhaust standards although the vehicle must meet all other Title II requirements as well as qualify as a CFV. For federal standards which are not currently identical to CARB requirements (e.g., cold CO emissions, evaporative emissions, THC, NMHC), the existing federal administration and enforcement provisions, including the applicable test procedures, will apply.

Provisions established in the Motor Vehicle and Engine Compliance Program Fees rule (57 FR 30044, July 7, 1992) give EPA the authority to recover all reasonable costs associated with enforcement and compliance activities performed by EPA. CFVs certified for use in the Pilot program may be subject to California-only fees if a manufacturer only intends to sell the CFV in California. However, other CFVs certified under the same process may be subject to fees applicable for a federal certificate. This would be the case if such CFVs were sold outside of California (e.g., CFVs used in the CFF program outside California).

As EPA proposed in the NPRM, vehicles certified as CFVs are to be labeled according to CARB's revised motor vehicle emission control label specifications.[19] These revised labeling requirements include labeling vehicles to designate that they meet LEV, ULEV or ZEV standards.

2. Heavy-Duty Clean-Fuel Vehicle Standards

Today's rule requires that engines intended for use in clean-fuel vehicles greater than 8,500 and up to 26,000 pounds GVWR meet a combined non-

[17] This provision is similar to the requirements for Otto-cycle vehicles which must show compliance with a PM standard in the Tier 1 rulemaking (56 FR 25730).

[18] California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-duty Vehicles, Appendix VIII.

[19] Contained in California's proposed LEV program, California Code of Regulations, Title 13, section 1965.

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methane hydrocarbon (NMHC) plus NO_X emissions standard of 3.8 grams per brake horsepower hour (g/Bhp–hr). This new standard applies to all light and medium heavy-duty engines which are to be certified for inclusion in the Clean Fuel Fleet program, independent of fuel type. (Also, this standard applies to heavy heavy-duty engines participating in the Clean Fuel Fleet program for the purpose of generating credits.) Thus, it applies to vehicles operating on gasoline, diesel, alcohols, gaseous fuels, electricity, and other fuels.

Section 246(f)(4) of the CAA requires that credit-generating standards be promulgated for heavy-duty clean-fuel vehicles, including standards for heavy-duty ULEVs and ZEVs. The CAA requires these standards to be "comparable", which EPA interprets to mean comparable to the credit-generating standards established for light-duty vehicles.

a. *The Heavy-Duty Clean Fuel Vehicle Low-Emission Vehicle NMHC+NO_X Standard.* Section 245 of the CAA sets forth the statutory framework governing establishment of the heavy-duty clean-fuel vehicle standards. Section 245(a) sets a combined NMHC+NO_X standard of 3.15 g/Bhp-hr for engines intended for use in heavy-duty clean-fuel vehicles, reflecting a 50 percent reduction from the current combined HC and NO_X standards for heavy-duty diesel engines (HDDE). Section 245(b) permits EPA to set a less stringent standard or standards if EPA determines that the statutory level of 3.15 g/Bhp-hr is infeasible for clean diesel-fueled engines. Under this provision, EPA must make a determination as to the feasibility of this standard for clean diesel-fueled engine technology, taking into account "durability, costs, lead time, safety, and other relevant factors." If the Administrator determines that the standard is not feasible for clean diesel-fueled engines, EPA may set a less stringent standard so long as it is at least a 30 percent reduction from the combined NMHC plus NO_X standards for model year 1994 heavy-duty engines. A 30 percent reduction would be equivalent to a NMHC plus NO_X standard of 4.41 g/Bhp-hr.

EPA determines today that a combined NMHC+NO_X emission standard of 3.15 g/Bhp-hr is infeasible for clean diesel-fueled engines, for the reasons discussed below. Under Section 245(b)(1), EPA has the authority to establish a less stringent standard. The only statutory criteria for setting the less stringent standard is the requirement that the standard require at least a 30 percent reduction from the combined NMHC+NO_X standards for the 1994 model year heavy-duty engines. Because the same standard that will apply to diesel-fueled vehicles will also apply to vehicles run on other fuels (including gasoline), EPA has looked at feasibility for both diesel- and nondiesel-fueled vehicles. Based on these considerations, EPA has decided to set the standard at 3.8 g/Bhp-hr.

(i) *Establishing the NMHC+NO_X Standard.* In determining whether the 3.15 g/Bhp-hr NMHC+NO_X standard is feasible for clean diesel-fueled heavy-duty engines, EPA believes that the CAA does not require a determination that the standard is feasible for every diesel engine family, but rather that it is feasible for at least enough diesel engine families such that fleet operators have enough choice to meet their requirements under the Clean Fuel Fleet Program. The clean-fuel vehicle standard is not a mandatory national standard for all heavy-duty vehicles manufactured, but instead applies to vehicles that fleet owners in certain areas must buy as a certain percentage of their vehicle purchases beginning in model year 1998.

In the NPRM, EPA proposed a level of 3.5 g/Bhp-hr NMHC+NO_X based on concerns about technology, cost, leadtime, and durability for diesel engines as prescribed in section 245 (b) of the CAA. Based on the comments submitted to EPA and further analysis by the Agency, EPA believes that achieving HDDE emission levels below about 3.5 g/Bhp-hr NMHC+NO_X would be technically difficult and costly to manufacturers and would not be achievable for an adequate number of light and medium heavy-duty diesel engine families by 1998. In their comments, engine manufacturers argued that the 3.15 g/Bhp-hr level, as well as the proposed 3.5 g/Bhp-hr level, would not be technologically and economically feasible for diesel-fueled engines. The Natural Gas Vehicle Coalition (NGVC) argued that the 3.15 g/Bhp-hr level would be feasible for diesel-fueled engines, based largely on a final report by Acurex under contract with CARB, entitled "Technical Feasibility Reducing NO_X and Particulate Emissions from Heavy-Duty Engines." [20] As the analysis summarized below demonstrates, EPA agrees in part with each set of comments, but reaches a conclusion different from both.

As a part of its assessment of the potential HDDE emission control technology, EPA studied the Acurex report in depth. Like the Regulatory Support Document associated with this rule,[21] this report concludes that to achieve a NO_X-emission level of 2.5 g/Bhp-hr by 2000 (NO_X levels needed to meet a 3.15 g/Bhp-hr NMHC+NO_X standard),[22] diesel-fueled engines would need to be equipped with advanced catalytic trap or EGR (exhaust gas recirculation) technologies. In addition, the 2.5 g/Bhp-hr level would also require the use of a combination of some or all of the following emission control approaches for diesel-fueled engines: very high pressure fuel injection, variable geometry turbocharging, air-to-air aftercooling, optimized combustion, electronic unit injections with minimized sac volumes, optimized fuel injection nozzles, rate shaping, exhaust gas recirculation and sophisticated electronic control of all engine systems. Most of the devices described in the Acurex report are in relatively early stages of development and would require extensive changes in heavy-duty diesel-powered engines compared to today's designs. Acurex projects that achieving this level would be possible, but it would result in a 5 percent fuel economy penalty and a doubling of the engine price of a 1994 diesel-fueled engine. Based on reasons discussed throughout this section, EPA is very doubtful that this standard could be met in a cost-effective manner in time for the production of an adequate number of 1998 model year engine families. However, Acurex has projected that a 3.0 g/Bhp-hr NO_X-emission level (approximately equivalent to a 3.5 g/Bhp-hr NMHC+NO_X level) is achievable for diesel-fueled engines by 1999 with the addition of EGR and oxidation catalyst technology without major new costs or fuel economy penalties.

Also, the NGVC argued that no technological breakthroughs are required to meet the 3.15 standard since each one of these technologies is already in use in one or more commercial diesel engine families to meet the 1994 and 1998 standards. They also state that all

[20] Acurex Environmental Project Under Contract with California Air Resources Board, Final Report, "Technical Feasibility of Reducing NO_X and Particulate Emissions From Heavy-Duty Engines," Acurex Environmental Project 8450, Contract No. A132–085, April 30, 1993 (found in the docket for this rulemaking).

that would be required to meet the 3.15 standard would be the addition of EGR and possibly a particulate trap. Although it is true that some versions of the necessary technologies are in use today, EPA believes, as stated above, that the additional development effort needed to reach very low emission levels would be very costly and would likely limit or eliminate the availability of heavy-duty diesel engines for the program.

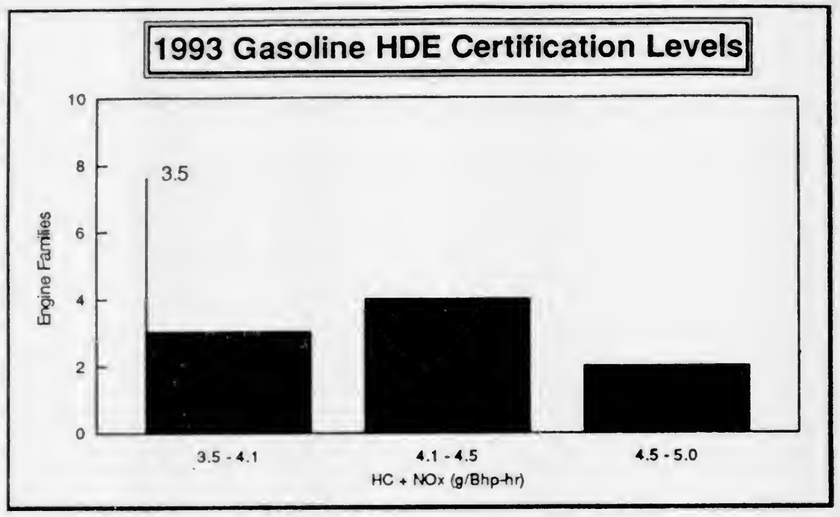
Furthermore, a review of the 1993 HDE federal certification results clarifies the magnitude of the developmental task for manufacturers to achieve extremely low- emission levels, especially for diesels. The data, which represents engines tested on federal certification fuel, indicates that no current gasoline or diesel HDE family meets or is close to the 3.15 g/Bhp-hr standard on federal certification fuel (for diesel and gasoline engines NMHC and HC are roughly equivalent). Of the 9 gasoline HDE families certified in 1993, three are within one g/Bhp-hr of the standard (see Figure 1). Based on the aftertreatment control technology used by and available for gasoline engines, EPA believes that 3.15 g/Bhp-hr level would be within reach for a number of these families. For diesel engines, however, the 1993 heavy-duty engine federal certification results presented in Figure 1 indicate that achieving the 3.15 g/Bhp-hr standard on federal diesel fuel would be extremely problematic for the majority of engine families by 1998. However, five of the 37 diesel engine families certified in 1993 are within one g/Bhp-hr of the 3.5 g/Bhp-hr NMHC+NO_X level (equivalent to NO_X-certification level of 3.0 g/Bhp-hr), indicating that a standard in this range would more likely be achieved by a variety of diesel engines on federal certification fuel than would the 3.15 level. Only one of 37 diesel engine families certified in 1993 is within one g/Bhp-hr of the 3.15 level; most have combined HC and NO_X certification levels of 5.5 g/Bhp-hr or less.

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[21] U.S. Environmental Protection Agency, Office of Mobile Sources, "Regulatory Support Document: Emissions Standards for Heavy-Duty Fleets," June 1994 (found in the docket for this rulemaking).

[22] Current certification data indicate that generally all diesel engine families have HC certification levels less than 0.5 g/Bhp-hr, so most reductions would have to be achieved in NO_X emissions. Thus, achieving a 3.15 g/Bhp-hr NMHC+NO_X standard would essentially require NO_X-certification levels on the order of 2.5 to 2.7 g/Bhp-hr.

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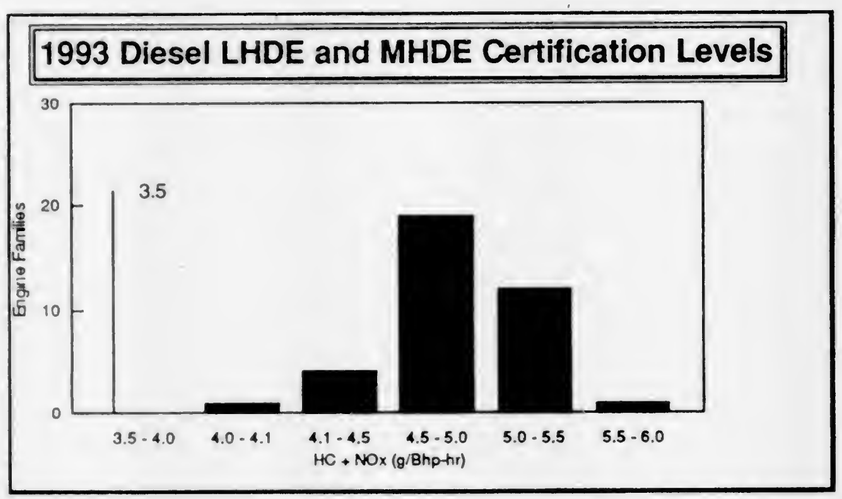


Figure 1: 1993 Heavy-Duty Engine Certification Levels

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There are two existing sets of regulations that will drive heavy-duty engine technology towards low $NMHC+NO_X$ levels: the federal 1998 4.0 g/Bhp-hr NO_X standard, and the California Air Resources Board (CARB) LEV standard for diesel engines and incomplete medium-duty vehicles of 3.5 g/Bhp-hr $NMHC+NO_X$. EPA received many comments in Docket A–91–28 stating that the 4.0 g/Bhp-hr NO_X standard for all 1998 and later HDEs, which is one g/Bhp-hr lower than the existing standard, is feasible for diesel engines. Development of the technology necessary to comply with the 4.0 g/Bhp-hr NO_X standard will make it more likely that a significant number of light and medium diesel HDE families will be able to reach emission levels slightly below 4.0 g/Bhp-hr NO_X on federal diesel fuel in the future, but it is unlikely that this federal standard will force the development of technologies needed to achieve a 3.15 g/Bhp-hr $NMHC+NO_X$ standard on such fuel (i.e., NO_X levels of 3.0 g/Bhp-hr or less) since there is no federal requirement to reach lower levels.

CARB's 3.5 g/Bhp-hr $NMHC+NO_x$ standard is the only other impetus driving technology to achieve emission levels significantly below the 4.0 g/Bhp-hr NO_x standard. Engine manufacturers have stated that the CARB 1998 3.5 g/Bhp-hr $NMHC+NO_x$ standard for incomplete medium-duty vehicles and diesel engines is feasible, and EPA agrees with CARB's expectation that manufacturers will market a range of LEV diesel HDEs in California which will meet the California standard. However, as with the federal 4.0 g/Bhp-hr NO_x standard, it is unlikely the current California standard will prompt the additional technology development needed to reach a 3.15 g/Bhp-hr $NMHC+NO_x$ level since there is no requirement to reach levels below 3.5 g/Bhp-hr $NMHC+NO_x$. This is especially true for engines intended for vehicles between 14,000 and 26,000 pounds GVWR, which are covered by the Clean Fuel Fleet Program but not the current CARB LEV program.

EPA believes it is appropriate to look at the demand that will be created for heavy-duty CFVs as a relevant factor when determining whether a particular combined $NMHC+NO_x$ standard for diesel-fueled vehicles is technologically feasible under section 245(b)(1). For the reasons discussed above, EPA believes that achieving a level of 3.15 g/Bhp-hr $NMHC+NO_x$ for even a small selection of HDDEs by 1998 will be a very difficult task. Manufacturers will need to invest significantly in research and accelerated technology development, and any engines which reach production would be more costly (in terms of both engine price increase and fuel economy penalty, as discussed above), especially based on the relatively small demand that will be created by the Clean Fuel Fleet Program. In the absence of mandated production, EPA believes that a technological effort of this magnitude is likely to be undertaken by engine manufacturers only under circumstances of a certain, substantial market.

The CFF program contains no authority for a production mandate. Thus, the size and certainty of the market is central to whether diesel engines will be developed to meet the requirements of heavy-duty fleets covered by the fleet program. However, only a small number of vehicles will be needed by fleets for their fleet program purchase requirements. For example, during each year of the fleet program EPA estimates that a maximum of only about 2 percent (10,000) of total nationwide new heavy-duty diesel vehicles will be purchased by fleet operators to meet the Clean Fuel Fleet Program requirements.[23] This projected market decreases by about 25 percent if California opts out of the Clean Fuel Fleet Program; other potential opt outs by additional states may reduce the market to under one percent of nationwide heavy-duty diesel engine sales (or under about 5000 vehicles). By comparison, based on the implementation schedule of CARB's LEV program, the annual market (30,000) for vehicles required to meet CARB's LEV standard for diesel engines and incomplete medium duty-vehicles of 3.5 g/Bhp-hr $NMHC+NO_x$ is approximately three to six times as large as the potential federal clean diesel-fueled market.[24] CARB's program incorporates a phased-in percentage sales mandate for this larger number of vehicles.

EPA is concerned that a market of the size represented by the CFF program will not be seen as sufficient for engine manufacturers to justify the major voluntary technological development efforts necessary to reach a 3.15 g/Bhp-hr standard. Even if some manufacturers do launch such an effort, the likely higher cost and possible fuel economy penalty may make it much more difficult for diesel engine producers to compete for sales with gasoline or alternative fueled engine options which may be available. Since developing and producing vehicles for the fleet program is, by statute, voluntary, the Agency believes that it is very possible that, with a very low emission standard, no diesels will be produced for the clean fuel fleet program. The Act is clear in its intention that EPA may design the fleet program such that clean diesel vehicles can participate. EPA thus concludes that a standard of 3.15 g/Bhp-hr is not feasible for heavy-duty diesel-fueled CFVs taking into account costs, lead time, durability, and other relevant factors, and should not be promulgated at this time.

EPA reserves the right to reconsider through rulemaking the 3.15 g/Bhp-hr $NMHC+NO_x$ standard at a later time if diesel NO_x control technology and the HD clean-fuel engine market develop to a point which would make this level feasible for heavy-duty diesel-fueled CFVs. Such a reconsideration may be prompted by developments in the ongoing CARB HD LEV program now under consideration.

ii. *$NMHC+NO_x$ LEV standard.* EPA is adopting an approach for the heavy-duty clean fuel vehicle engine standard that is very similar to the proposed approach. The intent of this approach is to implement a challenging standard in a way that harmonizes as completely as possible the federal standard with CARB's $NMHC+NO_x$ LEV standard for diesel engines and incomplete medium-duty vehicles. The Agency believes that the effect of this harmonization is to make the overall national market for clean HDDs significantly larger than it would be with either program alone and will thus assure that clean diesels will in fact be produced by 1998 for the clean fuel fleet program.

To meet these objectives, EPA is promulgating a combined $NMHC+NO_x$ clean-fuel engine emission standard of 3.8 g/Bhp-hr for heavy-duty engines certified on federal diesel certification fuel. Manufacturers may also certify heavy-duty engines to a standard of 3.5 g/Bhp-hr on California diesel certification fuel, which for a given engine is approximately equal in stringency to the 3.8 g/Bhp-hr standard using federal diesel certification fuel, as described below. The level of stringency represented by these standards should be achievable for at least several diesel engines with fairly straightforward technological improvements and

[23] U.S. Environmental Protection Agency, Office of Mobile Sources, "Estimated Number of Fleet Vehicles Affected by the Clean Fuel Fleet Program," Memorandum from Sheri Dunatchik to Docket A–91–25, June 11, 1991.

[24] Heavy-duty vehicle population projections for the California LEV program are based on the following: (1) light heavy-duty production reports submitted to the U.S. Environmental Protection Agency for model year 1991 and (2) New Truck Registrations by Manufacturer and State data from the "AAMA Facts and Figures 1993" (page 27) that shows California truck sales to be 10 percent of nationwide truck sales.

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without a serious fuel economy penalty. EPA intends for this approach to assure that the same engines that are developed and produced for the California LEV program will also be acceptable to fulfill the requirements of the Clean Fuel Fleet Program. These vehicles and engines would, as specified by section 242(b) of the Act, also be required to meet all other applicable emission standards and requirements of 40 CFR Part 86 (such as standards for CO, particulates, smoke and evaporative emissions, as applicable).

As discussed in the NPRM, EPA recognizes that differences between California and federal certification and in-use diesel fuels may cause a difference in emission rates. CARB limits the aromatics content of the test fuel to a maximum of ten percent, while federal test fuel may contain as much as 35 percent aromatics. There is evidence to suggest that the use of federal test fuel can result in higher NMHC+NO_X emissions than the use of CARB fuel in the same engine. Apparently, this occurs because the higher aromatic content of the fuel reduces its cetane rating and thus combustion is slightly less enhanced. Data reported in the NPRM for a 1991 prototype DDC Series 60 heavy heavy-duty engine showed this difference to be in the range of 0.3 g/Bhp-hr offset.[25]

In addition to the analysis of the 1991 prototype heavy-duty diesel engine referenced in the NPRM, EPA has used a similar analysis to examine diesel fuel effects based on data presented in a study performed on a 1993 prototype Navistar Diesel DTA 466 medium heavy-duty engine.[26] As had been done in the earlier analysis, EPA compared federal and California diesel fuels on the basis of aromatic percent and cetane number. EPA used the specified aromatic levels of 10 percent for California test fuel and 35 percent for federal test fuel and natural cetane numbers of 50 and 46 for typical California and federal certification fuels, respectively.[27] An API gravity number typical of both test fuels of 36 degrees was used. The following regression equations were developed in the study conducted on the 1993 engine for total hydrocarbon (THC) and NO_X:

THC [g/Bhp-hr] = 0.819 − 0.01942 * (Natural Cetane) + 0.01159 * (API)

NO_X [g/Bhp-hr] = 6.593 + 0.01183 * (SFC Aromatics %) − 0.02497 * (Natural Cetane) − 0.02365 (API)

Substituting the values selected above for percent aromatics and cetane numbers into these equations, the Agency calculated a THC + NO_X offset of about 9.7 percent. Applying this percent offset to the 3.5 g/Bhp-hr standard for CARB diesel fuel, the Agency analysis calculated that the offset would be about 0.34 g/Bhp-hr THC + NO_X. (This analysis assumed that the offset would apply equally whether THC or NMHC was being considered; the Agency has no data to indicate that the small methane emissions component in diesel emissions would affect the relative behavior of the engine on the two fuels).

Thus, the Agency concludes that diesel engines certified to a 3.5 g/Bhp-hr level on California diesel fuel would for typical engines, result in emissions of approximately 3.8 g/Bhp-hr for the same engines operated on federal diesel fuel, confirming the estimate made in the NPRM. In their comments engine manufacturers quoted the same data that EPA has used for the 1991 and 1993 prototype diesel engines, but used different assumptions for the cetane number for in-use diesel fuel. Also, the industry analysis did not adjust the offset proportionally to account for the much lower emissions of CFVs as compared to the current engine which generated the test data. In their comments, they concluded that the offset between federal certification fuel and California certification fuel may be more in the range of 0.55–0.56 g/Bhp-hr. EPA has examined the assumptions used in the industry analysis and concluded that the EPA analysis is a more appropriate approach for determining the expected emissions offset. While this conclusion is based on data from a single engine, the 1993 engine is of the appropriate size (medium heavy-duty) from which to draw a conclusion for this program and the study was done on a meaningful array of diesel test fuels. It is likely that if similar data were collected on other engines, somewhat different values for the CARB/federal fuel offset might be observed. Until such a time when additional data becomes available, EPA will assume that offsets for other heavy-duty diesel engines would range on either side of the 0.34 g/bhp-hr level EPA has developed for the 1993 engine. Thus, the Agency believes that its analysis reasonably accounts for potential fuel variability and that the 0.34 g/Bhp-hr value represents a reasonable estimate for the average emissions offset between federal certification fuel and California certification fuel. If a reduction catalyst is used as a means to reduce NO_X levels, concerns over fuel variability diminish significantly. The CARB/federal fuel offset would tend to be less because the reduction catalyst would reduce emissions proportionally for both fuels. While the use of reduction catalysts may not be universal, EPA expects that some light/medium heavy-duty engine families will use reduction catalyst technology to meet the NO_X target level. Additional data and analysis supporting the above conclusion of the offset between federal and California diesel fuel can be found in the Summary and Analysis of Comments document for this rulemaking.

Based on its analysis of the emissions offset above, EPA has set the emission standard for HDD CFVs certified on federal diesel fuel at 3.8 g/Bhp-hr NMHC + NO_X. This standard is consistent with EPA's intent that the heavy-duty clean-fuel vehicle standards be of as close to equivalent stringency as possible to the CARB LEV standard for similar vehicles to assure the production of an adequate number of diesel engine models for the clean fuel fleet program. Further, because the Agency is reasonably confident that in-use emissions of a engine certified at 3.5 g/Bhp-hr on California fuel will emit in the range of 3.8 g/Bhp-hr on federal fuel, EPA will grant a federal certificate of conformity to a manufacturer which demonstrates compliance with the 3.5 g/Bhp-hr standard on California certification fuel. While it is possible that individual engines certified on California fuel may experience a slightly different offset when operated on federal diesel fuel (e.g., when a cetane number is much different between the fuels), EPA believes that this will be the exception and that in-use performance on federal diesel fuel will average about 3.8 g/Bhp-hr. The use of federal fuel in engines certified on California fuel is consistent in this case with the fuel use provisions of sections 246(b) and 241(2), since EPA has concluded that such engines indeed comply with the clean fuel vehicle requirements on federal diesel fuel.

As another way of harmonizing the CARB LEV program and the CFF program to ensure a sufficient number of HDDEs will be available by 1998 for the fleet program, EPA will only test engine families which were certified to CFV standards on California diesel fuel on diesel fuel meeting California specifications during any Selective Enforcement Audit (SEA) testing or in-use recall enforcement testing. The Agency believes that if manufacturers of HD CFVs certified on California fuel perceive that their engines may be subject to later EPA testing on federal diesel fuel, then they may desire to perform additional testing of these engines on federal certification diesel fuel for the purpose of assuring themselves of in-use compliance on federal diesel fuel. This approach to SEA and in-use recall testing should assure manufacturers that they will not need to perform any additional testing at certification beyond that required for California certification. Fuel meeting California diesel test fuel specifications is an acceptable test fuel under the FTP because it meets the federal fuel specifications. This policy of the Agency using fuel meeting California diesel test fuel specifications for SEA and recall testing applies only to CFVs. If the Agency becomes aware of changed circumstances which indicate that this policy is inappropriate, the Agency reserves the right to discontinue this policy.

For gasoline-fueled HD CFVs, EPA is aware of no evidence to suggest any significant difference in emissions between such vehicles operating on federal and California certification gasolines; thus the technical basis for separate standards which exists for diesels does not apply for gasoline engines. Commenters did not respond to the issue of the appropriateness of a single standard for all HDEs. However, EPA believes that in general, a single standard for all fuels provides equity among manufacturers of different types of engines for this program. Also, section 245 of the Act seems to indicate that Congress intended for there to be a single heavy-duty CFV standard. Therefore, as for diesel engines, EPA today also promulgates a standard of 3.8 g/Bhp-hr for gasoline clean-fuel vehicle engines certified on federal gasoline test fuel. As with diesel engines, gasoline engines demonstrating compliance with the California 3.5 g/Bhp-hr standard on California gasoline certification fuel will be eligible for a federal certificate.

Given the arguments above, as well as the fact that manufacturers have more than three years before the purchase requirements for clean-fuel fleet vehicles begin, EPA believes that several heavy-duty diesel engine families will achieve a standard of 3.8 g/Bhp-hr NMHC + NO_X on federal certification fuel or 3.5 g/Bhp-hr NMHC + NO_X on California certification fuel by the 1998 model year. Also, EPA believes that most gasoline-fueled HDE families can meet a standard of either 3.8 g/Bhp-hr on federal certification fuel or 3.5 g/Bhp-hr on California fuel by the 1998 model year. These clean fuel vehicle standards will apply to HDEs used in clean-fuel fleet vehicles of 8,501 to 26,000 lbs. GVWR to meet the purchase requirements of the fleet program.

b. Heavy-Duty ULEV and ZEV Standards. As previously discussed, section 246(f)(4) of the CAA requires EPA to promulgate emission standards for ULEVs and ZEVs, for the purpose of determining fleet program credits. The provision states that the standards:

> * * * shall be more stringent than those otherwise applicable to clean-fuel vehicles under this part* * *. The standards* * *for [light-duty] vehicles* * *shall conform as closely as possible to standards which are established by the State of California for ULEV and ZEV vehicles in the same class. For vehicles of 8,500 lbs. GVWR or more, the Administrator shall promulgate comparable standards for purposes of this subsection.

EPA interprets this comparability criteria to mean that ULEV and ZEV standards for heavy-duty engines should require approximately the same percentage of emission reduction compared to heavy-duty CFV LEV standards as light-duty CFV ULEV and ZEV standards require compared to light-duty CFV LEV standards. Under this provision, EPA must determine the appropriate level for the heavy-duty ULEV and ZEV standards. EPA proposed this interpretation and did not receive any comments objecting to it.

EPA also believes it is appropriate to take California's ULEV and ZEV standards into consideration and attempt to harmonize the federal and California standards where possible. As mentioned above in the section pertaining to the feasibility of the HD CFV LEV standard, EPA believes such harmonization is valuable because it helps create a single larger market for heavy-duty ULEVs and ZEVs rather than two smaller markets. A single larger market makes it more economical for manufacturers to produce heavy-duty ULEVS and ZEVs, which makes it more likely that manufacturers will choose to produce vehicles that can participate in the federal program. (The federal program does not have a sales mandate for manufacturers, so their participation is voluntary and controlled, in part, by market demand for their products.)

EPA also believes it has authority to consider harmonization of federal heavy-duty ULEV and ZEV standards and California incomplete medium-duty vehicle and diesel engine ULEV and ZEV standards in setting the federal standards.[28] As explained above, EPA interprets "comparable standards" to mean that heavy-duty CFV ULEV and ZEV standards must be comparable to light-duty CFV ULEV and ZEV standards. Since the Act requires EPA to establish federal light-duty ULEV and ZEV standards that conform as closely as possible to California's light-duty ULEV and ZEV standards, harmonization of the federal heavy-duty ULEV and ZEV standards and California incomplete medium-duty vehicle and diesel engine ULEV and ZEV standards could be part of the comparability determination. In addition, the direction of section 246(h) to set "comparable standards" gives EPA some discretion in establishing standards. EPA believes it is appropriate to consider California's standards in exercising this discretion. EPA believes that, since the federal HD ULEV and ZEV standards are voluntary credit-generating standards, their intended purpose is primarily to provide compliance flexibility for manufacturers and fleet operators. The Agency's goal then, in selecting these standards, is to provide the maximum flexibility allowable under section 246(f)(4) of the Act, while ensuring that there will be no negative impacts on the environment.

i. Ultra low-emission vehicle standards. EPA is adopting standards for heavy-duty ULEVs NMHC+NO_X, CO, particulate, and formaldehyde emissions as specified below in Table 5. These standards are the same as those that were proposed, except the formaldehyde standard, which is lower than originally proposed. In the opening statement at the public hearing for the proposal and in a memorandum that was placed in the docket and distributed at the public hearing,[29] EPA

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[25] "Effects of Fuel Aromatics, Cetane Number, and Cetane Improver on Emissions from a 1991 Prototype Heavy-Duty Diesel Engine," T. Ullman, R. Mason, and D. Montalvo, Southwest Research Institute, SAE Paper 902171., U.S. Environmental Protection Agency, Office of Mobile Sources, "Effect of Test Fuel Differences on NMHC+NO_X Emissions," Memorandum from Michael Samulski to the docket of this rulemaking, February 23, 1993.

[26] Diesel Fuel Property Effects on Exhaust Emissions from a Heavy Duty Diesel Engine that Meets the 1994 Emissions Requirements, "C. McCarthy, Amoco Oil Co., W. Slodowske, E. Slenicke, and R. Jass, Navistar International Transportation Corp., SAE Paper 922267.

[27] The cetane numbers used in the EPA analysis on the 1993 heavy-duty engine were based on the following: (1) "Development of the First CARB certified California Alternative Diesel Fuel", M. Nikanjam, SAE Paper 930728. (2) Section 2282, Title 13, California Code of Regulations procedure for certifying diesel fuel formulations resulting in equivalent emissions reductions and (3) Cummins Engine Company and Caterpiller diesel fuel formulations for federal diesel fuel. These cetane numbers are natural cetane numbers (without cetane improver).

[28] Beginning with the 1995 model year, CARB's medium-duty vehicles include vehicles with a GVWR of 14,000 pounds or less.

[29] U.S. Environmental Protection Agency, Office of Mobile Sources, "Request for Comment on Revised Formaldehyde Standard for Heavy-Duty ULEVs for the Clean Fuel Fleet NPRM," July 12, 1993, Memorandum from Bryan J. Manning through Tad Wysor to docket A-92-30 (Document Number III-A-03).

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informed the public that the proposed standard for formaldehyde was a typographical error and requested comment on the change of the heavy-duty ULEV standard to the level specified in Table 5. EPA did not receive any comments objecting to this level for the formaldehyde ULEV standard. The final heavy-duty ULEV standards require reductions in emissions that are comparable to the respective emission reductions required of light-duty ULEVs, and are consistent with the respective requirements of the California LEV program.

As proposed, EPA is setting a combined NMHC + NO_X HD CFV ULEV standard that is approximately a 30 percent reduction from the HD CFV LEV standard. The comparable light-duty CFV ULEV standards require reductions from light-duty CFV LEV standards of 38 to 50 percent of NMOG emissions and 45 to 50 percent for NO_X emissions. Even though EPA has separate NMOG and NO_X standards for light-duty CFV ULEVs, the Agency does not believe it is required to establish such separate standards for heavy-duty CFV ULEVs. Rather, EPA believes it is appropriate to have a combined NMHC + NO_X heavy-duty CFV ULEV standard because heavy-duty CFV LEV standards have a combined NMHC + NO_X standard rather than separate NMOG and NO_X standards (as do light-duty CFV LEVs and ULEVs). Furthermore, a combined NMHC + NO_X standard is consistent with the California incomplete medium-duty vehicle and diesel engine ULEV standard. EPA proposed this interpretation and did not receive any comments objecting to a combined NMHC + NO_X standard for HDEs.

EPA also is setting specific emission standards for CO and particulates that require a reduction in emissions from the heavy-duty CFV LEV standards of 50 to 54 percent and 50 percent, respectively, as proposed. (For both CO and particulates, heavy-duty CFV LEVs must meet the same standards as do conventional heavy-duty vehicles. Thus, for these standards, the reductions in emissions for heavy-duty CFV ULEV standards are the same whether they are compared to conventional or CFV LEV heavy-duty standards.) The comparable light-duty CFV ULEV standards require reductions in CO and particulate emissions of 50 percent each from light-duty CFV LEV standards. These federal heavy-duty ULEV standards are identical to California's incomplete medium-duty vehicle and diesel engine ULEV standards.

Finally, EPA is also setting a specific heavy-duty ULEV standard for formaldehyde. The comparable light-duty CFV ULEV standard requires a reduction in emissions ranging from 39 to 52 percent from light-duty CFV LEV standards. Though formaldehyde is not regulated for heavy-duty CFV LEVs, formaldehyde is regulated in the light-duty CFV ULEV standards. EPA believes that heavy-duty vehicles that emit formaldehyde are likely to participate in the CFV ULEV program. Because emissions of formaldehyde are of significant concern to EPA and to Congress, as evidenced by the inclusion of formaldehyde standards for light-duty CFV LEVs and the inclusion of formaldehyde as a hazardous air pollutant, EPA believes it is appropriate to include standards for formaldehyde emissions in the heavy-duty CFV ULEV program. EPA has the authority to regulate formaldehyde emissions not only under section 246(f)(4), but also under CAA sections 202(a) and 301(a). Also, the CARB LEV program includes a formaldehyde ULEV standard for diesel engines and incomplete medium-duty vehicles. Therefore, it is consistent with the CARB LEV program to set a formaldehyde standard for federal HD ULEVs. The standard promulgated today is identical to CARB's incomplete medium-duty vehicle and diesel engine ULEV formaldehyde standard.

TABLE 5.—EMISSION STANDARDS FOR MODEL YEAR 1998 AND LATER HEAVY-DUTY VEHICLES

Vehicle type	THC (g/Bhp-hr)	NO_X (g/Bhp-hr)	NMHC + NO_X (g/Bhp-hr)	CO (g/Bhp-hr)	Particulate [1] (g/Bhp-hr)	OMHCE (g/Bhp-hr)	HCHO (g/Bhp-hr)
Conventional Gasoline <= 14,000 GVWR	1.1	4.0	.....	14.4	.....	1.1	.....
Conventional Gasoline >= 14,000 GVWR	1.9	4.0	.....	37.1	.....	1.9	.....
Conventional Diesel	1.3	4.0	.....	15.5	0.10	1.3	.....
LEV Certified on Federal Fuel	[2]	[2]	3.8	[2]	[2]	[2]	.....
LEV Certified on California Fuel	[2]	[2]	3.5	[2]	[2]	[2]	.....
ULEV	[2]	[2]	2.5	7.2	0.05	[2]	0.025
ILEV	[2]	[2]	2.5	14.4	0.10	[2]	0.050

[1] Standards for particulate matter (PM) apply only to diesel-fueled vehicles.
[2] HD CFVs must meet conventional vehicle standards for THC, NO_X, CO, PM, and OMHCE.

Based on the Acurex report, Regulatory Support Document, and comments received from the Natural Gas Vehicle Coalition, EPA believes that alternative fuel vehicle technology will be available to meet these standards by 1998, and that gasoline and diesel engines may also be able to achieve these ULEV levels by that time or shortly thereafter. In any event, covered fleet operators are never required to purchase ULEVs to meet the requirements of the fleet program.

ii. *Zero-emission vehicle standards.* Zero-emission vehicles (e.g. electric vehicles) are vehicles which have no emissions of the pollutants of concern. Therefore, as proposed, EPA today establishes heavy-duty ZEV standards of zero for NMHC + NO_X, CO, particulates, and formaldehyde. (Emissions from non-fuel sources (e.g. tires, seats, paint, etc.) will likely exist as they do for conventional vehicles and other CFVs.) These final heavy-duty ZEV standards each require a 100 percent reduction in emissions from the heavy-duty LEV standards, which for each pollutant is comparable to the respective emission reductions required of light-duty CFV ZEVs. Furthermore, these federal ZEV standards are identical to California's incomplete medium-duty vehicle and diesel engine ZEV standards.

Compliance with the ZEV standards may be assessed through engineering analysis, which shall include a description and analysis of all primary or auxiliary equipment and engines which concludes that no emissions of the stated pollutants is possible. The engineering analysis must determine that the vehicle fuel system(s) does not contain either carbon or nitrogen compounds (including air) which, when burned, form the above regulated exhaust emissions. Such criteria will also assure that evaporative emissions will not occur. Given these criteria there is no need to perform emission testing because the above pollutants cannot be emitted from the vehicle. However, compliance for ZEVs may be assessed through testing by performing the tests required by Parts 86 and 88 (Federal Test Procedure) when applicable.

Any vehicle with additional power system(s) or auxiliary engine(s) that might produce regulated pollutants (e.g. hybrid vehicle or an electric vehicle with an auxiliary power source to run other vehicle systems) will be subject to the testing requirements of Part 86 or Part 88 or future applicable regulations and might not qualify as a ZEV. A ZEV with a heater will be considered a ZEV as long as the heater will not operate at an ambient temperature above 40°F and the heater's power/fuel source does not have evaporative emissions in use.

c. *Other Issues*—i. *Flexible- and Dual-Fuel HDEs.* EPA is not promulgating a set of emission standards for flexible- and dual-fuel heavy-duty vehicles. (Flexible- and dual-fuel vehicles are also commonly referred to as variable- and bi-fuel vehicles, respectively.) Section 243(d) of the Act prescribes emission standards for flexible- and dual-fueled light-duty vehicle and light-duty trucks. EPA is establishing these standards today (see II.A.1.a). The directive of section 243(g) that "nothing in this section shall apply to heavy-duty engines" makes it clear that section 243(d) does not require EPA to establish flexible- and dual-fueled standards for heavy-duty engines.

Even if EPA has authority to promulgate such standards (a question which we do not answer here), EPA does not think it is appropriate to exercise that authority at this time. As Natural Gas Vehicle Coalition suggested in their comments, it is possible that similar standards could be implemented for HDEs in the same manner as prescribed in the statute for light-duty vehicles and light-duty trucks. However, as described in the proposal, separate NMHC standards are not necessary for flexible- or dual-fuel HDEs since similar behavior of NMHC (or the equivalent (NMHCE)) would be expected for all fuel types. In addition, as discussed above, heavy-duty vehicles operated on conventional gasoline and diesel fuel will be able to comply with the CFV standards by 1998, and thus, there is not a compelling technical reason to have slightly higher standards for the vehicle when it is operated on clean alternative fuel. For all these reasons, EPA is not adopting separate standards for flexible- or dual-fuel HDEs.

Section 241(2) defines clean alternative fuel for flexible- or dual-fuel vehicles and engines as the fuel(s) on which such vehicles are certified to the CFV standards. EPA concludes from this statutory language that engines certified on California gasoline or diesel fuel only will need to operate exclusively on that fuel in covered nonattainment areas. (For single-fuel vehicles and engines, section 241(2) requires operation in covered areas on the fuel(s) on which they "comply" with the CFV standards. As discussed above, EPA has determined that single-fuel HDEs certified on California gasoline or diesel fuel comply with the HD CFV standard on federal fuels.)

ii. *Optional LDT Certification.* For a number of years, manufacturers have had the option of certifying their HDEs used in vehicles between 8501 and 10,000 lbs. GVWR using the LDT emission standards and provisions. This provision is found in 40 CFR 86.085–1(b). EPA finds no reason why the treatment of CFVs should be different than conventional vehicles in this regard, and thus for consistency EPA will also make this option available for clean-fuel HDEs.

iii. *Heavy-duty test procedures.* While this action establishes NMHC + NOx standards for heavy-duty vehicles and engines, EPA regulations historically have not included test procedures for the measurement of methane separate from other hydrocarbons, and thus the calculation of NMHC emissions would not have been possible. Prior to today's regulations the heavy-duty test procedures only measured the total amount of hydrocarbons (including methane), but did not separately measure the amount of any individual hydrocarbons such as methane. Therefore, EPA is promulgating additional test procedures for the separate measurement of methane and calculation methods for NMHC emissions, as discussed below. Test procedures for measurement of total hydrocarbon (THC) emissions will be unchanged, and EPA will continue the current practice of using a flame ionization detector (FID) for THC measurement.

The test procedures call for the separate measurement of methane using gas chromatography [30] as specified in the Society of Automotive Engineers (SAE) Recommended Practice J1151. This is consistent with both the previously established EPA procedure for light-duty vehicles and light-duty trucks (40 CFR 86.111–94 and 40 CFR 86.140–94), and the California procedure for methane measurement. This approach does not permit continuous methane measurement of exhaust samples and will require that a bag sample be collected for all classes of vehicles and engines. (The SAE Recommended Practice J1151 is incorporated by reference in sections 86.111–94(b)(3)(vii) and 86.1311–94(b)(2)(iii) of the regulatory text and is available in EPA Air Docket A–92–30.)

Under the approach for measuring NMHC, THC will first be measured using the FID. Then, methane will be measured using gas chromatography. This methane measurement will then be multiplied by a "FID response factor." This response factor is necessary because the FID responds differently to methane than it does to other hydrocarbons. In order to find what portion of the FID's THC reading is attributable to methane, the tester must know the relationship between the FID response to other hydrocarbons and to methane. Such a "FID response factor" is calculated by noting the response of the FID, calibrated for typical HCs, to a known quantity of methane. For example, if a sample known to be 10.0 grams of methane gives a FID reading of 11.0 grams, then the FID response factor is 11.0/10.0 or 1.10. The mass of NMHC is then the difference between the THC (as measured by the FID) and the methane (as measured by gas chromatography), multiplied by the FID response factor.

For natural gas vehicles (NGVs), the Natural Gas Vehicle Coalition and the American Gas Association suggested that the EPA adopt the CARB method of direct measurement of NMHC by gas chromatography. This issue was also raised in response to the Gaseous Fuels Rule NPRM (proposed in November, 1992), and EPA has addressed all concerns related to the measurement of NMHC emissions for NGVs in the subsequent Gaseous Fuels FRM. The NMHC measurement method promulgated in this section is the same as the method established in the Gaseous Fuels FRM. If the NMHC measurement procedure for NGVs is revisited and changed in the future, then any revised method will apply to clean-fuel vehicle testing as well.

In order to provide manufacturers with additional flexibility, EPA proposes to make the measurement of methane (and subsequent calculations) optional. Manufacturers would be allowed to measure and report THC emissions for compliance with the NMHC standards. Since THC emissions are the sum of the methane and NMHC emissions, they will be higher than the NMHC emissions alone; thus, if the THC emissions are lower than the standard, the NMHC will also be below the

[30] Gas Chromatography—A separation technique in which a sample of the gaseous state is carried by a flowing gas (carrier gas) through a tube (column) containing stationary material. The stationary material performs the separation by means of its differential affinity for the components of the sample.

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standard. While this option in effect increases the stringency of the standard, some manufacturers may find that the savings associated with using a simpler test procedure justify certifying under this option. This is especially true for diesels, where the methane fraction of THC emissions is small.

iv. *Averaging, trading, and banking.* The Agency has previously established an extensive credit exchange program for NO_x and PM emissions from heavy-duty engines[31]. Under this program, a manufacturer can take emissions credits for producing vehicles that are below the applicable standards, and then use those credits either on its own engines within the same averaging set or to sell to other manufacturers for use in families in the same averaging set which do not meet the applicable standards (trading). These emission credits can be used in the year generated or retained for later use (banking). Fleet average emissions are unchanged by this program.

It would be inappropriate for a manufacturer to receive certification emission credits for vehicles certified under part 88 (i.e., CFV LEVs, ULEVs and ZEVs) for participation in the fleet program. The CFV standards are mandatory for covered fleet vehicle purchases; to also allow manufacturer credits for certification of the same vehicles would result in less emission reduction than is contemplated in the Act. Thus, CFVs certified under part 88 for use in the fleet program for either compliance or credit purposes shall be excluded from the manufacturers' credit exchange program. By contrast, single-fuel engines that are certified under part 86 may not participate in the fleet program even if their emissions meet CFV standards. Therefore, such engines may generate manufacturer certification credits. However, dual- and flexible-fuel vehicles certified under part 86 may only be able to generate certification emission credits based on the least stringent standard to which the vehicle is certified since the manufacturer has no control of the fuel used by the vehicle owner.

In order to allow a distinction between engines which are eligible for the fleet program and those that are not, EPA requires manufacturers to have different engine lables. Those engines labeled under Part 88 must include on the label an indication that this engine is intended to be part of a clean-fuel vehicle program, and as such, they will be excluded from the manufacturers' credit exchange programs. Those engines labeled under Part 86 only will not include any indication on the label that the engine meets any of the emissions requirements of Part 88, and as such, they will be excluded from all clean-fuel vehicle programs and may be included in a manufacturers' credit exchange programs. EPA will allow manufacturers to divide a clean-fueled engine family into two engine families, one labeled under Part 88 (the Part which regulates clean-fuel fleet vehicles) and one labeled under Part 86 (the Part which regulates conventional vehicles) only. The Agency believes that this approach will prevent "double counting" of emissions benefits, but will still provide the manufacturers flexibility in determining the most cost effective means of complying with the requirements of Part 86.

Furthermore, EPA has decided not to pursue the proposed Credit Exchange Programs for Manufacturers of Heavy-Duty Clean-Fuel Fleet Vehicles. The programs appeared to be administratively burdensome with minimal economic and emission benefit, and there was no support expressed in the comments for these programs.

v. *Labeling.* Section 86.095–35 of Part 86 requires that all heavy-duty vehicles and engines certified by EPA have a permanently affixed label indicating that this vehicle or engine meets all of the applicable requirements of Part 86. All heavy-duty LEVs, ULEVs, and ZEVs will be required to meet additional labeling requirements so the purchaser (e.g. fleet operator) knows the vehicle is a CFV and "double counting" of emissions benefits by the purchasers or manufacturers of CFVs is prevented as discussed above in the Averaging, Banking, and Trading section. Those clean-fuel vehicles and engines that are regulated under both Part 86 and Part 88 (e.g., gasoline-fueled vehicles, methanol-fueled vehicles) shall meet the standard labeling requirements of Part 86 with the addition of a statement that this vehicle or engine meets the applicable heavy-duty LEV, ULEV, or ZEV standards. However, certain clean-fuel vehicles (for instance electric vehicles) are regulated under Part 88 but have not yet been regulated under Part 86. For these clean-fuel vehicles not yet regulated under Part 86, the manufacturer shall affix a permanent label that indicates that the vehicle or engine meets the requirements of Part 88 for heavy-duty LEVs, ULEVs, or ZEVs, as applicable, but does not necessarily meet the requirements of Part 86. The reason for this requirement is to inform the consumer that the vehicle may be used by a fleet operator towards meeting the purchase requirements of the Clean Fuel Fleet program, but the vehicle is not eligible to be used in the averaging, trading, and banking program in Part 86.

B. Conversions to Clean-Fuel Vehicles

CAA section 247 states that fleet owners may meet clean-fuel fleet vehicle purchase requirements through the conversion of existing or new gasoline- or diesel-powered vehicles to clean-fuel vehicles. A converted CFV will thus be considered a new vehicle for the purposes of the Clean Fuel Fleet program, and so it will be eligible to meet CFF purchase requirements and to earn credits and TCM exemptions. For this purpose, a clean-fuel fleet vehicle (or engine) is one which meets the applicable CFV emission standards and other requirements as prescribed in CAA sections 242 through 245.

1. EPA's General Regulatory Approach for Conversions of Vehicles

EPA today codifies the exemption from tampering liability for conversion of gasoline or diesel-fueled vehicles to clean fuel vehicles if the converted vehicles comply with the applicable clean fuel vehicle standards and the conversions are performed in compliance with EPA's conversion regulations being promulgated today. Section 247(e) states that such conversions shall not be considered as violations of the tampering prohibition in Section 203(a)(3).

Since conversions involve changes to vehicles/engines that have previously been certified as meeting applicable emission standards, conversions are typically subject to the tampering prohibitions of CAA section 203(a)(3), which prohibit tampering with emission control devices. The initial guidelines established by EPA regarding the enforcement of tampering prohibitions are contained in the two documents entitled "Mobile Source Enforcement Memorandum No. 1A", dated June 25, 1974, and "Fact Sheet: Conversion of Vehicles and Engines to Operate on Natural Gas or Propane", dated November 1, 1991. In the 1990 amendments to the CAA, section 203 was amended to limit the scope of the tampering provisions of section 203(a)(3). As amended, an exemption to the tampering provisions of section 203(a)(3) is provided where a conventional vehicle is converted "* * * for use of a clean alternative fuel and if such vehicle continues to comply with section 202 standards when operating on the alternative fuel * * * and if in the case of a clean alternative fuel vehicle (as defined by the Administrator), the device or element is replaced upon completion of the conversion procedure and such action results in proper functioning of the device or element when the motor vehicle operates on a conventional fuel."

In addition to the general exemption for clean fuel conversion from the tampering prohibitions, section 247(d) creates a special exemption for conversions performed pursuant to EPA's regulations issued under section 247. Thus, if a conversion is performed in compliance with the regulations issued today, the conversion will not violate the tampering prohibition of section 203(a)(3). For any conversions that are not performed in compliance with today's regulations (e.g., installation of a not-certified conversion configuration), liability for tampering will be determined based on section 203(a).

Issues related to the conversion of vehicles to alternative fuel use are addressed in the NPRM and FRM on gaseous-fueled emission standards, (FRM: published in the **Federal Register** on September 21, 1994), hereafter referred to as the Gaseous Fuels Rule. The conversion provisions in the Gaseous Fuels Rule apply to all conversions regardless of fuel type and hence form the basis for the certification procedures established in today's rule for vehicles converted to CFVs except where superseded by the requirements of today's rule. The Gaseous Fuels Rule provides that a vehicle conversion will not be considered tampering if the vehicle has been converted to a configuration which has been certified by EPA as meeting applicable emission standards. For vehicles converted to use fuels for which no standards exist, the provisions of Memorandum 1A apply, and EPA will not consider a modification to a certified emission control configuration to be tampering if the emissions from the vehicle are not increased as a result of the modification. Consistent with the Gaseous Fuels Rule, today's rule provides that in order to be considered clean fuel vehicles, conversion configurations of vehicles/engines must include all of the hardware necessary to allow a vehicle to operate on a fuel other than the fuel for which the vehicle or engine was originally manufactured.

2. Requirements for Clean Fuel Fleet Vehicle Conversions

Section 247(b) of the CAA directs EPA to promulgate regulations governing conversions of conventional vehicles to CFVs that "* * * will ensure that a converted vehicle will comply with the standards applicable under this part to clean-fuel vehicles." While the conversion provisions in the Gaseous Fuels Rule will require that emissions from converted vehicles meet the applicable emission standards whenever manufacturers certify conversion configurations, those provisions are not intended to fulfill all of the requirements of section 247 of the CAA. Therefore, in addition to the general guidelines for converted vehicles discussed in the section above and in the Gaseous Fuels rule, today's rule establishes that certification must be obtained from EPA before a converted vehicle can be sold to the public as a clean fuel fleet vehicle. The following sections describe the regulations which are promulgated by today's rule to satisfy the requirement of section 243(b).

a. *Responsible parties: certification, warranty and liability provisions for CFV vehicles.* EPA in today's rule holds that the certifier of the conversion configuration is liable as a manufacturer for purposes of sections 206 and 207 and related enforcement provisions. Imposing such liability on the certifier is an outgrowth and systhesis of the two options presented in the proposal. Following is a discussion of the significant advantages and disadvantages inherent in each of the proposed options, a response to pertinent pubic comments, and the final approach being promulgated today.

Section 247(c) states that "any person who converts conventional vehicles to clean-fuel vehicles * * * shall be considered a manufacturer for purposes of sections 206 and 207 and related enforcement provisions." To implement this requirement EPA considered two options in the NPRM regarding the definition of the "person who converts."

Under the first proposed option, the person(s) who installs a conversion configuration on a vehicle in order to convert the vehicle into a CFV would be liable as a manufacturer under section 247(c). Thus, a person installing a conversion kit would be required to obtain a federal certificate of conformity for that conversion configuration. Under the second proposed option, both the conversion kit manufacturer and the installer of the kit would be liable as manufacturers under 247(c). In the second option, the kit manufacturer and the installer would both have responsibilities in demonstrating that a vehicle converted to a CFV complies with the CFV standards and with EPA's regulations promulgated under section 247(b).

A significant advantage inherent in the first option is that liability is easily assigned and enforcement is less complicated if a single entity is held accountable for warranting each vehicle's emissions performance and is subject to production line testing requirements. The existence of such a sole liable party may also make it easier for purchasers of converted vehicles to seek redress for emissions performance failures under warranty provisions.

However, EPA believes that the installer may not be the appropriate party on which to focus all liability. Commenters indicated that the kit manufacturer is in the best position to perform the required certification testing. In addition, EPA believes that the first proposed option would result in a larger number of certifiers, and multiple certificates for the same conversion configuration. This would complicate enforcement and warranty actions by increasing the number or parties against whom such actions would need to be taken.

Commenters also noted the need for strong warranty and recall provisions in order to increase public confidence in the performance of converted vehicles. EPA believes that the existence of a large number of certifier-installers, many of whom may be relatively small businesses with limited financial resources[32] will adversely affect the confidence of purchasers of converted vehicles in their ability to pursue warranty claims.

The second option offers the advantage of allowing EPA to hold kit manufacturers legally responsible for some or all of the certification, production line testing, in-use testing, warranty, and recall requirements. EPA believes it will be more practical to focus enforcement efforts on kit manufacturers than on installers, given the large number of installers in relation to the number of kit manufacturers. This option would also allow EPA to distribute the responsibility for certification, and warranty and recall between a kit manufacturer and installers in a manner consistent with their abilities and level of involvement in the conversion process. Public comment was generally in support of adopting this option and favored holding conversion kit manufacturers responsible for in-use emission performance of kit hardware except where performance failures result from poor installation.

[31] "Certificatioo Programs for Banking and Trading of Oxides of Nitrogen and Particulate Emission Credits for Heavy-Duty Engines;" Final Rule, 55 FR 30584, July 26, 1990.

[32] U.S. Environmental Protection Agency, Office of Mobile Sources, "A Preliminary Assessment of the Gaseous Fuels Aftermarket Conversions Industry, EPA Contract 68–C1–0059, September 28, 1992.

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A significant disadvantage in this approach is that, though EPA could bring an action against either the kit manufacturer or the installer for any violation of the Act, as both would be jointly and severally liable, factual disputes between the parties regarding the actual cause of the emission failure could become a complicating factor during an enforcement action. This could lead to lengthy proceedings between the involved parties which in turn may delay resolution of emission problems and/or the compensation to vehicle owners for in-use performance problems covered under vehicle warranty.

The definition of the "person who converts" for the purposes of section 247(c) that will be promulgated by today's rule is as follows. Any entity (kit manufacturer, installer, or other) may apply for a certification for a conversion configuration and receive a federal certificate of conformity. This certifier will be considered the "person who converts" under section 247(c) and will assume all responsibility as the manufacturer under sections 206 and 207. If the conversion is performed by an entity other than the certifier, the certifier must provide the installer with instructions for proper installation, and the installer must follow these instructions. While the certifier is responsible as the manufacturer, if the installer installs improper equipment or performs a faulty installation, EPA may hold the installer responsible as well under the tampering provisions of the Act.

Under this approach a single party, the certifier, will be responsible for warranting the vehicle's emissions performance, and liability can easily be assigned for enforcement and warranty purposes as under the first option considered in the NPRM. In addition, this approach avoids the disadvantages inherent in the first option by providing industry with the flexibility to determine which business entity is in the best position to provide EPA with the data necessary for certification and to assume responsibilities as the manufacturer. Based on public comment EPA anticipates that in most cases the kit manufacturer will be the certifying party. Since the certifier will assume liability for in-use vehicle performance failures that result from faulty installations, EPA expects that the certifier will develop oversight programs to insure that installations are performed properly and will enter into indemnification agreements with installers. Kit manufacturers would be wholly within their rights to require such indemnification agreements before allowing installers to install their kit.

Thus, the result of holding the certifier solely responsible is consistent with the intent of the second option and with public comment in that it provides that the responsibility for certification, and warranty and recall will be distributed equitably among all those responsible for the completion of the final vehicle. Given that under the second option, kit manufacturers would have been liable for any violation (although EPA would have attempted to enforce against the party it believed was responsible), this approach does not substantially increase manufacturers' liability. In addition, enforcement actions by EPA will be simplified and the resolution of warranty claims by vehicle owners will be expedited. EPA believes that this approach best satisfies the need expressed in public comment to provide strict standards of liability in order to instill consumer confidence in the emissions performance of converted vehicles. The Natural Gas Vehicle Coalition and the American Gas Association encouraged EPA to establish CFV conversion requirements that are consistent with requirements for all other conversions. Holding the converter solely responsible is also consistent with the approach taken in the Gaseous Fuels Final Rule.

As proposed, the original equipment manufacturer (OEM) will remain responsible for the equipment that was on the vehicle before it was converted unless the conversion caused the failure of the OEM equipment to function in its role in meeting emission standards. EPA believes that this is necessary because the proper performance of the conversion configuration relies on the OEM's underlying emissions control systems. Also, EPA interprets section 247(c) of the CAA to direct that the certifier of a CFV conversion will not be required to warrant any vehicle for parts or operation existing in the vehicle prior to conversion and not affected by the conversion.

Public comment was mixed on the issue of OEM liability, with some commenters agreeing with EPA's proposed approach and others stating that the OEM should not be held responsible for post-conversion failures of OEM equipment due to concerns over the potential impact that converted parts may have on the performance or durability of the original parts. EPA recognizes this concern, and will evaluate in-use enforcement actions that involve an OEM versus converter liability decision on a case by case basis. One indicator that might be used by EPA to determine that the OEM was liable for an emission failure of a converted vehicle will be an emission-related recall action against unconverted OEM vehicles of the same model.

The CAA does not specify how the useful life period of converted vehicles should be measured for the purposes of in-use liability. EPA requested comment on this issue, and all of the public comment received suggested that the liability of the converter should not extend beyond the original useful life of the vehicle. Given that the emissions performance of the conversion configuration depends on the underlying emissions control systems of the OEM, EPA agrees with this approach. Thus, the regulations promulgated by today's rule provide that the liability of both the OEM and converter for in-use emission performance will extend to the end of the original vehicle/engine's useful life.

This definition of useful life creates the potential concern that fleet operations will satisfy Clean Fuel Fleet Program (CFFP) purchase requirements through the conversion of vehicles that have little mileage remaining in their useful life. If this occurs to a significant degree, CFFP purchase requirements could be met without achieving the emissions reductions anticipated from the CFFP. However, EPA does not expect fleet operators to satisfy their CFFP purchase requirements in this way because of the financial disincentives involved with converting such high mileage vehicles and maintaining them beyond their useful life solely for the purpose of meeting CFFP purchase requirements.

b. *Certification requirements.* Dedicated, dual, or flexible fuel conversions of light-duty vehicles, light-duty trucks, and heavy-duty vehicles/engines may qualify as CFVs. CFV conversions must meet the CFV emission standards (LEV, ULEV, or ZEV) prescribed in 40 CFR Part 88 (as described in the previous section on light-duty and heavy-duty standards) and must also meet the applicable emission standards and provisions of Part 86 which apply to all vehicles to the extent they are not superseded by the requirements of Part 88. In addition, the conversion must comply with the requirements of the regulations being promulgated today to qualify as a CFV.

A separate certification is required for each conversion configuration to be used with a given model year vehicle/engine for each certifier desiring to perform such a conversion. The conversion configuration certification will also be eligible for carryover to future model years only if the OEM vehicle/engine is also certified under

carryover provisions and no changes occurred in the conversion configuration. A dual-fuel or flexible fuel conversion must be certified according to the general requirements for dual-fuel/flexible fuel vehicles discussed in section A.1.a above.

It should be noted that a certificate issued for a given model year expires on December 31st of that calendar year, after which time a conversion under that certificate may no longer be performed. A conversion for a given model year may be introduced for sale prior to January 1st of that year, but in no case may a conversion be introduced prior to January 1st of the preceding year.

i. *Small-volume manufacturers certification program—volume limits.* Consistent with the Gaseous Fuels Rule, today's rule establishes that a conversion configuration may be certified according to the Small-Volume Manufacturers Certification Program (55 FR 7178, February 28, 1990) and that certifiers of conversion configurations will be treated the same as small volume manufacturers for this purpose. In the Gaseous Fuels NPRM and in the proposal for this rule, EPA proposed that all certifiers of conversion configurations be permitted to use the Small-Volume Manufacturers Certification Program, regardless of the annual volume of conversions. Public comment on the gaseous fuels NPRM[33] was received that suggested that the production volume limits that currently define a small volume vehicle manufacturer under 40 CFR 86.092–14 should also apply to parties seeking to certify a conversion configuration. The Agency agrees with this comment and believes that given the anticipated increase in demand for conversions in response to a variety of federal and state programs, it is reasonable to believe that existing or future manufacturers may produce more than 10,000 converted vehicles annually at some point in the future. (No current company produces this number of conversions). EPA does not believe it would be equitable for certifiers with sales or production of more than 10,000 converted vehicles to take advantage of the Small Volume Manufacturer's Certification Program when that program is not available to manufacturers of more than 10,000 new vehicles. EPA believes it would be inappropriate to provide relief designed for small volume manufacturers to entities that sell or produce more than 10,000 converted vehicles annually.

Thus, consistent with the approach taken in the Gaseous Fuels Rule, EPA believes that the volume limits that currently apply to manufacturers seeking to certify under the provisions for small volume manufacturers should also apply to parties seeking to certify under the CFF program. Small-volume aftermarket conversion certifiers will also have the option of using the EPA full certification program prescribed in 40 CFR 86.094–23. Aftermarket conversion certifiers with annual sales or production volume of more than 10,000 converted vehicles should be required to use the EPA full certification program.

While the sales volume limit in the Small-Volume Manufacturers Certification Program applies to sales for a particular model year, conversion companies may certify conversion configurations based on engine families from older model years. To accommodate this, the 10,000 vehicle limit will apply to the aggregate total of all vehicles converted within a calendar year by a given aftermarket conversion certifier at all of its installation facilities without regard to the model year of the original vehicles upon which the configurations are based. All vehicle conversions within a calendar year will be considered when determining whether the 10,000 vehicle limit is exceeded including those converted under the CFF program, the Gaseous Fuels Rule, and Memorandum 1A. Apart from this difference, all provisions related to the sales volume limit under the Small-Volume Manufacturers Certification Program would apply (40 CFR Part 86, as promulgated by 55 FR 7178, February 28, 1990).

In this rulemaking, EPA did not propose to set a sales or production volume limit for manufacturers wishing to certify according to the Small Volume Manufacturers Certification Program (the "volume limit"), nor did EPA receive any comments in this rulemaking suggesting that such a volume limit should be used. In this circumstance, EPA believes it should not finalize a volume limit without first providing the public an opportunity to comment on such a limit. Therefore, the portion of today's rule that limits the use of the Small-Volume Manufacturers Certification program to those certifiers with an annual sales or production volume of 10,000 or fewer converted vehicles, shall be effective on November 29, 1994, unless the information collection requirements contained in this section have not been approved by the Office of Management and Budget (OMB). In that case, EPA will publish a timely document in the Federal Register delaying the effective date. If, on or before October 31, 1994, EPA does not receive notification that someone wishes to file an adverse or negative comment on the volume limit portion of the rule, then the volume limit portion of the rule will become final and effective without further EPA action. On the other hand, if, on or before October 31, 1994, EPA receives notification that someone wishes to file adverse or negative comment on the volume limit portion of the rule, EPA will withdraw the volume limit portion of the rule. EPA will then repropose the volume limit and go through full notice-and-comment procedures before adopting the volume limit. If EPA were to withdraw this portion of the rule, all certifiers would be able to certify according to the Small-Volume Manufacturers Certification Program until and unless EPA issued a final rule that established a different requirement.

ii. *Small-volume manufacturers certification program—durability testing.* Under the Small-Volume Manufacturer's Certification Program, a certifier will be required to demonstrate durability unless the certifier is specifically authorized to use another certifier's durability data and deterioration factors. If deterioration factors are not available, certifiers will be required to use assigned deterioration factors from the Small-Volume Manufacturer's Certification Program. Current regulations require that assigned deterioration factors be determined based on the seventieth percentile of industry-wide gasoline-fueled vehicle deterioration factors. Since the emission deterioration characteristics of vehicles operating on other fuels may be different, EPA may in the future consider through rulemaking the use of deterioration factors based on data from vehicles using different fuels when developing deterioration factors for such vehicles.

The Small-Volume Manufacturers Program requires manufacturers to provide full low mileage emission data which show compliance with new vehicle emission standards, but requires complete durability testing only for vehicles with unproven technology. Certification through use of the small-volume certification program reduces the burden of durability testing for small volume manufacturers while providing reasonable assurance of emission compliance. Public comment was received that to further reduce the burden on small volume manufacturers, EPA should accept as proven

[33] Materials relevant to the Gaseous Fuels NPRM have been placed in the public docket, No. A–92–14.

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technology under the Small-Volume Manufacturers Program any aftermarket conversion technology that has been durability tested and certified under CARB's bench testing rules [34] or has been durability tested using on-road mileage accumulation.

As specified in 40 CFR 86.092–2, EPA will accept bench or road test data that has been demonstrated to be equal or more severe than certification mileage accumulation requirements to satisfy the requirements for proven technology under the Small-Volume Manufacturers Program. Thus, durability test data collected to satisfy CARB's bench testing rules or by on-road mileage accumulation could be submitted to EPA for review under the Small-Volume Manufacturers Program. EPA reserves the right to evaluate the adequacy of such data, and acceptance by CARB will not constitute automatic acceptance by EPA. It should be noted that EPA requires in-use data to demonstrate that bench and on-road durability testing is equal or more severe than certification mileage accumulation requirements. For example, actual temperature trace data collected during vehicle operation must be used to demonstrate that the temperature experienced during bench aging testing is at least as severe.

It should also be noted that EPA will only permit the use of provisions in the Small-Volume Certification Program to demonstrate the durability of technology that is currently used in automotive applications. For technology that has not previously been used in automotive applications in certified vehicles the full mileage accumulation durability requirements will be required.

iii. *Other provisions.* EPA is also establishing other requirements with which certifiers must comply. For vehicles converted under today's regulations, the certifier must list each installer which produces CFV conversions on the certification application for that CFV conversion. A revised list must be submitted as new installers are authorized to produce the conversion configuration. Because the certifier will be treated as the manufacturer for purposes of sections 206 and 207 and related enforcement provisions, EPA anticipates that certifiers will enter into legally binding agreements with installers to ensure that installers are exercising due care in performing the installation and meeting other obligations under today's regulations.

In cases where installations of conversion configurations are performed by parties other than the certifier, EPA envisions that the certifier will enter into legally binding agreements with said installers. To facilitate EPA enforcement actions each installer must be listed on the certificate filed with EPA at the time of certification for each conversion configuration, and the certifier must submit a revised list to EPA when new installers are added. The certifier is responsible for compliance with any applicable production line testing requirements (e.g., Selective Enforcement Auditing in federal certification) regarding the availability of vehicles and emissions testing facilities at the certifier's facilities and at those of the certifier's installers.

Identification of a converted CFV as a LEV, ULEV, or ZEV will be based on the information provided to EPA at the time of the certification of the conversion configuration. To aid in their identification, a converted CFV must be labeled as such on the engine labels. Consistent with other EPA certification programs, records are required to be maintained of the tests performed to support the certification application, and these records must be made available to EPA enforcement personnel upon request. Certifiers must maintain records of each vehicle converted including the make of the vehicle, vehicle identification number, serial number of the conversion kit, date and location of the conversion, and the results of the post-installation emission test discussed in the following section.

c. *Conversion installation quality test.*

i. *Background.* The CFV emission standards are considerably more stringent than conventional standards, and converted vehicles certified as CFV's will be eligible to earn marketable purchase and emission credits and to receive TCM exemptions as CFVs in the Clean Fuel Fleet program (LEVs, ULEVs, ZEVs or ILEVs). In the NPRM EPA requested comment on whether additional requirements are necessary to ensure compliance with the CFV standards given that the conversion industry historically has consisted of a large number of relatively small businesses that have not previously faced specific emissions performance requirements. Specifically, EPA requested comment on whether it would be useful to require a post-installation test for converted vehicles to assess the quality of the conversion installation from an emissions perspective. Such a test is required by the California Air Resources Board in its regulation of alternative fuel retrofit systems.[35]

Of those commenting on this subject, all expressed concern regarding reports of poor emissions performance of some converted vehicles presently in use and stated that EPA should promulgate strict standards to instill consumer confidence in the emissions performance of CFVs. There was support for the EPA concept of a post-installation test requirement to help identify poor installations or defective conversion kit hardware that would otherwise result in high emissions.

ii. *Summary of today's action.* EPA believes that the certification program and warranty and liability provisions promulgated by today's notice address many of the concerns noted in the public comments and will provide a fair degree of confidence that the in-use emissions performance of CFVs will remain within the applicable standards. EPA believes that these provisions, coupled with production line and in-use testing programs, will adequately ensure that installations by larger conversion manufacturers that produce or sell more than 10,000 converted vehicles per year will be performed properly and that the emissions performance of these vehicles will meet expectations. However, EPA believes that it is uncertain whether smaller conversion manufacturers will have the resources and experience to institute the necessary quality control measures. Therefore, to provide greater assurance that conversion hardware is installed properly, EPA will require that each vehicle converted by a manufacturer that sells or produces less than 10,000 converted vehicles per year undergo a post-installation test to assess the quality of the installation from an emissions perspective before it may be sold as a CFV or is eligible for special benefits available under the CFF program.[36] For vehicles that fail the post-installation test, the certifier will be required to take such remedial actions as are necessary to ensure compliance, and to retest each vehicle before it is sold as a CFV.

Another point that supports the need for a post-installation test for small-volume conversion manufacturers is the anticipated difficulty in conducting production line emissions testing at small manufacturers' facilities. In such cases, small production volumes will make the necessary statistical sampling difficult to achieve, and such manufacturers will not generally have on-site test equipment capable of running FTP testing. Due to these difficulties, EPA will not be able to rely on production line testing of small manufacturers to the same degree as it will for larger volume manufacturers. Requiring post-installation testing of small-volume manufacturers helps to compensate for this limitation.

EPA proposed to allow manufacturers that convert fewer than 300 vehicles per year special exemptions from the post-installation test requirements when access to inspection and maintenance test facilities is not available in the area where the production facility for converted vehicles is located.[37] EPA believes that it is unlikely that manufacturers will be located in areas without access to such facilities. However, inspection and maintenance testing is not available for heavy duty vehicles in all areas, and the alternate two-speed idle post-installation test may represent a significant burden for small manufacturers. Therefore, in cases where inspection and maintenance testing is not available, manufacturers which sell or produce fewer than 300 vehicles in a calendar year may request an exemption from EPA from the post-installation test requirement. Included in the request for exemption must be the estimated number of vehicles and engines that the manufacturer will convert in the calendar year, a description of any emissions related quality control procedures used, and sufficient information to demonstrate that the post-installation testing requirement represents a severe financial hardship. Within 120 days of receipt of the application for exemption, the Administrator will notify the applicant either that an exemption has been granted, or that sufficient cause for an exemption has not been demonstrated and that all of the manufacturer's vehicles are subject to the post-installation testing requirement.

If granted, an exemption from the post installation testing requirement would apply only to the manufacturer's vehicles which have the conversion installations performed outside of a nonattainment area with an inspection and maintenance testing program that has a test for CO emissions. A small manufacturer that is exempted from the post-installation test requirement could sell untested converted vehicles otherwise certified as CFVs. These vehicles could be used by covered fleet owners in compliance with CFFV purchase requirements, would be eligible for temporal TCM exemptions, would be eligible to participate in the CFF purchase credit program, and could qualify as ILEVs.

EPA considered allowing the post-installation test to be alternately conducted by the purchaser to provide additional flexibility for those manufacturers who may not have access to inspection and maintenance test facilities. Upon further evaluation of this option, EPA believes that it is unworkable given that it would create a situation where the requirements for producing a certified vehicle would not be complete until after the manufacturer transferred the title of the converted vehicle to the ultimate purchaser. To be eligible as a CFV, each vehicle emission control information label [38] must state that it is a clean fuel vehicle (indicating that a post-installation test was performed as required). The transfer of the vehicle title before all of the criteria for certification of the converted vehicles are met would raise doubts as to the validity of such a label given that a vehicle purchaser could fail to perform the required test.

Public comment largely supported the use of a CO emissions test such as that discussed in the NPRM for the post-installation emission evaluation. Commenters agreed that the approach proposed by EPA would be useful in uncovering gross installation errors and would provide an additional level of assurance that CFV emission standards will be met in-use. EPA believes that the simple requirements of such a CO emissions test will fulfill the goal of uncovering gross installation errors without imposing a significant burden on small-volume manufacturers.[39] It should be noted that this test is intended as a screening mechanism only and may not be as discriminating of emissions levels as tests performed for inspection and maintenance purposes or a full Federal Test Procedure.

Two options will be available to satisfy the post-installation test requirement. Under both options, a separate test would be required for dual-fuel vehicles for each fuel on which the converted vehicle is capable of operating. Under the first option, a CO emissions test could be performed using the same equipment, procedure, and pass/fail criteria as that used under the inspection and maintenance testing program in the area where the testing is conducted. This test could be performed at an official inspection and maintenance facility, by the manufacturer, or by the manufacturer's contractor. If pass/fail criteria specific to the converted vehicle's operation on alternative fuel are not available the pass/fail criteria applicable to the vehicle's operation on gasoline prior to conversion will be used. In cases where inspection and maintenance testing procedures are not available the second post-installation testing option described below must be used. The second post-installation testing option may also be used in areas where inspection and maintenance facilities are available at the manufacturer's discretion.

In the NPRM EPA discussed adopting a single-speed idle test per 40 CFR 85.2212 as an alternative to the inspection and maintenance testing facilities procedure described above. Since the publication of the NPRM, EPA has further evaluated the capabilities and limitations of potential post-installation test procedures and has determined that measuring CO emissions on an existing two-speed idle test [40] would provide greater assurance of properly identifying gross installation errors while limiting the potential of false failures as compared to a single-step idle test. EPA believes that the minor change from a single-speed to a two-speed idle test will not add significantly to the cost and difficulty of post-installation testing.[41] The California Air Resources Board's regulation of alternative fuel retrofit systems also requires that a two-speed idle test be performed as part of a post-installation vehicle evaluation.[42] For these reasons, EPA is adopting the two-speed idle test of CO emissions as the required post-installation test when an inspection and maintenance test procedure is not available.

A two-speed idle test is required to be performed on the certification vehicle

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[34] Sections 2030 and 2031 of Title 13, California Code of Regulations.

[35] Title 13, California Code of Regulations, Sections 2030 and 2031.

[36] These special benefits include potential eligiblity for a purchase credit in the fleet program and exemptions from some transportation control measures (TCMs). Converted vehicles could also potentially qualify as Inherently Low-Emissions Vehicles (ILEVs) under the program promulgated in March 1, 1993 (58 FR 11888), and receive expanded TCM exemptions. Finally, converted vehicles could generate mass emission credits for trading under state programs developed as part of the Federal Economic Incentives Program under the Clean Air Act (58 FR 11110, February 23, 1993).

[37] The sugeested guidelines for the post installation test were placed in Section II–A of the public docket.

[38] See 40 CFR 86.085–35 regarding additional labelling requirements.

[39] ibid.

[40] The two-speed idle test (40 CFR 85.2215, "EPA 91") is described in the Short Test Emission Regulations Final Rule, 58 FR 58405–58407.

[41] The two-speed idle test requires a tachometer and a special multiple emission measurement computer sofware algorithm that are not required for the single-speed idle test. However, many emissions testing facilities will already have access to such equipment and EPA believes the cost to those who may need to acquire the additional equipment to be less than $300.

[42] Title 13, California Code of Regulations, Sections 2030 and 2031.

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during certification testing to establish reference values (at idle and 2500 rpm) against which post-installation test results may be compared. EPA considered requiring that each vehicle's post-installation test CO emissions measurement be below the reference value established at the time of certification plus 20 percent of the reference value. The comment received from the public on the post-installation test pass/fail criteria indicated that the CO emissions of some CFVs may be so low as to make the use of a cut point at this level impractical given the measurement accuracy of the test. One commenter suggested an alternative cut point of the CO certification reference value plus 0.4 percent CO by volume.

This cutpoint is very similar to the 0.5 percent CO standard promulgated for the certification short test (CST) two-speed idle procedure for gasoline-fueled vehicles (58 FR 58382–58440, November 1, 1993). The choice of the CST standard was based on a review of data collected from inspection and maintenance facilities that employ a two-speed idle test which indicate that production line gasoline powered vehicles from non-pattern failure engine families could easily meet a 0.5 percent CO standard.[43] Since the CO emissions of CFVs can be expected to be no greater than, and in many cases are expected to be less than, those from vehicles meeting Tier 1 and Tier 2 standards, EPA believes that properly manufactured CFVs can also easily meet a 0.5 percent CO standard and will therefore not have difficulty in meeting a standard of 0.4 percent plus the certification reference value (the sum of which will likely total more than 0.5 percent in most instances). Based on the above discussion, EPA agrees that a cut point of the CO certification reference value plus 0.4 percent CO by volume provides reasonable assurance that gross installation errors will be discovered while sufficiently limiting the probability of false test failures, and therefore will adopt this pass/fail criteria for the two-speed idle post-installation test.

C. The California Pilot Test Program

The Pilot program will be federally administered in the State of California and will require vehicle manufacturers to sell a minimum number of clean-fuel LDVs and LDTs in California starting in MY 1996. Unlike the CFF program, the Pilot program's requirements do not include HDVs. The CAA gives EPA several responsibilities with regard to the Pilot program. EPA has already implemented a credit program for vehicle manufacturers (57 FR 60038, December 17, 1992; 40 CFR 88.304–94) and today's action covers vehicle sales requirements and state opt-in provisions. The light-duty vehicle and truck CFV emission standards applicable to vehicles under both the Pilot and CFF program are discussed above under section A.1.a.

1. Sales Requirements

a. *CAA Requirements.* Section 249(c) of the CAA requires EPA to promulgate regulations requiring that "[c]lean fuel vehicles shall be produced, sold, and distributed (in accordance with normal business practices and applicable franchise agreements) to ultimate purchasers in California (including owners of covered fleets . . .) in numbers that meet or exceed" 150,000 in MYs 1996 through 1998 and 300,000 in MYs 1999 and later. However, the CAA does not direct EPA on how to distribute these sales requirements among vehicle manufacturers. Section 249(d) allows EPA to make available credits for use in the "fulfillment of [a] manufacturer's share of the requirements" of the Pilot program. As mentioned earlier, EPA has established a credit program that allows manufacturers to use credits to meet the sales requirements of the Pilot program.

b. *CARB requirements.* CARB's Low Emission Vehicle (LEV) Program will require the sale of vehicles meeting more stringent exhaust emission levels by establishment of (1) a decreasing fleet average NMOG emission requirement (for manufacturers of vehicles up to 6,000 lbs GVWR) and (2) through direct sales percentage requirements (for manufacturers of vehicles from 6,000 to 14,000 lbs GVWR). (Note: The Pilot program and the California LEV program will overlap only for those vehicles up to 8,500 lbs GVWR, as the Pilot program does not cover vehicles beyond this GVWR.)

The CARB program will require each manufacturer of vehicles up to 6,000 lbs GVWR to sell LEVs in each of two LVW subclasses (≤3750 and 3750–5750 lbs LVW). Each manufacturer will need to sell a sufficient number of LEVs such that the manufacturer's California fleet average NMOG exhaust emission value is less than or equal to a fleet average NMOG exhaust emission requirement for the corresponding model year, vehicle type, and LVW subclass. In addition to meeting the fleet average NMOG requirement, each manufacturer must also sell a required minimum percentage of ZEVs starting in the 1998 MY. Also beginning with MY 1998, CARB requires that manufacturers of medium-duty vehicles (i.e., trucks from 6,001 to 14,000 lbs GVWR) certify enough such vehicles to CARB's emission standards such that the manufacturer's fleet consists of a minimum percentage of ULEVs.

The projected sales of vehicles in California resulting from the CARB LEV program are likely to far exceed the sales of CFVs under the Pilot program. Based on the projected sales of only LDVs and LDTs under 3,750 LVW in 1996 and 1999, sales under the CARB LEV program are expected to reach about 200 and 400 percent of the Pilot program CFV sales requirements, respectively. Unless and until EPA adopts California standards for CFVs, CARB LEVs which do not meet federal CFV requirements could not be counted in the Pilot program (although vehicles meeting CFV requirements will likely meet the exhaust emission requirements of the CARB LEV program).

c. *California Pilot Program sales requirements—i. "Sales" definition.* CAA Section 249(c)(1) requires that "[c]lean fuel vehicles be produced, sold, and distributed to ultimate purchasers in California". EPA is today establishing this requirement as applying at the first point of sale from the manufacturer to the dealer or ultimate owner. Until such time as EPA formally changes its interpretation of section 249(c), manufacturers covered by the Pilot program may not use sales of converted vehicles to meet the sales requirements of the Pilot program. Similarly, manufacturers of conversions are not subject to the sales requirements. As was stated in the NPRM for this rule, nothing in section 249(c)(1) requires that conversions be part of the CFV sales requirements. Furthermore, section 247 sets forth requirements applicable to conversions and states that conversions to CFVs that meet those requirements may be used to satisfy the purchase requirements of the federal CFF program; however, there is no mention of the Pilot program.

In light of the evolving regulatory framework affecting conversions, culminating with today's provisions for CFV conversions, EPA is reconsidering whether it is appropriate for manufacturers of CFV conversions to participate in the Pilot program. This reconsideration is largely due to the fact that manufacturers of CFV conversions under today's rule will be treated like vehicle manufacturers for purposes of compliance with EPA emission regulations. EPA may propose by regulation in the future to include

[43] Sierra Research Inc., "Analytical Support for Selection of Certification Short Test Standards", Report No. SR93–03–0, EPA Air Docket #A–91–21, Item. IV–A–01, March 4, 1993.

manufacturers of conversions in the Pilot program. EPA will solicit public comment on this issue at that time.

ii. Manufacturer sales distribution. Although CAA section 249 clearly indicates that vehicle manufacturers are responsible for meeting sales requirements, it does not cover how the sales requirements are to be allocated among manufacturers. Sales under the California LEV Program are likely to far exceed the sales requirements set forth in the Pilot program and, since the vehicles for the two programs will be identical or at least very similar, the Pilot program requirements will likely be easily satisfied. As a result, any method for allocating sales requirements among manufacturers will have little impact.

Two options for determining a manufacturer's individual sales allocation were presented in the NPRM. In both options, an equation was used to calculate a manufacturer's share of required CFV sales based on the share of that manufacturer's vehicle sales in the State of California during the previous model year. Under Option 1, EPA would be responsible for calculating the individual sales responsibilities; in the second option, manufacturers would perform the computation. The primary concern of those commenters who responded was that only California vehicle sales be considered since the Pilot program was to be implemented in California. The proposed regulations were written based on the second option and it is this option that is finalized today.

A manufacturer's share of the total CFV sales requirement in any given year (150,000 CFVs annually for 1996–1997; 300,000 CFVs annually thereafter) will be based on the ratio of the manufacturer's sales to all sales in California according to the following equation:

RMS = (MS/TS) × TCPPS

where:

RMS = a manufacturer's required sales in a given model year.

MS = a manufacturer's total LDV and light LDT sales in California two model years earlier than year in question (for MY 1996 and 1997 RMS calculations).
= a manufacturer's total LDV and light LDT sales in California two model years earlier than year in question (for MY 1998 and later RMS calculations).

TS = total LDV and light LDT sales in California of all manufacturers two model years earlier than the year in question (for MY 1996 and 1997 RMS calculations). Sales of manufacturers which meet the criteria of (d) of this paragraph will not be included.
= total LDV and light LDT sales in California of all manufacturers two model years earlier than the year in question (for MY 1998 and later RMS calculations). Sales of manufacturers which meet the criteria of (d) of this paragraph will not be included.

TCPPS = Pilot program CFV sales requirement for the year in question (either 150,000 or 300,000).

Each manufacturer will use this equation to determine its individual CFV sales requirement. The two factors, MS and TS, will be based on vehicle sales two MYs from the year in question (e.g, for MY 1996, a manufacturer will use sales data from MY 1994). In the NPRM, EPA requested comment as to whether a manufacturer's share of required CFV sales should be calculated based on sales in the previous model year or sales two model years prior. Commenters did not address this issue. EPA believes that using MY sales data that is two years prior, as opposed to only one year, is not likely to reflect the most recent market changes and will also allow new manufacturers a two year delay before they are factored into the equation; however, it will provide manufacturers with sufficient time for planning their CFV production and will also require less administration and oversight on the part of both EPA and manufacturers. EPA believes that the CFV sales distribution that will result among manufacturers will be fair and equitable in light of these advantages. Therefore, EPA is finalizing the requirement that California sales figures from two model years earlier be used by manufacturers to calculate required CFV sales shares.

Since heavy LDT standards under the Pilot program are not effective until MY 1998, a manufacturer's share of required sales for MYs 1996 and 1997 will be based on LDV and light LDT sales only. All LDV and LDT sales will be used once the CFV standards for heavy LDTs are in effect beginning with MY 1998.

iii. Exemptions for small volume manufacturers. EPA proposed that, for the Pilot program, small volume manufacturers of clean-fuel LDVs and LDTs would not have to fulfill a calculated share of the required CFV sales requirements until the 2001 MY. EPA is finalizing this requirement today. However, in 2001 and subsequent model years, no further distinction will be made between small volume manufacturers and larger manufacturers for purposes of the Pilot program.

As defined in the CARB LEV program, a small volume manufacturer has average annual vehicle sales less than or equal to 3,000 vehicles based on the consecutive three-year period 1989–1991. If a small volume manufacturer exceeds this average level, they are then subject to the LEV program fleet average NMOG requirements applicable to larger manufacturers beginning four model years after the last of the consecutive three model years. Larger manufacturers with average sales that fall below the 3,000 unit threshold over any consecutive three-year period qualify as small volume manufacturers beginning with the following model year.

Due to the many parallels between the Pilot program and the CARB LEV program, EPA continues to believe it is logical that the "small volume manufacturer" definition under the Pilot program should be as similar as possible to the definition under the CARB LEV program. Several commenters also supported consistency between the two programs. Therefore, for purposes of the Pilot program, EPA is defining "small volume manufacturer" as one whose average annual LDV and LDT sales in California are less than or equal to 3,000 units during a consecutive three-year period beginning no earlier than 1993. (This accommodates new manufacturers who may have less than three consecutive years of sales but which do not exceed the 3,000 threshold.) And, like CARB, EPA is also granting leadtime to small volume manufacturers who exceed the average annual level. A manufacturer who qualifies as a small volume manufacturer for the first year of the Pilot program (i.e., in model year 1996) will not have to fulfill a CFV sales requirement until model year 2001. As proposed in the NPRM and finalized here today, beginning with model year 2001, all manufacturers, regardless of average annual sales, will have to calculate and fulfill their CFV sales share based on the formula above. This five-year delay is intended to encourage the viability of small volume manufacturers whose limited capital and resources do not allow them to comply as easily. It is also intended to provide consistency with the CARB LEV program and minimize adminstrative burden.

iv. Sales reporting and enforcement of requirements. In order for EPA to administer and enforce the sales requirements of the Pilot Program, manufacturers will have to report their California vehicles sales to EPA. Currently, there is a requirement for manufacturers to submit sales data to EPA in Code of Federal Regulations

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(CFR), 40 CFR 86.085–37); however, the reporting requirements do not distinguish between California vehicle sales and sales throughout the U.S. Such a distinction is necessary for purposes of the Pilot Program. Therefore, EPA will require that manufacturers, in addition to complying with the requirements of 40 CFR 86.085–37, report the number of vehicles sold only in California.

If a manufacturer fails to meet its required sales volume, EPA believes that it has the authority to penalize the manufacturer to the full extent allowed for such an infraction under CAA section 205(a). In accordance with this section, a $25,000 penalty will be levied on a manufacturer in the event of a failure to meet the prescribed sales requirements for certified Pilot Program vehicles.

2. State Opt-In Program

CAA section 249(f) requires that EPA promulgate regulations which will (1) allow states other than California to encourage the sale of CFVs in their state which are sold in California under the Pilot program and (2) allow such states to use incentives to promote the sale and use of CFVs and clean alternative fuels. States opting into the program may voluntarily decide to implement a clean fuel vehicle incentive program as described in this Final Rule.

Any state that contains all or part of any ozone nonattainment area that is classified under subpart D of Title I as serious, severe, or extreme can choose to submit a revision of their applicable state implementation plan (SIP) under part D of Title I and section 110. A state's SIP shall include incentives for the sale and use of CFVs and for the production and distribution of clean alternative fuels such as those that are required to be produced, sold, and distributed in the State of California. These SIP provisions shall come into effect at least one year after the state has notified vehicle manufacturers and fuel suppliers of the plan provisions.

As mentioned above, section 249(f) directs EPA to establish the voluntary opt-in program under which states may use incentives to promote the sale and use of CFVs and clean alternative fuels. Examples of incentives listed in section 249(f) include higher registration fees for non-CFVs, financial incentives, exemptions from high occupancy vehicle or trip reduction requirements, and parking preferences. Today's rule establishes these incentives for use by states under a section 249(f) opt-in provision. States may develop additional incentives, as well, subject to EPA approval via the SIP approval process.

Section 249(f) prohibits a state opting into the program from including sales or production mandates for CFVs or clean alternative fuels in its SIP revision opting into the Pilot program. In addition, the SIP revision must provide that vehicle manufacturers and fuel suppliers will not be penalized or subject to sanctions for failing to produce or sell CFVs or clean alternative fuels.

D. Technical Amendments to CFF Definitions and Other Clarifications

1. Explanatory Language in the Preamble of the Final Rulemaking for Clean Fuel Fleet Definitions and General Provisions Is Clarified in Four Areas, as Described Below

a. *The role of fleet payment methods in establishing whether fleet vehicles are centrally fueled.* In the description of "contract fueling" as it pertains to the definition of "centrally fueled" (section III(3)(a) of the Definitions final rule preamble, 58 FR 64679, December 9, 1993), EPA indicated that the nature of the method of payment used by a fleet operator for fuel purchases might be useful for determining whether the fueling arrangement constituted "central fueling." In its description, EPA stated that "retail credit cards" would not represent central fueling arrangements while "commercial fleet credit cards" would represent such arrangements.

Since the time of the final rule, parties representing fleet leasing companies and independent fuel marketers informed the Agency that the emerging business in broad national fleet fueling cards requires further clarification of this issue. These parties have indicated that the use of such cards, which generally include a wide network of fuel providers nationwide and an administrative system for monitoring fuel purchases, do not necessarily indicate that fueling is occurring at a central facility or set of facilities. Similarly, the use of retail credit cards does not prove that fueling is not occurring in a centralized way. EPA believes there is value in these observations, and the Agency will no longer recommend that states look to the payment method as a key indicator of the presence or absence of central fueling. Instead, EPA recommends that states look at the actual refueling patterns used by fleet operators. When an individual fleet's fueling is limited to a single location or a prescribed and identified set of locations within the operational range of the vehicles, EPA believes this situation represents central fueling, regardless of the method of payment for the fuel. As the implementation of state fleet programs evolves, EPA may consider further clarification of this issue, by rule or by guidance.

b. *Clarification of the determination of whether a fleet is "capable of being centrally fueled".* In the preamble of the Definitions final rulemaking, EPA described a preferred technique for determining fleets capability of being centrally fueled, based on the number of miles from trips that could be centrally fueled. Because of an editorial oversight, portions of section III(4)(a)(i) and (4)(c) of the Definitions final rule preamble may be misleading (58 FR 64679, December 9, 1993). EPA wishes to clarify that the number of miles from trips that could be centrally fueled should be tabulated only from those trips that do not require the fleet vehicle to travel outside of its operational range (i.e., the distance a vehicle is able to travel on a round trip with a single refueling). This clarification makes the method of calculation consistent with the stated intent of the overall determination procedure.

c. *Correction to reference in the definition of "owned or operated, leased, or otherwise controlled by such person".* The definition of "owned or operated, leased, or otherwise controlled by such person" in § 88.302–94 of the Definitions final rule regulations may be misleading (58 FR 64679, December 9, 1993). Paragraph (2) within this definition refers to the definition of "control" as being in paragraph (c) of § 88.302–94; however, the definition of "control" is not designated as paragraph (c). Thus, EPA wishes to clarify that in the definition of "owned or operated, leased, or otherwise controlled by such person" it intended to refer to the definition of "control" in § 88.302–94.

d. *Correction to the instructions for the promulgation of § 88.308–94 of the regulations, entitled "Programmatic requirements for clean-fuel fleet vehicles".* Because of an editorial error, the definition of "multi-state nonattainment areas" (§ 88.308–94) in the Definitions final rule regulation (58 FR 64679, December 9, 1993) was described as an amendment to a previously promulgated section instead of a new definition to be promulgated in a new section of part 88. Thus, EPA wishes to clarify that it intended to add a new § 88.308–94 to 40 CFR part 88.

2. Harmonization of ILEV Exhaust Standards and Test Procedures With the CFV Provisions

In EPA's final rule on "Clean Fuel Fleet Credit Programs, Transportation Control Measure Exemptions, and Related Provisions" (58 FR 11888, March 1, 1993), Inherently Low-Emission Vehicle (ILEV) emission standards and test procedures were established. The exhaust emission standards were published in tables C93–6, C93–6.1, and C93–6.2.

With the finalizing of exhaust emission standards and test procedures in today's rule, the earlier treatment of ILEV standards and test procedures for exhaust emissions are now obsolete. Technical revisions of the ILEV regulations are included in today's rule. These changes have the effect of focusing ILEV exhaust requirements on those of other CFVs, while the special ILEV evaporative emissions standard and test procedure remains unchanged.

E. Display of OMB Control Numbers

EPA is also amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. This amendment updates the table to accurately display those information requirements contained in this final rule which have already been approved. This display of the OMB control number and the subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be necessary. For the same reasons, EPA finds that there is good cause under 5 U.S.C. 553(d)(3).

F. Regulatory Impacts

The economic and environmental impacts of this rulemaking are only from the provisions pertaining to the Clean Fuel Fleet Program since the impacts of the California Pilot Program will most likely be superseded by the projected effect of the CARB LEV program and other federal requirements and should not create additional economic or environmental impact. EPA has prepared a Regulatory Impact Analysis (RIA) that evaluates the program costs, potential program benefits, and cost effectiveness of the Clean Fuel Fleet Program. As described in the proposal, included here is a summary of the results of those analyses. The program costs and potential benefits related to light-duty vehicles and trucks are evaluated separately from those of heavy-duty vehicles (above 8,500 lbs GVWR) because the CFV standards and the technology used to meet them are very different for the light-duty and heavy-duty classes.

1. Program Costs

a. *Light-duty vehicles and light-duty trucks.* As described in the proposal, to estimate the potential costs of clean-fuel LDVs and LDTs, EPA has developed two scenarios representing different assumptions about the future use of nonconventional fuels. Scenario I assumes no major changes from conditions that exist today. Scenario II assumes the emergence of some driving force that would encourage or require OEMs to offer more non-petroleum fuel/vehicle combinations.

Using the above scenarios, the incremental acquisition and operating costs, coupled with estimates of the number of CFVs operating, can be used to estimate an overall cost of the fleet program for LDVs and LDTs. The incremental acquisition cost is the amount a fleet owner must pay for a CFV above the cost of a comparable conventional vehicle, and different incremental costs are associated with each vehicle/fuel type. As in the proposal, EPA estimates an incremental acquisition cost of $170 for vehicles fueled with reformulated gasoline, $300 for alcohol-fueled vehicles, $2,000 for gaseous-fueled vehicles, and $3,300 for electric vehicles.

Another fleet program cost is incurred in the operation of clean-fuel vehicles. Estimated operating costs, for all of the vehicle/fuel combinations, are based solely on fuel costs, since no additional maintenance is expected for CFVs above their conventional counterparts. As in the proposal, compared to conventional gasoline equivalent cost of $1.31 in the year 2000, the projected gasoline equivalents for the same year are as follows: $1.36 for reformulated gasoline, $1.12 for alcohol fuels, $1.09 for CNG, $0.62 for LPG, and $1.12 for electricity. Thus, all fuels except for reformulated gasoline represent a cost savings when compared to the estimated price of conventional gasoline in the year 2000.

The incremental costs for new CFV acquisitions and their operation were summed for each future year between 1998 and 2010 to yield an estimated total annual cost of the fleet program for LDVs and LDTs. The present value costs under Scenario I for the years 1998 through 2010 is almost $709 million in 1998 dollars. Under Scenario II, the present value of the potential costs in years 1998 through 2010 is estimated at $673 million in 1998 dollars. (In contrast to the proposal, the discount rate used in this analysis is 7 percent instead of 10 percent as recommended by EPA's Office of Policy, Planning, and Evaluation.)[44] Projected annual costs for each of the years from 1998 to 2010 are presented in the RIA. This analysis does not take into account infrastructure costs. EPA has examined the sensitivity of the projected incremental acquisition and operating costs results in the RIA to other reasonable estimates of future acquisition and operating costs and concluded that the impact on the cost effectiveness is not major.

b. *Heavy-duty vhicles.* As described in the draft RIA for the proposal, incremental acquisition costs were estimated for conventional gasoline and diesel HDVs expected to be capable of meeting CFV standards through the use of technological changes rather than the use of clean fuels themselves. However, possible manufacturing process changes or slightly higher component costs may be incurred when adapting these technologies to HDEs. The analysis projects that these changes could increase the variable production cost of heavy-duty gasoline engines by $50.00 and heavy-duty diesel engines by about $100.00. Factoring in a 29 percent overhead and profit mark-up would bring the estimated increase in manufacturing costs to $65 and $129 per engine for gasoline and diesel engines respectively. In addition to this increased manufacturing/component cost per engine, consumers will also have to pay for the amortized cost of research and development and engine certification, as well as retail price mark-up. Manufacturers are expected to recover the development costs over the first five years of engine sales. Thus, using a more conservative range of projected costs than in the proposal, the total incremental acquisition cost is estimated at $246 more per gasoline engine and $477 more per diesel engine for the first five years of the program as compared with engines used in conventional heavy-duty vehicles. During the remaining years of the program, the total incremental

[44] EPA Office of Policy, Planning and Evaluation, "OMB Presentation and Discussion on OMB Circular A–94 Regarding Discount Rates and Benefit-Cost Analysis," Memorandum from Brett Snyder to Addressees, March 23, 1993.

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acquisition cost is estimated at $178 more per gasoline engine and $338 more per diesel engine.

Gasoline- and diesel-fuel HDVs meeting CFV standards are not expected to have added fuel or maintenance costs compared to conventional HDVs. However, EPA expects that approximately 10 percent of all fleet HDVs will need to be operated on reformulated gasoline in an area where reformulated gasoline is not routinely supplied. Thus, as in the proposal, an incremental fuel cost of five cents per gallon is applied to approximately 10 percent of all fleet HDVs.

The incremental costs for new CFV acquisitions and operations were summed for each year from 1998 to 2010 to yield an estimated total annual cost of the fleet program for HDVs. As described in the proposal, three scenarios were developed based on differing assumptions about vehicle mix and about costs of alternative-fuel vehicles compared to conventional HDVs. The first scenario, Scenario A, assumes conventional-fuel vehicles will be purchased for the fleet program, while the second, Scenario B, assumes 20 percent of CFVs will be nonconventional-fuel vehicles. The third scenario, Scenario C, assumes 30 percent of CFVs are nonconventional-fuel vehicles. Thus, for the first twelve years of the program 1998 present value cost is estimated to be $67 million for Scenario A, $99 million for Scenario B, and $30 million for Scenario C (using a discount rate of 7 percent).[45]

2. Program Benefits

As with the draft RIA for the proposal, the final RIA presents an analysis of the expected emission benefits of the Clean Fuel Fleet Program. These benefits were estimated by comparing the total emissions from covered fleet vehicles to the emissions which the same number of conventional vehicles would produce in the absence of a fleet program. As in the economic analysis, the emission benefits of LDVs and LDTs were studied separately from HDVs, and the results of both are summarized below. The same scenarios used in the economic analysis (i.e., assuming different degrees of participation by non-petroleum fueled vehicles) were used in the benefits analysis. Along with vapor emission reductions, reductions in NMOG, NO_X, and CO combustion emissions from LDVs and LDTs, and reductions in NMHC, NO_X, and CO combustion emissions from HDVs, are discussed below.

a. *Light-duty vehicles and light-duty trucks.* To estimate the environmental benefits of the fleet program, emission inventories were generated for two cases. In the base case, the number of covered fleet LDVs and LDTs estimated to be operating in each year were all assumed to be conventional vehicles. The base case emission inventories were calculated by computing lifetime emission factors for conventional (Tier 1) vehicles using the MOBILE5a emission factor model (instead of the specialized analysis using vehicle standards developed for the proposal). Similarly, emission inventories for the covered fleet vehicles were calculated using lifetime emission factors for LEVs from MOBILE5a. The difference between the two inventories yields the emission benifit of the program in terms of NMOG and NO_X reductions. The final analyis results in 1998 present value benefits of the light-duty NMOG and NO_X reductions realized for the years 1998 through 2010 (using a discount rate of 7 percent) are approximately 11,720 tons and 12,119 tons, respectively.

As in the proposal, since LEVs will not generally achieve CO emission reductions, potential CO inventories were determined using the number of light-duty ULEVs and ZEVs. The 1998 present value benefit of the annual CO reductions is projected to range between 93,694 tons and 120,885 tons.

In addition to combustion emission benefits, the fleet program will also realize benefits from vapor emission reductions resulting from use of CNG, LPG, and electric vehicles. Some of these benefits will be achieved by inherently low-emission vehicles (ILEVS); however, a calculation of the amount of vapor reduction attributable to ILEVs was not attempted because the purchase of these vehicles is voluntary and their numbers are very uncertain.

As in the proposal, vapor emission benefits of the fleet program were determined by multiplying the number of in-use CFVs projected to be operating on CNG, LPG, and electricity, by the average annual vehicle miles traveled for each class, and by the projected vapor emission reduction (grams/mile/vehicle) expected for each vehicle class. These vapor emission reductions were based on MOBILE5a evaporative emission factors in today's rule instead of MOBILE5.0 evaporative emission factors as were used in the proposal. Even though the new analysis results in lower annual emission reductions, the vapor emission benefits reported in today's rule are higher level than those in the proposal due to the use of the 7 percent discount rate. The 1998 present value benefits of the light-duty vapor emission reduction realized from the 1998 through 2000 are approximately 4,654 tons under Scenario I and 6,982 tons under Scenario II.

Thus, summing the benefits, the 1998 present value benefits of NMOG and CO emission reduction achieved by the light-duty portion of the fleet program for the years 1998 through 2010 are projected to range from 16,400 to 18,700 tons and 93,700 to 121,000 tons respectively. The NO_X emission reduction is estimated to be approximately 12,100 tons.

b. *Heavy-duty vehicles.* As in the proposal and similar to the analysis conducted for light-duty fleet vehicles, the emission benefits of heavy-duty clean-fuel fleet vehicles have been estimated by comparing total emissions from a base case to the emissions from a scenario using clean-fuel fleet vehicles. (Unlike LDVs and LDTs, EPA has not incorporated clean-fuel HDVs into MOBILE5a, and thus, HDVs were modelled in the same way as in the proposal.) The clean-fuel fleet vehicle scenario assumes that all covered fleet HDVs operate at the LEV emission level, and is used to generate emission inventories of NMHC and NO_X. CO benefits expected to be realized at the ULEV level are also summarized below (heavy-duty ZEVs are not likely to be a viable option to fleet owners at the time the fleet program begins and thus no CO benefits are expected from vehicles other than heavy-duty ULEVs).

Annual emission inventories of NMHC and NO_X were generated by multiplying the number of in-use heavy-duty vehicles by the number of vehicle miles traveled and multiplying the result by the appropriate difference in emission factors. The 1998 present value benefits of the heavy-duty NMHC and NO_X emission reduction realized from the 1998 through 2010 are approximately 4,100 tons and 16,400 tons, respectively. The emission benefits are lower than the benefits reported in the proposal because the combined NMHC+NO_X standard was changed from the proposed 3.5 g/Bhp-hr to 3.8 g/Bhp-hr in today's final rule (See section (II)(A)(2) above).

In determining CO benefits, there is no reduction in the CO emission standard for heavy-duty vehicles meeting the minimum clean-fuel fleet vehicle (LEV) requirements, but gasoline ULEVs will achieve a benefit. Those vehicles operating at the ULEV level, will include a 50 percent reduction in CO emissions from their conventional or LEV counterparts. Diesel heavy-duty vehicles are not expected to generate incremental CO benefits since they currently emit below the heavy-duty ULEV standard for CO. The present value of the CO emission benefits are projected to range from 15,500 to 27,000 tons/year. Using a discount rate of 7 percent in today's rule instead of the proposed 10 percent rate, results in higher CO emission benefits than were projected in the proposal.

Vapor emission benefits were projected for the replacement of gasoline-fueled HDVs by gaseous-fueled HDVs. For the years 1998 through 2010 the program yields 1998 present value vapor emission benefits of 2,700 to 4,500 tons. As with LDVs and LDTs, these vapor emission reductions were based on MOBILE5a evaporative emission factors in today's rule instead of MOBILE5.0 evaporative emission factors as were used in the proposal, and thus, the vapor emission reductions used in today's rule for HDVs are at a higher level than those emission reductions used in the proposal. (Also, using a discount rate of 7 percent instead of the proposed 10 percent rate contrubuted to the higher levels of vapor emission reductions.)

Thus, summing the benefits together, the 1998 present values of NMHC and CO emission reduction achieved by the heavy-duty portion of the fleet program for the years 1998 through 2010 are projected to range from 4,100 to 8,600 tons and to 15,500 to 27,000 tons respectively. The NO_X emission reduction is estimated to be approximately 16,400 tons.

3. Cost Effectiveness

As described in the proposal, for both light-duty and heavy-duty portions of the fleet program, the overall cost effectiveness was determined by dividing the total 1998 present value costs of the first 12 years of the program by the associated discounted 12-year benefits. The overall cost effectiveness for LDVs is estimated to range between $4,400 and $5,800 per ton of all pollutants. The analysis suggests that the fleet program will provide a greater reduction in emissions per dollar spent if more light-duty vehicles operate on alternative fuels. The overall estimated heavy-duty cost effectiveness ranges from $580 per ton to $3,300 per ton.

4. Additional Program Impacts

The increased use of clean alternative fuels due to the fleet program may well result in the displacement of some of the use of conventional fuels. As in the proposal, EPA projects for the first twelve years of the Clean Fuel Fleet Program 3.2 to 6.4 billion gallons of petroleum-based fuel could be conserved. In addition to the conservation of petroleum resources, the fleet program may provide a number of non-quantifiable impacts, as well. The program will potentially furnish incentives for the development of clean-fuel vehicle technology, stimulate the vehicle conversion industry, support the wider distribution of alternative fuels and related infrastructure, and encourage the public to purchase and use clean-fuel vehicles.

[45] As in proposal, Scenario C assumes that purchases of nonconventional-fuel vehicles are driven by a hypothetical combined acquisition and operating cost that is below the cost of conventional HDVs.

III. Public Participation

As in past rulemaking actions, EPA strongly encouraged full public participation in arriving at final decisions. On July 15, 1993 a public hearing was held for any person to present testimony in response to the proposal, and written comments on this proposal were accepted for a period of sixty days after the hearing (September 15, 1993). EPA has fully considered all of the comments and has modified the proposal to reflect many of the suggestions received. EPA's complete assessment of the comments received can be found in the summary and analysis of comments document for this rulemaking, which has been placed in Docket No. A–92–30 and A–92–69.

IV. Statutory Authority

The statutory authority for this proposal is provided by sections 241, 242, 243, 244, 245, 246, 247(a), 247(b), 249, and 301(a) of the CAA.

V. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 [58 **Federal Register** 51,735 (October 4, 1993)], the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking, covering emission standards for clean-fuel vehicles and engines, CFV conversion requirements, and the California Pilot Program, is considered an "economically significant regulatory action" under this definition, since the Clean Fuel Fleet Program and California Pilot Program together will cost more than $100 million annually in at least some years of its implementation. In addition, this rule is significant in that it represents the first motor vehicle emission control program which focus exclusively on fleets, raising a range of unprecedented issues. Finally, the rule is significant in that it parallels in many ways the alternative fuel fleet program required in the Energy Policy Act, which the Department of Energy is implementing; the areas of overlap between the two programs add to the significance of the rule. For these reasons, an RIA has been prepared, and is available in the docket for this rulemaking.

This final rulemaking was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12866. Any written comments from OMB and any EPA response to OMB comments are in the public docket for this rulemaking.

VI. Compliance With Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires federal agencies to examine the effects of federal regulations and to identify significant adverse impacts on a substantial number of small entities. Because the RFA does not provide concrete definitions of "small entity", "significant impact", or "substantial number", EPA has established guidelines setting the standards to be used in evaluating impacts on small businesses.[46] Section 604 of the Regulatory Flexibility Act requires EPA to prepare a Regulatory Flexibility Analysis when the Agency determines that there is a significant adverse impact on a substantial number of small entities.

Concerns regarding the potential impact of this regulation on small businesses are related to vehicle conversions. There could be a

[46] U.S. Environmental Protection Agency Memorandum to Assistant Administrators, "Compliance With the Regulatory Flexibility Act", EPA Office of Policy, Planning, and Evaluation, 1984. In addition, U.S. Environmental Protection Agency, Memorandum to Assistant Administrators, "Agency's Revised Guidelines for Implementing the Regulatory Flexibility Act", EPA Office of Policy, Planning, and Evaluation, 1992.

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significant impact on small converters if they were distant from inspection and maintenance testing facilities. Difficulty in using such test facilities to comply with the post-installation emission test requirement could represent a significant economic burden to small manufacturers if they were compelled to rely solely on the alternative two-step idle post-installation test. (See section II.B.2.c. for a discussion of the post-installation testing requirements). However, EPA has no information to indicate that converters which may face such a situation currently exist or will exist in the future. Generally, EPA expects that such a situation would not occur or would occur very infrequently since there are significant economic and logistical advantages associated with locating a vehicle conversion facility within or close to an urban area. In any event, the rule provides for converters of 300 or fewer vehicles per year to request an exemption from the post-installation test if a severe economic hardship can be demonstrated.

EPA has evaluated the effects of this regulation and the Administrator of EPA certifies that there will not be an adverse impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis was not conducted.

VII. Paperwork Reduction Act

The information collection requirements in this rule pertaining to the California Pilot Program and the post-installation test for converted vehicles have been submitted to OMB for approval under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Request document has been prepared by EPA (ICR No. 1694) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA/OPPE/ORME, 401 M Street SW, Washington, DC 20460 (Mail Code 2136) or by calling (202) 260–2740. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**.

This collection of information has an estimated reporting burden averaging 1.4 hours per response and an estimated annual recordkeeping burden averaging 67 hours per respondent. However, the hours spent annually on information collection activities by a given manufacturer depends upon manufacturer-specific variables, such as the number of engine families, production changes, emissions defects, and so on. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA/OPPE/ORME; 401 M Street SW, (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: EPA Desk Officer".

All other information collection requirements in this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and have been assigned control number 2060–0104.

VIII. Consultation With DOE and DOT

As per section 250(d) of the Clean Air Act, this rulemaking has coordinated with the Department of Energy and the Department of Transportation. Also, pursuant to section 247(e) of the Act that states "* * * The Secretary of Transportation shall, if necessary, promulgate rules under applicable motor vehicle laws regarding the safety of vehicles converted from existing and new vehicles to clean-fuel vehicles," this rulemaking has been coordinated with the Department of Transportation regarding the safety of vehicles converted to CFVs. Interagency review documents are contained in section II–F and IV–H of this rulemaking's docket.

IX. Judicial Review

Under section 307(b)(1) of the Clean Air Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by filing a petition for review of the United States Court of Appeals for the District Of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in the judicial proceedings brought by EPA to enforce these requirements.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 88

Environmental protection, Incorporation by reference, Motor vehicle pollution, Reporting and Recordkeeping requirements.

Dated: June 14, 1994.

Carol M. Browner,

Administrator.

For reasons set forth in the preamble, parts 9, 86 and 88 of title 40 of the Code of Federal Regulations are amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et. seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et. seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1334, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et. seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended in the table by adding in numerical order new entries under the center heading "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures" and by adding a new center heading, "Clean-Fuel Vehicles", and new entries under it to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citations	*OMB control No*
. . . . .	
Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures	
. . . . .	
§ 86.111–94	2060–0104
. . . . .	
§ 86.1311–94	2060–0104
. . . . .	
Clean-Fuel Vehicles	
§ 88.104–94 (a), (c), (e), (f), (g), (h), (i), (j), (k)	2060–0104
§ 88.105–94	2060–0104
§ 88.305–94	2060–0104
§ 88.306–94(a), (b) introductory text	2060–0104
. . . . .	

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

3. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a), Clean Air Act as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

3a. Section 86.1 is amended by adding a new entry to the end of the table in paragraph (b)(2) to read as follows:

§ 86.1 Reference materials.

* * * * *

(b) * * *

(2) * * *

Document No. and name	40 CFR part 86 reference
. . . . .	
SAE Recommended Practice J1151, December 1991, Methane Measurement Using Gas Chromatography, 1994 SAE Handbook—SAE International Cooperative Engineering Program, Volume 1: Materials, Fuels, Emissions, and Noise; Section 13 and page 170 (13.170).	86.111–94, 86.1311–94.

4. Section 86.085–37 of subpart A is amended by revising paragraph (b)(1) introductory text to read as follows:

§ 86.085–37 Production vehicles and engines.

* * * * *

(b)(1) Any manufacturer of light-duty vehicles or light-duty trucks obtaining certification under this part shall notify the Administrator, on a yearly basis, of the number of vehicles domestically produced for sale in the United States and the number of vehicles produced and imported for sale in the United States during the preceding year. Such information shall also include the number of vehicles produced for sale pursuant to 40 CFR 88.204–94(b). A manufacturer may elect to provide this information every 60 days instead of yearly by combining it with the notification required under § 86.079–36. The notification must be submitted 30 days after the close of the reporting period. The vehicle production information required shall be submitted as follows:

* * * * *

5. Section 86.094–15 of subpart A is amended by revising paragraph (a)(1) to read as follows:

§ 86.094–15 NO_x and particulate averaging, trading, and banking for heavy-duty engines.

(a)(1) Heavy-duty engines eligible for NO_x and particulate averaging, trading and banking programs are described in the applicable emission standards sections in this subpart. All heavy-duty engine families which include any engines labeled for use in clean-fuel vehicles as specified in 40 CFR part 88 are not eligible for these programs. Participation in these programs is voluntary.

* * * * *

6. Section 86.094–24 of subpart A is amended by adding a new paragraph (a)(3)(iii) and revising paragraph (a)(4) introductory text to read as follows:

§ 86.094–24 Test vehicles and engines.

(a) * * *

(3) * * *

(iii) Engines identical in all of the respects listed in paragraphs (a)(2) and (a)(3)(i) of this section may be further divided into different engine families if some of the engines are expected to be sold as clean-fuel vehicles under 40 CFR Part 88, and if the manufacturer chooses to certify the engines to both the clean-fuel vehicle standards of 40 CFR part 88 and the general standards of this part 86. One engine family shall include engines that are intended for general use. For this engine family, only the provisions of this part 86 shall apply. The second engine family shall include all engines that are intended to be used in clean-fuel vehicles. For this engine family, the provisions of both this part 86 and 40 CFR Part 88 shall apply. The manufacturer may submit one set of data to certify both engine families.

(4) Where engines are of a type which cannot be divided into engine families based upon the criteria listed in paragraphs (a)(2) and (a)(3) of this section, the Administrator will establish families for those engines based upon those features most related to their emission characteristics. Engines that are eligible to be included in the same engine family based on the criteria in paragraphs (a)(2) and (a)(3)(i) of this section may be further divided into different engine families if the manufacturer determines that they may be expected to have different emission characteristics, or if the manufacturer chooses to certify the engines to both the clean-fuel vehicle standards of 40 CFR Part 88 and the general standards of this part 86 as described in paragraph (a)(3)(iii) of this section. The determination of the emission characteristics will be based upon a consideration of the following features of each engine:

* * * * *

7. Section 86.111–94 of subpart B is amended by adding a new paragraph (b)(3)(vii) to read as follows:

§ 86.111–94 Exhaust gas analytical system.

* * * * *

(b) * * *

(3) * * *

(vii) Using a methane analyzer consisting of a gas chromatograph combined with a FID, the measurement of methane shall be done in accordance with the Society of Automotive Engineers, Inc. (SAE) Recommended Practice J1151, "Methane Measurement Using Gas Chromatography," December 1991, 1994 SAE Handbook—SAE International Cooperative Engineering Program, Volume 1: Materials, Fuels, Emissions, and Noise; Section 13 and page 170 (13.170), which is incorporated by reference.

(A) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(B) Copies may be inspected at U.S. EPA, OAR, 401 M Street, SW., Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies of this material may be obtained from Society of Automotive Engineers International, 400 Commonwealth Drive, Warrendale, PA 15096–001.

* * * * *

8. Section 86.1311–94 of subpart N is amended by adding a new paragraph (b)(2)(iii) preceding figure N94–1 to read as follows:

§ 86.1311–94 Exhaust gas analytical system; CVS bag sample.

* * * * *

(b) * * *

(2) * * *

(iii) Using a methane analyzer consisting of a gas chromatograph combined with a FID, the measurement of methane shall be done in accordance with SAE Recommended Practice J1151, "Methane Measurement Using Gas Chromatography". (Incorporated by reference pursuant to § 86.1(b)(2)).

* * * * *

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PART 88—CLEAN-FUEL VEHICLES

9. The authority citation for part 88 continues to read as follows:

Authority: 42 U.S.C. 7410, 7418, 7581, 7582, 7583, 7584, 7586, 7588, 7589, and 7601(a).

10. Sections 88.101–94 and 88.102–94 in subpart A are redesignated as §§ 88.102–94 and 88.103–94, respectively, and a new § 88.101–94 is added to read as follows:

§ 88.101–94 General applicability.

The clean-fuel vehicle standards and provisions of this subpart are applicable to vehicles used in subpart B of this part (the Clean Fuel Fleet Program) and subpart C of this part (the California Pilot Test Program).

1. Newly designated § 88.102–94 of subpart A is amended by revising the the introductory text and adding the following definitions in alphabetical order to read as follows:

§ 88.102–94 Definitions.

Any terms defined in 40 CFR part 86 and not defined in this part shall have the meaning given them in 40 CFR part 86, subpart A.

Adjusted Loaded Vehicle Weight is defined as the numerical average of the vehicle curb weight and the GVWR.

Dual Fuel Vehicle (or Engine) means any motor vehicle (or motor vehicle engine) engineered and designed to be operated on two different fuels, but not on a mixture of the fuels.

Flexible Fuel Vehicle (or Engine) means any motor vehicle (or motor vehicle engine) engineered and designed to be operated on any mixture of two or more different fuels.

* * * * *

Non-methane Hydrocarbon Equivalent means the sum of the carbon mass emissions of non-oxygenated non-methane hydrocarbons plus the carbon mass emissions of alcohols, aldehydes, or other organic compounds which are separately measured in accordance with the applicable test procedures of 40 CFR part 86, expressed as gasoline-fueled vehicle non-methane hydrocarbons. In the case of exhaust emissions, the hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1. In the case of diurnal and hot soak emissions, the hydrogen-to-carbon ratios of the equivalent hydrocarbons are 2.33:1 and 2.2:1 respectively.

* * * * *

12. Newly designated § 88.103–94 of subpart A is amended by adding the following abbreviations in alphabetical order to read as follows:

§ 88.103–94 Abbreviations.

* * * * *

ALVW—Adjusted Loaded Vehicle Weight.

* * * * *

HC—Hydrocarbon.

* * * * *

HDV—Heavy-Duty Vehicle.
LDT—Light-Duty Truck.
LDV—Light-Duty Vehicle.
NMHC—Non-Methane Hydrocarbon.
NMHCE—Non-Methane Hydrocarbon Equivalent.

* * * * *

13. A new § 88.104–94 is added to subpart A to read as follows:

§ 88.104–94 Clean-fuel vehicle tailpipe emission standards for light-duty vehicles and light-duty trucks.

(a) A light-duty vehicle or light-duty truck will be considered as a TLEV, LEV, ULEV, or ZEV if it meets the applicable requirements of this section.

(b) Light-duty vehicles certified to the exhaust emission standards for TLEVs, LEVs, and ULEVs in Tables A104–1 and A104–2 shall be considered as meeting the requirements of this section for that particular vehicle emission category for model years 1994–2000 for the California Pilot Program.

(c) Light-duty vehicles certified to the exhaust emission standards for LEVs and ULEVs in Tables A104–1 and A104–2 shall be considered as meeting the requirements of this section for that particular vehicle emission category for model years 2001 and later for the California Pilot Program, and for model years 1998 and later for the Clean Fuel Fleet Program.

(d) Light light-duty trucks certified to the exhaust emission standards for a specific weight category for TLEVs, LEVs, and ULEVs in Tables A104–3 and A104–4 shall be considered as meeting the requirements of this section for that particular vehicle emission category. For model years 1994–2000 for the California Pilot Program.

(e) Light Light-duty trucks certified to the exhaust emission standards for a specific weight category for LEVs and ULEVs in Tables A104–3 and A104–4 shall be considered as meeting the requirements of this section for that particular vehicle emission category. For model years 2001 and later for the California Pilot Program, and for model years 1998 and later for the Clean Fuel Fleet Program.

(f) Heavy light-duty trucks certified to the exhaust emission standards for a specific weight category of LEVs and ULEVs in Tables A104–5 and A104–6 for model years 1998 and later shall be considered as meeting the requirements of this section for that particular vehicle emission category.

(g) A light-duty vehicle or light-duty truck shall be certified as a ZEV if it is determined by engineering analysis that the vehicle satisfies the following conditions:

(1) The vehicle fuel system(s) must not contain either carbon or nitrogen compounds (including air) which, when burned, form any of the pollutants listed in Table A104–1 as exhaust emissions.

(2) All primary and auxiliary equipment and engines must have no emissions of any of the pollutants listed in Table A104–1.

(3) The vehicle fuel system(s) and any auxiliary engine(s) must have no evaporative emissions in use.

(4) Any auxiliary heater must not operate at ambient temperatures above 40 degrees Fahrenheit.

(h) *NMOG standards for flexible- and dual-fueled vehicles when operating on clean alternative fuel*—(1) *Light-duty vehicles, and light light-duty trucks.* Flexible- and dual-fueled LDVs and light LDTs of 1996 model year and later shall meet all standards in Table A104–7 for vehicles of the applicable model year, loaded vehicle weight, and vehicle emission category.

(2) *Light-duty trucks above 6,000 lbs GVWR.* Flexible- and dual-fueled LDTs above 6,000 lbs. GVWR of 1998 model year and later shall meet all standards in Table A104–8 for vehicles of the applicable test weight and vehicle emission category.

(i) *NMOG standards for flexible- and dual-fueled vehicles when operating on conventional fuel*—(1) *Light-duty vehicles, and light light-duty trucks.* Flexible- and dual-fueled LDVs and light LDTs of 1996 model year and later shall meet all standards in Table A104–9 for vehicles of the applicable model year, loaded vehicle weight, and vehicle emission category.

(2) *Light-duty trucks above 6,000 lbs GVWR.* Flexible- and dual-fueled LDTs of 1998 model year and later shall meet all standards in Table A104–10 for vehicles of the applicable test weight and vehicle emission category.

(j) *Other standards for flexible- and dual-fueled vehicles.* When operating on clean alternative fuel, flexible- and dual-fueled light-duty vehicles and light light-duty trucks must also meet the appropriate standards for carbon monoxide, oxides of nitrogen, formaldehyde, and particulate matter as designated in paragraphs (a) through (f) of this section as well as all other applicable standards and requirements. When operating on conventional fuel, flexible- and dual-fueled vehicles must also meet all other applicable standards and requirements in 40 CFR part 86.

(k) Motor vehicles subject to standards and requirements of this section shall also comply with all applicable standards and requirements of 40 CFR part 86, except that any exhaust emission standards in 40 CFR part 86 pertaining to pollutants for which standards are established in this section shall not apply. For converted vehicles, the applicable standards and requirements of 40 CFR part 86 and this part 88 shall apply based on the model year in which the conversion is performed, regardless of the model year in which the base vehicle was originally manufactured prior to conversion.

(1) Gaseous-fueled, diesel-fueled, and electric clean-fuel vehicles are waived from cold CO test requirements of subpart C of this part if compliance is demonstrated by engineering analysis or test data.

(2) The standards in this section shall be administered and enforced in accordance with the California Regulatory Requirements Applicable to the Clean Fuel Fleet and California Pilot Programs, April 1, 1994, which are incorporated by reference.

(i) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(ii) Copies may be inspected at U.S. EPA, OAR, 401 M Street, Southwest, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies of these materials may be obtained from Barclay's Law Publishers, 400 Oyster Point Boulevard, P.O. Box 3066, South San Francisco, CA 94080, phone (415) 244–6611.

(l) The standards set forth in this section other than those for NMOG emissions refer to the exhaust emitted while the vehicle is being tested in accordance with the applicable test procedures set forth in 40 CFR part 86, subpart N. NMOG emissions are to be measured in accordance with the California Regulatory Requirements Applicable to the Clean Fuel Fleet and California Pilot Program, April 1, 1994, incorporated by reference pursuant to paragraph (k)(2) of this section.

TABLE A104–1.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR HCS, CO, NO_x, HCHO, and PM

	Vehicle emission category	NMOG	CO	NO_x	HCHO	PM[1]
	TLEV	0.125	3.4	0.4	0.015	
	LEV	[2].075	[2]3.4	.2	[2].015	
	ULEV	.040	1.7	[2].2	008	

[1] Applies to diesel vehicles only.
[2] Applies to ILEVs.

TABLE A104–2.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR HCS, CO, NO_x, HCHO, and PM

	Vehicle emission category	NMOG	CO	NO_x	HCHO	PM[1]
	TLEV	0.156	4.2	0.6	0.018	0.08
	LEV	[2]0.090	[2]4.2	.3	[2].018	[2].08
	ULEV	.055	2.1	[2].3	.011	.04

[1] Applies to diesel vehicles only.
[2] Applies to ILEVs.

TABLE A104–3.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR HCS, CO, NO_x, HCHO, and PM

LVW (lbs)	Vehicle emission category	NMOG	CO	NO_x	HCHO	PM[1]
0–3750	TLEV	.125	3.4	.4	.015	
	LEV	[2].075	[2]3.4	.2	[2].015	
	ULEV	.040	1.7	[2].2	.008	
3751–5750	TLEV	0.160	4.4	.7	.018	
	LEV	[2].100	[2]4.4	.4	[2].018	
	ULEV	.050	2.2	[2].4	.009	

[1] Applies to diesel vehicles only.
[2] Applies to ILEVs.

TABLE A104–4.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR HCS, CO, NO_x, HCHO, and PM

LVW (lbs)	Vehicle emission category	NMOG	CO	NO_x	HCHO	PM[1]
0–3750	TLEV	0.156	4.2	0.6	0.018	0.08
	LEV	[2]0.090	[2]4.2	0.3	[2].018	[2].08
	ULEV	.055	2.1	[2].3	.011	.04
3751–5750	TLEV	.200	5.5	.9	.023	.08
	LEV	[2].130	[2]5.5	.5	[2].023	[2].08
	ULEV	.070	2.8	[2].5	.013	.04

[1] Applies to diesel vehicles only.
[2] Applies to ILEVs.

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TABLE A104–5.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS FOR HCS, CO, NO_x, HCHO, and PM

ALVW (lbs)	Vehicle emission category	NMOG	CO	NO_x[2]	HCHO	PM[1]
0–3750	LEV	[3]0.125	[3]3.4	0.4	[3]0.015	
	ULEV	.075	1.7	[3].2	.008	
3751–5750	LEV	[3].160	[3]4.4	.7	[3].018	
	ULEV	.100	2.2	[3].4	.009	
5751–	LEV	[3].195	[3]5.0	1.1	[3].022	
	ULEV	.117	2.5	[3].6	.011	

[1] Applies to diesel vehicles only.
[2] Does not apply to diesel vehicles.
[3] Applies to ILEVs.

TABLE A104–6.—FULL USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS FOR HCS, CO, NO_x, HCHO, and PM

ALVW (lbs)	Vehicle emission category	NMOG	CO	NO_x	HCHO	PM[1]
0–3750	LEV	[2]0.180	[2]5.0	0.6	[2]0.022	[2]0.08
	ULEV	.107	2.5	[2].3	.012	.04
3751–5750	LEV	[2].230	[2]6.4	1.0	[2].027	[2].10
	ULEV	.143	3.2	[2].5	.013	.05
5751–	LEV	[2].280	[2]7.3	1.5	[2].032	[2].12
	ULEV	.167	3.7	[2].8	.016	.06

[1] Applies to diesel vehicles only.
[2] Applies to ILEVs.

TABLE A104–7.—NMOG STANDARDS (G/MI) FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CLEAN ALTERNATIVE FUEL FOR LIGHT LIGHT-DUTY TRUCKS AND LIGHT-DUTY VEHICLES

Vehicle type	50,000 mile NMOG standard	100,000 mile NMOG standard
MY 1996 and later:		
LDTs (0–3,750 lbs. LVW) and LDVs	0.125	0.156
LDTs (3,751–5,750 lbs. LVW)	.160	.200
Beginning MY 2001:		
LDTs (0–3,750 lbs. LVW) and LDVs	.075	.090
LDTs (3,751–5,750 lbs. LVW)	.100	.130

TABLE A104–8.—NMOG STANDARDS (G/MI) FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CLEAN ALTERNATIVE FUEL FOR HEAVY LIGHT-DUTY TRUCKS

Vehicle type	50,000 mile NMOG standard	120,000 mile NMOG standard
Beginning MY 1998:		
LDTs (0–3,750 lbs. ALVW)	0.125	0.180
LDTs (3,751–5,750 lbs. ALVW)	.160	.230
LDTs (5,751–8,500 lbs. ALVW)	.195	.280

TABLE A104–9.—NMOG STANDARDS (G/MI) FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CONVENTIONAL FUEL FOR LIGHT LIGHT-DUTY TRUCKS AND LIGHT-DUTY VEHICLES

Vehicle type	50,000 mile NMOG standard	100,000 mile NMOG standard
Beginning MY 1996:		
LDTs (0–3,750 lbs. LVW) and LDVs	0.25	0.31
LDTs (3,751–5,750 lbs. LVW)	.32	.40
Beginning MY 2001:		
LDTs (0–3,750 lbs. LVW) and LDVs	.125	.156
LDTs (3,751–5,750 lbs. LVW)	.160	.200

TABLE A104–10.—NMOG STANDARDS (G/MI) FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CONVENTIONAL FUEL FOR LIGHT LIGHT-DUTY TRUCKS

Vehicle type	50,000 mile NMOG standard	120,000 mile NMOG standard
Beginning MY 1998:		
LDTs (0–3,750 lbs. ALVW)	0.25	0.36
LDTs (3,751–5,750 lbs. ALVW)	.32	.46
LDTs (5,751–8,500 lbs. ALVW)	.39	.56

4. A new § 88.105–94 is added to subpart A to read as follows:

§ 88.105–94 Clean-fuel fleet emission standards for heavy-duty engines.

(a) Exhaust emissions from engines used in heavy-duty low emission vehicles shall meet one of the following standards:

(1) Combined emissions of oxides of nitrogen and nonmethane hydrocarbons (or nonmethane hydrocarbon equivalent) shall not exceed 3.8 grams per brake horsepower-hour.

(2) Combined emissions of oxides of nitrogen and nonmethane hydrocarbons (or nonmethane hydrocarbon equivalent) shall not exceed 3.5 grams per brake horsepower-hour when tested (certified) on fuel meeting the specifications of California certification fuel.

(b) Exhaust emissions from engines used in heavy-duty low emission vehicles shall meet conventional vehicle standards set forth in Part 86 for total hydrocarbon, carbon monoxide, particulate, and organic material hydrocarbon equivalent.

(c) Exhaust emissions from engines used in ultra-low emission heavy-duty vehicles shall meet each of the following standards:

(1) The combined emissions of oxides of nitrogen and nonmethane hydrocarbons (or nonmethane hydrocarbon equivalent) shall not exceed 2.5 grams per brake horsepower-hour.

(2) Carbon monoxide emissions shall not exceed 7.2 grams per brake horsepower-hour.

(3) Particulate emissions shall not exceed 0.05 grams per brake horsepower-hour.

(4) Formaldehyde emissions shall not exceed 0.025 grams per brake horsepower-hour.

(d) Exhaust emissions from engines used in inherently-low emission heavy-duty vehicles shall meet each of the following standards:

(1) The combined emissions of oxides of nitrogen and nonmethane hydrocarbons (or nonmethane hydrocarbon equivalent) shall not exceed 2.5 grams per brake horsepower-hour.

(2) Carbon monoxide emissions shall not exceed 14.4 grams per brake horsepower-hour.

(3) Particulate emissions shall not exceed 0.10 grams per brake horsepower-hour.

(4) Formaldehyde emissions shall not exceed 0.05 grams per brake horsepower-hour.

(e) The standards set forth in paragraphs (a), (b), (c), and (d) of this section refer to the exhaust emitted while the vehicle is being tested in accordance with the applicable test procedures set forth in 40 CFR part 86, subpart N.

(f)(1) A heavy-duty zero-emission vehicle (ZEV) has a standard of zero emissions for nonmethane hydrocarbons, oxides of nitrogen, carbon monoxide, formaldehyde, and particulates.

(2) A heavy-duty vehicle shall be certified as a ZEV if it is determined by engineering analysis that the vehicle satisfies the following conditions:

(i) The vehicle fuel system(s) must not contain either carbon or nitrogen compounds (including air) which, when burned, form nonmethane hydrocarbons, oxides of nitrogen, carbon monoxide, formaldehyde, or particulates as exhaust emissions.

(ii) All primary and auxiliary equipment and engines must have no emissions of nonmethane hydrocarbons, oxides of nitrogen, carbon monoxide, formaldehyde, and particulates.

(iii) The vehicle fuel system(s) and any auxiliary engine(s) must have no evaporative emissions.

(iv) Any auxiliary heater must not operate at ambient temperatures above 40 degrees Fahrenheit.

(g) All heavy-duty engines used in low emission, ultra-low emission, or zero emission vehicles shall also comply with all applicable standards and requirements of 40 CFR part 86, except that any exhaust emission standards in 40 CFR part 86 pertaining to pollutants for which standards are established in this section shall not apply.

15. Section 88.201–94 of subpart B is amended by revising paragraph (a) to read as follows:

§ 88.201–94 Scope.

* * * * *

(a) State Implementation Plan revisions for the State of California and other states pursuant to compliance with section 249 of the Clean Air Act, as amended in 1990.

* * * * *

16. A new § 88.204–94 is added to subpart B to read as follows:

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§ 88.204–94 Sales requirements for the California Pilot Test Program.

(a) The total annual required minimum sales volume of new clean fuel vehicles in California for this program shall correspond to Table B204.

(b) (1) When manufacturers of vehicles subject to the regulations of this section file a report pursuant to 40 CFR 86.085–37(b), such report shall include the following information: the number of light-duty vehicles and light-duty trucks sold only in California, and the number of clean-fuel vehicles sold for the Pilot program beginning with model year 1996.

(2) For model years 1996 and 1997, manufacturers may exclude heavy light-duty trucks from the reporting required by this section.

(c) (1) Except as provided in paragraph (d) of this section, each vehicle manufacturer must sell clean-fuel vehicles in California in an amount equal to the required annual sales volume calculated in paragraph (c)(2) of this section.

(2) The required annual clean fuel vehicle sales volume for a given manufacturer is expressed in the following equation rounded to the nearest whole number.

$$RMS = \frac{MS}{TS} \times TCPPS$$

Where:

RMS=a manufacturer's required sales in a given model year.

MS=a manufacturer's total LDV and light LDT sales in California two model years earlier than year in question (for MY 1996 and 1997 RMS calculations).

=a manufacturer's total LDV and LDT sales in California two model years earlier than year in question (for MY 1998 and later RMS calculations).

TS=total LDV and light LDT sales in California of all manufacturers two model years earlier than the year in question (for MY 1996 and 1997 RMS calculations). Sales of manufacturers which meet the criteria of (d) of this paragraph will not be included.

=total LDV and LDT sales in California of all manufacturers two model years earlier than the year in question (for MY 1998 and later RMS calculations). Sales of manufacturers which meet the criteria of (d) of this paragraph will not be included.

TCPPS=Pilot program annual CFV sales requirement (either 150,000 or 300,000) for the model year in question.

(i) A manufacturer's share of required annual sales for model years 1996 and 1997 will be based on LDV and light LDT sales only. Once the heavy LDT standards are effective beginning with model year 1998, a manufacturer's required sales share will be based on all LDV and LDT sales.

(ii) A manufacturer certifying for the first time in California shall calculate annual required sales share based on projected California sales for the model year in question. In the second year, the manufacturer shall use actual sales from the previous year. In the third year and subsequent years, the manufacturer will use sales from two model years prior to the year in question.

(d) (1) Small volume manufacturer is defined in the Pilot program as one whose average annual LDV and LDT sales in California are less than or equal to 3,000 units during a consecutive three-year period beginning no earlier than model year 1993.

(i) A manufacturer with less than three consecutive years of sales in California shall use a single year of sales or, if available, the average of two years of sales in California to determine whether they fall at or below the threshold of 3,000 units.

(ii) A manufacturer certifying for the first time in California shall be considered a small volume manufacturer if their projected California sales level is at or below 3,000 units for a given year. Once the manufacturer has actual sales data for one year, this actual sales data shall be used to determine whether the manufacturer qualifies as a small volume manufacturer.

(iii) A manufacturer which does not qualify as a small volume manufacturer in model year 1996 but whose average annual LDV and LDT sales fall to or below the 3,000 unit threshold between 1996 and 2001 shall be treated as a small volume manufacturer and shall be subject to requirements for small volume manufacturers as specified in paragraph (d)(2) of this section beginning with the next model year.

(2) A manufacturer which qualifies as a small volume manufacturer prior to model year 2001 is not required to comply with the sales requirements of this section until model year 2001.

TABLE B204.—PILOT PROGRAM VEHICLE SALES SCHEDULE

Model years	Vehicle types	Required annual sales
1996 and 1997.	LDTs (< 6000 GVWR and ≤5750 LVW); and LDVs.	150,000
1998	All Applicable Vehicle Types.	150,000
1999+ ...	All Applicable Vehicle Types.	300,000

17. A new § 88.206–94 is added to subpart B to read as follows.

§ 88.205–94 State Opt-In for the California Pilot Test Program.

(a) A state may opt into the Pilot program if it contains all or part of an ozone nonattainment area classified as serious, severe, or extreme under subpart D of Title I.

(b) A state may opt into the program by submitting SIP revisions that meet the requirements of this section.

(c) For a state that chooses to opt in, SIP provisions can not take effect until one year after the state has provided notice to of such provisions to motor vehicle manufacturers and fuel suppliers.

(d) A state that chooses to opt into the program can not require a sales or production mandate for CFVs or clean alternative fuels. States may not subject fuel or vehicle suppliers to penalties or sanctions for failing to produce or sell CFVs or clean alternative fuels.

(e) (1) A state's SIP may include incentives for the sale or use in such state of CFVs required in California by the Clean Fuel Fleet Program, and the use of clean alternative fuels required to be made available in California by the California Pilot Program.

(2) Incentives may include:

(i) A registration fee on non-CFVs of at least 1 percent of the total cost of the vehicle. These fees shall be used to:

(A) Provide financial incentives to purchasers of CFVs and vehicle dealers who sell high volumes or high percentages of CFVs.

(B) Defray administrative costs of the incentive program.

(ii) Exemptions for CFVs from high occupancy vehicle or trip reduction requirements.

(iii) Preferences for CFVs in the use of existing parking places.

18. The tables to subpart B of part 88 are revised to read as follows:

Tables to Subpart B of Part 88

TABLE B–1.—CREDIT TABLE FOR PHASE I VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

TABLE B–1.1.—CREDIT GENERATION: SELLING MORE CLEAN-FUEL VEHICLES THAN REQUIRED

[Phase I: Effective Through 2000 Model-Year]

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 alvw	LDT >6000 gvwr >3750 alvw ≤5750 alvw	LDT >6000 gvwr >5750 alvw
TLEV	1.00	1.28	(1)	(1)	(1)
LEV	1.40	1.76	1.00	1.28	1.56
ULEV	1.68	2.16	1.40	1.76	2.18
ZEV	2.00	2.56	2.00	2.56	3.12

TABLE B–1.2.—CREDIT GENERATION: SELLING MORE STRINGENT CLEAN FUEL VEHICLES

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 alvw	LDT >6000 gvwr >3750 alvw ≤5750 alvw	LDT ≤6000 gvwr >5750 alvw
TLEV	0.00	0.00	(1)	(1)	(1)
LEV	.40	.48	0.00	0.00	0.00
ULEV	.68	.88	.40	.48	.62
ZEV	1.00	1.28	1.00	1.28	1.56

TABLE B–1.3.—CREDIT NEEDED IN LIEU OF SELLING CLEAN-FUEL VEHICLE

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 alvw	LDT >6000 gvwr >3750 alvw ≤5750 alvw	LDT >6000 gvwr >5750 alvw
TLEV	1.00	1.28	(1)	(1)	(1)
LEV	.....	.....	1.00	1.28	1.56

[1] There is no TLEV category for this vehicle class.

TABLE B–2.—CREDIT TABLE FOR PHASE II: VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

TABLE B–2.1.—CREDIT GENERATION: SELLING MORE CLEAN-FUEL VEHICLES THAN REQUIRED

[Phase II: effective 2001 and subsequent model-years]

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 alvw	LDT >6000 gvwr >3750 alvw ≤5750 alvw	LDT >6000 gvwr >5750 alvw
LEV	1.00	1.26	0.71	0.91	1.11
ULEV	1.20	1.54	1.00	1.26	1.56
ZEV	1.43	1.83	1.43	1.83	2.23

TABLE B–2.2.—CREDIT GENERATION: SELLING MORE STRINGENT CLEAN-FUEL VEHICLES

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 alvw	LDT >6000 gvwr >3750 alvw ≤5750 alvw	LDT >6000 gvwr >5750 alvw
LEV	0.00	0.00	0.00	0.00	0.00
ULEV	.20	.28	.29	.34	.45
ZEV	.43	.57	.71	.91	1.11

TABLE B–2.3.—CREDIT NEEDED IN LIEU OF SELLING CLEAN-FUEL VEHICLES

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 alvw	LDT >6000 gvwr >3750 alvw ≤5750 alvw	LDT >6000 gvwr >5750 alvw
LEV	1.00	1.26	0.71	0.91	1.11

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19. Section 88.302–94 of subpart C is amended by adding two new definitions in alphabetical order and revising a third definition to read as follows:

§ 88.302–94 Definitions.

* * * * *

Clean-fuel vehicle aftermarket conversion certifier means the business or entity that obtains a certificate of conformity with the clean-fuel vehicle standards and requirements for a vehicle/engine conversion configuration pursuant to the requirements of 40 CFR part 86 and this part 88.

* * * * *

Conversion configuration means any combination of vehicle/engine conversion hardware and a base vehicle of a specific engine family.

* * * * *

Owned or operated, leased or otherwise controlled by such person means either of the following:

(1) Such person holds the beneficial title to such vehicle; or

(2) Such person uses the vehicle for transportation purposes pursuant to a contract or similar arrangement, the term of such contract or similar arrangement is for a period of 120 days or more, and such person has control over the vehicle pursuant to the definition of control of this section.

* * * * *

20. A new § 88.305–94 is added to subpart C to read as follows:

§ 88.305–94 Clean-fuel fleet vehicle labeling requirements for heavy-duty vehicles.

(a) All clean-fuel heavy-duty engines and vehicles used as LEVs, ULEVs, and ZEVs that are also regulated under 40 CFR part 86 shall comply with the labeling requirements of 40 CFR 86.095–35 (or later applicable sections), and shall also include an unconditional statement on the label indicating that the engine or vehicle is a LEV, ULEV, or ZEV, and meets all of the applicable requirements of this part 88.

(b) All heavy-duty clean-fuel fleet vehicles not regulated under 40 CFR part 86 shall have a permanent legible label affixed to the engine or vehicle in a readily visible location, which contains the following information:

(1) The label heading: vehicle emissions classification information (e.g., "This is a Low Emission Vehicle");

(2) Full corporate name and trademark of the manufacturer;

(3) A statement that this engine or vehicle meets all applicable requirements of the U.S. Environmental Protection Agency clean-fuel fleet vehicle program, as described in this part 88, but not necessarily those requirements found in 40 CFR part 86.

21. A new § 88.306–94 is added to subpart C to read as follows:

§ 88.306–94 Requirements for a converted vehicle to qualify as a clean-fuel fleet vehicle.

(a) For purposes of meeting the requirements of section 246 of the Clean Air Act or the SIP revisions, conversions of engines or vehicles which satisfy the requirements of this section shall be treated as a purchase of a clean-fuel vehicle under subpart C of this part.

(b) The engine or vehicle must be converted using a conversion configuration which has been certified according to the provisions of 40 CFR part 86 using applicable emission standards and other provisions from part 88 for clean-fuel engines and vehicles. The following requirements will also apply:

(1) If the installation of the certified conversion configuration is performed by an entity other than aftermarket conversion certifier, the aftermarket conversion certifier shall submit a list of such installers to the Administrator. Additional installers must be added to this list and the revised list submitted to the Administrator within 5 working days from the time they are authorized to perform conversion installations by the clean-fuel vehicle aftermarket conversion certifier.

(2) If the installation of the certified conversion configuration is performed by an entity other than the certificate holder, the certificate holder shall provide instructions for installation of the aftermarket conversion system to installers listed on the certificate, and ensure that the systems are properly installed.

(3) For the purpose of determining whether certification under the Small-Volume Manufacturers Certification Program pursuant to the requirements of 40 CFR 86.094–14 is permitted, the 10,000 sales volume limit in 40 CFR 86.094–14(b)(1) shall apply to the aggregate total of all vehicles sold by a given clean-fuel vehicle aftermarket conversion certifier at all of its installation facilities without regard to the model year of the original vehicles upon which the conversion configurations are based. All vehicle sales will be included in calculating the clean-fuel vehicle aftermarket conversion certifier's aggregate total, including vehicle conversions performed under the requirements of this part 88, and all other vehicle conversions. Vehicle conversions not covered by this part 88 will be counted if they occur within the model year for which certification is sought.

(4) Clean-fuel vehicle aftermarket conversion certifiers that are subject to the post-installation emissions testing requirements in paragraph (c) of this section and who will satisfy these requirements by using the two speed idle test procedure detailed in paragraph (c)(2)(ii) of this section must conduct the following testing at the time of certification in order to generate the required certification CO emissions reference values. The certification CO emissions reference values generated must be submitted to the Administrator at the time of application for certification.

(i) For dual and flexible fuel vehicles, certification reference values must be generated for each certification test fuel required for exhaust emissions testing pursuant to 40 CFR 86.113 or 40 CFR 86.1313.

(ii) For light-duty vehicles and light-duty trucks the test fuels used during the emissions testing required by paragraph (b)(3) of this section must comply with the fuel specifications for exhaust emissions testing found in 40 CFR 86.113. For heavy-duty engines the test fuels used during the emissions testing required by paragraph (b)(3) of this section must comply with the fuel specifications for exhaust emissions testing found in 40 CFR 86.1313.

(iii) Single, consecutive idle mode and high-speed mode segments of the two speed idle test must be conducted pursuant to the requirements of 40 CFR 85.2215 and as modified by the provisions of paragraph (c)(4)(ii)(D) of this section and this paragraph to determine the required certification CO emission reference values.

(A) The certification CO emission reference value for the idle mode of the test will be the simple average of all emissions measurements taken during an idle mode of 90 seconds duration pursuant to the requirements in 40 CFR 85.2215(a).

(B) The certification CO emission reference value for the high-speed mode of the test will be the simple average of all emissions measurements taken during a high-speed mode of 180 seconds duration pursuant to the requirements in 40 CFR 85.2215(a).

(c) Except as provided in paragraph (c)(1) of this section, each converted vehicle manufactured by a clean-fuel vehicle aftermarket conversion certifier with aggregate sales of less than 10,000 converted vehicles within a given calendar year must satisfy the post-installation emissions testing requirements of paragraph (c)(2) of this section. If a vehicle fails to satisfy the

emissions testing requirements such vehicle may not be considered a clean-fuel vehicle until such noncompliance is rectified and compliance is demonstrated.

(1) A clean-fuel vehicle aftermarket conversion certifier with estimated sales of 300 or fewer engines and vehicles in a calendar year and which sells or converts vehicles outside of a non-attainment area (as classified under subpart D of Title I) which has an inspection and maintenance program that includes a test of carbon monoxide emissions may submit a request to the Administrator for an exemption from the post-installation emission test requirements of paragraph (c) of this section. If granted, such an exemption would apply to converted vehicles that have the conversion installation performed outside of a nonattainment area which has an inspection and maintenance program that includes a test of carbon monoxide emissions.

(i) The request for exemption submitted to the Administrator must include the following:

(A) The estimated number of engines and vehicles that will be converted in the calendar year.

(B) Sufficient information to demonstrate that complying with the post-installation emission test requirement represents a severe financial hardship.

(C) A description of any emission related quality control procedures used.

(ii) Within 120 days of receipt of the application for exemption, the Administrator will notify the applicant either that an exemption is granted or that sufficient cause for an exemption has not been demonstrated and that all of the clean-fuel vehicle aftermarket conversion certifier's vehicles are subject to the post-installation test requirement of paragraph (c)(2) of this section.

(iii) If the clean-fuel vehicle aftermarket conversion certifier granted an exemption originally estimates that 300 or fewer conversions would be performed in the calendar year, and then later revises the estimate to more than 300 for the year, the certifier shall inform the Administrator of such revision. A post-installation emissions test for each conversion performed after the estimate is revised is required pursuant to the requirements of paragraph (c)(2) of this section. The estimated number of conversions from such a clean-fuel vehicle aftermarket conversion certifier must be greater than 300 in the following calendar year.

(2) A clean-fuel vehicle aftermarket conversion certifier with aggregate sales less than 10,000 converted vehicles within a given calendar year shall conduct post-installation emissions testing using either of the following test methods:

(i) The carbon monoxide (CO) emissions of the converted vehicle must be determined in the manner in which CO emissions are determined according to the inspection and maintenance requirements applicable in the area in which the vehicle is converted or is expected to be operated.

(A) For dual-fuel vehicles, a separate test is required for each fuel on which the vehicle is capable of operating. For flexible fuel vehicles, a single test is required on a fuel that falls within the range of fuel mixtures for which the vehicle was designed. The test fuel(s) used must be commercially available.

(B) A converted vehicle shall be considered to meet the requirements of this paragraph if the vehicle's measured exhaust CO concentration(s) is lower than the cutpoint(s) used to determine CO pass/fail under the inspection and maintenance program in the area in which the conversion is expected to be operated.

(1) If CO pass/fail criteria are not available for a vehicle fuel type then pass/fail criteria specific to gasoline use are to be used for vehicles of that fuel type.

(2) [Reserved].

(ii) The carbon monoxide (CO) emissions of the converted vehicle must be determined in the manner specified in the two speed idle test-EPA 91 found in 40 CFR 85.2215. All provisions in the two speed idle test must be observed except as detailed in paragraph (c)(2)(ii)(D) of this section.

(A) For dual and flexible fuel vehicles, a separate test is required for each certification test fuel required for exhaust emissions testing pursuant to 40 CFR 86.113 or 40 CFR 86.1313.

(B) For light-duty vehicles and light-duty trucks the test fuels used during the emissions testing required by paragraph (c)(4) of this section must comply with the fuel specifications for exhaust emissions testing found in 40 CFR 86.113. For heavy-duty engines the test fuels used during the emissions testing required by paragraph (c)(2) of this section must comply with the fuel specifications for exhaust emissions testing found in 40 CFR 86.1313.

(C) A converted vehicle shall be considered to meet the requirements of this paragraph if the following criteria are satisfied:

(1) The vehicle's measured idle mode exhaust CO concentration(s) must be lower than the sum of 0.4 percent CO plus the idle mode certification CO emissions reference value as determined according to the requirements of paragraph (b)(3) of this section.

(2) The vehicle's measured high-speed mode exhaust CO concentration(s) must be lower than the sum of 0.4 percent CO plus the high-speed certification CO emissions reference value as determined according to the requirements of paragraph (b)(3) of this section.

(D) For the purposes of the post-installation emissions testing required by paragraph (c) of this section, the following adjustments to the two speed idle test-EPA 91 in 40 CFR 85.2215 are necessary.

(1) Testing of hydrocarbon emissions and equipment associated solely with hydrocarbon emissions testing is not required.

(2) The CO emissions pass/fail criteria in 40 CFR 85.2215(a)(2), (c)(1)(ii)(A), (c)(2)(ii)(A)*(1)*, (c)(2)(iii)(A)*(1)*, and (d)(3)(i) are to be replaced with the pass/fail criteria detailed in paragraph (c)(2)(ii)(C) of this section. All HC pass/fail criteria in 40 CFR 85.2215 do not apply.

(3) The void test criteria in 40 CFR 85.2215(a)(3) and (b)(2)(iv) associated with maintaining the measured concentration of CO plus CO_2 above six percent does not apply. However, the Administrator may reconsider requiring that the void test criteria in 40 CFR 85.2215(a)(3) and (b)(2)(iv) be applied, and may issue an advisory memorandum to this effect in the future.

(4) The ambient temperature levels encountered by the vehicle during testing must comply with the specifications in 40 CFR 86.130 or 40 CFR 86.1330.

(d) The clean-fuel vehicle aftermarket conversion certifier shall be considered a manufacturer for purposes of Clean Air Act sections 206 and 207 and related enforcement provisions, and must accept liability for in-use performance of all the vehicles produced under the certificate of conformity as outlined in 40 CFR part 85.

(1) The useful life period for the purposes of determining the in-use liability of the clean-fuel vehicle aftermarket conversion certifier shall be the original useful life of the vehicle prior to conversion.

(2) [Reserved].

(e) *Tampering.* (1) The conversion from an engine or vehicle capable of operating on gasoline or diesel fuel only to a clean-fuel engine or vehicle shall not be considered a violation of the tampering provisions of Clean Air Act section 203(a)(3), if such conversion is done pursuant to a conversion configuration certificate by the

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aftermarket conversion certifier or by an installer listed on the certificate.

(2) In order to comply with the provisions of this subpart, an aftermarket conversion installer must:

(i) Install a certified aftermarket conversion system for which the installer is listed by the certifier; and

(ii) Perform such installation according to instructions provided by the aftermarket conversion certifier.

(f) *Data collection.* The clean-fuel vehicle aftermarket conversion certifier is responsible for maintaining records of each engine and vehicle converted for use in the Clean Fuel Fleets program for a period of 5 years. The records are to include the engine or vehicle make, engine or vehicle model year, and engine or vehicle identification number of converted engines and vehicles; the certification number of the conversion configuration; the brand names and part numbers of the parts included in the conversion configuration; the date of the conversion and the facility at which the conversion was performed; and the results of post-installation emissions testing if required pursuant to paragraph (c) of this section.

22. A new § 88.308–94 is added to subpart C to read as follows:

§ 88.308–94 Programmatic requirements for clean-fuel fleet vehicles.

Multi-State nonattainment areas. The states comprising a multi-State nonattainment area shall, to the greatest extent possible, promulgate consistent clean-fuel fleet vehicle programs.

23. Section 88.311–93 of subpart C is amended by revising paragraphs (c) and (d) to read as follows:

§ 88.311–93 Emissions standards for inherently Low-Emission Vehicles.

* * * * *

(c) *Light-duty vehicles and light-duty trucks.* ILEVs in LDV and LDT classes shall have exhaust emissions which do not exceed the LEV exhaust emission standards for NMOG, CO, HCHO, and PM and the ULEV exhaust emission standards for NO_X listed in Tables A104–1 through A104–6 for light-duty CFVs. Exhaust emissions shall be measured in accordance with the test procedures specified in § 88.104(l). An ILEV must be able to operate on only one fuel, or must be certified as an ILEV on all fuels it can operate on. These vehicles shall also comply with all requirements of 40 CFR part 86 which are applicable to conventional gasoline-fueled, methanol-fueled, diesel-fueled, natural gas-fueled or liquifled petroleum gas-fueled LDVs/LDTs of the same vehicle class and model year.

(d) *Heavy-duty vehicles.* ILEVs in the HDV class shall have exhaust emissions with combined non-methane hydrocarbon and oxides of nitrogen exhaust emissions which do not exceed the exhaust emission standards in grams per brake horsepower-hour listed in § 88.105. Exhaust emissions shall be measured in accordance with the test procedures specified in § 88.105(d). An ILEV must be able to operate on only one fuel, or must be certified as an ILEV on all fuels it can operate on. These vehicles shall also comply with all requirements of 40 CFR part 86 which are applicable in the case of conventional gasoline-fueled, methanol-fueled, diesel-fueled, natural gas-fueled or liquified petroleum gas-fueled HDVs, of the same weight class and model year.

* * * * *

24. The tables to subpart C of part 88 are amended by removing tables C93–6, C93–6.1, and C93–6.2, and by revising tables C94–1, C94–1.1, C94–1.2, C94–1.3, C94–2, C94–2.1, C94–2.2, C94–2.3, C94–3, C94–3.1, C94–3.2, and C94–3.3 to read as follows:

Tables to Subpart C of Part 88

TABLE C94–1.—FLEET CREDIT TABLE BASED ON REDUCTION IN NMOG. VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

TABLE C94–1.1.—CREDIT GENERATION: PURCHASING MORE CLEAN-FUEL VEHICLES THAN REQUIRED BY THE MANDATE

NMOG	LDV, LDT ≤6000 GVWR, ≤3750 LVW	LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW	LDT >6000 GVWR, ≤3750 ALVW	LDT >6000 GVWR, >3750 ALVW ≤5750 ALVW	LDT >6000 GVWR, >K5750 ALVW
LEV	1.00	1.26	0.71	0.91	1.11
ULEV	1.20	1.54	1.00	1.29	1.47
ZEV	1.43	1.83	1.43	1.83	2.23

TABLE C94–1.2.—CREDIT GENERATION: PURCHASING A ULEV OR ZEV TO MEET THE MANDATE

NMOG	LDV, LDT ≤6000 GVWR, ≤3750 LVW	LDT 1≤6000 GVWR, >3750 LVW ≤5750 LVW	LDT >6000 GVWR, ≤3750 ALVW	LDT >6000 GVWR, >3750 ALVW, ≤5750 ALVW	LDT >6000 GVWR, >5750 ALVW
LEV	0.00	0.00	0.00	0.00	0.00
ULEV	0.20	0.29	0.29	0.34	0.45
ZEV	0.43	0.57	0.71	0.91	1.11

TABLE C94–1.3.—CREDIT NEEDED IN LIEU OF PURCHASING A LEV TO MEET THE MANDATE

NMOG	LDV, LDT ≤6000 GVWR, ≤3750 LVW	LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW	LDT >6000 GVWR, ≤3750 ALVW	LDT >6000 GVWR, >3750 ALVW ≤5750 ALVW	LDT >6000 GVWR, ≤5750 ALVW
LEV	1.00	1.26	0.71	0.91	1.11

TABLE C94–2.—FLEET CREDIT TABLE BASED ON REDUCTION IN $NMOG+NO_x$. VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

TABLE C94–2.1.—CREDIT GENERATION: PURCHASING MORE CLEAN-FUEL VEHICLES THAN REQUIRED BY THE MANDATE

$NMOG+NO_x$	LDV, LDT ≤6000 GVWR, ≤3750 LVW	LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW	LDT >6000 GVWR, ≤3750 ALVW	LDT >6000 GVWR, >3750 ALVW ≤5750 ALVW	LDT >6000 GVWR, >5750 ALVW
LEV	1.00	1.39	0.33	0.43	0.52
ULEV	1.09	1.52	1.00	1.39	2.06
ZEV	1.73	2.72	1.73	2.72	3.97

TABLE C94–2.2.—CREDIT GENERATION: PURCHASING A ULEV OR ZEV TO MEET THE MANDATE

$NMOG+NO_x$	LDV, LDT ≤6000 GVWR, ≤3750 LVW	LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW	LDT >6000 GVWR, ≤3750 ALVW	LDT >6000 GVWR, >3750 ALVW ≤5750 ALVW	LDT >6000 GVWR, >5750 ALVW
LEV	0.00	0.00	0.00	0.00	0.00
ULEV	0.09	0.13	0.67	0.96	1.54
ZEV	0.73	1.34	1.40	2.29	3.45

TABLE C94–2.3.—CREDIT NEEDED IN LIEU OF PURCHASING A LEV TO MEET THE MANDATE

$NMOG+NO_x$	LDV, LDT ≤6000 GVWR, ≤3750 LVW	LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW	LDT ≤6000 GVWR, ≤3750 ALVW	LDT >6000 GVWR, >3750 ALVW ≤5750 ALVW	LDT >6000 GVWR, >5750 ALVW
LEV	1.00	1.39	0.33	0.43	0.52

TABLE C94–3.—FLEET CREDIT TABLE BASED ON REDUCTION IN CARBON MONOXIDE. VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

TABLE C94–3.1.—CREDIT GENERATION: PURCHASING MORE CLEAN-FUEL VEHICLES THAN REQUIRED BY THE MANDATE

CO	LDV, LDT ≤6000 GVWR, ≤3750 LVW	LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW	LDT ≤6000 GVWR, ≤3750 ALVW	LDT >6000 GVWR, >3750 ALVW ≤5750 ALVW	LDT >6000 GVWR, >5750 ALVW
LEV	1.00	1.00	1.00	1.00	1.00
ULEV	2.00	2.29	2.00	2.29	2.47
ZEV	3.00	3.59	3.00	3.59	3.94

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TABLE C94–3.2.—CREDIT GENERATION: PURCHASING A ULEV OR ZEV TO MEET THE MANDATE

CO	LDV, LDT ≤6000 GVWR, ≤3750 LVW	LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW	LDT >6000 GVWR, ≤3750 ALVW	LDT >6000 GVWR, >3750 ALVW ≤5750 ALVW	LDT >6000 GVWR, >5750 ALVW
LEV	0.00	0.00	0.00	0.00	0.00
ULEV	1.00	1.00	1.00	1.00	1.00
ZEV	2.00	2.29	2.00	2.29	2.47

TABLE C94–3.3.—CREDIT NEEDED IN LIEU OF PURCHASING A LEV TO MEET THE MANDATE

CO	LDV, LDT ≤6000 GVWR, ≤3750 LVW	LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW	LDT >6000 GVWR, ≤3750 ALVW	LDT >6000 GVWR, >3750 ALVW ≤5750 ALVW	LDT >6000 GVWR, >5750 ALVW
LEV	1.00	1.00	1.00	1.00	1.00

* * * * *

[FR Doc. 94–22132 Filed 9–29–94; 8:45 am]
BILLING CODE 6560–50–P

federal register

Friday
September 30, 1994

Part III

Department of Transportation

Federal Railroad Administration

49 CFR Parts 212 and 234
Grade Crossing Signal System Safety; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 212 and 234

[FRA Docket No. RSGC–5; Notice No. 7]

RIN 2130—AA70

Grade Crossing Signal System Safety

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is issuing a final rule requiring that railroads comply with specific maintenance, inspection, and testing requirements for active highway-rail grade crossing warning systems. FRA is also requiring that railroads take specific and timely actions to protect the travelling public and railroad employees from the hazards posed by malfunctioning highway-rail grade crossing warning systems. This action is taken in part, in response to a statutory requirement that FRA "issue rules, regulations, orders, and standards to ensure the safe maintenance, inspection, and testing of signal systems and devices at railroad highway grade crossings."

EFFECTIVE DATE: These rules will become effective January 1, 1995.

FOR FURTHER INFORMATION CONTACT: William Goodman, Chief, Signal and Train Control Division, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–366–2231), or Mark Tessler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–366–0628).

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1994, FRA published a Notice of Proposed Rulemaking (NPRM) in which FRA proposed to require that railroads comply with specific maintenance, inspection, and testing requirements for active highway-rail grade crossing warning systems. FRA also proposed to require that railroads take specific and timely actions to protect the travelling public and railroad employees from the hazards posed by malfunctioning highway-rail grade crossing warning systems. A public hearing was held in Washington, D.C. on March 1, 1994. The comment period in this rulemaking closed on March 21, 1994. The final rule issued today reflects many of the comments and the testimony presented by 25 parties.

FRA had issued an earlier NPRM on June 29, 1992 (57 FR 28819), in which FRA proposed rules requiring specific and timely response in situations involving malfunctioning highway-rail grade crossing warning systems. A public hearing was held in Washington, D.C. on September 15, 1992. This prior NPRM did not address maintenance, inspection and testing of such warning systems. Due to comments received and an intention to widen the scope of the rulemaking to include proposed standards for maintenance, inspection, and testing pursuant to the mandate of 49 U.S.C. 20134(b), (formerly § 202(q) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(q)) (Safety Act) as amended by section 2 of the Rail Safety Enforcement and Review Act (Pub. L. 102-365)), an open meeting was held on December 11, 1992. Among the comments received was a joint submission from the Brotherhood of Railroad Signalmen, the Association of American Railroads, and The American Short Line Railroad Association. In addition to commenting on the prior NPRM, the labor/management group proposed specific regulatory language addressing both timely response and maintenance, inspection, and testing.

The NPRM issued on January 20, 1994 reflected the consolidation into one rulemaking docket of the timely response rulemaking with proposed standards for maintenance, inspection, and testing of grade crossing warning systems. The NPRM generated a wide range of comments. Individual comments were received from: thirteen state regulatory agencies representing eleven states; five commuter rail authorities; three freight railroads; one union; and two industry associations. Additionally, a joint submission was received from the Brotherhood of Railroad Signalmen, the American Short Line Railroad Association and the Association of American Railroads ("labor/management group").

This final rule amends 49 CFR Part 234, "Grade Crossing Signal Safety", and to a lesser extent, 49 CFR Part 212, "State Safety Participation Regulations."

This rule is a vital component of DOT's Rail-Highway Grade Crossing Action Plan which details six major Departmental initiatives addressing highway-rail grade crossing safety and trespass prevention. These initiatives include: enhanced enforcement of traffic laws at crossings; enhanced rail corridor crossing reviews and improvements; expanded public education and Operation Lifesaver activities; increased safety at private crossings; improved data and research efforts; and prevention of rail trespassing. These initiatives are comprised of fifty-five separate actions the Department proposes to take.

Part 234 was issued in 1991 (56 FR 33728, July 23, 1991) primarily as a reporting rule by which FRA received data pertaining to malfunctions of highway-rail grade crossing warning systems. Part 234 is being amended by restructuring the existing Part 234 into two new subparts, "Subpart A—General" and "Subpart B—Reports" and by adding two subparts, "Subpart C—Response to Reports of Warning System Malfunction" and "Subpart D—Maintenance, Inspection, and Testing."

Additionally, 49 CFR Part 212 is being amended to provide for the participation of qualified state highway-rail grade crossing inspectors and apprentices within the State Participation Program.

As we stated in the preamble to the early NPRM, we believe the risks to the travelling public and railroad employees from grade crossing accidents resulting from system failures can be reduced. The active grade crossing warning systems in place at the nation's highway-rail grade crossings are designed to fail in a "fail-safe" mode. If a component or circuitry fails, the device fails in such a manner that the warning is activated, thus in theory preventing a highway user from entering onto the tracks in front of a train. This system has worked successfully for many years. FRA does not take issue with the basic design theory of "fail-safe" warning devices—they are true lifesaving devices. However, the fail-safe feature loses its effectiveness as time goes by without repair of the warning system and its return to fully functioning status.

Failure of a device to activate when a train is approaching creates an obvious and acute risk. Indeed, an otherwise cautious highway user could be entrapped by the failure to warn. Although activation failures are rare events and railroads typically respond with appropriate dispatch, adding further impetus to appropriate diagnosis and response is warranted by the critical nature of the risk.

Therefore, FRA is issuing these amendments to 49 CFR part 234 in which railroads are required to take certain steps when they are notified of either activation failures or false activations. These steps, designed to assure the safety of the travelling public and railroad employees, are not unknown to the railroad industry. They require the railroad to take the following three series of steps after learning of a malfunctioning warning system: (1) Notify trains and law enforcement

authorities of the malfunction; (2) take appropriate actions to warn and control highway traffic pending inspection and repair of the system; and (3) repair the system.

The rules do not establish a specific time frame for repair of malfunctioning warning systems. Setting a specific repair time would necessitate establishing a schedule of various defects together with approved repair periods. Not only is a system of this type very cumbersome to establish and monitor, it would not take into consideration the operating environments of various railroads. Rather, safety is being maintained while the warning system is out of service by requiring an equivalent level of warning and protection. That safety level will be ensured by the flagging and speed restrictions contained in this rule.

Safety at active grade crossings will be further ensured by the maintenance, inspection, and testing requirements contained in this rule.

Section-by-Section Analysis

49 CFR Part 212

FRA proposed revisions to 49 CFR Part 212, "State Safety Participation Program" in order to provide for qualified state railroad safety inspectors to enforce the grade crossing safety rules issued today.

Section 212.231 Highway-rail Grade Crossing Inspector

As proposed, this section amends 49 CFR Part 212, "State Safety Participation Program" to create a new category of "Highway-rail grade crossing inspector" within the State Participation Program. The proposal established minimum qualification standards enabling state inspectors to enforce grade crossing signal system safety regulations at 49 CFR Part 234. Additionally, this section as proposed provided that all state signal and train control inspectors qualified under § 212.207 are also thereby fully qualified under new § 212.231. California Department of Transportation, Division of Rail (CA DOT) commented that this proposed section was "worrisome in its flagrant approval of substituting schooling or related technical specialization, or completion of an apprentice training program, in lieu of having four years of specific experience* * * *." FRA appreciates CA DOT's concerns, however, FRA has not found the qualification requirements, which mirror the requirements for state inspectors in other disciplines, to be a problem. However, if any state regulatory agency deems it appropriate to impose more stringent requirements for its inspectors, it is entirely free to do so. General qualifications of state inspection personnel under the state participation program are governed by 49 C.F.R. part 212.201 which, in subsection (a) states that "this subpart [subpart C—State Inspection Personnel] prescribes the minimum qualification requirements for State railroad safety inspectors, compliance inspectors and inspector apprentices. A State agency may establish more stringent or additional requirements for its employees." Consequently, FRA has not modified this section as suggested by CA DOT.

Final Rule

This section is being adopted as proposed, with the exception that language has been added to subsection (d) to clarify FRA's original intent that state signal and train control inspectors can also enforce Grade Crossing Signal System Safety Rules only if they have demonstrated the ability to understand and detect deviations from those rules. While FRA anticipates that state signal and train control inspectors will have the technical expertise needed to ensure compliance with these rules, they also need to be familiar with the regulatory requirements themselves.

Section 212.233 Apprentice Highway-rail Grade Crossing Inspector

As proposed, this section establishes minimum qualification standards which applicants must meet prior to being enrolled in the inspector training program within the State Participation Program. FRA received no specific comments regarding this section.

Final Rule

This section is adopted as proposed.

49 CFR Part 234

Section 234.1 Scope

As proposed, this section expands the scope of Part 234. The final rule issued today adds two new subparts to Part 234, "Response to Reports of Warning System Malfunction" and "Maintenance, Inspection, and Testing." This section is amended to include the subject areas covered by these new subparts.

This section has been revised from that proposed to make clear that this part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part. In addition to prescribing standards for the reporting of failures of highway-rail grade crossing warning systems, this part also prescribes minimum actions railroads must take when such warning systems malfunction and imposes minimum maintenance, inspection, and testing standards for such systems. The actions required by this part are the minimum actions which need to be taken by a railroad in a specific situation. Thus, it would be acceptable for a railroad to determine that it will stop at every malfunctioning warning system rather than cross at a reduced speed. Similarly, it is acceptable to test a crossing system component every three months, rather than every 12 months as required by this rule. References in sections 234.105 and 234.107 to a railroad "taking, at a minimum, the following actions:" have accordingly been revised to delete "at a minimum" inasmuch as the requirement has been placed more appropriately in section 234.1.

The NPRM contained a provision stating that "[w]hen any person performs any function required by this part, that person is required to perform that function in accordance with this part." After review, and in an effort to delete unnecessary and confusing language, FRA will delete the proposed language inasmuch as section 234.6 "Penalties", provides for appropriate penalties against any person who violates any requirement of this part.

Final Rule

This section sets forth the scope of Part 234. Part 234 imposes minimum maintenance, inspection, and testing standards highway-rail grade crossing warning systems. This part also prescribes standards for the reporting of failures of such systems and prescribes minimum actions railroads must take when such warning systems malfunction. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

Section 234.3 Application

FRA did not propose any specific changes to this section. Rather, FRA posed a series of questions pertaining to the application of these rules. FRA questioned whether the rules should apply to scenic or tourist railroads—those both on and off the general railroad system of transportation. FRA stated that:

> FRA does not believe that scenic railroads which are part of the general railroad system of transportation should be treated differently than other railroads under the proposed rules issued today. The primary beneficiary of these rules will be the motoring public. A motorist should have the same assurance of safety whether crossing the tracks of a Class

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l railroad, a small short line, or those of a small scenic railroad. FRA invites public comment on this issue.

FRA further questioned whether these rules should "be applied to crossings on trackage not located on the general railroad system? Should the answer depend on whether the crossing is a public or private crossing?"

There was disagreement among commenters as to whether these rules should be applied to trackage not located on the general railroad system. The Minnesota Department of Transportation stated, "We believe the rules should apply to all signals whether they are on public or private railroads, public or private roadways or whether the railroad is connected into the rail network or not. The driver of a vehicle is seldom aware of facility ownership. The credibility of crossing signals needs to be maintained regardless of where they are used." The New York State Department of Transportation (NYS DOT) agreed to the extent that the rules "should apply to all crossings of public roadways regardless of the status of the railroad." However, the NYS DOT further stated that "extension of the authority to include tourist and plant railroad crossings on private property would not be appropriate, since motorist expectations are different on private property and both train and vehicle speeds are generally low." This difference of opinion was also reflected in comments received from other parties.

In analyzing this issue, FRA is confronted with a number of differing situations based on the different nature of vehicle roadways (public and private) and differing railroad operations: freight and passenger operation on the general system; freight operations within an industrial plant; tourist railroad on the general system; and tourist railroad not part of the general system (see discussion below).

Commenters generally agree that all crossings over general system railroads should be governed by this rule. We agree. Thus, active warning systems on both private and public roadways crossing general system railroads are subject to this rule.

There was no consensus as to whether these rules should apply to public or private crossings over "plant" railroads. While some commenters urged that all crossings under all circumstances should be governed by the rule, others, such as NYS DOT and West Virginia Department of Transportation held the opinion that crossings over plant railroads should not be subject to the rule. Unfortunately, FRA did not receive specific information or data supporting the views commenters supporting either position. If FRA were to include plant railroads within the application of this rule, it would be applying a regulatory regimen over entities which have historically not been regulated by the FRA. Although FRA has authority to regulate this field of entities, it has not chosen to do so for reasons of both lack of a demonstrated safety need and the need to apply limited FRA safety resources where they can be best utilized. As has been stated, plant railroad operations typically involve low speed operations with small numbers of rail cars permitting relatively short stopping distances. These operations typically also involve roadway crossings with relatively low speed vehicular traffic. These reasons, together with the historical basis for not asserting jurisdiction in these situations leads FRA to not assert jurisdiction over public and private crossings at such plant railroads. Of course, because FRA's regulatory authority permits it to amend the applicability sections of its regulations so as to expand or contract the populations of railroads covered by a particular set of regulations, if circumstances so warrant, FRA may assert such jurisdiction in the future.

As noted in the NPRM, FRA recently received a petition from the Berkshire Scenic Railway Museum, Incorporated on behalf of tourist, excursion, and scenic railroads requesting the need for legislative and regulatory action for new regulations tailored specifically to the tourist rail industry. Pursuant to FRA's response to that petition, FRA has considered the suggestions made by those parties in drafting these final regulations. There is a very wide range of operations that could be considered tourist, excursion, or scenic railroads under the broadest reading of the term "railroad." In an effort to clarify the proper extent of the exercise of FRA's jurisdiction. FRA recently settled on several principles that will be used as current FRA guidelines. FRA will exercise jurisdiction over all tourist, excursion, and scenic railroads, whether or not they operate over the general railroad system, except those that are (1) less than 24 inches in gage and/or (2) insular.

To determine insularity, FRA looks at various criteria that measure the likelihood that a railroad's operations might affect a member of the public. FRA has concluded that a tourist, excursion, or scenic railroad is insular if its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of any member of the public (except a business guest, a licensee of the tourist operation or an affiliated entity, or a trespasser) would be affected by the operation. A railroad is *not* considered insular if one or more of the following exists on its line: (a) A public highway-rail crossing that is in use; (b) an at-grade rail crossing that is in use; (c) a bridge over a public road or waters used for commercial navigation; or (d) a common corridor with a railroad, *i.e.*, its operations are within 30 feet of those of any railroad.

Thus, the mere fact that the trackage of a railroad is not connected to the general system does not make the railroad insular under these criteria. While these criteria tend to sort out the insular theme parks and museums, a need to do case-by-case analysis in certain close situations still exists.

Therefore, FRA has concluded that the requirements contained in this part should apply to each non-general system, non-insular passenger railroad that confines its operations to lines that are not part of the general system (*i.e.*, it is a stand-alone with no freight traffic but has one or more features that preclude its being considered insular). FRA believes that application of these regulations to non-insular passenger operations off the general system is warranted by the risk to passengers associated with accidents involving heavy motor vehicles and is consistent with FRA's ability to regulate and enforce safety standards in a cost effective manner.

FRA recognizes that additional crossings equipped with automated warning systems may be found on plant railroads and private freight railroads. Maintenance, inspection, and testing of these automated systems is the responsibility of entities not otherwise regulated by FRA. As to plant and private freight railroads, these functions lie outside the scope of this final rule, and state and local authorities will retain their existing authority to administer and enforce appropriate requirements for the protection of the public. If data should be developed that indicates a need for uniform national regulation of this subject matter, FRA may revisit this issue at a future time.

Based on the above, FRA is revising § 234.3 to apply to all freight, passenger and scenic railroads which are part of the general system of transportation. Because the present definition of "highway-rail grade crossing" contained in § 234.5 includes both private and public crossings, no change is necessary to provide that this part applies to both private and public crossings over railroads which are subject to the rule. As a consequence, private and public crossings over general system railroads will be covered by this part. Additionally, this part will apply to all non-insular passenger railroads off the general system. FRA notes that a passenger railroad off the general system may be considered non-insular under FRA's listed factors, but have only private grade crossings on its line of railroad. Because of the non-insular status of the railroad, the private crossings will be subject to this rule. However, if based on an analysis of the listed factors which determine insularity, a tourist operation is considered to be insular, private crossings on its line would not be subject to this rule.

Final Rule.

This section provides that this part applies to all railroads except a railroad that exclusively operates freight trains only on track which is not part of the general railroad system of transportation, rail rapid transit operations conducted over track that is used exclusively for that purpose and that is not part of the general railroad system of transportation, or a passenger railroad that operates trains only on track inside an installation that is insular.

Paragraph 234.4 Preemptive Effect

FRA proposed adding this section to Part 234 to inform the public as to FRA's views regarding the preemptive effect of these rules. While the presence or absence of such a section does not in itself affect the preemptive effect of this part, it informs the public concerning the statutory provision which does govern the preemptive effect of these rules. Section 20106 of title 49 of the United States Code, (formerly Section 205 of the Safety Act (45 U.S.C. 434)) provides that all regulations prescribed by the Secretary relating to railroad safety preempt any State law, regulation, or order, covering the same subject matter, except a provision directed at an essentially local safety hazard that is not incompatible with a federal law, regulation, or order and that does not unreasonably burden interstate commerce.

The California Public Utilities Commission commented that the "Federal regulations do not explain the relationship between the FRA rules and the various state rail-highway crossing regulatory agency rules. Federal rules which preempt state regulation should clearly define a state regulatory agency's role." FRA views the terms of 49 U.S.C. 20106 as explaining such relationships. Any state regulatory agency rules covering the same subject matter as these regulations issued today are preempted. However, section 20106 provides that a State may adopt or continue in force an additional or more stringent law, rule, regulation, or order, relating to railroad safety when necessary to eliminate or reduce an essentially local safety hazard, and when not incompatible with any Federal law, rule, regulation, or order, and when not creating an unreasonable burden on interstate commerce.

Section 20105 of title 49 of the United States Code, (formerly Section 206 of the Safety Act (45 U.S.C. 435)) provides a mechanism by which a state agency can participate in the subject areas covered by today's regulation. That section provides for state participation in carrying out investigative and surveillance activities in connection with federal railroad safety rules. See also FRA's state participation regulations at 49 C.F.R. Part 212.

Final Rule

This section explains that under 49 U.S.C. 20106 (formerly Section 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434)), issuance of these regulations preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision directed at an essentially local safety hazard that is consistent with this part and that does not impose an undue burden on interstate commerce.

Section 234.5 Definitions

The NPRM contained proposals to add three definitions to those terms already defined in the rule. Commenters generally supported the proposed definitions contained in the NPRM. However, some parties suggested changes to two proposed definitions, "appropriately equipped flagger" and "credible report of system malfunction". No opposition was expressed to the definition of "warning system malfunction."

"*Appropriately equipped flagger.*" As proposed, the definition of "appropriately equipped flagger" means a person other than a train crewmember who is equipped with an orange vest, shirt, or jacket for daytime flagging. For nighttime flagging, similar outside garments shall be retroreflective. The retroreflective material shall be either orange, white (including silver-colored coatings or elements that retroreflect white light), yellow, fluorescent red-orange, or fluorescent yellow-orange and shall be designed to be visible at a minimum distance of 1,000 feet. The design configuration of the retroreflective material shall provide recognition of the wearer as a person and shall be visible through the full range of body motions. Acceptable hand signalling devices for daytime flagging include STOP/SLOW paddles and red flags. For nighttime flagging, a flashlight, lantern, or other lighted signal shall be used.

The West Virginia Department of Transportation recommended that flaggers' clothing, devices and training conform to the Manual on Uniform Traffic Control Devices ("MUTCD") in all respects. As we stated in the NPRM, we encourage railroads to provide equipment and training in accordance with "Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility and Incident Management Operations" issued by the Federal Highway Administration as part VI of the MUTCD. However, given the industry-wide cost of equipping in full accordance with the MUTCD and training thousands of employees, FRA is leaving to individual railroads the decision as to the extent of training and equipping beyond the minimum requirements of this rule.

The Long Island Rail Road (LIRR) commented that a uniformed police officer should be considered to meet the requirements of this section. We agree. As noted in the NPRM, FRA does not intend to impose flagging equipment requirements on police officers, including uniformed railroad police. Police officers are presumably trained and equipped for traffic control functions. There is therefore no need for requiring any additional training or equipment.

The American Public Transit Association (APTA) suggested that FRA eliminate the requirement that flaggers carry specific signalling equipment. APTA stated that "it is important for flaggers to have their hands free to stay in radio contact with the railroad, which may not be possible if the flagger has to carry items such as paddles. In the commuter railroad's experience, once a flagger is at a crossing, motorists will obey the flagger regardless of the flagger's signalling devices." We agree that a motorist will obey the flagger, however a motorist must first identify a person as a flagger, and then the motorist must be able to determine the instructions given by the flagger. FRA believes that the proposed requirements provide the motorist with the necessary visual clues. FRA believes that the proposed requirements are the minimum that provide safety for both the highway user *and* the flagger and thus are retained in the final rule. Maine DOT also recommended that "reflective" be used to describe

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materials to be worn by flaggers rather than "retroreflective." Retroreflective is used in the latest version of the MUTCD. FRA will retain use of "retroreflective" to maintain consistency with the MUTCD. In addition to the minimum standards established by this definition, FRA encourages railroads to provide flagging equipment and training in accordance with "Traffic Controls for Street and Highway Construction, Maintenance, Utility and Emergency Operations" issued by the Federal Highway Administration as Part VI of the MUTCD.

As stated in the NPRM, persons needing to be appropriately equipped are railroad employees other than a train crewmember, or others acting on behalf of the railroad, who flag highway traffic at grade crossings with malfunctioning warning systems. The requirement that persons be appropriately equipped does not apply to train crewmembers who dismount from a locomotive to flag the train through a crossing in an emergency situation, or to uniformed law enforcement officers.

Final Rule

The definition of "appropriately equipped flagger" is adopted as proposed.

"Credible report of system malfunction." As proposed, "credible report of system malfunction" means specific information regarding a malfunction at an identified highway-rail grade crossing, supplied by a railroad employee, law enforcement officer, highway traffic official, or an employee of a public agency acting in an official capacity.

APTA and LIRR stated that given the high frequency of commuter rail operations, commuter railroads consider all reports of malfunction as credible and respond accordingly. The American Trucking Associations, Inc. (ATA) objected to the definition of "credible report" as too narrow. The ATA believes that reports from individual citizens should be given the same weight by the railroad as reports from railroad employees and the police. FRA believes that a reporting system in which citizens notify their local police or highway department of malfunctions will be more efficient. Providing this initial screening process will reduce frivolous or fraudulent notifications in which members of the public may attempt to harass a railroad or individual railroad employee. Additionally, as discussed below in the analysis of § 234.101, certain situations requiring repair or adjustment of the warning system do not trigger a railroad response under §§ 234.105 and 234.107. Although those situations, such as dirty roundels, a burnt out bulb, a broken reflector, or a broken gate arm tip, although important, are not the type of situations in which the railroad should be expected to take the actions required under this rule, it is likely that such reports would be made to the railroad. Providing an initial screening process will better enable a railroad to quickly respond to those situations which safety factors clearly require the speedy response.

FRA, of course, has no objection to railroads acting on reports from individuals and, indeed, as we stated in the preamble to the NPRM, "we expect that railroads will, as they have traditionally done, investigate reports of malfunctions received from the public. After determining the accuracy of the report a railroad would then take appropriate action in accordance with regulations." The rules issued today do not prohibit a railroad from adopting internal rules that would trigger specific responses to an individual's complaint, but would only mandate the required responses to reports from "official" sources.

FRA is including within the definition of "credible report" information generated by an automatic reporting device. FRA has considered this inclusion in light of possible "scope of notice" problems. However, after consideration, FRA is of the opinion that even without this clarifying language, railroads would be required to respond to such reports under the rule as proposed. Section 234.101 mandates rules requiring employees to report instances of malfunctions. The employee responsible for monitoring such automatic devices must report such malfunctions under section 234.101. Such reports are within the definition of "credible report." By adding "generated by an automatic reporting device" to the definition, FRA will avoid any confusion in the industry as to what is expected when automatic reporting devices are used.

In a comment related to credible reports, the ATA further recommended that railroads be required to post at the crossing the railroad's name, crossing identification number, and a telephone number for reporting malfunctions similar to the system now in place in Texas. The railroads have cooperated in establishing such systems in three States (Texas, Delaware and Connecticut), and FRA is finalizing a report reviewing the results of the Texas program.

FRA agrees that establishment of a notification system is a desirable objective. The Department's Rail-Highway Grade Crossing Action Plan specifies that this issue will be further examined through a special safety inquiry.

Public/private cooperation is needed to make this type of system workable. It is important that initial notification go to a public authority or an entity operating on behalf of the public. This procedure helps prevent the misuse of the notification system, while providing immediate notice to public authorities where steps should be taken to protect highway traffic pending the railroad response. Where citizens making reports do not note the inventory number or it is not posted due to vandalism, knowledge of the street or highway system may be necessary to identification of the railroad company and specific crossing.

Railroad cooperation is important to sort out valid reports from those that derive from misunderstanding of how devices function (as where a switching movement is occupying the fouling circuit on an industrial siding) and to ensure prompt response to valid reports. Clear identification of responsibility for posting and maintaining signage is also essential.

Although this rulemaking is not the appropriate vehicle for resolving this issue, FRA will continue its examination of this issue through the safety inquiry noted above, with the objective of promoting the earliest feasible notification of warning device malfunctions.

Final Rule

The definition of "credible report of system malfunction" is adopted as proposed.

"Warning system malfunction" As proposed "warning system malfunction" means an activation failure or a false activation of a highway-rail grade crossing warning system.

No opposition was expressed to this definition.

Final Rule

The definition of "warning system malfunction" is adopted as proposed.

Section 234.6(o) Civil Penalties

As proposed, this section amends the present "civil penalty" provision in effect for Part 234. The amendment brings this section into conformity with 49 U.S.C. 21301 (formerly § 209(a) of the Safety Act as amended by section 9 of the Rail Safety Enforcement and Review Act). That section amended the definition of "person." The clarified definition of "person" includes, but is not limited to, such entities as

manufacturers and lessors of railroad equipment and independent contractors. Congress' purpose in amending the definition of "person" was to clarify the Secretary's existing power over entities whose activities related to rail safety by explicitly defining that authority. See 1992 U.S. Code Cong. and Adm. News, p. 879. Congress made it clear that the included list of "persons" subject to the Secretary's authority was intended to be illustrative and not exhaustive.

There were no comments pertaining to this proposed section.

Final Rule

This section is adopted as proposed.

Section 234.101 Employee Notification Rules

As proposed, this section requires that each railroad issue rules requiring employees to report to a designated railroad official, by the quickest means available, any warning system malfunction. This provision is intended to ensure that all employees report instances of false activations and activation failures (see definition of warning system malfunctions) and that such reports are made to the appropriate person. This section does not require that a railroad issue rules to require notification of maintenance or operational problems which are not false activations or activation failures. Examples of such situations not covered by this section would be dirty roundels, one bulb burnt out, a broken reflector, or a gate arm tip broken. While employees should report such situations to the railroad, those situations do not require a railroad response under Subpart C of this part.

The labor/management group recommended that this provision be modified in recognition that railroad employees frequently report signal malfunctions to dispatchers, operators, and other railroad personnel who would not be categorized as "railroad officials." The labor/management group thus recommended that the provision be revised to include other persons designated by the railroad. We agree. Broadening those persons to whom notification of malfunctions can be made will eliminate potential confusion in implementing the regulations. This section is being revised accordingly.

Final Rule

This section requires that each railroad issue rules requiring its employees to report to persons designated by that railroad, by the quickest means available, any warning system malfunction.

Section 234.103 Timely Response to Report of Malfunction

§ 234.103(a)

Proposed subsection (a) requires that upon receipt of a credible report of a warning system malfunction, the railroad shall immediately investigate the report and determine the nature of the malfunction. The railroad then takes action as required by § 234.207.

Various commenters stated that use of the term "immediately" is inappropriate. New Jersey Transit states that "[t]he requirement to 'immediately investigate' a reported warning system malfunction in (a) adds vagueness to an otherwise adequate rule." The labor/management group also recommended deletion of the "immediate response" requirement. They commented that "the term 'immediately' may be too restrictive and would impose a standard which simply could not be achieved under all circumstances." We agree with the commenters that use of "immediate" could present compliance problems when "immediate" is interpreted in its dictionary meaning. Immediately is commonly defined as "without lapse of time; without delay; instantly; at once." We agree with the labor/management group that a more appropriate standard is provided by requiring a "prompt" response, which, while not requiring a virtually impossible instantaneous response, will establish a standard that a railroad must respond quickly to a credible report of malfunction. The final rule is revised accordingly.

Final Rule

Subsection 234.103(a) requires that upon receipt of a credible report of a warning system malfunction, a railroad having maintenance responsibility for the warning system shall promptly investigate a credible report of malfunction. Based upon the results of that investigation, and in accordance with § 234.207, the railroad is required to adjust, repair, or replace any faulty component without undue delay.

§ 234.103(b)

As proposed, § 234.103(b) requires that, until repair or correction of the warning system is completed, the railroad shall provide alternative means of warning highway traffic and railroad employees in accordance with this subpart.

There were no comments on subsection (b).

Final Rule

Because acceptable alternative means of protecting the travelling public and railroad employees are described in §§ 234.105 and 234.107, this section is being revised to specifically reference those sections.

§ 234.103(c)

As proposed, subsection (c) provides that nothing in this subpart requires repair or correction of a warning system, if, acting in accordance with applicable State law, the railroad proceeds to discontinue or dismantle the warning system, provided such warning system not be left in place unless the railroad complies with this subpart.

This subsection makes clear that nothing in these regulations forces a railroad to continually repair a warning system that, under State law, may be retired. However, a railroad must still comply with this part during retirement proceedings. This subsection also requires that even if a warning system has been retired under State law, until that system is physically removed, the railroad must comply with this part. This requirement will ensure that if a highway user sees a warning system at a crossing, he or she can rely on it to be a properly functioning system.

There were no comments on this subsection.

Final Rule

Subsection 234.103(c) is adopted as proposed.

Section 234.105 Activation Failure

Commenters raised a number of issues relating to this section. The labor/management group recommended that this section be modified by establishing a requirement for "prompt," rather than "immediate," action in response to a credible report of warning system malfunction. For the same reasons as stated in the discussion regarding § 234.103, FRA is substituting "promptly" for "immediately" in the final rule. As in § 234.103, FRA believes this will establish a standard that a railroad must initiate the required warning efforts quickly and without undue delay.

The labor/management group suggested replacing the reference to "motorist" with "highway user" inasmuch as highway traffic is not limited to motorists. FRA agrees, and has changed the rule accordingly.

The labor/management group also recommended that the phrase "at a minimum" be eliminated from this section and § 234.107. The group believed that the phrase is unnecessary and that it could be misinterpreted as implying that additional action could be necessary in response to a report of a malfunction. As stated in the discussion of § 234.1, FRA intends that the rule

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issued today specifies the minimum actions a railroad must take in certain circumstances. Section 234.1 has been revised to make clear that this part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part. Thus, given the revision to § 234.1, references in § 234.105 and 234.107 to minimum actions to be taken by a railroad have been deleted as unnecessarily repetitive.

The labor/management group also noted that manual operation of defective warning devices was not addressed in the NPRM and suggested that such operation should be considered to be an "alternative means" of giving warning, with the result that a train could proceed through the crossing at normal speed. FRA agrees that if a warning system is manually activated, a train can proceed through the crossing at normal speed.

§ 234.105(b)

FRA received a number of comments pertaining to the proposed requirement of § 234.105(b) that "the highway traffic control authority having jurisdiction over the crossing" be notified of the crossing system malfunction. The Southern Pacific Transportation Company and related railroads recommended deletion of this requirement because it "would be very difficult for the railroads to determine who to call, and to maintain such a database." The railroad further stated that "it is not likely that highway traffic authority will respond due to their own shortages of staff, and even if they do respond, they may be unable to properly staff the crossing * * *." West Virginia Department of Transportation (WVDOT) commented that notifying the highway traffic authority would only be appropriate during normal business hours. WVDOT suggested that it would be better to notify the appropriate law enforcement agency. We fully agree. FRA always intended that notification be given to the public agency charged with traffic enforcement on the road, whether that be the local police, sheriff's department or state police. FRA's use of the term "highway traffic authority" was misleading and FRA is therefore replacing that term with "law enforcement agency." The LIRR, which presently uses its own railroad police extensively in situations of grade crossing warning malfunctions, notifies the local police only when its own uniformed police are unable to respond or due to high volume of traffic flow at the crossing. FRA considers notification of railroad police who are capable of responding and controlling vehicular traffic to be equivalent to notification of the appropriate "law enforcement agency." The final rule is being modified accordingly.

§ 234.105(c)

In response to a commenter's suggestion, this subsection is rearranged to be consistent with the arrangement of § 234.107(c). Both subsections begin with the flagging requirements which permit train operations at normal speed. The subsections then address those situations which are progressively more restrictive on train operations. References in the following discussion are to the subsection numbers as proposed. The revised section number as it appears in the final rule follows in parentheses.

As proposed, subsection 105(c) requires that upon receipt of a credible report of malfunction, a railroad must provide or arrange for alternative means of actively warning motorists of approaching trains, consistent with requirements detailed in paragraphs (1) through (4). FRA is deleting the phrase "or arrange for" in the first sentence of this subsection. A railroad may provide for alternative means of warning highway users by providing its own flaggers, or it may contract with another entity to provide that warning. FRA is deleting the above phrase to avoid the impression that merely arranging for such activities is an adequate response. A railroad's responsibilities under this provision are fulfilled only when the alternative means of warning highway users is actually provided.

Paragraph 105(c)(1) (final rule—105(c)(3)) generated many comments. As proposed, it requires a train to stop before entering a crossing until an appropriately equipped flagger or law enforcement officer was stationed at the crossing. The proposal further requires that once the train was stopped, a crewmember must dismount to flag highway traffic to a stop. When safe to do so, the locomotive would proceed through the crossing, with the crewmember then reboarding.

The LIRR noted that the proposed regulation does not cover the situation of trains being operated by one person. The LIRR stated "it would not be in the best interest of our customers if the engine could not be moved until an appropriately equipped person arrived." The labor/management group also commented that in unusual situations there may be occasions where a train has only the engineer available to flag traffic: "In those cases, we believe that under § 234.105, the train would be permitted to proceed through the crossing after the train was stopped and it was determined that it was safe to do so." That interpretation is incorrect. FRA notes that nothing in the proposed language of § 234.105(c)(1) permits a locomotive to proceed through the crossing without being flagged through that crossing by someone on the ground, nor does the labor/management group provide any basis for their contrary conclusion.

In addressing the issue raised by these commenters, we are faced with balancing the railroads' and commuters' needs for timeliness with the safety needs of the motoring public. Requiring commuter trains to remain stopped until a flagger or law enforcement officer arrives will undoubtedly inconvenience the commuting public. Similarly, freight trains and intercity passenger trains will be inconvenienced, although on a smaller scale. We note however, that the requirement to flag a crossing during periods of malfunction, while not universal, is not new. Rule 138(c) of the Northeast Operating Rules Advisory Committee (NORAC) requires that if "crossing protection devices are not functioning properly * * * trains must approach the crossing(s) prepared to stop and not proceed until protection against highway traffic is provided by on-ground personnel." The Northeast Illinois Regional Commuter Railroad Corporation (METRA), a commuter railroad carrying 240,000 commuters daily, requires that in situations of activation failure, "trains must be advised to STOP and flag the crossing on both sides until the entire movement has cleared the crossing."

After consideration of the comments and implications for both safety and railroads' on-time performance, FRA is not revising the rule to provide an exception for trains operated by one person. Permitting a train to stop and then proceed through a crossing without a flagger and without properly functioning automatic gates and lights sends a confusing and potentially tragic message to a highway user. The highway user, seeing the train stop, may be encouraged to cross in front of the train thinking that he or she has the right of way.

FRA believes the effect on railroads such as the LIRR will be minimal. As noted elsewhere in this discussion, FRA is revising section 105(c) to permit trains to proceed at normal speed through crossings when one uniformed law enforcement officer is present, rather than one officer for each direction of highway traffic. Due to this change, railroad or local police will be better able to respond to crossing malfunctions, even in cases of multiple crossings malfunctioning. The presence of one flagger will avoid the necessity of trains coming to a stop, and the presence of a uniformed police officer will permit normal speed operations through the crossing.

The labor/management group proposed adding a provision to this section which would provide that after a train is stopped at a crossing, if a member of the train crew determines that the warning devices are in fact operating properly, a crewmember will not be required to dismount to flag highway traffic. The group proposes that the locomotive may then proceed through the crossing and normal speed resumed after the locomotive has passed through the crossing. FRA takes no exception to this procedure, although an additional regulatory provision is not needed. If a train crew, after being notified of activation failure, finds instead that the warning system is indeed properly providing warning, the train may pass through the crossing without flagging because, in essence, the malfunction, if one then exists, is a false activation. It is difficult to determine whether the situation at the crossing was in fact a false activation, since the crew does not know if the system was incorrectly warning of oncoming trains when no trains were approaching, the reality is that the warning system is in fact providing warning to the highway user. Flagging in that situation is not needed since the malfunction is not one of activation failure, but instead is, at most, one of false activation.

Section 105(c)(1) (final rule—105(c)(3)) is also being revised to permit a train to resume normal speed after the flagging crewmember reboards the locomotive. This change will correct an earlier drafting oversight and will bring this section into conformity with both the remainder of this section and § 234.107.

Section 234.105(c)(2) (Final Rule—234.105(c)(1))

Paragraph 105(c)(2) (final rule—105(c)(1)) as proposed requires that if an appropriately equipped flagger or law enforcement officer provides warning for each direction of highway traffic, trains may proceed through the crossing at normal speed.

The LIRR objected to the requirement that there be a flagger or law enforcement officer flagging both directions of traffic before a train could proceed through the crossing at normal speed. LIRR presently uses uniformed railroad police to flag crossings during malfunctions. Under present LIRR policy, one uniformed police officer controls both directions of highway traffic at crossings with malfunctioning warning systems. Based on its experience and the effect it would have on its police operations, the LIRR strenuously objects to requiring a flagger for each direction of highway traffic. LIRR claims that it would result in unnecessary delays to LIRR's commuter trains, which operate at up to 2-minute headways, each carrying up to 1300 passengers. The railroad also stated that requiring two police officers to flag a crossing would have a significant impact on LIRR police operations by effectively requiring two-officer patrols instead of the present patrols using one officer.

FRA made no distinction in the NPRM between flaggers and law enforcement officers and their ability to safely control and direct vehicular traffic. Thus, under the NPRM, a train could proceed through a crossing with a malfunctioning warning system only if an appropriately equipped flagger or law enforcement officer provides warning for each direction of highway traffic. Based on the comments received, FRA has reconsidered and determined that due to a police officer's traffic control training, the officer's ability to call for assistance if needed, and the motoring public's higher level of responsiveness to a uniformed officer, the presence of one uniformed law enforcement officer at a crossing will enable trains to pass through the crossing at normal speed. This section is being revised accordingly.

Maine DOT recommended that speeds be limited in all cases of activation failure. It recommended a 20 mile per hour limit in those cases where a flagger is present for each direction of highway traffic. Such a limit would, according to Maine DOT "allow more stopping time for highway users, thereby simplifying the flaggers job and enhancing overall safety at the crossing." We continue to believe that the presence of a uniformed law enforcement officer or the appropriate number of flaggers can effectively warn highway traffic of oncoming trains. We are therefore not revising section 105(c)(2) (final rule—105(c)(1)) regarding train speed.

Section 234.105(c)(3) (Final Rule—234.105(c)(2))

Paragraph 105(c)(3) as proposed, provides that trains may proceed with caution through the crossing at a speed not exceeding 10 miles per hour if an appropriately equipped flagger or law enforcement officer provides warning for highway traffic, but there is not at least one flagger of law enforcement officer providing warning for each direction of highway traffic. After the locomotive has passed through the crossing, normal speed may be resumed.

This paragraph is being revised to omit references to law enforcement officers, inasmuch as paragraph 105(c)(1) of the final rule now provides that the presence of one law enforcement officer will permit normal speeds through the crossing.

LIRR expressed concern regarding the maximum speed at which a train would be permitted to proceed through a crossing under this paragraph. The representative of the LIRR testified that LIRR's "operating speed under restricted speed, * * * is a speed not exceeding 15 miles an hour, at which a train can be stopped within one half division of range short of the next signal, an obstruction, switch properly aligned, looking out for broken rail or crossing protection not functioning. We think that the restricted speed meets the criteria safely for moving trains over grade crossings." The LIRR emphasized the increased disruption to commuter traffic resulting from the 10 miles per hour limit compared to a limit of 15 miles per hour. APTA also opposed the 10 miles per hour limit, as did the labor/management group and the Southern Pacific. Other views included those of New Jersey Transit which was in favor of requiring movement at "restricted speed" rather than 10 miles per hour.

FRA rejected the use of "restricted speed" in the NPRM because it does not have the same meaning throughout the industry. "Restricted speed" has different meanings on different railroads, different speed limits ranging from 10 mph to 20 mph and its meaning can be changed unilaterally by a railroad. Reliance on the requirement that the train be able to "stop within one-half the range of vision" (a common element of the definition of "restricted speed") may be appropriate in a wholly railroad context in which the concern is to avoid other trains and equipment and personnel on the tracks in front of the locomotive. The requirement that a locomotive be able to stop within one-half the range of vision is virtually useless when an object can instantaneously move from off the right-of-way onto the tracks well within that range of vision limitation.

FRA will retain a specific and clearly understood speed limit for these situations. FRA has reconsidered its proposal and is revising this subsection to provide a 15 miles per hour speed limit. We repeat that the requirements of these sections are only minimum requirements. Under certain conditions, such as severe weather, sharp curves, or high speed vehicular traffic, a railroad

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may wish to impose a slower speed during times of activation failure.

Final Rule

This section requires that upon receiving a credible report of an activation failure, a railroad having maintenance responsibility for the warning system shall immediately initiate efforts to warn highway users and railroad employees at the subject crossing by taking certain actions. Paragraph (a) provides that, prior to any train's arrival at the crossing, the railroad must notify the train crew of the report of activation failure and notify any other railroads operating over the crossing. Paragraph (b) requires that the railroad notify the law enforcement authority having jurisdiction over the crossing, and paragraph (c) requires the railroad to provide or arrange for alternative means of actively warning highway users of approaching trains.

Paragraph (c)(1)(i) provides that, if an appropriately equipped flagger provides warning for each direction of highway traffic, trains may proceed through the crossing at normal speed. Paragraph (c)(1)(ii) provides that, if at least one law enforcement officer (including a railroad police officer) provides warning to highway traffic at the crossing, trains may proceed through the crossing at normal speed.

Paragraph (c)(2) provides that, if an appropriately equipped flagger provides warning for highway traffic, but there is not at least one flagger providing warning for each direction of highway traffic, trains may proceed with caution through the crossing at a speed not exceeding 15 miles per hour. Normal speed may be resumed after the locomotive has passed through the crossing.

Paragraph (c)(3) provides that, until an appropriately equipped flagger or law enforcement officer is stationed at the crossing to warn highway traffic of approaching trains, each train must stop before entering the crossing to permit a crewmember to dismount to flag highway traffic to a stop. The locomotive may then proceed through the crossing and the flagging crewmember may reboard the locomotive before the remainder of the train proceeds through the crossing. Normal speed may be resumed after the crewmember reboards the train.

Paragraph (c)(4) has been redesignated § 234.105(d). The body of this paragraph remains unchanged. This paragraph requires that a locomotive's audible warning device be activated in accordance with railroad rules. This provision addresses those instances in which a "whistle ban" may be in effect in a local jurisdiction. While there may be disagreement as to the effect on safety of whistle bans, there can be little doubt that a ban on sounding a train whistle or horn should be lifted when a grade crossing warning system is malfunctioning. In addressing whistle bans in this limited situation, FRA does not wish to give the impression it approves of or encourages whistle bans in other situations. FRA is opposed to local restrictions on the use of train whistles. See FRA Emergency Order No. 15, 56 FR 36190, July 31, 1991.

Section 234.107 False Activation

Inasmuch as the proposed requirements of this section were in many ways similar to the requirements of § 234.105, comments, our responses and reasons for them, are consistent with that section.

Final Rule

This section requires a railroad to take the same initial actions as it would take in cases of activation failure. Upon receiving a credible report of a false activation, a railroad having maintenance responsibility for the warning system shall promptly initiate efforts to warn highway users and railroad employees at the subject crossing by taking certain actions.

Paragraph (a) provides that prior to any train's arrival at the crossing, the railroad must notify the train crew of the report of activation failure and notify any other railroads operating over the crossing. Paragraph (b) requires that the railroad notify the law enforcement authority having jurisdiction over the crossing, and paragraph (c) requires the railroad to provide for alternative means of actively warning highway users of approaching trains. Paragraphs (c)(1) and (c)(2) provide for the alternative means of warning highway users. Subparagraph (c)(1) as proposed in the NPRM has been divided into two parts to distinguish between the requirement that there be an appropriately equipped flagger for each direction of highway traffic while flagging by one uniformed police officer is sufficient even though there is more than one direction of highway traffic. Paragraph (c)(1)(A) provides that, if an appropriately equipped flagger is stationed at the crossing providing warning for each direction of highway traffic, trains may proceed through the crossing at normal speed. Paragraph (c)(1)(B) provides that, if at least one uniformed law enforcement officer (including a uniformed railroad police officer) provides warning to highway traffic at the crossing, trains may proceed through the crossing at normal speed.

Paragraph (c)(2) provides that, if there is not an appropriately equipped flagger providing warning for each direction of highway traffic, or if there is not at least one uniformed law enforcement officer providing warning, trains with the locomotive or cab car leading, may proceed with caution through the crossing at a speed not exceeding 15 miles per hour. Normal speed may be resumed after the locomotive has passed through the crossing. In the case of a shoving move, a crewmember shall be on the ground to flag the train through the crossing. This section has been expanded from that proposed in order to eliminate any possible confusion. Although we believe it was clear that this section as proposed only applied to trains with a locomotive or cab car at the leading end, the section has been revised to be more specific. Additionally, in the event of a shoving move, the rule has been expanded to require that a crewmember be on the ground to flag the train through the crossing. This requirement is similar to requirements in both NORAC and the General Code of Operating Rules pertaining to malfunctioning warning systems.

Paragraph (c)(3) of this section provides the railroad an option of temporarily taking the warning system out of service until repairs are completed. However, the warning system may only be taken out of service if the railroad complies with the protection requirements for activation failures. From a highway traffic control and warning system credibility perspective, it would be preferable for a railroad with few trains traversing the crossing to take a falsely activated warning system out of service. The railroad would then comply with the activation failure provisions of § 234.105 rather than § 234.107.

Paragraph (d) provides that a locomotive's audible warning device shall be activated in accordance with railroad rules regarding the approach to a grade crossing, regardless of any State laws or ordinances to the contrary.

Section 234.109 Recordkeeping

The labor/management group recommended that this section be revised to clarify that the recordkeeping provisions apply only to "credible" reports of warning system malfunctions. We agree and have modified the section accordingly.

Both APTA and the LIRR claimed that the recordkeeping requirements of this section are redundant since under § 234.9 railroads must file Form F 6180.83 which includes information pertaining to the time and date of the reported malfunction, actions taken and the time and date of the repair. FRA notes that in an attempt to minimize paperwork burdens on the railroads, proposed § 234.109 did not require filing of reports. It requires only that a railroad maintain records pertaining to compliance—records which we believe most railroads would keep for their internal purposes in any event. All that is required by this section is that a railroad have the required information available for inspection. It is acceptable for that information to be contained in a data base a railroad maintains in order to comply with § 234.9's reporting requirements.

FRA notes that the requirements of § 234.9(b), which required reports for each false activation, expired on April 1, 1994. Those reports, which comprised the vast majority of reports required under § 234.9, will thus no longer be required.

Section 234.9(b) requires that records referred to in § 234.9(a) be retained for one year. Because various records required by § 234.9(b) will in some cases be made on different days, the retention period is one year from the latest date of railroad activity in response to a credible report of malfunction. That date would typically be the date of repair of the warning system.

The labor/management group suggested that it be made clear that keeping records by electronic means is acceptable. FRA agrees, and has revised paragraph (a) of this section accordingly.

Final Rule

Paragraph (a) of this section requires each railroad to keep records pertaining to compliance with this subpart. Records may be kept on forms provided by the railroad or by electronic means. Each railroad is required to keep the following information for each credible report of warning system malfunction: location of crossing (by highway name and DOT/AAR Crossing Inventory Number); time and date of receipt by railroad of report of malfunction; actions taken by railroad prior to repair and reactivation of repaired system; and time and date of repair.

Paragraph (b) requires that each railroad retain for at least one year (from the latest date of railroad activity in response to a credible report of malfunction) all records referred to in paragraph (a) of this section. Records required to be kept shall be made available to FRA as provided by 49 U.S.C. 20107 (formerly section 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437)).

Subpart D—Maintenance, Inspection, and Testing Maintenance Standards

Section 234.201 Location of Plans

The proposed rule requires that plans and other information required for the proper maintenance and testing of highway-rail grade crossing warning systems, be available for use at each warning system location.

The labor/management group and New Jersey Transit commented that the phrase "and other information" should be eliminated from the rule. Labor/management group was concerned that "other information" has not been defined by FRA and could include such things as manufacturers' manuals for various types of warning system equipment. The parties note that 49 CFR 236.1, the equivalent requirement pertaining to signal and train control systems, does not contain such a requirement. While complete consistency between the two sets of regulations is not necessarily appropriate in every case, in this instance we agree that the phrase "and other information" is vague and unnecessary. It has been deleted from the final rule.

Final Rule

The final rule requires that plans required for the proper maintenance and testing of highway-rail grade crossing warning systems be available for use at each warning system location. Plans shall be legible and correct to protect against errors in circuitry connections.

Section 234.203 Control Circuits

The proposed rule requires that all control circuits that affect the safe operation of a highway-rail grade crossing warning system be designed on the closed circuit principle. This requirement was intended to ensure that failure of any part or component of the circuit will cause the warning system to activate (fail-safe principle). Interested parties commented that not all elements of control circuits for all warning systems can be designed on the closed circuit principle. The labor/management group also expressed concern that the proposed rule is a design standard and could conflict with the language in the MUTCD.

The final rule is changed to reflect a performance standard versus a design standard.

Final Rule

The final rule requires that all control circuits that affect the safe operation of a highway-rail grade crossing warning system shall operate on the fail-safe principle.

Section 234.205 Operating Characteristics of Warning System Apparatus

The proposed rule requires that operating characteristics of electromagnetic, electronic, or electrical apparatus of each crossing warning system be maintained in accordance with the limits within which it is designed to operate. The labor/management group supports the proposed rule. There were no other specific comments on the proposal.

In order to comply with this section, each carrier should have specifications available which set forth the pick-up values, release values, working values, and condemning limits of these values for all electromagnetic, electronic, or electrical devices used in highway-rail grade crossing warning systems.

Final Rule

The final rule is adopted as proposed. It requires that operating characteristics of electromagnetic, electronic, or electrical apparatus of each highway-rail crossing warning system shall be maintained in accordance with the limits within which the system is designed to operate.

Section 234.207 Adjustment, Repair, or Replacement of Component

Paragraph (a) of the proposal requires that when any essential component of a highway-rail grade crossing warning system fails to perform its intended function, the cause shall be determined and the faulty component shall be adjusted, repaired, or replaced without undue delay. Commenters expressed differing views on this provision. NJ Transit found the language consistent with FRA's signal and train control rules and stated that "it seems adequately defined and workable." The labor/management group also supported the rule as proposed. The Southern Pacific recommended that the rule be clarified to make clear that it does not, in every case, require that repairs be made before the next train movement. Paragraph (b) of the proposal which requires appropriate action under § 234.105 or § 234.107, is written on the assumption that at least in some situations a train will arrive at the crossing before repairs are completed.

The Illinois Commerce Commission (ICC) concurred with use of the term "without undue delay" when concerning the "total time it takes to make such repairs." However, the ICC stated that the rule should more specifically address the amount of time it takes railroad signal personnel to begin on-site repairs after receipt of a

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credible false activation report. ICC recommended that the time limit for response be set at two hours. Similarly, Washington Public Utilities Commission viewed the phrase "undue delay" as too general or open ended.

As was stated in the NPRM, "[i]t is of paramount importance that remedial action begin as soon as possible after a credible report of a malfunction is received by a railroad. In general, adjustment, repair, or replacement without undue delay will require that remedial action be taken in as timely a manner as possible. Successful, practical application of these general principles may be the objective of this regulatory proceeding that is most crucial to the safety of the motoring public; and the safety of employees and rail operations is also implicated." Because of the great variety of factors involved with malfunctioning warning systems, including the location of the crossing, frequency of train movements, type of corrective action needed, availability of personnel, and other competing emergency situations we are unwilling at this time to establish specific time limits for actions. FRA continues to believe that the requirements of this section, taken together with the alternative protective measures required under §§ 234.105 and 234.107 will provide the needed measure of safety.

Final Rule

Paragraph (a) of this section requires that when any essential component of a highway-rail grade crossing warning system fails to perform its intended function, the cause shall be determined and the faulty component shall be adjusted, repaired, or replaced without undue delay. Paragraph (b) requires until repair of an essential component is completed, a railroad shall take appropriate action under § 234.105 or § 234.107.

Section 234.209 Interference With Normal Functioning of System

The proposed rule requires that the normal functioning of any system shall not be interfered with in testing or otherwise without first taking measures to provide for safety of highway traffic that depends on normal functioning of such system.

FRA requested that interested parties discuss the safety effect on warning systems caused by railroad equipment standing or being switched within the system's approach circuit where the warning system is not designed to accommodate those activities. FRA stated, "[t]here have been instances of such cars and locomotives activating the warning system for an extended length of time when there is no danger in crossing the tracks, raising the issue of credibility at that crossing. If there are multiple tracks at the crossing, a warning system activated for a period of time due to standing equipment may effectively entice a highway user to cross the tracks, when in fact a train may be approaching on the other track. This situation may be exacerbated by reduced visibility of the approaching train due to the standing equipment."

The ATA suggested that the rule be revised to prohibit railroad equipment from being left standing or switched at a crossing in a manner that interferes with the normal functioning of the warning system. Maine DOT noted that warning system activations due to switching activity and standing equipment within crossing circuitry can be alleviated by installation of motion sensing devices. The labor/management group concurred in the rule as proposed and noted that most railroads have established procedures to be followed when testing or other work is performed near grade crossings. The group also notes that it would be "inappropriate" to allow excessive or continuous operation of warning devices while such work is being performed. In response to FRA's question regarding the effect of switching operations and equipment standing near crossings, the group recognized that the issues presented are important but believe a "separate examination of the engineering and operating issues involved" to be more appropriate to determine if agency action is warranted. The group stated that "as FRA is aware, railroads cannot operate without conducting switching operations in the approaches of highway-rail crossings. This is a normal part of railroad operations and there is no available technology which would completely eliminate the warning system activations which result from these operations."

FRA recognizes that normal switching operations will activate warning systems in many locations. We agree that there is no realistic means to prevent this from occurring at all locations. However, standing equipment which is not involved in switching activities can be prevented from activating warning systems. A warning system can be designed to accommodate trains, locomotives or other railroad equipment standing within the system's approach circuit. Motion detectors, time-out circuits, and similar technology can accommodate a railroad's operational needs while retaining a credible, functioning warning system at a nearby crossing. If such technology is not in place, a railroad must take measures to prevent activation of the nearby warning system. Many railroads presently have operating rules prohibiting just such a result. Rule 103(D) of the General Code of Operating Rules provides that "automatic crossing signals must not be actuated unnecessarily by open switch or permitting equipment to stand within the controlling circuit." Similarly, NORAC Rule 138(b) provides that to "* * * avoid unnecessary operation of automatic highway crossing protection * * * [E]ngines or cars must not be allowed to stand longer than necessary."

FRA is therefore revising this section to provide that interference with normal functioning of the warning system includes trains, locomotives or other railroad equipment standing within the system's approach circuit where the warning system is not designed to accommodate those activities. Normal train movements or switching operations are not considered to be interference with the warning system operations. This revision is directed to situations such as when a car or other rail equipment is set out on an approach circuit thereby activating the warning system. If the warning system at that crossing is equipped with a time-out circuit, cut-out circuit, motion detector, or motion sensor, the system will deactivate, permitting traffic to proceed through the crossing. This provision affects operations at those crossings not so equipped. Standing railroad equipment not involved in active switching will not be allowed to keep a warning system activated.

Maine DOT suggested that FRA consider requiring track gangs performing maintenance activities within crossing circuitry to disconnect the warning system when working. Many crossings are equipped with cut-out switches which enable a worker to disable the automatic warning system in such a situation. FRA supports the use of these devices provided they are utilized under appropriately rigorous controls established by the railroad. Other than use of such cut-out circuits designed to enable a worker to safely disable a warning system, FRA is strongly opposed to allowing railroad employees unfamiliar with warning system circuitry to actually adjust and modify operation of the warning system. Allowing unqualified employees to modify the circuitry would jeopardize the safety of both employees and the travelling public.

Final Rule

The rule requires that the normal functioning of any system shall not be interfered with in testing or otherwise without first taking measures to provide for the safety of highway traffic. Interference includes, but is not limited to:

(1) Trains, locomotives or other railroad equipment standing within the system's approach circuit, other than normal switching operations, where the warning system is not designed to accommodate those activities; and

(2) Not providing alternative methods of maintaining safety for the highway user while testing or performing work on the warning systems or on track and other railroad systems or structures which may affect the integrity of the warning system.

The intent of the rule is to ensure that railroads provide alternative methods of maintaining safety whenever the normal functioning of a warning system is interfered with. Those situations include testing or performing other work on the warning systems or on track and other railroad systems or structures which may affect the integrity of the warning system. As stated in the NPRM, "in some circumstances, nearby track work could activate a crossing warning system. FRA does not believe that 'taking measures to provide for the safety of highway traffic' in this context includes chaining a gate in the 'up' position while allowing warning lights to continue."

Section 234.211 Locking of Warning System Apparatus

This section as proposed provides that highway-rail grade crossing warning system apparatus shall be secured against unauthorized entry. The rule provides the carrier with discretion as to the specific manner in which the warning system housings are secured. The rule requires that all external housings of warning system apparatus be kept locked or sealed. This includes warning system houses, flashing light signals, gate mechanisms, and bell or stationary audible warning system housings.

The labor/management group supports this section as proposed. There were no other specific comments.

Final Rule

This section is adopted as proposed.

Section 234.213 Grounds

This section as proposed requires that each circuit that affects the proper functioning of a highway-rail grade crossing warning system be kept free of any ground or combination of grounds which will permit a flow of current equal to or in excess of 75 percent of the release value of any relay or electromagnetic device in the circuit. This requirement does not apply to circuits that include track rail, alternating current power distribution circuits that are grounded in the interest of safety, and any common return wires of grounded common return single break circuits.

The labor/management group supports this section as proposed. There were no other specific comments.

Final Rule

This section is adopted as proposed.

Section 234.215 Standby Power System

The proposed rule requires that if alternating current power is used as the primary source of power, a standby battery must be provided. The proposal also requires that an indicator or alarm be used to indicate when the alternating current power is off. The proposal also requires that the battery be designed and maintained to provide at least 48 hours of normal operations of the crossing warning device when primary battery-charging current is removed.

In drafting the proposed rule, FRA was addressing the most common type of crossing installation in the nation—a battery-operated system in which the batteries are constantly being recharged by alternating current from a commercial or private source. In these systems, if the supply of alternating current is interrupted, the batteries continue to operate the system. If alternating current is restored before the batteries are discharged there is no interruption in operation. However if alternating current is not restored in time to recharge the batteries before they are fully discharged, warning system operations will be interrupted. FRA recognizes that systems other than the typical system addressed in the proposed section are in operation or may be in the development stage. We do not want these rules to hinder development of possible alternative equipment and systems.

Various commenters, including the labor/management group, Consolidated Rail Corporation, LIRR, NJ Transit, and APTA, opposed all or part of the proposal. The Maine Department of Transportation and the New York State Department of Transportation supported the 48-hour battery capacity provision. Labor/management commented that it would be difficult and very expensive (approximately $180 million) to meet the proposed requirements for battery capacity. Commenters stated that the indicator light or alarm requirement would be difficult and expensive to implement and maintain because of the number of locations that would require installation (as many as 50,000) and the high probability of vandalism to such installations. After reviewing the comments, FRA has deleted the power-off indicator requirement.

FRA recognizes that different crossings have different back-up power needs. A crossing tied into commercial power in a large metropolitan area does not necessarily need 48 hour back-up power. If power were to fail in that area, the failure would likely be for a relatively short period of time. This contrasts to crossings in rural areas where, if there is a power failure, discovery of the failure itself may take a relatively long time. FRA is therefore revising the rule in recognition of the variety of crossing situations Availability of automatic notification of warning system problems is also a factor. For instance, by linking warning devices to a digital data network, information concerning primary power status and the unit's operational status can be almost instantaneously communicated to a railroad control center. FRA wishes to provide flexibility for railroads and their suppliers to develop and deploy cost effective technology that can provide advances in both safety and efficiency. Given those facts and the industry's testimony about the capabilities of the back-up power devices being employed, FRA has shifted to a straight-forward performance standard: FRA will require that a standby source of power be provided to ensure the highway-rail grade crossing warning system continues to function normally if there is an interruption in primary power. We will not require that a specific type of back-up power be available, nor will we establish a minimum period for standby capacity. Those decisions will be left up to the railroads or the authorities installing new systems. Also left to a railroad or the installing authority is installation of a conventional power-off indicator or indicators based on new or developing technologies. While installation of these devices is optional, railroads remain responsible for ensuring that warning systems remain operational.

FRA continues to stress that it is vital for a warning system to be equipped with a standby source of power to continue providing warning to the highway user in cases of primary power loss. FRA will vigorously enforce this provision. If investigation or testing reveals that there is no standby power at a crossing sufficient to enable the system to continue functioning normally, FRA will take appropriate enforcement action. Similarly, if a

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power interruption results in use of the standby power source to such an extent that power is depleted and the warning system is not operating normally, FRA will take appropriate enforcement action under this section. If primary or standby power is not available for any reason, FRA expects a railroad to provide portable power or provide warning for highway users in accordance with §§ 234.105 or 234.107.

Final Rule

This section requires that a standby source of power be provided of sufficient capacity to operate the warning system during any period of primary power interruption.

Section 234.217 Flashing Light Units

The proposed rule requires that each flashing light unit be positioned and aligned in accordance with installation plans. Several commenters, including the labor/management group, remarked that installation plans typically do not include detailed specifications for the alignment of light units. Labor/management group recommended that the rule be amended to require that light units be "properly" positioned and aligned. It is not practical to require a specific distance for the alignment of each flashing light unit because of varying conditions (i.e., road curvature, fixed obstructions, intersections, etc.) at each crossing. Maintainers have been ensuring proper positioning of lights for many years without the benefit of alignment specifications. While a standard based on "properly positioned and aligned" is somewhat vague, FRA is adopting the recommended language rule by requiring that each flashing light unit be "properly" positioned and aligned. Compliance and enforcement of this section will be based on the good judgment of both maintainers and inspectors. The requirement that the light be visible to a highway user approaching the crossing has been added to this section. This basic requirement is being added to this section in lieu of the focusing requirement contained in the NPRM's proposed § 234.253.

The proposed rule also requires that each flashing light unit be maintained to prevent dust and moisture from entering the interior of the unit. FRA has revised this section to require that reflectors, as well as roundels, be clean and in good condition. The Wisconsin Central Railroad commented that it is impossible to keep dust out of roundels because each light unit is vented. We agree; however, while it may be impossible to keep all dust out of roundels, excessive dust will not be a problem if the roundels and reflectors are cleaned periodically.

Additionally, the proposed rule requires light units to flash alternately at a rate of 35 to 55 times per minute. The labor/management group commented that the flashing rate is adequately addressed in the MUTCD. It further commented that proper maintenance of the equipment which controls the flash rate is covered appropriately under other sections, including 234.205. The Association of American Railroads Signal Manual, published in 1991 recommends a flash rate of 45 to 65 times per minute for solid state flashers rather than the 35 to 55 times per minute as required by the MUTCD. FRA does not perceive a safety advantage of one standard over the other. Therefore the rule will be revised to require that light units flash alternately at a rate of 35 to 65 times per minute.

Final Rule

Paragraph (a) of this section requires that each flashing light unit shall be properly positioned and aligned and visible to a highway user approaching the crossing. Paragraph (b) requires that each flashing light unit be maintained to prevent dust and moisture from entering the interior of the unit. Roundels and reflectors shall be clean and in good condition. Paragraph (c) requires that all light units shall flash alternately. The number of flashes per minute for each light unit shall be 35 minimum and 65 maximum.

Section 234.219 Gate Arm Lights and Light Cable

The proposed rule requires that each gate arm light be visible to approaching motorists. The rule also required that lights and light wires be secured to the gate arm. The labor/management group suggested that the proposed rule be modified to reflect a maintenance requirement. FRA concurs with this recommendation and is revising the rule to require that each gate arm light be maintained in such condition to be properly visible to approaching highway users.

Final Rule

This section requires that each gate arm light be maintained in such condition to be properly visible to approaching highway users and that lights and light wire be secured to the gate arm.

Section 234.221 Lamp Voltage

The rule requires that lamp voltage be maintained at no less than 85 percent of its prescribed rating. The National Transportation Safety Board has recommended that FRA establish a standard for minimum lamp voltage at highway-rail grade crossing warning systems. There is a consensus that it is impossible to maintain lamp voltage at the full rating of the lamp, at all warning system installations. The State of Oregon Public Utility Commission commented that the rule should require that voltage be maintained at 95 percent of the lamp's prescribed rating. FRA agrees that 95 percent, or even 90 percent of the lamp's rating is a desirable voltage and should be maintained when possible. However, it is not a realistic minimum standard, particularly at locations where there is great distance from the source of the lamp voltage to the farthest lamp (i.e., lights supported by cantilever on expansive highway) or at older installations where light cable upgrades would be required at substantial expense.

All other commenters were supportive of the 85 percent minimum requirement. The section will ensure that the lamp voltage is sufficient to provide suitable illumination of the lamp.

Final Rule

This section requires that each lamp shall be maintained at not less than 85 percent of the prescribed rating for the lamp.

Section 234.223 Gate Arm

The proposed rule requires that each gate arm, when in the downward position, extend across each lane of approaching highway traffic and be maintained in a condition sufficient to be clearly viewed by approaching highway users. The proposed rule also requires that each gate arm start its downward motion not less than three seconds after flashing lights begin to operate and assume the horizontal position in a minimum of five seconds before the arrival of any train at the crossing.

The labor/management group commented that the rule should be modified to reflect a requirement for maintenance of gate arms in accordance with the design of the warning system. They believe that it would be inappropriate to establish universal criteria for gate arm operation because of the variation in warning system designs, particularly at locations utilizing four quadrant gates or other special applications. While FRA does not want to impede the development or use of special applications, we do believe it is important to establish minimum standards for gate arm operations. FRA has revised this section to make clear that, in four-quadrant gate installations, the three second and five second requirements apply only to entrance gates, (the gates closest to oncoming traffic).

New Jersey Transit commented that there is no demonstrated need for the requirement that gates assume the horizontal position at least five seconds before the arrival of any train at the crossing. We disagree. It is important for the highway user to have more than a minimal warning of approaching trains. We do not believe that sufficient warning is provided by only requiring that gates reach the horizontal position before arrival of the train at the crossing. The five second requirement helps to ensure that the highway user who attempts to cross at the last opportunity will be able to clear the crossing or vacate a stalled vehicle. It will not have any impact on the design of grade crossing warning systems.

Final Rule

This section requires that each gate arm, when in the downward position, shall extend across each lane of approaching highway traffic and shall be maintained in a condition sufficient to be clearly viewed by approaching highway users. Each gate arm shall start its downward motion not less than three seconds after flashing lights begin to operate and shall assume the horizontal position at least five seconds before the arrival of any train at the crossing. At those crossings equipped with four quadrant gates, the timing requirements of this section apply to entrance gates only.

Section 234.225 Activation of Warning System

As proposed, this section requires that a warning system activate to provide no less than 20 seconds warning time before the crossing is occupied by rail traffic. The labor/management group recommended that this section refer to a maintenance, rather than a design requirement. Accordingly, they suggested that the rule be modified to require that the system be maintained to activate in accordance with the design of the warning system. FRA has determined that while drafting this section in terms of maintenance requirements may be appropriate, there remains a need to maintain a minimum activation standard for warning systems. We note that the 20 second period is consistent with the design requirement of the MUTCD. In light of the labor/management group comments FRA is revising this section to provide that the warning system be maintained to activate in accordance with the design of the warning system, but in no event shall it provide less than 20 seconds warning time.

Final Rule

This section requires that a highway-rail grade crossing warning system be maintained to activate in accordance with the design of the warning system, but in no event shall it provide less than 20 seconds warning time.

Section 234.227 Train Detection Apparatus

Subsection (a) of this section as proposed requires that train detection apparatus detect the presence of a train or car when any part of a train detection circuit is occupied. In addition, subsection (b) of the proposed rule requires that when a grade crossing equipped with a warning system is fouled by a train or car, the warning system would continue to operate until such train or car clears the roadway. Subsection (c) of the proposal requires that when there are no other movements within the limits of the warning circuit, the warning system shall discontinue operation after the train or car passes the point of fouling the crossing. Subsection (d) requires that if the presence of sand, rust, dirt, grease, or other foreign matter is known to prevent effective shunting, appropriate action under § 234.105 must be taken to safeguard motor vehicle operation.

Various parties suggested that different portions of the rule be modified. The labor/management group recommended that the rule be modified to reflect the requirement for maintenance of train detection apparatus rather than addressing "design standards." FRA has considered this suggestion and revised the rule to provide that the train detection apparatus be maintained to detect the presence of rail equipment in any part of a train detection circuit, in accordance with the design of the warning system. This new subsection (a) replaces proposed subsections (a), (b), and (c). It will serve the same purpose as the sections replaced, but will do so in a clearer and more straightforward manner.

There were no comments regarding proposed paragraph (d) which provides that if the presence of sand, rust, dirt, grease, or other foreign matter is known to prevent effective shunting, a railroad shall take appropriate action under § 234.105 to safeguard vehicle operation. This section, renumbered as paragraph (b), remains unchanged.

Final Rule

Subsection (a) requires that train detection apparatus be maintained to detect a train or railcar in any part of a train detection circuit, in accordance with the design of the warning system. Subsection (b) provides that if the presence of sand, rust, dirt, grease, or other foreign matter is known to prevent effective shunting, a railroad shall take appropriate action under § 234.105, "Activation failure," to safeguard highway users.

Section 234.229 Shunting Sensitivity

As proposed, this section requires that each train detection circuit that controls a highway-rail grade crossing warning system will detect the presence of a shunt of 0.06 ohm resistance when the shunt is connected across the track rails of the circuit, including fouling sections of turnouts. The labor/management group commented that the proposed rule should be modified to reflect the testing requirements of warning systems based on certain technologies. The group noted that certain types of constant warning time systems may not detect the "presence" of a shunt. The group believes it would be more appropriate to require that the detection systems be maintained to detect the "application" of a shunt. The group believes that warning systems currently in use are designed so that they will meet that criteria. Southern Pacific also commented that constant time warning devices should be taken into account in drafting this section.

FRA agrees with the commenters and has modified the section accordingly. "Application of a shunt" is replacing "presence of a shunt" in the final rule. In the interest of clarity the text "including fouling sections of turnouts" has been deleted and "of any part" of the circuit added to the final rule.

FRA notes that the labor/management group stated that they believe warning systems currently in use "could be tested for compliance without using multiple shunts to simulate train movements or performing other complex tests of questionable value." We agree that multiple shunts may not be necessary to test for compliance with this section, however, multiple shunts may indeed be needed to perform operational tests.

Final Rule

This section requires that each highway-rail grade crossing train detection circuit shall detect the application of a shunt of 0.06 ohm resistance when the shunt is connected across the track rails of the circuit.

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Section 234.231 Fouling Wires

This section is meant to assure the detection of a train operating through turnouts located within the limits of train detection circuits. If one wire or rail plug were broken, a dangerous condition would be prevented if the other wire or rail plug continues to be effective.

This section as proposed requires that each set of fouling wires located in a highway-rail grade crossing warning system train detection circuit consist of at least two discrete conductors, and requires that each conductor be of sufficient conductivity and maintained in such condition to ensure proper operation of the train detection apparatus when the circuit is shunted.

The labor/management group recommended that the proposal be modified to accord with existing technology. The group stated that "certain train detection apparatus, particularly motion sensing equipment, is designed to prevent the system from assuming the most restrictive state under certain conditions, including some instances when the train detection circuit is shunted." We agree with the comments and, therefore, in lieu of requiring that the train detection apparatus be in its most restrictive state, have revised the section to require that each conductor be maintained in such condition to ensure proper operation of the train detection apparatus when the train detection circuit is shunted.

Final Rule

This section requires that each set of fouling wires in a highway-rail grade crossing train detection circuit shall consist of at least two discrete conductors. The section requires that each conductor be of sufficient conductivity and be maintained in such condition to ensure proper operation of the train detection apparatus when the train detection circuit is shunted.

Section 234.233 Rail Joints

This provision provided that each rail joint located within the limits of a highway-rail grade crossing train detection circuit shall be bonded by means other than joint bars to ensure electrical conductivity. The labor/management group, the only party to comment on this section, recommended that it be modified to reflect maintenance requirements. The group also recommended that this section be changed to reflect that it apply only to non-insulated rail joints. FRA concurs in the recommendations and has revised the section accordingly.

Final Rule

This section requires that each non-insulated rail joint located within the limits of a highway-rail grade crossing train detection circuit be bonded by means other than joint bars and the bonds shall be maintained in such condition to ensure electrical conductivity.

Section 234.235 Insulated Rail Joints

This provision provided that each insulated rail joint used to separate train detection circuits within the limits of a highway-rail grade crossing shall prevent current from flowing between rails separated by the insulation in an amount sufficient to cause a failure of any train detection circuit.

The labor/management group, the only party commenting on this provision, recommended that the section be revised to reflect the requirement for maintenance of insulated rail joints. FRA agrees and the final rule is revised accordingly.

Final Rule

This section requires that each insulated rail joint used to separate train detection circuits of a highway-rail grade crossing be maintained to prevent current from flowing between rails separated by the insulation in an amount sufficient to cause a failure of the train detection circuit.

Section 234.237 Switch Equipped With Circuit Controller

This section as proposed requires that when a switch equipped with a switch circuit controller connected to the point is interconnected with highway-rail grade crossing warning system circuitry, such switch shall be maintained so that the warning system can be cut out only when the point is within one-half inch of the full reverse position.

The only party commenting on this section, the labor/management group, supported the proposal.

Final Rule

This section is adopted as proposed.

Section 234.239 Tagging of Wires and Interference of Wires or Tags With Signal Apparatus

This section as proposed requires that each wire be tagged or otherwise so marked that it can be identified at each terminal. Tags and other marks of identification shall be made of insulating material and so arranged that tags and wires do not interfere with moving parts of the apparatus.

The only party commenting on this section, the labor/management group, supported the proposal.

Final Rule

This section is adopted as proposed.

Section 234.241 Protection of Insulated Wire; Splice in Underground Wire

This section as proposed requires that insulated wire be protected from mechanical injury. The rule prohibits insulation from being punctured for test purposes. A splice in underground wire will be required to have insulation resistance at least equal to the wire spliced.

The only party commenting on this section, the labor/management group, supported the proposal.

Final Rule

This section is adopted as proposed.

Section 234.243 Wire on pole line and aerial cable

This section as proposed requires that wire on a pole line be securely attached to an insulator that is properly fastened to a crossarm or bracket supported by a pole or other support. The rule requires that the wire not interfere with, or be interfered with by, other wires on the pole line. Aerial cable is required to be supported by messenger wire. Open-wire transmission line operating at 750 volts or more shall not be placed less than 4 feet above the nearest crossarm carrying active warning system circuits.

The only party commenting on this section, the labor/management group, supported the proposal.

Final Rule

This section is adopted as proposed.

Section 234.245 Signs

The proposed rule requires that each sign mounted on a highway-rail grade crossing signal post be maintained in good condition and visible to the motorist. Signs mounted on the mast could include crossbucks, "number of tracks" etc. The proposal also stated that standards for such signs are found in Part VIII ("Traffic Control Systems for Railroad-Highway Grade Crossings") of the MUTCD. After consideration, FRA is deleting from this section the informational reference to the MUTCD. It is sufficient that the information is available through this notice.

The labor/management group supported the proposal. The ATA recommended that railroads be required to post information at the crossing to expedite malfunction reporting. As discussed above (see § 234.5) FRA is in favor of the posting of such information, but requiring such posting is beyond the scope of this rulemaking.

Final Rule

This section requires that each sign mounted on a highway-rail grade crossing signal post shall be maintained in good condition and be visible to the highway user.

Inspections and Tests

Section 234.247 Purpose of Inspections and Tests; Removal From Service of Relay or Device Failing To Meet Test Requirements

The proposed rule requires that certain FRA-required tests be made to determine whether apparatus and equipment are maintained in a condition to perform their intended function. An electronic device, relay, or other electromagnetic device that fails to meet the requirements of specified tests will be required to be removed from service and not restored to service until its operating characteristics are in accordance with the limits within which such device or relay is designed to operate.

The only party commenting on this section, the labor/management group, supported the proposal.

Final Rule

FRA is revising the first sentence of this section to eliminate the redundant and possibly confusing terms "apparatus" and "equipment" and to clarify which tests are being referred to. This section therefore provides that the inspections and tests set forth in §§ 234.249 through 234.271 shall be made to determine if the warning system and its component parts are maintained in a condition to perform their intended function. Any electronic device, relay, or other electromagnetic device that fails to meet the requirements of tests required by this part shall be removed from service and shall not be restored to service until its operating characteristics are in accordance with the limits within which such device or relay is designed to operate.

Section 234.249 Ground Tests

As proposed, this section requires a test for grounds on each energy bus furnishing power to circuits that affect the safety of highway-rail grade crossing warning system operation. The rule requires that the test be made when an energy bus is placed in service, and at least once each month thereafter.

The rule will assist in maintaining the integrity and safety of the warning system. As provided in § 234.213, tests would not be required on circuits that include track rail, alternating current power distribution circuits that are grounded in the interest of safety, and common return wires of grounded common return single break circuits.

There was no opposition to the proposed rule. The labor/management group, the only party commenting, supported the rule as proposed.

Final Rule

This section is adopted as proposed.

Section 234.251 Standby Power

The proposed section, entitled "Battery voltage." requires that battery voltage be checked at the battery, with battery-charging current removed, at least once each month to determine battery capability for instances of battery-charging current loss. There was no opposition to the proposed rule. However, FRA is amending this section to reflect changes to § 234.215.

Final Rule

This section requires that standby power be tested at least once each month.

Section 234.253 Flashing Light Units and Lamp Voltage

The proposed rule requires that lamp voltage be tested when installed and at least once every twelve months, with battery-charging current removed and with battery charging current restored, to determine the lamp voltage. Each flashing light unit would be required to be inspected at installation and once every twelve months for alignment, focus, and frequency of flashes in accordance with installation specifications. The exterior of each flashing light unit would be required to be inspected for dust and damage to roundels to ensure visibility of the light unit, at least once each month.

Labor/management recommended that the rule should be modified to reflect current practices in the maintenance, inspection and testing of flashing light units. Since the plans kept at crossing locations typically do not address the alignment or focus of flashing light units, they believe it would be more appropriate to have the requirements based on the installation specifications, which would reflect the design of the system. They commented that the term "focus" should be eliminated from the rule. Light units are focused initially in the manufacturing process, and the focus should be adjusted thereafter only in a shop environment. In accordance with the current practices, the group recommended that the requirements under subsection (c) include the words "for proper visibility." This requirement will more appropriately address the intent of the rule with regard to the proper operation of the light units. We agree with the comments and have revised the rule accordingly.

Final Rule

This section requires that each flashing light unit be inspected when installed and at least once every 12 months for proper alignment and frequency of flashes in accordance with installation specifications. Lamp voltage will be required to be tested when installed and at least once every 12 months thereafter. Each flashing light unit will be inspected for proper visibility, and for dirt and damage to roundels and reflectors at least once each month.

Section 234.255 Gate Arm and Gate Mechanism

There was no opposition to the proposed rule. The final rule will remain as proposed.

Final Rule

This section requires that each gate arm and gate mechanism be inspected, and gate arm movement be observed for proper operation, at least once each month. Hold-clear devices (devices that keep the gate arms in the vertical position when the warning system is not activated) shall be tested for proper operation at least once every 12 months.

Section 234.257 Warning System Operation

The labor/management group supported the proposed rule. There was no opposition. The final rule will remain as proposed.

Final Rule

Paragraph (a) of this section requires that a highway-rail grade crossing warning system be tested for proper operation when the warning system is placed in service and thereafter at least once each month and whenever it is modified or disarranged. For purposes of paragraphs (a) and (b), "disarranged" includes situations in which a relay, circuit board, or other electronic device is replaced with another; two or more conductors in a cable are severed; a cable or conductor in a train detection system is replaced with another; or wires are removed at the same time from more than one terminal of a relay, electronic device, terminal board, or other vital component of a train detection system. The extent of testing the warning system for proper operation will be dependent on the degree of modification or disarrangement.

Paragraph (b) also requires that when a warning bell or other stationary

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audible warning device is used, it be checked for proper operation when installed. Thereafter it must be tested at least once each month and whenever modified or disarranged.

Section 234.259 Warning Time

The proposed rule requires that a crossing warning system be tested for prescribed warning time at least once every three months. The labor/management group originally concurred in this section as proposed. The group later revised its comment. They state that it would be more appropriate to test warning time once each year, or when the warning system is modified in connection with changes in authorized train speeds. The LIRR commented that testing should only be required when a system is installed or disarranged. Labor/management and the Wisconsin Central Railroad request that testing of warning times using automatic recording devices should be an acceptable method of performing this test.

FRA has reviewed its proposal in light of the comments received. After consideration, FRA has determined that extending the testing period from three months to one year is appropriate in conjunction with requiring that testing be performed whenever the warning system is modified because of a change in train speeds. FRA also notes that under the requirements of § 234.257, "Warning system operation", warning time must be tested if the warning system is modified in such a manner that the warning time might be affected. FRA also agrees that electronic devices which accurately determine actual warning time may be substituted for other tests.

The labor/management group expressed confusion regarding the type of testing permitted under this section. The group stated that "although the rule itself permits testing of the adequacy of warning time by calculation based on the fastest allowable train speed, the preamble creates confusion by its reference to testing with an actual train movement or 'simulation of a train movement'." The group also stated that "section 234.259, as written, permits calculation as a complying testing technique * * *." This conclusion is unfounded. The section-by-section analysis of the section stated that "[testing] can be accomplished by observation of a train movement, if practical, or by calculation and simulation of a train movement. Calculation alone is not testing. It is merely a determination of design criteria. Only when the results of that calculation are combined with actions that determine that the mechanical, electrical or electronic system functions as intended, can an adequate test be done.

Final Rule

This section requires that each crossing warning system shall be tested for the prescribed warning time at least once every 12 months, and when the warning system is modified because of a change in train speeds. Electronic devices that accurately determine warning time will be an acceptable means of meeting the requirements of this provision.

Section 234.261 Highway Traffic Signal Pre-emption

The proposed rule requires that highway traffic signal pre-emption interconnections, for which a railroad has maintenance responsibility, be tested at least once each month. The pre-emption of a highway traffic signal requires an electrical circuit between the control relay of the crossing warning system and the controller assembly of the highway traffic signal. The railroad will only be responsible for the maintenance and testing of its interconnections. The State of West Virginia noted that this section "requires testing of the highway traffic signal preemption but doesn't include any notification requirement. If the preempt fails to work and the fault is on the highway side of the equipment, we need to be notified so that repairs can be initiated." Although it is beyond the scope of the present rulemaking to require notification of state highway departments when a signal maintainer discovers a malfunction of the highway traffic signal preemption equipment, FRA expects that such notifications would be routinely made. Nothing in this rulemaking is intended to preempt any local requirements that mandate notification to appropriate officials. However, we note that the railroad is not responsible for the controller assembly of the highway traffic signal and therefore the signal maintainer is not always aware of a malfunction of such equipment.

Final Rule

The final rule will remain as proposed.

Section 234.263 Relays

The labor/management group supported the proposed rule. There was no opposition. The final rule will remain as proposed.

Final Rule

Paragraph (a) of this section requires that (except for certain relays listed in paragraph (b)) each relay that affects the proper functioning of a crossing warning system shall be tested at least once every four years.

Paragraph (b)(1) requires that alternating current vane type relays, direct current polar type relays, and relays with soft iron magnetic structure shall be tested at least once every two years. Paragraph (b)(2) requires that alternating current centrifugal type relays shall be tested at least once every 12 months.

Section 234.265 Timing Relays and Timing Devices

The labor/management group supported the proposed rule. There was no opposition. The final rule will remain as proposed.

Final Rule

This section requires that each timing relay and timing device be tested at least once every twelve months. The timing shall be maintained at not less than 90 percent nor more than 110 percent of the predetermined time interval, which shall be shown on the plans or marked on the timing relay or timing device.

Timing relays and timing devices are essential components of time-out circuits which are primarily used for train switching movements at warning system installations. A time-out circuit de-activates a crossing warning system after a predetermined amount of time after a train movement has occupied the detection circuit in approach to the grade crossing.

Section 234.267 Insulation Resistance Tests, Wires in Trunking and Cables

The labor/management group supported the proposed rule. There was no opposition. The final rule will remain as proposed.

Final Rule

Paragraph (a) of this section requires that insulation resistance tests be made when wires or cables are installed and at least once every ten years thereafter. Paragraph (b) requires that insulation resistance tests be made between all conductors and ground, between conductors in each multiple conductor cable, and between conductors in trunking. Such tests must be performed when wires, cables, and insulation are dry. Paragraph (c) provides that, subject to the requirements of paragraph (d), when insulation resistance of wire or cable is found to be less than 500,000 ohms, prompt action must be taken to repair or replace the defective wire or cable. Until such defective wire or cable is replaced, insulation resistance tests must be made annually. Paragraph (d) provides that a circuit with a conductor having an insulation resistance of less than 200,000 ohms shall not be used.

Section 234.269 Cut-Out Circuits

The proposed rule requires that each cut-out circuit be tested at least once every three months to determine that the circuit functions as intended. Labor/management group commented that the rule should be clarified by changing all references of cut-out circuits to "switch" cut-out circuits. They asked for clarification concerning the type of cut-out circuits this provision applies to.

For purposes of this section, a cut-out circuit is any circuit which overrides the operation of automatic warning systems. This includes both switch cut-out circuits and devices which enable personnel to manually override the operation of automatic warning systems.

Final Rule

This section requires that each cut-out circuit shall be tested at least once every three months to determine that the circuit functions as intended. For purposes of this section, a cut-out circuit is any circuit which overrides the operation of automatic warning systems. This includes both switch cut-out circuits and devices which enable personnel to manually override the operation of automatic warning systems.

Section 234.271 Insulated Rail Joints, Bond Wires, and Track Connections

The proposed rule requires that each insulated rail joint, bond wire, and track connection located within the limits of a highway-rail grade crossing train detection circuit be inspected at least once every three months. Insulated rail joints are used to prevent current from flowing between rails. Bondwires and track connections ensure continuity of a train detection circuit.

The labor/management group supported the proposed rule. The only other commenter on this proposal, the Wisconsin Central Railroad, commented that the requirement for inspection every three months is nearly impossible to meet, given the large geographical territories some signal maintainers have. Wisconsin Central suggests that this inspection should be extended to every six months. Because of the effect that damage to bonds, track connections and insulated rail joints due to vandalism, track equipment and other conditions can have on the integrity of the warning system, it is imperative that those components be inspected more often than twice a year. FRA notes that the three month inspection schedule is generally consistent with present industry inspection standards.

Final Rule

This section is adopted as proposed.

Section 234.273 Results of Tests

This section as proposed requires that results of tests made in compliance with this part be recorded on preprinted or computerized forms provided by the railroad, or by electronic means, approved by the Associate Administrator for Safety. Records must show the name of the railroad having maintenance responsibility for the warning system, AAR/DOT inventory number, place and date, equipment tested, results of tests, repairs, replacements, adjustments made, and condition in which the apparatus was left. Each record must be signed or electronically coded by the employee making the test and be filed in the office of a supervisory official having jurisdiction. Additionally, the proposal requires that records be made available to FRA as provided by 49 U.S.C. 20107 (formerly section 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437). Each record must be retained until the next record for that test is filed but in no case less than one year from the date of the test. If a railroad elects to use an electronic means for recording and signing results of tests, such means must be approved by FRA prior to use.

Only two parties specifically commented on this section. Labor/management group and New Jersey Transit commented that test results should be permitted to be retained at the highway-rail grade crossing location or at the office of an official. FRA has determined that a more centralized location is needed for the retention of the results of tests. In some instances the control housings of warning systems are destroyed when there is an accident at a grade crossing. If the records of tests are also destroyed, an effective investigation of the accident would be precluded. Additionally, retaining test results at the office of an official permits more effective monitoring of rule compliance by the railroad and FRA. The final rule will not be changed as suggested. FRA is adding notice similar to that contained in § 234.109 that records required to be kept shall be made available to FRA as provided by 49 U.S.C. 20107 (formerly section 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437).

Final Rule

This section is adopted as proposed with additional language as stated above.

Regulatory Impact

E.O. 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and is considered to be significant under DOT policies and procedures (44 FR 11034, February 26, 1979) because it initiates a new regulatory program. This regulatory document was subject to review under E.O. 12866. FRA has prepared and placed in the rulemaking docket a regulatory evaluation addressing the economic impact of this rule. A copy of the regulatory evaluation may be inspected and copied in Room 8201, 400 Seventh Street, SW., Washington, DC 20590.

In the regulatory analysis accompanying the NPRM, FRA analyzed grade crossing malfunction data which had been submitted in accordance with the requirements of 49 CFR 234.9. The FRA's preliminary review and analysis of those data indicated that there is a correlation between false activations at a grade crossing and accidents occurring at the same crossing in the week following the false activation. Because the data had not yet been subjected to the careful testing and scrutiny FRA would have wished had it had more time perform further analyses, FRA invited comments on the data and methodology used in its analysis.

The AAR responded to the request that commenters review FRA's preliminary analysis. The AAR concluded that the data did not support the FRA's preliminary conclusions. After a review of FRA's data and AAR's analysis of that data, FRA agrees with the AAR's conclusion.

In its regulatory analysis FRA posited that the benefits of this rule would arise because the number of grade crossing signal malfunctions would decrease due to compliance with maintenance, inspection and testing requirements of Subpart D, grade crossings would be made safer during periods of warning system malfunction due to compliance with Subpart C. FRA further estimated that the costs of §§ 234.105 and 234.107 would be reduced because the railroads would repair warning systems more rapidly under the provisions of § 234.103.

It appears that activation failures now cost about $4.4 million per year in accidents. In these accidents the highway user doesn't know a train is

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coming, enters the crossing and is struck by a train. This rule should reduce that cost to about $1.3 million per year.

It is not as clear how many accidents are attributable to false activations. The FRA's best estimate, based on educated estimates of its staff, is that false activations cause about $10.9 million a year in accident costs. In these accidents the highway user thinks the signal is "crying wolf", ignores a valid warning, and is struck by a train. This rule should reduce the annual cost to about $3.3 million.

This rule will prevent malfunctions, reduce their duration, and make crossings safer during a malfunction.

The total cost of this rule, discounted over twenty years, will be about $80 million and the total benefit will be about $150 million. Benefits will be about 1.9 times costs.

Regulatory Flexibility Act

FRA certifies that this rule will not have a significant impact on a substantial number of small entities. There are no substantial economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

The rule contains information collection requirements. FRA is submitting these information collection requirements to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The section that contains information collection requirements is § 234.273. The estimated time to fulfill the requirement of that section is five minutes for each record.

Environmental Impact

FRA has evaluated these regulations in accordance with its procedure for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, "Federalism," and it has been determined that the rule has sufficient federalism implications to warrant the preparation of a Federalism Assessment. FRA recognizes that currently a small number of states have statutes mandating to some extent maintenance, inspection and testing procedures for railroads operating within those states. In general, this rule will preempt those requirements. In an effort to maintain state expertise and involvement in this critical safety area, FRA is including grade crossing warning system inspection functions within its State Participation Program. FRA has also provided in §§ 234.105 and 234.107 that, in instances of grade crossing warning system malfunctions, "a locomotive's audible warning device shall be activated in accordance with railroad rules." This provision preempts local "whistle ban" ordinances to the extent they would otherwise prohibit the use of horns or whistles in such situations. This minimal intrusion into an area in which certain State and local governments have become involved is necessary to protect the travelling public and train crews from possible injury or death at grade crossings with malfunctioning warning systems. A copy of the Federalism Assessment has been placed in the public docket located in Room 8201, 400 Seventh Street, S.W., Washington, D.C. 20590.

List of Subjects

49 CFR Part 212

Intergovernmental relations, Investigations, Railroad safety.

49 CFR Part 234

Railroad safety, Highway-rail grade crossings.

The Rule

In consideration of the foregoing, FRA amends chapter IIb of Title 49, Code of Federal Regulations as follows:

PART 212—[AMENDED]

1. The authority citation for part 212 is revised due to recodification of title 49 of the United States Code to read as follows:

Authority: 49 U.S.C. 20103, 20106, 20105, and 20113 (formerly Secs. 202, 205, 206, and 208, of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 431, 434, 435, and 436)); and 49 CFR 1.49.

2. Section 212.231, "Inapplicable qualification requirements," is redesignated § 212.235, and new §§ 212.231 and 212.233 are added to read as follows:

§ 212.231 Highway-rail grade crossing inspector.

(a) The highway-rail grade crossing inspector is required, at a minimum, to be able to conduct independent inspections of all types of highway-rail grade crossing warning systems for the purpose of determining compliance with Grade Crossing Signal System Safety Rules (49 CFR Part 234), to make reports of those inspections, and to recommend institution of enforcement actions when appropriate to promote compliance.

(b) The highway-rail grade crossing inspector is required, at a minimum, to have at least four years of recent experience in highway-rail grade crossing construction or maintenance. A bachelor's degree in engineering or a related technical specialization may be substituted for two of the four years of this experience requirement. Successful completion of an apprentice training program under § 212.233 may be substituted for the four years of this experience requirement.

(c) The highway-rail grade crossing inspector shall demonstrate the following specific qualifications:

(1) A comprehensive knowledge of highway-rail grade crossing nomenclature, inspection techniques, maintenance requirements, and methods;

(2) The ability to understand and detect deviations from:

(i) grade crossing signal system maintenance, inspection and testing standards accepted in the industry; and

(ii) the Grade Crossing Signal System Safety Rules (49 CFR Part 234);

(3) Knowledge of operating practices and highway-rail grade crossing systems sufficient to understand the safety significance of deviations and combinations of deviations from § 212.231(c)(2) (i) and (ii);

(4) Specialized knowledge of the requirements of the Grade Crossing Signal System Safety Rules (49 CFR Part 234), including the remedial action required to bring highway-rail grade crossing signal systems into compliance with those Rules;

(5) Specialized knowledge of highway-rail grade crossing standards contained in the Manual on Uniform Traffic Control Devices; and

(6) Knowledge of railroad signal systems sufficient to ensure that highway-rail grade crossing warning systems and inspections of those systems do not adversely affect the safety of railroad signal systems.

(d) A State signal and train control inspector qualified under this part and who has demonstrated the ability to understand and detect deviations from the Grade Crossing Signal System Safety Rules (49 CFR Part 234) is deemed to meet all requirements of this section and is qualified to conduct independent inspections of all types of highway-rail grade crossing warning systems for the purpose of determining compliance with Grade Crossing Signal System Safety Rules (49 CFR Part 234), to make reports of those inspections, and to recommend institution of enforcement

actions when appropriate to promote compliance.

§ 212.233 Apprentice highway-rail grade crossing inspector.

(a) An apprentice highway-rail grade crossing inspector shall be enrolled in a program of training prescribed by the Associate Administrator for Safety leading to qualification as a highway-rail grade crossing inspector. The apprentice inspector may not participate in investigative and surveillance activities, except as an assistant to a qualified State or FRA inspector while accompanying that qualified inspector.

(b) Prior to being enrolled in the program the apprentice inspector shall demonstrate:

(1) Working basic knowledge of electricity;

(2) The ability to use electrical test equipment in direct current and alternating current circuits; and

(3) A basic knowledge of highway-rail grade crossing inspection and maintenance methods and procedures.

PART 234—[AMENDED]

3. The authority citation for Part 234 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20108, 20111, 20112, 20114, 21301, 21302, 21304, and 21311 (formerly Secs. 202, 208, and 209 of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 431, 437, and 438, as amended)); 49 U.S.C. 20901 and 20102 (formerly the Accident Reports Act (45 U.S.C. 38 and 42)); and 49 CFR 1.49 (f), (g), and (m).

4. Section 234.1 is revised to read as follows:

§ 234.1 Scope.

This part imposes minimum maintenance, inspection, and testing standards highway-rail grade crossing warning systems. This part also prescribes standards for the reporting of failures of such systems and prescribes minimum actions railroads must take when such warning systems malfunction. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

5. Section 234.3 is revised to read as follows:

§ 234.3 Application.

This part applies to all railroads except:

(a) A railroad that exclusively operates freight trains only on track which is not part of the general railroad system of transportation;

(b) Rapid transit operations within an urban area that are not connected to the general railroad system of transportation; and

(c) A railroad that operates passenger trains only on track inside an installation that is insular; *i.e.*, its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of the public—except a business guest, a licensee of the railroad or an affiliated entity, or a trespasser—would be affected by the operation. An operation will not be considered insular if one or more of the following exists on its line:

(1) A public highway-rail crossing that is in use;

(2) An at-grade rail crossing that is in use;

(3) A bridge over a public road or waters used for commercial navigation; or

(4) A common corridor with a railroad, i.e., its operations are within 30 feet of those of any railroad.

6. Section 234.4 is added to read as follows:

§ 234.4 Preemptive effect.

Under 49 U.S.C. 20106 (formerly § 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434)), issuance of these regulations preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision directed at an essentially local safety hazard that is consistent with this part and that does not impose an undue burden on interstate commerce.

7. Amend § 234.5 by removing paragraph designations, listing definitions in alphabetical order, and adding the following definitions to read as follows:

§ 234.5 Definitions.

* * * * *

Appropriately equipped flagger means a person other than a train crewmember who is equipped with an orange vest, shirt, or jacket for daytime flagging. For nighttime flagging, similar outside garments shall be retroreflective. The retroreflective material shall be either orange, white (including silver-colored coatings or elements that retroreflect white light), yellow, fluorescent red-orange, or fluorescent yellow-orange and shall be designed to be visible at a minimum distance of 1,000 feet. The design configuration of the retroreflective material shall provide recognition of the wearer as a human being and shall be visible through the full range of body motions. Acceptable hand signal devices for daytime flagging include "STOP/SLOW" paddles and red flags. For nighttime flagging, a flashlight, lantern, or other lighted signal shall be used.

Credible report of system malfunction means specific information regarding a malfunction at an identified highway-rail crossing, supplied by a railroad employee, law enforcement officer, highway traffic official, or other employee of a public agency acting in an official capacity.

* * * * *

Warning system malfunction means an activation failure or a false activation of a highway-rail grade crossing warning system.

§§ 234.15 and 234.17 [Redesignated as § 234.6]

8. Redesignate the heading and text of § 234.15, and the heading and text of § 234.17, as the heading and text of a new paragraph (a) of § 234.6 and the heading and text of paragraph (b) of § 234.6, respectively; add a new section heading for newly designated § 234.6; and revise the newly designated paragraph (a) of § 234.6 to read as follows:

§ 234.6 Penalties.

(a) *Civil penalty.* Any person (including but not limited to a railroad, any manager, supervisor, official, or other employee or agent of a railroad, any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500, but not more than $10,000 per violation, except that: penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death of injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Appendix A to this part contains a schedule of civil penalty amounts used in connection with this rule.

* * * * *

9. Designate §§ 234.1 through 234.6 as "Subpart A—General" and designate §§ 234.7 through 234.13 as "Subpart B—Reports."

10. Add new "Subpart C—Response to Reports of Warning System Malfunction," and new "Subpart D—Maintenance, Inspection, and Testing," to read as follows:

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Subpart C—Response to Reports of Warning System Malfunction

Sec.
234.101 Employee notification rules.
234.103 Timely response to report of malfunction.
234.105 Activation failure.
234.107 False activation.
234.109 Recordkeeping.

Subpart D—Maintenance, Inspection, and Testing

Maintenance Standards

234.201 Location of plans.
234.203 Control circuits.
234.205 Operating characteristics of warning system apparatus.
234.207 Adjustment, repair, or replacement of component.
234.209 Interference with normal functioning of system.
234.211 Security of warning system apparatus.
234.213 Grounds.
234.215 Standby power system.
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234.219 Gate arm lights and light cable.
234.221 Lamp voltage.
234.223 Gate arm.
234.225 Activation of warning system.
234.227 Train detection apparatus.
234.229 Shunting sensitivity.
234.231 Fouling wires.
234.233 Rail joints.
234.235 Insulated rail joints.
234.237 Switch equipped with circuit controller.
234.239 Tagging of wires and interference of wires or tags with signal apparatus.
234.241 Protection of insulated wire; splice in underground wire.
234.243 Wire on pole line and aerial cable.
234.245 Signs.

Inspections and Tests

234.247 Purpose of inspections and tests; removal from service of relay or device failing to meet test requirements.
234.249 Ground tests.
234.251 Standby power.
234.253 Flashing light units and lamp voltage.
234.255 Gate arm and gate mechanism.
234.257 Warning system operation.
234.259 Warning time.
234.261 Highway traffic signal pre-emption.
234.263 Relays.
234.265 Timing relays and timing devices.
234.267 Insulation resistance tests.
234.269 Cut-out circuits.
234.271 Insulated rail joints, bond wires, and track connections.
234.273 Results of tests.

Appendix A to Part 234—Schedule of Civil Penalties

Appendix B to Part 234—Alternate Methods of Protection Under 49 CFR 234.105(c) and 234.107(c).

§ 234.101 Employee notification rules.

Each railroad shall issue rules requiring its employees to report to persons designated by that railroad, by the quickest means available, any warning system malfunction.

§ 234.103 Timely response to report of malfunction.

(a) Upon receipt of a credible report of a warning system malfunction, a railroad having maintenance responsibility for the warning system shall promptly investigate the report and determine the nature of the malfunction. The railroad shall take appropriate action as required by § 234.207.

(b) Until repair or correction of the warning system is completed, the railroad shall provide alternative means of warning highway traffic and railroad employees in accordance with §§ 234.105 or 234.107 of this part.

(c) Nothing in this subpart requires repair of a warning system, if, acting in accordance with applicable State law, the railroad proceeds to discontinue or dismantle the warning system. However, until repair, correction, discontinuance, or dismantling of the warning system is completed, the railroad shall comply with this subpart to ensure the safety of the travelling public and railroad employees.

§ 234.105 Activation failure.

Upon receipt of a credible report of warning system malfunction involving an activation failure, a railroad having maintenance responsibility for the warning system shall promptly initiate efforts to warn highway users and railroad employees at the subject crossing by taking the following actions:

(a) Prior to any train's arrival at the crossing, notify the train crew of the report of activation failure and notify any other railroads operating over the crossing;

(b) Notify the law enforcement agency having jurisdiction over the crossing, or railroad police capable of responding and controlling vehicular traffic; and

(c) Provide for alternative means of actively warning highway users of approaching trains, consistent with the following requirements (see Appendix B for a summary chart of alternative means of warning):

(1) (i) If an appropriately equipped flagger provides warning for each direction of highway traffic, trains may proceed through the crossing at normal speed.

(ii) If at least one uniformed law enforcement officer (including a railroad police officer) provides warning to highway traffic at the crossing, trains may proceed through the crossing at normal speed.

(2) If an appropriately equipped flagger provides warning for highway traffic, but there is not at least one flagger providing warning for each direction of highway traffic, trains may proceed with caution through the crossing at a speed not exceeding 15 miles per hour. Normal speed may be resumed after the locomotive has passed through the crossing.

(3) If there is not an appropriately equipped flagger or uniformed law enforcement officer providing warning to highway traffic at the crossing, each train must stop before entering the crossing and permit a crewmember to dismount to flag highway traffic to a stop. The locomotive may then proceed through the crossing, and the flagging crewmember may reboard the locomotive before the remainder of the train proceeds through the crossing.

(d) A locomotive's audible warning device shall be activated in accordance with railroad rules regarding the approach to a grade crossing.

§ 234.107 False activation.

Upon receipt of a credible report of a false activation, a railroad having maintenance responsibility for the highway-rail grade crossing warning system shall promptly initiate efforts to warn highway users and railroad employees at the crossing by taking the following actions:

(a) Prior to a train's arrival at the crossing, notify the train crew of the report of false activation and notify any other railroads operating over the crossing;

(b) Notify the law enforcement agency having jurisdiction over the crossing, or railroad police capable of responding and controlling vehicular traffic; and

(c) Provide for alternative means of actively warning highway users of approaching trains, consistent with the following requirements (see Appendix B for a summary chart of alternative means of warning):

(1) (i) If an appropriately equipped flagger is providing warning for each direction of highway traffic, trains may proceed through the crossing at normal speed.

(ii) If at least one uniformed law enforcement officer (including a railroad police officer) provides warning to highway traffic at the crossing, trains may proceed through the crossing at normal speed.

(2) If there is not an appropriately equipped flagger providing warning for each direction of highway traffic, or if there is not at least one uniformed law enforcement officer providing warning, trains with the locomotive or cab car leading, may proceed with caution through the crossing at a speed not exceeding 15 miles per hour. Normal speed may be resumed after the locomotive has passed through the crossing. In the case of a shoving move, a crewmember shall be on the ground to flag the train through the crossing.

(3) In lieu of complying with paragraphs (c)(1) or (2) of this section, a railroad may temporarily take the warning system out of service if the railroad complies with all requirements of § 234.105, "Activation failure."

(d) A locomotive's audible warning device shall be activated in accordance with railroad rules regarding the approach to a grade crossing.

§ 234.109 Recordkeeping.

(a) Each railroad shall keep records pertaining to compliance with this subpart. Records may be kept on forms provided by the railroad or by electronic means. Each railroad shall keep the following information for each credible report of warning system malfunction:

(1) Location of crossing (by highway name and DOT/AAR Crossing Inventory Number);

(2) Time and date of receipt by railroad of report of malfunction;

(3) Actions taken by railroad prior to repair and reactivation of repaired system; and

(4) Time and date of repair.

(b) Each railroad shall retain for at least one year (from the latest date of railroad activity in response to a credible report of malfunction) all records referred to in paragraph (a) of this section. Records required to be kept shall be made available to FRA as provided by 45 U.S.C. 20107 (formerly § 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437)).

Subpart D—Maintenance, Inspection, and Testing

Maintenance Standards

§ 234.201 Location of plans.

Plans required for proper maintenance and testing shall be kept at each highway-rail grade crossing warning system location. Plans shall be legible and correct.

§ 234.203 Control circuits.

All control circuits that affect the safe operation of a highway-rail grade crossing warning system shall operate on the fail-safe principle.

§ 234.205 Operating characteristics of warning system apparatus.

Operating characteristics of electromagnetic, electronic, or electrical apparatus of each highway-rail crossing warning system shall be maintained in accordance with the limits within which the system is designed to operate.

§ 234.207 Adjustment, repair, or replacement of component.

(a) When any essential component of a highway-rail grade crossing warning system fails to perform its intended function, the cause shall be determined and the faulty component adjusted, repaired, or replaced without undue delay.

(b) Until repair of an essential component is completed, a railroad shall take appropriate action under § 234.105, "Activation failure," or § 234.107, "False activation," of this part.

§ 234.209 Interference with normal functioning of system.

(a) The normal functioning of any system shall not be interfered with in testing or otherwise without first taking measures to provide for safety of highway traffic that depends on normal functioning of such system.

(b) Interference includes, but is not limited to:

(1) Trains, locomotives or other railroad equipment standing within the system's approach circuit, other than normal train movements or switching operations, where the warning system is not designed to accommodate those activities.

(2) Not providing alternative methods of maintaining safety for the highway user while testing or performing work on the warning systems or on track and other railroad systems or structures which may affect the integrity of the warning system.

§ 234.211 Security of warning system apparatus.

Highway-rail grade crossing warning system apparatus shall be secured against unauthorized entry.

§ 234.213 Grounds.

Each circuit that affects the proper functioning of a highway-rail grade crossing warning system shall be kept free of any ground or combination of grounds that will permit a current flow of 75 percent or more of the release value of any relay or electromagnetic device in the circuit. This requirement does not apply to: Circuits that include track rail; alternating current power distribution circuits that are grounded in the interest of safety; and common return wires of grounded common return single break circuits.

§ 234.215 Standby power system.

A standby source of power shall be provided with sufficient capacity to operate the warning system during any period of primary power interruption.

§ 234.217 Flashing light units.

(a) Each flashing light unit shall be properly positioned and aligned and shall be visible to a highway user approaching the crossing.

(b) Each flashing light unit shall be maintained to prevent dust and moisture from entering the interior of the unit. Roundels and reflectors shall be clean and in good condition.

(c) All light units shall flash alternately. The number of flashes per minute for each light unit shall be 35 minimum and 65 maximum.

§ 234.219 Gate arm lights and light cable.

Each gate arm light shall be maintained in such condition to be properly visible to approaching highway users. Lights and light wire shall be secured to the gate arm.

§ 234.221 Lamp voltage.

The voltage at each lamp shall be maintained at not less than 85 percent of the prescribed rating for the lamp.

§ 234.223 Gate arm.

Each gate arm, when in the downward position, shall extend across each lane of approaching highway traffic and shall be maintained in a condition sufficient to be clearly viewed by approaching highway users. Each gate arm shall start its downward motion not less than three seconds after flashing lights begin to operate and shall assume the horizontal position at least five seconds before the arrival of any train at the crossing. At those crossings equipped with four quadrant gates, the timing requirements of this section apply to entrance gates only.

§ 234.225 Activation of warning system.

A highway-rail grade crossing warning system shall be maintained to activate in accordance with the design of the warning system, but in no event shall it provide less than 20 seconds warning time before the grade crossing is occupied by rail traffic.

§ 234.227 Train detection apparatus.

(a) Train detection apparatus shall be maintained to detect a train or railcar in any part of a train detection circuit, in accordance with the design of the warning system.

(b) If the presence of sand, rust, dirt, grease, or other foreign matter is known to prevent effective shunting, a railroad shall take appropriate action under § 234.105, "Activation failure," to safeguard highway users.

§ 234.229 Shunting sensitivity.

Each highway-rail grade crossing train detection circuit shall detect the application of a shunt of 0.06 ohm

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resistance when the shunt is connected across the track rails of any part of the circuit.

§ 234.231 Fouling wires.

Each set of fouling wires in a highway-rail grade crossing train detection circuit shall consist of at least two discrete conductors. Each conductor shall be of sufficient conductivity and shall be maintained in such condition to ensure proper operation of the train detection apparatus when the train detection circuit is shunted.

§ 234.233 Rail joints.

Each non-insulated rail joint located within the limits of a highway-rail grade crossing train detection circuit shall be bonded by means other than joint bars and the bonds shall be maintained in such condition to ensure electrical conductivity.

§ 234.235 Insulated rail joints.

Each insulated rail joint used to separate train detection circuits of a highway-rail grade crossing shall be maintained to prevent current from flowing between rails separated by the insulation in an amount sufficient to cause a failure of the train detection circuit.

§ 234.237 Switch equipped with circuit controller.

A switch, when equipped with a switch circuit controller connected to the point and interconnected with warning system circuitry, shall be maintained so that the warning system can only be cut out when the switch point is within one-half inch of full reverse position.

§ 234.239 Tagging of wires and interference of wires or tags with signal apparatus.

Each wire shall be tagged or otherwise so marked that it can be identified at each terminal. Tags and other marks of identification shall be made of insulating material and so arranged that tags and wires do not interfere with moving parts of the apparatus.

§ 234.241 Protection of insulated wire; splice in underground wire.

Insulated wire shall be protected from mechanical injury. The insulation shall not be punctured for test purposes. A splice in underground wire shall have insulation resistance at least equal to that of the wire spliced.

§ 234.243 Wire on pole line and aerial cable.

Wire on a pole line shall be securely attached to an insulator that is properly fastened to a crossarm or bracket supported by a pole or other support. Wire shall not interfere with, or be interfered with by, other wires on the pole line. Aerial cable shall be supported by messenger wire. An open-wire transmission line operating at voltage of 750 volts or more shall be placed not less than 4 feet above the nearest crossarm carrying active warning system circuits.

§ 234.245 Signs.

Each sign mounted on a highway-rail grade crossing signal post shall be maintained in good condition and be visible to the highway user.

Inspections and Tests

§ 234.247 Purpose of inspections and tests; removal from service of relay or device failing to meet test requirements.

The inspections and tests set forth in §§ 234.249 through 234.271 shall be made to determine if the warning system and its component parts are maintained in a condition to perform their intended function. Any electronic device, relay, or other electromagnetic device that fails to meet the requirements of tests required by this part shall be removed from service and shall not be restored to service until its operating characteristics are in accordance with the limits within which such device or relay is designed to operate.

§ 234.249 Ground tests.

A test for grounds on each energy bus furnishing power to circuits that affect the safety of warning system operation shall be made when such energy bus is placed in service and at least once each month thereafter.

§ 234.251 Standby power.

Standby power shall be tested at least once each month.

§ 234.253 Flashing light units and lamp voltage.

(a) Each flashing light unit shall be inspected when installed and at least once every twelve months for proper alignment and frequency of flashes in accordance with installation specifications.

(b) Lamp voltage shall be tested when installed and at least once every 12 months thereafter.

(c) Each flashing light unit shall be inspected for proper visibility, dirt and damage to roundels and reflectors at least once each month.

§ 234.255 Gate arm and gate mechanism.

(a) Each gate arm and gate mechanism shall be inspected at least once each month.

(b) Gate arm movement shall be observed for proper operation at least once each month.

(c) Hold-clear devices shall be tested for proper operation at least once every 12 months.

§ 234.257 Warning system operation.

(a) Each highway-rail crossing warning system shall be tested to determine that it functions as intended when it is placed in service. Thereafter, it shall be tested at least once each month and whenever modified or disarranged.

(b) Warning bells or other stationary audible warning devices shall be tested when installed to determine that they function as intended. Thereafter, they shall be tested at least once each month and whenever modified or disarranged.

§ 234.259 Warning time.

Each crossing warning system shall be tested for the prescribed warning time at least once every 12 months. Electronic devices that accurately determine actual warning time may be used in performing such tests.

§ 234.261 Highway traffic signal pre-emption.

Highway traffic signal pre-emption interconnections, for which a railroad has maintenance responsibility, shall be tested at least once each month.

§ 234.263 Relays.

(a) Except as stated in paragraph (b) of this section, each relay that affects the proper functioning of a crossing warning system shall be tested at least once every four years.

(b) (1) Alternating current vane type relays, direct current polar type relays, and relays with soft iron magnetic structure shall be tested at least once every two years.

(2) Alternating current centrifugal type relays shall be tested at least once every 12 months.

§ 234.265 Timing relays and timing devices.

Each timing relay and timing device shall be tested at least once every twelve months. The timing shall be maintained at not less than 90 percent nor more than 110 percent of the predetermined time interval. The predetermined time interval shall be shown on the plans or marked on the timing relay or timing device.

§ 234.267 Insulation resistance tests.

(a) Insulation resistance tests shall be made when wires or cables are installed and at least once every ten years thereafter.

(b) Insulation resistance tests shall be made between all conductors and ground, between conductors in each multiple conductor cable, and between conductors in trunking. Insulation resistance tests shall be performed when wires, cables, and insulation are dry.

(c) Subject to paragraph (d) of this section, when insulation resistance of wire or cable is found to be less than 500,000 ohms, prompt action shall be taken to repair or replace the defective wire or cable. Until such defective wire or cable is replaced, insulation resistance tests shall be made annually.

(d) A circuit with a conductor having an insulation resistance of less than 200,000 ohms shall not be used.

§ 234.269 Cut-out circuits.

Each cut-out circuit shall be tested at least once every three months to determine that the circuit functions as intended. For purposes of this section, a cut-out circuit is any circuit which overrides the operation of automatic warning systems. This includes both switch cut-out circuits and devices which enable personnel to manually override the operation of automatic warning systems.

§ 234.271 Insulated rail joints, bond wires, and track connections.

Insulated rail joints, bond wires, and track connections shall be inspected at least once every three months.

§ 234.273 Results of tests.

(a) Results of tests made in compliance with this part shall be recorded on forms provided by the railroad, or by electronic means, subject to approval by the Associate Administrator for Safety. Each record shall show the name of the railroad, AAR/DOT inventory number, place and date, equipment tested, results of tests, repairs, replacements, adjustments made, and condition in which the apparatus was left.

(b) Each record shall be signed or electronically coded by the employee making the test and shall be filed in the office of a supervisory official having jurisdiction. Records required to be kept shall be made available to FRA as provided by 45 U.S.C. 20107 (formerly section 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437)).

(c) Each record shall be retained until the next record for that test is filed but in no case for less than one year from the date of the test.

Appendix A to Part 234—Schedule of Civil Penalties

Note: A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

Section		Violation	Willful violation
Subpart B—Reports			
234.7	Accidents involving grade crossing signal failure	$5,000	$7,500
234.9	Grade crossing signal system failure reports	2,500	5,000
234.11	Railroad rules	2,500	5,000
234.13	Grade Crossing signal system information	2,500	5,000
Subpart C—Response to Reports of Warning System Malfunction			
234.101	Employee notification rules.	2,500	5,000
234.103	Timely response to report of malfunction.	2,500	5,000
234.105	Activation failure:		
	(a) failure to notify—		
	Train crews	5,000	7,500
	Other railroads	5,000	7,500
	(b) failure to notify law enforcement agency	2,500	5,000
	(c) failure to comply with—,		
	Flagging requirements	5,000	7,500
	Speed restrictions	5,000	7,500
	(d) failure to activate horn or whistle	5,000	7,500
234.107	False activation:		
	(a) failure to notify—		
	Train crews	5,000	7,500
	Other railroads	5,000	7,500
	(b) failure to notify law enforcement agency	2,500	5,000
	(c) failure to comply with—		
	Flagging requirements	5,000	7,500
	Speed restrictions	5,000	7,500
	(d) failure to activate horn or whistle	5,000	7,500
Subpart D—Maintenance, Inspection, and Testing			
	Maintenance Standards		
234.201	Location of plans	1,000	2,000
234.203	Control circuits	1,000	2,000
234.205	Operating characteristics of warning system apparatus	2,500	5,000
234.207	Adjustment, repair, or replacement of component	2,500	5,000
234.209	Interference with normal functioning of system	5,000	7,500
234.211	Locking of warning system apparatus	1,000	2,000
234.213	Grounds	1,000	2,000
234.215	Standby power system	5,000	7,500
234.217	Flashing light units	1,000	2,000
234.219	Gate arm lights and light cable	1,000	2,000
234.221	Lamp voltage	1,000	2,000
234.223	Gate arm	1,000	2,000

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Section		Violation	Willful violation
234.225	Activation of warning system	5,000	7,500
234.227	Train detection apparatus	2,500	5,000
234.229	Shunting sensitivity	2,500	5,000
234.231	Fouling wires	1,000	2,000
234.233	Rail joints	1,000	2,000
234.235	Insulated rail joints	1,000	2,000
234.237	Switch equipped with circuit controller	1,000	2,000
234.239	Tagging of wires and interference of wires or tags with signal apparatus	1,000	2,000
234.241	Protection of insulated wire; splice in underground wire.	1,000	2,000
234.243	Wire on pole line and aerial cable	1,000	2,000
234.245	Signs	1,000	2,000
	Inspections and Tests		
234.247	Purpose of inspections and tests; removal from service of relay or device failing to meet test requirements	2,500	5,000
234.249	Ground tests	2,500	5,000
234.251	Standby power	5,000	7,500
234.253	Flashing light units and lamp voltage	1,000	2,000
234.255	Gate arm and gate mechanism	1,000	2,000
234.257	Warning system operation	2,500	5,000
234.259	Warning time	1,000	2,000
234.261	Highway traffic signal pre-emption	1,000	2,000
234.263	Relays	1,000	2,000
234.265	Timing relays and timing devices	1,000	2,000
234.267	Insulation resistance tests	2,500	5,000
234.269	Cut-out circuits	1,000	2,000
234.271	Insulated rail joints, bond wires, and track connections	2,500	5,000
234.273	Results of tests	1,000	2,000

Appendix B to Part 234—Alternate Methods of Protection Under 49 CFR §§ 234.105(c) and 234.107(c)

THIS IS A SUMMARY—SEE BODY OF TEXT FOR COMPLETE REQUIREMENTS

	Flagger for each direction of traffic	Police officer present	Flagger present, but not one for each direction of traffic	No flagger/no police
False activation	Normal speed	Normal speed	Proceed with caution—maximum speed of 15 mph.	Proceed with caution—maximum speed of 15 mph.
Activation failure	Normal speed	Normal speed	Proceed with caution—maximum speed of 15 mph.	Stop: Crewmember flag traffic and reboard.

Issued in Washington D.C. on September 27, 1994.

Jolene M. Molitoris,

Administrator.

[FR Doc. 94-24223 Filed 9-29-94, 8:45 am]

BILLING CODE 4910-06-P

Federal Register

Friday
September 30, 1994

Part IV

Department of the Treasury

Fiscal Service

31 CFR Part 210

Federal Government Participation in the Automated Clearing House; Proposed Rule

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN Number 1510–AA39

Federal Government Participation in the Automated Clearing House

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to revise regulations which define the responsibilities and liabilities of the Federal Government (Government), Federal Reserve Banks, financial institutions, Receivers and Originators doing business with the Government through the Automated Clearing House (ACH) system. This revision proposes substantive changes to the existing regulations and supersedes the savings allotment provisions of Part 209 because savings allotment and recurring benefit payments formerly under the terms of Part 209 are made by the ACH method under the terms of Part 210.

These revisions are intended to provide a regulatory basis for broader use of the ACH system to meet the future payment, collection, and information flow needs of the Government. These revisions also are intended to bring Government regulations more in line with financial industry rules so as to eliminate, as much as possible, the need for the financial industry to operate under two sets of rules for processing ACH transactions. In general, these revisions accept the private industry *ACH Rules* as promulgated by the National Automated Clearing House Association (NACHA), unless it is determined that, in its role of protecting the public trust, it is not in the best interests of the Government to do so. The exceptions to the *ACH Rules* are cited in these regulations. The Government already uses *ACH Rules* transaction formats and applies many *ACH Rules* to Government entries. These regulations will continue to provide provisions which protect the substantive rights of participants and enumerate their liabilities.

The major reasons for the proposed changes are to provide a clearer and broader framework, and greater leeway for the Department of the Treasury, Financial Management Service (the Service), to make ongoing modifications to policies, Government operating instructions, and interpretations of this regulation. This will permit the Service to manage effectively the transition to fully electronic processing, respond more rapidly to changes in commercial rules and operating procedures, and utilize commercial ACH processes or rules, unless it is determined not to be in the best interest of the Government. It also will provide the Service a regulatory basis for working with the financial community to develop or enhance ACH products and services as they become available in the banking industry, if they are consistent with the terms of the regulation described in this part. This requires a complete rewording of Subpart A and Subpart B.

DATES: Comments must be received on or before November 29, 1994.

ADDRESSES: Comments may be mailed to the Cash Management Policy and Planning Division, Financial Management Service, U.S. Department of the Treasury, Room 511, Liberty Center, 401 14th Street SW., Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: John Galligan (202) 874–6935 (Director, Cash Management Policy and Planning Division); or Margaret Roy (Principal Attorney) (202) 874–6680.

SUPPLEMENTARY INFORMATION:

Background

Part 210 of Title 31 of the Code of Federal Regulations sets forth the rights and liabilities of the Government, Federal Reserve Banks, financial institutions and recipients where recipients of Government payments authorize the payments to be made by the ACH method. The regulations in this part were promulgated in 1975 and revised in 1976, 1984, 1987, 1989, and 1993.

The Service is revising these regulations to provide the framework necessary to achieve its ACH development strategy which involves the following three objectives: (1) Broaden the use of the ACH network for payments and collections; (2) move closer to industry standards to easily expand Government services within existing networks; and, (3) pursue a paperless environment.

The Service proposes to increase the use of the ACH network by adapting the regulatory framework of Part 210 to the emerging body of ACH products and services. This requires an expansion of the regulation to cover activities that are, or in the future may be, handled over the ACH network, including collections and the movement of information related to monetary transactions. In this way, the Service and Federal program agencies will be in a position to take full advantage of the ACH network to move as many of the Government's transactions as possible to ACH.

Moving closer to industry standards, as set forth by NACHA through the *ACH Rules*, also will enable the Government to expand its use of the ACH network. This will give the Service the flexibility to adopt, when in the best interest of the Government and consistent with legal requirements, those ACH practices and procedures that are proven viable in the commercial sector, and to work within industry rulemaking practices to introduce new practices and procedures. This requires a complete reworking of Subpart A and Subpart B.

The Service, in its pursuit toward a paperless environment, will be able to streamline and automate such diverse payment-related information processes as change requests, authorization activities, and reclamations. In the past, these have been expensive paper-based ancillary ACH activities. Advances in the ACH network have shown the efficiency of automating these processes.

The following methods were used by the Service to determine which revisions to the rules were necessary to achieve its ACH development strategy. First, an ACH work group was established to identify the major differences between the Government and private industry. The work group wrote issue papers discussing the differences along with options for resolving them. Second, a rules impact assessment was developed to determine how the differences in rules affected financial institutions. The assessment involved asking representatives from financial institutions about the impact of the current Government ACH rules and procedures, and an analysis of their responses. Third, the Service conducted a series of Federal agency forums to discuss options to resolve the differences. These efforts provided the basis for making the proposed revisions.

The Service is proposing:

(1) Clarification of the authorization and revocation processes to offer additional consumer protection and to facilitate automated or streamlined authorization procedures, including procedures to authorize debits.

(2) Clarification of the liability of participants with regard to authorizations, revocations, prenotification entries, notification of change entries, and commercial-to-Government entries.

(3) That liabilities be associated with failure to examine and act upon prenotifications that may be originated by the Government.

(4) A regulatory framework for equitable adjustments when a financial institution either has been enriched, or harmed, as a result of erroneous ACH entries. The provision will allow Federal agencies to abide by industry rules if they have independent authority and choose to do so.

(5) That after due consideration of commercial practices, the Service may publish procedures under which it may authorize reversing entries to correct duplications or errors.

(6) Improvements to the reclamation of post-death benefits portion of the regulation, and a framework for paperless processing of the information and money associated with these transactions.

(7) To substitute certain terms used in the *ACH Rules* for terms which the Government uses in the same way as those defined in the *ACH Rules*, and to include those terms the Government uses differently from the *ACH Rules* or which are not contained in the *ACH Rules*. For example, current Part 210 uses the term "payment date," while the *ACH Rules* use the term "settlement date." Since both of these terms are used in the same way, the Service will use the term "settlement date."

The Service will accept or reject amendments to the NACHA Operating Rules and NACHA Operating Guidelines which may affect Government ACH transactions. Therefore, Section 210.2(a)(4) proposes that "The Service will indicate its acceptance or rejection of amendments to NACHA Operating Rules and NACHA Operating Guidelines in effect on September 27, 1994, by publishing a notice in the **Federal Register** prior to the effective date of the amendments."

Rulemaking Analysis

Treasury has determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required. It is hereby certified that this revision will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The included changes are expected to result in improvements to the ACH process with advantages to institutions and recipients.

List of Subjects in 31 CFR Part 210

Automated Clearing House, banks, banking, electronic funds transfer, Federal Reserve Banks, financial institution, Government employees, wages.

Accordingly, Part 210 of Title 31 of the code of Federal regulations is proposed to be revised, as follows:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

Subpart—A General

Sec.
210.1 Scope of regulations.
210.2 General.
210.3 Authorizations and revocations of authorizations.
210.4 The Government.
210.5 Federal Reserve Banks.
210.6 Financial institutions.
210.7 Fraud.

Subpart B—Reclamations

210.8 General terms of reclamations.
210.9 Knowledge of death or legal incapacity of Receiver or death of entitled beneficiary.
210.10 Liabilities/limitations.
210.11 Notice to Account Holders.
210.12 Erroneous death information, restitution and over recoveries.

Subpart C—Discretionary Salary Allotments

210.13 General.

Subpart D—Savings Allotments

210.14 General.

Subpart E—Definitions

210.15 Definitions.

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3335 and other provisions of law.

Subpart A—General

§ 210.1 Scope of regulations.

This part governs the way the Federal Government (Government) uses the Automated Clearing House (ACH) network to effect electronic credits and debits, and non-value transactions. This part supersedes the savings allotment provisions of Part 209 of this title by including provisions for savings allotments (available hereunder only to Federal civilian employees). These transactions are made by the ACH payment method under the terms of this part. Regulations requiring the collection and disbursement of all ACH Federal funds via Electronic Funds Transfer (EFT), when cost effective, practicable, and consistent with existing statutes, can be found at Part 206 of this title. Regulations promulgated by the Bureau of the Public Debt governing payments made by the ACH method for principal and interest on Government securities can be found at Part 370 of this title.

§ 210.2 General.

(a) *Governing law.* Federal payments and collections made through the ACH method are governed by the terms of this part, the instructions issued under this part, Federal statutes and Regulation E. Federal payments and collections also are governed by the operating rules and guidelines promulgated by the National Automated Clearing House Association (NACHA), in effect on September 27, 1994, only to the extent they do not conflict with this part, the instructions issued under this part, Federal statutes and Regulation E.

(1) This part furthers the Government's obligation to protect the public trust, limits the financial liability of the Government, and ensures clarity in the application of the *ACH Rules* to Government participants.

(2) The Department of the Treasury, Financial Management Service (the Service), is responsible for publishing operating policies, procedures and guidelines for Government payment and collection transactions using the ACH method. These instructions will be published by the Service in its Treasury Financial Manual (TFM) and/or other operating guidelines.

(3) The NACHA operating guidelines may be found in the *ACH Rules* book, published by NACHA and distributed through regional ACH associations.

(4) The Service will indicate its acceptance or rejection of amendments to NACHA Operating Rules and NACHA Operating Guidelines in effect on September 27, 1994, by publishing a notice in the **Federal Register** prior to the effective date of the amendments. Failure to accept or reject prior to the effective date of the amendments will be deemed a rejection of such amendments.

(b) *Breach of warranty, compensation for breach of warranty or errors.* Each participant named under this part warrants to all other parties that it has handled entries in accordance with the requirements stated in this part. This warranty shall be limited to the amount of the payment, with one exception: Agencies may use the compensation rules found in Appendix VIII of the *ACH Rules*. Use of the compensation rules shall be preceded by a written agreement. Funding, authority, and agreements for any such payments will be the responsibility of the agency, not the Department of the Treasury or the Service.

(c) *Arbitration rules in cases of dispute.* Agencies may use arbitration requirements found in Appendix IX of the ACH Rules. Use of the arbitration provisions shall be preceded by a written agreement for their use. Funding for any expenses incurred in following the arbitration requirements will be the responsibility of the agency, not the Department of the Treasury or the Service.

(d) *Relationship to other laws.* Payments and collections through the ACH method are subject to all applicable Federal statutes, regulations, and executive orders, and to the laws of the United States.

(e) *Relationship to commercial practices.* Payments and collections through the ACH method are subject to commercial practices, such as those governing commercial ACH transactions, to the extent that they are consistent with this part, the instructions issued under this part, Federal statutes and Regulation E.

(f) *Relationship to Regulation E.* Regulation E applies to all EFT services offered by financial institutions for the transfer of funds that debit or credit consumer accounts. Regulation E applies to any person or entity that issues an access device that allows individuals to initiate EFT from consumer accounts, and to any financial institution or other person that holds consumer accounts. Regulation E applies to Federal payments and collections through the ACH method.

(g) *Relationship to Uniform Commercial Code.* Payments and collections through the ACH method are subject to Articles 3 and 4 of the Uniform Commercial Code as adopted by the jurisdiction governing the account, to the extent that they are consistent with this part, the instructions issued under this part, Federal statutes and Regulation E.

§ 210.3 Authorizations and revocations of authorizations.

(a) *Authorizations.* Authorizations for payments and collections through the ACH method must be in writing and signed or similarly authenticated by the individual or entity initiating the payment or collection. Authorizations must be readily identifiable as authorizations and must clearly and conspicuously state their terms. Authorizations must provide that receipt by the Government of a revocation of authorization from the individual or entity initiating the payment or collection will be treated by the Government as a revocation of authorization by all parties, including the Government, the financial institution, and the Receiver. Authorizations must provide that the individual or entity initiating the payment or collection must give advance notice of the date and amount of the payment or collection. Authorizations must provide that the individual or entity initiating the payment or collection must give advance notice of any change in the date or amount of the payment or collection. Authorizations must provide that the individual or entity initiating the payment or collection must give advance notice of the termination of the authorization by the Government. Authorizations must provide that the individual or entity initiating the payment or collection must retain a copy of the authorization for two years after termination of the authorization and must provide a copy upon request to the Government, the financial institution, and the Receiver.

(b) *Revocations of authorizations.* Revocations of authorizations for payments and collections through the ACH method must be in writing and signed or similarly authenticated by the individual or entity initiating the payment or collection. Revocations of authorizations must be readily identifiable as revocations of authorizations and must clearly and conspicuously state their terms. Revocations of authorizations must provide that receipt by the Government of a revocation of authorization from the individual or entity initiating the payment or collection will be treated by the Government as a revocation of authorization by all parties, including the Government, the financial institution, and the Receiver. Revocations of authorizations must provide that the individual or entity initiating the payment or collection must retain a copy of the revocation of authorization for two years after termination of the authorization and must provide a copy upon request to the Government, the financial institution, and the Receiver.

§ 210.4 The Government.

(a) *Authorizations.* The Government is not required to obtain authorizations for payments and collections through the ACH method.

(b) *Revocations of authorizations.* The Government is not required to obtain revocations of authorizations for payments and collections through the ACH method.

(c) *Liabilities/limitations.* The Government is not liable for any loss or damage resulting from the failure of a financial institution to comply with the requirements of this part, the instructions issued under this part, Federal statutes and Regulation E, or the operating rules and guidelines promulgated by NACHA, in effect on September 27, 1994, only to the extent they do not conflict with this part, the instructions issued under this part, Federal statutes and Regulation E.

(d) *Notice to Account Holders.* The Government is not required to provide notice to Account Holders of payments and collections through the ACH method.

(e) *Erroneous death information, restitution and over recoveries.* The Government is not liable for any loss or damage resulting from erroneous death information, restitution and over recoveries.

§ 210.5 Federal Reserve Banks.

(a) *Authorizations.* Federal Reserve Banks are not required to obtain authorizations for payments and collections through the ACH method.

(b) *Revocations of authorizations.* Federal Reserve Banks are not required to obtain revocations of authorizations for payments and collections through the ACH method.

(c) *Liabilities/limitations.* Federal Reserve Banks are not liable for any loss or damage resulting from the failure of a financial institution to comply with the requirements of this part, the instructions issued under this part, Federal statutes and Regulation E, or the operating rules and guidelines promulgated by NACHA, in effect on September 27, 1994, only to the extent they do not conflict with this part, the instructions issued under this part, Federal statutes and Regulation E.

(d) *Notice to Account Holders.* Federal Reserve Banks are not required to provide notice to Account Holders of payments and collections through the ACH method.

(e) *Erroneous death information, restitution and over recoveries.* Federal Reserve Banks are not liable for any loss or damage resulting from erroneous death information, restitution and over recoveries.

§ 210.6 Financial institutions.

(a) *Authorizations.* Financial institutions are not required to obtain authorizations for payments and collections through the ACH method.

(b) *Revocations of authorizations.* Financial institutions are not required to obtain revocations of authorizations for payments and collections through the ACH method.

(c) *Liabilities/limitations.* Financial institutions are not liable for any loss or damage resulting from the failure of a financial institution to comply with the requirements of this part, the instructions issued under this part, Federal statutes and Regulation E, or the operating rules and guidelines promulgated by NACHA, in effect on September 27, 1994, only to the extent they do not conflict with this part, the instructions issued under this part, Federal statutes and Regulation E.

(d) *Notice to Account Holders.* Financial institutions are not required to provide notice to Account Holders of payments and collections through the ACH method.

(e) *Erroneous death information, restitution and over recoveries.* Financial institutions are not liable for any loss or damage resulting from erroneous death information, restitution and over recoveries.

§ 210.7 Fraud.

(a) *Authorizations.* Financial institutions are not required to obtain authorizations for payments and collections through the ACH method.

(b) *Revocations of authorizations.* Financial institutions are not required to obtain revocations of authorizations for payments and collections through the ACH method.

(c) *Liabilities/limitations.* Financial institutions are not liable for any loss or damage resulting from fraud.

(d) *Notice to Account Holders.* Financial institutions are not required to provide notice to Account Holders of payments and collections through the ACH method.

(e) *Erroneous death information, restitution and over recoveries.* Financial institutions are not liable for any loss or damage resulting from erroneous death information, restitution and over recoveries.

Subpart B—Reclamations

§ 210.8 General terms of reclamations.

(a) *Governing law.* Reclamations of benefit payments made through the ACH method are governed by the terms of this part, the instructions issued under this part, Federal statutes and Regulation E. Reclamations also are governed by the operating rules and guidelines promulgated by NACHA, in effect on September 27, 1994, only to the extent they do not conflict with this part, the instructions issued under this part, Federal statutes and Regulation E.

(b) *Relationship to other laws.* Reclamations of benefit payments made through the ACH method are subject to all applicable Federal statutes, regulations, and executive orders, and to the laws of the United States.

(c) *Relationship to commercial practices.* Reclamations of benefit payments made through the ACH method are subject to commercial practices, such as those governing commercial ACH transactions, to the extent that they are consistent with this part, the instructions issued under this part, Federal statutes and Regulation E.

(d) *Relationship to Regulation E.* Regulation E applies to all EFT services offered by financial institutions for the transfer of funds that debit or credit consumer accounts. Regulation E applies to any person or entity that issues an access device that allows individuals to initiate EFT from consumer accounts, and to any financial institution or other person that holds consumer accounts. Regulation E applies to Federal reclamations through the ACH method.

(e) *Relationship to Uniform Commercial Code.* Reclamations of benefit payments made through the ACH method are subject to Articles 3 and 4 of the Uniform Commercial Code as adopted by the jurisdiction governing the account, to the extent that they are consistent with this part, the instructions issued under this part, Federal statutes and Regulation E.

§ 210.9 Knowledge of death or legal incapacity of Receiver or death of entitled beneficiary.

(a) *Knowledge of death or legal incapacity of Receiver or death of entitled beneficiary.* A financial institution is deemed to have knowledge of the death or legal incapacity of a Receiver or the death of an entitled beneficiary if the financial institution has received notice of the death or legal incapacity of a Receiver or the death of an entitled beneficiary in sufficient time to act upon the notice.

(b) *Sufficient time to act.* A financial institution is deemed to have received notice of the death or legal incapacity of a Receiver or the death of an entitled beneficiary in sufficient time to act upon the notice if the notice is received by the financial institution at least two banking days before the payment date of the benefit payment.

§ 210.10 Liabilities/limitations.

(a) *Liabilities/limitations.* A financial institution is not liable for any loss or damage resulting from the failure of a financial institution to comply with the requirements of this part, the instructions issued under this part, Federal statutes and Regulation E, or the operating rules and guidelines promulgated by NACHA, in effect on September 27, 1994, only to the extent they do not conflict with this part, the instructions issued under this part, Federal statutes and Regulation E.

(b) *Notice to Account Holders.* A financial institution is not required to provide notice to Account Holders of reclamations through the ACH method.

(c) *Erroneous death information, restitution and over recoveries.* A financial institution is not liable for any loss or damage resulting from erroneous death information, restitution and over recoveries.

§ 210.11 Notice to Account Holders.

(a) *Notice to Account Holders.* A financial institution is not required to provide notice to Account Holders of reclamations through the ACH method.

(b) *Erroneous death information, restitution and over recoveries.* A financial institution is not liable for any loss or damage resulting from erroneous death information, restitution and over recoveries.

§ 210.12 Erroneous death information, restitution and over recoveries.

(a) *Erroneous death information, restitution and over recoveries.* A financial institution is not liable for any loss or damage resulting from erroneous death information, restitution and over recoveries.

Subpart C—Discretionary Salary Allotments

§ 210.13 General.

(a) *Governing law.* Discretionary salary allotments made through the ACH method are governed by the terms of this part, the instructions issued under this part, Federal statutes and Regulation E. Discretionary salary allotments also are governed by the operating rules and guidelines promulgated by NACHA, in effect on September 27, 1994, only to the extent they do not conflict with this part, the instructions issued under this part, Federal statutes and Regulation E.

(b) *Relationship to other laws.* Discretionary salary allotments made through the ACH method are subject to all applicable Federal statutes, regulations, and executive orders, and to the laws of the United States.

(c) *Relationship to commercial practices.* Discretionary salary allotments made through the ACH method are subject to commercial practices, such as those governing commercial ACH transactions, to the extent that they are consistent with this part, the instructions issued under this part, Federal statutes and Regulation E.

(d) *Relationship to Regulation E.* Regulation E applies to all EFT services offered by financial institutions for the transfer of funds that debit or credit consumer accounts. Regulation E applies to any person or entity that issues an access device that allows individuals to initiate EFT from consumer accounts, and to any financial institution or other person that holds consumer accounts. Regulation E applies to Federal discretionary salary allotments through the ACH method.

(e) *Relationship to Uniform Commercial Code.* Discretionary salary allotments made through the ACH method are subject to Articles 3 and 4 of the Uniform Commercial Code as adopted by the jurisdiction governing the account, to the extent that they are consistent with this part, the instructions issued under this part, Federal statutes and Regulation E.

Subpart D—Savings Allotments

§ 210.14 General.

(a) *Governing law.* Savings allotments made through the ACH method are governed by the terms of this part, the instructions issued under this part, Federal statutes and Regulation E. Savings allotments also are governed by the operating rules and guidelines promulgated by NACHA, in effect on September 27, 1994, only to the extent they do not conflict with this part, the instructions issued under this part, Federal statutes and Regulation E.

(b) *Relationship to other laws.* Savings allotments made through the ACH method are subject to all applicable Federal statutes, regulations, and executive orders, and to the laws of the United States.

(c) *Relationship to commercial practices.* Savings allotments made through the ACH method are subject to commercial practices, such as those governing commercial ACH transactions, to the extent that they are consistent with this part, the instructions issued under this part, Federal statutes and Regulation E.

(d) *Relationship to Regulation E.* Regulation E applies to all EFT services offered by financial institutions for the transfer of funds that debit or credit consumer accounts. Regulation E applies to any person or entity that issues an access device that allows individuals to initiate EFT from consumer accounts, and to any financial institution or other person that holds consumer accounts. Regulation E applies to Federal savings allotments through the ACH method.

(e) *Relationship to Uniform Commercial Code.* Savings allotments made through the ACH method are subject to Articles 3 and 4 of the Uniform Commercial Code as adopted by the jurisdiction governing the account, to the extent that they are consistent with this part, the instructions issued under this part, Federal statutes and Regulation E.

Subpart E—Definitions

§ 210.15 Definitions.

(a) *Account Holder* means a person or entity that has an account with a financial institution.

(b) *ACH* means Automated Clearing House.

(c) *ACH Rules* means the operating rules and guidelines promulgated by NACHA.

(d) *Agency* means a Federal agency as defined in 5 U.S.C. 551(1).

(e) *Authorization* means a record authorizing payments or collections through the ACH method.

(f) *Banking day* means a day on which a financial institution is open to the public for substantially all of its banking functions.

(g) *Benefit payment* means a payment made by the Government to an individual, including a payment made on behalf of an individual to a third party, such as a mortgage company making a housing payment on behalf of a homeowner.

(h) *Business day* means Monday through Friday, except Federal holidays.

(i) *Commercial ACH transaction* means a payment or collection through the ACH method between business entities.

(j) *Commercial-to-Government entry* means a payment or collection through the ACH method between a business entity and the Government.

(k) *Consumer account* means an account established primarily for personal, family or household purposes.

(l) *Direct deposit* means the deposit of a benefit payment into an account.

(m) *Discretionary salary allotment* means a payment or collection through the ACH method between the Government and a financial institution for the benefit of a Receiver, at the Receiver's discretion.

(n) *Electronic Funds Transfer (EFT)* means the electronic transfer of money through the ACH method.

(o) *Entitled beneficiary* means a person or entity entitled to receive a benefit payment.

(p) *Entry* means a payment or collection through the ACH method.

(q) *Fraud* means fraud in connection with payments or collections through the ACH method.

(r) *Government* means the Government of the United States of America.

(s) *Non-value transaction* means a transaction through the ACH method that does not involve a payment or collection, such as a prenotification entry.

(t) *Notice* means a record providing information.

(u) *Originator* means a person or entity that initiates payments or collections through the ACH method.

(v) *Payment date* means the date on which a payment is to be made.

(w) *Prenotification entry* means a non-value transaction through the ACH method to verify the routing number and account number of a Receiver.

(x) *Receiver* means a person or entity that receives payments or collections through the ACH method.

(y) *Record* means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(z) *Regulation E* means 12 CFR Part 205.

(aa) *Reclamation* means a demand for the return of a benefit payment.

(bb) *Reclamation entry* means a payment through the ACH method to return a benefit payment.

(cc) *Recurring benefit payment* means a benefit payment that is made on a regular basis.

(dd) *Revocation of authorization* means a record revoking authorization for payments or collections through the ACH method.

(ee) *Savings allotment* means a payment through the ACH method between the Government and a financial institution for the benefit of a Receiver, at the Receiver's discretion.

(ff) *Settlement date* means the date on which payments are to be settled.

(gg) *Treasury* means the Department of the Treasury.

(hh) *Writing* means a record.

Dated: September 26, 1994.

Russell D. Morris,

Commissioner.

[FR Doc. 94–24127 Filed 9–29–94; 8:45 am]

BILLING CODE 4810–35–M

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§ 210.3 Authorizations and revocations of authorizations.

(a) *Requirements for authorization.* The requirements for authorization to originate and receive credit and debit transactions are as follows:

(1) Every Government Originator shall obtain prior authorization from the Receiver for ACH transactions originated by the Government. The Government Originator shall exercise due diligence in verifying the identity of any Receiver who presents an authorization to the Government.

(2) All Originators sending ACH credits with a value greater than zero to the Government shall enter into an agreement with the Government entity to which the credit is directed prior to transmitting the first credit. Specifications for the agreement can be found in the TFM.

(3) A Receiving Depository Financial Institution (RDFI) shall verify the identity of any Receiver who initiates or executes an authorization through the RDFI to receive credits or debits originated by the Government. The RDFI shall exercise due diligence in such identification, at a minimum applying the standards used for negotiation of financial instruments.

(4) The title of the account designated to receive a payment shall include the name of the Receiver, except as provided as follows:

(i) In the case of discretionary allotments, the allotter may authorize a credit to any other Receiver. The Receiver's agreement is not required for the authorization or revocation;

(ii) In the case of a master account/sub-account structure, the accounts need not include the name of the Receiver. However, a clearly traceable audit trail to the payment shall exist in the sub-account, and the Receiver must retain control over the funds.

(5) Government benefit payments shall be deposited only into a consumer account except under conditions stated in § 210.3(a)(4)(ii). The definition of consumer account includes non-participating depository financial institutions that receive Government payments.

(6) Unless expressly authorized in writing, Originators and Originating Depository Financial Institutions (ODFIs) shall not initiate, under any circumstances, debit entries to the Government. ODFIs shall be subject to the liabilities in § 210.6(e)(2) for any unauthorized debits.

(b) *Terms of Receiver authorizations.* By executing an authorization for a Government ACH participant to initiate credits or debits, a Receiver agrees:

(1) To the provisions of this part;

(2) To provide accurate information;

(3) To verify their identity to the satisfaction of the RDFI or Government Originator, whichever has accepted the authorization;

(4) That any new authorization pertaining to a credit or debit supersedes any previous authorization pertaining to the same credit or debit;

(5) That the Government reserves the right to use reversal entries in the event that it originates duplicate files or makes entries in error; and,

(6) That Government benefits shall be sent to a designated RDFI and that the full amount of the Government benefit shall be credited to either a checking or a savings account, but not both.

(c) *Termination and revocation of authorizations.* An ACH authorization shall remain valid until it is terminated or revoked by—

(1) Receipt by the Government Originator of a written request from the Receiver, unless a later effective date is requested by the Receiver;

(2) A change in the title of an account which removes or adds the name of a Receiver, or otherwise alters the interest of the Receiver of Government credits, except as provided in § 210.3(a)(4)(i) & (ii) of this part;

(3) The death of a Receiver or the death of a beneficiary on whose behalf the Receiver is accepting credits;

(4) Closing of the Receiver's account at the RDFI by the Receiver or by the RDFI. If the RDFI is closing the account, it shall provide 30 days written notice to the Receiver before it takes any action;

(5) Inability of the RDFI to process the item correctly or properly because of incorrect transaction instructions;

(6) Failure to meet any of the conditions specified in the terms of the authorization;

(7) A determination by the Government Originator that the conditions of authorization have changed and accordingly, the authorization is void as of the time of the changed condition;

(8) Return by the RDFI of one or more debit entries originated by the Government for reasons of insufficient funds, stop payment orders, or other similar reasons; or,

(9) The RDFI's insolvency, closure by any State or Federal regulatory authority or by corporate action, or appointment of a receiver, conservator, liquidator or other officer. In each event, the authorization shall remain valid if a successor is named. At the Service's discretion, the Government may temporarily transfer authorizations to another RDFI. The transfer is valid until either a new authorization is executed by the Receiver, or 120 days have elapsed since the insolvency, closure or appointment, whichever occurs first.

(d) *Assignment of benefit payments prohibited.* Except as authorized by law, an ACH authorization shall not be used to assign benefits to a party other than the beneficiary, or someone designated by the Government Originator to act on behalf of the beneficiary.

§ 210.4 The Government.

(a) *Timeliness of entries.* Government ACH participants shall forward all ACH transactions they prepare to an ACH Operator site designated by the Federal Reserve Bank. Government ACH participants shall conform with the timing requirements of the Federal Reserve Bank.

(b) *Authorization to receive ACH entries.* Government participants may receive ACH credit entries with a value greater than zero. Prior written authorization from the Service is required, and the Service will direct the Federal Reserve Bank to take appropriate actions. Government participants shall require ODFIs to initiate such credits to the General Account of the Department of the Treasury at a Federal Reserve Bank designated by the Government Participant in the authorization agreement.

(c) *Requirement to post or return ACH entries.* Government participants shall review all ACH credit entries with a value greater than zero, that they receive. If the entries do not balance, are incomplete, are clearly incorrect, or, are incapable of being processed, the Government participants shall advise the Federal Reserve Bank to take appropriate action. Timing of the advice shall be according to Federal Reserve Bank deadlines and instructions. In the event of an unauthorized debit to the Government, the Government participant shall transmit a Return entry to the designated Federal Reserve Bank, in time to effect same-day settlement.

(d) *Timing of settlement by the Government.* Government participants shall make their authorized ACH transactions effective on the designated settlement date.

(e) *Prenotifications.* Government participants may originate ACH Prenotification entries prior to origination of the first ACH credit to a Receiver. Government participants shall originate a Prenotification prior to origination of the first debit to a Receiver. A Government participant that is a Receiver of Prenotifications will verify and respond to Prenotifications according to the *ACH Rules.*

(f) *Notification of Change.* Government participants shall originate and receive Notification of Change entries and Refused Notification of Change entries, except where the Government does not recognize a particular change code. A list of acceptable change codes can be found in the TFM.

(g) *Limited liability of the Government.* The Government will be liable to a Receiver or Originator only for a failure to effect the appropriate credit or debit entries to the Receiver's account. The Government's total liability is limited to the amount of the payment entry, unless the exception in § 210.2(b) applies. The Government will not be liable to any ACH association.

(h) *Losses sustained by financial institutions.* The Government will be liable to financial institutions for losses sustained in processing ACH credit and debit entries originated by a Government participant. The Government's total liability is limited to the amount of the payment entry, unless the exception in § 210.2(b) applies. Financial institutions shall have exercised due diligence, using standard commercial practices, in following the transaction instructions associated with the entry. The provisions of this subsection do not apply to credits and debits received by the RDFI after the death or legal incapacity of the beneficiary. Such credits and debits shall be governed by § 210.10 of this part.

(i) *Acquittance.* The appropriate crediting of the amount of an entry to a Receiver's account shall constitute full acquittance of the Government for the amount of the entry. The crediting of the amount of an entry received by the Federal Reserve Bank and posted to Treasury's General Account shall constitute full acquittance of the ODFI for the amount of the entry. Full acquittance of the ODFI shall not occur if the entries do not balance, are incomplete, are clearly incorrect, or, are incapable of being processed.

§ 210.5 Federal Reserve Banks.

(a) *Fiscal Agent role.* Each Federal Reserve Bank serves as a Fiscal Agent of the Government and is authorized to act as the Government's ACH Operator.

(b) *Routing and Transit Numbers.* All routing and transit numbers issued to Government participants require the prior approval of the Service.

(c) *Delivery and funds availability.* The Federal Reserve Banks shall make the Government's ACH entry information available to a financial institution or its agent no later than the opening of business for the financial institution on the settlement date. The Federal Reserve Banks shall make funds available to the financial institution for credit entries at the opening of business for the Federal Reserve Banks on the settlement date as prescribed by the Board of Governors of the Federal Reserve System. The Federal Reserve Banks shall prescribe the medium which will be used.

(d) *Authorization of Federal Reserve Banks to debit or credit financial institutions.* A financial institution that utilizes an account at a Federal Reserve Bank and that transmits ACH transactions to or from a Government participant, shall be deemed to authorize the Federal Reserve Bank to use the account for settlement purposes.

(e) *Federal Reserve Bank liability.* Each Federal Reserve Bank shall be responsible only to the Treasury and shall not be liable to any other party for any loss resulting from the Federal Reserve Bank's action under this part.

§ 210.6 Financial Institutions.

(a) *Acceptance of the terms of this part.* Financial institution acceptance or transmittal of ACH entries to or from participating Government participants constitutes the financial institution's agreement to the terms of this part, regardless of whether it has executed an authorization.

(b) *Funds availability.* RDFIs shall make Government consumer credit entries available to the Receiver for withdrawal not later than the opening of business (the later of 9:00 a.m. local time or the time the teller facilities, including automatic teller machines, are available for customer account withdrawals).

(c) *RDFI action in response to Government-originated Prenotifications.* Government Originators may send Prenotification transactions to the RDFIs prior to the start of authorized credit or debit entries.

(1) In addition to the responsibilities outlined in the *ACH Rules,* the RDFI shall verify the entry by examining the Receiver's account number and at least one other identifying data element. An example of an identifying data element is the authorizing Receiver's name.

(2) RDFIs that fail to act upon proper and timely Government Prenotifications, and RDFIs that fail to fully verify the identity of the Receiver, shall be held liable to the Government. This liability shall be the lesser of the Government's loss or the amount of the credit or debit transaction(s) in question.

(d) *Financial institution is not designated a Government depository.* RDFIs to which a Government ACH entry is sent do not become, by such action, a Government depositary and shall not advertise themselves as Government depositaries.

(e) *Financial institution liabilities.* Financial institution liabilities are as follows:

(1) A financial institution shall be liable to the Government for losses sustained by the Government if the Government has correctly handled the entry(ies). This liability is limited to the amount of the entry(ies).

(2) ODFIs shall be liable for all unauthorized debits to the Treasury General Account regardless of timeliness of the return entry. As a remedy, the Service may instruct the Federal Reserve Bank to debit the account utilized by the financial institution.

(3) Financial institutions will be held harmless for the Government's losses if the financial institution notifies the Government Originator of erroneous entries originated by the Government. Such notification shall be by Notification of Change entry. This relief from liability only applies to credits and debits received by the financial institution 10 or more business days after a Notification of Change is provided to the Government Originator.

§ 210.7 Fraud.

Identification of Receivers. An RDFI that executes an authorization in which the Receiver's signature is forged or in which other information is falsified, shall be liable to the Government for all payments or collections made in reliance on the authorization. The provisions of § 210.3(a) also apply.

Subpart B—Reclamations

§ 210.8 General terms of reclamations.

(a) *General.* Credits originated by Government participants subsequently may be determined to be erroneous because of the death or legal incapacity of the Receiver or death of the beneficiary. The Government reserves the right to recover these credits and hold the RDFI liable for these funds. The terms "reclamation" and "reclaim" refer to the Government's action to recover these benefit payments. Reclamation actions are strictly limited to circumstances that meet the following criteria:

(1) The credit being reclaimed was a benefit payment to a Receiver or beneficiary; and,

(2) The Receiver was deceased or legally incapacitated, or the beneficiary was deceased, on or before the last day of the entitlement period to which the credit applies; and,

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(3) The Government participant that originated the entry has requested reclamation; and,

(4) The credit has not been previously remitted to the Government by any source.

(b) *Reclamation by non-Government Originators.* The Government will not accept or be liable for reclamation entries received from non-Government Originators.

§ 210.9 Knowledge of death or legal incapacity of Receiver or death of beneficiary.

(a) *Knowledge of death or legal incapacity by an RDFI.* When an RDFI first learns of the death or incapacity of a customer who is a Receiver of Government ACH benefit payments or the death of a customer who is a beneficiary, it shall take the actions required under this part. Knowledge of the death or incapacity may occur by, but is not limited to, any communication with an executor of the deceased Receiver's or beneficiary's estate, family member, or other third party; or any form of notification from the Government. RDFIs are not obligated to undertake extraordinary efforts that fall outside normal business practices to learn of a death or legal incapacity. Extraordinary measures include, but are not limited to, reviewing newspaper obituary notices.

(b) *Actions required when RDFIs are notified of a death or legal incapacity.* When notified of the death or legal incapacity of a Receiver, or the death of a beneficiary, a RDFI shall either return or refuse any ACH entries subsequently received from Government Originators. If an RDFI returns either full or partial payments by check, the Service may assess an administrative fee to cover the expense of processing. Failure to return credits in accordance with these rules shall result in forfeiture of the RDFI's right to limit its liability under the provisions of this part.

(c) *Recovery involving multiple credits that are subject to reclamation.* If the Government erroneously originates a number of credits after the death or legal incapacity of a Receiver or the death of a beneficiary, the sequence of effective recovery of credits does not affect the RDFI's liability.

§ 210.10 Liabilities/limitations.

(a) *Rules pertaining to type of account.* There is no exemption from liability for recovery of payments issued erroneously after the Receiver's death or legal incapacity or the beneficiary's death based on the type of account to which the Government credits are made.

(b) *RDFI liability and right to limit liability.* An RDFI shall be liable to the Government for the total amount of each credit received after the death or legal incapacity of the Receiver or the death of the beneficiary, except as provided in paragraphs (e) and (f) of this section. An RDFI may limit its liability if:

(1) The RDFI did not have knowledge of the death or legal incapacity on the effective settlement date of the entry in question, or at the time of withdrawal of credits made after the death or legal incapacity; and

(2) The RDFI fulfills the requirements of this subpart and any relevant procedures published by the Service.

(c) *Determination of the amount of an RDFI's liability.* Except as provided in paragraph (f) of this section, if limitation of liability is available to an RDFI, the amount of its liability for erroneous Government credits received shall be as follows:

(1) The RDFI is liable for the amount of any Federal Government entries settled within 45 days of the Receiver's death or legal incapacity, or the beneficiary's death, minus any amount recovered by the Government Originator;

(2) In addition, the RDFI's liability extends to Federal Government entries settled more than 45 days after the death or legal incapacity of the Receiver or the death of the beneficiary. This additional liability is the lesser of:

(i) An amount equal to the amount of the entries which settled more than 45 days after the death or legal incapacity of the Receiver or the death of the beneficiary;

(ii) An amount equal to the amount in the Receiver's or beneficiary's account as defined in § 210.10(i)(2)(ii).

(d) *Reclamation actions are not directed toward Receiver's account.* This part does not authorize or direct an RDFI to debit the account of a Receiver or any other customer, living or deceased, for the RDFI's liability to the Government under §§ 210.8 through 210.12. The amount in the Receiver's account is only a measure of the RDFI's liability. Nothing in this part shall be construed to affect any right an RDFI may have under State law or the RDFI's contract with a customer to recover amounts equal to those returned to the Government in compliance with this part. A withdrawer may deposit funds to an account and authorize the RDFI to return such monies to the Government.

(e) *Exception to liability rule—person entitled to Government benefits is deceased at the time of authorization.* An RDFI shall not be liable for ACH credit entries sent to a Receiver acting as a fiduciary on behalf of a beneficiary, if the beneficiary was deceased at the time the authorization was executed and the RDFI had no knowledge of the death. The verification and liability provisions of §§ 210.3(a)(3) and 210.7 shall apply.

(f) *Requirement that Government Originators act on notice of death.* An RDFI return of credits to the Government by ACH because of the death of the Receiver or beneficiary will constitute effective notice of death to the Government Originator. The RDFI shall not be liable for any future ACH transaction for that individual from the same Government Originator if the settlement date is more than 10 business days after the settlement date of the return entry.

(g) *Time limit to initiate reclamation actions.* The Government may initiate reclamation actions to recover erroneous credits within 12 months after the date that the Originator receives notice that the Receiver died or became legally incapacitated, or that the beneficiary died. The amount Government Originators can reclaim is the total of all payments made during the 6 years following the date of death or legal incapacity of the Receiver or death of the beneficiary.

(h) *Actions to recover funds from withdrawers.* The RDFI's liability under this part is not affected by any unsuccessful action taken by the Government to recover funds from any party.

(i) *Payment to the Government for reclaimed amounts.* The payments subject to reclamation are:

(1) If the RDFI had knowledge on the settlement date of the death or legal incapacity of the Receiver or the death of the beneficiary and did not timely and properly return the payment(s) by ACH return entry to the Government, the RDFI shall be liable for that entry(ies) and shall return an equal amount to the Government.

(2) If the RDFI had no knowledge on the settlement date of the death or legal incapacity of the Receiver or the death of beneficiary, the RDFI shall be liable for the lesser of:

(i) An amount equal to the amount of the payment(s); or

(ii) An amount equal to the amount in the deceased or legally incapacitated Receiver's account, or the deceased beneficiary's account, up to the amount of the payment. The amount in the account is defined as the account balance when the RDFI received notice of the death or legal incapacity and had reasonable time to take action on it, plus any other additions to the account balance made before the RDFI returns the payment(s). For purposes of this paragraph, action is taken within a reasonable time if it is taken not later than the close of the business day following the receipt of the reclamation entry(ies). When determining the amount in the account, the RDFI's liability shall not be reduced for debit card withdrawals, automated withdrawals, pre-authorized debits, non-Government reclamations, and forged checks or other comparable instruments, made after the RDFI had knowledge of the death or legal incapacity.

(j) *List of withdrawers.* If the amount paid by the RDFI is less than the full amount of the reclamation, the RDFI shall provide the Government:

(1) A list of withdrawers of any post-death payments and their most recent addresses;

(2) Certification that the RDFI has returned an amount equal to the amount in the account as defined in § 210.10(i)(2)(ii); and,

(3) Certification that the RDFI had no knowledge of the Receiver's death or legal incapacity, or the beneficiary's death, prior to receiving the credit entry(ies) in question.

§ 210.11 Notice to account holders.

(a) *Requirement to notify account holder(s).* When the RDFI receives a reclamation, it shall send written notification to the account holder(s) stating that a collection action may be or has been initiated. This notice should be sent no later than the date the RDFI recovers funds from the account.

(b) *Forfeiture of right to limit liability for failure to notify account holder(s).* Failure to provide notice to account holders, as prescribed in § 210.11 shall result in the forfeiture by the RDFI of its ability to limit its liability under this part. The Government may require the RDFI to provide proof that written notice was mailed to joint account holders. Proof may include, but is not limited to, a file copy of the notice, a certified mail receipt, or documentation pertaining to the standard operating procedure of the RDFI that such a notice is routinely sent. If an RDFI is not able to furnish proof of notice in response to a request by the Government, it shall forfeit any right it may have to limit its liability for that payment(s) and the Government may request the Federal Reserve Bank to debit the account of the RDFI for any otherwise unrecovered amount.

§ 210.12 Erroneous death information, restitution and over recoveries.

(a) *Reporting corrections or errors to the Government.* If the RDFI learns that the Receiver or beneficiary is not deceased or legally incapacitated, or that the date of death is incorrect, the RDFI shall inform the Government of the error immediately. Until the RDFI is notified otherwise, however, it remains liable for Government credits as specified in § 210.10 of this part.

(b) *Relief from or reduction in liability—error in fact or error in date of death.* The Government Originator will determine whether the report of an error in the fact of a Receiver's death or legal incapacity, or the date of death, is correct. After its review, the Government Originator will certify its determination in writing to the RDFI and inform the RDFI of relief from or change to its liability. If the Government Originator agrees that the original notice of death or legal incapacity was incorrect, or the date of death is materially different from the original notice, it shall stop further reclamation activity that it determines to be inappropriate.

(c) *Restitution by the Government of RDFI funds improperly reclaimed.* When appropriate, the Government Originator will remit to the RDFI any funds incorrectly returned or otherwise received from the RDFI.

(d) *Over/under recoveries.* In the event of an over recovery by the Government for an erroneous credit, the Government Originator will return immediately the excess amount, by appropriate means, to the party suffering the loss. In the event of either an over or under recovery, the Service may instruct the Federal Reserve Bank to credit or debit the reserve account of a financial institution.

Subpart C—Discretionary Salary Allotments

§ 210.13 General.

(a) *Scope.* This subpart applies only to Government discretionary allotments. This part does not supersede, and shall not be used to circumvent, the requirements of particular statutes, Executive Orders or other executive branch regulations; for example, the Office of Personnel Management regulations at 5 CFR Part 550, Subpart C, implementing 5 U.S.C. 5525.

(b) *Required use of the Automated Clearing House method.* Discretionary allotments shall be made by ACH entry, except when the Service determines that other means are more appropriate. "Discretionary allotment" as used herein means an amount the employing agency permits a Government employee to request be deducted from his/her net salary amount and paid to a Receiver. The aggregate amount of discretionary allotments may not exceed the net pay due the employee for each pay period after all deductions required by law are subtracted.

(c) *Head of Government originating agency determines discretionary allotment policy.* Discretionary allotments may be made for any purpose determined appropriate by the head of a Government participant and which are consistent with Title 5, Chapter 55, subchapter III, United States Code, and Title 5, Chapter 1, Part 550, subpart C, Code of Federal Regulations.

(d) *Timing of discretionary allotments.* Discretionary allotment payments shall be made in accordance with the schedule established by the Government Originator, provided such allotment credits are not effected until the related earnings have accrued.

(e) *Payment of discretionary allotments.* Discretionary allotments shall be made following the policy and procedures outlined in Subpart A for non-benefit payments, and in conformance with other requirements published by the Service.

Subpart D—Savings Allotments

§ 210.14 General.

(a) *Scope.* This subpart applies only to savings allotments. Provisions for certain other types of allotments, for example, dues to labor organizations, can be found in 5 CFR part 550, subpart C. The regulations in this part do not supersede, and shall not be used to circumvent, the requirements of particular statutes, Executive Orders or other executive branch regulations.

(b) *Required use of the Automated Clearing House method.* Savings allotments shall be made by ACH entry, when cost effective, practicable, and consistent with current statutory authority.

(c) *Policy for savings allotments for Government employees.* Any employee whose place of employment is within the boundaries of the United States or its territories may authorize an allotment of pay for a savings account under the regulations in this part. "Savings account" as used herein means an account (single or joint) for the purchase of shares (other than shares of stock) or for the deposit of savings in any RDFI. The title of the account shall include the name of the authorizing employee. The head of the employing Government participant shall honor requests for allotment of pay for savings accounts if:

(1) The Government employee provides the Government participant with an authorization; and,

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(2) The authorization has not been canceled by the employee, in writing, or otherwise terminated or revoked; and,

(3) Not more than two such allotments for any employee are in effect at any time; and,

(4) The amount of salary or wages becoming due an employee for any pay period thereafter is sufficient to cover the allotment(s). In making any determination under this paragraph, all payroll deductions otherwise required shall have precedence over those authorized by this section; and,

(5) The purpose of the allotment is not to circumvent statutes, Executive Orders, and other executive branch regulations, regardless of the manner in which the allotment for savings will be disposed of by the employee (which is at the employee's discretion).

Subpart E—Definitions

§ 210.15 Definitions.

As used in this part, unless the context otherwise requires:

Allotment means a recurring specified deduction from pay of a Government employee for a legal purpose authorized by the employee.

Allotter means the employee from whose pay an allotment is made.

Automated Clearing House or ACH means a funds transfer system which provides for the interbank clearing of electronic entries for participants.

Beneficiary means a natural person who is entitled to receive a benefit payment, or portion thereof, from the Government.

Benefit Payment is a credit of funds for any Federal entitlement program or annuity, originated by a Government participant. Benefit payments may be either one-time disbursements or recurring payments. A list of benefit payments is published by the Service in operating guidelines. Only benefit payments are subject to the reclamation provisions of this part.

Erroneous Payment means a benefit payment made after the death or legal incapacity of a Receiver or the death of a beneficiary. Erroneous payment is an operational term used by Government participants to refer to the payments described in the preceding sentence. Erroneous payments are subject to the 45-day liability rule of § 210.10 and the reclamation provisions of §§ 210.8 through 210.12.

Government means any department, independent establishment, board, office, commission, or other establishment in the executive, legislative (except the Senate and House of Representatives), or judicial branch of the Federal Government, including any wholly-owned or controlled Federal Government corporation, responsible for authorizing and initiating an ACH entry.

Government Participant means any Government agency or entity that sends ACH transactions to an ACH operator or receives ACH transactions from an ACH operator.

National Automated Clearing House Association or NACHA means the national association of regional member ACH associations, ACH Operators and participating financial institutions located in the United States. NACHA is a rulemaking body for commercial ACH transactions. The rules promulgated by NACHA can be found in the *ACH Rules* published by NACHA and distributed through regional ACH associations. For further information on the *ACH Rules*, call (703) 742–9190 or write to NACHA, 607 Herndon Parkway, Suite 200, Herndon, VA 22070.

Receiver means a natural person, corporation, or other public or private entity which is authorized by the Government Originator to receive ACH credit or debit entries from the Government.

Treasury Financial Manual (TFM) means the manual issued by the Service containing procedures to be observed by all Government agencies in relation to central accounting, financial reporting, and other Government-wide fiscal responsibilities of the Department of the Treasury. Copies of the TFM are available free to Government agencies. Others who are interested in ordering a copy may call (202) 208–1819 or write the Directives Management Branch, Financial Management Service, Department of the Treasury, Liberty Center (UPC–741), Washington, DC 20227 for further information.

Dated: July 28, 1994.

Russell D. Morris,

Commissioner.

[FR Doc. 94–23009 Filed 9–29–94; 8:45 am]

BILLING CODE 4810–35–P

federal register

Friday
September 30, 1994

Part V

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 58, et al.

Agency Reorganization of Analytical Testing Services; Final Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 58, 91, 93, 94, 95, and 98

[SD–94–002]

RIN 0581–AB24

Agency Reorganization of Analytical Testing Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) commodity laboratory testing programs under the AMS Science Division were established in August 1993. In order to implement the testing programs under the new regulations, AMS codified the agency reorganization of analytical testing services by consolidating and transferring functions from other Title 7 CFR parts related to testing to the AMS Science Division. An interim final rule to amend the regulations was published in the Federal Register on May 10, 1994, and received one comment. The interim final rule provided for reduced laboratory testing fees for certain dairy products based on various factors such as a decrease in minimum test times for certain products from one-half hour to one-quarter hour, a decrease in expenditures for making some test preparations, and a decreased number of procedural steps required for performing certain laboratory analyses. This final rule adopts as final the interim final rule with one additional fee change.

EFFECTIVE DATE: September 30, 1994.

FOR FURTHER INFORMATION CONTACT: William J. Franks, Jr., Director, Science Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 3507 South Agriculture Building, Washington, D.C. 20090–6456. Telephone (202) 720–5231.

SUPPLEMENTARY INFORMATION:

I. Executive Order 12866 and Executive Order 12778

The Department has determined that this rule is not significant for purposes of Executive Order 12866 and it therefore has not been reviewed by the Office of Management and Budget (OMB).

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

II. Effect on Small Entities

The Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (U.S.C. 601–612). The fees provided for in this rule reflect a minimal change in the costs currently borne by those entities which utilize certain laboratory services. The rule is designed to provide usual and reasonable fees for laboratory testing that are consistent with costs in time and resources to ensure adequate funding of the laboratory operations of the Science Division.

III. Background

On August 9, 1993, the agency reorganization of analytical testing under the Science Division and schedules of laboratory fees were published as a final rule in the Federal Register (58 FR 42408–42448) after receiving only one comment on the proposal. The fee schedules became effective immediately and were devised to have a single fee for the same test rather than assessing separate laboratory fees for different commodities and their products.

The dairy product laboratory fees for 35 tests or combinations of tests that were listed in former regulations at 7 CFR 58.44 were increased by large percentages in the August 9, 1993 final rule. As a consequence, the dairy industry indicated that it is burdened with testing fees that cannot be assimilated into current purchasing contracts.

The single test laboratory fees for other commodity products did not change as significantly as test fees for dairy products. Prior to the final rule implementation, the dairy testing fees had been revised only slightly since November 2, 1977 (42 FR 57301). The heavy volume of laboratory testing of dairy products in the early 1980's associated with Commodity Credit Corporation purchases diminished the need for periodic fee increases. However, the workload for laboratory testing of dairy products was reduced greatly beginning in 1986. In addition, the dairy testing fees were carried over and not revised from 1988 to 1993 while the Agency prepared a consolidated regulation for laboratory services within the Science Division and updated fees. Consequently, when the new fees were placed in effect, the dairy industry faced substantial increases in testing fees. In response to the various objections generated among dairy processors, and after further consideration of the matter, the agency temporarily restored the dairy testing fees to the applicable charges and hourly rate in effect on April 17, 1989. An interim final rule reducing testing fees was published and effective on May 10, 1994 (59 FR 24318). That rule amended 7 CFR parts 58, 91, 93, 94, 95 and 98. It provided a 30-day comment period which ended June 9, 1994. Only one comment was received recommending that the flavor fee be adjusted and made specific to dairy products.

IV. Provisions of the Interim Final Rule

The minimum laboratory testing fee was reduced from $17.10 to $8.55. The original minimum fee published on August 9, 1993, was based on current commodity product grading and inspection fees which specify a minimum one-half hour charge. However, some laboratory analyses applying to dairy product grading can be performed within a one-quarter hour and therefore would incur a corresponding $8.55 fee. The laboratory tests with a revised one-quarter hour charge are listed as follows: (1) Titratable acidity, (2) density or specific gravity, (3) scorched particles, (4) net weight per can, and (5) flavor. Analysis time includes the allotted periods for sample tracking, reagent and standard solution preparation, sample preparation and laboratory bench analysis, cleanup, analytical result determination and interpretation with supervisory review, and the time for issuing a test report. The individual laboratory test fee determinations in this rule must necessarily include the length of time spent on tests performed for quality control, quality assurance, and proficiency testing.

The schedules of consolidated fees and charges for the single analyte testings were established in the rule published on August 9, 1993, based on the reasoning that there is, in general, comparable complexity of procedures and similar methodology for different commodities and their products. However, some standard methods or tests for the examination of dairy products have a dissimilar process for testing a given analyte, shorter procedures, decreased complexity of reagent and materials preparation, reduced analyst manipulations with samples and their derivatives, fewer measurements, and/or a lower degree of interpretation required. Consequently, these dairy tests are less complex and would justify a reduction of the fee. The laboratory fees for dairy products that were lowered in the interim final rule because the tests are less complex are as follows: (1) Fat (cheese), (2) fat (dairy products except cheese), (3) salt titration, (4) peroxide value, (5) free fatty acid, (6) solubility index, (7) whey protein nitrogen, (8) vitamin A (dry milk products), (9) alkalinity of ash, (10) antibiotic, (11) complete Kohman, (12) direct microscopic clump count, (13) proteolytic count, (14) coliform, and (15) *Salmonella* Step 1.

V. Discussion of Comment

Since the issuance of the interim final rule on May 10, 1994, only one response was received from another agency within the Department (the Agricultural Stabilization and Conservation Service). That response persuaded the Agricultural Marketing Service to reconsider its fee for flavor in the fee schedule in Table 3 of the earlier rule (58 FR 42408–42448) of August 9, 1993. The response stated that the flavor test fee is too high for testing flavors in dairy products and that a reduction of the flavor analysis fee for dairy products from a three-quarter hour charge to a one-quarter hour charge or lower be considered.

The flavor test charge of three-quarter hour or $25.65 was not specifically directed to dairy products nor modified with the interim final rule issuance. Our records show that 8,900 flavor tests of dairy products were conducted in the Science Division Midwestern Laboratory during Fiscal Year 1993. There was only a limited number of additional flavor testings of dairy products by the Resident Dairy Graders.

The Agency agrees with the respondent's recommendation regarding the dairy flavor test fee. Therefore, the flavor test for dairy products in Table 3 is set at the recommended minimum one-quarter hour charge or corresponding $8.55 fee. Flavor tests for other products will remain at the three-quarter hour charge or $25.65. The one-quarter hour charge is adequate for the dairy flavor test since a battery of other laboratory tests are usually performed in conjunction with this sensory analysis which involve the same preliminary sample preparation steps.

VI. Effective Date of Rule

It is found that good cause that exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because:

(1) The interim final rule provided a comment period, and the only comment received was from an agency within the Department.

(2) That comment persuaded the Science Division to lower the dairy flavor test fee.

(3) For the benefit of those using the test, the lower fee should become effective immediately.

Lists of Subjects

7 CFR Part 58

Food grades and standards, Dairy products, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 91

Administrative practice and procedure, Agricultural commodities, Fees and charges, Laboratories.

7 CFR Part 93

Citrus fruits, Fruit juices, Fruits, Laboratories, Nuts, Vegetable.

7 CFR Part 94

Eggs and egg products, Laboratories, Poultry and poultry products.

7 CFR Part 95

Dairy products, Laboratories, Milk.

7 CFR Part 98

Meat and meat products, Laboratories.

Accordingly, the interim final rule amending 7 CFR parts 58, 91, 93, 94, 95 and 98 which was published at 59 FR 24318–24325 on May 10, 1994, is adopted as a final rule with the following change:

PART 91—SERVICES AND GENERAL INFORMATION

1. The authority citation for part 91 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. In § 91.37(a), Table 3 is revised to read as follows:

§ 91.37 Fees for laboratory testing, analysis, and other services.

(a) * * *

TABLE 3.—SINGLE TEST TIMES AND LABORATORY FEES FOR FOOD ADDITIVES (DIRECT AND INDIRECT)

Type of analysis	Hours for single test	List fee
Aflatoxin, (Dairy, Eggs)	3.5	$119.70
Alar or Daminozide Residue	6	205.20
Amitraz Residue, GLC	6	205.20
Alcohol (Qualitative)	2	68.40
Alkalinity of Ash	1.5	51.30
Antibiotic, Qualitative (Dairy)	0.5	17.10
Antibiotic, Quantitative	4	136.80
Ascorbates (Qualitative—Meats)	0.5	17.10
Ascorbic Acid, Titration	1	34.20
Ascorbic Acid, Spectrophotometric	1	34.20
Benzene, Residual	2	68.40
Brix, Direct Percent Sucrose	0.5	17.10
Brix, Dilution	0.5	17.10
Butylated Hydroxyanisole (BHA)	1.5	51.30
Butylated Hydroxytoluene (BHT)	1.5	51.30
Caffeine, Micro Bailey-Andrew	1.5	51.30
Caffeine, Spectrophotometric	1	34.20
Calcium	1.5	51.30
Citric Acid, GLC or HPLC	1.5	51.30
Chlorinated Hydrocarbons:		
Pesticides and Industrial Chemicals—		
Initial Screen	4	136.80
Second Column Confirmation of Analyte	1	34.20
Confirmation on Mass Spectrometer	2	68.40
Dextrin (Qualitative)	0.5	17.10
Dextrin (Quantitative)	3	102.60

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TABLE 3.—SINGLE TEST TIMES AND LABORATORY FEES FOR FOOD ADDITIVES (DIRECT AND INDIRECT)—Continued

Type of analysis	Hours for single test	List fee
Filth, Heavy (Dairy)	2.5	85.50
Filth, Heavy (Eggs)	4	136.80
Filth, Light (Eggs)	2.5	85.50
Filth, Light and Heavy (Eggs Extraneous)	6	205.20
Flavor (Dairy)	0.25	8.55
Flavor (Products except Dairy)	0.75	25.65
Fumigants:		
Initial Screen—		
Dibromochloropropane (DBCP)	1	34.20
Ethylene Dibromide	1	34.20
Methyl Bromide	1	34.20
Confirmation on Mass Spectrometer—		
Each individual fumigant residue	2	68.40
Glucose (Qualitative)	0.75	25.65
Glucose (Quantitative)	1.75	59.85
Glycerol (Quantitative)	3	102.60
Gums	3	102.60
High Sucrose Content or Avasucrol—Percent Sucrose (Holland Eggs)	4	136.80
Hydrogen Ion Activity, pH	0.5	17.10
Mercury, Cold Vapor AA	2.5	85.50
Metals—Other Than Mercury, Each Metal	2	68.40
Monosodium Dihydrogen Phosphate	4	136.80
Monosodium Glutamate	4	136.80
Nitrites (Qualitative)	0.5	17.10
Nitrites (Quantitative)	3	102.60
Oxygen	0.5	17.10
Palatability and Odor:		
First Sample	0.75	25.65
Each Additional Sample	0.5	17.10
Phosphatase, Residual	1	34.20
Phosphorus	2	68.40
Propylene Glycol, Codistillation: (Qualitative)	2	68.40
Pyrethrin Residue (Dairy)	4	136.80
Scorched Particles	0.25	8.55
Sodium, Potentiometric	1	34.20
Sodium Benzoate, HPLC	1.5	51.30
Sodium Lauryl Sulfate (SLS)	8	273.60
Sodium Silicoaluminate (Zeolex)	2	68.40
Solubility Index	0.5	17.10
Starch, Direct Acid Hydrolysis	3	102.60
Sugar, Polarimetric Methods	1	34.20
Sugar Profile, HPLC—This profile includes the following components: Dextrose, Fructose, Lactose, Maltose and Sucrose:		
One type sugar from HPLC profile	3	102.60
Each additional type sugar	0.5	17.10
Sugars, Non-Reducing	3	102.60
Sugars, Total as Invert	2	68.40
Sulfites (Qualitative)	0.75	25.65
Sulfur Dioxide, Direct Titration	1	34.20
Sulfur Dioxide, Monier-Williams	1.5	51.30
Toluene, Residual	2	68.40
Triethyl Citrate, GC (Quantitative)	1	34.20
Vitamin A	2.5	85.50
Vitamin A, Carr-Price (Dry Milk)	1.25	42.75
Vitamin D, HPLC (Vitamins D2 and D3)	8.5	290.70
Whey Protein Nitrogen	0.75	25.65
Xanthydrol Test For Urea	1.5	51.30
This is an optional test to the extraneous materials isolation test.		

* * * * *

Dated: September 26, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–24174 Filed 9–29–94; 8:45 am]

BILLING CODE 3410–02–P

Friday
September 30, 1994

Part VI

Federal Emergency Management Agency

Changes to the Hotel and Motel Fire Safety Act National Master List; Notice

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FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: October 31, 1994.

ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, D.C. 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, see Supplementary Information below.

FOR FURTHER INFORMATION CONTACT: John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 29, 1993, 58 FR 62718, and published changes approximately monthly since then.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 58 FR 17020 on March 31, 1993. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices.

Each update contains or may contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows below.

Dated: September 27, 1994.

Spence W. Perry,

Acting General Counsel.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 9/16/94 UPDATE

Index	Property Name	PO box/Rt No. and Street Address	City	State/zip	Telephone
ADDITIONS					
CA:					
CA1324	BEST WESTERN HERITAGE INN.	4600 CLAYTON ROAD	CONCORD	CA 94521	(510)686–4466
CA1326	ECONO LODGE	12225 FIRESTONE BLVD	NORWALK	CA 90650–4323	(310)868–0791
CA1319	HOLIDAY INN EXPRESS—ONTARIO.	1818 E. HOLT BLVD	ONTARIO	CA 91761	(909)988–8466
CA1325	ELDORADO MOTEL	410 S. CHINA LAKE BLVD	RIDGECREST	CA 93555	(619)371–2300
CA1321	DYNASTY SUITES, RIVERSIDE.	3735 IOWA AVE	RIVERSIDE	CA	(909)369–8200
CA1320	BEST WESTERN POSADA INN	5005 N. HARBOR DR	SAN DIEGO	CA 92106	(619)224–3254
CA1323	TUSCAN INN	425 NORTHPOINT ST	SAN FRANCISCO	CA 94133	(415)561–1100
CA1322	DYNASTY SUITES, SANTE FE SPRINGS.	13530 E FIRESTONE BLVD	SANTA FE SPRINGS	CA	(310)921–8571
CO.					
CO0280	HOLIDAY INN BOULDER	600 28TH STREET	BOULDER	CO 80303	(303)443–3322
CO0284	COMFORT INN	8280 HIGHWAY 83	COLORADO SPRINGS.	CO 80920	(719)598–6700
CO0278	ECONO LODGE—CITY CENTRE.	714 NORTH NEVADA	COLORADO SPRINGS.	CO 80903	(719)636–3385
CO0281	HOLIDAY INN EXPRESS CRIPPLE CREEK.	601 EAST GALENA	CRIPPLE CREEK	CO 80813	(719)689–2600
CO0282	COMFORT INN DENVER	401 17TH STREET	DENVER	CO 80202	(303)296–0400
CO0279	THE CAMBRIDGE HOTEL	1560 SHERIDAN BLVD	DENVER	CO 80203	(303)831–1252
CO0283	RODEWAY INN DENVER WEST.	7150 WEST COLFAX AVE	LAKEWOOD	CO 80215	(303) 238–1251
HI:					
HI0180	MAUI MARRIOTT	100 NOHEA KAI DR	LAHINA, MAUI	HI 96761	(808)667–1200

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 9/16/94 UPDATE—Continued

Index	Property Name	PO box/Rt No. and Street Address	City	State/zip	Telephone
KS:					
KS0140	AMERISUITES	6800 W 12TH STREET	OVERLAND PARK	KS 66211	(913)451–2553
ME:					
ME0046	FAIRFIELD INN BY MARRIOTT	125 EDEN ST	BAR HARBOR	ME 04609	
ME0042	MOTEL 111	470 ALFRED RD	BIDDEFORD	ME 04005	(207)284–2440
ME0047	BEST WESTERN JED PROUTY MOTOR INN.	52 MAIN ST	BUCKSPORT	ME 04416	(207)464–3113
ME0048	HERITAGE MOTOR INN	935 CENTRAL ST	MILLINOCKET	ME	(207)423–9777
ME0043	HOLIDAY INN PORTLAND WEST.	81 RIVERSIDE ST	PORTLAND	ME 04103	(207)774–5601
ME0044	RAMADA INN	1230 CONGRESS ST	PORTLAND	ME 04102	(207)774–5611
ME0045	VILLAGE BY THE SEA HOTEL AND CONFERENCE CTR..	PO BOX 1107 RT. 1 S	WELLS	ME 04090	(207)646–1000
MI:					
MI0294	HILTON—ANN ARBOR	610 HILTON BLVD	ANN ARBOR	MI 48108	(313)761–7800
MI0295	COMFORT INN—GAYLORD	137 WEST ST	GAYLORD	MI 49735	(517)732–7541
MI0297	ECONO LODGE AT THE BRIDGE—MACKINAW CITY.	412 N. NICOLET	MACKINAW CITY	MI 49701	(616)436–5025
MI0296	ECONO LODGE LAKESIDE—MACKINAW CITY.	519 S. HURON	MACKINAW CITY	MI 49701	(616)436–7111
MI0299	THE ROYCE HOTEL	31500 WICK RD	ROMULUS	MI 48174	(313)467–8000
MI0298	PLAZA HOTEL	16400 J.L. HUDSON DR	SOUTHFIELD	MI 48075	(810)559–6500
NC:					
NC0341	NORTH RALEIGH HILTON	3415 WAKE FOREST RD	RALEIGH	NC 27609	(919)872–2323
NJ:					
NJ0188	ECONO LODGE	3001 PACIFIC AVE	ATLANTIC CITY	NJ 08401	(609)344–2925
NJ0189	ECONO LODGE	301 S BLACK HORSE PIKE	BELLMAWR	NJ 08031	(609)931–2800
NJ0187	BEST WESTERN BORDENTOWN.	1068 ROUTE 206	BORDENTOWN	NJ 08505	(609)298–8000
NJ0190	COMFORT INN	725 RIVER ROAD	EDGEWATER	NJ 07020	(201)943–3131
NJ0191	CLARION HOTEL AND TOWERS.	2055 LINCOLN HWY	EDISON	NJ 08817	(908)287–3500
NJ0183	BEST WESTERN THE MANSION HOTEL.	295 SOUTH AVE	FANWOOD	NJ 07023	(908)654–5200
NJ0193	G.I.F. MOTEL CORP	750 TONNELLO AVE	JERSEY CITY	NJ 07307	(201)420–9040
NJ0192	ECONO LODGE	119 ROUTE 9 S	MARMORA	NJ 08223	(609)390–3366
NJ0184	BEST WESTERN MURRAY HILL INN.	535 CENTRAL AVE	NEW PROVIDENCE	NJ 07974	(908)665–9200
NJ0185	BEST WESTERN THE PALMER INN.	3499 ROUTE 1 SO	PRINCETON	NJ 08540	(609)452–2500
NJ0186	BEST WESTERN WESTFIELD INN.	435 NORTH AV W	WESTFIELD	NJ 07090	(908)654–5600
NY:					
NY0589	FRIENDSHIP INN	8212 PARK ROAD	BATAVIA	NY 14020	(716)343–2311
NY0590	COMFORT INN	1156 FRONT STREET	BINGHAMTON	NY 13905	(607)722–5353
NY0591	BEAR ROAD FRIENDSHIP INN	901 SOUTH BAY ROAD	CICERO	NY 13039	(315)458–3510
NY0599	MIRCROTEL—CARRIER CIRCLE.	6608 OLD COLLAMER CIRCLE	E. SYRACUSE	NY 13057	(315)437–3500
NY0592	FRIENDSHIP INN	6037 RT. 96	FARMINGTON	NY 14425	(716)924–2300
NY0600	MICROTEL VICTOR	7498 MAIN ST	FISHERS	NY 14564	(800)278–8884
NY0593	COMFORT INN LAKE GEORGE.	I–87 @ EXIT 21 & RT. 9W	LAKE GEORGE	NY 12845	(518)668–4141
NY0594	ECONO LODGE	227 WEST MAIN ST	MALONE	NY 12953	(518)483–0500
NY0595	ECONO LODGE/MEADOW VIEW MOTEL.	RD #1, BOX 261	MASSENA	NY 13662	(315)764–0246
NY0601	EASTGATE TOWER	222 EAST 39TH STREET	NEW YORK	NY 100160911	(212)687–8000
NY0596	ECONO LODGE OF PLATTSBURGH.	528 RT. 3	PLATTSBURGH	NY 12901	(518)563–0833
NY0597	ECONO LODGE LONG ISLAND MACARTHUR AIRPORT.	S.R. 454 3055 VETERAN'S MEMORIAL HWY.	RONKONKOMA	NY 11779	(516)588–6800
NY0598	COMFORT SUITES AT VERNON DOWNS.	STUHLMAN ROAD	VERNON	NY 13476	(318)829–3400
OH:					
OH0544	FAIRFIELD INN MIDDLETOWN	6750 ROOSEVELT PARKWAY	MIDDLETOWN	OH 45044	(513)424–5444
OH0545	FAIRFIELD INN SPRINGFIELD	1870 W. 1ST ST	SPRINGFIELD	OH 45504	(513)323–9554
RI:					
RI0035	NEWPORT COMFORT INN AND CONFERENCE CENTER.	936 W. MAIN RD	MIDDLETOWN	RI 02842	(401)846–7600
RI0033	SUSSE CHALET SMITHFIELD	Rt. 116	SMITHFIELD	RI 02917	(401)232–2400

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RI0036 ..	JOHNSON AND WALES AIRPORT HOTEL.	2081 POST RD	WARWICK	RI 02886	(401)739–3000
RI0034 ..	SUSSE CHALET WARWICK	36 JEFFERSON BLVD	WARWICK	RI 02888	(401)941–6600
TN:					
TN0240 .	HOLIDAY INN COVE LAKE	RT 1 BOX 14	CARYVILLE	TN 37714	(615)562–8476
TN0241 .	COMFORT INN	7717 LEE HWY	CHATTANOOGA	TN 37421	(615)894–5454
TN0242 .	COMFORT INN OF CLARKSVILLE.	1112 HWY 76/I–24 EXIT 11	CLARKSVILLE	TN 37043	(615)358–2020
TN0238 .	WINNERS CIRCLE MOTEL	3430 FT. CAMPBELL BLVD	CLARKSVILLE	TN 37042	(615)431–4906
TN0243 .	ECONO LODGE	2650 WESTSIDE DRIVE	CLEVELAND	TN 37312	(615)472–3281
TN0244 .	COMFORT INN	1100 SOUTH JEFFERSON	COOKSVILLE	TN 38501	(615)528–1040
TN0245 .	COMFORT INN	901 HWY 51 NORTH	COVINGTON	TN 38019	(901)475–0380
TN0246 .	COMFORT INN OF DICKSON	2325 HWY 465	DICKSON	TN 37056	(615)446–2423
TN0237 .	BEST WESTERN COPPER INN	US HWY 64	DUCKTOWN	TN 37326	(615)496–5541
TN0248 .	COMFORT INN OF GOODLETTSVILLE.	925 CONFERENCE DRIVE	GOODLETTSVILLE	TN 37072	(615)859–5400
TN0249 .	ECONO LODGE RIVERGATE	320 LONG HOLLOW PIKE	GOODLETTSVILLE	TN 37072	(615) 859–4988
TN0247 .	FRIENDSHIP INN	650 WADE CIRCLE	GOODLETTSVILLE	TN 37072	(615) 859–1416
TN0250 .	COMFORT INN	4624–4628 FAIRLANE DRIVE	KINGSPORT	TN 37663	(615) 234–7447
TN0251 .	COMFORT SUITES	811 N CAMPBELL STA RD	KNOXVILLE	TN 37922	(615) 675–7585
TN0252 .	SLEEP INN	5460 CENTRAL AVENUE PIKE	KNOXVILLE	TN 37912	(615) 688–7300
TN0253 .	COMFORT INN	829 S CUMBERLAND STREET	LEBANON	TN 37008	(615) 444–1001
TN0254 .	FRIENDSHIP INN	625 N GALLATIN ROAD	MADISON	TN 37115	(615) 865–2323
TN0255 .	COMFORT SUITES	3812 AMERICAN WAY	MEMPHIS	TN	(901) –
TN0256 .	COMFORT SUITES	3660 WEST ANDREW JOHNSON HWY.	MORRISTOWN	TN 37814	(615) 585–4000
TN0258 .	COMFORT SUITES	2615 ELM HILL PIKE	NASHVILLE	TN 37214	(615) 883–0114
TN0257 .	ECONO LODGE (NORTH)	110 MAPLEWOOD LANE	NASHVILLE	TN 37207	(615) 262–9193
TN0259 .	ECONO LODGE OPRYLAND	2460 MUSIC VALLEY DRIVE	NASHVILLE	TN 37214	(615) 889–0090
TN0260 .	COMFORT INN	323 E EMORY ROAD	POWELL	TN 37849	(615) 938–5500
TN0236 .	B/W SANDS MOTOR HOTEL	I–65 & US–64	PULASKI	TN 38478	(615) 363–4501
TN0261 .	APPLE VALLEY COMFORT INN.	1850 PARKWAY	SEVIERVILLE	TN 37862	(615) 428–1069
TN0262 .	COMFORT INN	I 75 AND HWY 68	SWEETWATER	TN 37874	(615) 337–3353
TN0263 .	COMFORT INN	803 S MAIN STREET	SWEETWATER	TN 37874	(615) 337–6646
TX:					
TX0528 .	ECONO LODGE AIRPORT	1803 LAKESIDE DR	AMARILLO	TX 79104	(806) 335–1561
TX0527 .	HOLIDAY INN EXPRESS	3411 IH–40 WEST	AMARILLO	TX 79109	(806) 356–6800
TX0524 .	RAMADA INN EAST	2501 IH–40 E	AMARILLO	TX 79104	(806) 379–6555
TX0529 .	QUALITY INN SOUTH	2200 S. IH–35	AUSTIN	TX 78704	(512) 444–0561
TX0530 .	COMFORT INN	HWY. 54 E	DALHART	TX 79022	(806) 249–8585
TX0545 .	BEST WESTERN OF DESOTO	1135 B. BECKLEY	DESOTO	TX 75115	(214) 224–8575
TX0538 .	ECONO LODGE	810 S. ADAMS	FREDRICKSBURG	TX 78624	(210) 997–3437
TX0531 .	COMFORT INN	1005 LEANDER RD	GEORGETOWN	TX 78628	(512) 863–7504
TX0544 .	LA QUINTA INN HOUSTON	17111 N. FRWY	HOUSTON	TX 770905005	(713) 444–7500
TX0543 .	HARVEY SUITES DFW	4550 JOHN CARPENTER FRWY.	IRVING	TX 75063	(214) 929–4499
TX0539 .	FRIENDSHIP INN	601 W. HWY. 190	KILLEEN	TX 76541	(817) 526–2232
TX0537 .	ECONO LODGE	117 HWY. 59 LOOP 5	LIVINGSTON	TX 77351	(409) 327–2451
TX0525 .	HOLIDAY INN AIRPORT	2000 S. 10TH ST	MCALLEN	TX 78501	(210) 686–1741
TX0532 .	COMFORT INN	U.S. 271 & IH–30	MT. PLEASANT	TX 75455	(903) 577–7553
TX0533 .	COMFORT INN	621 CENTRAL PKWY. E	PLANO	TX 75074	(214) 424–5568
TX0541 .	SLEEP INN PLANO	4801 W. PLANO PKWY	PLANO	TX 75093	(214) 867–1111
TX0542 .	SLEEP INN	2650 N. CENTRAL EXPWY	RICHARDSON	TX 75080	(214) 470–9440
TX0526 .	ALAMO TRAVELODGE	405 BROADWAY	SAN ANTONIO	TX 78205	(210) 222–1000
TX0535 .	COMFORT INN	4403 IH–10 E	SAN ANTONIO	TX 78219	(210) 333–9430
TX0534 .	ECONOLODGE O'CONNOR RD..	11591 IH–35 N	SAN ANTONIO	TX 78233	(210) 654–9111
TX0540 .	FRIENDSHIP INN	1507 IH–35 N	SAN MARCOS	TX 78666	(512) 396–6060
TX0536 .	COMFORT INN	1705 HWY. 34 S	TERRELL	TX	(214) 563–1511
VA					
VA0559 .	SHERATON CRYSTAL CITY HOTEL.	1800 JEFFERSON DAVIS HWY	ARLINGTON	VA 222020000	(703) 486–1111
VA0563 .	COMFORT INN ASHLAND	101 COTTAGE GREEN DR	ASHLAND	VA 230050000	(804) 752–7777
VA0564 .	COMFORT INN	ROUTES 18 & 460	BLUEFIELD	VA 246050000	(703) 326–3688
VA0565 .	COMFORT INN	4433 S. MILITARY HWY	CHESAPEAKE	VA 233210000	(804) 488–7900
VA0566 .	ECONO LODGE	800 VIRGINIA AVE	COLLINSVILLE	VA 240780000	(703) 647–3941
VA0557 .	HOLIDAY INN EXPRESS		DUMFRIES	VA	(703) 221–1141
VA0560 .	SHERATON RESTON HOTEL	11810 SUNRISE VALLEY DRIVE.	RESTON	VA 220910000	(703) 620–9000

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VA0558 .	SHERATON PREMIERE AT TYSONS CORNER.	8661 LEESBURG PIKE	VIENNA	VA 221820000	(703) 448–1234
VA0556 .	BEST WESTERN WYTHEVILLE INN.	355 NYE ROAD	WYTHEVILLE	VA	(703) 228–7300
WI:					
WI10206	SUPER 8 MOTEL	3002 MILWAUKEE RD	BELOIT	WI 53511	(608) 365–8680
WI0217 ..	MILWAUKEE MARRIOTT BROODFIELD.	375 SOUTH MOORLAND RD	BROOKFIELD	WI 53005	(414) 786–1100
WI0219 ..	LILY LAKE RESORT	7912–328 TH AVE	BURLINGTON	WI 53105	(414) 537–2848
WI0212 ..	AMERICAN HOTEL OF CHIPPEWA FALLS.	11 WEST SOUTH STREET	CHIPPEWA FALLS	WI 54729	(715) 723–5711
WI0211 ..	WOOD RIVER INN	703 HWY 10	GRANSBURG	WI 54840	(715) 463–2541
WI0209 ..	LUXURY SUITES	2815 RAMADA WAY	GREEN BAY	WI 54304	(414) 494–8790
WI0220 ..	MARSHFIELD INN	116 W. IVES	MARSHFIELD	WI 54449	(715) 387–6381
WI0210 ..	MAYVILLE INN	701 MOUMTAIN DR	MAYVILLE	WI 53050	(414) 387–1234
WI0213 ..	QUALITY INN AIRPORT	5311 SO. HOWELL AVE	MILWAUKEE	WI 53207	(414) 481–2400
WI0214 ..	COMFORT INN	8729 HWY 51 N	MINOCQUA	WI 54548	(715) 358–2588
WI0218 ..	RACINE SUPER 8	7141 KINZLE AVENUE	RACINE	WI 53406	(414) 884–0486
WI0205 ..	SUPER 8 MOTEL	3402 WILGUS RD	SHEBOYGAN	WI 53081	(414) 458–8080
WI0207 ..	SUPER 8 MOTEL	247 N DIVISION ST	STEVENS POINT	WI 54481	(715) 341–8888
WI0215 ..	COMFORT INN	923 GREENBAY RD	STURGEON BAY	WI 54235	(414) 743–7846
WI0216 ..	COMFORT INN	2111 E MORELAND	WAUKESHA	WI 53186	(414) 547–7790
WI0221 ..	RIB MOUNTAIN INN	2900 RIB MOUNTAIN WAY	WAUSAU	WI 54401	(715) 443–3384
WI0208 ..	SUPER 8 MOTEL	3410 8TH STREET SOUTH	WISCONSIN RAPIDS	WI 54494	(715) 423–3595
WV:					
WV0163	KRISTA-LITE MOTEL	RT. 1 BX249A	MARTINSBURG	WV 25401	(304) 263–0906
WV0164	MOTEL 81—ECONO LODGE	RT. 2. BX208N	MARTINSBURG	WV 25401	(304) 274–2181
WV0160	PIKESIDE MOTEL	2138 WINCHESTER AVE	MARTINSBURG	WV 25401	(304) 263–5189
WV0161	SCOTTISH INNS	1024 WINCHESTER AVE	MARTINSBURG	WV 25401	(304) 267–2935
WV0162	WHEATLAND MOTEL	1193 WINCHESTER AVE	MARTINSBURG	WV 25401	(304) 267–2994
WV0159	WESTON MOTOR INN	RT 2 BOX 184	WESTON	WV 26452	(304) 269–1975
CORRECTIONS/ CHANGES					
CO					
CO0194 .	QUALITY INN—WEST	12100 W. 44TH AVE	WHEAT RIDGE	CO 80033	(303)467–2400
HI					
HI0159 ..	HILTON WAIKOLOA VILLAGE RESORT.	69–425 WAIKOLOA DR	KAMUELA	HI 967439791	(808)885–1234
KS					
KS0112 .	HARVEY HOTEL	549 S. ROCK RD	WICHITA	KS 67207	(316)686–7131
ME					
ME0035 .	HOWARD JOHNSON LODGE	356 MAIN ST	WATERVILLE	ME 04901	(207)873–3335
MI					
MI0236 ..	COMFORT INN—ALMA	3110 W. MONROE	ALMA	MI 48801	(517)463–4400
MI0229 ..	HOLIDAY INN—ALPENA	1000 US 23 N	ALPENA	MI 49707	(517)356–2151
MI0063 ..	HAMPTON INN—ANN ARBOR NORTH.	2300 GREEN RD	ANN ARBOR	MI 48105	(313)996–4444
MI0064 ..	HAMPTON INN—ANN ARBOR SOUTH.	25 VICTORS WAY	ANN ARBOR	MI 48105	(313)665–5000
MI0290 ..	MOTEL 6—ANN ARBOR	3764 S. STATE ST	ANN ARBOR	MI 48108	(313)665–9900
MI0252 ..	HAMPTON INN—AUBURN HILLS.	1461 N. OPDYKE RD	AUBURN HILLS	MI 48326	(313)370–0044
MI0219 ..	HILTON SUITES—AUBURN HILLS.	2300 FEATHERSTONE	AUBURN HILLS	MI 48326	(313)334–2233
MI0066 ..	HOLIDAY INN—AUBURN HILLS.	1500 OPDYKE RD	AUBURN HILLS	MI 48326	(313)373–4550
MI0069 ..	SUPER 8 MOTEL—BARAGA	790 MICHIGAN AVE	BARAGA	MI 49908	(906)353–6680
MI0287 ..	KNIGHTS INN SOUTH—BATTLE CREEK.	2595 CAPITAL AVE. SW	BATTLE CREEK	MI 490154160	(616)964–2600
MI0273 ..	COMFORT INN—BENTON HARBOR.	1598 MALL DR	BENTON HARBOR	MI 49022	(616)925–1880
MI0002 ..	DAYS INN—BENTON HARBOR	RT. 139 2699 MICHIGAN	BENTON HARBOR	MI 49022	(616)925–7021
MI0230 ..	HOLIDAY INN—BENTON HARBOR.	2960 S. MICHIGAN HWY. 139	BENTON HARBOR	MI 49022	(616)925–3234
MI0178 ..	MOTEL 6—BENTON HARBOR	2063 PIPESTONE	BENTON HARBOR	MI 49022	(616)925–5100
MI0094 ..	DAYS INN—CADILLAC	6001 MILLS	CADILLAC	MI 49601	(616)775–4414
MI0143 ..	BUDGITEL INN—CANTON	41211 FORD RD	CANTON	MI 48187	(313)981–1808
MI0272 ..	COMFORT INN—CEDARVILLE	PO BOX 189 210 W. SR–134	CEDARVILLE	MI 49719	(906)484–2266
MI0179 ..	SUPER 8 MOTEL—COLDWATER.	600 ORLEANS BLVD	COLDWATER	MI 49036	(517)278–8833

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MI0271 ..	COMFORT INN—DAVISON	10082 LAPEER RD	DAVISON	MI 48423	(313)658–2700
MI0127 ..	HAMPTON INN—DEARBORN	20061 MICHIGAN AVE	DEARBORN	MI 48124	(313)436–9600
MI0204 ..	HOLIDAY INN—FAIRLANE	5801 SOUTHFIELD SERVICE DR.	DETROIT	MI 48228	(313)336–3340
MI0270 ..	COMFORT INN—DUNDEE	621 TECUMSEH RD	DUNDEE	MI 48131	(313)529–5505
MI0006 ..	HOLIDAY INN—TAWAS BAY RESORT.	300 E. BAY ST	EAST TAWAS	MI 48730	(517)362–8601
MI0156 ..	COMFORT INN—FARMINGTON HILLS.	30715 TWELVE MILE RD	FARMINGTON HILLS	MI 48334	(313)471–9220
MI0155 ..	KNIGHTS INN—FARMINGTON HILLS.	37527 GRAND RIVER AVE	FARMINGTON HILLS	MI 48335	(313)477–3200
MI0114 ..	COMFORT INN—FLINT	2361 AUSTINS PKWY	FLINT	MI 48507	(313)232–4222
MI0198 ..	DAYS INN—FLINT	2207 W. BRISTOL RD	FLINT	MI 48507	(313)239–4681
MI0225 ..	ECONO LODGE—FLINT	932 S. CENTER RD	FLINT	MI 48503	(313)744–0200
MI0181 ..	HAMPTON INN—FLINT	1150 ROBERT T. LONGWAY BLVD.	FLINT	MI 48503	(313)238–7744
MI0194 ..	DAYS INN—GRAND HAVEN	1500 S. BEACON BLVD	GRAND HAVEN	MI 49417	(616)842–1999
MI0109 ..	BUDGITEL INN—GRAND RAPIDS.	2873 KRAFT AVE. SE	GRAND RAPIDS	MI 49512	(616)956–3300
MI0243 ..	COMFORT INN—GRAND RAPIDS.	4155 28TH ST	GRAND RAPIDS	MI 49512	(616)957–2080
MI0141 ..	DAYS INN—GRAND RAPIDS	310 PEARL ST. NW	GRAND RAPIDS	MI 49504	(616)235–7611
MI0123 ..	QUALITY INN TERRACE CLUB	4495 28TH ST. SE	GRAND RAPIDS	MI 49512	(616)956–8080
MI0276 ..	QUALITY INN—HAZEL PARK	1 WEST 9 MILE RD	HAZEL PARK	MI 48030	(810)399–5800
MI0047 ..	HOLIDAY INN—HOLLAND	650 E. 24TH ST	HOLLAND	MI 49423	(616)394–0111
MI0274 ..	COMFORT INN—IRON MOUNTAIN.	PO BOX 807 1555 N. STEPHENSON AVE.	IRON MOUNTAIN	MI 49801	(906)774–5505
MI0247 ..	BUDGETEL INN—JACKSON	2035 SERVICE DR	JACKSON	MI 49201	(517)789–6000
MI0291 ..	MOTEL 6—JACKSON	830 ROYAL DR	JACKSON	MI 49204	(517)789–7186
MI0166 ..	BUDGETEL INN—KALAMAZOO.	2203 S. 11TH ST	KALAMAZOO	MI 49009	(616)372–7999
MI0277 ..	QUALITY INN—KALAMAZOO	5300 S. WESTNEDGE	KALAMAZOO	MI 49008	(616)382–1000
MI0115 ..	DAYS INN—LANSING SOUTH	6501 S. PENNSYLVANIA	LANSING	MI 48911	(517)393–1650
MI0119 ..	HAMPTON INN—LANSING	525 NORTH CANAL RD	LANSING	MI 489179755	(517)627–8381
MI0100 ..	KNIGHTS INN—LANSING	11200 RAMADA DR	LANSING	MI 48911	(517)394–7200
MI0292 ..	MOTEL 6—LANSING	7326 W. SAGINAW HWY	LANSING	MI 48917	(517)321–1444
MI0189 ..	SUPER 8 MOTEL—LANSING	910 AMERICAN RD	LANSING	MI 48911	(517)393–8008
MI0268 ..	COMFORT INN—LIVONIA	29235 BUDKINGHAM DR	LIVONIA	MI 48154	(313)458–7111
MI0232 ..	HOLIDAY INN—LIVONIA WEST.	17123 LAUREL PARK DR. N	LIVONIA	MI 48152	(313)464–1300
MI0279 ..	QUALITY INN—LIVONIA	16999 S. LAURAL PART	LIVONIA	MI 48154	(313)464–0050
MI0210 ..	RAMADA INN—LIVONIA	30375 PLYMOUTH RD	LIVONIA	MI 48150	(313)261–6800
MI0190 ..	SUPER 8 MOTEL—LIVONIA	28512 SCHOOLCRAFT	LIVONIA	MI 48150	(313)425–5150
MI0174 ..	SUPER 8 MOTEL—MACKINAW CITY.	601 N. HURON	MACKINAW CITY	MI 49701	(616)436–5252
MI0205 ..	HAMPTON INN—MADISON HEIGHTS.	32420 STEPHENSON HWY	MADISON HEIGHTS	MI 48071	(313)585–8881
MI0103 ..	DAYS INN—MANISTEE	1462 US 31 S	MANISTEE	MI 49660	(616)723–8385
MI0200 ..	RAMADA INN—MANISTIQUE	PO BOX 485 LAKESHORE DR	MANISTIQUE	MI 49854	(906)341–6911
MI0233 ..	HOLIDAY INN—MIDLAND	1500 W. WACKERLY ST	MIDLAND	MI 48640	(517)631–4220
MI0234 ..	RAMADA INN—MIDLAND	1815 S. SAGINAW RD	MIDLAND	MI 48640	(517)631–0570
MI0288 ..	KNIGHTS INN—MONROE	1250 N. DIXIE HIGHWAY	MONROE	MI 481615223	(313)243–0597
MI0224 ..	COMFORT INN—MT. PLEASANT.	2424 S. MISSION	MT. PLEASANT	MI 48858	(517)772–4000
MI0231 ..	HOLIDAY INN—MT. PLEASANT.	5665 E. PICKARD	MT. PLEASANT	MI 48858	(517)772–2905
MI0242 ..	COMFORT INN—MUNISING	M–28 EAST	MUNISING	MI 49862	(906)387–5292
MI0082 ..	COMFORT INN—MUSKEGON	1675 E. SHERMAN	MUSKEGON	MI 49444	(616)739–9092
MI0062 ..	HOLIDAY INN—MUSKEGON HARBOR.	939 THIRD ST	MUSKEGON	MI 49440	(616)722–0100
MI0269 ..	COMFORT INN—NEW BUFFALO.	11539 O'BRIAN CT	NEW BUFFALO	MI 49117	(616)469–4440
MI0202 ..	COMFORT INN—NEWBERRY	JCT. M–123 & M–28	NEWBERRY	MI 49868	(906)293–3218
MI0036 ..	HAMPTON INN—NORTHVILLE	20600 HAGGERTY RD	NORTHVILLE	MI 48167	(313)462–1119
MI0027 ..	HILTON—NOVI	21111 HAGGERTY RD	NOVI	MI 48375	(313)349–4000
MI0223 ..	COMFORT INN—OKEMOS	2209 UNIVERSITY PARK DR	OKEMOS	MI 48864	(517)349–8700
MI0267 ..	COMFORT INN—PETOSKEY	1314 U.S. 31	PETOSKEY	MI 49770	(616)347–3220
MI0251 ..	ECONO LODGE—PETOSKEY	1858 U.S. 131 S	PETOSKEY	MI 49770	(616)348–3324
MI0266 ..	COMFORT INN—PORT HURON.	1700 YEAGER	PORT HURON	MI 48060	(810)982–5500
MI0041 ..	BUDGETEL INN—ROMULUS	9000 WICKHAM RD	ROMULUS	MI 48174	(313)722–6000

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MI0118 ..	HILTON SUITES DETROIT METRO.	8600 WICKHAM RD	ROMULUS	MI 48174	(313)728–9200
MI0087 ..	BUDGETEL INN—ROSEVILLE	20675 13 MILE RD	ROSEVILLE	MI 48066	(313)296–6910
MI0090 ..	KNIGHTS INN—ROSEVILLE	31842 LITTLE MACK	ROSEVILLE	MI 48066	(313)294–6140
MI0168 ..	HAMPTON INN—SAGINAW	2222 TITTABAWASSEE RD	SAGINAW	MI 48604	(517)792–7666
MI0106 ..	KNIGHTS INN—SAGINAW	2225 TITTABAWASSEE RD	SAGINAW	MI 48604	(517)791–1411
MI0289 ..	MOTEL 6—SAGINAW	6361 DIXIE HWY	SAGINAW	MI 48722	(517)777–2582
MI0153 ..	COMFORT INN—SAULT STE MARIE.	4404 I–75 BUSINESS SPUR	SAULT STE MARIE	MI 49783	(906)635–1118
MI0282 ..	ECONO LODGE—SOUTHFIELD.	23300 TELEGRAPH RD	SOUTHFIELD	MI 48034	(313)358–1800
MI0132 ..	HILTON—SOUTHFIELD GARDEN INN.	26000 AMERICAN DR	SOUTHFIELD	MI 48034	(313)357–1100
MI0124 ..	BUDGETEL INN—SOUTHGATE.	12888 REECH RD	SOUTHGATE	MI 48195	(313)374–3000
MI0099 ..	ECONO LODGE—ST. IGNACE	927 N. STATE ST	ST. IGNACE	MI 49781	(906)643–7733
MI0073 ..	HOLIDAY INN - TAYLOR	20777 EUREKA RD	TAYLOR	MI 48180	(313)283–2200
MI0121 ..	SUPER 8 MOTEL - TAYLOR	15101 HURON ST	TAYLOR	MI 48180	(313)283–8830
MI0065 ..	HAMPTON INN - TRAVERSE CITY.	100 US 31 N	TRAVERSE CITY	MI 49684	(616)946–8900
MI0157 ..	HILTON - NORTHVILLE	5500 CROOKS RD	TROY	MI 48098	(313)879–2100
MI0126 ..	HOLIDAY INN - TROY	2737 ROCHESTER CT	TROY	MI 48084	(313)689–7500
MI0264 ..	COMFORT INN - UTICA	11401 HALL RD	UTICA	MI 48317	(313)739–7111
MI0201 ..	BUDGETEL INN - WARREN	30900 VAN DYKE	WARREN	MI 48093	(313)574–0550
MI0226 ..	DAYS INN - WARREN	30000 VAN DYKE AVE	WARREN	MI 48093	(313)573–7600
MI0120 ..	HAMPTON INN - WARREN	7447 CONVENTION RD	WARREN	MI 48092	(313)977–7270
MI0237 ..	HOLIDAY INN - WARREN	11500 ELEVEN MILE	WARREN	MI 48089	(313)754–9400
MI0280 ..	QUALITY INN - WARREN	32035 VANDYKE	WARREN	MI 48093	(313)264–0100
MI0265 ..	COMFORT INN - WATERFORD	7076 HIGHLAND RD	WATERFORD	MI 48327	(313)666–6555
NJ:					
NJ0144 ..	B/W FAIRFIELD EXECUTIVE INN.	216–234 RT 46 E	FAIRFIELD	NJ 07004	(201)575–7700
NJ0108 ..	ECONO LODGE OF MANCHESTER.	2016 RT 37 W	LAKEHURST	NJ 08733	(908)657–7100
NJ0132 ..	BEST WESTERN MORRISTOWN INN.	270 SOUTH ST	MORRISTOWN	NJ 07960	(201)540–1700
NJ0056 ..	QUALITY INN SOMERSET	1850 EASTON AVE	SOMERSET	NJ 08873	(908)469–5050
NJ0174 ..	COMFORT INN ATLANTIC CITY WEST.	7095 BLACK HORSE PIKE	W ATLANTIC CITY	NJ 08232	(609)645–1818
NY:					
NY0072 .	ECONO LODGE SOUTH	4344 MILESTRIP RD	BLASDELL	NY 14219	(716)825–7530
NY0108 .	COMFORT SUITES	901 DICK RD	BUFFALO	NY 14225	(716)633–6000
NY0361 .	QUALITY INN	4217 GENESSE ST	BUFFALO	NY 14225	(716)633–5500
NY0114 .	RADISSON HOTEL CORNING	125 DENISON PKWY. E	CORNING	NY 148302766	(607)962–5000
NY0102 .	COMFORT INN CORTLAND	2½ LOCUST AVE	CORTLAND	NY 13045	(607)753–7721
NY0161 .	GLENS FALLS/LAKE GEORGE ECONO LODGE.	29 AVIATION RD	GLENS FALLS	NY 12801	(518)793–3491
NY0156 .	ECONO LODGE	CASCADE RD	LAKE PLACID	NY 12946	(518)523–2812
NY0106 .	COMFORT INN THE POINTE	ONE PROSPECT POINTE	NIAGARA FALLS	NY 14303	(716)284–6835
NY0155 .	ECONO LODGE	7708 NIAGARA FALLS BLVD	NIAGARA FALLS	NY 14304	(716)283–0621
NY0562 .	DARIEN LAKES ECONO LODGE.	8493 ALLEGENY ROAD	PEMBROKE	NY 14036	(716)599–3040
NY0103 .	COMFORT INN FAIRGROUNDS.	7010 INTERSTATE ISLAND RD	SYRACUSE	NY 13209	(315)453–0045
NY0104 .	COMFORT INN UNIVERSITY	454 JAMES ST	SYRACUSE	NY13203	(315)425–0015
NY0312 .	MICROTEL LANCASTER	50 FREEMAN RD	WILLIAMSVILLE	NY14221	(716)633–6200
TX:					
TX0381 .	ARLINGTON COMFORT INN AT SIX FLAGS.	1601 E. DIVISION ST	ARLINGTON	TX 76011	(817)261–2300
TX0422 .	DALLS CLARION	1241 W. MOCKINGBIRD LN	DALLAS	TX 75247	(214)630–7000
TX0080 .	DOUBLETREE HOTEL	8250 N. CENTRAL EXPWY	DALLAS	TX 75206	(214)691–8700
TX0394 .	COMFORT INN	900 YARBROUGH DR	EL PASO	TX 79915	(915)594–9111
TX0253 .	ECONOLODGE GALVESTON	2825 61ST ST	GALVESTON	TX 77551	(409)744–7133
TX0369 .	HARVEY HOTEL NEAR GREENWAY PLAZA.	2712 SW FRWY	HOUSTON	TX 77098	(713)523–8448
TX0340 .	HARVEY SUITES HOUSTON MEDICAL CENTER.	6800 S. MAIN	HOUSTON	TX 77030	(713)526–7744
TX0338 .	THE HARVEY HOTEL DFW AIRPORT.	4545 W. JOHN CARPENTER FRWY.	IRVING	TX 75063	(214)929–4500
TX0285 .	RADISSON ODESSA HOTEL & CONFERENCE CENTER.	5200 E. UNIVERSITY	ODESSA	TX 797628113	(915)368–5885

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HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 9/16/94 UPDATE—Continued

Index	Property Name	PO box/Rt No. and Street Address	City	State/zip	Telephone
TX0473 .	COMFORT INN	P O BOX 28 1307 AVE. A	OZONA	TX 76943	(915)392–3791
TX0474 .	COMFORT INN OF PARIS	3505 NE LOOP 286	PARIS	TX 75460	(903)784–7481
TX0289 .	CLARION HOTEL RICHARDSON.	1981 N. CENTRAL EXPRWY	RICHARDSON	TX 75080	(214)64)–4000
TX0477 .	ECONO LODGE EAST	218 SOUTH W.W. WHITE RD	SAN ANTONIO	TX 78219	(210)333–3346
TX0107 .	LA QUINTA INN SAN ANTONIO CONVENTION CENTER.	1001 E. COMMERCE ST	SAN ANTONIO	TX 782053303	(210)222–9181
TX0309 .	RODEWAY INN FIESTA PARK	19793 IH–10 WEST	SAN ANTONIO	TX 78257	(210)698–3991
VA:					
VA0330 .	SHERATON NATIONAL HOTEL	900 S. ORME STREET	ARLINGTON	VA 222040000	(703)521–1900
VA0064 .	COMFORT SUITES	1550 CROSSWAYS BLVD	CHESAPEAKE	VA 233200000	(804)420–1600
VA0247 .	NORFOLK MARRIOTT WATERSIDE HOTEL.	235 E MAIN STREET	NORFOLK	VA 235100000	(804)627–4200
WI:					
WI0066 ..	COUNTRY INN BY CARLSON .	737 AVON RD	SPARTA	WI 54656	(608)269–3110
WV:					
WV0001	KNIGHTS INN	1599 EDWIN MILLER BLVD	MARTINSBURG	WV 25401	(304)267–2211
WV0152	LEISURE INN	INT. I–81 & WV9 EXIT 16 E	MARTINSBURG	WV 25401	(304)263–8811
DELETIONS					
AL:					
AL0229 ..	PERDIDO BEACH HILTON RESORT.	27200 PERDIDO BEACH BLVD	ORANGE BEACH	AL 36561	(205)981–9811
HI:					
HI0051 ..	HAWAIIAN REGENT HOTEL KALAKAUA.	2552 KALAKAUA AVE	HONOLULU, OAHU	HI 96815	(808)922–6611
HI0151 ..	SHERATON MAUI HOTEL	2605 KAANAPALI PKWY	LAHAINA, MAUI	HI 967611991	(808)661–0031
HI0026 ..	THE WESTIN KAUAI	3610 RICE ST	LIHUE, KAUAI	HI 96766	(808)245–5050
NY:					
NY0571 .	COMFORT INN AIRPORT	395 BUELL RD	ROCHESTER	NY 14624	(716)436–4400
NY0570 .	ECONO LODGE ROCHESTER SOUTH.	940 JEFFERSON STREET	ROCHESTER	NY 14623	(716)427–2700
TN:					
TN0150 .	COREY HOTELS INC. HOLIDAY INN.	PO BOX 14 RT. 1 OLD HWY. 25 W. EXIT 134.	CARYVILLE	TN 37714	(615)562–8476
TN0015 .	WINNERS CIRCLE MOTEL	3430 FORT CAMPBELL BLVD	LARKSVILLE	TN 37042	(615)431–4906
TN0058 .	ECONO LODGE	853 UNIVERSITY ST	MARTIN	TN 38237	(901)587–4241
TX:					
TX0401 .	HOLIDAY INN LA PLAZA MALL	2000 S. 10TH ST	MCALLEN	TX 78501	(210)686–1741

[FR Doc. 94–24221 Filed 9–29–94; 8:45 am]
BILLING CODE 6718–26–U

federal register

Friday
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Part VII

Federal Emergency Management Agency

State Contacts; Hotel and Motel Fire Safety Act National Master List; Notice

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FEDERAL EMERGENCY MANAGEMENT AGENCY

State Contacts for the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the State contacts for the Hotel and Motel Fire Safety Act national master list. The offices or officials listed are responsible for compiling the respective State listings of properties which comply with the Hotel and Motel Fire Safety Act, and should be contacted directly for any changes to the national master list.

EFFECTIVE DATE: September 30, 1994.

ADDRESSES: Comments on the State contact list or the national master list or any changes to the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (fax) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1141.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 24, 1992, 57 FR 55314, and makes periodic changes to the list.

Each State and Territory or other participating jurisdiction is responsible for compiling its respective listings of properties which comply with the Hotel and Motel Fire Safety Act. If you own or represent a property in compliance with the Act, and want to include the property in the national master list or to make an addition, deletion, or other change to a listing on the national master list, please contact the appropriate office in the State or jurisdiction where the property is located.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The State contacts for the national master list follow below.

Dated: September 27, 1994.

Spence W. Perry,

Acting General Counsel.

STATE CONTACTS FOR HOTEL AND MOTEL FIRE SAFETY ACT MASTER LIST 9/16/94

State/Contact	Office	Address	Phone	FAX
AL—John Robison	Fire Marshal's Office	135 S Union Street, Room 140, Montgomery, AL 36130–3401.	205/269–3575	205/240–3194
AK—Jack McGary	State Fire Marshal's Office.	5700 E Tudor Road, Anchorage, AK 99507–1225.	907/269–5604	907/338–4375
AZ—Michael Reichling	Office of the State Fire Marshal.	1540 W Van Buren Street, Room 235, Phoenix, AZ 85007.	602/255–4964	602/255–4961
AR—Ray Carnahan	Arkansas State Police	Fire Marshal's Section, 3 Natural Resources Drive, Little Rock, AR 72215.	501/221–8258	501/224–5006
CA—Penny Williams	State Fire Marshal	7171 Bowling Drive, Suite 500, Sacramento, CA 95823.	916/262–2006	916/262–1942
CO—Dean Smith	Colorado Division of Fire Safety.	PO Box 158, Palisade, CO 81526–0158	303/464–0728	303/464–0729
CT—Sheryl Salvatore	Bureau of State Fire Marshal.	Division of Fire and Building Safety, 294 Colony Street, Meriden, CT 06450.	203/238–6625	203/238–6148
DC—Insp. Fenton	DC Fire Prevention Division.	613 G Street NW, Room 810, Washington, DC 20001.	202/673–3344	202/628–5306
DE—Diane Towns	State Fire Marshal	RD2, Box 166A, Dover, DE 19901	302/739–5665	302/739–3696
FL—Debbie Crowder	Division of State Fire Marshal.	Department of Insurance, 101 E Gaines Street, Rm 660, Tallahassee FL 23299–0300.	904/922–3172 x3629	904/922–2553
GA—Sonya Scandret	State Fire Marshal	2 Martin Luther King Jr. Drive, Suite 620 West, Atlanta, GA 30334.	404/656–0698	404/656–7628
GUAM—Frank Cruz	Fire Department	Pedro's Plaza, 287 W O'Brien Drive, Agana, Guam 96910.	671/477–3473	671/477–4385
HI—August Range	State Fire Council	3375 Koapaka Street, Suite H425, Honolulu, HI 96819–1869.	808/831–7748	808/831–7750
ID—Lorraine Allen	State Fire Marshal	500 S 10th Street, Boise, ID 83720	208/334–4288	208/334–2298
IL—Peter Vina	Illinois State Fire Marshal.	1035 Stevenson Drive, Springfield, IL 62703–4259.	217/785–5620	217/782–1062
IN—Pauline Strashberry	Office of the State Fire Marshal.	402 W Washington Street, Room E241, Indianapolis, IN 46204.	317/232–2222	317/232–0146
IA—Sue Mallory	Iowa State Fire Marshal.	Des Moines, IA 50319	515/281–5821	515/242–6299
KS—Chasity Uhl	State Fire Marshal Department.	700 SW Jackson Street, Suite 600, Topeka, KS 66603–3714.	913/296–3401	913/296–0151
KY—Lisa Mahoney	Division of Fire Prevention.	1047 US 127 South, Frankfort, KY 40601	502/564–3626	502/564–6799
LA—Theresa Stevens	Dept. of Public Safety and Corrections.	5150 Florida Blvd, Baton Rouge, LA 70806.	504/925–3647	504/925–4241
ME—Karen Peterson	State Fire Marshal's Office.	317 State Street, Station #52, Augusta, ME 04333–0052.	207/287–3473	207/287–5163

STATE CONTACTS FOR HOTEL AND MOTEL FIRE SAFETY ACT MASTER LIST 9/16/94—Continued

State/Contact	Office	Address	Phone	FAX
MD—Kathy Rose	State Fire Marshal's Office.	106 Old Court Road, Suite 300, Pikesville, MD 21208.	410/764–4324	410/764–4576
MA—Jennifer Meith	State Fire Marshal's Office.	1010 Commonwealth Avenue, Boston, MA 02215.	617/566–4500	617/566–2600
MI—Cindy Rice	Michigan Fire Marshal Division.	7150 Harris Drive, Lansing, MI 48913	517/322–5469	517/322–2908
MN—Theresa Brigleb	State Fire Marshal Division.	450 N Syndicate, Suite 285, St. Paul, MN 55104.	612/643–3093	612/643–3095
MS—Judy Lowry	Mississippi Emergency Mgmt Agency.	PO Box 4501, Jackson, MS 39296–4501	601/960–9013	601/352–8314
MO—Theresa Morris	Division Of Fire Safety	301 W High Street, #860, Jefferson City, MO 65101.	314/751–2930	314/751–1744
MT—Gail Pocha	Fire Prevention and Investigation.	303 N Roberts, Helena, MT 59620	406/444–2050	406/444–4722
NE—Lori Lloyd	State Fire Marshal's Office.	246 S 14th Street, Lincoln, NE 68506–1804.	402/471–2027	402/471–3118
NV—Vicki Stevens	State Fire Marshal's Office.	Capitol Complex, Carson City, NV 89710	702/687–4290	702/687–5122
NH—John Gregiore	State Of New Hampshire Dept. of Safety.	Division of Fire Service, 91 Airport Road, Concord, NH 03301.	603/271–3294	603/271–3903
NJ—Sue Miller	Bureau of Fire Safety	CN 809, Trenton, NJ 08625	609/633–6115	609/633–6134
NM—Solomon Gonzales	New Mexico State Fire Marshal's Office.	PO Box Drawer 1269, Santa Fe, NM 87504–1269.	505/827–3550	505/827–3778
NY—Bryant Stevens	Office of Fire Prevention and Control.	162 Washington Avenue, Albany, NY 12231.	518/474–6746	518/474–3240
NC—Ellen Sullivan	Fire and Rescue Service Division.	111 Seaboard Avenue, PO Box 26387, Raleigh, NC 27603.	919/733–5435	919/733–9076
ND—Deb Larson	Consumer Protection Division.	PO Box 937, Bismark, ND 58502–0937	701/221–6147	701/221–6145
OH—Jennifer Bair	Division of State Fire Marshal.	8895 E Main Street, Reynoldsburg, OH 43068.	614/752–8200	614/752–7213
OK—Caroline Stewart	State Fire Marshal's Office.	4030 N Lincoln Blvd, Suite 100, Oklahoma City, OK 73105.	405/424–4371	405/424–0926
OR—Benita Cooper	Office of State Fire Marshal.	4760 Portland Road NE, Salem, OR 97305–1760.	503/378–3473	503/373–1825
PA—Rose Thompson	Pennsylvania Emergency Mgmt Agency.	PO Box 3321, Harrisburg, PA 17105	717/783–5061	717/772–6917
PR—Eliberto Colon	Puerto Rico Fire Department.	PO Box 13325	809/725–3444	
RI—Bill Howe	State Fire Marshal's Office.	272 W. Exchange Street, Providence, RI 02903.	401/277–2335	401/773–1222
SC—Pam Dewease	Division of State Fire Marshal.	1201 Main Street, Suite 810, Columbia, SC 29201.	803/737–0660	803/737–0675
SD—Rex Vandenberg	South Dakota Department of Health.	Office of Health Protection, 445 E. Capitol Ave., Pierre, SD 57501–3185.	605/773–3364	605/773–5904
TN—Fred Sims	Division of Fire Protection.	500 James Robertson Parkway, Volunteer Plaza, 3rd Floor, Nashville, TN 37243.	615/741–2981	615/741–1583
TX—Dennis Frasier	Texas Commission on Fire Protection.	3006–B Longhorn Blvd, Austin, TX 78768.	512/873–1875	512/873–1740
UT—Deanne Mousley	Office of the Fire Marshal.	4501 South 2700 West, Salt Lake City, UT 84119.	801/965–4909	801/964–4597
VT—Robert Howe	Fire Prevention Director's Office.	Department of Labor and Industry, Montpelier, VT 05620–3401.	802/828–2288	802/828–2288
VA—Glenn Dean	Dept of Housing & Community Develop..	501 N 2nd Street, Richmond, VA 23219–1321.	804/371–7153	804/371–7092
WA—Rubye Mitchell	Department of Community Development.	Fire Protection Services, 4317 6th Avenue SE, PO Box 48350, Olympia, WA 98504–8350.	206/493–2663	206/493–2648
WV—Debbie Hudson	Office of the State Fire Marshal.	Inspection Division, 2100 Washington St. E, PO Box 51040, Charleston, WV 25305–0140.	304/558–2191	304/558–2537

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STATE CONTACTS FOR HOTEL AND MOTEL FIRE SAFETY ACT MASTER LIST 9/16/94—Continued

State/Contact	Office	Address	Phone	FAX
WI—Lynn Lecount	Bureau of Buildings and Structures	Safety and Building Division, 20 E Washington Avenue, Room 103, Madison, WI 53707.	608/267–2496	608/267–2496
WY—Bruce Jasperson	Dept of Fire Prev. and Electrical Safety.	Herschler Building, 1st Floor West, Cheyenne, WY 82002.	307/777–7288	307/777–7119

[FR Doc. 94–24220 Filed 9–29–94, 8:45 am]
BILLING CODE 6718–01–U

Federal Register

Friday
September 30, 1994

Part VIII

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 200 and 203
Nationwide Pre-Foreclosure Sale Procedure; Interim Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 200 and 203

[Docket No. R-94-1749; FR-2682-I-01]

RIN 2502-AE72

Nationwide Pre-Foreclosure Sale Procedure

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule sets forth the requirements and procedures that govern the Department's Pre-Foreclosure Sale (PFS) Procedure beginning in Federal fiscal year 1995 (October 1, 1994 through September 30, 1995). The requirements and procedures contained in this interim rule are based on the Pre-Foreclosure Sale Demonstration Program established by a notice published in the **Federal Register**. This interim rule takes into consideration the public comments received on that notice. It also incorporates changes in the PFS requirements and procedures based on the experience of the Department under the Demonstration.

DATES: Effective Date: October 31, 1994. Comments due date: November 14, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Joseph Bates, Director, Single Family Servicing Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone (202) 708-3680. A telecommunications device for deaf persons (TDD) is available at (202) 708-1112. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this interim rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register**. Information on the estimated public reporting burden is provided later in this Interim Rule under *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, S.W., Room 10276, Washington, D.C. 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, D.C. 20503.

Background

Sometimes, a mortgagor must confront the twin realities of not being able to meet his or her mortgage obligation *and* static or declining property values. Such a situation makes it virtually impossible for a financially distressed mortgagor to sell the home and, using the proceeds, to fully discharge the mortgage debt. Foreclosure of the mortgage is often the method of resolving these difficulties.

Over the past few years, much interest has been expressed by mortgagors and real estate agents in a transaction known as the "pre-foreclosure sale." In a successful pre-foreclosure sale, neither foreclosure nor conveyance of the property to the Department occur. A third party buys the home from a defaulting mortgagor at its approximate fair market value (with certain adjustments, as approved by the Secretary), which is less than the owner's outstanding indebtedness at the time of sale.

Section 1064 of the McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628) amended section 204(a) of the National Housing Act (12 U.S.C. 1710(a)) to authorize HUD to pay a claim to a lender equal to the difference between the fair market sale price and the outstanding indebtedness (with certain adjustments). A successfully completed pre-foreclosure sale benefits the mortgagor, who avoids the stigma of foreclosure on his or her credit record, and also benefits HUD, which can expect to save by not paying foreclosure-related costs. HUD also saves on maintenance costs and marketing expenses for properties which would otherwise be conveyed to the Department following foreclosure. Finally, mortgagees also benefit through incorporating this loss-mitigation technique into their overall loan servicing, by frequently being able to file their claim for insurance benefits sooner, following a successful pre-foreclosure sale, than they would following a post-foreclosure conveyance claim.

On May 29, 1991, the Department published in the **Federal Register**, at 56 FR 24324, a notice which announced a limited demonstration program to gauge the demand for, and the efficacy of, pre-foreclosure sales as a means of assisting qualified mortgagors in avoiding foreclosure of their FHA-insured mortgages and of saving the Department money.

The Department has decided to implement the pre-foreclosure sale procedure nationwide by incorporating it into the overall approach of servicing FHA-insured loans by FHA-approved lender/servicers. The Demonstration now concluding has been successful in that the demand for this alternative to foreclosure was found to be very substantial; the efficacy of the pre-foreclosure sale transaction was found to be cost-beneficial to HUD; and feedback obtained from participating local HUD offices, program coordinators, mortgagees, homeowners and the general public, was quite favorable. By expanding the options available to financially distressed mortgagors and not adversely affecting any mortgagor rights or interests under existing FHA-insured loan servicing regulations, the Department has not only acted responsibly toward the homeowners with FHA-insured mortgages, but also has operated with an eye to the cost-effectiveness of its own policies and procedures. This interim rule will make pre-foreclosure sales an even more efficient servicing tool by streamlining procedures and, in some respects, reducing the Department's cost of following this course of action.

Among the regulatory changes being implemented is a new § 203.370, which provides for the payment of FHA insurance benefits to mortgagees upon the filing of claims following successful pre-foreclosure sales. (It also contains notification and eligibility provisions, noted below.) Other sections governing claim submission, calculation and payment—24 CFR 200.155, 203.360, 203.365, 203.401, 203.402, 203.403, and 203.410—are being amended to recognize the possibility of a pre-foreclosure sale as an outcome of the servicing of a defaulted mortgage.

Public Comments

The public was given 60 days to comment on the requirements and procedures set forth in the May 29, 1991 notice that established the Pre-Foreclosure Sale Demonstration discussed above. Comments were received from 22 commenters: 12 mortgagees/servicers, three counseling agencies, two real estate service companies, one national association of real estate sales professionals, one quasi-governmental organization, one financial services company, one local HUD office, and one individual. Below is a listing of the comments received and the Department's responses to those comments.

1. With the exception of one mortgagee, all other comments had at least some positive aspects and were supportive of the fact that HUD was engaging in an effort to mitigate losses through pre-foreclosure sales. Typically, commenters believed that PFS was "overdue," "a much needed program," "an attractive alternative to loan foreclosure," and that the "program nationwide should help reduce foreclosures and encourage sales where the market is not strong." [two mortgage servicers, one real estate service company, one national association of real estate sales professionals]

Response: It is because of the overall response of this nature that the Department has decided to implement the pre-foreclosure sale procedure nationwide.

2. Seven commenters stressed the need for trained, proficient professionals to be involved in PFS; e.g., contractors, program administrators, local HUD staff, or HUD Headquarters staff overseeing the Demonstration. [one national association of real estate sales professionals, two real estate service companies, four mortgagees]

Response: It has come to HUD's attention that a number of mortgagees have added, or otherwise identified, loss-mitigation teams to their respective servicing staffs, in an effort to improve the responsiveness to mortgagor defaults and to apply alternatives to foreclosure where feasible and cost-beneficial. HUD applauds and encourages these efforts; they comport with the Department's own evolving philosophy regarding foreclosure avoidance and with expanding concepts of "prudent mortgage servicing" and "protecting HUD's interests." The Department expects that the benefits of such an approach will be marked and far-reaching, extending not only to HUD, but also to homeowners and mortgagees. In particular, the move to increase the mortgagees' role in HUD's pre-foreclosure sale procedure is being taken to utilize the mortgagees' growing ability to manage or mitigate loss in a responsible fashion. HUD will provide sufficient information and/or training to its own staff involved in pre-foreclosure sales to enable them to make prudent decisions and to disseminate accurate details about the PFS procedure.

3. One element of the Demonstration that was criticized was the eligibility criterion requiring mortgagors to be at least three months in arrears before they could be considered for the program. It was felt that this was counterproductive to the goal of loss mitigation, and that in many cases, a case-by-case determination of need and qualifications could be performed at virtually any time before allowing mortgagors to become program participants. Several commenters urged that a comprehensive determination be made, using financial statements, etc. [six mortgagees]

Response: The experience of the PFS Demonstration has provided the basis for the decision to retain the eligibility criterion pertaining to the defaulted status of a PFS candidate's mortgage loan. There must still be a determination made in every case that the mortgagor is in default, and that, at a minimum, three monthly installments are in arrears. As a practical matter, however, this means that a candidate for PFS could satisfy this criterion as early as the 62nd day of default, i.e., because the third payment can be due and unpaid at that time. Retaining this criterion as the new nationwide PFS procedure as implemented does keep the administration of pre-foreclosure sales from possibly impinging on servicing requirements related to HUD's mortgage assignment program. Notification of the mortgagor of his right to apply for assignment assistance from HUD (which mortgagees are required to perform at or after the third payment is due and unpaid), will occur at a time when homeowners can choose between a course of action directed toward homeownership retention OR one whose objective is to dispose of the property and relieve the mortgagor of his mortgage obligation. It is the Department's intent that defaulting mortgagors make such an informed decision. Permitting participation in the PFS procedure at an earlier juncture will be evaluated in the future, however, and could be implemented if found not to be detrimental.

4. Another element of the Demonstration that received criticism was the allowance of a ten day period for review of the proposed pre-foreclosure sale. [three mortgagees, one real estate service company, one individual]

Response: The ten day period for review of the proposed pre-foreclosure sale, as described in the Notice, was reduced to five (5) working days during the Demonstration, and will remain a *maximum* of 5 working days when the function is transferred to the mortgagee. The period might be further reduced (e.g., to three working days) after evaluating the experience of the nationwide PFS procedure.

5. Another criticized provision was the series of cash incentives payable to mortgagors who consummate a pre-foreclosure sale after participating in the program, although several commenters did support this concept. Four commenters opposed seller incentives [two mortgagees, one individual, one quasi-governmental organization]; three supported them [one mortgagee, one real estate services company, one national association of real estate sales professionals]; one supported case-by-case determinations of amounts [a mortgagee]; and one suggested that cash "incentives" be applied toward property improvements only [a real estate services company]. One commenter [a mortgagee] also criticized the expanded deed-in-lieu incentive as being over-generous and inappropriate. Another [a mortgagee] suggested that mortgagors were prepared to pay money towards accomplishing a deed-in-lieu. A third [a mortgagee] suggested that the mortgagor assign any and all refunds of insurance, etc. to HUD as a provision of enrollment in the PFS program.

Response: Cash incentives for mortgagors are being reduced for the nationwide implementation of the PFS procedure. The amount payable to a mortgagor who has successfully marketed and sold his home will be $750, with an additional $250 if the time needed to go to closing is 90 days or less from the date the mortgagor was advised that he could participate in the PFS procedure. HUD is retaining the policy of paying incentives to mortgagors in return for a successful pre-foreclosure sale as a means of providing moving assistance or the promise of reimbursement for cosmetic repairs and maintenance undertaken by homeowners who may still be experiencing financial problems. In addition, the Department wishes to encourage the maximum number of interested and qualified mortgagors to take advantage of the PFS option, because of the savings this generates for HUD.

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good-faith participant in the PFS procedure whose participation does not conclude with a pre-foreclosure sale is being retained. Since the commencement of the Demonstration in 1991, HUD has raised the limit for cash consideration payable for *any* deed-in-lieu from $200 to $500. This was done to motivate mortgagors, and to encourage mortgagees to process deeds-in-lieu in as many appropriate cases as possible, because of the saving HUD experiences in most instances. For mortgagors who have made efforts to market their homes, payment of the maximum amount otherwise authorized will underscore HUD's interest in seeing as many appropriate deeds-in-lieu processed as possible instead of normally costlier foreclosures.

The assignment to the mortgagee of all refunds due the mortgagor (for example from hazard insurance refunds) is being incorporated into the application form for participation in the PFS procedure. The provision will apply to mortgagors in the event their participation concludes with either a pre-foreclosure sale or a deed-in-lieu. The mortgagee will deduct any such refunds received from the mortgagor from their claim for FHA insurance benefits submitted to HUD.

6. There was considerable support for payment of one sort or another to the mortgagee/servicer for the inconvenience of administering the case to facilitate participation by the mortgagor in the PFS program. The method of payment varied from calculating the claim using note rate interest, as though there were a formal forbearance in effect, to following the FNMA $500-to-$1000 payment in each case resulting in a closed PFS. [three mortgagees, one real estate services company, one quasi-governmental organization]

Response: With the commencement of the nationwide PFS procedure, HUD will pay an administrative fee to the mortgagees of $1000, via the Single Family Claims process, for each pre-foreclosure sale that goes to settlement ("closes"). This should provide the mortgagees ample motivation to utilize this servicing tool whenever it is appropriate to do so. It will also defray mortgagee expenses related to the duties that must be performed with regard to all participants in the PFS procedure, not just the successful ones. Payment of this administrative fee, and the amount paid, are subject to change in the future, in the sole discretion of the Department.

7. One commenter suggested that HUD consider making it possible for original homeowners to benefit from the program by allowing them to have their mortgages modified to reflect the current, lower value of the property, which would result in a more bearable financial obligation for them. [one individual] Two others suggested that we engineer the program to permit assumptions of the existing loans, after HUD has "bought down" the value of the obligation (involving partial payoff of the mortgagee). [one national association of real estate sales professionals, one mortgagee]

Response: "Retention of ownership" and assumption provisions are not being considered as part of the Department's pre-foreclosure sale procedure. The PFS procedure is designed to result in an outright sale at the property's current value, and in cancellation of the original mortgage instrument. If HUD were to implement the "buy down" recommendation, it would in effect be insuring the purchase values of the properties and not the mortgages. Properties depreciate in value for various reasons and it is not practicable for HUD to compensate homeowners for losses in that way. The Department is exploring various other servicing activities designed to assist homeowners to avoid foreclosure, retain their properties, and also to mitigate HUD's losses.

8. Another idea that received considerable support was the performance of a title search early on in the participant's exposure to the program, to eliminate many candidates from the program who would not be approved for either a PFS or a deed-in-lieu. [three mortgagees]

Response: The desirability of an early title search is stressed in the latest instructions being issued to mortgagees regarding the PFS procedure. This is especially true in cases where suspicions are aroused that significant secondary liens or encumbrances exist.

9. Several commenters supported the idea of relying on Brokers' Price Opinions (BPOs) either singly, severally, or in combination with appraisals conducted under program auspices. [one quasi-governmental organization, two mortgagees, one real estate services company]

Response: HUD is not closing the door regarding the use of BPOs, alone or in conjunction with more formal property appraisals, in the future. However, at this time, appraisals are the only method of establishing property valuation under the PFS procedure. The costs are higher for appraisals, but the reliability may also be greater. The Department also values the fact that the appraisers will be credentialed as well as "neutral" parties, otherwise uninvolved with the sale unlike the BPOs, which are frequently provided by real estate brokers that have a relationship with one or more parties to the sale. This reliability and neutrality is especially important during the initial period when mortgagees are becoming acclimated to their central role in facilitating pre-foreclosure sales. The Department may add BPOs to the PFS procedure after evaluating the performance of appraisers, comparing their cost to BPOs, and taking other factors into account.

10. Several commenters criticized the "70% appraisal of the indebtedness" criterion and the "90% net proceeds of the appraised value" criterion as unworkable in many areas, requiring delays for HUD office intervention to decide whether to waive. Most wanted the formula to change, downward, or at least have the discretion to waive them placed firmly in the hands of the coordinator. [three mortgagees]

Response: When preparing the legislation which authorized HUD to engage in pre-foreclosure sales, Congress issued a strong warning that HUD should avoid a "fire sale" atmosphere in administering the PFS program. The Department's experience during the Demonstration supports retaining the 70% criterion, which is the ratio of as-is appraised value to outstanding loan indebtedness. In rare instances, it will be possible for the local HUD Office to grant an inquiring mortgagee a variance from the 70% criterion, based on a consideration of the facts of that case.

The expectation of netting 90% of appraised value was an internal rule of thumb. That figure has been reduced to 87% as more workable and realistic, given the typical transactional costs of pre-foreclosure sales during the Demonstration. Mortgagees will be able to request a variance from the local HUD Office with jurisdiction over the property, to permit a sale that would net less than 87%.

11. Two commenters [two mortgagees] supported the idea of parallel processing of foreclosure while a participant was enrolled in the PFS program. Two commenters [two mortgagees] were also concerned that the deadline for initiation of foreclosure be explicitly lifted in cases involving participation in the PFS program, or else HUD would run the risk of non-cooperation from mortgagees who would expect to be penalized for missing this deadline.

Response: If participation in the PFS procedure is unsuccessful and does not result in a sale, a mortgagee has nine months after default or sixty (60) days after the date of termination of PFS participation, whichever is later, to initiate foreclosure or accept a deed-in-lieu of foreclosure. The mortgagee must also meet conveyance time requirements. If the pre-foreclosure sale does go to closing, neither foreclosure nor conveyance of the property occur; the mortgagee has 30 days after the sale closing date to file its claim. If these time frames cannot be met, the mortgagee must file Form HUD–50012, Extension Request, with the Loan Management Branch of the local HUD Office.

Apart from the issue of obtaining extensions, and the customary timeframes in which to initiate foreclosure, and submit a claim, it is still possible for mortgagees to opt to continue steps leading to foreclosure while a mortgagor is engaged in marketing the property for sale under the PFS procedure. *This decision must be weighed by the mortgagee in light of the cost-effectiveness (i.e., the "loss mitigation perspective") of such actions.* Proceeding with such steps in the face of a mortgagor's participation in the PFS procedure—which has a high likelihood of ending either in the sale of the property or a deed-in-lieu—is *frequently not justified*, because of the outlay of time and money required to accomplish them. In the meantime, the experiences of the PFS procedure will be observed and evaluated. HUD may in the future direct mortgagees to desist from concurrently taking foreclosure-related steps unless certain criteria are met.

Mortgagees are reminded that they must always explain their concurrent foreclosure-related actions to the mortgagors participating in the PFS procedure, because such actions may be misconstrued by the mortgagor and may jeopardize the pre-foreclosure sale.

12. There was a serious division of opinion as to whether mortgagees should be expected to participate in the mechanics of the program. One commenter [a mortgagee] said that HUD shouldn't ask lenders to, or expect that they would, prepare the PFS sale package for submission to the program coordinator. Two other commenters [two mortgagees] indicated that it was appropriate for HUD to designate the mortgagee as a principal player in the administration of the pre-foreclosure sale, as a means of loss-mitigation and appropriate loan servicing.

Response: The difference of opinion over the appropriate level of mortgagee participation in the Pre-foreclosure Sale procedure has been resolved by substantially increasing the mortgagees' engagement in the process over what was expected during the Demonstration, and also by significantly increasing the administrative fee payable to mortgagees for facilitating each pre-foreclosure sale. During the course of the Demonstration, many mortgagees did express a willingness to expand the level of their involvement in the pre-foreclosure sale procedure. HUD has decided to implement its nationwide PFS procedure by using the mortgagees in the central role of PFS "facilitators" because of the mortgagees' existing loan servicing role; the savings generated by authorizing mortgagees to carry out the PFS procedure under express HUD procedures and criteria; and the Department's evolving policy that mortgagees explore alternatives to foreclosure, whenever appropriate.

13. Other recommendations included wider circulation of the program's *Information Sheet* [one mortgagee]; quicker nationwide implementation of the program [one mortgagee]; greater publicizing of the PFS alternative to maximize the number of participants [one mortgagee]; combining mandatory notification by lender with other mandatory HUD correspondence that gets sent to mortgagor [one mortgagee]; and relying on the lender for homeownership counseling [one mortgagee].

Response: A new PFS *Information Sheet* will be distributed, and be generally available, to real estate brokers, housing counseling agencies, mortgagees, and local HUD offices. Although nationwide implementation of the PFS option is now imminent, during the Demonstration all local HUD offices other than those "officially" designated as being involved in the PFS Demonstration were nonetheless able to activate the pre-foreclosure sale procedure "unofficially" in their jurisdictions, and a significant number did. There will be more publicizing of the nationwide PFS procedure as it starts up.

Many forms have been eliminated or streamlined, and the mandatory notification forms have been combined with other correspondence that mortgagees must send to mortgagors While it is not appropriate to depend exclusively on lenders to provide homeownership counseling (there is a network of HUD-approved housing counseling agencies whose duties include homeownership counseling), lenders are free to provide homeownership counseling and other information related to pre-foreclosure sales if requested by the mortgagor to do so.

14. Other recommendations also included allowing participants to select their own brokers independently [one national association of real estate sales professionals), and also deciding on how HUD will determine "qualified" real estate brokers to put on the program's referral list [one HUD field office].

Response: PFS participants *are* permitted to select their own brokers—the required list of cooperating brokers has been eliminated as too cumbersome for mortgagees to produce and update, and also as possibly confusing to some PFS participants. Thus the issue of whether and how "qualified" are the brokers on the list is rendered moot

This Interim Rule

This interim rule takes into consideration the public comments received on the notice announcing the PFS demonstration published on May 29, 1991, 56 FR 24324. It also incorporates changes in the PFS requirements and procedures based on the Department's experience under the Demonstration.

Eligibility Criteria

In order to be eligible for the pre-foreclosure sale procedure, a mortgagor must:

(1) be an owner-occupant in a single family residence that is security for a mortgage insured under 24 CFR part 203, unless otherwise prescribed by the Secretary;

(2) have an account in default with at least three monthly installments past due and unpaid; (The default must be the result of a documentable involuntary reduction in income or an unavoidable increase in his or her expenses; including job relocation);

(3) have been made aware of the assignment program, as discussed below under *Notification of PFS Procedure*, and have been either turned down for it by HUD, or have decided not to apply for it;

(4) have, at the time application is made to pursue a pre-foreclosure sale, a mortgaged property whose current fair market value, compared to the amount needed to discharge the mortgage, meets the criterion established by the Secretary, unless a variance is granted by the Secretary; and

(5) have received homeownership counseling, as defined by the Secretary, and have executed a certification to that effect.

These criteria are contained in new section 24 CFR 203.370(c).

The Department has decided to continue a policy begun during the PFS Demonstration, under which those mortgagors who are small investors with only one FHA-insured mortgage (e.g., a former owner-occupant who may be renting out the property) can be

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considered for PFS eligibility. Under no circumstances, however, will the pre-foreclosure sale option be made available to "walkaways" who have abandoned their mortgage obligations despite their continued ability to pay. Mortgagors determined to be eligible for, and who participate in, the pre-foreclosure sale procedure will *not* be pursued for deficiency judgments by the Department.

Use of Mortgagees To Facilitate Pre-foreclosure Sales

The Department is adding the pre-foreclosure sale to the list of existing foreclosure alternatives that can be offered by mortgagees to mortgagors facing financial difficulties and who meet certain qualifying criteria. Although offering the pre-foreclosure sale option to a qualified mortgagor is arguably a part of "normal" servicing under FHA procedures and guidelines which require mortgagees to act prudently and with HUD's interests in mind, the Department is encouraging mortgagees to incorporate pre-foreclosure sales without delay into their overall servicing procedures by paying mortgagees an administrative fee for each successful pre-foreclosure sale that they facilitate. Payment of the administrative fee via the claims process is provided for in 24 CFR 203.402(t), which is being implemented as part of this interim rule.

Justification of Incentive Paid to Mortgagors

The Department has decided to retain the practice used during the Demonstration of paying certain cash incentives drawn from sale proceeds to qualified mortgagors who close a pre-foreclosure sale; however, the amount of this incentive is being reduced from that which was used in the Demonstration. Also, in cases where a deed-in-lieu of foreclosure follows bona fide but unsuccessful participation in the PFS procedure, the Department's policy of strongly encouraging mortgagees to offer such mortgagors the full $500 consideration payable for a deed-in-lieu (authorized in HUD Mortgagee Letter 93–16) is being continued.

The Department is aware that other mortgage insurers and financial institutions have not authorized the use of a portion of sale proceeds for consideration payable to the mortgagor, and do not otherwise reward mortgagors who engage in a pre-foreclosure sale or deed-in-lieu of foreclosure, beyond the fact that PFS necessarily precludes the foreclosure. However, the proportion of pre-foreclosure sales occurring in these other agencies and institutions among defaulting mortgagors is generally much lower than the level of participation which HUD would prefer for its nationwide pre-foreclosure sale procedure. Furthermore, although the Department acknowledges that the avoidance of a foreclosure on their credit records is a prime motivation for mortgagors to dispose of their properties via pre-foreclosure sales, HUD has a number of other justifications for offering monetary consideration to participants in the PFS procedure.

—PFS participants must make considerable efforts and undergo significant inconvenience in seeking out buyers, making the property presentable, and allowing the public access to their home as they attempt to reach an approved sale transaction before the participation period has run.

—Cash incentives for expedited pre-foreclosure sales occurring within three months of commencing the PFS procedure represent a small portion of the estimated savings to the Department of interest that would otherwise have to be paid to mortgagees as part of the insurance contract.

—It is HUD's objective to maximize the number of interested participants in pre-foreclosure sales, because of the estimated aggregate savings to the Department that successful pre-foreclosure sales transactions represent. We estimate that the PFS-related consideration will be more than offset by the savings in pre- and post-acquisition costs for the properties affected by participation in the pre-foreclosure sale procedure.

—Mortgagors can request deeds-in-lieu of foreclosure without first attempting to execute pre-foreclosure sales and might request deeds-in-lieu of foreclosure rather than the pre-foreclosure sale option, when they become fully apprised of the efforts involved in the pre-foreclosure sale, as well as possible tax implications. if a mortgagor meets prevailing criteria and the mortgagee is willing to cooperate, a deed-in-lieu of foreclosure can occur. This would benefit the mortgagor but would represent only modest savings to the Department. Therefore, it is in HUD's interest to make the pre-foreclosure sale option as attractive as possible in order to maximize the number of interested participants.

Although payment of such consideration is warranted by the anticipated savings to the Department, HUD acknowledges the need for vigilance to head off abuse of the process by opportunistic parties.

Deed-In-Lieu of Foreclosure as Feature of the PFS Procedure

At the time he or she requests to participate in the Pre-Foreclosure Sale procedure, the mortgagor is asked whether there are encumbrances on the mortgage, or whether there are title problems of which he or she is aware. The mortgagee should order a title search during the mortgagor's participation in the PFS procedure. The existence of encumbrances or title problems may preclude or result in a refusal to permit either a pre-foreclosure sale *or* a deed-in-lieu. For those mortgagors who can deliver clear title, but who, despite a good faith effort, do not consummate a pre-foreclosure sale, the mortgagee will customarily process a deed-in-lieu of foreclosure upon the failure of the participant to execute a pre-foreclosure sale. A deed-in-lieu action will leave the mortgagor without a foreclosure on his or her credit history.

Notification of PFS Procedure

HUD will circulate an *Information Sheet* on pre-foreclosure sales among mortgagees and housing counseling agencies, and the mortgagees and housing counseling agencies will be encouraged to distribute the document among mortgagors who might be interested in, and possibly qualified to participate in, the Pre-Foreclosure Sale procedure. It will contain basic information about pre-foreclosure sales and will instruct mortgagors or others interested in PFS to contact the homeowner's mortgagee for more information or an application.

Mortgagees are required to notify mortgagors about the pre-foreclosure sale procedure by sending a prescribed communication (HUD–426) when the mortgagors fall two payments behind, and a copy of the *Information Sheet* when the mortgagors become three or more payments in arrears. The requirement that mortgagees provide notification of the pre-foreclosure sale option to mortgagors in default is contained in 24 CFR 203.370(b).

Commencing the Pre-foreclosure Sale Procedure

Once a mortgagor is found to be eligible to participate in the pre-foreclosure sale procedure, and is so notified by the mortgagee, the mortgagor may begin marketing the property. Section 203.356(b) requires mortgagees to notify HUD of that change in status of the mortgagor. The mortgagee will also direct the mortgagor to retain the services of a real estate broker in an attempt to market the property within the established time and price guidelines. These brokers are prohibited from sharing a business interest with the mortgagee or mortgagor (seller).

An appraisal will be ordered by the mortgagee from an appraiser who meets standard eligibility requirements for performing FHA Single Family appraisals. The appraisal will contain "as is" and "as repaired" valuations of the property. Reasonable costs for the property appraisal will be reimbursed through the FHA claims process. Section 203.402(l) has been revised to include the cost of an appraisal performed as part of the Pre-foreclosure Sale procedure. The Department reserves the right, in the future, to authorize mortgagees to substitute or add the use of Broker Price Opinions (BPOs) to the valuation process under the Pre-Foreclosure Sale procedure.

Homeownership Counseling Responsibilities

Before a mortgagor's participation in the Pre-foreclosure Sale procedure can be approved by the mortgagee, either a HUD-approved counseling agency located in the mortgagor's geographic area, the mortgagee, or the local HUD Office will be available to do the following:

(1) Provide mandatory "homeownership counseling" to the mortgagor considering the pre-foreclosure sale option. This will include explaining the alternatives available to the mortgagor, including a payment plan negotiated with the lender, foreclosure and deed-in-lieu of foreclosure, the assignment program (if still an option), and changes in household income, expenses, or composition that might have a bearing on the ability of the mortgagor to retain ownership of the property. The homeownership counseling and certification requirement is contained in § 203.370(c)(5).

(2) Advise mortgagors considering a pre-foreclosure sale that they may wish to contact a financial or tax counselor to assess the specific tax consequences (if any) to them of a pre-foreclosure sale.

(3) Assist in executing certifications for the mortgagors to sign before they can be permitted to participate in the pre-foreclosure sale procedure. These certifications shall include statements that:

(a) Homeownership counseling has been received;

(b) The mortgagor understands that any proposed pre-foreclosure sale must be an "arm's length" transaction; i.e., a sale between two unrelated parties that is characterized by a selling price and other conditions which would prevail in an open market environment, without hidden terms or special understandings between any of the parties connected to the transaction, including the appraiser, sales agent, closing agent and mortgagee; and

(c) If the mortgagor has not made application for mortgage assignment, that the assignment program has been explained to him and that he desires to waive any right he has to apply for the program. The provision regarding consideration of (and for) mortgage assignment is contained in 24 CFR 203.370(c)(3). (This waiver applies to assignment rights arising only from his present mortgage default, and only if he is permitted to participate in the Pre-foreclosure Sale procedure.)

Responsibilities of the Real Estate Broker or the Mortgagor's Attorney

The real estate broker or the mortgagor's attorney should forward to the mortgagee a copy of the contract of sale made conditional upon approval by HUD or the mortgagee, acting under the Secretary's instructions. The contract package should identify the sales commission, and include the necessary certifications (if they are in the broker's or attorney's possession) that have been signed by the mortgagor. The mortgagee will review the package and render a decision within five (5) days of receiving the completed package.

Monitoring Responsibilities of HUD Personnel

The determination by the mortgagee of the mortgagor's eligibility to pursue a pre-foreclosure sale or a deed-in-lieu, as well as the mortgagee's final approval of a proposed sale, shall be reviewed by the appropriate HUD personnel. These reviews may occur at any time, and will be performed on-site by local HUD office or Headquarters personnel. Mortgagees' submission of data pertaining to individual participants in the PFS procedure, as well as monthly Single Family Default Monitoring System (SFDMS) reports, will also be subject to review. The speed and effectiveness with which mortgagees incorporate the pre-foreclosure sale procedure into their overall servicing techniques will be evaluated on-site during mortgagee reviews conducted by HUD staff. A pre-foreclosure sale component will also be incorporated into HUD's regular claim reviews.

General Responsibilities of Mortgagees

(1) Mortgagees will be responsible for implementing correct notification procedures (in particular, sending appropriate notices to defaulting mortgagors and providing information as requested to mortgagors about the PFS procedure).

(2) Mortgagees will be responsible for determining the eligibility of mortgagors to participate in the pre-foreclosure sale procedure, including those whose assignment applications are turned down or for whom the opportunity for assignment has expired or been waived.

(3) Mortgagees will be responsible for responsive and timely servicing in taking the necessary steps for, and cooperating with all aspects of, the PFS procedure, including the expediting of sale transactions; the processing of deeds-in-lieu of foreclosure from qualified participants who did not close a pre-foreclosure sale despite a good faith effort; and the timely resumption of appropriate servicing of those loans when participation in the PFS procedure ends and neither a sale nor a deed-in-lieu has occurred.

(4) The mortgagee will have the authority, on a case-by-case basis, to determine the mortgagor's participation deadline (up to four months to obtain a signed contract of sale, or up to six months to go to closing) when it determines that granting that period is in the best interest of the Department.

(5) In determining the eligibility of a mortgagor to participate in the Pre-foreclosure Sale procedure, the mortgagee shall arrange for the valuation of the property according to instructions issued by the Secretary, to assist in determining whether the property's as-is appraised value is at least 70% of the outstanding mortgage indebtedness (principal and accrued interest only) at the time application is made to pursue a pre-foreclosure sale. In cases where the appraised value is less than 70% of the outstanding debt, the mortgagee must obtain local HUD Office approval for a "variance" from this criterion before the mortgagor can be permitted to participate in the pre-foreclosure sale procedure.

(6) The offer to purchase the property should net HUD at least 87% of the appraised value of the property. However, the mortgagee may exercise discretion in cases where the net proceeds would be less than 87%, if the mortgagee believes that it would still be in HUD's best interest to permit the sale to occur. In such cases, the mortgagee must refer the matter to the Chief of Loan Management at the local HUD Office with the recommendation that the sale be approved by granting a "variance" in that case from the "net proceeds" criterion.

Consideration

Mortgagors who qualify for the pre-foreclosure sale procedure and who close an approved sale shall be able to retain from the sales proceeds before

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disbursement to the mortgagee, the base amount of $750 (seven hundred fifty dollars).

In addition to the base amount, the mortgagor will be able to retain an additional amount of $250 (two hundred fifty dollars) from the proceeds of sale if the closing of an approved pre-foreclosure sale occurs within three (3) months of the commencement of the mortgagor's participation in the pre-foreclosure sale procedure (i.e., from the time the mortgagor is advised in writing that he may participate in the procedure).

If, despite a good faith effort—as determined by the mortgagee—a property does not sell during the mortgagor's period of participation in the PFS procedure, the mortgagee will authorize a title search of the participant's mortgage for title problems and encumbrances (if one was not already performed during the period of participation). If any obstacles to obtaining clear and marketable title are resolved pursuant to instructions from the Secretary, the mortgagee will process a deed-in-lieu of foreclosure from the mortgagor. The mortgagee shall follow prescribed methods of processing the deed-in-lieu and will disburse consideration in the amount of $500 to the mortgagor upon completion of the deed-in-lieu transaction. This consideration is 100% reimbursable to the mortgagee through the FHA claims process.

Other Provisions

(1) All sales contracts submitted for consideration under the pre-foreclosure sale procedure shall contain a clause which provides that HUD approval (directly or through the mortgagee, as prescribed by the Secretary) is a pre-condition of the sale.

(2) Purchasers in approved pre-foreclosure sales may qualify for FHA mortgage insurance.

The Closing of the Pre-Foreclosure Sale; Payment of Claims

Prior to closing the sale:

(1) The mortgagee will provide to the Closing Agent a list of those parties entitled to receive financial consideration and the amounts payable out of sale proceeds.

(2) The Closing Agent will calculate the net sale proceeds and communicate this data to the mortgagee, so that the mortgagee can ascertain that the actual terms of the transaction are in accordance with the proposed sale that the mortgagee had approved earlier.

If the mortgagee approves the transaction, and closing occurs, the Closing Agent will pay the consideration set forth in the list previously provided by the mortgagee, and will send the net proceeds of sale and a form HUD–1 to the mortgagee.

Upon receipt of the payoff funds, the mortgagee will file a claim for the balance due to it under the terms of the contract for insurance. In addition, an administrative fee of $1,000 will be payable, as part of the claim, to the mortgagee for each approved pre-foreclosure sale that goes to closing. Payment of this fee, which is not subject to debenture interest, will be made under the provisions of Section 204(a) of the National Housing Act (12 U.S.C. 1710(a)), as amended by Section 1064 of the McKinney Homeless Assistance Amendments Act of 1988 (P.L. 100–628).

For proposed pre-foreclosure sales that "fall through," or are sought without positive result, the mortgagee should file its claim under existing procedures for conveyance claims, and in compliance with any additional provisions which may be applicable to conveyance claims that follow a mortgagor's unsuccessful participation in the PFS procedure. Section 203.355 has been amended to include definitions of the "end of participation" in the Pre-foreclosure Sale procedure, so mortgagees can calculate the appropriate timeframe within which they must initiate foreclosure or accept a deed-in-lieu of foreclosure where no actual pre-foreclosure sale has resulted.

Other Changes

A conforming amendment is also being made to § 200.155(a). That section provides for the various methods by which a mortgagee may perfect a claim for the payment of mortgage insurance benefits. The case of a pre-foreclosure sale is being added to this list.

Section 203.501 is being added to set forth the Department's policy that mortgagees must consider the financial consequences of their elective servicing action and that HUD expects mortgagees to take those appropriate actions which will generate the smallest financial loss to the Department.

Other Matters

Justification for Interim Rule and for the 45-day Comment Period

The Department has determined that it is impracticable and contrary to the public interest to have notice and public procedure before making the provisions of this interim rule effective, and that expeditious promulgation of this interim rule provides a benefit to all the parties involved.

A successfully completed pre-foreclosure sale benefits the mortgagor, who avoids the stigma of foreclosure on his or her credit record, and also benefits HUD, which can expect to save by not paying foreclosure-related costs. HUD also saves on maintenance costs and marketing expenses for properties which would otherwise be conveyed to the Department following foreclosure. Mortgagees also benefit through incorporating this loss-mitigation technique into their overall loan servicing, by earning an additional administrative fee and by frequently being able to file claims for insurance benefits sooner, following a successful pre-foreclosure sale, than they would following a post-foreclosure conveyance claim.

Because the requirements and procedures contained in this interim rule are based on the Pre-Foreclosure Sale Demonstration Program established by a notice published in the Federal Register on May 29, 1991, at 56 FR 24324, and because this interim rule takes into consideration the public comments received on that notice, the Department believes there is adequate justification for shortening the public comment period to 45 days.

Sunset Provision

The Department has adopted a policy of setting a date for expiration of an interim rule unless a final rule is published before that date. Therefore, this interim rule will expire on a date 18 months from the date of publication.

Environmental Finding

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410.

Information Collection Requirements

The collection of information requirements contained in this interim rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. The public reporting burden for the collection of information requirements contained in this interim rule is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN—NATIONWIDE PRE-FORECLOSURE SALE PROCEDURE

Description of information collection	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Disclosure by Applicants	14,040	1	14,040	.50	7020
Certifications by Participants	10,800	1	10,800	.05	540
Transactional:					
Mortgagees (approving Participation)	10,800	1	10,800	.15	1620
Variance Requests	2,700	1	2,700	.25	645
Closings	6,480	2.30	14,904	.75	11,178
Reporting	10,800	1	10,800	.30	3240
Total (annual) burden	55,620		64,044		24,273

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule before publication and by approving it certifies that this interim rule does not have a significant economic impact on a substantial number of small entities because this interim rule pertains to a limited number of single-family mortgage situations. It expands the options available to financially distressed mortgagors and does not adversely affect any mortgagor rights or interests under existing FHA-insured loan servicing regulations.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this interim rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. The purpose of this interim rule is to implement the requirements and methods of pre-foreclosure sales as a means of assisting qualified mortgagors in avoiding foreclosure of their FHA-insured mortgages and of saving the Department money.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this interim rule does not have potential significant impact on family formation, maintenance, and general well-being.

Semiannual Agenda

This interim rule was listed as item 1587 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20440), pursuant to Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, the Department amends parts 200 and 203 in chapter II of title 24 of the Code of Federal Regulations as follows:

PART 200—INTRODUCTION

1. The authority citation for part 200 is revised to read as follows:

Authority: 12 U.S.C. 1701–1715z–18, 1701s, and 1715z–11; 42 U.S.C. 3535(d), 3543, and 3544.

2. In § 200.155, paragraph (a) is amended by adding at the end the following sentence, to read as follows:

§ 200.155 Claim requirements.

(a) * * * The mortgagee may also perfect its claim for the payment of the insurance benefits in the case of a Pre-Foreclosure Sale conducted in accordance with 24 CFR 203.370.

* * * * *

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

3. The authority citation for Part 203 is revised to read as follows:

Authority: 12 U.S.C. 1701q, 1709, 1710, 1715b; 42 U.S.C. 3535(d). In addition, subpart C is also issued under 12 U.S.C. 1715u.

4. Section 203.355 is amended by revising the introductory sentence of paragraph (a); by revising the first sentence of paragraph (c); and by adding a new paragraph (g), to read as follows:

§ 203.355 Acquisition of property.

(a) *In general.* Upon default of a mortgage, except as provided in paragraphs (b) through (g) of this section, the mortgagee shall take one of the following actions within nine months from the date of default, or within any additional time approved by the Secretary or authorized by §§ 203.345, 203.346, or 203.650 through 203.660: * * *

* * * * * *

(c) *Law prohibiting foreclosures within nine months.* If the laws of the State in which the mortgaged property is located or if Federal bankruptcy law does not permit the commencement of foreclosure within the time limits described in paragraphs (a), (b), and (g) of this section, the mortgagee must commence foreclosure within 60 days after the expiration of the time during which foreclosure is prohibited. * * *

* * * * * *

(g) *Pre-foreclosure sale procedure.* Within 60 days of the end of a mortgagor's participation in the pre-foreclosure sale procedure, *or* nine (9) months after default, whichever is later, if no closing of an approved pre-

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foreclosure sale has occurred, the mortgagee must obtain a deed-in-lieu of foreclosure, with title being taken in the name of the mortgagee or the Secretary, or commence foreclosure. The end-of-participation date is defined as:

(1) Four months after the date of commencement of participation, if there is no signed Contract of Sale at that time, unless extended by the Commissioner;

(2) Six months after the date of commencement of participation, if there is a signed contract but settlement has not occurred by that date, unless extended by the Commissioner;

(3) The date the mortgagee is notified of the mortgagor's withdrawal from the Pre-foreclosure Sale procedure; or

(4) The date of the letter sent by the mortgagee to the mortgagor prior to the expiration of the customary participation period, terminating the mortgagor's opportunity to participate in the Pre-foreclosure Sale procedure.

5. Section 203.356 is amended by revising the section heading; by redesignating the existing text as paragraph (a); and by adding a new paragraph (b), to read as follows:

§ 203.356 Notice of foreclosure; reasonable diligence requirements; notice of pre-foreclosure sale.

* * * * *

(b) The mortgagee must give written notice to the Secretary within the time frame prescribed by the Secretary of the acceptance of any mortgagor into the pre-foreclosure sale procedure.

6. Section 203.360 is amended by revising the section heading; by redesignating the existing text as paragraph (a); and by adding a new paragraph (b), to read as follows:

§ 203.360 Notice of property transfer or pre-foreclosure sale and application for insurance benefits.

* * * * *

(b) Within 30 days of the closing of an approved pre-foreclosure sale, the mortgagee shall notify the Commissioner on a form prescribed by him of the pre-foreclosure sale.

7. Section 203.365 is amended by revising paragraph (a), to read as follows:

§ 203.365 Documents and information to be furnished the Secretary; claims review.

(a) *Items to be furnished the Secretary.* Within 45 days after the deed is filed for record, in the case of a conveyance claim; or, in the case of a claim arising from a pre-foreclosure sale, within 30 days after the closing of the pre-foreclosure sale, unless extended by the Commissioner, the mortgagee must forward to the Secretary:

(1) A copy of the deed to the Secretary that has been filed for record and the title evidence continued so as to include recordation of the deed; or evidence, as prescribed by the Secretary, of the closing of the pre-foreclosure sale.

(2) Fiscal data pertaining to the mortgage transaction.

(3) Any additional information or data that the Secretary may require.

* * * * *

8. A new § 203.370 is added immediately after § 203.369 and before the undesignated center heading, "Condition of Property", to read as follows:

§ 203.370 Pre-foreclosure sales.

(a) *General.* HUD will pay FHA insurance benefits to mortgagees in cases where, in accordance with all regulations and procedures applicable to pre-foreclosure sales, the mortgaged property is sold by the mortgagor, after default and *prior to* foreclosure, at its current fair market value (less adjustments as the Commissioner may deem appropriate) but for less than the mortgage loan amount currently outstanding.

(b) *Notification of mortgagor.* The mortgagee shall give notice, according to prescribed procedures, of the opportunity to be considered for the pre-foreclosure sale procedure to each mortgagor in default. All notices to mortgagors must be in an accessible format, if requested, or if required by the person's known disability, as required by 24 CFR part 9.

(c) *Eligibility for the Pre-foreclosure Sale Procedure.* In order to be considered for the pre-foreclosure sale procedure, a mortgagor:

(1) Must be an owner occupant in a single family residence that is security for a mortgage insured under this part, unless otherwise prescribed by the Secretary.

(2) Must have an account in default, for such period as determined by the Secretary, which default is the result of an adverse and unavoidable financial situation.

(3) Must have been provided notice of the Mortgage Assignment Program (24 CFR 203.650, *et seq*), and either have been found ineligible by HUD, or have made an informed decision not to apply for an assignment.

(4) Must have, at the time application is made to pursue a pre-foreclosure sale, a mortgaged property whose current fair market value, compared to the amount needed to discharge the mortgage, meets the criterion established by the Secretary, unless a variance is granted by the Secretary.

(5) Must have received homeownership counseling, as defined by the Secretary, and have executed a certification to that effect.

9. Section 203.401 is amended by redesignating paragraph (c) as paragraph (d); by adding a new paragraph (c); and by revising the newly redesignated paragraph (d), to read as follows:

§ 203.401 Amount of payment—conveyed and non-conveyed properties.

* * * * *

(c) *Pre-foreclosure Sales.* Where a claim for insurance benefits is filed in accordance with this subpart, based on a pre-foreclosure sale approved by or on behalf of the Secretary (under the provisions of § 203.370), the amount of insurance benefits shall be computed by adding to the original principal balance of the mortgage (as increased by the amount of open-end advances made by the mortgagee and approved by the Commissioner) which was unpaid on the date of closing of the pre-foreclosure sale, the amount of all applicable items set forth in § 203.402; provided however that appropriate adjustment shall be made for any such items covered by proceeds of the pre-foreclosure sale.

(d) *Final Payment.* (1) The mortgagee may not file for any additional payments of its mortgage insurance claim after six months from payment by the Commissioner of the final payment except for:

(i) Cases where the Commissioner requests or requires a deficiency judgment.

(ii) Other cases where the Commissioner determines it appropriate and expressly authorizes an extension of time.

(2) For the purpose of this section, the term *final payment* shall mean, in the case of claims filed for conveyed properties, the payment under subpart B of this part which is made by the Commissioner based upon the submission by the mortgagee of all required documents and information filed pursuant to § 203.365. In the case of claims filed under claims without conveyance of title, *final payment* shall mean the payment which is made by the Commissioner based upon submission by the mortgagee of all required documents and information filed pursuant to §§ 203.368 and 203.401(b). In the case of claims filed pursuant to pre-foreclosure sales, *final payment* shall mean the payment which is made by the Commissioner based upon submission by the mortgagee of all required documents and information filed pursuant to §§ 203.370 and 203.401(d).

10. Section 203.402 is amended by revising the introductory paragraph; by adding a new paragraph (k)(3); by revising paragraph (l); and by adding new paragraphs (s) and (t), to read as follows:

§ 203.402 Items included in payment—conveyed and non-conveyed properties.

The insurance benefits paid in connection with foreclosed properties, whether or not conveyed to the Commissioner; and those properties conveyed to the Commissioner as a result of a deed in lieu of foreclosure; and those properties sold under an approved pre-foreclosure sale shall include the following items:

* * * * *

(k) * * *

(3) Where a claim for insurance benefits is being paid following a pre-foreclosure sale, without foreclosure or conveyance to the Commissioner in accordance with § 203.370, an amount equivalent to the sum of:

(i) The debenture interest which would have been earned, as of the date of the closing of the pre-foreclosure sale, on an amount equal to the amount by which an insurance claim determined in accordance with § 203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(ii) The debenture interest which would have been earned, from the date of the closing of the pre-foreclosure sale to the date when payment of the claim is made, on the portion of the insurance benefits paid in cash if such portion had been paid in debentures, except that if the mortgagee fails to meet any of the applicable requirements of § 203.365 within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(l) Reasonable costs of appraisal under § 203.368(e) or pursuant to § 203.370;

* * * * *

(s) Reasonable costs of the title search ordered by the mortgagee, in accordance with procedures prescribed by the Secretary, to determine the status of a mortgagor meeting all other criteria for approval to participate in the Pre-foreclosure Sale procedure.

(t) The administrative fee as authorized by the Secretary and payable to the mortgagee for its role in facilitating a successful pre-foreclosure sale, said fee not to be subject to the payment of debenture interest thereon.

11. Section 203.403 is amended by adding a new paragraph (d), to read as follows:

§ 203.403 Items deducted from payment—conveyed and non-conveyed properties.

* * * * *

(d) With regard to claims filed pursuant to successful pre-foreclosure sales, all amounts received by the mortgagee relating to the sale of the property.

12. Section 203.410 is amended by revising the introductory text in paragraph (a); by removing the word "or" from the end of paragraph (a)(1)(ii); by removing the period at the end of paragraph (a)(1)(iii), and adding in its place "; or"; and by adding a new paragraph (a)(1)(iv), to read as follows:

§ 203.410 Issue date of debentures.

(a) Conveyed properties, claims without conveyance, pre-foreclosure sales—Where the property is conveyed to the Commissioner, or the mortgagee or other party acquires title to the property under the claim without conveyance procedure or the pre-foreclosure sale procedure, debenture shall be dated:

* * * * *

(1) * * *

(iv) The property was acquired after default by a third party under the pre-foreclosure sale procedure.

13. A new § 203.501 is added to read as follows:

§ 203.501 Loss mitigation.

Mortgagees must consider the comparative effects of their elective servicing actions, and must take those appropriate actions which can reasonably be expected to generate the smallest financial loss to the Department.

Dated: September 12, 1994.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94-24262 Filed 9-29-94; 8:45 am]
BILLING CODE 4210-27-P

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Federal Register

Friday
September 30, 1994

Part IX

Department of Housing and Urban Development

Government National Mortgage Association Guaranteed Multiclass Securities; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-94-1608; FR-3555-N-04]

RIN 2503-ZA00

Government National Mortgage Association Guaranteed Multiclass Securities

AGENCY: Government National Mortgage Association, HUD.

ACTION: Supplemental Notice for GNMA Multiclass Securities Program.

SUMMARY: In its May 26, 1994 **Federal Register** Notice, the Government National Mortgage Association ("GNMA") implemented a new program under which GNMA would guarantee multiclass mortgage-backed securities. The Notice provided for implementation in two stages, the initial stage and the full participation stage. With the completion of the initial stage, GNMA is now commencing the full participation stage of its multiclass securities program. The program is intended to benefit borrowers using federally insured or guaranteed mortgages by increasing investment demand for GNMA guaranteed mortgage-backed securities ("MBS") that are backed by these mortgages, thus reducing financing costs for these mortgages; and raise revenues through the receipt of guarantee and other fees by GNMA.

DATES: *Effective date:* September 30, 1994.

Comments due date: November 29, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this Notice to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, Washington, D.C. 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address. Facsimile (FAX) comments are *not* acceptable.

FOR FURTHER INFORMATION CONTACT: Guy S. Wilson, Vice President, Government National Mortgage Association, Room 6151, 451 Seventh Street, S.W., Washington, D.C. 20410–9000, telephone (202) 401–8970. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–3649. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

GNMA published a Notice in the **Federal Register** on May 26, 1994 (59 FR 27290) ("May 26 Notice") which implemented a new program under which GNMA guarantees real estate mortgage investment conduits ("REMICs"). GNMA began its program with an "initial stage". During the initial stage, participation was limited to firms selected through a Competitive Application Procedure ("CAP"), standard documents were drafted, internal control procedures and information gathering and retention processes were developed, and a Multiclass Securities Guide was produced. This Guide will be updated from time to time to reflect changes in the policies governing the program, in accordance with usual GNMA procedures, and consistent with any regulations established for the program.

GNMA received two comments regarding participation by minority and women-owned firms, both of which recommended that GNMA mandate participation by minority and women-owned businesses. GNMA considered these comments in the development of its policy as discussed below in section IV. One of these comments also recommended that GNMA pay the transaction costs from its guaranty fee. GNMA has decided not to take this approach, for the reasons discussed in section II.

GNMA is now commencing the full participation stage, which GNMA is implementing with the publication of this Notice. Changes in GNMA's multiclass securities program are noted in this Notice. Any provisions in the May 26 Notice that are not revised in this Notice remain in full force and effect.

II. Program Revisions for Full Participation Stage

A. Types of Eligible Securities

For the full participation stage, GNMA is expanding its multiclass securities program to include multiclass securities in addition to those issued by trusts electing REMIC status. Section 306(g) of the National Housing Act (12 U.S.C. 1721(g)), authorizes GNMA to guarantee "securities . . . based on or backed by a trust or pool composed of mortgages. * * *" This language does not limit GNMA to any specific type of security so long as it is based on or backed by a trust or pool composed of eligible mortgages. In addition, section 3004 of the Omnibus Budget Reconciliation Act of 1993, which revised GNMA's statutory provisions relating to guaranty fees, referred to fees charged for GNMA's guaranty of "multiclass securities backed by a trust or pool of securities or notes guaranteed by the Association under this subsection. * * *"

B. Sponsors

GNMA is willing to undertake a variety of transactions, provided that GNMA determines in its sole discretion that they enhance the goals of the program and provide protection against any loss to GNMA for which it would not otherwise be responsible.

The obligations of Sponsors with respect to any particular type of GNMA multiclass securities transaction will be established from time to time by GNMA and will be set forth in the Multiclass Securities Guide. In general:

1. Sponsors are required to demonstrate their capacity to accumulate those MBS needed for a securities issuance as to which GNMA has committed to issue its guaranty.

2. Sponsors are required to represent the structural integrity of the issuance under all cash flow scenarios and demonstrate to GNMA's satisfaction their ability to indemnify GNMA for a breach of this representation. Sponsors are required to have sufficient assets to back their representations and commitments to GNMA, as specifically set forth in the GNMA Multiclass Securities Guide.

3. For transactions involving the distribution of multiclass securities in a public offering, the Sponsors are responsible for assuring that distribution will be by licensed broker-dealers in good standing under the Securities and Exchange Act of 1934.

GNMA requires entities wishing to participate in this program as Sponsors to provide GNMA with certain information and meet certain requirements. Currently, a Sponsor must have minimum capital assets of $250 million in shareholders' equity, evidenced by the Sponsor's most recent audited financial statements. GNMA also requires that Sponsors have had at least one REMIC transaction with the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC"). If an entity that wishes to sponsor GNMA guaranteed transactions has not had this experience, GNMA requires an alternative demonstration of experience, as GNMA determines appropriate. A computer bulletin board, gREX, will be used to announce revisions to this policy.

Entities that would like to obtain application forms or obtain further information should contact Chemical New York, Inc., 1325 G St., N.W., Suite 640, Washington, D.C. 20005.

C. Selection of Trustee

GNMA has determined that the safety, integrity and efficiency of the multiclass securities program will be best served if a limited number of institutions act as trustee. In making this determination, GNMA was particularly mindful of the long-term obligations associated with acting as trustee for multiclass securities.

To secure trustee services, GNMA has requested applications from qualified institutional trustees under a CAP. In the meantime, the trustees approved for the initial stage will continue to serve as trustees for multiclass securities transactions. Trustee services must include tax administration as well as customary securities administrative and payment functions. Trustees approved pursuant to the CAP will be authorized to serve with respect to securities issued during the period (not more than five years) specified in the request for applications. Once a trustee is assigned to a specific transaction, it will continue to act as trustee for the life of the security, unless removed in accordance with the Trust Agreement. Sponsors will use trustees approved pursuant to the CAP. Trustees will be paid from funds related to the transaction.

D. Trust Counsel and Accounting Firms

Trust counsel selected by the Sponsor will provide customary securities and tax opinions on the transactions, in accordance with GNMA's requirements.

Accounting firms selected by the Sponsor will perform customary procedures with respect to financial information included in the offering documents and as part of the closing process, in accordance with GNMA's requirements. GNMA currently requires entities wishing to participate in GNMA guaranteed transactions to submit certain information to GNMA. Interested parties may obtain the appropriate forms from Chemical New York, Inc. ("Chemical Bank") at the address set out in section II.B. above.

E. The Guaranty Fee

GNMA will (1) make such multiclass guaranty fee adjustments as it determines, in GNMA's sole discretion, to be appropriate to fulfill the objectives of the program, and (2) establish and adjust from time to time such guaranty fees as it determines to be appropriate for other types of multiclass securities transactions in accordance with the objectives of the program. Guaranty fees and changes in guaranty fees will be announced on gREX (described below).

F. Information Distribution System (gREX)

GNMA has established a multiclass securities bulletin board, named "gREX", which is operated by GNMA's Information Agent, which at present is Chemical Bank. Financial information and offering circular disclosure information for multiclass securities transactions will be posted on gREX. Interested parties may obtain gREX software by contacting Chemical Bank at 1–800–2341–REX, or at the address set out in section II.B. above. Users must pay for their connect time and software.

G. Eligible MBS

The May 26, 1994 Notice identified eligible MBS as GNMA I MBS backed by single family mortgages that were issued on or after February 1, 1993. GNMA intends to expand the program to include other MBS and perhaps other securities. Announcements of additional eligible securities will be made on gREX.

H. Distribution Date

With the expansion of eligible collateral and securities, GNMA may vary the distribution date, referred to as the "Payment Date" in the May 26, 1994 Notice, based on the type of multiclass transaction. Announcements of any changes in the distribution date of multiclass securities will be made on gREX.

I. Transaction Expenses

During the initial stage, GNMA had no liability for payment of any fees or expenses, other than those of GNMA's Legal Advisor, in connection with the GNMA guaranty of multiclass securities. One commentor suggested that GNMA include the transaction expenses in its guaranty fee, citing the practice of FNMA and FHLMC. GNMA notes that these entities have different programs from GNMA in that both of these entities issue securities as well as guaranteeing the securities.

GNMA has decided to continue the initial stage approach. Therefore, GNMA will not be liable for transaction expenses, other than the Legal Advisor's fees. Subject to GNMA requirements, during the full participation stage, the Sponsors generally will select the program participants to be used for each transaction and negotiate the fees (other than those of the Financial Advisor) to be paid to the other program participants.

III. Combination of Outstanding MBS

There are a large number of outstanding MBS in current principal amounts that are not large enough to be traded efficiently in the current MBS market. In addition, there are certain multiclass securities transactions that can be effected most efficiently if the trust issuing the multiclass securities is funded by GNMA MBS having large outstanding principal amounts. As necessary, to facilitate other multiclass securities transactions, to enhance the secondary market for MBS and to raise revenues through the receipt of guarantee fees by GNMA, GNMA is implementing a program to permit the combination of MBS into a new GNMA combined multiclass security entitled to the payments on the underlying MBS. The guaranty fees to be charged to effect combination transactions will be established by GNMA from time to time and announced on gREX.

IV. Participation by Minority and Women-Owned Firms

A. Sponsor Responsibilities

Pursuant to Executive Order 12138 of May 18, 1979, 3 CFR, 1979 Comp., p. 393, as amended, and Executive Order 12432 of July 14, 1983, 3 CFR, 1983 Comp., p. 198, GNMA anticipates meaningful participation by minority and women-owned businesses ("MWOBs") and minority and women-owned law firms ("MWOLFs") in the GNMA multiclass securities program. Sponsors are required to develop and implement a plan that sets goals for meaningful participation by MWOBs as Co-sponsors. Also, Sponsors are required to ensure that the trust counsel they engage for transactions develop and implement a plan that sets goals for meaningful participation by MWOLFs.

1. Co-sponsor Participation

GNMA considers meaningful participation for MWOB Co-sponsors to be the use of one of the following two options. Sponsors may increase the level of participation by Co-sponsors.

a. Best Efforts Option. Under the Best Efforts Option, the Co-sponsor is provided the opportunity to sell at least 10 percent of the transaction, computed on the basis of the original principal balance, for a 24-hour period, prior to the Sponsor's or other's marketing of the allocated percentage of the transaction.

b. Underwriting Option. Under the Underwriting Option, the Co-sponsor is provided the opportunity to acquire, at the option of the Co-sponsor, at least 10 percent of the transaction, at prices negotiated between the Sponsor and the Co-sponsor. In addition to the sales

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price, and in lieu of a schedule of discounts, the Sponsor pays the Co-sponsor an amount equal to 1/8th of 1 percent of the principal amount purchased.

2. Trust Counsel Participation

GNMA considers meaningful participation of MWOLFs to be at least ten percent of the billing for the work completed for each transaction.

B. Minority and Women-Owned Businesses as Sponsors

GNMA encourages MWOBs to become Sponsors, either individually or as joint venturers, by providing a 15 percent reduction in the GNMA guaranty fee for transactions closed and securities sold solely by MWOB Sponsors and Co-sponsors.

C. Certification

Sponsors are required to provide GNMA with two annual certifications:

1. With respect to Co-sponsors:

a. Certification that the Sponsor has developed and implemented a plan that sets goals for meaningful participation by Co-sponsors, and

b. Certification of the extent to which MWOBs have been participants in the Sponsor's transactions as Co-sponsors.

2. With respect to Co-trust Counsel:

a. Certification from trust counsel used for transactions by the Sponsor that the trust counsel has developed and implemented a plan that sets goals for meaningful participation by MWOLFs, and

b. Certification from such trust counsel of the extent to which MWOLFs have been participants in the transactions for the Sponsor.

D. Applicability

The requirements described in this Section IV are not applicable to securities that GNMA guarantees under the program described in Section III.

E. Inclusion in Guide

This policy on minority participation is included in the GNMA Multiclass Securities Guide.

V. Delegations of Authority

The President, each Vice President and each Assistant Vice President of GNMA have been given general signing authority on behalf of GNMA pursuant to the existing GNMA Bylaws, found at 24 CFR Part 310. In addition, the Vice President in charge of multiclass securities has delegated authority to sign all contracts and other documents, instruments and writings that call for execution by GNMA in order to affix the GNMA guaranty on a multiclass securities transaction, to the Director of Multiclass Securities. Further, the Vice President in charge of multiclass securities has delegated authority to execute the Transaction Initiation Letter in the form specified by the Multiclass Securities Guide to the Senior Multiclass Securities Specialist.

VI. Waiver

Section 300.13 of Title 24 of the Code of Federal Regulations permits GNMA to waive or alter any of its requirements, to impose additional requirements, to amend or rescind any or all of its regulations. GNMA considers this regulation applicable to the May 26, 1994 Notice, this Notice, the GNMA Multiclass Securities Guide and its multiclass regulations when issued, as well as the existing MBS regulations. The operation of a securities guaranty program requires that GNMA have the ability to revise its requirements and operations in accordance with program objectives and the needs and fluctuations of the financial markets.

VII. Terms and Conditions for Participants

As a condition of participation in the program, each participant must agree to the conditions set out below.

A. Participant Certifications

Each Sponsor, Co-sponsor, all participating trust counsel and accounting firms, and other persons or entities designated by GNMA from time to time in the Multiclass Securities Guide, must certify as of January 1 each year that neither the corporate nor partnership entity, nor any officer, partner or professional presently employed and who will work on the subject matter of this Notice, has been convicted of, or found liable in a civil action for, fraud, forgery, bribery, falsification or destruction of records, making false statements or any other offense indicating a lack of business integrity that seriously and directly affects the present responsibility of the officer, partner or professional, and no entity or individual to which this certification is applicable is currently suspended or debarred by a State or the Federal government. Participants must report any event which would necessitate a change in this certification to GNMA within 60 days of its occurrence.

Material adverse changes in status including voluntary and non-voluntary terminations, defaults, fines, and agency findings of material non-compliance or non-conformance with agency rules and policies with state and federal agencies and government sponsored enterprises must be reported to GNMA within 60 business days of their occurrence.

B. Compliance with the GNMA Multiclass Securities Guide

Participants will comply with the requirements of the GNMA Multiclass Securities Guide.

VIII. Appropriate Investors

GNMA guaranteed multiclass securities may not be suitable investments for all investors. No investor should purchase securities of any class unless the investor understands, and is able to bear, the prepayment, yield, liquidity and market risks associated with that class.

IX. Authority and Full Faith and Credit of the United States

The General Counsel of the Department of Housing and Urban Development has issued an opinion which concludes that GNMA has the authority to guarantee multiclass securities and that such GNMA guarantees will constitute general obligations of the United States backed by the full faith and credit of the United States.

X. Other Matters

Information Collections

The information collection requirements contained in this notice and the associated forms for application for participation in the program have been submitted to the Office of Management and Budget ("OMB") for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). HUD has published a notice of that information collection approval request on September 28, 1994 (59 FR 49410), which invited public comment on them. That notice requested expedited review of these requirements by OMB. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Executive Order 12866, Regulatory Planning and Review

This Notice was reviewed by OMB under Executive Order 12866 as a significant regulatory action. Any changes made in this Notice as a result of that review are clearly identified in the docket file for this Notice, which is available for public inspection in the Office of HUD's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made for the May 26 Notice in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410. This Notice merely amends the May 26 Notice.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this Notice does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. This notice only affects participants and investors in GNMA guaranteed single and multiclass securities industry. States and their political subdivisions would not be affected.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this Notice does not have potential significant impact on family formation, maintenance, and general well-being because it only affects participants and investors in GNMA guaranteed single and multiclass securities.

Lobbying Activities

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by a final rule codified as 24 CFR Part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read Part 86, particularly the examples contained in Appendix A of the regulation.

Any questions about that rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–3000. Telephone: (202) 708–3815; TDD number (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Authority: Section 309, National Housing Act (12 U.S.C. 1723).

Dated: September 23, 1994.

Dwight P. Robinson,

President.

[FR Doc. 94–24360 Filed 9–29–94; 8:45 am]

BILLING CODE 4210–01–P

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H.R. 4624/P.L. 103–327

Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Sept. 28, 1994; 108 Stat. 2298; 40 pages)

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LSA—LIST OF CFR SECTIONS AFFECTED

The LSA (List of CFR Sections Affected) is a monthly publication designed to lead users of the Code of Federal Regulations (CFR) to amendatory actions published in the Federal Register (FR). It should be shelved with current CFR volumes. Entries are by CFR title, chapter, part, and section. Proposed rules are listed at the end of appropriate titles.

HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

Titles 1–16—as of Jan. 1
17–27—as of April 1
28–41—as of July 1
42–50—as of Oct. 1

To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

The page numbers listed to the right of each LSA entry indicate where the specific amendments begin in the Federal Register. **Boldface** page numbers under a particular title indicate that the page numbers span 2 years. **Boldface** is used to distinguish the previous year from the current year.

Cite a page reference from this publication using the volume number (i.e. 59 FR for 1994) and the page number. Example: 24727 cite as 59 FR 24727. For your convenience, the volume number has been included in the Table of Federal Register Issue Pages and Dates.

ISSUES TO BE SAVED

There is no single annual issue of the LSA. Four ANNUAL ISSUES must be saved; the DECEMBER issue is the ANNUAL for Titles 1–16; the MARCH issue is the ANNUAL for Titles 17–27; the JUNE issue is the ANNUAL for Titles 28–41; the SEPTEMBER issue is the ANNUAL for Titles 42–50. ANNUAL ISSUES to be saved are clearly designated on the cover.

PARALLEL TABLE OF AUTHORITIES AND RULES

Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1994.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

INDEXES

An INDEX to the daily Federal Register is published monthly and is cumulated for 12 months. A separate volume, the CFR Index and Finding Aids to the entire Code of Federal Regulations, is revised as of January 1 each year.

INQUIRIES AND SUGGESTIONS

Brian Swidal was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark, Ken Payne and Rob Sheehan. INQUIRIES, telephone 202–523–5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–022–00001–2)	$ 5.00	Jan. 1, 1994
3 (1992 Compilation and Parts 100 and 101).	(869–022–00002–1)	33.00	[1] Jan. 1, 1994
4	(869–022–00003–9)	5.50	Jan. 1, 1994
5 Parts:.			
1–699	(869–022–00004–7)	22.00	Jan. 1, 1994
700–1199	(869–022–00005–5)	19.00	Jan. 1, 1994
1200–End, 6 (6 Reserved)	(869–022–00006–3)	23.00	Jan. 1, 1994
7 Parts:.			
0–26	(869–022–00007–1)	21.00	Jan. 1, 1994
27–45	(869–022–00008–0)	14.00	Jan. 1, 1994
46–51	(869–022–00009–8)	20.00	[6] Jan. 1, 1993
52	(869–022–00010–1)	30.00	Jan. 1, 1994
53–209	(869–022–00011–0)	23.00	Jan. 1, 1994
210–299	(869–022–00012–8)	32.00	Jan. 1, 1994
300–399	(869–022–00013–6)	16.00	Jan. 1, 1994
400–699	(869–022–00014–4)	18.00	Jan. 1, 1994
700–899	(869–022–00015–2)	22.00	Jan. 1, 1994
900–999	(869–022–00016–1)	34.00	Jan. 1, 1994
1000–1059	(869–022–00017–9)	23.00	Jan. 1, 1994
1060–1119	(869–022–00018–7)	15.00	Jan. 1, 1994
1120–1199	(869–022–00019–5)	12.00	Jan. 1, 1994
1200–1499	(869–022–00020–9)	30.00	Jan. 1, 1994
1500–1899	(869–022–00021–7)	30.00	Jan. 1, 1994
1900–1939	(869–022–00022–5)	15.00	Jan. 1, 1994
1940–1949	(869–022–00023–3)	30.00	Jan. 1, 1994
1950–1999	(869–022–00024–1)	35.00	Jan. 1, 1994
2000–End	(869–022–00025–0)	14.00	Jan. 1, 1994
8	(869–022–00026–8)	22.00	Jan. 1, 1994
9 Parts:.			
1–199	(869–022–00027–6)	29.00	Jan. 1, 1994
200–End	(869–022–00028–4)	23.00	Jan. 1, 1994
10 Parts:.			
0–50	(869–022–00029–2)	29.00	Jan. 1, 1994
51–199	(869–022–00030–6)	30.00	Jan. 1, 1994
200–399	(869–022–00031–4)	15.00	[6] Jan. 1, 1994
400–499	(869–022–00032–2)	21.00	Jan. 1, 1994
500–End	(869–022–00033–1)	37.00	Jan. 1, 1994
11	(869–022–00034–9)	14.00	Jan. 1, 1994
12 Parts:.			
1–199	(869–022–00035–7)	12.00	Jan. 1, 1994
200–219	(869–022–00036–5)	16.00	Jan. 1, 1994
220–299	(869–019–00037–2)	26.00	Jan. 1, 1993
300–499	(869–022–00038–1)	22.00	Jan. 1, 1994
500–599	(869–022–00039–0)	20.00	Jan. 1, 1994
600–End	(869–022–00040–3)	32.00	Jan. 1, 1994
13	(869–022–00041–1)	30.00	Jan. 1, 1994
14 Parts:.			
1–59	(869–019–00042–9)	29.00	Jan. 1, 1993
60–139	(869–022–00043–8)	26.00	Jan. 1, 1994

See footnotes at end of table.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

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140–199	(869–022–00044–6)	13.00	Jan. 1, 1994
200–1199	(869–022–00045–4)	23.00	Jan. 1, 1994
1200–End	(869–022–00046–2)	16.00	Jan. 1, 1994
15 Parts:			
0–299	(869–022–00047–1)	15.00	Jan. 1, 1994
300–799	(869–022–00048–9)	26.00	Jan. 1, 1994
800–End	(869–022–00049–7)	23.00	Jan. 1, 1994
16 Parts:			
0–149	(869–022–00050–1)	6.50	Jan. 1, 1994
150–999	(869–022–00051–9)	18.00	Jan. 1, 1994
1000–End	(869–022–00052–7)	25.00	Jan. 1, 1994
17 Parts:			
1–199	(869–019–00054–2)	18.00	Apr. 1, 1993
200–239	(869–019–00055–1)	23.00	Apr. 1, 1993
240–End	(869–019–00056–9)	30.00	Apr. 1, 1993
18 Parts:			
1–149	(869–019–00057–7)	16.00	Apr. 1, 1993
150–279	(869–019–00058–5)	19.00	Apr. 1, 1993
280–399	(869–019–00059–3)	15.00	Apr. 1, 1993
400–End	(869–019–00060–7)	10.00	Apr. 1, 1993
19 Parts:			
1–199	(869–019–00061–5)	35.00	Apr. 1, 1993
200–End	(869–022–00062–4)	12.00	Apr. 1, 1994
20 Parts:			
1–399	(869–019–00063–1)	23.00	Apr. 1, 1993
400–499	(869–019–00064–0)	31.00	Apr. 1, 1993
500–End	(869–019–00065–8)	30.00	Apr. 1, 1993
21 Parts:			
1–99	(869–019–00066–6)	13.00	Apr. 1, 1993
100–169	(869–019–00067–4)	21.00	Apr. 1, 1993
170–199	(869–019–00068–2)	20.00	Apr. 1, 1993
200–299	(869–019–00069–1)	6.00	Apr. 1, 1993
300–499	(869–019–00070–4)	34.00	Apr. 1, 1993
500–599	(869–019–00071–2)	21.00	Apr. 1, 1993
600–799	(869–019–00072–1)	8.00	Apr. 1, 1993
800–1299	(869–019–00073–9)	22.00	Apr. 1, 1993
1300–End	(869–019–00074–7)	12.00	Apr. 1, 1993
22 Parts:			
1–299	(869–019–00075–5)	30.00	Apr. 1, 1993
300–End	(869–019–00076–3)	22.00	Apr. 1, 1993
23	(869–019–00077–1)	21.00	Apr. 1, 1993
24 Parts:			
0–199	(869–019–00078–0)	38.00	Apr. 1, 1993
200–499	(869–019–00079–8)	36.00	Apr. 1, 1993
500–699	(869–019–00080–1)	17.00	Apr. 1, 1993
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1700–End	(869–019–00082–8)	15.00	Apr. 1, 1993
25	(869–019–00083–6)	31.00	Apr. 1, 1993
26 Parts:			
§§ 1.0-1–1.60	(869–019–00084–4)	21.00	Apr. 1, 1993
§§ 1.61–1.169	(869–019–00085–2)	37.00	Apr. 1, 1993
§§ 1.170–1.300	(869–019–00086–1)	23.00	Apr. 1, 1993

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Title	Stock Number	Price	Revision Date
§§ 1.301–1.400	(869–019–00087–9)	21.00	Apr. 1, 1993
§§ 1.401–1.440	(869–019–00088–7)	31.00	Apr. 1, 1993
§§ 1.441–1.500	(869–019–00089–5)	23.00	Apr. 1, 1993
§§ 1.501–1.640	(869–019–00090–9)	20.00	Apr. 1, 1993
§§ 1.641–1.850	(869–019–00091–7)	24.00	Apr. 1, 1993
§§ 1.851–1.907	(869–017–00092–5)	27.00	Apr. 1, 1993
§§ 1.908–1.1000	(869–019–00093–3)	26.00	Apr. 1, 1993
§§ 1.1001–1.1400	(869–019–00094–1)	22.00	Apr. 1, 1993
§§ 1.1401–End	(867–019–00095–0)	31.00	Apr. 1, 1993
2–29	(869–019–00096–8)	23.00	Apr. 1, 1993
30–39	(869–019–00097–6)	18.00	Apr. 1, 1993
40–49	(869–019–00098–4)	13.00	Apr. 1, 1993
50–299	(869–019–00099–2)	13.00	Apr. 1, 1993
300–499	(869–019–00100–0)	23.00	Apr. 1, 1993
500–599	(869–022–00101–9)	6.00	Apr. 1, 1994
600–End	(869–019–00102–6)	8.00	Apr. 1, 1993
27 Parts:			
1–199	(869–019–00103–4)	37.00	Apr. 1, 1993
200–End	(869–022–00104–3)	13.00	Apr. 1, 1994
28 Parts:			
0–42	(869–019–00105–1)	27.00	July 1, 1993
43–End	(869–019–00106–9)	21.00	July 1, 1993
29 Parts:			
0–99	(869–019–00107–7)	21.00	July 1, 1993
100–499	(869–019–00108–5)	9.50	July 1, 1993
500–899	(869–019–00109–3)	36.00	July 1, 1993
900–1899	(869–019–00110–7)	17.00	July 1, 1993
1900–1910 (§§ 1901.1 to 1910.999)	(869–019–00111–5)	31.00	July 1, 1993
1910 (§§ 1910.1000 to end)	(869–019–00112–3)	21.00	July 1, 1993
1911–1925	(869–019–00113–1)	22.00	July 1, 1993
1926	(869–019–00114–0)	33.00	July 1, 1993
1927–End	(869–019–00115–8)	36.00	July 1, 1993
30 Parts:			
1–199	(869–019–00116–6)	27.00	July 1, 1993
200–699	(869–019–00117–4)	20.00	July 1, 1993
700–End	(869–019–00118–2)	27.00	July 1, 1993
31 Parts:			
0–199	(869–019–00119–1)	18.00	July 1, 1993
200–End	(869–019–00120–4)	29.00	July 1, 1993
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–019–00121–2)	30.00	July 1, 1993
191–399	(869–019–00122–1)	36.00	July 1, 1993
400–629	(869–019–00123–9)	26.00	July 1, 1993
630–699	(869–019–00124–7)	14.00	[5] July 1, 1993
700–799	(869–019–00125–5)	21.00	July 1, 1993
800–End	(869–019–00126–3)	22.00	July 1, 1993
33 Parts:			
1–124	(869–019–00127–1)	20.00	July 1, 1993
125–199	(869–019–00128–0)	25.00	July 1, 1993

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200–End	(869–019–00129–8)	24.00	July 1, 1993
34 Parts:			
1–299	(869–019–00130–1)	27.00	July 1, 1993
300–399	(869–019–00131–0)	20.00	July 1, 1993
400–End	(869–019–00132–8)	37.00	July 1, 1993
35	(867–019–00133–6)	12.00	July 1, 1993
36 Parts:			
1–199	(869–019–00134–4)	16.00	July 1, 1993
200–End	(869–019–00135–2)	35.00	July 1, 1993
37	(869–019–00136–1)	20.00	July 1, 1993
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0–17	(869–019–00137–9)	30.00	July 1, 1993
18–End	(869–019–00138–7)	30.00	July 1, 1993
39	(869–019–00139–5)	17.00	July 1, 1993
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1–51	(869–019–00140–9)	39.00	July 1, 1993
52	(869–019–00141–7)	37.00	July 1, 1993
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60	(869–019–00143–3)	35.00	July 1, 1993
61–80	(869–019–00144–1)	29.00	July 1, 1993
81–85	(869–019–00145–0)	21.00	July 1, 1993
86–99	(869–019–00146–8)	39.00	July 1, 1993
100–149	(869–019–00147–6)	36.00	July 1, 1993
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425–699	(869–019–00153–1)	28.00	July 1, 1993
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41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
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9		13.00	[3] July 1, 1984
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18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
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1–100	(869–019–00156–5)	10.00	July 1, 1993
101	(869–019–00157–3)	30.00	July 1, 1993
102–200	(869–019–00158–1)	11.00	[5] July 1, 1993
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42 Parts:			
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200–499	(869–019–00168–9)	15.00	Oct. 1, 1993
500–1199	(869–019–00169–7)	32.00	Oct. 1, 1993
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41–69	(869–019–00172–7)	16.00	Oct. 1, 1993
70–89	(869–019–00173–5)	8.50	Oct. 1, 1993
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140–155	(869–019–00175–1)	12.00	Oct. 1, 1993
156–165	(869–019–00176–0)	17.00	Oct. 1, 1993
166–199	(869–019–00177–8)	17.00	Oct. 1, 1993
200–499	(869–019–00178–6)	20.00	Oct. 1, 1993
500–End	(869–019–00179–4)	15.00	Oct. 1, 1993
47 Parts:			
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20–39	(869–019–00181–6)	24.00	Oct. 1, 1993
40–69	(869–019–00182–4)	14.00	Oct. 1, 1993
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48 Chapters:			
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2 (Parts 201–251)	(869–019–00187–5)	16.00	Oct. 1, 1993
2 (Parts 252–299)	(869–019–00188–3)	12.00	Oct. 1, 1993
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7–14	(869–019–00190–5)	31.00	Oct. 1, 1993
15–28	(869–019–00191–3)	31.00	Oct. 1, 1993
29–End	(869–019–00192–1)	17.00	Oct. 1, 1993
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100–177	(869–019–00194–8)	30.00	Oct. 1, 1993
178–199	(869–019–00195–6)	20.00	Oct. 1, 1993
200–399	(869–019–00196–4)	27.00	Oct. 1, 1993
400–999	(869–019–00197–2)	33.00	Oct. 1, 1993
1000–1199	(869–019–00198–1)	18.00	Oct. 1, 1993
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50 Parts:			
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200–599	(869–019–00201–4)	21.00	Oct. 1, 1993
600–End	(869–019–00202–2)	22.00	Oct. 1, 1993

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(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
CFR Index and Finding Aids	(869–022–00053–5)	38.00	Jan. 1, 1994
Complete 1994 CFR set		829.00	1994
Microfiche CFR Edition:.			
Complete set (one-time mailing)		188.00	1991
Complete set (one-time mailing)		188.00	1992
Complete set (one-time mailing)		223.00	1993
Subscription (mailed as issued)		244.00	1994
Individual copies		2.00	1994

[1]Because title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR parts 1—189 contains a note only for parts 1—39 inclusive. For the full text of the Defense Acquisition Regulations in parts 1—39, consult the three CFR volumes issued July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR chapters 1—100 contains a note only for chapters 1 to 49 inclusive. For the full text of procurement regulations in chapters 1 to 49, consult the three CFR volumes issued July 1, 1984 containing those chapters.

[4]No amendments to this volume were promulgated during the period April 1, 1990 through March 31, 1993. The CFR volume issued April 1, 1990 should be retained.

[5]No amendments to this volume were promulgated during the period July 1, 1991 through June 30, 1993. The CFR volume issued July 1, 1991 should be retained.

[6]No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993 should be retained.

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Other Related Publications

Title	*Price*	*Revision Date*
Federal Register:		
Yearly subscription (with FR Index and LSA)	490.00	
Yearly subscription (without FR Index and LSA)	444.00	
Individual copies	6.00	daily
Federal Register Document Drafting Handbook	5.50	1991
Guide to Record Retention Requirements in the Code of Federal Regulations	15.00	Jan. 1, 1992
List of CFR Sections Affected, 1973–1985		
(Titles 1 through 16) Vol. I	27.00	1990
(Titles 17 through 27) Vol. II	25.00	1990
(Titles 28 through 41) Vol. III	28.00	1990
(Titles 42 through 50) Vol. IV	25.00	1990
LSA (List of CFR Sections Affected):		
Yearly subscription	24.00	
Federal Register Index:		
Yearly subscription	22.00	
CFR Index and Finding Aids	38.00	1994

CHANGES JANUARY 3, 1994 THROUGH MAY 31, 1994

TITLE 1—GENERAL PROVISIONS

Chapter III—Administrative Conference of the United States (Parts 300—399)

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TITLE 3—THE PRESIDENT

Proclamations

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6569 Revoked by Proc. 6685 24337
6579 *See* Proc. 6650 8115
6641 Modified by Proc. 6650 8115
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907 Budget of expenses.....4244
907.58 Suspended; interim.....1269
Regulation at 59 FR 1269 confirmed.....10053
907.71 Suspended; interim.....1269
Regulation at 59 FR 1269 confirmed.....10053
907.112 Suspended; interim.....1269
Regulation at 59 FR 1269 confirmed.....10053
907.131 Regulation at 58 FR 53114 confirmed.....242
907.141 Regulation at 58 FR 53114 confirmed.....242
Suspended; interim.....1269
Regulation at 59 FR 1269 confirmed.....10053
908 Budget of expenses.....4244
908.58 Suspended; interim.....1269
Regulation at 59 FR 1269 confirmed.....10053

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908.71 Suspended; interim.....1269
Regulation at 59 FR 1269 confirmed.....10053
908.112 Suspended; interim.....1269
Regulation at 59 FR 1269 confirmed.....10053
908.131 Regulation at 58 FR 53114 confirmed.....242
908.141 Regulation at 58 FR 53114 confirmed.....242
Suspended; interim.....1269
Regulation at 59 FR 1269 confirmed.....10053
910.180 Regulation at 58 FR 52402 confirmed.....1270
911 Budget of expenses.....5074, 18943
911.53 Suspended; interim; eff. 3–22–94 through 3–31–96.....13430
911.54 Suspended; interim; eff. 3–22–94 through 3–31–96.....13430
911.55 Suspended; interim; eff. 3–22–94 through 3–31–96.....13430
911.56 Suspended; interim; eff. 3–22–94 through 3–31–96.....13430
911.57 Suspended; interim; eff. 3–22–94 through 3–31–96.....13430
911.58 Suspended; interim; eff. 3–22–94 through 3–31–96.....13430
911.59 Suspended; interim; eff. 3–22–94 through 3–31–96.....13430
911.111 Suspended; interim; eff. 3–22–94 through 3–31–96.....13430
915 Budget of expenses.....5074, 18943
915.306 (a)(7) revised; interim.....15315
916.350 (a) introductory text and (4)(iv) revised; interim.....15838
916.356 Revised; interim.....15838
917 Authority citation revised.....10055
917.4 Suspended in part.....10055
917.15 Suspended in part.....10055
917.18 (a) suspended in part.....10055
917.20 Suspended in part.....10055
917.21 Suspended.....10055
917.24 (a) and (c) suspended in part.....10055
917.25 Suspended in part.....10055
917.26 Suspended in part.....10056
917.28 Suspended in part.....10056
917.29 (b) suspended in part.....10056
917.34 (k) suspended in part.....10056
917.35 (a) suspended in part.....10056
917.100 Suspended in part.....10056
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917.143 (b) introductory text and (1) through (4) suspended in part.....10056

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917.149 Suspended 10056
917.176 Suspended 10056
917.179 Suspended in part 10056
917.442 (a) introductory text and (4)(iv) revised; interim 15840
917.459 Revised; interim 15841
917.461 Suspended 10056
925 Budget of expenses 3316, 15611
927 Budget of expenses 12526
928 Budget of expenses 1266
932 Budget of expenses 12526
932.153 Regulation at 58 FR 48594 confirmed 1273
944 Comment period reopened 11529
944.106 Regulation at 58 FR 59934 confirmed 12524
944.312 (h) corrected 4246
Revised 25792
944.401 Regulation at 58 FR 48596 confirmed 1273
946 Budget of expenses 15039, 27221
948 Budget of expenses 27223
953 Budget of expenses 27222
955 Authority citation revised 1896
Budget of expenses 12527
955.101 Added; interim 1896
Regulation at 59 FR 1896 confirmed 13868
955.142 Added 18946
958 Budget of expenses 24631
959 Authority citation revised 1453
Budget of expenses 1453, 12149
959.322 (d)(2) and (3) revised; interim 13431
Introductory text revised 17267
Regulation at 59 FR 13431 confirmed 26736
966 Authority citation revised 1455
Budget of expenses 1455
967.228 Regulation at 58 FR 62033 confirmed 6868
979 Budget of expenses 4246, 15041
979.304 (c)(2) and (3) revised; interim 13432
Regulation at 59 FR 13432 confirmed 26736
980 Comment period reopened 11529
981 Authority citation revised 13434
981.441 Comment period reopened 4247
981.442 (a)(4) and (5) amended 13434
982 Marketing percentages 9071
Budget of expenses 24632
984 Authority citation revised 1455
984.344 Budget of expenses 1455
985 Marketing percentages 12151, 21917
Budget of expenses 18948
989 Marketing percentages 12528
Budget of expenses 12153
989.126 (b) introductiory text and (2) revised; interim 27226
989.246 Regulation at 59 FR 12530 confirmed 27228
993.128 (a) revised; interim 8518
Regulation at 59 FR 8518 confirmed 25794
993.150 Corrected 10228
998 Budget of expenses 24633
999 Comment period reopened 11529

Chapter X—Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

1001.62 (c) and (d) removed 16512
1002.61 (d) and (e) removed 16512
1005.7 (d)(3) suspended in part 3–1–94 through 2–28–95 15318
1007.7 (e)(3) suspended in part and (e)(4) suspended 3–1–94 through 2–28–95 15318
1007.61 (a) in part and (b) suspended; eff. 7–1–94 to 8–31–94 6869
1011.7 (b) amended; eff. 3–1–94 through 7–31–94 13644
(d)(3) suspended in part 3–1–94 through 2–28–95 15318
1033.60 (m) redesignated as (n); new (m) added 24031
1036.60 (m) redesignated as (n); new (m) added 24031
1046.2 Suspended in part 3–1–94 through 2–28–95 15318
1049.60 (l) redesignated as (m); new (l) added 24031
1094.7 (c) suspended in part; eff. 3–3–94 through 12–31–94 10057
1098 Removed 13645
1106 Authority citation revised 11182
1106.3 Suspended in part 1274
1106.6 Suspended in part; eff. 2–1–94 through 8–31–96 11182
1106.7 (b)(1) suspended in part; eff. 2–1–94 through 8–31–96 11182
1106.13 (d)(1) suspended; eff. 2–1–94 through 8–31–96 11182
1124 Authority citation revised 15319
1124.7 (b) introductory text amended 15319

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1124.9 (c) amended 15319
1124.10 (c)(2) revised 15319
1124.19 Revised 15319
1124.30 (a)(1)(i), (ii), (c)(1), (2) and (3) revised 15319
1124.31 (a)(1), (b) introductory text and (1) revised 15320
1124.32 Revised 15320
1124.41 (c) amended 15320
1124.50—1124.54 Undesignated center heading revised 15320
1124.50 Revised 15320
1124.51 Revised 15320
1124.51a Removed 15321
1124.53 Revised 15321
1124.60—1124.62 Undesignated center heading revised 15321
1124.60 Revised 15321
1124.61 Revised 15322
1124.62 Redesignated as 1124.63; new 1124.62 added 15322
1124.63 Redesignated from 1124.62 and revised 15322
1124.70 Revised 15322
1124.71 Revised 15322
1124.72 Revised 15323
1124.73 Revised 15322
1124.74 Removed; new 1124.74 redesignated from 1124.75; (c) revised 15323
1124.75 Redesignated as 1124.74 15323
Redesignated from 1124.76; (a)(1)(i), (a)(2)(i) and (b)(4) amended 15324
1124.76 Redesignated as 1124.75; new 1124.76 redesignated from 1124.77 15324
1124.77 Redesignated as 1124.76; new 1124.77 redesignated from 1124.78; (a) introductory text amended 15324
1124.78 Redesignated as 1124.77 15324
1124.85 (b) and (c)(2) amended 15324
1126.12 (b)(5) suspended 26737
1135 Authority citation revised 15324
1135.9 (c) amended 15324
1135.19 Revised 15324
1135.30 Introductory text, (a) and (c) revised; (b) and (d) redesignated as (d) and (e); new (b) added 15324
1135.31 (a) introductory text amended; (a)(4) revised 15324
1135.41 (b)(3) amended; (c) revised 15324
1135.50—1135.62 Undesignated center heading revised 15325
1135.50 Heading and (a) revised; (b) introductory text, (1) and (2) amended; (e), (f) and (g) added 15325
1135.51 Revised 15325
1135.51a Removed 15325
1135.53 Revised 15325
1135.60—1135.62 Undesignated center heading added 15325
1135.60 Revised 15326
1135.61 Revised 15326
1135.62 Redesignated as 1135.63 15326
Added 15327
1135.63 Redesignated from 1135.62 and revised 15326
1135.70 Revised 15327
1135.71 Revised 15327
1135.72 Revised 15327
1135.73 (b), (d) and (e)(2) through (6) revised 15327
1135.74 Removed; new 1135.74 redesignated from 1135.76; (a)(4), (b)(1)(i), (ii) and (iii) introductory text amended; (b)(1)(iii)(*a*), (*b*) and (c) redesignated as (b)(1)(iii)(A), (B) and (C) 15327
1135.75 Redesignated from 1135.77 15327
1135.76 Redesignated as 1135.74; new 1135.76 redesignated from 1135.78 and amended 15327
1135.77 Redesignated as 1135.75 15327
1135.78 Redesignated as 1135.76 15327
1135.85 (b) and (c) amended 15327
1150.131 (a)(4) and (8) revised 13435

Chapter XI—Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

1210.401 (b) amended 18948
1210.501 Added 18948
1211 Authority citation revised 11898
1211.30—1211.39 Undesignated center heading removed 11898
1211.30 Removed 11898
1211.31 Removed 11898
1211.32 Removed 11898
1211.33 Removed 11898
1211.34 Removed 11898

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1211.35 Removed 11898
1211.36 Removed 11898
1211.37 Removed 11898
1211.38 Removed 11898
1211.39 Removed 11898
1211.40—1211.42 Undesignated center heading removed 11898
1211.40 Removed 11898
1211.41 Removed 11898
1211.42 Removed 11898
1211.51 Removed 11898
1211.54 Removed 11898
1211.56 Removed 11898
1211.72 Removed 11898
1211.77 Removed 11898
1220 Referendum results 15327
1240 Authority citation revised 22493
Technical correction 24217
1240.50 (a) amended; interim 22493
1240.114 (b) amended; interim 22493
1250.510 Revised 12155

Chapter XIV—Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

1413.54 (a)(5)(ii) and (iii) revised; (a)(5)(iv) and (d)(4) added 22495
(a)(3)(ii) and (iii) revised; (a)(3)(iv) and (d)(4)(iii) added 22496
(a)(4)(iii) revised; (a)(4)(iv) and (d)(4)(v) added 25795
1413.104 (a)(8)(ii), (iii) and (b) revised; (a)(8)(iv) added 22495
1413.110 (b) revised; interim 10574
1421.7 (c)(7)(iii) and (iv) added 25795
1421.217 (d) added 25796
1427.8 (a)(2)(ii) and (iii) revised; (a)(2)(iv) added 22495
(a)(1)(ii) and (iii) revised; (a)(1)(iv) added 22496
1427.107 (a)(1)(i), (ii) and (2)(i) through (iv) revised; (a)(2)(v) redesignated as (a)(2)(viii); new (a)(2)(v), (vi) and (vii) added; (c)(2) amended 17919
1434.1 (a) revised; interim 23790
1434.6 (b) revised; interim 23790
1434.7 (c)(1) and (2) added; interim 23791
1434.13 (b) revised; interim 23791
1434.14 Removed; interim 23791
1434.16 (a)(1) revised; interim 23791
1434.17 (a)(3) and (4) revised; (a)(5), (6) and (7) added; interim 23791
1434.23 (a)(2), (3), (b)(1), (2), (c), (d) introductory text, (2) and (e) revised; (k) added; interim 23791
1434.24 (f) added; interim 23792
1434.25 (a)(1) revised; interim 23792
1434.26 (b)(3) revised; interim 23792
1434.27 (c)(3) added; interim 23792
1464.12 Existing text designated as (a); (b) added 6867
1464.13 Existing text designated as (a); (b) added 27220
1464.14 Existing text designated as (a); (b) added 27220
1464.15 Existing text designated as (a); (b) added 27220
1464.16 Existing text designated as (a); (b) added 27221
1464.17 Existing text designated as (a); (b) added 27221
1464.18 Existing text designated as (a); (b) added 27221
1464.19 Existing text designated as (a); (b) added 22725
1464.101—1464.108 (Subpart B) Regulation at 58 FR 68020 eff. date corrected to 1-1-94 1274
Revised 10944
1468.4 (b) revised 2284
1475.3 Regulation at 58 FR 62512 confirmed 9919
1475.6 Regulation at 58 FR 62512 confirmed 9919
1475.10 Regulation at 58 FR 62513 confirmed 9919
1475.17 Regulation at 58 FR 62513 confirmed 9919
1475.22 Regulation at 58 FR 62513 confirmed 9919

Chapter XV—Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)

1540.40—1540.45 (Subpart C) Regulation at 58 FR 16104 confirmed 25797

Chapter XVI—Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)

1610.1 Regulation at 58 FR 66252 confirmed 17464
1610.2 Regulation at 58 FR 66252 confirmed 17464

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1610.3 Regulation at 58 FR 66252 confirmed 17464
1610.4 Regulation at 58 FR 66252 confirmed 17464
1610.5 Regulation at 58 FR 66252 confirmed 17464
1610.6 Regulation at 58 FR 66252 confirmed 17464
1610.11 Regulation at 58 FR 66253 confirmed 17464

Chapter XVII—Rural Electrification Administration, Department of Agriculture (Parts 1700—1799)

1700.40—1700.44 (Subpart D) Added 21624
1700.60—1700.61 (Subpart E) Added 21625
1700.70—1700.73 (Subpart F) Added 21625
1700.90—1700.93 (Subpart G) Added 21626
1700.100—1700.109 (Subpart H) Added 21626
1700.120—1700.132 (Subpart I) Added 21627
1700.140—1700.150 (Subpart J) Added 21631
1700.160—1700.161 (Subpart K) Added 21633
1700.170—1700.173 (Subpart L) Added 21633
1703.12 Amended 11706
1703.17 (c) added 11706
1703.18 Added 11706
1703.19 Added 11706
1703.20 Revised 11707
1703.21 (b) amended; (d) revised 11708
1703.22 Added 11708
1703.28 (b) revised 11711
1703.30 OMB number 11711
1703.34 (b)(5)(ii) and (iii) revised; (b)(5)(iv) and (v) added 11711
1703.46 (e) removed; (f) through (l) redesignated as (e) through (k); (a) and new (g)(6)(iv) amended 11711
1703.61 (a) and (b) amended 11712
1703.66 (b), (d), (e) and (g) revised; (h), (i) and (j) added 11712
1703.67 Added 11712
1703.68 Added 11712
1710 Authority citation revised 495
1710.2 (a) amended; interim 495
1710.7 Added; interim 3984
1710.118 Removed; interim 496
1710.350—1710.364 (Subpart H) Heading revised; sections added; interim 496
1717.851 Amended; interim 3986
1717.852 (a)(1)(ii) amended; (b)(1)(ii)(A) revised; interim 3986
1717.860 Added; interim 3986
1717.904 Added; interim 3987
1735.2 Regulation at 58 FR 66253 confirmed 17464
1735.10 Regulation at 58 FR 66253 confirmed; (b) revised 17464
1735.13 Regulation at 58 FR 66253 confirmed 17464
1735.14 Regulation at 58 FR 66253 confirmed 17464
1735.17 Regulation at 58 FR 66253 confirmed 17464
1735.20 Regulation at 58 FR 66254 confirmed 17464
1735.21 Regulation at 58 FR 66254 confirmed 17464
1735.22 Regulation at 58 FR 66254 confirmed 17464
1735.30 Regulation at 58 FR 66254 confirmed 17464
1735.31 Regulation at 58 FR 66255 confirmed 17464
1735.32 Regulations at 58 FR 66255 and 66256 confirmed 17464
1735.74 Regulation at 58 FR 66256 confirmed 17464
1737.2 Regulation at 58 FR 66256 confirmed 17464
1737.11 Regulation at 58 FR 66256 confirmed 17464
1737.22 Regulation at 58 FR 66256 confirmed 17464
1737.32 Regulation at 58 FR 66256 confirmed 17464
1737.50 Regulation at 58 FR 66256 confirmed 17464
1737.70 Regulation at 58 FR 66256 confirmed 17464
1737.71 Regulation at 58 FR 66257 confirmed 17464
1744.61 Regulation at 58 FR 66257 confirmed 17464
1744.67 Regulation at 58 FR 66257 confirmed 17464
1744.68 Regulation at 58 FR 66257 confirmed 17464
1753.2 Regulation at 58 FR 66259 confirmed and amended 17464

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1753.3 Regulation at 58 FR 66259 confirmed; (a) introductory text and (4) amended 17464
1753.7 (f)(4) revised 17679
1753.15 Regulation at 58 FR 66259 confirmed; (b)(4) amended 17464
1753.38 (a)(2)(iii) removed; (a)(2)(iv) through (vii) redesignated as (a)(2)(iii) through (vi); (a)(2)(i)(J), new (a)(2)(v) and (c) revised 17679
1753.66 Regulation at 58 FR 66259 confirmed; (d) amended 17464
1755 Authority citation revised 17681
1755.93 Table amended 17681
1767.18 Amended 27436
1767.19 Amended 27436
1767.41 Amended 27436
1773 Authority citation revised 659
1773.3 (c) revised 659
1773.20 (a) revised 659
1773.21 (b) and (c) revised 659
1773.34 (e)(1)(i) and (2)(i) removed; (e)(1)(ii), (iii), (iv), (2)(ii), (iii) and (iv) redesignated as (e)(1)(i), (ii), (iii), (2)(i), (ii) and (iii) and revised 659
1773.40 Revised 660
1773.45 Revised 660
1773 Appendix C revised 660
1786.150—1786.170 (Subpart F) Added 13620

Chapter XVIII—Farmers Home Administration, Department of Agriculture (Parts 1800—2099)

1902.1—1902.16 (Subpart A) Heading revised 3778
1902.1 Introductory text added 3778
1902.4 Added 3778
1902.50 Added (OMB number) 3778
1924.4 (i)(4) through (7) redesignated as (i)(5) through (8); new (i)(4) and (9) added 6882
Regulation at 59 FR 6882 eff. date corrected to 3–16–94 9805
1924.13 (a)(3), (e)(1)(iii)(B)(*2*), (iv), (v), (vii)(B)(*1*), (2)(i)(B), (G), (H), (ii)(C), (iii)(A), (iv), (v) and (viii) revised 6882
Regulation at 59 FR 6882 eff. date corrected to 3–16–94 9805
1924.50 Revised (OMB number) 6885
Regulation at 59 FR 6885 eff. date corrected to 3–16–94 9805
1924.60 (c)(3) and (d)(2) amended 8519
1930.123 (i) amended 6885
Regulation at 59 FR 6885 eff. date corrected to 3–16–94 9805
1930.101—1939.150 (Subpart C) Exhibit B amended 3779
Exhibit B, B–3 and B–8 amended 6886
Regulation at 59 FR 6886 eff. date corrected to 3–16–94 9805
1941.19 (a) revised; (b)(4) through (b)(6) redesignated as (b)(5) through (b)(7) and (b) through (i) redesignated as (c) through (j); introductory text, new (b) and new (c)(4) added; new (f)(1) amended 25799
(b)(2) amended 22962
1941.25 (a) introductory text and (b) revised; (a)(5) and (6) added 16772
(a)(4) revised 25800
1942.306 (a)(10) added; interim 26587
1942.386 Added 12156
1942.501 Regulation at 56 FR 58178 confirmed 11531
1942.504 Regulation at 56 FR 58178 confirmed 11531
1942.507 Regulation at 56 FR 58178 confirmed 11531
1942.510 Regulation at 56 FR 58178 confirmed 11531
1942.511 Regulation at 56 FR 58178 confirmed 11531
1942.513 Regulation at 56 FR 58178 confirmed 11531
1943.17 (b) amended 25800
1943.19 (a)(2) and (b)(4) removed; (a)(3) through (8) and (b)(3) redesignated as (a)(2) through (7) and (b)(4) and (b), (d), (e) and (f) redesignated as (d) through (g); introductory text, (a)(1), new (2) and new (c) revised; new (b) and new (d)(3) added; new (f)(1) and new (g) amended 25800
(b)(1) amended 22962
1943.24 (b)(1)(i) amended 25801
1943.25 (c)(2), (3) and (4) redesignated as (c)(4), (5) and (6); (c)(1) and new (4) revised; new (c)(2) and new (3) added 16773
1943.38 (a) amended 25801
1943.69 (a)(2) and (b)(4) removed; (a)(3) through (8) and (b)(3) redesignated as (a)(2) through (7) and (b)(4); introductory text, (a)(1), new (2), (c) introductory text, (1) and (2) revised; new (b)(3) added 25801
(b)(1) amended 22962
1943.75 (c)(2), (3) and (4) redesignated as (c)(4), (5) and (6); (c)(1) and new (4) revised; new (c)(2) and new (3) added 16773
1943.88 (a) amended 25801
1944 Authority citation revised 7193
1944.205 Amended 6886, 6897
Regulations at 59 FR 6886 and 6897 eff. date corrected to 3–16–94 9805
1944.211 (a)(6)(iii) removed; (a)(6)(iv) redesignated as (a)(6)(iii); (a)(4), (6)(i) and (ii) revised 6886
Regulation at 59 FR 6886 eff. date corrected to 3–16–94 9805
1944.212 (b) introductory text, (c)(1), (2), (3)(ii), (g), (i) and (j) introductory text revised; (c)(3)(iii) added 6887
(l)(1) amended 6897
Regulations at 59 FR 6887 and 6897 eff. date corrected to 3–16–94 9805
1944.213 (c)(12) removed; (b)(4), (5) and (6) redesignated as (b)(5), (6) and (7); new (b)(4) added; (c)(6), (10), (d) introductory text, (1)(ii) and (e)(1) introductory text revised 6887
Regulation at 59 FR 6887 eff. date corrected to 3–16–94 9805
1944.215 (a), (b) introductory text, (1) introductory text and (e) introductory text revised; (b)(1)(iii) and (h)(1) amended; (w)(3) added 6887
(r)(6), (v) and (u) amended 6897
Regulations at 59 FR 6887 and 6897 eff. date corrected to 3–16–94 9805
1944.222 (g) amended 6890, 6897
(a) amended 6896
Regulations at 59 FR 6890, 6896 and 6897 eff. date corrected to 3–16–94 9805
1944.224 (a)(3)(i) amended 6890
Regulation at 59 FR 6890 eff. date corrected to 3–16–94 9805
1944.231 (a) amended; (e)(2), (3) and (4) redesignated as (e)(3), (4) and (5); (e) introductory text revised; new (e)(2) added 6890
(b), (c)(6), (d) introductory text and (i)(1)(vi) amended 6896
(c) heading, (1), (3), (4), (5) introductory text, (6), (8), (e)(4), (5), (f)(2), (i)(1)(i), (iv), (v), (viii), (5)(iv), (j)(3) and (k)(3) amended 6897
Regulations at 59 FR 6890, 6896 and 6897 eff. date corrected to 3–16–94 9805
1944.232 (c) amended 6897
Regulation at 59 FR 6897 eff. date corrected to 3–16–94 9805
1944.235 (a)(1) removed; (a)(2) through (5) redesignated as (a)(1) through (4); new (a)(2) and (c)(1) introductory text revised; (b)(3) and (c)(1)(viii) added 6890
(e)(1) and (f)(1) amended 6896
(c)(1)(v), (vii) introductory text, (2)(ii), (d), (e)(1), (2), (f)(1), (h) introductory text, (1), (2) and (3) amended 6897
Regulations at 59 FR 6890, 6896 and 6897 eff. date corrected to 3–16–94 9805
1944.236 (c)(3) amended 6890
(e)(2) amended 6896
(d) amended 6897
Regulations at 59 FR 6890, 6896 and 6897 eff. date corrected to 3–16–94 9805
1944.237 (a) and (c)(2) revised 6890
Regulation at 59 FR 6890 eff. date corrected to 3–16–94 9805
1944.239 Introductory text amended 6896
Regulation at 59 FR 6896 eff. date corrected to 3–16–94 9805
1944.246 (b)(3) amended 6896
(b)(2)(ii) amended 6897
Regulations at 59 FR 6896 and 6897 eff. date corrected to 3–16–94 9805

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1944.201—1944.250 (Subpart E) Exhibit A amended 6891
Exhibits A–6, A–7 and A–8 amended 6892
Exhibit A–9 and A–10 amended 6896
Exhibits A, A–6 and B amended 6897
Regulations at 59 FR 6891, 6892, 6896 and 6897 eff. date corrected to 3–16–94 9805
1944.251—1944.302 (Subpart F) Revised 22225, 22235
1944.506 (e)(1) revised 7193
1945 Authority citation revised 25801
1945.163 (a)(2)(v), (xx) and (d) revised 16774
1945.169 (a) revised; (b)(3) through (7) redesignated as (b)(4) through (8) and (b) through (n) redesignated as (d) through (p); introductory text, new (b), (c) and (d)(3) added; new (e)(1), (f)(3), (h)(3), (4), (l) introductory text, (3) and (p)(2) amended 25801
(j) revised 16774
(b)(1) amended 22962
1945.175 (c) revised 16774
(c)(1)(iii) amended 25803
1948.103 (c)(4) amended; interim 24636
1951.910 (b) revised 25803
1955.3 Regulation at 58 FR 68723 eff. date corrected to 12–29–94 15966
1955.9 Regulation at 58 FR 68723 eff. date corrected to 12–29–94 15966
1955.10 Regulation at 58 FR 68724 eff. date corrected to 12–29–94 15966
1955.15 Regulation at 58 FR 68725 eff. date corrected to 12–29–94 15966
1955.18 Regulation at 58 FR 68725 eff. date corrected to 12–29–94 15966
1955.107 Regulation at 58 FR 68725 eff. date corrected to 12–29–94 15966
1980.498 Regulation at 58 FR 41172 confirmed 23615
2018.254 Introductory text revised 3651

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TITLE 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice (Parts 1—499)

3.1 Regulation at 57 FR 11570 confirmed; (d)(1–a) revised 1899
3.12 Regulation at 57 FR 11571 confirmed 1899
3.13 Regulation at 57 FR 11571 confirmed and amended 1899
3.14 Regulation at 57 FR 11571 confirmed 1899
3.15 Regulation at 57 FR 11571 confirmed 1899
3.16 Regulation at 57 FR 11571 confirmed 1899
3.17 Regulation at 57 FR 11571 confirmed 1899
3.18 Regulation at 57 FR 11571 confirmed 1899
3.19 Regulation at 57 FR 11571 confirmed 1899
3.20 Regulations at 57 FR 11571 and 11572 confirmed 1899
3.21 Regulations at 57 FR 11571 and 11572 confirmed 1899
3.22 Regulation at 57 FR 11571 confirmed 1899
3.23 Regulation at 57 FR 11571 confirmed 1899
3.24 Regulation at 57 FR 11571 confirmed 1899
3.25 Regulation at 57 FR 11571 confirmed 1899
3.26 Regulations at 57 FR 11571 and 11572 confirmed and revised 1899
3.27 Regulations at 57 FR 11571 and 11572 confirmed 1899
3.28 Regulation at 57 FR 11571 confirmed 1899
3.29 Regulation at 57 FR 11571 confirmed 1899
3.30 Regulation at 57 FR 11571 confirmed 1899
3.31 Regulations at 57 FR 11571 and 11572 confirmed 1899
3.32 Regulations at 57 FR 11571 and 11572 confirmed 1899
3.33 Regulations at 57 FR 11571 and 11573 confirmed 1899
Revised 1900
3.34 Regulations at 57 FR 11571 confirmed 1899
3.35 Regulation at 57 FR 11571 confirmed 1899
3.36 Regulation at 57 FR 11571 confirmed 1899
3.37 Regulations at 57 FR 11571 and 11573 confirmed 1899
(b) added 1900
3.38 Regulation at 57 FR 11571 confirmed 1899

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3.39 Regulations at 57 FR 11571 and 11573 confirmed 1899
3.40 Regulation at 57 FR 11571 confirmed 1899
103.1 Regulation at 58 FR 44608 confirmed 17921
103.2 (a) revised 1460
(b)(2) and (3) redesignated as (b)(18) and (16); (b), (b)(1) and new (b)(18) headings revised; new (b)(16)(i) and (ii) amended; new (b)(2), new (3), (4) through (15), (17) and (19) added 1461
103.3 Regulation at 57 FR 11573 confirmed 1899
103.5 (a)(1)(i) and (iii) introductory text amended; (a)(1)(iii)(C), (2), (3) and (4) revised; (a)(8) added 1463
103.5b Added 1463
103.7 Regulation at 57 FR 11573 confirmed 1899
(b)(1) amended 26590
204.5 (d) amended; interim 502
(m)(1) amended; interim 27229
204.6 Regulations at 58 FR 44608 and 44609 confirmed 17921
210a.8 Regulation at 56 FR 38333 confirmed 26594
211.1 (b)(1)(i) introductory text revised 26590
212 Authority citation revised 13870
212.1 (g) amended 1467
(l) correctly designated 1992
212.12 (e) revised; (g)(1) amended 13870
214 Authority citation revised 1463
214.1 (a) redesignated as (a)(3); (a)(1), (2) and new (3) heading added; (c) and (d) revised 1463
Regulation at 56 FR 38333 confirmed 26594
214.2 (h)(1)(ii)(B)(*1*), (4)(i)(B)(*5*), (viii)(A)(*1*) and (B)(*2*) revised; (h)(2)(i)(B) amended; (h)(4)(viii)(C) added 1470
Regulation at 56 FR 38333 confirmed 26594
216 Heading revised 26590
Authority citation revised 26590
216.1 Amended 26590
216.2 (b) and (c) amended 26590
216.3 Revised 26590
216.4 Heading revised; (a)(1) and (2) amended 26590
(a)(6) amended 26591
216.5 Heading and (a) introductory text revised; (b) and (c) amended 26591
216.6 Added 26591
223 Revised 1464
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235.11 (a) and (c) revised 26592
238.3 (a) revised; (b) amended 1617
(b) amended 1618
238.4 Amended 1618
241.1 Regulation at 56 FR 38333 confirmed 26594
242.2 Regulation at 57 FR 11573 confirmed 1899
242.7a Regulation at 56 FR 38333 confirmed 26594
242.8 Regulation at 57 FR 11574 confirmed 1899
Regulation at 56 FR 38333 confirmed; (a) amended 26594
242.17 (a) revised 26593
Regulation at 56 FR 38333 confirmed; (d) amended 26594
242.20 Amended 26595
242.23 Regulation at 56 FR 38333 confirmed 26594
245a.2 Regulation at 58 FR 45236 confirmed 1471
248 Authority citation revised 1465
248.1 (a) amended; (b) revised 1465
248.3 (a), (b) and (c) revised; (d) removed 1466
264.1 (b) amended; (c)(1) removed; (c)(2) redesignated as (c)(1) 1466
264.4 Added 1466
264.5 (g) added 1466
264.6 Added 1466
292.3 Regulation at 57 FR 11574 confirmed 1899
292.4 (a) amended 1466
299.1 Revised 25556
299.3 Revised 25558
299.4 Revised 25558
299.5 Revised 25559
499.1 Revised 25561
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TITLE 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)

51.3 (b)(2) amended; interim 12533
(a)(4) added 21635
51.6 (c) revised; interim 12533
54.1 Amended 21920
77.1 Amended 9071
77.3 Revised 9072
78 Technical correction 2649
78.1 Amended 9399, 18951
78.30 (a) amended; (c) added 18952
78.32 Revised; interim 12533
78.41 (b) and (c) amended; interim 14360
(a) and (b) amended; interim 15613
78.43 Regulation at 58 FR 68506 confirmed 22497
79 Authority citation revised 21921
79.1 Amended 21921
79.2 (a)(1) through (7) redesignated as (a)(2)(i) through (vii); (a) introductory text and new (2)(iv) revised; new (a)(1) and (2) introductory text added; new (a)(2)(ii), (iii), (v), (vi) and (vii) amended 21921
(a)(2)(ii) and (vii) amended 21992
79.3 (a) and (b) amended 21922
91.14 (a)(1)(iii) removed 9617
Regulation at 59 FR 9617 eff. date confirmed as 5-2-94 17921
(a)(1)(i)(B) revised; (a)(15)(ii) through (vi) redesignated as (a)(15)(iii) through (vii); new (a)(15)(ii) added 21637
92.100—92.107 (Subpart A) Footnotes 2 through 13 redesignated as Footnotes 3 through 14; interim 10732
92.100 Amended; interim 10732
92.101 (b)(3)(i) revised; interim 10732
92.103 (a)(2)(iv) through (vii) added; interim 10733
92.104 (c)(12) and (13) redesignated as (c)(15) and (16); new (c)(12), new (13), (14), (d)(8), (9), and (10) added; interim 10733
92.301 (c)(1) revised; interim 24888
92.308 (a)(2) amended 9073
(a)(2) amended; interim 24888
92.427 (c)(5) added 24886
92.430 (a), (b)(2)(i), (ii), (4), (5), (6), (c) introductory text, (1), (3) and (d) amended; (b)(3)(ii) redesignated as (b)(3); (b)(1)(ii) and new (b)(3) revised 9620
92.522 (a), (b)(2)(i), (ii), (4), (5), (6), (c) introductory text, (1), (3) and (d) amended; (b)(3)(i) removed; (b)(3)(ii) redesignated as (b)(3); (b)(1)(ii) and new (b)(3) revised 9621
94.0 Amended 13185
94.1 (a)(2) and (d)(1) amended 2286, 12535, 19632
(c)(1) amended 13186
94.4 Footnote 1 removed; (b) introductory text, (1), (2) and (4) revised; (b)(3) and Footnotes 2 and 3 redesignated as (b)(8) and Footnotes 1 and 2; new (b)(3), (5), (6), (7) and (c) added 13186
94.11 (a) amended 2286, 12535, 19632
94.12 (b)(1)(iv)(A) revised 12536
94.18 (a) revised 24638
95 Authority citation revised 9400
95.11 Heading revised; existing text designated as (a); (b) added 9400
96.2 (b) revised 27970
97.2 Table amended 21638
98 Authority citation revised 26596
98.31 Existing text designated as (a); (b) added 26596
98.34 (a)(3) amended 26596
113.70 (b)(4) revised 19633
145.1 Amended 12798
145.10 (d) amended; (l) added 12798
145.12 (o) amended 12798
145.14 (a)(1) and (6) introductory text amended 12798
145.21 Amended 12798
145.23 (d)(1)(vi), (vii), (viii), (e)(1)(ii)(*a*) and (*b*) redesig-

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nated as (d)(1)(vii), (viii), (ix), (e)(1)(ii)(A) and (B); (b)(3) introductory text, (v), (d) heading, (1)(i), (v), new (vii), (2) and (3) amended; new (d)(1)(vi) added 12798
145.31 Amended 12799
145.33 (b)(3) introductory text and (v) amended; (d)(1)(viii) Footnote 4a, (e)(1)(iii)(*a*) and (*b*) redesignated as (d)(1)(viii) Footnote 4, (e)(1)(ii)(A) and (B) 12799
145.41 (a) designation removed 12799
145.43 (b)(3)(v) and (f)(3)(ii) amended 12799
145.51 Amended 12799
145.53 (a) Footnote 1 redesignated as Footnote 7; (b)(3) introductory text and (v) amended 12799
147.1 OMB number 12799
147.2 OMB number 12799
147.3 OMB number 12799
147.5 (b) Footnote 1 redesignated as Footnote 4 and amended; OMB number 12799
147.6 (b) introductory text, (5) and (12) through (15) amended 12799
147.7 Heading Footnote 1 redesignated as Footnote 5; introductory text, (a) heading, (a)(1) introductory text and (e) amended 12799
(e) heading amended; (e) introductory text through (e)(3)(xi) redesignated as (e)(1) introductory text through (e)(1)(iii)(K); new (e)(1) heading and (e)(2) added 12800
147.10 Added 12801
147.11 Footnotes 1 through 4 and (a) through (j) redesignated as Footnotes 7 through 10 and (b)(1) through (10); new (a) and new (b) heading added; OMB number 12801
147.12 (c)(2) Footnote 1 redesignated as Footnote 11; OMB number 12805
147.13 OMB number 12805
147.14 Heading Footnote 1 redesignated as Footnote 12; new Footnote 12 and (a)(2) introductory text amended; (a)(2)(i) and (ii) added 12805
147.15 Footnotes 4 through 11 redesignated as Footnotes 13 through 20 12805
147.16 Footnote 12 redesignated as Footnote 21 12805
147.21 OMB number 12805
147.41 Amended 12805
147.43 (a) introductory text amended 12805

Chapter III—Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300—399)

313.5 (a)(1) and (b)(3) amended; (a)(3) and (b)(1)(i) revised 21640
317.2 (l) added 14539
317.5 (b)(12) and (13) amended; (b)(14) added 14540
317.8 (b)(37) removed 12538
317.309 Regulation at 58 FR 47627 confirmed 12158
317.312 Regulation at 58 FR 47627 confirmed 12158
317.313 Regulation at 58 FR 47627 confirmed 12158
317.345 Regulation at 58 FR 47627 confirmed 12158
317.362 Regulation at 58 FR 47627 confirmed 12158
317.363 Added; eff. 11-10-95 24228
317.380 Regulation at 58 FR 47627 confirmed 12158
317.400 Regulation at 58 FR 47627 confirmed 12158
318.7 (c)(4) table amended 12538
320.1 (b)(9) correctly designated 6897
381.125 Undesignated text designated as (a); (b) added 14540
381.134 (b)(12) and (13) amended; (b)(14) added 14540
381.409 Regulation at 58 FR 47628 confirmed 12158
381.412 Regulation at 58 FR 47628 confirmed 12158
381.413 Regulation at 58 FR 47628 confirmed 12158
381.445 Regulation at 58 FR 47628 confirmed 12158
381.462 Regulation at 58 FR 47628 confirmed 12158
381.463 Added; eff. 11-10-95 24228
381.480 Regulation at 58 FR 47628 confirmed 12158
381.500 Regulation at 58 FR 47628 confirmed 12158

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TITLE 10—ENERGY

Chapter I—Nuclear Regulatory Commission (Parts 0—199)

0 Authority citation revised 17460
0.735–1 Added 17460
0.735–2 Redesignated from 0.735–21; heading revised 17460
0.735–8 Removed 17460
0.735–21 Redesignated as 0.735–2 17460
0.735–29 Removed 17460
0.735–40 Removed 17460
1.5 (b) amended 17465
1.41 (h) amended 5519
12 Added 23121
20.1—20.602 Sections and Appendixes A, B and D correctly removed; Appendix C correctly redesignated as Part 30 Appendix B 1900
20.2202 (d)(2) revised 14086
20 Appendix D amended 17465
21.2 (d) amended 14086
21.3 (e) amended 5519
21.21 (c)(3)(i) amended 14086
26.24 (a)(2) revised 507
30.6 (b)(2)(iv) revised; (b)(2)(v) removed 17465

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30.8 (b) corrected 1618
30.35 (f)(2) corrected 1618
30.50 (c)(1) Footnote 1 amended 14086
30.70 Table amended 5519
30 Appendix C correctly designated 1618
32.51 (a)(3)(iii) amended 5520
34.42 Corrected 1900
35.33 (a)(1) Footnote 2 amended 14086
40.5 (b)(2)(iv) revised; (b)(2)(v) removed 17466
40.36 (e)(2) corrected 1618
40.60 (c)(1) Footnote 1 amended 14086
50.36a (b) amended 5520
50.54 (s)(1) amended 5520
(bb) revised 10269
50.55 (e)(6)(i) amended 14087
50.72 (a)(2) Footnote 3 amended 14087
50.75 (e)(2)(iii) corrected 1618
50 Appendix E amended 14090
55.2 (c) added 5938
55.5 (b)(1) and (3)(ii) revised; (b)(2)(v) removed 17466
55.57 (b)(2)(iv) removed 5938
55.59 (c) introductory text revised 5938
70.5 (b)(2)(iv) revised; (b)(2)(v) removed 17466
70.25 (f)(2) corrected 1618
70.50 (c)(1) Footnote 1 amended 14087
70.52 (a) Footnote 1 amended 14087
72.30 (c)(2) corrected 1618
72.74 (a) Footnote 1 amended 14087
73.57 (d)(3) revised 662
73.67 (e)(3)(vii) Footnote 1 and (g)(3)(iii) Footnote 1 amended 14087
73.71 (a)(1) Footnote 1 amended 14087
73 Appendix A amended 17466
171 Authority citation revised 12543
171.11 (a) revised 12543
171.15 (c)(3) and (4) added 26098
171.16 (f) and (g) added 26099

Chapter II—Department of Energy (Parts 200—699)

435.109 Amended 18293
600.12 (c) revised 18474

Chapter III—Department of Energy (Parts 700—999)

765 Added 26726
830 Added 15851

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Chapter XI—United States Enrishment Corporation (Part 1102)

Chapter XI Established 16979
1102 Added 27437

Chapter XVII—Defense Nuclear Facilities Safety Board (Parts 1700—1799)

1703 FOIA fee schedule adjustment 21640

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19 ..... 5132, 6792
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50 ..... 979, 14373, 17499, 19147, 23641
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70 ..... 6792, 19147
71 ..... 6792, 8143, 26608
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TITLE 11—FEDERAL ELECTIONS

Chapter I—Federal Election Commission (Parts 1—9099)

102.14 (b)(3) added (effective date pending) 17269
104.7 Regulation at 58 FR 57729 eff. 3-3-94 10057

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8 ..... 11211, 14022
102 14794

TITLE 12—BANKS AND BANKING

Chapter I—Comptroller of the Currency, Department of the Treasury (Parts 1—199)

3 Appendix A amended 10952, 10953
5.33 Regulation at 57 FR 49642 confirmed; (b)(8) revised 22498
27 Authority citation revised 26415
27.3 (a) and (b)(1)(xx) revised 26415
27.4 (c)(5) revised 26415
27.7 (b), (c) introductory text and (d) revised 26415
27 Heading to Part 27 appendixes added; Appendix II revised 26415
34 Statement and order 6531

Chapter II—Federal Reserve System (Parts 200—299)

205 Authority citation revised 10683
205.15 Added 10683
205 Appendix A amended 10683
207 OTC margin stock list 4549, 23124
210 Authority citation revised 22965
210.1 Amended 22965
210.2 (g) introductory text revised; (p) added 22965
210.3 (a) amended; (f) added 22965
210.5 (a) introductory text and (2) revised; (b)(3) amended; (d) added 22965
210.6 (b)(1) and (2) revised; (b) concluding text and (c) amended 22966
210.9 (a)(5) revised 22966
210.12 (a) amended; (d) through (g) redesignated as (e) through (h); new (d) and (i) added; (c) introductory text, (2), new (e) concluding text and (h) revised 22966
210.13 Revised 22966
210.14 Revised 22967
215 Authority citation revised 8837
215.1—215.13 (Subpart A) Revised 8837
215.21 (a) amended; Footnote 10 removed; Footnotes 11 and 12 redesignated as Footnotes 5 and 6 8842

215.22 (c)(1)(ii) amended 8842
220 OTC margin stock list 4549, 23124
221 OTC margin stock list 4549, 23124
224 OTC margin stock list 4549, 23124
225 Statement and order 6531
Authority citation revised 22968
225.4 (b)(1) revised; (b)(6) added 22968
226 Order 6532
230 Determination 24032
231 Added 4784
264b.3 (d) amended 12805
265.11 (c)(11)(v) revised 22968
268 Revised 16098

Chapter III—Federal Deposit Insurance Corporation (Parts 300—399)

303 Authority citation revised 7198
303.2 Heading and (a) introductory text revised 4250
303.6 (a)(3), (f)(1)(ii)(B) heading and (2) revised; (f)(1)(ii) introductory text, (3) and (4) amended 4250
303.15 Added; interim 7198
323 Statement and order 6531
325 Authority citation revised 3784
325.1—325.6 (Subpart A) Appendix A amended 3784

Chapter V—Office of Thrift Supervision, Department of the Treasury (Parts 500—599)

Chapter V Nomenclature change 18475
503 Authority citation revised 18475
503.1 (e) amended 18475
504 Authority citation revised 18475
504.3 Introductory text amended 18475
504.4 Amended 18475
505 Authority citation revised 18475
505.2 Amended 18475
505.4 Amended 18475
515 Authority citation revised 18475
515.2 Amended 18475
515.4 (a) introductory text and (b) amended 18475
515.5 Amended 18476
544 Authority citation revised 18476
544 Appendix amended 18476
552.4 (d) amended 18476
552.6 (d)(1) amended 18476
552 Appendix amended 18476
561.5 Added 18476
563b.2 (a)(14) removed; (a)(15) through (19) and (29) through (40) redesignated as (a)(14) through (18) and (30) through (41); new (a)(16) revised; new (a)(19) and (29) added; interim 22732
563b.3 (c)(2)(i), (ii), (4)(i) through (iv), (5)(i) and (ii) redesignated as (c)(2)(ii), (iii), (4)(ii) through (v), (5)(ii) and (iii); new (c)(2)(i), new (4)(i), new (5)(i) and (g)(4) added; (c)(6)(i), (iv), (7), (14), (23),(d)(4), (g) heading, (1)(i), (ii) and (3) revised; (g)(1)(iii) removed 22733
563b.4 (b)(1) amended; (c) revised; interim 22734
563b.5 (d)(4) and (e)(5) revised; interim 22734
563b.7 (f)(1)(ii) and (3) revised; (f)(1)(iii) amended; (f)(1)(iv) added; interim 22734
563b.8 (e)(1) and (t)(1) amended; interim 22735
563b.10 Revised; interim 22735
563b.100 Amended; interim 22735
563b.101 Amended; interim 22735
564 Statement and order 6531
567 Authority citation revised 4788
567.1 (v) revised 12810
567.5 (a)(2)(i) and (ii) revised; (a)(2)(iii) removed 4788
567.6 (a)(1)(iii)(C) revised; eff. in part 3-18-94 to 9-29-94 and 9-30-94 12810
(a)(1)(iv)(L) revised 4788
567.7 (a) amended 12811
567.9 (c)(1) revised 4788
567.12 Added 4788
575.7 (e) added; interim 22735
575.13 (a)(4) amended; interim 22735

Chapter VI—Farm Credit Administration (Parts 600—699)

600.1 Amended (effective date pending) 21641
Regulation at 59 FR 21641 eff. 4-26-94 27970
600.4 (b) revised; (c) and (d) added (effective date pending) 21641
Regulation at 59 FR 21641 eff. 4-26-94 27970
600.5 (a), (b) and (c) redesignated as (b), (d) and (e), new (a)

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and new (c) added; new (b) and new (d) revised (effective date pending)....21642
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600.10 (c) amended (effective date pending)....21642
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604 Authority citation revised....21642
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605 Authority citation revised (effective date pending)....21643
605.502 (f) amended (effective date pending)....21643
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608 Added (effective date pending)....13187
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611.1130 (a) amended (effective date pending)....21643
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612 Revised (effective date pending)....24894
614.4516 Regulation at 58 FR 62514 eff. 3-15-94....11898
615.5060 (a) revised (effective date pending)....3787
Regulation at 59 FR 3787 eff. 3-18-94....12811
615.5131 Regulation at 58 FR 63055 eff. 3-15-94....11898
615.5132 Regulation at 58 FR 63056 eff. 3-15-94....11898
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2615.21 (a) introductory text and (1) amended **35386**
2615.22 (a) introductory text and (c) amended **35386**
2615.23 Heading amended; (a) and (e) heading revised **35386**
2616 Authority citation revised **63082**
2616.3 (b)(2) amended 17695
2616.4 (c) amended **35387**
2616.7 (b) amended **63082**
2616.10 Redesignated as 2616.11; new 2610.10 added 17695
2616.11 Redesignated from 2616.10 17695
2616.24 (d) added 17695
2616.25 (c)(2) amended 17696
2616.27 (d)(4) and (e)(1)(ii) correctly revised 11188

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TITLE 29 Chapter XXVI—Con.

(a)(1) amended 17696
2616.29 (a)(1) amended 17696
2617 Authority citation revised **44740, 63082**
2617.3 (b)(2) amended **44740**
2617.8 (b) amended **63082**
2617.22 (d)(9) correctly revised; (e)(1)(ii) corrected 11188
2617.25 (a) introductory text amended; (a)(1) and (2) added **44740**
(a)(2)(i) corrected **48600**
(b)(2) amended **63082**
2617.28 (f)(4) added **44740**
(f)(4)(i) corrected **48600**
2618 Authority citation revised **63082**
2618.31 (d) amended **63082**
2619 Authority citation revised **50815**
2619.3 (a) amended **50815**
2619.25 (b)(2) amended **50815**
2619.41 Revised **50815**
2619.42 Redesignated as 2619.43; new 2619.42 added **50815**
2619.43 Removed; new 2619.43 redesignated from 2619.42 ..... **50815**
2619.49 Added **50816**
2619 Appendix B amended **38051, 48305, 53409, 60117, 65549**
Appendix A amended **50820, 50821**
Appendix B revised **50824**
Appendix C revised **50825**
Appendix D amended **66278**
Appendix B amended 2297, 7211, 11926, 17925, 24940
2621 Appendix A amended **65552**
2622 Heading revised **35387**
Authority citation revised **63082**
2622.1 Revised **35387**
2622.2 Amended **35387**
Corrected **37991**
2622.3 Revised **35388**
2622.4 Heading, (b) and (c) revised; (d) amended **35388**
2622.5 (a), (b) and (c) amended **35389**
2622.6 Revised **35389**
(a) and (c) corrected **37991**
2622.7 Heading, (a) and (b) revised; (d) removed **35389**
(c) amended **35390**
2622.8 Heading and (a) through (d) revised; (e) amended **35390**
2622.9 Heading, (a) and (b) amended **35390**
(c) amended; (d) revised **35391**
2622.10 (a) introductory text and (b) amended **35391**
(b) amended **63082**
2622 Appendix A amended **38050, 53407**
Appendix A amended 2296, 17924
2623 Authority citation revised **35391**
Heading revised **35391**
2623.1 Revised **35391**
2623.2 Amended **35391**
2623.5 (b), (c), (d) and (f) heading amended; (e) and (f)(1) removed; (f) and (g) redesignated as (e) and (f); (a) and new (f) *Examples* (1), (2) and (3) revised **35392**
(e) correctly designated; (f) *Example* 3 corrected **37991**
2623.6 (a) through (d) amended; (e) *Examples* (1), (2) and (3) revised **35393**
2623.7 Heading, (a), (b), (c), (d) introductory text and (1) amended; (e) *Examples* (1) and (2) revised **35394**
2623.8 Removed **35394**
2623.11 (a), (b) and (c) amended **35395**
2623.12 (a)(1) and (3) amended **35395**
2625 Authority citation revised 8539
2625.1 (a) amended 8539
2625.2 (b), (c) and (d) amended 8539
2625.3 (c) amended 8539
2641 Authority citation revised **63082**
2641.13 (c) amended **63082**
2642 Authority citation revised **63082**
2642.12 (c) amended **63082**
2643 Authority citation revised **63082**
2643.2 (c) amended **63082**
2644 Appendix A amended **38052, 53411**
Appendix A amended 2300, 17927
2645 Authority citation revised **63082**
2645.3 (c) amended **63082**
2646 Authority citation revised **63082**
2646.8 (c) amended **63082**
2647 Authority citation revised 9927
2647.1 (a) amended 9927
2647.2 (a) amended 9927
2647.9 Added 9927
2648 Authority citation revised **63083**
2648.8 (d) amended **63083**
2672 Authority citation revised **63083**
2672.7 (c) amended **63083**
2673 Authority citation revised **63083**
2673.2 (d) amended **63083**
2674 Authority citation revised **63083**
2674.6 Amended **63083**
2675 Authority citation revised **63083**
2675.2 (b) amended **63083**
2676.13 (a) and (b)(2) revised **50825**

(b)(1) correctly added; CFR correction 15117
2676.14 Removed; new 2676.14 redesignated from 2676.16 ..... **50826**
2676.15 (c) table amended **38053, 43080, 48306**
Removed **50826**
2676.16 Redesignated as 2676.14 ..... **50826**
2676 Appendixes A, B and C added **50826**
Appendix B amended **53409, 60117, 65550**
Appendix B amended 2298, 7212, 11927, 17926, 24941
2677 Authority citation revised **63083**
2677.2 (c) amended **63083**

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24 12506
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402 ..... **49672**
403 ..... **49672**
507 ..... **52152, 58994**
552 ..... **69310**
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1605 ..... **49456**
1609 ..... **51266**
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1910 ..... **47690**
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2530 ..... **54444, 68339**
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TITLE 30—MINERAL RESOURCES

Chapter I—Mine Safety and Health Administration, Department of Labor (Parts 1—199)

50 Authority citation revised **63528**
50.10 Revised **63528**
56 Authority citation revised **69605**
56.5003 Removed 8327
56.5010 Removed 8327
56.6000—56.6904 (Subpart E) Revised **69606**
56.6000 Regulation at 58 FR 31908 eff. date delayed to 1–31–94 ..... **69606**
56.6130 Regulation at 58 FR 31908 eff. date delayed to 1–31–94 ..... **69606**
56.6131 Regulation at 58 FR 31908 eff. date delayed to 1–31–94 ..... **69606**
56.6140 Regulation at 58 FR 31908 eff. date extended to 1–31–94 ..... **69606**
56.6202 Regulation at 58 FR 31908 eff. date delayed to 1–31–94 ..... **69606**
56.6220 Regulation at 58 FR 31908 eff. date extended to 1–31–94 ..... **69606**
56.6304 Regulation at 58 FR 31908 eff. date delayed to 1–31–94 ..... **69606**
56.6306 Regulation at 58 FR 31908 eff. date delayed to 1–31–94 ..... **69606**
56.6320 Regulation at 58 FR 31908 eff. date extended to 1–31–94 ..... **69606**
56.6330 Regulation at 58 FR 31908 eff. date extended to 1–31–94 ..... **69606**
56.6331 Regulation at 58 FR 31908 eff. date extended to 1–31–94 ..... **69606**
56.6501 Regulation at 58 FR 31908 eff. date delayed to 1–31–94 ..... **69606**
56.6902 Regulation at 58 FR 31908 eff. date delayed to 1–31–94 ..... **69606**
56.6903 Regulation at 58 FR 31908 eff. date delayed to 1–31–94 ..... **69606**
56.6000—56.6904 (Subpart E) Regulation at 58 FR 31908 eff. date delayed to 1–31–94 ..... **69606**
57.5003 Removed 8327
57.5010 Removed 8327
57.5016 Removed 8327
58 Added 8327
70 Authority citation revised 8327
70.201—70.220 (Subpart C) Authority citation revised **63528, 63529**
70.209 (a) revised **63528**
70.400 Removed 8327
70.400–1 Removed 8327
70.400–2 Removed 8327
70.400–3 Removed 8327
71.209 (a) revised **63529**
72 Added 8327
75.313 Regulation at 58 FR 53857 stay extended 18485
75.344 Regulation at 58 FR 53857 stay extended 18485

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90.201—90.220 (Subpart C) Authority citation added **63529**
90.209 (a) revised **63529**

Chapter II—Minerals Management Service, Department of the Interior (Parts 200—299)

202 Policy statement **37420**
206 Policy statement **37420**
Extraordinary cost provisions 17479
207 Authority citation revised **64901**
207.1 (b) amended **64901**
208 Authority citation revised **64901**
208.2 Amended **64901**
208.3 Revised **64901**
208.6 (a) revised **64901**
208.7 (h) amended **64901**
208.11 Revised **64901**
208.12 (a) amended; (c) and (d) revised **64902**
208.13 Revised **64902**
210 Authority citation revised **64902**
210.10 (a) table, (b)(3) through (6), (c)(1), (2), (8), (9), (12), (13), (19) and (d) amended; (b)(1) revised; (c)(6), (11), (15) and (17) removed; (c)(7) through (10), (12), (13), (14), (16) and (18) through (23) redesignated as (c)(6) through (19); new (c)(20) added; OMB number **64902**
210.53 (a) and (b) amended **64902**
210.204 (a) and (b) amended **64902**
210.355 (a) and (b) amended **64902**
216 Authority citation revised **45254, 64903**
216.2 Revised **45254**
216.6 Amended **45254**
216.15 (a) and (b) amended **64903**
216.16 (a) and (b) amended **64903**
216.20 Revised **45254**
216.40 (c) amended **64903**
216.50 (a) removed; (b) through (e) redesignated as (a) through (d); new (a) revised; new (d)(3) amended **45254**
(a), (c)(1) and (2) amended **64903**
216.51 Revised **45254**
216.52 Removed; new 216.52 redesignated from 216.53 ..... **64903**
216.53 Redesignated as 216.52; new 216.53 redesignated from 216.54 ..... **64903**
216.54 Revised **45255**
Redesignated as 216.53; new 216.54 redesignated from 216.55 ..... **64903**
216.55 Revised **45255**
Redesignated as 216.54; new 216.55 redesignated from 216.56 ..... **64903**
216.56 Revised **45255**
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216.57 Removed; new 216.57 added **64903**
216.58 Revised **45255**
Redesignated as 216.56 ..... **64903**
216.61 Removed **64903**
218 Authority citation revised **45438, 64903**
Authority citation revised 14559
218.41 Added **45438**
218.51 (f)(2) amended **64903**
218.202 (c) and (d) revised 14559
218.302 (c) and (d) revised 14559
219.102 Amended **64903**
220.003 (b) amended **64903**
228.10 (b) amended **64903**
229 Authority citation revised **64903**
229.123 (b)(2) and (3)(vii) amended **64903**
243.4 (b)(2) removed; (b)(3) through (9) redesignated as (b)(2) through (8); new (b)(5) revised; new (b)(8) amended **64903**
250.0 (r), (t) and (v) removed; (s), (u), (w), (x) and (y) redesignated as (r) through (v); (o), (p), (q) and new (r) through (u) revised **49926**
250.18 (d) introductory text revised; (d)(4) through (8) added **44764**
(d)(1), (2) and (3) revised; (d)(4) and (5) added **49927**
(d) revised 12161
250.51 (a)(3) amended **49927**
250.64 (a) and (f) introductory text revised **49927**
250.65 (a), (b) and (c) amended **49928**
250.66 (b) and (e) amended **49928**
250.83 (a) and (b) amended; (c) revised; (d) added **49928**
250.85 (a) amended **49928**
250.103 (a), (b) introductory text and (c) introductory text amended; (d) revised **49928**

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250.105 (a) amended **49928**
250.111 Introductory text amended **49928**
250.114 (b) amended **49928**
250.121 (h)(1) amended **49928**
250.172 (a)(1), (b)(2), (3), (5) and (6) revised; (a)(2), (3), (6), (7) and (8) amended; (a)(9), (b)(8) and (9) added **49928**
250.260 (b)(3) amended **49928**
250.272 (a) and (c) introductory text amended **49928**
250.273 (a), (b) and (c) amended **49928**
250.274 (b) amended **49928**
250.282 (a), (b), (c)(1) and (2) amended **49928**
256 Heading revised **45261**
Authority citation revised **45261**
256.0—256.12 (Subpart A) Heading revised **45261**
256.0 Revised **45261**
256.58 Heading, (a), (c) and (e) revised; (f) redesignated as (h); new (f) and (g) added **45261**
256.59 Revised **45262**
256.61 Revised **45262**
256.62 (e) revised **45262**

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

718 Removed **41937**
720 Removed **41937**
735.21 (a)(6) revised **41938**
779.22 Removed 27937
779.25 (a)(11) removed 27937
780.23 Revised 27937
783.22 Removed 27937
783.25 (a)(11) removed 27937
784.15 Revised 27937
795.3 Amended 28167
795.4 Revised; OMB number 28167
795.6 (a)(2) introductory text, (i) and (ii) revised 28168
795.9 (a) and (b) revised 28168
795.12 (a) introductory text, (2) and (3) revised 28168
870.5 Amended 28168
870.10 Revised; OMB number 28169
870.12 (d) added 28169
870.15 (d) revised 14479
(b) revised; (c) amended 28169
870.17 Revised 28169
872 Authority citation revised 28169
872.10 Revised; OMB number 28169
872.11 (a)(6), (b)(6), (7) and (8) added; (b)(1) through (5) revised 28169
873 Added 28170
874 Authority citation revised 28171
874.1 Revised 28171
874.11 Revised 28171
874.12 (d) through (h) added 28171
874.13 Revised 28171
874.14 Added 28171
874.15 Added 28172
874.16 Added 28172
875 Authority citation revised 28172
875.10 Added; OMB number 28172
875.12 Revised 28172
875.13 Revised 28172
875.14 Added 28172
875.15 Added 28173
875.16 Added 28173
875.17 Added 28173
875.18 Added 28173
875.19 Added 28173
875.20 Added 28173
876 Added 28174
876.10 OMB number 28174
886 Authority citation revised 28174
886.23 (b)(2)(ii) and (iii) amended; (c) added 28174
901.10 Revised 17928
901.15 (p) added **54289**
901.20 Revised 17928
901.25 (a) and (b) revised 17929
904.10 (a) revised 17931
904.20 Revised **38534**
Revised 17931
904.25 Added **38534**
(b) added 541
904.26 Added **38534**
Revised 542
906.10 (a) and (b) revised; (c) removed 17932
906.15 (o) added 2745
906.20 Revised 17932
913.15 (o) added **46856**
(p) added 4833
913.16 (l), (m), (n), (p), (q) and (r) removed; (s), (t) and (u) added **46857**
(v) added 4833
913.25 (e) added **48962**
914 Technical correction 1919
914.10 (c) revised 17929
914.15 (uu) added **41042**
(vv) added **43259**
(ww) added **46860**

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(xx) added 48966
(YY) added 60786
914.16 (l) through (m) removed 41042
(n) through (aa) added 43260
(bb), (cc) and (dd) added 46861
(g) removed 48967
(d) revised; (e) removed 60786
914.20 Revised 17929
915.10 (a) and (b) revised; (c) removed 17932
915.15 (j) added 5723
915.16 (a) introductory text, (1) and (5) revised; (a)(2), (3), (4) and (6) through (21) removed; (b) added 5723
915.20 Revised 17932
916.15 (n) correctly designated 45439
917.10 (b) removed; (c) redesignated as (b); (a) and new (b) revised 17929
917.15 (rr) added 42011
(ss) added 51227
(uu) added 8865
(tt) added 27238
917.16 Heading revised; (j) and (k) added 42011
(f) revised 27238
917.20 Revised 17929
(b) correctly revised 27239
917.21 (a) and (b) revised 17929
(a)(1) and (b)(1) correctly revised 27239
918.10 (a) and (b) revised 17932
918.20 Revised 17932
920.10 (a) and (b) revised; (c) removed 17929
920.15 (x) added 36138
920.20 Revised 17929
924.10 (a)(1) and (2) revised; (a)(3) removed 17930
925.10 (a) revised 17932
925.15 (q) added 64150
(r) added 19137
925.16 (d), (g)(9) through (19), (21), (p)(1), (2), (3), (13), (17) and (19) removed; (p)(9) revised; (q) added 64150
(i) removed 19137
925.25 (b) revised 17932
926.10 Revised 17932
926.15 (k) added 9087
926.16 (f) added 9087
926.20 Revised 17932
931.10 (a) and (b) revised 17933
931.15 (r) added 65928
931.16 (d) through (v) added 65929
931.20 Revised 17933
934.15 (q) added 11933
934.16 (m), (o) through (t) and (v) removed 11933
934.25 (d) added 50258
935.10 (a) revised; (b) removed 17930
935.15 (ooo) added 43263
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(qqq) added 22518
935.16 Revised 22518
935.20 Revised 17930
936 Informal conference 2300
936.15 (m) added 64383
936.16 Revised 64383
938.10 Revised 17930
938.15 (z) added 36141
(aa) added 64152
938.20 Revised 17930
943.10 Revised 17933
943.15 (l) added 13209
943.16 Introductory text, (c), (d), (f) and (j) revised; (b), (e), (g), (h) and (i) removed; (r) and (s) added 13209
943.20 Revised 17933
944.10 Revised 17933
944.15 (w) added 48611
(x) added 16548
(y) added 26739
944.16 (a) through (d) added 48611
Revised 16548
944.20 Revised 17933
946.10 (a) and (b) revised; (c) and (d) removed 17930
946.15 (gg) added 49931
(ff) amended 52667
946.20 (a) and (b) revised; (c) removed 17930
946.25 Revised 17930
948.10 (b) removed; (c) redesignated as (b) and revised 17930
948.20 (a) revised; (c) removed 17931
950 Authority citation revised 3520
950.11 (c) revised 3520
950.12 (a)(9) removed 14753
950.15 (o) added 44455
(p) added 52237
(q) added 58494
(r) added 3520
(s) added 14753
950.16 (o) removed 44455
(aa) added 52237
(bb) through (gg) added 3526

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934 ..... 37449, 61857, 64528, 68617
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950 ..... 44480, 54540, 65681
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TITLE 31—MONEY AND FINANCE: TREASURY

Subtitle A—Office of the Secretary of the Treasury (Parts 0—50)

11 Revised 57560

Chapter I—Monetary Offices, Department of the Treasury (Parts 51—199)

103.11 Regulation at 58 FR 13546 eff. date delayed to 3-1-94 45263
Regulation at 57 FR 13546 eff. date delayed to 12-1-94 9088
103.22 Regulation at 58 FR 13547 eff. date delayed to 3-1-94 45263
Regulation at 57 FR 13547 eff. date delayed to 12-1-94 9088

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103.28 Regulation at 58 FR 13547 eff. date delayed to 3–1–94 ..... **45263**
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103.36 Regulation at 58 FR 13548 eff. date delayed to 3–1–94 ..... **45263**
Regulation at 57 FR 13548 eff. date delayed to 12–1–94 9088
103.54 Regulation at 58 FR 13549 eff. date delayed to 3–1–94 ..... **45263**
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128 Revised **58495**
129 Reporting requirements **68528**

Chapter II—Fiscal Service, Department of the Treasury (Parts 200—399)

203 Revised; eff. 8–2–93 ..... **35396**
205.4 (b) revised; interim 14754
206 Revised 4538
315.1 (a) amended; (b) revised 10534
315.31 (d) amended 10535
315.35 (e) amended 10535
315.39 (b) amended 10535
315.40 (a) amended 10535
315.41 Amended 10535
315.56 (a) amended 10535
318.3 Footnote 2 amended 10535
316.6 (c) amended 10535
316.8 (c)(1) revised; (c)(2) introductory text through (viii) removed; (c)(2)(ix) redesignated as (c)(2) **60936**
(e) amended **60937**
316.10 (b) amended 10535
316.12 Revised 10535
317.1 (b) revised; (c) amended 10535
317.3 (a) revised 10535
(b) and (c) amended 10536
317.5 (a) and (b) amended 10536
317.6 (b) revised **63529**
(a) and (b) amended 10536
317.7 Amended 10536
317.8 Amended 10536
317.9 (a) revised; (b) redesignated as (c); new (b) added; new (c) heading and introductory text amended 10536
321.1 (f) removed; (d) and (e) redesignated as (e) and (f); new (d) added; new (f) revised 10536
321.2 (b) revised 10536
321.3 (a) introductory text, concluding text, (b) and (c) amended; (d) revised 10536
321.5 (a) and (b) amended 10537
321.8 (d) revised 10537
321.11 (f) revised 10537
321.13 Amended 10537
321.14 Revised 10537
321.20 Amended 10537
321.22 Amended 10537
321.23 (a) introductory text amended; (a)(1) removed; (a)(2) and (3) redesignated as (a)(1) and (2) 10537
321.25 Revised 10537
321 Appendix amended 10538
330 Authority citation revised 10538
330.1 (a) revised 10538
(c) and (i) amended 10539
330.2 (a) and (c) amended 10539
330.3 (a) and (b) amended 10539
330.4 Introductory text amended 10539
330.6 (c) amended 10539
330.7 Amended 10539
330.8 Amended 10539
330.9 Revised 10539
332.8 (b) revised **60937**
332.10 Amended 10539
332.12 Revised 10539
342.3 (b)(1) revised; (b)(2) introductory text, (i) and (ii) removed; (b)(2)(iii) redesignated as (b)(2) **60937**
Amended **60938**
342.7 (a) amended 10540
342.9 Revised 10540
347 Removed 24047
348 Removed 5724
351.0 Amended **60938**
351.2 (c) table, (e) introductory text, (1), (g)(3)(i) and (h) amended; (g)(2) tables revised **60938**
(i) amended **60939**
351.5 (b)(1) amended 10540
351.7 (b) amended 10540
351.12 Revised 10540
351 Appendix amended **60939**
352.0 Amended **60947**
352.2 (e)(1)(i) through (vi) redesignated (e)(1)(ii) through (vii); new (e)(1)(i) added; (e)(1)(ii) and (2) revised; (e)(1) amended **60947**
(h) amended 10540
352.5 Amended 10540
352.7 (b) and (c) amended 10540
352.13 Revised 10541

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352 Table revised **60947**
353.1 (a) amended; (b) revised 10541
353.13 (d) introductory text amended 10541
353.31 (d) amended 10541
353.35 (c) amended 10541
353.39 (b) amended 10541
353.40 (a) amended 10541
353.41 Amended 10541

Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

500 Authority citation revised **47644**
500.413 Added **68530**
500.508 (f) revised **47644**
500.566 (a) introductory text amended; (b) redesignated as (c); heading and new (c) revised; new (b) added **63084**
500.575 Added **63084**
500.576 Added **68531**
500.577 Added **68532**
500.578 Added 5696
500.579 Added 26602
500.603 Added **47644**
500.701—500.707 (Subpart G) Revised 16776
500.901 Amended 16777
500 Appendix A added **68532**
505 Authority citation revised 16777
505.50 Revised 16777
515 Authority citation revised **45060**, **47644**
515.418 Added **45060**
515.508 (f) added **47645**
515.563 (b) amended **45060**
515.569 (b) and (c) amended **45060**
515.603 Added **47645**
515.901 Amended **45061**
520 Authority citation revised 16777
520.701 Revised 16777
550 Authority citation revised **47645**
550.511 (g) revised **47645**
550.516 Removed 5106
550.603 Added **47645**
550 Appendixes A and B amended 13211
565 Authority citation revised 24644
565.512 Added 24644
575 Authority citation revised **47645**
575.503 (h) revised **47646**
575.606 Added **47646**
580 Authority citation revised **40044**, **47646**
Policy statement 8134, 15342, 25817
Authority citation revised 16549
580.503 (h) revised **47646**
580.518 Added **46541**
Removed **54024**
580.603 Revised **47646**
580 Appendix A added **40044**
Appendix A amended **46541**
Appendix A amended 16549
585 Authority citation revised **35828**, **47646**
585.201 (b) redesignated as (c); new (b) added **35828**
585.215 Added **35829**
585.216 Added **35829**
585.217 Added **35829**
585.218 Added **35829**
585.301 (a) revised; (c) and (d) amended; (e) added **35829**
585.418 Added **35829**
585.419 Added **35829**
585.503 (a) revised **47646**
585.509 Heading and (a) revised; (b) and (d)(2)(ii) amended **35829**
585.524 Added **35829**
585.603 Revised **47647**
585.901 Added (OMB numbers) **35830**
590 Added **64904**

Chapter VI—Bureau of Engraving and Printing, Department of the Treasury (Parts 600—699)

601 Revised 22973

Chapter VIII—Office of International Investment, Department of the Treasury (Parts 800--899)

800 Authority citation revised 27179
800.208 Redesignated as 800.209; new 800.208 added 27179
800.209. Redesignated as 800.211; new 800.209 redesignated from 800.208 27179
800.210 Redesignated as 800.212; new 800.210 added 27179
800.211 Redesignated as 800.213; new 800.211 redesignated from 800.209 27179
800.212 Redesignated as 800.214; new 800.212 redesignated from 800.210 27179
800.213 Redesignated as 800.215; new 800.213 redesignated from 800.211 27179

TITLE 31 Chapter VIII—Con.

800.214 Redesignated as 800.216; new 800.214 redesignated from 800.212 27179
800.215 Redesignated as 800.217; new 800.215 redesignated from 800.213 27179
800.216 Redesignated as 800.218; new 800.216 redesignated from 800.214 27179
800.217 Redesignated as 800.219; new 800.217 redesignated from 800.215 27179
800.218 Redesignated as 800.220; new 800.218 redesignated from 800.216 27179
800.219 Redesignated as 800.221; new 800.219 redesignated from 800.217 27179
800.220 Redesignated as 800.222; new 800.220 redesignated from 800.218 27179
800.221 Redesignated as 800.223; new 800.221 redesignated from 800.219 27179
800.222 Redesignated from 800.220 and amended 27179
800.223 Redesignated from 800.221 27179
800.301 (b)(5) Example 1 amended 27179
800.302 (d) introductory text amended 27179
800.401 (a) amended 27179
800.402 (c)(3)(v)(A) revised; (c)(5)(i) and (ii)(E) amended; (c)(5)(iii), (iv) and (i) added 27179
800.504 Amended 27179
800.601 (b), (c) and (d) amended 27180
800.702 (a) amended 27180
800 Appendix redesignated as Appendix A; Appendix B added; new Appendixes A and B amended 27180

Proposed Rules:

1 ..... **43312, 44481**
103 ..... **46014, 46021, 51269**
206 ..... **41902**
209 ..... **41449**
357 ..... **59972**
601 ..... **59973**
800 7666

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (Parts 1—399)

40 Revised; interim **47624**
Heading revised **51780**
40a Revised 1646
80 Added; interim **51997**
83 Added 13212
84 Added 13214
86 Added; interim **52010**
88 Added 14559
90 Removed 10988
Added; interim 16126
91 Removed 13212
Added; interim 16127
95.3 Amended **63294**
95 Appendix A amended **63294**
154 Authority citation revised **61024**
154.2 Amended **61024**
154.3 (f) and (h) amended; (o) removed; (p) through (ee) redesignated as (o) through (dd); (e) and new (q) revised **61024**
154.43 Revised **61025**
154.48 (a), (b) and (d) amended **61025**
154.49 (c) revised **61025**
154.55 (c) revised; (d) amended **61025**
154.56 (b)(1) amended **61025**
154.60 (d)(2) revised **61025**
154.61 (b)(2) and (d) revised; (e)(2) amended **61026**
154.76 (a) and (c) amended **61026**
154.77 Revised **61026**
154 Appendixes A, D and H amended; Appendix G removed **61026**
156 Revised **42855**
185 Revised **52667**
199 Technical correction **53411**
Grace period delayed **59364**
199.2 (b) amended **35405, 51237, 58959**
(b) amended 8404
199.4 (a)(12) heading, (a)(12)(i), (ii)(A) and (b)(6) introductory text amended; (b)(10), (f)(2)(v) and (3)(iv) added **35405**
(a)(7) and (f)(6)(i) revised; (f)(3)(iii) redesignated as (f)(3)(iii)(A); new (f)(3)(iii)(A) heading and (B) added **51237**
(a)(9) heading, (10), (11), (12)(ii)(B), (13) and (b)(4)(viii)(D) revised; (a)(9)(i)(C) note and (f)(6) removed; (a)(9)(i)(D) and (f)(9) added **58959**
(b)(1)(i), (c)(1)(i), (3)(ix)(A), (g)(1), (2) and (39) revised; (c)(3)(xiii), (g)(37)(vii) and (viii) added 8405
199.5 (a)(3) revised **51237**
199.6 (b)(4)(x) heading, (A)(*1*) introductory text, (*2*) introductory text, (*i*), (*ii*), (*iv*), (*3*) introductory text, (B) introductory text and (*2*) revised; (b)(4)(xii) added **35407**
(a)(8) revised; (a)(11) and (12) added **51237**
(b)(1)(i) revised **58961**
(c)(1) introductory text, (iv) introductory text and (3)(iv) introductory text revised; (d)(6) added 8406
199.7 (b)(3)(iv)(B)(*5*) revised **35408**
(d) introductory text and (1) revised; (d)(2)(i)(D) removed; (d)(2)(i)(E) redesignated as (d)(2)(i)(D); new (d)(2)(i)(E) added **51238**
(f)(1)(ii) revised **58961**
199.14 (a)(2)(ix) added **35408**
(g)(1)(viii) redesignated as (g)(1)(x); (d), (g)(1)(i), (ii)(A), (iii), (iv) and new (g)(1)(x) revised; new (g)(1)(viii) added **51239**
(a)(1)(i)(C)(*1*) revised **58961**
199.15 Heading, (a), (b), (f) and (1)(4) revised; (c)(5) removed **58961**
199.16 (a)(1), (3), (b), (c), (d) introductory text, (2), (3), (4) and (e) revised; (d)(5) and (f)(3) added **58963**
199.20 Added; interim; eff. 10–1–94 16137
206 Added; interim 26116
228 Added 5948
246 Added 19137
247.5 (b)(4), (b)(6)(i) and (d)(6) amended 19145
247.6 (b)(4) amended; (e)(2) removed; (e)(3) and (4) redesignated as (e)(2) and (3) 19145
254 Added; interim 7213
290 Appendix B amended **63084**
296 Added **60382**
311.7 (c)(1) removed **59658**
312.4 Revised 2746
312.5 (b) revised 2746

323 Appendix H amended 9668
341 Redesignated from 369 ..... **39368**
Revised 13457
342 Added **48307**
343 Added 14561
344 Added 14563
354 Redesignated as 385 ..... **39360**
Added **39369**
355 Redesignated as 386 ..... **39360**
Added **39368**
356 Redesignated as 364 ..... **39360**
Added **39366**
357 Redesignated as 387 ..... **39360**
Added **39365**
358 Redesignated as 393 ..... **39360**
Added **39364**
359 Redesignated as 398 ..... **39360**
Added **39363**
360 Redesignated as 399 ..... **39360**
Added **39361**
361 Redesignated as 377 ..... **39360**
Added **39361**
364 Removed; new 364 redesignated from 356 and amended **39360**
369 Redesignated as 341 and revised **39368**
371 Added **48308**
375 Revised **69229**
377 Redesignated from 361 and amended **39360**
379 Removed 14561
384 Removed 14561
385 Removed; new 385 redesignated from 354 and amended **39360**
385.6 Amended **39360**
385.7 (m), (p) and (q) amended **39360**
386 Removed; new 386 redesignated from 355 and amended **39360**
387 Removed; new 387 redesignated from 357 and amended **39360**
387.5 (c) amended **39360**
393 Redesignated from 358 and amended **39360**
393.1 Amended **39360**
393.3 Amended **39360**
393.4 Introductory text, (a) through (d) and (g) amended **39360**
393.5 Introductory text, (b), (c) and (g) amended **39360**
393.6 (a) introductory text, (2), (b)(1) and (2) amended **39360**

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TITLE 32 Chapter I—Con.

393.7 (a) through (d) amended 39360
393 Appendix amended 39360
398 Redesignated from 359 and amended 39360
399 Redesignated from 360 and amended 39360

Chapter V—Department of the Army (Parts 400—699)

505.1 (d)(1), (2), (g) introductory text, (1) through (20) and (h) revised 51012
505.3 (b)(10)(i) through (iv) and (11)(i) through (iv) revised 51013
505.5 (e) amended 61027
619 Revised 44405

Chapter VI—Department of the Navy (Parts 700—799)

701.119 (f) introductory text revised 9928
706.2 Table Five amended 36868, 58102, 58103, 61809, 64678
Tables One and Three amended 44133, 61808, 61810
Table Three amended 44134, 44456, 60383, 60384
Table Four amended 50259
Tables Four and Five amended 50260, 51241
Table Three amended 22756, 27240
Table Five amended 27239
707.2 Tables Four and Five amended 7217
725 Regulation at 57 FR 2463 confirmed 53883

Chapter VII—Department of the Air Force (Parts 800—1099)

806b.13 (b)(6), (14), (15) and (16) introductory texts amended 2746

Proposed Rules:

2 63542
43a 21713
50 21713
77 15673
91 16157
118 65956
199 ..... 47692, 48473
..... 3046
220 21949
246 41671
296 41679
298 23649
323 2786
400—699 (Ch. V) 42518
501 37770
536 12650
552 ..... 37774, 40611
855 49951
989 17061

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

1.07-1—1.07-100 (Subpart 1.07) Regulations at 43 FR 54186, 50 FR 23689, 51 FR 19329, 52 FR 17554 and 17555 and 54 FR 37615 confirmed 65667
1.07-5 Revised; interim 16560
1.07-10 (a) revised; interim 16560
1.07-11 Added; interim 16560
1.30-1 Revised 12549
Regulation at 58 FR 8885 confirmed; (e)(3) removed 22130
1.30-10 Regulation at 58 FR 8885 confirmed 22130
2 Authority citation revised 51726
2.05-35 Added 51726
3.01-1 (f) amended 51726
3.05-10 (b) revised 51727
3.05-15 (b) revised 51727
3.05-20 (b) revised 51727
3.05-25 Revised 51727
3.05-30 Revised 51727
3.05-35 (b) revised 51727
3.10-10 (b) revised 51728
3.25-05 (b) revised 51728
3.25-10 (b) revised 51728
(b) corrected 67909
3.25-15 (b) revised 51728
3.25-20 (b) revised 51728
(b) correctly revised 948
3.35-10 (b) revised 51729
3.35-15 (b) revised 51729
3.35-20 (b) revised 51729
3.35-25 (b) revised 51729
3.35-30 (b) revised 51729
3.35-35 (b) revised 51729
3.40-10 (b) revised 51729
3.40-15 (b) revised 51730
3.40-17 (b) revised 51730
3.40-20 (b) revised 51730

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3.40-30 (b) revised 51730
3.40-35 (b) revised 51730
3.55-10 (b) revised 51731
3.55-15 (b) revised 51731
(b) correctly revised 59364
3.55-20 Revised 51731
3.65-10 (b) revised 51731
3.65-15 (b) revised 51731
(b) corrected 948
3.70-10 (b) and (c) revised; (d) added 51731
(c)(8) correctly added 948
3.70-15 Revised 51731
3.85-10 (b) revised 51732
3.85-15 Revised 51732
3.85-20 (b) revised 51732
20 Revised 15022
66.01-10 (b) revised 64153
80.750 (a) revised 65668
80.753 (a) revised 65668
100 Temporary regulations list 46078, 59948
Temporary regulations list 5950
100.35T01-76 Added (temporary) 40359
100.35-T0209 Added (temporary) 39144
100.35-T0216 Added (temporary) 38301
100.35-T0220 Added (temporary) 38300
100.35-T0231 Added (temporary) 52440
100.35-T02-33 Added (temporary) 59171
100.35-T02-035 Added (temporary) 674
100.35-T0558 Added (temporary) 41429
100.35T07-009 Added (temporary) 13457
100.35T07033 Added (temporary) 16561
100.35T07034 Added (temporary) 16562
100.35T07-049 Added (temporary) 21930
100.35-T0772 Added (temporary) 38298
100.35-T07-103 Added (temporary) 57742
100.35-T0907 Added (temporary) 27461
100.91 Table 1 revised 40738
100.103 Implementation (temporary) 36355
Implementation (temporary) 26426
100.105 (b)(2) and (c) revised (temporary) 50261
100.108 Implementation (temporary) 26426
100.109 Removed 38302
100.501 Implementation (temporary) 38054, 62035, 66279
Implementation (temporary) 10749, 24942, 26119, 26120
100.502 Implementation (temporary) 38053
100.504 Implementation (temporary) 38053
100.505 Revised 38302
Implementation (temporary) 21931
100.507 Implementation (temporary) 24942
100.508 Implementation (temporary) 38053
100.518 Added 57741
Implementation (temporary) 26120
100.520 Added 5323
100.523 Implementation (temporary) 4583
100.1105 Implementation (temporary) 50261
(b)(2) amended 51242
101.101 (b) revised (temporary) 26427
110.84a Removed 65286
110.86 Added; interim 40740
110.186 Added 36356
110.195 (a)(7), (11), (13) and (15) revised 13458
110.214 (a)(7)(iii) added 5952
110.710 Added 38055
117 Temporary drawbridge operation regulations 38056, 39145, 42856, 47067, 47068, 54289, 62532, 65668
Temporary drawbridge operation regulations 10749, 14754
Technical correction 11659
117.4 Added 16563
117.11 Revised 16563
117.43 Revised 46081
117.155 Revised 8409
117.195 Revised 13248
117.272 Added 39146
117.287 (d)(3) removed 36357
(b-1) revised; eff. 1-1-94 to 1-30-94 60555
(d)(1) and (2) revised; eff. 1-1-94 to 1-30-94 60556
117.295 Revised 21932
117.301 Removed 36357
117.317 (j) removed; (k) redesignated as (j) 36357
117.321 Removed 36357
117.391 Revised 18299
117.439 Revised 14757
117.478 (b) revised 14756
117.484 Added 14755
(b) and (c) corrected 23158
117.501 (c) revised 43264
117.637 Revised 52442

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117.723 Revised 39148
117.739 (a)(5) added; (a)(3), (4) and (e) revised 39149
117.745 Revised 40591
117.793 Revised 42859
117.839 Removed 39146
117.899 Revised 44613
117.973 Removed 13249
117.1025 Added 5954
117.1047 (e) removed 44613
117.1049 (a) and (c) revised; (d) suspended; eff. 4-4-94 through 6-30-94 10077
Technical correction 12032
117 Appendix A amended 39149, 42859
147 Authority citation revised 675
147.T801 Added (temporary) 675
150 Technical correction 23095
150 Appendix A amended 17482
151.47 Amended 16986
151.49 (a) and (b) amended 16987
151.55 Added 18703
151.63 (b)(2) revised 18703
154.310 (a)(22) added 39662
154.500 (e) and (f) revised 39662
155 Authority citation revised 62262, 67995
155.140 (a) revised; (b) amended; interim 67995
155.200 Added; interim 67996
155.205 Added; interim 67996
155.210 Corrected 3749
155.215 Added; interim 67996
155.220 Added; interim 67996
155.225 Added; interim 67996
155.230 Added; interim 67996
155.235 Added; interim 67996
155.240 Added; interim 67996
155.245 Added; interim 67997
155.310 Heading and (b) introductory text revised; (c) and (d) added; interim 67997
155.450 (a) revised 62262
155.750 (a)(11) added 39662
156 Authority citation revised 48436
156.200 Revised 48436
156.205 (b) amended 48436
156.210 (a)(3) redesignated as (a)(4); new (a)(3) and (c) added 48436
156.215 (a)(3) revised 48437
161.580 Revised; interim 46082
161.880 Revised; eff. 12-27-93 through 4-15-94 5324
162.T139 added (temporary) 16565
162.25 Removed 69232
162.130 (b)(3) introductory text revised; (b)(4) added 59365
164.T0257 Added (temporary) 44615
164.T1106 Added (temporary) 40362
164.13 (e) suspended 36141
165 Temporary regulations list 46078, 59948
Temporary regulations list 5950
165.T01-63 Added (temporary) 40745
165.T01-85 Added (temporary) 40743
165.T01-87 Added (temporary) 39151
165.T01-93 Added (temporary) 40742
165.T01-005 (b) revised (temporary) 65669
165.T01-019 Removed 39151
165.T01-020 Added (temporary) 36869
165.T01-022 Added (temporary) 26429
165.T01-025 Added (temporary) 18486
165.T01-030 Added (temporary) 27462
165.T01-034 Added (temporary) 47992
165.T01-043 Added (temporary) 26428
165.T01-057 Added (temporary) 36598
165.T01-109 Added (temporary) 47988
165.T01-119 Added (temporary) 47989
165.T01-130 Added (temporary) 51244
165.T01-134 Added (temporary) 53884
165.T01-151 Added (temporary) 68308
Removed 4584
165.T01-152 Added (temporary) 68310
Removed 8410
165.T01-153 Added (temporary) 68307
165.T01-401 Added (temporary) 69234
165.T02-001 Added (temporary) 4586
165.T02-003 Added (temporary) 8411
165.T02-005 Added (temporary) 5325
165.T02-006 Added (temporary) 7641
165.T02-007 Added (temporary) 4585
165.T02-011 Added (temporary) 8410
165.T02-013 Added (temporary) 10750
165.T02-014 Added (temporary) 13654
165.T02-016 Added (temporary) 13250
165.T02-018 Added (temporary) 17483
165.T02-022 Added (temporary) 21932
165.T02-067 Added (temporary) 51243
165.T02-073 Added (temporary) 58498
165.T02-076 Added (temporary) 69235
165.T02-077 Added (temporary) 676
165.T02-079 Added (temporary) 677
165.T0248 Added (temporary) 39152
165.T0254 Added (temporary) 38303, 39664
165.T0263 Added (temporary) 40361, 46084
(b) revised (temporary) 48968
165.T02-60 Added (temporary) 40741
165.T05-022 Added (temporary) 26121

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165.T05-024 Added (temporary) 24049
165.T05-063 Added (temporary) 47990
165.T05-092 Added (temporary) 66280
165.T05-097 Added (temporary) 949
165.T062 Added (temporary) 46083
165.T07-008 Added (temporary) 10078
165.T07-045 Added (temporary) 25328
165.T07-056 Added (temporary) 24048
165.T0787 Added (temporary) 47069
165.T08-006 Added (temporary) 10751
165.T08-066 Added (temporary) 948
165.T0976 Added (temporary) 36358
165.T0982 Added (temporary) 40363
165.T1-144 Added (temporary) 69233
165.T11-050 Added (temporary) 59172
165.T1105 Added (temporary) 39663
Removed 68036
165.T1128 Removed 68306
165.T1148 Added (temporary) 48967
165.T13029 Added (temporary) 60557, 60558
165.112 Added 47991
Regulation at 58 FR 47990 eff. date corrected to 10-8-93 52442
165.122 Added 18489
165.204 (b)(4) removed 59952
165.503 Implementation 5954
Regulation at 59 FR 5954 terminated 23158
165.730 Revised 38057
165.803 Introductory text and (m)(1) introductory text revised; interim 21935
165.809 Added; interim 18487
165.1109 Revised 5953
165.1113 Removed 68306
167.3 Revised 21937
167.5 (e) added 21937
167.150—167.155 (Subpart B) Heading revised 21937
167.200 Added 21937
167.201 Added 21937
167.202 Added 21937
167.203 Added 21937
175.1 (e) added 41607
175.3 Revised 41607
175.5 Added 41608
175.11 Revised 41608
175.15 Revised; eff. in part 5-1-95 41608
175.17 Revised 41608
(a)(1) introductory text, (e)(1), (g)(1) and (2) correctly revised; (g)(3) correctly added 51576
181 Technical correction 51576
181.703 (c) added 41608

Chapter II—Corps of Engineers, Department of the Army (Parts 200—399)

323.2 (d) revised; (e) and (f) amended 45035
(d)(3)(iii) corrected 48424
323.3 (c) added 45036
328 Technical correction 48424
328.3 (a)(8) added 45036
334.1 Added 37607
334.2 Added 37607
334.3 Added 37607
334.4 Added 37608
334.5 Added 37608
334.80 Heading revised 37608
334.260 Heading revised 37608
334.275 Added 47788
334.380 Revised 53428
334.390 (b)(1), (2), (4), and (5) revised 53428
334.400 Heading revised 37608
334.460 (a)(12) and (b)(11) added 2916
334.500 Heading revised 37609
334.540 Heading revised 37609
334.560 Heading revised 37609
334.905 Added; interim 53427
Regulation at 58 FR 53427 confirmed 4226
334.938 (a) corrected 42237
334.980 Regulation at 58 FR 21226 confirmed 42238
334.1000 Removed 64384
334.1320 Regulation at 58 FR 26046 confirmed 42237
334.1340 (c) revised 53427
334.1370 (b)(2) revised 53427
334.1400 (b)(4) revised 53427

Chapter IV—Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

402.3 (b)(5) revised 2986
402.8 (a)(2) table amended 2986
402.9 (f) through (i) removed 2986

Proposed Rules:

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21.7032 (d)(3) and authority citation added....63530
21.7042 (f)(2) introductory text revised; (f)(3) added....24050
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36.4202 Amended 37858
36.4204 (a)(7) amended; (b), (c) and (e) redesignated as (d), (e) and (g); new (g) amended; new (b), (c) and (f) added; OMB number 37858
36.4205 (a), (b)(1), (2), (3) and (f)(1) amended 37859
36.4206 (d)(1), (2)(i) and (ii) amended 37859
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36.4223 (a)(1) and (2) revised 37860
36.4224 (b) amended 37860
36.4232 (a)(2) through (5) redesignated as (a)(3), (4), (5) and (7); new (a)(5) and (b) amended; new (a)(2) and (6) added; (d)(1) revised; (e)(5) removed 37860
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36.4234 (a), (b) and (c) amended 37860
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36.4253 (b)(9) and (c)(2) amended 37860
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3001.20a Introductory text and (a) amended 38976
3001.20b (b) amended 38976
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35.105 Amended; interim....13817
35.115 (b), (d), (f) and (g) amended; interim....13817
35.155 (c) amended; interim....13817
35.250 Amended; interim....13817
35.255 (b) amended; interim....13817
35.260 (a) and (b) amended; interim....13817
35.265 (a) amended; interim....13817
35.350 Introductory text amended; interim....13817
35.365 (a)(1) amended; interim....13817
35.400 Amended; interim....13817
35.415 (a)(1) amended; interim....13817
35.450 Amended; interim....13817
35.465 (a)(1) amended; interim....13817
35.750 Amended; interim....13817
35.755 (a) and (b)(1) amended; interim....13817
35.1605–9 Amended; interim....13817
35.1620–1 (c) amended; interim....13817
35.10000—35.10035 (Subpart Q) Added; interim....63878
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51.46 (b) revised; (c) removed....38821
51.63 (a) amended....38821
51.112 (a) amended; (a)(1) and (2) added....38821
51.117 (c)(1), (2) and (3) amended....38822
51.150 (e) amended....38822
51.160 (f)(1) and (2) added....38822
51.166 (l)(1) and (2) revised....38822
51.351 (a)(7)(iv), (v) and (vi) revised....59367
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51.359 (e)(1) amended....59367
51.360 (a)(8) revised....59367
51.373 (a) amended....59367
51.350—51.373 (Subpart S) Appendixes A, D and E amended....59367
51.390—51.464 (Subpart T) Added....62216
51.490—51.494 (Subpart U) Added....16710
51.850—51.860 (Subpart W) Added (OMB number pending)....63247
51 Appendix W added....38822
52 Authority citation revised....38883
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52.50 (c)(61) added....45440
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52.70 (c)(17) added....43085
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52.219 Added....62533
52.220 (c)(182)(i)(B)(*5*), (183)(i)(A)(*9*), (F), and (185)(i)(B)(*4*) added....37423
(c)(183)(i)(A)(*11*), (C)(*4*) and (*6*) added....45442
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(c)(192) added....16140
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52.320 (c)(59) added....50270
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52.332 Added....68038
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52.370 (c)(62) added....65932
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52.420 (c)(45) added....40066
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52.422 Existing text designated as (a); (b) added....50848
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52.520 (c)(76) added....37660
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52.670 (c)(26) and (27) added....39447
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52.720 (c)(96) added....45450
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52.724 (g) added....18753
52.726 (g) added....9092
52.741 (e)(5) and (z)(1) revised; (e)(7) added....14112
52.744 Added....45451
52.770 (c)(88) added....43083
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52.776 (p) added....7224
52.777 (e) added....12170
52.786 (h) added....62535
52.798 Added....46544
52.820 (c)(58) added....50268
52.870 (c)(28) added; eff. 7–11–94....24646
52.920 (c)(68) added....54521
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52.970 (c)(59) added....38060
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52.1020 (c)(29) added....12855
52.1031 Table amended....12855
52.1070 (c)(93) through (96) added....40062
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52.1073 (f) added....50848
52.1110 Added; eff. 7–15–94....25333
52.1120 (c)(98) added....48317
52.1167 Table amended....48318
52.1170 (c)(93) added....10753
52.1174 Regulation at 58 FR 34227 withdrawn....44456
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52.1220 (c)(29) added....7221
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52.1225 (a) added....21941
52.1230 (a) revised....7222
52.1270 (c)(23) added....12851
52.1320 (c)(84) added....45452
(c)(82) added....57566
(c)(83) added....24648
52.1370 (c)(28) added....64160
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(c)(27) added....2991
(c)(29) added....11553
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52.1570 (c)(51) added....17935
52.1605 Table amended....17935
52.1620 (c)(50) added....47385
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52.1627 Revised....12172
52.1634 Revised....67333
52.1636 Revised....67334
52.1670 (c)(84) added....40058
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52.1770 (c)(66) added....47396
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52.1820 (c)(24) added **54043**
52.1833 Added 1486
52.1870 (c)(83) added **47214**
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(c)(90) added 22980
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52.1879 (e) removed **47214**
52.1880 (d) revised 27472
52.1881 (b)(23) revised **46869**
52.1882 (l) added **46871**
52.1920 (c)(43) added **38062**
52.1970 (c)(96) added **47387**
(c)(100) added **50850**
(c)(101) added **64164**
(c)(99) added **65936**
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(c)(104) added 7223
(c)(102) added 13888
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52.1977 Revised **47387**
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52.1987 Revised **47391**
52.1988 (b) revised **47391**
52.2020 (c)(84) added **50518**
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(c)(85) added **57563**
(c)(86) added 6220
52.2023 (h) added 6220
52.2070 (c)(39) added **65932**
52.2081 Table amended **65933**
52.2120 (c)(37) added 17937
52.2126 (a) revised; (b) removed 17937
52.2170 (c)(14) added **37425**
52.2183 Added **37426**
52.2219 Added 18316
52.2220 (c)(111) added **50273**
(c)(114) added 17939
(c)(115) added 18316
52.2225 (b) redesignated as (c); new (b) added 18317
52.2228 (e) added 18317
52.2270 (c)(76) added **45456**
(c)(79) added 2534
(c)(80) added 2994
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52.2348 Added 1486
52.2420 (c)(98) added **45459**
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52.2423 (j) added **50848**
(k) added 22758
52.2460 Added 5329
52.2470 (c)(39) added **37427**
(c)(41) added **40057**
(c)(40) added **40060**
(c)(42) added 2997
52.2479 Revised **37427**
52.2520 (c)(27) added 18490
52.2560 Added **48312**
52.2569 Added 4594
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52.2570 (c)(69) added **43082**
(c)(70) added **64157**
52.2585 (f) added 12853
52.2770 (c)(17) added 18309
52.2773 Revised 18309
55 Petition for reconsideration **61027**
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55.14 (e)(3)(ii)(E), (F) and (H) revised **44617**
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55.15 Regulation at 58 FR 14159 eff. date corrected to 9-4-92 ..... **47398**
55 Appendix A amended **44617, 59173**
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60 Authority delegation notices 9093
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60.1 (c) added 12427
60.2 Amended 12427
60.4 (c) table revised **64160**
60.7 (e), (f) and (g) redesignated as (f), (g) and (h); new (e) added 12428
60.17 (a)(6) and (38) amended **45962**
(a)(22) revised 19308
60.19 Added 12428
60.154 (d)(3), (4) and (5) removed 5108
60.700—60.708 (Subpart RRR) Added (OMB number pending) **45962**
60.735 (b) and (c)(2) amended **40591**
(c)(3) amended **40592**
60 Appendix A amended 19308, 19309, 19311, 19319
60 Appendix G amended 8135
61 Clarification **51784**
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61.01 (d) added 12429
61.02 Amended 12429
61.04 (c) table revised 11555
61.10 (e) through (j) added 12430
63 Complete enforceable commitments list 7224

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63.1—63.15 (Subpart A) Added 12430
63.14 (b)(3) and (c) added 19453
63.40—63.56 (Subpart B) Added 26449
63.74 (d)(2) revised; (d)(4) and (l) removed; Table 1 amended **62543**
63.75 (f) added **62543**
63.77 Revised **62543**
63.90—63.96 (Subpart E) Added **62283**
63.100—63.106 (Subpart F) Added (OMB number pending) 19454
63.110—63.152 (Subpart G) Added (OMB number pending) 19468
63.160—63.182 (Subpart H) Added (OMB number pending) 19568
63.190—63.193 (Subpart I) Added (OMB number pending) 19587
63.300—63.313 (Subpart L) Added **57911**
63.300—63.313 (Subpart L) Appendix A corrected 1992
63.320 (c) revised **66289**
63.320—63.325 (Subpart M) Added **49376**
63.324 (a) introductory text, (b) introductory text and (c) introductory text revised **66289**
63 Appendix A amended **57924**
Appendix A corrected 1992
Appendix A amended 19590
Appendix C amended 19605
68 Added 4493
69 Authority citation revised **43043**
69.11 (a) and (b) added **43043**
72.2 Corrected **40746, 40747**
72.8 (c)(2)(ii) corrected **40747**
72.41 (e)(3)(iii) and (iv) corrected **40747**
72.74 (b)(1)(iii) corrected **40747**
72.91 (a) introductory text and (3)(iii) corrected **40747**
72.92 (c)(2)(v)(C) corrected **40747**
73 Notice of procedure **48318**
73.10 (a) Table 1 corrected **40747**
73.30 (a) corrected **40747**
73.31 (c)(1) introductory text corrected **40747**
73.32 (a)(1) corrected **40747**
73.72 Technical correction **40747**
73.80 (b) corrected **40747**
73.81 (b)(4) corrected **40747**
73.82 Heading corrected **40747**
75 Meeting **67692**
75.1 (b) existing text designated as (b)(1) and (2); new (b)(2) corrected **40747**
75.5 (b) corrected **40747**
75.6 (a)(4) corrected **40747**
75.7 Corrected **40747**
75.11 (c) introductory text corrected **40747**
75.15 (a) introductory text, (2) and (b)(1) corrected **40747**
75.16 (e) corrected **40747**
75.17 (a)(2)(iii)(a) correctly designated as (a)(2)(iii)(A) **40747**
(a)(2)(iii)(B) and (b)(2) corrected **40748**
75.20 (b)(3), (c) introductory text, (9)(i) introductory text, (B) and (d) corrected; (c)(5)(iv) correctly added **40748**
75.31 (b)(2), (c)(2) and (3) corrected **40748**
75.32 (b) corrected **40748**
75.34 (b)(1) corrected **40748**
75.41 (a)(9)(i), (ii), (b)(1)(i), (2)(i), (iv)(A), (C), (v)(A), (B), (c)(1)(i), (ii) and (2)(i) corrected **40748**
75.48 (a)(3) corrected **40748**
75.50 (b) introductory text, (6), (c)(1)(iii), (iv), (vi), (2)(iii), (iv), (v), (vii), (3)(ii), (iii), (iv) Table 3, (d) introductory text, (3) through (9), (e)(1)(iii), (iv), (v), (vii), (viii), (2)(ii), (iv) and (v) corrected **40749**
75.51 (b)(1)(vii) correctly designated as (b)(1)(viii); (a)(1)(iii) through (vi), (viii), (2)(i), (iii), (b) introductory text, new (b)(1)(viii), (1)(ix), (c)(1)(ii), (vi), (d)(1)(ii) and (iv) corrected **40749**
75.52 (a)(5)(iv)(G) and (H) correctly redesignated as (a)(5)(v) and (vi) **40749**
75.53 (a) introductory text, (c)(2) introductory text and (4)(vi) corrected **40749**
(c)(8) and (9) corrected; (c)(10), (10)(i), (ii), (A) and (B) correctly redesignated as (d), (d)(1), (2), (i) and (ii) **40750**
75 Appendixes A, B and C corrected **40750**
Appendixes C through H corrected **40751**
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76 Added 13564
79 Authority citation revised **65554**

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79.8 Revised **65554**
80 Petition for exemption **48968**
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80.2 (ee) through (nn) added (OMB number pending) 7812
80.5 Revised **65554**
80.27 (a)(2) table amended **46511**
(a)(2) table amended 15629, 15633
80.40—80.82 (Subpart D) Added (OMB number pending) 7813
80.90—80.106 (Subpart E) Added (OMB number pending) 7860
80.125—80.130 (Subpart F) Added (OMB number pending) 7875
81 Attainment status designations **53888**
81.300 (d)(2)(iii) revised 18970
81.303 Table amended **67341**
81.305 Table amended **62546, 67342**
81.306 Table amended **67343, 68038**
Table amended 26128
81.313 Table amended **67343**
81.316 Table amended 11195
81.324 Revised **50277**
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81.327 Table amended **53887, 67343**
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81.333 Table amended **50853, 67344**
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81.334 Table revised **47396**
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81.336 Table amended 5335
81.338 Table amended **49932, 64164, 67344**
81.339 Table amended **67345**
81.343 Table revised **50274**
Table amended **69235**
81.348 Table amended **64491**
81.349 Table amended **67345**
82.1—82.13 (Subpart A) Revised **65062**
82.5 (f) and (g) added **69238**
82.6 (f) and (g) added **69238**
82.21 Added **40054**
82.60—82.70 (Subpart C) Revised **69666, 69675**
82.80—82.86 (Subpart D) Added **54898**
82.154 (g) and (h) amended **36516**
82.170—82.184 (Subpart G) Added 13147
85 Public workshop **36871**
Authority citation revised **65554**
85.2109 (a)(6) revised **65554**
85.2110 (b) revised **65554**
85.2111 Introductory text revised **65554**
85.2201 (b) revised; (c) added **58400**
85.2203 Redesignated from 85.2203–81 and revised **58401**
85.2203–81 Redesignated as 85.2203 ..... **58401**
85.2204 Redesignated from 85.2204–81 and revised **58401**
85.2204–81 Redesignated as 85.2204 ..... **58401**
85.2208 (a)(3) added; (c) revised **58401**
85.2209 (a) and (b) redesignated as (b) and (c); heading and new (c)(6) revised; new (a) added **58402**
85.2210 (a) and (b) redesignated as (b) and (c); heading and new (c)(7) revised; new (a) added **58402**
85.2211 Heading revised; (a) and (b) redesignated as (b) and (c); new (a) added **58402**
85.2212 Heading revised; (a) and (b) redesignated as (b) and (c); new (a) added **58403**
85.2213 Redesignated as 85.2214; new 85.2213 added **58403**
85.2214 Redesignated as 85.2216; new 85.2214 redesignated from 85.2213 ..... **58403**
(a), (b) and (c) redesignated as (b), (c) and (d); heading, new (c)(4), (5), (6) and (d) revised; new (a) added **58404**
85.2215 Redesignated as 85.2224 ..... **58403**
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85.2216 Redesignated as 85.2229; new 85.2216 redesignated from 85.2214 ..... **58403**
(a), (b) and (c) redesignated as (b), (c) and (d); heading, new (c)(6) and (7) revised; new (a) added **58407**
85.2217 Redesignated as 85.2232 ..... **58403**
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85.2218 Redesignated as 85.2237 ..... **58403**
Added **58408**
85.2219 Added **58409**
85.2220 Added **58411**
85.2224 Redesignated from 85.2215 ..... **58403**
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85.2225 Added **58413**
85.2229 Redesignated from 85.2216 ..... **58403**

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Heading revised; (a) and (b) redesignated as (b) and (c); new (a) added **58414**
85.2230 Added **58414**
85.2232 Redesignated from 85.2217 ..... **58403**
(a) through (e) redesignated as (b) through (f); heading and new (f)(1) revised; new (a) added **58415**
85.2233 Added **58415**
85.2237 Redesignated from 85.2218 ..... **58403**
Heading revised; (a), (b) and (c) redesignated as (b), (c) and (d); new (a) added **58416**
85.2238 Added **58416**
86.1 (b)(1) table amended **58417**
86.001–2 Added 16281
86.001–9 Added 16282
86.001–21 Added 16282
86.001–22 Added 16283
86.001–23 Added 16283
86.001–24 Added 16283
86.001–25 Added 16283
86.001–26 Added 16284
86.001–28 Added 16284
86.001–30 Added 16285
86.001–35 Added 16285
86.004–9 Added 16286
86.004–28 Added 16286
86.004–30 Added 16287
86.092–15 Added 14106
86.092–23 Added 14108
86.094–15 (a)(2)(iii) and (b)(6)(ii) revised 14110
86.094–23 (c)(2)(i) revised **66294**
(h)(3)(iv) revised 14110
86.095–23 Added **66294**
(h)(3)(iv) revised 14110
86.096–2 Amended **58417**
86.096–3 Added **58417**
86.096–8 (a)(1)(iii) and (3) added **58417**
86.096–9 (a)(1)(v) and (3) added **58417**
86.096–21 (j) and (k) added **58417**
86.096–23 Introductory text and (a) through (l) revised **66297**
86.096–24 Added **58417**
86.096–35 (a)(1)(iii)(N) and (2)(iii)(P) added **58421**
86.097–9 (a)(1)(iv) and (3) added **58421**
86.098–2 Revised 16288
86.098–3 Added 16288
86.098–7 Added 16288
86.098–8 Added 16289
86.098–14 Added 16289
86.098–17 Added 16289
86.098–21 Added 16290
86.098–22 Added 16290
86.098–23 Introductory text and (a) through (l) revised **66297**
Introductory text and (a) through (l) revised 16290
86.098–24 Added 16290
86.098–25 Added 16291
86.098–26 Added 16291
86.098–28 Added 16292
86.098–30 Added 16293
86.098–35 Added 16294
86.099–8 (a)(1)(iii) and (3) added **58421**
(b)(5), (6) and (d) added; (c) and (e) through (k) revised 16294
86.099–9 (a)(1)(iv) and (3) added **58422**
86.101 (a)(3) added 16295
86.105 (b) revised 16295
86.107–98 Added 16295
86.115–78 (b)(3)(ii) and (5) revised 16296
86.116–90 (c)(5) added; (d)(1) removed **58422**
86.123–78 (a) introductory text revised **58422**
86.132–96 (h) introductory text, (j) introductory text, (1)(i) and (viii) revised 16296
86.142–90 (d) through (i), (k), (l), (m), (o) and (p) revised; (q) and (r) removed **58422**
86.150–98 Added 16296
86.151–98 Added 16296
86.152–98 Added 16298
86.153–98 Added 16298
86.154–98 Added 16299
86.155–98 Added 16300
86.156–98 Added 16300
86.210–96 Added **58424**
86.301–79—86.348–79 (Subpart D) Heading revised **58422**
86.319–79 (b) revised **58422**
86.332–79 (a) revised; (d) and (e) removed **58423**
86.516–90 (c)(3) added; (d)(1) removed **58423**
86.523–78 (a) introductory text revised **58423**
86.602–98 Added 16300
86.603–98 Added 16300
86.605–98 Added 16301
86.608–96 Added **58423**
86.608–98 Added 16301
86.609–96 Added **58423**
86.609–98 Added 16303

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86.610–96 Added 58424
86.610–98 Added 16304
86.708–94 (a)(1)(iii) and (3) added 58424
86.708–98 (a)(1)(iii) and (3) added 58424
86.709–94 (a)(1)(v) and (3) added 58424
86.709–99 (a)(1)(iv) and (3) added 58425
86.1002–2001 Added 16304
86.1003–2001 Added 16305
86.1008–96 Added 58425
86.1008–2001 Added 16305
86.1009–96 Added 58425
86.1009–2001 Added 16308
86.1010–96 Added 58426
86.1010–2001 Added 16309
86.1105–87 (e) revised; (f) added 68540
86.1106–87 (a)(2) revised 68540
86.1316–90 (b)(3) added and (c)(1) removed 58426
86.1323–84 (a) introductory text revised 58426
86.1401—86.1442 (Subpart O) Added 58426
88.302–94 Added 64691
88.308–94 Revised 64692
88.311–98 Added 16309
93 Added 62235
93.150—93.160 (Subpart B) Added (OMB number pending) 63253
93.150 (c)(2)(i) corrected 67442
110 Technical correction 48424
110.1 Amended 45036
112 Technical correction 48424
112.2 (k) amended 45037
116 Technical correction 48424
116.3 Amended 45037
117 Technical correction 48424
117.1 Amended 45037
122 Technical correction 48424
122.2 Amended 45037, 67980
123.1 (b) and (h) revised; (d) redesignated as (b)(1); (b)(2) added 67981
123.21 (a)(1) revised; (b) redesignated as (b)(1); (b)(2) added 67981
123.22 (g) added 67981
123.23 (b) revised 67981
123.24 (b)(1) redesignated as (b)(1)(i); (b)(1)(ii) added 67981
123.25 (a)(12) revised 67981
123.27 (e) added 67981
123.31 Added 67981
123.32 Added 67982
123.33 Added 67982
123.34 Added 67983
123.62 (a) amended 67983
124 Authority citation revised 67983
124.2 Amended 67983
124.51 (c) added 67983
130.1 (a) amended; interim 13817
130.6 (d) introductory text amended; interim 13818
130.15 Heading and (a) amended; (a) designation, (b), (c) and (d) removed; interim 13818
131.36 (d)(14)(ii) amended 36142
136.3 (a) tables, (b) and (e) table amended 4505
141.30 (e)(3) and (4) added; (e) amended 41345
144.3 Amended 63895
144.11 Amended 63895
144.17 Added 63895
144.21 Introductory text, (a), (b) and (c) redesignated as (a), (b), (d) and (e); new (a) and new (b) revised; new (c) added 63895
144.22 (a) revised; (b) redesignated as (d); new (b) and new (c) added 63896
144.24 Revised 63896
144.25 (a) introductory text, (b) and (c) amended 63896
144.26 Introductory text revised; (d) introductory text added 63896
(e) added; interim 63896
144.27 Amended; (d) added 63896
144.28 Introductory text, (d)(1), (2) and (l) revised; (f)(2) and (3) redesignated as (f)(5) and (6); (d)(5), (6), new (f)(2), (3) and (4) added 63897
144.31 (a) and (c)(2) revised; (e)(10) added 63897
144.51 (p) removed; (o) redesignated as (p); new (o) and (q) added 63898
144.52 (a)(7) revised 63898
146.2 Revised 63898
146.8 (b)(1) revised; (f) added 63898
146.15 Removed 63898
146.25 Removed 63898
146.35 Removed 63899
146.52 (a) removed; (b) redesignated as new (a) 63899
152.25 (f) added 2751
165 Policy statement 43994
180.1 (h) table amended 64497
(h) table amended 10287
180.3 (c) revised 65555
180.1001 (c) table and (e) table amended 26951

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180.123a Redesignated from 180.126a and revised 65555
180.126 Removed 65555
180.126a Redesignated as 180.123a 65555
180.138 Removed 46088
180.177 Removed 13659
180.180 Revised 3655
180.204 (b) table amended 63295
180.206 Revised 62038
180.227 (c) added 62041
180.234 Removed 60559
180.271 Removed 44283
180.277 Revised 1653
180.281 Removed 47216
180.319 Table amended 39154, 46088
Table amended 17487
180.335 Removed 39154
180.342 (c) table amended; (e) added 9095
(c) table amended; (d) introductory text revised 10288
180.356 (a) designation and (b) removed; table amended 36361
180.359 Revised 24060
180.362 Heading revised; (b) table amended 48321
180.364 (a) table amended; (d) added 36359
(a) table amended 62037
180.378 (a) introductory text revised 9412
180.379 (a) table amended 9412
180.397 Removed 65556
180.407 (b) introductory text and (c) introductory text amended 42675
180.414 (e) added 44767
(e) table amended 54044
(e) table amended 9932
(f) added 26952
180.415 (a) table amended 17488
180.418 Table amended 9094
Introductory text amended 9412
180.422 Introductory text revised 9412
180.428 (a) table amended 13891, 25820
180.431 (a) table amended 54297
(b) revised 19640
180.432 (b) revised 14760
180.434 Table amended 42673
(a) revised 8137
(c) added 18974
(c) table amended 26950
180.436 Table amended 9412
180.438 (a) designation removed; introductory text revised; table amended 9412
180.439 Table amended 25822
180.442 Introductory text revised 9413
Revised 26946
180.446 (b) introductory text and (c) introductory text revised 26947
180.447 (c) revised 64492
180.450 (a) table amended 46087, 62039
180.458 Revised 4835
180.464 Heading revised; table amended 16144
180.468 Added 57967
180.469 Added 12857
180.470 Added 13658
Table amended 26955
180.471 Added 24059
180.1001 (d) table amended 37862, 38978, 40364, 44766, 50854, 59662
(c) table, (d) table and (e) table amended 54295
(e) table amended 64496
(e) table amended 950, 10992, 18755
(d) table amended 952, 2752, 3656, 9929, 10989, 13890, 17710
(c) table amended 10289, 25819
(c) table and (e) table amended 10991, 24056, 26951
(d) amended 26953
180.1029 Amended 47215
180.1058 Revised 47215
180.1121 Added 44283
180.1122 Added 64494
180.1123 Added 51015
180.1124 Added 14759
180.1125 Added 13660
180.1126 Added 9931
180.1127 Added 15857
180.4725 Added; eff. to 3–1–95 48322
185.350 Removed 37867
Reinstated 48458
185.410 Removed 10997
Regulation at 59 FR 10997 eff. date stayed 23800
185.1100 (b) revised 19640
185.1250 (a) revised 9413
185.1900 Revised 59667
Regulation at 58 FR 59667 effective date stayed 11556
185.3500 (a)(3) added 36359
185.3550 Table revised 5109
185.3950 Removed 37867
Reinstated 48458

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185.4150 (b) revised 24060
185.5450 Introductory text revised 9413
185.5750 Removed 46088
185.5900 Removed 37867
Reinstated 48458
185.6300 Amended 37867, 48458
186.500 Removed 41432
186.1075 Revised 4835
186.1100 (b) revised 19640
186.1250 (a) revised 9413
186.1800 Revised 62041
186.3375 Table corrected 37867
186.3550 Revised 48321
(a) table revised 5109
186.4150 (d) added 24060
191 Authority citation revised 66415
191.11 (b) revised 66414
191.12 Amended 66414
191.15 Revised 66414
191.16 Removed; new 191.16 redesignated from 191.17 66414
191.17 Redesignated as 191.16; new 191.17 redesignated from 191.18 66414
191.18 Redesignated as 191.17 66414
191.21—191.27 (Subpart C) Added 66415
191 Appendix B redesignated as Appendix C; Appendixes A and C amended; new Appendix B added 66415
192.31 (k) through (q) added 60355
192.32 (a)(3) and (4) redesignated as (a)(5) and (6); new (a)(3) and (4) added 60355
(b)(1) Footnote 1 revised 60356
192.41 Introductory text revised; (e) added 60356
195 Added 13175
227.6 (c)(2) Footnote 1 added; interim 26572
227.27 (b) Footnote 2 added; interim 26572
228.12 (b)(94) added 35887
Heading revised; (a)(3) amended; (b)(92) added 42502
(a)(3) amended; (b)(93) added 46547
(b)(79) amended 64498
230 Technical correction 48424
230.3 (s) amended 45037
232 Technical correction 48424
232.2 Amended 45037
233 Authority citation revised 9933
233.71 Added 9933
238 Added; eff. 9–1–94 9870
258 Authority citation revised 51546
Technical correction 53136
258.1 (d), (e), (f)(1) introductory text, (3) and (j) revised; eff. 10–9–93 51546
258.2 Amended; eff. 10–9–93 51547
258.50 (c) introductory text revised; (e), (f) and (g) redesignated as (f), (g) and (h); new (e) added 51547
258.70—258.74 (Subpart G) Regulation at 56 FR 51016 eff. date delayed to 4–9–95 51536
258.70 (b) revised; eff. 4–9–95 51547
258.74 (a)(5) revised; (b)(1), (c)(1) and (d)(1) amended; eff. 4–9–95 51547
260.11 (a) amended 38883, 46049
(a) amended 468
260.22 (d)(1)(i) revised 46049
261 Determination 42466
261.4 (e)(2)(i), (ii), (3), (f)(3), (4) and (5) revised 8365
261.22 (a)(1) and (2) revised 46049
261.24 (a) revised 46049
261 Appendix IX amended 40070, 42244
Appendixes II and III revised 46049
Appendix X removed 46050
Appendix VIII amended 468
Appendix IX amended 5726
264.190 (a) amended 46050
264.314 (c) revised 46050
264 Appendix I amended 13891
265.190 (a) amended 46050
265.314 (d) revised 46050
265 Appendix I amended 13892
266 Authority citation revised 38883
266.104 (e)(3) revised 38883
266.106 (h) revised 38883
266.112 (b)(2)(i) revised; interim 59602
266 Appendix X removed 38883
Appendix VII amended; interim 59603
268.7 (a) revised 46050
268.40 (a) revised 46050
268.41 (a) introductory text revised 46050
268 Appendixes I and IX revised 46051
270.6 (a) revised 46051
270.19 (c)(1)(iii) amended; (c)(1)(iv) revised 46051
270.62 (b)(2)(i)(C) amended; (b)(2)(i)(D) revised 46051
270.66 (c)(2)(i) amended; (c)(2)(ii) revised 46051
271 State hazardous waste management program authorizations 47216, 49932, 50854, 51244, 54044, 57745, 59367, 59370, 60388
State hazardous waste management program authorizations 1275, 2752, 2998, 3792, 4594, 7641, 8544, 12857, 15633, 16566, 16568, 16987, 16991, 17273, 21664, 27472
271.1 (j) Table 1 amended; interim 59603
271.16 (a)(3)(ii) revised 10559
272.201 Added 52676
272.1601 Added 52678
272.1851 Added 52681
272.2500 Removed 49200
272.2501 Revised 49200
272 Appendix A amended 49200, 52676, 52679, 52682
279.1 Amended 10559
279.10 (b)(1)(ii) amended; (b)(2)(iii) and (g) revised 10559
279.20 (b)(2) revised 10560
279.41 (c) added 10560
279.44 (c) introductory text amended 10560
279.46 (a)(5) and (b)(5) revised 10560
279.53 (c) introductory text amended 10560
279.63 (c) amended 10560
280.91 (e) revised; (f) added 9607
281 State underground storage tank program authorizations 47217
282 Added 58625
291.505 (d)(1)(i)(C), (iii)(B)(*1*), (C), (3)(i), (13)(i) and (f)(2)(viii) amended; (d)(6)(ii) removed; (k) redesignated as (l); (b)(2)(v), (vi)(D), (c)(4)(i), (ii), (d)(1)(ii), (iv), (6) heading, (6)(i) heading, (h)(1) and new (l) revised; (d)(1)(iii)(B)(*6*), (4)(v) and new (k) added 38709
300.440 Added 49215
300 Appendix B amended 46087, 52019, 54297, 59370, 61029, 63531, 69239
Appendix B amended 5110
Appendix B revised 8729, 27996
305.5 (b)(2)(v) added 26
372 Authority citation revised 63499
372.65 (a) and (b) amended 51786
(a) table and (b) table amended 63499

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(a) table, (b) table and (c) table amended 63514
401 Technical correction 48424
401.11 (l) amended 45038
414.25 Revised 36892
414.26 Revised 36892
414.35 Revised 36892
414.36 Revised 36892
414.45 Revised 36892
414.46 Revised 36892
414.55 Revised 36892
414.56 Revised 36892
414.65 Revised 36892
414.66 Revised 36892
414.75 Revised 36892
414.76 Revised 36892
414.85 Revised 36892
414.86 Revised 36892
414.91 (b) amended 36892
414.101—414.111 (Subpart K) Added 36893
414.101 (b) amended 36893
455 Authority citation revised 50689
Tables 1 through 7 added 50691
455.10 (f) added 50689
455.11 Added 50689
455.20 (a) revised; (d) and (e) added 50689
455.21 (d) and (e) added 50689
455.23 Added 50689
455.24 Added 50690
455.25 Added 50690
455.26 Added 50690
455.27 Added 50690
455.33 Heading added 50690
455.34 Heading added 50690
455.35 Heading added 50690
455.36 Heading added 50690
455.37 Heading added 50690
455.50 (Subpart D) Added 50690
501.1 (c)(5) revised; (f) redesignated as (f)(1); (f)(2) added 67983
501.2 Amended 67983
501.11 (a)(1) revised; (b) redesignated as (b)(1); (b)(2) added 67983
501.12 (g) added 67984
501.13 Amended 67984
501.14 (b)(1) redesignated as (b)(1)(i); (b)(1)(ii) added 67984
501.15 (b)(15) added 67984
501.17 (e) added 67984
501.22 Added 67984
501.23 Added 67984
501.24 Added 67985
501.25 Added 67985
503.13 (b)(2), (3) and (4) revised 9099

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503.40 (c) added 9099
600 Authority citation revised 678
600.111–80 (a) revised 16309
600.502–81 (a)(1) revised 678
600.511–80 (a) introductory text, (1) and (b)(2) introductory text revised; (b)(3), (4) and (5) added 679
700 Authority citation revised 13177
700.41 Added 13177
707 Clarification 2999
707.65 (a)(2) and (c) revised **40242**
707.70 (a) revised **40242**
712.30 (x) table amended **47648**
(w) table and (x) table amended **68314, 68320**
(x) table amended 5959, 22519
(x) table stayed in part 14115
716.20 (b)(2) revised; (d) table amended **47649**
(b)(3) added **68315**
716.120 (a) table and (d) table amended **42678, 68315, 68321**
(d) table amended 5960, 22519
(d) table stayed in part 14115
721.3 Amended **63516**
721.285 Added **51702**
721.320 Added **51681**
721.323 Added **51702**
721.470 Added **51681**
721.536 Added **51681**
721.715 Added; eff. 7–26–94 27481
721.757 Added **51681**
721.982 Added; eff. 7–26–94 27482
721.1068 Added **51682**
721.1372 Added **51682**
721.1430 Added **63516**
721.1435 Added **63516**
721.1440 Added **63516**
721.1555 Added **51682**
721.1568 Added **51682**
721.1600 Removed 17491
721.1612 Added; eff. 7–26–94 27482
721.1630 Added; eff. 7–26–94 27482
721.1637 Added; eff. 7–26–94 27482
721.1640 Added; eff. 7–26–94 27483
721.1645 Added; eff. 7–26–94 27483
721.1728 Added **51682**
721.1732 Added **51682**
721.1740 Added **51702**
721.1920 Added **51683**
721.2000 Removed 17489
721.2084 Added **63516**
721.2092 Added **63516**
721.2170 Added **51683**
721.2260 Added **51702**
721.2270 Added **51683**
721.2287 Added **63516**
721.2355 Added **63516**
721.2460 Removed 17491
721.2565 Added **51683**
721.2575 Added **51683**
721.2930 Added; eff. 7–26–94 27483
721.2950 Added; eff. 7–26–94 27483
721.3350 Added **63517**
721.3364 Added; eff. 7–26–94 27484
721.3367 Added **51684**
721.3374 Added **51684**
721.3390 Added **51684**
721.3430 Added **63517**
721.3435 Added **51684**
721.3540 Removed 17489
721.4080 Added **63517**
721.4155 Added **63517**
721.4215 Added **51703**
721.4250 Added **51704**
(a)(2)(i) amended **68311**
721.4255 Added; eff. 7–26–94 27484
721.4490 Added **51685**
721.4550 Added **51705**
721.4585 Added; eff. 7–26–94 27484
721.4590 Added **51705**
721.4794 Added; eff. 7–26–94 27484
721.5075 Added **51685**
721.5175 Added **63517**
721.5285 Added **51685**
721.5310 Added **51705**
(a)(2)(i) and (ii) amended **68311**
721.5330 Added **51685**
721.5385 Added **51706**
721.5705 Added **51706**
721.5710 Added **63517**
721.5910 Added **51686**
721.5915 Added **51706**
721.5920 Added **51706**
721.5970 Added; eff. 7–26–94 27485
721.5990 Added **51707**
721.6070 Added **51707**
721.6085 Added **51707**
721.6090 Added **51686**
721.6480 Removed 17490
721.6820 Removed **45842**
721.7450 Added **51686**
721.7655 Added; eff. 7–26–94 27485
721.7710 Added; eff. 7–26–94 27485
721.7770 Added **51707**
721.8082 Added **51686**
721.8160 Added **51707**
721.8265 Added **51687**
721.8290 Added **51687**
721.8335 Added **51708**
721.8650 Added **51687**

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721.8654 Added; eff. 7–26–94 27485
721.9000 Added **63517**
721.9100 Added; eff. 7–26–94 27485
721.9470 Added **63517**
721.9510 Added **51687**
721.9580 Added **63518**
721.9620 Added **51709**
721.9650 Added **51687**
721.9660 Added **63517**
721.9665 Added **51709**
721.9668 Added; eff. 7–26–94 27485
721.9750 Added; eff. 7–26–94 27485
721.9925 Added **51709**
721.9957 Added **63518**
750.11 (b) removed; (c) and (d) redesignated as (b) and (c); concluding text designated as (d); new (b) and new (d) revised; (e) added 16998
750.13 Amended 16998
750.14 Amended 16998
750.31 (b) removed; (c), (d) and (e) redesignated as (b), (c) and (d); new (b) revised; new (e) added 16998
761.30 (p) added 16998
761.65 (d)(2)(vii) revised **59374**
761.80 (c)(2) and (m)(7) added; (h) and (n) revised 16998
763 Clarification **58964**
763.80—763.99 (Subpart E) Appendix C revised; interim 5251
799.5000 Heading revised; table amended **61816**
799.5050 Added **40291**
799.5075 Added **59681**
(d) corrected 1992

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1—799 (Ch. I) ..... **37450, 37991, 38546, 42518, 42711, 44799, 47414, 48012, 53688, 55033, 58315, 60419, 60572** 1923, 3047, 9946, 25859
16 ..... **61638**
35 ..... **40106, 53688**
50 5164
51 ..... **54648, 61640, 65573** 21720
52 ..... **36905, 37450, 37453, 38108, 38326, 39717, 40107, 40759, 41218, 41451, 42914, 43609, 44799, 44802, 45469, 45471, 45473, 45474, 45874, 47101, 47103, 47239, 47414, 47415, 47701, 47705, 47707, 47840, 48339, 48344, 48811, 48812, 48999, 49001, 49254, 49258, 49458, 49463, 49464, 49952, 49954, 49956, 50304, 50307, 50311, 50530, 50884, 50886, 51028, 51270, 51279, 51591, 51593, 52467, 53693, 54081, 54089, 54648, 57573, 57575, 59427, 59698, 61040, 62065, 62067, 62304, 62307, 62309, 62560, 62563, 63316, 63545, 63547, 63549, 64530, 65307, 65309, 65573, 65686, 65688, 65691, 65959, 66324, 66326, 66334, 67383, 67748, 67754, 68094** 278, 707, 988, 1513, 1693, 1695, 1698, 2795, 3047, 3534, 3540, 3544, 3804, 3808, 3809, 4016, 4261, 4263, 4620, 5370, 5371, 5374, 5742, 6608, 8150, 8578, 9154, 9155, 9158, 9947, 10103, 10349, 11012, 11228, 11569, 11958, 12882, 12886, 13289, 13292, 13910, 15683, 15686, 15689, 15691, 16158, 16580, 16582, 17078, 18341, 18346, 18988, 21738, 22776, 23264, 24096, 24330, 25002, 25867, 26988, 26993, 26994, 28036, 28038
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355.....**54836**
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201-17.001 (l) and (m) revised; (n) added; interim 953
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301-7.11 (e) amended **58241**
301-8.2 (a) amended **58241**
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301-15.7 (g) amended **58242**
301-16 Added **58242**
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301 Appendix A amended **58502**
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401 Authority citation revised **61837**
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405.1720 Introductory text correctly revised; CFR correction 18318
405.2137 Regulation at 56 FR 43709 confirmed; (b)(7) revised 1284
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410.29 Regulation at 56 FR 43709 confirmed 1284
410.36 Regulation at 57 FR 36015 confirmed **58505**
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488.6 Redesignated as 488.7; new 488.6 added **61840**
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488.7 Redesignated from 488.6 and revised **61840**
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488.8 Revised **61841**
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488.9 Added **61842**
Regulation at 58 FR 61842 eff. date corrected to 2–22–94 108
488.10 (d) revised **61842**
Regulation at 58 FR 61842 eff. date corrected to 2–22–94 108
488.11 (b) amended **61842**
Regulation at 58 FR 61842 eff. date corrected to 2–22–94 108
488.201 (a)(1) revised **61843**
Regulation at 58 FR 61843 eff. date corrected to 2–22–94 108
489.2 (b)(8) added; (c) revised; interim 6578
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489.10 Revised **61843**
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489.12 (c) amended; interim 6578
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489.13 Revised; interim 6578
Regulation at 59 FR 6578 eff. date corrected to 3–13–94 13459
489.20 Regulation at 57 FR 36018 confirmed **58505**
489.31 Regulation at 57 FR 36018 confirmed **58505**
491.9 (c)(2) revised **63536**
493.1483 (b)(1), (4), (5)(i) and (ii) amended 685
498 Authority citation revised 6578
498.2 Amended; interim 6578
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4.1109 (a) amended 1488
4.1151 (b) revised 1488
4.1152 (a)(2) revised 1488
4.1154 (a)(2) revised 1488
4.1157 (a) and (b)(1) revised 1488
4.1266 (b)(2) amended 1488
4.1271 (a) revised 1489
11.13 (e)(3) revised 14281
11.14 (qq) revised 14281
11.15 (a)(3)(ii) revised 14281
11.30 (c)(1)(v) revised 14281

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11.31 (a)(2) revised; (c)(2) removed; (c)(3) and (4) redesignated as (c)(2) and (3) and amended; new (c)(4) added 14281
11.32 (a)(2)(iii)(A) and (f)(2) revised; (f)(3) removed 14282
11.35 Revised 14282
11.60 (d)(1)(iii) and (iv) revised 14283
11.71 (a)(2) and (l)(4)(ii) revised 14283
11.72 (b)(4) revised 14283
11.73 (a) revised 14283
11.80 Revised 14283
11.81 Revised 14283
11.82 Revised 14284
11.83 (a) and (b) revised; (c) removed; (b)(2), (d)(5)(i) and (ii) redesignated as (c)(1)(iii), (2)(vii)(A) and (B); new (c)(1) introductory text, (1)(i), (ii), (2) introductory text, (i) through (vi), (vii) heading and (3) added; new (c)(2)(vii)(A) amended; (d) removed 14285
11.84 (h) removed; (i) redesignated as (h); (a), (b)(1), (d)(2), (f), (g) heading, (1), (2) introductory text, (i), (ii), (iii) and new (h) revised 14286
11.90 (c) revised 14287
11.91 (e) added 14287
11.92 (b) revised 14287
11.93 (a) revised 14287
12 Authority citation revised 17712
12.2 (d) added 17712
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1820.2–1 (d) amended 25823
2090 Authority citation revised **60917**
2091.0–3 Amended **60917**
2091.2–1 (b) amended; (c) removed **60917**
2091.2–2 (b) revised; (c) removed **60917**
2091.3 Heading revised **60917**
2091.3–1 (b) removed; (a) redesignated as (b); new (a) added **60917**
2091.3–2 Revised **60917**
2200 Authority citation revised **60918**
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2203.1 Revised **60926**
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3160 Authority citation revised **58505**
3164.1 (b) table amended **58505**
3180 Authority citation revised **58632**
3181.5 Added **58632**
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3183.4 (a) revised **58633**
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61 Authority citation revised....62424
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61.5 (d)(1), (2), (e) through (h) and (j) removed; (d)(3) and (i) redesignated as (d) and (e); (a) and new (d) amended....62424
61.6 (c) added....62424
61.9 Revised....26741
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61 Appendix A (1) revised....62424
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62.3 (b) revised; (d) removed....62447
62 Appendix A revised; interim....26966
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400.204 (b) amended **64507**
400.209 (b) amended **64507**
400.211 Added **64507**

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607 Added **68769**
608 Added **68772**
670.50—670.72 (Subpart K) Regulation at 58 FR 34718 correctly redesignated as Part 672; eff. date corrected to 8–15–93 54522
671 Regulation at 58 FR 34719 eff. date corrected to 8–15–93 ..... **54522**
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1207.3–5 (a)(3), (4) and (c)(5) revised 15122
1208.1–2 Amended 15122
1208.3–1 (v) added 15122
1208.3–5 (a)(3), (4) and (c)(5) revised 15122

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1355 Authority citation revised **67924**
1355.20 Amended **67924**
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1355.40 Added **67924**
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1355.52 Added; interim **67945**
1355.53 Added; interim **67945**
1355.54 Added; interim **67946**
1355.55 Added; interim **67946**
1355.56 Added; interim **67946**
1355.57 Added; interim **67946**
1355.60 (e) added; interim **67947**
1355 Appendixes A through F added **67926**
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1356 Authority citation revised **67938**
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1356.20 (b), (c) and (d) redesignated as (d), (e) and (f); new (b) and new (c) added **67938**
1356.60 (c)(2)(x) and (d) added **67938**
1357 Authority citation revised **67938**
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2490.170 (c) revised **57699**

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2510 Added 13783
2513 Added 13785
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1 Technical correction **65131**
1.03–15 (h)(1) revised **60265**
1.03–45 Added **60265**
10.103 Regulation at 55 FR 14798 confirmed 10756
10.107 Regulation at 55 FR 14799 confirmed 10756
10.201 Regulation at 55 FR 14799 confirmed 10756
10.205 Regulation at 55 FR 14799 confirmed 10756
10.468 Regulation at 55 FR 14799 confirmed 10756
10.470 Regulation at 55 FR 14799 confirmed 10756
10.472 Regulation at 55 FR 14801 confirmed 10756
10.474 Regulation at 55 FR 14801 confirmed 10756
10.476 Regulation at 55 FR 14802 confirmed 10756
10.540 Regulation at 55 FR 14802 confirmed 10756
10.542 Regulation at 55 FR 14802 confirmed; (c) added 10756
10.544 Regulation at 55 FR 14802 confirmed; (c) added 10756
10.903 (b)(1), (2) and (3) redesignated as (b)(2), (3) and (4); new (b)(1) added 10756
10.920 Regulation at 55 FR 14802 confirmed 10756

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15 Authority citation revised 4841
15.301 Amended; interim 4841
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15.520 Regulation at 55 FR 14805 confirmed 10756
15.810 Regulation at 55 FR 14805 confirmed 10756
15.812 Revised; interim 4842
16 Common preamble **68194**
16.500 (Subpart E) Added **68277**
16 Appendix B added **68279**
30 Authority citation revised **52602**
30.01–5 (e)(2) revised **52602**
30.25–1 Table revised 17005
31 Authority citation revised **52602**
31.10–21a Added **52602**
32 Authority citation revised **52602**
32.59 Added **52602**
35.01–60 Added 16779
40.01–1 Amended 17011
40.01–5 Removed 17011
40.15–1 (a)(3) and (e) amended 17011
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78 Authority citation revised 16779
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97 Authority citation revised 16779
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147.95 (b) amended 17011
150 Table I revised 17011
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151.05 Table amended 17027
151.12–5 Amended 17028
151.50–20 (b)(1) and (k) amended 17028
151.50–77 Heading revised 17028
151.50–86 Heading revised 17028
153 Nomenclature change 17028
153.0 (b)(1) and (3) through (6) revised 17028
153.9 (a) Footnote 2 removed 17028
153.560 Heading revised 17028
153 Table 1 revised 17028
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160 Technical correction **51576**
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Correctly suspended in part 17047

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232 Authority citation revised **62043**
232.1 (b) revised **62043**
232.2 (c) removed; (d), (e) and (f) redesignated as (c), (d) and (e); (a), (b) and new (d) amended; new (c) and new (e) revised **62043**
232.3 (a) amended **62044**
232.4 (b)(A)(*10*) and (*11*) redesignated as (b)(A)(*11*) and (*10*); (b)(A)(*2*)(*1*), (*8*)(1), (iv), new (*11*), (B)(*1*)(ii) and (h)(A)(*8*)(1) amended; (b)(A)(*3*)(ii), (*4*)(ii), (*5*) heading, (*8*)(ii), new (*10*) heading, new (*11*) heading and (*12*) heading revised 62044
(b)(A)(*8*)(c) corrected **64798**
232.5 (b)(E)(*1*)(ii) and (iii) amended; (b)(E)(*11*)(1) revised **62044**
298 Authority citation revised 15128
298.1 Revised; interim 15128
298.2 (b), (d), (e), (f), (m), (s)(3), (4)(v) and (w) amended; (s)(4)(vi) removed; (c) through (g), (h) through (l) and (m) through (w) redesignated as (d) through (h), (l) through (p) and (r) through (bb); new (c), (i), (j), (k) and (q) added; new (x)(4)(iv) revised 15128
298.3 (e) existing text designated as introductory text and amended; (e)(1), (2) and (3) added 15129
298.10 (e) added 15129
298.11 (c) amended 15129
298.12 (b)(1)(i), (ii) and (c)(4) revised; (f) existing text designated as (f)(1) and amended; (f)(2) added 15130
298.13 (a)(2)(ii), (iii) and (iv) redesignated as (a)(2)(iii), (iv) and (v); new (a)(2)(ii), (d)(3) and (e)(3) added; new (a)(2)(iv), (3), (b)(5), (6), (c)(1) and (2) amended 15130
298.14 (a) introductory text revised; (a)(1)(ii), (iii), (iv), (2)(i)(B), (C), (D), (F)(*1*), (ii), (iii) and (b)(1) introductory text amended 15130
298.16 (b) amended 15130
298.17 Introductory text and (a) through (d) redesignated as (a) introductory text and (1) through (4); (a)(5), (6) and (b) added 15131
298.10—298.17 (Subpart B) Appendix B removed 15131
298.18 Added 15133
298.19 Added 15133
298.20 (a) introductory text, (2), (3) and (b) amended; (a)(4) added; (c) revised 15131
298.21 (a) introductory text, (2), (b), (c)(12), (13), (d), (f) and (g) amended; (c)(14) and (15) added 15131
298.22 (1) and (2) redesignated as (a) and (b); introductory text, new (a) and new (b) amended; (c) added 15131
298.23 Amended 15131
298.27 Amended 15131
298.28 (a)(2)(i), (ii) and (iii) amended; (a)(2)(iv) added 15131
298.31 (a) revised; (c) amended 15131
298.32 (a)(1), (2), (3), (b)(2), (3), (6) and (7) amended; (b)(4) revised; (b)(8) and (9) added 15132
298.33 (b), (c), (e), (g) and (h) amended 15132
298.34 (b) amended 15132
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501.603–4 Revised **58284**
501.603–70 (c) and (f) introductory text amended; (d)(1), (2), (4), (h)(1)(i), (4), (i)(1), (2) and (3) revised **58284**
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533.7103–1 (b)(1) and (4) revised 22520
536.201 Revised **52445**
536.203 Revised **52445**
536.206 Removed **52445**

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536.303 Removed **52445**
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536.303–71 (g) removed **52445**
536.303–72 (c) removed; (d) redesignated as (c) **52445**
538.203–71 (c) added **54524**
(d) added; interim 3657
542.302 (c) removed; (d) redesignated as (c) **52445**
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552.222–82 Removed **52445**
552.225–8 Revised; eff. 1–1–94 through 12–31–94 ..... **69244**
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552.228–70 Introductory text revised **52446**
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552.246–70 Amended **64694**
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570.208–1 (c) removed **52446**

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852 Technical correction **58730**

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901.104–1 (a)(2) amended 9103
901.107 Added 9103
901.201–1 (b) and (d) amended 9103
901.301 (b) introductory text amended 9103
901.570 (b) amended 9103
901.601 Amended 9103
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903.303 (a) amended 9104
903.603 (a) amended 9104
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904.403 (a) and (c) amended 9104
904.404 (d)(3) amended 24358
904.601 (c) amended 9104
904.601–70 (b) introductory text amended; (b)(4) removed 9104
904.601–71 (a) and (b) amended 9104
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904.805 Amended 9104
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904.7002 Amended 9104
904.7003 (c) amended 9104
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904.7100—904.7103 (Subpart 904.71) Added; interim **59684**
Regulation at 58 FR 59684 confirmed 6221
905.403 (a) amended 9104
905.403–70 Introductory text amended 9104
(c) removed 24358
905.404–1 Amended 9104
906.303–1 (a) amended 9104
907.102 Amended 9104
907.401 (f) amended 9104
907.402–70 (b) introductory text, (3), (c)(1)(iv) and (4) amended 9104
908.307 (b) amended 9104
908.802 (b) amended 9104
908.1170 (a) and (b) amended 9104
908.7101–2 (c) amended 9104
908.7101–3 Amended 9104
908.7101–4 (b) amended 9104
908.7101–5 Amended 9104
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908.7101–7 (b) amended 9104
908.7107 (i) amended 9105
908.7108 (b) amended 9105
908.7112 Amended 9105
908.7115 (a) amended 9105
908.7116 (b) amended 9105
908.7121 (b) amended 9105
912.300 Amended 9105
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912.304 (c) amended 9105
913 Heading amended 9105
913.505–1 (b)(2) amended 9105

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914.201–5 (a)(1) amended 9105
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914.406–3 (e) amended 9105
914.407–8 Removed 9105
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914.408–2 Amended 9105
915.406–5 (a)(1) and (2)(iv) amended 9105
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915.502 (a)(iv) and (b) amended 9105
915.504 (b)(6)(ii), (iv) and (vi) amended 9105
915.506 (b) amended 9105
915.506–2 (a) and (e) amended 9105
915.801 Amended 9105
915.804–3 (b)(2)(iii), (c)(8), (g) and (i) amended 9105
915.804–6 (e) and (i) amended 9105
915.805–5 (c)(1) amended 9105
915.807 (d)(5)(h) amended 9105
915.903 (f) amended 9105
915.970–4 (c) amended 9105
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915.971–4 (h) amended 9105
915.1003 (a) amended 9105
916.203–4 (d)(2) amended 9105
916.207–3 (d) amended 9105
916.306 (c)(2) amended 9105
916.404–2 (d) amended 9105
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917.504 (b)(9)(i) amended 9105
917.7003 (b)(3) and (e) amended 9105
917.7006 Amended 9105
917.7200 (b) amended 9105
917.7300 (b) amended 9105
917.7301–4 (a)(9) amended 9105
917.7303 (b) amended 9105
917.7401 Amended 9105
917.7402 (c)(3) amended 9105
917.7403 (b) amended 9105
917.7502 (b) amended 9106
919.201 (c) amended 9106
919.501 (c) amended 9106
919.705–2 (a) amended 24359
919.705–6 Amended 9106
919.708 (c) amended 9106
920.102 Amended 9106
920.106 Revised 9106
922.103–4 (d)(1) amended 9106
922.470 (a) amended 9106
922.471 (e) and (g)(2)(iii) amended 9106
922.473 (a) and (b) amended 9106
922.608–5 Amended 9106
922.800 Amended 9106
922.804–2 (a)(1) amended 9106
923 Heading revised 9106
923.7001 (a) amended 9106
923.7002 (b) introductory text and (d) amended 9106
924.103 (b)(2) amended 9106
924.202 (b) amended 9106
925.108 (b) amended 9106
925.204 (d) designation removed 9106
925.702 (Subpart 925.7) Added; interim **59684**
Regulation at 58 FR 59684 confirmed 6221
925.901 (Subpart 925.9) Revised 9106
928.202–70 Amended 9106
932.501–2 (a)(3) amended 9106
932.803 (d) amended 9106
932.970 (a)(1), (2), (b) heading, (1) and (2) amended 9106
932.7003 (a) amended 9106
932.7004–2 (d) amended 9106
932.7004–3 (b) amended 9106
933.103 (a), (d)(5) and (e) amended 9106
933.104 (a)(3), (4)(iii), concluding text, (5)(i), (6), (b) and (c)(2) amended 9106
933.105 (a)(1)(ii), (g) and (h) amended 9107
933.170 (b) through (e) amended 9107
935.016–3 Amended 9107
935.016–4 (b)(5), (c) and (d) amended 9107
935.016–5 (b)(1)(ii) amended 9107
935.016–6 (a) amended 9107
935.016–7 (d)(4) amended 9107
935.016–8 (a)(5), (e)(1), (10) and (11) amended 9107
935.016–9 Introductory text amended 9107
935.070 Amended 9107
936.70 Removed 24359
936.73 Removed 24359
936.202 (a) amended 9107
936.601 Amended 9107
936.602–3 (c)(5) amended 9107
936.602–4 (b) amended 9107
936.603 Amended 9107
936.605 (c)(1) and (3) amended 9107
936.606 (f) amended 9107
936.702 (Subpart 936.7) Heading revised 9107
936.7002–3 (a) amended 9107

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936.7003–1 Amended 9107
937.205 (Subpart 937.2) Heading revised; redesignated as 937.207 9107
937.207 (Subpart 937.2) Redesignated from 937.205; heading revised; (b) designation and (7) removed 9107
942.003 (b) amended 9107
942.101 (b) amended 9107
942.705–1 (a)(3) amended 9107
942.705–3 Amended 9107
942.705–4 Amended 9107
942.705–5 Amended 9107
942.708 Undesignated text designated as (b) 9107
942.803 (c)(3)(vii) amended 9107
942.1401 Amended 9107
942.1402 (a)(2) amended 9107
942.1403–1 (a) and (c)(1) amended 9107
942.1403–2 (a) amended 9107
943.170 (g) introductory text, (1) and (3) amended 9107
943.301 (c) amended 24359
944.302 (a) and (c) amended 9107
944.305–1 (a) amended 9107
944.307 (b) amended 9107
945.102–70 Introductory text and (c) amended 9107
945.104–70 (a)(5), (6), (7) and (11) amended 9108
945.303–1 Introductory text amended 9108
945.304 (c) and (d) amended 9108
945.505–14 Table amended 9108
945.570–2 (a), (b)(1), (2) and (g) introductory text amended 9108
945.607–2 (b) amended 9108
945.608–2 (b)(1)(ii) amended 9108
945.608–6 (a) and (b) amended 9108
949.111 (a) and (c) amended 9108
949.501 (a) designation removed; amended 9108
950.104 Amended 9108
950.7003 (b) amended 9108
950.7006 (a) amended 9108
950.7101 (a), (c)(2), (d), (e) and (g) amended 9108
951.102 (a) and (c)(1) amended 9108
951.102–1 (Subpart 952.1) Heading and (a) amended 9108
952.1 Removed 24359
952.202–1 Amended 9108
952.204–2 Amended 9108
952.204–70 Introductory text amended 9108
952.204–71 Amended 9108
952.204–72 Introductory text amended 9108
952.204–73 Amended; interim **59684**
Regulation at 58 FR 59684 confirmed 6221
Amended 9108
952.208–7 Introductory text amended 9108
952.208–70 Introductory text amended 9108
952.209–70 Amended 9108
952.209–71 Amended 9108
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952.212–71 Introductory text amended 9109
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952.212–73 Introductory text amended 9109
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952.227–80 Introductory text amended 9109
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952.233–2 Amended 9109
952.235–70 Amended 9109
952.236–70 Amended 9109
952.236–71 Amended 9109
952.236–72 Introductory text amended 9109
952.249–70 Amended 9109
952.251–70 Amended 9109
970.0000 Amended 9109
970.0001 (b) introductory text amended 9109
970.0404–1 Amended 9109
970.0404–2 (b), (d)(2)(i) and (ii) amended 9109
970.0404–3 (a) and (b) amended 9109

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970.0404–4 (d) added; interim **59684**
Regulation at 58 FR 59684 confirmed 6221
(a)(3) removed 24359
970.0406 Amended 9109
970.0803 (b) amended 9109
970.0905 Amended 9109
970.1001 Amended 9109
970.1509–1 (b) amended 9109
970.1509–2 Heading amended 9109
970.1509–4 (b)(6) amended 9109
970.1509–6 (b)(1)(iii) and (e) amended 9109
970.1509–8 (d) table, (e) and (g) amended 9109
970.2201 (a) and (b)(3) amended 9109
970.2271 (b)(1), (2) and (3) amended 9110
970.2272 (b)(2) amended 9110
(a) amended 24359
970.2273 (a)(7), (8), (b) introductory text, (3), (c)(1)(iv), (2) and (d) amended 9110
970.2303–2 (e) added 5531
(d) amended 9110
970.2901 (b) amended 9110
970.2902 Introductory text amended 9110
970.3001–2 Amended 9110
970.3101–1 (c) amended 9110
970.3101–2 (b)(1) amended 9110
970.3102–1 (b) and (c) amended 9110
970.3102–2 (h)(2)(ii), (1)(2)(iv), (6)(iv), (7) heading, (i)(A) and (ii) amended 9110
970.3102–5 (a) amended 9110
970.3102–9 Amended 9110
970.3102–17 (a)(1) and (b) introductory text heading amended 9110
970.3102–18 Amended 9110
970.3102–19 (d) introductory text, (5) concluding text, (e)(1) and (2)(iii) amended 9110
970.3102–20 Revised **61628**
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970.3102–21 (b)(3) introductory text and concluding text amended 9110
970.3102–22 Amended 9110
970.3103 (c) added **61628**
970.3201 Amended 9110
970.3271 Amended 9110
970.5101 (c) amended 9110
970.5203–1 Amended 9110
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970.5203–3 Amended 9110
970.5204–1 Amended 9110
970.5204–2 Introductory text added 9110
970.5204–4 Amended 9110
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970.5204–6 Amended 9110
970.5204–8 Amended 9110
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970.5204–11 Introductory text added 9110
970.5204–12 Introductory text added 9110
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970.5204–14 (e)(31) revised **61628**
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970.5204–15 Amended; introductory text added 9111
970.5204–16 Introductory text added 9111
970.5204–17 Amended; introductory text added 9111
970.5204–18 Amended; introductory text added 9111
970.5204–19 Introductory text added 9111
970.5204–21 Amended; introductory text added 9111
970.5204–22 Introductory text added 9111
970.5204–23 Introductory text added 9111
970.5204–24 Amended; introductory text added 9111
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970.5204–26 Introductory text amended 9111
970.5204–28 Introductory text added 9111
970.5204–29 Introductory text added 9111
970.5204–30 Revised 9111
970.5204–31 Amended; introductory text added 9111
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970.5204–33 (a) and (b) amended 9111
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970.5204–35 Heading amended; introductory text added 9111

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970.5204–37 Amended 9111
970.5204–38 Amended 9111
970.5204–41 Amended 9111
970.5204–42 Introductory text added 9111
970.5204–43 Amended; introductory text added 9112
970.5204–45 Amended; introductory text revised; amended 9112
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970.5204–55 Amended; introductory text added 9112
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970.5204–57 Amended 9112
970.5204–58 Introductory text amended 9112
970.5204–60 Amended 9112
970.5204–61 Added **61628**
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970.5204–62 Added 5531
970.7102 Amended 9112
970.7104–7 Table amended 9112
970.7104–9 (b) amended 9112
970.7104–12 (a) amended 9112
970.7104–19 (b) amended 9112
970.7104–22 (a) amended 9112
970.7104–24 Amended 9112
970.7104–25 Amended 9112
970.7104–27 (a)(2) amended 9112
970.7104–28 (c) and (d) amended 9112
970.7107 (e), (f) and (g) amended 9112
970.7108 (a), (c) and (h) amended 9112
971.101 Amended 9113
971.102 Amended 9113
971.103 (a) introductory text and (b) amended 9113
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1501.301 Amended 18976
1501.370 Revised (OMB numbers) 18619
1501.602–3 (c)(2) and (3) amended 18976
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1503.301 Amended 18976
1503.408–1 Amended 18976
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1503.502 Amended 18976
1506.202 Amended 18976
1509.170–4 (b)(1), (2), (3), (d), (e) and (f) amended 18976
1509.505–70 Redesignated from 1509.506 18619
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1509.508 Redesignated as 1509.507–1; new 1509.508 redesignated from 1509.509 18619
1509.509 Redesignated as 1509.508 18619
1510.007 Amended 18976
1510.011–80 Added 18619
1512.104 (b) amended 18619
1514.201–7 Amended 18976
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1515.604 (a) amended 18976
1515.608 (e) amended 18976
1515.609 (b) amended 18976
1515.610–70 (b) amended 18976
1515.612 (a)(1) introductory text, (i), (ii) and (2) introductory text amended 18976
1515.804–3 Amended 18976
1515.902 (c) amended 18976
1515.1003 Amended 18976
1516.404–276 (a) introductory text amended 18976
1516.404–277 Introductory text amended 18976
1516.603–3 Amended 18976
1517.202 (a) amended 18976
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1533.209 Amended 18977
1533.212 (a)(3) and (b)(4) amended 18977
1536.201 (d) and (e) amended 18977
1536.209 (c) amended 18977
1536.602–2 Revised 18977
1536.602–4 Amended 18977
1542.705–1 (a) and (b)(1)(i) amended 18977
1542.708 (c) amended 18977
1542.1202 (a) and (b) amended 18977
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1552.209–73 Added 18620
1552.209–74 Added 18620
1552.210–80 Added 18623
1552.212–71 Amended 18624
1552.227–76 Added 18624
1552.242–70 (a) amended 18977

Chapter 16—Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)

1601.102 Existing text designated as (a); (b) added 14764
1602.170–11 Revised 14764
1609.470—1609.471 (Subpart 1609.4) Added 14764
1609.701 Redesignated as 1609.7001 14764
1609.7001 Redesignated from 1609.701 14764
(a)(7), (b)(7) and (8) added 14765
1615.802 (a) and (c) redesignated as (a)(1) and (2); new (a)(1) and (b)(3) revised; (b)(4) added 14765
1615.804–70 Revised 14765
1632.617 Revised 14765
1633—1649 (Subchapter G) Heading added 14765
1642 Added 14765
1646.270 (Subpart 1646.2) Added 14767
1646.301 (Subpart 1646.3) Heading added 14767
1652.000 Amended 14767
1652.370 Table amended 14767

Chapter 18—National Aeronautics and Space Administration (Parts 1800—1899)

1801.105 (a) table amended (OMB numbers) 12193
1801.370 (a)(1)(i), (ii), (iii), (2)(i), (iv), (5) and (b) revised 12193
(a)(1)(i) table, (ii) table and (b) table amended 21667
1801.602–3 (b)(1) designation and (2) removed; (b)(i) through (iv) redesignated as (b)(1) through (4) 12194
1801.670 (b) amended 21667
1804.402 Amended 12194
1804.404–70 Amended 12194
1804.601—1804.677–6 (Subpart 1804.6) Table 1804–1 added 12196
1804.671–3 Amended 12194
1804.671–4 Introductory text, (k), (n) table, (r), (s) and (u) table amended; (v) through (y) and (z) through (ttt) redesignated as (w) through (z) and (bb) through (vvv); new (vv) revised; new (oo)(7) redesignated as (oo)(8); (v), (aa) and new (oo)(7) added 12194
1804.675 Removed; interim 23801
1804.675–1 Removed; interim 23801
1804.676 Table 1804–1 removed 12195
1804.677 Removed 10079
1804.677–1 Removed 10079
1804.677–2 Removed 10079
1804.677–3 Removed 10079
1804.677–4 Removed 10079
1804.677–5 Removed 10079
1804.677–6 Removed 10079
1805.202 Existing text designated as (a); (b) added; interim **69246**
1805.207 (c) added **59188**
1807.103 (a)(1) and (b) revised; interim **61629**
1807.170–1 (a) revised; interim **58792**
(b)(11) amended; (d)(1)(i) revised; interim **61630**
(d)(4) added; interim 11200
1807.170–4 Added; interim **61630**
1807.7102 (a) amended; interim **61630**
1807.7103–1 (b) amended; interim **61630**
1807.7103–2 (a) amended; interim **61630**

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1807.7105 Removed; new 1807.7105 redesignated from 1807.7106 and revised; interim **61630**
1807.7106 Redesignated as 1807.7105; new 1807.7106 redesignated from 1807.7107; interim **61630**
1807.7107 Redesignated as 1807.7106; interim **61630**
1808.802 Amended 12197
1808.1100 Revised 12197
1809.200 Revised 12197
1810.002 Amended 12197
1814.201–70 Added 21667
1814.406–3 (a) revised 12197
1814.406–4 (a) designation and (b) removed 12197
1814.406–5 (b)(1) revised 12197
1815.406 (c) and (d) added; interim **61630**
(c) amended 11199
1815.406–71 Added 21667
1815.407–70 (j) and (k) added; interim **61631**
1815.570 Revised 12197
1815.610 Revised 10081
1815.611 Added **54299**
1815.613–70 Revised 10081
(c) amended 21667
1815.613–71 (b)(5)(i) revised; (b)(6) removed; (b)(7) and (8) redesignated as (b)(6) and (7) **54299**
(b)(4) revised; interim **61631**
(a) revised 10081
(b)(4)(i) and (ii) amended 11199
1815.613–72 Heading revised; text redesignated as (a); (b) added; interim **61631**
1815.807–70 (d)(1) revised 12197
1816.307–70 (h) added; interim 22521
1816.404 Revised **52446**
1816.405 Revised **52449**
1816.603–3 (a)(1) designation, (2), and (3) removed; (a) amended; (a)(1)(i) through (xi) redesignated as (a)(1) through (11) 12197
1817.504 (a) amended 12197
1824.102 Revised 12197
1824.202 (a) revised 12197
1825.604 (e) amended 12197
1828.371 Revised; interim **54050**
1828.373 Removed; interim **54051**
1831.205–18 Added; interim 22521
1831.205–670 Added 12198
1831.205–671 Added 12198
1832.402–1 Amended 12198
1832.702–70 (d) amended 12198
1832.705–2 Removed 12198
1832.705–270 (b) amended 12198
1833.211 Regulation at 58 FR 44462 confirmed **53138**
1833.211–70 Regulation at 58 FR 44462 confirmed **53138**
1834 Revised; interim **58792**
1834.000 Amended 10080
1834.001 (b) amended 10080
1834.005–1 (b)(3) corrected **68687**
(a) revised 10080
1835.003 (c) revised 12198
1837.200 Revised 12198
1839.7003–4 (a)(6) added **59189**
1839.7008 Added **59189**
1842.173 Amended 12198
1842.202–72 Amended 12198
1842.270 Revised 21667
1842.7201—1842.7201 (Subpart 1842.72) Added; interim 23801
1843.101—1843.105 (Subpart 1843.1) Added; interim 23803
1845.302–1 (c) added; interim 13250
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1845.302–70 Revised 12198
1846.270 (a) amended 12198
1847.200–70 Revised 12199
1852.204–71 Removed; interim 23802
1852.204–72 Removed; interim 23802
1852.215–70 Amended; interim **61631**
1852.215–81 Added; interim **61631**
Amended 11199
1852.215–82 Added; interim **61632**
1852.215–83 Added; interim **61632**
1852.216–76 Revised **52449**
1852.216–77 Added **52449**
(d) added 21668
1852.216–83 Amended **52450**
1852.216–84 Amended **52450**
1852.216–85 Revised **52450**
1852.216–88 Added **52450**
1852.216–89 Added; interim 22521
1852.228–72 Revised; interim 54051
1852.228–76 Revised; interim **54052**
1852.228–78 Added; interim 54051
1852.231–71 Added 12199
1852.234–70 Added; interim **58794**
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1852.234–71 Added; interim **58794**
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1852.237–71 Amended 12199
1852.239–70 Added **59189**
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1852.242–70 Amended 21668
1852.242–73 Added; interim 23802
1852.242–74 Added; interim 23802
1853.204–70 Heading amended; (o) removed 10079
1870.103 Appendix I amended 12199
1870.303 Appendix I amended **54300**
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Appendix I amended 10079, 11200, 12199
1870.501—1870.503 (Subpart 1870.5) Added; interim **58795**
1870.502 Amended 10080
1870.503 Appendix I corrected **68687**
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1871 Added; eff. in part to 6–30–97 ..... **54300**
1871.102 (b) added (effective date pending) **54301**

Chapter 28—Department of Justice (Parts 2800—2899)

2801.601 Revised **68774**
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2801.602–70 Revised **68775**
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2801.603–2 (d)(3) correctly revised 13661
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2807.170–1 (a) amended 10080
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Chapter 61—General Services Administration Board of Contract Appeals (Parts 6100—6199)

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9903.201–1 (b) introductory text and (15) revised **58801**
9903.201–2 (a)(1), (2), (b)(1), (2) and (d) revised; (a)(3) removed 58801
(a)(2) and (b)(1) corrected **65556**
9903.201–3 Amended **58802**
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9903.201–4 (c)(1) revised **58802**
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9903.202–1 (b)(1), (2) and (c) revised **58802**
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174 Authority citation revised.....**51533**
174.1 Amended.....**51533**
174.25 (a)(2)(ii) amended.....**51533**
174.55 (c) amended.....**51533**
174.82 (a) amended.....**51533**
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174.700 (c) table amended.....**51533**
175 Authority citation revised.....**51533**
175.320 (a) table and (c) introductory text amended.....**51533**
176 Authority citation revised.....**51533**
176.5 (b) introductory text amended.....**51533**
176.83 (f)(4) amended.....**51533**
176.100 Amended.....**51533**
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176.410 (c)(2) amended.....**51533**
177 Authority citation revised.....**51533**
177.825 Revised.....**51533**
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177.838 (g) amended.....**51533**
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178.39–9 (a) amended.....**51533**
178.39–14 (b) amended.....**51534**
178.46–12 (e) redesignated as (c).....**51534**
178.53–9 (b) amended.....**51534**
178.55–20 (a) introductory text amended.....**51534**
178.56–3 Amended.....**51534**
178.56–11 (a) amended.....**51534**
178.60–24 (a) amended.....**51534**
178.61–8 (c)(2) amended.....**51534**
178.61–20 (b) amended.....**51534**

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178.270–5 (d) amended **51534**
178.270–11 (d)(1) amended **51534**
178.337–1 (f) amended **51534**
178.337–16 (b)(2) amended **51534**
178.338–10 (c) amended **51534**
178.338–19 (c) amended **51534**
178.345–14 (b)(11) amended **51534**
178.352–2 (a) amended **51534**
178.352–6 (a)(2) amended **51534**
178.362–2 (e)(5) amended **51534**
178.516 (b)(3)(i) introductory text amended **51534**
178.518 (a)(2) amended **51534**
178.600 Amended **51534**
178.603 (a) table amended **51534**
178.605 (d)(1) amended **51534**
179 Authority citation revised **51534**
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179.101–1 (a) table amended **51534**
179.105–4 (a) introductory text amended **51534**
179.203–1 (a) amended **51534**
180 Authority citation revised **51534**
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180.405 (f)(2) introductory text amended **51534**
(b) and (c)(1) table amended 1786
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180.407 (f)(1)(i)(C) amended **51534**
180.413 (d)(1)(i), (ii) and (iii) amended 1786
Regulation at 59 FR 1786 effective date confirmed 12861
180.417 (a)(3) heading amended 1786
Regulation at 59 FR 1786 effective date confirmed 12861
190.9 Added 17280
192.3 Amended 17281
192.9 Revised 17281
192.150 Added 17281
192.453 Revised; eff. 2–11–95 6584
192.603 (b) revised; eff. 2–11–95 6584
192.605 Revised; eff. in part 2–11–95 6584
192.615 (d) redesignated as 192.616; eff. 2–11–95 6585
192.616 Redesignated from 192.615(d); eff. 2–11–95 6585
192.706 (a) removed; (b) introductory text, (1) and (2) redesignated as introductory text, new (a) and new (b); eff. 2–11–95 6585
192.723 (b)(1) amended **54528**
(b)(2) revised **54529**
Heading and (a) revised; eff. 2–11–95 6585
192.727 Heading and (a) revised; eff. 2–11–95 6585
192.729 Removed; eff. 2–11–95 6585
192.733 Removed; eff. 2–11–95 6585
192.737 Removed; eff. 2–11–95 6585
193.2015 Removed 17281
195 Authority citation revised 17281
195.2 Amended 17281
195.8 Amended 17281
195.56 (a) amended 17281
195.58 Amended 17281
195.106 (e) amended 17281
195.120 Revised 17281
195.260 (e) amended 17281
195.402 (c)(14) added; eff. in part 2–11–95 6585
199 Common preamble **68194**
Authority citation revised **68260**
Heading revised 7430
199.1—199.25 Designated as Subpart A 7430
199.1 (a) amended **68260**
199.23 (a)(2) revised **68260**
199.25 Added **68261**
199.200—199.245 (Subpart B) Added 7430

Chapter II—Federal Railroad Administration, Department of Transportation (Parts 200—299)

207 Added 6587
217 Common preamble **68194**
217.13 (d) removed **68235**
219 Common preamble **68194**
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219.3 (a) introductory text and (c) revised; (b)(3) added; eff. 1–1–95 7457
219.5 Amended; eff. 1–1–95 7457
219.9 (a) amended; (c) added; eff. 1–1–95 7458
219.11 (b)(2) revised; (g) redesignated as (h); (c)(4) and new (g) added; eff. 1–1–95 7458
219.15 Removed; eff. 1–1–95 7458
219.23 Heading, (a) and (b) revised; (d), (e) and (f) added; eff. 1–1–95 7458
219.101 (a)(2)(ii) revised; (a)(3) and (4) added; eff. 1–1–95 7459
219.104 (a), (d) and (e) revised; (f) and (g) added; eff. 1–1–95 7459
219.107 Added; eff. 1–1–95 7460

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219.201 (a)(1)(iii), (2)(ii) and (b) revised; eff. 1–1–95 7460
219.203 (a)(1) revised; (d)(2) amended; eff. 1–1–95 7460
219.205 (a) revised; eff. 1–1–95 7460
219.206 Added; eff. 1–1–95 7461
219.209 (a)(1) amended; (c) added; eff. 1–1–95 7461
219.211 (a), (c) and (d) amended; (e) and (h) revised; eff. 1–1–95 7461
219.213 (a) and (b) revised; eff. 1–1–95 7461
219.300 Added; eff. 1–1–95 7461
219.301—219.309 (Subpart D) Heading revised; eff. 1–1–95 7461
219.301 (b)(1), (f) and (g) removed; (b) introductory text, (2) introductory text and (c) introductory text revised; eff. 1–1–95 7461
219.302 Added; eff. 1–1–95 7462
219.303 Revised; eff. 1–1–95 7462
219.307 Removed; eff. 1–1–95 7462
219.309 Removed; eff. 1–1–95 7462
219.501—219.505 (Subpart F) Heading revised; eff. 1–1–95 7462
219.501 Revised 7462
219.503 Revised; eff. 1–1–95 7462
219.505 Heading revised; (a) designation and (b) removed; eff. 1–1–95 7462
219.601—219.605 (Subpart G) Heading revised; eff. 1–1–95 7462
219.601 Heading, (b)(2)(iii) concluding text and (7) revised; (c) amended; eff. 1–1–95 7462
219.603 Heading revised; (a) designation, (b) and (c) removed; eff. 1–1–95 7463
219.605 Heading revised; (b) amended; eff. 1–1–95 7463
219.607 Added; eff. 1–1–95 7463
219.608 Added; eff. 1–1–95 7464
219.609 Added; eff. 1–1–95 7464
219.611 Added; eff. 1–1–95 7464
219.701—219.713 (Subpart H) Heading revised; eff. 1–1–95 7464
219.703 Heading revised; eff. 1–1–95 7464
219.707 Heading revised; (a) amended 7464
219.708 Added 7464
219.713 Removed; eff. 1–1–95 7464
219.715 Added; eff. 1–1–95 7464
219.801 (Subpart I) Added; eff. 1–1–95 7465
219.803 (Subpart I) Added **68235**
219.901—219.905 (Subpart J) Added; eff. 1–1–95 7466
219 Appendix D added **68237**
Appendix D2 added **68250**
Appendix D3 added; eff. 1–1–95 7468
Appendix D4 added; eff. 1–1–95 7477
229 Authority citation revised 24963
229.133 (b) revised; interim 24963

Chapter III—Federal Highway Administration, Department of Transportation (Parts 300—399)

Chapter III Interpretation **60734**
350.11 (a) revised; interim 5264
350.21 (d)(3) added; interim 5264
350 Appendix C amended; interim 5264
382 Added 7505
383 Authority citation revised 26028
383.5 Amended 26028
383.37 (a) and (b) amended; (c) added 26028
383.51 (d) redesignated as (e); new (d) added 26028
383.53 Revised 26028
384 Added 26039
390.3 (f)(6) removed; eff. 1–1–95 8752
390.5 Amended **59196, 67375**
Amended; eff. 1–1–95 8752
Amended 26028
391 Common preamble **68194**
391.15 (d) added 26028
391.31 (a) revised; eff. 1–1–95 8752
391.35 (a) revised; eff. 1–1–95 8752
391.43 Amended; (e) introductory text and (g) revised **59196**
391.51 (a) revised; eff. 1–1–95 8752
391.68 Added; eff. 1–1–95 8752
391.73 Added; eff. 1–1–95 8752
391.83 (a) revised; eff. 1–1–95 8753
391.87 (h) revised **68222**
391.93 Revised 7514
391.125 Added 7514
392.5 Heading, (a)(1), (2), (3) and (b)(2) revised 7515
392.71 Added **67375**
393.42 (b)(4) removed 25574
393.67 (a)(6) added; eff. 1–1–95 8753
395.2 Amended 7515
395.8 (a) introductory text revised; eff. 1–1–95 8753

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396.3 (b) introductory text revised; eff. 1-1-95 8753
396.11 (d) revised; eff. 1-1-95 8753

Chapter V—National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

526 Authority citation revised 25576
526.1 (b) and (c) revised 25576
526.2 Revised 25576
526.3 Heading, introductory text and (a) introductory text revised 25576
526.4 Removed 25576
526.5 Introductory text and (a) revised 25576
531.5 (b)(2) revised 62295
533.5 (a) Table IV added 16323
541 Appendixes A and A-I revised 63298
Appendix A-II revised 63299
542 Revised 21672
543.5 (a) revised 10758
543.6 (a)(1) revised 10758
544 Appendix A revised 63301
Appendixes B and C revised 63302
555 Authority citation revised 58104
555.9 (c)(1) revised 58104
571 Petition denied 2755, 14569, 27506
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571.103 Amended 11006
571.108 Amended 52026, 64169, 65676
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571.111 Regulation at 57 FR 57000 confirmed 53666
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571.120 Amended 25578
571.121 Amended 6909
Figure 1 revised 6911
Amended; eff. 10-20-94 18323
571.131 Amended; interim 26761
571.203 Amended 63304
571.208 Amended; eff. 9-1-95 52926
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571.209 Amended 17994
571.213 Amended 7647, 15863
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571.217 Amended 22999
571.301 Amended 51788
571.303 Added; eff. 9-1-95 19659
582 Petition denied 13630

Chapter VI—Federal Transit Administration, Department of Transportation (Parts 600—699)

604.9 (b)(8)(iv) revised 52685
613 Authority citation added; subpart authority citations removed 58079
613.100 (Subpart A) Revised 58079
613.200 (Subpart B) Revised 58079
614 Added; interim 63485
Technical correction 64374
626 Removed 63485
653 Revised 7589
654 Added 7549
665 Authority citation revised 58733
665.3 (d) revised; interim 58733
665.5 Amended; interim 58734

Chapter X—Interstate Commerce Commission (Parts 1000—1399)

1002 Regulation at 58 FR 7748 eff. 10-1-93 52027
1002.2 (f) table amended 4844
1017 Regulation at 58 FR 7748 eff. 10-1-93 52027
1018 Regulation at 58 FR 7748 eff. 10-1-93 52027
1033 Revised 60144
1035 Revised 60797
1039.11 (a) table revised 53434
1051 Authority citation revised 2303
Interpretation 14570
1051.2 (a) introductory text and (1) through (11) redesignated as (a)(1) introductory text and (i) through (xi); new (a)(2) and (3) added 2303
Regulation at 59 FR 2303 eff. date delayed to 4-2-94 6221
1053 Added 2303
Regulation at 59 FR 2303 eff. date delayed to 4-2-94 6221
Interpretation 14570
1056.2 (a)(3) revised 2305
1056.18 Revised 2305
1145.9 Existing text redesignated as (a); (a) heading and (b) added 53667
1180.0 Amended 63104
1180.2 (b) revised 63104
1180.4 (b)(1)(iv) revised 63104
1180.6 (b) introductory text revised; (c) added 63104
1180.9 Introductory text revised 63104
1207 Removed 5110

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1249.1 Revised 5110
1249.2 (a), (b)(1), (4) and (c) revised; (b)(5) added 5111
1312 Regulation at 58 FR 7748 eff. 10-1-93 52027
Authority citation revised 2304, 4844
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1312.14 (a)(4) added 2304
Heading revised 4844
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1312.20 (h)(1) revised 10305
1312.41 Added 4844
1313 Regulation at 58 FR 7748 eff. 10-1-93 52027
1314 Regulation at 58 FR 7748 eff. 10-1-93 52027

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TITLE 50—WILDLIFE AND FISHERIES

Chapter I—United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

15 Revised 60536
16 Authority citation revised 58979
16.13 Revised 58979
17.11 (h) table amended 53804, 53807, 54065, 65095, 68486
(h) table amended 4856, 5498, 10584, 13397, 13836, 17998
(h) table amended; eff. 1-31-94 through 9-28-94 5310
(h) table amended; eff. 4-18-94 to 12-14-94 18327
17.12 (h) table amended 52030, 62049, 68480

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(h) table amended 14371, 5509, 8141, 9327, 9936, 10323, 13840, 14493, 15345
17.21 (g)(1) introductory text revised **68325**
17.41 (b) added **65095**
17.84 (c)(1), (4), (5)(iii), (6), (9), (10) and (11) correctly revised; (c)(5)(iv) correctly added; CFR correction **52031**
17.95 (b) amended 4856
(c) amended 5845
(c) corrected 9032
(e) amended 10905, 10914, 13397
17.108 (a)(3) through (6) and illustration revised; (a)(7) removed 24658
18.121—18.129 (Subpart J) Added; eff. 12–16–93 through 6–16–95 ..... **60410**
20 Temporary regulations **65656**
21.29 (k) amended 11204
24.12 (a) and (e) amended **68543**
(e) redesignated as (g) and amended; new (e) and (f) added 14121
32.7 Amended 6685, 6688
32.20 Amended 6688
32.22 Amended 6688
32.23 Amended 6689
32.24 Amended 6689
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32.49 Amended 6686
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32.52 Amended 6695
32.53 Amended 6686
32.55 Amended 6695
32.56 Amended 6696
32.57 Amended 6698
32.60 Amended 6698
32.62 Amended 6698
32.63 Amended 6698
32.64 Amended 6699
32.66 Amended 6686
32.67 Amended 6686, 6699
32.69 Amended 6700
36.39 (j) added; interim; eff. 6–25–94 through 9–30–94 24566
85 Revised 11206
100.24 (a)(1) table and (2) table amended 27463
100.25 (b)(2)(i) introductory text, (iv) introductory text and (f) revised; (m)(1) table amended **61811**

Chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

204.1 (b) table amended (OMB numbers) **59401**
Regulation at 58 FR 33567 confirmed 13894
215 Harvest quotas **58297**
216 Temporary regulations 8142
Finding of conformance 15655
216.3 Amended 16145
216.4 (b)(1) through (h) removed; (b) introductory text revised **65134**
216.15 (f) added **58297**
216.24 (a)(1), (b)(1)(iii) heading and (v) amended; (d)(2)(vii)(C)(*1*) introductory text and ((*i*)(*D*) revised **63539**
(d)(2)(viii) introductory text, (A) introductory text, (B), (C) and (E) amended **63540**
(e)(3)(i)(A)(*1*) revised 16145
216.110—216.113 (Subpart I) Removed **65134**
217 Temporary regulations 23169
217.12 Amended **54067**
Amended; interim 10586
222.23 (a) amended 450
226.22 Added **68551**
226 Table 3 and Figure 5 added **68552**
227 Temporary regulations 23169
227.4 (e) removed; (f), (g) and (h) redesignated as (e), (f) and (g) 450
227.12 (a)(3) Table 1 amended **53139**
(a)(3) illustration revised **53141**
(a)(3) corrected **58594**

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227.21 (a), (b)(1) and (2) amended 450
227.72 (e)(4)(ii) and (iii) redesignated as (e)(4)(iii) and (iv); new (e)(4)(iv) introductory text revised; new (e)(4)(ii) added **54067**
(e)(5) heading and (i) revised **54068**
(e)(4)(i)(G)(*2*) redesignated as (e)(4)(i)(G)(*2*)(*i*); (e)(4)(i)(G)(*2*)(*ii*) added 25829
227 Figures 10 and 11 added **54069**
Figure 12a added 25830
Figure 12b added 25831
228.51—228.57 (Subpart F) Added; eff. 3–3–94 through 3–3–99 5126
229 Regulation at 54 FR 21921 eff. date extended to 4–1–94 ..... **51789**
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229.1 (b) amended **51789**
(b) amended 17049
282.2 Regulation at 58 FR 33567 confirmed and amended 13894
282.3 Regulation at 58 FR 33567 confirmed 13894
282.5 Regulation at 58 FR 33567 confirmed 13894
282.6 Regulation at 58 FR 33567 confirmed 13894
282.8 Regulation at 58 FR 33568 confirmed 13894
282.9 Regulation at 58 FR 33568 confirmed 13894
282.14 Regulation at 58 FR 33568 confirmed 13894
282.15 Regulation at 58 FR 33568 confirmed 13894
285 Harvest quotas **53434**
Temporary regulations **53668, 63104**
285.2 Amended; interim 17725
285.22 (a), (d) introductory text, (1), (2), (e) introductory text, (f) introductory text and (i) amended; (e)(1) revised; interim 17725
285.23 (c)(1) and (2) revised; interim 17726
285.24 (e) added; interim 17726
285.26 Introductory text revised; interim 17726
285.29 (a) and (b)(1) revised; interim 17726
285.31 (a)(28), (30) and (37) revised; (c) removed; interim 17726

Chapter III—International Regulatory Agencies (Fishing and Whaling) (Parts 300—399)

301 Temporary regulations **51253**
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301.7 (f) revised 27242
301.11 (g) revised 27242
371 Inseason adjustments **54307**
380.2 Amended 11730
380.20 Revised 25835
380.23 (c), (e) introductory text, (f) introductory text, (g), (h) introductory text, (1), (2), (i), (k) introductory text and (3) revised; (k)(5) added 25835
380.24 (f) introductory text, (2), (g)(1) introductory text, (ii) and (2) revised; (f)(3), (g)(1)(iii) and (iv) added; (g)(1)(i) amended 25836
380.26 (d) through (h) revised 25836
380.27 (c) and (d) revised; (e) added 25837
380.28 Added 11730
380.30 Added 25837
380 Figure 2 added 25837
Figure 3 added 25840

Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

601.37 (a) revised; interim 11559
605.24 Comment period extended to 11–26–93; interim **57968**
611 Fishery management measures 685, 7647, 7656
Technical correction 13769
625 Harvest quotas **59196, 61844, 62050, 65134, 68555**
Harvest quotas 257, 3320, 10586, 15863, 26971
625.2 Amended **65937**
625.6 (a)(1) through (4), (b) and (c) revised; (a)(5) redesignated as (a)(6); new (a)(5) added; interim 11935
625.8 (c)(2) revised; interim 11936
Corrected 19146

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625.20 Regulation at 58 FR 27215 and 39680 terminated; regulation at 58 FR 49940 corrected **52685**
Regulation at 58 FR 45076 eff. date extended through 12–31–93 ..... **62556**
(f) added **65937**
625.22 Revised; interim 18757
625.25 (d) revised **65938**
(a) revised; interim 18757
630.24 Regulation at 58 FR 33569 confirmed **58509**
638.5 (o), (p) and (q) added; interim; eff. 5–16–94 through 8–14–94 25345
638.27 Added; interim; eff. 5–16–94 through 8–14–94 25345
640.7 (n) amended **61845**
641 Temporary regulations 22760
641.1 (b) revised 970
641.2 Amended 971
641.4 (a)(1), (4), (b)(1), (2) introductory text, (xi), (xiii)(B), (h), (i) and (k) revised; (b)(2)(xiii)(C) and (xiv) removed; (o) added; eff. in part 2–7–94 through 2–7–97 971
(h)(1) revised; (n)(3) added; eff. in part 1–1–94 through 12–31–94 and 1–1–94 through 2–9–94 ..... **68326**
(b)(2)(xiii)(B) correctly designated 3749
(a)(1) through (5) and (c) through (o) redesignated as (a)(1)(i) through (l)(v) and (d) through (p); new (a)(1) heading, (2), (c) and (n)(3) added; (b) heading, new (d) through (i) and (p)(4) revised; new (m) introductory text, (1), (2), (n)(2) and (p) introductory text amended 6590
641.5 (b), (c), (f), (g) and (i) revised 971
(d) revised 6591
Regulation at 59 FR 6591 eff. date corrected to 3–9–94 10675
641.6 Heading and (a) through (e) revised 972
641.7 (u) revised; (w) and (x) added; eff. in part 1–1–94 through 12–31–94 and 1–1–94 through 2–9–94 ..... **68326**
(a), (b), (g), (l), (k), (l) and (s) revised; (y) through (cc) added 972
(a), (b) and (c) revised; (y) amended; (bb) and (cc) redesignated as (cc) and (dd); new (bb) added 6591
641.21 (d) heading revised; (d)(4) and (5) added; eff. 1–1–94 through 12–31–94 ..... **68326**
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Table I is in the CFR Index and Finding Aids revised as of January 1, 1994. Removals during 1993 are in the December 1993 LSA (List of CFR Sections Affected).

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LSA—LIST OF CFR SECTIONS AFFECTED

The LSA (List of CFR Sections Affected) is a monthly publication designed to lead users of the Code of Federal Regulations (CFR) to amendatory actions published in the Federal Register (FR). It should be shelved with current CFR volumes. Entries are by CFR title, chapter, part, and section. Proposed rules are listed at the end of appropriate titles.

HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

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To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

The page numbers listed to the right of each LSA entry indicate where the specific amendments begin in the Federal Register. **Boldface** page numbers under a particular title indicate that the page numbers span 2 years. **Boldface** is used to distinguish the previous year from the current year.

Cite a page reference from this publication using the volume number (i.e. 59 FR for 1994) and the page number. Example: 24727 cite as 59 FR 24727. For your convenience, the volume number has been included in the Table of Federal Register Issue Pages and Dates.

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There is no single annual issue of the LSA. Four ANNUAL ISSUES must be saved; the DECEMBER issue is the ANNUAL for Titles 1–16; the MARCH issue is the ANNUAL for Titles 17–27; the JUNE issue is the ANNUAL for Titles 28–41; the SEPTEMBER issue is the ANNUAL for Titles 42–50. ANNUAL ISSUES to be saved are clearly designated on the cover.

PARALLEL TABLE OF AUTHORITIES AND RULES

Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1994.

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INQUIRIES AND SUGGESTIONS

Brian Swidal was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark, Ken Payne and Rob Sheehan. INQUIRIES, telephone 202–523–5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

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[1]Because title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR parts 1—189 contains a note only for parts 1—39 inclusive. For the full text of the Defense Acquisition Regulations in parts 1—39, consult the three CFR volumes issued July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR chapters 1—100 contains a note only for chapters 1 to 49 inclusive. For the full text of procurement regulations in chapters 1 to 49, consult the three CFR volumes issued July 1, 1984 containing those chapters.

[4]No amendments to this volume were promulgated during the period April 1, 1990 through March 31, 1993. The CFR volume issued April 1, 1990 should be retained.

[5]No amendments to this volume were promulgated during the period April 1, 1991 through March 31, 1993. The CFR volume issued April 1, 1991 should be retained.

[6]No amendments to this volume were promulgated during the period July 1, 1991 through June 30, 1993. The CFR volume issued July 1, 1991 should be retained.

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Chapter VI—Federal Retirement Thrift Investment Board (Parts 1600—1699)

1620.72 (d) removed; interim 1889
1620.73 Removed; new 1620.73 redesignated from 1620.74; interim 1889
1620.74 Redesignated as 1620.73; new 1620.74 redesignated from 1620.75; interim 1889
1620.75 Redesignated as 1620.74; new 1620.75 redesignated from 1620.76; interim 1889
1620.76 Redesignated as 1620.75; interim 1889
1620.83 (c) removed; interim 1889
1620.84 Removed; new 1620.84 redesignated from 1620.85; interim 1890
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1630.5 (a) revised 26409

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2100 Added 30669

Chapter XIV—Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)

Chapter XIV Appendix A amended 30504

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2635.403 (a) amended 4780
2635.803 Amended 4780
2635 Appendix A added 4780
2638.203 (b)(6) revised; interim 12148
2638.702 (a)(2) introductory text, (3) introductory text, (ii) and (iii) revised; interim 12148
2638.703 Revised; interim 12148
2638.704 (a), (b)(4), (c) and (d) revised; interim 12149

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1.410—1.429 (Subpart M) Added 8824
2.19 (b)(38) added 18709
2.21 (b)(1), (6), (8), (10), (11), (13), (14), (15), (19), (20), (21), (24), (31), (36) and (39) revised; (b)(40) through (43) added 14084
2.23 (b)(32) added 2725
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(e)(16) added 31917
2.35 (a) amended 8830
2.60 (a)(45) added 18709
2.65 (a)(1), (6), (9), (11), (12), (14), (15), (16), (20), (21), (22), (25), (32), (37) and (40) revised; second (a)(42) redesignated as (a)(43); (a)(44) through (47) added 14084
2.71 (a)(33) added 2725
7.15 (b)(11) revised 15827
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25 Added; interim 2689

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

28.909 (b) revised 26410
28.911 (a) amended 26410
29.8001 Table amended 27215
51 Authority citation revised 31504
51.38 Revised 31504
54.27 Regulation at 58 FR 64670 eff. date corrected to 12–9–93 1890
Regulation at 58 FR 64670 confirmed 13643
58 Authority citation revised 5934
58.43 Revised 5934
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58.101 (c) amended; interim 24321
58.126 (e)(5)(ii) redesignated as (e)(5)(iii); new (e)(5)(ii) added; interim 24321
58.305 (f) revised 1264
58.323 Removed 1264
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58.2425—58.2435 (Subpart G) Added 1264
61.26 Removed 26411
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61.28 Removed 26411
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61.43 Undesignated center heading and text removed 26411
68 Determination 26585
80 Regulation at 58 FR 29098 confirmed 25786
91.5 (a)(1)(ii), (2)(i) and (iii) revised; (a)(3) and (b) amended; interim 24321
91.37 (a) introductory text amended; Tables 1 through 5 revised; interim 24321
93.3 (a) amended; interim 24324
93.102 (a)(1) and (2) revised; interim 24324
94.3 (3) amended; interim 24325
95.2 Amended; interim 24325
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100.32 (a) suspended; eff. 7–1–94 to 8–31–94 6869
110 Regulation at 58 FR 42448 corrected 15313
201.104 (a) revised 655

Chapter II—Food and Nutrition Service, Department of Agriculture (Parts 210—299)

210 Authority citation revised 1894
210.11 (a)(2) amended 23614
210.18 Regulation at 58 FR 38584 confirmed; (c) introductory text and (l)(1)(iii) amended; (l)(1)(iv) removed; (l)(1)(v) redesignated as (l)(1)(iv) 1894
210.19 Regulation at 58 FR 38586 confirmed; (c)(2)(ii) and (d) amended 1894
210.30 Regulation at 58 FR 38586 confirmed 1894
215 Authority citation revised 1894
215.2 Regulation at 58 FR 38586 confirmed 1894
215.11 Regulation at 58 FR 38586 confirmed 1894
215.13 Regulation at 58 FR 38586 confirmed; (e) amended 1894
220 Authority citation revised 1894
220.2 Regulation at 58 FR 38587 confirmed 1894

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(i–1) amended 23614
220.12 (b)(1) amended 23614
220.13 Regulation at 58 FR 38587 confirmed 1894
220.15 Regulation at 58 FR 38587 confirmed; (f) amended 1894
246 Nomenclature change 11498
246.2 Amended 11498
246.3 (b) amended; (c) and (e)(4) redesignated as (c)(1) and (e)(5); new (c)(1) revised; (c)(2) and new (e)(4) added 11499
246.4 (a)(2), (7), (10), (11)(i), (13) and (19) amended; (a)(8) and (9) revised; (a)(20) through (23) added 11499
246.6 (b)(1) revised; (f) added 11500
246.7 (b) through (n) redesignated as (c) through (o) and amended; new (b) and new (j)(9) added; new (d), (h)(1) introductory text and (ii) revised 11500
246.9 (g) amended 11503
246.11 (c)(2) amended; (c)(3), (5), (6) and (e)(4) revised, (c)(8) added 11503
246.12 (o), (r)(2)(ii) and (iii) amended; (r)(8) revised 11503
246.14 (c) heading, introductory text and (1) revised; (c)(10) added 11503
246.16 (a) through (i) revised; (j) and (k) removed; (l) through (q) redesignated as (j) through (o); new (k)(2)(ii) and (iii) amended 11504
246.19 (b)(3) revised 11508
246.24 (a) revised 11508
246.25 (b)(2) amended 11508
246.27 (a) through (d) and (f) revised 11508
248 Added; interim 11517
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248.9 OMB number pending 11521
248.10 OMB number pending 11521
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250 Authority citation revised 16972
250.3 Amended 16972
250.41 (a)(1) amended 16972
250.52 Added 16973
251 Heading revised 16974
251.2 (c) amended 16974
251.3 (d) revised; (f) removed; (g) redesignated as (f) 16974
251.4 (d)(3) revised; (h), (i) and (j) redesignated as (j), (k) and (l); (c)(3), new (h) and (i) added; (d) and new (l) amended 16974
251.6 (a)(4) revised 16974
251.7 (a) revised 16974
251.8 Heading and (d) revised 16974
251.9 (a) and (c) revised 16975
251.10 (a)(2) and (d)(1) amended; (e)(2) revised; (e)(7), (g), and (h) added 16975
253.2 (c) revised; interim 1449
253.6 (b)(1) amended; interim 1449
254.2 (d) revised; interim 1449
271.1 (b) amended 29713
271.2 Amended 5698, 27434
Regulation at 54 FR 24527 confirmed and amended 16095
Regulation at 59 FR 5698 eff. date corrected in part to 2–1–92 22723
271.6 (b)(1)(ii), (iii), (vi) and (vii) amended 29713
271.7 (d)(1)(ii) amended 29713
271.8 Regulation at 54 FR 24527 confirmed 16095
272.1 (g)(130) added 2731
(g)(131) added 5699
Regulation at 54 FR 24527 confirmed; (g)(132) added 16095
(g)(133) added 16978
Regulation at 59 FR 5699 eff. date corrected in part to 2–1–92 22723
(g)(7)(viii), (10), (17)(i)(B), (36), (84)(i) and (90) amended; (g)(74)(1), (2) introductory text, (i) and (ii) redesignated as (g)(74)(i), (ii) introductory text, (A) and (B) 29713
(g)(134) added; interim 30866
272.2 Regulation at 54 FR 24527 confirmed 16096
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272.4 Regulation at 54 FR 24527 confirmed 16096
272.5 Regulation at 54 FR 24527 confirmed 16096
272.6 (c)(3) amended 29713
272.8 (i) heading and introductory text amended 29713
272.10 (a)(2)(iii) amended 29713
273.1 (e)(1)(iii) amended 5699

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Regulation at 59 FR 5699 eff. date corrected in part to 2–1–92 22723
(c)(3)(i), (ii) and (e)(1)(i) amended 29713
273.2 Regulation at 54 FR 24528 confirmed; (b)(3), (c)(5), (f)(8)(i)(A) and (ii) amended 16096
273.7 (o)(7) revised; (o)(8)(i) amended; (p)(4) added 16978
273.8 Regulation at 54 FR 24529 confirmed 16096
(i)(2)(i) amended 29713
273.9 (c)(17) added 5699
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(c)(11) introductory text amended; interim 30866
273.10 Regulation at 54 FR 24529 confirmed 16096
(d)(1)(i) amended; interim 30866
273.11 (f) heading revised; (f)(1) and (3) amended 5699
Regulation at 54 FR 24530 confirmed 16096
Regulation at 59 FR 5699 eff. date corrected in part to 2–1–92 22723
(b)(1)(ii)(A) and (B) amended 29713
273.12 Regulation at 54 FR 24530 confirmed 16096
273.13 (b)(14) added 2731
Regulation at 54 FR 24530 confirmed 16096
273.15 (r)(2) amended 29713
273.17 (i) removed 29713
273.18 (d)(3)(iv) through (viii), (4)(ii), (iii) and (h) through (l) redesignated as (d)(3)(vi) through (x), (4)(iii), (iv) and (l) through (m); (d)(3) introductory text and new (d)(4)(iv) amended; (d)(3)(iii), new (iv), new (v), new (4)(ii) and new (h) added; (d)(4) heading, (i) and new (i)(1) revised 2731
(d)(2) amended 29713
273.20 (a), (b) and (c) amended 29713
273.21 Regulation at 54 FR 24530 confirmed 16096
273.22 (f)(6)(iii)(A) amended 29713
275.8 (a) amended 29713
275.9 (c)(1) amended 29713
276.2 (e)(3) revised 2733
276.3 (b)(3) amended 29713
276.7 (h)(4) amended 29714
277.4 (b)(1) revised; (b)(11) and (12) added 2733
Regulation at 54 FR 24531 confirmed; (f) amended 16096
277.16 (c)(1)(ii) and (iii) revised; (c)(1)(iv) added 2733
277.18 (b), (c)(1) introductory text, (ii), (d)(1)(ii), (g) heading, (1), (2) introductory text, (ii), (3), (5) introductory text, (6), (7), (8) introductory text, (iv) and (p)(5) amended 2733
277 Appendix A amended 2733
Regulation at 54 FR 24531 confirmed 16096
278.1 (j)(1) and (k)(1)(ii) amended 29714
278.2 (g) amended 29714
278.5 (e) amended 29714
278.6 (j) introductory text amended 27434
278.9 (j) added 27434
279.1 Amended 29714
279.2 Heading, (a) and (b) amended 29714
279.3 (a) and (b) amended 29714
279.7 (b), (c) and (d) amended 29714
279.8 Heading, (a) introductory text, (1) and (b) through (g) amended 29714
279.9 (a) and (b) amended 29714
279.10 (a) amended 29714

Chapter III—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

300 Authority citation revised 9614
300.1 (a) revised 9614
Regulation at 59 FR 9614 withdrawn 18943
301 Technical correction 11659
301.38–2 (b) amended 9066
Regulation at 59 FR 9066 eff. date confirmed; (b) corrected 17917
301.52–2a Amended; heading revised 25788
Amended; interim 27966
301.75–4 (a) and (d)(1) revised 25288
301.78–2 (a) amended; interim 25791

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301.78-3 (c) amended; interim 2282, 7896, 11179
301.78-10 (c) amended; OMB number; interim 25791
301.80-2a Regulation at 58 FR 51980 confirmed 12795
301.81-3 (e) amended; interim 3314, 22492
(e) corrected 6531
301.83 (b) amended 13183
319.28 (a), (b) introductory text and (6) amended 13183
319.37—319.37-14 (Subpart) Authority citation removed 21622
319.37-2 (a) table amended 9918
319.37-14 (b) amended 21622
319.56-2 (h) amended 9382
321 Authority citation revised 9918
321.2 Amended 9918
321.8 Heading revised 9918
321.9 Revised 9918
322 Authority citation revised 656
322.1 Footnote 1 revised 656
354.2 Table amended 21623, 27435

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

457 Heading revised 9391
457.101 Added 9391
457.102 Added 9397
457.103 Added 9397
457.110 Added; interim 9615

Chapter VI—Soil Conservation Service, Department of Agriculture (Parts 600—699)

658 Authority citation revised 31117
658.2 (a) and (c) revised 31117
658.3 (c) and (d) revised 31117
658.4 (a) and (c)(2) revised; (g) and (h) added 31118
658.7 (b) redesignated as (c); new (b) and (d) added 31118

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700—799)

703 Authority citation revised 3773
703.1 Revised; interim 3773
703.2 (f)(1) and (2) amended; interim 3774
703.3 (b) amended; interim 3774
703.5 Revised; interim 3774
703.7 (a)(1)(i), (2)(i), (ii) and (iii) revised; interim 3774
703.8 (a) amended; interim 3774
703.9 (b) revised; interim 3774
703.10 Revised; interim 3774
703.11 Heading, (b)(1), (2), (c) and (d) revised; interim 3775
703.12 (a) introductory text, (1)(iv), (v), (3), (14), (17) and (18) revised; (a)(1)(vi) and (19) added; interim 3775
703.13 (c)(4) removed; (c)(5) redesignated as (c)(4); (c)(1) and new (4) revised; (e) added; interim 3775
703.15 (a), (b)(2) and (d) revised; interim 3775
703.17 (c) revised; interim 3775
703.25 (c) added; interim 3775
723 Authority citation revised 28210
723.111 Existing text designated as (a); (b) added 6866
723.112 Existing text designated as (a); (b) added 22725
723.113 Existing text designated as (a); (b) added 27220
723.114 Existing text designated as (a); (b) added 27220
723.115 Existing text designated as (a); (b) added 27220
723.116 Existing text designated as (a); (b) added 27220
723.117 Existing text designated as (a); (b) added 27220
723.118 Existing text designated as (a); (b) added 27220
723.501—723.508 (Subpart E) Added 28210
729.214 (d) added 9068
735 Authority citation revised 15038
735.2 (bb) through (ii) added 15038
735.16 (h) added 15038
735.100—735.105 Undesignated center heading added 15038
735.100 Added 15038
735.101 Added 15038
735.102 Added 15039
735.103 Added 15039
735.104 Added 15039
735.105 Added 15039
792 Added 15829

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Chapter VIII—Federal Grain Inspection Service, Department of Agriculture (Parts 800—899)

800.71 Regulation at 58 FR 49422 confirmed 13866
801.7 Revised 31506
810.109 (b) amended 10573
810.1604 Revised 10573
810.1605 Existing text designated as (a); (b) added 10573

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

905.140 Regulation at 58 FR 65539 confirmed 10052
905.146 Revised; interim 26928
905.147 (a) and (c) revised; interim 26929
905.148 (a) revised; (b) amended; interim 26929
905.306 Regulation at 58 FR 59932 confirmed 12524
906 Budget of expenses 1266
906.365 Regulation at 58 FR 54926 confirmed 1450
Regulation at 58 FR 54201 confirmed 1452
907 Budget of expenses 4244
907.58 Suspended; interim 1269
Regulation at 59 FR 1269 confirmed 10053
907.71 Suspended; interim 1269
Regulation at 59 FR 1269 confirmed 10053
907.112 Suspended; interim 1269
Regulation at 59 FR 1269 confirmed 10053
907.131 Regulation at 58 FR 53114 confirmed 242
907.141 Regulation at 58 FR 53114 confirmed 242
Suspended; interim 1269
Regulation at 59 FR 1269 confirmed 10053
908 Budget of expenses 4244
908.58 Suspended; interim 1269
Regulation at 59 FR 1269 confirmed 10053
908.71 Suspended; interim 1269
Regulation at 59 FR 1269 confirmed 10053
908.112 Suspended; interim 1269
Regulation at 59 FR 1269 confirmed 10053
908.131 Regulation at 58 FR 53114 confirmed 242
908.141 Regulation at 58 FR 53114 confirmed 242
Suspended; interim 1269
Regulation at 59 FR 1269 confirmed 10053
910.180 Regulation at 58 FR 52402 confirmed 1270
911 Budget of expenses 5074, 18943
911.53 Suspended; interim; eff. 3-22-94 through 3-31-96 13430
Regulation at 59 FR 13430 confirmed 29536
911.54 Suspended; interim; eff. 3-22-94 through 3-31-96 13430
Regulation at 59 FR 13430 confirmed 29536
911.55 Suspended; interim; eff. 3-22-94 through 3-31-96 13430
Regulation at 59 FR 13430 confirmed 29536
911.56 Suspended; interim; eff. 3-22-94 through 3-31-96 13430
Regulation at 59 FR 13430 confirmed 29536
911.57 Suspended; interim; eff. 3-22-94 through 3-31-96 13430
Regulation at 59 FR 13430 confirmed 29536
911.58 Suspended; interim; eff. 3-22-94 through 3-31-96 13430
Regulation at 59 FR 13430 confirmed 29536
911.59 Suspended; interim; eff. 3-22-94 through 3-31-96 13430
Regulation at 59 FR 13430 confirmed 29536
911.111 Suspended; interim; eff. 3-22-94 through 3-31-96 13430
Regulation at 59 FR 13430 confirmed 29536
915 Budget of expenses 5074, 18943
915.306 (a)(7) revised; interim 15315
Regulation at 59 FR 15315 confirmed 33418
915.332 Revised 30869
916.350 (a) introductory text and (4)(iv) revised; interim 15838
(a)(1) revised; interim 31120
916.356 Revised; interim 15838
917 Authority citation revised 10055
917.4 Suspended in part 10055

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917.15 Suspended in part 10055
917.18 (a) suspended in part 10055
917.20 Suspended in part 10055
917.21 Suspended 10055
917.24 (a) and (c) suspended in part 10055
917.25 Suspended in part 10055
917.26 Suspended in part 10056
917.28 Suspended in part 10056
917.29 (b) suspended in part 10056
917.34 (k) suspended in part 10056
917.35 (a) suspended in part 10056
917.100 Suspended in part 10056
917.121 Suspended 10056
917.143 (b) introductory text and (1) through (4) suspended in part 10056
917.149 Suspended 10056
917.176 Suspended 10056
917.179 Suspended in part 10056
917.442 (a) introductory text and (4)(iv) revised; interim 15840
(a)(1) revised; interim 31120
917.459 Revised; interim 15841
917.461 Suspended 10056
922.306 Revised; interim 30673
923.322 Introductory text removed; (b) through (e) redesignated as (d) through (g); (a), new (d)(2) and new (f) revised; new (b) and (c) added 31920
925 Budget of expenses 3316, 15611
926 Budget of expenses 30872
927 Budget of expenses 12526
928 Budget of expenses 1266
932 Budget of expenses 12526, 30873
932.153 Regulation at 58 FR 48594 confirmed 1273
944 Comment period reopened 11529
944.31 Revised 30871
944.106 Regulation at 58 FR 59934 confirmed 12524
944.312 (h) corrected 4246
Revised 25792
944.401 Regulation at 58 FR 48596 confirmed 1273
946 Budget of expenses 15039, 27221
948 Budget of expenses 27223
953 Budget of expenses 27222
955 Authority citation revised 1896
Budget of expenses 12527
955.101 Added; interim 1896
Regulation at 59 FR 1896 confirmed 13868
955.142 Added 18946
958 Budget of expenses 24631
959 Authority citation revised 1453
Budget of expenses 1453, 12149
959.322 (d)(2) and (3) revised; interim 13431
Introductory text revised 17267
Regulation at 59 FR 13431 confirmed 26736
966 Authority citation revised 1455
Budget of expenses 1455
967.228 Regulation at 58 FR 62033 confirmed 6868
979 Budget of expenses 4246, 15041
979.304 (c)(2) and (3) revised; interim 13432
Regulation at 59 FR 13432 confirmed 26736
980 Comment period reopened 11529
981 Authority citation revised 13434
981.441 Comment period reopened 4247
981.442 (a)(4) and (5) amended 13434
982 Marketing percentages 9071
Budget of expenses 24632
984 Authority citation revised 1455
Budget of expenses 1455
985 Marketing percentages 12151, 21917
Budget of expenses 18948
989 Marketing percentages 12528
Budget of expenses 12153
989.126 (b) introductiory text and (2) revised; interim 27226
989.246 Regulation at 59 FR 12530 confirmed 27228
993.128 (a) revised; interim 8518
Regulation at 59 FR 8518 confirmed 25794
993.150 Corrected 10228
998 Budget of expenses 24633
999 Comment period reopened 11529
Revised; interim 26928

Chapter X—Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

1001.62 (c) and (d) removed 16512
1002.61 (d) and (e) removed 16512
1005.7 (d)(3) suspended in part 3-1-94 through 2-28-95 15318
1007.7 (e)(3) suspended in part and (e)(4) suspended 3-1-94 through 2-28-95 15318

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1007.61 (a) in part and (b) suspended; eff. 7-1-94 to 8-31-94 6869
1011.7 (b) amended; eff. 3-1-94 through 7-31-94 13644
(d)(3) suspended in part 3-1-94 through 2-28-95 15318
1033.60 (m) redesignated as (n); new (m) added 24031
1036.60 (m) redesignated as (n); new (m) added 24031
1040.5 Amended 33418
1040.7 Introductory text and (a) revised; (b) introductory text amended 33418
1046.2 Suspended in part 3-1-94 through 2-28-95 15318
1049.60 (l) redesignated as (m); new (l) added 24031
1094.7 (c) suspended in part; eff. 3-3-94 through 12-31-94 10057
1098 Removed 13645
1106 Authority citation revised 11182
1106.3 Suspended in part 1274
1106.6 Suspended in part; eff. 2-1-94 through 8-31-96 11182
1106.7 (b)(1) suspended in part; eff. 2-1-94 through 8-31-96 11182
1106.13 (d)(1) suspended; eff. 2-1-94 through 8-31-96 11182
1124 Authority citation revised 15319
1124.7 (b) introductory text amended 15319
1124.9 (c) amended 15319
1124.10 (c)(2) revised 15319
1124.19 Revised 15319
1124.30 (a)(1)(i), (ii), (c)(1), (2) and (3) revised 15319
1124.31 (a)(1), (b) introductory text and (1) revised 15320
1124.32 Revised 15320
1124.41 (c) amended 15320
1124.50—1124.54 Undesignated center heading revised 15320
1124.50 Revised 15320
1124.51 Revised 15320
1124.51a Removed 15321
1124.53 Revised 15321
1124.60—1124.62 Undesignated center heading revised 15321
1124.60 Revised 15321
1124.61 Revised 15322
1124.62 Redesignated as 1124.63; new 1124.62 added 15322
1124.63 Redesignated from 1124.62 and revised 15322
1124.70 Revised 15322
1124.71 Revised 15322
1124.72 Revised 15323
1124.73 Revised 15322
1124.74 Removed; new 1124.74 redesignated from 1124.75; (c) revised 15323
1124.75 Redesignated as 1124.74 15323
Redesignated from 1124.76; (a)(1)(i), (a)(2)(i) and (b)(4) amended 15324
1124.76 Redesignated as 1124.75; new 1124.76 redesignated from 1124.77 15324
1124.77 Redesignated as 1124.76; new 1124.77 redesignated from 1124.78; (a) introductory text amended 15324
1124.78 Redesignated as 1124.77 15324
1124.85 (b) and (c)(2) amended 15324
1126.12 (b)(5) suspended 26737
1135 Authority citation revised 15324
1135.9 (c) amended 15324
1135.19 Revised 15324
1135.30 Introductory text, (a) and (c) revised; (b) and (d) redesignated as (d) and (e); new (b) added 15324
1135.31 (a) introductory text amended; (a)(4) revised 15324
1135.41 (b)(3) amended; (c) revised 15324
1135.50—1135.62 Undesignated center heading revised 15325
1135.50 Heading and (a) revised; (b) introductory text, (1) and (2) amended; (e), (f) and (g) added 15325
1135.51 Revised 15325
1135.51a Removed 15325
1135.53 Revised 15325
1135.60—1135.62 Undesignated center heading added 15325
1135.60 Revised 15326
1135.61 Revised 15326
1135.62 Redesignated as 1135.63 15326
Added 15327
1135.63 Redesignated from 1135.62 and revised 15326
1135.70 Revised 15327
1135.71 Revised 15327
1135.72 Revised 15327

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1135.73 (b), (d) and (e)(2) through (6) revised 15327
1135.74 Removed; new 1135.74 redesignated from 1135.76; (a)(4), (b)(1)(i), (ii) and (iii) introductory text amended; (b)(1)(iii)(*a*), (*b*) and (c) redesignated as (b)(1)(iii)(A), (B) and (C) 15327
1135.75 Redesignated from 1135.77 15327
1135.76 Redesignated as 1135.74; new 1135.76 redesignated from 1135.78 and amended 15327
1135.77 Redesignated as 1135.75 15327
1135.78 Redesignated as 1135.76 15327
1135.85 (b) and (c) amended 15327
1150.131 (a)(4) and (8) revised 13435

Chapter XI—Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

1210.401 (b) amended 18948
1210.501 Added 18948
1211 Authority citation revised 11898
1211.30—1211.39 Undesignated center heading removed 11898
1211.30 Removed 11898
1211.31 Removed 11898
1211.32 Removed 11898
1211.33 Removed 11898
1211.34 Removed 11898
1211.35 Removed 11898
1211.36 Removed 11898
1211.37 Removed 11898
1211.38 Removed 11898
1211.39 Removed 11898
1211.40—1211.42 Undesignated center heading removed 11898
1211.40 Removed 11898
1211.41 Removed 11898
1211.42 Removed 11898
1211.51 Removed 11898
1211.54 Removed 11898
1211.56 Removed 11898
1211.72 Removed 11898
1211.77 Removed 11898
1220 Referendum results 15327
1240 Authority citation revised 22493
Technical correction 24217
1240.50 (a) amended; interim 22493
1240.114 (b) amended; interim 22493
1250.510 Revised 12155

Chapter XIV—Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

1413.54 (a)(5)(ii) and (iii) revised; (a)(5)(iv) and (d)(4) added 22495
(a)(3)(ii) and (iii) revised; (a)(3)(iv) and (d)(4)(iii) added 22496
(a)(4)(iii) revised; (a)(4)(iv) and (d)(4)(v) added 25795
1413.104 (a)(8)(ii), (iii) and (b) revised; (a)(8)(iv) added 22495
1413.110 (b) revised; interim 10574
1421.7 (c)(7)(iii) and (iv) added 25795
1421.217 (d) added 25796
1427.8 (a)(2)(ii) and (iii) revised; (a)(2)(iv) added 22495
(a)(1)(ii) and (iii) revised; (a)(1)(iv) added 22496
1427.107 (a)(1)(i), (ii) and (2)(i) through (iv) revised; (a)(2)(v) redesignated as (a)(2)(viii); new (a)(2)(v), (vi) and (vii) added; (c)(2) amended 17919
1434.1 (a) revised; interim 23790
1434.6 (b) revised; interim 23790
1434.7 (c)(1) and (2) added; interim 23791
1434.13 (b) revised; interim 23791
1434.14 Removed; interim 23791
1434.16 (a)(1) revised; interim 23791
1434.17 (a)(3) and (4) revised; (a)(5), (6) and (7) added; interim 23791
1434.23 (a)(2), (3), (b)(1), (2), (c), (d) introductory text, (2) and (e) revised; (k) added; interim 23791
1434.24 (f) added; interim 23792
1434.25 (a)(1) revised; interim 23792
1434.26 (b)(3) revised; interim 23792
1434.27 (c)(3) added; interim 23792
1464.12 Existing text designated as (a); (b) added 6867
1464.13 Existing text designated as (a); (b) added 27220
1464.14 Existing text designated as (a); (b) added 27220
1464.15 Existing text designated as (a); (b) added 27220
1464.16 Existing text designated as (a); (b) added 27221

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1464.17 Existing text designated as (a); (b) added 27221
1464.18 Existing text designated as (a); (b) added 27221
1464.19 Existing text designated as (a); (b) added 22725
1464.101—1464.108 (Subpart B) Regulation at 58 FR 68020 eff. date corrected to 1-1-94 1274
Revised 10944
1468.4 (b) revised 2284
1475.3 Regulation at 58 FR 62512 confirmed 9919
1475.6 Regulation at 58 FR 62512 confirmed 9919
1475.10 Regulation at 58 FR 62513 confirmed 9919
1475.17 Regulation at 58 FR 62513 confirmed 9919
1475.22 Regulation at 58 FR 62513 confirmed 9919

Chapter XV—Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)

1540.40—1540.45 (Subpart C) Regulation at 58 FR 16104 confirmed 25797

Chapter XVI—Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)

1610.1 Regulation at 58 FR 66252 confirmed 17464
1610.2 Regulation at 58 FR 66252 confirmed 17464
1610.3 Regulation at 58 FR 66252 confirmed 17464
1610.4 Regulation at 58 FR 66252 confirmed 17464
1610.5 Regulation at 58 FR 66252 confirmed 17464
1610.6 Regulation at 58 FR 66252 confirmed 17464
1610.11 Regulation at 58 FR 66253 confirmed 17464
1627 Removed; CFR Correction 33641

Chapter XVII—Rural Electrification Administration, Department of Agriculture (Parts 1700—1799)

1700.40—1700.44 (Subpart D) Added 21624
1700.60—1700.61 (Subpart E) Added 21625
1700.70—1700.73 (Subpart F) Added 21625
1700.90—1700.93 (Subpart G) Added 21626
1700.100—1700.109 (Subpart H) Added 21626
1700.120—1700.132 (Subpart I) Added 21627
1700.140—1700.150 (Subpart J) Added 21631
1700.160—1700.161 (Subpart K) Added 21633
1700.170—1700.173 (Subpart L) Added 21633
1703.12 Amended 11706
1703.17 (c) added 11706
1703.18 Added 11706
1703.19 Added 11706
1703.20 Revised 11707
1703.21 (b) amended; (d) revised 11708
1703.22 Added 11708
1703.28 (b) revised 11711
1703.30 OMB number 11711
1703.34 (b)(5)(ii) and (iii) revised; (b)(5)(iv) and (v) added 11711
1703.46 (e) removed; (f) through (l) redesignated as (e) through (k); (a) and new (g)(6)(iv) amended 11711
1703.61 (a) and (b) amended 11712
1703.66 (b), (d), (e) and (g) revised; (h), (i) and (j) added 11712
1703.67 Added 11712
1703.68 Added 11712
1710 Authority citation revised 495
1710.2 (a) amended; interim 495
1710.7 Added; interim 3984
1710.118 Removed; interim 496
1710.350—1710.364 (Subpart H) Heading revised; sections added; interim 496
1717.851 Amended; interim 3986
1717.852 (a)(1)(ii) amended; (b)(1)(ii)(A) revised; interim 3986
1717.860 Added; interim 3986
1717.904 Added; interim 3987
1735.2 Regulation at 58 FR 66253 confirmed 17464
1735.10 Regulation at 58 FR 66253 confirmed; (b) revised 17464

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1735.13 Regulation at 58 FR 66253 confirmed 17464
1735.14 Regulation at 58 FR 66253 confirmed 17464
1735.17 Regulation at 58 FR 66253 confirmed 17464
1735.20 Regulation at 58 FR 66254 confirmed 17464
1735.21 Regulation at 58 FR 66254 confirmed 17464
1735.22 Regulation at 58 FR 66254 confirmed 17464
1735.30 Regulation at 58 FR 66254 confirmed 17464
1735.31 Regulation at 58 FR 66255 confirmed 17464
1735.32 Regulations at 58 FR 66255 and 66256 confirmed 17464
1735.46 Existing text designated as (a); (b) through (h) added 29537
1735.74 Regulation at 58 FR 66256 confirmed 17464
1737.2 Regulation at 58 FR 66256 confirmed 17464
1737.11 Regulation at 58 FR 66256 confirmed 17464
1737.22 Regulation at 58 FR 66256 confirmed 17464
1737.32 Regulation at 58 FR 66256 confirmed 17464
1737.50 Regulation at 58 FR 66256 confirmed 17464
1737.70 Regulation at 58 FR 66256 confirmed 17464
1737.71 Regulation at 58 FR 66257 confirmed 17464
1744.61 Regulation at 58 FR 66257 confirmed 17464
1744.67 Regulation at 58 FR 66257 confirmed 17464
1744.68 Regulation at 58 FR 66257 confirmed 17464
1753.2 Regulation at 58 FR 66259 confirmed and amended 17464
1753.3 Regulation at 58 FR 66259 confirmed; (a) introductory text and (4) amended 17464
1753.7 (f)(4) revised 17679
1753.15 Regulation at 58 FR 66259 confirmed; (b)(4) amended 17464
1753.38 (a)(2)(iii) removed; (a)(2)(iv) through (vii) redesignated as (a)(2)(iii) through (vi); (a)(2)(i)(J), new (v) and (c) revised 17679
1753.39 (f)(1)(i) revised 31126
1753.66 Regulation at 58 FR 66259 confirmed; (d) amended 17464
1755 Authority citation revised 17681
1755.93 Table amended 17681
Table amended; Footnote 1 revised 31126
1755.97 Table amended 30507
1755.525 Added 31126
1755.870 Added 30507
1767.18 Amended 27436
1767.19 Amended 27436
1767.41 Amended 27436
1773 Authority citation revised 659
1773.3 (c) revised 659
1773.20 (a) revised 659
1773.21 (b) and (c) revised 659
1773.34 (e)(1)(i) and (2)(i) removed; (e)(1)(ii), (iii), (iv), (2)(ii), (iii) and (iv) redesignated as (e)(1)(i), (ii), (iii), (2)(i), (ii) and (iii) and revised 659
1773.40 Revised 660
1773.45 Revised 660
1773 Appendix C revised 660
1786.150—1786.170 (Subpart F) Added 13620

Chapter XVIII—Farmers Home Administration, Department of Agriculture (Parts 1800—2099)

1902.1—1902.16 (Subpart A) Heading revised 3778
1902.1 Introductory text added 3778
1902.4 Added 3778
1902.50 Added (OMB number) 3778
1924.4 (i)(4) through (7) redesignated as (i)(5) through (8); new (i)(4) and (9) added 6882
Regulation at 59 FR 6882 eff. date corrected to 3–16–94 9805
1924.13 (a)(3), (e)(1)(iii)(B)(*2*), (iv), (v), (vii)(B)(*1*), (2)(i)(B), (G), (H), (ii)(C), (iii)(A), (iv), (v) and (viii) revised 6882
Regulation at 59 FR 6882 eff. date corrected to 3–16–94 9805
1924.50 Revised (OMB number) 6885
Regulation at 59 FR 6885 eff. date corrected to 3–16–94 9805
1924.60 (c)(3) and (d)(2) amended 8519
1930.123 (i) amended 6885

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Regulation at 59 FR 6885 eff. date corrected to 3–16–94 9805
1930.101—1939.150 (Subpart C) Exhibit B amended 3779
Exhibit B, B–3 and B–8 amended 6886
Regulation at 59 FR 6886 eff. date corrected to 3–16–94 9805
1941.19 (a) revised; (b)(4), (5) and (6) redesignated as (b)(5), (6) and (7) and (b) through (i) redesignated as (c) through (j); introductory text, new (b) and new (c)(4) added; new (f)(1) amended 25799
(b)(2) amended 22962
1941.25 (a) introductory text and (b) revised; (a)(5) and (6) added 16772
(a)(4) revised 25800
1942.306 (a)(10) added; interim 26587
1942.386 Added 12156
1942.501 Regulation at 56 FR 58178 confirmed 11531
1942.504 Regulation at 56 FR 58178 confirmed 11531
1942.507 Regulation at 56 FR 58178 confirmed 11531
1942.510 Regulation at 56 FR 58178 confirmed 11531
1942.511 Regulation at 56 FR 58178 confirmed 11531
1942.513 Regulation at 56 FR 58178 confirmed 11531
1943.17 (b) amended 25800
1943.19 (a)(2) and (b)(4) removed; (a)(3) through (8) and (b)(3) redesignated as (a)(2) through (7) and (b)(4) and (b), (d), (e) and (f) redesignated as (d) through (g); introductory text, (a)(1), new (2) and new (c) revised; new (b) and new (d)(3) added; new (f)(1) and new (g) amended 25800
(b)(1) amended 22962
1943.24 (b)(1)(i) amended 25801
1943.25 (c)(2), (3) and (4) redesignated as (c)(4), (5) and (6); (c)(1) and new (4) revised; new (c)(2) and new (3) added 16773
1943.38 (a) amended 25801
1943.69 (a)(2) and (b)(4) removed; (a)(3) through (8) and (b)(3) redesignated as (a)(2) through (7) and (b)(4); introductory text, (a)(1), new (2), (c) introductory text, (1) and (2) revised; new (b)(3) added 25801
(b)(1) amended 22962
1943.75 (c)(2), (3) and (4) redesignated as (c)(4), (5) and (6); (c)(1) and new (4) revised; new (c)(2) and new (3) added 16773
1943.88 (a) amended 25801
1944 Authority citation revised 7193
1944.205 Amended 6886, 6897
Regulations at 59 FR 6886 and 6897 eff. date corrected to 3–16–94 9805
1944.211 (a)(4), (6)(i) and (ii) revised; (a)(6)(iii) removed; (a)(6)(iv) redesignated as (a)(6)(iii) 6886
Regulation at 59 FR 6886 eff. date corrected to 3–16–94 9805
1944.212 (b) introductory text, (c)(1), (2), (3)(ii), (g), (i) and (j) introductory text revised; (c)(3)(iii) added 6887
(l)(1) amended 6897
Regulations at 59 FR 6887 and 6897 eff. date corrected to 3–16–94 9805
1944.213 (c)(6), (10), (d) introductory text, (1)(ii) and (e)(1) introductory text revised; (c)(12) removed; (b)(4), (5) and (6) redesignated as (b)(5), (6) and (7); new (b)(4) added 6887
Regulation at 59 FR 6887 eff. date corrected to 3–16–94 9805
1944.215 (a), (b) introductory text, (1) introductory text and (e) introductory text revised; (b)(1)(iii) and (h)(1) amended; (w)(3) added 6887
(r)(6), (v) and (u) amended 6897
Regulations at 59 FR 6887 and 6897 eff. date corrected to 3–16–94 9805
1944.222 (g) amended 6890, 6897
(a) amended 6896
Regulations at 59 FR 6890, 6896 and 6897 eff. date corrected to 3–16–94 9805
1944.224 (a)(3)(i) amended 6890

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Regulation at 59 FR 6890 eff. date corrected to 3-16-94 9805
1944.231 (a) amended; (e)(2), (3) and (4) redesignated as (e)(3), (4) and (5); (e) introductory text revised; new (e)(2) added 6890
(b), (c)(6), (d) introductory text and (i)(1)(vi) amended 6896
(c) heading, (1), (3), (4), (5) introductory text, (6), (8), (e)(4), (5), (f)(2), (i)(1)(i), (iv), (v), (viii), (5)(iv), (j)(3) and (k)(3) amended 6897
Regulations at 59 FR 6890, 6896 and 6897 eff. date corrected to 3-16-94 9805
1944.232 (c) amended 6897
Regulation at 59 FR 6897 eff. date corrected to 3-16-94 9805
1944.235 (a)(1) removed; (a)(2) through (5) redesignated as (a)(1) through (4); new (a)(2) and (c)(1) introductory text revised; (b)(3) and (c)(1)(viii) added 6890
(e)(1) and (f)(1) amended 6896
(c)(1)(v), (vii) introductory text, (2)(ii), (d), (e)(1), (2), (f)(1), (h) introductory text, (1), (2) and (3) amended 6897
Regulations at 59 FR 6890, 6896 and 6897 eff. date corrected to 3-16-94 9805
1944.236 (c)(3) amended 6890
(e)(2) amended 6896
(d) amended 6897
Regulations at 59 FR 6890, 6896 and 6897 eff. date corrected to 3-16-94 9805
1944.237 (a) and (c)(2) revised 6890
Regulation at 59 FR 6890 eff. date corrected to 3-16-94 9805
1944.239 Introductory text amended 6896
Regulation at 59 FR 6896 eff. date corrected to 3-16-94 9805
1944.246 (b)(3) amended 6896
(b)(2)(ii) amended 6897
Regulations at 59 FR 6896 and 6897 eff. date corrected to 3-16-94 9805
1944.201—1944.250 (Subpart E) Exhibit A amended 6891
Exhibits A-6, A-7 and A-8 amended 6892
Exhibit A-9 and A-10 amended 6896
Exhibits A, A-6 and B amended 6897
Regulations at 59 FR 6891, 6892, 6896 and 6897 eff. date corrected to 3-16-94 9805
1944.251—1944.302 (Subpart F) Revised 22225, 22235
1944.506 (e)(1) revised 7193
1945 Authority citation revised 25801
1945.163 (a)(2)(v), (xx) and (d) revised 16774
1945.169 (a) revised; (b)(3) through (7) redesignated as (b)(4) through (8) and (b) through (n) redesignated as (d) through (p); introductory text, new (b), (c) and (d)(3) added; new (e)(1), (f)(3), (h)(3), (4), (l) introductory text, (3) and (p)(2) amended 25801
(j) revised 16774
(b)(1) amended 22962
1945.175 (c) revised 16774
(c)(1)(iii) amended 25803
1948.103 (c)(4) amended; interim 24636
1951.910 (b) revised 25803
1955.3 Regulation at 58 FR 68723 eff. date corrected to 12-29-94 15966
1955.9 Regulation at 58 FR 68723 eff. date corrected to 12-29-94 15966
1955.10 Regulation at 58 FR 68724 eff. date corrected to 12-29-94 15966
1955.15 Regulation at 58 FR 68725 eff. date corrected to 12-29-94 15966
1955.18 Regulation at 58 FR 68725 eff. date corrected to 12-29-94 15966
1955.107 Regulation at 58 FR 68725 eff. date corrected to 12-29-94 15966
1980 Authority citation revised 28466
1980.490 Added; interim 28466
1980.498 Regulation at 58 FR 41172 confirmed 23615
2018.254 Introductory text revised 3651

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Proposed Rules:

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1 ..... 9114, 32138
6 28495
7 32138
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TITLE 8—ALIENS AND NATIONALITY

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3.1 Regulation at 57 FR 11570 confirmed; (d)(1-a) revised 1899
3.12 Regulation at 57 FR 11571 confirmed 1899
3.13 Regulation at 57 FR 11571 confirmed and amended 1899
3.14 Regulation at 57 FR 11571 confirmed 1899
3.15 Regulation at 57 FR 11571 confirmed 1899
3.16 Regulation at 57 FR 11571 confirmed 1899
3.17 Regulation at 57 FR 11571 confirmed 1899
3.18 Regulation at 57 FR 11571 confirmed 1899
3.19 Regulation at 57 FR 11571 confirmed 1899
3.20 Regulations at 57 FR 11571 and 11572 confirmed 1899
3.21 Regulations at 57 FR 11571 and 11572 confirmed 1899
3.22 Regulation at 57 FR 11571 confirmed 1899
3.23 Regulation at 57 FR 11571 confirmed 1899
3.24 Regulation at 57 FR 11571 confirmed 1899
3.25 Regulation at 57 FR 11571 confirmed 1899
3.26 Regulations at 57 FR 11571 and 11572 confirmed and revised 1899
3.27 Regulations at 57 FR 11571 and 11572 confirmed 1899
3.28 Regulation at 57 FR 11571 confirmed 1899
3.29 Regulation at 57 FR 11571 confirmed 1899
3.30 Regulation at 57 FR 11571 confirmed 1899
3.31 Regulations at 57 FR 11571 and 11572 confirmed 1899
3.32 Regulations at 57 FR 11571 and 11572 confirmed 1899
3.33 Regulations at 57 FR 11571 and 11573 confirmed 1899
Revised 1900
3.34 Regulations at 57 FR 11571 confirmed 1899
3.35 Regulation at 57 FR 11571 confirmed 1899
3.36 Regulation at 57 FR 11571 confirmed 1899
3.37 Regulations at 57 FR 11571 and 11573 confirmed 1899
(b) added 1900
3.38 Regulation at 57 FR 11571 confirmed 1899
3.39 Regulations at 57 FR 11571 and 11573 confirmed 1899
3.40 Regulation at 57 FR 11571 confirmed 1899
103.1 Regulation at 58 FR 44608 confirmed 17921
103.2 (a) revised 1460
(b)(2) and (3) redesignated as (b)(18) and (16); (b) heading, (1) heading and new (18) heading revised; new (b)(16)(i) and (ii) amended; new (b)(2), new (3), (4) through (15), (17) and (19) added 1461
103.3 Regulation at 57 FR 11573 confirmed 1899
103.5 (a)(1)(i) and (iii) introductory text amended; (a)(1)(iii)(C), (2), (3) and (4) revised; (a)(8) added 1463
103.5b Added 1463
103.7 Regulation at 57 FR 11573 confirmed 1899
(b)(1) amended 26590, 30518
204.5 (d) amended; interim 502
(m)(1) amended; interim 27229
204.6 Regulations at 58 FR 44608 and 44609 confirmed 17921
210a.8 Regulation at 56 FR 38333 confirmed 26594
211.1 (b)(1)(i) introductory text revised 26590
212 Authority citation revised 13870
212.1 (g) amended 1467
(l) correctly designated 1992
212.12 (e) revised; (g)(1) amended 13870
214 Authority citation revised 1463
214.1 (a) redesignated as (a)(3); (a)(1), (2) and new (3) heading added; (c) and (d) revised 1463
Regulation at 56 FR 38333 confirmed 26594

214.2 (h)(1)(ii)(B)(*1*), (4)(i)(B)(*5*), (viii)(A)(*1*) and (B)(*2*) revised; (h)(2)(i)(B) amended; (h)(4)(viii)(C) added 1470
Regulation at 56 FR 38333 confirmed 26594
216 Heading revised 26590
Authority citation revised 26590
216.1 Amended 26590
216.2 (b) and (c) amended 26590
216.3 Revised 26590
216.4 Heading revised; (a)(1) and (2) amended 26590
(a)(6) amended 26591
216.5 Heading and (a) introductory text revised; (b) and (c) amended 26591
216.6 Added 26591
223 Revised 1464
223a Removed 1465
235.11 (a) and (c) revised 26592
238.3 (a) revised; (b) amended 1617
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238.4 Amended 1618
241.1 Regulation at 56 FR 38333 confirmed 26594
242.2 Regulation at 57 FR 11573 confirmed 1899
242.7a Regulation at 56 FR 38333 confirmed 26594
242.8 Regulation at 57 FR 11574 confirmed 1899
Regulation at 56 FR 38333 confirmed; (a) amended 26594
242.17 (a) revised 26593
Regulation at 56 FR 38333 confirmed; (d) amended 26594
242.20 Amended 26595
242.23 Regulation at 56 FR 38333 confirmed 26594
245a.2 Regulation at 58 FR 45236 confirmed 1471
248 Authority citation revised 1465
248.1 (a) amended; (b) revised 1465
248.3 (a), (b) and (c) revised; (d) removed 1466
264.1 (b) amended; (c)(1) removed; (c)(2) redesignated as (c)(1) 1466
264.4 Added 1466
264.5 (g) added 1466
264.6 Added 1466
292.3 Regulation at 57 FR 11574 confirmed 1899
292.4 (a) amended 1466
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51.6 (c) revised; interim 12533
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78 Technical correction 2649
78.1 Amended 9399, 18951, 31923
78.30 (a) amended; (c) added 18952
78.32 Revised; interim 12533
78.41 (b) and (c) amended; interim 14360
(a) and (b) amended; interim 15613
78.43 Regulation at 58 FR 68506 confirmed 22497
79 Authority citation revised 21921
79.1 Amended 21921
79.2 (a)(1) through (7) redesignated as (a)(2)(i) through (vii); (a) introductory text and new (2)(iv) revised; new

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92.101 (b)(3)(i) revised; interim....10732
92.103 (a)(2)(iv) through (vii) added; interim....10733
92.104 (c)(12) and (13) redesignated as (c)(15) and (16); new (c)(12), new (13), (14), (d)(8), (9), and (10) added; interim....10733
92.301 (c)(1) revised; interim....24888
92.304 (a)(3)(i) amended....31924
92.308 (a)(2) amended....9073
(a)(2) amended; interim....24888
92.316 Amended....28216
92.404 (c)(3) redesignated as (c)(4); new (c)(3) added; (c)(1) and new (c)(4) amended....28216
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92.418 (a) amended....28216
92.419 (a) amended; (c) removed....28216
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92.700—92.701 (Subpart G) Added; interim....29187
94.0 Amended....13185
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94.4 Footnote 1 removed; (b) introductory text, (1), (2) and (4) revised; (b)(3) and Footnotes 2 and 3 redesignated as (b)(8) and Footnotes 1 and 2; new (b)(3), (5), (6), (7) and (c) added....13186
94.9 (b)(1)(ii)(*a*), (*b*), (iii)(*a*), (*b*) and (c) redesignated as (b)(1)(ii)(A), (B), (iii)(A), (B) and (C); new (b)(1)(iii) introductory text, (C)(*2*), (2), (3) and (c) amended....28218
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94.12 (b)(1)(iv)(A) revised....12536
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94.13 Introductory text amended....28220
94.18 (a) revised....24638
95 Authority citation revised....9400
95.11 Heading revised; existing text designated as (a); (b) added....9400
96.2 (b) revised....27970
97.2 Table amended....21638
98 Authority citation revised....26596
98.31 Existing text designated as (a); (b) added....26596
98.34 (a)(3) amended....26596
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145.23 (d)(1)(vi), (vii), (viii), (e)(1)(ii)(*a*) and (*b*) redesignated as (d)(1)(vii), (viii), (ix), (e)(1)(ii)(A) and (B); (b)(3) introductory text, (v), (d) heading, (1)(i), (v), new (vii), (2) and (3) amended; new (d)(1)(vi) added....12798
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145.53 (a) Footnote 1 redesignated as Footnote 7; (b)(3) introductory text and (v) amended....12799
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147.5 (b) Footnote 1 redesignated as Footnote 4 and amended; OMB number....12799
147.6 (b) introductory text, (5) and (12) through (15) amended....12799
147.7 Heading Footnote 1 redesignated as Footnote 5; introductory text, (a) heading, (1) introductory text and (e) amended....12799
(e) heading amended; (e) introductory text through (3)(xi) redesignated as (e)(1) introductory text through (iii)(K); new (e)(1) heading and (2) added....12800
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147.11 Footnotes 1 through 4 and (a) through (j) redesignated as Footnotes 7 through 10 and (b)(1) through (10); new (a) and new (b) heading added; OMB number....12801
147.12 (c)(2) Footnote 1 redesignated as Footnote 11; OMB number....12805
147.13 OMB number....12805
147.14 Heading Footnote 1 redesignated as Footnote 12; new Footnote 12 and (a)(2) introductory text amended; (a)(2)(i) and (ii) added....12805
147.15 Footnotes 4 through 11 redesignated as Footnotes 13 through 20....12805
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147.43 (a) introductory text amended....12805

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313.5 (a)(1) and (b)(3) amended; (a)(3) and (b)(1)(i) revised....21640
317 Compliance date extended....30875
317.2 (l) added....14539
317.5 (b)(12) and (13) amended; (b)(14) added....14540
317.8 (b)(37) removed....12538
317.309 Regulation at 58 FR 47627 confirmed....12158
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317.362 Regulation at 58 FR 47627 confirmed....12158
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319.5 (e)(2) amended....33642
319.700 (a) amended; Footnote 2 revised....33642
320.1 (b)(9) correctly designated....6897
381 Compliance date extended....30875
381.125 Undesignated text designated as (a); (b) added....14540
381.134 (b)(12) and (13) amended; (b)(14) added....14540
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381.409 Regulation at 58 FR 47628 confirmed....12158
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381.413 Regulation at 58 FR 47628 confirmed....12158
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381.462 Regulation at 58 FR 47628 confirmed 12158
381.463 Added; eff. 11-10-95 24228
381.480 Regulation at 58 FR 47628 confirmed 12158
381.500 Regulation at 58 FR 47628 confirmed 12158

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TITLE 10—ENERGY

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0 Authority citation revised 17460
0.735-1 Added 17460
0.735-2 Redesignated from 0.735-21; heading revised 17460
0.735-8 Removed 17460
0.735-21 Redesignated as 0.735-2 17460
0.735-29 Removed 17460
0.735-40 Removed 17460
1.5 (b) amended 17465
1.41 (h) amended 5519
2.1205 (c)(2) revised 29189
12 Added 23121
20.1—20.602 Sections and Appendixes A, B and D correctly removed; Appendix C correctly redesignated as Part 30 Appendix B 1900
20.2202 (d)(2) revised 14086
20 Appendix D amended 17465
21.2 (d) amended 14086
21.3 (e) amended 5519
21.21 (c)(3)(i) amended 14086
26.24 (a)(2) revised 507
30.6 (b)(2)(iv) revised; (b)(2)(v) removed 17465
30.8 (b) corrected 1618
30.35 (f)(2) corrected 1618
30.50 (c)(1) Footnote 1 amended 14086
30.70 Table amended 5519
30 Appendix C correctly designated 1618
32.51 (a)(3)(iii) amended 5520
34.42 Corrected 1900
35.33 (a)(1) Footnote 2 amended 14086
40.5 (b)(2)(iv) revised; (b)(2)(v) removed 17466
40.36 (e)(2) corrected 1618
40.60 (c)(1) Footnote 1 amended 14086
40 Appendix A amended 28229
50.36a (b) amended 5520
50.54 (s)(1) amended 5520
(bb) revised 10269
50.55 (e)(6)(i) amended 14087
50.72 (a)(2) Footnote 3 amended 14087
50.75 (e)(2)(iii) corrected 1618
50 Appendix E amended 14090
55.2 (c) added 5938
55.5 (b)(1) and (3)(ii) revised; (b)(2)(v) removed 17466
55.57 (b)(2)(iv) removed 5938
55.59 (c) introductory text revised 5938
70.5 (b)(2)(iv) revised; (b)(2)(v) removed 17466
70.25 (f)(2) corrected 1618
70.50 (c)(1) Footnote 1 amended 14087
70.52 (a) Footnote 1 amended 14087
72.30 (c)(2) corrected 1618
72.74 (a) Footnote 1 amended 14087
73.57 (d)(3) revised 662
73.67 (e)(3)(vii) Footnote 1 and (g)(3)(iii) Footnote 1 amended 14087
73.71 (a)(1) Footnote 1 amended 14087
73 Appendix A amended 17466

171 Authority citation revised 12543
171.11 (a) revised 12543
171.15 (c)(3) and (4) added 26098
171.16 (f) and (g) added 26099

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435.109 Amended 18293
600.12 (c) revised 18474

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765 Added 26726
830 Added 15851

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104.7 Regulation at 58 FR 57729 eff. 3-3-94 10057
107 Revised (effective date pending) 33615
114.1 (a)(2)(viii) revised (effective date pending) 33615
9008 Revised (effective date pending) 33616

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3 Appendix A amended 10952, 10953
5.33 Regulation at 57 FR 49642 confirmed; (b)(8) revised 22498
27 Authority citation revised 26415
27.3 (a) and (b)(1)(xx) revised 26415
27.4 (c)(5) revised 26415
27.7 (b), (c) introductory text and (d) revised 26415
27 Heading to Part 27 appendixes added; Appendix II revised 26415
Appendix IV corrected 31924
34 Statement and order 6531
34.42 (d) through (l) redesignated as (e) through (m); new (d) added 29499

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34.43 (a) revised; (b), (c) and (d) redesignated as (d), (e) and (f); new (b) and new (c) added 29499
34.44 Revised 29500
34.45 (b) revised 29500
34.41—34.47 (Subpart C) Appendix A removed 29500

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201 Authority citation revised 29538
201.51 (d), (e), (f) and (g) through (k) redesignated as (e), (f), (g) and (i) through (m); new (d) and new (h) added 29500
Revised 29538
201.52 Revised 29538
205 Authority citation revised 10683
205.15 Added 10683
205 Appendix A amended 10683
207 OTC margin stock list 4549, 23124
208.22 Added 28761
210 Authority citation revised 22965
210.1 Amended 22965
210.2 (g) introductory text revised; (p) added 22965
210.3 (a) amended; (f) added 22965
210.5 (a) introductory text and (2) revised; (b)(3) amended; (d) added 22965
210.6 (b) and (c) amended; (b)(1) and (2) revised 22966
210.9 (a)(5) revised 22966
210.12 (a) amended; (d) through (g) redesignated as (e) through (h); new (d) and (i) added; (c) introductory text, (2), new (e) concluding text and (h) revised 22966
210.13 Revised 22966
210.14 Revised 22967
215 Authority citation revised 8837
215.1—215.13 (Subpart A) Revised 8837
215.21 (a) amended; Footnote 10 removed; Footnotes 11 and 12 redesignated as Footnotes 5 and 6 8842
215.22 (c)(1)(ii) amended 8842
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224 OTC margin stock list 4549, 23124
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225.4 (b)(1) revised; (b)(6) added 22968
225.62 (d), (e), (f) and (g) through (k) redesignated as (e), (f), (g) and (i) through (m); new (d) and (new (h) added 29500
225.63 Heading and (a) revised; (b) and (c) redesignated (d) and (e); new (b) and new (c) added 29500
225.64 Revised 29501
225.65 (b) revised 29501
225.61—225.67 (Subpart G) Appendix A removed 29501
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230 Determination 24032
231 Added 4784
264b.3 (d) amended 12805
265.11 (c)(11)(v) revised 22968
268 Revised 16098

Chapter III—Federal Deposit Insurance Corporation (Parts 300—399)

303 Authority citation revised 7198
303.2 Heading and (a) introductory text revised 4250
303.6 (a)(3), (f)(1)(ii)(B) heading and (2) revised; (f)(1)(ii) introductory text, (3) and (4) amended 4250
303.15 Added; interim 7198
323 Statement and order 6531
Authority citation revised 29501
323.2 (d) through (l) redesignated as (e) through (m); new (d) added 29501
323.3 Heading and (a) revised; (d) amended; (b), (c) and new (d) redesignated as (d), (e) and new (f); new (b) and new (c) added 29501
323.4 Revised 29502
323.5 (b) revised 29502
323 Appendix A removed 29502
325 Authority citation revised 3784
325.1—325.6 (Subpart A) Appendix A amended 3784
327.4 (b)(2)(iv)(B) amended; (b)(2)(v) added 29715

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412 Added 31136

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503 Authority citation revised 18475
503.1 (e) amended 18475
504 Authority citation revised 18475
504.3 Introductory text amended 18475
504.4 Amended 18475
505 Authority citation revised 18475
505.2 Amended 18475
505.4 Amended 18475
515 Authority citation revised 18475
515.2 Amended 18475
515.4 (a) introductory text and (b) amended 18475
515.5 Amended 18476
544 Authority citation revised 18476
544 Appendix amended 18476
545.32 (b)(2) amended 29502
545.103 (b) amended 29502
552.4 (d) amended 18476
552.6 (d)(1) amended 18476
552 Appendix amended 18476
561.5 Added 18476
563.170 (c)(1)(iv) revised 29502
563b.2 (a)(14) removed; (a)(15) through (19) and (29) through (40) redesignated as (a)(14) through (18) and (30) through (41); new (a)(16) revised; new (a)(19) and (29) added; interim 22732
563b.3 (c)(2)(i), (ii), (4)(i) through (iv), (5)(i) and (ii) redesignated as (c)(2)(ii), (iii), (4)(ii) through (v), (5)(ii) and (iii); new (c)(2)(i), new (4)(i), new (5)(i) and (g)(4) added; (c)(6)(i), (iv), (7), (14), (23), (d)(4), (g) heading, (1)(i), (ii) and (3) revised; (g)(1)(iii) removed 22733
563b.4 (b)(1) amended; (c) revised; interim 22734
563b.5 (d)(4) and (e)(5) revised; interim 22734
563b.7 (f)(1)(ii) and (3) revised; (f)(1)(iii) amended; (f)(1)(iv) added; interim 22734
563b.8 (e)(1) and (t)(1) amended; interim 22735
563b.10 Revised; interim 22735
563b.100 Amended; interim 22735
563b.101 Amended; interim 22735
564 Statement and order 6531
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564.2 (d) through (l) redesigntated as (e) through (m); new (d) added 29502
564.3 (a) revised; (b), (c) and (d) redesignated as (d), (e) and (f); new (b) and new (c) added 29502
564.4 Revised 29503
564.5 (b) revised 29503
564.8 (d) introductory text and (2) amended; (d)(1) removed; (d)(2) designation removed 29503
564 Appendix A removed 29503
567 Authority citation revised 4788
567.1 (v) revised 12810
567.5 (a)(2)(i) and (ii) revised; (a)(2)(iii) removed 4788
567.6 (a)(1)(iii)(C) revised; eff. in part 3–18–94 to 9–29–94 and 9–30–94 12810
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567.7 (a) amended 12811
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567.12 Added 4788
574.6 (a) revised 28470
574.7 Heading and (c) revised 28471
575.7 (e) added; interim 22735
575.13 (a)(4) amended; interim 22735
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600.4 (b) revised; (c) and (d) added (effective date pending) 21641
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600.5 (a), (b) and (c) redesignated as (b), (d) and (e), new (a) and new (c) added; new (b) and new (d) revised (effective date pending) 21642
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608 Added (effective date pending).....13187
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615.5060 (a) revised (effective date pending).....3787
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615.5132 Regulation at 58 FR 63056 eff. 3-15-94.....11898
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615.5150 Regulation at 58 FR 63056 eff. 3-15-94.....11898
615.5151 Regulation at 58 FR 63056 eff. 3-15-94.....11898
615.5160 Regulation at 58 FR 63056 eff. 3-15-94.....11898
615.5170—615.5172 (Subpart F) Regulation at 58 FR 63058 eff. 3-15-94.....11898
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615.5495 (b) amended (effective date pending).....21643
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650 Added (effective date pending).....9626
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741.11 (b)(1), (c), (d) and (g) revised.....33421

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935.1 Amended.....2949
935.5 (a)(2) amended; (a)(3) and (b) through (g) added.....2949
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1402 Added.....24638
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1627 Revised.....5939
1630 Added; interim.....8845

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107.1 Amended.....16916, 16942
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107.4 (b)(1), (2) and (3)(i) revised; (c) amended; (f) added.....16945
107.101 (d) and (e) redesignated as (e) and (f); (a) and new (e) introductory text revised; new (d), (g), (h) and (i) added.....16945
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107.302 Revised 16946
107.303 (b) redesignated as (c); (a) and new (c) introductory text, (6) and (7) *Example* revised; new (b) added 16947
107.304 Heading, (a)(1) and (b) revised; (c) added 16947
107.305 Added 16948
107.401 (a)(5) revised 16948
107.402 (a) and (d) revised; (e), (f) and (g) added 16948
107.403 (b)(1) revised 16949
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107.901 (a) amended 16933, 16951
107.906 (a) revised 16933
107.1004 (a) amended 16933
107 Appendix III added 16951
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121.601 Table revised 16518
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121.802 (a)(2) amended; (a)(3) redesignated as (a)(4); new (a)(3) added 16956
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121.906 (b)(3) revised 12814
121.1102 (a)(3) added 12814
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123.41 (b)(2)(ix) revised 10956
124.107 Introductory text and (a) revised; (b) and (c) redesignated as (c) and (d); new (b) added 12814
124.111 (a)(2)(ii) revised 12815
124.112 (a)(3)(i) removed; (a)(3)(ii) and (c)(2)(iii) redesignated as (a)(3)(i) and (c)(2)(iv); (a)(1), (c) introductory text and new (2)(iv) introductory text amended; new (a)(3)(ii) and new (c)(2)(iii) added; (c)(2)(i) revised 12815
124.305 (f) revised 12815
124.307 (e) added 12815
124.311 (f)(4) and (5) introductory text revised; (f)(5)(iii) and (iv) redesignated as (f)(5)(iv) and (v); new (f)(5)(iii) added; new (f)(5)(v) amended 12815
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124.321 (h)(2) and (3) amended 12816
124.601 (c) amended 12816
124.602 (f) and (g) amended 12816
124.604 Amended 12816
124.605 (a)(3) and (c)(1) amended 12816
124.607 (d) amended 12816
124.608 (a), (b) introductory text, (1), (3) and (c) amended 12816
124.609 (a) and (b) amended 12816
Authority citation revised 16942

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302 Authority citation revised 15329
302.2 Revised; interim 15329
302.3 (b) revised; interim 15329
302.7 (a)(2) revised; interim 15329
302.8 (a)(2) revised; interim 15329
305.5 (b)(3) table amended; interim 15329

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23.783 (f) added 25772
23.803 Existing text designated as (a); (b) added 25773
23.805 Added 25773
23.807 (d) introductory text and (1) revised; (d)(3), (4) and (e) added 25773

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23.811 (c) added 25773
23.812 Added 25774
23.813 Existing text designated as (a); (b) added 25774
23.815 Existing text designated as (a) and amended; (b) added 25774
25 Special FAA conditions 7199, 7202, 13870, 13875, 14740, 28234, 28762, 29538
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25.519 Added 22102
25.1316 Added 22116
25.1415 (d) revised 32057
27 Special FAA conditions 3988
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29.1415 (d) revised 32057
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61.197 (c) revised 17646
63 Authority citation revised 7389
63.12b Revised 7389
65 Authority citation revised 7389
65.23 Revised 7389
65.46a Added 7389
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73.67 22129
73.202 (b) table amended 7908
91 Regulations at 59 FR 2918 and 10958 eff. date delayed 24916
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91.92 Added 17452
91.126 (b) introductory text revised; (d) added 11693
91.127 (c) added 11693
91.130 (e) added 11693
91.207 (a) introductory text, (1) introductory text, (2) and (c)(2) revised; (d) and (e) redesignated as (e) and (f); new (e)(2) amended; new (d) added 32057
91 Appendix D amended 2918, 6547
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121 SFAR No. 36 revised 3940
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Authority citation revised 7389
121.339 (a)(4) revised 32057
121.343 (c) introductory text amended; (c)(1) added 26900
121.353 (b) revised 32057
121.458 Added 7389
121.459 Added 7390
121 Appendix A amended 1781
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125 Authority citation revised 32057
125.207 (a)(1)(iii) amended 1781
125.209 (b) revised 32058
127 SFAR No. 36 revised 3940
135 SFAR No. 36 revised 3940
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135.1 (c) and (d) revised 7396
135.129 (a)(2) and (3) redesignated as (a)(3) and (4); (a)(2), new (3) heading and new (4) heading added; (a)(1) revised 33603
135.167 (c) revised 32058
135.177 (a)(1)(iii) amended 1781
135.253 Added 7396
135.255 Added 7397
139.311 (f) revised 7120
141 Authority citation revised 17646
141.79 (c) revised 17646
145 SFAR No. 36 revised 3940
157 Comment disposition 10262

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300.0 Amended 10061
302.1 (a) amended 10061
302.22a (b) introductory text, (1), (c) and (d) amended 10061
303.02 (b) amended 10061
325.7 (c) amended 10061
325.8 (b) amended 10061
385.1 Amended 10061
385.13 (vv)(4) amended 10061
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7 Redesignated as Part 285 22745

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285 Redesignated from Part 7 22745
Authority citation revised 22745
285.1 Revised 22746
285.2 Revised 22746
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285.5 Revised 22746
285.6 Revised 22747
285.7 Revised 22747
285.8 Added 22747
285.11 (a), (b)(1), (3)(ii) and (c) revised; (e) and (f) added 22747
285.12 (a) and (b)(6) revised 22748
285.13 (a) and (c) revised 22748
285.14 (a) introductory text and (c) revised 22748
285.15 (a) and (c) revised 22748
285.17 (c) revised 22748
285.18 Revised 22748
285.19 (a) revised 22748
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285.22 Revised 22748
285.23 (a) and (b) revised; (d) removed 22749
285.24 Revised 22749
285.26 Added 22749
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285.33 Revised 22750
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290 Authority citation revised 22505
290.4 (b) Table 1 and (c)(5) revised 22505
295 Authority citation revised 666
295.1 Revised 666
295.2 (a) revised; (b), (c) and (d) through (i) redesignated as (e), (h) and (k) through (p); new (b), (c), (d), (f), (g), (i) and (j) added 666

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295.3 Redesignated as 295.6; new 295.3 added 667
295.4 Redesignated as 295.7 667
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295.5 Redesignated as 295.8 667
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295.6 Redesignated as 295.9; new 295.6 redesignated from 295.3 667
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295.7 Redesignated as 295.10; new 295.7 redesignated from 295.4 667
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295.8 Redesignated as 295.11; new 295.8 redesignated from 295.5 667
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295.9 Redesignated as 295.12; new 295.9 redesignated from 295.6 667
295.10 Redesignated as 295.13; new 295.10 redesignated from 295.7 667
295.11 Redesignated from 295.8 667
295.12 Redesignated from 295.9 667
295.13 Redesignated from 295.10 667
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295.20—295.24 (Subpart B) Heading revised 670
295.21 Revised 670
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295.24 Revised 670
295.30—295.32 (Subpart C) Heading revised 670
295.30 Revised 670
295.31 Revised 670

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303.14 (a)(1)(i), (d)(1) and (2) amended 8847
(e) amended 8848

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770 Authority citation revised 8849, 25305
770.2 Amended 8849, 13197
770.14 (a) introductory text and (3)(ii) amended 30683
770 Supplement No. 1 amended 6524
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771 Authority citation revised 25305
771.2 (c)(7) revised; interim 10962
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(c)(11) removed 30685
771.4 Footnotes 4 through 6 redesignated as Footnotes 2 through 4; interim 10962
(b)(3) revised 14362
(b)(3) removed 30685
771.6 Footnote 8 redesignated as Footnote 5; interim 10962
771.9 Footnote 9 redesignated as Footnote 6; interim 10962
771.10 Footnote 10 redesignated as Footnote 7; interim 10962
771.12 Footnotes 11 and 12 redesignated as Footnotes 8 and 9; interim 10962
771.14 (b) amended 30683
771.17 (a)(4) and (f)(3)(iv) removed; (a)(5) redesignated as (a)(4); (e)(3)(ii), (f)(2)(iii) and (3)(iii) revised; (e)(3)(iii) added; (f)(2)(i) and (ii) amended 9403
771.18 Footnote 13 redesignated as Footnote 10; interim 10962
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(b) amended 25305
771.23 (c) amended 15622, 25306
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771.25 (b) and (f)(2) amended 13197
771.27 Removed 6524
771.28 Removed 6524
771 Supplement No. 1 added 15622
Supplement No. 1 amended 25306
772 Authority citation revised 8849, 25305
772.1 (h) added 8850
772.4 (a)(1)(iv) revised; interim 10963
772.11 (b)(2)(i) amended; (k)(1) introductory text revised 25306
772 Supplement No. 1 amended; interim 10963
773 Authority citation revised 8849, 25305
773.1 (a) removed 30685
773.2 (b)(1) removed 30685

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773.7 (d)(1)(iii) revised; (e) removed; (k) introductory text amended 25306
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773.8 (d)(1) amended 25306
773.9 (l) amended; interim 12826
773 Supplement No. 1 amended 8850
Supplement No. 1 through 4 amended; interim (ECCN 3A52) 10963
Supplement No. 8 amended 13197
Supplement No. 3 amended 25306
774 Authority citation revised 25305
774.2 (a)(4) revised 9403
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774.3 (c)(1)(ii) revised 25306
775 Authority citation revised 25305
775.1 (b) table amended 25306
(a) amended 30683
775.1 Supplement No. 1 amended 30683
775.2 (b)(1) revised 25306
775.3 (b) introductory text and Footnote 1 revised 25306
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775.5 Removed 25306
775.8 Heading and (b)(2) revised; (a) and (e) amended 25306
775.10 Introductory text, (c)(2) heading and introductory text, (3), (f) introductory text, (g)(1) introductory text, (2)(i) introductory text, (2)(ii) and (h)(1) introductory text revised; (a), (b), (d) and (g) heading amended; Footnote 4 redesignated as Footnote 3 25307
775 Supplement No. 1 amended 25308
776 Authority citation revised 8849
776.10 (a)(2) revised 25308
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778 Authority citation revised 25305
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778.8 (a)(1) introductory text, (5)(i), (iv)(B) and (v) revised; interim 12826
778.9 (c) revised; interim 12826
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779.1 (b)(1) introductory text amended; (b)(1)(ii) and (c) introductory text revised 13449
779.2 Supplement No. 1 amended; interim 12828
779.4 Introductory text revised 13449
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799 Authority citation revised 8849, 25305
799.1 (b)(4) revised 30685
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923.25 (a), (c)(1) and (2) revised 27978
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923.41 (a), (b)(1) and (2) introductory text revised 27979
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923.43 (a) revised; (b) introductory text and (c)(2)(i) amended 27979
923.44 (a) revised 27979
923.45 (b)(2) removed; (b)(3) redesignated as (b)(2); (a) and new (b)(2) revised 27979
923.46 (a), (c)(1) and (2) revised 27980
923.47 (a) revised 27980
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923.50 (a), (b)(2) and (3) revised; (b)(4) and (5) added; (d) amended 27980
923.51 (a), (d) introductory text and (5)(vii) revised; (b) amended 27980
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128.21 (a)(4) revised; interim 30294
128.23 Revised; interim 30294
128.24 (b) and (c) amended; (d) and (e) revised; interim 30294
128.25 Revised; interim 30295
128.26 Removed; interim 30295
141 Authority citation amended 30295
141.4 Revised; interim 30295
142 Interpretation 17474

143.21 (l) added; interim 30295
143.23 (i) and (j) added; interim 30295
143.26 Added; interim 30296
145 Authority citation amended 25570, 30296
145.31 Revised; interim 30296
145.32 Revised; interim 30296
145.35 Amended 25570
148 Authority citation amended 30296
148.12 (b)(2)(ii) amended; interim 30296
148.51 (b)(1) amended; interim 30296
148.64 (b)(1) amended; interim 30296
159.6 (a), (b) and (c) amended; (d) revised; interim 30296
175 Regulation at 59 FR 13450 eff. date corrected to 4–29–94 16895
178.2 Table amended (OMB numbers) 25571

Chapter II—United States International Trade Commission (Parts 200—299)

206 Regulation at 59 FR 5091 confirmed 19638
207.90—207.120 (Subpart G) Regulation at 59 FR 5097 confirmed 19638

Proposed Rules:

4 25376
12 26151
101 23817
141 32942
177 ..... 18771, 32942
191 31177
201 18982
207 18982

TITLE 20—EMPLOYEES' BENEFITS

Chapter II—Railroad Retirement Board (Parts 200—399)

200.4 (g)(1) revised 28765

Chapter III—Social Security Administration, Department of Health and Human Services (Parts 400—499)

404.1501—404.1599 (Subpart P) Appendix 1 corrected 30389
416.1201 (b) revised 27988
416.1208 Added 27989

Chapter V—Employment and Training Administration, Department of Labor (Parts 600—699)

626.2 (a) amended 26600
626.3 (a) amended 26600
626.4 Amended 26601

Chapter IX—Office of the Assistant Secretary for Veterans' Employment and Training, Department of Labor (Parts 1000—1099)

1005 Removed 26601

Proposed Rules:

641 21874

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

5.31 (g) added 31138
5.80 (e) revised 33431
16 Public workshop 29950
73.200 Regulation at 59 FR 10578 effective date confirmed 28765
74.1101 Regulations at 59 FR 7638 and 8507 eff. date confirmed as 3–19–94 25322
74.1340 Regulation at 59 FR 7635 eff. date confirmed as 3–19–94 24643
74.2101 Regulations at 59 FR 7638 and 8507 eff. date confirmed as 3–19–94 25322
74.2340 Regulation at 59 FR 7636 eff. date confirmed as 3–19–94 24643
74.3602 Regulation at 59 FR 11720 eff. date confirmed 26420
101 Notice 28480
101.12 Table 2 amended 24039
101.36 Regulation at 59 FR 371 eff. date corrected to 7–1–95; (b)(4) introductory text, (vi), (c)(10) and (g) amended 24039
101.65 (d)(2), (3) and (4) added 24249

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TITLE 21 Chapter I—Con.

103.35 (d)(1)(i) table amended; (d)(3) introductory text revised; (d)(3)(i) and (v) added 26937
131 Authority citation revised 17691
131.130 (a) revised 17691
Regulation at 59 FR 17691 confirmed 32078
166 Authority citation revised 26939
166.110 (a) introductory text heading and (c) heading added; (a)(1) revised; (b) heading and (d) heading amended 26939
172.811 (b) revised 24924
173.21 Added 15623
173.170 Added 26711
176.170 (a)(5) table amended 33195
177.1520 (b) table amended 26422
178.2010 (b) table amended 33196
178.3295 Table amended 25323
336.50 (c)(1) revised; eff. 4-11-95 16982
338.50 (c)(3) revised; eff. 4-11-95 16983
341.14 (a)(5) and (6) added 29174
341.74 (c)(4)(vii), (viii), (ix), (d)(1)(iv) and (v) added 29174
341.90 (r) and (s) added 29174
346.18 (b) revised 28767
346.50 (b)(2)(vi) heading and (d)(8) heading amended 28767
347.10 (c) revised 28768
347.50 (b)(3) heading, (c)(2) heading and (d)(3) heading amended 28768
442.52 Added 26940
442.253 Redesignated as 442.253a; new 442.253 heading added 26941
442.253a Redesignated from 442.253 26941
442.253b Added 26941
510.600 (c)(1) table and (2) table amended 28768, 31139, 33197, 33198
520.531 (a) removed; (b) revised 26942
520.804 Added 17694
520.903c Removed 33198
520.905a (d)(3) added 26943
520.1806 (b) amended 28769
520.2045 (b)(2) amended 28769
520.2260a (b)(1) amended 22754
520.2260b (b)(1) amended 22754
520.2260c (a) amended 22754
520.2325a (c)(2) amended 28769
(c) amended 33197
520.2325b (c) amended 33197
520.2345d Revised 17693
(a)(1) amended 19133
522.1145 (a)(2) amended 33198
522.1680 (b) amended 31139
522.2680 Revised 19639
524.900 (c) amended 28769
524.1580b (b) amended 33197
524.1580c (b) amended 33197
529.1044a (b) amended 31140
556.275 Revised 26943
556.425 Revised 17922
558.4 (d) table amended 17477, 18297
558.95 (b)(4)(ii) added 15624
(b)(1)(xii)(*b*) amended 19134
(b)(1)(x)(*b*) and (xi)(*b*) amended 33197
558.305 Added 18297
558.311 (e)(1) table amended 33197
558.355 (f)(1)(xii)(*b*) and (xx)(*b*) amended 33197
558.360 (d)(2) redesignated as (d)(2)(i); new (d)(2)(i) heading and (ii) added; (d)(3) amended 17922
558.550 (a)(2) revised 15339
(a)(2) amended 19134, 21930, 26423, 26943
(a)(2), (b)(1)(x)(*c*), (xii)(*b*) and (c) amended 26424
(b)(1)(ii)(*c*) amended 33197
558.555 Added 17477
558.586 (a) amended 33197
558.625 (b)(71) removed 33198
573.130 Added 26711
606.65 (c) table amended 23636
606.121 (c)(12)(i), (ii) and (iii) amended 23636
660.28 (a)(1) table and (4) amended 23637
821.2 (b) introductory text amended 31138
1020.30 (b) amended 26403
1020.32 (d) revised; (e) through (h) redesignated as (f) through (i); new (e) added 26404
1270 Public workshop 29950

Chapter II—Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

1306.02 (h) redesignated as (i); new (h) added 26111
1306.11 (a) revised; (e) and (f) added 26111
(a) and (f) corrected 30832
1306.21 (a) and (c) revised 26112
1306.31 (c) revised 26112
(c) corrected 30832

Proposed Rules:

1—1299 (Ch. I) 26352, 29977
73 23035
74 23035
101 16577
123 16578
168 23035
172 23035
173 23035
182 23035
184 23035
331 17747
333 31402
343 18507
352 ..... 16042, 29706
369 31402
600 28821
601 28821
606 28822
607 28822
610 ..... 28821, 28822
640 28822
660 28822
700 16042
740 16042
810 ..... 30656, 32489
878 23036
1240 16578
1301 ..... 30555, 30738

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State (Parts 1—199)

22.1 Table amended; interim 25324
41.107 (e) added; interim 25325
120.15 Revised 25811
120.16 Revised 25811
123.16 (a) revised 29951
124.10 Revised 29951
126.1 (a) and (d) revised; (f) added 15625
126.5 Revised 29951
145 Added 18731

Chapter II—Agency for International Development, International Development Cooperation Agency (Parts 200—299)

220 Removed 28769

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222 Removed 28769

Chapter V—United States Information Agency (Parts 500—599)

502 Revised 18965
514.30 (b)(3) removed; (i) amended; (j) added; interim 16984

Proposed Rules:

42 ..... 18010, 21948
502 ..... 17057, 18772

TITLE 23—HIGHWAYS

Chapter I—Federal Highway Administration, Department of Transportation (Parts 1—999)

657 Authority citation revised 30418
657.11 Revised 30418
657.13 Revised 30418
657.15 Revised 30418
657.17 Revised 30418
658 Authority citation revised 30419
658.1 Revised 30419
658.5 Amended 30419
658.13 (d)(1)(i), (2)(i) and (e) amended; (d), (e) and (f) redesignated as (e), (f) and (g); new (d), (e)(4) and (5) added 30419
658.15 (b) and (c) amended 30419
658.17 (f), (g) and (h) redesignated as (g), (h) and (i); new (f), (j) and (k) added; new (h) revised 30420
658.19 (a) revised 30420
658.23 Added 30420
658 Appendix A amended 30421
Appendix C added 30422
660 Revised 30300
710 Authority citation revised 25327
710.203 (e)(3) revised 25327
710.204 Added 25327
710.304 (j)(5) amended 25327
712 Authority citation revised 25327
712.408 (a) revised 25327
712.805 (c)(1) revised 25327
713 Authority citation revised 25327
Authority citation corrected 30302
713.103 (h)(1) revised 25327
720 Authority citation revised 25327
720.22 (d)(2) revised 25327

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TITLE 23

Chapter II—National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)

1260.19 (d) added 30698
1260.21 (c) revised 30698

Proposed Rules:

645 25579

TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

9 Added 31047
24 Authority citation revised 18482
24.700 Revised 18482
42 Revised 29329
50 Authority citation revised 17199, 19107
50.3 Regulation at 57 FR 32110 confirmed 17199
50.4 (b)(3) removed; (b)(1) and (2) revised 19107
50.17 Regulation at 57 FR 32110 confirmed 17199
50.19 Regulations at 57 FR 32110 and 58 FR 41337 confirmed 17199
50.20 Regulations at 57 FR 32110 and 58 FR 41337 confirmed 17199
55 Added 19107
55.12 (b)(2) amended 33199
55.22 Heading revised; (a) introductory text and (b)(1) introductory text amended 33199
58.5 (b)(1) revised 19112
92 Waiver 22506
92.2 Amended; interim; eff. 5–19–94 through 6–20–95 18631
92.4 Added; interim; eff. 5–19–94 through 6–20–95 18631
92.50 (f) redesignated as (d)(5) and revised; interim; eff. 5–19–94 through 6–20–95 18631
92.61 Heading revised; interim; eff. 5–19–94 through 6–20–95 18631
92.64 (a)(1) revised; interim; eff. 5–19–94 through 6–20–95 18632
92.150 (b)(2) revised; interim; eff. 5–19–94 through 6–20–95 18632
92.204 (a)(1) revised; interim; eff. 5–19–94 through 6–20–95 18632
92.205 (a)(1) revised; interim; eff. 5–19–94 through 6–20–95 18632
92.206 Heading, (a)(2), (3), (b), (c) introductory text, (5), (d) and (e) revised; (c)(6) and (7) added; (f) and (g) removed; interim; eff. 5–19–94 through 6–20–95 18632
92.207 Added; interim; eff. 5–19–94 through 6–20–95 18633
92.208 Added; interim; eff. 5–19–94 through 6–20–95 18633
92.209 Added; interim; eff. 5–19–94 through 6–20–95 18633
92.211 (a)(2) and (f)(3) revised; (a)(3) added; interim; eff. 5–19–94 through 6–20–95 18633
92.214 (a)(8) revised; interim; eff. 5–19–94 through 6–20–95 18634
92.218 (a) introductory text and (c) revised; (e) added; interim; eff. 5–19–94 through 6–20–95 18634
92.219 Revised; interim; eff. 5–19–94 through 6–20–95 18634
92.220 (a)(1) introductory text, (2), (3) and (5) revised; interim; eff. 5–19–94 through 6–20–95 18634
92.221 (a)(7) and (c) added; interim; eff. 5–19–94 through 6–20–95 18635
92.222 (a)(2) added; interim; eff. 5–19–94 through 6–20–95 18635
92.252 (a)(2)(iii) added; (a)(5) amended; (d) revised; interim; eff. 5–19–94 through 6–20–95 18635
92.254 (a)(1)(i), (4) introductory text, (ii)(C) and (b)(1) revised; (a)(4)(ii)(D) added; interim; eff. 5–19–94 through 6–20–95 18636
92.255 Revised (OMB number); interim; eff. 5–19–94 through 6–20–95 18636
92.256 Revised; interim; eff. 5–19–94 through 6–20–95 18636
92.259 Added; interim; eff. 5–19–94 through 6–20–95 18636

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92.300 (b), (e) and (f) revised; interim; eff. 5–19–94 through 6–20–95 18637
92.350 (a)(4) introductory text revised 33893
92.354 (a) revised; interim; eff. 5–19–94 through 6–20–95 18637
92.502 (b)(1) revised; interim; eff. 5–19–94 through 6–20–95 18637
92.504 (e)(1) revised; interim; eff. 5–19–94 through 6–20–95 18637
92.508 (a)(4)(v) revised; interim; eff. 5–19–94 through 6–20–95 18637
92.625 Added; interim; eff. 5–19–94 through 6–20–95 18638
92.631 (c)(5) added 33893
92 Appendixes A and B amended 33893

Chapter I—Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

135 Revised; interim; eff. 8–1–94 through 6–30–95 33880
Chapter 1 Appendix IV added 33363

Chapter II—Office of Assistant Secretary for Housing–Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

200.93 (a)(1) revised; interim 31522
200.213 (d) removed; (e) redesignated as (d); interim 31522
200.217 (a)(3) removed; (a)(4) through (8) redesignated as (a)(3) through (7); interim 31522
200.926d (c)(4)(i), (ii) and (iii) revised; (c)(4)(iv) redesignated as (c)(4)(vii); new (c)(4)(iv), (v) and (vi) added 19112
207.10 Revised 31141
207.36 Regulation at 58 FR 34215 confirmed 28248
207.260 (e) revised 31141
213.13 Revised 31141
213.44 Regulation at 58 FR 34215 confirmed 28248
215.21 (b)(9) removed 32649
215.80 Added 29329
219.210 (c)(3) revised 33894
219.310 (c)(3) revised 33894
220.580 Regulation at 58 FR 34216 confirmed 28248
221 Authority citation revised 31141
221.521 Revised 31141
221.563 Regulation at 58 FR 34216 confirmed 28248
221.795 Added 29330
232.94 Regulation at 58 FR 34216 confirmed 28248
232.600 Regulation at 58 FR 34216 confirmed 28248
236.3 (b)(9) removed 32649
236.1001 (Subpart F) Added 29331
241.85 Regulation at 58 FR 34217 confirmed 28248
241.600 Regulation at 58 FR 34217 confirmed 28248
241.1085 Regulation at 58 FR 34217 confirmed 28248
242.43 Revised 31142
242.91 Regulation at 58 FR 34217 confirmed 28248
244.182 Regulation at 58 FR 34217 confirmed 28248
280.207 (a)(4) revised 33894
291 Authority citation revised 29509
291.400 (b) amended; (c), (d) and (e) revised 29509
291.405 Amended 29510
291.410 (c) introductory text and (d) revised; (c)(6) added 29510
291.415 (d)(1) redesignated as (d)(1)(i); (d)(1)(ii) added; (f)(1) amended 29510
291.420 Heading, (a)(1) and (3) revised; (b) amended 29511
291.425 (b) and (c) revised 29511
291.435 (a)(1) amended 29511

Chapter V—Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

510 Authority citation revised 29332
510.52 Revised 29332
570.487 (d) added 33894
570.607 (b) revised 33894
572.405 (c)(1) revised 33894
574 Regulation at 57 FR 61740 confirmed 17199
Authority citation revised 33894
574.2 (a) revised 17199
574.3 Amended 17199

TITLE 24 Chapter V—Con.

574.100 (a) designation and (b) removed 17199
574.140 Removed 17199
574.160 (b) and (c)(5) revised 17199
574.220 Removed 17199
574.240 (c)(6) revised 17199
574.300 (a) and (c)(i)(i)(C) amended; (b)(7) and (10)(ii) revised 17200
574.310 (a) heading redesignated as (a)(1) heading; new (a)(1) heading and (e) revised; (a)(2) added; (d) introductory text amended 17200
574.330 Introductory text, (a)(1) and (d) amended 17200
574.340 (b) revised 17200
574.600 (c) revised 33894
574.655 Added 17201
576.79 (a)(4) revised 33894
582.120 (a), (b) and (d) revised; interim 24253
582.200 Revised (OMB number); interim 24253
582.205 Removed; interim 24254
582.210 Removed; interim 24254
582.215 Removed; interim 24254
582.220 Removed; interim 24254
582.225 Removed; interim 24254
583 Authority citation revised 33894
583.155 (a), (b) and (d) revised; interim 24254
583.200 Revised (OMB number); interim 24254
583.205 Removed; interim 24254
583.210 Removed; interim 24254
583.215 Removed; interim 24254
583.220 Removed; interim 24254
583.225 Removed; interim 24254
583.325 (b)(4) revised 33894

Chapter VII—Office of the Secretary, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

700 Revised 22225, 22235

Chapter VIII—Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

813.106 (b)(9) removed 32649
850 Authority citation revised 29333
850.34 Added (OMB number) 29333
850.35 (d) removed 29335
880 Authority citation revised 22923
880.209 Revised (OMB number) 29335
880.609 (b) revised 22755
880.612a Added; interim 22923
881 Authority citation revised 22924
881.209 Revised (OMB number) 29336
881.609 (b) revised 22755
881.612a Added; interim 22924
882 Authority citation revised 24254, 33895
882.406 Revised (OMB number) 29337
882.712 Revised (OMB number) 29338
882.713 (c)(11) added 33895
882.720 (b)(3)(v) revised 29339
882.721 (c) amended 29340
882.803 (d) introductory text revised 29340
882.805 (a) through (d) and (f)(10) revised; interim 24254
882.810 Added (OMB number) 29340
883 Authority citation revised 22926
883.311 Revised (OMB number) 29341
883.704a Added; interim 22926
883.710 (b) revised 22755
884 Authority citation revised 22927
884.112 Revised (OMB number) 29342
884.223a Added; interim 22927
886 Authority citation revised 22929
886.329a Added; interim 22929
888 Fair market rent schedules 16408
Schedule C revised 21835
Technical correction 25703
Fair market rent schedules corrected 26944
Schedule C corrected 26944

889.265 (a)(4) revised 33895
890.260 (a)(4) revised 33895

Chapter IX—Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

900 Authority citation revised 28343
900.105 Added (OMB number) 29343
905 Authority citation revised 33655, 33895
905.120 (j) added 33895
905.160 (a)(3)(ii)(C) revised; interim 31522
905.165 (c)(5) revised 33895
905.195 Added 31929
905.210 Removed 25812
905.585 Added 31930
905.642 (d)(4) removed; (g) revised; interim 31523
905.681 (c)(2) revised; interim 31523
905.715 (b)(2) revised 33655
905.720 (f) added 25812
(b) existing text designated as (b)(1); (b)(2) added 33655
905.730 (c)(1)(i) revised 33655
913.106 (b)(9) removed 32649
941.206 (c) revised 18484
941.207 Revised (OMB number) 29344
941.404 (n) introductory text through (9) redesignated as (n)(1) introductory text through (ix); (n) concluding text designated as (n)(2); heading, new (n)(1) and new (2) revised; (n)(1)(x) added 18484
941.502 (a) revised; interim 31523
945 Added 17662
960.401—960.409 (Subpart D) Heading revised 17667
960.401 Revised 17667
960.403 Revised 17667
960.405 Revised 17667
960.407 Revised 17667
960.409 Removed 17667
961 Authority citation revised 33895
961.29 (b)(4) revised 33895
963 Authority citation revised 33895
963.3 Amended 33895
963.10 (d) revised 33895
965.215 Added 31930
965.705 Added 31930
968.103 (c) revised 30477
968.235 (d)(4) removed; (g) revised; interim 31523
968.335 (c)(2) revised; interim 31523
968.401—968.425 (Subpart D) Added 30478
968.407 OMB number 30478
968.422 OMB number 30480
968.428 OMB number 30480
990 Authority citation revised 33655
990.107 (b)(2) revised 33655
990.108 (b) existing text designated as (b)(1); (b)(2) added 33655
990.110 (c)(1)(i) revised 33656

Chapter XX—Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3699)

3280 Interpretation 19072

Proposed Rules:

35 24850
200 24850
280 24850
290 17500
291 24850
510 24850
511 24850
570 ..... 24850, 28176
577 24850
578 24850
579 24850
880 30557
881 30557
882 24850
883 30557
884 30557
885 24850
886 ..... 24850, 30557
887 24850
888 32492
890 24850
905 ..... 18666, 24850
913 18666
941 24850
961 24850
964 18666
965 24850
968 24850
990 18666

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

226.11 (a)(2) revised 22104
248.6 Revised 16757

Proposed Rules:

1—299 (Ch. I) 21872, 23774, 33236
20 16720
40 18460
113 16760
256 ..... 16726, 30276
900 26920

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury (Parts 1—799)

1 Technical correction 17154
Authority citation amended 18747, 24041, 24928, 27459, 30103, 32080, 33432
1.42–12 (a) corrected 15501
1.52–1 (f) amended 30102
1.101–2 (e)(2) *Example* amended 30102
(e)(1)(iii)(*b*)(*1*) and (*2*) revised; (e)(1)(iii)(*b*)(*3*) removed 30103
1.103–8 (a)(5) revised 24041
1.103–8T Added 24041
1.148–0 Amended 24041
1.148–1 (c)(4)(ii)(A) revised 24041
1.148–1T Added 24041
1.148–2 (b)(2)(ii) revised 24042
1.148–2T Added 24042
1.148–3 (h)(3) amended 24042
(j) *Example* 1 revised; *Example* 2 amended 24350
1.148–3T Added 24042
1.148–4 (b)(5) redesignated as (b)(6); new (b)(5) added; (g), (h)(1), (2)(vii), (ix), (3), (4) and (5) revised 24042
1.148–4T Added 24042
1.148–5 (b)(2)(iii), (c)(2)(i), (3)(ii), (d)(3)(ii) and (e)(2)(iii) revised; (e)(2)(ii)(B) amended 24044
1.148–5T Added 24044
1.148–6 (d)(3)(iii)(C) revised 24045
1.148–6T Added 24045
1.148–9 (c)(2)(ii)(B) revised; (h)(4)(vi) added 24045
1.148–9T Added 24045
1.148–10 (b)(2) revised; (c)(2)(ix) amended 24046
(d) *Example* 1 amended 24351
1.148–10T Added 24046
1.148–11 (i) added 24046
1.148–11T Added 24046
1.149(d)–1 (f)(3) revised 24046
1.149(d)–1T Added 24046
1.149(e)–1 (e)(3)(i) and (4) revised 24351
1.150–1 (c)(1) and (4) heading revised; (c)(4)(iii) added 24046
1.150–1T Added 24046
1.170A–4 (d) *Example 9* amended 30102
1.170A–5 (b) *Example 5* amended 30102
1.170A–6 (c)(3)(i), (iii) *Examples 1, 2, 3,* (c)(4), (5) *Examples 1, 2,* and *3*; amended 30102
1.170A–7 (c) amended 30102
1.170A–12 (a)(3) and (c) amended 30102
(a)(3) amended; (b), (e)(1) and (2) revised; (f) and authority citation removed 30104
1.170A–13 Authority citation removed 30105
1.170A–13T Added 27460
1.170A–14 (h)(4) *Example 2* amended 30105
1.338–4T (h)(4) corrected 15501
1.382–1 Amended 32080
1.382–6 Added; heading revised 32080
1.401(a)(17)–1 Revised 32905
1.410(b)–0 Amended 32914
1.410(b)–2 (b)(7) amended 32914
1.410(b)–6 (d)(2)(i), (ii) and (g) corrected 16984
(d)(1), (2)(iv) *Example 2* amended 32914
1.410(b)–7 (c)(4) and (5) revised; (c)(6) removed; (d)(4) amended 32914
1.414–11 (b)(2) and (4) revised; (b)(3) and (c)(2)(v) amended 32922
1.414(c)–2 (b)(2)(ii) amended 30102
1.414(c)–4 (b)(3)(i) amended 30102
1.414(g)–1T (b)(1) introductory text and (2)(iii) revised; (g) removed 32916
1.414(q)–1 Added 32915
1.414(r)–0 Amended 32916

1.414(r)–1 (c)(2)(ii) *Example*, (d)(4), (9)(i) and (e) amended; (c)(3)(ii) revised 32916
1.414(r)–2 (b)(2), (c)(3) *Examples 1* and *2* revised 32917
1.414(r)–3 (c)(2)(ii), (4), (5)(iii), (7) *Example 1*, (d)(2) and (4) *Example 1* revised; (c)(7) *Examples 3* and *4* redesignated as *Examples 4* and *5*; (b)(4), (c)(6) introductory text, *Examples 2* through *5*, *7*, (7) introductory text, *Example 2* and new *Example 5* amended; new (c)(7) *Example 3* added 32917
1.414(r)–4 (b) amended 32919
1.414(r)–5 (b)(5)(ii), (d)(1)(ii)(B), (C), (4) *Example 2*, and (g)(5) revised; (d)(1)(iii) added; (d)(1) concluding text removed; (g)(2)(iii)(A), (D), (3)(ii)(B), (iii)(B), (C), (D) and (g)(6) amended 32919
1.414(r)–6 (a) amended; (b) revised; (c) removed 32920
1.414(r)–7 (c)(2) and (d) removed; (c)(3), (4) and (5) redesignated as (c)(2), (3) and (4); (a)(1), (b)(2)(ii), (3), new (c)(2)(i), (3)(i), (ii) introductory text, (A), (B), (iii) *Example 1*, (4)(i), (ii), (iii) introductory text, (E), (v) introductory text and *Examples 1* through *4* amended; (c)(1) and new (c)(2)(iv) revised; (c)(5) added 32920
1.414(r)–8 (b)(4) *Examples 1* and *4* amended; (b)(2)(iii) and (4) *Example 2* revised; (d)(4) removed; (b)(4) *Examples 3, 4*, and (d)(5) redesignated as *Examples 5, 6* and (d)(4); new (b)(4) *Examples 3* and *4* added; new (b)(4) *Examples 5* and *6* amended 32921
1.469–1T (e)(5) corrected 17478
1.514(c)–2 Added 24928
1.585–1 (b)(2) corrected 15502
1.585–5 (c)(4)(ii) and (d)(2) corrected 15502
1.585–6 (d)(5) *Example* 3 corrected 15502
1.585–7 (d)(1) corrected 15502
1.585–8 (b)(2) corrected 15502
1.642(c)–6 (d)(1) redesignated as (d) and (d)(2) and (3) redesignated as 1.642(c)–6A (d)(3) and (4); heading, (a), (b), (c)(1), new (d) and (e) revised; (f) added; authority citation removed 30105
(d)(2) amended 30102
1.642(c)–6A Undesignated center heading and section added; (d)(3) and (4) redesignated from 1.642(c)–6 (d)(2) and (3) 30105
(d)(4) table amended 30116
1.642(c)–7 (d)(2) amended 30102
1.664–1 (a)(6) *Example*, amended 30102
(a)(5)(ii)(*b*), (iv)(*a*), (*b*), (*c*), and (6) introductory text revised; (a)(5)(iv)(*d*) added; authority citation removed 30116
1.664–2 (c) revised; authority citation removed 30116
1.664–4 (b)(1) redesignated as (b) and (b)(2) through (5) redesignated as 1.664–4A (d)(3) through (6); (a), new (b), (c) and (d) revised; (e) and (f) added; authority citation removed 30117
(b)(2) and (3) amended 30102
1.664–4A Undesignated center heading and section added 30116
(d)(3) through (6) redesignated from 1.664–4 30117
(d)(4), (5), (6) heading, Tables D, E, and F(1) amended 30148
1.665(a)–0—1.669(b)–2 Undesignated center heading revised 30148
1.665(a)–0A—1.665(g)–2A Undesignated center heading added 30148
1.860G–1T Added 18747
1.1011–2 (c) *Example (8)* amended 30148
1.1014–5 (a)(3), (c) *Examples 1, 2, 3, 4, 5*, and *6* amended 30102
1.1031(b)–2 (b) revised; (c) and (d) added 18749
Heading corrected 33200
1.1031(k)–1 (j)(2) added 18749
1.1388–1 Undesignated center heading added 24937
1.1398–1 Added 24937
1.1398–2 Added 24938

TITLE 26 Chapter I—Con.

1.6695–1 (a)(1) introductory text, (b)(1), (4)(iv), (v), (5) introductory text, (c)(1) introductory text, (3) and (e) revised; (b)(4)(vi) added 33432
1.7520–1—1.5520–4 Undesignated center heading added 30148
1.7520–1 Added 30149
1.7520–2 Added 30149
1.7520–3 Added 30150
1.7520–4 Added 30150
15a Authority citation revised 18751
15a.453–1 (b)(3)(i) amended 18751
20 Authority citation revised 30150
20.2013–4 (a) introductory text and *Example (2)* amended 30151
20.2031–0 Added 30151
20.2031–7 (a)(2) amended 30102
(a)(2), (b)(1), (2), (3)(i), (ii), (c), (d), and (e) amended 30103
Redesignated as 20.2031–7A (d); new 20.2031–7 added 30152
20.2031–7A Undesignated center heading and section added 30151
(d) redesignated from 20.2031–7; new (d) heading, (1)(i) and (iii) revised; new (d)(5), (6), Tables A, B and LN amended 30152
20.2031–10 Removed 30170
20.2032–1 (f)(1) amended 30103
20.2039–2 (c)(1)(viii) amended 30103
20.2039–5 (c)(1) and (2) amended 30103
20.2055–2 (f)(2)(iv) amended 30103
(f)(4) revised 30170
20.2056(b)–4 (d) amended 30103
20.7520–1—20.7520–4 Undesignated center heading added 30170
20.7520–1 Added 30170
20.7520–2 Added 30171
20.7520–3 Added 30172
20.7520–4 Added 30172
25 Authority citation amended 23154
Authority citation revised 30172
25.2511–1 (h)(6) and (7) amended 30103
25.2512–0 Added 30173
25.2512–5 (a)(2), (b)(1), (2), (3)(i), (ii), (c), and (d) amended 30103
Redesignated as 25.2512–5A(d); heading, (a) introductory text, (1) introductory text, (i), (ii) introductory text, (A), (B), (iii) introductory text, (A), (B), (2), (3), (b) introductory text, (1), (2), (3) introductory text, (i), (ii), (c), (d), (e) and (f) redesignated as 25.2512–5A(d) heading, (1) introductory text, (i) introductory text, (A), (B) introductory text, (*1*), (*2*), (ii), (iii), (2)(C) introductory text, (*1*), (*2*) introductory text, (i), (ii), (iii) introductory text, (A), (B), (3), (4), (5) and (6) 30173
Added 30174
25.2512–5A Undesignated center heading added; (d) heading, (1) introductory text, (i) introductory text, (A), (B) introductory text, (*1*), (*2*), (C) introductory text, (*1*), (*2*), (ii), (iii), (2) introductory text, (i), (ii), (iii) introductory text, (A), (B), (3), (4), (5) and (6) redesignated from 25.2512–5 heading, (a) introductory text, (1) introductory text, (i), (ii) introductory text, (A), (B), (iii) introductory text, (A), (B), (2), (3), (b) introductory text, (1), (2), (3) introductory text, (i), (ii), (c), (d), (e) and (f); new (d) heading revised; new (d)(1)(i)(A) and (B) amended 30173
(d)(1)(i)(C) and (5) amended; (d)(1)(iii) and (6) revised 30174
25.2512–9 Removed 30176
25.2515–2 (c) amended 30177
25.2518–3 (a)(1)(iv)(A) amended 30103
Undesignated center heading added 30173
25.2522(a)–2 (a) amended 30177
25.2522(c)–3 (d)(2)(iv) amended 30103
(d)(3) revised 30177
25.2523(a)–1 (d) amended 30103
25.2523(c)–1 (c) *Example* amended 30103
25.2701–0 Amended 23154
25.2701–1 (a)(1) amended 23154
25.2701–5 Added 23154
25.2702–3 (b)(3) and (c)(3) amended 23157
25.7520–1—25.7520–4 Undesignated center heading added 30177
25.7520–1 Added 30177
25.7520–2 Added 30178
25.7520–3 Added 30178
25.7520–4 Added 30179
48 Authority citation amended 33657
48.4082–1 Added 33657
48.4082–1T Removed 33657
301.7426–1 (a)(1) revised; (c) added 26601
301.7430–0 Added 29360
301.7430–1 Revised 29357
301.7430–2 Added 29360
301.7430–3 Added 29362
301.7430–4 Added 29363
301.7430–5 Added 29364
301.7430–6 Added 29366
602 Technical correction 17154
602.101 (c) table amended (OMB numbers) 23157, 24939, 27235, 27460, 29366, 30179, 32081, 33433

Proposed Rules:

1 ..... 15877, 17747, 18011, 18048, 18772, 21697, 22773, 24094, 24095, 24992, 25581, 25584, 25847, 26466, 27515, 30180, 32160, 32670
20 30180
25 30180
31 ..... 18057, 24096
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602 27515

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

Chapter I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

9.148 Added 26114
70.92 (d)(2)(iii) and (iv) revised 29367

Proposed Rules:

4 ..... 15878, 30560
6 ..... 21698, 29215
8 ..... 21698, 29215
10 ..... 21698, 29215
11 ..... 21698, 29215

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TITLE 28—JUDICIAL ADMINISTRATION

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0 Authority citation revised **62260**
0.17 Added **62260**
0.41 (i) added; (k) revised 14101
0.96 (s) revised 29717
0.103a Added **35371**
0.100—0.104 (Subpart R) Appendix amended 23637
0.132 (c) revised 13883
1 Revised **53658**
2.13 (a), (b) and (c) revised; interim 11187
2.20 Amended; interim 11186
Paroling policy guidelines amended 25813, 25814
2.23 (a), (b) and (c) revised; interim 11187
2.56 (d) amended; (h) added **51780**
2.62 (a)(5) amended; (i)(2) revised; (k)(7) removed; (k)(8) redesignated as (k)(7); interim **65548**
(a)(5) amended; (i)(1) and (2) revised; (k)(7) removed; (k)(8) redesignated as (k)(7) 26425
5 Authority citation revised **37418**
5.2 Revised **37418**
5.3 Amended **37419**
5.5 Added **37419**
5.205 (d) added **37419**
5.601 Revised **37420**
5.1101 Added **37420**
11 Authority citation revised **51223**
11.10—11.12 (Subpart C) Revised **51223**
14 Appendix amended **36867**
16.82 Added **41038**
16.98 Revised 29717
23 Revised **48452**
36 Authority citation revised 2675, 17446
36.406 Amended 2675
36.407 Added 17446
36 Appendix A amended 2675
42.700—42.736 (Subpart I) Added 6560
44.101 (a)(5) revised **59948**
44.200 (a)(2) and (3) revised **59948**
44.300 (c) revised **59948**
51.24 (b) amended **51225**
55.1 Amended **35372**
55.6 Revised **35372**
55.7 (b) amended **35373**
55.13 (b) amended **35373**
55.17 Amended **35373**
55.20 (c) amended **35373**
55 Appendix revised **35373**
Appendix corrected **36516**
64.1 Revised; interim 25816
64.2 Revised; interim 25816
65 Authority citation revised 30521
65.80—65.85 (Subpart I) Added 30522

Chapter III—Federal Prison Industries, Inc., Department of Justice (Parts 300—399)

301.101 (a) and (b) revised 2666
301.102 (b) revised; (d) and (e) added 2666
301.103 Amended 2667
301.104 Revised 2667
301.105 Revised 2667
301.201 Redesignated as 301.102; new 301.201 added 2667
301.202 Redesignated as 301.203; new 301.202 redesignated from 301.201 2667
301.203 Redesignated as 301.204; new 301.203 redesignated from 301.202 2667
301.204 Redesignated as 301.205; new 301.204 redesignated from 301.203 2667
301.205 Redesignated from 301.204 2667
301.303 (b) through (e) redesignated as (c) through (f); (a) and new (d) amended; new (b) added 2667
301.316 Revised 2667
301.317 Amended 2667
301.319 Amended 2667

Chapter V—Bureau of Prisons, Department of Justice (Parts 500—599)

503.2 (a) revised; (c) removed; (b)(1) through (8) and (d) redesignated as (b)(3) through (10) and (c); new (b)(1), (2) and (d) added **44428**
503.3 (b)(3) through (6) redesignated as (b)(4) through (7); new (b)(3) added **44428**

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TITLE 28 Chapter V—Con.

503.4 (b)(1) and (c)(2) removed; (b)(2) through (5) and (c)(3), (4) and (5) redesignated as (b)(1) through (4) and (c)(2), (3) and (4) **44428**
503.5 Introductory text revised; (a)(1) and (2) redesignated as (a)(2) and (3); new (a)(1) added **44428**
503.7 (b)(3) removed; (b)(1) and (2) redesignated as (b)(2) and (3); new (b)(1) added **44428**
504.1 Revised **60768**
504.2 (a) revised **60768**
511 Authority citation revised 5924
511.10 Revised 5924
511.11 Revised 5924
511.12 (d) amended 5925
512 Authority citation revised 13860
512.10—512.22 (Subpart B) Revised and redesignated as 512.10—512.21 (Subpart B); interim 13860
513.10—513.13 (Subpart B) Revised and redesignated as 513.10—513.12 (Subpart B) **68765**
522 Authority citation revised 16406
522.11 (g) revised 16406
522.20 Authority citation removed 16406
522.21 Authority citation removed 16406
522.40—522.42 (Subpart E) Authority citation revised 16406
524.20—524.25 (Subpart C) Revised **50808**
524.41 (a) through (d) revised; (e) redesignated as (f); new (e) added 6856
524.42 Removed; new 524.42 redesignated from 524.43 and revised 6857
524.43 Redesignated as 524.42; new 524.43 redesignated from 524.44 and revised 6857
524.44 Redesignated as 524.43 6857
527 Authority citation added; subpart authority citations removed **47976**
Authority citation revised 23998
527.20 (Subpart C) Removed 23998
527.41 Introductory text revised **47976**
527.42 Redesignated as 527.43; new 527.42 redesignated from 527.46 ..... **47976**
527.43 Redesignated as 527.44; new 527.43 redesignated from 527.42 ..... **47976**
527.44 Redesignated as 527.45; new 527.44 redesignated from 527.43; (c), (d) introductory text, (1), (2), (e), (g) and (h)(2) amended **47976**
(g) amended **47977**
527.45 Redesignated as 527.46; new 527.45 redesignated from 527.44 ..... **47976**
527.46 Redesignated as 527.42; new 527.46 redesignated from 527.45 ..... **47976**
(b) and (c)(3) revised **47977**
540 Authority citation revised **39095**
Authority citation revised 15824
540.40 Amended **39095**
540.50 (b)(1) amended; (c) revised **39095**
540.51 (b)(1) revised; (b)(4), (g)(2) and (4) amended **39095**
540.100 Revised 15824
540.101 Redesignated as 540.102; new 540.101 added 15824
540.102 Redesignated as 540.103; new 540.102 redesignated from 540.101 15824
540.103 Redesignated as 540.104; new 540.103 redesignated from 540.102 15824
540.104 Redesignated as 540.105; new 540.104 redesignated from 540.103 15824
540.105 Removed; new 540.105 redesignated from 540.104 and revised; eff. in part 1–3–95 15824
541.13 Tables 3 and 4 amended **39095**
542.10 Amended **58246**
542.11 (a) introductory text revised **58246**
542.13 (a), (b) and (c) amended **58246**
542.14 Amended **58246**
542.15 Amended **58246**
544 Authority citation revised **65850**, **65852**
544.30—544.34 (Subpart D) Revised and redesignated as 544.30—544.35 (Subpart D) **65850**
544.40—544.44 (Subpart E) Added; interim 14724
544.60—544.61 (Subpart G) Removed **65852**

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544.80—544.82 (Subpart I) Revised and redesignated as 544.80—544.83 (Subpart I) **65852**
544.90—544.91 (Subpart J) Removed **65853**
544.110 (Subpart L) Removed **58247**
545 Authority citation revised 15825
545.11 (b) introductory text amended; (d)(10) added; eff. in part 1–3–95 15825
(a)(2) revised 16406
549.60 Heading revised 31883
549.62 Revised 31883
549.63 (a)(6), (7), (c) and (d) revised 31883
549.64 (c) revised 31883
549.65 (a) and (c) revised 31883
549.66 Revised 31883
551 Authority citation revised 5514
551.11 (b) revised **58248**
551.14 (c) revised **58248**
551.90 Amended 16406
551.140 (Subpart L) Removed 5514
551.150 Amended 5514
552.20—552.26 (Subpart C) Regulation at 54 FR 21394 30469
552.20 Revised 30469
552.21 Redesignated as 552.22; new 552.21 added 30469
552.22 Redesignated as 552.23; new 552.22 redesignated from 552.21 30469
(a), (g), (h) introductory text, (2), (4) and (j) revised 30470
552.23 Redesignated as 552.24; new 552.23 redesignated from 552.22 30469
Revised 30470
552.24 Redesignated as 552.25; new 552.24 redesignated from 552.23 30469
Introductory text and (a) revised; (e) amended 30470
552.25 Redesignated as 552.26; new 552.25 redesignated from 552.24 30469
Introductory text and (a) revised 30470
552.26 Redesignated as 552.27; new 552.26 redesignated from 552.25 30469
Revised 30470
552.27 Redesignated from 552.26 30469
Revised 30470
570.10—570.24 (Subpart B) Removed **58248**
570.30 Amended 3510
570.31 (a) introductory text revised 3510
570.32 (a)(9) and (b)(1) revised 3510
570.33 (b) and (c) revised 3510
570.34 (b) revised 3511
571 Authority citation revised 1238
571.60—571.64 (Subpart G) Added 1238
572 Authority citation revised 1239
572.40 (Subpart E) Revised 1239

Chapter VI—Offices of Independent Counsel, Department of Justice (Parts 600—699)

600 Authority citation revised 5322
600.1 (b) and (c) revised 5322
603 Added 5322

Proposed Rules:

0 15880
2 ..... **65571**, **65572**
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37 31808
58 ..... **48472**
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550 1240
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TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor (Parts 0—99)

0 Authority citation revised 32611
0.735–1—0.735–3 (Subpart A) Removed 32611

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TITLE 29 Subtitle A—Con.

0.735–4—0.735–10 (Subpart B) Removed 32611
0.735–11 Removed 32611
0.735–12 Introductory text, (a), (b) and (d) removed 32611
0.735–13 Heading revised; (d) added 32611
0.735–14—0.735–17 (Subpart D) Removed 32611
0.735–18—0.735–28 (Subpart E) Removed 32611
1.7 (d) suspended 58955
4 Administrative variance 49192
5.2 (n)(4) suspended 58955
5.5 (a)(1)(ii) suspended; (a)(1)(v) added 58955
18 Authority citation revised 38500
18.9 Heading revised; (e) added 38500
70 Appendix A amended 29900

Chapter I—National Labor Relations Board (Parts 100—199)

102 Authority citation revised 42235
102.117 (m), (n), and (o) added 42235

Chapter IV—Office of Labor-Management Standards, Department of Labor (Parts 400—499)

401 Authority citation revised 15115
401.4 Authority citation removed 15115
401.18 Revised 15115
401.19 Revised 15115
402 Authority citation revised 67604
Technical correction 14750
Authority citation revised 15115
402.4 Revised; eff. 12–31–94 67604
402.13 Added (OMB number) 15115
403 Authority citation revised 15115
403.11 Added (OMB number) 15115
404 Heading revised 15116
Authority citation revised 15116
404.9 Added (OMB number) 15116
405 Authority citation revised 15116
405.11 Added (OMB number) 15116
406 Authority citation revised 15116
406.10 Added (OMB number) 15116
408 Authority citation revised 15116
408.13 Added (OMB number) 15116
409 Authority citation revised 15116
409.7 Added (OMB number) 15116
417 Authority citation revised 15116
417.16 Amended 15116
451 Authority citation revised 15116
452 Authority citation revised 15116
453 Authority citation revised 15116
457.13 Revised 15116
457.15 Revised 15116
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458.3 OMB number 15116
458.50 (b) amended 15117
458.52 Amended 15117
458.56 Amended 15117
458.57 Amended 15117
458.58 Amended 15117
458.59 Amended 15117
458.60 Amended 15117
458.61 Amended 15117
458.64 (a) amended 15117
458.66 (b) and (c) amended 15117
458.67 Amended 15117
458.79 Amended 15117

Chapter V—Wage and Hour Division, Department of Labor (Parts 500—899)

504 Regulation at 55 FR 50511 confirmed and revised 898
504.300—504.350 (Subpart D) Regulation at 59 FR 898 eff. date corrected to 2–7–94 5484
504.310 OMB number pending 898
OMB number 5487
504.350 OMB number pending 898
OMB number 5487
504.400—504.460 (Subpart E) Regulation at 59 FR 898 eff. date corrected to 2–7–94 5484
507 Authority citation revised 69228
507.700 (c) redesignated as (c)(1); (c)(2) added; interim 69228
697.1 (a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), (j)(1), (k)(1), (l)(1), (m)(1) and (n)(1) revised 43561
697.3 Revised 43562
825 Regulation at 58 FR 31812 comment period extended 45433

Chapter XII—Federal Mediation and Conciliation Service (Parts 1400—1499)

1400.735–12 (a)(2) correctly revised 35377

Chapter XIV—Equal Employment Opportunity Commission (Parts 1600—1699)

1601.74 (a) amended 5708, 14554, 18752

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1601.80 Amended 5709
1650 Added; interim 24

Chapter XVII—Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

1904 Authority citation revised 15600
Technical correction 16895
1904.8 Revised 15600
1910 Determination 15339
1910.132 (d), (e) and (f) added; eff. 7–5–94 16360
1910.132—1910.140 (Subpart I) Authority citation revised 4435, 16360
1910.133 Revised; eff. 7–5–94 16360
1910.135 Revised; eff. 7–5–94 16362
1910.136 Revised; eff. 7–5–94 16362
1910.137 Revised 4435
(a)(3)(ii)(B), (b)(2)(vii)(B) and (ix) corrected 33662
1910.138 Added; eff. 7–5–94 16362
1910.132—1910.140 (Subpart I) Appendixes A and B added; eff. 7–5–94 16362
1910.146 (k)(3)(ii) and Appendix E amended 26115
1910.261—1910.275 (Subpart R) Authority citation revised 4437
1910.269 Added; eff. in part 5–31–94 and 1–31–95 4437
Note added 33660
(a)(1)(i)(B)(*3*), (C), (D), (ii) introductory text, (2), (d)(1) Note 2, (2)(ii)(C), (8)(ii), (v), (B), (e)(7) note, (11) note, (14) note, (g)(2)(v), (i)(4)(iv), (l) designation, (2)(iii) note, Tables R–6, R–7, R–8, (m)(1), (2)(i), (iii) and (o)(4)(iii)(B) note corrected 33662
(p)(4)(iii)(C)(*4*) note, (q)(1)(i) note, (3)(i), (viii)(A), (xiv), (4)(iv), (r)(1)(ii)(A), (iv) note, (u)(1) note, (v)(3) note, (11)(x), (w)(3), (5)(ii), (7), (x), Appendixes A–2 and B through E amended 33663
1910.331 (c)(1) Note 2 redesignated as Note 3 and revised; new (c)(1) Note 2 added 4476
1910.333 (c)(3) introductory text note amended 4476
1910.1000 Table Z–3 correctly revised 40191
1910.1200 Revised 6170
Effective date stayed 3–11–94 through 8–11–94; note added 17479
1915 Authority citation revised 35514
1915.5 Amended 35514
1915.12 (a)(3) and (b)(3) revised 35514
1915.99 Redesignated as 1915.1200 35514
1915.1000—1915.1450 (Subpart Z) Revised 35514
1915.1027 Added 147
1915.1200 Redesignated from 1915.99 35514
Revised 6170
Effective date stayed 3–11–94 through 8–11–94; note added 17479
1917 Determination 15339
1917.28 Revised 6170
Effective date stayed 3–11–94 through 8–11–94; note added 17479
1918.90 Revised 6170
Effective date stayed 3–11–94 through 8–11–94; note added 17479
1926.59 Revised 6170
Effective date stayed 3–11–94 through 8–11–94; note added 17479
1926.63 Redesignated as 1926.1127 215
1926.1127 Redesignated from 1926.63; (m)(4)(iii)(H), (n)(1)(iii), (3)(iii), (5)(i) and (6) amended 215
1926.1147 Appendix D corrected 40468
1952.97 Added 14555, 32650
1952.105 (e) added 14555
1952.117 (b) added 2295
(a)(3) added 14555
1952.125 (c) added 14555
1952.157 Added 14555, 32650
1952.167 Added 14555
1952.175 (i) added 14556
1952.207 Added 14556
1952.217 Added 14556
1952.227 Added 14556
1952.237 Added 14556
1952.246 (b) added 14556
1952.256 Added 14556
1952.265 Added 14556

NOTE:: Boldface page numbers indicate 1993 changes.

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TITLE 29 Chapter XVII—Con.

1952.275 Added 14556
1952.297 Added 14556
1952.316 Added 14556
1952.327 Added 14556
1952.347 (a)(2) added 14556
1952.357 Added 2295, 14556
1952.365 Added 14556
1952.377 (b) added 14556
1952.385 Added 2295
(b) added 14556

Chapter XXV—Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

2509 Authority citation revised 32607
2509.94–1 Added 32607

Chapter XXVI—Pension Benefit Guaranty Corporation (Parts 2600—2699)

2603.28 Amended 63081
2603.32 (a) amended 63081
2603.39 Amended 63081
2606 Authority citation revised 35383
2606.1 (a), (b)(1) and (5) through (8) amended; (b)(10) and (11) removed; (b)(3), (9) and (c) revised 35383
(b)(3)(i) and (9) corrected 37991
2606.2 Amended 35384
2606.3 Amended 35384
2606.4 Existing text designated as (a); new (a) heading and (b) added 44740
(b)(1) corrected 48600
2606.7 Amended 35384
2606.9 (b) amended 35384, 63081
2606.22 Amended 35384
2606.34 Amended 35384
2606.36 (a) amended 35384
2606.51 Amended 35384
2606.54 Amended 63081
2606.56 Amended 63081
2607 Authority citation revised 63081
2607.2 (a) amended 63081
2607.3 (a) amended 63081
2607.4 (a) amended 63081
2607.5 (a) amended 63081
2607.6 (a) and (c) amended 63081
2607.7 (c) amended 63081
2607.8 (a) and (c) amended 63081
2608 Authority citation revised 63081
2608.170 (c) amended 63081
2610 Authority citation revised 63081
2610.4 Revised 63081
2610 Appendixes A and B amended 38050, 53407
Appendixes A and B amended 2296, 17923
2612 Heading revised 35384
Authority citation revised 35384
2612.1 (a) revised; (b) amended 35384
2612.2 Amended 35384
2612.3 Revised 35384
2615 Authority citation revised 63082
2615.1 (a) revised; (b) amended 35385
2615.2 Redesignated in part as 2615.14(c)(2); amended 35385
2615.3 (b)(2), (4), (c)(2) and (5) amended; (6) revised 35385
(e) amended 35386, 63082
2615.5 Amended 35386
2615.12 (a) amended 35386
2615.14 (a) and (b) introductory text amended; (b)(3) added; (c) existing text designated in part as (c)(1) and (c)(2); (b)(2) and new (c)(2) revised 35386
2615.15 (a) amended 35386
2615.16 (a) and (b) amended 35386
2615.18 (d) amended; (f) heading revised 35386
2615.21 (a) introductory text and (1) amended 35386
2615.22 (a) introductory text and (c) amended 35386
2615.23 Heading amended; (a) and (e) heading revised 35386
2616 Authority citation revised 63082
2616.3 (b)(2) amended 17695
2616.4 (c) amended 35387
2616.7 (b) amended 63082
2616.10 Redesignated as 2616.11; new 2610.10 added 17695
2616.11 Redesignated from 2616.10 17695
2616.24 (d) added 17695
2616.25 (c)(2) amended 17696
2616.27 (d)(4) and (e)(1)(ii) correctly revised 11188
(a)(1) amended 17696

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2616.29 (a)(1) amended 17696
2617 Authority citation revised 44740, 63082
2617.3 (b)(2) amended 44740
2617.8 (b) amended 63082
2617.22 (d)(9) correctly revised; (e)(1)(ii) corrected 11188
2617.25 (a) introductory text amended; (a)(1) and (2) added 44740
(a)(2)(i) corrected 48600
(b)(2) amended 63082
2617.28 (f)(4) added 44740
(f)(4)(i) corrected 48600
2618 Authority citation revised 63082
2618.31 (d) amended 63082
2619 Authority citation revised 50815
2619.3 (a) amended 50815
2619.25 (b)(2) amended 50815
2619.41 Revised 50815
2619.42 Redesignated as 2619.43; new 2619.42 added 50815
2619.43 Removed; new 2619.43 redesignated from 2619.42 50815
2619.49 Added 50816
2619 Appendix B amended 38051, 48305, 53409, 60117, 65549
Appendix A amended 50820, 50821
Appendix B revised 50824
Appendix C revised 50825
Appendix D amended 66278
Appendix B amended 2297, 7211, 11926, 17925, 24940, 30699
2621 Appendix A amended 65552
2622 Heading revised 35387
Authority citation revised 63082
2622.1 Revised 35387
2622.2 Amended 35387
Corrected 37991
2622.3 Revised 35388
2622.4 Heading, (b) and (c) revised; (d) amended 35388
2622.5 (a), (b) and (c) amended 35389
2622.6 Revised 35389
(a) and (c) corrected 37991
2622.7 Heading, (a) and (b) revised; (d) removed 35389
(c) amended 35390
2622.8 Heading and (a) through (d) revised; (e) amended 35390
2622.9 Heading, (a) and (b) amended 35390
(c) amended; (d) revised 35391
2622.10 (a) introductory text and (b) amended 35391
(b) amended 63082
2622 Appendix A amended 38050, 53407
Appendix A amended 2296, 17924
2623 Authority citation revised 35391
Heading revised 35391
2623.1 Revised 35391
2623.2 Amended 35391
2623.5 (b), (c), (d) and (f) heading amended; (e) and (f)(1) removed; (f) and (g) redesignated as (e) and (f); (a) and new (f) *Examples* (1), (2) and (3) revised 35392
(e) correctly designated; (f) *Example* 3 corrected 37991
2623.6 (a) through (d) amended; (e) *Examples* (1), (2) and (3) revised 35393
2623.7 Heading, (a), (b), (c), (d) introductory text and (1) amended; (e) *Examples* (1) and (2) revised 35394
2623.8 Removed 35394
2623.11 (a), (b) and (c) amended 35395
2623.12 (a)(1) and (3) amended 35395
2625 Authority citation revised 8539
2625.1 (a) amended 8539
2625.2 (b), (c) and (d) amended 8539
2625.3 (c) amended 8539
2641 Authority citation revised 63082
2641.13 (c) amended 63082
2642 Authority citation revised 63082
2642.12 (c) amended 63082
2643 Authority citation revised 63082
2643.2 (c) amended 63082
2644 Appendix A amended 38052, 53411
Appendix A amended 2300, 17927
2645 Authority citation revised 63082
2645.3 (c) amended 63082
2646 Authority citation revised 63082
2646.8 (c) amended 63082
2647 Authority citation revised 9927
Authority citation amended 33664
2647.1 (a) amended 9927
2647.2 (a) amended 9927

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TITLE 29 Chapter XXVI—Con.

2647.9 Added 9927
OMB number 33664
2648 Authority citation revised **63083**
2648.8 (d) amended **63083**
2672 Authority citation revised **63083**
2672.7 (c) amended **63083**
2673 Authority citation revised **63083**
2673.2 (d) amended **63083**
2674 Authority citation revised **63083**
2674.6 Amended **63083**
2675 Authority citation revised **63083**
2675.2 (b) amended **63083**
2676.13 (a) and (b)(2) revised **50825**
(b)(1) correctly added; CFR correction 15117
2676.14 Removed; new 2676.14 redesignated from 2676.16 ..... **50826**
2676.15 (c) table amended **38053, 43080, 48306**
Removed **50826**
2676.16 Redesignated as 2676.14 ..... **50826**
2676 Appendixes A, B and C added **50826**
Appendix B amended **53409, 60117, 65550**
Appendix B amended 2298, 7212, 11927, 17926, 24941, 30700
2677 Authority citation revised **63083**
2677.2 (c) amended **63083**

Proposed Rules:

24 12506
89 21874
102 ..... **57572**
103 28501
402 ..... **49672**
403 ..... **49672**
417 31056
452 30834
507 ..... **52152, 58994**
552 ..... **69310**
570 ..... 25164, 25167
1605 ..... **49456**
1609 ..... **51266**
..... 24998
1903 18508
1910 ..... **47690**
..... 11567, 15968, 18443, 28594, 30389, 30560
1915 ..... **47690**
..... 11567, 15968, 17290, 18443, 30560
1917 ..... **47690**
..... 28594, 30389
1918 ..... **47690**
..... 28594, 30389
1926 ..... **47690**
..... 4615, 11567, 15968, 18443, 24389, 25848, 26153, 30560, 32943
1928 ..... **47690**
..... 15968, 18443, 30560
1952 ..... 14584, 14586, 14587, 14589
2520 ..... **68339**
2530 ..... **54444, 68339**
..... 1692
2609 ..... 26467, 29661

TITLE 30—MINERAL RESOURCES

Chapter I—Mine Safety and Health Administration, Department of Labor (Parts 1—199)

50 Authority citation revised **63528**
50.10 Revised **63528**
56 Authority citation revised **69605**
56.5003 Removed 8327
56.5010 Removed 8327
56.6000—56.6904 (Subpart E) Revised **69606**
56.6000 Regulation at 58 FR 31908 eff. date delayed to 1-31-94 ..... **69606**
56.6130 Regulation at 58 FR 31908 eff. date delayed to 1-31-94 ..... **69606**
56.6131 Regulation at 58 FR 31908 eff. date delayed to 1-31-94 ..... **69606**
56.6140 Regulation at 58 FR 31908 eff. date extended to 1-31-94 ..... **69606**
56.6202 Regulation at 58 FR 31908 eff. date delayed to 1-31-94 ..... **69606**
56.6220 Regulation at 58 FR 31908 eff. date extended to 1-31-94 ..... **69606**
56.6304 Regulation at 58 FR 31908 eff. date delayed to 1-31-94 ..... **69606**
56.6306 Regulation at 58 FR 31908 eff. date delayed to 1-31-94 ..... **69606**
56.6320 Regulation at 58 FR 31908 eff. date extended to 1-31-94 ..... **69606**
56.6330 Regulation at 58 FR 31908 eff. date extended to 1-31-94 ..... **69606**
56.6331 Regulation at 58 FR 31908 eff. date extended to 1-31-94 ..... **69606**

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56.6501 Regulation at 58 FR 31908 eff. date delayed to 1-31-94 ..... **69606**
56.6902 Regulation at 58 FR 31908 eff. date delayed to 1-31-94 ..... **69606**
56.6903 Regulation at 58 FR 31908 eff. date delayed to 1-31-94 ..... **69606**
56.6000—56.6904 (Subpart E) Regulation at 58 FR 31908 eff. date delayed to 1-31-94 ..... **69606**
57 Authority citation revised 69611
57.5003 Removed 8327
57.5010 Removed 8327
57.5016 Removed 8327
57.6000--57.6904 (Subpart E) Revised 69612
57.6000 Regulation at 58 FR 31908 eff. date delayed to 1-31-94 69611
57.6130 Regulation at 58 FR 31908 eff. date delayed to 1-31-94 69611
57.6131 Regulation at 58 FR 31908 eff. date delayed to 1-31-94 69611
57.6140 Regulation at 58 FR 31908 eff. date extended to 1-31-94 69611
57.6202 Regulation at 58 FR 31908 eff. date delayed to 1-31-94 69611
57.6220 Regulation at 58 FR 31908 eff. date extended to 1-31-94 69611
57.6304 Regulation at 58 FR 31908 eff. date delayed to 1-31-94 69611
57.6306 Regulation at 58 FR 31908 eff. date delayed to 1-31-94 69611
57.6320 Regulation at 58 FR 31908 eff. date extended to 1-31-94 69611
57.6330 Regulation at 58 FR 31908 eff. date extended to 1-31-94 69611
57.6331 Regulation at 58 FR 31908 eff. date extended to 1-31-94 69611
57.6375 Regulation at 58 FR 31908 eff. date extended to 1-31-94 69611
57.6382 Regulation at 58 FR 31908 eff. date extended to 1-31-94 69611
57.6501 Regulation at 58 FR 31908 eff. date delayed to 1-31-94 69611
57.6902 Regulation at 58 FR 31908 eff. date delayed to 1-31-94 69611
57.6903 Regulation at 58 FR 31908 eff. date delayed to 1-31-94 69611
57.6000--57.6904 (Subpart E) Regulation at 58 FR 31908 eff. date delayed to 1-31-94 69611
58 Added 8327
70 Authority citation revised 8327
70.201—70.220 (Subpart C) Authority citation revised **63528**
70.209 (a) revised **63528**
70.400 Removed 8327
70.400-1 Removed 8327
70.400-2 Removed 8327
70.400-3 Removed 8327
71.201—71.220 (Subpart C) Authority citation revised **63529**
71.209 (a) revised **63529**
72 Added 8327
75.313 Regulation at 58 FR 53857 stay extended 18485
75.344 Regulation at 58 FR 53857 stay extended 18485
90.201—90.220 (Subpart C) Authority citation added **63529**
90.209 (a) revised **63529**

Chapter II—Minerals Management Service, Department of the Interior (Parts 200—299)

202 Policy statement **37420**
206 Policy statement **37420**
Extraordinary cost provisions 17479
207 Authority citation revised **64901**
207.1 (b) amended **64901**
208 Authority citation revised **64901**
208.2 Amended **64901**
208.3 Revised **64901**
208.6 (a) revised **64901**
208.7 (h) amended **64901**
208.11 Revised **64901**
208.12 (a) amended; (c) and (d) revised **64902**
208.13 Revised **64902**
210 Authority citation revised **64902**
210.10 (a) table, (b)(3) through (6), (c)(1), (2), (8), (9), (12), (13), (19) and (d) amended; (b)(1) revised; (c)(6), (11), (15) and (17) removed; (c)(7) through (10), (12), (13), (14), (16) and (18) through (23) redesignated as (c)(6) through (19); new (c)(20) added; OMB number **64902**
210.53 (a) and (b) amended **64902**
210.204 (a) and (b) amended **64902**
210.355 (a) and (b) amended **64902**

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CHANGES JULY 1, 1993 THROUGH JUNE 30, 1994

TITLE 30 Chapter II—Con.

216 Authority citation revised **45254**, **64903**
216.2 Revised **45254**
216.6 Amended **45254**
216.15 (a) and (b) amended **64903**
216.16 (a) and (b) amended **64903**
216.20 Revised **45254**
216.40 (c) amended **64903**
216.50 (a) removed; (b) through (e) redesignated as (a) through (d); new (a) revised; new (d)(3) amended **45254**
(a), (c)(1) and (2) amended **64903**
216.51 Revised **45254**
216.52 Removed; new 216.52 redesignated from 216.53 ..... **64903**
216.53 Redesignated as 216.52; new 216.53 redesignated from 216.54 ..... **64903**
216.54 Revised **45255**
Redesignated as 216.53; new 216.54 redesignated from 216.55 ..... **64903**
216.55 Revised **45255**
Redesignated as 216.54; new 216.55 redesignated from 216.56 ..... **64903**
216.56 Revised **45255**
Redesignated as 216.55; new 216.56 redesignated from 216.58 ..... **64903**
216.57 Removed; new 216.57 added **64903**
216.58 Revised **45255**
Redesignated as 216.56 ..... **64903**
216.61 Removed **64903**
218 Authority citation revised **45438**, **64903**
Authority citation revised 14559
218.41 Added **45438**
218.51 (f)(2) amended **64903**
218.202 (c) and (d) revised 14559
218.302 (c) and (d) revised 14559
219.102 Amended **64903**
220.003 (b) amended **64903**
228.10 (b) amended **64903**
229 Authority citation revised **64903**
229.123 (b)(2) and (3)(vii) amended **64903**
243.4 (b)(2) removed; (b)(3) through (9) redesignated as (b)(2) through (8); new (b)(5) revised; new (b)(8) amended **64903**
250.0 (r), (t) and (v) removed; (s), (u), (w), (x) and (y) redesignated as (r) through (v); (o), (p), (q) and new (r) through (u) revised **49926**
250.18 (d) introductory text revised; (d)(4) through (8) added **44764**
(d)(1), (2) and (3) revised; (d)(4) and (5) added **49927**
(d) revised 12161
250.51 (a)(3) amended **49927**
250.64 (a) and (f) introductory text revised **49927**
250.65 (a), (b) and (c) amended **49928**
250.66 (b) and (e) amended **49928**
250.83 (a) and (b) amended; (c) revised; (d) added **49928**
250.85 (a) amended **49928**
250.103 (a), (b) introductory text and (c) introductory text amended; (d) revised **49928**
250.105 (a) amended **49928**
250.111 Introductory text amended **49928**
250.114 (b) amended **49928**
250.121 (h)(1) amended **49928**
250.172 (a)(1), (b)(2), (3), (5) and (6) revised; (a)(2), (3), (6), (7) and (8) amended; (a)(9), (b)(8) and (9) added **49928**
250.260 (b)(3) amended **49928**
250.272 (a) and (c) introductory text amended **49928**
250.273 (a), (b) and (c) amended **49928**
250.274 (b) amended **49928**
250.282 (a), (b), (c)(1) and (2) amended **49928**
256 Heading revised **45261**
Authority citation revised **45261**
256.0—256.12 (Subpart A) Heading revised **45261**
256.0 Revised **45261**
256.58 Heading, (a), (c) and (e) revised; (f) redesignated as (h); new (f) and (g) added **45261**
256.59 Revised **45262**
256.61 Revised **45262**
256.62 (e) revised **45262**

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

718 Removed **41937**
720 Removed **41937**

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735.21 (a)(6) revised **41938**
756.16 Added 29721
779.22 Removed 27937
779.25 (a)(11) removed 27937
780.23 Revised 27937
783.22 Removed 27937
783.25 (a)(11) removed 27937
784.15 Revised 27937
795.3 Amended 28167
795.4 Revised; OMB number 28167
795.6 (a)(2) introductory text, (i) and (ii) revised 28168
795.9 (a) and (b) revised 28168
795.12 (a) introductory text, (2) and (3) revised 28168
870.5 Amended 28168
870.10 Revised; OMB number 28169
870.12 (d) added 28169
870.15 (d) revised 14479
(b) revised; (c) amended 28169
870.17 Revised 28169
872 Authority citation revised 28169
872.10 Revised; OMB number 28169
872.11 (a)(6), (b)(6), (7) and (8) added; (b)(1) through (5) revised 28169
873 Added 28170
874 Authority citation revised 28171
874.1 Revised 28171
874.11 Revised 28171
874.12 (d) through (h) added 28171
874.13 Revised 28171
874.14 Added 28171
874.15 Added 28172
874.16 Added 28172
875 Authority citation revised 28172
875.10 Added; OMB number 28172
875.12 Revised 28172
875.13 Revised 28172
875.14 Added 28172
875.15 Added 28173
875.16 Added 28173
875.17 Added 28173
875.18 Added 28173
875.19 Added 28173
875.20 Added 28173
876 Added 28174
876.10 OMB number 28174
886 Authority citation revised 28174
886.23 (b)(2)(ii) and (iii) amended; (c) added 28174
901.10 Revised 17928
901.15 (p) added **54289**
901.20 Revised 17928
901.25 (a) and (b) revised 17929
(d) added 33666
904.10 (a) revised 17931
904.20 Revised **38534**
Revised 17931
904.25 Added **38534**
(b) added 541
904.26 Added **38534**
Revised 542
906.10 (a) and (b) revised; (c) removed 17932
906.15 (o) added 2745
(p) added 28260
906.16 (f) added 28260
906.20 Revised 17932
913.15 (o) added **46856**
(p) added 4833
913.16 (l), (m), (n), (p), (q) and (r) removed; (s), (t) and (u) added **46857**
(v) added 4833
913.25 (e) added **48962**
914 Technical correction 1919
914.10 (c) revised 17929
914.15 (uu) added **41042**
(vv) added **43259**
(ww) added **46860**
(xx) added **48966**
(YY) added **60786**
(zz) added 30879
914.16 (i) through (m) removed **41042**
(n) through (aa) added **43260**
(bb), (cc) and (dd) added **46861**
(g) removed **48967**
(d) revised; (e) removed **60786**
(ee) added 30879
914.20 Revised 17929
915.10 (a) and (b) revised; (c) removed 17932
915.15 (j) added 5723
915.16 (a) introductory text, (1) and (5) revised; (a)(2), (3), (4) and (6) through (21) removed; (b) added 5723
915.20 Revised 17932
916.15 (n) correctly designated **45439**
(o) added 28773
916.16 Revised 28773
917.10 (b) removed; (c) redesignated as (b); (a) and new (b) revised 17929
917.15 (rr) added **42011**
(ss) added **51227**
(uu) added 8865
(tt) added 27238
917.16 Heading revised; (j) and (k) added **42011**
(f) revised 27238

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917.20 Revised 17929
(b) correctly revised 27239
917.21 (a) and (b) revised 17929
(a)(1) and (b)(1) correctly revised 27239
918.10 (a) and (b) revised 17932
918.20 Revised 17932
920.10 (a) and (b) revised; (c) removed 17929
920.15 (x) added **36138**
(y) added 33669
920.20 Revised 17929
924.10 (a)(1) and (2) revised; (a)(3) removed 17930
925.10 (a) revised 17932
925.15 (q) added **64150**
(r) added 19137
925.16 (d), (g)(9) through (19), (21), (p)(1), (2), (3), (13), (17) and (19) removed; (p)(9) revised; (q) added **64150**
(i) removed 19137
925.25 (b) revised 17932
926.10 Revised 17932
926.15 (k) added 9087
926.16 (f) added 9087
926.20 Revised 17932
931.10 (a) and (b) revised 17933
931.15 (r) added **65928**
931.16 (d) through (v) added **65929**
931.20 Revised 17933
934.15 (q) added 11933
934.16 (m), (o) through (t) and (v) removed 11933
934.25 (d) added **50258**
935.10 (a) revised; (b) removed 17930
935.15 (ooo) added **43263**
(ppp) added **46864**
(qqq) added 22518
935.16 Revised 22518
935.20 Revised 17930
936 Informal conference 2300
936.15 (m) added **64383**
936.16 Revised **64383**
938.10 Revised 17930
938.15 (z) added **36141**
(aa) added **64152**
938.20 Revised 17930
943.10 Revised 17933
943.15 (i) added 13209
943.16 Introductory text, (c), (d), (f) and (j) revised; (b), (e), (g), (h) and (i) removed; (r) and (s) added 13209
943.20 Revised 17933
944.10 Revised 17933
944.15 (w) added **48611**
(x) added 16548
(y) added 26739
944.16 (a) through (d) added **48611**
Revised 16548
944.20 Revised 17933
946.10 (a) and (b) revised; (c) and (d) removed 17930
946.15 (gg) added **49931**
(ff) amended **52667**
946.20 (a) and (b) revised; (c) removed 17930
946.25 Revised 17930
948.10 (b) removed; (c) redesignated as (b) and revised 17931
948.20 (a) revised; (c) removed 17931
950 Authority citation revised 3520
950.11 (c) revised 3520
950.12 (a)(9) removed 14753
950.15 (o) added **44455**
(p) added **52237**
(q) added **58494**
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100.35–T0772 Added (temporary) **38298**
100.35–T07–103 Added (temporary) **57742**
100.35–T0907 Added (temporary) 27461
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100.91 Table 1 revised **40738**
100.103 Implementation (temporary) **36355**
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100.105 (b)(2) and (c) revised (temporary) **50261**
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110.86 Added; interim **40740**
110.186 Added **36356**
110.195 (a)(7), (11), (13) and (15) revised 13458
110.214 (a)(7)(iii) added 5952
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117.4 Added 16563
117.11 Revised 16563
117.43 Revised **46081**
117.155 Revised 8409
117.195 Revised 13248
117.272 Added **39146**
117.287 (d)(3) removed **36357**
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117.301 Removed **36357**
117.317 (j) removed; (k) redesignated as (j) **36357**
117.321 Removed **36357**
117.391 Revised 18299
117.393 Introductory text through (e) redesignated as (a) introductory text through (5); (b) added; interim; eff. 8–1–94 33677
117.439 Revised 14757
117.478 (b) revised 14756
117.484 Added 14755
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117.501 (c) revised **43264**
117.637 Revised **52442**
117.667 (b) revised (temporary) 28778
117.723 Revised **39148**
117.739 (a)(5) added; (a)(3), (4) and (e) revised **39149**
117.745 Revised **40591**
117.793 Revised **42859**
117.821 (b)(3) removed; (b)(4), (5) and (6) redesignated as (b)(3), (4) and (5); eff. 7–5–94 28778
117.839 Removed **39146**
117.899 Revised **44613**
117.973 Removed 13249
117.1025 Added 5954
117.1047 (e) removed **44613**
117.1049 (a) and (c) revised; (d) suspended; eff. 4–4–94 through 6–30–94 10077
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147 Authority citation revised 675
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151.47 Amended 16986
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151.63 (b)(2) revised 18703
154.310 (a)(22) added **39662**
154.500 (e) and (f) revised **39662**
155 Authority citation revised **62262, 67995**
155.140 (a) revised; (b) amended; interim **67995**
155.200 Added; interim **67996**
155.205 Added; interim **67996**
155.210 Corrected 3749
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155.225 Added; interim **67996**
155.230 Added; interim **67996**
155.235 Added; interim **67996**
155.240 Added; interim **67996**
155.245 Added; interim **67997**
155.310 Heading and (b) introductory text revised; (c) and (d) added; interim **67997**
155.450 (a) revised **62262**
155.750 (a)(11) added **39662**
156 Authority citation revised **48436**
156.200 Revised **48436**
156.205 (b) amended **48436**
156.210 (a)(3) redesignated as (a)(4); new (a)(3) and (c) added **48436**
156.215 (a)(3) revised **48437**
161.580 Revised; interim **46082**
161.880 Revised; eff. 12–27–93 through 4–15–94 5324
162.T139 added (temporary) 16565
162.25 Removed **69232**
162.130 (b)(3) introductory text revised; (b)(4) added **59365**
164.T0257 Added (temporary) **44615**
164.T1106 Added (temporary) **40362**
164.13 (e) suspended **36141**
165 Temporary regulations list **46078, 59948**
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165.T01–005 (b) revised (temporary) **65669**
165.T01–019 Removed **39151**
165.T01–020 Added (temporary) **36869**
165.T01–022 Added (temporary) 26429
165.T01–025 Added (temporary) 18486
165.T01–030 Added (temporary) 27462
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165.T01–039 Added (temporary) 28780
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165.T01–057 Added (temporary) **36598**
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165.T01–087 Added (temporary) **39151**
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165.T01–151 Added (temporary) **68308**
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165.T01–152 Added (temporary) **68310**
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165.T01–401 Added (temporary) **69234**
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165.T0260 Added (temporary) **40741**
165.T0263 Added (temporary) **40361, 46084**
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165.T02–067 Added (temporary) **51243**
165.T02–073 Added (temporary) **58498**
165.T02–076 Added (temporary) **69235**
165.T02–077 Added (temporary) 676
165.T02–079 Added (temporary) 677
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165.T05–022 Added (temporary) 26121
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165.T05–029 Added (temporary) 28264

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165.T05–063 Added (temporary) **47990**
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165.T1105 Added (temporary) **39663**
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165.T11–050 Added (temporary) **59172**
165.T13–006 Added (temporary) 31935
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165.122 Added 18489
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165.803 Introductory text and (m)(1) introductory text revised; interim 21935
165.809 Added; interim 18487
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165.1113 Removed **68306**
165.1706 Added; eff. 7–3–94 31934
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167.3 Revised 21937
167.5 (e) added 21937
167.150—167.155 (Subpart B) Heading revised 21937
167.200 Added 21937
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209.135 Removed 31146
209.147 Removed 31146
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334.1 Added **37607**
334.2 Added **37607**
334.3 Added **37607**
334.4 Added **37608**
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334.80 Heading revised **37608**
334.260 Heading revised **37608**
334.275 Added **47788**
334.380 Revised **53428**
334.390 (b)(1), (2), (4), and (5) revised **53428**
334.400 Heading revised **37608**
334.460 (a)(12) and (b)(11) added 2916
334.500 Heading revised **37609**
334.540 Heading revised **37609**
334.560 Heading revised **37609**
334.905 Added; interim **53427**
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334.980 Regulation at 58 FR 21226 confirmed **42238**
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334.1320 Regulation at 58 FR 26046 confirmed **42237**
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7.9 Amended 26122
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9.6 (a)(1) amended 26122
9.8 (b)(1) amended 26122
9.11 (e) introductory text and (4) amended 26122
10.5 (b)(1) amended 26123
10.10 (b)(1) amended 26123
10.12 (a) amended 26123
10.14 (b)(1) amended 26123
10.21 Revised 9089
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10.22 Revised 9090
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60.12 (a) and (d)(3) amended 26123
135.443 Amended 26123

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13 Authority citation revised 14566
13.65 (a) added; interim; eff. to 1–1–96 14566
51.9 (b) corrected **36598**

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200.12 (a) introductory text and (1)(ii) introductory text amended 2987
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217 Heading revised 58915
217.1 Revised 58915
217.2 Amended 58915
217.3 Revised 58915
217.4 Revised 58915
217.7 (b), (c) and (d) revised; (e) removed 58916
217.8 (a)(2) revised; (f)(1) and (3) removed; (f)(2) and (4) redesignated as (f)(1) and (2) 58916
217.10 (i) revised 58916
217.14 (a) revised 58916
217.15 (a) revised 58916
217.16 (e) revised 58916
217.17 (b), (c) and (f) revised 58916
223.190 (h) introductory text, (1), (2) and (3) removed; (h)(4) and (5)(i) through (iv) redesignated as (h) and (i)(1) through (4); (g) and new (h) revised; new (i)(1) amended 8830
223.191 (e)(1) amended 8831
242.24 (a)(1) table and (2) table amended 27463
(a)(2) table corrected 28922
242.25 (b)(2)(i) introductory text, (iv) introductory text and (f) revised; (m)(1) table amended 61811
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242.26 Regulation at 58 FR 31289 eff. date extended to 12-31-95; interim 32925
242.27 Regulation at 58 FR 31294 eff. date extended to 12-31-95; interim 32925
254.1—254.17 (Subpart A) Revised 10867
254.5 (a) corrected 15501
254.7 (a)(2) corrected 15501
254.14 (b) introductory text and (1) corrected 15501
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261 Authority citation revised 31152
261.2 Amended 31152
261.8 (e) added 31152
261.9 (j) added 31152
261.10 (d) introductory text revised; (d)(3) and (n) added 31152
261.58 (ee) added 31152
290 Added 31152
292.20—292.25 (Subpart E) Added 30497

Chapter XI—Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)

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Appendix redesignated as Appendix A and amended 38211
Authority citation revised 31744
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1191.2 Added 17446
1191 Appendix A amended; interim; eff. 12-20-94 31745

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1220.42 Added; eff. 7-5-94 28783
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1230.1 Revised 49194
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1230.4 Amended 49195
1230.7 (Subpart B) Added 49195
1230.10—1230.16 (Subpart B) Redesignated as Subpart C 49195
1230.12 (d)(1)(i) and (2) revised 49195
1230.14 (a) and (b) revised; (c), (d)(1)(i) and (2) amended 49195
1230.16 Revised 49196
1230.20—1230.26 (Subpart C) Redesignated as Subpart D 49195
1230.20 Revised 49196
1230.22 (a)(6) removed; (a)(7) and (8) redesignated as (a)(6) and (7); (a)(1), (4)(i), (5) and new (a)(7) revised 49196
1230.24 (a) revised 49196
1230.26 (a) revised 49196
1230.50—1230.52 (Subpart D) Redesignated as Subpart E 49195
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1252.2 Amended; eff. 7-6-94 29191
1253.1 Revised 6901
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1254.1 (a) and (d) amended; (b) and (e) revised; eff. 7-6-94 29192
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1254.4 (a), (b) and (d) amended; (c) revised; eff. 7-6-94 29192
1254.8 (c) amended; eff. 7-6-94 29192
1254.10 Revised; eff. 7-6-94 29192
1254.12 Revised; eff. 7-6-94 29192
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1254.17 Redesignated from 1254.22 and revised; eff. 7-6-94 29193
1254.18 Amended; eff. 7-6-94 29192
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1254.26 (e)(2) amended; eff. 7-6-94 29192
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1254.27 (f)(2) amended; eff. 7-6-94 29192
(c)(2), (f)(2), (4) and (5) amended; eff. 7-6-94 29192
Heading, (b), (f) introductory text, (3) and (6) revised; (a), (c)(2) and (3) amended; eff. 7-6-94 29194
1254.35 Added; eff. 7-6-94 29194
1254.36 Revised; eff. 7-6-94 29194
1254.40 Revised; eff. 7-6-94 29194
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1254.48 (a) and (c) revised; eff. 7-6-94 29194
1254.50 Revised; eff. 7-6-94 29194
1254.70 (a) amended; eff. 7-6-94 29192
(b) revised; eff. 7-6-94 29194
1254.71 (c)(1), (2), (3), (d) introductory text, (2), (4) and (5) amended; eff. 7-6-94 29192
(a), (b)(1), (2)(i), (d)(3), (6), (f) and (g)(1) revised; eff. 7-6-94 29194
1254.72 Revised; eff. 7-6-94 29195
1254.74 Revised; eff. 7-6-94 29195
1254.76 Revised; eff. 7-6-94 29195
1254.90 (a) revised; eff. 7-6-94 29195
1254.92 (c)(5) introductory text, (i), (ii) and (6) redesignated as (d) introductory text, (1), (2) and (e); heading, (a) and new (d)(2) revised; eff. 7-6-94 29195
(c)(1) introductory text amended; eff. 7-6-94 29192
1254.94 (b), (f) introductory text, (3), (g) introductory text through (6), (h) and (i) amended; eff. 7-6-94 29192
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TITLE 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

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1 Technical correction **64155**
1.4 Heading revised; (d), (e) and (f) added **54501**
1.5 (a) revised **54501**
1.6 Revised **54501**
(d)(3) corrected **64154**
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1.123 Revised **38726**
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1.191 (d) revised **54510**
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1.352 (a) revised **54511**
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201—211 (Subchapter A) Heading added; interim 23981
201 Authority citation revised 12164
201.16 (a) and (b)(3)(iii) amended 33201
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21.7635 (b)(1) authority citation, (c) introductory text and (2) authority citation added; (b)(1), (2) introductory text, authority citation, (c)(1) and (2) revised **51783**
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36.4205 (a), (b)(1), (2), (3) and (f)(1) amended **37859**
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36.4223 (a)(1) and (2) revised **37860**
36.4224 (b) amended **37860**
36.4232 (a)(2) through (5) redesignated as (a)(3), (4), (5) and (7); new (a)(5) and (b) amended; new (a)(2) and (6) added; (d)(1) revised; (e)(5) removed **37860**
36.4233 Removed **60385**
36.4234 (a), (b) and (c) amended **37860**
36.4235 (a) amended **37860**
Removed **60385**
36.4253 (b)(9) and (c)(2) amended **37860**
36.4276 (c) added **37860**
36.4283 (f)(4) added; (g) introductory text revised **37860**
36.4284 (e) added **37861**
36.4331 Removed **60385**
36.4341 Removed **60385**
36.4361 Removed **60385**
36.4500 (b) redesignated as (c); new (b) added; interim **59660**
36.4501 Amended; (o) and paragraph designations removed; authority citation revised; interim **59660**
36.4527 Added; interim **59660**
44 Authority citation revised **60385**
44.700—44.713 (Subpart G) Added **60385**
47 Added **48455**

Proposed Rules:

1 ..... **39706**
3 ..... **38103, 38104, 38106, 46919, 48483, 50528, 51798, 65958**
..... 278, 3532, 4619, 5161, 6607, 9719, 10675
4 17295
13 3659
14 ..... **39174**
17 ..... **44313, 51799**
20 ..... **47100**
21 ..... **38106, 39488, 41325, 50873**
..... 32671
36 ..... **49251, 49253, 50875**
..... 8881, 9944

TITLE 39—POSTAL SERVICE

Chapter I—United States Postal Service (Parts 1—999)

1 Revised 18447
2 Revised 18447
3 Revised 18448
4 Revised 18450
5 Revised 18450
6 Revised 18451
7 Revised 18451
8 Removed 18447
11 Added 18454
20 IMM amended; incorporation by reference; interim **57743, 60788**
IMM amended; incorporation by reference 11192, 24943
111 Regulation at 58 FR 13552 confirmed **42012**
DMM amended; incorporation by reference **60386**
DMM amended; incorporation by reference; eff. 7-3-94 ..... 11888, 23162, 30701, 32337
Regulation at 59 FR 11888 effective date delayed to 6-12-94 17485
Authority citation revised 23162
DMM amended; incorporation by reference eff. 10-2-94 32335
221 Authority citation revised 18454
221.9 Added 18454
233.2 (b)(1) introductory text and (b)(2) Note revised; (b)(1)(x) added 5326
233.3 Revised **36599**
233.7 (c) amended 31154
241 Heading revised 29725

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241.3 Added 29725
265.6 (d)(2) and (4) removed; (d)(3) and (5) through (10) redesignated as (d)(2) through (8); new (d)(2), (3)(ii), (iii) and new (4)(iv) amended; (d)(1) and new (d)(4)(iii) revised; interim 11550
(d)(8) revised; interim 22757
265.9 (g)(5)(ii) and (iv) amended; interim 11550
266.4 (b)(5) revised **62036**
946.11 Revised 29372
953 Revised 31539
962.26 (c) amended; (b) and (d) revised; (e) removed 2987
963.1 Amended 10751
963.2 Amended 10751
963.3 (a) and (c) amended 10752

Chapter III—Postal Rate Commission (Parts 3000—3099)

3000 Authority citation revised **42874**
3000.735-101—3000.735-104 (Subpart A) Revised **42874**
3000.735-201—3000.735-205 (Subpart B) Removed **42874**
3000.735-301—3000.735-316 (Subpart C) Removed **42874**
3000.735-401—3000.735-405 (Subpart D) Removed **42874**
3000.735-501—3000.735-502 (Subpart E) Redesignated as Subpart B **42874**
3001 Authority citation revised 8542
3001.5 (g) and (h) amended **38976**
3001.6 (a), (b) and (c) amended **38976**
3001.7 (a)(1)(i), (ii), (iii), (b)(2), (3), (c)(1) and (d)(1) amended **38976**
3001.9 (a) amended **38976**
3001.10 (a) amended **38976**
3001.11 (a) and (e) amended **38976**
3001.12 (e) and (g) amended **38976**
3001.13 Amended **38976**
3001.17 (c)(3) and (4) amended **38976**
3001.19 Amended **38976**
3001.20 (b), (c) and (e) amended **38976**
3001.20a Introductory text and (a) amended **38976**
3001.20b (b) amended **38976**
3001.21 (b) amended **38976**
3001.23 (b) and (d) amended **38976**
3001.24 (b), (d)(1) through (11) and (e) amended **38976**
3001.25 (c) and (e) amended **38976**
3001.26 (a) and (c) amended **38976**
3001.27 (c) amended **38976**
3001.31 (b), (d) and (k)(3)(iv) amended **38976**
3001.31a (b) and (c) amended **38976**
3001.33 (e) and (h) amended **38976**
3001.36 Amended **38976**
3001.39 (a) amended **38976**
3001.42 (c)(2) amended **38976**
3001.42a Amended **38976**
3001.43 (e)(4) introductory text, (i), (f)(1), (g)(3), (5) and (6) amended **38976**
3001.54 (h)(5)(v)(a) and (p)(2) amended; (l) redesignated as (l)(1); (l)(2) added **38976**
(o)(2)(i), (3), (p)(2) and (r) amended **38977**
(j)(3), (4) and (6) introductory text revised 8542
3001.55 Amended **38977**
3001.57 Heading amended **38977**
3001.57c Heading amended **38977**
3001.63 Amended **38977**
3001.64 (c)(1) and (2) amended **38977**
3001.65 Amended **38977**
3001.61—3001.68 (Subpart C) Appendix A amended **54512**
3001.75 Amended **38977**
3001.83 (e) amended **38976**
(a) amended **38977**
3001.101 Amended **38977**
3001.102 (a)(1), (d) introductory text and (4) amended **38977**
3001.110 Amended **38977**
3001.111 (b) amended **38977**
3001.114 (a) amended **38977**
3001.115 (a) amended **38976**
Heading revised **38977**
3001.116 Amended **38977**

Proposed Rules:

1—999 (Ch. I) 31178
39 ..... **38321**
71 ..... **38322**
73 ..... **38323**
111 ..... **49402, 64918, 65959, 67747**
..... 1512, 8575, 13287, 16786, 17076, 23038, 26609, 31178, 32165
262 30739
265 ..... **48808**
266 ..... 17749, 30739
3001 ..... **58519**

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.....8576

TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—799)

6 Authority citation revised.....63247
6.303 (a) and (b) revised; (c) through (g) removed.....63247
9 Authority citation revised.....32339
9.1 Table amended (OMB numbers).....40054, 49376, 57911, 58400, 62283, 66294
Table amended (OMB numbers) 4493, 8412, 13146, 13564, 14106, 26449, 31335, 31541, 32342
Table corrected.....17154
Table amended (OMB numbers); eff. 7-22-94.....32083
Table amended; eff. 7-25-94 (OMB numbers) 32339, 32340, 32341
13 Authority citation revised.....651
13.34—13.40 (Subpart H) Added; interim.....651
16.14 (a)(1) revised.....17486
35 Authority citation revised.....63878
35.105 Amended; interim.....13817
35.115 (b), (d), (f) and (g) amended; interim.....13817
35.155 (c) amended; interim.....13817
35.250 Amended; interim.....13817
35.255 (b) amended; interim.....13817
35.260 (a) and (b) amended; interim.....13817
35.265 (a) amended; interim.....13817
35.350 Introductory text amended; interim.....13817
35.365 (a)(1) amended; interim.....13817
35.400 Amended; interim.....13817
35.415 (a)(1) amended; interim.....13817
35.450 Amended; interim.....13817
35.465 (a)(1) amended; interim.....13817
35.750 Amended; interim.....13817
35.755 (a) and (b)(1) amended; interim.....13817
35.1605-9 Amended; interim.....13817
35.1620-1 (c) amended; interim.....13817
35.10000—35.10035 (Subpart Q) Added; interim.....63878
51 Authority citation revised.....38821
Solid waste incinerator categories list.....58498
51.46 (b) revised; (c) removed.....38821
51.63 (a) amended.....38821
51.112 (a) amended; (a)(1) and (2) added.....38821
51.117 (c)(1), (2) and (3) amended.....38822
51.150 (e) amended.....38822
51.160 (f)(1) and (2) added.....38822
51.166 (l)(1) and (2) revised.....38822
51.351 (a)(7)(iv), (v) and (vi) revised.....59367
(v) correctly revised.....32343
51.353 (a) amended.....59367
51.359 (e)(1) amended.....59367
51.360 (a)(8) revised.....59367
51.373 (a) amended.....59367
51.350—51.373 (Subpart S) Appendixes A, D and E amended.....59367
51.390—51.464 (Subpart T) Added.....62216
51.490—51.494 (Subpart U) Added.....16710
51.850—51.860 (Subpart W) Added (OMB number pending).....63247
51 Appendix W added.....38822
52 Authority citation revised.....38883
State implementation plan determinations.....41430, 42671, 50516, 52237, 64678, 65286
Authority delegation notice.....43798
Technical correction.....61143
Technical correction.....2649
State implementation plan determinations.....8867, 18753, 24054
Authority delegation notice.....26129
52.21 (l)(1) revised; (l)(2) amended.....38883
52.30 Added.....1484
52.50 (c)(61) added.....45440
(c)(56) and (57) added.....50266
(c)(63) added.....5332
52.70 (c)(17) added.....43085
(c)(18) added.....13886
52.219 Added.....62533
52.220 (c)(182)(i)(B)(*5*), (183)(i)(A)(*9*), (F), and (185)(i)(B)(*4*) added.....37423
(c)(183)(i)(A)(*11*), (C)(*4*) and (185)(i)(C)(*6*) added.....45442
(c)(179)(i)(C), (182)(i)(B)(*3*), (i)(C) and (183)(i)(E)(*2*) added.....45443
(c)(182)(i)(A)(*2*) added.....45445
(c)(182)(i)(A)(*3*) and (185)(i)(B)(*5*) added.....45447
(c)(183)(i)(A)(*6*) added.....47832
(c)(184)(i)(B)(*3*) added.....50851
(c)(181) added.....64158

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(c)(182)(i)(D) added.....66282
(c)(188) and (189) added.....66283
(c)(188)(i)(B) added.....66285
(c)(188)(i)(C), (189)(i)(A)(*2*) and (193) added.....66286
(c)(188)(i)(D), (189)(i)(A)(*3*) and (191) added.....66287
(c)(185)(i)(C)(*5*) and (187)(i)(A)(*4*) added.....2536
(c)(187)(i)(A)(*2*) added.....5725
(c)(192) added.....16140
(c)(189)(i)(A)(*4*) and (193)(i)(A)(*2*) added.....17698
(c)(188)(i)(F) added; eff. 7-11-94.....29732
(c)(183)(i)(F)(*2*), (186)(i)(B) and (C) added; eff. 7-25-94.....32355
52.320 (c)(59) added.....50270
(c)(62) added.....26128
52.329 (a)(3) removed.....50271
52.332 Added.....68038
Existing text designated as (a); (b) added.....26128
(c) added; eff. 7-11-94.....29734
52.346 Added.....49435
52.347 Added.....4004
52.370 (c)(62) added.....65932
(c)(63) added.....2532
(c)(65) added; eff. 7-18-94.....26126
52.420 (c)(45) added.....40066
(c)(47) added.....16142
(c)(50) added; eff. 7-11-94.....29957
52.422 Existing text designated as (a); (b) added.....50848
52.460 Added.....25572
52.520 (c)(76) added.....37660
(c)(80) added.....8544
(c)(79) added.....13884
(c)(83) added.....17697
Regulation at 59 FR 8544 withdrawn.....21664
52.531 Removed.....37660
52.670 (c)(26) and (27) added.....39447
52.679 Revised.....39448
52.681 Revised.....39450
52.683 Revised.....39450
52.720 (c)(96) added.....45450
(c)(97) added.....47382
(c)(98) added.....48314
(c)(95) added.....54294
(c)(99) added.....4003
(c)(37) and (46) redesignated as (c)(43) and (47).....5955
52.724 (g) added.....18753
52.726 (g) added.....9092
52.741 (e)(5) and (z)(1) revised; (e)(7) added.....14112
52.744 Added.....45451
52.770 (c)(88) added.....43083
(c)(93) added.....21945
(c)(91) added; eff. 8-9-94.....29956
52.776 (p) added.....7224
52.777 (e) added.....12170
(g) added; eff. 8-19-94.....31548
52.786 (h) added.....62535
52.798 Added.....46544
52.820 (c)(58) added.....50268
52.870 (c)(28) added; eff. 7-11-94.....24646
52.920 (c)(68) added.....54521
(c)(69) added; eff. 8-22-94.....32352
52.934 Added.....54522
Revised; eff. 8-22-94.....32352
52.970 (c)(59) added.....38060
(c)(61) added.....14114
(c)(60) added.....23166
(c)(63) added; eff. 8-22-94.....32359
52.991 Added; eff. 8-22-94.....32360
52.1020 (c)(29) added.....12855
(c)(33) added; eff. 7-18-94.....31156
52.1031 Table amended.....12855
Table amended; eff. 7-18-94.....31157
52.1070 (c)(93) through (96) added.....40062
(c)(98) added.....63086
(c)(87) redesignated as (c)(91).....2541
(c)(99) added.....8867
(c)(100) added.....17700
(c)(107) added.....29731
(c)(88) removed; (c)(101) added; eff. 7-11-94.....29958
52.1073 (f) added.....50848
52.1110 Added; eff. 7-15-94.....25333
52.1120 (c)(98) added.....48317
52.1167 Table amended.....48318
52.1170 (c)(93) added.....10753
(c)(94) added; eff. 8-2-94.....28788
52.1174 Regulation at 58 FR 34227 withdrawn.....44456
(b) added.....10753
52.1184 Added; eff. 8-2-94.....28788
52.1220 (c)(29) added.....7221
Second (c)(16) redesignated in part as (c)(17).....10078
(c)(28) added.....12168
(c)(30) added.....17706
(c)(32) added.....17707
(c)(31) added.....17709
(c)(33) added.....21941
52.1225 (a) added.....21941
52.1230 (a) revised.....7222
52.1270 (c)(23) added.....12851
52.1320 (c)(84) added.....45452

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(c)(82) added **57566**
(c)(83) added 24648
52.1370 (c)(28) added **64160**
(c)(26) added **67326**
(c)(30) added 2540
(c)(27) added 2991
(c)(29) added 11553
(c)(31) added 17703
52.1389 Added 10286
52.1420 (c)(40) added **45454**
52.1570 (c)(51) added 17935
52.1605 Table amended 17935
52.1620 (c)(50) added **47385**
(c)(52) added **62539**
(c)(51) added **67329**
(c)(53) added **67333**
(c)(54) added 12172
(c)(57) added; eff. 7–5–94 23168
52.1627 Revised 12172
52.1628 Removed 12172
52.1634 Revised **67333**
52.1636 Revised **67334**
52.1670 (c)(84) added **40058**
(c)(85) added **40064**
(c)(86) added **50852**
52.1679 Table amended **40059, 40065**
52.1770 (c)(66) added **47396**
(c)(67) added 18305
(c)(67) added; eff. 8–22–94 32365
(c)(68) added; eff. 8–29–94 33684
52.1780 Added; eff. 8–22–94 32365
52.1820 (c)(24) added **54043**
52.1833 Added 1486
52.1870 (c)(83) added **47214**
(c)(94) added **54516**
(c)(95) added **65934**
(c)(93) added 5335
(c)(90) added 22980
(c)(96) added 23799
(c)(97) added 27471
52.1879 (e) removed **47214**
52.1880 (d) revised 27472
52.1881 (b)(23) revised **46869**
52.1882 (l) added **46871**
52.1920 (c)(43) added **38062**
(c)(45) added; eff. 8–22–94 32370
52.1935 Added; eff. 8–22–94 32370
52.1970 (c)(96) added **47387**
(c)(100) added **50850**
(c)(101) added **64164**
(c)(99) added **65936**
(c)(103) added 2748
(c)(104) added 7223
(c)(102) added 13888
(c)(106) added; eff. 7–15–94 25334
(c)(105) added; eff. 8–29–94 33203
(c)(107) added; eff. 8–30–94 33920
52.1977 Revised **47387**
Revised; eff. 7–15–94 25334
52.1987 Revised **47391**
52.1988 (b) revised **47391**
52.2020 (c)(84) added **50518**
(c)(87) added **53885**
(c)(85) added **57563**
(c)(86) added 6220
(c)(89) added; eff. 7–13–94 30304
52.2023 (h) added 6220
(i) added; eff. 7–13–94 30304
52.2070 (c)(39) added **65932**
52.2081 Table amended **65933**
52.2120 (c)(37) added 17937
52.2126 (a) revised; (b) removed 17937
52.2170 (c)(14) added **37425**
52.2183 Added **37426**
52.2219 Added 18316
52.2220 (c)(111) added **50273**
(c)(114) added 17939
(c)(115) added 18316
52.2225 (b) redesignated as (c); new (b) added 18317
52.2228 (e) added 18317
52.2270 (c)(76) added **45456**
(c)(79) added 2534
(c)(80) added 2994
(c)(81) added 17942
52.2348 Added 1486
52.2420 (c)(98) added **45459**
(c)(99) added 15118
(c)(100) added 17943
(c)(101) added; eff. 7–25–94 32354
52.2423 (j) added **50848**
(k) added 22758
52.2439 Removed; eff. 7–25–94 32354
52.2460 Added 5329
52.2470 (c)(39) added **37427**
(c)(41) added **40057**
(c)(40) added **40060**
(c)(42) added 2997
(c)(47) added; eff. 8–22–94 32376
52.2479 Revised **37427**
52.2520 (c)(27) added 18490
52.2560 Added **48312**
52.2569 Added 4594
(a)(2) added 9671
52.2570 (c)(69) added **43082**
(c)(70) added **64157**
52.2585 (f) added 12853
(e) added; eff. 8–15–94 30705
52.2620 (c)(23) added; eff. 8–19–94 31551
(c)(24) added; eff. 7–25–94 32362

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52.2770 (c)(17) added 18309
52.2773 Revised 18309
55 Petition for reconsideration **61027**
Authority delegation notice 11721
Reconsideration decision 24351
55.14 (e)(3)(ii)(E), (F) and (H) revised **44617**
(e)(6)(i)(A) revised **59173**
(e)(3)(ii)(E), (F), (G) and (H) revised 17270
55.15 Regulation at 58 FR 14159 eff. date corrected to 9–4–92 ..... **47398**
55 Appendix A amended **44617, 59173**
Appendix A amended 17271
60 Authority delegation notices 9093
Authority citation revised **40591**
Authority delegation notices 5955, 22758, 22759
60.1 (c) added 12427
60.2 Amended 12427
60.4 (c) table revised **64160**
60.7 (e), (f) and (g) redesignated as (f), (g) and (h); new (e) added 12428
60.17 (a)(6) and (38) amended **45962**
(a)(22) revised 19308
60.19 Added 12428
60.154 (d)(3), (4) and (5) removed 5108
60.604 Note removed; eff. 7–25–94 32341
60.700—60.708 (Subpart RRR) Added (OMB number pending) **45962**
60.735 (b) and (c)(2) amended **40591**
(c)(3) amended **40592**
60 Appendix G amended 8135
Appendix A amended 19308, 19309, 19311, 19319
61 Clarification **51784**
Clarification 542
Petition for reconsideration 14040
61.01 (d) added 12429
61.02 Amended 12429
61.04 (c) table revised 11555
61.10 (e) through (j) added 12430
61.140—61.157 (Subpart M) Appendix A added 31158
63 Complete enforceable commitment list 7224
63.1—63.15 (Subpart A) Added 12430
63.14 (b)(3) and (c) added 19453
63.40—63.56 (Subpart B) Added 26449
63.74 (d)(2) revised; (d)(4) and (i) removed; Table 1 amended **62543**
63.75 (f) added **62543**
63.77 Revised **62543**
63.90—63.96 (Subpart E) Added **62283**
63.100—63.106 (Subpart F) Added (OMB number pending) 19454
63.110—63.152 (Subpart G) Added (OMB number pending) 19468
63.110—63.152 (Subpart G) Appendix amended 29201
63.160—63.182 (Subpart H) Added (OMB number pending) 19568
63.190—63.193 (Subpart I) Added (OMB number pending) 19587
63.300—63.313 (Subpart L) Added **57911**
63.300—63.313 (Subpart L) Appendix A corrected 1992
63.320 (c) revised **66289**
63.320—63.325 (Subpart M) Added **49376**
63.324 (a) introductory text, (b) introductory text and (c) introductory text revised **66289**
63 Appendix A amended **57924**
Appendix A corrected 1992
Appendix A amended 19590
Appendix C amended 19605
68 Added 4493
69 Authority citation revised **43043**
69.11 (a) and (b) added **43043**
72.2 Corrected **40746, 40747**
72.8 (c)(2)(ii) corrected **40747**
72.41 (e)(3)(iii) and (iv) corrected **40747**
72.74 (b)(1)(iii) corrected **40747**
72.91 (a) introductory text and (3)(iii) corrected **40747**
72.92 (c)(2)(v)(C) corrected **40747**
73 Notice of procedure **48318**
73.10 (a) Table 1 corrected **40747**
73.30 (a) corrected **40747**
73.31 (c)(1) introductory text corrected **40747**
73.32 (a)(1) corrected **40747**
73.72 Technical correction **40747**
73.80 (b) corrected **40747**
73.81 (b)(4) corrected **40747**
73.82 Heading corrected **40747**
75 Meeting **67692**
75.1 (b) existing text designated as (b)(1) and (2); new (b)(2) corrected **40747**
75.5 (b) corrected **40747**
75.6 (a)(4) corrected **40747**

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75.7 Corrected **40747**
75.11 (c) introductory text corrected **40747**
75.15 (a) introductory text, (2) and (b)(1) corrected **40747**
75.16 (e) corrected **40747**
75.17 (a)(2)(iii)(a) correctly designated as (a)(2)(iii)(A) **40747**
(a)(2)(iii)(B) and (b)(2) corrected **40748**
75.20 (b)(3), (c) introductory text, (9)(i) introductory text, (B) and (d) corrected; (c)(5)(iv) correctly added **40748**
75.31 (b)(2), (c)(2) and (3) corrected **40748**
75.32 (b) corrected **40748**
75.34 (b)(1) corrected **40748**
75.41 (a)(9)(i), (ii), (b)(1)(i), (2)(i), (iv)(A), (C), (v)(A), (B), (c)(1)(i), (ii) and (2)(i) corrected **40748**
75.48 (a)(3) corrected **40748**
75.50 (b) introductory text, (6), (c)(1)(iii), (iv), (vi), (2)(iii), (iv), (v), (vii), (3)(ii), (iii), (iv) Table 3, (d) introductory text, (3) through (9), (e)(1)(iii), (iv), (v), (vii), (viii), (2)(ii), (iv) and (v) corrected **40749**
75.51 (b)(1)(vii) correctly designated as (b)(1)(viii); (a)(1)(iii) through (vi), (viii), (2)(i), (iii), (b) introductory text, new (b)(1)(viii), (1)(ix), (c)(1)(ii), (vi), (d)(1)(ii) and (iv) corrected **40749**
75.52 (a)(5)(iv)(G) and (H) correctly redesignated as (a)(5)(v) and (vi) **40749**
75.53 (a) introductory text, (c)(2) introductory text and (4)(vi) corrected **40749**
(c)(8) and (9) corrected; (c)(10), (10)(i), (ii), (A) and (B) correctly redesignated as (d), (d)(1), (2), (i) and (ii) **40750**
75 Appendixes A, B and C corrected **40750**
Appendixes C through H corrected **40751**
Appendix H corrected **40752**
76 Added 13564
79 Authority citation revised **65554**
Authority citation revised 33092
79.2 (d), (e) and (f) revised 33092
79.3 Revised 33092
79.4 (b)(1) revised 33092
79.6 Revised 33092
79.8 Revised **65554**
79.10 Revised 33092
79.11 Introductory text revised; (h) amended; (i) and (j) added 33092
79.12 Revised 33093
79.13 (a) revised 33093
79.20 Revised 33093
79.21 Introductory text and (d) revised; (h) and (i) added 33093
79.22 Revised 33093
79.23 (a) revised; (b) removed; (c) redesignated as (b) 33093
79.31 (b) revised 33093
79.50—79.68 (Subpart F) Added 33093
79.51 OMB number pending 33094
79.52 OMB number pending 33099
79.57 OMB number pending 33111
79.58 OMB number pending 33115
79.59 OMB number pending 33117
79.60 OMB number pending 33119
79.61 OMB number pending 33124
79.62 OMB number pending 33129
79.63 OMB number pending 33132
79.64 OMB number pending 33134
79.65 OMB number pending 33135
79.66 OMB number pending 33137
79.67 OMB number pending 33140
79.68 OMB number pending 33140
80 Petition for exemption **48968**
Petition for exemption 13610, 26129
80.2 (ee) through (nn) added (OMB number pending) 7812
80.5 Revised **65554**
80.27 (a)(2) table amended **46511**
(a)(2) table amended 15629, 15633
80.40—80.82 (Subpart D) Added (OMB number pending) 7813
80.90—80.106 (Subpart E) Added (OMB number pending) 7860
80.125—80.130 (Subpart F) Added (OMB number pending) 7875
81 Attainment status designations **53888**
81.300 (d)(2)(iii) revised 18970
81.303 Table amended **67341**
81.305 Table amended **62546, 67342**
81.306 Table amended **67343, 68038**
Table amended 26128
81.313 Table amended **67343**
81.316 Table amended 11195
81.324 Revised **50277**

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Table corrected **60495**
Table amended 17709
81.327 Table amended **53887, 67343**
Table amended 11553
81.333 Table amended **50853, 67344**
Table amended 18970
81.334 Table revised **47396**
Table amended 18305
81.336 Table amended 5335
Table removed 28482
81.338 Table amended **49932, 64164, 67344**
81.339 Table amended **67345**
81.343 Table revised **50274**
Table amended **69235**
81.348 Table amended **64491**
81.349 Table amended **67345**
82.1—82.13 (Subpart A) Revised **65062**
82.5 (f) and (g) added **69238**
82.6 (f) and (g) added **69238**
82.21 Added **40054**
82.60—82.70 (Subpart C) Revised **69666, 69675**
82.80—82.86 (Subpart D) Added **54898**
82.154 (g) and (h) amended **36516**
82.170—82.184 (Subpart G) Added 13147
85 Public workshop **36871**
Authority citation revised **65554**
85.2109 (a)(6) revised **65554**
85.2110 (b) revised **65554**
85.2111 Introductory text revised **65554**
85.2201 (b) revised; (c) added **58400**
85.2203 Redesignated from 85.2203–81 and revised **58401**
85.2203–81 Redesignated as 85.2203 ..... **58401**
85.2204 Redesignated from 85.2204–81 and revised **58401**
85.2204–81 Redesignated as 85.2204 ..... **58401**
85.2208 (a)(3) added; (c) revised **58401**
85.2209 (a) and (b) redesignated as (b) and (c); heading and new (c)(6) revised; new (a) added **58402**
85.2210 (a) and (b) redesignated as (b) and (c); heading and new (c)(7) revised; new (a) added **58402**
85.2211 Heading revised; (a) and (b) redesignated as (b) and (c); new (a) added **58402**
85.2212 Heading revised; (a) and (b) redesignated as (b) and (c); new (a) added **58403**
85.2213 Redesignated as 85.2214; new 85.2213 added **58403**
85.2214 Redesignated as 85.2216; new 85.2214 redesignated from 85.2213 ..... **58403**
(a), (b) and (c) redesignated as (b), (c) and (d); heading, new (c)(4), (5), (6) and (d) revised; new (a) added **58404**
85.2215 Redesignated as 85.2224 ..... **58403**
Added **58405**
85.2216 Redesignated as 85.2229; new 85.2216 redesignated from 85.2214 ..... **58403**
(a), (b) and (c) redesignated as (b), (c) and (d); heading, new (c)(6) and (7) revised; new (a) added **58407**
85.2217 Redesignated as 85.2232 ..... **58403**
Added **58407**
85.2218 Redesignated as 85.2237 ..... **58403**
Added **58408**
85.2219 Added **58409**
85.2220 Added **58411**
85.2224 Redesignated from 85.2215 ..... **58403**
Heading revised; (a) and (b) redesignated as (b) and (c); new (a) added **58412**
85.2225 Added **58413**
85.2229 Redesignated from 85.2216 ..... **58403**
Heading revised; (a) and (b) redesignated as (b) and (c); new (a) added **58414**
85.2230 Added **58414**
85.2232 Redesignated from 85.2217 ..... **58403**
(a) through (e) redesignated as (b) through (f); heading and new (f)(1) revised; new (a) added **58415**
85.2233 Added **58415**
85.2237 Redesignated from 85.2218 ..... **58403**
Heading revised; (a), (b) and (c) redesignated as (b), (c) and (d); new (a) added **58416**
85.2238 Added **58416**
86.1 (b)(1) table amended **58417**
86.001–2 Added 16281
86.001–9 Added 16282
86.001–21 Added 16282

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86.001–22 Added 16283
86.001–23 Added 16283
86.001–24 Added 16283
86.001–25 Added 16283
86.001–26 Added 16284
86.001–28 Added 16284
86.001–30 Added 16285
86.001–35 Added 16285
86.004–9 Added 16286
86.004–28 Added 16286
86.004–30 Added 16287
86.092–15 Added 14106
86.092–23 Added 14108
86.094–15 (a)(2)(iii) and (b)(6)(ii) revised 14110
86.094–23 (c)(2)(i) revised **66294**
(h)(3)(iv) revised 14110
86.095–23 Added **66294**
(h)(3)(iv) revised 14110
86.096–2 Amended **58417**
86.096–3 Added **58417**
86.096–8 (a)(1)(iii) and (3) added **58417**
86.096–9 (a)(1)(v) and (3) added **58417**
86.096–21 (j) and (k) added **58417**
86.096–23 Introductory text and (a) through (l) revised **66297**
86.096–24 Added **58417**
86.096–35 (a)(1)(iii)(N) and (2)(iii)(P) added **58421**
86.097–9 (a)(1)(iv) and (3) added **58421**
86.098–2 Revised 16288
86.098–3 Added 16288
86.098–7 Added 16288
86.098–8 Added 16289
86.098–14 Added 16289
86.098–17 Added 16289
86.098–21 Added 16290
86.098–22 Added 16290
86.098–23 Introductory text and (a) through (l) revised **66297**
Introductory text and (a) through (l) revised 16290
86.098–24 Added 16290
86.098–25 Added 16291
86.098–26 Added 16291
86.098–28 Added 16292
86.098–30 Added 16293
86.098–35 Added 16294
86.099–8 (a)(1)(iii) and (3) added **58421**
(b)(5), (6) and (d) added; (c) and (e) through (k) revised 16294
86.099–9 (a)(1)(iv) and (3) added **58422**
86.101 (a)(3) added 16295
86.105 (b) revised 16295
86.107–98 Added 16295
86.115–78 (b)(3)(ii) and (5) revised 16296
86.116–90 (c)(5) added; (d)(1) removed **58422**
86.123–78 (a) introductory text revised **58422**
86.132–96 (h) introductory text, (j) introductory text, (1)(i) and (viii) revised 16296
86.142–90 (d) through (i), (k), (l), (m), (o) and (p) revised; (q) and (r) removed **58422**
86.150–98 Added 16296
86.151–98 Added 16296
86.152–98 Added 16298
86.153–98 Added 16298
86.154–98 Added 16299
86.155–98 Added 16300
86.156–98 Added 16300
86.210–96 Added **58424**
86.301–79—86.348–79 (Subpart D) Heading revised **58422**
86.319–79 (b) revised **58422**
86.332–79 (a) revised; (d) and (e) removed **58423**
86.516–90 (c)(3) added; (d)(1) removed **58423**
86.523–78 (a) introductory text revised **58423**
86.602–98 Added 16300
86.603–98 Added 16300
86.605–98 Added 16301
86.608–96 Added **58423**
86.608–98 Added 16301
86.609–96 Added **58423**
86.609–98 Added 16303
86.610–96 Added **58424**
86.610–98 Added 16304
86.708–94 (a)(1)(iii) and (3) added **58424**
86.708–98 (a)(1)(iii) and (3) added **58424**
86.709–94 (a)(1)(v) and (3) added **58424**
86.709–99 (a)(1)(iv) and (3) added **58425**
86.1002–2001 Added 16304
86.1003–2001 Added 16305
86.1008–96 Added **58425**
86.1008–2001 Added 16305
86.1009–96 Added **58425**
86.1009–2001 Added 16308
86.1010–96 Added **58426**
86.1010–2001 Added 16309
86.1105–87 (e) revised; (f) added **68540**
86.1106–87 (a)(2) revised **68540**

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86.1316–90 (b)(3) added and (c)(1) removed **58426**
86.1323–84 (a) introductory text revised **58426**
86.1401—86.1442 (Subpart O) Added **58426**
88.302–94 Added **64691**
88.308–94 Revised **64692**
88.311–98 Added 16309
89 Added 31335
89.114–96 OMB number pending 31341
89.115–96 OMB number pending 31341
89.116–96 OMB number pending 31341
89.117–96 OMB number pending 31342
89.118–96 OMB number pending 31342
89.119–96 OMB number pending 31342
89.120–96 OMB number pending 31342
89.122–96 OMB number pending 31342
89.123–96 OMB number pending 31342
89.124–96 OMB number pending 31343
89.125–96 OMB number pending 31343
89.126–96 OMB number pending 31343
89.127–96 OMB number pending 31344
89.129–96 OMB number pending 31344
89.203–96 OMB number pending 31346
89.204–96 OMB number pending 31346
89.205–96 OMB number pending 31346
89.206–96 OMB number pending 31346
89.207–96 OMB number pending 31346
89.209–96 OMB number pending 31346
89.210–96 OMB number pending 31347
89.211–96 OMB number pending 31347
89.304–96 OMB number pending 31348
89.305–96 OMB number pending 31348
89.306–96 OMB number pending 31348
89.307–96 OMB number pending 31348
89.308–96 OMB number pending 31349
89.309–96 OMB number pending 31349
89.310–96 OMB number pending 31349
89.311–96 OMB number pending 31350
89.312–96 OMB number pending 31351
89.313–96 OMB number pending 31352
89.314–96 OMB number pending 31351
89.315–96 OMB number pending 31351
89.316–96 OMB number pending 31351
89.317–96 OMB number pending 31351
89.318–96 OMB number pending 31351
89.319–96 OMB number pending 31352
89.320–96 OMB number pending 31353
89.321–96 OMB number pending 31353
89.322–96 OMB number pending 31353
89.323–96 OMB number pending 31354
89.324–96 OMB number pending 31354
89.325–96 OMB number pending 31354
89.326–96 OMB number pending 31354
89.327–96 OMB number pending 31354
89.328–96 OMB number pending 31354
89.329–96 OMB number pending 31354
89.330–96 OMB number pending 31354
89.331–96 OMB number pending 31355
89.404–96 OMB number pending 31360

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89.405–96 OMB number pending 31360
89.406–96 OMB number pending 31361
89.407–96 OMB number pending 31361
89.408–96 OMB number pending 31361
89.409–96 OMB number pending 31362
89.410–96 OMB number pending 31362
89.411–96 OMB number pending 31362
89.412–96 OMB number pending 31363
89.413–96 OMB number pending 31363
89.414–96 OMB number pending 31363
89.415–96 OMB number pending 31364
89.416–96 OMB number pending 31364
89.417–96 OMB number pending 31364
89.418–96 OMB number pending 31364
89.419–96 OMB number pending 31365
89.420–96 OMB number pending 31367
89.421–96 OMB number pending 31367
89.422–96 OMB number pending 31367
89.423–96 OMB number pending 31369
89.424–96 OMB number pending 31369
93 Added **62235**
93.150—93.160 (Subpart B) Added (OMB number pending) **63253**
93.150 (c)(2)(i) corrected **67442**
110 Technical correction **48424**
110.1 Amended **45036**
112 Technical correction **48424**
112.2 (k) amended **45037**
116 Technical correction **48424**
116.3 Amended **45037**
117 Technical correction **48424**
117.1 Amended **45037**
122 Technical correction **48424**
122.2 Amended **45037, 67980**
123.1 (b) and (h) revised; (d) redesignated as (d)(1); (d)(2) added **67981**
123.21 (a)(1) revised; (b) redesignated as (b)(1); (b)(2) added **67981**
123.22 (g) added **67981**
123.23 (b) revised **67981**
123.24 (b)(1) redesignated as (b)(1)(i); (b)(1)(ii) added **67981**
123.25 (a)(12) revised **67981**
123.27 (e) added **67981**
123.31 Added **67981**
123.32 Added **67982**
123.33 Added **67982**
123.34 Added **67983**
123.62 (a) amended **67983**
124 Authority citation revised **67983**
124.2 Amended **67983**
124.51 (c) added **67983**
130.1 (a) amended; interim 13817
130.6 (d) introductory text amended; interim 13818
130.15 Heading and (a) amended; (a) designation, (b), (c) and (d) removed; interim 13818
131.36 (d)(14)(ii) amended **36142**
136.3 (a) tables, (b) and (e) table amended 4505
141.30 (e)(3) and (4) added; (e) amended **41345**
141.81 (c) amended 33862
141.87 Introductory text revised 33862
141.89 (a) introductory text, table, (1)(ii) and (3) revised; (a)(4) removed 33863
141.90 (g) revised 33864
142.16 (d) added 33864
142.62 (g)(2) amended 33864
144.3 Amended **63895**
144.11 Amended **63895**
144.17 Added **63895**
144.21 Introductory text, (a), (b) and (c) redesignated as (a), (b), (d) and (e); new (a) and new (b) revised; new (c) added **63895**
144.22 (a) revised; (b) redesignated as (d); new (b) and new (c) added **63896**
144.24 Revised **63896**
144.25 (a) introductory text, (b) and (c) amended **63896**

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144.26 Introductory text revised; (d) introductory text added **63896**
(e) added; interim **63896**
144.27 Amended; (d) added **63896**
144.28 Introductory text, (d)(1), (2) and (l) revised; (f)(2) and (3) redesignated as (f)(5) and (6); (d)(5), (6), new (f)(2), (3) and (4) added **63897**
144.31 (a) and (c)(2) revised; (e)(10) added **63897**
144.51 (p) removed; (o) redesignated as (p); new (o) and (q) added **63898**
144.52 (a)(7) revised **63898**
144.70 (d) amended; eff. 8–9–94 29959
146.2 Revised **63898**
146.8 (b)(1) revised; (f) added **63898**
146.15 Removed **63898**
146.25 Removed **63898**
146.35 Removed **63899**
146.52 (a) removed; (b) redesignated as new (a) **63899**
152.25 (f) added 2751
165 Policy statement **43994**
170.112 (e)(7) added 30264
180.1 (h) table amended **64497**
(h) table amended 10287
180.3 (c) revised **65555**
180.33 Revised; eff. 6–2–94 28483
180.123a Redesignated from 180.126a and revised **65555**
180.126 Removed **65555**
180.126a Redesignated as 180.123a **65555**
180.138 Removed **46088**
180.177 Removed 13659
180.180 Revised 3655
180.204 (b) table amended **63295**
180.206 Revised **62038**
180.227 (c) added **62041**
180.234 Removed **60559**
180.271 Removed **44283**
180.277 Revised 1653
180.281 Removed **47216**
180.319 Table amended **39154, 46088**
Table amended 17487
180.335 Removed **39154**
180.342 (c) table amended; (e) added 9095
(c) table amended; (d) introductory text revised 10288
180.356 (a) designation and (b) removed; table amended **36361**
180.359 Revised 24060
180.362 Heading revised; (b) table amended **48321**
180.364 (a) table amended; (d) added **36359**
(a) table amended **62037**
180.378 (a) introductory text revised 9412
180.379 (a) table amended 9412
180.397 Removed **65556**
180.407 (b) introductory text and (c) introductory text amended **42675**
180.414 (e) added **44767**
(e) table amended **54044**
(e) table amended 9932
(f) added 26952
180.415 (a) table amended 17488
180.418 Table amended 9094
Introductory text amended 9412
180.422 Introductory text revised 9412
180.428 (a) table amended 13891, 25820
180.431 (a) table amended **54297**
(b) revised 19640
180.432 (b) revised 14760
180.434 Table amended **42673**
(a) revised 8137
(c) added 18974
(c) table amended 26950
180.436 Table amended 9412
180.438 (a) designation removed; introductory text revised; table amended 9412
180.439 Table amended 25822
Revised 32085
180.442 Introductory text revised 9413
Revised 26946
180.446 (b) introductory text and (c) introductory text revised 26947
180.447 (c) revised **64492**
180.450 (a) table amended **46087, 62039**
180.451 Revised 32085
180.458 Revised 4835
180.464 Heading revised; table amended 16144
180.468 Added **57967**
180.469 Added 12857
180.470 Added 13658
Table amended 26955
180.471 Added 24059
180.472 Added 33205
180.1001 (d) table amended **37862, 38978, 40364, 44766, 50854, 59662**

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(c) table, (d) table and (e) table amended **54295**
(e) table amended **64496**
(e) table amended 950, 10992, 18755
(d) table amended 952, 2752, 3656, 9929, 10989, 13890, 17710, 26953
(c) table amended 10289, 25819, 33438
(c) table and (e) table amended 10991, 24056, 26951
180.1029 Amended **47215**
180.1058 Revised **47215**
180.1121 Added **44283**
180.1122 Added **64494**
180.1123 Added **51015**
180.1124 Added 14759
180.1125 Added 13660
180.1126 Added 9931
180.1127 Added 15857
180.1128 Added 29544
180.1130 Added 32084
180.1131 Added 33437
180.4725 Added; eff. to 3–1–95 ..... **48322**
185.350 Removed **37867**
Reinstated **48458**
Removed 33694
185.410 Removed 10997
Regulation at 59 FR 10997 eff. date stayed 23800
185.1100 (b) revised 19640
185.1250 (a) revised 9413
185.1900 Revised **59667**
Regulation at 58 FR 59667 eff. date stayed 11556
185.3500 (a)(3) added **36359**
185.3550 Table revised 5109
185.3950 Removed **37867**
Reinstated **48458**
Removed 33964
185.4150 (b) revised 24060
185.5450 Introductory text revised 9413
185.5750 Removed **46088**
185.5900 Removed **37867**
Reinstated **48458**
Removed 33964
185.6300 Amended **37867, 48458**
Amended 33694, 33696
186.500 Removed **41432**
186.1075 Revised 4835
186.1100 (b) revised 19640
186.1250 (a) revised 9413
186.1800 Revised **62041**
186.3375 Table corrected **37867**
186.3550 Revised **48321**
(a) table revised 5109
186.4150 (d) added 24060
191 Authority citation revised **66415**
191.11 (b) revised **66414**
191.12 Amended **66414**
191.15 Revised **66414**
191.16 Removed; new 191.16 redesignated from 191.17 ..... **66414**
191.17 Redesignated as 191.16; new 191.17 redesignated from 191.18 ..... **66414**
191.18 Redesignated as 191.17 ..... **66414**
191.21—191.27 (Subpart C) Added **66415**
191 Appendix B redesignated as Appendix C; Appendixes A and C amended; new Appendix B added **66415**
192.31 (k) through (q) added **60355**
192.32 (a)(3) and (4) redesignated as (a)(5) and (6); new (a)(3) and (4) added **60355**
(b)(1) Footnote 1 revised **60356**
192.41 Introductory text revised; (e) added **60356**
195 Added 13175
227.6 (c)(2) Footnote 1 added; interim 26572
227.27 (b) Footnote 2 added; interim 26572
228.12 (b)(94) added **35887**
Heading revised; (a)(3) amended; (b)(92) added **42502**
(a)(3) amended; (b)(93) added **46547**
(b)(79) amended **64498**
230 Technical correction **48424**
230.3 (s) amended **45037**
232 Technical correction **48424**
232.2 Amended **45037**
233 Authority citation revised 9933
233.71 Added 9933
238 Added; eff. 9–1–94 9870
258 Authority citation revised **51546**
Technical correction **53136**
258.1 (d), (e), (f)(1) introductory text, (3) and (j) revised; eff. 10–9–93 ..... **51546**
258.2 Amended; eff. 10–9–93 ..... **51547**
258.50 (c) introductory text revised; (e), (f) and (g) redesignated as (f), (g) and (h); new (e) added **51547**
258.70—258.74 (Subpart G) Regulation at 56 FR 51016 eff. date delayed to 4–9–95 ..... **51536**
258.70 (b) revised; eff. 4–9–95 ..... **51547**

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258.74 (a)(5) revised; (b)(1), (c)(1) and (d)(1) amended; eff. 4–9–95 ..... **51547**
260.11 (a) amended **38883, 46049**
(a) amended 468
(a) corrected 28484
260.22 (d)(1)(i) revised **46049**
261 Determination **42466**
261.4 (e)(2)(i), (ii), (3), (f)(3), (4) and (5) revised 8365
261.22 (a)(1) and (2) revised **46049**
261.24 (a) revised **46049**
261.33 (e) table amended 31551
261 Appendix IX amended **40070, 42244**
Appendixes II and III revised **46049**
Appendix X removed **46050**
Appendix VIII amended 468, 31551
Appendix IX amended 5726
264.151 (d) and (k) amended; eff. 8–9–94 29960
264.190 (a) amended **46050**
264.314 (c) revised **46050**
264 Appendix I amended 13891
265.190 (a) amended **46050**
265.314 (d) revised **46050**
265 Appendix I amended 13892
266 Authority citation revised **38883**
266.104 (e)(3) revised **38883**
266.106 (h) revised **38883**
266.112 (b)(2)(i) revised; interim **59602**
266 Appendix X removed **38883**
Appendix VII amended; interim **59603**
268.7 (a) revised **46050**
268.40 (a) revised **46050**
268.41 (a) introductory text revised **46050**
268.42 Amended 31552
268 Appendixes I and IX revised **46051**
270 Permit application deadline extension 29372
270.6 (a) revised **46051**
270.19 (c)(1)(iii) amended; (c)(1)(iv) revised **46051**
270.62 (b)(2)(i)(C) amended; (b)(2)(i)(D) revised **46051**
270.66 (c)(2)(i) amended; (c)(2)(ii) revised **46051**
271 State hazardous waste management program authorizations **47216, 49932, 50854, 51244, 54044, 57745, 59367, 59370, 60388**
State hazardous waste management program authorizations 1275, 2752, 2998, 3792, 4594, 7641, 8544, 12857, 15633, 16566, 16568, 16987, 16991, 17273, 21664, 27472, 29734, 30525, 32377
Regulation at 59 FR 27472 eff. date corrected to 7–26–94 32489
271.1 (j) Table 1 amended; interim **59603**
271.16 (a)(3)(ii) revised 10559
272 State hazardous waste management program authorizations 30528
272.201 Added **52676**
272.1601 Added **52678**
272.1851 Added **52681**
272.2500 Removed **49200**
272.2501 Revised **49200**
272 Appendix A amended **49200, 52676, 52679, 52682**
279.1 Amended 10559
279.10 (b)(1)(ii) amended; (b)(2)(iii) and (g) revised 10559
279.20 (b)(2) revised 10560
279.41 (c) added 10560
279.44 (c) introductory text amended 10560
279.46 (a)(5) and (b)(5) revised 10560
279.53 (c) introductory text amended 10560
279.63 (c) amended 10560
280.91 (e) revised; (f) added 9607
280.99 (b) amended; eff. 8–9–94 29960
281 State underground storage tank program authorizations **47217**
State underground storage tank program authorizations 29201
282 Added **58625**
300.440 Added **49215**
300 Appendix B amended **46087, 52019, 54297, 59370, 61029, 63531, 69239**
Appendix B amended 5110
Appendix B revised 8729, 27996
302.4 (b) table amended 31552
302 Appendix A amended 31552
305.5 (b)(2)(v) added 26
372 Authority citation revised **63499**
372.65 (a) and (b) amended **51786**
(a) table and (b) table amended **63499**
(a) table, (b) table and (c) table amended **63514**
(c) amended 33208

NOTE:: **Boldface page numbers indicate 1993 changes.**

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TITLE 40 Chapter I—Con.

401 Technical correction **48424**
401.11 (l) amended **45038**
414.25 Revised **36892**
414.26 Revised **36892**
414.35 Revised **36892**
414.36 Revised **36892**
414.45 Revised **36892**
414.46 Revised **36892**
414.55 Revised **36892**
414.56 Revised **36892**
414.65 Revised **36892**
414.66 Revised **36892**
414.75 Revised **36892**
414.76 Revised **36892**
414.85 Revised **36892**
414.86 Revised **36892**
414.91 (b) amended **36892**
414.101—414.111 (Subpart K) Added **36893**
414.101 (b) amended **36893**
455 Authority citation revised **50689**
Tables 1 through 7 added **50691**
455.10 (f) added **50689**
455.11 Added **50689**
455.20 (a) revised; (d) and (e) added **50689**
455.21 (d) and (e) added **50689**
455.23 Added **50689**
455.24 Added **50690**
455.25 Added **50690**
455.26 Added **50690**
455.27 Added **50690**
455.33 Heading added **50690**
455.34 Heading added **50690**
455.35 Heading added **50690**
455.36 Heading added **50690**
455.37 Heading added **50690**
455.50 (Subpart D) Added **50690**
501.1 (c)(5) revised; (f) redesignated as (f)(1); (f)(2) added **67983**
501.2 Amended **67983**
501.11 (a)(1) revised; (b) redesignated as (b)(1); (b)(2) added **67983**
501.12 (g) added **67984**
501.13 Amended **67984**
501.14 (b)(1) redesignated as (b)(1)(i); (b)(1)(ii) added **67984**
501.15 (b)(15) added **67984**
501.17 (e) added **67984**
501.22 Added **67984**
501.23 Added **67984**
501.24 Added **67985**
501.25 Added **67985**
503.13 (b)(2), (3) and (4) revised 9099
503.40 (c) added 9099
600 Authority citation revised 678
600.111–80 (a) revised 16309
600.502–81 (a)(1) revised 678
600.511–80 (a) introductory text, (1) and (b)(2) introductory text revised; (b)(3), (4) and (5) added 679
700 Authority citation revised 13177
700.41 Added 13177
707 Clarification 2999
707.65 (a)(2) and (c) revised **40242**
707.70 (a) revised **40242**
710.39 Revised 30654
712.30 (x) table amended **47648**
(w) table and (x) table amended **68314, 68320**
(x) table amended 5959, 22519
(x) table stayed in part 14115
716.20 (b)(2) revised; (d) table amended **47649**
(b)(3) added **68315**
716.120 (a) table and (d) table amended **42678, 68315, 68321**
(d) table amended 5960, 22519
(d) table stayed in part 14115
721.3 Amended **63516**
721.285 Added **51702**
721.320 Added **51681**
721.323 Added **51702**
721.470 Added **51681**
721.536 Added **51681**
721.715 Added; eff. 7–26–94 27481
721.757 Added **51681**
721.982 Added; eff. 7–26–94 27482
721.1068 Added **51682**
721.1372 Added **51682**
721.1430 Added **63516**
721.1435 Added **63516**
721.1440 Added **63516**
721.1555 Added **51682**
721.1568 Added **51682**
721.1600 Removed 17491
721.1612 Added; eff. 7–26–94 27482
721.1630 Added; eff. 7–26–94 27482
721.1637 Added; eff. 7–26–94 27482
721.1640 Added; eff. 7–26–94 27483
721.1645 Added; eff. 7–26–94 27483
721.1728 Added **51682**
721.1732 Added **51682**
721.1740 Added **51702**
721.1920 Added **51683**
721.2000 Removed 17489
721.2084 Added **63516**
721.2092 Added **63516**
721.2170 Added **51683**

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721.2260 Added **51702**
721.2270 Added **51683**
721.2287 Added **63516**
721.2355 Added **63516**
721.2460 Removed 17491
721.2565 Added **51683**
721.2575 Added **51683**
721.2930 Added; eff. 7–26–94 27483
721.2950 Added; eff. 7–26–94 27483
721.3350 Added **63517**
721.3364 Added; eff. 7–26–94 27484
721.3367 Added **51684**
721.3374 Added **51684**
721.3390 Added **51684**
Removed 29203
721.3430 Added **63517**
721.3435 Added **51684**
721.3540 Removed 17489
721.3764 (a)(2)(ii) revised; eff. 7–6–94 29204
721.4080 Added **63517**
721.4155 Added **63517**
721.4215 Added **51703**
721.4250 Added **51704**
(a)(2)(i) amended **68311**
721.4255 Added; eff. 7–26–94 27484
721.4490 Added **51685**
721.4550 Added **51705**
721.4585 Added; eff. 7–26–94 27484
721.4590 Added **51705**
721.4794 Added; eff. 7–26–94 27484
721.5075 Added **51685**
721.5175 Added **63517**
721.5285 Added **51685**
721.5310 Added **51705**
(a)(2)(i) and (ii) amended **68311**
721.5330 Added **51685**
721.5385 Added **51706**
721.5705 Added **51706**
721.5710 Added **63517**
721.5910 Added **51686**
721.5915 Added **51706**
721.5920 Added **51706**
721.5970 Added; eff. 7–26–94 27485
721.5990 Added **51707**
721.6070 Added **51707**
721.6085 Added **51707**
721.6090 Added **51686**
721.6180 Removed; eff. 7–6–94 29204
721.6480 Removed 17490
721.6600 Removed; eff. 7–6–94 29205
721.6820 Removed **45842**
721.7450 Added **51686**
721.7655 Added; eff. 7–26–94 27485
721.7710 Added; eff. 7–26–94 27485
721.7770 Added **51707**
721.8082 Added **51686**
721.8160 Added **51707**
721.8265 Added **51687**
721.8290 Added **51687**
721.8335 Added **51708**
721.8650 Added **51687**
721.8654 Added; eff. 7–26–94 27485
721.9000 Added **63517**
721.9100 Added; eff. 7–26–94 27485
721.9470 Added **63517**
721.9510 Added **51687**
721.9580 Added **63518**
721.9620 Added **51709**
721.9650 Added **51687**
721.9660 Added **63517**
721.9665 Added **51709**
721.9668 Added; eff. 7–26–94 27485
721.9750 Added; eff. 7–26–94 27485
721.9925 Added **51709**
721.9957 Added **63518**
750.11 (b) removed; (c) and (d) redesignated as (b) and (c); concluding text designated as (d); new (b) and new (d) revised; (e) added 16998
750.13 Amended 16998
750.14 Amended 16998
750.31 (b) removed; (c), (d) and (e) redesignated as (b), (c) and (d); new (b) revised; new (e) added 16998
761.19 (b) amended 33697
761.30 (p) added 16998
761.65 (d)(2)(vii) revised **59374**
761.80 (c)(2) and (m)(7) added; (h) and (n) revised 16998
761.185 (f) amended 33697
761.187 (d) amended 33697
761.205 (a)(3) and (d) amended 33697
763 Clarification **58964**
763.80—763.99 (Subpart E) Appendix C revised; interim 5251
763.163 Revised 33208
763.165 Revised 33209
763.167 Revised 33209
763.169 Revised 33209
763.171 Revised 33209
763.173 Heading, (a), (b), (c) and (g) revised 33210
799.5000 Heading revised; table amended **61816**
799.5050 Added **40291**
Regulation at 58 FR 40291 stayed 33186
799.5075 Added **59681**
(d) corrected 1992

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TITLE 40

Proposed Rules:

1—799 (Ch. I) ...**37450, 37991, 38546, 42518, 42711, 44799, 47414, 48012, 53688, 55033, 58315, 60419, 60572** 1923, 3047, 9946, 25859, 29750, 32389
16 ..... **61638**
35 ..... **40106, 53688**
50 5164
51 ..... **54648, 61640, 65573** 21720, 33237
52 ..... **36905, 37450, 37453, 38108, 38326, 39717, 40107, 40759, 41218, 41451, 42914, 43609, 44799, 44802, 45469, 45471, 45473, 45474, 45874, 47101, 47103, 47239, 47414, 47415, 47701, 47705, 47707, 47840, 48339, 48344, 48811, 48812, 48999, 49001, 49254, 49258, 49458, 49463, 49464, 49952, 49954, 49956, 50304, 50307, 50311, 50530, 50884, 50886, 51028, 51270, 51279, 51591, 51593, 52467, 53693, 54081, 54089, 54648, 57573, 57575, 59427, 59698, 61040, 62065, 62067, 62304, 62307, 62309, 62560, 62563, 63316, 63545, 63547, 63549, 64530, 65307, 65309, 65573, 65686, 65688, 65691, 65959, 66324, 66326, 66334, 67383, 67748, 67754, 68094** 278, 707, 988, 1513, 1693, 1695, 1698, 2795, 3047, 3534, 3540, 3544, 3804, 3808, 3809, 4016, 4261, 4263, 4620, 5370, 5371, 5374, 5742, 6608, 8150, 8578, 9154, 9155, 9158, 9947, 10103, 10349, 11012, 11228, 11569, 11958, 12882, 12886, 13289, 13292, 13910, 15683, 15686, 15689, 15691, 16158, 16580, 16582, 17078, 18341, 18346, 18988, 21738, 22776, 23264, 24096, 24330, 25002, 25867, 26988, 26993, 26994, 28036, 28038, 28503, 29977, 30326, 30562, 30564, 30741, 30742, 31568, 31962, 32390, 32392, 32395, 32397, 33240, 33709, 33718
55 ..... **48619, 61041** 994, 5745, 33719
59 22776
60 ..... **42760, 54648, 65573**
61 ..... **42760, 54648, 65573** 5674
63 ..... **37778, 42760, 43028, 45081, 45476, 53478, 53900, 62566, 65768, 66078, 66336, 68804** 1515, 4879, 5868, 8429, 10352, 10461, 10591, 11018, 11662, 11960, 12567, 15504, 25004, 25387, 29216, 29750, 32165
64 ..... **54648, 65573**
65 22795
68 ..... **54190, 60419, 65311** 9947, 11105
70 ..... 15504, 26158, 31183
71 ..... **68804**
72 ..... **50088, 60950, 63134, 69314** 3660
73 ..... **44482, 50088, 60950, 63134, 69314** 3660
74 ..... **50088, 63134**
75 ..... **50088, 63134**
78 ..... **44482, 50088, 63134**
79 8886
80 ..... **45307, 54547, 64213, 68343** 22800
81 ..... **36908, 37453, 38108, 38331, 43609, 44639, 44641, 49001, 49467, 49956, 58999, 66334, 68094** ... 707, 4263, 5374, 6608, 8150, 11012, 12886, 16158, 23264, 24330, 29977, 30326, 32397
82 ..... **38735, 50464, 59630, 69568**
85 13912
88 ..... **35420, 42266**
89 ..... **51595**
90 25399
117 ..... **54836** 8683
122 ..... **42266, 47845, 53168** 13665
123 ..... **42266, 46145, 47417, 47845, 53168** 13665, 13820
124 ..... 13820, 28680
131 ..... **42266, 47845, 53168** 810, 3829, 13665, 13820
132 ..... **42266, 47845, 53168** 13665
141 ..... **65622, 68826** 6332, 11961
142 13820
143 ..... **65622**
144 13820
145 13820
148 ..... **48092**
152 ..... **42711**
156 ..... 5971, 6712, 10228, 18058
165 ..... 6712, 10228, 15966, 22574
172 13666
180 ..... **36366, 37893, 40394, 40395, 41452, 43828, 43830, 44990, 46147, 46149, 49263, 49264, 49265, 49267, 50888, 51031, 54092, 54094, 54316, 59699, 59700, 60573, 62069, 62071, 62072, 62074, 62075, 64536, 64538, 67759, 68621, 68827** 1700, 1702, 1704, 2799, 2800, 5972, 8581, 9165, 9167, 9169, 9947, 9949, 11570, 11572, 14820, 14822, 14824, 14825, 15144, 17508, 17751, 17754, 24100, 24101, 25431, 25586, 28326, 29576, 30746, 30748, 30750, 32167, 32169, 32170, 32172, 32173, 33240, 33723
185 ..... **54094, 54316** 11570, 11572, 17754, 32172
186 ..... **36366, 39180, 54094, 54316, 62075** 2800, 11570, 11572, 17754
195 ..... **54474**
227 26573
228 ..... **43090** 7952
230 26162
233 13820
247 18852
248 18852
249 18852
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252 18852
253 18852
258 ..... **40568, 68353**
260 ..... **46052, 48092** 31568
261 ..... **36367, 48092, 58521, 67383** 709, 9808, 10352, 17080, 18348, 24530, 31568
262 31568
264 ..... 28504, 31568
265 ..... 28504, 31568
266 ..... 8583, 31964
268 ..... **48092, 59976** 10778, 31568
270 ..... 28504, 28680, 31568
271 ..... **48092** 9808, 14827, 18348, 24530, 28504
273 31568
280 ..... **43770** 30448
281 ..... 9950, 25588, 30448
300 ..... **37693, 42519, 42916, 44804, 45082, 50893, 53688, 54702, 60825, 63551, 64539** 714, 2568, 15147, 23819, 30752, 32673
302 ..... **54836** 8683, 9808, 18348, 24530
355 ..... **54836** 8683
372 ..... **36180, 46596, 47709, 60574** 1788, 29252
430 ..... **66078** 1515, 4879, 12567
435 31186
437 8150
438 4019
439 21740
455 ..... 17850, 30753
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600 13912
704 ..... **63134** 6610
721 ..... **40397, 45871, 46921, 48346, 48347, 48348, 49269, 49271, 50895, 50896, 61649** 38, 13294, 23041, 29255, 29258
745 ..... **46921** 9170, 9951, 11108, 11122, 23041
749 ..... **63148**
761 ..... **60970** 3660
763 17301
799 ..... **61654** 3661, 33187

NOTE:: **Boldface page numbers indicate 1993 changes.**

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TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 51—Committee for Purchase From People Who Are Blind or Severely Disabled (Parts 51-1—51-99)

Chapter 51 Nomenclature change 16777

Chapter 101—Federal Property Management Regulations (Parts 101-1—101-99)

101-6.5 Added 21945
101-18 Authority citation revised **40592**
101-18.000—101-18.001 (Subpart 101-18.0) Added **40592**
101-18.100—101-18.106 (Subpart 101-18.1) Revised **40592**
101-16—101-21 (Subchapter D) Appendix amended **52918**
101-26.107 Revised **41637**
101-34 Removed 15119
101-37—101-41 (Subchapter G) Appendix amended; eff. date extended to 3-31-96 15636
101-37.400—101-37.403 (Subpart 101-37.4) Heading revised **53660**
101-37.400 Revised **53660**
101-37.401 Revised **53660**
101-37.402 Revised **53661**

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TITLE 41 Chapter 101—Con.

101-37.403 Added **53661**
101-37.404 Added **53661**
101-37.405 Added **53662**
101-37.406 Added **53662**
101-37.407 Added **53662**
101-37.408 Added **53662**
101-37.1200—101-37.1214 (Subpart 101-37.12) Added 27486
101-38.100—101-38.104-8 (Subpart 101-38.1) Heading revised **65288**
101-38.100 (a) revised **65288**
101-38.101 Revised **65288**
101-38.101-1 Redesignated as 101-38.102 ..... **65289**
101-38.101-2 Redesignated as 101-38.103 ..... **65289**
101-38.101-3 Redesignated as 101-38.104 ..... **65289**
101-38.102 Redesignated as 101-38.105; new 101-38.102 redesignated from 101-38.101-1 ..... **65289**
101-38.103 Redesignated as 101-38.106; new 101-38.103 redesignated from 101-38.101-2 and revised **65289**
101-38.103-1 Removed **65288**
101-38.104 Removed **65288**
Redesignated from 101-38.101-3 and revised **65289**
101-38.104-1 Removed **65288**
101-38.104-2 Removed **65288**
101-38.104-3 Removed **65288**
101-38.104-4 Removed **65288**
101-38.104-5 Removed **65288**
101-38.104-6 Removed **65288**
101-38.104-7 Removed **65288**
101-38.104-8 Removed **65288**
101-38.105 Redesignated from 101-38.102 ..... **65289**
Revised **65290**
101-38.106 Redesignated from 101-38.103 ..... **65289**
Revised **65291**
101-38.402 (a) revised 5962
101-38.601 Revised; OMB number **65291**
101-39 (d) redesignated as (e); new (d) added **63532**
101-39.301 Introductory text revised **63533**
101-39.306 (g) revised **65291**
101-39.401 (b) and (c) revised **65291**
101-39.403 (b) removed; (c) and (d) redesignated as (b) and (c) and revised **65291**
101-40 Authority citation revised **53889**
101-40.202 Revised **48972**
101-40.203 Heading revised **53889**
101-40.203-1 Revised **48972**
101-40.205 Revised **53889**
101.41 Temporary reg. G-57 added **39664**
101-41.203-1 (a) revised **39665**
101-41.203-2 Revised **39665**
101-44.207 (a)(18.1) revised **39666**
101-45.4802 Revised 26739
101-45.4803 Revised 26739
101-49.001-5 Introductory text revised **46089**

Chapter 105—General Services Administration (Parts 105-1—105-999)

105-57 Added 1277
105-71 Added **43270**

Chapter 128—Department of Justice (Parts 128-1—128-99)

128-1.8000—128-1.8010 (Subpart 128-1.80) Added **42876**
corrected 33439

Chapter 201—Federal Information Resources Management Regulation (Parts 201-1—201-99)

201-17.001 (l) and (m) revised; (n) added; interim 953
201-20.103-11 Added; interim 953

Chapter 301—Travel Allowances (Parts 301-1—301-99)

301-1 Authority citation revised **58236**
301-1.102 (a) introductory text and (b)(1) revised **58236**
301-1.103 (f)(3) amended **58236**
301-2.5 (b) revised **58236**
301-3.3 Revised **58236**
(d)(4)(iii)(C) and (ix) corrected **60390**
(e)(1)(vi) amended 27488
301-4.3 (a)(1) and (2) revised **58240**
301-7.11 (e) amended **58241**
301-8.2 (a) amended **58241**
301-8.3 (c)(4) and (5) amended; (c)(6) added **58241**
301-9.2 (a)(1) revised 27488
301-10.2 (a)(2)(i) revised **58241**

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301-10.3 (f) redesignated as (e) **58241**
301-11.6 (b)(9) revised **58241**
301-15.7 (g) amended **58242**
301-16 Added **58242**
301-16.4 (a)(1) corrected **60390**
301 Appendix A amended **58502**
Appendix A revised **67950**
Appendix A amended 15119

Chapter 302—Relocation Allowances (Parts 302-1—302-99)

302-1 Authority citation revised 58243
302-1.2 (a)(7) added 27488
302-1.3 (a) revised **58243**
302-1.10 (b) through (g) redesignated as (c) through (h); (a), new (e) introductory text and new (f) amended; new (b) added **58243**
(b)(1) amended 27488
302-1.100—302-1.107 (Subpart B) Heading revised **58243**
302-1.100 Revised **58243**
302-1.101 Introductory text and (a) revised **58243**
302-1.102 Amended **58244**
302-1.104 Amended **58244**
302-1.105 (a) and (c) amended **58244**
302-1.106 Amended **58244**
302-6.1 (c) and (f) revised 27489
302-6.2 (g)(1) and (2) amended **53137**
302-11.5 (i) revised **58244**
302-11.8 (e)(2)(iii) amended 27490
302-11 Appendixes A through D amended 10997
Appendix A corrected 22520

Chapter 304—Payment from a non-Federal source for travel expenses (Parts 304-1—304-99)

304-1.3 (d) revised **58244**

Proposed Rules:

101-6 ..... 26768, 33724
101-25 ..... **39720**
101-26 8587
101-41 8151
105-57 ..... **46596**
201-1 ..... 39, 4978
201-3 ..... **64389**
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201-4 ..... **64389**
201-9 ..... **64389**
201-11 ..... **64389**
201-18 ..... **64389**
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60.60 (a) revised; (b) and (c) redesignated as (c) and (d); new (b) added; OMB number **67350**
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488.6 Redesignated as 488.7; new 488.6 added **61840**
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488.11 (b) amended **61842**
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489 Authority citation revised 32120
489.2 (b)(8) added; (c) revised; interim 6578
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489.12 (c) amended; interim 6578
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489.20 Regulation at 57 FR 36018 confirmed **58505**
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489.53 (a)(10), (11) and (12) added; (b) and (c)(2) revised; interim 32123
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498 Authority citation revised 6578
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1003 Authority citation revised 32124
1003.100 (b)(1) introductory text, (iv) and (v) revised; (b)(1)(vi) added; interim 32124
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11.32 (a)(2)(iii)(A) and (f)(2) revised; (f)(3) removed 14282
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11.72 (b)(4) revised 14283
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2091.2-1 (b) amended; (c) removed 60917
2091.2-2 (b) revised; (c) removed 60917
2091.3 Heading revised 60917
2091.3-1 (b) removed; (a) redesignated as (b); new (a) added 60917
2091.3-2 Revised 60917
2200 Authority citation revised 60918
2200.0-2—200.0-9 (Subpart 2200) Revised 60918
2201.1—2201.9 (Subpart 2201) Revised 60920
2202.1 (b) revised; (c) and (d) added 60925
2203.1 Revised 60926
2203.2 (a) and (d) revised 60926
2203.3 Amended 60926
2510 Removed 29206

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3160 Authority citation revised 58505
3164.1 (b) table amended 58505
3180 Authority citation revised 58632
3181.5 Added 58632
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3183.4 (a) revised 58633
3185.1 Revised 58633
3186.1 Amended 58633
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4700 Authority citation revised 7643, 28275
4700.0-5 (l) revised 28275
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1094 Revoked in part by PLO 7050 25339
1564 Revoked in part by PLO 7038 19640
1703 Revoked in part by PLO 7049 25338
1731 Revoked in part by PLO 7021 65130
1770 Revoked in part by PLO 7024 69239
1800 Revoked in part by PLO 7062 28791
2051 Revoked in part by PLO 7066 33697
2301 Revoked in part by PLO 7008 58969
2460 Revoked in part by PLO 6998 52238
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2588 Revoked in part by PLO 7063 29544
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4522 Revoked in part by PLO 7002 52684
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4825 Revoked in part by PLO 7047 24648
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7016 Corrected by PLO 7035 15636
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TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE

Chapter I—Federal Emergency Management Agency (Parts 0—399)

2 Revised 26133
2.81 OMB numbers 26140
10 Authority citation revised 954
10.8 (c)(2)(x) added; interim 954
59 Authority citation revised **62424**
59.1 Amended **62424**
59.24 Table amended 2755
61 Authority citation revised **62424**
61.3 Amended **62424**
61.4 (a) designation and (b) through (e) removed; (1) through (4) redesignated as (a) through (d) **62424**
61.5 (d)(1), (2), (e) through (h) and (j) removed; (d)(3) and (i) redesignated as (d) and (e); (a) and new (d) amended **62424**
61.6 (c) added **62424**
61.9 Revised 26741
61.13 (a) and (d) amended **62424**
61 Appendix A (1) revised **62424**
Appendix A (2) revised **62432**
Appendix A (3) added **62439**
62 Authority citation revised **62447**
62.3 (b) revised; (d) removed **62447**
62 Appendix A revised; interim 26966
64.6 Table amended ... **51577, 52019, 58654, 58656, 58970, 63900, 67693**
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65.4 Table amended **68040, 68044**
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67 Flood elevation determinations **68047, 68049**
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206.266 (a) revised 55022
206.430 Revised; interim 24356
206.431 (c) revised; interim 24356
206.432 (b) and (c) revised; interim 24356
206.434 (c)(4) revised; (d) and (e) redesignated as (f) and (g); new (d) and new (e) added; interim 24356
311 Removed; CFR correction 24947

Chapter IV—Department of Commerce and Department of Transportation (Parts 400—499)

403.1 Revised 8413
403.2 Revised 8413

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TITLE 45—PUBLIC WELFARE

Subtitle A—Department of Health and Human Services, General Administration (Parts 1—199)

46 Authority citation revised 28276
46.204 (d) removed 28276
95.605 Amended 30708
95.611 (a)(2) and (5) revised 30708
95.625 Revised 30708
96 Authority citation revised **60128**
96.1 (f) revised **60128**
96.17 Revised **60128**
96.74 Added **60129**
96 Appendixes A and B added **60129**

Chapter II—Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

205.35 Introductory text amended 30708
205.37 Heading revised; (a) through (e) amended 30709
205.38 (a) revised; (b), (c) and (e) amended 30709
205.50 Regulation at 58 FR 49920 confirmed 26142
233 Authority citation revised **60135**
Authority citation revised 1839
233.20 (a)(2)(vi) revised; (a)(2)(vii) removed **60135**
(a)(3)(vi)(B), (13)(i)(A)(*1*), (*2*), (b) and (c) added 3319
(a)(3)(iv)(B) and (2)(4)(ii)(*d*) revised; (a)(3)(xxi) and (a)(4)(ii)(*p*) through (*u*) added 4839
(a)(3)(xiv)(A) revised 10300
Regulation at 58 FR 49920 confirmed 26142
233.90 Regulation at 58 FR 49920 confirmed 26142
235 Authority citation revised 12861
235.64 Heading and introductory text revised 12861
235.112 (f) removed; (g) redesignated as (f) and revised 12861

Chapter IV—Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services (Parts 400—499)

400.2 Amended **64507**
400.60 (b) amended **64507**
400.100 (b) amended **64507**
400.203 (b) amended **64507**
400.204 (b) amended **64507**
400.209 (b) amended **64507**
400.211 Added **64507**

Chapter VI—National Science Foundation (Parts 600—699)

607 Added **68769**
608 Added **68772**
670.50—670.72 (Subpart K) Regulation at 58 FR 34718 correctly redesignated as Part 672; eff. date corrected to 8–15–93 54522
671 Regulation at 58 FR 34719 eff. date corrected to 8–15–93 ..... **54522**
672 Regulation at 58 FR 34718 correctly redesignated from 670.50—670.72 (Subpart K); eff. date corrected to 8–15–93 ..... **54522**

Chapter XI—National Foundation on the Arts and the Humanities (Parts 1100—1199)

1180.78 Added 15344

Chapter XII—ACTION (Parts 1200—1299)

1207.1–2 Amended 15122
1207.3–1 (v) added 15122
1207.3–5 (a)(3), (4) and (c)(5) revised 15122
1208.1–2 Amended 15122
1208.3–1 (v) added 15122

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1208.3–5 (a)(3), (4) and (c)(5) revised 15122

Chapter XIII—Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

1355 Authority citation revised 67924
1355.20 Amended 67924
1355.30 (e) revised 67924
1355.40 Added 67924
1355.50 Added; interim 67945
1355.52 Added; interim 67945
1355.53 Added; interim 67945
1355.54 Added; interim 67946
1355.55 Added; interim 67946
1355.56 Added; interim 67946
1355.57 Added; interim 67946
1355.60 (e) added; interim 67947
1355 Appendixes A through F added 67926
Appendixes A, D and E corrected 13535
1356 Authority citation revised 67938
Technical correction 13535
1356.20 (b), (c) and (d) redesignated as (d), (e) and (f); new (b) and new (c) added 67938
1356.60 (c)(2)(x) and (d) added 67938
1357 Authority citation revised 67938
1357.15 (h) added 67938
(h) corrected 13535

Chapter XVI—Legal Services Corporation (Parts 1600—1699)

1601 Removed 21666
1602 Authority citation revised 52919
1602.2 Revised 52919
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1602.4 Revised 52919
Regulation at 58 FR 52919 eff. date delayed to 10–2–94 65292
1602.5 Revised 52920
Regulation at 58 FR 52920 eff. date delayed to 10–2–94 65292
1602.6 Added 52920
Regulation at 58 FR 52920 eff. date delayed to 10–2–94 65292
1602.7 Revised 52920
Regulation at 58 FR 52920 eff. date delayed to 10–2–94 65292
1602.8 (a), (b)(3), (4), (5), (c) introductory text and (d) revised 52920
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1602.9 (a)(2) and (6)(iv) revised 52921
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1602.10 Revised 52921
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1602.12 Revised 52921
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1602.13 Revised 52921
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1611 Appendix A revised 12550

Chapter XXIII—Arctic Research Commission (Part 2301)

Chapter XXIII Established 57698
2301.170 (c) revised 57699

Chapter XXIV—James Madison Memorial Fellowship Foundation (Parts 2400—2499)

Chapter XXIV Revised 27490
2490 Added 57699
2490.170 (c) revised 57699

Chapter XXV—Corporation for National and Community Service (Parts 2500—2550)

Chapter XXV Heading revised; interim 60981
2510 Added 13783
2513 Added 13785
2515 Added 13786
2516 Added 13786
2517 Added 13790
2518 Added 13792
2519 Added 13792
2520 Added 13794
2521 Added 13794
2522 Added 13796
2523 Added 13804
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2525 Added; interim 30710
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2527 Added; interim 30712
2528 Added; interim 30713
2529 Added; interim 20714
2530 Added 13806
2531 Added 13806
2532 Added 13807
2533 Added 13808
2540 Added 13808
2550 Added; interim 60981

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TITLE 46—SHIPPING

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1 Technical correction 65131
1.03–15 (h)(1) revised 60265
1.03–45 Added 60265
10.103 Regulation at 55 FR 14798 confirmed 10756
10.107 Regulation at 55 FR 14799 confirmed 10756
10.201 Regulation at 55 FR 14799 confirmed 10756
10.205 Regulation at 55 FR 14799 confirmed 10756
10.468 Regulation at 55 FR 14799 confirmed 10756
10.470 Regulation at 55 FR 14799 confirmed 10756
10.472 Regulation at 55 FR 14801 confirmed 10756
10.474 Regulation at 55 FR 14801 confirmed 10756
10.476 Regulation at 55 FR 14802 confirmed 10756
10.540 Regulation at 55 FR 14802 confirmed 10756
10.542 Regulation at 55 FR 14802 confirmed; (c) added 10756
10.544 Regulation at 55 FR 14802 confirmed; (c) added 10756
10.903 (b)(1), (2) and (3) redesignated as (b)(2), (3) and (4); new (b)(1) added 10756
10.920 Regulation at 55 FR 14802 confirmed 10756
10.950 Regulation at 55 FR 14804 confirmed 10756
12 Authority citation revised 28792
12.25–5 Removed 28792
15 Authority citation revised 4841
15.301 Amended; interim 4841
Regulation at 55 FR 14805 confirmed 10756
15.520 Regulation at 55 FR 14805 confirmed 10756
15.810 Regulation at 55 FR 14805 confirmed 10756
15.812 Revised; interim 4842
16 Common preamble 68194
16.105 Amended 28792
16.210 (a) revised 28792
16.500 (Subpart E) Added 68277
16 Appendix B added 68279
30 Authority citation revised 52602
30.01–5 (e)(2) revised 52602
30.25–1 Table revised 17005
31 Authority citation revised 52602
31.10–21a Added 52602
32 Authority citation revised 52602
32.59 Added 52602
35.01–60 Added 16779

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40.01–1 Amended 17011
40.01–5 Removed 17011
40.15–1 (a)(3) and (e) amended 17011
67 Revised **60266**
Policy statement 24060
67.19 (c)(2) corrected **65131**
67.43 Corrected **65131**
67.111 (a) introductory text corrected **65131**
67.113 Introductory text corrected **65131**
67.117 (a) introductory text corrected **65131**
67.141 (a)(1) corrected **65131**
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67.145 (d) corrected **65131**
67.165 (a) corrected **65131**
67.173 Corrected **65131**
67.217 (a)(3) and (4) corrected **65131**
67.500—67.550 (Subpart Y) Heading corrected **65131**
67.500 (a) corrected **65131**
67.550 Table corrected **65243**
67 Appendix A corrected **65132**
69 Policy statement **57747**
Technical correction **60731**
78 Authority citation revised 16779
78.10–1 Revised 16779
97 Authority citation revised 16779
97.10–5 Revised 16779
98.01–1 (e) amended 17011
147.45 (f)(4), (h)(1) and (2) amended 17011
147.95 (b) amended 17011
150 Table I revised 17011
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151.05 Table amended 17027
151.12–5 Amended 17028
151.50–20 (b)(1) and (k) amended 17028
151.50–77 Heading revised 17028
151.50–86 Heading revised 17028
153 Nomenclature change 17028
153.0 (b)(1) and (3) through (6) revised 17028
153.9 (a) Footnote 2 removed 17028
153.560 Heading revised 17028
153 Table 1 revised 17028
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160 Technical correction **51576**
171.080 Regulation at 57 FR 41826 and 58 FR 45264 suspension extended in part 9099
Correctly suspended in part 17047

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232 Authority citation revised **62043**
232.1 (b) revised **62043**
232.2 (c) removed; (d), (e) and (f) redesignated as (c), (d) and (e); (a), (b) and new (d) amended; new (c) and new (e) revised **62043**
232.3 (a) amended **62044**
232.4 (b)(A)(*10*) and (*11*) redesignated as (b)(A)(*11*) and (*10*); (b)(A)(*2*)(i), (*8*)(i), (iv), new (*11*), (B)(*1*)(ii) and (h)(A)(*8*)(i) amended; (b)(A)(*3*)(ii), (*4*)(ii), (*5*) heading, (*8*)(ii), new (*10*) heading, new (*11*) heading and (*12*) heading revised 62044
(b)(A)(*8*)(c) corrected **64798**
232.5 (b)(E)(*1*)(ii) and (iii) amended; (b)(E)(*11*)(i) revised **62044**
298 Authority citation revised 15128
298.1 Revised; interim 15128
298.2 (b), (d), (e), (f), (m), (s)(3), (4)(v) and (w) amended; (s)(4)(vi) removed; (c) through (g), (h) through (l) and (m) through (w) redesignated as (d) through (h), (l) through (p) and (r) through (bb); new (c), (i), (j), (k) and (q) added; new (x)(4)(iv) revised 15128
298.3 (e) existing text designated as introductory text and amended; (e)(1), (2) and (3) added 15129
298.10 (e) added 15129
298.11 (c) amended 15129
298.12 (b)(1)(i), (ii) and (c)(4) revised; (f) existing text designated as (f)(1) and amended; (f)(2) added 15130
298.13 (a)(2)(ii), (iii) and (iv) redesignated as (a)(2)(iii), (iv) and (v); new (a)(2)(ii), (d)(3) and (e)(3) added; new (a)(2)(iv), (3), (b)(5), (6), (c)(1) and (2) amended 15130
298.14 (a) introductory text revised; (a)(1)(ii), (iii), (iv), (2)(i)(B), (C), (D), (F)(*1*), (ii), (iii) and (b)(1) introductory text amended 15130
298.16 (b) amended 15130
298.17 Introductory text and (a) through (d) redesignated as (a) introductory text and (1) through (4); (a)(5), (6) and (b) added 15131
298.10—298.17 (Subpart B) Appendix B removed 15131
298.18 Added 15133
298.19 Added 15133
298.20 (a) introductory text, (2), (3) and (b) amended; (a)(4) added; (c) revised 15131
298.21 (a) introductory text, (2), (b), (c)(12), (13), (d), (f) and (g) amended; (c)(14) and (15) added 15131
298.22 (1) and (2) redesignated as (a) and (b); introductory text, new (a) and new (b) amended; (c) added 15131
298.23 Amended 15131
298.27 Amended 15131
298.28 (a)(2)(i), (ii) and (iii) amended; (a)(2)(iv) added 15131
298.31 (a) revised; (c) amended 15131
298.32 (a)(1), (2), (3), (b)(2), (3), (6) and (7) amended; (b)(4) revised; (b)(8) and (9) added 15132
298.33 (b), (c), (e), (g) and (h) amended 15132
298.34 (b) amended 15132
298.35 (b)(1)(i), (c)(1)(i), (v), (vi), (d) introductory text and (e) amended; (b)(1)(v) and (c)(1)(vii) added 15132
298.36 (a), (c) and (d) amended 15132
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298.41 (b) amended 15133
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501 Revised 954
502 Authority citation revised **58976**
502.27 (c) amended **58976**
502.67 (a)(3)(d) and (e)(1) introductory text revised **58976**
502.155 Revised **58976**
503.68 Revised 15636
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585 Revised **64910**
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TITLE 47—TELECOMMUNICATION

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0.5 (a)(14) added 32132
0.61 (a) revised; (h) and (j) through (n) removed; (i) redesignated as (h) 32132
0.101 Added 32132
0.231 (a) revised 30998
0.284 (a)(10) removed 32132
0.321 Undesignated center heading and section added 32132
0.325 Added 32132
0.406 (b)(2) revised 30998
0.453 (a) introductory text, (1) and (4) revised; (a)(5) through (7) added 32132
0.455 (a) introductory text, (1) and (5) revised; (a)(6), (11) and (12) removed; (a)(7) through (10) redesignated as (a)(6) through (9); (d) added 32133
0 Technical correction 25825
0.11 (a)(10) removed; (a)(11) and (12) redesignated as (a)(10) and (11) 26971
0.91 (n) added 26747
(l) revised 26971
0.111 (o) added 26971
0.131 (k) removed 543
(k) added 24957
0.182 Heading revised 26971
0.183 Revised 26971
0.185 Introductory text, (a) and (b) revised 26971
0.231 (a), (b) and (i) removed; (c) through (h), (j), (k) and (l) redesignated as (a) through (f), (g), (h) and (i) 26971
0.284 (a)(4) revised 26971
0.311 (f) added **68053**
0.331 (d) removed 543
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0.408 (b) table amended (OMB numbers) **55023**
0.467 (a) redesignated in part as (a)(1) and (2); heading, (a) table and new (a)(2) revised 21946
0.486 Removed 543
1 Report and order 8413
Authority citation revised 22985
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1.49 (a) amended **63087**
1.423 Revised **66300**
1.742 Revised 30998
1.773 (a)(4) and (b)(3) revised **51247**
1.912 (a) revised 543
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1.922 Table amended 24957
1.924 (d) added 9101
1.972 (a)(1) and (c) amended 24957
1.1102 Table amended **68541**
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1.1106 Redesignated as 1.1107 30998
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1.1107 Redesignated as 1.1108; new 1.1107 redesignated from 1.1106 and amended 30998
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1.1109 Redesignated as 1.1110; new 1.1109 redesginated from 1.1108 30998
(a), (d) and (f) revised 30999
1.1110 Redesignated as 1.1111; new 1.1110 redesignated from 1.1109 30998
(a) revised 30999
1.1111 Redesignated as 1.1112; new 1.1111 redesignated from 1.1110 30998
1.1112 Redesignated as 1.1113; new 1.1112 redesignated from 1.1111 30998
1.1113 Redesignated as 1.1114; new 1.1113 redesignated from 1.1112; introductory text, (d), (e) introductory text and (3) amended 30998
1.1114 Redesignated as 1.1115; new 1.1114 redesignated from 1.1113; (a) amended 30998
1.1115 Redesignated as 1.1116; new 1.1115 redesignated from 1.1114; (a) amended 30998
1.1116 Redesignated as 1.1117; new 1.1116 redesignated from 1.1115; (e) amended 30998
Heading and (c) revised 30999
1.1117 (a) amended **68541**
Redesignated as 1.1118; new 1.1117 redesignated from 1.1116 30998
1.1118 Redesignated from 1.1117; (b) amended 30998
1.1151 Added 30999
1.1152 Added 31000
1.1153 Added 31000
1.1154 Added 31000
1.1155 Added 31001
1.1156 Added 31001
1.1157 Added 31001
1.1158 Added 31002
1.1159 Added 31002
1.1160 Added 31002
1.1161 Added 31003
1.1162 Added 31003
1.1163 Added 31004
1.1164 Added 31004
1.1165 Added 31004
1.1166 Added 31005
1.2101—1.2111 (Subpart Q) Added 22985
2 Authority citation revised 32851
2.1 Amended **68058**
2.106 Table amended **59176**
Footnotes 747—750 removed; Footnotes 735A, 740A, 746A, 746B, 746C, 747A, 750A and US331 added; Footnote NG 153 revised **59179**
Table amended; Footnotes 731A through 731D, 753E, 877, 878, 890 and 891 removed; Footnotes 733A, 733E, 734, 753, 753C, 882E, 882F, 882G and US–319 revised; Footnotes 731E, 731F, 753F, 881A and 881B added 9415
Table corrected 15266
Table amended 32851
13.9 (c) and (d) revised 3795
13.13 (c) revised 3795
13.201 (c) removed 3795
13.205 Removed 3795
15 Authority citation revised 25340
15.3 (aa) added 25340
15.19 (d) added 25341
15.31 (a)(6)(iii) note added **51249**
15.107 (d) redesignated as (f); new (d) and (e) added **51249**
15.109 (e) amended; (g) added **51249**
15.115 (c)(1)(i) revised; (h) and (i) added 25341
15.117 (h) revised 25341
15.118 Added 25341
15.207 (b) and (c) redesignated as (c) and (d); new (b) added **51249**
15.301—15.323 (Subpart D) Added **59180**
15.301 Revised 32852
15.303 (g) and (j) revised 32852
15.307 (a) introductory text, (d) and (e) revised 32852
15.311 Revised 32852
15.319 (a) and (i) revised 32852
15.321 (a), (c)(5), (d) and (f) corrected 15269
Redesignated as 15.323; new 15.321 redesignated from 15.323 32852
(g) removed; heading, (a), (b), (c)(1), (4), (6), (d) and (e) revised 32853
15.323 (a) corrected 15269
Redesignated as 15.321; new 15.323 redesignated from 15.321 32852
Heading, (a), (b), (c)(1), (4), (6), (8), (d) and (f) revised; (c)(10), (11) and (12) added 32853
20 Added 18495

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21.38 (g) added 9101
21.50 (a) and (b) revised 19645
21.120 (e) revised 19645
21.701 (d) revised; (m) added 19645
22 Waiver 1285
22.1 (g) added 18499
22.13 (f) removed 18499
22.39 (d) added 9101
22.43 (b)(2) removed 18499
22.50 (a) and (b) revised 19646
22.304 Removed 18499
22.911 (b) revised **59183**
24 Redesignated from 99 18499
Regulation at 59 FR 18499 eff. date changed to 6–22–94 26602
Authority citation revised 26747
24.1 (b) revised 32854
24.2 (g), (h) and (i) redesignated as (h), (i) and (j); new (g) added 18499
24.3 Revised 32854
24.10 Revised 26747, 32854
24.11 Revised 32854
24.52 Revised 32854
24.129 Revised 26747
24.130 (b) and (c) revised 26747
24.200—24.238 (Subpart E) Revised 32854
24.301—24.309 (Subpart F) Added 26747
24.403—24.444 (Subpart G) Added 26749
25 Waiver 1285
25.114 (c)(18) revised; (c)(27) added **68059**
25.115 (d) added **68059**
25.120 (d) and (e) revised **68059**
25.130 (b) revised **68059**
25.133 (b) revised **68059**
25.135 Added **68059**
25.140 (d)(2)(iii) redesignated as (d)(2)(iv); new (d)(2)(iii) added **68060**
25.142 Added **68060**
25.151 (c)(5) revised **68061**
25.201 Amended **68059**
25.202 (a)(3) added; (f)(4) revised **68061**
32.22 (a), (c), (d) and (f) revised 9418
32.103 Table amended 9418
32.1437 Added 9418
32.4000 Table amended 9418
32.4100 (d) revised 9419
32.4110 (g) revised 9419
32.4340 (a) and (d) revised 9419
32.4341 Added 9419
32.4350 (a) and (g) revised 9419
32.4361 Added 9419
36 Order 27496
36.601 (c) added **69242**
36.622 (a) amended; (c) added **69242**
43.21 (c) revised 19648
43.42 Removed 19648
43.43 (c) revised **58790**
61.3 (jj) and (kk) redesignated as (kk) and (ll); new (jj) added 10301
61.42 (e)(1)(iii), (iv) and (v) removed; (e)(1)(vi) and (vii) redesignated as (e)(1)(iii) and (iv); (d)(3), new (e)(1)(iii), (2) introductory text, (i), (iii) and (iv) revised; (e)(2)(v) and new (vi) added 10301
(e)(2)(vii) added 32930
61.47 (e)(2), (3), (f), (g), (h)(1) and (i) redesignated as (g)(2), (3), (f)(1), (2), (g)(1) and (4); (a), (b), (c), new (f)(2), new (g)(1) and (4) amended; (e)(1) designation removed; (e), (g)(2), (3) and (h) revised; (f) heading and (g) heading added 10302
(g)(5) added 32930
61.48 (g) and (h) revised; (i) added 10302
61.49 (c) and (d) amended 10304
61.58 (c)(3) and (4) amended 10304
63.100 (a) amended **64168**
64 Memorandum opinion and order **53663**
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64.1201 (c) redesignated as (c)(1); (a)(2), new (c)(1), (e)(2) and (3) revised; (c)(2) added; (d) removed **65671**
64.1301 (b) revised; (f) added **57750**
64.1401 (i) added 32930
64.1510 Regulation at 58 FR 44774 eff. date delayed to 1–1–94 ..... **62044**
64.1600—64.1604 (Subpart P) Added; eff. 4–12–95 18319
69.2 (vv) added 32930
69.110 (c)(1) and (2) amended 10304
69.113 (a), (d) and (e) amended 10304
69.126 Amended 10304
69.129 Added 32930
69.407 (c) redesignated as (d); new (c) added **65671**

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73 Compliance notification 12191
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73.51 (a)(50) revised **64168**
73.128 Revised **66301**
73.202 (b) table amended **51250, 51578, 51579, 51787, 51788, 53665, 53666, 54523, 58506, 58507, 58790, 59374, 59375, 62289, 62555, 63296, 63536, 65132, 65133, 65672, 65673**
(b) table amended 2302, 2303, 4007, 4008, 4009, 6221, 8414, 8415, 8416, 8417, 11556, 11557, 12551, 13661, 14567, 22996, 25825, 27505, 31161, 32133
73.520 Redesignated as 73.672 ..... **51250**
73.606 (b) table amended **51578**
(b) table amended 31162
73.614 (b)(1) amended **51250**
73.660 (a) revised **62555**
73.661 (a) revised; (b) amended (OMB number pending) **62555**
Regulation at 58 FR 62547 confirmed **65132**
73.663 Redesignated as 73.664; new 73.663 added **62555**
73.664 Redesignated from 73.663 ..... **62555**
73.672 Redesignated from 73.520 ..... **51250**
73.682 Schedule I removed **51250**
73.1635 (a)(4) amended **51250**
73.1941 (b) revised 14568
73.3522 (a)(6) amended **51250**
(a)(3) revised 31556
73.3545 Amended **51250**
73.3550 (b), (f), (h), (j) and (n) revised 31556
73.3555 (a)(1)(ii) and note amended **51250**
73.3564 (a)(2) amended **51250**
(a) introductory text and (2) amended 31556
73.3580 (a)(6) amended **51251**
73.3591 (b) introductory text revised 31557
73.3594 (a)(2) amended **51251**
73 Index amended **51250**
74.602 (e) amended **51251**
74.637 Table amended **51251**
74.780 Amended 31557
74.783 (e) redesignated as (f); new (e) added 31557
76 Authority citation revised **60395**
Authority citation revised 25342
76.51 (a)(50) revised **64168**
(a)(2) and (28) revised **67694**
Regulation at 58 FR 64168 eff. date changed to 12–31–93 ..... **68323**
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76.62 (a) stayed **53429**
76.64 (e) stayed **53429**
76.205 (b) revised 14568
76.503 Added (effective date pending) **60141**
76.504 Added **60141**
Regulation at 58 FR 60135 eff. date corrected to 1–26–94 9934
76.605 (a)(2) through (12) redesignated as (a)(3) through (13); new (a)(2) added 25342
76.630 Added 25342
76.901 (c) revised 17951
76.905 (c) revised 17972
76.914 (a)(1) revised 17972
76.917 Added 17972
76.922 (b)(1)(i) and (ii) introductory text revised **63091**
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(b)(9) added 17973
(g) through (k) added 17989
76.923 (l) added 17960
(m) added 17973
76.924 (b) through (f) revised; (g) redesignated as (j); new (g) and (i) added 17990
76.930 Revised 17973
76.933 (d) added 17973
76.934 Existing text designated as (a); (b), (c) and (d) added 17960
76.937 (d) and (e) added 17973
76.938 Revised 17973
76.939 Added 17974
76.942 (a) and (c)(2) revised; (c)(3) and (f) added 17974
76.943 (b) revised; (c) added 17974
76.944 (b) revised 17974
76.945 (b) revised 17974
76.946 Added 17974
76.952 (a) revised 17960
76.953 (a) revised 17960
(b) revised 17974
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76.958 Added 17960
76.961 (b) revised; (e) added 17975
76.964 Heading revised; existing text designated as (a); (b) and (c) added 17960

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76.984 Revised 17975
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76.1300—76.1302 (Subpart Q) Added **60395**
Regulation at 58 FR 60390 eff. date corrected to 1-26-94 9934
80 Waiver **58790**
Waiver 1285
80.3 (g) through (k) removed; (f) and (l) through (o) redesignated as (g) through (k); new (f) added 18499
80.25 (a) and (b) redesignated as (b) and (c); new (a) added; new (b) revised **68062**
80.205 (a) table corrected 7714
87 Waiver 1285
87.27 (a) and (b) redesiganted as (b) and (c); new (a) added; new (b) revised **68062**
87.139 (d) and (i)(1) table revised; (i) introductory text and (4) amended **67695**
87.145 (b) and (c) revised; (d)(5) added **67695**
87.147 (b) and (d)(2) amended; (d) introductory text revised **67695**
87.187 (l)(1)(bb) and (cc) correctly designated **52021**
87.217 (a)(1) revised **67696**
87.303 (d)(1) amended **67696**
87.471 (b) revised **67696**
90 Waiver 1285
Interpretation 15857
90.5 (h), (i) and (j) redesignated as (i), (j) and (k); new (h) added 18499
90.73 (c) table corrected; CFR correction 30304
90.153 Amended 9101
90.159 (b)(1) revised **62291**
90.173 (k) revised **51252**
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90.175 (c) revised **62291**
90.494 Revised **62291**
90.495 Added **62292**
90.496 Added **62293**
90.615 (b)(2)(ii) correctly revised **61844**
90.619 (b)(5) table amended; (b)(6) removed 31558
90.621 (b) introductory text, (1), (2) introductory text, (4) and (6) revised; (b)(3) amended; (b)(7) added; (c) and (d) removed; (e), (f), (g), (i) and (j) redesignated as (c), (d), (e), (f), (g) and (h) **53431**
(h) correctly redesignated as (i) **58729, 59298**
94 Authority citation revised **68062**
94.47 (c) added 9101
94.59 Amended; (a), (b) and (f) revised 19646
94.65 (g) revised 19647
94.81 (c) revised 19647
94.85 Removed **68062**
94.113 Revised **68062**
95 Waiver 1285
Technical correction 25825
95.816 Added 24957
95.819 Revised 24958
95.821 Amended 9102
97.3 (a)(28) through (44) redesignated as (a)(29) through (45); new (a)(28) added; (a)(7) and new (36) revised 18975
97.17 (b) revised; (g) removed 543
97.19 (a) and (b) revised 543
97.21 Revised **53138**
97.29 Removed 543
97.109 (e) revised 18975
97.201 (b) revised **64385**
97.205 (b) revised **64385**
(g) added 18975
97.216 Redesignated as 97.217 18975
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97.219 Added 18975
97.301 (f) amended **64385**
99 Revised **59183**
Waiver 1285
Report and order 9419
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Regulation at 59 FR 18499 eff. date changed to 6-22-94 26602
99.12 Corrected 15269
99.13 Removed 14117
99.53 (d) corrected 15269
99.101 Added 14118
99.102 Revised 14118
99.103 Revised 14118
(a) corrected 15269
99.129 Added 14118
99.130 Revised 14119
(a) table correctly revised 15269
99.132 (a) corrected 15269
99.133 (a)(1)(ii) revised 14119
99.231 (a) Table 1 correctly revised 15270
99.233 (a) Table 2 corrected 15270

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1.404 (c) amended 11387
3.104-9 (c)(2) amended 11387
4.900—4.904 (Subpart 4.9) Regulation at 57 FR 44260 confirmed 11370
5.202 (a)(12) amended; interim 545
5.207 (b) amended 11387
9.403 Amended; interim 11372
9.406-2 (a)(3) amended; (a)(4) redesignated as (a)(5); new (a)(4), (b)(3) and (4) added; interim 11372
9.407-2 (a)(5) redesignated as (a)(7); new (a)(5) and (6) added; interim 11373
10.001 Regulation at 56 FR 67131 confirmed; amended 11373
10.002 Regulation at 56 FR 67131 confirmed; (d) revised 11373
10.006 Regulation at 56 FR 67131 confirmed 11373
Heading and (a) revised 11374
14.201-6 (x) and (y) revised; interim 545
14.201-7 Regulation at 56 FR 67413 confirmed 11374
14.408-1 (a)(2) introductory text revised; interim 545
15 Clarification 11374
15.407 (l) and (m) revised; interim 545
15.804-2 Regulation at 56 FR 67413 confirmed 11374
Regulation at 57 FR 60579 confirmed 11375
15.804-3 Regulation at 56 FR 67414 confirmed 11374
15.804-4 Regulation at 56 FR 67414 confirmed 11374
15.804-6 Regulation at 56 FR 67414 confirmed 11374
Table 15-2 amended 11387

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19.102 Regulation at 57 FR 60580 confirmed; (f)(5)(i) amended; (f)(5)(iii) and (iv) redesignated as (f)(6) and (7); new (f)(7) revised....11376
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25.407 Heading revised; introductory text removed; (a) through (d) redesignated as (b) through (e); new (a), (f) and (g) added; new (d) amended; interim....547
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215.804–3 (b)(3)(B)(*2*) revised; (b)(3)(B)(*3*) added; interim....27669
215.804–6 (b)(2)(A) amended; interim....27669
215.807 (b) added; interim....27669
215.871–3 (c) amended; interim....27669
215.971–3 (d)(2) amended; interim....27669
215.975 (b) table amended; interim....27669
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219.000 Introductory text revised; interim....27670
219.301 (a) introductory text revised; interim....22131
219.502–1 Regulation at 58 FR 28465 confirmed....27667
219.502–2 Regulation at 58 FR 28465 confirmed....27667
219.502–2–70 (a)(1)(ii) revised; (a)(1)(iii) added; interim....24959
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219.504 (b) introductory text revised; interim....12192
219.602–1 Regulation at 58 FR 28465 confirmed....27667
219.705–2 Regulation at 58 FR 28465 confirmed....27667
Revised; interim....27670
219.808–1 (b)(iv) added; interim....27670
219.1005 (a) revised; interim....27670
219.1006 Regulation at 58 FR 28466 confirmed....27667
219.7100—219.7105 (Subpart 219.71) Revised; interim....27670
222.101–3 (3) amended; interim....27671
223.370–4 (b)(1)(ii) introductory text amended....27671

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223.7100—223.7103 (Subpart 223.71) Regulation at 58 FR 28466 confirmed 27668
225 Technical correction 26343
225.000–70 (m) revised; interim 1289
Regulation at 59 FR 1289 comment period extended 5335
225.000–71 (a)(2) and (c)(1) revised; interim 1289
Regulation at 59 FR 1289 comment period extended 5335
225.105 (3) and (5)(ii)(A) revised; interim 1289
Regulation at 59 FR 1289 comment period extended 5335
225.109 (a) revised; interim 1289
Regulation at 59 FR 1289 comment period extended 5335
225.302 (b)(1) amended 27671
225.401 Revised; interim 1289
Regulation at 59 FR 1289 comment period extended 5335
Amended 23169
225.402 (c)(i) and (ii) revised; interim 1289
Regulation at 59 FR 1289 comment period extended 5335
225.403 (m)(4) added 23169
225.403–70 Amended; introductory text revised; interim 1289
Regulation at 59 FR 1289 comment period extended 5335
Amended 23169
225.407 Redesignated as 225.408; interim 1289
Regulation at 59 FR 1289 comment period extended 5335
225.408 Redesignated from 225.407; (a)(1) and (2)(A) amended; (a)(3) and (4) added; interim 1289
Regulation at 59 FR 1289 comment period extended 5335
225.602 (3)(ii) revised; interim 1290
Regulation at 59 FR 1290 comment period extended 5335
225.603 (1)(ii)(C) added; (1)(iii)(C)(*3*) revised; interim 1290
Regulation at 59 FR 1290 comment period extended 5335
225.605–70 (c) redesignated as (d); new (c) added; interim 1290
Regulation at 59 FR 1290 comment period extended 5335
225.702 Revised 27671
225.703 Removed 27671
225.704 Removed 27671
225.704–70 Removed 27671
225.7002 Revised 27671
225.7002–1(c) added 27671
225.7002–2 (a), (d) and (i) revised; interim 27671
225.7002–4 Introductory text and (d) added; interim 27671
225.7003 Removed; interim 27671
225.7003–1 Removed; interim 27671
225.7003–2 Removed; interim 27671
225.7004 (a) amended; interim 27671
225.7007 (a) amended; interim 27672
225.7010 Introductory text amended; interim 27672
225.7011 Revised; interim 27672
225.7011–1 Amended; interim 27672
225.7011–2 (a) and (c) amended; interim 27672
225.7011–4 (b) introductory text amended; interim 27672
225.7011–5 Amended; interim 27672
225.7014 Removed 10579
Removed; interim 27672
225.7014–1 Removed 10579
Removed; interim 27672
225.7014–2 Removed 10579
Removed; interim 27672
225.7014–3 Removed 10579
Removed; interim 27672
225.7016–1 Introductory text amended; interim 27672
225.7018 Regulation at 58 FR 28468 confirmed 27668
225.7018–1 Revised; interim 27672
225.7018–3 Revised; interim 27672
225.7019 Regulation at 58 FR 28468 confirmed 27667
225.7020 Added; interim 27672
225.7020–1 Added; interim 27672
225.7020–2 Added; interim 27672
225.7021 Added; interim 11729
225.7022 Added; interim 19146
226.7000 Revised; interim 27672
226.7005 (a)(1) revised; interim 22131
226.7100—226.7103 (Subpart 226.71) Added; interim 12192
226.7100 Corrected 15501
226.7103 (c)(2) corrected 15501
231 Authority citation revised 26144
231.100–70 Revised; interim 27672
231.205–18 (c)(2) introductory text amended; interim 27672
231.205–22 Regulation at 58 FR 28469 confirmed 27667

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231.303 (Subpart 231.3) Added; interim 26144
231.7000—231.7002–6 (Subpart 231.70) Regulation at 58 FR 28469 confirmed 27668
231.7000 Revised; interim 27672
231.7001 Amended; interim 27672
231.7002–1 (a)(1)(i) and (b) revised; interim 27673
231.7002–2 (c) redesignated as (b); new (b) introductory text amended; interim 27673
231.7002–3 (b)(1) amended; interim 27673
231.7002–4 (b) amended; interim 27673
231.7002–5 (c)(1) amended; interim 27673
232.501–1 (a)(i) revised; interim 62046
232.502–1–71 Table 32–1 revised; interim 62046
Table corrected 64353
233.1 Removed; interim 27673
233.7000 Regulation at 58 FR 28470 confirmed 27668
(a) revised; interim 27673
235.006 (b)(i)(C)(*1*) introductory text, (ii) and (iii) revised; interim 27673
235.015 Revised; interim 27673
235.015–71 (i)(3) revised; interim 27673
236.602–1 (a)(i)(6)(C) added; interim 27673
237.171 Regulation at 58 FR 28471 confirmed 27667
237.171–1 Regulation at 58 FR 28471 confirmed 27667
237.171–2 Regulation at 58 FR 28471 confirmed 27667
242.205 (1) revised; interim 27673
242.1203 (b)(1) amended; interim 27674
243.405–70 Revised; interim 27674
245.310 (c)(ii)(A) amended; interim 27674
245.505–14 Revised; interim 27674
245.607–2 Revised; interim 27674
247.105 (a)(iii)(A) revised; (a)(iii)(D) amended; interim 27674
247.571 (c) redesignated as (e); new (c) and (d) added; interim 10580
247.573 (d) added; interim 10580
248.270 Amended; interim 27674
249.105–1 Introductory text amended; interim 27674
249.7001 (b)(1), (4) and (12) revised; interim 27674
249.7003 Revised; interim 27674
250.201 (b) amended; interim 27675
250.303 (5) and (13) amended; interim 27675
251.106 Removed; interim 27675
252 Technical correction 26343
252.203–7001 (h) amended; interim 27675
252.210–7005 Removed; interim 27675
252.217–7026 Amended; interim 27675
252.219–7000 Amended; interim 22131
252.219–7001 Amended; interim 24959
252.219–7002 Amended; interim 24959
252.219–7003 Amended; interim 22131, 27675
252.219–7006 Amended; interim 22131, 24959
252.219–7008 Removed; interim 27675
252.219–7009 Regulation at 58 FR 28472 confirmed 27667
252.223–7002 Amended; (a)(2)(iv) and (v) redesignated as (a)(2)(v) and (vi); new (a)(2)(iv) added; (b)(1) revised; interim 27675
252.223–7006 Regulation at 58 FR 28472 confirmed 27668
Introductory text amended; interim 27675
252.225–7001 Amended; interim 1290
Regulation at 59 FR 1290 comment period extended 5335
252.225–7006 Amended; heading revised; interim 1290
Regulation at 59 FR 1290 comment period extended 5335
252.225–7007 Amended; heading revised; interim 1290
Regulation at 59 FR 1290 comment period extended 5335
(c) and (d) corrected 8041
252.225–7010 Introductory text revised; interim 1291
Regulation at 59 FR 1291 comment period extended 5335
252.225–7011 Removed; interim 27675
252.225–7015 Introductory text amended; interim 27675
252.225–7016 Regulation at 58 FR 28473 confirmed 27667
252.225–7018 Amended; interim 27675
252.225–7023 Removed 10579

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Removed; interim 27675
252.225–7025 (f) amended; interim 27675
252.225–7031 Introductory text amended; interim 27675
252.225–7033 Regulation at 58 FR 28474 confirmed 27668
252.225–7034 Added; interim 27675
252.225–7035 Added; interim 1291
Regulation at 59 FR 1291 comment period extended 5335
252.225–7036 Added; interim 1291
Regulation at 59 FR 1291 comment period extended 5335
252.225–7037 Added; interim 1292
Regulation at 59 FR 1291 comment period extended 5335
(f)(2)(iv) corrected 8041
252.225–7038 Added; interim 11729
252.225–7039 Added; interim 19146
Technical correction 26343
252.226–7000 Amended; interim 22131
252.226–7001 Amended; interim 22131
252.227–7001 (b), (d)(2)(i) and (e) amended; clause date revised; interim 27676
252.227–7013 Amended; interim 27676
252.231–7001 Regulation at 58 FR 28474 confirmed 27668
252.232–7004 Amended; interim **62046**
252.233–7000 Regulation at 58 FR 28475 confirmed 27668
Amended; interim 27676
252.234–7000 Amended; interim 27676
252.234–7001 Amended; interim 27677
252.237–7020 Regulation at 58 FR 28475 confirmed 27667
252.237–7021 Regulation at 58 FR 28475 confirmed 27667
252.243–7000 Revised; interim 27677
252.245–7001 Added; interim 27677
252.247–7025 Added; interim 10580
252.248–7000 Revised; interim 27677
252.249–7002 Revised; interim 27677
252.7012 Amended; (b)(1) revised; interim 27675
253.204–70 (b)(12)(iii)(B) amended; interim 27677
253.215–70 Note amended; interim 27677, 27678
Chapter 2 Appendix F amended; interim 27670
Appendix B amended; Appendix G revised; interim 27678
Appendix H added; interim 27700
Appendix I revised; interim 27701

Chapter 5—General Services Administration (Parts 500—599)

501.105 Amended **52443**
501.603–3 Revised **58284**
501.603–4 Revised **58284**
501.603–70 (c) and (f) introductory text amended; (d)(1), (2), (4), (h)(1)(i), (4), (i)(1), (2) and (3) revised **58284**
(h)(1)(v) revised **64694**
501.670 Removed **52443**
501.670–1 Removed **52443**
501.670–2 Removed **52443**
501.670–3 Removed **52443**
501.670–4 Removed **52443**
501.670–5 Removed **52443**
501.670–6 Removed **52443**
501.704–70 (b)(2) removed **52443**
503.104–8 Revised **52443**
507.305 Removed **52443**
508.307–1 Revised **52443**
508.705–72 Removed **52443**
509.106–1 Removed **52443**
509.106–2 Revised **64694**
509.405 Removed **52443**
511.001 Removed **52443**
514.201–72 Removed **52443**
514.208 Removed **52443**
514.402–1 (i) revised **52443**
514.404–1 (b) revised **52443**
514.407–2 Removed **52443**
515.170 Removed **52443**
515.402 Revised **52443**
515.403 Removed **52443**
515.405–1 Revised **52443**
515.414–70 (a) revised **52443**
515.506–1 Removed **52443**
516.505 Revised 32384
519.705–5 (d) revised **52444**
519.705–6 (a) revised; (c) removed **52444**
519.770–1 (b)(2)(i) revised **52444**
519.770–3 (a) revised **52444**
522.407 Removed **52444**
525.10 Removed **52444**
525.203 Revised; eff. 1–1–94 through 12–31–94 ..... **69243**
Corrected 5484
525.205 Revised; eff. 1–1–94 through 12–31–94 ..... **69244**
525.402 (a) amended; eff. 1–1–94 through 12–31–94 ..... **69244**
528.102–3 Removed **52444**
528.106–70 Removed **52444**
528.202 Revised **52444**

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529.401–70 Revised **52444**
529.401–71 Removed **52444**
532.803 Removed **52444**
533.105 (a)(1)(iii), (2) and (4) revised 22520
(a) corrected 29480
533.7103–1 (b)(1) and (4) revised 22520
Correctly designated 29480
536.201 Revised **52445**
536.203 Revised **52445**
536.206 Removed **52445**
536.303 Removed **52445**
536.303–70 Revised **52445**
536.303–71 (g) removed **52445**
536.303–72 (c) removed; (d) redesignated as (c) **52445**
538.203–71 (c) added **54524**
(d) added; interim 3657
542.302 (c) removed; (d) redesignated as (c) **52445**
543.202 Revised **52445**
552 Technical correction 5484
552.207–70 Removed **52445**
552.216–73 (a) amended 32394
552.216–74 Added 32385
552.222–82 Removed **52445**
552.225–8 Revised; eff. 1–1–94 through 12–31–94 ..... **69244**
552.225–9 Revised; eff. 1–1–94 through 12–31–94 ..... **69244**
552.225–75 Revised; eff. 1–1–94 through 12–31–94 ..... **69245**
552.228–70 Introductory text revised **52446**
552.238–74 Added **54524**
552.238–75 Added 3657
552.246–70 Amended **64694**
Amended 15134
570.208–1 (c) removed **52446**

Chapter 7—Agency for International Development (Parts 700—799)

701.105 Revised (OMB numbers) 33445
701.376–4 Amended 33445
701.470 (a)(2) amended 33445
701.601 (b)(4) amended 33445
702.170–13 (a) and (b) revised 33445
703.403 Amended 33446
706.501 Revised 33446
710.070 (b) amended 33446
715.504 (a) revised 33446
725.705 Revised 33446
728.105–1 (b) amended 33446
728.307–70 Added 33446
737.270 Amended 33446
749.111–71 (b) amended 33446
750.7109–1 Amended 33446
750.7110–1 Amended 33446
750.7110–2 Amended 33446
750.7110–3 Amended 33446
752.225–9 Amended 33447
752.228–70 Added 33447
752.232–70 Introductory text amended 33447
752.7004 Amended 33447
752.7017 Revised 33447
752.7026 Amended 33447
752.7029 Amended **58596**
752.7033 Amended; (b)(1) revised **58596**
753.1 Amended 33447
Chapter 7 Appendix D revised **58596**
Appendix J revised **58611**
Chapter 7 Appendix H amended 33447

Chapter 8—Department of Veterans Affairs (Parts 800—899)

836.513 Corrected **58730**
852 Technical correction **58730**

Chapter 9—Department of Energy (Parts 900—999)

901.103–70 (a) amended 9103
901.104–1 (a)(2) amended 9103
901.107 Added 9103
901.201–1 (b) and (d) amended 9103
901.301 (b) introductory text amended 9103
901.570 (b) amended 9103
901.601 Amended 9103
901.602–3 (b)(3), (c)(7)(ii) and (iv) amended 9103
901.603–1 Amended 9103
901.603–71 (a) amended 9103
901.603–72 (a) amended 9103
902.101 Amended 9103, 9104
903.104–11 Added 11198
903.203 (a) amended 9104
903.303 (a) amended 9104
903.603 (a) amended 9104
904.401 Amended 9104
904.403 (a) and (c) amended 9104
904.404 (d)(3) amended 24358
904.601 (c) amended 9104
904.601–70 (b) introductory text amended; (b)(4) removed 9104
904.601–71 (a) and (b) amended 9104
(b) amended 24358

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904.702 (b) amended 9104
904.805 Amended 9104
904.7000 Amended 9104
904.7001 Amended 9104
904.7002 Amended 9104
904.7003 (c) amended 9104
904.7004 Amended 9104
904.7100—904.7103 (Subpart 904.71) Added; interim **59684**
Regulation at 58 FR 59684 confirmed 6221
905.403 (a) amended 9104
905.403-70 Introductory text amended 9104
(c) removed 24358
905.404-1 Amended 9104
906.303-1 (a) amended 9104
907.102 Amended 9104
907.401 (f) amended 9104
907.402-70 (b) introductory text, (3), (c)(1)(iv) and (4) amended 9104
908.307 (b) amended 9104
908.802 (b) amended 9104
908.1170 (a) and (b) amended 9104
908.7101-2 (c) amended 9104
908.7101-3 Amended 9104
908.7101-4 (b) amended 9104
908.7101-5 Amended 9104
908.7101-6 (a) amended 9104
908.7101-7 (b) amended 9104
908.7107 (i) amended 9105
908.7108 (b) amended 9105
908.7112 Amended 9105
908.7115 (a) amended 9105
908.7116 (b) amended 9105
908.7121 (b) amended 9105
912.300 Amended 9105
912.302 (e) amended 9105
912.304 (c) amended 9105
913 Heading amended 9105
913.505-1 (b)(2) amended 9105
913.505-3 (d)(1) amended 9105
914.201-5 (a)(1) amended 9105
(b) removed 24358
914.406-3 (e) amended 9105
914.407-8 Removed 9105
914.407-70 Removed 9105
914.408-2 Amended 9105
915.406-5 (a)(1) and (2)(iv) amended 9105
(d) removed 24358
915.502 (a)(iv) and (b) amended 9105
915.504 (b)(6)(ii), (iv) and (vi) amended 9105
915.506 (b) amended 9105
915.506-2 (a) and (e) amended 9105
915.801 Amended 9105
915.804-3 (b)(2)(iii), (c)(8), (g) and (i) amended 9105
915.804-6 (e) and (i) amended 9105
915.805-5 (c)(1) amended 9105
915.807 (d)(5)(h) amended 9105
915.903 (f) amended 9105
915.970-4 (c) amended 9105
915.970-8 (b)(1) and (h)(1) amended; (b)(2)(iv)(C) redesignated as (c) 9105
915.971-4 (h) amended 9105
915.1003 (a) amended 9105
916.203-4 (d)(2) amended 9105
916.207-3 (d) amended 9105
916.306 (c)(2) amended 9105
916.404-2 (d) amended 9105
916.405 (e) amended 9105
917.71 Removed 24358
917.504 (b)(9)(i) amended 9105
917.7003 (b)(3) and (e) amended 9105
917.7006 Amended 9105
917.7200 (b) amended 9105
917.7300 (b) amended 9105
917.7301-4 (a)(9) amended 9105
917.7303 (b) amended 9105
917.7401 Amended 9105
917.7402 (c)(3) amended 9105
917.7403 (b) amended 9105
917.7502 (b) amended 9106
919.201 (c) amended 9106
919.501 (c) amended 9106
919.705-2 (a) amended 24359
919.705-6 Amended 9106
919.708 (c) amended 9106
920.102 Amended 9106
920.106 Revised 9106
922.103-4 (d)(1) amended 9106
922.470 (a) amended 9106
922.471 (e) and (g)(2)(iii) amended 9106
922.473 (a) and (b) amended 9106
922.608-5 Amended 9106
922.800 Amended 9106
922.804-2 (a)(1) amended 9106
923 Heading revised 9106
923.7001 (a) amended 9106
923.7002 (b) introductory text and (d) amended 9106
924.103 (b)(2) amended 9106
924.202 (b) amended 9106
925.108 (b) amended 9106
925.204 (d) designation removed 9106
925.702 (Subpart 925.7) Added; interim **59684**

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Regulation at 58 FR 59684 confirmed 6221
925.901 (Subpart 925.9) Revised 9106
928.202-70 Amended 9106
932.501-2 (a)(3) amended 9106
932.803 (d) amended 9106
932.970 (a)(1), (2), (b) heading, (1) and (2) amended 9106
932.7003 (a) amended 9106
932.7004-2 (d) amended 9106
932.7004-3 (b) amended 9106
933.103 (a), (d)(5) and (e) amended 9106
933.104 (a)(3), (4)(iii), concluding text, (5)(i), (6), (b) and (c)(2) amended 9106
933.105 (a)(1)(ii), (g) and (h) amended 9107
933.170 (b) through (e) amended 9107
935.016-3 Amended 9107
935.016-4 (b)(5), (c) and (d) amended 9107
935.016-5 (b)(1)(ii) amended 9107
935.016-6 (a) amended 9107
935.016-7 (d)(4) amended 9107
935.016-8 (a)(5), (e)(1), (10) and (11) amended 9107
935.016-9 Introductory text amended 9107
935.070 Amended 9107
936.70 Removed 24359
936.73 Removed 24359
936.202 (a) amended 9107
936.601 Amended 9107
936.602-3 (c)(5) amended 9107
936.602-4 (b) amended 9107
936.603 Amended 9107
936.605 (c)(1) and (3) amended 9107
936.606 (f) amended 9107
936.702 (Subpart 936.7) Heading revised 9107
936.7002-3 (a) amended 9107
936.7003-1 Amended 9107
937.205 (Subpart 937.2) Heading revised; redesignated as 937.207 9107
937.207 (Subpart 937.2) Redesignated from 937.205; heading revised; (b) designation and (7) removed 9107
942.003 (b) amended 9107
942.101 (b) amended 9107
942.705-1 (a)(3) amended 9107
942.705-3 Amended 9107
942.705-4 Amended 9107
942.705-5 Amended 9107
942.708 Undesignated text designated as (b) 9107
942.803 (c)(3)(vii) amended 9107
942.1401 Amended 9107
942.1402 (a)(2) amended 9107
942.1403-1 (a) and (c)(1) amended 9107
942.1403-2 (a) amended 9107
943.170 (g) introductory text, (1) and (3) amended 9107
943.301 (c) amended 24359
944.302 (a) and (c) amended 9107
944.305-1 (a) amended 9107
944.307 (b) amended 9107
945.102-70 Introductory text and (c) amended 9107
945.104-70 (a)(5), (6), (7) and (11) amended 9108
945.303-1 Introductory text amended 9108
945.304 (c) and (d) amended 9108
945.505-14 Table amended 9108
945.570-2 (a), (b)(1), (2) and (g) introductory text amended 9108
945.607-2 (b) amended 9108
945.608-2 (b)(1)(ii) amended 9108
945.608-6 (a) and (b) amended 9108
949.111 (a) and (c) amended 9108
949.501 (a) designation removed; amended 9108
950.104 Amended 9108
950.7003 (b) amended 9108
950.7006 (a) amended 9108
950.7101 (a), (c)(2), (d), (e) and (g) amended 9108
951.102 (a) and (c)(1) amended 9108
951.102-1 (Subpart 952.1) Heading and (a) amended 9108
952.1 Removed 24359
952.202-1 Amended 9108
952.204-2 Amended 9108
952.204-70 Introductory text amended 9108
952.204-71 Amended 9108
952.204-72 Introductory text amended 9108
952.204-73 Amended; interim **59684**
Regulation at 58 FR 59684 confirmed 6221
Amended 9108
952.208-7 Introductory text amended 9108
952.208-70 Introductory text amended 9108
952.209-70 Amended 9108

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952.209–71 Amended 9108
952.212–70 Introductory text amended....9109
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952.212–72 Amended 9109, 24359
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952.215–22 Amended 9109
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952.216–15 Amended 9109
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171.8 Amended.....**51528**
171.9 (b)(4) amended.....**51528**
171.14 (b)(5) removed; (b)(6)(iii) added.....**66303**
171.15 Authority citation removed.....**51528**
172 Authority citation revised.....**51528**
172.101 Table amended.....**51528, 51529**
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Table amended.....28491
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172.102 (c)(1), (3) and (5) amended.....**51531**
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172.202 (a)(2) amended.....**51531**
172.203 (k) introductory text, (3), (4)(iii) and (iv) amended.....**51531**
172.400a (a)(6) amended.....**51531**
172.406 (a)(2) and (e)(1) amended.....**51531**

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172.420 (a) illustration corrected; CFR correction.....30530
172.422 (a) illustration corrected; CFR correction.....30530
172.521 (a) illustration corrected; CFR correction.....30530
172.525 (b) amended.....**51531**
172.526 (b) amended.....**51531**
172.546 (a) illustration corrected; CFR correction.....30530
172.556 (b) amended.....**51531**
(a) illustration corrected; CFR correction.....30530
173 Authority citation revised.....**51531**
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173.2 Table amended.....**51531**
173.3 (c) introductory text amended.....**51531**
173.4 (a) introductory text, (2) introductory text and (11) amended.....**51531**
173.7 (a) introductory text amended.....**51532**
173.10 (d) and (e) amended.....**51532**
173.21 (b) and (j) amended.....**51532**
173.22 (a)(3)(i) amended.....**51532**
173.24a (b)(4)(i) amended.....**51532**
173.25 (a) introductory text amended.....**51532**
173.31 (c)(9) amended.....**51532**
173.33 (c)(4) and (d)(1) amended.....1786
Regulation at 59 FR 1786 effective date confirmed.....12861
173.34 (e)(16) introductory text and (v) amended.....**51532**
(e)(15)(i) revised; (v) and (17)(ii) amended.....28493
173.56 (b)(2) introductory text and (i) amended.....**51532**
173.57 (a) introductory text amended.....**51532**
173.62 (b) amended.....**51532**
173.115 (a) introductory text and (2) amended.....**51532**
173.124 (b)(2) amended.....**51532**
173.127 (a) amended.....**51532**
173.128 (a) introductory text amended.....**51532**
173.132 (b)(1) amended.....**51532**
173.133 (b)(1)(ii) amended.....**51532**
173.136 (a) introductory text amended.....**51532**
173.151 (b)(2) amended.....**51532**
173.159 (g)(1) amended.....**51532**
173.225 (b) table amended.....**51532**

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(b) table amended 28493
173.247 (g)(1)(ii) and (iii)(B) amended 51532
(g)(1)(iii)(B) revised 28493
173.301 (g)(5) amended 51532
173.302 (h) amended 28493
173.304 (d)(3)(i) amended 51532
(g) amended 28493
173.306 (i) introductory text amended 51532
(a)(3) introductory text amended 28493
173.315 (a) table amended 51532
173.318 (b)(3)(ii) amended 51532
173.323 (f) amended 51532
173.417 (b)(2)(ii) Table 5 amended 51533
173.420 (a)(2)(i) and (b) amended 28493
173.433 (b)(4) amended 51533
173 Appendixes B, D and E amended 51533
174 Authority citation revised 51533
174.1 Amended 51533
174.25 (a)(2)(ii) amended 51533
(c) amended 28493
174.55 (c) amended 51533
174.82 (a) amended 51533
174.290 Heading amended 51533
174.430 Amended 51533
174.700 (c) table amended 51533
175 Authority citation revised 51533
175.320 (a) table and (c) introductory text amended 51533
176 Authority citation revised 51533
176.5 (b) introductory text amended 51533
176.83 (f)(4) amended 51533
(c)(2)(ii) illustration and (iii) illustration corrected; CFR correction 30530
(c)(2)(iv) illustration and (v) illustration corrected; CFR correction 30531
176.100 Amended 51533
176.118 (b) amended 51533
176.410 (c)(2) amended 51533
177 Authority citation revised 51533
177.825 Revised 51533
177.834 (j) amended 51533
177.838 (g) amended 51533
177.857 (d) amended 51533
177.858 (b)(1) amended 51533
178 Authority citation revised 51533
Clarification 53626
178.39–9 (a) amended 51533
178.39–14 (b) amended 51534
178.46–12 (e) redesignated as (c) 51534
178.53–9 (b) amended 51534
178.55–20 (a) introductory text amended 51534
178.56–3 Amended 51534
178.56–11 (a) amended 51534
178.60–24 (a) amended 51534
178.61–8 (c)(2) amended 51534
178.61–20 (b) amended 51534
178.270–5 (d) amended 51534
178.270–11 (d)(1) amended 51534
178.337–1 (f) amended 51534
178.337–16 (b)(2) amended 51534
178.338–10 (c) amended 51534
178.338–19 (c) amended 51534
178.345–14 (b)(11) amended 51534
178.352–2 (a) amended 51534
178.352–6 (a)(2) amended 51534
178.362–2 (e)(5) amended 51534
178.503 (a)(9), (d)(2)(ii) illustration and (3) illustration revised 28493
178.505 (b)(1) amended 28494
178.506 (b)(1) amended 28494
178.509 (b)(4) amended 28494
178.511 (b)(1) amended 28494
178.516 (b)(3)(i) introductory text amended 51534
178.518 (a)(2) amended 51534
178.600 Amended 51534
178.601 (g)(7) amended 28494
178.603 (a) table amended 51534
178.605 (d)(1) amended 51534
(b) amended 28494
178.606 (b) amended 28494
179 Authority citation revised 51534
Amended 51534
179.101–1 (a) table amended 51534
179.105–4 (a) introductory text amended 51534
179.105–7 (b) amended 28494
179.203–1 (a) amended 51534
180 Authority citation revised 51534
Clarification 53626
180.405 (f)(2) introductory text amended 51534
(b) and (c)(1) table amended 1786
Regulation at 59 FR 1786 effective date confirmed 12861
180.407 (f)(1)(i)(C) amended 51534
180.413 (d)(1)(i), (ii) and (iii) amended 1786
Regulation at 59 FR 1786 effective date confirmed 12861

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180.417 (a)(3) heading amended 1786
Regulation at 59 FR 1786 effective date confirmed 12861
190.9 Added 17280
192.3 Amended 17281
192.9 Revised 17281
192.150 Added 17281
192.453 Revised; eff. 2–11–95 6584
192.603 (b) revised; eff. 2–11–95 6584
192.605 Revised; eff. in part 2–11–95 6584
192.615 (d) redesignated as 192.616; eff. 2–11–95 6585
192.616 Redesignated from 192.615(d); eff. 2–11–95 6585
192.706 (a) removed; (b) introductory text, (1) and (2) redesignated as introductory text, new (a) and new (b); eff. 2–11–95 6585
192.723 (b)(1) amended 54528
(b)(2) revised 54529
Heading and (a) revised; eff. 2–11–95 6585
192.727 Heading and (a) revised; eff. 2–11–95 6585
192.729 Removed; eff. 2–11–95 6585
192.733 Removed; eff. 2–11–95 6585
192.737 Removed; eff. 2–11–95 6585
193.2015 Removed 17281
194.416 (a) revised; (h) redesignated as (i); new (h) added 33397
195 Authority citation revised 17281
195.1 (b)(5), (7) and (8) revised; (b)(6) amended 33395
195.2 Amended 17281, 33395, 33396
195.3 (a) revised; (b)(1) through (5) and (c)(1) through (4) redesignated as (b)(2) through (6) and (c)(2) through (5); new (c)(2)(iii) and new (iv) redesignated as (c)(2)(v) and (vi); new (b)(1), (c)(1), new (2)(iii) and new (iv) added 33396
195.5 (a)(1) and (4) revised 33396
195.8 Amended 17281
195.50 (f) revised 33396
195.52 (a)(3) revised 33396
195.56 (a) amended 17281
195.58 Amended 17281
195.106 (e) amended 17281
(b) revised 33396
(c) amended 33397
195.112 (c) amended 33396
195.120 Revised 17281
195.204 Amended 33397
195.212 (b)(3)(ii) amended 33396
195.228 (b) revised 33397
195.234 (e) introductory text and (g) revised 33397
195.246 (b) revised 33397
195.248 (a) table amended; (b) introductory text revised 33397
195.260 (e) amended 17281
195.262 (d) revised 33397
195.300 Revised 29384
195.300—195.310 (Subpart E) Heading revised 29384
195.302 Revised 29384
195.303 Added 29384
195.304 (a) and (b) introductory text amended 29385
(b) introductory text revised 33397
195.306 (b) introductory text revised 29385
195.308 Amended 29385
195.310 (a) amended 29385
195.402 (c)(14) added; eff. in part 2–11–95 6585
195.406 (a)(3) amended; (a)(5) revised 29385
(a)(1) revised 33397
195.412 (a) revised 33397
195.413 (a) amended 33396
195.416 (a) revised; (h) edesignated as (i); new (h) added 33397
199 Common preamble 68194
Authority citation revised 68260
Heading revised 7430
199.1—199.25 Designated as Subpart A 7430
199.1 (a) amended 68260
199.23 (a)(2) revised 68260
199.25 Added 68261
199.200—199.245 (Subpart B) Added 7430

Chapter II—Federal Railroad Administration, Department of Transportation (Parts 200—299)

207 Added 6587
214.103 (b) and (c) revised 30883
214.111 Revised 30883
214.113 (b) revised; (c) removed 30883
214.115 (b) revised 30883
214.117 (b) revised 30884
217 Common preamble 68194
217.13 (d) removed 68235

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219 Common preamble **68194**
Nomenclature change; eff. 1-1-95 7457
219.3 (a) introductory text and (c) revised; (b)(3) added; eff. 1-1-95 7457
219.5 Amended; eff. 1-1-95 7457
219.9 (a) amended; (c) added; eff. 1-1-95 7458
219.11 (b)(2) revised; (g) redesignated as (h); (c)(4) and new (g) added; eff. 1-1-95 7458
219.15 Removed; eff. 1-1-95 7458
219.23 Heading, (a) and (b) revised; (d), (e) and (f) added; eff. 1-1-95 7458
219.101 (a)(2)(ii) revised; (a)(3) and (4) added; eff. 1-1-95 7459
219.104 (a), (d) and (e) revised; (f) and (g) added; eff. 1-1-95 7459
219.107 Added; eff. 1-1-95 7460
219.201 (a)(1)(iii), (2)(ii) and (b) revised; eff. 1-1-95 7460
219.203 (a)(1) revised; (d)(2) amended; eff. 1-1-95 7460
219.205 (a) revised; eff. 1-1-95 7460
219.206 Added; eff. 1-1-95 7461
219.209 (a)(1) amended; (c) added; eff. 1-1-95 7461
219.211 (a), (c) and (d) amended; (e) and (h) revised; eff. 1-1-95 7461
219.213 (a) and (b) revised; eff. 1-1-95 7461
219.300 Added; eff. 1-1-95 7461
219.301—219.309 (Subpart D) Heading revised; eff. 1-1-95 7461
219.301 (b)(1), (f) and (g) removed; (b) introductory text, (2) introductory text and (c) introductory text revised; eff. 1-1-95 7461
219.302 Added; eff. 1-1-95 7462
219.303 Revised; eff. 1-1-95 7462
219.307 Removed; eff. 1-1-95 7462
219.309 Removed; eff. 1-1-95 7462
219.501—219.505 (Subpart F) Heading revised; eff. 1-1-95 7462
219.501 Revised 7462
219.503 Revised; eff. 1-1-95 7462
219.505 Heading revised; (a) designation and (b) removed; eff. 1-1-95 7462
219.601—219.605 (Subpart G) Heading revised; eff. 1-1-95 7462
219.601 Heading, (b)(2)(iii) concluding text and (7) revised; (c) amended; eff. 1-1-95 7462
219.603 Heading revised; (a) designation, (b) and (c) removed; eff. 1-1-95 7463
219.605 Heading revised; (b) amended; eff. 1-1-95 7463
219.607 Added; eff. 1-1-95 7463
219.608 Added; eff. 1-1-95 7464
219.609 Added; eff. 1-1-95 7464
219.611 Added; eff. 1-1-95 7464
219.701—219.713 (Subpart H) Heading revised; eff. 1-1-95 7464
219.703 Heading revised; eff. 1-1-95 7464
219.707 Heading revised; (a) amended 7464
219.708 Added 7464
219.713 Removed; eff. 1-1-95 7464
219.715 Added; eff. 1-1-95 7464
219.801 (Subpart I) Added; eff. 1-1-95 7465
219.803 (Subpart I) Added **68235**
219.901—219.905 (Subpart J) Added; eff. 1-1-95 7466
219 Appendix D added **68237**
Appendix D2 added **68250**
Appendix D3 added; eff. 1-1-95 7468
Appendix D4 added; eff. 1-1-95 7477
229 Authority citation revised 24963
229.133 (b) revised; interim 24963

Chapter III—Federal Highway Administration, Department of Transportation (Parts 300—399)

Chapter III Interpretation **60734**
350.11 (a) revised; interim 5264
350.21 (d)(3) added; interim 5264
350 Appendix C amended; interim 5264
382 Added 7505
383 Authority citation revised 26028
383.5 Amended 26028
383.37 (a) and (b) amended; (c) added 26028
383.51 (d) redesignated as (e); new (d) added 26028
383.53 Revised 26028
384 Added 26039

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390.3 (f)(6) removed; eff. 1-1-95 8752
390.5 Amended **59196, 67375**
Amended; eff. 1-1-95 8752
Amended 26028
391 Common preamble **68194**
391.15 (d) added 26028
391.31 (a) revised; eff. 1-1-95 8752
391.35 (a) revised; eff. 1-1-95 8752
391.43 Amended; (e) introductory text and (g) revised **59196**
391.51 (a) revised; eff. 1-1-95 8752
391.68 Added; eff. 1-1-95 8752
391.73 Added; eff. 1-1-95 8752
391.83 (a) revised; eff. 1-1-95 8753
391.87 (h) revised **68222**
391.93 Revised 7514
391.125 Added 7514
392.5 Heading, (a)(1), (2), (3) and (b)(2) revised 7515
392.71 Added **67375**
393.42 (b)(4) removed 25574
393.67 (a)(6) added; eff. 1-1-95 8753
395.2 Amended 7515
395.8 (a) introductory text revised; eff. 1-1-95 8753
396.3 (b) introductory text revised; eff. 1-1-95 8753
396.11 (d) revised; eff. 1-1-95 8753

Chapter V—National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

526 Authority citation revised 25576
526.1 (b) and (c) revised 25576
526.2 Revised 25576
526.3 Heading, introductory text and (a) introductory text revised 25576
526.4 Removed 25576
526.5 Introductory text and (a) revised 25576
531.5 (b)(2) revised **62295**
533.5 (a) Table IV added 16323
541 Appendixes A and A-I revised **63298**
Appendix A-II revised **63299**
Appendix A revised 31163
Appendixes A-I and A—II revised 31164
542 Revised 21672
543.5 (a) revised 10758
543.6 (a)(1) revised 10758
544 Appendix A revised **63301**
Appendixes B and C revised **63302**
555 Authority citation revised **58104**
555.9 (c)(1) revised **58104**
571 Petition denied 2755, 14569, 27506
Technical correction 19753
571.103 Amended 11006
571.108 Amended **52026, 64169, 65676**
Corrected 3164
571.111 Regulation at 57 FR 57000 confirmed **53666**
Amended **60402**
571.120 Amended 25578
571.121 Amended 6909
Figure 1 revised 6911
Amended; eff. 10-20-94 18323
571.131 Amended; interim 26761
571.203 Amended **63304**
571.208 Amended; eff. 9-1-95 ..... **52926**
Figure 5 added; eff. 9-1-95 ..... **52927**
Amended; eff. 9-1-97 ..... **59191, 59193**
Amended 11203, 17994, 25827
571.209 Amended 17994
571.213 Amended 7647, 15863
Corrected 14452
571.217 Amended 22999
571.301 Amended **51788**
571.303 Added; eff. 9-1-95 19659
582 Petition denied 13630
591.5 (f)(1) revised; (g) removed; interim 31560
591.6 (c) revised; (e) removed; (f) and (g) redesignated as (e) and (f); interim 31560
591.7 (c) amended; interim 31560
591.8 (a) amended; (d)(2)(i) redesignated as (d)(2); (d)(2)(ii) removed; interim 31560
591.9 (a) amended; interim 31560
591 Appendix B removed; interim 31560
592.6 (a) amended; interim 31560

Chapter VI—Federal Transit Administration, Department of Transportation (Parts 600—699)

604.9 (b)(8)(iv) revised **52685**
613 Authority citation added; subpart authority citations removed **58079**
613.100 (Subpart A) Revised **58079**
613.200 (Subpart B) Revised **58079**
614 Added; interim **63485**
Technical correction **64374**
626 Removed **63485**
653 Revised 7589
654 Added 7549
665 Authority citation revised **58733**

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665.3 (d) revised; interim **58733**
665.5 Amended; interim **58734**

Chapter VIII—National Transportation Safety Board (Parts 800—899)

826.2 Revised 30531
826.6 (b)(1) revised 30531
826.21 (b) introductory text revised 30532
826.24 (a) revised 30532
826.31 Revised 30532

Chapter X—Interstate Commerce Commission (Parts 1000—1399)

1002 Regulation at 58 FR 7748 eff. 10–1–93 ..... **52027**
1002.2 (f) table amended 4844
1017 Regulation at 58 FR 7748 eff. 10–1–93 ..... **52027**
1018 Regulation at 58 FR 7748 eff. 10–1–93 ..... **52027**
1033 Revised **60144**
1035 Revised **60797**
1039.11 (a) table revised **53434**
1051 Authority citation revised 2303
Interpretation 14570
1051.2 (a) introductory text and (1) through (11) redesignated as (a)(1) introductory text and (i) through (xi); new (a)(2) and (3) added 2303
Regulation at 59 FR 2303 eff. date delayed to 4–2–94 6221
1053 Added 2303
Regulation at 59 FR 2303 eff. date delayed to 4–2–94 6221
Interpretation 14570
1056.2 (a)(3) revised 2305
1056.18 Revised 2305
1145.9 Existing text redesignated as (a); (a) heading and (b) added **53667**
1180.0 Amended **63104**
1180.2 (b) revised **63104**
1180.4 (b)(1)(iv) revised **63104**
1180.6 (b) introductory text revised; (c) added **63104**
1180.9 Introductory text revised **63104**
1207 Removed 5110
1249.1 Revised 5110
1249.2 (a), (b)(1), (4) and (c) revised; (b)(5) added 5111
1312 Regulation at 58 FR 7748 eff. 10–1–93 ..... **52027**
Authority citation revised 2304, 4844
Technical correction 11557
Interpretation 14570
1312.14 (a)(4) added 2304
Heading revised 4844
Regulation at 59 FR 2304 eff. date delayed to 4–2–94 6221
1312.20 (h)(1) revised 10305
1312.41 Added 4844
1313 Regulation at 58 FR 7748 eff. 10–1–93 ..... **52027**
1314 Regulation at 58 FR 7748 eff. 10–1–93 ..... **52027**

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199 7614
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1312 ..... **64717, 68108**
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TITLE 50—WILDLIFE AND FISHERIES

Chapter I—United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

14.12 (j) and (k) amended; (l) added 33212
15 Revised **60536**
16 Authority citation revised **58979**
16.13 Revised **58979**
17 Petition findings 30254
17.11 (h) table amended **53804, 53807, 54065, 65095, 68486**
(h) table amended 4856, 5498, 10584, 13397, 13836, 17998, 31095
(h) table amended; eff. 1–31–94 through 9–28–94 5310
(h) table amended; eff. 4–18–94 to 12–14–94 18327
17.12 (h) table amended **52030, 62049, 68480**
(h) table amended 14371, 5509, 8141, 9327, 9936, 10323, 13840, 14493, 15345, 32937
17.21 (g)(1) introductory text revised **68325**
17.41 (b) added **65095**
17.84 (c)(1), (4), (5)(iii), (6), (9), (10) and (11) correctly revised; (c)(5)(iv) correctly added; CFR correction **52031**
17.95 (b) amended 4856
(c) amended 5845
(c) corrected 9032
(e) amended 10905, 10914, 13397
17.108 (a)(3) through (6) and illustration revised; (a)(7) removed 24658
18.121—18.129 (Subpart J) Added; eff. 12–16–93 through 6–16–95 ..... **60410**
20 Temporary regulations **65656**
21.29 (k) amended 11204
24.12 (a) and (e) amended **68543**
(e) redesignated as (g) and amended; new (e) and (f) added 14121
32.7 Amended 6685, 6688
32.20 Amended 6688
32.22 Amended 6688
32.23 Amended 6689
32.24 Amended 6689
32.25 Amended 6685
32.28 Amended 6690
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32.31 Amended 6691
32.32 Amended 6685, 6692
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32.52 Amended 6695
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32.56 Amended 6696

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32.57 Amended 6698
32.60 Amended 6698
32.62 Amended 6698
32.63 Amended 6698
32.64 Amended 6699
32.66 Amended 6686
32.67 Amended 6686, 6699
32.69 Amended 6700
36.39 (j) added; interim; eff. 6–25–94 through 9–30–94 24566
85 Revised 11206
100.24 (a)(1) table and (2) table amended 27463
(a)(2) table corrected 28922
100.25 (b)(2)(i) introductory text, (iv) introductory text and (f) revised; (m)(1) table amended **61811**
Revised; eff. 7–1–94 through 6–30–95 29036
100.26 Regulation at 58 FR 31289 eff. date extended to 12–31–95; interim 32925
100.27 Regulation at 58 FR 31294 eff. date extended to 12–31–95; interim 32925, 28922

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204.1 (b) table amended (OMB numbers) **59401**
Regulation at 58 FR 33567 confirmed 13894
215 Harvest quotas **58297**
216 Temporary regulations 8142
Finding of conformance 15655
216.3 Amended 16145
216.4 (b)(1) through (h) removed; (b) introductory text revised **65134**
216.15 (f) added **58297**
216.24 (a)(1), (b)(1)(iii) heading and (v) amended; (d)(2)(vii)(C)(*1*) introductory text and ((*i*)(*D*) revised **63539**
(d)(2)(viii) introductory text, (A) introductory text, (B), (C) and (E) amended **63540**
(e)(3)(i)(A)(*1*) revised 16145
(e) heading and (9) revised 30306
Note amended; eff. 6–17–94 through 9–1–95 31165
216.110—216.113 (Subpart I) Removed **65134**
217 Temporary regulations 23169
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217.12 Amended **54067**
Amended; interim 10586
222.23 (a) amended 450, 31095
226.13 Added 28805
226.22 Added **68551**
226 Table 3 and Figure 5 added **68552**
Table 2 amended 30716
227 Temporary regulations 23169
Temporary restrictions 29545
227.4 (e) removed; (f), (g) and (h) redesignated as (e), (f) and (g) 450
227.12 (a)(3) Table 1 amended **53139**
(a)(3) illustration revised **53141**
(a)(3) corrected **58594**
227.21 (a), (b)(1) and (2) amended 450
227.72 (e)(4)(ii) and (iii) redesignated as (e)(4)(iii) and (iv); new (e)(4)(iv) introductory text revised; new (e)(4)(ii) added **54067**
(e)(5) heading and (i) revised **54068**
(e)(4)(i)(G)(*2*) redesignated as (e)(4)(i)(G)(*2*)(*i*); (e)(4)(i)(G)(*2*)(*ii*) added 25829
(e)(4)(i)(I) added; (e)(4)(iv)(A) revised; interim 33449
(e)(3)(i) and (ii)(B) revised 33699
227 Figures 10 and 11 added **54069**
Figure 12a added 25830
Figure 12b added 25831
228.51—228.57 (Subpart F) Added; eff. 3–3–94 through 3–3–99 5126
229 Regulation at 54 FR 21921 eff. date extended to 4–1–94 ..... **51789**
Regulation at 54 FR 21921 eff. date extended to 5–1–94 17048
Added; eff. 6–17–94 through 9–1–95 31165
229.1 (b) amended **51789**
(b) amended 17049
282.2 Regulation at 58 FR 33567 confirmed and amended 13894
282.3 Regulation at 58 FR 33567 confirmed 13894
282.5 Regulation at 58 FR 33567 confirmed 13894
282.6 Regulation at 58 FR 33567 confirmed 13894
282.8 Regulation at 58 FR 33568 confirmed 13894
282.9 Regulation at 58 FR 33568 confirmed 13894
282.14 Regulation at 58 FR 33568 confirmed 13894
282.15 Regulation at 58 FR 33568 confirmed 13894
285 Harvest quotas **53434**
Temporary regulations **53668, 63104**
285.2 Amended; interim 17725
285.22 (a), (d) introductory text, (1), (2), (e) introductory text, (f) introductory text and (i) amended; (e)(1) revised; interim 17725
285.23 (c)(1) and (2) revised; interim 17726
285.24 (e) added; interim 17726
285.26 Introductory text revised; interim 17726
285.29 (a) and (b)(1) revised; interim 17726
285.31 (a)(28), (30) and (37) revised; (c) removed; interim 17726

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301 Temporary regulations **51253**
Revised 22526
Inseason adjustments 24359, 30307
Fishery management measures 24964
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Inseason adjustment 33699, 33700
301.7 (f) revised 27242
301.11 (g) revised 27242
371 Inseason adjustments **54307**
380.2 Amended 11730
380.20 Revised 25835
380.23 (c), (e) introductory text, (f) introductory text, (g), (h) introductory text, (1), (2), (i), (k) introductory text and (3) revised; (k)(5) added 25835
380.24 (f) introductory text, (2), (g)(1) introductory text, (ii) and (2) revised; (f)(3), (g)(1)(iii) and (iv) added; (g)(1)(i) amended 25836
380.26 (d) through (h) revised 25836
380.27 (c) and (d) revised; (e) added 25837
380.28 Added 11730
380.30 Added 25837
380 Figure 2 added 25837
Figure 3 added 25840

Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

601.37 (a) revised; interim 11559
605.24 Comment period extended to 11–26–93; interim **57968**
611 Fishery management measures 685, 7647, 7656
Technical correction 13769
625 Harvest quotas **59196, 61844, 62050, 65134, 68555**
Harvest quotas 257, 3320, 10586, 15863, 26971, 29207
625.2 Amended **65937**
625.6 (a)(1) through (4), (b) and (c) revised; (a)(5) redesignated as (a)(6); new (a)(5) added; interim 11935
625.8 (c)(2) revised; interim 11936
Corrected 19146
(a)(6), (7) and (9) revised; (e) added 28810
625.20 Regulation at 58 FR 27215 and 39680 terminated; regulation at 58 FR 49940 corrected **52685**
Regulation at 58 FR 45076 eff. date extended through 12–31–93 ..... **62556**
(f) added **65937**
(c) revised 28810
625.22 Revised; interim 18757
625.24 (c) removed; (d) and (e) redesignated as (c) and (d); new (e) and (f) added 28810
625.25 (d) revised **65938**
(a) revised; interim 18757
(d) revised 28810
625.28 Added 28811
630 Temporary regulations 32136
630.24 Regulation at 58 FR 33569 confirmed **58509**
638.5 (o), (p) and (q) added; interim; eff. 5–16–94 through 8–14–94 25345
(r), (s) and (t) added; interim 32939
638.27 Added; interim; eff. 5–16–94 through 8–14–94 25345

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640.7 (n) amended **61845**
641 Temporary regulations 22760
641.1 (b) revised 970
641.2 Amended 971
641.4 (a)(1), (4), (b)(1), (2) introductory text, (xi), (xiii)(B), (h), (i) and (k) revised; (b)(2)(xiii)(C) and (xiv) removed; (o) added; eff. in part 2–7–94 through 2–7–97 971
(h)(1) revised; (n)(3) added; eff. in part 1–1–94 through 12–31–94 and 1–1–94 through 2–9–94 ..... **68326**
(b)(2)(xiii)(B) correctly designated 3749
(a)(1) through (5) and (c) through (o) redesignated as (a)(1)(i) through (1)(v) and (d) through (p); new (a)(1) heading, (2), (c) and (n)(3) added; (b) heading, new (d) through (i) and (p)(4) revised; new (m) introductory text, (1), (2), (n)(2) and (p) introductory text amended 6590
641.5 (b), (c), (f), (g) and (i) revised 971
(d) revised 6591
Regulation at 59 FR 6591 eff. date corrected to 3–9–94 10675
641.6 Heading and (a) through (e) revised 972
641.7 (u) revised; (w) and (x) added; eff. in part 1–1–94 through 12–31–94 and 1–1–94 through 2–9–94 ..... **68326**
(a), (b), (g), (i), (k), (l) and (s) revised; (y) through (cc) added 972
(a), (b) and (c) revised; (y) amended; (bb) and (cc) redesignated as (cc) and (dd); new (bb) added 6591
641.21 (d) heading revised; (d)(4) and (5) added; eff. 1–1–94 through 12–31–94 ..... **68326**
(a)(1) and (b) revised 972
641.22 (b)(2)(i), (ii), (iii) introductory text, (A), (5) and (6) revised; (b)(3) introductory text amended; (b)(7) added 973
641.23 (a)(3) and (b)(3) amended; (c) and (d) added 973
641.24 (a) and (g) revised; (c)(1) amended 973
641.27 (a) amended 974
641.28 Revised 974
641.30 Added; eff. 1–1–94 through 2–9–94 ..... **68326**
641 Appendix A amended 974
642 Temporary regulations **51579, 68327**
Temporary regulations 257, 4255, 5962, 8868
642.7 (u) added **58511**
642.25 (a)(1)(i) suspended; (a)(1)(iii) added; interim; eff. through 1–3–94 ..... **51791**
Regulation at 58 FR 51791 eff. date extended to 3–31–94 ..... **69273**
642.31 Added **58511**
646.1 (b) revised 27244
646.2 Amended 27244
646.4 (b)(2)(vi)(A) and (B) amended; (b)(2)(vi)(C) removed 27244
646.5 (d) introductory text and (4) revised 27244
646.7 (kk) revised; (mm) redesignated as (ss); new (mm) through (rr) added 27244
646.20 Revised 27245
646.21 (j) added 27245
646.23 (a)(4) added; (b)(3) revised 27245
646.24 Revised 27245
646.25 Redesignated as 646.27; new 646.25 added 27245
646.26 (d) added 27245
646.27 Redesignated as 646.28; new 646.27 redesignated from 646.25 27245
646.28 Redesignated from 646.27 27245
646 Figure 2 removed; Figure 3 redesignated as Figure 2 27246
649 Revised 31943
649.20 (b) revised **68556**
(b) revised 26455
650 Revised 2763
Temporary regulations 2777
650.9 (b)(13) and (c)(14) suspended; (b)(25), (26), (c)(8) and (9) added; interim; eff. 3–4–94 through 4–30–94 11007
650.20 Suspended; interim; eff. 3–4–94 through 4–30–94 11007
650.21 (b)(3)(i) suspended; (b)(3)(iv) added; interim; eff. 3–4–94 through 4–30–94 11007
650.30 Added; interim; eff. 3–4–94 through 4–30–94 11007

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(a) corrected 14370
651 Technical correction **55116**
Revised; eff. in part to 4–2–94 9884
651.2 Amended; eff. 1–3–94 through 4–2–94 28
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651.7 (a)(3) through (7) and (b)(15) through (21) added; (b)(11) suspended; eff. 1–3–94 through 4–2–94 28
651.9 Regualtion at 59 FR 9884 eff. date extended in part to 6–30–94 15656
(a)(13) and (e)(31) revised 26976
(a)(11), (12), (e)(33) and (34) revised 32136
651.20 (g) added; eff. 1–3–94 through 4–2–94 29
(b)(3)(vi) added 5129
(a)(2) and (5) corrected 10588
(a)(2) and (5) revised; interim 15657
651.21 (a) introductory text, (1), (2) and (3) suspended; (c) added; eff. 1–3–94 through 4–2–94 29
(b)(6) added; (b)(3)(i) suspended; interim; eff. 4–3–94 through 6–30–94 15657
(b)(3) revised 32136
651.22 (b)(1)(i), (3)(ii), (iv), (7), (c)(1)(i) heading, (A), (E) and (F) revised; (b)(3)(i) amended 22762
651.27 Regulation at 59 FR 9884 eff. date extended in part to 6–30–94 15656
(b) revised 32136
651.28 Added; eff. 1–3–94 through 4–2–94 29
651.29 Added; eff. 1–3–94 through 4–2–94 29
651.32 (a), (b)(1) and (2) revised 26976
651 Figure 2 suspended; Figure 6 added; eff. 1–3–94 through 4–2–94 29
Figure 6 added 5130
Figure 4 added 26978
652 Temporary regulations **59197**
Harvest quotas 6221
658 Temporary regulations 24660
659 Added **57751**
661 Inseason adjustments **53143**
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661 Appendix amended **68064**
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662.2 Amended 18978
662.20 (a) revised 18978
663 Restrictions **52031, 64169**
Fishery management measures 685, 23638
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663.7 (q) amended; interim 700
(o) amended; eff. 4–8–94 through 12–31–96 17493
663.23 (b)(2) heading and (c)(1) heading revised; (c)(2) redesignated as (c)(3); (b)(2) introductory text and new (c)(2) added; interim 700
(b)(4) added; eff. 4–8–94 through 12–31–96 17493
663.24 Removed; interim 701
663.31 Amended; interim 701
663.33 (f)(2) suspended 12–29–93 to 4–1–94 259
(d)(1) amended; interim 701
Suspension at 59 FR 259 extended through 4–14–94 15345
(g) revised 17735
663.35 (b)(1), (2)(i) and (ii) amended; interim 701
663.36 (b)(1) amended; interim 701
663.37 (b)(1) amended; interim 701
663.41 (c)(2) and (3) amended; interim 701
663 Appendix amended; interim 701
669 Heading revised **53146**
669.1 Revised **53146**
669.2 Amended **53146**
669.4 Amended **53148**
669.6 (a), (e)(1) introductory text, (2) and (3) amended **53148**
669.7 Revised **53147**
669.20—669.25 (Subpart B) Revised **53147**
669.23 (b)(1) revised 11560
671.20 Removed 28281
672 Inseason adjustments 51791
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15134, 17737, 21946, 26761, 28811, 29208, 29548, 33212
Fishery management measures 7647
Technical corrections 17848
672.2 Amended 9422
672.3 Revised **59401**
672.7 (n) added 9423
(o) added 18761
672.20 (i) introductory text and (1) through (5) redesignated as (i)(1) through (6); new (i)(1) and (2) revised; (i)(7) added **57753**
(f)(1)(i) and (h)(1) suspended; eff. 2-7-94 to 5-11-94; (f)(3) and (h)(3) added; interim 6225
(g)(1)(i)(A), (ii), (2) and (4)(ii) revised 10589
(i)(1) and (6) revised 14122
Regulation at 59 FR 6225 eff. date extended through 8-9-94 24965
672.24 (e)(1) table and (2) table amended **53142**
672.27 (g) added 18761
(a) amended; (b), (c)(1)(ii)(D), (iii)(C) and (D) revised; (c)(1)(ii)(E), (iii)(E), (F), (iv) and (v) added 22136
675 Temporary regulations **51253, 52033, 52451, 53148, 54529, 58297, 58802, 60145, 65292, 65556, 69273**
Regulation at 58 FR 50857 eff. date corrected **58593**
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675.2 Amended 9423, 18762
675.3 Revised **59402**
675.7 (o) added 9423
(p) added 18762
675.20 (j) introductory text and (1) through (5) redesignated as (j)(1) through (6); new (j)(1), (2) and (5) revised; (j)(7) added **57753**
(a)(3) introductory text revised; eff. 1-1-95 ....**59402**
(a)(2)(iv), (v) and (3)(iv) added 4012
(h)(2), (6) and (i)(1) suspended; (h)(7), (8) and (i)(3) added; eff. 2-7-94 to 5-11-94 6226
(j)(1) and (6) revised 14123
(c)(3) and (4) revised; (c)(6) added 18762
Regulation at 59 FR 6226 eff. date extended through 8-9-94 24965
675.21 (a)(4) and (c)(1)(iii) removed; (a)(5), (6), (7) and (c)(1)(iv) redesignated as (a)(4), (5), (6) and (c)(1)(iii); new (a)(4), (b)(1) introductory text, (2)(i) and new (c)(1)(iii) revised 18763
675.23 (c) suspended; (f) added; eff. 2-7-94 to 5-11-94 6226
675.24 (f)(1)(i), (ii), (2)(i) and (ii) tables amended **53142**
675.25 (g) added 18763
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675.27 (e)(4) revised; (h) added 25349
676 Added; eff. in part 1-1-95 ....**59402**
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676.25 Added 28283
678 Temporary regulations 25350
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678.2 Amended; interim **68558**
Regulation at 58 FR 68558 comment period extended 3321
678.7 (p) revised; (x) added; interim **68558**
Regulation at 58 FR 68558 comment period extended 3321
678.21 (c) added; interim **68558**
Regulation at 58 FR 68558 comment period extended 3321
681 Harvest quotas 6912
683.28 Added; interim 32939
685.2 Amended 26982
685.4 (b) introductory text revised 26982
685.5 (l) revised; (u) through (x) added; interim **67701**
(e) through (h) revised; (r) through (x) redesignated as (n) through (t); new (u) through (x), (y) and (z) added 26982
685.9 Revised 26983
(c)(4) corrected 28449
685.11 Revised **67701**
(a) amended 18501, 26984
685.13 Revised 26984
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685.18 Added 26984
685.23 Removed; new 685.23 redesignated from 685.24 26986
685.24 Redesignated as 685.23; new 685.24 redesignated from 685.25; (a)(1) and (f) introductory text revised 26986
685.25 Redesignated as 685.24; new 685.25 redesignated from 685.26 and revised 26986
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685 Figure 1 added 26987

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676....5979, 23664, 24679, 24680, 28048, 28827, 31189, 33272
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Additions to Table I, June 1994

This table lists the sections of the U.S. Code, U.S. Statutes at Large, Public Laws, and Presidential documents which are being added to Table I as a result of authority citations carried in the **Federal Register** during January through June. Recent legislation is carried by public law number.

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LSA

List of CFR Sections Affected

July 1994

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LSA

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Title 28-41
Changes July 1, 1994
through July 29, 1994

Title 42-50
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through July 29, 1994

LSA—LIST OF CFR SECTIONS AFFECTED

The LSA (List of CFR Sections Affected) is a monthly publication designed to lead users of the Code of Federal Regulations (CFR) to amendatory actions published in the Federal Register (FR). It should be shelved with current CFR volumes. Entries are by CFR title, chapter, part, and section. Proposed rules are listed at the end of appropriate titles.

HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

Titles 1–16—as of Jan. 1
17–27—as of April 1
28–41—as of July 1
42–50—as of Oct. 1

To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

The page numbers listed to the right of each LSA entry indicate where the specific amendments begin in the Federal Register. **Boldface** page numbers under a particular title indicate that the page numbers span 2 years. **Boldface** is used to distinguish the previous year from the current year.

Cite a page reference from this publication using the volume number (i.e. 59 FR for 1994) and the page number. Example: 24727 cite as 59 FR 24727. For your convenience, the volume number has been included in the Table of Federal Register Issue Pages and Dates.

ISSUES TO BE SAVED

There is no single annual issue of the LSA. Four ANNUAL ISSUES must be saved; the DECEMBER issue is the ANNUAL for Titles 1–16; the MARCH issue is the ANNUAL for Titles 17–27; the JUNE issue is the ANNUAL for Titles 28–41; the SEPTEMBER issue is the ANNUAL for Titles 42–50. ANNUAL ISSUES to be saved are clearly designated on the cover.

PARALLEL TABLE OF AUTHORITIES AND RULES

Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1994.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

INDEXES

An INDEX to the daily Federal Register is published monthly and is cumulated for 12 months. A separate volume, the CFR Index and Finding Aids to the entire Code of Federal Regulations, is revised as of January 1 each year.

INQUIRIES AND SUGGESTIONS

Brian Swidal was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark, Ken Payne and Rob Sheehan. INQUIRIES, telephone 202–523–5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–022–00001–2)	$ 5.00	Jan. 1, 1994
3 (1993 Compilation and Parts 100 and 101)	(869–022–00002–1)	33.00	[1] Jan. 1, 1994
4	(869–022–00003–9)	5.50	Jan. 1, 1994
5 Parts:.			
1–699	(869–022–00004–7)	22.00	Jan. 1, 1994
700–1199	(869–022–00005–5)	19.00	Jan. 1, 1994
1200–End, 6 (6 Reserved)	(869–022–00006–3)	23.00	Jan. 1, 1994
7 Parts:.			
0–26	(869–022–00007–1)	21.00	Jan. 1, 1994
27–45	(869–022–00008–0)	14.00	Jan. 1, 1994
46–51	(869–022–00009–8)	20.00	[6] Jan. 1, 1993
52	(869–022–00010–1)	30.00	Jan. 1, 1994
53–209	(869–022–00011–0)	23.00	Jan. 1, 1994
210–299	(869–022–00012–8)	32.00	Jan. 1, 1994
300–399	(869–022–00013–6)	16.00	Jan. 1, 1994
400–699	(869–022–00014–4)	18.00	Jan. 1, 1994
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1120–1199	(869–022–00019–5)	12.00	Jan. 1, 1994
1200–1499	(869–022–00020–9)	30.00	Jan. 1, 1994
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1900–1939	(869–022–00022–5)	15.00	Jan. 1, 1994
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8	(869–022–00026–8)	22.00	Jan. 1, 1994
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200–End	(869–022–00028–4)	23.00	Jan. 1, 1994
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0–50	(869–022–00029–2)	29.00	Jan. 1, 1994
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12 Parts:.			
1–199	(869–022–00035–7)	12.00	Jan. 1, 1994
200–219	(869–022–00036–5)	16.00	Jan. 1, 1994
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300–499	(869–022–00038–1)	22.00	Jan. 1, 1994
500–599	(869–022–00039–0)	20.00	Jan. 1, 1994
600–End	(869–022–00040–3)	32.00	Jan. 1, 1994
13	(869–022–00041–1)	30.00	Jan. 1, 1994
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1–59	(869–022–00042–0)	32.00	Jan. 1, 1994
60–139	(869–022–00043–8)	26.00	Jan. 1, 1994

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1200–End	(869–022–00046–2)	16.00	Jan. 1, 1994
15 Parts:			
0–299	(869–022–00047–1)	15.00	Jan. 1, 1994
300–799	(869–022–00048–9)	26.00	Jan. 1, 1994
800–End	(869–022–00049–7)	23.00	Jan. 1, 1994
16 Parts:			
0–149	(869–022–00050–1)	6.50	Jan. 1, 1994
150–999	(869–022–00051–9)	18.00	Jan. 1, 1994
1000–End	(869–022–00052–7)	25.00	Jan. 1, 1994
17 Parts:			
1–199	(869–022–00054–3)	20.00	Apr. 1, 1994
200–239	(869–019–00055–1)	23.00	Apr. 1, 1993
240–End	(869–022–00056–0)	30.00	Apr. 1, 1994
18 Parts:			
1–149	(869–022–00057–8)	16.00	Apr. 1, 1994
150–279	(869–022–00058–6)	19.00	Apr. 1, 1994
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400–End	(869–022–00060–8)	11.00	Apr. 1, 1994
19 Parts:			
1–199	(869–019–00061–5)	35.00	Apr. 1, 1993
200–End	(869–022–00062–4)	12.00	Apr. 1, 1994
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1–399	(869–022–00063–2)	20.00	Apr. 1, 1994
400–499	(869–019–00064–0)	31.00	Apr. 1, 1993
500–End	(869–022–00065–9)	31.00	Apr. 1, 1994
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600–799	(869–022–00072–1)	8.50	Apr. 1, 1994
800–1299	(869–022–00073–0)	22.00	Apr. 1, 1994
1300–End	(869–022–00074–8)	13.00	Apr. 1, 1994
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25	(869–022–00083–7)	32.00	Apr. 1, 1994
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§§ 1.0–1–1.60	(869–019–00084–4)	21.00	Apr. 1, 1993
§§ 1.61–1.169	(869–019–00085–2)	37.00	Apr. 1, 1993

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§§ 1.401–1.440	(869–019–00088–7)	31.00	Apr. 1, 1993
§§ 1.441–1.500	(869–022–00089–6)	22.00	Apr. 1, 1994
§§ 1.501–1.640	(869–022–00090–0)	21.00	Apr. 1, 1994
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§§ 1.851–1.907	(869–017–00092–5)	27.00	Apr. 1, 1993
§§ 1.908–1.1000	(869–022–00093–4)	27.00	Apr. 1, 1994
§§ 1.1001–1.1400	(869–022–00094–2)	24.00	Apr. 1, 1994
§§ 1.1401–End	(867–022–00095–1)	32.00	Apr. 1, 1994
2–29	(869–022–00096–9)	24.00	Apr. 1, 1994
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40–49	(869–019–00098–4)	13.00	Apr. 1, 1993
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300–499	(869–022–00100–1)	24.00	Apr. 1, 1994
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600–End	(869–022–00102–7)	8.00	Apr. 1, 1994
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1–199	(869–019–00103–4)	37.00	Apr. 1, 1993
200–End	(869–022–00104–3)	13.00	Apr. 1, 1994
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29 Parts:			
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1900–1910 (§§ 1901.1 to 1910.999)	(869–019–00111–5)	31.00	July 1, 1993
1910 (§§ 1910.1000 to end)	(869–019–00112–3)	21.00	July 1, 1993
1911–1925	(869–019–00113–1)	22.00	July 1, 1993
1926	(869–019–00114–0)	33.00	July 1, 1993
1927–End	(869–019–00115–8)	36.00	July 1, 1993
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700–End	(869–019–00118–2)	27.00	July 1, 1993
31 Parts:			
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1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–019–00121–2)	30.00	July 1, 1993
191–399	(869–019–00122–1)	36.00	July 1, 1993
400–629	(869–019–00123–9)	26.00	July 1, 1993
630–699	(869–019–00124–7)	14.00	[5] July 1, 1993
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800–End	(869–019–00126–3)	22.00	July 1, 1993
33 Parts:			

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200–End	(869–019–00129–8)	24.00	July 1, 1993
34 Parts:			
1–299	(869–019–00130–1)	27.00	July 1, 1993
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400–End	(869–019–00132–8)	37.00	July 1, 1993
35	(867–019–00133–6)	12.00	July 1, 1993
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37	(869–019–00136–1)	20.00	July 1, 1993
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40 Parts:			
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52	(869–019–00141–7)	37.00	July 1, 1993
53–59	(869–019–00142–5)	11.00	July 1, 1993
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61–80	(869–019–00144–1)	29.00	July 1, 1993
81–85	(869–019–00145–0)	21.00	July 1, 1993
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700–789	(869–019–00154–9)	26.00	July 1, 1993
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9		13.00	[3] July 1, 1984
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102–200	(869–019–00158–1)	11.00	[5] July 1, 1993
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42 Parts:			
1–399	(869–019–00160–3)	24.00	Oct. 1, 1993

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1000–3999	(869–019–00164–6)	32.00	Oct. 1, 1993
4000–End	(869–019–00165–4)	14.00	Oct. 1, 1993
44	(869–019–00166–2)	27.00	Oct. 1, 1993
45 Parts:			
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200–499	(869–019–00168–9)	15.00	Oct. 1, 1993
500–1199	(869–019–00169–7)	32.00	Oct. 1, 1993
1200–End	(869–019–00170–1)	22.00	Oct. 1, 1993
46 Parts:			
1–40	(869–019–00178–9)	18.00	Oct. 1, 1993
41–69	(869–019–00172–7)	16.00	Oct. 1, 1993
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90–139	(869–019–00174–3)	15.00	Oct. 1, 1993
140–155	(869–019–00175–1)	12.00	Oct. 1, 1993
156–165	(869–019–00176–0)	17.00	Oct. 1, 1993
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200–499	(869–019–00178–6)	20.00	Oct. 1, 1993
500–End	(869–019–00179–4)	15.00	Oct. 1, 1993
47 Parts:			
0–19	(869–019–00180–8)	24.00	Oct. 1, 1993
20–39	(869–019–00181–6)	24.00	Oct. 1, 1993
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70–79	(869–019–00183–2)	23.00	Oct. 1, 1993
80–End	(869–019–00184–1)	26.00	Oct. 1, 1993
48 Chapters:			
1 (Parts 1–51)	(869–019–00185–9)	36.00	Oct. 1, 1993
1 (Parts 52–99)	(869–019–00186–7)	23.00	Oct. 1, 1993
2 (Parts 201–251)	(869–019–00187–5)	16.00	Oct. 1, 1993
2 (Parts 252–299)	(869–019–00188–3)	12.00	Oct. 1, 1993
3–6	(869–019–00189–1)	23.00	Oct. 1, 1993
7–14	(869–019–00190–5)	31.00	Oct. 1, 1993
15–28	(869–019–00191–3)	31.00	Oct. 1, 1993
29–End	(869–019–00192–1)	17.00	Oct. 1, 1993
49 Parts:			
1–99	(869–019–00193–0)	23.00	Oct. 1, 1993
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Title	Stock Number	Price	Revision Date
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[1]Because title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR parts 1—189 contains a note only for parts 1—39 inclusive. For the full text of the Defense Acquisition Regulations in parts 1—39, consult the three CFR volumes issued July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR chapters 1—100 contains a note only for chapters 1 to 49 inclusive. For the full text of procurement regulations in chapters 1 to 49, consult the three CFR volumes issued July 1, 1984 containing those chapters.

[4]No amendments to this volume were promulgated during the period April 1, 1990 through March 31, 1993. The CFR volume issued April 1, 1990 should be retained.

[5]No amendments to this volume were promulgated during the period July 1, 1991 through June 30, 1993. The CFR volume issued July 1, 1991 should be retained.

[6]No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993 should be retained.

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List of CFR Sections Affected, 1973–1985			
(Titles 1 through 16) Vol. I	27.00		1990
(Titles 17 through 27) Vol. II	25.00		1990
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(Titles 42 through 50) Vol. IV	25.00		1990
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Yearly subscription	24.00		
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210.19 Regulation at 58 FR 38586 confirmed; (c)(2)(ii) and (d) amended 1894
210.30 Regulation at 58 FR 38586 confirmed 1894
215 Authority citation revised 1894
215.2 Regulation at 58 FR 38586 confirmed 1894
215.11 Regulation at 58 FR 38586 confirmed 1894
215.13 Regulation at 58 FR 38586 confirmed; (e) amended 1894
220 Authority citation revised 1894
220.2 Regulation at 58 FR 38587 confirmed 1894
(i-1) amended 23614
220.12 (b)(1) amended 23614
220.13 Regulation at 58 FR 38587 confirmed 1894
220.15 Regulation at 58 FR 38587 confirmed; (f) amended 1894
246 Nomenclature change 11498
246.2 Amended 11498
246.3 (b) amended; (c) and (e)(4) redesignated as (c)(1) and (e)(5); new (c)(1) revised; (c)(2) and new (e)(4) added 11499
246.4 (a)(2), (7), (10), (11)(i), (13) and (19) amended; (a)(8) and (9) revised; (a)(20) through (23) added 11499
246.6 (b)(1) revised; (f) added 11500
246.7 (b) through (n) redesignated as (c) through (o) and amended; new (b) and new (j)(9) added; new (d), (h)(1) introductory text and (ii) revised 11500
246.9 (g) amended 11503
246.11 (c)(2) amended; (c)(3), (5), (6) and (e)(4) revised; (c)(8) added 11503
246.12 (o), (r)(2)(ii) and (iii) amended; (r)(8) revised 11503
246.14 (c) heading, introductory text and (1) revised; (c)(10) added 11503
246.16 (a) through (i) revised; (j) and (k) removed; (l) through (q) redesignated as (j) through (o); new (k)(2)(ii) and (iii) amended 11504
246.19 (b)(3) revised 11508
246.24 (a) revised 11508
246.25 (b)(2) amended 11508
246.27 (a) through (d) and (f) revised 11508
248 Added; interim 11517
248.4 OMB number pending 11519
248.9 OMB number pending 11521
248.10 OMB number pending 11521

248.11 OMB number pending 11524
248.14 OMB number pending 11524
248.17 OMB number pending 11527
248.18 OMB number pending 11527
250 Authority citation revised 16972
250.3 Amended 16972
250.41 (a)(1) amended 16972
250.52 Added 16973
251 Heading revised 16974
251.2 (c) amended 16974
251.3 (d) revised; (f) removed; (g) redesignated as (f) 16974
251.4 (d)(3) revised; (h), (i) and (j) redesignated as (j), (k) and (l); (c)(3), new (h) and (i) added; (d) and new (l) amended 16974
251.6 (a)(4) revised 16974
251.7 (a) revised 16974
251.8 Heading and (d) revised 16974
251.9 (a) and (c) revised 16975
251.10 (a)(2) and (d)(1) amended; (e)(2) revised; (e)(7), (g), and (h) added 16975
253.2 (c) revised; interim 1449
253.6 (b)(1) amended; interim 1449
254.2 (d) revised; interim 1449
271.1 (b) amended 29713
271.2 Amended 5698, 27434
Regulation at 54 FR 24527 confirmed and amended 16095
Regulation at 59 FR 5698 eff. date corrected in part to 2-1-92 22723
271.6 (b)(1)(ii), (iii), (vi) and (vii) amended 29713
271.7 (d)(1)(ii) amended 29713
271.8 Regulation at 54 FR 24527 confirmed 16095
272.1 (g)(7)(viii), (10), (17)(i)(B), (36), (84)(i) and (90) amended; (g)(74)(i), (2) introductory text, (i) and (ii) redesignated as (g)(74)(i), (ii) introductory text, (A) and (B) 29713
(g)(130) added 2731
(g)(131) added 5699
Regulation at 54 FR 24527 confirmed; (g)(132) added 16095
(g)(133) added 16978
Regulation at 59 FR 5699 eff. date corrected in part to 2-1-92 22723
(g)(134) added; interim 30866
(g)(135) added 34561
272.2 Regulation at 54 FR 24527 confirmed 16096
(a)(2) amended 29713
272.4 Regulation at 54 FR 24527 confirmed 16096
272.5 Regulation at 54 FR 24527 confirmed 16096
272.6 (c)(3) amended 29713
272.8 (i) heading and introductory text amended 29713
272.10 (a)(2)(iii) amended 29713
273.1 (e)(1)(iii) amended 5699
Regulation at 59 FR 5699 eff. date corrected in part to 2-1-92 22723
(c)(3)(i), (ii) and (e)(1)(i) amended 29713
273.2 Regulation at 54 FR 24528 confirmed; (b)(3), (c)(5), (f)(8)(i)(A) and (ii) amended 16096
273.7 (o)(7) revised; (o)(8)(i) amended; (p)(4) added 16978
273.8 Regulation at 54 FR 24529 confirmed 16096
(i)(2)(i) amended 29713
273.9 (c)(17) added 5699
Regulation at 54 FR 24529 confirmed 16096
(c)(11) introductory text amended; interim 30866
273.10 Regulation at 54 FR 24529 confirmed 16096
(d)(1)(i) amended; interim 30866
273.11 (f) heading revised; (f)(1) and (3) amended 5699
Regulation at 54 FR 24530 confirmed 16096
Regulation at 59 FR 5699 eff. date corrected in part to 2-1-92 22723
(b)(1)(ii)(A) and (B) amended 29713
273.12 Regulation at 54 FR 24530 confirmed 16096
273.13 (b)(14) added 2731
Regulation at 54 FR 24530 confirmed 16096
273.15 (r)(2) amended 29713
273.17 (i) removed 29713
273.18 (d)(3)(iv) through (viii), (4)(ii), (iii) and (h) through (l) redesignated as (d)(3)(vi) through (x), (4)(iii), (iv) and (i) through (m); (d)(3) introductory text and new

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(d)(4)(iv) amended; (d)(3)(iii), new (iv), new (v), new (4)(ii) and new (h) added; (d)(4) heading, (i) and new (i)(1) revised 2731
(d)(2) amended 29713
273.20 (a), (b) and (c) amended 29713
273.21 Regulation at 54 FR 24530 confirmed 16096
273.22 (f)(6)(iii)(A) amended 29713
275.8 (a) amended 29713
275.9 (c)(1) amended 29713
275.23 (e)(5)(iii) revised 34561
276.2 (e)(3) revised 2733
276.3 (b)(3) amended 29713
276.7 (h)(4) amended 29714
277.4 (b)(1) revised; (b)(11) and (12) added 2733
Regulation at 54 FR 24531 confirmed; (f) amended 16096
277.16 (c)(1)(ii) and (iii) revised; (c)(1)(iv) added 2733
277.18 (b), (c)(1) introductory text, (ii), (d)(1)(ii), (g) heading, (1), (2) introductory text, (ii), (3), (5) introductory text, (6), (7), (8) introductory text, (iv) and (p)(5) amended 2733
277 Appendix A amended 2733
Regulation at 54 FR 24531 confirmed 16096
278.1 (j)(1) and (k)(1)(ii) amended 29714
278.2 (g) amended 29714
278.5 (e) amended 29714
278.6 (j) introductory text amended 27434
278.9 (j) added 27434
279.1 Amended 29714
279.2 Heading, (a) and (b) amended 29714
279.3 (a) and (b) amended 29714
279.7 (b), (c) and (d) amended 29714
279.8 Heading, (a) introductory text, (1) and (b) through (g) amended 29714
279.9 (a) and (b) amended 29714
279.10 (a) amended 29714
283 Added 34561

Chapter III—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

300 Authority citation revised 9614
300.1 (a) revised 9614
Regulation at 59 FR 9614 withdrawn 18943
301 Technical correction 11659
301.38–2 (b) amended 9066
Regulation at 59 FR 9066 eff. date confirmed; (b) corrected 17917
301.52–2a Amended; heading revised 25788
Amended; interim 27966
301.75–4 (a) and (d)(1) revised 25288
301.78–2 (a) amended; interim 25791
301.78–3 (c) amended; interim 2282, 7896, 11179, 35612
301.78–10 (c) amended; OMB number; interim 25791
301.80–2a Regulation at 58 FR 51980 confirmed 12795
301.81–3 (e) amended; interim 3314, 22492
(e) corrected 6531
301.83 (b) amended 13183
301.93–3 (c) revised; interim 37930
319.28 (a), (b) introductory text and (6) amended 13183
319.37—319.37–14 (Subpart) Authority citation removed 21622
319.37–2 (a) table amended 9918
(a) table corrected 35564
319.37–14 (b) amended 21622
319.56–2 (h) amended 9382
321 Authority citation revised 9918
321.2 Amended 9918
321.8 Heading revised 9918
321.9 Revised 9918
322 Authority citation revised 656
322.1 Footnote 1 revised 656
354.2 Table amended 21623, 27435, 35613

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

406.7 Amended 35614
457 Heading revised 9391
457.101 Added 9391
457.102 Added 9397

457.103 Added 9397
457.110 Added; interim 9615

Chapter VI—Soil Conservation Service, Department of Agriculture (Parts 600—699)

658 Authority citation revised 31117
658.2 (a) and (c) revised 31117
658.3 (c) and (d) revised 31117
658.4 (a) and (c)(2) revised; (g) and (h) added 31118
658.7 (b) redesignated as (c); new (b) and (d) added 31118

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700—799)

703 Authority citation revised 3773
703.1 Revised; interim 3773
703.2 (f)(1) and (2) amended; interim 3774
703.3 (b) amended; interim 3774
703.5 Revised; interim 3774
703.7 (a)(1)(i), (2)(i), (ii) and (iii) revised; interim 3774
703.8 (a) amended; interim 3774
703.9 (b) revised; interim 3774
703.10 Revised; interim 3774
703.11 Heading, (b)(1), (2), (c) and (d) revised; interim 3775
703.12 (a) introductory text, (1)(iv), (v), (3), (14), (17) and (18) revised; (a)(1)(vi) and (19) added; interim 3775
703.13 (c)(4) removed; (c)(5) redesignated as (c)(4); (c)(1) and new (4) revised; (e) added; interim 3775
703.15 (a), (b)(2) and (d) revised; interim 3775
703.17 (c) revised; interim 3775
703.25 (c) added; interim 3775
723 Authority citation revised 28210
723.111 Existing text designated as (a); (b) added 6866
723.112 Existing text designated as (a); (b) added 22725
723.113 Existing text designated as (a); (b) added 27220
723.114 Existing text designated as (a); (b) added 27220
723.115 Existing text designated as (a); (b) added 27220
723.116 Existing text designated as (a); (b) added 27220
723.117 Existing text designated as (a); (b) added 27220
723.118 Existing text designated as (a); (b) added 27220
723.501—723.508 (Subpart E) Added 28210
729.214 (d) added 9068
735 Authority citation revised 15038
735.2 (bb) through (ii) added 15038
735.16 (h) added 15038
735.100—735.105 Undesignated center heading added 15038
735.100 Added 15038
735.101 Added 15038
735.102 Added 15039
735.103 Added 15039
735.104 Added 15039
735.105 Added 15039
792 Added 15829

Chapter VIII—Federal Grain Inspection Service, Department of Agriculture (Parts 800—899)

800.71 Regulation at 58 FR 49422 confirmed 13866
801.7 Revised 31506
810.109 (b) amended 10573
810.1604 Revised 10573
810.1605 Existing text designated as (a); (b) added 10573

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

905.140 Regulation at 58 FR 65539 confirmed 10052
905.146 Revised; interim 26928
905.147 (a) and (c) revised; interim 26929
905.148 (a) revised; (b) amended; interim 26929
905.306 Regulation at 58 FR 59932 confirmed 12524
906 Budget of expenses 1266
906.365 Regulation at 58 FR 54926 confirmed 1450
Regulation at 58 FR 54201 confirmed 1452
907 Budget of expenses 4244
907.58 Suspended; interim 1269

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Regulation at 59 FR 1269 confirmed....10053
907.71 Suspended; interim....1269
Regulation at 59 FR 1269 confirmed....10053
907.112 Suspended; interim....1269
Regulation at 59 FR 1269 confirmed....10053
907.131 Regulation at 58 FR 53114 confirmed....242
907.141 Regulation at 58 FR 53114 confirmed....242
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Regulation at 59 FR 1269 confirmed....10053
908 Budget of expenses....4244
908.58 Suspended; interim....1269
Regulation at 59 FR 1269 confirmed....10053
908.71 Suspended; interim....1269
Regulation at 59 FR 1269 confirmed....10053
908.112 Suspended; interim....1269
Regulation at 59 FR 1269 confirmed....10053
908.131 Regulation at 58 FR 53114 confirmed....242
908.141 Regulation at 58 FR 53114 confirmed....242
Suspended; interim....1269
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910.180 Regulation at 58 FR 52402 confirmed....1270
911 Budget of expenses....5074, 18943
911.53 Suspended; interim; eff. 3–22–94 through 3–31–96....13430
Regulation at 59 FR 13430 confirmed....29536
911.54 Suspended; interim; eff. 3–22–94 through 3–31–96....13430
Regulation at 59 FR 13430 confirmed....29536
911.55 Suspended; interim; eff. 3–22–94 through 3–31–96....13430
Regulation at 59 FR 13430 confirmed....29536
911.56 Suspended; interim; eff. 3–22–94 through 3–31–96....13430
Regulation at 59 FR 13430 confirmed....29536
911.57 Suspended; interim; eff. 3–22–94 through 3–31–96....13430
Regulation at 59 FR 13430 confirmed....29536
911.58 Suspended; interim; eff. 3–22–94 through 3–31–96....13430
Regulation at 59 FR 13430 confirmed....29536
911.59 Suspended; interim; eff. 3–22–94 through 3–31–96....13430
Regulation at 59 FR 13430 confirmed....29536
911.111 Suspended; interim; eff. 3–22–94 through 3–31–96....13430
Regulation at 59 FR 13430 confirmed....29536
915 Budget of expenses....5074, 18943
915.306 (a)(7) revised; interim....15315
Regulation at 59 FR 15315 confirmed....33418
915.332 Revised....30869
916 Budget of expenses....33898
916.350 (a) introductory text and (4)(iv) revised; interim....15838
(a)(1) revised; interim....31120
916.356 Revised; interim....15838
917 Authority citation revised....10055
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917.4 Suspended in part....10055
917.15 Suspended in part....10055
917.18 (a) suspended in part....10055
917.20 Suspended in part....10055
917.21 Suspended....10055
917.24 (a) and (c) suspended in part....10055
917.25 Suspended in part....10055
917.26 Suspended in part....10056
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917.29 (b) suspended in part....10056
917.34 (k) suspended in part....10056
917.35 (a) suspended in part....10056
917.100 Suspended in part....10056
917.121 Suspended....10056
917.143 (b) introductory text and (1) through (4) suspended in part....10056
917.149 Suspended....10056
917.176 Suspended....10056
917.179 Suspended in part....10056
917.442 (a) introductory text and (4)(iv) revised; interim....15840
(a)(1) revised; interim....31120
917.459 Revised; interim....15841
917.461 Suspended....10056
922.306 Revised; interim....30673
923.322 Introductory text removed; (b) through (e) redesignated as (d) through (g); (a), new (d)(2) and new (f) revised; new (b) and (c) added....31920
925 Budget of expenses....3316, 15611
926 Budget of expenses....30872
927 Budget of expenses....12526
928 Budget of expenses....1266, 33900
928.150 Suspended; interim....38104
928.152 Suspended; interim....38104
928.160 (a)(1) amended; interim....38104
928.313 Suspended; interim....38104
929.107 Revised; interim....36023
929.108 Removed; interim....36023
929.110 Revised; interim....36023
929.148 Removed; interim....36023
929.150 Heading and (a) revised; interim....36023
929.153 Removed; interim....36023
932 Budget of expenses....12526, 30873
932.152 (a), (b), (f)(2), (3), and (g)(1) Table II revised; interim....38106
932.153 Regulation at 58 FR 48594 confirmed....1273
944 Comment period reopened....11529
944.31 Revised....30871
944.106 Regulation at 58 FR 59934 confirmed....12524
944.312 (h) corrected....4246
Revised....25792
944.401 Regulation at 58 FR 48596 confirmed....1273
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946 Budget of expenses....15039, 27221
947 Budget of expenses....33901
948 Budget of expenses....27223, 38107
953 Budget of expenses....27222, 38107
955 Authority citation revised....1896
Budget of expenses....12527
955.101 Added; interim....1896
Regulation at 59 FR 1896 confirmed....13868
955.142 Added....18946
958 Budget of expenses....24631
959 Authority citation revised....1453
Budget of expenses....1453, 12149
959.322 (d)(2) and (3) revised; interim....13431
Introductory text revised....17267
Regulation at 59 FR 13431 confirmed....26736
966 Authority citation revised....1455
Budget of expenses....1455
967 Limitation of handling....38108

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967.228 Regulation at 58 FR 62033 confirmed....6868
979 Budget of expenses....4246, 15041
979.304 (c)(2) and (3) revised; interim....13432
Regulation at 59 FR 13432 confirmed....26736
980 Comment period reopened....11529
981 Authority citation revised....13434
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981.441 Comment period reopened....4247
Revised....35233
981.442 (a)(4) and (5) amended....13434
982 Marketing percentages....9071
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984 Authority citation revised....1455
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985 Marketing percentages....12151, 21917
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989 Marketing percentages....12528
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989.126 (b) introductory text and (2) revised; interim....27226
Regulation at 59 FR 27226 confirmed....38111
989.246 Regulation at 59 FR 12530 confirmed....27228
993.128 (a) revised; interim....8518
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993.150 Corrected....10228
993.601 (a) revised....38113
998 Budget of expenses....24633
998.100 Heading revised; (e)(2) amended; interim....36354
998.200 Heading revised; interim....36354
998.300 Heading revised; interim....36354
999 Comment period reopened....11529
999.200 Exhibit A amended....38113
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1002.61 (d) and (e) removed....16512
1005.7 (d)(3) suspended in part 3–1–94 through 2–28–95....15318

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1007.7 (e)(3) suspended in part and (e)(4) suspended 3-1-94 through 2-28-95 15318
1007.61 (a) in part and (b) suspended; eff. 7-1-94 to 8-31-94 6869
1011.7 (b) amended; eff. 3-1-94 through 7-31-94 13644
(d)(3) suspended in part 3-1-94 through 2-28-95 15318
1033.60 (m) redesignated as (n); new (m) added 24031
1036.60 (m) redesignated as (n); new (m) added 24031
1040.5 Amended 33418
1040.7 Introductory text and (a) revised; (b) introductory text amended 33418
1046.2 Suspended in part 3-1-94 through 2-28-95 15318
1049.60 (l) redesignated as (m); new (l) added 24031
1094.7 (c) suspended in part; eff. 3-3-94 through 12-31-94 10057
1098 Removed 13645
1106 Authority citation revised 11182
1106.3 Suspended in part 1274
1106.6 Suspended in part; eff. 2-1-94 through 8-31-96 11182
1106.7 (b)(1) suspended in part; eff. 2-1-94 through 8-31-96 11182
1106.13 (d)(1) suspended; eff. 2-1-94 through 8-31-96 11182
1124 Authority citation revised 15319
1124.7 (b) introductory text amended 15319
1124.9 (c) amended 15319
1124.10 (c)(2) revised 15319
1124.19 Revised 15319
1124.30 (a)(1)(i), (ii), (c)(1), (2) and (3) revised 15319
1124.31 (a)(1), (b) introductory text and (1) revised 15320
1124.32 Revised 15320
1124.41 (c) amended 15320
1124.50—1124.54 Undesignated center heading revised 15320
1124.50 Revised 15320
1124.51 Revised 15320
1124.51a Removed 15321
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1124.60—1124.62 Undesignated center heading revised 15321
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1124.62 Redesignated as 1124.63; new 1124.62 added 15322
1124.63 Redesignated from 1124.62 and revised 15322
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1124.73 Revised 15322
1124.74 Removed; new 1124.74 redesignated from 1124.75; (c) revised 15323
1124.75 Redesignated as 1124.74 15323
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1124.76 Redesignated as 1124.75; new 1124.76 redesignated from 1124.77 15324
1124.77 Redesignated as 1124.76; new 1124.77 redesignated from 1124.78; (a) introductory text amended 15324
1124.78 Redesignated as 1124.77 15324
1124.85 (b) and (c)(2) amended 15324
1126.12 (b)(5) suspended 26737
1135 Authority citation revised 15324
1135.9 (c) amended 15324
1135.19 Revised 15324
1135.30 Introductory text, (a) and (c) revised; (b) and (d) redesignated as (d) and (e); new (b) added 15324
1135.31 (a) introductory text amended; (a)(4) revised 15324
1135.41 (b)(3) amended; (c) revised 15324
1135.50—1135.62 Undesignated center heading revised 15325
1135.50 Heading and (a) revised; (b) introductory text, (1) and (2) amended; (e), (f) and (g) added 15325
1135.51 Revised 15325
1135.51a Removed 15325
1135.53 Revised 15325
1135.60—1135.62 Undesignated center heading added 15325
1135.60 Revised 15326
1135.61 Revised 15326
1135.62 Redesignated as 1135.63 15326
Added 15327
1135.63 Redesignated from 1135.62 and revised 15326
1135.70 Revised 15327

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1135.71 Revised 15327
1135.72 Revised 15327
1135.73 (b), (d) and (e)(2) through (6) revised 15327
1135.74 Removed; new 1135.74 redesignated from 1135.76; (a)(4), (b)(1)(i), (ii) and (iii) introductory text amended; (b)(1)(iii)(*a*), (*b*) and (c) redesignated as (b)(1)(iii)(A), (B) and (C) 15327
1135.75 Redesignated from 1135.77 15327
1135.76 Redesignated as 1135.74; new 1135.76 redesignated from 1135.78 and amended 15327
1135.77 Redesignated as 1135.75 15327
1135.78 Redesignated as 1135.76 15327
1135.85 (b) and (c) amended 15327
1150.131 (a)(4) and (8) revised 13435

Chapter XI—Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

1205.510 (b)(3) revised; interim 33902
1210.401 (b) amended 18948
1210.501 Added 18948
1211 Authority citation revised 11898
1211.30—1211.39 Undesignated center heading removed 11898
1211.30 Removed 11898
1211.31 Removed 11898
1211.32 Removed 11898
1211.33 Removed 11898
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1211.72 Removed 11898
1211.77 Removed 11898
1220 Referendum results 15327
1240 Authority citation revised 22493
Technical correction 24217
1240.50 (a) amended; interim 22493
1240.114 (b) amended; interim 22493
1250.510 Revised 12155

Chapter XIV—Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

1413.54 (a)(5)(ii) and (iii) revised; (a)(5)(iv) and (d)(4) added 22495
(a)(3)(ii) and (iii) revised; (a)(3)(iv) and (d)(4)(iii) added 22496
(a)(4)(iii) revised; (a)(4)(iv) and (d)(4)(v) added 25795
1413.104 (a)(8)(ii), (iii) and (b) revised; (a)(8)(iv) added 22495
1413.110 (b) revised; interim 10574
1421.1 (a) revised; interim 34347
1421.3 Revised; interim 34348
1421.4 (b) and (f) revised; interim 34348
1421.5 (b)(1), (4)(iv) and (d)(2) revised; interim 34348
1421.7 (c)(7)(iii) and (iv) added 25795
(b) removed; (c) and (d) redesignated as (b) and (c); new (c)(1) revised; new (c)(3) redesignated as (c)(4); new (c)(3) added; interim 34348
1421.8 (b)(2) revised; interim 34348
1421.9 (f)(2)(iv)(E), (F) and (xiv)(B)(*5*)(*v*) revised; (f)(2)(iv)(G) removed; interim 34348
1421.11 (a) revised; interim 34349
1421.14 Removed; interim 34349
1421.16 (a)(1) introductory text, (1)(i), (2), (3), (b)(1), (2), (c), (d) introductory text, (2), (e), (k)(1)(ii)(C), (D), (l)(1)(ii) and (iii) revised; (k)(1)(ii)(E), (l)(1)(iv) and (q) added; interim 34349
1421.17 (a), (c)(1), (3) and (e) revised; interim 34349
1421.18 (b)(12)(iv)(B), (13)(iv)(D) introductory text, (*5*) and (15)(ii)(G) revised; interim 34350
1421.19 (b) revised; interim 34350
1421.20 (a)(2) revised; (e) added; interim 34350

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1421.22 (c)(3)(i)(A) and (4) revised; (e) through (i) added; interim 34350
1421.29 (b)(3), (c) and (g) revised; (h) removed; (i) redesignated as (h); interim 34351
1421.202 Revised; interim 34351
1421.205 (a) introductory text, (2) and (b) revised; interim 34351
1421.206 (b) revised; interim 34351
1421.207 (b)(1), (2)(i) and (iii) revised; interim 34351
1421.208 Revised; interim 34352
1421.210 (a), (b)(2), (4) introductory text, (ii), (5)(i), (ii), (iv), (c)(1) introductory text and (2) through (5) revised; interim 34352
1421.211 Revised; interim 34353
1421.215 Revised; interim 34353
1421.217 (d) added 25796
1421.320 (a) and (c)(2) revised; interim 34353
1421.321 Introductory text revised; interim 34353
1421.323 Revised; interim 34353
1421.324 Revised; interim 34353
1427.5 (b)(2)(iii) introductory text and (A) revised 37399
1427.8 (a)(2)(ii) and (iii) revised; (a)(2)(iv) added 22495
(a)(1)(ii) and (iii) revised; (a)(1)(iv) added 22496
1427.107 (a)(1)(i), (ii) and (2)(i) through (iv) revised; (a)(2)(v) redesignated as (a)(2)(viii); new (a)(2)(v), (vi) and (vii) added; (c)(2) amended 17919
1434.1 (a) revised; interim 23790
1434.6 (b) revised; interim 23790
1434.7 (c)(1) and (2) added; interim 23791
1434.13 (b) revised; interim 23791
1434.14 Removed; interim 23791
1434.16 (a)(1) revised; interim 23791
1434.17 (a)(3) and (4) revised; (a)(5), (6) and (7) added; interim 23791
1434.23 (a)(2), (3), (b)(1), (2), (c), (d) introductory text, (2) and (e) revised; (k) added; interim 23791
1434.24 (f) added; interim 23792
1434.25 (a)(1) revised; interim 23792
1434.26 (b)(3) revised; interim 23792
1434.27 (c)(3) added; interim 23792
1464.12 Existing text designated as (a); (b) added 6867
1464.13 Existing text designated as (a); (b) added 27220
1464.14 Existing text designated as (a); (b) added 27220
1464.15 Existing text designated as (a); (b) added 27220
1464.16 Existing text designated as (a); (b) added 27221
1464.17 Existing text designated as (a); (b) added 27221
1464.18 Existing text designated as (a); (b) added 27221
1464.19 Existing text designated as (a); (b) added 22725
1464.101—1464.108 (Subpart B) Regulation at 58 FR 68020 eff. date corrected to 1-1-94 1274
Revised 10944
1468.4 (b) revised 2284
1475.3 Regulation at 58 FR 62512 confirmed 9919
1475.6 Regulation at 58 FR 62512 confirmed 9919
1475.10 Regulation at 58 FR 62513 confirmed 9919
1475.17 Regulation at 58 FR 62513 confirmed 9919
1475.22 Regulation at 58 FR 62513 confirmed 9919

Chapter XV—Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)

1540.40—1540.45 (Subpart C) Regulation at 58 FR 16104 confirmed 25797

Chapter XVI—Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)

1610.1 Regulation at 58 FR 66252 confirmed 17464
1610.2 Regulation at 58 FR 66252 confirmed 17464
1610.3 Regulation at 58 FR 66252 confirmed 17464
1610.4 Regulation at 58 FR 66252 confirmed 17464
1610.5 Regulation at 58 FR 66252 confirmed 17464
1610.6 Regulation at 58 FR 66252 confirmed 17464

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1610.11 Regulation at 58 FR 66253 confirmed 17464
1627 Removed; CFR Correction 33641

Chapter XVII—Rural Electrification Administration, Department of Agriculture (Parts 1700—1799)

1700.40—1700.44 (Subpart D) Added 21624
1700.60—1700.61 (Subpart E) Added 21625
1700.70—1700.73 (Subpart F) Added 21625
1700.90—1700.93 (Subpart G) Added 21626
1700.100—1700.109 (Subpart H) Added 21626
1700.120—1700.132 (Subpart I) Added 21627
1700.140—1700.150 (Subpart J) Added 21631
1700.160—1700.161 (Subpart K) Added 21633
1700.170—1700.173 (Subpart L) Added 21633
1703.12 Amended 11706
1703.17 (c) added 11706
1703.18 Added 11706
(b) and (c) corrected 38341
1703.19 Added 11706
1703.20 Revised 11707
1703.21 (b) amended; (d) revised 11708
1703.22 Added 11708
(a)(10) corrected 38341
1703.28 (b) revised 11711
1703.30 OMB number 11711
OMB number corrected 38341
1703.34 (b)(5)(ii) and (iii) revised; (b)(5)(iv) and (v) added 11711
OMB number 38341
1703.46 (e) removed; (f) through (l) redesignated as (e) through (k); (a) and new (g)(6)(iv) amended 11711
(a), (d) introductory text and (e) amended 38341
(g)(6)(iii) and (h) introductory text amended 38342
1703.61 (a) and (b) amended 11712
1703.66 (b), (d), (e) and (g) revised; (h), (i) and (j) added 11712
1703.67 Added 11712
1703.68 Added 11712
1710 Authority citation revised 495
1710.2 (a) amended; interim 495
1710.7 Added; interim 3984
1710.118 Removed; interim 496
1710.350—1710.364 (Subpart H) Heading revised; sections added; interim 496
1717.851 Amended; interim 3986
1717.852 (a)(1)(ii) amended; (b)(1)(ii)(A) revised; interim 3986
1717.860 Added; interim 3986
1717.904 Added; interim 3987
1735.2 Regulation at 58 FR 66253 confirmed 17464
1735.10 Regulation at 58 FR 66253 confirmed; (b) revised 17464
1735.13 Regulation at 58 FR 66253 confirmed 17464
1735.14 Regulation at 58 FR 66253 confirmed 17464
1735.17 Regulation at 58 FR 66253 confirmed 17464
1735.20 Regulation at 58 FR 66254 confirmed 17464
1735.21 Regulation at 58 FR 66254 confirmed 17464
1735.22 Regulation at 58 FR 66254 confirmed 17464
1735.30 Regulation at 58 FR 66254 confirmed 17464
1735.31 Regulation at 58 FR 66255 confirmed 17464
1735.32 Regulations at 58 FR 66255 and 66256 confirmed 17464
1735.46 Existing text designated as (a); (b) through (h) added 29537
1735.74 Regulation at 58 FR 66256 confirmed 17464
1737.2 Regulation at 58 FR 66256 confirmed 17464
1737.11 Regulation at 58 FR 66256 confirmed 17464
1737.22 Regulation at 58 FR 66256 confirmed 17464
1737.32 Regulation at 58 FR 66256 confirmed 17464
1737.50 Regulation at 58 FR 66256 confirmed 17464
1737.70 Regulation at 58 FR 66256 confirmed 17464
1737.71 Regulation at 58 FR 66257 confirmed 17464

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1744.61 Regulation at 58 FR 66257 confirmed 17464
1744.67 Regulation at 58 FR 66257 confirmed 17464
1744.68 Regulation at 58 FR 66257 confirmed 17464
1753.2 Regulation at 58 FR 66259 confirmed and amended 17464
1753.3 Regulation at 58 FR 66259 confirmed; (a) introductory text and (4) amended 17464
1753.7 (f)(4) revised 17679
1753.15 Regulation at 58 FR 66259 confirmed; (b)(4) amended 17464
1753.38 (a)(2)(iii) removed; (a)(2)(iv) through (vii) redesignated as (a)(2)(iii) through (vi); (a)(2)(1)(J), new (v) and (c) revised 17679
1753.39 (f)(1)(i) revised 31126
1753.66 Regulation at 58 FR 66259 confirmed; (d) amended 17464
1755 Authority citation revised 17681
1755.93 Table amended 17681
Table amended; Footnote 1 revised 31126
1755.97 Table amended 30507, 34360
1755.525 Added 31126
1755.870 Added 30507
(a)(2) table and (h)(3)(i) corrected 34899
1755.900 Added 34360
1767.18 Amended 27436
1767.19 Amended 27436
1767.41 Amended 27436
1773 Authority citation revised 659
1773.3 (c) revised 659
1773.20 (a) revised 659
1773.21 (b) and (c) revised 659
1773.34 (e)(1)(i) and (2)(i) removed; (e)(1)(ii), (iii), (iv), (2)(ii), (iii) and (iv) redesignated as (e)(1)(i), (ii), (iii), (2)(i), (ii) and (iii) and revised 659
1773.40 Revised 660
1773.45 Revised 660
1773 Appendix C revised 660
1786.150—1786.170 (Subpart F) Added 13620

Chapter XVIII—Farmers Home Administration, Department of Agriculture (Parts 1800—2099)

1902.1—1902.16 (Subpart A) Heading revised 3778
1902.1 Introductory text added 3778
1902.4 Added 3778
1902.50 Added (OMB number) 3778
1924.4 (i)(4) through (7) redesignated as (i)(5) through (8); new (i)(4) and (9) added 6882
Regulation at 59 FR 6882 eff. date corrected to 3–16–94 9805
1924.13 (a)(3), (e)(1)(iii)(B)(2), (iv), (v), (vii)(B)(1), (2)(i)(B), (G), (H), (ii)(C), (iii)(A), (iv), (v) and (viii) revised 6882
Regulation at 59 FR 6882 eff. date corrected to 3–16–94 9805
1924.50 Revised (OMB number) 6885
Regulation at 59 FR 6885 eff. date corrected to 3–16–94 9805
1924.60 (c)(3) and (d)(2) amended 8519
1930.123 (i) amended 6885
Regulation at 59 FR 6885 eff. date corrected to 3–16–94 9805
1930.101—1939.150 (Subpart C) Exhibit B amended 3779
Exhibit B, B–3 and B–8 amended 6886
Regulation at 59 FR 6886 eff. date corrected to 3–16–94 9805
1941.19 (a) revised; (b)(4), (5) and (6) redesignated as (b)(5), (6) and (7) and (b) through (i) redesignated as (c) through (j); introductory text, new (b) and new (c)(4) added; new (f)(1) amended 25799
(b)(2) amended 22962
1941.25 (a) introductory text and (b) revised; (a)(5) and (6) added 16772
(a)(4) revised 25800
1942.306 (a)(10) added; interim 26587
1942.386 Added 12156
1942.501 Regulation at 56 FR 58178 confirmed 11531
1942.504 Regulation at 56 FR 58178 confirmed 11531
1942.507 Regulation at 56 FR 58178 confirmed 11531
1942.510 Regulation at 56 FR 58178 confirmed 11531

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1942.511 Regulation at 56 FR 58178 confirmed 11531
1942.513 Regulation at 56 FR 58178 confirmed 11531
1943.17 (b) amended 25800
1943.19 (a)(2) and (b)(4) removed; (a)(3) through (8) and (b)(3) redesignated as (a)(2) through (7) and (b)(4) and (b), (d), (e) and (f) redesignated as (d) through (g); introductory text, (a)(1), new (2) and new (c) revised; new (b) and new (d)(3) added; new (f)(1) and new (g) amended 25800
(b)(1) amended 22962
1943.24 (b)(1)(i) amended 25801
1943.25 (c)(2), (3) and (4) redesignated as (c)(4), (5) and (6); (c)(1) and new (4) revised; new (c)(2) and new (3) added 16773
1943.38 (a) amended 25801
1943.69 (a)(2) and (b)(4) removed; (a)(3) through (8) and (b)(3) redesignated as (a)(2) through (7) and (b)(4); introductory text, (a)(1), new (2), (c) introductory text, (1) and (2) revised; new (b)(3) added 25801
(b)(1) amended 22962
1943.75 (c)(2), (3) and (4) redesignated as (c)(4), (5) and (6); (c)(1) and new (4) revised; new (c)(2) and new (3) added 16773
1943.88 (a) amended 25801
1944 Authority citation revised 7193
1944.205 Amended 6886, 6897
Regulations at 59 FR 6886 and 6897 eff. date corrected to 3–16–94 9805
1944.211 (a)(4), (6)(i) and (ii) revised; (a)(6)(iii) removed; (a)(6)(iv) redesignated as (a)(6)(iii) 6886
Regulation at 59 FR 6886 eff. date corrected to 3–16–94 9805
1944.212 (b) introductory text, (c)(1), (2), (3)(ii), (g), (i) and (j) introductory text revised; (c)(3)(iii) added 6887
(l)(1) amended 6897
Regulations at 59 FR 6887 and 6897 eff. date corrected to 3–16–94 9805
1944.213 (c)(6), (10), (d) introductory text, (1)(ii) and (e)(1) introductory text revised; (c)(12) removed; (b)(4), (5) and (6) redesignated as (b)(5), (6) and (7); new (b)(4) added 6887
Regulation at 59 FR 6887 eff. date corrected to 3–16–94 9805
1944.215 (a), (b) introductory text, (1) introductory text and (e) introductory text revised; (b)(1)(iii) and (h)(1) amended; (w)(3) added 6887
(r)(6), (v) and (u) amended 6897
Regulations at 59 FR 6887 and 6897 eff. date corrected to 3–16–94 9805
1944.222 (g) amended 6890, 6897
(a) amended 6896
Regulations at 59 FR 6890, 6896 and 6897 eff. date corrected to 3–16–94 9805
1944.224 (a)(3)(i) amended 6890
Regulation at 59 FR 6890 eff. date corrected to 3–16–94 9805
1944.231 (a) amended; (e)(2), (3) and (4) redesignated as (e)(3), (4) and (5); (e) introductory text revised; new (e)(2) added 6890
(b), (c)(6), (d) introductory text and (i)(1)(vi) amended 6896
(c) heading, (1), (3), (4), (5) introductory text, (6), (8), (e)(4), (5), (f)(2), (i)(1)(i), (iv), (v), (viii), (5)(iv), (j)(3) and (k)(3) amended 6897
Regulations at 59 FR 6890, 6896 and 6897 eff. date corrected to 3–16–94 9805
1944.232 (c) amended 6897
Regulation at 59 FR 6897 eff. date corrected to 3–16–94 9805
1944.235 (a)(1) removed; (a)(2) through (5) redesignated as (a)(1) through (4); new (a)(2) and (c)(1) introductory text revised; (b)(3) and (c)(1)(viii) added 6890
(e)(1) and (f)(1) amended 6896
(c)(1)(v), (vii) introductory text, (2)(ii), (d), (e)(1), (2),

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(f)(1), (h) introductory text, (1), (2) and (3) amended 6897
Regulations at 59 FR 6890, 6896 and 6897 eff. date corrected to 3–16–94 9805
1944.236 (c)(3) amended 6890
(c)(2) amended 6896
(d) amended 6897
Regulations at 59 FR 6890, 6896 and 6897 eff. date corrected to 3–16–94 9805
1944.237 (a) and (c)(2) revised 6890
Regulation at 59 FR 6890 eff. date corrected to 3–16–94 9805
1944.239 Introductory text amended 6896
Regulation at 59 FR 6896 eff. date corrected to 3–16–94 9805
1944.246 (b)(3) amended 6896
(b)(2)(ii) amended 6897
Regulations at 59 FR 6896 and 6897 eff. date corrected to 3–16–94 9805
1944.201—1944.250 (Subpart E) Exhibit A amended 6891
Exhibits A–6, A–7 and A–8 amended 6892
Exhibits A–9 and A–10 amended 6896
Exhibits A, A–6 and B amended 6897
Regulations at 59 FR 6891, 6892, 6896 and 6897 eff. date corrected to 3–16–94 9805
1944.251—1944.302 (Subpart F) Revised 22225, 22235
1944.506 (e)(1) revised 7193
1945 Authority citation revised 25801
1945.163 (a)(2)(v), (xx) and (d) revised 16774
1945.169 (a) revised; (b)(3) through (7) redesignated as (b)(4) through (8) and (b) through (n) redesignated as (d) through (p); introductory text, new (b), (c) and (d)(3) added; new (e)(1), (f)(3), (h)(3), (4), (l) introductory text, (3) and (p)(2) amended 25801
(j) revised 16774
(b)(1) amended 22962
1945.175 (c) revised 16774
(c)(1)(iii) amended 25803
1948.103 (c)(4) amended; interim 24636
1951.910 (b) revised 25803
1955.3 Regulation at 58 FR 68723 eff. date corrected to 12–29–94 15966
1955.9 Regulation at 58 FR 68723 eff. date corrected to 12–29–94 15966
1955.10 Regulation at 58 FR 68724 eff. date corrected to 12–29–94 15966
1955.15 Regulation at 58 FR 68725 eff. date corrected to 12–29–94 15966
1955.18 Regulation at 58 FR 68725 eff. date corrected to 12–29–94 15966
1955.107 Regulation at 58 FR 68725 eff. date corrected to 12–29–94 15966
1980 Authority citation revised 28466
1980.490 Added; interim 28466
1980.498 Regulation at 58 FR 41172 confirmed 23615
2018.254 Introductory text revised 3651

Chapter XLII—Rural Development Administration, Department of Agriculture (Parts 4284–4285)

4285 Added 38342

Proposed Rules:

0 ..... 9114, 32138
1 ..... 9114, 32138
6 28495
7 32138
13 2307
28 ..... 4257, 12862, 15865
29 14124
46 35487
47 ..... 9114, 32138
50 ..... 9114, 32138
51 ..... 1490, 8871, 9114, 32138
52 ..... 9114, 13252, 26762, 32138
53 ..... 9114, 32138
54 ..... 9114, 32138
56 ..... 15866, 17154
58 38136
59 18979
61 6914
110 16400
180 ..... 9114, 32138

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201 25706
210 30218
220 30218
246 ..... 16146, 29549
273 ..... 2779, 17050
300 ..... 13256, 19753, 22538, 24968
301 ..... 12553, 31561, 36996
318 ..... 9136, 13256, 19753
319 ..... 3002, 22538, 24968, 29557
322 36373
372 ..... 28814, 37442
400 30533
406 ..... 19661, 30536
457 ..... 28016, 28022, 28027, 30537
700—799 (Ch. VII) 22938
701 1293
704 16780
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723 1493
735 26146
736 26146
737 26146
738 26146
739 26146
740 26146
741 26146
742 26146
800 9424
906 38138
915 15658
920 33451
923 26146
925 36091
930 ..... 4259, 26603
944 ..... 9140, 15661, 33451, 36091
955 12554
959 11008
980 33453
982 9425
989 36093
993 25841
999 25841
1001 8873
1002 8873
1004 10326
1005 1305
1007 ..... 1305, 5132
1011 ..... 1305, 7665
1030 ..... 260, 22138, 36094
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1046 ..... 1305, 15348
1065 ..... 260, 22138
1068 ..... 260, 22138
1076 ..... 260, 22138
1079 ..... 260, 22138
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1094 ..... 1307, 5132
1096 5132
1099 5132
1106 ..... 6915, 36095
1108 5132
1124 8546
1126 17498
1131 6916
1135 8546
1137 33455
1150 4260
1208 33400
1210 ..... 4013, 17739
1212 16571
1230 24971
1250 ..... 13460, 31174
1410 16780
1413 16149
1427 9674
1468 22546
1499 ..... 6916, 12200
1530 ..... 23017, 28286
1703 38377
1710 ..... 28495, 36998
1726 ..... 4603, 28924
1744 ..... 10327, 19051
1753 ..... 10327, 19051
1755 19661
1823 23018
1910 23018
1927 24362
1941 ..... 2307, 23018
1942 ..... 12200, 23018
1943 ..... 2307, 23018
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1945 ..... 2307, 5737, 23018
1948 ..... 23018, 30717
1951 ..... 2307, 22548, 23018, 30717
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1980 ..... 12200, 14371, 14769, 23018, 23173, 30717, 32660
2812 24973
4285 23804

TITLE 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice (Parts 1—499)

3.1 Regulation at 57 FR 11570 confirmed; (d)(1–a) revised 1899
3.12 Regulation at 57 FR 11571 confirmed 1899

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3.13 Regulation at 57 FR 11571 confirmed and amended 1899
3.14 Regulation at 57 FR 11571 confirmed 1899
3.15 Regulation at 57 FR 11571 confirmed 1899
3.16 Regulation at 57 FR 11571 confirmed 1899
3.17 Regulation at 57 FR 11571 confirmed 1899
3.18 Regulation at 57 FR 11571 confirmed 1899
3.19 Regulation at 57 FR 11571 confirmed 1899
3.20 Regulations at 57 FR 11571 and 11572 confirmed 1899
3.21 Regulations at 57 FR 11571 and 11572 confirmed 1899
3.22 Regulation at 57 FR 11571 confirmed 1899
3.23 Regulation at 57 FR 11571 confirmed 1899
3.24 Regulation at 57 FR 11571 confirmed 1899
3.25 Regulation at 57 FR 11571 confirmed 1899
3.26 Regulations at 57 FR 11571 and 11572 confirmed and revised 1899
3.27 Regulations at 57 FR 11571 and 11572 confirmed 1899
3.28 Regulation at 57 FR 11571 confirmed 1899
3.29 Regulation at 57 FR 11571 confirmed 1899
3.30 Regulation at 57 FR 11571 confirmed 1899
3.31 Regulations at 57 FR 11571 and 11572 confirmed 1899
3.32 Regulations at 57 FR 11571 and 11572 confirmed 1899
3.33 Regulations at 57 FR 11571 and 11573 confirmed 1899
Revised 1900
3.34 Regulations at 57 FR 11571 confirmed 1899
3.35 Regulation at 57 FR 11571 confirmed 1899
3.36 Regulation at 57 FR 11571 confirmed 1899
3.37 Regulations at 57 FR 11571 and 11573 confirmed 1899
(b) added 1900
3.38 Regulation at 57 FR 11571 confirmed 1899
3.39 Regulations at 57 FR 11571 and 11573 confirmed 1899
3.40 Regulation at 57 FR 11571 confirmed 1899
103.1 Regulation at 58 FR 44608 confirmed 17921
103.2 (a) revised 1460
(b)(2) and (3) redesignated as (b)(18) and (16); (b) heading, (1) heading and new (18) heading revised; new (b)(16)(i) and (ii) amended; new (b)(2), new (3), (4) through (15), (17) and (19) added 1461
(a)(1) revised; interim 33905
103.3 Regulation at 57 FR 11573 confirmed 1899
103.5 (a)(1)(i) and (iii) introductory text amended; (a)(1)(iii)(C), (2), (3) and (4) revised; (a)(8) added 1463
103.5b Added 1463
103.7 Regulation at 57 FR 11573 confirmed 1899
(b)(1) amended 26590, 30518
204.5 (d) amended; interim 502
(m)(1) amended; interim 27229
204.6 Regulations at 58 FR 44608 and 44609 confirmed 17921
210a.8 Regulation at 56 FR 38333 confirmed 26594
211.1 (b)(1)(i) introductory text revised 26590
212 Authority citation revised 13870
212.1 (g) amended 1467
(l) correctly designated 1992
Regulation at 58 FR 38046 confirmed; (e)(3) revised 35615
212.12 (e) revised; (g)(1) amended 13870
214 Authority citation revised 1463
214.1 (a) redesignated as (a)(3); (a)(1), (2) and new (3) heading added; (c) and (d) revised 1463
Regulation at 56 FR 38333 confirmed 26594
214.2 (h)(1)(ii)(B)(*1*), (4)(i)(B)(*5*), (viii)(A)(*1*) and (B)(*2*) revised; (h)(2)(i)(B) amended; (h)(4)(viii)(C) added 1470
Regulation at 56 FR 38333 confirmed 26594
216 Heading revised 26590
Authority citation revised 26590
216.1 Amended 26590
216.2 (b) and (c) amended 26590
216.3 Revised 26590
216.4 Heading revised; (a)(1) and (2) amended 26590
(a)(6) amended 26591
216.5 Heading and (a) introductory text revised; (b) and (c) amended 26591
216.6 Added 26591
223 Revised 1464
223a Removed 1465
235.11 (a) and (c) revised 26592
238.3 (a) revised; (b) amended 1617
(b) amended 1618
238.4 Amended 1618
241.1 Regulation at 56 FR 38333 confirmed 26594
242.2 Regulation at 57 FR 11573 confirmed 1899
242.7a Regulation at 56 FR 38333 confirmed 26594
242.8 Regulation at 57 FR 11574 confirmed 1899
Regulation at 56 FR 38333 confirmed; (a) amended 26594
242.17 (a) revised 26593
Regulation at 56 FR 38333 confirmed; (d) amended 26594
242.20 Amended 26595
242.23 Regulation at 56 FR 38333 confirmed 26594
245.2 (a)(1), (5)(i), (ii), (iii), (b) and (c) amended; interim 33905
245.3 Amended; interim 33905
245.7 (a) amended; interim 33905
245a.2 Regulation at 58 FR 45236 confirmed 1471
245a.3 (d)(1) revised; interim 33905
248 Authority citation revised 1465
248.1 (a) amended; (b) revised 1465
248.3 (a), (b) and (c) revised; (d) removed 1466
264.1 (b) amended; (c)(1) removed; (c)(2) redesignated as (c)(1) 1466
264.4 Added 1466
264.5 (g) added 1466
(e)(2)(i) amended; interim 33905
264.6 Added 1466
274a.13 (a) and (d) amended; interim 33905
292.3 Regulation at 57 FR 11574 confirmed 1899
292.4 (a) amended 1466
299.1 Revised 25556
Table corrected 35978
299.3 Revised 25558
299.4 Revised 25558
299.5 Revised 25559
Table corrected 35978
499.1 Revised 25561
Removed 24032

Proposed Rules:

1 29386
3 ..... 24976, 24977, 29386
103 ..... 1308, 1317, 5740, 14779, 17283, 29386
204 36729
208 ..... 14779, 29386
211 1317
212 17283
214 ..... 5533, 35866
216 1317
217 17283
235 ..... 1317, 17283
236 14779
242 ..... 1317, 14779, 29386
245a 24978
264 17283
274a 5533, 14779
286 ..... 7227, 17283
340 38381

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)

51.3 (b)(2) amended; interim 12533
(a)(4) added 21635
51.6 (c) revised; interim 12533
54.1 Amended 21920
77.1 Amended 9071
Amended; interim 29186, 31922, 36692
77.3 Revised 9072
78 Technical correction 2649
78.1 Amended 9399, 18951, 31923, 35617
78.30 (a) amended; (c) added 18952
78.32 Revised; interim 12533
78.41 (b) and (c) amended; interim 14360
(a) and (b) amended; interim 15613
Regulation at 59 FR 14360 confirmed 36024
78.43 Regulation at 58 FR 68506 confirmed 22497
79 Authority citation revised 21921

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79.1 Amended 21921
79.2 (a)(1) through (7) redesignated as (a)(2)(i) through (vii); (a) introductory text and new (2)(iv) revised; new (a)(1) and (2) introductory text added; new (a)(2)(ii), (iii), (v), (vi) and (vii) amended 21921
(a)(2)(ii) and (vii) amended 21992
79.3 (a) and (b) amended 21922
91.14 (a)(1)(iii) removed 9617
Regulation at 59 FR 9617 eff. date confirmed as 5-2-94 17921
(a)(1)(i)(B) revised; (a)(15)(ii) through (vi) redesignated as (a)(15)(iii) through (vii); new (a)(15)(ii) added 21637
92.100—92.107 (Subpart A) Footnotes 2 through 13 redesignated as Footnotes 3 through 14; interim 10732
Regulation at 59 FR 10732 comment period extended 34375
92.100 Amended; interim 10732
Regulation at 59 FR 10732 comment period extended 34375
92.101 (b)(3)(i) revised; interim 10732
Regulation at 59 FR 10732 comment period extended 34375
(c)(3)(ii) amended 36026
92.102 (a) revised; (d) added 36026
92.103 (a)(2)(iv) through (vii) added; interim 10733
Regulation at 59 FR 10733 comment period extended 34375
92.104 (c)(12) and (13) redesignated as (c)(15) and (16); new (c)(12), new (13), (14), (d)(8), (9), and (10) added; interim 10733
Regulation at 59 FR 10733 comment period extended 34375
92.105 (b) amended 36026
92.106 (a) amended 36026
92.301 (c)(1) revised; interim 24888
92.304 (c)(3)(i) amended 31924
92.308 (a)(2) amended 9073
(a)(2) amended; interim 24888
92.316 Amended 28216
92.404 (c)(3) redesignated as (c)(4); new (c)(3) added; (c)(1) and new (c)(4) amended 28216
(a)(4)(i) amended 31924
92.418 (a) amended 28216
92.419 (a) amended; (c) removed 28216
92.420 Revised 28216
92.427 (c)(5) added 24886
92.430 (a), (b)(2)(i), (ii), (4), (5), (6), (c) introductory text, (1), (3) and (d) amended; (b)(3)(ii) redesignated as (b)(3); (b)(1)(ii) and new (3) revised 9620
92.504 (c)(3) redesignated as (c)(4); new (c)(3) added; (c)(1) and new (4) amended 28216
(a)(4)(i) amended 31924
92.518 Amended 28216
92.522 (a), (b)(2)(i), (ii), (4), (5), (6), (c) introductory text, (1), (3) and (d) amended; (b)(3)(i) removed; (b)(3)(ii) redesignated as (b)(3); (b)(1)(ii) and new (3) revised 9621
92.700—92.701 (Subpart G) Added; interim 29187
94.0 Amended 13185
94.1 (a)(2) and (d)(1) amended 2286, 12535, 19632, 28218, 28219
(c)(1) amended 13186
94.4 Footnote 1 removed; (b) introductory text, (1), (2) and (4) revised; (b)(3) and Footnotes 2 and 3 redesignated as (b)(8) and Footnotes 1 and 2; new (b)(3), (5), (6), (7) and (c) added 13186
94.9 (b)(1)(ii)(*a*), (*b*), (iii)(*a*), (*b*) and (*c*) redesignated as (b)(1)(ii)(A), (B), (iii)(A), (B) and (C); new (b)(1)(iii) introductory text, (C)(*2*), (2), (3) and (c) amended 28218
94.11 (a) amended 2286, 12535, 19632, 28218, 28219
94.12 (b)(1)(iv)(A) revised 12536
(a) amended 28219
94.13 Introductory text amended 28220
94.18 (a) revised 24638
95 Authority citation revised 9400
95.11 Heading revised; existing text designated as (a); (b) added 9400
96.2 (b) revised 27970
97.2 Table amended 21638, 34757
98 Authority citation revised 26596
98.31 Existing text designated as (a); (b) added 26596

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98.34 (a)(3) amended 26596
113.70 (b)(4) revised 19633
145.1 Amended 12798
145.10 (d) amended; (l) added 12798
145.12 (b) amended 12798
145.14 (a)(1) and (6) introductory text amended 12798
145.21 Amended 12798
145.23 (d)(1)(vi), (vii), (viii), (e)(1)(ii)(*a*) and (*b*) redesignated as (d)(1)(vii), (viii), (ix), (e)(1)(ii)(A) and (B); (b)(3) introductory text, (v), (d) heading, (1)(i), (v), new (vii), (2) and (3) amended; new (d)(1)(vi) added 12798
145.31 Amended 12799
145.33 (b)(3) introductory text and (v) amended; (d)(1)(viii) Footnote 4a, (e)(1)(iii)(*a*) and (*b*) redesignated as (d)(1)(viii) Footnote 4, (e)(1)(ii)(A) and (B) 12799
145.41 (a) designation removed 12799
145.43 (b)(3)(v) and (f)(3)(ii) amended 12799
145.51 Amended 12799
145.53 (a) Footnote 1 redesignated as Footnote 7; (b)(3) introductory text and (v) amended 12799
147.1 OMB number 12799
147.2 OMB number 12799
147.3 OMB number 12799
147.5 (b) Footnote 1 redesignated as Footnote 4 and amended; OMB number 12799
147.6 (b) introductory text, (5) and (12) through (15) amended 12799
147.7 Heading Footnote 1 redesignated as Footnote 5; introductory text, (a) heading, (1) introductory text and (e) amended 12799
(e) heading amended; (e) introductory text through (3)(xi) redesignated as (e)(1) introductory text through (iii)(K); new (e)(1) heading and (2) added 12800
147.10 Added 12801
147.11 Footnotes 1 through 4 and (a) through (j) redesignated as Footnotes 7 through 10 and (b)(1) through (10); new (a) and new (b) heading added; OMB number 12801
147.12 (c)(2) Footnote 1 redesignated as Footnote 11; OMB number 12805
147.13 OMB number 12805
147.14 Heading Footnote 1 redesignated as Footnote 12; new Footnote 12 and (a)(2) introductory text amended; (a)(2)(i) and (ii) added 12805
147.15 Footnotes 4 through 11 redesignated as Footnotes 13 through 20 12805
147.16 Footnote 12 redesignated as Footnote 21 12805
147.21 OMB number 12805
147.41 Amended 12805
147.43 (a) introductory text amended 12805

Chapter III—Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300—399)

Chapter III Policy statement 34375
313.5 (a)(1) and (b)(3) amended; (a)(3) and (b)(1)(i) revised 21640
317 Compliance date extended 30875
317.2 (l) added 14539
317.5 (b)(12) and (13) amended; (b)(14) added 14540
317.8 (b)(37) removed 12538
317.309 Regulation at 58 FR 47627 confirmed 12158
317.312 Regulation at 58 FR 47627 confirmed 12158
317.313 Regulation at 58 FR 47627 confirmed 12158
317.345 Regulation at 58 FR 47627 confirmed 12158
317.362 Regulation at 58 FR 47627 confirmed 12158
317.363 Added; eff. 11-10-95 24228
317.380 Regulation at 58 FR 47627 confirmed 12158
317.400 Regulation at 58 FR 47627 confirmed 12158
318.7 (c)(4) table amended 12538
318.19 (b) amended; Footnote 1 revised 33642
318.21 (a) amended; (b)(3)(viii) and Footnote 4 revised 33642
319.5 (e)(2) amended 33642

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319.700 (a) amended; Footnote 2 revised 33642
320.1 (b)(9) correctly designated 6897
381 Compliance date extended 30875
381.125 Undesignated text designated as (a); (b) added 14540
381.134 (b)(12) and (13) amended; (b)(14) added 14540
381.153 (a) amended 33642
(b)(3)(viii) and Footnote 4 revised 33643
381.409 Regulation at 58 FR 47628 confirmed 12158
381.412 Regulation at 58 FR 47628 confirmed 12158
381.413 Regulation at 58 FR 47628 confirmed 12158
381.445 Regulation at 58 FR 47628 confirmed 12158
381.462 Regulation at 58 FR 47628 confirmed 12158
381.463 Added; eff. 11-10-95 24228
381.480 Regulation at 58 FR 47628 confirmed 12158
381.500 Regulation at 58 FR 47628 confirmed 12158

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50 ..... 23810, 36374
53 33214
54 24979
71 33214
77 ..... 23810, 36374
78 ..... 2312, 6593, 9938
82 33214
91 ..... 21675, 24979, 31956
92 ..... 9679, 23810, 33214, 36374
94 ..... 3029, 9939, 9941, 17999, 31957, 33214
95 ..... 9142, 18003
101 9681
113 ..... 9681, 13257, 13896
160 12863
161 33214
201 26767
202 9114
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301 10246
306 ..... 6929, 21948
317 ..... 12462, 12472, 26916, 27144, 34396
318 ..... 550, 6929, 10246, 21948
381 ..... 551, 6929, 10230, 12462, 12472, 21948, 22554, 27144, 35639
391 32940

TITLE 10—ENERGY

Chapter I—Nuclear Regulatory Commission (Parts 0—199)

0 Authority citation revised 17460
0.735-1 Added 17460
0.735-2 Redesignated from 0.735-21; heading revised 17460
0.735-8 Removed 17460
0.735-21 Redesignated as 0.735-2 17460
0.735-29 Removed 17460
0.735-40 Removed 17460
1.5 (b) amended 17465
1.41 (h) amended 5519
2.1205 (c)(2) revised 29189
2 Appendix C amended 36040
12 Added 23121
20.1—20.602 Sections and Appendixes A, B and D correctly removed; Appendix C correctly redesignated as Part 30 Appendix B 1900
20.2202 (d)(2) revised 14086
20 Appendix D amended 17465
21.2 (d) amended 14086
21.3 (e) amended 5519
21.21 (c)(3)(i) amended 14086
26.24 (a)(2) revised 507
30.4 Amended 36034
30.6 (b)(2)(iv) revised; (b)(2)(v) removed 17465
30.8 (b) corrected 1618
30.35 (f)(2) corrected 1618
30.36 Revised 36034
30.37 Revised 36035
30.50 (c)(1) Footnote 1 amended 14086
30.70 Table amended 5519
30 Appendix C correctly designated 1618
32.51 (a)(3)(iii) amended 5520
34.42 Corrected 1900
35.33 (a)(1) Footnote 2 amended 14086
40.4 Amended 36035
40.5 (b)(2)(iv) revised; (b)(2)(v) removed 17466
40.36 (e)(2) corrected 1618
40.42 Revised 36035
40.43 Revised 36037
40.60 (c)(1) Footnote 1 amended 14086
40.64 (a) revised 35620
40 Appendix A amended 28229

50 Policy statement 35461
50.36a (b) amended 5520
50.54 (s)(1) amended 5520
(bb) revised 10269
50.55 (e)(6)(i) amended 14087
50.72 (a)(2) Footnote 3 amended 14087
50.75 (e)(2)(iii) corrected 1618
50 Appendix E amended 14090
55.2 (c) added 5938
55.5 (b)(1) and (3)(ii) revised; (b)(2)(v) removed 17466
55.57 (b)(2)(iv) removed 5938
55.59 (c) introductory text revised 5938
70.4 Amended 36037
70.5 (b)(2)(iv) revised; (b)(2)(v) removed 17466
70.25 (f)(2) corrected 1618
70.33 (b) removed 36037
70.38 Revised 36037
70.50 (c)(1) Footnote 1 amended 14087
70.52 (a) Footnote 1 amended 14087
72.3 Amended 36038
72.30 (c)(2) corrected 1618
72.54 Revised 36038
72.74 (a) Footnote 1 amended 14087
72.76 (a) revised 35620
72.78 Revised 35621
72.86 (b) revised 36040
73.46 (b)(4) and (i) revised; (b)(10), (11) and (12) added 38348
73.57 (d)(3) revised 662
(b)(2)(iv) revised 38554
73.67 (e)(3)(vii) Footnote 1 and (g)(3)(iii) Footnote 1 amended 14087
73.71 (a)(1) Footnote 1 amended 14087
73 Appendix A amended 17466
74.13 (a)(1) revised 35621
74.15 Revised 35621
75.31 Revised 35621
75.32 (b) revised 35622
75.33 (a) revised 35622
75.34 Revised 35622
75.35 (a) revised 35622
150.16 (a) revised 35622
150.17 (a) revised 35622
170.3 Amended 36917
170.11 (a)(9) added 36917
170.20 Revised 36917
170.21 Introductory text revised; table amended 36917
170.31 Revised 36918
171 Authority citation revised 12543
171.11 (a) revised 12543
(a)(2) revised 36924
171.15 (c)(3) and (4) added 26098
(a), (b)(3), (c)(2), (d) and (e) revised 36924
171.16 (f) and (g) added 26099
(c) introductory text, (4), (d) and (e) revised 36924
171.17 Revised 36928
171.19 (b) and (c) revised 36928

Chapter II—Department of Energy (Parts 200—699)

435.109 Amended 18293
600.12 (c) revised 18474

Chapter III—Department of Energy (Parts 700—999)

710 Authority citation revised 35185
Heading revised 35185
710.1—710.34 (Subpart A) Revised 35185
765 Added 26726
830 Added 15851

Chapter XI—United States Enrichment Corporation (Part 1102)

Chapter XI Established 16979
1102 Added 27437

Chapter XVII—Defense Nuclear Facilities Safety Board (Parts 1700—1799)

1703 FOIA fee schedule adjustment 21640

Proposed Rules:

0—199 (Ch. I) 36374
2 24371
9 30308
19 ..... 5132, 6792
20 ..... 4868, 5132, 6792, 9146, 17746, 30724, 37950
21 6792
26 ..... 6792, 24373
30 ..... 19147, 32138
32 17286
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40 ..... 19147, 32138
50 ..... 979, 14373, 17499, 19147, 23641
51 ..... 2542, 6792, 23030, 37724
52 29965

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61 17052
70 ....6792, 19147, 32138
71 ....6792, 8143, 26608
72 ....19147, 28496, 32138
73 ....6792, 23641
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95 6792
150 9429
170 ....12555, 24065
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451 24982
474 5336
700—999 (Ch. III) 9682
960 19680
1000—1099 (Ch. X) 9682
1003 34767
1101 9150
1102 14789

TITLE 11—FEDERAL ELECTIONS

Chapter I—Federal Election Commission (Parts 1—9099)

8 Added 32323
102.14 (b)(3) added (effective date pending) 17269
Regulation at 59 FR 17269 eff. 6-30-94 33643
(b)(3) corrected 35785
104.7 Regulation at 58 FR 57729 eff. 3-3-94 10057
107 Revised (effective date pending) 33615
114.1 (a)(2)(viii) revised (effective date pending) 33615
9008 Revised (effective date pending) 33616

Proposed Rules:

8 ....11211, 14022
102 14794

TITLE 12—BANKS AND BANKING

Chapter I—Comptroller of the Currency, Department of the Treasury (Parts 1—199)

3 Appendix A amended 10952, 10953
6.33 Regulation at 57 FR 49642 confirmed; (b)(8) revised 22498
27 Authority citation revised 26415
27.3 (a) and (b)(1)(xx) revised 26415
27.4 (c)(5) revised 26415
27.7 (b), (c) introductory text and (d) revised 26415
27 Heading to Part 27 appendixes added; Appendix II revised 26415
Appendix IV corrected 31924
34 Statement and order 6531
34.42 (d) through (l) redesignated as (e) through (m); new (d) added 29499
34.43 (a) revised; (b), (c) and (d) redesignated as (d), (e) and (f); new (b) and new (c) added 29499
34.44 Revised 29500
34.45 (b) revised 29500
34.41—34.47 (Subpart C) Appendix A removed 29500

Chapter II—Federal Reserve System (Parts 200—299)

201 Authority citation revised 29538
201.51 (d), (e), (f) and (g) through (k) redesignated as (e), (f), (g) and (i) through (m); new (d) and new (h) added 29500
Revised 29538
201.52 Revised 29538
205 Authority citation revised 10683
205.15 Added 10683
205 Appendix A amended 10683
207 OTC margin stock list 4549, 23124, 37651
208.22 Added 28761
210 Authority citation revised 22965
210.1 Amended 22965
210.2 (g) introductory text revised; (p) added 22965
210.3 (a) amended; (f) added 22965
210.5 (a) introductory text and (2) revised; (b)(3) amended; (d) added 22965
210.6 (b) and (c) amended; (b)(1) and (2) revised 22966
210.9 (a)(5) revised 22966
210.12 (a) amended; (d) through (g) redesignated as (e) through (h); new (d) and (i) added; (c) introductory text, (2), new (e) concluding text and (h) revised 22966
210.13 Revised 22966
210.14 Revised 22967
215 Authority citation revised 8837

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215.1—215.13 (Subpart A) Revised 8837
215.2 (c)(4) and (d) introductory text corrected 37930
215.3 (b)(2) corrected 37930
215.4 (e)(1) introductory text and Footnote 3 corrected 37930
215.5 (b) and (c)(4) corrected 37930
215.11 (b)(1) corrected 37930
215.21 (a) amended; Footnote 10 removed; Footnotes 11 and 12 redesignated as Footnotes 5 and 6 8842
215.22 (c)(1)(ii) amended 8842
220 OTC margin stock list 4549, 23124, 37651
221 OTC margin stock list 4549, 23124, 37651
224 OTC margin stock list 4549, 23124, 37651
225 Statement and order 6531
Authority citation revised 22968, 29500
225.4 (b)(1) revised; (b)(6) added 22968
225.62 (d), (e), (f) and (g) through (k) redesignated as (e), (f), (g) and (i) through (m); new (d) and (new (h) added 29500
225.63 Heading and (a) revised; (b) and (c) redesignated (d) and (e); new (b) and new (c) added 29500
225.64 Revised 29501
225.65 (b) revised 29501
225.61—225.67 (Subpart G) Appendix A removed 29501
226 Order 6532
230 Determination 24032
231 Added 4784
264b.3 (d) amended 12805
265.11 (c)(11)(v) revised 22968
268 Revised 16098

Chapter III—Federal Deposit Insurance Corporation (Parts 300—399)

303 Authority citation revised 7198
303.2 Heading and (a) introductory text revised 4250
303.6 (a)(3), (f)(1)(ii)(B) heading and (2) revised; (f)(1)(ii) introductory text, (3) and (4) amended 4250
303.15 Added; interim 7198
323 Statement and order 6531
Authority citation revised 29501
323.2 (d) through (l) redesignated as (e) through (m); new (d) added 29501
323.3 Heading and (a) revised; (d) amended; (b), (c) and new (d) redesignated as (d), (e) and new (f); new (b) and new (c) added 29501
323.4 Revised 29502
323.5 (b) revised 29502
323 Appendix A removed 29502
325 Authority citation revised 3784
325.1—325.6 (Subpart A) Appendix A amended 3784
327.4 (b)(2)(iv)(B) amended; (b)(2)(v) added 29715

Chapter IV—Export-Import Bank of the United States (Parts 400—499)

412 Added 31136

Chapter V—Office of Thrift Supervision, Department of the Treasury (Parts 500—599)

Chapter V Nomenclature change 18475
503 Authority citation revised 18475
503.1 (e) amended 18475
504 Authority citation revised 18475
504.3 Introductory text amended 18475
504.4 Amended 18475
505 Authority citation revised 18475
505.2 Amended 18475
505.4 Amended 18475
515 Authority citation revised 18475
515.2 Amended 18475
515.4 (a) introductory text and (b) amended 18475
515.5 Amended 18476
544 Authority citation revised 18476
544 Appendix amended 18476
545.32 (b)(2) amended 29502
545.103 (b) amended 29502
552.4 (d) amended 18476
552.6 (d)(1) amended 18476
552 Appendix amended 18476
561.5 Added 18476
563.170 (c)(1)(iv) revised 29502
563b.2 (a)(14) removed; (a)(15) through (19) and (29) through (40) redesignated as (a)(14) through (18) and (30) through

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(41); new (a)(16) revised; new (a)(19) and (29) added; interim 22732
563b.3 (c)(2)(i), (ii), (4)(i) through (iv), (5)(i) and (ii) redesignated as (c)(2)(ii), (iii), (4)(ii) through (v), (5)(ii) and (iii); new (c)(2)(i), new (4)(i), new (5)(i) and (g)(4) added; (c)(6)(i), (iv), (7), (14), (23), (d)(4), (g) heading, (1)(i), (ii) and (3) revised; (g)(1)(iii) removed 22733
563b.4 (b)(1) amended; (c) revised; interim 22734
563b.5 (d)(4) and (e)(5) revised; interim 22734
563b.7 (f)(1)(ii) and (3) revised; (f)(1)(iii) amended; (f)(1)(iv) added; interim 22734
563b.8 (e)(1) and (t)(1) amended; interim 22735
563b.10 Revised; interim 22735
563b.100 Amended; interim 22735
563b.101 Amended; interim 22735
564 Statement and order 6531
Authority citation revised 29502
564.2 (d) through (l) redesignated as (e) through (m); new (d) added 29502
564.3 (a) revised; (b), (c) and (d) redesignated as (d), (e) and (f); new (b) and new (c) added 29502
564.4 Revised 29503
564.5 (b) revised 29503
564.8 (d) introductory text and (2) amended; (d)(1) removed; (d)(2) designation removed 29503
564 Appendix A removed 29503
567 Authority citation revised 4788
567.1 (v) revised 12810
567.5 (a)(2)(i) and (ii) revised; (a)(2)(iii) removed 4788
567.6 (a)(1)(iii)(C) revised; eff. in part 3–18–94 to 9–29–94 and 9–30–94 12810
(a)(1)(iv)(L) revised 4788
567.7 (a) amended 12811
567.9 (c)(1) revised 4788
567.12 Added 4788
574.6 (a) revised 28470
574.7 Heading and (c) revised 28471
575.7 (e) added; interim 22735
575.13 (a)(4) amended; interim 22735
(a) revised 28470

Chapter VI—Farm Credit Administration (Parts 600—699)

600 Authority citation revised 21641
600.1 Amended (effective date pending) 21641
Regulation at 59 FR 21641 eff. 4–26–94 27970
600.4 (b) revised; (c) and (d) added (effective date pending) 21641
Regulation at 59 FR 21641 eff. 4–26–94 27970
600.5 (a), (b) and (c) redesignated as (b), (d) and (e), new (a) and new (c) added; new (b) and new (d) revised (effective date pending) 21642
Regulation at 59 FR 21642 eff. 4–26–94 27970
600.10 (c) amended (effective date pending) 21642
Regulation at 59 FR 21642 eff. 4–26–94 27970
604 Authority citation revised 21642
604.440 Amended (effective date pending) 21642
Regulation at 59 FR 21642 eff. 4–26–94 27970
605 Authority citation revised (effective date pending) 21643
605.502 (f) amended (effective date pending) 21643
Regulation at 59 FR 21643 eff. 4–26–94 27970
607.2 (b) introductory text amended 37403
608 Added (effective date pending) 13187
Regulation at 59 FR 13187 eff. 5–6–94 23615
611 Authority citation revised 37411
611.400 Revised (effective date pending) 37411
611.1130 (a) amended (effective date pending) 21643
Regulation at 59 FR 21643 eff. 4–26–94 27970
612 Revised (effective date pending) 24894
614.4351 (a) revised 37403
614.4516 Regulation at 58 FR 62514 eff. 3–15–94 11898
614.4710 (a)(1)(i) amended 37404
615.5060 (a) revised (effective date pending) 3787

Regulation at 59 FR 3787 eff. 3–18–94 12811
615.5131 Regulation at 58 FR 63055 eff. 3–15–94 11898
(t) amended 37404
615.5132 Regulation at 58 FR 63056 eff. 3–15–94 11898
615.5133 Regulation at 58 FR 63056 eff. 3–15–94 11898
615.5134 Regulation at 58 FR 63056 eff. 3–15–94 11898
615.5135—615.5160 (Subpart E) Regulation at 58 FR 63055 eff. 3–15–94 11898
615.5135 Regulation at 58 FR 63056 eff. 3–15–94 11898
615.5136 Regulation at 58 FR 63057 eff. 3–15–94 11898
615.5140 Regulation at 58 FR 63057 eff. 3–15–94 11898
(a)(8)(i)(B) and (11)(ii) corrected 22736
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615.5201 (a) through (l) redesignated as (b) through (g) and (i) through (n); new (a) and new (h) added; new (j) revised; new (k) amended 37404
615.5210 (d) and (e) redesignated as (e) and (f); new (e)(4) through (7) redesignated as (e)(6) through (9); (c), new (f)(1), new (3)(i) and new (ii)(D)(*1*) amended; new (e)(3) removed; new (d), (e)(3), (4) and (5) added; new (e)(2) revised 37404
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701.14 (f) amended 36042
701.31 (d)(3) amended 36041
701.32 (b)(2), (3) and (4) redesignated as (b)(4), (5) and (6); (b)(1) and new (6) revised; new (b)(2) and new (3) added 26102
707.2 (r) amended 13436
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709.8 (c)(1) amended 36041
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745.202 (a) amended 36041
747.306 (b) amended 36041
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747.609 (d) amended 36041
747.616 Amended 36041
790 Authority citation revised 36041
790.2 (b)(6) redesignated as (b)(6)(i) and (ii); (b)(1), (3), new (6)(i), (8) and (9) amended; (b)(6)(iii) (13), (14) and (15) added; (d) and (e) removed 36042

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792 Authority citation revised 36041
792.2 (g)(1) amended 36041
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792.5 (b)(1)(i), (ii) and (2) amended 36042
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793 Authority citation revised 36041
793.2 (c) amended 36041
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935 Authority citation revised 2949
935.1 Amended 2949
935.5 (a)(2) amended; (a)(3) and (b) through (g) added 2949
935.17 Revised 2950

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1102.300—1102.304 (Subpart D) Authority citation revised 1902
1102.305 Added 1902
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1402 Added 24638
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1627 Revised 5939
1630 Added; interim 8845
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107.101 (d) and (e) redesignated as (e) and (f); (a) and new (e) introductory text revised; new (d), (g), (h) and (i) added 16945
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107.202 Removed 16918
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107.303 (b) redesignated as (c); (a) and new (c) introductory text, (6) and (7) *Example* revised; new (b) added 16947
107.304 Heading, (a)(1) and (b) revised; (c) added 16947
107.305 Added 16948
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124.311 (f)(4) and (5) introductory text revised; (f)(5)(iii) and (iv) redesignated as (f)(5)(iv) and (v); new (f)(5)(iii) added; new (f)(5)(v) amended 12815
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124.601 (c) amended 12816
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124.604 Amended 12816
124.605 (a)(3) and (c)(1) amended 12816
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658.13 (d)(1)(i), (2)(i) and (e) amended; (d), (e) and (f) redesignated as (e), (f) and (g); new (d), (e)(4) and (5) added 30419
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658.17 (f), (g) and (h) redesignated as (g), (h) and (i); new (f), (j) and (k) added; new (h) revised 30420
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17.62 Revised 34579
17.64 (a) revised 34580
17.65 (b) revised 34580
17.72 (e) revised 34580
17.110 (b) revised 34580
24 Authority citation revised 18482
24.700 Revised 18482
42 Revised 29329
50 Authority citation revised 17199, 19107
50.3 Regulation at 57 FR 32110 confirmed 17199
50.4 (b)(3) removed; (b)(1) and (2) revised 19107
50.17 Regulation at 57 FR 32110 confirmed 17199
50.19 Regulations at 57 FR 32110 and 58 FR 41337 confirmed 17199
50.20 Regulations at 57 FR 32110 and 58 FR 41337 confirmed 17199
55 Added 19107
55.12 (b)(2) amended 33199
55.22 Heading revised; (a) introductory text and (b)(1) introductory text amended 33199
58.5 (b)(1) revised 19112
92 Waiver 22506
92.2 Amended; interim; eff. 5–19–94 through 6–20–95 18631
92.4 Added; interim; eff. 5–19–94 through 6–20–95 18631
92.50 (f) redesignated as (d)(5) and revised; interim; eff. 5–19–94 through 6–20–95 18631
92.61 Heading revised; interim; eff. 5–19–94 through 6–20–95 18631
92.64 (a)(1) revised; interim; eff. 5–19–94 through 6–20–95 18632
92.150 (b)(2) revised; interim; eff. 5–19–94 through 6–20–95 18632
92.204 (a)(1) revised; interim; eff. 5–19–94 through 6–20–95 18632
92.205 (a)(1) revised; interim; eff. 5–19–94 through 6–20–95 18632
92.206 Heading, (a)(2), (3), (b), (c) introductory text, (5), (d) and (e) revised; (c)(6) and (7) added; (f) and (g) removed; interim; eff. 5–19–94 through 6–20–95 18632
92.207 Added; interim; eff. 5–19–94 through 6–20–95 18633
92.208 Added; interim; eff. 5–19–94 through 6–20–95 18633
92.209 Added; interim; eff. 5–19–94 through 6–20–95 18633

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92.211 (a)(2) and (f)(3) revised; (a)(3) added; interim; eff. 5-19-94 through 6-20-95 18633
92.214 (a)(8) revised; interim; eff. 5-19-94 through 6-20-95 18634
92.218 (a) introductory text and (c) revised; (e) added; interim; eff. 5-19-94 through 6-20-95 18634
92.219 Revised; interim; eff. 5-19-94 through 6-20-95 18634
92.220 (a)(1) introductory text, (2), (3) and (5) revised; interim; eff. 5-19-94 through 6-20-95 18634
92.221 (a)(7) and (c) added; interim; eff. 5-19-94 through 6-20-95 18635
92.222 (a)(2) added; interim; eff. 5-19-94 through 6-20-95 18635
92.252 (a)(2)(iii) added; (a)(5) amended; (d) revised; interim; eff. 5-19-94 through 6-20-95 18635
92.254 (a)(1)(i), (4) introductory text, (ii)(C) and (b)(1) revised; (a)(4)(ii)(D) added; interim; eff. 5-19-94 through 6-20-95 18636
92.255 Revised (OMB number); interim; eff. 5-19-94 through 6-20-95 18636
92.256 Revised; interim; eff. 5-19-94 through 6-20-95 18636
92.259 Added; interim; eff. 5-19-94 through 6-20-95 18636
92.300 (b), (e) and (f) revised; interim; eff. 5-19-94 through 6-20-95 18637
92.350 (a)(4) introductory text revised 33893
92.354 (a) revised; interim; eff. 5-19-94 through 6-20-95 18637
92.502 (b)(1) revised; interim; eff. 5-19-94 through 6-20-95 18637
92.504 (e)(1) revised; interim; eff. 5-19-94 through 6-20-95 18637
92.508 (a)(4)(v) revised; interim; eff. 5-19-94 through 6-20-95 18637
92.625 Added; interim; eff. 5-19-94 through 6-20-95 18638
92.631 (c)(5) added 33893
92 Appendixes A and B amended 33893

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135 Revised; interim; eff. 8-1-94 through 6-30-95 33880
Chapter 1 Appendix IV added 33363

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200 Authority citation revised 36695
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200.213 (d) removed; (e) redesignated as (d); interim 31522
200.217 (a)(3) removed; (a)(4) through (8) redesignated as (a)(3) through (7); interim 31522
200.925a (c)(2) revised; (c)(3) amended 36695
200.925b (c) heading and (5) revised 36695
200.925c (c) introductory text revised 36695
200.926 (c)(2) revised; (c)(3) amended 36695
200.926a (c) heading, (3) and (5) revised 36695
200.926c Table amended 36695
200.926d (c)(4)(i), (ii) and (iii) revised; (c)(4)(iv) redesignated as (c)(4)(vii); new (c)(4)(iv), (v) and (vi) added 19112
200.926e (b), (c) introductory text, (2) and (d) amended 36695
200.937 (a)(2) amended 36695
207.10 Revised 31141
207.36 Regulation at 58 FR 34215 confirmed 28248
207.260 (e) revised 31141
213.13 Revised 31141
213.44 Regulation at 58 FR 34215 confirmed 28248
215.21 (b)(9) removed 32649
215.80 Added 29329
219.210 (c)(3) revised 33894
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220.580 Regulation at 58 FR 34216 confirmed 28248
221 Authority citation revised 31141

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242.43 Revised 31142
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280.207 (a)(4) revised 33894
291 Authority citation revised 29509
291.400 (b) amended; (c), (d) and (e) revised 29509
291.405 Amended 29510
291.410 (c) introductory text and (d) revised; (c)(6) added 29510
291.415 (d)(1) redesignated as (d)(1)(i); (d)(1)(ii) added; (f)(1) amended 29510
291.420 Heading, (a)(1) and (3) revised; (b) amended 29511
291.425 (b) and (c) revised 29511
291.435 (a)(1) amended 29511

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510 Authority citation revised 29332
510.52 Revised 29332
570.487 (d) added 33894
570.607 (b) revised 33894
571 Removed; interim 38329
572.405 (c)(1) revised 33894
574 Regulation at 57 FR 61740 confirmed 17199
Authority citation revised 33894
574.2 (a) revised 17199
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574.140 Removed 17199
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574.220 Removed 17199
574.240 (c)(6) revised 17199
574.300 (a) and (c)(i)(i)(C) amended; (b)(7) and (10)(ii) revised 17200
574.310 (a) heading redesignated as (a)(1) heading; new (a)(1) heading and (e) revised; (a)(2) added; (d) introductory text amended 17200
574.330 Introductory text, (a)(1) and (d) amended 17200
574.340 (b) revised 17200
574.600 (c) revised 33894
574.655 Added 17201
576.79 (a)(4) revised 33894
582.120 (a), (b) and (d) revised; interim 24253
582.200 Revised (OMB number); interim 24253
582.205 Removed; interim 24254
582.210 Removed; interim 24254
582.215 Removed; interim 24254
582.220 Removed; interim 24254
582.225 Removed; interim 24254
583 Authority citation revised 33894
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583.5 Amended 36891
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583.100 (b)(3), (4) and (5) redesignated as (b)(4), (5) and (6); new (3) added 36891
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583.115 (b)(2) amended 36891
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583.120 (a) amended 36891
Regulation at 59 FR 36891 eff. date corrected to 7-19-94 38562
583.130 Revised; OMB number 36891
Regulation at 59 FR 36891 eff. date corrected to 7-19-94 38562
583.140 Revised 36892
Regulation at 59 FR 36892 eff. date corrected to 7-19-94 38562
583.150 (b) removed; (c) redesignated as (b); new (c) added 36892
Regulation at 59 FR 36892 eff. date corrected to 7-19-94 38562
583.155 (a), (b) and (d) revised; interim 24254

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583.200 Revised (OMB number); interim 24254
Regulation at 59 FR 24254 confirmed 36891
583.205 Removed; interim 24254
Regulation at 59 FR 24254 confirmed 36891
583.210 Removed; interim 24254
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583.215 Removed; interim 24254
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583.300 (e) amended 36892
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583.310 (f)(1)(i) and (g) revised; (h) added 36892
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583.315 (a)(1) revised 36892
Regulation at 59 FR 36892 eff. date corrected to 7-19-94 38562
583.325 (b)(4) revised 33894

Chapter VII—Office of the Secretary, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

700 Revised 22225, 22235
791.407 (a) introductory text revised; interim 35255

Chapter VIII—Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

813 Authority citation revised 36681
813.104 (b)(2) removed; (b)(3) redesignated as (b)(2) 36681
813.105 (a) introductory text amended; (c), (e)(2) and (4) removed; (e)(3) redesignated as (e)(2) 36681
813.106 (b)(9) removed 32649
850 Authority citation revised 29333
850.34 Added (OMB number) 29333
850.35 (d) removed 29335
880 Authority citation revised, ... 22923
880.209 Revised (OMB number) 29335
880.603 (b) introductory text amended; (b)(1) removed; (b)(2), (3) and (4) redesignated as (b)(1), (2) and (3) 36624
880.609 (b) revised 22755
880.612a Added; interim, ... 22923
880.613 Revised (OMB number) 36624
880.614 Added (OMB number) 36625
880.615 Added 36626
880.616 Added 36627
880.617 Added 36627
881 Authority citation revised, ... 22924
881.209 Revised (OMB number) 29336
881.603 (b) introductory text amended 36628
881.609 (b) revised 22755
881.612a Added; interim, ... 22924
881.613 Revised (OMB number) 36628
881.614 Added (OMB number) 36629
881.615 Added 36630
881.616 Added 36631
881.617 Added 36631
882 Authority citation revised 24254, 33895, 36681
882.103 Introductory text removed; (b) revised 36681
882.116 (c) revised 36682
882.207 Removed 36682
882.209 (a) revised 36682
882.216 (a)(4) removed 36682

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882.219 Removed 36682
882.335 (a)(2)(i) revised 36682
882.406 Revised (OMB number) 29337
882.517 Revised (OMB number) 36632
882.518 Added (OMB number) 36633
882.519 Added 36633
882.520 Added 36634
882.521 Added 36635
882.701 (c) revised 36682
882.712 Revised (OMB number) 29338
882.713 (c)(11) added 33895
882.720 (b)(3)(v) revised 29339
882.721 (c) amended 29340
882.753 (a) revised 36682
882.803 (d) introductory text revised 29340
882.805 (a) through (d) and (f)(10) revised; interim 24254
882.810 Added (OMB number) 29340
883 Authority citation revised, ... 22926
883.311 Revised (OMB number) 29341
883.704a Added; interim, ... 22926
883.710 (b) revised 22755
883.714 Revised (OMB number) 36635
883.715 Added (OMB number) 36636
883.716 Added 36637
883.717 Added 36638
883.718 Added 36638
884 Authority citation revised, ... 22927
884.112 Revised (OMB number) 29342
884.223a Added; interim, ... 22927
884.226 Revised (OMB number) 36639
884.227 Added (OMB number) 36640
884.228 Added 36641
884.229 Added 36642
884.230 Added 36642
885.427 Revised 36643
886 Authority citation revised, ... 22929
886.132 Revised (OMB number) 36643
886.133 Redesignated as 886.138 36643
Added (OMB number) 36644
886.134 Added 36645
886.135 Added 36646
886.136 Added 36647
886.138 Redesignated from 886.133 36643
886.329a Added; interim, ... 22929
886.337 Revised 36647
887 Authority citation revised 36682
887.5 (c) removed 36682
887.59 (c)(1) and (d) revised 36682
887.105 (b)(1) and (2) amended 36682
887.107 Removed 36682
887.151—887.167 (Subpart D) Heading revised 36682
887.151 Revised 36682
887.153 Removed 36682
887.155 Removed 36682
887.157 Removed 36682
887.565 (c) revised 36682
888 Fair market rent schedules 16408
Schedule C revised 21835
Technical correction 25703
Fair market rent schedules corrected 26944
Schedule C corrected 26944
888.203 (b) revised 38564
889 Authority citation revised 36647
889.265 (a)(4) revised 33895
889.611 Added (OMB number) 36647
889.612 Added (OMB number) 36648
889.613 Added 36649
889.614 Added 36650
889.615 Added 36650
890.260 (a)(4) revised 33895

Chapter IX—Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

900 Authority citation revised 28343
900.105 Added (OMB number) 29343
904 Authority citation revised 36651
904.122 Revised 36651
905 Authority citation revised 33655, 33895, 36651
905.120 (j) added 33895
905.160 (a)(3)(ii)(C) revised; interim 31522
905.165 (c)(5) revised 33895
905.195 Added 31929
905.210 Removed 25812
905.301 (a) revised; (e)(1), (2) and (4) amended 36651
905.303 Added (OMB number) 36652
905.304 Added 36653
905.305 Revised 36653
905.306 Added 36654
905.307 Added 36654
905.416 (a)(3) revised; (d) and (f) amended 36655
905.585 Added 31930
905.642 (d)(4) removed; (g) revised; interim 31523
905.681 (c)(2) revised; interim 31523
905.715 (b)(2) revised 33655

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905.720 (f) added 25812
(b) existing text designated as (b)(1); (b)(2) added 33655
905.730 (c)(1)(i) revised 33655
905.1008 Introductory text revised; (a) amended 36655
906 Authority citation revised 36655
906.8 Introductory text revised; (a) amended 36655
913.106 (b)(9) removed 32649
941.206 (c) revised 18484
941.207 Revised (OMB number) 29344
941.404 (n) introductory text through (9) redesignated as (n)(1) introductory text through (ix); (n) concluding text designated as (n)(2); heading, new (n)(1) and new (2) revised; (n)(1)(x) added 18484
941.502 (a) revised; interim 31523
945 Added 17662
953 Added; interim 38329
960 Authority citation revised 36655
960.203 Revised 36655
960.204 Revised 36655
960.205 (a) and (c) revised 36656
960.206 (a) amended 36656
960.207 (a) and (b) introductory text amended; (b)(1) and (2) removed 36656
960.211 Revised (OMB number) 36656
960.212 Added (OMB number) 36657
960.213 Added 36658
960.214 Added 36658
960.215 Added 36659
960.401—960.409 (Subpart D) Heading revised 17667
960.401 Revised 17667
960.403 Revised 17667
960.405 Revised 17667
960.407 Revised 17667
960.409 Removed 17667
961 Authority citation revised 33895
961.29 (b)(4) revised 33895
963 Authority citation revised 33895
963.3 Amended 33895
963.10 (d) revised 33895
965.215 Added 31930
965.705 Added 31930
968.103 (c) revised 30477
968.235 (d)(4) removed; (g) revised; interim 31523
968.335 (c)(2) revised; interim 31523
968.401—968.425 (Subpart D) Added 30478
968.407 OMB number 30478
968.422 OMB number 30480
968.428 OMB number 30480
982 Added 36682
990 Authority citation revised 33655
990.107 (b)(2) revised 33655
990.108 (b) existing text designated as (b)(1); (b)(2) added 33655
990.110 (c)(1)(i) revised 33656

Chapter XX—Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3699)

3280 Interpretation 19072, 34294
3500.6 (a)(3)(ii) and (iii) amended; (a)(3)(iv) added 37423
3500.7 (e)(1)(iii) amended 37423

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35 24850
43 34300
92 34300
100 34902
200 24850
203 36846
280 24850
290 17500
291 24850
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511 24850
570 ..... 24850, 28176, 34300
577 24850
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579 24850
880 30557
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883 30557
884 30557
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886 ..... 24850, 30557
887 24850
888 32492
890 24850
905 ..... 18666, 24850
913 18666
941 ..... 24850, 35834
961 24850
964 18666
965 24850
968 24850
982 36846
984 36846

990 18666
3500 37360

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

226.11 (a)(2) revised 22104
248.6 Revised 16757

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1—299 (Ch. I) 21872, 23774, 33236, 36108
20 16720
40 18460
113 16760
164 35580
165 35580
256 ..... 16726, 30276
900 26920

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury (Parts 1—799)

1 Technical correction 17154, 36256
Authority citation amended 18747, 24041, 24928, 27459, 30103, 32080, 33432, 34988, 35416, 36363
1.42–12 (a) corrected 15501
1.52–1 (f) amended 30102
1.101–2 (e)(2) *Example* amended 30102
(e)(1)(iii)(*b*)(*1*) and (*2*) revised; (e)(1)(iii)(*b*)(*3*) removed 30103
1.103–8 (a)(5) revised 24041
1.103–8T Added 24041
1.148–0 (c) amended 24041
1.148–1 (c)(4)(ii)(A) revised 24041
1.148–1T Added 24041
1.148–2 (b)(2)(ii) revised 24042
1.148–2T Added 24042
1.148–3 (h)(3) amended 24042
(j) *Example* 1 revised; *Example* 2 amended 24350
1.148–3T Added 24042
1.148–4 (b)(5) redesignated as (b)(6); new (b)(5) added; (g), (h)(1), (2)(vii), (ix), (3), (4) and (5) revised 24042
1.148–4T Added 24042
1.148–5 (b)(2)(iii), (c)(2)(i), (3)(ii), (d)(3)(ii) and (e)(2)(iii) revised; (e)(2)(ii)(B) amended 24044
1.148–5T Added 24044
1.148–6 (d)(3)(iii)(C) revised 24045
1.148–6T Added 24045
1.148–9 (c)(2)(ii)(B) revised; (h)(4)(vi) added 24045
1.148–9T Added 24045
1.148–10 (b)(2) revised; (c)(2)(ix) amended 24046
(d) *Example* 1 amended 24351
1.148–10T Added 24046
1.148–11 (i) added 24046
1.148–11T Added 24046
1.149(d)–1 (f)(3) revised 24046
1.149(d)–1T Added 24046
1.149(e)–1 (e)(3)(i) and (4) revised 24351
1.150–1 (c)(1) and (4) heading revised; (c)(4)(iii) added 24046
1.150–1T Added 24046
1.170A–4 (d) *Example 9* amended 30102
1.170A–5 (b) *Example 5* amended 30102
1.170A–6 (c)(3)(i), (iii) *Examples 1, 2, 3,* (c)(4), (5) *Examples 1, 2,* and *3*; amended 30102
1.170A–7 (c) amended 30102
1.170A–12 (a)(3) and (c) amended 30102
(a)(3) amended; (b), (e)(1) and (2) revised; (f) and authority citation removed 30104
1.170A–13 Authority citation removed 30105
1.170A–13T Added 27460
1.170A–14 (h)(4) *Example 2* amended 30105
1.338–4T (h)(4) corrected 15501
1.382–1 Amended 32080
1.382–6 Added; heading revised 32080
1.401(a)(17)–1 Revised 32905
1.410(b)–0 Amended 32914
1.410(b)–2 (b)(7) amended 32914
1.410(b)–6 (d)(2)(i), (ii) and (g) corrected 16984
(d)(1), (2)(iv) *Example 2* amended 32914
1.410(b)–7 (c)(4) and (5) revised; (c)(6) removed; (d)(4) amended 32914
1.414–11 (b)(2) and (4) revised; (b)(3) and (c)(2)(v) amended 32922
1.414(c)–2 (b)(2)(ii) amended 30102
1.414(c)–4 (b)(3)(i) amended 30102

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1.414(g)–1T (b)(1) introductory text and (2)(iii) revised; (g) removed 32916
1.414(q)–1 Added 32915
1.414(r)–0 Amended 32916
1.414(r)–1 (c)(2)(ii) *Example*, (d)(4), (9)(i) and (e) amended; (c)(3)(ii) revised 32916
1.414(r)–2 (b)(2), (c)(3) *Examples 1* and *2* revised 32917
1.414(r)–3 (c)(2)(ii), (4), (5)(iii), (7) *Example 1*, (d)(2) and (4) *Example 1* revised; (c)(7) *Examples 3* and *4* redesignated as *Examples 4* and *5*; (b)(4), (c)(6) introductory text, *Examples 2* through *5*, *7*, (7) introductory text, *Example 2* and new *Example 5* amended; new (c)(7) *Example 3* added 32917
1.414(r)–4 (b) amended 32919
1.414(r)–5 (b)(5)(ii), (d)(1)(ii)(B), (C), (4) *Example 2*, and (g)(5) revised; (d)(1)(iii) added; (d)(1) concluding text removed; (g)(2)(iii)(A), (D), (3)(ii)(B), (iii)(B), (C), (D) and (g)(6) amended 32919
1.414(r)–6 (a) amended; (b) revised; (c) removed 32920
1.414(r)–7 (c)(2) and (d) removed; (c)(3), (4) and (5) redesignated as (c)(2), (3) and (4); (a)(1), (b)(2)(ii), (3), new (c)(2)(i), (3)(i), (ii) introductory text, (A), (B), (iii) *Example 1*, (4)(i), (ii), (iii) introductory text, (E), (v) introductory text and *Examples 1* through *4* amended; (c)(1) and new (c)(2)(iv) revised; (c)(5) added 32920
1.414(r)–8 (b)(4) *Examples 1* and *4* amended; (b)(2)(iii) and (4) *Example 2* revised; (d)(4) removed; (b)(4) *Examples 3*, *4*, and (d)(5) redesignated as *Examples 5*, *6* and (d)(4); new (b)(4) *Examples 3* and *4* added; new (b)(4) *Examples 5* and *6* amended 32921
1.446–3 (h)(2) and (5) introductory text amended 36358
1.446–4 Added 36358
1.461–1 (a)(2)(iii)(B) revised 36360
1.469–1T (e)(5) corrected 17478
1.482–0 Added 34988
1.482–0T Removed 34988
1.482–1 Added 34990
1.482–1T Removed 34988
1.482–2 Added 35002
1.482–2T Removed 34988
1.482–3 Added 35011
1.482–3T Removed 34988
1.482–4 Added 35016
1.482–4T Removed 34988
1.482–5 Added 35021
1.482–5T Removed 34988
1.482–6 Added 35025
1.482–6T Removed 34988
1.482–8 Added 35028
1.514(c)–2 Added 24928
1.585–1 (b)(2) corrected 15502
1.585–5 (c)(4)(ii) and (d)(2) corrected 15502
1.585–6 (d)(5) *Example* 3 corrected 15502
1.585–7 (d)(1) corrected 15502
1.585–8 (b)(2) corrected 15502
1.642(c)–6 (d)(1) redesignated as (d) and (d)(2) and (3) redesignated as 1.642(c)–6A (d)(3) and (4); heading, (a), (b), (c)(1), new (d) and (e) revised; (f) added; authority citation removed 30105
(d)(2) amended 30102
1.642(c)–6A Undesignated center heading and section added; (d)(3) and (4) redesignated from 1.642(c)–6 (d)(2) and (3) 30105
(d)(4) table amended 30116
1.642(c)–7 (d)(2) amended 30102
1.664–1 (a)(6) *Example*, amended 30102
(a)(5)(ii)(*b*), (iv)(*a*), (*b*), (c), and (6) introductory text revised; (a)(5)(iv)(*d*) added; authority citation removed 30116
1.664–2 (c) revised; authority citation removed 30116
1.664–4 (b)(1) redesignated as (b) and (b)(2) through (5) redesignated as 1.664–4A (d)(3) through (6); (a), new (b), (c) and (d) revised; (e) and (f) added; authority citation removed 30117
(b)(2) and (3) amended 30102
1.664–4A Undesignated center heading and section added 30116

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(d)(3) through (6) redesignated from 1.664–4 30117
(d)(4), (5), (6) heading, Tables D, E, and F(1) amended 30148
1.665(a)–0—1.669(b)–2 Undesignated center heading revised 30148
1.665(a)–0A—1.665(g)–2A Undesignated center heading added 30148
1.860G–1T Added 18747
1.904–4 (j) revised 37672
1.954–2T (g)(2)(i) revised 37672
1.985–0 Amended 37672
1.985–1 (a)(1) and (d)(1)(ii) amended; (b) and (c)(6) revised; (d)(1) concluding text removed 37672
1.985–2 (a) and (b)(2) revised 37673
1.985–3 Revised 37673
1.1011–2 (c) *Example (8)* amended 30148
1.1014–5 (a)(3), (c) *Examples 1*, *2*, *3*, *4*, *5*, and *6* amended 30102
1.1031(b)–2 (b) revised; (c) and (d) added 18749
Heading corrected 33200
1.1031(k)–1 (j)(2) added 18749
1.1221–2 Added 36363
1.1221–2T Removed 36367
1.1233–2 Redesignated from 1.1233–2T and revised 36367
1.1233–2T Redesignated as 1.1233–2 36367
1.1234–4 Redesignated from 1.1234–4T and revised 36367
1.1234–4T Redesignated as 1.1234–4 36367
1.1256(e)–1 Added 36367
1.1388–1 Undesignated center heading added 24937
1.1398–1 Added 24937
1.1398–2 Added 24938
1.6302–1T Added 35416
1.6302–2T Added 35416
1.6302–3T Added 35416
1.6662–0 Amended 35031
1.6662–6T Heading, (d)(2)(ii), (iii)(A), (B), (3)(ii)(B) and (C) revised; (d)(2)(iii)(D) and (3)(iii)(C) added 35031
1.6695–1 (a)(1) introductory text, (b)(1), (4)(iv), (v), (5) introductory text, (c)(1) introductory text, (3) and (e) revised; (b)(4)(vi) added 33432
1.7520–1—1.5520–4 Undesignated center heading added 30148
1.7520–1 Added 30149
1.7520–2 Added 30149
1.7520–3 Added 30150
1.7520–4 Added 30150
15a Authority citation revised 18751
15a.453–1 (b)(3)(i) amended 18751
20 Authority citation revised 30150
20.2013–4 (a) introductory text and *Example (2)* amended 30151
20.2031–0 Added 30151
20.2031–7 (a)(2) amended 30102
(a)(2), (b)(1), (2), (3)(i), (ii), (c), (d), and (e) amended 30103
Redesignated as 20.2031–7A (d); new 20.2031–7 added 30152
20.2031–7A Undesignated center heading and section added 30151
(d) redesignated from 20.2031–7; new (d) heading, (i)(i) and (iii) revised; new (d)(5), (6), Tables A, B and LN amended 30152
20.2031–10 Removed 30170
20.2032–1 (f)(1) amended 30103
20.2039–2 (c)(1)(viii) amended 30103
20.2039–5 (c)(1) and (2) amended 30103
20.2055–2 (f)(2)(iv) amended 30103
(f)(4) revised 30170
20.2056(b)–4 (d) amended 30103
20.7520–1—20.7520–4 Undesignated center heading added 30170
20.7520–1 Added 30170
20.7520–2 Added 30171
20.7520–3 Added 30172
20.7520–4 Added 30172
25 Authority citation amended 23154
Authority citation revised 30172
25.2511–1 (h)(6) and (7) amended 30103
25.2512–0 Added 30173
25.2512–5 (a)(2), (b)(1), (2), (3)(i), (ii), (c), and (d) amended 30103
Redesignated as 25.2512–5A(d); heading, (a) introductory text, (1) introductory text, (i), (ii) introductory text, (A), (B), (iii) introductory text, (A), (B), (2), (3), (b) introductory text, (1), (2), (3) introductory text, (i), (ii), (c), (d), (e) and (f) redesignated as 25.2512–5A(d) head-

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ing, (1) introductory text, (i) introductory text, (A), (B) introductory text, (*1*), (*2*), (ii), (iii), (2)(C) introductory text, (*1*), (*2*) introductory text, (i), (ii), (iii) introductory text, (A), (B), (3), (4), (5) and (6) 30173
Added 30174
25.2512–5A Undesignated center heading added; (d) heading, (1) introductory text, (i) introductory text, (A), (B) introductory text, (*1*), (*2*), (C) introductory text, (*1*), (*2*), (ii), (iii), (2) introductory text, (i)(, (ii), (iii) introductory text, (A), (B), (3), (4), (5) and (6) redesignated from 25.2512–5 heading, (a) introductory text, (1) introductory text, (i), (ii) introductory text, (A), (B), (iii) introductory text, (A), (B), (2), (3), (b) introductory text, (1), (2), (3) introductory text, (i), (ii), (c), (d), (e) and (f); new (d) heading revised; new (d)(1)(i)(A) and (B) amended 30173
(d)(1)(i)(C) and (5) amended; (d)(1)(iii) and (6) revised 30174
25.2512–9 Removed....30176
25.2515–2 (c) amended 30177
25.2518–3 (a)(1)(iv)(A) amended....30103
Undesignated center heading added 30173
25.2522(a)–2 (a) amended....30177
25.2522(c)–3 (d)(2)(iv) amended....30103
(d)(3) revised....30177
25.2523(a)–1 (d) amended....30103
25.2523(c)–1 (c) *Example* amended 30103
25.2701–0 Amended 23154
25.2701–1 (a)(1) amended 23154
25.2701–5 Added 23154
25.2702–3 (b)(3) and (c)(3) amended....23157
25.7520–1—25.7520–4 Undesignated center heading added 30177
25.7520–1 Added 30177
25.7520–2 Added 30178
25.7520–3 Added 30178
25.7520–4 Added 30179
31 Authority citation amended 35416
31.6302–1T Added 35416
31.6302(c)–3T Added 35417
40 Authority citation amended 35417
40.6302(c)–1T Added 35417
48 Authority citation amended 33657
48.4082–1 Added 33657
48.4082–1T Removed 33657
301.6323(f)–1 (a)(2) amended; (c) and (d) redesignated as (d) and (e); new (c) and new (e) *Examples* 5 and 6 added 38120
301.7426–1 (a)(1) revised; (c) added 26601
301.7430–0 Added 29360
301.7430–1 Revised 29357
301.7430–2 Added 29360
301.7430–3 Added 29362
301.7430–4 Added 29363
301.7430–5 Added 29364
301.7430–6 Added 29366
602 Technical correction 17154
602.101 (c) table amended (OMB numbers)....23157, 24939, 27235, 27460, 29366, 30179, 32081, 33433, 35030, 35033, 36360, 36367, 37680

Proposed Rules:

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25 30180
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TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

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5 Interpretation....35623
9.148 Added 26114
70.92 (d)(2)(iii) and (iv) revised....29367

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4 ....15878, 30560

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571.10—571.13 (Subpart B) Revised 35456

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31 37866

TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor (Parts 0—99)

95 Added 38271

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100 Authority citation revised 37158
100.101 Revised 37158
100.102 Revised 37158
100.103 Removed 37158
100.104 Removed 37158
100.105 Removed 37158
100.111 Removed 37158
100.112 Removed 37158
100.113 Removed 37158
100.114 Removed 37158
100.115 Removed 37158
100.116 Removed 37158
100.117 Removed 37158
100.118 Removed 37158
100.119 Removed 37158
100.120 Removed 37158
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488.3 Heading, (a)(1) and (2) revised **61838**
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1003.106 (a) heading and (4) added; (b) introductory text revised; interim 32125
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11.32 (a)(2)(iii)(A) and (f)(2) revised; (f)(3) removed 14282
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2091.2-1 (b) amended; (c) removed **60917**
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2091.3 Heading revised **60917**
2091.3-1 (b) removed; (a) redesignated as (b); new (a) added **60917**
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2460 Revoked in part by PLO 6998 ..... **52238**
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2588 Revoked in part by PLO 7063 29544
2634 Revoked in part by PLO 7017 ..... **64692**

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TITLE 43 Public Land Orders—Con.

4522 Revoked in part by PLO 7002 ..... **52684**
Revoked in part by PLO 7039 19641
4825 Revoked in part by PLO 7047 24648
5150 Amended by PLO 7064 34582
5490 Amended by PLO 7043 24946
6986 Corrected 108
6997 Corrected **58593**
6998 ..... **52238**
6999 ..... **52238**
7000 ..... **52682**
7001 ..... **52683**
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7002 ..... **52684**
7003 ..... **53428**
7004 ..... **53429**
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7005 ..... **54049**
7006 ..... **57566**
7007 ..... **58968**
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7009 ..... **62041**
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7010 ..... **62042**
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7017 ..... **64692**
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7019 ..... **64693**
7020 ..... **64166**
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7021 ..... **65130**
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7023 ..... **66299**
7024 ..... **69239**
7025 2301
7026 1489
7027 3000
7028 7226
7029 8868
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7030 11726
7031 11195
7032 11196
7033 11196
7034 13893
7035 15636
7036 15342
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7037 19145
7038 19640
7039 19641
7040 19641
7041 29638
7042 24945
7043 24946
7044 24946
7045 24947
7046 24648
7047 24648
7048 24649
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7049 25338
7050 25339
7051 25823
7052 25824
7053 25824
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7055 28013
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7056 29206
7057 28788
7058 28789
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7060 28790
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7062 28791
7063 29544
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7065 35054
7066 33697
7067 35859
7068 35859
7069 35267

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12 2343
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TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE

Chapter I—Federal Emergency Management Agency (Parts 0—399)

2 Revised 26133
2.81 OMB numbers 26140
10 Authority citation revised 954
10.8 (c)(2)(x) added; interim 954
59 Authority citation revised **62424**
59.1 Amended **62424**
59.24 Table amended 2755
61 Authority citation revised **62424**
61.3 Amended **62424**
61.4 (a) designation and (b) through (e) removed; (1) through (4) redesignated as (a) through (d) **62424**
61.5 (d)(1), (2), (e) through (h) and (j) removed; (d)(3) and (i) redesignated as (d) and (e); (a) and new (d) amended **62424**
61.6 (c) added **62424**
61.9 Revised 26741
61.13 (a) and (d) amended **62424**
61 Appendix A (1) revised **62424**
Appendix A (2) revised **62432**
Appendix A (3) added **62439**
62 Authority citation revised **62447**
62.3 (b) revised; (d) removed **62447**
62.24 Added; interim 38572
62 Appendix A revised; interim 26966
Appendix A amended; interim 38573
64.6 Table amended ... **51577, 52019, 58654, 58656, 58970, 63900, 67693**
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65.4 Table amended **68040, 68044**
Table amended; interim **68042, 68045**
Table amended; interim 5728, 5729, 12186, 12187, 17715, 17716, 28486, 32128, 33441
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67 Flood elevation determinations **68047, 68049**
Flood elevation determinations 5732, 5733, 12188, 12190, 17719, 17720, 17722, 32130, 33443
206.266 (a) revised 55022
206.430 Revised; interim 24356
206.431 (c) revised; interim 24356
206.432 (b) and (c) revised; interim 24356
206.434 (c)(4) revised; (d) and (e) redesignated as (f) and (g); new (d) and new (e) added; interim 24356
311 Removed; CFR correction 24947
322 Removed 36088
362 Added 35631

Chapter IV—Department of Commerce and Department of Transportation (Parts 400—499)

403.1 Revised 8413
403.2 Revised 8413

Proposed Rules:

59 15351
60 15351
61 13298
64 15351
65 15351
67 ..... **51598, 68101, 68105** 5747, 5748, 12213, 12215, 26167, 26171, 26177, 28505, 36421
70 15351
75 15351
354 38306

TITLE 45—PUBLIC WELFARE

Subtitle A—Department of Health and Human Services, General Administration (Parts 1—199)

5b.11 (b)(2)(vii) added 36718
46 Authority citation revised 28276
46.204 (d) removed 28276
95.605 Amended 30708
95.611 (a)(2) and (5) revised 30708
95.625 Revised 30708
96 Authority citation revised **60128**

NOTE: Boldface page numbers indicate 1993 changes.

TITLE 45 Subtitle A—Con.

96.1 (f) revised 60128
96.17 Revised 60128
96.74 Added 60129
96 Appendixes A and B added 60129

Chapter II—Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

205.35 Introductory text amended 30708
205.37 Heading revised; (a) through (e) amended 30709
205.38 (a) revised; (b), (c) and (e) amended 30709
205.50 Regulation at 58 FR 49920 confirmed 26142
233 Authority citation revised 60135
Authority citation revised 4839
233.20 (a)(2)(vi) revised; (a)(2)(vii) removed 60135
(a)(3)(vi)(B), (13)(i)(A)*(1)*, *(2)*, (b) and (c) added 3319
(a)(3)(iv)(B) and (2)(4)(ii)*(d)* revised; (a)(3)(xxi) and (a)(4)(ii)*(p)* through *(u)* added 4839
(a)(3)(xiv)(A) revised 10300
Regulation at 58 FR 49920 confirmed 26142
233.90 Regulation at 58 FR 49920 confirmed 26142
235 Authority citation revised 12861
235.64 Heading and introductory text revised 12861
235.112 (f) removed; (g) redesignated as (f) and revised 12861

Chapter IV—Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services (Parts 400—499)

400.2 Amended 64507
400.60 (b) amended 64507
400.100 (b) amended 64507
400.203 (b) amended 64507
400.204 (b) amended 64507
400.209 (b) amended 64507
400.211 Added 64507

Chapter VI—National Science Foundation (Parts 600—699)

606.70 (c), (d) and (f) introductory text amended 37437
607 Added 68769
608 Added 68772
610 Removed 37437
611.9 (b) amended 37437
611 Appendix A amended 37437
612.2 (b) amended 37437
(c) amended 37438
612.3 (a), (c) and (f) amended 37438
613.2 (a) amended 37438
613.3 (a) amended 37438
613.4 (a) amended 37438
614.2 (b) amended 37438
630 Removed 37438
640.2 (a) revised 37438
641.14 (m) amended 37438
641.16 (d) amended 37438
641.20 Amended 37438
650.4 (a) amended 37438
650.11 Amended 37438
670.50—670.72 (Subpart K) Regulation at 58 FR 34718 correctly redesignated as Part 672; eff. date corrected to 8–15–93 54522
671 Regulation at 58 FR 34719 eff. date corrected to 8–15–93 54522
671.2 Amended 37438
671.6 (b) amended 37438
672 Regulation at 58 FR 34718 correctly redesignated from 670.50—670.72 (Subpart K); eff. date corrected to 8–15–93 54522
672.3 Heading and (f) through (i) amended 37438
689.6 (a) amended 37438
689.7 (a) amended 37439

Chapter XI—National Foundation on the Arts and the Humanities (Parts 1100—1199)

1180.78 Added 15344

Chapter XII—ACTION (Parts 1200—1299)

1207.1–2 Amended 15122
1207.3–1 (v) added 15122
1207.3–5 (a)(3), (4) and (c)(5) revised 15122
1208.1–2 Amended 15122

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1208.3–1 (v) added 15122
1208.3–5 (a)(3), (4) and (c)(5) revised 15122

Chapter XIII—Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

1355 Authority citation revised 67924
1355.20 Amended 67924
1355.30 (e) revised 67924
1355.40 Added 67924
1355.50 Added; interim 67945
1355.52 Added; interim 67945
1355.53 Added; interim 67945
1355.54 Added; interim 67946
1355.55 Added; interim 67946
1355.56 Added; interim 67946
1355.57 Added; interim 67946
1355.60 (e) added; interim 67947
1355 Appendixes A through F added 67926
Appendixes A, D and E corrected 13535
1356 Authority citation revised 67938
Technical correction 13535
1356.20 (b), (c) and (d) redesignated as (d), (e) and (f); new (b) and new (c) added 67938
1356.60 (c)(2)(x) and (d) added 67938
1357 Authority citation revised 67938
1357.15 (h) added 67938
(h) corrected 13535

Chapter XVI—Legal Services Corporation (Parts 1600—1699)

1601 Removed 21666
1602 Authority citation revised 52919
1602.2 Revised 52919
Regulation at 58 FR 52919 eff. date delayed to 10–2–94 65292
1602.4 Revised 52919
Regulation at 58 FR 52919 eff. date delayed to 10–2–94 65292
1602.5 Revised 52920
Regulation at 58 FR 52920 eff. date delayed to 10–2–94 65292
1602.6 Added 52920
Regulation at 58 FR 52920 eff. date delayed to 10–2–94 65292
1602.7 Revised 52920
Regulation at 58 FR 52920 eff. date delayed to 10–2–94 65292
1602.8 (a), (b)(3), (4), (5), (c) introductory text and (d) revised 52920
Regulation at 58 FR 52920 eff. date delayed to 10–2–94 65292
1602.9 (a)(2) and (6)(iv) revised 52921
Regulation at 58 FR 52921 eff. delayed to 10–2–94 65292
1602.10 Revised 52921
Regulation at 58 FR 52921 eff. date delayed to 10–2–94 65292
1602.12 Revised 52921
Regulation at 58 FR 52921 eff. date delayed to 10–2–94 65292
1602.13 Revised 52921
Regulation at 58 FR 52921 eff. date delayed to 10–2–94 65292
1611 Appendix A revised 12550

Chapter XXIII—Arctic Research Commission (Part 2301)

Chapter XXIII Established 57698
2301.170 (c) revised 57699

Chapter XXIV—James Madison Memorial Fellowship Foundation (Parts 2400—2499)

Chapter XXIV Revised 27490
2490 Added 57699
2490.170 (c) revised 57699

Chapter XXV—Corporation for National and Community Service (Parts 2500—2550)

Chapter XXV Heading revised; interim 60981
2510 Added 13783
2513 Added 13785
2515 Added 13786
2516 Added 13786
2517 Added 13790
2518 Added 13792
2519 Added 13792
2520 Added 13794
2521 Added 13794
2522 Added 13796
2523 Added 13804
2524 Added 13805
2525 Added; interim 30710
2526 Added; interim 30711
2527 Added; interim 30712
2528 Added; interim 30713

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TITLE 45 Chapter XXV—Con.

2529 Added; interim 20714
2530 Added 13806
2531 Added 13806
2532 Added 13807
2533 Added 13808
2540 Added 13808
2550 Added; interim **60981**

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1—199 (Subtitle A) 3040
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98 24510
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255 24510
256 24510
257 24510
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TITLE 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

1 Technical correction **65131**
1.03–15 (h)(1) revised **60265**
1.03–45 Added **60265**
10.103 Regulation at 55 FR 14798 confirmed 10756
10.107 Regulation at 55 FR 14799 confirmed 10756
10.201 Regulation at 55 FR 14799 confirmed 10756
10.205 Regulation at 55 FR 14799 confirmed 10756
10.468 Regulation at 55 FR 14799 confirmed 10756
10.470 Regulation at 55 FR 14799 confirmed 10756
10.472 Regulation at 55 FR 14801 confirmed 10756
10.474 Regulation at 55 FR 14801 confirmed 10756
10.476 Regulation at 55 FR 14802 confirmed 10756
10.540 Regulation at 55 FR 14802 confirmed 10756
10.542 Regulation at 55 FR 14802 confirmed; (c) added 10756
10.544 Regulation at 55 FR 14802 confirmed; (c) added 10756
10.903 (b)(1), (2) and (3) redesignated as (b)(2), (3) and (4); new (b)(1) added 10756
10.920 Regulation at 55 FR 14802 confirmed 10756
10.950 Regulation at 55 FR 14804 confirmed 10756
12 Authority citation revised 28792
12.25–5 Removed 28792
15 Authority citation revised 4841
15.301 Amended; interim 4841
Regulation at 55 FR 14805 confirmed 10756
15.520 Regulation at 55 FR 14805 confirmed 10756
15.810 Regulation at 55 FR 14805 confirmed 10756
15.812 Revised; interim 4842
16 Common preamble **68194**
16.105 Amended 28792
16.210 (a) revised 28792
16.500 (Subpart E) Added **68277**
16 Appendix B added **68279**
30 Authority citation revised **52602**
30.01–5 (e)(2) revised **52602**
30.25–1 Table revised 17005
31 Authority citation revised **52602**
31.10–21a Added **52602**
32 Authority citation revised **52602**
32.59 Added **52602**

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35.01–60 Added 16779
40.01–1 Amended 17011
40.01–5 Removed 17011
40.15–1 (a)(3) and (e) amended 17011
67 Revised **60266**
Policy statement 24060
67.19 (c)(2) corrected **65131**
67.43 Corrected **65131**
67.111 (a) introductory text corrected **65131**
67.113 Introductory text corrected **65131**
67.117 (a) introductory text corrected **65131**
67.141 (a)(1) corrected **65131**
67.143 Corrected **65131**
67.145 (d) corrected **65131**
67.165 (a) corrected **65131**
67.173 Corrected **65131**
67.217 (a)(3) and (4) corrected **65131**
67.500—67.550 (Subpart Y) Heading corrected **65131**
67.500 (a) corrected **65131**
67.550 Table corrected **65243**
67 Appendix A corrected **65132**
68 Policy statement 36088
69 Policy statement **57747**
Technical correction **60731**
78 Authority citation revised 16779
78.10–1 Revised 16779
97 Authority citation revised 16779
97.10–5 Revised 16779
98.01–1 (e) amended 17011
147.45 (f)(4), (h)(1) and (2) amended 17011
147.95 (b) amended 17011
150 Table I revised 17011
Table II amended 17025
Appendix I amended 17026
151.05 Table amended 17027
151.12–5 Amended 17028
151.50–20 (b)(1) and (k) amended 17028
151.50–77 Heading revised 17028
151.50–86 Heading revised 17028
153 Nomenclature change 17028
153.0 (b)(1) and (3) through (6) revised 17028
153.9 (a) Footnote 2 removed 17028
153.560 Heading revised 17028
153 Table 1 revised 17028
Table 2 amended 17044
Appendix III redesignated as Appendix II 17045
160 Technical correction **51576**
171.080 Regulation at 57 FR 41826 and 58 FR 45264 suspension extended in part 9099
Correctly suspended in part 17047

Chapter II—Maritime Administration, Department of Transportation (Parts 200—399)

232 Authority citation revised **62043**
232.1 (b) revised **62043**
232.2 (c) removed; (d), (e) and (f) redesignated as (c), (d) and (e); (a), (b) and new (d) amended; new (c) and new (e) revised **62043**
232.3 (a) amended **62044**
232.4 (b)(A)(*10*) and (*11*) redesignated as (b)(A)(*11*) and (*10*); (b)(A)(*2*)(i), (*8*)(i), (iv), new (*11*), (B)(*1*)(ii) and (h)(A)(*8*)(i) amended; (b)(A)(*3*)(ii), (*4*)(ii), (*5*) heading, (*8*)(ii), new (*10*) heading, new (*11*) heading and (*12*) heading revised 62044
(b)(A)(*8*)(c) corrected **64798**
232.5 (b)(E)(*1*)(ii) and (iii) amended; (b)(E)(*11*)(i) revised **62044**
298 Authority citation revised 15128
298.1 Revised; interim 15128
298.2 (b), (d), (e), (f), (m), (s)(3), (4)(v) and (w) amended; (s)(4)(vi) removed; (c) through (g), (h) through (l) and (m) through (w) redesignated as (d) through (h), (l) through (p) and (r) through (bb); new (c), (i), (j), (k) and (q) added; new (x)(4)(iv) revised 15128
298.3 (e) existing text designated as introductory text and amended; (e)(1), (2) and (3) added 15129
298.10 (e) added 15129
298.11 (c) amended 15129
298.12 (b)(1)(i), (ii) and (c)(4) revised; (f) existing text designated as (f)(1) and amended; (f)(2) added 15130
298.13 (a)(2)(ii), (iii) and (iv) redesignated as (a)(2)(iii), (iv) and (v); new (a)(2)(ii), (d)(3) and (e)(3) added; new (a)(2)(iv), (3), (b)(5), (6), (c)(1) and (2) amended 15130

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TITLE 46 Chapter II—Con.

298.14 (a) introductory text revised; (a)(1)(ii), (iii), (iv), (2)(i)(B), (C), (D), (F)(*1*), (ii), (iii) and (b)(1) introductory text amended 15130
298.16 (b) amended 15130
298.17 Introductory text and (a) through (d) redesignated as (a) introductory text and (1) through (4); (a)(5), (6) and (b) added 15131
298.10—298.17 (Subpart B) Appendix B removed 15131
298.18 Added 15133
298.19 Added 15133
298.20 (a) introductory text, (2), (3) and (b) amended; (a)(4) added; (c) revised 15131
298.21 (a) introductory text, (2), (b), (c)(12), (13), (d), (f) and (g) amended; (c)(14) and (15) added 15131
298.22 (1) and (2) redesignated as (a) and (b); introductory text, new (a) and new (b) amended; (c) added 15131
298.23 Amended 15131
298.27 Amended 15131
298.28 (a)(2)(i), (ii) and (iii) amended; (a)(2)(iv) added 15131
298.31 (a) revised; (c) amended 15131
298.32 (a)(1), (2), (3), (b)(2), (3), (6) and (7) amended; (b)(4) revised; (b)(8) and (9) added 15132
298.33 (b), (c), (e), (g) and (h) amended 15132
298.34 (b) amended 15132
298.35 (b)(1)(i), (c)(1)(i), (v), (vi), (d) introductory text and (e) amended; (b)(1)(v) and (c)(1)(vii) added 15132
298.36 (a), (c) and (d) amended 15132
298.37 Amended 15132
298.39 Amended 15133
298.41 (b) amended 15133
298.42 Amended 15133

Chapter IV—Federal Maritime Commission (Parts 500—599)

501 Revised 954
502 Authority citation revised **58976**
502.27 (c) amended **58976**
502.67 (a)(3)(d) and (e)(1) introductory text revised **58976**
502.155 Revised **58976**
503.68 Revised 15636
530 Removed 13459
585 Revised **64910**
586.5 Removed 26143

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10 ..... **51408**
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160 ..... **59428**
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552 ..... 16592, 27002, 38418
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585 ..... **52248, 16592**

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission (Parts 0—199)

Chapter I Waiver **63086**
Periodic review of regulations 3633
Report 35631
0 Technical correction 25825
0.5 (a)(14) added 32132
0.11 (a)(10) removed; (a)(11) and (12) redesignated as (a)(10) and (11) 26971
0.61 (a) revised; (h) and (j) through (n) removed; (i) redesignated as (h) 32132
(a) revised 38374
0.91 (n) added 26747
(l) revised 26971
Introductory text revised 38374
0.101 Added 32132
0.111 (o) added 26971
0.131 (k) removed 543
(k) added 24957
0.182 Heading revised 26971
0.183 Revised 26971
0.185 Introductory text, (a) and (b) revised 26971
0.231 (a), (b) and (i) removed; (c) through (h), (j), (k) and (l) redesignated as (a) through (f), (g), (h) and (i) 26971
(a) revised 30998
0.284 (a)(4) revised 26971
(a)(10) removed 32132
0.311 (f) added **68053**
0.321 Undesignated center heading and section added 32132
0.325 Added 32132
0.331 (d) removed 543
(g) and (h) revised 26971
0.332 (d) revised 26971
0.406 (b)(2) revised 30998
0.408 (b) table amended (OMB numbers) **55023**
0.453 (a) introductory text, (1) and (4) revised; (a)(5) through (7) added 32132
(g) revised 28374, 38374
0.455 (a) introductory text, (1) and (5) revised; (a)(6), (11) and (12) removed; (a)(7) through (10) redesignated as (a)(6) through (9); (d) added 32133
0.467 (a) redesignated in part as (a)(1) and (2); heading, (a) table and new (a)(2) revised 21946
0.486 Removed 543
1 Report and order 8413
Authority citation revised 22985
Technical correction 25825
1.49 (a) amended **63087**
(a) revised 37721
1.50 Revised 37721
1.423 Revised **66300**
1.742 Revised 30998
1.773 (a)(4) and (b)(3) revised **51247**
1.821 Introductory text revised 38375
1.912 (a) revised 543
(e) redesignated as (f); new (e) added 24957
1.922 Table amended 24957
1.924 (d) added 9101
1.972 (a)(1) and (c) amended 24957
1.1102 Table amended **68541**
Revised 31009

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TITLE 47 Chapter I—Con.

Table corrected 32489
1.1103 Revised 31014
1.1104 Revised 31015
1.1105 Revised 31018
1.1106 Redesignated as 1.1107 30998
Revised 31029
1.1107 Redesignated as 1.1108; new 1.1107 redesignated from 1.1106 and amended 30998
1.1108 Redesignated as 1.1109; new 1.1108 redesignated from 1.1107; (a) through (d) revised 30998
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1.1112 Redesignated as 1.1113; new 1.1112 redesignated from 1.1111 30998
1.1113 Redesignated as 1.1114; new 1.1113 redesignated from 1.1112; introductory text, (d), (e) introductory text and (3) amended 30998
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1.1115 Redesignated as 1.1116; new 1.1115 redesignated from 1.1114; (a) amended 30998
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1.1164 Added 31004
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13.13 (c) revised 3795
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15.19 (d) added 25341
15.31 (a)(6)(iii) note added **51249**
15.107 (d) redesignated as (f); new (d) and (e) added **51249**
15.109 (e) amended; (g) added **51249**
15.115 (c)(1)(*i*) revised; (h) and (i) added 25341
15.117 (h) revised 25341
15.118 Added 25341
15.207 (b) and (c) redesignated as (c) and (d); new (b) added **51249**
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24.200—24.238 (Subpart E) Revised 32854
24.204 (f)(1) and (2) amended 37603
24.301—24.309 (Subpart F) Added 26747
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24.425 (a), (b) introductory text and (1) corrected 37164
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25.135 Added **68059**
25.140 (d)(2)(iii) redesignated as (d)(2)(iv); new (d)(2)(iii) added **68060**
25.142 Added **68060**
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61.3 (jj) and (kk) redesignated as (kk) and (ll); new (jj) added 10301
61.42 (e)(1)(iii), (iv) and (v) removed; (e)(1)(vi) and (vii) redesignated as (e)(1)(iii) and (iv); (d)(3), new (e)(1)(iii), (2) introductory text, (i), (iii) and (iv) revised; (e)(2)(v) and new (vi) added 10301
(e)(2)(vii) added 32930
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5.202 (a)(12) amended; interim 545
5.207 (b) amended 11387
9.403 Amended; interim 11372
9.406–2 (a)(3) amended; (a)(4) redesignated as (a)(5); new (a)(4), (b)(3) and (4) added; interim 11372
9.407–2 (a)(5) redesignated as (a)(7); new (a)(5) and (6) added; interim 11373
10.001 Regulation at 56 FP 67131 confirmed; amended 11373
10.002 Regulation at 56 FR 67131 confirmed; (d) revised 11373
10.006 Regulation at 56 FR 67131 confirmed 11373
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14.201–6 (x) and (y) revised; interim 545
14.201–7 Regulation at 56 FR 67413 confirmed 11374
14.408–1 (a)(2) introductory text revised; interim 545
15 Clarification 11374
15.407 (l) and (m) revised; interim 545
15.804–2 Regulation at 56 FR 67413 confirmed 11374
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15.804–3 Regulation at 56 FR 67414 confirmed 11374
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15.804–6 Regulation at 56 FR 67414 confirmed 11374
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15.806–1 Regulation at 56 FR 67414 confirmed 11374
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15.808 Regulation at 56 FR 67414 confirmed 11374
15.1001 (c)(2) revised; interim 545
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19.001 Regulation at 57 FR 60580 confirmed 11376
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25.109 (d) and (f) revised; (g)(2) redesignated as (g)(3); new (g)(2) added; interim 545
25.201 Regulation at 57 FR 20375 confirmed 11377
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25.403 (a), (e) and (h) amended; (b) and (l) revised; interim 546
25.405 Introductory text, (d) and (e) amended; interim 546
25.406 Amended; interim 547
25.407 Heading revised; introductory text removed; (a) through (d) redesignated as (b) through (e); new (a), (f) and (g) added; new (d) amended; interim 547
25.408 (a)(1), (2) and (d) amended; (a)(3) and (4) added; (c) revised; interim 547
25.901 (c) revised 11378
25.1003 (a)(2) and (b)(2) amended; interim 547
31.205–18 (c)(2)(iii)(A) amended 11379
31.205–38 (c)(2)(iii) amended 11387

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33.210 Introductory text revised 11381
33.211 (a)(4)(v) revised; (e), (f) and (g) redesignated as (f), (g) and (h); new (e) added; interim 11382
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52.246–21 Amended 11388
52.247–66 Added 11386
53.203 (b) revised 11934
53.213 Heading amended 11388
53.214 (a) and (c) amended 11388
53.222 (e) amended 11388
53.301–254 Form revised 11388
53.301–255 Form revised 11388
53.302–333 Form revised 11388

Chapter 2—Department of Defense (Parts 200—299)

202.101 Amended; interim 27668
204.201 Introductory text removed; (1) and (2) added; interim 27668
204.670–6 (b)(2) amended; interim 27668
204.7003 (a)(1)(i)(J) amended; interim 27668
206.302–5 (b) revised; interim 36089
207.105 Regulation at 58 FR 32061 confirmed 27667
209.106–2 Regulation at 58 FR 28464 confirmed 27667
209.202 (a)(1) amended; interim 27668
209.402 Added; interim 27668
209.403 Amended; interim 27668
209.406–2 Regulation at 58 FR 28464 confirmed 27667
209.406–4 Regulation at 58 FR 28464 confirmed 27667
Removed; interim 27669
210.001 Amended; interim 27669
210.002–71 Regulation at 58 FR 32062 confirmed 27667

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210.011–70 (d) removed; interim 27669
210.070 Removed; interim 27669
214.406–3 (e)(i) revised; (e)(ix) added; interim 27669
215.605 Regulation at 58 FR 28465 confirmed 27667
(a) removed; (b) revised; interim 27669
215.804–3 (b)(3)(B)(2) revised; (b)(3)(B)(3) added; interim 27669
215.804–6 (b)(2)(A) amended; interim 27669
215.807 (b) added; interim 27669
215.871–3 (c) amended; interim 27669
215.971–3 (d)(2) amended; interim 27669
215.975 (b) table amended; interim 27669
217 Technical correction 26343
217.500 Added 22760
217.502 Revised 22760
217.503 Removed 22760
219 Technical correction 15501
219.000 Introductory text revised; interim 27670
219.301 (a) introductory text revised; interim 22131
219.502–1 Regulation at 58 FR 28465 confirmed 27667
219.502–2 Regulation at 58 FR 28465 confirmed 27667
219.502–2–70 (a)(1)(ii) revised; (a)(1)(iii) added; interim 24959
(a) introductory text and (c) revised; (d) added; interim 27670
219.504 (b) introductory text revised; interim 12192
219.602–1 Regulation at 58 FR 28465 confirmed 27667
219.705–2 Regulation at 58 FR 28465 confirmed 27667
Revised; interim 27670
219.808–1 (b)(iv) added; interim 27670
219.1005 (a) revised; interim 27670
219.1006 Regulation at 58 FR 28466 confirmed 27667
219.7100—219.7105 (Subpart 219.71) Revised; interim 27670
222.71 Heading revised; interim 36089
222.101–3 (3) amended; interim 27671
223.370–4 (b)(1)(ii) introductory text amended 27671
223.7100—223.7103 (Subpart 223.71) Regulation at 58 FR 28466 confirmed 27668
225 Technical correction 26343
225.000–70 (m) revised; interim 1289
Regulation at 59 FR 1289 comment period extended 5335
225.000–71 (a)(2) and (c)(1) revised; interim 1289
Regulation at 59 FR 1289 comment period extended 5335
225.105 (3) and (5)(ii)(A) revised; interim 1289
Regulation at 59 FR 1289 comment period extended 5335
225.109 (a) revised; interim 1289
Regulation at 59 FR 1289 comment period extended 5335
225.302 (b)(1) amended 27671
225.401 Revised; interim 1289
Regulation at 59 FR 1289 comment period extended 5335
Amended 23169
225.402 (c)(i) and (ii) revised; interim 1289
Regulation at 59 FR 1289 comment period extended 5335
225.403 (m)(4) added 23169
225.403–70 Amended; introductory text revised; interim 1289
Regulation at 59 FR 1289 comment period extended 5335
Amended 23169
225.407 Redesignated as 225.408; interim 1289
Regulation at 59 FR 1289 comment period extended 5335
225.408 Redesignated from 225.407; (a)(1) and (2)(A) amended; (a)(3) and (4) added; interim 1289
Regulation at 59 FR 1289 comment period extended 5335
225.602 (3)(ii) revised; interim 1290
Regulation at 59 FR 1290 comment period extended 5335
225.603 (1)(ii)(C) added; (1)(iii)(C)(3) revised; interim 1290
Regulation at 59 FR 1290 comment period extended 5335
225.605–70 (c) redesignated as (d); new (c) added; interim 1290
Regulation at 59 FR 1290 comment period extended 5335
225.702 Revised 27671

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225.703 Removed 27671
225.704 Removed 27671
225.704-70 Removed 27671
225.7002 Revised 27671
225.7002-1(c) added 27671
225.7002-2 (a), (d) and (i) revised; interim 27671
225.7002-4 Introductory text and (d) added; interim 27671
225.7003 Removed; interim 27671
225.7003-1 Removed; interim 27671
225.7003-2 Removed; interim 27671
225.7004 (a) amended; interim 27671
225.7007 (a) amended; interim 27672
225.7010 Introductory text amended; interim 27672
225.7011 Revised; interim 27672
225.7011-1 Amended; interim 27672
225.7011-2 (a) and (c) amended; interim 27672
225.7011-4 (b) introductory text amended; interim 27672
225.7011-5 Amended; interim 27672
225.7014 Removed 10579
Removed; interim 27672
225.7014-1 Removed 10579
Removed; interim 27672
225.7014-2 Removed 10579
Removed; interim 27672
225.7014-3 Removed 10579
Removed; interim 27672
225.7016-1 Introductory text amended; interim 27672
225.7018 Regulation at 58 FR 28468 confirmed 27668
225.7018-1 Revised; interim 27672
225.7018-3 Revised; interim 27672
225.7019 Regulation at 58 FR 28468 confirmed 27667
225.7020 Added; interim 27672
225.7020-1 Added; interim 27672
225.7020-2 Added; interim 27672
225.7021 Added; interim 11729
225.7022 Added; interim 19146
226.7000 Revised; interim 27672
226.7005 (a)(1) revised; interim 22131
226.7100—226.7103 (Subpart 226.71) Added; interim 12192
226.7100 Corrected 15501
226.7103 (c)(2) corrected 15501
226.7200 (Subpart 226.72) Added; interim 36089
231 Authority citation revised 26144
231.100-70 Revised; interim 27672
231.205-18 (c)(2) introductory text amended; interim 27672
231.205-22 Regulation at 58 FR 28469 confirmed 27667
231.303 (Subpart 231.3) Added; interim 26144
231.7000—231.7002-6 (Subpart 231.70) Regulation at 58 FR 28469 confirmed 27668
231.7000 Revised; interim 27672
231.7001 Amended; interim 27672
231.7002-1 (a)(1)(i) and (b) revised; interim 27673
231.7002-2 (c) redesignated as (b); new (b) introductory text amended; interim 27673
231.7002-3 (b)(1) amended; interim 27673
231.7002-4 (b) amended; interim 27673
231.7002-5 (c)(1) amended; interim 27673
232.501-1 (a)(i) revised; interim **62046**
232.502-1-71 Table 32-1 revised; interim **62046**
Table corrected **64353**
233.104 (Subpart 233.1) Removed; interim 27673
233.7000 Regulation at 58 FR 28470 confirmed 27668
(a) revised; interim 27673
235.006 (b)(i)(C)(*1*) introductory text, (ii) and (iii) revised; interim 27673
235.015 Revised; interim 27673
235.015-71 (i)(3) revised; interim 27673
236.602-1 (a)(i)(6)(C) added; interim 27673
237.171 Regulation at 58 FR 28471 confirmed 27667
237.171-1 Regulation at 58 FR 28471 confirmed 27667
237.171-2 Regulation at 58 FR 28471 confirmed 27667
237.7400—237.7402 (Subpart 237.74) Added; interim 36089
242.205 (1) revised; interim 27673
242.1203 (b)(1) amended; interim 27674
243.205-70 Revised; interim 27674
245.310 (c)(ii)(A) amended; interim 27674
245.505-14 Revised; interim 27674
245.607-2 Revised; interim 27674
247.105 (a)(iii)(A) revised; (a)(iii)(D) amended; interim 27674

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247.571 (c) redesignated as (e); new (c) and (d) added; interim 10580
247.573 (d) added; interim 10580
248.270 Amended; interim 27674
249.105-1 Introductory text amended; interim 27674
249.7001 (b)(1), (4) and (12) revised; interim 27674
249.7003 Revised; interim 27674
250.201 (b) amended; interim 27675
250.303 (5) and (13) amended; interim 27675
251.106 Removed; interim 27675
252 Technical correction 26343
252.203-7001 (h) amended; interim 27675
252.210-7005 Removed; interim 27675
252.217-7026 Amended; interim 27675
252.219-7000 Amended; interim 22131
252.219-7001 Amended; interim 24959
252.219-7002 Amended; interim 24959
252.219-7003 Amended; interim 22131, 27675
252.219-7006 Amended; interim 22131, 24959
252.219-7008 Removed; interim 27675
252.219-7009 Regulation at 58 FR 28472 confirmed 27667
252.223-7002 Amended; (a)(2)(iv) and (v) redesignated as (a)(2)(v) and (vi); new (a)(2)(iv) added; (b)(1) revised; interim 27675
252.223-7006 Regulation at 58 FR 28472 confirmed 27668
Introductory text amended; interim 27675
252.225-7001 Amended; interim 1290
Regulation at 59 FR 1290 comment period extended 5335
252.225-7006 Amended; heading revised; interim 1290
Regulation at 59 FR 1290 comment period extended 5335
252.225-7007 Amended; heading revised; interim 1290
Regulation at 59 FR 1290 comment period extended 5335
(c) and (d) corrected 8041
252.225-7010 Introductory text revised; interim 1291
Regulation at 59 FR 1291 comment period extended 5335
252.225-7011 Removed; interim 27675
252.225-7012 Amended; interim 27675
252.225-7015 Introductory text amended; interim 27675
252.225-7016 Regulation at 58 FR 28473 confirmed 27667
252.225-7018 Amended; interim 27675
252.225-7023 Removed 10579
Removed; interim 27675
252.225-7025 (f) amended; interim 27675
252.225-7031 Introductory text amended; interim 27675
252.225-7033 Regulation at 58 FR 28474 confirmed 27668
252.225-7034 Added; interim 27675
252.225-7035 Added; interim 1291
Regulation at 59 FR 1291 comment period extended 5335
252.225-7036 Added; interim 1291
Regulation at 59 FR 1291 comment period extended 5335
252.225-7037 Added; interim 1292
Regulation at 59 FR 1291 comment period extended 5335
(f)(2)(iv) corrected 8041
252.225-7038 Added; interim 11729
252.225-7039 Added; interim 19146
Technical correction 26343
252.226-7000 Amended; interim 22131
252.226-7001 Amended; interim 22131
252.227-7013 Amended; interim 27676
252.231-7001 Regulation at 58 FR 28474 confirmed 27668
Amended; interim 27676
252.232-7004 Amended; interim **62046**
252.233-7000 Regulation at 58 FR 28475 confirmed 27668
Amended; interim 27676
252.234-7000 Amended; interim 27676
252.234-7001 Amended; interim 27677
252.237-7020 Regulation at 58 FR 28475 confirmed 27667
252.237-7021 Regulation at 58 FR 28475 confirmed 27667
252.237-7022 Added; interim 36090
252.243-7000 Revised; interim 27677
252.245-7001 Added; interim 27677
252.247-7025 Added; interim 10580
252.248-7000 Revised; interim 27677
252.249-7002 Revised; interim 27677
253.204-70 (b)(12)(iii)(B) amended; interim 27677
253.215-70 Note amended; interim 27677, 27678
Chapter 2 Appendix F amended; interim 27670

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Appendixes B and F amended; Appendix G revised; interim 27678
Appendix H added; interim 27700
Appendix I added; interim 27701

Chapter 5—General Services Administration (Parts 500—599)

501.105 Amended **52443**
501.603–3 Revised **58284**
501.603–4 Revised **58284**
501.603–70 (c) and (f) introductory text amended; (d)(1), (2), (4), (h)(1)(i), (4), (i)(1), (2) and (3) revised **58284**
(h)(1)(v) revised **64694**
501.670 Removed **52443**
501.670–1 Removed **52443**
501.670–2 Removed **52443**
501.670–3 Removed **52443**
501.670–4 Removed **52443**
501.670–5 Removed **52443**
501.670–6 Removed **52443**
501.704–70 (b)(2) removed **52443**
503.104–8 Revised **52443**
507.305 Removed **52443**
508.307–1 Revised **52443**
508.705–72 Removed **52443**
509.106–1 Removed **52443**
509.106–2 Revised **64694**
509.405 Removed **52443**
511.001 Removed **52443**
514.201–72 Removed **52443**
514.208 Removed **52443**
514.402–1 (i) revised **52443**
514.404–1 (b) revised **52443**
514.407–2 Removed **52443**
515.170 Removed **52443**
515.402 Revised **52443**
515.403 Removed **52443**
515.405–1 Revised **52443**
515.414–70 (a) revised **52443**
515.506–1 Removed **52443**
516.505 Revised 32384
519.705–5 (d) revised **52444**
519.705–6 (a) revised; (c) removed **52444**
519.770–1 (b)(2)(i) revised **52444**
519.770–3 (a) revised **52444**
522.407 Removed **52444**
525.10 Removed **52444**
525.203 Revised; eff. 1–1–94 through 12–31–94 ..... **69243**
Corrected 5484
525.205 Revised; eff. 1–1–94 through 12–31–94 ..... **69244**
525.402 (a) amended; eff. 1–1–94 through 12–31–94 ..... **69244**
528.102–3 Removed **52444**
528.106–70 Removed **52444**
528.202 Revised **52444**
529.401–70 Revised **52444**
529.401–71 Removed **52444**
532.803 Removed **52444**
533.105 (a)(1)(iii), (2) and (4) revised 22520
(a) corrected 29480
533.7103–1 (b)(1) and (4) revised 22520
Correctly designated 29480
536.201 Revised **52445**
536.203 Revised **52445**
536.206 Removed **52445**
536.303 Removed **52445**
536.303–70 Revised **52445**
536.303–71 (g) removed **52445**
536.303–72 (c) removed; (d) redesignated as (c) **52445**
538.203–71 (c) added **54524**
(d) added; interim 3657
542.302 (c) removed; (d) redesignated as (c) **52445**
543.202 Revised **52445**
552 Technical correction 5484
552.207–70 Removed **52445**
552.216–73 (a) amended 32384
552.216–74 Added 32385
552.222–82 Removed **52445**
552.225–8 Revised; eff. 1–1–94 through 12–31–94 ..... **69244**
552.225–9 Revised; eff. 1–1–94 through 12–31–94 ..... **69244**
552.225–75 Revised; eff. 1–1–94 through 12–31–94 ..... **69245**
552.228–70 Introductory text revised **52446**
552.238–74 Added **54524**
552.238–75 Added 3657
552.246–70 Amended **64694**
Amended 15134
570.208–1 (c) removed **52446**

Chapter 7—Agency for International Development (Parts 700—799)

701.105 Revised (OMB numbers) 33445
701.376–4 Amended 33445
701.470 (a)(2) amended 33445
701.601 (b)(4) amended 33445
702.170–13 (a) and (b) revised 33445
703.403 Amended 33446
706.501 Revised 33446

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710.070 (b) amended 33446
715.504 (a) revised 33446
725.705 Revised 33446
728.105–1 (b) amended 33446
728.307–70 Added 33446
737.270 Amended 33446
749.111–71 (b) amended 33446
750.7109–1 Amended 33446
750.7110–1 Amended 33446
750.7110–2 Amended 33446
750.7110–3 Amended 33446
752.225–9 Amended 33447
752.228–70 Added 33447
752.232–70 Introductory text amended 33447
752.7004 Amended 33447
752.7017 Revised 33447
752.7026 Amended 33447
752.7029 Amended **58596**
752.7033 Amended; (b)(1) revised **58596**
753.1 Amended 33447
Chapter 7 Appendix D revised **58596**
Appendix J revised **58611**
Appendix H amended 33447

Chapter 8—Department of Veterans Affairs (Parts 800—899)

836.513 Corrected **58730**
852 Technical correction **58730**

Chapter 9—Department of Energy (Parts 900—999)

901.103–70 (a) amended 9103
901.104–1 (a)(2) amended 9103
901.107 Added 9103
901.201–1 (b) and (d) amended 9103
901.301 (b) introductory text amended 9103
901.570 (b) amended 9103
901.601 Amended 9103
901.602–3 (b)(3), (c)(7)(ii) and (iv) amended 9103
901.603–1 Amended 9103
901.603–71 (a) amended 9103
901.603–72 (a) amended 9103
902.101 Amended 9103, 9104
903.104–11 Added 11198
903.203 (a) amended 9104
903.303 (a) amended 9104
903.603 (a) amended 9104
904.401 Amended 9104
904.403 (a) and (c) amended 9104
904.404 (d)(3) amended 24358
904.601 (c) amended 9104
904.601–70 (b) introductory text amended; (b)(4) removed 9104
904.601–71 (a) and (b) amended 9104
(b) amended 24358
904.702 (b) amended 9104
904.805 Amended 9104
904.7000 Amended 9104
904.7001 Amended 9104
904.7002 Amended 9104
904.7003 (c) amended 9104
904.7004 Amended 9104
904.7100—904.7103 (Subpart 904.71) Added; interim **59684**
Regulation at 58 FR 59684 confirmed 6221
905.403 (a) amended 9104
905.403–70 Introductory text amended 9104
(c) removed 24358
905.404–1 Amended 9104
906.303–1 (a) amended 9104
907.102 Amended 9104
907.401 (f) amended 9104
907.402–70 (b) introductory text, (3), (c)(1)(iv) and (4) amended 9104
908.307 (b) amended 9104
908.802 (b) amended 9104
908.1170 (a) and (b) amended 9104
908.7101–2 (c) amended 9104
908.7101–3 Amended 9104
908.7101–4 (b) amended 9104
908.7101–5 Amended 9104
908.7101–6 (a) amended 9104
908.7101–7 (b) amended 9104
908.7107 (i) amended 9105
908.7108 (b) amended 9105
908.7112 Amended 9105
908.7115 (a) amended 9105
908.7116 (b) amended 9105
908.7121 (b) amended 9105
912.300 Amended 9105
912.302 (e) amended 9105
912.304 (c) amended 9105
913 Heading amended 9105
913.505–1 (b)(2) amended 9105
913.505–3 (d)(1) amended 9105
914.201–5 (a)(1) amended 9105
(b) removed 24358
914.406–3 (e) amended 9105
914.407–8 Removed 9105
914.407–70 Removed 9105
914.408–2 Amended 9105
915.406–5 (a)(1) and (2)(iv) amended 9105
(d) removed 24358

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915.502 (a)(iv) and (b) amended 9105
915.504 (b)(6)(ii), (iv) and (vi) amended 9105
915.506 (b) amended 9105
915.506-2 (a) and (e) amended 9105
915.801 Amended 9105
915.804-3 (b)(2)(iii), (c)(8), (g) and (i) amended 9105
915.804-6 (e) and (i) amended 9105
915.805-5 (c)(1) amended 9105
915.807 (d)(5)(h) amended 9105
915.903 (f) amended 9105
915.970-4 (c) amended 9105
915.970-8 (b)(1) and (h)(1) amended; (b)(2)(iv)(C) redesignated as (c) 9105
915.971-4 (h) amended 9105
915.1003 (a) amended 9105
916.203-4 (d)(2) amended 9105
916.207-3 (d) amended 9105
916.306 (c)(2) amended 9105
916.404-2 (d) amended 9105
916.405 (e) amended 9105
917.71 Removed 24358
917.504 (b)(9)(i) amended 9105
917.7003 (b)(3) and (e) amended 9105
917.7006 Amended 9105
917.7200 (b) amended 9105
917.7300 (b) amended 9105
917.7301-4 (a)(9) amended 9105
917.7303 (b) amended 9105
917.7401 Amended 9105
917.7402 (c)(3) amended 9105
917.7403 (b) amended 9105
917.7502 (b) amended 9106
919.201 (c) amended 9106
919.501 (c) amended 9106
919.705-2 (a) amended 24359
919.705-6 Amended 9106
919.708 (c) amended 9106
920.102 Amended 9106
920.106 Revised 9106
922.103-4 (d)(1) amended 9106
922.470 (a) amended 9106
922.471 (e) and (g)(2)(iii) amended 9106
922.473 (a) and (b) amended 9106
922.608-5 Amended 9106
922.800 Amended 9106
922.804-2 (a)(1) amended 9106
923 Heading revised 9106
923.7001 (a) amended 9106
923.7002 (b) introductory text and (d) amended 9106
924.103 (b)(2) amended 9106
924.202 (b) amended 9106
925.108 (b) amended 9106
925.204 (d) designation removed 9106
925.702 (Subpart 925.7) Added; interim **59684**
Regulation at 58 FR 59684 confirmed 6221
925.901 (Subpart 925.9) Revised 9106
928.202-70 Amended 9106
932.501-2 (a)(3) amended 9106
932.803 (d) amended 9106
932.970 (a)(1), (2), (b) heading, (1) and (2) amended 9106
932.7003 (a) amended 9106
932.7004-2 (d) amended 9106
932.7004-3 (b) amended 9106
933.103 (a), (d)(5) and (e) amended 9106
933.104 (a)(3), (4)(iii), concluding text, (5)(i), (6), (b) and (c)(2) amended 9106
933.105 (a)(1)(ii), (g) and (h) amended 9107
933.170 (b) through (e) amended 9107
935.016-3 Amended 9107
935.016-4 (b)(5), (c) and (d) amended 9107
935.016-5 (b)(1)(ii) amended 9107
935.016-6 (a) amended 9107
935.016-7 (d)(4) amended 9107
935.016-8 (a)(5), (e)(1), (10) and (11) amended 9107
935.016-9 Introductory text amended 9107
935.070 Amended 9107
936.70 Removed 24359
936.73 Removed 24359
936.202 (a) amended 9107
936.601 Amended 9107
936.602-3 (c)(5) amended 9107
936.602-4 (b) amended 9107
936.603 Amended 9107
936.605 (c)(1) and (3) amended 9107
936.606 (f) amended 9107
936.702 (Subpart 936.7) Heading revised 9107
936.7002-3 (a) amended 9107
936.7003-1 Amended 9107
937.205 (Subpart 937.2) Heading revised; redesignated as 937.207 9107
937.207 (Subpart 937.2) Redesignated from 937.205; heading revised; (b) designation and (7) removed 9107

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942.003 (b) amended 9107
942.101 (b) amended 9107
942.705-1 (a)(3) amended 9107
942.705-3 Amended 9107
942.705-4 Amended 9107
942.705-5 Amended 9107
942.708 Undesignated text designated as (b) 9107
942.803 (c)(3)(vii) amended 9107
942.1401 Amended 9107
942.1402 (a)(2) amended 9107
942.1403-1 (a) and (c)(1) amended 9107
942.1403-2 (a) amended 9107
943.170 (g) introductory text, (1) and (3) amended 9107
943.301 (c) amended 24359
944.302 (a) and (c) amended 9107
944.305-1 (a) amended 9107
944.307 (b) amended 9107
945.102-70 Introductory text and (c) amended 9107
945.104-70 (a)(5), (6), (7) and (11) amended 9108
945.303-1 Introductory text amended 9108
945.304 (c) and (d) amended 9108
945.505-14 Table amended 9108
945.570-2 (a), (b)(1), (2) and (g) introductory text amended 9108
945.607-2 (b) amended 9108
945.608-2 (b)(1)(ii) amended 9108
945.608-6 (a) and (b) amended 9108
949.111 (a) and (c) amended 9108
949.501 (a) designation removed; amended 9108
950.104 Amended 9108
950.7003 (b) amended 9108
950.7006 (a) amended 9108
950.7101 (a), (c)(2), (d), (e) and (g) amended 9108
951.102 (a) and (c)(1) amended 9108
951.102-1 (Subpart 952.1) Heading and (a) amended 9108
952.1 Removed 24359
952.202-1 Amended 9108
952.204-2 Amended 9108
952.204-70 Introductory text amended 9108
952.204-71 Amended 9108
952.204-72 Introductory text amended 9108
952.204-73 Amended; interim **59684**
Regulation at 58 FR 59684 confirmed 6221
Amended 9108
952.208-7 Introductory text amended 9108
952.208-70 Introductory text amended 9108
952.209-70 Amended 9108
952.209-71 Amended 9108
952.212-70 Introductory text amended 9109
952.212-71 Introductory text amended 9109
952.212-72 Amended 9109, 24359
952.212-73 Introductory text amended 9109
952.215-22 Amended 9109
952.215-70 Amended 9109
Removed 24359
952.216-15 Amended 9109
952.223-71 Amended 9109
952.223-72 Amended 9109
952.223-75 Introductory text amended 9109
952.224-70 Amended 9109
952.227-71 Amended 9109
952.227-75 Amended 9109
952.227-76 Amended 9109
952.227-77 Amended 9109
952.227-78 Amended 9109
952.227-79 Introductory text amended 9109
952.227-80 Introductory text amended 9109
952.227-82 Amended 9109
952.233-2 Amended 9109
952.235-70 Amended 9109
952.236-70 Amended 9109
952.236-71 Amended 9109
952.236-72 Introductory text amended 9109
952.249-70 Amended 9109
952.251-70 Amended 9109
970.0000 Amended 9109
970.0001 (b) introductory text amended 9109
970.0404-1 Amended 9109
970.0404-2 (b), (d)(2)(i) and (ii) amended 9109
970.0404-3 (a) and (b) amended 9109
970.0404-4 (d) added; interim **59684**
Regulation at 58 FR 59684 confirmed 6221
(a)(3) removed 24359
970.0406 Amended 9109
970.0803 (b) amended 9109
970.0905 Amended 9109
970.1001 Amended 9109
970.1509-1 (b) amended 9109

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970.1509–2 Heading amended 9109
970.1509–4 (b)(6) amended 9109
970.1509–6 (b)(1)(iii) and (e) amended 9109
970.1509–8 (d) table, (e) and (g) amended 9109
970.2201 (a) and (b)(3) amended 9109
970.2271 (b)(1), (2) and (3) amended 9110
970.2272 (b)(2) amended 9110
(a) amended 24359
970.2273 (a)(7), (8), (b) introductory text, (3), (c)(1)(iv), (2) and (d) amended 9110
970.2303–2 (e) added 5531
(d) amended 9110
970.2901 (b) amended 9110
970.2902 Introductory text amended 9110
970.3001–2 Amended 9110
970.3101–1 (c) amended 9110
970.3101–2 (b)(1) amended 9110
970.3102–1 (b) and (c) amended 9110
970.3102–2 (h)(2)(ii), (l)(2)(iv), (6)(iv), (7) heading, (i)(A) and (ii) amended 9110
970.3102–5 (a) amended 9110
970.3102–9 Amended 9110
970.3102–17 (a)(1) and (b) introductory text heading amended 9110
970.3102–18 Amended 9110
970.3102–19 (d) introductory text, (5) concluding text, (e)(1) and (2)(iii) amended 9110
970.3102–20 Revised **61628**
(d) amended 9110
970.3102–21 (b)(3) introductory text and concluding text amended 9110
970.3102–22 Amended 9110
970.3103 (c) added **61628**
970.3201 Amended 9110
970.3271 Amended 9110
970.5101 (c) amended 9110
970.5203–1 Amended 9110
970.5203–2 Amended 9110
970.5203–3 Amended 9110
970.5204–1 Amended 9110
970.5204–2 Introductory text added 9110
970.5204–4 Amended 9110
970.5204–5 Revised 9110
970.5204–6 Amended 9110
970.5204–8 Amended 9110
970.5204–9 Amended; introductory text added 9110
970.5204–11 Introductory text added 9110
970.5204–12 Introductory text added 9110
Amended 24359
970.5204–13 (e)(33) revised **61628**
Amended; introductory text added 9110
970.5204–14 (e)(31) revised **61628**
Amended; introductory text added 9110
970.5204–15 Amended; introductory text added 9111
970.5204–16 Introductory text added 9111
970.5204–17 Amended; introductory text added 9111
970.5204–18 Amended; introductory text added 9111
970.5204–19 Introductory text added 9111
970.5204–21 Amended; introductory text added 9111
970.5204–22 Introductory text added 9111
970.5204–23 Introductory text added 9111
970.5204–24 Amended; introductory text added 9111
970.5204–25 Introductory text added 9111
970.5204–26 Introductory text amended 9111
970.5204–28 Introductory text added 9111
970.5204–29 Introductory text added 9111
970.5204–30 Revised 9111
970.5204–31 Amended; introductory text added 9111
970.5204–32 Amended 9111
970.5204–33 (a) and (b) amended 9111
970.5204–34 Amended 9111
Removed 24359
970.5204–35 Heading amended; introductory text added 9111
Amended 24359
970.5204–36 Heading amended; introductory text added 9111
970.5204–37 Amended 9111
970.5204–38 Amended 9111
970.5204–41 Amended 9111

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970.5204–42 Introductory text added 9111
970.5204–43 Amended; introductory text added 9112
970.5204–45 Amended; introductory text revised; amended 9112
970.5204–50 Amended 9112
970.5204–52 Amended 9112
970.5204–54 Amended; introductory text added 9112
970.5204–55 Amended; introductory text added 9112
970.5204–56 Amended; introductory text added 9112
970.5204–57 Amended 9112
970.5204–58 Introductory text amended 9112
970.5204–60 Amended 9112
970.5204–61 Added **61628**
Amended; introductory text added 9112
970.5204–62 Added 5531
970.7102 Amended 9112
970.7104–7 Table amended 9112
970.7104–9 (b) amended 9112
970.7104–12 (a) amended 9112
970.7104–19 (b) amended 9112
970.7104–22 (a) amended 9112
970.7104–24 Amended 9112
970.7104–25 Amended 9112
970.7104–27 (a)(2) amended 9112
970.7104–28 (c) and (d) amended 9112
970.7107 (e), (f) and (g) amended 9112
970.7108 (a), (c) and (h) amended 9112
971.101 Amended 9113
971.102 Amended 9113
971.103 (a) introductory text and (b) amended 9113
971.202 Amended 9113

Chapter 15—Environmental Protection Agency (Parts 1500—1599)

1501.301 Amended 18976
1501.370 Revised (OMB numbers) 18619
Heading revised; table amended (OMB numbers) 32134
1501.602–3 (c)(2) and (3) amended 18976
1502.1 Revised 18977
1503.301 Amended 18976
1503.408–1 Amended 18976
1503.409 Amended 18976
1503.502 Amended 18976
1506.202 Amended 18976
1509.170–4 (b)(1), (2), (3), (d), (e) and (f) amended 18976
1509.505–70 Redesignated from 1509.506 18619
1509.506 Redesignated as 1509.505–70; new 1509.506 redesignated from 1509.507 and (b) amended 18619
(b) amended 18976
1509.507 Redesignated as 1509.506 18619
1509.507–1 Redesignated from 1509.508; heading revised, (a)(1) and (b) amended; (c) removed 18619
1509.507–2 Added 18619
1509.508 Redesignated as 1509.507–1; new 1509.508 redesignated from 1509.509 18619
1509.509 Redesignated as 1509.508 18619
1510.007 Amended 18976
1510.011–80 Added 18619
1512.104 (b) amended 18619
1514.201–7 Amended 18976
1514.404–1 Amended 18976
1515.604 (a) amended 18976
1515.608 (e) amended 18976
1515.609 (b) amended 18976
1515.610–70 (b) amended 18976
1515.612 (a)(1) introductory text, (i), (ii) and (2) introductory text amended 18976
1515.804–3 Amended 18976
1515.902 (c) amended 18976
1515.1003 Amended 18976
1516.404–276 (a) introductory text amended 18976
1516.404–277 Introductory text amended 18976
1516.603–3 Amended 18976
1517.202 (a) amended 18976
1522.608–4 Amended 18976
1522.803 Amended 18976
1522.1306 Amended 18976
1522.1403 Amended 18976
1527.409 Added 18620
1530.304 Amended 18976
1531.101 Amended 18976
1532.102 Amended 18977
1533.209 Amended 18977

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1533.212 (a)(3) and (b)(4) amended 18977
1536.201 (d) and (e) amended 18977
1536.209 (c) amended 18977
1536.602–2 Revised 18977
1536.602–4 Amended 18977
1542.705–1 (a) and (b)(I)(i) amended 18977
1542.708 (c) amended 18977
1542.1202 (a) and (b) amended 18977
1542.1203 (c) amended 18977
1545.403 amended 18977
1552.209–70 Introductory text amended 18620
1552.209–71 Amended 18620
1552.209–72 Introductory text amended 18620
1552.209–73 Added 18620
1552.209–74 Added 18620
1552.210–80 Added 18623
1552.212–71 Amended 18624
1552.227–76 Added 18624
1552.242–70 (a) amended 18977

Chapter 16—Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)

1601 Technical correction 28487
1601.102 Existing text designated as (a); (b) added 14764
1602 Technical correction 28487
1602.170–11 Revised 14764
1609 Technical correction 28487
1609.470—1609.471 (Subpart 1609.4) Added 14764
1609.701 Redesignated as 1609.7001 14764
1609.7001 Redesignated from 1609.701 14764
(a)(7), (b)(7) and (8) added 14765
1615 Technical correction 28487
1615.802 (a) and (c) redesignated as (a)(1) and (2); new (a)(1) and (b)(3) revised; (b)(4) added 14765
1615.804–70 Revised 14765
1632 Technical correction 28487
1632.617 Revised 14765
1633—1649 (Subchapter G) Heading added 14765
1642 Added 14765
Technical correction 28487
1646 Technical correction 28487
1646.270 (Subpart 1646.2) Added 14767
1646.301 (Subpart 1646.3) Heading added 14767
1652 Technical correction 28487
1652.000 Amended 14767
1652.370 Table amended 14767

Chapter 18—National Aeronautics and Space Administration (Parts 1800—1899)

1801.105 (a) table amended (OMB numbers) 12193
1801.370 (a)(1)(i), (ii), (iii), (2)(i), (iv), (5) and (b) revised 12193
(a)(1)(i) table, (ii) table and (b) table amended 21667
1801.601—1801.670 (Subpart 1801.6) Heading revised 29961
1801.602–3 (b)(1) designation and (2) removed; (b)(i) through (iv) redesignated as (b)(1) through (4) 12194
1801.670 (b) amended 21667
1802.101 Amended 29961
1804.402 Amended 12194
1804.404–70 Amended 12194
1804.601—1804.677–6 (Subpart 1804.6) Table 1804–1 added 12196
1804.671–3 Amended 12194
1804.671–4 Introductory text, (k), (n) table, (r), (s) and (u) table amended; (v) through (y) and (z) through (ttt) redesignated as (w) through (z) and (bb) through (vvv); new (vv) revised; new (oo)(7) redesignated as (oo)(8); (v), (aa) and new (oo)(7) added 12194
1804.675 Removed; interim 23801
1804.675–1 Removed; interim 23801
1804.676 Table 1804–1 removed 12195
1804.677 Removed 10079
1804.677–1 Removed 10079
1804.677–2 Removed 10079
1804.677–3 Removed 10079
1804.677–4 Removed 10079
1804.677–5 Removed 10079
1804.677–6 Removed 10079
1804.7102–4 (a) table amended 29961
1804.7103–2 Table amended 29961
1805.202 Existing text designated as (a); (b) added; interim **69246**
1805.207 (c) added **59188**
(a) amended 29961
1805.303–71 (b) introductory text revised; (b)(1) amended 29961
1807.002–71 Added 29963

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1807.103 (a)(1) and (b) revised; interim **61629**
1807.170–1 (a) revised; interim **58792**
(b)(11) amended; (d)(1)(i) revised; interim **61630**
(d)(4) added; interim 11200
(b)(1)(iv) and (v) revised; (b)(1)(vi) added 29963
1807.170–2 Revised 29963
1807.170–4 Added; interim **61630**
1807.7102 (a) amended; interim **61630**
(b) revised 29961
1807.7103–1 (b) amended; interim **61630**
1807.7103–2 (a) amended; interim **61630**
1807.7105 Removed; new 1807.7105 redesignated from 1807.7106 and revised; interim **61630**
1807.7106 Redesignated as 1807.7105; new 1807.7106 redesignated from 1807.7107; interim **61630**
1807.7107 Redesignated as 1807.7106; interim **61630**
1808.802 Amended 12197
1808.1100 Revised 12197
1809.200 Revised 12197
1809.500—1809.507–2 (Subpart 1809.5) Heading revised 29961
1810.002 Amended 12197
1814.201–70 Added 21667
1814.406–3 (a) revised 12197
1814.406–4 (a) designation and (b) removed 12197
1814.406–5 (b)(1) revised 12197
1815.406 (c) and (d) added; interim **61630**
(c) amended 11199
1815.406–71 Added 21667
1815.407–70 (j) and (k) added; interim **61631**
1815.570 Revised 12197
1815.610 Revised 10081
1815.611 Added **54299**
1815.613–70 Revised 10081
(c) amended 21667
1815.613–71 (b)(5)(i) revised; (b)(6) removed; (b)(7) and (8) redesignated as (b)(6) and (7) **54299**
(b)(4) revised; interim **61631**
(a) revised 10081
(b)(4)(i) and (ii) amended 11199
1815.613–72 Heading revised; text redesignated as (a); (b) added; interim **61631**
1815.804–3 (e)(3) amended; (e)(4) removed 29961
1815.807–70 (d)(1) revised 12197
1815.807–71 Amended 29961
1815.970–3 (b) amended 29961
1816.307–70 (h) added; interim 22521
1816.404 Revised **52446**
1816.405 Revised **52449**
1816.603–3 (a)(1) designation, (2), and (3) removed; (a) amended; (a)(1)(i) through (xi) redesignated as (a)(1) through (11) 12197
1817.504 (a) amended 12197
1819.505–70 Added; interim 38131
1822.103–4 Amended 29962
1822.870 (a) amended 29962
1823.7002 (c) revised 29962
1824.102 Revised 12197
1824.202 (a) revised 12197
1825.71 Removed 29962
1825.604 (e) amended 12197
1825.7003 Amended 29962
1825.7004 Amended 29962
1828.371 Revised; interim **54050**
1828.373 Removed; interim **54051**
1831.205–18 Added; interim 22521
1831.205–670 Added 12198
1831.205–671 Added 12198
1832.402–1 Amended 12198
1832.702–70 (d) amended 12198
1832.705–2 Removed 12198
1832.705–270 (b) amended 12198
1833.211 Regulation at 58 FR 44462 confirmed **53138**
1833.211–70 Regulation at 58 FR 44462 confirmed **53138**
1834 Revised; interim **58792**
1834.000 Amended 10080
1834.001 (b) amended 10080
1834.005–1 (b)(3) corrected **68687**
(a) revised 10080
1835.003 (c) revised 12198
1837.200 Revised 12198
1839.7003–4 (a)(6) added **59189**
1839.7003–5 (a)(2) revised 29962
1839.7008 Added **59189**
1842.173 Amended 12198
1842.202–72 Amended 12198
1842.270 Revised 21667
1842.801 Revised 38131
1842.7201—1842.7201 (Subpart 1842.72) Added; interim 23801
1843.101 Redesignated as 1843.7001; interim 29964
1843.101—1843.105 (Subpart 1843.1) Added; interim 23803

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Redesignated as 1843.7001—1843.7005 Subpart 1843.70); interim 29964
1843.102 Redesignated as 1843.7002; interim 29964
1843.103 Redesignated as 1843.7003; interim 29964
1843.104 Redesignated as 1843.7004; interim 29964
1843.105 Redesignated from 1843.7005; interim 29964
1843.7001 Redesignated from 1843.101; interim 29964
1843.7001–1843.7005 (Subpart 1843.70) Redesignated from 1843.101—1843.105 (Subpart 1843.1); heading revised; interim 29964
1843.7002 Redesignated from 1843.102; interim 29964
1843.7003 Redesignated from 1843.103; interim 29964
1843.7004 Redesignated from 1843.104; interim 29964
1843.7005 Redesignated from 1843.105; interim 29964
1845.302–1 (c) added; interim 13250
Regulation at 59 FR 13250 eff. date corrected to 3–21–94 27312
1845.302–70 Revised 12198
1846.270 (a) amended 12198
1847.200–70 Revised 12199
1852.103 (a)(1) amended 29962
1852.204–71 Removed; interim 23802
1852.204–72 Removed; interim 23802
1852.209–71 Introductory text revised 29962
1852.215–70 Amended; interim **61631**
1852.215–81 Added; interim **61631**
Amended 11199
1852.215–82 Added; interim **61632**
1852.215–83 Added; interim **61632**
1852.216–76 Revised **52449**
1852.216–77 Added **52449**
(d) added 21668
1852.216–83 Amended **52450**
1852.216–84 Amended **52450**
1852.216–85 Revised **52450**
1852.216–88 Added **52450**
1852.216–89 Added; interim 22521
Introductory text revised; interim 29964
1852.225–74 Removed 29962
1852.225–75 Removed 29962
1852.228–72 Revised; interim **54051**
1852.228–76 Revised; interim **54052**
1852.228–78 Added; interim **54051**
1852.231–71 Added 12199
1852.234–70 Added; interim **58794**
Amended 10080
1852.234–71 Added; interim **58794**
Amended 10080
1852.237–71 Amended 12199
1852.239–70 Added **59189**
Corrected **62556**
1852.242–70 Amended 21668
1852.242–73 Added; interim 23802
1852.242–74 Added; interim 23802
1853.204–70 Heading amended; (o) removed 10079
1853.242–72 Revised 38132
1870.103 Appendix I amended 12199
1870.303 Appendix I amended **54300**
Appendix I amended; interim **61632, 61633, 61634**
Appendix I amended 10079, 11200, 12199
1870.501—1870.503 (Subpart 1870.5) Added; interim **58795**
1870.502 Amended 10080
1870.503 Appendix I corrected **68687**
Appendix I amended 10081
1871 Added; eff. in part to 6–30–97 ..... **54300**
1871.102 (b) added (effective date pending) **54301**

Chapter 28—Department of Justice (Parts 2800—2899)

2801.601 Revised **68774**
2801.601–70 Removed **68775**
2801.602–70 Revised **68775**
2801.603 Revised **68776**
2801.603–2 (d)(3) correctly revised 13661
2802.102 (a) revised **68778**
2806.304 (a) amended **68778**
2806.501 (b) revised **68779**
2806.502 Revised **68779**
2807.102 (b) revised **68779**
2807.103 (a) revised **68779**
2807.170–1 (a) amended 10080
2807.7001 (b)(1) amended **68779**

Chapter 61—General Services Administration Board of Contract Appeals (Parts 6100—6199)

6101 Revised **69250**

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Chapter 99—Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget (Parts 9900—9999)

9903.201–1 (b) introductory text and (15) revised **58801**
9903.201–2 (a)(1), (2), (b)(1), (2) and (d) revised; (a)(3) removed 58801
(a)(2) and (b)(1) corrected **65556**
9903.201–3 Amended **58802**
Corrected **61844, 65556**
9903.201–4 (c)(1) revised **58802**
Corrected **65556**
9903.202–1 (b)(1), (2) and (c) revised **58802**
9903.301 Amended **58802**

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TITLE 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)

1.22 Revised 10061
1.23 Revised 10062
1.25 (b) amended 10063
1.26 (a) revised 10063
1.43 (c) amended 10061, 10063
1.45 (e)(2) amended 10061
1.47 (p)(2) amended 10061
1.48 (cc) amended 10061
1.56 Revised 10063
1.56a Revised 10063
1.56b Added 10064
1.57 (q) added 32134
1.57b Heading revised 10064
1.63 Heading and introductory text amended 10064
1.65 (c)(1) amended 10061
(c) introductory text amended 10064
1.66 (x) removed; (z) added 36988
7.11 Amended 10061
7.53 (c) amended 10061
7.97 (e) amended 10061
7 Appendix D revised **65824**
8.11 (b)(1) amended 10061, 10064
10 Authority citation revised **67697**
10.61 (a) amended **67697**
10 Appendixes A and D amended **67697**
Appendix A corrected 13662
19 Added; interim 15639
28.170 (i) amended 10061
37 Nomenclature change **63101**
37.3 Amended **63101**
37.7 (b) revised **63101**
37.9 (d) revised **63102**
37.15 Added 17447
37.47 (c)(1) revised **63102**
37.51 (c)(1) revised **63102**
37.87 (d) redesignated as (e); new (d) added **63102**
37.165 (g) revised **63103**
37.167 (j) added **63103**
37 Appendix A amended **38211**
38 Authority citation revised **63103**
38.113 Amended **63103**
38.125 (d)(2) revised **63103**
40 Authority citation revised 7354
40.1—40.19 Designated as Subpart A and revised 7354
40.21—40.39 Designated as Subpart B 7355
40.25 (f)(10) revised 7355
40.29 (b)(2) revised; (b)(3) added 7356
40.33 (e), (f) and (g) revised; (h) redesignated as (i); new (h) added 7356
40.51—40.83 (Subpart C) Added 7357

Chapter I—Research and Special Programs Administration, Department of Transportation (Parts 100—199)

107 Authority citation revised **51527**
Clarification **53626**
Filing requirements 22132
107.117 (a) amended **51527**
107.101—107.123 (Subpart B) Appendix B amended **51527**
107.202 (d) amended **51527**
107.315 (c) and (d) amended **51527**
107.327 (a)(1)(iii) amended **51527**
107.502 (f)(1) corrected; CFR correction 30530
107.601 (e) amended 32932
107.606 (d) amended **51527**
(f) amended 32932
107.608 (a) revised 32932
107.620 (c) redesignated as (d); new (c) added 32932
171 Authority citation revised **51527**
Clarification **53626**
Filing requirements 22132
171.6 (b)(2) table amended **51527**
171.7 (a)(3) table amended 28490, 38052
171.8 Amended **51528**
Amended 38052
171.9 (b)(4) amended **51528**
171.12 (b)(5) revised 38052
171.14 (b)(5) removed; (b)(6)(iii) added **66303**
171.15 Authority citation removed **51528**
172 Authority citation revised **51528**
172.101 Table amended **51528, 51529**
Appendixes A and B amended **51531**
Table amended 28491, 38052
Table corrected 35411, 37537
172.101 Appendix A amended 31823, 31824
172.102 (c)(1), (3) and (5) amended **51531**
(c)(1) and (3) introductory text amended 28493
(c)(3) amended 38064

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172.202 (a)(2) amended **51531**
172.203 (k) introductory text, (3), (4)(iii) and (iv) amended **51531**
172.322 (b) and (e)(2) revised 38064
172.400a (a)(6) amended **51531**
172.406 (a)(2) and (e)(1) amended **51531**
172.420 (a) illustration corrected; CFR correction 30530
172.422 (a) illustration corrected; CFR correction 30530
172.514 (c)(3) amended; (c)(4) added 38064
172.521 (a) illustration corrected; CFR correction 30530
172.525 (b) amended **51531**
172.526 (b) amended **51531**
172.546 (a) illustration corrected; CFR correction 30530
172.556 (b) amended **51531**
(a) illustration corrected; CFR correction 30530
173 Authority citation revised **51531**
Clarification **53626**
173.2 Table amended **51531**
173.3 (c) introductory text amended **51531**
173.4 (a) introductory text, (2) introductory text and (11) amended **51531**
173.7 (a) introductory text amended **51532**
173.10 (d) and (e) amended **51532**
173.21 (b) and (j) amended **51532**
173.22 (a)(3)(i) amended **51532**
173.24 (d) amended 38064
173.24a (b)(4)(i) amended **51532**
173.25 (a) introductory text amended **51532**
173.31 (c)(9) amended **51532**
173.32 (d) and (e)(1)(ii) revised 38064
173.33 (c)(4) and (d)(1) amended 1786
Regulation at 59 FR 1786 effective date confirmed 12861
173.34 (e)(16) introductory text and (v) amended **51532**
(e)(15)(i) revised; (v) and (17)(ii) amended 28493
173.35 Added 38064
173.56 (b)(2) introductory text and (i) amended **51532**
173.57 (a) introductory text amended **51532**
173.62 (b) amended **51532**
173.115 (a) introductory text and (2) amended **51532**
173.124 (b)(2) amended **51532**
173.127 (a) amended **51532**
173.128 (a) introductory text amended **51532**
173.132 (b)(1) amended **51532**
173.133 (b)(1)(ii) amended **51532**
173.136 (a) introductory text amended **51532**
173.151 (b)(2) amended **51532**
173.159 (g)(1) amended **51532**
173.225 (b) table amended **51532**
(b) table amended 28493
(b) table amended; (e)(5) added 38065
173.240 (d) added 38067
173.241 (d) added 38067
173.242 (d) added 38067
173.243 Heading revised; (d) and (e) added 38068
173.247 (g)(1)(ii) and (iii)(B) amended **51532**
(g)(1)(iii)(B) revised 28493
173.301 (g)(5) amended **51532**
173.302 (h) amended 28493
173.304 (d)(3)(i) amended **51532**
(g) amended 28493
173.306 (i) introductory text amended **51532**
(a)(3) introductory text amended 28493
173.315 (a) table amended **51532**
173.318 (b)(3)(ii) amended **51532**
173.323 (f) amended **51532**
173.417 (b)(2)(ii) Table 5 amended **51533**
173.420 (a)(2)(i) and (b) amended 28493
173.433 (b)(4) amended **51533**
173 Appendixes B, D and E amended **51533**
174 Authority citation revised **51533**
174.1 Amended **51533**
174.25 (a)(2)(ii) amended **51533**
(c) amended 28493
174.55 (c) amended **51533**
174.82 (a) amended **51533**
174.290 Heading amended **51533**
174.430 Amended **51533**
174.700 (c) table amended **51533**
175 Authority citation revised **51533**
175.320 (a) table and (c) introductory text amended **51533**
176 Authority citation revised **51533**

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176.5 (b) introductory text amended **51533**
176.83 (f)(4) amended **51533**
(c)(2)(ii) illustration and (iii) illustration corrected; CFR correction 30530
(c)(2)(iv) illustration and (v) illustration corrected; CFR correction 30531
176.100 Amended **51533**
176.118 (b) amended **51533**
176.410 (c)(2) amended **51533**
177 Authority citation revised **51533**
177.825 Revised **51533**
177.834 (j) amended **51533**
177.838 (g) amended **51533**
177.857 (d) amended **51533**
177.858 (b)(1) amended **51533**
178 Authority citation revised **51533**
Clarification **53626**
178.39–9 (a) amended **51533**
178.39–14 (b) amended **51534**
178.46–12 (e) redesignated as (c) **51534**
178.53–9 (b) amended **51534**
178.55–20 (a) introductory text amended **51534**
178.56–3 Amended **51534**
178.56–11 (a) amended **51534**
178.60–24 (a) amended **51534**
178.61–8 (c)(2) amended **51534**
178.61–20 (b) amended **51534**
178.251 Removed 38068
178.251–1 Removed 38068
178.251–2 Removed 38068
178.251–3 Removed 38068
178.251–4 Removed 38068
178.251–5 Removed 38068
178.251–6 Removed 38068
178.251–7 Removed 38068
178.252 Removed 38068
178.252–1 Removed 38068
178.252–2 Removed 38068
178.252–3 Removed 38068
178.253 Removed 38068
178.253–1 Removed 38068
178.253–2 Removed 38068
178.253–3 Removed 38068
178.253–4 Removed 38068
178.253–5 Removed 38068
178.270–5 (d) amended **51534**
178.270–11 (d)(1) amended **51534**
178.337–1 (f) amended **51534**
178.337–16 (b)(2) amended **51534**
178.338–10 (c) amended **51534**
178.338–19 (c) amended **51534**
178.345–14 (b)(11) amended **51534**
178.352–2 (a) amended **51534**
178.352–6 (a)(2) amended **51534**
178.362–2 (e)(5) amended **51534**
178.503 (a)(9), (d)(2)(ii) illustration and (3) illustration revised 28493
178.505 (b)(1) amended 28494
178.506 (b)(1) amended 28494
178.509 (b)(4) amended 28494
178.511 (b)(1) amended 28494
178.516 (b)(3)(i) introductory text amended **51534**
178.518 (a)(2) amended **51534**
178.600 Amended **51534**
178.601 (g)(7) amended 28494
178.603 (a) table amended **51534**
178.605 (d)(1) amended **51534**
(b) amended 28494
178.606 (b) amended 28494
178.700—178.710 (Subpart N) Added 38068
178.800—178.819 (Subpart O) Added 38075
179 Authority citation revised **51534**
Amended **51534**
179.101–1 (a) table amended **51534**
179.105–4 (a) introductory text amended **51534**
179.105–7 (b) amended 28494
179.203–1 (a) amended **51534**
180 Authority citation revised **51534**
Clarification **53626**
180.350—180.352 (Subpart D) Added 38079
180.405 (f)(2) introductory text amended **51534**
(b) and (c)(1) table amended 1786
Regulation at 59 FR 1786 effective date confirmed 12861
180.407 (f)(1)(i)(C) amended **51534**
180.413 (d)(1)(i), (ii) and (iii) amended 1786
Regulation at 59 FR 1786 effective date confirmed 12861
180.417 (a)(3) heading amended 1786
Regulation at 59 FR 1786 effective date confirmed 12861
190.9 Added 17280
192.3 Amended 17281
192.9 Revised 17281
192.150 Added 17281
192.453 Revised; eff. 2–11–95 6584
192.603 (b) revised; eff. 2–11–95 6584
192.605 Revised; eff. in part 2–11–95 6584

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192.615 (d) redesignated as 192.616; eff. 2–11–95 6585
192.616 Redesignated from 192.615(d); eff. 2–11–95 6585
192.706 (a) removed; (b) introductory text, (1) and (2) redesignated as introductory text, new (a) and new (b); eff. 2–11–95 6585
192.723 (b)(1) amended **54528**
(b)(2) revised **54529**
Heading and (a) revised; eff. 2–11–95 6585
192.727 Heading and (a) revised; eff. 2–11–95 6585
192.729 Removed; eff. 2–11–95 6585
192.733 Removed; eff. 2–11–95 6585
192.737 Removed; eff. 2–11–95 6585
193.2015 Removed 17281
194.416 (a) revised; (h) redesignated as (i); new (h) added 33397
195 Authority citation revised 17281
195.1 (b)(5), (7) and (8) revised; (b)(6) amended 33395
(b)(3) and (c) revised 35470
195.2 Amended 17281, 33395, 33396, 35471
195.3 (a) revised; (b)(1) through (5) and (c)(1) through (4) redesignated as (b)(2) through (6) and (c)(2) through (5); new (c)(2)(iii) and new (iv) redesignated as (c)(2)(v) and (vi); new (b)(1), (c)(1), new (2)(iii) and new (iv) added 33396
195.5 (a)(1) and (4) revised 33396
195.8 Amended 17281
195.50 (f) revised 33396
195.52 (a)(3) revised 33396
195.56 (a) amended 17281
195.58 Amended 17281
195.106 (e) amended 17281
(b) revised 33396
(c) amended 33397
195.112 (c) amended 33396
195.120 Revised 17281
195.204 Amended 33397
195.212 (b)(3)(ii) amended 33396
195.228 (b) revised 33397
195.234 (e) introductory text and (g) revised 33397
195.246 (b) revised 33397
(b) corrected 36256
195.248 (a) table amended; (b) introductory text revised 33397
(a) corrected 36256
195.260 (e) amended 17281
195.262 (d) revised 33397
195.300 Revised 29384
195.300—195.310 (Subpart E) Heading revised 29384
195.302 Revised 29384
(b) and (c) introductory text revised 35471
195.303 Added 29384
195.304 (a) and (b) introductory text amended 29385
(b) introductory text revised 33397
195.306 (b) introductory text revised 29385
(a) revised; (d) added 35471
195.308 Amended 29385
195.310 (a) amended 29385
195.401 (c) revised 35471
195.402 (c)(14) added; eff. in part 2–11–95 6585
195.406 (a)(3) amended; (a)(5) revised 29385
(a)(1) revised 33397
195.412 (a) revised 33397
195.413 (a) amended 33396
195.414 (b) and (c) revised 35471
195.416 (a) revised; (h) redesignated as (i); new (h) added 53397
199 Common preamble **68194**
Authority citation revised **68260**
Heading revised 7430
199.1—199.25 Designated as Subpart A 7430
199.1 (a) amended **68260**
199.23 (a)(2) revised **68260**
199.25 Added **68261**
199.200—199.245 (Subpart B) Added 7430

Chapter II—Federal Railroad Administration, Department of Transportation (Parts 200—299)

207 Added 6587
214.103 (b) and (c) revised 30883
214.111 Revised 30883
214.113 (b) revised; (c) removed 30883
214.115 (b) revised 30883
214.117 (b) revised 30884
217 Common preamble **68194**
217.13 (d) removed **68235**
219 Common preamble **68194**
Nomenclature change; eff. 1–1–95 7457

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219.3 (a) introductory text and (c) revised; (b)(3) added; eff. 1-1-95 7457
219.5 Amended; eff. 1-1-95 7457
219.9 (a) amended; (c) added; eff. 1-1-95 7458
219.11 (b)(2) revised; (g) redesignated as (h); (c)(4) and new (g) added; eff. 1-1-95 7458
219.15 Removed; eff. 1-1-95 7458
219.23 Heading, (a) and (b) revised; (d), (e) and (f) added; eff. 1-1-95 7458
219.101 (a)(2)(ii) revised; (a)(3) and (4) added; eff. 1-1-95 7459
219.104 (a), (d) and (e) revised; (f) and (g) added; eff. 1-1-95 7459
219.107 Added; eff. 1-1-95 7460
219.201 (a)(1)(iii), (2)(ii) and (b) revised; eff. 1-1-95 7460
219.203 (a)(1) revised; (d)(2) amended; eff. 1-1-95 7460
219.205 (a) revised; eff. 1-1-95 7460
219.206 Added; eff. 1-1-95 7461
219.209 (a)(1) amended; (c) added; eff. 1-1-95 7461
219.211 (a), (c) and (d) amended; (e) and (h) revised; eff. 1-1-95 7461
219.213 (a) and (b) revised; eff. 1-1-95 7461
219.300 Added; eff. 1-1-95 7461
219.301—219.309 (Subpart D) Heading revised; eff. 1-1-95 7461
219.301 (b)(1), (f) and (g) removed; (b) introductory text, (2) introductory text and (c) introductory text revised; eff. 1-1-95 7461
219.302 Added; eff. 1-1-95 7462
219.303 Revised; eff. 1-1-95 7462
219.307 Removed; eff. 1-1-95 7462
219.309 Removed; eff. 1-1-95 7462
219.501—219.505 (Subpart F) Heading revised; eff. 1-1-95 7462
219.501 Revised 7462
219.503 Revised; eff. 1-1-95 7462
219.505 Heading revised; (a) designation and (b) removed; eff. 1-1-95 7462
219.601—219.605 (Subpart G) Heading revised; eff. 1-1-95 7462
219.601 Heading, (b)(2)(iii) concluding text and (7) revised; (c) amended; eff. 1-1-95 7462
219.603 Heading revised; (a) designation, (b) and (c) removed; eff. 1-1-95 7463
219.605 Heading revised; (b) amended; eff. 1-1-95 7463
219.607 Added; eff. 1-1-95 7463
219.608 Added; eff. 1-1-95 7464
219.609 Added; eff. 1-1-95 7464
219.611 Added; eff. 1-1-95 7464
219.701—219.713 (Subpart H) Heading revised; eff. 1-1-95 7464
219.703 Heading revised; eff. 1-1-95 7464
219.707 Heading revised; (a) amended 7464
219.708 Added 7464
219.713 Removed; eff. 1-1-95 7464
219.715 Added; eff. 1-1-95 7464
219.801 (Subpart I) Added; eff. 1-1-95 7465
219.803 (Subpart I) Added **68235**
219.901—219.905 (Subpart J) Added; eff. 1-1-95 7466
219 Appendix D added **68237**
Appendix D2 added **68250**
Appendix D3 added; eff. 1-1-95 7468
Appendix D4 added; eff. 1-1-95 7477
229 Authority citation revised 24963
229.133 (b) revised; interim 24963

Chapter III—Federal Highway Administration, Department of Transportation (Parts 300—399)

Chapter III Interpretation **60734**
301 Inseason adjustments 36719
350.11 (a) revised; interim 5264
350.21 (d)(3) added; interim 5264
350 Appendix C amended; interim 5264
382 Added 7505
383 Authority citation revised 26028
383.5 Amended 26028
383.37 (a) and (b) amended; (c) added 26028
383.51 (d) redesignated as (e); new (d) added 26028
383.53 Revised 26028
384 Added 26039
390.3 (f)(6) removed; eff. 1-1-95 8752
390.5 Amended **59196, 67375**

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Amended; eff. 1-1-95 8752
Amended 26028
391 Common preamble **68194**
391.15 (d) added 26028
391.31 (a) revised; eff. 1-1-95 8752
391.35 (a) revised; eff. 1-1-95 8752
391.43 Amended; (e) introductory text and (g) revised **59196**
391.51 (a) revised; eff. 1-1-95 8752
391.68 Added; eff. 1-1-95 8752
391.73 Added; eff. 1-1-95 8752
391.83 (a) revised; eff. 1-1-95 8753
391.87 (h) revised **68222**
391.93 Revised 7514
391.125 Added 7514
392 Authority citation revised 34711
392.5 Heading, (a)(1), (2), (3) and (b)(2) revised 7515
392.22 (b)(1) introductory text, (2)(i) and (ii) revised; (b)(1)(iv) added; (b)(2)(vii) and authority citation removed 34711
392.71 Added **67375**
393 Authority citation revised 34712
393.7 Added 34712
(b)(2) through (6) added 34718
393.42 (b)(4) removed 25574
393.67 (a)(6) added; eff. 1-1-95 8753
393.95 (f)(2), (g) and (j) revised; (f)(3) added 34712
393.102 (b) revised; (g) removed 34718
395.2 Amended 7515
395.8 (a) introductory text revised; eff. 1-1-95 8753
396.3 (b) introductory text revised; eff. 1-1-95 8753
396.11 (d) revised; eff. 1-1-95 8753

Chapter V—National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

526 Authority citation revised 25576
526.1 (b) and (c) revised 25576
526.2 Introductory text revised 25576
526.3 Heading, introductory text and (a) introductory text revised 25576
526.4 Removed 25576
526.5 Introductory text and (a) revised 25576
531.5 (b)(2) revised **62295**
533.5 (a) Table IV added 16323
541 Appendixes A and A-I revised **63298**
Appendix A-II revised **63299**
Appendix A revised 31163
Appendixes A-I and A—II revised 31164
542 Revised 21672
543.5 (a) revised 10758
543.6 (a)(1) revised 10758
544 Appendix A revised **63301**
Appendixes B and C revised **63302**
555 Authority citation revised **58104**
555.9 (c)(1) revised **58104**
571 Petition denied 2755, 14569, 27506
Technical correction 19753
Authority citation revised 37175
571.103 Amended 11006
571.108 Amended **52026, 64169, 65676**
Corrected 3164
571.111 Regulation at 57 FR 57000 confirmed **53666**
Amended **60402**
571.120 Amended 25578
571.121 Amended 6909
Figure 1 revised 6911
Amended; eff. 10-20-94 18323
571.131 Amended; interim 26761
571.203 Amended **63304**
571.207 Amended; eff. 10-19-94 37167
571.208 Amended; eff. 9-1-95 ..... **52926**
Figure 5 added; eff. 9-1-95 ..... **52927**
Amended; eff. 9-1-97 ..... **59191, 59193**
Amended 11203, 17994, 25827
Compliance date amended 35636
571.209 Amended 17994
Compliance date amended 35636
571.213 Amended 7647, 15863, 37175, 37177
Corrected 14452
571.217 Amended 22999
571.301 Amended **51788**
571.303 Added; eff. 9-1-95 19659
582 Petition denied 13630
583 Added 37330
591.5 (f)(1) revised; (g) removed; interim 31560
591.6 (c) revised; (e) removed; (f) and (g) redesignated as (e) and (f); interim 31560
591.7 (c) amended; interim 31560
591.8 (a) amended; (d)(2)(i) redesignated as (d)(2); (d)(2)(ii) removed; interim 31560
591.9 (a) amended; interim 31560
591 Appendix B removed; interim 31560

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592.6 (a) amended; interim 31560

Chapter VI—Federal Transit Administration, Department of Transportation (Parts 600—699)

604.9 (b)(8)(iv) revised **52685**
613 Authority citation added; subpart authority citations removed **58079**
613.100 (Subpart A) Revised **58079**
613.200 (Subpart B) Revised **58079**
614 Added; interim **63485**
Technical correction **64374**
625.8 Corrected 36720
626 Removed **63485**
650.2 Amended 36722
650.9 (b)(8), (11), (14), (15), (16), (c)(2), (5) and (6) revised 36722
650.21 (a)(1), (b)(1), (4)(ii), (iii) and (c) revised 36723
650.24 (c)(1) revised 36723
651.9 (b)(1), (d) and (e)(2) introductory text revised 36726
651.20 (a)(3)(i), (4)(i)(A), (c)(3)(i), (ii), (d)(3)(i), (ii), (e)(1)(iv) and (f)(4) revised 36726
651.22 (c)(1)(i) heading, (B) and (d)(2)(ii) revised 36727
651.27 (a) heading, (1), (2) and (4) revised 36727
653 Revised 7589
654 Added 7549
665 Authority citation revised **58733**
665.3 (d) revised; interim **58733**
665.5 Amended; interim **58734**
675 Temporary regulations 36727

Chapter VIII—National Transportation Safety Board (Parts 800—899)

826.2 Revised 30531
826.6 (b)(1) revised 30531
826.21 (b) introductory text revised 30532
826.24 (a) revised 30532
826.31 Revised 30532

Chapter X—Interstate Commerce Commission (Parts 1000—1399)

1002 Regulation at 58 FR 7748 eff. 10–1–93 ..... **52027**
1002.2 (f) table amended 4844
1017 Regulation at 58 FR 7748 eff. 10–1–93 ..... **52027**
1018 Regulation at 58 FR 7748 eff. 10–1–93 ..... **52027**
1033 Revised **60144**
1035 Revised **60797**
1039.11 (a) table revised **53434**
1051 Authority citation revised 2303
Interpretation 14570
1051.2 (a) introductory text and (1) through (11) redesignated as (a)(1) introductory text and (i) through (xi); new (a)(2) and (3) added 2303
Regulation at 59 FR 2303 eff. date delayed to 4–2–94 6221
1053 Added 2303
Regulation at 59 FR 2303 eff. date delayed to 4–2–94 6221
Interpretation 14570
1056 Nomenclature change 34392
1056.2 (a)(3) revised 2305
1056.18 Revised 2305
1145.9 Existing text redesignated as (a); (a) heading and (b) added **53667**
1180.0 Amended **63104**
1180.2 (b) revised **63104**
1180.4 (b)(1)(iv) revised **63104**
1180.6 (b) introductory text revised; (c) added **63104**
1180.9 Introductory text revised **63104**
1207 Removed 5110
1249.1 Revised 5110
1249.2 (a), (b)(1), (4) and (c) revised; (b)(5) added 5111
1312 Regulation at 58 FR 7748 eff. 10–1–93 ..... **52027**
Authority citation revised 2304, 4844
Technical correction 11557
Interpretation 14570
1312.14 (a)(4) added 2304
Heading revised 4844
Regulation at 59 FR 2304 eff. date delayed to 4–2–94 6221
1312.20 (h)(1) revised 10305
1312.41 Added 4844
1313 Regulation at 58 FR 7748 eff. 10–1–93 ..... **52027**
1314 Regulation at 58 FR 7748 eff. 10–1–93 ..... **52027**

Proposed Rules:

23 ..... **52050, 63153**
27 ..... **63154**
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37 ..... **52735**
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14.12 (j) and (k) amended; (l) added 33212
14.106 (a) amended 36719
15 Revised **60536**
16 Authority citation revised **58979**
16.13 Revised **58979**
17 Petition findings 30254, 37439
17.11 (h) table amended **53804, 53807, 54065, 65095, 68486**
(h) table amended 4856, 5498, 10584, 13397, 13836, 17998, 31095, 36995
(h) table amended; eff. 1–31–94 through 9–28–94 5310
(h) table amended; eff. 4–18–94 to 12–14–94 18327
17.12 (h) table amended **52030, 62049, 68480**
(h) table amended 14371, 5509, 8141, 9327, 9936, 10323, 13840, 14493, 15345, 32937, 35864
17.21 (g)(1) introductory text revised **68325**
17.41 (b) added **65095**
17.84 (c)(1), (4), (5)(iii), (6), (9), (10) and (11) correctly re-

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vised; (c)(5)(iv) correctly added; CFR correction **52031**
17.95 (b) amended 4856
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17.108 (a)(3) through (6) and illustration revised; (a)(7) removed 24658
18.121—18.129 (Subpart J) Added; eff. 12–16–93 through 6–16–95 ..... **60410**
20 Temporary regulations **65656**
21.29 (k) amended 11204
24.12 (a) and (e) amended **68543**
(e) redesignated as (g) and amended; new (e) and (f) added 14121
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36.33 Revised 38314
36.39 (j) added; interim; eff. 6–25–94 through 9–30–94 24566
85 Revised 11206
100 Policy statement 36063
100.24 (a)(1) table and (2) table amended 27463
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100.25 (b)(2)(i) introductory text, (iv) introductory text and (f) revised; (m)(1) table amended **61811**
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100.26 Regulation at 58 FR 31289 eff. date extended to 12–31–95; interim 32925
100.27 Regulation at 58 FR 31294 eff. date extended to 12–31–95; interim 32925, 28922

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204.1 (b) table amended (OMB numbers) **59401**
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215 Harvest quotas **58297**
215.32 (b) revised 35474
216 Temporary regulations 8142
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216.3 Amended 16145, 35865
216.4 (b)(1) through (h) removed; (b) introductory text revised **65134**
216.15 (f) added **58297**
216.24 (a)(1), (b)(1)(iii) heading and (v) amended; (d)(2)(vii)(C)(*1*) introductory text and ((*i*)(*D*) revised **63539**
(d)(2)(viii) introductory text, (A) introductory text, (B), (C) and (E) amended **63540**
(e)(3)(i)(A)(*1*) revised 16145
(e) heading and (9) revised 30306
Note amended; eff. 6–17–94 through 9–1–95 31165
(e)(1) redesignated as (e)(1)(i); (e)(1)(ii) added 35865
216.110—216.113 (Subpart I) Removed **65134**
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217.12 Amended **54067**
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222.23 (a) amended 450, 31095
226.13 Added 28805
226.22 Added **68551**
226 Table 3 and Figure 5 added **68552**
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227 Temporary regulations 23169
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227.4 (e) removed; (f), (g) and (h) redesignated as (e), (f) and (g) 450
227.12 (a)(3) Table 1 amended **53139**
(a)(3) illustration revised **53141**
(a)(3) corrected **58594**
227.21 (a), (b)(1) and (2) amended 450
227.72 (e)(4)(ii) and (iii) redesignated as (e)(4)(iii) and (iv); new (e)(4)(iv) introductory text revised; new (e)(4)(ii) added **54067**
(e)(5) heading and (i) revised **54068**
(e)(4)(i)(G)(*2*) redesignated as (e)(4)(i)(G)(*2*)(*i*); (e)(4)(i)(G)(*2*)(*ii*) added 25829
(e)(4)(i)(I) added; (e)(4)(iv)(A) revised; interim 33449
(e)(3)(i) and (ii)(B) revised 33699
227 Figures 10 and 11 added **54069**
Figure 12a added 25830
Figure 12b added 25831
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229 Regulation at 54 FR 21921 eff. date extended to 4–1–94 ..... **51789**
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229.1 (b) amended **51789**
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282.5 Regulation at 58 FR 33567 confirmed 13894
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282.8 Regulation at 58 FR 33568 confirmed 13894
282.9 Regulation at 58 FR 33568 confirmed 13894
282.14 Regulation at 58 FR 33568 confirmed 13894
282.15 Regulation at 58 FR 33568 confirmed 13894
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285.22 (a), (d) introductory text, (1), (2), (e) introductory text, (f) introductory text and (i) amended; (e)(1) revised; interim 17725
285.23 (c)(1) and (2) revised; interim 17726
285.24 (e) added; interim 17726
285.26 Introductory text revised; interim 17726
285.29 (a) and (b)(1) revised; interim 17726
285.31 (a)(28), (30) and (37) revised; (c) removed; interim 17726

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301.11 (g) revised 27242
371 Inseason adjustments **54307**
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380.23 (c), (e) introductory text, (f) introductory text, (g), (h) introductory text, (1), (2), (i), (k) introductory text and (3) revised; (k)(5) added 25835
380.24 (f) introductory text, (2), (g)(1) introductory text, (ii) and (2) revised; (f)(3), (g)(1)(iii) and (iv) added; (g)(1)(i) amended 25836
380.26 (d) through (h) revised 25836
380.27 (c) and (d) revised; (e) added 25837
380.28 Added 11730
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380 Figure 2 added 25837
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601.37 (a) revised, interim 11559
605.24 Comment period extended to 11-26-93; interim **57968**
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625 Harvest quotas **59196, 61844, 62050, 65134, 68555**
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625.8 (c)(2) revised; interim 11936
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625.20 Regulation at 58 FR 27215 and 39680 terminated; regulation at 58 FR 49940 corrected **52685**
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(f) added **65937**
(c) revised 28810
625.22 Revised; interim 18757
625.24 (c) removed; (d) and (e) redesignated as (c) and (d); new (e) and (f) added 28810
625.25 (d) revised **65938**
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625.28 Added 28811
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630.24 Regulation at 58 FR 33569 confirmed **58509**
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640.7 (n) amended **61845**
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641.5 (b), (c), (f), (g) and (i) revised 971
(d) revised 6591
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641.23 (a)(3) and (b)(3) amended; (c) and (d) added 973
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641.27 (a) amended 974
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646.4 (b)(2)(vi)(A) and (B) amended; (b)(2)(vi)(C) removed 27244
646.5 (d) introductory text and (4) revised 27244
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646.27 Redesignated as 646.28; new 646.27 redesignated from 646.25 27245
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646 Figure 2 removed; Figure 3 redesignated as Figure 2 27246
649 Revised 31943
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650.20 Suspended; interim; eff. 3-4-94 through 4-30-94 11007
650.21 (b)(3)(i) suspended; (b)(3)(iv) added; interim; eff. 3-4-94 through 4-30-94 11007
650.30 Added; interim; eff. 3-4-94 through 4-30-94 11007
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651 Technical correction **55116**
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651.2 Amended; eff. 1-3-94 through 4-2-94 28
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651.9 Regulation at 59 FR 9884 eff. date extended in part to 6-30-94 15656
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(a)(11), (12), (e)(33) and (34) revised 32136
651.20 (g) added; eff. 1-3-94 through 4-2-94 29
(b)(3)(vi) added 5129
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651.21 (a) introductory text, (1), (2) and (3) suspended; (c) added; eff. 1-3-94 through 4-2-94 29
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(b)(3) revised 32136
651.22 (b)(1)(i), (3)(ii), (iv), (7), (c)(1)(i) heading, (A), (E) and (F) revised; (b)(3)(i) amended 22762
651.27 Regulation at 59 FR 9884 eff. date extended in part to 6-30-94 15656
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651.28 Added; eff. 1-3-94 through 4-2-94 29
651.29 Added; eff. 1-3-94 through 4-2-94 29
651.32 (a), (b)(1) and (2) revised 26976
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651 Figure 2 suspended; Figure 6 added; eff. 1-3-94 through 4-2-94 29
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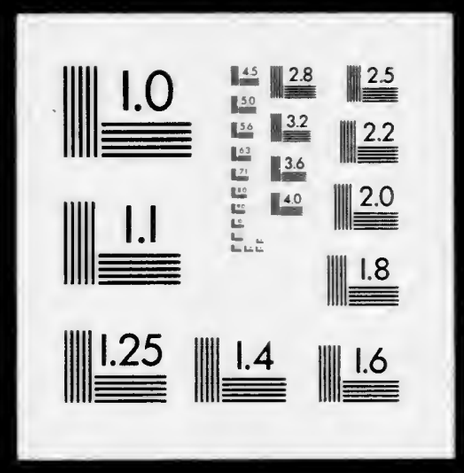
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VOL
59
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190
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10–3–94
Vol. 59 No. 190
Pages 50153–50480

Federal Register

Monday
October 3, 1994

VOL
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OC
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Rules and Regulations

Federal Register
Vol. 59, No. 190
Monday, October 3, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amendment No. 359]

RIN 0584–AB78

Food Stamp Program; Medical Expense Deduction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This action will change Food Stamp Program rules relating to the excess medical expense deduction. The changes will simplify the means by which households with elderly and disabled members claim deductions from income for verified, prospective, non-reimbursed medical expenses.

DATES: Effective Date: This rule is effective and must be implemented no later than October 1, 1994.

Comments: Comments must be received on or before December 2, 1994 to be assured of consideration.

ADDRESSES: Comments should be submitted to Judith M. Seymour, Eligibility and Certification Regulation Section, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be datafaxed to the attention of Ms. Seymour at (703) 305–2454. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 720.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Ms. Seymour at the above address or by telephone at (703) 305–2496.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Ellen Haas, the Assistant Secretary for Food and Consumer Services, has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the EFFECTIVE DATE paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) for Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 284 (for rules related to QC liabilities); (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Public Participation and Effective Date

The amendment to section 5(e) of the Food Stamp Act of 1977 (7 U.S.C. 2014(e)) which is reflected in this rule was enacted in 1990 as section 1717 of the Mickey Leland Memorial Domestic Relief Act (1990 Leland Act), Title XVII, Pub. L. 101–624 (104 Stat. 3783, Nov. 28, 1990). This amendment was effective February 1, 1992. The provisions of this rule are required to be implemented not later than October 1, 1994, in order to assure that all State agencies are in full compliance with the amendment as soon as possible. For this reason, Ellen Haas, Assistant Secretary for Food and Consumer Services, has determined pursuant to 5 U.S.C. 553 that public comment on this rule prior to implementation is impracticable and that good cause exists for making this rule effective less than 30 days after its publication. However, because we believe the administration of the rule may be improved by public comment, comments are solicited on this rule for 60 days after publication. All comments received within the comment period will be analyzed, and any appropriate changes will be incorporated in the subsequent publication of a final rule.

Background

Section 351 of the Hunger Prevention Act of 1988, Pub. L. 100–435 (102 Stat. 1645, September 19, 1988) (HPA) amended Section 5(e) of the Food Stamp Act of 1977, as amended, 7 U.S.C. 2014(e), to require State agencies to offer eligible households with an elderly or disabled member a method for claiming a deduction for recurring medical expenses in place of provisions that had required households to report and verify expenses monthly. On June 7, 1989, the Department published an interim rulemaking at 54 FR 24518, which implemented Section 351 of Pub. L. 100–435. The interim rules are still in effect.

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The 1989 interim rule amended several provisions of the regulations pertaining to the medical deduction, particularly in the area of reporting and verification requirements for allowable medical expenses. Under the 1989 interim rule, households subject to monthly reporting are given the option of either reporting and verifying all medical expenses monthly, or of reporting and verifying changes in medical expenses in excess of $25 occurring during the certification period, but they cannot be required to report under both procedures. The 1989 interim rule amended 7 CFR 273.21(h)(3) (i) and (ii), (i)(1), and (j)(3)(iii) to specify the household's options with regard to reporting and verifying medical expenses in a monthly reporting and retrospective budgeting (MRRB) system. In addition, 7 CFR 273.12(a)(1)(vi) and 7 CFR 273.21(h)(3)(iii) were amended by the 1989 interim rule to simplify reporting changes in medical expenses. The 1989 interim rule required that changes in total medical expenses greater than $25 must be reported, as opposed to a $25 change in each individual allowable medical expense.

Following publication of the 1989 interim rule, the 1990 Leland Act was enacted. Regulations published to implement provisions of that Act superseded some of the changes made in the 1989 interim rule. Section 1724 of the 1990 Leland Act delegated to each State agency the responsibility for design of the monthly report form, including the determination of what information relevant to eligibility and benefits was to be included on that form. These provisions of section 1724 were implemented by the Monthly Reporting and Retrospective Budgeting Amendments and Mass Changes final rule, published on December 4, 1991 at 56 FR 63597. Conforming amendments to verification requirements associated with the monthly report were also made at that time. The regulatory amendments in the December 4, 1991 final rule superseded the changes made to 7 CFR 273.21(h)(3) (i), (ii), and (iii), and (i)(1) by the 1989 interim rule, because the interim provisions concerned the information that the Department mandated be contained on the monthly report form.

The amendments made to the regulations at 7 CFR 273.12(a)(vi) and 273.21(j)(iii) (C) and (D) by the 1989 interim rule were neither finalized nor superseded by subsequent regulations. As explained below, however, the Department is now making new amendments to these sections.

Section 1717 of the 1990 Leland Act amended section 5(e) of the Food Stamp Act to provide for a simplified means for eligible households to claim the excess medical expense deduction for recurring medical costs. Section 1717 requires State agencies to estimate at certification a recipient's recurring medical expenses for the certification period based upon the recipient's current verified medical expenses, as well as available information about the recipient's medical condition, and public or private medical insurance coverage. The household's medical deduction would be based on these estimates, and further verification would not be required. In a proposed rule entitled "Miscellaneous Provisions of the Mickey Leland Memorial Domestic Hunger Relief Act and Food Stamp Certification Policy," published on June 28, 1991 (56 FR 29594), the Department stated that food stamp regulations at 7 CFR 273.2(f)(8) and 273.12(a)(6) already reflected the intent of the statute and that, therefore, no change to the regulations was required. No comments disputing this position were received, and the position was reiterated in a final rule published on December 4, 1991 (56 FR 63594).

It has come to the attention of the Department that some State agencies may not be properly applying section 1717. This may be due to confusion on the part of State agencies with regard to the Department's decision not to issue regulations in connection with section 1717. To ensure that State agencies are in compliance with section 1717, the Department issued three memoranda to FNS regional offices, dated February 3, 1994, April 1, 1994, and May 12, 1994. In the memoranda, the Department instructed the regional offices to remind State agencies that they must be in compliance with the provisions of section 1717. The Department also offered direction as to how the State agencies can implement the provisions of section 1717.

In a further effort to insure that State agencies are implementing the provisions of section 1717, the Department is amending food stamp regulations that concern the medical expense deduction. These changes will clarify current regulations to better express the intent of section 1717. Accordingly, this rule amends 7 CFR 273.10(d)(1)(i), 273.10(d)(4), 273.12(a)(vi), 273.21 (h), (i), and (j)(iii) (C) and (D).

Under the amendments, the household will be required to report and verify all medical expenses at certification and recertification. The household's monthly medical deduction for its certification period will be based on the information reported and verified by the household, and any anticipated changes in the household's medical expenses that can be reasonably expected to occur during the certification period based on available information about the recipient's medical condition, public or private insurance coverage, and current verified medical expenses. If the household reports a medical expense at certification but cannot verify the expense at that time, and if the amount of the expense cannot be reasonably anticipated based on available information about the recipient's medical condition, public or private insurance coverage, and current verified medical expenses, the expense will be considered at the time the amount of the expense or reimbursement is reported and verified. The household will not be required to file reports about its medical expenses during the certification period. If the household voluntarily reports a change in its medical expenses, the State agency will act on the changes in accordance with current regulations at 7 CFR 273.12(c).

The Department is also making a related amendment to the regulations at 7 CFR 273.12(c) for changes in medical expenses that are discovered from a source other than the household. Currently, those regulations require the State agency to act on all changes in a household's circumstances, including those it discovers from a source other than the household. Often times, however, the State agency must contact the household to verify such unreported changes. Since the intent of section 1717 is to avoid recurrent reporting and verification on the part of households receiving the medical expense deduction, the Department is amending 7 CFR 273.12(c) to require that the State agency act on those changes in medical expenses it learns of from a source other than the household only if it can act without contacting the household for further information or verification. The household will be informed about the changes in accordance with the notice requirements at 7 CFR 273.13. Those changes learned from a source other than the household which are not verified upon receipt and therefore necessitate contact with the household for verification purposes shall not be acted upon until the household is recertified.

Implementation

This rule is effective and must be implemented no later than October 1, 1994. For quality control purposes, any variances resulting from the implementation of the rule shall be excluded from error analysis for 120 days from the required implementation date, in accordance with 7 CFR 275.12(d)(2)(vii). The provision must be implemented for all households that newly apply for Program benefits on or after the required implementation date. The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. The State agency must provide restored benefits to such households back to the required implementation date or the date of application whichever is later. If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application whichever is later.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Records, Reporting and recordkeeping requirements, Social Security.

Accordingly, 7 CFR parts 272 and 273 are amended as follows:

1. The authority citation for 7 CFR parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, paragraph (g)(138) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(138) *Amendment No. 359* The provision of *Amendment No. 359* regarding the medical expense deduction is effective and must be implemented no later than October 1, 1994. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with 7 CFR 275.12(d)(2)(vii). The provision must be implemented for all households that newly apply for Program benefits on or after the required implementation date. The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. The State agency must provide restored benefits to such households back to the required implementation date or the date of application whichever is later. If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application whichever is later.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In 273.10:

a. The fifth sentence of paragraph (d)(1)(i) is revised;

b. Four sentences are added to the end of paragraph (d)(4).

The revisions and additions read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) *Determining deductions.* * * *

(1) *Disallowed expenses.*

(i) * * * If the household reports an allowable medical expense at the time of certification but cannot provide verification at that time, and if the amount of the expense cannot be reasonably anticipated based upon available information about the recipient's medical condition and public or private medical insurance coverage, the household shall have the nonreimbursable portion of the medical expense considered at the time the amount of the expense or reimbursement is reported and verified. * * *

* * * * *

(4) *Anticipating expenses.* * * * At certification and recertification, the household shall report and verify all medical expenses. The household's monthly medical deduction for the certification period shall be based on the information reported and verified by the household, and any anticipated changes in the household's medical expenses that can be reasonably expected to occur during the certification period based on available information about the recipient's medical condition, public or private insurance coverage, and current verified medical expenses. The household shall not be required to file reports about its medical expenses during the certification period. If the household voluntarily reports a change in its medical expenses, the State agency shall verify the change in accordance with § 273.2(f)(8) and act on the change in accordance with current regulations at § 273.12(c).

* * * * *

4. In 273.12:

a. Paragraph (a)(1)(vi) is removed;

b. Paragraph (c) introductory text is amended by adding two sentences after the first sentence to read as follows:

§ 273.12 Reporting changes.

* * * * *

(c) *State agency action on changes.* * * * However, during the certification period, the State agency shall not act on changes in the medical expenses of households eligible for the medical expense deduction which it learns of from a source other than the household and which, in order to take action, require the State agency to contact the household for verification. The State agency shall only act on those changes in medical expenses that it learns about from a source other than the household if those changes are verified upon receipt and do not necessitate contact with the household. * * *

* * * * *

5. In § 273.21:

a. Paragraph (h)(3) is revised.

b. A third sentence is added to paragraph (i).

c. Paragraph (j)(3)(iii)(C) is revised.

d. Paragraph (j)(3)(iii)(D) is removed and paragraph (j)(3)(iii)(E) is redesignated as paragraph (j)(3)(iii)(D)

The revisions read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

* * * * *

(h) *The monthly report form.* * * *

(3) *Reported information.* The State agency may determine the information relevant to eligibility and benefit determination to be included on the monthly report form except that the State agency shall not require households to monthly report medical expenses. Medical expenses may be reported in accordance with § 273.10(d)(4).

* * * * *

(i) *Verification.* * * * Medical expenses shall be verified in accordance with § 273.2(f).

(j) *State agency action on reports.* * * *

(3) *Incomplete filing.* * * *

(iii) * * *

(C) If a household fails to verify changes in reported medical expenses in accordance with § 273.2(f)(8), the State agency shall not make the change.

* * * * *

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Dated: September 27, 1994

Ellen Haas,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 94-24384 Filed 9-30-94; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770, 771, and 775

[Docket No. 94083-4243]

RIN 0694-AB00

Exports to Taiwan: Expansion of Import Certificate/Delivery Verification (IC/DV) Procedure, Shorter Processing Time Frames and General License GCG; and Revision of Romanian IC/DV Authority Address

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: As part of the Department of Commerce initiative to streamline export licensing requirements for exports to countries that are demonstrating increased ability to safeguard reexports of U.S.-origin strategic goods and technology, the Bureau of Export Administration (BXA) is extending to Taiwan export licensing benefits available under the provisions of section 5(k) of the Export Administration Act of 1979, as amended (EAA). This action will lessen the administrative burden on U.S. exporters and their foreign customers.

Specifically, BXA is: Providing shorter processing times for license applications for Taiwan; and amending General License GCG to authorize certain shipments of U.S.-origin commodities to Taiwan.

This rule also amends the Export Administration Regulations (EAR) to include new requirements based on the implementation of Import Certificate/Delivery Verification (IC/DV) procedures for Taiwan.

The address for the authority administering the IC/DV system within Romania is also revised by this rule.

DATES: *Effective date.* This rule is effective October 3, 1994.

Grace period. In lieu of the 45 day grace period provided in 15 CFR 775.10(c)(2), a 90 day grace period will apply to the requirement to obtain the Taiwan Import Certificate to support an export license application.

FOR FURTHER INFORMATION CONTACT: Rodney Joseph, Office of Technology and Policy Analysis, Telephone: (202) 482-0171.

SUPPLEMENTARY INFORMATION:

Grace Period

During the 90 day grace period indicated in **DATES**, applications destined for Taiwan will be accepted if supported by a Taiwan Import Certificate from either the Board of Foreign Trade, Hsinchu Science-based Industrial Park, or the Export Processing Zone Administration, or a Form BXA-629P (Statement by Ultimate Consignee and Purchaser).

Background

In April, 1994, Taiwan implemented an island-wide IC/DV system. This system extends the Hsinchu Science-based Industrial Park IC/DV system and makes Taiwan eligible for general license GCG and 15 day/15 day license processing.

The Bureau of Export Administration (BXA) requires a foreign importer to file an International Import Certificate (IC) in support of individual validated license applications to export certain commodities controlled for national security reasons to specified destinations. The commodities are identified by the code letter "A" following the Export Control Classification Number on the Commerce Control List, which identifies those items subject to Department of Commerce export controls. An IC is an undertaking by the government of the country of ultimate destination to exercise legal control over the disposition of those commodities covered by an IC.

BXA also requires a Delivery Verification Certificate (DV) on a selective basis, as described in 15 CFR 775.3(i). A DV is issued by the government of the country of ultimate destination after the exported commodities have either entered the export jurisdiction of that country or are otherwise accounted for by the importer.

New documentation practices adopted by Taiwan warrant the inclusion of that country in the IC/DV procedure. This rule amends the EAR by revising Taiwan's entry within the list of countries that issue Import Certificates and by revising the name and address of the Taiwan authorities in the list of foreign offices that administer the IC/DV systems.

The main authority for administering the Taiwan IC/DV program is the Board of Foreign Trade, Ministry of Economic Affairs. There are also two satellite offices: the Science-Based Industrial Park Administration and the Export Processing Zone Administration. If the destination of the export is within the Science-Based Industrial Park or the Export Processing Zone, then one should apply for the IC/DV at the appropriate satellite office.

This rule also revises the Romanian IC/DV authority address to the "Authorities Administering Import Certificate/Delivery Verification System in Foreign Countries" table, Supplement No. 1 to Part 775.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget (OMB) under control numbers 0694-0001, 0694-0005, 0694-0007, 0695-0010, and 0694-0016. Licensing requirements under OMB control numbers 0694-0005, 0694-0007, and 0694-0010 will be reduced as a result of this rule, while there will be a small increase under 0694-0001 and 0694-0016, thereby reducing overall the paperwork burden on the public.

The Import Certificate issued by the Government of Taiwan does not constitute a collection of information under the Paperwork Reduction Act of 1980.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking

and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 770

Administrative practice and procedure, Exports.

15 CFR Parts 771 and 775

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 770, 771, and 775 of the Export Administration Regulations (15 CFR parts 770, 771, and 775) are amended as follows:

1. The authority citations for 15 CFR Parts 770 and 771 are revised to read as follows:

Authority: 50 U.S.C. App. 5, as amended; Pub. L. 264, 59 Stat. 619 (22 U.S.C. 287c), as amended; Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93-153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94-163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94-258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95-372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99-64, 99 Stat. 156 (46 U.S.C. 466c); Pub. L. 102-484, 106 Stat. 2575 (22 U.S.C. 6004); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12851 of June 11, 1993 (58 FR 33181, June 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993); E.O. 12918 of May 26, 1994 (59 FR 28205, May 31, 1994); and E.O. 12924 of August 19, 1994 (59 FR 43437 of August 23, 1994).

2. The authority citation for 15 CFR Part 775 is revised to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103-10, 107 Stat. 40 and Pub. L. 103-277, 108 Stat. 1407); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12851 of June 11, 1993 (58 FR 33181, June 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); E.O. 12868 of September 30, 1993 (57 FR 51749, October 4, 1993); E.O. 12924 of August 19, 1994 (59 FR 43437 of August 23, 1994).

PART 770—[AMENDED]

§ 770.14 [Amended]

3. Section 770.14(a) introductory text is amended by revising the phrase "New Zealand, Sweden, and Switzerland." to read "New Zealand, Sweden, Switzerland, and Taiwan.".

PART 771—[AMENDED]

4. Section 771.14(b) is amended by revising the second sentence to read as follows:

§ 771.14 General License GCG; shipments to agencies of cooperating governments.

* * * * *

(b) * * * Cooperating governments are the national governments of Argentina, Australia, Austria, Belgium, Canada, Denmark, Finland, France, the Federal Republic of Germany, Greece, Hong Kong, Ireland, Italy, Japan, Korea (Republic of), Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Taiwan, Turkey, the United Kingdom, and the United States.

* * * * *

PART 775—[AMENDED]

§ 775.1 [Amended]

5. The Table in § 775.1(b), entry number 1, column 2 is amended by removing the phrase "(Hsinchu Science-based Industrial Park)".

§ 775.3 [Amended]

6. The list of countries in § 775.3(b) is amended by revising the entry "Taiwan (Hsinchu Science-based Industrial Park)" to read "Taiwan".

7. The notes in § 775.3(b) are amended by removing Note 2 and redesignating Note 3 as Note 2.

Supplement No. 1 to Part 775 [Amended]

8. In Supplement No. 1 to Part 775 the entries for Romania and Taiwan (Hsinchu Science-based Industrial Park) and footnote 1 at the end of the table are revised to read as follows:

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SUPPLEMENT NO. 1.—AUTHORITIES ADMINISTERING IMPORT CERTIFICATE/DELIVERY VERIFICATION SYSTEM IN FOREIGN COUNTRIES[1]

[See footnotes at end of table]

Country	IC/DV Authorities	System administered[2]
.	.	.
Romania	National Agency for Control of Strategic Exports and Prohibition of Chemical Weapons, 13, Calea 13 Septembrie Casa Republicii, Gate A 1 Bucharest, Sector 5, Romania, P.O. Box 5–10, Phone: 401–311–2083, Fax : 401–311–1265.	IC/DV
.	.	.
Taiwan	Board of Foreign Trade, Ministry of Economic Affairs, 1 Hu-Kou Street, Taipei, Taiwan, R.O.C	IC/DV
	Science-Based Industrial Park Administration, No. 2 Hsin Ann Road, Hsinchu, Taiwan	IC/DV
	Export Processing Zone Administration, 600 Chiachang Road, Nantz, Kaohsiung, Taiwan.	
.	.	.

[1] Facsimiles of Import Certificates and Delivery Verifications issued by each of these countries may be inspected at the Bureau of Export Administration Western Regional Office, 3300 Irvine Avenue, Suite 345, Newport Beach, California 92660–3198 or at any U.S. Department of Commerce District Office (see listing in Commerce Office Addresses section of the publication U.S. Export Administration Regulations) or at the Office of Export Licensing, Room 1099D, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Copies not available.

[2] IC—Import Certificate and/or DV—Delivery Verification.

Dated: September 26, 1994.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 94–24270 Filed 9–30–94; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 791

[Docket No. R–94–1752; FR–3737–F–01]

Allocation of Budget Authority for Indian Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule amends HUD's regulations at 24 CFR part 791 on the allocation of budget authority with respect to the data to be used in determining the relative need for housing assistance in each HUD Field Office jurisdiction for the Indian housing program under 24 CFR part 905.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Dom Nessi, Director, Office of Native American Programs, Room 8204, L'Enfant Plaza, Building 490 East, Washington, DC 20410; telephone (202) 755–0066; (TDD) (202) 708–9300. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: Subpart D of 24 CFR part 791 provides the procedures for allocating budget authority under section 213(d) of the Housing and Community Development Act of 1974 among the HUD Field Offices for certain programs specified in 24 CFR 791.101(a). The regulations currently provide that budget authority for the Indian housing program under 24 CFR part 905 shall be allocated on the basis of the relative housing needs of the Indian tribal population, "as measured by the Bureau of Indian Affairs, and by data for non-BIA recognized groups served by the Indian housing program." (See 24 CFR 791.402(c)(2).)

The Bureau of Indian Affairs (BIA) no longer provides data upon which HUD can make its determination. This rule amends § 791.402(c)(2) to provide that HUD will base its determination upon data from the most recent, available decennial census and, where appropriate, more recent data from the Bureau of the Census or other Federal agencies.

Justification for Final Rule Making

In accordance with its own regulations on rulemaking in 24 CFR part 10, the Department generally publishes a rule for public comment before issuing a rule for effect, unless to do so would be impracticable, unnecessary, or contrary to the public interest. This rule is being published for effect without prior public comment because the Department believes to do so would be unnecessary. The decennial census is the source of data used in making determinations for allocating budget authority in non-Indian housing programs, and therefore, is one the Department has confidence in as a reliable and objective source.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas or building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this document before publication and by approving it certifies that the rule would not have a significant economic impact on a substantial number of small entities. The rule revises existing procedures for the allocation of housing assistance funds, but will make no change in the economic impact of these procedures on small entities.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have a significant impact on family formation, maintenance, or well-being. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule does not involve the preemption of State law by Federal statute or regulation and does not have Federalism implications. Specifically, the rule will not substantially alter the established roles of HUD and the States and local governments, including IHAs, in administering affected programs. As a result, the rule is not subject to review.

Regulatory Agenda

This rule was not listed on the Department's semi-annual regulatory agenda published on April 25, 1994, at 59 FR 20424, under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 791

Grant programs—housing and community development, Indians, Intergovernmental relations, Public housing, Rent subsidies.

Accordingly, 24 CFR part 791 is amended as follows:

PART 791—REVIEW OF APPLICATIONS FOR HOUSING ASSISTANCE AND ALLOCATIONS OF HOUSING ASSISTANCE FUNDS

1. The authority citation for 24 part 791 continues to read as follows:

Authority: 42 U.S.C. 1439; 42 U.S.C. 3535(d).

2. Section 791.402 is amended by revising paragraph (c)(2) to read as follows:

§ 791.402 Determination of lower income housing needs.

* * * * *

(c) * * *

(2) Budget authority for the Indian housing program under 24 CFR part 905 shall be allocated on the basis of the relative housing needs of the Indian tribal population, based upon data from the most recent, available decennial census and, where appropriate, upon more recent data from the Bureau of the Census or other Federal agencies.

* * * * *

Dated: September 20, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–24328 Filed 9–30–94; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8562]

RIN 1545–AM92

Research or Experimental Expenditures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to the Income Tax Regulations clarifying the definition of *research or experimental expenditures* and providing guidance regarding the reasonableness requirement of section 174(e), added to the Internal Revenue Code by the Revenue Reconciliation Act of 1989. These amendments affect taxpayers conducting research or experimentation in connection with a trade or business.

EFFECTIVE DATE: October 3, 1994.

FOR FURTHER INFORMATION CONTACT: Lisa J. Shuman, (202) 622–3120 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 174 of the Internal Revenue Code (Code) provides two alternative methods that taxpayers may use to account for research or experimental expenditures. A taxpayer may either deduct the expenditures in the year in which they are paid or incurred, or treat the expenditures as deferred expenses, amortizable over a period of at least 60 months. In 1957, the IRS adopted § 1.174–2(a)(1), which defines the term *research or experimental expenditures* as expenditures which represent research and development costs in the experimental or laboratory sense (22 FR 7901 (October 4, 1957)).

In 1993, the IRS proposed amendments to § 1.174–2(a)(1) to clarify the definition of *research or experimental expenditures* (58 FR 15819 (March 24, 1993)). The amendments also provide guidance regarding section 174(e), which was added to the Code by the Revenue Reconciliation Act of 1989. Section 174(e) provides that the accounting rules of section 174 apply to a research or experimental expenditure only to the extent that the amount of the expenditure is reasonable under the circumstances.

The IRS received comments on the proposed amendments both in writing and at a public hearing on June 18, 1993. This Treasury decision adopts the proposed amendments with several revisions in response to public comments.

Explanation of Provisions

A. Clarification of Uncertainty Test

As noted above, the 1957 regulations define *research or experimental expenditures* as expenditures which represent research and development costs in the experimental or laboratory sense. The proposed amendments provide that expenditures represent research and development costs in the experimental or laboratory sense if they are for activities intended to discover information that would eliminate uncertainty concerning the development or improvement of a product. Under the proposed amendments, the requisite uncertainty exists if the information reasonably available to the taxpayer does not establish the capability or method for developing or improving the product.

Several commentators expressed concern that the uncertainty test provided in the proposed amendments could be construed to limit unduly the definition of *research or experimental expenditures*. In particular, the commentators argued that the test could exclude expenditures incurred to determine the appropriate design of a product if the taxpayer knows at the outset that the procedure will be successful. In such a case, the taxpayer is not uncertain as to either its capability to develop the product or the method by which it will develop the product.

The Treasury Department and the IRS agree that a taxpayer's knowledge that a product development project will be successful does not preclude the process of determining the appropriate design of the product from qualifying as research. The Treasury Department and the IRS also agree that the language of the uncertainty test provided in the proposed amendments could be construed to reach a result contrary to that intended. The final amendments thus clarify the uncertainty test. Under the final amendments, the requisite uncertainty exists if the information available to the taxpayer does not establish either (i) The capability or method for developing or improving the

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product, or (ii) the appropriate design of the product.

The uncertainty test, as clarified in the final amendments, reflects the dual purposes of section 174. Congress enacted section 174 not only to encourage research, but also to avoid the difficult tax accounting questions that would arise regarding research expenditures in the absence of special tax accounting rules. See H. Rep. 1337, 83d Cong., 2d Sess. (1954), reprinted in 1954 U.S.C.C.A.N. 4017, 4053. These difficult tax accounting questions would not be limited to cases in which the success of a product development project is in doubt. If a given line of inquiry proves to be unfruitful, questions could arise regarding whether the costs involved could be deducted, or whether the knowledge gained from the inquiry might contribute sufficiently to the ultimate design of the product that the costs must be capitalized. In short, the tax accounting questions that section 174 was meant to resolve can arise whenever the taxpayer is uncertain as to the capability or method for developing or improving the product, or the appropriate design of the product.

The proposed amendments apply the uncertainty test with reference to "the information reasonably available to the taxpayer." The Treasury Department and the IRS agree with the commentators that the meaning of the phrase *reasonably available* is unclear. Further, the phrase could be read to impose an unintended restriction on the definition of research or experimental expenditures. Information could be considered to be *reasonably available* to a taxpayer if the taxpayer can obtain the information through procedures that, while not particularly involved, are nonetheless in the nature of research activities. To avoid the ambiguities resulting from the term *reasonably*, the final amendments provide for the application of the uncertainty test with reference to the information actually available to the taxpayer. The removal of the term *reasonably* is not intended to expand the information considered to be available to the taxpayer.

B. Validation Testing

The 1957 regulations exclude from the definition of research the ordinary testing or inspection of materials or products for quality control. Several commentators on the proposed amendments asked for clarification that research includes validation testing to ensure that a product design meets its intended objectives. In response to these comments, the final amendments clarify that the existing exclusion for quality control testing does not apply to testing to determine if the design of a product is appropriate.

C. Effective Date

The final amendments retain the effective date of the proposed amendments, and thus apply to taxable years beginning after October 3, 1994. Some commentators requested that the proposed amendments apply to all open taxable years. Because the amendments merely clarify the existing definition of *research or experimental expenditures*, retroactive application of the amendments is unnecessary. Return positions consistent with the amendments will be consistent with the existing regulations and will be recognized as such by the IRS.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Lisa J. Shuman of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.174–2 is amended as follows:

1. Paragraph (a)(1) is revised.

2. Paragraphs (a) (2) and (3) are redesignated as paragraphs (a) (8) and (9), respectively.

3. New paragraphs (a) (2) through (7) are added.

4. Paragraph (c) is amended by removing the reference "sections 615" and adding "sections 617" in its place.

5. The additions and revisions read as follows:

§ 1.174–2 Definition of research and experimental expenditures.

(a) *In general.* (1) The term *research or experimental expenditures*, as used in section 174, means expenditures incurred in connection with the taxpayer's trade or business which represent research and development costs in the experimental or laboratory sense. The term generally includes all such costs incident to the development or improvement of a product. The term includes the costs of obtaining a patent, such as attorneys' fees expended in making and perfecting a patent application. Expenditures represent research and development costs in the experimental or laboratory sense if they are for activities intended to discover information that would eliminate uncertainty concerning the development or improvement of a product. Uncertainty exists if the information available to the taxpayer does not establish the capability or method for developing or improving the product or the appropriate design of the product. Whether expenditures qualify as research or experimental expenditures depends on the nature of the activity to which the expenditures relate, not the nature of the product or improvement being developed or the level of technological advancement the product or improvement represents.

(2) For purposes of this section, the term *product* includes any pilot model, process, formula, invention, technique, patent, or similar property, and includes products to be used by the taxpayer in its trade or business as well as products to be held for sale, lease, or license.

(3) The term *research or experimental expenditures* does not include expenditures for—

(i) The ordinary testing or inspection of materials or products for quality control (quality control testing);

(ii) Efficiency surveys;

(iii) Management studies;

(iv) Consumer surveys;

(v) Advertising or promotions;

(vi) The acquisition of another's patent, model, production or process; or

(vii) Research in connection with literary, historical, or similar projects.

(4) For purposes of paragraph (a)(3)(i) of this section, testing or inspection to determine whether particular units of materials or products conform to specified parameters is quality control testing. However, quality control testing does not include testing to determine if the design of the product is appropriate.

(5) See section 263A and the regulations thereunder for cost capitalization rules which apply to expenditures paid or incurred for research in connection with literary, historical, or similar projects involving the production of property, including the production of films, sound recordings, video tapes, books, or similar properties.

(6) Section 174 applies to a research or experimental expenditure only to the extent that the amount of the expenditure is reasonable under the circumstances. In general, the amount of an expenditure for research or experimental activities is reasonable if the amount would ordinarily be paid for like activities by like enterprises under like circumstances. Amounts supposedly paid for research that are not reasonable under the circumstances may be characterized as disguised dividends, gifts, loans, or similar payments. The reasonableness requirement of this paragraph (a)(6) does not apply to the reasonableness of the type or nature of the activities themselves.

(7) This paragraph (a) applies to taxable years beginning after October 3, 1994.

* * * * * * *

Dated: September 9, 1994.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: September 9, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–24153 Filed 9–30–94; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 1 and 602

[TD 8563]

RIN 1545–AQ41

State Housing Credit Ceiling and Other Rules Relating to the Low-Income Housing Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the low-income housing credit under section 42 of the Internal Revenue Code. The regulations provide rules relating to the order in which housing credit dollar amounts are allocated from each State's housing credit ceiling under section 42(h)(3)(C) and the determination of which States qualify to receive credit from a national pool of credit under section 42(h)(3)(D). The regulations affect State and local housing credit agencies and taxpayers receiving credit allocations, and provide them with guidance for complying with section 42. The final regulations also amend § 1.42–5 to provide a cross reference to section 42(g)(8)(B).

EFFECTIVE DATE: These regulations are effective January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Christopher J. Wilson 202–622–3040 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1423. The estimated annual burden per State or local government respondent varies from 2 hours to 6 hours, with an estimated average of 4 hours. The estimated annual burden for all other respondents varies from .5 hours to 1.5 hours, with an estimated average of 1 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the IRS, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On December 29, 1993, the IRS published a notice of proposed rulemaking in the **Federal Register** (58 FR 68799) proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 42 of the Internal Revenue Code of 1986, as amended. These amendments provide guidance on several requirements of the low-income housing tax credit relating to determinations of the housing credit dollar amount available to housing credit agencies for allocation in any given year.

Written comments responding to the notice of proposed rulemaking were received. A public hearing was scheduled for April 26, 1994, pursuant to a notice of public hearing published simultaneously with the notice of proposed rulemaking. The IRS received one request to speak at the public hearing. This request was withdrawn before the hearing date. On April 14, 1994, the IRS published a notice (59 FR 17747) cancelling the public hearing on the proposed regulations. After consideration of the comments received, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 42 provides for a low-income housing credit that may be claimed as part of the general business credit under section 38. In general, the credit is allowable only if the owner of a qualified low-income building receives a housing credit allocation from a State or local housing credit agency (Agency) of the jurisdiction where the building is located.

The aggregate housing credit dollar amount that an Agency may allocate for any calendar year is limited to the State housing credit ceiling apportioned to the Agency for that year. Under section 42(h)(3)(C), the State housing credit ceiling of any State for any calendar year is an amount equal to the sum of: (a) $1.25 multiplied by the State population (the population component); (b) the unused State housing credit ceiling, if any, of the State for the preceding calendar year (the unused carryforward component); (c) the amount of State housing credit ceiling returned in the calendar year (the returned credit component); plus (d) the amount, if any, allocated to the State by the Secretary under section 42(h)(3)(D) from a national pool of unused credit (the national pool component).

The final regulations set forth the rules governing the order in which credit is allocated from the various components of the State housing credit ceiling under section 42(h)(3)(C) (the stacking rules). In general, under the stacking rules, credit is allocated first from the sum of the population and returned credit components, then from the unused carryforward component, and finally from the national pool component. The final regulations also reflect the statutory rule that unallocated credit attributable to the national pool component cannot be carried forward, and, therefore, is not included in the carryforward component for the following year. In addition, the final regulations provide that no credit allocated prior to calendar year 1990, and no credit allowable under section 42(h)(4) (relating to the portion of credit attributable to eligible basis financed by certain tax-exempt obligations under section 103), may be returned for reallocation. Thus, this credit is not included in the returned credit component for any year.

One commentator requested clarification of the rule in the proposed regulations that if the terms of the

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allocation violate any requirement of section 42, the allocation is not valid. Specifically, the commentator expressed concern that a misrepresentation by a taxpayer to an Agency would result in the allocation being treated as not valid and as if it had never been made and ineligible for treatment as a returned credit. The final regulations do not include this statement. First, the determination of whether an allocation is valid is not within the scope of these regulations. Second, given the general requirement that an allocation must be valid to qualify as a returned credit, it is unnecessary to include the additional statement that, if the terms of the allocation violate any requirement of section 42, the allocation is not valid and is treated as if it had not been made. However, for all purposes of section 42, including qualification as a returned credit, an allocation must be validly made. See, for example, §§ 1.42–1T and 1.42–6.

The final regulations adopt the provision of the proposed regulations requiring that if a credit is returned within 180 days following the close of the first taxable year of a building's credit period and a Form 8609, *Low-Income Housing Credit Allocation Certification*, has been issued for the building, an Agency must notify the IRS that the credit has been returned. One commentator requested that the procedure for notifying the IRS be clarified. Accordingly, the final regulations clarify that if all of the credit is returned, the Agency must follow the procedures in § 1.42–5(e)(3) for filing the Form 8823, *Low-Income Housing Credit Agencies Report of Noncompliance*. In situations where the credit is only partially returned, the Agency must follow the procedures prescribed for filing an amended Form 8610, *Annual Low-Income Housing Credit Agencies Report*.

The proposed regulations permit an Agency to treat credit returned from a project to the Agency after October 31 of any calendar year and not reallocated by the Agency by the close of the year as returned at the beginning of the succeeding calendar year (the two-month rule). One commentator suggested that the two-month rule of the proposed regulations be changed to allow more time to reallocate credits before the close of the calendar year. Accordingly, the final regulations provide that credit returned to the Agency after September 30 of any calendar year and not reallocated by the close of the year may be treated as returned at the beginning of the succeeding calendar year. In response to another comment, the final regulations clarify that an Agency, in its discretion, may treat a portion of a credit that is so returned and that is not reallocated before the close of the calendar year as returned in the next calendar year. However, to the extent any portion of a credit returned after September 30 of any calendar year is allocated by the close of the calendar year in which it is returned, that portion of the credit is included as part of the returned credit component of the State housing credit ceiling for the year in which the credit is returned.

The proposed regulations provide that, if an allocation is cancelled by mutual consent, a signed and dated written agreement between the Agency and the allocation recipient (or its successor in interest) must indicate the amount of the allocation returned and the date on which the credit is returned. Commentators suggested that, if the terms of an allocation state that any unused amounts are automatically returned to the Agency by mutual agreement, the regulations should not require a signed and dated written agreement. If this suggestion were adopted, neither the IRS nor the Agency would know with enough precision the amount of credit returned and the date on which the credit is returned. This information is necessary to determine with certainty the returned credit component of the State housing credit ceiling and to avoid discrepancies in the amount of credit allocated to a particular project. Thus, the final regulations do not adopt this suggestion.

Under section 42(h)(3)(D), States that have unused housing credit carryovers must assign them to the Secretary for inclusion in a national pool of unused housing credit carryovers (National Pool), and the Secretary must allocate National Pool credit among qualified States.

In determining whether there is any unallocated credit within the State at the close of a calendar year, the housing credit dollar amounts apportioned to all Agencies within the State (including Agencies of constitutional home rule cities in the State) and the allocations of all Agencies within the State are considered. One commentator suggested that a constitutional home rule city be considered alone rather than in combination with other constitutional home rule cities or Agencies within a State in determining access to the National Pool. Section 42(h)(3)(E) does provide special rules for apportioning credits to constitutional home rule cities. Under these rules, however, credits are apportioned to these cities from the State housing credit ceiling. There is no provision in the Code that permits a constitutional home rule city to receive credit that is not apportioned from the State housing credit ceiling. Accordingly, the final regulations do not adopt this suggestion.

In addition to a de minimis exception for States that have 1 percent or less of unallocated credit remaining in their State housing credit ceiling at the close of a calendar year (de minimis rule), the proposed regulations provide that, in other circumstances where relief is deemed appropriate, the IRS may determine that a State is a qualified State eligible to participate in the National Pool. One commentator requested that States that cannot allocate their entire ceiling as a result of a natural disaster be allowed to participate in the National Pool. This type of relief exceeds the scope and intent behind the limited exception provided in the proposed regulations. Further, this type of relief would be inequitable to other States that qualify for the National Pool. Thus, the final regulations do not adopt this suggestion.

Another commentator suggested that the de minimis rule provide an alternative fixed dollar amount measurement of de minimis amount to reflect unallocated amounts that are, as a practical matter, insufficient to provide an allocation to a project. Due to variations in construction and housing costs across the United States, this suggestion was not adopted. Similarly, a suggestion that the final regulations provide a separate de minimis rule for the set-aside for nonprofit organizations was not adopted. Under the regulations, however, these situations can be addressed by the IRS on a case-by-case basis. Moreover, if appropriate, additional safe harbors could be provided in the future (e.g., to respond to other common situations not addressed by the 1 percent rule).

The final regulations also amend § 1.42–5 to provide a cross reference to section 42(g)(8)(B), as added by section 13142(b)(3) of the Revenue Reconciliation Act of 1993. Section 42(g)(8)(B) provides that on application by the taxpayer, the Secretary may waive any annual recertification of tenant income (the Waiver) for purposes of section 42(g), if the entire building is occupied by low-income tenants. Instructions on how to obtain the Waiver will be contained in a forthcoming revenue procedure.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Christopher J. Wilson, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.42–14 also issued under 26 U.S.C. 42(n). * * *

Par. 2. Section 1.42–5 is amended by:

1. Revising paragraph (b)(1)(vi).
2. Adding a sentence after the first sentence in paragraph (b)(1)(vii).
3. Revising paragraph (c)(1)(iii).
4. The revisions and additions read as follows:

§ 1.42–5 Monitoring compliance with low-income housing credit requirements.

* * * * *

(b) * * * (1) * * *

(vi) The annual income certification of each low-income tenant per unit. For an exception to this requirement, see section 42(g)(8)(B) (which provides a special rule for a 100 percent low-income building);

(vii) * * * For an exception to this requirement, see section 42(g)(8)(B) (which provides a special rule for a 100 percent low-income building). * * *

* * * * *

(c) * * * (1) * * *

(iii) The owner has received an annual income certification from each low-income tenant, and documentation to support that certification; or, in the case of a tenant receiving Section 8 housing assistance payments, the statement from a public housing authority described in paragraph (b)(1)(vii) of this section. For an exception to this requirement, see section 42(g)(8)(B) (which provides a special rule for a 100 percent low-income building);

* * * * *

Par. 3. Section 1.42–14 is added to read as follows:

§ 1.42–14 Allocation rules for post-1989 State housing credit ceiling amounts.

(a) *In general.* The State housing credit ceiling for a State for any calendar year after 1989 is comprised of four components. The four components are—

(1) $1.25 multiplied by the State population (the population component);

(2) The unused State housing credit ceiling, if any, of the State for the preceding calendar year (the unused carryforward component);

(3) The amount of State housing credit ceiling returned in the calendar year (the returned credit component); plus

(4) The amount, if any, allocated to the State by the Secretary under section 42(h)(3)(D) from a national pool of unused credit (the national pool component).

(b) *The population component.* The population component of the State housing credit ceiling of a State for any calendar year is determined pursuant to section 146(j). Thus, a State's population for any calendar year is determined by reference to the most recent census estimate, whether final or provisional, of the resident population of the State released by the Bureau of the Census before the beginning of the calendar year for which the State's housing credit ceiling is set. Unless otherwise prescribed by applicable revenue procedure, determinations of population are based on the most recent estimates of population contained in the Bureau of the Census publication, *Current Population Report, Series P–25; Population Estimates and Projections, Estimates of the Population of States.* For convenience, the Internal Revenue Service publishes the population estimates annually in the Internal Revenue Bulletin. [See § 601.601(d)(2)(ii)(*b*)).

(c) *The unused carryforward component.* The unused carryforward component of the State housing credit ceiling for any calendar year is the excess, if any, of the sum of the population and returned credit components, over the aggregate housing credit dollar amount allocated for the year. Any credit amounts attributable to the national pool component of the State housing credit ceiling that remain unallocated at the close of a calendar year are not carried forward to the succeeding calendar year; instead, the credit expires and cannot be reallocated by any Agency.

(d) *The returned credit component—*

(1) *In general.* The returned credit component of the State housing credit ceiling for any calendar year equals the housing credit dollar amount returned during the calendar year that was validly allocated within the State in a prior calendar year to any project that does not become a qualified low-income housing project within the period required by section 42, or as required by the terms of the allocation. The returned credit component also includes credit allocated in a prior calendar year that is returned as a result of the cancellation of an allocation by mutual consent or by an Agency's determination that the amount allocated is not necessary for the financial feasibility of the project. For purposes of this section, credit is allocated within a State if it is allocated from the State's housing credit ceiling by an Agency of the State or of a constitutional home rule city in the State.

(2) *Limitations and special rules.* The following limitations and special rules apply for purposes of this paragraph (d).

(i) *General limitations.* Notwithstanding any other provision of this paragraph (d), returned credit does not include any credit that was—

(A) Allocated prior to calendar year 1990;

(B) Allowable under section 42(h)(4) (relating to the portion of credit attributable to eligible basis financed by certain tax-exempt bonds under section 103); or

(C) Allocated during the same calendar year that it is received back by the Agency.

(ii) *Credit period limitation.* Notwithstanding any other provision of this paragraph (d), an allocation of credit may not be returned any later than 180 days following the close of the first taxable year of the credit period for the building that received the allocation. After this date, credit that might otherwise be returned expires, and cannot be returned to or reallocated by any Agency.

(iii) *Three-month rule for returned credit.* An Agency may, in its discretion, treat any portion of credit that is returned from a project after September 30 of a calendar year and that is not

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reallocated by the close of the calendar year as returned on January 1 of the succeeding calendar year. In this case, the returned credit becomes part of the returned credit component of the State housing credit ceiling for the succeeding calendar year. Any portion of credit that is returned from a project after September 30 of a calendar year that is reallocated by the close of the calendar year is treated as part of the returned credit component of the State housing credit ceiling for the calendar year that the credit was returned.

(iv) *Returns of credit.* Subject to the limitations of paragraphs (d)(2) (i) and (ii) of this section, credit is returned to the Agency in the following instances in the manner described in paragraph (d)(3) of this section.

(A) *Building not qualified within required time period.* If a building is not a qualified building within the time period required by section 42, it loses its credit allocation and the credit is returned. For example, a building is not qualified within the required time period if it is not placed in service within the period required by section 42 or if the project of which the building is a part fails to meet the minimum set-aside requirements of section 42(g)(1) by the close of the first year of the credit period.

(B) *Noncompliance with terms of the allocation.* If a building does not comply with the terms of its allocation, it loses the credit allocation and the credit is returned. The terms of an allocation are the written conditions agreed to by the Agency and the allocation recipient in the allocation document.

(C) *Mutual consent.* If the Agency and the allocation recipient cancel an allocation of an amount of credit by mutual consent, that amount of credit is returned.

(D) *Amount not necessary for financial feasibility.* If an Agency determines under section 42(m)(2) that an amount of credit allocated to a project is not necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period, that amount of credit is returned.

(3) *Manner of returning credit—*(i) *Taxpayer notification.* After an Agency determines that a building or project no longer qualifies under paragraph (d)(2)(iv)(A), (B), or (D) of this section for all or part of the allocation it received, the Agency must provide written notification to the allocation recipient, or its successor in interest, that all or part of the allocation is no longer valid. The notification must also state the amount of the allocation that is no longer valid. The date of the notification is the date the credit is returned to the Agency. If an allocation is cancelled by mutual consent under paragraph (d)(2)(iv)(C) of this section, there must be a written agreement signed by the Agency, and the allocation recipient, or its successor in interest, indicating the amount of the allocation that is returned to the Agency. The effective date of the agreement is the date the credit is returned to the Agency.

(ii) *Internal Revenue Service notification.* If a credit is returned within 180 days following the close of the first taxable year of a building's credit period as provided in paragraph (d)(2)(ii) of this section, and a Form 8609, *Low-Income Housing Credit Allocation Certification,* has been issued for the building, the Agency must notify the Internal Revenue Service that the credit has been returned. If only part of the credit has been returned, this notification requirement is satisfied when the Agency attaches to an amended Form 8610, *Annual Low-Income Housing Credit Agencies Report,* the original of an amended Form 8609 reflecting the correct amount of credit attributed to the building together with an explanation for the filing of the amended Forms. The Agency must send a copy of the amended Form 8609 to the taxpayer that owns the building. If the building is not issued an amended Form 8609 because all of the credit allocated to the building is returned, notification to the Internal Revenue Service is satisfied by following the requirements prescribed in § 1.42–5(e)(3) for filing a Form 8823, *Low-Income Housing Credit Agencies Report of Noncompliance.*

(e) *The national pool component.* The national pool component of the State housing credit ceiling of a State for any calendar year is the portion of the National Pool allocated to the State by the Secretary for the calendar year. The national pool component for any calendar year is zero unless a State is a *qualified State.* (See paragraph (i) of this section for rules regarding the National Pool and the description of a qualified State.) Credit from the national pool component of a State housing credit ceiling must be allocated prior to the close of the calendar year or the credit expires and cannot be reallocated by any Agency. A national pool component credit that is allocated during a calendar year and returned after the close of the calendar year may qualify as part of the returned credit component of the State housing credit ceiling for the calendar year that the credit is returned.

(f) *When the State housing credit ceiling is determined.* For purposes of accounting for the State housing credit ceiling on Form 8610 and for purposes of determining the set-aside apportionment for projects involving qualified nonprofit organizations described in section 42(h)(5) and § 1.42–1T(c)(5), the State housing credit ceiling for any calendar year is determined at the close of the calendar year.

(g) *Stacking order.* Under section 42(h)(3)(C), credit is treated as allocated from the various components of the State housing credit ceiling in the following order. The first credit allocated for any calendar year is treated as credit from the sum of the population and returned credit components of the State housing credit ceiling. Once all of the credit in these components has been allocated, the next credit allocated is treated as credit from the unused carryforward component of the State housing credit ceiling. Finally, after all of the credit from the population component, returned credit component, and unused carryforward component has been allocated, any further credit allocated is treated as credit from the national pool component.

(h) *Nonprofit set-aside—*(1) *Determination of set-aside.* Under section 42(h)(5) and § 1.42–1T(c)(5), at least 10 percent of a State housing credit ceiling in any calendar year must be set aside exclusively for projects involving qualified nonprofit organizations (the nonprofit set-aside). However, credit allocated from the nonprofit set-aside in a calendar year and returned in a subsequent calendar year does not retain its nonprofit set-aside character. The credit becomes part of the returned credit component of the State housing credit ceiling for the calendar year that the credit is returned and must be included in determining the nonprofit set-aside of the State housing credit ceiling for that calendar year. Similarly, credit amounts that are not allocated from the nonprofit set-aside in a calendar year and are returned in a subsequent calendar year become part of the returned credit component of the State housing credit ceiling for that year and are also included in determining the set-aside for that year.

(2) *Allocation rules.* An Agency may allocate credit from any component of the State housing credit ceiling as part of the nonprofit set-aside and need not reserve 10 percent of each component for the nonprofit set-aside. Thus, an Agency may satisfy the nonprofit set-aside requirement of section 42(h)(5) and § 1.42–1T(c)(5) in any calendar year by setting aside for allocation an amount equal to at least 10 percent of the total State housing credit ceiling for the calendar year.

(i) *National Pool—*(1) *In general.* The unused housing credit carryover of a State for any calendar year is assigned to the Secretary for inclusion in a national pool of unused housing credit carryovers (National Pool) that is reallocated among qualified States the succeeding calendar year. The assignment to the Secretary is made on Form 8610.

(2) *Unused housing credit carryover.* The unused housing credit carryover of a State for any calendar year is the excess, if any, of the unused carryforward component of the State housing credit ceiling for the calendar year over the excess, if any, of—

(i) The total housing credit dollar amount allocated for the year; over

(ii) The sum of the population and returned credit components of the State housing credit ceiling for the year.

(3) *Qualified State—*(i) *In general.* The term *qualified State* means, with respect to any calendar year, any State that has allocated its entire State housing credit ceiling for the preceding calendar year and for which a request is made by the State, not later than May 1 of the calendar year, to receive an allocation of credit from the National Pool for that calendar year. Except as provided in paragraph (i)(3)(ii) of this section, a State is not a qualified State in a calendar year if there remains any unallocated credit in its State housing credit ceiling at the close of the preceding calendar year that was apportioned to any Agency within the State for the calendar year.

(ii) *Exceptions—*(A) *De minimis amount.* If the amount remaining unallocated at the close of a calendar year is only a de minimis amount of credit, the State is a qualified State eligible to participate in the National Pool. For that purpose, a credit amount is de minimis if it does not exceed 1 percent of the aggregate State housing credit ceiling of the State for the calendar year.

(B) *Other circumstances.* Pursuant to the authority under section 42(n), the Internal Revenue Service may determine that a State is a qualified State eligible to participate in the National Pool even though the State's unallocated credit is in excess of the 1 percent safe harbor set forth in paragraph (A) of this section. The Internal Revenue Service will make this determination based on all the facts and circumstances, weighing heavily the interests of the States who would otherwise qualify for the National Pool. The Internal Revenue Service will generally grant relief under this paragraph only where a State's unallocated credit is not substantial.

(iii) *Time and manner for making request.* For further guidance as to the time and manner for making a request of housing credit dollar amounts from the National Pool by a qualified State, see Rev. Proc. 92–31, 1992–1 C.B. 775. (See 601.601(d)(2)(ii)(*b*)).

(4) *Formula for determining the National Pool.* The amount allocated to a qualified State in any calendar year is an amount that bears the same ratio to the aggregate unused housing credit carryovers of all States for the preceding calendar year as that State's population for the calendar year bears to the population of all qualified States for the calendar year.

(j) *Coordination between Agencies.* The Agency responsible for filing Form 8610 on behalf of all Agencies within a State and making any request on behalf of the State for credit from the National Pool (the Filing Agency) must coordinate with each Agency within the State to ensure that the various requirements of this section are complied with. For example, the Filing Agency of a State must ensure that all Agencies within the State that were apportioned a credit amount for the calendar year have allocated all of their respective credit amounts for the calendar year before the Filing Agency can make a request on behalf of the State for a distribution of credit from the National Pool.

(k) *Examples.* (1) The operation of the rules of this section may be illustrated by the following examples. Unless otherwise stated in an example, Agency A is the sole Agency authorized to make allocations of housing credit dollar amounts in State M, all of Agency A's allocations are valid, and for calendar year 1994 Agency A has available for allocation a State housing credit ceiling consisting of the following housing credit dollar amounts:

A. Population component	$100
B. Unused carryforward component	50
C. Returned credit component	10
D. National pool component	0
Total	160

(2) In addition, the $10 of returned credit component was returned before October 1, 1994.

Example 1—(i) *Additional facts.* By the close of 1994, Agency A had allocated $80 of the State M housing credit ceiling. Of the $80 allocated, $16 was allocated to projects involving qualified nonprofit organizations.

(ii) *Application of stacking rules.* The first credit allocated is treated as allocated from the population and returned credit components of the State housing credit ceiling, to the extent of those components. In this case, the $80 of credit allocated is less than the sum of the population and returned credit components. The excess of the sum of the population and returned credit components over the total amount allocated for the calendar year ($110 – 80=$30) becomes the unused carryforward component of State M's 1995 State housing credit ceiling. Because Agency A did not allocate credit in excess of the sum of the population and returned credit components, no credit is treated as allocated from State M's $50 unused carryforward component in 1994. Because none of this component may be carried forward, all $50 is assigned to the Secretary for inclusion in the National Pool. Under paragraph (i)(3) of this section, State M does not qualify for credit from the National Pool for the 1995 calendar year.

(iii) *Nonprofit set-aside.* Agency A allocated exactly the amount of credit to projects involving qualified nonprofit organizations as necessary to meet the nonprofit set-aside requirement ($16, 10% of the $160 ceiling).

Example 2—(i) *Additional facts.* By the close of 1994, Agency A had allocated $130 of the State M housing credit ceiling. Of the $130 allocated, $20 was allocated to projects involving qualified nonprofit organizations.

(ii) *Application of stacking rules.* The first $110 of credit allocated is treated as allocated from the population and returned credit components. In this case, because all of the population and returned credit components are allocated, no amount is included in State M's 1995 State housing credit ceiling as an unused carryforward component. The next $20 of credit allocated is treated as allocated from the $50 unused carryforward component. The $30 remaining in the unused carryforward component is assigned to the Secretary for inclusion in the National Pool for the 1995 calendar year. Under paragraph (i)(3) of this section, State M does not qualify for credit from the National Pool for the 1995 calendar year.

(iii) *Nonprofit set-aside.* Agency A allocated $4 more credit to projects involving qualified nonprofit organizations than necessary to meet the nonprofit set-aside requirement. This does not reduce the application of the 10% nonprofit set-aside requirement to the State M housing credit ceiling for the succeeding year.

Example 3—(i) *Additional fact.* None of the applications for credit that Agency A received for 1994 are for projects involving qualified nonprofit organizations.

(ii) *Nonprofit set-aside.* Because at least 10% of the State housing credit ceiling must be set aside for projects involving a qualified nonprofit organization, Agency A can allocate only $144 of the $160 State housing credit ceiling for calendar year 1994 ($160 – 16=$144). If Agency A allocates $144 of credit, the credit is treated as allocated $110 from the population and returned credit components and $34 from the unused carryforward component. The $16 of unallocated credit that is set aside for projects involving qualified nonprofit organizations is treated as the balance of the unused carryforward component, and is assigned to the Secretary for inclusion in the National Pool. Under paragraph (i)(3) of this section, State M does not qualify for credit

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from the National Pool for the 1995 calendar year.

Example 4—(i) *Additional facts.* The $10 of returned credit component was returned prior to October 1, 1994. However, a $40 credit that had been allocated in calendar year 1993 to a project involving a qualified nonprofit organization was returned to the Agency by a mutual consent agreement dated November 15, 1994. By the close of 1994, Agency A had allocated $160 of the State M housing credit ceiling, including $16 of credit to projects involving qualified nonprofit organizations.

(ii) *Effect of three-month rule.* Under the three-month rule of paragraph (d)(2)(iii) of this section, Agency A may treat all or part of the $40 of previously allocated credit as returned on January 1, 1995. If Agency A treats all of the $40 amount as having been returned in calendar year 1995, the State M housing credit ceiling for 1994 is $160. This entire amount, including the $16 nonprofit set-aside, has been allocated in 1994. Under paragraph (i)(3) of this section, State M qualifies for the National Pool for the 1995 calendar year.

(iii) *If three-month rule not used.* If Agency A treats all of the $40 of previously allocated credit as returned in calendar year 1994, the State housing credit ceiling for the 1994 calendar year will be $200 of which $50 will be attributable to the returned credit component ($10+$40=$50). Because credit amounts allocated in a prior calendar year that are returned in a subsequent calendar year do not retain their nonprofit character, the nonprofit set-aside for calendar year 1994 is $20 (10% of $200). The $160 that Agency A allocated during 1994 is first treated as from the population and returned credit components, which total $150. The next $10 of credit allocated is treated as from the unused carryforward component. The $40 of unallocated credit from the unused carryforward component includes the $4 of unallocated nonprofit set-aside. The entire $40 of credit from the carryforward component is assigned to the Secretary for inclusion in the National Pool for the 1995 calendar year. State M does not qualify for credit from the National Pool for the 1995 calendar year.

Example 5—(i) (A) *Additional facts.* For calendar year 1994, Agency A has a State housing credit ceiling that consists of the following housing credit dollar amounts:

A. Population component	$100
B. Unused carryforward component	0
C. Returned credit component	20
D. National pool component	10
Total	130
Minimum nonprofit set-aside	13
Ceiling amount not set-aside	117

In addition, the $20 of returned credit component was returned before October 1, 1994. By the close of 1994, Agency A had allocated $100 of the State housing credit ceiling.

(ii) *Application of stacking rules.* The $20 excess of the sum of the population component and the returned credit component over the total amount allocated for the calendar year ($120 − 100=$20) becomes the unused carryforward component of the State housing credit ceiling for the 1995 calendar year. The $10 of unallocated credit from the national pool component expires and cannot be reallocated. This amount is neither carried over to 1995 by State M nor assigned to the Secretary for inclusion in the National Pool. Under paragraph (i)(3) of this section, State M does not qualify for credit from the National Pool for the 1995 calendar year.

(l) *Effective date.* The rules set forth in § 1.42–14 are effective January 1, 1994.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101(c) [Amended]

Par. 5. Section 602.101(c) is amended by adding the entry "1.42–14....1545–1423" in numerical order to the table.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: September 9, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–24283 Filed 9–30–94; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–94–008]

RIN–2115–AE47

Drawbridge Operation Regulations; Black Rock Canal, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Canadian National Railway Company, the Coast Guard is changing the operating regulations governing the Canadian National railroad bridge at mile 3.8 across the Black Rock Canal in Buffalo, New York, by not requiring bridgetenders to be in constant attendance at the bridge during periods of time when there is little or no significant navigation on the Canal. This action will relieve the bridge owner of the burden of having a bridgetender in constant attendance and will provide for the reasonable needs of navigation. Additionally, this rule adjusts the hours of the Ferry Street bridge at mile 2.6 across the Black Rock Canal when the bridge is not required to have a bridgetender in attendance.

EFFECTIVE DATE: This rule becomes effective on November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Bloom, Jr., Chief, Bridge Branch, Ninth Coast Guard District, at (216) 522–3993.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal person involved in drafting this document is Mr. Fred H. Mieser, Project Manager.

Regulatory History

On June 1, 1994, the Coast Guard published a notice of proposed rulemaking entitled Drawbrige Operation Regulations; Black Rock Canal, NY, in the **Federal Register** (59 FR 28324 and 28325). On June 17, 1994, the commander, Ninth Coast Guard District published the proposed rule as a Public Notice (PN 09–03/94). Interested persons were given until August 1, 1994, and July 18, 1994, respectively, to submit comments. Two letters were received commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

Presently, the Canadian National railroad bridge is required to have bridgetenders in constant attendance at all times. The owner requested that they be allowed to remove bridgetenders from the bridge between the hours of 11 p.m. and 7 a.m., seven days a week, from April 15 through November 30, with a requirement to open the bridge on signal when notice is given at least two hours in advance of a vessel's time of intended passage through the draw. From December 1 through April 14, the bridge would be unattended at all times with a requirement to open the bridge on signal if notice is given at least four hours in advance of a vessel's time of intended passage through the draw. At all times, the bridge will be required to open as soon as possible for the passage of public vessels of the United States, State or local government vessels used for public safety, and vessels in distress.

Discussion of Comments and Changes

Two comments were received from the notice of proposed rulemaking requesting that the hours when the bridges are unattended be changed. The commenters requested the unattended periods for the bridges listed in the proposed rule, 11 p.m. to 7 a.m., be changed to conform with the period of time when the Black Rock Locks are unattended, between the hours of 12 midnight and 8 a.m., seven days a week. In addition, the regulations contained in 33 CFR 117.769 do not require the Ferry Street bridge across the Black Rock Canal to be manned from 11 p.m. to 7 a.m. The requested change of time is a reasonable request and will benefit marine traffic using the Black Rock Canal by bringing the time period for the bridges and locks in line when a vessel owner/operator is required to give an advance notice to transit the Canal. Therefore, section 117.769(a) of the proposed rule has been changed in the final rule by not requiring the bridges to be manned between the hours of 12 midnight to 8 a.m.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The Coast Guard concludes this because the rule which is being changed allows for the removal of bridgetenders during a period of time when there is little or no significant navigation on a waterway. In addition this rule establishes a consistent period of time when an advance notice is required to have the bridges manned which is less confusing to the person requesting passage through the locks and draws of the bridges.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this action will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The time period addressed by this regulation is consistent with the time period when most traffic using the Black Rock Canal is already controlled by the operation of the Black Rock Locks and when there is little or no significant vessel traffic on the waterway. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this action under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.5 of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination Statement has been prepared and placed in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations

For reasons set out in the preamble, the Coast Guard amends 33 CFR 117 as follows:

PART 117—DRAWBRIDGE OPERATING REGULATIONS

1. The authority citation for Part 117 continues to read as follows.

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.769 is revised to read as follows:

§ 117.769 Black Rock Canal.

The draws of the Ferry Street bridge, mile 2.6, and Canadian National Railway bridge, mile 3.8, both at Buffalo, shall operate as follows:

(a) From April 15 through November 30, the draws shall open on signal. However, between the hours of 12 midnight and 8 a.m., seven days a week, no bridgetender is required to be in attendance at the bridges and the draws shall open on signal if notice is given to the owners at least two hours in advance of a vessel's intended time of passage through the draws.

(b) From December 1 through April 14, no bridgetender is required to be in attendance at the bridges and the draws shall open on signal if notice is given to the owners at least four hours in advance of a vessel's time of intended passage through the draws.

Dated: September 19, 1994.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 94–24386 Filed 9–30–94; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[Docket No. DA94–1063]

List of Office of Management and Budget Approved Information Collection Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's list of Office of Management and Budget approved information collection requirements contained in the Commission's Rules.

This action will provide the public with a current list of information collection requirements in the Commission's Rules which have OMB approval and a current list of OMB-approved information collection requirements which do not have a FCC Form number or rule section associated with it.

EFFECTIVE DATE: September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Judy Boley, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

Order

In the matter of: Editorial amendment of list of Office of Management and Budget approved information collection requirements contained in Part 0 of the Commission's Rules.

By the Managing Director:

Adopted: September 28, 1994

Released: September 29, 1994

1. Section 3507(f) of the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3507(f), requires agencies to display a current control number assigned by the Director of the Office of Management and Budget ("OMB") for each agency information collection requirement.

2. Section 0.408 of the Commission's Rules displays the OMB control numbers assigned to the Commission's non-form information collection requirements. OMB control numbers assigned to Commission forms are not

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listed in this section since those numbers appear on the forms.

3. This Order amends Section 0.408 to remove listings of information collections which the Commission has eliminated and to add listings of new information collections which OMB has approved.

4. Authority for this action is contained in Section 4(i) of the Communications Act of 1934 (47 U.S.C. 154(i)), as amended, and Section 0.231(d) of the Commission's Rules. Since this amendment is a matter of agency organization procedure or practice, the notice and comment and effective date provisions of the Administrative Procedure Act do not apply. See 5 U.S.C. Section 553(b)(A)(d).

5. Accordingly, it is ordered, that § 0.408 of the Rules is amended as set forth in the Amendatory text, effective on the date of publication in the **Federal Register**.

6. Persons having questions on this matter should contact Judy Boley at (202) 418–0214.

List of Subjects in 47 CFR Part 0

Reporting and Recordkeeping Requirements.

Federal Communications Commission.

Andrew S. Fishel,

Managing Director.

Amendatory Text

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 0.408, paragraph (b) is amended by removing the following rule sections and their corresponding control numbers.

§ 0.408 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(b) * * *

47 CFR part or section where identified and described	Current OMB control No.
* * * * *	
76.33	3060–0416
* * * * *	

§ 0.408 [Amended]

3. Section 0.408, paragraph (b) is amended by adding the following rule sections and their corresponding OMB control to read as follows:

* * * * *

(b) * * *

47 CFR part or section where identified and described	Current OMB control no.
* * * * *	
76.503	3060–0581
76.504	3060–0580
* * * * *	
76.917	3060–0602
76.922	3060–0607
76.923	3060–0603
* * * * *	
76.934(d)	3060–0609
* * * * *	
76.958	3060–0610
* * * * *	
76.964(b)	3060–0608
* * * * *	
76.1302	3060–0582
* * * * *	
80.605	3060–0325
* * * * *	
80.1061	3060–0558
* * * * *	
90.173	3060–0461
* * * * *	
90.673	3060–0587
90.677	3060–0588
* * * * *	

§ 0.408 [Amended]

4. Section 0.408, paragraph (c) is amended by adding the following miscellaneous information and their corresponding OMB control numbers to read as follows:

* * * * *

(c) * * *

Description of miscellaneous information collections	Current OMB control No.
* * * * *	
Rewrite and Update of Part 22 of the Public Mobile Service rules—CC Docket No. 92–115	3060–0508
Licensing Policies and Procedures for Low-Earth Orbit Satellite Operating Below 1 GHz—CC Docket 92–76	3060–0539
Expanded Interconnection with Local Telephone Company Facilities—CC Docket No. 91–141	3060–0577
Expanded Interconnection with Local Telephone Company Facilities for Interstate Switched Transport Services	3060–0579
Amendment of Part 32 and 64 of the Commission's Rules to Account for Transactions Between Carriers and Their Nonregulated Affiliates—CC Docket No. 93–251	3060–0583
Implementation of Sections 3(n) and 332 of the Communications Act, First Report and Order—GN Docket No. 93–252	3060–0586
Transport Rate Structure and Pricing, CC Docket No. 91–213	3060–0590
Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610–1626.5/2483.5–2500 MHz Frequency Bands	3060–0591
Implementation of Sections 3(n) and 332 of the Communications Act, Second Report and Order, GN Docket No. 93–252	3060–0599
Implementation of Section 309(j) of the Communications Act, Competitive Bidding, Third Report and Order, PP Docket No. 93–253 (47 CFR Part 24)	3060–0604
Expanded Interconnection with Local Telephone Company Facilities, Commission Requirements for Cost Support Material to be Filed with Virtual Collocation Tariffs	3060–0614

[FR Doc. 94–24393 Filed 9–30–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final Rule; Correction.

SUMMARY: This document contains a correction to the *Report and Order* (Amendment of Section 73.202(b) Table of Allotments, FM Broadcasting Stations (Various Locations)), which was published July 27, 1994. The *Order* amended the FM Table of Allotments to specify the classes of channels allotted to various communities.

EFFECTIVE DATE: October 3, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau (202) 632–5414.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the *Order* contained errors which need to be corrected.

Correction of Publication

Accordingly, the publication on July 27, 1994, of the Public Notice regulations which were the subject of FR Doc. 94–18245, is corrected as follows:

§ 73.202 [Corrected]

On page 38129, in the third column, paragraph 2, on line five of the paragraph, the language "removing Channel 293C2 and adding Channel 293C3 at Sheffield" should be corrected to read: "removing Channel 292C2 and adding Channel 292C3 at Sheffield."

On page 38129, in the third column, paragraph 12 should be removed.

On page 38130, in the first column, paragraph 26, the paragraph should be corrected to read as follows:

"Section 73.202(b), the Table of FM Allotments for Texas, is amended by removing Channel 236C and adding Channel 236C1 at Beaumont, by removing Channel 300C and adding Channel 300C1 at Canyon, by removing Channel 253A and adding Channel 253C3 at Clarksville, by removing Channel 228C2 and adding Channel 228C3 at Greenville, by removing Channel 250C and adding Channel 250C1 at Odessa, and by removing Channel 256C and adding Channel 256C1 at Odessa."

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–24284 Filed 9–30–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–312; RM–8394]

Radio Broadcasting Services; Gallup, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of **Lewis J. Wallach**, allots Channel **268A to Gallup**, NM, as the community's fifth local commercial FM channel. *See* 59 FR 43, January 3, 1994. Channel 268A can be allotted to Gallup in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 35–31–30 North Latitude and 108–44–30 West Longitude. With this action, this proceeding is terminated.

DATES: Effective November 14, 1994. The window period for filing applications will open on November 15, 1994, and close on December 15, 1994.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–312, adopted September 21, 1994, and released September 28, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 268A at Gallup.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–24344 Filed 9–30–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–6; RM–8410]

Radio Broadcasting Services; The Dalles, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of **Larson-Wynn, Inc.**, allots Channel **224C3** to The Dalles, Oregon, as the community's third local FM transmission service. *See* 59 FR 7966, February 17, 1994. Channel 224C3 can be allotted to The Dalles in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 45–35–42 North Latitude and 121–10–24 West Longitude. With this action, this proceeding is terminated.

DATES: Effective November 14, 1994. The window period for filing applications will open on November 15, 1994, and close on December 15, 1994.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 94–6, adopted September 21, 1994, and released Sept. 28, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Channel 224C3 at The Dalles.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–24345 Filed 9–30–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 930222–4274; I.D. 091294C]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Technical amendment.

SUMMARY: NMFS issues a technical amendment to clarify regulations that prohibit a vessel from participating in the Gulf of Alaska (GOA) directed

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sablefish hook-and-line gear fishery when hook-and-line gear was deployed from that vessel within 72 hours prior to the opening of that fishery. This technical amendment clarifies this prohibition by stating that it applies only to vessels that deployed hook-and-line gear in the GOA within 72 hours prior to the start of that fishery.

EFFECTIVE DATE: October 3, 1994.

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS published a final rule (58 FR 28520, May 14, 1993) that prohibits participation in the GOA directed sablefish fishery by a vessel that has deployed hook-and-line gear within 72 hours prior to the opening of that fishery. The rule was intended to apply only to vessels that deployed gear in the GOA in advance of that fishery. As written, the rule implied that a vessel is prohibited from participating in the GOA directed sablefish fishery if the vessel deployed hook-and-line gear in any fishery within 72 hours prior to that opening. This interpretation is inconsistent with the preamble to the proposed rule, published in the **Federal Register** on April 1, 1993 (58 FR 17193), which explains that the prohibition applies only to vessels that deploy hook-and-gear in the GOA within 72 hours prior to the opening. Because hook-and-line vessel operators participating in fisheries in the Bering Sea and Aleutian Islands management area have expressed uncertainty as to the regulatory intent, § 672.7(k) is clarified to specify that this prohibition applies only to vessels that fished in the GOA.

Classification

Because this rule clarifies the regulation to make its text consistent with the intent set forth in its preamble, it is an interpretive rule that may be published without notice and opportunity for comment and without a 30-day delay in effective date under section 553 of the Administrative Procedure Act (5 U.S.C. 553).

This rule is exempt from review under E.O. 12866.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: September 27, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 672 is amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.7, paragraph (k) is revised to read as follows:

§ 672.7 Prohibitions.

* * * * *

(k) Engage in directed fishing for sablefish with hook-and-line gear from a vessel that was used to deploy hook-and-line gear in the Gulf of Alaska within 72 hours prior to the opening of the sablefish hook-and-line directed fishery.

* * * * *

[FR Doc. 94–24381 Filed 9–30–94; 8:45 am]

BILLING CODE 3510–22–W

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50 CFR Part 672

[Docket No. 931199–4042; I.D. 092394A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Atka mackerel in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully use the total allowable catch (TAC) of Atka mackerel in that area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), September 30, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the annual TAC for Atka mackerel was established by the final 1994 specifications (59 FR 7647, February 16, 1994), as 1,000 metric tons (mt) for the Central Regulatory Area. At the same time, the directed fishery for Atka mackerel in the GOA was closed under § 672.20(c)(2)(ii) in the final 1994 specifications in order to reserve amounts anticipated to be needed for incidental catch by other fisheries.

The Director, Alaska Region, NMFS, has determined that, as of September 17, 1994, 995 mt of Atka mackerel in the Central Regulatory Area of the GOA remains unharvested. This amount is in excess of the amount necessary as incidental catch for other groundfish fisheries. Therefore, NMFS is terminating this closure and opening directed fishing for Atka mackerel in the Central Regulatory Area of the GOA effective at 12 noon, A.l.t., September 30, 1994, until 12 midnight, A.l.t., December 31, 1994.

All other closures remain in full force and effect.

Classification

This action is taken under § 672.20 and is exempt from review under E.O 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 27, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–24322 Filed 9–28–94; 11:34 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 190
Monday, October 3, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2604

RIN 3209–AA17

Freedom of Information Act Rules and Schedule of Fees for the Production of Public Financial Disclosure Reports

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule.

SUMMARY: The Office of Government Ethics is issuing a proposed rule to establish procedures for the implementation of the Freedom of Information Act (FOIA). The rule also proposes to establish a schedule of fees which will be charged for the reproduction and mailing of public financial disclosure reports (SF 278s).

DATES: Public comments on this proposed rule are invited and must be received by December 2, 1994.

ADDRESSES: Submit comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Ms. Roell.

FOR FURTHER INFORMATION CONTACT: Janet K. Roell, Office of Government Ethics, telephone (202) 523–5757, FAX (202) 523–6325.

SUPPLEMENTARY INFORMATION: The Freedom of Information Act, 5 U.S.C. 552, requires every agency to promulgate regulations implementing certain of its provisions. On October 1, 1989, the Office of Government Ethics, formerly part of the Office of Personnel Management, was established as a separate executive branch agency and is therefore proposing to adopt this rule incorporating many of its existing practices for the implementation of the Freedom of Information Act, as amended by the Freedom of Information Reform Act of 1986 (Pub. L. 99–570). This rule would also implement the Guidelines for a uniform Freedom of Information Act fee schedule published by the Office of Management and Budget on March 27, 1987 (52 FR 10012) and the Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act dated December, 1987. Subpart G of the rule proposes to establish a separate schedule of fees for the reproduction and mailing of public financial disclosure reports requested pursuant to section 105 of the Ethics in Government Act of 1978, as amended.

I. General Provisions

Subpart A of the proposed rule contains general provisions describing the purpose of the Freedom of Information Act and its coverage. Section 2604.102 describes the types of records to which the Freedom of Information Act applies, and the relationship between the FOIA and the Privacy Act of 1974, 5 U.S.C. 552a. The proposed rule also provides that if another statute, such as the Ethics Act, sets forth procedures for the disclosure of specific types of records, the Office will process a request for those records in accordance with the procedures that apply to those specific records. However, in cases where the record is not required to be released under the specific procedures set forth in another statute, the Office will consider the request under FOIA.

Section 2604.102 as proposed also explains that records which are available through an established distribution system (for example, the National Technical Information Service) should preferably be obtained through that system, rather than pursuant to the provisions of the FOIA. The terms frequently used in the rule are defined in proposed § 2604.104.

II. Public Reading Room

Subpart B of the proposed rule describes the location of OGE's public reading room and the materials available there. The subpart would also set forth the indexing requirements as to any records OGE maintains which are required to be indexed under 5 U.S.C. 552(a)(2). Proposed § 2604.202 contains the Director's determination that, because of OGE's size and the relatively small number of requests for records required to be indexed, such indexes do not need to be published quarterly.

III. Production and Disclosure of Records Under FOIA

Subpart C as proposed contains detailed rules of procedure for requesting records under FOIA. It also describes the format to which OGE will adhere in responding to these requests.

Requests for OGE records have generally been directed to the Office of the General Counsel. Since this approach is administratively practical, this system is being proposed for codification. Proposed § 2604.301 states that requests for records should be addressed to the General Counsel of OGE. Requesters will generally be required to submit FOIA requests in writing. Each request should contain sufficient detail to allow the Office to locate the record with a reasonable amount of effort. If a request is too broad or too vague to allow the Office to locate the record with a reasonable amount of effort, the Office would assist the requester in revising the request as appropriate.

The filing of a request would be deemed to constitute an agreement to pay any applicable fees up to $25.00, unless a waiver were sought. The request could also specify a limit on fees the requester is willing to pay.

The General Counsel of OGE, or his designee, has been delegated responsibility in proposed § 2604.302 to grant or deny requests and to determine appropriate fees.

Consistent with the terms of proposed § 2604.302(b), OGE will ordinarily refer FOIA requests for records that originated in another Government agency to the other agency for response. In such cases, the requester will be notified of the referral. Section 2604.302(c) as proposed specifies that, in cases where a requester asks for a record in a format which does not currently exist, OGE will provide whatever records reasonably respond to the request, but will not create a new record in order to respond. Under § 2604.302(d) of the proposed rule, if a record cannot be located from the information supplied, the General Counsel will so inform the requester.

Proposed § 2604.303 requires the General Counsel to notify a requester in writing of the determination to grant a request in whole or in part. The response must describe the manner in which the record will be disclosed and inform the requester of any fees which will be charged. Similarly, the General Counsel's determination to deny a request in whole or in part must be made in writing and signed by the

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General Counsel (or his designee). Consistent with § 2604.303(b) as proposed, any denial is to contain a brief statement describing the basis for the denial, including the FOIA exemptions which were relied upon. Moreover, the denial must state that requesters have a right to appeal and must explain OGE's appeal procedures.

The Office's appeal procedures are set forth in § 2604.304 of the proposed rule. Denials may be appealed to OGE's Deputy Director within 30 days after receipt of a denial letter. Appeals must be in writing and must contain reasons or arguments in support of disclosure. The Office will respond to appeals in writing, and will specify the reason for affirming any original denial. When a denial is reversed in whole or in part, the request for disclosure will be processed promptly. The decision on appeal is the Office's final action on a request. Requesters have a right to seek judicial review of the action under 5 U.S.C. 552(a)(4).

Section 2604.305 of the proposed rule describes the time limits to which the Office will adhere in responding to requests. The time limits may be extended up to a total of 10 working days in unusual circumstances, i.e., when the records are in a location other than the Office, the request is for a large number of records, or the Office must consult with another agency or consult with various OGE components.

IV. Exemptions Under FOIA

The Freedom of Information Act contains nine exemptions from its mandatory disclosure provisions. These exemptions permit an agency to withhold a requested record in certain circumstances. Section 2604.401 in subpart D of the proposed rule generally references the nine classes of records that may be exempted from disclosure under FOIA. Proposed § 2604.401(a) states that OGE will not withhold a requested record unless it falls within a FOIA exemption and that in deciding whether to withhold material, OGE will consider whether another statute, Executive order or regulation prohibits release or, if not, whether there is a need in the public interest to withhold it. Further, under proposed § 2604.401(b), the Office with withhold information which falls within an exemption if the information was furnished on a pledge of confidentiality authorized by statute, Executive order or regulation.

Section 2604.401(c) also provides that certain information compiled for law enforcement purposes may not be subject to the requirement of FOIA. Additionally, proposed § 2604.401(d) provides for partial application of the exemptions to a record.

Proposed § 2604.402 contains OGE's procedures for disclosure of business information provided to the Office. Generally, § 2604.402 would require submitters of business information to designate those portions of their submissions they believe may be exempt from disclosure under any exemption of the FOIA. If records so designated are subsequently requested under FOIA, in most cases the submitter will have an opportunity to provide a written objection to disclosure.

V. Fees

Subpart E of the proposed rule contains provisions relating to the fees which will be assessed for services rendered in responding to and processing requests for records under FOIA. Fees are to be based on the type of service provided (e.g., search, review, duplication) as well as the category of person making the request (e.g., commercial user, educational institution, news media). Generally, commercial requesters will pay the full amount of permissible fees; educational and noncommercial scientific institutions and news media will pay only duplication costs. As a matter of policy, OGE will not change fees for any individual request if the total charge would be $10.00 or less. Additionally, under the proposal OGE may furnish records without charge or at a reduced charge where disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. In making this determination, OGE will apply the factors suggested by the Department of Justice in the Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act dated December, 1987. These factors have been incorporated in proposed § 2604.503.

Section 2604.504 as proposed contains a number of miscellaneous provisions concerning fees, including a requirement that requesters pay in advance fees likely to exceed $250.00. However, advance payment may not be required in the case of a requester who has a history of prompt payment.

VI. Annual Report to Congress

On or before March 15 of each year, the Office sends a report of OGE's FOIA activities for the prior calendar year to the Speaker of the House of Representatives and the President of the Senate. Section 2604.602 of the proposed rule lists the information included in this annual report.

VII. Fees for the Production and Mailing of Public Financial Disclosure Reports

Section 105(a) of the Ethics in Government Act of 1978, as amended, requires an agency, with certain limited exceptions, to make available to the public any public financial disclosure report (SF 278) filed with the agency. Section 105(b)(1) permits an agency to charge a fee adequate to recover the cost of reproduction and mailing of a public financial disclosure report (SF 278) requested by any person in accordance with the requirements of section 105. However, the fee may not include any charge attributable to the salary of any employee involved in the reproduction or mailing of these reports. To implement this provision for such reports filed with it, OGE is proposing to create a fee structure separate from the FOIA fee structure set forth in subpart E of this proposed rule. Proposed subpart G contains provisions to implement this authority.

Section 2604.702 as proposed provides that public financial disclosure reports will be furnished upon payment of $.03 per page and the actual direct cost of mailing. The $.03 per page charge includes the actual cost of the paper used and the cost of operating duplicating machinery. It does not include any overhead charges (such as lighting and heat), nor does it include the salary of any employee involved in operating a duplicating machine. No change will be made for individual requests if the total charge would be $10.00 or less. Proposed § 2604.702(d) specifically provides that the miscellaneous fee provisions in § 2604.504 of subpart E will apply to requests for public financial disclosure reports (SF 278s). However, no other provisions in subpart E concerning fees, fee waivers, and fee reductions apply to requests for public financial disclosure reports.

Executive Order 12866

In promulgating this proposed rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulations set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This proposed regulation has been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this proposed regulation because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2604

Administrative practice and procedure, Archives and records, Confidential business information, Conflict of interests, Freedom of Information, Government employees.

Approved: September 27, 1994.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to amend subchapter A of chapter XVI of title 5 of the Code of Federal Regulations by adding the text of and an authority citation for part 2604, previously reserved, and by revising the title thereof to read as follows:

PART 2604—FREEDOM OF INFORMATION ACT RULES AND SCHEDULE OF FEES FOR THE PRODUCTION OF PUBLIC FINANCIAL DISCLOSURE REPORTS

Subpart A—General Provisions

Sec.
2604.101 Purpose.
2604.102 Applicability.
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Authority: 5 U.S.C. 552; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

Subpart A—General Provisions

§ 2604.101 Purpose.

This part contains the regulations of the Office of Government Ethics (OGE) implementing the Freedom of Information Act (FOIA) and Executive order 12600. It describes how any person may obtain records from OGE under the FOIA. It also implements section105(b)(1) of the Ethics in Government Act of 1978, as amended, which authorizes an agency to charge reasonable fees to cover the cost of reproduction and mailing of public financial disclosure reports requested by any person.

§ 2604.102 Applicability.

(a) *General.* The FOIA and this rule apply to all OGE records. However, if another law sets forth procedures for the disclosure of specific types of records, such as section 105 of the Ethics in Government Act of 1978, 5 U.S.C. appendix, OGE will process a request for those records in accordance with the procedures that apply to those specific records. See 5 CFR 2634.603 and subpart G of this part. If there is any record which is not required to be released under those provisions, OGE will consider the request under the FOIA and this rule, provided that the special Ethics Act access procedures cited must be complied with as to any record within the scope thereof.

(b) *The relationship between the FOIA and the Privacy Act of 1974.* The Privacy Act of 1974, 5 U.S.C. 552a, applies to records that are about individuals, but only if the records are in a system of records as defined in the Privacy Act. Requests from individuals for records about themselves which are contained in an OGE system of records will be processed under the provision of the Privacy Act as well as the FOIA. OGE will not deny access by a first party to a record under the FOIA or the Privacy Act unless the record is not available to that individual under both the Privacy Act and the FOIA.

(c) *Records available through routine distribution procedures.* When the record requested includes material published and offered for sale (e.g., by the Superintendent of Documents, Government Printing Office) or which is available to the public through an established distribution system (such as that of the National Technical Information Service of the Department of Commerce), OGE will instead explain how the record may be obtained through those channels.

§ 2604.103 Definitions.

As used in this part,

(a) *Agency* has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(f).

(b) *Business information* means trade secrets or other commercial or financial information, provided to the Office by a submitter, which arguably is protected from disclosure under Exemption 4 of the Freedom of Information Act.

(c) *Business submitter* means any person who provides business information, directly or indirectly, to the Office and who has a proprietary interest in the information.

(d) *Commercial use* means, when referring to a request, that the request is from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or of a person on whose behalf the request is made. Whether a request is for a commercial use depends on the purpose of the request and the use to which the records will be put. When a request is from a representative of the news media, a purpose or use supporting the requester's news dissemination function is not a commercial use.

(e) *Direct costs* means those expenditures actually incurred in searching for and duplicating (and, in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include the salary of the employee performing the work and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the records are stored.

(f) *Duplication* means the process of making a copy of a record. Such copies include paper copy, microform, audio-visual materials, and magnetic tapes, cards, and discs.

(g) *Educationol institution* means a preschool, elementary or secondary school, institution of undergraduate or graduate higher education, or institute of professional or vocational education, which operates a program of scholarly research.

(h) *Freedom of Information Act* or *FOIA* means section 552 of Title 5, United States Code, as amended.

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(i) *General Counsel* means the General Counsel of the Office of Government Ethics. The General Counsel may delegate any of his responsibilities in handling FOIA requests in this part to a designee on OGE's staff.

(j) *He, his* and *him* include she, hers and her.

(k) *Noncommercial scientific institution* means an institution that is not operated solely for purposes of furthering its own or someone else's business, trade, or profit interests, and that is operated for purposes of conducting scientific research the results of which are not intended to promote any particular product or industry.

(l) *Office* or *OGE* means the United States Office of Government Ethics.

(m) *Person* has the meaning given in 5 U.S.C. 551(2).

(n) *Records* means any handwritten, typed, or printed documents (such as memoranda, books, brochures, studies, writings, drafts, letters, transcripts, and minutes) and documentary material in other forms (such as punchcards, magnetic tapes, cards or discs, paper tapes, audio or video recordings, maps, photographs, slides, microfilm and motion pictures) that are either created or obtained by the Office and are under Office control. It does not include objects or articles such as exhibits, models, equipment, and duplication machines or audiovisual processing materials.

(o) *Representative of the news media* means a person actively gathering information for an entity organized and operated to publish or broadcast news to the public. News media entities include television and radio broadcasters, publishers of periodicals who distribute their products to the general public or who make their products available for purchase or subscription by the general public, and entities that may disseminate news through other media, such as electronic dissemination of text. Freelance journalists will be considered as representatives of a news media entity if they can show a solid basis for expecting publication through such an entity. A publication contract is such a basis, and the requester's past publication record may show such a basis.

(p) *Request* means any request for records made pursuant to 5 U.S.C. 552(a)(3).

(q) *Requester* means any person who makes a request for records to OGE.

(r) *Review* means the process of initially, or upon appeal (see § 2604.501(h)(3)), examining documents located in a response to a request to determine whether any portion of any document is permitted to be withheld. It also includes processing documents for disclosure, such as redacting portions which may be withheld. Review does not include time spent resolving general legal and policy issues regarding the application of exemptions.

(s) *Search* means the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

(t) *Working days* means calendar days, excepting Saturdays, Sundays, and legal public holidays.

Subpart B—Public Reading Room and Index Identifying Information for the Public

§ 2604.201 Public reading room.

(a) *Location of public reading room.* The Office of Government Ethics maintains a public reading room at its offices located at 1201 New York Avenue, NW., Suite 500, Washington, DC 20005–3917. Persons desiring to utilize the reading room should contact the Office, in writing or by telephone at (202) 523–5757 or FAX (202) 523–6325, to arrange a time to inspect the materials available there.

(b) *Records available.* The Office of Government Ethics public reading room contains OGE records which are required by 5 U.S.C. 552(a)(2) to be made available for public inspection and copying, including:

(1) Any final opinions, as well as orders, made in the adjudication of cases;

(2) Any statements of policy and interpretation which have been adopted by the agency and are not published in the **Federal Register**;

(3) Any administrative staff manuals and instructions to staff that affect a member of the public, and which are not exempt from disclosure under section (b) of the FOIA; and

(4) Current indexes providing identifying information for the public as to any matter which was issued, adopted or promulgated after July 4, 1967, and is required by 5 U.S.C. 552(a)(2) to be made available or published.

(c) *Copying.* The cost of copying information available in OGE's public reading room shall be imposed on a requester in accordance with the provisions of subpart E of this part.

§ 2604.202 Index identifying information for the public.

(a) The Office of Government Ethics will maintain and make available for public inspection and copying a current index of the materials available at its public reading room which are required to be indexed under 5 U.S.C. 552(a)(2).

(b) The Director of the Office of Government Ethics has determined that it is unnecessary and impracticable to publish quarterly or more frequently and distribute (by sale or otherwise) copies of each index and supplements thereto, as provided in 5 U.S.C. 552(a)(2). The Office will provide copies of such indexes upon request, at a cost not to exceed the direct cost of duplication and mailing, if sending records by other than ordinary mail.

Subpart C—Production and Disclosure of Records Under FOIA

§ 2604.301 Requests for records.

(a) *Addressing requests.* Requests for copies of records may be made in person or by telephone, (202) 523–5757, during normal business hours at the Office of Government Ethics, 1201 New York Avenue NW., Suite 500, Washington, DC 20005–3917 or by mail addressed to the General Counsel of OGE. Although oral requests may be honored, a requester generally will be asked to submit his request under the FOIA in writing. In the case of a written request, the envelope containing the request and the letter itself should both clearly indicate that the subject is a Freedom of Information Act request.

(b) *Description of records.* Each request must reasonably describe the desired records in sufficient detail to enable Office personnel to locate the records with a reasonable amount of effort. A request for a specific category of records will be regarded as fulfilling this requirement if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive of Office operations.

(1) Wherever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record.

(2) If the General Counsel determines that a request does not reasonably describe the records sought, he will either advise the requester what additional information is needed to locate the record, or otherwise state why the request is insufficient. The General Counsel will also extend to the requester an opportunity to confer with Office personnel with the objective of reformulating the request in a manner which will meet the requirements of this section.

(c) *Agreement to pay fees.* The filing of a request under this subpart will be deemed to constitute an agreement by the requester to pay all applicable fees charged under subpart E of this part, up to $25.00, unless a waiver of fees is sought. The request may also specify a limit on the amount the requester is willing to spend, or may indicate a willingness to pay an amount greater than $25.00, if applicable. In cases where a requester has been notified that actual or estimated fees may amount to more that $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee.

(d) *Requests for records relating to corrective actions.* No record developed pursuant to the authority of 5 U.S.C. app. 402(f)(2) concerning the investigation of an employee for a possible violation of any provision relating to a conflict of interest shall be made available pursuant to this part unless the request for such information identifies the employee to whom the records relate and the subject matter of any alleged violation to which the records relate. Nothing in this subsection shall affect the application of subpart D of this part to any record so identified.

§ 2604.302 Response to requests.

(a) *Response to initial request.* The General Counsel is authorized to grant or deny any request for a record and to determine appropriate fees.

(b) *Referral to another agency.* When a requester seeks records that originated in another Government agency, OGE will normally refer the request to the other agency for response. If OGE refers the request to another agency, it will notify the requester of the referral. If release of certain records may adversely affect United States relations with foreign governments, the Office will usually consult with the Department of State. A request for any records classified by some other agency will be referred to that agency for response.

(c) *Creating records.* If a person seeks information from OGE in a format that does not currently exist, OGE will not ordinarily reformat the information for the purpose of responding to the request. OGE will advise the requester that it does not have the record in the format sought, but will provide whatever records in existing formats that would reasonably respond to the request. Additionally, OGE will not generally develop a new record of information to satisfy a request.

(d) *Record cannot be located.* If a requested record cannot be located from the information supplied, the General Counsel will so notify the requester in writing.

§ 2604.303 Form and content of responses.

(a) *Form of notice granting a request.* After the General Counsel has made a determination to grant a request in whole or in part, the requester will be notified in writing. The notice shall describe the manner in which the record will be disclosed, whether by providing a copy of the record with the response or at a later date, or by making a copy of the record available to the requester for inspection at a reasonable time and place. The procedure for such an inspection may not unreasonably disrupt the operations of the Office. The response letter will also inform the requester with the provisions of subpart E of this part.

(b) *Form of notice denying a request.* When the General Counsel denies a request in whole or in part, he will so notify the requester in writing. The response will be signed by the General Counsel and will include:

(1) The name and title or position of the person making the denial;

(2) A brief statement of the reason or reasons for the denial, including the FOIA exemption or exemptions which the General Counsel has relied upon in denying the request; and

(3) A statement that the denial may be appealed under § 2604.304 of this subpart, and a description of the requirements of that section.

§ 2604.304 Appeal of denials.

(a) *Right of appeal.* If a request has been denied in whole or in part, the requester may appeal the denial to the Deputy Director of the Office of Government Ethics, 1201 New York Avenue, NW., Suite 500, Washington, DC 20005–3917.

(b) *Letter of appeal.* The appeal must be in writing and must be sent within 30 days of receipt of the denial letter. An appeal should include a copy of the initial request, a copy of the letter denying the request in whole or in part, and a statement of the circumstances, reasons or arguments advanced in support of disclosure of the request for the record. Both the envelope and the letter of appeal must be clearly marked "Freedom of Information Act Appeal."

(c) *Action on appeal.* The disposition of an appeal will be in writing and will constitute the final action of the Office on a request. A decision affirming in whole or in part the denial of a request will include a brief statement of the reason or reasons for affirmance, including each FOIA exemption relied on. If the denial of a request is reversed in whole or in part on appeal, the request will be processed promptly in accordance with the decision on appeal.

(d) *Judicial review.* If the denial of the request for records is upheld in whole or in part, the Office will notify the person making the request of his right to seek judicial review under 5 U.S.C. 552(a)(4).

§ 2604.305 Time limits.

(a) *Initial request.* Following receipt of a request for records, the General Counsel will determine whether to comply with the request and will notify the requester in writing of his determination within 10 working days.

(b) *Appeal.* A written determination on a appeal submitted in accordance with § 2604.304 of this subpart will be issued within 20 working days after receipt of the appeal.

(c) *Extension of time limits.* The time limits specified in either paragraph (a) or (b) of this section may be extended in unusual circumstances up to a total of 10 working days, after written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be made. As used in this paragraph, *unusual circumstances* means that there is a need to:

(1) Search for and collect records from archives;

(2) Search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) Consult with another agency having a substantial interest in the determination of the request, or consult with various OGE components that have substantial subject matter interest in the records requested.

Subpart D—Exemptions under FOIA

§ 2604.401 Policy.

(a) *Policy on application of exemptions.* Section 552(b) of the Freedom of Information Act contains nine exemptions to the mandatory disclosure of records. A requested record will not be withheld from inspection or copying unless it comes within one of the classes of records exempted by 5 U.S.C. 552. In making its determination on withholding, OGE will consider whether another statute, Executive order or regulation prohibits release or, if not, whether there is a need in the public interest to withhold material which is otherwise exempt under FOIA.

(b) *Pledge of confidentiality.* Information obtained from any individual or organization, furnished in reliance on a provision for confidentiality authorized by applicable statute, Executive order or regulation.

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will not be disclosed to the extent it can be withheld under one of the exemptions. However, this paragraph does not itself authorized the giving of any pledge of confidentiality by any officer or employee of the Office of Government Ethics.

(c) *Exception for law enforcement information.* The Office may treat records compiled for law enforcement purposes as not subject to the requirements of the Freedom of Information Act when:

(1) The investigation or proceeding involves a possible violation of criminal law;

(2) There is reason to believe that the subject of the investigation or proceeding is unaware of its pendency; and

(3) The disclosure of the existence of the records could reasonably by expected to interfere with the enforcement proceedings.

(d) *Partial application of exemptions.* Any reasonably segregable portion of a record will be provided to any person requesting the record after deletion of the portions which are exempt under this subpart.

§ 2604.402 Business information.

(a) *In general.* Business information provided to the Office of Government Ethics by a submitter will not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(b) *Designation of business information.* Submitters of business information should use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions which they deem to be protected under Exemption 4 of the FOIA. Any such designation will expire 10 years after the records were submitted to the Government, unless the submitter requests, and provides reasonable justification for, a designation period of longer duration.

(c) *Predisclosure notification.* The General Counsel will provide a submitter with prompt written notice of a FOIA request regarding its business information if:

(1) The information has been designated by the submitter as information deemed protected from disclosure under Exemption 4 of the FOIA; or

(2) The General Counsel has reason to believe that the information may be protected from disclosure under Exemption 4 of the FOIA.

Such written notice shall either describe the exact nature of the business information requested or provide copies of the records containing the business information. The requester also shall be notified that notice and an opportunity to object are being provided to a submitter.

(d) *Opportunity to object to disclosure.* A submitter has five working days from receipt of the predisclosure notification to provide a written statement of any objection to disclosure. Such statement shall specify all the grounds for withholding any of the information under any exemption of the FOIA and, in the case of Exemption 4, shall demonstrate why the information is deemed to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(e) *Notice of intent to disclose.* The General Counsel will consider all objections raised by a submitter and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the General Counsel decides to disclose business information over the objection of a submitter, he will send the submitter a written notice at least 10 working days before the date of disclosure containing:

(1) A statement of the reasons why the submitter's objections were not sustained;

(2) A copy of the records which will be disclosed or a written description of the records; and

(3) A specified disclosure date. The requester shall also be notified of the General Counsel's determination to disclose records over a submitter's objections.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the General counsel shall promptly notify the submitter.

(g) *Exceptions to predisclosure notification.* The notice requirements in paragraph (c) of this section do not apply if:

(1) The General Counsel determines that the information should not be disclosed;

(2) The information has been published previously or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The designation made by the submitter in accordance with paragraph (b) of this section appears obviously frivolous; except that, in such a case, the General Counsel will provide the submitter with written notice of any final decision to disclose business information within a reasonable number of days prior to a specified disclosure date.

Subpart E—Schedule of Fees

§ 2604.501 Fees to be charged—general.

(a) *Policy.* Fees shall be assessed according to the schedule contained in paragraph (b) of this section and the category of requesters described in § 2604.502 for services rendered in responding to and processing requests for records under subpart C of this part. All fees shall be charged to the requester, except where the charging of fees is limited under § 2604.503 (a) and (b) or where a waiver or reduction of fees is granted under § 2604.503(c). Requesters shall pay fees by check or money order made payable to the Treasury of the United States.

(b) *Types of charges.* The types of charges that may be assessed in connection with the production of records in response to a FOIA request are as follows:

(1) *Searches—*

(i) *Manual searches for records.* Whenever feasible, the office will charge at the salary rate (i.e., basic pay plus 16%) of the employee making the search. However, where a homogeneous class of personnel is used exclusively in a search (e.g., all clerical time or all professional time) the Office will charge $10.00 per hour for clerical time and $20.00 per hour for professional time. Charges for search time will be billed by fifteen minute segments.

(ii) *Computer searches for records.* Requesters will be charged the actual direct cost of conducting a search using existing programming. These direct costs shall include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the cost of operator/programmer salary apportionable to the search. The Office will not alter or develop programming to conduct a search.

(iii) *Unproductive searches.* The Office will charge search fees even if no records are found which are responsive to the request, of if the records found are exempt from disclosure.

(2) *Duplication.* The standard copying charge for documents in paper copy is $.15 per page. When responsive information is provided in a format other than paper copy, such as in the form of computer tapes and discs, the requester may be charged the direct costs of the tape, disc, or whatever medium is used to produce the

information, as well as any related reproduction costs.

(3) *Review.* Costs associated with the review of documents, as defined in § 2604.104(q), will be charged at the salary rate (i.e., basic pay plus 16%) of the employee conducting the review. Except as noted below, charges may be assessed only for review at the initial level, i.e., the review undertaken the first time the documents are analyzed to determine the applicability of specific exemptions to a particular record or portion of the records. A requester will not be charged for review at the administrative appeal level concerning the applicability of an exemption already applied at the initial level. However, when a record has been withheld pursuant to an exemption which is subsequently determined not to apply and the record is reviewed again at the appeal level to determine the potential applicability of other exemptions, the costs of such additional review may be assessed.

(4) *Other services and materials.* Where the Office elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending records by special methods, the actual direct costs of providing the service or materials will be charged.

§ 2604.502 Fees to be charged—categories of requesters.

(a) *Fees for various requester categories.* The paragraphs below state, for each category of requester, the type of fees generally charged by the Office. However, for each of these categories, the fees may be limited, waived or reduced in accordance with the provisions set forth in § 2604.503. In determining whether a requester belongs in any of the following categories, the Office will determine the use to which the requester will put the documents requested. If the Office has reasonable cause to doubt the use to which the requester will put the records sought, or where the use is not clear from the request itself, the Office will seek clarification before assigning the request to a specific category.

(b) *Commercial use requester.* The Office will charge the full costs of search, review, and duplication. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of reproduction as described in § 2604.503(a); however, the de minimis fees provision of § 2604.503(b) does apply to such requesters.

(c) *Educational and noncommercial scientific institutions and news media.* If the request is from an educational institution or a noncommercial scientific institution, operated for scholarly or scientific research, or a representative of the news media, and the request is not for a commercial use, the Office will charge only for duplication of documents, excluding charges for the first 100 pages.

(d) *All other requesters.* If the request is not one described in paragraph (b) or (c) of this section, the Office will charge the full and direct costs of searching for and reproducing records that are responsive to the request, excluding the first 100 pages of duplication and the first two hours of search time.

§ 2604.503 Limitations on charging fees.

(a) *In general.* Except for requesters seeking records for a commercial use as described in § 2604.502(b), the Office will provide, without charge, the first 100 pages of duplication and the first two hours of search time, or their cost equivalent.

(b) *De minimis fees.* The Office will not assess fees for individual requests if the total charge would be $10.00 or less.

(c) *Waiver or reduction of fees.* Records responsive to a request under 5 U.S.C. 552 will be furnished without charge or at a reduced charge where the Office determines, based upon information provided by a requester in support of a fee waiver request, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees will be considered on a case-by-case basis.

(1) In determining whether disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, the Office will consider the following factors:

(i) *The subject of the request: Whether the subject of the requested records concerns the operations or activities of the Government.* The subject matter of the requested records, in the context of the request, must specifically and directly concern identifiable operations or activities of the Federal Government. Furthermore, the records must be sought for their information value with respect to those Government operations or activities;

(ii) *The informative value of the information to be disclosed: Whether the information is likely to contribute to an understanding of Government operations or activies.* The disclosable portions of the requested records must be meaningfully information on specific Government operations or activities in order to hold potential for contributing to increased public understanding of those operations and activities. The disclosure of information which is already in the public domain, in either a duplicative or substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding.* The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. A requester's identity and qualifications e.g., expertise in the subject area and ability and intention to convey information to the general public—will be considered; and

(iv) *The significance of the contribution to public understanding. Whether the disclosure is likely to contribute significantly to public understanding of Government operations or activities.* The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be significantly enhanced by the disclosure.

(2) In determining whether disclosure of the requested information is not primarily in the commercial interest of the requester, the Office will consider the following factors:

(i) *The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.* The Office will consider all commercial interests of the requester, or any person on whose behalf the requester may be acting, which would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration will be given to the effect that the information disclosed would have on those commercial interests; and

(ii) *The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.* A fee waiver or reduction is warranted only where the public interest can fairly be regarded as greater in magnitude than

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the requester's commercial interest in disclosure. The Office will ordinarily presume that, where a news media requester has satisfied the public interest standard, the public interest will be served primarily by disclosure to that requester. Disclosure to data brokers and others who compile and market Government information for direct economic return will not be presumed to primarily serve the public interest.

(3) Where only a portion of the requested record satisfies the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(4) A request for a waiver or reduction of fees must accompany the request for disclosure of records, and should include:

(i) A clear statement of the requester's interest in the documents;

(ii) The proposed use of the documents and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from release of the requested documents; and

(iv) If specialized use of the documents is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(5) A requester may appeal the denial of a request for a waiver or reduction of fees in accordance with the provisions of § 2604.304.

§ 2604.504 Miscellaneous fee provisions.

(a) *Notice of anticipated fees in excess of $25.00.* Where the Office determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the Office shall notify the requester as soon as practicable of the actual or estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Where a requester has been notified that the actual or estimated fees may exceed $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to the requester pursuant to this paragraph will include the opportunity to confer with Office personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(b) *Aggragating requests.* A requester may not file multiple requests, each seeking portions of a document or documents in order to avoid the payment of fees. Where there is reason to believe that a requester or group of requesters acting in concert, is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Office may aggregate the requests and charge accordingly. The Office will presume that multiple requests of this type made within a 30-day period have been made in order to evade fees. Multiple requests regarding unrelated matters will not be aggregated.

(c) *Advance payments.* An advance payment before work is commenced or continued will not be required unless:

(1) The Office estimates or determines that the total fee to be assessed under this section is likely to exceed $250.00. When a determination is made that the allowable charges are likely to exceed $250.00, the requester will be notified of the likely cost and will be required to provide satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or will be required to submit an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing). In such cases the requester may be required to pay the full amount owed plus any applicable interest as provided by paragraph (e) of this section, and to make an advance payment of the full amount of the estimated fee before the Office begins to process a new request.

(3) When the Office requests an advance payment of fees, the administrative time limits described in subsection (a)(6) of the FOIA will begin to run only after the Office has received the advance payment.

(d) *Billing and payment.* Normally the Office will require a requester to pay all fees before furnishing the requested records. However, the Office may send a bill along with, or following the furnishing of records, in cases where the requester has a history of prompt payment.

(e) *Interest charges.* Interest charges on an unpaid bill may be assessed starting on the 31st day following the day on which the billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717 and shall accrue from the date of billing. To collect unpaid bills, the Office will follow the provisions of the Debt Collection Act of 1982 (P.L. 97–365) including the use of consumer reporting agencies, collection agencies, and offset.

Subpart F—Annual Report to Congress

§ 2604.601 Submission of report.

On or before March 15 of each calendar year, a report of OGE's activities over the preceding year relating to the Freedom of Information Act will be submitted to the Speaker of the House of Representatives and the President of the Senate.

§ 2604.602 Contents of the report.

Th annual report to Congress will include for the relevant reporting period:

(a) The number of FOIA requests made to OGE, determinations made by OGE not to comply with requests for records made to it under the FOIA and the reasons for each such determination;

(b) The number of appeals made by persons under the FOIA, the results of such appeals, and the reasons for the action by OGE upon each appeal that results in a denial of information;

(c) The names and titles or positions of each person responsible for the denial of records requested under the FOIA;

(d) The results of each proceeding conducted pursuant to subsection (a)(4)(F) of the FOIA, including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(e) A copy of every rule made by OGE regarding the FOIA;

(f) A copy of the fee schedule and the total amount of fees collected by OGE for making records available under the FOIA; and

(g) Such other information as indicates efforts by OGE to administer fully the FOIA.

Subpart G—Fees for the Reproduction and Mailing of Public Financial Disclosure Reports

§ 2604.701 Policy.

Fees for the reproduction and mailing of public financial disclosure reports (SF 278s) requested pursuant to section 105 of the Ethics in government Act of 1978, as amended, and § 2634.603 of this title shall be assessed according to the schedule contained in § 2604.702. Requesters shall pay fees by check or money order made payable to the Treasury of the United States. Except as provided in § 2604.702(d), nothing concerning fees in subpart E of this part supersedes the charges set forth in this subpart for records covered in this subpart.

2604.702 Charges.

(a) *Duplication.* Except as provided in paragraph (c) of this section, copies of public financial disclosure reports (SF 278s) requested pursuant to section 105 of the Ethics in Government Act of 1978, as amended, and § 2634.603 of this chapter will be provided upon payment of $.03 per page furnished.

(b) *Mailing.* Except as provided in paragraph (c) of this section, the actual direct cost of mailing public financial disclosure reports will be charged for all forms requested. Where the Office elects to comply, as a matter of administrative discretion, with a request for special mailing services, the actual direct cost of such service will be charged.

(c) *De minimis fees.* The Office will not assess fees for individual requests if the total charge would be $10.00 or less.

(d) *Miscellaneous fee provision.* The miscellaneous fee provisions set forth in § 2604.504 apply to requests for public financial disclosure reports pursuant to § 2634.603 of this chapter.

[FR Doc. 94–24229 Filed 9–30–94; 8.45 am]
BILLING CODE 6345–01–P–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 542

[BOP–1014–P]

RIN 1120–AA20

Administrative Remedy Program

AGENCY: Federal Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to revise its regulations on the Administrative Remedy Program. These regulations describe the process through which inmates may seek formal review of any issue related to their confinement. The proposed changes are deemed necessary in order to attend to increased numbers of remedy requests occasioned by the continued growth of the inmate population. Proposed procedural changes include increases in the time limits set for inmate filing of requests and for Bureau responses; additional specifications for the provision of assistance to inmates; and increased access to Administrative Remedy indexes.

DATES: Comments due by December 2, 1994.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street NW., Washington. DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on the Administrative Remedy Program. A final rule on this subject was published in the **Federal Register** on October 29, 1979 (44 FR 62250), and was amended December 27, 1979 (44 FR 76726), November 20, 1991 (56 FR 58634), and on October 29, 1993 (58 FR 58246).

The proposed revision set forth below is the first major change to the Bureau's Administrative Remedy Program since its adoption on October 29, 1979. Subsequent growth of the inmate population has resulted in an increase in the number of remedy requests filed. As a means of effectively addressing this situation, the Bureau has reorganized its regulation, currently entitled Administrative Remedy Procedure for Inmates, for the sake of clarity, and is proposing various efficiencies in the procedures for processing remedy requests.

Procedural efficiencies include making adjustments to the time limits for filing requests by inmates and for responses by the Bureau. The time limit for submission of an initial remedy request by an inmate has been lengthened to 20 calendar days following the date on which the basis for the request had occurred. Current regulations specify a 15-day limit. The time limit for submission of an appeal to the General Counsel has been lengthened to 30 calendar days following the date Regional Counsel signed the response. The proposed time limits for agency responses have also been lengthened, from 15 to 20 calendar days at the institution level, and from 30 to 40 calendar days at the Central Office level.

Additional revisions include additional guidelines in the following areas: informal resolution, forms, and assistance to inmates. Also, advances in recordkeeping technology have now made it possible to expand the provisions for access to remedy indexes.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 542

Prisoners.

Wade B. Houk,

Acting Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), it is proposed to revise part 542 in subchapter C of 28 CFR, chapter V as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

1. 28 CFR part 542 is revised to read as follows:

PART 542—ADMINISTRATIVE REMEDY

Subpart A—[Reserved]

Subpart B—Administrative Remedy Program

Sec.

542.10 Purpose and scope.
542.11 Responsibility.
542.12 Excluded matters.
542.13 Informal resolution.
542.14 Initial filing.
542.15 Appeals.
542.16 Assistance.
542.17 Resubmission.
542.18 Response time.
542.19 Access to indexes and responses.

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510, 28 CFR 0.95–0.99.

Subpart A—[Reserved]

Subpart B—Administrative Remedy Program

§ 542.10 Purpose and scope.

The Administrative Remedy Program is a process through which inmates may seek formal review of an issue which relates to any aspect of their confinement, except as excluded in § 542.12, if less formal procedures have not resolved the matter. This Program applies to all inmates confined in

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Bureau of Prisons institutions, to inmates designated to contract Community Corrections Centers (CCCs) under Bureau of Prisons responsibility, and to former inmates for issues that arose during their confinement, but does not apply to inmates confined in other non-federal facilities.

§ 542.11 Responsibility.

(a) The Community Corrections Manager (CCM), Warden, Regional Director, and General Counsel are responsible for the implementation and operation of the Administrative Remedy Program at the Community Corrections Center (CCC), institution, regional and Central Office levels, respectively, and shall:

(1) Establish procedures for receiving, recording, reviewing, investigating, and responding to Administrative Remedy Requests (Requests) or Appeals (Appeals) submitted by an inmate;

(2) Acknowledge receipt of a Request or Appeal by returning a receipt to the inmate;

(3) Conduct an investigation into each Request or Appeal;

(4) Respond to and sign all Requests or Appeals filed at their levels. At the regional level, signatory authority may be delegated to the Deputy Regional Director. At the Central Office level, signatory authority may be delegated to the National Inmate Appeals Administrator. Signatory authority extends to staff designated as acting in the capacities specified in this § 542.11, but may not be further delegated without the written approval of the General Counsel.

(b) Inmates have the responsibility to use this Program in good faith and in an honest and straightforward manner.

§ 542.12 Excluded matters.

(a) An inmate may not use this Program to submit a Request or Appeal on behalf of another inmate. This program is intended to address concerns that are personal to the inmate making the Request or Appeal, but shall not prevent an inmate from obtaining assistance in preparing a Request or Appeal, as provided in § 542.16 of this part.

(b) Requests or Appeals will not be accepted under the Administrative Remedy Program for claims for which other administrative procedures have been established, including tort claims, Inmate Accident Compensation claims, and Freedom of Information or Privacy Act requests. Staff shall inform the inmate in writing of the appropriate administrative procedure if the Request or Appeal is not acceptable under the Administrative Remedy Program.

§ 542.13 Informal resolution.

(a) *Informal Resolution.* Except as provided in § 542.13(b), an inmate shall first present an issue of concern informally to staff, and staff shall attempt to informally resolve the issue before an inmate submits a Request for Administrative Remedy.

(b) *Exceptions.* Inmates in CCCs are not required to attempt informal resolution. An informal resolution attempt is not required prior to submission to the Regional or Central Office as provided for in § 542.14(d) of this part. An informal resolution attempt may be waived in individual cases at the Warden or institution Administrative Remedy Coordinator's discretion when the inmate demonstrates an acceptable reason for bypassing informal resolution.

§ 542.14 Initial filing.

(a) *Submission.* After the required informal resolution attempt, an inmate may submit a formal written Administrative Remedy Request on the appropriate form (BP–9), within 20 calendar days of the date on which the basis for the Request occurred.

(b) *Extension.* Where the inmate demonstrates a valid reason for delay, an extension in filing time may be allowed. In general, valid reason for delay means a situation which prevented the inmate from submitting the request within the established time frame. Valid reasons for delay include the following: an extended period in-transit during which the inmate was separated from documents needed to prepare the Request or Appeal; an extended period of time during which the inmate was physically incapable of preparing a Request or Appeal; an unusually long period taken for informal resolution attempts; indication by an inmate, verified by staff, that a response to the inmate's request for copies of dispositions requested under § 542.19 of this part has not been received.

(c) *Form.* (1) The inmate shall obtain the appropriate form from CCC staff or institution staff (ordinarily, the correctional counselor).

(2) The inmate shall place a single complaint or a reasonable number of closely related issues on the form. If the inmate includes on a single form multiple unrelated issues, the submission shall be rejected and returned without response, and the inmate shall be advised to use a separate form for each unrelated issue. For DHO and UDC appeals, each separate incident report number must be appealed on a separate form.

(3) The inmate shall complete the form with all requested identifying information and shall state the complaint in the space provided on the form. If more space is needed, the inmate may use up to one letter-size (8½" by 11") continuation page. The inmate must provide an additional three copies of any continuation page. The inmate must submit one copy of supporting exhibits. Exhibits will not be returned with the response. Because copies of exhibits must be filed for any appeal (see § 542.15(b)(3)), the inmate is encouraged to retain a copy of all exhibits for his or her personal records.

(4) The inmate shall date and sign the Request and submit it to the institution staff member designated to receive such Requests (ordinarily a correctional counselor). CCC inmates may mail their Requests to the CCM.

(d) *Exceptions to initial filing at institution—(1) Sensitive issues.* If the inmate reasonably believes the issue is sensitive and the inmate's safety or well-being would be placed in danger if the Request became known at the institution, the inmate may submit the Request directly to the appropriate Regional Director. The inmate shall clearly mark "Sensitive" upon the Request and explain, in writing, the reason for not submitting the Request at the institution. If the Regional Administrative Remedy Coordinator agrees that the Request is sensitive, the Request shall be accepted. Otherwise, the Request will not be accepted, and the inmate shall be advised in writing of that determination, without a return of the Request. The inmate may pursue the matter by submitting an Administrative Remedy Request locally to the Warden. The Warden shall allow a reasonable extension of time for such a resubmission.

(2) *DHO appeals.* DHO appeals shall be submitted initially to the Regional Director for the region where the inmate is currently located.

(3) *Control unit appeals.* Appeals related to Executive Panel Reviews of Control Unit placement shall be submitted directly to the General Counsel.

(4) *Controlled housing status appeals.* Appeals related to the Regional Director's review of controlled housing status placement may be filed directly with the General Counsel.

§ 542.15 Appeals.

(a) *Submission.* An inmate who is not satisfied with the Warden's response may submit an Appeal on the appropriate form (BP–10) to the appropriate Regional Director within 20 calendar days of the date the Warden signed the response. An inmate who is not satisfied with the Regional Director's response may submit an Appeal on the appropriate form (BP–11) to the General Counsel within 30 calendar days of the date the Regional Director signed the response. When the inmate demonstrates a valid reason for delay, these time limits may be extended. Valid reasons for delay include those situations described in § 542.14(b) of this part. Appeal to the General Counsel is the final administrative appeal.

(b) *Form.* (1) Appeals to the Regional Director shall be submitted on the form designed for regional Appeals (BP–10) and accompanied by one complete copy or duplicate original of the institution Request and response. Appeals to the General Counsel shall be submitted on the form designed for Central Office Appeals (BP–11) and accompanied by one complete copy or duplicate original of the institution and regional filings and their responses. Appeals shall state specifically the reason for appeal.

(2) An inmate may not raise in an Appeal issues not raised in the lower level filings. An inmate may not combine Appeals of separate lower level responses (different case numbers) into a single Appeal.

(3) An inmate shall complete the appropriate form with all requested identifying information and shall state the reasons for the Appeal in the space provided on the form. If more space is needed, the inmate may use up to one letter-size (8½"×11") continuation page. The inmate shall provide two additional copies of any continuation page and exhibits with the regional Appeal, and three additional copies with an Appeal to the Central Office (the inmate is also to provide copies of exhibits used at the prior level(s) of appeal). The inmate shall date and sign the Appeal and mail it to the appropriate Regional Director, if a Regional Appeal, or to the National Inmate Appeals Section, Office of General Counsel, if a Central Office Appeal (see 28 CFR part 503 for addresses of the Central Office and Regional Offices).

§ 542.16 Assistance.

(a) An inmate may obtain assistance from another inmate or from institution staff in preparing a Request or an Appeal. An inmate may also obtain assistance from outside sources, such as family members or attorneys. However, no person may submit a Request or Appeal on the inmate's behalf, and obtaining assistance will not be considered a valid reason for exceeding a time limit for submission unless the delay was caused by staff.

(b) Wardens shall ensure that assistance is available for inmates who are illiterate, disabled, or who are not functionally literate in English. Such assistance includes provision of reasonable accommodation in order for an inmate with a disability to prepare and process a Request or an Appeal.

§ 542.17 Resubmission.

(a) *Rejections.* The Coordinator at any level (CCM, institution, region, Central Office) may reject and return to the inmate without response a Request or an Appeal that is written in a manner that is obscene or abusive, or does not meet any other requirement of this part.

(b) *Notice.* When a submission is rejected, the inmate shall be provided a written notice, signed by the Administrative Remedy Coordinator, explaining the reason for rejection. If the defect on which the rejection is based is correctable, the notice shall inform the inmate of a reasonable time extension within which to correct the defect and resubmit the Request or Appeal.

(c) *Appeal of rejections.* When a Request or Appeal is rejected and the inmate is not given an opportunity to correct the defect and resubmit, the inmate may appeal the rejection, including a rejection on the basis of an exception as described in § 542.14(d), to the next appeal level. The Coordinator at that level may affirm the rejection, may direct that the submission be accepted at the lower level (either upon the inmate's resubmission or direct return to that lower level), or may accept the submission for filing. The inmate shall be informed of the decision by delivery of either a receipt or rejection notice.

§ 542.18 Response time.

If accepted, a Request or Appeal is considered filed on the date it is logged into the Administrative Remedy Index as received. Once filed, response shall be made by the Warden or CCM within 20 calendar days; by the Regional Director within 30 calendar days; and by the General Counsel within 40 calendar days. If the Request is determined to be of an emergency nature which threatens the inmate's immediate health or welfare, the Warden shall respond not later than the third calendar day after filing. If the time period for response to a Request or Appeal is insufficient to make an appropriate decision, the time for response may be extended once by 20 days at the institution level, 30 days at the regional level, or 20 days at the Central Office. Staff shall inform the inmate of this extension in writing. Staff shall respond in writing to all filed Requests or Appeals. If the inmate does not receive a response within the time allotted for reply, including extension, the inmate may consider the absence of a response to be a denial at that level.

§ 542.19 Access to indexes and responses.

Inmates and members of the public may request access to Administrative Remedy indexes and responses, for which inmate names and Register Numbers have been removed, as indicated below. Each institution shall make available its index, and the indexes of its regional office and the Central Office. Each regional office shall make available its index, the indexes of all institutions in its region, and the index of the Central Office. The Central Office shall make available its index and the indexes of all institutions and regional offices. Responses may be requested from the location where they are maintained and must be identified by Remedy ID number as indicated on an index. Copies of indexes or responses may be inspected during regular office hours at the locations indicated above, or may be purchased in accordance with the regular fees established for copies furnished under the Freedom of Information Act (FOIA).

[FR Doc. 94–24362 Filed 9–30–94; 8 45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 940968–4268]

RIN 0651–AA71

Patent Appeal and Interference Practice

AGENCY: Patent and Trademark Office, Commerce..

ACTION: Notice of proposed rulemaking

SUMMARY: The Patent and Trademark Office proposes to amend the rules of practice in patent cases, part 1 of title 37, Code of Federal Regulations, relating to patent appeal and interference proceedings. The proposed changes include amendments to conform the interference rules to 35 U.S.C. 104 as amended by Public Law 103–182, 107 Stat. 2057 (1993) (North American Free Trade Agreement Implementation Act) and a number of clarifying and housekeeping amendments.

DATES: Written comments must be submitted no later than November 30, 1994. A public hearing will be held on

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December 7, 1994. Requests to present oral testimony must be received no later than December 2, 1994.

ADDRESSES: Address written comments to Board of Patent Appeals and Interference, P.O. Box 15647, Arlington, Virginia 22215, marked to the attention of Fred E. McKelvey. Written comments will be available for public inspection in the interference copy room, which is located on the 10th floor of Crystal Gateway 2, 1225 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Fred E. McKelvey by telephone at (703) 603–3320 or by mail marked to the attention of Fred E. McKelvey at P.O. Box 15647, Arlington, Virginia 22215.

SUPPLEMENTARY INFORMATION:

I. Amendments Responsive to Adoption of Public Law 103–182

Several of the proposed amendments to the interference rules (i.e., 37 CFR 1.601 *et seq.*) are responsive to Public Law 103–182, 107 Stat. 2057 (1993) (North American Free Trade Agreement Implementation Act), which amended 35 U.S.C. 104 to permit reliance on activities occurring in a "NAFTA country" to prove a date of invention. Paragraph (b) of § 104 as amended states that "the term 'NAFTA country' has the meaning given that term in section 2(4) of the North American Free Trade Agreement Implementation Act." That section of Public Law 103–182 has been codified at 19 U.S.C. 3301(4), which reads:

(4) NAFTA Country

Except as provided in section 3332 of this title, the term "NAFTA country" means—

(A) Canada for such time as the [North American Free Trade] Agreement is in force with respect to, and the United States applies the Agreement to, Canada; and

(B) Mexico for such time as the Agreement is in force with respect to, and the United States applies the Agreement to, Mexico.

Accordingly, it is proposed to amend 37 CFR 1.601 by adding a new paragraph (r) defining the term "NAFTA country" and "non-NAFTA country" and to amend the following interference rules, which set forth the requirements for preliminary statements, so as to permit reliance on activities occurring in a NAFTA country: §§ 1.622(b), 1.623(a), 1.624(a) and 1.628(b)(2).

37 CFR 1.684, which relates to the taking of testimony in a foreign country, is proposed to be deleted and reserved in view of proposed amendments to §§ 1.671 and 1.672. Section 1.671 is proposed to be amended by redesignating paragraph (h) as paragraph (i) and adding new paragraphs (h) and (j). New paragraph (h) would set forth the requirements for a motion § 1.635 to compel testimony or the production of documents or things in a foreign country. New paragraph (j) would provide that the weight to be given testimony taken in a foreign country will be determined on a case-by-case basis. Little, if any, weight would be given to testimony taken in a foreign country unless the party taking the testimony proves by clear and convincing evidence (1) that giving false testimony in an interference proceeding is punishable as perjury under the laws of the foreign country where the testimony is taken and (2) that the punishment in a foreign country for giving such false testimony is similar to the punishment for perjury committed in the United States. The proposed amendments to § 1.672 include amending paragraphs (a) and (b), redesignating current paragraphs (c) through (f) as paragraphs (e) through (h) and adding new provisions identified as paragraphs (c) and (d). Paragraph (a) as proposed to be amended would limit a party's case-in-chief testimony to affidavits, except where testimony is to be compelled under 35 U.S.C. 24 or compelled from a party or in a foreign country. New paragraph (c) would provide that where an opponent objects to the admissibility of any evidence contained in or submitted with an affidavit, the opponent must file and serve objections stating with particularity the nature of the objection, to which the party may respond by filing supplemental affidavits and supplemental official records and printed publications. New paragraph (c) further would provide that any objections to the admissibility of any evidence contained in or submitted with a supplemental affidavit shall be by a motion to suppress under § 1.656(h). New paragraph (d) of § 1.672 would require any cross-examination of affiants to be by deposition within the United States, which is defined in current § 1.601(p) as the United States of America, its territories and possessions. New paragraph (d) of § 1.672 would require that the party whose witness is to be cross-examined notice the deposition under § 1.673(e), obtain a court reporter and provide a translator of the witness will not testify in English. Although not set forth in the proposed rules, any party attending the deposition can bring its own translator or the parties can agree to share the cost of single mutually agreeable translator. Paragraphs (g) and (h) of § 1.671 as proposed to be amended would provide that a party seeking to compel testimony or production of documents or things pursuant to 35 U.S.C. 24 or to compel testimony or production from a party or in a foreign country would have to first file a § 1.635 motion to obtain permission from an administrative patent judge. A motion to compel testimony or the production of documents or things in a foreign country would have to show that the witness has been asked to testify in the United States and has refused to do so or that the individual or entity having possession, custody, and control of the document or thing has refused to produce the document or thing in the United States, even though the moving party has offered to pay the expenses involved in bringing the witness or the document or thing to the United States. When permission has been obtained from the administrative patent judge, the party, after also complying with the current requirements for an oral conference (§ 1.673(g)) and service of documents and a proffer of access to things (§ 1.673(b)), would be required to notice the deposition under § 1.673(a).

Section 1.616 is proposed to be amended by adding a paragraph (c) stating that to the extent that any information under the control of an individual or entity located in a NAFTA country concerning knowledge, use, or other activity relevant to proving or disproving a date of invention has been ordered to be produced by an administrative patent judge or the Board (§ 1.671(h)), but is not produced for use in the interference to the same extent as such information could be made available in the United States, the administrative patent judge or the Board shall draw such adverse inferences as may be appropriate under the circumstances, or take such other action permitted by statute, rule, or regulation, in favor of the party that requested the information in the interference, including imposition of appropriate sanctions under § 1.616(a).

Section 1.647, which currently requires a party who relies on a non-English language document to provide an English-language translation and an affidavit attesting to its accuracy, is proposed to be amended to extend these requirements to non-English language documents that a party is required to produce via discovery (see § 1.671(h)).

II. Attorney Fees and Expenses

Section 1.616 is proposed to be amended by redesignating current paragraphs (a) through (e) as paragraphs (a)(1) through (a)(4) and (a)(6) and adding new paragraphs (a)(5) and (b). New paragraph (a)(5) would authorize the award of compensatory (as opposed to punitive) expenses and/or attorney fees as a sanction for failing to comply with the rules or an order, since there are occasions when such a sanction would be more commensurate in scope with the infraction than the sanctions that are currently authorized. New paragraph (b) would authorize the imposition of a sanction, including a sanction in the form of compensatory expenses and/or attorney fees, against a party for taking or maintaining a frivolous position.

III. Certificates of Prior Consultation

Paragraph (b) of § 1.637 currently requires that a miscellaneous motion under § 1.635 contain a certificate stating that the moving party has conferred with all opponents in a good faith effort to resolve by agreement the issues raised by the motion and indicating whether any other party plans to oppose the motion. It is proposed to amend paragraph (b) to extend the requirement for such a certificate to motions filed under §§ 1.633 and 1.634 and also to require the certificate to indicate that the reasons and facts in support of the motion were discussed with each opponent and, if an opponent has indicated that it will oppose the motion, to identify the issues and/or facts believed to be in dispute. The proposed requirement for consultation should result in a reduction in the number of issues raised by motions under § 1.633 and 1.634 as well as a reduction in the number of motions filed under those rules.

IV. Service of a "Developing Record"

In addition to the amendments to § 1.672 discussed above under the heading "Amendments responsive to adoption of Public Law 103–182," it is proposed to amend §§ 1.672, 1.682, 1.683 and 1.688 to require each party to serve on each opponent a "developing record" that will evolve into the record required to be filed under § 1.653. Specifically, in § 1.672, it is proposed to amend paragraph (b) to provide that a party presenting testimony of a witness by affidavit shall, no later than the time set by the administrative patent judge for serving affidavits, file (which includes serve) the affidavit, whether it is a new affidavit or an affidavit that was previously filed by that party during *ex porte* prosecution of an application or under § 1.608 or 1.639(b).

Sections 1.682, 1.683 and 1.688 are proposed to be amended to parallel the proposed amendments to § 1.672. Specifically, paragraph (a) of § 1.682 as proposed to be amended would provide that a party may introduce into evidence, if otherwise admissible, an official record or printed publication not identified in an affidavit or on the record during an oral deposition of a witness, by filing (which includes serving) a copy of the official record or publication no later than the time set for filing affidavits under § 1.672(b), thereby dispensing with the current requirement to file a notice of intent to rely on the official record or printed publication. In § 1.683, paragraph (a) as proposed to be amended would provide that a party may introduce into evidence, if otherwise admissible, testimony by affidavit or oral deposition from another interference, proceeding, or action involving the same parties by filing (which includes serving) a copy of the affidavit or a copy of the deposition transcript no later than the time set for filing affidavits under § 1.672(b), thereby dispensing with the current requirement for a party to file a motion under § 1.635 for leave to rely on such testimony. Section 1.688 as proposed to be amended would provide that, if otherwise admissible, a party may introduce into evidence an answer to a written request for an admission or an answer to a written interrogatory obtained by discovery under § 1.687 by filing a copy of the request for admission or the written interrogatory and the answer no later than the time set for filing affidavits under § 1.672(b). Thus, all evidence filed under §§ 1.672, 1.682, 1.683 and 1.688 that relates to a party's case-in-chief should be filed together no later than the date set by an administrative patent judge for the party to serve affidavits under § 1.672(b) for its case-in-chief and all evidence under those sections that relates to the party's rebuttal should be filed no later than the date set for the party to serve affidavits under § 1.672(b) for its case-in-rebuttal.

The pages of all affidavits and deposition transcripts would be required to have sequential numbers that would also serve as the record page numbers for the affidavits and transcripts in the party's record when it is filed under § 1.653. Likewise, the exhibits identified in the affidavits and deposition transcripts and any official records and printed publications served under § 1.682(a) would be required to have sequential numbers which would serve as the exhibit numbers when the exhibits are filed with the party's record. Affidavits and § 1.683(a) testimony would have to be accompanied by an index giving the name of each witness and the number of the page where the testimony of each witness begins. The exhibits would have to be accompanied by an index briefly describing the nature of each exhibit and giving the number of the page of affidavit or § 1.683(a) testimony where each exhibit identified in an affidavit or during an oral deposition is first identified and offered into evidence.

An opponent who objects to the admissibility of any evidence filed under §§ 1.672(b), 1.682(b), 1.683(a) and 1.688(a) would have to file objections under §§ 1.672(c), 1.682(c), 1.683(b) and 1.688(b) no later than the date set by the administrative patent judge for filing objections to affidavits under paragraph § 1.672(c). An opponent who fails to challenge the admissibility of the evidence on a ground that could have been raised in a timely objection under §§ 1.672(c), 1.682(c), 1.683(b) or 1.688(b) would not be permitted to move under § 1.656(h) to suppress the evidence on that ground. If an opponent timely files an objection to evidence filed under §§ 1.672(b), 1.682(b), 1.683(a) or 1.688(a), the party may respond by filing supplemental affidavits and, in the case of objections to evidence filed under §§ 1.672(b), 1.682(b) and 1.683(a), may also file supplemental official records and printed publications. No objection to the admissibility of supplemental evidence shall be made, except as provided by § 1.656(h). The page numbers of the supplemental affidavits would be sequentially numbered beginning with the number following the last page number of the testimony served under §§ 1.672(b), 1.683(a) and 1.688(a). Likewise, any additional exhibits identified in the supplemental affidavits and any supplemental official records and printed publications would be given sequential numbers beginning with the number following the last number of the previously identified exhibits. After the time expires for filing objections and supplemental affidavits, or earlier when appropriate, the administrative patent judge would set a time within which any opponent may file a request to cross-examine an affiant on oral deposition.

If any opponent requests cross-examination of an affiant, the party shall notice a deposition at a reasonable location within the United States under § 1.673(e) for the purpose of cross-examination. Any redirect and recross shall take place at the deposition Within 45 days of the close of the period for taking cross-examination (§ 1.678 is proposed to be amended to change the time for filing certified transcripts from 45 days to 30 days), the party would serve (but not file) a copy of each deposition transcript on each opponent together with copies of any additional documentary exhibits identified by a witness during a deposition. The pages of the transcripts served under this

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paragraph and the accompanying exhibits would be sequentially numbered in the manner discussed above. The deposition transcripts would be accompanied by an index of the names of the witnesses, giving the number of the page where cross-examination, redirect and recross of each witness begins, and an index of exhibits of the type specified in §1.672(b). At this point in time, the opponent will have been served with all of the testimony that will appear in the party's record (with the same page numbers) as well as all of the documentary exhibits that will accompany the record (with the same exhibit numbers).

Since the proposed amendments to § 1.672 would require a party, during its testimony period, to file all affidavits on which it intends to rely at final hearing, it is proposed to delete as unnecessary paragraph (e) of § 1.671, which requires a party to give notice of intent to rely on an affidavit filed by that party during *ex parte* prosecution of an application or an affidavit under § 1.608 or 1.639(b).

V. Withdrawal of Previous Notices

Some of the clarifying and housekeeping amendments proposed in part VI below originally appeared in the same or similar form in two previous notices of proposed rulemaking, which are hereby withdrawn:

(a) RIN: 0651–AA53—"Patent Interference Practice—Notice of Proposed Rulemaking," 57 Fed. Reg. 2698 (Jan. 23, 1992), reprinted in 1135 Off. Gaz. Pat. Office 37 (Feb. 11, 1992); and

(b) RIN:0651–AA66—"Patent Interference Practice—Separate Patentability of Claims," 58 FR 39704 (July 26, 1993), reprinted in 1153 Off. Gaz. Pat. Office 59 (Aug. 17, 1993).

VI. Miscellaneous Amendments

Throughout the rules, the term "examiner-in-chief" has been replaced by "administrative patent judge" to reflect the change in the title of the members of the Board. See Commissioner's Notice of October 13, 1993, published as "New Title for Examiners-in-Chief," 1156 Off. Gaz. Pat. Office 332 (Nov. 9, 1993).

In § 1.11, it is proposed to amend paragraph (e) to allow access to the file on an interference involving a reissue application once the interference has terminated or an award of priority or judgment has been entered as to all counts. Although it was intended that the public have access to any interference that involves a case which is open to the public and § 1.11(b) provides that a reissue application is open to the public, interferences involving reissue applications were inadvertently not included in current § 1.11(e).

In § 1.192, which specifies the contents of the brief of an appellant for final hearing in an *ex parte* appeal, it is proposed to amend paragraph (a) in three respects. The first proposal is to simplify the language used to refer to a brief filed by an applicant who is not represented by a registered practitioner. The second is to delete the requirement that such a brief be in substantial compliance with the requirements of paragraphs (c) (1), (2), (6) and (7), because experience has shown that it is better to evaluate such briefs on a case-by-case basis. The third is to codify the "good cause" standard that is currently used to determine whether the Board will consider any arguments or authorities not included in the brief. It is proposed to make clarifying amendments to paragraphs (c), (c)(5) and (c)(5)(ii), to redesignate current paragraphs (c)(1) through (c)(7) as paragraphs (c)(3) through (c)(9), and to add new paragraphs (c)(1) and (c)(2) that would require an appellant who has filed an appeal to the Board to identify the real party in interest and any related appeals and interferences. The proposed requirement to identify the real party in interest is derived from Federal Circuit Rule 47.4 and Federal Circuit Form 7. For some time, it has been necessary to know the identity of the real party in interest. This information would permit members of the Board to comply with ethics regulations associated with working on matters in which the member has an interest. The proposed requirement to identify related appeals and interferences is derived in part from Federal Circuit Rule 47.5 and, if adopted, would prevent the Board from entering inconsistent decisions in related cases.

Section 1.601 is proposed to be amended in several ways. Paragraph (f) as proposed to be amended would specify that a count should be sufficiently broad as to encompass the broadest corresponding patentable claim of each of the parties without being so broad as to be unpatentable over the prior art and also to indicate that a phantom count is unpatentable to all parties under the written description requirement of the first paragraph of 35 U.S.C. 112. Paragraph (g) as proposed to be amended would broaden the definition of "effective filing date" to mean the actual filing date when the involved application or patent is not entitled to the benefit of the filing date of an earlier application. Specifically, paragraph (g) would provide that the effective filing date of an application is the filing date of an earlier application accorded to the application under 35 U.S.C. 119, 120, 121 or 365, or, if no benefit is accorded, the filing date of the application. The effective filing date of a patent would be defined as the filing date of an earlier application accorded to the patent under 35 U.S.C. 120, 121, or 365(c) or, if no benefit is accorded, the filing date of the application which matured into the patent. The reference to 35 U.S.C. 121 is included to eliminate any doubt that a divisional application may be entitled to an earlier filing date in accordance with 35 U.S.C. 121.

Paragraph (j) is proposed to be amended by changing "which" to "that." Paragraph (1) is proposed to be amended by changing "assignee" to "assignee of record in the Patent and Trademark Office." Paragraph (q) is proposed to be amended by deleting "a panel of" as superfluous.

Section 1.602 is proposed to be clarified by changing "within 20 days of" to "within 20 days after."

Sections 1.603 and 1.606 are proposed to be amended by deleting the third sentence ("Each count shall define a separate patentable invention.") as redundant in view of the identical sentence in § 1.601(f). In addition, it is proposed to clarify §§ 1.603 and 1.606 by amending them to require each application to contain, or be amended to contain, at least one patentable claim which corresponds to each count.

In section 1.604, it is proposed to amend paragraph (a)(1) by changing "his or her" to "its."

In § 1.605, it is proposed to amend paragraph (a) for clarification.

Section 1.606 is also proposed to be amended to note that the claim in the application need not be, and most often will not be, identical to a claim in the patent.

In § 1.607, it is proposed to amend paragraph (a)(4) by changing "his or her" to "its" and to add a new paragraph (a)(6) requiring an applicant seeking an interference with a patent to demonstrate compliance with 35 U.S.C. 135(b) which provides:

> A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an issued patent may not be made in any application unless such a claim is made prior to one year from the date on which the patent was granted.

Requiring an applicant to show compliance with § 135(b) before an interference is declared will prevent an interference from being declared where the applicant cannot satisfy § 135(b) with respect to any claim alleged to correspond to the proposed count.

In § 1.608, it is proposed to amend paragraphs (a) and (b) in several respects. First, both paragraphs are proposed to be amended to delete the information about effective filing dates, which would appear instead in § 1.601(g) as proposed to be amended. Second, it is proposed to relax the current requirement of paragraph (a) for an affidavit filed by the applicant. Paragraph (a) as proposed to be amended would permit a statement to be filed by the applicant or a practitioner of record. Third, it is proposed to change "sufficient cause" in paragraph (b) and in other interference rules to "good cause" in order to make it clear that only one "cause" standard is intended. Fourth, it is proposed to change "8½ x 11 inches (21.8 by 27.9 cm.)" to "21.8 by 27.9 cm. (8½ x 11 inches)."

In § 1.609, it is proposed to amend paragraphs (b)(2) and (b)(3) to require the examiner's statement (i.e., the form PTO–850, also known as the initial interference memorandum) to explain why each claim designated as corresponding to a count is directed to the same patentable invention as the count and why each claim designated as not corresponding to a count is not directed to the same patentable invention as the count. The proposed amendment, if adopted, would provide the Board and the parties with the benefit of the examiner's reasoning and would provide a better foundation for considering preliminary motions to designate claims as corresponding or as not corresponding to a count.

In § 1.610, it is proposed to amend paragraph (a) by deleting the language "a panel consisting of at least three members of" as superfluous and by deleting the reference to § 1.640(e), which is proposed to be amended to allow a request for reconsideration under § 1.640(c) to be decided by an individual administrative patent judge rather than by the Board. It is further proposed to amend paragraph (b) by deleting "Unless otherwise provided in this section," as unnecessary in light of the proposed amendment to paragraph (a).

Section 1.611 is proposed to be amended by redesignating paragraph (a)(8) as paragraph (a)(9) and adding a new paragraph (a)(8) requiring that a notice of declaration of interference indicate why each claim designated as corresponding to a count is directed to the same patentable invention as the count and why each claim designated as not corresponding to a count is not directed to the same patentable invention as the count. This information should assist the parties in deciding whether to move to have claims designated as corresponding or not corresponding to the count. An administrative patent judge can satisfy this requirement by enclosing a copy of the examiner's statement with the parties' copies of the declaration notice. It is also proposed to capitalize the first word in each of paragraphs (d)(2) and (d)(3).

In § 1.612, it is proposed to amend paragraph (a) to change "opposing party's" to "opponent's" and to add a sentence referring to § 1.11(e) concerning public access to interference files.

In § 1.614, it is proposed to clarify the meaning of paragraph (a) by changing "the Board shall assume jurisdiction" to "the Board acquires jurisdiction."

In § 1.616, in addition to authorizing an award of compensatory attorney fees and expenses in appropriate circumstances, as discussed above, it is proposed to amend current paragraph (b) (which is proposed to be redesignated as paragraph (a)(2)) to permit a party to be sanctioned for failing to comply with the rules or an order by entering an order precluding the party from filing any type of paper. Paragraph (b) currently permits entry of an order precluding the filing of a motion or a preliminary statement.

Section 1.617 is proposed to be amended to authorize a party against whom a § 1.617(a) order to show cause has been issued to respond with an appropriate preliminary motion under § 1.633(c), (f) or (g). A preliminary motion under § 1.633(c) to redefine the interference, under § 1.633(f) for benefit of the filing date of an earlier application or under § 1.633(g) attacking the benefit accorded a patentee may be appropriate where the count set forth in the notice declaring the interference is not the same as the count proposed in the applicant's showing under § 1.608(b). A preliminary motion under § 1.633(f) or (g) may also be appropriate where the count set forth in the notice delcaring the interference is the same as the count proposed in the applicant's showing under § 1.608(b), but the notice either fails to accord the applicant the benefit of the filing date of an earlier application whose benefit was requested in the § 1608(b) showing or accords the parentee the benefit of the filing date of an earlier application whose benefit the § 1.608(b) showing argued should not be accorded the patentee.

In § 1.618, it is proposed to amend paragraph (a) for clarification and to state that a paper that has been returned as unauthorized will not thereafter be considered in the interference. Paragraph (a) currently states that a paper that has been returned as unauthorized will not thereafter be considered by the Patent and Trademark Office.

In § 1.625, it is proposed to simplify paragraph (a) by deleting "the invention was made in the United States or abroad and" as surplusage.

Section 1.626 is proposed to be simplified by changing "earlier application filed in the United States or aboard" to "earlier filed application." The same change is proposed for §§ 1.630, 1.633(f), 1.633(g), 1.637(c)(1)(vi), 1.637(e)(1)(viii), 1.637(e)(2)(vii) and 1.637(h)(4).

In § 1.628, it is proposed to amend paragraph (a) by changing "ends of justice" to "interest of justice" to be consistent with the language used in §§ 1.628(a) and 1.687(c), since a single standard is intended. Paragraph (a) of § 1.628 is also proposed to be amended to apply the "interest of justice" requirement only to corrected preliminary statements that are filed on or after the due date for serving preliminary statements. Where the moving party has not yet seen the opponent's statement, an opponent will not normally be prejudiced by the filing of a corrected statement.

In § 1.629, it is proposed to amend paragraphs (a), (c)(1) and (d) to make them consistent with the proposed amendment of the definition of "effective filing date" in § 1.601(g).

In § 1.631, it is proposed to amend paragraph (a) to delete "by the examiner-in-chief" (second occurrence) as superfluous.

Section 1.632 is proposed to be amended to more precisely state that a notice of intent to argue abandonment, suppression or concealment must be filed "within ten days after," rather than "within ten days of," the close of the testimony-in-chief of the opponent.

In § 1.633, it is proposed to amend paragraph (a) to specify that a claim shall be construed in light of the specification of the application or patent in which it appears. This amendment would administratively set aside the judicially created rule of *In re Spina*, 975 F.2d 854, 856, 24 USPQ2d 1142, 1144 (Fed. Cir. 1992), to the extent it held that the interference rules require that an ambiguous claim copied from a patent for interference purposes be construed in light of the disclosure of the patent. A claim that has been added to a pending application for any purpose, including to provoke an interference, would be given the broadest reasonable interpretation consistent with the disclosure of the application to which it is added, as are claims which are added during *ex parte*

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prosecution. As explained *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

[D]uring patent examination the pending claims must be interpreted as broadly as their terms reasonably allow. When the applicant states the meaning that the claim terms are intended to have, the claims are examined with that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art. *See In re Prater*, 415 F.2d 1393, 1404–05, 162 USPQ 541, 550–51 (CCPA 1969) (before the application is granted, there is no reason to read into the claim the limitations of the specification). The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed. *Burlington Industries, Inc. v. Quigg*, 822 F.2d 1581, 1583, 3 USPQ2d 1436, 1438 (Fed. Cir. 1987); *In re Yamamoto*, 740 F.2d 1569, 1571, 222 USPQ 934, 936 (Fed. Cir. 1984).

If a party believes an opponent's claim corresponding to the count is ambiguous when construed in light of the opponent's disclosure, the party should move under § 1.633(a) for judgment against the claim on the ground of unpatentability under the second paragraph of 35 U.S.C. 112. In paragraph (a), it is also proposed to delete "by reference to the prior art of record" as unnecessary.

Paragraphs (a)(1) and (a)(2) of § 1.633 are proposed to be amended by deleting some unnecessary language from each paragraph and by changing "derivation" to "Derivation" in paragraph (a)(2). Paragraph (b), which concerns motions for judgment on the ground of no interference-in-fact, is proposed to be amended by stating that it is possible for claims of opponents presented in "means plus function" format to define separate patentable inventions even though the claims of the opponents contain the same literal wording. The reason is that the sixth paragraph of 35 U.S.C. 112, which is applicable to "means plus function" limitations in application claims and patent claims, provides that such limitations are to be construed as covering the corresponding structure disclosed in the associated application or patent and equivalents thereof. *In re Donaldson Co.*, 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994).

Paragraph (i) of § 1.633 in its current form authorizes a party who opposes a preliminary motion under § 1.633 (a), (b) or (g) to file a preliminary motion under § 1.633 (c) or (d). It is proposed to amend paragraph (i) to additionally authorize a party-patentee to file a preliminary motion under § 1.633(h) to add to the interference an application for reissue of the party's involved patent. Because a reissue application can include an amended or new claim to be designated as corresponding to a count, the proposed amendment would give a patentee an option similar to that afforded in the same situation to a party-applicant, who can file a preliminary motion under § 1.633(c)(2) to amend a claim in, or add a claim to, its involved application to be designated as corresponding to a count.

In § 1.637, it is proposed to amend paragraph (a) to incorporate the substance of the Notice of the Chairman of the Board of Patent Appeals and Interferences of August 10, 1990, published as "Interferences—Preliminary Motions for Judgment," 1118 Off. Gaz. Pat. Office 19 (Sept. 11, 1990). Paragraph (a) as proposed to be amended would state that where a party files a preliminary motion for judgment against an opponent under § 1.633(a) based on unpatentability over prior art having a date that appears to make the prior art equally applicable to the moving party, it will be presumed, without regard to the dates alleged in the preliminary statement of the party, that the cited prior art is also applicable to the party unless there is included with the motion an explanation, and evidence if appropriate, as to why the prior art does not apply to the party. The proposed amendment differs from the notice by providing that if the motion fails to include a sufficient explanation or evidence, the party will not be permitted to rely on any such explanation or evidence in response to or in any subsequent action in the interference. The notice had directed the administrative party, a procedure which results in delaying a decision on the preliminary motion. Paragraph (a) is further proposed to be clarified by changing "Every" in the second sentence to "Each."

Paragraph (c)(1) of § 1.637 sets forth the requirements for a preliminary motion to add or substitute a proposed count. It is proposed to amend paragraph (c)(1)(v) in two respects. The first is to require a moving party to show that the proposed count is patentable over the prior art. The second is to specify that a proposed substitute count need only be shown to be patentably distinct from the other counts proposed to remain in the interference, since a proposed substitute count need not be patentably distinct from the count it is to replace. Paragraph (c)(1)(vi) is proposed to be amended to clarify that a preliminary motion under § 1.633(c)(1) need not be accompanied by a preliminary motion for benefit under § 1.633(f) unless the moving party seeks benefit with respect to the proposed count. It is also proposed to add a new paragraph (c)(1)(vii) specifying that where an opponent is accorded the benefit of the filing date of an earlier filed application in the notice of declaration of the interference, the moving party must show why the opponent is not also entitled to benefit of the filing date of the earlier filed application with respect to the proposed count. Otherwise, the opponent will be presumed to be entitled to the benefit of the earlier filed application with respect to the proposed count. The amendment would eliminate the need for an opponent to respond to a § 1.633(c)(1) motion with a preliminary motion under § 1.633(f) claiming benefit, which has the effect of delaying a decision on the § 1.633(c)(1) motion.

Paragraphs (c)(2) (ii) and (iii) of § 1.637 are proposed to be amended for clarification. Paragraphs (c)(2)(iv) and § 1.637(c)(3)(iii), which relate to § 1.633(f) motions for benefit, are proposed to be deleted and reserved as unnecessary, since motions under § 1.633(c) (2) and (3) do not efect the count. Paragraph (c)(3)(ii), which applies to motions under § 1.633(c)(3) to designate a claim as corresponding to a count, is proposed to be amended to have claims compared to claims, as is the case in § 1.633(c)(4)(ii), which applies to motions filed under § 1.633(c)(4) to designate a claim as not corresponding to a count. The proposed amendment avoids the need to compare claims to counts, which are subject to different rules of construction than are claims.

Paragraph (c)(4)(ii) of § 1.637 is proposed to be amended to require that a party moving to designate a claim as not corresponding to a count must show that the claim could not serve as the basis for a preliminary motion under § 1.633(c)(1) to add a new count. The proposed amendment, if adopted, would preclude a party from moving to designate one of its claims as not corresponding to the count where an opponent's disclosure would support a similar claim, in which case the party could file a § 1.633(c)(1) preliminary motion proposing a claim to be added to the opponent's application and suggesting that the proposed claim and the party's claim in question be designated as corresponding to a proposed new count.

Paragraph (d)(4) of § 1.637, which authorizes a party to file a motion for benefit together with a motion under § 1.633(d), is proposed to be deleted and reserved as unnecessary, because motions filed under § 1.633(d) do not affect the count. Paragraphs (e)(1)(viii) and (e)(2)(vii) are proposed to be amended to make it clear that a preliminary motion under § 1.633(e) (1) or (2) need not be accompanied by a preliminary motion for benefit under § 1.633(f) unless the moving party seeks benefit with respect to the proposed count. Paragraphs (e)(1)(ix) and (e)(2)(viii) are proposed to be added to specify that where an opponent is accorded the benefit of the filing date of an earlier filed application in the notice of declaration of the interference, the moving party must show why the opponent is not entitled to benefit of the earlier filed application with respect to the proposed count; otherwise, the opponent will be presumed to be entitled to benefit of the earlier filed application with respect to the proposed count. Paragraph (f)(2) of § 1.637 is proposed to be amended to change "abroad" to "in a foreign country" and to delete both occurrences of "filed abroad" as superfluous.

Paragraph (h) of § 1.637 is proposed to be amended to explain that a preliminary motion to add a reissue application that includes a new or amended claim to be designated as not corresponding to a count will be given the same treatment as a preliminary motion proposing to amend a claim in, or add a new claim to, an involved application to be designated as not corresponding to the count, i.e., the preliminary motion will be dismissed. See L'Esperance v. Nishimoto, 18 USPQ2d 1534, 1537 (Bd. Pat. App. & Int. 1991) (interference rules do not authorize a motion by party-applicant to amend or add a claim to be designated as not corresponding to the count).

In § 1.638, it is proposed to amend paragraph (b) for clarification by changing "a reply" to "any reply."

In § 1.639, it is proposed to amend paragraph (a), which requires that a motion, opposition or reply be accompanied by the evidence on which a party intends to rely in support of or in opposition to a motion, to be consistent with paragraphs (c) through (g), which permit some types of evidence to be filed after filing of the motion, opposition or reply. It is also proposed to amend paragraph (d)(1) by changing "call" to "use."

In § 1.640, it is proposed to amend paragraph (b) in several respects. The first is to provide that a decision on a preliminary motion shall be deferred to final hearing unless an administrative patent judge or the Board is of the opinion that a decision on a preliminary motion will materially advance the resolution of the interference. The second is to state that a matter raised by a party in support of or in opposition to a motion that is deferred to final hearing will not be entitled to consideration at final hearing unless the matter is raised in the party's brief at final hearing. It is also proposed to amend paragraph (b) to state that where the administrative patent judge determines that the interference shall proceed to final hearing on the issue of priority or derivation, a time shall be set for each party to file a paper identifying any decisions of the administrative patent judge that the party wishes to have reviewed at final hearing as well as identifying any deferred or belatedly filed motions that the party wishes to have considered at final hearing. Paragraph (b) as proposed to be amended would also require that any evidence a party wishes to have considered with respect to the decisions and motions to be considered or reviewed at final hearing, including any affidavits filed by the party under § 1.608(b) or 1.639(b), would have to be served on the opponent during the testimony-in-chief period of the party.

Paragraph (b)(1) of § 1.640 is proposed to be amended for clarification. Paragraph (b)(2), which currently states that a preliminary motion filed after a decision is entered on preliminary motions under § 1.633 will not be considered except as provided by § 1.655(b), is proposed to be amended to state that a preliminary motion filed after the time expires for filing preliminary motions will not be considered except as provided by § 1.645(b) by changing "1.655(b)" to "1.645(b)," which relates to consideration of belatedly filed papers in general.

Paragraph (c) of § 1.640, which currently requires an administrative patent judge or the Board to specifically authorize an opposition to a request for reconsideration of a decision by an administrative patent judge, is proposed to be amended to authorize an opponent to file an opposition, thereby saving the administrative patent judge or the Board the time it would otherwise take to determine whether an opposition should be authorized. If adopted, the administrative patent judge would continue to have the authority to deny a request for reconsideration without waiting for an opposition. In order to conserve the resources of the Board, it is also proposed to delete the last sentence of § 1.640(c) so as to authorize a single individual administrative patent judge to decide a request for reconsideration. Paragraph (c) is also proposed to be amended to require that a request for reconsideration be filed by hand or Express Mail. Paragraph (d)(1), which currently states that an order to show cause under that section can be based on a decision on a motion which is dispositive of the interference against a party as to any count, is proposed to be amended to include decisions on dispositive matters raised sua sponte by an administrative patent judge.

Paragraph (e) of § 1.640 is proposed to be amended to incorporate the substance of the Deputy Commissioner's Notice of December 8, 1986, published as Interference Practice: Response to Order to Show Cause Under 37 CFR 1.640," 1074 Off. Gaz. Pat. Office 4 (Jan. 6, 1987), reprinted in 1086 Off. Gaz. Pat Office 282 (Jan. 5, 1988). Specifically, paragraph (e) as proposed to be amended would provide that where the order to show cause was issued under § 1.640(d)(1), the party may respond with a paper (i) requesting that final hearing be set to review the decision which is the basis for the order and identifying every other decision of the administrative patent judge that the party wishes to have reviewed by the Board at a final hearing, or (ii) fully explaining why judgment should not be entered. Any other party would be permitted to file a response to the paper within 20 days of the date of service of the paper. Where the order was issued under § 1.640(d)(1) and the paper includes a request for final hearing, the response must identify every decision of the administrative patent judge that the responding party wishes to have reviewed by the Board at a final hearing. Where the order was issued under § 1.640(d)(1) and the paper does not include a request for final hearing, the response may include a request for final hearing, which must identify every decision of the administrative patent judge that the responding party wishes to have reviewed by the Board at a final hearing. Where only the response includes a request for a final hearing, the party who filed the paper would have 14 days from the date of service of the response in which to file a supplemental paper identifying any other decision of the administrative patent judge that the party wishes to have reviewed by the Board at a final hearing. The paper or the response thereto would have to be accompanied by a motion (§ 1.635) requesting a testimony period if a party wishes to introduce any evidence to be considered at final hearing (§ 1.671), such as affidavits previously filed under § 1.639(b). A request for a testimony period would be construed as including a request for final hearing. Where the paper contains an explanation of why judgment should not be entered in accordance with the order and no party has requested a final hearing, the decision that is the basis for the order

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would be reviewed based on the contents of the paper and the response. If the paper fails to show good cause, the Board would enter judgment against the party against whom the order issued.

Section 1.641 currently indicates that an administrative patent judge who, during the pendency of an interference, becomes aware of a reason why a claim designated to correspond to a count may not be patentable should notify the parties of the reason and set a time within which each party may present its views, which the administrative patent judge will consider in determining how the interference shall proceed. It is proposed to amend § 1.641 to indicate that a party's views may include argument or appropriate preliminary motions under § 1.633(c), (d) and (h), including any supporting evidence.

In § 1.643, it is proposed to amend paragraph (b) for clarification and also to change "ends of justice" to "interest of justice" to be consistent with the language used in other interference rules, including §§ 1.628(a) and 1.687(c).

In § 1.644, it is proposed to simplify paragraph (a) by changing "a panel consisting of more than one examiner-in-chief" to "the Board." Paragraphs (a)(1), (b) and (c) are proposed to be amended by changing both occurrences of "panel" to "Board." Paragraphs (a)(2) and (b) are proposed to be changed to provide that a petition seeking to invoke the supervisory authority of the Commissioner shall not be filed prior to the party's brief for final hearing; these paragraphs currently provide that such a petition shall not be filed prior to a decision of the Board awarding judgment.

Paragraph (b) of § 1.644 is proposed to be clarified by amending it to state that a petition under § 1.644(a) shall be considered timely if it is made as part of, or simultaneously with, a proper motion under § 1.633, 1.634, or 1.635 when granting the motion would require waiver of a rule. In other words, a petition under § 1.644(a)(2) must seek waiver of a rule prospectively rather than retroactively.

Paragraph (d) of § 1.644 is proposed to be amended to provide that the statement of facts in a petition preferably should be in numbered paragraphs and also to delete the second sentence as unnecessary. Paragraph (f) is proposed to be amended to change the "15 days" in which to request reconsideration of a decision by the Commissioner to "14 days." In paragraph (g), it is proposed to delete the quotation marks around "Express Mail."

Section 1.645, which in its current form permits consideration of a belatedly filed paper only if accompanied by a motion under § 1.635 which shows sufficient cause (§ 1.645(b)) why the paper was not timely filed, is proposed to be amended in several respects. First, it is proposed to change "sufficient cause" to "good cause" in order to use a single "cause" standard throughout the interference rules. Second, it is proposed to amend paragraph (b) to permit consideration of a belatedly filed paper if an administrative patent judge or the Board, sua sponte, is of the opinion that it would be in the interest of justice to consider the paper. An example would be where the delay is short (e.g., one day) and there is no prejudice to an opponent. For purposes of the sections other than § 1.645, a belatedly filed paper is considered "timely filed" if accompanied by a motion under § 1.635 which is granted.

Paragraph (d) of § 1.645 is proposed to be amended by deleting "In an appropriate circumstance" as superfluous in view of the language "may stay proceedings," which indicates that the administrative patent judge has the discretion to stay an interference.

In § 1.646, it is proposed to amend paragraph (a)(2) by deleting the reference to § 1.684, which is proposed to be deleted. It is proposed to amend paragraph (c)(1) by inserting "or causing a copy of the paper to be handed" after "By handing a copy of the paper" to make it clear that the paper need not be personally delivered by the party, i.e., that delivery by hand can be effected by a commercial courier, for example. In paragraph (c)(4), it is proposed to change "mail" (second occurrence) to "first class mail" to make it clear that the service date specified in that paragraph applies only to first class mail. It is also proposed to redesignate paragraph (c)(5) as paragraph (c)(6) and to add a new paragraph (c)(5) which clarifies that a party may serve by Express Mail and that when service is effected by Express Mail, the date of service is considered to be the date of deposit with the U.S. Postal Service. Paragraph (d) is proposed to be amended to delete the quotation marks around "Express Mail." Paragraph (e) is proposed to be amended to state that the due date for serving a paper is the same as the due date for filing the paper in the Patent and Trademark Office.

In § 1.651, it is proposed to amend paragraph (a)(2) by deleting "(testimony includes testimony to be taken abroad under § 1.684)" in order to be consistent with the proposal to delete § 1.684.

Paragraphs (c)(2) and (c)(3) are proposed to be amended to be consistent with the proposed amendment to the definition of "effective filing date" in § 1.601(g). In paragraph (d), it is proposed to change "abroad under § 1.684" to "in a foreign country."

In § 1.653, it is proposed to amend paragraph (a) in several ways. The first is to change the references to paragraphs of § 1.672 to be consistent with the proposed redesignation of certain paragraphs of § 1.672, discussed below. The second is to delete "of fact" in the clause "agreed statements of fact under § 1.672(f)" (proposed to be redesignated as § 1.672(h)), because agreed statements under § 1.672(f) can set forth either (1) how a particular witness would testify if called or (2) the facts in the case of one or more of the parties. The third is to delete "under § 1.684(c)," since § 1.684 is proposed to be deleted. A fourth proposed amendment to § 1.653(a) is to indicate that in addition to the types of testimony already set forth in paragraph (a), testimony includes copies of written interrogatories and answers and written requests for admissions and answers, which might be obtained where a motion for additional discovery under § 1.687(c) is granted.

Paragraph (b) of § 1.653 is proposed to be amended to be consistent with the proposed redesignation of certain paragraphs of § 1.672, to delete the reference to § 1.684(c), which is proposed to be cancelled, and for clarity. Paragraphs (c)(1) and (c)(4) of § 1.653 are proposed to be amended to make it clear that the only testimony to be included in a party's record is testimony submitted on behalf of the party. Having copies of the same testimony appear in both parties' records unnecessarily encumbers the records and is confusing in that a given page of testimony will have different page numbers in the different records, with the result that the briefs of the parties will refer to different record pages for the same testimony.

It is proposed that paragraph (c)(5) of § 1.653 be deleted and reserved. Paragraph (c)(5) currently requires that the record filed by each party include each notice, official record and printed publication relied upon by the party and filed under § 1.682(a). This requirement is considered unnecessary because such notices, official records and printed publications are in the nature of exhibits under § 1.653(i), which are submitted with but not included in the record. The inclusion of exhibits in the record merely increases the size of the record without serving any useful purpose.

Paragraph (g) of § 1.653 is proposed to be amended and paragraphs (f) and (h) deleted and reserved to eliminate the current distinction between typewritten and printed records. Paragraph (g) is also proposed to be amended to change "8½ x 11 inches (21.8 by 27.9 cm.)" to "21.8 by 27.9 cm. (8½ x 11 inches)" and to delete the requirement for justified margins and to require that the records be bound with covers at their left edges in such manner as to lie flat when open to any page and in one or more volumes of convenient size (approximately 100 pages per volume is suggested) and that when there is more than one volume, the numbers of the pages contained in each volume must appear at the top of the cover for each volume. Paragraph (i) is proposed to be amended to state that exhibits include documents and things identified in affidavits or on the record during the taking of oral depositions as well as official records and publications submitted pursuant to § 1.682(a).

In § 1.654, it is proposed to amend paragraph (a) by changing "shall" in the second sentence to "may" for clarity and also to reduce the time for oral argument by a party from 60 minutes to 30 minutes, because most hearings have required no more than 30 minutes per side and a panel has the discretion to grant more time at the hearing, where necessary.

In § 1.655, it is proposed to amend paragraph (a) by changing the standard of review from "erroneous or an abuse of discretion" to "an abuse of discretion." The recitation of a separate "error" standard is unnecessary, because an abuse of discretion may be found when (1) the decision of an administrative patent judge is clearly unreasonable, arbitrary or fanciful, (2) the decision is based on an erroneous conclusion of law, (3) the findings of the administrative patent judge are clearly erroneous, or (4) the record contains no evidence upon which the administrative patent judge rationally could have based the decision. See, *e.g.*, Heat and Control Inc. v. Hester Industries, Inc., 785 F.2d 1017, 228 USPQ 926 (Fed. Cir. 1986); Western Electric Co. v. Piezo Technology, Inc. v. Quigg, 860 F.2d 428, 8 USPQ2d 1853 (Fed. Cir. 1988).

It is proposed to amend paragraph (b) of § 1.655 to clarify which matters a party is not entitled to raise for consideration at final hearing. As proposed to be amended, paragraph (b) would provide that a party shall not be entitled to raise for consideration at final hearing a matter which properly could have been raised by a motion under § 1.633 or 1.634 unless (1) the matter was properly raised in a motion that was timely filed by the party under § 1.633 or 1.634 and the motion was denied or deferred to final hearing, (2) the matter was properly raised by the party in a timely filed opposition to a motion under § 1.633 or 1.634 and the motion was granted over the opposition or deferred to final hearing, or (3) the party shows good cause why the issue was not properly raised by a timely filed motion or opposition. It is also proposed to amend paragraph (b) of § 1.655 to state that a change of attorneys during the interference generally does not constitute good cause for failing to file a timely motion or opposition.

It is further proposed, in response to *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993), to amend paragraph (b) of § 1.655 by adding a sentence explaining that a party who fails to contest, by way of a timely filed preliminary motion under § 1.633(c), the designation of a claim as corresponding to a count may not subsequently argue the separate patentability or the lack of separate patentability of claims designated as corresponding to the count. The Patent and Trademark Office conducts interference proceedings to determine who, as between two or more applicants for patent or one or more applicants for patent and one or more patentees, is the first inventor of a patentable invention. A primary examiner determines in the first instance whether the claims in a pending application interfere with the claims in another pending application or unexpired patent. When the examiner is of the view that an interference exists, the Board is notified (§ 1.609). The interference is assigned to an administrative patent judge (§ 1.610), who issues a notice declaring the interference (§ 1.611). Each separately patentable invention involved in the interference is defined by a count, which is merely a vehicle for contesting priority of invention (i.e, who made the invention defined by the count first) and determining the evidence relevant to the issue of priority. A preliminary determination is made by the Patent and Trademark Office as to which claims should be designated to correspond to the count. The claims that are initially determined to define the same patentable invention are designated as corresponding to the count. All other claims are designated as not corresponding to the count. The designation of claims provides a starting point in an interference. There is a presumption that the designation of a claim as corresponding or as not corresponding to a count is correct.

The interference rules authorize a party to file a preliminary motion to redefine an interference by designating a claim as corresponding (§ 1.633(c)(3)) or not corresponding (§ 1.633(c)(4)) to a count. Prior to Van Geuns, the Patent and Trademark Office interpreted the interference rules as requiring a party to file a preliminary motion under § 1.633(c)(4) to designate a claim as not corresponding to the count as a condition for arguing at final hearing that a claim designated as corresponding to the count is patentably distinct from another claim designated as corresponding to the count. *See* Brooks v. Street, 16 USPQ2d 1374, 1377 (Bd. Pat. App. & Int. 1990); Flehmig v. Geisa, 13 USPQ2d 1052, 1054 (Bd. Pat. App. & Int. 1989); Kwon v. Perkins, 6 USPQ2d 1747, 1750 (Bd. Pat. App. & Int. 1988), aff'd on other grounds, 886 F.2d 325, 12 USPQ2d 1308 (Fed. Cir. 1989); see also Lamont v. Berguer, 7 USPQ2d 1580, 1582 (Bd. Pat. App. & Int. 1988). However, in Van Geuns the Federal Circuit interpreted the rules differently, stating:

> [T]he position of the Commissioner that claims designated as corresponding to a count stand or fall with the patentability of the subject matter of the count is overboard.

988 F.2d at 1185, 26 USPQ2d at 1060. The Court further stated:

> [W]e conclude that a party to an interference, who has failed to timely contest the designation of claims as corresponding to a count, has not conceded that claims corresponding to a count are anticipated or made obvious [i.e., are unpatentable] by the prior art when the subject matter of account is determined to be unpatentable for obviousness. The PTO must determine, based on the actual prior art reference or references, whether claims not [designated as] corresponding exactly to the count are unpatentable.
>
> * * * The interference rules do not specify whether a party may argue the patentability of claims separately to the EIC [examiner-in-chief, now administrative patent judge] and the board.

Id. at 1186, 26 USPQ2d at 1060 (bracketed material added by the Commissioner). The proposed amendment to § 655(b) is designed to overcome the Federal Circuit's interpretation of the rules and to create a presumption that all claims designated as corresponding to a count are directed to the same patentable invention.

It is proposed to amend paragraph (c) of § 1.655 by changing "To prevent manifest injustice" to "In the interest of justice" to be consistent with the language used in other interference rules.

In § 1.656, it is proposed to redesignate paragraphs (b)(1) through (b)(6) as paragraphs (b)(3) through (b)(8), respectively, and to add new paragraphs (b)(1) and (b)(2) requiring the brief to

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include (1) a statement of interest identifying every party represented by the attorney in the interference and the real party in interest if the party named in the caption is not the real party in interest and (2) a statement or related cases indicating whether the interference was previously before the Board for final hearing and identifying any related appeal or interference which is pending before, or which has been decided by, the Board, or which is pending before, or which has been decided by, the Court of Appeals for the Federal Circuit or a district court in a proceeding under 35 U.S.C. 146. A related appeal or interference is one which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending interference. Appeals are mentioned because related issues may be present before the board simultaneously in an ex parte appeal and an interference. It is also proposed to amend current paragraph (b)(3) (proposed to be redesignated as paragraph (b)(5)) to specify that statements of fact preferably should be presented in numbered paragraphs.

Current paragraph (b)(4) of § 1.656 (proposed to be redesignated as paragraph (b)(6)) requires that the opening brief of the junior party contain the contentions of the party with respect to the "issues to be decided," which has been construed to include the matter of whether some of the senior party's evidence of conception was inadmissible hearsay. Suh v. Hoefle, 23 USPQ2d 1321, 1323 (Bd. Pat. App. & Int. 1991). As support, the Board relied on Fisher v. Bouzard, 3 USPQ2d 1677 (Bd. Pat. App. & Int. 1987), and Moller v. Harding, 214 USPQ 730 (Bd. Pat. Int. 1982). Both of these cases concern interferences declared under the "old" interference rules (i.e., § 1.201 *et seq.*) of which § 1.254 specified that the opening brief of the junior party shall "present a full, fair statement of the questions involved, including his position with respect to the priority evidence on behalf of other parties." Current § 1.656(b)(4) does not expressly require, and was not intended to imply, that the opening brief of the junior party must address the evidence of any other party with respect to the issue of priority or any other issue. In order to clarify that the opening brief of a junior party need not address the evidence of the other parties, it is proposed to amend current paragraph (b)(4) to require that the junior party's opening brief contain the contentions of the party "with respect to the issues it is raising for consideration at final hearing." These issues would include the junior party's case-in-chief for priority with respect to an opponent or derivation by an opponent as well as matters raised in any denied or deferred motions of the junior party that are to be reviewed or considered at final hearing. Where the reply brief of the union party includes a new argument in response the case-in-chief of the senior party as presented in the senior party's opening brief, the senior party may move under § 1.635 for leave to file a reply to the junior party's reply brief, which motion must be accompanied by a copy of the senior party's reply.

Paragraph (d) of § 1.656 is proposed to be amended to state that unless ordered otherwise by an administrative patent judge, briefs shall be double-spaced (except for footnotes, which may be single-spaced) and shall comply with the requirements of § 1.653(g) for records except the requirement for binding. As a result, the current distinction between printed and typewritten briefs would be eliminated.

Paragraphs (e), (g) and (h) of § 1.656 are proposed to be amended to require an original and *four* copies (currently an original and three copies are required) of each brief, any proposed findings of fact and conclusions of law, any motion under 37 CFR 1.635 to suppress evidence and any opposition to a motion to suppress evidence.

Paragraph (g) of § 1.656, which permits a party to file proposed findings of fact and conclusions of law, is further proposed to be amended to require paragraph numbers for the findings of fact and conclusions of law.

Paragraph (h) is further proposed to be amended to state that a party's failure to challenge the admissibility of the evidence of an opponent on a ground that could have been raised in a timely objection under §§ 1.672(c), 1.682(c), 1.683(b) or 1.688(b) constitutes a waiver of the right to move under § 1.656(h) to suppress the evidence on that ground at final hearing.

Paragraph (i) of § 1.656 currently provides that if a junior party fails to file an opening brief for final hearing, an order may be issued by the administrative patent judge requiring the junior party to show cause why the failure to file a brief should not be treated as a concession of priority and further provides that judgment may be rendered against the junior party if the junior party "fails to respond" within a time period set in the order. The expression "fails to respond" has been misinterpreted by some junior parties as meaning that the mere filing of a response of any kind to the order to show cause should be sufficient to avoid the entry of judgment. Such an interpretation was not intended and if adopted would effectively negate § 1.656(i). The term "respond" is proposed to be changed to "show good cause" in order to make it clear that a junior party's failure to file a timely opening brief will not be excused unless good cause is shown to explain or justify the failure to file a brief. The language of the rule will then be consistent with the other interference rules concerning orders to show cause, e.g., §§ 1.640(c) and 1.652.

Section 1.657 is proposed to be amended to be consistent with the proposed changes to the definition of "effective filing date" in § 1.601(g) to state that in an interference involving an application and a patent where the effective filing date of the application is after the date the patent issued, a junior party has the burden of establishing priority by clear and convincing evidence, and that in other interferences the junior party has the burden of establishing priority by a preponderance of the evidence. The proposed amendment would codify the holding of Price v. Symsek, 988 F.2d 1187, 19990–91, 26 USPQ2d 1031, 1033 (Fed. Cir. 1993), as clarified by Bosies v. Benedict, 27 F.3d 539, 541–42, 30 USPQ2d 1862, 1864 (Fed. Cir. 1994).

In § 1.658, it is proposed to amend paragraph (a) to state that when the Board enters a decision awarding judgment as to all counts, the decision shall be regarded as a final decision for the purpose of judicial review (35 U.S.C. 141–144, 146) unless a request for reconsideration under paragraph (b) of this section is timely filed. In paragraph (b), third sentence, it is proposed to delete the phrases "[w]here reasonably possible" and "such that delivery is accomplished" as unnecessary and to add a sentence specifying that a decision on reconsideration is a final decision for the purpose of judicial review (35 U.S.C. 141–144, 146). It is also proposed to amend paragraph (b) by changing "reply to a request for reconsideration" to be consistent with the terminology employed in § 1.640(c) regarding requests for reconsideration of decisions on preliminary motions.

Section 1.660 is proposed to be amended by adding a new paragraph (e) explaining that the failure of a party to comply with the notice provisions of § 1.660 may result in sanctions under § 1.616, that knowledge by, or notice to, an employee of the Office other than an employee of the Board, of the existence of the reexamination, application for reissue, protest, or litigation shall not be sufficient, and that the notice contemplated by this section is notice addressed specifically to an administrative patent judge or the Board.

In § 1.662, it is proposed to amend paragraph (a) by changing "filing by an applicant or patentee" in the second sentence to "filing by a party" to make it clear that the terminal disclaimer can be signed by the party's attorney or agent of record. For the same reason, it is proposed to change "by an applicant" to "by a party" in the third sentence of paragraph (a), which concerns abandonment of an involved application.

In paragraph (b) of § 1.662, the first sentence is proposed to be amended to change "omits all claims of the patent corresponding to the counts of the interference for the purpose of avoiding the interference" to "does not include a claim that corresponds to a count" in order to make it clear that judgment may not be entered where the reissue application includes a new or amended claim that should be designated as corresponding to a count, even if the patentee argues that it should be designated as not corresponding to a count. Similarly, it is proposed to change "reissue other than for the purpose of avoiding the interference" to "reissue which includes a claim that corresponds to a count."

In § 1.671, it is proposed to amend paragraph (a) by changing "*evidence* from another interference, proceeding, or action filed § 1.683" to "*testimony* from another interference, proceeding, or action filed under § 1.683" in order to be consistent with the terminology of § 1.683. It is proposed to amend paragraphs (c)(6) and (c)(7) of § 1.671 to change "by oral deposition or affidavit" to "by affidavit or oral deposition." Paragraph (f) is proposed to be amended to clarify that the requirement for the significance of documentary and other exhibits to be discussed with particularity by a witness applies only to documentary and other exhibits identified by a witness in an affidavit or during oral deposition. Paragraph (f) does not apply to official records and printed publications submitted into evidence pursuant to § 1.682(a).

In § 1.672, in addition to the proposed amendments discussed above under the heading "Amendments responsive to adoption of Public Law 103–182," it is proposed to amend paragraph (b) by deleting the third sentence, which specifies the type of paper to be used for affidavits, as being superfluous in view of § 1.677(a). In paragraph (d), it is proposed to delete the fifth sentence ("A party electing to present testimony of a witness by deposition shall notice a deposition of the witness under § 1.673(a).") as superfluous in view of the second sentence of § 1.672(d).

In § 1.673, it is proposed to amend paragraph (b) by changing the time for service of evidence to be relied on at an oral deposition from "at least three days" prior to the conference required by § 1.673(g) when service is by hand or by Express Mail to "at least three working days" prior to the conference. It is also proposed to amend paragraph (b) to change the time for service by any other means from 10 days to 14 days prior to the conference.

It is proposed to amend paragraph (d) of § 1.673 by deleting the second sentence as unnecessary, since all depositions for a case-in-chief would have to be approved by an administrative patent judge. It is also proposed to delete the quotation marks around "Express Mail" in paragraph (b).

Also in § 1.673, it is proposed to clarify paragraph (e) by changing "party electing to present testimony by affidavit" to "party who has presented testimony by affidavit."

In paragraph (a) of § 1.674, which specifies before whom depositions may be taken, it is proposed to delete the reference to "United States or a territory or insular possession of the United States" in order to make this paragraph applicable to depositions for testimony compelled in foreign countries.

In § 1.675, it is proposed to amend paragraph (d), which concerns reading and signing of a transcript by the witness, to take into account that the witness might refuse to read and/or sign the transcript of the deposition, in which case the circumstances under which the witness refused to sign must be noted on the certificate by the officer who prepared the certified transcript (§ 1.676(c)).

In § 1.676, it is proposed to amend paragraph (a)(4) by changing "opposing party" to "opponent."

Section 1.677, which in its current form specifies the required form for transcripts of depositions, is proposed to be amended to also apply to affidavits. Furthermore, it is proposed to delete the reference to "typewritten" matter, to change "pica-type" to "11 point type" and to change "8½ × 11 inches (21.8 by 27.9 cm.)" to "21.8 by 27.9 cm. (8½ × 11 inches)."

In § 1.678, it is proposed to change the section heading from "Transcript of deposition must be filed" to "Time for filing transcript of deposition" for clarity and to amend the text by changing the time for filing the certified transcript from 45 days to 30 days.

In § 1.679, it is proposed to change "transcript" to "transcript of a deposition" for clarity and also to delete "for printing (§ 1.653(g))" as unnecessary.

In § 1.682, in addition to the proposed amendments discussed above under the heading "service of a 'developing record,'" it is proposed to amend paragraph (a) by changing "identified during the taking of testimony of a witness" to "identified in an affidavit or on the record during an oral deposition of a witness" for clarity. It is also proposed to delete and reserve paragraph (a)(4) ("where appropriate, be accompanied by a certified copy of the official record or a copy of the printed publication (§ 1.671(d))") as superfluous in view of Rules 901 and 902 of the Federal Rules of Evidence, which apply to interference proceedings (§ 1.671(b)) and require authentication of evidence that is not self-authenticating. Finally, it is proposed to capitalize the first word in each of paragraphs (a)(2), (a)(3) and (a)(4).

In § 1.685, it is proposed to amend paragraph (d) for clarification.

In § 1.687, it is proposed to amend paragraph (c) to refer to § 1.647 concerning translations of documents in a foreign language.

Other Considerations

These proposed rules conform with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, Executive Order 12866, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget has determined that these proposed rules are not significant for the purposes of Executive Order 12866.

The Assistant Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule changes will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)), because the changes clarify existing rules setting forth the procedures used in patent appeals and interferences.

The Patent and Trademark Office has determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These rule changes will not impose any additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et.seq.*, since no record keeping or reporting requirements within the coverage of the Act are placed upon the public.

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List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Inventions and patents.

For the reasons set out in the preamble, it is proposed to amend 37 CFR Part 1 wherein removals are indicated by brackets ([ ]) and additions by arrows (►◄) as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.11 is proposed to be amended by revising paragraph (e) to read as follows:

§ 1.11 Files open to the public.

* * * * *

(e) The file of any interference involving a patent, a statutory invention registration, ►a reissue application, ◄ or an application on which a patent has been issued or which has been published as a statutory invention registration, is open to inspection by the public, and copies may be obtained upon paying the fee therefor, if: (1) The interference has terminated, or (2) an award of priority or judgment has been entered as to all parties and all counts.

3. In § 1.192, it is proposed to revise paragraphs (a), (c), (c)(5) and (c)(5)(ii), redesignate current paragraphs (c)(1) through (c)(7) as paragraphs (c)(3) through (c)(9) and add new paragraphs (c)(1) and (c)(2) to read as follows:

§ 1.192 Appellant's brief.

(a) [The appellant] ►Appellant◄ shall, within 2 months from the date of the notice of appeal under § 1.191 [in an application, reissue application, or patent under reexamination,] or within the time allowed for response to the action appealed from, if such time is later, file a brief in triplicate. The brief must be accompanied by the requisite fee set forth in § 1.17(f) and must set forth the authorities and arguments on which [the] appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief ►will◄ [may] be refused consideration by the Board of Patent Appeals and Interferences ►, unless good cause is shown◄.

* * * * *

(c) The brief shall contain the following items under appropriate headings and in the order [here] indicated ►below◄ unless ►the brief is filed by an applicant who is not represented by a registered practitioner◄ [there is no attorney or agent of record in the application or reexamination proceeding, the brief was not prepared by a registered practitioner, and the brief was not signed by a registered practitioner, wherein the brief will be accepted as complying with this paragraph provided it is at least in substantial compliance with the requirements of paragraphs (c)(1), (2), (6) and (7)]:

►(1) *Real Party in Interest.* A statement identifying the real party in interest, if the party named in the caption of the brief is not the real party in interest, and the parent companies, subsidiaries (except wholly owned subsidiaries) and affiliates that have issued shares to the public of the real party in interest.

(2) *Related Appeals and Interferences.* A statement identifying by number and filing date all other appeals or interferences known to appellant, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.◄

[(1)] ►(3)◄ *Status of Claims.* A statment of the status of all the claims, pending or cancelled, and identifying the claims appealed.

[(2)] ►(4)◄ *Status of Amendments.* A statment of the status of any amendment filed subsequent to final rejection.

[(3)] ►(5)◄ *Summary of Invention.* A concise explanation of the invention defined in the claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters.

[(4)] ►(6)◄ *Issues.* A concise statement of the issues presented for review.

[(5)] ►(7)◄ *Grouping of Claims.* For each ground of rejection which appellant contests and which applies to more than one claim, [it will be presumed that] the rejected claims ►shall◄ stand or fall together ►with the broadest claim, and only the broadest claim will be considered by the Board of Patent Appeals and Interferences◄ unless:

►(i)◄ a statement is included that the rejected claims do not stand or fall together, and

►(ii)◄ in [the appropriate part or parts of] the argument under subparagraph ►(c) (8)◄ [(c) (6)] of this section appellant presents reasons as to why appellant considers the rejected claims to be separately patentable ►from the broadest claim. Merely pointing out what a claim covers is not an argument as to why the claim is separately patentable from the broadest claim◄.

[(6)] ►(8)◄ *Argument.* The contentions of [the] appellant with respect to each of the issues presented for review in subparagraph ►(c) (6)◄ [(c) (4)] of this section, and the basis therefor, with citations of the authorities, statutes, and parts of the record relied on. Each issue should be treated under a separate heading.

* * * * *

(v) For any rejection other than those referred to in paragraphs ►(c) (8) (i)◄ [(6) (6) (i)] to (iv) of this section, the argument shall specify the errors in the rejection and the specific limitations in the rejected claims, if appropriate, or other reasons, which cause the rejection to be in error.

[(7)] ►(9)◄ *Appendix.* An appendix containing a copy of the claims involved in the appeal.

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, [the] appellant will be notified of the reasons for non-compliance and provided with a period of one month within which to file an amended brief. If [the] appellant does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons from non-compliance stated in the notification, the appeal will ►stand◄ [be] dismissed.

4. Section 1.601 is proposed to be amended by revising paragraphs (f), (g), (j), (k), (l), and (q) and adding a new paragraph (r) to read as follows:

§ 1.601 Scope of rules, definitions.

* * * * *

(f) A *count* defines the interfering subject matter between (1) two or more applications or (2) one or more applications and one or more patents. ►A count should be broad enough to encompass the broadest corresponding patentable claim of each of the parties. A count may not be so broad as to be unpatentable over the prior art.◄ When there is more than one count, each count shall define a separate patentable invention. Any claim of an application or patent [which] ►that is designated to◄ correspond[s] to a count is a claim involved in the interference within the meaning of 35 U.S.C. 135(a). A claim of a patent or application ►designated to correspond to a count that◄ [which] is identical to a count is said to "correspond exactly" to the count. A claim of a patent or application ►designated to correspond to a count that◄ [which] is not identical to a count [, but which defines the same patentable invention as the count,] is said to "correspond substantially" to the count. When a count is broader in scope than all claims which correspond to the count, the count is a "phantom count." A phantom count is [not patentable to any party] ►unpatentable to all parties under the written description requirement of the first paragraph of 35 U.S.C. 112◄.

(g) The *effective filing date* of an application [or a patent] is the filing date of an earlier application accorded to the application [or patent] under 35 U.S.C. 119, 120, ►121,◄ or 365 ►or, if no benefit is accorded, the filing date of the application. The *effective filing date* of a patent is the filing date of an earlier application accorded to the patent under 35 U.S.C. 120, 121, or 365(c) or, if no benefit is accorded, the filing date of the application which issued as the patent.◄

* * * * *

(j) An *interference-in-fact* exists when at least one claim of a party [which] ►that◄ corresponds to a count and at least one claim of an opponent [which] ►that◄ corresponds to the count define the same patentable invention.

(k) A *lead* attorney or agent is a registered attorney or agent of record who is primarily responsible for prosecuting an interference on behalf of a party and is the attorney or agent whom an ►administrative patent judge◄ [examiner-in-chief] may contact to set times and take other action in the interference.

(l) A *party* is (1) an applicant or patentee involved in the interference or (2) a legal representative or an assignee ►of record in the Patent and Trademark Office◄ of an applicant or patentee involved in an interference. Where acts of a party are normally performed by an attorney or agent, "party" may be construed to mean the attorney or agent. An "inventor" is the individual named as inventor in an application involved in an interference or the individual named as inventor in a patent involved in an interference.

* * * * *

(q) A *final decision* is a decision awarding judgment as to all counts. An *interlocutory order* is any other action taken by an ►administrative patent judge◄ [examiner-in-chief] or [a panel of] the Board in an interference, including the notice declaring an interference.

►(r) *NAFTA country* means NAFTA country as defined in section 2(4) of the North American Free Trade Agreement Implementation Act. A "non-NAFTA country" is a country other than the United States or a NAFTA country.◄

5. Section 1.602 is proposed to be amended by revising paragraph (c) to read as follows:

§ 1.602 Interest in applications and patents involved in an interference.

* * * * *

(c) If a change of any right, title, and interest in any application or patent involved or relied upon in the interference occurs after notice is given declaring the interference and before the time expires for seeking judicial review of a final decision of the Board, the parties shall notify the Board of the change within 20 days ►after◄ [of] the change.

6. Section 1.603 is proposed to be revised to read as follows:

§ 1.603 Interference between applications; subject matter of the interference.

Before an interference is declared between two or more applications, the examiner must be of the opinion that there is interfering subject matter claimed in the applications which is patentable to each applicant subject to a judgment in the interference. The interfering subject matter shall be defined by one or more counts. [Each count shall define a separate patentable invention.] Each application must contain, or be amended to contain, at least one ►patentable◄ claim which corresponds to each count. All claims in the applications which define the same patentable invention as a count shall be designated to correspond to the count.

7. Section 1.604 is proposed to be amended by revising paragraph (a)(1) to read as follows:

§ 1.604 Request for interference between applications by an applicant.

(a) * * *

(1) Suggesting a proposed count and presenting at least one claim corresponding to the proposed count or identifying at least one claim in [his or her] ►its◄ application that corresponds to the proposed count,

* * * * *

8. Section 1.605 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.605 Suggestion of claim to applicant by examiner.

(a) ►If no claim in an application is drawn to the same patentable invention claimed in another application or patent, the ◄ [The] examiner may suggest that an applicant present a claim [in an application] ►drawn to an invention claimed in another application or patent◄ for the purpose of an interference with another application or a patent. The applicant to whom the claim is suggested shall amend the application by presenting the suggested claim within a time specified by the examiner, not less than one month. Failure or refusal of an applicant to timely present the suggested claim shall be taken without further action as a disclaimer by the applicant of the invention defined by the suggested claim. At the time the suggested claim is presented, the applicant may also (1) call the examiner's attention to other claims already in the application or which are presented with the suggested claim and (2) explain why the other claims [would be more appropriate to] ►should◄ be included in any interference which may be declared.

* * * * *

9. Section 1.606 is proposed to be revised to read as follows:

§ 1.606 Interference between an application and a patent; subject matter of the interference.

Before an interference is declared between an application and an unexpired patent, an examiner must determine that there is interfering subject matter claimed in the application and the patent which is patentable to the applicant subject to a judgment in the interference. The interfering subject matter will be defined by one or more counts. [Each count shall define a separate patentable invention.] ►The◄ [Any] application must contain, or be amended to contain, at least one ►patentable◄ claim which corresponds to each count. ►The claim in the application need not be, and most often will not be, identical to a claim in the patent.◄ All claims in the application and patent which define the same patentable invention as a count shall be designated to correspond to the count. At the time an interference is initially declared (§ 1.611), a count shall not be narrower in scope than any patent claim which corresponds to the count and any single patent claim will be presumed, subject to a motion under § 1.633(c), not to contain separate patentable inventions.

10. Section 1.607 is proposed to be amended by revising paragraph (a)(4) and adding a new paragraph (a)(6) to read as follows:

§ 1.607 Request by applicant for interference with patent.

(a) * * *

(4) Presenting at least one claim corresponding to the proposed count or identifying at least one claim already pending in [his or her] ►its◄ application that corresponds to the proposed count, and, if any claim of the patent or application identified as corresponding to the proposed count

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does not correspond exactly to the proposed count, explaining why each such claim corresponds to the proposed count, and

(5) * * *

►(6) Explaining how the requirements of 35 U.S.C. 135(b) are met, if the claim presented or identified under paragraph (a)(4) of this section was not present in the application until more than one year after the issue date of the patent.◄

* * * * *

11. Section 1.608 is proposed to be amended by revising paragraphs (a) and (b) thereof to read as follows:

§ 1.608 Interference between an application and a patent; prima facie showing by applicant.

(a) When the [earlier of the filing date or] effective filing date of an application is three months or less after the [earlier of the filing date or] effective filing date of a patent, [the applicant,] before an interference will be declared, ►either the applicant or the applicant's attorney or agent of record◄ shall file [an affidavit] ►a statement◄ alleging that there is a basis upon which ►the◄ applicant is entitled to a judgment relative to the patentee.

(b) When the [earlier of the filing date or the] effective filing date of an application is more than three months after the [earlier of the filing date or the] effective filing date [under 35 U.S.C. 120] of a patent, the applicant, before an interference will be declared, shall file (1) evidence which may consist of patents or printed publications, other documents, and one or more affidavits which demonstrate that applicant is *prima facie* entitled to a judgment relative to the patentee and (2) an explanation stating with particularity the basis upon which the applicant is *prima facie* entitled to the judgment. Where the basis upon which an applicant is entitled to judgment relative to a patentee is priority of invention, the evidence shall include affidavits by the applicant, if possible, and one or more corroborating witnesses, supported by documentary evidence, if available, each setting out a factual description of acts and circumstances performed or observed by the affiant, which collectively would *prima facie* entitle the applicant to judgment on priority with respect to the [earlier of the filing date or] effective filing date of the patent. To facilitate preparation of a record (§ 1.653 (g) and (h)) for final hearing, an applicant should file affidavits on paper which is ►21.8 by 27.9 cm. (8½ x 11 inches)◄ [8½ x 11 inches (21.8 by 27.9 cm.)]. The significance of any printed publication or other document which is self-authenticating within the meaning of Rule 902 of the Federal Rules of Evidence or § 1.671(d) and any patent shall be discussed in an affidavit or the explanation. Any printed publication or other document which is not self-authenticating shall be authenticated and discussed with particularity in an affidavit. Upon a showing of ►good◄ [sufficient] cause, an affidavit may be based on information and belief. If an examiner finds an application to be in condition for declaration of an interference, the examiner will consider the evidence and explanation only to the extent of determining whether a basis upon which the application would be entitled to a judgment relative to the patentee is alleged and, if a basis is alleged, an interference may be declared.

12. Section 1.609 is proposed to be amended by revising paragraph (b)(2) and (b)(3) to read as follows:

§ 1.609 Preparation of interference papers by examiner.

* * * * *

(b) * * *

(2) The claims of any application or patent which correspond to each count, stating whether the claims correspond exactly or substantially to each count ►and an explanation why each claim designated as corresponding to a count is directed to the same patentable invention as the count◄;

[3] The claims in any application ►or patent◄ which [are deemed by the examiner to be patentable over any] ►do not correspond to each◄ count ►and an explanation why each claim designated as not corresponding to a count is not directed to the same patentable invention as the count◄; and

* * * * *

13. Section 1.610 is proposed to be amended by revising the section heading and paragraphs (a) through (e) to read as follows:

§ 1.610 Assignment of interference to ►administrative patent judge◄ [examiner-in-chief], time period for completing interference.

(a) Each interference will be declared by an ►administrative patent judge◄ [examiner-in-chief] who may enter all interlocutory orders in the interference, except that only [a panel consisting of at least three members of] the Board shall (1) hear oral argument at final hearing, (2) enter a decision under §§ 1.617, ►1.640(e)◄ [1.640(c) or (e)], 1.652, 1.656(i) or 1.658 or (3) enter any other order which terminates the interference.

(b) As necessary, another ►administrative patent judge◄ [examiner-in-chief] may act in place of the one who declared the interference. [Unless otherwise provided in this section, at] ►At◄ the discretion of the examiner-in-chief assigned to the interference, a panel consisting of two or more members of the Board may enter interlocutory orders.

(c) Unless otherwise provided in this subpart, times for taking action by a party in the interference will be set on a case-by-case basis by the ►administrative patent judge◄ [examiner-in-chief] assigned to the interference. Times for taking action shall be set and the ►administrative patent judge◄ [examiner-in-chief] shall exercise control over the interference such that the pendency of the interference before the Board does not normally exceed two years.

(d) An ►administrative patent judge◄ [examiner-in-chief] may hold a conference with the parties to consider: (1) Simplification of any issues, (2) the necessity or desirability of amendments to counts, (3) the possibility of obtaining admissions of fact and genuineness of documents which will avoid unnecessary proof, (4) any limitations on the number of expert witnesses, (5) the time and place for conducting a deposition (§ 1.673(g)), and (6) any other matter as may aid in the disposition of the interference. After a conference, the ►administrative patent judge◄ [examiner-in-chief] may enter any order which may be appropriate.

(e) The ►administrative patent judge◄ [examiner-in-chief] may determine a proper course of conduct in an interference for any situation not specifically covered by this part.

14. Section 1.611 is proposed to be amended by redesignating paragraph (c)(8) as paragraph (c)(9), adding a new paragraph (c)(8) and revising paragraphs (b), (c)(8) and (d) to read as follows:

§ 1.611 Declaration of interference.

* * * * *

(b) When a notice of declaration is returned to the Patent and Trademark Office undelivered, or in any other circumstance where appropriate, an ► administrative patent judge◄ [examiner-in-chief] may (1) send a copy of the notice to a patentee named in a patent involved in an interference or the patentee's assignee of record in the Patent and Trademark Office or (2) order publication of an appropriate notice in the *Official Gazette*.

(c) * * *

(7) The claim or claims of any application or any patent which correspond to each count; [and]

(8) ►Why each claim designated as corresponding to a count is directed to the same patentable invention as the count and why each claim designated as not corresponding to a count is not directed to the same patentable invention as the count; and

(9) ◄ The order of the parties.

(d) The notice of declaration may also specify the time for: (1) Filing a preliminary statement as provided in § 1.621(a); (2) ►Serving◄ [serving] notice that a preliminary statement has been filed as provided in § 1.621(b); and (3) ►Filing◄ [filing] preliminary motions authorized by § 1.633, oppositions to the motions, and replies to the oppositions.

* * * * *

15. Section 1.612 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.612 Access to applications.

(a) After an interference is declared, each party shall have access to and may obtain copies of the files of any application set out in the notice declaring the interference, except for affidavits filed under § 1.131 and any evidence and explanation under § 1.608 filed separate from an amendment. A party seeking access to any abandoned or pending application referred to in the [opposing party's] ►opponent's◄ involved application or access to any pending application referred to in the [opposing party's] ►opponent's◄ patent must file a motion under § 1.635. ►See § 1.11(e) concerning public access to interference files.◄

* * * * *

16. Section 1.613 is proposed to be amended by revising paragraphs (c) and (d) to read as follows:

§ 1.613 Lead attorney, same attorney representing different parties in an interference, withdrawal of attorney or agent.

* * * * *

(c) An ►administrative patent judge◄ [examiner-in-chief] may make necessary inquiry to determine whether an attorney or agent should be disqualified from representing a party in an interference. If an ►administrative patent judge◄ [examiner-in-chief] is of the opinion that an attorney or agent should be disqualified, the ►administrative patent judge◄ [examiner-in-chief] shall refer the matter to the Commissioner. The Commissioner will make a final decision as to whether any attorney or agent should be disqualified.

(d) No attorney or agent of record in an interference may withdraw as attorney or agent of record except with the approval of an ►administrative patent judge◄ [examiner-in-chief] and after reasonable notice to the party on whose behalf the attorney or agent has appeared. A request to withdraw as attorney or agent of record in an interference shall be made by motion (§ 1.635).

17. Section 1.614 is proposed to be amended by revising paragraphs (a) and (c) to read as follows:

§ 1.614 Jurisdiction over interference.

(a) The Board ►acquires◄ [shall assume] jurisdiction over an interference when the interference is declared under § 1.611.

* * * * *

(c) The examiner shall have jurisdiction over any pending application until the interference is declared. An ►administrative patent judge◄ [examiner-in-chief], where appropriate, may for a limited purpose restore jurisdiction to the examiner over any application involved in the interference.

18. Section 1.615 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 1.615 Suspension of ex parte prosecution

(a) When an interference is declared, ex parte prosecution of an application involved in the interference is suspended. Amendments and other papers related to the application received during pendency of the interference will not be entered or considered in the interference without the consent of an ►administrative patent judge◄ [examiner-in-chief].

(b) Ex parte prosecution as to specified matters may be continued concurrently with the interference with consent of the ►administrative patent judge◄ [examiner-in-chief].

19. Section 1.616 is proposed to be amended by revising the section heading, introductory text and paragraphs (a) through (e) to read as follows and by adding new paragraphs (b) and (c) to read as follows:

§ 1.616 Sanctions for failure to comply with rules or order ►or for taking or maintaining a frivolous position◄

►(a)◄ An ►administrative patent judge◄ [examiner-in-chief] or the Board may impose an appropriate sanction against a party who fails to comply with the regulations of this part or any order entered by an ►administrative patent judge◄ [examiner-in-chief] or the Board. An appropriate sanction may include among others entry of an order:

►(1)◄ [(a)] Holding certain facts to have been established in the interference;

►(2)◄ [(b)] Precluding a party from filing a ►paper◄ [motion or a preliminary statement];

►(3)◄ [(c)] Precluding a party from presenting or contesting a particular issue;

►(4)◄ [(d)] Precluding a party from requesting, obtaining, or opposing discovery; [or]

►(5)◄ [(e)] ►Awarding compensatory expenses and/or compensatory attorney fees; or

(6)◄ Granting judgment in the interference.

►(b) An administrative patent judge or the Board may impose a sanction, including a sanction in the form of compensatory expenses and/or compensatory attorney fees, against a party for taking or maintaining a frivolous position.

(c) To the extent that any information under the control of an individual or entity located in a NAFTA country concerning knowledge, use, or other activity relevant to proving or disproving a date of invention has been ordered to be produced by an administrative patent judge or the Board (§ 1.671(h)), but has not been produced for use in the interference to the same extent as such information could be made available in the United States, the administrative patent judge or the Board shall draw such adverse inferences as may be appropriate under the circumstances, or take such other action permitted by statute, rule, or regulation, in favor of the party that requested the information in the interference, including imposition of appropriate sanctions under paragraph (a) of this section.◄

20. Section 1.617 is proposed to be amended by revising paragraphs (a), (b), (d), (e), (g) and (h) to read as follows:

§ 1.617 Summary judgment against applicant.

(a) An ►administrative patent judge◄ [examiner-in-chief] shall review any evidence filed by an applicant under § 1.608(b) to determine if the applicant is *prima facie* entitled to a judgment relative to the patentee. If the ►administrative patent judge◄ [examiner-in-chief] determines that the evidence shows the applicant is *prima facie* entitled to a judgment relative to the patentee, the interference shall proceed in the normal manner under the regulations of this part. If in the opinion of the ►administrative patent judge◄ [examiner-in-chief] the evidence fails to show that the applicant is *prima facie* entitled to a judgment relative to the

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patentee, the ►administrative patent judge◄ [examiner-in-chief] shall, concurrently with the notice declaring the interference, enter an order stating the reasons for the opinion and directing the applicant, within a time set in the order, to show cause why summary judgment should not be entered against the applicant.

(b) The applicant may file a response to the order ►, which may include an appropriate preliminary motion under § 1.633(c), (f) or (g),◄ and state any reasons why summary judgment should not be entered. Any request by the applicant for a hearing before the Board shall be made in the response. Additional evidence shall not be presented by the applicant or considered by the Board unless the applicant shows good cause why any additional evidence was not initially presented with the evidence filed under § 1.608(b). At the time an applicant files a response, the applicant shall serve a copy of any evidence filed under § 1.608(b) and this paragraph.

* * * * *

(d) If a response is timely filed by the applicant, all opponents may file a statement ►and may oppose any preliminary motion filed under § 1.633(c), (f) or (g) by the applicant◄ within a time set by the ►adminsitrative patent judge◄ [examiner-in-chief]. The statement may set forth views as to why summary judgment should be granted against the applicant, but the statement shall be limited to discussing why all the evidence presented by the applicant does not overcome the reasons given by the ►administrative patent judge◄ [examiner-in-chief] for issuing the order to show cause. ►Except as required to oppose a motion under § 1.633(c), (f) or (g) by the applicant, evidence◄ [Evidence] shall not be filed by any opponent. An opponent may not request a hearing.

(e) Within a time authorized by the ►administrative patent judge◄ [examiner-in-chief], an applicant may file a reply to any statement ►or opposition◄ filed by any opponent.

* * * * *

(g) If a response by the applicant is timely filed, the ►administrative patent judge◄ [examiner-in-chief] or the Board shall decide whether the evidence submitted under § 1.608(b) and any additional evidence properly submitted under ►paragraphs◄ [paragraph] (b) ►and (e)◄ of this section shows that the applicant is *prima facie* entitled to a judgment relative to the patentee. If the applicant is not *prima facie* entitled to a judgment relative to the patentee, the Board shall enter a final decision granting summary judgment against the applicant. Otherwise, an interlocutory order shall be entered authorizing the interference to proceed in the normal manner under the regulations of this subpart.

(h) Only an applicant who filed evidence under § 1.608(b) may requests a hearing. If that applicant requests a hearing, the Board may hold a hearing prior to entry of a decision under paragraph (g) of this section. The ►administrative patent judge◄ [examiner-in-chief] shall set a date and time for the hearing. Unless otherwise ordered by the ►administrative patent judge◄ [examiner-in-chief] or the Board, the applicant and any opponent will each be entitled to no more than 30 minutes of oral argument at the hearing.

21. Section 1.618 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.618 Return of unauthorized papers.

(a) ►An administrative patent judge or the Board shall enter an order directing the◄ [The Patent and Trademark Office shall] return to a party ►of◄ any paper presented by the party when the filing of the paper is not authorized by, or is not in compliance with the requirements, this subpart. Any paper returned will not thereafter be considered [by the Patent and Trademark Office] in the interference. A party may be permitted to file a corrected paper under such conditions as may be deemed appropriate by an ►administrative patent judge◄ [examiner-in-chief].

* * * * *

22. Section 1.621 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.621 Preliminary statement, time for filing, notice of filing.

* * * * *

(b) When a party files a preliminary statement, the party shall also simultaneously file and serve on all opponents in the interference a notice stating that a preliminary statement has been filed. A copy of the preliminary statement need not be served until ordered by the ►administrative patent judge◄ [examiner-in-chief].

23. Section 1.622 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.622 Preliminary statement, who made invention, where invention made.

* * * * *

(b) The preliminary statement shall state whether the invention was made in the United States ►, a NAFTA country (and, if so, which NAFTA country),◄ or [abroad] ►in a non-NAFTA country◄. If made ►in a non-NAFTA country◄ [abroad], the preliminary statement shall state whether the party is entitled to the benefit of the second sentence of 35 U.S.C. 104.

24. Section 1.623 is proposed to be amended by revising the section heading and paragraph (a) to read as follows:

§ 1.623 Preliminary statement; invention made in United States ►or a NAFTA country◄

(a) When the invention was made in the United States ►or a NAFTA country,◄ or a party is entitled to the benefit of the second sentence of 35 U.S.C. 104, the preliminary statement must state the following facts as to the invention defined by each count:

* * * * *

25. Section 1.624 is proposed to be amended by revising the section heading and paragraphs (a), (a)(1) through (a)(6) and (c) to read as follows:

§ 1.624 Preliminary statement; invention made [abroad] ►in a non-NAFTA country◄

(a) When the invention was made ►in a non-NAFTA county◄ [abroad] and a party intends to rely on introduction of the invention into the United States ►or a NAFTA country◄, the preliminary statement must state the following facts as to the invention defined by each count:

(1) The date on which a drawing of the invention was first introduced into the United States ►or a NAFTA country◄.

(2) The date on which a written description of the invention was first introduced into the United States ►or a NAFTA country◄.

(3) The date on which the invention was first disclosed to another person in the United States ►or a NAFTA country◄.

(4) The date on which the inventor's conception of the invention was first introduced into the United States ►or a NAFTA country◄.

(5) The date on which an actual reduction to practice of the invention was first introduced into the United States ►or a NAFTA country◄. If an actual reduction to practice of the invention was not introduced into the United States ►or a NAFTA country◄, the preliminary amendment shall so state.

(6) The date after introduction of the inventor's conception into the United States ►or a NAFTA country◄ when active exercise of reasonable diligence in the United States ►or a NAFTA country◄ toward reducing the invention to practice began.

* * * * *

(c) When a party alleges under paragraph (a)(1) of this section that a drawing was introduced into the United States ►or a NAFTA country,◄ a copy of that drawing shall be filed with and identified in the preliminary statement. When a party alleges under paragraph (a)(2) of this section that a written description of the invention was introduced into the United States ►or a NAFTA country,◄ a copy of that written description shall be filed with and identified in the preliminary statement. See § 1.628(b) when a copy of the first drawing or first written description introduced in the United States ►or a NAFTA country◄ cannot be filed with the preliminary statement.

26. Section 1.625 is proposed to be amended by revising paragraph (a) introductory test to read as follows:

§ 1.625 Preliminary statement; derivation by an opponent.

(a) When [the invention was made in the United States or abroad and] a party intends to prove derivation by an opponent from the party, the preliminary statement must state the following as to the invention defined by each count:

* * * * *

27. Section 1.626 is proposed to be revised to read as follows:

§ 1.626 Preliminary statement; earlier application.

When a party does not intend to present evidence to prove a conception or an actual reduction to practice and the party intends to rely solely on the filing date of an earlier ►filed◄ application [filed in the United States or abroad] to prove a constructive reduction to practice, the preliminary statement may so state and identify the earlier ►filed◄ application with particularity.

28. Section 1.627 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.627 Preliminary statement; sealing before filing, opening of statement.

* * * * *

(b) A preliminary statement may be opened only at the direction of an ►administrative patent judge◄ [examiner-in-chief].

29. Section 1.628 is proposed to be amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 1.628 Preliminary statement; correction of error.

(a) A material error arising through inadvertence or mistake in connection with (1) a preliminary statement or (2) drawings or a written description submitted therewith or omitted therefrom, may be corrected by a motion (§ 1.635) for leave to file a corrected statement. The motion shall be supported by an affidavit ►stating the date the error was first discovered,◄ [and shall show that the correction is essential to the ends of justice and] shall be accompanied by the corrected statement [. The motion] ►and◄ shall be filed as soon as practical after discovery of the error. ►If filed on or after the date set by the administrative patent judge for service of preliminary statements, the motion shall also show that correction of the error is essential to the interest of justice.◄

(b) * * *

(2) shall attach to the preliminary statement the earliest drawing or written description made in or introduced into the United States ►or a NAFTA country◄ which is available. The party shall file a motion (§ 1.635) to amend its preliminary statement promptly after the first drawing, first written description, or drawing or written description first introduced into the United States ►or a NAFTA country◄ becomes available. A copy of the drawing or written description may be obtained, where appropriate, by a motion (§ 1.635) for additional discovery under § 1.687 or during a testimony period.

30. Section 1.629 is proposed to be amended by revising paragraphs (a), (c)(1) and (d) to read as follows:

§ 1.629 Effect of preliminary statement.

(a) A party shall be strictly held to any date alleged in the preliminary statement. Doubts as to (1) definiteness or sufficiency of any allegation in a preliminary statement or (2) compliance with formal requirements will be resolved against the party filing the statement by restricting the party to [the earlier of] its [filing date or] effective filing date or to the latest date of a period alleged in the preliminary statement [,] as may be appropriate. A party may not correct a preliminary statement except as provided by § 1.628.

* * * * *

(c) * * *

(1) Shall be restricted to the [earlier of the] party's [filing date or] effective filing date and

* * * * *

(d) If a party files a preliminary statement which contains an allegation of a date of first drawing or first written description and the party does not file a copy of the first drawing or written description with the preliminary statement as required by § 1.623(c), § 1.624(c), or § 1.625(c), the party will be restricted to the [earlier of the] party's [filing date or] effective filing date as to that allegation unless the party complies with § 1.628(b). The content of any drawing or written description submitted with a preliminary statement will not normally be evaluated or considered by the Board.

* * * * *

31. Section 1.630 is proposed to be revised to read as follows:

§ 1.630 Reliance on earlier application.

A party shall not be entitled to rely on the filing date of an earlier ►filed◄ application [filed in the United States or abroad] unless (a) the earlier application is identified (§ 1.611(c)(5)) in the notice declaring the interference or (b) the party files a preliminary motion under § 1.633 seeking the benefit of the filing date of the earlier application.

32. Section 1.631 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.631 Access to preliminary statement, service of preliminary statement.

(a) Unless otherwise ordered by an ►administrative patent judge◄ [examiner-in-chief] on preliminary motions filed under § 1.633, any preliminary statement filed under § 1.621(a) shall be opened to inspection by the senior party and any junior party who filed a preliminary statement. Within a time set by the ►administrative patent judge◄ [examiner-in-chief], a party shall serve a copy of its preliminary statement on each opponent who served a notice under § 1.621(b).

* * * * *

33. Section 1.632 is proposed to be revised to read as follows:

§ 1.632 Notice of intent to argue abandonment, suppression or concealment by opponent.

A notice shall be filed by a party who intends to argue that an opponent has abandoned, suppressed ►,◄ or concealed an actual reduction to practice (35 U.S.C. 102(g)). A party will not be permitted to argue abandonment, suppression, or concealment by an opponent unless the notice is timely filed. Unless authorized otherwise by an ►administrative patent judge◄ [examiner-in-chief], a notice is timely when filed within ten (10) days ►after◄ [of] the close of the testimony-in-chief of the opponent.

34. Section 1.633 is proposed to be amended by revising paragraphs (a),

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(a)(1), (a)(2), (b)(2) (f), (g) and (i) to read as follows:

§ 1.633 Preliminary motions.

* * * * *

(a) A motion for judgment ►against◄ [on the ground that] an opponent's claim corresponding to a count ►on the ground that the claim◄ is not patentable to the opponent. In ►deciding an issue raised in◄ [determining] a motion filed under this paragraph, a claim [may] ►will◄ be construed [by reference to the prior art of record] ►in light of the specification of the application or patent in which it appears◄. A motion under this paragraph shall not be based on:

(1) Priority of invention [of the subject matter of a count] by the moving party as against any opponent or

(2) ►Derivation◄ [derivation] of the ►invention◄ [subject matter of a count] by an opponent from the moving party. See 1.637(a).

(b) * * *

(2) no claim of a party which corresponds to a count is identical to any claim of an opponent which corresponds to that count. See § 1.637(a). ►When claims of opponents are presented in "means plus function" format, it may be possible for the claims of the opponents not to define the same patentable invention even though the claims contain the same literal wording.◄

* * * * *

(f) A motion to be accorded the benefit of the filing date of an earlier ►filed◄ application [filed in the United States or abroad]. See § 1.637 (a) and (f).

(g) A motion to attack the benefit accorded an opponent in the notice declaring the interference of the filing date of an earlier ►filed◄ application [filed in the United States or abroad]. See § 1.637 (a) and (g).

* * * * *

(i) When a motion is filed under paragraph (a), (b), or (g) of this section, an opponent, in addition to opposing the motion, may file a motion to redefine the interfering subject matter under paragraph (c) of this section [or] ►,◄ a motion to substitute a different application under paragraph (d) of this section ►, or a motion to add a reissue application to the interference under paragraph (h) of this section◄.

* * * * *

35. Section 1.636 is proposed to be amended by revising paragraphs (a) through (d) to read as follows:

§ 1.636 Motions, time for filing.

(a) A preliminary motion under § 1.633 (a) through (h) shall be filed within a time period set by an ►administrative patent judge◄ [examiner-in-chief].

(b) A preliminary motion under § 1.633 (i) or (j) shall be filed within 20 days of the service of the preliminary motion under § 1.633 (a), (b), (c)(1), or (g) unless otherwise ordered by an ►administrative patent judge◄ [examiner-in-chief].

(c) A motion under § 1.634 shall be diligently filed after an error is discovered in the inventorship of an application or patent involved in an interference unless otherwise ordered buy an ►administrative law judge◄ [examiner-in-chief].

(d) A motion under § 1.635 shall be filed as specified in this subpart or when appropriate unless otherwise ordered by an ►administrative patent judge◄ [examiner-in-chief].

36. Section 1.637 is proposed to be amended by revising paragraphs (a), (b), (c)(1)(v), (c)(1)(vi), (c)(2)(ii), (c)(2)(iii), (c)(3)(ii), (c)(4)(i), (c)(4)(ii), (d) introductory text, (e)(1)(viii), (e)(2)(vii), (f)(2), (h)(3), (h)(4) to read as follows, deleting paragraphs (c)(2)(iv), (c)(3)(iii), (d)(4) and redesignating them as "Reserved." and adding paragraphs (c)(1)(vii), (e)(1)(ix), (e)(2)(viii) to read as follows:

§ 1.637 Content of motions.

(a) A party filing a motion has the burden of proof to show that it is entitled to the relief sought in the motion. ►Each◄ [Every] motion shall include (1) a statement of the precise relief requested, (2) a statement of the material facts in support of the motion ►preferably in numbered paragraphs◄, and (3) a full statement of the reasons why the relief requested should be granted. ►If a party files a motion for judgment under § 1.633(a) against an opponent based on the ground of unpatentability over prior art, and the dates of the cited prior art are such that the prior art appears to be applicable to the party, it will be presumed, without regard to the dates alleged in the preliminary statement of the party, that the cited prior art is applicable to the party unless there is included with the motion an explanation, and evidence if appropriate, as to why the prior art does not apply to the party. If the motion fails to include a sufficient explanation or evidence, the party will not be permitted to rely on any such explanation or evidence in response to or in any subsequent action in the interference.◄

(b) A motion under [§] ►§§ 1.633, 1.634 or◄ 1.635 shall contain a certificate by the moving party stating that the moving party has conferred with all [opposing parties] ►opponents◄ in an effort in good faith to resolve by agreement the issues raised by the motion. ►The certificate shall indicate that the reasons and facts in support of the motion were discussed with each opponent and, if an opponent has indicated that it will oppose the motion, identify the issues and/or facts believed to be in dispute.◄ [A moving party shall indicate in the motion whether any other party plans to oppose the motion.] The provisions of this paragraph do not apply to a motion to suppress evidence (§ 1.656(h)).

(c) * * *

(1) * * *

(v) Show that each proposed count ►is patentable over the prior art and◄ defines a separate patentable invention from every other count ►proposed to remain◄ in the interference.

(vi) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of any earlier ►filed◄ application [filed in the United States or abroad] ►, if benefit of the earlier filed application is desired with respect to a proposed count◄.

►(vii) If an opponent is accorded the benefit of the filing date of an earlier filed application in the notice of declaration of the interference, show why the opponent is not entitled to benefit of the earlier filed application with respect to the proposed count. Otherwise, the opponent will be presumed to be entitled to the benefit of the earlier filed application with respect to the proposed count.◄

(2) * * *

(ii) Show that the ►claim◄ proposed ►to be amended◄ or added [claim] defines the same patentable invention as the count.

(iii) Show the patentability to the applicant of each ►claim proposed to be◄ amended or added [claim] and apply the terms of the ►claim proposed to be◄ amended or added [claim] to the disclosure of the application; when necessary a moving party applicant shall file with the motion [an] ►a proposed◄ amendment [making the amended] ►to the application amending the claim corresponding to the count◄ or [added] ►adding the proposed additional◄ claim to the application.

(iv) ►Reserved.◄ [Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of any earlier application filed in the United States or abroad.]

(3) * * *

(ii) Show the claim defines the same patentable invention as ►another claim whose designation as corresponding

to◄ the count ►the moving party does not dispute◄.

(iii) ►Reserved.◄ [Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of any earlier application filed in the United States or abroad.]

(4) * * *

(ii) Show ►(A) that◄ the claim does not define the same patentable invention as any other claim [designated] ►whose designation◄ in the notice declaring the interference as corresponding to the count ►the party◄ does not dispute and (B) that the claim cannot serve as the basis for a motion under § 1.633(c)(1) to add a new count◄.

* * * * *

(d) A preliminary motion under § 1.633(d) to substitute a different application ►of the moving party◄ shall:

* * * * *

(4) ►Reserved.◄ [Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of an earlier application filed in the United States or abroad].

(e) * * *

(1) * * *

(viii) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of an earlier ►filed◄ application [filed in the United States or abroad] ►, if benefit is desired with respect to a proposed count◄.

►(ix) If an opponent is accorded the benefit of the filing date of an earlier filed application in the notice of declaration of the interference, show why the opponent is not entitled to benefit of the earlier filed application with respect to the proposed count. Otherwise, the opponent will be presumed to be entitled to the benefit of the earlier filed application with respect to the proposed count.◄

(2) * * *

(vii) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of an earlier ►filed◄ application [filed in the United States or abroad] ►, if benefit is desired with respect to a proposed count◄.

►(viii) If an opponent is accorded the benefit of the filing date of an earlier filed application in the notice of declaration of the interference, show why the opponent is not entitled to benefit of the earlier filed application with respect to the proposed count. Otherwise, the opponent will be presumed to be entitled to the benefit of the earlier filed application with respect to the proposed count.◄

(f) * * *

(2) When the earlier application is an application filed in the United States, certify that a complete copy of the file of the earlier application, except for documents filed under § 1.131 or § 1.608, has been served on all opponents. When the earlier application is an application filed ►in a foreign country◄ [abroad], certify that a copy of the application [filed abroad] has been served on all opponents. If the earlier ►filed◄ application [filed abroad] is not in English, the requirements of § 1.647 must also be met.

* * * * *

(h) * * *

(3) Show the patentability of all claims in, or proposed to be added to, the application for reissue which correspond to each count and apply the terms of the claims to the disclosure of the application for reissue; when necessary a moving applicant for reissue shall file with the motion an amendment adding any proposed claim to the application for reissue. ►A patentee may not move under § 1.633(h) to add a reissue application that includes new or amended claims to be designated as not corresponding to a count.◄

(4) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of any earlier ►filed◄ application [filed in the United States or abroad] ►, if benefit is desired◄.

37. Section 1.638 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 1.638 Opposition and reply, time for filing opposition and reply.

(a) Unless otherwise ordered by an ►administrative patent judge◄ [examiner-in-chief], any opposition to any motion shall be filed within 20 days after service of the motion. An opposition shall (1) identify any material fact set forth in the motion which is in dispute and (2) include an argument why the relief requested in the motion should be denied.

(b) Unless otherwise ordered by an ►administrative patent judge◄ [examiner-in-chief], ►any◄ [a] reply shall be filed within 15 days after service of the opposition. A reply shall be directed only to new points raised in the opposition.

38. Section 1.639 is proposed to be amended by revising paragraphs (a), (c), and (d)(1) to read as follows:

§ 1.639 Evidence in support of motion, opposition, or reply.

(a) ►Except as provided in paragraphs (c) through (g) of this section, proof◄ [Proof] of any material fact alleged in a motion, opposition, or reply must be filed and served with the motion, opposition, or reply unless the proof relied upon is part of the interference file or the file of any patent or application involved in the interference or any earlier application filed in the United States of which a party has been accorded or seeks to be accorded benefit.

* * * * *

(c) If a party believes that additional evidence in the form of testimony that is unavailable to the party is necessary to support or oppose a preliminary motion under § 1.633 or a motion to correct inventorship under § 1.634, the party shall describe the nature of any proposed testimony as specified in paragraphs (d) through (g) of this section. If the ►administrative patent judge◄ [examiner-in-chief] finds that testimony is needed to decide the motion, the ►administrative patent judge◄ [examiner-in-chief] may grant appropriate interlocutory relief and enter an order authorizing the taking of testimony and deferring a decision on the motion to final hearing.

(d) * * *

(1) Identify the person whom it expects to [call] ►use◄ as an expert;

* * * * *

39. Section 1.640 is proposed to be amended by revising paragraphs (a), (b), (b)(1), (b)(2), (c), (d), (d)(1), (d)(3) and (e) to read as follows:

§ 1.640 Motions, hearing and decision, redeclaration of interference, order to show cause.

(a) A hearing on a motion may be held in the discretion of the ►administrative patent judge◄ [examiner-in-chief]. The ►administrative patent judge◄ [examiner-in-chief] shall set the date and time for any hearing. The length of oral argument at a hearing on a motion is a matter within the discretion of the ►administrative patent judge◄ [examiner-in-chief]. An ►administrative patent judge◄ [examiner-in-chief] may direct that a hearing take place by telephone.

(b) ►Unless an administrative patent judge or the Board is of the opinion that a decision on a preliminary motion would materially advance the resolution of the interference, decision on a preliminary motion shall be deferred to final hearing.◄ Motions ►otherwise◄ will be decided by an ►administrative patent judge◄ [examiner-in-chief]. An ►administrative patent judge◄ [examiner-in-chief] may consult with an examiner in deciding motions involving a question of patentability. An ►administrative patent judge◄ [examiner-in-chief] ►may take up motions for decision in any order and◄ may grant or deny any motion or take

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such other action which will secure the just, speedy, and inexpensive determination of the interference. ►A matter raised by a party in support of or in opposition to a motion that is deferred to final hearing will not be entitled to consideration at final hearing unless the matter is raised in the party's brief at final hearing. If the administrative patent judge determines that the interference shall proceed to final hearing on the issue of priority or derivation, a time shall be set for each party to file a paper identifying any decisions on motions or on matters raised sua sponte by the administrative patent judge that the party wishes to have reviewed at final hearing as well as identifying any deferred motions that the party wishes to have considered at final hearing. Any evidence that a party wishes to have considered with respect to the decisions and motions identified by the party or by an opponent for consideration or review at final hearing, including any affidavit filed by the party under § 1.608 or 1.639(b), shall be served on the opponent during the testimony-in-chief period of the party.◄

(1) ►When appropriate after the time expires for filing replies to oppositions to preliminary motions◄ [When preliminary motions under § 1.633 are decided], the ►administrative patent judge◄ [examiner-in-chief] will [, when necessary,] set a time for filing any amendment to an application involved in the interference and for filing a supplemental preliminary statement as to any new counts ►which may become◄ involved in the interference ►if a preliminary motion to amend or substitute a count has been filed◄. Failure or refusal of a party to timely present an amendment required by an ►administrative patent judge◄ [examiner-in-chief] shall be taken without further action as a disclaimer by that party of the invention involved. A supplemental preliminary statement shall meet the requirements specified in § 1.623, § 1.624, § 1.625, or § 1.626, but need not be filed if a party states that it intends to rely on a preliminary statement previously filed under § 1.621(a). ►At an appropriate time in the interference, and when necessary◄ [After the time expires for filing any amendment and supplemental preliminary statement], ►an order will be entered redeclaring [the examiner-in-chief will, if necessary, redeclare] the interference.

(2) After ►the time expires for filing preliminary motions◄ [a decision is entered on preliminary motions filed under § 1.633], a further ►preliminary◄ motion under § 1.633 will not be considered except as provided by § [1.655(b)] ►1.645(b)◄.

(c) When a decision on any motion under § 1.633, § 1.634, or § 1.635 ►or on any matter raised sua sponte by an administrative patent judge◄ is entered which does not result in the issuance of an order to show cause under paragraph (d) of this section, a party may file a request for reconsideration within 14 days after the date of the decision. ►The request for reconsideration shall be served by hand or Express Mail.◄ The filing of a request for reconsideration will not stay any time period set by the decision. The request for reconsideration shall specify with particularity the points believed to have been misapprehended or overlooked in rendering the decision. ►An opponent may file an opposition within 14 days after service of the request for reconsideration.◄ [No opposition to a request for reconsideration shall be filed unless requested by an examiner-in-chief or the Board. A decision of a single examiner-in-chief will not ordinarily be modified unless an opposition has been requested by an examiner-in-chief or the Board. The request for reconsideration shall be acted on by a panel of the Board consisting of at least three examiners-in-chief, one of whom will normally be the examiner-in-chief who decided the motion].

(d) An ►administrative patent judge◄ [examiner-in-chief] may issue an order to show cause why judgment should not be entered against a party when:

(1) A decision on a motion ►or on a matter raised sua sponte by an administrative patent judge◄ is entered which is dispositive of the interference against the party as to any count;

* * * * *

(3) The party is a junior party whose preliminary statement fails to overcome the [earlier of the filing date or] effective filing date of another party.

(e) When an order to show cause is issued under paragraph (d) of this section, the Board shall enter judgment in accordance with the order unless, within 20 days after the date of the order, the party against whom the order issued files a paper which shows good cause why judgment should not be entered in accordance with the order.

►(1) If the order was issued under paragraph (d)(1) of this section, the paper may (i) request that final hearing be set to review any decision which is the basis for the order as well as any other decision of the administrative patent judge that the party wishes to have reviewed by the Board at final hearing, or (ii) fully explain why judgment should not be entered.

(2)◄ Any other party may file a response to the paper within 20 days of the date of service of the paper. ►If the order was issued under paragraph (d)(10 of this section and the paper includes a request for final hearing, the response must identify every decision of the administrative patent judge that the responding party wishes to have reviewed by the Board at a final hearing. If the order was issued under paragraph (d)(1) of this section and the paper does not include a request for final hearing, the response may include a request for final hearing, which must identify every decision of the administrative patent judge that the responding party wishes to have reviewed by the Board at a final hearing. Where only the response includes a request for a final hearing, the party that filed the paper has 14 days from the date of service of the response in which to file a supplemental paper identifying any other decision of the administrative patent judge that the party wishes to have reviewed by the Board at a final hearing.

(3) The paper or the response thereto should be accompanied by a motion (§ 1.635) requesting a testimony period if a party wishes to introduce any evidence to be considered at final hearing (§ 1.671). A request for a testimony period shall be construed as including a request for final hearing.

(4) If the paper contains an explanation of why judgment should not be entered in accordance with the order and no party has requested a final hearing, the decision that is the basis for the order shall be reviewed based on the contents of the paper and the response. If the paper fails to show good cause, the Board shall enter judgment against the party against whom the order issued.◄ [If the party against whom the order was issued fails to show good cause, the Board shall enter judgment against the party. If a party wishes to take testimony in response to an order to show cause, the party's response should be accompanied by a motion (§ 1.635) requesting the testimony period. See § 1.651(c)(4).]

40. Section 1.461 and the section heading are proposed to be revised to read as follows:

§ 1.641 Unpatentability discovered by ►administrative patent judge◄ [examiner-in-chief].

◄(a)► During the pendency of an interference, if the ◄administrative patent judge► [examiner-in-chief] becomes aware of a reason why a claim ◄designated to correspond► [corresponding] to a count may not be patentable, the ◄administrative patent judge► [examiner-inc-chief] may ◄enter an order notifying► [notify] the parties of the reason and set a time within which each party may present its views◄, which may include argument and any appropriate preliminary motions under § 1.633(c), (d) or (h), including any supporting evidence►.

►(b) If a party timely files a preliminary motion in response to the order of the administrative patent judge, any opponent may file an opposition pursuant to § 1.638(a). If an opponent files an opposition, the party may reply pursuant to § 1.638(b).

(c)◄ After considering any timely filed views, ►including any timely filed preliminary motions under § 1.633,◄ the ►administrative patent judge◄ [examiner-in-chief] shall decide how the interference shall proceed.

41. Section 1.642 is proposed to be revised to read as follows:

§ 1.642 Addition of application or patent to interference.

During the pendency of an interference, if the ►administrative patent judge◄ [examiner-in-chief] becomes aware of an application of a patent not involved in the interference which claims the same patentable invention as a count in the interference, the ►administrative patent judge◄ [examiner-in-chief] may add the application or patent to the interference on such terms as may be fair to all parties.

42. Section 1.643 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.643 Prosecution of interference by assignee.

* * * * *

(b) An assignee of a part interest in an application or patent involved in an interference may file a motion (§ 1.635) for entry of an order authorizing it to prosecute the interference. The motion shall show (1) the inability or refusal of the inventor to prosecute the interference or (2) other cause why ►it is in the interest of◄ [the ends of] justice ►to permit◄ [require that] the assignee of a part interest [be permitted] to prosecute the interference. The ►administrative patent judge◄ [examiner-in-chief] may allow the assignee of a part interest to prosecute the interference upon such terms as may be appropriate.

43. Section 1.644 is proposed to be amended by revising paragraphs (a), (a)(1), (a)(2), (b), (c), (d), (f) and (g) to read as follows:

§ 1.644 Petitions in interferences.

(a) There is no appeal to the Commissioner in an interference from a decision of an ►administrative patent judge◄ [examiner-in-chief] or ►the Board◄ [a panel consisting of more than one examiner-in-chief]. The Commissioner will not consider a petition in an interference unless:

(1) The petition is from a decision of an ►administrative patent judge◄ [examiner-in-chief] or [a panel] ►the Board◄ and the ►administrative patent judge◄ [examiner-in-chief] or the [panel] ►Board◄ shall be of the opinion

* * * * *

(2) The petition seeks to invoke the supervisory authority of the Commissioner [and is not filed prior to the decision of the Board awarding judgment] and does not relate to

* * * * *

(3) * * *

(b) A petition under paragraph (a)(1) of this section filed more than 15 days after the date of the decision of the ►administrative patent judge◄ [examiner-in-chief] or the [panel] ►Board◄ may be dismissed as untimely. A petition under paragraph (a)(2) of this section shall not be filed prior to ►the party's brief for final hearing (see § 1.656)◄ [the decision by the Board awarding judgment]. Any petition under paragraph (a)(3) of this section shall be timely if it is made as part of, or simultaneously with, a proper motion under § 1.633, § 1.634, or § 1.635 ►when granting the motion would require waiver of a rule◄. Any opposition to a petition shall be filed within 15 days of the date of service of the petition.

(c) The filing of a petition shall not stay the proceeding unless a stay is granted in the discretion of the ►administrative patent judge◄ [examiner-in-chief, the panel], ►the Board,◄ or the Commissioner.

(d) Any petition must contain a statement of the facts involved ►, preferably in numbered paragraphs,◄ and the point or points to be reviewed and the action requested. [Briefs or memoranda, if any, in support of the petition or opposition shall accompany or be embodied therein.] The petition will be decided on the basis of the record made before the ►administrative patent judge◄ [examiner-in-chief] or the [panel] ►Board◄ and no new evidence will be considered by the Commissioner in deciding the petition. Copies of documents already of record in the interference shall not be submitted with the petition or opposition.

* * * * *

(f) Any request for reconsideration of a decision by the Commissioner shall be filed within ►14◄ [15] days of the decision of the Commissioner and must be accompanied by the fee set forth in § 1.17(b). No opposition to a request for reconsideration shall be filed unless requested by the Commissioner. The decision will not ordinarily be modified unless such an opposition has been requested by the Commissioner.

(g) Where reasonably possible, service of any petition, opposition, or request for reconsideration shall be such that delivery is accomplished within one working day. Service by hand or ["] Express Mail ["] complies with this paragraph.

* * * * *

44. Section 1.645 is proposed to be amended by revising paragraphs (a), (b) and (d) to read as follows:

§ 1.645 Extension of time, late papers, stay of proceedings.

(a) Except to extend the time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action, a party may file a motion (§ 1.635) seeking an extension of time to take action in an interference. See § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action. The motion shall be filed within sufficient time to actually reach the ►administrative patent judge◄ [examiner-in-chief] before expiration of the time for taking action. A moving party should not assume that the motion will be granted even if there is no objection by any other party. The motion will be denied unless the moving party shows good cause why an extension should be granted. The press of other business arising after an ►administrative patent judge◄ [examiner-in-chief] sets a time for taking action will not normally constitute good cause. A motion seeking additional time to take testimony because a party has not been able to procure the testimony of a witness shall set forth the name of the witness, any steps taken to procure the testimony of the witness, the dates on which the steps were taken, and the facts expected to be proved through the witness.

(b) Any paper belatedly filed [,] will not be considered except upon motion (§ 1.635) which shows ►good◄ [sufficient] cause why the paper was not timely filed [,] ►or an administrative patent judge or the Board, sua sponte, is of the opinion that

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it would be in the interest of justice to consider the paper.◄ See § 1.304(a) for exclusive procedures relating to belated filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or belated commencement of a civil action.

* * * * *

(d) [In an appropriate circumstance, an] ►An administrative patent judge◄ [examiner-in-chief] may stay proceedings in an interference.

45. Section 1.646 is proposed to be amended by revising paragraphs (a)(1), (a)(2), (b), (c), (c)(1), (c)(4), (d) and (e), redesignating paragraph (c)(5) as (c)(6) and revising it, and adding a new paragraph (c)(5) to read as follows:

§ 1.646 Service of papers, proof of service.

(a) * * *

(1) Preliminary statements when filed under § 1.621; preliminary statements shall be served when service is ordered by an ►administrative patent judge◄ [examiner-in-chief].

(2) Certified transcripts and exhibits which accompany the transcripts filed under § [§] 1.676 [or 1.684]; copies of transcripts shall be served as part of a party's record under § 1.653(c).

(b) Service shall be on an attorney or agent for a party. If there is no attorney or agent for the party, service shall be on the party. An ►administrative patent judge◄ [examiner-in-chief] may order additional service or waive service where appropriate.

(c) Unless otherwise ordered by an ►administrative patent judge◄ [examiner-in-chief], or except as otherwise provided by this subpart, service of a paper shall be made as follows:

(1) By handing a copy of the paper ►or causing a copy of the paper to be handed◄ to the person served.

* * * * *

(4) By mailing a copy of the paper by first class mail; when service is by ►first class◄ mail the date of mailing is regarded as the date of service.

(5) ►By mailing a copy of the paper by Express Mail; when service is by Express Mail the date of deposit with the U.S. Postal Service is regarded as the date of service.

(6) ◄ When it is shown to the satisfaction of an ►administrative patent judge◄ [examiner-in-chief] that none of the above methods of obtaining or serving the copy of the paper was successful, the ►administrative patent judge◄ [examiner-in-chief] may order service by publication of an appropriate notice in the *Official Gazette*.

(d) An ►administrative patent judge◄ [examiner-in-chief] may order that a paper be served by hand or ["]Express Mail["].

(e) ►The due date for serving a paper is the same as the due date for filing the paper in the Patent and Trademark Office.◄ Proof of service must be made before a paper will be considered in an interference. Proof of service may appear on or be affixed to the paper. Proof of service shall include the date and manner of service. In the case of personal service under paragraphs (c)(1) through (c)(3) of this section, proof of service shall include the names of any person served and the person who made the service. Proof of service may be made by an acknowledgment of service by or on behalf of the person served or a statement signed by the party or the party's attorney or agent containing the information required by this section. A statement of an attorney or agent attached to, or appearing in, the paper stating the date and manner of service will be accepted as *prima facie* proof of service.

46. Section 1.647 is proposed to be revised to read as follows:

§ 1.647 Translation of document in foreign language.

When a party relies on a document ►or is required to produce a document◄ in a language other than English, a translation of the document into English and an affidavit attesting to the accuracy of the translation shall be filed with the document.

47. Section 1.651 is proposed to be amended by revising paragraphs (a), (a)(2), (c)(1), (c)(2), (c)(3) and (d) to read as follows:

§ 1.651 Setting times for discovery and taking testimony, parties entitled to take testimony.

(a) At an appropriate stage in an interference, an ►administrative patent judge◄ [examiner-in-chief] shall set

* * * * *

(2) Testimony periods for taking any necessary testimony [(testimony includes testimony to be taken abroad under § 1.684)].

* * * * *

(c) * * *

(1) The ►administrative patent judge◄ [examiner-in-chief] orders the taking of testimony under § 1.639(c);

(2) The party alleges in its preliminary statement a date of invention prior to the [earlier of the filing date or] effective filing date of the senior party;

(3) A testimony period has been set to permit an opponent to prove a date of invention prior to the [earlier of the filing date or] effective filing date of the party and the party has filed a preliminary statement alleging a date of invention prior to that date; or

* * * * *

(d) Testimony, including any testimony to be taken ►in a foreign country◄ [abroad under § 1.684], shall be taken and completed during the testimony periods set under paragraph (a) of this section. A party seeking to extend the period for taking testimony must comply with § 1.635 and § 1.645(a).

48. Section 1.652 is proposed to be revised to read as follows:

§ 1.652 Judgment for failure to take testimony or file record.

If a junior party fails to timely take testimony authorized under § 1.651, or file a record under § 1.653(c), an ►administrative patent judge◄ [examiner-in-chief], with or without a motion (§ 1.635) by another party, may issue an order to show cause why judgment should not be entered against the junior party. When an order is issued under this section, the Board shall enter judgment in accordance with the order unless, within 15 days after the date of the order, the junior party files a page which shows good cause why judgment should not be entered in accordance with the order. Any other party may file a response to the paper within 15 days of the date of service of the paper. If the party against whom the order was issued fails to show good cause, the Board shall enter judgment against the party.

49. Section 1.653 is proposed to be amended by deleting paragraphs (c)(5), (f) and (h) and redesignating them as "Reserved" and by revising paragraphs (a), (b), (c), (c)(1), (c)(4), (g) and (i) to read as follows:

§ 1.653 Record and exhibits.

(a) Testimony shall consist of affidavits under [§] ►§§◄ 1.672(b) ►, (c)◄ and [(e)] ►(g), 1.682(c), 1.683(b) and 1.688(b)◄, transcripts of depositions under §§ [1.672(b) and (c)] ►1.671(g) and 1.672(a) when a deposition is authorized by an administrative patent judge, transcripts of depositions under §§ 1.672(d), 1.682(d), 1.683(c) and 1.688(c)◄, agreed statements [of fact] under § [1.672(f)] ►1.672.(h)◄, [and] transcripts of interrogatories, cross-interrogatories, and recorded answers ►and copies of written interrogatories and answers and written requests for admissions and answers◄ under § [1.684(c)] ►1.688(a)◄.

(b) An affidavit shall be filed as set forth in § [1.672(b)] ►1.677◄. A certified transcript of a deposition ►, ◄ including a deposition cross-examining

an affiant, shall be filed as set forth in [§] ►§§◄ 1.676 ►, 1.677 and 1.678◄. An original agreed statement shall be filed as set forth in ►§ 1.672(h)◄ [§ 1.672(f). A transcript of interrogatories, cross-interrogatories, and recorded answers shall be filed as set forth under § 1.684(c)].

(c) In addition to the items specified in paragraph (b) of this section and within a time set by an ►administrative patent judge,◄ [examiner-in-chief] each party shall file three copies and serve one copy of a record consisting of:

(1) An index of the names of [each witness] ►the witnesses for the party,◄ giving the pages of the record where the direct testimony and cross-examination of each witness begins.

* * * * *

(4) Each (i) affidavit ►by a witness for the party◄, (ii) transcript, including transcripts of cross-examination of any affiant ►who testified for the party and transcripts of compelled deposition testimony by a witness for the party◄, (iii) agreed statement relied upon by the party, and (iv) transcript of interrogatories, cross-interrogatories and recorded answers [filed under paragraph (b) of this section].

(5) ►Reserved.◄ [Each notice, official record, and publication relied upon by the party and filed under § 1.682(a).]

* * * * *

(f) ►Reserved.◄ [The record may be typewritten or printed.]

(g) [When the] ►The◄ [is printed, it] may be produced by standard typographical printing or by any ►other◄ process capable of producing a clear black permanent image◄. All printed matter except on covers must appear in at least 11 point type on opaque, unglazed paper. [Margins must be justified.] Footnotes may not be printed in type smaller than 9 point. The ►pages◄ [pages] size shall be ►21.8 by 27.9 cm. (8½ by 11 inches) (letter size)◄ [8½ by 11 inches (21.8 by 27.9 cm.)] with [type] ►printed◄ matter ►16.5 by 24.1 cm. (6½ by 9½ inches)◄ [6½ by 9½ inches (16.5 by 24.1 cm.)]. The record shall be bound ►with covers at their left edges in such manner as◄ to lie flat when open ►to any page and in one or more volumes of convenient size (approximately 100 pages per volume is suggested). When there is more than one volume, the numbers of the pages contained in each volume shall appear at the top of the cover for each volume◄.

(h) ►Reserved.◄ [When the record is type written, it must be clearly legible on opaque, unglazed, durable paper approximately 8½ by 11 inches (21.8 by 27.9 cm.) in size (letter size). Typing shall be double-spaced on one side of the paper in not smaller than pica-type with a margin of 1½ (3.8 cm.) on the left-hand side of the page. The pages of the record shall be bound with covers at their left edges in such manner to lie flat when open in one or more volumes of convenient size (approximately 100 pages per volume is suggested). Multigraph or otherwise reproduced copies conforming to the standards specified in this paragraph may be accepted.]

(i) Each party shall file its exhibits with the record specified in paragraph (c) of this section. ►Exhibits include documents and things identified in affidavits or on the record during the taking of oral depositions and official records and publications filed by the party under § 1.682(a).◄ One copy of each documentary exhibit shall be served. Documentary exhibits shall be filed in an envelope or folder and shall not be bound as part of the record. Physical exhibits, if not filed by an officer under § 1.676(d), shall be filed with the record. Each exhibit shall contain a label which identifies the party submitting the exhibit and an exhibit number, the style of the interference (e.g., Jones v. Smith), and the interference number. Where possible, the label should appear at the bottom right-hand corner of each documentary exhibit. Upon termination of an interference, an ►administrative patent judge◄ [examiner-in-chief] may return an exhibit to the party filing the exhibit. When any exhibit is returned, [the examiner-in-chief] ►an order◄ shall ►be entered◄ [enter an appropriate order] indicating that the exhibit has been returned.

* * * * *

50. Section 1.654 is proposed to be amended by revising paragraphs (a) and (d) to read as follows:

§ 1.654 Final hearing.

(a) At an appropriate stage of the interference, the parties will be given an opportunity to appear before the Board to present oral argument at a final hearing. An ►administrative patent judge may◄ [examiner-in-chief shall] set a date and time for final hearing. Unless otherwise ordered by an ►administrative patent judge◄ [examiner-in-chief] or the Board, each party will be entitled to no more than ►30◄ [60] minutes of oral argument at final hearing. ►A party who does not file a brief for final hearing (§ 1.656(a)) shall not be entitled to appear at final hearing.◄

* * * * *

(d) After final hearing, the interference shall be taken under advisement by the Board. No further paper shall be filed except under § 1.658(b) or as authorized by an ►administrative patent judge◄ [examiner-in-chief] or the Board. No additional oral argument shall be had unless ordered by the Board.

51. Section 1.655 is proposed to be amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 1.655 Matters considered in rendering a final decision.

(a) In rendering a final decision, the Board may consider any properly raised issue including (1) priority of invention, (2) derivation by an opponent from a party who filed a preliminary statement under § 1.625, (3) patentability of the invention, (4) admissibility of evidence, (5) any interlocutory matter deferred to final hearing, and (6) any other matter necessary to resolve the interference. The Board may also consider whether ►entry of◄ any interlocutory order was [erroneous or] an abuse of discretion. All interlocutory orders shall be presumed to have been correct and the burden of showing [error or] an abuse of discretion shall be on the party attacking the order. When two or more interlocutory orders involve the same issue, the last entered order shall be presumed to have been correct.

(b) A party shall not be entitled to raise for consideration at final hearing a matter which properly could have been raised by a motion under §§ 1.633 or 1.634 unless (1) the ►matter was properly raised in a◄ motion ►that◄ was [properly] ►timely◄ filed ►by the party under §§ 1.633 or 1.634 and the motion was denied or deferred to final hearing◄, (2) the matter was properly raised by [a] ►the◄ party in [an] ►a timely filed◄ opposition to a motion under §§ 1.633 or 1.634 and the motion was granted over the opposition ►or deferred to final hearing◄, or (3) the party shows good cause why the issue was not [timely] ►properly◄ raised by ►a timely filed◄ motion or opposition. ►A change of attorneys during the interference generally does not constitute good cause. A party who fails to contest, by way of a timely filed preliminary motion under § 1.633(c), the designation of a claim as corresponding to a count may not subsequently argue to an administrative patent judge or the Board the separate patentability or lack of separate patentability of claims designated to correspond to the count.◄

(c) ►In the interest of justice◄ [To prevent manifest injustice], the Board may ►exercise its discretion to◄

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consider an issue even though it would not otherwise be entitled to consideration under this section.

52. Section 1.656 is proposed to be amended by revising paragraphs (a), (d), (e), (g), (h) and (i), redesignating paragraphs (b)(1) through (b)(6) as (b)(3) through (b)(8), revising newly designated paragraphs (b)(5) and (b)(6), and adding new paragraphs (b)(1) and (b)(2) to read as follows:

§ 1.656 Briefs for final hearing.

(a) Each party shall be entitled to file briefs for final hearing. The ►administrative patent judge◄ [examiner-in-chief] shall determine the briefs needed and shall set the time and order for filing briefs.

(b) * * *

(1) ►A statement of interest indicating:

(i) The full name of every party represented by the attorney in the interference.

(ii) The name of the real party in interest if the party named in the caption is not the real party in interest.

(2) A statement of related cases indicating:

(i) Whether the interference was previously before the Board for final hearing.

(ii) The name and number of any related appeal or interference which is pending before, or which has been decided by, the Board, or which is pending before, or which has been decided by, the U.S. Court of Appeals for the Federal Circuit or a district court in a proceeding under 35 U.S.C. 146. A related appeal or interference is one which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending interference.

(3)◄ * * *

►(4)◄ [(2)] A statement of the issues presented for decision in the interference.

►(5)◄ [(3)] A statement of the facts ►, preferably in numbered paragraphs,◄ relevant to the issues presented for decision with appropriate references to the record.

►(6)◄ [(4)] An argument, which may be preceded by a summary, which shall contain the contentions of the party with respect to the issues ►it is raising for consideration at final hearing◄ [to be decided], and the reasons therefor, with citations to the cases, statutes, other authorities, and parts of the record relied on.

►(7)◄ [(5)] A short conclusion stating the precise relief requested.

►(8)◄ [(6)] An appendix containing a copy of the counts.

* * * * *

(d) ►Unless ordered otherwise by an administrative patent judge, briefs shall be double-spaced (except for footnotes, which may be single-spaced) and shall comply with the requirements of § 1.653(g) for records except the requirement for binding.◄ [Briefs may be printed or typwritten. If typewritten, legal-size paper may be used. The opening brief of each party in excess of 50 legal-size double-spaced typewritten pages or any other brief in excess of 25 legal-size double spaced typewritten pages shall be printed unless a satisfactory reason be given why the brief should not be printed. Any printed brief shall comply with the requirements of § 1.653(g). Any typewritten brief shall comply with the requirements of § 1.653(h), except legal-size paper may be used and the binding and covers specified are not required.]

(e) An original and ►four◄ [three] copies of each brief must be filed.

* * * * *

(g) Any party, separate from its opening brief, but filed concurrently therewith, may file an original and ►four◄ [three] copies of concise proposed findings of fact and conclusions of law. Any proposed findings of fact shall be ►in numbered paragraphs and◄ supported by specific references to the record. Any proposed conclusions of law shall be ►in numbered paragraphs and◄ supported by citation of cases, statutes, or other authority. Any [opposing party] ►opponent◄, separate from its opening or reply brief, but filed concurrently therewith, may file a paper accepting or objecting to any proposed findings of fact or conclusions of law; when objecting, a reason must be given. The Board may adopt the proposed findings of fact and conclusions of law in whole or in part.

(h) If a party wants the Board in rendering its final decision to rule on the admissibility of any evidence, the party shall file with its opening brief an original and ►four◄ [three] copies of a motion (§ 1.635) to suppress the evidence. The provisions of § 1.637(b) do not apply to a motion to suppress under this paragraph. Any objection previously made to the admissibility of ►the evidence of an opponent◄ [an opponent's evidence] is waived unless the motion required by this paragraph is filed. ►A party that failed to challenge the admissibility of the evidence of an opponent on a ground that could have been raised in a timely objection under § 1.672(c), 1.682(c), 1.683(b) or 1.688(b) may not move under this paragraph to suppress the evidence on that ground at final hearing.◄ An original and ►four◄ [three] copies of an opposition to the motion may be filed with an opponent's opening brief or reply brief as may be appropriate.

(i) When a junior party fails to timely file an opening brief, an order may issue requiring the junior party to show cause why the Board should not treat failure to file the brief as a concession of priority. If the junior party fails to ►show good cause◄ [respond] within a time period set in the order, judgment may be entered against the junior party.

53. Section 1.657 is proposed to be revised to read as follows:

§ 1.657 Burden of proof as to date of invention.

►(a)◄ A rebuttable presumption shall exist that, as to each count, the inventors made their invention in the chronological order of the earlier of their [filing dates or] effective filing dates. The burden of proof shall be upon a party who contends otherwise.

►(b) In an interference involving copending applications or involving a patent and an application having an effective filing date on or before the date the patent issued, a junior party shall have the burden of establishing priority by a preponderance of the evidence.

(c) In an interference involving an application and a patent and where the effective filing date of the application is after the date the patent issued, a junior party shall have the burden of establishing priority by clear and convincing evidence.◄

54. Section 1.658 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 1.658 Final decision.

(a) After final hearing, the Board shall enter a decision resolving the issues raised at final hearing. The decision may (1) enter judgment, in whole or in part, (2) remand the interference to an ►administrative patent judge◄ [examiner-in-chief] for further proceedings, or (3) take further action not inconsistent with law. A judgment as to a count shall state whether or not each party is entitled to a patent containing the claims in the party's patent or application which correspond to the count. When the Board enters a decision awarding judgment as to all counts, the decision shall be regarded as a final decision ►for the purpose of judicial review (35 U.S.C. 141–144, 146) unless a request for reconsideration under paragraph (b) of this section is timely filed◄.

(b) Any request for reconsideration of a decision under paragraph (a) of this section shall be filed within one month after the date of the decision. The

request for reconsideration shall specify with particularity the points believed to have been misapprehended or overlooked in rendering the decision. Any [reply] ►opposition◄ to a request for reconsideration shall be filed within 14 days of the date of service of the request for reconsideration. [Where reasonably possible, service] ►Service◄ of the request for reconsideration shall be [such that delivery is accomplished] by hand or ["]Express Mail.["] The Board shall enter a decision on the request for reconsideration. If the Board shall be of the opinion that the decision on the request for reconsideration significantly modifies its original decision under paragraph (a) of this section, the Board may designate the decision on the request for reconsideration as a new decision. ►A decision on reconsideration is a final decision for the purpose of judicial review (35 U.S.C. 141–144, 146).◄

* * * * *

55. Section 1.660 is proposed to be amended by adding paragraph (e) to read as follows:

§ 1.660 Notice of reexamination, reissue, protest or litigation.

* * * * *

►(e) The notice required by this section is designed to assist the administrative patent judge and the Board in efficiently handling interference cases. Failure of a party to comply with the provisions of this section may result in sanctions under § 1.616. Knowledge by, or notice to, an employee of the Office other than an employee of the Board, of the existence of the re-examination, application for reissue, protest, or litigation shall not be sufficient. The notice contemplated by this section is noticed addressed specifically to an administrative patent judge or the Board.◄

56. Section 1.662 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 1.662 Request for entry of adverse judgment; re-issue filed by patentee.

(a) A party may, at any time during an interference, request and agree to entry of an adverse judgment. The filing by ►a party◄ [an applicant or patentee] of a written disclaimer of the invention defined by a court, concession of priority or unpatentability of the subject matter of a count, abandonment of the invention defined by a count, or abandonment of the contest as to a count will be treated as a request for entry of an adverse judgment against the applicant or patentee as to all claims which correspond to the count. Abandonment of an application [by an applicant], other than an [applicant] ►application◄ for re-issue having a claim of the patent sought to be reissued involved in the interference, will be treated as a request for entry of an adverse judgment against the applicant as to all claims corresponding to all counts. Upon the filing by a party of a request for entry of an adverse judgment, the Board may enter judgment against the party.

(b) If a patentee involved in an interference files an application for reissue during the interference and ►the reissue application does not include a claim that corresponds to a count◄ [omits all claims of the patent corresponding to the counts of the interference for the purpose of avoiding the interference], judgment may be entered against the patentee. A patentee who files an application for re-issue ► which includes a claim that corresponds to a count◄ [other than for the purpose of avoiding the interference] shall ►, in addition to complying with the provisions of § 1.660(b),◄ timely file a preliminary motion under § 1.663(h) or show good cause why the motion could not have been timely filed or would not be appropriate.

* * * * *

57. Section 1.664 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 1.664 Action after interference.

(a) After termination of an interference, the examiner will promptly take such action in any application previously involved in the interference as may be necessary. Unless entered by order of an ►administrative patent judge◄ [examiner-in-chief], amendments presented during the interference shall not be entered, but may be subsequently presented by the applicant subject to the provisions of this subpart provided prosecution of the application is not otherwise closed.

(b) After judgment, the application of any party may be held subject to further examination, including an interference with another application.

58. Section 1.671 is proposed to be amended by revising paragraphs (a), (c)(1), (c)(2), (c)(6), (c)(7), (f) and (g) to read as follows, deleting paragraph (e) and redesignating it as "Reserved", redesignating current paragraph (h) as (i), and adding new paragraphs (h) and (j) to read as follows:

§ 1.671 Evidence must comply with rules.

(a) Evidence consists of testimony and exhibits, official records and publications filed under § 1.682, [evidence] ►testimony◄ from another interference, proceeding, or action filed under § 1.683, and discovery relied upon under § 1.688, and the specification (including claims) and drawings of any application or patent:

* * * * *

(c) * * *

(1) *Courts of the United States, U.S. Magistrate, court, trial court,* or *trier of fact* means ►administrative patent judge◄ [examiner-in-chief] or Board as may be appropriate.

(2) *Judge* means ►administrative patent judge◄ [examiner-in-chief].

* * * * *

(6) *Before the hearing* in Rule 703 means before giving testimony by ►affidavit or◄ oral deposition [or affidavit].

(7) *The trial or hearing* in Rules 803(24) and 804(5) means the taking of testimony by ►affidavit or◄ oral deposition [or affidavit].

* * * * *

(e) ►Reserved.◄ [A party may not rely on an affidavit filed by that party during *ex parte* prosecution of an application, an affidavit under § 1.608, or an affidavit under § 1.639(b) unless: (1) A copy of the affidavit is or has been served and (2) a written notice is filed prior to the close of the party's relevant testimony period stating that the party intends to rely on the affidavit. When proper notice is given under this paragraph, the affidavit shall be deemed filed under § 1.672(b). A copy of the affidavit shall be included in the record (§ 1.653).]

(f) The significance of documentary and other exhibits ►identified by a witness in an affidavit or during oral deposition◄ shall be discussed with particularity by [a] ►the◄ witness [during oral deposition or in an affidavit].

(g) A party must file a motion (§ 1.635) seeking permission from an ►administrative patent judge◄ [examiner-in-chief] prior to ►compelling◄ [taking] testimony or ►production of◄ [seeking] documents or things under 35 U.S.C. 24 ►or from a party◄. The motion shall describe the general nature and the relevance of the testimony, document, or thing. ►If permission is granted, the party shall notice a deposition under § 1.673 and may proceed to take testimony. The testimony of the witness shall be taken on oral deposition.◄

►(h) A party must file a motion (§ 1.635) seeking permission from an administrative patent judge prior to compelling testimony or production of documents or things in a foreign country.

(1) In the case of testimony, the motion shall:

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(i) Describe the general nature and relevance of the testimony;

(ii) Identify the witness by name or title;

(iii) State why the party believes the witness can be compelled to testify in the foreign country; and

(iv) Demonstrate that the witness has been asked to testify in the United States and has refused to do so even though the party has offered to pay the expenses of the witness to travel to the United States.

(2) In the case of production of a document or thing, the motion shall:

(i) Describe the general nature and relevance of the document or thing;

(ii) State why the party believes production of the document or thing can be compelled in the foreign country; and

(iii) Demonstrate that the individual or entity having possession, custody, and control of the document or thing will not produce the document or thing in the United States even though the party has offered to pay the expenses of producing the document or thing in the United States.◄

►(i)◄ [(h)] Evidence which is not taken or sought and filed in accordance with this subpart shall not be admissible.

►(j) The weight to be given testimony taken in a foreign country will be determined on a case-by-case basis. Little, if any, weight may be given to testimony taken in a foreign country unless the party taking the testimony proves by clear and convincing evidence (1) that giving false testimony in an interference proceeding is punishable as perjury under the laws of the foreign country where the testimony is taken and (2) that the punishment in a foreign country for giving such false testimony is similar to the punishment for perjury committed in the United States.◄

59. Section 1.672 is proposed to be amended by revising paragraphs (a), (b), (c) and (d), redesignating paragraphs (c), (d), (e) and (f) as paragraphs (e), (f), (g) and (h), respectively, and by adding new paragraphs (c) and (d) to read as follows:

§ 1.672 Manner of taking testimony.

(a) ►Unless testimony must be compelled under 35 U.S.C. 24 or compelled from a party or in a foreign country, testimony◄ [Testimony] of a witness ►shall◄ [may] be taken by [oral deposition or] affidavit in accordance with this subpart. ►Testimony which must be compelled under 35 U.S.C. 24 or compelled from a party or in a foreign country shall be taken by oral deposition.◄

(b) [A party wishing to take the testimony of a witness whose testimony will not be compelled under 35 U.S.C. 24 may elect to present the testimony of the witness by affidavit or deposition.] A party [electing to present] ►presenting◄ testimony of a witness by affidavit shall, prior to the [close of the party's relevant testimony period, file and serve] ►time set by the administrative patent judge for serving affidavits, file a copy of the◄ [an] affidavit [of the witness or, where appropriate, a notice under § 1.671(e). To facilitate preparation of the record (§ 1.653 (g) and (h)), a party should file an affidavit on paper which is 8½ by 11 inches (21.8 by 27.9 cm)]. ►If the affidavit relates to a party's case-in-chief, it shall be filed no later than the date set by an administrative patent judge for the party to file affidavits for its case-in-chief. If the affidavit relates to a party's case-in-rebuttal, it shall be filed no later than the date set by an administrative patent judge for the party to file affidavits for its case-in-rebuttal.◄ A party shall not be entitled to rely on any document referred to in the affidavit unless a copy of the document is filed with the affidavit. A party shall not be entitled to rely on any thing mentioned in the affidavit unless the opponent is given reasonable access to the thing. A thing is something other than a document. ►The pages of affidavits filed under this paragraph and of any other testimony filed therewith under §§ 1.683(a) and 1.688(a) shall be given sequential numbers which shall also serve as the record page numbers for the affidavits and other testimony in the party's record to be filed under § 1.653. Exhibits identified in the affidavits or in any other testimony filed under §§ 1.683(a) and 1.688(a) and any official records and printed publications filed under § 1.682(a) shall be given sequential exhibit numbers which shall also serve as the exhibit numbers when the exhibits are filed with the party's record. The affidavits, testimony filed under §§ 1.683(a) and 1.688(a) exhibits shall be accompanied by an index of the names of the witnesses, giving the number of the page where the testimony of each witness begins, and by an index of the exhibits briefly describing the nature of each exhibit and giving the number of the page where each exhibit is first identified and offered into evidence.

(c) If an opponent objects to the admissibility of any evidence contained, in or submitted with an affidavit filed under paragraph (b) of this section, the opponent must, no later than the date set by the administrative patent judge for filing objections under this paragraph, file objections stating with particularity the nature of each objection. An opponent that fails to challenge the admissibility of the evidence contained in or submitted with an affidavit on a ground that could have been raised in a timely objection under this paragraph will not be entitled to move under § 1.656(h) to suppress the evidence on that ground. If an opponent timely files objections, the party may, within 20 days of the due date for filing objections, file supplemental affidavits and supplemental official records and printed publications to overcome the objections. No objection to the admissibility of the supplemental evidence shall be made, except as provided by § 1.656(h). The pages of supplemental affidavits filed under this paragraph shall be sequentially numbered beginning with the number following the last page number of the party's testimony submitted under paragraph (b) of this section. The page numbers assigned to the supplemental affidavits shall also serve as the record page numbers for the supplemental affidavits in the party's record filed under § 1.653. Additional exhibits identified in supplemental affidavits and any supplemental official records and printed publications shall be given sequential numbers beginning with the number following the last number of the exhibits submitted under paragraph (b) of this section. The exhibit numbers shall also serve as the exhibit numbers when the exhibits are filed with the party's record. The supplemental affidavits shall be accompanied by an index of the names of the witnesses and an index of exhibits of the type specified in paragraph (b) of this section.

(d)◄ After the ►time expires for filing objections and supplemental affidavits, or earlier when appropriate,◄ [affidavit is filed and within a time set by an examiner-in-chief,] ►the administrative patent judge shall set a time within which◄ any opponent may file a request to cross-examine [the witness] ►an affiant◄ on oral deposition. If any opponent requests cross-examination of an affiant, the party shall notice a deposition ►at a reasonable location within the United States◄ under § 1.673(e) for the purpose of cross-examination by any opponent. Any redirect and recross shall take place at the deposition. At any deposition for the purpose of cross-examination of a witness [whose testimony is presented by affidavit], the party shall not be entitled to rely on any document or

thing not mentioned in one or more of the affidavits filed under [this paragraph] ►paragraphs (b) and (c) of this section◄, except to the extent necessary to conduct proper redirect. [A party electing to present testimony of a witness by deposition shall notice a deposition of the witness under § 1.673(a).] The party who gives notice of a deposition shall be responsible ►for providing a translator if the witness does not testify in English,◄ for obtaining a court reported and for filing a certified transcript of the deposition as required by § 1.676. ►Within 45 days of the close of the period for taking cross-examination, the party shall serve (but not file) a copy of each transcript on each opponent together with copies of any additional documentary exhibits identified by the witness during the deposition. The pages of the transcripts served under this paragraph shall be sequentially numbered beginning with the number following the last page number of the party's supplemental affidavits submitted under paragraph (c) of this section. The numbers assigned to the transcript pages shall also serve as the record page numbers for the transcripts in the party's record fled under § 1.653. Additional exhibits identified in the transcripts shall be given sequential numbers beginning with the number following the last number of the exhibits submitted under paragraphs (b) and (c) of this section. The exhibit numbers assigned to the additional exhibits shall also serve as the exhibit numbers when those exhibits are filed with the party's record. The deposition transcripts shall be accompanied by an index of the names of the witnesses, giving the number of the page where cross-examination, redirect and recross of each witness begins, and an index of exhibits of the type specified in paragraph (b) of this section.

(e) Reserved.◄ [(c) A party wishing to take the testimony of a witness whose testimony will be compelled under 35 U.S.C. 24 must first obtain permission from an examiner-in-chief under § 1.671(g). If permission is granted, the party shall notice a deposition of the witness under § 1.673 and may proceed under 35 U.S.C. 24. The testimony of the witness shall be taken on oral deposition.]

►(f)◄ [(d)] ►When a deposition is authorized under◄ [Notwithstanding the provisions of] this subpart, if the parties agree in writing, ►the◄ [a] deposition may be taken before any person authorized to administer oaths, at any place, upon any notice, and in any manner, and when so taken may be used like other depositions.

►(g)◄ [(e)] If the parties agree in writing, the testimony of any witness may be submitted in the form of an affidavit without opportunity for cross-examination. The affidavit of the witness shall be filed in the Patent and Trademark Office.

►(h)◄ [(f)] If the parties agree in writing, testimony may be submitted in the form of an agreed statement setting forth: (1) How a particular witness would testify if called or (2) the facts in the case of one or more of the parties. The agreed statement shall be filed in the Patent and Trademark Office. See § 1.653(a).

60. Section 1.673 is proposed to be amended by revising paragraphs (a), (b), (c), (c)(2), (d), (e) and (g) to read as follows:

§ 1.673 Notice of examination of witness ►when deposition testimony is authorized◄

(a) A party [electing] ►authorized◄ to take testimony of a witness by deposition shall, after complying with paragraphs (b) and (g) of this section, file and serve a single notice of deposition stating the time and place of each deposition to be taken. Depositions ►to be taken in the United States◄ may be noticed for a reasonable time and place in the United States. [Unless the parties agree in writing, a] ►A◄ deposition may not be noticed for any other place without approval of an ►administrative patent judge◄ [examiner-in-chief (see § 1.684)]. The notice shall specify the name and address of each witness and the general nature of the testimony to be given by the witness. If the name of a witness is not known, a general description sufficient to identify the witness or a particular class or group to which the witness belongs may be given instead.

(b) Unless the parties agree ►or an administrative patent judge or the Board determine◄ otherwise, a party shall serve, but not file, at least three ►working◄ days prior to the conference required by paragraph (g) of this section, if service is made by hand or ["]Express Mail,["] or at least ►14◄ [ten] days prior to the conference if service is made by any other means, the following:

* * * * *

(c) A party shall not be permitted to rely [at any deposition] on any witness not listed in the notice, or any document not served or any thing not listed as required by paragraph (b) of this section:

(1) * * *

(2) except upon a motion (§ 1.635) promptly filed which is accompanied by any proposed notice, additional documents, or lists and which shows [sufficient] ►good◄ cause why the notice, documents, or lists were nit served in accordance with this section.

(d) Each [opposing party] ►opponent◄ shall have a full opportunity to attend a deposition and cross-examine. [If an opposing party attends a deposition of a witness not named in a notice and cross-examines the witness or fails to object to the taking of the deposition, the opposing party shall be deemed to have waived any right to object to the taking of the deposition for lack of proper notice.]

(e) A party ►who has presented◄ [electing to present] testimony by affidavit and [who] is required to notice depositions for the purpose of cross-examination under § 1.672(b), shall, after complying with paragraph (g) of this section, file and serve a single notice of depsotion stating the time and place of each cross-examination deposition to be taken.

* * * * *

(g) Before serving a notice of deposition and after complying with paragraph (b) of this section, a party shall have an oral conference with all opponents to attempt to agree on a mutually acceptable time and place for conducting the deposition. A certificate shall appear in the notice stating that the oral conference took place or explaining why the conference could not be had. If the parties cannot agree to a mutually acceptable place and time for conducting the deposition at the conference, the parties shall contact an ►administrative patent judge◄ [examiner-in-chief] who shall then designate the time and place for conducting the deposition.

* * * * *

61. Section 1.674 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.674 Persons before whom depositions may be taken.

(a) ►A◄ [Within the United States or a territory or insular possession of the United States a] deposition shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

* * * * *

62. Section 1.675 is proposed to be amended by revising paragraph (d) to read as follows:

§ 1.675 Examination of witness, reading and signing transcript of deposition.

* * * * *

(d) Unless the parties agree in writng or waive reading and signature by the witness on the record at the depsotion,

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when the testimony has been transcribed a transcript of the deposition shall ►, unless the witness refuses to read and/or sign the transcript of the depsotion,◄ be read by the witness and then signed by the witness in the form of: (1) An affidavit in the presence of any notary or (2) a declaration.

63. Section 1.676 is proposed to be amended by revising paragraph (a)(4) to read as follows:

§ 1.676 Certification and filing by officer, marking exhibits.

(a) * * *

(4) The presence or absence of any [opposing party] ►opponent◄

* * * * *

64. Section 1.677 is proposed to be amended by revising the section heading and paragraph (a) to read as follows:

§ 1.677 Form of ►affidavit or◄ a transcript of deposition.

(a) ►An affidavit or a◄ [A] transcript of a deposition must be [typewritten] on opaque, unglazed, durable paper approximately ►21.8 by 27.9 cm. (8½ by 11 inches)◄ [8½ by 11 inches (21.8 by 27.9 cm.)] in size (letter size). [Typing] ►The printed matter◄ shall be double-spaced on one side of the paper in not smaller than ►11 point type◄ [pica-type] with a margin of ►3.8 cm. (1½ inches)◄ [1½ inches (3.8 cm.)] on the left-hand side of the page. The pages must be consecutively numbered throughout the entire record of each party (§ 1.653(d)) and the name of the witness [must be typed] ►shall appear◄ at the top of the each page (§ 1.653(e)). ►In transcripts of depositions, the◄ [The] questions propounded to each witness must be consecutively numbered unless paper with numbered lines is used and each question must be followed by its answer.

* * * * *

65. Section 1.678 and the section heading are proposed to be revised to read as follows:

§ 1.678 ►Time for filing transcript◄ βTranscripts of deposition βmust be filedα.

Unless otherwise ordered by an ►administrative patent judge◄ [examiner-in-chief], a certified transcript of a deposition must be filed in the Patent and Trademark Office within [45] ►30◄ days from the date of deposition. If a party refuses to file a certified transcript, the ►administrative patent judge◄ [examiner-in-chief] or the Board may take appropriate action must § 1.616. If a party refuses to file a certified transcript, any opponent may move for leave to file the certified transcript and include a copy of the transcript as part of the opponent's record.

66. Section 1.679 is proposed to be revised to read as follows:

§ 1.679 Inspection of transcript.

A certified transcript ►of a desposition◄ filed in the Patent and Trademark Office may be inspected by any party. The certified transcript may not be removed from the Patent and Trademark Office [for printing (§ 1.653(g)(1)] unless authorized by an ►administrative patent judge◄ [examiner-in-chief] upon such terms as may be appropriate.

67. Section 1.682 is proposed to be amended by deleting paragraphs (a)(4) and (b) and redesignating them as "Reserved," revising paragraphs (a), (a)(2), (a)(3), and (c) and adding a new paragraph (d) to read as follows:

§ 1.682 Official records and printed publications.

(a) A party may introduce into evidence, if otherwise admissible, [any] ►an◄ official record or printed publication not identified ►in an affidavit or◄ on the record during ►an oral deposition◄ [the taking of testimony] of a witness, by filing [a notice offering] ►a copy of◄ the official record or ►printed◄ publication [into evidence]. If the ►official record or printed publication◄ [evidence] relates to the party's case-in-chief, ►it shall be filed together with any affidavits filed by the party under § 1.672(b) for its case-in-chief or, if the party does not serve any affidavits under § 1.672(b) for its case-in-chief, no later than the date set by an administrative patent judge for the party to file affidavits under § 1.672(b) for its◄ [the notice shall be filed prior to close of testimony of the party's] case-in-chief. If the ►official record or printed publication◄ [evidence] relates to rebuttal, ►it shall be filed together with any affidavits filed by the party under § 1.672(b) for its case-in-rebuttal or, if the party does not file any affidavits under § 1.672(b) for its case-in-rebuttal, no later than the date set by an administrative patent judge for the party to file affidavits under § 1.672(b) for its◄ [the notice shall be filed prior to close of testimony of the party's] case-in-rebuttal. [The notice] ►Official records and printed publications filed under this paragraph shall be assigned sequential exhibits numbers by the party in the manner set forth in § 1.672(b). The official record and printed publications shall be accompanied by a paper which◄ shall:

(1) * * *

(2) ►Identify◄ [identify] the portion thereof to be introduced in evidence, ►and◄

(3) ►Indicate◄ [indicate] generally the relevance of the portion sought to be introduced in evidence ►.◄ [, and]

(4) ►Reserved.◄ [where appropriate, be accompanied by a certified copy of the official record or a copy of the printed publication (§ 1.671(d)).]

(b) ►Reserved.◄ [A copy of the notice, official record, and publication shall be served.]

(c) Unless otherwise ordered by an ►administrative patent judge◄ [examiner-in-chief], any written objection ►by an opponent◄ to the [notice] ►paper◄ or to the admissibility of the official record or printed publication shall be filed [within 15 days of service of the notice] ►no later than the date set by the administrative patent judge for the opponent to file objections under § 1.672(c) to affidavits submitted by the party under § 1.672(b). An opponent who fails to challenge the admissibility of the official record or printed publication on a ground that could have been raised in a timely objection under this paragraph will not be entitled to move under § 1.656(h) to suppress the evidence on that ground. If an opponent timely files an objection, the party may respond by filing supplemental affidavits and supplemental official records and printed publications, which must be filed together with any supplemental evidence filed by the party under § 1.672(c) or, if the party does not file any supplemental evidence under § 1.672(c), no later than the date set for the party to file supplemental affidavits under § 1.672(c). No objection to the admissibility of the supplemental evidence shall be made, except as provided by◄◄ [See also] § 1.656(h). ►The pages of supplemental affidavits and the exhibits filed under this section shall be sequentially numbered by the party in the manner set forth in § 1.672(c). The supplemental affidavits and exhibits shall be accompanied by an index of witnesses and an index of exhibits of the type required by § 1.672(b).

(d) Any request by an opponent to cross-examine on oral deposition the affiant of a supplemental affidavit submitted under paragraph (c) of this section shall be filed no later than the date set by the administrative patent judge for the opponent to file a request to cross-examine an affiant with respect to an affidavit served by the party under § 1.672 (b) or (c). If any opponent requests cross-examination of an affiant, the party shall file notice of a deposition for a reasonable location within the United States under § 1.673(e) for the purpose of cross-examination by any opponent. Any redirect and recross shall take place at the deposition. At any deposition for the purpose of cross-examination of a witness, the party shall not be entitled to rely on any document or thing not mentioned in one or more of the affidavits filed under this paragraph, except to the extent necessary to conduct proper redirect. The party who gives notice of a deposition shall be responsible for providing a translator if the witness does not testify in English, for obtaining a court reporter and for filing a certified transcript of the deposition as required by § 1.676. Within 45 days of the close of the period for taking cross-examination, the party shall serve (but not file) a copy of each deposition transcript on each opponent together with copies of any additional documentary exhibits identified by the witness during the deposition. The pages of deposition transcripts and exhibits served under this paragraph shall be sequentially numbered by the party in the manner set forth in § 1.672(d). The deposition transcripts shall be accompanied by an index of the names of the witnesses, giving the number of the page where cross-examination, redirect and recross of each witness begins, and an index of exhibits of the type specified in § 1.672(b).◄

68. Section 1.683 is proposed to be amended by revising paragraphs (a) and (b) and adding a new paragraph (c) to read as follows:

§ 1.683 Testimony in another interference, proceeding, or action.

(a) ►A party may introduce into evidence, if otherwise admissible,◄ [Prior to close of a party's appropriate testimony period or within such time as may be set by an examiner-in-chief, a party may file a motion (§ 1.635) for leave to use in an interference] testimony ►by affidavit or oral deposition◄ [of a witness] from another interference, proceeding, or action involving the same parties [, subject to such conditions as may be deemed appropriate by an examiner-in-chief.] ►by filing a copy of the affidavit or a copy of the transcript of the oral deposition. If the testimony relates to the party's case-in-chief, it shall be filed together with any affidavits served by the party under § 1.672(b) for its case-in-chief, if the party does not file any affidavits under § 1.672(b) for its case-in-chief, no later than the date set by an administrative patent judge for the party to file affidavits under § 1.672(b) for its case-in-chief. If the testimony relates to rebuttal, it shall be filed together with any affidavits served by the party under § 1.672(b) for its case-in-rebuttal or, if the party does not file any affidavits under § 1.672(b) for its case-in-rebuttal, no later than the date set by an administrative patent judge for the party to file affidavits under § 1.672(b) for its case-in-rebuttal. Pages of affidavits and deposition transcripts served under this paragraph and any new exhibits served therewith shall be assigned sequential numbers by the party in the manner set forth in § 1.672(b).◄ The [motion] ►testimony shall be accompanied by a paper which specifies◄ [shall specify] with particularity the exact testimony to be used and ►demonstrates◄ [shall demonstrate] its relevance.

(b) [Any objection to the admissibility of the testimony of the witness shall be made in an opposition to the motion. See also] ►Unless otherwise ordered by an administrative patent judge, any written objection by an opponent to the paper or the admissibility of the testimony filed under this section shall be filed no later than the date set by the administrative patent judge for the opponent to file any objections under § 1.672(c) to affidavits submitted by the party under § 1.672(b). An opponent who fails to challenge the admissibility of the testimony on a ground that could have been raised in a timely objection under this paragraph will not be entitled to move under § 1.656(h) to suppress the evidence on that ground. If an opponent timely files an objection, the party may respond with a supplemental affidavit and supplemental official records and printed publications, which must be filed together with any supplemental evidence filed by the party under § 1.672(c) or, if the party does not file any supplemental evidence under § 1.672(c), no later than the date set by an administrative patent judge for the party to file supplemental evidence under § 1.672(c). No objection to the admissibility of the evidence contained in or submitted with a supplemental affidavit shall be made, except as provided by◄ § 1.656(h). ►The pages of supplemental affidavits and the exhibits filed under this section shall be sequentially numbered by the party in the manner set forth in § 1.672(c). The supplemental affidavits and exhibits shall be accompanied by an index of witnesses and an index of exhibits of the type required by § 1.672(b).

(c) Any request by an opponent to cross-examine on oral deposition the affiant of an affidavit or supplemental affidavit submitted under paragraph (a) or (b) of this section shall be filed no later than the date set by the administrative patent judge for the opponent to file a request to cross-examine an affiant with respect to an affidavit filed by the party under § 1.672 (b) or (c). If any opponent requests cross-examination of an affiant, the party shall file a notice of deposition for a reasonable location within the United States under § 1.673(e) for the purpose of cross-examination by any opponent. Any redirect and recross shall take place at the deposition. At any deposition for the purpose of cross-examination of a witness, the party shall not be entitled to rely on any document or thing not mentioned in one or more of the affidavits filed under this paragraph, except to the extent necessary to conduct proper redirect. The party who gives notice of a deposition shall be responsible for providing a translator if the witness does not testify in English, for obtaining a court reporter and for filing a certified transcript of the deposition as required by § 1.676. Within 45 days of the close of the period for taking cross-examination, the party shall serve (but not file) a copy of each deposition transcript on each opponent together with copies of any additional documentary exhibits identified by the witness during the deposition. The pages of deposition transcripts and exhibits served under this paragraph shall be sequentially numbered by the party in the manner set forth in § 1.672(d). The deposition transcripts shall be accompanied by an index of the names of the witnesses, giving the number of the page where cross-examination, redirect and recross of each witness begins, and an index of exhibits of the type specified in § 1.672(b).◄

69. Section 1.684 is proposed to be deleted and redesignated as "Reserved," as follows:

§ 1.684 ►Reserved.◄ [Testimony in a foreign country]

(a) An examiner-in-chief may authorize testimony of a witness to be taken in a foreign country. A party seeking to take testimony in a foreign country shall, promptly after the testimony period is set, file a motion (§ 1.635):

(1) Naming the witness.

(2) Describing the particular facts to which it is expected that the witness will testify.

(3) Stating the grounds on which the moving party believes that the witness will testify.

(4) Demonstrating that the expected testimony is relevant.

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(5) Demonstrating that the testimony cannot be taken in this country at all or cannot be taken in this country without hardship to the moving party greatly exceeding the hardship to which all opposing parties will be exposed by the taking of the testimony in a foreign country.

(6) Accompanied by an affidavit stating that the motion is made in good faith and not for the purpose of delay or harassing any party.

(7) Accompanied by written interrogatories to be asked of the witness.

(b) Any opposition under § 1.638(a) shall state any objection to the written interrogatories and shall include any cross-interrogatories to be asked of the witness. A reply under § 1.638(b) may be filed and shall be limited to stating any objection to any cross-interrogatories proposed in the opposition.

(c) If the motion is granted, taking of the testimony abroad must be completed within the testimony period set under § 1.651 or within such time as may be set by the Examiner-in-Chief. The moving party shall be responsible for obtaining answers to the interrogatories and cross-interrogatories before an officer qualified to administer oaths in the foreign country under the laws of the United States or the foreign country. The officer shall prepare a transcript of the interrogatories, cross-interrogatories, and recorded answers to the interrogatories and cross-interrogatories and shall transmit the transcript to Box Interference, Commissioner of Patents and Trademarks, Washington, D.C. 20231, with a certificate signed and sealed by the officer and showing:

(1) The witness was duly sworn by the officer before answering the interrogatories and cross-interrogatories.

(2) The recorded answers are a true record of the answers given by the witness to the interrogatories and cross-interrogatories.

(3) The name of the person by whom the answers were recorded and, if not recorded by the officer, whether the answers were recorded in the presence of the officer.

(4) The presence or absence of any party.

(5) The place, day, and hour that the answers were recorded.

(6) A copy of the recorded answers was read by or to the witness before the witness signed the recorded answers and that the witness signed the recorded answers in the presence of the officer. The officer shall state the circumstances under which a witness refuses to read or sign recorded answers.

(7) The officer is not disqualified under § 1.674.

(d) If the parties agree in writing, the testimony may be taken before the officer on oral deposition.

(e) A party taking testimony in a foreign country shall have the burden of proving that false swearing in the giving of testimony is punishable as perjury under the laws of the foreign country. Unless false swearing in the giving of testimony before the officer shall be punishable as perjury under the laws of the foreign country where testimony is taken, the testimony shall not be entitled to the same weight as testimony taken in the United States. The weight of the testimony shall be determined in each case.]

70. Section 1.685 is proposed to be amended by revising paragraphs (d) and (e) to read as follows:

§ 1.685 Errors and irregularities in depositions.

* * * * *

(d) An objection to the ►deposition on any grounds, such as the◄ competency of a witness, admissibility of evidence, manner of taking the deposition, the form of questions and answers, any oath or affirmation, or conduct of any party at the deposition ►, ◄ is waived unless an objection is made on the record at the deposition stating the specific ground of objection. Any objection which a party wishes considered by the Board at final hearing shall be included in a motion to suppress under § 1.656(h).

(e) Nothing in this section precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of an ►administrative patent judge◄ [examiner-in-chief] or the Board.

71. Section 1.687 is proposed to be amended by revising paragraph (c) to read as follows:

§ 1.687 Additional discovery.

* * * * *

(c) Upon a motion (§ 1.635) brought by a party within the time set by an ►administrative patent judge◄ [examiner-in-chief] under § 1.651 or thereafter as authorized by § 1.645 and upon a showing that the interest of justice so requires, an ►administrative patent judge◄ [examiner-in-chief] may order additional discovery, as to matters under the control of a party within the scope of the Federal Rules of Civil Procedure, specifying the terms and conditions of such additional discovery. ►See § 1.647 concerning translations of documents in a foreign language.◄

* * * * *

72. Section 1.688 is proposed to be amended by revising paragraphs (a) and (b) and adding a new paragraph (c) to read as follows:

§ 1.688 Use of discovery.

(a) If otherwise admissible a party may introduce into evidence, an answer to a written request for an admission or an answer to a written interrogatory obtained by discovery under § 1.687 by filing a copy of the request for admission or the written interrogatory and the answer. If the answer relates to a party's case-in-chief, the answer shall be [filed prior to the close of testimony of the party's] ►served together with any affidavits served by the party under § 1.672(b) for its case-in-chief or, if the party does not serve any affidavits under § 1.672(b) for its case-in-chief, no later than the date set by an administrative patent judge for the party to serve affidavits under § 1.672(b) for its◄ case-in-chief. If the answer relates to the party's rebuttal, the [admission or] answer shall be [filed prior to the close of testimony of the party's] ►served together with any affidavits served by the party under § 1.672(b) for the its case-in-rebuttal or, if the party does not serve any affidavits under § 1.672(b) for its case-in-rebuttal, no later than the date set by an administrative patent judge for the party to serve affidavits under § 1.672(b) for its◄ case-in-rebuttal.

►(b)◄ Unless otherwise ordered by an ►administrative patent judge◄ [examiner-in-chief], any written objection to the admissibility of an answer shall be filed [within 15 days of service of the answer.] ►no later than the date set by the administrative patent judge for the opponent to file any objections under § 1.672(c) to affidavits submitted by the party under § 1.672(b). An opponent who fails to challenge the admissibility of an answer on a ground that could have been raised in a timely objection under this paragraph will not be entitled to move under § 1.656(h) to suppress the evidence on that ground. If an opponent timely files an objection, the party may respond with supplemental affidavits, which must be filed together with any supplemental evidence filed by the party under § 1.672(c) or, if the party does not file any supplemental evidence under § 1.672(c), no later than the date set by an administrative patent judge for the party to file supplemental affidavits under § 1.672(c). No objection to the admissibility of the evidence contained in or submitted with a supplemental affidavit shall be made, except as provided by◄ § 1.656(h). ►The pages of supplemental affidavits and the exhibits filed under this section shall be sequentially numbered by the party in the manner set forth in § 1.672(c). The supplemental affidavits and exhibits shall be accompanied by an index of witnesses and an index of exhibits of the type required by § 1.672(b).

(c) Any request by an opponent to cross-examine on oral deposition the affiant of a supplemental affidavit submitted under paragraph (b) of this section shall be filed no later than the date set by the administrative patent judge for the opponent to file a request to cross-examine an affiant with respect to an affidavit filed by the party under § 1.672(b) or (c). If any opponent requests cross-examination of an affiant, the party shall file a notice of deposition for a reasonable location within the United States under § 1.673(e) for the purpose of cross-examination by any opponent. Any redirect and recross shall take place at the deposition. At any deposition for the purpose of cross-examination of a witness, the party shall not be entitled to rely on any document or thing not mentioned in one or more of the affidavits filed under this paragraph, except to the extent necessary to conduct proper redirect. The party who gives notice of a deposition shall be responsible for providing a translator if the witness does not testify in English, for obtaining a court reporter and for filing a certified transcript of the deposition as required by § 1.676. Within 45 days of the close of the period for taking cross-examination, the party shall serve (but not file) a copy of each deposition transcript on each opponent together with copies of any additional documentary exhibits identified by the witness during the deposition. The pages of deposition transcripts and exhibits served under this paragraph shall be sequentially numbered by the party in the manner set forth in § 1.672(d). The deposition transcripts shall be accompanied by an index of the names of the witnesses, giving the number of the page where cross-examination, redirect and recross of each witness begins, and an index of exhibits of the type specified in § 1.672(b).◄

[(b)] ►(d)◄ A party may not rely upon any other matter obtained by discovery unless it is introduced into evidence under this subpart.

73. Section 1.690 is proposed to be amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 1.690 Arbitration of interferences.

(a) Parties to a patent interference may determine the interference or any aspect thereof by arbitration. Such arbitration shall be governed by the provisions of Title 9, United States Code. The parties must notify the Board in writing of their intention to arbitrate. An agreement to arbitrate must be in writing, specify the issues to be arbitrated, the name of the arbitrator or a date not more than thirty (30) days after the execution of the agreement for the selection of the arbitrator, and provide that the arbitrator's award shall be binding on the parties and that judgment thereon can be entered by the Board. A copy of the agreement must be filed within twenty (20) days after its execution. The parties shall be solely responsible for the selection of the arbitrator and the rules for conducting proceedings before the arbitrator. Issues not disposed of by the arbitration will be resolved in accordance with the procedures established in 37 CFR, Subpart E of Part 1, as determined by the ►administrative patent judge◄ [examiner-in-chief].

(b) An arbitration proceeding under this section shall be conducted within such time as may be authorized on a case-by-case basis by an ►administrative patent judge◄ [examiner-in-chief].

(c) An arbitration award will be given no consideration unless it is binding on the parties, is in writing and states in a clear and definite manner (1) the issue or issues arbitrated and (2) the disposition of each issue. The award may include a statement of the grounds and reasoning in support thereof. Unless otherwise ordered by an ►administrative patent judge◄ [examiner-in-chief], the parties shall give notice to the Board of an arbitration award by filing within twenty (20) days from the date of the award a copy of the award signed by the arbitrator or arbitrators. When an award is timely filed, the award shall, as to the parties to the arbitration, be dispositive of the issue or issues to which it relates.

* * * * *

Dated: September 23, 1994.

Bruce A. Lehman,

Assistant Secretary of Commerce, and Commissioner of Patents and Trademarks.

[FR Doc. 94-24203 Filed 9-30-94; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA-29-01-6537; A-1-FRL-5083-5]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Amendment to Massachusetts' SIP (for Ozone and for Carbon Monoxide) for Establishment of a South Boston Parking Freeze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) amendment submitted by the Commonwealth of Massachusetts. The intent of the SIP amendment is to effect a decrease in vehicle miles travelled (VMT) and motor vehicle emissions by controlling the growth of parking spaces in the South Boston neighborhood of Boston and holding automobile usage to levels within the practical capacity of the local street network. Vehicular emissions of carbon monoxide, hydrocarbons and nitrogen oxides will be reduced compared with their expected levels if parking is not constrained. These pollutants contribute to the carbon monoxide and ozone air pollution problems in the Boston urbanized area. This SIP revision adds the South Boston Parking Freeze Area to ongoing parking management plans in the Metropolitan Boston Area. The intended effect of this action is to propose approval of the changes to Massachusetts' SIP. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before November 2, 1994.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, (617) 565-3227.

SUPPLEMENTARY INFORMATION: On July 30, 1993, the Massachusetts Department

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of Environmental Protection (DEP) submitted a revision to its State Implementation Plan (SIP) for the South Boston Parking Freeze. The amendment adds or revises four definitions to 310 CMR 7.00 and adds a new section, 310 CMR 7.33 "MB City of Boston/South Boston Parking Freeze" to manage the overall parking demand in South Boston. Specifically, the measure will constrain future parking supply at 10 percent above 1990 levels, allowing for an increase in the supply to accommodate an expected increase in demand accompanying intensive development in South Boston. A second ten percent increase in parking supply will be permitted in the South Boston Piers area when the Central Artery/Third Harbor Tunnel Project is completed and open to the public.

Background

Parking freezes for part of the City of Boston, the City of Cambridge, and Logan Airport were included as one strategy in the Transportation Control Plan promulgated by the EPA in its plan for the Boston Region in 1975. (See CFR part 52, subpart W; 38 FR 17689 (July 2, 1973); 38 FR 30960 (November 8, 1973); 40 FR 25162 (June 12, 1975); 40 FR 39863 (August 29, 1975).) On September 16, 1979, EPA approved Massachusetts' 1979 SIP, which included these parking freezes. Massachusetts reaffirmed these freezes in its 1982 SIP.

On December 19, 1990, the Massachusetts Executive Office of Transportation and Construction (EOTC), the Massachusetts Department of Public Works ((MDPW), now the Massachusetts Highway Department (MA HWY)) and the Conservation Law Foundation (CLF) signed a Memorandum of Understanding (MOU) committing the parties to pursue implementation, monitoring and enforcement of traffic, and air quality mitigation measures for the Central Artery/Third Harbor Tunnel project. Parking freezes, including the development and implementation of the South Boston Parking Freeze, were among the specific measures committed to in the MOU. The Boston Metropolitan Planning Organization (MPO) voted on December 27, 1990, to adopt the items of the MOU as a State Implementation Plan (SIP) provision, and forwarded the items to the Massachusetts Department of Environmental Protection (MA DEP) as a proposed amendment to the SIP.

The Metropolitan Planning Organization is the current "State Certified Organization" for transportation control measures in the SIP. In response to the MPO submission, MA DEP developed regulations which were proposed in October of 1992. MA DEP held a public hearing on these amendments on November 30, 1992. The comment period ended December 10, 1992, with oral testimony and written comments received from EPA as well as various other parties. The amendments (as formal state regulations) were filed with Massachusetts Secretary of State on March 15, 1993, and became effective on April 9, 1993, upon publication in the Massachusetts Register.

Summary of SIP Revision

(1) Geographic Area. The South Boston Parking Freeze area is divided into three zones defined as: (i) The South Boston Piers Zone; (ii) the South Boston Industrial/Commercial Zone; and (iii) the South Boston Residential Zone. The boundaries of these zones are defined in the state regulation as well as in EPA's Technical Support Document (TSD) available in the docket for this action.

(2) Definition of the Parking Freeze. There is a freeze (limit) on the availability of motor vehicle parking spaces within the South Boston Piers Zone and the Industrial/Commercial Zone, and a freeze on the availability of remote parking spaces within the South Boston Residential Zone.[1] In addition, the South Boston Piers Zone will have ten percent of its off-street spaces set aside and allocated for off-peak period parking. Off-peak spaces would not be used by everyday commuters but reserved for people needing short term parking. Therefore, parking spaces designated for off-peak use may not be used between 7:30 a.m. and 9:30 a.m., but could be used at other times. Once the South Boston Transitway opens, additional spaces in the South Boston Piers Zone will be set aside for off-peak parking, resulting in a total of 20 percent off-peak parking spaces. Finally, a second ten percent will be created and added to the Freeze Bank for the South Boston Piers Zone when the Central Artery/Third Harbor Tunnel opens to the public.

The Massachusetts regulation requires the Boston Air Pollution Control Commission (BAPCC) and Massachusetts Port Authority (Massport) to develop and submit an inventory of all existing motor vehicle parking spaces for each of their respective areas. In addition, all motor vehicle parking spaces that were part of any project submitted for review under the Massachusetts Environmental Policy Act (MEPA) process in 301 CMR 11.00, or the Federal Environmental Review Process in 40 U.S.C. 4321 *et seq.* as of August 1, 1990, as well as remote parking spaces, must be identified in their respective inventories. This inventory will identify parking spaces for commercial, remote, employee, restricted use, off-peak uses and parking spaces eliminated during the Central Artery/Third Harbor Tunnel project construction within the freeze area.

The Massachusetts Regulation authorizes BAPCC to allow "restricted use parking" spaces in the South Boston Piers and Industrial/Commercial zones for up to ten days each year. These spaces are designed to allow the cap to be exceeded on a very short-term basis to accommodate unusual events. Massport is prohibited from providing restricted use parking in South Boston.

A South Boston Parking Freeze Draft Base Inventory was developed by the BAPCC in accordance with the state regulation and was submitted to MA DEP for review, public comment and approval. BAPCC's April 1994 Draft Base Inventory estimated 27,768 motor vehicle parking spaces within the South Boston Parking Freeze Area. This is broken down as: South Boston Piers Zone 15,916 spaces: South Boston Industrial Zone 11,841 spaces; and South Boston Residential Zone 11 spaces. On June 13, 1994, MA DEP found BAPCC's parking inventory inadequate and required BAPCC to resolve those inadequacies.

(3) Establishment of Parking Freeze Banks. The number of Motor vehicle parking spaces in the South Boston Parking Freeze Area will be limited to the base inventory, plus an initial parking freeze bank equal to 10% of the base inventory of motor vehicles parking spaces. There will be two parking freeze banks, administered separately by the BAPCC and Massport. Motor vehicle parking spaces eliminated from use in the South Boston Parking Freeze Area can be credited to the appropriate parking freeze bank for reallocation and are not privately transferrable.

Goals of the Parking Freeze

MA DEP expects that the parking freeze will ensure that economic growth in South Boston occurs efficiently with respect to land use and transportation infrastructure and in the most environmentally beneficial way. MA DEP stated that the South Boston Parking Freeze has been designed with the following specific objectives: to improve air quality over forecast levels, in the metropolitan Boston area and locally, by limiting the growth in traffic congestion so Federal health-related air quality standards can be attained as rapidly as possible; to reduce traffic on South Boston neighborhood streets; to manage the parking supply so that transportation and land resources are used efficiently; to build in flexibility to respond to the changes in traffic capacity resulting from the Central Artery/Third Harbor Tunnel project; and to encourage transit as the preferred transportation access mode for all new development in the South Boston area.

[1] "Remote parking spaces" are spaces in which the driver parks and then proceeds to his/her destination outside South Boston, such as Downtown Boston or Logan Airport. See 310 CMR 7.00.

Air Quality Impacts

The South Boston Parking Freeze is designed to reduce the growth of VMT and travel-related air emissions by controlling the growth of parking spaces serving South Boston. The freeze will result in air quality improvements beyond those which would occur in the future without this measure.

For the three South Boston zones, MA DEP expects the proposed freeze to reduce total future trips by 15,220 per day or 19 percent of the approximately 80,105 trips forecast with unconstrained parking. This is a 5.3 percent reduction in the future year trips without the freeze in the Central Artery Study area, and a 0.3 percent reduction overall in Eastern Massachusetts.

Without the South Boston freeze, the amount of VMT increases in the South Boston zones are large. On average in the three South Boston zones, MA DEP expects trips to rise by about 35 percent between now and the year 2010. Based on vehicle trip reductions and the related VMT change, a reduction of 8.06 percent in VMT is obtained below the level which would otherwise occur with unconstrained parking within the Central Artery Study area, and 0.3 percent over the entire region.

Using EPA's Mobile Emission Factor Model (MOBILE4.1, the current version at the time of the MA DEP's analysis) and the Central Artery Traffic Model, the South Boston Parking Freeze would reduce emissions of volatile organic compounds (VOCs) by approximately 74.86 kilograms per day by the year 2010 within the Central Artery Study area. Carbon Monoxide emissions would be reduced by 558.50 kilograms per day within the Central Artery Study area. Using the EPA MOBILE4.1 emission Model and the Central Transportation Planning Staff (CTPS) regional transportation model, the South Boston Parking Freeze will reduce emissions of VOCs by 269.79 kilograms per day, and of carbon monoxide (CO) by approximately 1,663.91 kilograms per day within Eastern Massachusetts. The regional model also accounts for the secondary effects of reducing traffic, which will in turn reduce congestion and emissions elsewhere in the region.

EPA supports the South Boston Parking Freeze Plan as a means to reduce VMT and ultimately eliminate motor vehicle emissions associated with reduced VMT. The VMT reduction anticipated with implementing the South Boston Parking Freeze Plan will be accounted for through Highway Performance Monitoring System's (HPMS) statistical sampling of VMT within the Boston Metropolitan area. VMT reductions resulting from the South Boston freeze will be documented by Massachusetts in their emission inventories and regional emission analysis (prepared for transportation conformity) and result in improved ambient air quality. Specific emission credit associated with the South Boston Parking Freeze Plan is not being assigned in the SIP. In addition, because Massachusetts will account for VMT and emission benefits in their base scenario, Massachusetts' Reasonable Further Progress Plan does not identify the South Boston Parking Freeze as an emission reduction element or as a contingency measure.

EPA's review of this material indicates that the proposed SIP amendment will result in improved air quality. EPA is proposing to approve the Massachusetts SIP revision for South Boston Parking Freeze, which was submitted on July 30, 1993. EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

Proposed Action

EPA is proposing to approve the South Boston Parking Freeze SIP Amendment.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements ofsections 110(a)(2)(A)-(K) and 110(l) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and

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recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 21, 1994.

Patricia L. Meaney,

Acting Deputy Regional Administrator, Region I.

[FR Doc. 94–24371 Filed 9–30–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 70

[MS01; FRL–5082–8]

Clean Air Act Proposed Full Approval of Operating Permits Program; State of Mississippi

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval.

SUMMARY: The EPA proposes to grant full approval to the Operating Permits Program submitted by the State of Mississippi for the purpose of complying with Federal requirements which mandate that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by November 2, 1994.

ADDRESSES: Written comments should be addressed to Carla Pierce at the Region IV address.

Copies of the State's submittal and other supporting information used in developing the proposed full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, GA 30365. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Carla E. Pierce, Regional Program Manager, Air Programs Branch, Air Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, GA 30365, telephone (404) 347–2864.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act Amendments of 1990, (Clean Air Act ("Act") sections 501–507), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal operating permits program.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

Pursuant to section 502(d) of the Clean Air Act as amended (1990 Amendments), the Governor of each State must develop and submit to the Administrator an operating permits program under State or local law or under an interstate compact meeting the requirements of title V of the Act. The Mississippi Department of Environmental Quality (MDEQ) requested, under the signature of Governor Kirk Fordice, approval of its operating permits program with full authority to administer the program in all areas of the State of Mississippi, with the exceptions of the Indian reservations and tribal lands.

In the MDEQ operating permits program submittal, Mississippi does not assert jurisdiction over Indian lands or reservations for purposes of 40 CFR part 70 and title V. EPA will, at a future date, conduct a Federal title V operating permits program governing title V sources of air emissions on Indian lands and reservations in Mississippi.

The Mississippi submittal, provided as Section I–"Program Description and Implementation Summary," addresses 40 CFR 70.4(b)(1) by describing how the MDEQ intends to carry out its responsibilities under the part 70 regulations. The program description has been deemed to be sufficient for meeting the requirement of 40 CFR 70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), the Governor is required to submit a legal opinion from the Attorney General (or the attorney for the State air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of a title V operating permits program. The State of Mississippi submitted an Attorney General's Opinion and a Supplemental Attorney General's Opinion demonstrating adequate legal authority as required by Federal law and regulation.

Section 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit application forms, permit forms and relevant guidance to assist in the State's implementation of its permit program. Appendix 10 of the MDEQ submittal includes the permit application form, and it has been determined that the application form meets the requirements of 40 CFR 70.5(c).

EPA intends to develop an Implementation Agreement with Mississippi, although this proposed action does not depend on the Implementation Agreement.

2. Regulations and Program Implementation

The State of Mississippi has submitted Regulations APC-S–6, "Mississippi Air Emissions Operating Permit Regulations for the purposes of title V of the Federal Clean Air Act," for implementing the State part 70 program as required by 40 CFR 70.4(b)(2). Sufficient evidence of their procedurally correct adoption was included in Appendices 7 and 12 of the submittal. Copies of all applicable State statutes and regulations which authorize the part 70 program, including those governing State administrative procedures, were submitted with the State's program.

The Mississippi operating permits regulations followed part 70 very closely. The following requirements, set out in EPA's part 70 operating permits program review, are addressed in Section II of the State's submittal: (A) Applicability requirements, (40 CFR 70.3(a)): APC-S–6, Section I.B; (B) Permit applications, (40 CFR 70.5): APC-S–6, Section II; (C) Provisions for permit content, (40 CFR 70.6): standard permit requirements: APC-S–6, Section III.A.1; permit duration: APC-S–6, Section III.A.2; monitoring and related record keeping and reporting requirements: APC-S–6, Section III.A.3; compliance requirements: APC-S–6, Sections III.B and III.C; (D) Operational flexibility provisions, (40 CFR 70.4(b)(12)): APC-S–6, Section IV.F; (E) Provisions for permit issuance, renewals, reopenings and revisions, including public participation (40 CFR 70.7): APC-S–6, Section IV; and (F) Permit review by EPA and affected States (40 CFR 70.6): APC-S–6, Section V. Mississippi Code Annotated (MSCA) sections 49–17–36 and 49–17–43, satisfy the requirements of 40 CFR 70.11, for enforcement authority.

The MDEQ has included criteria to determine insignificant activities and emissions levels in APC-S–6, Section VII. Section VII.A includes activities/emissions sources which are not required to be included in the permit application. Section VII.B includes activities/emissions sources that must be listed in the permit application, but their emissions do not have to be quantified. Notwithstanding Sections VII.A and B, applicants are required to include all emission sources and quantify emissions if needed to determine major source compliance with an applicable requirement, or to collect any permit fee. Applicants shall also include all emission sources with a potential to emit greater than 1 pound per hour of any regulated air pollutant that is not a hazardous air pollutant, or greater than 0.1 pound per hour of any hazardous air pollutant.

Part 70 of the operating permits regulations requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given that this is a distinct reporting obligation under 40 CFR 70.6(a)(3)(iii)(A). Where "prompt" is defined in the individual permit but not in the program regulations, EPA may veto permits that do not require sufficiently prompt reporting of deviations. The State of Mississippi has not defined prompt in its program regulations with respect to reporting of deviations. The MDEQ, however, has committed to define "prompt" as discussed above in each individual permit.

The State statute (MSCA 49–2–9) contains a provision that allows the State to adopt, modify, repeal, and promulgate, after due notice and hearing, and where not otherwise prohibited by Federal or State law, to make exceptions to and grant exceptions and variances from, and to enforce rules and regulations implementing or effectuating the powers and duties of the Mississippi Commission on Environmental Quality under any and all statutes within the Commission's jurisdiction, and as the Commission may deem necessary to prevent, control and abate existing or potential pollution. Regulation APC-S–6, Section I.B.8 prohibits exceptions or variances to be granted from any of the regulations regarding title V permits. The program submittal is approvable based on these limitations placed on the state's variance provision.

The complete MDEQ program submittal and the Technical Support Document are available for review for more detailed information.

3. Permit Fee Demonstration

MSCA sections 49–17–14 and 49–17–30 require the establishment of a permit fee sufficient to cover the reasonable direct and indirect costs of the title V operating permit program. The fee amount is set annually by order of the Mississippi Commission on Environmental Quality and is based on either actual or allowable emissions at the request of the source. Under State law, the minimum annual fee assessment is set at $250 and the maximum annual fee assessment is set at $250,000.

The MDEQ has elected to assess a title V operating permit fee below the Federal presumptive minimum permit fee. Mississippi's fee amount was determined through a detailed fee demonstration study that was conducted by the John C. Stennis Institute of Government at Mississippi State University. The basis of the fee demonstration was a comprehensive workload analysis for the title V program.

Based on the results of the fee demonstration study, the Mississippi Commission on Environmental Quality issued an Order setting the title V fee at $23.39 per ton of regulated air pollutants for the first year of the title V program. The fee may be adjusted annually by Order of the Commission to account for inflation factors or changing program costs. EPA has determined that Mississippi's fee demonstration is adequate and meets the requirements of 40 CFR 70.9.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation. Mississippi has demonstrated in its title V program submittal broad legal authority to incorporate into permits and enforce all applicable requirements. Additionally, the State has adopted APC-S–1, Section 8, "Provisions for Hazardous Air Pollutants," which provides adequate legal authority to implement and enforce applicable section 112 rules, emission standards, and requirements. Mississippi has further supplemented its broad legal authority with a commitment to "take action, following promulgation by EPA of regulations implementing section 112 of title III of the Federal Clean Air Act, and to submit, for EPA approval, MDEQ regulations implementing these provisions." EPA has determined that this commitment, in conjunction with Mississippi's broad statutory and regulatory authority, adequately assures compliance with all section 112 requirements. EPA regards this commitment as an acknowledgement by Mississippi of its obligation to obtain further regulatory authority as needed to issue permits that assure compliance with section 112 applicable requirements. This commitment does not substitute for compliance with part 70 requirements that must be met at the time of program approval.

EPA is interpreting the above legal authority and commitment to mean that Mississippi is able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Document accompanying this proposed full approval and the April 13, 1993 guidance memorandum entitled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz.

b. Implementation of 112(g) Upon Program Approval. As a condition of approval of the part 70 program, Mississippi is required to implement section 112(g) of the Act from the effective date of the part 70 program. Imposition of case-by-case determinations of MACT or offsets under section 112(g) will require the use of a mechanism for establishing federally enforceable restrictions on a source-specific basis. EPA is proposing to approve Mississippi's preconstruction permitting program found in APC-S–2 under the authority of title V and part 70 solely for the

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purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. EPA believes this approval is necessary so that Mississippi has a mechanism in place to establish federally enforceable restrictions for section 112(g) purposes from the date of part 70 approval. Section 112(l) provides the authority for approval for the use of State air programs to implement 112(g), and title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g), and does not confer or imply approval for purposes of any other provision under the Act. If Mississippi does not wish to implement section 112(g) through its preconstruction permit program and can demonstrate that an alternative means of implementing section 112(g) exists, EPA may, in the final action approving Mississippi's part 70 program, approve the alternative instead.

This approval only extends until such time as the State is able to adopt regulations consistent with any regulations promulgated by EPA to implement section 112(g). Accordingly, EPA is proposing to limit the duration of this approval to a reasonable time following promulgation of section 112(g) regulations so that Mississippi, acting expeditiously, will be able to adopt regulations consistent with the section 112(g) regulations. EPA is proposing here to limit the duration of this approval to 18 months following promulgation by EPA of section 112(g) regulations.

c. *Program for Delegation of Section 112 Standards as Promulgated.* Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 General Provisions Subpart A and standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated, and to delegate existing standards under 40 CFR parts 61 and 63 for part 70 sources.[1] Mississippi has informed EPA that it intends to accept delegation of section 112 standards through adoption by reference. This program applies to both existing and future standards.

Additionally, Mississippi has requested delegation of current and future section 112 standards under section 112(l)(5) and 40 CFR 63.91 for sources not subject to part 70 requirements. The State has demonstrated that it has broad legal authority which covers all section 112 sources. MSCA sections 49–2–9 and 49–17–29(a), and APC-S–1 section 8, give the State the authority to implement each applicable section 112 rule, emission standard, or requirement for sources not subject to part 70 requirements. Mississippi has demonstrated that it will expeditiously implement section 112 requirements for these sources pursuant to a schedule after EPA promulgation, and that it has sufficient enforcement authority to adequately enforce section 112 requirements. The State has also demonstrated that it has adequate resources to implement current section 112 standards. With respect to future section 112 requirements, Mississippi has committed to provide EPA with future demonstrations of resource adequacy as necessary when new requirements are promulgated and the resource burdens associated with those requirements become known. Therefore, for sources not subject to part 70 requirements, EPA is proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of future section 112 standards that are unchanged from Federal standards as promulgated, and to delegate existing standards under 40 CFR parts 61 and 63 for non-part 70 sources.

d. *Commitment to implement Title IV of the Act.* The MDEQ has committed to "take action, following promulgation by EPA of regulations implementing sections 407 and 410 of the Act, or revising either part 72 or the regulations implementing sections 407 or 410, to either incorporate such new revised provisions by reference or submit, for EPA approval, MDEQ regulations implementing these provisions." The MDEQ committed to adopt and submit to EPA the above referenced regulations no later than January 1, 1995.

B. Proposed Actions

1. Full Approval of the Program

EPA proposes to fully approve the operating permits program submitted to EPA from the State of Mississippi on November 15, 1993. As a condition of full approval, Mississippi has issued a commitment to EPA which confirms that the State's interpretation of a "title I modification" is consistent with EPA's current interpretation of that term. In addition, the State's regulatory definition is on its face consistent with EPA's interpretation. See APC-S–6, Section I.A.31. EPA believes the better interpretation of the phrase "modifications under any provision of title I of the Act" in 40 CFR 70.7(e)(2)(i)(A)(5) to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under title I of the Act. This would include State preconstruction review programs approved into the State Implementation Plan (SIP) under section 110(a)(2)(C) and regulations addressing source changes that trigger National Emission Standards for Hazardous Air Pollutants (NESHAPs) established pursuant to section 112 prior to the 1990 amendments. EPA is soliciting comment in the current proposal to revise part 70 on the proper definition of "title I modification." Unless Mississippi changes its own interpretation from that indicated in its commitment, the program will be fully approvable under either option discussed in that proposal. See 56 FR 44460, 44515 (August 29, 1994). EPA has determined that the program is otherwise adequate to meet the minimum elements of a State operating permits program as specified in 40 CFR part 70.

2. Program for Straight Delegation of Section 112 Standards

As discussed above in section II.A.4.c, EPA is proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations applies to all section 112 sources. Additionally, EPA is proposing to delegate existing standards under 40 CFR parts 61 and 63 for all section 112 sources.

[1] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of "major" for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

III. Administrative Requirements

A. Request for Public Comments

EPA is requesting comments on all aspects of this proposed full approval. Copies of the State's submittal and other information relied upon for the proposed full approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process; and

(2) To serve as the record in case of judicial review. EPA will consider any comments received by November 2, 1994.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from executive order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 21, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94–24372 Filed 9–30–94; 8:45 am]

BILLING CODE 6560–50–F

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Notices

Federal Register
Vol. 59, No. 190
Monday, October 3, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Housing Guaranty Program; Investment Opportunity

The U.S. Agency for International Development (USAID) has authorized the guaranty of loans to the Republic of Indonesia ("Borrower") as part of USAID's development assistance program. The proceeds of these loans will be used to facilitate the delivery of urban environment infrastructure for the benefit of low-income families in Indonesia. At this time, the Government of Indonesia has authorized USAID to request proposals from eligible lenders for a loan under this program of $25 Million U.S. Dollars (U.S. $25,000,000). The name and address of the Borrower's representatives to be contacted by interested U.S. lenders or investment bankers, and the amount of the loan and project number are indicated below:

Government of Indonesia

Project No.: 497–HG–002—$25,000,000
Housing guaranty Loan No.: 49997–HG–006 A01

1. Attention: Mr. Darsjah, Director General of Budget, Ministry of Finance, Jalan Lapangan Banteng Timur No. 2, Jakarta, Indonesia, Telex No.: 45799 DJMLNIA or Telefax No.: 62–21–365859 or 374530 (preferred communication) Telephone No.: 62–21–3458289, 372758 or 3842234 or 3848294
2. Attention: Mr. Paul Sutopo, Bank of Indonesia, Jalan M.H. Thamrin No. 2, Jakarta, Indonesia, Telex No.: 44200 BISIR IA or 46611 BISIR IA, Telefax No.: 62–21–3452892, Telephone No.: 62–21–367972
3. Attention: Mr. Ibrahim Zarkasi, Bank of Indonesia, One World Financial Center, 200 Liberty Street, 6th Floor, New York, N.Y. 10281, Telefax No.: 212/945–1316, Telephone No.: 212/945–1310 or 1311.

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids to all of the Borrower's representatives by *Monday, October 17, 1994, 12:00 noon Eastern Standard Time.* Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. William Frej, Director, Regional Housing and Urban Development Office/Jakarta, USAID, Box 4, APO AP 96520 (Street address: J1 Medan Merdeka Selatan No. 5, Jakarta, Indonesia) Telex No.: 44218 AMEMB IA, Telefax No.: 62–21–380–6694 (preferred communication), Telephone No.: 62–21–360–360

Mr. David Grossman, Assistant Director/Mr. Peter Pirnie, Financial Advisor, Address: U.S. Agency for International Development, Office of Environment and Urban Programs, G/ENV/UP, Room 401, SA–2, Washington, DC 20523–0214, Telex No.: 892703 AID WSA, Telefax No.: (202) 663–2552 or (202) 663–2507 (preferred communication), Telephone No.: (202) 663–2530 or (202) 663–2547,

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $25 million.
(2) *Term:* 30 years.
(3) *Grace Period:* Ten years grace on repayment of principal (during grace period, semi-annual payments of interest only). If *variable* interest rate, repayment of principal to amortize in equal, semi-annual installments over the remaining 20-years life of the loan. If *fixed* interest rate, semi-annual level payments of principal and interest over the remaining 20-year life of the loan.
(4) *Interest Rate:* Alternatives of both fixed and variable rate loans are requested.
(a) *Fixed Interest Rate:* If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond, specifically the 7½ percent U.S. Treasury Bond due November 15, 2024. Such rate is to be set at the time of acceptance.
(b) *Variable Interest Rate:* To be based on the six-month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to convert to fixed. The rate should be adjusted weekly.
(5) *Prepayment:*
(a) Offers should include any options for prepayment and mention prepayment premiums, if any.
(b) Only in an extraordinary event to assure compliance with statutes binding USAID, USAID reserves the right to accelerate the loan (it should be noted that since the inception of the USAID Housing Guaranty Program in 1962, USAID has not exercised its right of acceleration).
(6) *Fees:* Offers should specify the placement fees and other expenses, including USAID fees and Paying and transfer Agent fees. Lenders are requested to include all legal fees and out-of-pocket expenses in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan. *All fees should be clearly specified in the offer.*
(7) *Closing Date:* Not to exceed 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower, and thereafter, subject to certain conditions required of the Borrower by USAID as set forth in agreements between USAID and the Borrower.

The full repayment of the loans will be guaranteed by USAID. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive the USAID guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for the USAID guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by USAID.

Information as to the eligibility of investors and other aspects of the USAID housing guaranty program can be obtained from: Mr. Peter M. Kimm, Director, Office of Environment and Urban Programs, U.S. Agency for International Development, Room 401, SA–2, Washington, DC 20523–0214, Fax Nos: (202) 663–2552 or 663–2507, Telephone: (202) 663–2530.

Dated: September 28, 1994.

Michael G. Kitay,

Assistant General Counsel, Bureau for Global Programs, Field Support and Research, U.S. Agency for International Development.

[FR Doc. 94–24389 Filed 9–30–94; 8:45 am]
BILLING CODE 6116–01–M

Housing Guaranty Program; Investment Opportunity

The U.S. Agency for International Development (USAID) has authorized the guaranty of loans to the Democratic Socialist Republic of Sri Lanka ("Borrower") as part of USAID's development assistance program. At this time, the Government of Sri Lanka has authorized USAID to request proposals from eligible lenders for a loan under this program of $10 Million U.S. Dollars (US$10,000,000). The Government of Sri Lanka ("GOSL") has retained the services of a Financial Advisor for this borrowing. Interested U.S. lenders or investment bankers may submit bids either directly to the Borrower's representative and USAID or through the Financial Advisor retained by GOSL for the borrowing.

The names and addresses of (1) the Borrower's representative, and (2) the Borrower's Financial Advisor for this financing (for those who wish to bid through the Financial Advisor), to be contacted by interested U.S. lenders or investment bankers, as well as the amount of the loan and project number, are indicated below:

Government of Sri Lanka

Project No.: 383–HG–004—$10,000,000
Housing Guaranty Loan No.: 383–HG–004 A01

1. Attention: (Mrs.) V.M.Y. Casie Chitty, Director General, Address: Ministry of Finance, Department of Fiscal Policy and Economic Affairs, The Secretariat, Colombo 1, Sir Lanka, Telex No.: 21409 CE, Telefax No.: 011 (94) 1–449–823 (preferred communication), Telephone Nos.: 011 (94) 1–433–357 or 011 (94) 1–434–278.
2. Attention: Mr. Miner H. Warner, President, Address: Public Resources International, 21 West Street (27th Floor), New York, N.Y. 10006, Telefax No.: (212) 363–8399 (preferred communication), Telephone No.: (212) 363–8383.

Interested lenders should contact the Borrower, or its Financial Advisor (if they wish to bid via GOSL's Financial Advisor), as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids direct to the Borrower's representative with copies to the Borrower's Financial Advisor by *Tuesday, September 20, 1994, 12:00 noon Eastern Daylight Time.* Bids should be open for a period of 48 hours from the bid closing date. Please note that the Borrower reserves the right to accept or reject any bid without being obliged to give any reasons. Copies of all bids should be simultaneously sent to the following:

1. Mr. Earl Kessler, Director/RHUDO/New Delhi, USAID/New Delhi, India (Street address: c/o American Embassy, Chanakyapuri New Delhi—110 021, India), Telefax No.: 011 (91) 11–686–8594 (preferred communication), Telephone No.: 011 (91) 11–686–5301
2. Ms. Kamalini Fernando, Housing Advisor, USAID/Colombo, Sri Lanka (Street address: USAID/Colombo, 356 Galle Road, Colombo, Sri Lanka), Telefax No.: 011 (94) 1–574–333 or 011 (94) 1–574–500 (preferred communication), Telephone No.: 011 (94) 1–574–296
3. Mr. David Grossman, Assistant Director/Mr. Peter Pirnie, Financial Advisor, Address: U.S. Agency for International Development, Office of Environment and Urban Programs, G/ENV/UP, Room 401, SA–2, Washington, D.C. 20523–0214, Telefax No.: 892703 AID WSA, Telefax No.: (202) 663–2552 or (202) 663–2507 (preferred communication), Telephone No.: 202/663–2530 or (202) 663–2547.

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $10 million.
(2) *Term:* 30 years.
(3) *Grace Period:* Ten years grace on repayment of principal (during grace period, semi-annual payments of interest only). If *variable* interest rate, repayment of principal to amortize in equal, semi-annual installments over the remaining 20-year life of the loan. If *fixed* interest rate, semi-annual level payments of principal and interest over the remaining 20-year life of the loan.
(3) *Interest Rate:* Alternatives of both fixed and variable rate loans are requested.
(a) *Variable Interest Rate:* To be based on the three-month or six-month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to convert to fixed. The rate should be adjusted weekly.
(b) *Fixed Interest Rate:* If rates are to be quoted on a spread over an index, the lender should use as its index a long bond, specifically the 7½% U.S. Treasury bond due November 15, 2024. Such rate is to be set at the time of acceptance.
(5) *Prepayment:*
(a) Offers should include any options for prepayment and mention prepayment premiums, if any.
(b) Federal statutes governing the activities of the USAID Housing Guaranty Program require that the proceeds of USAID-guaranteed loans be used to provide affordable shelter and related infrastructure and services to below median-income families. In the extraordinary event that the Borrower materially breaches its obligation to comply with this, or related, requirements, USAID reserves the right, among its other rights and remedies, to accelerate the loan. (It should be noted that since the inception of the USAID Housing Guaranty Program in 1962, USAID has not exercised its right of acceleration.)
(6) *Fees:* Please note that Lenders' placement fees (if any), legal fees, and out-of-pocket expenses are to be *included* in the rate quoted for this financing (i.e., such fees will not be deductible from the proceeds of the loan). The initial upfront fees of USAID and the Paying and Transfer Agent shall be payable at closing from the proceeds of the loan. In the event of bidding through the Financial Advisor, the Investor is required to arrange with the Financial Advisor regarding the fees to be paid, which are also to be included in the interest rate to be quoted.
(7) *Closing Date:* Not to exceed 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower, and thereafter, subject to certain conditions required of the Borrower by USAID as set forth in agreements between USAID and the Borrower.

The full repayment of the loans will be guaranteed by USAID. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive the USAID guaranty are those specified in Section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations,

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partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for the USAID guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by USAID.

Information as to the eligibility of investors and other aspects of the USAID Housing Guaranty Program can be obtained from: Mr. Peter M. Kimm, Director, Office of Environment and Urban Programs, U.S. Agency for International Development, Room 401, SA–2, Washington, D.C. 20523–0214, Fax No.: (202) 663–2552 or 663–2507, Telephone: 202/663–2530.

Dated: September 9, 1994.

Michael G. Kitay,

Assistant General Counsel, Bureau for Global Programs, Field Support and Research, U.S. Agency for International Development.

[FR Doc. 94–24390 Filed 9–30–94; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94–096–1]

Addition of One Genetically Engineered Tomato Line to Determination of Nonregulated Status for Calgene, Inc.

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Animal and Plant Health Inspection Service is announcing that it has added one genetically engineered tomato line to those subject to its October 19, 1992, interpretive ruling for FLAVR SAVR™ tomatoes, that the subject FLAVR SAVR™ lines need no longer be regulated. The effect of this action is that one additional delayed-softening tomato line, which has been modified by the addition of genetic material identical to that added to other tomato lines covered by the initial determination and is designated by Calgene as FLAVR SAVR™ line N73 1436–111, will also no longer be subject to regulation under 7 CFR part 340.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Schechtman, Senior Microbiologist, Biotechnology Coordination and Technical Assistance, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7601.

SUPPLEMENTARY INFORMATION: On October 19, 1992, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (57 FR 47608–47616, Docket No. 92–087–2) a notice announcing the issuance of an interpretive ruling that the Calgene, Inc., FLAVR SAVR™ tomato does not present a plant pest risk and is not a regulated article under the regulations contained in 7 CFR part 340. That action was in response to a petition submitted by Calgene seeking a determination from APHIS that its FLAVR SAVR™ tomato no longer be deemed a regulated article based on an absence of plant pest risk. The effect of the action was that previously field-tested lines of the FLAVR SAVR™ tomato and their descendants would no longer be regulated under the regulations in 7 CFR part 340.

FLAVR SAVR™ tomatoes were defined by Calgene in its initial petition to include any tomatoes transformed with one of seven identified plasmid vectors that all carry an antisense copy of the tomato polygalacturonase gene and a bacterial neomycin phosphotransferase gene with associated regulatory sequences. Calgene's initial request to APHIS in 1992 was for a determination pertaining to all FLAVR SAVR™ transformants produced in tomato using any one of the seven plasmid vectors. Calgene indicated in its petition that data provided to APHIS was representative of the data gathered for all lines tested up to that time. The initial determination announced by APHIS on October 19, 1992, only applied to those lines that had already been field tested. However, APHIS indicated that new lines were likely to exhibit properties similar to those of lines already field tested under permit. The determination also allowed for cross-breeding of the identified FLAVR SAVR™ tomato lines with any other lines or cultivars of tomato without permit.

The new line that is the subject of this notice was a new transformant produced using one of the same plasmid vectors that were previously reviewed in our October 19, 1992, determination. Line N73 1436–111 has been field tested in accordance with APHIS regulations in 7 CFR part 340. Data provided to APHIS indicates that the new transformant line, produced in a manner identical to the earlier transformant lines, behaves similarly to those earlier FLAVR SAVR™ tomato lines to which the determination initially applied. Reports from field trials and other data indicate that tomato line N73 1436–111 grows normally, exhibits the expected morphological, reproductive, and physiological properties, and does not have unexpected pest or disease susceptibility or symptoms. Therefore, APHIS' determination of nonregulated status of October 19, 1992, is considered to apply to this new transformant line as well.

Done in Washington, DC, this 27th day of September 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–24374 Filed 9–30–94; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 94–098–1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service during the month of August 1994. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Thomas, Program Assistant, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245. For a copy of this month's list, or to be placed on the mailing list, write to Ms. Thomas at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 et seq.) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License.

The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 et seq.) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month, the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of August 1994. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 27th day of September 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–24375 Filed 9–30–94; 8:45 am]

BILLING CODE 3410–34–P

Federal Grain Inspection Service

Designation of the Little Rock (AR), Los Angeles (CA), and Ohio Valley (IN) Agencies

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of Little Rock Grain Exchange Trust (Little Rock), Los Angeles Grain Inspection Service, Inc. (Los Angeles), and Ohio Valley Grain Inspection, Inc. (Ohio Valley), to provide official inspection services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: November 1, 1994.

ADDRESSES: Janet M. Hart, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the May 3, 1994, **Federal Register** (59 FR 22816), FGIS announced that the designations of Little Rock, Los Angeles, and Ohio Valley will expire on October 31, 1994, and asked persons interested in providing official services in the geographic areas assigned to Little Rock, Los Angeles, and Ohio Valley to submit an application for designation. Applications were due by May 31, 1994. Little Rock, Los Angeles, and Ohio Valley, the only applicants, each applied for designation in the entire area they are currently assigned.

FGIS requested comments on the applicants in the July 1, 1994, **Federal Register** (59 FR 33950). Comments were due by August 1, 1994. FGIS received no comments by the deadline.

FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Little Rock, Los Angeles, and Ohio Valley are able to provide official services in the geographic areas for which they applied.

Effective November 1, 1994, and ending October 31, 1997, Little Rock, Los Angeles, and Ohio Valley are designated to provide official inspection services in the geographic areas specified in the May 3, 1994, **Federal Register**.

Interested persons may obtain official services by contacting Little Rock at 501–372–5302, Los Angeles at 213–721–9216, and Ohio Valley at 812–858–5444.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 19, 1994.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 94–24232 Filed 9–30–94; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity for Designation in the Indianapolis (IN) and Quincy (IL) Areas

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designations of Indianapolis Grain Inspection & Weighing Service, Inc. (Indianapolis), and Quincy Grain Inspection & Weighing Service, Inc. (Quincy), will end March 31, 1995, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before November 1, 1994.

ADDRESSES: Applications must be submitted to Janet M. Hart, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Janet M. Hart. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Indianapolis, main office located in Beech Grove, Indiana, to provide official inspection services under the Act on April 1, 1994, and Quincy, main office located in Quincy, Illinois, to provide official inspection services under the Act on April 1, 1992.

Section 7(g)(1) of the Act provides that designations of official agencies shall end no later than triennially and

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may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Indianapolis and Quincy end on March 31, 1995.

The geographic area presently assigned to Indianapolis, pursuant to Section 7(f)(2) of the Act, in the State of Indiana, which will be assigned to the applicant selected for designation is as follows:

Bartholomew; Brown; Hamilton, south of State Route 32; Hancock; Hendricks; Johnson; Madison, west of State Route 13 and south of State Route 132; Marion; Monroe; Morgan; and Shelby Counties.

The geographic area presently assigned to Quincy, pursuant to Section 7(f)(2) of the Act, in the State of Illinois, which will be assigned to the applicant selected for designation is as follows:

Adams, Brown, Greene, Macoupin (southwest of a straight line from the junction of State Route 111 and the northern Macoupin County line southeast to the junction of Interstate 55 and State Route 16), and Pike Counties.

Exceptions to Quincy's assigned geographic area are the following locations inside Quincy's area which have been and will continue to be serviced by the following official agencies:

1. Keokuk Grain Inspection Service, Inc.: Ursa Farmers Coop, Meyer, and Ursa Farmers Coop, Ursa, both in Adams County; and

2. Springfield Grain Inspection, Inc.: Cargill, Inc., and Quincy Soybean Company, Florence, Pike County.

Interested persons, including Indianapolis and Quincy are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning April 1, 1995, and ending no later than March 31, 1998. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 19, 1994.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 94–24233 Filed 9–30–94; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity to Comment on the Applicants for the Grand Forks (ND), Lima (OH), and Virginia Areas

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS requests comments on the applicants for designation to provide official services in the geographic areas currently assigned to the Grand Forks Grain Inspection Department, Inc. (Grand Forks), Lima Grain Inspection Service, Inc. (Lima), and the Virginia Department of Agriculture and Consumer Services (Virginia).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by November 1, 1994.

ADDRESSES: Comments must be submitted in writing to Janet M. Hart, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36JHART]. ATTMAIL and FTS2000MAIL users may respond to !A36JHART. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–720–1015, attention: Janet M. Hart. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the August 1, 1994, **Federal Register** (59 FR 38954), FGIS asked persons interested in providing official services in the geographic areas assigned to Grand Forks, Lima, and Virginia to submit an application for designation. Grand Forks, Lima, and Virginia, the only applicants, each applied for designation in the entire area currently assigned to them.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicants written notification of the decision.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 19, 1994.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 94–24234 Filed 9–30–94; 8:45 am]

BILLING CODE 3410–EN–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Extension of Deadline for Comments on Preliminary Draft of the Report of the Working Group of Intellectual Property Rights

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Extension of deadline for public comments.

SUMMARY: The Working Group on Intellectual Property Rights of the White House Information Infrastructure Task Force issued a preliminary draft of its report, "Intellectual Property and the National Information Infrastructure," and solicited public comment. As announced in a previous notice regarding public comment on the preliminary report, published at 59 FR 35912 (July 14, 1994), the deadline for submission of written comments was September 7, 1994. Comments in reply to initial written comments were to be submitted no later than September 28, 1994. The deadline for submission of comments in reply to initial written comments is extended to October 21, 1994, to allow more time for the public to review the large number of initial comments submitted.

DATES: Comments in reply to initial written comments may be submitted no later than October 21, 1994.

ADDRESSES: An original and four copies of comments should be submitted to the Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office, Box 4, Washington, D.C. 20231, marked to the attention of Terri A. Southwick, Attorney-Advisor, Office of Legislative and International Affairs. Alternatively, comments may be submitted electronically to the following Internet address: nii-ip@uspto.gov. Initial comments that have been submitted are available for public inspection at the Scientific and Technical information Center of the Patent and Trademark Office, Room 2C01, Crystal Plaza 3/4, 2021 Jefferson Davis Highway, Arlington, Virginia, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except holidays. Reply comments will be available for public inspection at the same location.

FOR FURTHER INFORMATION CONTACT: Terri A. Southwick, Attorney-Advisor, Office of Legislative and International Affairs, U.S. Patent and Trademark Office, Box 4, Washington, DC 20231. Telephone: (703) 305–9300/Fax: (703) 305–8885.

SUPPLEMENTARY INFORMATION: The Working Group on Intellectual Property Rights, chaired by Assistant Secretary of Commerce and Commissioner of Patents and Trademarks Bruce A. Lehman, was established as part of the White House Information Infrastructure Task Force. The Task Force, chaired by Secretary of Commerce Ronald H. Brown, was created to work with Congress and the private sector to develop comprehensive telecommunications and information policies aimed at articulating and implementing the Administration's vision for the National Information Infrastructure (NII).

The Preliminary Draft of the Report of the Working Group on Intellectual Property Rights represents the Working Group's examination and analysis to date of the intellectual property implications of the NII, and includes the Group's draft findings and recommendations. While it addresses each of the major areas of intellectual property law, including patents, trademarks and trade secrets, the preliminary draft focuses primarily on copyright law and its application and effectiveness in the context of the NII.

Dated: September 28, 1994.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Potents and Trademarks.

[FR Doc. 94–24475 Filed 9–30–94; 8:45 am]

BILLING CODE 3510–16–M

Public Hearing and Request for Comments on Commercial Security on the National Information Infrastructure

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of public hearing and request for public comments.

SUMMARY: The Security Issues Forum of the Infrastructure Task Force (IITF) and Mega-Project III of the U.S. National Information Infrastructure Advisory Council (NIIAC) request public input on issues associated with the security of commercial products and services on the National Information Infrastructure (NII). Interested members of the public, especially representatives from the entertainment, computing and software industries, are invited to participate in a public hearing and to submit written comments on any of the topics outlined in the supplementary information section of this notice.

DATES: A public hearing will be conducted by the Patent and Trademark Office on Thursday, October 20, 1994, from 9:00 a.m. until 12:30 p.m. Those wishing to participate as a witness in the hearing must request an opportunity to do so no later than October 13, 1994. Individuals who wish to offer general comments or present questions to witnesses may request an opportunity to do so during the hearing. Written comments on the topics in the supplementary information section of this notice will be accepted until December 2, 1994.

ADDRESSES: The public hearing will be held at the Sunnyvale Community Center, 550 East Remington Drive, Sunnyvale, California. Those interested in presenting written comments on the topics identified in the supplementary information, or any other related topics, should address their comments to the Commissioner of Patents and Trademarks, marked to the attention of Jeff Kushan. Comments submitted by mail should be sent to Commissioner of Patents and Trademarks, Box 4, Patent and Trademark Office, Washington, DC 20231. Comments may also be submitted by fax to (703) 305–8885 and by electronic mail to "Comments-security@uspto.gov." Written comments should include the following information:

—Name and affiliation, if any, of the individual responding;

—An indication of whether comments offered represent views of the respondent's organization or are the respondent's personal views; and

—If applicable, information on the respondent's organization, including the type of organization (e.g., business, trade group, university, non-profit organization) and general areas of interest.

Parties offering testimony or written comments are asked to provide them on paper and, where possible, in machine-readable format. Machine-readable submissions may be provided either as electronic mail messages sent over the Internet, or on a 3.5" floppy disk formatted for use in either a Macintosh or MS–DOS based computer. Machine-readable submissions should be provided as unencoded, unformatted ASCII text.

Requests to participate as a witness in the hearing should be submitted to Jeff Kushan by mail, phone or fax (see information regarding addresses above). No requests for participation as a witness will be accepted through electronic mail.

Written comments and transcripts of the hearings will be available for public inspection by December 10, 1994, at the Patent and Trademark Office, in Room 902 of Crystal Park Two, 2121 Crystal Drive, Arlington, Virginia. In addition, transcripts of the hearings and comments provided in machine-readable format will be available by December 10, 1994, through anonymous file transfer protocol (ftp) via the Internet (address: comments.uspto.gov and www.uspto.gov).

FOR FURTHER INFORMATION CONTACT: Jeff Kushan by telephone at (703) 305–9300, by fax at (703) 305–8885, by electronic mail at kushan@uspto.gov, or by mail marked to his attention addressed to the Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

I. Issues for Public Comment

A. Background

The National Information Infrastructure is a system of high-speed telecommunications networks, databases, and advanced computer systems that will make electronic information and entertainment products more widely available and accessible to the public than ever before. This increased availability and accessibility will dramatically affect the way information and entertainment products are created, marketed and delivered throughout the world. Consequently, the commercial viability of the NII hinges not only upon effectively promoting and encouraging use of the NII by types of users, but also upon implementing standards, policies and practices that ensure that the owners of products can effectively control access to and the integrity of their electronically disseminated products and services. In this regard, it is essential that the public and private sectors collaborate to ensure that the interests of owners and users of intellectual property are adequately considered in any discussion of proposed standards and policies that may be established.

To address the issues raised by the NII, the President formed the Information Infrastructure Task Force (IITF). The mission of the IITF is to

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articulate and implement the Administration's vision for the NII. The IITF is working with the private sector, public interest groups, Congress and State and local governments, to develop comprehensive telecommunications and information policies and programs that best meet the country's needs. The IITF is chaired by the Secretary of Commerce and is comprised of senior Administration officials having expertise in the technical and legal areas of particular importance to the NII. The NII Security Issues Forum was established within the IITF to address the cross-cutting issue of security on the NII. The Forum is chaired by Sally Katzen, Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget.

In addition to the IITF, the President has established the U.S. National Information Infrastructure Advisory Council (NIIAC). The NIIAC represents industry, labor, and public interest groups, and advises the Secretary of Commerce on issues relating to the NII. The Council has established three Mega-Projects which will form the backbone for initial programmatic work of the NIIAC. Mega-Project III, co-chaired by John Cooke of the Disney Channel and Esther Dyson of EDVenture, is responsible for addressing security, intellectual property and privacy issues as they relate to the NII.

B. Structure and Content of Public Hearing

Security is linked inextricably to the commercial success of the NII. The policies and procedures used to ensure the confidentiality, availability, and integrity of digitally produced and transmitted products and services on the NII will determine whether, how, and at what cost such products and services will be made available. Without the existence of appropriate legal, technical and policy mechanisms, the potential of the NII to be a commercially viable means for delivering digital products and services cannot be realized.

Development of policies and procedures that will ensure commercial security of intellectual property on the NII requires study from different perspectives. One such perspective is the legal protection of intellectual property. This topic is presently being addressed by the IITF Working Group on Intellectual Property Rights, chaired by Bruce A. Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks. The Working Group on Intellectual Property has recently released a preliminary report on intellectual property issues on the NII and has conducted a series of public hearings to receive views on the preliminary report and any other concerns about intellectual property raised by the NII.

A second perspective concerns a more functional approach to protecting intellectual property; namely, what legal measures, policy mechanisms, and technological solutions, or combinations thereof, aside from intellectual property laws, can be used to effectively protect commercial products and services delivered or made accessible using the NII. This latter topic is the subject that the Forum and Mega-Project III wish to develop through this public hearing.

The Forum and Mega-Project III seek input from parties who will produce and make accessible commercial products and services via the NII, as well as users of such products and services. A panel of witnesses drawn from the public will be assembled to discuss the following topics with a panel comprising the Commissioner of Patents and Trademarks, members of the Security Information Forum and members of Mega-Project III of the NIIAC, and to field questions and comments from other members of the public:

1. What types of projects and services are you contemplating delivering or making available, or would you like to see delivered or made available on the National Information Infrastructure?

2. What capacity do you want to provide to users of the NII to view, hear, retrieve, reproduce, modify or further distribute your products and services? As a user of such products and services, what capabilities in this regard would you like to see made available by content producers?

3. What commercial threats do you foresee in making products and services available via the NII, in terms of:

(a) Unauthorized access to or theft of products or services; and

(b) Integrity or confidentiality of information delivered or retrieved via the NII?

4. What kinds of technical solutions are you aware of, or would you like to see developed, to address security concerns?

Note: Parties who wish to offer comments or suggestions regarding the adequacy of existing intellectual property laws to address questions of commercial security on the NII should utilize the public comment process established by the Working Group on Intellectual Property rights of the IITF. Copies of the draft report of this working group can be obtained by contacting the Patent and Trademark Office by phone, fax or mail using the information provided in the addresses section of this notice. Copies of the report may also be obtained via the Internet at the addresses listed in the addresses section of this notice.

II. Guidelines for Participation in the Public Hearing

Participants in the public hearing will testify before a panel consisting of members of Mega-Project III of the NIIAC, the Security Issues Forum and the Working Group on Intellectual Property Rights of the IITF. The public hearings will be chaired by Bruce A. Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

Individuals who would like to participate as a witness must request an opportunity to do so no later than October 13, 1994. Each approved participant will be permitted to present brief opening remarks. Once each witness has presented their opening remarks, a general discussion on the topics listed above will be conducted.

Individuals may offer comments or ask questions of the witnesses by requesting an opportunity to do so and being recognized during the hearing by the chair of the meeting. Oral remarks offered in this fashion may not exceed three minutes. No advance approval is required to attend, offer comments, or present questions during the hearing.

Dated: September 28, 1994.

[FR Doc. 94–24458 Filed 9–30–94; 8:45 am]

BILLING CODE 3510–16–M

Performance Review Board Membership

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Announcement of membership of the Patent and Trademark Office Performance Review Board.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), the Patent and Trademark Office is modifying the composition of its Performance Review Board to achieve the maximum possible degree of fairness and equity in the process of appraising, rating and rewarding the performance of senior executives and employees in the Senior-Level and Administratively-Determined pay categories.

This notice (1) announces the appointments of three new members of the Performance Review Board; and (2) establishes rotational term limits for each member to assure consistency, stability and objectivity in the performance appraisal process.

ADDRESSES: Comments should be addressed to Director, Office of Human Resources, Patent and Trademark Office, One Crystal Park, Suite 700, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Colleen Woodard at the above address or telephone (703) 305–8062.

SUPPLEMENTARY INFORMATION: The Patent and Trademark Office Performance Review Board is comprised of the following individuals:

Bradford R. Huther, Chairperson, Associate Commissioner and Chief Financial Officer, Patent and Trademark Office, Washington, DC 20231, Term—expires September 30, 1996

Theodore Morris (New Member), Director, Patent Examining Group 1500, Patent and Trademark Office, Washington, DC 20231, Term—expires September 30, 1996

Carol C. Darr, Associate Administrator, Office of International Affairs, National Telecommunications and Information Administration, Department of Commerce, Washington, DC 20230, Term—expires September 30, 1995

Nicholas P. Godici (New Member), Director, Patent Examining Group 3200, Patent and Trademark Office, Washington, DC 20231, Term—expires September 30, 1996

Paula J. Schneider (New Member), Principal Associate Director for Programs, Office of the Director, Bureau of the Census, Washington, DC 20233, Term—expires September 30, 1996

J.O. Thomas, Deputy Assistant Commissioner for Patent Process Services, Patent and Trademark Office, Washington, DC 20231, Term—expires September 30, 1995

Karl E. Bell, Deputy Director of Administration, National Institute of Standards and Technology, Gaithersburg, MD 20899, Term—expires September 30, 1995

Belkis Leong-Hong, Director, Center for Information Management, Defense Information Systems Agency, Falls Church, VA 22041, Term—expires September 30, 1996

Gerald R. Lucas, Director, Eastern Administrative Support Center, Department of Commerce, Norfolk, VA 23510, Term—expires September 30, 1996.

Bradford R. Huther,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

[FR Doc. 94–24351 Filed 9–30–94; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

September 28, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: October 3, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated September 26, 1994, the Governments of the United States and El Salvador agreed, among other things, to establish a bilateral agreement for cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in El Salvador and exported during the periods October 1, 1994 through December 31, 1994 and January 1, 1995 through December 31, 1995.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish, pursuant to the MOU, a limit for the period beginning on October 1, 1994 and extending through December 31, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 28, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; pursuant to the Memorandum of Understanding dated September 26, 1994 between the Governments of the United States and El Salvador; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 3, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in El Salvador and exported during the period beginning on October 1, 1994 and extending through December 31, 1994, in excess of 450,000 dozen [1]

Textile products in Categories 340/640, which have been exported to the United States prior to October 1, 1994 shall not be subject to this directive.

Textile products in Categories 340/640 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–24408 Filed 9–30–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

[1] The limit has not been adjusted to account for any imports exported after September 30, 1994.

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The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Applicable Form, and OMB Control Number: Third Party Collection Program; DD Form 2569; OMB Control Number 0704–0323.

Type of Request: Reinstatement.

Number of Respondents: 1,224,311.

Responses per Respondent: 1.

Annual Responses: 1,224,311.

Average Burden per Response: 2.5 minutes.

Annual Burden Hours: 50,197.

Needs and Uses: This information will be collected by military treatment facilities (MTF) admissions clerks from beneficiaries (dependents of retirees having (private health insurance) at the time of admission, or by clinic personnel from this same category of beneficiaries receiving outpatient care. It will assist the local MTF commander in determining the proper third party payers to bill for medical care provided to these beneficiaries, as well as facilitate the collection of reasonable hospital costs from third party payers.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Shannah Koss.

Written Comments and recommendations on the proposed information collection should be sent to Ms. Koss at the Office of Management and Budget, Desk Officer for DoD, Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 27, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–24290 Filed 9–30–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 1995 Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of updated mental health per diem rates.

SUMMARY: This notice provides for the updating of hospital-specific per diem rates for high volume providers and regional per diem rates for low volume providers; the updated cap per diem for high volume providers; the beneficiary per diem cost-share amount for low volume providers to be used for FY 1995 under the CHAMPUS Mental Health Per Diem Payment System; and the updated per diem rates for both full-day and half-day CHAMPUS Partial Hospitalization Programs for fiscal year 1995.

EFFECTIVE DATE: The rates contained in this notice are effective for services occurring on or after October 1, 1994.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

For copies of the **Federal Register** containing this notice,contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Stan Regensberg, Program Development Branch, OCHAMPUS, telephone (303) 361–1342. To obtain copies of this document, see the **ADDRESSES** section above. Questions regarding payment of specific claims under the CHAMPUS Mental Health Per Diem Payment System should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** on September 6, 1988, (52 FR 34285) set forth reimbursement changes that were effective for all inpatient hospital admissions in psychiatric hospitals and exempt psychiatric units occurring on or after January 1, 1989. The final rule published in the **Federal Register** on July 1, 1993, (58 FR 35–400) set forth maximum per diem rates for all partial hospitalization admissions on or after September 29, 1993. Included in these final rules were provisions for updating reimbursement rates for each federal fiscal year. As stated in the final rules, each per diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare Prospective Payment System. Medicare has recommended an update factor of 3.7 percent for federal fiscal year 1995 for hospitals and units excluded from the prospective payment system. CHAMPUS will adopt this update factor for FY 1995 as the final update factor. Hospitals and units with hospital-specific rates (hospitals and units with high CHAMPUS volume) will have their FY 1994 CHAMPUS per diem rates updated by 3.7 percent for FY 1995.

The following reflect an update of 3.7 percent.

REGIONAL SPECIFIC RATES FOR PSYCHIATRIC HOSPITALS AND UNITS WITH LOW CHAMPUS VOLUME

United States census region	Rate[2]
Northeast:	
New England	$515
Mid-Atlantic	492
Midwest:	
East North Central	426
West North Central	402
South:	
South Atlantic	509
East South Central	550
West South Central	463
West:	
Mountain	462
Pacific	545

[2] The wage portion of the rate, subject to the area wage adjustment, is 71.40 percent.

Beneficiary Cost-Share: Beneficiary cost-share (other than dependents of active duty members) for care paid on the basis of a regional per diem rate is the lower of $137 per day or 25 percent of the hospital billed charges effective for services rendered on or after October 1, 1994.

Cap Amount: Cap amount for hospitals and units with high CHAMPUS volume is $760 per day.

CHAMPUS Partial Hospitalization Programs will have their FY 1994 CHAMPUS per diem rates updated by 3.7 percent for FY 1995.

The following reflect an update of 3.7 percent.

PARTIAL HOSPITALIZATION RATES FOR FULL-DAY AND HALF-DAY PROGRAMS

United States census regions	Full-day rate (6 hrs or more)	Half-day rate (3–5 hours)
Northeast:		
New England (ME, NH, VT, MA, RI, CT)	$211	$159
Mid-Atlantic (NY, NJ, PA)	230	173
Midwest:		
East North Central (OH, IN, IL, MI, WI)	205	154
West North Central (MN, IA, MO, ND, SD, NE, KS)	202	152
South:		
South Atlantic (DE, MD, DC, VA, WV, NC, SC, GA, FL)	218	164
East South Central (KY, TN, AL, MS)	237	178

PARTIAL HOSPITALIZATION RATES FOR FULL-DAY AND HALF-DAY PROGRAMS—Continued

United States census regions	Full-day rate (6 hrs or more)	Half-day rate (3–5 hours)
West South Central (AR, LA, TX, OK)	234	176
West:		
Mountain (MT, ID, WY, CO, NM, AZ, UT, NV)	243	183
Pacific (WA, OR, CA, AK, HI)	239	180

Dated: September 26, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 94–24388 Filed 9–30–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary of Defense

AGENCY: Defense Intelligence Agency Scientific Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

DATES: Monday and Tuesday 17 and 18 October 1994 (0900 to 1600).

ADDRESSES: The Defense Intelligence Agency (DIAC), Bolling AFB, Washington, D.C., 20340–5100.

FOR FURTHER INFORMATION CONTACT: Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, D.C. 20340–5100 (202) 373–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: September 27, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–24291 Filed 9–30–94; 8:45 am]

BILLING CODE 3810–01–M

Defense Advisory Committee on Women in the Services (DACOWITS) Meeting

ACTION: Notice of conference.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS).The purpose of DACOWITS is to advise the Secretary of Defense on matters relating to women in the Services. The Committee meets semiannually.

DATES: October 19–23, 1994 (Summarized agenda follows).

ADDRESSES: The Cavalier Hotel, Oceanfront at 42nd Street, Virginia Beach, VA 23451 (804) 425–8555 or 1–800–446–8199.

AGENDA: Sessions will be conducted daily and will be open to the public. The agenda will include the following:

Wednesday, October 19, 1994

Conference Registration (Conference Participants)
Planning Workshops (current DACOWITS members only)

Thursday, October 20, 1994 7:30 a.m.–10:00 p.m.

Conference Registration (Former Members and Conference Participants)
No host Working Breakfast (current DACOWITS members only)
Offical Opening Ceremony/General Business Session
Official OSD Luncheon (By Invitation Only)
Field Trip/Installation Visit (current DACOWITS members and Senior Military Representatives Only)

Friday, October 21, 1994, 8:00 a.m.–9:30 p.m.

Subcommitee sessions
No host working luncheon
Administrative Time
OSD Reception & Dinner (By Invitation Only)

Saturday, October 22, 1994, 8:00 a.m.–6:30 p.m.

Subcommittee Session
No-host Brunch (Conference Participants)
DEOMI/Diversity Workshop (DACOWITS members only)
Executive Committee Mark-Up
Closing Session
No Host sit down dinner

Sunday, October 23, 1994, 8:30 a.m. to 10:00 p.m.

No-Host Farewell Breakfast Buffet.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Martha C. Gillette, USN or CPT Alissa B. Deuel, Plans and Communications Officer, DACOWITS and Military Women Matters, OUSD (Personnel and Readiness) 4000 Defense Pentegon, Room 3D769, Washington, DC 20301–4000; Telephone (703) 697–2122.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the conference:

(1) Members of the public will not be permitted to attend the official OSD Luncheon; Field Trip; and the OSD Reception and Dinner.

(2) The Opening Session/business session, all subcommittee sessions and the closing session will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the conference.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than October 10.

(5) Length and number of oral presentations to be made will depend on the number of requests received from members of the public.

(6) Oral Presentations by members of the public will be permitted only on Saturday, October 22, 1994 before the full Committee.

(7) Each person desiring to make an oral presentation must provide the DACOWITS office 1 copy of the presentation by October 10 and make available 175 copies of any material that is intended for distribution at the conference.

(8) Persons submitting a written statement for inclusion in the minutes of the conference must submit to the DACOWITS staff one copy by the close of the conference.

(9) Other new items from members of the public may be presented in writing to any DACOWITS members for transmittal to the DACOWITS Chair or Director, DACOWITS and Military Women Matters to consider.

(10) Members of the public will not be permitted to enter into oral discussion by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to ask questions to the scheduled speakers if recognized by the Chair and if time allows after the official participants have asked questions and/or made comments.

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Dated: September 27, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94-24292 Filed 9-30-94; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 2, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Request for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708-9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: September 27, 1994.

Ingrid Kolb,

Acting Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Reinstatement

Title: Application for New Awards under the Law School Clinical Experience Program

Frequency: Annually

Affected Public: Non-profit institutions

Reporting Burden:

Responses: 90

Burden Hours: 3,720

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: This form will be used by State Educational agencies to apply for funding under the Law School Clinical Experience Program. The Department will use the information to make grant awards.

Office of the Under Secretary

Type of Review: New

Title: Application for Federal Educational Assistance

Frequency: Annually

Affected Public: Individuals or households; state or local governments

Reporting Burden:

Responses: 23,000

Burden Hours: 5,750

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: This form will be used by State educational agencies to apply for funding under the Federal Educational Assistance Program. The Department will use the information to make grant awards.

[FR Doc. 94-24294 Filed 9-30-94; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11402-000]

City of Crystal Falls, MI; Notice of Intent to Prepare an Environmental Assessment and Conduct Public Scoping Meetings

September 27, 1994.

The Federal Energy Regulatory Commission (FERC) has received an application for license of the existing Crystal Falls Project No. 11402. The Crystal Falls Project is located on the Paint River in Iron County, Michigan.

The FERC staff intends to prepare an Environmental Assessment (EA) on the hydroelectric project in accordance with the National Environmental Policy Act.

The staff's EA will objectively consider both site specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EA will be issued and circulated for review by all the interested parties. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

Scoping Meetings

The FERC will conduct two scoping meetings. An evening scoping meeting is primarily for public input while the morning meeting will focus on resource agency concerns. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EA. Staff will also visit the project site on November 2, 1994, at 9 a.m.

Both scoping meetings will be held at the City Hall Auditorium, 401 Superior Avenue, Crystal Falls, Michigan. The first meeting will be held on November 1, 1994, from 7 p.m. to 10 p.m. and will focus primarily on issues of concern to the general public. The second meeting will be held on November 2, 1994, from 11 a.m. to 2 p.m. and will focus primarily on issues of concern to the resource agencies.

Prior to the meetings, a scoping document will be mailed to the list of interested parties. The scoping document identifies resource issues to be addressed in the EA. Copies of the scoping document will also be available at the scoping meetings or can be obtained by writing: FERC-Crystal Falls Project, c/o Elaine Bazarian, Stone and Webster, 245 Summer Street, Boston, MA 02110.

Objectives

At the scoping meetings the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) determine the relative depth of analysis for issues to be addressed in the EA; (3) identify resource issues that are not important and do not require detailed analysis; (4) solicit from the meeting participants all available information, especially quantified data, on the resources at issue; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The meetings will be recorded by a stenographer and all statements (oral and written) thereby become a part of the formal record of the Commission proceedings. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying the issues to be addressed in the EA.

Participants at the public meeting are asked to keep oral comments brief and concise to allow everyone the opportunity to speak.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, until December 2, 1994.

All written correspondence should clearly show the following caption on the first page: Crystal Falls Project No. 11402.

All those that are formally recognized by the Commission as intervenors in the licensing proceeding are asked to refrain from engaging staff or its contractor in discussions of the merits of the project outside of any announced meeting.

Further, parties are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list.

For further information, please contact Thomas Dean at (202) 219-2778.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24317 Filed 9-30-94; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2687-014]

Pacific Gas & Electric Company; Intent to Conduct Environmental Scoping Meetings and Site Visit

September 27, 1994.

The Federal Energy Regulatory Commission (FERC) has received an application for relicensing for the proposed Pit 1 Hydroelectric Project No. 2687-014. The project is located on the Fall and Pit Rivers, near the towns of Fall River Mills, McArthur, and Burney, in Shasta County, California.

The FERC staff intends to prepare an Environmental Assessment (EA) for this hydroelectric project in accordance with the National Environmental Policy Act.

In the EA, we will consider both site-specific and cumulative environmental effects of the project and reasonable alternatives, and will include economic, financial, and engineering analyses.

The draft EA will be issued and circulated for review by all interested parties. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations will then be presented for the consideration by the Commission in reaching its final licensing decision.

Scoping Meetings

Staff will hold two scoping meetings. A scoping meeting oriented towards the agencies will be held on Thursday, October 27, 1994, at 9:00 AM, at the McArthur Fairgrounds, in McArthur, California. A scoping meeting oriented towards the public will be held the same day at 6:00 PM, at the same location.

Interested individuals, organizations, and agencies are invited to attend either or both meetings and assist the staff in identifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions at the meetings, a scoping document outlining subject areas to be addressed in the EA will be mailed to agencies and interested individuals on the FERC mailing list. Copies of the scoping document will also be available at the scoping meetings.

Objectives

At the scoping meetings, the FERC staff will: (1) Identify preliminary environmental issues related to the proposed project, (2) identify preliminary resource issues that are not important and do not require detailed analysis; (3) identify reasonable alternatives to the proposal; (4) solicit from meeting participants all available information, especially quantified data, on the resource issues; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The scoping meetings will be recorded by a court reporter and all statements, both oral and written, will become part of the record of the Commission proceedings on the Pit 1 Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying the issues to be addressed in the EA.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meetings. In addition, written scoping comments (an original and eight copies) may be filed with Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, until [COMMENT DATE].

All written correspondence should clearly show the following caption on the first page: Pit 1 Hydroelectric Project, FERC Project No. 2687-014.

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list. Further, if a party files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Site Visit

A site visit to the Pit 1 Hydroelectric Project is planned for Wednesday,

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October 26, 1994. Those who wish to attend should plan to meet at 10:00 AM at the McArthur, Fairgrounds, in McArthur, California. The site is located near the fairgrounds. For more details, contact Mr. Steve Christ, Pacific Gas and Electric Company, at (415) 973–2629.

Any questions regarding this notice may be directed to Mike Strzelecki, FERC Environmental Coordinator, at (202) 219–2827.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24358 Filed 9–30–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–766–000, et al.]

Northern Natural Gas Company, et al.; Natural Gas Certificate Filings

September 23, 1994.

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company

[Docket No. CP94–766–000]

Take notice that on September 9, 1994, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP94–766–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install five delivery points and upgrade one delivery point to accommodate increased natural gas deliveries to Peoples Natural Gas Company (Peoples) under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to install and operate one Town Border Station (TBS), four small volume customer taps, and upgrade one TBS and appurtenant facilities as delivery points to accommodate increased natural gas deliveries to Peoples under Northern's currently effective throughput rate schedules. The upgraded and new delivery points will be used for commercial and residential end-use by Peoples for redelivery to: 1) Bruce Pals (Pals) in Chicago City, Minnesota, Section 2, T37N, R21W; 2) Eileen Beninga (Beninga) in Black Hawk City, Iowa, Section 6, T88N, R14W; 3) Justin Deutsch (Deutsch) in LeSueur City, Minnesota, Section 21, T112N, R23W; 4) Arnie Kubes (Kubes) in LeSueur City, Minnesota, Section 4, T112N, R23W; 5) Buccaneer Bay TBS (Buccaneer) in Cass City, Nebraska, Section 34, T13N, R13E, and 6) Northrup #1 TBS upgrade (Northrup) in Martin City, Minnesota, Section 12, T103N, R31W. Northern states that the estimated cost and the proposed peak day and annual volumes to be delivered are: 1) Pals $700, 1.5/d and 200/a; 2) Beninga $0, 1/d and 140/a; 3) Deutsch $700, .8/d and 280/a; 4) Kubes $700, .8/d and 120/a; 5) Buccaneer $48,770, 570/d and 50,455/a, and 6) Northrup $31,000, 1376/d and 94,178/a.

Northern states that deliveries of the estimated total volumes to Peoples at these delivery points will be made pursuant to Northern's existing transportation service agreements. Northern advises that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. Northern states it has sufficient capacity for the proposed changes without detriment or disadvantage to its other customers.

Comment date: November 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP94–784–000]

Take notice that on September 16, 1994, Northwest Pipeline Corporation (Northwest), P.O. Box 58900, Salt Lake City, Utah 84108–0900, filed in Docket No. CP94–784–000 a request pursuant to Sections 157.205, 157.216 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to abandon certain facilities at the Twin Falls Meter Station in Twin Falls County, Idaho,[1] and to construct and operate upgraded replacement facilities at this station, under its blanket certificate issued in Docket No. CP82–433–000,[2] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Northwest states that upgraded facilities are needed to better accommodate its existing firm maximum daily delivery obligations at this delivery point to Intermountain Gas Company (Intermountain). Northwest proposes to replace four existing 3-inch regulators with four new 4-inch regulators, relief valve, new upstream headers, relocate filter, replace station by-pass and appurtenances. Northwest states that the upgrade will increase the design capacity of the station from 14,670 Dth per day to approximately 24,600 Dth per day. Northwest further states that the total cost of the project is estimated to be approximately $289,191. Since this expenditure is necessary to increase the design capacity to serve existing maximum daily delivery obligation, Northwest will not require any cost reimbursement from Intermountain.

Northwest states that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. Northwest holds a blanket transportation certificate pursuant to Part 284 of the Commission's Regulations issued in Docket No. CP86–578–000.[3] Northwest states that construction of the proposed delivery point is not prohibited by its existing tariff and that it has sufficient capacity to deliver the requested gas volumes without detriment or disadvantage to it's other customers.

Comment date: November 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Koch Gateway Pipeline Company

[No. CP94–790–000]

Take notice that on September 21, 1994, Koch Gateway Pipeline Company (Koch), 600 Travis Street, P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP94–790–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to install a two-inch delivery tap to serve Willmut Gas and Oil Company, a local distribution company, which will in turn serve Hattiesburg-Laurel Regional Airport in Jones County, Mississippi. Koch will install the delivery tap for an estimated cost of $4,900 under its blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Willmut will reimburse Koch for the actual cost of the construction. Willmut will construct and own the meter station associated with the tap. Koch proposes to deliver up to 50 MMBtu/d under its No-Notice Service Rate Schedule. Koch states that it has sufficient capacity to render the proposed service without detriment to its other existing customers.

Comment date: November 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

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[1] *See*, Docket No. G–8934 (14 FPC 157).

[2] *See*, 20 FERC ¶ 62,412 (1982).

[3] *See*, 42 FERC ¶ 61,019 (1988).

Standard Paragraphs

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24359 Filed 9–30–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. IS94–22–000]

Chevron Pipe Line Company; Notice of Informal Settlement Conference

September 27, 1994.

Take notice that Commission Staff will convene an informal settlement conference in this proceeding on October 5, 1994, at 8:30 a.m. The conference will be held in a hearing room at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, DC.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), may attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Donald A. Heydt at (202) 208–0740 or Kathleen M. Dias at (202) 208–0524.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24318 Filed 9–30–94; 8:45 am]

BILLING CODE 6717–01–M

[RP94–164–000]

Trunkline Gas Company; Notice of Informal Settlement Conference

September 27, 1994.

Take notice that an informal settlement conference will be convened in these proceedings on October 4, 1994 at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215 or Edith A. Gilmore (202) 208–2158.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24319 Filed 9–30–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5085–2]

Clean Air Act Advisory Committee

Emergency Notice of Public Meeting

Under Section (10)(a)(2) of Title 5 U.S.C. App 2, "The Federal Advisory Committee Act," notice is hereby given that the Subcommittee on Mobile Source Emissions and Air Quality in the Northeastern States of the Clean Air Act Advisory Committee will meet on Wednesday, October 12, 1994 beginning at 8:30 A.M. to 3:00 P.M. at the Hotel Washington, located at Pennsylvania Avenue and Fifteenth Streets, N.W., Washington, D.C. 202/638–5900. Because the Subcommittee met in late September, 1994 and set October 12, 1994 as the next meeting date this emergency notice is hereby given. These meetings are open to the public. For further information concerning the meeting, please contact the individuals listed below.

Mobile Source Emissions and Air Quality in the Northern States Subcommittee

The Mobile Source Emissions and Air Quality in the Northeastern States Subcommittee of the Clean Air Act Advisory Committee will conduct a meeting to discuss the pending petition offered by the Ozone Transport Commission regarding the adoption of Low Emission Vehicle Emission Standards in the northeastern states and related issues. In addition, the meeting agenda will include progress reports from various work groups established at previously by the Subcommittee.

Further Information and Providing Comments

For additional information concerning these meetings, please contact Mike Shields, Designated Federal Official, Office of Mobile Sources, U.S. Environmental Protection Agency, 401 M Street, SW. Washington, D.C. 20460 (202) 260–7645.

Dated: September 28, 1994.

Rob Brenner,

Director, Office of Policy Analysis and Review, Office of Air and Radiation, U.S. Environmental Protection Agency.

[FR Doc. 94–24490 Filed 9–30–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5083–2]

Notice and Open Meeting for the Permits Improvement Team

AGENCY: Environmental Protection Agency.

ACTION: National meetings of the permits improvement team.

SUMMARY: In July of 1994, Administrator Browner established the Permits Improvement Team (Team) to implement specific actions to reform the permits process. These actions will: (1) improve the quality, certainty and timeliness of the permit decision process; (2) provide for earlier and better public participation in the permitting process; and (3) enhance the use of innovative technologies and pollution prevention through the permitting process. From October 20, 1994 through November 21, 1994 the Team will be holding national stakeholder meetings to receive individual input on the specific activities the Team should focus on. The objective of these meetings is to obtain individual ideas and comments, but not to obtain a group opinion from the meeting participants.

DATES: The Team will be holding national stakeholder meetings to solicit input on the priorities of the team. Meetings will be held on October 20th in Denver CO., October 26th in Philadelphia PA., November 7th in Seattle WA., November 14th in Dallas TX., and on November 21st in Boston, MA. Meetings are open to the public and will be held from 9:00 am to 5:00 pm on these scheduled dates. Participants are requested to notify in writing which meeting they will be attending. Notification should be sent to USEPA Permits Improvement Team, Mail Stop 100, 2890 Woodbridge Ave., Edison, New Jersey 08837.

ADDRESSES: The location of the October 20, 1994 meeting is EPA's Region 8

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Office (Conference Center), 999 15th Street, Denver, Colorado. The October 26, 1994 meeting will be held in the Barclay Hotel, 237 S. 18th Street, Philadelphia, Pennsylvania. The November 7, 1994 meeting will be held in the Claremont Hotel, 2004 4th Avenue at Virginia Street, Seattle. The November 21, 1994 meeting location is EPA's Region 1 Office (11th floor Conference Center), 1 Congress Street, Boston, Massachusetts. The location of the Dallas meeting will be provided in a future notice.

FOR FURTHER INFORMATION CONTACT: Persons requiring further information on the substantive matters of the Team should contact, in writing, Mr. Lance Miller, USEPA Permits Improvement Team, Mail Stop 100, 2890 Woodbridge Ave., Edison New Jersey 08837.

Dated: September 27, 1994.

Elliot P. Laws,

Designated Federal Official.

[FR Doc. 94–24373 Filed 9–30–94; 8:45 am]

BILLING CODE 6560–60–M

[FRL–5084–3]

Proposed De Minimis Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act; In the Matter of American Chemical Services

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: Notice of *De Minimis* Settlement: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), notice is hereby given of a *de minimis* settlement concerning past and estimated future response actions at the American Chemical Services (ACS) Site in Griffith, Indiana. U.S. EPA Region 5 has submitted the proposed agreement to the U.S. Department of Justice for review concurrent with this request for public comment. This settlement will not be finalized until the approval process set forth in Section 122(g)(4) of CERCLA has been completed.

DATES: Comments must be provided on or before November 2, 1994.

ADDRESSES: Comments should be addressed to the Docket Clerk, Mail Code MFA–10J, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and should refer to: In the Matter of American Chemical Services.

FOR FURTHER INFORMATION CONTACT: Steven Siegel, Mail Code CS–29A, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: 959 Respondents and the State of Indiana executed binding certifications of their consent to participate in the settlement. The settlement may be amended to add additional parties.

The Respondents will pay approximately $23,649,894.84 in settlement payments for response costs related to the American Chemical Services Site, including past response costs incurred by the State of Indiana, if the United States Environmental Protection Agency determines that it will not withdraw or withhold its consent to the proposed settlement after consideration of comments submitted pursuant to this office.

U.S. EPA may enter into this settlement under the authority of Section 122(g) of CERCLA. Section 122(g) authorizes *de minimis* settlements with potentially responsible parties ("PRPs") that contributed hazardous substances to a site where those contributions were small and where the toxicity of the substances contributed is not significantly different from the other substances brought to the site. Pursuant to this authority, the agreement proposes to settle with generator parties whose individual volume of hazardous substances sent to site does not exceed .08% of the total amount of hazardous substances sent to the site. Settling *de minimis* PRPs will be required to pay their fair share of the past and estimated future response costs at the site based on a payment of $3.76 per pound of hazardous substances that the party contributed to the Site. Certain reduction factors were applied in determining the pounds sent by each company based upon the operations of the ACS facility at different time periods. Some participants in the settlement also have presented ability to pay issues and have settled on that basis. The estimated future response costs account for potential cost overruns, the potential for failure of the remedies selected to clean up the site, and other risks.

A copy of the proposed administrative order on consent and additional background information relating to the settlement, including a list of parties to the settlement, are available for review and may be obtained in person or by mail from Steven Siegel, Mail Code CS–29A, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

The U.S. Environmental Protection Agency will receive written comments relating to the settlement for thirty days from the date of publication of this notice.

Authority: The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*

Identification of Documents: Proposed *De Minimis* Settlement: American Chemical Services Site.

William E. Muno,

Director, Waste Management Division.

[FR Doc. 94–24413 Filed 9–30–94; 8:45 am]

BILLING CODE 6560–50–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATES: Comments must be received on or before November 17, 1994. If you anticipate commenting on a report form, but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Copies of the proposed report form, the request for clearance (Standard Form 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: EEOC Agency Clearance Officer: Margaret P. Ulmer, Financial and Resource Management Services, Room 2204, 1801 L Street, NW., Washington, DC 20507; Telephone (202) 663–4279.

OMB Reviewer: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503; Telephone (202) 395–7316.

Type of Request: Extension (No Change).

Title: State and Local Government Information EEO–4.

Form Number: EEOC Form 164.

Frequency of Report: Biennially for respondents with 100 or more employees, a statistical sample of respondents with 15–99 employees.

Type of Respondent: State and local governments with 15 or more employees.

Standard Industrial Classification (SIC) Codes: 911–965.

Description of Affected Public: State and local governments.

Responses: 12,050.

Reporting Hours: 74,150

Federal Cost: $47,000.

Applicable under Section 3504(h) of Public Law 96–511: Not applicable.

Number of Forms: 1.

Abstract-Needs/Users: EEO–4 data are used by EEOC to investigate charges of discrimination against State and local governments and in EEOC systemic program decisions. Data are shared with several Federal government agencies. Under Section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–4 data are also shared with approximately 83 State and local Fair Employment Practices Agencies (FEPAs). Aggregate data are used by researchers and the general public.

For the Commission,

R. Edison Elkins,

Management Director, Equal Employment Opportunity Commission.

[FR Doc. 94–24320 Filed 9–30–94; 8:45 am]

BILLING CODE 6570–06–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficiency of Assets to Satisfy all Claims of Certain Financial Institutions in Receivership

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: In accordance with the authorities contained in 12 U.S.C. 1821(c), the Federal Deposit Insurance Corporation (FDIC) was duly appointed receiver for the financial institutions specified in SUPPLEMENTARY INFORMATION. The FDIC has determined that the proceeds which can be realized from the liquidation of the assets of the below listed receivership estates are insufficient to wholly satisfy the priority claims of depositors against the receivership estates. Therefore, upon satisfaction of secured claims, depositor claims and claims which have priority over depositors under applicable law, no amount will remain or will be recovered sufficient to allow a dividend, distribution or payment to any creditor of lessor priority, including but not limited to, claims of general creditors. Any such claims are hereby determined to be worthless.

FOR FURTHER INFORMATION CONTACT: Tina A. Lamoreaux, Counsel, Legal Division, FDIC, 550 17th Street NW., Room H–11027, Washington, DC 20429. Telephone (202) 736–3134.

SUPPLEMENTARY INFORMATION: Financial Institutions in Receivership Determined to Have Insufficient Assets to Satisfy All Claims.

Bank of Commerce and Trust Company, #2556, Tulsa, Oklahoma

Western Bank, #2596, Midland, Texas.

Dated: September 27, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–24285 Filed 9–30–94; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–009648A–066.

Title: Inter-American Freight Conference.

Parties:

A.P. Moller-Maersk Line
Empresa de Navegacao Alianca S.A.
Frota Amazonica S.A.
Columbus Line
Transroll/Sea-Land Joint Service
Crowley American Transport, Inc.
A/S Ivarans Rederi d/b/a Ivaran Lines
Companhia Maritime Nacional
Companhia de Navegacao Lloyd Brasileiro
Empresa Lineas Maritimas Argentinas

Synopsis: The proposed amendment adds a new sub-paragraph 10.16 which provides that the members of the Agreement may elect to be policed under a separate self-policing agreement covering the Agreement's trade should such an agreement be filed and become effective. In addition, Article 14.01 is amended by adding sub-paragraphs (e), (f), (g), and (h) which set forth the rights, duties, obligations and responsibilities of any member that withdraws from the Conference, or any section of the Conference, with respect to that member's participation in service contracts.

Agreement No.: 232–011471.

Title: Crowley American Transport, Inc./A/S Ivarans Rederi Space Charter and Sailing Agreement.

Parties:

Crowley American Transport, Inc.
A/S Ivarans Rederi

Synopsis: The proposed Agreement authorizes the parties to consult and agree upon deployment and utilization of vessels, charter space to and from one another, and rationalize sailings in the trade between U.S. Atlantic and Gulf Coast ports and points and ports in Puerto Rico and points and ports on the East Coast of South America (including but not limited to Venezuela, Brazil, Argentina, Paraguay, Uruguay) and ports in Mexico.

By Order of the Federal Maritime Commission.

Dated: September 28, 1994.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 94–24385 Filed 9–30–94; 8:45 am]

BILLING CODE 6730–01–M

[Fact Finding Investigation No. 21]

Activities of the Trans-Atlantic Agreement and Its Members; Notice of Second Hearing in Washington DC

Pursuant to Commission Order issued July 27, 1994, instituting Fact Finding Investigation No. 21 ("the Fact Finding Order"), notice is hereby given that the Investigative Officers will conduct a hearing concerning various activities and practices by the Trans-Atlantic Agreement ("TAA") and its members which are alleged to be anticompetitive or otherwise violative of the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* The Investigative Officers will take testimony under oath, and receive documents in evidence, as appropriate. In the discretion of the Investigative Officers, portions of this hearing may be conducted in non-public session, as authorized by the Fact Finding Order.

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Hearings in Fact Finding Investigation No. 21 will be conducted in Washington D.C., at the following location: Federal Maritime Commission, Hearing Room No. 1, 800 North Capitol St., NW., Washington, D.C. 20573.

The hearings will commence in public session at 10:00 A.M. on November 14, 1994, and may be conducted on subsequent days at the same location, as appropriate.

Martha C. Smith,

Investigative Officer, Federal Maritime Commission, Bureau of Hearing Counsel, 800 North Capitol Street NW., Washington, D.C. 20573, Tele: (202) 523-5783, Fax: (202) 523-5785.

[FR Doc. 94-24341 Filed 9-30-94; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the General Counsel and Public Health Service

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority

Part A, Chapter AG (Office of the General Counsel) (38 FR 17032, June 28, 1973, as amended most recently at 57 FR 10765, March 30, 1992) and Part H, Chapter HF (Food and Drug Administration) 35 FR 3685, February 25, 1970, as amended most recently at 59 FR 38482, July 28, 1994) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services is amended to reflect an organizational change in the Office of the General Counsel (OGC) and in the Food and Drug Administration (FDA).

The OGC in the Office of the Secretary, HHS, and FDA find it in their common interest and interest of the Department to test the efficacy of decentralizing the provision of legal services to FDA by establishing an organizational component within FDA comprised of lawyers and support staff who will provide certain legal services exclusively to that Agency and be funded by that Agency, but be subject to the supervision of the General Counsel with respect to legal policy and direction. OGC will continue to provide legal services to FDA in the areas of ethics, business and administrative law, legislation, personnel, and procurement on the same basis as OGC provides such services to other HHS operating divisions generally. A new Office of the Chief Counsel will be established in FDAs Office of the Commissioner and simultaneously the Food and Drug Division will be removed from OGC.

The following changes are made to reflect the organizational change:

Under Chapter AG, Section AG-B, Organization

1. Under Section AG.22 Divisions in the Office of the General Counsel delete subparagraph 4 Food and Drug Division in its entirety.

Under Chapter HF, Section HF-B, Organization

2. Insert a new subparagraph under the Office of the Commissioner (HF), the Office of Chief Counsel (HFA-J) reading as follows:

(a-6) Office of Chief Counsel (HFA-J). Subject to the professional supervision and control of the General Counsel, represents the FDA in court proceedings and administrative hearings with respect to programs administered by the FDA.

Provides legal advice and policy guidance for programs administered by the FDA.

Acts as liaison to the Department of Justice and other Federal Departments for programs administered by FDA.

Drafts or reviews all proposed and final regulations and **Federal Register** notices prepared by FDA.

Performs legal research and gives legal opinions on regulatory issues, actions, and petitions submitted to FDA.

Reviews proposed legislation affecting FDA that originates in the Department or on which Congress requests the views of the Department.

Provides legal advice and assistance to the Office of the Secretary on matters within the expertise of the Chief Counsel.

Dated: September 17, 1994.

Effective Date: October 1, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94-24216 Filed 9-30-94; 8:45 am]

BILLING CODE 4160-1-M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Subcommittee Meeting of the National Task Force on AIDS Drug Development on Public/Private Issues

Date, time, and place. October 28, 1994, 12:30 p.m., The Hyatt Regency Crystal City, Lincoln Room, 2799 Jefferson Davis Hwy., Arlington, VA.

Type of meeting and contact person. Open subcommittee discussion, 12:30 p.m. to 1:30 p.m.; open public hearing, 1:30 p.m. to 2:30 p.m., unless public participation does not last that long; Jean H. McKay, Office of AIDS and Special Health Issues (HF-12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-0104.

General function of the task force. The National Task Force on AIDS Drug Development shall identify any barriers and provide creative options for the rapid development and evaluation of treatments for human immunodeficiency virus (HIV) infection and its sequelae. It also advises on issues related to such barriers, and provides options for the elimination of these barriers.

Open task force discussion. The subcommittee will present, hear, and discuss issues on the barriers to collaboration on acquired immunodeficiency syndrome (AIDS) drug development from the perspective of the subcommittee members, members of the Federal Government, and the public.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the task force. Those desiring to make formal presentations should notify the contact person before October 19, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: September 26, 1994.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 94-24355 Filed 9-30-94; 8:45 am]

BILLING CODE 4160-01-F

Health Care Financing Administration

[MB-84-NC]

RIN 0938-AG77

Medicaid Program; Charges for Vaccine Administration Under the Vaccines for Children (VFC) Program

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice with comment period lists, by State, the interim regional maximum charges that providers may impose for the administration of pediatric vaccines to Federally vaccine-eligible children under the Pediatric Immunization Distribution Program, more commonly known as the Vaccines for Children (VFC) program. This notice also specifies the methodology that HCFA used to establish the maximum administration charges.

In addition, the notice provides States that purchase vaccines for all children the option to use these maximum charges or devise their own, and clarifies that State Medicaid agencies may establish lower fees than these maximums if they can provide assurances of access to immunizations for Medicaid eligible children to the same extent as the general population.

The publication of these administration charges is essential to implementation of the VFC program, which is mandated by law to become operational on October 1, 1994. We intend that this list be used on an interim basis until we issue a separate **Federal Register** document that will finalize these maximum regional charges and respond to any relevant public comments.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Marge Sciulli, (410) 966-0691.

SUPPLEMENTARY INFORMATION:

I. Background

The Omnibus Budget Reconciliation Act of 1993 (OBRA '93), Public Law 103-66, created the Pediatric Vaccine Distribution Program (more commonly known and hereafter referred to as the Vaccines for Children (VFC) Program), which takes effect on October 1, 1994. Section 13631 of OBRA '93 added section 1902(a)(62) to the Social Security Act (the Act) to require that States provide for a program for the purchase and distribution of pediatric vaccines to program-registered providers for the immunization of vaccine eligible children in accordance with section 1928 of the Act. Section 13631 redesignated the existing section 1928 as section 1931 and inserted a new section 1928. The new section 1928 requires each State to establish a VFC Program (which may be administered by the State department of health) under which certain specified groups of children are entitled to receive qualified pediatric immunizations without charge for the cost of the vaccine.

Federally purchased vaccines under the VFC Program will be made available to children who are 18 years of age or younger and—

- Who are eligible for Medicaid;
- Who are not insured under any form of health insurance;
- Who are not insured with respect to the vaccine and who are administered pediatric vaccines by a federally qualified health center (FQHC) or in a rural health clinic; or
- Who are Indians, as defined in section 4 of the Indian Health Care Improvement Act.

Under the VFC program, vaccines must be administered by program-registered providers. Section 1928(c) defines a program-registered provider as any health care provider that—

- Is licensed or authorized to administer pediatric vaccines under the law of the State in which the administration occurs without regard to whether or not the provider is a Medicaid-participating provider;
- Submits to the State an executed provider agreement in the form and manner specified by the Secretary; and
- Has not been found by the Secretary or the State to have violated a provider agreement or other requirements that may apply that are established by the Secretary or the State.

Providers may participate in the VFC program without participating in Medicaid if they are qualified to administer vaccines under applicable State law. However, such providers will

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not be reimbursed by Medicaid for their services in administering the vaccine.

Under the VFC Program, a provider may impose a fee for the administration of a qualified pediatric vaccine as long as the fee, in the case of a Federally vaccine-eligible child, does not exceed the cost of such administration (as determined by the Secretary based on actual regional costs for such administration). However, a provider may not deny administration of a qualified pediatric vaccine to a vaccine-eligible child due to the inability of the child's parents or legal guardian to pay the administration fee.

II. Provisions of This Notice With Comment Period

A. General Statement

This notice announces interim regional maximum charges. These represent the maximum amount that a provider in a State may charge for the administration of qualified pediatric vaccines to Federally vaccine-eligible children under the VFC Program. It also specifies the methodology that HCFA used to establish these regional maximum charges. We are interpreting "regional" as specified in the statute to be the "State", as discussed in section II.B.2. of this notice. In addition, this notice gives Universal Purchase States (that is, where the vaccines are purchased by the State for all children in the State) the right to develop administration charges that differ from those established by HCFA, provided they are reasonable. Therefore, Universal Purchase States are provided the flexibility to accept the maximum charges established by the Secretary or to develop their own maximum charges. In either case, the statute gives State Medicaid agencies the option to establish and apply vaccine administration fees that are lower than the specified maximum charges if they provide assurances that Medicaid children have access to immunizations to the same extent as the general population. Section 1902(a)(30)(A) of the Act, as amplified by section 1926, requires States to pay enough for obstetrical and pediatric services (which include immunization services) so that those services are available to the "Medicaid population" to the same extent that are available to the general population in the geographic area. These assurances must be submitted to HCFA as part of the appropriate State plan amendment to impose the fees. This notice specifies guidelines for States to use in setting lower administration fees.

The administration charge cap applies to all VFC Program-registered providers that administer the vaccine to a Federally vaccine-eligible child. It does not apply to children receiving free vaccines under State purchase programs or any other arrangement.

In accordance with the statute, physicians participating in the VFC Program can charge non-Medicaid eligible children the maximum administration charge (if that charge reflects the provider's cost of administration) regardless of whether the State has established a lower administration fee under the Medicaid program. However, there would be no Federal Medicaid matching funds available for such administration. Although the cost of the vaccines for the VFC Program is funded under Title XIX of the Act, Medicaid will not pay for the administration of vaccines provided to children under the VFC Program who are not eligible for Medicaid. A provider may only bill Medicaid for the administration of a vaccine if the child is Medicaid eligible.

Because the VFC program is mandated by law to become operational on October 1, 1994, we are announcing these regional maximum administration charges and guidelines for documenting access on an interim basis, subject to comment and revision. We will issue a final **Federal Register** document setting forth the applicable requirements and responding to public comments on the provisions of this notice that we receive on a timely basis.

B. Methodology Used to Establish Administration Charges

We used the following methodology to establish the regional maximum charges for administration of qualified pediatric vaccines set forth under section II.C. of this notice.

1. Basis for Using Charge Data versus Cost Data

As noted above, the statute provides that these maximum charges are to be based in the actual costs of vaccine administration, as determined by the Secretary. This provision posed a serious implementation problem for HCFA because of the unavailability of usable actual cost data on a nationwide basis and the urgency of promulgating maximum fees before the VFC program begins operation. We searched thoroughly for appropriate data on the costs of vaccine administration. We also consulted with several organizations and with individuals with knowledge and expertise in issues regarding physician payment, including the Physician Payment Review Commission (PPRC). We were informed that there are no data readily available on physicians' actual costs that would provide a valid basis for setting these maximum charges on a nationwide scale. It also was apparent to us that it would not be possible to generate such data via field research within the time available to implement the VFC program on October 1, 1994. A proper analysis would require detailed, expensive, and time-consuming collection and evaluation of data on each element of both direct and indirect costs, including equipment, supplies and labor, as well as an appropriate verification and allocation of "overhead" costs.

On the basis of this information, we concluded that we should explore setting the maximum charges based on data regarding actual charges for the administration of vaccines in physicians' offices. This, too, posed a problem. We consulted with insurance companies, physicians' groups, trade associations, the PPRC, and other knowledgeable experts. Again, we concluded that accurate, consistent data on charges were not readily available. There are a number of concerns about the data that are available, including inconsistencies in the coding of procedures and the fact that most payers do not differentiate, or pay separately for, the cost of the vaccine and its administration. In light of these problems, we were unable to construct a reliable data base by integrating data from existing information sources.

We concluded that it would be necessary to generate a data base specifically for this purpose. For the reasons stated above, it was not feasible to generate a data base using actual costs, but it was feasible to do one based on charges. In the absence of valid studies to the contrary, we think that, for this particular service, charge data is a reasonable proxy for setting these maximum fees until we are able to obtain cost data. Our conclusion is reinforced by the provision of the statute requiring physicians to agree not to refuse to vaccinate a child because of the family's inability to pay the administration fee and by the knowledge that many physicians currently either do not bill indigent patients their full charge or accept less than full payment from them.

Given the statutory requirements that the administration fees not exceed the costs of administration, we recognize the importance of utilizing cost data in developing the regional maximum charges. We also realize that the use of charge data in developing the maximum charges may result in maximum charges that are too high. While it appears that there are no useable cost data readily available, our goal is to obtain information that can be used in setting maximum charges in the future. We will be conducting a study to accumulate accurate cost data, and will revise the maximum charges based on cost as soon as possible.

The fiscal year 1995 Department of Health and Human Services appropriations bill specifically addresses the use of charge versus cost data. (140 Cong. Rec. H9306, Sept. 20, 1994) The Secretary is directed to compute the actual cost of administering vaccines and to revise the fees in accordance with the requirements of the law. Because the appropriations bill also states that this directive is not intended to delay the start-up of the VFC program, we will utilize the interim maximum charges. However, as stated above, we will conduct a study with the goal of obtaining accurate cost data and will issue revised maximum charge amounts as soon as possible.

2. Charge Data Methodology

To obtain a data base of physician charges, we contracted with the American Academy of Pediatrics (AAP) to purchase data on the normal fee charged by its members for administering the vaccines to be covered by this program. (We note that AAP did not believe it could obtain cost data by directly surveying its membership.) The AAP had gathered these data from a national, sample survey of its members. The sample was large enough (approximately 1,114 responses) to give us confidence in the national average, but not large enough in each State to allow us to set state-by-state maximum charges without further adjustment. The preliminary results of the survey indicated that the overall average administration charge was $14.48. The final national average administration charge we obtained from the AAP was $15.09.

In order to adjust this national average for regional variations, we concluded that the most reliable means available was the Geographic Practice Cost Indices (GPCIs) established for the Medicare physician fee schedule.

The GPCI is an index developed by a joint effort of the Urban Institute (UI) and the Center for Health Economics Research (CHER) to measure the differences in resource cost among localities compared to the national average in the three components of the relative value units—physician work, practice expenses, excluding malpractice, and malpractice. These three components are weighted 54.2 percent, 40.2 percent, and 5.6 percent, respectively. The resource inputs and their weights were obtained from the American Medical Association's (AMA) Socioeconomic Characteristics of Medical Practice. The weights for the current GPCIs are from the AMA's 1989 Socioeconomic Monitoring System (SMS) Survey.

If there is more than one GPCI for a State, we used the GPCI with the highest values to derive the maximum charge in order to assure that the administration charge for providers in high cost areas would fall within our established maximum.

The GPCIs are grouped by State and substate areas. For purposes of developing the regional maximum charges, we interpreted the term "regional" used in the statute to mean "State" because of the specific grouping of the data using the GPCIs. While the GPCI is grouped by State and substate areas, we decided to use the State grouping only. The geographic area of a State is clearly identifiable by boundary lines recognized nationwide, as opposed to a substate area. In other words, substate areas do not necessarily represent counties, which would be an easily identifiable geographic area. Therefore, we believe using substate geographic areas would be confusing to both States and providers.

We derived the amounts specified in the chart under section II.C. of this notice as the maximum charges that may be charged for the administration of qualified pediatric vaccines for each State on the basis of the following formula: National charge data × total weighted GPCI = maximum charge.

Following is an example of application of the formula for Hawaii:

Average national administration charge = $15.09
Work expense = 1.003
Practice expense = 1.094
Malpractice expense = 1.025

Using Medicare weights to weigh components of—

Work expense = 54.2 percent
Practice expense = 40.2 percent
Malpractice expense = 5.6 percent

Calculation:

Work expense	1.003 × 54.2 percent =	.5436
Practice expense	1.094 × 40.2 percent =	.4398
Malpractice expense	1.025 × 5.6 percent =	.0574
		1.0408

Hawaii's maximum charge for administration of the vaccine is:

$15.09 × 1.0408 = $15.71

Given the circumstances discussed in the beginning of section II.B. of this notice, the maximum charge will be based on charge data and will be applicable until we are able to obtain cost data. Our goal is to obtain information that can be used in setting maximum charges in the future. We will revise the regional maximum charges as we determine it is necessary, or in response to public comments.

C. Maximum Regional Charges for Vaccine Administration by State

Based on the methodology described, the maximum administration charges are as follows:

State	Regional maximum charge
Alabama	$14.26
Alaska [1]	17.54
Arizona	15.43
Arkansas	13.30
California	17.55
Colorado	14.74
Connecticut [1]	16.56
Delaware	15.13
District of Columbia	16.55
Florida	16.06
Georgia	14.81
Hawaii	15.71
Idaho [1]	14.34
Illinois	16.79
Indiana	14.47
Iowa	14.58
Kansas	14.80
Kentucky	14.17
Louisiana	15.22
Maine [1]	14.37
Maryland	15.49
Massachusetts [1]	15.78
Michigan	16.75
Minnesota	14.69
Mississippi	13.92
Missouri	15.07
Montana	14.13

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State	Regional maximum charge
Nebraska	13.58
Nevada	16.13
New Hampshire [1]	14.51
New Jersey	16.34
New Mexico	14.28
New York	17.85
North Carolina [1]	13.71
North Dakota	13.90
Ohio	14.67
Oklahoma	13.89
Oregon	15.19
Pennsylvania	15.76
Puerto Rico	12.24
Rhode Island [1]	14.93
South Carolina	13.62
South Dakota [1]	13.56
Tennessee	13.70
Texas	14.85
Utah	14.52
Vermont [1]	13.86
Virginia	14.71
Virgin Islands	15.09
Washington [1]	15.60
West Virginia	14.49
Wisconsin	15.02
Wyoming [1]	14.31

[1] According to available information, these are Universal Purchase States. The Universal Purchase States may accept the maximum charges listed or develop their own maximum fees, as indicated under section II.D. of this notice.

D. Maximum Charges for Administration of Vaccines in Universal Purchase States

States that have programs under which the State purchases vaccines for all children in the State (Universal Purchase States) have the flexibility to accept the maximum charges developed by HCFA or to develop their own maximum charges. We believe it is necessary that Universal Purchase States are provided sufficient flexibility in developing charges in order to ensure that there is equal access to immunizations for all children. In these States, we believe the State may wish to set one overall charge cap in order to encourage adequate provider participation. Furthermore, it is our understanding that providers should experience no cost differences between VFC program eligible children and all other children inasmuch as the provider never incurs the cost of the vaccine.

While Universal Purchase States have the flexibility to develop their own caps, they must develop these by utilizing a reasonable methodology based upon the requirements of section 1928(c)(2)(C)(ii) of the Act. The amount of the cap is not required to be set in State law. However, the authority to set an amount must be based in State law.

E. Optional Lower Medicaid Administration Fees

State Medicaid agencies are not obligated to set the Medicaid payment for vaccine administration at the level of the maximum charges set forth in this notice. Section 1928(c)(2)(C)(ii) of the Act allows them to set their payment at a lower level, according to their own judgment. State Medicaid agencies typically set payment rates taking into consideration a variety of factors, including the need to assure adequate participation by providers. Since the maximum charges in this notice are based on the normal charges billed by physicians, rather than on the amounts actually collected by physicians from insurers or patients, State Medicaid agencies may determine that a lower payment level is appropriate.

If the State Medicaid agency elects to pay a lower fee, it must provide assurances to HCFA, as described below, that Medicaid-eligible children will have access to vaccines. In addition, a State Medicaid agency may elect to apply the regional maximum charges in selected areas of the State and a lower fee in other areas. Any lower fees that a State Medicaid agency elects to apply must be justified using the guidelines specified in section II.F. of this notice.

In the case of Universal Purchase States that elect to develop their own maximum charges, State Medicaid agencies have the flexibility to pay the maximum charge or to pay a lower fee subject to the same provisions discussed above.

F. Documentation Guidelines for Optional Lower Medicaid Administration Fees

1. Pediatric Services Defined

As defined in section 1926(a)(4)(B) of the Act, the term "pediatric services" means "services covered under the State plan provided by a pediatrician, family practitioner, or certified pediatric nurse practitioner to children under 18 years of age and does not include inpatient or outpatient hospital services or other institutional services."

2. Immunization Rate

In applying any of the guidelines under section II.F.3. of this notice, we believe it is necessary to identify what children would be considered immunized. In order to be counted toward the immunization rate goals discussed, a child must have received, within the year period of measure for access, all immunizations required for his or her particular age, including those immunizations under a revised schedule because of those missed from a previous year.

3. Data Requirements

If the State elects to pay an administration fee lower than the maximum charge set forth in section II.C. of this notice, it must provide, via the obstetrical/pediatric State plan amendment submittal, data that document that the lower or varying fees meet the statutory requirements of sections 1902(a)(30)(A) and 1926 of the Act and the implementing regulatory requirements of 42 CFR 447.204. Section 447.204 of the regulations specify that a Medicaid agency's payments must be sufficient to enlist enough providers so that services under the plan are available to recipients at least to the extent that those services are available to the general population.

The State may use one or more of the following guidelines to document that the statutory and regulatory requirements are met:

a. Comparison of Ratios

Under this guideline, the State would submit a comparison between the following ratios:

(i) The ratio of the number of children in the general population immunized to the number of children in the general population; and

(ii) The ratio of the number of Medicaid children immunized to the number of Medicaid children.

In order for a State to use this guideline as an equal access assurance, the ratio of Medicaid children immunized to the number of Medicaid children would have to be equal to or greater than the ratio of the general population immunized to the number of children in the general population.

b. Comparison to Private Insurance

Another alternative is for the State to do a comparison of the Medicaid fees for administration of pediatric vaccines to the administration fees paid by a major insurance company.

In order for the State to use this guideline as an equal access assurance, the Medicaid rates for the administration of pediatric vaccines would have to be set at a rate equal to or greater than the private insurance company's rates up to the established State maximum fee.

c. Practitioner Participation

The State also may compare:

(i) The number of Medicaid pediatric practitioners (which includes practitioners listed in section 1926(a)(4)(B) of the Act) who are Medicaid program- registered providers and who have submitted pediatric immunization claims; and

(ii) The total number of pediatric practitioners providing immunizations to children.

The program registered providers must have at least one Medicaid pediatric immunization claim per month or an average of 12 such claims during the year. The State would need 50 percent participation to show equal access through use of this guideline.

d. Other

States have the flexibility to devise alternative measures of equal access to immunizations. HCFA will evaluate these other methods by which States can choose to demonstrate equal access.

G. Submittal of State Plan Amendments

A State Medicaid agency must specify the reimbursement for the administration of pediatric vaccines (and, if applicable, submit documentation of equal access) as part of its obstetrical/pediatric payment rate State Medicaid plan amendment submittal that are due by April 1 of each year, beginning April 1, 1995 (and which are effective July 1, 1995). If the State Medicaid agency elects to pay the maximum regional amount statewide (including that established by the State in Universal Purchase States), it need only specify this in its State plan amendment submittal (no additional documentation will be needed). However, if the State Medicaid agency elects to vary the vaccine administration fee by geographic areas within the State, the State must list the administration fee for each area, and specify the methodology, and provide the data and methodology it used to demonstrate equal access to the vaccines for each geographic area where the maximum charges are not applied. This documentation requirement is consistent with the requirements currently imposed for submittal of State Medicaid plan amendments for obstetrical and pediatric payment rates under sections 1902(a)(30)(A) and 1926 of the Act. We also believe that documenting access to immunizations by each geographic area provides a more accurate picture of access and areas where access is problematic.

The State plan amendment must be submitted by December 31, 1994 and be effective on October 1, 1994. For the interim period of October 1, 1994 through March 31, 1995, States may claim Federal matching funds for the costs of administration of vaccines to Medicaid-eligible children using the maximum charges or the lower fees established on the basis of the guidance provided in this notice. For this interim State plan amendment, the State will not be required to submit the data to document access to immunizations but will be required to list the methodology by which Medicaid beneficiary access to immunizations is assured. Beginning April 1, 1995, documentation of equal access to immunizations will be required to be included as part of the yearly Obstetrical/Pediatric State plan amendment submittal in accordance with section 1926 of the Act.

III. Impact Statement

For notices such as this, we generally prepare a flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of a RFA, States and individuals are not considered small entities. However, providers are considered small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice of proposed rulemaking that may have a significant impact on the operation of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This notice with comment period implements a provision of section 1928 of the Act. Specifically, this notice with comment period announces interim regional maximum charges that providers may impose for administering pediatric vaccines to Federally vaccine-eligible children under the VFC Program. Section 1928 of the Act directs the Secretary to establish regional maximum fees. As discussed in section II. B of this notice, HCFA contracted with the American Academy of Pediatrics to conduct a survey to obtain national charge data for the administration of pediatric vaccines. HCFA used this data to develop a national charge amount and then adjusted this amount to take into account regional variations to establish a charge for each State. The GPCIs established for the Medicare physician fee schedule were used to make this adjustment. Universal Purchase States have the flexibility to accept the maximum charges developed by HCFA or to develop their own maximum charges. HCFA is also permitting State Medicaid agencies to develop a lower administration fee than the maximum charge if they can demonstrate equal access for children to the vaccines.

The impact of implementing the provision of section 1928(c)(2)(C)(ii) of the Act is discussed further below. We do not believe that this provision will have a significant effect on a substantial number of small entities.

To the extent that a legislative provision being implemented by a notice such as this may have a significant effect on recipients or providers or may be viewed as controversial, we believe that we should address any potential concerns. In this instance, it is difficult to predict what the fiscal impact of this notice will be. There are several unknown factors. Among them are the number of program-eligible providers who will elect to administer the vaccines. In addition, State Medicaid agencies are not required to pay the maximum charges. State Medicaid agencies may establish and apply lower vaccine administration fees if they document that Medicaid children have access to immunizations to the same extent as the general population. Given the availability of free vaccines and the fact that State payments for all pediatric and obstetrical services, including, presumably, vaccine administration, have for some time been subject to access demonstration requirements under 42 CFR 447.204 and sections 1902(a)(30)(A) and 1926 of the Act, we believe that a large proportion of States will be able to demonstrate equal access for Medicaid-eligible children at rates lower than the maximum charges. In addition, should a State Medicaid agency not be able to demonstrate equal access at its current rates, the State Medicaid agency would only have to increase its rates to where there would be equal access. The publication of the maximum charge schedule will certainly create pressure in States with vaccine administration fees for Medicaid-eligible children lower than the maximums to raise those fees. However, to the extent that these States can provide the required assurances, they will not need to raise their fees. (Currently, it appears that most States pay for vaccine administration under Medicaid at rates well below the proposed maximum. This is allowable under the statute.)

Hence, the magnitude of any increase in Medicaid outlays is difficult to ascertain. Because of the pre-existing equal access demonstration requirements, we find it hard to estimate how much of any increase in charges would be attributable to the

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specific guidelines of this notice and how much would occur without publication of the notice. We invite public comment on the impact of both the equal access assurances and anticipated fee increases.

We are providing a voluntary regulatory flexibility analysis because of the large number of children and providers who may be affected. Normally, a regulatory flexibility analysis requires the agency to discuss various alternatives to the provisions in a notice. As discussed above, however, HCFA is implementing the provisions of section 1928(c)(2)(C)(ii) of the Act. The focus of this legislation is upon expanding the number of children who are eligible to receive free pediatric vaccines. We have provided State Medicaid agencies with an option of using a lower fee than the maximum charges set forth in this notice or using a charge established by a Universal Purchase State at their option if they can demonstrate equal access of children to the pediatric vaccines. Because indicated Congressional intent was to expand the coverage for vaccines, we believe that permitting State Medicaid agencies to use a lower fee where they can demonstrate equal access of children to the pediatric vaccines is consistent with the statute. In addition, we note that this option, if utilized by State Medicaid agencies, will cost Federal and State governments less money than if the State Medicaid agencies were using the maximum regional charges as set forth in this notice, while simultaneously achieving Congress' goal.

A brief summary of the impact of the provisions of this notice with comment period upon various groups is provided below.

1. Providers

Each program-registered provider who administers a qualified pediatric vaccine is entitled to receive the vaccine without charge either for the vaccine or its delivery to the provider. This notice specifically establishes maximum regional charges for providers to administer the vaccines. As a result of these maximum regional charges, we believe that the number of providers who may be willing to administer the vaccines would be maintained or increased. In addition to a potential increase in the number of providers who may be willing to administer these vaccines, there may be an increase in the number of patients that they treat since section 1928 of the Act expands the number of children who are eligible to receive the vaccine without charge.

2. Children

The greatest benefit of this provision is that it expands the number of children who are eligible to receive pediatric vaccines without charge for the vaccines. We believe that there will be an increase in the number of children receiving pediatric vaccines. As the number of children who are vaccinated increases, we believe that savings will accrue as a result of a decline in the number of children who will require treatment for vaccine-preventable illnesses.

3. States

States may also benefit under various provisions of the VFC Program. Specifically, this program will provide free vaccines and free delivery to States thus saving States monies that would otherwise be spent on purchase and delivery of vaccines. Where they can demonstrate equal access, State Medicaid agencies are given the option of using the regional charge as specified in this notice or a lower fee. States could experience an increase in the number of children who are receiving the vaccines, thus achieving Congress' goal though increasing their pediatric immunization costs. As discussed above, fewer children may be treated for vaccine-preventable illnesses which may provide a savings to the States.

We are not preparing a rural impact statement since we have determined, and the Secretary has certified, that this notice with comment period will not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: September 2, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: September 23, 1994

Donna E. Shalala,

Secretary.

[FR Doc. 94–24433 Filed 9–30–94; 8:45 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration

Funding Notice for Grants for Family Medicine Training for Fiscal Year 1995

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1995 Grants for Family Medicine Training funded under the authority of section 747 (a) and (b), title VII of the Public Health Service Act (the Act), as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992. These grant programs include:

Grants for Predoctoral Training in Family Medicine
Grants for Graduate Training in Family Medicine
Grants for Faculty Development in Family Medicine
Grants for Establishment of Departments of Family Medicine

This program announcement is subject to the appropriation of funds. The Administration's budget request for FY 1995 includes funding for each of these programs. Applicants are advised that this program announcement is a contingency action being taken to assure that should authority and funds become available for these purposes, awards can be made in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year. Please see Table 1 for specific budget estimates for each of the grant programs.

Grants for Predoctoral Training in Family Medicine

Purpose: Section 747(a) of the Public Health Service Act authorizes the award of grants to assist in meeting the cost of planning, developing and operating or participating in approved predoctoral training programs in the field of family medicine. Grants may include support for the program only or support for both the program and the trainees.

Eligibility: Eligible applicants are accredited public or nonprofit private schools of medicine or osteopathic medicine.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR part 57, subpart Q and section 791(b) of the PHS Act.

Grants for Graduate Training in Family Medicine

Purpose: Section 747(a) of the Public Health Service Act authorizes the Secretary to award grants to assist in meeting the costs of planning, developing and operating or participating in approved graduate training programs in the field of family medicine. In addition, section 747(a) authorizes assistance in meeting the cost of supporting trainees, who are in need thereof, in such programs who plan to specialize or work in the practice of family medicine.

Eligibility: Eligible applicants are accredited schools of medicine or osteopathic medicine, public or nonprofit private hospitals, and other public or private nonprofit entities.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR part 57, subpart Q and section 791(b) of the PHS Act.

Grants for Faculty Development in Family Medicine

Purpose: Section 747(a)(3) of the PHS Act authorizes the award of grants to assist in meeting the cost of planning, developing and operating programs for the training of physicians who plan to teach in family medicine training programs. In addition, section 747(a)(4) authorizes assistance in meeting the cost of supporting physicians who are trainees in such programs and who plan to teach in a family medicine training program.

Eligibility: Eligible applicants are public or nonprofit private hospitals, schools of medicine or osteopathic medicine, or other public or private nonprofit entities.

To receive support, applicants must meet the requirements of regulations as specified in 42 CFR part 57, subpart Q and section 791(b) of the PHS Act.

Grants for Establishment of Departments of Family Medicine

Purpose: Section 747(b) of the PHS Act authorizes support to meet the costs of projects to establish, maintain, or improve family medicine academic administrative units (which may be departments, divisions, or other units) to provide clinical instruction in family medicine. Funds awarded will be used to: (1) Plan and develop model educational predoctoral, faculty development and graduate medical education programs in family medicine which will meet the requirements of section 747(a), by the end of the project period of section 747(b) support; and (2) support academic and clinical activities relevant to the field of family medicine.

The program may also assist schools to strengthen the administrative base and structure that is responsible for the planning, direction, organization, coordination, and evaluation of all undergraduate and graduate family medicine activities. Funds are to complement rather than duplicate programmatic activities for actual operation of family medicine training programs under section 747(a).

Eligibility: To be eligible to receive support for this grant program, the applicant must be a public, or nonprofit private, accredited school of medicine or osteopathic medicine.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR part 57, subpart R, and section 791(b) of the PHS Act.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Other Considerations

In addition, funding factors may be applied in determining funding of approved applications.

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications in a discretionary program, or favorable adjustment of the formula which determines the grant award in a formula grant program.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Statutory General Preference

All of the Family Medicine Training grant programs are subject to the statutory general preference. As provided in section 791(a) of the PHS Act, statutory preference will be given to any qualified applicant that—

(A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) During the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

This statutory preference will only be applied to applications that rank above the 20th percentile of proposals recommended for approval by the peer review group.

For Grants for Predoctoral Training in Family Medicine, the following definitions apply: *High rate* is defined as a minimum of 20 percent of graduates of the medical school in academic year 1989–90 or 1990–91.

Significant increase in the rate means that the rate of placing academic year 1990–91 graduates in the specified settings is at least 50 percent higher than the rate of placing academic year 1989–90 graduates in such settings and that not less than 15 percent of academic year 1990–91 graduates are working in these areas. Academic years 1989–90 and 1990–91 are used because they are the two most recent years that medical school graduates would have entered practice following the completion of residency training.

For Grants for Graduate Training in Family Medicine, the following definitions apply: *High rate* is defined as a minimum of 25 percent of combined graduates of the residency training program in academic years 1991–92 through 1993–94.

Significant increase in the rate means that, between academic years 1992–93 and 1993–94, the rate of placing graduates in the specified settings has increased by a minimum of 50 percent and not less than 15 percent of graduates from the most recent year are working in these areas.

For Grants for Family Medicine Faculty Development, the following definitions apply: *High rate* is defined as a minimum of 20 percent of faculty development/fellowship program graduates in academic year 1992–93 or academic year 1993–94, whichever is greater, who spend at least 50 percent of their worktime in the specified settings.

Significant increase in the rate means that, between academic years 1992–93 and 1993–94, the rate of placing faculty development/fellowship program graduates in the specified settings has increased by a minimum of 50 percent and that not less than 15 percent of the academic year 1993–1994 graduates are working in these areas.

For Grants for the Establishment of Departments of Family Medicine, the following definitions apply: *High rate* means that 20 percent of all graduates of the medical school in 1990 or 1991, whichever is greater, are spending at

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least 50 percent of their work time in clinical practice in the specified settings.

Significant increase in the rate means that, between academic years 1992–93 and 1993–94, the rate of placing 1990 or 1991 graduates in the specified settings has increased by at least 50 percent and that not less than 15 percent of graduates from the most recent year (1991) are working in these settings.

Additional general information regarding the implementation of the statutory general preference has been published in the **Federal Register** at 59 FR 15741, dated 4/4/94.

Additional Statutory Funding Preference for Grants for the Establishment of Departments of Family Medicine

An additional statutory funding preference applies only to Grants for the Establishment of Departments of Family Medicine. Under section 747(b), a funding preference is provided for qualified applicants that agree to expend the award for the purpose of: (1) Establishing an academic administrative unit defined as a department, division, or other unit, for programs in family medicine; or (2) substantially expanding the programs of such a unit.

Information Requirements Provision

All of the Family Medicine Training grant programs are subject to the information requirements provision. Under section 791(b) of the Act, the Secretary may make an award under certain title VII grant programs only if the applicant for the award submits to the Secretary the following required information:

1. A description of rotations or preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.

2. The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.

3. With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.

4. If applicable, the number of recent graduates who have chosen careers in primary health care.

5. The number of recent graduates whose practices are serving medically underserved communities.

6. A description of whether and to what extent the applicant is able to operate without Federal assistance under this title.

Additional details concerning the implementation of this information requirement have been published in the **Federal Register** at 58 FR 43642, dated August 17, 1993, and will be provided in the application materials.

Application Requests

Requests for application materials and questions regarding grants policy and business management issues should be directed to Grants Management Branch, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857. Completed applications should be returned to the Grants Management Branch at the above address. Please see Table 1 for specific names and phone numbers for each grant program.

If additional programmatic information is needed, please contact the Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9A–20, 5600 Fishers Lane, Rockville, Maryland 20857. Please see Table 1 for specific names and phone numbers for each grant program.

Paperwork Reduction Act

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for these grant programs have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0915–0060.

Deadline Dates

The deadline date for receipt of applications for each of these grant programs is shown in Table 1. Applications will be considered to be "on time" if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

TABLE 1

PHS title VII section No./program title/CFDA No./program regulations	Anticipated budget (in thousands)			Number of new awards anticipated	Grants management contact/phone No. (FAX: 443–6343)	Programmatic contact/phone No. (FAX 443–8890)	Deadline date for competing applications
	Total in President's budget [1]	Estimate for continuations	Estimate for competing projects				
747—Graduate Training in FM—93.379—42 CFR part 57, subpart Q.	.....	$9,979	$4,900	38 [2]	Mrs. Mary Allen, (301) 443–6002.	Ms. Martha Evans, (301) 443–1467.	12/2/94
747—Predoctoral Training in FM—93.896—42 CFR part 57, subpart Q.	.....	7,691	3,780	29	Mrs. Judy Bowen, (301) 443–6960.	Mrs. Betty Ball, (301) 443–1467.	12/28/94
747—Faculty Development in FM—93.985—42 CFR part 57, subpart Q.	.....	5,210	1,960	15	Mrs. Judy Bowen, (301) 443–6960.	Mrs. Joan Harrison, (301) 443–1467.	11/28/94

TABLE 1—Continued

PHS title VII section No./program title/CFDA No./program regulations	Anticipated budget (in thousands)			Number of new awards anticipated	Grants management contact/phone No. (FAX: 443–6343)	Programmatic contact/phone No. (FAX 443–8890)	Deadline date for competing applications
	Total in President's budget [1]	Estimate for continuations	Estimate for competing projects				
747—Departments of FM—93.984—42 CFR part 57, subpart R.	.....	7,079	3,360	26	Mrs. Judy Bowen, (301) 443–6960.	Mrs. Shelby Biedenkapp, (301) 443–1467 ..	12/19/94

[1] $43,992.
[2] Approximately $130,000 each.

These Grants for Family Medicine Training are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). Also, these grant programs are not subject to the Public Health System Reporting Requirements.

Dated: August 31, 1994.

Ciro V. Sumaya,

Administrator.

[FR Doc. 94–24339 Filed 9–30–94; 8:45 am]

BILLING CODE 4160–15–P

RIN 0905–ZA45

Proposed Review Criterion and Indicators for Grants for Family Medicine Training and Grants for General Internal Medicine and General Pediatrics Training

Grants for Family Medicine Training and Grants for General Internal Medicine and General Pediatrics Training are authorized by sections 747 (a) and (b) and 748, title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992. These grant programs include:

Grants for Predoctoral Training in Family Medicine
Grants for Graduate Training in Family Medicine
Grants for Faculty Development in Family Medicine
Grants for Establishment of Departments of Family Medicine
Grants for Residency Training in General Internal Medicine and General Pediatrics
Grants for Faculty Development in General Internal Medicine and General Pediatrics

Competing applications for grants authorized under sections 747 and 748 are reviewed by chartered review committees. It is proposed that the following review criteria and weighted indicators be used by the chartered review committees for the FY 1995 grant cycles. Public comments are invited on the one proposed review criterion and the weighted indicators associated with all four review criteria.

This review criterion and weighted indicators are proposed in this combined notice, rather than in individual program announcements, to provide consistent review of all primary care medical education grant applications. A funding notice for Grants for Family Medicine Training for FY 1995 has been published elsewhere in today's **Federal Register**. A funding notice for Grants for General Internal Medicine and General Pediatrics will be published should funds become available for competitive cycles in FY 1995. Deadline dates and other specific information regarding these grant programs are included in funding notices.

General Purposes

Grants provided in support of primary care medical education are intended to produce, over time, a training infrastructure capable of meeting the nation's needs for generalist health care practitioners by the year 2000 and beyond.

The Division of Medicine (DM), Bureau of Health Professions (BHPr), has developed the following Strategic Directions for fiscal year 1995:

- Generalism—increasing the number of generalist physicians, including the coordination and integration of training opportunities designed to produce generalists;
- Workforce diversity, particularly the training of minorities;
- Strategies to improve health care for the underserved;
- Improve primary care quality;
- Increase primary care faculty and researchers; and
- Emphasize public health and interdisciplinary training.

Applicants are encouraged to consider each application as part of an integrated institutional plan that considers these strategic directions in providing education and training that encourages the selection and future practice of generalist physicians in the disciplines of family medicine, general internal medicine and general pediatrics.

Review Criteria

Considering charter review committee recommendations, the Secretary will approve projects which best promote the purposes of sections 747 and 748 of the PHS Act, taking into consideration the following review criteria established in 42 CFR part 57, subparts Q, R, and FF.

1. The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner.

2. The potential of the project to continue on a self-sustaining basis after the period of grant support.

3. The degree to which the proposed project adequately provides for the project requirements.

In addition, the following review criterion is proposed for FY 1995:

4. Potential effectiveness of the proposed project in carrying out the training purposes of sections 747 or 748 of the PHS Act.

For the above review criteria, weighted indicators have been identified. These indicators, which are listed below, will measure, among other things, the qualifications of the proposed staff and faculty, the institution's commitment to preparing generalist physicians, and the recruitment and retention of underrepresented minority and disadvantaged faculty, students, trainees and/or residents. These issues have been addressed in previous grant cycles as review criteria or funding factors. The review criteria and indicators were developed for the FY 1995 grant cycle with input from potential applicants for these grant programs.

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MERIT SCORE POINT POTENTIAL

Type of project	Potential effectiveness (points)	Administrative and management ability (points)	Economic viability (points)	Project requirements (points)
Department of Family Medicine	130	145	20	75
Family Medicine Residencies	100	145	20	40
Family Medicine Faculty Development	110	145	20	65
Family Medicine Predoctoral Training	130	145	20	80
General Internal Medicine/General Pediatrics Residencies	130	145	20	120
General Internal Medicine/General Pediatrics Faculty Development	110	145	20	65

The points available for the various grant programs in the "Potential Effectiveness" criterion vary slightly. This is a result of a small number of indicators that are specific to individual grant programs. In general, this category relates to the overall institutional environment in which the program is located and the manner of support for establishing or enhancing the training of generalist physicians at the institution.

The "Administrative and Management Ability" review criterion has the highest number of points and is consistent across all grant programs because this area of the application will describe the proposed project for which the grant funds are being requested. The proposal needs to clearly detail the proposed project as well as relate the proposed project to the institution's overall goal of establishing or enhancing its training infrastructure in order to produce more generalist physicians to meet the needs of the Nation.

The "Economic Viability" points are consistent across all grant programs.

The "Project Requirements" points vary considerably for some programs. This is related to the differing number of project requirements specific to each grant program as well as the significance of some of the indicators. For example, for Family Medicine Residencies, the points are lower to reflect the fact that residency programs that are accredited or approved by the appropriate accrediting body, have already met the project requirements.

Weighted Indicators

Criterion 1: Potential Effectiveness of the Proposed Project in Carrying Out the Training Purposes of Sections 747 and 748 of the PHS Act

Indicator 1—Institutional Environment—20 points

Proposal describes the actions taken by the institution (i.e., department, medical school, or other sponsoring health care delivery institution) that demonstrate a high level of support for and promotion of generalist training and practice in community-based settings within underserved urban and rural communities and populations. Examples include organizational mission statements describing support for training and graduating generalists in the primary care disciplines, institutional financial support for such programs, institutional support for rural practices such as locum tenens, 1–800 numbers for consultations, visiting faculty status for rural practitioners, complementary institutional and other resources to support such programs, and adequate representation of generalist faculty on key academic committees such as Admissions, Selection, Tenure, and Faculty Recruitment.

Indicator 2—Strategic Outcomes—20 Points

Proposal describes a strategy for the institution's training program that will lead to or sustain a high level of graduates entering generalist residencies and/or practice.

Indicator 3—Generalist Faculty—10 points

Proposal includes strong, clinically-oriented generalist faculty who practice in community-based settings that include underserved populations.

Indicator 4—Promotion of Workforce Diversity—20 Points

Proposal includes a strategy and plan for recruiting and retaining underrepresented minority and disadvantaged faculty, students, trainees and/or residents. Proposal describes the current and projected levels of participation of these underrepresented groups in the program. Applicants are expected to reflect the diversity of the populations within their states.

Indicator 5—Critical Training Emphasis—10 Points

Proposal includes reference to a curriculum that incorporates Healthy People 2000 objectives in one or more of the following content areas: HIV/AIDS epidemiology, prevention, diagnosis and treatment; substance abuse; or clinical preventive services. Wherever necessary, curriculum is appropriate to the needs of the patient population (culturally competent regarding ethnicity, gender, and sexual orientation) whether that population is urban, rural or underserved.

Indicator 6—Interdisciplinary Training—10 Points

Except for Faculty Development projects, proposal provides for interdisciplinary clinical training opportunities, i.e., a training environment in which students, interns and/or residents learn to work in teams including varied health care professionals and/or primary care disciplines. The environment is such that the important contributions by each member of the health care team are recognized and utilized in the primary care setting.

Indicator 7—Clinical Training Settings—10 Points

Except for Faculty Development projects, proposal provides for clinical training in community-based settings within underserved areas or populations.

Indicator 8—Primary Care Preceptorship—10 Points

For Departments of Family Medicine and Predoctoral Training Programs Only: Training includes a primary care preceptorship that: 1) occurs in the first or second year and is at least four weeks in duration; or 2) is a longitudinal experience of at least five days per semester in both the first and second years.

Indicator 9—Third-Year Clerkship—20 Points

For Departments of Family Medicine and Predoctoral Training Programs Only: Training includes a required third-year clerkship in family medicine of at least four-weeks duration.

Indicator 10—Faculty Expertise—30 Points

For Faculty Development Programs Only: Proposal includes adequate balance in faculty expertise to teach the proposed curriculum, e.g., teaching skills, administrative and management skills, or primary care research.

Indicator 11—Generalism Outcomes/Continuity of Care—30 Points

For General Internal Medicine and/or General Pediatrics Residency Training Program Only: Competing continuation General Internal Medicine and/or General Pediatrics program demonstrates a consecutive 3-year track record of 80% or more graduates entering primary care careers. *IN ADDITION*, by the beginning of the second year of grant support the competing continuation *OR* NEW General Internal Medicine and/or General Pediatrics program will provide *ALL* PGY–1 residents (primary care and traditional) entering the Internal Medicine and/or Pediatrics residency with continuity of care training experience comprising a total of 20% (average) over the 3-year training period, scheduled in at least 9 months of each year of training.

Criterion 2: Administration & Management Ability of the Applicant to Carry Out the Proposed Project in a Cost-Effective Manner

Indicator 1—Project Rationale—30 Points

Project plan includes a background statement, a statement of need for the project, and a specific rationale justifying the proposed project. Project plan also describes the links between this proposed project and an effective larger institutional program, i.e., the department, division, residency, etc. This section of the project plan will define the larger purposes of the project, i.e., in what way the project will cause an improvement or expansion in the capability of the larger educational institution or program to deliver quality primary care training.

For competing continuation proposals, a progress report is provided. At a minimum, the report includes a summary of the funded objectives and the accomplishments made during the project period. Progress report includes evaluation data related to each of the project objectives. For applicants who are not currently funded, but who have received funding within the last four years, a discussion is included in the application describing the previously funded objectives, accomplishments and evaluation data relative to those objectives.

Indicator 2—Project Objectives—40 Points

Project plan contains a detailed description of the project's objectives with measurement indicators for each objective. The plan also includes a description of the methods that will be used to implement the project, e.g., educational strategy, timetable and a resource plan that outlines the faculty, staff, facilities and equipment that will be used, including identification of those resources that already exist or that will be made available by the institution.

Indicator 3—Budget Justification—30 Points

Project plan indicates the degree to which the proposed objectives relate to the budget narrative and justifies the budget items requested.

Indicator 4—Evaluation Plan—10 Points

Project plan includes an evaluation strategy for the proposed project to determine achievements in relation to project objectives.

Indicator 5—Anticipated Problems—10 Points

Project plan defines the problems anticipated in implementing the project and the proposed approaches to resolving such problems as may arise.

Indicator 6—Institutional Collaboration—15 Points

Project plan includes documentation of the support of individuals or organizations who will collaborate in implementation of this proposed project. Letters of support for the project from the institution, department, faculty, etc., are included. *For Faculty Development projects*, letters from potential/actual trainees are included.

Indicator 7—Trainee Grid—10 Points

Except for Departments of Family Medicine, project plan includes a "trainee grid" that defines the type of individuals being trained, how many will be trained, and when they will be trained.

For General Internal Medicine and General Pediatrics Residencies, the grid should also reflect actual and projected numbers of primary care and traditional residents.

Criterion 3: Economic Viability—The Potential of the Project to Continue on a Self-Sustaining Basis After the Period of the Project Grant

Indicator 1—Continuation Support—10 Points

Proposed projects demonstrate how their support will be continued after cessation of Federal funding. If other projects have been funded under this grant program within the past five years, a financial report discusses how terminated Federal funds have been replaced.

Indicator 2—Non-Federal Support—10 Points

Financial and in-kind support is or will be provided by state or local government, institution, medical school, department, patient fees, or other private funding sources to supplement the Federal grant.

Criterion 4: Degree to Which the Proposed Project Adequately Provides for the Project Requirements

These indicators (project requirements) have been established in 42 CFR part 57, subparts Q, R, and FF and are summarized below.

Establishing Departments of Family Medicine

Indicator 1—Project Director—10 points
Indicator 2—Administrative Autonomy—15 points
Indicator 3—Control Over Residency Program—10 points
Indicator 4—Evaluation Plans—10 points
Indicator 5—Family Medicine Instruction—10 points
Indicator 6—Full-Time Faculty—10 points
Indicator 7—Academic Status—10 points

Family Medicine Residencies

Indicator 1—Accreditation Status—40 points

Proposal includes a letter of accreditation from the ACGME/RRC or a letter of approval from the AOA verifying that the residency meets all requirements. All such projects are considered to have satisfied the Project Requirements. To the extent that problems are noted by the accrediting body, the project plan addresses the problems and has a plausible plan for their correction.

Family Medicine Faculty Development

Indicator 1—Project Director—10 points
Indicator 2—Administrative & Organizational Plan—10 points
Indicator 3—Evaluation Plans—10 points
Indicator 4—Curriculum—25 points
Indicator 5—Eligible Trainees—10 points
Indicator 6—Number of Trainees—0 points
Indicator 7—Length of Training—0 points
Indicator 8—Trainee Support—0 points

Family Medicine Predoctoral Training

Indicator 1—Project Director—10 points
Indicator 2—Administrative & Organizational Plan—10 points
Indicator 3—Evaluation Plans—10 points
Indicator 4—Ambulatory Care Training Settings—20 points
Indicator 5—Curriculum—10 points
Indicator 6—Sponsoring Unit—10 points
Indicator 7—Institutional Strategy—10 points

General Internal Medicine & General Pediatrics Residencies

Indicator 1—Project Director—10 points
Indicator 2—Administrative & Organizational Plan—10 points

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Indicator 3—Curriculum Development and Evaluation Coordinator—10 points
Indicator 4—Faculty and Training Personnel—10 points
Indicator 5—Behavioral Science Faculty—10 points
Indicator 6—Resident Recruitment and Selection—10 points
Indicator 7—Requirement for Stipend Support—0 points
Indicator 8—Number and Distribution of Residents—10 points
Indicator 9—Ambulatory Care Training Setting—10 points
Indicator 10—Continuity of Care Experience—0 points
Indicator 11—Other Ambulatory Patient Care Experiences—10 points
Indicator 12—Curriculum Content and Evaluation of Educational Offerings—20 points
Indicator 13—Evaluation of Residents—10 points

General Internal Medicine & General Pediatrics Faculty Development

Indicator 1—Project Director—10 points
Indicator 2—Administrative & Organizational Plan—10 points
Indicator 3—Curriculum—25 points
Indicator 4—Evaluation Plans—10 points
Indicator 5—Eligible Trainees—10 points
Indicator 6—Eligibility for Trainee Stipend Support—0 points
Indicator 7—Length of Training for Stipend Support—0 points

Additional Information

Interested persons are invited to comment on the one proposed review criterion and the weighted indicators associated with all four review criteria. The comment period is 30 days. All comments received on or before November 2, 1994 will be considered before the final review criterion and weighted indicators are established. Written comments should be addressed to: Marc Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9A–27, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

If additional information is needed, please contact: Enrique Fernandez, M.D., Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9A–20, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone : (301) 443–1467, FAX: (301) 443–8890.

Dated: August 29, 1994.
Ciro V. Sumaya,
Administrator.
[FR Doc. 94–24340 Filed 9–30–94; 8:45 am]
BILLING CODE 4160–15–P

Health Care Financing Administration

[ORD–68–N]

Medicare and Medicaid Programs; Small Business Innovation Research Grants for Fiscal Year 1995

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the availability of HCFA funding, through grants, for small businesses under the Small Business Innovation Research (SBIR) Program. This notice contains information about the subject areas for grants that will be given priority, application requirements, review procedures, and other relevant information.

DATES: Grant applications must be submitted by December 9, 1994, in order to be considered under the fiscal year (FY) 1995 annual funding cycle. For an explanation of a timely submission, see section IV. of this notice entitled "Submission of Grant Applications."

ADDRESSES: Standard application forms and related instructions are available from and must be formally submitted to: JuDee Caquelin, HCFA Grants Officer, Division of Contracts and Grants, Office of Acquisition and Grants, Health Care Financing Administration, 389 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187, (410) 966–5157.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783–3238 or by faxing to (202) 512–2250. The cost for each copy is $6.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Questions on the HCFA SBIR Program may be addressed to Carl Hackerman, SBIR Coordinator, Office of Research and Demonstrations, Health Care Financing Administration, Room 2–C–9 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187, (410) 966–5181. Questions regarding completion of the application forms may be addressed to JuDee Caquelin, HCFA Grants Officer, (410) 966–5157.

SUPPLEMENTARY INFORMATION:

I. Small Business Innovation Research Program

The Small Business Innovation Development Act of 1982 (Public Law 97–219, enacted on July 22, 1982), as amended by the Small Business Innovation Research Program Extension (Public Law 99–443, enacted on October 6, 1986), the Small Business Administration Reauthorization and Amendment Act of 1988 (Public Law 100–590, enacted on November 3, 1988), and the Small Business Research and Development Enhancement Act of 1992 (Public Law 102–564, enacted on October 28, 1992) (15 U.S.C. 638(e) through (m)), requires Federal agencies to reserve a specific amount of their extramural research and development (R&D) budgets for a Small Business Innovation Research (SBIR) Program. This SBIR Program is intended to—

- Stimulate technological innovation;
- Use small business to meet Federal R&D needs;
- Increase private sector commercialization of innovations derived from Federal R&D; and
- Foster and encourage participation by minority and disadvantaged persons in technological innovation.

The principal purpose of HCFA's SBIR Program is to provide assistance to creative applicants so that innovation can be encouraged that will result in better health care.

A. SBIR Program Phases, Award Amounts, and Period of Support

The SBIR Program consists of the following three phases:

Phase I

The objective of this phase is to establish the technical merit and feasibility of proposed research or R&D efforts and to determine the quality of performance of the small business awardee organization before furnishing further Federal support in Phase II. Phase I awards will be approximately $35,000 to $50,000 (for both direct and indirect costs) for a period not to exceed 12 months.

Phase II

The objective of this phase is to continue the research or R&D efforts initiated in Phase I and to actually create the proposed product and test it before marketing. Funding is based on the results of Phase I and the scientific and technical merit of the Phase II application, including its potential for commercialization. (Only Phase I awardees are eligible to apply for Phase II funding.) Phase I awardees are eligible to apply for Phase II funding only from the Federal agency that supported their Phase I project. Phase II awards will be approximately $100,000 (for both direct and indirect costs) for a period normally not to exceed 12 months.

Phase III

The objective of this phase, if appropriate, is for the small business concern to pursue with non-Federal funds the commercialization of the results of the research or R&D in Phases I and II.

The purpose of this notice is to invite Phase I and II grant applications from for-profit domestic small business concerns that have the expertise to develop or further develop innovative technology. This technology should be compatible with the general mission of HCFA and contribute to the health care field. HCFA is responsible for the Medicare program, Federal participation in the Medicaid program, and related health care quality assurance programs. HCFA's mission is to promote the timely delivery of appropriate quality health care to its Medicare beneficiaries and Medicaid recipients; over 50 million of the nation's aged, disabled, and poor. HCFA must also ensure that Medicare beneficiaries and Medicaid recipients are aware of the services for which they are eligible. In addition, HCFA must ensure that those services are accessible and of high quality.

In carrying out its mission, HCFA conducts studies and projects that examine and demonstrate payment, coverage, eligibility, and management alternatives to the present programs. HCFA also studies the impact of HCFA programs on health care costs, program expenditures, beneficiary and recipient access to services, health care providers, and the health care segment of the American economy.

In addition, HCFA monitors national health care expenditures and prices and provides analyses of the costs of current programs, as well as the impact of possible legislative or administrative changes in the programs. HCFA's Office of Research and Demonstrations (ORD) is responsible for the technical aspects of the SBIR Program described in this section.

This notice outlines the eligibility requirements for organizations wishing to participate in the HCFA SBIR Program and the research grant application and review processes. It also provides both general program information as well as specific research topics and subtopics that may be of interest to small business concerns.

Although areas of special programmatic interest or priority are described in section VII. of this notice, we will consider grant applications in any area within the field of health care R&D unless otherwise specifically excluded. However, we are not generally interested in funding the biomedical or clinical projects that more appropriately fit the mission of the National Institutes of Health.

B. Eligibility

Each organization submitting a grant application under our SBIR Program must qualify as a small business concern. "Small business concern" is defined in section II.F. of this notice. In determining whether an applicant is a small business concern, an assessment will be made of several factors, including whether it is organized for profit, whether it is independently owned and operated, and whether it meets the size requirement of 500 or fewer employees. Whether the size requirement is met may depend on whether the applicant organization is affiliated with another organization whose employees, when added to those of the applicant organization, exceed 500. In conducting this assessment, all appropriate factors will be considered, including common ownership, common management, and contractual relationships.

Affiliation exists when one concern controls or has the power to control the other, or there is third party control, or an identity of interest between or among parties exists so that affiliation may be found. Control may be affirmative or negative, and it is immaterial whether it is exercised so long as the power to control exists. Indeed, control can arise from a variety of circumstances. One example of a circumstance that could lead to a finding that an organization is controlling, or has the power to control, another organization is the sharing of common office space, employees, or other facilities (for example, laboratory space). Although access to special facilities or equipment in another organization is permitted (as in cases in which the SBIR applicant has entered into a subcontractual agreement with another institution for a specific, limited portion of the research project), research space occupied by an SBIR applicant must be space that is not generally shared with another organization and over which the applicant has exclusive control. When there is an indication of sharing of common employees, a determination will be made on a case-by-case basis of whether the sharing constitutes control or the power to control.

Additionally, control or the power to control is generally considered to exist when "key employees of one concern organize a new concern and serve as its officers, directors, principal stockholders, and/or key employees, and the one concern is furnishing or will furnish the other concern with subcontracting financial or technical assistance, bid or performance bond indemnification, and/or other facilities, whether for a fee or otherwise." Affiliation can also arise between or among two or more persons when an identity of interest exists, such as members of the same family or persons with common investments in more than one concern.

All SBIR grant applications will be reviewed with the above considerations in mind. Organizations considering submitting an application are referred to the SBIR Program Policy Directive published in the **Federal Register** on January 26, 1993 (58 FR 6144) and to the regulations set forth at 13 CFR part 121 for further guidance regarding eligibility. In particular, to determine whether affiliation exists, the applicant should also refer to 13 CFR 121.401 for the definition of affiliation, which will be used as HCFA's guide on this matter. If it appears that an applicant organization does not meet eligibility requirements with respect to size, HCFA will request a size determination of the organization from the applicable Small Business Administration (SBA) regional office. The review of the application for scientific merit may be deferred until a definitive response is furnished by SBA.

Of particular concern in considering grant awards is the position of principal investigator. We wish to ensure that support is furnished to a carefully directed working group led by an individual personally committed to the development of the innovation. Accordingly, we are adopting the "principal investigator" concept from 42 CFR part 52. These regulations define the term "principal investigator" to mean "a single individual designated by the grantee in the grant application . . . who is responsible for the scientific and technical direction of the project." (42 CFR 52.2.) In order to meet this standard, the principal investigator's

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primary employment must be with the grantee at the time of the award and remain so for the duration of the project. Primary employment means that more than one-half of the principal investigator's time is spent in the employment of the small business concern. Primary employment with a small business concern precludes full-time employment at another organization.

In accordance with SBA's SBIR Program Policy Directive published in the **Federal Register** on January 26, 1993 (58 FR 6144), we have further restricted the definition of primary employment of the principal investigator to accurately reflect HCFA's needs. The applicant must declare the principal investigator's employment, whether paid or unpaid, at the time of application, and must declare all employment relationships, whether paid or unpaid, that the principal investigator is expected to have at the time the SBIR grant awards are expected to be made and for the duration of the proposed project. In the event that, at the time of application, the principal investigator—(1) is, or expects to be, a less-than-full-time employee of the small business concern, (2) is, or expects to be, concurrently employed by another organization, or (3) gives, or expects that he or she may give, the appearance of being concurrently employed by another organization, whether for a paid or unpaid position, it is essential that documentation be submitted with the application to verify the applicant's eligibility at the time of the award. Thus, if the principal investigator is also employed or appears to be employed by an institution other than the applicant organization (for example, a university, nonprofit research institute, or a company other than the applicant organization), a letter must be furnished by the nonapplicant organization confirming that the principal investigator, if awarded an SBIR grant, is, or will become, a less-than-half-time employee of the organization and will remain so for the duration of the SBIR project. If the principal investigator is employed by a university, the letter must be furnished by the dean of the school or the departmental chairperson. If the principal investigator is employed by another for-profit organization, the letter must be signed by a corporate official. This documentation of the primary employment of the principal investigator is required for every application that is submitted, even one that is a revision of a previously submitted application. In the event that solicitation of this documentation would place the principal investigator's current employment in jeopardy should the grant award not be made, the applicant may delay submission of the documentation, provided the documentation is submitted no later than 30 days after receiving notice of a grant award, and provided that the applicant includes a statement with the grant application to the effect that solicitation of the documentation at this time would place the principal investigator's current employment in jeopardy, that the applicant will forward the documentation within 30 days of receiving notice of a grant award, and that the applicant understands that should it fail to provide the documentation, we may, at our discretion, immediately suspend or terminate the grant. If the principal investigator fails to furnish adequate documentation, the application may be returned without review. In the event a grantee is required to submit documentation of the principal investigator's employment, but fails to do so within 30 days of the date of the notice of grant award, we may immediately suspend or terminate the grant.

For both Phase I and Phase II, the research or R&D must be performed in its entirety in the United States (U.S.), that is, the States, territories, and possessions of the U.S.; the Commonwealths of Puerto Rico and the Northern Mariana Islands; and the District of Columbia.

II. Definitions

The words and phrases that appear on the SBIR application form, or are needed in the application narrative, are not readily defined. Therefore, for convenience and clarity, we have furnished the following definitions, which, except as noted, are taken from SBA's SBIR Program Policy Directive that implements this program and was published on January 26, 1993, in the **Federal Register** (58 FR 6144). This policy directive requires an agency to define in a separate section whatever terms it uses that are unique to either the SBIR Program, a specific SBIR solicitation, or a portion of the solicitation. The section must also include, at a minimum, specific terms as defined in the policy directive. Accordingly, in addition to the terms required by the policy directive, we are also defining the terms "Contract" and "Grant" and including the policy directive's definition of the term "Research and Development."

A. Contract

A "contract" is an award instrument establishing a binding legal procurement relationship between a funding agency and the recipient, obligating the latter to furnish an end product or service and binding the agency to furnish payment for the product or service.

B. Grant

A "grant" is a financial assistance mechanism whereby either money or direct assistance, or both, is furnished to carry out approved activities.

C. Socially and Economically Disadvantaged Individual

A "socially and economically disadvantaged individual" is defined as a member of any of the following groups:

- Asian-Pacific Americans.
- Black Americans.
- Hispanic Americans.
- Native Americans.
- Subcontinent Asian Americans.

D. Socially and Economically Disadvantaged Small Business Concern

A "socially and economically disadvantaged" small business concern is one—

- In which at least 51 percent is owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the voting stock is owned by one or more socially and economically disadvantaged individuals; and
- Whose management and daily business operations are controlled by one or more of the individuals.

E. Research and Development

"Research and Development" or R&D is defined as any activity that is—

- A systematic, intensive study directed toward greater knowledge or understanding of the subject studies;
- A systematic study directed specifically toward applying new knowledge to meet a recognized need; or
- A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

F. Small Business Concern

At the time of award of Phase I and of Phase II, a "small business concern is one that—

- Is organized for profit, independently owned and operated, not dominant in the field of operation in which it is proposing, and has its principal place of business located in the U.S.;
- Is at least 51 percent owned or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by U.S. citizens or lawfully admitted permanent resident aliens; and
- Has, including its affiliates ("affiliation" is defined in 13 CFR 121.401), a number of employees (as defined in 13 CFR 121.407) not exceeding 500, and meets the other small business concern size regulation requirements found in 13 CFR 121. Business concerns, other than investment companies licensed, or State development companies qualifying, under the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.), are affiliates of one another when either directly or indirectly (1) one concern controls or has the power to control the other, (2) a third party or parties controls or has the power to control both, or (3) an identity of interest between or among parties exists so that affiliation may be found. Control can be exercised through common ownership, common management, and contractual relationships. Business concerns include, but are not limited to, any individual, partnership, corporation, joint venture, association, or cooperative.

G. Subcontract

A "subcontract" is any agreement, other than one involving an employer-employee relationship, entered into by a Federal government funding agreement awardee calling for supplies or services required solely for the performance of the original funding agreement.

H. Women-Owned Small Business Concern

A "women-owned small business concern" is a business that is at least 51 percent owned, controlled, and operated by a woman or women. "Control" is defined as exercising the power to make policy decisions; "operate" is defined as being actively involved in the day-to-day management.

III. Preparation of Grant Applications

The forms and instructions will be supplied to the applicant by the HCFA Grants Officer (see the ADDRESSES section of this notice) and are designed for use in applying for SBIR Phase I or Phase II research grants. The instructions contain the SBA policy directive's guidelines on proposal content and limitations.

Potential applicants are encouraged to contact the SBIR Coordinator (see the FOR FURTHER INFORMATION CONTACT section of this notice) for preapplication technical assistance and for more specific information on the research topics described in section VII. of this notice.

Health science research literature is available at academic and health science libraries and Regional Medical Libraries through a network supported by the National Library of Medicine. A list of Regional Medical Libraries and information about network services may be requested from the Public Information Office, National Library of Medicine, Bethesda, Maryland 20894, telephone (301) 496–6308.

Other sources that provide technology search and document services include the organizations listed below. They should be contacted directly for service and cost information.

National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487–4600

NASA Industrial Applications Center, University of Pittsburgh, 701 LIS Building, Pittsburgh, Pennsylvania 15280, (412) 624–5211

North Carolina Science and Technology Research Center, Post Office Box 12235, Research Triangle Park, North Carolina 27709, (919) 549–0671

NASA/Florida State Technology Applications Center, State University, System of Florida, 500 Well Hall, Gainesville, Florida 32611, (904) 392–6626

NASA/UK Technology, University of Kentucky, 109 Kinkead Hall, Lexington, Kentucky 40506, (606) 257–6322

Aerospace Research Applications Center, 611 N. Capitol Avenue, Indianapolis, Indiana 46204, (317) 262–5003

Kerr Industrial Applications Center, Southeastern Oklahoma State, University Durant, Oklahoma 74701, (405) 924–6822

IV. Submission of Grant Applications

Grant applications must be submitted to the HCFA Grants Officer (see the ADDRESSES section of this notice).

The following schedule applies to the receipt, review, and award of SBIR applications:

Receipt date—December 9, 1994
Technical review—January 17, 1995
Award decisions—February 10, 1995
Approximate award date—February 17, 1995

Applications must be received by December 9, 1994. Applications mailed through the U.S. Postal Service or a commercial delivery service will be "on time" if they are received or postmarked on or before December 9, 1994. Submissions by facsimile (fax) transmission will not be accepted. Applications that do not meet the above criteria will be considered late applications. Respondents are cautioned that if their application is late, it will be returned without review.

V. Method of Selection and Evaluation Criteria

All Phase I and Phase II grant applications will be evaluated and judged on a competitive basis. Applications will be screened, and those found to be inadequate for review or programmatically unrelated to HCFA's mission will be returned to the applicant. Those passing the screening will be reviewed for technical and scientific merit. Each application will be judged individually, as described in this section. HCFA is under no obligation to fund any application or make any specific number of awards in a given topic area. It may also elect to fund no projects within a given topic area.

A. Review Process

Grant applications are subject to a review process involving two sequential steps. The first step is performed by a technical review panel composed primarily of Federal and non-Federal professionals selected for their competence in particular fields. The task of the panel is to evaluate applications for scientific and technical merit. The reviewers furnish a number rating, make an overall recommendation, and, on occasion, make highly specific recommendations related to the scope, direction, and conduct of the proposed research. The second level of review is made by the senior management of HCFA's ORD. ORD management decisions are based on judgments about not only the technical merit of the proposed research, but also its relevance to our mission. Generally, HCFA may award a grant only if the corresponding application has been recommended for approval by the panel. However, applications recommended for approval are not automatically funded.

B. Review Criteria

In considering the scientific and technical merit of each application, the following criteria and weights will be used:

- The soundness and technical merit of the proposed approach—35 percent.
- The potential of the research for technological innovation including the potential for commercial application—30 percent.

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• The qualifications of the proposed principal investigator, support staff, and consultant—20 percent.

• The appropriateness of the budget—10 percent.

• The adequacy and suitability of the facilities and research environment—5 percent.

C. Funding Decisions

When making funding decisions, ORD takes into consideration the following: (1) ratings resulting from the technical evaluation process, (2) program relevance, and (3) applications.

D. Release of Grant Application Review Information

Following decisions on grant applications, summary statements are mailed with a disapproval letter to principal investigators whose proposals have not been accepted.

E. Submission of Similar Grant Applications by the Applicant Orgonization

HCFA discourages the submission of more than one grant application submitted by the same applicant organization with essentially the same research focus: That is, a product or technology that, with nonsubstantive modifications, can be applied to a variety of purposes. In evaluating groupings of applications with a common scientific focus or objective, technical review groups are in a position to easily identify multiple grant applications from the same organization for essentially the same project. In these cases, HCFA will give funding consideration to only one application.

VI. Considerations

SBA's SBIR Program Policy Directive (58 FR 6144) specifies that we furnish the following information:

A. Awards

• There will be approximately 10 to 15 Phase I and/or Phase II awards in FY '95.

• The SBA Program Policy Directive permits the payment of a reasonable fee or profit under the SBIR program.

B. Reports

The grantee organization will be required to submit short quarterly progress reports, a complete draft final report, and a final report. Additionally, a financial status report (SF–269A) must be submitted to the HCFA Grants Officer annually. The award will specify the schedule for these reports and place of delivery.

C. Payment Schedule

Once an SBIR grant is awarded, the grantee organization will receive information and forms regarding requests for cash, manner of payment, and associated reporting requirements. Payment may be made on a cost-reimbursement or advance basis. Cost reimbursements may be requested monthly, quarterly, or at other periodic intervals. Advance payments may be requested on a monthly basis only.

D. Limited Rights Information and Data

1. Proprietary Information

Information contained in an unfunded grant application will remain the property of the applicant. HCFA may, however, retain copies of all applications.

If proprietary information is provided by a proposer in a proposal that constitutes a trade secret, proprietary, commercial or financial information, confidential personal information or data affecting the national security, it will be treated in confidence, to the extent permitted by law, provided this information is clearly marked by the proposer with the term "confidential proprietary information" and provided the following legend appears on the title page of the proposal:

For any purpose other than to evaluate the proposal, this data shall not be disclosed outside the government and shall not be duplicated, used, or disclosed in whole or in part, provided that if a funding agreement is awarded to this proposer as a result of or in connection with the submission of this data, the government shall have the right to duplicate, use, or disclose the data to the extent provided in the funding agreement. This restriction does not limit the government's right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction are contained in pages _____ of this proposal.

Any other legend may be unacceptable to the Federal government and may constitute grounds for removing the proposal from further consideration and without assuming any liability for inadvertent disclosure. The government will limit dissemination of the information to official channels only.

2. Title to Property

Title to real property, equipment, and supplies acquired by a for-profit recipient under a financial assistance award or subaward will vest, upon acquisition, in the Federal government. However, the title may be transferred to the awardee upon termination of the project if the transfer would be more cost-effective than our recovery of the property. It is recommended that applicants consider leasing arrangements whenever possible. HCFA will generally not fund projects that require the acquisition of real property, equipment, or supplies.

3. Rights in Data Developed Under the SBIR Grant

Rights in data, including software developed under the terms of any grant resulting from an application submitted in response to this notice will remain with the grantee, except that the Federal government will have the limited right to use the data for internal Federal government purposes. These data will not be released outside the Federal government without permission of the grantee for a period of 4 years from completion of the project from which the data were generated. However, at the end of this 4-year period a royalty-free license will exist for HCFA to use, and to authorize others to use on its behalf, these data for Federal government purposes. At this time, HCFA is also relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties. This notice will be affixed to any reproductions of these data, in whole or in part.

4. Copyrights

With prior written permission of the Grants Officer, the awardee may normally copyright and publish (consistent with appropriate national security considerations, if any) material developed with HCFA's support. HCFA receives a royalty-free license for the Federal government and requires that each publication contain an appropriate acknowledgment of agency support and a disclaimer statement.

5. Patents

Small business concerns may normally retain the principal worldwide patent rights to any invention developed with HCFA support. The Federal government receives a royalty-free license for Federal government use, reserves the right to require the patentholder to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the U.S. must normally manufacture it substantially in the U.S. To the extent authorized by 35 U.S.C. 205, the government will not make public any information disclosing a government-supported invention for a 4-year period to allow the awardee a reasonable time to pursue a patent.

E. Profit or Fee

Absent a statutory prohibition, payment of a reasonable fee or profit will be made under the SBIR program (58 FR 6144). Because the regulations set forth at 45 CFR 74.705, which provide that no profit or fee will be furnished to for-profit organizations through grants, do not invoke a statutory prohibition on paying a fee or profit, the SBA's policy directive applies to these SBIR grants.

F. Joint Ventures and Limited Partnerships

Joint ventures and limited partnerships are eligible provided the entity created qualifies as a small business concern in accordance with the definition included in this notice.

G. Performance of Research and Analytical Work by the Applicant Organization

In Phase I, a minimum of two-thirds or 67 percent of the research or analytical effort must be carried out by the small business concern; that is, consultant fees and contracts to a third party for portions of the scientific or technical effort may not exceed 33 percent of the total proposed budget.

In Phase II, a minimum of one-half or 50 percent of the research or analytical effort must be carried out by the small business concern; that is, consultant fees and contracts to a third party for portions of the scientific or technical effort may not exceed 50 percent of the total proposed budget.

H. Terms and Conditions of Awards

Upon acceptance of a grant, the awardee must comply with the terms and conditions contained or referenced in the Notice of Grant Award document. These terms and conditions, constituting legal requirements imposed on a grantee by statute, regulations, administrative policy, or the award document itself, comprise the following "standard" and "special" provisions:

• Standard Provisions—Terms and conditions required as part of each Notice of Grant Award.

1. SBIR Grant program legislation: the Small Business Innovation Development Act of 1982 (Public Law 97–219); SBIR Program Extension (Public Law 99–443); the SBA Reauthorization and Amendment Act of 1988 (Public Law 100–590); and the Small Business Research and Development Enhancement Act of 1992 (Public Law 102–564).

2. The SBA's Small Business Innovation Research Program Policy Directive published in the Federal Register on January 26, 1993 (58 FR 6144).

3. Regulations set forth at 13 CFR part 121.

4. The inclusion of special terms and conditions, if any (see below).

5. Regulations set forth at 45 CFR part 74 (Administration of Grants).

• Special Provisions—Additional terms and conditions judged necessary to attain the objectives for which the grant is being made, to facilitate post-award administration of the grant, to conserve grant funds, or to otherwise protect the interests of the Federal government.

1. Requirement for written progress reports and due dates.

2. Requirement for a draft final report and due date.

3. The availability of the HCFA Project Officer.

4. Grantees' responsibilities with respect to information contained in technical documents.

5. HCFA's rights to suspend or terminate the grant.

6. Protection of individually identifiable data.

7. Grantees' responsibilities with respect to presentation of information.

8. Key personnel.

9. Submission of data to the Federal government.

10. Submission of items developed to the Federal government.

11. Other special terms and conditions that are appropriate to the circumstances of the individual award.

The grant must be administered in accordance with the following regulations:

13 CFR Part 121—Small Business Size Regulations
42 CFR Part 52—Grants for Research Projects
45 CFR Part 46—Protection of Human Subjects
45 CFR Part 74—Administration of Grants
45 CFR Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the DHHS Effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 84—Nondiscrimination of the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance
45 CFR Part 91—Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance.

I. Cost Sharing

Cost sharing is not required nor will it be an evaluation factor in consideration of the proposal. However, due to the special nature of the SBIR Program, the applicant may choose to share the costs of a project. This may be done through cash or in-kind contributions. Most frequently, we expect that the applicant will contribute more labor or use unreimbursed equipment as the applicant's share.

J. Additional Information

This Federal Register notice is intended for informational purposes and reflects current planning. If there is any inconsistency between the information contained in this notice and the terms of any resulting SBIR grant, the terms of the grant are controlling.

Before award of an SBIR grant, HCFA may request the applicant to submit certain organization, management, personnel, and financial information in order to ensure responsibility of the applicant.

The Federal government is not responsible for any monies expended by the applicant before the award of any grant.

This notice is not an offer by HCFA and does not obligate HCFA to make any specific number of awards.

The SBIR Program is not a substitute for HCFA's existing unsolicited proposal mechanisms, and unsolicited proposals will not be accepted under either Phase I or Phase II of the SBIR Program.

The applicant may be required to certify that he or she has not previously been paid, nor is currently being paid, for essentially equivalent work by an agency of the Federal government. If a grant is made under this notice for a project, some of whose elements are being supported, or will be supported, by another Federal agency, HCFA and the applicant will negotiate a budget that reflects the elimination of any overlapping support.

This program is not covered by Executive Order 12372, "Intergovernment Review of Federal Programs." Executive Order 12372 provides for a State clearinghouse in each State to review Federal programs. Research grants are exempt from this review.

VII. Research Topic Areas

This notice invites SBIR Phase I applications in the following areas. The topics are defined in general terms. They are intended to indicate where we believe we can properly offer assistance in the development of innovative technology. ORD will consider any idea that is within the general subject of a topic. In addition, ORD will review any idea that is within the general purview of HCFA, as described in section I. of this notice. Applicants are reminded

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that the overall intent of the HCFA SBIR Program is to provide assistance to the development of products and processes that have commercial potential and not to the acquisition of products for HCFA's own use.

A. High Quality and Effective Care

HCFA invites ideas that would develop products to assist all participants in health care in assessing and monitoring the quality of care and level of care being furnished to patients. Projects should aim to develop tools for health care professionals, providers, and managers that permit them to examine patterns of services being delivered, and the health and social outcome of those services. Projects that would assist private organizations in developing patient guidelines and in conducting technology assessments are of interest. These tools should provide a way to monitor and measure the delivery of health services and the outcomes of those services. They should also make possible a judgment about the quality of the care, the effectiveness of the care, or both. The technical efficiency with which care is delivered and the appropriateness of the overall outcome for the patient should be addressed.

B. Management of Ambulatory Services

HCFA invites ideas that would develop tools to monitor, assess, and control overutilization and underutilization of ambulatory services and products at all levels of the health care system. Apart from the inflation in the cost of each service, a significant cause of the rising cost of health care services is excessive utilization. Traditionally, utilization review techniques have been applied to high cost, acute services, such as surgery and hospitalizations. We wish to focus on physician services and other ambulatory services and products, for example, drugs, medical equipment, and testing. HCFA invites applications related to services or products commonly associated with Medicare beneficiaries and Medicaid recipients, who are primarily the aged, the poor, the disabled, and persons with end-stage renal disease. Techniques to be explored involve systems both for retrospective utilization pattern review and for managing prospective interventions in individual physician or beneficiary and recipient service or product use. This area also includes broader management tools, based on information derived from utilization review, that promote or ensure more efficient and effective service delivery.

C. Beneficiary Information and Assistonce

HCFA invites ideas that may make the Medicare and Medicaid programs understandable to beneficiaries and recipients and that provide assistance to these individuals in their attempts to deal with the programs. Potential program users (Medicare beneficiaries and Medicaid recipients) need to understand when they are eligible, what services or products are covered, and what their rights and responsibilities are within each program. An example would be an information project that would assist health care consumers, including Medicare beneficiaries and Medicaid recipients, by providing aggregate data on provider performance and utilization trends, discrete price information, and information on related copayments, etc.; in a sense, a "Blue Book for Consumers." Another example is obtaining payment for claims, one of the most frequent problems encountered by Medicare beneficiaries. The process of dealing with Medicare's fiscal intermediaries and carriers is difficult for many. Tools that would ease this process would be welcome. Beneficiaries also need to be able to decide whether they should join, or exit from, a health maintenance organization, and the advantages and disadvantages of the decision. Beneficiaries need to understand what considerations to take into account when long term care is a possibility. Similarly, beneficiaries need to be assisted in the decision about the purchase of health insurance in addition to Medicare. HCFA invites ideas in beneficiary communication and assistance approaches that are tailored to special populations (such as significant demographic, sociocultural, or disease-related groups of beneficiaries), as well as approaches that could be used by supplemental health benefit program sponsors (for example, employers and unions) in assisting Medicare-eligible retirees. Applicants who are considering this topic should understand that the SBIR Program generally seeks to support the development of commercially viable products and that there is already a fair amount of existing commercial activity in this area.

D. Program Efficiencies and Improvement

The existing systems for health care delivery and financing have undergone, and are continuing to undergo, changes due to new technology, legislation, regulation, and market forces. Major payers for health care are continually studying the feasibility of new approaches to improving the management of care, the delivery of care, and financing. Therefore, HCFA invites applications that focus on tools to assist in the goal of improved management of the Medicare and Medicaid programs. The term management is used in a broad sense. These could be tools that are directed toward providers who furnish services or products to Medicare beneficiaries or Medicaid recipients, organizations that handle the financing of care, organizations that oversee the quality of services and products, or the beneficiaries and recipients themselves, and State and local organizations that deal primarily with Medicare and Medicaid populations.

HCFA will consider any innovative idea that appears to have the potential for improving the programs for any of the several parties involved, and that has a potential for sale in the normal or commercial market. An example of an innovative idea is the development of improved computer- based case management systems for community care services. Case management programs are commonly being used to coordinate community-based care for frail elderly and other populations under Medicaid and other programs. Automated systems use client eligibility and assessment information to assist case management agencies in preparing appropriate plans of care based on the client's condition and select service providers. These systems would also interface with service approval or financial or billing systems to improve the cost-efficiency of case management programs. Proposed systems should complement or integrate existing mandated HCFA instruments (particularly functional assessment tools, minimum data sets, discharge planning, etc.). Redundant instruments will not be considered for funding.

E. Other Health Care R&D

We encourage small business concerns to submit applications for proposed research in any area within the field of health care R&D.

VIII. Other Required Information

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Public Law 97–219, 96 Stat. 217–221; Public Law 99–443, 100 Stat. 1120, Sec. 108, Public Law 100–590, 102 Stat. 2989, 2994; Public Law 102–564, 106 Stat. 4249 (15 U.S.C. 638 (e) through (m)).

(Catalog of Federal Domestic Assistance Program No. 93.779, Health Care Financing Research, Demonstration and Experiments)

Dated: June 21, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94–24349 Filed 9–30–94; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), November 2–4, 1994, National Institutes of Health, Building 5, Room 127, Bethesda, Maryland 20892. This meeting will be open to the public on November 2 from 7 p.m. to 9:30 p.m. and November 3 from 9 a.m. to 12 noon and 2 p.m. to 5 p.m. The open portion of the meeting will be devoted to scientific presentations by various laboratories of the NIDDK Intramural Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on November 2 from 6:30 p.m. to 7 p.m. and from 9:30 p.m. to 10:30 p.m.; November 3 from 12 noon to 2 p.m. and 5 p.m. to 6 p.m. and on November 4 from 9 a.m. to adjournment for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIDDK, including consideration of personnel qualifications and performance, the competence of individual investigations, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meeting and rosters of the members will be provided by the Committee Management Office, National Institute of Diabetes and Digestive and Kidney Diseases, Building 31, Room 9A19, Bethesda, Maryland 20892. For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Dr. Allen Spiegel, Scientific Review Administrator, Board of Scientific Counselors, National Institutes of Health, Building 10, Room 9N–222, Bethesda, Maryland 20892, (301) 496–4128, two weeks prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: September 26, 1994.

Susan K. Feldman,

Committee Management Officer, NIH

[FR. Doc. 94–24326 Filed 9–30–94, 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Availability and Request for Comment on the Healthy People 2000 Midcourse Revisions

SUMMARY: The U.S. Public Health Service of the Department of Health and Human Services has developed and is requesting public comment on the Draft for Public Review and Comment: *Healthy People 2000 Midcourse Revisions.* This set of national health objectives was first published in 1990. As the midpoint of the decade approaches, new science, new data, and new information are available to be incorporated into the nation's prevention agenda. The revisions take the form of proposed new objectives, new special population subobjectives, changes in language, and target revisions. The proposals reflect the availability of new information or scientific findings on prevention and new data indicating disparities in health status among special populations. The proposed revisions are printed within the context of the Healthy People 2000 objectives published in 1990.

DATES: Written comments must be postmarked or submitted by close of business November 30, 1994.

ADDRESSES: Requests for copies of the Draft for Public Review and Comment: *Healthy People 2000 Midcourse Revisions* can be faxed to (202) 205–9478, or mailed to: Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), U.S. Public Health Service, Department of Health and Human Services, 330 C Street, S.W., Room 2132, Washington, D.C. 20201. Comments should be sent to the same address. Comments should be submitted as follows: An original of the comments and 3 copies should be submitted, typewritten if possible. Submissions on low-density 5¼" computer disks, using WordPerfect 5.1 are also encouraged. Comments should clearly identify the objective(s) to which they are directed and, if possible, comments for different priority areas (chapters) should be provided on separate pages to facilitate their distribution to the appropriate lead agencies.

FOR FURTHER INFORMATION CONTACT: Lisa Kane or Debbie Maiese, Office of Disease Prevention and Health Promotion, U.S. Public Health Service, 330 C Street, S.W., 2132 Switzer, Washington, D.C. 20201, Telephone (202) 205–8583.

SUPPLEMENTARY INFORMATION

Background of Health People 2000

The Public Health Service (PHS), Department of Health and Human Services, has led a nationwide process to formulate and monitor national disease prevention and health promotion objectives since 1980. The year 2000 objectives build upon the 1990 objectives effort, which was initiated in 1979 with the publication of *Health People: The Surgeon General's Report on Health Promotion and Disease Prevention*, which led to the 1980 publication, *Promoting Health/ Preventing Disease: Objectives for the Nation.*

The Public Health Service lead agencies for the 22 Healthy People 2000 priority areas have developed the revision proposals that are now made available for public review and comment. Public comment will be considered by the appropriate lead agency. The Office of Disease Prevention and Health Promotion, in the Office of the Assistant Secretary of Health, serves as the overall coordinator for the dissemination and processing of the public comments.

A new PHS report, *Healthy People 2000 Midcourse Review and Revisions*, featuring the final revisions and a status report on progress in achieving targets for the year 2000, will be published in 1995.

Dated: September 26, 1994.

Jo Ivey Boufford,

Principal Deputy Assistant Secretary for Health.

[FR Doc. 94–24365 Filed 9–30–94, 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. R–94–1529; FR–2810–N–05]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD

ACTION: Notice.

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SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received by November 2, 1994. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 7, 1994.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Section 5(h) Homeownership Program for Public and Indian Housing (FR–2810).

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: Housing Authorities (HAs), after consulting with residents, prepare and submit a homeownership plan to HUD. The plan has to meet certain HUD criteria. The information provided by HAs will be used by HUD to ensure that they are complying with the requirements imposed by Section 5(h) of the Housing Act of 1937.

Form Number: None.

Respondents: Individuals or Households, State or Local Governments and Non-Profit Institutions.

Frequency of Submission: Recordkeeping and Annually.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	50		1		Varies		3,800
Recordkeeping	50		1		100		5,000

Total Estimated Burden Hours: 8,800.

Status: New.

Contact: Wayne Hunter, HUD, (202) 708–4233, Joseph F. Lackey, Jr., OMB, (202) 295–7316.

Dated: September 7, 1994.

[FR Doc. 94–24329 Filed 9–30–94; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. R–94–1734; FR 3118–N–03]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 8, 1994.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Requirement for Affirmatively Furthering Fair Housing

in the Community Development Block Grant Program (FR–3118).

Office: Fair Housing and Equal Opportunity.

Description of the Need for the Information and its Proposed Use: This information collection is needed so that State and entitlement grantees can fulfill their certifications to affirmatively further fair housing under the Community Development Block Grant (CDBG) program and the Comprehensive Housing Affordability Strategy (CHAS) program.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: Recordkeeping and Annually.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	850		1		18.76		15,950
Recordkeeping	850		1		52		44,000

Total Estimated Burden Hours: 59,950.

Status: New.

Contact: Leon M. Garrett, HUD, (202) 708–2740, Joesph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: September 8, 1994.

[FR Doc. 94–24330 Filed 9–30–94; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. R–94–1747; FR 3730–N–02]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 7, 1994.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Proposal: Electronic Transmission of Required Family Data for Public Housing, Indian Housing, and Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation Programs (FR–3730).

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: The purpose of this information collection is to have projects administered under the public housing, Indian housing, and Section 8 Certificate, Rental Voucher, and Moderate Rehabilitation programs submit certain data electronically to HUD in a HUD prescribed format. For housing agencies (HAs) that are not already automated or who determine that automation is not cost-effective, transmission of the data through the use of a service bureau is permitted. Electronic transmission is necessary because the manual submission of HUD forms has become a burden to HAs and to HUD.

Form Number: HUD–50058

Respondents: State or Local Governments.

Frequency of Submission: Monthly

Reporting Burden:

Form HUD–50058	Number of Respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Form HUD–50058	4,500		916.5		.5		2,062,125

Total Estimated Burden Hours: 2,062,125.

Status: Revision.

Contact: Earl Simons, HUD, (202) 708–0744, Joseph F Lackey, Jr., OMB (202) 395–7416.

Dated: September 7, 1994.

[FR Doc. 94–24331 Filed 9–30–94; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–94–3820]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD

ACTION: Notice.

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SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 13, 1994.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Proposal: Single Family Housing Mortgage Assignment Program.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The information provided on these forms will be used to make decisions regarding assignment of troubled HUD-insured mortgages from the current mortgagee to HUD. Acceptance into this assignment process provides the homeowner the opportunity to avoid foreclosures on their mortgage.

Form Number: HUD–92068F, 92203, 92207, 92208, and 92212.

Respondents: Individuals or Households and Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	57,000		3.38		.31		59,593

Total Estimated Burden Hours: 59,593.

Status: Revision.

Contact: Joseph C. Bates, HUD, (202) 708–3680, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: September 13, 1994.

[FR Doc. 94–24332 Filed 9–30–94; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Garrison Diversion Unit Federal Advisory Council Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Garrison Diversion Unit Federal Advisory Council established under the authority of the Garrison Diversion Unit Reformulation Act of 1986 (Public Law 99–0294, May 12, 1986). The meeting is open to the public. Interested persons may make oral statements to the council or may file written statements for consideration.

DATES: The Garrison Diversion Unit Federal Advisory Council will meet from 8 a.m. to 5 p.m. on Thursday, October 13, 1994.

ADDRESSES: The meeting will be held at the North Dakota Game and Fish Department Office, Lonetree Headquarters, Rural Route 2, Box 32, Harvey, North Dakota. The office is located 5 miles south, 8 miles west, and ½ mile north of Harvey.

FOR FURTHER INFORMATION CONTACT: Dr. Grady Towns, Ecological Services, at (303) 236–8186.

SUPPLEMENTARY INFORMATION: The Garrison Diversion Unit Federal Advisory Council will consider and discuss subjects such as the Garrison Diversion Unit project update and wildlife budget and approaches to Lonetree land acquisition and Kraft Slough acquisition and development status.

Dated: September 27, 1994.

Joseph J. Webster,

Acting Regional Director.

[FR Doc. 94–24448 Filed 9–30–94; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[NV–930–4210–05; N–59206; 4–00154]

Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-Competitive Sale of Public Lands in Clark County, Nevada.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of P.L. 94–579, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 43 U.S.C. 1719.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.,
Section 33, Lots 69 and 70,
containing 5 acres, more or less.

This parcel of land, situated in Las Vegas, NV., is being offered as a non competitive sale to Unicom Broadcasting, Inc. This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50,00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).
2. Oil, gas, sodium, potassium and saleable minerals, and will be subject to:
1. An easement for roads, public utilities and flood control purposes in accordance with the transportation plan for Clark County/the city of Las Vegas.
2. Those rights for road, sewer and drain purposes which have been granted to the City of Las Vegas by Permit No. N–47298 under the Act of October 21, 1976.
3. Those rights for road, sewer and drain purposes which have been granted to the City of Las Vegas by Permit No. N–54509 under the Act of October 21, 1976.
4. Those rights for an underground power and telephone line purposes which have been granted to Nevada Power Company/Sprint Central Telephone by Permit No. N–56873 under the Act of October 21, 1976.
5. Those rights for a 138KV transmission line and electrical substation purposes which have been granted to Nevada Power Company by Permit No. NEV–061618 under the Act of October 21, 1976.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Public Law 94–579, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: September 21, 1994.

Gary Ryan,

Acting District Manager, Las Vegas, NV.

[FR Doc. 94–24316 Filed 9–30–94; 8:45 am]

BILLING CODE 4310–HC–M

National Park Service

Gettysburg National Military Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the twelfth meeting of the Gettysburg National Military Park Advisory Commission.

Meeting Date and Time: November 3, 1994; 2:00 p.m. until 5:00 p.m.

Address: Holiday Inn, 516 Baltimore Street, Gettysburg, Pennsylvania 17325.

The Agenda for the meeting will focus on Sub-Committee Reports, briefing on the Environmental Impact Statement—deer management, briefing on Gettysburg College land exchange alternatives study, briefing on park roads rehabilitation project, recent lands activities and land acquisition issues, and an operational update on park activities.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 95 Taneytown Road, Gettysburg, Pennsylvania 17325.

FOR FURTHER INFORMATION, CONTACT: John A. Latschar, Superintendent, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325–1080, (717) 334–1124.

Dated: September 16, 1994.

B. J. Griffin,

Regional Director, Mid-Atlantic Region.

[FR Doc. 94–24333 Filed 9–30–94; 8:45 am]

BILLING CODE 4310–70–M

INFORMATION SECURITY OVERSIGHT OFFICE

National Industrial Security Program Policy Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2) and implementing regulation 41 CFR 101–6, announcement is made of the following committee meeting:

Name of Committee: National Industrial Security Program Policy, Advisory Committee (NISPPAC).

Date of Meeting: October 20, 1994.

Time of Meeting: 10:00 a.m.

Place: Information Security Oversight Office, 750 17th Street, NW., Suite 530, Washington, DC.

Purpose: To discuss National Industrial Security Program (NISP) policy matters. The agenda will include a discussion on the status of the NISP and the NISP Operating Manual.

This meeting will be open to the public. However, due to access procedures, the names and telephone numbers of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than October 12, 1994. Written statements from the public will be accepted in lieu of an opportunity for comment.

FOR FURTHER INFORMATION AND DIRECTIONS CONTACT: Steven Garfinkel, Director, ISOO, 750 17th Street, NW., Suite 530, Washington, DC 20006, telephone (202) 634–6150.

Dated: September 27, 1994.

Steven Garfinkel,

Director, Information Security Oversight Office.

[FR Doc. 94–24378 Filed 9–30–94; 8:45 am]

BILLING CODE 6820–AF–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Neuroscience; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting;

NAME: Advisory Panel for Neuroscience (1158).

DATE AND TIME: October 20–21, 1994; 9:00 a.m. to 5:00 p.m.

PLACE: Room 370, 4201 Wilson Boulevard, Arlington, VA.

TYPE OF MEETING: Part-Open.

CONTACT PERSON: Dr. Christopher Platt, Program Director, Sensory Systems, Division

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of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1424.

PURPOSE OF MEETING: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

MINUTES: May be obtained from the contact person listed above.

AGENDA: Open Session, October 21, 10:00 a.m. to 11:00 a.m., to discuss goals and assessment procedures. Closed Session: October 20, 9:00 a.m. to 5:00 p.m., and October 21, 9:00 a.m. to 10:00 a.m. and 11:00 a.m. to 5:00 p.m. To review and evaluate Sensory Systems proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 1994.

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 94–24293 Filed 9–30–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Duke Power Company; Environmental Assessment and Finding of No Significant Impact

[Docket Nos. 50–369 and 50–370]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. NPF–9 and NPF–17, issued to the Duke Power Company, licensee for the McGuire Nuclear Station Units 1 and 2. The plants are located at the licensee's site in Mecklenburg, County, North Carolina. The exemption was requested by the licensee by letter dated June 28, 1994, and supplemented by letters dated August 18, 1994 and September 7, 1994.

Environmental Assessment

Indentification of Proposed Action

The proposed action requests an exemption from certain requirements of 10 CFR 50.60, "Acceptance Criteria for Fracture Prevention Measures for Light-Water Nuclear Power Reactors for Normal Operation," to allow application of an alternate methodology to determine the low temperature overpressure protection (LTOP) setpoint for the McGuire Nuclear Station Units 1 and 2. The proposed alternate methodology is consistent with guidelines developed by the American Society of Mechanical Engineers (ASME) Working Group on Operating Plant Criteria (WGOPC) to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. These guidelines have been incorporated into Code Case N–514, "Low Temperature Overpressure Protection," which has been approved by the ASME Code Committee. The content of this code case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. The NRC staff is revising 10 CFR 50.55a, which will endorse the 1993 Addenda and Appendix G of Section XI into the regulations.

The philosophy used to develop Code Case N–514 guidelines is to ensure that the LTOP limits are still below the pressure/temperature (P/T) limits for normal operation, but allow the pressure that may occur with activation of pressure-relieving devices to exceed the P/T limits, provided acceptable margins are maintained during these events. This philosophy protects the pressure vessel from LTOP events, and still maintains the Technical Specification P/T limits applicable for normal heatup and cooldown in accordance with Appendix G to 10 CFR Part 50 and Section III and XI of the ASME Code.

The Need for the Proposed Action

10 CFR 50.60 states that all light-water nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR Part 50. Appendix G to 10 CFR 50 defines P/T limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime. 10 CFR 50.60(b) specifies that alternatives to the described requirements in Appendices G and H to 10 CFR Part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent transients that would produce pressure excursions exceeding the Appendix G P/T limits while the reactor is operating at low temperatures, the licensee installed an LTOP system. The LTOP system includes pressure relieving devices in the form of Power-Operated Relief Valves (PORVs) that are set at a pressure low enough that if a transient occurred while the coolant temperature is below the LTOP enabling temperature, they would prevent the pressure on the reactor vessel from exceeding the Appendix G P/T limits. To prevent these valves from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint.

In addition, in order to prevent cavitation of a reactor coolant pump, the operator must maintain a differential pressure across the reactor coolant pump seals. Hence, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start a reactor coolant pump and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. The licensee LTOP analysis indicates that using the Appendix G safety margins to determine the PORV setpoint would result in a pressure setpoint within its operating window, but there would be no margin for normal operating pressure surges. Therefore, operating with these limits could result in the lifting of the PORVs and cavitation of the reactor coolant pumps during normal operation. Therefore, the licensee proposed that in determining the PORV setpoint for LTOP events for McGuire, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins required by Appendix G to 10 CFR Part 50. The alternate methodology is consistent with ASME Code Case N–514. The content of this code case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for LTOP considerations. By application dated June 28, as supplemented August 18, 1994 (and further clarified by letter dated September 7, 1994), the licensee requested an exemption from 10 CFR 50.60.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the licensee's application.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) Using a safety factor of 2 on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter (¼) of the vessel wall thickness and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the McGuire reactor vessel material.

In determining the PORV setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110 percent of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, use of the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change involves use of more realistic safety margins for determining the PORV setpoint during LTOP events. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of the McGuire Nuclear Station, dated April 1976, and its addendum dated January 1981.

Agencies and Persons Consulted

The NRC staff consulted with the state of Tennessee regarding the environmental impact of the proposed action. The state official had no comments.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated June 28, as supplemented August 18, 1994 (and further clarified by letter dated September 7, 1994), which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the local public document room located at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Rockville, Maryland, this 28th day of September, 1994.

For the Nuclear Regulatory Commission.

Victor Nerses,

Acting Project Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–24382 Filed 9–30–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–443]

North Atlantic Energy Service Corporation, et al.; Seabrook Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering amending Facility Operating License No. NPF–86 issued to North Atlantic Energy Service Corporation (North Atlantic) for the Seabrook Station, Unit No. 1 (Seabrook). The facility is located in Rockingham County, New Hampshire.

Environmental Assessment

Identification of the Proposed Action

The proposed action would amend the Seabrook Technical Specifications (TS) to permit operation of the Seabrook core with an expanded axial flux difference (AFD) band from that currently permitted. Operation with the expanded AFD band would be supported by continuous monitoring of core power distribution using the fixed incore detector system. Other TS changes would allow for fuel design enhancements. The changes to the TS include modification to a number of safety analysis input parameters and assumptions as follows:

- Incorporation of Westinghouse WRB–1 departure from nucleate boiling correlation and revised thermal design procedure.
- Increased core power distribution peaking factors.
- Allowance for positive moderator temperature coefficient.
- Allowance for thimble plug deletion.
- Allowance for increased steam generator tube plugging limit.
- Allowance for new fuel design features.
- Modification of analytical assumptions related to certain surveillance parameters.
- Expansion of AFD band Limiting Condition for Operation.

The Need for the Proposed Action

The proposed changes will allow operation of Seabrook with improved fuel cycle management and will permit North Atlantic to implement certain new fuel design features in the future.

Environmental Impacts of the Proposed Action

The proposed action will allow for a significant improvement in fuel utilization. The number of fuel assemblies required for an equilibrium core reload will decrease from 80 to 72. Thus, the major environmental effects of the proposed action are:

a. Less nuclear fuel will be required for the reactor core thereby reducing the environmental impacts associated with mining, converting, enriching, and transporting uranium,

b. Fewer fuel assemblies will be required for the reactor core reloads thereby reducing the environmental impacts associated with fabricating and transporting fuel assemblies,

c. Fewer spent fuel assemblies will be produced reducing the amount of spent fuel storage space required, and

d. Fewer spent fuel assemblies will need to be managed in long-term storage or disposed of in licensed repositories.

The Commission has evaluated the environmental impact of the proposed action and has determined that neither the probability of accidents nor the post-accident radiological releases would be great than previously determined. Further, the Commission has determined that the proposed approval would not affect routine radiological plant effluents and would not increase occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

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With regard to potential nonradiological impacts, the proposed approval does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested approval. This would not reduce the environmental impact attributable to the facility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement Related to Operation of the Seabrook Station, Units 1 and 2, dated December 1974.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and discussed the proposed issuance with the New Hampshire and Massachusetts State officials. The State officials had no comments. The Commission did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the request for approval dated November 23, 1993, as clarified and supplemented by letter dated August 15, 1994, which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW, Washington, DC 20555, and at the Local Public Document Room located at the Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Dated at Rockville, Maryland, this 27th day of September 1994.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–24342 Filed 9–30–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–440]

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and, Toledo Edison Company; Exemption

I

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and, Toledo Edison Company (the licensees) hold Facility Operating License No. NPF–58, which authorizes operation of the Perry Nuclear Power Plant (PNPP), Unit No. 1. The license provides, among other things, that the facility is subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. This facility is a boiling water reactor located on the shore of Lake Erie in Lake County, Ohio, approximately 35 miles northeast of Cleveland, Ohio, and approximately 23 miles southwest of Ashtabula, Ohio.

II

Subsection (a) of 10 CFR 70.24, "Criticality Accident Requirements," requires that each licensee authorized to possess special nuclear material shall maintain in each area where such material is handled, used, or stored, an appropriate criticality monitoring system. In accordance with Subsection (a)(1) of 10 CFR 70.24, coverage of all such areas at PNPP, Unit No. 1, shall be provided by two criticality detectors. However, exemptions may be requested pursuant to 10 CFR 70.24(d), provided that the licensee believes that good cause exists for the exemption. In particular, Regulatory Guide 8.12, Revision 2, "Criticality Accident Alarm System," states that it is appropriate to request an exemption from 10 CFR 70.24 if an evaluation determines that a potential for criticality does not exist, as for example where geometric spacing is used to preclude criticality.

By letter dated February 28, 1992, the license requested an exemption from the requirements of 10 CFR 70.24. A previous exemption from the provisions of 10 CFR 70.24 for the storage of special nuclear material, including reactor fuel assemblies (maximum amount of 2,602 kg of U–235 in uranium enriched to no more than 3.00 weight percent (w/o)), was granted to PNPP in NRC Material License No. SNM–1928. The materials license was issued on March 7, 1985, and expired upon conversion of the construction permit to an operating license on November 13, 1986. The bases for the current exemption request is the same as for the original 1985 request. Specifically, the licensees proposed to handle and store unirradiated fuel in the fuel handling building in the new fuel pool without having a criticality monitoring system with two separate criticality detectors as required by 10 CFR 70.24.

The bases for the exemption is that the potential for accident critically is precluded because of the geometric spacing of fuel in the storage pool and administrative controls imposed in fuel handling procedures from the time the fuel is removed from approved shipping containers, until it is placed in specially designed storage racks. Administrative control encompass placing the assemblies in the fuel inspection stand, receipt inspection activities, and lifting and placement of the assemblies into specified locations into the new fuel storage vaults. Design of the new fuel racks precludes criticality, i.e., an effective multiplication factor of 0.95 or less in the normal dry condition or abnormal completely water flooded condition. Criticality during optimal moderation (foam, small droplets, spray, or fogging) is precluded by storing new fuel assemblies in the new fuel vaults in alternate rows and columns. Administrative controls will prevent placement of each fuel assembly in adjacent storage cells. Restrictions on this exemption ensure that personnel are trained, equipment is operable, an assembly storage plan is developed, reviewed, and approved, and verification is undertaken by the Reactor Engineer or licensed Senior Reactor Operator at the completion of each fuel assembly transfer to ensure criticality is precluded. These restrictions are listed in the enclosure as items 1, 2, 3, and 4. Restriction 5 requires performing and maintaining criticality analyses documenting that the maximum effective multiplication factor for each fuel assembly does not exceed 0.95 when optimally moderated and fully reflected by water. Restriction 6 limits maximum fuel enrichment to 5 w/o of U–235 independent of the results of analyses performed in accordance with Restriction 5. Fuel assemblies, when stored in their shipping containers, shall be stacked no more than three containers high (Restriction 7). No more than three fuel assemblies shall be outside their shipping containers or storage racks at any one time (Restriction 8). The minimum edge-to-edge distance between the group of three fuel assemblies and all other fuel assemblies shall be 12 inches (Restriction 9).

Based upon the information provided, there is reasonable assurance that unirradiated fuel will remain subcritical because of the new fuel pool design and administrative controls. The special circumstances for granting an exemption to 10 CFR 70.24 are met because criticality is precluded with the present design configuration, Technical Specification requirements, and the restrictions placed upon the exemption. Therefore, the staff concludes that the licensee's request for an exemption from the requirements of 10 CFR 70.24 for unirradiated fuel in the fuel handling building is acceptable and should be granted. This exemption is subject to the restrictions listed in the enclosure.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 70.24, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest.

Accordingly, the Commission hereby grants an exemption as described in Section II above from 10 CFR 70.24, "Criticality Accident Requirements," such that the licensee is exempt from providing two criticality detectors. This exemption is subjection to the restrictions in the enclosure.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (59 FR 47363).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, the 26th day of September 1994.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–24343 Filed 9–30–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives a consolidated notice of all positions excepted under Schedules A, B, and C as of June 30, 1994, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

SUPPLEMENTARY INFORMATION: Civil Service Rule VI (5 CFR 6.1) requires the Office of Personnel Management (OPM) to publish notice of all exceptions granted under Schedules A, B, and C. Title 5, Code of Federal Regulations, § 213.103(c), further requires that a consolidated listing, current as of June 30 of each year, be published annually as a notice in the **Federal Register**. That notice follows. OPM maintains continuing information on the status of all Schedule A, B, and C excepted appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by contacting the Staffing Management Services Division, room 6A12, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, or by calling (202) 606–0950.

The following exceptions were current on June 30, 1994.

Schedule A

Section 213.3102 Entire Executive Civil Service

(a) Positions of Chaplain and Chaplain's Assistant.

(b) (Reserved).

(c) Positions to which appointments are made by the President without confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admission to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment that was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.

(f) Chinese, Japanese, and Hindu interpreters.

(g) Any nontemporary position the duties of which are part-time or intermittent in which the appointee will receive compensation during his or her service year that aggregates not more than 40 percent of the annual salary rate for the first step of grade GS–3. This limited compensation includes any premium pay such as for overtime, night, Sunday, or holiday work. It does not, however, include any mandatory within-grade salary increases to which the employee becomes entitled subsequent to appointment under this authority. Appointments under this authority may not be for temporary project employment.

(h) Positions in Federal mental institutions when filled by persons who have been patients of such institutions and have been discharged and are certified by an appropriate medical authority thereof as recovered sufficiently to be regularly employed but it is believed desirable and in the interest of the persons and the institution that they be employed at the institution.

(i) Subject to prior approval of OPM, positions requiring temporary, part-time, or intermittent employment in wage board type occupations (i.e., positions excluded from Classification Act coverage by section 202(7) of the Act) on construction or repair work, where the activity is carried on in localities where examination coverage for the positions has not been provided and where because of employment conditions there is a shortage of available candidates for the positions. Appointments under this paragraph shall not extend beyond 1 year and the employment thereunder shall not exceed 180 working days a year. Seasonal employments of a recurring nature are not authorized under this paragraph.

(j) Positions filled by: (1) Appointment of persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) in positions at the same or equivalent level, or below, who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) or 5 U.S.C. 8456 by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment; or (2) reassignment, promotion, or demotion within the same agency of former National Guard Technicians originally appointed under this authority.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, and technical experts for consultation purposes.

(m) Nonsupervisory positions of custodial laborer (levels 1, 2, and 3) and general laborer (levels 2 and 3) in field establishments outside central office and regional office cities of OPM where

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examination coverage has not been provided for the positions, as follows:

(1) For temporary, intermittent, or seasonal employment (exclusive of positions covered by paragraph (i) of this section) not to exceed 180 working days a year in the Departments of Agriculture, Commerce, Interior, and Energy, in the Federal Aviation Administration, and in the International Boundary and Water Commission; or

(2) When it is specifically held by OPM that this authority is applicable for employment in localities that are isolated with respect to labor supply and where there is a shortage of available candidates for the positions.

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p) Positions of a scientific, professional or analytical nature when filled by bona fide graduate students at accredited colleges or universities provided that the work performed for the agency is to be used by the student as a basis for completing certain academic requirements toward a graduate degree. Appointments under this authority may not exceed 1 year, but may be extended for additional period(s) not to exceed 1 year as long as the conditions for appointment continue to be met. The appointment of any individual under this authority shall terminate upon the individual's completion of requirements for the graduate degree.

(q) Positions at grade GS–9, or equivalent, and below when appointees are to assist scientific, professional, or technical employees. Persons employed under this provision shall be (1) bona fide high school science or mathematics teachers, or (2) bona fide students at high schools or accredited colleges or universities who are pursuing courses related to the field in which employed. The appointment of any individual under this authority shall terminate upon the individual's ceasing to be enrolled in a qualifying educational program or to be employed as a teacher. No one shall be employed under this provision in routine clerical positions, routine trades and labor positions—unless such employment clearly related to a scientific, professional, or technical curriculum—or in excess of 1,040 working hours a year. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR Part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(r)–(s) (Reserved).

(t) Positions when filled by mentally retarded persons in accordance with the guidance in Federal Personnel Manual chapter 306. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(u) Positions when filled by severely physically handicapped persons who: (1) Under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or (2) have been certified by counselors of State vocational rehabilitation agencies or the Veterans Administration as likely to succeed in the performance of the duties. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(v) Between May 13 and September 30 only, temporary Summer Aid positions the duties of which involve work of a routine nature not regularly covered under the General Schedule and requiring no specific knowledge or skills, when filled by youths, either (1) appointed under economic needs standards prescribed by OPM; or (2) who are mentally retarded or severely physically handicapped. Youths may not be appointed unless they have reached their 16th birthday. This paragraph shall apply only to positions for which pay is fixed at the highest Federal minimum wage rate established by the Fair Labor Standards Act of 1938, as amended.

(w) Part-time or intermittent positions, the duties of which involve routine work up to and including the GS–4 level of difficulty or equivalent under the Federal Wage System, when filled by bona fide students appointed under the Stay-in-School Program. Students may be appointed if they need the earnings from this employment to continue in school or if they are mentally retarded or severely physically handicapped, provided that the following conditions are met:

(1) Appointees are enrolled in or accepted for enrollment as a resident student in a secondary school (or other appropriate school for mentally retarded students) or an institution of higher learning not above the baccalaureate level, accredited by a recognized accrediting body;

(2) Employment does not exceed 20 hours in any calendar week except that students may work full time during any period in which their school is officially closed and during any school vacation period;

(3) While employed, appointees continue to maintain an acceptable school standing, although they need not attend school during the summer;

(4) Appointees meet the economic criteria prescribed by the Office of Personnel Management, except that this requirement does not apply to mentally retarded or severely physically handicapped students appointed under the authority; and

(5) Salaries are fixed by the agency head at a level commensurate with the duties assigned and the expected level of performance.

Appointments under this authority may not extend beyond 1 year. *However*, such appointments may be made for additional periods of not to exceed 1 year, each, if the conditions for initial appointment are still met. Students may not be appointed under this authority unless they have reached their 16th birthday. No new appointments may be made between May 13 and August 31, inclusive.

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia, and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial appointments under this authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed 1 additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1 year beyond the date of that person's release from custody.

(y) Positions at grade GS–2 and below for summer employment, as defined in § 213.3101(d), of assistants to scientific, professional, and technical employees.

when filled by finalists in national science contests.

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS–11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of OPM except when the authority is specifically included in a delegated examining agreement with OPM.

(cc) Positions at GS–15 and below when filled by persons identified as Interchange Executives by the President's Commission on Executive Exchange. Appointments made under this authority may not extend beyond 2 years.

(dd)–(ee) (Reserved).

(ff) Not to exceed 25 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Public Law 91–452 and related statutes. A person appointed under this authority may continue to be employed under it after he/she ceases to be in a qualifying program only as long as he/she remains in the same agency without a break in service.

(gg)–(hh) (Reserved).

(ii) Positions of Presidential Intern, GS–9 and 11, in the Presidential Management Intern Program. Initial appointments must be made at the GS–9 level. No one may serve under this authority for more than 2 years, unless extended with OPM approval for up to 1 additional year. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive appointment under the provisions of Executive order 12364, in accordance with requirements published in the Federal Personnel Manual.

(jj) Legal intern positions. Appointments under this paragraph shall be confined to bona fide students at recognized law schools who are candidates for J.D. or LL.B. degrees. Appointments under this authority may not exceed 1 year, but may be extended for additional period(s) not to exceed 1 year as long as the conditions for appointment continue to be met. The appointment of any individual under this authority shall terminate upon the individual's graduation from law school.

(kk) (Reserved).

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full time, part-time, or intermittent basis.

Section 213.3103 Executive Office of the President

(a) *Office of Administration.* (1) Not to exceed 75 positions to provide administrative services and support to the White House office.

(b) *Office of Management and Budget.* (1) Not to exceed 10 positions at grades GS–9/15.

(c) *Council on Environmental Quality.* (1) Professional and technical positions in grades GS–9 through 15 on the staff of the Council.

(d)–(f) (Reserved).

(g) *National Security Council.* (1) All positions on the staff of the Council.

(h) *Office of Science and Technology Policy.* (1) Thirty positions of Senior Policy Analyst, GS–14, Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

(i) *Office of National Drug Control Policy.* (1) Not to exceed 15 positions, GS–15 and below, of senior policy analysts and other personnel with expertise in drug-related issues and/or technical knowledge to aid in anti-drug abuse efforts.

Section 213.3104 Department of State

(a) *Office of the Secretary.* (1) All positions, GS–15 and below, on the staff of the Family Liaison Office, Office of the Under Secretary for Management.

(2) One position of Curator (Arts), GM–1015–15, in the Office of the Under Secretary for Management.

(b) *American Embassy, Paris, France.* (1) Chief, Travel and Visitor Unit. No new appointments may be made under this authority after August 10, 1981.

(c) (Reserved).

(d) *International Boundary Commission, United States and Canada.* (1) Temporary and intermittent field employees such as instrumentmen, foremen, recorders, packers, cooks, and axemen, for not to exceed 180 working days within any 1 calendar year.

(e) *Bureau of Oceans and International Environmental and Scientific Affairs.* (1) Two Physical Science Administration Officer positions at GS–16.

(f) (Reserved).

(g) *Office of Refugee and Migration Affairs.* (1) Not to exceed 10 positions at grades GS–5 through 11 on the staff of the Office.

(h) *Bureau of Administration.* (1) One Presidential Trip Specialist. No new appointments may be made under this authority after June 11, 1981.

(2) One position of the Director, Art in Embassies Program, GM–1001–15.

Section 213.3105 Department of the Treasury

(a) *Office of the Secretary.* (1) Not to exceed 20 positions at the equivalent of GS–13 through GS–17 to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(2) Not to exceed 20 positions, which will supplement permanent staff involved in the study and analysis of complex problems in the area of domestic economic and financial policy. Employment under this authority may not exceed 4 years.

(b) *U.S. Customs Service.* (1) Positions in foreign countries designated as "interpreter-translator" and "special employees," when filled by appointment of persons who are not citizens of the United States; and positions in foreign countries of messenger and janitor.

(2) Positions of part-time, intermittent, mixed tour, or seasonal Customs Inspectors, Port Directors, Inspectional Aides, Clerks and Cashiers at remote/isolated locations where examination is impracticable. A remote/isolated location is outside the local commuting area of a population center from which an employee can reasonably be expected to travel on short notice under adverse weather and/or road conditions which are normal for the area. For this purpose, a population center is a town with housing, schools, health care, stores and other businesses in which the servicing OPM office can schedule tests and/or reasonably expect to attract applicants. An individual appointed under this authority may not be employed in the Customs Service under a combination of this and any other appointment for more than 1,040 working hours in a service year.

(3) Until October 1, 1994, positions of part-time, intermittent, or temporary

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Customs Inspectors, and Port Directors in Alaska paid at a rate not above GS–9 and for not more than 130 working days in a service year. No new appointments may be made under this authority after February 28, 1994.

(4) (Reserved).

(5) Until October 1, 1994, positions at GS–9 and below of Customs Enforcement Officer, Customs Inspector, Customs Marine Clerk/Officer, Customs Aid (Sampling), Customs Warehouse Officer, Port Director, Interpreter, and Laborer, with duties of a continuing nature that require the part-time or intermittent service of an employee for not more than 700 hours in his/her service year. An individual appointed under this exception may not be employed in the Customs Service under a combination of this and any other exception for more than 700 hours in his/her service year. No new appointments may be made under this authority after February 28, 1994.

(6) Two hundred positions of Criminal Investigator for special assignments.

(7)-(8) (Reserved).

(9) Not to exceed 25 positions of Customs Patrol Officers in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(c) *Office of the Comptroller of the Currency.* (1) Not to exceed six positions filled under the Professional Accounting Fellow Program. Appointments under this authority may not exceed 2 years, but may be extended for not to exceed an additional 90 days to complete critical projects.

(d) *Office of Thrift Supervision.* (1) All positions in the supervision policy and supervision operations functions of OTS. No new appointments may be made under this authority after December 31, 1993.

(e) *Internal Revenue Service.* (1) Twenty positions of investigator for special assignments.

(2) Two positions of Senior Visiting Pension Actuary, GS–1510–14/15. Appointments to these positions must be for periods not to exceed 24 months.

(f) (Reserved).

(g) *Bureau of Alcohol, Tobacco, and Firearms.* (1) One hundred positions of criminal investigator for special assignments.

(h) (Reserved).

(i) *Bureau of Government Financial Operations.* (1) Clerical positions at grades GS–5 and below established in Emergency Disbursing Offices to process emergency payments to victims of catastrophes or natural disasters requiring emergency disbursing services. Employment under this authority may not exceed 1 year.

Section 213.3106 Department of Defense

(a) *Office of the Secretary.* (1)–(5) (Reserved).

(6) One Executive Secretary, US-USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) *Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force).* (1) Professional positions in Military Dependent School Systems overseas.

(2) Positions in attache systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the staffs of the Chaplains in the military services.

(5) Positions under the program for utilization of alien scientists, approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense, when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the Department of Defense when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or separation of a dependent's sponsor: *Provided*, that (i) a school employee may be permitted to complete the school year; and (ii) an employee other than a school employee may be permitted to serve up to 1 additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Fifteen secretarial and staff support positions at GS–12 or below on the White House Support Group.

(8) Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to 1,040 working hours a year. Children of DOD employees may be appointed to these positions, notwithstanding the sons and daughters restriction, if the positions are in field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR Part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(c) *Defense Contract Audit Agency.* (1) Not to exceed two positions of Accounting Fellow, Auditor, GM–511–14, filled under the Accounting Fellowship Program. Appointments under this authority may not exceed 2 years.

(d) *General.* (1) Positions concerned with advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the applications of engineering, physical or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) *Uniformed Services University of the Health Sciences.* (1) Positions of President, Vice Presidents, Assistant Vice Presidents, Deans, Deputy Deans, Associate Deans, Assistant Deans, Assistants to the President, Assistants to the Vice Presidents, Assistants to the Deans, Professors, Associate Professors,

Assistant Professors, Instructors, Visiting Scientists, Research Associates, Senior Research Associates, and Postdoctoral Fellows.

(2) Positions established to perform work on projects funded from grants.

(f) *National Defense University.* (1) Not to exceed 16 positions of senior policy analyst, GS–15, at the Strategic Concepts Development Center. Initial appointments to these positions may not exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

(g) *Defense Communications Agency.* (1) Not to exceed 10 positions at grades GS–10/15 to staff and support the Crisis Management Center at the White House.

(h) *Defense Systems Management College, Fort Belvoir, Va.* (1) The Provost and professors in grades GS–13 through 15.

(i) *George C. Marshall European Center for Security Studies, Garmisch, Germany.* (1) The Director, Deputy Director, and positions of professor, instructor, and lecturer at the George C. Marshall European Center for Security Studies, Garmisch, Germany, for initial employment not to exceed 3 years, which may be renewed in increments from 1 to 2 years thereafter.

Section 213.3107 Department of the Army

(a) *General.* (1) Not to exceed 30 positions on the faculty and staff which are classified in the GS–1700 occupational group and the GS–1410 Librarian series, located at the U.S. Army Russian Institute, Garmisch, Germany, and the U.S. Army Foreign Language Training Center Europe, Munich, Germany.

(2) (Reserved).

(3) Not to exceed 500 Medical and Dental Intern, Resident and Fellow positions, whose incumbents are training under graduate medical/dental education programs in Army Medical Department facilities worldwide, and whose compensation is fixed under 5 U.S.C. 5351–5356. Employment under this authority may not exceed 4 years, unless extended with prior approval of OPM.

(b) *Aviation Systems Command.* (1) One scientific and professional research position in the U.S. Army Research and Technology Laboratories, the duties of which require specific knowledge of aviation technology in non-allied nations.

(c) *Corps of Engineers.* (1) (Reserved).

(2) Nonsupervisory trades, crafts, and manual labor positions at grades WG–6 and below on survey, construction, short-term maintenance, or floating-plant operations, where because of turnover, lack of housing facilities, mobility of work site, or remoteness of personnel servicing facilities, an adequate labor force can be recruited only by immediate gate hiring on a local basis. This authority can be used only when OPM has determined that it is specifically applicable to a given situation; ordinarily, it will not be used for employment in OPM central office, regional, and branch office cities or in cities where there is a local OPM area office to service the employing establishment.

(d) *U.S. Military Academy, West Point, New York.* (1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, chapel organist and choir-master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, Facility Manager, Building Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and librarian when filled by an officer of the Regular Army retired from active service, and the military secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e) *U.S. Army School of the Americas, Fort Benning, Georgia.* (1) Positions of Translator (Typing), GS–1040–5/9, and Supervisory Translator, GS–1040–11. No new appointments may be made under this authority after December 31, 1985.

(f) *Central Identification Laboratory.* (1) One position of Scientific Director, GM–190–15, and four positions of Forensic Scientist, GM–190–14. Initial appointment to these positions is NTE 3–5 years, with provision for indefinite numbers of renewals in 1-, 2-, or 3-year increments.

(g) *Defense Language Institute.* (1) All positions on the faculty and staff which are classified in the GS–1700 occupational group, the GS–1040 Language Specialist series, and the GS–303 Bilingual Clerk series, that require either a proficiency in a foreign language or a knowledge of foreign language teaching methods.

(h) *Army War College, Carlisle Barracks, PA.* (1) Positions of professor, instructor, or lecturer associated with courses of instruction of at least 10 months duration for employment not to exceed 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

(2) Nine senior policy analyst positions, GS–14/15, at the Strategic Studies Institute, Army War College, with appointments to be made initially for up to 3 years and thereafter extended annually if needed.

(i) (Reserved).

(j) *U.S. Military Academy Preparatory School, Fort Monmouth, New Jersey.* (1) Positions of Academic Director, Department Head, and Instructor.

(k) *U.S. Army Command and General Staff College, Fort Leavenworth, Kansas.* (1) Positions of professor, associate professor, assistant professor, and instructor associated with courses of instruction of at least 10 months duration, for employment not to exceed up to 5 years, which may be renewed in 1, 2, 3, 4, or 5-year increments indefinitely thereafter.

Section 213.3108 Department of the Navy

(a) *General.* (1) (Reserved).

(2) Positions of Student Pharmacist for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, clinics and departments when filled by students who are enrolled in an approved pharmacy program in a participating nonfederal institution, and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(3) (Reserved).

(4) Not to exceed 50 positions of resident-in-training at U.S. naval regional medical centers, hospitals, and dispensaries which have residency training programs, when filled by residents assigned as affiliates for part of their training from nonfederal hospitals. Assignments shall be on a temporary (full-time or part-time) or intermittent basis, shall not amount to more than 6 months for any person, and shall be applied only to persons whose compensation is fixed under 5 U.S.C. 5351–54.

(5) (Reserved).

(6) Positions of Student Operating Room Technician for temporary, part-time, or intermittent employment in U.S. naval regional medical centers and hospitals, when filled by students who are enrolled in an approved operating room technician program in a participating nonfederal institution, whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(7) Positions of student social worker for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by bona fide students enrolled in academic institutions: *Provided*, that the work performed in the agency is to be used by the student as a basis for completing

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certain academic requirements by such educational institution to qualify for a graduate degree in social work. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351–54.

(8) Positions of student practical nurse for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by trainees enrolled in a nonfederal institution in an approved program of educational and clinical training which meets the requirements for licensing as a practical nurse. This authority shall be applied only to trainees whose compensation is fixed under 5 U.S.C. 5351–54.

(9) (Reserved).

(10) Positions of medical technology intern in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by students enrolled in approved programs of training in nonfederal institutions. Employment under this authority may be on a full-time, part-time, or intermittent basis but may not exceed 1 year. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351–54.

(11) Positions of medical intern in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are serving medical internships at participating nonfederal hospitals and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(12) Positions of student speech pathologist at U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are enrolled in participating nonfederal institutions and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(13) Positions of student dental assistant in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are enrolled in participating nonfederal institutions and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year

(14) (Reserved).

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(16) All positions necessary for the administration and maintenance of the official residence of the Vice President.

(b) *Naval Academy, Naval Postgraduate School, and Naval War College.* (1) Professors, instructors, and teachers; the Director of Academic Planning, Naval Postgraduate School; and the librarian, organist-choirmaster, registrar, the dean of admissions, and social counselors at the Naval Academy.

(c) *Chief of Naval Operations.* (1) One position at grade GS–12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) *Military Sealift Command.* (1) All positions on vessels operated by the Military Sealift Command.

(e) *Pacific Missile Range Facility, Barking Sands, Hawaii.* (1) All positions. This authority applies only to positions that must be filled pending final decision on contracting of Facility operations. No new appointments may be made under this authority after July 29, 1988.

(f) (Reserved).

(g) *Office of Naval Research.* (1) Not to exceed five positions of Liaison Scientists, GS–13/15, in the Naval Research Branch Office in Japan, when filled by research scientists who have specialized experience in scientific disciplines of current interest to the Department and who have a demonstrated ability to deal with the Japanese scientific community in their disciplines. An appointment under this authority may be made initially for a period of not to exceed 2 years. With the prior approval of OPM, total employment under this authority may be for as long as 3 years.

Section 213.3109 Department of the Air Force

(a) *Office of the Secretary.* (1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) *General.* (1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) Seventy positions engaged in interdepartmental defense projects involving scientific and technical evaluations.

(c) Not to exceed 20 professional positions, GS–11 through GS–15, in Detachments 6 and 51, SM–ALC, Norton and McClellan Air Force Bases, California, which will provide logistic support management to specialized research and development projects.

(d) *U.S. Air Force Academy, Colorado.* (1) Positions of Cadet Hostesses, Instructors in Physical Education, Instructors in Music (choirmasters), one Training Instructor (Parachuting), one Training Instructor (Code of Conduct and Evasion), and two Physical Therapists (Athletic Trainers).

(2) Positions of professor, associate professor, assistant professor, and instructor, in the Dean of Faculty, Commandant of Cadets, and Director of Athletics organizations of the United States Air Force Academy.

(e) Not to exceed five positions, GS–12 through GS–15, in the Specialized Management Office (WR–ALC/QL) at Robins Air Force Base, Georgia, which will provide logistic support management staff guidance for highly sensitive and high priority programs and projects. Employment under this authority is not to exceed May 30, 1988.

(f) *Air Force Office of Special Investigations.* (1) Not to exceed 250 positions of Criminal Investigators/Intelligence Research Specialists, GS–5 through GS–15.

(g) Not to exceed eight positions, GS–12 through 15, in Headquarters Air Force Logistics Command, DCS Material Management, Office of Special Activities, Wright-Patterson Air Force Base, Ohio, which will provide logistic support management staff guidance to classified research and development projects.

(h) *Air University, Maxwell Air Force Base, Alabama.* (1) Positions of professor, instructor, or lecturer.

(i) *Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio.* (1) Civilian deans and professors.

(j) *Air Force Logistics Command.* (1) One Supervisory Logistics Management Specialist, GM–346–14, in Detachment 2, 2762 Logistics Management Squadron (Special), Greenville, Texas.

(k) One position of Supervisory Logistics Management Specialist, GS–346–15, in the 2762nd Logistics Squadron (Special), at Wright-Patterson Air Force Base, Ohio.

(l) One position of Commander, Air National Guard Readiness Center, Andrews Air Force Base, Maryland.

Section 213.3110 Department of Justice

(a) *General.* (1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2) (Reserved).

(3) U.S. Marshal in the Virgin Islands.

(4) Positions at GS–15 and below on the staff of an office of an independent counsel, that is established under 28 CFR Part 600. No office may use this authority for more than 4 years to make appointments and position changes unless prior approval of OPM is obtained.

(b) *Immigration and Naturalization Service.* (1) Not to exceed 350 positions, at grades GS–15 and below, engaged in planning for and implementing the processing of claims for resident status which may be submitted by aliens already in the United States as authorized by immigration control and reform legislation. New appointments under this authority may not be made after April 15, 1994.

(2) Not to exceed 500 positions of interpreters and language specialists, GS–1040–5/9.

(3) Not to exceed 25 positions, GS–15 and below, with proficiency in speaking, reading, and writing the Russian language and serving in the Soviet Refugee Processing Program with permanent duty location in Moscow, Russia.

(c) *Drug Enforcement Administration.* (1) (Reserved).

(2) One hundred and fifty positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS–132 series, grades GS–9 through GS–15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent). New appointments may be made under this authority only at grades GS–7/11.

Section 213.3112 Department of the Interior

(a) *General.* (1) Technical, maintenance, and clerical positions at or below grades GS–7, WG–10, or equivalent, in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS–7, or its equivalent, and below in such areas as forestry, 8 range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: *Provided*, that an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term "Indian."

(8) Temporary, intermittent, or seasonal positions at GS–7 or below in Alaska, as follows: Positions in nonprofessional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum wage rate. Employment under this authority may not exceed 10 weeks.

(b) (Reserved).

(c) *Indian Arts and Crafts Board.* (1) The Executive Director.

(d) (Reserved).

(e) *Office of the Assistant Secretary, Territorial and International Affairs.* (1) (Reserved).

(2) Not to exceed four positions of Territorial Management Interns, grades GS–5, GS–7, or GS–9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) (Reserved).

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) *National Park Service.* (1) Park Ranger positions (appropriate specializations) at salaries equivalent to GS–2 through GS–5 to perform practical and technical work supporting the management of Park Service areas and resources in the functional areas of interpretation, resources management, visitor protection, and visitor services; and positions at salaries equivalent to grades GS–6 and GS–7 in which the duties are supervisory or consist of highly specialized technical work in support of National Park Service operations in the functional areas delineated above. The total number of Park Ranger and Park Technician positions at salaries equivalent to GS–6 and GS–7 excepted under this paragraph shall not exceed 200. Employment under this paragraph is limited to persons who meet the qualification standards for each salary level which have been agreed upon by OPM and the Department. These standards include as a minimum the following number of previous seasons' experience at a salary equivalent to the next lower grade or equivalent experience in a Federal, State, or local park:

(i) For IGS–7: Two seasons at IGS–6 level in the National Park Service.

(ii) For IGS–6: Two seasons at IGS–5 level in the National Park Service.

(iii) For IGS–5: One season at IGS–4 level or its equivalent in experience.

(iv) For IGS–4: One season at IGS–3 level or its equivalent in experience.

(v) For IGS–3: One season at IGS–2 level or its equivalent in experience. Employment under this paragraph shall be only for duty that is temporary, intermittent, or seasonal, and no person shall be employed by the same appointing office in the National Park Service under this paragraph or a combination of this and any other excepting authorities in excess of 180 working days a year.

(2) (Reserved).

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(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Public Law 95–250.

(4) One Special Representative of the Director.

(g) *Bureau of Reclamation.* (1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entrymen-review projects where knowledge of local values on conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: *Provided*, that such employment, may with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) *Office of the Deputy Assistant Secretary for Territorial Affairs.* (1) Positions of Territorial Management Interns, GS–5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

Section 213.3113 Department of Agriculture

(a) *General.* (1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agricultural Research Service or the Statistical Reporting Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural commodity grader (grain) and (meat), (poultry), and (dairy), agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) (Reserved).

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions: Field assistants for subprofessional services; caretakers at temporarily closed camps or improved areas; forest workers engaged primarily for fire prevention or suppression activities and other forest workers employed at headquarters other than forest supervisor and regional offices; State performance assistants in the Agricultural Stabilization and Conservation Service; agricultural helpers, helper-leaders, and workers in the Agricultural Research Service and the Animal and Plant Health Inspection Service; and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: *Provided*, that an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraphs (i) and (m) of § 213.3102.

(6) (Reserved).

(7) Not to exceed 34 Program Assistants, whose experience acquired in positions excepted from the competitive civil service in the administration of agricultural programs at the State level is needed by the Department for the more efficient administration of its programs. No new appointment may be made under this authority after December 31, 1985.

(b) (Reserved).

(c) *Forest Service.* (1) (Reserved).

(2) Positions in Alaska of Laborers, Boat Operators, Mechanics, Equipment Operators, and Carpenters whose duties require the operation of boats in coastal waters and/or the establishment and maintenance of work camps in remote areas.

(d) *Agricultural Stabilization and Conservation Service.* (1) (Reserved).

(2) Members of State Committees: *Provided*, that employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(e) *Farmers Home Administration.* (1) (Reserved).

(2) County committeemen to consider, recommend, and advise with respect to the Farmers Home Administration program. (3) Temporary positions whose principal duties involve the making and servicing of natural disaster emergency loans pursuant to current statutes authorizing natural disaster emergency loans. Appointments under this provision shall not exceed 1 year unless extended for one additional period not to exceed 1 year, but may, with prior approval of OPM be further extended for additional periods not to exceed 1 year each.

(4)–(5) (Reserved).

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) *Agricultural Marketing Service.* (1) Positions of: Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance Specialists, GS–11 and below; Clerks, Office Automation Clerks, and Computer Clerks at GS–5 and below; Clerk-Typists at grades GS–4 and below; and Laborers under the Wage System. Employment under this authority is limited to either 1,280 hours or 180 days in a service year.

(2) Positions of: Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–11 and below in the cotton, raisin, and processed fruit and vegetable commodities and the following positions in support of these commodities: Clerks, Office Automation Clerks, and Computer Clerks and Operators at GS–5 and below; Clerk-Typists at grades GS–4 and below; and, under the Federal Wage System, High Volume Instrumentation (HVI) Operators and HVI Operator Leaders at WG/WL–2 and below, respectively, Instrument Mechanics/Workers/Helpers at WG–10 and below, and Laborers. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

(3) Milk Market Administrators.

(4) All positions on the staffs of the Milk Market Administrators.

(g)–(i) (Reserved).

(j) *Food and Nutrition Service.* (1)-(2) (Reserved).

(3) Positions of meat and poultry inspectors (veterinarians at GS–11 and below and nonveterinarians at

appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(k)–(l) (Reserved).

(m) *Federal Grain Inspection Service.* (1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions of Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

Section 213.3114 Department of Commerce

(a) *General.* (1)-(2) (Reserved).

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b) *Office of the Secretary.* (1) One position of Administrative Assistant, GS–301–8, in the Office of Economic Affairs. New appointments may not be made after March 30, 1979.

(c) (Reserved).

(d) *Bureau of the Census.* (1) Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for (1) temporary, part-time, or intermittent employment in connection with major economic and demographic censuses or with surveys of a nonrecurring or noncyclical nature; and (2) indefinite employment for the duration of each decennial census for key employees located at the Master District Offices (MDO) and Processing Offices (PO): *Provided*, that temporary, part-time employment of the nature described in (1) above will be for periods not to exceed 1 year; and that such appointments may be extended for additional periods of not to exceed 1 year each; but that prior Office approval is required for extension of total service beyond 2 years.

(2) Current Program Interviewers employed on an intermittent or part-time basis in the field service.

(3) Not to exceed 20 professional and scientific positions at grades GS–9 through GS–12 filled by participants in the ASA research trainee program. Employment of any individual under this authority may not exceed 2 years.

(e)–(h) (Reserved).

(i) *Office of the Under Secretary for International Trade.* (1) Thirty positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) Not to exceed 40 positions of Managers and Deputy Managers of International Trade Fairs and Exhibit Programs in foreign countries when the duties require a considerable portion of the employee's time to be spent in foreign countries.

(3) Not to exceed 30 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit procedures applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed 2 years and may, with prior approval of OPM, be extended for an additional period of 2 years.

(j) *National Oceanic and Atmospheric Administration.* (1) Subject to prior approval of OPM, which shall be contingent upon a showing of inadequate housing facilities, meteorological aid positions at the following stations in Alaska: Barrow, Bethal, Kotzebue, McGrath, Northway, and St. Paul Island.

(2) (Reserved).

(3) All civilian positions on vessels operated by the National Ocean Service.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Service. Appointment to such positions shall not exceed 8 months in any 1 calendar year.

(k) (Reserved).

(l) *National Telecommunication and Information Administration.* (1) Seventeen professional positions in grades GS–13 through GS–15.

Section 213.3115 Department of Labor

(a) *Office of the Secretary.* (1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board.

(b) *Bureau of Labor Statistics.* (1) Not to exceed 500 positions involving part-time and intermittent employment for field survey and enumeration work in the Bureau of Labor Statistics. This authority is applicable to positions where the salary is equivalent to GS–6 and below. Employment under this authority may not exceed 1,600 work hours in a service year. No new appointment may be made under this authority after December 31, 1984.

(c) (Reserved).

(d) *Employment and Training Administration.* (1) Not to exceed 10 positions of Supervisory Manpower Development Specialist and Manpower Development Specialist, GS–7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

Section 213.3116 Department of Health and Human Services

(a) (Reserved).

(b) *Public Health Service.* (1) Not to exceed five positions a year of Medical Technologist Resident, GS–644–7, in the Blood Bank Department, Clinical Center, of the National Institutes of Health. Appointments under this authority will not exceed 1 year.

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) (Reserved).

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the participating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5) Medical and dental interns, externs, and residents; and student nurses.

(6) Positions of scientific, professional, or technical nature when filled by bona fide students enrolled in academic institutions: *Provided*, that the work performed in the agency is to be used by the student as a basis for completing certain academic requirements required by an educational institution to qualify for a scientific, professional, or technical field. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351–5356.

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(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term "Indian."

(9) Twelve positions of Therapeutic Radiologic Technician Trainee in the Radiation Oncology Branch, National Cancer Institute. Employment under this authority shall not exceed 1 year for any individual. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351–5356.

(10) Health care positions of the National Health Service Corps for employment of any one individual not to exceed 4 years of service in health manpower shortage areas.

(11) Pharmacy Resident positions at GS–7 in the National Institutes of Health's Clinical Center Pharmacy Department. Employment in these positions is confined to graduates of approved schools of pharmacy and is limited to a period not to exceed 12 months pending licensure.

(12) Hospital Administration Resident positions at GS–9 in the National Institutes of Health's Clinical Center, Bethesda, Maryland. Employment in these positions is confined to graduates of approved hospital or health care administration programs and is limited to a period not to exceed 1 year.

(13) Not to exceed 30 positions of Cancer Control Science Associate in the Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, for assignments at a level of difficulty and responsibility at or equivalent to GS–11/13. No one may be employed under this authority for more than 3 years, and no more than 10 appointments will be made under the authority in any 1 year

(14) Not to exceed 30 positions at grades GS–11/13 associated with the postdoctoral training program for interdisciplinary toxicologists in the National Institute of Environmental Health Sciences, National Institutes of Health, Research Triangle Park, North Carolina.

(15) Not to exceed 200 staff positions, GS–15 and below, in the Office of Refugee Health, for an emergency staff to provide health related services to Haitian entrants.

(c) (Reserved).

(d) *Social Security Administration.* (1) Six positions of social insurance representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(2) Seven positions of social insurance representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(3) Two positions of social insurance representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointment of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

(e) (Reserved).

(f) *The President's Council on Physical Fitness.* (1) Four staff assistants.

(g)–(i) (Reserved).

(j) *Health Care Financing Administration.* (1) Reserved.

(2) Not to exceed 10 professional positions, GS–9 through GS–15, to be filled under the Health Care Financing Administration Professional Exchange Program. Appointments under this authority will not exceed 1 year.

(k) *Office of the Secretary.* (1) (Reserved).

(2) Not to exceed 10 positions at grades GS–9/14 in the Office of the Assistant Secretary for Planning and Evaluation filled under the Policy Research Associate Program. New appointments to these positions may be made only at grades GS–9/12. Employment of any individual under this authority may not exceed 2 years.

Section 213.3117 Department of Education

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

Section 213.3121 Corporation for National and Community Service

(a) All positions on the staff of the Corporation for National Community Service. No new appointments may be made under this authority after September 30, 1995.

Section 213.3124 Board of Governors, Federal Reserve System

(a) All positions.

Section 213.3127 Department of Veterans Affairs

(a) *Construction Division.* (1) Temporary construction workers paid from "purchase and hire" funds and appointed for not to exceed the duration of a construction project.

(b) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) *Board of Veterans' Appeals.* (1) Positions, GS–15, when filled by a member of the Board. Except as provided by section 201(d) of Public Law 100–687, appointments under this authority shall be for a term of 9 years, and may be renewed.

(2) Positions, GS–15, when filled by a non-member of the Board who is awaiting Presidential approval for appointment as a Board member.

(d) Not to exceed 600 positions at grades GS–3 through GS–11, involved in the Department's Vietnam Era Veterans Readjustment Counseling Service.

Section 213.3128 U.S. Information Agency

(a) *Office of Congressional and Public Liaison.* (1) Two positions of Liaison Officer (Congressional), GS–14.

(b) Five Positions of Supervisory International Exchange Officer (Reception Center Director), GS–13 and GS–14, located in USIA's field offices of New Orleans, New York, Miami, San Francisco, and Honolulu. Initial appointments will not exceed December 31 of the calendar year in which appointment is made with extensions permitted up to a maximum period of 4 years.

Section 213.3129 Thrift Depositor Protection Oversight Board

(a) All positions. No new appointments may be made under this authority after December 31, 1994.

Section 213.3130 Securities and Exchange Commission

(a)–(b) (Reserved).

(c) Positions of accountant and auditor, GS–13 through 15, when filled by persons selected under the SEC Accounting Fellow Program, as follows: (1) Seven positions, for employment of any one individual not to exceed 2 years; and

(2) Two additional identical positions, for employment of any one individual not to exceed 90 days, which may be used to provide a period of transition and orientation between Fellowship appointments. These additional identical positions must be filled by persons who either have completed a 2-year Fellowship or have been selected as replacement Fellows for a 2-year term. Appointments of outgoing Fellows under this authority must be made without a break in service of 1 workday following completion of their 2-year term; incoming Fellows appointed under this provision must be appointed to 2-year Fellowships without a break in service of 1 workday following their 90-day appointments.

(d) Positions of Economist, GS–13 through 15, when filled by persons selected under the SEC Economic Fellow Program. No more than four positions may be filled under this authority at any one time. An employee may not serve under this authority longer than 2 years unless selected under provisions set forth in the Intergovernmental Personnel Act (IPA), 5 U.S.C. 3372(b)(2).

(e) Not to exceed 10 positions of accountant, GS–12/13, when filled by persons selected as SEC Accounting Fellows for the Full Disclosure Program. Employment under this authority may not exceed 2 years.

(f) Not to exceed four positions of accountant, GS–14/15, when filled by persons selected as SEC Accounting Fellows for the Capital Markets Risk Assessment Program. Employment under this authority may not exceed 2 years.

Section 213.3131 Department of Energy

(a) (Reserved).

(b) *Bonneville Power Administration.* (1) Five Area Managers.

Section 213.3132 Small Business Administration

(a) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior Office approval. Appointments under this authority may not be used to extend the 2-year service limit contained in paragraph (b) below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 8 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(c) Positions of Community Economic-Industrial Planner, GS–7 through 12, when filled by local residents who represent the interest of the groups to be served by the Minority Entrepreneurship Teams of which they are members. No new appointments may be made under this authority after May 1, 1977.

Section 213.3133 Federal Deposit Insurance Corporation

(a) Until June 1, 1996, all Liquidation Graded, temporary field positions concerned with the work of liquidating the assets of closed banks or savings and loan institutions, of liquidating loans to banks or savings and loan institutions, or of paying the depositors of closed insured banks or savings and loan institutions. New appointments may be made under this authority after December 31, 1993.

(b) Not to exceed 300 positions in field offices of the Resolution Trust Corporation. No new appointments may be made under this authority after September 30, 1992.

(c) Temporary positions located at closed banks or savings and loan institutions that are concerned with liquidating the assets of the institutions, liquidating loans to the institutions, or paying the depositors of closed insured institutions. New appointments may be made under this authority only during the 60 days immediately following the institution's closing date. Such appointments may not exceed 1 year, but may be extended for not to exceed 1 additional year.

Section 213.3136 U.S. Soldiers' and Airmen's Home

(a) (Reserved).

(b) Positions when filled by member-residents of the Home.

Section 213.3137 General Services Administration

(a) (Reserved).

(b) Not to exceed 25 positions at grades GS–14/15, in order to bring into the agency current industry expertise in various program areas. Appointments under this authority may not exceed 2 years.

(c) All law clerk positions in the Board of Contract Appeals' Law Clerk Fellows Program. Appointments under this authority at GS–11 and GS–12 will be limited to 2 years with provision for a 1-year extension at the GS–13 level only in cases of exceptional circumstances, as determined by the Chief Judge and Chairman.

Section 213.3138 Federal Communications Commission

(a) Fifteen positions of Telecommunications Policy Analyst, GS–301–13/14/15. Initial appointment to these positions will be for a period of not to exceed 2 years with provision for two 1-year extensions.

Section 213.3141 National Labor Relations Board

(a) Election Examiners for temporary, part-time, or intermittent employment in connection with elections under the Labor-Management Relations Act.

Section 213.3142 Export-Import Bank of the United States

(a) One Special Assistant to the Board of Directors, grade GS–14 and above.

Section 213.3146 Selective Service System

(a) State Directors.

(b)–(c) (Reserved).

(d) Executive Secretary, National Selective Service Appeal Board.

Section 213.3148 National Aeronautics and Space Administration

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

(b) Not to exceed 40 positions of fully qualified pilot and mission specialists astronauts.

(c)–(e) (Reserved).

(f) Positions of Program Coordinator/Counselor at grades GS–7/9/11 for part-time and summer employment in connection with the High School Students Summer Research Apprenticeship Program.

Section 213.3152 U.S. Government Printing Office

(a) Not to exceed three positions of Research Associate at grades GS–15 and

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below, involved in the study and analysis of complex problems relating to the reduction of the Government's printing costs and to provision of more efficient service to customer agencies and the public. Appointments under this authority may not exceed 1 year, but may be extended for not to exceed 1 additional year.

(b) Positions in the printing trades when filled by students majoring in printing technology employed under a cooperative education agreement with the University of the District of Columbia.

Section 213.3156 Commission on Civil Rights

(a) Twenty-five positions at grade GS–11 and above of employees who collect, study, and appraise civil rights information to carry out the national clearinghouse responsibilities of the Commission under Public Law 88–352, as amended. No new appointments may be made under this authority after March 31, 1976.

Section 213.3174 Smithsonian Institution

(a) Not to exceed 25 positions at grades GS–11 and below which support planning and production of the Annual American Folklife Festival. Employment under this authority may not exceed 6 months in connection with any one Festival.

(b) All positions located in Panama which are part of or which support the Smithsonian Tropical Research Institute.

(c) Positions at GS–15 and below in the National Museum of the American Indian requiring knowledge of, and experience in, tribal customs and culture. Such positions comprise approximately 10 percent of the Museum's positions and, generally, do not include secretarial, clerical, administrative, or program support positions.

Section 213.3175 Woodrow Wilson International Center for Scholars

(a) One East Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, one West European Program Administrator, and one Social Science Program Administrator.

Section 213.3182 National Foundation on the Arts and the Humanities

(a) *National Endowment for the Arts.* (1) One position of Assistant Director, Artists-in-Education Programs, Office of Partnerships.

(2) One position of Assistant Director for State Programs.

(3) One position of Director of Literature Programs.

(4) One position of Assistant Director of Theater Programs.

(5) One position of Director of Folk Arts Programs.

(6) One position of Director, Opera/Musical Theater Programs.

(7) One position of Assistant Director of Opera/Musical Theater Programs.

(8) One position of Assistant Director of Literature Programs.

(9) One position of Director of Locals Test Programs, Office of the Deputy to the Chairman for Public Partnership.

(10) One position of Deputy Chairman for Public Partnership.

(11) Four Project Evaluators.

(12) One position of Director of Museum Programs.

(13) One position of Assistant Director of Folk Arts, Office of the Deputy Chairman for Programs.

(14) One position of Assistant Director of Music Programs.

(15) One position of Director of Expansion Arts Programs.

(16) One position of Director of Media Arts Programs.

(17) One position of Director, Challenge and Advancement Grant Program.

(18) One position of Assistant Director, Challenge and Advancement Grant Program.

(19) One position of Art Specialist, International Programs.

(20) One position of Director of Inter Arts Program.

(21) One position of Assistant Director of Expansion of Arts Programs.

(22) One position of Assistant Director of Media Arts Programs.

(23) One position of Assistant Director of Design Arts Program.

(24) One position of Assistant Director of Dance Programs.

(25) One position of Assistant Director of Visual Arts Programs.

(26) One position of Assistant Director of Museum Programs.

(27)–(29) (Reserved).

(30) One position of Director of Education Programs.

(31) One position of Director of Music Programs.

(32) One position of Director of Theater Programs.

(33) One position of Director of Dance Programs.

(34) One position of Director of Visual Arts Programs.

(35) One position of Director of Design Arts Program.

(36) (Reserved).

(37) One Director for State Programs.

(38) One Director for Artists-in-Education Programs.

(39) One position of Assistant Director of Inter-Arts Program.

(40) One position of Assistant Director of the International Program.

Section 213.3184 Department of Housing and Urban Development

(a) One position of Special Advisor to the Regional Administrator, GS–301–14, in San Francisco. Employment under this authority may not exceed 2 years.

(b) *Office of Federal Housing Enterprise Oversight.* (1) All positions on the staff. No new appointments may be made under this authority after July 6, 1995.

Section 213.3187 Federal Housing Finance Board

(a) All positions. No new appointments may be made under this authority after December 31, 1993.

Section 213.3190 African Development Foundation

(a) Two Financial Analyst positions, GS–501–12, and one Research Specialist position, GS–301–13, requiring indepth professional and cultural knowledge of African grassroots development.

Section 213.3191 Office of Personnel Management

(a) Not to exceed 500 positions in Federal Job Information Centers, to be filled under the Community Outreach Information Network program. Appointments under this authority may not exceed 90 days, and no one may receive more than one appointment under the authority.

(b)–(c) (Reserved).

(d) Part-time and intermittent positions of test examiners at grades GS–8 and below.

Section 213.3194 Department of Transportation

(a) *U.S. Coast Guard.* (1) Not to exceed 25 positions of Marine Traffic Controller (Pilot), at grade GS–11 and below for temporary, intermittent, or seasonal employment in the State of Louisiana. Temporary appointments may not exceed 1 year, and temporary appointees may be reappointed under this authority only after a break in service of at least 6 months. Intermittent or seasonal employment may not exceed 180 working days in a service year, except that this limitation for an individual employee may be extended to 220 days when necessitated by emergencies caused by unusual flooding conditions or high river stages.

(2) Lamplighters.

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Conn.

(b) *Federal Aviation Administration.* (1) Positions of entry-level air traffic control specialists filled in connection with the testing of alternative methods of training such specialists. These positions require experience or education related to air traffic control that provided knowledges, skills, and abilities comparable to those gained through initial training in the FAA Academy. Appointees under this authority will not participate in such Academy training. This authority will expire on December 31, 1994.

(c) *Federal Highway Administration.* (1) Temporary, intermittent, or seasonal employment in the field service of the Federal Highway Administration at grades not higher than GS–5 for subprofessional engineering aide work on the highway surveys and construction projects, for not to exceed 180 working days a year, when in the opinion of OPM, appointment through competitive examination is impracticable.

(d) (Reserved).

(e) *Maritime Administration.* (1)–(2) (Reserved).

(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(4)–(5) (Reserved).

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers: including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

Section 213.3195 Federal Emergency Management Agency

(a) Field positions at grades GS–15 and below, or equivalent, which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort.

(b) Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority.

(c) Not to exceed 350 professional and technical positions at grades GS–5 through GS–15, or equivalent, in Mobile Emergency Response Support Detachments (MERS).

Section 213.3199 Temporary Organizations

(a) Positions at GS–15 and below on the staffs of temporary boards and commissions which are established by law or Executive order for specified periods not to exceed 4 years to perform specific projects. A temporary board or commission originally established for less than 4 years and subsequently extended may continue to fill its staff positions under this authority as long as its total life, including extension(s), does not exceed 4 years. No board or commission may use this authority for more than 4 years to make appointments and position changes unless prior approval of the Office is obtained.

(b) Positions at GS–15 and below on the staffs of temporary organizations established within continuing agencies when all of the following conditions are met: (1) The temporary organization is established by an authority outside the agency, usually by law or Executive order; (2) the temporary organization is established for an initial period of 4 years or less and, if subsequently extended, its total life including extension(s) will not exceed 4 years; (3) the work to be performed by the temporary organization is outside the agency's continuing responsibilities; and (4) the positions filled under this authority are those for which other staffing resources or authorities are not available within the agency. An agency may use this authority to fill positions in organizations which do not meet all of the above conditions or to make appointments and position changes in a single organization during a period longer than 4 years only with prior approval of the Office.

Schedule B

Section 213.3202 Entire Executive Civil Service

The provisions established under paragraphs (a) through (i) are authorized under provisions of E.O. 12015 and support career-related work-study programs. OPM's requirements relating to appointment under paragraphs (a) through (i) will be published in the Federal Personnel Manual. Further, appointments under paragraphs (a) through (i) are subject to all the requirements and conditions governing career or career-conditional appointments, including investigation by OPM to establish an appointee's qualifications and suitability. Appointments of participants may be converted to career or career-conditional at any time within a 120-day period after satisfactory completion of a career-related work-study program.

(a) Student positions established in connection with a bachelor's degree cooperative education program which provide for a formally arranged schedule of attendance at an institution of higher learning combined with at least 26 weeks, or 1,040 hours, of study-related work in a Federal agency. The periods of work and study together must satisfy requirements for a bachelor's degree and must provide the experience necessary for a career or career-conditional appointment to administrative, professional, or technical positions in the Federal career service upon the student's graduation.

(b) Student positions established in support of cooperative education programs for graduate students which provide for scheduled periods of attendance at a graduate school combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of work and study must satisfy requirements for the graduate degree and provide experience necessary for career or career-conditional appointment in the Federal

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career service upon the student's graduation.

(c) Student positions established in connection with associate degree cooperative education programs which provide for formally arranged schedules of attendance at a recognized 2-year educational institution combined with at least 26 weeks or 1,040 hours of study-related work in a Federal agency. The periods of work and study together must satisfy the requirements for graduation and must provide the experience necessary for career or career-conditional appointment in selected occupations in the Federal career service upon the student's graduation.

(d) Student positions established in connection with the Harry S. Truman Foundation Scholarship Program under the provisions of Public Law 93–642 to permit scheduled periods of attendance at institutions of higher education combined with at least 26 weeks or 1,040 hours of study-related work in a Federal agency. The periods of work and study must satisfy requirements of programs established by agreement between the Harry S. Truman Scholarship Foundation and the employing agency and provide the experience necessary for a career or career-conditional appointment in the Federal career service upon the student's graduation.

(e) Student positions established in support of the Cooperative Education (Vocational Education) Program for high school students which provide for scheduled periods of classroom study combined with at least 16 weeks or 640 hours, of study-related work in a Federal agency. The periods of study and work must satisfy requirements for a high school diploma and provide experience necessary for career or career-conditional appointment into office and administrative support, technician, assistant, helper, and preapprentice occupations in the Federal career service upon the student's graduation.

(f) Positions under the Federal Junior Fellowship Program, a career-related work-study program covered under the provisions of Executive Order 12015.

(g) Student positions established in support of the Cooperative Education Program in which the student is enrolled in an undergraduate certificate or diploma program in an accredited college, technical, trade, vocational, or business school which provides for scheduled periods of classroom study combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of study and work must satisfy requirements for an undergraduate certificate or diploma and provide experience necessary for a career or career-conditional appointment into office and administrative support, technician, assistant, helper, and preapprentice occupations in the Federal career service upon the student's graduation.

(h)–(i) (Reserved).

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding 3 years for one individual.

(k) Positions at grades GS–15 and below when filled by individuals who (1) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disability; and (2) are certified to a specific position by a State vocational rehabilitation counselor or a Veterans Administration counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the positions to which they will be appointed, and that any residual disability is not job related. Employment of any individual under this authority may not exceed 2 years following each significant period of mental illness.

(l) (Reserved).

(m) Positions when filled under any of the following conditions: (1) Appointment at grades GS–15 and above, or equivalent, in the same or a different agency without a break in service from a career appointment in the Senior Executive Service (SES) of an individual who:

(i) Has completed the SES probationary period;

(ii) Has been removed from the SES because of less than fully successful executive performance or a reduction in force; and

(iii) Is entitled to be placed in another civil service position under 5 U.S.C. 3594(b).

(2) Appointment in a different agency without a break in service of an individual originally appointed under paragraph (m)(1).

(3) Reassignment, promotion, or demotion within the same agency of an individual appointed under this authority.

Section 213.3203 Executive Office of the President

(a) (Reserved).

(b) *Office of the Special Representative for Trade Negotiations.* (1) Seventeen positions of economist at grades GS–12 through GS–15.

Section 213.3204 Department of State

(a)–(c) (Reserved).

(d) Fourteen positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) Four Physical Science Administration Officer positions at GS–11 through and GS–13 under the Bureau of Oceans and International Environmental and Scientific Affairs' Science, Engineering and Diplomacy Fellowship Program. Employment under this authority is not to exceed 2½ years.

(f) Scientific, professional, and technical positions at grades GS–12 to GS–15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

Section 213.3205 Department of the Treasury

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b) Not to exceed 10 positions engaged in functions mandated by Public Law 99–190, the duties of which require expertise and knowledge gained as a present or former employee of the Synthetic Fuels Corporation, as an employee of an organization carrying out projects or contacts for the Corporation, or as an employee of a Government agency involved in the Synthetic Fuels Program. Appointments under this authority may not exceed 4 years.

(c) Not to exceed two positions of Accountant (Tax Specialist) at grades GS–13 and above to serve as specialists on the accounting analysis and treatment of corporation taxes. Employments under this paragraph shall not exceed a period of 18 months in any individual case.

(d) Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed (1) a total of 4 years; or (2) 120 days following completion of the service required for conversion under Executive Order 11203, whichever comes first.

Section 213.3206 Department of Defense

(a) *Office of the Secretary.* (1) (Reserved).

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) (Reserved).

(5) Four Net Assessment Analysts.

(b) *Interdepartmental activities.* (1) Five positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(2) Eight positions, GS–15 or below, in the White House Military Office, providing support for airlift operations, special events, security, and/or administrative services to the Office of the President.

(c) *National Defense University.* (1) Sixty-one positions of professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in any increment from 1 to 6 years indefinitely thereafter.

(d) *General.* (1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

(2) Acquisition positions at grades GS–5 through GS–11, whose incumbents have successfully completed the required course of education as participants in the Department of Defense scholarship program authorized under 10 U.S.C. 1744.

(e) *Office of the Inspector General.* (1) Positions of Criminal Investigator, GS–1811–5/15.

(f) *Department of Defense Polygraph Institute, Fort McClellan, Alabama.* (1) One Director, GM–15.

Section 213.3207 Department of the Army

(a) *U.S. Army Command and General Staff College.* (1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

(b) *Brooke Army Medical Center, Fort Sam Houston, Texas.* (1) Two Medical Officer (Surgery) positions, GS–12, in the Clinical Division, U.S. Army Institute of Surgical Research, whose incumbents are enrolled in medical school surgical residency programs. Employment under this authority shall not exceed 12 months.

Section 213.3208 Department of the Navy

(a) *Naval Underwater Systems Center, New London, Connecticut.* (1) One position of oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) One Director and four Research Psychologists at the professor or GS–15 level in the Defense Personnel Security Research and Education Center.

(d) All civilian professor positions at the Marine Corps Command and Staff College.

(e) One position of Staff Assistant, GS–301–13, whose incumbent will manage the Navy's Executive Dining facilities at the Pentagon.

(f) One position of Housing Management Specialist, GM–1173–14, involved with the Bachelor Quarters Management Study. No new appointments may be made under this authority after February 29, 1992.

Section 213.3209 Department of the Air Force

(a) Not to exceed four interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1, 2, or 3 years indefinitely thereafter.

(b) (Reserved).

(c) One Director of Instruction and 14 civilian Instructors at the Defense Institute of Security Assistance Management, Wright-Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

(d) Six positions of professor, associate professor, or professional academic staff at the Air University, Maxwell Air Force Base, Alabama, associated with courses of instruction of less than 10 months duration, for employment not to exceed 3 years, which may be renewed in 1-, 2-, or 3-year increments indefinitely thereafter.

(e) One position of Director of Development and Alumni Programs, GS–301–13, with the U.S. Air Force Academy, Colorado.

Section 213.3210 Department of Justice

(a) Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) Positions of Port Receptionist and Supervisory Port Receptionist, Immigration and Naturalization Service.

(c) Not to exceed 400 positions at grades GS–5 through 15 assigned to regional task forces established to conduct special investigations to combat drug trafficking and organized crime.

(d) (Reserved).

(e) Positions, other than secretarial, GS–6 through GS–15, requiring knowledge of the bankruptcy process, on the staff of the offices of United States Trustees or the Executive Office for U.S. Trustees.

Section 213.3213 Department of Agriculture

(a) *Office of International Cooperation and Development.* (1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 5 years on a single project for any individual unless delayed completion of a project justifies an extension up to but not exceeding 2 years.

(b) *General.* (1) Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to 2 additional years. Extensions beyond 4

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years, up to a maximum of 2 additional years, may be granted, but only in very rare and unusual circumstances, as determined by the Personnel Officer, Agricultural Research Service, or the Personnel Officer, Forest Service.

(2) Not to exceed 55 Executive Director positions, GM–301–14/15, with the State Rural Development Councils in support of the Presidential Rural Development Initiative.

Section 213.3214 Department of Commerce

(a) *Bureau of the Census.* (1) (Reserved).

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS–5 through GS–12.

(3) Not to exceed 300 Community Awareness Specialist positions at the equivalent of GS–7 through GS–12. Employment under this authority may not exceed December 31, 1992.

(b) (Reserved).

(c) (Reserved).

(d) *National Telecommunications and Information Administration.* (1) Not to exceed 10 positions of Telecommunications Policy Analysts, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

Section 213.3215 Department of Labor

(a) Positions of Chairman and Member, Wage Appeals Board.

(b) *Office of the Inspector General.* (1) Not to exceed 110 positions of Criminal Investigator (Special Agent), GS–1811–5/15, in the Office of Labor Racketeering.

Section 213.3216 Department of Health and Human Services

(a) *Public Health Service.* (1) Not to exceed 68 positions at GS–11 and below on the Health and Nutrition Examination Survey teams of the National Center for Health Statistics.

(2) One Public Health Education Specialist, GS–1725–15, in the Centers for Disease Control, Atlanta, Georgia.

(b)-(c) (Reserved).

(d) *National Library of Medicine.* (1) Ten positions of Librarian, GS–9, the incumbents of which will be trainees in the Library Associate Training Program in Medical Librarianship and Biomedical Communications. Employment under this authority is not to exceed 1 year.

Section 213.3217 Department of Education

(a) Seventy-five positions, not in excess of GS–13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in midcareer development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

Section 213.3227 Department of Veterans Affairs

(a) Not to exceed 800 principal investigatory, scientific, professional, and technical positions at grades GS–11 and above in the medical research program.

Section 213.3228 U.S. Information Agency

(a) *Voice of America.* (1) Not to exceed 200 positions at grades GS–15 and below in the Cuba Service. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

(b) Positions of English Language Radio Broadcast Intern, GS–1001–5/7/9. Employment is not to exceed 2 years for any intern.

Section 213.3231 Department of Energy

(a) Twenty Exceptions and Appeals Analyst positions at grades GS–7 through 11, when filled by persons selected under DOE's fellowship program in its Office of Hearings and Appeals, Washington, DC. Appointments under this authority shall not exceed 3 years.

Section 213.3233 Federal Deposit Insurance Corporation

(a) Temporary Positions in the Washington, DC, headquarters offices of the Resolution Trust Corporation when filled by individuals whose specialized experience in field and regional offices performing the work of the Resolution Trust Corporation under Schedule A authorities in 5 CFR section 213.3133(a) or (b) immediately prior to their appointment under this authority is needed by the Resolution Trust Corporation for more efficient administration of its programs.

Section 213.3234 Federal Trade Commission

(a) Positions filled under the Economic Fellows Program. No more than five new appointments may be made under this authority in any fiscal year. Service of an individual Fellow may not exceed 4 years.

Section 213.3236 U.S. Soldiers' and Airmen's Home

(a) Three GS–11 Medical Officer positions under a fellowship program on geriatrics.

(b) Director, Health Care Services; Director, Member Services; Director, Logistics; and Director, Plans and Programs.

Section 213.3237 General Services Administration

(a) One position of Deputy Director of Network Services.

Section 213.3242 Export-Import Bank of the U.S.

(a) One position of Food Service Worker WG–7804–3/4/5, in the Office of the President and Chairman.

Section 213.3248 National Aeronautics and Space Administration

(a) Not to exceed 40 positions of Command Pilot, Pilot, and Mission Specialist candidates at grades GS–7 through 15 in the Space Shuttle Astronaut program. Employment under this authority may not exceed 3 years.

Section 213.3257 National Credit Union Administration

(a) *Central Liquidity Facility.* (1) All managerial and supervisory positions at pay levels greater than the equivalent of GS–13.

Section 213.3259 ACTION

(a) Office of Domestic and Anti-Poverty Operations. (1) Not to exceed 25 positions of Program Specialist at grades GS–9 through GS–15.

(b) *Office of Policy and Research.* (1) Three positions of Program Specialist at grades GS–7 through GS–15.

Section 213.3264 U.S. Arms Control and Disarmament Agency

(a) Twenty-five scientific, professional, and technical positions at grades GS–12 through GS–15 when filled by persons having special qualifications in the fields of foreign policy, foreign affairs, arms control, and related fields. Total employment under this authority may not exceed 4 years.

Section 213.3274 Smithsonian Institution

(a) *National Zoological Park.* (1) Four positions of Veterinary Intern, GS–8/9/11. Employment under this authority is not to exceed 36 months.

(b) *Freer Gallery of Art.* (1) Not to exceed four positions of Oriental Art Restoration Specialist at grades GS–9 through GS–15.

Section 213.3276 Appalachian Regional Commission

(a) Two Program Coordinators.

Section 213.3278 Armed Forces Retirement Home

(a) *Naval Home, Gulfport, Mississippi.* (1) One Resource Management Officer position and one Public Works Officer position, GS/GM–15 and below.

Section 213.3282 National Foundation on the Arts and the Humanities

(a) (Reserved).

(b) *National Endowment for the Humanities.* (1) Humanities Administrator, Reference Materials Programs, Division of Research Programs.

(2) Humanities Administrator (Assistant Director), Humanities Projects in Higher Education Program, Division of Education Programs.

(3) Deputy to the Director, Division of Education Programs.

(4) Director, Division of Research Programs.

(5) Director, Deputy to the Director and seven positions of Humanities Administrators, Division of State Programs.

(6) Director and Deputy to the Director, Division of Fellowships and Seminars.

(7) One Humanities Administrator, Fellowships for College Teachers, Division of Fellowships and Seminars.

(8) Seven Humanities Administrators, Humanities Projects in Media Program, Division of Public Programs.

(9) One Humanities Administrator, Humanities Projects in Higher Education Program, Division of Education Programs.

(10) One Assistant Director for the Elementary and Secondary Education Program, Division of Education Programs.

(11) One Assistant Director for the Museums and Historical Organizations Program, Division of Public Programs.

(12) Four Humanities Administrators, Museums and Historical Organizations Program, Division of Public Programs.

(13) Five Humanities Administrators, Elementary and Secondary Education Program, Division of Education Programs.

(14) Director, Division of Public Programs.

(15) Deputy to the Director, Division of Public Programs.

(16) One Humanities Administrator, Younger Scholars Programs, Division of Fellowships and Seminars.

(17) One Humanities Administrator, Public Humanities Projects, Division of Public Programs.

(18) Director, Division of Education Programs.

(19) One Humanities Administrator (Assistant Director), Texts Programs, Division of Research Programs.

(20) One Humanities Administrator, Centers for Advanced Study, Division of Research Programs.

(21) One Challenge Grants Officer.

(22) One Assistant Director, Humanities Projects in Media Program, Division of Public Programs.

(23) One Humanities Administrator, Publications Program, Division of Research Programs.

(24) Deputy to the Director, Division of Research Programs.

(25) One Humanities Administrator, Summer Seminars for College Teachers, Division of Fellowships and Seminars.

(26) Two Humanities Administrators, Humanities Projects in Libraries and Archives, Division of Public Programs.

(27) One Humanities Projects Assessment Officer and one Humanities Administrator, Office of the Chairman.

(28) One Humanities Administrator, Public Humanities Projects, Division of Public Programs.

(29) One Humanities Administrator, Interpretive Research Programs, Division of Research Programs.

(30) One Humanities Administrator, Office of Challenge Grants.

(31) (Reserved).

(32) One Assistant Director, Fellowships Program, Division of Fellowships and Seminars.

(33) (Reserved).

(34) One Humanities Administrator, Humanities Projects in Higher Education Program, Division of Education Programs.

(35) Two Humanities Administrators, Humanities Projects in Higher Education Program, Division of Education Programs.

(36) Three Humanities Administrators, Humanities Projects in Higher Education Program, Division of Education Programs.

(37) Two Humanities Administrators, Summer Seminars for Secondary School Teachers, Division of Fellowships and Seminars.

(38) One Humanities Administrator, Summer Stipends, Division of Fellowships and Seminars.

(39) One Humanities Administrator, Travel to Collections, Division of Fellowships and Seminars.

(40) One Humanities Administrator, Translation Program, Reference Works Program, Division of Research Programs.

(41) One Humanities Administrator, Editions Program, Reference Work Program, Division of Research Programs.

(42) (Reserved).

(43) One Humanities Administrator, Foundations of American Society Program, Division of Fellowships and Seminars.

(44) One Humanities Administrator, Humanities Projects in Museums and Historical Organizations, Division of Public Programs.

(45) Six Humanities Administrators, Division of Preservation and Access.

(46) Director, Division of Preservation and Access.

(47) One Humanities Administrator, Centers for Advanced Study, International Research, and Selected Areas, Division of Research Programs.

(48) Director, Office of Planning and Budget.

(49) One Humanities Administrator, Tools Program, Reference Materials Program, Division of Research Programs.

(50) One Humanities Administrator, Division of Preservation and Access.

(51) Two Humanities Administrators, Archaeology Program, Interpretive Research Program, Division of Research Programs.

(52) One Humanities Administrator, Humanities, Science, and Technology Program, Interpretive Research Program, Division of Research Programs.

(53) One Humanities Administrator, Office of the Chairman.

(54) Four Humanities Administrators, Office of the Assistant Chairman for Programs and Policy.

(55) One Humanities Administrator, Fellowships Program, Division of Fellowships and Seminars.

(56) One Humanities Administrator, Seminars Program, Division of Fellowships and Seminars.

(57) One Humanities Administrator, Guides Program, Reference Materials Program, Division of Research Programs.

(58) One Humanities Administrator, Public Challenge Grants Program, Division of Public Programs.

(59) One Humanities Administrator, Dissertation Grants/Summer Seminars for College Teachers, Division of Fellowships and Seminars.

Section 213.3285 Pennsylvania Avenue Development Corporation

(a) One position of Civil Engineer (Construction Manager).

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Section 213.3291 Office of Personnel Management

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.

(b) Twelve positions of faculty members at grades GS–13 through 15, at the Federal Executive Institute. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1-, 2-, or 3-year increments indefinitely thereafter.

Schedule C

Section 213.3303 Executive Office of the President

Council of Economic Advisers
- CEA 1 Secretary to a Chairman
- CEA 4 Secretary to a Chairman
- CEA 5 Secretary to a Council Member
- CEA 6 Secretary to a Council Member

Council on Environmental Quality
- CEQ 4 Confidential Assistant to a Chairman

Office of Management and Budget
- OMB 80 Confidential Assistant to the Executive Assistant to the Director
- OMB 81 Confidential Assistant to the Deputy Director for Management
- OMB 92 Confidential Assistant to the Associate Director for Legislative Reference and Administration
- OMB 94 Confidential Assistant to the Associate Director for Economics and Government
- OMB 95 Legislative Assistant to the Director, Office of Management and Budget
- OMB 96 Confidential Assistant to the Associate Director for Human Resources
- OMB 97 Confidential Assistant to the Administrator, Office of Information and Regulatory Affairs
- OMB 98 Press Agent to the Associate Director for External Affairs
- OMB 99 Confidential Assistant to the Associate Director for National Resources, Energy and Science
- OMB 100 Legislative Assistant to the Director, Office of Management and Budget
- OMB 101 Confidential Assistant to the Associate Director for Health

Office of National Drug Control Policy
- ONDCP 75 Special Assistant to the Director, Office of National Drug Control Policy
- ONDCP 76 Special Assistant to the Director, Office of National Drug Control Policy
- ONDCP 77 Public Affairs Specialist to the Director, Office of National Drug Control Policy
- ONDCP 78 Staff Assistant for Scheduling to the Director
- ONDCP 79 Public Affairs Specialist to the Director of Public and Legislative Affairs
- ONDCP 80 Public Affairs Specialist (Speechwriter) to the Director of Public and Legislative Affairs

Office of Science and Technology Policy
- OSTP 17 General Counsel to the Director, Office of Science and Technology Policy
- OSTP 18 Special Assistant to the Director, Office of Science and Technology Policy
- OSTP 19 Assistant to the Director, Office of Science and Technology Policy, for Intergovernmental Affairs and Policy
- OSTP 21 Confidential Assistant to the Associate Director, Technology Division
- OSTP 22 Confidential Assistant to the Director, Office of Science and Technology Policy
- OSTP 23 Confidential Assistant to the Associate Director for National Security and International Affairs

Office of the United States Trade Representative
- USTR 30 Confidential Assistant to the Deputy U.S. Trade Representative
- USTR 35 Deputy Assistant U.S. Trade Representative for Congressional Affairs to the Assistant U.S. Trade Representative for Congressional Affairs
- USTR 36 Confidential Assistant to the U.S. Trade Representative
- USTR 37 Confidential Assistant to the General Counsel
- USTR 39 Supervisory Public Affairs Specialist to the Assistant U.S. Trade Representative for Public Affairs
- USTR 40 Confidential Assistant to the Deputy U.S. Trade Representative to the Deputy U.S. Trade Representative
- USTR 42 Special Assistant to the Deputy U.S. Trade Representative
- USTR 44 Confidential Assistant to the U.S. Trade Representative
- USTR 45 Congressional Affairs Specialist to the Assistant U.S. Trade Representative for Congressional Affairs
- USTR 46 Public Affairs Specialist to the Assistant U.S. Trade Representative for Public Affairs
- USTR 47 Public Affairs Specialist to the Assistant U.S. Trade Representative for Public Affairs
- USTR 48 Congressional Affairs Specialist to the Assistant U.S. Trade Representative for Congressional Affairs
- USTR 49 Confidential Secretary (Typing) to the Chief of Staff
- USTR 50 Confidential Assistant to the Deputy U.S. Trade Representative, Geneva Switzerland
- USTR 51 Confidential Assistant to the Special Counsel for Financial and Investment Policy

President's Commission on White House Fellowships
- PCWHF 4 Confidential Assistant to the Director
- PCWHF 6 Associate Director to the Director

213.3304 Department of State
- ST 81 Secretary (Steno) to the Assistant Secretary, Bureau of Near Eastern and South Asian Affairs
- ST 329 Staff Assistant to the Deputy Secretary of State
- ST 356 Member, Policy Planning Staff to the Director, Policy Planning Staff
- ST 357 Staff Assistant to the Secretary of State
- ST 358 Special Assistant to the Secretary of State
- ST 359 Legislative Officer to the Under Secretary for Management
- ST 364 Special Assistant to the Assistant Secretary for African Affairs, Bureau of African Affairs
- ST 365 Special Assistant to the Legal Advisor
- ST 366 Secretary (Stenography) to the Assistant Secretary for Consular Affairs
- ST 369 Special Assistant to the Assistant Secretary, Bureau of East Asian and Pacific Affairs
- ST 370 Special Assistant to the Assistant Secretary, Bureau of Public Affairs
- ST 371 Secretary (Steno) to the Assistant Secretary, Bureau of European and Canadian Affairs
- ST 372 Secretary (Steno) to the Assistant Secretary, Bureau of International Organization Affairs
- ST 373 Staff Assistant to the Senior Advisor and Counsel to United States Permanent Representative to the United Nations
- ST 374 Special Assistant to the United States Permanent Representative to the Organization of American States, Bureau of Inter-American Affairs
- ST 376 Secretary to the Assistant Secretary, Bureau of Oceans and International Environmental and Scientific Affairs
- ST 379 Special Assistant to the Assistant Secretary
- ST 380 Senior Policy Advisor to the Assistant Secretary, Bureau of Legislative Affairs
- ST 381 Member Policy Planning Staff to the Director, Policy Planning Staff
- ST 382 Management Analyst to the Director, Office of Management Planning
- ST 383 Correspondence Officer to the Assistant Secretary
- ST 388 Senior Policy Advisor to the Assistant Secretary, Bureau of Legislative Affairs
- ST 389 Legislative Management Officer to the Assistant Secretary, Bureau of Legislative Affairs
- ST 391 Special Assistant to the Counselor to the Department
- ST 392 Special Assistant to the Under Secretary for Economic and Agricultural Affairs
- ST 393 Legislative Analyst to the Assistant Secretary
- ST 394 Senior Advisor to the Assistant Secretary
- ST 395 Special Assistant to the Under Secretary for Political Affairs
- ST 396 Staff Assistant to the Assistant Secretary, Bureau of Political-Military Affairs
- ST 397 Special Assistant to the Assistant Secretary, Bureau of European and Canadian Affairs
- ST 398 Special Adviser to the Ambassador, United States Permanent Representative to the Organization of American States, Bureau of Inter-American Affairs
- ST 399 Confidential Assistant to the Secretary of State
- ST 400 Special Assistant to the Under Secretary for International Security Affairs
- ST 401 Staff Assistant to the Assistant Secretary, Bureau of Political-Military Affairs
- ST 402 Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs
- ST 403 Foreign Affairs Officer (Ceremonial) to the Chief of Protocol
- ST 405 Supervisory Protocol Officer (Visits) to the Foreign Affairs Officer (Visits)
- ST 406 Secretary (Typing) to the Assistant Secretary, Bureau of Economic And Business Affairs
- ST 407 Special Assistant to the Director, Policy Planning Staff
- ST 408 Staff Assistant to the Assistant Secretary, Bureau of Public Affairs
- ST 409 Legislative Analyst to the Director, Legislative Affairs, Office of the Under Secretary for Management
- ST 411 Protocol Assistant to the Foreign Affairs Officer, Office of the Chief of Protocol
- ST 412 Senior Advisor to the Assistant Secretary, Bureau of Inter-American Affairs
- ST 413 Special Assistant to the Assistant Secretary, Bureau of International Organization Affairs
- ST 414 Foreign Affairs Officer to the Assistant Secretary, Bureau of Public Affairs
- ST 415 Special Assistant to the Deputy Assistant Secretary, for Environment and Development
- ST 416 Protocol Officer (Visits) to the Foreign Affairs Officer (Visits)
- ST 417 Foreign Affairs Officer to the Chief of Protocol
- ST 418 Special Assistant to the Chief of Protocol
- ST 420 Staff Assistant to the Assistant Secretary, Bureau of Legislative Affairs
- ST 421 Member, Policy Planning Staff to the Director of the Policy Planning Staff
- ST 423 Special Assistant to the Under Secretary
- ST 424 Secretary (OA) to the Assistant Secretary, Bureau of Intelligence and Research
- ST 425 Public Affairs Specialist to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs
- ST 426 Secretary (Steno) to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs
- ST 427 Special Assistant to the Assistant Secretary, Bureau of Public Affairs
- ST 428 Secretary to the Assistant Secretary, Bureau of Legislative Affairs
- ST 429 Special Assistant to the Assistant Secretary, Bureau of Consular Affairs
- ST 430 Special Assistant to the Deputy Assistant Secretary for Environment and Development, Bureau of Oceans, Environmental and Scientific Affairs
- ST 431 Special Assistant to the Assistant Secretary, Bureau of Intelligence and Research
- ST 432 Special Assistant to the Assistant Secretary, Bureau of International Organization Affairs
- ST 433 Correspondence Officer to the Assistant Secretary, Bureau of Legislative Affairs
- ST 434 Staff Assistant to the Director of White House Liaison
- ST 435 Public Affairs Specialist to the Assistant Secretary, Bureau of Economics and Business Affairs
- ST 438 Staff Assistant to the Deputy Secretary of State
- ST 439 Staff Assistant to the Population Coordinator, Bureau of Oceans and International Environment and Scientific Affairs
- ST 445 Foreign Affairs Officer to the Deputy Assistant Secretary
- ST 446 Foreign Affairs Officer to the Deputy Secretary

213.3305 Department of the Treasury
- TREA 39 Deputy to the Assistant Secretary (Legislative Affairs)
- TREA 44 Deputy to the Assistant Secretary (Legislative Affairs)
- TREA 139 Director, Scheduling and Advance to the Chief of Staff
- TREA 170 Assistant Director, Travel and Special Events Services to the Director, Administrative Operations Division
- TREA 202 Director, Office of Legislative Affairs to the Senior Deputy Assistant Secretary for Legislative Affairs
- TREA 213 Special Assistant to the Assistant Secretary for Legislative Affairs
- TREA 220 Confidential Assistant to the Commissioner, Internal Revenue Service
- TREA 230 Public Affairs Specialist to the Director, Office of Public Affairs
- TREA 236 Staff Assistant to the Deputy Executive Secretary (Public Liaison)
- TREA 244 Administrative Assistant to the Director, Office of Thrift Supervision
- TREA 250 Director, Office of Public Affairs to the Deputy Assistant Secretary (Public Affairs)
- TREA 261 Travel Assistant to the Director, Administration Operations Division
- TREA 264 Senior Policy Analyst to the Deputy Assistant Secretary, Corporate Finance
- TREA 265 Special Assistant to the General Counsel
- TREA 277 Public Affairs Specialist to the Assistant Secretary for Public Affairs and Public Liaison
- TREA 284 Director, Office of Business Liaison to the Deputy Assistant Secretary (Public Liaison)
- TREA 290 Special Assistant to the Deputy Assistant Secretary for Administration
- TREA 291 Confidential Assistant to the Assistant Secretary (Management)
- TREA 293 Deputy to the Assistant Secretary (Legislative Affairs)

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TREA 298 Special Assistant to the Assistant Secretary (Management)
TREA 307 Confidential Assistant to the Treasurer of the United States
TREA 312 Confidential Assistant to the Deputy Secretary of the Treasury
TREA 313 Confidential Assistant to the Secretary of the Treasury
TREA 314 Public Affairs Specialist to the Assistant Secretary (Public Affairs and Public Liaison)
TREA 315 Special Assistant to the Chief of Staff
TREA 316 Public Affairs Specialist to the Director, Office of Public Affairs
TREA 318 Legislative Assistant to the Director, Office of Legislative Affairs
TREA 319 Confidential Assistant to the Commissioner of Customs
TREA 320 Staff Assistant to the Assistant Secretary of Economic Policy
TREA 321 Confidential Staff Assistant to the Under Secretary for International Affairs
TREA 322 Staff Assistant (Correspondence Review) to the Executive Secretary and Senior Adviser
TREA 323 Special Assistant to the Senior Deputy Comptroller for Economic Analysis and Public Affairs
TREA 327 Senior Policy Analyst to the Deputy Assistant Secretary for Government Financial Policy
TREA 328 Special Assistant to the Assistant Secretary for Economic Policy
TREA 330 Special Assistant (External Affairs) to the Director of the United States Mint
TREA 331 Legislative Policy Advisor to the Assistant Secretary (Enforcement)
TREA 334 Staff Assistant to the Assistant Secretary (Enforcement)
TREA 335 Staff Assistant to the Assistant Secretary (Economic Policy)
TREA 336 Director, Administrative Operations Division to the Deputy Assistant Secretary (Administration)
TREA 337 Senior Policy Analyst to the Assistant Secretary (Enforcement)
TREA 338 Staff Assistant to the Director, Scheduling and Advance, Office of the Secretary
TREA 339 Policy Analyst to the Under Secretary for Domestic Finance
TREA 340 Public Affairs Specialist to the Director, Office of Public Affairs
TREA 341 Staff Assistant to the Assistant Secretary (Economic Policy)
TREA 342 Senior Advisor to the Treasurer of the United States
TREA 343 Deputy Executive Director for Special Programs to the Executive Director, United States Bond Division, Bureau of Public Debt
TREA 344 Policy Advisor to the Assistant Secretary (Enforcement)
TREA 345 Policy Advisor to the Assistant Secretary (Enforcement)
TREA 346 Policy Advisor to the Assistant Secretary (Enforcement)
TREA 347 Policy Advisor to the Assistant Secretary (Enforcement)

213.3306 Department of Defense

DOD 5 Private Secretary to Deputy Secretary
DOD 19 Personal and Confidential Assistant to the Director, Program Analysis and Evaluation
DOD 22 Personal and Confidential Assistant to the Assistant to the Secretary of Defense for Atomic Energy
DOD 23 Confidential Assistant to the Military Assistant to the Secretary of Defense
DOD 24 Chauffeur to the Secretary of Defense
DOD 33 Personal Secretary to the Deputy Secretary of Defense
DOD 54 Personal and Confidential Assistant to a Judge
DOD 56 Personal and Confidential Assistant to the Chief Judge
DOD 66 Private Secretary to the Physician to the President
DOD 75 Chauffeur to the Deputy Secretary of Defense
DOD 101 Special Assistant to the Director of Net Assessment
DOD 119 Private Secretary to the Principal Deputy Director, Program Analysis and Evaluation
DOD 175 Private Secretary to a Judge
DOD 205 Private Secretary to a Judge
DOD 236 Director for Programs to the Assistant to the Secretary of Defense for Public Affairs
DOD 241 Personal and Confidential Assistant to the Assistant Secretary of Defense
DOD 256 Special Assistant to the Assistant Secretary of Defense (Personnel and Readiness)
DOD 270 Private Secretary to the Director, Strategic Defense Initiative Organization
DOD 271 Private Secretary to the Principal Deputy Assistant Secretary of Defense (Reserve Affairs)
DOD 283 Personal and Confidential Assistant to the Assistant to the Deputy Secretary of Defense
DOD 295 Personal and Confidential Assistant to the Under Secretary of Defense for Personnel and Readiness
DOD 310 Civilian Executive Assistant to the Chairman of the Joint Chiefs of Staff
DOD 317 Personal and Confidential Assistant to the Director, Defense Research and Engineering
DOD 320 Executive Assistant to the Secretary of Defense
DOD 321 Executive Assistant to Vice President to the Assistant Secretary to Vice President for National Security Affairs
DOD 332 Personal and Confidential Assistant to the Assistant Secretary of Defense (Regional Security)
DOD 335 Public Affairs Specialist to the Special Assistant to the Secretary for Public Affairs
DOD 339 Speechwriter to the Special Assistant to the Secretary of Defense for Public Affairs
DOD 355 Special Assistant for Strategic Modernization to the Assistant Secretary of Defense (Legislative Affairs)
DOD 361 Special Assistant for Production and Logistics and Energy to the Assistant Secretary of Defense, Legislative Affairs
DOD 368 Personal and Confidential Assistant to the Assistant Secretary of Defense for Legislative Affairs
DOD 370 Personal and Confidential Assistant to Principal Deputy Under Secretary of Defense
DOD 380 Director of Protocol to the Assistant to the Secretary of Defense for Protocol
DOD 386 Personal and Confidential Assistant to the Assistant Secretary of Defense for Reserve Affairs
DOD 392 Confidential Assistant to the Under Secretary of Defense for Acquisition and Technology
DOD 401 Personal and Confidential Assistant to a Judge
DOD 402 Private Secretary to the Judge
DOD 404 Private Secretary to a Judge, U.S. Court of Military Appeals
DOD 405 Personal and Confidential Assistant to a Judge, U.S. Court of Military Appeals
DOD 409 Personal and Confidential Assistant to a Judge, U.S. Court of Military Appeals

DOD 410 Private Secretary to the Judge, U.S. Court of Military Appeals
DOD 411 Private Secretary to the Principal Deputy General Counsel
DOD 415 Private Secretary to the General Counsel
DOD 421 Special Assistant (Research) to the Assistant to the Secretary of Defense (Public Affairs)
DOD 427 Paralegal Specialist to the Chief Judge, U.S. Court of Military Appeals
DOD 429 Paralegal Specialist to a Judge, U.S. Court of Military Appeals
DOD 430 Confidential Assistant to the Special Assistant to the Secretary
DOD 431 Paralegal Specialist to the Chief Judge
DOD 432 Personal and Confidential Assistant to the Assistant Secretary of Defense (Democracy and Peacekeeping)
DOD 434 Speech Writer to the Assistant to Secretary of Defense for Public Affairs
DOD 435 Public Affairs Specialist to the Assistant to the Secretary of Defense for Public Affairs
DOD 436 Personal and Confidential Assistant to the General Counsel
DOD 437 Program Analyst to the Deputy Under Secretary (Environmental Security)
DOD 438 Staff Specialist to the Under Secretary (Acquisition and Technology)
DOD 439 Staff Specialist to the Under Secretary (Acquisition and Technology)
DOD 440 Personal and Confidential Assistant to the Deputy Under Secretary of Defense for Acquisition Reform
DOD 442 Director, Strategy Development, to the Deputy Assistant Secretary (Strategy)
DOD 443 Special Assistant to the Counselor to the Secretary and Deputy Secretary of Defense
DOD 444 Country Director to the Deputy Assistant Secretary of Defense, Inter-American Affairs Region
DOD 445 Confidential Assistant to the Assistant to the Secretary of Defense for Public Affairs
DOD 446 Policy Assistant to the Deputy Assistant Secretary of Defense (Russian, Ukrainian, and Eurasian Affairs)
DOD 447 Personal and Confidential Assistant to the Deputy Under Secretary of Defense for Environmental Security
DOD 448 Personal and Confidential Assistant to the Principal Deputy Assistant Secretary of Defense for Dual Use Technology and International Programs
DOD 449 Staff Specialist to the Assistant to the Secretary of Defense for Public Affairs
DOD 451 Assistant for Strategy Development to the Deputy Assistant Secretary of Defense (Strategy)
DOD 452 Special Assistant to the Assistant Secretary of Defense (Nuclear Security and Counterproliferation)
DOD 453 Staff Assistant to the Deputy Assistant Secretary of Defense (Humanitarian and Refugee Affairs)
DOD 455 Assistant for Strategy Development to the Deputy Assistant Secretary Defense (Strategy)
DOD 456 Special Assistant for Family Advocacy and External Affairs to the Deputy Assistant Secretary of Defense, (Prisoner of War/Missing in Action Affairs)
DOD 457 Staff Assistant to the Deputy Assistant Secretary of Defense (Democracy and Human Rights)
DOD 458 Defense Fellow to the Director of Protocol, Office of the Secretary of Defense
DOD 459 Public Affairs Specialist to the Assistant to the Secretary of Defense for Public Affairs
DOD 460 International Counterdrug Specialist to the Deputy Assistant Secretary of Defense (Drug Enforcement Policy and Support)
DOD 461 Defense Fellow to the Deputy Assistant Secretary of Defense (Drug Enforcement Policy and Support)
DOD 462 Defense Fellow to the Director, Civil-Military Cooperation (RA)
DOD 464 Defense Fellow to the Deputy Under Secretary for Logistics
DOD 465 Defense Fellow to the Assistant Secretary of Defense (Personnel and Readiness)
DOD 466 Defense Fellow to the Deputy Under Secretary for Environmental Security
DOD 467 Special Assistant to the Deputy Assistant Secretary of Defense for Drug Enforcement Policy and Support
DOD 468 Staff Assistant to the Director, Defense Information Systems Agency
DOD 469 Defense Fellow to the Under Secretary of Defense for Personal and Readiness
DOD 472 Defense Fellow to the Assistant Secretary of Defense (Special Operations and Low Intensity Conflict)
DOD 473 Personal and Confidential Assistant to the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict
DOD 474 Program Analyst to the Deputy Under Secretary (Environmental Security)
DOD 475 Personal and Confidential Assistant to the Assistant Secretary of Defense (Nuclear Security and Counterproliferation)
DOD 476 Defense Fellow to the Deputy Assistant Secretary of Defense (Humanitarian and Refugee Affairs)
DOD 479 Special Assistant to the Assistant to the Secretary of Defense (Legislative Affairs)
DOD 480 Executive Assistant to the Assistant Secretary of Defense (Strategy Requirements and Resources)
DOD 481 Personal and Confidential Assistant to the Principal Deputy Assistant Secretary of Defense for Special Operations and Low Intensity Conflict
DOD 483 Defense Fellow to the Principal Deputy Under Secretary of Defense (Policy)
DOD 484 Special Assistant for Health Care Policy to the Assistant Secretary of Defense for Legislative Affairs
DOD 485 Defense Fellow to the Deputy Assistant Secretary of Defense (Peacekeeping and Peace Enforcement Policy)
DOD 486 Defense Fellow to the Deputy Assistant Secretary of Defense (Peacekeeping and Peace Enforcement Policy)
DOD 487 Personal and Confidential Assistant to the Counsellor to the Secretary of Defense and Deputy Secretary of Defense
DOD 488 Personal and Confidential Assistant to the Comptroller
DOD 489 Media Analyst to the Assistant to the Secretary of Defense for Public Affairs
DOD 490 Principal Director, Threat Reduction Policy to the Deputy Assistant Secretary of Defense (Threat Reduction Policy)
DOD 491 Special Assistant to the Counsellor to the Secretary and Deputy Secretary of Defense
DOD 493 Special Assistant to the

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Assistant Secretary of Defense (Policy and Plans)
DOD 494 Special Assistant to the Assistant to the Secretary of Defense (Legislative Affairs)
DOD 495 Special Assistant for Humanitarian and Refugee Affairs Policy to the Deputy Assistant Secretary of Defense (Humanitarian and Refugee Affairs)
DOD 496 Secretary to the Assistant Secretary of Defense (Strategy, Requirements and Resources)
DOD 499 Personal and Confidential Assistant to the Deputy Under Secretary of Defense for Logistics
DOD 500 Staff Specialist to the Project Director for National Performance Review
DOD 501 Special and Confidential Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DOD 502 Special Assistant to the Deputy Under Secretary of Defense for Policy Planning
DOD 503 Counselor and Senior Assistant for Counterproliferation Policy to the Deputy Assistant Secretary of Defense (Counterproliferation Policy)
DOD 504 Special Assistant to the Assistant Secretary of Defense (Special Operations and Low Intensity Conflict)
DOD 505 Staff Specialist to the Assistant Secretary of Defense (Legislative Affairs)
DOD 506 Staff Specialist to the Assistant Secretary of Defense (Legislative Affairs)
DOD 508 Defense Fellow to the Assistant Secretary of Defense (Legislative Affairs)
DOD 509 Special Assistant to the Assistant to the Secretary of Defense for Protocol
DOD 510 Staff Specialist to the Assistant Secretary of Defense (Legislative Affairs)
DOD 512 Staff Specialist to the Deputy Assistant Secretary for Economic Reinvestment and Base Realignment and Closure
DOD 513 Special Assistant to the Deputy Assistant Secretary of Defense (Peacekeeping and Peace Enforcement Policy)
DOD 515 Defense Fellow to the Deputy Assistant Secretary of Defense (Drug Enforcement Policy and Support)
DOD 516 Staff Specialist to the Deputy Under Secretary for Environmental Security
DOD 517 Special Assistant to the Deputy to the Under Secretary of Defense (Policy) for Policy Planning
DOD 518 Defense Fellows to the Principal Deputy Assistant Secretary of Defense (Health Affairs)
DOD 519 Private Secretary to the Assistant Secretary of Defense (Regional Security Affairs)
DOD 520 Personal and Confidential Assistant to the Secretary of Defense
DOD 521 Staff Specialist to the Assistant Secretary of Defense (Legislative Affairs)
DOD 522 Deputy Director of Administration and Policy to the Deputy Assistant Secretary of Defense (Humanitarian and Refugee Affairs)
DOD 523 Special Assistant to the Assistant Secretary of Defense for Health Affairs
DOD 524 Confidential Assistant to the Deputy Assistant Secretary of Defense
DOD 525 Paralegal Specialist to a Judge, U.S. Court of Military Appeals
DOD 526 Paralegal Specialist to a Judge, U.S. Court of Military Appeals
DOD 527 Special Assistant for Demand Reduction to the Deputy Assistant Secretary of Defense (Drug Enforcement Policy and Support)
DOD 528 Staff Specialist to the Principal Deputy Assistant Secretary for Dual Use Technology and International Programs
DOD 529 Staff Specialist to the Assistant to the Secretary of Defense, Legislative Affairs
DOD 531 Paralegal Specialist to a Judge, U.S. Court of Military Appeals
DOD 532 Paralegal Specialist to a Judge, U.S. Court of Military Appeals
DOD 533 Paralegal Specialist to the Chief Judge, U.S. Court of Military Appeals
DOD 535 Special Assistant to the Deputy to the Under Secretary of Defense for Policy Support
DOD 536 Personal and Confidential Assistant to the Assistant Secretary of Defense for Economic Security

213.3307 Department of the Army (DOD)

ARMY 1 Executive Assistant to the Secretary of the Army
ARMY 2 Personal and Confidential Assistant to the Under Secretary of the Army
ARMY 21 Secretary (Steno) to the General Counsel
ARMY 59 Staff Assistant to the Secretary of the Army
ARMY 68 Special Assistant to the Executive Director (Special Assistant to the Secretary of the Army), World War II Commemorative Committee
ARMY 69 Defense Fellow (Public Affairs) to the Chief of Public Affairs
ARMY 70 Defense Fellow (Training & Education) to the Assistant Secretary of the Army (Manpower and Reserve Affairs)

213.3308 Department of the Navy (DOD)

NAV 2 Staff Assistant to the Secretary of the Navy
NAV 30 Staff Assistant to the Deputy Under Secretary
NAV 47 Special Assistant to the Assistant to the Vice President and Chief of Staff to Mrs. Gore
NAV 48 Staff Assistant to the Principal Deputy General Counsel of the Navy
NAV 49 Staff Assistant to the Under Secretary of the Navy
NAV 50 Staff Assistant to the Assistant Secretary of the Navy (Manpower and Reserve Affairs)
NAV 51 Defense Fellow to the Under Secretary of the Navy
NAV 53 Staff Assistant to the Assistant Secretary of the Navy (Research, Development and Acquisition)
NAV 54 Staff Assistant to the General Counsel
NAV 55 Staff Assistant to the Assistant Secretary of the Navy (Manpower and Reserve Affairs)

213.3309 Department of the Air Force (DOD)

AF 1 Secretary (S/OA) to the Secretary of the Air Force
AF 2 Secretary (Steno) to the Under Secretary of the Air Force
AF 5 Assistant Secretary (Steno) to the Assistant Secretary Acquisition
AF 6 Secretary (Steno) to the Assistant Secretary (Manpower and Reserve Affairs, Installation and Environment)
AF 8 Secretary (Steno OA) to the General Counsel
AF 22 Secretary (Steno and OA) to the Assistant Secretary to the Vice President for National Security Affairs
AF 29 Confidential Assistant to the Secretary of the Air Force
AF 31 Staff Assistant (Typing) to the Assistant to the Vice President for National Security Affairs
AF 39 Secretary (OA) to the Assistant Secretary of the Air Force (Financial Management and Comptroller)

AF 41 Confidential Assistant for Environmental Legislation to the Deputy Assistant Secretary for Environmental Safety and Occupational Health
AF 42 Staff Assistant to the Principal Deputy Assistant Secretary of the Air Force (Manpower, Reserve Affairs, Installations and Environment).

213.3310 Department of Justice

JUS 13 Special Assistant to the Deputy Attorney General
JUS 21 Confidential Assistant to the Assistant Attorney General
JUS 27 Counsel to the Assistant Attorney General, Environmental and Natural Resources Division
JUS 37 Secretary (OA) to the U.S. Attorney, District of Columbia
JUS 38 Secretary (OA) to the United States Attorney, Northern District of Illinois
JUS 40 Secretary (OA) to the United States Attorney, Eastern District of Michigan
JUS 44 Secretary (OA) to the United States Attorney, District of Massachusetts
JUS 47 Secretary (OA) to the United States Attorney, Western District of New York
JUS 70 Special Assistant to the Assistant Attorney General, Civil Rights Division
JUS 75 Secretary (OA) to the United States Attorney, Northern District of Texas
JUS 97 Staff Assistant to the Attorney General
JUS 114 Staff Assistant to the Attorney General
JUS 115 Staff Assistant to the Assistant Attorney General, Office of Legislative Affairs
JUS 128 Secretary (OA) to the United States Attorney, District of Arizona
JUS 132 Special Assistant to the Commissioner, Immigration and Naturalization Service
JUS 133 Staff Assistant (OA) to the Attorney General
JUS 140 Attorney Advisor to the Assistant Attorney General
JUS 141 Special Assistant to the Assistant Attorney General (Legislative Affairs)
JUS 142 Special Assistant to the Assistant Attorney General General, Office of Legislative Affairs
JUS 144 Special Assistant to the Solicitor General
JUS 149 Special Assistant to the Assistant Attorney General, Environmental and Natural Resources Division
JUS 162 Confidential Assistant to the Assistant Attorney General, Civil Rights Division
JUS 165 Special Assistant to the Associate Attorney General
JUS 170 Assistant to the Attorney General
JUS 173 Secretary (OA) to the United States Attorney,
JUS 182 Senior Liaison Officer to the Assistant Attorney General, Office of Policy Development
JUS 184 Counselor to the Assistant Attorney General, Antitrust Division
JUS 186 Special Assistant to the Assistant Attorney General, Criminal Division
JUS 188 Counselor to the Assistant Attorney General
JUS 190 Senior Counsel to the Assistant Attorney General, Office of Policy Development
JUS 198 Special Assistant to the Assistant Attorney General, Criminal Division
JUS 204 Deputy Assistant Attorney General to the Assistant Attorney General, Office of Legislative Affairs
JUS 207 Staff Assistant to the Director, Office of Public Affairs
JUS 214 Special Assistant to the Assistant Attorney General, Office of Policy and Development
JUS 216 Special Assistant to the Administrator, Office for Juvenile Justice and Delinquency Prevention
JUS 217 Special Assistant to the Director, Bureau of Justice Assistance
JUS 224 Special Assistant to the Deputy Attorney General
JUS 231 Special Assistant to the Assistant Attorney General
JUS 242 Special Assistant to the Assistant Attorney General
JUS 243 Staff Assistant to the Assistant Attorney General, Civil Rights Division
JUS 245 Special Assistant to the Assistant Attorney General, Environmental and Natural Resources Division
JUS 265 Staff Assistant to the Director, Office of Public Affairs
JUS 266 Special Affairs Assistant to the Deputy Director, Office of Policy and Communications
JUS 268 Litigation Counsel to the Assistant Attorney General
JUS 269 Special Assistant to the Assistant Attorney General, Office of Legislative Affairs
JUS 270 Special Assistant to the Assistant Attorney General, Civil Rights Division
JUS 271 Confidential Assistant to the Assistant Attorney General, Office of Policy Development
JUS 273 Special Assistant to the Associate Attorney General
JUS 274 Special Assistant to the Assistant Attorney General, Office of Legal Counsel
JUS 275 Special Assistant to the Assistant Attorney General, Office of Policy and Development
JUS 279 Confidential Assistant to the Assistant Attorney General, Office of Legislative Affairs
JUS 282 Director, Liaison Services to the Assistant Attorney General, Office of Policy Development
JUS 285 Staff Assistant to the Assistant Attorney General, Office of Legislative Affairs
JUS 287 Special Assistant to the Deputy Attorney General
JUS 288 Special Assistant to the Deputy Attorney General
JUS 289 Special Assistant to the Deputy Attorney General
JUS 291 Senior Liaison Officer to the Assistant Attorney General
JUS 309 Senior Liaison Officer to the Assistant Attorney General, Office of Policy Development
JUS 312 Special Assistant to the Assistant Attorney General
JUS 316 Special Assistant to the Director, Office for Victims of Crime
JUS 317 Senior Counsel to the Assistant Attorney General, Office of Policy Development
JUS 319 Special Assistant to the Assistant Attorney General, Criminal Division
JUS 322 Special Assistant to the Assistant Attorney General, Office of Policy Development
JUS 324 Special Assistant to the Assistant Attorney General
JUS 331 Special Assistant to the Director, National Institute of Justice
JUS 343 Staff Assistant to the Attorney General
JUS 346 Deputy Director to the Director, Office of Public Affairs
JUS 347 Special Assistant to the Deputy Assistant Attorney General
JUS 353 Confidential Assistant to the Solicitor General
JUS 361 Special Assistant to the Director, Bureau of Justice Statistics
JUS 377 Staff Assistant to the Director, Office of Public Affairs
JUS 387 Public Affairs Specialist to the Director, Office of Public Affairs
JUS 388 Special Assistant to the Director, United States Marshals Service
JUS 389 Special Assistant to the Assistant Attorney General, Office of Legal Counsel
JUS 396 Staff Assistant to the Assistant Attorney
JUS 401 Counsel to the Deputy Attorney General
JUS 404 Assistant to the Attorney

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General
JUS 407 Assistant to the Attorney General
JUS 409 Special Assistant to the Associate Attorney General
JUS 412 Public Affairs Specialist to the Director, Office of Public Affairs
JUS 417 Confidential Assistant to the U.S. Attorney, Eastern District of New York
JUS 418 Secretary (OA) to the U.S. Attorney, District of Nebraska
JUS 419 Secretary (OA/Stenography) to the U.S. Attorney, Northern District of Florida
JUS 420 Confidential Assistant to the U.S. Attorney, Eastern District of Pennsylvania
JUS 421 Secretary (OA) to the U.S. Attorney, Eastern District of Tennessee
JUS 422 Secretary (OA) to the U.S. Attorney, Eastern District of Wisconsin
JUS 423 Secretary to the U.S. Attorney, District of New Mexico
JUS 424 Secretary to the U.S. Attorney, Northern District of Iowa
JUS 425 Secretary (OA) to the U.S. Attorney, Middle District of Pennsylvania
JUS 426 Secretary (OA) to the U.S. Attorney, Sioux Falls, South Dakota
JUS 428 Secretary (OA) to the U.S. Attorney, District of Minnesota
JUS 429 Secretary (OA) to the U.S. Attorney, District of Maryland
JUS 430 Secretary (OA) to the U.S. Attorney, Western District of Michigan, Grand Rapids, MI.
JUS 431 Secretary (OA) to the U.S. Attorney, District of Oregon, Portland, OR
JUS 432 Secretary (OA) to the U.S. Attorney
JUS 433 Secretary (OA) to the U.S. Attorney, Middle District of Louisiana
JUS 434 Confidential Assistant, Sacramento, CA, to the U.S. Attorney
JUS 435 Secretary (OA) to the U.S. Attorney, Western District of Arkansas

213.3312 Department of the Interior

INT 171 Supervisory Public Affairs Specialist to the Commissioner of Reclamation, Bureau of Reclamation
INT 238 Director of Policy and External Affairs to the Commissioner of Reclamation, Bureau of Reclamation
INT 271 Special Assistant to the Director, Minerals Management Service
INT 375 Special Assistant to the Director, Minerals Management Service
INT 378 Special Assistant to the Director, Office of the Surface Mining
INT 386 Public Affairs Officer to the Director, Bureau of Land Management
INT 419 Special Assistant to the Director of the Mineral Management Service INT 426 Press Secretary to the Director of Communications
INT 427 Deputy Director to the Director of Communications
INT 430 Special Assistant to the Assistant to the Secretary
INT 431 Special Assistant to the Assistant Secretary for Policy, Management and Budget
INT 432 Scheduler to the Assistant to the Secretary
INT 433 Deputy Director for House Liaison to the Assistant to the Secretary, Office of Congressional and Legislative Affairs
INT 434 Deputy Director for Senate Liaison to the Assistant to the Secretary, Office of Congressional and Legislative Affairs
INT 435 Special Assistant to the Secretary of the Interior
INT 436 Special Assistant to the Assistant to the Secretary, Office of Congressional and Legislative Affairs
INT 437 Special Assistant to the Assistant to the Secretary
INT 439 Special Assistant to the Director, Bureau of Land Management
INT 440 Special Assistant to the Assistant Secretary Policy, Management and Budget
INT 442 Special Assistant to the Director, National Parks Service
INT 443 Special Assistant to the Solicitor
INT 444 Deputy Director for Legislative and Intergovernmental Affairs to the Assistant to the Secretary, Office of Congressional and Legislative Affairs
INT 446 Special Assistant to the Director, Bureau of Land Management
INT 447 Special Assistant to the Assistant to the Secretary
INT 449 Special Assistant to the Director, United States Fish & Wildlife Service
INT 450 Special Assistant to the Director, Unites States Fish & Wildlife Service
INT 451 Special Assistant to the Assistant Secretary-Territorial and International Affairs
INT 454 Special Assistant to the Chief of Staff
INT 455 Special Assistant to the Chief of Staff
INT 458 Deputy Director to the Assistant to the Secretary and Director of Regulatory Affairs
INT 460 Deputy Scheduler to the Special Assistant to the Secretary and Director of the Executive Secretariat
INT 461 Special Assistant to the Director, National Park Service
INT 462 Special Assistant to the Director, Mineral Management Service
INT 463 Special Assistant to the Director of the National Park Service
INT 465 Special Assistant to the Director, Mineral Management Service
INT 466 Special Assistant to the Chief of Staff
INT 467 Special Assistant to the Chief of Staff
INT 468 Special Assistant to the Chief of Staff
INT 470 Special Assistant to the Assistant Secretary, Indian Affairs
INT 472 Special Assistant to the Director, Bureau of Land Management
INT 473 Special Assistant to the Assistant Secretary—Water & Science
INT 474 Special Liaison for Congressional and Legislative Affairs to the Director of Policy and External Affairs, Bureau of Reclamation
INT 475 Special Liaison for Public Affairs to the Director, of Policy and External Affairs, Bureau of Reclamation
INT 476 Special Assistant to the Director, Bureau of Land Management
INT 477 Special Assistant to the Special Assistant to the Secretary and White House Liaison
INT 479 Special Assistant to the Deputy Director, Minerals Management Service
INT 480 Chief, Congressional and Legislative Affairs Division to the Director of Policy and External Affairs, Bureau of Reclamation

213.3313 Department of Agriculture

AGR 24 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 26 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 27 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 30 Private Secretary to the Manager, Federal Crop Insurance Corporation
AGR 31 Confidential Assistant to

the Administrator, Agricultural Stabilization and Conservation Service
AGR 48 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 56 Private Secretary to the Assistant Secretary for Congressional Relations
AGR 76 Confidential Assistant to the Assistant Secretary for Marketing and Inspection Services
AGR 77 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 79 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 96 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 100 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 103 Confidential Assistant to the Administrator of the Foreign Agricultural Service
AGR 106 Confidential Assistant to the Assistant Secretary for Congressional Relations to the Assistant Secretary for Congressional Relations
AGR 114 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 118 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 131 Private Secretary to the Assistant Secretary for Natural Resources and Environment
AGR 143 Confidential Assistant to the Administrator, Agricultural Marketing Service
AGR 151 Confidential Assistant to the Administrator, Agricultural Marketing Service
AGR 157 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 160 Confidential Assistant to the Associate Administrator, Foreign Agricultural Service
AGR 163 Confidential Assistant to the Executive Assistant to the Secretary
AGR 179 Staff Assistant to the Director, Office of Public Affairs
AGR 182 Confidential Assistant to the Administrator, Rural Electrification Administration
AGR 188 Northeast Area Director to the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service
AGR 201 Confidential Assistant to the Executive Assistant to the Secretary
AGR 203 Confidential Assistant to the Executive Assistant to the Secretary
AGR 205 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 206 Director, Office of Consumer Advisor to the Assistant Secretary for Food and Consumer Services
AGR 222 Confidential Assistant to the Manager, Federal Crop Insurance Corporation
AGR 225 Confidential Assistant to the Manager, Federal Crop Insurance Corporation
AGR 232 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 236 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service
AGR 237 Confidential Assistant to the Administrator, Agricultural Marketing Service
AGR 238 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 243 Confidential Assistant to the Director, Office of Public Affairs
AGR 244 Confidential Assistant to the Chief, Soil Conservation Service
AGR 257 Executive Assistant to the Assistant Secretary for Food and Consumer Services to the Assistant Secretary for Food and Consumer Services
AGR 258 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 263 Confidential Assistant to the Assistant Secretary for Natural Resources and Environment
AGR 267 Confidential Assistant to the Deputy Director Public Liaison
AGR 268 Confidential Assistant to the Administrator, Rural Electrification Administration
AGR 273 Staff Assistant to the Administrator, Foreign Agricultural Service
AGR 283 Staff Assistant to the Administrator, Agricultural Stabilization and Conservation Service
AGR 284 Confidential Assistant to the Administrator, Food Safety and Inspection Service
AGR 287 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 290 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service
AGR 293 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 295 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 298 Confidential Assistant to the Administrator
AGR 300 Confidential Assistant to the Manager, Federal Crop Insurance Corporation
AGR 302 Staff Assistant to the Administrator, Agricultural Stabilization and Conservation Service
AGR 306 Staff Assistant to the Director, Office of Public Affairs
AGR 312 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 313 Special Assistant to the Administrator, Farmers Home Administration
AGR 314 Confidential Assistant to the Director/Press Secretary, Office of Public Affairs
AGR 316 Staff Assistant to the Chief, Soil Conservation Service
AGR 327 Staff Assistant to the Director, Office of Public Affairs
AGR 328 Special Assistant to the Director of Intergovernmental Affairs, Office of Public Affairs
AGR 330 Confidential Assistant to the Director, Office of Public Affairs
AGR 332 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 333 Confidential Assistant to the Manager, Federal Crop Insurance Corporation
AGR 336 Confidential Assistant to the Secretary of Agriculture
AGR 337 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 339 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 341 Confidential Assistant to the Manager
AGR 343 Confidential Assistant to the Director, Office of Public Affairs
AGR 345 Confidential Assistant to the Director of Intergovernmental Affairs
AGR 346 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 347 Confidential Assistant to the Deputy Director to the Deputy Director, Office of Public Affairs
AGR 349 Confidential Assistant to the Deputy Administrator, Food and Nutrition Service
AGR 352 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 353 Speech Writer to the Director/Press Secretary, Office of Public Affairs
AGR 356 Staff Assistant (Typing) to the Secretary of Agriculture
AGR 366 Confidential Assistant to

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the Administrator, Food and Nutrition Service
AGR 368 Confidential Assistant to the Manager, Federal Crop Insurance Corporation
AGR 381 Staff Assistant to the Under Secretary for Small Community and Rural Development
AGR 385 Confidential Assistant to the Deputy Director, Office of the Executive Secretariat
AGR 388 Staff Assistant to the Chief, Soil Conservation Service
AGR 389 Confidential Assistant to the Director, Office of Public Affairs
AGR 390 Staff Assistant to the Secretary of Agriculture
AGR 391 Private Secretary to the Deputy Secretary
AGR 392 Staff Assistant to the Manager of the Federal Crop Insurance Corporation
AGR 393 Confidential Assistant to the Administrator, Rural Development Administration
AGR 395 Confidential Assistant to the Director, Office of Advocacy and Enterprise
AGR 396 Staff Assistant to the Assistant Secretary for Congressional Relations
AGR 397 Special Assistant to the Chief, Soil Conservation Service
AGR 399 Secretary (Typing) to the Assistant Secretary for Administration
AGR 400 Confidential Assistant to the Assistant Secretary for Administration
AGR 401 Staff Assistant to the Assistant Secretary for Economics
AGR 402 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 404 Confidential Assistant to the Director of Personnel
AGR 405 Staff Assistant to the Secretary of Agriculture
AGR 406 Confidential Assistant to the Chief Financial Officer
AGR 407 Confidential Assistant to the Assistant Secretary for Science and Education
AGR 408 Private Secretary to the Chief Financial Officer, Office of the Assistant Secretary for Administration
AGR 409 Confidential Assistant to the Manager, Federal Crop Insurance Corporation
AGR 411 Staff Assistant to the Assistant Secretary for Administration
AGR 412 Confidential Assistant to the Administrator, Food Safety and Inspection Service
AGR 413 Special Assistant to the Chief of the Soil Conservation Service
AGR 414 Confidential Assistant to the Secretary of Agriculture
AGR 415 Confidential Assistant to the Administrator, Rural Electrification Administration
AGR 416 Staff Assistant to the Administrator, Farmers Home Administration
AGR 417 Confidential Assistant to the Administrator, Agricultural Marketing Service
AGR 418 Staff Assistant to the Chief, Soil Conservation Service
AGR 419 Confidential Assistant to the Under Secretary for Small Community and Rural Development
AGR 420 Confidential Assistant to the Administrator

213.3314 Department of Commerce

COM 1 Director of Special Projects to the Chief of Staff, Office of the Secretary
COM 4 Confidential Assistant to the Secretary
COM 5 Special Assistant to the Deputy Assistant Secretary for White House Liaison
COM 19 Private Chauffeur to the Secretary
COM 20 Confidential Assistant to the Deputy Assistant Secretary for Administration
COM 70 Director of Congressional Affairs to the Assistant Secretary for Economic Development, Economic Development Administration
COM 74 Director, Office of Public Affairs to the Assistant Secretary for Economic Development
COM 152 Special Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 158 Director of Public Affairs to the Deputy Under Secretary for Travel and Tourism, U. S. Travel and Tourism Administration
COM 159 Deputy Director of Public Affairs to the Director, Office of Public Affairs
COM 161 Confidential Assistant to the Deputy Under Secretary for International Trade, International Trade Administration
COM 162 Special Assistant to the Assistant Secretary for International Economic Policy, International Trade Administration
COM 173 Special Assistant to the Deputy Assistant Secretary for Economic Development, Economic Development Administration
COM 189 Special Assistant to the Assistant Secretary for National Communications and Information Administration
COM 190 Director, Office of Congressional Affairs, to the Assistant Secretary, National Telecommunications and Information Administration
COM 191 Confidential Assistant to the General Counsel
COM 193 Special Assistant to the Deputy Assistant Secretary for Trade Development
COM 194 Special Assistant to the Under Secretary, National Oceanic and Atmospheric Administration
COM 204 Special Assistant to the Chief Scientist, National Oceanic and Atmospheric Administration
COM 217 Special Assistant to the Director, Office of Public Affairs
COM 248 Confidential Assistant to the Deputy Secretary
COM 258 Special Assistant to the Deputy Assistant Secretary for Import Administration, International Trade Administration
COM 259 Director, Office of Legislative and Intergovernmental Affairs to the Under Secretary for International Trade
COM 260 Confidential Assistant to the Director of Intergovernmental Affairs
COM 262 Special Assistant to the Assistant Secretary for Trade Development, International Trade Administration
COM 268 Executive Assistant to the Counsellor and Chief of Staff
COM 274 Confidential Assistant to the Director, Office of Business Liaison
COM 275 Confidential Assistant to the Director, Office of Business Liaison
COM 284 Confidential Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs, Office of Legislative and Intergovernmental Affairs
COM 285 Director of Intergovernmental Affairs to the Assistant Legislative and Intergovernmental Affairs
COM 287 Confidential Assistant to the Director of Legislative, Intergovernmental and Public Affairs, Bureau of Export Administration
COM 289 Confidential Assistant to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs
COM 291 Confidential Assistant to the Director of Public Affairs
COM 292 Special Assistant to the Director of Intergovernmental Affairs
COM 293 Special Assistant to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs
COM 298 Special Assistant to the Assistant Secretary for

Communications and Information, National Telecommunications and Information Administration
COM 299 Confidential Assistant to the Chief Economist, Economics and Statistics Administration
COM 303 Special Assistant to the Chief Financial Officer and Assistant Secretary for Administration
COM 304 Special Assistant to the Under Secretary for Travel and Tourism, U.S. Travel and Tourism Administration
COM 306 Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 309 Confidential Assistant to the Director, Minority Business Development Agency
COM 312 Special Assistant to the Assistant Secretary and Director General U.S. and Foreign Commerce Service
COM 314 Special Assistant to the Director, Office of the White House Liaison
COM 320 Confidential Assistant to the Director, Office of External Affairs
COM 321 Director, Office of Public Affairs to the Under Secretary for International Trade, the International Trade Administration
COM 326 Confidential Assistant to the Assistant Secretary and Director General U.S. and Foreign Commercial Service
COM 330 Special Assistant to the Assistant Secretary for Trade Development, International Trade Administration
COM 338 Press Secretary to the Director, Office of Public Affairs
COM 342 Confidential Assistant to the Director of White House Liaison
COM 344 Congressional Liaison Specialist to the Director, Office of Legislative and Intergovernmental Affairs
COM 347 Confidential Assistant to the Director, Office of Public Affairs
COM 348 Special Assistant to the Director, Office of Public Affairs
COM 350 Deputy Director, Office of Business Liaison to the Director, Office of Business Liaison
COM 354 Confidential Assistant to the Assistant Secretary for Communications and Information, National Telecommunications and Information Administration
COM 358 Special Assistant to the Assistant Secretary for Import Administration, International Trade Administration
COM 361 Special Assistant to the Director, Bureau of Census
COM 368 Congressional Affairs Specialist to the Director, Congressional Affairs Division
COM 370 Chief, Legislative and Intergovernmental Affairs to the Assistant Director for External Affairs
COM 371 Confidential Assistant to the Director, Office of External Affairs
COM 374 Congressional Liaison Specialist to the Congressional Affairs Officer
COM 377 Special Assistant to the Director, White House Liaison
COM 380 Confidential Assistant to the Deputy Assistant Secretary for Import Administration, International Trade Administration
COM 389 Confidential Assistant to the Under Secretary, the International Trade Administration
COM 390 Confidential Assistant to the Under Secretary for Economic Affairs/Administrator, Economics and Statistics Administration
COM 397 Congressional Affairs Officer to the Assistant Director for Commerce
COM 398 Special Assistant to the Deputy Assistant Secretary for Domestic Operations
COM 401 Congressional Affairs Specialist to the Chief of Congressional Affairs, National Oceanic and Atmospheric Administration
COM 410 Confidential Assistant to the Under Secretary, International Trade Administration
COM 415 Congressional Affairs Specialist to the Chief Congressional Affairs Division
COM 416 Director, Office of Consumer Affairs to the Secretary of Commerce
COM 418 Confidential Assistant to the Under Secretary for Economic Affairs
COM 419 Confidential Assistant to the Under Secretary for International Trade, International Trade Administration
COM 420 Special Assistant to the Director General of the United States and Foreign Commercial Service, International Trade Administration
COM 422 Special Assistant to the Deputy Assistant Secretary
COM 423 Director of Congressional Affairs to the Assistant Secretary and Commissioner, Patent and Trademark Office
COM 424 Congressional Liaison Specialist to the Under Secretary for International Trade, International Trade Administration
COM 432 Confidential Assistant to the Assistant to the Deputy Secretary
COM 439 Special Assistant to the General Counsel
COM 442 Director of Public Affairs to the Assistant Secretary for Communications and Information
COM 443 Director, Office of External Affairs to the Deputy Assistant Secretary
COM 446 Special Assistant to the Deputy Under Secretary for Export Administration, Bureau of Export Administration
COM 448 Confidential Assistant to the Assistant Secretary for International Economic Policy, International Trade Administration
COM 452 Confidential Assistant to the Chief of Staff
COM 459 Confidential Assistant to the Director, Office External Affairs, Office of the Secretary
COM 466 Director of Public Affairs to the Under Secretary, Technology Administration
COM 468 Confidential Assistant to the Under Secretary for Export Administration, Bureau of Export Administration
COM 469 Confidential Assistant to the Deputy Assistant Secretary for White House Liaison
COM 477 Director of Legislative and Intergovernmental Affairs to the Deputy Under Secretary for Travel and Tourism
COM 480 Director of Congressional Affairs to the Under Secretary for Technology
COM 481 Special Assistant to the Under Secretary
COM 485 Special Assistant to the Chief of Staff
COM 486 Speechwriter to the Director of Public Affairs
COM 487 Special Assistant to the Deputy Assistant Secretary for White House Liaison
COM 488 Confidential Assistant to the Deputy Director, Office of Public Affairs
COM 490 Director of Scheduling to the Director, Office of External Affairs
COM 492 Confidential Assistant to the Chief of Staff
COM 500 Special Assistant to the Under Secretary for Travel and Tourism, U.S. Travel and Tourism
COM 503 Public Affairs Specialist to the Director of Legislative, Intergovernmental and Public Affairs, Office of the Under Secretary for Export Administration
COM 508 Special Assistant to the Director, Office of Space Commerce
COM 511 Confidential Assistant to the Assistant Secretary for Oceans

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and Atmosphere, National Oceanic and Atmospheric Administration
COM 519 Special Assistant to the General Counsel, National Oceanic and Atmospheric Administration
COM 527 Executive Assistant to the Secretary
COM 528 Deputy Director of Scheduling to the Director of Scheduling, Office of the Secretary
COM 530 Special Assistant to the Under Secretary for Technology, Technology Administration
COM 531 Confidential Assistant to the Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods, International Trade Administration
COM 538 Special Assistant and Chief of Protocol to the Chief of Staff
COM 539 Special Assistant to the Chief of Staff
COM 544 Special Assistant to the Under Secretary for International Trade, International Trade Administration
COM 545 Director, Secretariat Staff to the Deputy Executive Secretary
COM 547 Confidential Assistant to the Director of Public Affairs, U.S. Travel and Tourism Administration
COM 549 Confidential Assistant to the Deputy Under Secretary Economic Affairs
COM 550 Confidential Assistant to the Assistant Secretary, Legislative and Interagency Affairs
COM 551 Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 553 Confidential Assistant to the Assistant Secretary for Export Administration
COM 556 Confidential Assistant to the Assistant to the Deputy Secretary
COM 557 Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 558 Confidential Assistant to the Director of Scheduling
COM 560 Special Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 561 Confidential Assistant to the Assistant Secretary and Commissioner, Patent and Trademark Office
COM 562 Special Assistant to the Deputy Executive Secretary
COM 563 Director of Advance to the Director, Office of External Affairs
COM 564 Confidential Assistant to the Director, Office of External Affairs
COM 566 Congressional Liaison Specialist to the Chief, Legislative and Intergovernmental Affairs Division, Minority Business Development Agency
COM 567 Confidential Assistant to the Deputy Director, Minority Business Development Agency
COM 568 Special Assistant to the Deputy Assistant Secretary for Africa, Near East and South Asia
COM 569 Confidential Assistant to the Director, Office of Public Affairs
COM 570 Special Assistant to the Counsellor to the Counsellor to the Secretary
COM 571 Special Assistant to the Deputy Assistant Secretary for Service Industries and Finance
COM 573 Special Assistant to the Assistant Secretary and Director General, U.S. and Foreign Commercial Service
COM 574 Confidential Assistant to the Director, Office of Business Liaison
COM 575 Confidential Assistant to the Assistant Secretary for Import Administration, International Trade Administration
COM 576 Confidential Assistant to the Assistant to Secretary and Director Office of Policy and Strategic Planning
COM 577 Director of Media Relations to the Assistant Secretary and Commissioner, Patent and Trademark Office
COM 578 Confidential Assistant to the Director, of Legislative, Intergovernmental and Public Affairs, Bureau of Export Administration
COM 579 Director of Legislative, Intergovernmental and Public Affairs to the Under Secretary, Bureau of Export Administration
COM 580 Confidential Assistant to the Deputy Assistant Secretary for Economic Development
COM 581 Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 583 Special Assistant to the Counsellor to the Secretary of Commerce
COM 584 Confidential Assistant to the Deputy Director, Minority Business Development Agency
COM 585 Chief, Intergovernmental Affairs to the Director, Office of Sustainable Development and Intergovernmental Affairs
COM 586 Confidential Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 587 Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 588 Congressional Affairs Specialist to the Director, Office of Legislative Affairs, National Oceanic and Atmospheric Administration
COM 589 Special Assistant to the Director, Office of Public and Constituent Affairs, National Oceanic and Atmospheric Administration
COM 590 Confidential Assistant to the Deputy Executive Secretary
COM 591 Special Assistant to the Assistant Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration
COM 592 Special Assistant to the Deputy Assistant Secretary for Technology and Aerospace Industries, International Trade Administration
COM 593 Special Assistant to the Director, Executive Secretariat
COM 594 Deputy Director of Advance to the Deputy Director of External Affairs and Director of Advance
COM 595 Confidential Assistant to the Director, Office Space Commerce
COM 596 Confidential Assistant to the Deputy Director Office of Public Affairs
COM 598 Special Assistant to the Deputy General Counsel
COM 599 Confidential Assistant to the Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration
COM 600 Intergovernmental Affairs Specialist to the Chief of Intergovernmental Affairs, Office of Sustainable Development and Intergovernmental Affairs, NOAA
COM 601 Director, Office of Public Affairs to the Under Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration
COM 602 Financial Officer to the Director, Minority Business Development Agency
COM 604 Assistant Director for Communications to the Director, Bureau of the Census
COM 605 Special Assistant to the Director International Technology, Policy and Programs, Technology Administration
COM 606 Speechwriter to the Director, Office of Public Affairs
COM 607 Intergovernmental Affairs Specialist to the Chief Intergovernmental Affairs, Office of Sustainable Development and Intergovernmental Affairs (NOAA)
COM 608 Confidential Assistant to the Director, Office of Public Affairs, International Trade Administration
COM 609 Confidential Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 610 Special Assistant to the Deputy Under Secretary for Policy Development, International Trade Administration
COM 611 Special Assistant to the Deputy Under Secretary for Policy Development, International Trade Administration
COM 612 Special Assistant to the Deputy Assistant Secretary for Service Industries and Finance, International Trade Administration
COM 613 Confidential Assistant to the Assistant to the Deputy Secretary
COM 615 Director of the Advocacy Center to the Deputy Assistant Secretary for Trade Development, International Trade Administration
COM 616 Confidential Assistant to the Assistant Secretary for Export Administration, Bureau of Export Administration
COM 617 Director, Office of Energy, Infrastructure and Machinery to the Deputy Assistant Secretary for Basic Industries
COM 618 Confidential Assistant to the Director, Secretariat Staff, Office of the Executive Secretariat
COM 619 Confidential Assistant to the Deputy Assistant Secretary for Economic Development
COM 620 Confidential Assistant to the Director, Office of Public Affairs

213.3315 Department of Labor

LAB 3 Special Assistant to the Deputy Secretary of Labor
LAB 17 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 25 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 35 Special Assistant to the Director of the Women's Bureau
LAB 41 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 43 Special Assistant to the Assistant Secretary for Occupational Safety and Health
LAB 44 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 55 Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 62 Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration
LAB 66 Executive Assistant to the Deputy Assistant Secretary, Office of Federal Contracts Compliance Programs, Employment Standards Administration
LAB 76 Special Assistant to the Director of the Women's Bureau
LAB 79 Special Assistant to the Deputy Assistant Secretary for Program Economics, Research and Technical Support, Office of the Assistant Secretary for Policy
LAB 84 Confidential Assistant to the Assistant Secretary for the American Workplace
LAB 87 Staff Assistant to the Assistant Secretary for Employment Standards, Employment Standards Administration
LAB 89 Special Assistant to the Assistant Secretary for the American Workplace
LAB 92 Special Assistant to the Secretary of Labor
LAB 93 Special Assistant to the Chief of Staff to the Chief of Staff
LAB 94 Special Assistant to the Chief Economist
LAB 96 Chief of Staff to the Assistant Secretary for Employment and Training
LAB 99 Special Assistant to the Assistant Secretary of Labor, Employment and Training Administration
LAB 101 Special Assistant to the Administrator, Wage and Hour Division, Employment Standards Administration
LAB 103 Secretary's Representative, Boston, MA, to the Director, Office of Intergovernmental Affairs
LAB 104 Secretary's Representative to the Associate Director, Intergovernmental Affairs
LAB 105 Secretary's Representative, Philadelphia, PA, to the Associate Director, Office of Congressional and Intergovernmental Affairs
LAB 106 Secretary's Representative, Atlanta, GA, to the Director, Office of Intergovernmental Affairs
LAB 111 Secretary's Representative (San Francisco, CA) to the Director, Office of Intergovernmental Affairs
LAB 112 Secretary's Representative, Seattle, WA, to the Director, Office of Intergovernmental Affairs
LAB 129 Special Assistant to the Assistant Secretary for Occupational Safety and Health, Occupational Safety And Health Administration
LAB 130 Special Assistant to the Executive Secretary
LAB 132 Associate Director for Congressional Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 133 Special Assistant to the Director, Women's Bureau
LAB 137 Special Assistant to the Assistant Secretary for Public Affairs
LAB 145 Intergovernmental Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 147 Attorney-Advisor (Labor) to the Solicitor of Labor
LAB 151 Special Assistant to the Director, Women's Bureau
LAB 154 Associate Director for Congressional Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 159 Special Assistant to the Deputy Under Secretary for International Affairs, Bureau of International Labor Affairs
LAB 160 Special Assistant to the Secretary of Labor
LAB 161 Special Assistant to the Chief Economist
LAB 163 Special Assistant to the Assistant Secretary for Occupational Safety and Health Administration
LAB 169 Special Assistant to the Assistant Secretary for Policy
LAB 171 Confidential Assistant to the Secretary of Labor
LAB 172 Special Assistant to the Deputy Secretary of Labor
LAB 174 Special Assistant to the Deputy Secretary to the Deputy Secretary of Labor
LAB 175 Special Assistant to the Deputy Secretary to the Deputy Secretary
LAB 180 Associate Director to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 181 Special Assistant to the Deputy Under Secretary for International Affairs
LAB 182 Special Assistant to the Assistant Secretary for the American Workplace
LAB 186 Public Affairs Specialist to the Director, Women's Bureau
LAB 190 Special Assistant to the

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Assistant Secretary for Policy
LAB 196 Executive Assistant to the Assistant Secretary for Veterans' Employment and Training
LAB 204 Special Assistant to the Assistant Secretary for Veterans' Employment and Training
LAB 205 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 208 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 210 Special Assistant to the Assistant Secretary for Policy
LAB 211 Special Assistant to the Executive Secretary
LAB 212 Special Assistant to the Chief of Staff
LAB 215 Special Assistant to the Director of the Women's Bureau
LAB 217 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 220 Special Assistant to the Assistant Secretary for Public Affairs
LAB 221 Special Assistant to the Assistant Secretary for Public Affairs
LAB 225 Special Assistant to the Assistant Secretary, Pension and Welfare Benefits Administration
LAB 228 Special Assistant to the Assistant Secretary for Occupational Safety and Health Administration
LAB 229 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 230 Special Assistant to the Assistant Secretary for Public Affairs
LAB 231 Staff Assistant to the Chief of Staff
LAB 234 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 235 Associate Director for Congressional Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 239 Special Assistant to the Chief of Staff
LAB 240 Deputy Secretary's Representative to the Secretary's Representative, Boston, MA
LAB 241 Special Assistant to the Assistant Secretary for Public Affairs
LAB 243 Intergovernmental Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 252 Special Assistant to the Secretary Chief of Staff
LAB 253 Staff Assistant to the Chief of Staff
LAB 254 Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 255 Special Assistant to the Assistant Secretary for Public Affairs
LAB 260 Special Assistant to the Chief of Staff
LAB 262 Special Assistant to the Assistant Secretary, Employment Standards Administration
LAB 263 Special Assistant to the Administrator, Wage and Hour Division
LAB 264 Staff Assistant to the Administrator, Wage and Hour Division
LAB 266 Staff Assistant to the Deputy Under Secretary for International Labor Affairs
LAB 269 Intergovernmental Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs

213.3316 Department of Health and Human Services

HHS 2 Special Assistant to the Chief of Staff
HHS 14 Special Assistant to the Executive Secretary
HHS 17 Director, Office of Scheduling to the Chief of Staff, Office of the Secretary
HHS 31 Special Assistant to the Secretary of Health and Human Services
HHS 127 Special Assistant to the Director, Office for Civil Rights
HHS 273 Special Assistant to the Deputy Assistant Secretary for Legislation (Human Services)
HHS 292 Confidential Assistant to the Deputy Assistant Secretary for Planning and Evaluation
HHS 293 Special Assistant to the Commissioner, Administration for Children, Youth and Families
HHS 315 Special Assistant to the Director of Intergovernmental Affairs
HHS 331 Special Assistant to the Administrator, Health Care Financing Administration
HHS 340 Executive Assistant to the Assistant Secretary for Legislation
HHS 344 Congressional Liaison Specialist to the Deputy Assistant for Legislation (Congressional Liaison)
HHS 359 Congressional Liaison Specialist to the Deputy Assistant Secretary for Congressional Liaison
HHS 361 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison)
HHS 373 Confidential Assistant to the Executive Secretary
HHS 374 Confidential Assistant to the Executive Secretary
HHS 392 Confidential Assistant to the Assistant Secretary for Planning and Evaluation
HHS 395 Special Assistant to the Director, Office of Community Services, Administration for Children and Families.
HHS 399 Special Assistant to the Assistant Secretary for Children and Families
HHS 419 Special Assistant to the Secretary of Health and Human Services
HHS 427 Executive Director, President's Committee on Mental Retardation to the Assistant Secretary for the Administration for Children and Families
HHS 446 Special Assistant to the Chief of Staff
HHS 451 Confidential Staff Assistant to the Director, Office of Community Services, Administration for Children and Families
HHS 457 Special Assistant to the Deputy Secretary
HHS 475 Special Assistant to the Deputy Assistant Secretary for Policy and External Affairs, Administration for Children and Families
HHS 489 Special Assistant to the Assistant Secretary for Children and Families
HHS 500 Director, Office of Public Liaison to the Associate Administrator for Communications, Health Care Financing Administration
HHS 510 Deputy Director, Office of Public Liaison to the Director, Office of Public Liaison, Health Care Financing Administration
HHS 513 Confidential Assistant to the Administrator, Health Care Financing Administration
HHS 522 Special Assistant to the Director, Office of Public Affairs, Administration for Children and Families
HHS 526 Confidential Staff Assistant to the Administrator, Health Care Financing Administration
HHS 533 Executive Assistant to the Commissioner, Social Security Administration
HHS 539 Special Assistant to the General Counsel

HHS 545 Special Assistant to the Associate Commissioner for Public Affairs.
HHS 549 Speechwriter to the Director of Speechwriting
HHS 551 Special Assistant for Legislative Affairs to the Associate Commissioner for Legislative Affairs, Food and Drug Administration
HHS 556 Director of Speechwriting to the Deputy Assistant Secretary for Public Affairs (Media)
HHS 558 Executive Assistant to the Assistant Secretary for Public Affairs
HHS 570 Confidential Assistant (Advance) to the Director of Advance, Office of the Secretary
HHS 585 Special Assistant (Speechwriting) to the Director of Speechwriting
HHS 589 Speechwriter to the Deputy Assistant Secretary for Public Affairs (Media)
HHS 594 Confidential Assistant (Advance) to the Director, Office of Scheduling
HHS 595 Special Assistant to the Director, Office of Public Affairs, Administration for Children and Families
HHS 606 Special Assistant for Policy to the Deputy Commissioner for Policy
HHS 609 Special Initiatives Coordinator to the Assistant Secretary for Public Affairs
HHS 610 Executive Assistant to the Deputy Assistant Secretary for Aging (Operations)
HHS 611 Confidential Assistant to the Assistant Secretary for Planning and Evaluation
HHS 612 Special Assistant to the Deputy Assistant Secretary for Planning and Evaluation/Health Policy
HHS 613 Executive Assistant to the Assistant Secretary for Planning and Evaluation
HHS 614 Confidential Assistant to the Assistant Secretary for Aging
HHS 615 Special Assistant to the Director of Communications
HHS 616 Special Assistant to the Principal Deputy Assistant Secretary for Planning and Evaluation
HHS 617 Confidential Assistant to the Special Assistant to the Secretary of Health and Human Services
HHS 618 Special Assistant to the Principal Deputy Assistant Secretary for Planning and Evaluation
HHS 620 Special Assistant to the Deputy Assistant Secretary for Planning and Evaluation, Office of Family, Community and Long-Term Care Policy
HHS 622 Special Assistant to the Director, Office of Public Liaison, Health Care Financing Administration
HHS 623 Executive Assistant to the Deputy Assistant Secretary for Health, Public Health Service
HHS 624 Special Assistant to the Commissioner, Administration for Children and Families
HHS 625 Special Assistant to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
HHS 626 Confidential Assistant to the Principal Deputy Assistant Secretary for Planning and Evaluation
HHS 627 Confidential Assistant to the Deputy Assistant Secretary for Family, Community and Long-Term Care Policy
HHS 628 Special Assistant to the Administrator, Substance Abuse and Mental Health Services Administration
HHS 629 Special Assistant for Media Affairs, Office of National Aids Policy, to the Assistant Secretary for Health
HHS 630 Special Assistant to the Deputy Assistant Secretary for Health (Communications)
HHS 631 Special Assistant to the Assistant Secretary, Administration for Children and Families
HHS 632 Special Outreach Coordinator to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
HHS 633 Special Assistant to the Director, Office of Community Services, Administration for Children and Families

213.3317 Department of Education

EDU 1 Special Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 3 Confidential Assistant to the Assistant Secretary, Office of Human Resources and Administration
EDU 4 Deputy Secretary's Regional Representative, Region IV (Atlanta, GA) to the Secretary's Regional Representative, Region IV, Office of Intergovernmental and Interagency Affairs
EDU 7 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 8 Confidential Assistant to the Director, Scheduling and Briefing Staff
EDU 10 Confidential Assistant to the Chief of Staff, Office of the Secretary
EDU 11 Confidential Assistant to the Chief of Staff
EDU 12 Confidential Assistant to the Chief of Staff
EDU 13 Special Assistant to the Assistant Secretary, Office of Human Resources and Administration
EDU 16 Confidential Assistant to the Director, Community Development Services Staff, Community Reform Initiatives Services
EDU 20 Steward to the Chief of Staff
EDU 21 Confidential Assistant to the Deputy Secretary
EDU 23 Confidential Assistant to the Assistant Secretary, Office of Human Resources and Administration
EDU 25 Confidential Assistant to the Director, Scheduduling and Briefing Staff
EDU 26 Confidential Assistant to the Director, Intergovernmental and Constituent Services
EDU 27 Confidential Assistant to the Assistant Secretary, Office of Civil Rights
EDU 28 Confidential Assistant to the Deputy Secretary of Education
EDU 29 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 30 Director, Scheduling and Briefing Staff to the Chief of Staff, Office of the Secretary
EDU 31 Special Assistant to the Secretary of Education
EDU 33 Special Assistant to the Chief of Staff
EDU 35 Special Assistant to the Director, Policy Development Staff
EDU 38 Director, Community Reform Initiatives Services to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs
EDU 40 Confidential Assistant to the Chief of Staff
EDU 42 Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education
EDU 44 Special Assistant to the Assistant Secretary, Office of Educational Research and Improvement
EDU 47 Confidential Assistant to the Chief of Staff
EDU 49 Confidential Assistant to the Chief of Staff
EDU 50 Special Assistant to the Director, Office of Public Affairs
EDU 53 Special Assistant to the Assistant Secretary, Office of Policy

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and Planning
EDU 54 Confidential Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 55 Special Assistant (Special Advisor, HBCU) to the Director, Historically Black Colleges and Universities Staff
EDU 56 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 57 Special Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs
EDU 62 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 67 Special Assistant to the Secretary of Education
EDU 69 Confidential Assistant to the Director, Office of Public Affairs
EDU 70 Confidential Assistant to the Director, Intradepartmental Services Staff, Federal Interagency and International Services
EDU 71 Executive Assistant to the Deputy Secretary of Education
EDU 72 Special Assistant to the Assistant Secretary, Office of Special Education and Rehabilitive Services
EDU 74 Chief of Staff to the Deputy Secretary
EDU 76 Special Assistant to the Chief of Staff
EDU 78 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 79 Confidential Assistant to the Director, Office of Public Affairs
EDU 80 Director, Corporate Liaison Staff, to the Deputy Secretary of Education
EDU 81 Special Assistant to the Secretary of Education
EDU 82 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 84 Confidential Assistant to the Director, Corporate Liaison Staff, Office of the Deputy Secretary
EDU 85 Special Assistant to the Deputy Assistant Secretary, Office of Student Financial Assistance Programs
EDU 87 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 91 Special Assistant to the Director, Office of Public Affairs
EDU 94 Confidential Assistant to the Assistant Secretary, Office of Vocational and Adult Education
EDU 95 Special Assistant to the Assistant Secretary, Office for Civil Rights
EDU 97 Special Assistant to the Under Secretary of Education
EDU 98 Special Assistant to the Assistant Secretary for Special Education and Rehabilitation Services
EDU 99 Executive Assistant for Policy and Operations to the Assistant Secretary, Office of Civil Rights
EDU 101 Deputy Secretary's Regional Representative to the Secretary's Regional Representative, Region I, Boston, MA
EDU 103 Secretary's Regional Representative, Region VIII-Denver, CO, to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 104 Special Assistant to the Director, Community Development Services Staff, Reform Initiatives Services
EDU 106 Special Assistant to the Assistant Secretary, Office of Human Resources Division
EDU 107 Secretary's Regional Representative, Region V, Chicago, IL, to the Director, State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 108 Special Assistant to the Director, Office of Public Affairs
EDU 109 Secretary's Regional Representative, Region VII, Kansas City, MO, to the Director, of the State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 110 Secretary's Regional Representative-Region II New York, NY, to the Director of State, Local and Regional Services Staff
EDU 113 Special Assistant to the Assistant Secretary, Office of Educational Research and Improvement
EDU 117 Director, Historically Black Colleges to the Assistant Secretary, Office of Postsecondary Education
EDU 118 Confidential Assistant to the Assistant Secretary, Office of Educational Research and Improvement
EDU 119 Secretary's Regional Representative to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 120 Director, Congressional Affairs Staff to the Assistant Secretary for Legislative and Congressional Affairs
EDU 121 Special Assistant to the Assistant Secretary, Office of Civil Rights
EDU 123 Secretary's Regional Representatives, Region VI Dallas, TX, to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 124 Liaison for Community and Junior Colleges to the Assistant Secretary, Office of Vocational and Adult Education
EDU 125 Deputy Director, Office of Bilingual Education and Minority Languages Affairs to the Director
EDU 126 Confidential Assistant to the Special Assistant, Office of the Secretary
EDU 127 Secretary's Regional Representative Region I Boston, MA, to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 128 Confidential Assistant to the Director, Intergovernmental and Constituent Services
EDU 129 Special Assistant to the Assistant Secretary for Vocational and Adult Education
EDU 130 Confidential Assistant to the Director, Executive Secretariat
EDU 131 Secretary's Regional Representative, Region IX, San Francisco, CA, to the Director, State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 132 Confidential Assistant to the Chief of Staff, Office of the Deputy Secretary of Education
EDU 133 Special Assistant to the Under Secretary
EDU 134 Confidential Assistant to the Assistant Secretary, Office of Legislative and Congressional Affairs
EDU 135 Confidential Assistant to the Chief of Staff
EDU 136 Confidential Assistant to the Director, Interagency Services Staff, Federal Interagency and International Services
EDU 137 Special Assistant to the Under Secretary
EDU 138 Special Assistant to the Under Secretary
EDU 139 Confidential Assistant to the General Counsel
EDU 141 Special Assistant to the Assistant Secretary, Office of Civil Rights
EDU 143 Confidential Assistant to the Director, Information Resources Services Center, Community Reform Initiatives Services
EDU 157 Confidential Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 159 Confidential Assistant to the Deputy Assistant Secretary, Student Financial Assistance Programs, Office of Postsecondary Education.

EDU 161 Confidential Assistant to the Counselor to the Secretary
EDU 169 Confidential Assistant to the Director, Community Development Field Services Staff, Community Reform Initiatives Services
EDU 174 Confidential Assistant to the Chief of Staff, Office of the Deputy Secretary
EDU 175 Confidential Assistant to the Chief of Staff, Office of the Secretary of Education
EDU 178 Confidential Assistant to the Chief of Staff
EDU 202 Confidential Assistant to the Director, Community Reform Initiatives Services
EDU 340 Deputy Secretary's Regional Representative, Region II, New York, NY, to the Secretary's Regional Representative
EDU 347 Secretary's Regional Representative, Region X, Seattle, WA, to the Director of the State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 350 Deputy Secretary's Regional Representative to the Secretary's Regional Representative, Region IX, San Francisco, CA
EDU 356 Deputy Director, Office of Public Affairs to the Director Office of Public Affairs
EDU 404 Secretary's Regional Representative, Region IV, Atlanta, GA, to the Director, State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 427 Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs
EDU 428 Confidential Assistant to the Chief of Staff
EDU 429 Confidential Assistant to the Director, Federal Interagency and International Services
EDU 430 Special Assistant to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs
EDU 431 Special Assistant to the Assistant Secretary, Office of Legislation and Congressional Affairs
EDU 432 Confidential Assistant to the Director, Community Field Services Staff, Community Reform Initiatives Services
EDU 433 Confidential Assistant to the Director, Intergovernmental and Constituent Service, Office of Intergovernmental and Interagency Affairs
EDU 434 Confidential Assistant to the Director, State, Local and Regional Services Staff, Intergovernmental and Constituent Services
EDU 435 Confidential Assistant to the Chief of Staff, Office of the Secretary
EDU 436 Special Assistant to the Director, Policy Development Staff
EDU 437 Special Assistant to the Deputy Secretary
EDU 438 Confidential Assistant to the Deputy Assistant Secretary
EDU 439 Special Assistant to the Deputy Chief of Staff

213.3318 Environmental Protection Agency

EPA 153 Confidential Assistant to the Administrator
EPA 155 Congressional Liaison Specialist to the Associate Administrator
EPA 160 Director, Congressional Liaison Division to the Associate Administrator for Congressional and Legislative Affairs
EPA 161 Deputy Director to the Director, Congressional Liaison Division
EPA 163 Communications Specialist to the Associate Administrator for Communications, Education and Public Affairs
EPA 165 Congressional Liaison Specialist to the Associate Administrator
EPA 167 Director, Public Liaison Division to the Associate Administrator for Communications, Education and Public Affairs
EPA 168 Program Advisor to the Assistant Administrator, Office of Air and Radiation
EPA 170 Staff Assistant (Management) to the Assistant Administrator for Office of Policy, Planning and Evaluation
EPA 171 Congressional Liaison Specialist to the Director, Congressional Liaison Division
EPA 172 Special Assistant to the Assistant Administrator, Office of Solid Waste and Emergency Response
EPA 173 Special Assistant to the Assistant Administrator for Solid Waste and Emergency Response
EPA 174 Special Assistant to the Chief of Staff
EPA 175 Director, Office of the Executive Secretariat to the Chief of Staff, Office of the Administrator
EPA 176 Staff Assistant to the Associate Administrator, Office of Communications, Education and Public Affairs
EPA 177 Senior Policy Advisor to the Assistant Administrator, Office of Air and Radiation
EPA 178 Policy Advisor to the Assistant Administrator, Office of Air and Radiation
EPA 179 Advanced Program Advisor to the Assistant Administrator for Enforcement
EPA 180 Special Assistant to the Associate Administrator for Regional Operations and State/Local Relations
EPA 181 Special Counsel to Deputy Administrator of the Environmental Protection Agency
EPA 182 Legal Advisor to the Assistant Administrator for Prevention, Pesticides and Toxic Substances
EPA 183 Confidential Assistant to the Chief of Staff
EPA 184 Chief, Policy Counsel to the Assistant Administrator, Office of Water
EPA 185 Special Assistant to the Associate Administrator for Regional Operations and State/Local Relations
EPA 186 Special Assistant to the Chief of Staff
EPA 187 Counsel to the Assistant Administrator for Air and Radiation
EPA 188 Legislative Coordinator to the Assistant Administrator, Office of Solid Waste and Emergency Response
EPA 189 Director, Policy Development to the Assistant Administrator
EPA 190 Special Assistant to the General Counsel
EPA 191 Special Assistant to the Regional Administrator, Region III, Philadelphia, PA
EPA 192 Director, State/Local Relations Division to the Associate Administrator, for Regional Operations and State/Local Relations

213.3319 Administrative Conference of the United States

ACUS 4 Confidential Assistant to the Chairman

213.3322 Interstate Commerce Commission

ICC 6 Confidential Assistant to the Commissioner
ICC 60 Staff Advisor (Economic) to a Commissioner
ICC 67 Special Assistant to the Director, Office of Congressional and Legislative Affairs
ICC 68 Confidential Assistant to the Chairman of the Interstate Commerce Commission
ICC 69 Congressional Affairs Advisor to the Chairman
ICC 70 Confidential Assistant to a Commissioner

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213.3323 Federal Communications Commission

FCC 11 Special Assistant to the Director, Office of Public Affairs
FCC 23 Special Assistant to the Director, Office of Legislative Affairs
FCC 24 Research Assistant to the Director, Office of Public Affairs
FCC 25 Special Assistant to the Deputy Chief, Cable Services Bureau

213.3325 United States Tax Court

TCOUS 40 Secretary and Confidential Assistant to a Judge
TCOUS 41 Secretary and Confidential Assistant to a Judge
TCOUS 42 Secretary and Confidential Assistant to a Judge
TCOUS 43 Secretary and Confidential Assistant to a Judge
TCOUS 44 Secretary and Confidential Assistant to a Judge
TCOUS 45 Secretary and Confidential Assistant to a Judge
TCOUS 46 Secretary and Confidential Assistant to a Judge
TCOUS 47 Secretary and Confidential Assistant to a Judge
TCOUS 48 Secretary and Confidential Assistant to a Judge
TCOUS 49 Secretary and Confidential Assistant to a Judge
TCOUS 50 Secretary and Confidential Assistant to a Judge
TCOUS 51 Secretary and Confidential Assistant to a Judge
TCOUS 53 Secretary and Confidential Assistant to a Judge
TCOUS 54 Secretary and Confidential Assistant to a Judge
TCOUS 55 Secretary and Confidential Assistant to a Judge
TCOUS 56 Secretary and Confidential Assistant to a Judge
TCOUS 57 Secretary and Confidential Assistant to a Judge
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TCOUS 61 Secretary and Confidential Assistant to a Judge
TCOUS 62 Secretary and Confidential Assistant to a Judge
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TCOUS 65 Secretary and Confidential Assistant to a Judge
TCOUS 66 Trial Clerk to a Judge
TCOUS 67 Trial Clerk to a Judge
TCOUS 68 Trial Clerk to a Judge
TCOUS 69 Trial Clerk to a Judge
TCOUS 71 Trial Clerk to a Judge
TCOUS 72 Trial Clerk to a Judge
TCOUS 73 Trial Clerk to a Judge
TCOUS 74 Trial Clerk to a Judge
TCOUS 76 Trial Clerk to a Judge
TCOUS 78 Trial Clerk to a Judge
TCOUS 79 Trial Clerk to a Judge
TCOUS 81 Secretary (Confidential Assistant) to a Judge
TCOUS 82 Secretary (Confidential Assistant) to a Judge

213.3327 Department of Veterans Affairs

VA 72 Special Assistant to the Assistant Secretary for Congressional Affairs
VA 73 Special Assistant to the Secretary of Veterans Affairs
VA 74 Special Assistant to the Secretary of Veterans Affairs
VA 76 Special Assistant to the Assistant Secretary for Congressional Affairs
VA 77 Special Assistant to the Director, National Cemetery System
VA 78 Special Assistant to the Assistant Secretary for Finance and Information Resources Management
VA 79 Special Assistant to the Assistant Secretary for Human Resources and Administration
VA 80 Special Assistant to the Deputy Secretary of Veterans Affairs
VA 81 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs
VA 82 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs
VA 83 Special Assistant to the Assistant Secretary for Policy and Planning
VA 84 Special Assistant to the Assistant Secretary for Public and Congressional Affairs
VA 85 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs.

213.3328 United States Information Agency

USIA 14 Special Assistant to the Associate Director, Bureau of Policy and Programs
USIA 22 Supervisory Public Affairs Specialist (New York, N.Y.) to the Associate Director for Policy and Programs
USIA 26 Special Assistant to the Associate Director, Bureau of Policy and Programs
USIA 26 Special Assistant to the Associate Director, Bureau of Policy and Programs
USIA 33 Staff Assistant to the Director, Office of Public Liaison
USIA 37 Special Assistant to the Director, Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs
USIA 45 Director, Office of Program Coordination and Development, to the Associate Director, Bureau of Policy and Programs
USIA 54 Special Assistant to the Associate Director, Bureau of Policy
USIA 67 Chief, Voluntary Visitors Division to the Director, Office of International Visitors, Bureau of Educational and Cultural Affairs
USIA 80 Special Advisor to the Director, Office of Public Liaison
USIA 83 Special Assistant to the Director, Office of Research
USIA 89 Staff Director, Advisory Board for Cuba Broadcasting to the Chairman of the Advisory Board
USIA 93 Program Officer to the Deputy Director, Office of European Affairs
USIA 99 White House Liaison to the Chief of Staff, Office of the Director
USIA 101 Public Affairs Specialist to the Director, New York Foreign Press Center, New York, NY
USIA 112 Special Assistant to the Director, Office of Program Coordination and Development, Bureau of Policy and Programs
USIA 116 Special Projects Officer to the Director, Office of Special Projects
USIA 118 Senior Advisor to the Director, United States Information Agency
USIA 124 Special Assistant to the Associate Director for Programs, Bureau of Policy and Programs
USIA 125 Special Assistant to the Director, Office of Academic Affairs, Bureau of Educational and Cultural Affairs
USIA 126 Special Assistant to the Director, Office of Congressional and Intergovernmental Affairs
USIA 127 Writer to the Director, Office of Policy
USIA 128 Senior Advisor to the Director, Bureau of Educational and Cultural Affairs
USIA 129 Special Assistant to the Director of Worldnet Television and Film Service, Bureau of Broadcasting
USIA 130 Confidential Assistant to the Director, Voice of America, Bureau of Broadcasting
USIA 131 Director, Policy and Planning Unit to the Deputy Director, United States Information Agency
USIA 132 Director, Office of International Visitors, to the Associate Director of the Bureau of Educational and Cultural Affairs

213.3330 Securities and Exchange Commission

SEC 3 Confidential Assistant to the Commissioner
SEC 4 Confidential Assistant to a Commissioner
SEC 5 Confidential Assistant to a Commissioner
SEC 6 Confidential Assistant to a Commissioner
SEC 8 Secretary (OA) to the Chief Accountant
SEC 11 Confidential Assistant to the Chairman
SEC 12 Supervisory Public Affairs Specialist to the Chairman
SEC 15 Secretary to the Director, Division of Market Regulations
SEC 16 Secretary to the Director
SEC 18 Secretary to the Director, Investment Management
SEC 19 Secretary (OA) to the Director
SEC 24 Secretary to the Chief Economist
SEC 27 Secretary (Typing) to the Director
SEC 23 Confidential Assistant to the Chairman of the Securities and Exchange Commission
SEC 29 Secretary to the Deputy Director of Market Regulation
SEC 31 Public Affairs Specialist to the Director of Public Affairs, Office of Public Affairs, Policy Evaluation and Research
SEC 32 Confidential Assistant to the Director of Public Affairs
SEC 33 Confidential Assistant to the Regional Administrator
SEC 34 Secretary to the Executive Director
SEC 35 Secretary to the General Counsel
SEC 36 Confidential Assistant to the Chairman
SEC 37 Writer-Editor to the Chairman

213.3331 Department of Energy

DOE 77 Staff Assistant to the Secretary of Energy
DOE 571 Intergovernmental Affairs Specialist to the Deputy Assistant Secretary for Intergovernmental Affairs
DOE 573 Staff Assistant to the Director, Office of Public Affairs
DOE 574 Confidential Assistant to the Chief of Staff
DOE 575 Special Assistant to the Chief of Staff
DOE 576 Director, Office of Scheduling and Logistics to the Secretary of Energy
DOE 577 Staff Assistant to the Assistant Secretary for Policy, Planning and Program Evaluation
DOE 580 Staff Assistant to the Director, Office of Intelligence and National Security
DOE 581 Staff Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 582 Special Assistant to the Deputy Secretary for Scheduling and Logistics
DOE 586 Senior Policy Specialist to the Director, Office of Civilian Radioactive Waste Management
DOE 587 Staff Assistant to the Assistant Secretary for Environmental Safety and Health
DOE 589 Congressional Liaison Officer to the Deputy Assistant Secretary for House Liaison
DOE 590 Staff Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 591 Staff Assistant to the Deputy Assistant Secretary for Building Technologies
DOE 592 Staff Assistant to the Deputy Assistant Secretary for Gas and Technology
DOE 593 Special Assistant to the Assistant Secretary for Policy Planning and Program Evaluation
DOE 594 Staff Assistant to the Assistant Secretary for Congressional, Intergovernmental, and International Affairs
DOE 595 Special Assistant to the Deputy Secretary of Energy
DOE 596 Legislative Affairs Specialist to the Assistant Secretary for Congressional, Intergovernmental and International Affairs
DOE 597 Special Assistant to the General Counsel
DOE 598 Staff Assistant to the Deputy Secretary of Energy
DOE 599 Staff Assistant to the Director, Office of Civilian Radioactive Waste Management
DOE 600 Special Assistant to the Principal Deputy Assistant Secretary for Policy, Planning and Program Evaluation
DOE 601 Program Information Coordinator to the Director, Office of Strategic Planning
DOE 602 Technology Transfer Specialist to the Director, Office of Technology Utilization
DOE 603 Special Assistant to the Director, Office of Strategic Planning and Analysis
DOE 604 Special Assistant to the Assistant Secretary for Policy, Planning and Program Evaluation
DOE 605 Special Assistant to the Principal Deputy Assistant Secretary for Policy, Planning and Program Evaluation
DOE 606 Staff Assistant to the Senior Staff Assistant, Office of the Deputy Assistant Secretary for Gas and Petroleum Technology
DOE 607 Special Assistant to the General Counsel
DOE 609 Special Assistant to the Under Secretary of Energy
DOE 610 Staff Assistant to the Director, Office of Energy Research
DOE 611 Staff Assistant to the Principal Deputy Assistant Secretary, Office of Energy Efficiency and Renewable Energy
DOE 612 Policy Specialist to the Director, Office of Strategic Planning and Analysis
DOE 613 Special Assistant to the Assistant Secretary for Environmental Restoration and Waste Management
DOE 614 Staff Assistant to the Deputy Assistant Secretary for Building Technologies, Office of Energy Efficiency and Renewable Energy
DOE 615 Staff Assistant to the Director, Office of Intelligence and National Security
DOE 617 Senior Advisor for Diversity Programs and Education Initiatives to the Director, Office of Science Education and Technical Information
DOE 618 Special Assistant to the Director, Office of Public Accountability, Environmental Restoration and Waste Management
DOE 619 Confidential Assistant to the General Counsel
DOE 620 Executive Assistant to the Chief of Staff
DOE 621 Executive Assistant to the Secretary of Energy
DOE 622 Legislative Affairs Specialist to the Deputy Assistant Secretary for Senate Liaison, Office of Congressional and Intergovernmental Affairs
DOE 623 Staff Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 624 Special Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 625 Staff Assistant to the Deputy Associate Deputy Secretary for Field Management
DOE 626 Staff Assistant to the Director, Office of Public Accountability
DOE 627 Staff Assistant to the Assistant Secretary for Environmental Restoration and Waste Management
DOE 628 Policy Analyst to the Assistant Secretary for Policy, Planning and Program Evaluation
DOE 629 Staff Assistant to the Administrator, Office of Energy

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Information Administration
DOE 630 Special Assistant to the Deputy Assistant Secretary for Planning and Administration, Office of Environment, Safety and Health
DOE 631 Special Assistant to the Press Secretary, Press Services Division, Office of Public and Consumer Affairs
DOE 632 Special Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy

Federal Energy Regulatory Commission

FERC 1 Executive Assistant to the Chairman, Federal Energy Regulatory Commission
FERC 2 Attorney Advisor (Public Utilities) to the Chairman
FERC 3 Confidential Assistant to a Member
FERC 4 Attorney-Adviser (Public Utilities) to a Member of the Federal Energy Regulatory Commission

213.3332 Small Business Administration

SBA 4 Special Assistant to the Deputy Administrator
SBA 11 Deputy Assistant Administrator for Congressional and Legislative Affairs to the Assistant Administrator for Congressional and Legislative Affairs
SBA 45 Special Assistant to the Associate Deputy Administrator for Economic Development
SBA 59 Deputy Assistant Administrator for Public Communications to the Administrator
SBA 90 Confidential Assistant to the Administrator of the Small Business Administration
SBA 97 Confidential Assistant to the General Counsel
SBA 100 Special Assistant to the Regional Administrator, Dallas Regional Office
SBA 126 Special Assistant to the Assistant Administrator for Public Communications
SBA 128 Assistant Administrator for Women's Business Ownership to the Associate Deputy Administrator for Economic Development
SBA 143 Special Assistant to the Administrator
SBA 151 Director of External Affairs to the Associate Administrator for Communications and Public Liaison
SBA 152 Deputy Director of Intergovernmental Affairs to the Chief of Staff
SBA 159 Special Assistant to the Associate Deputy Administrator for Business Development
SBA 165 Special Assistant to the Administrator for District Operations
SBA 166 Staff Assistant to the Chief of Staff
SBA 167 Special Assistant to the Administrator
SBA 168 Director of Intergovernmental Affairs to the Associate Administrator for Communications and Public Liaison
SBA 169 Regional Administrator, Region I, Boston, MA, Administrator
SBA 170 Regional Administrator, Region VIII, Denver CO, to the Administrator
SBA 172 Regional Administrator, Region VII, Kansas City, MO, to the Administrator
SBA 173 Regional Administrator, Region VI, Dallas, TX, to the Administrator
SBA 174 Regional Administrator, Region V, Chicago, IL, to the Administrator
SBA 175 Regional Administrator, Region IV, Atlanta, GA, to the Administrator
SBA 176 Regional Administrator, Region II, New York, NY, to the Administrator
SBA 177 Director of Strategic Planning and Policy to the Associate Deputy Administrator for Economic Development
SBA 178 Regional Administrator, Region III, Philadelphia, PA, to the Administrator
SBA 179 Press Secretary to the Administrator to the Associate Administrator for Communications and Public Liaison
SBA 180 Special Assistant to the Associate Administrator for Communications and Public Liaison
SBA 181 Associate Administrator for Field Operations to the Administrator
SBA 182 Assistant Administrator for Marketing and Outreach to the Associate Administrator for Communications and Public Liaison
SBA 183 Special Assistant to the Associate Administrator for Communications and Public Liaison
SBA 184 Special Assistant to the Administrator and Director of Special Capital Initiatives to the Associate Deputy Administrator for Economic Development

213.3333 Federal Deposit Insurance Corporation

FDIC 2 Administrative Assistant to a Director

213.3334 Federal Trade Commission

FTC 2 Director of Public Affairs to the Chairman
FTC 14 Congressional Liaison Specialist to the Chairman
FTC 18 Executive Secretary to the Chairman
FTC 19 Congressional Liaison Specialist to the Director, Office of Congressional Relations
FTC 20 Special Assistant to the Commissioner

213.3337 General Services Administration

GSA 24 Special Assistant to the Commissioner, Public Buildings Service
GSA 26 Special Assistant to the Commissioner, Public Buildings Service
GSA 44 Special Assistant to the Chief of Staff
GSA 52 Special Assistant to the Commissioner, Public Buildings Service
GSA 58 Special Assistant to the Deputy Administrator
GSA 62 Special Assistant to the Commissioner, Information Resources Management Service
GSA 63 Special Assistant to the Associate Administrator for Business, Industry and Government Affairs
GSA 82 Special Assistant to the Regional Administrator, Region 4, Atlanta, GA
GSA 89 Congressional Liaison Officer to the Associate Administrator for Congressional and Intergovernmental Affairs
GSA 94 Congressional Relations Officer to the Associate Administrator, Office of Congressional and Intergovernmental Affairs
GSA 105 Special Assistant to the Associate Administrator for Public Affairs
GSA 106 Special Assistant to the Associate Administrator for Public Affairs
GSA 107 Special Assistant to the Associate Administrator for Administration
GSA 113 Senior Advisor (Region 1—Boston, MA) to the Regional Director
GSA 114 Special Assistant to the Regional Administrator
GSA 126 Director, Office of Media Relations to the Associate Administrator for Public Affairs
GSA 127 Special Assistant to the Director of Small and Disadvantaged Business Utilization

213.3339 U.S. International Trade Commission

ITC 1 Confidential Assistant to a Commissioner
ITC 3 Staff Assistant (Legal) to a Commissioner
ITC 7 Special Assistant (Economics) to a Commissioner
ITC 9 Confidential Assistant to the Chairman (Commissioner)
ITC 12 Staff Assistant to a Commissioner
ITC 13 Staff Assistant (Economics) to a Commissioner
ITC 14 Staff Assistant (Legal) to a Commissioner
ITC 17 Staff Assistant (Legal) to a Commissioner
ITC 19 Staff Assistant (Economics) to a Commissioner
ITC 22 Staff Assistant to a Commissioner
ITC 24 Staff Assistant (LEGAL) to the Chairman
ITC 26 Staff Assistant to the Chairman
ITC 29 Staff Assistant to a Commissioner
ITC 30 Confidential Assistant to a Commissioner
ITC 31 Executive Assistant to a Commissioner
ITC 32 Special Assistant to a Commissioner
ITC 33 Special Assistant to a Commissioner
ITC 34 Staff Assistant (Legal) to a Commissioner

213.3340 National Archives and Records Administration

NARA 3 Presidential Diarist to the Archivist of the United States
NARA 5 Supervisory Public Affairs Specialist to the Archivist of the United States
NARA 6 White House Liaison to the Archivist of the United States

213.3341 National Labor Relations Board

NLRB 1 Confidential Assistant to the Chairman
NLRB 6 Confidential Assistant to a Board Member
NLRB 9 Confidential Assistant to the General Counsel

213.3342 Export-Import Bank of the United States

EXIM 3 Administrative Assistant to the Director
EXIM 30 Administrative Assistant to the Director
EXIM 38 Assistant to the Chairman and President
EXIM 39 Assistant to the Chairman and President
EXIM 40 Assistant to the Chairman and President
EXIM 41 Confidential Assistant to President and Chairman
EXIM 42 Assistant to the President and Chairman
EXIM 43 Administrative Assistant to the President and Chairman
EXIM 44 Personal and Confidential Assistant to the Vice Chairman

213.3343 Farm Credit Administration

FCA 6 Executive Assistant to a Member
FCA 8 Secretary to the Chairman
FCA 11 Special Assistant to the Chairman
FCA 12 Congressional Affairs Specialist to the Director, Congressional and Public Affairs
FCA 13 Special Assistant to a Member
FCA 15 Congressional and Public Affairs Specialist to the Director of Congressional and Public Affairs

213.3344 Occupational Safety and Health Review Commission

OSHRC 2 Special Assistant to the Chairman
OSHRC 3 Confidential Assistant to a Member (Commissioner)
OSHRC 6 Confidential Assistant to a Member (Commissioner)
OSHRC 8 Counsel to a Member (Commissioner)
OSHRC 11 Counselor to a Member (Commissioner)

213.3347 Federal Mediation and Conciliation Service

FMCS 7 Special Assistant to the Director, Federal Mediation Conciliation Service

213.3348 National Aeronautics and Space Administration

NASA 21 Public Affairs Specialist to the Administrator,
NASA 22 Special Assistant to the Associate Administrator for Legislative Affairs
NASA 24 . Legislative Affairs Assistant to the Special Assistant to the Associate Administrator for Legislative Affairs
NASA 25 Public Affairs Specialist to the Senior Public Affairs Specialist
NASA 26 Legislative Affairs Specialist to the Special Assistant to the Associate Administrator for Legislative Affairs
NASA 27 White House Liaison Officer to the Administrator

213.3351 Federal Mine Safety and Health Review Commission

FM 7 Attorney Advisor (General) to a Commissioner
FM 8 Attorney Advisor (General) to a Commissioner
FM 16 Confidential Assistant to the Vice Chairman
FM 17 Confidential Assistant to the Chairman
FM 19 Attorney-Advisor(General) to the Chairman
FM 20 Confidential Assistant to the Chairman

213.3352 Government Printing Office

GPO 3 Congressional and Public Affairs Officer to the Public Printer

213.3356 Commission on Civil Rights

CCR 1 Special Assistant to the Staff Director
CCR 12 Special Assistant to a Commissioner
CCR 13 Special Assistant to a Commissioner
CCR 15 Special Assistant to a Commissioner
CCR 23 Special Assistant to a Commissioner
CCR 29 Special Assistant to a Commissioner
CCR 30 Special Assistant to a Commissioner
CCR 32 Special Assistant to a Commissioner

213.3357 National Credit Union Administration

NCUA 9 Staff Assistant to the Chairman of the Board, National Credit Union Administration
NCUA 12 Executive Assistant to the Vice Chairman
NCUA 20 Executive Assistant to a Board Member
NCUA 21 Secretary (Typing) to a Board Member
NCUA 23 Special Assistant to the Executive Director
NCUA 24 Deputy Director to the Director of Community Development Credit Unions

213.3359 Corporation for National and Community Service

CNCS 4 Executive Assistant to the Managing Director
CNCS 5 Special Assistant to the Director
CNCS 7 Special Assistant to the Special Assistant to the Director
CNCS 8 Special Assistant to the Assistant Director of Vista/Student Community Service Programs
CNCS 9 Special Assistant to the Director
CNCS 10 Special Assistant to the Director of Public Liaison

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CNCS 11 Special Assistant to the Director of Public Affairs
CNCS 12 Special Assistant to the Director
CNCS 13 Confidential Assistant to the Director
CNCS 14 Legislative and Intergovernmental Specialist to the Director, Congressional and Intergovernmental Affairs

213.3360 Consumer Product Safety Commission

CPSC 12 Special Assistant (Legal) to the Chairman
CPSC 49 Staff Assistant to a Commissioner
CPSC 50 Staff Assistant to a Commissioner
CPSC 51 Special Assistant (Legal) to a Commissioner
CPSC 52 Director, Office of Information and Public Affairs to the Chairman
CPSC 53 Special Assistant to the Chairman
CPSC 54 Special Assistant (Legal) to the Chairman
CPSC 55 Executive Assistant to the Chairman
CPSC 56 Director, Office of Congressional Relations to the Chairman
CPSC 57 Staff Assistant to the Chairman
CPSC 58 Executive Assistant to a Commissioner

213.3364 U.S. Arms Control and Disarmament Agency

ACDA 17 Secretary (OA) to the Director
ACDA 20 Special Assistant to the Director of Public Affairs
ACDA 27 Special Assistant to the Director, U.S. Arms Control and Disarmament Agency
ACDA 31 Speechwriter to the Director, United States Arms Control and Disarmament Agency
ACDA 35 Policy Analyst to the Director, United States Arms Control and Disarmament Agency

213.3367 Federal Maritime Commission

FMC 5 Counselor to a Commissioner
FMC 9 Secretary (Steno) to a Commissioner
FMC 10 Special Assistant to a Commissioner
FMC 26 Executive Assistant to the Chairman
FMC 29 Administrative Assistant to the Chairman

213.3368 Agency for International Development

AID 125 Executive Assistant to the Chief of Staff
AID 126 Special Assistant to the Administrator
AID 127 Supervisory Public Affairs Specialist to the Director, Office of External Affairs
AID 128 Special Assistant to the Director, Office of External Affairs
AID 129 Public Affairs Specialist to the Chief of Public Relations Division, Office of External Affairs
AID 130 Public Affairs Specialist to the Deputy Chief of Public Liaison Division, Office of External Affairs
AID 131 Public Affairs Specialist to the Chief of Public Liaison Division, Office of External Affairs
AID 132 Supervisory Public Affairs Specialist to the Chief of Public Liaison Division, Office of External Affairs
AID 133 Public Affairs Specialist to the Chief of Public Relations Division, Office of External Affairs
AID 134 Special Assistant to the Chief of Public Relations, Office of External Affairs
AID 135 Junior Press Officer to the Chief of Press Relations Division, Office of External Affairs
AID 136 Congressional Liaison Officer to the Deputy Assistant Administrator, Bureau of Legislative Affairs
AID 137 Congressional Liaison Officer to the Deputy Assistant Administrator, Bureau of Legislative Affairs
AID 138 Public Affairs Specialist to the Assistant Administrator, Bureau of Legislative and Public Affairs
AID 139 Deputy Director, Office of Public Affairs to the Assistant Administrator, Bureau of Legislative and Public Affairs
AID 141 Special Assistant and Legal Counsel to the General Counsel
AID 142 Special Assistant to the Assistant Administrator, Bureau of Europe and New Independent States
AID 143 Administrative Operations Assistant to the Chief of Staff

213.3371 Office of Government Ethics

OGE 2 Executive Secretary to the Director, Office of Government Ethics

213.3373 United States Trade and Development Agency

TDA 1 Special Assistant for Policy and Public Affairs to the Director of the U.S. Trade and Development Agency
TDA 2 Congressional Liaison Officer to the Director, Trade and Development Agency

213.3377 Equal Employment Opportunity Commission

EEOC 9 Special Assistant to the Chairman
EEOC 17 Special Assistant to a Member
EEOC 18 Media Contact Specialist to Director for the Office of Communications and Legislative Affairs
EEOC 43 Communications and Legislative Specialists to the Director, Office of Communications and Legislative Affairs

213.3379 Commodity Futures Trading Commission

CFTC 3 Administrative Assistant to a Commissioner
CFTC 4 Administrative Assistant to a Commissioner
CFTC 5 Administrative Assistant to a Commissioner
CFTC 6 Administrative Assistant to a Commissioner
CFTC 21 Governmental Affairs Officer to the Chairman
CFTC 26 Special Assistant to a Commissioner

213.3382 National Endowment for the Arts

NEA 9 Congressional Liaison Officer to the Chairman
NEA 68 Attorney Adviser to the Chairman
NEA 70 Special Assistant to the Chairman
NEA 71 Secretary (Typing) to the Chairman
NEA 72 Director of Policy, Planning and Research to the Chairman
NEA 73 Chief of Staff and White House Liaison to the Chairman
NEA 74 Staff Assistant to the Chairman
NEA 76 Executive Secretary to the Chairman
NEA 77 Director of Public Affairs to the Chairman, National Endowment for the Arts

National Endowment for the Humanities

NEH 48 Congressional Liaison Officer to the Chairman
NEH 63 Special Assistant to the Chairman for Institutional Relations
NEH 65 Special Assistant to the Chairman
NEH 67 Special Assistant to the Deputy Chairman

213.3384 Department of Housing and Urban Development

HUD 33 Legislative Officer to the Deputy Assistant Secretary for Legislation
HUD 37 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations
HUD 39 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations
HUD 42 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations, Office of Congressional and Intergovernmental Relations
HUD 60 Director, Office of Executive Scheduling to the Assistant Secretary for Administration
HUD 64 Staff Assistant to the Deputy Assistant Secretary for Operations, Office of Community Planning and Development
HUD 65 Special Assistant to the Assistant Secretary for Community Planning and Development
HUD 68 Special Assistant to the Assistant Secretary for Community Planning and Development
HUD 120 Special Assistant (Speechwriter) to the Assistant Secretary for Public Affairs
HUD 126 Special Assistant (Litigation Liaison) to the Assistant Secretary for Fair Housing and Equal Opportunity
HUD 137 Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity
HUD 160 Special Assistant to the Assistant Secretary for Policy Development and Research
HUD 163 Special Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs
HUD 172 Special Assistant to the Assistant Secretary for Public and Indian Housing
HUD 176 Staff Assistant to the Special Assistant to Secretary
HUD 187 Special Assistant to the Deputy Assistant Secretary for Single Family Housing, Federal Housing Commission
HUD 188 Special Assistant to the Assistant Secretary for Administration
HUD 190 Special Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs
HUD 192 Special Assistant to the Secretary of Housing and Urban Development
HUD 193 Deputy General Counsel (Finance and Regulations) to the General Counsel
HUD 195 Special Assistant to the Deputy Assistant Secretary for Economic Development, Office of Community Planning and Development
HUD 198 Special Assistant to the Secretary of Housing and Urban Development
HUD 211 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations
HUD 215 Special Assistant to the Assistant Secretary for Housing, Federal Housing Commission
HUD 238 Special Assistant to the Secretary of Housing and Urban Development
HUD 247 Special Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner
HUD 249 Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Relations
HUD 259 Special Assistant to the Secretary of Housing and Urban Development
HUD 263 Special Assistant (Speechwriter) to the Assistant Secretary for Public Affairs, Office of Policy Support
HUD 272 Deputy Assistant Secretary for Grant Programs to the Assistant Secretary for Community Planning and Development
HUD 279 Executive Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity
HUD 280 Special Assistant to the Assistant Secretary for Community Planning and Development
HUD 281 Special Administrator to Regional Administrator
HUD 285 Legislative Officer to the Deputy Assistant Secretary for Legislation, Office of Congressional and Intergovernmental Relations
HUD 289 Deputy Assistant Secretary for Operations to the Assistant Secretary for Community Planning and Development
HUD 292 Special Assistant to the Deputy Assistant Secretary for Economic Development
HUD 293 Special Assistant to the President, Government National Mortgage Association
HUD 317 Special Assistant to the Regional Administrator- Regional Housing Commissioner, Region V, Chicago, IL
HUD 323 Executive Assistant to the Assistant Secretary for Housing
HUD 328 Deputy Assistant Secretary for Public Affairs to the Assistant Secretary for Public Affairs
HUD 335 Deputy Assistant Secretary for Economic Development to the Assistant Secretary for Community Planning and Development
HUD 336 Special Assistant to the Assistant Secretary for Administration
HUD 340 Staff Assistant to the Chief of Staff
HUD 341 Special Assistant to the Secretary of Housing and Urban Development
HUD 363 Special Assistant to the Assistant Secretary for Policy Development and Research
HUD 366 Special Assistant to the Deputy Assistant Secretary for Operations, Federal Housing Commission
HUD 372 Staff Assistant (Advance) to the Assistant Secretary for Administration, Office of Executive Scheduling
HUD 373 Special Assistant (Speech Writer) to the Assistant Secretary for Public Affairs
HUD 381 Special Assistant to the Secretary of Housing and Urban Development
HUD 385 Special Assistant to the Assistant Secretary for Public Affairs, Office of Press Relations
HUD 387 Staff Assistant to the Assistant Secretary for Public Affairs
HUD 394 Staff Assistant to the Deputy Assistant Secretary for Operations, Office of Community Planning and Development
HUD 398 Special Assistant to the Assistant to the Secretary for Field Management
HUD 400 Deputy Assistant Secretary for Legislation to the Assistant Secretary for Congressional and Intergovernmental Relations
HUD 401 Special Assistant to the Assistant Secretary for Housing-Federal Housing Commissioner
HUD 404 Special Assistant to the Regional Administrator/ Regional Housing Commissioner, Region V, Chicago, IL
HUD 410 Special Assistant to the General Counsel
HUD 412 Special Assistant to the Secretary of Housing and Urban Development
HUD 419 Special Assistant (Speech Writer) to the Assistant Secretary for Public Affairs
HUD 420 Secretary's Representative (Rocky Mountain) to the Deputy Secretary
HUD 421 Assistant Director to the Director, Executive Secretariat, Office of Administration
HUD 425 Director, Office of Resident Initiatives to the Assistant Secretary for Public and Indian

Office of Communications
Administration
DOT 316 Special Assistant to the

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Housing
HUD 428 Special Assistant to the Assistant Secretary for Public and Indian Housing
HUD 431 Secretary's Representative (Great Plains) to the Deputy Secretary
HUD 432 Regional Administrator/Regional Housing Commissioner, Region X, Seattle, WA, to the Senior Advisor and Assistant to the Secretary for Field Management
HUD 437 Special Assistant to the Assistant Secretary for Public Affairs, Office of Press Relations
HUD 438 Director, Hospital Mortgage Insurance Staff to the Associate General Deputy Assistant Secretary, Office of the Assistant Secretary for Housing-Federal Housing Commissioner
HUD 441 Deputy Assistant Secretary for Policy Development to the Assistant Secretary for Policy Development and Research
HUD 445 Special Assistant to the Deputy Assistant Secretary for Economic Development
HUD 446 Senior Intergovernmental Relations Officer to the Deputy Assistant Secretary for Intergovernmental Relations
HUD 447 Special Assistant to the Assistant Secretary for Administration
HUD 448 Special Assistant to the Assistant Secretary for Administration
HUD 449 Legislative Assistant to the Deputy Assistant Secretary for Legislation, Office of Congressional and Intergovernmental Relations
HUD 450 Special Assistant to the Deputy Assistant Secretary for Federal Relief—South Dade County (Miami, FL)
HUD 451 Special Assistant for Labor Relations to the Secretary of Housing and Urban Development
HUD 452 Deputy Director, Special Actions Office to the Director, Special Actions Office
HUD 453 Executive Assistant to the Director, Office Federal Housing Enterprise Oversight
HUD 454 Staff Assistant to the Special Assistant to the Deputy Assistant Secretary for Federal Relief—South Dade County, Florida
HUD 455 Deputy Assistant Secretary for Multifamily Housing Programs to the Assistant Secretary for Housing
HUD 456 Legislative Assistant to the Deputy Assistant Secretary for Legislation
HUD 457 Staff Assistant to the Deputy Assistant Secretary for Federal Relief (South Dade County)
HUD 458 Special Assistant to the Assistant Secretary for Administration
HUD 460 Staff Assistant to the Assistant Secretary for Administration
HUD 461 Special Assistant to the Chief Financial Officer
HUD 462 Staff Assistant to the Assistant Secretary for Administration
HUD 463 Special Projects Officer to the Director, Special Actions Office
HUD 464 Special Projects Officer to the Director, Special Actions Office, Office of the Assistant Secretary for Administration
HUD 465 Special Projects Officer to the Director, Special Actions Office, Office of the Assistant Secretary for Administration
HUD 466 Director, Special Actions Office to the Secretary
HUD 467 Staff Assistant to the Deputy Assistant Secretary for Economic Development, Office of the Assistant Secretary for Community Planning and Development
HUD 468 Special Assistant to the Deputy Assistant Secretary for Economic Development, Office of Community Planning and Development
HUD 469 Special Assistant to the Deputy Assistant Secretary for Economic Development, Office of Community Planning and Development
HUD 470 Staff Assistant (Typing) to the General Counsel
HUD 471 Special Projects Officer to the Regional Administrator-Regional Housing Commissioner, Region I, Boston, MA
HUD 472 Deputy Assistant Secretary for Congressional Relations to the Assistant Secretary for Congressional and Intergovernmental Relations
HUD 473 Special Assistant to the Assistant Secretary for Community Planning and Development
HUD 474 Special Assistant to the Deputy Assistant Secretary for Distressed and Troubled Housing
HUD 475 Staff Assistant to the Chief Financial Officer
HUD 476 Special Projects Officer to the Director, Special Actions Office
HUD 477 Special Assistant to the Deputy Assistant Secretary for Distressed and Troubled Housing
HUD 478 Special Projects Officer to the Regional Administrator-Regional Housing Commissioner, Region VI, Fort Worth, TX
HUD 480 Special Assistant to the Deputy Assistant Secretary for Distressed and Troubled Housing
HUD 481 Special Projects Officer to the Director, Special Actions Office
HUD 482 Special Projects Officer to the Director, Special Actions Office
HUD 483 Special Assistant (Advance/Security) to the Director, Executive Scheduling
HUD 485 Special Assistant (Advance) to the Assistant Secretary for Administration, Office of Executive Scheduling
HUD 486 Director, Policy and Planning Division to the Director, Office of Distressed and Troubled Housing Recovery
HUD 487 Staff Assistant (Advance) to the Assistant Secretary for Administration, Office of Executive Scheduling
HUD 488 Special Assistant to the Director, Office of Distressed and Troubled Housing Recovery
HUD 489 Special Assistant to the Deputy Assistant Secretary for Distressed and Troubled Housing
HUD 490 Special Advisor to the Assistant Secretary for Community Planning and Development
HUD 491 Deputy Assistant Secretary for Planning to the Assistant Secretary for Community Planning

213.3389 National Mediation Board

NMB 52 Confidential Assistant to a Board Member
NMB 53 Confidential Assistant to a Board Member
NMB 54 Confidential Assistant to the Chairman

213.3391 Office of Personnel Management

OPM 7 Deputy Director to the Director, Office of Congressional Relations
OPM 62 Confidential Assistant to the Director, Office of Personnel Management
OPM 63 Confidential Assistant to the Director, Office of Congressional Relations
OPM 64 Director of Program Management to the Chief of Staff
OPM 65 Special Assistant to the Director, Office of Congressional Relations
OPM 66 Special Assistant to the Director of Congressional Relations
OPM 67 Executive Assistant to the Deputy Director, Office of Personnel Management
OPM 68 Deputy Director, Office of Communications to the Director,

Office of Communications
OPM 69 Special Assistant to the Director of Communications
OPM 70 Confidential Assistant (Office Automation) to the Director, Office of Personnel Management
OPM 71 Special Assistant to the Director, Office of Congressional Relations
OPM 72 Director of International Affairs to the Director, Office of Personnel Management
OPM 73 Public Affairs Specialist to the Deputy Director, Office of Communications
OPM 74 Public Affairs Specialist to the Deputy Director, Office of Communications
OPM 75 Policy Analyst to the Director of Policy
OPM 76 Speech Writer to the Director, Office of Communications

213.3392 Federal Labor Relations Authority

FLRA 5 Executive Assistant to a Member
FLRA 7 Confidential Assistant and Public Information Specialist to the Chairman
FLRA 13 Staff Assistant to the General Counsel
FLRA 14 Executive Assistant to the General Counsel

213.3393 Pension Benefit Guaranty Corporation

PBGC 6 Confidential Assistant to the Executive Director
PBGC 7 Assistant Executive Director for Legislative Affairs to the Executive Director
PBGC 11 Special Assistant to the Deputy Executive Director and Chief Financial Officer
PBGC 12 Staff Assistant to the Deputy Executive Director
PBGC 14 Special Assistant to the Deputy Executive Director and Chief Financial Officer

213.3394 Department of Transportation

DOT 20 Congressional Liaison Officer to the Director, Office of Congressional Affairs
DOT 55 Senior Congressional Liaison Officer to the Director of Congressional Affairs
DOT 61 Special Assistant to the Deputy Secretary of Transportation
DOT 69 Director, Office of Public Affairs, to the Administrator, Federal Railroad Administration
DOT 100 Chief, Consumer Information Division to the Director, Office of Public and Consumer Affairs
DOT 105 Staff Assistant to the Administrator, Federal Highway Administration
DOT 123 Intergovernmental Relations Officer to the Director, Office of the Intergovernmental and Consumer Affairs
DOT 127 Special Assistant to the Assistant Secretary for Budget and Programs
DOT 128 Special Assistant to the Deputy Administrator, Federal Highway Administration
DOT 129 Special Assistant to the General Counsel
DOT 141 Special Assistant to the Secretary of Transportation
DOT 142 Intergovernmental Relations Officer to the Director, Intergovernmental and Consumer Affairs
DOT 147 Special Assistant to the Assistant to Secretary and Director of Public Affairs
DOT 151 Director of Technology Deployment to the Deputy Secretary of Transportation
DOT 202 Special Assistant to the Administrator, Federal Highway Administration
DOT 226 Special Assistant to the Maritime Administrator
DOT 235 Special Assistant for Scheduling and Advance to the Secretary of Transportation
DOT 254 White House Liaison to the Chief of Staff
DOT 257 Deputy Director of Public Affairs to the Assistant to the Secretary and Director of Public Affairs
DOT 271 Special Assistant to the Administrator Federal, Aviation Administration
DOT 272 Special Assistant to the Director, Small and Disadvantaged Business Utilization
DOT 274 Special Assistant to the Associate Director for Media Relations and Special Projects
DOT 279 Associate Director for Speechwriting and Research to the Assistant to the Secretary and Director of Public Affairs
DOT 287 Scheduling Assistant to the Special Assistant for Scheduling and Advance, Office of the Secretary
DOT 292 Intergovernmental Liaison Officer to the Director of Intergovernmental Affairs
DOT 294 Special Assistant to the Associate Deputy Secretary
DOT 296 Special Assistant to the Deputy Administrator, Maritime Administration
DOT 313 Director, Office of Public and Consumer Affairs to the Deputy Administrator, National Highway Transportation Safety Administration
DOT 316 Special Assistant to the Assistant Secretary for Transportation Policy
DOT 317 Deputy Assistant Administrator for Government and Industry Affairs to the Assistant Administrator for Government and Industry Affairs, Federal Aviation Administration
DOT 320 Special Assistant to the Secretary of Transportation
DOT 324 Scheduling Assistant to the Special Assistant for Scheduling and Advance
DOT 338 Special Assistant to the Deputy Administrator, Federal Highway Administration
DOT 341 Congressional Liaison Officer to the Director, Office of Congressional Affairs
DOT 347 Special Assistant for Scheduling to the Special Assistant for Scheduling and Advance
DOT 349 Special Assistant to the Associate Administrator for Motor Carriers, Federal Highway Administration
DOT 351 Special Assistant to the Deputy Secretary
DOT 352 Regional Administrator, Region II, New York, N.Y. to the Deputy Administrator, Federal Transit Administration

213.3395 Federal Emergency Management Agency

FEMA 46 Special Assistant to the Associate Director, State and Local Programs and Support Directorate
FEMA 52 Supervisory Public Affairs Specialist to the Director, Federal Emergency Management Agency
FEMA 53 Policy Advisor to the Director, Federal Emergency Management Agency

213.3396 National Transportation Safety Board

NTSB 1 Special Assistant to a Member
NTSB 2 Secretary (Typing) to the Chairman, National Transportation Safety Board
NTSB 25 Special Assistant to a Board Member
NTSB 30 Confidential Assistant to the Chairman
NTSB 31 Confidential Assistant to a Board Member
NTSB 34 Confidential Assistant to a Board Member
NTSB 92 Director, Office of Congressional and Intergovernmental Relations to the Chairman
NTSB 102 Special Assistant to a Board Member
NTSB 105 Special Assistant to the

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Chairman

213.3397 Federal Housing Finance Board

FHFB 2 Special Assistant to the Board Director

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–24166 Filed 9–30–94; 8:45 am]

BILLING CODE 6325–01–P

Excepted Services

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Sherry Turpenoff, (202) 606–0940.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on September 9, 1994 (59 FR 46275). Individual authorities established or revoked under Schedules A and B and established under Schedule C between August 1 and August 31, 1994, appear in the listing below. Further notice will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, will also be published.

Schedule A

No Schedule A authorities were established or revoked during August 1994.

Schedule B

No Schedule B authorities were established or revoked during August 1994.

Schedule C

Corporation for National and Community Service

Senior Policy Advisor to the Executive Vice President and Managing Director, Corporation for National and Community Service. Effective August 11, 1994.

Executive Assistant to the Vice President/Director, Domestic Volunteer Service Programs, Corporation for National and Community Services. Effective August 22, 1994.

Executive Assistant to the Senior Counsellor to the Chief Executive Officer, Corporation for National and Community Services. Effective August 22, 1994.

Special Assistant to the Director of Public Affairs, Corporation for National and Community Services. Effective August 22, 1994.

Legislative Officer to the Director, Congressional and Intergovernmental Affairs. Effective August 22, 1994.

Department of Agriculture

Staff Assistant to the Administrator of the Farmers Home Administration. Effective August 5, 1994.

Staff Assistant to the Administrator, Farmers Home Administration. Effective August 5, 1994.

Special Assistant (Jackson, MS) to the Administrator, Farmers Home Administration. Effective August 5, 1994.

Southeast Area Director to the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service. Effective August 11, 1994.

Southwest Area Director to the Deputy Administrator, State and County Operations, Agricultural Conservation and Stabilization Service. Effective August 18, 1994.

Confidential Assistant to the Administrator, Rural Development Administration. Effective August 19, 1994.

Department of Commerce

Special Assistant to the General Counsel, Office of the General Counsel. Effective August 19, 1994.

Confidential Assistant to the Deputy Assistant Secretary for Program Support, Economic Development Administration. Effective August 29, 1994.

Department of Defense

Special Assistant to the Executive Director, President's Foreign Intelligence Advisory Board. Effective August 3, 1994.

Secretary (OA) to the Deputy Assistant Secretary of Defense for Public Affairs (Information). Effective August 3, 1994.

Staff Specialist to the Principal Deputy Assistant Secretary of Defense for Dual Use Technology Policy and International Programs. Effective August 10, 1994.

Department of Education

Special Assistant to the Assistant Secretary, Office of Human Resources and Administration. Effective August 10, 1994.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective August 16, 1994.

Department of Energy

Senior Advisor to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective August 3, 1994.

Staff Assistant to the Assistant Secretary for Policy. Effective August 3, 1994.

Staff Assistant to the Assistant Secretary for Efficiency and Renewable Energy. Effective August 26, 1994.

Department of Health and Human Services

Special Assistant (Speechwriting) to the Director of Speechwriting. Effective August 22, 1994.

Director of Communications to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy). Effective August 23, 1994.

Department of Housing and Urban Development

Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective August 1, 1994.

Staff Assistant to the Deputy Assistant Secretary for Intergovernmental Relations. Effective August 8, 1994.

Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Relations. Effective August 11, 1994.

Department of the Interior

Staff Assistant to the Director, Office of Surface Mining Reclamation and Enforcement. Effective August 10, 1994.

Staff Assistant to the Assistant Secretary for Indian Affairs. Effective August 10, 1994.

Special Assistant to the Deputy Chief of Staff, Office of the Secretary. Effective August 10, 1994.

Special Assistant to the Director, National Biological Survey. Effective August 10, 1994.

Department of Justice

Secretary (OA) to the United States Attorney, District of Delaware. Effective August 5, 1994.

Deputy Assistant Attorney General to the Assistant Attorney General, Office of Policy Development. Effective August 8, 1994.

Confidential Assistant to the Deputy Attorney General. Effective August 12, 1994.

Counsel to the Deputy Attorney General. Effective August 16, 1994.

Staff Assistant to the Assistant Attorney General, Office of Policy Development. Effective August 16, 1994.

Special Assistant to the Deputy Attorney General. Effective August 16, 1994.

Public Affairs Specialist to the Director, Public Affairs. Effective August 26, 1994.

Department of Labor

Special Assistant to the Director, Women's Bureau. Effective August 1, 1994.

Secretary, U.S. National Administrative Office to the Deputy Under Secretary for International Affairs. Effective August 2, 1994.

Secretary's Representative to the Associate Director, Congressional and Intergovernmental Affairs. Effective August 4, 1994.

Special Assistant to the Assistant Secretary for Veterans Employment and Training. Effective August 11, 1994.

Special Assistant to the Assistant Secretary, Pension and Welfare Benefits Administration. Effective August 25, 1994.

Department of the Navy (DOD)

Staff Assistant to the Assistant Secretary of the Navy (Financial Management). Effective August 2, 1994.

Department of State

Special Assistant to the Assistant Secretary, Bureau of International Narcotics Matters. Effective August 11, 1994.

Special Advisor to the Under Secretary for Global Affairs. Effective August 18, 1994.

Department of the Treasury

Special Assistant to the Chief of Staff. Effective August 18, 1994.

Policy Advisor to the Under Secretary (Enforcement). Effective August 18, 1994.

Public Affairs Specialist to the Director, Office of Public Affairs. Effective August 24, 1994.

Export-Import Bank of the United States

Administrative Assistant to the Bank Director. Effective August 11, 1994.

Administrative Assistant to the Chief of Staff. Effective August 26, 1994.

Federal Communications Commission

Special Assistant (Public Affairs) to the Chief, Cable Services Bureau. Effective August 19, 1994.

Federal Labor Relations Authority

Staff Assistant to the Chairman. Effective August 2, 1994.

Federal Maritime Commission

Counsel to the Commissioner. Effective August 26, 1994.

General Services Administration

Special Assistant to the Administrator, General Services Administration. Effective August 5, 1994.

Special Assistant to the Regional Administrator, Region 10, Auburn, Washington. Effective August 24, 1994.

National Aeronautics and Space Administration

Public Affairs Specialist to the Associate Administrator for Public Affairs. Effective August 8, 1994.

Office of Management and Budget

Confidential Assistant to the Deputy Director for Management. Effective August 5, 1994.

Confidential Assistant to the Associate Director for Human Resources. Effective August 26, 1994.

Office of National Drug Control Policy

Confidential Assistant to the Director, Office of the National Drug Control Policy. Effective August 11, 1994.

Office of Science and Technology Policy

Research Assistant to the Director, Office of Science Technology and Policy. Effective August 3, 1994.

Office of the United States Trade Representative

Confidential Assistant to the Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison. Effective August 23, 1994.

Private Sector Liaison to the Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison. Effective August 23, 1994.

Congressional Affairs Specialist to the Assistant United States Trade Representative for Congressional Affairs. Effective August 31, 1994.

Small Business Administration

Special Assistant to the Assistant Administrator for Women's Business Ownership. Effective August 26, 1994.

U.S. Arms Control and Disarmament Agency

Confidential Assistant to the Assistant Director, Multilateral Affairs Bureau. Effective August 8, 1994.

U.S. International Trade Commission

Staff Assistant to the Commissioner. Effective August 3, 1994.

Staff Assistant (Economics) to the Commissioner. Effective August 23, 1994.

Staff Assistant (Legal) to the Commissioner. Effective August 23, 1994.

Congressional Liaison to the Chairman. Effective August 26, 1994.

United States Information Agency

Program Officer to the Associate Director, Bureau of Information. Effective August 18, 1994.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p.218.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–24286 Filed 9–30–94; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

National Partnership Council Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Office of Personnel Management (OPM) announces the eleventh meeting of the National Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Council will meet October 12, 1994, 1 p.m., in the OPM Conference Center, Room 1350, at the Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415–0001. The conference center is located on the first floor.

TYPE OF MEETING: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact OPM to obtain appropriate accommodations.

POINT OF CONTACT: Douglas K. Walker, National Partnership Council, Executive Secretariat, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 5315, Washington, DC 20415–0001, (202) 606–1000.

SUPPLEMENTARY INFORMATION: The Council will receive reports on and discuss activities contained in its work plan for calendar year 1994, *Strategy To Promote Change,* which was adopted at the April 12, 1994, meeting.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comment or recommendations to Mr. Douglas K. Walker at the address shown above. Comments should be received by

October 7, in order to be considered at

SECURITIES AND EXCHANGE

the places specified in Item IV below.

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October 7, in order to be considered at the October 12, meeting.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 94–24287 Filed 9–30–94; 8:45 am]

BILLING CODE 6325–01–M

Privacy Act of 1974; Amendment to Existing Notices of Systems of Records

AGENCY: Office of Personnel Management.

ACTION: Notice of updates to existing systems of records.

SUMMARY: OPM proposes to rescind routine uses recently added to two existing record systems.

DATES: The changes will become effective without further notice on date of publication of this notice in the **Federal Register** (October 3, 1994).

ADDRESSES: Written comments should be sent to C. Ronald Trueworthy, Chief, Information Policy Branch, Room CHP 500, Plans and Policies Division, Office of Information Resources Management, Administration Group, Office of Personnel Management, 1900 E Street NW., Washington DC 20415.

FOR FURTHER INFORMATION CONTACT: Leslie Crawford, 703–908–8550.

SUPPLEMENTARY INFORMATION: On June 15, 1994, the Office of Personnel Management (OPM) published changes to four existing system notices (59 FR 30817). The routine uses added to OPM/Central–10 (Directory of Federal Executive Institute Alumni) and OPM/Central–11 (Presidential Management Intern Program Records) by that publication allowed disclosure of names and home address of participants and alumni of the programs to other program participants and alumni.

It has been determined that the Federal Executive Institute already obtains consent for disclosure directly from the individuals involved, and the Presidential Management Intern program will establish a similar procedure for release of such data. Therefore, routine uses to cover disclosure of the information are not necessary, and routine use "m" added to OPM/Central–10 and routine use "n" added to OPM/Central–11 are hereby rescinded.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–24288 Filed 9–30–94; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34711; File No. SR–CBOE–94–30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Storage of Customer Account Records

September 23, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 7, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, paragraph (c) of CBOE Rule 9.8, "Supervision of Accounts," provides that background and financial information of customers who have been approved for options transactions must be maintained at both the branch office servicing the customer's account and at the principal supervisory office with jurisdiction over the branch office. In addition, copies of options customer account statements over the most recent six months must be maintained at both the branch office supervising the accounts and at the principal supervisory office with jurisdiction over that branch. The CBOE proposes to amend CBOE Rule 9.8(c) and Interpretation and Policy .03 to enable members' supervisory offices to maintain certain customer account information at off-site locations as long as the records are readily accessible and promptly retrievable.

The text of the proposal is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE states that the purpose of the proposal is to enable supervisory offices of CBOE members to store certain customer account records off-site. CBOE members that elect to do so must ensure that the records are easily accessible and promptly retrievable.

Currently, under CBOE Rule 9.8, background and financial information about customers, as well as copies of customer account statements, must be maintained at the branch office serving the customer and at that branch's principal supervisory office. The substance of this rule appears uniformly in the rules of the other options exchanges and in the options account rules of the National Association of Securities Dealers, Inc. ("NASD"). According to the CBOE, on-site storage in major financial centers is expensive, and, in today's market environment, automated and secure facilities for data storage and retrieval make it unnecessary to require on-site storage. The CBOE states that, given those realities, the Options Self-Regulatory Council ("OSRC")[1] has recommended that record retention requirements be relaxed and that the exchanges and the NASD amend their rules to permit supervisory offices to store customer records off-premises as a matter of routine practice.[2]

The CBOE concurs with the OSRC's recommendation and believes that its proposal will afford the CBOE's members the opportunity to discharge their supervisory responsibilities more efficiently and more cost-effectively. Accordingly, the CBOE's proposal amends paragraph (c) and Interpretation and Policy .03 of CBOE Rule 9.8 to enable CBOE members' supervisory offices to use off-premises storage for certain of the customer records specified in the rules, provided the records are easily accessible and promptly retrievable.[3]

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement of Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days after the publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 24, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24301 Filed 9–30–94; 8:45 am]

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[1] The OSRC, which was created pursuant to a plan submitted by the options exchanges under Rule 17d–2 ("17d–2 plan") under the Act, includes representatives from each of the registered options exchanges and the NASD. The 17d–2 plan was developed by the exchanges and approved by the Commission to reduce regulatory duplication and to coordinate solutions to options-related sales practice issues common to firms which are members of two or more self-regulatory organizations.

[2] In connection with the OSRC's recommendation, the designated options examining authorities, including the CBOE, have committed to periodic examinations of the document retention and supervisory practices of firms using off-site storage arrangements.

[3] Interpretation and Policy .03 requires member to maintain, at the principal supervisory office with jurisdiction over the office servicing a customer's account, information to permit review of each customer's account to determine (1) the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved; (2) the size and frequency of options transactions; (3) commission activity in the account; (4) profit or loss in the account; (5) undue concentration in any options class or classes and (6) compliance with the provisions of Regulation T of the Federal Reserve Board.

[4] 17 CFR 200.30–3(a)(12) (1993).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Incorporated

September 27, 1994.

The above named national securities exchange has filed application with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Boise Cascade
Preferred Stock Dep. Sh. (1/10 Pfd. E, No Par Value (File No. 7–12994)
Sunamerica, Inc.
Preferred Stock Dp. Sh. (1/100 PFP) o Par Value $.10 (File No. 7–12995)
USX Corp.
Preferred Stock Cum. Conv. Pfd., No Par Value (File No. 7–12996)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 19, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–24306 Filed 9–30–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

September 27, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Amax Gold, Inc.
$3.75 Ser. B Conv. Pfd. Stk., $1.00 Par Value (File No. 7–12970)
Americas Income Trust, Inc.
Common Stock, No Par Value (File No. 7–12971)
Apartment Investment & Management Co.
Common Stock, $.01 Par Value (File No. 7–12972)
Bush Industries, Inc.
Class A Common Stock, $.10 Par Value (File No. 7–12973)
Chilgener S.A.
American Depositary Shares (rep. 4 shs. Common Without, Par Value (File No. 7–12974)
Corning Delaware, L.V.
Conv. Mon. Income Pfd. Shs. (MIPS) (File No. 7–12975)
Dominion Resources Black Resources Trust Trust Units (File No. 7–12976)
Embotelladora Andina S.A.
American Depositary Shares (rep. 6 Common Shares, Without Par Value (File No. 7–12977)
Freeport McMoran Copper & Gold
Depositary Shares (rep. .025 of a sh. of Silver-Din. Pfd., $10.00 Par Value (File No. 7–12978)
Greenbrier Companies, Inc.
Common Stock, $.001 Par Value (File No. 7–12979)
Greenwich Street Municipal Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–12980)
Grupo Elektra S.A. De C.V.

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Global Depositary Shares (rep. 2 Ord. Partic, Ctfs.) (File No. 7–12981)
Grupo Sidek, S.A. De C.V.
Ser. L American Depositary Shares (rep. 4 sh. Ser. L Common Stock, No Par Value (File No. 7–12982)
Istituto Nazionale Delle Assicurazioni SPA
American Depositary Shares (rep. 10 Ord. Shs., Lit. 1,000 Par Value) (File No. 7–12983)
Labortorio Chile S.A.
American Depositary Shares (rep. 20 sh. Common Stock, Without Par Value (File No. 7–12984)
Nokia Corp.
American Depositary Shares (rep. ½ of a Pfd. Sh., FIM 20 Par Value (File No. 7–12985)
Paragon Group, Inc.
Common Stock, $.01 Par Value (File No. 7–12986)
Penelec Capital L.P.
98 ¾% Cum. Mon. Income Pfd. Shs. (MIPS) (File No. 7–12987)
UAL Corp.
Depositary Shares (rep. 1/1000 sh. of 12¼% Ser. B Pfd. Stock) (File No. 7–12988)
Vastar Resources, Inc.
Common Stock, $1.00 Par Value (File No. 7–12989)
Enzo Biochemical, Inc.
Common Stock, $.01 Par Value (File No. 7–12990)
Cardinal Health, Inc.
Common Shares, Without Par Value (File No. 7–12991)
LSB Industries, Inc.
Common Stock, $10.00 Par Value (File No. 7–12992)
Newbridge Network Corp.
Common Stock, Without Par Value (File No. 7–12993)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 19, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–24307 Filed 9–30–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34710; File No. SR–PSE–94–25]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Extension of the Lead Market Maker System Pilot Program

September 23, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 9, 1994, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Commentary .01 to PSE Rule 6.82, "Lead Market Maker Pilot Program," states that the PSE's Lead Market Maker ("LMM") system pilot program will expire on September 30, 1994. The PSE proposes to amend Commentary .01 to extend the Exchange's LMM system pilot program through September 30, 1995.

The text of the proposed rule change is available at the PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) *Purpose.*

On January 17, 1990, the Commission approved the PSE's LMM system on a pilot basis.[1] Previously, the Commission has approved Exchange requests for extension of the pilot program,[2] which is set to expire on September 30, 1994.[3] The PSE submitted pilot program reports to the Commission on September 18, 1992, and on July 26, 1993. In addition, on April 20, 1994, the Exchange withdrew several pending rule filings relating to the LMM program and did so with the intention of resubmitting a consolidated filing at a later date.[4] At this time, the PSE is considering additional rule changes to be included in the consolidated filing. Therefore, the Exchange proposes to amend its rules to extend the LMM pilot program through September 30, 1995, in order to provide additional time for evaluation of the LMM program in light of any changes that may be approved within the next year.

(b) *Basis.*

The PSE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it will promote just and equitable principles of trade and contribute to the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others.

Written comments on the proposed rule change were neither solicited or received.

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[1] *See* Securities Exchange Act Release No. 27631 (January 17, 1990), 55 FR 2462 (January 24, 1990).

[2] *See* Securities Exchange Act Release Nos. 33854 (April 1, 1994), 59 FR 16873 (April 8, 1994) ("April 1994 Pilot Approval Order"); 31063 (August 21, 1992), 57 FR 39255 (August 28, 1992); and 31635 (December 22, 1992), 57 FR 62414 (December 30, 1992).

[3] *See* April 1994 Pilot Approval Order, *supra* note 3.

[4] *See* Letter from David P. Semak, Vice President, Regulation, PSE, to Sharon M. Lawson, Assistant Director, Division of Market Regulation, Commission, dated April 20, 1994 (withdrawing File Nos. SR–PSE–91–08, SR–PSE–92–35, SR–PSE–92–36, and SR–PSE–93–16).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PSE has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposal to extend the LMM pilot program through September 30, 1995, is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, the requirements of Section 6.[5] The Commission concludes, as it did in approving the LMM pilot program, that the pilot program may enhance the market making mechanism on the PSE, thereby improving the markets for listed options on the Exchange. Specifically, the Commission believes that the LMM pilot may improve the PSE's market making capabilities by creating long-term commitments to options classes. Moreover, the pilot program will continue with adequate due process safeguards in the LMM selection and termination procedures and will retain procedures that prevent the misuse of material non-public LMM information by either an LMM or a broker-dealer affiliated with an LMM. The Commission notes, however, that before the pilot program can be approved on a permanent basis, the PSE must provide the Commission with a report on the operation of the pilot program.

Specifically, before requesting permanent approval or further extension of the pilot program the PSE must submit a pilot program report by June 1995 that addresses: (1) whether there have been any complaints regarding the operation of the pilot; (2) whether the PSE has taken any disciplinary or performance action against any member due to the operation of the pilot; (3) the number of LMMs involved in the pilot; (4) the extent to which the pilot has been used on the PSE; (5) whether the PSE has terminated or replaced an LMM and the reasons therefore; (6) the impact of the pilot on the bid/ask spreads, depth and continuity in PSE options markets; and (7) whether the PSE has taken any action or there have been any complaints against LMMs or associated broker-dealers relating to improper activity as a result of LMM affiliations with upstairs firms.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because the PSE has not indicated that there have been any problems associated with the operation of the LMM system pilot program and because the Commission has not received any adverse comments concerning the pilot program. In addition, the Commission believes good cause exists to approve the extension of the LMM pilot program on an accelerated basis in order to allow the pilot program to continue uninterrupted. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those they may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 24, 1994.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–PSE–94–25) is approved on an accelerated basis, and, accordingly, that the LMM pilot program is extended until September 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24302 Filed 9–30–94; 8:45 am]

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[5] 15 U.S.C. § 78f(b) (1982).

[6] 15 U.S.C. § 78s(b)(2) (1982).

[7] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34712; International Series Release No. 717; File No. SR–PHLX–93–13]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Modifications of the Position and Exercise Limits for Foreign Currency Options

September 23, 1994.

On March 29, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposal to amend PHLX Rules 1001, "Position Limits", and 1002," "Exercise Limits,"[3] to increase the position and exercise limits for foreign currency options ("FCOs") from 100,000 contracts to 150,000 contracts for FCOs with annual trading volume of at least 3,500,000 contracts, based on the previous year's trading volume.[4]

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[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert. Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days. Throughout this approval order, the terms "position limits" or "limits" will be used to refer to both position and exercise limits.

[4] On July 19, 1994, the PHLX amended its proposal to establish an FCO position limit of 150,000 contracts for FCOs with annual trading volume of at least 4,000,000 contracts. *See* Letter from Gerald D. O'Connell, First Vice President, Regulation and Trading Operations, PHLX, to Michael Walinskas, Branch Chief, Options Regulation, Division of Market Regulation ("Division"). Commission, dated July 19, 1994 ("Amendment No. 1"). In addition, the PHLX submitted information concerning the implementation and effective date of the proposal. *See* Letter from Edith Hallahan, Attorney, Market Surveillance, PHLX, to Richard Zack, Branch Chief, Options Branch, Division, Commission, dated July 27, 1993 ("July 27 Letter"). On July 26, 1994, the PHLX amended the proposal to provide that FCOs with annual trading volume of 3,500,000 contracts would be ellgible for a position limit of 150,000 contracts and to indicate that the PHLX plans a one time immediate review to implement the higher position limit for FCOs which meet the annual trading volume requirement. *See* Letter from Gerald D. O'Connell, First Vice President, Regulation and Trading Operations, PHLX, to Michael Walinskas, Branch Chief, Options Regulation, Division, Commission, dated July 26, 1994 ("Amendment No. 2"). On September 22, 1994, the PHLX amended its proposal to revise the effective date of a change to a lower FCO position limit. Specifically, if the PHLX's beginning-of-the-year review of FCO trading volume indicates that the position limit for an FCO

Continued

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Notice of the proposal appeared in the **Federal Register** on August 18, 1994.[5] No comments were received on the proposal.

Currently, PHLX Rule 1001 establishes a position limit of 100,000 contracts for FCOs traded on the PHLX. The PHLX proposes to amend Exchange Rules 1001 and 1002 to increase the position and exercise limits for FCOs, including cross-rate FCOs.[6] Specifically, under proposed Commentary .05(b) to PHLX rule 1001, the PHLX proposes to establish a position limit of 150,000 contracts for FCOs with annual trading volume of at least 3,500,000 contracts, based upon the previous year's volume. At the beginning of each calendar year, the PHLX will review FCO volume information from the previous year to determine which limit will apply; a higher limit will be effective on the date set by the Exchange, and a lower limit will take effect on the Monday following the mid-month June expiration. If the PHLX's beginning-of-the-year FCO trading volume review indicates that the position limit for an FCO must be lowered from 150,000 contracts to 100,000 contracts, the PHLX will promptly notify FCO participants that the lower limit will be effective for all series in that option on the Monday following the mid-month June expiration, and FCO participants will be required to comply with the lower limit.[7] In addition, the PHLX's Market Surveillance Department plans to monitor trading volume on a monthly basis, so that FCOs will be eligible immediately for a higher position limit when annual trading volume, as measured from the beginning of the calendar year, exceeds the levels established in the proposal.

In order to implement the proposal prior to the end of 1994, the PHLX plans to conduct a one-time review of FCO volume, calculating volume for the 12-month period immediately preceding approval of the proposal, so that FCOs with annual trading volume during that period of at least 3,500,000 contracts will be eligible for the 150,000-contract limit immediately after approval of the proposal.[8] The PHLX states that for the 12-month period from September 1993–August 1994, the Deutsche mark and the French franc would qualify for the higher limit.[9]

The PHLX notes that the Exchange's exercise limits are established by reference to position limits, so that any increase in position limits will also increase exercise limits. Accordingly, the PHLX proposes to amend Exchange Rule 1002 to reflect the proposed amendment to Exchange Rule 1001.

The Exchange views the current FCO position and exercise limits as too low in light of increased levels of trading activity in the underlying currency markets and the resultant growth in liquidity of PHLX FCOs in recent years. The PHLX's proposal is designed to identify and accommodate those active currencies where heavier trading and open interest warrant higher limits. The PHLX understands that if it were to begin trading a new currency, measurement of the new currency's trading volume for purposes of establishing its eligibility for the 150,000-contract limit would be calculated from the beginning of the "calendar year."

When FCOs began trading on the PHLX in 1982, FCO position limits were set at 10,000 contracts.[10] Since that time the position limits have been changed three times, including an increase to the current level of 100,000 contracts in 1986.[11] Since 1986, the PHLX has added several new products for which position limits are aggregated with other trading in the same underlying foreign currency.[12] As a result, many traders have begun to regularly accumulate positions near existing limits, especially in certain more active currencies. In those active currencies, the PHLX believes that trading interest could migrate to the over-the-counter ("OTC") market, hampering PHLX liquidity if large traders continue to be restricted by the current position limits.

The PHLX notes that since the time of the most recent increase in position limits, the size of the underlying currency market has grown exponentially.[13] Since 1986, average daily trading volume in PHLX FCOs has grown from 30,880 to 48,246 contracts in 1992.[14] As of February 1993, average daily volume was 61,062 contracts. Monthly volume and open interest have also increased dramatically since 1986, especially in certain FCOs. Further, the highest monthly open interest in FCOs reached 995,941 in 1986; 1,188,570 contracts in 1987; 1,190,389 contracts in 1992; and 1,338,458 in 1993. Total annual volume has increased from 7,905,239 contracts in 1986 to 12,158,069 contracts in 1992 to 13,101,365 contracts in 1993. Total FCO trading volume as of July 1994 was 5,755,939 contracts.

In light of these market changes, the PHLX believes that increased position and exercise limits are necessary to add depth and liquidity to the market. Because of the large size of the underlying market in foreign currencies, the PHLX does not believe that higher position and exercise limits will increase manipulative concerns. Moreover, the Exchange believes that these increases are particularly appropriate because the FCO market attracts a large number of institutional and corporate investors who have substantial hedging needs and execute block-sized[15] transactions in FCOs.

Although the Exchange may grant position limit exemptions in the interest of fair and orderly markets, the Exchange believes that it is more direct and logical to establish more appropriate position limits for all investors.

must be lowered from 150,000 to 100,000 contracts, the PHLX will promptly advise FCO participants that all series in that FCO will be subject to the lower limit effective the Monday following the mid-month June expiration. *See* Letter from Gerald D. O'Connell, First Vice President, Regulation and Trading Operations, PHLX, to Michael Wallnskas, Branch Chief, Options Regulation, Division, Commission, dated September 22, 1994 ("Amendment No. 3").

[5] *See* Securities Exchange Act Release No. 34525 (August 11, 1994), 59 FR 42620 (August 18, 1994).

[6] Currently, the PHLX trades two cross-rate FCOs, the British pound/Deutsche mark and the Deutsche mark/Japanese yen.

[7] *See* Amendment No. 3, *supra* note 4.

[8] *See* Amendment No. 2, *supra* note 4.

[9] *See* Amendment No. 3, *supra* note 4.

[10] *See* Securities Exchange Act Release No. 19313 (December 8, 1982) 47 FR 56591 (order approving File No. SR-PHLX-81-04).

[11] *See* Securities Exchange Act Release No. 27310, *supra* note 2. *See also* Securities Exchange Act Release Nos. 21676 (January 18, 1985) 50 FR 3859 (order approving File No. SR-PHLX-84-18) (increasing position limits from 10,000 to 25,000 contracts); and 22479 (September 27, 1985), 50 FR 41276 (order approving File No. SR-PHLX-85-22) (increasing position limits to 50,000 contracts).

[12] *See e.g.* Securities Exchange Act Release Nos. 24859 (August 27, 1987) 52 FR 33493 (order approving File No. SR-PHLX-87-24) (aggregating European-style contracts); 30945 (July 21, 1992) 57 FR 33381 ((order approving File No. SR-PHLX-92-13) (aggregating month-end options); and 33732 (May 8, 1994), 59 FR 12023 (order approving File No. SR-PHLX-93-10) (aggregating cash-spot FCOs).

[13] In 1989, total gross global foreign exchange turnover was estimated to be $932 billion per day and net global turnover was estimated to be $640 billion per day. *See* Bank for International Settlements ("BIS") Survey of Foreign Exchange Market Activity, April 1989. In 1992, total gross global foreign exchange turnover was estimated to be $1,354 billion per day, a 35% increase since April 1989. After allowing for the elimination of local and cross-border double-counting and estimated gaps in reporting (*e.g.*, exchange-traded options and futures and countries not providing counterparty information for over-the-counter transactions), global "net-net" exchange market turnover in spot, forward and derivative contracts may be estimated at $880 billion per day during April 1992. *See* BIS Central Bank Survey of Foreign Exchange Market Activity in April 1992, March 1993.

[14] Average daily volume in foreign currency options was 14,829 contracts in 1985 and 30,880 contracts in 1986.

[15] For the purposes of this proposal, the PHLX defines "block-sized orders" as orders of 100 contracts or more. *See* July 27 Letter, *supra* note 4.

The PHLX believes that the proposed rule change is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade as well as to protect investors and the public interest. The PHLX believes that the increased depth and liquidity of the FCO market should promote just and equitable principles of trade. In addition, the PHLX believes that the proposed approach to FCO position limits should ensure that the applicable limit is reasonably related to trading volume. The PHLX believes that this, in turn, should result in position limit levels that serve the purposes of protecting investors and the public interest as well as preventing unfair acts and practices, such as manipulation.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5).[16] Specifically, the Commission believes that the proposal to raise the position limit for only those FCOs with annual trading volume of at least 3,500,000 contracts should help to accommodate the needs of investors and market participants while ensuring that the increased limits are only available for those currencies with extremely large and liquid markets.

In this regard, the Commission believes, as it has stated in the past, that although position and exercise limits for FCOs must be sufficient to protect the options and related markets from disruptions by manipulation, the limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent market makers from adequately meeting their obligations to maintain a fair and orderly market.[17] In its proposal, the PHLX states that the FCO market attracts a large number of institutional and corporate investors who have substantial needs and who execute block-sized transactions in FCOs. In addition, the PHLX believes that trading in active currencies could migrate to the OTC market if traders continue to be restricted by the PHLX's current FCO position limits. In light of the size of the FCO market and the needs of FCO investors and market makers, the Commission believes that the PHLX's proposal is a reasonable effort to accommodate the needs of market participants and to help the Exchange remain competitive with the OTC market for FCOs.

At the same time, the Commission does not believe that the proposal significantly increases concerns regarding intermarket manipulations or disruptions of the markets for FCOs or the underlying currencies. The Commission notes that the interbank foreign currency spot market is an extremely large, diverse market comprised of banks and other financial institutions worldwide.[18] That market is supplemented by equally deep and liquid markets for standardized options and futures on foreign currencies and options on those futures. An active OTC market also exists in FCOs. Given the probable expense of attempting to affect the cash market for the currencies underlying the FCOs, the Commission believes that it would be difficult for a market participant to manipulate the underlying cash market to benefit a previously established FCO position.

In addition, the Commission believes the proposal's requirement that FCOs have annual trading volume of 3,500,000 contracts to be eligible for the 150,000 contract limit further minimizes the potential for manipulations and helps to ensure that only consistently active currencies will be eligible for the higher position limit. In this regard, the Commission notes that if the PHLX's annual review of FCO trading volume indicates that an FCO is no longer eligible for the higher position limit, then the lower limit will be effective in all series of the FCO effective the Monday following the mid-month June expiration.[19]

The Commission believes that the proposal's two-tiered approach to FCO position limits is consistent with the three-tiered position limits for equity and narrow-based index options traded on the PHLX, and that tiering is consistent with the evolutionary approach that the Commission and the options exchanges have adopted in increasing position and exercise limits.[20] The Commission believes that the PHLX has had considerable experience monitoring the tiered framework in equity options and narrow-based index options, and that differing position limits in those options have not created programming or monitoring problems for securities firms, or led to significant customer confusion.[21] Based on the PHLX's experience with the three-tiered approach in equity and narrow-based index options, the Commission believes the two-tiered approach for FCOs is appropriate.

Moreover, the absence of discernible manipulative problems under the current FCO position limit leads the Commission to conclude that the proposed increase is warranted. The Commission recognizes, as it has stated in the past, that there are no ideal limits in the sense that options positions of any given size can be stated conclusively to be free of any manipulative concerns.[22] The PHLX and the Commission, however, have relied largely on the absence of discernible manipulation or disruption problems under the current limit as an indicator that additional increases can be safely considered. The Commission believes for these reasons that the liberalization of existing FCO position and exercise limits under the condition specified is appropriate.[23]

In addition, the Commission believes that the PHLX's surveillance programs will be adequate to detect and deter the use of illegal position limits by market participants as well as detect and deter attempted manipulative activity and other trading abuses.

The Commission believes that it is reasonable for the PHLX, on a timely basis, to review annual FCO volume during the year measured immediately prior to approval of the proposal in order to allow the Exchange to implement the higher position limit for eligible FCOs prior to the end of 1994.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

The Commission believes that Amendment No. 3 strengthens the PHLX's proposal by requiring that lower position limits be implemented sooner than originally proposed, *i.e.*, six months rather than up to two years, if an FCO's trading volume for the previous year is less than 3,500,000 contracts, thereby helping to ensure that

[16] 15 U.S.C. § 78f(b)(5) (1982).

[17] *See* Securities Exchange Act Release No. 22479, *supra* note 11.

[18] *See* Securities Exchange Act Release No. 31627 (December 21, 1992), 57 FR 62399 (December 30, 1992) (order approving File No. SR-Amex-92-36).

[19] *See* Amendment No. 3, *supra* note 4.

[20] *See* Securities Exchange Act Release No. 33288 (December 3, 1994), 58 FR 65221 (December 13, 1993) (order partially approving File No. SR-PHLX-93-07).

[21] *Id.*

[22] *See* Securities and Exchange Act Release No 33288, *supra* note 20.

[23] The Commission continues to believe that proposals to increase position and exercise limits must be justified and evaluated separately. After reviewing the proposed exercise limits, along with the eligibility criteria for the higher tier, the Commission has concluded that the exercise limit increase does not raise manipulation problems or increase concerns over market disruption in the underlying currencies.

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only actively traded currencies are eligible for the higher position limit. Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b) of the Act to approve Amendment No. 3 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 24, 1994.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–PHLX–93–13) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24304 Filed 9–30–94, 8:45 am]

BILLING CODE 8010–01–M

[24] 15 U.S.C. § 78s(b)(2) (1982).

[25] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34721; File No. SR–Phlx–92–03]

Self Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 to the Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 4 to the Proposed Rule Change, by the Philadelphia Stock Exchange, Inc., Amending Options Floor Procedure Advice A–2 and Rule 1066

September 26, 1994.

On February 26, 1992, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Phlx Options Floor Procedure Advice ("OFPA") A–2 and Phlx Rule 1066. The Exchange filed Amendment No. 1 to the proposed rule change on January 6, 1993,[3] Amendment No. 2 on June 19, 1993,[4] Amendment No. 3 on June 23, 1994,[5] Amendment No. 4 on September 21, 1994.[6]

The proposed rule change and Amendment Nos. 1, 2, and 3 thereto were published for comment in the **Federal Register** on July 1, 1994.[7] No comments were received on the proposed rule changes, nor the amendments. This order approves the proposal and the floor amendments.

The proposed rule change to existing OFPA A–2 relates to the acceptance of contingency orders by Exchange specialists ("Specialists"). The changes to part (ii), and the addition of part (iii), of OFPA A–2 would permit Specialists to accept contingency orders currently forwarded through the Automated Options Market System (also known as "AUTOM") without the requirement of approval by an Exchange floor official ("Floor Official"). Such contingency orders would include those currently listed and defined in paragraph (c) of Phlx Rule 1066,[8] as well as additional types of contingency orders that the Exchange is proposing to add to Rule 1066(c). In addition, the Exchange is proposing to make changes to the fine schedule of OFPA A–2.

Curently, a Specialist is prohibited under OFPA A–2 from accepting contingency orders, other than stop (stop-loss) and stop-limit orders, without the express approval of a Floor Official.[9] The proposed changes would make permissible the acceptance of contingency orders by Specialists without the approval of a Floor Official. The change would extend the acceptance of certain contingency orders without floor official approval beyond the currently permitted acceptance of stop (stop-loss) and stop-limit orders to include contingency orders as defined as such in Rule 1066(c), and will apply to both customer and broker-dealer accounts. Furthermore, a Specialist would be able to refuse to accept contingency orders, but may only refuse to accept contingency orders from customer accounts upon the prior approval of two Floor Officials.

The Exchange is proposing to clarify the existing definitions of stop (stop-loss) and stop-limit orders in Phlx Rule 1066, and to add new subparagraphs (c)(4)–(7) to Rule 1066. This new text would expand the existing list of the types of contingency orders and define each contingency order permitted. Specifically, the Exchange proposes to add all-or-none,[10] opening-only-market,[11] market-on-close,[12] and cancel-replacement orders.[13]

Finally, the Exchange is proposing to amend the fine schedule to OFPA A–2 to increase the penalties for infractions of those guidelines by Specialists.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[14] Specifically, the Commission finds the amendment to OFPA A–2 permitting Specialists to accept contingency orders, as defined in Phlx Rule 1066, without prior Floor Official approval, will remove impediments to and perfect the mechanism of a free and open market and a national market system by facilitating quicker and more efficient executions of such contingency orders. While the Commission believes that it is permissible for Specialists to retain the ability to refuse to accept contingency orders as market conditions necessitate, the Commission also believes that the proposed amendment to OFPA A–2 requiring the express approval of two Floor Officials in order for a Specialist to refuse to accept a contingency order from a customer account will serve to prevent Specialists from arbitrarily rejecting such customer orders, and will thereby help to protect investors and the public interest. In this regard, the Commission would expect the Phlx to monitor this area to assure that orders are not arbitrarily or unfairly being refused.

The Commission finds that the expansion of Phlx Rule 1066(c) to include four additional types of contingency orders is consistent with the Act and the rules thereunder, as well as the rules of other self-regulatory organizations which trade option products. Specifically, the definitions of all-or-none,[15] opening-only-market,[16] and market-on-close[17] orders are consistent with the definitions contained in the rules of other options self-regulatory organizations, all of which rules have been previously approved by the Commission. In addition, although not contained in the rules of other self-regulatory organizations, the ability, or in some cases the responsibility, of Exchange members to submit cancel-replacement orders in appropriate circumstances is set forth in Phlx OFPA A–7(b), which was previously approved by the Commission.[18]

The Commission also finds that the proposed amendments to the definitions of stop (stop-loss) and stop-limit orders in Rule 1066(c) merely clarify the current definitions of those terms, and therefore present no new regulatory issues.

The Commission also finds that the amendment to OFPA A–2's fine schedule to increase the penalties for infractions thereof will continue to provide a fair and effective means to enforce compliance with the provisions and thereby promote just and equitable principles of trade and the protection of investors and the public interest.

Finally, the Commission finds good cause for approving Amendment No. 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Currently, OFPA A–2(ii) permits specialists to accept spread, straddle, or combination orders, as those terms are defined in Phlx Rule 1066(d), (g) and (h), respectively with the express approval of one Floor Official. However, because such orders are discretionary in nature, and Section 11(a) of the Act[19] prohibits specialists from accepting discretionary orders, the Phlx has amended OFPA A–2 to prohibit specialists from accepting such orders, regardless of Floor Official approval. Thus, the purpose of Amendment No. 4 is merely to conform OFPA A–2 with the requirements and prohibitions of the Act, and necessarily serves to promote just and equitable principles of trade and protect investors and the public interest. Therefore, the Commission finds that no new regulatory issues are raised by Amendment No. 4. Accordingly, the Commission believes it is consistent with Sections 19(b)(2) and 6(b)(5) of the Act to approve Amendment No. 4 on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the foregoing that are filed with the Commission, and all written communications relating to the foregoing between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory orgainzation. All submissions should refer to File No. SR–Phlx–92–03, and should be submitted by October 24, 1994.

[1] 15 U.S.C. § 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] Amendment No. 1 clarifies that an Exchange specialist may accept or refuse contingency orders for placement on the Exchange order book, except that Exchange floor official approval is required to refuse to accept a customer contingency order. *See* Letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Sharon Lawson, Assistant Director, Division of Market Regulation, Commission, dated January 5, 1995.

[4] In Amendment No. 2, the Exchange notified the Commission of its intention to withdraw File No. SR–Phlx–92–37, because proposed changes to Phlx Rule 1066(c) contained therein, which would clarify the definitions of stop-limit and stop (stop-loss) orders and add definitions of all-or-none, opening-only-market, market-on-close, and cancel-replacement orders, would have duplicated the changes proposed by the Exchange in this File No. SR–Phlx–92–03. *See* Securities Exchange Act Release No. 32380 (May 28, 1993), 58 FR 31765 (June 4, 1993) ("Release No. 32380"). Also in Amendment No. 2, the Exchange proposed that Exchange specialists be permitted to accept spread, straddle, and combination orders, in addition to contingency orders, without the prior approval of an Exchange floor official. Amendment No. 2 added that Exchange specialists would not be permitted to refuse to accept customer contingency, spread, straddle, or combination orders without the prior approval of two Exchange floor officials. *See* Letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Michael Walinskas, Staff Attorney, Division of Market Regulation, Commission, dated June 17, 1993.

[5] In Amendment No. 3, the Exchange deleted from its proposal its request that Exchange specialists be permitted to accept spread, straddle, and/or combination orders without the prior approval of an Exchange floor official. *See* Letter from Gerald D. O'Connell, First Vice President, Phlx, to Michael Walinskas, Branch Chief, Options Regulation, Division of Market Regulation, Commission, dated June 23, 1994.

[6] In Amendment No. 4, the Phlx revised the text of Option Floor Procedure Advice A–2 to reflect the requirement that Exchange specialists are not permitted to accept discretionary orders, including spread, straddle, and combination orders, regardless of whether they receive the approval of a floor official. *See* Letter from Gerald D. O'Connell, First Vice President, Phlx, to Michael Walinskas, Branch Chief, Options Regulation, Division of Market Regulation, Commission, dated September 21, 1994.

[7] *See* Securities Exchange Act Release No. 32455 (June 24, 1994), 59 FR 33998 (July 1, 1994).

[8] Phlx Rule 1066 generally sets forth certain types of orders, including contingency orders, market orders, and limit orders. Paragraph (c) of Rule 1066 lists certain types of contingency orders, and specifically defines such orders. Currently, the contingency orders currently listed and defined under paragraph (c) are stop (stop-loss) orders, stop-limit orders, delta orders, and multi-part orders.

[9] In addition, a Specialist is prohibited from accepting option orders consisting of two or more option series (*i.e.*, spread, straddle, and/or combination orders). *See* Phlx OFPA A–2. The Exchange's proposed rule change does not affect this prohibition, which continues to apply to Specialists. *See* Amendment No. 3, *supra* note 5.

[10] The Exchange defines an all-or-none order as a market order or limit order which is to be executed in its entirety, or not at all.

[11] The Exchange defines an opening-only-market order as a market order which is to be executed in whole or in part during the opening rotation of an options series, or not at all.

[12] The Exchange defines a market-on-close order as a market or limit order to be executed as close as possible to the closing bell, or during the closing rotation, and should be near to or at the closing price for the particular series.

[13] The Exchange defines a cancel-replacement order as a contingency order consisting of two or more parts which require the immediate cancellation of a previously received order prior to the replacement of a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety, the replacement order is automatically cancelled or reduced by such number.

[14] 15 U.S.C. § 78f(b)(5) (1988).

[15] *See* American Stock Exchange, Inc. ("Amex") Rule 131(c); Chicago Board Options Exchange, Inc. ("CBOE") Rule 6.53(i); and New York Stock Exchange, Inc. ("NYSE") Rule 13. *See also* Phlx OFPA A–7.

[16] *See* Amex Rule 131(e); CBOE Rule 6.53(h); and NYSE Rule 13.

[17] *See* Amex Rule 131(f) and NYSE Rule 13.

[18] *See* Securities Exchange Act Release No. 30670 (May 6, 1992), 57 FR 20312 (May 12, 1992) ("Release No. 30670"). OFPA A–7(b) states that in order to effect a change in the option series of an order placed on the Specialist book, a member shall submit separate cancel and replacement orders to the Specialists. In order to effect a change in the price or volume of an order placed on the Specialist book, a member may submit the appropriate cancel and replacement ticket or tickets to the Specialist. In Release No. 30670, the Commission found that this provision "served the needs of investors and promotes investor confidence in the quality and integrity of the Phlx's options market by requiring specialists to respond promptly to cancellation instructions and to indicate immediately that the cancellation was accepted or that the cancellation was too late, and therefore, that the order was executed." In addition, the Commission found that the provision "will improve the execution of customer orders by providing an efficient procedure for submitting changes in the terms of an order on the specialist's book." *Id.*

[19] 15 U.S.C. 78k(a)

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It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change (File No. SR–Phlx–92–03), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24305 Filed 9–30–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

September 27, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

WHX Corporation Holding Co.
Series D Conv. Pfd. Stock (File No. 7–12997)
US 1 Industries, Inc.
Common Stock, $.01 Par Value (File No. 7–12998)
Clarcor, Inc.
Common Stock, $1 Par Value (File No. 7–12999)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 19, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

[20] 15 U.S.C. § 78s(b)(2) (1988).

[21] 17 CFR 200.30–3(a)(12) (1993).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–24308 Filed 9–30–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20574; 812–9186]

ACM Institutional Reserves, Inc.; Notice of Application

September 26, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: ACM Institutional Reserves, Inc. ("ACM").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from rule 24f–2 under the Act.

SUMMARY OF APPLICATION: ACM requests an order to permit it to pay a share registration fee due under rule 24f–2 for its fiscal year ending April 30, 1994 based on net sales, *i.e.*, new sales minus redemptions, rather than on gross sales, *i.e.*, with no credit for redemptions.

FILING DATE: The application was filed on August 19, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested parties may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 20, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Senior Attorney, at (202) 942–0570, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Applicant, a registered open-end investment company, has filed a declaration pursuant to rule 24f–2 under the Act to register an indefinite amount of shares under the Securities Act of 1933.

2. An investment company that has filed a declaration under rule 24f–2 must file annual notices with the SEC and pay share registration fees for shares sold in the previous fiscal year. If the rule 24f–2 notice is filed within two months after the close of the investment company's fiscal year, the amount of the registration fee is based on net sales (new sales minus redemptions) in the year in question. If the rule 24f–2 notice is not filed within two months, the registration fee is based on gross sales (with no credit for redemptions). At the latest, the rule 24f–2 notice along with the appropriate registration fee must be filed within six months after the end of an investment company's fiscal year.

3. ACM's fiscal year ends on April 30. ACM submitted the rule 24f–2 notice for the fiscal year ending April 30, 1994 to a same day courier service on June 30, 1994, the last day of the two month filing deadline. Because ACM had net sales during the fiscal year, the notice was accompanied by $25,031.59, the fee payable to register the shares sold by ACM in excess of redemptions. The filing arrived at the SEC's filing desk after 5:30 p.m. on June 30, 1994, and was then made on July 1, 1994, but was rejected as having been filed too late to be eligible for a registration fee based on net sales. Thus, absent relief, applicant owes registration fees based on gross sales. For the fiscal year ending April 30, 1994, this would amount to an additional $573,733.41.

Applicants' Legal Analysis

1. Section 6(c) permits the SEC to exempt any person, security, or transaction from any provisions of the Act if and to the extent the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. In addition, the SEC must find that an investment company was not at fault to grant an exemption from the two month filing deadline of rule 24f–2.[1]

2. ACM believes that it made a good faith effort to file the rule 24f–2 notice on a timely basis by same-day courier. ACM states that the delay in receipt of its filing was caused by an extraordinary

[1] *See* Decision of the Comptroller General of the United States, File No. B–239769.2 (July 24, 1992).

series of delays precipitated by the same-day courier service.

3. ACM believes that the requested relief meets the section 6(c) standards. Thus, ACM requests an exemption under section 6(c) from rule 24f–2 to permit them to pay registration fees based on net sales.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24309 Filed 9–30–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20575; 812–8942]

Colonial Trust I, et al.; Notice of Application

September 26, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Colonial Trust II, Colonial Trust II, Colonial Trust III, Colonial Trust IV, Colonial Investment Grade Municipal Trust, Colonial Municipal Income Trust (collectively, the "Closed-End Trusts"), and any subsequently registered investment companies advised by Colonial Management Associates, Inc. (collectively, with the Open-End Trusts and Closed-End Trusts, the "Trusts"); and Colonial Management Associates, Inc. (the "Adviser").

RELEVANT ACT SECTIONS: Order requested (a) under section 6(c) of the Act granting an exemption from sections 13(a)(2), 18(a), 18(c), 18(f)(1), 22(f), 22(g), and 23(a), and rule 2a–7 thereunder, (b) under sections 6(c) and 17(b) of the Act granting an exemption from section 17(a)(1), and (c) pursuant to section 18(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting each applicant investment company to establish deferred compensation plans for its trustees who are not affiliated persons of the company's investment adviser or principal underwriter.

FILING DATES: The application was filed on February 16, 1994, and amended on April 29, 1994, August 12, 1994, and September 16, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 24, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, One Financial Center, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each existing Trust is organized as a Massachusetts business trust and advised by the Adviser. The Open-End Trusts are registered open-end management investment companies, and the Closed-End Trusts are registered closed-end management investment companies. The Colonial Investment Services division (the "Distributor") of the Adviser serves as the principal underwriter of the Open-End Trusts. Certain of the existing Trusts offer multiple series of shares. The term "Fund" refers to any series of a Trust, if the Trust offers shares in multiple series, or to a Trust that offers shares only in one series.

2. The board of trustees [1] of each Fund currently consists of nine persons, eight of whom are not "affiliated persons" of the Adviser or the Distributor within the meaning of section 2(a)(3) of the Act. Only the trustees who are not affiliated persons of the Adviser or the Distributor (the "Eligible Trustees") are entitled to receive annual fees for their services. The aggregate annual fees are, and are expected to remain, insignificant in comparison to applicants' total net assets.[2]

3. Applicants request relief to permit the Eligible Trustees to elect to defer receipt of all or part of their trustees' fees pursuant to a deferred fee agreement (the "Agreement") entered into between each Eligible Trustee and appropriate Fund. Under the Agreement, the Eligible Trustees could defer payment of trustees' fees to defer payment of income taxes or for other reasons.

4. Under the Agreement, the deferred fees payable by a Fund to a particular Eligible Trustee will be credited to a book reserve account established by the Fund (the "Deferred Fee Account"), as of the date such fees would have been paid to the Eligible Trustee. Trustees' fees payable for attending board meetings or board committee meetings will be credited to the Deferred Fee Account on the following business day. The value of a Deferred Fee Account shall equal the value such account would have had if the amounts credited to such account had been invested and reinvested in certain designated securities ("Underlying Securities") as of the date credited. Each Deferred Fee Account shall be credited or charged with book adjustments reflecting all dividends, including interest income and capital gains, and all unrealized gains and losses that would have been earned had the account been investing in such Underlying Securities.

5. The Underlying Securities will be shares of Funds as agreed to between the applicable board of trustees and the participating trustee. Although a Fund's own shares may serve as an Underlying Security, applicants do not anticipate that a Fund will purchase its own shares. Rather, monies equal to the amount credited to the Deferred Fee Account will be invested along with and in the same securities and proportions as the rest of the Fund's assets. Under existing deferral agreements, certain trustees have deferred receipt of their compensation under an arrangement where the trustee is entitled to receive an amount equal to the value such deferred compensation would have had if it had been invested in U.S. Treasury Bills on the date upon which such compensation otherwise would have been paid to such trustee.[3]

[1] The term "trustee," as used herein, also refers to directors of a Fund that is organized as a corporation.

[2] It is expected that the aggregate amount payable to all trustees of the Trusts who receive remuneration from the Trusts for their services in 1994 will be $791,000, which would represent .0053% of the Trusts' aggregate net assets as of December 31, 1993.

[3] The staff of the Division of Investment Management has stated that it would not recommend that the Commission take any enforcement action under the Act if registered investment companies establish deferred compensation plans where the rate of return on the deferred compensation is based on the return on

Continued

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6. The obligations of a Fund to make payments to the Deferred Fee Accounts will be general unsecured obligations of the Fund, and payments made pursuant to the Agreement will be made from the Fund's general assets and property. As a matter of risk management, each Fund intends and, with respect to any money market Fund that values its assets by the amortized cost method, undertakes, to purchase and maintain the Underlying Securities in amounts equal to the deemed investment of the Deferred Fee Accounts of its trustees. If a Fund chooses to purchase Underlying Securities to cover its obligations under the Agreement, any and all such Underlying Securities will continue to be a part of the general assets and property of the Fund. Any purchase of Underlying Securities will be made for the benefit of shareholders generally and not for the Eligible Trustees.

7. Under the Agreement, an Eligible Trustee may elect to defer payment of all or part of his or her trustee's fees until (a) The trustee ceases to be a trustee of the Fund, (b) the trustee dies, (c) the dissolution, liquidation, or winding up of the Fund, or the disposition of all of or substantially all of the Fund's assets (unless the Fund's obligations under the Agreement have been assumed by a financially responsible party purchasing such assets), or (d) the merger or consolidation of the Fund (unless, prior to such merger or consolidation, the board of trustees determines that the Agreement shall survive the merger or consolidation).[4] Payments shall be made in a lump sum or in a number of annual installments, not to exceed ten, elected by the trustee at the time of entering into the Agreement. Each annual payment will be made as of January 31. The trustee's right to receive payments will be nontransferable, except that, in the event of a trustee's death, amounts payable to him or her thereafter will be payable to his or her designated beneficiary.

8. The Agreement will not obligate a Fund to retain the services of a trustee, nor will it obligate a Fund to pay any particular level of fees to any trustee. The proposed arrangements will not affect the voting rights of any of the Funds' shareholders. If a Fund purchases Underlying Securities issued by another Fund, the purchasing Fund will vote such shares in proportion to the votes of all other holders of shares of such affiliated Fund.

U.S. Treasury Bills. *See, e.g., The North Carolina Cash Management Trust* (pub. avail. Jan. 23, 1992).

[4] Applicants acknowledge that the requested order would not permit a party acquiring a Fund's assets to assume a Fund's obligations under the Agreement if such assumption of obligations would violate the Act. Accordingly, such assumption would be permitted only if the assuming party is (1) Another Fund, (2) another registered investment company that has received exemptive relief similar to that sought by the application, or (3) not a registered investment company.

Applicants' Legal Analysis

1. Applicants believe that the deferred fee arrangements are in the best interests of each Fund and its shareholders, and that the arrangements will enhance the ability of the Funds to attract and retain high caliber trustees.

2. Sections 18(a) and 18(c) restrict the ability of a registered closed-end investment company to issue senior securities. Similarly, section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that any registered investment company obtain shareholder authorization before issuing any senior securities not contemplated by the recitals of policy in its registration statement. Applicants contend that the Agreement possesses none of the characteristics of senior securities that led Congress to enact these sections. The Agreement would not: (a) Induce speculative investments or provide opportunities for manipulative allocation of the expenses and profits of a Fund; (b) affect control of a Fund; (c) confuse investors or convey a false impression of safety; or (d) be inconsistent with the theory of mutuality of risk. All liabilities for deferred fees are expected to be offset by essentially equal amounts of assets that would not otherwise exist if the fees were paid on a current basis.

3. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities issued by open-end investment companies. Applicants contend that any restrictions created under the Agreement clearly would be set forth in the Agreement, are included primarily to benefit the Eligible Trustees, and would not adversely affect the interests of any shareholder of any Fund.

4. Sections 22(g) and 23(a) generally prohibit a registered open-end and closed-end investment company, respectively, from issuing any of their securities for services or for property other than cash or securities. Applicants assert that, while a trustee would receive fees for services, such fees would be payable independent of the Agreement. The Agreement would merely provide for deferral of payment of such fees and thus should be viewed as being issued not in return for services but in return for a Trust not being required to pay such fees on a current basis. Applicant further assert that these sections primarily are concerned with the dilutive effect on the equity and voting power than can result when securities are issued for consideration that is not readily valued. Applicants submit that the Agreement would not have such effect.

5. Rule 2a–7 imposes certain restrictions on the investments of "money market funds," as defined under the rule, that would prohibit a Fund that is a money market fund from investing in the shares of any other Fund. Applicants submit that the requested exemption would permit the Funds in question to achieve an exact matching of Underlying Securities with the deemed investments of the Deferred Fee Accounts, thereby ensuring that the deferred fees would not affect net asset value. Applicants further assert that the amounts involved in all cases would be *de minimis* in relation to the total net assets of each Fund, and would have no effect on the per share net asset value of the Funds.

6. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the proposed arrangements satisfy the standards for an exemption from the provisions discussed above.

7. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company from selling any security to such registered investment company. Each Fund may be an affiliated person of each other Fund under section 2(a)(3) of the Act. Applicants assert that section 17(a)(1) was designed to prevent sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated or to acquire controlling interests in such enterprises. Applicants submit that the sale of securities issued by the Funds pursuant to the Agreement does not implicate the concerns of Congress in enacting this section, but merely would facilitate the matching of each Fund's liability for deferred fees with the Underlying Securities that would determine the amount of such liability. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the transaction is consistent with the policies of the registered investment company, and the transaction is consistent with the general purposes of the Act. Applicants assert that the proposed transaction satisfies the criteria of section 17(b).

8. Section 17(d) and rule 17d–1 generally prevent a registered investment company's joint or joint and several participation with an affiliated person in a transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan on a basis different from or less advantageous than that of the affiliated person. Applicants assert that any adjustments made to the Deferred Fee Accounts to reflect the income, gain, or loss on investments of the assets of a Fund would be identical in amount to income, gain, and loss by other shareholders in the Fund. An Eligible Trustee would neither directly or indirectly receive a benefit that otherwise would inure to the Funds or their shareholders. Deferral of an Eligible Trustee's fees in accordance with the Agreement essentially would maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the fees were paid on a current basis. When all payments have been made to an Eligible Trustee, such Eligible Trustee will be, relative to the Funds, no better off than if such Eligible Trustee had received deferred fees on a current basis and invested them in shares of the Underlying Securities.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. With respect to the requested relief from rule 2a–7, any money market Fund that values its assets by the amortized cost method or penny-rounding method will buy and hold Underlying Securities that determine the performance of Deferred Fee Accounts to achieve an exact match between such Fund's liability to pay deferred fees and the assets that offset that liability.

2. If a Fund purchases Underlying Securities issued by an affiliated Fund, the purchasing Fund will vote such shares in proportion to the votes of all other holders of shares of such affiliated Fund.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24311 Filed 9–30–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20577; No. 811–4515]

Colonial United States Equity Index Trust

September 26, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Colonial United States Equity Index Trust.

RELEVANT 1940 ACT SECTION: Order requested under Section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on August 25, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 21, 1994, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, Colonial United States Equity Index Trust, One Financial Center, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Counsel, on (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a free from the SEC's Public Reference Branch.

Applicant's Representations

1. The Applicant (formerly, the GNMA Trust) is a Massachusetts business trust and an open-end, diversified investment management company registered under the 1940 Act.

2. On December 17, 1985, Applicant filed a notification of registration under Section 8(a) of the 1940 Act and a registration statement under the Securities Act of 1933 and Section 8(b) of the 1940 Act registering an unlimited number of shares of beneficial interest. The registration statement became effective on July 22, 1986, and the initial public offering commenced July 25, 1986.

3. On August 13, 1993, Applicant's board of trustees unanimously approved the terms of an agreement and plan of reorganization ("Plan"). The Plan was approved by Applicant's shareholders on December 10, 1993. Applicant relied upon Rule 17a–8 under the 1940 Act in determining to merge its assets into an existing series of a registered investment management company.

4. On December 16, 1993, Applicant made a final distribution of dividend income to its security holders in the amount of $0.1825 per share, for a total distribution of $342,672.

5. On December 17, 1993, pursuant to the Plan, Applicant transferred all of its assets to Colonial U.S. Fund for Growth ("Colonial Growth") in a non-taxable transaction. Colonial Growth is a series of Colonial Trust VI, a registered management investment company. In exchange for the transfer of assets, Colonial Growth assumed Applicant's liabilities and issued *pro rata* to Applicant's shareholders 3,552,164 of Colonial Growth Class A shares at a rate of 1.88 shares for each former share of the Applicant. The exchange resulted in the complete liquidation, distribution and cancellation of 1,885,910.722 shares of Applicant then outstanding, valued at $42,692,625.55 based on the closing net asset value for Applicant and the Colonial Growth as of December 17, 1993 of $22.64 and $12.02, respectively. The aggregate net assets of Colonial Growth immediately after the exchange were $227,715,458. The Plan did not affect the net asset value of the shares held by Applicant's shareholders.

6. Applicant's investment adviser paid all expenses incurred in connection with the Plan. These expenses totaled approximately $79.063, and consisted of legal, auditing, printing, mailing and proxy solicitation expenses. No brokerage commissions were paid with respect to the Plan.

7. Applicant has retained no assets and has no security holders. Applicant does not have any debts or other liabilities which remain outstanding and is not a party to any litigation or administrative proceeding.

8. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of Applicant.

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9. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs. Applicant will, after receipt of the relief requested, file certificates of dissolution or similar documents in accordance with state law.

10. Applicant states that it is current with all of its filings under the 1940 Act, including all Form N–SAR filings for each semi-annual period for which such filing was or is required.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24312 Filed 9–30–94, 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20573; No. 812–9112]

Great-West Life & Annuity Insurance Company, et al.

September 26, 1994.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Great-West Life & Annuity Insurance Company ("Great-West Life"), Maxim Series Account ("Separate Account"), and The Great West Life Assurance Company ("Great West Assurance").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of: (a) The Separate Account in connection with the offer and sale of certain flexible premium payment variable annuity contracts ("Contracts"); (b) the Separate Account in connection with the issuance of variable annuity contracts that are substantially similar in all material respects to the Contracts ("Future Contracts"); and (c) any other separate account established in the future by Great-West Life in connection with the issuance of Future Contracts.

FILING DATE: The application was filed on July 15, 1994, and amended and restated on September 20, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request at hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 21, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Beverly A. Byrne, Esq., The Great-West Life Assurance Company, 8515 East Orchard Road, Englewood, Colorado 80111.

FOR FURTHER INFORMATION CONTACT: Yvonne Hunold, Senior Counsel, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representatives;

1. Great-West Life is a stock file insurance company and a wholly-owned subsidiary of Great-West Assurance. Great-West Assurance is a subsidiary of Great-West Lifeco, Inc. ("Great-West Lifeco"), an insurance holding company and a subsidiary of Power Financial Corporation of Canada, a financial services company. Great-West Life is principally engaged in offering insurance and annuity contracts, and is admitted to do business in the District of Columbia and in all states, except New York.

2. The Separate Account is a separate investment account established by Great-West Life for the purpose of investing purchase payments received under the Contracts. The Separate Account is registered under the 1940 Act as a unit investment trust and the Contracts are registered as securities under the Securities Act of 1933.

The Separate Account currently has nine investment divisions ("Divisions"). Seven Divisions invest solely in corresponding portfolios of the Maxim Series Fund Inc. ("Maxim Fund"), and two Divisions invest solely in corresponding Portfolios of TCI Portfolios Inc. ("TCI Fund") (collective, "Funds"). Each Division is subdivided into six subaccounts ("Subaccounts"), two of which are used for allocations under the Contracts. The remaining four Subaccounts are used for allocations under other variable annuity contracts previously offer by Great-West life. Additional Divisions may be established in the future to invest in other portfolios of Maxim Fund or TCI Fund, or in other investments.

Great-West Life may, in the future, issue through the Separate Account, and through other separate accounts that it may establish in the future, other variable annuity contracts that are substantially similar in all material respects to the Contracts (collectively, "Future Contracts").

3. Maxim Fund and TCI Fund are registered open-end, diversified investment companies under the 1940 Act, each consisting of one or more investment series or portfolios (collectively, "Portfolios") with different investment objectives and policies. Great-West Life purchases and redeems Portfolio shares for the corresponding Divisions at net asset value. Shares of the Funds also are offered to other affiliated or unaffiliated separate accounts of insurance companies offering variable annuity or variable life insurance contracts.

4. Great-West Assurance will serve as the principal underwriter of the Contracts. Great-West Assurance is a subsidiary of Great-West Lifeco and is an affiliate of Great-West Life. Great-West Assurance is registered under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc.

5. The Contracts are to be used in connection with retirement plans that qualify for favorable federal income tax treatment under Section 401 or Section 408 of the Internal Revenue Code as an individual retirement plan ("Qualified Plan") or with plans purchased on a non-tax qualified basis ("Non-Qualified Plan"). The Contracts may be used for other purposes in the future, or offered only in connection with Qualified or Non-Qualified Plans.

6. The Contracts provide for minimum initial purchase payments and permit additional minimum purchase payments and periodic payments, subject to certain limitations. The Contracts provide for the accumulation of values on a variable basis determined by the investment experience of the Divisions to which the Contract owner allocates Purchase Payments. The Contracts also provide four Annuity Options for the payment of annuity benefits on a fixed and/or variable basis.

7. The Contracts also provide for the payment of a death benefit. If the Annuitant dies prior to the date on which annuity payments are to begin

("Retirement Date") and before age 75, the death benefit will be equal to the greater of either; (a) Contract Value less premium taxes, if any; or (b) total purchase payments made, less any partial surrenders of Contract Value, surrender charges, periodic payments, and premium taxes, if any. If the Annuitant dies prior to Retirement Date and after age 75, the Contract Value, less premium taxes, if any, will be paid to the beneficiary.

8. Various fees and expenses are deducted under the Contracts. An annual maintenance charge of $27 will be deducted from the Contract Value prior to the Retirement Date to compensate Great-West Life for administrative services. This charge is guaranteed not to exceed the cost of services to be provided over the life of the Contract, in accordance with the provisions of Rule 26a–1 under the 1940 Act. Great-West Life does not anticipate any profit from this charge.

9. Any premium or other taxes assessed by any governmental entity will be paid by Great-West Life. If the Contract Value is used to purchase an annuity under the Annuity Options, the dollar amount of any premium tax previously paid or payable upon annuitization by Great-West Life will be charged against Contract Value. The applicable premium tax rates currently range from 0% to 2.50%. The Separate Account and the Divisions will bear their own operating expenses and charges for federal income taxes, should such taxes be incurred by Great-West Life in connection with the operation of the Separate Account. No charge is made by Great-West Life for transfers of Contract Value among the Divisions. The Contracts also are not subject to any Contract policy fee.

10. No sales charges are deducted from premium payments under the Contracts. A contingent deferred sales charge ("CDSC") is deducted on any total or partial surrender of Contract Value prior to the Retirement Date that are attributable to Purchase Payments which have been credited to a Contract for less than seven years. Up to 10% of Contract Value as of December 31 of a calendar year prior to the year in which the amount is being surrendered can be withdrawn once per year without incurring the CDSC. Additional withdrawals are subject to a surrender charge equal to a percentage of the amount distributed according to the following schedule:

Year completed	Maximum surrender charge percent
1	7
2	6
3	5
4	4
5	3
6	2
7+	0

Total surrender charges will not exceed 7% of Purchase Payments under the Contracts. No CDSC is assessed on or after the seventh year of the Contracts. Applicants are relying on Rule 6c–8 under the 1940 Act to deduct the CDSC.

Great-West Life does not anticipate that the CDSC will generate sufficient revenues to pay the cost of distributing the Contracts. If this charge is insufficient to cover the expenses, the deficiency will be met from Great-West Life's general account assets, which may include amounts derived from the charge for mortality and expenses risks, discussed below.

11. A daily charge equal to an effective annual rate of 1.25% of the net asset value of the Separate Account will be imposed to compensate Great-West Life for bearing certain mortality and expense risks in connection with the Contracts and in connection with Future Contracts. Of this amount, 0.85% is allocable to mortality risks and 0.40% is allocable to expense risks. No deduction will be made for mortality and expense risks after the Retirement Date under Contracts electing certain Annuity Options that do not vary with the investment performance of the Divisions. The mortality and expense risk charge is guaranteed never to exceed 1.25%. This charge may be a source of profit for Great-West Life which will be added to its surplus and may be used for, among other things, the payment of distribution expenses.

12. The mortality risk arises from Great-West Life's contractual obligations to make Annuity Payments where one of the Life Annuity Options is selected (determined in accordance with the Annuity Tables and other provisions contained in the Contracts) regardless of how long an Annuitant may live. The mortality risk under the Contracts is the risk that, upon selection of an Annuity Option with a life contingency, Annuitants will live longer than Great-West Life's actuarial projections indicate, thereby resulting in higher than expected Annuity Payments. Great-West Life also assumes a mortality risk if the Annuitant should die prior to the Contract anniversary nearest the 75th birthday. In that event, Great-West Life is at risk to the extent that the amount of the Purchase Payments made exceed the Contract Value, less partial surrenders and surrender charges as of the date notice of death is received.

13. The expense risk borne by Great-West Life is the risk that the charges for administrative expenses, which are guaranteed not to increase for the life of the Contracts, may be insufficient to cover the actual costs of issuing and administering the Contracts in excess of the Contract Maintenance Charge.

Applicants' Legal Analysis

1. Applicants request an order of the Commission under Section 6(c) for exemptions from Section 26(a)(2) and 27(c)(2) of the 1940 Act to the extent necessary to permit the dedication of a maximum charge of 1.25% for the assumption of mortality and expense risks from the assets of: (a) The Separate Account in connection with the issuance of the Contracts; (b) the Separate Account in connection with the issuance of any Future Contracts; and (c) any other separate account established in the future by Great-West Life in connection with the issuance of Future Contracts. Applicants believe that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants submit that their request for exemptive relief for deduction of the 1.25% mortality and expense risk charge from the assets of the Separate Account, or any other separate account established by Great-West Life in the future, in connection with the issuance of Future Contracts, would promote competitiveness in the variable annuity contract market by eliminating the need for Great-West Life the file redundant exemptive applications, thereby reducing Great-West Life's administrative expenses and maximizing the efficient use of its resources. Applicants further submit that the delay and expense involved in having repeatedly to seek exemptive relief would impair Great-West Life's ability effectively to take advantage of business opportunities as they arise. Further, if Great-West Life were required repeatedly to seek exemptive relief with respect to the same issues addressed in this Application, investors would not receive any benefit or additional protection thereby. Thus, Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and purposes

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fairly intended by the policy and provisions of the 1940 Act.

3. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

4. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

5. Applicants represent that the 1.25% mortality and expense risk charge under the Contracts is within the range of industry practice for comparable annuity contracts. This representation is based on Applicants' analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the manner in which charges are imposed, the existence of charge level or annuity-rate guarantees, and the markets in which the Contracts are offered. Applicants represent that Great-West Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

Similarly, prior to making available any Future Contracts through the Separate Account, or through other separate accounts established in the future by Great-West Life, Applicants will represent that the mortality and expense risk charge under any such Future Contracts will be within the range of industry practice for comparable contracts. Applicants represent that Great-West Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology, and results of, its comparative survey.

6. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge under the Contracts, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC. Great-West Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and the Contract owners. The basis for that conclusion is set forth in a memorandum which will be maintained by Great-West Life at its administrative offices and will be made available to the Commission.

Additionally, Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge under Future Contracts, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC. Great-West Life also will maintain and make available to the Commission a memorandum setting forth the basis for the same representation with respect to Future Contracts offered by the Separate Account and by any other separate account established in the future by Great-West Life.

7. Applicants also represents that the Separate Account, and separate accounts established by Great-West Life in the future, will invest only in underlying funds which undertake, in the event they should adopt a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors or trustees, majority of whom are not "interested persons" of the company, formulate and approve any such plan.

Condition

Applicants undertake that such Future Contracts funded by the Separate Account, or by separate accounts established in the future by Great-West, which seek to rely on the order issued pursuant to this Application will be substantially similar in all material respects to the Contracts.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24314 Filed 9–30–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20584/812–9160

The Park Avenue Portfolio; Notice of Application

September 27, 1994

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Park Avenue Portfolio (the "Portfolio").

RELEVANT ACT SECTIONS: Order requested under section 17(b) of the Act for an exemption from section 17(a), and under section 17(d) of the Act and rule 17d–1 thereunder permitting certain joint transactions.

SUMMARY OF APPLICATION: Applicant requests an order to permit The Guardian U.S. Government Securities Fund series (the "Government Fund") of the Portfolio to merge with The Guardian Investment Quality Bond Fund series (the "Bond Fund") of the Portfolio. Because of certain affiliations, the two series may not rely on rule 17a–8 under the Act.

FILING DATE: The application was filed on August 12, 1994 and amended on September 21, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 20, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 201 Park Avenue South, New York, New York 10003.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Portfolio is an open-end management investment company. Prior to October 14, 1992, the Portfolio was known as The Guardian U.S. Government Trust (the "Trust"), and issued shares in a single series. Effective October 14, 1992, the Trust changed its name to "The Park Avenue Portfolio" and established six additional series within the Portfolio. These series include the Government Fund and the Bond Fund, as well as The Guardian Park Avenue Fund, The Guardian Baillie Gifford International Fund (the "International Fund"), The Guardian Asset Allocation Fund, The Guardian Tax-Exempt Fund, and The Guardian Cash Management Fund.

2. Guardian Investor Services Corporation ("GISC") serves as the distributor for all of the series and as investment adviser for all of the series except the International Fund. GISC is a wholly-owned subsidiary of The Guardian Insurance & Annuity Company, Inc., which in turn is a wholly-owned subsidiary of Guardian Life Insurance Company of America ("Guardian Life"). Guardian Life is a mutual life insurance company organized in the State of New York.

3. GISC provided the initial capital for the Trust in 1989. As of June 30, 1994, GISC owned 13.55% of the Government Fund and may be considered to control the Fund. In January 1993, Guardian Life provided the initial capital for the Bond Fund. As of June 30, 1994, Guardian Life owned 50.24% of the Bond Fund and may be considered to control the Fund. The investment objective of the Government Fund is to achieve a high level of current return through a combination of interest income and net capital gains consistent with prudent investment risk and security of principal. The investment objective of the Bond Fund is to secure a high level of current income and capital appreciation without undue risk to principal.

4. At a meeting held on June 23, 1994, the board of trustees of the Portfolio, including a majority of those trustees who are not "interested persons" as defined in the Act, approved an agreement and plan of reorganization the "Plan"). Pursuant to the Plan, on the effective date of the transaction (the "Closing Date"), the Government Fund will transfer all of its assets and liabilities to the Bond Fund in exchange for a number of shares of the Bond Fund having an aggregate net asset value equal to the aggregate net assets of the Government Fund exchanged. The Government Fund then will distribute such Bond Fund shares to its shareholders on a *pro rata* basis. Each Government Fund shareholder will have his or her Government Fund shares exchanged for the number of full and fractional shares of the Bond Fund which, when multiplied by the net asset value per share of Bond Fund, will have an aggregate net asset value equal to the aggregate net asset value of that holder's shares in the Government Fund on the Closing Date. On July 29, 1994, the Portfolio registered the shares of the Bond Fund to be issued pursuant to the Plan with the SEC on Form N–14.

5. While the Bond Fund ordinarily imposes in initial sales charge in connection with the purchase of shares, the sales charge will not apply to shares of the Bond Fund acquired pursuant to the proposed reorganization. Neither Fund imposes a contingent deferred sales charge or other fee in connection with the redemption of shares.

6. In evaluating whether to adopt the Plan and recommend its approval by shareholders of the Government Fund, the board of trustees has considered the following factors, among others: (a) The potential benefits of the reorganization to shareholders; (b) the compatibility of investment objectives, policies, restrictions and investment holdings of the Government Fund and the Bond Fund; (c) the current total net assets of the two Funds and the current and historical expenses and performance of each Portfolio; (d) the terms and conditions of the proposed reorganization and whether it would result in dilution of any shareholder's interest; (e) the absence of any direct or indirect costs to be incurred by either Fund or the Portfolio; and (f) the tax-free nature of the reorganization.

7. The Portfolio will submit the proposed Plan to the shareholders of the Government Fund for their approval at a meeting called for that purpose on October 19, 1994. Shareholders of the Government Fund will receive a notice of the special meeting of shareholders and a proxy statement and prospectus containing all material disclosures, including a description of all material aspects of the proposed reorganization and a copy of the Plan. Consistent with the declaration of trust, a majority of the outstanding shares of the Government Fund must approve the reorganization. GISC will vote the shares it owns in the Government Fund in favor of the Plan and will pay all the costs of the reorganization. In addition to shareholders approval, the consummation of the reorganization is conditioned upon receipt from the SEC of the order requested herein.

Applicant's Legal Analysis

1. Section 17(a) of the Act, in pertinent part, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company, any security or other property. Section 2(a)(3) of the Act provides, in pertinent part, that any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of any other person is an affiliated person of that person.

2. Section 17(b) provides that the SEC may exempt a transaction from section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

3. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all the assets involving registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors and/or common officers. The exemption provided by the rule is conditioned upon a determination by a majority of the directors of each such investment company (including a majority of the directors of each company who are not interested persons of the participating registered investment companies) that (a) participation in the transaction is in the best interests of that registered investment company, and (b) the interests of existing shareholders of that registered investment company will not be diluted as a result of the transaction.

4. The proposed reorganization could rely on rule 17a–8, except for the fact that the Government Fund and the Bond Fund may be affiliated persons for reasons other than those set forth in the rule. Because GISC, an indirect wholly-owned subsidiary of Guardian Life, directly owns more than 5% of the outstanding voting securities of the Government Fund, and Guardian Life directly owns more than 5% of the outstanding voting securities of the Bond Fund, if the series funds are treated as separate entities, the Portfolio may not rely upon rule 17a–8 because the Bond Fund and the Government Fund may be affiliated persons because

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of the ultimate ownership by a single shareholder.

5. The Portfolio believes that the terms of the proposed reorganization meet the standards of section 17(b). The board of trustees of the Portfolio, including a majority of the trustees who are not "interested persons," has reviewed and approved the terms of the proposed reorganization as set forth in the Plan, including the consideration to be paid or received by all parties. They have independently determined for each of the Government Fund and the Bond Fund, that the proposed reorganization will be in the best interests of the shareholders of each Fund and that the consummation of the proposed reorganization will not result in the dilution of the current interests of the shareholders of the Funds. If effectuated according to the Plan, the proposed reorganization will result in the Government Fund's assets being managed together with the Bond Fund's assets in a combined portfolio of substantially greater size. The investment objectives of the Government Fund and the Bond Fund are substantially similar, to provide positive total returns without undue risks. The proposed transaction will comply with all the conditions that rule 17a–8 requires for the protection of investment companies and their shareholders.

6. Section 17(d) prohibits any affiliated person of a registered investment company, acting as principal, from effecting any transaction in which such registered investment company is a joint participant with such person in contravention of SEC rules and regulations. Rule 17d–1 provides that no joint enterprise or arrangement may be consummated unless the SEC first approves the transaction.

7. The Funds may be affiliated persons of each other, and the proposed transaction might be deemed to be a joint enterprise or other joint arrangement. The Portfolio believes that the terms of the proposed Plan meet the standards for relief under rule 17d–1, in that the terms of the Plan are reasonable and fair to all parties, do not involve overreaching and are consistent with the investment policies of the Funds. The participation in the Plan by each Fund is also not on a basis different from or less advantageous than that of the other participants.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24376 Filed 9–30–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20585; 812–8958]

Twentieth Century Investors, Inc., et al.; Notice of Application

September 27, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Twentieth Century Investors, Inc. ("Twentieth Century"), TCI Portfolios, Inc. ("TCI"), ("Twentieth Century World Investors, Inc., Twentieth Century Premium Reserves, Inc. ("Premium Reserves"), Twentieth Century Capital Portfolios, Inc. ("Capital") (collectively, the "Investment Companies"), Investors Research Corporation (the "Manager"), and all subsequently registered open-end investment companies advised by the Manager (together with the Investment Companies, the "Funds").

RELEVANT ACT SECTIONS: Order requested pursuant to section 6(c) for an exemption from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) of the Act and rule 2a–7 thereunder; pursuant to sections 6(c) and 17(b) for an exemption from section 17(a)(1); and pursuant to section 17(d) of the Act and rule 17d–1 thereunder to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Funds to enter into deferred compensation arrangements with certain of their directors and to effect transactions incident to those arrangements.

FILING DATE: The application was filed on May 3, 1994 and amended on July 20, 1994. By letters dated September 15, 1994 and September 20, 1994, applicants' counsel stated that an amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m., on October 24, 1994 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC, 20549, Applicants, Twentieth Century Tower, 4500 Main Street, P.O. Box 419200, Kansas City, Missouri 64141–6200.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942–0563 or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Investment Companies is an open-end management investment company organized under the laws of the State of Maryland. The Manager serves as the investment adviser for the Investment Companies.

2. The Board of Directors of each Investment Company currently consists of seven persons, five of whom are not "interested persons" of that Investment Company within the meaning of section 2(a)(19) of the Act. Each director is entitled to receive an annual fee plus meeting attendance fees from each Investment Company, except that directors who are interested persons of the Manager receive no remuneration from the Investment Companies. Non-interested directors who serve on certain committees of the directors are entitled to additional fees for such service. The aggregate amount payable to the non-interested directors will be *de minimis* in comparison to the aggregate net assets of the existing Funds.

3. Applicants propose to implement a Deferred Compensation Plan for non-interested directors (the "Plan"). The purpose of the Plan is to permit individual directors to elect to defer receipt of all or a portion of the fees (the "Deferred Fees") to enable them to defer payment of income taxes on such fees or for other financial goals. Applicants believe that the availability of deferred fee arrangements will enhance the ability of the Funds to attract and retain qualified directors.

4. Under the Plan, a director's Deferred Fees are credited as of the date such fees would have been paid to a separate book reserve account established with respect to each series of each participating Fund (each a "Deferred Fee Account"). The value of the Deferred Fee Account as of any date will be equal to the value each account would have had of such date if the amounts credited to such account had been invested and reinvested as of the date credited in shares of certain designated series of the Funds. Shares of any series of any Fund, other than TCI or Premium Reserves,[1] as the Plan Committee and the participating director shall have agreed upon in writing from time to time, may be selected (the "Designated Shares"). Each Deferred Fee Account shall be credited or charged with book adjustments representing all interest, dividends, and other earnings, and all gains and losses that would have been realized had such account been invested in the Designated Shares.

5. With respect to the obligations created under the Plan, each director will remain a general unsecured creditor. The Plan does not create an obligation of any Fund to any director to purchase, hold, or dispose of any investments, and if a Fund or series thereof should choose to purchase investments, including Designated Shares, all such investments will continue to be part of the general assets and property of such Fund or series.

6. As a matter of prudent risk management, each Fund intends, where it determines appropriate, and with respect to money management series that employ the amortized cost method of valuation, will undertake, to purchase and maintain Designated Shares in amounts equal to the amount of Deferred Fees so credited.

7. The Plan will allow a director to elect to defer payment of fees payable to him by a Fund with respect to any year (including all adjustments representing interest, dividends and other earnings, and all gains and losses, credited or charged with respect thereof) until (a) the director ceases to be a director of the Fund or (b) the Plan is terminated. Payments to directors may be made in a lump sum or in such number of annual installments (not to exceed 10) as shall be elected by the director. In the event of death, amounts payable to the director under the Plan will become payable to his designated beneficiary; in all other events, the director's right to receive payments will be non-transferable.

8. The Plan will not obligate any Fund to retain the services of a director, nor will it obligate any Fund or series to pay any (or any particular level of) fees to any director. Rather, it will merely permit a director to defer receipt of those fees that would otherwise be payable from each Fund.

9. No Fund will purchase any Designated Shares, nor will it credit the Deferred Fee Accounts as though it had purchased any Designated Shares, before the requested exemptive order is issued.

Applicants' Legal Analysis

1. Sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), 22(g), 17(a)(1), and 17(d) of the Act and rules 2a–1 and 17d–1 thereunder, taken together, might be deemed to preclude the Funds and their directors from implementing the Plan absent an exemptive order form the Commission. Each Investment Company and the Manager believes, however, that the Plan is and will be in the best interests of each Fund adopting the Plan and its shareholders and is and will be consistent with the purposes fairly intended by the policy and provisions of the Act. In addition, applicants believe that exemption of the deferred fee arrangement and transactions related thereto from certain provisions of the Act is necessary and appropriate in the public interest and consistent with the protection of investors.

2. Applicants submit that the ability of the Funds to recruit and retain highly qualified directors will be enhanced if they are able to offer their directors the option of deferred payment of fees. Moreover, on a comparative basis, deferral would have a negligible effect on each Fund's total assets and liabilities because the total fees paid to each director will be *de minimis* in relation to the size of each Fund, and will have no effect on net assets and net income per share.

3. Section 18(f)(1) of the Act generally prohibits a registered open-end investment company from issuing any class of senior security or selling any senior security of which it is the issuer. In addition, section 13(a)(2) of the Act requires that a registered investment company obtain authorization by the vote of a majority of its outstanding voting securities before issuing any senior securities not contemplated by the recitals of policy contained in its registration statement. The Plan does not and would not give rise to any of the "evils" that led to Congress' concerns in enacting these provisions.

4. Section 13(a)(3) of the Act prohibits registered investment companies from, absent shareholder approval, deviating from any "fundamental" investment policy that is changeable only upon shareholder approval. The fundamental investment policies of certain series of the Funds[2] would prohibit investment in Designated Shares of other series offered by the Funds. Any series of the Funds with these types of policies would be prevented, without shareholder approval, from purchasing shares of other series of the Funds. If any such series of Funds are prevented from so investing, they will not be able to effect the matching of Designated Shares with the liabilities credited to the Deferred Fee Accounts. This matching is desirable because it will help ensure that the deferred fee arrangements will not affect the net asset value of any series' shares. Applicants believe that it is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act to exempt the Funds from the provisions of section 13(a)(3). The relief requested from section 13(a)(3) would extend only to the specifically named applicants and not to future investment companies or series because future open-end management investment companies or future series of currently effective open-end management companies will be able to establish fundamental policies with the necessary exceptions to accommodate purchases of Fund shares in connection with the Plan.

5. Section 22(f) of the Act prohibits a registered open-end investment company from restricting the transferability or negotiability of any

[1] TCI and Premium Reserves are excluded from those Funds the shares of which are eligible for selection because neither generally would be available to participating directors in their individual capacities. TCI is sold to insurance companies and Premium Reserves has a minimum investment requirement of $100,000 (an amount in excess of amounts anticipated to be deferred by any director). Because the directors believe it inappropriate to be able to invest in Funds they would not otherwise be able to invest in individually, it is anticipated that future Funds with restrictive provisions also will be excluded similarly from those eligible for selection under the Plan.

[2] The specific Funds seeking relief from the provisions of section 13(a)(3) are: Twentieth Century's Cash Reserve, U.S. Governments Short-Term, U.S. Governments Intermediate-Term, Limited-Term Bond, Intermediate-Term Bond, Long-Term Bond, Tax-Exempt Short-Term Bond, Tax-Exempt Intermediate-Term Bond, and Tax-Exempt long-Term Bond, all of which are limited to the purchase of bonds and other fixed income securities; Twentieth Century's Balanced Investors, which is limited to "common stocks * * * bonds and other fixed income securities"; Capital's Value which is restricted to "securities that management believes to be undervalued at the time of purchase"; and Premium Reserves' Government Reserve, Capital Reserve, and Management Bond, which are limited to the purchase of bonds and other fixed income securities.

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security of which it is the issuer unless the restriction is disclosed in its registration statement and does not contravene rules and regulations prescribed by the Commission. Section 22(g) of the Act generally prohibits a registered open-end investment company from issuing any of its securities for services or for property other than cash or securities.

6. Section 22(f) was designed to bar only those restrictions on transferability or negotiability not disclosed to the holder of the subject security or expressly prohibited by Commission rule or regulations, neither of which circumstances would apply to the restriction of transferability of a director's benefits under the Plan. Such restriction is clearly set forth in the Plan, is included primarily to benefit the participating director, and does not adversely affect the interests of the directors or of a shareholder of any Fund.

7. With respect to section 22(g), the legislative history of the Act suggests that Congress was concerned with the dilutive effect on the equity and voting power of common stock of, or units of beneficial interest in, an open-end company if the company's securities were issued for consideration not readily valued. Applicants assert that the Plan would not have this effect. Also, a director's right to receive payments under the Plan are not granted in return for services or property other than cash already owed to the director. Although any director's fees that may be payable to a director would clearly be for services rendered, a Fund's obligation to pay such fees would exist whether or not the Plan was in effect. The Plan would merely provide for deferral of the payment of such fees and thus any rights under the Plan should be viewed as being "issued" not for services but for the Fund's not being required to pay such fees on a current basis. Thus, the requested exemption of the proposed deferred fee arrangement and future transactions effected pursuant to such arrangement from section 22(g) of the Act would not be inconsistent with the protection of investors and the purposes of the Act.

8. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or any affiliated person of such person, from selling any security to such registered investment company. The section was designed to prevent sponsors of investment companies from using investment company assets as capital for enterprises with which they are associated or to acquire controlling interest in such enterprises. Applicants believe that the sale of securities issued by the various series of the Funds pursuant to the Plan does not implicate Congress concerns in enacting this section, but merely facilities the matching of the liabilities for Deferred Fees with Designated Shares, the value of which determines the amount of such liabilities.

9. Rule 2a–7 provides that the current price per share of any "money market fund" may be computed by use of the amortized cost method or the penny-rounding method, provided that the money market funds meets certain conditions. These conditions include, among others, (a) that the money market fund limit its investments to securities that have a remaining maturity of 397 days or less and that meet certain quality standards and (b) that the money market fund will not maintain a dollar-weighted average portfolio maturity that exceeds 90 days. Applicants believe that an exemption from rule 2a–7 for each money market fund to the limited extent required to permit them to invest in Designated Shares (and to exclude Designated Shares from the calculation of such series' dollar-weighted average maturities) is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Such an exemption would permit the series in question to achieve an exact matching of Designated Shares with the deemed investments of the Deferred Fee Accounts, thereby ensuring that the deferred fee arrangements will not affect net asset value.

10. Section 17(d) of the Act and rule 17d–1 thereunder are designed to limit or prevent a registered investment company's joint or joint and several participation with an affiliated person in a transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan on a basis different or less advantageous than that of the affiliated person.

11. Under the Plan, each Fund will have discretion to set aside cash to fund the general obligations accruing thereunder, and each Fund may invest cash in those shares of one or more series of Funds representing Designated Shares. Adjustments are to be made to the Deferred Fee Accounts to reflect the income, gain or loss with respect to the Designated Shares. The changes in value would be identical to the changes in share value experienced by any shareholder of the same series during the same period, but whose shares were not held in a Deferred Fee Account.

As an affiliated person, the participating director would neither directly nor indirectly receive a benefit that would otherwise inure to the Funds or any of their shareholders and thus the Plan would not constitute a joint or joint and several participation by any Fund with an affiliated person on a basis different from or less advantageous than that of the affiliated person.

Applicants' Conditions

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions:

1. With respect to the requested relief from rule 2a–7, any money market series of the Funds that values its assets by the amortized cost method will buy and hold Designated Shares that determine the performance of Deferred Fee Accounts to achieve an exact match between such series' liability to pay deferred fees and the assets that offset that liability.

2. If a Fund purchases Designated Shares issued by an affiliated Fund, the Fund will vote such shares in proportion to the votes of all other holders of shares of such affiliated Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24377 Filed 9–30–94, 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20576; File No. 812–8424]

Sentry Life Insurance Company, et al.

September 26, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act" or "Act").

APPLICANTS: Sentry Life Insurance Company ("Sentry"), Sentry Variable Account II of Sentry ("Sentry Account"), Sentry Investors Life Insurance Company ("SILIC"), Sentry Investors Variable Account II of SILIC ("SILIC Account," and, together with the Sentry Account, the "Accounts"), and Sentry Equity Services, Inc. ("SESI") (collectively, the "Applicants").

RELEVANT 1940 ACT SECTION: Order requested under Section 17(b) of the 1940 Act for exemption from Section 17(a) thereof and under Section 6(c) of the Act for exemptions from Sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an Order to the extent necessary to permit the transfer of assets of the SILIC Account to the Sentry Account and to permit the deduction of a mortality and expense risk charge under certain variable annuity contracts from the assets of the Sentry Account as provided for by the SILIC Contracts originally issued through the SILIC Account and proposed to be transferred to and supported by the Sentry Account.

FILING DATE: The application was filed on May 28, 1993 and was amended and restated on March 29, 1994 and on September 6, 1994.

HEARING OR NOTIFICATION OF HEARING: An Order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 21, 1994, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicants: Sentry Life Insurance Company, 1800 North Point Drive, Stevens Point, Wisconsin 54481; Sentry Investors Life Insurance Company, 1800 North Point Drive, Stevens Point, Wisconsin 54481; Sentry Equity Services, Inc., 1800 North Point Drive, Stevens Point, Wisconsin 54481.

FOR FURTHER INFORMATION CONTACT: W. Thomas Conner, Attorney, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch

Applicants' Representations

1. Sentry is a stock life insurance company that was organized under the laws of the State of Wisconsin in 1958. SILIC is a stock life insurance company that was originally organized in 1966 under the laws of the Commonwealth of Massachusetts as Patriot General Life Insurance Company. SILIC is a wholly-owned subsidiary of Sentry. SESI is registered with the SEC as a broker-dealer, is a member of the National Association of Securities Dealers, Inc., and serves as the principal underwriter for variable annuity contracts issued through the Sentry Account and the SILIC Account (the "Sentry Contracts" and the "SILIC Contracts," respectively, and, together, the "Contracts"). Sentry, SILIC, and SESI are direct or indirect subsidiaries of Sentry Insurance a Mutual Company, a Wisconsin mutual insurer.

2. Sentry established the Sentry Account in 1983 pursuant to the laws of the State of Wisconsin. The Sentry Account is registered under the Act as a unit investment trust, and the Sentry Contracts are registered under the Securities Act of 1933 ("1993 Act"). SILIC established the SILIC Account in 1983 to the laws of the Commonwealth of Massachusetts. The SILIC Account is registered under the 1940 Act as a unit investment trust, and the SILIC Contracts are registered under the 1933 Act.

3. Each Account consists of four subaccounts: a Liquid Asset Subaccount; a Growth Subaccount; a Limited Maturity Bond Subaccount; and a Balanced Subaccount. Each of the subaccounts invests exclusively in shares of a corresponding portfolio of the Neuberger & Berman Advisers Management Trust ("Fund"). The Fund is registered under the 1940 Act as a diversified open-end management investment company, and the shares issued by the Fund are registered under the 1933 Act.

4. The Sentry Contracts and the SILIC Contracts are identical in all material respects, except for the identity and depositor of the separate account issuing the respective Contract. The Contracts provide for the accumulation of contract values and payment of monthly annuity payments on a variable basis. The Contracts are designed for use by individuals in retirement plans on a qualified or non-qualified basis.

5. Sentry has or will shortly enter into an agreement providing for the sale of all outstanding stock of SILIC to an unrelated third party. One of the conditions of the sale will be that Sentry and SILIC enter into an assumption reinsurance arrangement providing for the transfer to Sentry of all assets and liabilities of SILIC, other than the minimum amount of capital necessary to support SILIC's licenses. Sentry will, pursuant to the assumption reinsurance agreement, assume legal ownership of the SILIC Account assets and become responsible for satisfaction of all liabilities and obligations arising under the SILIC Contracts and outstanding at the time of the transaction.

6. In order to avoid the administrative duplication that would result from maintaining two identical unit investment trusts, Sentry has decided to effectively merge the Accounts by transferring the assets of the SILIC Account (consisting of shares of the Fund) to the Sentry Account (the "Proposed Transaction"). The Sentry Account will continue to exist, and the SILIC Separate Account thereafter will be deregistered as an investment company. The effect of the Proposed Transaction will be that, as of its effective date, the Sentry Account will support the Sentry Contracts, the SILIC Contracts (*i.e.*, those originally issued by the SILIC Account), and any Contracts issued subsequent to the effective date of the Proposed Transaction. The assets supporting the former SILIC Contracts will continue to be invested exclusively in shares of the Fund.

7. The Proposed Transaction will be effected at the net asset values of the subaccounts involved, and no charges will be imposed or other deductions made in connection therewith. The Proposed Transaction also will not affect the net asset value of any subaccount: the net asset values for the four subaccounts of the Sentry Account in effect immediately after the transaction will be identical to the net asset values for the subaccounts of the SILIC Account in effect immediately prior to the transaction. All costs of the transaction will be borne by Sentry and not by Contractowners.

8. The succession of Sentry to SILIC as the insurance company issuing the Contracts will not dilute or otherwise adversely affect the economic interests of the Contractowners. The only change discernible to a Contractowner as a result of the Proposed Transaction will be the identity and depositor of the separate account in which his or her cash value is invested. The fees deducted from assets supporting the former SILIC Contracts after the Proposed Transaction will not differ in amount or type from those currently being deducted from the Sentry Account. After the Proposed Transaction, the guarantees that are not allocated to the Sentry Account (*e.g.*, the minimum death benefit) will be backed by Sentry's pool of assets, which, based on financial information as of December 31, 1993, is more than sixty times larger than SILIC's. Moreover, as of the date hereof, Sentry is rated "A+" by A.M. Best, while SILIC is rated "NA4" (rating procedure inapplicable).

9. The Proposed Transaction and the other transactions related to the sale of SILIC will be approved in advance by the respective Boards of Directors of Sentry and SILIC. Prior approval of the transaction will be obtained from the

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Massachusetts Insurance Department and any other applicable regulatory authority. To the extent notification to Contractowners is required pursuant to generally applicable state insurance laws relating to assumption reinsurance, it will be provided. Applicable state insurance law does not require that Contractowners vote on the transaction or be granted any "opt-out" rights.

10. In offer to reflect the transfer of assets supporting the SILIC Contracts to the Sentry Account, Sentry will file a new 1933 Act registration statement for the Contracts and will amend the 1940 Act registration statement for the Sentry Account. Once the new 1933 Act registration statement becomes effective, Sentry will distribute copies of the prospectus contained therein to owners of outstanding Contracts. Once the Proposed Transaction is effected, application will be made to the Commission pursuant to Section 8(f) of the Act and Rule 8f–1 thereunder for an order declaring that the SILIC Account has ceased to be an investment company.

11. Certain charges will be imposed under the SILIC Contracts proposed to be supported by the Sentry Account. Sentry will deduct a mortality and expense risk charge equal on an annual basis to 1.20% of the average daily net asset value of the Sentry Account. Of this charge, .80% will be for mortality risks and .40% will be for expense risks. This charge compensates Sentry for providing a mortality guarantee, a death benefit, an expense guarantee, and the waiver of the Contingent Deferred Sales Charge, if any, upon the death of the annuitant.

12. Sentry will deduct a contract maintenance charge of $30 per SILIC Contract from contract values on each contract anniversary the SILIC Contract is in force, or when the value of the SILIC Contract is withdrawn in full prior to a contract anniversary. Sentry guarantees that the amount of the contract maintenance charge will not be increased in the future.

13. No sales charge was imposed on the SILIC Contracts at the time of sale. A contingent deferred sales charge is imposed on surrenders of purchase payments within six years after their being made. Thereafter, the charge is equal to zero. The amount of the contingent deferred sales charge is calculated by allocating purchase payments to the amount surrendered, multiplying each such allocated purchase payment by the appropriate percentage determined on the basis of the table below, and adding the products of each such multiplication.

Time between receipt of allocated purchase payment and date of surrender	Percentage
Less than 1 year	6
At least 1 year but less than 2 years	5
At least 2 years but less than 3 years	4
At least 3 years but less than 4 years	3
At least 4 years but less than 5 years	2
At least 5 years but less than 6 years	1
At least 6 years	0

The contingent deferred sales charge is intended to provide reimbursement for sales-related expenses. To the extent the charge is insufficient to cover all distribution costs, Sentry may use the mortality and expense risk charge to make up any difference.

14. Sentry will permit SILIC Contractowners to transfer all or part of the contract values between eligible mutual fund(s) or portfolio(s) subject to certain conditions. Currently, Sentry does not impose any charge for effecting transfers but it reserves the right to assess a transfer fee in the future subject to prior Commission approval or pursuant to any applicable exemptive release issued by the Commission.

15. Any premium taxes payable to any governmental entity as a result of the existence of the SILIC Contracts or the Sentry Account will be charged against contract value. Premium taxes currently imposed range from 0% to 4.0%.

16. Sentry deducts from the Sentry Account any income taxes resulting from the operation of the Sentry Account. Sentry has not made a provision for taxes within the Sentry Account for the payment of any tax obligation because Sentry believes that the operations of the Sentry Account and the underlying Trust will be conducted in such a manner as to not give rise to such tax obligation. Sentry has reserved the right, however, to establish such a provision in the future if it determines that it will incur a tax as a result of the operation of the Sentry Account.

17. On July 17, 1984, the SEC issued an order pursuant to Section 6(c) of the 1940 Act to SILIC, the SILIC Account, and SESI, exempting them from Sections 26(a) and 27(c) of the Act to the extent necessary to permit certain deductions and practices in connection with the SILIC Contracts. The SEC granted identical relief on the same day to Sentry, the Sentry Account, and SESI in connection with the Sentry Contracts.

Applicants' Legal Analysis

1. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, from knowingly selling any securities or other property to that company. Section 17(a)(2) of the Act prohibits these persons from knowingly purchasing any security or other property from the registered investment company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person directly or indirectly controlling, controlled by, or under common control with such other person. The Sentry Account and the SILIC Account may be deemed to be under the common control of Sentry, which is the depositor of the Sentry Account and the parent of the depositor of the SILIC Account. While Applicants do not concede that Section 17(a) applies to the Proposed Transaction, because the Sentry Account and the SILIC Account are affiliated persons, the transfer of assets from the SILIC Account to the Sentry Account arguably involves these entities, acting as principals, in buying and selling securities or other property from or to one another in contravention of Section 17(a).

2. Section 17(b) of the Act provides that a person may apply for an order of exemption from the provisions of Section 17(a) in connection with a transaction prohibited by that section, and that the Commission shall grant such an application if evidence establishes that (1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (3) the proposed transaction is consistent with the general purposes of the Act.

3. Although Rule 17a–8 is not available in this case, Applicants submit that the Commission can look to the rule to determine whether the transaction is reasonable and fair. Applicants assert that the participating companies' investment objectives, policies, restrictions, and portfolios are compatible. Both the Sentry Account and SILIC Account invest exclusively in shares of the Fund, and, after the Proposed Transaction, the Sentry Account will continue to invest in shares of the Fund and provide holders of SILIC Contracts with the same

investment options as before the Proposed Transaction. Accordingly, the Proposed Transaction will result in no change in the investment objectives, policies, restrictions, or portfolios of the separate account funding the SILIC Contracts.

4. Applicants also represent that the transfer of assets held by the SILIC Account to the Sentry Account will be made at the relative net asset values of the subaccounts. No dilution of, or increase in, the SILIC Contractowners' contract values will occur as a result of the Proposed Transaction. The transfer will not result in any change in charges, costs, fees, or expenses borne by Contractowners.

5. Finally, Applicants state that no direct or indirect costs will be incurred by the SILIC Account or the Sentry Account as a result of the transaction. No charges, costs, fees, or other expenses would be incurred by holders of the Contracts as a result of, or in connection with, the Proposed Transaction. Thus, the Proposed Transaction will not result in dilution of the economic interests of the Contractowners.

6. Applicants represent that the Proposed Transaction does not involve overreaching on the part of any person involved. The purpose of the transfer is to consolidate two identical separate accounts, both of which issue identical contracts, have the same principal underwriter, and invest in the same underlying mutual fund, into a single separate account. This aggregation will allow for administrative efficiencies and cost savings on Sentry's part because Sentry can consolidate its separate account operations. It also will allow SILIC Contractowners to participate in a separate account that is sizable in terms of its total net assets and can be expected to grow since sales of Sentry contracts will continue after the Proposed Transaction.

7. Section 17(b) also requires that the Proposed Transaction be consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act. Applicants represent that because the assets underlying the SILIC Contracts and the Sentry Contracts will continue to be invested in shares of one or more portfolios of the Fund in the same manner as before the Proposed Transaction, the assets underlying the SILIC Contracts and the Sentry Contracts will continue to be invested according to the investment policies recited in their respective registration statements.

8. Finally, Section 17(b) requires that the Proposed Transaction be consistent with the general purposes of the Act. Applicants represent that the Proposed Transaction is consistent with the general policies and purposes of the Act. The transfer does not present any of the issues or abuses that Section 17(a) in particular, and the 1940 Act in general, were designed to prevent.

9. In light of the foregoing, Applicants request an exemption from Section 17(a) of the Act, pursuant to Section 17(b) thereof, to permit the proposed transfer. Applicants represent that the terms of the proposed transfer described in this Application, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; are consistent with the investment policies of each of the Accounts; and are consistent with the general purposes of the Act.

10. Section 26(a)(2)(C) provides that no payment to the depositor of, or principal underwriter for, a registered unit investment trust shall be allowed the trustee or custodian as an expense except compensation, not exceeding such reasonable amount as the Commission may prescribe for performing bookkeeping and other administrative duties normally performed by the trustee or custodian. Section 27(c)(2) prohibits a registered investment company or a depositor or underwriter for such company for selling periodic payment plan certificates unless the proceeds of all payments on such certificates, other than sales loads, are deposited with a trustee or custodian having the qualifications prescribed in Section 26(a)(1), and are held by such trustee or custodian under an agreement containing substantially the provisions required by Sections 26(a)(2) and 26(a)(3) of the 1940 Act.

11. Sentry, the Sentry Account, and SESI ("Section 6(c) Applicants") request an order under Section 6(c) of the 1940 Act exempting them from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the mortality and expense risk charge from the Sentry Account as provided for by the SILIC Contracts previously issued through the SILIC Account and proposed to be supported by the Sentry Account pursuant to the Proposed Transaction.

12. Sentry represents that the charge of 1.20% for mortality and expense risks is reasonable in relation to the risks undertaken by Sentry and within the range of industry practice with respect to comparable annuity products. This representation is based upon Sentry's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Sentry will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of its comparative survey.

13. The Section 6(c) Applicants acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being offset by distribution expenses not reimbursed by the sales charge. Sentry has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Sentry Account and SILIC Contractowners. The basis for such conclusion is set forth in a memorandum maintained by the Sentry at its administrative offices and will be available to the Commission.

14. Sentry represents that the Sentry Account will invest only in management investment companies that undertake, in the event the company adopts a plan to finance distribution expenses under Rule 12b–1 under the 1940 Act, to have a board of directors, a majority of whom are not interested persons of the company within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

Conclusion

Applicants request that the Commission issue an order pursuant to Section 17(b) of the 1940 Act exempting the Proposed Transaction from the provisions of Section 17(a), to the extent necessary to permit that transfer of assets underlying the SILIC Contracts to the Sentry Account. In addition, the Section 6(c) Applicants request that the Commission issue an order pursuant to Section 6(c) of the Act to the extent necessary to permit the deduction by Sentry of mortality and expense risk charges from Sentry Account as provided for by the SILIC Contracts previously supported by the Sentry Account pursuant to the Proposed Transaction. Applicants and the Section 6(c) Applicants, as appropriate, submit that, for all of the reasons stated above, granting the relief requested herein is appropriate in the public interest, and consistent with the policy and purposes of the 1940 Act.

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For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24315 Filed 9–30–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2744]

North Carolina; Declaration of Disaster Loan Area

Transylvania and Watauga Counties and the contiguous Counties of Ashe, Avery, Buncombe, Caldwell, Haywood, Henderson, Jackson, and Wilkes in North Carolina; Carter and Johnson Counties in Tennessee; and Greenville, Pickens, and Oconee Counties in South Carolina constitute a disaster area as a result of damages caused by severe storms and flooding which occurred on August 16 and 17, 1994. Applications for loans for physical damage may be filed until the close of business on November 28, 1994 and for economic injury until the close of business on June 27, 1995 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308 or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The numbers assigned to this disaster for physical damage are 274406 for North Carolina; 274506 for Tennessee; and 274606 for South Carolina. For economic injury the numbers are 834900 for North Carolina; 835000 for Tennessee; and 835100 for South Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 27, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–24380 Filed 9–30–94; 8:45 am]

BILLING CODE 8025–01–M

Interest Rate—Amendment #1

In the Notice published on Tuesday, September 27, 1994, in Volume 59, page 49272, the date for the beginning of the 1st quarter for FY 95 was stated incorrectly. The 1st quarter of FY 95 begins on October 1 and ends on December 31, 1994.

John R. Cox,

Associate Administrator for Financial Assistance.

[FR Doc. 94–24334 Filed 9–30–94; 8:45 am]

BILLING CODE 8025–01–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

National Advisory Board Meeting

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., announcement is hereby published for a meeting of the National Advisory Board. The meeting is open to the public.

DATES: The National Advisory Board meeting is scheduled for Wednesday, October 12, 1994, 9 a.m. to 12 noon. Due to scheduling difficulties, this notice is being published less than fifteen days prior to the meeting date.

ADDRESSES: The meeting will be held at the Federal Deposit Insurance Corporation, Board Room 6010, 550 17th St., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, NW., Washington, DC 20232, 202/416–2626.

SUPPLEMENTARY INFORMATION: Pursuant to section 21A(d) of the Federal Home Loan Bank Act, the Thrift Depositor Protection Oversight Board established a National Advisory Board and six Regional Advisory Boards to advise the Oversight Board and the Resolution Trust Corporation (RTC) on the disposition of real property assets of the Corporation.

Agenda

A detailed agenda will be available at the meeting. The meeting will include remarks from the national chairperson and briefings from the chairpersons of the six regional advisory boards on the results of their respective meetings held throughout the country from September 13 through September 29. The major issues to be discussed at the national meeting will include RTC's Small Investor Program and Land II Sales.

Statements

Interested persons may submit, in writing, data, information or views on the issues pending before the National Advisory Board prior to or at the meeting. Seating is available on a first come first served basis for this open meeting.

Dated: September 28, 1994.

Jill Nevius,

Committee Management Officer.

[FR Doc. 94–24379 Filed 9–30–94; 8:45 am]

BILLING CODE 2221–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings

Aviation Proceedings; Agreements filed during the Week Ended September 23, 1994. The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49776
Date filed: September 19, 1994
Parties: Members of the International Air Transport Association
Subject: TC1 Reso/P 0435 dated August 26, 1994; TC1 Areawide Resolutions, r–1 to r–5; TC1 Reso/P 0436 dated August 26, 1994; TC1 Caribbean Resolutions r–6 to r–20; TC1 Reso/P 0438 dated August 26, 1994; TC1 Longhaul Resolutions r–21 to r–69; Minutes—TC1 Meet/P 0105 dated September 13, 1994, Summary of Agreements
Proposed Effective Date: January 1, 1995

Docket Number: 49777
Date filed: September 19, 1994
Parties: Members of the International Air Transport Association
Subject: TC1 Reso/P 0437 dated August 26, 1994; TC1 Within South America Resos r–1 to r–9
Proposed Effective Date: January 1, 1995

Docket Number: 49778
Date filed: September 19, 1994
Parties: Members of the International Air Transport Association
Subject: Comp MV/P 0777 dated August 18, 1994, Mail Vote 705—Fares from Mozambique, Amendment to Mail Vote
Proposed Effective Date: October 1, 1994

Docket Number: 49780
Date filed: September 21, 1994
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1643 dated September 20, 1994, Within Middle East resos 002a (r–1) & 015v (r–2), Minutes—TC2 Meet/P 0338 dated September 20, 1994
Proposed Effective Date: Expedited November 1, 1994

Docket Number: 49785
Date filed: September 23, 1994
Parties: Members of the International Air Transport Association
Subject: TC23 Telex Mail Vote 711—Australia-Europe fares r–1—07111 r–2—07100
Proposed Effective Date: November 15, 1994

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–24295 Filed 9–30–94; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD 94–079]

National Offshore Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) will meet to discuss various offshore safety related issues. The meeting will be open to the public.

DATES: The meeting will be held on Monday, November 14, 1994, from 12:30 p.m. to 4:00 p.m. Written material should be submitted not later than October 28, 1994.

ADDRESSES: The meeting will be held in the Shell Annex Auditorium (2nd Floor of the Parking Bldg), 701 Poydras Street, New Orleans, Louisiana. Written material should be submitted to CDR Adan Guerrero, Executive Director, Commandant (G–MVI–4), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: CDR Adan Guerrero, Executive Director, National Offshore Safety Advisory Committee (NOSAC), Room 1405, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–2307.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 Section 1 et seq. The agenda will include discussion of the following topics:

(1) Clean Air Act of 1990;
(2) ISM Code Implementation for the Offshore Industry;
(3) Status of Coast Guard Maritime Regulatory Reform (MRR);
(4) Revision of Subchapter "L" on OSVs and Liftboats;
(5) Legislative initiatives on new category of larger OSV;
(6) IMO Items Affecting the Offshore Industry;

Attendance at the meeting is open to the public. With advance notice, and at the discretion of the Chairman, members of the public may make oral presentations at the meeting. Persons wishing to make oral presentations should notify the Executive Director, listed above under **ADDRESSES**, no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each Committee member, 20 copies of the written materials should be submitted to the Executive Director no later than October 28, 1994.

Dated: September 22, 1994.

J.F. McGowam,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–24387 Filed 9–30–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Docket No. 27649]

Supplemental Draft Environmental Impact Statement; Effects of Changes in Aircraft Flight Patterns Over the State of New Jersey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Issuance of A Supplemental Draft Environmental Impact Statement (EIS) For Public Review and Comment.

SUMMARY: The FAA has decided to prepare a supplement to the draft environmental impact statement (DEIS) on the effects of changes in aircraft flight patterns over the State of New Jersey caused by implementation of the Expanded East Coast Plan (EECP). As a result of the analysis phase of the comment period associated with the DEIS, new information was developed by the FAA. Additionally, new information was received from the public during the comment period. Since this information is pertinent to the decision process leading to issuance of a final EIS (FEIS), the public should have an opportunity to examine the new material and comment on it prior to completion of the FEIS.

The supplemental DEIS (SDEIS) was prepared in accordance with the National Environmental Policy Act (NEPA). Copies have been mailed to individuals that participated in the EIS process as well as to libraries in select locations throughout New Jersey.

SUPPLEMENTARY INFORMATION: The following is a summary of key portions of the SDEIS and major areas of concern identified by the public. It is not intended to duplicate or cover every aspect of the SDEIS. Substantive comments submitted to the FAA should address the SDEIS, not this summary.

I. Summary of Key Portions of the SDEIS

A. Alternatives and Mitigation Under Consideration

The following alternatives were evaluated and are being considered by the FAA:

(1) Alternative A. Maintain the current (as defined in 1991) EECP structure. (Proposed action and no action)

(2) Alternative B. Return to 1986 air traffic routes and procedures using 1991 traffic. (Rollback)

(3) Alternative C2. Route Newark south flow departure traffic from over Raritan Bay to over the ocean (at night only) via a specific path defined by the Solberg and Colts Neck navigational aids. (Nighttime only oceanic/military routing)

Alternative D3. Spread aircraft departing Newark runways 22L and 22R to three different headings. (Spreading of fanning)

These alternatives are described in detail in Chapter 3 of the SDEIS. Two mitigation measures were evaluated and are also being considered:

(1) Routing some westbound departures from Newark to a new departure gate in the vicinity of the Solberg navigational aid.

(2) Moving LaGuardia arrival traffic further south from its current routing.

These mitigation measures are described in detail in Chapter 6 of the SDEIS. These measures, if selected by the decision-maker for implementation, would reduce noise by Day-Night Level (DNL) 5 dB or greater for approximately 18,500 residents of the Scotch Plains and Fanwood areas of Union County, New Jersey. These were two of the areas that experienced some of the greatest increases in noise as a result of implementation of the EECP.

B. Environmental Consequences

None of the alternatives would cause significant noise, air quality or water quality impacts. (The one exception identified in the area of noise results from the assumptions used in

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reconstructing and modeling the return to 1986 routes and procedures.) Noise analysis indicates that 1.45 million individuals would be impacted by noise increases of DNL 5 dB or greater if the FAA returned to use of 1986 routes and procedures, while approximately 45,000 individuals would experience noise benefits of DNL 5 dB or greater. Fanning and nighttime use of ocean routing would have marginal noise benefits. In response to the volume of comments concerning noise impacts in particular communities, Appendix F of the SDEIS provides the increases in noise level predicted for each census block in New Jersey.

C. Public Participation

In preparing the SDEIS the FAA has carefully summarized and addressed the comments received on the DEIS and made revisions to the text as appropriate. There have been extensive opportunities for public participation since the DEIS was made available on November 12, 1992. In January, 1993, the FAA held public hearings in New Jersey to obtain comments on the DEIS. In addition, two public meetings were held in Staten Island, New York to address the DEIS and the New York Metropolitan Area Aircraft Noise Mitigation Review, a study mandated by Congress, which specifically addressed noise issues in the New York metropolitan area, including parts of Connecticut and New Jersey, separate from the EIS action. The comment period on the DEIS extended from November 12, 1992 to November 23, 1993. This 369 day comment period was well in excess on NEPA requirements.

II. Areas of Controversy

In addition to noise, air, and water quality impacts, the major areas of controversy concerning this EIS were alternate use of ocean routing, effects or aircraft noise on property values, and the scope of the EIS.

A. Ocean Routing

Many commenters believed the alternative of using ocean routes 24 hours a day should be studied in detail as a reasonable alternative. Several different proposals were considered in the DEIS, but eliminated due to concerns about operational feasibility and potential environmental impacts. In June 1993, the New Jersey Citizens for Environmental Research (NJCER), on behalf of the New Jersey Coalition Against Aircraft Noise, submitted a proposal to route all Newark Airport departures south, down the Arthur Kill and over Raritan Bay to the ocean. This study was analyzed operationally and modeled to determine its noise impacts within the scope of this EIS.

Operational examination indicates this proposal would cause about 5 points of conflicting traffic within New Jersey, require tunneling of traffic from Newark under traffic from other airports, and cause substantial delays at Newark.

Noise analysis indicates this proposal would have net benefits of DNL 5 dB or greater for approximately 228,000 New Jersey residents (690,000 residents would benefit while 462,000 residents would experience increased noise of DNL 5 dB or greater). In addition there appear to be potentially significant adverse noise impacts in areas south of Newark that would be overflown by aircraft at altitudes below 3,000 above ground level (AGL) feet as well as in New York and Connecticut. Additional environmental review would be required to examine these impacts, which are beyond the scope of this EIS. This proposal is described in detail in Chapter 1 of the SDEIS.

B. Effect of Noise on Property Values

Another area of concern was the effect of noise increases on real property values. There is insufficient scientific data to support a reasonable conclusion about whether the noise levels associated with implementation of the EECP have, or its alternatives would have, depressed property values in New Jersey. The economic studies of the effects of airport noise on house values to date, which have found a slight devaluation, have involved properties in or near urban areas surrounding major airports at noise exposure levels exceeding those in this EIS. This is discussed in detail in Section 5.2.1 of the SDEIS.

C. Scope of the EIS

Another controversial issue was the scope of the EIS. The legal and policy reasons supporting the decision to limit the scope of the EIS to New Jersey and to air traffic changes above 3,000 AGL feet are fully explained in Chapter 2 of the SDEIS and Appendix A. Briefly, the FAA adhered strictly to the congressional mandate to study New Jersey because of the complexity of an expanded study, the difficulty of identifying objective criteria for excluding portions of the other 18 States and the District of Columbia that were also potentially affected by the EECP, and the time constraints on the EIS process. The EIS examines changes above 3,000 AGL feet because that was the scope of the EECP. To assure compliance with NEPA, no alternative will be selected for implementation until all applicable environmental review requirements have been satisfied.

FOR FURTHER INFORMATION CONTACT:

For further information contact Mr. William J. Marx, FAA Office of Air Traffic System Management, Environmental Issues Program Office, ATM–700, Washington, DC 20591, telephone (202) 267–7900.

Any person may obtain a copy of the SDEIS by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling FAA's toll-free Consumer Hotline: 1–800–FAA–SURE between 8 a.m. and 4 p.m. Eastern Time, Monday through Friday, excluding Federal holidays.

COMMENT PERIOD: The public will be afforded a 60-day period to comment upon release of the SDEIS. The opportunity to comment will extend from September 30, until November 30, 1994. Comments will be considered in preparing the FEIS. Late-filed comments will be considered to the extend practicable.

Written comments on the SDEIS should be received at the following address, in triplicate, by November 30, 1994: Headquarters Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Docket No. 27649, 800 Independence Avenue SW., Washington, DC 20591. Comments may be delivered or inspected at Room 915G in FAA headquarters between 8:30 a.m. and 5 p.m., Monday through Friday, excluding Federal holidays.

Additionally, the FAA intends to conduct hearings and a meeting to gather comments on the SDEIS. The FAA will conduct public hearings in Cranford, Bernardsville and Tinton Falls, New Jersey to solicit both written and oral comments. A public meeting will also be held in Staten Island, New York. All persons wishing to make oral presentations at the public hearings and the public meeting are strongly urged to provide a written copy of their statements at the hearing/meeting or at the FAA address provided in the above paragraph. The exact dates, times and locations of the hearings in New Jersey and the meeting in Staten Island will be published in a subsequent **Federal Register** Notice and through the Press when arrangements are finalized.

Issued in Washington, DC on September 28, 1994.

Bill F. Jeffers,

Acting Associate Administrator for Air Traffic.

[FR Doc. 94–24368 Filed 9–30–94; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 94–80; Notice 1]

Ford Motor Company; Receipt of Application for Decision of Inconsequential Noncompliance

Ford Motor Company (Ford) of Dearborn, Michigan has determined that some of its windows fail to comply with the labeling requirements of 49 CFR 571.205, Federal Motor Vehicle Safety Standard (FMVSS) No. 205, "Glazing Materials," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Ford has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 (formerly Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417)) and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

Standard No. 205, which incorporates, by reference, the American National Standards Institute's "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways" Z–26.1–1977, January 26, 1977, as supplemented by Z26.1a, July 3, 1980 (ANS Z26.1), specifies that typical automotive tempered glass with a luminous transmittance of less than 70 percent shall be labeled "AS3."

Ford manufactured approximately 1,820,000 quarter windows with a luminous transmittance of less than 70 percent for use in 1986 through 1994 model year Ranger Supercab vehicles. These windows were labeled "AS2" instead of "AS3." Approximately 7,900 were located and scrapped. The remaining windows have been used in vehicle production or provided to aftermarket distributors for service replacement.

For supports its application for inconsequential noncompliance with the following:

[Ford believes that t]he incorrect marking presents no risk of accident or injury. The windows can be installed only as rear quarter windows in Ranger Supercab trucks; AS2 and S3 glazing are both appropriate for these applications in accordance with Standard 205. In Ford's judgement, the mismarking is inconsequential as it relates to motor vehicle safety. The stated purposes of FMVSS No. 205 are to reduce injuries resulting from impact to glazing surfaces, to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through vehicle windows in collisions. As previously noted the affected quarter windows fully comply with the performance requirements of FMVSS No. 205. Because all performance requirements are met, the incorrect marking of the quarter windows has no effect upon the ability of the glazing to perform in the manner intended by the standard. Ford is not aware of any complaints, accidents, or injuries related to this condition.

The mismarking should not cause confusion in glass replacement in vehicles in service. Aftermarket distributors do not use the marking to determine which glazing is used for replacement. Rather, replacement parts are determined by service part numbers which are obtained from cataloged listings. Further, we are not aware of any confusion in aftermarket servicing of vehicles as a result of this mismarking.

Interested persons are invited to submit written data, views, and arguments on the application of Ford, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, D.C., 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 2, 1994.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and NHTSA Order 800–2)

Issued on : September 27, 1994.

Stanley R. Scheiner,

Acting Associated Administrator for Rulemaking.

[FR Doc. 94–24299 Filed 9–30–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–79; Notice 1]

General Motors Corporation; Receipt of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) of Warren, Michigan, has determined that some of its vehicles fail to comply with 49 CFR 571.209, Federal Motor Vehicle Safety Standard (FMVSS) No. 209, "Seat Belt Assemblies," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." GM has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 (formerly Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417)) and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S4.6(b) of FMVSS No. 209 states that a seat belt assembly shall be labeled with the following statement:

This seat belt assembly is for use only in [insert specific seating position(s), e.g., 'front right'] in [insert specific vehicles make(s) and model(s)].

GM produced two different populations of vehicles which do not meet the labeling requirements stated in the standard. The first population of vehicles, 68,405 1994 model year Chevrolet and GMC G-vans, were built with left-side seat belt assemblies that were labeled as right-side assemblies.

The second population of vehicles, 31,978 1992–94 model year Chevrolet and GMC K20753 extended cap pickups, were built with front outboard seat belt assemblies with the appropriate model designation omitted. The model designation is K20753.

GM supports its application for inconsequential noncompliance with the following.

For both these issues, the GM part numbers and manufacturer's model numbers correctly identify the affected seat belt assemblies. In addition, the service parts manuals correctly specify the proper part numbers if replacement parts were needed. In the case of the G-van seat belt assemblies, it is not possible to install the left front seat belt assembly at the right front position. For the K 20753 model, the issue is the omission of an appropriate model. Usage of the seat belt assembly in any of the models identified on the label is appropriate, as would be usage in the K 20753.

It is GM's understanding that the purposed of the subject requirement was to provide the

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person *replacing* a seat belt assembly in a vehicle with appropriate seat position and vehicle model information. However, original equipment seat belt assemblies have already been installed in the appropriate models and positions at the assembly plant. The Agency stated in a recent rulemaking proposal (Docket 74–14; Notice 81, dated May 10, 1993), "* * * that seat belt assemblies installed as original equipment in new motor vehicles need not be required to be labeled with position model information. This information is only useful if the assembly is removed with the intention of using the assembly as a replacement in another vehicle. NHTSA does not believe this is a common practice." GM agrees and believes that the removal of original equipment seat belt assemblies for the purpose of replacement installation in another vehicle is rare. The Agency finalized that rulemaking action on April 15, 1994, eliminating the required label verbiage on seat belt assemblies installed as original equipment by vehicle manufacturers.

Interested persons are invited to submit written data, views, and arguments on the application of GM, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicate below be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 2, 1994

(49 U.S.C. 30118, 30120 delegations of authority at 49 CFR 1.50 and NHTSA Order 800–2)

Issued on: September 27, 1994.

Stanley R. Scheiner,

Acting Associate Administrator for Rulemaking.

[FR Doc. 94–24300 Filed 9–30–94, 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–58; Notice 2]

Decision That Nonconforming 1991 Mercedes-Benz 300CE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that conforming 1991 Mercedes-Benz 300CE passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1991 Mercedes-Benz 300CE passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1991 Mercedes-Benz 300CE), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective October 3, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

C&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to decide whether 1991 Mercedes-Benz 300CE passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on July 22, 1994 (59 FR 37530) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 83 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1991 Mercedes-Benz 300CE (Model ID 124.051) not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1991 Mercedes-Benz 300CE originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 26, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–24296 Filed 9–30–94, 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–81; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1995 Mercedes-Benz Gelaendewagen 300GE (Long Wheel Base Type 463) Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for comments on petition for decision that nonconforming 1995 Mercedes-Benz Gelaendewagen 300GE (long wheel base Type 463) multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice requests comments on a petition submitted to the National Highway Traffic Safety Administration (NHTSA) for a decision that a 1995 Mercedes-Benz Gelaendewagen 300GE (long wheel base Type 463) MPV that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because it has safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The closing date for comments on the petition is November 2, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5606).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)([3)(A)(i)(I) of the National Traffic and Motor Vehicle safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. § 30141(a)(1)(B) (formerly section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. § 1397(c)(3)(A)(i)(II)) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 40 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Europa International, Inc. of Santa Fe, New Mexico (Registered Importer No. R–91–002) has petitioned NHTSA to decide whether 1995 Mercedes-Benz Gelaendewagen 300GE (long wheel base Type 463) MPVs are eligible for importation into the United States. Europa contends that this vehicle is eligible for importation under 49 U.S.C. § 30141(a)(1)(B) because it has safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that the 1995 Mercedes-Benz Gelaendewagen 300GE (long wheel base Type 463) MPV has safety features that comply with Standard Nos. 102 Transmission Shift Lever Sequence * * * (based on visual inspection and operation), 103 Defrosting and Defogging Systems (based on inspection), 104 Windshield Wiping and Washing Systems (based on operation), 106 Brake Hoses (based on visual inspection of certification markings), 107 Reflecting Surfaces (based on visual inspection), 113 Hood Latch Systems (based on information in owner's manual describing operation of secondary latch mechanism), 116 Brake Fluids (based on visual inspection of certification markings and information in owner's manual describing fluids installed at factory), 119 New Pneumatic Tires for Vehicles other than Passenger Cars (based on visual inspection of certification markings), 124 Accelerator Control Systems (based on operation and comparison to U.S.-certified vehicles), 201 Occupant Protection in Interior Impact (based on test data and certification of vehicle to European standard), 202 Head Restraints (based on test data and certification of vehicle to European standard), 204 Steering Control Rearward Displacement (based on test film), 205 Glazing Materials (based on visual inspection of certification markings), 207 Seating Systems, (based on test results and certification of vehicle to European standard), 209 Seat belt Assemblies (based on certification markings), 211 Wheel Nuts, Wheel Discs and Hubcaps (based on visual inspection), 214 Side Impact Protection (based on test results), 219 Windshield Zone Intrusion (based on engineering evaluation of Standard No. 208 compliance test film and test data), and 302 Flammability of Interior Materials (based on composition on upholstery).

The petitioner also contends that the 1995 Mercedes-Benz Gelaendewagen 300GE (long wheel base Type 463) MPV is capable of being altered to comply with the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a speedometer/odometer calibrated in miles per hour.

Standard No. 105 Hydraulic Brake Systems: placement of warning label on brake fluid reservoir cap.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) installation of U.S.—model sealed beam headlamps; (b) installation of U.S.—model side marker lamps and reflectors; (c) installation of a high mounted stop lamp. The petitioner asserts that testing performed on the taillamp reveals that it complies with the standard, even though it lacks a DOT certification marking, and that all other lights are DOT certified.

Standard No. 111 Rearview Mirrors: inscriptions of the required warning statement on the convex surface of the passenger side rearview mirror.

Standard No. 114 Theft Protection: installation of a warning buzzer in the steering lock electrical circuit.

Standard No. 115 Vehicle Identification Number: installation of a VIN plate that can be read from outside the left windshield pillar.

Standard No. 118 Power-Operated Window Systems: rewiring of the power window system so that the window transport is inoperative when the front doors are open.

Standard No. 120 Tire Selection and Rims for Vehicles Other Than Passenger Cars: installation of a tire information placard. The petitioner asserts that even though the tire rims lack a DOT certification marking, they comply with the standard, based on their manufacturer's certification that they comply with the German TUV regulations, as well as their certification by the British Standards Association and the Rim Association of Australia.

Standard No. 206 Door Locks and Door Retention Components: installation of interior locking buttons on all door locks and modification of rear door locks to disable latch release controls when locking mechanism is engaged.

Standard No. 208 Occupant Crash Protection: installation of a complying driver's side air bag and a seat belt warning buzzer. The petitioner asserts that the vehicle conforms to the standard's injury criteria at the front

Integrity, and 302 Flammability of

Authority: 49 U.S.C. 30141(a)(1)(A) and

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passenger position based on a test report from the vehicle's manufacturer.

Standard No. 210 Seat Belt Assembly Anchorages: insertion of instructions on the installation and use of child restraints in the owner's manual for the vehicle. The petitioner asserts that the vehicle is certified as complying with a European standard that contains more severe force application requirements than those of this standard.

Standard No. 212 Windshield Retention: application of cement to the windshield's edges.

The petitioner provided test data indicating that the vehicle satisfied the frontal barrier requirements of Standard No. 301 Fuel System Integrity. The petitioner also supplied data on a rear barrier crash at 31 mph with crash forces approximating those required by the standard. The data revealed that fuel leaked from the vent during the rollover that was conducted as part of this test. The petitioner installed a rollover valve in the fuel tank line to resolve that problem. The petitioner also stated that the vehicle should comply with the lateral impact test at the lower speed of 20 mph due to the reinforcing structure surrounding the fuel tank and the placement of the fuel lines inside the main frame of the vehicle.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. § 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–24297 Filed 9–30–94; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 94–82; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1989 Audi 100 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1989 Audi 100 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1989 Audi 100 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 2, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.].

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors, Inc. of Kingsville, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether 1989 Audi 100 passenger cars are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1989 Audi 100 that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1989 Audi 100 to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1989 Audi 100, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1989 Audi 100 is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence.* * * *, 103 *Defrosting and Defrosting Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 214 *Side Door Strength*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity, and* 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model taillamp lenses which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a key microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning buzzer, wired to the seat belt latch.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1989 Audi 100 must be reinforced to comply with the Bumper Standard found in 49 CFR Part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issue on: September 26, 1994.

Willian A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–24298 Filed 9–30–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

September 27, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0028.

Form Number: IRS Forms 940 and 940–PR.

Type of Review: Revision.

Title: Employer's Annual Federal Unemployment (FUTA) Tax Return (940) Planilla Para La Declaracion Anual Del Patrono-La Contribucion Para El Desempleo (FUTA) (940–PR).

Description: Internal Revenue Code (IRC) section 3301 imposes a tax on employers based on the first $7,000 of taxable annual wages paid to each employee. IRS uses the information reported on Forms 940 and 940–PR (Puerto Rico) to ensure that employers have reported and figured the correct FUTA wages and tax.

Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 1,332,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 940	Form 940–PR
Recordkeeping.	12 hr., 26 min	12 hr., 12 min.
Learning about the law or the form.	18 min	12 min.
Preparing and sending the form to the IRS.	36 min	24 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 17,529,302 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–24370 Filed 9–30–94; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

September 23, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0092.

Form Number: ATF Form 5100.31 (1648/1649/1650).

Type of Review: Extension.

Title: Application for Certification/ Exemption of Label/Bottle Approval Under the Federal Alcohol Administration Act.

Description: The Federal Alcohol Administration Act regulates the labeling of alcoholic beverages and designates the Treasury Department to oversee compliance with regulations. This form is completed by the regulated industry and submitted to Treasury as an application to label

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their products. Treasury oversees label application to prevent consumer deception and to deter falsification of unfair advertising practices on alcoholic beverages.

Respondents: Businesses or other for-profit. Small businesses or organizations.

Estimated Number of Respondents: 6,060.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 27,300 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–24369 Filed 9–30–94; 8:45 am]

BILLING CODE 4810–31–P

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986)

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: September 27, 1994.

Norman Richter,

Acting International Tax Counsel for Tax Policy.

[FR Doc. 94–24352 Filed 9–30–94; 8:45 am]

BILLING CODE 4810–25–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comment With Respect To the Annual National Trade Estimate Report on Foreign Trade Barriers

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to section 303 of the Trade and Tariff Act of 1984, as amended, USTR is required to publish annually the National Trade Estimate Report on Foreign Trade Barriers (NTE). With this notice, the Trade Policy Staff Committee (TPSC) is requesting interested parties to assist it in identifying significant barriers to U.S. exports of goods, services and overseas direct investment for inclusion in the NTE. Particularly important are impediments materially affecting the actual and potential financial performance of an industry sector. The TPSC invites written comments which provide views relevant to the issues to be examined in preparing the NTE.

DATES: Public comments are due at USTR not later than noon on November 1, 1994.

ADDRESSES: Carolyn Frank, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street NW., Room 501, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: John Panulas, Assistant Director for Policy Coordination, Office of the United States Trade Representative, (202) 395–9599.

SUPPLEMENTARY INFORMATION: Submissions should contain descriptions of any or all of the following nine categories of foreign trade barriers:

(1) import policies (e.g., tariffs and other import charges, quantitative restrictions, import licensing, and customs barriers);

(2) standards, testing, labeling, and certification (including unnecessarily restrictive application of phytosanitary standards, refusal to accept U.S. manufacturers' self-certification of conformance to foreign product standards, and environmental restrictions);

(3) discriminatory government procurement practices (e.g., "buy national" policies and closed bidding);

(4) export subsidies (e.g., export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets);

(5) lack of intellectual property protection (e.g., inadequate patent, copyright, and trademark regimes);

(6) services barriers (e.g., limits on the range of financial services offered by foreign financial institutions, regulation of international data flows, restrictions on the use of data processing, and quotas on imports of foreign films);

(7) investment barriers (e.g., limitations on foreign equity participation and on access to foreign government-funded R&D consortia, local content, technology transfer and export requirements, and restrictions on repatriation of earnings, capital, fees and royalties);

(8) anticompetitive practices tolerated by foreign governments (including anticompetitive activities of both state-owned and private firms which apply to services or to goods and which restrict the sale of U.S. products to any firm, not just to the foreign firms that perpetuate the practices); and

(9) other barriers (i.e., barriers that encompass more than one category listed above or that affect a single sector).

In comparison with last year's report, this year we are adding a new category, anti-competitive practices, to the NTE. In addition, the standards category will now encompass restrictive foreign environmental practices, and the investment category will cover restrictions on U.S. access to foreign government-funded research and development (R&D) consortia.

Submissions should contain estimates of the potential increase in exports that would result from the removal of the barrier, as well as a clear discussion of the method(s) by which the estimates were computed. Estimates should fall within the following value ranges: less than $5 million; $5 to $25 million; $25 million to $50 million; $50 million to $100 million; $100 million to $500 million; or over $500 million.

Please note that interested parties discussing barriers in more than one country should provide a separate submission for each country.

Written Comments

All written comments should be addressed to: Carolyn Frank, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street NW., Room 501, Washington, DC 20506.

All submissions must be in English and should conform to the information requirements of 15 CFR 2007.

A party must provide ten copies of its submission which must be received at USTR no later than noon on November 1, 1994. If the submission contains business confidential information, ten copies of a non-confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked "confidential" at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential."

Written comments submitted in connection with this request, except for information granted "business confidential" status pursuant to 15 CFR 2007.7, will be available for public inspection shortly after the filing deadline. Inspection is by appointment only with the staff of the USTR Public Reading Room and can be arranged by calling (202) 295–6186.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 94–24363 Filed 9–30–94; 8:45 am]

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VOL
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Sunshine Act Meetings

Federal Register
Vol. 59, No. 190
Monday, October 3, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY CREDIT CORPORATION

TIME AND DATE: 2:00 p.m., October 11, 1994.

PLACE: Room 104–A Administration Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Special Open Meeting of March 22, 1994.
2. Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.
3. Memorandum re: Commodity Credit Corporation's (CCC's) Financial Condition Report.
4. Memorandum re: Commodity Credit Corporation's (CCC's) Annual Financial Statement and Related Activities.
5. Docket CZ–161a, Revision 6 re: Policies for Collection, Settlement, and Adjustment of Certain Claims By or Against the Commodity Credit Corporation.
6. Memorandum re: Revised Availability of Commodity Credit Corporation Stocks for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, for Fiscal Year 1994.
7. Memorandum re: Availability of Commodity Credit Corporation Stocks for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, for Fiscal Year 1995.
8. Resolution re: Docket CZ–266, Resolution No. 32, Ratification of Commodities Available for Public Law 480 During Fiscal Year 1995.

CONTACT PERSON FOR MORE INFORMATION: Deborah A. Dawson, Secretary, Commodity Credit Corporation, Room 3603 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, DC 20013; telephone (202) 690–0490.

Dated: September 29, 1994.

Deborah A. Dawson,

Secretary, Commodity Credit Corporation.

[FR Doc. 94–24545 Filed 9–29–94; 3:23 pm]

BILLING CODE 3410–05–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, October 5, 1994.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Voluntary Standards/International Activities

The staff will brief the Commission on voluntary standards and international activities.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: September 29, 1994.

Sadye E. Dunn,

Secretary.

[FR Doc. 94–24544 Filed 9–29–94; 3:18 pm]

BILLING CODE 6355–01–M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: September 26, 1994, 59 FR 49103.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: September 28, 1994, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added on the Agenda scheduled for September 28, 1994:

Item No., Docket No., and Company

CAG–10 RP94–67–000, *et al.*, Southern Natural Gas Company
CAG–12 RP94–150–000, *et al.*, ANR Pipeline Company
CAG–34 TM94–4–32–000 and 001, Colorado Interstate Gas Company

Lois D. Cashell,

Secretary.

[FR Doc. 94–24426 Filed 9–28–94; 4:47 pm]

BILLING CODE 6717–01–M

Federal Register

Monday
October 3, 1994

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 314
Abbreviated New Drug Application Regulations; Patent and Exclusivity Provisions; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 85N-0214]

RIN 0905-AB63

Abbreviated New Drug Application Regulations; Patent and Exclusivity Provisions

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing regulations on certain requirements governing the submission, review, and approval of abbreviated new drug applications (ANDA's). Specifically, these new regulations pertain to patent issues, certification and notice of certification of invalidity or noninfringement of a patent by ANDA applicants, effective date of approval of an application under the Federal Food, Drug, and Cosmetic Act (the act), and new drug product exclusivity. These regulations are intended to complete FDA's implementation of Title I of the Drug Price Competition and Patent Term Restoration Act of 1984.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Sharon M. Sheehan, Center for Drug Evaluation and Research (HFD-600), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-0340.

SUPPLEMENTARY INFORMATION:

I. Background

On September 24, 1984, the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) (the 1984 amendments) was enacted. The law consisted of two different titles Title I authorized the approval of duplicate versions of approved drug products (other than those reviewed and approved under section 507 of the act (21 U.S.C. 357)) under an ANDA procedure. Title II authorized the extension of patent terms for approved new drug products (including antibiotics and biological drug products), some medical devices, food additives, and color additives. Congress intended these provisions to provide a careful balance between promoting competition among brand-name and duplicate or "generic" drugs and encouraging research and innovation

Title I also amended section 505 of the act (21 U.S.C. 355) by requiring all New Drug Application (NDA) applicants and holders to provide certain patent information, requiring ANDA applicants to certify as to the status of patents claiming the drug product they intend to copy, providing for the submission and approval of applications for which the investigations relied on by the applicant to satisfy the "full reports" of safety and effectiveness requirements were not conducted by the applicant or for which the applicant had not obtained a right of reference or use from the person who conducted the investigations, establishing rules for disclosure of safety and effectiveness data submitted as part of an NDA, and providing specific time periods during which an NDA or an ANDA cannot be submitted or approved. The 1984 amendments also required FDA to promulgate new regulations implementing the statute. In the **Federal Register** of July 10, 1989 (54 FR 28872), FDA published a proposed rule on Title I. In the **Federal Register** of April 28, 1992 (57 FR 17950), FDA published a final rule on some aspects of Title I, such as ANDA content and format, approval and nonapproval of an application, and suitability petitions. In that final rule, FDA stated that it was still examining issues concerning patents and market exclusivity, and would issue a final rule once it had completed its deliberations. This document now finalizes those provisions.

In the **Federal Register** of March 7, 1988 (53 FR 7298), FDA published a final rule implementing Title II. That rule is codified at 21 CFR part 60.

II. Highlights of the Final Rule

A. Patent Information, Certification, and Notice of Certification to Patent Owner and Certain Application Holders

The statute prohibits the agency from making effective the approval of an ANDA or an application described by section 505(b)(2) of the act (referred to as a 505(b)(2) application) before all relevant product and use patents for the listed drug (a drug product listed in an approved drug product list published by the agency) have expired, except where the generic applicant asserts either that its product will not infringe the patent or that the patent is invalid. In the latter case, approval of the ANDA or the 505(b)(2) application may not be made effective until the patent owner and the NDA holder have been notified and have had an opportunity to litigate the issue of patent infringement or validity. To facilitate the patent protection provisions, the statute requires that applications submitted under section 505(b) of the act include the patent number and expiration date of all relevant patents that claim the drug (including product and formulation patents) in the application or use patents that claim a method of using the drug. The agency publishes this patent information in its approved drug product list ("Approved Drug Products With Therapeutic Equivalence Evaluations," also known as the "Orange Book") for each listed drug for which patent information has been submitted.

A generic drug applicant submitting an ANDA that refers to a listed drug must include a certification as to the status of all patents applicable to the listed drug. Similarly, an applicant submitting a 505(b)(2) application must make certifications with respect to patents claiming any listed drug or claiming a use for such listed drug. If a generic applicant certifies that a relevant patent expires on a specified date, the effective date of approval of the ANDA or 505(b)(2) application will be delayed until the expiration of the patent. Thus, for example, if the patent expired on January 1, 1995, the effective date of approval of the ANDA or 505(b)(2) application would be January 1, 1995. The agency regards drug products with delayed effective dates as having tentative approvals; it does not consider the approval to be final until the effective date and the issuance of a final approval letter (see 57 FR 17950 at 17956). When a generic applicant certifies that any product or use patent is invalid or will not be infringed, the applicant must give notice of such certification to the patent owner and appropriate approved application holder for the listed drug. The generic applicant must include in the notice the factual and legal basis for the applicant's opinion that the patent is invalid or will not be infringed. Finally, a patent owner has 45 days from receipt of the notice of certification to file suit against the generic applicant to defend the patent. If the patent owner files suit within 45 days, the effective date of approval of the ANDA or 505(b)(2) application may be delayed up to 30 months pending resolution of the lawsuit.

The final rule describes: (1) The requirements for the submission of patent information by an NDA holder or applicant, (2) the patent certification requirements applicable to generic applicants, and (3) the content of a patent certification notice. The final rule also specifies: (1) When and to whom the notice is to be sent, and (2) the effect of each type of patent certification on the effective date of approval of an application for a generic drug product.

B. Exclusivity

Section 505(c)(3)(D) and (j)(4)(D) of the act protects certain listed drugs, or certain changes in listed drugs, from generic copying for specified periods by placing a moratorium on the submission, or by delaying the effective date of approval, of ANDA's and 505(b)(2) applications for those listed drugs. These so-called "exclusivity provisions" provide the following periods of protection from generic competition: (1) A 10-year period of exclusivity for new chemical entities approved during the period January 1, 1982, to September 24, 1984, the date of enactment of the 1984 amendments; (2) a 5-year period of exclusivity for new chemical entities approved after September 24, 1984; (3) a 3-year period of exclusivity for drugs that are not new chemical entities approved after September 24, 1984, if the applicant submitted an application containing reports of "new clinical investigations (other than bioavailability studies) essential to approval and conducted or sponsored by the applicant"; (4) a 3-year period of exclusivity for certain changes made after September 24, 1984, if the applicant submitted a supplement containing reports of "new clinical investigations (other than bioavailability studies) essential to approval and conducted or sponsored by the person submitting the application"; and (5) a 2-year period of exclusivity for drugs that are not new chemical entities, or for certain changes made to already approved drug products, approved during the period January 1, 1982, to September 24, 1984.

The agency is codifying the provisions regarding 5- and 3-year exclusivity; FDA is not codifying the other exclusivity provision because they have expired. The final rule also defines certain terms used in the regulations, and clarifies the agency's interpretation of each of the provisions.

III. Comments on the Proposed Rule

A. Section 314.50—Content and Format of an Application (21 CFR 314.50)

The proposed rule contained several additions to the existing requirements in § 314.50. The proposed additions focused on patent information and certifications and claimed exclusivity. Under proposed § 314.50(i), for example, a 505(b)(2) applicant would be required to include in its application one of four possible certifications: (1) That patent information on the reference listed drug had not been submitted to FDA; (2) that the patent had expired; (3) the date on which the patent will expire; or (4) that the patent was invalid or would not be infringed by the manufacture, use, or sale of the proposed drug product.

1. Two comments objected to the provision regarding use patents (patents that claim a use for the patented invention) under proposed § 314.50(i). The comments explained that the provision would permit applicants to decide whether a use would infringe a patent and whether the patent owner should be notified. Both comments asked FDA to require applicants to send a certification of invalidity or noninfringement to all patent owners whose patents claim the active ingredient involved in the proposed drug product. One comment would also revise the provision to withhold approval of an application if the patent owner disagreed with the patent certification in order to give the patent owner an opportunity to initiate a lawsuit.

The regulation corresponds to the statutory language at section 505(b)(2)(B) of the act. The statute does not require a patent certification with respect to a use patent if the applicant is seeking approval for a drug product that does not claim a use protected by the patent. FDA also declines to revise the provision to have FDA withhold approval of an application under these circumstances. The statute provides express and specific grounds for delaying an effective date of approval (see section 505(c)(3) of the act). These do not include any express authority to delay an effective date of approval based on an inadequate notice, and the agency is not prepared to infer such authority. NDA holders are advised, however, to notify FDA of the patented uses that appear in the approved labeling for their products; this will enable the agency to provide some guidance to applicants required to submit either a patent certification under section 505(b)(2)(A) or (j)(2)(A) of the act, or a statement under section 505(b)(2)(B) or (j)(2)(A)(viii) of the act. These uses will be listed in the Orange Book.

2. One comment noted that "United States Office of Patent and Trademark" in proposed § 314.50(i)(1)(i) should be "United States Patent and Trademark Office."

FDA agrees and has revised the provision accordingly.

3. One comment asked FDA to give examples of patent certifications under proposed § 314.50(i)(1)(i)(A)(*1*) to (i)(1)(i)(A)(*3*). As proposed, these provisions would require an applicant to certify that: (1) No patent information had been submitted to FDA, (2) the patent has expired, or (3) the patent would expire on a specific date.

Generally, most applicants making paragraph I, II, or III patent certifications simply paraphrase the language used in § 314.50(i)(1)(i)(A)(*1*) to (i)(1)(i)(A)(*3*) for each patent.

4. The agency, on its own initiative, has amended § 314.50(i)(1)(i)(A) to replace the reference to a patent that claims "the drug or drugs" with a patent that claims "a drug (the drug product or drug substance that is a component of the drug product)." The agency has made this amendment to clarify the types of patents for which a certification should be made.

5. The agency, on its own initiative, has also amended § 314.50(i)(1)(i)(A)(*4*) and § 314.94(a)(12)(i)(A)(*4*) (21 CFR 314.94(a)(12)(i)(A)(*4*)) to include a reference to unenforceable patents. As proposed, these provisions would have required applicants to certify that a patent is invalid or will not be infringed by the manufacture, use, or sale of the drug product that is the subject of the application. The agency has revised these certification statements to clarify how an applicant challenging a patent as unenforceable should word its paragraph IV certification. Although the agency realizes that courts have, in patent cases, distinguished invalid patents from unenforceable patents, the only court addressing the issue of unenforceable patents in the context of the provisions of section 505 of the act interpreted the phrase "invalid or not infringed" to include an unenforceable patent. (See *Merck* v. *Danbury Pharmacal, Inc.*, 694 F.Supp. 1 (D. Del. 1988), *aff'd*, 873 F.2d 1418 (Fed. Cir. 1989) (applying section 505(j)(4)(B)(iii) of the act).) The agency agrees with the court's construction of the act. The alternative interpretation, precluding applicants challenging patents as unenforceable from filing certifications under paragraph IV, would be contrary to Congress' obvious intent in allowing patent challenges under section 505 of the act and would lead to absurd results. Subsequent to the *Merck* decision, the agency has accepted paragraph IV certifications from applicants challenging patents as unenforceable.

The agency has also made corresponding changes to other provisions, such as the notice requirements in §§ 314.52 and 314.95, to include certifications for "unenforceable" patents.

6. Two comments disagreed with proposed § 314.50(i)(1)(ii), which would require an applicant to state that, in its opinion and to the best of its knowledge, there are no patents that

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claim the drug or drugs on which investigations that the applicant relied upon in its application were conducted or that claim a use for the drug or drugs. One comment said applicants should only be required to certify that there are no listed patents. The other comment suggested deleting the provision and combining this patent certification with a paragraph I (no patent information submitted) certification.

FDA believes the comments have misconstrued proposed § 314.50(i)(1)(ii). The provision would require a "no relevant patents" certification if, "in the opinion of the applicant and to the best of its knowledge," there are no patents described in the patent certification section (§ 314.50(i)(1)(i)). In other words, if an applicant made one of the four patent certifications under § 314.50(i)(1)(i), the applicant would not make another certification under § 314.50(i)(1)(ii).

7. One comment strongly objected to proposed § 314.50(i)(4). The provision would require section 505(b)(2) applicants whose applications were submitted after the late patent information is filed, or did not contain an appropriate patent certification at the time of the late submission, to submit a patent certification on such patents. The comment explained that section 505(d)(6) and 505(e)(4) of the act authorizes the agency, after providing an opportunity for a hearing, to refuse to approve an application or to withdraw approval of an NDA for failure to provide patent information. Thus, the comment argued that proposed § 314.50(i)(4) conferred a benefit on NDA applicants by permitting late patent information submissions without applying the statutory requirements for timely submission.

The agency has considered this and other comments which suggest regulatory approaches for handling patents that are filed outside the statutory time limits. Congress clearly intended to enforce timely submission of patent information. The statute requires that patent information be submitted with the application, by amendment prior to approval of the application, or within 30 days after the patent issues. (See 21 U.S.C. 355(b)(1) and (c)(2)). For the most extreme example of untimely patent filing—when a pioneer fails to file required patent information within 30 days of notice from the agency—Congress has provided the extreme remedy of withdrawal of approval of the new drug application. (See 21 U.S.C. 355(e)(4)). Congress did not directly address the question of patent filings that occur more than 30 days after issuance of the patent and for which the agency does not provide notice of the deficiency. The agency could treat these filings in a number of ways. The agency could refuse to publish in the list the untimely patent information. This approach has been rejected because it would provide no notice to subsequent 505(b)(2) or ANDA applicants that a patent exists that the NDA holder believes is applicable to the pioneer drug product. Absence of publication could lead an applicant to submit a 505(b)(2) application or an ANDA that it would not have submitted had the patent been listed. As a result, the applicant and the agency may expend resources unnecessarily. In addition, 505(b)(2) or ANDA applicants could thereby subject themselves and the NDA holder to unnecessary patent litigation.

Prior to publication of the proposed rule, the agency was asked to consider regulatory language designed to allow a pioneer holder to update, at any time, its patent information. This approach has been rejected because it would allow for manipulation of the patent filing system by the holder of the NDA and could result in delays in approval of otherwise approvable ANDA's. For example, if patents could be filed at any time after issuance, the holder of the NDA could delay the filing of a patent, and subsequent publication, until within 30 months prior to the expiration of the latest-expiring patent. Even if the ANDA applicant does not believe the patent is applicable to the pioneer drug, it will then be required either to file a paragraph III certification and wait until the patent expires, or to file a paragraph IV certification and therefore initiate the procedure set out at section 505(c)(3)(C) and (j)(4)(B). This procedure requires that the agency wait at least 30 months, unless a shorter or longer period is judicially ordered, before it makes effective approval of the application. Even if the NDA holder is unsuccessful in defending the late-filed patent, it will have extended its period of market monopoly in a manner inconsistent with the intent of Congress when it struck the balance between protecting the patent rights of innovators and encouraging prompt and efficient entry of generics onto the market. By requiring timely filing of patent information, the agency hopes to permit judicial resolution of patent disputes without unduly extending the innovator's period of patent protection.

The approach adopted by the agency as best embodying the compromise adopted by Congress requires that if an NDA applicant submits required patent information on an approved drug product more than 30 days after issuance of the patent, FDA will publish the untimely information, but will not require ANDA and 505(b)(2) applicants with pending applications who have previously submitted a certification, i.e. those applicants who would be prejudiced by the late submission, to recertify to the new patent. Only applicants who initially submit ANDA's or 505(b)(2) applications after the submission of the patent information or whose pending applications do not contain a valid certification at the time of submission would be required to submit a certification as to that patent. (See §§ 314.50(i)(4) and 314.94(a)(12)(vi).) While this could result in two categories of ANDA's for a pioneer drug, those without certifications for the late-filed patent and those with certifications for that patent, this approach is the best means for discouraging manipulation of the patent filing scheme and providing optimum notice of applicable patents. Disputes over patent issues arising from this approach will be resolved by Federal courts.

It is the agency's opinion that this remedy may also prove suitable in certain instances when an NDA holder fails to respond to an agency request for patent information within the statutory 30-day period. It is a less severe sanction than withdrawing the approval of the NDA, but nonetheless effectuates congressional intent to encourage timely filing and protect patent rights.

8. One comment asked FDA to clarify supplemental patent certifications under proposed § 314.50(i)(6)(i). The comment noted that the provision would have applicants submit new patent certifications if a patent were found valid and infringed, but does not instruct applicants what to do if a patent is found to be infringed, but also invalid.

FDA has revised §§ 314.50(i)(6)(i) and 314.94(a)(12)(vii)(A) to state that an applicant does not have to provide an amended patent certification if a court finds a patent to be invalid and infringed. FDA recognizes that courts have the discretion to focus on patent infringement issues and not decide patent validity. However, court decisions have also recognized the desirability of a court ruling on patent infringement even if the patent is held invalid. (See, e.g., *Medtronic, Inc. v. Cardiac Pacemakers, Inc.*, 721 F.2d 1563 at 1583 (Fed. Cir. 1983).) ("Though an invalid claim cannot give rise to liability for infringement, whether it is infringed is an entirely separate question capable of determination without regard to its validity. Because both validity and infringement involve construction of a claim, and because the construction must be the same in determining both, it is desirable to decide both questions at the same time.") Moreover, in such instances, the Supreme Court has indicated that "of the two questions, validity has the greater public importance." (See *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 330 (1945).) Consequently, if a court finds a patent to be invalid and infringed, FDA will attach more importance to the finding of invalidity, and will not require an amended patent certification even if the patent is also found to be infringed.

9. The agency, on its own initiative, has also revised § 314.50(i)(6)(ii) regarding patent certifications when a patent is removed from the list of patents for any reason other than a declaration of invalidity. Section 314.50(i)(6)(ii), as proposed, would have required an applicant to certify that there are no patents that claim the drug or, if other relevant patents claim the drug, to submit a request to withdraw the paragraph IV (patent is invalid, unenforceable, or will not be infringed) certification. FDA has revised this section so that an applicant must certify that there are no patents that claim the drug or, if other relevant patents claim the drug, to provide an appropriate patent certification.

10. On its own initiative, the agency has also revised § 314.50(i)(6)(iii)(*b*) (now renumbered as § 314.50(i)(6)(iii)(B)). As proposed, this provision would not require an applicant to amend a patent certification "when information on an otherwise applicable patent is submitted after the 505(b)(2) application is approved, whether or not the approval of the abbreviated application is effective." Because an approval with a delayed effective date is tentative and is not final (see 57 FR 17950 at 17956), the agency has revised § 314.50(i)(6)(iii)(B) to require section 505(b)(2) applicants to amend their patent certifications until the effective date of approval.

11. FDA received five comments on proposed § 314.50(j) and the applicant's obligations when claiming marketing exclusivity for a product. One comment would change proposed § 314.50(j) to have an applicant submit exclusivity information "with" its application rather than "to" its application.

FDA agrees, in part, with the comment. In general, applicants should submit exclusivity information with their NDA's. If the NDA has been submitted, but has not been approved, the applicant should submit exclusivity information as an amendment.

12. One comment would revise proposed § 314.50(j)(3) to have an applicant state that, "to the best of its knowledge or belief, a drug has not been approved." The comment said proposed § 314.50(j)(3) would require applicants to "prove a negative" because they would have to show that "no drug has previously been approved under section 505(b) of the act containing any active moiety in the drug for which the applicant is seeking approval."

FDA agrees and has amended the rule accordingly.

13. Proposed § 314.50(j)(4)(i) contained a typographical error. As originally drafted, the provision interpreted "new clinical investigations" as a certification that, to the best of the applicant's knowledge, the clinical investigations included in the application "meet the definitions of 'new' and 'clinical investigations' set forth in § 314.108(a)." Proposed section 314.108(a), however, only defined "new clinical investigation." The agency has corrected § 314.50(j)(4)(i) to refer to "new clinical investigation." The agency has also replaced the reference to "the clinical investigations" with "each of the clinical investigations." This change is intended to clarify that each clinical investigation, as opposed to some clinical investigations, must meet the definition of a "new clinical investigation" in § 314.108. The agency has also made a minor grammatical change to § 314.50(j)(4) to simplify its sentence structure.

14. Proposed § 314.50(j)(4)(ii) interpreted the phrase "essential to approval" as:

> A list of all published studies or publicly available reports of clinical investigations known to the applicant through a literature search that are relevant to the conditions for which the applicant is seeking approval, a certification that the applicant has thoroughly searched the scientific literature and, to the best of the applicant's knowledge, the list is complete and accurate and, in the applicant's opinion, such published studies or publicly available reports do not provide a sufficient basis for the approval of the conditions for which the applicant is seeking approval without reference to the new clinical investigation(s) in the application, and an explanation as to why the studies or reports are insufficient.

Three comments would revise proposed § 314.50(j)(4)(ii) to have FDA declare whether a study is "essential to approval" before the applicant begins the study or at the applicant's request. Another comment would consider the agency's rejection of a suitability petition or ANDA as conclusive evidence that studies are "essential to approval."

As stated elsewhere in this final rule, determining whether a study is essential for approval before a firm submits an application or even begins the study is not always feasible. Research goals and objectives often change during clinical investigations. Moreover, as stated in the preamble to the proposed rule, one cannot determine what studies will be essential to approval of an application by a review of protocols without knowing what drugs have been approved and what is in the published literature at the time the application is approved. If published reports of investigations, other than those conducted or sponsored by the applicant, are sufficient to approve a drug product, no additional studies would be essential to approval of that drug product as of the date of approval, and no exclusivity would be granted (see 54 FR 28872 at 28900 and 28901). Thus, it is far more practical for FDA to decide whether a study is essential for approval at the time the application is approved. FDA also believes that, if a pivotal study that could form the basis for approval were published by someone other than the applicant after submission but before approval of the application, there would be no exclusivity.

The agency also declines to treat its rejection of a suitability petition or ANDA as conclusive evidence that studies are "essential to approval." FDA may refuse to approve a suitability petition or ANDA for a variety of reasons. For example, under 21 CFR 314.93(e)(1)(ii), the agency may not approve a suitability petition that seeks to change an active ingredient if the drug product that is the subject of the petition is not a combination drug. Under 21 CFR 314.127(a), the agency may refuse to approve an ANDA if the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of the drug product are inadequate to ensure and preserve its identity, strength, quality, and purity. Thus, the agency's refusal to approve a suitability petition or ANDA does not necessarily mean that studies conducted or sponsored by the applicant are "essential to approval."

15. One comment also interpreted the terms "scientific literature" in proposed § 314.50(j)(4)(ii) as literature existing at the time the application was submitted.

FDA agrees that § 314.50(j)(4)(ii) only requires applicants to provide a list of all published studies or publicly available reports of clinical investigations known to the applicant at the time the applicant submits the application.

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B. Section 314.52—Notice of Certification of Invalidity or Noninfringement of a Patent

Proposed § 314.52 described the process whereby an applicant would provide notice of certification of invalidity or noninfringement of a patent. Proposed § 314.52(a) would have required applicants to provide notice to each patent owner that is the subject of the certification and the holder of the approved application. Proposed § 314.52(b) instructed applicants to provide notice after receipt of a letter from FDA stating that the application has been filed. Proposed § 314.52(c)(6) specified the content of a notice, including a "detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid or will not be infringed." Proposed § 314.52(d) would have required an applicant who amended its application to contain a patent certification to provide notice of certification of invalidity or noninfringement of a patent. Proposed § 314.52(e) would have required applicants to document receipt of notice.

16. FDA received two comments on proposed § 314.52(a). One comment agreed with the provision, but stated that notice to the holder of the approved application should be considered only as informational "with no legal ramifications since the NDA holder has *no* patent rights by reason of its NDA." (Emphasis added in original.)

The legal ramifications under patent law, if any, of this notice of certification of invalidity or noninfringement of a patent are beyond the scope of this rulemaking.

17. One comment objected to proposed § 314.52(a)(3). The comment explained that the provision would permit an applicant whose application did not cover any use claimed in a patent to refrain from making any patent certifications or providing any notice. The comment would require all applicants to provide notice of certification of invalidity or noninfringement of a patent to all patent owners whose patents claim the active ingredient that is the subject of the application.

Under section 505(b)(2)(A) of the Act, an application must contain a certification with respect to each patent which claims the listed drug or which claims a use for such listed drug for which the 505(b)(2) applicant is seeking approval. One of these patent certifications is that the patent is invalid or will not be infringed by the manufacture, use, or sale of the new drug for which the application is submitted. (See section 505(b)(2)(A)(iv) of the Act). If an applicant makes a "paragraph IV" certification, it must give notice to the patent owner and the NDA holder. (See section 505(b)(3)(A) of the Act.) If, however, the applicant is not seeking approval for a use that is covered by a use patent, the statute does not require a "paragraph IV" certification or notice to that patent owner and NDA holder. (See section 505(b)(2)(B) and (b)(2)(A) of the Act.)

Thus, § 314.52(a) is consistent with the statute, and FDA declines to revise it as suggested by the comment.

18. FDA received three comments on proposed § 314.52(c) regarding the content of a notice of certification of invalidity or noninfringement of a patent. Two comments favored extremely detailed statements of the factual and legal basis of the applicant's opinion that the patent is not valid or will not be infringed. These comments would require the applicant to list all components used in the proposed drug product, the proportions of each component, and list all grounds supporting its opinion that the patent is invalid or will not be infringed. One comment opposed disclosure of the proposed drug product's formulation and also objected to the use of a "designated intermediary" in proposed § 314.52(c)(6)(iii).

In general, the statute requires a notice of certification of invalidity or noninfringement of a patent to state that an application has been submitted and to include "a detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid or will not be infringed." (See section 505(b)(3)(B) and 355(j)(2)(B)(ii).) The proposed rule listed the type of information FDA considered necessary to enable patent owners to decide whether to sue for patent infringement. The list at proposed §§ 314.52(c) and 314.95(c) generated substantial debate, as reflected in the comments, as to the details to be included in a notice. The agency is neither prepared nor required to become involved in issues concerning sufficiency of notice for purposes of enforcing patent law. Therefore, FDA has revised both §§ 314.52(c) and 314.95(c) so that the detailed statement of the factual and legal basis behind the applicant's opinion that the patent is invalid, unenforceable, or will not be infringed must include: (1) For each claim of the patent alleged not to be infringed, a full and detailed explanation why the claim is not infringed; and (2) for each claim of a patent alleged to be invalid or unenforceable, a full and detailed explanation of the grounds supporting the allegation. These provisions, as revised, paraphrase the statutory language. The sufficiency of the notice, for purposes of patent enforcement, is an issue to be resolved by the applicant and the patent owner or the holder of the approved application.

The agency has also revised §§ 314.52(c)(6) and 314.95(c)(6) by removing paragraphs (c)(6)(iii) entirely. FDA is making this change due to the numbers of comments that objected to the use of a "designated intermediary" and the "referee" concept in proposed §§ 314.52 and 314.95.

19. One comment would amend proposed § 314.52(e) pertaining to documentation of receipt of notice of certification of invalidity or noninfringement of a patent. The comment would include a signed receipt or delivery manifest as documentation of notice.

Section 314.52(e) clearly states that documentation of notice may be a copy of the return receipt or "other similar evidence of the date the notification was received." The provision also states that FDA will accept as adequate documentation of the date of receipt a return receipt or "a letter acknowledging receipt by the person provided the notice." Thus, § 314.52(e) does not limit an applicant to a particular form of documentation of notice. Applicants are required, however, to obtain agreement from FDA in advance if they intend to use a form of documentation other than return receipt.

20. The agency has also revised § 314.52(f) to state that the 45-day period provided for in section 505(c)(3)(C) of the Act will begin on the day following the date of receipt of the notice by the patent owner or its representative and by the approved application holder. The reasons for this change are described in comment 62 below.

The agency, on its own initiative, has also revised § 314.52(f) to state that the agency may begin the 45-day period on a later date if the applicant has amended its application to state that a later date should be used. This could occur, for example, where the applicant has amended its notice to the patent owner to provide more information regarding the applicant's notice of invalidity or noninfringement. This revision is also consistent with the corresponding provision for ANDA's.

C. Section 314.53—Submission of Patent Information

Proposed § 314.53 contained general requirements for the submission of patent information by NDA applicants

and NDA holders. For example, proposed § 314.53(b) would have required an NDA applicant to submit information on each patent that claims the drug or drug product for which the applicant is seeking approval or a method of using the drug that is the subject of the NDA or amendment or supplement and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product. Proposed § 314.53(c) described general reporting requirements, such as information on the type of patent and the name of the patent owner, and also required applicants to submit "certifications" with respect to formulation or composition patents (proposed § 314.53(c)(2)) and method of use patents (proposed § 314.53(c)(3)).

21. One comment addressed patent information and amendments of patent information under proposed §§ 314.50(h) and 314.53. These provisions would require each application under section 505(b) of the act to contain specific information about each patent that claimed the drug product or a method of using the drug product. The provisions also would require applicants to amend patent information or patent certifications and would permit the agency to disclose patent information. The comment said FDA should only publish patent information filed by NDA applicants at the time FDA approves the NDA.

A drug product does not necessarily have a patent by the time FDA approves the NDA. The statute expressly recognizes that a patent might issue after NDA approval, and, under such circumstances, instructs the NDA holder to file patent information within 30 days of the patent's issue date. Once FDA receives this information, the agency is obliged to publish it (see section 505(c)(2) of the act). Patent information might also change after NDA approval. For example, the patent term restoration provisions at 35 U.S.C. 156 give patent holders the opportunity to extend patent terms. The extended patent term may be as long as 5 years. However, patent owners cannot apply for patent term extension until FDA approves the product for marketing (see 35 U.S.C. 156(d)(1)). Thus, patent term restoration (also known as "patent term extension") always occurs after NDA approval, and patent owners who obtain such extensions usually notify FDA of the new patent expiration date. The new expiration date will be important to ANDA applicants because section 505(j)(2)(A)(vii) of the act requires ANDA applicants to submit patent certifications. Consequently, FDA does not accept the comment's suggestion.

22. One comment would amend proposed § 314.53 to establish a mechanism "for review of submitted patent information to determine, at least on a very general basis, applicability to the particular NDA in question."

FDA declines to adopt the comment. As stated elsewhere in this final rule, FDA does not have the expertise to review patent information. The agency believes that its scarce resources would be better utilized in reviewing applications rather than reviewing patent claims.

23. FDA, on its own initiative, has amended § 314.53(b) by replacing the phrase, "such patents consist of drug (ingredient) patents" with "such patents consist of drug substance (ingredient) patents." The final rule also replaces the phrase "For patents that claim a drug or drug product" with "For patents that * claim a drug substance or drug product." These changes are intended to clarify the type of patents involved.

24. One comment would amend proposed § 314.53(b) by requiring an applicant to declare that it holds each patent or is the exclusive licensee of the patent owner or is authorized to submit patent information on behalf of the patent owner. The comment would also prohibit an applicant from submitting patent information and would prohibit the agency from listing any patent information if the applicant did not make any of these declarations.

The agency declines to amend the provision. Under § 314.53(c), the applicant must provide the name of the patent owner or, if the patent owner or applicant does not reside or have a place of business within the United States, the name of an agent or representative who resides or maintains a place of business within the United States and is authorized to receive notice of patent certification. Requiring an applicant to declare that it is the patent owner or exclusive licensee or is authorized to submit patent information would go beyond the statutory language at section 505(b)(1) of the act and would not serve any statutory purpose.

FDA also declines to amend the rule to prohibit the applicant from submitting patent information or to prohibit the agency from listing patent information without a declaration of ownership or license. Such an amendment would be contrary to section 505(b)(1) of the act and may result in less published patent information, thereby causing applicants to question the accuracy and validity of any patent information listed by FDA.

25. FDA received two comments that objected to proposed § 314.53(b) and (c) regarding the submission of patent information by NDA applicants. Both comments claimed that the 1984 amendments only require NDA applicants to provide patent numbers and patent expiration dates.

FDA disagrees with the comments. Section 505(b)(1) of the act requires an applicant to file "the patent number and the expiration date of any patent which claims the drug for which the applicant submitted the application * * * and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug." The requirement in § 314.53(b) and (c) that applicants provide information on the type of patent and the name of the patent owner or authorized representative is consistent with the purpose of section 505(b)(1) of the act.

26. One comment objected to proposed § 314.53(c)(2) and (c)(3). Proposed § 314.53(c)(2) would have required an applicant to provide a patent certification for each formulation or composition patent in addition to certain, general patent information. Proposed § 314.53(c)(3) would have required applicants to provide similar certifications for method of use patents. The comment said that a patent may contain formulation, composition, and method of use claims. The comment suggested deleting the proposed rule's classification of patents and replacing it with a general certification that the patents listed by the applicant contain claims with respect to which the applicant could reasonably assert a claim of infringement against a person engaged in the unlicensed manufacture, use, or sale of the drug for which the application was submitted.

FDA acknowledges that a patent may contain a variety of claims, and has revised proposed § 314.53(c)(2) by creating a single certification statement. The new certification statement would have an applicant state that, "The undersigned declares that Patent No. _____ covers the formulation, composition, and/or method of use of (*name of drug product*). This product is (*currently approved under section 505 of the Federal Food, Drug, and Cosmetic Act*) [or] (*the subject of this application for which approval is being sought*): _____." However, because section 505(b)(1) of the act specifically requires applicants to "file with the application the patent number and the expiration date of any patent which claims the drug for which the applicant submitted the application or which

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claims a method of using such drug," and because FDA lacks patent law expertise, the agency strongly encourages applicants to identify, to the best of their ability, the type of patent covering the drug or drug product. This information will help FDA determine which claims cover the drug or drug product and which claims cover a method of use.

27. One comment said FDA should not list formulation patents. Proposed § 314.53(c)(2) would require applicants under section 505(b) of the act to provide information on formulation or composition patents, and FDA would publish this information under § 314.53(e). The comment said this would increase the number of generic drug applications by avoiding difficult questions of exclusivity for "patentably distinct formulations" and noted that patent owners can always resort to patent law to halt possible patent infringement.

FDA disagrees with the comment. The statute expressly requires applicants to file "the patent number and the expiration date of any patent which claims the drug for which the applicant submitted the application * * *" (section 505(b)(1) of the act). Thus, if the formulation patent claimed the drug product in the application, the applicant must file information on that patent.

28. One comment would revise proposed § 314.53(c)(2)(i), (c)(3)(i), and (c)(4) to refer to a "declaration" rather than "certification." The comment explained that the 1984 amendments used the word "certification" with respect to patent information to be submitted by applicants under section 505(b)(2)(A) and (j)(2)(A)(vii) of the act, so use of the word "certification" in proposed § 314.53(c) would be confusing.

The agency agrees and has revised these and other sections of the rule accordingly.

29. One comment would delete proposed § 314.53(c)(2)(ii) and (c)(3)(ii). The comment said that the provision for the correction of patent information at proposed § 314.53(f) would ensure that patent information is correct.

The provisions cited by the comment serve different purposes. As revised, § 314.53(c)(2)(ii) requires an applicant to provide patent information about a product within 30 days after the date of approval; these provisions contemplate the possibility that the patents pertaining to a product's formulation, composition, and uses may change between the time the application is initially submitted and the time the application is approved (see 54 FR 28872 at 28909). Although § 314.53(f) enables any person to dispute the accuracy or relevance of the patent information submitted to FDA, it is the responsibility of the applicant, not the general public or the applicant's competitors, to ensure that the information provided by the applicant is accurate. These provisions for amending patent information are necessary for maintaining an accurate list of patent information and useful for applicants who must comply with the patent certification requirements. Therefore, FDA declines to adopt the comment.

30. FDA received two comments on proposed § 314.53(c)(4) (now renumbered as § 314.53(c)(3)), which would enable an applicant to claim that there are no relevant patents that claim the drug product or a method of using the drug product. One comment supported the provision; the other recommended deleting it entirely, stating that the only party that would be injured by the failure to list a patent is the NDA applicant.

FDA declines to delete the provision as suggested. The agency disagrees with the assertion that the NDA applicant would be the only party injured by the failure to list a patent. The patent holder may be a person other than the NDA applicant and may be injured if the patented invention is made, sold, or used without the patent owner's knowledge or consent. Failure to list a patent may also result in injury to other applicants who devote resources towards submitting applications for duplicate products without realizing that those products may be covered by the patent

31. FDA, on its own initiative, has reorganized § 314.53(d) to clarify further when and where patent information should be submitted. As revised, § 314.53(d)(1) pertains to patent information requirements for original applications. New § 314.53(d)(2), formerly § 314.53(d)(2)(ii), applies to patent information requirements for supplements, and a new § 314.53(d)(3), formerly § 314.53(d)(2)(i), applies to patent information submitted after an application has been approved. The agency has renumbered the remaining paragraphs accordingly.

32. Proposed § 314.53(d) instructed applicants when and where to submit patent information in an original application and in a supplement and would require an applicant to provide patent information within 30 days if a patent issues for a drug, drug product, or method of use after the application had been approved. Three comments asked FDA to extend the 30-day period in proposed § 314.53(d) to 60 days.

FDA declines to accept the comment. The 30-day period is consistent with section 505(c)(2) of the act and permits the agency to include the latest patent information in supplements to the Orange Book. If FDA provided for a longer time period, the Orange Book and its supplements might be less likely to contain current patent information for each product, and potential applicants might be misled by outdated patent information. FDA has, on its own initiative, clarified § 314.53(d)(1) and (d)(3) to mention the 30-day deadline.

33. Proposed § 314.53(d)(2)(ii) (now renumbered as § 314.53(d)(2)) would require an applicant to submit patent information for a patent that claims the drug, drug product, or a method of using the product if the applicant sought approval of certain, listed changes through a supplemental application. One comment would revise proposed § 314.53(d)(2)(ii) to require an applicant to provide a patent declaration for each supplement. The comment explained that this would "eliminate the risk that the four types of supplements described in the proposal do not comprise the entire universe of supplements that may affect the patent information filed with the FDA." The comment would also require an NDA applicant to submit information on patents that claim the formulation or composition each time the NDA applicant submits a supplement to revise the formulation or composition.

FDA disagrees with the comment. Section 505(b)(1) of the act requires an applicant to submit information on each patent that claims the drug or a method of using a drug product for which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug. The supplements listed in new § 314.53(d)(2)(i)—supplements to change a formulation, to add a new indication or other condition of use, to change the strength, or to make any other patented change regarding the drug, drug product, or any method of use—are those that concern the drug product or a method of using the drug product. Additionally, new § 314.53(d)(2)(i)(D) provides for the submission of patent information for any other type of patented change. Requiring an applicant to provide patent information for all supplements, even if the supplement did not involve a change to the drug product or a method of using the product (i.e., a change in the site of manufacturing), would increase the workload on applicants and the agency without a significant benefit.

The suggestion that FDA require an applicant to submit information on patents that claim the formulation or composition each time the NDA applicant submits a supplement to revise the formulation or composition is apparently based on a misreading of proposed § 314.53(d)(2)(ii)(A) (now renumbered as § 314.53(d)(2)(i)(A)). This section already requires an applicant to provide such information. Thus, the comment's suggestion is unnecessary.

34. One comment would revise proposed § 314.53(d)(2)(ii)(D) (now renumbered as § 314.53(d)(2)(i)(D)) to require the submission of patent information if the applicant submits a supplement to make any other patented change "except patented manufacturing processes."

The suggested revision is unnecessary because § 314.53(b) clearly states that, "Process patents are not covered by [§ 314.53] and information on process patents may not be submitted to FDA."

35. One comment would delete proposed § 314.53(d)(2)(v) (now renumbered as § 314.53(d)(2)(iv)), which would require an applicant to comply with the requirements for amending formulation, composition, or method of use patent information. The comment said applicants are already required to comply with such requirements.

FDA disagrees with the comment. Section 314.53(d)(2)(iv) requires applicants to amend the patent information to account for changes proposed in supplemental applications whereas § 314.53(c)(2)(ii) and (d)(2)(ii) require an applicant to amend patent information when there have been changes in status, or there is other new information regarding the relevant patents.

36. Proposed § 314.53(d)(3) (now renumbered as § 314.53(d)(4)) would require an applicant to submit two copies of each submission of patent information. One copy would go to the archival copy of the application and the other copy would go to the chemistry, manufacturing, and controls section of the review copy. One comment would delete the phrase "of the review copy" from proposed § 314.53(d)(3) on the grounds that the phrase appeared to be a typographical error.

FDA believes that the comment misreads proposed § 314.53(d)(3). An applicant is required to submit an archival copy and a review copy of an application consisting of several separately bound technical sections. New § 314.53(d)(4) requires an applicant to provide two copies of each submission of patent information. One copy will go to the archival copy of the NDA; the other will go to the chemistry, manufacturing, and controls technical section of the review copy of the NDA.

37. FDA, on its own initiative, has amended § 314.53(e) regarding public disclosure of patent information. As originally proposed, § 314.53(e) stated that, for each use patent, FDA would publish the "approved indications or other conditions of use covered by a patent and any unapproved indications or condition of use to which the applicant certified." The agency is deleting the reference to "any unapproved indications or condition of use" to be consistent with the patent information requirements in § 314.53(c).

38. FDA received two comments on proposed § 314.53(f) regarding corrections of patent information errors. The proposed provision would require a person disputing the accuracy or relevance of patent information submitted to and published by FDA to first notify the agency in writing stating the grounds for the disagreement. The agency would then ask the NDA holder to confirm whether the patent information was correct, but would not change the patent information listed in the Orange Book unless the NDA holder withdrew or amended that information. If the NDA holder did not change the patent information, a 505(b)(2) applicant or ANDA applicant would be required to make a certification for the listed patent despite any disagreement as to its correctness.

Both comments said that FDA should ensure that patent information submitted to the agency is complete and applies to a particular NDA. One comment would also amend the rule to have FDA confirm, upon request from any person, the accuracy or relevance of the patent information submitted to the agency. One comment said the agency should not provide applicants the grounds for a disagreement on the accuracy or relevance of patent information.

As stated elsewhere in this rule, FDA does not have the resources or the expertise to review patent information for its accuracy and relevance to an NDA. Therefore, the agency declines the comment's requests to ensure that patent information is complete and relevant to an NDA and to confirm, upon request, the validity of patent information submitted to the agency. The agency believes that the declaration requirements under § 314.53(c), as well as an applicant's potential liability if it submits an untrue statement of material fact, will help ensure that accurate patent information is submitted.

FDA also declines to amend the rule to prevent the agency from providing applicants the grounds for a disagreement on the accuracy or relevance of patent information. Absent such information, a patent owner will be unable to evaluate the disagreement or to explain whether the patent information is correct.

39. One comment noted that proposed § 314.53(f) does not require applicants to correct patent listings. The comment would revise the provision to permit applicants to "make otherwise pertinent certifications while a listing dispute is pending." The comment would also require FDA to notify the NDA holder of the disagreement within 15 days of notification and require patent owners or NDA holders to respond to a disagreement on patent information or to withdraw or amend the patent information within 30 days. The comment would then require FDA to immediately send the NDA holder's response to the party that began the disagreement and inform the party whether the patent would remain listed.

As originally proposed, § 314.53(f) expressly required an applicant to make "an appropriate certification for each listed patent" notwithstanding any disagreement as to the correctness of the listed patent information. If, as FDA assumes, the proposed reference to "otherwise pertinent certifications" means "appropriate certifications," the proposal is unnecessary. If the proposed reference is to negate any responsibility to file an appropriate certification for a patent that is subject to a dispute over listing, FDA rejects the proposal. Until the dispute is resolved, the patent is listed within the meaning of the act. FDA also declines to amend the rule to impose deadlines for resolving patent disagreements. The agency believes that such deadlines would be impractical, considering the agency's lack of expertise in patent matters and the volume of applications FDA receives, and agency resources would be better spent on reviewing applications rather than exchanging disputed patent information among parties as proposed by the comment. The agency also notes that it has not had any significant problems with the informal procedures described in proposed § 314.53(f) as most NDA holders have amended or corrected their patent information after FDA has informed them of a dispute.

The agency has, however, revised § 314.53(f) to provide a new address for the submission of written statements disputing the relevance or accuracy of patent information. Such statements should now be directed to the Drug Information Services Branch in the Division of Drug Information Resources.

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This change reflects current FDA operations.

D. Section 314.54—Procedure for Submission of an Application Requiring Investigations for Approval of a New Indication for, or Other Change From, a Listed Drug

Proposed § 314.54(a)(1)(vii) would require an applicant seeking approval of a drug product that represents a modification of a listed drug, to provide certain information regarding marketing exclusivity if the applicant believed the modification would be entitled to such exclusivity.

The agency received no comments on this provision and has finalized it without change.

E. Section 314.70—Supplements and Other Changes to an Approved Application

Proposed § 314.70(e) (now renumbered as § 314.70(f)) would require applicants submitting a supplement to an approved application to provide certain marketing exclusivity information if the applicant intended to seek market exclusivity.

The agency received no comments on this provision and has finalized it without change.

F. Section 314.94—Content and Format of an Abbreviated Application (21 CFR 314.94)

Proposed § 314.94(a)(12) contained the patent certification requirements for ANDA's. For example, under proposed § 314.94(a)(12)(i), an ANDA applicant would provide a patent certification with respect to each patent that claims the reference listed drug or that claims a use of the reference listed drug for which the ANDA applicant is seeking approval. Proposed § 314.94(a)(12)(ii) would permit an ANDA applicant to certify that there are no relevant patents that claim the listed drug or a method of use of the listed drug. Proposed § 314.94(a)(12)(iii) would permit an ANDA applicant to state that the use for which the applicant is seeking approval is not covered by a patent claiming a use for the listed drug.

40. One comment claimed that proposed § 314.94(a)(12)(i)(A) was inconsistent with the statute because the statute only requires ANDA applicants to make certifications for listed patents rather than patents issued by the United States Patent and Trademark Office. Two comments added that the suggestion regarding patent searches that FDA made in the preamble to the proposed rule was irrational and legally insupportable. One company, however, agreed that ANDA applicants should submit patent certifications with respect to all patents, including those that had not been submitted to FDA for listing.

The rule simply paraphrases the statutory language in section 505(j)(2)(A)(vii) of the act. The rule does not require ANDA applicants to conduct patent searches. If the applicant believes that no patent exists, the applicant is to submit a patent certification under § 314.94(a)(12)(ii) that no relevant patents exist. If the applicant believes that a patent exists but that the patent owner has not filed patent information at FDA, the ANDA applicant would certify that, "in its opinion and to the best of its knowledge," no patent information has been submitted (i.e., make a paragraph I certification). FDA, however, believes it would be prudent for applicants to conduct patent searches if possible. A patent search could reveal the existence of an unlisted, but valid, patent and thus prevent an unnecessary expenditure of resources by applicants and FDA on a product that might not be marketable. A patent search might also enable ANDA applicants to avoid unnecessary patent infringement litigation.

41. One comment suggested that FDA publish all patent information, including descriptions of the patents and patent numbers, in the Orange Book.

The Orange Book already contains an addendum listing both patent and exclusivity information. This section provides patent numbers and patent expiration dates as well as exclusivity codes and expiration dates. In addition, for a use patent, FDA includes in the Orange Book a code identifying the indication covered by the patent. As for patent descriptions, FDA lacks the expertise to review and summarize patents and individual patent claims and does not believe that expanding the Orange Book to include patent descriptions would be an efficient use of FDA resources. However, persons who wish to obtain a synopsis of a particular patent can consult the Official Gazette for Patents, which is published by the United States Patent and Trademark Office. The Official Gazette for Patents contains short descriptions of patents and is publicly available.

42. One comment asserted that FDA should list patents that claim drug products for which the patent owner is not seeking or has not obtained approval. The comment explained that the statute requires NDA holders and applicants to submit information on "any patent which claims the drug for which the applicant submitted the application" (section 505(b)(1) of the act). The comment, citing § 314.50(d)(1), claimed that "drug" means the active ingredient while "drug product" denotes a marketed product composed of active and inactive ingredients. Thus, because section 505(b)(1) of the act uses the term "drug," the comment continued, any patent that claims the active ingredient is a patent that claims the drug for which the applicant submitted the application and should be listed.

FDA disagrees with the comment's interpretation of section 505(b)(1) of the act. The statutory provision states that patent information is to be filed on patents that claim the drug "for which the applicant submitted the application." Similarly, the House Report accompanying the Drug Price Competition and Patent Term Restoration Act indicates that the patent information to be filed "includes the patent number and the expiration date of any patent which claims the drug *in the NDA* or which claims *a method of using such drug* with respect to which a claim of patent infringement could reasonably be asserted * * *." H. Rept. 857, 98th Cong., 2d sess. 31–32 (1984) (emphasis added). Thus, both the statute and its legislative history reveal that Congress intended the term "drug" to mean "drug product" rather than "active ingredient" because NDA's are granted only for drug products and not for active ingredients. FDA's interpretation of this provision has been upheld by a United States magistrate in *Pfizer* v. *FDA*, No. HM–88–1019, slip op. at 10–13 (D. Md. October 2, 1989) and adopted by a Federal district court (see *Pfizer, Inc.* v. *Food and Drug Administration*, 753 F.Supp. 171 (D. Md. 1990)).

43. Several comments sought clarification regarding the interaction between proposed § 314.94(a)(12)(i)(A)(*4*) and § 314.94(a)(12)(v), 180-day exclusivity periods under section 505(j)(4)(B)(iv) of the act, and licensees.

Because patent licensees are subject to 180-day exclusivity that has been granted to another applicant, the only instance in which proposed § 314.94(a)(12)(v) would apply would be where a patent licensee would seek to have an effective approval of its ANDA or 505(b)(2) application within 45 days of its receipt or filing (because the patent holder has 45 days to file a lawsuit against an ANDA applicant making a paragraph IV certification). Because the agency does not anticipate approving an ANDA or 505(b)(2) application in 45 days, FDA, on its own initiative, removed the provisions in § 314.94(a)(12)(v) and § 314.107(b)(1)(iv) related to consent by a patent owner to

an immediate effective date of approval for a licensee.

44. Two comments disagreed with proposed § 314.94(a)(12)(ii), which would require ANDA applicants to certify that there are no relevant patents that claim the listed drug referred to in the ANDA. One comment said that ANDA applicants should only be required to certify that no listed patents claim the listed drug referred to in the ANDA. The second comment suggested deleting the provision and revising proposed § 314.94(a)(12)(i)(A)(*1*) so ANDA applicants would certify that no patent information had been filed.

FDA declines to accept the comments. As stated in the preamble to the proposed rule, an applicant makes a patent certification under § 314.94(a)(12)(ii) if "in the applicant's opinion and to the best of its knowledge, no relevant patents claim the listed drug or a method of using the listed drug" (54 FR 28872 at 28885). The applicant makes the patent certifications under § 314.94(a)(12)(i) when it is aware of or believes that a patent covers the listed drug. (Id.) FDA believes that § 314.94(a)(12)(ii) will enable FDA to ensure that each applicant has complied with the patent certification requirements.

45. One comment asked FDA to define "relevant" for proposed § 314.94(a)(12)(ii). The word "relevant" refers to those patents defined by section 505(j)(2)(A)(vii) of the act for which a patent certification would be required, i.e., patents that claim the listed drug, or drug substance component thereof, referred to in the ANDA or that claim a use of the listed drug or drug substance for which the ANDA applicant seeks approval and for which patent information is required to be filed under section 505 (b) and (c) of the act and § 314.53.

Although patents that are held to be invalid or unenforceable in a judicial decision may be removed from the list by FDA, a patent that has been declared invalid or unenforceable in a lawsuit resulting in 180-day exclusivity will be deemed relevant under § 314.94(a)(12)(ii) and will not be removed from the list until the end of the 180-day exclusivity period. This will ensure that 180-day exclusivity cannot be avoided by changing a patent certification.

46. Several comments objected to proposed § 314.94(a)(12)(iii), which would require ANDA applicants to provide a patent statement if the listed patent is for a method of use and that applicant does not intend to claim any of the patented uses. The comments recommended that such ANDA applicants certify, under § 314.94(a)(12)(i)(A)(*4*), that the listed use patent would not be infringed, thereby giving the patent owner notice of possible patent infringement. One comment asked how proposed § 314.94(a)(12)(iii) would affect eligibility for the 180-day exclusivity period. The comment explained that the statute requires ANDA applicants to make patent certifications under section 505(j)(2)(A)(vii) of the act and statements for method of use patents under section 505(j)(2)(A)(viii) of the act. However, the comment stated, for method of use patents, the proposed rule could be interpreted as giving ANDA applicants the option of making a patent certification of noninfringement under proposed § 314.94(a)(12)(i)(A)(*4*) or a statement that the applicants' drug products do not involve a patented claim under proposed § 314.94(a)(12)(iii).

FDA does not intend § 314.94(a)(12)(i)(A)(*4*) to authorize certifications with respect to patents that claim a use for the listed drug for which the applicant is not seeking approval. The statute requires patent certifications only if the patent "claims a use for [the] listed drug for which the applicant is seeking approval * * *" (section 505(j)(2)(A)(vii) of the act). The statute requires an applicant to make a patent statement when a method of use patent "does not claim a use for which the applicant is seeking approval * * *" (section 505(j)(2)(A)(viii) of the act).) The proposed rule recognized this distinction. FDA stated that if a patent claims a method of using the listed drug, and labeling for the ANDA applicant's proposed drug product does not contain any indications covered by the method of use patent, the ANDA applicant "should not submit a certification under § 314.94(a)(12)(i)(A) for such a patent" (54 FR 28872 at 28886). The preamble also indicated that if the labeling for the ANDA applicant's product did contain an indication that was claimed by a patent, the applicant should make a certification under § 314.94(a)(12)(i)(A) (Id.) Thus, the two provisions cited by the comment are not overlapping, and an applicant does not have the option of making a certification under § 314.94(a)(12)(i)(A)(*4*) in lieu of, or in addition to, a statement under § 314.94(a)(12)(iii).

If, however, there are listed patents that present both a product and method of use claim, the applicant may file a paragraph IV certification with respect to the product patent or patent claim and a statement that the product that is the subject of the application does not involve a patented method of use with respect to the method of use patent or patent claim.

47. One comment recommended revising proposed § 314.94(a)(12)(v) to provide NDA holders the opportunity to consent to licensing agreements between ANDA applicants and patent owners. As written, proposed § 314.94(a)(12)(v) did not address this issue.

Neither the statute nor the legislative history suggests that NDA holders should be given such a right, and the agency is not prepared to infer such a right to interfere in the patent holder's enjoyment of its right to license. However, as stated earlier, FDA has elected to remove the language in § 314.94(a)(12)(v) regarding consent by the patent owner.

48. One comment objected, in part, to proposed § 314.94(a)(12)(vi), which would require an ANDA applicant to provide a patent certification in response to an untimely submission of patent information if the ANDA was submitted after the untimely submission of patent information or did not contain an appropriate patent certification at the time the patent information was submitted. The comment correctly noted that FDA may refuse to approve or may even withdraw approval of an application for failure to submit patent information (see section 505 (d)(6) and (e)(4) of the act). The comment said these sanctions emphasize the importance of filing patent information, and FDA "should not provide any benefit to the NDA applicant who ignores the statutory requirement for timely submission of such information."

Section 314.94(a)(12)(vi) is intended to effectuate Congress' intent to enforce timely submission of patent information. As discussed more fully in the response to comment 7 above, FDA believes a less severe sanction than the withdrawal of NDA approval for late submission of patent information would ordinarily effectuate congressional intent. For the reasons discussed in response to comment 7 FDA has concluded that if an NDA applicant submits required patent information on an approved drug product more than 30 days after issuance of the patent, the agency will publish the untimely information but will not require ANDA applicants with pending applications who have previously submitted a certification that was correct at the time it was submitted, i.e., those applicants who would be prejudiced by the late submission, to recertify as to the new patent. Applicants who initially submit ANDA's after the submission of the patent information or whose pending

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applications do not contain a valid certification at the time of the submission would be required to submit a certification as to that patent. The agency, therefore, declines to revise this provision.

FDA also notes that, if an ANDA applicant with a pending application voluntarily makes a patent certification for an untimely filed patent, the ANDA applicant may withdraw the patent certification for the untimely filed patent. The agency, on its own initiative, has amended § 314.94(a)(12)(viii) to make this clear. Additionally, if the patent certification for the untimely filed patent was a paragraph IV certification (claiming that the patent is invalid or would not be infringed), the agency would not consider the withdrawn paragraph IV certification to preclude FDA from granting 180-day exclusivity to another ANDA applicant.

49. Proposed § 314.94(a)(12)(vii) would permit an ANDA applicant to seek confirmation of the correctness of patent information, but would also require an ANDA applicant to submit the appropriate patent certification if the disputed patent information was not amended or withdrawn. One comment suggested amending proposed § 314.94(a)(12)(vii) to declare the end of the error correction process for patent information to be final agency action. The comment explained that this section permits challenges to listed patents but, in conjunction with proposed § 314.53(f), neglects to contain a process to require patent owners to withdraw or modify patent listings. The comment said that declaring the end of the error correction process to be final agency action would enable ANDA applicants to seek judicial review rather than wait for the patent owner to voluntarily correct the patent information.

FDA disagrees with the comment. Disputes between ANDA applicants and patent holders regarding the validity or correctness of the listed patent information must be resolved among the ANDA applicants and the patent holders rather than by agency action. FDA stated this position in the preamble to the proposed rule (see 54 FR 28872 at 28910).

50. One comment addressed proposed § 314.94(a)(12)(viii) and asked FDA to permit applicants to amend their patent certifications if a patent is declared invalid. The comment proposed that any amendment, with the exception of a paragraph IV certification being changed to a paragraph III certification, be considered nunc pro tunc (now for then). If a patent were declared invalid, the comment suggested that an amendment from paragraph IV to paragraph III be considered "as if a III were originally filed, subject to a prior IV certificant's exclusivity rights during the remaining lifetime of the patent." Finally, the comment said that applicants should be permitted to make a paragraph I certification if the patent were removed from the list.

FDA agrees in part with the comment. An applicant may change its certification at any time. Although there is no need for the agency to pronounce such changes in certification nunc pro tunc, the agency agrees that the protection offered by 180-day exclusivity should not be undermined by changes from paragraph IV certification or by the filing of original certifications other than paragraph IV certifications. If a patent were removed from the list immediately upon a court decision that the patent is invalid or unenforceable, an applicant with a subsequently filed application might seek to certify that there is no relevant patent and seek an immediately effective approval. To ensure that this does not occur, the agency has required that a patent remain on the list after being declared invalid or unenforceable until the end of any applicable 180-day exclusivity period. This means that a patent is deemed to be relevant under § 314.94(a)(12)(ii) until the end of the term of the patent or applicable 180-day exclusivity period, whichever occurs first. Thus, where there is a patent that has been challenged by a paragraph IV applicant, a subsequent applicant will not be able to file a certification that there is no relevant patent or seek an immediately effective approval until either the patent or the 180-day exclusivity period expires. The agency has amended § 314.94(a)(12)(viii)(B) and made a similar change to § 314.50(i)(6)(ii) to reflect this position.

The agency also notes that an applicant may withdraw its patent certification at any time. However, as stated earlier, if an ANDA applicant made a paragraph IV certification and later withdraws that certification, the agency will not regard the withdrawn paragraph IV certification as precluding the agency from granting 180-day exclusivity to a subsequent ANDA applicant.

51. One comment suggested that ANDA applicants amend their patent certifications to a paragraph I certification if FDA or the NDA holder "delists" a patent.

As stated in the preamble to the proposed rule, the agency believes that a certification under § 314.94(a)(12)(ii), stating that no relevant patents claim the listed drug, would be more appropriate if a patent is "delisted" (see 54 FR 28872 at 28886).

52. One comment asked FDA to clarify proposed § 314.94(a)(12)(viii)(A) so that an amended patent certification would be required if a patent were held valid and infringed but not required if a patent were held infringed, but not valid.

If a claim is found to be invalid or unenforceable, the patent will ordinarily be removed from the list, and applicants with pending applications containing certifications with respect to that patent must amend their certifications accordingly to certify that no relevant patents claim the drug or, if another relevant patent claims the drug, to make an appropriate certification regarding that patent. In the amendment, the applicant must state the reason for the change in certification (that the patent has been removed from the list). A patent that is the subject of a lawsuit under § 314.107(c) will not be removed from the list until FDA determines either that no delay in effective dates of approval is required as a result of the lawsuit or that any such period of delay in effective dates of approval is ended. The agency has amended § 314.94(a)(12)(viii)(B) to clarify its position regarding certifications and patents removed from the list.

The agency also advises applicants to submit any patent certification changes by letter if the applicant has not received a "not approvable" letter from the agency. If the applicant has received a "not approvable" letter, it may include the amended certification along with the complete response to the deficiencies in the "not approvable" letter. This will enable FDA to process amendments more efficiently.

53. Six comments addressed amended certifications under proposed § 314.94(a)(12)(viii)(C)(*2*) which would not require applicants to amend their patent certifications when patent information is submitted after the abbreviated application's approval "whether or not the approval of the abbreviated application is effective." One comment would require amended patent certifications only if a new patent issued after the ANDA had been submitted and make supplements optional after ANDA approval. Five comments would require ANDA applicants to amend patent certifications until the effective date of their ANDA approvals because the existence of a patent would affect the ANDA's effective date of approval.

In the **Federal Register** of April 28, 1992 (57 FR 17950 at 17953), FDA stated that it had clarified its policies with respect to drug products with delayed effective dates of approval. The agency stated that an approval with a delayed effective date is tentative and does not become final until the effective date. Therefore, FDA has amended § 314.94(a)(12)(viii)(C)(*2*) by deleting the phrase "whether or not the approval of the abbreviated application is effective," and, consistent with this change, and in response to the comments, by requiring an ANDA applicant to amend its patent certifications until the effective date of ANDA approval.

G. Section 314.95—Notice of Certification of Invalidity or Noninfringement of a Patent

Proposed § 314.95 described an ANDA applicant's obligations with respect to a notice of certification of invalidity or noninfringement of a patent. Proposed § 314.95(a), for example, would require an ANDA applicant to provide notice to the patent owner and the NDA holder. Proposed § 314.95(b) would require an ANDA applicant to send the notice when it receives an acknowledgment letter from FDA stating that the ANDA is sufficiently complete for review to begin. Proposed § 314.95(c) prescribed the contents of a notice of certification of invalidity or noninfringement of a patent, including "a detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid or will not be infringed."

54. One comment recommended that FDA revise the regulation by adding a mechanism whereby FDA or the United States Patent and Trademark Office would review notices of certification of invalidity or noninfringement. The comment would have FDA suspend the 45-day period provided by section 505(j)(4)(B)(iii) of the act until FDA or the United States Patent and Trademark Office determined that the notice was sufficient.

FDA declines to adopt the comment. As stated elsewhere in this preamble, FDA lacks expertise in patent law. Moreover, neither FDA nor the United States Patent and Trademark Office currently has access to the additional resources that would be necessary to review these notices, and a patent certification review system would subject the agency's decisions to questioning that would require further resource expenditures and create delays in the statutory patent certification and challenge process.

The agency does note, however, that in cases where the notice was deemed inadequate by the patent owner or exclusive patent licensee and where the ANDA applicant subsequently amends the notice, the agency may, if the applicant amends its ANDA with a written statement that the date of receipt of the amended notification should be considered the date of receipt of notice, use the date of the amended notification to begin the 45-day statutory period for institution of an action for patent infringement (see 54 FR 28872 at 28888; see also § 314.95(f)).

55. Two comments addressed return receipts under proposed § 314.95(a). One comment would amend the rule to provide for signed receipts while the second would revise the rule to permit reliance on "any appropriate federal rule for transmitting notice to another party or for receipt of such notice."

Under § 314.95(e), applicants are required to document receipt of a notice of invalidity or noninfringement by submitting "a copy of the return receipt or other similar evidence of the date the notification was received." The rule states that FDA will accept return receipts, letters acknowledging receipt by the person provided the notice, or "another form of documentation only if FDA has agreed to such documentation in advance." Thus, the rule provides several methods for documenting receipt of a notice, so the comment's recommendations are unnecessary.

56. One comment asked FDA to clarify when multiple notices might be required.

Section 314.95(a) requires applicants to send notices to each patent owner and each holder (or its attorney, agent, or other authorized official) of the approved application under section 505(b) of the act for the listed drug that is claimed by the patent and for which the applicant is seeking approval (§ 314.95 (a)(1) and (a)(2)). Consequently, applicants could be obliged to send multiple notices under several situations. For example, a patent owner is usually an individual whereas the holder of an approved application is often a corporation. The applicant, therefore, would send one notice to the patent owner and another to the firm holding the approved application. If several patents cover the listed drug, there may be several different patent owners, so the applicant would be required to provide separate notices to each patent owner.

57. Two comments suggested revising proposed § 314.95(a)(1) to include the patent owner's name and address in the Orange Book.

The patent owner's name and address are printed on each patent. As a result, whenever a prospective applicant examines a patent to determine whether its proposed product would infringe any of the patent claims, the applicant would have access to the patent owner's name and address. The comment's suggestion, therefore, is unnecessary.

58. Several comments asked when and how applicants should send notices under proposed § 314.95(b). Two comments would have an applicant provide a statement to FDA declaring that the applicant "will give," rather than "has provided," notice of certification of invalidity or noninfringement of a patent. These comments explained that the statute does not specify a time for the notice, so the rule should permit applicants to decide when to send such notices. One comment would revise the rule to give FDA 30 days to determine whether the ANDA was complete before the applicant would be required to send a notice of certification of invalidity or noninfringement of a patent.

The legislative history discussing a notice of certification of invalidity or noninfringement of a patent clearly states that ANDA applicants should provide notice "simultaneously with the submission of an ANDA" and that Congress did "not intend that applicants be permitted to circumvent this notice requirement by filing sham ANDA's or ANDA's which are substantially incomplete" (see H. Rept. 857, 98th Cong., 2d sess. 24 (1984)). Thus, to permit applicants to state that they "will provide" notice to the patent owner and holder of the approved application would be contrary to congressional intent. Moreover, such a statement would be redundant relative to that required under § 314.94(a)(12)(i) and would not inform FDA whether notice has, in fact, been provided. With regard to the suggestion of a 30-day deadline for FDA to respond before an applicant sends notice, FDA believes such a requirement would be impractical. The time required to review an application may vary depending upon the application's complexity, the review division's workload, the timing and scope of an applicant's response to FDA's questions or requests, etc. Although FDA intends to review applications expeditiously, current resources and priorities may not, in all instances, enable the agency to determine whether an application is sufficiently complete for review to begin within 30 days after receiving the application. Consequently, FDA declines to adopt the comments.

59. One comment argued that proposed § 314.95(b) creates a delay that is detrimental to ANDA applicants and is contrary to the 1984 amendments and the legislative history. The comment said that proposed § 314.95(b) would deprive ANDA applicants of "statutory

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rights" associated with the 45-day period and the 30-month period for the effective date of an ANDA approval and could present problems among competing ANDA applicants. The comment said FDA should permit ANDA applicants to provide notice upon submission of an application or have ANDA applicants await an initial FDA determination (presumably as to whether the application is received) before providing notice.

FDA disagrees with the comment. As stated above, the legislative history expressly states that notice of certification of invalidity or noninfringement of a patent must be given simultaneously with the submission of an ANDA and that the ANDA cannot be a "sham" ANDA or one that is substantially incomplete (see H. Rept. 857, 98th Cong., 2d sess. 24 (1984)). As written, § 314.95(b) is consistent with the legislative history because it requires the ANDA applicant to provide notice once FDA has determined that the ANDA is substantially complete to permit a substantive review. To permit an ANDA applicant to provide notice before FDA has determined whether the ANDA is sufficiently complete would be contrary to the legislative history because it would only encourage ANDA applicants to file incomplete or "sham" ANDA's and to supplement them later to secure a place in the review queue in an attempt to secure the first ANDA approval.

60. FDA received five comments regarding the exact contents of a notice of certification of invalidity or noninfringement of a patent. Two comments would revise the rule to require applicants to disclose all components, including active and inactive ingredients, in the applicant's prospective formulation, the proportions of those components, and all grounds supporting the applicant's assertion that the patent is invalid or will not be infringed. Three comments opposed disclosure of the applicant's formulation or composition information or a detailed statement of the applicant's legal reasoning. These comments explained that such information and statements might compromise the applicant's trade secrets and adversely affect the applicant's ability to engage in litigation.

As noted above in comment 18, the agency did not anticipate that the list in proposed § 314.95(c) would generate the debate reflected in the comments and, again, reiterates that the agency does not have the expertise or the desire to become involved in issues concerning patent law and sufficiency of notice. Therefore, FDA has revised § 314.95 to require that the detailed statement of the factual and legal basis behind the applicant's opinion that the patent is invalid, unenforceable, or will not be infringed include the following: (1) For each claim of a patent alleged not to be infringed, a full and detailed explanation why the claim is not infringed; and (2) for each claim of a patent alleged to be invalid or unenforceable, a full and detailed explanation of the grounds supporting the allegation (see §§ 314.52(c)(6)(i) and (c)(6)(ii) and 314.95(c)(6)(i) and (c)(6)(ii)). Disputes involving the sufficiency of the notice must be resolved by the applicant, patent owner, and holder of the approved application rather than by action on the part of FDA.

61. FDA also received five comments opposing the use of a referee or designated intermediary under proposed § 314.95(c)(6)(iii). The proposal would have required an ANDA applicant to describe a mechanism for disclosing the formulation or composition of the proposed drug product to the patent owner or to a "designated intermediary who will act as a referee" on the subject of patent invalidity or noninfringement. The comments said that the concept was legally unauthorized and interfered with the traditional judicial process for resolving patent disputes.

FDA agrees that traditional processes for resolving patent disputes, which do not involve the agency's regulations, are appropriate under these circumstances. Therefore, the agency has deleted the provision in its entirety.

62. Proposed § 314.95(f) would presume a notice of certification of invalidity or noninfringement to be complete and sufficient if the ANDA applicant complied with the regulatory requirements under § 314.95(a) through (e) and would start the 45-day clock for filing a patent infringement suit on the date following receipt of the notice. One comment challenged the presumption that a notice is complete and sufficient to permit the statutory 45-day period to begin. The comment would revise the rule to require applicants to file a complete copy of the certification and notice of service with FDA and delay the start of the 45-day period if any dispute over the certification's sufficiency arose. A second comment argued that an approved application holder who is also an exclusive patent licensee might have different interests than the patent owner. The comment would revise the rule to require notice to both the patent owner and to the licensee or approved application holder.

With respect to FDA's presumption that a notice is complete and sufficient to begin the 45-day period, § 314.95(c), as amended, paraphrases the statutory language concerning notices and does not attempt to establish more detailed requirements for "sufficiency" of a notice. FDA has revised § 314.95(f) to state that it will begin the 45-day period on the first day after the documented date of receipt by the person(s) receiving the notice. FDA will be able to determine this date because § 314.95(e) requires applicants to submit documentation of receipt of notice. FDA may, if the applicant amends its ANDA with a written statement that a later date should be used, count from the later date.

FDA also agrees that an exclusive patent licensee's interests may differ from those of the patent owner. Therefore, FDA has revised §§ 314.52(f) and 314.95(f) to start the 45-day period on the day following the date of receipt of the notice by the patent owner or its representative and by the approved application holder.

H. Section 314.101—Filing an Application and an Abbreviated Antibiotic Application and Receiving an Abbreviated New Drug Application (21 CFR 314.101)

63. The agency, on its own initiative, is revising § 314.101(e) to add a new paragraph stating that the agency will refuse to file a 505(b)(2) application or receive an ANDA if the drug product that is the subject of the 505(b)(2) application or ANDA is protected by a 5-year exclusivity period under section 505(c)(3)(D)(ii) and (j)(4)(D)(ii) of the act. This amendment is consistent with the statutory language and § 314.108(b)(2).

I. Section 314.107—Effective Date of Approval of a 505(b)(2) Application or Abbreviated New Drug Application Under Section 505(j) of the Act)

Proposed § 314.107 was intended to codify the requirements under section 505(c)(3) and (j)(4) of the act regarding the effective dates of approval for a 505(b)(2) application or an ANDA. For example, if the 505(b)(2) applicant or ANDA applicant certified that there are no relevant patents, that patent information has not been submitted, that the patent has expired, or that the patent is invalid, unenforceable, or not infringed, and the patent owner has not brought suit for patent infringement, proposed § 314.107(b)(1) would treat the date FDA issues an approval letter as the effective date of approval. If the 505(b)(2) applicant or ANDA applicant certified that the patent would expire on a specific date, proposed § 314.107(b)(2) would treat that specific date as the effective date of approval. Proposed § 314.107(b)(3) described several situations in which the effective date of approval could vary, depending upon the disposition of patent litigation.

Proposed § 314.107 also implemented the "180-day exclusivity period" described in section 505(j)(4)(B)(iv) of the act. In brief, section 505(j)(4)(B)(iv) of the act states that if an ANDA contains a paragraph IV patent certification (declaring the patent to be invalid or not infringed) and the ANDA is for a drug for which a previous ANDA containing a paragraph IV patent certification has been submitted, approval of the subsequently submitted ANDA will be made effective 180 days after the date FDA receives from the previous ANDA applicant notice of the first commercial marketing of the drug or the date a court holds the patent that is the subject of the patent certification to be invalid or not infringed, whichever date is earlier (see section 505(j)(4)(B)(iv) of the act). Proposed § 314.107(c) provided that an applicant must be the first ANDA applicant to submit a substantially complete application with a paragraph IV certification and must have been sued for patent infringement in order to qualify for 180-day exclusivity.

64. One comment asked FDA to permit any person to contact FDA informally to determine whether the listed patent information was correct and later petition the agency to correct any errors. As proposed, § 314.107 did not provide for inquiries concerning patent information.

Sections 314.53(f) and 314.94(a)(12)(vii) describe the procedures that an applicant can use to question the validity of patent information. In brief, if an applicant disputes the accuracy or relevance of patent information, it should first notify FDA in writing and state the reasons for the disagreement. FDA will then request that the relevant NDA holder confirm the validity of the patent information, but will not change the patent information itself unless the NDA holder withdraws or amends the patent information. The agency believes that these procedures for determining the validity of patent information are sufficient, and, therefore, declines to adopt the change suggested by the comment.

65. FDA, on its own initiative, has amended § 314.107(b)(1) to state that an approval will become effective on the date FDA issues an approval letter except as provided under paragraphs (b)(3), pertaining to approvals resulting from the disposition of patent litigation; (b)(4), pertaining to approvals where an applicant has submitted multiple certifications; and (c), regarding subsequent ANDA submissions. These changes are to clarify that there are other situations that may make an approval effective.

66. Two comments would revise proposed § 314.107(b)(1)(iv) regarding a certification that a patent is "invalid or will not be infringed." The comments would have this certification state that the patent is "invalid and will not be infringed."

FDA declines to adopt the suggested language. The provision simply paraphrases the statutory language for a paragraph IV certification (see section 505(j)(2)(A)(vii)(IV) of the act). The agency has, however, amended the provision to account for a certification that a patent is unenforceable and, as stated earlier, removed the language regarding consent from the patent holder.

67. One comment asked FDA to amend proposed § 314.107(b)(1)(iv)(B)(*2*) to require NDA holders to have a role in or consent to licensing agreements between patent owners and ANDA applicants. The proposed rule would consider the effective date of approval for a 505(b)(2) application or an ANDA to be the date FDA issues an approval letter if, among other things, the drug product is covered by a patent licensing agreement and the 505(b)(2) application or ANDA contains a statement that the applicant has been granted a patent license and a statement from the patent owner that it has a licensing agreement with the applicant for the proposed drug product and that the patent owner consents to an immediate effective date.

As stated elsewhere in this final rule, FDA believes that the negotiations surrounding licensing agreements and the parties entering into such agreements are outside the scope of this rule. Additionally, as stated in the response to comment 43 above, the agency has deleted the provisions in § 314.107(b)(1)(iv) relating to consent by a patent owner to an immediate effective date of approval for a licensee.

68. The agency, on its own initiative, has made minor grammatical changes and other revisions to § 314.107 (b)(2) and (b)(3). These revisions replace "Upon patent expiration" with "Patent Expiration" and "Upon disposition of patent litigation" with "Disposition of patent litigation." Additionally, the changes specify that the patent owner must receive the notice of certification and clarify, in § 314.107(b)(3)(i)(B), the effective date of approval.

69. Proposed § 314.107(b)(3) described the effective date of approval of a 505(b)(2) application or ANDA upon disposition of patent litigation. Under proposed § 314.107(b)(3)(i)(A), if an applicant certified that the relevant patent was invalid or would not be infringed, and the patent owner or its representative brought suit for patent infringement, the effective date of approval for the 505(b)(2) application or ANDA would be 30 months after the date of receipt of the notice of certification of patent invalidity or noninfringement by the patent owner or its representative unless a court extended or reduced the 30-month period. Proposed § 314.107(b)(3)(i)(B) described the effective date of approval of a 505(b)(2) application or an ANDA upon disposition of patent litigation when the patented drug product also qualified for 5 years of market exclusivity. Proposed § 314.107(b)(3)(ii) through (b)(3)(iv) represented additional modifications to the effective date of approval due to court decisions or orders.

One comment concerned the proposed language in § 314.107(b)(3)(i) regarding the 30-month period. The comment would amend this provision to shorten or lengthen the 30-month period pursuant to a court order.

The suggested change is unnecessary because § 314.107(b)(3)(i) through (b)(3)(iv) explains how the 30-month period may be changed due to court decisions or orders.

The agency also emphasizes that disposition of patent litigation will not result in automatic approval of a pending application. FDA notes that section 505(c)(3)(C) and (j)(4)(B)(iii) of the act describe when approval of a 505(b)(2) application or an ANDA shall be made effective if an applicant submitting a 505(b)(2) application or ANDA has made a paragraph IV certification and has or has not been sued for patent infringement. For example, if the applicant made a paragraph IV certification, was sued for patent infringement, and the court hearing the patent infringement suit decided that the patent was either invalid or not infringed, section 505(c)(3)(C)(i) and (j)(4)(B)(iii)(I) of the act state, respectively, that approval of the 505(b)(2) application or ANDA may "be made effective on the date of the court decision." However, the agency interprets these provisions of the act as requiring, as a preliminary matter, final agency approval of the application in order for any approval to be made effective. Thus, an applicant with a tentative approval may not begin marketing its drug product until it has

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received an approval letter from the agency because a tentative approval letter does not constitute a final "approval" of the application. In such cases, the agency will examine the application to determine whether there have been any changes in the conditions under which the application was tentatively approved. The tentative approval would become final and, therefore, effective only when the agency sends an approval letter to the applicant.

Similarly, an applicant that has not yet received a tentative approval letter may not begin marketing its drug product in the event that a court reaches a decision in any related patent infringement litigation because there is no final "approval" by FDA that could be made "effective" within section 505(c)(3)(C)(i) or (j)(4)(B)(iii) of the act.

Other provisions of the act support this interpretation of section 505(c)(3)(C)(i) and 505(j)(4)(B)(iii) of the act as they relate to the expiration of the 30-month period or the date of the court decision. For example, section 505(j)(3) of the act states that the agency shall approve an ANDA unless certain circumstances are found to exist. Section 505(j)(3)((A) of the act prevents the agency from approving an ANDA if the agency finds that "the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of the drug are inadequate to assure and preserve its identity, strength, quality, and purity." Consequently, until FDA assesses the available information, often from an additional current good manufacturing practices inspection, it cannot determine whether the applicant's methods and controls used for the manufacture, processing, and packing of the drug are adequate to assure and preserve the drug's identity, strength, quality, and purity and therefore, under section 505(j)(3) of the act, whether the ANDA should be approved. Thus, unless FDA has formally approved an ANDA under section 505(j)(3) of the act, there is no "approval" that could be made effective under section 505(j)(4)(B) of the act upon resolution of the patent litigation. (Section 505(d) of the act establishes an analogous approval requirement for 505(b)(2) applications.)

The legislative history provides additional support for FDA's interpretation. In describing the provisions regarding effective dates of approval and court decisions, the House Report states:

> The Committee wishes to emphasize that the court *may not order an ANDA approved* under this provision. These are times when approval of an ANDA may be made effective *if the FDA has approved the ANDA*.

See H. Rept. 857, 98th Cong., 2d sess., Part 1, 27–28 (1984) (emphasis added). The same concept is applicable to 505(b)(2) applications (see id. at 34).

This interpretation of section 505(j)(4)(B) of the act reflects current FDA practice and revises the agency's previous policy that was stated in the preamble to the proposed rule (see 54 FR 28872 at 28894). It also clarifies the agency's position on delayed effective dates of approvals as expressed in the preamble to the final rule on ANDA content and format that was published in the **Federal Register** on April 28, 1992 (57 FR 17950 at 17956). Consequently, FDA, on its own initiative, has amended § 314.107(b)(3) to clarify when approval of an application may become effective and by adding a new paragraph (b)(3)(v) to state that, in order for an approval to become effective under paragraph (b)(3), the applicant must first receive a final approval letter from the agency.

70. One comment would restrict proposed § 314.107(b)(3)(ii) to district court orders. The comment would revise the rule to state: "If before the expiration of the 30-month period, or 7½ years where applicable, the district court decides such patent is invalid or not infringed, the approval will be made effective on the date of the district court order or judgment." The comment would also replace the words "a final order" in proposed § 314.107(b)(3)(iii) and (b)(3)(iv) with "an order or judgment."

FDA declines to limit the rule to district court orders. As stated in the preamble to the proposed rule, FDA interprets the requirement of a "court decision" to mean "a final decision of a court from which no appeal can or has been taken" (see 54 FR 28872 at 28895). Beginning the 180-day exclusivity period before the resolution of the appeals process would render the exclusivity valueless to a prudent applicant who delayed marketing until the issues were resolved on appeal.

FDA has, however, revised § 314.107(b)(3)(iii) and (b)(3)(iv) to refer to an "order or judgment" because both terms are sometimes used to refer to actions that terminate an action or decide a matter in litigation.

71. Proposed § 314.107(b)(4) concerned applicants who made multiple patent certifications. In essence, the proposed provision would consider the approval of a 505(b)(2) application or an ANDA to be effective on the last applicable date. One comment would amend proposed § 314.107(b)(4) by adding a new sentence stating:

> If the applicant has submitted certifications under § 314.50(i) or § 314.94(a)(12) and has submitted notice to the owner of the patent pursuant to § 314.95, and FDA subsequently receives a stipulation or order by the district court notifying it that the applicant has amended its answer to add new arguments, not included in that notice, in any ensuing suit for patent infringement, the date of approval will be calculated based on a 30-month period starting at the date of receipt by FDA of each such stipulation or order, and the approval will become effective on the last applicable date.

Alternatively, the comment suggested that an ANDA applicant who amended its answer to a patent infringement suit to include arguments that were not in the notice to the patent owner under § 314.95 would be considered to have been uncooperative in expediting the lawsuit. The comment explained that these revisions would prevent generic drug companies from amending their answers during patent infringement litigation to delay completion of a trial and also delay the start of the 30-month period.

FDA declines to adopt the comment's suggestion. As stated above, FDA has revised the notice requirements in §§ 314.52(c) and 314.95(c) to parallel the statutory language rather than specify notice requirements. The agency has neither the resources nor the expertise to engage in patent disputes or questions regarding sufficiency of notice. The statute leaves the issue of extending the 30-month period (based on a lack of cooperation between the parties in patent litigation) to the discretion of the trial court. The agency believes that the trial court should make determinations of cooperation on a case-by-case basis. Accordingly, the agency declines to amend the rule to consider an applicant to be uncooperative and to extend the 30-month period if the applicant amends an answer to a complaint in patent litigation to include an argument not reflected in the notice to the patent holder.

72. FDA received several comments on proposed § 314.107(c) and the 180-day exclusivity period against subsequent ANDA's. As proposed, § 314.107(c) would provide 180-day exclusivity to the first ANDA applicant that made a paragraph IV patent certification (that the patent was invalid or not infringed) and was sued for patent infringement. Seven comments said the language requiring an ANDA applicant to have been sued in order for the 180-day exclusivity period to become effective was contrary to the statute and to a judicial ruling in the U.S. District Court for the District of Columbia.

Section 505(j)(4)(B)(iv) of the act can be applied straightforwardly only when an applicant who seeks the 180-day period of exclusive marketing has been involved in a patent infringement lawsuit. To apply the section where there has been no lawsuit would require that the agency ignore the textual relationship between section 505(j)(4)(B)(iii) and (j)(4)(B)(iv) of the act and assume that Congress intended, contrary to the goals it stated in the legislative history, to create an incentive for delay in generic competition, without any countervailing benefit to society. Moreover, it would provide a windfall to an applicant who has not devoted the considerable time and money necessary for patent litigation. Thus, consistent with the agency's longstanding interpretation of the act, § 314.107(c) applies only when the first applicant has been sued. Although, as the comments state, one Federal district court reached a contrary conclusion, the agency appealed that decision and, on appeal, the decision was vacated as moot (*Inwood Laboratories, Inc. v. Young*, 723 F.Supp. 1523 (D.D.C. 1989), *vacated as moot*, no. 89–5209 (D.C. Cir., November 13, 1989). The agency has not altered its interpretation of the act.

FDA has, however, revised § 314.107(c) to clarify other issues, such as the start and end of the 180-day exclusivity period, and to make minor editorial changes.

73. One comment suggested revising proposed § 314.107(c) to state that the 180-day exclusivity period does not apply to delay the effective date of approval of licensees to the NDA holder.

As stated above, FDA does not believe that an ANDA applicant who has made a paragraph IV certification and obtained a patent license should be able to circumvent a 180-day exclusivity period. Consequently, the agency declines to amend the provision as requested by the comment.

74. Two comments would revise proposed § 314.107(c) to extend the 45-day period in which patent owners have to file suit against an ANDA applicant. The proposal referred to the statutory 45-day period in which a patent owner would have to file suit against an ANDA applicant. The comments would extend the 45-day period upon request or when the ANDA applicant and the patent owner agree to an extension.

FDA declines to accept the comments' suggestion. The 45-day period for filing a lawsuit against an ANDA applicant is fully consistent with section 505(j)(4)(B)(iii) of the act, and the agency finds that there are sound policy reasons that outweigh extensions of the 45-day period. For example, if an ANDA applicant has provided notice to a patent owner stating that the ANDA applicant believes that the patent is invalid or would not be infringed (a paragraph IV certification), the patent owner may elect to bring suit against the ANDA applicant for patent infringement. If the suit is brought within 45 days from the date the ANDA applicant provided the notice, section 505(j)(4)(B)(iii) of the act precludes the agency from granting a final approval of the ANDA. If suit is not brought within 45 days, FDA could grant a final approval of the ANDA upon expiration of this time period, assuming that the ANDA met all applicable requirements for approval. Thus, amending the rule to provide the patent owner an extension to file suit beyond the 45-day period would not prevent the agency from approving ANDA's during the extension (because the statutory restriction against making an approval effective would no longer apply), even if the patent owner later decided to bring suit against the ANDA applicant and prevailed in that lawsuit. Such a result would waste agency and industry resources.

FDA also notes that, in situations where an ANDA applicant has amended its notification to the patent owner and approved NDA holder to make it more complete, the agency may, under § 314.95(f), consider the 45-day period to begin on the day after the date of receipt of the amended notification.

75. One comment would revise proposed § 314.107(c) to begin the 180-day exclusivity period "on the first day that a court would allow non-infringing marketing (unless that decision were stayed)" or "30 months from receipt of notice."

The agency declines to revise the rule as suggested. The rule, which paraphrases the statutory language at section 505(j)(4)(B)(iv) of the act, better reflects the plain meaning of the act. Revising the rule as requested by the comment would begin the 180-day exclusivity period at the end of the 30-month period without regard to whether the applicant had commenced marketing on that date.

76. Proposed § 314.107(c)(1)(i) would provide 180-day exclusivity to the first ANDA applicant to submit a complete ANDA with a paragraph IV patent certification and "to be sued within 45 days of the patent owner's receipt of notice." One comment said the rule, as drafted, created an incentive for frivolous claims of patent invalidity or noninfringement because it would give ANDA applicants exclusivity even if the applicant was unsuccessful in defending against the patent owner's lawsuit. The comment would replace the phrase "to be sued within 45 days" with "and to successfully defend a suit brought within 45 days."

FDA agrees and has amended § 314.107(c) accordingly.

77. FDA received several comments regarding proposed § 314.107(c)(1)(i) and (c)(1)(ii). These provisions concerned the start of the 180-day exclusivity period. Proposed § 314.107(c)(1)(i) would begin the 180-day exclusivity period on the date of the first commercial marketing of the drug product by the first ANDA applicant who submitted a substantially complete ANDA containing a certification that the patent was invalid or not infringed and who was sued for patent infringement within 45 days after providing notice to the patent owner. Alternatively, proposed § 314.107(c)(1)(ii) would begin the 180-day exclusivity period on the "date a decision of the court holding the relevant patent invalid or not infringed" if that date was earlier than the date of the first commercial marketing. One comment would revise proposed § 314.107(c)(1)(ii) to include a cross-reference to the language in § 314.107(b)(3) on patent litigation.

FDA declines to adopt the suggested revision. The agency believes that the meaning of § 314.107(c)(1)(ii) is sufficiently clear so that the court referred to in § 314.107(c)(1)(ii) is the court deciding the patent infringement suit. However, for reasons stated elsewhere in this document, the agency has amended this provision to include a reference to unenforceable patents.

78. One comment would amend § 314.107(c), (c)(1)(i), and (c)(1)(ii) to permit an ANDA applicant to decide whether to start the 180-day exclusivity period on the date it notifies the agency that the applicant has begun commercial marketing of the drug product or to wait to see whether the court decision is appealed. If an appeal did result, the comment would permit the ANDA applicant to have the 180-day period begin when a court issues a decision on the appeal.

FDA declines to amend the provision as suggested by the comment. The provision is consistent with section 505(j)(4)(B)(iv) of the act by beginning the 180-day period on the date the first ANDA applicant has notified the agency that it has begun commercial marketing of the drug product or the date of a court decision holding the patent to be invalid or not infringed, "whichever is earlier" (see section 505(j)(4)(B)(iv) of the act).) Allowing an applicant to begin marketing before the commencement of the 180-day exclusivity period would,

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in effect, extend the exclusivity period in a manner that is inconsistent with the plain meaning of the act. FDA also notes that the court decision must be a final decision from which no appeal can be or has been taken (see 54 FR 28872 at 28895).

79. FDA received four comments regarding "substantially complete" applications under proposed § 314.107(c)(2). Proposed § 314.107(c)(2) would consider an ANDA to have been "previously submitted" with respect to another application for the same listed drug "if the date on which the first application was both substantially complete and contained a certification that the patent was invalid or not infringed is earlier than the date on which the second application was both substantially complete and contained the same certification." The proposal also stated that a "substantially complete" application "must contain the results of any required bioequivalence studies, or, if applicable, a request for a waiver of such studies."

One comment asked FDA to provide information as to which ANDA was the first "substantially complete" ANDA. The comment suggested that disclosing such information did not present any confidentiality problems because the ANDA applicant would have revealed the existence of the ANDA when it provided notice of certification of invalidity or noninfringement of the patent to the patent owner and NDA holder.

FDA agrees, in part, with the comment. Disclosing whether an ANDA had been received for a specific listed drug would enable manufacturers to decide whether to develop a generic version of that drug and perhaps conserve the manufacturer's resources. Such knowledge could, in turn, effectively reduce the number of applications for the same product and thus also conserve agency resources. The agency, therefore, will disclose whether an ANDA has been received for a particular drug, but, in order to preserve the confidentiality of the applicant, will not disclose when the application had been received or the applicant's identity. Potential applicants who wish to inquire whether an ANDA for a specific drug has been received can contact the Regulatory Support Branch (HFD–615), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0315.

80. Two comments disagreed with the language regarding "substantially complete" applications. One comment said FDA should only determine whether an ANDA contains a bioequivalence test or waiver request and not focus on the results of any required bioequivalence studies. The second comment suggested that a "substantially complete" ANDA be one that contained a paragraph IV patent certification and a bioequivalence study that is ultimately approved. The comment said this change would deter ANDA applicants from submitting "superficial" bioequivalence tests. The comment also suggested that the agency establish criteria as to whether changes to an ANDA were so substantial that the ANDA could no longer be considered as the first to be filed.

Since publication of the proposed rule, FDA has clarified its policies regarding the submission of incomplete ANDA's. Under the earlier policy, ANDA applicants could submit ANDA's with bioequivalence study protocols and could provide bioequivalence study data at a later date. This policy resulted in a significant and unwarranted expenditure of resources in reviewing applications that had little potential for approval. Thus, in the **Federal Register** of April 28, 1992, FDA announced that it would no longer accept an ANDA that does not contain complete bioequivalence study data if such data are required for approval (see 57 FR 17950 at 17959). A "substantially complete" application, therefore, should have a complete bioequivalence study, or other information to show bioequivalence that could support approval of the application. FDA will examine the bioequivalence information upon submission and, if the agency determines that the bioequivalence information is facially insufficient to support a finding of bioequivalence, the agency will not review the application under § 314.101(d). A decision by the agency after receipt of an application that the bioequivalence information is inadequate for approval does not necessarily mean that the application was not substantially complete at the time of submission.

FDA also declines to establish criteria to establish whether changes to an ANDA were so substantial that it could not be considered to have been filed. While certain changes in an ANDA (e.g., a change in the listed drug) would amount to a new filing for purposes of § 314.107(c)(2), other changes (e.g., minor labeling changes) would not. The agency believes a case-by-case approach is preferable because many products and manufacturers may be unique.

81. The agency, on its own initiative, has revised the provisions in § 314.107 (c)(2) and (c)(3) to clarify their intent. These provisions address the issues of the "applicant submitting the first application" for exclusivity purposes, what constitutes a "substantially complete" application, and the effective dates of approval for subsequently submitted applications if the first applicant is not "actively pursuing" approval. FDA has made similar editorial changes at § 314.107(c)(4).

82. Four comments addressed proposed § 314.107(c)(3). The proposed provision would make an ANDA that had been received after FDA had already received an ANDA for the same drug immediately effective if the agency concluded that the first ANDA applicant "is not actively pursuing approval of its abbreviated application." Three comments asked FDA to define the phrase "actively pursuing approval."

For purposes of this rule, the phrase "actively pursuing approval" is intended to encompass a drug sponsor's good faith effort to pursue marketing approval in a timely manner. In determining whether a sponsor is actively pursuing marketing approval, FDA will consider all relevant factors, such as the sponsor's compliance with regulations and the timeliness of its responses to FDA's questions or application deficiencies during the review period.

83. One comment would revise proposed § 314.107(c)(3) to make a subsequently received ANDA immediately effective upon a finding that the first applicant is not actively pursuing approval "if [the subsequent application is] otherwise eligible for an immediately effective approval."

The agency agrees and has amended the provision accordingly. This change will remind applicants that FDA will make approval of a subsequent abbreviated application immediately effective if it satisfies all applicable requirements and FDA has concluded that the first applicant is not actively pursuing approval of its abbreviated application.

84. FDA received five comments regarding the interpretation of "the court" and court judgments in proposed § 314.107(e)(1). Proposed § 314.107(e)(1) stated that "the court" in § 314.107(b) and (c) referred to "the court that enters final judgment from which no appeal can be or has been taken." Three comments supported the proposal, but two comments argued that FDA had misconstrued the 1984 amendments. One comment argued that the court finding a patent to be invalid or not infringed should be "the court of first instance" or district court because a decision that a patent was invalid or not infringed or a decision to issue an injunction would be done by a district court. Another comment argued that interpreting "the court" to mean the court that enters final judgment "effectively gives a patent owner an additional extension of the patent * * * for the duration of the appeal" and delay generic competition. The comment would revise the rule to permit an ANDA applicant to market its drug product after it had prevailed at the trial court level.

FDA declines to amend § 314.107(e)(1) as suggested by the comments. To construe "the court" as a district court, regardless of any appeal of the district court decision, would deny the benefits of exclusivity to a prudent applicant that delayed marketing its product until resolution of an appeal by the patent holder (see 54 FR 28872 at 28894). Moreover, if the patent holder appealed the district court decision and were able to obtain a stay or an injunction against the marketing of the applicant's product, the applicant could lose the entire 180-day exclusivity period before the stay or injunction were lifted.

Given these considerations, FDA believes that any reference to "the court" must be the court that enters final judgment from which no appeal can be or has been taken. (The reference to "appeals" does not include the certiorari process. The likelihood of an appellate court decision being heard and overruled by the Supreme Court is too remote to warrant delaying marketing and exclusivity pending resolution of a petition for writ of certiorari.) This interpretation avoids potentially premature decisions on the effective date of ANDA approval and the loss of 180-day exclusivity. FDA has, however, also revised § 314.107(e)(2) to clarify which court decisions will represent the "final" judgment.

85. One comment would revise proposed § 314.107(e)(2) to refer to a court order or judgment rather than simply a court judgment.

As amended, § 314.107(e)(2) refers to a court "decision," which could be in the form of either an order or a judgment. The agency has also made minor changes to § 314.107(e)(2) to clarify that the court decisions involve patent issues and that a higher court can hold or affirm a lower court decision that a patent is invalid, unenforceable, or not infringed.

86. A second comment would revise proposed § 314.107(e)(2) to require applicants to submit copies of a court order or judgment to the Division of Generic Drugs or "New Drug Evaluation Division (where applicable)."

FDA agrees with the comment, and has added § 314.107(e)(2)(iv) to require applicants to send a copy of a final decision to the Office of Generic Drugs, or to the appropriate division in the Office of Drug Evaluation I or the Office of Drug Evaluation II, whichever is applicable.

87. Proposed § 314.107(f) described how the 45-day period for filing a patent infringement suit would be determined. In brief, under proposed § 314.107(f)(1), the 45-day period would begin on the day after the date the patent owner or approved application holder, if an exclusive patent licensee, received a notice of certification of invalidity or noninfringement of the patent. Proposed § 314.107(f)(2) would require the 505(b)(2) applicant or ANDA applicant to notify FDA whether an action for patent infringement had been filed. Several comments objected to language in proposed § 314.107(f) that would consider notice to or actions by exclusive licensees to be equivalent to notice to or actions by a patent owner. The comments said that exclusive licensees do not always share the patent owner's interests.

FDA agrees and has revised the rule to remove language that would consider exclusive licensees to be equivalent to patent owners.

88. One comment objected to proposed § 314.107(f)(1) because it would start the 45-day period on the day after the date the patent owner or the approved application holder, if an exclusive patent licensee, received notice of invalidity or noninfringement of a patent. The comment argued that the 45-day period should begin on the day after the date that the patent owner and the approved application holder received notice and, if these dates differed, the latest date should mark the start of the 45-day period.

The agency agrees with the comment and has revised § 314.107(f)(1) to begin the 45-day period on the day after the date the patent owner and the approved application holder have received the applicant's notice of certification of invalidity or noninfringement of a patent.

89. FDA received several comments on proposed § 314.107(f)(2). Absent a notice of an action for patent infringement, the proposal would make the approval of an ANDA or 505(b)(2) application effective immediately upon the expiration of the 45-day period for filing a patent infringement suit or upon FDA's completion of the review and approval process, whichever is later. The comments noted that the regulation would have ANDA or 505(b)(2) applicants notify FDA whether a patent infringement suit had been filed and asked FDA to permit, by regulation, patent owners to notify FDA whether it had brought suit. Alternatively, some comments would require the ANDA or 505(b)(2) applicant certify that it had not been sued. The comments explained that these changes were necessary because ANDA and 505(b)(2) applicants would have no interest in notifying FDA whether suit had been filed because, without such notice, they could immediately secure effective approval of an application.

The agency has amended § 314.107(f)(2) to permit patent owners or their representatives to notify FDA whether a patent infringement suit has been filed. The statute does not require applicants to certify that they have not been sued, and the agency does not believe such a burden to be necessary.

The agency has also made minor revisions to § 314.107(f)(2) to place more emphasis on an applicant's obligation to notify FDA immediately of the filing of any legal action within 45 days of receipt of a notice of certification.

Additionally, the agency has made a grammatical change in § 314.107(f)(2) to clarify that applicants must send the notification to the Office of Generic Drugs or to the appropriate division in the Center for Drug Evaluation and Research reviewing the application.

90. One comment addressed the requirement in proposed § 314.107(f)(2) that a 505(b)(2) applicant or ANDA applicant notify FDA whether an action for patent infringement had been filed "before the expiration of the 45-day time period or the completion of the agency's review of the application, whichever occurs later." The comment argued that a patent owner had 45 days to file a lawsuit after receiving a notice of certification of invalidity or noninfringement of a patent and, therefore, a party should have an additional time period beyond the 45-day period for filing an action for patent infringement for notifying the agency whether an action had been filed. The comment would revise the rule to give a party an additional 15 days beyond the 45-day period to notify FDA whether an action for patent infringement had been filed.

The agency declines to revise the rule as suggested. FDA believes it is important to learn immediately if an action for patent infringement is filed before the completion of the 45-day period to avoid an erroneous approval with an immediate effective date.

FDA has, therefore, amended § 314.107(f)(2) to require applicants to notify FDA immediately whether any legal action has been filed. The agency has also amended this subsection to clarify the identity of the "applicant."

91. FDA has, on its own initiative, clarified its notification requirements in

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§ 314.107(f)(2)(iii). As proposed, § 314.107(f)(2)(iii) would have required parties to identify a drug by its established name, but would not have expressly required any identification of the drug if no established name existed. The agency has amended this provision to require identification of the drug product by its established name or, if no established name exists, its active ingredient(s).

92. One comment asked FDA to publish information regarding the status and progress of patent infringement suits so other ANDA applicants could decide whether to intervene in the suit "and ask that the 30-month period be shortened or lengthened in the event that it feels that one or both of the litigants are not reasonably cooperating in expediting the action." Alternatively, the comment asked FDA to permit any interested party to petition the agency "to remove an ANDA from exclusivity considerations if it has not proceeded with due diligence—either in prosecution of its ANDA or defense of an infringement suit."

FDA believes that ANDA applicants are capable of monitoring the progress of patent litigation without imposing the additional burden of acquiring and publishing information on patent litigation on FDA. The agency, therefore, declines to adopt the comment.

FDA also declines to amend the rule to permit third parties to petition the agency to deny exclusivity to an ANDA due to the ANDA applicant's actions during litigation. Under the statute, the reduction or enlargement of the 30-month period is left to the trial court's discretion. Intervention by the agency is unwarranted.

93. One comment suggested replacing the words, "action to defend," in proposed § 314.107(f)(2)(iv) with the words, "action for patent infringement." The comment said that "action to defend" was not a term of art.

FDA agrees and has adopted the comment.

94. FDA, on its own initiative, has modified the language regarding waivers in § 314.107(f)(3). The change is intended to clarify that the patent owner does not object to FDA's approval of an ANDA or 505(b)(2) application with an immediate effective date and to account for those situations where the ANDA applicant or 505(b)(2) applicant and the patent owner have agreed to extend the 45-day period.

J. Section 314.108—New Drug Product Exclusivity

Proposed § 314.108 was intended to implement the new drug exclusivity provisions under section 505(c)(3)(D) and (j)(4)(D) of the act. This section of the act provides specific time periods, known as new drug product exclusivity or market exclusivity, during which the effective date of approval for a 505(b)(2) application or an ANDA must be delayed or, in some cases, a 505(b)(2) application or an ANDA cannot be submitted. For example, section 505(c)(3)(D)(i) and (j)(4)(D)(i) of the act grant a 10-year period of exclusivity to new chemical entities that were approved during January 1, 1982, to September 24, 1984. Section 505(c)(3)(D)(ii) and (j)(4)(D)(ii) of the act grant a 5-year period of exclusivity to new chemical entities approved after September 24, 1984. These sections of the act expressly state that no 505(b)(2) application or ANDA may be submitted during the exclusivity period except that such applications may be submitted after 4 years if they contain a certification of patent invalidity or noninfringement. Section 505(c)(3)(D)(iii), (c)(3)(D)(iv), (j)(4)(D)(iii), and (j)(4)(D)(iv) of the act grant a 3-year period of exclusivity to an application or supplemental application that is approved after September 24, 1984, and contains "reports of new clinical investigations (other than bioavailability studies) essential to the approval" of the application or supplemental application and "conducted or sponsored by" the person submitting the application or supplemental application.

Section 505(c)(3)(D)(v) and (j)(4)(D)(v) of the act granted a 2-year period of exclusivity to drugs that are not chemical entities or for certain changes to already approved products that were approved during January 1, 1982, to September 24, 1984. FDA did not propose any regulations for this 2-year period because it expired on September 24, 1986.

The exclusivity provisions of the act do not provide any protection from the marketing of a generic version of the same drug product if the generic version is the subject of a full NDA submitted under section 505(b)(1) of the act.

95. Proposed § 314.108(b)(4) would provide 3 years of exclusivity to an application that was submitted under section 505(b) of the act, was approved after September 24, 1984, was for a drug product containing an active moiety that had been previously approved in another application under section 505(b) of the act, and contained reports of new clinical investigations (other than bioavailability studies) conducted or sponsored by the applicant that were essential to approval of the application. Proposed § 314.108(b)(5) would provide 3 years of exclusivity to a supplemental application that was approved after September 24, 1984, and contained reports of new clinical investigations (other than bioavailability studies) conducted or sponsored by the applicant that were essential to approval of the application.

Several comments addressed the scope of new drug exclusivity. Two comments said FDA should grant exclusivity for any change to an approved drug product or, alternatively, should grant exclusivity based on specific types of studies, such as studies intended to reduce drug dosing or drug efficacy study implementation (DESI) upgrade studies. One comment disagreed with the preamble to the proposed rule, which stated, "FDA expects that only those changes in an approved drug product that affect its active ingredient(s), strength, dosage form, route of administration or conditions of use would be granted exclusivity" (54 FR 28872 at 28899). Two comments asked FDA to clarify whether a clinical investigation establishing new risks could be eligible for exclusivity. The preamble to the proposed rule had indicated that such studies would not qualify for exclusivity because "protection of the public health demands that all products' labeling contain all relevant warnings" (see 54 FR 28872 at 28899). One comment said FDA should accept an applicant's claim of exclusivity alone.

Two other comments sought to limit exclusivity or clarify its scope. One comment argued that the rule was too broad, would confer "an unearned windfall," and stifle generic competition. The comment explained that some variations, such as reductions in dosage, require little effort but would nevertheless qualify for exclusivity. The comment suggested that the rule define what types of changes would qualify for exclusivity. The second comment agreed with the preamble that DESI upgrades should not qualify for exclusivity but asked FDA to create a procedure whereby parties could contact FDA to determine whether exclusivity information was accurate. The comment said this would enable third parties to decide whether to challenge decisions to grant or deny exclusivity.

FDA disagrees with those comments that would grant exclusivity for any change to an approved drug product or accept, without question, an applicant's claim that it is entitled to exclusivity. Under the statute and this final rule, certain drugs or changes to drugs can receive 3 years of exclusivity if the application or supplement to an application "contains reports of new clinical investigations (other than bioavailability studies) essential to the approval * * *" (see section 505(j)(4)(D)(iii) and (j)(4)(D)(iv) of the act). The phrase "essential to the approval" suggests that the clinical investigations that warrant exclusivity must be vital to the application or supplement. As stated in the preamble to the proposed rule, "to qualify for exclusivity, there must not be published reports of studies other than those conducted or sponsored by the applicant, or other information available to the agency sufficient for FDA to conclude that a proposed drug product or change to an already approved drug product is safe and effective" (see 54 FR 28872 at 28900). For example, the agency would not consider studies to support a switch from prescription to over-the-counter (OTC) status to be "essential to approval" if the agency already had sufficient information to conclude that the OTC product would be safe and effective. (In OTC switch situations, FDA encourages applicants to consult FDA to determine whether clinical investigations or any other actions are necessary to permit FDA to approve a switch in a product's status.)

FDA declines to define in the regulation the kinds of supplemental applications that, if supported by clinical investigations, would warrant 3-year exclusivity. Although the preamble to the proposed rule identified certain types of changes in a product that would normally warrant exclusivity (changes in active ingredient, strength, dosage form, route of administration, or conditions of use), the agency did not intend to suggest that other types of changes would not qualify. For example, changes in dosing regimen have resulted in grants of 3-year exclusivity. Changes that would not warrant exclusivity are, as discussed in the preamble to the proposed rule, changes in labeling that involve warnings or other similar risk information that must be included in the labeling of generic competitors. Applicants obtaining approval for such changes in labeling would, in any event, have no valid interest in precluding such information from the labeling of other products. Furthermore, FDA does not consider a study to be "essential to approval" simply because the applicant conducted it and submitted the study for agency review (Ref. 1).

FDA's interpretation is supported by statements that were made during the congressional debates surrounding the 3-year exclusivity provisions. Senator Orrin Hatch described the 3-year exclusivity provisions upon approval of certain supplemental applications as protecting "some changes in strength, indications, and so forth, which require considerable time and expense in FDA required clinical testing" (130 Congressional Record S10505, August 10, 1984) (statement of Senator Hatch)). Representative Henry Waxman said 3-year exclusivity was intended to "encourage drugmakers to obtain FDA approval for significant therapeutic uses of previously approved drugs" (130 Congressional Record H9114, (September 6, 1984)). Thus, an applicant is not entitled to 3-year exclusivity merely because it supplements an approved application based in part on a clinical investigation or because it certifies to FDA that the clinical investigation is essential to approval of the application or supplement.

FDA also declines to create a new procedure whereby a party could contact FDA to determine whether exclusivity information is accurate. Interested parties can obtain information on exclusivity decisions through the Freedom of Information Act process (21 CFR part 20). Parties who wish to challenge an exclusivity decision can utilize the citizen petition procedures (21 CFR 10.30).

96. One comment suggested that products whose labeling may not include certain therapeutic indications (due to exclusivity or patent protection) be listed in the Orange Book as not being therapeutically equivalent to the innovator product.

FDA addressed this comment in its response to a citizen petition submitted by the Pharmaceutical Manufacturers Association (PMA). The response stated, in pertinent part:

> In drafting the 1984 Amendments, the only mechanism that Congress provided for enforcing the exclusivity accorded a new indication is the requirement that ANDA's and 505(b)(2) applications be given delayed effective approval for the exclusive indication. During the period that ANDA's and 505(b)(2) applications may not be made effective, pioneers thus have the exclusive right to promote and label their products for the exclusive indication. Nothing in the language of the amended statute or its legislative history, however, suggests that Congress intended the granting of exclusivity for a new indication to alter therapeutic equivalence ratings. Moreover, it would be inconsistent with the established standards for making therapeutic equivalence determinations to rate two products as not therapeutically equivalent simply because one is labeled with fewer than all the approved indications.
>
> FDA's standards for therapeutic equivalence determinations * * * have always been based upon scientific considerations relevant to predicting the comparative pharmacological behavior of two products in or on the human body. There is no scientific basis for concluding that differences in recommended indications are relevant to this prediction. For example, the fact that a particular brand of drug is recommended in a medical journal article for an unlabeled use, does not, from a scientific standpoint, render other brands of the same drug therapeutically or biologically inequivalent. Similarly, the fact that a pioneer drug is labeled with a protected indication does not mean that generic copies of the same drug are not therapeutically equivalent to the pioneer.
>
> In absence of any suggestion in the statute or legislative history that Congress intended FDA to alter the scientific basis of therapeutic equivalence ratings to enforce exclusivity, FDA declines to consider non-scientific criteria, i.e., the existence of exclusive indications, in making therapeutic equivalence decisions.

(Ref. 2)

FDA has not changed this position and, therefore, declines to adopt the comment.

97. Many comments objected to the definition of "active moiety" and the references to active moieties and new chemical entities throughout proposed § 314.108. The comments said the definitions lacked statutory support and were contrary to two court decisions, *Abbott Laboratories* v. *Young*, 691 F.Supp. 462 (D. D.C. 1988), *remanded*, 920 F.2d 984 (D.C. Cir. 1990), and *Glaxo Operations UK Ltd.* v. *Quigg*, 706 F.Supp. 1224 (E.D. Va. 1989), *aff'd*, 894 F.2d 392 (Fed. Cir. 1990). Two comments added that the definition of "active moiety" was also too restrictive because it excluded chelates, clathrates, and other noncovalent derivatives. The comments, in general, would delete all references to "active moiety" and "new chemical entity" and refer only to "active ingredients." Some comments would also define "active ingredient" as the active ingredient found in the finished dosage form before the drug is administered to the patient.

Subsequent to the close of the comment period, the interpretation of the act urged by the comments and adopted by the district court in *Abbott Laboratories* v. *Young* (providing 10 years of exclusivity under section 505(j)(4)(D)(i) of the act for products offering the same therapeutic moiety in different active ingredient forms if the salt or ester form was approved subsequent to the pure therapeutic moiety form) was rejected by the United States Court of Appeals for the District of Columbia. Noting that such an interpretation would award exclusivity to both an active moiety and a salt if the application containing the active moiety were submitted first, but would award exclusivity only to the salt if the salt

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were submitted first, the court of appeals rejected the interpretation as "farfetched because it is not consistent with any legislative goal" (see *Abbott Laboratories* v. *Young*, 920 F.2d 984, 989).

Although the court of appeals appeared to agree with the agency's conclusion that exclusivity should be limited to the first approved product containing the active moiety, the court found the agency's parsing of the operative statutory phrase "active ingredient (including any salt or ester of the active ingredient)" to be linguistically impermissible as set forth in the agency's administrative decision denying 10-year exclusivity to Abbott. Rather than interpret the term "active ingredient" broadly to include the concept of active moiety, the agency interpreted the term narrowly to refer to the form of the moiety in the product, but interpreted the parenthetical phrase "(including any salt or ester of the active ingredient)" broadly to include all active ingredients that are different but contain the same active moiety. Although the court noted that the agency had, subsequent to the administrative decision, voiced the more linguistically permissible construction (interpreting the term "active ingredient" to refer to active moiety), the court found that it could not consider this construction because it was not relied upon in the administrative decision. The court thus remanded the case to the district court with instructions to remand the issue to the agency for further consideration.

The agency has concluded that the term "active ingredient," as used in the phrase "active ingredient (including any salt or ester of the active ingredient)," means active moiety. Thus, the agency declines to adopt the comments suggesting removal of the definition of, and references to, "active moiety" from § 314.108.

FDA disagrees with the assertion that the definition of "active moiety" should not exclude chelates, clathrates, and other noncovalent derivatives. As stated in the preamble to the proposed rule, exclusivity is intended to provide incentives for innovation (see 54 FR 28872 at 28898 and 28899). The addition of a chelate, clathrate, or other noncovalent derivative generally does not affect the active moiety of a drug product. The agency, therefore, does not believe that providing exclusivity for chelates, clathrates, and other noncovalent derivatives of a previously approved active moiety would be consistent with the statutory intent.

98. FDA received a number of comments regarding the term "substantial support" in the definition of "conducted or sponsored by the applicant" in proposed § 314.108(a). The proposed rule stated, "Ordinarily, substantial support will mean providing 50 percent or more of the cost of conducting the study" (see 54 FR 28872 at 28930). The comments said the 50 percent figure was unrealistic, unnecessary, or unauthorized by law and argued that cost should not be a controlling factor in determining new drug exclusivity. Other comments said the rule should permit firms to buy studies because there is no basis to grant exclusivity to a firm that purchases an NDA and to deny exclusivity to a firm that purchases a study. One comment asked how FDA would treat a publicly funded study.

The 50-percent contribution requirement reflects a reasonable interpretation of section 505 (j)(4)(D)(iii) and (j)(4)(D)(iv) of the act. A study can be conducted by or for only one applicant. Exclusivity based on less than 50-percent funding would allow multiple parties to claim exclusivity against ANDA applicants as well as each other. Moreover, the legislative history indicates that Congress created 3-year exclusivity to protect products whose development required a significant time commitment and "an investment of some magnitude" (see 130 Congressional Record S10504 (August 10, 1984) (statement of Senator Hatch); 130 Congressional Record H9124–H9125 (September 6, 1984) (statement of Representative Waxman)). Obviously, if a sponsor provided 50 percent or more funding to a study, its investment represents a substantial portion of the study's funding.

FDA acknowledges that there may be some rare circumstance in which less than 50-percent funding could constitute "substantial support" and merit exclusivity. FDA has, therefore, revised the rule to require: (1) A certified statement from a Certified Public Accountant that the applicant provided 50 percent or more of the cost of conducting the study; or (2) an explanation from the applicant why FDA should consider the applicant to have conducted or sponsored the study if the applicant's financial contribution to the study is less than 50 percent if the applicant did not sponsor the investigational new drug application. The agency has made a corresponding change to § 314.50(j)(4)(iii).

With regard to studies that the applicant has purchased and publicly funded studies, FDA agrees that an applicant who has purchased exclusive rights to a study should be able to obtain new drug exclusivity. FDA, therefore, has revised the definition of "conducted or sponsored by the applicant" to state that the purchase of nonexclusive rights to an investigation does not satisfy the definition. FDA emphasizes that the applicant must have exclusive rights to the purchased study in order to be deemed to have sponsored a study. The purchase of nonexclusive rights by different parties could result in multiple claims of exclusivity for the same study. For these reasons, FDA also believes that most, if not all, publicly funded studies will not qualify for exclusivity. These studies are usually publicly available, so FDA will not give one applicant exclusive rights based on a study that, by virtue of its funding, belongs to the general public and is publicly available.

99. The agency, on its own initiative, has amended the definition of "date of approval" to note that the date of approval "refers only to a final approval and not to a tentative approval that may become effective at a later date." This change reflects FDA's position that drug products with delayed effective dates of approval are not listed drugs and that an "approval with a delayed effective date is tentative and does not become final until the effective date" (see 57 FR 17950 at 17953).

100. One comment said proposed § 314.108(a) failed to correspond to proposed § 314.50(j)(4)(i), which states that § 314.108(a) defines "new" and "clinical investigations." Proposed § 314.50(j)(4)(i) contained an error. The proposed rule does not contain separate definitions for "new" and "clinical investigations"; it does, however, define "new clinical investigations" at § 314.108(a). FDA has corrected § 314.50(j)(4)(i) accordingly.

101. One comment objected to the last sentence in the definition of "new clinical investigation." The comment claimed that the definition would "unnecessarily, and contrary to the Statute, "expand and award an exclusivity for a previously submitted study; and it unjustifiably distinguishes between safety and effectiveness."

Under the statute, 3-year exclusivity is awarded if the application or supplemental application contained reports of new clinical investigations that were conducted or sponsored by the applicant and were essential to the approval of the application or supplemental application (see section 505(j)(4)(D)(iii) and (j)(4)(D)(iv) of the act). The legislative history indicates that 3-year exclusivity is for investigations requiring a considerable investment of time and money and that are necessary for approval of important innovations (see 54 FR 28872 at 28899).

Thus, FDA interprets "new clinical investigation" as a clinical investigation whose data have not been relied upon by FDA to demonstrate substantial evidence of effectiveness of a previously approved drug for any indication or safety in a new patient population and do not duplicate the results of another investigation relied upon by FDA to demonstrate a previously approved drug's effectiveness or safety in a new patient population. An applicant is not limited to recently conducted clinical investigations; a clinical investigation that provides a "new" basis for drug approval can qualify for exclusivity.

102. Two comments recommended revising the rule to address transfers of new drug exclusivity between an applicant and all predecessors in interest, including licensors, assignors, joint venture partners, or other parties.

New drug exclusivity is not a property right, but is rather a statutory obligation on the agency. This statutory obligation is based on data and information in an approved application. Although an applicant may purchase an application or rights to data and information in an application (i.e., exclusive rights to a new clinical investigation), from which exclusivity would flow, there is no property right to exclusivity itself that can be transferred separately and apart from the application or data upon which exclusivity is based. The agency does, however, permit the submission or approval of an ANDA when the holder of the exclusivity permits FDA to receive or approve the ANDA.

FDA notes that joint venture partners differ from licensees, assignors, etc., because joint venture partners share in developing a drug product. Consequently, FDA suggests that joint venture partners carefully consider how they will seek approval of an application and define their rights and interests in the application to avoid questions regarding applicability of the exclusivity provisions of the act.

As stated above, FDA has revised the definition of the phrase, "conducted or sponsored by the applicant," to construe a party who has purchased exclusive rights to a study to have "conducted or sponsored" the study. This change will enable a party who has acquired exclusive rights to a study to seek exclusivity.

103. Four comments asked FDA to create a mechanism that would determine whether a study was "essential for approval" either before an application would be submitted or before the study began. Proposed § 314.108(a) stated that "essential to approval" with regard to an investigation "means that the application could not be approved by FDA without that investigation, even with a delayed effective date." The proposal, however, did not discuss the procedure by which FDA would determine a study to be "essential to approval."

FDA declines to accept the comments. FDA cannot determine whether a study is essential for approval until the application is approved. Research goals and objectives often change during clinical investigations. For example, the results from a study designed to support a new indication could generate interest in a completely different indication. The product ultimately approved may be a different product from that characterized in the original application. It is also possible that newly available data in the public domain will obviate the need for the study prior to approval. Thus, FDA will decide whether a study is essential for approval at the time of approval.

The agency has, however, amended the definition of "essential to approval" to delete the reference to a delayed effective date. This change is necessary because the agency no longer regards an application with a delayed effective date as being approved. Instead, FDA considers such applications as being tentatively approved (see 57 FR 17950 at 17953).

104. Proposed § 314.108(b)(2) would provide 5 years of exclusivity for a new chemical entity if a drug product containing the new chemical entity was approved after September 24, 1984, in an application submitted under section 505(b) of the act. One comment said FDA should deny 5-year exclusivity to any section "505(b)(2) application for a new chemical entity that relies upon one or more investigations that are essential for approval of the application but which were not conducted or sponsored by the applicant * * *." The comment explained that a 505(b)(2) applicant could assemble literature demonstrating the safety and effectiveness of a drug product marketed before 1962 (when the Federal Food, Drug, and Cosmetic Act was amended to require new drugs to be safe and effective for their intended uses) or 1938 (when the Food and Drugs Act was amended to require new drugs to be safe for the conditions of their intended use) and, under the rule, seek 5 years of new drug exclusivity. The comment said granting exclusivity to such drugs would be inconsistent with statutory intent and the legislative history.

Under the statute, a drug product may qualify for 5 years of exclusivity if its active moiety has not been previously approved in any other application (see section 505(c)(3)(D)(ii) and (j)(4)(D)(ii) of the act). For some drug products marketed before 1938 or 1962, the active moiety will have been the subject of an approved application (under prior versions of the act or as part of a combination product approved under the act), so the active moiety will be ineligible for 5-year exclusivity.

FDA also notes that the statute provides 5-year exclusivity for applications approved under section 505(b) of the act and that such applications are submitted by persons who wish to introduce or deliver for introduction into interstate commerce "any new drug." (See section 505(a) and (c)(3)(D)(ii).) The term "new drug" is defined in section 201(p) of the act (21 U.S.C. 321(p)). Drug products with active ingredients marketed before 1938 or 1962 may be "new drugs," especially where there has been a change in the product's labeling, composition, or manufacturer.

Products falling within the definition of a "new drug" must be approved under section 505(b) of the act and, as a result, may qualify for 5-year exclusivity under the language of the act and consistent with legislative history.

105. One comment said that FDA should provide 5 years of exclusivity for a single enantiomer of a previously approved racemate. The comment asserted that FDA approval of a racemic drug mixture covers the mixture rather than the enantiomers that compose the mixture.

The agency declines to revise the rule as requested by the comment. As stated in the preamble to the proposed rule, the agency's position is that "a single enantiomer of a previously approved racemate contains a previously approved active moiety and is therefore not considered a new chemical entity" (see 54 FR 28872 at 28898).

106. One comment asked FDA to interpret the phrase "conditions of approval" in proposed § 314.108(b)(4)(iv) narrowly to limit exclusivity to studies conducted by the original applicant. Proposed § 314.108(b)(4) stated that if an application: (i) Was submitted under section 505(b) of the act; (ii) was approved after September 24, 1984; (iii) was for a drug product that contains an active moiety that has been previously approved in another application under section 505(b) of the act; and (iv) contained reports of new clinical investigations (other than bioavailability studies) conducted or sponsored by the applicant that were essential to approval of the application, the agency will not make effective for a period of 3 years after the date of approval of the

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application the approval of a 505(b)(2) application, or an ANDA for the conditions of approval of the original application, or an ANDA submitted pursuant to an approved petition under section 505(j)(2)(C) of the act that relies on the information supporting the conditions of approval of an original NDA. The comment said subsequent applicants who conduct their own studies to obtain approval should not be subject to the original applicant's exclusivity.

FDA believes that the comment misinterprets the scope of exclusivity. As stated in the preamble to the proposed rule and the preamble to this final rule, market exclusivity does not provide any protection from the marketing of a generic version of the same drug product if the generic version is the subject of a full NDA submitted under section 505(b)(1) of the act (see 54 FR 28872 at 28896). As discussed earlier, the statute does not require that the original applicant "conduct" the study to obtain exclusivity. FDA interprets the act to allow for exclusivity where the applicant has supported the study by providing more than 50 percent of the funding or by purchasing exclusive rights to the study.

IV. Analysis of Impacts

FDA has examined the impacts of this rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact on small entities. Title I of Pub. L. 98–417 eliminated unnecessary regulatory barriers for generic drug products and has resulted in generic competition on many important post-1962 drugs. Generic drug sales account for a significant portion of total prescription drug sales, and many of these sales would not have occurred in the absence of Pub. L. 98–417. This competition has saved consumers hundreds of millions of dollars per year, and FDA concludes that this impact is directly attributable to the statute. This rule will not affect the pace or magnitude of this economic impact. The rule simply clarifies and facilitates implementation of the act. Thus, FDA certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1980

This final rule contains information collections which have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Abbreviated New Drug Application Regulations; Patent and Exclusivity Provisions.

Description: The information requirements collect information from persons who must obtain FDA approval before marketing new human drug products or generic versions of previously approved drug products. These persons must submit information to FDA in the form of applications, notices, and certifications. FDA will use this information to determine whether patent information for a drug product has been submitted and whether an applicant is seeking market exclusivity for a particular drug product.

Description of Respondents: Businesses.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total hours
314.50(i)	8	1	8	2	16
314.50(j)	50	1	50	2	100
314.52	30	1	30	8	240
314.53	200	1	200	1	200
314.94(a)(12)	215	1	215	2	430
314.95	30	1	30	16	480
314.107	10	1	10	10	10
Total					1,476

There were no comments received on the Paperwork Reduction Act clearance submission or on the burden estimates. The agency has, however, revised the estimate for ANDA's under § 314.94 based on its latest figures for the number of ANDA's received.

VII. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Letter dated September 28, 1992, from Jane E. Henney, Deputy Commissioner for Operations, to Alan H. Kaplan and Richard S. Morey, Kleinfeld, Kaplan and Becker (FDA Docket No. 90P–0455).

2. Letter dated December 8, 1987, from John M. Taylor, Associate Commissioner for Regulatory Affairs, to Bruce J. Brennan, Senior Vice President and General Counsel (FDA Docket No. 86P–0235/CP).

List of Subjects in 21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 314 is amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

1. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 374, 379e).

2. Section 314.50 is amended by redesignating existing paragraph (h) as paragraph (k) and by adding new paragraphs (h), (i), and (j) to read as follows:

§ 314.50 Content and format of an application.

* * * * *

(h) *Patent information.* The application is required to contain the patent information described under § 314.53.

(i) *Patent certification*—(1) *Contents.* A 505(b)(2) application is required to contain the following:

(i) *Patents claiming drug, drug product, or method of use.* (A) Except as provided in paragraph (i)(2) of this section, a certification with respect to each patent issued by the United States Patent and Trademark Office that, in the opinion of the applicant and to the best of its knowledge, claims a drug (the drug product or drug substance that is a component of the drug product) on which investigations that are relied upon by the applicant for approval of its application were conducted or that claims an approved use for such drug and for which information is required to be filed under section 505 (b) and (c) of the act and § 314.53. For each such patent, the applicant shall provide the patent number and certify, in its opinion and to the best of its knowledge, one of the following circumstances:

(*1*) That the patent information has not been submitted to FDA. The applicant shall entitle such a certification "Paragraph I Certification";

(*2*) That the patent has expired. The applicant shall entitle such a certification "Paragraph II Certification";

(*3*) The date on which the patent will expire. The applicant shall entitle such a certification "Paragraph III Certification"; or

(*4*) That the patent is invalid, unenforceable, or will not be infringed by the manufacture, use, or sale of the drug product for which the application is submitted. The applicant shall entitle such a certification "Paragraph IV Certification". This certification shall be submitted in the following form:

I, (*name of applicant*), certify that Patent No. _____ (*is invalid, unenforceable, or will not be infringed by the manufacture, use, or sale of*) (*name of proposed drug product*) for which this application is submitted.

The certification shall be accompanied by a statement that the applicant will comply with the requirements under § 314.52(a) with respect to providing a notice to each owner of the patent or their representatives and to the holder of the approved application for the drug product which is claimed by the patent or a use of which is claimed by the patent and with the requirements under § 314.52(c) with respect to the content of the notice.

(B) If the drug on which investigations that are relied upon by the applicant were conducted is itself a licensed generic drug of a patented drug first approved under section 505(b) of the act, the appropriate patent certification under this section with respect to each patent that claims the first-approved patented drug or that claims an approved use for such a drug.

(ii) *No relevant patents.* If, in the opinion of the applicant and to the best of its knowledge, there are no patents described in paragraph (i)(1)(i) of this section, a certification in the following form:

In the opinion and to the best knowledge of (*name of applicant*), there are no patents that claim the drug or drugs on which investigations that are relied upon in this application were conducted or that claim a use of such drug or drugs.

(iii) *Method of use patent.* (A) If information that is submitted under section 505 (b) or (c) of the act and § 314.53 is for a method of use patent, and the labeling for the drug product for which the applicant is seeking approval does not include any indications that are covered by the use patent, a statement explaining that the method of use patent does not claim any of the proposed indications.

(B) If the labeling of the drug product for which the applicant is seeking approval includes an indication that, according to the patent information submitted under section 505 (b) or (c) of the act and § 314.53 or in the opinion of the applicant, is claimed by a use patent, the applicant shall submit an applicable certification under paragraph (i)(1)(i) of this section.

(2) *Method of manufacturing patent.* An applicant is not required to make a certification with respect to any patent that claims only a method of manufacturing the drug product for which the applicant is seeking approval.

(3) *Licensing agreements.* If a 505(b)(2) application is for a drug or method of using a drug claimed by a patent and the applicant has a licensing agreement with the patent owner, the applicant shall submit a certification under paragraph (i)(1)(i)(A)(*4*) of this section ("Paragraph IV Certification") as to that patent and a statement that it has been granted a patent license. If the patent owner consents to an immediate effective date upon approval of the 505(b)(2) application, the application shall contain a written statement from the patent owner that it has a licensing agreement with the applicant and that it consents to an immediate effective date.

(4) *Late submission of patent information.* If a patent described in paragraph (i)(1)(i)(A) of this section is issued and the holder of the approved application for the patented drug does not submit the required information on the patent within 30 days of issuance of the patent, an applicant who submitted a 505(b)(2) application that, before the submission of the patent information, contained an appropriate patent certification is not required to submit an amended certification. An applicant whose 505(b)(2) application is filed after a late submission of patent information or whose 505(b)(2) application was previously filed but did not contain an appropriate patent certification at the time of the patent submission shall submit a certification under paragraph (i)(1)(i) or (i)(1)(ii) of this section or a statement under paragraph (i)(1)(iii) of this section as to that patent.

(5) *Disputed patent information.* If an applicant disputes the accuracy or relevance of patent information submitted to FDA, the applicant may seek a confirmation of the correctness of the patent information in accordance with the procedures under § 314.53(f). Unless the patent information is withdrawn or changed, the applicant must submit an appropriate certification for each relevant patent.

(6) *Amended certifications.* A certification submitted under paragraphs (i)(1)(i) through (i)(1)(iii) of this section may be amended at any time before the effective date of the approval of the application. An applicant shall submit an amended certification as an amendment to a

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pending application or by letter to an approved application. If an applicant with a pending application voluntarily makes a patent certification for an untimely filed patent, the applicant may withdraw the patent certification for the untimely filed patent. Once an amendment or letter for the change in certification has been submitted, the application will no longer be considered to be one containing the prior certification.

(i) *After finding of infringement.* An applicant who has submitted a certification under paragraph (i)(1)(i)(A)(*4*) of this section and is sued for patent infringement within 45 days of the receipt of notice sent under § 314.52 shall amend the certification if a final judgment in the action is entered finding the patent to be infringed unless the final judgment also finds the patent to be invalid. In the amended certification, the applicant shall certify under paragraph (i)(1)(i)(A)(*3*) of this section that the patent will expire on a specific date.

(ii) *After removal of a patent from the list.* If a patent is removed from the list, any applicant with a pending application (including a tentatively approved application with a delayed effective date) who has made a certification with respect to such patent shall amend its certification. The applicant shall certify under paragraph (i)(1)(ii) of this section that no patents described in paragraph (i)(1)(i) of this section claim the drug or, if other relevant patents claim the drug, shall amend the certification to refer only to those relevant patents. In the amendment, the applicant shall state the reason for the change in certification (that the patent is or has been removed from the list). A patent that is the subject of a lawsuit under § 314.107(c) shall not be removed from the list until FDA determines either that no delay in effective dates of approval is required under that section as a result of the lawsuit, that the patent has expired, or that any such period of delay in effective dates of approval is ended. An applicant shall submit an amended certification as an amendment to a pending application. Once an amendment for the change has been submitted, the application will no longer be considered to be one containing a certification under paragraph (i)(1)(i)(A)(*4*) of this section.

(iii) *Other amendments.* (A) Except as provided in paragraphs (i)(*4*) and (i)(6)(iii)(B) of this section, an applicant shall amend a submitted certification if, at any time before the effective date of the approval of the application, the applicant learns that the submitted certification is no longer accurate.

(B) An applicant is not required to amend a submitted certification when information on an otherwise applicable patent is submitted after the effective date of approval for the 505(b)(2) application.

(j) *Claimed exclusivity.* A new drug product, upon approval, may be entitled to a period of marketing exclusivity under the provisions of § 314.108. If an applicant believes its drug product is entitled to a period of exclusivity, it shall submit with the new drug application prior to approval the following information:

(1) A statement that the applicant is claiming exclusivity.

(2) A reference to the appropriate paragraph under § 314.108 that supports its claim.

(3) If the applicant claims exclusivity under § 314.108(b)(2), information to show that, to the best of its knowledge or belief, a drug has not previously been approved under section 505(b) of the act containing any active moiety in the drug for which the applicant is seeking approval.

(4) If the applicant claims exclusivity under § 314.108(b)(4) or (b)(5), the following information to show that the application contains "new clinical investigations" that are "essential to approval of the application or supplement" and were "conducted or sponsored by the applicant:"

(i) *"New clinical investigations."* A certification that to the best of the applicant's knowledge each of the clinical investigations included in the application meets the definition of "new clinical investigation" set forth in § 314.108(a).

(ii) *"Essential to approval."* A list of all published studies or publicly available reports of clinical investigations known to the applicant through a literature search that are relevant to the conditions for which the applicant is seeking approval, a certification that the applicant has thoroughly searched the scientific literature and, to the best of the applicant's knowledge, the list is complete and accurate and, in the applicant's opinion, such published studies or publicly available reports do not provide a sufficient basis for the approval of the conditions for which the applicant is seeking approval without reference to the new clinical investigation(s) in the application, and an explanation as to why the studies or reports are insufficient.

(iii) *"Conducted or sponsored by."* If the applicant was the sponsor named in the Form FDA–1571 for an investigational new drug application (IND) under which the new clinical investigation(s) that is essential to the approval of its application was conducted, identification of the IND by number. If the applicant was not the sponsor of the IND under which the clinical investigation(s) was conducted, a certification that the applicant or its predecessor in interest provided substantial support for the clinical investigation(s) that is essential to the approval of its application, and information supporting the certification. To demonstrate "substantial support," an applicant must either provide a certified statement from a certified public accountant that the applicant provided 50 percent or more of the cost of conducting the study or provide an explanation of why FDA should consider the applicant to have conducted or sponsored the study if the applicant's financial contribution to the study is less than 50 percent or the applicant did not sponsor the investigational new drug. A predecessor in interest is an entity, e.g., a corporation, that the applicant has taken over, merged with, or purchased, or from which the applicant has purchased all rights to the drug. Purchase of nonexclusive rights to a clinical investigation after it is completed is not sufficient to satisfy this definition.

* * * * *

3. New sections 314.52 and 314.53 are added to subpart B to read as follows:

§ 314.52 Notice of certification of invalidity or noninfringement of a patent.

(a) *Notice of certification.* For each patent which claims the drug or drugs on which investigations that are relied upon by the applicant for approval of its application were conducted or which claims a use for such drug or drugs and which the applicant certifies under § 314.50(i)(1)(i)(A)(*4*) that a patent is invalid, unenforceable, or will not be infringed, the applicant shall send notice of such certification by registered or certified mail, return receipt requested to each of the following persons:

(1) Each owner of the patent that is the subject of the certification or the representative designated by the owner to receive the notice. The name and address of the patent owner or its representative may be obtained from the United States Patent and Trademark Office; and

(2) The holder of the approved application under section 505(b) of the act for each drug product which is claimed by the patent or a use of which is claimed by the patent and for which the applicant is seeking approval, or, if the application holder does not reside or maintain a place of business within the United States, the application holder's attorney, agent, or other authorized official. The name and address of the application holder or its attorney, agent, or authorized official may be obtained from the Division of Drug Information Resources (HFD–80), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(3) This paragraph does not apply to a use patent that claims no uses for which the applicant is seeking approval.

(b) *Sending the notice.* The applicant shall send the notice required by paragraph (a) of this section when it receives from FDA an acknowledgment letter stating that its application has been filed. At the same time, the applicant shall amend its application to include a statement certifying that the notice has been provided to each person identified under paragraph (a) of this section and that the notice met the content requirement under paragraph (c) of this section.

(c) *Content of a notice.* In the notice, the applicant shall cite section 505(b)(3)(B) of the act and shall include, but not be limited to, the following information:

(1) A statement that a 505(b)(2) application submitted by the applicant has been filed by FDA.

(2) The application number.

(3) The established name, if any, as defined in section 502(e)(3) of the act, of the proposed drug product.

(4) The active ingredient, strength, and dosage form of the proposed drug product.

(5) The patent number and expiration date, as submitted to the agency or as known to the applicant, of each patent alleged to be invalid, unenforceable, or not infringed.

(6) A detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid, unenforceable, or will not be infringed. The applicant shall include in the detailed statement:

(i) For each claim of a patent alleged not to be infringed, a full and detailed explanation of why the claim is not infringed.

(ii) For each claim of a patent alleged to be invalid or unenforceable, a full and detailed explanation of the grounds supporting the allegation.

(7) If the applicant does not reside or have a place of business in the United States, the name and address of an agent in the United States authorized to accept service of process for the applicant.

(d) *Amendment to an application.* If an application is amended to include the certification described in § 314.50(i), the applicant shall send the notice required by paragraph (a) of this section at the same time that the amendment to the application is submitted to FDA.

(e) *Documentation of receipt of notice.* The applicant shall amend its application to document receipt of the notice required under paragraph (a) of this section by each person provided the notice. The applicant shall include a copy of the return receipt or other similar evidence of the date the notification was received. FDA will accept as adequate documentation of the date of receipt a return receipt or a letter acknowledging receipt by the person provided the notice. An applicant may rely on another form of documentation only if FDA has agreed to such documentation in advance. A copy of the notice itself need not be submitted to the agency.

(f) *Approval.* If the requirements of this section are met, the agency will presume the notice to be complete and sufficient, and it will count the day following the date of receipt of the notice by the patent owner or its representative and by the approved application holder as the first day of the 45-day period provided for in section 505(c)(3)(C) of the act. FDA may, if the applicant amends its application with a written statement that a later date should be used, count from such later date.

§ 314.53 Submission of patent information.

(a) *Who must submit patent information.* This section applies to any applicant who submits to FDA a new drug application or an amendment to it under section 505(b) of the act and § 314.50 or a supplement to an approved application under § 314.70, except as provided in paragraph (d)(2) of this section.

(b) *Patents for which information must be submitted.* An applicant described in paragraph (a) of this section shall submit information on each patent that claims the drug or a method of using the drug that is the subject of the new drug application or amendment or supplement to it and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product. For purposes of this part, such patents consist of drug substance (ingredient) patents, drug product (formulation and composition) patents, and method of use patents. Process patents are not covered by this section and information on process patents may not be submitted to FDA. For patents that claim a drug substance or drug product, the applicant shall submit information only on those patents that claim a drug product that is the subject of a pending or approved application, or that claim a drug substance that is a component of such a product. For patents that claim a method of use, the applicant shall submit information only on those patents that claim indications or other conditions of use of a pending or approved application.

(c) *Reporting requirements.*—(1) *General requirements.* An applicant described in paragraph (a) of this section shall submit the following information for each patent described in paragraph (b) of this section:

(i) Patent number and the date on which the patent will expire.

(ii) Type of patent, i.e., drug, drug product, or method of use.

(iii) Name of the patent owner.

(iv) If the patent owner or applicant does not reside or have a place of business within the United States, the name of an agent (representative) of the patent owner or applicant who resides or maintains a place of business within the United States authorized to receive notice of patent certification under section 505(b)(3) and (j)(2)(B) of the act and §§ 314.52 and 314.95.

(2) *Formulation, composition, or method of use patents.*—(i) *Original declaration.* For each formulation, composition, or method of use patent, in addition to the patent information described in paragraph (c)(1) of this section the applicant shall submit the following declaration:

The undersigned declares that Patent No. _____ covers the formulation, composition, and/or method of use of (*name of drug product*). This product is (*currently approved under section 505 of the Federal Food, Drug, and Cosmetic Act*) [or] (*the subject of this application for which approval is being sought*):

(ii) *Amendment of patent information upon approval.* Within 30 days after the date of approval of its application, if the application contained a declaration required under paragraph (c)(2)(i) of this section, the applicant shall by letter amend the declaration to identify each patent that claims the formulation, composition, or the specific indications or other conditions of use that have been approved.

(3) *No relevant patents.* If the applicant believes that there are no patents which claim the drug or the drug product or which claim a method of using the drug product and with

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respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product, it shall so declare.

(4) *Authorized signature.* The declarations required by this section shall be signed by the applicant or patent owner, or the applicant's or patent owner's attorney, agent (representative), or other authorized official.

(d) *When and where to submit patent information*—(1) *Original application.* An applicant shall submit with its original application submitted under this part, including an application described in section 505(b)(2) of the act, the information described in paragraph (c) of this section on each drug (ingredient), drug product (formulation and composition), and method of use patent issued before the application is filed with FDA and for which patent information is required to be submitted under this section. If a patent is issued after the application is filed with FDA but before the application is approved, the applicant shall, within 30 days of the date of issuance of the patent, submit the required patent information in an amendment to the application under § 314.60.

(2) *Supplements.* (i) An applicant shall submit patent information required under paragraph (c) of this section for a patent that claims the drug, drug product, or method of use for which approval is sought in any of the following supplements:

(A) To change the formulation;

(B) To add a new indication or other condition of use, including a change in route of administration;

(C) To change the strength;

(D) To make any other patented change regarding the drug, drug product, or any method of use.

(ii) If the applicant submits a supplement for one of the changes listed under paragraph (d)(2)(i) of this section and existing patents for which information has already been submitted to FDA claim the changed product, the applicant shall submit a certification with the supplement identifying the patents that claim the changed product.

(iii) If the applicant submits a supplement for one of the changes listed under paragraph (d)(2)(i) of this section and no patents, including previously submitted patents, claim the changed product, it shall so certify.

(iv) The applicant shall comply with the requirements for amendment of formulation or composition and method of use patent information under paragraphs (c)(2)(ii) and (d)(3) of this section.

(3) *Patent information deadline.* If a patent is issued for a drug, drug product, or method of use after an application is approved, the applicant shall submit to FDA the required patent information within 30 days of the date of issuance of the patent.

(4) *Copies.* The applicant shall submit two copies of each submission of patent information, an archival copy and a copy for the chemistry, manufacturing, and controls section of the review copy, to the Central Document Room, Center for Drug Evaluation and Research, Food and Drug Administration, Park Bldg., rm. 2–14, 12420 Parklawn Dr., Rockville, MD 20857. The applicant shall submit the patent information by letter separate from, but at the same time as, submission of the supplement.

(5) *Submission date.* Patent information shall be considered to be submitted to FDA as of the date the information is received by the Central Document Room.

(6) *Identification.* Each submission of patent information, except information submitted with an original application, and its mailing cover shall bear prominent identification as to its contents, i.e., "Patent Information," or, if submitted after approval of an application, "Time Sensitive Patent Information."

(e) *Public disclosure of patent information.* FDA will publish in the list the patent number and expiration date of each patent that is required to be, and is, submitted to FDA by an applicant, and for each use patent, the approved indications or other conditions of use covered by a patent. FDA will publish such patent information upon approval of the application, or, if the patent information is submitted by the applicant after approval of an application as provided under paragraph (d)(2) of this section, as soon as possible after the submission to the agency of the patent information. Patent information submitted by the last working day of a month will be published in that month's supplement to the list. Patent information received by the agency between monthly publication of supplements to the list will be placed on public display in FDA's Freedom of Information Staff. A request for copies of the file shall be sent in writing to the Freedom of Information Staff (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857.

(f) *Correction of patent information errors.* If any person disputes the accuracy or relevance of patent information submitted to the agency under this section and published by FDA in the list, or believes that an applicant has failed to submit required patent information, that person must first notify the agency in writing stating the grounds for disagreement. Such notification should be directed to the Drug Information Services Branch (HFD–84), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. The agency will then request of the applicable new drug application holder that the correctness of the patent information or omission of patent information be confirmed. Unless the application holder withdraws or amends its patent information in response to FDA's request, the agency will not change the patent information in the list. If the new drug application holder does not change the patent information submitted to FDA, a 505(b)(2) application or an abbreviated new drug application under section 505(j) of the act submitted for a drug that is claimed by a patent for which information has been submitted must, despite any disagreement as to the correctness of the patent information, contain an appropriate certification for each listed patent.

4. Section 314.54 is amended by adding new paragraph (a)(1)(vii) to read as follows:

§ 314.54 Procedure for submission of an application requiring investigations for approval of a new indication for, or other change from, a listed drug.

(a) * * *

(1) * * *

(vii) If the applicant believes the change for which it is seeking approval is entitled to a period of exclusivity, the information required under § 314.50(j).

* * * * * *

5. Section 314.70 is amended by adding new paragraph (f) to read as follows:

§ 314.70 Supplements and other changes to an approved application.

* * * * * *

(f) *Claimed exclusivity.* If an applicant claims exclusivity under § 314.108 upon approval of a supplemental application for a change to its previously approved drug product, the applicant shall include with its supplemental application the information required under § 314.50(j).

6. Section 314.94 is amended by adding a new paragraph (a)(12) to read as follows:

§ 314.94 Content and format of an abbreviated application.

(a) * * *

(12) *Patent certification*—(i) *Patents claiming drug, drug product, or method of use.* (A) Except as provided in paragraph (a)(12)(iv) of this section, a certification with respect to each patent issued by the United States Patent and Trademark Office that, in the opinion of the applicant and to the best of its knowledge, claims the reference listed drug or that claims a use of such listed drug for which the applicant is seeking approval under section 505(j) of the act and for which information is required to be filed under section 505(b) and (c) of the act and § 314.53. For each such patent, the applicant shall provide the patent number and certify, in its opinion and to the best of its knowledge, one of the following circumstances:

(*1*) That the patent information has not been submitted to FDA. The applicant shall entitle such a certification "Paragraph I Certification";

(*2*) That the patent has expired. The applicant shall entitle such a certification "Paragraph II Certification";

(*3*) The date on which the patent will expire. The applicant shall entitle such a certification "Paragraph III Certification"; or

(*4*) That the patent is invalid, unenforceable, or will not be infringed by the manufacture, use, or sale of the drug product for which the abbreviated application is submitted. The applicant shall entitle such a certification "Paragraph IV Certification". This certification shall be submitted in the following form:

I, (*name of applicant*), certify that Patent No. _____ (*is invalid, unenforceable, or will not be infringed by the manufacture, use, or sale of*) (*name of proposed drug product*) for which this application is submitted.

The certification shall be accompanied by a statement that the applicant will comply with the requirements under § 314.95(a) with respect to providing a notice to each owner of the patent or their representatives and to the holder of the approved application for the listed drug, and with the requirements under § 314.95(c) with respect to the content of the notice.

(B) If the abbreviated new drug application refers to a listed drug that is itself a licensed generic product of a patented drug first approved under section 505(b) of the act, the appropriate patent certification under paragraph (a)(12)(i) of this section with respect to each patent that claims the first-approved patented drug or that claims a use for such drug.

(ii) *No relevant patents.* If, in the opinion of the applicant and to the best of its knowledge, there are no patents described in paragraph (a)(12)(i) of this section, a certification in the following form:

In the opinion and to the best knowledge of (*name of applicant*), there are no patents that claim the listed drug referred to in this application or that claim a use of the listed drug.

(iii) *Method of use patent.* (A) If patent information is submitted under section 505(b) or (c) of the act and § 314.53 for a patent claiming a method of using the listed drug, and the labeling for the drug product for which the applicant is seeking approval does not include any indications that are covered by the use patent, a statement explaining that the method of use patent does not claim any of the proposed indications.

(B) If the labeling of the drug product for which the applicant is seeking approval includes an indication that, according to the patent information submitted under section 505(b) or (c) of the act and § 314.53 or in the opinion of the applicant, is claimed by a use patent, an applicable certification under paragraph (a)(12)(i) of this section.

(iv) *Method of manufacturing patent.* An applicant is not required to make a certification with respect to any patent that claims only a method of manufacturing the listed drug.

(v) *Licensing agreements.* If the abbreviated new drug application is for a drug or method of using a drug claimed by a patent and the applicant has a licensing agreement with the patent owner, a certification under paragraph (a)(12)(i)(A)(*4*) of this section ("Paragraph IV Certification") as to that patent and a statement that it has been granted a patent license.

(vi) *Late submission of patent information.* If a patent on the listed drug is issued and the holder of the approved application for the listed drug does not submit the required information on the patent within 30 days of issuance of the patent, an applicant who submitted an abbreviated new drug application for that drug that contained an appropriate patent certification before the submission of the patent information is not required to submit an amended certification. An applicant whose abbreviated new drug application is submitted after a late submission of patent information, or whose pending abbreviated application was previously submitted but did not contain an appropriate patent certification at the time of the patent submission, shall submit a certification under paragraph (a)(12)(i) of this section or a statement under paragraph (a)(12)(iii) of this section as to that patent.

(vii) *Disputed patent information.* If an applicant disputes the accuracy or relevance of patent information submitted to FDA, the applicant may seek a confirmation of the correctness of the patent information in accordance with the procedures under § 314.53(f). Unless the patent information is withdrawn or changed, the applicant shall submit an appropriate certification for each relevant patent.

(viii) *Amended certifications.* A certification submitted under paragraphs (a)(12)(i) through (a)(12)(iii) of this section may be amended at any time before the effective date of the approval of the application. However, an applicant who has submitted a paragraph IV patent certification may not change it to a paragraph III certification if a patent infringement suit has been filed against another paragraph IV applicant unless the agency has determined that no applicant is entitled to 180-day exclusivity or the patent expires before the lawsuit is resolved or expires after the suit is resolved but before the end of the 180-day exclusivity period. If an applicant with a pending application voluntarily makes a patent certification for an untimely filed patent, the applicant may withdraw the patent certification for the untimely filed patent. An applicant shall submit an amended certification by letter or as an amendment to a pending application or by letter to an approved application. Once an amendment or letter is submitted, the application will no longer be considered to contain the prior certification.

(A) *After finding of infringement.* An applicant who has submitted a certification under paragraph (a)(12)(i)(A)(*4*) of this section and is sued for patent infringement within 45 days of the receipt of notice sent under § 314.95 shall amend the certification if a final judgment in the action against the applicant is entered finding the patent to be infringed. In the amended certification, the applicant shall certify under paragraph (a)(12)(i)(A)(*3*) of this section that the patent will expire on a specific date. Once an amendment or letter for the change has been submitted, the application will no longer be considered to be one containing a certification under paragraph (a)(12)(i)(A)(*4*) of this section. If a final judgment finds the patent to be invalid and infringed, an amended certification is not required.

(B) *After removal of a patent from the list.* If a patent is removed from the list, any applicant with a pending application (including a tentatively

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approved application with a delayed effective date) who has made a certification with respect to such patent shall amend its certification. The applicant shall certify under paragraph (a)(12)(ii) of this section that no patents described in paragraph (a)(12)(i) of this section claim the drug or, if other relevant patents claim the drug, shall amend the certification to refer only to those relevant patents. In the amendment, the applicant shall state the reason for the change in certification (that the patent is or has been removed from the list). A patent that is the subject of a lawsuit under § 314.107(c) shall not be removed from the list until FDA determines either that no delay in effective dates of approval is required under that section as a result of the lawsuit, that the patent has expired, or that any such period of delay in effective dates of approval is ended. An applicant shall submit an amended certification. Once an amendment or letter for the change has been submitted, the application will no longer be considered to be one containing a certification under paragraph (a)(12)(i)(A)(4) of this section.

(C) *Other amendments.* (1) Except as provided in paragraphs (a)(12)(vi) and (a)(12)(viii)(C)(*2*) of this section, an applicant shall amend a submitted certification if, at any time before the effective date of the approval of the application, the applicant learns that the submitted certification is no longer accurate.

(*2*) An applicant is not required to amend a submitted certification when information on a patent on the listed drug is submitted after the effective date of approval of the abbreviated application.

* * * * *

7. New section 314.95 is added to subpart C to read as follows:

§ 314.95 Notice of certification of invalidity or noninfringement of a patent.

(a) *Notice of certification.* For each patent that claims the listed drug or that claims a use for such listed drug for which the applicant is seeking approval and that the applicant certifies under § 314.94(a)(12) is invalid, unenforceable, or will not be infringed, the applicant shall send notice of such certification by registered or certified mail, return receipt requested to each of the following persons:

(1) Each owner of the patent which is the subject of the certification or the representative designated by the owner to receive the notice. The name and address of the patent owner or its representative may be obtained from the United States Patent and Trademark Office; and

(2) The holder of the approved application under section 505(b) of the act for the listed drug that is claimed by the patent and for which the applicant is seeking approval, or, if the application holder does not reside or maintain a place of business within the United States, the application holder's attorney, agent, or other authorized official. The name and address of the application holder or its attorney, agent, or authorized official may be obtained from the Division of Drug Information Resources (HFD–80), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(3) This paragraph does not apply to a use patent that claims no uses for which the applicant is seeking approval.

(b) *Sending the notice.* The applicant shall send the notice required by paragraph (a) of this section when it receives from FDA an acknowledgment letter stating that its abbreviated new drug application is sufficiently complete to permit a substantive review. At the same time, the applicant shall amend its abbreviated new drug application to include a statement certifying that the notice has been provided to each person identified under paragraph (a) of this section and that the notice met the content requirements under paragraph (c) of this section.

(c) *Contents of a notice.* In the notice, the applicant shall cite section 505(j)(2)(B)(ii) of the act and shall include, but not be limited to, the following information:

(1) A statement that FDA has received an abbreviated new drug application submitted by the applicant containing any required bioavailability or bioequivalence data or information.

(2) The abbreviated application number.

(3) The established name, if any, as defined in section 502(e)(3) of the act, of the proposed drug product.

(4) The active ingredient, strength, and dosage form of the proposed drug product.

(5) The patent number and expiration date, as submitted to the agency or as known to the applicant, of each patent alleged to be invalid, unenforceable, or not infringed.

(6) A detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid, unenforceable, or will not be infringed. The applicant shall include in the detailed statement:

(i) For each claim of a patent alleged not to be infringed, a full and detailed explanation of why the claim is not infringed.

(ii) For each claim of a patent alleged to be invalid or unenforceable, a full and detailed explanation of the grounds supporting the allegation.

(7) If the applicant does not reside or have a place of business in the United States, the name and address of an agent in the United States authorized to accept service of process for the applicant.

(d) *Amendment to an abbreviated application.* If an abbreviated application is amended to include the certification described in § 314.94(a)(12)(i)(A)(*4*), the applicant shall send the notice required by paragraph (a) of this section at the same time that the amendment to the abbreviated application is submitted to FDA.

(e) *Documentation of receipt of notice.* The applicant shall amend its abbreviated application to document receipt of the notice required under paragraph (a) of this section by each person provided the notice. The applicant shall include a copy of the return receipt or other similar evidence of the date the notification was received. FDA will accept as adequate documentation of the date of receipt a return receipt or a letter acknowledging receipt by the person provided the notice. An applicant may rely on another form of documentation only if FDA has agreed to such documentation in advance. A copy of the notice itself need not be submitted to the agency.

(f) *Approval.* If the requirements of this section are met, FDA will presume the notice to be complete and sufficient, and it will count the day following the date of receipt of the notice by the patent owner or its representative and by the approved application holder as the first day of the 45-day period provided for in section 505(j)(4)(B)(iii) of the act. FDA may, if the applicant provides a written statement to FDA that a later date should be used, count from such later date.

8. Section 314.101 is amended by revising paragraph (e) to read as follows:

§ 314.101 Filing an application and an abbreviated antibiotic application and receiving an abbreviated new drug application.

* * * * *

(e) The agency will refuse to file an application or abbreviated antibiotic application or will consider an abbreviated new drug application not to have been received if any of the following applies:

(1) The drug product is subject to licensing by FDA under the Public Health Service Act (42 U.S.C. 201 *et seq.*) and subchapter F of this chapter.

(2) In the case of a 505(b)(2) application or an abbreviated new drug application, the drug product contains the same active moiety as a drug that:

(i) Was approved after September 24, 1984, in an application under section 505(b) of the act, and

(ii) Is entitled to a 5-year period of exclusivity under section 505(c)(3)(D)(ii) and (j)(4)(D)(ii) of the act and § 314.108(b)(2), unless the 5-year exclusivity period has elapsed or unless 4 years of the 5-year period have elapsed and the application or abbreviated application contains a certification of patent invalidity or noninfringement described in § 314.50(i)(1)(i)(A)(*4*) or § 314.94(a)(12)(i)(A)(*4*).

* * * * *

9. New sections 314.107 and 314.108 are added to subpart D to read as follows:

§ 314.107 Effective date of approval of a 505(b)(2) application or abbreviated new drug application under section 505(j) of the act.

(a) *General.* A drug product may be introduced or delivered for introduction into interstate commerce when approval of the application or abbreviated application for the drug product becomes effective. Except as provided in this section, approval of an application or abbreviated application for a drug product becomes effective on the date FDA issues an approval letter under § 314.105 for the application or abbreviated application.

(b) *Effect of patent on the listed drug.* If approval of an abbreviated new drug application submitted under section 505(j) of the act or of a 505(b)(2) application is granted, that approval will become effective in accordance with the following:

(1) *Date of approval letter.* Except as provided in paragraphs (b)(3), (b)(4), and (c) of this section, approval will become effective on the date FDA issues an approval letter under § 314.105 if the applicant certifies under § 314.50(i) or § 314.94(a)(12) that:

(i) There are no relevant patents; or

(ii) The applicant is aware of a relevant patent but the patent information required under section 505 (b) or (c) of the act has not been submitted to FDA; or

(iii) The relevant patent has expired; or

(iv) The relevant patent is invalid, unenforceable, or will not be infringed.

(2) *Patent expiration.* If the applicant certifies under § 314.50(i) or § 314.94(a)(12) that the relevant patent will expire on a specified date, approval will become effective on the specified date.

(3) *Disposition of patent litigation.* (i)(A) Except as provided in paragraphs (b)(3)(ii), (b)(3)(iii), and (b)(3)(iv) of this section, if the applicant certifies under § 314.50(i) or § 314.94(a)(12) that the relevant patent is invalid, unenforceable, or will not be infringed, and the patent owner or its representative or the exclusive patent licensee brings suit for patent infringement within 45 days of receipt by the patent owner of the notice of certification from the applicant under § 314.52 or § 314.95, approval may be made effective 30 months after the date of the receipt of the notice of certification by the patent owner or by the exclusive licensee (or their representatives) unless the court has extended or reduced the period because of a failure of either the plaintiff or defendant to cooperate reasonably in expediting the action; or

(B) If the patented drug product qualifies for 5 years of exclusive marketing under § 314.108(b)(2) and the patent owner or its representative or the exclusive patent licensee brings suit for patent infringement during the 1-year period beginning 4 years after the date the patented drug was approved and within 45 days of receipt by the patent owner of the notice of certification, the approval may be made effective at the expiration of the 7½ years from the date of approval of the application for the patented drug product.

(ii) If before the expiration of the 30-month period, or 7½ years where applicable, the court issues a final order that the patent is invalid, unenforceable, or not infringed, approval may be made effective on the date the court enters judgment;

(iii) If before the expiration of the 30-month period, or 7½ years where applicable, the court issues a final order or judgment that the patent has been infringed, approval may be made effective on the date the court determines that the patent will expire or otherwise orders; or

(iv) If before the expiration of the 30-month period, or 7½ years where applicable, the court grants a preliminary injunction prohibiting the applicant from engaging in the commercial manufacture or sale of the drug product until the court decides the issues of patent validity and infringement, and if the court later decides that the patent is invalid, unenforceable, or not infringed, approval may be made effective on the date the court enters a final order or judgment that the patent is invalid, unenforceable, or not infringed.

(v) In order for an approval to be made effective under paragraph (b)(3) of this section, the applicant must receive an approval letter from the agency indicating that the application has received final approval. Tentative approval of an application does not constitute "approval" of an application and cannot, absent a final approval letter from the agency, result in an effective approval under paragraph (b)(3) of this section.

(4) *Multiple certifications.* If the applicant has submitted certifications under § 314.50(i) or § 314.94(a)(12) for more than one patent, the date of approval will be calculated for each certification, and the approval will become effective on the last applicable date.

(c) *Subsequent abbreviated new drug application submission.*

(1) If an abbreviated new drug application contains a certification that a relevant patent is invalid, unenforceable, or will not be infringed and the application is for a generic copy of the same listed drug for which one or more substantially complete abbreviated new drug applications were previously submitted containing a certification that the same patent was invalid, unenforceable, or would not be infringed and the applicant submitting the first application has successfully defended against a suit for patent infringement brought within 45 days of the patent owner's receipt of notice submitted under § 314.95, approval of the subsequent abbreviated new drug application will be made effective no sooner than 180 days from whichever of the following dates is earlier:

(i) The date the applicant submitting the first application first commences commercial marketing of its drug product; or

(ii) The date of a decision of the court holding the relevant patent invalid, unenforceable, or not infringed.

(2) For purposes of paragraph (c)(1) of this section, the "applicant submitting the first application" is the applicant that submits an application that is both substantially complete and contains a certification that the patent was invalid, unenforceable, or not infringed prior to the submission of any other application for the same listed drug that is both substantially complete and contains the same certification. A "substantially complete" application must contain the results of any required bioequivalence studies, or, if applicable, a request for a waiver of such studies.

(3) For purposes of paragraph (c)(1) of this section, if FDA concludes that the

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applicant submitting the first application is not actively pursuing approval of its abbreviated application, FDA will make the approval of subsequent abbreviated applications immediately effective if they are otherwise eligible for an immediately effective approval.

(4) For purposes of paragraph (c)(1)(i) of this section, the applicant submitting the first application shall, if sued for patent infringement, notify FDA of the date that it commences commercial marketing of its drug product. Commercial marketing commences with the first date of introduction or delivery for introduction into interstate commerce outside the control of the manufacturer of a drug product, except for investigational use under part 312 of this chapter, but does not include transfer of the drug product for reasons other than sale within the control of the manufacturer or application holder. If an applicant does not promptly notify FDA of such date, the effective date of approval shall be deemed to be the date of the commencement of first commercial marketing.

(d) *Delay due to exclusivity.* The agency will also delay the effective date of the approval of an abbreviated new drug application under section 505(j) of the act or a 505(b)(2) application if delay is required by the exclusivity provisions in § 314.108. When the effective date of an application is delayed under both this section and § 314.108, the effective date will be the later of the 2 days specified under this section and § 314.108.

(e) *Court actions.* (1) References to actions of "the court" in paragraphs (b) and (c) of this section are to the court that enters final judgment from which no appeal can be or has been taken.

(2) For purposes of establishing the effective date of approval based on a court judgment, the following dates shall be deemed to be the date of the final decision of the court on the patent issues:

(i) If the district court enters a decision that the patent is invalid, unenforceable, or not infringed, and the decision is not appealed, the date on which the right to appeal lapses.

(ii) If the district court enters a decision that the patent is invalid, unenforceable, or not infringed, and the decision is appealed, the date of the first decision or order by a higher court holding or affirming the decision of the district court that the patent is invalid, unenforceable, or not infringed.

(iii) If the district court enters a decision that the patent is infringed, and the decision is appealed, the date on which the district court enters a judgment that the patent is invalid, unenforceable, or not infringed pursuant to a mandate issued by a court of appeals.

(iv) The applicant shall submit a copy of the entry of the order or judgment to the Office of Generic Drugs (HFD–600), or to the appropriate division in the Office of Drug Evaluation I (HFD–100) or Office of Drug Evaluation II (HFD–500), whichever is applicable, within 10 working days of a final judgment.

(f) *Computation of 45-day time clock.* (1) The 45-day clock described in paragraph (b)(3) of this section begins on the day after the date of receipt of the applicant's notice of certification by the patent owner or its representative, and by the approved application holder. When the 45th day falls on Saturday, Sunday, or a Federal holiday, the 45th day will be the next day that is not a Saturday, Sunday, or a Federal holiday.

(2) The abbreviated new drug applicant or the 505(b)(2) applicant shall notify FDA immediately of the filing of any legal action filed within 45 days of receipt of the notice of certification. If the applicant submitting the abbreviated new drug application or the 505(b)(2) application or patent owner or its representative does not notify FDA in writing before the expiration of the 45-day time period or the completion of the agency's review of the application, whichever occurs later, that a legal action for patent infringement was filed within 45 days of receipt of the notice of certification, approval of the abbreviated new drug application or the 505(b)(2) application will be made effective immediately upon expiration of the 45 days or upon completion of the agency's review and approval of the application, whichever is later. The notification to FDA of the legal action shall include:

(i) The abbreviated new drug application or 505(b)(2) application number.

(ii) The name of the abbreviated new drug or 505(b)(2) application applicant.

(iii) The established name of the drug product or, if no established name exists, the name(s) of the active ingredient(s), the drug product's strength, and dosage form.

(iv) A certification that an action for patent infringement identified by number, has been filed in an appropriate court on a specified date.

The applicant of an abbreviated new drug application shall send the notification to FDA's Office of Generic Drugs (HFD–600). A 505(b)(2) applicant shall send the notification to the appropriate division in the Center for Drug Evaluation and Research reviewing the application. A patent owner or its representative may also notify FDA of the filing of any legal action for patent infringement. The notice should contain the information and be sent to the offices or divisions described in this paragraph.

(3) If the patent owner or approved application holder who is an exclusive patent licensee waives its opportunity to file a legal action for patent infringement within 45 days of a receipt of the notice of certification and the patent owner or approved application holder who is an exclusive patent licensee submits to FDA a valid waiver before the 45 days elapse, approval of the abbreviated new drug application or the 505(b)(2) application will be made effective upon completion of the agency's review and approval of the application. FDA will only accept a waiver in the following form:

(*Name of patent owner or exclusive patent licensee*) has received notice from (*name of applicant*) under (*section 505(b)(3) or 505(j)(2)(B) of the act*) and does not intend to file an action for patent infringement against (*name of applicant*) concerning the drug (*name of drug*) before (*date on which 45 days elapses. (Name of patent owner or exclusive patent licensee*) waives the opportunity provided by (*section 505(c)(3)(C) or 505(j)(B)(iii) of the act*) and does not object to FDA's approval of (*name of applicant*)'s (*505(b)(2) or abbreviated new drug application*) for (*name of drug*) with an immediate effective date on or after the date of this letter.

§ 314.108 New drug product exclusivity.

(a) *Definitions.* The following definitions of terms apply to this section:

Active moiety means the molecule or ion, excluding those appended portions of the molecule that cause the drug to be an ester, salt (including a salt with hydrogen or coordination bonds), or other noncovalent derivative (such as a complex, chelate, or clathrate) of the molecule, responsible for the physiological or pharmacological action of the drug substance.

Approved under section 505(b) means an application submitted under section 505(b) and approved on or after October 10, 1962, or an application that was "deemed approved" under section 107(c)(2) of Pub. L. 87–781.

Clinical investigation means any experiment other than a bioavailability study in which a drug is administered or dispensed to, or used on, human subjects.

Conducted or sponsored by the applicant with regard to an investigation means that before or during the investigation, the applicant was named in Form FDA–1571 filed with FDA as the sponsor of the investigational new drug application under which the investigation was conducted, or the applicant or the applicant's predecessor in interest, provided substantial support for the investigation. To demonstrate "substantial support," an applicant must either provide a certified statement from a certified public accountant that the applicant provided 50 percent or more of the cost of conducting the study or provide an explanation why FDA should consider the applicant to have conducted or sponsored the study if the applicant's financial contribution to the study is less than 50 percent or the applicant did not sponsor the investigational new drug. A predecessor in interest is an entity, e.g., a corporation, that the applicant has taken over, merged with, or purchased, or from which the applicant has purchased all rights to the drug. Purchase of nonexclusive rights to a clinical investigation after it is completed is not sufficient to satisfy this definition.

Date of approval means the date on the letter from FDA stating that the new drug application is approved, whether or not final printed labeling or other materials must yet be submitted as long as approval of such labeling or materials is not expressly required. "Date of approval" refers only to a final approval and not to a tentative approval that may become effective at a later date.

Essential to approval means, with regard to an investigation, that there are no other data available that could support approval of the application.

FDA means the Food and Drug Administration.

New chemical entity means a drug that contains no active moiety that has been approved by FDA in any other application submitted under section 505(b) of the act.

New clinical investigation means an investigation in humans the results of which have not been relied on by FDA to demonstrate substantial evidence of effectiveness of a previously approved drug product for any indication or of safety for a new patient population and do not duplicate the results of another investigation that was relied on by the agency to demonstrate the effectiveness or safety in a new patient population of a previously approved drug product. For purposes of this section, data from a clinical investigation previously submitted for use in the comprehensive evaluation of the safety of a drug product but not to support the effectiveness of the drug product would be considered new.

(b) *Submission of and effective date of approval of an abbreviated new drug application submitted under section 505(j) of the act or a 505(b)(2) application.* (1) [Reserved]

(2) If a drug product that contains a new chemical entity was approved after September 24, 1984, in an application submitted under section 505(b) of the act, no person may submit a 505(b)(2) application or abbreviated new drug application under section 505(j) of the act for a drug product that contains the same active moiety as in the new chemical entity for a period of 5 years from the date of approval of the first approved new drug application, except that the 505(b)(2) application or abbreviated application may be submitted after 4 years if it contains a certification of patent invalidity or noninfringement described in § 314.50(i)(1)(i)(A)(*4*) or § 314.94(a)(12)(i)(A)(*4*).

(3) The approval of a 505(b)(2) application or abbreviated application described in paragraph (b)(2) of this section will become effective as provided in § 314.107(b)(1) or (b)(2), unless the owner of a patent that claims the drug, the patent owner's representative, or exclusive licensee brings suit for patent infringement against the applicant during the 1-year period beginning 48 months after the date of approval of the new drug application for the new chemical entity and within 45 days after receipt of the notice described at § 314.52 or § 314.95, in which case, approval of the 505(b)(2) application or abbreviated application will be made effective as provided in § 314.107(b)(3).

(4) If an application:

(i) Was submitted under section 505(b) of the act;

(ii) Was approved after September 24, 1984;

(iii) Was for a drug product that contains an active moiety that has been previously approved in another application under section 505(b) of the act; and

(iv) Contained reports of new clinical investigations (other than bioavailability studies) conducted or sponsored by the applicant that were essential to approval of the application, the agency will not make effective for a period of 3 years after the date of approval of the application the approval of a 505(b)(2) application or an abbreviated new drug application for the conditions of approval of the original application, or an abbreviated new drug application submitted pursuant to an approved petition under section 505(j)(2)(C) of the act that relies on the information supporting the conditions of approval of an original new drug application.

(5) If a supplemental application:

(i) Was approved after September 24, 1984; and

(ii) Contained reports of new clinical investigations (other than bioavailability studies) that were conducted or sponsored by the applicant that were essential to approval of the supplemental application, the agency will not make effective for a period of 3 years after the date of approval of the supplemental application the approval of a 505(b)(2) application or an abbreviated new drug application for a change, or an abbreviated new drug application submitted pursuant to an approved petition under section 505(j)(2)(C) of the act that relies on the information supporting a change approved in the supplemental new drug application.

Dated: September 23, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–24052 Filed 9–30–94; 8:45 am]

BILLING CODE 4160–01–P

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ISS
190
OC
3
1994
UMI

federal register

Monday
October 3, 1994

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 215 and 216

General Authorization for Scientific Research; Final Rule

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 215 and 216

[Docket No. 940840–4262; I.D. 081694C]

RIN 0648–AH20

General Authorization for Scientific Research

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule implements recent amendments to the Marine Mammal Protection Act of 1972 (MMPA) by amending the regulations implementing the MMPA to authorize, pursuant to a General Authorization for Scientific Research, the harassment of marine mammals in the wild for purposes of bona fide scientific research, that does not have the potential to injure marine mammals (Level B harassment).

DATES: The interim rule is effective on October 3, 1994. Comments must be postmarked or received by November 17, 1994.

ADDRESSES: Comments or requests for the Environmental Assessment (EA) prepared for this action should be sent to Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226. Comments regarding the burden-hour estimate or any other aspect of the collection-of-information requirement contained in this rule should be sent to Ann D. Terbush at the above address and to the Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ann D. Terbush, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

General Background and Statutory Information

Marine Mammal Protection Act

The MMPA (16 U.S.C. 1361 *et seq.*) places a moratorium on the taking and importing of marine mammals by persons subject to U.S. jurisdiction with limited exceptions. One exception is for the taking or importing of marine mammals for purposes of scientific research. The MMPA Amendments of 1994 (1994 Amendments), enacted on April 30, 1994 (P.L. 103–238), among other things, require that, within 120 days of enactment, NMFS issue a General Authorization for Scientific Research and implementing regulations allowing takings of marine mammals in the wild for purposes of bona fide scientific research by no more than Level B harassment (pursuit, torment, or annoyance of marine mammals that does not have the potential to injure marine mammals).

The 120-day deadline requires that this General Authorization be issued by interim final rule without prior notice and opportunity for prior public comment. Comments on the General Authorization and implementing regulations are invited and will be considered in issuing a final rule.

Level B harassment is defined as any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but does not have the potential to injure a marine mammal or marine mammal stock in the wild. Level A harassment is defined as any act which has the potential to injure a marine mammal or marine mammal stock in the wild. In general, except for small take authorizations for harassment under section 101(a)(5)(D) of the MMPA, a permit is required to take by Level A harassment. And, a permit is also required to hunt, capture, or kill marine mammals for the purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock, or to take by Level B harassment for photography for educational or commercial purposes.

Fur Seal Act

In proposed revised permit regulations published on October 14, 1993 (58 FR 53320), NMFS proposed consolidating three sets of permit regulations that have been implemented under the MMPA, the Fur Seal Act of 1966 (FSA) (16 U.S.C. 1151 *et seq.*), and the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 *et seq.*). This interim final rule revises the permit sections of the implementing regulations of the FSA (50 CFR part 215) to reference MMPA permit regulations (50 CFR part 216, subpart D) as the applicable regulations for the taking of North Pacific fur seals for scientific research or exhibition purposes. The FSA permit regulations are also revised to allow the taking of North Pacific fur seals involving only Level B harassment for the purpose of scientific research under this interim final rule. (Note: North Pacific fur seals (Pribilof Island population) have been designated as depleted under the MMPA.)

Collection of Certain Marine Mammal Parts

In enacting the 1994 Amendments it was the apparent intent of Congress to allow under a General Authorization the conduct of scientific research activities involving certain low-impact types of taking of marine mammals in the wild, with the goal of making a permit unnecessary for scientific research involving types of taking that do not have the potential to injure marine mammals or marine mammal stocks. NMFS believes that such types of low-impact taking include the collection of tissues, fluids, or other marine mammal parts sloughed, excreted, or otherwise discharged naturally by marine mammals in the wild, where such collection may not necessarily involve the harassment of living marine mammals in the wild. Accordingly, NMFS is amending § 216.26 of the implementing regulations (50 CFR part 216) to allow for purposes of bona fide scientific research, without issuance of a permit, the collection of any tissues, fluids or other marine mammal parts naturally sloughed, excreted or otherwise discharged by a living marine mammal in the wild. Section 216.26 is also amended to: (1) Ensure that requirements for the registration, identification, transfer, or other possession of such marine mammal parts are consistent with those already established for parts salvaged from beached or stranded marine mammals (§ 216.22(c)); (2) require that, in registering such marine mammal parts, the person collecting the part must also state the scientific research purpose for which the part was collected; and (3) prohibit the sale or trade of any such marine mammal part for commercial purposes.

Discussion of General Authorization and Implementing Regulations

The implementing regulations for the General Authorization are organized into five parts: (1) The General Authorization and the types of activities covered; (2) letter of intent requirements; (3) procedures for confirming that the General Authorization applies or notifying the applicant that a permit is required; (4) the terms and conditions applicable to activities conducted under the General Authorization, including reporting requirements; and (5) the circumstances under which NMFS may suspend, revoke, or modify the authority to

conduct scientific research under the General Authorization.

Scope

Activities Included Under the General Authorization

Research activities that are likely to involve only Level B harassment of marine mammals, and therefore that may be conducted under the General Authorization consistent with the requirements of these regulations, include: Photo-identification studies; behavioral observations; vessel surveys; and aerial surveys over water or land, and over pinniped rookeries if flown at altitudes greater than 1,000 ft (305 meters (m)). These activities are listed in § 216.45(a)(3). This list may be expanded as new information becomes available and NMFS determines that other types of research activities are likely to involve only Level B harassment. Comment is requested regarding what other types of research activities are likely to involve only Level B harassment (i.e., no potential to injure) and can be clearly and uniquely categorized as such in the final rule.

The General Authorization also applies to persons issued a scientific research permit under the ESA that authorizes the taking by Level B harassment of marine mammals listed as threatened or endangered. An ESA permit holder authorized to conduct Level B harassment is not required to submit a separate letter of intent. Such Level B activities are included under the MMPA General Authorization for Scientific Research and no letter of confirmation is needed.

Activities Not Included Under the General Authorization

As stated in section 2(b) of the 1994 Amendments, "Except as otherwise expressly provided, nothing in this Act is intended to amend, repeal, or otherwise affect any other provision of law." Thus, marine mammals listed as endangered or threatened under the ESA may be taken for purposes of scientific research only after issuance of a permit for such activities pursuant to the ESA (50 CFR part 222). And, except for Level B harassment, other types of taking of marine mammals listed as threatened or endangered that are authorized under an ESA permit for scientific research are not authorized under the General Authorization.

Research activities involving the harassment of marine mammals in the wild that have the potential to injure a marine mammal (Level A harassment) are not covered by the General Authorization. They may be conducted only pursuant to a scientific research permit. Likewise, activities that involve the hunting, capturing, or killing of marine mammals for the purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock, or taking by Level B harassment for photography for educational or commercial purposes, are not covered by the General Authorization and require a permit.

Although most population surveys are likely to involve only Level B harassment or no harassment at all, pinniped rookeries are an area of concern because many pinniped species stampede into the water when startled or otherwise threatened by a potential predator or by human activity. When a stampede occurs in a haulout area (in the non-reproductive season), it generally does not involve a potential injury, but in a rookery situation, a stampede has the potential to injure pups. The 1,000 ft (305 m) threshold for aerial surveys over pinniped rookeries serves as an objective standard that may be used to determine whether such research may be conducted under the General Authorization or may involve potential injury to marine mammals (i.e., Level A harassment) and, therefore, require a permit. In this regard, NMFS is interested in comments on whether different species-specific aerial survey altitudes or methods associated with minimal disturbance have been established definitively in the scientific literature.

In the interest of simplicity and predictability, the interim final rule limits research activities that may be conducted under the General Authorization to only those types listed in § 216.45(a)(3). In preparing this interim final rule, however, NMFS considered including provisions that would have allowed research activities other than those types listed in § 216.45(a)(3) to be included under the General Authorization; *Provided*, That in the letter of intent the applicant described the activity and furnished supporting documentation sufficient for NMFS to determine that the activity likely would involve only Level B harassment. For example, although bleach marking of pinnipeds in the wild is a type of research that could injure marine mammals (Level A harassment), if the activity is being conducted by an experienced researcher using only non-toxic bleaching agents and proven direct application methods on a species for which there is an established record of tolerance of such methods without any disturbance with potential to injure (e.g., Northern elephant seals, *Mirounga angustirostris*), NMFS, upon receipt of a letter of intent containing sufficient documentation, could determine such activity likely would involve only Level B harassment and that the activity could be conducted under the General Authorization. NMFS is requesting comment on whether the final rule should include such flexibility; i.e., allow persons to conduct, under the General Authorization, a research activity that has not been listed in the regulations as a type of research likely to involve only Level B harassment, if sufficient documentation is submitted to NMFS to make a determination that the activity is bona fide scientific research and does not involve the potential to injure marine mammals or marine mammal stocks.

Applicants

An applicant submitting a letter of intent to conduct scientific research under the General Authorization must be the principal investigator, or the appropriate institution, government entity, or corporation responsible for the supervision of the principal investigator. If the research involves co-investigators, a single principal investigator, who will be primarily responsible for the research to be conducted under the General Authorization, must submit the letter of intent, with all co-investigators identified as such. Identification of both principal and co-investigators ensures accountability for activities conducted under the General Authorization.

All persons conducting an activity under the authority of the General Authorization must possess qualifications (e.g., education or experience) commensurate with their duties and responsibilities, or must be under the direct supervision of a person with such qualifications. Applicants must enclose with the letter of intent, curricula vitae for themselves and any co-investigators that may conduct research activities under the General Authorization. NMFS will consider this information in determining whether the research as described in the letter of intent can be expected to be conducted in a manner involving no more than Level B harassment of marine mammals or marine mammal stocks.

Letter of Intent

Persons intending to conduct a scientific research activity of the type listed in § 216.45 (a)(3) under the General Authorization must submit, at least 60 days before commencement of such research, a letter of intent by certified return/receipt mail to the Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1335 East-

This interim final rule has been

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West Highway, Silver Spring, MD 20910–3226. Persons issued an ESA scientific research permit authorizing the take of marine mammals in the wild by Level B harassment, however, need not submit a letter of intent. Those Level B activities are covered by the General Authorization, and no letter of confirmation is needed.

All letters of intent must include the name, address, telephone number, qualifications, and experience of the applicant (i.e., principal investigator) and any co-investigator(s). Curricula vitae must be provided for each, including a list of publications by such investigator relevant to the objectives, methodology, or other aspects of the proposed research. Each letter of intent must be signed, dated, and include the certification statement specified at § 216.45(b)(3).

Each letter of intent must include brief statements responsive to the information requirements of section 104(c)(3)(C) of the MMPA: The species or stocks of marine mammals (common and scientific names) that are the subject of the scientific research and any other species or stock of marine mammals that may be harassed during the conduct of the research; the geographic location(s) in which the research is to be conducted, e.g., geographic name or lat./long.; the period(s) of time over which the research will be conducted (up to 5 years), including the field season(s) for the research, if applicable; the purpose of the research, including a description of how the proposed research qualifies as bona fide research; and the methods to be used to conduct the research.

Confirmation Letter or Notification of Permit Requirement

No later than 30 days after receipt of a letter of intent, NMFS will issue a letter to the applicant either: Confirming that the General Authorization applies, notifying the applicant that all or part of the proposed research does not qualify for the General Authorization and that a scientific research permit is required, or notifying the applicant that the letter of intent was insufficient to determine whether the General Authorization applies and identifying the deficiencies to enable the applicant to revise and resubmit the letter.

The Marine Mammal Commission (MMC) and Committee of Scientific Advisors were established under Title II of the MMPA to, among other things, review applications for permits for the taking or import of marine mammals and provide comment and recommendations to NMFS. Although the 1994 Amendments do not provide for the involvement of either the MMC or the Committee of Scientific Advisors in the General Authorization for Scientific Research, a copy of each letter of intent and NMFS' response will be forwarded to the MMC. This will allow the MMC to review all research activities involving marine mammals, including research conducted under the General Authorization.

Any suspension, revocation, or modification of the authorization under the General Authorization will be conducted in accordance with 15 CFR part 904.

Terms and Conditions

Monitoring and Coordination

In order to ensure that research activities conducted under the General Authorization do not either individually or cumulatively result in takes other than by Level B harassment, NMFS plans to coordinate and monitor research activities. Monitoring will be accomplished, in part, through NMFS and MMC review of required annual reports. Coordination of research activities will be accomplished, in part, by requiring persons conducting research under the General Authorization to notify the appropriate NMFS Regional Office(s) at least 2 weeks before initiation of on-site activities. The Regional Office(s) will review these notifications and coordinate upcoming research to minimize adverse impacts on marine mammals in the wild. Where appropriate, Regional Offices may convene meetings to coordinate research under the General Authorization. In the event of any circumstance where research activities result in a taking which exceeds Level B harassment, for example, in the case of potential or actual injury to or death of a marine mammal or marine mammal stocks in the wild, research activities must be immediately discontinued and the principal investigator must notify NMFS. NMFS will determine whether: The research activity in question may continue under the General Authorization; revision of the research methodology is necessary to remove any potential to injure marine mammals or marine mammal stocks; or, a permit is necessary to continue the research. The reporting of such incidents is a condition of conducting research under the General Authorization. Similarly, in certain instances (e.g., reports of abuse of the General Authorization), it may be necessary for a NMFS observer to monitor research activities directly. Therefore, a condition of conducting research under the General Authorization is that, upon notification, the principal investigator must allow a NMFS observer to observe research activities.

Reporting Requirements

Persons conducting research under the General Authorization must submit annual reports of activity. This information will be used to monitor the effects of the activities on individual animals and their populations, to assess possible cumulative impacts, and to determine whether the activity is being conducted as described in the letter of intent. Annual reports will also be used to track the progress of the research, to determine whether the research continues to meet the bona fide requirement, and to allow for coordination with similar research in the same area.

Photography (e.g., still photography, videotaping, and motion picture filming) often will be one of the methodologies employed by researchers engaged in scientific research under the General Authorization. Such photography does not require a photography permit issued under the MMPA provided the primary use of the resulting images will be for the conduct of the research or presenting or publishing the results. In such case, such images may be incidentally used for other scientific, educational, or commercial purposes provided the names of all photographers are disclosed in the annual report and any photographs, videotape, or film obtained during the conduct of research under the General Authorization are identified by a statement that refers to the General Authorization and includes the file number provided by NMFS in the confirmation letter, the name of the photographer, and the date the image was taken. This statement must accompany the image(s) in all subsequent uses or sales. The annual report must note incidental scientific, educational, or commercial uses of the images. However, if the primary use of the images will be for educational or commercial use, a separate photography permit must first be obtained.

Classification

NMFS prepared an EA for this action and concluded that this interim final rule will not significantly affect the human environment. As a result, preparation of an Environmental Impact Statement on this action is not required by section 102(2) of the National Environmental Policy Act or its implementing regulations. Copies of the EA are available on request (see **ADDRESSES**).

This interim final rule has been determined to be not significant for purposes of E.O. 12866.

Pursuant to section 553(b)(3)(B) of the Administrative Procedure Act (APA), the Assistant Administrator for Fisheries, NOAA, (AA) finds there is a good cause to waive prior notice and opportunity to comment on this rule. It is contrary to public interest to provide prior notice and opportunity for comment because of the deadline for implementation mandated by the 1994 Amendments.

Pursuant to section 553(d) of the APA, the AA finds there is good cause to waive the required 30-day delay in the effective date. Any delay in this action would deny timely coverage by the General Authorization to qualified persons. This General Authorization grants an exception from the MMPA requirement to obtain a scientific research permit for the taking of marine mammals.

This interim final rule involves an existing collection-of-information requirement subject to the Paperwork Reduction Act that has been approved by OMB (control number 0648–0084). The burden for collection of that information was estimated to average 43 hours per response, including the time to complete permit applications, complete reporting requirements, and request subsequent modifications or authorizations. The public reporting burden for the collection-of-information associated with the General Authorization established under the current rule is estimated to average 17 hours per response. Send any comments regarding these burden estimates or any other aspect of these requirements, including suggestions for reducing the burden to NMFS and OMB (see **ADDRESSES**).

List of Subjects

50 CFR Part 215

Administrative practice and procedure, Marine mammals, Penalties, Pribilof Islands, Reporting and recordkeeping requirements.

50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: September 27, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR parts 215 and 216 are amended as follows:

PART 215—PRIBILOF ISLANDS

1. The authority citation for part 215 is revised to read as follows:

Authority: 16 U.S.C. 1151–1175, and 1361 *et seq.*

2. Section 215.1 is revised to read as follows:

§ 215.1 Purpose and scope.

The purpose of these regulations is to implement the provisions of the Fur Seal Act of 1966, as amended. These regulations apply to the administration of the Pribilof Islands; the take of fur seals; and permits for the take, transportation, importation, exportation, or possession of fur seals or their parts for educational, scientific, or exhibition purposes.

3. Subpart B is revised to read as follows:

Subpart B—Permits for Scientific Research and Public Display

§ 215.11 Permits for scientific research and public display purposes.

In accordance with the provisions of part 216, subpart D, of this chapter, the Director, Office of Protected Resources, NMFS, may issue permits for the taking, transportation, importation, exportation, or possession of fur seals or their parts for scientific research or public display purposes, and may authorize Level B harassment (defined at § 216.3) of fur seals for scientific research purposes under the General Authorization for Scientific Research set forth at § 216.45.

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

4. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

5. In § 216.3, the definition of "Act" is revised, and new definitions "Bona fide scientific research," "ESA," "FSA," "Level A harassment," "Level B harassment," and "MMPA" are added, in alphabetical order, to read as follows:

§ 216.3 Definitions.

* * * * *

Acts means, collectively, the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, and the Fur Seal Act of 1966, as amended, 16 U.S.C. 1151 *et seq.*

* * * * *

Bona fide scientific research: (1) Means scientific research on marine mammals conducted by qualified personnel, the results of which:

(i) Likely would be accepted for publication in a refereed scientific journal;

(ii) Are likely to contribute to the basic knowledge of marine mammal biology or ecology. (Note: This includes, for example, marine mammal parts in a properly curated, professionally accredited scientific collection); or

(iii) Are likely to identify, evaluate, or resolve conservation problems.

(2) Research that is not on marine mammals, but that may incidentally take marine mammals, is not included in this definition (see sections 101(a)(3)(A), 101(a)(5)(A), and 101(a)(5)(D) of the MMPA, and sections 7(b)(4) and 10(a)(1)(B) of the ESA).

* * * * *

ESA means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

* * * * *

FSA means the Fur Seal Act of 1966, as amended, 16 U.S.C. 1151 *et seq.*

* * * * *

Level A Harassment means any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild.

Level B Harassment means any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

* * * * *

MMPA means the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1361 *et seq.*

* * * * *

6. In part 216, all references to "the Act" are revised to read "MMPA" in the following places only.

Part/Sec.	Paragraph	Frequency
216	Table of Contents entry for § 216.14.	
216.2		1
216.3	Introductory text	1
216.6	(a)	1
	(b)	1
	(d)	1
	(e)	3
216.7	(a)	1
	(b)	1
216.8		5
216.12	(b)(1)(i)	1
216.13	(b)	1

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Part/Sec.	Paragraph	Frequency
	(c)	1
216.14	Heading	1
	(a) Introductory text	2
	(b)(1)	1
216.15	Introductory text	1
216.21		2
216.23	(d)	2
216.24	(b)(2)(vii)	2
	(b)(2)(viii)	1
	(b)(4)	1
	(c)(8)	1
	(d)(2)(i)(D)	3
	(d)(2)(vi)	2
	(e)(7) introductory text	1
	(e)(7)(ii)	1
	(g)	1
216.25	(a) introductory text	1
216.31	(a)(10)	1
	(c)	2
216.70	(a) introductory text	1
	(a)(3)	1
216.72		2
216.73	(b)(4)	1

7. In subpart B, § 216.16 is added to read as follows:

§ 216.16 Prohibitions under the General Authorization for Level B harassment for scientific research.

It shall be unlawful for any person to:

(a) Provide false information in a letter of intent submitted pursuant to § 216.45(b);

(b) Violate any term or condition imposed pursuant to § 216.45(d).

8. In subpart C, paragraphs (b), (c), and (d) of § 216.26 are revised to read as follows:

§ 216.26 Collection of certain marine mammal parts.

* * * * *

(b) Any tissues, fluids or other marine mammal parts sloughed, excreted, or otherwise discharged naturally by a living marine mammal in the wild may be collected for purposes of bona fide scientific research, *Provided*, That such parts are not substances of significant commercial value, such as ambergris, and any such collection does not otherwise involve the taking of a living marine mammal in the wild except as authorized under other provisions of this part.

(c) Any marine mammal part collected under paragraphs (a) and (b) of this section must be registered and identified, and may be transferred or otherwise possessed, in accordance with § 216.22(c). In registering a marine mammal part collected under paragraph (b) of this section, the person who collected the part must also state the scientific research purpose for which the part was collected.

(d) *No sale or commercial trade.* No person may sell or trade for commercial purposes any marine mammal part collected under this section.

§ 216.40 [Redesignated as § 216.50]

9. Section 216.40 is redesignated as § 216.50 of subpart E.

10. In subpart D, § 216.45 is added to read as follows:

§ 216.45 General Authorization for Level B harassment for scientific research.

(a) *General Authorization.* (1) Persons are authorized under section 104(c)(3)(C) of the MMPA to take marine mammals in the wild by Level B harassment, as defined in § 216.3, for purposes of bona fide scientific research *Provided*, That:

(i) They submit a letter of intent in accordance with the requirements of paragraph (b) of this section, receive confirmation that the General Authorization applies in accordance with paragraph (c) of this section, and comply with the terms and conditions of paragraph (d) of this section; or

(ii) If such marine mammals are listed as endangered or threatened under the ESA, they have been issued a permit under Section 10(a)(1)(A) of the ESA and implementing regulations at 50 CFR parts 217–227, particularly at § 222.23 through § 222.28, to take marine mammals in the wild for the purpose of scientific research, the taking authorized under the permit involves such Level B harassment of marine mammals or marine mammal stocks, and they comply with the terms and conditions of that permit.

(2) Except as provided under paragraph (a)(1)(ii) of this section, no taking, including harassment, of marine mammals listed as threatened or endangered under the ESA is authorized under the General Authorization. Marine mammals listed as endangered or threatened under the ESA may be taken for purposes of scientific research only after issuance of a permit for such activities pursuant to the ESA.

(3) The following types of research activities will likely qualify for inclusion under the General Authorization: Photo-identification studies, behavioral observations, and vessel and aerial population surveys (except aerial surveys over pinniped rookeries at altitudes of less than 1,000 ft).

(b) *Letter of intent.* Except as provided under paragraph (a)(1)(ii) of this section, any person intending to take marine mammals in the wild by Level B harassment for purposes of bona fide scientific research under the General Authorization must submit, at least 60 days before commencement of such research, a letter of intent by certified return/receipt mail to the Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226.

(1) The letter of intent must be submitted by the principal investigator (who shall be deemed the applicant). For purposes of this section, the principal investigator is the individual who is responsible for the overall research project, or the institution, governmental entity, or corporation responsible for supervision of the principal investigator.

(2) The letter of intent must include the following information:

(i) The name, address, telephone number, qualifications and experience of the applicant and any co-investigator(s) to be conducting the proposed research, and a curriculum vitae for each, including a list of publications by each such investigator relevant to the objectives, methodology, or other aspects of the proposed research;

(ii) The species or stocks of marine mammals (common and scientific names) that are the subject of the scientific research and any other species or stock of marine mammals that may be harassed during the conduct of the research;

(iii) The geographic location(s) in which the research is to be conducted, e.g., geographic name or lat./long.;

(iv) The period(s) of time over which the research will be conducted (up to five years), including the field season(s) for the research, if applicable;

(v) The purpose of the research, including a description of how the proposed research qualifies as bona fide research as defined in § 216.3; and

(vi) The methods to be used to conduct the research.

(3) The letter of intent must be signed, dated, and certified by the applicant as follows:

> In accordance with section 104(c)(3)(C) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and implementing regulations (50 CFR part 216), I hereby notify the National Marine Fisheries Service of my intent to conduct research involving only Level B harassment on marine mammals in the wild, and request confirmation that the General Authorization for Level B Harassment for Scientific Research applies to the proposed research as described herein. I certify that the information in this letter of intent is complete, true, and correct to the best of my knowledge and belief, and I understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or penalties under the MMPA and implementing regulations. I acknowledge and accept that authority to conduct scientific research on marine mammals in the wild under the General Authorization is a limited conditional authority restricted to Level B harassment only, and that any other take of marine mammals, including the conduct of any activity that has the potential to injure marine mammals (i.e., Level A harassment), may subject me to penalties under the MMPA and implementing regulations.

(c) *Confirmation that the General Authorization applies or notification of permit requirement.*

(1) Not later than 30 days after receipt of a letter of intent as described in paragraph (b) of this section, the Chief, Permits Division, NMFS will issue a letter to the applicant either:

(i) Confirming that the General Authorization applies to the proposed scientific research as described in the letter of intent;

(ii) Notifying the applicant that all or part of the research described in the letter of intent is likely to result in a taking of a marine mammal in the wild involving other than Level B harassment and, as a result, cannot be conducted under the General Authorization, and that a scientific research permit is required to conduct all or part of the subject research; or

(iii) Notifying the applicant that the letter of intent fails to provide sufficient information and providing a description of the deficiencies, or notifying the applicant that the proposed research as described in the letter of intent is not bona fide research as defined in § 216.3.

(2) A copy of each letter of intent and letter confirming that the General Authorization applies or notifying the applicant that it does not apply will be forwarded to the Marine Mammal Commission.

(3) Periodically, NMFS will publish a summary document in the **Federal Register** notifying the public of letters of confirmation issued.

(d) *Terms and conditions.* Persons issued letters of confirmation in accordance with paragraph (c) of this section are responsible for complying with the following terms and conditions:

(1) Activities are limited to those conducted for the purposes, by the means, in the locations, and during the periods of time described in the letter of intent and acknowledged as authorized under the General Authorization in the confirmation letter sent pursuant to paragraph (c) of this section;

(2) Annual reports of activities conducted under the General Authorization must be submitted to the Chief, Permits Division (address listed in paragraph (b) of this section) within 90 days of completion of the last field season(s) during the calendar year or, if the research is not conducted during a defined field season, no later than 90 days after the anniversary date of the letter of confirmation issued under paragraph (c) of this section. Annual reports must include:

(i) A summary of research activities conducted;

(ii) Identification of the species and number of each species taken by Level B harassment;

(iii) An evaluation of the progress made in meeting the objectives of the research as described in the letter of intent; and

(iv) Any incidental scientific, educational, or commercial uses of photographs, videotape, and film obtained as a result of or incidental to the research and if so, names of all photographers.

(3) Authorization to conduct research under the General Authorization is for the period(s) of time identified in the letter of intent or for a period of 5 years from the date of the letter of confirmation issued under paragraph (c) of this section, whichever is less, unless extended by the Director or modified, suspended, or revoked in accordance with paragraph (e) of this section;

(4) Activities conducted under the General Authorization may only be conducted under the on-site supervision of the principal investigator or co-investigator(s) named in the letter of intent. All personnel involved in the conduct of activities under the General Authorization must perform a function directly supportive of and necessary for the research being conducted, or be one of a reasonable number of support personnel included for the purpose of training or as back-up personnel;

(5) The principal investigator must notify the appropriate Regional Director, NMFS, (Regional Director) in writing at least 2 weeks before initiation of on-site activities. The Regional Director shall consider this information in efforts to coordinate field research activities to minimize adverse impacts on marine mammals in the wild. The principal investigator must cooperate with coordination efforts by the Regional Director in this regard;

(6) If research activities result in a taking which exceeds Level B harassment, the applicant shall:

(i) Report the taking within 12 hours to the Director, Office of Protected Resources, or his designee as set forth in the letter authorizing research; and

(ii) Temporarily discontinue for 72 hours all field research activities that resulted in the taking. During this time period, the applicant shall consult with NMFS as to the circumstances surrounding the taking and any precautions necessary to prevent future taking, and may agree to amend the research protocol, as deemed necessary by NMFS.

(7) NMFS may review scientific research conducted pursuant to the General Authorization. If requested by NMFS, the applicant must cooperate with any such review and shall:

(i) Allow any employee of NOAA or any other person designated by the Director, Office of Protected Resources to observe research activities; and

(ii) Provide any documents or other information relating to the scientific research;

(8) Any photographs, videotape, or film obtained during the conduct of research under the General Authorization must be identified by a statement that refers to the General Authorization or ESA permit number, and includes the file number provided by NMFS in the confirmation letter, the name of the photographer, and the date the image was taken. This statement must accompany the image(s) in all subsequent uses or sales. The annual report must note incidental scientific, educational, or commercial uses of the images, and if there are any such uses, the names of all photographers; and

(9) Persons conducting scientific research under authority of the General Authorization may not transfer or assign any authority granted thereunder to any other person.

(e) *Suspension, revocation, or modification.* (1) NMFS may suspend, revoke, or modify the authority to conduct scientific research under the General Authorization if:

(i) The letter of intent included false information or statements of a material nature;

(ii) The research does not constitute bona fide scientific research;

(iii) Research activities result in takings of marine mammals other than by Level B harassment;

(iv) Research activities differ from those described in the letter of intent submitted by the applicant and letter of confirmation issued by NMFS; or

(v) The applicant violates any term or condition set forth in this section.

(2) Any suspension, revocation, or modification is subject to the requirements of 15 CFR part 904.

[FR Doc. 94–24356 Filed 9–28–94; 2:05 pm]
BILLING CODE 3510–22–W

VOL
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ISS
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OC
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UMI

federal register

Monday
October 3, 1994

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 27 and 29
Airworthiness Standards; Crash Resistant Fuel Systems in Normal and Transport Category Rotorcraft; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No. 26352 Amdts. 27–30, 29–35]

RIN 2120–AC68

Airworthiness Standards; Crash Resistant Fuel Systems In Normal and Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments add comprehensive crash resistant fuel system design and test criteria to the airworthiness standards for normal and transport category rotorcraft. Application of these standards will minimize fuel spillage near ignition sources and potential ignition sources and, therefore, will improve the evacuation time needed for crew and passengers to escape a post-crash fire (PCF). Implementation of these amendments will minimize the PCF hazard saving lives and substantially reducing the severity of physiological injuries sustained from PCF's in otherwise survivable accidents.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Regulations Group, ASW–111, Rotorcraft Directorate, Aircraft Certification Office, FAA, Fort Worth, Texas 76193–0111, telephone number (817) 624–5123.

SUPPLEMENTARY INFORMATION:

Background

These amendments are based on a Notice of Proposed Rulemaking (NPRM) No. 90–24, issued September 27, 1990 (55 FR 41000, October 5, 1990). A correction to the NPRM was published on December 11, 1990 (55 FR 50931).

Post-crash fires (PCF's) are the primary cause of fatalities and injuries in otherwise survivable impacts resulting from rotorcraft accidents. It is estimated that 5 percent of the occupants in survivable rotorcraft accidents are killed or injured by PCF's annually. These types of fatalities and traumatic injuries will be substantially reduced by the implementation of the design and test criteria of this amendment. Nearly all PCF's are caused by crash-induced fuel leaks that quickly come in contact with ignition sources during or after impact. The fuel containment and hazard elimination provisions contained in this amendment will, in the majority of cases, give occupants the time necessary to escape a survivable crash before a post-crash fire (PCF) could become life threatening. A crash resistant fuel system (CRFS) would not be expected to prevent all fires; however, a CRFS would, in the majority of survivable accidents, either prevent a PCF or delay the massive fire, or fireball, long enough to allow the occupants to escape. These standards have been validated by military safety statistics as significantly minimizing the PCF hazard and its associated fatalities and injuries.

Discussion of Comments

General

Thirteen commenters, including representatives from small and large U.S. helicopter manufacturers, foreign airworthiness authorities, and foreign helicopter manufacturers, commented on the NPRM. All commenters agree with the FAA that CFRS installations will improve occupant survivability in parts 27 and 29 rotorcraft.

The majority of commenters fully support all of the proposals. No commenter opposes adoption of the proposed amendments. One commenter proposes adoption of more stringent standards, and several commenters offer other counterproposals and recommendations for specific proposals.

General Comments on the Proposals

Unless specifically noted otherwise, the comments and responses apply to both proposed §§ 27.952 and 29.952, since the requirements in both are identical.

The Use of the Term "Flammable Fluid"

Flammable fluids other than fuel should not be included in the amendments, since all on-board light and heavy oil systems are affected. Accordingly, the commenter proposes that "flammable fluid" be changed to "fuel." The FAA agrees with this comment, and appropriate changes have been made.

Accuracy of the Economic Analysis

One commenter questions the accuracy of the economic analysis but offers no specific recommendations or corrections. The FAA has reevaluated the analysis and found no changes were necessary based on this comment.

Rigidity of the Proposals

A commenter states that the proposed amendments are "too rigid" in their approach and limit the designers' choices. The FAA disagrees. Although the 50-foot drop height and certain strength requirements are specific, these and most of the other requirements do not mandate specific designs. Objective rules allow flexibility in showing compliance. An example of this flexibility is that bladders are not mandated; the rule specifies only freedom from leakage after impact. The amendments are intended to be as flexible as possible to allow design innovation while at the same time requiring a specific safety standard for a CRFS.

Level of Detail in the Proposals

A commenter states that the amendments include some very detailed requirements that are more appropriate for a Technical Standard Order (TSO). The FAA agrees that some of the details proposed for paragraphs 27.952 (e) and (f) and 29.952 (e) and (f) should not be regulatory requirements, are more appropriate for an advisory circular, and should not be part of the proposed standard. Therefore, those details have been removed and placed in the draft advisory material. However, the FAA disagrees with the commenter that the level of detail either in the proposals or in the advisory material would necessitate a CRFS TSO.

The Standardized Approach of the Proposals

A commenter believes that the standardized design and test approach of these amendments to CRFS certification, while acceptable, is not as valid as the establishment of individual design criteria on a case-by-case basis followed by a design review and a test program. However, the commenter offered no specific data or case histories to substantiate this position. Since all past successful civil and military experience has been with a standardized design and test approach, the FAA finds no historical or technical basis to support the commenter. Moreover, the FAA has determined that a standardized design and test approach, when properly applied, still allows for adequate use of individual design features that meet the specific safety standards.

Military Standards

A commenter expresses concern that the proposals are less stringent than the corresponding military standard because of perceived differences in the military and civil environments. The commenter is especially concerned that fuel tank bladders are not mandated. The commenter proposes verbatim adoption of the military standards. The FAA disagrees. Based on independent studies, the General Aviation Safety Panel (GASP) committee recommendations, and past civil CRFS service experience, the FAA has

determined that the proposals, while less stringent than the military standard, provide an equivalent level of safety considering the differences (such as violent atypical flight maneuvers, landing maneuvers, and gunfire hazards) in the civil and military environments. While it is anticipated that most successful fuel cell designs will involve the use of bladders, bladderless rigid designs (that provide the same level of safety as designs with bladders) may be approved under the new standard.

Comment Concerning Performance Criteria Specification

One commenter applauds the fact that the proposal specified performance standards (i.e., a minimum level of safety) in lieu of unnecessarily mandating certain specific design features such as flexible liners.

Comments on Specific Proposals

Comments on Section 27.561(d)

A commenter questions the need for the specification of load factors in proposed § 27.516(d), since similar load factors are specified in proposed § 27.952(b)(3). The FAA has determined that load factors are needed in both §§ 27.561(d) and 27.952(b)(3). Section 27.561(d) applies to fuselage structure, and § 27.952(b)(3) applies to fuel tanks. Although the load factors are identical, they are specified for different parts of the rotorcraft.

Another commenter correctly states that the load factors are clearly specified for fuel cells by their location on the rotorcraft but asks which load factors are to be used for other major fuel system components. The load factors used for each fuel cell location should be used for fuel cell components of significant mass in the same locations. Therefore, this amendment is adopted as proposed.

Comments on Sections 27.952(a) and 29.952(a)

A commenter states that identification of a critical fuel tank (if such exists) should not be allowed in certification. The FAA does not agree. The use of critical conditions, systems, etc., is a well-established technique for substantiating similar design features. Therefore, these amendments are adopted as proposed.

Comments on Sections 27.952(a)(1) and 29.952(a)(1)

All commenters support the proposed drop test, and most commenters favor the 50-foot drop height. However, two commenters propose a reduction in the drop height for a bare fuel cell from 50 to 25 feet. Another commenter proposed a reduction in drop height of a fuel cell test article configuration (i.e., a fuel cell installed in its representative airframe structure) from 50 to 15 feet. Another commenter contends that since the military fuel cell drop test (and nearly 20 years of associated, successful safety experience) is at a 65-foot drop height, the proposed drop height should be 65 feet, not 50 feet. The proposed 50-foot drop height is based, in part, on an analysis of nearly 20 years of combined military and civilian design and operational data. (The 15-foot reduction in drop height from the military standard to the proposed civil standard equates their level of safety because of the elimination of the additional risks associated with the military environment.) A significant part of this 20 years of data is based on approximately 1,500 civil rotorcraft that have been certificated (on a voluntary, nonhazard basis) to design standards (including a 50-foot drop test) analogous to these proposals. This 20 years of data and experience (from both the military and voluntary civil unit installations) have resulted in a good operational safety record. This good safety record indicates that fuel tank installations designed to these proposals (including the practical standard of a 50-foot drop height) successfully minimize the post-crash fire hazard. Therefore, no change to the 50-foot drop height is warranted.

Another commenter proposes deletion of the requirement to drop the fuel cell in its surrounding structure. The same commenter asks if the bare tank drop test will follow the procedure of MIL–T–27422B when the surrounding structure is free of projections or design features likely to contribute to tank ruptures. Another commenter states that the requirement to drop a representative structure should be fully defined. The same commenter states that no mention is made of production drop test requirements that would be made necessary by postproduction design changes to either the fuel system or its surrounding structure. The FAA considers these suggested changes unnecessary because (under Part 21) a design review (precipitated by a proposed design modification that affects the fuel cell-airframe interface) would automatically require a review of the interface with regard to these proposed standards. If that design review shows the surrounding structure is free of projections and hazards, the fuel cell may be dropped alone. Additionally, MIL–T–27422B procedures may be used, except that the drop height is reduced to 50 feet. Further, major post certification design changes, such as major changes to the fuel system cells or their locations, automatically require recertification in accordance with FAR 21.93(a). Therefore, the amendments are adopted as proposed.

Comments on Sections 27.952(a)(3) and 29.952(a)(3)

A commenter notes that the proposed drop test criteria require that the fuel cell test article be filled 80 percent with water with no mention of the contents of the other 20 percent. The commenter states that this is different from part 23 Notice No. 85–7A (55 FR 7280, February 28, 1990) in that the proposed rotorcraft amendments do not require the air to be removed from the fuel cell prior to the drop test. The commenter suggests that the best method of compensating for the difference between the density of fuel and water is to leave the tank 100 percent full of fuel and adjust the drop height to a lower value.

The FAA notes that the drop test criteria proposed in Notice 90–24 are the same as those proposed in part 23 Notice 85–7A and the same as those used to comply with MIL–T–27422B. There are standard, acceptable methods of configuring (i.e., properly removing the air from) a soft flexible fuel cell, and there are standard, acceptable methods of configuring (i.e., properly removing the air from) the vents on a rigid fuel cell. The air removal methods intended by these proposals are the same as those used to comply with MIL–T–27422B and are accepted, industry practice. It is impracticable to remove a significant amount of air from many rigid fuel cell designs by pulling a vacuum without either inducing unacceptable stresses or causing structural failure. Extreme vacuum conditions inside fuel tanks do not exist in practice. However, natural venting (involving partial vacuums) exists for rigid tanks in a pre-crash, falling condition. A natural partial vacuum condition is intended to be duplicated for rigid tanks by allowing normal vent function during the drop test. Flexible fuel cells will have the air removed by hand (i.e., by pushing out the air and resealing the bag) prior to the drop as is currently practiced by the industry.

The method chosen to compensate for the density of water versus that of fuel (i.e., 80 percent full of water) is a standard method. It is used successfully by the civil rotorcraft industry. The commenter's alternate method of reducing the drop height has some merit but is not supported by current, known data.

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Therefore, these amendments are adopted as proposed.

Comments on Sections 27.952(a)(4) and 29.952(a)(4)

A commenter notes that the amendments differ from MIL–T–27422B, in that the amendments require that the tank be dropped in its surrounding structure, unless it is clearly shown that the structure is free from projections and other such hazards. The commenter suggests that the FAA not adopt the requirement to drop the tank in the surrounding structure. The FAA disagrees. The FAA concluded that in the interests of safety the tank should be dropped in its surrounding structure. Only when all projections and other puncture hazards have been minimized by design will dropping a bare fuel cell suffice to show compliance. The FAA's approach improves on the MIL–T–27422B criteria in that an FAA-approved, documented certification design review will be required to minimize the surrounding airframe projections and other puncture hazards prior to a bare tank drop test. Therefore, the amendments are adopted as proposed.

Comments on Sections 27.952(b) and 29.952(b)

A commenter states that the load factors proposed in these sections are redundant to those contained in structural §§ 27.561 and 29.561(d), that no procedures to conduct these tests have been defined, and that the cost of this type of testing is not addressed. Two other commenters question the need for specification of separate load factors by rotorcraft zone (i.e., location) for fuel cells that exceed the standard airframe load factors. The FAA disagrees that the proposed load factors are redundant. They are for fuel cells and major mass items in the fuel system only. The load factors are to be used in standard structural analysis to structurally design the fuel cells, other major fuel system mass items, and their attachments. No special tests, other than the required structural substantiation tests are intended. No costs have been added since the required structural analysis and test programs are already conducted during certification for these components to the current load factors. The separate load factor specification by zone is necessary to provide proper crash resistance for occupant safety and PCF prevention for fuel system components located in three selected zones of the rotorcraft. They also provide the designer with specific criteria (i.e., load factors) for proper static analysis of fuel system components in these specific zones. The load factors proposed by §§ 27.952(b) and 29.952(b) are for fuel system components only; whereas, the load factors of current § 29.561(d) are for the airframe only. However, load factors for fuel system components and airframe components are compatible.

Therefore, the amendments are adopted as proposed.

Comments on Sections 27.952(b)(2) and 29.952(b)(2)

A commenter suggests that the words "* * * that if loosened could injure an occupant in an emergency landing * * *." be removed from §§ 27.952(b)(2) and 29.952(b)(2). The commenter believes removal to be necessary because this phrase is intended to minimize a "mechanical" ballistic hazard from fuel system components and not a PCF hazard. The amendments, in the commenter's view, are only intended to minimize a PCF. The commenter's presumption is incorrect. The amendments are intended to provide a CRFS. This includes preventing impact-induced, ballistic hazards to fuel system components as well as PCF hazards. Therefore, the amendments are adopted as proposed.

Comments on Sections 27.952(c) and 29.952(c)

A commenter believes that the proposed amendments mandate self-sealing breakaway couplings and suggests that the amendments be revised to include the words "Where hazardous relative motion of fuel system components is likely to exist during a crash, breakaway self-sealing couplings shall be required." Another commenter suggests that no alternate, equivalent designs to breakaway fuel fittings be allowed by the amendments. A third commenter points out that there is no mention of any pull-out strength requirements for fuel tank fittings as stated in MIL–T–27422B. The amendments already express the intent of the wording suggested by the first commenter concerning hazardous relative motion. Further, the FAA does not agree with the second comment that alternate, equivalent designs to breakaway fuel fittings should not be allowed, since several proven, alternate, equivalent designs have already been approved. Thus, alternate, equivalent designs for breakaway fuel fittings are acceptable. In response to the third commenter, fitting strength and hose pull-out strength requirements of MIL–T–27422B are industry practice and are acceptable as one means of compliance. Therefore, the amendments are adopted as proposed.

Comments on Sections 27.952(c)(1)(iii) and 29.952(c)(1)(iii)

A commenter suggests that §§ 27.952(c)(2)(iii) and 29.952(c)(1)(iii) be changed to specify leakage as one method of detecting an unlocked or otherwise faulty breakaway coupling. The FAA agrees that leakage is one method of detecting an unlocked coupling but finds that the proposed wording of "design provisions to visually ascertain" adequately covers consideration of leakage as a means to verify locking of the couplings. Therefore, the amendments are adopted as proposed.

Comments on Sections 27.952(c)(1)(v) and 29.952(c)(1)(v)

A commenter suggests that §§ 27.952(c)(1)(v) and 29.952(c)(1)(v) be changed to allow "fuel seepage" after a breakaway coupling has performed its intended function. The FAA agrees with the intent of the comment but has determined that this kind of detail is more appropriate in advisory guidance material. It is intended that industry practice, which allows loss of entrapped fuel (up to 8 ounces) and fuel seepage (up to 5 drops per minute), be acceptable after the valve has functioned. Therefore, the amendments are adopted as proposed.

Comments on Sections 27.952(d) and 29.952(d)

A commenter suggests adding a sentence between the second and third sentences of §§ 27.952(d) and 29.952(d) as follows: "For tanks using a flexible tank or flexible liner, all filler caps and tank fittings attached to structure in locations of anticipated structural deformation must be frangibly attached such that the tank fittings and filler caps stay with the fuel tank to preclude tank ruptures after the frangible separation." The FAA agrees with the intent of this comment but finds that no change is necessary in the final rule. The FAA understands the commenter is suggesting that compliance methodology rather than objective substance be included in the rule. Therefore, the amendments are adopted as proposed.

Comments on Sections 27.952(d)(1) and 29.952(d)(1)

A commenter suggests that the FAA remove the second sentence from §§ 27.952(d)(1) and 29.952(d)(1), which reads as follows: "To prevent inadvertent separation or deformation, the load must be 10 times the normal service loads at the frangible or deformable attachment location." The FAA recognizes the large variance in

industry design practice in calculating this particular ratio and in setting its specific value. Accordingly, the FAA agrees with the commenter, and the sentence is removed from the final rule. Therefore, these amendments are adopted as revised.

Comments on Sections 27.952(e)(1) and 29.952(e)(1)

A commenter states that the proposed §§ 27.952(e)(1) and 29.952(e)(1) criteria largely repeat existing criteria. The commenter provides several specific examples of the perceived repetition. Another commenter asks why airframe mounted fuel filters are not acceptable in the engine compartment (i.e., fire zone) if engine mounted filters are acceptable. The FAA maintains that the proposed sections relate to a post-crash configured rotorcraft, that is radically different in terms of ignition sources, fuel leaks, and geometry than a pre-crash configured rotorcraft even though similarities may exist. Prior to these proposed amendments, parts 27 and 29 applied only to pre-crash (or flight) configured rotorcraft. Also, the proposed sections refer to the entire rotorcraft, not just specific zones, such as the pre-crash configured exhaust system regulations that were cited by the commenter in a particular example. However, because of this and other related comments, the FAA has decided to simplify the final rule by deleting the proposed subsections relating to compliance methodology and moving the term "occupiable areas" from proposed paragraphs e(4) to revised paragraphs (e).

With respect to the comment concerning the use of airframe mounted fuel filters, the FAA agree that airframe mounted fuel filters, as well as engine mounted fuel filters inside the engine fire zone, are acceptable. Therefore, §§ 27.952(e) and 29.952(e) are adopted as revised; and §§ 27.952(e)(1), (e)(2), (e)(3), (e)(4); 29.952(e)(1), (e)(2), (e)(3) and (e)(4) are deleted.

Comments on Sections 27.952(e)(4) and 29.952(e)(4)

A commenter states that the existing rules are adequate to ensure sufficient PCF protection for fuel tanks located near occupiable areas. Therefore, from a practical view, sufficient separation cannot be economically achieved to the extent that it would have a significant impact on preventing a PCF. Thus, the commenter suggests that §§ 27.952(e)(4) and 29.952(e)(4) be removed. In contrast, the FAA believes that it is practical to enhance PCF safety through design changes under proposed §§ 27.952(e)(4) and 29.952(e)(4). For example, moving a fuel cell an additional ¼ or more inches aft of an occupied volume (within the maximum practicable extent of a given design envelope) could avoid a major, occupant-drenching, post-crash fuel spill (and potential PCF). This could be accomplished by simply adding ¼ or more inches of crushable, energy absorbing airframe distance between the occupied volume and the fuel cell. Such a design decision would not need to be considered under the current standards. Under these proposals it would have to be considered. As stated previously, §§ 27.952(e)(4) and 29.952(e)(4) have been removed in order to simplify the final rule by deleting the compliance methodology. However, the requirement for separation of fuel tanks from occupiable areas is adopted in §§ 27.952(e) and 29.952(e).

Comments on Sections 27.952(e) and 29.952(e)(5)

Three commenters correctly observe that §§ 27.952(e)(5) and 29.952(e)(5) contained the incorrect reference, "* * * (as defined by paragraph (b) of this section) * * *." The FAA agrees. As stated previously, §§ 27.952(e)(5) and 29.952(e)(5) have been removed in order to simplify the final rule by deleting the compliance methodology.

Comments on Sections 27.952(e)(6) and 29.952(e)(6)

A commenter states that, under his interpretation, proposed §§ 27.952(e)(6) and 29.952(e)(6) would require firewalls to retain their sealing ability under the load factors of §§ 27.952(b)(1) and 29.952(b)(1)). The commenter believes that all large mass items, such as engines and cowlings, in the vicinity of the firewall would have to be restrained to prevent impact-induced firewall ruptures (i.e., preserve postimpact sealing ability). The commenter further believes that, based on other common design requirements such as fuel line penetrations of firewalls, the proposed amendment is impractical. Another commenter concurs with the proposed firewall survivable impact sealing retention requirement, but is concerned that a direct application of the proposed §§ 27.952(b)(1) and 29.952(b)(1) load factors would produce a stiff, heavy firewall that, while able to retain sealing capability, would be heavy, uneconomical, and not have the intended crash-resistant design features.

The commenters misinterpreted the intent of proposed §§ 27.952(e)(6) and 29.952(e)(6). These proposals are based on similar MIL–STD–1290 requirements that have been used in design for many years. The FAA does not intend that a firewall designed to the load factors of §§ 27.952(b)(1) and 29.952(b)(1) would retain its complete sealing ability under all post-crash threats. Thus, some leakage around typical vent and line penetrations and other small post-crash penetrations of the firewall in a survivable impact are acceptable. Unless an obvious, catastrophic hazard would be created in a survivable impact by atypical design features, restraint of the engines and cowling to prevent impact-induced firewall rupture was not intended. The FAA intends that the firewall retain its sealing ability in a survivable impact. The most significant problem addressed during the firewall design is deformation of the firewall induced by fuselage deformations under crash conditions.

Concerning the second comment, the FAA does not agree that the proposed requirement will result in stiff, heavy firewalls. The requirement can be met by a firewall of a low stiffness, ductile design that can withstand the maximum vertical, lateral, and horizontal crushing displacements that are estimated to occur in a survivable impact. A low stiffness, ductile design can efficiently accommodate crash-induced deformations without shearing fuel or electrical lines and without rupturing or otherwise losing its gross sealing ability (i.e., creating a major ignition source or fire path). A displacement based firewall certification test should be conducted that shows that it is capable of performing its intended gross sealing function in a survivable impact. As stated previously, in order to simplify the final rule by deleting the compliance methodology, new §§ 27.952(e) and 29.952(e) are adopted as revised, and proposed §§ 27.952(e)(6) and 29.952(e)(6) are removed.

Comments on Sections 27.952(e)(1)(iv) and 29.952(e)(1)(iv)

A commenter suggests that §§ 27.952(e)(1)(iv) and 29.952(e)(1)(iv) be modified to add the phrase "* * * if it can be considered an ignition source," to the end of the last sentence. The commenter correctly states that not all hot surfaces should be considered as ignition sources. The FAA agrees. As stated previously, §§ 27.952(e)(1)(iv) and 29.952(e)(1)(iv) have been removed; new §§ 27.952(e) and 29.952(e) adequately incorporate the substance of this comment.

Comments on Sections 27.952(e)(1)(v)

A commenter notes that the word "not" was omitted between "must" and "be" in the second sentence of §§ 27.952(e)(1)(v). The FAA agrees. The error was discovered after publication of

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the proposed rule, and a correction was published in the **Federal Register** on December 11, 1990 (55 FR 50931).

Comments on Sections 27.952(f) and 29.952(f)

A commenter recommends placing the detailed design criteria proposed by §§ 27.952(f) and 29.952(f) in an advisory circular retaining only a shortened lead-in version of §§ 27.952(f) and 29.952(f). Another commenter believes that §§ 27.952(f) and 29.952(f), while acceptable in principle, duplicate many current FAR requirements and several other sections of 27.952 and 29.952. The commenter cited several examples of perceived duplication. The FAA agrees with the first commenter's proposal to place detailed design criteria in the advisory circular material. Therefore, proposed §§ 27.952(f)(1) through 27.952(f)(9) and 29.952(f)(1) through 29.952(f)(9) are removed. Sections 27.952(f) and 29.952(f) are revised to replace the proposed, detailed design criteria specified after the phrase "as follows:" with a less detailed design criteria indicated by the phrase," * * * to be crash resistant * * *." Therefore, these amendments are adopted as revised. Additionally, this revision answers the second commenter's perceived duplicity concerns.

Another commenter notes that the word 'long' used in line 4 of § 29.952(f)(5) should be 'along'. The FAA agrees but no correction is necessary since this proposed paragraph was removed.

Comments on Sections 27.952(g) and 29.952(g)

A commenter suggests that requirements for impact and tear resistance be included in the amendments. The commenter correctly notes that the GASP report recommends specific impact and tear resistance values for civil rotorcraft based on MIL–T–27422B requirements. The FAA agrees with the comment in general but notes that proposed §§ 27.952(g) and 29.952(g) objectively requires that crash-resistant fuel cells be tear and impact resistant. Further, it is intended that paragraphs 4.6.5.1 through 4.6.5.5 of MIL–T–27422B (modified for the civil environment) may be used to provide one acceptable method of properly assessing impact and tear resistance. Therefore, the amendments are adopted as proposed.

Comments on Sections 27.952(h) and 29.952(h)

Two commenters state that §§ 27.952(h) and 29.952 (h) and (b) are redundant. The FAA agrees. Therefore, proposed §§ 27.952(h) and 29.952(h) are deleted.

Comments on Sections 27.975(b) and 29.975(a)(7)

A commenter states full support for §§ 27.975(b) and 29.975(a)(7), which propose that the venting system be designed to minimize spillage of fuel through the vents to an ignition source in the event of a rollover. However, the comment suggests deletion of the phrase "* * * is shown to be extremely improbable * * *" because, in his view, in practical terms, it would be impossible for an applicant to demonstrate such a low probability. The FAA agrees. The current term "extremely remote" rather than "extremely improbable" was intended. The FAA has determined that "extremely remote" is the correct term. The amendments are adopted as proposed except for replacing the word "improbable" with the word "remote."

Regulatory Evaluation Summary

Executive Order 12866 dated September 30, 1993, directs Federal agencies to promulgate new regulations and maintain current regulations only if they are required by law, are necessary to interpret the law, or are made necessary by a "compelling public need." The order also requires that agencies assess all costs and benefits of available regulatory alternatives and select the alternative that maximizes the net benefits and imposes the least burden on society.

Additionally, the order requires agencies to submit a list of all rules, except those specifically exempted by the Office of Information and Regulatory Affairs (OIRA) because they respond to emergency situations or other narrowly defined exigencies, to determine if the rules constitute "significant regulatory action." "Significant regulatory action" means an action that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact on entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. "Significant regulatory action" is submitted to centralized regulatory review by OIRA.

OIRA and the FAA have determined that this rule is not "a significant regulatory action." However, a cost-benefit analysis, including evaluation of cost-reducing alternatives to this rule has been prepared. This analysis also contains the regulatory flexibility determination required by the Regulatory Flexibility Act and a Trade Impact Assessment. If more detailed economic information is desired, the reader may refer to the full evaluation contained in the docket.

Benefits

Studies have shown that a significant PCF hazards exist in rotorcraft operations. In a study of rotorcraft crashworthiness dynamics, the FAA found that burn fatalities and injuries account for about 14 percent of rotorcraft accident casualties and occur in about 20 percent of the accidents in which there are injuries. In a study comparing rotorcraft equipped with and without a CRFS, the U.S. Army found that average thermal casualty costs per survivable accident were 95.4 percent lower in CRFS-equipped rotorcraft, and that 50 percent of all rotorcraft accidents with a PCF are survivable prior to the onset of fire. An FAA review of NTSB rotorcraft accident data from 1983 through 1987 shows that 295 accidents occurred that involved a crash landing or collision with an object resulting in fatalities, serious injuries, or combinations of fatalities and injuries. Sixty-three of these accidents involved a PCF, in which about 77 percent of the occupants were fatally injured, as compared to 42 percent of the occupants in accidents not involving a PCF.

In the 63 accidents involving a PCF, there were 113 fatalities, 27 serious injuries, 5 minor injuries, and one noninjury. The FAA estimates that the use of CRFS's would have altered these casualty distributions to approximately the following: 83 fatalities, 31 serious injuries, 24 minor injuries, and 8 noninjuries—a difference of 30 fewer fatalities with some of the fatalities being reduced to serious injuries (4) and minor injuries (19).

In order to provide the public and government officials with a benchmark comparison of the expected safety benefits of rulemaking actions with estimated costs over an extended period of time, the FAA currently uses a minimum value of $1.5 million to statistically represent an avoided fatality. Serious injuries are estimated to have an average cost of $640,000, and minor injuries are estimated to have an average cost of $2,300. Applying these values to the calculated differences yields benefits of about $42 million [(30 fewer fatalities × $1.5 million) − (4 more serious injuries × $640,000) − (19 more minor injuries × $2,300)]. The average benefit per accident involving a PCF is approximately $670,000. Accounting for parts 27 and 29 separately, the average benefits are approximately $464,000 per part 27 rotorcraft accident involving a PCF and approximately $1,638,000 per part 29 rotorcraft accident involving a PCF.

During the 5-year study period, an average of 5,450 part 27 rotorcraft and an average of 1,150 part 29 rotorcraft were in operation in the United States. During this period, the annual probability of a part 27 rotorcraft being involved in a serious survivable accident with a PCF is estimated to be 1.903×10^{-3} ((52 accidents / 5,450 part 27 rotorcraft) / 5 years). The corresponding probability for part 29 rotorcraft is 1.913×10^{-3} ((11 accidents / 1,150 part 29 rotorcraft) / 5 years). Multiplying these probabilities by an estimated benefits per accident with a PCF yields annual benefits of $885 per part 27 rotorcraft and $3,134 per part 29 rotorcraft. Assuming 15-year operating lives, these benefits when discounted equate to $3,103 per part 27 rotorcraft and $10,985 per part 29 rotorcraft.

Costs

This rule will increase costs for both rotorcraft manufacturers and operators. Manufacturers will incur increased development, certification, and production costs; and operators (in addition to absorbing these costs in higher rotorcraft acquisition costs) will incur increased operating costs due to the additional weight of the fuel system.

The FAA estimates the development and certification costs per new rotorcraft certification will be $36,000. Most of these costs are for testing, analysis, and documentation. The primary testing required by the rule is a test of each fuel tank to show no loss of fuel under specified crash conditions. This can be accomplished by a simple, inexpensive drop test.

There will be increased production costs associated with fuel tanks, fittings, and flexible fuel lines. The incremental cost of a fuel tank meeting the requirements of the rule is estimated to be $30 per gallon of tank capacity. Part 27 rotorcraft are assumed to have 50-gallon tanks that will cost $1,500 more as a result of this rule; part 29 rotorcraft are assumed to have 200-gallon tanks costing $6,000 more. The FAA estimates that the cost per frangible, self-sealing fitting is $60; that a typical part 27 rotorcraft will require 8 fittings, totaling $480; and that a typical part 29 rotorcraft will require 10 fittings, totaling $600. Flexible fuel line sections are expected to add about $100 to the cost of a fuel system for a part 27 rotorcraft and about $150 for a part 29 rotorcraft. The estimated total incremental production costs are $2,080 per part 27 rotorcraft and $6,750 per part 29 rotorcraft.

The FAA estimates that the rule will increase the weight of a part 27 rotorcraft by 9.5 pounds and a part 29 rotorcraft by 33 pounds, and that each extra pound of weight increases average annual fuel consumption by 3.8 gallons per part 27 rotorcraft and 6.2 gallons per part 29 rotorcraft. Applying fuel prices of $1.87 per gallon for part 27 rotorcraft and $1.78 for part 29 rotorcraft, the estimated increase in average annual operating costs is $68 ($1.87 × 3.8 gals. × 9.5 lbs.) per part 27 rotorcraft and $364 ($1.78 × 6.2 gals. × 33 lbs.) per part 29 rotorcraft.

Assuming 15 years operating lives, the total incremental development, certification, production, and operating costs when discounted are $1,426 per part 27 rotorcraft and $4,617 per part 29 rotorcraft.

Benefit/Costs Comparison

Benefits exceed costs for both parts 27 and 29 rotorcraft. The net present value (discounted benefits minus discounted costs) is $1,677 per part 27 rotorcraft and $6,368 per part 29 rotorcraft. The rule will be cost beneficial even if it is only 50 percent effective in eliminating PCF fatalities and injuries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule is expected to have a "significant economic impact on a substantial number of small entities." FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, prescribes standards for complying with RFA review requirements in FAA rulemaking actions. The FAA does not expect the rule to have a significant economic impact on a substantial number of small manufacturers or operators.

Trade Impact Assessment

The rule will have no impact on trade for either U.S. firms doing business in foreign markets or foreign firms doing business in the United States. In the United States, foreign manufacturers must meet U.S. requirements, and thus will gain no competitive advantage. In foreign countries, U.S. manufacturers are not bound by parts 27 and 29 requirements and can choose whether or not to implement the provisions of this rule on the basis of competitive and other considerations. Also, the Joint Airworthiness Authority (JAA) and Transport Canada are both in the process of adopting this rule.

Federalism Implications

The regulations herein do not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble and based on the findings in the Regulatory Flexibility Determination and the Trade Impact Assessment, the FAA has determined that these amendments are not major under Executive Order 12866. In addition, the FAA certifies that these amendments do not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. These amendments are considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of the amendments, including a Regulatory Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the Rules Docket (AGC–10), Docket No. 26392, 800 Independence Avenue, SW., Washington, D.C. 25890

List of Subjects in 14 CFR Parts 27 and 29

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

The Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR pats 27 and 29 of the Federal Aviation Regulations as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for part 27 continues to read as follows:

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Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; and 49 U.S.C. 106(g).

2. Section 27.561 is amended by adding a new paragraph (d) to read as follows:

§ 27.561 General.

* * * * *

(d) Any fuselage structure in the area of internal fuel tanks below the passenger floor level must be designed to resist the following ultimate inertial factors and loads and to protect the fuel tanks from rupture when those loads are applied to that area:

(i) Upward—1.5g.
(ii) Forward—4.0g.
(iii) Sideward—2.0g.
(iv) Downward—4.0g.

3. A new § 27.952 is added to read as follows:

§ 27.952 Fuel system crash resistance.

Unless other means acceptable to the Administrator are employed to minimize the hazard of fuel fires to occupants following an otherwise survivable impact (crash landing), the fuel systems must incorporate the design features of this section. These systems must be shown to be capable of sustaining the static and dynamic deceleration loads of this section, considered as ultimate loads acting alone, measured at the system component's center of gravity, without structural damage to system components, fuel tanks, or their attachments that would leak fuel to an ignition source.

(a) *Drop test requirements.* Each tank, or the most critical tank, must be drop-tested as follows:

(1) The drop height must be at least 50 feet.

(2) The drop impact surface must be nondeforming.

(3) The tank must be filled with water to 80 percent of the normal, full capacity.

(4) The tank must be enclosed in a surrounding structure representative of the installation unless it can be established that the surrounding structure is free of projections or other design features likely to contribute to rupture of the tank.

(5) The tank must drop freely and impact in a horizontal position ±10°.

(6) After the drop test, there must be no leakage.

(b) *Fuel tank load factors.* Except for fuel tanks located so that tank rupture with fuel release to either significant ignition sources, such as engines, heaters, and auxiliary power units, or occupants is extremely remote, each fuel tank must be designed and installed to retain its contents under the following ultimate inertial load factors, acting alone.

(1) For fuel tanks in the cabin:
(i) Upward—4g.
(ii) Forward—16g.
(iii) Sideward—8g.
(iv) Downward—20g.

(2) For fuel tanks located above or behind the crew or passenger compartment that, if loosened, could injure an occupant in an emergency landing:
(i) Upward—1.5g.
(ii) Forward—8g.
(iii) Sideward—2g.
(iv) Downward—4g.

(3) For fuel tanks in other areas:
(i) Upward—1.5g.
(ii) Forward—4g.
(iii) Sideward—2g.
(iv) Downward—4g.

(c) *Fuel line self-sealing breakaway couplings.* Self-sealing breakaway couplings must be installed unless hazardous relative motion of fuel system components to each other or to local rotorcraft structure is demonstrated to be extremely improbable or unless other means are provided. The couplings or equivalent devices must be installed at all fuel tank-to-fuel line connections, tank-to-tank interconnects, and at other points in the fuel system where local structural deformation could lead to the release of fuel.

(1) The design and construction of self-sealing breakaway couplings must incorporate the following design features:

(i) The load necessary to separate a breakaway coupling must be between 25 to 50 percent of the minimum ultimate failure load (ultimate strength) of the weakest component in the fluid-carrying line. The separation load must in no case be less than 300 pounds, regardless of the size of the fluid line.

(ii) A breakaway coupling must separate whenever its ultimate load (as defined in paragraph (c)(1)(i) of this section) is applied in the failure modes most likely to occur.

(iii) All breakaway couplings must incorporate design provisions to visually ascertain that the coupling is locked together (leak-free) and is open during normal installation and service.

(iv) All breakaway couplings must incorporate design provisions to prevent uncoupling or unintended closing due to operational shocks, vibrations, or accelerations.

(v) No breakaway coupling design may allow the release of fuel once the coupling has performed its intended function.

(2) All individual breakaway couplings, coupling fuel feed systems, or equivalent means must be designed, tested, installed, and maintained so that inadvertent fuel shutoff in flight is improbable in accordance with § 27.955(a) and must comply with the fatigue evaluation requirements of § 27.571 without leaking.

(3) Alternate, equivalent means to the use of breakaway couplings must not create a survivable impact-induced load on the fuel line to which it is installed greater than 25 to 50 percent of the ultimate load (strength) of the weakest component in the line and must comply with the fatigue requirements of § 27.571 without leaking.

(d) *Frangible or deformable structural attachments.* Unless hazardous relative motion of fuel tanks and fuel system components to local rotorcraft structure is demonstrated to be extremely improbable in an otherwise survivable impact, frangible or locally deformable attachments of fuel tanks and fuel system components to local rotorcraft structure must be used. The attachment of fuel tanks and fuel system components to local rotorcraft structure, whether frangible or locally deformable, must be designed such that its separation or relative local deformation will occur without rupture or local tear-out of the fuel tank or fuel system components that will cause fuel leakage. The ultimate strength of frangible or deformable attachments must be as follows:

(1) The load required to separate a frangible attachment from its support structure, or deform a locally deformable attachment relative to its support structure, must be between 25 and 50 percent of the minimum ultimate load (ultimate strength) of the weakest component in the attached system. In no case may the load be less than 300 pounds.

(2) A frangible or locally deformable attachment must separate or locally deform as intended whenever its ultimate load (as defined in paragraph (d)(1) of this section) is applied in the modes most likely to occur.

(3) All frangible or locally deformable attachments must comply with the fatigue requirements of § 27.571.

(e) *Separation of fuel and ignition sources.* To provide maximum crash resistance, fuel must be located as far as practicable from all occupiable areas and from all potential ignition sources.

(f) *Other basic mechanical design criteria.* Fuel tanks, fuel lines, electrical wires, and electrical devices must be designed, constructed, and installed, as far as practicable, to be crash resistant.

(g) *Rigid or semirigid fuel tanks.* Rigid or semirigid fuel tank or bladder walls must be impact and tear resistant.

4. Section 27.963 is amended by revising paragraph (f) and by adding new paragraphs (g) and (h) to read as follows:

§ 27.963 Fuel tanks: general.

* * * * *

(f) Each fuel tank installed in personnel compartments must be isolated by fume-proof and fuel-proof enclosures that are drained and vented to the exterior of the rotorcraft. The design and construction of the enclosures must provide necessary protection for the tank, must be crash resistant during a survivable impact in accordance with § 27.952, and must be adequate to withstand loads and abrasions to be expected in personnel compartments.

(g) Each flexible fuel tank bladder or liner must be approved or shown to be suitable for the particular application and must be puncture resistant. Puncture resistance must be shown by meeting the TSO–C80, paragraph 16.0, requirements using a minimum puncture force of 370 pounds.

(h) Each integral fuel tank must have provisions for inspection and repair of its interior.

5. A new § 27.967 is added to read as follows:

§ 27.967 Fuel tank installation.

(a) Each fuel tank must be supported so that tank loads are not concentrated on unsupported tank surfaces. In addition—

(1) There must be pads, if necessary, to prevent chafing between each tank and its supports;

(2) The padding must be nonabsorbent or treated to prevent the absorption of fuel;

(3) If flexible tank liners are used, they must be supported so that it is not necessary for them to withstand fluid loads; and

(4) Each interior surface of tank compartments must be smooth and free of projections that could cause wear of the liner unless—

(i) There are means for protection of the liner at those points; or

(ii) The construction of the liner itself provides such protection.

(b) Any spaces adjacent to tank surfaces must be adequately ventilated to avoid accumulation of fuel or fumes in those spaces due to minor leakage. If the tank is in a sealed compartment, ventilation may be limited to drain holes that prevent clogging and excessive pressure resulting from altitude changes. If flexible tank liners are installed, the venting arrangement for the spaces between the liner and its container must maintain the proper relationship to tank vent pressures for any expected flight condition.

(c) The location of each tank must meet the requirements of § 27.1185 (a) and (c).

(d) No rotorcraft skin immediately adjacent to a major air outlet from the engine compartment may act as the wall of the integral tank.

6. Section 27.973 is revised to read as follows:

§ 27.973 Fuel tank filler connection.

(a) Each fuel tank filler connection must prevent the entrance of fuel into any part of the rotorcraft other than the tank itself during normal operations and must be crash resistant during a survivable impact in accordance with § 27.952(c). In addition—

(1) Each filler must be marked as prescribed in § 27.1557(c)(1);

(2) Each recessed filler connection that can retain any appreciable quantity of fuel must have a drain that discharges clear of the entire rotorcraft; and

(3) Each filler cap must provide a fuel-tight seal under the fluid pressure expected in normal operation and in a survivable impact.

(b) Each filler cap or filler cap cover must warn when the cap is not fully locked or seated on the filler connection.

7. Section 27.975 is amended by revising paragraph (b) to read as follows:

§ 27.975 Fuel tank vents.

* * * * *

(b) The venting system must be designed to minimize spillage of fuel through the vents to an ignition source in the event of a rollover during landing, ground operation, or a survivable impact, unless a rollover is shown to be extremely remote.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

8. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; and 49 U.S.C. 106(g).

9. A new § 29.952 is added to read as follows:

§ 29.952 Fuel system crash resistance.

Unless other means acceptable to the Administrator are employed to minimize the hazard of fuel fires to occupants following an otherwise survivable impact (crash landing), the fuel systems must incorporate the design features of this section. These systems must be shown to be capable of sustaining the static and dynamic deceleration loads of this section, considered as ultimate loads acting alone, measured at the system component's center of gravity without structural damage to the system components, fuel tanks, or their attachments that would leak fuel to an ignition source.

(a) *Drop test requirements.* Each tank, or the most critical tank, must be drop-tested as follows:

(1) The drop height must be at least 50 feet.

(2) The drop impact surface must be nondeforming.

(3) The tanks must be filled with water to 80 percent of the normal, full capacity.

(4) The tank must be enclosed in a surrounding structure representative of the installation unless it can be established that the surrounding structure is free of projections or other design features likely to contribute to rupture of the tank.

(5) The tank must drop freely and impact in a horizontal position ±10°.

(6) After the drop test, there must be no leakage.

(b) *Fuel tank load factors.* Except for fuel tanks located so that tank rupture with fuel release to either significant ignition sources, such as engines, heaters, and auxiliary power units, or occupants is extremely remote, each fuel tank must be designed and installed to retain its contents under the following ultimate inertial load factors, acting alone.

(1) For fuel tanks in the cabin:
(i) Upward—4g.
(ii) Forward—16g.
(iii) Sideward—8g.
(iv) Downward—20g.

(2) For fuel tanks located above or behind the crew or passenger compartment that, if loosened, could injure an occupant in an emergency landing:
(i) Upward—1.5g.
(ii) Forward—8g.
(iii) Sideward—2g.
(iv) Downward—4g.

(3) For fuel tanks in other areas:
(i) Upward—1.5g.
(ii) Forward—4g.
(iii) Sideward—2g.
(iv) Downward—4g.

(c) *Fuel line self-sealing breakaway couplings.* Self-sealing breakaway couplings must be installed unless hazardous relative motion of fuel system components to each other or to local rotorcraft structure is demonstrated to be extremely improbable or unless other means are provided. The couplings or equivalent devices must be installed at all fuel tank-to-fuel line connections, tank-to-tank interconnects, and at other

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points in the fuel system where local structural deformation could lead to the release of fuel.

(1) The design and construction of self-sealing breakaway couplings must incorporate the following design features:

(i) The load necessary to separate a breakaway coupling must be between 25 to 50 percent of the minimum ultimate failure load (ultimate strength) of the weakest component in the fluid-carrying line. The separation load must in no case be less than 300 pounds, regardless of the size of the fluid line.

(ii) A breakaway coupling must separate whenever its ultimate load (as defined in paragraph (c)(1)(i) of this section) is applied in the failure modes most likely to occur.

(iii) All breakaway couplings must incorporate design provisions to visually ascertain that the coupling is locked together (leak-free) and is open during normal installation and service.

(iv) All breakaway couplings must incorporate design provisions to prevent uncoupling or unintended closing due to operational shocks, vibrations, or accelerations.

(v) No breakaway coupling design may allow the release of fuel once the coupling has performed its intended function.

(2) All individual breakaway couplings, coupling fuel feed systems, or equivalent means must be designed, tested, installed, and maintained so inadvertent fuel shutoff in flight is improbable in accordance with § 29.955(a) and must comply with the fatigue evaluation requirements of § 29.571 without leaking.

(3) Alternate, equivalent means to the use of breakaway couplings must not create a survivable impact-induced load on the fuel line to which it is installed greater than 25 to 50 percent of the ultimate load (strength) of the weakest component in the line and must comply with the fatigue requirements of § 29.571 without leaking.

(d) *Frangible or deformable structural attachments.* Unless hazardous relative motion of fuel tanks and fuel system components to local rotorcraft structure is demonstrated to be extremely improbable in an otherwise survivable impact, frangible or locally deformable attachments of fuel tanks and fuel system components to local rotorcraft structure must be used. The attachment of fuel tanks and fuel system components to local rotorcraft structure, whether frangible or locally deformable, must be designed such that its separation or relative local deformation will occur without rupture or local tear-out of the fuel tank or fuel system component that will cause fuel leakage. The ultimate strength of frangible or deformable attachments must be as follows:

(1) The load required to separate a frangible attachment from its support structure, or deform a locally deformable attachment relative to its support structure, must be between 25 and 50 percent of the minimum ultimate load (ultimate strength) of the weakest component in the attached system. In no case may the load be less than 300 pounds.

(2) A frangible or locally deformable attachment must separate or locally deform as intended whenever its ultimate load (as defined in paragraph (d)(1) of this section) is applied in the modes most likely to occur.

(3) All frangible or locally deformable attachments must comply with the fatigue requirements of § 29.571.

(e) *Separation of fuel and ignition sources.* To provide maximum crash resistance, fuel must be located as far as practicable from all occupiable areas and from all potential ignition sources.

(f) *Other basic mechanical design criteria.* Fuel tanks, fuel lines, electrical wires, and electrical devices must be designed, constructed, and installed, as far as practicable, to be crash resistant.

(g) *Rigid or semirigid fuel tanks.* Rigid or semirigid fuel tank or bladder walls must be impact and tear resistant.

10. Section 29.963 is amended by removing paragraph (b); by redesignating paragraphs (c), (d), and (e) as (b), (c), and (d) respectively; by revising redesignated paragraph (b); and by adding a new paragraph (e) to read as follows:

§ 29.963 Fuel tanks: general.

* * * * *

(b) Each flexible fuel tank bladder or liner must be approved or shown to be suitable for the particular application and must be puncture resistant. Puncture resistance must be shown by meeting the TSO–C80, paragraph 16.0, requirements using a minimum puncture force of 370 pounds.

* * * * *

(e) Each fuel tank installed in personnel compartments must be isolated by fume-proof and fuel-proof enclosures that are drained and vented to the exterior of the rotorcraft. The design and construction of the enclosures must provide necessary protection for the tank, must be crash resistant during a survivable impact in accordance with § 29.952, and must be adequate to withstand loads and abrasions to be expected in personnel compartments.

§ 29.967 [Amended]

11. Section 29.967 is amended by removing paragraph (e).

12. Section 29.973 is revised to read as follows:

§ 29.973 Fuel tank filler connection.

(a) Each fuel tank filler connection must prevent the entrance of fuel into any part of the rotorcraft other than the tank itself during normal operations and must be crash resistant during a survivable impact in accordance with § 29.952(c). In addition—

(1) Each filler must be marked as prescribed in § 29.1557(c)(1);

(2) Each recessed filler connection that can retain any appreciable quantity of fuel must have a drain that discharges clear of the entire rotorcraft; and

(3) Each filler cap must provide a fuel-tight seal under the fluid pressure expected in normal operation and in a survivable impact.

(b) Each filler cap or filler cap cover must warn when the cap is not fully locked or seated on the filler connection.

13. Section 29.975 is amended by revising paragraph (a)(7) to read as follows:

§ 29.975 Fuel tank vents and carburetor vapor vents.

(a) * * *

(7) The venting system must be designed to minimize spillage of fuel through the vents to an ignition source in the event of a rollover during landing, ground operations, or a survivable impact, unless a rollover is shown to be extremely remote.

* * * * *

Issued in Washington, D.C., on September 26, 1994.

David R. Hinson,

Administrator.

[FR Doc. 94–24218 Filed 9–30–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Monday
October 3, 1994

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 101

Model Rocket Operations; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 101

[Docket No. 26965; Amendment No. 101–6]

RIN 2120–AD84

Model Rocket Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the operational guidelines of the Federal Aviation Regulations (FAR) Part 101 for model rockets that: use not more than 125 grams (4.4 ounces) of propellant; are made of paper, wood, or breakable plastic; contain no substantial metal parts; and weigh not more than 1,500 grams (53 ounces). This amendment is necessary to provide for the operation of the technologically advanced, larger category, model rockets and to ensure that their operation is in concert with the maximum level of safety protection for aircraft, flight crews, and the flying public. The FAA believes that this amendment will foster important aeronautical education and research activities, while retaining appropriate operational safety precautions.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. White, Air Traffic Rules Branch, ATP–230, Airspace Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On May 28, 1985, the National Association of Rocketry (NAR) and the Hobby Industry Association (HIA) filed a joint petition requesting that the FAA amend 14 CFR 101.1, by raising the upper weight limit on excepted model rockets from 16 ounces to 1,500 grams (approximately 53 ounces) and the allowable propellant mass from 4 ounces to 125 grams (approximately 4.4 ounces). At present, 14 CFR 101.1 exempts "model" rockets having no more than 4.0 ounces of propellant and weighing no more than 16 ounces, including the propellent.

In response to the NAR/HIA joint petition, the FAA published a Notice of Proposed Rulemaking (NPRM), Notice 92–12, 57 FR 41628, Sep. 10, 1992. Notice 92–12 proposed to amend 14 CFR Part 101 by adding § 101.22, Special provisions for larger model rockets, and by amending § 101.25, Notice requirements, to accommodate larger model rockets. In summary, model rockets that use not more than 125 grams of propellant; that weigh not more than 1,500 grams, including the propellant; that are constructed principally of paper, wood, or breakable plastic, and continue to have no substantial metal parts; may be operated in a controlled airspace, within 5 miles of the boundary of any airport, within 1,500 feet of any person or property that is not associated with the operations or at night. These operations may be conducted, provided that persons operating these model rockets give prior notification of launch activities and other pertinent launch information to the FAA Air Traffic Control (ATC) facility nearest the place of intended operation between 24 and 48 hours prior to beginning the operation and the manager of any airport whose landing area or runway is within 5 miles of the model rocket launch site.

Analysis of Comments

Interested persons were invited to participate in this rulemaking effort by submitting written data, views, or arguments. All comments received during the comment period were considered before making a determination regarding this final rule.

During the comment period, a total of 117 comments were received in response to Notice 92–12. Two comments were received from the NAR, and one comment each, from the Airline Pilots Association (ALPA), the Arizona Pilots Association, the Airport Transport Association (ATA), and the National Fire Protection Association. Ninety-one comments were received from individuals, eight from pilots, six from model rocket associations, three from teachers/professional educators, and one each from a scientist, an aerospace educational organization, and a model rocket manufacturer. A discussion of these comments follows:

One commenter supports the NPRM as written. All other commenters oppose the NPRM and support, instead, either the original NAR petition or the development of regulatory action which proposes fewer model rocket notification requirements. Comments opposing the NPRM are summarized in the following categories, each of which is subsequently discussed more fully:

1. Approximately 95 commenters state there is no need for a separate category of "Large Model Rockets"; they favor adoption of NAR's original petition for rulemaking.

2. Approximately 74 commenters believe the NPRM's proposed notification requirements are burdensome and unnecessary.

3. Approximately 8 commenters state the FAA needs to update its rules to reflect the current technology of model rocketry and to promote the inherent educational value of the hobby.

4. Approximately 3 commenters oppose both the NPRM and NAR's original petition for rulemaking.

5. Approximately 4 commenters suggest regulatory alternatives to the NPRM.

A number of commenters oppose the proposal to establish a separate category of "Large Model Rockets" and instead support the NAR's original petition to broaden the exempt definition of model rockets. Based upon NAR and FAA studies, commenters argue that air traffic will not be adversely affected by the NAR's requested increase in the maximum, unregulated model rocket liftoff and propellant weight. The NAR reiterates that, "not a single documented incident of model rockets interfering with aviation, hitting or harming aircraft on ascent or descent of the rocket, or impairing aircraft flight operations has occurred". Commenters attribute this enviable safety record to rocketeers' voluntary compliance with the *Model Rocket Safety Code*. Accordingly, they consider the code and a rocketeer's own visual and aural check as sufficient launch safety measures. Moreover, several commenters assert that increasing model rocket weight may actually improve model rocket safety as heavier rockets are purported to have larger drag coefficients, achieve lower altitudes, have shorter flight duration, and be more easily seen by aircraft than lighter rockets.

The FAA agrees that the model rocket industry has a long and distinguished record of safety. However, as noted in Notice 92–12, the FAA must acknowledge the remote, yet inherent increase in hazard potential that accompanies greater model rocket propellant/mass weight. This consideration is particularly relevant for general aviation aircraft and rotorcraft, which operate at a lower velocity and flight altitude, making them especially vulnerable to collision with larger, more powerful model rockets. In order to provide a maximum level of safety protection to aircraft passengers and crew members, the FAA has determined that operational safeguards, beyond the *Model Rocket Safety Code* and rocketeers' own diligence, are needed for larger rockets with greater propellant/mass weight. Therefore, a regulatory category that segregates larger rockets from smaller rockets is required.

A number of commenters believe that the proposed notification requirements for "Large Model Rocket" launches are unnecessary and burdensome. Commenters argue that the FAA has cited "no cases where notification would have increased air safety above and beyond . . . current regulations which require no notification." Several commenters also mention the potential for conflict to occur between lawful rocketeers and airport/ATC officials who are unfamiliar with model rocketry and with 14 CFR Part 101 entitlement. Two commenters detail occasions where misinformation was believed to have resulted in the denial of waiver applications or the interruption of model rocket launch competitions. Commenters are equally troubled by the requirement to notify air traffic officials within 24 to 48 hours of "Large Model Rocket" launches, regardless of where these launches occur.

The proposed notification requirements assist the FAA and airport officials in determining how model rocket launch activities may affect flight operations in a given area. The proposed requirements are not intended to hinder or minimize model rocket activity, but merely to ensure that airspace is mutually accommodating of both model rocket operations and aircraft operations. To this end, FAA or airport officials review model rocket launch information and make it available to pilots, as necessary, via air traffic control or through Notice to Airmen (NOTAM) publications. NOTAMs highlight events that may result in airspace restrictions and give time frames in which restrictions will be in effect. Review of NOTAMs offers pilots an opportunity to adjust or reschedule their flight plans in light of planned aerial activity. Because a pilot's awareness of model rocket launches enhances this safety process, the proposed notification requirements are beneficial. Additionally, to facilitate disclosure of requested model rocket launch data, the NPRM proposed a decrease in the amount and specificity of information currently required from rocketeers. For example, when there are multiple participants at a single event, rather than give names and addresses for every rocketeer, a single person may be designated as the event launch coordinator for the operation. Similarly, rather than provide the specific number, size, weight, and maximum altitude of each rocket to be launched, the appropriate individual may estimate the information. The FAA further concludes that the current level of safety will not be decreased by utilizing the less restrictive reporting requirements as proposed in the NPRM when a single name and address of the person provided is that of the event launch coordinator, and this person is the one who has provided the other required launch data estimates for that event.

Several commenters recommend that notification of the airport manager or FAA tower facility be required only when large model rockets will be launched into controlled airspace or within 5 miles of an airport.

The current prohibition against operating such model rockets in controlled airspace, within 5 miles of an airport, within 1,500 feet of any non-participant, or between sunset and sunrise, will not apply provided the person operating the model rocket complies with the proposed modified provisions of § 101.25. The intent of the notice requirement is not to exclude or hinder model rocket operations, but to provide notification of such operations to afford an adequate level of safety for person and property in the air, as well as on the ground.

Commenters maintain that the notice requirement is unrealistic for several reasons: Model rocket launch times are inherently unpredictable as they are dependent upon favorable cloud cover and weather conditions; many impromptu launches occur at model rocket meets, making it difficult to give prior disclosure of the total number of participants and other launch information; the notification process may prove too complex for novice or youthful rocketeers; and, the notification process is likely to be cost intensive to the FAA, as the agency will be forced to process a presumably high number of waiver applications.

The FAA disagrees that the notification process may prove too complex for novice or youthful rocketeers. Through voluntary compliance with the *Model Rocket Safety Code*, model rocketeers of all ages have proven a ready aptitude and willingness for ensuring launch safety and have demonstrated an awareness of how to knowledgeably operate scientific equipment. The effective handling of these important responsibilities is believed to be an accurate indicator of rocketeers' ability to adhere to the proposed notification requirements. The FAA acknowledges that the agency will incur costs in receiving, recording, and evaluating notification information; but, the agency determines these costs to be minor.

Several commenters believe the FAA needs to update 14 CFR Part 101 to reflect the current technology of model rocketry and to promote the inherent educational value of the hobby. According to the NAR, original model rocket limitations were set in light of what was the only foreseeable type of model rocket propellant at the time, black powder. Over the years, new propellant technologies have emerged that are vastly superior to black powder, both in terms of specific impulse and a capability to accommodate more complex payloads, e.g. cameras, radio control receivers, and computer equipment. One commenter mentions that it is difficult to construct these payloads while remaining within the present 16 ounce total weight limitation. Most commenters agree that the more diverse payloads available with larger-sized rockets present unique opportunities for promoting scientific study. Teachers and rocketry clubs report using larger rockets as educational aids. Science professionals use them in collecting data and conducting analysis. These groups believe their efforts help the United States remain academically and technologically competitive. As such, they assert that the FAA's proposed restrictions on large model rockets are counterproductive to scientific achievement and overall growth of the model rocket industry.

Three major factors form the basis of the proposed amendment: (1) The FAA's support in fostering public interest in aeronautics through model rocketry; (2) the agency's recognition of the importance for model rocketeers to utilize state-of-the-art technology to enhance educational value and international competitiveness; and (3) the agency's responsibility to ensure aircraft flight safety. Accordingly, the proposed amendment reflects the FAA's desire to support the advancement of model rocketry while maintaining an assurance that larger and faster rockets do not jeopardize the safety of aircraft in flight.

Several commenters oppose both the NPRM and NAR's original petition. The Air Line Pilots Association (ALPA) and the Air Transport Association (ATA) believe that the larger and more powerful rockets pose a potential threat to air traffic safety. Both organizations underscore the point that larger model rockets are capable of achieving aircraft cruising altitudes. In this regard, ALPA believes collision with a model rocket can cause aircraft damage beyond that "comparable to the impact of large hailstones" and that penetration of the aircraft wing skin is likely. For this reason, ALPA believes that the current provisions of 14 CFR Part 101 best ensure safety and recommends that the

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notification requirements be applied to any rocket firing surpassing 1500 feet above ground level (AGL), regardless of airport proximity. Additionally, ALPA recommends that a safety officer should visually survey rocket firings in controlled areas and manufacturers should provide a copy of applicable FAA regulations relating to launch activities. The ATA favors ensuring safety by permitting no unmanned rockets within a 30-mile radius of regulated airspace.

The FAA acknowledges a minimal risk increase in hazard potential that accompanies the operation of larger, more powerful rockets. This minimal risk increase was confirmed by a March 1991 FAA study, Model Rocketry Hazard Study, conducted as part of the agency's analysis of in-flight collision probability between aircraft and model rockets. In concert with the study's final report recommendation, Notice 92–12 proposed certain guidelines for large model rocket launches. These proposed guidelines, together with rocketeers' proven launch safety vigilance, effectively lessen the minimal risk increase in hazard potential associated with heavier model rockets.

One commenter concurs with the safety concerns raised by ATA and ALPA and alleges that hazardous incidents have occurred with larger model rockets. This commenter believes that present technology offers model rockets sufficient propellant capacity so that the FAA should set a maximum allowable rocket weight of 3 pounds and hold propellant mass to a maximum 62.5 grams. To further ensure safety, this commenter recommends that the FAA establish clear, defined limits for model rocket construction material. The commenter contends that "hi-tech" paper and plastic are being used to construct more durable rockets than 14 CFR 101 intends.

No data was provided by the commenter to support the allegation, and the FAA has no other data which substantiates any occurrence of hazardous instances with larger model rockets. The FAA shares the viewpoint that model rockets only be constructed of paper and other breakable material. To reiterate this agency intent, Notice 92–12 maintains the current language of § 101.1(c), which outlines appropriate material for model rocket construction. However, to issue explicit direction on the manufacture of model rockets, which appears to be the commenter's suggestion, goes beyond the FAA's regulatory purview.

Several commenters asked that the FAA create a uniform set of regulations pertaining specifically to model rockets weighing greater than 53 ounces launch weight.

The FAA acknowledges the commenters' suggestions and concerns. However, since Notice 92–12 conveyed only those proposals contained in the original NAR petition. Recommendations to create an additional set of uniform rules specifically for model rockets would be a separate rulemaking action and is beyond the scope of this particular action.

The NAR and several other commenters assert that an apparent typographical error in Notice 92–12 incorrectly reports the NAR's estimate of model rocket launches as 250,000 since the inception of the sport. Commenters state that the appropriate number, as submitted in NAR's 1985 study, is 250,000,000.

The FAA has investigated the commenters' assertion and noted that Notice 92–12 reference was "250,000 launches of model rockets since the inception of the sport . . ." The estimate, as contained in the NAR report is, "At the time the NAR's petition was submitted in 1985, NAR informed the FAA that more than 250,000,000 launches had been made." Because the number of launches of model rockets since the inception of the sport was not used in any FAA rulemaking calculations, the correct figure is hereby noted in this document and has no further bearing on this rulemaking activity.

Regulatory Evaluation Summary

Cost-Benefit Analysis

The FAA has determined that this final rule is not a "significant regulatory action", as defined by Executive Order 12866 (Regulatory Planning and Review). The anticipated costs and benefits associated with this final rule are summarized below. (A detailed discussion of costs and benefits is contained in the full evaluation in the docket for this final rule).

Costs

The final rule for unmanned rockets consists of provisions that specify what persons operating certain model rockets (rockets using not more than 125 grams of propellant; made of paper, wood, or breakable plastic; containing no substantial metal parts, and weighing not more than 1500 grams including propellant) would be required to do. The final rule is designed to accommodate the advancement of model rocketry with regulations that will also provide an adequate level of assurance that such rockets will not jeopardize the safety of aircraft in flight.

The FAA estimates that the changes in the final rule will have a no cost impact to users of model rockets. In fact, the changes might produce a cost savings. The savings associated with these changes, however are considered negligible and unquantifiable.

Section 101.22(a)(2), however, may impose minor costs on the FAA. Persons operating model rockets will have to provide the information required in existing § 101.25 to the manager of that airport and to the FAA ATC facility that is nearest the place of the intended operation. The FAA would then incur costs associated with receiving, recording, and evaluating the material that has been received. The FAA believes that these costs will be minor.

Benefits

The final rule will provide benefits, in that the FAA has determined that the final regulations will accommodate the advancement of model rocketry and simultaneously provide an adequate level of assurance that such rockets will not jeopardize the safety of aircraft in flight.

Conclusions

Based upon the fact that there are little or no compliance costs coupled with the potential benefits, the FAA concludes that the final rule is cost beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have "a significant cost impact on a substantial number of small entities."

With regards to this regulatory evaluation, there is no cost associated with any of the amendments. The FAA has determined that the amendments contained herein will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The amendments apply to users of model rockets in the United States only There is no economic impact resulting from any of the amendments and the FAA has determined that these regulations will not have an impact on international trade.

Federalism Determination

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirements of part 101 were previously approved under OMB Control No. 2120–0027. This amendment makes only minor changes to those requirements.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with the U.S. obligations under the convention on International Civil Aviation (ICAO), it is FAA policy to comply with ICAO Standards and Recommended Practices (SARP) to the maximum extent practicable. The FAA has determined that this regulation complies with the ICAO SARP.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Assessment, the FAA has determined that this regulation is not a "significant regulatory action" under Executive Order 12866. This rule is not considered significant under DOT Order 2100.5, Policies and Procedures (44 FR 11034, February 26, 1979). In addition, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A regulatory evaluation of the final rule, including a Regulatory Flexibility Determination and Trade Impact Assessment, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 101

Aircraft, Aviation Safety, Federal Aviation Administration, Recreation and recreation areas.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration finds that it would be in the public interest to adopt the amendment as proposed. Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 101 of the Federal Aviation Regulations (14 CFR Part 101) as follows:

1. The authority citation for Part 101 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354, 1372, 1421, 1442, 1443, 1472, 1510, and 1522; E.O. 11514; 49 U.S.C. 106(g).

Subpart C—Unmanned Rockets

2. Section 101.22 is added to read as follows:

§ 101.22 Special provisions for large model rockets.

Persons operating model rockets that use not more than 125 grams of propellant; that are made of paper, wood, or breakable plastic; that contain no substantial metal parts, and that weigh not more than 1,500 grams, including the propellant, need not comply with § 101.23 (b), (c), (g), and (h), provided:

(a) That person complies with all provisions of § 101.25; and

(b) The operation is not conducted within 5 miles of an airport runway or other landing area unless the information required in § 101.25 is also provided to the manager of that airport.

3. Section 101.25 is amended by revising the introductory text and paragraphs (a), (b), (c), and (d) to read as follows:

§ 101.25 Notice requirements.

No person may operate an unmanned rocket unless that person gives the following information to the FAA ATC facility nearest to the place of intended operation no less than 24 hours prior to and no more than 48 hours prior to beginning the operation:

(a) The names and addresses of the operators; except when there are multiple participants at a single event, the name and address of the person so designated as the event launch coordinator, whose duties include coordination of the required launch data estimates and coordinating the launch event;

(b) The estimated number of rockets to be operated;

(c) The estimated size and the estimated weight of each rocket; and

(d) The estimated highest altitude or flight level to which each rocket will be operated.

* * * * *

Issued in Washington, DC, on September 26, 1994.

David R. Hinson,

Administrator.

[FR Doc. 94–24217 Filed 9–30–94; 8:45 am]

BILLING CODE 4910–13–M

VOL
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ISS
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OC
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federal register

Monday
October 3, 1994

Part VI

Advisory Council on Historic Preservation

36 CFR Part 800
Protection of Historic Properties;
Proposed Rule

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ADVISORY COUNCIL ON HISTORIC PRESERVATION

36 CFR Part 800

Protection of Historic Properties

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of proposed rulemaking; revision of current regulations.

SUMMARY: The Advisory Council on Historic Preservation (Council) is proposing changes to its regulations in order to implement the 1992 amendments to the National Historic Preservation Act and to improve the Section 106 process, by which Federal agencies consider the effects of their undertakings on historic properties. The proposed changes seek to balance the interests and concerns of various users of the Section 106 process, including Federal agencies, State Historic Preservation Officers (SHPOs), Native Americans and Native Hawaiians, and the public. The revised regulations also respond to the new Section 110 provisions in the 1992 amendments which require Federal agencies to establish historic preservation programs.

DATES: Comments must be received on or before December 2, 1994. In recognition of the unique trust and treaty relationships between the United States Government and Indian tribes, their enhanced role in the Section 106 process as directed by the National Historic Preservation Act amendments of 1992, and the possibility that some tribes will need more than 60 days to provide comments, the Council will provide on request an additional 30 days for an Indian tribe to submit comments. A representative of the tribal government must file such request with the Council no later than December 2, 1994.

ADDRESSES: Comments should be addressed to the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, Suite 809, Washington, DC 20004. Fax 202–606–8647.

FOR FURTHER INFORMATION CONTACT: Stephanie Woronowicz, Information Assistant, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, Suite 809, Washington, DC 20004 (202) 606–8503.

SUPPLEMENTARY INFORMATION:

I. Background

Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470f, requires Federal agencies to take into account the effect of their undertakings on properties included in or eligible for inclusion in the National Register of Historic Places and to afford the Council a reasonable opportunity to comment on such undertakings. Public Law 102–575 was enacted in October, 1992, and contains amendments to the National Historic Preservation Act which affect the way Section 106 review is carried out under the Council's regulations. Furthermore, as part of the Administration's National Performance Review, the Council undertook a review of the current regulatory process to identify potential changes that could improve the operation of the Section 106 process and conform it to the principles of this Administration. The Council commenced an information-gathering effort to assess the current Section 106 process and to identify desirable changes.

As a part of this effort, the Council sent a questionnaire to 1,200 users of the Section 106 process, including Federal agencies, SHPOs, State and local governments, applicants for Federal assistance, Native Americans, preservation groups, contractors involved in the process, and members of the public. The questionnaires sought opinions on the current regulatory process and ideas for enhancing the process. The Council received over 400 responses. After analyzing the responses and holding several meetings with Federal Preservation Officers and SHPOs, the Council staff presented its preliminary findings to a special Council member Task Force comprised of the Department of Transportation, the National Conference of State Historic Preservation Officers, the National Trust for Historic Preservation, Native American representative William Tallbull, expert member Jane Davidson, and Council chairman Cathryn Buford Slater.

The key findings presented to and adopted by the Regulations Task Force were the following: (1) Federal agencies and SHPOs should be given greater authority to conclude Section 106 review; (2) the Council should spend more time monitoring program trends and overall performance of Federal agencies and SHPOs and less time reviewing individual cases or participating in case-specific consultation; (3) Section 106 review requirements should be integrated with environmental review required by other statutes; (4) enforcement of Section 106 should be increased and specific remedies should be provided for failure to comply; and (5) there should be expanded opportunities for public involvement in the Section 106 process.

II. Summary of Regulatory Changes

Consistent with the findings adopted by the Council Regulations Task Force, the Council proposes to revise its regulations as follows:

Subpart A—Background and Policy

This Subpart adds a new section describing the goals of the consultation process (Section 800.1(b)) and clarifying the roles of participants in the Section 106 process, particularly those of Native Americans and Native Hawaiians (Section 800.1(e)) as required by the 1992 NHPA amendments. The provision regarding Native American and Native Hawaiian participation provides detailed guidance on how Federal agency officials consult with Native American and Native Hawaiian organizations that attach religious and cultural significance to historic properties that may be affected by an undertaking (Section 800.1(e)(5)). The section on participants in the Section 106 process also elaborates on the role and rights of the public to participate in the process (Section 800.6(e)(6)). In order to encourage consideration of historic properties as early in the planning stages as possible, the regulations specifically set forth a section on timing (Section 800.6(c)).

Subpart A also adds new definitions and revises current definitions to conform to the 1992 NHPA amendments and to clarify terms which have raised questions during the implementation of the Section 106 process (Section 800.2). New definitions include: agency, anticipatory demolition, approval of the expenditure of funds, comment, conditional no adverse effect agreement, consultation, Council membership, foreclosure, head of the agency, memorandum of agreement, Native Hawaiian, Native Hawaiian organization, notice of violation, traditional community, and traditional cultural authority. Revised definitions include: agency official, area of potential effects, historic property, Indian tribe, interested (party) person, Indian (tribal) lands, and undertaking. The definition of undertaking has been changed to accord with the intent of the statutory definition provided in the 1992 NHPA amendments.

Subpart B—Federal Procedures to Implement Section 106

The Council has added new provisions to assist agencies in meeting their responsibilities under the statutory requirement in Section 110(a)(2) of the 1992 NHPA amendments which requires agencies to develop preservation programs and to ensure

that the agencies' procedures for compliance with Section 106 are consistent with the Council's procedures (Sections 800.3–800.6). The provisions implement the principle that agency procedures establishing a preservation program must be consistent with the Council's regulations by providing standards for consistency (Section 800.4) and processes through which the Council can evaluate whether these standards have been met (Section 800.5 and 800.6).

Subpart C—The Section 106 Process

The heart of the Section 106 process is in Subpart C. The provisions in this Subpart have changed to allow for more agency-SHPO decisionmaking without Council involvement. To offset the Council's removal from routine cases, this Subpart gives the Council the authority to resolve disputes between Federal agencies and SHPOs and to monitor agency performance and provides an expanded opportunity for the public to request the Council to intervene in particular cases.

Section 800.7(a–e) sets forth the steps that an agency official must go through prior to the identification of historic properties. These provisions emphasize the need for early planning and coordination, both with reviews under other authorities and with other individuals and organizations, prior to the initiation of the identification stage. The identification and evaluation stages (Section 800.8) remain essentially the same as the present regulations, except that the regulation adds a provision allowing for Council review of agency decisions made during the identification and evaluation stages (Section 800.8(e)). As a supplement to Section 800.8, a non-binding Appendix has been added to provide additional clarification on the identification process and the establishment of the area of potential effects.

The revised regulations eliminate the determination of effect step (and the existing Criteria of Effect) currently in the Section 106 process and allow an agency to apply the criteria of adverse effect directly after completing the identification stage (Section 800.9(a)). An agency is no longer required to notify the Council of a finding of no adverse effect, but the Council may review such a finding if requested or if the Council deems it appropriate (Section 800.9(d)). The revised regulations also eliminate the exceptions to a finding of adverse effect and incorporate those exceptions into a new provision allowing for conditional no adverse effect agreements (Section 800.9(b)(2)). The intent of the addition of the conditional no adverse effect agreement provision is to allow agencies and SHPOs flexibility in reaching routine agreements while maintaining agency accountability. It formally recognizes a practice that has already become widespread under the current regulations.

In order to resolve adverse effects more efficiently, the revised regulations provide more autonomy to the SHPO and the Federal agency. The revised regulations establish a method for resolution of adverse effects without the Council's participation, changing the current two-party Memorandum of Agreement process (Sections 800.10(a)(1) and 800.10(c)(1)). Under this provision, if the Council elects not to participate in the negotiation, the agency and the SHPO may execute a Memorandum of Agreement which is sent to the Council, but need not be executed by the Council (Section 800.10(c)(1)). The revised regulations also clarify the use, force and effect of a Memorandum of Agreement and its provisions (Section 800.10(d)).

If a Memorandum of Agreement cannot be reached during two-party consultation, the parties must seek the Council's participation and enter three-party consultation before terminating negotiations. If a Memorandum of Agreement cannot be reached, the revised regulations set forth more detailed provisions on termination of negotiations and Council comments (Section 800.11)). With regard to Council comments, the new regulations require that the head of the agency respond to the Council's comments in accordance with Section 110(l) of the NHPA.

In responding to comments made by respondents to the Council's survey of Section 106 users and in order to balance the Council's removal from routine Section 106 cases, the revised regulations establish a new section on agency monitoring and compliance (Section 800.12). This section provides for the review of an agency official's findings, providing more detail than the review procedures contained in the current regulations at Section 800.6(e). The monitoring and compliance section also includes a new provision for the issuance of a notice of violation to an agency which has violated or, in the case of a preliminary notice of violation, is about to violate the requirements of the NHPA. In response to the 1992 amendments which added Section 110(k), the Council has established procedures addressing anticipatory demolition.

Subpart D—Alternative Procedures

This Subpart provides options for complying with the requirements of Section 106 other than those set forth in Subpart C. Its purpose is to encourage agencies to integrate the Section 106 process into their internal planning procedures. Section 800.16 of the revised regulations explains that counterpart procedures, as described in Sections 800.4 and 800.5(a), Programmatic Agreements, as described in Section 800.5(b), provide alternative means of compliance. In accordance with Section 101(d)(5) of the NHPA, the Council has added a new provision to establish a process by which an Indian tribe may substitute its tribal historic preservation regulations for the Council's regulations for review of undertakings on tribal lands (Section 800.17). The Council has also attempted to address the unique situations created by disasters or emergencies and has revised its emergency regulations to emphasize the need for the development of agency counterpart procedures which establish a plan for considering historic properties during responses to disasters and emergencies. The revised emergency regulations delete reference to 36 CFR Part 78 in order to encourage agencies to develop their own procedures for dealing with disasters. The Council has limited the applicability of the regulations to natural disasters or emergencies declared by the President or by an Agency Official.

Subpart E—Coordination With Other Authorities

As an expansion and revision of the current regulations regarding agency coordination, requested by surveyed users, the revised regulations establish more detailed guidance on coordination with the National Environmental Policy Act and indicate other relevant statutes where coordination is desirable (Section 800.19).

III. Issues Deserving Special Attention From Commenters

In the development of these revisions, the Council determined that several issues warranted special attention from commenters. These issues fall into three categories: (1) areas of particular concern to the Council on which the views of users and the public are particularly solicited; (2) provisions that could be drafted in one or more alternative ways and views are sought on the best alternative; and (3) questions about actions that could be taken to improve the functioning of the Section 106 process, but that would not be

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specifically included in the regulations. The Council invites commenters to give these issues special consideration and provide views for its use.

1. Agency Implementing Procedures

Section 110(a)(2)(E)(i) of the NHPA requires that each Federal agency have procedures for compliance with Section 106 that are consistent with the Council's regulations. The Secretary of the Interior, acting through the Director of the National Park Service, and the Council share oversight for this provision, since the Secretary is charged with providing guidance on implementing Section 110 responsibilities. The Council wishes to encourage Federal agencies to develop such procedures to adapt the Section 106 process to their particular needs and to better integrate Section 106 into their regular planning processes. Subpart B of the revised regulations sets forth criteria for evaluating consistency; outlines a process for Council review of such procedures; and defines the consequences of a Council finding regarding consistency. Does the proposed process meet the need for agency program oversight? Are there ways the regulations could better encourage Federal agencies to adopt the required procedures in a timely manner? Are there better alternatives to the proposed consistency standards and review process? Are the criteria appropriate to meet the objective on achieving internal Federal agency procedures that effectively implement Section 106?

2. Exemption of Certain Undertakings From the Section 106 Process

As part of the development of agency procedures to implement Section 106, the proposed regulations include a new provision that will allow agencies to waive the Section 106 review for categories of undertakings which generally would not have an effect on historic properties. Since the use of categorical exclusions has been a major component of the NEPA process, there is the potential that this provision may be confusing. Further, approval of such a listing may incorrectly infer that the exemption of a class of undertakings means that an included undertaking could never result in adverse effect to historic properties. Should the procedures for categorical exemptions be included in the revised regulations? Should they be further distinguished from NEPA categorical exclusions to avoid confusion? Are the criteria for categorical exemptions too broad or too narrow? Should parties other than the agency and the Council be able to require individual Section 106 reviews for undertakings previously listed as categorical exclusions?

3. Regulation Versus Guidance

When surveyed, users of the current Section 106 regulations generally requested more specificity and guidance on various provisions of the regulations. The revised regulations respond to that concern. Are the regulatory provisions sufficiently detailed or have they become too specific? Where should any changes be made? Should some existing material or additional material be set forth in appendices to the regulations or in separate, subsequently issued guidance documents?

4. Public Participation

The proposed regulations rely heavily on increased access for the public to the Section 106 process to offset the Council's reduced role in individual cases. These enhanced opportunities for public involvement anticipate both a greater public role in shaping decisions regarding the treatment of effects on historic properties and a more active watchdog function for the public to ensure that procedures are followed and decisions are made properly. Conversely, expanded public participation can impose burdens on Federal planning processes and adequate opportunities for public input often require that extra efforts and time be expended by Federal officials. The revised regulations attempt to strike a balance between these two extremes, with an emphasis on public access to the process. Has this balance been struck effectively? Are there specific places where public notification or participation should be strengthened or reduced? Should the regulations be more specific on public participation or should additional guidance be provided in less formal channels, such as guidance documents?

5. Role of Certain Interested Parties

The proposed regulations seek to clarify and enhance the involvement of individuals and organizations that have significant interests in the negotiating process designed to avoid or minimize adverse effects (See Section 800.10(b)(1)). One such group is owners of properties affected by the undertaking and whose interests may be impacted by decisions made in the Section 106 process regarding the avoidance or mitigation of the undertaking's adverse effects on historic properties. The proposed regulations allow all owners of affected properties to participate in negotiations for a Memorandum of Agreement, provided that the Council can limit participation to a representative if the number of owners desiring to participate becomes unwieldy. Is this a reasonable balance of access and procedural efficiency? Should only owners of historic properties be given this status? How broadly should "affected" be defined?

6. Substitution of State and Local Review Processes for These Regulations.

The current regulations allow a Certified Local Government (CLG), as established under Section 101(c)(1) of the NHPA, to assume the role of the State Historic Preservation Officer (SHPO) in the Section 106 review when the Council, SHPO, and local government are in agreement. The proposed regulations delete this provision, in the interest of avoiding too many variations on the Section 106 process and resultant confusion. Should the current role of CLGs be maintained? Should it be expanded to allow review procedures established under local law and administered by a CLG to substitute for the Council's regulations? Should the regulations require Federal agencies to routinely consult with CLGs in addition to or in lieu of consultation with SHPOs? The current regulations allow State review systems to substitute for the Federal process under certain circumstances. The revised regulations delete this. Should it be retained and, if so, should it be modified from its current form?

7. Role of the Federal Preservation Officer

Section 110(c) of the NHPA requires Federal agencies to designate an official to be responsible for coordinating the agency's activities under the NHPA. However, the position and function of the Federal Preservation Officer (FPO) vary widely from agency to agency and the revised regulations are currently silent on the issue. Given the key role the NHPA intends for the FPO to play as a central agency-wide coordinator, should the Section 106 regulations define a role for the FPO? If so, should it be with regard to all individual project review, terminations where Council member comment is sought (Section 800.11), the development of agency procedures (Subpart B) or something else?

8. Disputes Over Application of the Regulations

When surveyed, users reported a serious shortcoming in the current regulations with the lack of any process to resolve disputes over when Section 106 applies and over the various determinations made in the Section 106

process. The proposed regulations authorize the Council to do this at several points. These include whether an action is an "undertaking" (Section 800.7(a)), what the area of potential effects is (Section 800.8(a)), whether historic properties are present (Section 800.8(e)) and whether documentation to support agency determinations is adequate (Section 800.14(f)). Such determinations would be legally binding for purposes of Section 106. Alternatives to Council resolution include giving the Federal agency the authority to make these determinations, referring the matter to a third party such as the Office of Management and Budget or the Justice Department or continuing the current situation where the absence of a recognized administrative decisionmaker leaves resolution to the Federal courts, but only if a formal legal challenge is made. Is the proposed system the best alternative?

9. Reviews and Appeals

There are several points in the current Section 106 regulations which provide an opportunity for Council review of agency decisions and for public appeals to the Council. The proposed regulations expand the right to appeal Federal agency decisions to the Council by giving the public a broad right to request review of an agency decision, although the Council may determine that the request is not timely. (See Section 800.12(a)(1).) This expanded appeal process is intended to serve as a balance for the Council's withdrawal from regular involvement in agency-SHPO decisions in the Section 106 process. While the regulation (Section 800.12(a)(1)) allows an agency to go forward with an undertaking while the Council conducts its review, the open-endedness of the appeals process diminishes the finality of Section 106 compliance for Federal agencies. Is the appeals mechanism as proposed an effective means to balance the Council's reduced role in the review of individual undertakings? Should it be broader or narrower? Could the provision be revised to give a greater degree of finality to the process and also afford the public fair access to the Council?

10. Notice of Violation

The proposed regulations authorize the Council to issue a preliminary or final notice of violation when the Council determines that a Federal agency has acted in violation of Section 106 or the Council's regulations. (See Section 800.12(d).) Under the current regulations, the Council may inform an agency when it finds the agency in violation, or in danger of violation, of Section 106 and the Council's regulations, but such action lacks any official sanction under the regulations and is viewed as purely advisory. The concept of a formal notice of violation, adapted from other Federal environmental protection processes, is in response to widespread concern that the current regulations lack effective means of enforcement. Is the proposed notice of violation an appropriate method? Are there other techniques or actions within the Council's legal authority to achieve this objective? Would the presence of stronger enforcement tools encourage the fulfillment of Section 106 responsibilities?

11. Treatment of Archeological Resources

The revised regulations continue the policy of the current regulations with regard to providing expedited review for undertakings with effects limited to archeological resources. The current process allows such cases to be processed as No Adverse Effect Determinations, provided that the values of the resource are limited to scientific data and that data will be recovered in manner consistent with the Secretary of the Interiors standards and guidelines. The revised regulations would essentially continue this exception, but as a Conditional No Adverse Effect Agreement. The regulations further clarify that such treatment is not available if there is the potential for human remains to be affected or traditional cultural values are present. Should this approach be pursued or should undertakings that threaten to destroy archeological resources, regardless of the presence of human remains or traditional cultural values, be considered to have an adverse effect and processed according to Section 800.10?

12. Coordination With the National Environmental Policy Act

An identified shortcoming in the current Section 106 regulations is the limited guidance provided for coordination between Section 106 reviews and those conducted under the National Environmental Policy Act (NEPA). The revised regulations contain expanded provisions (Section 800.19). Is the content sufficient? Are there specific areas that warrant more or less detail? Should similar guidance be provided for other related laws, such as Section 4(f) of the Department of Transportation Act?

13. Use of Information Technology

The rapid advances in information technology and the widespread access of Federal agencies and other Section 106 participants to it offers opportunities to improve Section 106 case processing. Electronic filing of certain agency notices and determinations with the Council is one example. Are there specific places in the process where this kind of innovation should be encouraged? Do the regulations need to be modified to facilitate the use of contemporary information technology? Should formats for electronic submission of information be specified in the regulations or related guidance documents?

IV. Impact Analysis

A. The Regulatory Flexibility Act

The proposed rules will not have a significant economic impact on a substantial number of small entities. The Council's regulations, in their current and revised form, only impose obligations on Federal agencies. If a Federal agency is legally authorized and chooses to delegate its responsibility to local governments, then that Federal agency must determine whether or not its delegation will have a significant economic impact on a substantial number of small entities.

B. The Paperwork Reduction Act

The proposed rules do not impose reporting requirements or the collection of information as defined in the Paperwork Reduction Act.

C. The National Environmental Policy Act

Pursuant to 36 CFR Part 805, National Environmental Policy Act Implementation Procedures, the Council has determined that an Environmental Impact Statement Is not required.

D. Executive Order 12866

The Council is exempt from compliance with Executive Order 12866 pursuant to a memorandum issued by the Office of Information and Regulatory Affairs on October 12, 1993. Although the Council is exempt from compliance, the Council has complied with the principles set forth in the Order by identifying problems in our regulatory process and seeking to modify our regulations in order to establish a more efficient and practical regulatory framework. The Council has sought the views of the public, including State, local and tribal entities, through the use of focus group meetings, questionnaires and solicitation of informal advice. Furthermore, the Council has

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voluntarily submitted this regulation to the Office of Management and Budget for review in accordance with the Executive Order.

E. Executive Order 12875

The Council is exempt from compliance with the documentation requirements set forth in Executive Order 12875. However, the Council has adhered to the principles embodied in the Order. The proposed regulations, like the current regulations, do not mandate State, local and tribal governments to participate in the Section 106 process, but rather, mandate Federal agencies to inform and request the involvement of such sectors. The State, tribal or local governments have the option of declining to participate in the process. Thus, the regulations do not impose unfunded mandates. Moreover, the Historic Preservation Fund makes monies available to States that participate in the Section 106 process. The Council's proposed regulations impose obligations on Federal agencies and do not delegate responsibilities to the States. If a Federal agency chooses to delegate its responsibilities, then the requirements of the Order must be addressed by that agency. State, local and tribal representatives have been an integral part of the development of the proposed rules as members of the Council's Regulations Task Force, as participants in focus groups, and as respondents to the Council's questionnaire. The proposed regulations provide a flexible process which includes various alternative procedures, including categorical exemptions, programmatic agreements and development of counterpart procedures to comply with the requirements of Section 106.

F. Executive Order 12898

The Council is not required to comply with this Order. Nevertheless, the regulations implementing Section 106 do not pose environmental risks, but rather, seek to avoid adverse effects on historic properties in all areas of the United States.

G. Memorandum Concerning Government-to-Government Relations with Native American Tribal Governments

The Council has fully complied with this Memorandum. A Native American representative serves as a member of the Council and as a member of the Council's Regulations Task Force. The proposed regulations enhance the opportunity for Native American involvement in the Section 106 process and clarify the obligation of Federal agencies to consult with Native Americans, fulfilling the objectives of the 1992 NHPA amendments.

List of Subjects in 36 CFR Part 800

Administrative practice and procedure, Historic preservation, Indians, Intergovernmental relations.

Dated: September 26, 1994

Robert D. Bush,

Executive Director.

Title 36, Chapter VIII is amended by revising Part 800 to read as follows:

PART 800—PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

Sec

Subpart A—Background and Policy

800.1 Purposes and participants.
800.2 Definitions.

Subpart B—Federal Procedures to Implement Section 106

800.3 Qualifying procedures.
800.4 Standards for evaluating consistency.
800.5 Counterpart procedures, programmatic agreements and exempted categories.
800.6 Council review of agency procedures.

Subpart C—The Section 106 Process

800.7 Initiation of the Section 106 process.
800.8 Identification of historic properties.
800.9 Assessment of effects.
800.10 Resolution of adverse effects.
800.11 Failure to resolve adverse effects.
800.12 Monitoring and compliance.
800.13 Special requirements for protecting National Historic Landmarks.
800.14 Documentation requirements.
800.15 Properties discovered after approval or during implementation of an undertaking.

Subpart D—Alternative Procedures

800.16 Federal agency program alternatives.
800.17 Tribal program alternatives.
800.18 Emergency situations.

Subpart E—Coordination With Other Authorities

800.19 Coordination with other authorities.

Appendix A to Part 800–Identifying Historic Properties in Coordination With Other Planning Needs

Authority: 16 U.S.C. 470a(d)(2), 470a(d)(6), 470f, 470h–2(a)(2), 470h–2(f), 470h–2(k), 470h–2(l), 470s and 470w.

Subpart A—Background and Policy

§ 800.1 Purposes and participants.

(a) *Purposes of the Section 106 process.* Section 106 requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. This part defines the manner in which Federal agencies meet both of these statutory responsibilities through the Section 106 process. The Section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings. It is designed to identify potential conflicts between the two and to resolve such conflicts through consultation among the Agency Official, the State Historic Preservation Officer, the Council, and other interested parties during the early stages of planning. By following the steps set forth in this part to assess the effects of an undertaking on historic properties and either resolving those effects through negotiated agreements or obtaining and considering the formal written comments of the Council membership, Federal agencies evidence that they have taken into account the effects of their undertakings on historic properties and have afforded the Council its reasonable opportunity to comment.

(b) *Consultation under this part.* The fundamental principle of the Section 106 process is the identification and resolution of preservation issues in the planning of a Federal undertaking through an open and ongoing exchange of factual information and opinion between the Agency Official and those agencies, organizations, and individuals with an interest in the undertaking's effects on historic properties. This principle is embodied in the concept of consultation, which means the process of seeking, discussing, and considering in good faith the views of other participants in the Section 106 process. Section 110(a)(2)(E) of the Act requires that agency procedures for compliance with Section 106 provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered. The goal of the consultation process is to seek ways to avoid or minimize the adverse effects of an undertaking on historic properties. The agency should first seek ways to avoid the adverse effects of an undertaking, and where avoidance cannot reasonably or practicably be achieved, should seek ways to minimize those effects. Destruction of historic properties should always be a last resort. Consultation commences at the earliest stages of planning between the Agency Official and the State Historic Preservation Officer and continues through the identification of historic properties, the assessment of the undertaking's effects and negotiation to resolve adverse effects, with the addition of other parties at various points and the ongoing opportunity for participation of the public. Consultation in the Section 106 process normally results in agreed upon outcomes and decisions. In the event that there is disagreement, this part provides that the Council will resolve disputes over the application of these regulations and specific findings under them. In the event that consultation fails to result in resolution of an undertaking's adverse effects, the head of the agency retains final decisionmaking authority for the undertaking after obtaining and considering the formal written comments of the Council membership.

(c) *Timing.* Section 106 requires the Agency Official to complete the Section 106 process prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license or permit. This does not bar an Agency Official from expending funds on, or authorizing, nondestructive project planning activities preparatory to an undertaking before complying with Section 106, provided that such expenditures or activities do not restrict the consideration of alternatives to avoid or mitigate adverse effects on historic properties. The Agency Official shall ensure that the Section 106 process is initiated early in the planning stages of the undertaking, when the widest feasible range of alternatives is open for consideration. The Agency Official shall establish a schedule for completing the Section 106 process that is consistent with the planning schedule for the undertaking, the conduct of reviews required under other authorities (See § 800.20), and the final approval of the undertaking.

(d) *Relation of the Section 106 process to agency preservation programs under Section 110.* Section 110(a) of the Act requires a Federal agency to establish a preservation program for the identification, evaluation, and nomination of historic properties to the National Register and the protection of such properties. Agency procedures for compliance with Section 106 are a required element of such a program. Section 110 further requires that agency Section 106 procedures be consistent with this part. Subpart B of this part sets forth standards and procedures for determining consistency. The Council encourages agencies to develop their Section 110 procedures as soon as possible. Unless or until an agency has formally adopted its procedures and completed the process for substitution, including Council review (§ 800.3(c)), this part governs the actions taken by an agency to take into account the effects of a proposed undertaking on historic properties and afford the Council a reasonable opportunity to comment in accordance with Section 106 of the Act.

(e) *Participants in the Section 106 process.*—(1) *Agency Official.* The Agency Official with jurisdiction over an undertaking has legal responsibility for complying with Section 106. It is the Agency Official's responsibility to determine whether the agency's proposed action is an undertaking; establish an undertaking's area of potential effect; identify and evaluate potentially affected historic properties; assess an undertaking's likely effect upon them; seek and consider alternatives to avoid or reduce any adverse effects upon historic properties; decide upon an appropriate resolution of adverse effects; and afford the Council its comment opportunity.

(i) *Assistance by non-Federal parties.* The Agency Official may use the services of grantees, applicants, consultants, or designees to prepare the necessary information and analyses, but remains legally responsible for Section 106 compliance, including all determinations charged to the Agency Official under this part. If any document or study is prepared by a consultant or contractor for purposes of compliance with Section 106 and this part, the Agency Official shall furnish guidance and shall independently evaluate the document prior to its approval, taking responsibility for its scope and contents.

(ii) *Multiple agencies involved in an undertaking.* If more than one Federal agency is involved in an undertaking, each agency has the responsibility for compliance with Section 106 and this part. The Council and the Federal agencies, in consultation with the Council, may mutually agree to designate a lead Federal agency. The lead Federal agency shall identify the appropriate official to serve as Agency Official for the purposes of this part. Assumption of lead agency status carries with it the responsibility to act on behalf of all participating Federal agencies during Section 106 review, addressing their collective responsibilities under Section 106 and this part. Designation of one agency as lead Federal agency does not abrogate the other Federal agencies' responsibilities to participate in the negotiation process if the Council deems it necessary, and to comply with the requirements of Section 106 and this part.

(2) *State Historic Preservation Officer.* The State Historic Preservation Officer coordinates State participation in the implementation of the National Historic Preservation Act and is a key participant in the Section 106 process. The role of the State Historic Preservation Officer is to consult with and assist the Agency Official in identifying historic properties, assessing effects upon them, and considering and deciding upon the resolution of adverse effects. The State Historic Preservation Officer reflects the interests of the State and its citizens in the preservation of their cultural heritage and helps the Agency Official identify parties interested in an undertaking, effects upon historic properties, and alternatives that may avoid or reduce adverse effects upon historic properties.

(3) *Council.* The Council is responsible for promulgating regulations to implement Section 106 in its entirety, consulting with and commenting to the Agency Official on an undertaking that affects historic properties, interpreting this part, and generally overseeing the operation of the Section 106 process. The Council may participate at any point in the Section 106 process at its own initiative.

(4) *Interested parties.* (i) Interested parties are those individuals and organizations that are identified by the Agency Official or who indicate to the Agency Official, the State Historic Preservation Officer or the Council in accordance with this part their concern with the effects of an undertaking on historic properties. If the State Historic Preservation Officer or the Council receive notification from interested parties, they shall notify the Agency Official. This part requires that particular interested parties be invited to participate in the Section 106 process under certain circumstances. In addition, whenever the Agency Official, the State Historic Preservation Officer, and the Council, if participating, agree that active participation of an interested party will advance the objectives of Section 106, they may invite that party to participate. Anyone who wishes to participate in the Section 106 process as an interested party should notify the Agency Official in writing and make the State Historic Preservation Officer and the Council aware of that request.

(ii) Interested parties may include:

(A) *Local governments.* Local governments are encouraged to take an active role in the Section 106 process when undertakings affect historic properties within their jurisdiction. When a local government has legal responsibility for Section 106 compliance under programs such as the

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Community Development Block Grant Program, participation as the Agency Official is required. When no such legal responsibility exists, units of local government may request to participate in the Section 106 process.

(B) *Applicants for Federal assistance, permits, and licenses.* When the undertaking is proposed by an applicant for Federal assistance or for a Federal permit or license, the applicant may participate in the Section 106 process in the manner prescribed in this part.

(C) *Owners of affected properties.* Individuals or organizations that own property that may be affected by an undertaking may request to participate. Qualifying property is not limited to historic property, but may include any real property affected directly or indirectly by the undertaking.

(D) *Other individuals and organizations* that have notified the Agency Official of their concern about the effects of the undertaking on historic properties.

(5) *Indian tribes and Native Hawaiian organizations.* (i) Section 101(d)(6)(B) of the Act requires the Agency Official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. To meet this responsibility, the Agency Official, at the outset of the Section 106 process, shall identify Indian tribes and Native Hawaiian organizations likely to have such interests and notify them of their opportunity to participate in the Section 106 process. The Agency Official shall provide for Indian tribe and Native Hawaiian participation in accordance with guidance issued by the National Park Service and the following principles:

(A) Consultation shall be designed to identify the Indian tribe's or Native Hawaiian organization's general concerns and interests regarding historic properties, and to seek their assistance in identifying historic properties and assessing effects on such properties. The Agency Official shall commence consultation through the Indian tribe's or Native Hawaiian organization's governing body and also include traditional cultural authorities and members of traditional communities where appropriate.

(B) To the extent feasible, consultation shall be initiated prior to any other public involvement procedures, in order to identify and resolve possible concerns about the confidentiality of information on historic properties. If the Indian tribe or the Native Hawaiian organization requests confidentiality, the Agency Official shall use the authority of Section 304 of the Act to protect the confidentiality of information about historic properties.

(C) Consultation shall be carried out in a manner that respects the cultural values, modes of communication, and systems of interaction used by the Indian tribe or Native Hawaiian organization. The Agency Official shall be sensitive both in choosing a culturally appropriate manner of communication and in timing a request for views from Indian tribes and Native Hawaiian organizations. The Agency Official shall initiate efforts to obtain such views early enough in the planning process, if necessary prior to other public involvement, to allow adequate time for responses and discussion of relevant preservation and traditional cultural issues.

(D) Consultation shall include an Indian tribe that does not reside in the vicinity of the undertaking when the Indian tribe has an interest in historic properties affected by the undertaking and has notified the Agency Official of that interest.

(ii) When an Indian tribe has assumed the functions of a State Historic Preservation Officer in the Section 106 process with respect to tribal lands under Section 101(d)(2)(C) of the Act, the Agency Official shall consult with the Indian tribe in accordance with the plan prepared by the tribe pursuant to that section. The Agency Official need not consult with the State Historic Preservation Officer except:

(A) To the extent such consultation is stipulated in the plan pursuant to Section 101(d)(2)(D)(ii) of the Act;

(B) With regard to effects on historic properties located on non-tribal lands; or

(C) When the State Historic Preservation Officer requests to participate in consultation as an interested party.

(6) *The public.* The Council values the views of the public on historic preservation questions and encourages maximum public participation in the Section 106 process. This part defines specific points in the process where the Agency Official is required to provide the public with information concerning an undertaking and its effects on historic properties and to provide opportunities for public comment and input. The public may also provide its views at other points in the process and the Agency Official should consider those views in decisionmaking. This part also identifies specific opportunities for the public to seek Council review of an Agency Official's findings under this part. Members of the public should become familiar with these points for involvement in order to maximize their participation in the Section 106 process. The Agency Official's efforts to seek and consider the views of the public shall reflect the nature and complexity of the undertaking and its effects on historic properties.

(i) The public may provide its views to the Agency Official, the State Historic Preservation Officer, the Council, and interested parties during the determination of the area of potential effects (§ 800.8(a)(1)), the assessment of the need for specific actions to identify historic properties (§ 800.8 (b)), the evaluation of historic significance (§ 800.8(c)), the assessment of effects (§ 800.9(a)), the resolution of adverse effects (§ 800.10), and the preparation of Council comments (§ 800.11(b)). The relevant sections of this part provide details on how the public participates.

(ii) The public may examine findings made by an Agency Official during the Section 106 process along with the documentation supporting such findings and responses provided by the State Historic Preservation Officer or the Council. These include the Agency Official's decision regarding whether an action is an undertaking (§ 800.7(a)), the Agency Official's finding as to the area of potential effects (§ 800.8(a)(1)), the Agency Official's evaluation of a property's historic significance (§ 800.8(c)), the Agency Official's finding regarding the presence of historic properties (§ 800.8(d)), the Agency Official's finding regarding the undertaking's effect on historic properties (§ 800.9), and any Memorandum of Agreement executed to resolve adverse effects (§ 800.10(c)). Any member of the public may request the Council to review any of the preceding findings.

(iii) Members of the public may request to participate in the Section 106 process as interested parties in accordance with § 800.1(e)(4)(iv). The request should be made early in the Section 106 process and in writing to the Agency Official. Copies of the request should be provided to the appropriate State Historic Preservation Officer and the Council.

(iv) When issuing notice to the public in accordance with this part, an Agency Official shall adequately inform the public of historic preservation issues in order to elicit public views on such issues that can then be considered and resolved in decisionmaking. The Agency Official shall determine appropriate channels for providing notice, considering the nature of the affected public and culturally appropriate communication.

(v) Agencies should use their established public participation procedures when they meet the public involvement requirements set forth in this part.

§ 800.2 Definitions.

(a) *Act* means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470–470w–6.

(b) *Agency* means agency as defined in 5 U.S.C. 551.

(c) *Agency Official* means the Federal agency head or a designee with legal authority over a specific undertaking, including any State, local, or tribal government official who has been delegated legal responsibility for compliance with Section 106 in accordance with law.

(d) *Anticipatory Demolition* means an action of an applicant who, with intent to avoid the requirements of Section 106, has intentionally significantly adversely affected a historic property to which an agency grant of a loan, loan guarantee, permit, license, or other assistance relates, or an inaction of an applicant who, having the legal power to prevent it, allowed such a significant adverse effect to occur.

(e) *Approval of the expenditure of funds* means any final agency decision approving the eligibility of an undertaking for Federal funds or financial assistance, including any agency decision that may be subject to an administrative appeal or rehearing procedure and conditional decisions subject to reevaluation by the agency.

(f) *Area of potential effects* means the geographic area or areas within which an undertaking may directly or indirectly cause changes, whether beneficial or adverse, to the character or use of historic properties, if any such properties exist. The area of potential effects is not limited to land under Federal jurisdiction or control or land within a Federal construction, right-of-way, or permit area. (See Appendix A of this part for further discussion).

(g) *Comment* means the findings and recommendations of the Council membership formally provided in writing to the head of a Federal agency under Section 106.

(h) *Conditional No Adverse Effect Agreement* means an agreement between an Agency Official and a State Historic Preservation Officer that an undertaking will have no adverse effect, because the undertaking is being conducted in accordance with specified conditions.

(i) *Consultation* means the good faith process of seeking, discussing, and considering the views of other participants in the Section 106 process as set forth in § 800.1(b).

(j) *Council* means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(k) *Council membership* means the full membership of the Council or a subgroup of members, numbering not less than three, appointed by the Chairman to carry out specific responsibilities under this part.

(l) *Foreclosure* means the action or inaction of a Federal agency which precludes the Agency Official from obtaining, considering and acting on the Council's comments on the full range of measures to avoid or minimize the adverse effects in accordance with § 800.12(b).

(m) *Head of the agency* means the chief official of the agency responsible for all aspects of the agency's actions. If a State, local or tribal government has been delegated responsibility for compliance with Section 106, the head of that unit of government shall be considered the head of the agency.

(n) *Historic property* means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. For the purposes of this part, this term includes but is not limited to, artifacts, records, and remains that are related to and located within such properties. The term further includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization which meet the criteria for inclusion in the National Register of Historic Places. The term "eligible for inclusion in the National Register" includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet National Register listing criteria.

(o) *Indian tribe* means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(p) *Interested party* means any individual or organization that has indicated to the Agency Official, State Historic Preservation Officer or Council its concern with the effects of an undertaking on historic properties.

(q) *Local government* means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

(r) *Memorandum of Agreement* means the document that records the terms and conditions which have been agreed upon to resolve the adverse effects of an undertaking upon historic properties.

(s) *National Historic Landmark* means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(t) *National Register* means the National Register of Historic Places maintained by the Secretary of the Interior.

(u) *National Register Criteria* means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR Part 60).

(v) *Native Hawaiian* means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(w) *Native Hawaiian organization* means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.

(x) *Notice of Violation* means a notification from the Council of its finding in accordance with § 800.12(d) that an Agency Official has failed to comply with Section 106 and this part.

(y) *Secretary* means the Secretary of the Interior.

(z) *State Historic Preservation Officer* means the official appointed or designated pursuant to Section 101(b)(1) of the Act to administer the State historic preservation program or a representative designated to act for the State Historic Preservation Officer.

(aa) *Traditional community* means the members of a recognizable ethnic group who continue to live according to beliefs and traditions passed down from previous generations.

(bb) *Traditional cultural authority* means an individual or a group of individuals in an Indian tribe, Native Hawaiian organization, or other social or ethnic group who is recognized by members of the group as knowledgeable in the group's traditional history and cultural practices.

(cc) *Tribal lands* means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

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(dd) *Undertaking* means any project, activity, or program under the direct or indirect jurisdiction of a Federal agency that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. It includes any project, activity, or program that is carried out by or on behalf of the agency; is financed in whole or in part with Federal financial assistance; requires a Federal permit, license or approval, including agency authority to disapprove or veto the project, activity, or program; or is subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency. Undertakings include new and continuing projects, technical assistance pertaining to a specific site and related to the provision of Federal financial assistance, activities, or programs, renewals or reapprovals of such assistance, activities, or programs, and any of their elements not previously considered under Section 106.

Subpart B—Federal Procedures to Implement Section 106

§ 800.3 Qualifying procedures.

(a) *Purpose.* Section 110(a)(2) of the Act directs each Federal agency to establish a preservation program for the identification of historic properties, their evaluation and nomination to the National Register, and their protection. Section 110(a)(2)(E) of the Act requires that each Federal agency preservation program ensures that the agency's procedures for compliance with Section 106 are consistent with the Council's regulations; provides a process for the identification and evaluation of historic properties for listing in the National Register and for developing and implementing of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered; and provides for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with Section 3(c) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001–3013). This subpart sets forth standards for making agency procedures consistent with the Council's regulations and establishes the process by which the Council will evaluate such procedures. This subpart sets forth standards for evaluating

(b) *Definition of procedure.* For the purposes of this subpart, any formal statement of agency policy or process that deals with the implementation of Section 106 shall be considered a procedure. Included are formal regulations and other procedures that are agency-wide in scope or pertain to a specific program, organizational unit, or geographical area.

(c) *Substitution of agency procedures for Council regulations.* An agency procedure may substitute for the Council's regulations or any part thereof if it is formally approved by the Council membership as a counterpart procedure or executed through a Programmatic Agreement in accordance with § 800.5. Agency procedures to augment, explain, or an agency without Council membership approval, but the Council membership reserves the right to determine that such a procedure, or any part thereof, is inconsistent with the Council's regulations. If an agency develops a procedure that is not proposed as a counterpart procedure, the agency may follow such procedure to adapt the specific requirements of Subpart C of this part to its programs, provided that the agency's procedure is consistent with the Council's regulations. Agency procedures found by the Council membership to be inconsistent with the Council's regulations are invalid for compliance with Section 106 of the Act to the extent that they are found inconsistent.

§ 800.4 Standards for evaluating consistency.

(a) *Consistency with the Council's regulations.* The Council membership will consider agency procedures to be consistent with the Council's regulations for Section 106 when the agency procedures include the following provisions:

(1) Initiation of the Section 106 process early in the planning and development of the agency's undertakings, coordinated with specific reference to the particular requirements of each agency program, so that identification and evaluation of historic properties, assessment of effects, and resolution of adverse effects occurs before irreversible commitments are made to preferred alternatives that limit the consideration of options which can avoid or reduce such effects;

(2) Use of threshold terms, such as "undertaking" and "area of potential effects," that conform to the definitions and standards set forth in the Council's regulations;

(3) Provision for timely and informed consultation involving State Historic Preservation Officers, the Council, and interested parties in the identification and evaluation of historic properties, assessment of effects, and resolution of adverse effects;

(4) Adequate opportunity for State Historic Preservation Officers, the Council, interested parties, and the public to obtain information on proposed undertakings and to make their views known to Agency Officials so that those views can be effectively considered in the planning of undertakings;

(5) Access to and use of appropriate professional expertise at each step of the Section 106 process, consistent with standards and guidelines promulgated by the Secretary under Section 112 of the Act;

(6) Integration of planning and decisionmaking with normal agency administrative processes and other government-wide requirements to the maximum extent possible, including provisions for considering the needs of State, local, and tribal environmental and historic preservation laws and regulations, with appropriate timing of decision points and actions;

(7) Identification of appropriate officers of the agency to fulfill the duties of the Agency Official in the Section 106 process and proper delineation and communication of the roles and responsibilities of applicants, grantees, and permittees;

(8) Use of culturally appropriate means of communication with Native American and Native Hawaiian communities and individuals, with sensitivity to the confidentiality of information related to historic properties significant to those parties;

(9) A review and reporting system for Section 106 compliance that is integrated into established internal agency environmental audit systems to ensure adequate quality control and promote procedural efficiency;

(10) Provision for adequate safeguards against foreclosure and anticipatory demolition;

(11) Use of procedures that place no greater burden of consultation, coordination, or record keeping on State Historic Preservation Officers, Indian tribes, and Native Hawaiian organizations and interested parties than this part;

(12) Mechanisms to ensure that agency staff, cooperating agencies and organizations, contractors, applicants, permit holders, and others are trained in the use of the procedures; and

(13) Provision for State Historic Preservation Officers, Indian Tribes, and Native Hawaiian organizations, and potentially interested parties to be

notified of the procedures and kept informed about their implementation.

(b) *Consistency with Section 3(c) of Native American Graves Protection and Repatriation Act.* The Council membership will consider agency procedures for compliance with Section 106 to also meet the requirement that they provide for disposition of Native American cultural items in a manner consistent with Section 3(c) of the Native American Graves Protection and Repatriation Act when the agency procedures include the following provisions:

(1) A policy encouraging coordination between actions taken subject to Section 106 and the Native American Graves Protection and Repatriation Act compliance;

(2) Early consultation with appropriate Indian tribes or Native Hawaiian organizations when planning undertakings subject to Section 106 on Federal or tribal lands, which may result in the intentional excavation and removal of Native American cultural items subject to the Native American Graves Protection and Repatriation Act;

(3) Mechanisms to obtain and evidence the consent of the appropriate Indian tribe or Native Hawaiian organization to the intentional excavation and removal of such items from tribal lands when proposed as part of an undertaking or as a mitigation measure pursuant to Section 106; and

(4) Mechanisms to ensure appropriate disposition of any such items intentionally excavated and removed from Federal or tribal lands consistent with the ownership and right of control provisions in Sections 3(a) and 3(b) of the Native American Graves Protection and Repatriation Act.

§ 800.5 Counterpart procedures, programmatic agreements and exempted categories.

(a) *Counterpart procedures.* An agency, in consultation with the Council, may develop counterpart procedures to substitute for all of Subpart C of this part. To qualify as counterpart procedures the Council must determine that the procedures are consistent with the Council's regulations in accordance with § 800.4 and approve the procedures prior to publication in the **Federal Register**. Counterpart procedures substitute for the Council's regulations for the purposes of the agency's compliance with Section 106, except that where an Indian tribe has entered into an agreement with the Council pursuant to § 800.17, the agency shall follow tribal historic preservation regulations in lieu of the agency's procedures.

(b) *Programmatic Agreements.* At the request of the appropriate Agency Official, the Council and the Agency Official may negotiate a Programmatic Agreement to govern the implementation of a particular program.

(1) The negotiation shall involve State Historic Preservation Officers, Indian tribes and Native Hawaiian organizations, other Federal agencies, and other interested parties as appropriate.

(2) The Agency Official shall arrange for public notice and involvement appropriate to the subject matter and the scope of the program. Views from the public will be invited and considered during the negotiation of the Programmatic Agreement.

(3) A Programmatic Agreement shall meet the requirements for consistency with the Council's regulations as set forth in § 800.4. The Programmatic Agreement shall result in specific internal agency procedures that shall be issued in accordance with the agency's procedures and policies.

(4) Compliance with the procedures established by an approved Programmatic Agreement satisfies the agency's Section 106 responsibilities for all individual undertakings covered by the agreement until it expires or is terminated.

(5) The Agency Official shall publish notice of an approved Programmatic Agreement in the **Federal Register** and make the agency procedures implementing the Programmatic Agreement readily available to the Council, State Historic Preservation Officers, and the public.

(6) If the Council determines that the terms of a Programmatic Agreement are not carried out, or if such an agreement is terminated, the Agency Official shall comply with Subpart C of this part with regard to individual undertakings covered by the agreement.

(c) *Exempted categories*—(1) *Criteria for establishing.* When an agency has in place a preservation program meeting the requirements of Section 110(a) of the Act, or when an agency is developing a procedure to implement Section 106 in accordance with this subpart, an Agency Official may propose a category of agency undertakings that may be exempted from review under the provisions of this part, if the category meets all of the following criteria:

(i) The action would otherwise qualify as an undertaking in accordance with § 800.2(dd);

(ii) The potential effects of the undertakings within the category upon historic properties are foreseeable and do not by their nature have the potential to result in changes to the character or use of historic properties;

(iii) The agency's procedures establish the category of undertakings as a categorical exclusion under the National Environmental Policy Act, if applicable, consistent with the provisions of 40 CFR 1508.4;

(iv) The agency's procedures provide that the exempted category will not be applicable if the Agency Official, the SHPO, the Tribal Preservation Officer, if participating, or the Council determines that the normally exempted excluded undertaking may have an adverse effect.

(2) *Council review of proposed exempted categories.* The Council membership shall review a request for an exemption that is supported by documentation demonstrating that the criteria of § 800.5(c)(1) have been met. Unless further information is requested by the Council, it shall approve or reject the proposed exemption within 30 days of its submission. If the Council fails to respond within 30 days of a request for an exemption which is supported by adequate documentation, then the requested exemption becomes effective.

(3) *Effect.* Any undertaking that falls within the exempted category approved by the Council shall require no further review pursuant to this part, unless the Agency Official, Council, State Historic Preservation Officer, or Tribal Preservation Officer, if participating, determines that there are circumstances under which the normally excluded undertaking may have an adverse effect upon historic properties.

§ 800.6 Council review of agency procedures.

(a) *Initiation of review.* When requested by the appropriate officer of a Federal agency or the Secretary pursuant to Section 110(a)(2)(E) of the Act, the Council shall review a procedure for consistency with the Council's regulations. An agency request shall be accompanied by the full text of the procedure and the information necessary to evaluate the programs and organizational structure of the agency as they are affected by the procedure.

(1) The Council may request additional information necessary to complete its review of the procedure. The Council may also undertake review of an agency's procedures under this section upon its own initiative. The agency shall provide such procedures to the Council when requested.

(2) When reviewing a procedure to evaluate consistency with the Council's regulations, the Council shall also consult with the Secretary, and may provide the agency head and the

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Secretary with its views on the consistency of the procedure with the disposition requirements of Section 3(c) of the Native American Graves Protection and Repatriation Act.

(b) *Council finding of consistency.* The Council membership shall make a finding as to the consistency of the procedure with the Council's regulations based on the criteria set forth in § 800.4. The Council shall provide its finding in writing to the officer of the agency who made the request and the head of the agency.

(c) *Approval of counterpart procedures.* If the Council membership finds the procedure consistent, the agency may request the Council membership to approve the procedure as a counterpart procedure to substitute for the provisions of Subpart C of this part. Counterpart procedures must meet the requirements of §§ 800.4 and 800.5.

(d) *Council finding of inconsistency.* If the Council membership finds the procedure inconsistent with the Council's regulations, the Council shall notify the officer of the agency who made the request, the head of the agency, and the Secretary. The notice shall identify the specific provisions that are inconsistent and include any recommendations that the Council may have to make the procedure consistent and suitable for approval as a counterpart procedure.

(1) In the event that an agency procedure is found to be inconsistent with the Council's regulations, the agency shall follow the provisions of the Council's regulations with regard to the inconsistent provisions.

(2) The Council membership's decision as to the consistency of an agency's procedures shall be determinative, in accordance with Section 211 of the Act.

Subpart C—The Section 106 Process

§ 800.7 Initiation of the section 106 process.

The procedure in this subpart guides Agency Officials, State Historic Preservation Officers, and the Council in the conduct of the Section 106 process. Alternative methods of meeting Section 106 obligations are found in Subpart B of this part, "Federal Procedures to Implement Section 106," and Subpart D of this part, "Alternative Procedures." These include Counterpart Procedures, Programmatic Agreements, and Exempted Categories (§ 800.5) and Tribal Program Alternatives (§ 800.17).

(a) *Establish undertaking.* In accordance with the definition set forth in § 800.2(dd) and with consideration for any categorical exclusions previously established pursuant to § 800.11, the Agency Official shall decide whether an undertaking exists for the purposes of Section 106. If anyone disagrees with the Agency Official's decision and notifies the Council, the Council shall review the decision in accordance with § 800.12(a).

(b) *Coordinate with other reviews.* The Agency Official shall establish a schedule for carrying out the steps of the Section 106 process that considers the overall planning and approval schedule for the undertaking and effective coordination with reviews required under other authorities including, but not limited to, the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act and agency specific legislation, such as Section 4(f) of the Department of Transportation Act. Further information regarding coordination of the Section 106 process with those authorities is found in Subpart E of this part.

(c) *Plan for public participation.* The Agency Official shall commence planning for informing and involving the public in the conduct of the specific steps of the Section 106 process. The Agency Official should seek to identify parties who may be concerned about the effects on historic properties, and to determine the issues that may be involved in dealing with such properties. The Agency Official should consider the likely complexity of preservation issues and the possible extent of public controversy, the nature of the potential effects of the undertaking upon historic properties, the suitability of using established public involvement procedures used by the agency to comply with the National Environmental Policy Act and related authorities, and the overall planning and approval schedule for the undertaking. Where an Agency Official determines that it is appropriate, or the State Historic Preservation Officer or the Council so request, the Agency Official shall establish a specific plan for public involvement and make it available to the State Historic Preservation Officer, the Council, interested parties, and the public at large. The Agency Official must reconsider the needs for public participation as the Section 106 process proceeds.

(d) *Initiate consultation with the State Historic Preservation Officer.* The Agency Official shall determine the appropriate State Historic Preservation Officer or Officers to be involved in the Section 106 process and proceed to consult in accordance with §§ 800.8–800.10.

(1) If the State Historic Preservation Officer declines in writing to participate in the Section 106 process, the Agency Official shall consult with the Council, without the State Historic Preservation Officer, to complete the Section 106 process.

(2) If the State Historic Preservation Officer does not respond within 30 days of receipt to a written request for participation at any step in § 800.8, the Agency Official may assume that the State Historic Preservation Officer concurs in the Agency Official's finding. The Agency Official may consult with the Council to complete the Section 106 process, in lieu of further efforts to obtain a response from the State Historic Preservation Officer.

(3) If the State Historic Preservation Officer does not respond within 30 days of receipt to a written request for participation at any step in §§ 800.9 or 800.10, the Agency Official may not assume such action to indicate the concurrence of the State Historic Preservation Officer with the Agency Official's position. The Agency Official may consult with the Council to complete the Section 106 process, in lieu of further efforts to obtain a response from the State Historic Preservation Officer.

(e) *Identify Indian tribes and Native Hawaiian organizations.* As early as possible in planning the undertaking, the Agency Official shall initiate consultation with any Indian tribe or Native Hawaiian organization that the Agency Official has reason to believe might attach religious and cultural significance to historic properties in the area of potential effects, or cause such contact to be initiated by an applicant for Federal assistance or permission. Such consultation should be designed to identify the tribe's or organization's general concerns and interests regarding historic properties, and to seek the tribe's or organization's assistance in identifying historic properties and assessing effects on such properties. Consultation should be carried out in a manner consistent with § 800.1(e)(5) and continue in the same manner when identifying historic properties, assessing effects, and resolving adverse effects.

§ 800.8 Identification of historic properties.

(a) *Determine scope of identification efforts.* At the earliest feasible stage in planning any undertaking, coordinated with the preparation of any Environmental Assessment or Environmental Impact Statement under the National Environmental Policy Act, and in consultation with the State Historic Preservation Officer, the Agency Official shall:

(1) Define the area of potential effects, using the definition set forth in § 800.2(f);

(2) Review existing information on historic properties potentially affected by the undertaking, including any data concerning the likelihood that unidentified historic properties exist in the area of potential effects; and

(3) Seek information from local governments, Indian tribes, Native Hawaiian organizations, traditional cultural authorities, other organizations, and interested parties likely to have knowledge of, or concerns with, historic properties in the area and should seek to identify the issues that may be involved in dealing with historic properties in the planning process.

(b) *Locate historic properties.* Based on the information gathered under § 800.8(a) and the State Historic Preservation Officer's opinion on further actions to identify historic properties that may be affected, the Agency Official shall determine the need for further actions, such as field surveys, modeling, informant interviews and ethnographic studies, to identify historic properties. The Agency Official shall make a reasonable and good faith effort to identify historic properties that may be affected by the undertaking and gather sufficient information to evaluate the eligibility of these properties for the National Register. Efforts to identify historic properties shall follow applicable standards and guidelines established by the Secretary and conform to the agency's program to meet the requirements of Section 110(a)(2) of the Act.

(c) *Evaluate historic significance.*—(1) *Apply National Register Criteria.* In consultation with the State Historic Preservation Officer and following the Secretary's Standards and Guidelines for Evaluation, the Agency Official shall apply the National Register Criteria to properties that may be affected by the undertaking and that have not been previously evaluated for National Register eligibility. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require reevaluation of properties previously determined eligible or ineligible.

(2) *Agree that a property is eligible.* If the Agency Official and the State Historic Preservation Officer agree that a property is eligible under the criteria, the property shall be considered eligible for the National Register for Section 106 purposes.

(3) *Agree that a property is not eligible.* If the Agency Official and the State Historic Preservation Officer agree that the criteria are not met, the property shall be considered not eligible for the National Register for Section 106 purposes, subject to any appeal or petition under 36 CFR part 60.

(4) *Resolve questions on eligibility.* If the Agency Official and the State Historic Preservation Officer do not agree, or if the Council or the Secretary so request, the Agency Official shall obtain a determination of eligibility from the Secretary pursuant to the applicable National Park Service regulations.

(d) *Results of identification and evaluation.*—(1) *No historic properties found.* If the Agency Official determines in accordance with § 800.8 (a) through (c) that there are no historic properties within the area of potential effects, the Agency Official shall provide documentation of this finding as set forth in § 800.14(a) to the State Historic Preservation Officer. The Agency Official shall notify known interested parties and make the documentation available for public inspection. Unless the Council determines otherwise in accordance with § 800.12(a), the Agency Official has completed the Section 106 process.

(2) *Historic properties found.* If there are historic properties that the undertaking may affect, the Agency Official shall notify known interested parties and assess effects in accordance with § 800.9.

(e) *Council review of agency findings.* If anyone disagrees with the Agency Official's finding regarding the presence of historic properties, including the determination of the area of potential effects, the Agency Official's efforts to locate historic properties, or the evaluation of historic significance, and notifies the Council, the Council shall review the finding in accordance with § 800.12(a). The Council shall refer questions relating to National Register eligibility to the Secretary for resolution and the Agency Official shall provide relevant documentation to assist the Secretary's review.

§ 800.9 Assessment of effects.

(a) *Apply criteria of adverse effect.* In consultation with the State Historic Preservation Officer, the Agency Official shall apply the criteria of adverse effect set forth at § 800.9(a)(1) to historic properties within the area of potential effects, giving consideration to the views concerning such effects provided by interested parties and the public, if any. The Agency Official shall also consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties within the area of potential effects.

(1) *Criteria of adverse effect.* An undertaking is considered to have an adverse effect when it may alter characteristics of a historic property that may qualify the property for inclusion in the National Register in a manner that may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects may be direct or indirect. Direct effects are caused by the undertaking and occur at the same time and place. Indirect effects include those caused by the undertaking that are later in time or farther removed in distance, but are still reasonably foreseeable. For the purpose of determining adverse effect, alteration to features of a property's location, setting, or use may be relevant, depending on the property's significant characteristics and should be considered.

(2) *Examples of adverse effects.* Adverse effects on historic properties include, but are not limited to:

(i) Physical destruction, damage, or alteration of all or part of the property;

(ii) Isolation of the property, from or alteration of, the character of the property's setting when that character contributes to the property's qualification for the National Register;

(iii) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(iv) Neglect of a property which may result in its deterioration or destruction; and

(v) Transfer, lease, or sale of property under the jurisdiction or control of a Federal agency.

(b) *Request State Historic Preservation Officer concurrence.* If the Agency Official believes the effect will not be adverse or proposes to carry out the undertaking in accordance with a Conditional No Adverse Effect Agreement that meets the requirements of § 800.9(b)(2), the Agency Official shall submit the proposed finding or agreement with adequate documentation to the State Historic Preservation Officer for review and concurrence.

(1) *State Historic Preservation Officer response to a submitted finding of no adverse effect.* (i) If the State Historic Preservation Officer concurs with the Agency Official's finding, the Agency Official may proceed and shall carry out the undertaking in accordance with § 800.9(c)(1).

(ii) If the State Historic Preservation Officer fails to respond within 30 days of receipt of the finding, the Agency Official may proceed and shall carry out

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the undertaking in accordance with § 800.9(c) .

(iii) If the State Historic Preservation Officer objects and does not propose terms for a Conditional No Adverse Effect Agreement, or the Agency Official does not agree to execute such an agreement, than the effect shall be considered adverse. The State Historic Preservation Officer shall specify the its reasons for objecting to a finding of no adverse effect.

(2) *Conditional No Adverse Effect Agreement.* If the Agency Official proposes to carry out the undertaking in accordance with the requirements of paragraph (b)(2), or the State Historic Preservation Officer objects to the Agency Official's finding of no adverse effect but proposes terms for such agreement, the Agency Official and the State Historic Preservation Officer may execute a Conditional No Adverse Effect Agreement that meets the criteria of § 800.9(b)(2)(i).

(i) A Conditional No Adverse Effect Agreement may be executed when:

(A) The historic property is of significance only for its potential contribution to archeological, historical, or architectural research, is not of value for other public uses including onsite interpretation and adaptive use, and when its significance can be substantially preserved through the conduct of appropriate research or recordation, provided that such research or recordation is conducted in accordance with a plan that meets applicable professional standards and guidelines and has been reviewed by the State Historic Preservation Officer prior to implementation of the plan; or

(B) The undertaking is limited to rehabilitation of buildings and structures and will be conducted in a manner that preserves the historical and architectural value of affected historic property in accordance with plans and specifications that conform to the Secretary's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" and that have been reviewed by the State Historic Preservation Officer prior to implementation; or

(C) The undertaking is limited to the transfer, lease, or sale of a historic property, and adequate restrictions or conditions, legally enforceable within the State, are included to ensure preservation of the property's significant historic features; or

(D) The Agency Official agrees to modify the undertaking in such a way as to avoid any adverse effects; or

(E) The undertaking meets other conditions specified by the Council in accordance with a notice that is published in the **Federal Register**.

(ii) Where the potential exists for the discovery of human remains or cultural items, as defined in the Native American Graves Protection and Repatriation Act, during the implementation of the undertaking, the Agency Official shall consult with Indian tribes, Native Hawaiian organizations, or other concerned descendant individuals and communities in developing the Conditional No Adverse Effect Agreement.

(A) If it is known that human remains or cultural items as defined in the Native American Graves Protection and Repatriation Act are present, a Conditional No Adverse Effect Agreement may not be executed.

(B) If it is not known that human remains or cultural items as defined in the Native American Graves Protection and Repatriation Act are present, then a Conditional No Adverse Effect Agreement may be executed, but shall contain adequate provisions for consultation with Indian tribes, Native Hawaiian organizations, or other concerned descendant individuals and communities in the event of discovery.

(iii) The Agency Official and the State Historic Preservation Officer shall execute a Conditional No Adverse Effect Agreement that specifies the conditions which qualify the undertaking for such treatment. The Agency Official shall file the Conditional No Adverse Effect Agreement with the Council prior to approval of the undertaking and carry out the undertaking in accordance with the agreement.

(iv) Unless anyone requests, the Council shall not review individual Conditional No Adverse Effect Agreements, but may elect to review specific ones at its discretion in accordance with § 800.12(e)(1) .

(v) For the purposes of this part, the Conditional No Adverse Effect Agreement shall be considered a Memorandum of Agreement in accordance with § 800.10(d) and shall govern the undertaking and all of its parts in accordance with Section 110(l) of the Act. Effects covered by the Conditional No Adverse Effect Agreement shall be considered not to be adverse under this part.

(c) *Results of assessment.*—(1) *No adverse effect found.* A finding of no adverse effect in which the State Historic Preservation Officer has concurred, failed to respond, or has executed a Conditional No Adverse Effect Agreement in accordance with § 800.9(b) shall be final, unless the Council determines otherwise in accordance with § 800.12(a). Implementation of the undertaking in accordance with the finding as documented, or in accordance with a Conditional No Adverse Effect Agreement, evidences that the Agency Official has complied with Section 106 and this part. The Agency Official shall maintain a record of the finding or the Conditional No Adverse Effect Agreement, notify all known interested parties, and make the record available for public review before approving the undertaking. Failure to carry out the undertaking in accordance with a finding of no adverse effect or a Conditional No Adverse Effect Agreement requires the Agency Official to reopen the Section 106 process.

(2) *Adverse effect found.* If an adverse effect is found in accordance with this section, the Agency Official shall consult further to resolve the adverse effect pursuant to § 800.10.

(d) *Council review of findings.* If anyone requests, the Council shall review in accordance with § 800.12(a) a finding made by an Agency Official under § 800.9(a) or (b).

§ 800.10 Resolution of adverse effects.

(a) *Determine method.* If an adverse effect on historic properties is found, the Agency Official shall consult further with the State Historic Preservation Officer to determine the appropriate method for resolving the adverse effect of the undertaking.

(1) *Resolution with the State Historic Preservation Officer.* If the undertaking and its effects on historic properties do not involve National Historic Landmarks, the preservation issues are not complex, and there is no public controversy over preservation issues, the Agency Official may follow § 800.10(c)(1).

(2) *Resolution with the State Historic Preservation Officer and the Council.* If the undertaking and its effects on historic properties involve National Historic Landmarks, the preservation issues are complex, or there is public controversy over preservation issues, the Agency Official shall follow § 800.10(c)(2).

(b) *Initiate negotiation.* The Agency Official shall use the selected method to develop and evaluate acceptable alternatives or modifications to the undertaking, including avoiding and minimizing adverse effects on historic properties. In consultation with the State Historic Preservation Officer, the Agency Official shall initiate negotiation by involving interested parties, providing documentation, and involving the public.

(1) *Involve interested parties.* The Agency Official shall notify interested parties and invite them to participate in the negotiation as follows:

(i) An Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties within the area of potential effects must be invited to participate in any negotiation.

(ii) An Indian tribe with jurisdiction over tribal lands affected by the undertaking must be invited to participate in any negotiation.

(iii) The Agency Official shall notify the following interested parties who may participate in the negotiation by notifying the Agency Official:

(A) The head of a local government when the undertaking may affect historic properties within the local government's jurisdiction;

(B) Units of local government with an interest in the undertaking and its effects on historic properties;

(C) Applicants for, or holders of, grants, permits, or licenses;

(D) Owners of affected properties, provided that participation may be limited to organizations representing the interests of affected property owners if the Council determines it is necessary;

(E) Traditional cultural authorities and traditional communities with an interest in the undertaking and its effects on historic properties of traditional cultural and religious importance; and

(F) Other interested parties as jointly determined appropriate by the Agency Official, the State Historic Preservation Officer, and the Council, if participating.

(2) *Provide documentation.* The Agency Official shall provide each of the parties to the negotiation with the documentation set forth in § 800.14(c) and such other documentation as may be developed in the course of negotiation to resolve adverse effects.

(3) *Involve the public.* The Agency Official shall provide information to the public and an adequate opportunity for members of the public to express their views on resolving adverse effects of the undertaking. The Agency Official shall use appropriate mechanisms to ensure that the full range of the public's views is represented in the negotiation. The Agency Official, the State Historic Preservation Officer, or the Council may meet with members of the public or conduct a public information meeting for this purpose.

(c) *Resolve adverse effects.*—(1) *Resolution with the State Historic Preservation Officer.* (i) When the Agency Official determines that the nature of the undertaking and its effects do not warrant Council participation in the consultation in accordance with § 800.10(a)(2), the Agency Official shall notify the Council by providing the documentation set forth in § 800.14(c).

(ii) The Council shall notify the Agency Official of its intention to participate in the negotiation within 30 days of receiving the notice. If the Council elects to participate, the Agency Official shall proceed in accordance with § 800.10(c)(2). Failure of the Council to notify the Agency Official within the 30 day time period shall not preclude the Council joining the negotiation process at any later point.

(iii) If the Council does not elect to participate, the Agency Official shall negotiate with the State Historic Preservation Officer and interested parties to seek ways to avoid or reduce the adverse effects by negotiating acceptable alternatives or modifications to the undertaking as proposed.

(iv) If the Agency Official and the State Historic Preservation Officer agree on how the adverse effects will be resolved, they shall execute a Memorandum of Agreement. The Agency Official shall submit the Memorandum of Agreement to the Council with the documentation set forth in § 800.14(d) for review.

(v) The Council shall have 30 days from the receipt of an adequately documented Memorandum of Agreement to review it. Unless the Council objects to the Memorandum of Agreement before this review period ends, the Memorandum of Agreement shall become final. The Council may object when it determines that further negotiation is necessary in accordance with § 800.10(c)(2) because the Agency Official failed to notify the Council pursuant to § 800.10(c)(1)(i); interested parties were not adequately involved; the Memorandum of Agreement contains serious technical or substantive flaws; or public controversy exists.

(vi) If the Agency Official and the State Historic Preservation Officer are unable to agree on the terms of a Memorandum of Agreement, the Agency Official or the State Historic Preservation Officer shall request the Council to join the consultation. Consultation shall proceed in accordance with § 800.10(c)(2).

(2) *Resolution with Council participation.* (i) When the Agency Official determines that Council involvement is warranted in accordance with § 800.10(a)(2), when the Council notifies the Agency Official in accordance with § 800.10(c)(1)(ii), or when the Agency Official, the State Historic Preservation Officer, or the Council so requests, the Agency Official shall consult with the State Historic Preservation Officer and the Council to avoid or reduce the adverse effects by negotiating acceptable alternatives or modifications to the undertaking as proposed. The Agency Official shall invite interested parties to participate in the negotiation in accordance with § 800.10(b)(1). If the Agency Official, the State Historic Preservation Officer, and the Council agree on how the adverse effects will be resolved, they shall execute a Memorandum of Agreement.

(ii) When negotiation is being conducted in accordance with § 800.10(c)(1), the Agency Official, the State Historic Preservation Officer, or any interested party may request the Council to participate. The Council shall determine if it will participate and notify the requestor of its decision within 30 days of the request. The Council may participate at any point in the Section 106 process without such a request. If the Council decides to participate, negotiation shall be conducted in accordance with § 800.10(c)(2).

(d) *Memorandum of Agreement*—(1) *Signatories.* The signatories have the sole authority to execute, amend, or terminate the agreement. The Agency Official and the State Historic Preservation Officer are the signatories to a Memorandum of Agreement executed pursuant to § 800.10(c)(1). The Agency Official, the State Historic Preservation Officer, and the Council are the signatories to a Memorandum of Agreement executed pursuant to § 800.10(c)(2). When an Indian tribe or Native Hawaiian organization has participated in the negotiation, the Agency Official shall invite the governing body of the Indian tribe or the Native Hawaiian organization to concur in any Memorandum of Agreement. Other interested parties may be invited by the signatories to concur in the agreement, but their concurrence is not necessary for the Memorandum of Agreement to take effect. When exercising its authorities under § 800.10(c)(1)(v), the Council will consider any objection to execution of such an agreement raised by an Indian tribe, Native Hawaiian organization, or other interested party.

(2) *Use of a Memorandum of Agreement for special situations.* (i) A Memorandum of Agreement may govern more than one individual undertaking, a large or complex project, or certain situations that do not fall within the normal process of individual project review. These include situations:

(A) When effects on historic properties are similar and repetitive or are multi-State or regional in scope;

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(B) When effects on historic properties cannot be fully determined prior to approval;

(C) When non-Federal parties are delegated major decisionmaking responsibilities; or

(D) Where routine management activities are undertaken at Federal installations, facilities, or other land-management units.

(ii) Such a Memorandum of Agreement shall be developed in the same manner as other Memoranda of Agreement under § 800.10, except that if negotiation pertains to a large project involving several undertakings and the parties fail to reach agreement, then the Agency Official shall Comply with §§ 800.8–800.10 for each individual undertaking.

(3) *Duration and reports on implementation.* Any Memorandum of Agreement completed in accordance with this part shall include a provision for monitoring of, and reporting on, the implementation of the terms of the agreement. Reports shall be provided to the State Historic Preservation Officer and the Council, and be made available to other interested parties and for public inspection. A Memorandum of Agreement shall also include provisions for termination or reconsideration of terms if the undertaking has not been implemented within a specified period of time.

(4) *Effect.* A Memorandum of Agreement that has been executed pursuant to this part evidences the Agency Official's compliance with Section 106 and this part and shall govern the undertaking and all of its parts, in accordance with Section 110(l) of the Act. The Agency Official must conform to and carry out the terms of the Memorandum of Agreement to satisfy the requirements of Section 106 and this part.

(5) *Amendments.* The Agency Official, the State Historic Preservation Officer, and the Council may agree to amend a Memorandum of Agreement executed in accordance with § 800.10(c)(2) and to execute an amended Memorandum of Agreement. The Agency Official and the State Historic Preservation Officer may agree to amend a Memorandum of Agreement executed in accordance with § 800.10(c)(1) and execute an amended Memorandum of Agreement, which shall be filed with the Council and take effect unless the Council objects within 30 days of receipt. Failure to agree on amendments leaves the existing Memorandum of Agreement in effect, provided that the Council may terminate any Memorandum of Agreement and comment to the head of the agency on the undertaking in accordance with § 800.11(b).

(6) *Termination.* If one of the signatories determines that the terms of a Memorandum of Agreement cannot be carried out, the Agency Official, the State Historic Preservation Officer and the Council, where appropriate, shall consult to seek amendment of the agreement in accordance with § 800.10(c)(5). If the Memorandum of Agreement is not amended, any of the signatories may terminate the agreement. In that event, the Agency Official shall seek the comments of the Council in accordance with § 800.11(b).

§ 800.11 Failure to resolve adverse effects.

(a) *Termination of negotiation*—(1) *Finding negotiation unproductive.* After participating in consultation to avoid or minimize the adverse effects by negotiating acceptable alternatives or modifications to the undertaking as proposed, the Agency Official, the State Historic Preservation Officer, or the Council may determine that further negotiation will not be productive and terminate negotiation. If negotiation is terminated, the head of the agency or an Assistant Secretary or an officer having major department-wide or agency-wide responsibilities shall then request the Council's comments.

(2) *Documentation requirements.* The official requesting Council comment shall submit the documentation set forth in § 800.14(e) with the request for Council comments and notify other participants in the consultation of the request.

(b) *Comments by the Council*—(1) *Preparation.* The Council shall prepare its comments with an adequate opportunity for the Agency Official, the State Historic Preservation Officer, interested parties, and the public to provide their views on the adverse effects of the undertaking and offer any alternatives or modifications to resolve those effects. The Agency Official shall make a good faith effort to provide additional information available concerning the undertaking, its effects, and possible alternatives or modifications, and shall assist the Council in arranging an onsite inspection and an opportunity for public participation when requested by the Council. The Agency Official shall assist the Council to ensure that any Indian tribe or Native Hawaiian organization is afforded a reasonable opportunity to make its views known during the formulation of Council comments.

(2) *Timing.* The Council shall transmit its comments within 45 days of receipt of a properly documented request from the head of the agency, unless otherwise agreed to by the Agency Official.

(3) *Transmittal.* The Council shall provide its comments to the head of the agency requesting comment with copies to the State Historic Preservation Officer, interested parties, and others as appropriate.

(4) *Response to Council comment.* When the Council has commented pursuant to this paragraph (b), the head of the agency shall consider the Council's comments in reaching a final decision on the proposed undertaking. The head of the agency may not delegate his or her responsibilities pursuant to this paragraph. The head of the agency shall document any decision made pursuant to Section 106 by:

(i) Preparing a record of the decision and the rationale for the decision made by the head of the agency, evidencing the consideration given to the Council's comments;

(ii) Providing that record to the Council prior to the approval of the undertaking;

(iii) Notifying known interested parties of the decision;

(iv) Providing a copy of the record of decision to all interested parties who participated in the negotiation process; and

(v) Notifying the public and making the record available for public inspection.

§ 800.12 Monitoring and compliance.

(a) *Review of Agency Official findings*—(1) *Timeliness.* The Council shall consider a request for review of an Agency Official's finding under this part at any time, regardless of the status of the undertaking in the planning and approval process. The Council may determine that a request for review is not timely and decline to consider the substance of the request. The Council shall deem a request for review timely if it determines that an opportunity exists to influence the effects of an undertaking on historic properties, provided that such a determination shall not preclude the Council from subsequently determining that an agency has foreclosed the Council's opportunity to comment pursuant to § 800.12(b).

(2) *Council review.* The Council shall review the substance of a request for review and provide its conclusions to the Agency Official, the State Historic Preservation Officer, and the requesting party within 30 days. The Council shall reach a determination on the finding that is presented for review and may also advise the Agency Official of appropriate steps to take in light of the Council's determination.

(3) *Agency Official responsibilities.* The Agency Official shall take all measures to avoid adverse effects to historic properties while the Council is reviewing the finding. The Agency Official is not required to delay approval of the undertaking prior to a request for review being filed or during the Council's review of such request, but should recognize that a Council determination may require the Agency Official to reconsider actions previously taken in the Section 106 process. In response to the Council's determination, the Agency Official shall take the appropriate steps specified in this part.

(4) *Council initiation of review.* The Council may review any Agency Official finding made under this part on its own initiative. Such review shall proceed as though a request to the Council has been made.

(5) *Effect of the Council's determination.* In accordance with Section 211 of the Act, the Council's determination on the finding shall be conclusive for the purposes of Section 106 and this part.

(b) *Foreclosure of the Council's opportunity to comment.*—(1) *Notice to Agency Official.* The Council membership may inform the head of an agency that an Agency Official has taken an action that has precluded the Agency Official from completing the requirements of Section 106 in accordance with this part and thereby foreclosed the Council's opportunity to comment. The Council shall notify the Agency Official that it is considering a finding of foreclosure and afford the Agency Official 30 days to provide information for the Council's consideration as to whether the agency has foreclosed the Council's opportunity to comment.

(2) *Consideration of foreclosure.* After providing notice to the Agency Official, the Council membership shall make a final determination as to foreclosure. If the Council membership determines that the Agency Official has foreclosed the Council's opportunity to comment, the Council shall transmit its determination to the head of the agency as a Notice of Violation.

(c) *Anticipatory demolition.* Section 110(k) of the Act specifies that an agency shall not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of Section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or to an applicant who allowed such significant adverse effect to occur and had the legal power to prevent its occurrence. If, after consultation with the Council, the agency determines that circumstances justify granting such assistance, despite the adverse effect created or permitted by the applicant, the agency may allow the grant.

(1) *Information for the Council.* If the Council is apprised of or has reason to believe that anticipatory demolition has occurred, it shall request information from the Agency Official regarding the applicant's action, including, but not limited to:

(i) The actual effect on historic properties, evaluated in the context of the Criteria of Adverse Effect set forth in § 800.9(a)(1);

(ii) Any actions, if any, taken by the Agency Official with respect to the applicant, the undertaking, or the historic properties;

(iii) Any notification given to the applicant regarding the Section 106 process and any other information relating to the applicant's knowledge of the requirements of Section 106 and this part;

(iv) The degree of control of the applicant over the action causing adverse effects;

(v) Any other information bearing on the applicant's intent regarding the action causing the adverse effects; and

(vi) Any comments provided by the State Historic Preservation Officer and any interested parties.

(2) *Council views on anticipatory demolition.* Based on the information provided by the Agency Official and any other information provided to the Council, the Council shall advise the Agency Official of its views regarding whether the applicant has engaged in anticipatory demolition.

(3) *Agency determination.* The Agency Official shall consider the views of the Council in reaching its determination regarding anticipatory demolition. The Agency Official may independently determine that anticipatory demolition has occurred, without seeking the views of the Council.

(4) *Denial of assistance.* If the Agency Official determines that anticipatory demolition has occurred, the Agency Official shall not grant a loan, loan guarantee, permit, license, or other assistance to the applicant, unless after consultation with the Council, the Agency Official determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. In that case, the Agency Official may grant the assistance.

(5) *Consideration of circumstances justifying granting assistance.* When consulting with the Council regarding circumstances that would justify granting the assistance, the Agency Official shall provide the Council with:

(i) The basis for its determination that anticipatory demolition had occurred;

(ii) The Agency Official's assessment of the severity of the damage to historic properties, the significance of the historic properties, the opportunities for mitigation, and the availability of other remedial actions;

(iii) Any information regarding mitigating circumstances or other justification for granting the assistance; and

(iv) Any views or information provided to the Agency Official by the applicant.

(6) *Agency determination regarding justifying circumstances.* The Council shall provide the Agency Official with its written views regarding justifying circumstances. If, after consulting with the Council, the Agency Official determines that circumstances justify granting the assistance, despite the adverse effect, the Agency Official shall notify the Council, the State Historic Preservation Officer and interested parties of its decision and provide documentation on the basis of its finding.

(7) *Review of undertaking.* If the Agency Official decides to grant the assistance, the Agency Official shall complete the Section 106 process for the undertaking in accordance with §§ 800.7 through 800.11.

(d) *Notice of Violation.*—(1) *Basis for notice.* If the Council membership determines that the actions of an Agency Official constitute a violation of Section 106 of the Act or this part, the Council may issue a Notice of Violation to the Agency Official and the head of the agency advising that the agency has failed to meet the requirements of Federal law. The Council membership may determine that a violation of Section 106 has occurred under the following circumstances:

(i) An Agency Official has proceeded with the planning and approval of an undertaking without adequate compliance with Section 106 of the Act and this part;

(ii) An Agency Official or an applicant has failed to carry out the terms of a no adverse effect determination, a Conditional No Adverse Effect Agreement, a Memorandum of Agreement, a Programmatic Agreement, or a counterpart regulation, or failed to comply with a process or requirement originating under such document;

(iii) An Agency Official has taken or sanctioned an action that has resulted in adverse effects to a historic property, including demolition by neglect, prior

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to completion of the Section 106 process; or

(iv) An Agency Official has foreclosed the Council's opportunity to comment.

(2) *Procedure.* The Council shall issue a preliminary Notice of Violation to an Agency Official when it believes that a violation of Section 106 or this part has occurred or is about to occur. The preliminary Notice of Violation shall apprise the Agency Official of the basis for the Council's action and request the views of the Agency Official on the issue. The Council membership may, at its discretion, decide to issue a final Notice of Violation to the Agency Official. The final Notice of Violation shall indicate the specific reasons for the Council membership's finding and shall also be provided to the head of the agency.

(3) *Effect.* A Notice of Violation issued by the Council constitutes the opinion of the Council membership that an Agency Official has acted in violation of Section 106 of the Act and this part.

(e) *Reporting.*—(1) *Reports of agency performance.* The Council may review the performance of agencies and other parties under this part and report its findings to the agency Federal Preservation Officer, the head of the agency, the Office of Management and Budget, the Department of Justice, and the Congress, as it deems appropriate.

(2) *Remedial actions.* When the Council determines that an agency has failed to meet its Section 106 obligations in a manner consistent with this part, the Council may notify the appropriate Agency Official that the Council will participate in specific steps of the Section 106 process for review of the agency's undertakings.

§ 800.13 Special requirements for protecting National Historic Landmarks.

Section 110(f) of the Act requires that the Agency Official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in §§ 800.7 through 800.11 and give special consideration to protecting National Historic Landmarks as follows:

(a) *Resolution of adverse effects.* Any negotiation to resolve adverse effects conducted under § 800.10 shall include the Council;

(b) *Involvement of the Secretary.* The Council shall notify the Secretary of negotiations involving National Historic Landmarks and may request a report from the Secretary under Section 213 of the Act to assist in the negotiation; and

(c) *Report of outcome.* The Council shall report the outcome of the Section 106 process, including its comments or any Memoranda of Agreement, to the President, the Congress, the Secretary, and the head of the agency responsible for the undertaking.

§ 800.14 Documentation requirements.

(a) *Finding of no historic properties.* The required documentation is:

(1) A description of the undertaking, including photographs, maps, and drawings, as necessary;

(2) A description of the undertaking's area of potential effects;

(3) A description of the efforts used to identify historic properties; and

(4) The basis for determining that no historic properties are present.

(b) *Finding of no adverse effect.* The purpose of this documentation is to provide sufficient information to explain how the Agency Official reached the finding of no adverse effect, along with the basis for any Conditional No Adverse Effect Agreement. The required documentation is:

(1) A description of the undertaking and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of historic properties that may be affected by the undertaking;

(3) A description of the efforts used to identify historic properties;

(4) A statement of how and why the Criteria of Adverse Effect were found inapplicable; and

(5) The views of affected local governments, Indian tribes, Native Hawaiian organizations, Federal agencies, and the public, if any were provided, as well as a description of the means employed to solicit those views.

(c) *Finding of adverse effect and notification to the Council of resolution with the State Historic Preservation Officer.* The required documentation is:

(1) A description of the undertaking and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of the affected historic properties, with information on the significant characteristics of each property;

(3) A description of the efforts to identify historic properties;

(4) A description of the undertaking's effects on historic properties; and

(5) A description of anticipated public interest and measures to ensure public involvement.

(d) *Memorandum of Agreement.* When a memorandum is submitted to the Council for review in accordance with § 800.10(c)(1)(iii), the documentation, in addition to that specified in § 800.14(c), shall also include a description and evaluation of any proposed mitigation measures or alternatives that were considered to avoid or minimize the undertaking's effects and a summary of the views of any interested parties and the public.

(e) *Requests for comment when negotiation is terminated.* The purpose of this documentation is to provide the Council with sufficient information to make an independent review of the undertaking's effects on historic properties as the basis for informed and meaningful comments to the Agency Official. The required documentation is:

(1) A description of the undertaking, with photographs, maps, and drawings, as necessary;

(2) A description of the efforts to identify historic properties;

(3) A description of the affected historic properties, with information on the significant characteristics of each property;

(4) A description of the effects of the undertaking on historic properties and the basis for the determinations;

(5) A description and evaluation of any alternatives or mitigation measures that the Agency Official proposes to resolve the undertaking's adverse effects;

(6) A description of any alternatives or mitigation measures that were considered but not chosen, and the reasons for their rejection;

(7) Documentation of consultation with the State Historic Preservation Officer regarding the identification and evaluation of historic properties, assessment of effect, and any consideration of alternatives or mitigation measures;

(8) A description of the Agency Official's efforts to obtain and consider the views of affected local governments, Indian tribes, Native Hawaiian organizations, and other interested parties;

(9) The planning and approval schedule for the undertaking;

(10) Copies or summaries of any views submitted to the Agency Official concerning the effects of the undertaking on historic properties and alternatives to reduce or avoid those effects; and

(11) Any additional available information specifically requested by the Council.

(f) *Adequacy of documentation.* The Council shall determine the adequacy of documentation prepared to meet the requirements of this part. If the Council determines that documentation is inadequate, the running of the time

period specified at the relevant section of this part shall be suspended until adequate documentation is submitted.

§ 800.15 Properties discovered after approval or during implementation of an undertaking.

(a) *Planning for discoveries.* When the Agency Official's identification efforts in accordance with § 800.8 indicate that historic properties are likely to be discovered during implementation of an undertaking, the Agency Official is encouraged to develop a plan for the resolution of any adverse effects upon such properties if discovered. The plan should be incorporated into any Memorandum of Agreement executed for the undertaking.

(b) *When properties are discovered*—(1) If a plan exists. When an Agency Official has completed the Section 106 process and prepared a plan in accordance with § 800.15(a), the Agency Official shall satisfy the requirements of Section 106 concerning properties discovered during implementation of an undertaking by following the plan.

(2) *If no plan exists.* When an Agency Official has completed the Section 106 process without preparing a plan in accordance with § 800.15(a) and finds after beginning to carry out the undertaking that the undertaking will have an adverse effect upon a previously unidentified historic property, or adversely affect a known historic property in an unanticipated manner, the Agency Official shall resolve the adverse effects by:

(i) Consulting pursuant to § 800.10;

(ii) Consulting pursuant to § 800.15(c); or

(iii) Complying with the Archeological and Historic Preservation Act, 16 U.S.C. 469(a)–(c) and implementing regulations, instead of this part, if the property is principally of archeological significance and subject to the requirements of that Act. When the Agency Official elects to follow this paragraph (b)(2)(iii), the Agency Official shall consult with the State Historic Preservation Officer on the actions proposed and provide the Council with a report on the actions after they are completed.

(c) *Expedited consultation.* When an Agency Official elects to follow this paragraph (c), the Agency Official shall notify the State Historic Preservation Officer and the Council at the earliest possible time, describe the actions proposed to resolve the adverse effects, and request the views of the Council and the State Historic Preservation Officer on the proposed actions. The Council and the State Historic Preservation Officer shall provide an interim response to the Agency Official within 48 hours of the request and a final response to the Agency Official within 30 days of the request.

(d) *Other considerations*—(1) *Eligibility of properties.* When a newly discovered property has not previously been included in or determined eligible for the National Register, the Agency Official may assume the property to be eligible for purposes of Section 106.

(2) *Discoveries on tribal or Federal land.* When a discovery occurs and compliance with this section is necessary on tribal or Federal lands, the Agency Official shall consult with the Indian tribe or other appropriate parties during implementation of this section's requirements and comply with the Native American Graves Protection and Repatriation Act as required.

(3) *Agency responsibilities during resolution of issues involving newly discovered properties.* Section 106 and this part do not require the Agency Official to stop work on the undertaking. Depending on the nature of the property and the undertaking's adverse effects on it, the Agency Official shall make reasonable efforts to avoid or minimize harm to the property until the requirements of this section are met. If the provisions of Native American Graves Protection and Repatriation Act are applicable, the Agency Official must comply with requirements of the Native American Graves Protection and Repatriation Act and may be required to cease the activity in the area of the discovery.

Subpart D—Alternative Procedures

§ 800.16 Federal agency program alternatives.

(a) *Counterpart procedures.* An agency may develop counterpart procedures to substitute for Subpart B of this part. Sections 800.4 and 800.5(a) govern the development of counterpart procedures.

(b) *Programmatic Agreements.* A Programmatic Agreement may be used to fulfill an agency's Section 106 responsibilities for certain activities or programs that would otherwise require numerous individual requests for comments. Programmatic Agreements for programs shall be developed in accordance with § 800.5(b).

§ 800.17 Tribal program alternatives.

(a) *Application.* An Indian tribe may enter into an agreement with the Council to substitute tribal historic preservation regulations for the Council's regulations for the review of undertakings on tribal lands.

(b) *Request for Council approval.* An Indian tribe shall request the Council to approve the substitution of tribal historic preservation regulations. The request shall be accompanied by a copy of the tribal regulations, a list of potential interested parties and the Indian tribe's comparison of the consideration afforded historic properties under its regulations and the Council's regulations.

(c) *Consultation.* The Council shall consult with the requesting Indian tribe, the appropriate State Historic Preservation Officer or Officers, the Secretary and any interested parties who so request. The requesting Indian tribe shall provide the information submitted in accordance with § 800.17(b) to interested parties as determined by the Council. The Council shall provide notice to Federal agencies and consider any comments received.

(d) *Approval.* If the Council determines that the tribal historic preservation regulations will afford historic properties consideration equivalent to that afforded by the Council's regulations, the Council shall execute an agreement with the requesting Indian tribe to that effect.

(e) *Effect.* After an agreement is executed, an Agency Official with jurisdiction over an undertaking carried out on tribal lands covered by the agreement shall follow the approved tribal historic preservation regulations in lieu of the Council's regulations.

(f) *Amendment and termination.* Either the Indian tribe or the Council may seek an amendment to the agreement, which shall take effect upon agreement of both parties. The agreement may be terminated at any time by the Indian tribe and by the Council after it finds that the operation of the tribal regulations do not afford historic properties consideration equivalent to the Council's regulations.

§ 800.18 Emergency situations.

(a) *Counterpart procedures.* Prior to a disaster or emergency, the Agency Official should develop a plan for taking historic properties into account during operations which respond to a disaster or emergency declared by the President or Agency Official. At the request of the Agency Official, the Council will assist in the development of such a plan. The plan shall be submitted to the Council for approval and, if approved, shall govern the agency's historic preservation responsibilities during any disaster or emergency.

(b) *Alternatives to counterpart procedures.* When an Agency Official proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, and the agency has not

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developed counterpart procedures pursuant to paragraph (a) of this section, the Agency Official may satisfy Section 106 by:

(1) Following a State Disaster Plan which contains a historic preservation component that has been approved by the Council; or

(2) If there is no State Disaster Plan which contains a historic preservation component that has been approved by the Council and if the Agency Official determines that circumstances permit, notifying the Council and the appropriate State Historic Preservation Officer prior to the undertaking and affording them an opportunity to comment within seven days of notification.

(c) *Local governments statutorily delegated responsibility for Section 106 compliance.* For the purposes of activities assisted under Title I of the Housing and Community Development Act of 1974, as amended, or any other statute which delegates Section 106 compliance responsibilities, §§ 800.18 (a) and (b) also apply to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or State Historic Preservation Officer objects within 7 days, the Agency Official shall comply with §§ 800.7 through 800.10.

(d) *Applicability.* Paragraph (b)(2) of this section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been initially and formally declared by the President. An agency may seek renewals of the 30 day period by requesting a renewal from the Council prior to the completion of the 30 days.

Subpart E—Coordination With Other Authorities.

§ 800.19 Coordination with other authorities.

(a) *Purpose and scope.* The requirements of Section 106 of the National Historic Preservation Act are independent of other environmental review and protection, historic preservation, and resource management authorities. As such, compliance with one does not substitute for compliance with the other. To promote program effectiveness and efficiency, Agency Officials are encouraged to coordinate and, where appropriate, integrate the requirements of Section 106 and this part with the requirements of other environmental review and protection, historic preservation, and resource management authorities to the maximum extent feasible. Neither Section 106 or this part require that Federal agencies comply with these related authorities, nor do they supersede any regulations that have been issued to govern any related authorities.

(b) *Related authorities.* Authorities that should be considered for coordination with Section 106 compliance include, but are not limited to, the following:

(1) Other authorities that require agencies to identify, evaluate, and consider effects on historic properties through planning processes (e.g., National Environmental Policy Act; American Indian Religious Freedom Act; Federal Land Policy and Management Act; National Forest Management Act; and Department of Transportation Act, Section 4(f)); and

(2) Other authorities that require agencies to establish mechanisms for protection and disposition of historic properties (e.g., Native American Graves Protection and Repatriation Act; Archeological Resources Protection Act; Abandoned Shipwrecks Act; and Archeological and Historic Preservation Act).

(c) *Coordination with specific authorities.*—(1) *National Environmental Policy Act (NEPA).*—The Agency Official should coordinate the identification, evaluation, assessment, and resolution of adverse effect steps of Subpart C of this part with NEPA requirements, so that determinations reached under the Section 106 process are accurately reflected in the Agency Official's decision- making process for the proposed undertaking.

(i) During the preparation of preliminary environmental investigations and studies (and the scoping process where applicable), the Agency Official should ensure that information is explicitly sought on the presence of historic properties and the nature of any effects upon them. This information is sought to be consistent with the spirit of NEPA to identify, avoid, minimize, and lastly to mitigate unavoidable adverse environmental effects.

(ii) The Agency Official is encouraged to coordinate the public participation requirements of the EIS process with those of the Section 106 process to eliminate duplication and maximize public knowledge and understanding of the undertaking and its effects upon historic properties, provided that the use of the NEPA public participation process shall not abrogate the public involvement rights afforded in the Council's regulations.

(iii) An undertaking considered to be categorically excluded from review under NEPA in accordance with agency procedures may require review under Section 106 (See § 800.5(c)(3)).

(iv) When the Agency Official prepares an Environmental Assessment (EA) or Draft Environmental Impact Statement (DEIS) to meet NEPA requirements, the EA or DEIS should document the steps taken to comply with Section 106 and reflect the method by which the Agency Official concluded the Section 106 process.

(A) The Agency Official should complete the identification and evaluation of potentially affected historic properties and the assessment of effects on such properties as set forth in Subpart C of this part prior to circulating or making the EA or DEIS available for comment. The Agency Official may include the resolution of adverse effects, if that step has been completed prior to circulation of the Draft EIS.

(B) The Agency Official should complete the Section 106 process for affected historic properties so that the revised EA or Final EIS will document the conclusion of the Section 106 process, including any no adverse effect determinations, Memorande of Agreement or Council comments.

(C) The Agency Official may use an EA or Draft EIS to meet the information requirements of Subpart C of this part, provided that the document contains the information specified in § 800.14 as appropriate.

(D) The Agency Official should ensure that the Finding of No Significant Impact or Record of Decision incorporates any applicable mitigation measures related to effects on historic properties.

(v) Further guidance on coordination with NEPA is contained in Appendix A of this part.

(2) *American Indian Religious Freedom Act (AIRFA).* An Agency Official planning or reviewing an undertaking which may affect Native Americans' exercise of their religion, including access to religious sites, should initiate consultation with such groups as early as possible in planning. Such consultation should be carried out in a manner that is sensitive to the cultural values of the concerned group, and may be combined with consultation under Section 106. Where the undertaking may affect historic properties that possess traditional religious and cultural importance, Subpart C of this part sets forth the process for consulting with Native Americans to meet the requirements of Section 106.

(3) *Federal Land Policy and Management Act and National Forest Management Act.* Agencies planning or reviewing undertakings on Federal lands should integrate the public notification, identification, evaluation, assessment of effects and resolution of adverse effects under Section 106 with the land-use planning requirements of these authorities.

(4) *Native American Graves Protection and Repatriation Act (NAGPRA).* Agencies planning or reviewing undertakings on Federal or tribal lands which may result in the intentional removal or inadvertent discovery of Native American cultural items as defined in NAGPRA are encouraged to combine necessary consultation and agreement with Indian tribes and Native Hawaiian organizations with the provisions of Subpart C of this part.

(5) *Archeological Resources Protection Act (ARPA).* Agencies planning or reviewing undertakings on public or Indian lands which may involve excavation or removal of archeological resources subject to protection under ARPA should coordinate the permit application and permit review process with consultation under Section 106. The information used for ARPA permit issuance may be used as documentation for review under Section 106. If the only Federal involvement is issuance of an ARPA permit, compliance with Section 106 is not required.

(6) *Section 4(f) of the Department of Transportation Act.* A Department of Transportation agency planning an undertaking that may require the use of a historic site is encouraged to integrate the activities required under this Part with activities that may be performed to support determinations under Section 4(f) of the Department of Transportation Act, with respect to such site.

Appendix A to Part 800—Identifying Historic Properties in Coordination With Other Planning Needs

This Appendix offers guidance on implementing 36 CFR Part 800. It is designed to supplement and explain the regulations, but is not binding on Federal agencies.

(a) *Overall timing and coordination.*

(1) The Section 106 process should be used during the planning process to progressively narrow resource concerns and issues requiring resolution about historic properties and historic preservation. Ultimately, the objective is to resolve outstanding conflicts between proposed undertakings and their effects on historic properties, and to make available an appropriate level of information to decisionmakers so that they can "take into account" the effects of those undertakings on historic properties when the conflicts are not completely resolved. Consequently, the process will be most effective when planning, review, consultation, and decisionmaking steps are explicitly linked to the nature and scope of the undertaking as well as to other relevant planning and program requirements to the maximum extent possible.

(2) The Agency Official should establish a procedure and schedule for completing the Section 106 process that is consistent with the planning approach and approval schedule for the undertaking.

(3) The Agency Official should begin the Section 106 process and integrate it with other planning needs at the earliest possible time, when the widest feasible range of alternatives is open for consideration. The process should be fully coordinated with actions and preparation of documents necessary to comply with the National Environmental Policy Act (NEPA) and other environmental and planning requirements. This will help to ensure that planning and decisions fully reflect historic preservation issues and cultural values and concerns, maximize program and budgetary efficiency, and head off potential conflicts later in the process that could lead to delays and litigation.

(b) *Early planning.* At the earliest feasible stage in planning any undertaking, in conjunction with the preparation of any Environmental Assessment (EA) or Draft Environmental Impact Statement (DEIS) under the National Environmental Policy Act (NEPA), and in consultation with the State Historic Preservation Officer where appropriate, the Agency Official should:

(1) *Establish the nature of the proposed undertaking.* Does it deal principally with operation of a program with a variety of public policy objectives, management or maintenance of resources and resource types, or planning and approval of a specific project? What is the extent of public investment in the undertaking? Will the effects of the undertaking be widespread or localized?

(2) *Determine what decisions need to be made about the proposed undertaking, and who needs to make them.* Does the Agency Official for a single agency have jurisdiction and control over the undertaking, or is that jurisdiction shared with other agencies? At what level will decisions be made within the agency? If there are other Federal agencies involved, who will be the lead Federal agency, and how will responsibilities be apportioned? Is all or part of the undertaking on tribal or State lands, and subject to other legal requirements?

(3) *Determine the range of likely historic preservation issues that may need to be considered.* What is the extent of knowledge of historic properties that may be affected? Are effects likely to be detrimental or beneficial? Is public interest or controversy likely? What are the program and fiscal consequences of these issues in relation to the planning, approval, and implementation of the undertaking?

(4) *Decide what legal responsibilities, policy objectives, and performance standards need to be satisfied in the planning and execution of the proposed undertaking.* What other statutory, policy, fiscal, or timing requirements apply that may affect consultation and decisions under Section 106? What legal or practical constraints may affect the planning and execution of the proposed undertaking, such as access for identification of historic properties?

(5) *Establish how to identify and consult with others who may have a legal responsibility or a likely interest in the proposed undertaking, and what those responsibilities or interests might be.* To what extent should other branches within the lead Federal agency be consulted? Other Federal, State, or local government agencies and organizations? Can the State Historic Preservation Officer help identify other parties with an interest in or information about local historic preservation values and concerns?

(6) *Establish the area of potential effects of each alternative under consideration, including the likelihood of direct, indirect, and cumulative effects on historic properties.*

(i) The area of potential effects:

(A) should be broadly and prospectively defined, but with a logical linkage to reasonably foreseeable potential effects that various alternatives for the particular type of undertaking could have;

(B) should consider possible direct, indirect, and cumulative effects on the physical characteristics, contextual environment, use, or long-term preservation of properties that help qualify them for inclusion in the National Register, recognizing that:

(I) direct effects are caused by the undertaking and occur at the same time and place;

(II) indirect effects include those caused by the undertaking that are later in time or farther removed in distance, but are still reasonably foreseeable;

(III) cumulative effects refer to the incremental effect of an action when added to other past, present, and

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reasonably foreseeable future actions regardless of what entity (Federal or non-Federal) or person undertake such other actions;

(C) should not be defined on the basis of land ownership or control and may include Federal and non-Federal land;

(D) may include geographic areas subject to indirect effects that are outside of "permit areas" or construction "footprints;"

(E) should include alternative locations for elements of the undertaking, locations where the undertaking may result in disturbance of the ground, locations from which elements of the undertaking may be visible (if that is important in regard to the property's significance), and locations where the undertaking may result in changes in land use, public access, traffic patterns, and similar indirect effects; and

(F) to the extent feasible, should consider potential cumulative effects resulting from incremental impacts of the undertaking which, when added to other past, present, and reasonably foreseeable future actions, may result in adverse effects on historic properties.

(ii) *Programmatic actions.* For undertakings involving the potential effects of a program on historic properties and historic and cultural values, the area of potential effects should consider the nature of the program as well as the nature of historic property types most likely to be affected by it. Planning information should be developed from knowledge of existing historic resources, interviews with persons with special expertise or knowledge, and modeling to anticipate the full range of historic properties involved and likely effects attributable to the program. For example, a program to replace or rehabilitate bridges throughout a State needs to consider not only likely bridge locations and the direct effects of abandonment in place, demolition or dismantling, relocation, rehabilitation work, on those bridges, but also any associated archaeological sites which could be damaged or destroyed with ground disturbing activities such as construction equipment storage, abutment repair, pavement approach reconstruction, or bank stabilization; any nearby or surrounding historic districts whose character would be altered by replacement, new construction, or changes in historic access patterns; and historic traditional use areas peculiar to the region (such as fish weirs or traps) that may be located in the stream itself at or near a new bridge location.

(iii) *Management and maintenance areas.* For undertakings involving the potential effects of land-use planning or maintenance practices for specific management units, such as a national park, national forest, military installation, Federal office complex, or similar discrete area, the area of potential effects should consider land uses, associated management needs, and the range of potential uses of historic properties, as well as the nature of maintenance requirements on particular historic property types. A planning document should establish procedures to satisfy Section 110 requirements which, among other things, provide for long-term protection, enhancement, management and use of historic properties and early consultation with Native Americans and other interested parties. For example, a military installation resource management plan needs to consider separate use zones (cantonment or built-up area, vehicular or infantry training areas, firing ranges and impact area, airfields, hazardous or toxic materials storage areas, high security vs. public access areas, and other special use areas). The range of uses and possible effects of actions in each zone on historic structures, archaeological sites, traditional cultural properties, and other types of resources will vary considerably, as will the agency's long-term management responsibility for and procedures for dealing with those properties under Section 110 and other statutes.

(iv) *Project areas.* For undertakings involving the potential effects of a specific federally-supported, -assisted, or -permitted action or series of actions such as new construction, rehabilitation, or transfer out of Federal ownership, agencies should at a minimum distinguish between two groups of undertakings. The first includes relatively simple, small-scale undertakings affecting limited land area and a small number of resources. The second includes more complex undertakings affecting large land areas, multiple resources, and involving complex jurisdictional matters or other potential points of controversy. The area of potential effects for an undertaking subject to preparation of an environmental impact statement under NEPA, defined as a "major Federal action significantly affecting the quality of the human environment," may necessarily involve numerous alternative locations or project designs, and will thus affect the level of effort necessary to identify historic properties subject to effect (see 36 CFR Sec. 800.8 and Appendix 1.C. below).

(c) *Scope of identification of historic properties subject to effect.* Following determination of the area of potential effects appropriate to the undertaking, and coordinated with the preparation of any Environmental Assessment (EA) or Draft Environmental Impact Statement (DEIS) under NEPA:

(1) The Agency Official should determine whether the area of potential effects has been surveyed or otherwise inspected to identify historic properties, and review available information to decide:

(i) the likelihood that historic properties exist within areas subject to effect, and their characteristics, numbers, and probable significance;

(ii) the likelihood that such properties retain their historic, cultural, and/or architectural integrity, given what is known about historic and recent modification of land or structures in the area; and

(iii) the nature and severity of effects reasonably expectable as a result of the type of undertaking involved, including both effects that will occur as the immediate result of the undertaking, or near the site of a specific undertaking, and those that may occur at a later time or greater distance, provided the latter are reasonably foreseeable.

(2) The Agency Official should collect available information, determine whether the undertaking involves a programmatic action, a land management area, or a specific project, and carry out further identification by making a reasonable and good faith effort to identify historic properties within the area of potential effects, with reference to the nature of the undertaking, its likely effects, and the extent of available information on historic properties.

(i) In order to provide a reliable basis for a "reasonable and good faith effort" to identify historic properties subject to effect, agencies should:

(A) Consult with the SHPO, local governments, Indian tribes, Native Hawaiian organizations, and other Native American groups and traditional cultural authorities, community organizations, academic institutions, and others with knowledge of or concerns with history, culture, historic preservation issues, and specific historic properties that may be affected;

(B) Consult existing registers of historic properties, including but not limited to the National Register of Historic Places and State and local registers, reports of prior historic property surveys, and knowledgeable projections of historic property distributions;

(C) Review other existing information on historic properties potentially affected by the undertaking, including any data concerning the likelihood that unidentified historic properties exist in the area of potential effect, and relevant background information sources on each areas history, prehistory, architecture, sociocultural characteristics, and cultural geography as appropriate.

(D) Determine to what extent available information provides a reliable basis for decisionmaking consistent with Section 106 requirements and 36 CFR Part 800, and determine the need for additional investigations given the number of alternatives under consideration, the scale of the undertaking, the nature and severity of likely effects, the accessibility of each area of potential effect, and similar factors.

(ii) *Programmatic actions.* For undertakings involving the potential effects of a program on historic properties and historic and cultural values, the identification of historic preservation issues and historic properties subject to effect should include agreement with other consulting parties on a process for ongoing identification and evaluation of properties. This may include administrative modifications to or adaptation of the standard portions of the Section 106 process contained in the Council's regulations in § 800.8, and may categorize types of resources that will be subject to varying identification and evaluation methodologies. For example, a programmatic undertaking to maintain, modernize, selectively staff, and partially abandon fire observation towers in national forests nationwide could involve a long-term plan to use historic records to identify and evaluate historically significant *types* of towers against agreed-upon criteria.

(iii) *Management and maintenance areas.* For undertakings involving the potential effects of land-use planning or maintenance practices for specific management units, such as a national park, national forest, military installation, Federal office complex, or similar discrete area, the identification of historic properties subject to effect should involve incorporation of the process into a standard operating procedure for a General Management Plan, Historic Preservation Plan, Land Use and Resource Management Plan, or similar comprehensive planning tool with an appropriate national, regional, or statewide context to evaluate the historic significance of identified resources. For example, ongoing management activities for a Bureau of Land Management district should include a continuing program of sample field survey, predictive modelling, and regional evaluation criteria, tied to other resource management needs and operating procedures for mineral exploration, range and timber management, road construction, fire control, and recreation programs. (Such a program is also required under Section 110 of NHPA).

(iv) *Project areas.* For undertakings involving the potential effects of a specific action or series of actions such as new construction, a decision needs to be made whether the project is *large-scale* and complex, or *small-scale* and less complex.

(A) For large-scale projects, particularly those covering a very large area or numerous alternative locations for the undertaking, the purpose of initial identification efforts is to collect and review existing information and records in order to consider the likelihood that historic properties will be adversely affected in choosing a preferred alternative for the undertaking. Draft EAs, DEISs and other environmental and planning documents should, at a minimum, reflect this level of information. A less intensive investigation (which may include development and testing of a "predictive model" to indicate where historic properties exist or are likely to exist) will be sufficient until one or more principal or preferred alternatives is identified.

(B) For small-scale projects, and for the principal or preferred alternatives of large-scale projects, the agency should determine the extent to which available information provides a reliable basis for decisionmaking, and then consult with the SHPO and others to consider the need for more detailed and site-specific identification, including intensive field survey(s). The agency should follow up by completing identification and "gather sufficient information to evaluate the eligibility of [identified] properties for the National Register" (§ 800.8(b)).

(d) *Coordinate identification with NEPA and other land and resource management planning requirements.* (1) The magnitude of effects, both detrimental and beneficial, on historic properties and historic and cultural values should be projected and analyzed in adequate detail so they can be compared to other environmental, economic, and technical analyses and projections for various project alternatives. The projected number and character of historic properties and the likely effects of each alternative on buildings, neighborhoods, land use, socioeconomics, cultural values, and other relevant natural and cultural characteristics of the environment should be taken into account. Historic preservation documents and appropriate analyses, at least of a preliminary nature, should be circulated and reviewed at the same time as other planning documents, such as Eas and DEISs, land management plans, engineering general design memoranda, and transportation Section 4(f) analyses.

(2) Appropriate alternatives to recommended courses of action for any undertaking which involves alternatives that may adversely affect historic properties should be studied, developed, and described.

(3) Situations where actions are planned by private applicants or other non-Federal entities before Federal involvement should be adequately provided for, so that:

(i) Policies are established and staff designated to advise potential applicants of studies or other information foreseeably required for later Federal action and Section 106 compliance, consistent with Section 110(k);

(ii) The Federal Agency consults with appropriate State and local agencies, Indian tribes, Native Hawaiian organizations, and with interested private persons and organizations to ensure that the concerns of other parties can be addressed before any irretrievable or irreversible commitment to the project is made; and

(iii) The Federal Agency commences the Section 106 process at the earliest possible time so that by the time an EA, Finding of No Significant Impact, or Final EIS and Record of Decision under NEPA is issued, historic properties have been identified, effects determined, and this information is incorporated with the consideration of alternatives for any necessary resolution through negotiation with other parties.

[FR Doc. 94-24357 Filed 9-30-94; 8:45 am]

BILLING CODE 4310-10-P

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Federal Register

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Part VII

Department of the Interior

Bureau of Indian Affairs

Program Announcement for Integration of Employment, Training and Related Services Provided by Indian Tribes; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Program Announcement for Integration of Employment, Training and Related Services Provided by Indian Tribes

AGENCY Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The "Indian Employment, Training and Related Services Demonstration Act of 1992" authorizes the integration of employment, training and related services provided by Indian tribes and Alaska Natives. A memorandum of understanding among the Department of the Interior, Department of Health and Human Services and the Department of Labor has been developed which provides for the implementation of the Act.

DATES: Tribal resolutions and plans for participation may be submitted at any time.

ADDRESSES: Tribal plans must be submitted to: Division of Job Placement and Training, Office of Economic Development, Bureau of Indian Affairs, MS 1458–MIB, 1849 C Street, NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Lynn Forcia, Chief, Division of Job Placement and Training, (202) 208–2570.

SUPPLEMENTARY INFORMATION: Under Public Law 102–477, "Indian Employment, Training and Related Services Demonstration Act of 1992," tribes and Alaska Natives will be afforded the opportunity to integrate these services in order to improve their effectiveness, reduce unemployment and reach tribally-determined goals. This program announcement invites tribes and Alaska Natives to apply for participation in the demonstration project which may begin on any quarterly basis. Tribes will receive guidance in preparing tribal plans, including a copy of the reporting requirements. The guidance also addresses regulation waivers, training and technical assistance. This program provides a 95% reduction in the instructions and forms previously required for the programs involved.

Dated: September 8, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–24338 Filed 9–30–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

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Part VIII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal-State Compact between the Eastern Band of Cherokee Indians and the State of North Carolina, which was executed on August 11, 1994.

DATES: This action is effective October 3, 1994.

FOR FURTHER INFORMATION CONTACT: Larry Scrivner, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240 (202) 219–4068.

Dated: September 22, 1994.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 94–24337 Filed 9–30–94; 8:45 am]

BILLING CODE 4310–02–P

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Part IX

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds; Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR PART 20

RIN 1018–AA24

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits for general waterfowl seasons and those early seasons for which States previously deferred selection. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule will permit taking of designated species during the 1994–95 season.

EFFECTIVE DATE: September 30, 1994.

ADDRESSES: Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1994

On April 7, 1994, the Service published for public comment in the **Federal Register** (59 FR 16762) a proposal to amend 50 CFR part 20, with comment periods ending July 21 for early-season proposals and September 2 for late-season proposals. The deadline for late-season proposals was subsequently extended to September 9 in the September 7 **Federal Register** (58 FR 46320). These regulations would be proposed for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons), Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). These species are designated as "migratory game birds" in conventions between the United States and several foreign nations for the protection and management of these birds. All other birds designated as migratory (under 10.13 of Subpart B of 50 CFR Part 10) in the aforementioned conventions may not be hunted. On June 8, 1994, the Service published for public comment a second document (59 FR 29700) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks. On June 23, 1994, a public hearing was held in Washington, DC, an announced in the April 7 and June 8 **Federal Register**, to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons. On July 12, 1993, the Service published in the **Federal Register** (59 FR 35566) a third document in the series of proposed, supplemental, and final rulemaking documents which dealt specifically with proposed early-season frameworks for the 1994–95 season. On August 4, 1994, a public hearing was held in Washington, DC, as announced in the April 7, June 8, and July 12 **Federal Register**, to review the status of waterfowl. Proposed hunting regulations were discussed for these late seasons. On August 17, 1994, the Service published a fourth document (59 FR 42474) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits for 1994–95. The fifth document in the series, published August 24, 1994 (59 FR 43684), dealt specifically with proposed frameworks for the 1994–95 late-season migratory bird hunting regulations. On September 1, 1994, the Service published in the **Federal Register** a sixth document consisting of a final rule amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons. On September 7, 1994, the Service published in the **Federal Register** a seventh document announcing an extension of the closing date for the comment period on late-season regulations from September 2 to September 9. On September 27, 1994, the Service published an eighth document in the **Federal Register** consisting of final late-season frameworks for migratory game bird hunting regulations, from which State wildlife conservation agency officials selected late-season hunting dates, hours, areas, and limits for 1994–95. The final rule described here is the ninth in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending subpart K of CFR part 20 to set hunting seasons, hours, areas, and limits for species subject to late-season regulations and those for early seasons that were previously deferred.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1983 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). However, this programmatic document does not prescribe year-specific regulations; those are developed annually. The annual regulations and options are being considered in the Environmental Assessment, "Waterfowl Hunting Regulations for 1994," which is available upon request.

Endangered Species Act Consideration

In August 1994, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for inspection in the Division of Endangered Species and the Office of Migratory Bird Management.

Regulatory Flexibility Act; Executive Order 12866; and the Paperwork Reduction Act

In the **Federal Register** dated April 7, 1994 (59 FR 16762), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing an Analysis of Regulatory Effects and an updated Final Regulatory Impact Analysis, under the Regulatory Flexibility Act (5 U.S.C. 601 et seq), and publication of a summary of the latter. This information is included in the present document by reference. This action was not subject to review by the Office of Management and Budget under E.O. 12866. This rule does not contain any information collection requiring approval by the Office of Management and Budget under 44 U.S.C. 3504.

Authorship

The primary author is Robert J. Blohm, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: September 26, 1994

George T. Frampton, Jr.

Assistant Secretary for Fish and Wildlife and Parks

PART 20—[AMENDED]

For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K is amended as follows.

1. The authority citation for part 20 is revised to read as follows:

Authority: Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711); the Fish and Wildlife Improvement Act of 1978 (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a–d and e–j).

BILLING CODE 4310–55–F–M

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Note - The following annual regulations provided for by §§20.104, 20.105, 20.106, 20.107, and 20.109 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

2. Section 20.104 is amended as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 17 and September 27 Federal Registers.

NOTE: The following seasons are in addition to the seasons published previously in the September 1, 1994, Federal Register (59 FR 45588).

	Sora & Virginia Rails	Clapper & King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	5 (3)	8
Possession limit	25 (1)	30 (2)	10 (3)	16
ATLANTIC FLYWAY				
. . . . .				
Massachusetts (4)	Sept. 1-Nov. 9	Closed	Oct. 15-Nov. 28	Sept. 1-Dec. 16
. . . . .				
MISSISSIPPI FLYWAY				
. . . . .				
Tennessee				
Reelfoot Zone	Nov. 12-Nov. 13 & Dec. 10-Jan. 18	Closed	Oct. 8-Dec. 11	Nov. 14-Feb. 28
State Zone	Dec. 3-Dec. 7 & Dec. 17-Jan. 20	Closed	Oct. 8-Dec. 11	Nov. 14-Feb. 28
Wisconsin				
North Zone	Oct. 1-Nov. 9	Closed	Sept. 27-Nov. 20	Oct. 1-Nov. 9
South Zone	Oct. 1-Oct. 9 & Oct. 17-Nov. 18	Closed	Sept. 27-Nov. 20	Oct. 1-Oct. 9 & Oct. 17-Nov. 16
CENTRAL FLYWAY				
. . . . .				
New Mexico (16)				
North Zone	Oct. 29-Nov. 18 & Dec. 10-Jan. 18	Closed	Closed	Oct. 29-Nov. 18 & Dec. 10-Jan. 18
South Zone	Nov. 19-Jan. 18	Closed	Closed	Nov. 19-Jan. 18
. . . . .				
Texas	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 28-Jan. 31	Oct. 22-Feb. 5
. . . . .				
PACIFIC FLYWAY				
Arizona (17)				
North Zone	Closed	Closed	Closed	Oct. 7-Dec. 14
South Zone	Closed	Closed	Closed	Oct. 7-Oct. 16 & Nov. 18-Jan. 15
California	Closed	Closed	Closed	Oct. 1-Jan. 15
. . . . .				
Nevada				
Clark County	Closed	Closed	Closed	Nov. 12-Jan. 19
Rest of State	Closed	Closed	Closed	Oct. 1-Oct. 16 & Oct. 29-Dec. 20
New Mexico (16)	Oct. 15-Oct. 30 & Nov. 19-Jan. 10	Closed	Closed	Oct. 15-Oct. 30 & Nov. 19-Jan. 10
Oregon	Closed	Closed	Closed	Oct. 8-Jan. 1
Utah				
Zone 1	Closed	Closed	Closed	Oct. 8-Jan. 8
Washington				
East Zone	Closed	Closed	Closed	Oct. 15-Oct. 23 & Nov. 5-Jan. 10
West Zone	Closed	Closed	Closed	Oct. 15-Oct. 23 & Nov. 12-Jan. 10
. . . . .				

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.
(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States.
(3) In States of the Atlantic Flyway, the woodcock bag limit is 3 daily and 6 in possession.
(4) In Massachusetts, the sora bag limit is 5 daily and 10 in possession; the Virginia rail bag limit is 10 daily and 20 in possession.

. . . . . .

(16) In New Mexico, the rail limits are 10 daily and 10 in possession.
(17) In Arizona, Ashurst Lake in Unit 5B is closed to common snipe hunting.

3. Section 20.105 paragraph (a) is amended, paragraph (b) is revised, and paragraph (e) is added to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 17 and September 27 Federal Registers.

(a) Common Moorhens and Purple Gallinules (Atlantic, Mississippi, and Central Flyways)

NOTE: The following seasons are in addition to the seasons published previously in the September 1, 1994, Federal Register (59 FR 45588). The zones named in this paragraph are the same as those used for setting duck seasons.

	Season Dates	Limits: Bag	Limits: Possession
ATLANTIC FLYWAY			
. . . . .			
Georgia	Nov. 23-Nov. 27 & Dec. 17-Jan. 20	15 15	30 30
. . . . .			
Virginia	Oct. 5-Oct. 8 &	15	30
	Nov. 23-Nov. 26 &	15	30
	Dec. 20-Jan. 20	15	30
West Virginia			
Zone 1	Oct. 1-Oct. 8 &	15	30
	Dec. 24-Jan. 14	15	30
Zone 2	Oct. 1-Oct. 8 &	15	30
	Oct. 22-Nov. 12	15	30
MISSISSIPPI FLYWAY			
. . . . .			
Michigan			
North Zone	Oct. 1-Nov. 7 &	15	30
	Nov. 12-Nov. 13	15	30
Middle Zone	Oct. 1-Nov. 6 &	15	30
	Nov. 11-Nov. 13	15	30
South Zone	Oct. 8-Nov. 13 &	15	30
	Nov. 25-Nov. 27	15	30
Minnesota (2)	Oct. 1-Nov. 9	15	30
. . . . .			
Tennessee			
Reelfoot Zone	Nov. 12-Nov. 13 &	15	30
	Dec. 10-Jan. 16	15	30
State Zone	Dec. 3-Dec. 7 &	15	30
	Dec. 17-Jan. 20	15	30

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	Season Dates	Limits Bag	Possession
Maine	Oct. 3-Jan. 17	7	14
Maryland	Oct. 6-Jan. 20	5	10
Massachusetts	Oct. 6-Jan. 20	7	14
New Hampshire	Sept. 15-Dec. 30	7	14
New Jersey	Oct. 1-Jan. 15	7	14
New York	Oct. 6-Jan. 20	7	14
North Carolina	Oct. 6-Jan. 20	7	14
Rhode Island	Oct. 1-Jan. 15	7	14
South Carolina	Oct. 6-Jan. 20	7	14
Virginia	Oct. 6-Jan. 20	7	14

Note: Notwithstanding the provisions of this Part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(e) Waterfowl, Coots, and Pacific Flyway Seasons for Common Moorhens and Purple Gallinules

Definitions

The Atlantic Flyway: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

The Mississippi Flyway: Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

The Central Flyway: Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

The Pacific Flyway: Includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

	Season Dates	Limits Bag	Possession
Wisconsin			
North Zone	Oct. 1-Nov. 9	15	30
South Zone	Oct. 1-Oct. 9 &	15	30
	Oct. 17-Nov. 16	15	30
CENTRAL FLYWAY			
	. . . . .		
New Mexico (1)			
North Zone	Oct. 29-Nov. 18 &	1	2
	Dec. 10-Jan. 18	1	2
South Zone	Nov. 19-Jan. 18	1	2
	. . . . .		
PACIFIC FLYWAY			
All States	Seasons are in aggregate with coots and listed in paragraph (e)		

(1) The season applies to common moorhens only.
(2) In Minnesota, the daily bag limit is 15 and the possession limit is 30 coots, moorhens, and gallinules in the aggregate.

(b) Sea Ducks (scoter, eider, and oldsquaw ducks in Atlantic Flyway)

Within the special sea duck areas, the daily bag limit is 7 scoter, eider, and oldsquaw ducks, singly or in the aggregate, of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season Dates	Limits Bag	Possession
Connecticut	Oct. 1-Jan. 14	7	14
Delaware	Sept. 24-Jan. 7	7	14
Georgia	Nov. 23-Jan. 20	7	14

Geese: Includes all geese (except brant in California, Oregon, Washington, and the entire Atlantic Flyway).

Light Geese: Includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Dark Geese: Includes Canada geese, white-fronted geese, emperor geese, and (except as noted above) brant.

ATLANTIC FLYWAY

Flyway-wide Restrictions

Duck Limits: For 40-day seasons, the daily bag limit of 3 ducks may include no more than 1 female mallard, 1 pintail, 1 black duck, 1 canvasback, 1 mottled duck, 2 wood ducks, 2 redheads, and 1 fulvous tree duck. For 30-day seasons, the daily bag limit of 4 ducks may include no more than 3 mallards (no more than 1 of which may be female), and the same species restrictions as above. The possession limit is twice the daily bag limit.

Harlequin Ducks: All areas of the Flyway are closed to harlequin duck hunting.

Merganser Limits: The merganser limits include no more than 1 hooded merganser daily and 2 in possession.

	Season Dates	Limits Bag	Possession
Connecticut			
Ducks (1):			
North Zone	Oct. 15-Oct. 22 &	3	6
	Nov. 23-Dec. 24	3	6
South Zone	Oct. 15 only &	3	6
	Dec. 7-Jan. 14	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
North Zone	Oct. 15-Oct. 22 &	1	2
	Oct. 24-Oct. 29 &	2	4
	Nov. 23-Dec. 31 &	2	4
	Jan. 2-Jan. 16	3	6
South Zone	Oct. 15-Oct. 22 &	1	2
	Nov. 23-Dec. 31 &	2	4
	Jan. 2-Jan. 14	3	6
(special season)	Jan. 16-Feb. 15	State Permit Only	
Light Geese	Oct. 15-Jan. 28	5	10
Brant:			
North Zone	Nov. 23-Jan. 11	2	4
South Zone	Dec. 2-Jan. 20	2	4

	Season Dates	Limits Bag	Possession
Delaware			
Ducks	Nov. 1-Nov. 5 &	3	6
	Nov. 21-Nov. 26 &	3	6
	Dec. 10-Jan. 7	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Nov. 21-Nov. 26 &	1	2
	Dec. 12-Dec. 31	1	2
Light Geese:			
Bombay Hook NWR	Nov. 11-Nov. 20	5	10
Statewide	Oct. 12-Nov. 10 &	5	10
	Nov. 21-Jan. 14 &	5	10
	Jan. 28-Feb. 8	5	10
Brant	Dec. 1-Jan. 20	2	4
Florida			
Ducks	Nov. 23-Nov. 27 &	4	8
	Dec. 22-Jan. 15	4	8
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese	Closed	--	--
Georgia			
Ducks	Nov. 23-Nov. 27 &	3	6
	Dec. 17-Jan. 20	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese (special season) (2)	Jan. 5-Jan. 8 &	2	4
	Jan. 19-Jan. 22	2	4
Brant	Closed	--	--
Maine			
Ducks:			
North Zone	Oct. 3-Oct. 26 &	3	6
	Nov. 4-Nov. 19	3	6
South Zone	Oct. 3-Oct. 15 &	3	6
	Nov. 21-Dec. 17	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
North Zone	Oct. 1-Oct. 15 &	1	2
	Oct. 17-Dec. 10	2	4
South Zone	Oct. 1-Oct. 15 &	1	2
	Oct. 16-Nov. 12 &	2	4
	Nov. 21-Dec. 17	2	4
Light Geese	Oct. 1-Jan. 14	5	10
Brant	Oct. 1-Nov. 19	2	4

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	Season Dates	Limits Bag	Possession
Maryland			
Ducks (3)	Oct. 13-Oct. 15 &	3	6
	Nov. 22-Nov. 25 &	3	6
	Dec. 13-Jan. 14	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Nov. 23-Nov. 25 &	1	2
	Dec. 14-Dec. 30 &	1	2
	Dec. 31-Jan. 14	2	4
Light Geese	Oct. 22-Nov. 25 &	5	10
	Dec. 1-Feb. 10	5	10
Brant	Nov. 16-Nov. 25 &	2	4
	Dec. 12-Jan. 20	2	4
Massachusetts			
Ducks:			
Western Zone	Oct. 10-Nov. 12 &	3	6
	Nov. 21-Nov. 26	3	6
Central Zone	Oct. 13-Oct. 22 &	3	6
	Nov. 18-Dec. 17	3	6
Coastal Zone	Oct. 20-Oct. 29 &	3	6
	Nov. 25-Dec. 24	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
Western Zone	Oct. 10-Oct. 29 &	1	2
	Oct. 30-Nov. 26 &	2	4
	Dec. 12-Jan. 2	2	4
Central Zone	Oct. 13-Oct. 22 &	1	2
	Nov. 18-Dec. 31 &	2	4
	Jan. 1-Jan. 16	3	6
(special season) (2)	Jan. 21-Feb. 4	5	10
Coastal Zone	Oct. 20-Oct. 29 &	1	2
	Nov. 22-Dec. 31 &	2	4
	Jan. 1-Jan. 20	3	6
(special season) (2)	Jan. 21-Feb. 4	5	10
Light Geese:			
Western Zone	Oct. 10-Nov. 26 &	5	10
	Dec. 12-Jan. 2	5	10
Central Zone	Oct. 13-Oct. 22 &	5	10
	Nov. 18-Jan. 16	5	10
Coastal Zone	Oct. 20-Oct. 29 &	5	10
	Nov. 22-Jan. 20	5	10
Brant:			
Berkshire & Central Zone	Closed		
Coastal Zone	Nov. 22-Jan. 10	2	4
New Hampshire			
Ducks:			
Inland Zone	Oct. 6-Oct. 29 &	3	6
	Nov. 19-Dec. 4	3	6
Coastal Zone	Oct. 7-Oct. 10 &	3	6
	Nov. 19-Dec. 24	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
Inland Zone	Oct. 6-Oct. 15 &	1	2
	Oct. 16-Dec. 14	2	4
Coastal Zone	Oct. 15-Oct. 30 &	1	2
	Nov. 19-Dec. 31 &	2	4
	Jan. 1-Jan. 11	3	6
Light Geese:			
Inland Zone	Oct. 6-Dec. 14	5	10
Coastal Zone	Oct. 15-Oct. 30 &	5	10
	Nov. 19-Jan. 11	5	10
Brant:			
Inland Zone	Oct. 6-Nov. 24	2	4
Coastal Zone	Nov. 19-Jan. 7	2	4
New Jersey			
Ducks:			
North Zone	Oct. 15-Oct. 29 &	3	6
	Nov. 23-Dec. 17	3	6
South Zone	Oct. 22-Oct. 29 &	3	6
	Nov. 23-Dec. 24	3	6
Coastal Zone	Nov. 2-Nov. 12 &	3	6
	Dec. 10-Jan. 7	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
North Zone	Oct. 15-Oct. 22 &	1	2
	Nov. 23-Dec. 31 &	2	4
	Jan. 1-Jan. 23	3	6
South Zone	Oct. 22-Oct. 29 &	1	2
	Nov. 23-Dec. 31 &	2	4
	Jan. 1-Jan. 23	3	6
Coastal Zone	Nov. 2-Nov. 12 &	1	2
	Dec. 1-Dec. 31 &	2	4
	Jan. 1-Jan. 28	3	6
(special season) (2)	Jan. 28-Feb. 11	5	10
Light Geese:			
North Zone	Oct. 15-Jan. 23	5	10
South Zone	Oct. 22-Nov. 17 &	5	10
	Nov. 23-Feb. 10	5	10
Coastal Zone	Oct. 14-Jan. 28	5	10

	Season Dates	Limits Bag	Possession
New York (cont.)			
Brant:			
Long Island Zone	Nov. 23-Nov. 27 &	2	4
	Dec. 2-Jan. 15	2	4
Lake Champlain Zone	Oct. 8-Nov. 26	2	4
Northeastern Zone	Oct. 1-Nov. 19	2	4
Southeastern Zone	Oct. 16-Dec. 4	2	4
Western Zone	Oct. 13-Dec. 1	2	4
North Carolina			
Ducks	Oct. 6-Oct. 8 &	3	6
	Nov. 23-Nov. 26 &	3	6
	Dec. 19-Jan. 20	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Closed	--	--
Light Geese	Oct. 27-Feb. 10	5	10
Brant	Nov. 23-Nov. 26 &	2	4
	Dec. 6-Jan. 20	2	4
Pennsylvania			
Ducks:			
North Zone	Oct. 8-Oct. 22 &	3	6
	Nov. 5-Nov. 29	3	6
South Zone	Oct. 17-Oct. 22 &	3	6
	Nov. 21-Dec. 24	3	6
Northwest Zone	Oct. 10-Oct. 15 &	3	6
	Nov. 5-Dec. 8	3	6
Lake Erie Zone	Nov. 7-Nov. 26 &	3	6
	Dec. 12-Dec. 31	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
North Zone	Oct. 8-Oct. 15 &	1	2
	Oct. 17-Dec. 17	2	4
South Zone	Oct. 17-Oct. 24 &	1	2
	Nov. 19-Dec. 31 &	2	4
	Jan. 1-Jan. 19	3	6
(special season) (4)	Jan. 20-Feb. 4	5	10
Erie, Mercer, and Butler Counties	Oct. 8-Oct. 15 &	1	2
	Nov. 14-Jan. 14	2	4
Crawford County	Oct. 8-Oct. 15 &	1	2
	Nov. 5-Dec. 1	1	2
Light Geese	Oct. 17-Jan. 31	5	10
Brant	Oct. 17-Dec. 5	2	4

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	Season Dates	Limits Bag	Possession
Rhode Island			
Ducks	Oct. 7-Oct. 10 &	3	6
	Nov. 23-Nov. 27 &	3	6
	Dec. 17-Jan. 16	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Oct. 7-Oct. 9 &	1	2
	Nov. 26-Nov. 30 &	1	2
	Dec. 1-Dec. 31 &	2	4
	Jan. 1-Jan. 31	3	6
Light Geese	Oct. 7-Oct. 9 &	5	10
	Nov. 26-Jan. 31	5	10
Brant	Nov. 28-Jan. 16	2	4
South Carolina			
Ducks (5)	Nov. 23-Nov. 26 &	3	6
	Dec. 16-Jan. 20	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese (special season) (2) (6)	Dec. 7-Dec. 10 &	2	6
	Jan. 25-Jan. 28	2	6
Light Geese	Nov. 23-Nov. 26 &	5	10
	Dec. 16-Jan. 20	5	10
Brant	Nov. 23-Nov. 26 &	2	4
	Dec. 16-Jan. 20	2	4
Vermont			
Ducks			
Lake Champlain Zone	Oct. 15-Nov. 6 &	3	6
	Nov. 19-Dec. 5	3	6
Interior Zone	Oct. 8-Nov. 9 &	3	6
	Nov. 21-Nov. 27	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese (7)	Oct. 8-Oct. 15 &	1	2
	Oct. 18-Dec. 18	2	4
Light Geese	Oct. 8-Jan. 22	5	10
Brant	Oct. 8-Nov. 26	2	4
Virginia			
Ducks	Oct. 5-Oct. 8 &	3	6
	Nov. 23-Nov. 26 &	3	6
	Dec. 28-Jan. 20	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese			
Back Bay Area	Closed.		
Remainder of State	Nov. 21-Dec. 10 &	1	2
	Dec. 12-Jan. 20	2	4
Light Geese	Oct. 26-Oct. 29 &	5	10
	Oct. 31-Feb. 10	5	10
Virginia (cont.)			
Brant	Dec. 1-Dec. 10 &	2	4
	Dec. 12-Jan. 20	2	4
West Virginia			
Ducks			
Zone 1	Oct. 1-Oct. 8 &	4	8
	Dec. 24-Jan. 14	4	8
Zone 2	Oct. 1-Oct. 8 &	4	8
	Oct. 22-Nov. 12	4	8
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese			
Zone 1	Oct. 1-Oct. 8 &	3	6
	Nov. 14-Jan. 14	3	6
Zone 2	Oct. 1-Nov. 12 &	3	6
	Dec. 19-Jan. 14	3	6
Light Geese			
Zone 1	Oct. 1-Oct. 8 &	5	10
	Nov. 14-Jan. 14	5	10
Zone 2	Oct. 1-Nov. 12 &	5	10
	Dec. 19-Jan. 14	5	10
Brant	Nov. 26-Jan. 14	2	4

(1) In Connecticut, the season is closed for black ducks during October 15 through October 22 in the North Zone and on October 15 in the South Zone.
(2) State permit required.
(3) Maryland, the daily bag limit may include no more than 1 redhead, the black duck season is closed October 13 through October 15, and the canvasback season is open only January 7 through January 14.
(4) In Pennsylvania, the special season will only be held in the Susquehanna/Juniata Zone.
(5) In South Carolina, the bag limit may not exceed 1 black duck, mottled duck, or female mallard, in the aggregate.
(6) In South Carolina, the bag limits during the special season are 2 per day and 6 per season.
(7) In Vermont, a permit is required for the Dead Creek Goose Management Area in the town of Addison, and the daily bag limit is 4 geese of any species, not to exceed 1 Canada goose daily, October 8 through October 15, or 2 Canada geese daily October 16 through November 30.

MISSISSIPPI FLYWAY

Flyway-wide Restrictions

Duck Limits: For 40-day seasons, the daily bag limit of 3 ducks may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 1 pintail, 1 canvasback, 1 redhead, and 2 wood ducks. For 30-day seasons, the daily bag limit of 4 ducks may include no more than 3 mallards (no more than 1 of which may be a female), 3 mottled ducks, 1 black duck, 1 pintail, 1 canvasback, 1 redhead, and 2 wood ducks. The possession limit is twice the daily bag limit.

Merganser Limits: The merganser limits include no more than 1 hooded merganser daily and 2 in possession.

	Season Dates	Limits Bag	Possession
Alabama			
Ducks:			
North Zone	Dec. 7-Jan. 1 &	3	6
	Jan. 7-Jan. 20	3	6
South Zone	Nov. 17-Nov. 20 &	3	6
	Dec. 16-Jan. 20	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		5	5
Dark Geese:			
North Zone:			
SJBP Zone	Dec. 12-Jan. 1 &	2	4
	Jan. 7-Jan. 20	2	4
Rest of North Zone	Oct. 1-Oct. 14 &	2	4
	Dec. 7-Jan. 1 &	2	4
	Jan. 7-Jan. 31		
South Zone	Nov. 17-Nov. 20 &	2	4
	Dec. 16-Jan. 31	2	4
Light Geese	Same as for dark geese	5	5
Arkansas			
Ducks	Nov. 25-Dec. 4 &	3	6
	Dec. 10-Dec. 18 &	3	6
	Dec. 26-Jan. 15	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada:			
East Zone	Jan. 14-Feb. 5	2	4
West Zone	Jan. 14-Jan. 27	1	2
White-fronted	Nov. 25-Jan. 31	2	4
Brant	Closed	..	..
Light Geese	Oct. 29-Nov. 13 &	7	14
	Nov. 25-Feb. 14	7	14
Illinois			
Ducks:			
North Zone	Oct. 20-Nov. 28	3	6
Central Zone	Oct. 27-Dec. 5	3	6
South Zone	Nov. 3-Dec. 12	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Illinois (cont.)			
Geese:		7	14
Canada (1):			
North Goose Zone:			
Northern Illinois Quota Zone	Oct. 20-Nov. 13 &	2	4
	Nov. 23-Dec. 18	2	4
Rest of North Goose Zone	Oct. 20-Nov. 13 &	2	4
	Nov. 23-Dec. 18	2	4
Central Goose Zone:			
Central Illinois Quota Zone	Oct. 27-Oct. 30 &	2	4
	Nov. 23-Jan. 8	2	4
Rest of Central Goose Zone	Oct. 27-Oct. 30 &	2	4
	Nov. 23-Jan. 8	2	4
South Goose Zone:			
Southern Illinois Quota Zone (1)(2)	Dec. 3-Jan. 22	2	10
Rend Lake Quota Zone (1)(2)	Dec. 3-Jan. 22	2	10
Rest of South Goose Zone	Dec. 3-Jan. 22	2	4
White-fronted and Brant	Same as for Canada geese	2	4
Light Geese	Same as for Canada geese	7	14
Indiana			
Ducks:			
North Zone	Oct. 22-Oct. 30 &	3	6
	Nov. 4-Dec. 4	3	6
South Zone	Oct. 29-Oct. 30 &	3	6
	Nov. 25-Jan. 1	3	6
Ohio River Zone	Nov. 25-Nov. 27 &	3	6
	Dec. 10-Jan. 15	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada (1):			
North Zone:			
SJBP Area	Oct. 22-Oct. 24 &	2	4
	Nov. 24-Dec. 25	2	4
Rest of North Zone	Oct. 22-Oct. 24 &	2	4
	Nov. 4-Jan. 9	2	4
South Zone:			
Posey County (1)	Dec. 10-Jan. 31	2	4
Rest of South Zone	Oct. 29-Oct. 30 &	2	4
	Nov. 25-Jan. 31	2	4
Ohio River Zone:			
Posey County (1)	Dec. 10-Jan. 31	2	4
Rest of Ohio River Zone	Nov. 23-Jan. 31	2	4
White-fronted and Brant	Same as for Canada geese	2	4
Light Geese	Same as for Canada geese	7	14

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	Season Dates	Limits Bag	Possession
Louisiana			
Ducks:			
West Zone	Nov. 12-Nov. 27 &	3	6
	Dec. 17-Jan. 9	3	6
East Zone			
Catahoula Lake Area	Nov. 19-Nov. 27 &	3	6
	Dec. 10-Jan. 9	3	6
Rest of East Zone	Nov. 19-Nov. 27 &	3	6
	Dec. 17-Jan. 16	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada:			
Southwest Zone (3)	Jan. 18-Jan. 26	1	2
Rest of State	Closed	..	..
White-fronted and Brant (3)	Nov. 12-Dec. 4 &	2	4
	Dec. 17-Feb. 1	2	4
Light Geese	Nov. 12-Dec. 4 &	7	14
	Dec. 17-Feb. 14	7	14
Michigan			
Ducks:			
North Zone	Oct. 1-Nov. 2 &	3	6
	Nov. 12-Nov. 13	3	6
Middle Zone	Oct. 1-Nov. 6 &	3	6
	Nov. 11-Nov. 13	3	6
South Zone	Oct. 8-Nov. 13 &	3	6
	Nov. 25-Nov. 27	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada (1):			
North Zone	Sept. 24-Oct. 16	2	4
Middle Zone	Oct. 1-Oct. 23	2	4
South Zone:			
Muskegon Wastewater Goose Management Unit (GMU) (1)	Oct. 15-Nov. 14 &	2	4
	Dec. 1-Dec. 22	2	4
Allegan County GMU (1)	Oct. 15-Dec. 4	1	2
Saginaw County GMU (1)	Oct. 1-Nov. 6 &	1	2
	Nov. 25-Nov. 27	1	2
Tuscola/Huron GMU (1)	Oct. 1-Nov. 6 &	1	2
	Nov. 25-Nov. 27	1	2
Southern Michigan GMU (special season)	Oct. 8-Nov. 6	1	2
	Jan. 7-Feb. 5	2	4
Rest of South Zone	Oct. 8-Nov. 6	1	2
White-fronted and Brant	See Footnote 4	2	4
Light Geese	See Footnote 5	7	14

	Season Dates	Limits Bag	Possession
Iowa			
Ducks:			
North Zone	Sept. 17-Sept. 19 &	3	6
	Oct. 15-Nov. 20	3	6
South Zone	Oct. 1-Oct. 3 &	3	6
	Oct. 22-Nov. 27	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Dark Geese:			
North Zone	Oct. 8-Dec. 1	2	4
South Zone	Oct. 22-Dec. 15	2	4
Light Geese	Oct. 1-Jan. 10	7	14
Kentucky			
Ducks:			
West Zone	Nov. 24-Nov. 27 &	3	6
	Dec. 10-Jan. 14	3	6
East Zone	Nov. 24-Nov. 27 &	3	6
	Dec. 16-Jan. 20	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada (1):			
Western Goose Zone (1):			
Fulton County	Dec. 10-Feb. 13	2	4
Rest of Western Goose Zone	Dec. 10-Jan. 31	2	4
Pennyroyal/Coalfield Zone	Dec. 17-Jan. 20	2	4
Rest of State	Dec. 13-Jan. 31	2	4
White-fronted:			
Western Goose Zone	Dec. 10-Jan. 31	2	4
Pennyroyal/Coalfield Zone	Dec. 17-Jan. 20	2	4
Rest of State	Dec. 13-Jan. 31	2	4
Brant	Nov. 24-Jan. 31	2	4
Light Geese	Same as for Brant	7	14

	Season Dates	Limits Bag	Possession
Minnesota			
Ducks (6)	Oct. 1-Nov. 9	3	6
Mergansers	Same as for ducks	5	10
Coots (7)	Same as for ducks	15	30
Geese:		7	14
Canada (1):			
West Zone:			
West Central Zone:			
Lac qui Parle Zone (1)	Oct. 1-Oct. 9 &	1	2
	Oct. 15-Nov. 4	1	2
Rest of West Central Zone	Oct. 1-Oct. 9 &	1	2
	Oct. 15-Nov. 4	1	2
Rest of West Zone	Oct. 1-Nov. 9	1	2
Northwest Zone	Oct. 1-Nov. 9	1	2
Fergus Falls/Alexandria Zone:			
West Zone	Oct. 1-Nov. 9	1	2
(special season)	Dec. 10-Dec. 19	2	4
Rest of Fergus Falls/ Alexandria Zone	Oct. 1-Nov. 19	2	4
(special season)	Dec. 10-Dec. 19	2	4
Southeast Zone:			
Twin Cities Metro Zone and Olmsted County	Oct. 1-Dec. 9 &	2	4
	Dec. 15-Dec. 24	2	4
Rest of Southeast Zone	Oct. 1-Dec. 9	2	4
Rest of State	Oct. 1-Nov. 19	2	4
White-fronted and Brant:			
West Zone	Oct. 1-Nov. 6	2	4
Northwest Zone	Oct. 1-Nov. 9	2	4
Southeast Zone	Oct. 1-Dec. 9	2	4
Rest of State	Oct. 1-Nov. 19	2	4
Light Geese	Oct. 1-Dec. 19	7	14
Mississippi			
Ducks	Dec. 17-Dec. 20 &	4	8
	Dec. 26-Jan. 20	4	8
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Dark Geese	Nov. 26-Jan. 31	2	4
Light Geese	Nov. 1-Feb. 14	7	14

	Season Dates	Limits Bag	Possession
Missouri			
Ducks and Mergansers:			
North Zone	Oct. 29-Dec. 7	3	6
Middle Zone	Nov. 5-Dec. 14	3	6
South Zone	Nov. 25-Jan. 3	3	6
Coots	Same as for ducks	15	30
Geese:		7	14
Canada (1):			
North Zone:			
Swan Lake Zone (1)	Oct. 29-Nov. 6 &	2	4
	Nov. 25-Dec. 25	2	4
Central Missouri Zone	Oct. 29-Nov. 6 &	2	4
	Nov. 25-Jan. 4	2	4
(special season)	Oct. 1-Oct. 10	3	6
Rest of North Zone	Oct. 29-Nov. 6 &	2	4
	Nov. 25-Jan. 4	2	4
Middle Zone:			
Schell-Osage Zone	Nov. 25-Jan. 3	2	4
Rest of Middle Zone	Nov. 25-Dec. 4 &	2	4
	Dec. 23-Jan. 31	2	4
South Zone	Nov. 25-Dec. 4 &	2	4
	Dec. 23-Jan. 31	2	4
White-fronted and Brant:			
North Zone	Oct. 29-Jan. 6	2	4
Middle Zone	Nov. 5-Jan. 13	2	4
South Zone	Nov. 25-Jan. 31	2	4
Light Geese:			
North Zone	Oct. 29-Feb. 12	7	14
Middle Zone	Nov. 5-Feb. 14	7	14
South Zone	Nov. 25-Feb. 14	7	14
Ohio			
Pymatuning Area:			
Ducks (8)	Oct. 10-Oct. 15 &	3	6
	Nov. 5-Dec. 8	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Oct. 8-Oct. 15 &	1	2
	Nov. 5-Dec. 1	1	7
Light Geese	Oct. 17-Jan. 31	5	10
Brant	Oct. 17-Dec. 5	2	4
Rest of State:			
Ducks:			
North Zone	Oct. 15-Oct. 23 &	3	6
	Nov. 5-Dec. 5	3	6
South Zone	Oct. 15-Oct. 23 &	3	6
	Dec. 9-Jan. 8	3	6
Ohio River Zone	Oct. 15-Oct. 23 &	3	6
	Dec. 16-Jan. 15	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30

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	Season Dates	Limits Bag	Possession
Ohio (cont.)			
Geese:		7	14
Canada:			
North Zone:			
Lake Erie SJBP Zone	Nov. 15-Dec. 5 &	1	2
	Dec. 24-Jan. 1	1	2
Rest of North Zone	Oct. 15-Dec. 5 &	2	4
	Dec. 24-Jan. 10	2	4
South Zone	Oct. 15-Oct. 23 &	2	4
	Nov. 19-Jan. 18	2	4
Ohio River Zone	Oct. 15-Oct. 23 &	2	4
	Nov. 19-Jan. 18	2	4
White-fronted and Brant	Same as for Canada geese	2	4
Light Geese	Same as for Canada geese	7	14
Tennessee			
Ducks:			
Reelfoot Zone	Nov. 12-Nov. 13 &	3	6
	Dec. 10-Jan. 16	3	6
State Zone	Dec. 3-Dec. 7 &	3	6
	Dec. 17-Jan. 20	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada (1)(9):			
Northwest Zone (1)	Dec. 3-Feb. 15	2	4
Southwest Zone	Dec. 3-Jan. 31	2	4
Kentucky/Barkley Lakes Zone (1)	Dec. 10-Jan. 28	2	4
Rest of State (9)	Oct. 1-Oct. 16 &	2	4
	Dec. 3-Jan. 25	2	4
White-fronted and Brant	Nov. 23-Jan. 31	2	4
Light Geese	Nov. 23-Jan. 31	7	14
Wisconsin			
Ducks (10):			
North Zone	Oct. 1-Nov. 9	3	6
South Zone	Oct. 1-Oct. 9 &	3	6
	Oct. 17-Nov. 16	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	5	10
Geese:		7	14
Canada (1):			
Horicon Zone	Sept. 24-Dec. 12	Tag System--See State Regulations	
Collins Zone	Sept. 24-Nov. 18 &	Tag System--See State Regulations	
	Nov. 28-Dec. 2	Tag System--See State Regulations	
Exterior Zone:			
Rock Prairie Subzone	Oct. 1-Dec. 2	1	2
Mississippi River Subzone			
North Duck Zone	Oct. 1-Dec. 9	1	2
South Duck Zone	Oct. 1-Oct. 9 &	1	2
	Oct. 17-Dec. 16	1	2
Rest of Exterior Zone	Oct. 1-Dec. 9	1	2
White-fronted and Brant:			
Horicon Zone	Sept. 24-Dec. 2	2	4
Collins Zone	Sept. 24-Nov. 18 &	2	4
	Nov. 28-Dec. 2	2	4
Exterior Zone:			
Rock Prairie Subzone	Oct. 1-Dec. 2	2	4
Mississippi River Subzone			
North Duck Zone	Oct. 1-Dec. 9	2	4
South Duck Zone	Oct. 1-Oct. 9 &	2	4
	Oct. 17-Dec. 16	2	4
Rest of Exterior Zone	Oct. 1-Dec. 9	2	4
Light Geese:			
Horicon Zone	Sept. 24-Dec. 9	7	14
Collins Zone	Sept. 24-Nov. 18 &	7	14
	Nov. 28-Dec. 2	7	14
Exterior Zone:			
Rock Prairie Subzone	Oct. 1-Dec. 2	7	14
Mississippi River Subzone			
North Duck Zone	Oct. 1-Dec. 9	7	14
South Duck Zone	Oct. 1-Oct. 9 &	7	14
	Oct. 17-Dec. 16	7	14
Rest of Exterior Zone	Oct. 1-Dec. 9	7	14

(1) Harvests of Canada geese will be limited by quotas established in the September 27, 1994, Federal Register. When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, Southern Illinois and Rend Lake Quota Zones in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan, the Lac Qui Parle Zone in Minnesota, the Swan Lake Zone in Missouri, and the northwest and Kentucky/Barkley Lakes Zones in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.
(2) In Illinois, except during the last 3 days of the season, shooting hours for geese in the Southern Illinois Quota Zone and Rend Lake Quota Zone shall close at 3 p.m.
(3) In Louisiana, in the Southwest Zone, during the Canada goose season, the daily bag limit is 2 Canada and white-fronted geese in the aggregate, no more than 1 of which may be a Canada goose. The possession limit is twice the daily bag limit. A special permit is required by the State.
(4) In Michigan, the seasons for white-fronted geese and brant are concurrent with the seasons for Canada geese, except in the Southern Michigan Goose Management Unit, where the January 7 through February 5 special season is for Canada geese only.
(5) In Michigan, the seasons for light geese begin with Canada goose seasons in the respective zones and goose management units and run continuously through December 22, except in the Southern Michigan Goose Management Unit, where the January 7 through February 5 special season is for Canada geese only.
(6) In Minnesota, Lake Christina in Douglas and Grant Counties and North Heron Lake, South Heron Lake, North Marsh, and Duck Lake in Jackson County are closed to the taking of canvasbacks.

(7) In Minnesota, the daily bag limit is 15 and the possession limit is 30, coots, moorhens, and gallinules in the aggregate.
(8) In Ohio, in the Pymatuning Area, the restrictions of the duck bag limit for Pennsylvania apply.
(9) In Tennessee, see State regulations for permit requirements and additional restrictions.
(10) In Wisconsin, the season dates for canvasbacks in the north are Oct. 1-Nov. 9 and in the south are Oct. 22-Nov. 16.

CENTRAL FLYWAY

Flyway-wide Restrictions

Duck Limits: For a 49-day season (61 days in the High Plains Mallard Management Unit), the daily bag limit of 3 ducks may include no more than 3 mallards, no more than 1 of which may be a female, 1 mottled duck, 1 pintail, 1 redhead, 1 canvasback, and 2 wood ducks. For a 39-day season (51 days in the High Plains Mallard Management Unit), the daily bag limit of 4 ducks may include no more than 4 mallards (no more than 1 of which may be a female) and the same species restrictions as above. The possession limit is twice the daily bag limit.

Merganser Limits: The merganser limits include no more than 1 hooded merganser daily and 2 in possession.

	Season Dates	Limits Bag	Possession
Colorado			
Ducks	Oct. 2-Oct. 15 &	3	6
	Oct. 29-Nov. 27 &		
	Dec. 17-Jan. 1		
Coots	Same as for ducks	15	30
Mergansers	Same as for ducks	5	10
Dark Geese:			
Northern Front Range Unit	Oct. 1-Oct. 14 &	3	6
	Oct. 29-Jan. 29	3	6
South Park Unit (1)	Oct. 1-Oct. 14 &	2	4
	Oct. 29-Jan. 1	2	4
San Luis Valley Unit (1)	Oct. 29-Jan. 1	2	4
North Park Unit (1)	Oct. 1-Oct. 14 &	2	4
	Oct. 29-Jan. 1	2	4
Arkansas Valley Unit	Nov. 9-Jan. 29	3	6
Rest of State in Central Flyway	Oct. 29-Jan. 29	3	6
Light Geese:			
Northern Front Range Unit	Oct. 29-Jan. 29	5	10
South Park Unit (1)	Oct. 29-Jan. 1	2	4
San Luis Valley Unit (1)	Oct. 29-Jan. 1	2	4
North Park Unit (1)	Oct. 29-Jan. 1	2	4
Arkansas Valley Unit	Nov. 9-Feb. 12	5	10
Rest of State in Central Flyway	Oct. 29-Jan. 29	5	10
Kansas			
Ducks and Mergansers:			
High Plains	Oct. 15-Oct. 31 &	3	6
	Nov. 11-Dec. 11 &	3	6
	Dec. 21-Jan. 2	3	6
Low Plains	Oct. 22-Oct. 31 &	3	6
	Nov. 11-Dec. 11 &	3	6
	Dec. 26-Jan. 7	3	6
Coots	Same as for ducks	15	30
Dark Geese (2):		2	4
Canada	Nov. 5-Nov. 18 &	1	2
	Nov. 19-Jan. 29	2	4
White-fronted	Nov. 5-Jan. 29	1	2
Light Geese:			
Unit 1	Nov. 11-Feb. 25	10	20
Unit 2	Oct. 22-Feb. 5	10	20
Montana			
Ducks and Mergansers:			
Zone 1	Oct. 1-Nov. 13 &	3	6
	Dec. 10-Dec. 26	3	6
Zone 2	Oct. 1-Oct. 9 &	3	6
	Nov. 11-Jan. 1	3	6
Coots	Same as for ducks	15	30
Geese:			
Sheridan County:			
Dark Geese	Oct. 1-Jan. 15	2	4
Light Geese	Oct. 1-Jan. 15	5	10
Rest of State in Central Flyway:			
Dark Geese	Oct. 1-Jan. 15	4	8
Light Geese	Oct. 1-Jan. 15	5	10
Nebraska (3)			
Ducks and Mergansers:			
High Plains	Oct. 15-Nov. 27 &	3	6
	Dec. 17-Jan. 2	3	6
Low Plains:			
Zones 1 and 2	Oct. 22-Oct. 23 &	3	6
	Oct. 29-Dec. 14	3	6
Zones 3 and 4	Oct. 8-Oct. 10 &	3	6
	Oct. 15-Nov. 29	3	6
Coots	Same as for ducks	15	30
Dark Geese:		2	4
North Unit:			
Canada	Oct. 29-Nov. 11 &	1	2
	Nov. 12-Jan. 22	2	4
White-fronted	Oct. 29-Jan. 22	1	2

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	Season Dates	Limits Bag	Possession
Nebraska (cont.):			
East Unit:			
Canada	Oct. 8-Nov. 11 &	1	2
	Nov. 12-Dec. 25 &	2	4
	Dec. 26-Jan. 1	1	2
White-fronted	Oct. 8-Jan. 1	1	2
West Unit:			
Canada	Oct. 8-Oct. 18 &	1	2
	Oct. 24-Nov. 11 &	1	2
	Nov. 12-Dec. 25 &	2	4
	Dec. 26-Jan. 8	1	2
White-fronted	Oct. 8-Oct. 16 &	1	2
	Oct. 24-Jan. 8	1	2
Light Geese	Oct. 1-Dec. 30 &	10	20
	Jan. 28-Feb. 12	10	20
New Mexico:			
Ducks and Mergansers			
North Zone	Oct. 28-Nov. 18 &	3	6
	Dec. 10-Jan. 18	3	6
South Zone	Nov. 19-Jan. 18	3	6
Coots	Same as for ducks	15	30
Dark Geese (4)	Oct. 15-Jan. 29	3	6
Light Geese:			
Middle Rio Grande Valley Unit	Nov. 12-Feb. 28	10	20
Rest of State	Nov. 12-Feb. 26	5	10
North Dakota:			
Ducks:			
Statewide	Oct. 1-Nov. 6 &	4	8
	Nov. 12-Nov. 13	4	8
High Plains			
(male mallards only)	Dec. 10-Dec. 21	4	8
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Dark Geese:		2	4
Statewide:			
Canada	Oct. 1-Nov. 13	2	4
White-fronted	Oct. 1-Nov. 13	2	4
Missouri River Zone:	Nov. 14-Dec. 18	2	4
Light Geese	Oct. 1-Dec. 11	10	20
Oklahoma:			
Ducks and Mergansers			
High Plains	Oct. 15-Dec. 2 &	3	6
	Dec. 10-Dec. 21	3	6
Low Plains:			
Zone 1	Oct. 22-Nov. 20 &	3	6
	Dec. 10-Dec. 28	3	6
Zone 2	Nov. 12-Nov. 30 &	3	6
	Dec. 10-Jan. 8	3	6
Coots	Same as for ducks	15	30
Dark Geese		2	4
Canada	Nov. 5-Jan. 29	2	4
White-fronted	Nov. 5-Jan. 29	1	2
Light Geese	Nov. 5-Feb. 19	10	20
South Dakota:			
Ducks and Mergansers			
High Plains	Oct. 1-Nov. 8 &	4	8
	Dec. 10-Dec. 21	4	8
Low Plains			
North Zone	Oct. 1-Nov. 8	4	8
Middle Zone	Oct. 8-Nov. 15	4	8
South Zone	Oct. 29-Dec. 6	4	8
Coots	Same as for ducks	15	30
Dark Geese:		2	4
Missouri River Unit:			
Canada	Oct. 1-Dec. 23	2	4
White-fronted	Oct. 1-Dec. 23	1	2
Rest of State:			
Canada	Oct. 1-Oct. 31	2	4
	Nov. 1-Dec. 23	1	2
White-fronted	Oct. 1-Dec. 23	1	2
Light Geese	Oct. 1-Dec. 23	10	20
Texas:			
Ducks:			
High Plains	Nov. 19-Jan. 8	4	8
Low Plains	Nov. 19-Nov. 27	4	8
	Dec. 17-Jan. 15	4	8
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:			
East Tier:			
Dark Geese:			
Canada	Nov. 5-Jan. 15 &	1	2
	Jan. 16-Jan. 29	2	4
White-fronted	Nov. 5-Jan. 15	1	2
Light Geese	Nov. 5-Feb. 19	10	20
West Tier:			
Dark Geese	Oct. 15-Jan. 29	3	6
Light Geese	Nov. 12-Feb. 26	5	10

	Season Dates	Limits Bag	Possession
Wyoming:			
Ducks	Oct. 1-Oct. 23 &	3	6
	Nov. 8-Nov. 28 &	3	6
	Dec. 10-Dec. 26	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Dark Geese:			
Area 1	Oct. 1-Jan. 2	3	6
Areas 2, 3, & 5	Oct. 1-Jan. 15	3	6
Area 4	Nov. 12-Jan. 15	3	6
Light Geese	Oct. 1-Dec. 30	5	10
Arizona:			
Ducks (1):			
North Zone	Oct. 7-Dec. 14	4	8
South Zone	Oct. 7-Oct. 16 &	4	8
	Nov. 18-Jan. 15	4	8
Coots and moorhens	Same as for ducks	25	25
Geese:		5	5
Dark (2):			
GMU 22 & 23	Nov. 15-Jan. 22	2	2
Balance of State	Oct. 22-Jan. 22	2	2
Light (2):			
GMU 22 & 23	Nov. 15-Jan. 22	3	3
Rest of State	Oct. 22-Jan. 22	3	3
California:			
Ducks:			
Northeastern Zone	Oct. 8-Dec. 5	5	10
Colorado River Zone	Oct. 7-Oct. 16 &	4	8
	Nov. 18-Jan. 15	4	8
Southern Zone	Oct. 22-Nov. 5 &	5	10
	Dec. 3-Jan. 15	5	10
Southern San Joaquin Valley Zone	Nov. 19-Jan. 15	5	10
Balance-of-State Zone	Oct. 22-Nov. 5 &	5	10
	Dec. 3-Jan. 15	5	10
Coots and moorhens:			
Northeastern Zone	Same as for ducks	25	25
Colorado River Zone	Same as for ducks	25	25
Southern Zone	Oct. 22-Jan. 15	25	25
Southern San Joaquin Valley Zone	Same as for ducks	25	25
Balance-of-State Zone	Oct. 22-Jan. 15	25	25
Geese:			
Northeastern Zone:		3	6
Canada Geese	Oct. 8-Jan. 8	2	4
Cackling Geese	Oct. 8-Oct. 30	1	2
White-fronted Geese	Oct. 8-Oct. 30	2	4
Light Geese	Oct. 8-Jan. 8	3	6
Colorado River Zone:		5	10
Canada Geese	Oct. 22-Jan. 22	2	4
White-fronted Geese	Oct. 22-Jan. 22	2	4
Light Geese	Oct. 22-Jan. 22	3	6
Southern Zone:		5	5
Dark Geese:		2	2
Canada	Oct. 22-Jan. 22	2	2
Cackling Geese	Oct. 22-Jan. 22	1	1
White-fronted Geese	Oct. 22-Jan. 22	2	2
Light Geese	Oct. 22-Jan. 22	3	3

(1) In Colorado, in the North Park, South Park, and San Luis Valley Units, the bag limit for the October 29-January 1 period is 2 geese. The possession limit is twice the daily bag limit.

(2) In Kansas, exceptions to the dark goose season are as follows: (a) Marais des Cygnes Valley Unit, South Flint Hills Unit, Central Flint Hills Unit, and Southeast Unit - season dates are December 17, 1994, through January 15, 1995. Dark goose permits issued by the Kansas Department of Wildlife and Parks are required. Unlimited permits are available in all four units with 2 geese allowed per permit. In the Marais des Cygnes Valley and South Flint Hills Units, there is maximum of two permits per individual. In the Central Flint Hills and Southeast Unit, there is a maximum of one permit per individual. Shooting hours in the Marais des Cygnes Unit shall be one-half hour before sunrise to 1:00 p.m. Shooting hours in all other units shall be one-half hour before sunrise to sunset.

(3) In Nebraska, see State regulations for additional information on daily bag limits.

(4) In New Mexico, the season for dark geese is closed in Bernalillo, Sandoval, Sierra, Sorocco, and Valencia Counties.

PACIFIC FLYWAY

Flyway-wide Restrictions

Duck and Merganser Limits. For a 69-day season, the daily bag limit of 4 ducks (including mergansers) may include no more than 3 mallards but only 1 female mallard, 1 pintail, 2 redheads and 1 canvasback. For a 59-day season, the daily bag limit of 5 ducks (including mergansers) may include no more than 4 mallards, only one of which may be a female mallard, with the other species restrictions shown above. The possession limit is twice the daily bag limit.

Coot and Common Moorhen Limits: Daily bag and possession limits are in the aggregate for the two species.

Goose Limits: Daily bag limits for geese may not exceed 2 white-fronted geese and 3 light geese. The possession limit is twice the daily bag limit.

Aleutian Canada Geese: The season is closed throughout the Flyway.

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	Season Dates	Limits Bag	Possession
Montana			
Ducks	Oct. 1-Oct. 16 &	4	8
	Oct. 22-Nov. 27 &	4	8
	Dec. 7-Jan. 1	4	8
Coots	Same as for ducks	25	25
Geese (7):			
Dark	Oct. 1-Jan. 8	3	6
Light	Oct. 1-Jan. 8	3	6
Nevada			
Ducks:			
Clark County	Nov. 12-Jan. 19	4	8
Rest of State	Oct. 1-Oct. 16 &	4	8
	Oct. 29-Dec. 20	4	8
Coots and moorhens	Same as for ducks	25	25
Dark Geese:			
Clark County	Nov. 19-Jan. 22	2	4
Rest of State	Oct. 15-Jan. 22	3	6
Light Geese:			
Clark County	Nov. 15-Jan. 22	3	6
Rest of State (7)	Oct. 15-Jan. 22	3	6
New Mexico			
Ducks	Oct. 15-Oct. 30 &	4	8
	Nov. 19-Jan. 10	4	8
Coots	Same as for ducks	15	30
Moorhens (9)	Same as for ducks	1	2
Geese:			
North Zone:			
Dark	Dec. 24-Jan. 22	2	4
Light	Dec. 24-Jan. 22	1	2
South Zone:			
Dark	Oct. 29-Jan. 22	2	4
Light	Oct. 29-Jan. 22	1	2
Oregon			
Ducks:			
Zone 1:			
Columbia Basin Unit	Oct. 15-Oct. 22 &	4	8
	Nov. 9-Jan. 15	4	8
Rest of Zone 1	Oct. 15-Oct. 22 &	4	8
	Nov. 9-Jan. 8	4	8
Zone 2	Oct. 8-Dec. 4 &	4	8
	Dec. 21-Dec. 31	4	8
Coots	Same as for ducks	25	25
Geese:			
Western Zone (10) (outside of NW permit zone):			
Dark Geese	Oct. 15-Jan. 15	4	8
Light Geese	Oct. 15-Jan. 15	3	6

	Season Dates	Limits Bag	Possession
California (cont.)			
Balance-of-State Zone		3	3
Dark Geese (3):		2	2
Canada:			
Del Norte & Humboldt	Closed		..
Sacramento Valley Closure	Closed		
San Joaquin Valley Closure	Oct. 29-Nov. 22	2	2
Cackling Geese	Oct. 29-Nov. 22	1	1
Rest of Zone	Oct. 29-Jan. 15	2	2
Cackling Geese	Oct. 29-Jan. 1	1	1
White-fronted:			
Sacramento Valley Closure	Oct. 29-Nov. 30	1	1
Rest of Zone	Oct. 29-Jan. 1	1	1
Light Geese	Oct. 29-Jan. 15	3	3
Brant	Nov. 1-Nov. 30	2	4
Colorado			
Ducks	Oct. 1-Oct. 16 &	4	8
	Oct. 29-Nov. 27 &	4	8
	Dec. 12-Jan. 8	4	8
Coots	Same as for ducks	25	25
Geese:			
LaPlata County (4)	Nov. 5-Jan. 13	2 per season	
Delta/Montrose Area	Nov. 5-Jan. 13	2	4
Gunnison/Saguache Area (4)	Oct. 22-Jan. 13	1 per season	
Dolores/Montezuma Area (4)	Nov. 5-Jan. 13	2 per season	
Rest of State	Oct. 1-Oct. 16 &	2	4
	Oct. 22-Jan. 13	2	4
Idaho			
Ducks:			
Zone 1	Oct. 22-Dec. 19	4	8
Zone 2	Oct. 8-Dec. 4 &	4	8
	Dec. 22-Jan. 1	4	8
Zone 3	Oct. 8-Oct. 16 &	4	8
	Nov. 12-Jan. 10	4	8
Coots	Same as for ducks	25	25
Geese:			
Zone 1:		4	8
Dark (5)	Oct. 1-Jan. 8	4	8
Light	Oct. 1-Jan. 8	3	6
Zone 2 (6):		3	6
Dark	Oct. 1-Jan. 8	2	4
Light	Oct. 1-Jan. 8	3	6
Zone 3:		3	6
Dark	Oct. 1-Oct. 8	1	2
Light	Oct. 1-Jan. 8	3	6
Zone 4 (5)	Oct. 1-Jan. 8	3	6
Zone 5 (5)	Oct. 8-Jan. 8	3	6

	Season Dates	Limits Bag	Possession
Oregon (cont.)			
(Coos, Curry, Josephine, and Jackson):			
Dark Geese	Oct. 15-Jan. 22	4	8
Light Geese	Oct. 15-Jan. 22	3	6
Eastern Zone:			
Columbia Basin:			
Dark Geese	Oct. 15-Jan. 22	4	8
Light Geese	Oct. 15-Jan. 22	3	6
Klamath, Harney, Lake and Malheur Counties (11):			
Dark Geese	Oct. 8-Jan. 15	4	8
Light Geese	Oct. 8-Jan. 15	3	6
Rest of Eastern Zone:			
Dark Geese	Oct. 15-Jan. 22	4	8
Light Geese	Oct. 15-Jan. 22	3	6
Brant (4)	Jan. 7-Jan. 22	2	4
Utah			
Ducks:			
Zone 1	Oct. 8-Dec. 6 &	4	8
	Dec. 23-Jan. 1	4	8
Zone 2	Oct. 15-Nov. 27 &	4	8
	Dec. 12-Jan. 10		
Coots	Same as for ducks	25	25
Geese:		5	6
Light	Oct. 8-Jan. 8	3	6
Dark:			
Washington County (12)	Oct. 22-Jan. 22	2	4
Rest of State	Oct. 8-Jan. 8	2	4
Washington			
Ducks:			
East Zone	Oct. 15-Oct. 23 &	4	8
	Nov. 5-Jan. 10	4	8
West Zone	Oct. 15-Oct. 23 &	4	8
	Nov. 12-Jan. 10	4	8
Coots	Same as for ducks	25	25
Geese (13):			
East Zone (14):			
Columbia Basin	Oct. 15-Jan. 22	4	8
Rest of East Zone	Oct. 15-Jan. 22	4	8
West Zone:			
Lower Columbia River Area (15)	Nov. 22-Jan. 22	3	6
Skagit Area	Oct. 15-Jan. 1	3	6
Rest of West Zone	Oct. 15-Jan. 22	4	8
Brant (16)	Dec. 10-Dec. 23	2	4

	Season Dates	Limits Bag	Possession
Wyoming			
Ducks	Oct. 1-Nov. 27	5	10
Coots	Same as for ducks	25	25
Dark Geese	Oct. 1-Jan. 5	3	6

(1) In Arizona, the daily limit may include no more than either 1 female mallard or 1 Mexican-like duck, but not both; and not more than 2 female mallards, 2 Mexican-like ducks, or 1 of each, may be in possession.
(2) In Arizona, in Yuma County, La Paz County, Game Management Units (Units) 13B, 15, and that portion of Unit 16 lying within Mohave County, the bag and possession limit is 2 and 4 for Canada geese and 3 and 6 for light geese, respectively.
(3) In California, the dark goose limits may be expanded to 2 per day and 4 in possession provided they are Canada geese other than cackling geese for which the daily limit is 1. Aleutian geese may not be taken.
(4) State permit is required.
(5) In Idaho, Zones 1, 4, and 5 have a daily limit of 2 whitefronted geese and a possession limit of 4.
(6) In Idaho, the season on light geese is closed in Fremont and Teton Counties.
(7) In Montana, check State regulations for special seasons/exceptions in Freezeout Lake WMA; Canyon Ferry; Flathead; Deer Lodge County; and Missoula County.
(8) In Nevada, there is no open season on light geese in Ruby Valley within Elko and White Pine Counties, White River Valley of Nye County, and Pahranagat Valley of Lincoln County.
(9) In New Mexico, the bag limit is 1 common moorhen daily and 2 in possession; there is no open season on the purple gallinule.
(10) In Oregon, the Northwest Area is closed to all goose hunting, except for the special permit goose season on designated portions of the special permit goose area from November 16 to January 22. See State regulations for specific boundary descriptions, times, days, and other conditions of the special permit season.
(11) In Oregon, in Klamath, Lake, and Harney Counties, the white-fronted goose season does not open until October 17.
(12) In Utah, the Washington County season is for Canada geese only.
(13) In Washington, daily bag and possession limits may include no more than 3 and 6 light geese, respectively.
(14) In Washington, in State Goose Area 1, hunting is only on Saturdays, Sundays, Wednesdays, and certain holidays. In State Goose Area 2, hunting is only on Saturdays, Sundays, Tuesdays, Wednesdays, and certain holidays. See State regulations for details.
(15) In Washington, in the Lower Columbia River Area, bag limits are 4 geese per day and 8 in possession. See State regulations for specific dates and conditions of permit hunts and closures for Canada geese.
(16) In Washington, brant may be hunted in Skagit, Pacific, and Whatcom Counties only; and only on December 10, 11, 12, 14, 16, 17, 18, 21, and 23.

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4 Section 20.106 is amended as follows

§20.106 Seasons, limits, and shooting hours for sandhill cranes

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 17, 1994, Federal Register (59 FR 42474)

Note: The following seasons are in addition to the seasons published previously in the September 1, 1994, Federal Register (59 FR 45588)

	Season Dates	Limits: Bag	Limits: Possession
CENTRAL FLYWAY			
. . . . .			
Kansas (6)	Nov. 5-Jan. 1	2	4
. . . . .			
Texas (1)			
Zone A	Nov. 12-Feb. 12	3	6
Zone B	Dec. 3-Feb. 12	3	6
Zone C	Jan. 7-Feb. 12	3	6
. . . . .			

(1) Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

. . . . . .

(6) In Kansas, the season is only open in the portions of southcentral and southwest Kansas bounded by Highways K-4 to K-14, K-14 to K-61, K-61 to US-54, US-54 to US-160, US-160 to US-83, US-83 to K-156, K-156 to US-183, US-183 to K-4. Shooting hours are sunrise to 2:00 p.m. Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit which must be displayed to any authorized law enforcement official upon request. In addition, the Federal sandhill crane hunting permit must be validated by the State of Kansas. No person while hunting cranes shall use or possess shot other than steel or such shot approved as nontoxic shot.

5. Section 20.107 is revised to read as follows:

§20.107 Seasons, limits, and shooting hours for tundra swans.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows.

Shooting hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Hunting is by State permit only.

NOTE. Successful permittees must immediately validate their harvest by that method required in State regulations.

	Season Dates	Limits: Bag	Limits: Possession
ATLANTIC FLYWAY			
North Carolina	Nov. 3-Jan. 31	1 per season	
Virginia	Dec. 3-Jan. 31	1 per season	
CENTRAL FLYWAY (1)			
Montana	Oct. 1-Jan. 1	1 per season	
North Dakota	Oct. 1-Nov. 27	1 per season	
South Dakota	Oct. 1-Nov. 27	1 per season	
PACIFIC FLYWAY (1)			
Montana	Oct. 15-Jan. 1	1 per season	
Nevada	Oct. 15-Jan. 22	1 per season	
Utah	Oct. 8-Dec. 15	1 per season	

(1) See State regulations for description of area open to swan hunting.

8 Section 20.109 is revised to read as follows

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise restricted by State regulations. Area descriptions were published in the August 17 and September 27 Federal Registers.

Limits: The daily bag limit may include no more than 3 migratory game birds, singly or in the aggregate. The possession limit is twice the daily bag limit.

These limits apply to falconry during both regular hunting seasons and extended falconry seasons -- unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas.

Although many States permit falconry during the gun seasons, only extended falconry seasons are shown below. Please consult State regulations for details

	Extended Falconry Dates
ATLANTIC FLYWAY	
Florida	
Ducks and coots	Nov. 1-Nov. 19 & Dec. 1-Dec. 14 & Jan. 21-Feb. 28
Georgia	
Sea Ducks	Nov. 15-Nov. 22 & Jan. 21-Feb. 28
Ducks, mergansers, gallinules, and coots	Nov. 15-Nov. 22 & Nov. 28-Dec. 16 & Jan. 21-Feb. 28
Maine	
Ducks, mergansers, and coots	
North Zone	Oct. 27-Nov. 3 & Nov. 21-Jan. 18
South Zone	Dec. 22-Dec. 31 & Jan. 2-Jan. 28 & Jan. 30-Feb. 28
Maryland	
Mourning doves	Oct. 23-Nov. 20 & Dec. 18-Dec. 25 &
Rails	Nov. 10-Dec. 16
Woodcock	Oct. 5-Oct. 23 & Nov. 26-Dec. 11 & Dec. 24-Jan. 19
Ducks	Dec. 1-Dec. 12 & Jan. 15-Mar. 10
Canada Geese	Jan. 15-Mar. 10
Brant	Jan. 21-Mar. 10
Massachusetts	
Ducks, mergansers, and coots	
Central Zone	Oct. 6-Oct. 12 & Oct. 23-Nov. 17 & Dec. 23-Jan. 20
Coastal Zone	Oct. 6-Oct. 19 & Oct. 30-Nov. 24 & Dec. 25-Jan. 20
Berkshire Zone	Oct. 6-Oct. 9 & Nov. 13-Nov. 20 & Nov. 27-Jan. 20
New Hampshire	
Ducks, mergansers, and coots:	
Inland Zone	Oct. 30-Nov. 18 & Dec. 5-Jan. 20
Coastal Zone	Oct. 6 only & Oct. 11-Nov. 18 & Dec. 25-Jan. 20

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	Extended Falconry Dates
New Jersey	
Woodcock	
North Zone	Oct. 1-Oct. 14 & Nov. 19-Jan. 15
South Zone	Oct. 1-Nov. 6 & Dec. 4-Dec. 16 & Dec. 25-Jan. 15
Ducks:	
North Zone	Oct. 1-Oct. 14 & Oct. 30-Nov. 22 & Dec. 18-Jan. 15
South Zone	Oct. 1-Oct. 21 & Oct. 30-Nov. 22 & Dec. 25-Jan. 15
Coastal Zone	Oct. 1-Nov. 1 & Nov. 13-Dec. 9 & Jan. 8-Jan. 15
New York	
Ducks and coots:	
Long Island Zone	Nov. 1-Nov. 22 & Nov. 28-Nov. 30
Northeastern Zone	Oct. 17-Oct. 27
Southeastern Zon	Oct. 1-Oct. 7 & Oct. 21-Oct. 31
Western Zone	Oct. 1-Oct. 12
Pennsylvania	
Mourning doves	Oct. 9-Oct. 28 & Nov. 27-Dec. 13
Ducks:	
North Zone	Oct. 23-Nov. 4 & Nov. 30-Jan. 22
Soutt Zone	Oct. 23-Nov. 20 & Dec. 25-Jan. 31

	Extended Falconry Dates
Pennsylvania (cont.)	
Northwest Zone	Oct. 16-Nov. 4 & Dec. 9-Jan. 24
Lake Erie Zone	Nov. 27-Dec. 11 & Jan. 1-Feb. 21
Canada Geese:	
North Zone	Dec. 18-Jan. 23
South Zone	Oct. 25-Oct. 30
Erie, Mercer, and Butler	Oct. 16-Nov. 11
Crawford	Oct. 16-Nov. 4 & Dec. 2-Jan. 12
Brant	Dec. 6-Jan. 31
South Carolina	
Ducks, mergansers, and coots	Oct. 6-Nov. 22 & Nov. 27-Dec. 15
Virginia	
Ducks, mergansers, coots, moorhens, and gallinules	Nov. 18-Nov. 22 & Nov. 27-Dec. 19 & Jan. 21-Feb. 28
Canada Geese	Nov. 16-Nov. 20 & Dec. 11 only & Jan. 21-Feb. 20
Brant	Nov. 16-Nov. 30 & Dec. 11 only & Jan. 21-Feb. 20
Swan	Nov. 16-Dec. 2 & Feb. 1-Feb. 20

	Extended Falconry Dates
MISSISSIPPI FLYWAY	
Arkansas	
Mourning doves	Oct. 22-Dec. 4 & Dec. 31-Jan. 2
Ducks, mergansers, and coots	Nov. 12-Nov. 23 & Dec. 19-Dec. 25 & Jan. 19-Feb. 26
Illinois	
Mourning doves	Oct. 31-Dec. 16
Rails	Nov. 19-Dec. 25
Woodcock	Sept. 1-Sept. 30 & Dec. 5-Dec. 16
Ducks, mergansers, and coots:	
North Zone	Oct. 15-Oct. 19 & Nov. 29-Dec. 13 & Feb. 1-Mar. 10
Central Zone	Oct. 15-Oct. 28 & Dec. 6-Dec. 13 & Feb. 1-Mar. 10
South Zone	Oct. 15-Nov. 2 & Dec. 13 & Feb. 1-Mar. 10
Geese:	
North Goose Zone	Oct. 15-Oct. 19 & Nov. 14-Nov. 22 & Feb. 1-Mar. 10
Central Goose Zone	Nov. 5-Nov. 22 & Feb. 1-Mar. 10
South Goose Zone	Nov. 24-Dec. 2 & Jan. 23-Mar. 10

	Extended Falconry Dates
Indiana	
Mourning doves	Oct. 17-Nov. 3 & Jan. 1-Jan. 29
Woodcock	Sept. 1-Sept. 23 & Nov. 28-Dec. 16
Ducks, mergansers, and coots:	
North Zone	Sept. 25-Oct. 21 & Oct. 31-Nov. 3 & Dec. 5-Dec. 31
South Zone	Oct. 1-Oct. 28 & Oct. 31-Nov. 24 & Jan. 2-Jan. 6
Ohio River Zone	Oct. 8-Nov. 24 & Nov. 28-Dec. 7
Iowa	
Ducks, mergansers, and coots:	
North Zone	Sept. 20-Oct. 14 & Nov. 21-Jan. 1
South Zone	Sept. 20-Sept. 30 & Oct. 4-Oct. 21 & Nov. 28-Jan. 1
Dark Geese:	
North Zone	Dec. 2-Jan. 22
South Zone	Dec. 16-Feb. 5
Light Geese	Jan. 11-Jan. 15

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	Extended Falconry Dates
Minnesota	
Rails, snipe, and woodcock	Nov. 5-Dec. 16
Ducks, mergansers, coots, and moorhens	Sept. 1-Sept. 30 & Nov. 10-Dec. 16
Canada Geese	
West Zone:	
West Central Zone	Oct. 10-Oct. 14 & Nov. 5-Dec. 16
Rest of West Zone	Nov. 10-Dec. 16
Northwest Zone	Nov. 10-Dec. 16
Fergus Falls/Alexandria Zone	
West Zone	Nov. 10-Dec. 9
Rest of Fergus Falls/Alexandria Zone	Nov. 20-Dec. 9
Southeast Zone:	
Twin Cities Metro Zone and Olmsted County	Dec. 10-Dec. 14
Rest of Southeast Zone	Dec. 10-Dec. 16
Rest of State	Nov. 20-Dec. 16
White-fronted Geese	
West Zone	Nov. 10-Dec. 16
Northwest Zone	Nov. 10-Dec. 16
Southeast Zone	Dec. 10-Dec. 16
Rest of State	Nov. 20-Dec. 16
Mississippi	
Mourning doves	Nov. 14-Nov. 18 & Jan. 18-Feb. 28
Ducks, mergansers, and coots	Nov. 26-Dec. 16 & Jan. 21-Mar. 6

	Extended Falconry Dates
Missouri	
Mourning doves	Oct. 31-Dec. 16
Ducks, mergansers, and coots:	
North Zone	Sept. 10-Sept. 18 & Oct. 1-Oct. 28 & Dec. 8-Jan. 6
Middle Zone	Sept. 10-Sept. 18 & Oct. 1-Nov. 4 & Dec. 15-Jan. 6
South Zone	Sept. 10-Sept. 18 & Oct. 1-Nov. 24 & Jan. 4-Jan. 6
Ohio	
Ducks, mergansers, and coots:	
Pymatuning Area	Oct. 10-Nov. 4 & Dec. 9-Jan. 15
Rest of State:	
North Zone	Oct. 24-Nov. 4 & Dec. 8-Jan. 15
South Zone	Oct. 24-Dec. 8 & Jan. 9-Jan. 15
Ohio River Zone	Oct. 24-Dec. 15
Tennessee	
Ducks, mergansers, and coots:	
Reelfoot Zone	Nov. 6-Nov. 11 & Nov. 14-Dec. 9 & Jan. 17-Feb. 15
State Zone	Nov. 6-Dec. 2 & Dec. 8-Dec. 16 & Jan. 21-Feb. 15

	Extended Falconry Dates
Kentucky	
Ducks, mergansers, and coots:	
West Zone	Nov. 5-Nov. 23 & Nov. 28-Dec. 8 & Jan. 15-Jan. 31
East Zone	Nov. 5-Nov. 23 & Nov. 28-Dec. 15 & Jan. 21-Jan. 31
Canada and White-fronted Geese	
Western Goose Zone	Nov. 5-Dec. 9
Pennyroyal/Coalfield Zone	Nov. 5-Dec. 16 & Jan. 21-Jan. 31
Rest of State	Nov. 5-Dec. 12
Light Geese and Brant	Nov. 5-Nov. 23
Michigan	
Rails, snipe, and woodcock	Sept. 7-Sept. 14 & Nov. 16-Dec. 22
Ducks, mergansers, coots, and moorhens:	
North Zone	Sept. 7-Sept. 20 & Nov. 9-Nov. 11 & Nov. 14-Dec. 22
Middle Zone	Sept. 7-Sept. 20 & Nov. 7-Nov. 10 & Nov. 14-Dec. 22
South Zone	Sept. 7-Oct. 7 & Nov. 14-Nov. 24 & Nov. 28-Dec. 22

	Extended Falconry Dates
Wisconsin	
Rails, snipe, moorhens, and gallinules:	
North Zone	Sept. 1-Sept. 30 & Nov. 10-Dec. 16
South Zone	Sept. 15-Sept. 30 & Oct. 10-Oct. 16 & Jan. 28-Mar. 10
Woodcock	Sept. 1-Sept. 16 & Nov. 21-Dec. 16
Ducks, mergansers, and coots:	
North Zone	Sept. 1-Sept. 30 & Nov. 10-Dec. 16
South Zone	Sept. 15-Sept. 30 & Oct. 10-Oct. 16 & Jan. 28-Mar. 10
CENTRAL FLYWAY	
Colorado	
Ducks, mergansers, and coots	Sept. 1-Sept. 2 & Sept. 12-Sept. 30 & Oct. 16-Oct. 28
Montana (1)	
Ducks, mergansers, and coots:	
Zone 1	Sept. 17-Sept. 30 & Nov. 14-Dec. 9 & Dec. 27-Jan. 1
Zone 2	Sept. 17-Sept. 30 & Oct. 10-Nov. 10

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	Extended Falconry Dates
Nebraska (2)	
Ducks, mergansers, and coots	
High Plains	Sept. 28-Oct. 14 & Nov. 28-Dec. 16 & Jan. 3-Jan. 12
Low Plains	
Zones 1 and 2	Sept. 28-Oct. 21 & Oct. 24-Oct. 28 & Dec. 15-Jan. 12
Zones 3 & 4	Sept. 28-Oct. 7 & Oct. 11-Oct. 14 & Nov. 30-Jan. 12
New Mexico (1)	
Ducks, coots, moorhens, snipe, sora and Virginia rail	
North Zone	Oct. 13-Oct. 28 & Nov. 19-Dec. 9
South Zone	Oct. 25-Nov. 18 & Jan. 19-Jan. 30
Oklahoma	
Ducks, mergansers, and coots	
High Plains	Sept. 19-Oct. 14 & Dec. 3-Dec. 9 & Dec. 22-Dec. 25
Low Plains:	
Zone 1	Nov. 21-Dec. 9 & Dec. 29-Jan. 27
Zone 2	Dec. 1-Dec. 9 & Jan. 9-Feb. 17
South Dakota	
Ducks, mergansers, and coots	
High Plains	Sept. 4-Sept. 30 & Nov. 9-Dec. 7
Low Plains:	
North Zone	Sept. 4-Sept. 30 & Nov. 9-Dec. 19
Middle Zone	Sept. 4-Oct. 7 & Nov. 16-Dec. 19
South Zone	Sept. 4-Oct. 28 & Dec. 7-Dec. 19
Texas	
Mourning and white-winged doves	Nov. 14-Dec. 20
Rails and gallinules	Nov. 14-Dec. 20
Ducks, mergansers, and coots	
High Plains	Jan. 9-Feb. 24
Low Plains	Nov. 28-Dec. 18 & Jan. 16-Feb. 24
Woodcock	Feb. 1-Feb. 26
Wyoming	
Rails	Sept. 1-Sept. 14
Ducks, mergansers, and coots	Sept. 1-Sept. 30 & Oct. 24-Nov. 7
PACIFIC FLYWAY	
Arizona	
Doves	Sept. 12-Oct. 28
Ducks and mergansers:	
North Zone	Sept. 1-Oct. 6
South Zone	Jan. 16-Feb. 22

	Extended Falconry Dates
California (cont.)	
Balance-of-State Zone	
Sacramento Valley	Oct. 22-Oct. 28 & Dec. 1-Feb. 5
Rest of Zone	Oct. 22-Oct. 28 & Jan. 2-Feb. 5
Colorado River Zone	Oct. 7-Oct. 16 & Jan. 23-Jan. 26
Southern San Joaquin Zone	Oct. 22-Oct. 28 & Jan. 2-Feb. 5
Brant	
Northeastern Zone	Oct. 8-Oct. 31 & Dec. 1-Jan. 22
Southern Zone	Oct. 22-Oct. 31 & Dec. 1-Feb. 5
Balance-of-State Zone	Oct. 22-Oct. 31 & Dec. 1-Feb. 5
Southern San Joaquin Zone	Oct. 22-Oct. 31 & Dec. 1-Feb. 5
Light Geese:	
Northeastern Zone	Jan. 9-Jan. 22
Southern Zone	Jan. 23-Feb. 5
Balance-of-State Zone	Oct. 22-Oct. 28 & Jan. 16-Feb. 5
Southern San Joaquin Zone	Oct. 22-Oct. 28 & Jan. 16-Feb. 5
Colorado River Zone	Oct. 7-Oct. 16 & Jan. 23-Jan. 26

	Extended Falconry Dates
California	
Ducks and mergansers:	
Northeastern Zone	Dec. 6-Jan. 22
Colorado River Zone	Jan. 16-Feb. 22
Southern Zone	Nov. 6-Dec. 2 & Jan. 16-Feb. 5
Balance-of-State Zone	Nov. 6-Dec. 2 & Jan. 16-Feb. 5
Southern San Joaquin Zone	Oct. 22-Nov. 18 & Jan. 16-Feb. 5
Coots	
Northeastern Zone	Dec. 6-Jan. 22
Southern Zone	Jan. 16-Feb. 5
Balance-of-State Zone	Jan. 16-Feb. 5
Colorado River Zone	Jan. 16-Feb. 22
Southern San Joaquin Zone	Jan. 16-Feb. 5
Canada Geese:	
Northeastern Zone	Jan. 9-Jan. 22
Southern Zone	Jan. 23-Feb. 5
Colorado River Zone	Jan. 23-Feb. 5
Balance-of-State Zone (3)	Jan. 16-Feb. 5
Southern San Joaquin Zone	Jan. 16-Feb. 5
White-fronted Geese	
Northeastern Zone	Oct. 31-Jan. 22
Southern Zone	Jan. 23-Feb. 5

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	Extended Falconry Dates
Colorado	
Ducks, mergansers, and coots	Sept. 17-Sept. 30 & Oct. 17-Oct. 28 & Nov. 28-Dec. 9
Idaho	
Mourning doves	Oct. 1-Nov. 30 & Feb. 23-Mar. 10
Ducks, mergansers, and coots:	
Zone 1	Sept. 1-Oct. 2 & Feb. 23-Mar. 10
Zones 2 and 3	Sept. 1-Oct. 2 & Mar. 5-Mar. 10
Geese:	
Zones 1 through 4	Sept. 1-Sept. 7
Zone 5	Sept. 1-Sept. 14
Montana (1)	
Ducks and coots	Oct. 17-Oct. 21 & Nov. 28-Dec. 15 & Feb. 25-Mar. 10
Geese	Jan. 9-Jan. 15
Nevada (4)	
Ducks, mergansers, coots, moorhens, and snipe:	
Clark County	Jan. 20-Feb. 26
Rest of State	Dec. 21-Jan. 22
New Mexico (1)	
Ducks, coots, moorhens, snipe, sora and Virginia rail	Jan. 11-Feb. 17

	Extended Falconry Dates
New Mexico (cont.)	
Geese:	
North Zone	Oct. 15-Dec. 23 & Jan. 23-Jan. 29
South Zone	Oct. 15-Oct. 28 & Jan. 23-Jan. 29
Oregon	
Mourning doves	Oct. 1-Dec. 16
Band-tailed pigeons (5)	Sept. 1-Sept. 14 & Sept. 24-Dec. 16
Ducks, mergansers, and coots:	
Zone 1:	
Columbia Basin	Oct. 1-Oct. 14 & Jan. 16-Feb. 1
Rest of Zone 1	Oct. 1-Oct. 14 & Jan. 9-Feb. 1
Zone 2	Oct. 1-Oct. 7 & Jan. 1-Jan. 7
Snipe	Oct. 1-Oct. 7
Utah	
Mourning doves and band-tailed pigeons	Oct. 1-Dec. 16
Ducks, mergansers, and coots:	
Zone 1	Oct. 1-Oct. 7 & Dec. 17-Dec. 22 & Jan. 2-Jan. 26
Zone 2	Jan. 13-Feb. 19
Light Geese	Jan. 9-Jan. 22
Dark Geese:	
Washington County	Oct. 8-Oct. 21
Rest	Jan. 9-Jan. 22

	Extended Falconry Dates
Washington	
Mourning doves	Sept. 1-Sept. 15 & Oct. 1-Dec. 31
Ducks, mergansers, coots, and snipe:	
West Zone	Jan. 11-Feb. 17
East Zone	Feb. 8-Mar. 10
Geese	Jan. 23-Jan. 29
Snipe:	
West Zone	Oct. 1-Oct. 14 & Oct. 24-Nov. 11 & Jan. 11-Jan. 15
East Zone	Oct. 1-Oct. 14 & Oct. 24-Nov. 11 & Jan. 11-Jan. 15
Wyoming	
Rails and snipe	Sept. 1-Sept. 14
Ducks, mergansers, and coots	Sept. 1-Oct. 4 & Oct. 22-Nov. 8

(1) The daily bag limit is 2 and the possession limit is 6.
(2) In Nebraska, the bag limit is 3, see State regulations for additional information on daily bag limits.
(3) In California, the falconry season for Canada geese is closed in Del Norte and Humbolt Area, the Sacramento Valley Area, and in the San Joaquin Valley Area.
(4) In Nevada, the bag limit is 2 and the possession limit is 4.
(5) In Oregon, no more than 1 pigeon daily in bag or possession.

[FR Doc. 94-24261 Filed 9-30-94; 8:45 am]
BILLING CODE 4310-55-C

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federal register

Monday
October 3, 1994

Part X

Department of Commerce

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure; Open Meeting; Notice

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure; Open Meeting

AGENCY: National Telecommunications and Information Administration (NTIA).

ACTION: Notice is hereby given of a meeting of the United States Advisory Council on the National Information Infrastructure, created pursuant to Executive Order 12864, as amended.

SUMMARY: The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of the NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services to the Council.

Authority: Executive Order 12864, signed by President Clinton on September 15, 1993, and amended on December 30, 1993 and June 13, 1994.

DATES: The NII Advisory Council meeting will be held on Wednesday, October 19, 1994 from 8:30 a.m. until 4:30 p.m.

ADDRESSES: The NII Advisory Council meeting will take place at the Mountain View Center for the Performing Arts, City of Mountain View, Post Office Box 7540, Mountain View, California 94039 (corner of Castro and Mercy Streets).

FOR FURTHER INFORMATION CONTACT: Ms. Celia Nogales (or Ms. Meggan Griggs, alternate), Designated Federal Officer for the Advisory Council on the National Information Infrastructure, National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, Room 4892; 14th Street and Constitution Avenue, N.W.; Washington, D.C. 20230. Telephone: 202–482–1835; Fax: 202–482–0979; E-mail: nii@ntia.doc.gov.

Agenda

1. *Opening Remarks by the Co-Chairs (Delano Lewis, Ed McCracken)*
2. *Review of Progress on Mega-Projects*
3. *Education and the NII Principles*
4. *Intellectual Property Principles*
5. *Remarks by the Deputy Secretary of Commerce*
6. *Discussion of Critical Issues*
   Personal Privacy
   Rules and Responsibilities of NII Use
   Ensuring Access to the NII
   Global Uses of the NII
7. *Public Discussion, Questions and Answers*
8. *Next Meeting Date and Agenda Items*

PUBLIC PARTICIPATION: The meeting will be open to the public, with limited seating available on a first-come, first-served basis. Any member of the public requiring special services, such as sign language interpretation, should contact Meggan Griggs at 202–482–1835.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meetings. Comments should be submitted through electronic mail to nii@ntia.doc.gov or to the Designated Federal Officer at the address listed above.

Within thirty (30) days following the meeting, copies of the minutes of the Advisory Council meeting may be obtained through Bulletin Board Services at 202–501–1920, 202–482–1199, over the Internet at iitf.doc.gov, or from the U.S. Department of Commerce, National Telecommunications and Information Administration, Room 4892, 14th Street and Constitution Avenue, N.W.; Washington, D.C. 20230, Telephone 202–482–1835.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 94–24336 Filed 9–30–94; 8:45 am]

BILLING CODE 3510–60–P

federal register

Monday
October 3, 1994

Part XI

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 Part 200 et al.

Appraisals and Property Valuation; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 203, 204, 206 and 267

[Docket No. R–94–1626; FR–3027–F–02]

RIN 2502–AF25

Appraisals and Property Valuation

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes minimum standards for real estate appraisals made by staff, fee panel and contract appraisers in determining the maximum insurable mortgage amount in most HUD/FHA single family (one-to-four family) and multifamily transactions; and establishes criteria for the selection of appraisers by mortgagees. The rule also distinguishes those appraisals that may be performed by state licensed appraisers from those that must be performed by state certified appraisers.

DATES: Effective Date: December 2, 1994.

Applicability date: Section 267.10 is applicable to HUD employees who qualify as certified general appraisers not later than December 31, 1996, unless the Assistant Secretary-Commissioner specifies otherwise in a specific case.

FOR FURTHER INFORMATION CONTACT: For single family programs: Morris Carter, Director of the Single Family Development Division, Room 9270, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000, telephone, voice: (202) 708–2720; (TDD) (202) 708–4594. (These are not toll-free numbers.) For multifamily programs: Linda Cheatham, Director, Office of Insured Multifamily Development, Room 6134, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000, telephone, voice: (202) 708–3000; (TDD) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Information Collection

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. See the "Other Matters" section of this preamble for further information on the information collection requirements.

II. Publication of the Proposed Rule

On September 16, 1993, the Department published in the above Docket, at 58 FR 48556, a proposed rule entitled "Appraisals and Property Valuation". The proposal, among other things, would promulgate a new part 267 to title 24 of the Code of Federal Regulations containing minimum standards for HUD real estate appraisals and criteria for the selection of appraisers by mortgagees. The preamble to the proposed rule describes, in greater detail than below, the legislative background for this rulemaking and set the rulemaking in the context of certain administrative changes that the Department had been considering on its own initiative. The preamble also explains the significant provisions of proposed part 267 as well as certain conforming amendments to other parts of HUD regulations.

Interested persons were invited to submit comments in Docket No. FR–3027 on or before Nov. 15, 1993.

III. Description of this Final Rule

Background

This rule implements two statutory provisions. Section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Reform Act) requires that the appraisal of all property securing an FHA-insured mortgage be performed in accordance with generally approved appraisal standards.[1] Section 322 of the Cranston-Gonzalez National Affordable Housing Act (Cranston-Gonzalez) provides that single family Direct Endorsement (DE) mortgagees may choose the appraisers who evaluate properties securing FHA-insured mortgages and states that those appraisers may be legal entities as well as natural persons.[2] Furthermore, as explained in the proposed rule, HUD, on its own initiative, has been revising its procedures for qualifying appraisers and for requiring their use in various FHA programs. The objective is to identify under each program the particular method of determining who is qualified to perform the appraisal, consultancy or other type of evaluation, based on differences inherent in the broad range of insurance programs that comprise Titles I and II of the National Housing Act (Act, NHA).

As a consequence of the Congressional mandates and its own initiatives, the Department published the proposed rule which elicited 384 written public comments. Some of these comments raised a single issue, while others expressed multiple questions or concerns. Many were repetitive. In this rule, a number of changes are the direct consequence of, or are easily traceable to, public comments, as explained below. Also being adopted are changes originated by the Department as a result of having further considered its proposal. Mainly, these modifications are designed to simplify the rule in its final form and to address comments which objected to the burdensomeness of several proposed requirements. In addition, there are a number of editorial revisions that were needed to correct errors and improve readability; they are self-explanatory and are not discussed.

Differences Between the Proposed and Final Rules

This rule differs from the proposal in two general respects. The first difference is in response to a view expressed by several commenters that the proposed rule was difficult to follow and should be split into separate rules covering single family and multifamily programs, respectively. HUD does not believe that such radical restructuring is necessary but does recognize that FHA's single and multifamily programs differ enough that a division of the proposed rule's content along those lines would be helpful. Consequently, the final rule has reorganized the new part 267 into three subparts. Subpart A includes material common to both single and multifamily programs, subpart B relates exclusively to single family programs and subpart C relates only to multifamily programs. This revision has necessitated a technical, non-substantive redrafting of various proposed sections, e.g., the definition of "appraisal" has been tailored to fit subparts B and C, but these changes do not affect meaning.

Not as obvious is a shift in the final rule toward a less incursive regulatory posture that gives greater recognition to accepted industry standards and practices. Several HUD standards contained in the proposal are being deleted and the Departure Provision of the Uniform Standards of Professional Appraisal Practice (USPAP) is being acknowledged with respect to single family programs. Regarding this latter change, FHA currently requires that all

[1] Section 142 of the Reform Act added section 202(e) to the National Housing Act (NHA, Act), 12 U.S.C. 1708(e).

[2] Section 322 of Cranston-Gonzalez amended section 202(e).

single family appraisals be "complete appraisals", as that term is defined under Standard 1 of USPAP, but instances may arise when the Departure Provision will be invoked to authorize "limited appraisals" under specific circumstances and on a case-by-case basis. In general, we are increasingly convinced that, with legislative prompting, the appraisal profession is moving in the direction of effective self-regulation and that HUD should limit its role to adapting industry requirements and practices to particular FHA needs rather than competing with broader ongoing efforts to improve the reliability of residential appraisals and the overall performance of the appraisal industry.

Set forth below is a discussion of significant changes from the proposed rule contained in each of the three subparts of new part 267.

Subpart A—General

In § 267.1 (applicability), paragraph (b)(2) has been changed to add a reference to § 201.23(b)(3) regarding the "trade-in" of a borrower's equity in a manufactured home. As a result, part 267 now excludes appraisals used in determining the borrower's equity in an existing manufactured home traded for a new manufactured home to be purchased with a Title I loan. This reference was inadvertently omitted from the proposed rule. Also, in paragraph (b)(3) of § 267.1, the exception for property improvement loans has been broadened by changing the phrase "one- to-four family dwellings" to "property" since the exception should cover Title I commercial and multifamily property improvement loans as well as one-to-four family dwellings. The paragraph has also been revised to reflect a recent decision by the Department to enhance the Title I program.[3] Specifically, the $15,000 threshold of borrower equity in the property undergoing improvement, below which no mortgage is required, has been eliminated.

"FIRREA" (Title XI of the Financial Institutions Reform, Recovery and Enforcement Act 1989) has been included as definition (d) under § 267.2 to aid the reader.

A broad description of "Single family program" has been included as definition (j) under § 267.2.

"USPAP" has been included as definition (l) under § 267.2 and to it has been added the provision of former § 267.4(c)(4). That provision states the Department's policy of recognizing any changes or additions to USPAP which the Appraisal Standards Board may from time to time adopt, unless HUD publishes in the **Federal Register** its decision not to recognize a change or addition.

In § 267.3, paragraph (b)(1) [formerly § 267.6(b)(1)] prohibits certain discriminatory acts. It has been extensively revised in response to numerous comments about the burdensomeness for mortgagees of reporting on the relative frequency with which they use women and minority status appraisers. At the same time, we have been careful to ensure the public availability of the data which would have been provided by those reports and which for single family programs the Department will now obtain elsewhere in accordance with paragraph (b)(2) of § 267.3. The Department will be scrutinizing that data carefully. We will not countenance discrimination by lenders against female and minority status appraisers.

For single family programs, HUD will compile an annual report directly from information which the Department will maintain for each appraiser listed on the Roster. Information with respect to gender and minority status will be furnished by the appraiser at the time he or she applies for listing. This is permitted by the newly-added reference to "such further information as HUD may require" in § 267.8(d)(2). When the mortgagee accesses the Computerized Homes Underwriting Management System (CHUMS), giving the appraiser's certification or license number, the information on the appraiser will be recorded from the Roster data bank. For fee panel appraisers, HUD will record the information from the Roster data at the time the panelist is assigned. The Department will be able to prepare the annual report directly from this information and will make it available to members of the public upon request. See § 267.3(c).

With respect to multifamily programs, there do not exist systems analogous to CHUMS and the Roster, and consequently the data must be furnished by Delegated Processors, contract appraisers and consultants, and each housing finance agency (HFA) participating in the Department's HFA Risk-Sharing Program. Since the number of multifamily cases processed is considerably less than single family activity during a given time span, this burden should not be unreasonable. Details of this reporting requirement will be specified in one of the terms of the contract/agreements which HUD executes with its Delegated Processors, contract appraisers and consultants and HFAs. Because reporting under multifamily programs is being implemented by contractural obligation, and because that obligation is not set forth under existing contracts, the data will not become immediately available when this rule takes effect. As of the effective date provided at the beginning of this preamble, however, all new contractural agreements and all renewals or renegotiations of existing agreements will provide for the data to be furnished thereafter. See § 267.3(c)(5).

Proposed § 267.6(c) relating to competency is now paragraph § 267.3(d).

A new § 267.4, entitled " waiver", has been added at the end of subpart A. The section authorizes the Assistant Secretary-Commissioner to waive any requirement in part 267 not mandated by statute when enforcement of that requirement would adversely affect the purposes of the NHA. It is unlikely that this waiver authority would be invoked often under part 267. However, HUD has been including a similar waiver provision in many recently adopted rules because it does permit administrative flexibility in unusual circumstances when invariable application of a rule would be unfair or contrary to program objectives.

Subpart B—Single Family Programs

In § 267.5, entitled "Definitions applicable to single family programs", paragraph (a), defining "Appraisal", no longer includes the phrase "as estimated by HUD staff or an appraiser under contract with HUD" which appeared in proposed § 267.2(b)(2). The effect of this change is that the DE lender, not HUD, will be responsible for estimating replacement cost under the section 220 single family program.

In customary usage, the term "single family" is well established. However, there are FHA programs that do not fit the usual concept of one-to-four family dwellings, yet are governed by one-to-four family appraisal standards and procedures, specifically, Title I multifamily and non-residential property improvement loans. The revised definition (c) under § 267.5, "one-to-four family residential property", covers this anomaly. Note that there is no parallel definition of multifamily programs, which simply include all other FHA mortgage origination transactions.

Section 267.6 follows proposed § 267.3, but with minor editing to improve readability and clarity.

Section 267.7, Appraisal standards, represents an extensive revision of

[3] See News Release issued by the Department on June 28, 1994.

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proposed § 267.4 on this subject. Specifically:

(1) The proposed rule stated that the USPAP Departure Provision would not apply to FHA single family appraisals. The preamble to the proposed rule stated a concern that the Provision might be used to dispense with important information gathering. (See 58 FR 48560). After considering the matter more fully, we have decided that this concern is unjustified. Each of the appraisal forms permitted by HUD makes clear what information is required and any deficiency should be readily noticed by the review appraiser or underwriter. Also, the Provision will only be invoked under unusual circumstances, subject to mutual agreement of the mortgagee and appraiser, after obtaining consent from the local HUD office. Should appropriate circumstances arise and a complete appraisal not be required, the Provision gives HUD the administrative flexibility to save the parties needless expense. The Department expects that eventually, as experience is gained, a handbook addition or other directive will be issued with respect to Departure situations in single family programs. In view of the foregoing, the Provision is being given recognition for single family programs and reference to it (as being inapplicable) has been dropped from former § 267.4(a)(1), now § 267.7(a)(1).

(2) Section 267.4(a)(3) of the proposed rule is being deleted as unnecessary and somewhat redundant since § 267.7(a)(8) of the final rule covers the question of property valuation methods in greater detail.

(3) Section 267.4(a)(4)(i) of the proposed rule described the appraisal report forms. That section has been revised in § 267.7(a) of the final rule to extract the language pertinent to single family programs. Two Federal National Mortgage Association forms are also being added as acceptable for FHA single family purposes; these are somewhat more detailed than the Uniform Residential Appraisal Report and offer an alternative means of presenting the data. In addition, former § 267.4(a)(4)(iii) required sufficient "depth of analysis" to reflect the complexity of the property. HUD has concluded that the data necessary for an appraisal which satisfies the other FHA standards will necessarily reveal whether the property is complex so as to require a certified rather than a licensed appraiser. Therefore, the need for this separate and rather vague standard is avoided and the language of proposed § 267.4(a)(4)(iii) has been dropped from this final rule.

(4) Proposed § 267.4(a)(7) is being deleted as not really pertinent for single family programs.

(5) Proposed § 267.4(a)(11) is being deleted to simplify the appraiser's responsibilities. We agree with several commenters that the added burden of requiring the appraiser to check the property's legal description is not justified by the remote likelihood of a mistake in the address.

(6) Section 267.7(a)(8) still requires the appraiser to certify that the racial/ethnic composition of the neighborhood has in no way affected the appraisal determination. However, the phrase "or socioeconomic" has been dropped as part of this certification. The term was not susceptible to a clear understanding. It was, in fact, misleading, since the economic composition of the surrounding neighborhood, e.g., level of property maintenance, is a valid consideration in determining value, whereas any consideration of the social mix and demographics is precluded by the rule's explicit warning that the appraiser must not give weight to racial and ethnic aspects of the neighborhood [4]. A similar change has been made with respect to the certification for multifamily programs in § 267.11(a)(9).

(7) Proposed § 267.4(a)(12), now § 267.7(a)(9), describing valuation methods, has been revised to extract the relevant single family provisions.

Section 267.8(a)(1)(i)(A) of the rule contains a parenthetical phrase to make clear that a mortgagee selecting an appraisal organization may also select a particular employee within that organization to perform the appraisal.

Section 267.8(c)(1) embodies the prohibitions of proposed § 267.5(c), but has been simplified in one respect. Proposed § 267.5(c)(1) addressed contracts between the mortgagee and the appraiser if the two were affiliated. While this relationship is still prohibited in multifamily cases, in single family programs, where DE mortgagees may employ staff appraisers, it is inconsistent with much of the lending industry's practice. The prohibition has therefore been dropped from § 267.8(c).

In § 267.8(d)(1), the list of legal entities which, together with natural persons, comprise eligible types of appraisers has been expanded from the list in § 267.5(d)(1) of the proposed rule to include joint ventures, limited liability companies and other organizations. In addition, § 267.8(d)(1) has been redrafted to explain the options available to a DE mortgagee in need of an appraiser, i.e., an independent contractor, a staff employee or a fee panelist. Section 267.5(d)(1) of the proposed rule did not cover these options; paragraphs (d)(1)(i), (d)(1)(ii) and (d)(1)(iii) focused instead on appraiser qualifications, which made them somewhat redundant since appraiser qualifications were also set forth in § 267.5(d)(2), now § 267.8(d)(2), describing the Roster.

Proposed § 267.5(d)(1)(iv) has been incorporated into § 267.8 (d)(1) of this rule and revised to make it clear that the mortgagee and appraiser share not only concurrent but also equal responsibility for the accuracy and thoroughness of an appraisal.

In § 267.8(d)(2), the appraiser, rather than providing evidence of compliance with the items listed in proposed § 267.5(d) (2)(i)–(vi), may now certify that he or she satisfies the requirements of that paragraph. Also, two of the proposed requirements have been dropped: there is no obligation to obtain errors and omissions insurance unless the mortgagee requires it and there is no fee for being listed on the Roster.

Section 267.8(f)(1) [proposed § 267.5(h)] no longer requires as a condition to transferring an appraisal that the accepting mortgagee have "adopted appraisal review procedures in accordance with this part". Inclusion of this condition in the proposed rule was an error. There is no appraisal review procedure contained in the rule.

Section 267.5(f) of the proposed rule, regarding the extent to which others may assist the appraiser, has been deleted. As explained above, the thrust of many changes which distinguish this rule from the proposal is to place a greater reliance on USPAP and, wherever possible, to achieve compatibility with generally accepted practices of the appraisal industry. Consistent with this approach, the Department looks to USPAP to set criteria for the "assistance of others".

Finally, mention should be made of the conforming amendment under 24 CFR part 204, Coinsurance, contained in the proposed rule (58 FR 48566). On March 30, 1994 (59 FR 14809, Docket No. R–94–1717), the Department proposed termination of its single family coinsurance program but the proceeding in Docket No. R–94–1717 is still open. Until final action is taken, part 204 remains in effect and is being amended by this rule.

[4] In addition to the certification requirement of § 267.7(a)(8) it should also be noted that the Uniform Residential Appraisal Report Form states in bold type that "[r]ace and the racial composition of the neighborhood are not appraisal factors."

Subpart C—Multifamily Programs

Section 267.9, Definitions applicable to multifamily programs, extracts from § 267.2 of the proposed rule those definitions pertinent to multifamily programs. As with § 267.5, some editorial changes have been required to accommodate this separation of the definitions from the format in which they were proposed.

Section 267.10, Qualified appraisers and appraisals, derives from § 267.3 of the proposal. It has been redrafted to fit exclusively multifamily programs. Note also that paragraph (a) provides for HUD employees performing multifamily appraisals to be qualified as certified general appraisers not later than December 31, 1996, unless the Assistant Secretary-Commissioner specifies otherwise in an individual case. It is FHA's goal to qualify its staff appraisers in accordance with the standards of a state as soon as possible. However, the Department is currently undertaking an extensive reorganization and restructuring of its field office functions and jurisdictions. Very likely, a number of HUD Multifamily appraisers, including some who have already attained certified general status, will be retiring in the near future. Time is required to recoup such losses and our current estimate is that we will not be able to achieve comprehensive certification of multifamily appraisers until the end of 1996. Some currently certified employees will remain, of course, and others will become certified before that time, but we cannot set a precise schedule because available training funds for the 1995 and 1996 fiscal years are not known nor is the retirement rate predictable with much accuracy. Moreover, the dispatch with which HUD can accomplish conprehensive certification of its staff appraisers will be directly proportional to the extent of training and experience required by different states so progress will undoubtedly vary from one field office to another. We have set a date of December 31, 1996 for achieving full staff certification in multifamily programs; however, in the event funding and attrition rates differ appreciably from our projections, we will adjust the effective date to make it earlier if possible, later if necessary.

As is the case with § 267.7, which sets standards for single family appraisals, § 267.11 has been extensively revised both to reduce requirements and to extract specific—in this case multifamily—appraisal standards. In most respects, §§ 267.7 and 267.11 are alike, except that in § 267.11: 1) the prescribed appraisal forms are different; 2) the review of historical sales prices covers a three-year (or more), rather than a one-year, time span; 3) proposed rule paragraphs 267.4(a)(7) and (a)(8), concerning marketing period and factors that affect income and the absorption period, are relevant for multifamily sales and are included; and 4) the reference to valuation methods focuses on the greater concern with replacement cost in multifamily programs.

For the reasons cited above in the description of § 267.8, the provision regarding the assistance of others, § 267.5(f) of the proposed rule, has been deleted. However, § 267.12 contains a new paragraph (b)(2), inadvertently omitted from the proposed rule, that outlines the relationship between an appraiser and a Delegated Processor. Paragraph (b)(2) explains that HUD must review and approve each appraiser who works for a Delegated Processor, either as an employee or as an independent contractor. We also review and approve each appraiser employed under a Technical Discipline Contract (TDC).

Discussion of the Comments Received

The Two Main Issues

Most of the comments addressed one or both of the principal objectives of the rule: to require the certification or licensing of appraisers for FHA-insured mortgages and to enable DE mortgagees to use appraisers of their own choosing for FHA transactions.[5]

The Certification/Licensure Issue

As was pointed out in the proposed rule, the requirement that FHA appraisers must be certified or licensed, depending upon the nature of the transaction, is based on section 142 of the Reform Act, and parallels a similar Congressional mandate in FIRREA that only certified general, certified residential or licensed persons may perform appraisals involving federally related transactions. Thus, when section 142 was enacted, a system of state certification and licensing was already under development. This was beneficial in two respects. First, it obviated the need for HUD to develop its own regulatory structure with a resultant drain on staff and budgetary resources. Second, by drawing upon the FIRREA system as an established resource, HUD could fulfill its regulatory responsibility with a minimum of added expense to homebuyers. We believe that most appraisers will soon be certified and/or licensed in order to participate in the broad range of federally related transactions and also to enhance their own professional stature. The cost of added training and membership will then be distributed over a wide base of consumers. Moreover, there will probably be a dwindling pool of unlicensed and uncertified appraisers upon which mortgagees can draw so that, quite apart from the mandate of section 142, debate over the need for such accreditation in FHA programs will become academic. In any event, HUD retains its control over appraisal fees permitted for single family programs to make sure that they do not rise disproportionately.

The Appraiser Selection Issue

With respect to the DE mortgagee's right to choose appraisers, we specifically requested comment from the public. It is not possible for HUD to preclude that choice by rulemaking, since the mortgagee's right to choose has been mandated by Congress and is therefore beyond the scope of agency policy. However, we wanted to assess the extent and weight of public opinion in order to ascertain if there were a good case HUD might present to Congress for repealing the provision. We found that public opinion was fairly well balanced between support and opposition. Some commenters argued that lender choice would lead to abuse and distorted valuation; others that it would do no more than serve to simplify and speed the appraisal process. We turned, therefore, to an analogy with experience already gained, inferring that use of the staff appraisers employed by many major lending firms should have the same potential for abuse and the same tendency to encourage lender-dictated property values. Yet increasing experience with this practice has not indicated that the accuracy or thoroughness of lender staff appraisals has been compromised by pressure on the employee. We have concluded that serious concern about the integrity of lender-selected appraisers is not supported by current evidence and we do not plan to pursue the matter legislatively at this time.

Specific comments. Some of the public comments raised specific issues that should be addressed.

Comment on review appraisers: The Department has not adequately addressed the need for qualifying review appraisers. Furthermore, there is no recognition of the difference between a technical review and an administrative review as those terms are

[5] Several commenters used the rulemaking as an occasion to raise matters outside the scope of this proceeding. It would be inappropriate to dispose of those matters at this time, but to the extent HUD deems appropriate, they may be the subject of subsequent administrative action.

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understood within the appraisal industry.

Response: HUD has given considerable thought to the general question of appraisal reviews and who performs them. For FHA purposes, reviews are essentially of two types. First are those incidental to the duties of the DE underwriter. In these instances, the appraisal is accepted on its face, while certain factors are weighed into the decision of whether or not to underwrite, and if so, whether to change the loan amount on the basis of an adjustment to value. This is not an appraisal action; it is an underwriting judgment as we explained in the proposed rule. Along with these judgments, the underwriter exercises administrative review responsibilities, checking to see if the appraiser has properly completed the form, noting the comparables used, etc. We see no element of technical review in this role of the underwriter, who is not certified or licensed in most cases.

The second type of review is technical, as compared to administrative. With respect to multifamily transactions, technical reviews are conducted by HUD staff or by a contractor and may result in a revision of the appraisal report. In the case of single family transactions, they are conducted by HUD staff and may provide a basis for administrative sanctions, but they do not materially affect the appraisal report. Whether a technical review is performed by a contractor or by HUD staff, the reviewer must be certified in the case of multifamily programs and either certified or licensed, as is necessary, for single family programs. In order to make HUD's own internal practices consistent with the standard that we apply to private sector appraisers, the Department intends that over the next several years, every FHA multifamily and single family staff appraiser who performs reviews will become either certified or licensed, whichever is appropriate for the nature of the reviews that he or she performs.

Comment on loan correspondents choosing appraisers: The proposed rule does not clarify whether loan correspondents or their sponsors should choose the appraiser.

Response: The Department expects sponsors to be responsible for underwriting single family loans submitted by their loan correspondents. Consistent with this approach, the sponsor must select the appraiser.

Comment on limiting market value with replacement cost: It is ill-advised and inconsistent with USPAP for HUD to stipulate that market value shall not exceed replacement cost.

Response: The Department agrees with several of the commenters that there are instances when replacement cost does not keep step with market value, and this is precisely why a limitation is needed. We do not agree that a property can adequately secure a debt for any sum greater than is sufficient to replace the property. For purposes of mortgage financing, value must be ascertained prudently. It is not the same, for example, as the value assigned to property when setting a market price. For FHA purposes, it is fair and sensible to limit market value by replacement cost, particularly since it will be supported by an actual construction contract.

We are puzzled by the assertion of one commenter that HUD's policy is inconsistent with USPAP. Standards Rule 1–5 of USPAP states that the appraiser must consider and reconcile the quality and quantity of data available and analyzed within the approaches used and the applicability or suitability of those approaches which are set forth in Standards Rule 1–4. For FHA, the acceptable approach is market value, although replacement cost is recognized as a limit to data acquired from the sales of comparable properties. We see no conflict with USPAP in this regard.

Comment on reporting market conditions and trends: Why require the appraiser to analyze and report on current market conditions and trends if, as stated in the preamble to the proposed rule, such conditions and trends should not be factored into the estimate of value?

Response: In the preamble to the proposed rule, we stated that:

> * * * while the appraiser should indicate observed market trends as a part of the appraisal report, a trend should not be factored into the estimate of value.

This statement failed to make a basic distinction between what is meant by "trend" in multifamily compared with single family programs, and caused several commenters to question the usefulness of trending in single family appraisal work.

A multifamily appraiser must give consideration to long-term projections of market changes in order to estimate, for example, project income from rents over the life of the mortgage. Trends are therefore of twofold significance in multifamily cases: they address projected changes in both the intrinsic value of the property and in its earning ability. Hence, they are essentially forward-looking.

By comparison, the existence of rapidly rising or declining prices for single family properties can be ascertained by analysis of recent sales data. Looking at sale prices within the preceding six months, the appraiser can estimate the rate of increase or decrease in an area. These rates of change will have an effect on the value of the subject property and must be taken into consideration.[6]

For both single family and multifamily transactions, however, it should be borne in mind that conditions and trends are ephemeral elements in any economy whether viewed from a local or national perspective and they reflect assumptions which may or may not be vindicated by subsequent events.

Comment on reporting the use of minority appraisers: Reporting on the use of minority and female appraisers is burdensome, unnecessary and if nevertheless adopted, should be HUD's responsibility.

Response: This is an important initiative. It is intended to address two matters of concern. One is the perceived underutilization of minority and female appraisers in general. Second is a perceived underutilization of minority appraisers in communities where they might be more knowledgeable about trends and conditions and more sensitive to community problems. However, the Department recognizes the burden this reporting requirement places on mortgagees, especially in FHA's high volume single family programs. We have therefore revised the requirement so that HUD will accept virtually all responsibility for compiling and reporting the information for those programs.

Comment on differing appraiser classifications: Why does the proposed rule not distinguish between the different levels of certification, such as a Certified General Appraiser compared with a Certified Residential Appraiser?

Response: We do distinguish between certified general and certified residential appraisers in those instances where the distinction must be made. Thus, when the reference is to multifamily programs, "certified general" is intended and the rule will usually so state. When we are referring to single family programs that require the services of a certified appraiser, as described in § 267.5(b), the rule makes no distinction because either a certified general or a certified residential appraiser would be appropriate for the assignment. Some jurisdictions have provided for other variant classifications which this rule does not seek to distinguish. We rely instead on the state accreditation agencies—prompted by the benefits of reciprocity and guided by the Appraiser Qualifications Board—to maintain comparable standards within the different classifications for use by FHA, the Federal Financial Institutions Examination Council members and other interested agencies such as the Department of Veterans Affairs (DVA) and the Farmers Home Administration.

[6] The URAR provides for the appraiser's perception of "Market conditions in the subject neighborhood (including support for the above conclusions [regarding marketability] *related to the trend of market values* * * *)" (Emphasis added.)

Comment on continuing the use of DVA certificates of reasonable value (CRVs) and HUD conditional commitments: According to HUD's Direct Endorsement regulations, in particular 24 CFR 203.5(e): "In lieu of appraising the property, the mortgagee may utilize a HUD conditional commitment (for proposed construction only), or a Department of Veterans Affairs certificate of reasonable value." Will this continue to be the practice under the Roster system?

Response: Lenders may continue to rely on conditional commitments and CRVs. Part 267 will not affect this interchangeability. For some time now, both HUD and DVA, by administrative instructions, have required certified or licensed appraisers for single family appraisals. Moreover, appraisals for veteran housing programs must comply with USPAP. Thus, DVA and FHA requirements are comparable in key respects and are mutually acceptable. Of course this interchangeability could end if either agency were to lessen its standards for appraisers or appraisals. We point out also that HUD requires virtually all applications for mortgage insurance to be processed under the DE program, so very little use is made of HUD conditional commitments. This fact tends to discourage the mutual recognition of CRVs and conditional commitments (or at least DVA's recognition of HUD commitments) since 38 U.S.C. 1831 requires that CRV appraisers be assigned on a rotational basis from a fee panel selected and maintained by DVA—a requirement incompatible with the DE lenders' freedom to select their appraisers.

Comment on the integrity of DE staff appraisers: It is naive and pointless to require that DE lenders separate the appraisal function from their underwriting operations in order to protect the autonomy and integrity of staff appraisers. Policy and decisionmaking for every corporate component coalesce at the top of the business structure and filter downward; a staff appraiser cannot avoid being influenced.

Response: We are aware of the potential for pressure on staff appraisers, but short of prohibiting the practice altogether, there is no completely satisfactory solution. We believe that by removing the appraiser from the direct supervision of the loan production department, two advantages accrue.

First, the appraiser is at least free from the everyday case-by-case control of loan officers. An appraiser may sense that too many unfavorable appraisals can impede on his or her career track (of course, a self-employed appraiser under contract with a lender can feel similar pressures), but there will at least not be instances where one's immediate supervisor looks for a specific value in every case assigned.

Second, when the nexus of decisionmaking shifts upward, if undue influence is manifest, it is usually easier to fix accountability. If there is a consistent problem, it will very likely have originated at upper corporate levels. Top management of a maleficent lending institution will find it more difficult to avoid culpability by claiming that fraudulent or misleading appraisals are the result of nothing more than faulty supervision or insensitivity to potential trouble at the loan officer level. Of course none of our precautions, including appraiser independence, can guarantee that a staff (or contract) appraiser will escape undue pressure. Ultimately, we look to the integrity and long-range business judgment of the mortgagees themselves to counter serious abuse and destructive practices. As we have observed previously, there has been a very good overall record on the part of mortgagees and staff appraisers in this regard.

Comment on the advisability of the Roster system: The idea of establishing a Roster for single family appraisers appears to be an offshoot of the fee panel system and is therefore a repudiation of the mortgagee's right to select the appraiser.

Response: The Roster and the fee panel are in fact totally different in concept and purpose. The fee panel was initiated as a means of controlling the quality of appraisers in terms of training, diligence, judgment and professionalism. It functioned mainly at a time when there was little other assurance in these respects. It afforded a means of training appraisers in FHA requirements and procedures and it also served to limit the pool of appraisers so that panelists could be kept active in FHA programs and their experience level would benefit accordingly.

Circumstances have now changed completely. First and most importantly, FIRREA has raised and standardized the level of appraiser competence nationwide so that it is no longer a major concern. Second, the law now permits DE mortgagees to select appraisers. This means that a system of assigning panelists, unless the mortgagee requests the assignment or is not DE approved (and most now are) would be illegal—a fact which is overlooked by those commenters who urge HUD to retain the strict panel assignment system. In a practical sense, it also means that there are far more potential FHA single family appraisers than this agency, with its increased budget constraints, could hope to train in the manner that it once did. We must now rely on FIRREA and State accreditation boards to do much of what HUD has done in the past. The fee panel will continue in a diminished role, and only for those lenders who wish to continue using it. This does not mean that HUD will abdicate its responsibility for guarding against poor appraisal work. We are instituting the Roster as a means of monitoring and quickly remedying problems. However, unlike the fee panel system, the Roster will list any applicant who holds current credentials under state certification/licensing law, who has acquainted himself or herself with FHA program requirements, and who has a good professional record, including competency in performing FHA assignments. The Roster will thus provide a rapid means of confirming that the appraiser is in good standing at the time the mortgagee requests an FHA case number and identifies the appraiser selected. That is its purpose—it is a monitoring control, not a system for training and qualifying FHA appraisers.

Comment on the need to list fee panelists on the Roster: The proposed rule does not clarify whether fee panelists must be listed on the Roster.

Response: Section 267.8(d)(1) now clarifies that fee panelists must be listed on the HUD Appraiser Roster. Otherwise, minority and female panelists could not be tracked for the report compiled by HUD pursuant to § 267.3(b)(2).

Comments on the scope of the Roster: Must an appraiser apply for listing on the Roster in every state where the appraiser may do business? Also, if an institutional appraiser applies, must the individual employees of that firm apply for listing as well?

Response: The appraiser must apply to the HUD Office (or to any one of the state's HUD Offices if there are several) in each state where he or she intends to

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perform an appraisal. The reason is that every state has its own numbering system and the only practical means of correlating the Roster data and the record of state accreditation is to maintain a list of all the various certification and/or license numbers pertaining to that appraiser. Individual employees as well as the employing institution must be listed since the performance of both will be monitored.

Comment on removal from the Roster: If HUD needs to remove an appraiser from the Roster for any reason, it should report that fact to the state licensing board. Two commenters, in fact, suggested that HUD "punish" a disqualified appraiser.

Response: It is HUD's intention to report cases of fraudulent or incompetent appraisals and other serious violations of appraisal professional conduct to state accrediting boards. However, the commenters who favor "punishment" mistake the purpose of the Roster. As we said previously, it is not a device for applying sanctions; it is simply a quality control measure to assure that appraisers who have not maintained their credentials, or who for some reason have not met FHA standards, are removed from the system where they can cause a problem. Congress did not make HUD a watchdog or enforcer for the appraisal industry when it enacted section 142 of the Reform Act, and it would be inappropriate to base a punitive process on the Roster system. When we discussed the Roster in the Proposed Rule, we explained that 24 CFR part 24 relating to Government debarment and suspension procedures does not apply to the removal of an appraiser from the listing, but we also cautioned that the Department will invoke part 24 whenever circumstances call for remedial action and § 267.8(d)(3) so states.

Comment on training for special HUD programs: How will HUD train non-panelists with regard to special FHA requirements such as lead based paint detection and abatement?

Response: This is a matter that has not been resolved. The Department is exploring several means of helping appraisers who have not been through fee panel training to become knowledgeable about specific program requirements. We are expediting this matter and will advise interested members of the public as soon as there is further information. In the meantime, appraisers should bear in mind that it would be a violation of USPAP's Competency Provision to undertake an assignment for which the appraiser has not been adequately trained and is not qualified.

Comment on membership in professional organizations: Even though the Department may not wish to predicate an individual appraiser's competence solely on the basis of his or her membership in a professional organization, such membership should be given weight.

Response: We disagree. There is simply no correlation in our view between an appraiser's competence and which professional organizations, or the number of professional organizations, that an appraiser may choose to join. Our conclusion in the proposed rule on this point remains unchanged.

Comment on appraising Secretary-held properties: It is short-sighted and ill-advised for HUD to exempt the sale of Secretary-held properties from part 267.

HUD disposition properties are indeed exempted from the requirements of part 267, but they are nonetheless subject to a valuation process in determining what would be an acceptable return on the disposition sale. Moreover, if FHA mortgage insurance is used to finance that sale, the maximum allowable mortgage is based on the bid amount capped by the FHA mortgage limit applicable to the area. No appraisal is required, and should the mortgagee on its own initiative call for one, this part 267 would not apply.

IV. Other Matters

A Rule Recently Adopted by the Federal Financial Agencies

On June 7, 1994 (59 FR 29482) the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision (the Agencies), after publishing a proposed rule for public comment, amended their respective parts of title 12 of the Code of Federal Regulations regarding the appraisal of real property pursuant to FIRREA. These amendments increase from $100,000 to $250,000 the minimum threshold for residential real estate appraisals as provided by that statute and also broaden existing exemptions from various other appraisal requirements. In addition, the amendments revise existing provisions with respect to appraisal content and appraiser independence.

In developing this final rule, HUD took the Agencies' amendments into consideration. However, we do not believe it would be appropriate for the Department to adopt a threshold mortgage amount that triggers the need for an appraisal. HUD is charged with a specific Congressional mandate under section 202(e) of the NHA to assure the quality of each appraisal used in determining the value of the security for an FHA insured mortgage. The Secretary's accountability in this regard is more immediate and direct than that of the Agencies in establishing a system of state accreditation under FIRREA. Moreover, protection of the FHA insurance funds is a duty of the greatest importance to HUD. We do not believe that we could fulfill these responsibilities by accepting as security for FHA insured mortgages properties that have not been thoroughly appraised.

The Department will therefore require appraisals for single family and multifamily programs as set forth in § 267.1, without exception. Various considerations that underlie the Agencies' other amendments with respect to appraisal standards, appraiser independence and miscellaneous related matters are, we believe, comprehensively addressed in this rule. Therefore, specific changes to the Agencies' regulations need not be discussed or included in this rulemaking which alone governs requirements for FHA mortgage insurance transactions.

Executive Order 12866

This rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The eligibility and performance requirements contained in this rule are consistent with requirements already established by other government agencies for lender eligibility. Accordingly, the economic impact of this rule would be minimal, and would affect small and large entities equally.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying Monday through Friday, 7:30 a.m. until 5:30 p.m. in the office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

HUD's Semiannual Agenda. This rule was listed under Office of Housing as sequence number 1589 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20448) under Executive Order 12866 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule do not have federalism implications and thus are not subject to review under the Order. The rule is limited to imposing additional eligibility and performance requirements on private lenders. The only point of policy contained in part 267 with even an indirect implication for federal-state relationships is the decision that a HUD appraiser should be subject to the certification requirements of any one state, but not necessarily other states in which he or she is assigned to perform appraisals. As explained previously, the standards of various jurisdictions developed pursuant to FIRREA should result in a reasonably uniform level of competence, and qualifying HUD employees in every jurisdiction would involve many dollars and staff hours spent on a largely duplicative effort. For purposes of section 142 of the Reform Act, certification by any one state should therefore be sufficient. In reaching this conclusion, HUD parallels OMB's decision with regard to FIRREA that:

> Federal employees who choose to become state-licensed or certified real estate appraisers need only be licensed or certified in one state or territory to perform real estate appraisal duties as Federal employees in all states and territories.[7]

The Department is working toward assuring that its employees who perform appraisals or consultations on multifamily projects become qualified as certified general appraisers as soon as possible.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have a potential significant impact on family formation, maintenance and general well-being, and, thus is not subject to review under the Order. No significant change in existing HUD policies or programs, as those policies relate to family concerns, will result from promulgation of this rule.

Paperwork Reduction Act Statement. The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The form shown in the matrix below has been determined by the Department to contain collection of information requirements:

Form	Number of Respondents	Number of Responses per Respondents	Hours per Respondents	Total hours
Form HUD 92563	50,000	1	.5	25,000
Total Annual Burden				25,000

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 204

Mortgage insurance.

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 267

Appraisals, Mortgage insurance, Property valuation, Reporting and recordkeeping requirements.

Accordingly, the Department amends CFR parts 200, 203, 204, and 206, and adds a new part 267, consisting of subparts A through C, as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 is revised to read as follows:

Authority: 12 U.S.C. 1701s, 1701–1715z–18a, 1715z–11; 42 U.S.C. 3535(d), 3543, and 3544.

2. Section 200.810 is amended by revising paragraph (b), to read as follows:

§ 200.810 Single family insurance and coinsurance.

* * * * *

(b) *Approisal.* The appraiser, who shall be listed on the HUD Appraiser Roster under § 267.8(d)(2) of this chapter, shall, when appraising a dwelling constructed prior to 1978, inspect the dwelling for defective paint surfaces.

* * * * *

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

3. The authority citation for 24 CFR part 203 is revised to read as follows:

Authority: 12 U.S.C. 1709, 1715b; 42 U.S.C. 3535(d).

4. Section 203.5(e) is revised to read as follows:

§ 203.5 Direct endorsement process.

* * * * *

(e) *Appraisal.* A mortgagee shall have the property appraised in accordance with the requirements of part 267 of this chapter.

[7] OMB Bulletin 92–06, March 16, 1992.

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PART 204—COINSURANCE

5. The authority citation for 24 CFR part 204 is revised to read as follows:

Authority: 12 U.S.C. 1715z–9; 42 U.S.C. 3535(d).

6. Section 204.3(b) is revised to read as follows:

§ 204.3 Authority to determine eligibility.

* * * * *

(b) In making the determination set forth in this section the mortgagee shall utilize an appraiser who meets the requirements of part 267 of this chapter and mortgage credit examiners and inspectors approved by the Commissioner.

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

7. The authority citation for 24 CFR part 206 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–20; 42 U.S.C. 3535(d).

8. Section 206.3 is amended by adding at the end of the definition of "Maximum claim amount" the following sentence:

§ 206.3 Definitions.

* * * * *

Maximum claim amount * * * Appraised value shall be determined by an appraisal performed in accordance with part 267 of this chapter.

* * * * *

9. A new part 267, consisting of subparts A through C, is added to read as follows:

PART 267—APPRAISAL AND PROPERTY VALUATION

Subpart A—General

Sec.
267.1 Applicability.
267.2 Definitions applicable to both single family and multifamily programs.
267.3 Professional association membership; nondiscrimination; lender reporting and competency.
267.4 Waiver.

Subpart B—Single Family Programs

267.5 Definitions applicable to single family programs.
267.6 Transactions requiring a state certified or state licensed appraiser.
267.7 Appraisal standards.
267.8 Selection of appraisers by mortgagees; HUD Appraiser Roster; appraiser independence.

Subpart C—Multifamily Programs

267.9 Definitions applicable to multifamily programs.
267.10 Qualified appraisers and appraisals.
267.11 Appraisal standards.
267.12 Selection of appraisers; appraiser independence.

Authority: 12 U.S.C. 1708(e), 1715b; 42 U.S.C. 3535 (d).

Subpart A—General

§ 267.1 Applicability.

(a) *General rule.* If the maximum insurable amount for a mortgage insured under any National Housing Act program covered by this subchapter is based in whole or in part upon the value of security as determined by an appraisal, the appraisal must comply with this part 267.

(b) *Exceptions.* This part does not apply:

(1) If title to the property is held by the Secretary and a determination of value is needed for disposition of the property or for an insured mortgage to finance the property;

(2) To appraisals of manufactured homes under § 201.10 (b) or (d) of this chapter or § 201.23(b)(3) of this chapter where the manufactured home is classified as personal property;

(3) To appraisals of property for purposes of property improvement loans under Title I of the National Housing Act if the principal balance of the loan is not required to be based on the borrower's equity in the property; or

(4) If the insured mortgage is secured by a hospital.

§ 267.2 Definitions applicable to both single family and multifamily programs.

The following definitions apply to subparts A, B and C of this part:

Appraisal Foundation means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

Appraisal Subcommittee means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

FIRREA means Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989;

Market analysis means a study of real estate market conditions for a specific type of property.

Market value means: (1) The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, provided that the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(i) Buyer and seller are typically motivated;

(ii) Both parties are well informed or well advised, and acting in what they consider their own best interests;

(iii) A reasonable time is allowed for sales exposure in the open market;

(iv) Payment is made in terms of cash in U.S. dollars or in terms of comparable financial arrangements; and

(v) The price represents the normal consideration for the property sold unaffected by special or creative financing or by a sales concession from anyone associated with the sale.

(2) For purposes of this definition, market value cannot exceed replacement cost, i.e., the reasonable estimated cost of replacing the property.

Mortgage means a mortgage as defined in this chapter, or a loan authorized for insurance under the National Housing Act.

Mortgagee means the holder of a mortgage and includes a lender holding a Title I contract of insurance and a Title I loan correspondent.

Replacement cost means the Secretary's estimate of the construction cost of the property or project when the proposed improvements are completed. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Secretary. For substantial rehabilitation proposals, the replacement cost estimate includes the "as is" value of the property before rehabilitation, plus the cost of rehabilitation and appropriate carrying and financing charges.

Single family program means a mortgage or loan insurance program authorized by the National Housing Act for one-to-four family residential property as defined in § 267.5(c).

State means any state of the United States, any territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

USPAP means that edition of the Uniform Standards of Professional Appraisal Practice most recently promulgated by the Appraisal Standards Board of the Appraisal Foundation at the time the Standards are applied. The term also includes such changes and additions to USPAP as the Department shall recognize. In general, HUD will recognize a change or addition to USPAP. If, after opportunity to consider the applicability and consequences of the change for HUD programs, HUD should decide that it will no longer recognize the change or addition, that

decision will be published in the Federal Register.

§ 267.3 Professional association membership; nondiscrimination; lender reporting and competency.

(a) *Membership in appraisal organizations.* A state certified general or certified residential appraiser or a state licensed appraiser may not be excluded from consideration for an assignment solely because of membership or lack of membership in a particular appraisal organization.

(b) *Discrimination prohibited.* In the selection of an appraiser, there shall be no discrimination on the basis of race, color, religion, national origin, sex, age or disability.

(c) *Single family report and multifamily information; public availability.* (1) Based upon data compiled pursuant to paragraphs (c)(3) and (c)(4) of this section, HUD will develop gender and minority status information and will publish a report summarizing with respect to each mortgagee the total number of appraisals performed within the applicable reporting period and of that total the number of appraisals performed by female appraisers and the number of appraisals performed by minority status appraisers as defined in paragraph (c)(3)(iii) of this section.

(2) Based on data compiled pursuant to paragraphs (c)(3) and (c)(5) of this section, HUD will develop gender and minority status information with respect to each housing finance agency participating in the Risk-Sharing Program, each Delegated Processor, and each appraisal company and individual appraiser contracting directly with the Department. The information will disclose for each of the parties described above the total number of appraisals performed within the applicable reporting period and of that total the number of appraisals performed by female appraisers and the number of appraisals performed by minority status appraisers as defined in paragraph (c)(3)(iii) of this section.

(3) Each institution or individual who conducts or contracts for appraisals covered by this part will be monitored by HUD with respect to the number of appraisals which it has performed or contracted for during the reporting year by:

(i) Staff appraisers;

(ii) Appraisers assigned from a fee panel;

(iii) Appraisers whose services it has contracted for; in order to determine the number of appraisals conducted for the mortgagee by female and minority persons within the reporting period. A minority appraiser is one who is: Hispanic, Hispanic black, Non-Hispanic black, Asian/Pacific Islander, Asian Indian American, or American Indian/Alaskan Native.

(4) With respect to single family programs, the information contained in the report will be extracted by HUD from data kept on record with respect to each appraiser listed on the HUD Appraiser Roster described in § 267.8(d)(2). The data will be maintained so as to record the identity of the appraiser when the mortgagee requests an appraisal assignment.

(5) With respect to multifamily programs, information will be extracted by HUD from data kept on record for each Review Appraiser and Field Appraiser performing appraisals or consulting for housing finance agencies (HFAs), Delegated Processors, and the Department on a contract basis. The information will be submitted within the following time limits:

(i) HFAs participating in the Risk-Sharing Program will be required to submit data early in the process (generally at the time of the request for HUD-Retained Reviews);

(ii) Delegated Processors will be required to submit data within three business days from receipt of the Task-Delivery Order;

(iii) Contract appraisers (Technical Discipline and Purchase Orders) will be required to submit data within three days from receipt of the Task/Delivery/Purchase Order. Institutions or individuals who are currently under contract to HUD will be required to furnish this additional information when exercising an option to renew or at any other time which involves a change in a negotiated price. HFAs will be required to submit the additional data as soon as possible after the final rule in the Risk-Sharing Program becomes effective.

(6) The single family report and the multifamily information will be available for public inspection during regular business hours at the Office of Insured Single Family Housing, Single Family Development Division, U.S. Department of Housing and Urban Development, 451 7th St., S.W., Washington, D.C. 20410.

(d) *Competency.* Although appraisers performing appraisals covered by this part must be either state licensed or certified, as appropriate, an appraiser shall not be considered competent or suitable solely by reason of having been licensed or certified by a state. Every determination of competency shall be based upon the appraiser's individual qualifications and character and upon his or her experience and educational background as they relate to a particular appraisal assignment.

§ 267.4 Waiver.

The Assistant Secretary for Housing-Federal Housing Commissioner, or an official designated to act on behalf of the Assistant Secretary-Commissioner, may waive any requirement of this part not mandated by statute upon a finding that application of such requirement would adversely affect the purposes of the National Housing Act. Each waiver pursuant to this section shall be in writing and shall be supported by a statement of the facts and reasons that are the basis for the waiver. The authority conferred under this section may not be redelegated.

Subpart B—Single Family Programs

§ 267.5 Definitions applicable to single family programs.

In addition to the definitions in § 267.2, the following definitions apply to single family programs:

Appraisal means a written report independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s), which statement is supported by the presentation and analysis of relevant market information; *except that,* in the case of a property which is not valued on the basis of economic soundness, the appraisal shall be based on replacement cost.

Complex one-to-four family residential property appraisal means an appraisal in which the nature of the property, the form of ownership, or the market conditions are atypical.

One-to-four family residential property means a manufactured home lot or real property upon which is located a structure containing not less than one, nor more than four, dwelling units (or 11 units for a mortgage to be insured under subpart A of part 220(h) of this chapter), including, for purposes of a mortgage to be insured under § 203.50 of this chapter, a structure that will contain such units after rehabilitation and for purposes of a mortgage to be insured under part 201 of this chapter, any property regardless of size or nature. The term includes a manufactured home and lot classified as real property, or a manufactured home lot which meets the requirements of § 201.2(v) of this chapter.

State certified appraiser means any individual who satisfies the requirements for certification in a state which has adopted criteria that currently meet or exceed the minimum certification criteria issued by the

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Appraiser Qualifications Board of the Appraisal Foundation. The state criteria must include a requirement that the individual have achieved a satisfactory grade upon a state-administered examination that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualifications Board of the Appraisal Foundation. Furthermore, if the Appraisal Subcommittee has issued a finding that the policies, practices, or procedures of the state are inconsistent with FIRREA, an individual must comply with any additional standards for state certified appraisers imposed by HUD under § 267.7(c)(2).

State licensed appraiser means any individual who satisfies the requirements for licensing in a state which has adopted criteria that currently meet or exceed the minimum licensing criteria issued by the Appraiser Qualifications Board of the Appraisal Foundation. The state criteria must include a requirement that the individual have achieved a satisfactory grade on a state-administered examination that is consistent with, and equivalent to, the Uniform State Licensing Examination issued or endorsed by the Appraiser Qualifications Board of the Appraisal Foundation. Furthermore, if the Appraisal Subcommittee has issued a finding that the policies, practices, or procedures of the State are inconsistent with Title XI of FIRREA, an individual must comply with any additional standards for state licensed appraisers imposed by HUD under § 267.7(c)(2).

§ 267.6 Transactions requiring a state certified or state licensed appraiser.

(a) *Appraisal by either a state certified or state licensed appraiser.* Every appraisal shall be performed by either a state certified appraiser or a state licensed appraiser, except as provided in paragraph (b) of this section. With respect to appraisals performed by HUD employees, this requirement is satisfied whether or not the property is located in the certifying or licensing state.

(b) *Appraisal by a state certified appraiser only.* An appraisal shall be prepared by a state certified appraiser if it is:

(1) Required in connection with a mortgage of $1,000,000 or more; or

(2) A complex one-to-four family residential property appraisal.

(c) *Recognition of appraisals not governed by this part.* An appraisal of a one-to-four family residential property prepared in accordance with standards prescribed under FIRREA, and in response to the requirements of any Federal Financial Institution Regulatory Agency, viz., the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Association or the Office of Thrift Supervision, or with standards of the Resolution Trust Corporation will comply with this section.

§ 267.7 Appraisal standards.

(a) *Minimum standards.* Each appraisal shall follow the requirements of this § 267.7. The appraisal shall, at a minimum:

(1) Conform to USPAP, except to the extent that such compliance may conflict with the provisions of this part 267.

(2) Disclose any steps taken that were necessary or appropriate to comply with the Competency Provision of USPAP.

(3) Be written and presented on the Uniform Residential Appraisal Report form, the Federal National Mortgage Association (FNMA) Small Residential Income Property Appraisal Report form, the FNMA Individual Condominium Unit Appraisal Report form or any other format that is acceptable to the Secretary.

(4) Analyze and report in reasonable detail all prior sales of the property being appraised that occurred within one year preceding the date when the appraisal is prepared.

(5) Analyze and report data on current revenues, expenses, and vacancies for the property if it currently is, and will continue to be, income-producing.

(6) Analyze and report on current market conditions and trends that will affect income or the absorption period, to the extent they affect the value of the property.

(7) Contain sufficient supporting documentation with all pertinent information reported so that the appraiser's logic, reasoning, judgment, and analysis in arriving at a conclusion indicate to the reader the reasonableness of the value reported.

(8) Include in the certification required by USPAP a statement that the appraisal is not based on a requested minimum valuation, a specific valuation or range of values, or the approval of the loan. The certification shall also include a statement that the racial/ethnic composition of the neighborhood surrounding the property in no way affected the appraisal determination.

(9) Follow a reasonable valuation method that, except for an appraisal with respect to a mortgage to be insured under part 220 of this chapter, addresses the direct sales comparison, income, and cost approaches to market value required by the Secretary, reconciles or explains any differences those approaches yield in determining the value of the property in question, and gives the reason(s) for rejecting each approach that was not used.

(b) *Unavailable information.* If information required by this section is not available, that fact shall be disclosed and explained in the appraisal report.

(c) *Additional standards.* In addition to the minimum standards set forth in paragraph (a) of this section:

(1) A Direct Endorsement mortgagee may adopt generally, or may impose in specific cases, such supplementary standards as are reasonable, appropriate, and consistent with this part 267.

(2) HUD may, in instances where the Appraisal Subcommittee has determined that the policies, practices, and procedures of a certifying or licensing state are inconsistent with FIRREA, impose such supplementary requirements as may be appropriate.

(3) HUD may, in instances where the Appraisal Subcommittee has determined that the requirements of FIRREA may be waived in accordance with 12 U.S.C. 3348(b), impose such supplementary requirements as may be appropriate.

§ 267.8 Selection of appraisers by mortgagees; HUD Appraiser Roster; appraiser independence.

(a) *Selection method.* (1) The method of selecting the appraiser depends upon the program involved.

(i) For a mortgage insured under Title II of the National Housing Act, the appraiser may be:

(A) Employed on the staff of the Direct Endorsement mortgagee or selected by the Direct Endorsement mortgagee (which includes being selected as an individual from the staff of a selected appraisal organization), provided the appraiser is listed on the Appraiser Roster provided under this § 267.8; or

(B) Assigned by HUD from membership on one of its fee panels.

(ii) Reserved.

(2) The criteria in paragraph (d) of this section govern the selection of the appraiser.

(3) For the appraisal of a manufactured home which is to be insured under Title I of the National Housing Act and is classified as personal property, the appraisal shall be carried out under the terms and conditions of a contract between HUD and a contractor selected to perform such appraisals.

(b) *Direct Endorsement staff appraisers.* An appraiser who is a staff employee of a Direct Endorsement

mortgagee shall be independent of the loan officers and the loan production operations of the mortgagee.

(c) *Mortgagees, staff and fee appraisers: conflicts of interests.* (1) A mortgagee must avoid conflicts of interest and other relationships which affect, either in reality or in appearance, the credibility of the appraisal. Accordingly, a mortgagee may not contract with an appraiser or appraisal organization to perform an appraisal of a property if the builder or seller of the property owns, is owned by, is affiliated with, or has a financial interest in the appraiser or appraisal organization.

(2) An appraiser must avoid conflicts of interest and other relationships which affect, either in reality or in appearance, the credibility of the appraisal. Accordingly, a fee appraiser may not have any interest, direct or indirect, in the property being appraised. A staff appraiser of a Direct Endorsement mortgagee may not have any direct interest, financial or otherwise, in the property being appraised, and is permitted an indirect interest only by reason of his or her employment by a mortgagee that has its appraisal operations isolated from its other activities in accordance with paragraph (b) of this section.

(d) *Eligible fee appraisers.* (1) *General rule for Direct Endorsement cases.* If a mortgage is to be processed by Direct Endorsement, the mortgagee may:

(i) Contract with a fee appraiser to perform appraisal services. The contract may be with an individual, a corporation, a partnership, a sole proprietorship, a joint venture, a limited liability company, or any other legal entity recognized for the purpose by the state, which the mortgagee has chosen at its sole discretion, provided that the individual appraiser selected to perform the appraisal is listed on the current HUD Appraiser Roster set forth in paragraph (d)(2) of this section. The mortgagee, concurrently and equally with the appraiser whom it has chosen, accepts full responsibility for the accuracy, integrity and thoroughness of the appraisal.

(ii) Use an appraiser employed on its staff, provided that the appraiser is listed on the current HUD Appraiser Roster.

(iii) Request HUD to assign an appraiser from one of its fee panels. Fee panelists must be listed on the HUD Appraiser Roster.

(2) *HUD Appraiser Roster.* (i) HUD will maintain a nationwide listing on an Appraiser Roster of appraisers who are permitted to perform appraisals in connection with HUD's single family programs. Being listed on the Roster does not indicate a warranty or endorsement by HUD of any appraiser or appraisal, and § 200.145(c) of this chapter applies to each appraisal performed in accordance with this part. Each applicant for listing or periodic relisting must certify that he or she:

(A) Holds a current certification or license from a state whose qualification standards are in compliance with FIRREA, as determined by the Appraisal Subcommittee (and must include his or her current certificate or license number);

(B) Has read HUD Handbook 4150.1 and related Mortgagee Letters;

(C) Is not listed on HUD's Credit Alert Interactive Voice Response System; and

(D) Is not debarred, suspended or in any way disqualified from participating in HUD programs.

(ii) In addition, the applicant must submit such additional information as HUD may require. Application to be listed on the Roster must be made at any HUD Office in each state where the applicant will perform appraisals.

(3) *Removal from the Roster.* HUD may at any time remove the appraiser from the Roster for cause. Cause includes, but is not limited to, significant deficiencies in appraisals, failure to maintain standing as a state certified or state licensed appraiser and prosecution for committing or attempting to commit fraud, misrepresentation or other offence that may reflect on the appraiser's character and integrity. Such removal shall not be governed by the procedures of part 24 of this Title. The appraiser shall, however, be subject to other sanctions in accordance with part 24 of this title.

(4) *Fee panels.* If a mortgage is not processed by the Direct Endorsement procedure, the appraiser will be assigned from a fee panel or otherwise designated by HUD. A mortgagee using the Direct Endorsement procedure may also request HUD to assign an appraiser from a fee panel.

(e) *Appraisal fees and charges.* The appraisal fee charged to the borrower or other party shall be reasonable. The fee may be prescribed by rule or other HUD issuance.

(f) *Transfer of appraisals between mortgagees.* A Direct Endorsement lender may accept an appraisal that was prepared by an appraiser engaged directly by another mortgagee, provided that the appraisal was performed in accordance with this part and that the mortgagee accepting the appraisal has:

(1) Reviewed the appraisal report under its review procedures; and

(2) Found the appraisal to be acceptable.

Subpart C—Multifamily Programs

§ 267.9 Definitions applicable to multifamily programs.

In addition to the definitions in § 267.2, the following definitions apply to multifamily programs:

Acceptable risk refers to a program in which the project's net operating income covers the mortgage debt service requirement and provides an appropriate return to the owner's equity. The term assumes that the mortgage does not exceed the appropriate percentage of estimated replacement cost and any other supplemental standards concerning particular programs contained in handbooks and other directives.

Appraisal means a written report independently and impartially prepared by a qualified appraiser setting forth an opinion:

(1) In the case of a project requiring economic soundness, as to the market value of an adequately described property as of a specific date(s), which statement is supported by the presentation and analysis of relevant market information, and is in accordance with the supplemental standards as set forth in HUD's appraisal instructions; or

(2) In the case of a project which does not require a determination of economic soundness, that is based on replacement cost, as estimated by HUD staff or by an appraiser who has contracted with HUD to perform a real estate consultation pursuant to § 267.12(b).

Consultant, which refers to an appraiser performing a real property consultation for HUD, means the person who provides such information, analysis, recommendations or conclusions.

Consultation or *consultancy* means the act or process of providing information, analysis of real estate data, and recommendations or conclusions on diversified problems in real estate, other than estimating value.

Economic soundness refers to a program under which a project has had its underwriting risk analyzed on the basis of three approaches to value.

Multifamily project or *multifamily property* means a project containing five or more family units (or in the case of a mortgage to be insured under section 220(h) of the National Housing Act, two or more rental units), a nursing home, an intermediate care facility, a board and care home or a project insured under section 232 of the NHA.

State certified appraiser means any individual who satisfies the requirements for certification as a certified general appraiser in a state

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which has adopted criteria that currently meet or exceed the minimum certification criteria issued by the Appraiser Qualifications Board of the Appraisal Foundation. The state criteria must include a requirement that the individual have achieved a satisfactory grade upon a state-administered examination that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualifications Board of the Appraisal Foundation. Furthermore, if the Appraisal Foundation has issued a finding that the policies, practices, or procedures of the state are inconsistent with FIRREA, an individual must comply with any additional standards for state certified appraisers imposed by HUD under § 267.11(c)(1).

§ 267.10 Qualified appraisers and appraisals.

(a) *Appraisal by a state certified general appraiser.* Every appraisal shall be performed by a state certified general appraiser. With respect to appraisals performed by HUD employees, this requirement is satisfied whether or not the property being appraised is located in the state which certified the HUD employee. Each HUD employee who performs appraisals or consultations or who reviews appraisals or consultations will be qualified as a certified general appraiser under the laws of one or more states not later than December 31, 1996, unless, in an individual case, the Assistant Secretary for Housing-Federal Housing Commissioner decides that a different date is appropriate. All appraisers shall comply with HUD policies and procedures as set forth in HUD handbooks and other issuances.

(b) *Only appraisals and consultations complying with this part are recognized.* Appraisals or consultations performed in accordance with the requirements of other agencies will not be recognized for HUD multifamily transactions that require appraisals or consultations complying with this part 267 unless those appraisals or consultations so comply.

§ 267.11 Appraisal standards.

(a) *Minimum standards.* Each appraisal or real estate consultation shall follow the requirements of this § 267.11 as supplemented from time to time by HUD processing instructions which comprise supplemental standards authorized in accordance with USPAP. The appraisal shall, at a minimum:

(1) Conform to USPAP, except to the extent that such compliance may conflict with the provisions of this part 267

(2) Disclose any steps taken that were necessary or appropriate to comply with the Competency Provision of the USPAP.

(3) Apply USPAP Standard 2, Real Property Appraisal Reporting; except that under the Supplemental Standards Provision of USPAP, reports by appraisers or consultants shall be in writing using the following forms:

(i) HUD–92264, HUD–92264(RCF) or HUD–92264B, with attachments as required;

(ii) Trial form HUD–92264A.

(4) Analyze and report in reasonable detail all prior sales of the property being appraised within three years preceding the date when the appraisal is prepared, or beyond three years if necessary to include the last arms-length transaction.

(5) Analyze and report data on current revenues, expenses, and vacancies for the property if it currently is, and will continue to be, income-producing.

(6) Analyze and report a reasonable marketing period for the subject property.

(7) Analyze and report on current market conditions and trends that will affect income or the absorption period, to the extent they affect the value of the property.

(8) Contain sufficient supporting documentation with all pertinent information reported so that the appraiser's logic, reasoning, judgment, and analysis in arriving at a conclusion indicate to the reader the reasonableness of the value reported or of the consulting recommendations or conclusions provided.

(9) Include in the certification required by USPAP a statement that the appraisal is not based on a requested minimum valuation, a specific valuation or range of values, or the approval of the loan. The certification shall also include a statement that the racial/ethnic composition of the neighborhood surrounding the property in no way affected the appraisal determination.

(10) Follow a reasonable valuation method that:

(i) With respect to a program based on market value, addresses the direct sales comparison, income, and cost approaches to market value, reconciles or explains any differences those approaches yield in determining the value of the property in question, and gives the reason(s) for rejecting each approach that was not used;

(ii) With respect to a program based on replacement cost, determines the acceptable risk using estimated replacement cost together with supplemental standards set forth in HUD handbooks and other program directives.

(b) *Unavailable information.* If information required by this section is not available, that fact shall be disclosed and explained in the appraisal report.

(c) *Additional standards.* In addition to the minimum standards set forth in paragraph (a) of this section:

(1) HUD may, in instances where the Appraisal Subcommittee has determined that the policies, practices, and procedures of a certifying or licensing state are inconsistent with FIRREA, impose such supplementary requirements as may be appropriate.

(2) HUD may, in instances where the Appraisal Subcommittee has determined that the requirements of FIRREA may be waived in accordance with 12 U.S.C. 3348(b), impose such supplementary requirements as may be appropriate.

§ 267.12 Selection of appraisers; appraiser independence.

(a) *Basis for selection.* The appraiser or consultant may be:

(1) A member of HUD's staff;

(2) Selected by the Delegated Processor in accordance with terms and conditions agreed to in writing by HUD and the Delegated Processor;

(3) Selected to perform appraisals in accordance with the terms and conditions of a formal contract between HUD and an institution or individual performing the services, or in accordance with the terms and conditions of a Purchase Order; or

(4) Selected by an HFA which has been approved to participate in the Department's Risk-Sharing Program.

(b) *Qualifications.* HUD exercises contractual control over the qualifications of those individuals and organizations that perform appraisal and consultation services in FHA multifamily programs.

(1) Appraisers and consultants performing services under HUD contracts for Delegated Processing and Technical Discipline assignments will be selected on the basis of criteria and procedures set forth in the solicitation, pursuant to the Federal Acquisition Regulations, 48 CFR Chapter 1.

(2) Under the Delegated Processing Program HUD contracts with a HUD-approved processing company to perform mortgage insurance underwriting processing and to make a recommendation to HUD. HUD makes the final underwriting determination. The Delegated Processor must identify the staff or contract review appraiser(s) and consultant(s) and must submit their qualifications, based upon requirements as set forth in the contract between HUD and the Delegated Processor, for review and approval. The Delegated Processor may subcontract appraiser and consulting functions, but must identify, prior to performing the appraisal or consultation, the appraiser or consultant selected under the subcontract and must provide a resume or qualifications for review and approval by the HUD field office concerned.

(3) Under the Housing Finance Agency Risk-Sharing Program, HUD delegates to state and local housing finance agencies the authority to originate and service loans that are fully insured by FHA. Under this program, participating agencies share in the risk associated with monetary losses that may be incurred as a result of loan defaults. An HFA may use either in-house or contract appraisers who meet certification requirements. The Risk-Sharing Program requires compliance with USPAP and therefore requires that appraisals be performed by certified general appraisers accredited by the state in which the project is located.

(c) *Delegated Processor appraisers: conflicts of interests.* A Delegated Processor or Consultant must avoid conflicts of interest and other relationships which affect, either in reality or in appearance, the credibility of the appraisal. The Delegated Processor or Consultant may not:

(1) Contract with an appraiser or appraisal organization to perform appraisals, if the Delegated Processor or Consultant owns, is owned by, is affiliated with, or has a financial interest in the appraiser or appraisal organization; or

(2) Contract with an appraiser or appraisal organization to perform an appraisal of a property if the builder or seller of the property owns or is owned by, is affiliated with, or has a financial interest in the appraiser or appraisal organization.

(d) *Appraiser independence.* An appraiser may not have any interest, direct or indirect, in the property being appraised.

(e) *Non-transferability of appraisal.* Appraisal materials and reports may not be transferred between mortgagees with respect to a property involved in a multifamily transaction.

Dated: September 16, 1994.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–24327 Filed 9–30–94; 8:45 am]

BILLING CODE 4210–27–P

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Part XII

The President

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Presidential Documents

Title 3—

The President

Executive Order 12929 of September 29, 1994

Delegation of Authority Regarding the Naval Petroleum and Oil Shale Reserves

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 and sections 7427 and 7428 of title 10, United States Code, and in order to meet the goals and requirements of the Naval Petroleum and Oil Shale Reserves, it is hereby ordered as follows:

The functions vested in the President by sections 7427 and 7428 of title 10 of the United States Code are delegated to the Secretary of Energy.

William J. Clinton

THE WHITE HOUSE,
September 29, 1994.

[FR Doc. 94–24589
Filed 9–30–94; 10:46 am]
Billing code 3195–01–P

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Presidential Documents

Executive Order 12930 of September 29, 1994

Measures To Restrict the Participation by United States Persons in Weapons Proliferation Activities

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3 of the United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, find that the proliferation of nuclear, biological, and chemical weapons, and of the means of delivering such weapons, constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and hereby declare a national emergency to deal with that threat.

Accordingly, in order to limit the participation by United States persons in weapons proliferation activities, it is hereby ordered as follows:

Section 1. The Secretary of Commerce, in consultation with the Secretary of State, is hereby authorized and directed to take such actions, including the promulgation of rules, regulations, and amendments thereto, as may be necessary to continue to regulate the activities of United States persons in order to prevent their participation in activities that could contribute to the proliferation of weapons of mass destruction and the means of their delivery, as provided in the Export Administration Regulations, set forth at 15 CFR Parts 768–799 (1994).

Sec. 2. Any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under the authority of the Export Administration Act, or the authorities provided under Executive Order No. 12868 on September 30, 1993, are hereby continued in effect unless altered, modified, or rescinded by the Secretary of Commerce pursuant to section 1 of this order.

Sec. 3. Executive Order No. 12868 is revoked and this order shall take effect at 11:59 p.m. on September 29, 1994.

William J. Clinton

THE WHITE HOUSE,
September 29, 1994.

[FR Doc. 94–24617
Filed 9–30–94; 12:20 pm]
Billing code 3195–01–P

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Presidential Documents

Presidential Determination No. 94–52 of September 29, 1994

Delegation of Authority To Modify, Restrict, or Terminate Title VII Trade Action Taken Against Japan

Memorandum for the United States Trade Representative

By the authority vested in me by the Constitution and laws of the United States, including 3 U.S.C. section 301, I hereby delegate to the United States Trade Representative the powers granted the President in section 305(g)(2) and (3) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515(g)(2) and (3)) to modify, restrict, or terminate the sanctions that will take effect on September 30, 1994, as a result of the identification of Japan as a country that discriminates in government procurement of U.S. medical technology and telecommunications goods and services, or to terminate the title VII action against Japan.

This delegation of authority is effective until October 7, 1994. You are authorized and directed to publish this determination in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, September 29, 1994.

[FR Doc. 94–24616
Filed 9–30–94; 12:19 pm]
Billing code 3190–01–P

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Presidential Documents

Notice of September 30, 1994

Continuation of Emergency With Respect to Haiti

On October 4, 1991, by Executive Order No. 12775, President Bush declared a national emergency to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the actions and policies of the *de facto* regime in Haiti, blocking all property and interests in property of the *de facto* regime and the Government of Haiti. President Bush took additional measures to prohibit trade and other transactions with Haiti by Executive Order No. 12779 of October 28, 1991, and to the same end I issued Executive Orders No. 12853 of June 30, 1993, No. 12872 of October 18, 1993, No. 12914 of May 7, 1994, No. 12917 of May 21, 1994, No. 12920 of June 10, 1994, and No. 12922 of June 21, 1994.

Because the *de facto* regime in Haiti has not yet fulfilled its commitments under the Governors Island Agreement of July 3, 1993, by relinquishing power, and therefore continues to obstruct the restoration of democracy in Haiti, the national emergency declared on October 4, 1991, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond October 4, 1994. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Haiti. This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
September 30, 1994.

[FR Doc. 94–24618
Filed 9–30–94; 12:02 pm]
Billing code 3195–01–P

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 3841/P.L. 103–328

Reigle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Sept. 29, 1994; 108 Stat. 2338; 44 pages)

Last List September 30, 1994

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993, should be retained.

CFR ISSUANCES 1994
January—July 1994 Editions and Projected October, 1994 Editions

This list sets out the CFR issuances for the January—July 1994 editions and projects the publication plans for the **October, 1994** quarter. A projected schedule that will include the **January, 1995** quarter will appear in the first **Federal Register** issue of January.

For pricing information on available 1993—1994 volumes consult the CFR checklist which appears every Monday in the Federal Register.

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Normally, CFR volumes are revised according to the following schedule:

Titles 1—16—January 1
Titles 17—27—April 1
Titles 28—41—July 1
Titles 42—50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

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This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

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October 6	October 21	November 7	November 21	December 5	January 4
October 7	October 24	November 7	November 21	December 6	January 5
October 11	October 26	November 10	November 25	December 12	January 9
October 12	October 27	November 14	November 28	December 12	January 10
October 13	October 28	November 14	November 28	December 12	January 11
October 14	October 31	November 14	November 28	December 13	January 12
October 17	November 1	November 16	December 1	December 16	January 17
October 18	November 2	November 17	December 2	December 19	January 17
October 19	November 3	November 18	December 5	December 19	January 17
October 20	November 4	November 21	December 5	December 19	January 18
October 21	November 7	November 21	December 5	December 20	January 19
October 24	November 8	November 23	December 8	December 23	January 23
October 25	November 9	November 25	December 9	December 27	January 23
October 26	November 10	November 25	December 12	December 27	January 24
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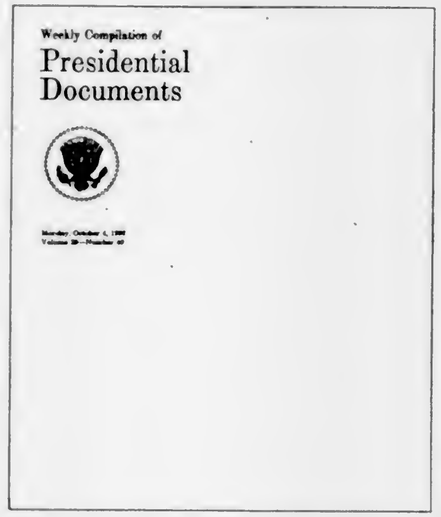
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10–4–94
Vol. 59 No. 191

Federal Register

Tuesday
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ISS
191
OC
4
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10–4–94
Vol. 59 No. 191
Pages 50481–50678

federal register

Tuesday
October 4, 1994

VOL
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ISS
191
OC
4
1994
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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 59, No. 191
Tuesday, October 4, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–221–AD; Amendment 39–9039; AD 94–20–10]

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, and –40 Series Airplanes and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, and –40 series airplanes and KC–10A (military) airplanes, that requires inspections to detect fatigue-related cracking in certain areas of the horizontal stabilizer; and repair of cracked parts. It also requires installation of terminating modifications, which, when accomplished, would eliminate the repetitive inspections. This amendment is prompted by reports of fatigue-related cracks found on the horizontal stabilizer. The actions specified by this AD are intended to prevent loss of the load carrying and fail safe capability of the horizontal stabilizer, damage to the adjacent structure, and subsequent reduced structural integrity of the airplane, due to the problems associated with fatigue cracking.

DATES: Effective October 31, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of November 3, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles ACO, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5324; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, and –40 series airplanes and KC–10A (military) airplanes was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on March 30, 1994 (59 FR 14800). That action proposed to require inspections to detect fatigue-related cracking in certain areas of the horizontal stabilizer; and repair of cracked parts. It also proposed to require the installation of certain terminating modifications that would eliminate the need for the repetitive inspections.

Immediate Adoption of This Regulation

Since issuance of the NPRM, one operator has reported finding a crack in the area of the forward spar upper cap on the horizontal stabilizer on a Model DC–10–10 series airplane that had accumulated approximately 16,000 landings. This evidence indicates that fatigue cracking may begin in this area much earlier than what was previously considered. In light of this, the FAA has reconsidered the compliance time proposed for the initiation of inspections to detect cracking in this subject area on these airplanes. The FAA now has determined that the initiation of inspections of Model DC–10–10 and –15 series airplanes must begin prior to the accumulation of 12,000 total landings or 90 days after the effective date of this AD, whichever occurs later. (The compliance time for this action that was proposed in the notice was 18,000 total landings.) The lowered threshold of 12,000 total landings is necessary to ensure that cracking is detected and corrected in a timely manner, and to prevent the loss of load-carrying and fail safe capability of the horizontal stabilizer due to the problems associated with fatigue cracking. The compliance time for the inspections specified in paragraph (a) of this final rule has been revised accordingly.

In making this revision, the FAA finds that, with respect to the reduced compliance threshold, a situation exists that requires the immediate adoption of this regulation. Therefore, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact

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concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–221–AD." The postcard will be date stamped and returned to the commenter.

Discussion of Comments Received to the NPRM

Interested persons have been afforded an opportunity to participate in the making of a portion of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

Several commenters request that the proposed rule be revised to exclude the Models DC–10–30 and –40 from the applicability until more information is gathered to substantiate that these airplanes are subject to the addressed unsafe condition. These commenters point out that cracks have been reported on Model DC–10–10 series airplanes only. One commenter states that the airframe manufacturer previously had requested that operators of Model DC–10 series airplanes inspect their airplanes for cracking and, as a result, none was found on any models other than the Model DC–10–10 and –15 series. Another commenter suggests that the spar cap and skin panel installed on Models DC–10–30 and –40 are thicker than those on Models DC–10–10 and –15; therefore, the possibility of these items cracking on the Model DC–10–30 and –40 airplanes is very low.

The FAA does not concur with these commenters' request. Although fatigue cracking may not have been detected on in-service Model DC–10–30 and –40 series airplanes, the airframe manufacturer has conducted load, fatigue, and damage-tolerance analyses, which indicate that fatigue-related cracking is likely to occur on all Model DC–10 series airplanes as these airplanes accumulate flight cycles. The compliance thresholds specified in this AD, as well as the compliance times for the required initial and repetitive inspections, were developed in consideration of these analyses and with the participation of the airframe manufacturer.

Several commenters request that the rule be revised to give credit for visual inspections of the area that were performed previously, and to add a visual inspection as an option for accomplishment of the initial eddy current inspection. These commenters state that a damage tolerance assessment conducted by the airframe manufacturer has shown that an initial visual inspection will ensure that the structural integrity of the horizontal stabilizer spar cap and skin is maintained. Additionally, by permitting a visual inspection to be performed, which takes less time and materials than an eddy current inspection, the economic impact of non-scheduled maintenance and removal of aircraft from service would be reduced for operators, as well as the corresponding inconvenience for the traveling public.

The FAA concurs with these commenters' request. Subsequent to the issuance of the notice, the FAA reviewed and approved Revision 1 to McDonnell Douglas DC–10 Service Bulletins 55–24 and 55–25, both dated August 3, 1994. These revised service bulletins contain revised instructions for accomplishing the eddy current inspection (to make it less complicated), and instructions for performing an optional visual inspection in lieu of the initial eddy current inspection to determine if cracks exist in the horizontal stabilizer forward cap and skin panel. The FAA has revised the final rule to permit operators to perform this optional visual inspection as the initial inspection only. All repetitive inspections must be performed using eddy current techniques.

Several commenters request that the proposed rule be revised to eliminate the compliance time for the terminating modifications. These commenters consider that these modifications should be optional instead of mandatory. Other commenters indicate that fatigue-related cracks are cycle-dependent, not calendar time-dependent; therefore, it is inappropriate to impose a calendar time compliance time on a cycle-dependent phenomenon. The commenters also consider that the proposed compliance time of five years for installation of the terminating modifications could be unfair to operators of low-time airplanes, since, in some cases, an operator could be required to install the terminating modifications before the airplane has reached the threshold for the initial inspection.

The FAA does not concur with the commenters' request to allow the terminating action to be optional. The FAA has determined that long term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The modifications required by this AD are in consonance with these considerations.

The FAA does acknowledge, however, that the proposed compliance time for installation of the terminating modifications could present an unfair situation to operators of low-time airplanes. This was not the FAA's intent. Therefore, the FAA has revised paragraph (d) of the final rule to specify modification prior to the accumulation of a certain number of cycles (depending upon airplane model) or within 5 years, whichever occurs later.

The FAA has revised paragraphs (a)(1), (b)(1), and (c)(1) of the final rule to delete the previously proposed requirement to continue inspections after installation of a repair that has been approved by the Manager of the Los Angeles Aircraft Certification Office. The FAA has determined that deletion of this requirement is appropriate, since some repairs that have been approved have incorporated a terminating action, thereby eliminating the need for continuing repetitive inspections.

Cost Impact

There are approximately 427 Model DC–10–10, –15, –30, and –40 series airplanes and KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 241 airplanes of U.S. registry will be affected by this AD.

The accomplishment of the optional initial visual inspection will take approximately 1 workhour per airplane per inspection, at an average labor charge of $55 per workhour. Based on these figures, the total cost impact of this optional inspection on U.S. operators who elect to accomplish it is estimated to be $55 per airplane.

The accomplishment of the eddy current inspections will take approximately 3 workhours per airplane per inspection, at an average labor charge of $55 per workhour. Based on these figures, the total cost impact of the inspection requirement on U.S. operators is estimated to be $39,765, or $165 per airplane, per inspection cycle.

The accomplishment of the modification of the forward spar upper cap will take approximately 248 workhours per airplane. Likewise, the accomplishment of the modification of the forward upper skin panel will take approximately 248 workhours per airplane. The average labor rate is $55 per workhour. Required parts will cost approximately $10,600 per airplane. Based on these figures, the total cost impact of the modification actions AD on U.S. operators is estimated to be $9,129,080, or $37,880 per airplane.

The FAA recognizes that the required modifications require a large number of workhours to accomplish. However, the 5-year compliance time specified in paragraph (d) of this proposed AD should allow ample time for the modifications to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

The total cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–20–10 McDonnell Douglas: Amendment 39–9039. Docket 93–NM–221–AD.

Applicability: Model DC–10–10, –15, –30, and –40 series airplanes and KC–10A (military) airplanes; as listed in McDonnell Douglas DC–10 Service Bulletins 55–24 and 55–25, Revision 1, both dated August 3, 1994; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the airplane, accomplish the following:

(a) For Model DC–10–10 and –15 series airplanes: Prior to the accumulation of 12,000 total landings, or within 90 days after the effective date of this AD, whichever occurs later, unless previously accomplished within the last 4,500 landings, perform either an initial an eddy current inspection or visual inspection to detect fatigue-related cracking of the forward spar upper caps on the horizontal stabilizer, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–24, Revision 1, dated August 3, 1994.

Note 1: Eddy current inspections accomplished in accordance with McDonnell Douglas DC–10 Service Bulletin 55–24, dated October 25, 1993, are considered acceptable for compliance with this paragraph.

(1) If any crack is detected, prior to further flight, repair the crack in accordance with a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(2) If no crack is detected, perform repetitive inspections thereafter in accordance with the service bulletin and in accordance with the following schedule:

(i) If the initial inspection was performed using visual techniques, perform an eddy current inspection within 1,000 landings after the visual inspection. Thereafter, repeat the eddy current inspection at intervals not to exceed 4,500 landings.

(ii) If the initial inspection was performed using eddy current techniques, repeat the eddy current inspection thereafter at intervals not to exceed 4,500 landings.

(b) For Model DC–10–30 and –40 series airplanes: Prior to the accumulation of 10,000 total landings, or within 120 days after the effective date of this AD, whichever occurs later, unless previously accomplished within the last 4,500 landings, perform either an initial eddy current inspection or visual inspection to detect fatigue-related cracking of the forward upper skin panel of the horizontal stabilizer, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–25, Revision 1, dated August 3, 1994.

Note 2: Eddy current inspections performed in accordance with McDonnell Douglas DC–10 Service Bulletin 55–25, dated October 25, 1993, are considered acceptable for compliance with this paragraph.

(1) If any crack is detected, prior to further flight, repair the crack in accordance with a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(2) If no crack is detected, perform repetitive eddy current inspections thereafter in accordance with the service bulletin and in accordance with the following schedule:

(i) If the initial inspection was performed using visual techniques, perform an eddy current inspection within 1,000 landings after the visual inspection. Thereafter, repeat the eddy current inspection at intervals not to exceed 4,500 landings.

(ii) If the initial inspection was performed using eddy current techniques, repeat the eddy current inspection thereafter at intervals not to exceed 4,500 landings.

(c) For Model DC–10–30 and –40 series airplanes: Prior to the accumulation of 17,500 total landings, or within 120 days after the effective date of this AD, whichever occurs later, unless previously accomplished within the last 4,500 landings, perform either an initial eddy current inspection or visual inspection to detect fatigue-related cracking of the forward upper skin panel of the horizontal stabilizer, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–25, Revision 1, dated August 3, 1994.

Note 3: Eddy current inspections performed in accordance with McDonnell Douglas DC–10 Service Bulletin 55–25, dated October 25, 1993, are considered acceptable for compliance with this paragraph.

(1) If any crack is detected, prior to further flight, repair the crack in accordance with a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(2) If no crack is detected, perform repetitive eddy current inspections thereafter in accordance with the service bulletin and in accordance with the following schedule:

(i) If the initial inspection was performed using visual techniques, perform an eddy current inspection within 1,000 landings after the visual inspection. Thereafter, repeat the eddy current inspection at intervals not to exceed 4,500 landings.

(ii) If the initial inspection was performed using eddy current techniques, repeat the eddy current inspection thereafter at intervals not to exceed 4,500 landings.

(d) For all airplanes: Install the preventative modifications specified in McDonnell Douglas DC–10 Service Bulletin 55–24, Revision 1, dated August 3, 1994; and McDonnell Douglas DC–10 Service Bulletin 55–25, Revision 1, dated August 3, 1994; in accordance with the following schedule. Accomplishment of these preventative modifications constitutes terminating action for the repetitive inspections required by this AD.

Note 4: Accomplishment of these preventative modifications in accordance

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with McDonnell Douglas DC–10 Service Bulletin 55–24, dated October 25, 1993; or McDonnell Douglas DC–10 Service Bulletin 55–25, dated October 25, 1993; as applicable; is considered acceptable for compliance with this paragraph.

(1) For Model DC–10–10 and –15 series airplanes:

(i) Prior to the accumulation of 21,000 total landings, or within 5 years after the effective date of this AD, whichever occurs later, accomplish the preventative modifications of the forward spar upper cap on the horizontal stabilizer in accordance with McDonnell Douglas DC–10 Service Bulletin 55–24, Revision 1, dated August 3, 1994.

(ii) Prior to the accumulation of 19,000 total landings, or within 5 years after the effective date of this AD, whichever occurs later, accomplish the modification of the forward upper skin panel on the horizontal stabilizer in accordance with McDonnell Douglas DC–10 Service Bulletin 55–25, Revision 1, dated August 3, 1994.

(2) For Model DC–10–30 and –40 series airplanes:

(i) Prior to the accumulation of 44,250 total landings, or within 5 years after the effective date of this AD, whichever occurs later, accomplish the modification of the forward spar upper cap on the horizontal stabilizer in accordance with McDonnell Douglas DC–10 Service Bulletin 55–24, Revision 1, dated August 3, 1994.

(ii) Prior to the accumulation of 26,500 total landings, or within 5 years after the effective date of this AD, whichever occurs later, accomplish the modification of the forward upper skin panel on the horizontal stabilizer in accordance with McDonnell Douglas DC–10 Service Bulletin 55–25, Revision 1, dated August 3, 1994.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections and modifications shall be done in accordance with McDonnell Douglas DC–10 Service Bulletin 55–24, Revision 1, dated August 3, 1994; and McDonnell Douglas DC–10 Service Bulletin 55–25, Revision 1, dated August 3, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801-1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on October 31, 1994.

Issued in Renton, Washington, on September 26, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–24199 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 450

[Docket No. 94N–0302]

Antibiotic Drugs; Bleomycin Sulfate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for standards of an antibiotic drug, bleomycin sulfate bulk drug substance. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective November 3, 1994; written comments, notice of participation, and request for a hearing by November 3, 1994; data, information, and analyses to justify a hearing by December 5, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James Timper, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6714.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval to provide for bleomycin sulfate bulk drug substance. The agency has concluded that the data supplied by the manufacturer concerning the antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR part 450 to provide for the inclusion of accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, is effective on November 3, 1994. However, interested persons may, on or before November 3, 1994, submit comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before November 3, 1994, a written notice of participation and request for a hearing, and (2) on or before December 5, 1994, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for a hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this document and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 450

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 450 is amended as follows:

PART 450—ANTITUMOR ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 450 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 450.10 is added to subpart A to read as follows:

§ 450.10 Bleomycin sulfate.

(a) *Requirements for certification—(1) Standards of identity, strength, quality, and purity.* Bleomycin sulfate is the amorphous sulfate salt of bleomycin. Bleomycin has been separated into several similar glyco-peptide molecules. It is a cream-colored powder that is so purified and dried that:

(i) Its potency is not less than 1.5 units and not more than 2.0 units of bleomycin per milligram.

(ii) It contains no depressor substances.

(iii) Its loss on drying is not more than 6.0 percent.

(iv) Its pH in an aqueous solution containing 10 units per milliliter is not less than 4.5 and not more than 6.0.

(v) Its copper content is not greater than 0.1 percent.

(vi) Its content of various bleomycins is as follows: Bleomycin A_2 is not less than 55 percent and not more than 70 percent; bleomycin B_2 is not less than 25 percent and not more than 32 percent; bleomycin B_4 is not more than 1 percent. Bleomycins A_2 and B_2 should comprise not less than 85 percent of the total bleomycins.

(vii) It passes the identity test.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5(b) of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, depressor substances, loss on drying, pH, copper, content of various bleomycins, and identity.

(ii) Samples required: For all tests: A minimum of 20 immediate containers.

(b) *Tests and methods of assay—(1) Potency.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.1*M* potassium phosphate buffer, pH 7.0 (solution 16), to provide a stock solution of convenient concentration. Dilute the sample thus obtained with solution 16 to provide a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with solution 16 to the reference concentration of 0.04 unit of activity per milliliter (estimated).

(2) *Depressor substances.* Proceed as directed in § 436.35 of this chapter.

(3) *Loss on drying.* Proceed as directed in § 436.200(a) of this chapter, using the total contents of two or three vials.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 10 units per milliliter.

(5) *Copper content—(i) Reagents.* Dissolve 10 milligrams of zinc dibenzyldithiocarbamate in 100 milliliters of carbon tetrachloride.

(ii) *Preparation of standard copper solution.* Accurately weigh 1.965 grams of cupric sulfate pentahydrate and transfer to a 1-liter volumetric flask. Dissolve the material in 0.1*N* hydrochloric acid, dilute to volume with 0.1*N* hydrochloric acid, and mix well. Transfer 3 milliliters of this stock solution to a 1-liter volumetric flask, dilute to volume with 0.1*N* hydrochloric acid, and mix well. This standard copper solution contains 0.0015 milligram of copper per milliliter. Transfer 10 milliliters of the standard copper solution to a 60-milliliter separatory funnel.

(iii) *Preparation of the sample.* Accurately weigh approximately 15 milligrams of sample into a 60-millilter separatory funnel. Dissolve the sample in 10 milliliters of 0.1*N* hydrochloric acid.

(iv) *Procedure.* To the separatory funnels containing the sample solution and standard copper solution, add 10 milliliters of the zinc dibenzyldithiocarbamate solution and shake the funnels vigorously for 1 minute. Allow the phases to separate. Filter the carbon tetrachloride phase (lower phase) through 1 gram of anhydrous sodium sulfate to remove excess water. Using a suitable spectrophotometer equipped with 1-centimeter cells, and carbon tetrachloride as a blank, measure the absorbance of the standard copper solution and the sample solution at 435 nanometers. Calculate the percent copper as follows:

$$\text{Percent copper} = \frac{\text{Absorbance of sample solution} \times 1.5}{\text{Absorbance of standard copper solution} \times \text{Sample weight in milligrams}}$$

(6) *Content of various bleomycin fractions.* Proceed as directed in § 436.339 of this chapter.

(7) *Identity test.* Proceed as directed in § 436.211 of this chapter, using the method described in paragraph (b)(1) of that section, using a 1 percent mixture.

Dated: September 27, 1994.

David B. Barr,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–24543 Filed 10–3–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8565]

RIN 1545–AM88

Limitation on Passive Activity Losses and Credits—Definition of Activity

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations defining the term "activity" for purposes of applying the limitations on passive activity losses and passive activity credits. The final regulations affect taxpayers subject to the limitations on passive activity losses and passive activity credits and provide them with the guidance necessary to comply with the law.

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DATES: These regulations are effective May 11, 1992.

For dates of applicability of these regulations, see § 1.469–11 of these regulations.

FOR FURTHER INFORMATION CONTACT: William M. Kostak at (202) 622–3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1 to provide additional rules under section 469. Section 469 limits the use of passive activity losses and passive activity credits. Section 469(l)(1) provides that the Treasury Department will prescribe regulations that may be necessary or appropriate to carry out the provisions of section 469, including regulations that specify what constitutes an activity for purposes of that section.

On May 15, 1992, the IRS published in the **Federal Register** a notice of proposed rulemaking (57 FR 20802) to replace certain temporary regulations defining the term "activity." A number of public comments were received concerning the proposed regulations, and a public hearing was held on September 3, 1992. After consideration of the comments received, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

I. General Background

Section 469 disallows losses from passive activities to the extent they exceed income from passive activities and similarly disallows credits from passive activities to the extent they exceed tax liability allocable to passive activities. Passive activities are defined, generally, as rental activities and activities in which the taxpayer does not materially participate, but the statute does not define the term "activity." Except for modifications in response to comments received on the proposed regulations, the final regulations generally adopt the same definition of activity as contained in the proposed regulations.

II. Public Comments

One comment suggested that the regulations make explicit that the same facts and circumstances may result in more than one permissible grouping of activities. In response to this comment, the final regulations clarify that there may be more than one reasonable method for grouping a taxpayer's activities after taking into account all the relevant facts and circumstances.

Another comment concerned an example in the proposed regulations that illustrates the grouping of two activities, both conducted through partnerships, where one activity involves the sale of non-food items to grocery stores and the other activity involves the warehousing of goods predominantly for the first activity. The comment suggested clarifying whether the warehousing activity is a rental activity or a trade or business activity. To clarify this point, the final regulations use the example of a trucking activity rather than a warehousing activity.

Several comments requested clarification of the rule that trade or business activities may be grouped together with rental activities only if one is insubstantial in relation to the other. Some comments suggested specifying that the term "insubstantial" refers to factors other than gross income. Other comments suggested adopting a bright-line or safe-harbor gross revenue test. Because the regulations already adopt a facts-and-circumstances test that looks at all of the pertinent factors, it is not necessary to specify that the term insubstantial refers to factors other than gross income. In addition, to avoid complex and mechanical rules, the final regulations do not adopt a bright-line or safe-harbor gross revenue test.

Another comment suggested that the insubstantial requirement should not apply when a taxpayer is renting property to the taxpayer's trade or business. In response to this comment, the final regulations provide that the portion of a rental activity that involves the rental of items of property to a trade or business activity may be grouped with the trade or business activity, regardless of whether one activity is insubstantial in relation to the other, provided each owner of the trade or business activity has the same proportionate ownership interest in the rental activity.

As under the proposed regulations, the Commissioner is authorized to issue guidance identifying activities that may not be grouped with other activities. The final regulations clarify that this authority is not restricted to activities owned by limited partners or limited entrepreneurs.

A commentator requested clarification on whether activities conducted through a C corporation may be grouped with activities not conducted through the C corporation. The final regulations clarify that in determining whether a taxpayer materially or significantly participates in an activity, a taxpayer may group that activity with activities conducted through C corporations that are subject to section 469 (that is, personal service and closely held C corporations).

In response to a comment, the final regulations clarify that an owner of an interest in an entity may not treat as separate activities the activities grouped together by the entity. However, if the activities are not grouped together by the entity, an owner of that entity may group the activities together so long as the grouping is appropriate under the general rules for grouping activities.

The final regulations also clarify the Commissioner's regrouping authority. Under the final regulations, the Commissioner may regroup a taxpayer's activities if any of the activities resulting from the taxpayer's grouping is not an appropriate economic unit and a principal purpose of the taxpayer's grouping is to circumvent the underlying purposes of section 469. If the Commissioner can show that the effect of a taxpayer's grouping is the circumvention of the underlying purposes of section 469, this will be evidence, sufficient in certain cases, of a principal purpose of the grouping. It is expected, however, that the Commissioner's regrouping authority will be exercised infrequently.

Tax practitioners have also inquired concerning the circumstances in which suspended losses will be allowed on the disposition of part of an activity. The final regulations modify the rule in the proposed regulations to provide that the rule allowing suspended losses on partial dispositions applies only to dispositions of substantially all of an activity. However, the effective date of the final regulations provides transitional rules that allow taxpayers to use the rules provided in the proposed regulations for taxable years beginning before October 4, 1994.

Several comments requested guidance on when activities grouped in accordance with the rules in the temporary regulations must be regrouped under the final regulations. In accordance with the effective date provisions, taxpayers that grouped their activities under the rules in the temporary regulations must regroup their activities if their activities are not appropriate economic units under these regulations. The effective date and transition rules reflect this clarification.

These regulations do not address the grouping of rental real estate activities by taxpayers subject to section 469(c)(7), as enacted by the Revenue Reconciliation Act of 1993.

III. Effective Dates

In general, these regulations are effective for taxable years ending after May 10, 1992. However, for taxable years in which these regulations apply and that begin before October 4, 1994, a taxpayer may determine its tax liability in accordance with proposed § 1.469–4 published at 1992–1 C.B. 1219. For taxable years ending on or before May 10, 1992, taxpayers must apply the rules of § 1.469–4T. For the taxable year that includes May 10, 1992, taxpayers may choose to apply the rules in § 1.469–4T, rather than the rules in these regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Ronald M. Gootzeit and William M. Kostak, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry "§§ 1.469–1, 1.469–1T, 1.469–2, 1.469–2T, 1.469–3, 1.469–3T, 1.469–5, 1.469–5T and 1.469–11" and adding the following entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.469–1 also issued under 26 U.S.C. 469(l).

Section 1.469–1T also issued under 26 U.S.C. 469(l).

Section 1.469–2 also issued under 26 U.S.C. 469(l).

Section 1.469–2T also issued under 26 U.S.C. 469(l).

Section 1.469–3 also issued under 26 U.S.C. 469(l).

Section 1.469–3T also issued under 26 U.S.C. 469(l).

Section 1.469–4 also issued under 26 U.S.C. 469(l).

Section 1.469–5 also issued under 26 U.S.C. 469(l).

Section 1.469–5T also issued under 26 U.S.C. 469(l).

Section 1.469–11 also issued under 26 U.S.C. 469(l). * * *

Par. 2. Section 1.469–0 is amended by:

1. Revising the heading for § 1.469–4 and adding entries for § 1.469–4 (a) through (h).
2. Revising the entry for § 1.469–11(b)(1).
3. Revising the entry for § 1.469–11(b)(2).
4. Adding entries for § 1.469–11(b)(2)(i) and (ii).
5. Adding an entry for § 1.469–11(b)(3).
6. The additions and revisions read as follows:

§ 1.469–0 Table of contents.

* * * * * *

§ 1.469–4 Definition of Activity

(a) Scope and purpose.
(b) Definitions.
(1) Trade or business activities.
(2) Rental activities.
(c) General rules for grouping activities.
(1) Appropriate economic unit.
(2) Facts and circumstances test.
(3) Examples.
(d) Limitation on grouping certain activities.
(1) Grouping rental activities with other trade or business activities.
(i) Rule.
(ii) Examples.
(2) Grouping real property rentals and personal property rentals prohibited.
(3) Certain activities of limited partners and limited entrepreneurs.
(i) In general.
(ii) Example.
(4) Other activities identified by the Commissioner.
(5) Activities conducted through section 469 entities.
(i) In general.
(ii) Cross reference.
(e) Disclosure and consistency requirements.
(1) Original groupings.
(2) Regroupings.
(f) Grouping by Commissioner to prevent tax avoidance.
(1) Rule.
(2) Example.
(g) Treatment of partial dispositions.
(h) Rules for grouping rental real estate activities for taxpayers qualifying under section 469(c)(7) for taxable years beginning after December 31, 1993 [Reserved].

* * * * * *

§ 1.469–11 Effective Date and Transition Rules

* * * * * *

(b) * * *

(1) Application of 1992 amendments for taxable years beginning before October 4, 1994.

(2) Additional transition rules for 1992 amendments.

(i) In general.

(ii) Additional rule for activity regulations.

(3) Certain investment credit property.

* * * * * *

Par. 3. Section 1.469–4 is added to read as follows:

§ 1.469–4 Definition of activity.

(a) *Scope and purpose.* This section sets forth the rules for grouping a taxpayer's trade or business activities and rental activities for purposes of applying the passive activity loss and credit limitation rules of section 469. A taxpayer's activities include those conducted through C corporations that are subject to section 469, S corporations, and partnerships.

(b) *Definitions.* The following definitions apply for purposes of this section—

(1) *Trade or business activities. Trade or business activities* are activities, other than rental activities or activities that are treated under § 1.469–1T(e)(3)(vi)(B) as incidental to an activity of holding property for investment, that—

(i) Involve the conduct of a trade or business (within the meaning of section 162);

(ii) Are conducted in anticipation of the commencement of a trade or business; or

(iii) Involve research or experimental expenditures that are deductible under section 174 (or would be deductible if the taxpayer adopted the method described in section 174(a)).

(2) *Rental activities. Rental activities* are activities that constitute rental activities within the meaning of § 1.469–1T(e)(3).

(c) *General rules for grouping activities*—(1) *Appropriate economic unit.* One or more trade or business activities or rental activities may be treated as a single activity if the activities constitute an appropriate economic unit for the measurement of gain or loss for purposes of section 469.

(2) *Facts and circumstances test.* Except as otherwise provided in this section, whether activities constitute an appropriate economic unit and, therefore, may be treated as a single activity depends upon all the relevant facts and circumstances. A taxpayer may use any reasonable method of applying the relevant facts and circumstances in grouping activities. The factors listed below, not all of which are necessary for a taxpayer to treat more than one activity as a single activity, are given the greatest weight in

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determining whether activities constitute an appropriate economic unit for the measurement of gain or loss for purposes of section 469—

(i) Similarities and differences in types of trades or businesses;

(ii) The extent of common control;

(iii) The extent of common ownership;

(iv) Geographical location; and

(v) Interdependencies between or among the activities (for example, the extent to which the activities purchase or sell goods between or among themselves, involve products or services that are normally provided together, have the same customers, have the same employees, or are accounted for with a single set of books and records).

(3) *Examples.* The following examples illustrate the application of this paragraph (c).

Example 1. Taxpayer *C* has a significant ownership interest in a bakery and a movie theater at a shopping mall in Baltimore and in a bakery and a movie theater in Philadelphia. In this case, after taking into account all the relevant facts and circumstances, there may be more than one reasonable method for grouping *C*'s activities. For instance, depending on the relevant facts and circumstances, the following groupings may or may not be permissible: a single activity; a movie theater activity and a bakery activity; a Baltimore activity and a Philadelphia activity; or four separate activities. Moreover, once *C* groups these activities into appropriate economic units, paragraph (e) of this section requires *C* to continue using that grouping in subsequent taxable years unless a material change in the facts and circumstances makes it clearly inappropriate.

Example 2. Taxpayer *B*, an individual, is a partner in a business that sells non-food items to grocery stores (partnership *L*). *B* also is a partner in a partnership that owns and operates a trucking business (partnership *Q*). The two partnerships are under common control. The predominant portion of *Q*'s business is transporting goods for *L*, and *Q* is the only trucking business in which *B* is involved. Under this section, *B* appropriately treats *L*'s wholesale activity and *Q*'s trucking activity as a single activity.

(d) *Limitation on grouping certain activities.* The grouping of activities under this section is subject to the following limitations:

(1) *Grouping rental activities with other trade or business activities*—(i) *Rule.* A rental activity may not be grouped with a trade or business activity unless the activities being grouped together constitute an appropriate economic unit under paragraph (c) of this section and—

(A) The rental activity is insubstantial in relation to the trade or business activity;

(B) The trade or business activity is insubstantial in relation to the rental activity; or

(C) Each owner of the trade or business activity has the same proportionate ownership interest in the rental activity, in which case the portion of the rental activity that involves the rental of items of property for use in the trade or business activity may be grouped with the trade or business activity.

(ii) *Examples.* The following examples illustrate the application of paragraph (d)(1)(i) of this section:

Example 1. (i) *H* and *W* are married and file a joint return. *H* is the sole shareholder of an S corporation that conducts a grocery store trade or business activity. *W* is the sole shareholder of an S corporation that owns and rents out a building. Part of the building is rented to *H*'s grocery store trade or business activity (the grocery store rental). The grocery store rental and the grocery store trade or business are not insubstantial in relation to each other.

(ii) Because they file a joint return, *H* and *W* are treated as one taxpayer for purposes of section 469. See § 1.469–1T(j). Therefore, the sole owner of the trade or business activity (taxpayer *H–W*) is also the sole owner of the rental activity. Consequently, each owner of the trade or business activity has the same proportionate ownership interest in the rental activity. Accordingly, the grocery store rental and the grocery store trade or business activity may be grouped together (under paragraph (d)(1)(i) of this section) into a single trade or business activity, if the grouping is appropriate under paragraph (c) of this section.

Example 2. Attorney *D* is a sole practitioner in town *X*. *D* also wholly owns residential real estate in town *X* that *D* rents to third parties. *D*'s law practice is a trade or business activity within the meaning of paragraph (b)(1) of this section. The residential real estate is a rental activity within the meaning of § 1.469–1T(e)(3) and is insubstantial in relation to *D*'s law practice. Under the facts and circumstances, the law practice and the residential real estate do not constitute an appropriate economic unit under paragraph (c) of this section. Therefore, *D* may not treat the law practice and the residential real estate as a single activity.

(2) *Grouping real property rentals and personal property rentals prohibited.* An activity involving the rental of real property and an activity involving the rental of personal property (other than personal property provided in connection with the real property or real property provided in connection with the personal property) may not be treated as a single activity.

(3) *Certain activities of limited partners and limited entrepreneurs*—(i) *In general.* Except as provided in this paragraph, a taxpayer that owns an interest, as a limited partner or a limited entrepreneur (as defined in section 464(e)(2)), in an activity described in section 465(c)(1), may not group that activity with any other activity. A taxpayer that owns an interest as a limited partner or a limited entrepreneur in an activity described in the preceding sentence may group that activity with another activity in the same type of business if the grouping is appropriate under the provisions of paragraph (c) of this section.

(ii) *Example.* The following example illustrates the application of this paragraph (d)(3):

Example. (i) Taxpayer *A*, an individual, owns and operates a farm. *A* is also a member of *M*, a limited liability company that conducts a cattle-feeding business. *A* does not actively participate in the management of *M* (within the meaning of section 464(e)(2)(B)). In addition, *A* is a limited partner in *N*, a limited partnership engaged in oil and gas production.

(ii) Because *A* does not actively participate in the management of *M*, *A* is a limited entrepreneur in *M*'s activity. *M*'s cattle-feeding business is described in section 465(c)(1)(B) (relating to farming) and may not be grouped with any other activity that does not involve farming. Moreover, *A*'s farm may not be grouped with the cattle-feeding activity unless the grouping constitutes an appropriate economic unit for the measurement of gain or loss for purposes of section 469.

(iii) Because *A* is a limited partner in *N* and *N*'s activity is described in section 465(c)(1)(D) (relating to exploring for, or exploiting, oil and gas resources), *A* may not group *N*'s oil and gas activity with any other activity that does not involve exploring for, or exploiting, oil and gas resources. Thus, *N*'s activity may not be grouped with *A*'s farm or with *M*'s cattle-feeding business.

(4) *Other activities identified by the Commissioner.* A taxpayer that owns an interest in an activity identified in guidance issued by the Commissioner as an activity covered by this paragraph (d)(4) may not group that activity with any other activity, except as provided in the guidance issued by the Commissioner.

(5) *Activities conducted through section 469 entities*—(i) *In general.* A C corporation subject to section 469, an S corporation, or a partnership (a section 469 entity) must group its activities under the rules of this section. Once the section 469 entity groups its activities, a shareholder or partner may group those activities with each other, with activities conducted directly by the shareholder or partner, and with activities conducted through other section 469 entities, in accordance with the rules of this section. A shareholder or partner may not treat activities grouped together by a section 469 entity as separate activities.

(ii) *Cross reference.* An activity that a taxpayer conducts through a C corporation subject to section 469 may be grouped with another activity of the taxpayer, but only for purposes of determining whether the taxpayer materially or significantly participates in the other activity. See § 1.469–2T(c)(3)(i)(A) and (c)(4)(i) for the rules regarding dividends on C corporation stock and compensation paid for personal services.

(e) *Disclosure and consistency requirements*—(1) *Original groupings.* Except as provided in paragraph (e)(2) of this section, once a taxpayer has grouped activities under this section, the taxpayer may not regroup those activities in subsequent taxable years. Taxpayers must comply with disclosure requirements that the Commissioner may prescribe with respect to both their original groupings and the addition and disposition of specific activities within those chosen groupings in subsequent taxable years.

(2) *Regroupings.* If it is determined that a taxpayer's original grouping was clearly inappropriate or a material change has occurred that makes the original grouping clearly inappropriate, the taxpayer must regroup the activities and must comply with disclosure requirements that the Commissioner may prescribe.

(f) *Grouping by Commissioner to prevent tax avoidance*—(1) *Rule.* The Commissioner may regroup a taxpayer's activities if any of the activities resulting from the taxpayer's grouping is not an appropriate economic unit and a principal purpose of the taxpayer's grouping (or failure to regroup under paragraph (e) of this section) is to circumvent the underlying purposes of section 469.

(2) *Example.* The following example illustrates the application of this paragraph (f):

Example. (i) Taxpayers *D, E, F, G,* and *H* are doctors who operate separate medical practices. *D* invested in a tax shelter several years ago that generates passive losses and the other doctors intend to invest in real estate that will generate passive losses. The taxpayers form a partnership to engage in the trade or business of acquiring and operating X-ray equipment. In exchange for equipment contributed to the partnership, the taxpayers receive limited partnership interests. The partnership is managed by a general partner selected by the taxpayers; the taxpayers do not materially participate in its operations. Substantially all of the partnership's services are provided to the taxpayers or their patients, roughly in proportion to the doctors' interests in the partnership. Fees for the partnership's services are set at a level equal to the amounts that would be charged if the partnership were dealing with the taxpayers at arm's length and are expected to assure the partnership a profit. The taxpayers treat the partnership's services as a separate activity from their medical practices and offset the income generated by the partnership against their passive losses.

(ii) For each of the taxpayers, the taxpayer's own medical practice and the services provided by the partnership constitute an appropriate economic unit, but the services provided by the partnership do not separately constitute an appropriate economic unit. Moreover, a principal purpose of treating the medical practices and the partnership's services as separate activities is to circumvent the underlying purposes of section 469. Accordingly, the Commissioner may require the taxpayers to treat their medical practices and their interests in the partnership as a single activity, regardless of whether the separate medical practices are conducted through C corporations subject to section 469, S corporations, partnerships, or sole proprietorships. The Commissioner may assert penalties under section 6662 against the taxpayers in appropriate circumstances.

(g) *Treatment of partial dispositions.* A taxpayer may, for the taxable year in which there is a disposition of substantially all of an activity, treat the part disposed of as a separate activity, but only if the taxpayer can establish with reasonable certainty—

(1) The amount of deductions and credits allocable to that part of the activity for the taxable year under § 1.469–1(f)(4) (relating to carryover of disallowed deductions and credits); and

(2) The amount of gross income and of any other deductions and credits allocable to that part of the activity for the taxable year.

(h) *Rules for grouping rental reol estate activities for taxpayers qualifying under section 469(c)(7) for taxable years beginning after December 31, 1993.* [Reserved]

Par. 4. Section 1.469–11 is amended as follows:

1. Paragraph (a)(1) is revised.

2. Paragraph (b)(1) is revised.

3. Paragraph (b)(2) is redesignated as paragraph (b)(3).

4. A new paragraph (b)(2) is added.

5. The added and revised provisions read as follows:

§ 1.469–11 Effective date and transition rules.

(a) * * *

(1) The rules contained in §§ 1.469–1, 1.469–1T, 1.469–2, 1.469–2T, 1.469–3, 1.469–3T, 1.469–4, 1.469–5, and 1.469–5T apply for taxable years ending after May 10, 1992.

* * * * *

(b) * * * (1) Application of 1992 amendments for taxable years beginning before October 4, 1994. Except as provided in paragraph (b)(2)(i) of this section, for taxable years that end after May 10, 1992, and begin before October 4, 1994, a taxpayer may determine its tax liability in accordance with Project PS–1–89 published at 1992–1 C.B. 1219 (see § 601.601(d)(2)(ii)(b) of this chapter).

(2) *Additional transition rules for 1992 amendments*—(i) *In general.* If a taxpayer's first taxable year ending after May 10, 1992, begins on or before that date, the taxpayer may treat the taxable year, for purposes of paragraph (a) of this section, as a taxable year ending on or before May 10, 1992.

(ii) *Additional rule for activity regulations.* For the first taxable year in which the rules in § 1.469–4 apply, taxpayers that are not in compliance with those rules must regroup their activities under those rules, without regard to the manner in which the activities were grouped in prior taxable years.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: August 1, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 94–24392 Filed 10–3–94; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 94–010]

RIN 2115–AA97

Safety Zone; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The U.S. Navy and the City of San Francisco coordinate an annual "Fleetweek" event on San Francisco Bay featuring, in part, practice flights by the U.S. Navy Blue Angels flight team on October 6 and October 7, and an air show including the U.S. Navy Blue Angels and civilian aircraft on October 9, 1994. To ensure the safety of Fleetweek participants and spectators, the Coast Guard proposes to establish a Safety Zone on the waters of San Francisco Bay, California, encompassing the entire water area bounded by the following: Commencing at the point 37°–48′–40″ N, 122°–28′–38″ W; thence to 37°–49′–10″ N, 122°–28′–41″ W; thence to 37°–49′–31″ N, 122°–25′–18″ W; thence to 37°–49′–31″ N, 122°–24′–19″ W; thence to 37°–48′–27.5″ N, 122°–

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24′–04″ W; and thence returning along the shoreline to the point of origin. Entry into, transit through, or anchoring within this zone by deep draft vessels, 1600 gross tons or greater, and tug and barge combinations is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This Safety Zone will be in effect on October 6, 7 and 9, 1994, commencing at 12 noon PDT on October 6, 11 a.m. PDT on October 7, and 9:30 a.m. PDT on October 9 and will conclude at 4 p.m. PDT each day unless canceled earlier by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Sean Regan, Coast Guard Marine Safety Office, San Francisco Bay, California; (510) 437–3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since the scope of activities potentially attracting a number of spectator craft and thus requiring a safety zone was not finalized until a date fewer than 30 days prior to the event date.

Drafting Information

The drafters of this notice are Lieutenant (junior grade) Sean Regan, Project Officer for the Captain of the Port, and Lieutenant Commander C.M. Juckniess, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will commence at 12 noon PDT on October 6, 11 a.m. PDT on October 7 and 9:30 a.m. PDT on October 9, 1994 and will conclude at 4 p.m. PDT each day, unless canceled earlier by the Captain of the Port. This Safety Zone is necessary to ensure the safety of pleasure boaters against injury from collision with deep draft vessels or tug and barge combinations. Deep draft vessels, 1600 gross tons or greater, and tug and barge combinations are prohibited from entering into, transiting through, or anchoring within the Safety Zone unless authorized by the Captain of the Port.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2. of Commandant Instruction M16475.1B it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for 33 CFR Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.T11–095 is added to read as follows:

§ 165.T11–095 Safety Zone: San Francisco Bay, CA.

(a) *Location.* The following area is a Safety Zone: The waters of San Francisco Bay, CA, encompassing the entire water area bounded by the following: Commencing at the point 37°–48′–40″ N, 122°–28′–38″ W; thence to 37°–49′–10″ N, 122°–28′–41″ W; thence to 37°–49′–31″ N, 122°–25′–18″ W; thence to 37°–49′–31″ N, 122°–24′–19″ W; thence to 37°–48′27.5″ N, 122°–24′–04″ W; and thence returning along the shoreline to the point of origin.

(b) *Effective dates.* This section will be in effect on October 6, 7 and 9, 1994, commencing at 12 noon PDT on October 6, 11 a.m. PDT on October 7, and 9:30 a.m. PDT on October 9 and will conclude at 4 p.m. PDT each day unless canceled earlier by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this Part, entry into, transit through, or anchoring within this zone by deep draft vessels, 1600 gross tons or greater, and tug and barge combinations is prohibited unless authorized by the Captain of the Port.

Dated: September 22, 1994.

D.P. Montoro,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 94–24523 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP San Francisco Bay 94–011]

RIN 2115–AA97

Safety Zone; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The U.S. Navy and the City of San Francisco coordinate an annual "Fleetweek" event on San Francisco Bay featuring, in part, a Parade of Ships. To ensure the safety of Fleetweek participants and spectators, the Coast Guard proposes to establish a Safety Zone on the waters of San Francisco Bay, California, in the area of the Golden Gate Bridge on October 8, 1994. The zone will encompass the following areas: (1) To the west of the Golden Gate Bridge, an area comprised of the entire Main Ship Channel extending between the sea buoy, at latitude 37°45′00″ N and longitude 122°23′09″ W, and the Golden Gate Bridge and including, in their entirety, the West Bound San Francisco Bay Traffic Lane, the East Bound San Francisco Bay Traffic Lane, and the Separation Line; and (2) an area to the east of the Golden Gate Bridge, described by those San Francisco Bay waters falling within a 2000-yard radius of the point at latitude 37°49′11″ N and longitude 122°28′43″ W. Entry into, transit through, or anchoring within this zone by deep draft vessels, 1600 gross tons or greater, and tug and barge combinations is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This Safety Zone will be in effect on October 8, 1994 between 8 a.m. PDT and 11 a.m. PDT, unless canceled earlier by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Sean Regan, Coast Guard Marine Safety Office, San Francisco Bay, California; (510) 437–3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since the scope of activities potentially attracting a number of spectator craft and thus requiring a safety zone was not finalized until a date fewer than 30 days prior to the event date.

Drafting Information

The drafters of this notice are Lieutenant (junior grade) Sean Regan, Project Officer for the Captain of the Port, and Lieutenant Commander C.M Juckiness, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this Safety Zone will occur on October 8, 1994 between 8 a.m. PDT and 11 a.m. PDT, unless canceled earlier by the Captain of the Port. This Safety Zone is necessary to allow for the safe maneuvering and navigation of 17 Naval ships and the USNS JEREMIAH O'BRIEN during the formation for, and conduct of, the Parade of Ships. Entry into, transit through, or anchoring within this Safety Zone by deep draft vessels, 1600 gross tons or greater, and tug and barge combinations is prohibited unless authorized by the Captain of the Port.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2. of Commandant Instruction M16475.1B it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for 33 CFR Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.T11–096 is added to read as follows:

§ 165.T11–096 Safety Zone: San Francisco Bay, CA.

(a) *Location.* The following area is a Safety Zone: The waters of San Francisco Bay, California: (1) to the west of the Golden Gate Bridge, an area comprised of the entire Main Ship Channel extending between the sea buoy, at latitude 37° – 45′ – 00″ N and longitude 122° – 23′ – 09″ W, and the Golden Gate Bridge and including, in their entirety, the West Bound San Francisco Bay Traffic Lane, the East Bound San Francisco Bay Traffic Lane, and the Separation Line; and (2) an area to the east of the Golden Gate Bridge, described by those San Francisco Bay waters falling within a 2000-yard radius of the point at latitude 37° – 49′ – 11″ N and longitude 122° – 28′ – 43″ W.

(b) *Effective date.* This section will be in effect on October 8, 1994 between 8 a.m. PDT and 11 a.m. PDT, unless canceled earlier by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this Part, entry into, transit through, or anchoring within this zone by deep draft vessels, 1600 gross tons or greater, and by tug and barge combinations is prohibited unless authorized by the Captain of the Port.

Dated: September 22, 1994.

D.P. Montoro,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 94–24524 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP San Francisco Bay 94–012]

RIN 2115–AA97

Safety Zone; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The U.S. Navy and the City of San Francisco coordinate an annual "Fleetweek" event on San Francisco Bay featuring, in part, a fireworks display. To ensure the safety of Fleetweek spectators, the Coast Guard proposes to establish a Safety Zone on the waters of San Francisco Bay, California in the vicinity of Treasure Island on October 12, 1994. The zone encompasses an area within a 400-yard radius of the point at latitude 37°–48′–58″ N and longitude 122°–22′–16″ W. Entry into, transit through, or anchoring within this Safety Zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This Safety Zone will be in effect on October 12, 1994 between 8 p.m. PDT and 9 p.m. PDT, unless canceled earlier by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Sean Regan, Coast Guard Marine Safety Office San Francisco Bay, California; (510) 437–3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since the scope of activities potentially attracting a number of spectator craft and thus requiring a safety zone was not finalized until a date fewer than 30 days prior to the event date.

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Drafting Information

The drafters of this notice are Lieutenant (junior grade) Sean Regan, Project Officer for the Captain of the Port, and Lieutenant Commander C. M. Jucknies, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this proposed regulation will begin at approximately 8 p.m. PDT on October 12, 1994, with a fireworks display, and will continue until 9 p.m. PDT unless canceled earlier by the Captain of the Port. This Safety Zone is necessary to ensure the safety of pleasure craft and spectators from possible damage or injury resulting from the hazards associated with the Fleetweek fireworks display. Entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2. of Commandant Instruction M16475.1B it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for 33 CFR Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.T11–097 is added to read as follows:

§ 165.T11–097 Safety Zone: San Francisco Bay, CA.

(a) *Location.* The following area is a Safety Zone: The waters of San Francisco Bay, California in the vicinity of Treasure Island, encompassed within a 400-yard radius of the point at latitude 37°–48′–58″ N and longitude 122°–22′–16″ W.

(b) *Effective date.* This section will be in effect on October 12, 1994 between 8 p.m. PDT and 9 p.m. PDT, unless canceled earlier by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this Part, entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port.

Dated: September 22, 1994.

D.P. Montoro,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 94–24525 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP San Francisco Bay 94–013]

RIN 2115–AA97

Safety Zone; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The U.S. Navy and the City of San Francisco coordinate an annual "Fleetweek" event on San Francisco Bay featuring, in part, a Parade of Ships and a U.S. Navy Blue Angels Air Show on October 8, 1994. To ensure the safety of Fleetweek participants and spectators, the Coast Guard proposes to establish a Safety Zone on the waters of San Francisco Bay, California, encompassing the entire water area bounded by the following: Commencing at the point 37°–48′40″ N, 122°–28′–38″ W; thence to 37°–49′–10″ N, 122°–28′41″ W; thence to 37°–49′–31″ N, 122°–25′–18″ W; thence to 37°–49′–36″ N, 122°–22′–44″ W; thence to 37°–48′–28″ N, 122°–22′02″ W, thence to 37°–47′–21″ N, 122°–23′–14″ W; and thence returning along the shoreline to the point of origin. Entry into, transit through, or anchoring within this Safety Zone by deep draft vessels, 1600 gross tons or greater, and tug and barge combinations is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This Safety Zone will be in effect on October 8, 1994 between 9 a.m. PDT and 4 p.m. PDT, unless canceled earlier by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT:

Lieutenant (junior grade) Sean Regan, Coast Guard Marine Safety Office San Francisco Bay, California; (510) 437–3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since the scope of activities potentially attracting a number of spectator craft and thus requiring a safety zone was not finalized until a date fewer than 30 days prior to the event date.

Drafting Information

The drafters of this notice are Lieutenant (junior grade) Sean Regan, Project Officer for the Captain of the Port, and Lieutenant Commander C.M. Jucknies, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this Safety Zone will begin on October 8, 1994 at 9 a.m. PDT and will conclude at 4 p.m. PDT, unless canceled earlier by the Captain of the Port. This Safety Zone is necessary to ensure the safety of pleasure boaters against injury from collision with deep draft vessels or tug and barge combinations during the Parade of Ships and U.S. Navy Blue Angels Air Show. Entry into this zone by deep draft vessels, 1600 gross tons or greater, or tug and barge combinations is prohibited unless authorized by the Captain of the Port.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*).

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2. of Commandant Instruction M16475.1B it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for 33 CFR Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.T11–098 is added to read as follows:

§ 165.I11–098 Safety Zone: San Francisco Bay, CA.

(a) *Location.* The following area is a Safety Zone: The waters of San Francisco Bay, CA, encompassing the entire water area bounded by the following: Commencing at the point 37°–48′–40″ N, 122°–28′–38″ W; thence to 37°–49′–10″ N, 122°–28′–41″ W; thence to 37°–49′–31″ N, 122°–25′–18″ W; thence to 37°–49′–36″ N, 122°–22′–44″ W; thence to 37°–48′–28″ N, 122°–22′–02″ W, thence to 37°–47′–21″ N, 122°–23′–14″ W; and thence returning along the shoreline to the point of origin.

(b) *Effective date.* This section will be in effect on October 8, 1994 between 9 a.m. PDT and 4 p.m. PDT, unless canceled earlier by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this Part, entry into, transit through, or anchoring within this zone by deep draft vessels, 1600 gross tons or greater, or by tug and barge combinations is prohibited unless authorized by the Captain of the Port.

Dated: September 22, 1994.

D. P. Montoro,

Captain, U.S. Coast Guard Captain of the Port.

[FR Doc. 94–24526 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN17–3–6325; [FRL–5077–2]

Approval and Promulgation of Implementation Plans; Carbon Monoxide; Oxygenated Gasoline Program; Minnesota

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA is approving a State Implementation Plan (SIP) revision submitted by the State of Minnesota. This revision requires an oxygenated gasoline program in the Minneapolis-St. Paul Metropolitan Statistical Area (MSA). Two areas were originally required to implement an oxygenated gasoline program because of past violations of the carbon monoxide standard, but on April 14, 1994, the Duluth area was redesignated to attainment of the National Ambient Air Quality Standards for carbon monoxide (CO). This SIP revision was submitted to satisfy the requirement for Minnesota of section 211(m) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (the Act), which requires all CO nonattainment areas with a design value of 9.5 parts per million (ppm) or above based on 1988 and 1989 air quality monitoring data to implement an oxygenated gasoline program. USEPA is approving the oxygenated gasoline program.

EFFECTIVE DATE: This final rule becomes effective on November 3, 1994.

ADDRESSES: Copies of the SIP revision, public comments, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Maggie Greene, at (312) 886–6088 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE–17J), Chicago, Illinois 60604.

A copy of this revision to the Minnesota Oxygenated Gasoline SIP is available at the following address: Office of Air and Radiation (OAR), Docket and Information Center, (Air Docket 6102), room M1500, U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460, (202) 260–7548, and Program Development Section, Air Quality Division, Minnesota Pollution Control Agency, 520 Lafayette Road, St. Paul, Minnesota 55155–3898.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, Air Enforcement Branch (AE–17J), U.S Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

The Minneapolis-St. Paul area and St. Louis County (Duluth) in the State of Minnesota (the control area) were designated nonattainment for CO and classified as moderate with a design value of 11.4 and 9.9 parts per million respectively, based on 1988 and 1989 data. USEPA redesignated the Duluth area to attainment on April 14, 1994 (59 FR 17706) in the **Federal Register**. Under section 211(m) of the Act, Minnesota was required to submit a revised SIP under section 110 and part D of the Act which includes an oxygenated gasoline program for Minneapolis-St. Paul and Duluth-Superior by November 15, 1992. On November 9, 1992, the Minnesota Pollution Control Agency (MPCA) submitted to USEPA a revised SIP including the oxygenated gasoline program containing legislation that was signed by the Governor on April 29, 1992, and became effective on August 1, 1992. The USEPA issued a completeness letter to the State on January 20, 1993. The notice of proposed rulemaking was published in

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the January 20, 1994 (59 FR 3047) **Federal Register**.

II. Public Comment/USEPA Response

A thirty-day public comment period was provided to allow interested parties the opportunity to comment on USEPA's proposed action. USEPA received three comments from the American Institute of Certified Public Accountants (CPAs), the Koch Refining Company, and the MPCA. The comments and USEPA's responses are addressed below.

Comment: The American Institute of CPAs objected to the use of the word "Account" when the word should be "Accountant" which is used to denote a CPA. This appeared in the section entitled "Registration Requirements."

Response: USEPA agrees that the sentence should have read, "The USEPA guidelines also require that CARs commission an annual attest engagement, performed by either an internal auditor or independent Certified Public Accountant (CPA)."

Comment: The Koch Refining Company supported the oxygenated gasoline program in Minnesota, but only within the control area and during the control period. On November 12, 1993, the MPCA submitted a contingency plan to require year-round oxygenated fuel beginning in 1995. Koch opposed this contingency plan. While Koch understood that the USEPA's proposed rule did not address the contingency plan and addressed only the oxygenated gasoline program within the control area and during the control period, Koch opposed any use of oxygenated gasoline outside of the control period. Koch will submit additional comments on the contingency plan when that plan is proposed for Federal rulemaking.

Response: USEPA will propose rulemaking on the contingency plan in another **Federal Register** notice. This final action only deals with the oxygenated gasoline program.

Comment: The MPCA noted that the officially designated nonattainment area for CO does not include Superior, Wisconsin, or St. Louis County, but only the City of Duluth, Minnesota. At this time, the State does not plan to enforce the oxygenated gasoline program in Duluth, which has been meeting standards since 1989. Also, it does not plan to enforce in the remaining portion of St. Louis County, which is largely a wilderness area and has never had a modeled or monitored "CO" problem.

Response: This issue is moot. The State of Minnesota requested that USEPA redesignate Duluth to attainment for CO. Minnesota submitted a draft request to USEPA on October 2, 1992, and a final request before November 1, 1992. USEPA requested additional information several months later, and the State responded to this request by sending the information in early December 1993. The USEPA redesignated the Duluth area to attainment for CO on April 14, 1994 (59 FR 17706) in the **Federal Register**.

Additional Information: During the public comment period, USEPA contacted the MPCA and requested that it withdraw from the Oxygenated SIP, the MPCA Board resolution of October 27, 1992, which was a part of the program plan. The resolution allowed the State to unilaterally take action to eliminate the oxygenated gasoline program upon submission by the State of a request for redesignation. This concept goes against USEPA redesignation procedures and cannot be approved as part of the State's plan. In a letter dated August 12, 1994, the State withdrew the October 27, 1992, MPCA Board Resolution from the requested SIP revision.

III. Rulemaking Action

In this action, USEPA is approving in final the SIP revision submitted by the State of Minnesota. The State of Minnesota has submitted and implemented an oxygenated gasoline program for the existing CO nonattainment area substantially in accordance with the requirements of the Act. The USEPA is, therefore, approving this submittal.

Nothing in this action should be construed as permitting, allowing or establishing precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

USEPA received no significant public comments on the proposed action. As a direct result, the Regional Administrator reclassified this action from Table 2 to a Table 3 action under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for 2 years. The USEPA submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993. OMB exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements. I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids USEPA to base its actions concerning SIPS on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307 (b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of each rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307 (b)(2)).

List of Subjects in 40 CFR Part 52

Environmenal protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of Minnesota was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 8, 1994.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart Y—[Amended]

2. Section 52.1220 is amended by adding paragraph (c)(34) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(34) On November 9, 1992, the State of Minnesota submitted the Oxygenated Gasoline Program. This submittal satisfies the requirements of section 211(m) of the Clean Air Act, as amended.

(i) Incorporation by reference.

(A) Minnesota Laws Chapter 2509, sections 1 through 31, except for sections 29 (b) and (c), enacted by the Legislature and signed into Law on April 29, 1992.

(ii) Additional material.

(A) Letter dated August 12, 1994, from the Minnesota Pollution Control Agency (MPCA), to the United States Environmental Protection Agency that withdraws the MPCA Board resolution dated October 27, 1992, and any reference to it, from the oxygenated gasoline State Implementation Plan revision request of 1992.

[FR Doc. 94–24420 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MA–24–1–6557; A–1–FRL–5074–8]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts—Amendment to Massachusetts' SIP (for Ozone and for Carbon Monoxide) for Transit Systems Improvements and High Occupancy Vehicle Facilities in the Metropolitan Boston Air Pollution Control District)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the Commonwealth of Massachusetts' Executive Office of Transportation and Construction to construct and operate specified transit facilities and high occupancy vehicle (HOV) lanes established therein. Implementation of the defined transportation projects will help reduce the use of automobiles, provide for additional transit facilities in the Metropolitan Boston Region, and improve traffic operations on the region's roadways, resulting in improved air quality. This action should have a beneficial effect on air quality because it is intended to reduce vehicle miles traveled (VMT) in the Boston Metropolitan Area. The emissions to be reduced include hydrocarbons (ground-level ozone precursors) and carbon monoxide (CO).

This action is being taken under sections 110 (a) and (l) of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on November 3, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street SW., (LE–131), Washington, DC 20460; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, (617) 565–3227.

SUPPLEMENTARY INFORMATION: On January 19, 1994 (59 FR 2795), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Massachusetts. The NPR proposed approval of a revision to Massachusetts' SIP for Transit Systems Improvements and HOV Facilities in the Metropolitan Boston Air Pollution Control District. The formal SIP revision was submitted by Massachusetts on December 9, 1991.

This new regulation commits the Massachusetts Executive Office of Transportation and Construction (MA EOTC) to pursue implementation, monitoring, and enforcement of transit system improvements and HOV facilities listed in Table 1, that were identified as transportation and air quality mitigation measures in a 1990 Final Supplemental Environmental Impact Statement for the CA/THT project. EPA determined five of the proposed transportation control measures (TCMs) were necessary to help achieve an air quality benefit from the CA/THT. The Massachusetts regulation amends 310 CMR 7.00 by adding two new sections; 310 CMR 7.36—"Transit System Improvements," and 310 CMR 7.37—"High Occupancy Vehicle Lanes."

TABLE 1

Project type and assigned completion date	Project description
HOV Project 12/31/91	HOV Lane: I–93 Southbound HOV Lane, North Of The Southbound Bank Of The Charles River, Shall Be Extended Toward Route 128 To The Northernmost Point Appropriate. No Addition Of New Lanes.
HOV Project 12/31/91	HOV Lane: The Final Design Of The Charles River Crossing On The Southbound Side Of I–93 Extending Down To The Exit Ramp To Nashua Street Shall Include A HOV Lane On The Southbound Side Of I–93. HOV Lane Shall Be Available With Opening Of CA/THT Project.
Transit Project 12/31/92	Lynn Central Square Station & Parking Garage.
Transit Project 12/31/92	North Station High Platform & High Tracks.
Transit Project 12/31/92	Lynn Transit Station Bus Terminal.
HOV Project 05/31/92	HOV Lane: Northbound & Southbound on I–93 Beginning At The Intersection Of I–93 With I–90 & Extending To A Point Immediately North On The Intersection Of I–93 & Route 3. [If The Threshold Standards Are Violated For Three Consecutive Months. Earlier Implementation If EOTC Determines.
Transit Project 12/31/94	South Station Bus Terminal.
Transit Project 12/31/94	South Station Track Number 12.
Transit Project 12/31/94	Ipswich Commuter Rail Line Extension To Newburyport.
Transit Project 12/31/96	Old Colony Commuter Rail Line Extension.
Transit Project 12/31/96	Framingham Commuter Rail Link Extension To Worcester.

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TABLE 1—Continued

Project type and assigned completion date	Project description
Transit Project 12/31/96	Park & Ride & Commuter Rail Parking Spaces Outside Of The Boston Core [10,000].
Transit Project 12/31/97	Green Line Arborway Restoration.
Transit Project 12/31/98	Blue Line Platform Lengthening & Modernization.
Transit Project 12/31/99	Park & Ride & Commuter Rail Station Parking Spaces Outside Of The Boston Core In Addition To Those Completed by Dec. 31, 1996 [10,000].
Transit Project 12/31/01	South Boston Piers Electric Bus Service.
Transit Project 12/31/11	Green Line Extension To Ball Square/Tufts University.
Transit Project 12/31/11	Blue Line Connection From Bowdoin Station To The Red Line At Charles Station.

Other specific requirements of the Commonwealth's State Implementation Plan (SIP) Amendment for Ozone and for Carbon Monoxide, for Transit System Improvements and High Occupancy Vehicle Facilities, and the rationale for EPA's proposed action, are explained in the NPR and will not be restated here.

Three public comments were received on the NPR. On February 16, 1994, a private citizen from Michigan submitted comments regarding Massachusetts' car and truck vehicle registrations, and the effect on the Massachusetts Inspection and Maintenance (I/M) program. EPA has found this comment not germane to approval of the Transit and HOV Facilities rules as a SIP Amendment. On February 18, 1994, The Conservation Law Foundation (CLF) submitted comments generally supporting approval of the Transit System Improvement and HOV rules into the SIP. Finally, on February 18, 1994, the Massachusetts Department of Environmental Protection (MA DEP) submitted comments requesting that EPA consider delaying final action on the HOV/Transit SIP rules.

The region has responded fully to CLF and MA DEP comments in a memorandum attached to the Technical Support Document (TSD) available in the docket for this action. A brief summary of these comments and EPA's responses appears below.

The Conservation Law Foundation generally supported approval of the Transit System Improvement and HOV rules into the SIP, but also requested clarification of several aspects of EPA's proposed approval. In support of the transit system improvement rule, CLF noted that several of the transit measures provided for in the rule are mitigation measures responding to the potential air quality impacts of the Central Artery/Third Harbor Tunnel. EPA agrees that completion of these measures, including the "Old Colony" rail line, are important transportation control measures that should help reduce VMT growth on the Central Artery. What follows is EPA's response to CLF's particular concerns.

1. Specific Requirements of These Rules Will Be Enforceable in a Citizens Suit

CLF is concerned that by characterizing these rules as "directionally sound," EPA is suggesting that they are not enforceable by citizens. EPA intended no such conclusion. The proposal expressed EPA's concern that the substitution provisions in these rules allow MA DEP to authorize different projects to substitute for those enumerated in the rules.[1] EPA believes that there is no reliable way to predict the reductions Massachusetts might achieve with these rules since their requirements might change in ways that are difficult to quantify in advance. Therefore, EPA is not prepared to give Massachusetts emissions reduction credit in the SIP for projects until they are substantially complete and a SIP revision requesting credit is submitted.

Withholding SIP credit for these projects, however, does not mean the requirements of these rules are not enforceable by MA DEP, EPA, or citizens under the Clean Air Act. Each rule contains the kind of specific objective requirements and compliance schedules that courts have required in a SIP as a basis for a citizen suit to enforce transportation control measures (TCMs). See e.g. *Wilder* v. *Thomas*, 854 F.2d 605, 615–616 (2d. Cir. 1988). As CLF points out for example, the transit rule identifies specific mass transit improvements to be implemented by certain dates and the HOV rule establishes a series of specific steps to establish and operate HOV lanes depending on traffic conditions. 310 CMR 7.36(2) and 7.37(2)–(7).[2] EPA's concerns relate to the planning implications of a rule with specific requirements that can be revised without case-by-case EPA approval. This concern does not affect citizens' ability to enforce those specific requirements as they may appear in these SIP rules at the time of the enforcement action.

2. When Is a Project "Substantially Complete"?

In response to the uncertainty about which projects will actually be implemented under this rule, EPA proposed to grant emissions reductions credits in the SIP for projects once they are substantially complete. EPA invited comment on how to define the substantial completion of a transit project, especially in the case of projects that do not require significant construction. CLF commented that projects should be credited under the SIP either (1) When funds have been irrevocably committed to them and all government approvals are obtained, or (2) when operation begins, whichever is earlier. CLF went on to say that any actual emissions reductions should not begin to accrue until operation has commenced. CLF believes this standard should apply to both construction and non-construction projects.

EPA appreciates CLF's efforts to devise an approach that would grant the Commonwealth SIP credit for funded projects as soon as possible. EPA is concerned, however, that given the length of the construction schedules involved with some transit projects and the vagaries of the transportation funding process, it will be difficult to determine what constitutes an irrevocable commitment of funds. EPA believes that it will be easier to determine objectively when a construction project is substantially complete. As for non-construction projects, EPA believes the second element of CLF's test is an appropriate clarification of the "ready to implement" concept EPA proposed. Massachusetts can apply for SIP credit for non-construction projects when operation begins.[3]

3. Are Completion Deadlines Expeditious?

Finally, CLF asserts that Massachusetts must submit SIP revisions committing the Commonwealth to firm completion deadlines for these projects to obtain SIP credit as soon as possible. CLF reads *Delaney* v. *EPA*, 898 F.2d 687 (9th Cir. 1990) as creating a presumption that omitting any TCMs listed in section 108(f) of the Act delays attainment in violation of the requirement that all nonattainment areas attain as expeditiously as practicable.

EPA believes that these rules contain deadlines for action on transit projects and HOV lanes. It is true that the Transit System Improvement rule 310 CMR 7.36(3) provides for delays in the deadlines listed in section 7.36(2) for up to three years, but it is also clear that at the end of those three years, either the project must be completed or there must be a proposed substitute. While it might be more desirable to have a fixed completion deadline without the "escape valve" for project delays in section 7.36(3), EPA cannot conclude that the possible three year delay authorized by this section causes these rules to violate any obligation to implement TCMs as expeditiously as practicable. Massachusetts has assembled an impressive roster of transportation measures, many of which must be implemented by the attainment year of 1999, even allowing for the possible three year delay.[4]

The Massachusetts DEP's comment advised EPA that the Commonwealth of Massachusetts may be developing changes to the transit improvement and HOV rules that could be submitted to EPA in calendar 1994. DEP suggested that it might be prudent for EPA to delay final action on these rules until EPA receives MA DEP's revisions. MA DEP did not, however, ask to withdraw the rules from EPA's consideration as a SIP revision. While EPA appreciates DEP's desire to avoid iterative SIP actions on these rules, EPA has an obligation to process SIP revisions consistent with section 110(k) of the Act to the extent practicable, including the requirement to act on the SIP submission within a year of deeming it complete. Furthermore, MA DEP has not clearly withdrawn this SIP action. At most their comment appears to be a suggestion to EPA about how to avoid repetitive rulemakings. EPA cannot suspend its statutory obligation to act on SIP submittals without a clear expression from a state that it is withdrawing the package. Suspending final action on these rules in anticipation of rule changes that EPA has not yet seen in draft would only aggravate any delays in processing these rules as a SIP revision to accommodate what is now a speculative rule change.

[1] The Transit System Improvement Rule section 7.36(4)(a) provides that other "transit improvement projects" may substitute for projects listed in section 7.36(2). Whereas the HOV rule allows an "alternative project" to substitute in section 7.37(8)(a). In theory, MA DEP could go so far as to substitute a non-transit project for an HOV lane under the HOV rule, although it may be difficult to make the demonstration that a non-transit project achieves the equivalent mix of CO, NMHC, and NO_x emissions reductions as a transit project as required under section 7.36(8)(a)1.

[2] EPA cites these provisions as examples of specific enforceable requirements in these rules, not an exclusive or exhaustive list of enforceable requirements.

[3] Note that the limitations EPA is putting on the SIP credit for these rules is *not* based on any view that TCMs are not fully creditable in a SIP demonstration pursuant to a binding SIP rule. Rather, it is the substitution process in these rules that causes EPA to require substantial completion of projects before giving SIP credit. If these rules had no substitution process, thereby committing to specific TCMs by specific dates, EPA could calculate SIP credit for these measures now.

[4] For example, section 7.36(2)(c)1. requires the Old Colony Commuter Rail Line Extension, one of the most significant transportation measures in 7.36, to be "complete and open to full public use" by December 31, 1996. Even the worst case scenario of a full three year delay would have the Old Colony in full use only 46 days after the attainment deadline for the Commonwealth, November 15, 1999.

Final Action

EPA is approving the Transit Systems Improvements and High Occupancy Vehicle Facilities in the Metropolitan Boston Air Pollution Control District as a revision to the Massachusetts SIP.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. The U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976), 42 U.S.C. 7410(a)(2).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

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Dated: September 7, 1994.

Patricia Meaney,

Acting Deputy Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(101) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(101) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on December 9, 1991.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated December 9, 1991 submitting a revision to the Massachusetts State Implementation Plan.

(B) Massachusetts Regulation 310 CMR 7.36, entitled "Transit System Improvements", Massachusetts Regulation 310 CMR 7.37, entitled "High Occupancy Vehicle Facilities", and amendments to 310 CMR 7.00, entitled "Definitions," effective in the Commonwealth of Massachusetts on December 6, 1991.

For the State of Massachusetts:

§ 52.1167 [Amended]

3. In § 52.1167, Table 52.1167 is amended by adding new entries to existing state citations for amendments to 310 CMR 7.00, entitled "Definitions"; and by adding new state citations for Massachusetts Regulation 310 CMR 7.36, entitled "Transit System Improvements" and Massachusetts Regulation 310 CMR 7.37, entitled "High Occupancy Vehicle Facilities" to read as follows:

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	FEDERAL REGISTER citation	52.1120(c)	Comments/unapproved sections
.	.	.	.	.	.	.
310 CMR 7.00.	Definitions	12/9/91	October 4, 1994	[Insert *FR* citation from published date].	101	Definitions of baseline roadway conditions, high occupancy vehicle, high occupancy vehicle lane, peak hour, performance standard, and roadway threshold standard.
.	.	.	.	.	.	.
310 CMR 7.36.	Transit system improvements regulations.	12/9/91	October 4, 1994	[Insert *FR* citation from published date].	101	Transit system improvement regulation for Boston metropolitan area.
.	.	.	.	.	.	.
310 CMR 7.37.	High occupancy vehicle lanes regulation.	12/9/91	October 4, 1994	[Insert *FR* citation from published date].	101	High occupancy vehicle lanes regulation for Boston metropolitan area.
.	.	.	.	.	.	.

[FR Doc. 94–24421 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA 13–8–6570; FRL–5073–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Sacramento Metropolitan Air Quality Management District, South Coast Air Quality Management District, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on December 17, 1993 and April 7, 1994. The revisions concern rules from the following local agencies: The Sacramento Metropolitan Air Quality Management District (SMAQMD), the South Coast Air Quality Management District (SCAQMD), and the Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from municipal landfills, graphic arts operations, barbecue charcoal ignition, and municipal sewage treatment plants. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on November 3, 1994.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket 6102, 401 "M" Street, SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 92123–1095

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento CA 95826

Ventura County Air Pollution Control District, 702 County Square Drive, Ventura, CA 93003

FOR FURTHER INFORMATION CONTACT: Erik H. Beck, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1190. Internet E-mail: beck.erik@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1993 in 58 FR 65959, EPA proposed to approve the following rules into the California SIP: SMAQMD Rule 450 "Graphic Arts Operations", and VCAPCD Rule 74.19 "Graphic Arts". On April 7, 1994 in 59 FR 16580, EPA proposed to approve the following rules into the California SIP: SCAQMD Rule 1174 "Control of Volatile Organic Compound Emissions from the Ignition of Barbecue Charcoal", SCAQMD Rule 1179 "Publicly Owned Treatment Works Operations", and VCAPCD Rule 74.17 "Solid Waste Disposal Sites". SMAQMD adopted Rule 450 on February 23, 1993. SCAQMD adopted Rule 1174 on October 5, 1990, and Rule 1179 was adopted on March 6, 1992. VCAPCD adopted Rule 74.17 on September 17, 1991, and Rule 74.19 was adopted on August 11, 1992. These rules were submitted to EPA by the California Air Resources Board on the following dates: May 13, 1991 (SCAQMD Rule 1174); January 28, 1992 (VCAPCD 74.17); September 14, 1992 (SCAQMD Rule 1179); November 12, 1992 (VCAPCD Rule 74.19 "Graphic Arts"); April 6, 1993(SMAQMD Rule 450).

These rules were submitted in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the Notices of Proposed Rulemaking (NPRM) cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRMs cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in 58 FR 65959 and 59 FR 16580 and in technical support documents (TSDs) available at EPA's Region IX office. These TSDs are dated: November 16, 1993 (SMAQMD Rule 450 and VCAPCD Rule 74.19) and February 7, 1994 (SCAQMD Rule 1174 and 1179, and VCAPCD Rule 74.17).

Response to Public Comments

A 30-day public comment period was provided in both 58 FR 65959 and in 59 FR 16580. EPA received no comments on these NPRMs.

EPA Action

EPA is finalizing this action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 6, 1994.

John Wise,

Deputy Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (184)(i)(B)(*4*), (187)(i)(B), (189)(i)(A)(*5*), (190), and (192)(i)(A)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(184) * * *

(i) * * *

(B) * * *

(*4*) New Rule 1174, adopted on October 5, 1990.

* * * * *

(187) * * *

(i) * * *

(B) Ventura County Air Pollution Control District.

(*1*) New Rule 74.17, adopted on September 17, 1991.

* * * * *

(189) * * *

(i) * * *

(A) * * *

(*5*) New Rule 1179, adopted March 6, 1992.

* * * * *

(190) New and amended regulations for the following APCDs were submitted on November 12, 1992, by the Governor's designee.

(i) Incorporation by reference.

(A) Ventura County Air Pollution Control District.

(*1*) Revised Rule 74.19, adopted August 11, 1992.

* * * * *

(192) * * *

(i) * * *

(A) * * *

(*3*) Revised Rule 450, adopted February 23, 1993.

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[FR Doc. 94–24418 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[LA-2-1-5200; FRL-5075-9]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Alternative Emission Control Plan for Dow Chemical, U.S.A., Louisiana Division, Plaquemine, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is announcing final approval of the alternative emission reduction (bubble) plan for the Dow Chemical Plaquemine facility as a revision to the Louisiana State Implementation Plan (SIP). The bubble plan uses the emissions reduction credit (ERC) from a process modification at the Glycol II expander unit in lieu of controlling emissions from four volatile organic compounds (VOC) storage tanks. The bubble plan was reviewed for consistency with the final Emissions Trading Policy Statement (ETPS) published by the EPA in the Federal Register on December 4, 1986. The ERC is determined to be valid for emissions trading.

EFFECTIVE DATE: This final rule is effective on November 3, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the locations listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, Dallas, TX 75202.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet, Baton Rouge, LA 70810.

FOR FURTHER INFORMATION CONTACT: Bill Deese or Russell Parr of the EPA Region 6 Air Programs Branch at (214) 665-7253 and at the EPA Region 6 address.

SUPPLEMENTARY INFORMATION:

Background

On October 19, 1983, the Governor of Louisiana submitted a request to revise the Louisiana SIP to include an alternative emission reduction plan for the Dow Chemical facility located in Plaquemine, Iberville Parish. The State submittal contains verification that adequate public notice was given and a public hearing was held for the bubble plan. The EPA proposed to approve the bubble plan in a rulemaking document published on June 21, 1991 (56 FR 28509). Brief background information about the bubble plan is provided in this final rulemaking notice; see the proposed rulemaking notice for a more comprehensive discussion of relevant issues and details.

In June 1977, a process modification instituted at the Glycol II expander unit reduced actual emissions of VOC from a waste gas vent by 455.1 tons per year (TPY), from 595.7 to 140.6 TPY. The modification involved adding an additional reactor to the process that reduced the amount of VOC entering and being emitted from the incinerator. The bubble plan uses the emissions reduction from the waste gas vent to offset uncontrolled emissions from four VOC storage tanks. Louisiana Administrative Code requires emissions from the four VOC storage tanks be controlled. Allowable emissions from the four tanks are 0.45 TPY, and total actual emissions from the tanks are 42.33 TPY. The actual emissions from one of the methanol tanks (8X) is 0.69 TPY greater than what was presented in the proposal (1.35 TPY as proposed versus 2.04 TPY as approved), due to an increased turnover rate reported by the Dow Chemical Company after publication of the proposed rulemaking notice. Of the 455.1 TPY ERC generated from the waste gas vent, 41.88 TPY is utilized to offset the noncompliance emissions from the four storage tanks and 5.7 TPY is utilized for improvement in air quality, leaving 407.5 TPY of ERC remaining. The 5.7 TPY improvement in air quality is a State requirement imposed on Dow Chemical. The entire trade as approved is summarized in the following table.

ERC from reduction of vent emissions (−455.1 TPY)

Emissions from four VOC storage tanks (+41.88 TPY)

Net air quality benefit (+5.7 TPY)

REMAINING ERC [1]

[−407.5 TPY]

Source	Emissions (tons/year)						
	Actual			Allowable			
	Before bubble	After bubble	Change	Before bubble	After bubble	Change	ID
Storage tanks	5.72	5.72	0.0	0.16	5.72	5.56	6L
	2.04	2.04	0.0	0.03	2.04	2.01	8X
	28.00	28.00	0.0	0.14	28.00	27.86	8S
	6.57	6.57	0.0	0.12	6.57	6.45	8T
Waste gas vent	595.7	140.6	−455.1	595.7	140.6	−455.1	2L
Air quality benefit	0.0	0.0	0.0	0.0	5.7	5.7	
Total	638.03	182.93	−455.1	596.15	188.63	−407.5 [1]	

[1] The 407.5 tons per year of remaining ERC has been voided for future use by Dow Chemical as credit. This has been reflected in the State permit number 1838T(M-2) dated October 16, 1991.

The figures in the table for the waste gas vent have had the ethane component removed because the EPA policy does not treat ethane as a VOC. Currently, emissions from three of the VOC storage tanks (6L, 8S and 8T) are controlled.

Discussion

The State submittal was reviewed for compliance with requirements of section 110 of the Clean Air Act (CAA), 40 CFR part 51, and proposed and final ETPS published by the EPA on April 7, 1982 (47 FR 15076) and December 4, 1986 (51 FR 43814), respectively. The EPA Evaluation Report titled Alternative Emission Control Plan for Dow Chemical, U.S.A., has been prepared and updated to correspond with circumstances presented in this final rulemaking notice.

Before the EPA would grant final approval of this bubble, the State of Louisiana was required to furnish the EPA with the following assurances specified in the proposed rulemaking: (1) That the State will document that none of the ERC was ever utilized in former planning to develop the SIP for the area so the entire 595.7 TPY serves as baseline; (2) that the State will document that the 407.5 TPY of remaining ERC designated for the bank is voided; (3) that the State will submit a revised, more enforceable permit—modeled after the ones finally issued and approved for Vulcan Materials Company, Geismar Chemical, and American Cyanamid Company Fortier facility bubbles and, ultimately, corresponding with the emissions table presented above; (4) that the State is addressing the post-87 SIP call; (5) that the State will submit a plan to demonstrate attainment for the area; and (6) that the State has resources to fulfill the requirements of numbers (4) and (5). On October 16, 1991, the permit was revised and a copy forwarded to the EPA. The State of Louisiana provided assurances addressing each of the six required elements in a letter to the EPA dated September 17, 1991.

Public Comment and EPA Response

Besides responses from the State of Louisiana, the EPA received one comment on the proposed June 21, 1991, rulemaking in response to publication of the proposed approval. The Ohio EPA, Division of Air Pollution Control, submitted the following comment. The comment has been paraphrased to reflect what the EPA believes is an accurate summary of the commenters' concerns.

In order for ERC to be valid, the 1977 process change should have occurred after the SIP baseline year in effect for ozone at the time of the submittal. This would ensure the emission reduction as surplus. The proposed rulemaking did not identify the SIP baseline year in effect when this bubble was submitted to the EPA on October 19, 1983. The EPA may want to require the affected storage tanks to meet the RACT regulations in the future ozone SIP without the benefit of the 1977 process change.

EPA Response: The final ETPS of December 4, 1986 (51 FR 43814) sets out current policy for approving bubbles. The EPA policy differs depending on whether the bubble is in a nonattainment area with an approved attainment demonstration (NAWAD) or a nonattainment area lacking an approved attainment demonstration (NALAD). When this bubble was submitted to the EPA on October 19, 1983, Plaquemine and Iberville Parishes were considered NAWAD. With the subsequent SIP call on May 26, 1988, these two parishes were considered part of the Baton Rouge Metropolitan Statistical Area and, therefore, were converted to NALAD. The EPA has determined that different requirements should apply to a pending bubble in a SIP call area, such as this one. Namely, the existing bubble can continue to use the baseline that was consistent with the assumptions in the original attainment demonstration. For this bubble, the EPA interprets the baseline as the emission level established by the underlying Reasonably Available Control Technology (RACT) regulation. RACT, in this case, is determined by the regulation approved by the State of Louisiana in 1980 which requires incineration (a control device). This control device was already installed when the process improvement resulting in the additional reduction of VOC was made in 1977. The additional reductions result from the process improvement before the incinerator, thereby reducing the amount of VOC going to the control device.

To be valid for trading purposes, an emission reduction must be surplus, enforceable, permanent, and quantifiable. First, Dow has shown that a significant VOC reduction was achieved, beyond what was required by RACT, by the process modification. Second, the emission reductions were made enforceable when the State issued to Dow a modified permit [Permit Number 1838T(M-2)] on October 16, 1991, that delineated the terms of the emission trade. Third, the emission reductions are permanent since the process change is permanent. Finally, the ERC's are quantifiable in that the VOC emissions can be calculated and the reduction in waste gases produced by the process can be measured. Therefore, the emission reduction credits associated with this bubble are valid.

With regard to requiring the affected storage tanks to meet the RACT regulation in future ozone SIP's, much of this has already been accomplished. Waste gas vents (emission point 2L) have been rerouted for recovery by the ethylene recovery unit under State Permit Number 2032. The tanks used for hexane storage (emission points 8S and 8T) have been replaced by pressurized tanks under State Permit Number 2033. One of the methanol tank vents (emission point 6L) will be rerouted for recovery under State Permit Number 2037. Only one methanol tank vent (emission point 8X) remains uncontrolled as originally proposed. Emissions from this vent have been revised from 1.37 tons per year to 2.04 tons per year based on an increased turnover rate.

Final Action

The EPA is taking final action to approve the alternative emission reduction (bubble) plan for the Dow Chemical Plaquemine facility as submitted by the Governor of Louisiana in a letter dated October 19, 1983, and amended with a permit number 1838T(M-2) dated October 16, 1991, and State assurances provided in a letter from the Louisiana Department of Environmental Quality dated September 17, 1991.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions

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concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 1994. Filing a petition for reconsideration of this final rule by the Administrator would not affect the finality of this rule for purposes of judicial review nor would it extend the time within which a petition for judicial review may be filed, and would not postpone the effectiveness of this rule. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Louisiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 7, 1994.

J.D. Winkle,

Regional Administrator (6A).

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. Section 52.970 is amended by adding paragraph (c)(62) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(62) Alternative emission reduction (bubble) plan for the Dow Chemical facility located in Plaquemine, Iberville Parish, as adopted by the Louisiana Environmental Control Commission on July 28, 1983, submitted by the Governor on October 19, 1983, and amended by the Louisiana Department of Environmental Quality with permit number 1838T(M–2) issued on October 16, 1991.

(i) Incorporation by reference.

(A) Permit number 1838T(M–2) as issued by the Louisiana Department of Environmental Quality on October 16, 1991.

(ii) Additional material.

(A) Letter dated September 17, 1991, from the Administrator of the Office of Air Quality at the Louisiana Department of Environmental Quality to the Chief of the Planning Section at the Air Programs Branch of the U.S. Environmental Protection Agency—Region 6, furnishing State assurances.

* * * * *

[FR Doc. 94–24419 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TX–41–01–6273a; FRL–5075–8]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan (SIP) Addressing Ozone Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to Texas' SIP for ozone. This action is based upon a revision request which was submitted by the State to satisfy the requirements of the Clean Air Act (Act), as amended November 15, 1990, and the Photochemical Assessment Monitoring Stations (PAMS) regulations. The PAMS regulation requires the State to provide for the establishment and maintenance of an enhanced ambient air quality monitoring network in the form of PAMS by November 12, 1993.

DATES: This final rule is effective December 5, 1994 unless adverse comments are received by November 3, 1994. If the effective date is delayed, timely notice will be published in the Federal Register (FR).

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons who want to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, suite 700, Dallas, TX 75202–2733.

The Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Texas Natural Resource Conservation Commission (TNRCC), Air Quality Planning Annex, 12118 North IH–35, Park 35 Technology Center, Building A, Austin, TX 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Cupp, Planning Section (6T-AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–8015.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On November 15, 1993, the TNRCC submitted to the EPA a SIP revision, incorporating PAMS into the ambient air quality monitoring network of State or Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS). The State will establish and maintain PAMS as part of its overall ambient air quality monitoring network.

Section 182(c)(1) of the Act and the General Preamble (57 FR 13515) require that the EPA promulgate rules for enhanced monitoring of ozone, oxides of nitrogen (NOX), and volatile organic compounds (VOC) no later than 18 months after the date of the enactment of the Act. In addition, the Act requires that, following the promulgation of the rules relating to enhanced ambient monitoring, the State must commence actions to adopt and implement a program based on these rules, to improve monitoring for ambient concentrations of ozone, NOX, and VOC and to improve monitoring of emissions of NOX and VOC.

The final PAMS rule was promulgated by the EPA on February 12, 1993 (58 FR 8452). Section 58.40(a) of the revised rule requires the State to submit a PAMS network description, including a schedule for implementation, to the Administrator within six months after promulgation or by August 12, 1993. Further, § 58.20(f) requires the State to provide for the establishment and maintenance of a PAMS network within nine months after promulgation of the final rule or by November 12, 1993.

On August 23, 1994, the TNRCC submitted a PAMS network description for the State of Texas, including a schedule for implementation. This submittal is currently being reviewed by the EPA and is intended to satisfy the requirements of 40 CFR 58.40(a). Since network descriptions may change annually, they are not part of the SIP as recommended by the Guideline for the Implementation of the Ambient Air Monitoring Regulations 40 CFR part 58.

However, the network description is negotiated and approved during an annual review as required by 40 CFR 58.25 and 58.36, respectively, and the revision to be codified at 40 CFR 58.46.

The TNRCC approved the proposed revision to the Texas ozone SIP on November 10, 1993. On November 15, 1993, the TNRCC submitted the SIP revision to the EPA. This submittal was included with the State's 15% Rate of Progress SIP; however, in this action, the EPA is only acting on and approving the PAMS section of the SIP, and this section will be referred to as the PAMS SIP revision. The EPA will address the remainder of the 15% Plan in later FR documents.

The EPA sent the Governor of Texas a letter on January 14, 1994, finding the submittal administratively complete.

Texas PAMS SIP revision is intended to meet the requirements of section 182(c)(1) of the Act and affect compliance with the PAMS regulations, to be codified at 40 CFR part 58, as promulgated on February 12, 1993.

The TNRCC held public hearings on the PAMS SIP revision on August 23–26, 1993, and no comments were received either during the public hearings or public comment period with the exception of the comment by the EPA as referenced below relating to the need for public access to a description of the monitoring network and the implementation schedule.

II. Analysis of State Submittal

The Texas PAMS SIP revision will provide Texas with the authority to establish and operate the PAMS sites, secure State funds for PAMS and provide the EPA with the authority to enforce the implementation of PAMS, since their implementation is required by the Act.

The criteria used to review the proposed SIP revision are derived from the PAMS regulations, to be codified at 40 CFR part 58, the Guideline for the Implementation of the Ambient Air Monitoring Regulations 40 CFR part 58 (EPA–450/4–78–038, Office of Air Quality Planning and Standards, November 1979), the September 2, 1993, memorandum from G. T. Helms entitled Final Boilerplate Language for the PAMS SIP Submittal (Helms boilerplate memorandum), the Act and the General Preamble.

The September 2, 1993, Helms boilerplate memorandum stipulates that the PAMS SIP, at a minimum, must: enable the monitoring of criteria pollutants, such as ozone and Nitrogen Dioxide and non-criteria pollutants, such as NOX, Nitric Oxide, speciated VOC, including carbonyls, as well as meteorological parameters; provide a copy of the approved (or proposed) PAMS network description, including the phase-in schedule, for public inspection during the public notice and/or comment period provided for in the SIP revision or, alternatively, provide information to the public upon request concerning the State's plans for implementing the rules; make reference to the fact that PAMS will become a part of the State or local air monitoring stations (SLAMS) network; and provide a statement that SLAMS will employ Federal reference (FRM) or equivalent methods while most PAMS sampling will be conducted using methods approved by the EPA which are not FRM or equivalent.

The Texas PAMS SIP revision provides that the State will implement PAMS as required in 40 CFR part 58, as amended February 12, 1993. The State will amend its SLAMS and its National Air Monitoring Stations (NAMS) monitoring systems to include the PAMS requirements. It will develop its PAMS network design and establish monitoring sites pursuant to 40 CFR part 58 in accordance with an approved network description and as negotiated with the EPA through the 105 grant process on an annual basis. The State has begun implementing its PAMS network as required in 40 CFR part 58.

The Texas PAMS SIP revision also includes a provision to meet quality assurance requirements as contained in 40 CFR part 58, appendix A. The State also assures that the State's PAMS monitors will meet monitoring methodology requirements contained in 40 CFR part 58, appendix C. Lastly, the State assures that the Texas PAMS network will be phased in over a period of five years as required in § 58.44. The State's PAMS SIP submittal and the EPA's technical support document are available for viewing at the EPA Region 6 Office and the TNRCC Austin Office as outlined under the "Addresses" section of this FR document.

The State revised its PAMS SIP to include Region 6's comment on the draft SIP that the description of the monitoring network and implementation schedule should be made available to the public. The final PAMS SIP for which the public hearing was held included a statement that the network description and implementation schedule will be on file for public inspection.

III. Rulemaking Action

In this action, the EPA is approving the revision to the Texas ozone SIP for PAMS. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the FR publication, the EPA is proposing to approve the SIP revision should adverse comments be received. Thus, the action will be effective December 5, 1994 unless, by November 3, 1994, adverse or critical comments are received.

If such comments are received, this action will be withdrawn before the effective date by publishing a subsequent document which will withdraw the final action. All public comments will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no comments are received, the public is advised that this action will be effective on December 5, 1994.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the Clean Air Act Amendments. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600*et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions

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concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by December 5, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the FR on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Office of Air and Radiation. The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Note: Incorporation by reference of the SIP for the State of Texas was approved by the Director of the FR on July 1, 1982.

Dated: September 13, 1994.

Jane N. Saginaw,

Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q

2. Section 52.2270 is amended by adding paragraph (c)(90) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(90) A revision to the Texas SIP regarding ozone monitoring. The State of Texas will modify its SLAMS and its NAMS monitoring systems to include a PAMS network design and establish monitoring sites. The State's SIP revision satisfies 40 CFR 58.20(f) PAMS requirements.

(i) Incorporation by reference.

(A) TNRCC Order Number 93–24 as adopted by the TNRCC November 10, 1993.

(B) SIP narrative plan entitled "Revisions to the State Implementation Plan (SIP) for the Control of Ozone Air Pollution" adopted by the TNRCC on November 10, 1993, addressing: 1993 Rate-of-Progress SIP for Dallas/Fort Worth, El Paso, Beaumont/Port Arthur and Houston/Galveston Ozone Nonattainment Areas, Section VI: Control Strategy, B. Ozone Control Strategy, 7. SIP Revisions for 1993 Rate-of-Progress (new.), a. Ozone Control Plan, 1) General, f) Photochemical Assessment Monitoring Stations, page 87, second paragraph, first sentence; third paragraph; fourth paragraph; and, the fifth paragraph which ends on page 88; page 88, first complete paragraph, including numbers (1), (2) and (3).

(ii) Additional material.

(A) The Texas SIP revision narrative regarding PAMS.

(B) TNRCC certification letter dated November 10, 1993, and signed by Gloria A. Vasquez, Chief Clerk, TNRCC.

[FR Doc. 94–24423 Filed 10–3–94; 8:45 am]

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40 CFR Part 52

[NH–8–1–6599; A–1–FRL–5075–4]

Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is conditionally approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire for the purpose of establishing a small business stationary source technical and environmental compliance assistance program (PROGRAM). The SIP revision was submitted by the State to satisfy the Federal mandate to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the Clean Air Act (CAA). The rational for this conditional approval is set forth in this final rulemaking action; additional information is available at the address indicated below.

EFFECTIVE DATE: This final rule is effective on November 3, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., (LE–131), Washington, DC 20460; and the Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Emanuel Souza, Jr., (617) 565–3248.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the CAA, as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a PROGRAM, and submit this PROGRAM as a revision to the federally approved SIP. In addition, the CAA directs the EPA to oversee these PROGRAMS and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA. In February 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.On June 14, 1994 (59 FR 30564), EPA published a notice of proposed rulemaking (NPR) for the State of New Hampshire. The NPR proposed conditional approval of the State's PROGRAM. The formal SIP revision was submitted by New Hampshire on January 12, 1993 and May 19, 1994. A more detailed account of EPA's action can be found in the proposed rule.

In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements: (1) The establishment of a small business assistance program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State small business ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

II. Summary of Submittal

EPA reviewed New Hampshire's PROGRAM and is conditionally approving it pursuant to section 110(k)(4) of the CAA. This approval is on the condition that New Hampshire meet its commitment to submit documentation to EPA by November 15, 1994 of adequate legal authority to establish and implement the PROGRAM and also submits the documentation designating a state agency to house the small business ombudsman. Additionally, the PROGRAM must be fully operational by November 15, 1994.

Other specific requirements of this SIP revision and the rationale for EPA's action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is conditionally approving the SIP revision submitted by the State of New Hampshire on January 12, 1993 and May 19, 1994 as a revision to the New Hampshire SIP. The State must submit to EPA by November 15, 1994 documentation of a designated state agency to house the small business ombudsman and adequate legal authority which allows a compliance advisory panel and a small business ombudsman to be established and implemented, incorporating all the elements listed in section 507(e) of the CAA; the PROGRAM must also be fully operational by that date. If the State fails to do so, this approval will become a disapproval on that date. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved New Hampshire SIP. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new legislative authority. If EPA disapproves the new submittal, the conditionally approved small business program will also be disapproved at that time. If EPA approves the submittal, the small business program will be fully approved in its entirety and replace the conditionally approved program in the SIP.

If the conditional approval is converted to a disapproval, such action will trigger EPA's authority to impose sanctions under section 110(m) of the CAA at the time EPA issues the final disapproval or on the date the State fails to meet its commitment. In the latter case, EPA will notify the State by letter that the conditional approval has been converted to a disapproval and that EPA's sanctions authority has been triggered. In addition, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). Pursuant to section 507(b)(3), EPA will provide for implementation of the program provisions required under section 507(a)(4) in any State that fails to submit such a program under that subsection. Therefore, EPA would have to provide for a compliance assistance program which assists small business stationary sources in determining applicable requirements and in receiving permits under the CAA.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing state requirements nor does it substitute a new Federal requirement.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. The Office of Management and Budget (OMB) has exempted this action under Executive Order 12866.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Small business assistance program.

Note: Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: August 26, 1994.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

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PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart EE—New Hampshire

2. Section 52.1519 is added to subpart EE to read as follows:

§ 52.1519 Identification of plan—Conditional approval.

(a) The following plan revisions were submitted on the dates specified.

(1) On January 12, 1993, the New Hampshire Department of Environmental Services submitted a small business stationary source technical and environmental compliance assistance program (PROGRAM). On May 19, 1994, New Hampshire submitted a letter deleting portions of the January 12, 1993 submittal. In these submissions, the State commits to designate a state agency to house the small business ombudsman and to submit adequate legal authority to establish and implement a compliance advisory panel and a small business ombudsman. Additionally, the State commits to have a fully operational PROGRAM by November 15, 1994.

(i) Incorporation by reference.

(A) Letter from the New Hampshire Department of Environmental Services dated January 12, 1993 submitting a revision to the New Hampshire State Implementation Plan.

(B) State Implementation Plan Revision for a Small Business Technical and Environmental compliance Assistance Program dated January 12, 1993.

(C) Letter from the New Hampshire Department of Environmental Services dated May 19, 1994 revising the January 12, 1993 submittal.

(ii) Additional materials.

(A) Non-regulatory portions of the State submittal.

[FR Doc. 94–24422 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–60–F

40 CFR Part 62

[ME–14–1–6648a; A–1–FRL–5080–4]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Plan for Controlling Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. Maine revised its "111(d) plan" for the control of total reduced sulfur (TRS) emissions from existing kraft pulp mills. The revised plan was submitted by the Maine Department of Environmental Protection (DEP) on April 27, 1994. The revised plan consists of a revised regulation entitled "Chapter 124: Total Reduced Sulfur Control From Kraft Pulp Mills." The revised plan satisfies EPA's requirements for adoption and submittal of a plan to control TRS emissions from designated facilities in accordance with section 111(d) of the Clean Air Act (CAA).

DATES: This final rule is effective December 5, 1994 unless, by November 3, 1994, adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., (LE–131), Washington, DC 20460; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Daria L. Dilaj at (617) 565–3249.

SUPPLEMENTARY INFORMATION: On September 19, 1990 (55 FR 38545), EPA approved Maine's 111(d) plan for controlling total reduced sulfur (TRS) emissions from existing kraft pulp mills in accordance with section 111(d) of the Clean Air Act. Maine's 111(d) plan consists of a regulation entitled "Chapter 124: Total Reduced Sulfur Control from Kraft Pulp Mills." The State of Maine, in adopting a plan pursuant to section 111(d) of the CAA to control TRS emissions from existing kraft pulp mills, chose to adopt requirements for existing brown stock washer systems which are not required to be controlled under EPA guidance. Under section 116 of the CAA, the State of Maine is legally entitled to adopt more stringent emission standards for stationary sources than required or recommended by EPA. The State of Maine in its response to public comments on the proposed regulation specified that they felt that the control of TRS emissions from brown stock washers was important because of the magnitude of potential emissions from uncontrolled washers and the height at which they are emitted (i.e., they are more likely to have negative impacts on local residential areas because they are emitted at lower levels and are subject to less dispersion). Kraft pulp mills were required to meet most of the requirements of the regulation by January 1991, but were given until January 1, 1994 to meet the requirements for brown stock washers.

On April 27, 1994, the State of Maine submitted a formal revision of Chapter 124 as an amendment to the 111(d) plan. The purpose of the revision is to extend the deadline (i.e., January 1, 1994) for brown stock washer systems to January 1, 1997. This extension addresses industry's concern that it be allowed to coordinate its efforts to comply with the SIP with its efforts to comply with EPA's forthcoming Maximum Achievable Control Technology (MACT) standard for the pulp and paper industry. This MACT standard is expected to be promulgated by September 1995. Maine believes a three-year compliance extension of the brown stock washer controls should be sufficient to allow industry to consider any impacts of the Federal MACT standard.

Since the brown stock washer requirements of Maine's TRS regulation are more stringent than the applicable EPA requirements in the EPA guideline document entitled "Kraft Pulping: Control of TRS Emissions from Existing Mills" (EPA–450/2–78–003b), the compliance extension for the brown stock washers is acceptable.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective December 5, 1994 unless, by November 3, 1994, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not

institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on December 5, 1994

Final Action

EPA is approving the revised 111(d) plan controlling TRS emissions from kraft pulp mills submitted by Maine Department of Environmental Protection. The revised plan which consists of the revised regulation entitled "Chapter 124: Total Reduced Sulfur From Kraft Pulp Mills" affects six existing kraft pulp mills in the State of Maine.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future submittal of a 111(d) plan by any State. Each request for approval of a 111(d) plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. The US EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on US EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 1994. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Paper and paper products industry, Reporting and recordkeeping requirements.

Dated: August 17, 1994.

John P. DeVillars,

Regional Administrator, Region I.

Title 40 of the Code of Federal Regulations, chapter I, part 62, is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read asfollows:

Authority: 42 U.S.C. 7401–7671q.

Subpart U—Maine

2. Section 62.4845 is amended by adding paragraph (b)(3) to read as follows:

§ 62.4845 Identification of plan.

* * * * * * *

(b) * * *

(3) A revision to the plan to control TRS from existing kraft pulp mills, which extends the final compliance date for brown stock washers to January 1, 1997, was submitted on April 27, 1994.

* * * * * * *

[FR Doc. 94–24406 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–17

[FPMR Temp. Reg. D–76, Suppl. 3]

Federal Property Management: Public Buildings and Space; Space Utilization and Assignment

AGENCY: Public Buildings Service, General Services Administration (GSA).

SUMMARY: This supplement extends the expiration date of FPMR Temporary Regulation D–76 to August 26, 1995. Temporary Regulation D–76 provides procedures governing the assignment and utilization of space in Federal or leased facilities under the custody and control of the General Services Administration.

DATES: *Effective Date:* October 4, 1994.

Expiration Date: August 26, 1995.

ADDRESSES: Comments should be submitted to the General Services Administration, (PQ), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Robert E. Ward, Director, Real Estate; Office of Real Property Development, at (202–501–4266).

SUPPLEMENTARY INFORMATION: The purpose of this regulation is to extend Temporary Regulation D–76 until such time as the Final Rule which will supersede it is approved for publication.

GSA has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least cost to society.

List of Subjects in 41 CFR Part 101–17

Administrative practices and procedures, Federal buildings and facilities, Government real property management.

Authority: (Sec. 205(c), 63 Stat. 390 40 U.S.C. 486(c)).

In 41 CFR Chapter 101, FPMR Temp. Reg. D–76, Supplement 3 is added to the appendix at the end of Subchapter D to read as follows:

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Federal Property Management Regulations, Temporary Regulation D–76, Supplement 3

To: Heads of Federal Agencies
Subject: Assignment and Utilization of Space

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation D–76.

2. *Effective date.* October 4, 1994.

3. *Expiration of change.* This supplement expires August 26, 1995.

4. *Explanation of change.* The expiration date in Temporary Regulation D–76 is revised to August 26, 1995.

Dated: September 2, 1994.

Julia M. Stasch,

Acting Administrator of General Services.

[FR Doc. 94–24399 Filed 10–3–94; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7092

[ID–943–4070–02; IDI–15651 01, IDI–15798 02]

Partial Revocation of Executive Order Dated July 2, 1910, and Geological Survey Order Dated July 26, 1948; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes one Executive order and one Geological Survey order insofar as they affect 3,116.49 acres of public lands withdrawn for the Bureau of Land Management's Powersite Reserve No. 77 and Powersite Classification No. 390. The lands are no longer needed for this purpose. The lands are within the Hagerman Fossil Beds National Monument which is managed by the National Park Service, and the revocation is needed to give the National Park Service total jurisdiction. The lands have been and will remain closed to surface entry, mining, and mineral leasing. This is a record-clearing action only.

EFFECTIVE DATE: November 3, 1994.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Executive Order dated July 2, 1910, which established Powersite Reserve No. 77, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 7 S., R. 13 E.,
Sec. 10, lots 3 and 6, and SE¼SW¼;
Sec. 15, lot 4;
Sec. 21, lots 2, 3, and 8;
Sec. 28, lots 2, 3, 6, and 7, and NW¼NW¼;
Sec. 33, lots 2, 3, 6, and 7.
T. 8 S., R. 13 E.,
Sec. 3, lot 7;
Sec. 4, lots 7, 8, and 9.

The area described contains 717.53 acres in Twin Falls County.

2. The Geological Survey Order dated July 26, 1948, which established Powersite Classification No. 390, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 7 S., R. 13 E.,
Sec. 9, E½SE¼ and SW¼SE¼;
Sec. 10, N½SW¼, SW¼SW¼, and NW¼SE¼;
Sec. 17, E½NE¼, SW¼NE¼, N½SE¼, and SE¼SE¼;
Sec. 20, E½NE¼ and NE¼SE¼;
Sec. 21, W½NW¼, SE¼NW¼, N½SW¼, and SW¼SW¼;
Sec. 29, E½NE¼, SE¼SW¼, and SE¼;
Sec. 32, NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 33, SW¼SW¼.
T. 8 S., R. 13 E.,
Sec. 3, SW¼;
Sec. 4, lots 2 and 3, S½NW¼, and S½;
Sec. 5, lot 1 and SE¼NE¼.

The area described contains 2,398.96 acres in Twin Falls County.

3. The lands described in paragraphs 1 and 2 will remain closed to surface entry, mining, and mineral leasing due to the lands being located within the Hagerman Fossil Beds National Monument.

Dated: September 26, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–24402 Filed 10–3–94; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 69

[CGD 92–053]

Tonnage Measurement of Vessels

AGENCY: Coast Guard, DOT.

ACTION: Technical amendment.

SUMMARY: The Coast Guard is correcting an address error that appeared in its final rule published on December 17, 1992 (57 FR 59937). The rule updated the list of organizations authorized to measure vessels and made technical changes to conform the regulations to tonnage measurement laws.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth C. Hixson, Vessel Documentation and Tonnage Survey Branch at (202) 267–1492.

SUPPLEMENTARY INFORMATION:

Background

The final rule, as published in the **Federal Register**, contained an address in 46 CFR 69.15 for Det Norske Veritas (DNV/USA) that is now incorrect. The authority citation also contains an erroneous reference. This document amends § 69.15 to reflect the correct address, and revises the authority citation to reflect the correct reference.

Need for Correction

As published, the regulations contain an erroneous address which could cause applications for measurement of vessels to be misrouted in the mail or lost; and a technical error in the authority citation.

List of Subjects in 46 CFR Part 69

Measurement standards, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard corrects 46 CFR Part 69 by making the following technical amendments:

PART 69—MEASUREMENT OF VESSELS

1. The authority citation for part 69 is revised to read as follows:

Authority: 46 U.S.C. 14102; 14103; 49 CFR 1.46. Section 69.29 issued under 44 U.S.C. 3507; 49 CFR 1.45.

§ 69.15 [Amended]

2. In § 69.15(a), the words "80 Grand Avenue, suite 201" are removed and the words "70 Grand Avenue" are added in their place.

Dated: September 29, 1994.

E.L. Ziff,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–24521 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[PR Docket 93–253, FCC 94–240]

Implementation of Section 309(j) of the Communications Act—Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, reconsiders and clarifies various decisions made with regard to designated entities in the *Third Memorandum and Order* in this docket. This *Order on Reconsideration* adopts installment payments for businesses owned by minorities and/or women so that these entities have a greater opportunity to participate successfully in the upcoming auction for licenses for regional narrowband personal communication services and clarifies its definition of businesses owned by minorities and/or women.

EFFECTIVE DATE: November 3, 1994.

FOR FURTHER INFORMATION CONTACT: Peter Tenhula, Office of General Counsel, (202) 418–1720.

SUPPLEMENTARY INFORMATION:

Order on Reconsideration

Adopted: September 22, 1994.
Released: September 22, 1994.

By the Commission: Commissioner Barrett not participating.

1. In this Order, we reconsider on our own motion various decisions made with regard to designated entities in the *Third Memorandum Opinion and Order* in this docket.[1] In addition, we take this opportunity to clarify other rules adopted in that Order.

I. Installment Payments for Women and Minority-Owned Businesses

2. In the *Third Memorandum Opinion and Order*, we adopted certain provisions to ensure the opportunity for businesses owned by women and minorities and small businesses to participate in the regional narrowband PCS auction to be held October 26, 1994. Specifically, we adopted a 40 percent bidding credit for women and minority-owned firms and installment payments for small businesses. Small businesses are defined as businesses with less than $40 million in annual gross revenues. On further reflection, we believe that to ensure that designated entities have the opportunity to participate in narrowband PCS, minority and women-owned companies, as opposed to just small businesses, should be allowed to pay their winning bids in installments.

3. As we noted in the *Third Memorandum Opinion and Order*, the original provisions adopted for designated entities in the narrowband PCS service were based on assumed relatively low capital entry costs. The experience in the nationwide narrowband PCS auction in July led us to adjust the designated entity provisions for the regional auction to take into account the much higher than expected prices paid for narrowband licenses. Specifically, we raised the bidding credit from 25 percent to 40 percent for women and minority-owned businesses and we raised the financial thresholds for businesses wishing to qualify as small businesses. We remain concerned, however, that, given these high costs, businesses owned by women and minorities will be unable to participate successfully in the upcoming regional auction without installment payments.

4. In the *Fifth Report and Order* in this proceeding, we documented the serious funding problems faced by women and minorities. Indeed, we noted that Congress had recognized that these problems were even more severe for minority and women-owned businesses than for small businesses.[2] We also referred to a number of studies that supported the congressional findings regarding the difficulties minorities and women have accessing capital.[3]

5. In its petition for reconsideration in this proceeding, Cook Inlet Region, Inc. asked us to reconsider the scope of the installment payment option for designated entities. It contended that failure to extend the availability of installment payments to all women and minority-owned companies, instead of just small businesses, will exclude a substantial number of designated entities from meaningful participation in spectrum-based services. Cook Inlet argued that this result is contrary to the intent of Congress.[4] In response to this, we stated with respect to our generic auction rules that, while installment payments would not generally be available to all designated entities irrespective of their economic status, we retained the flexibility to expand or modify the installment payment option on a service-specific basis where the spectrum costs, capital infrastructure requirements and other economic barriers necessitate their application to other entities.[5] "[T]his additional flexibility will allow us to take account of differences in capital requirements across services and license blocks, and to provide access to capital in ways that will give various groups of designated entities a realistic chance to participate in offering service."[6]

6. In addition, in a recent *ex parte* filing, Essence Communications, Inc. further elaborates on the various broad congressional initiatives that have been aimed at helping minorities overcome obstacles to financing.[7] For example, Essence notes that the Equal Credit Opportunity Act (ECOA) Amendments[8] impose a federal ban on race-based denials of extension of credit. The legislative history to the ECOA Amendments highlights the challenges faced by entrepreneurs seeking credit to fund their businesses.[9] In addition, Essence states that Congress recently amended the Community Reinvestment Act (CRA)[10] to bolster the evaluations of financial institutions that subsidize minority banks in predominately minority areas.[11] According to Essence, this aspect of the CRA is entirely race-conscious and contains no financial thresholds.

7. Essence further asserts that both these congressional measures and the steps taken by the Commission to improve minority access to capital have had limited success in reducing the barriers to entry for minority entrepreneurs. Therefore, Essence emphasizes that the Commission must do more to ensure the opportunity for minority participation in narrowband PCS. It states that the Commission's

[1] *See Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in PP Docket No. 93–253, FCC 94–219 (released August 17, 1994), 59 FR 44058 (August 26, 1994) (*"Third Memorandum Opinion and Order"*).

[2] *Fifth Report and Order* in PP Docket No. 93–253, FCC 94–178 at ¶ 96 (released July 15, 1994), 59 FR 37566 (July 22, 1994).

[3] *Id.* at ¶¶ 98–103. We incorporate by reference here the discussion of these issues in the *Fifth Report and Order*.

[4] Petition for Reconsideration of Cook Inlet Region, Inc., PP Docket No. 93–253, May 20, 1994, at 3–6. *See also*, Petition for Reconsideration of the Association of Independent Designated Entities, PP Docket No. 93–253, June 3, 1994.

[5] *See Second Memorandum Opinion and Order* in PP Docket No. 93–253, FCC 94–215 at ¶¶ 114, 128 (released August 15, 1994), 59 FR 44272 (August 26, 1994).

[6] *Id.* at ¶ 128.

[7] Comments and Recommendations of Essence Communications, Inc. in Response to the Commission's Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, September 14, 1994, at 8–10.

[8] Pub. L. 94–239, 90 Stat. 251 (1976).

[9] S. Rep. No. 589, 94th Cong., 2d Sess. 3 (1976), *reprinted in* 1976 U.S.C.C.A.N. 403, 405.

[10] Pub. L. 95–128, 91 Stat. 1147 (1977).

[11] *See* Resolution Trust Corporation Refinancing, Restructuring and Improvement Act, Pub. L. No. 102–233, § 302, 105 Stat. 1761 (1991).

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conclusion that bidding credits are the most cost effective and efficient means of achieving this congressional objective was mistaken and that the July 1994 narrowband auction proved that "bidding credits do not and cannot sufficiently address financing obstacles nor provide a competitive advantage with regard to the national licenses."[12] Accordingly, Essence argues that the Commission should either adopt an "entrepreneur block" scheme for the upcoming regional narrowband PCS auction or raise the small business financial threshold for minority-owned companies.

8. Based on this additional information, our experience from the recent nationwide narrowband auctions and upon further reflection, we agree that the funding problems faced by minority and women-owned companies, combined with the potentially high cost of purchasing a narrowband PCS license at auction, erect a significant hurdle for these entrepreneurs. Because of these difficulties, we already have adopted a 40 percent bidding credit for businesses owned by women and minorities,[13] regardless of size, on two of the regional narrowband PCS licenses.[14] We think that allowing these applicants owned by women and minorities to pay for their licenses over time will go a long way toward overcoming this barrier to entry. It will also provide more meaningful opportunities for designated entities bidding in the upcoming regional auctions. Accordingly, we adopt an installment payment plan for women and/or minority-owned businesses that obtain a regional narrowband PCS license on Channel 13 and Channel 17. Similar to the installment payments for larger entities in the entrepreneurs' blocks for broadband PCS auctions, this plan provides for interest charges to be fixed at the time of licensing at a rate equal to the rate for ten-year U.S. treasury obligations, plus 2.5 percent.[15] Payments of interest only will be due for the first two years, with principal and interest payments amortized over the remaining years of the license. In addition, as we did for small businesses, we will permit businesses owned by minorities and women to pay only half of the down payment (or 10 percent of the bid price) five business days after close of the auction. The remaining 10 percent payment will be deferred until five days after grant of the license.

II. Definition of Businesses Owned by Women and Minorities

9. In the rules adopted pursuant to the *Third Memorandum Opinion and Order*, we changed the definition of a business owned by women and minorities for purposes of the regional narrowband PCS auction. See 47 CFR 24.320(c). In particular, we departed from the definition adopted in the *Second Report and Order*, 59 FR 22980 (May 4, 1994) that required minorities and/or women to have at least 50.1 percent ownership and a 50.1 percent controlling interest in the applicant. 47 CFR 1.2110(b)(2). The new definition requires an applicant owned by women and/or minorities to establish a "control group" consisting entirely of women or minorities that has both *de jure* and *de facto* control of the applicant. It then gives the applicant two options for taking on passive investors. Under the first option, a single investor may hold as much as 49.9 percent of the applicant's passive equity if the control group holds at least 50.1 percent of the total equity.[16] The second option allows the control group to reduce its equity stake to 25 percent provided that no single other investor holds more than 25 percent of the applicant's passive equity. Under either option, the control group must control the applicant and, in the case of corporations, hold at least 50.1 percent of the voting stock. For partnerships, all general partnership interests will be considered to be part of the control group.

10. In the Third Memorandum Opinion and Order we neglected, however, to explain this change in course. We take that opportunity here. We believe that the "control group" approach to defining a woman or minority-owned business provides these designated entities with greater flexibility to access capital than the rule adopted in the *Second Report and Order*. In particular, it allows these companies to reduce by 25 percent the amount of equity the minority or women principals must hold. This ability to sell more equity will help designated entities raise the capital necessary to participate in the auctions as well as to construct their systems. Moreover, like the definition set forth in the *Second Report and Order*, the new rule gives a minority or women-owned company the option to partner with one large company instead of seeking multiple investors so long as the control group retains 50.1 percent of the equity. This option meets the needs of designated entities that are able to attract investors that desire a more substantial equity stake in the venture. Thus, we believe that modification of the definition of minority and/or women-owned businesses more fully satisfies the congressional mandate that the Commission provide the opportunity for companies owned by these designated entities to participate in spectrum-based services.

11. The new rule's requirement that investors take only passive interest also provides more assurance that the minority and women principals maintain control of their companies. As a result, we reduce the opportunity for fronts and help ensure that only *bona fide* designated entities will be able to take advantage of the 40 percent bidding credit and installment payments offered in the regional narrowband auctions.

12. In addition, we believe that modifying the definition in this manner provides consistency with the definition of a small business adopted in the *Third Memorandum Opinion and Order*, which also uses a "control group" approach. Thus, businesses will not have to satisfy disparate rules regarding levels of equity investment to receive both bidding credits and the installment payment option available to small businesses.

13. Although not explicitly stated in the *Third Memorandum Opinion and Order*, we also clarify here that we are departing from the provision in the *Second Report and Order* that bars publicly traded companies from qualifying as minority and women-owned businesses. This prohibition was based on our assumption that companies traded on the public market would not require government-sponsored measures to succeed in spectrum auctions. The high prices paid for the nationwide narrowband PCS licenses in the auction held in July 1994 has led us to conclude, however, that even publicly traded companies owned by women and minorities will require bidding credits and installment payments to participate successfully in the regional auction. We recognized these increased capital requirements in the *Third Memorandum Opinion and Order* by raising significantly the financial thresholds for qualifying for small business installment payments

[12] Essence *ex parte* filing at 11–12.

[13] *See* 47 CFR 24.320(c). *See also infra* ¶¶ 9–11.

[14] *See* 47 CFR 24.129(b), 24.309(b)(2).

[15] *Compare* 47 CFR 24.711(a)(4). Standard installment payments— at the 10-year treasury interest rate— remain available to small businesses including small businesses owned by minorities and/or women, on all regional licenses. *See Third Report and Order* in PP Docket No. 93–253, FCC 94–98 at ¶¶86–89 (released May 10, 1994) 59 FR 26741 (May 24, 1994).

[16] As provided in Section 24.320(g) of the Commission's rules, "passive equity" means "(i) for corporations, non-voting stock or stock that includes no more than fifteen percent of the voting equity, (ii) for partnerships, joint ventures and other non-corporate entities, limited partnership interests and similar interests that do not afford the power to exercise control of the entity." 47 CFR 24.320(g).

The same rationale applies to our decision here to give publicly traded minority and women-owned applicants government assistance in the form of bidding credits and installment payments. We emphasize, however, that these companies must comply with the control group and equity investment requirements set out above and in our rules.

14. Finally, we do not intend to suggest that by clarifying this rule change here we have reached a decision regarding the designated entity issues raised by petitioners in the broadband PCS auction proceeding. After further analysis of those petitions, it is possible that we will make additional adjustments to our rules with regard to broadband PCS. In addition, if those changes loosen the restrictions on designated entities, we may decide to apply them to designated entity licensees in the regional narrowband service.

III. Conclusion

15. Accordingly, *it is ordered* That Part 24 of the Commission's Rules is amended as set forth below.

16. *It is further ordered* That the rules changes made herein will become effective 30 days after their publication in the **Federal Register**. This action is taken pursuant to Sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 309(j).

List of Subjects in 47 CFR Part 24

Communications common carriers, Communications equipment, Competitive bidding, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Change

Part 24 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 24—PERSONAL COMMUNICATION SERVICES

1. The authority citation for Part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332, unless otherwise noted.

2. Section 24.309 is amended by revising paragraph (b)(1) to read as follows:

§ 24.309 Designated entities.

* * * * *

(b) * * *

(1) Installment payments.

(i) Small businesses, including small businesses owned by members of minority groups and women, will be eligible to pay the full amount of their winning bids on any regional, MTA or BTA license in installments over the term of the license pursuant to the terms set forth § 1.2110(e) of this chapter.

(ii) Businesses owned by members of minority groups and women that are winning bidders for the regional licenses indicated by an (**) in § 24.129 may pay the full amount of their winning bids (less the applicable bidding credit and down payment) in installments with

(A) Interest imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent;

(B) Interest-only payments for the first two years; and

(C) Principal and interest payments amortized over the remaining eight years of the license.

* * * * * *

[FR Doc. 94–24404 Filed 10–3–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Part 225

Defense Federal Acquisition Regulation Supplement; Offset Administrative Costs

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to change the criteria for contractor recovery of offset administrative costs under foreign military sales.

EFFECTIVE DATE: September 28, 1994.

FOR FURTHER INFORMATION CONTACT: LTC Ed King, (703) 604–5929.

SUPPLEMENTARY INFORMATION:

A. Background

This revision originated based on a Defense Security Assistance Agency (DSAA) procedural change on offset administrative costs. A proposed rule was published at 59 FR 17756 on April 14, 1994. The proposed rule is adopted as final without change. DSAA will issue a corresponding revision to the Security Assistance Manual.

B. Regulatory Flexibility Act

The Department of Defense certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it is unlikely that a substantial number of small entities have foreign military sales contracts. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The final rule does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Accordingly, 48 CFR Part 225 is amended as follows:

1. The authority citation for 48 CFR Part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7303–2(a) is revised to read as follows:

§ 225.7303–2 Cost of doing business with a foreign government or an international organization.

(a) In pricing FMS contracts where non-U.S. Government prices as described in § 225.7303–1 do not exist, recognize the reasonable and allocable costs of doing business with a foreign government or international organization, even though such costs might not be recognized in the same amounts in pricing other defense contracts. Examples of such costs include, but are not limited to—

(1) Selling expenses (not otherwise limited by FAR part 31), e.g.—

(i) Maintaining international sales and service organizations;

(ii) Sales commissions and fees in accordance with FAR subpart 3.4;

(iii) Sales promotions, demonstrations, and related travel for sales to foreign governments. Paragraph 126.8 of the International Traffic in Arms Regulations (ITAR) (22 CFR part 121) may require Government approval for these costs to be allowable. If Government approval is required for promotion or demonstration costs to be allowable, the approval must be obtained.

(iv) Configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

(2) Product support and post-delivery service expenses, such as—

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(i) Operations or maintenance training, training or tactics films, manuals, or other related data; and

(ii) Technical field services provided in a foreign country related to accident investigations, weapon system problems, operations/tactics enhancement, and related travel to foreign countries.

(3) Offset administrative costs.

(i) A U.S. defense contractor may recover costs incurred to administer specific requirements of its offset agreement with a foreign government or international organization if the foreign military sale Letter of Offer and Acceptance is financed wholly with customer cash or repayable foreign military finance credits.

(ii) The U.S. Government assumes no obligation to satisfy or administer the offset requirement or to bear any of the associated costs.

(iii) Some examples of offset administrative costs are—

((A) In-house and/or purchased: organizational, administrative and technical support, including offset staffing; quality assurance, manufacturing, purchasing support; data acquisition; proposal, transaction and report preparation; broker/trading services; legal support; and similar support activities;

(B) Off-shore operations for technical representative and consultant activities, office operations, customer and industry interface, capability surveys;

(C) Marketing assistance and related technical assistance, transfer of technical information and related training;

(D) Employee travel and subsistence costs; and

(E) Taxes and duties.

(4) Costs that are the subject of advance agreement under the appropriate provisions of FAR part 31; or where the advance understanding places a limit on the amounts of cost that will be recognized as allowable in defense contract pricing, and the agreement contemplated that it will apply only to DoD contracts for the U.S. Government's own requirement (as distinguished from contracts for FMS).

* * * * *

[FR Doc. 94-24461 Filed 10-3-94, 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[I.D. 092694B]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, (NOAA), Commerce.

ACTION: Notification of commercial quota transfer.

SUMMARY: NMFS announces that the State of New Jersey is transferring 23,085 lb (10,471 kg) of commercial summer flounder quota to the State of Connecticut. NMFS adjusted the quotas and announces the revised commercial quota for each state involved.

EFFECTIVE DATE: September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508-281-9101.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery are found at 50 CFR part 625. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 625.20.

The commercial quota for summer flounder for the 1994 calendar year was set equal to 16,005,560 lb (7,260,000 kg), and the allocations to each state were published March 7, 1994 (59 FR 10586). At that time, New Jersey was allocated a quota of 2,676,928 lb (1,214,234 kg), and Connecticut was allocated a quota of 361,258 lb (163,864 kg). The 1994 quotas for several states were adjusted for overages occurring in 1993, as required under § 625.20(d)(2), on May 25, 1994 (59 FR 26971). Since Connecticut's quota was not exceeded in 1993, its 1994 quota was unaffected by this adjustment; the New Jersey quota after the adjustment for overages was 2,533,830 lb (1,149,338 kg).

The final rule implementing Amendment 5 to the FMP was published December 17, 1993 (58 FR 65936), and allows two or more states, under mutual agreement and with the concurrence of the Director, Northeast Region, NMFS, (Regional Director) to transfer or combine summer flounder commercial quota. The Regional Director is required to consider the criteria set forth in § 625.20(f)(1) in the evaluation of requests for quota transfers or combinations.

New Jersey has agreed to transfer 23,085 lb (10,471 kg) of commercial quota to Connecticut. The Regional Director has determined that the criteria set forth in § 625.20(f) have been met, and publishes this notification of quota transfers. The revised quotas for the calendar year 1994 are: New Jersey, 2,510,745 lb (1,138,855 kg); and Connecticut, 384,343 lb (174,335 kg).

This action does not alter any of the conclusions reached in the environmental impact statement prepared for Amendment 2 to the FMP regarding the effects of summer flounder fishing activity on the human environment. Amendment 2 established procedures for setting an annual coastwide commercial quota for summer flounder and a formula for determining commercial quotas for each state. The quota transfer provision was established by Amendment 5 to the FMP and the environmental assessment prepared for Amendment 5 found that the action had no significant impact on the environment. Under section 6.02b.3(b)(i)(aa) of NOAA Administrative Order 216-6, this action is categorically excluded from the requirement to prepare additional environmental analyses. This is a routine administrative action that reallocates commercial quota within the scope of previously published environmental analyses.

Classification

This action is taken under 50 CFR part 625 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 28, 1994.

Richard H. Schaefer,

Director, Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-24489 Filed 9-29-94; 8:45 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register
Vol. 59, No. 191
Tuesday, October 4, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN: 3150-AD57

Fracture Toughness Requirements for Light Water Reactor Pressure Vessels

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations for light-water-cooled nuclear power plants to clarify several items related to the fracture toughness requirements for reactor pressure vessels (RPV). The proposed amendments would clarify the pressurized thermal shock (PTS) requirements, make changes to the Fracture Toughness Requirements and the Reactor Vessel Material Surveillance Program Requirements, and provide new requirements for thermal annealing of a reactor pressure vessel.

DATES: The comment period expires January 3, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Comments may be delivered to: One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:30 am and 4:15 pm on Federal workdays. Comments received on the proposed rules may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

A free single copy of draft regulatory guides DG-1023, DG-1025, and DG-1027 may be requested by those considering public comment by writing to the U.S. Nuclear Regulatory Commission, ATTN: Distribution and Mail Services Section, Room P-130A, Washington, DC 20555. A copy is also available for inspection and/or copying in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Alfred Taboada, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415-6014.

SUPPLEMENTARY INFORMATION:

Background

Maintaining the structural integrity of the reactor pressure vessel (RPV) of light-water-cooled reactors is a critical concern related to the safe operation of nuclear power plants. To assure the structural integrity of RPVs, NRC regulations and regulatory guides have been developed to provide analysis and measurement methods and procedures to assure that each RPV has adequate safety margins for continued operation. Structural integrity of a reactor pressure vessel is generally assured through a fracture mechanics evaluation, including measurement or estimation of the fracture toughness of the materials which compose the RPV. However, the fracture toughness of the RPV materials varies with time. As the plant operates, neutrons escaping from the reactor core impact the vessel beltline materials (e.g. the materials that surround the reactor core), causing embrittlement of those materials. The NRC's regulations and regulatory guides related to RPV integrity provide the criteria and methods needed to estimate the extent of the embrittlement, to evaluate the consequences of the embrittlement in terms of the structural integrity of the RPV, and to provide methods to mitigate the deleterious effects of the embrittlement.

The NRC has several regulations and regulatory guides that establish criteria and procedures for assuring the structural integrity of RPVs. With the addition of a proposed rule on thermal annealing and several draft regulatory guides, the existing and proposed regulatory documents contribute to a comprehensive set of regulations and regulatory guidance pertaining to RPV integrity, including:

1. The fracture toughness criteria that each RPV must satisfy (10 CFR 50.60, 10 CFR 50.61, and 10 CFR Part 50, Appendix G).
2. Irradiation embrittlement surveillance requirements (10 CFR Part 50, Appendix H).
3. Guidance for estimating the fracture toughness of the RPV (Regulatory Guide 1.99 and a draft regulatory guide on dosimetry).
4. Guidance for cases in which the RPV is estimated to exceed specified screening criteria (Regulatory Guide 1.154 and a draft regulatory guide on evaluating RPVs with Charpy upper-shelf energy less than 50 ft-lb).
5. Requirements and guidance for using thermal annealing of the RPV as a method for mitigating the effects of neutron irradiation (proposed 10 CFR 50.66 and a draft regulatory guide).

This notice proposes changes to the following requirements:

a. The Pressurized Thermal Shock (PTS) rule (10 CFR 50.61).
b. Appendix G of 10 CFR Part 50, "Fracture Toughness Requirements."
c. Appendix H of 10 CFR Part 50, "Reactor Vessel Material Surveillance Program Requirements."

This notice also proposes a thermal annealing requirement, 10 CFR 50.66. In addition to the proposed amendments addressed in this document, the NRC will publish for public comment a draft regulatory guide on thermal annealing, DG-1027 (the availability of this draft regulatory guide for will be announced in the **Federal Register** at a later date comment.)

Two related draft regulatory guides have been published for public comment (58 FR 51392; October 1, 1993). These draft regulatory guides are:

1. A draft regulatory guide that addresses evaluation of RPVs with Charpy upper-shelf energy levels less than 50 ft-lb (DG-1023).
2. A draft regulatory guide on dosimetry (DG-1025).

Other regulatory guides pertaining to RPV integrity, Regulatory Guides 1.99 and 1.154, are under evaluation. Revisions to these guides, if any, will be addressed in the future.

Other regulatory issues related to reactor pressure vessel integrity, such as low temperature over-pressure protection system setpoints, are being addressed as part of a broader scope evaluation of the pressure vessel regulations and are not part of this proposed amendment.

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Reasons for the Proposed Changes

The needs for these proposed amendments to the fracture toughness regulations have been identified from three sources:

1. The 1989 Nuclear Utility Backfitting and Reform Group (NUBARG) appeal concerning use of nuclear heat to warm the RPV for system leakage and hydrostatic pressure tests;
2. The 1990 review of the RPV integrity of the Yankee Nuclear Power Station; and
3. A comprehensive review of the regulations by NRC staff, resulting in the identification of the need for clarifications, corrections, and improved guidance in certain areas.

The recognition in 1986 by NRC staff that certain boiling water reactor (BWR) units were using nuclear heat to warm the system prior to performing leakage and pressure tests led to an NRC staff initiative to amend Appendix G to 10 CFR Part 50. During the NRC staff review to determine if this use of nuclear heating was permissible under either the ASME Code or the NRC regulations, the Nuclear Utility Backfitting and Reform Group (NUBARG) filed a backfitting claim, and later an appeal of the determination that a backfit was not involved. Stemming from this claim and appeal process, the Committee to Review Generic Requirements recommended to the Executive Director for Operations that the affected portions of Appendix G be revised to clearly indicate that all required leakage and pressure tests of the reactor pressure vessel must be performed when the core is not critical.

In 1990, the NRC began a review of the integrity of the Yankee Nuclear Power Station (YNPS) RPV. That review, along with stated plans by the licensee to consider thermal annealing of the RPV, highlighted the need for the NRC to amend its regulations and guidance pertaining to RPV integrity. The NRC staff proposed a plan to revise and clarify the pertinent regulations in SECY–91–333 (October 22, 1991) and SECY–92–283 (August 14, 1992), including schedules and general descriptions of the changes contemplated. The proposed changes included clarifications and corrections planned prior to the YNPS review. However, the YNPS review identified the need to clarify the requirements in Sections IV and V of Appendix G to 10 CFR Part 50, and the need to provide more complete requirements and guidance for thermal annealing.

The PTS rule, 10 CFR 50.61, was amended on May 15, 1991 (56 FR 22300) to make the method for evaluating irradiation embrittlement consistent with the recommended procedures of Regulatory Guide 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Materials." Subsequent inquiries to the Commission concerning the appropriate margin terms and use of surveillance data indicated that the PTS rule required clarification. A recent review of the rule by NRC staff concluded that the PTS rule should also be modified to bring the procedures for evaluating RTPTS into complete agreement with the recommended procedures in Regulatory Guide 1.99, Revision 2.

Overview of the Proposed Changes

PTS Rule (10 CFR 50.61)

The pressurized thermal shock rule, 10 CFR 50.61, was initially published in final form on July 23, 1985 (50 FR 29937) and amended on May 15, 1991 (56 FR 22300). This rule provides a screening criterion for irradiation embrittlement of RPV beltline materials, above which the plant cannot continue to be operated without justification. Historically, a value of reference temperature has been determined for each vessel beltline material for comparison to the PTS screening criteria. These values of reference temperature are termed RT_{PTS} values. However, the method for evaluating RT_{PTS} values has not been consistent with the embrittlement estimates used for other purposes, such as pressure-temperature limit calculations. The May 15, 1991, amendment was a step towards unifying the embrittlement estimate methodology. The amendment included the procedures given in Regulatory Guide 1.99, Revision 2, for the evaluation of irradiation embrittlement of the RPV beltline materials. The 1991 amendment left two differences between the rule and Regulatory Guide 1.99, Revision 2. These two differences are:

1. Values of unirradiated RT_{NDT} are specified for general classes of material in the PTS rule, while greater flexibility in determining unirradiated values is permitted in Regulatory Guide 1.99, Revision 2; and
2. The margin terms used in the PTS rule are based on assumptions which are not consistent with the method used in Regulatory Guide 1.99, Revision 2 for calculating the margin term.

This proposed amendment is intended to make the evaluation of RT_{PTS} consistent with the recommended methods of Regulatory Guide 1.99, Revision 2, which are used to evaluate RT_{NDT}. In this case, the RT_{PTS} value for each vessel beltline material is simply the RT_{NDT} value estimated for the projected end of license fluence.

This proposed amendment to the PTS rule would make three changes:

1. The Regulatory Guide 1.99, Revision 2, method for determining RT_{NDT}, of which RT_{PTS} is a unique value determined for the end of license fluence, would be incorporated in total, including treatment of the unirradiated RT_{NDT} value, the margin term, and the explicit definition of "credible" surveillance data.

2. The section would be restructured to improve clarity, with the requirements section giving only the requirements for the RT_{PTS} value. The method for calculating RT_{PTS} would be moved to a new paragraph of the rule.

3. Thermal annealing would be introduced as a method for mitigating the effects of neutron irradiation, thereby reducing RT_{PTS}.

Additionally, it should be noted that evaluations of current surveillance data have indicated that the standard deviation of the differences between predicted and measured shifts in RT_{NDT}, termed the residual, are higher than the margin values used in the PTS rule and in Regulatory Guide 1.99, Revision 2, particularly for plate materials. However, the mean embrittlement estimation equations in the rule and in Regulatory Guide 1.99, Revision 2, overestimate the actual surveillance data by less than 10°F on average. The NRC staff considered amending the PTS rule to incorporate the revised margin terms and the overestimation bias, but decided against such an amendment due to the small number of plants that would be affected by such a change, and a related NRC research program that addresses the overall issue of irradiation embrittlement correlations. The number of plants which would have their RT_{PTS} values change "significantly" by such a change to the margin terms is not large; the impact of the revised margin terms on those plants is being addressed through other regulatory mechanisms. The effect of the revised margin on pressure-temperature limits is being handled in a similar manner.

As noted, this proposed amendment to 10 CFR 50.61 introduces thermal annealing of the reactor pressure vessel beltline as a method for mitigating the effects of neutron irradiation and reducing RT_{PTS} to levels below the screening criteria. As specified in § 50.61(b)(7) of this proposed rule, the use of thermal annealing would be subject to the requirements of the proposed new section on thermal annealing (10 CFR 50.66).

Thermal Annealing Rule (10 CFR 50.66)

The proposed thermal annealing rule, 10 CFR 50.66, would provide a consistent set of requirements for the use of thermal annealing to mitigate the effects of neutron irradiation. The proposed rule would replace the requirements for annealing in the current Appendix G of 10 CFR Part 50 with the proposed consistent set of requirements in this proposed rule. Also, the PTS rule would be amended to add a new paragraph (b)(7) which would reference the proposed thermal annealing rule as a method for mitigating the effects of neutron irradiation, thereby reducing RT_{PTS}. Therefore, the intent of the thermal annealing rule, and related changes in 10 CFR 50.61 and Appendix G of 10 CFR Part 50, is to provide requirements for use of thermal annealing to mitigate the deleterious effects of neutron irradiation on reactor vessel material properties.

Consistent with guidance in Section V.D of the current Appendix G, the proposed thermal annealing rule would specify that thermal annealing would be subject to the approval of the Director, Office of Nuclear Reactor Regulation (NRR). Section 50.66(a) of the proposed thermal annealing rule would require submittal of an application containing three sections: a thermal annealing operating plan, a requalification inspection and test program, and a fracture toughness recovery and reembrittlement rate assurance program. This application would be required to be submitted at least three years before the proposed date of the annealing operation. This three-year period is specified only to provide NRC staff with sufficient time to review the thermal annealing application. The licensee may initiate the thermal annealing program as soon as NRC approval is given, even if this approval is given before three years from the date of the application.

The thermal annealing operating plan also must include an evaluation of the effects of temperature, and of mechanical and thermal stresses on the reactor and associated equipment to demonstrate that the operability of the reactor will not be detrimentally affected. The temperatures and times used in this analysis define the proposed annealing conditions. If these conditions are exceeded during the vessel annealing, then the evaluation would no longer be valid, and the acceptability of the actual vessel annealing would have to be demonstrated.

Upon completion of the thermal annealing and before subsequent operation of the plant, the licensee would be required to certify that the thermal annealing was performed in accordance with the approved application, that the approved criteria were satisfied, and that the proposed annealing conditions were not exceeded. However, in the event that the licensee cannot make this certification, a justification for subsequent operation would have to be submitted for approval by the Director, NRR. However, this provision does not relieve the licensee from obtaining 10 CFR 50.12 exemptions from any other requirements of this part that cannot be satisfied.

Two items of particular importance to the overall annealing are the recovery of fracture toughness and the rate of reembrittlement of the RPV beltline materials. This proposed rule provides three alternative methods for determining these values, ranging from assessments using plant-specific materials to an assessment using a generic computation.

Two methods for evaluating annealing recovery are experimental methods to determine plant-specific annealing recovery, and the third method is a generic computational method. The first method would be required for those plants with "credible" surveillance programs and where surveillance specimens are available. The second method would be an optional method, in which the licensee may remove material from the beltline of the RPV to evaluate annealing recovery. This method should provide the most accurate evaluation of annealing recovery. Presumably, it would be selected for those plants without credible surveillance programs or when surveillance specimens are not available. However, for this method to be acceptable, the vessel must be sufficiently thick so that the stress limits in Section III of the ASME Code can be satisfied, considering the effects of fatigue and corrosion.

The third method would use generic computational methods, for which appropriate justification would be required.

Paragraph (d) of § 50.66 describes the experimental methods and the computational method for estimating recovery of RT_{NDT} and Charpy upper-shelf energy of the beltline materials. The experimental methods for estimating recovery of RT_{NDT} and the Charpy upper-shelf energy utilize either surveillance program specimens or material removed from the vessel beltline. The experimental methods provide a plant-specific estimate of recovery, rather than the generic value evaluated from the computational method. It is the intent of this proposed rule to require that surveillance specimens from "credible" surveillance programs must be used to develop plant-specific recovery data, if such specimens are available. It is not the intent of this rule to require the removal of material from the RPV beltline to permit plant-specific evaluation of recovery.

As described previously, the computational method would require appropriate justification.

Reembrittlement trends are estimated, and monitored by continued surveillance in accordance with Appendix H of 10 CFR Part 50.

Paragraph (b)(3)(ii) provides that the reembrittlement rate must be monitored using a surveillance program which conforms to Appendix H of this part. Some older plants conform to Appendix H by applying issues of ASTM Standard E 185 that do not require the use of the vessel "limiting materials" in the surveillance program. Within this context, the term "limiting materials" refers to the materials predicted to have the highest RT_{NDT} or the lowest Charpy upper shelf energy during the operational lifetime of the plant. It is the intent of this rule that, as required by later issues of ASTM Standard E 185, the vessel "limiting materials" should be used to monitor reembrittlement if the materials are available.

Appendix G of 10 CFR Part 50

Appendix G of 10 CFR Part 50 specifies fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary of light-water-cooled nuclear power reactors. These requirements provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests. The proposed amendments to Appendix G are principally of a clarifying or a restructuring nature. These amendments include:

1. Sections IV and V of Appendix G which would be combined and rewritten to clarify the Charpy upper-shelf energy requirements, and the pressure-temperature and minimum permissible temperature requirements.
2. An explicit statement that would be added to Section IV requiring that pressure and leak tests of the reactor pressure vessel required by Section XI of the American Society of Mechanical Engineers Boiler & Pressure Vessel (B&PV) Code (ASME Code) must be completed before the core is critical.

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3. The proposed thermal annealing rule, 10 CFR 50.66, that would be referenced in lieu of the details on thermal annealing previously given in Section V.D.

4. The reference to the ASME Code that would be changed from Appendix G of Section III to Appendix G of Section XI of the ASME Code.

5. The "design to permit annealing" requirement (Section IV.B), which would be deleted.

The restructuring of Sections IV and V is intended to promote clarity of the requirements in these sections. The procedures required for cases in which the Charpy upper-shelf energy of a RPV beltline material falls below 50 ft-lb also would be clarified by consolidating the requirements previously addressed in parts of Sections IV and V.

The provisions in Section V.C concerning requirements for "volumetric inspection" and "additional evidence of fracture toughness" would be removed. The volumetric examination requirement would be removed because it was unnecessary, given the inspection and performance demonstration programs currently required under 10 CFR 50.55a. The "additional evidence of fracture toughness" requirement in Section V.C.2 would be incorporated in the "equivalent margins" analysis in Section IV.A.1, as a provisional method for developing fracture toughness data needed for that analysis. At the present time there is an adequate generic fracture toughness data base available to perform these analyses, with appropriate bounding considerations. The modification would permit a licensee to develop plant-specific data. Generally, plant-specific data would result in a reduction in the margin applied to the fracture toughness data, to reflect the reduction in uncertainties due to the availability of plant-specific data. However, this must be evaluated on a case-by-case basis.

The pressure-temperature and minimum permissible temperature requirements in Section IV would be restructured, with the principal feature being the addition of a table which summarizes the pressure-temperature limit requirements and minimum temperature requirements as a function of the plant operating condition, the vessel pressure, whether fuel is in the vessel, and whether the core is critical. In addition, Section IV would be reworded to clarify the minimum permissible temperature requirement by indicating the criteria for use in determining the location in the component or material which must satisfy the minimum temperature requirement. This minimum temperature is defined in Section IV as the metal temperature of the controlling material in the region which has the least favorable combination of stress and temperature for the appropriate plant condition.

The requirement that all pressure and leak tests of the RPV required by Section XI of the ASME Code must be completed before the core is critical is intended to prohibit the use of nuclear heat, i.e., core criticality, before the completion of these tests. The use of nuclear heat before the completion of such tests is considered unsafe for several reasons, including the hindrance of finding leaks with the vessel at such a high temperature and the potential for exacerbating the consequences of a vessel rupture (in the extremely unlikely event that it should occur) by having the core critical. The explicit prohibition of nuclear heat in these cases was recommended to the Executive Director for Operations by the Committee to Review Generic Requirements in a memorandum dated June 7, 1990.

The requirements on thermal annealing contained in the current Appendix G (Section V.D) would be replaced by a reference to the proposed Thermal Annealing rule, 10 CFR 50.66.

Changing the reference to Appendix G of the ASME Code from Section III to Section XI means that the requirements for operating plants will no longer come from the construction code (Section III of the ASME Code) but instead will come from Section XI, the in-service inspection code. Appendix G to Section XI and Appendix G to Section III are identical, so this amendment would not result in a change in technical requirements.

Section IV.B of Appendix G requires that:

"Reactor vessels for which the predicted value of upper-shelf energy at end of life is below 50 ft-lb or for which the predicted value of adjusted reference temperature at end of life exceeds 200 °F (93 °C) must be designed to permit a thermal annealing treatment * * *"

This proposed rule would delete that requirement. This deletion conforms with Commission direction from 1985 and public comments to delete this section. An additional consideration to delete this requirement is that there should be no requirement to ensure the feasibility of a (future) voluntary activity.

During the Commission review of the revision of Appendix G published final on May 27, 1983 (48 FR 24009), the requirement to "design to permit annealing" was criticized because licensee response to the requirement was perfunctory and staff review of the responses was cursory, as detailed in SECY–83–254 (June 27, 1983). Further, there were no criteria to assess whether a design would permit annealing. An additional problem cited with the requirement was that it was misinterpreted to mean that plant operation with an RT_{NDT} greater than 200°F or a Charpy upper-shelf energy below 50 ft-lb was unsafe. The Commission indicated that it would seek public comments on the proposed deletion of the requirement, and this was done concurrently with the publication of the proposed PTS rule on February 4, 1984 (49 FR 4498). All sixteen of the commenters on this item recommended deletion of the paragraph, although eight of them urged that the deletion should not in any way imply that annealing is no longer an option to increase safety margins. In the notice of final rulemaking for the PTS rule published on July 23, 1985 (50 FR 29944), the "Supplementary Information" noted that the Commission planned a separate rulemaking action to delete Section IV.B. That planned deletion was delayed so that it could be combined with other amendments to Appendix G.

Appendix H of 10 CFR Part 50

Changes in the fracture toughness properties of the RPV beltline materials due to irradiation embrittlement are monitored using a surveillance program, as required in Appendix H of 10 CFR Part 50, "Reactor Vessel Material Surveillance Program Requirements". Appendix H references American Society for Testing and Materials (ASTM) standard E 185 ("Standard Practice for Conducting Surveillance Tests for Light-Water Cooled Nuclear Power Reactor Vessels") for many of the detailed requirements of surveillance programs, and permits the use of integrated surveillance programs, wherein surveillance program capsules for one reactor are irradiated in another reactor. This proposed amendment would make the following changes:

1. End the provision for "reducing the amount of testing" for integrated surveillance programs,
2. Restructure the section on requirements for integrated surveillance programs (Section II.C), and
3. Clarify the version of ASTM Standard E 185 that applies to the surveillance program.

Integrated surveillance programs are permitted under Section II.C of Appendix H of 10 CFR Part 50. One provision of this section is that "the amount of testing may be reduced if the initial results agree with predictions." It is proposed to discontinue this provision as of the effective date of the Appendix, although previous authorizations granted by the Director, Office of Nuclear Reactor Regulation, would continue in effect.

A second proposed change to Appendix H restructures Section II.C to clarify the requirements for integrated surveillance programs.

The other principal change to Appendix H clarifies the version of ASTM Standard E 185 that applies to the various portions of the surveillance programs. Appendix H recognizes the need to separate surveillance programs into two essential parts, specifically the design of the program, and subsequent testing and reporting of results from the surveillance capsules. Since the design of the surveillance program cannot be changed once the program is in place, the requirements for design of the surveillance program are static for each plant. However, the testing and reporting requirements are updated along with technical improvements made to ASTM standard E 185. The clarification proposed in this revision indicates that the design of the program and the withdrawal schedule must meet the requirements of ASTM E 185–73, or the edition of ASTM E 185 that is current on the issue date of the ASME Code to which the reactor vessel was purchased, whichever is latest. Licensees could choose to comply with later editions of ASTM E 185, up through the 1982 edition. Further, specimen test procedures and reporting requirements must meet the requirements of ASTM E 185–82 "to the extent practicable for the configuration of the specimens in the capsule."

The NRC staff intended that this proposed amendment to Appendix H would incorporate by reference a version of ASTM standard E 185 updated from the currently available 1982 version. However, that standardization process has not been completed, and it was decided to proceed with this proposed amendment. A subsequent amendment to Appendix H will be considered after the NRC staff has reviewed the updated ASTM standard.

Request for Public Comments

On June 13, 1994 (SECY–94–163) the staff requested Commission approval to publish for public comment these proposed revisions and provided a discussion of options for public participation related to thermal annealing. The Commission approved issuance of the proposed revisions but directed that the staff to (1) include with the proposed rule package a discussion of options the staff has considered for structuring of the regulatory process for the proposed thermal annealing rule (10 CFR 50.66), which is included in the following section, and (2) request comments on the following issues related to the proposed regulation on thermal annealing:

1. The technical adequacy of the staff's guidance;
2. The sufficiency of the guidance and criteria to support a certification that if satisfied, a plant with an annealed vessel can safely resume operation;
3. Whether health and safety concerns are best served by approval of the thermal annealing plan or of readiness for restart;
4. The preferred regulatory process (including opportunities for public participation) and the commenter's basis for recommending a particular process; and
5. Whether there are health and safety issues concerning thermal annealing that cannot be addressed generically and would warrant plant-specific consideration.

Options the Staff Has Considered for Structuring of the Regulatory Process Related to Public Participation in Thermal Annealing

A significant issue with respect to thermal annealing, identified in SECY–92–283 (August 14, 1992), is the nature and timing of public participation related to the NRC's review and approval of a licensee's proposal for thermal annealing. The proposed rule does not address public participation per se, but instead provides the performance requirements that a licensee would have to meet to gain NRC approval of a thermal annealing application and to permit subsequent operation. Under the proposed rule, there are three circumstances that arguably require an opportunity for hearing pursuant to Section 189 of the Atomic Energy Act of 1954 (AEA) in connection with NRC review and approval of thermal annealing. First, a licensee seeking to anneal its reactor vessel must obtain NRC approval of the content of the thermal annealing plan prior to implementing the plan (see § 50.66(a) of the proposed rule). Second, and apart from the NRC approval required under § 50.66(a), the thermal annealing process as described in the licensee's plan may necessitate license amendments (including technical specification changes). License amendments may be required if the licensee's final safety analysis report (FSAR) needs to be revised to reflect the thermal annealing process, and the licensee is unable to conclude that such FSAR changes do not constitute "unreviewed safety questions" under 10 CFR 50.59. Implementation of the thermal annealing plan may also violate existing technical specifications, necessitating requests for changes to technical specifications. Any license amendment and technical specification change must be approved by the NRC before the licensee may implement the thermal annealing plan. Finally, after the licensee implements the annealing plan, if he determines that he cannot meet the criteria specified in § 50.66(c)(1) of the proposed rule, then NRC approval is needed in order for the licensee to resume operation (see § 50.66(c)(2) of the proposed rule).

It is clear that any license amendments and technical specification changes necessitated by the thermal annealing plan would require an opportunity for hearing, in accordance with Section 189 of the AEA. However, the scope of such a hearing would normally be limited to consideration of whether the proposed license amendment and technical specification changes are in accordance with the Commission's rules, and therefore provide reasonable assurance of adequate protection to the public health and safety. Issues related to the more general matter of the acceptability of the thermal annealing plan proposed by the licensee would not fall within the scope of any hearing for license amendment or technical specification change, except as they fall directly in the scope of the requested amendment or technical specification change.

However, there is some question whether the AEA requires an opportunity for hearing in connection with the NRC approval of the thermal annealing plan or the NRC decision approving resumption of operation under the proposed rule. There are four primary alternatives with respect to providing an opportunity for hearing in connection with thermal annealing. These alternatives are discussed in greater detail below:

Alternative 1. No Opportunity for Hearing Under Rule as Proposed

Under this alternative, the contention is that Section 189 of the AEA does not afford an interested member of the public a right to request a hearing in connection with NRC approvals of thermal annealing plans and resumption of operation under § 50.66(c)(2). This alternative is consistent with other

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provisions in 10 CFR Part 50 where approval by the Director of NRR is required and hearings are not routinely offered.

Notwithstanding the lack of a requirement for a public hearing, the staff anticipates that, with respect to the initial or the first several applications for thermal annealing, several informal hearings or public meetings would be held by the staff to permit discussion of both the thermal annealing plan proposed by the licensee and the technical issues related to annealing. These hearings or meetings would ensure that all of the pertinent technical issues have been addressed by the licensee in its thermal annealing plan and by the staff in its review of the plan. These hearings or meetings would be noticed in the Federal Register.

Alternative 2. Discretionary Opportunity for Hearing Under Rule as Proposed

Under this alternative, the contention is that Section 189 of the AEA does not afford an interested member of the public a right to request a hearing. However, as a matter of discretion, the Commission would determine on a case-by-case basis whether an opportunity for hearing will be provided in connection with the Director of NRR's determination on a thermal annealing application under § 50.66(b) of the proposed rule. In the hearing, the Commission would consider issues related to the adequacy of the thermal annealing plan, as well as the vessel's ability to perform its safety function after being annealed.

A case-by-case determination would also be made by the NRC with respect to providing an opportunity for hearing on the Director of NRR's determination on the licensee's justification for subsequent operation under the proposed § 50.66(c)(2).

In both cases, the Commission would publish a notice in the Federal Register announcing the NRC's approval of the licensee's thermal annealing plan or approval of resumed operation under § 50.66(c)(2). Neither implementation of the thermal annealing plan nor resumption of operation, once approved by the NRC, would be contingent upon completion of any hearing; i.e., the Commission does not believe that it is required to make a Section 189 "no significant hazards determination" ("Sholly finding") when it provides a discretionary hearing.

Alternative 3. Required Opportunity for Hearing Under Rule as Proposed

Under this alternative, the contention is that a hearing is required by Section 189 of the AEA for both NRC's approval of the thermal annealing plan and any NRC approval of resumed operation following annealing. The adequacy of the thermal annealing plan, as well as the vessel's ability to perform its safety function after being annealed, could be raised in the hearing associated with approval of the thermal annealing plan. Licensee implementation of the thermal annealing plan could not commence until any hearing is concluded unless the NRC makes a "no significant hazards determination" with respect to the thermal annealing.

Alternative 4. Modify Proposed Rule to Require Suspension of License Prior to Thermal Annealing

Under this alternative, the proposed rule's regulatory approach for thermal annealing would be modified to include a suspension of the operating license during thermal annealing. The suspension would be automatic under the rule, without the need for a suspension order, although a letter confirming the licensee's status under the annealing rule would be prepared. The rule itself, as is currently drafted, would specify the conditions for lifting of the suspension (Section 50.66(b)). The licensee would anneal its reactor vessel without prior NRC approval of its program for conducting the annealing. Upon completion, the suspension would be lifted only if the licensee demonstrated that the thermal annealing has addressed the reactor enbrittlement such that it is acceptable to operate the plant. There would be no opportunity for hearing associated with the lifting of the suspension, and since there would be no prior NRC approval of the annealing program, a hearing opportunity under Section 189 would not be implicated by any such approval.

Submission of Comments in Electronic Format

Commenters are encouraged to submit, in addition to the original paper copy, a copy of the letter in electronic format on a DOS-formatted (IBM compatible) 5.25 or 3.5 inch computer diskette. Text files should be provided in WordPerfect format or unformatted ASCII code. The format and version should be identified on the diskette's external label.

Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of human environment and, therefore, an environmental impact statement is not required.

As discussed below, the individual actions covered in this proposed rulemaking would either serve to enhance safety of the reactor pressure vessel, thereby decreasing the environmental impact of plant operation, or have no impact on the environment. Therefore, in all cases these individual actions will not have an adverse impact on the environment.

PTS Rule (10 CFR 50.61)

The inclusion of thermal annealing as an option for mitigating the effects of neutron irradiation would serve to decrease the environmental impact of plant operation by enhancing the safety of the reactor pressure vessel.

The incorporation of the Regulatory Guide 1.99, Revision 2, method for determining RT_{NDT} into the PTS rule would have no impact on the environment because this change will result in values of RT_{PTS} which are consistent with those currently used in plant operation.

The restructuring of the PTS rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, an environmental assessment is not necessary for this change.

Thermal Annealing Rule (10 CFR 50.66)

The proposed thermal annealing rule (10 CFR 50.66) would permit and provide requirements for the thermal annealing of a reactor vessel to restore fracture properties of the reactor vessel material which have been degraded by neutron irradiation. This rule does not affect all plants but provides an alternative for assuring compliance with the requirements in 10 CFR 50.61 and Appendix G of 10 CFR Part 50, and would only apply when a licensee elects to use it.

The application of thermal annealing to a reactor vessel would improve the condition of the reactor vessel material. In addition, this rule would establish requirements to avoid damaging the reactor system and to protect against accidents during the annealing operation, with attendant environmental consequences.

This rule is one of several regulatory requirements that will function to ensure reactor vessel integrity. In that sense, this rule would have a positive impact on the environment by reducing the potential for vessel failure. For these reasons, the Commission has determined that there would be no significant impact and, therefore, an environmental statement is not required.

Appendix G of 10 CFR Part 50

Concerning the amendments proposed to Appendix G of 10 CFR Part 50, the prohibition of core criticality before completion of the required pressure and leak tests will serve to reduce the potential for vessel failure, and thereby decrease the environmental impact of plant operation.

The restructuring of Sections IV and V of Appendix G is clarifying or corrective in nature, and hence is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, an environmental assessment is not necessary for this change.

The changing of the reference from Appendix G of Section III of the ASME Code to Appendix G of Section XI of the ASME Code has no impact on the environment since the requirements in the Appendices are identical. Therefore, there is no adverse impact on the environment from this change.

The referencing of the thermal annealing rule results in no adverse impact on the environment since Appendix G currently permits the use of thermal annealing to reduce fracture toughness loss of the RPV materials due to irradiation embrittlement.

The deletion of the "design to permit annealing" requirement has no adverse impact on the environment. This assessment is based on the fact that annealing is a voluntary activity.

Appendix H of 10 CFR Part 50

Concerning the amendments proposed to Appendix H of 10 CFR Part 50, the requirement that all irradiation surveillance tests be made (i.e., no reduction in testing is permitted) would have a positive impact on the environment in helping to assure the integrity of the reactor pressure vessel.

The restructuring of Section II.C is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, an environmental assessment is not necessary for this change.

The clarification of the applicable version of ASTM Standard E 185 will result in no adverse impact to the environment since there will be no change to current surveillance programs. Changes to future surveillance programs will make the programs more effective in assessing irradiation embrittlement effects to the RPV materials, thereby helping to assure the integrity of the reactor pressure vessel.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this collection of information is estimated to average 6,000 hours per respondent, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0011), Office of Management and Budget, Washington, D.C. 20503.

Regulatory Analysis

The NRC staff has prepared a regulatory analysis for the proposed amendments to 10 CFR 50.61, 10 CFR Part 50, Appendix G and 10 CFR Part 50 Appendix H, which describes the factors and alternatives considered by the Commission in deciding to propose these amendments. A copy of the regulatory analysis is available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555. Single copies of the analysis may be obtained from Alfred Taboada, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone, (301) 415–6014.

Single copies of the regulatory analysis prepared for 10 CFR 50.66 may be obtained from Alfred Taboada, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone, (301) 415–6014.

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that, if adopted, the proposed amendments would not have a significant economic impact on a substantial number of small entities. The rules which would be affected by the proposed amendments: (1) Preclude brittle fracture of embrittled vessels during PTS events, (2) provide the general fracture toughness requirements for RPVs, including ductile fracture toughness requirements and pressure-temperature limits, (3) provide the requirements for surveillance programs to monitor irradiation embrittlement of RPV beltline materials, and (4) provide for a method for restoring the fracture toughness of RPV beltline materials used in nuclear facilities licensed under the provision of 10 CFR 50.21(b) and 10 CFR 50.22. The companies that own these facilities do not fall within the scope of the definition of "small entities" as set forth in the Regulatory Flexibility Act or the Small Business Size Standards in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

PTS Rule (10 CFR 50.61)

The proposed revision to Section 50.61 would require licensees to calculate RT_{PTS} using the same methodology specified in Regulatory Guide 1.99, Revision 2 for determining RT_{NDT}. This proposal is logically a requisite part of the 1991 revisions to § 50.61, which addressed a unified method for calculating radiation enbrittlement of the reactor beltline materials. However, the Commission inadvertently failed to make the conforming change to § 50.61. Therefore, the Commission believes that the backfit statement for the 1991 amendments, which determined that the backfits were necessary to ensure that the facility provides adequate protection to the public health and safety, are applicable to this conforming change to § 50.61.

The restructuring of the PTS rule does not impose any backfits as defined in 10 CFR 50.109(a)(1), since there is no change in requirements due to this restructuring.

The inclusion of thermal annealing does not impose any backfits as defined in 10 CFR 50.109(a)(1), for the reasons set forth below in "Thermal Annealing Rule (10 CFR 50.66)."

Thermal Annealing Rule (10 CFR 50.66)

The proposed thermal annealing rule would establish new requirements with respect to applications for thermal annealing. However, the Commission has determined that the proposed rule would not impose a "backfit" as defined in 10 CFR 50.109(a)(1). The proposed thermal annealing rule would not require any licensee to perform thermal annealing. Under existing requirements, all licensees are required to evaluate whether they exceed the PTS screening limits in 10 CFR 50.61 and the Charpy

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upper shelf screening limits in 10 CFR Part 50, Appendix G. However, these rules provide an alternative means to meet these screening limits, *viz.*, performing thermal annealing. No licensee currently has pending before the NRC an application for thermal annealing, nor has any current licensee been granted permission to conduct thermal annealing. In addition, the proposed rule does not reflect any new or different Staff position which conflicts with a prior Staff position or Commission rule. Thus, the proposed rule would have a purely prospective effect on future applications for thermal annealing. The Commission has stated in other rulemakings establishing prospective requirements, *e.g.*, 10 CFR Part 52 and the License Renewal Rule, 10 CFR Part 54, that the Backfit Rule was not intended to protect the future applicant from current changes in Commission requirements when there are no prior NRC positions upon which the "substantial increase in overall protection" can be measured. Accordingly, the Commission concludes that the proposed rule does not impose backfits and a backfit analysis need not be prepared for the proposed thermal annealing rule.

10 CFR Part 50 Appendix G

The restructuring of Sections IV and V of this appendix, referencing of the thermal annealing rule, changing the reference from Appendix G of Section III of the ASME Code to Appendix G of Section XI of the ASME Code, and deleting the "design to permit annealing" requirement do not impose any backfits as defined in 10 CFR 50.109(a)(1), because they are either prospective in nature or of a clarifying nature.

The explicit prohibition on core criticality before the completion of pressure and leak tests can be construed as a backfit, although NRC staff intent was never to permit such a procedure (letter from J. M. Taylor, NRC, to N. S. Reynolds and D. F. Stenger, NUBARG, dated February 2, 1990). The Commission has concluded that any backfit requirements in this amendment are necessary to bring the facilities into compliance with licenses, or the rules and orders of the Commission, or into conformance with written commitments by the licensees. Therefore, a backfit analysis is not required pursuant to 10 CFR 50.109(a)(4)(i). This amendment underscores the prior intent of the Commission to prohibit the use of nuclear heat before the completion of leak and pressure tests that is implicit in 10 CFR 50.55a and Section XI of the ASME Code. The Commission's intent in this regard is demonstrated by the fact that only a very small minority of licensees actually used nuclear heat to conduct pressure and leak tests required by the ASME Code.

10 CFR Part 50 Appendix H

The amendments to Appendix H of 10 CFR Part 50 are either prospective in nature or of a clarifying nature, and hence do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

Criminal Penalties

For purposes of Section 223 of the Atomic Energy Act (AEA), the Commission proposes to issue the proposed rule under one or more of Sections 161b, 161i or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, and 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 - 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat 955 (42 U.S.C. 2237).

2. Section 50.61 is revised to read as follows:

§ 50.61 Fracture toughness requirements for protection against pressurized thermal shock events.

(a) Definitions. For the purposes of this section:

(1) *ASME Code* means the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section III, Division I, "Rules for the Construction of Nuclear Power Plant Components," edition and addenda and any limitations and modifications thereof as specified in § 50.55a of this part.

(2) *Pressurized Thermal Shock Event* means an event or transient in pressurized water reactors (PWRs) causing severe overcooling (thermal shock) concurrent with or followed by significant pressure in the reactor vessel.

(3) *Reactor Vessel Beltline* means the region of the reactor vessel (shell material including welds, heat affected zones and plates or forgings) that directly surrounds the effective height of the active core and adjacent regions of the reactor vessel that are predicted to experience sufficient neutron radiation damage to be considered in the selection of the most limiting material with regard to radiation damage.

(4) RT_{NDT} means the reference temperature for a reactor vessel material, under any conditions. For the reactor vessel beltline materials, RT_{NDT} must account for the effects of neutron radiation.

(5) $RT_{NDT(U)}$ means the reference temperature for a reactor vessel material in the pre-service or unirradiated condition, evaluated according to the procedures in the ASME Code, Paragraph NB–2331.

(6) *EOL Fluence* means the best-estimate neutron fluence projected for a specific vessel beltline material at the clad-base-metal interface on the inside surface of the vessel at the location where the material receives the highest fluence on the expiration date of the operating license, the proposed expiration date if a change in the term of the operating license has been requested, or the end of a renewal term if an application for a renewed license under 10 CFR Part 54 has been submitted.

(7) RT_{PTS} means the reference temperature, RT_{NDT}, evaluated for the

EOL Fluence for each of the vessel beltline materials, using the procedures of paragraph (c) of this section.

(8) *PTS Screening Criterion* means the value of RT_{PTS} for the vessel beltline material above which the plant cannot continue to operate without justification.

(b) Requirements.

(1) For each pressurized water nuclear power reactor for which an operating license has been issued, the licensee shall have projected values of RT_{PTS}, accepted by the NRC, for each reactor vessel beltline material for the EOL fluence of the material. The assessment of RT_{PTS} must use the calculative procedures given in paragraph (c)(1) of this section, except as provided in paragraphs (c)(2) and (c)(3) of this section. The assessment must specify the bases for the projected value of RT_{PTS} for each vessel beltline material, including the assumptions regarding core loading patterns, and must specify the copper and nickel contents and the fluence value used in the calculation for each beltline material. This assessment must be updated whenever there is a significant [1] change in projected values of RT_{PTS}, or upon a request for a change in the expiration date for operation of the facility.

(2) The pressurized thermal shock (PTS) screening criterion is 270 °F for plates, forgings, and axial weld materials, and 300 °F for circumferential weld materials. For the purpose of comparison with this criterion, the value of RT_{PTS} for the reactor vessel must be evaluated according to the procedures of paragraph (c) of this section, for each weld and plate, or forging, in the reactor vessel beltline. RT_{PTS} must be determined for each vessel beltline material using the EOL fluence for that material.

(3) For each pressurized water nuclear power reactor for which the value of RT_{PTS} for any material in the beltline is projected to exceed the PTS screening criterion using the EOL fluence, the licensee shall implement those flux reduction programs that are reasonably practicable to avoid exceeding the PTS screening criterion set forth in paragraph (b)(2) of this section. The schedule for implementation of flux reduction measures may take into account the schedule for submittal and anticipated approval by the Director, Office of Nuclear Reactor Regulation, of detailed plant-specific analyses.

[1] Changes to RT_{PTS} values are considered significant if either the previous value or the current value, or both values, exceed the screening criterion prior to the expiration of the operating license, including any renewed term, if applicable, for the plant.

submitted to demonstrate acceptable risk with RT_{PTS} above the screening limit due to plant modifications, new information or new analysis techniques.

(4) For each pressurized water nuclear power reactor for which the analysis required by paragraph (b)(3) of this section indicates that no reasonably practicable flux reduction program will prevent RT_{PTS} from exceeding the PTS screening criterion using the EOL fluence, the licensee shall submit a safety analysis to determine what, if any, modifications to equipment, systems, and operation are necessary to prevent potential failure of the reactor vessel as a result of postulated PTS events if continued operation beyond the screening criterion is allowed. In the analysis, the licensee may determine the properties of the reactor vessel materials based on available information, research results, and plant surveillance data, and may use probabilistic fracture mechanics techniques. This analysis must be submitted at least three years before RT_{PTS} is projected to exceed the PTS screening criterion.

(5) After consideration of the licensee's analyses, including effects of proposed corrective actions, if any, submitted in accordance with paragraphs (b)(3) and (b)(4) of this section, the Director, Office of Nuclear Reactor Regulation, may, on a case-by-case basis, approve operation of the facility with RT_{PTS} in excess of the PTS screening criterion. The Director, Office of Nuclear Reactor Regulation, will consider factors significantly affecting the potential for failure of the reactor vessel in reaching a decision.

(6) If the Director, Office of Nuclear Reactor Regulation, concludes, pursuant to paragraph (b)(5) of this section, that operation of the facility with RT_{PTS} in excess of the PTS screening criterion cannot be approved on the basis of the licensee's analyses submitted in accordance with paragraphs (b)(3) and (b)(4) of this section, the licensee shall request and receive approval by the Director, Office of Nuclear Reactor Regulation, prior to any operation beyond the criterion. The request must be based upon modifications to equipment, systems, and operation of the facility in addition to those previously proposed in the submitted analyses that would reduce the potential for failure of the reactor vessel due to PTS events, or upon further analyses based upon new information or improved methodology.

(7) If the limiting RT_{PTS} value of the plant is projected to exceed the screening criteria in paragraph (b)(2), or the criteria in paragraphs (b)(3) through (b)(6) of this section cannot be satisfied, the reactor vessel beltline may be given a thermal annealing treatment to recover the fracture toughness of the material, subject to the requirements of § 50.66. The reactor vessel may continue to be operated only for that service period within which the predicted fracture toughness of the vessel beltline materials satisfy the requirements of paragraphs (b)(2) through (b)(6) of this section, with RT_{PTS} accounting for the effects of annealing and subsequent irradiation.

(c) Calculation of RT_{PTS}. RT_{PTS} must be evaluated using the same procedures used to calculate RT_{NDT}, as indicated in paragraph (c)(1) of this section, and as provided in paragraphs (c)(2) and (c)(3). RT_{PTS} must be calculated for each vessel beltline material using a fluence value, f, which is the EOL fluence for the material.

(1) Equation 1 must be used to calculate values of RT_{NDT} for each weld and plate, or forging, in the reactor vessel beltline.

Equation 1:

$$RT_{NDT} = RT_{NDT(U)} + M + \Delta RT_{NDT}$$

(i) $RT_{NDT(U)}$ is the reference temperature, RT_{NDT}, of the material in the pre-service or unirradiated condition, evaluated according to the procedures in the ASME Code, Paragraph NB–2331.

(A) If a measured value of $RT_{NDT(U)}$ is not available, a generic mean value for the class [2] of material may be used if there are sufficient test results to establish a mean and a standard deviation for the class.

(B) For weld metals, the following generic mean values must be used, unless justification for different values is provided: 0 °F for welds made with Linde 80 flux, and −56 °F for welds made with Linde 0091, 1092 and 124 and ARCOS B–5 weld fluxes.

(ii) *M* means the margin to be added to account for uncertainties in the values of $RT_{NDT(U)}$, copper and nickel contents, fluence and the calculational procedures. M is evaluated from Equation 2.

Equation 2:

$$M = 2\sqrt{\sigma_U^2 + \sigma_\Delta^2}$$

(A) In Equation 2, σ_U is the standard deviation for $RT_{NDT(U)}$. If a measured value of $RT_{NDT(U)}$ is used, then σ_U is determined from the precision of the test method. If a measured value of

[2] The class of material for estimating $RT_{NDT(U)}$ is generally determined for welds by the type of welding flux (Linde 80, or other), and for base metal by the material specification.

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$RT_{NDT(U)}$ is not available and a generic mean value for that class of materials is used, then σ_U is the standard deviation obtained from the set of data used to establish the mean. If a generic mean value given in paragraph (c)(1)(i)(B) for welds is used, then σ_U is 17 °F.

(B) In Equation 2, $\sigma\Delta$ is the standard deviation for ΔRT_{NDT}. The value of $\sigma\Delta$ to be used is 28 °F for welds and 17 °F for base metal; the value of $\sigma\Delta$ shall not exceed one-half of ΔRT_{NDT}.

(iii) ΔRT_{NDT} is the mean value of the transition temperature shift, or change in RT_{NDT}, due to irradiation, and must be calculated using Equation 3.

Equation 3:

$$\Delta RT_{NDT} = (CF)f^{(0.28-0.10\log f)}$$

(A) *CF* (°F) is the chemistry factor, which is a function of copper and nickel content. CF is given in Table 1 for welds and in Table 2 for base metal (plates and forgings). Linear interpolation is permitted. In Tables 1 and 2, "Wt-% copper" and "Wt-% nickel" are the best-estimate values for the material, which will normally be the mean of the measured values for a plate or forging. For a weld, the best estimate values will normally be the mean of the measured values for a weld deposit made using the same weld wire heat number as the critical vessel weld. If these values are not available, the upper limiting values given in the material specifications to which the vessel material was fabricated may be used. If not available, conservative estimates (mean plus one standard deviation) based on generic data[1] may be used if justification is provided. If none of these alternatives are available, 0.35% copper and 1.0% nickel must be assumed.

(B) *f* is the best estimate neutron fluence, in units of 10^{19} n/cm² (E greater than 1 MeV), at the clad-base-metal interface on the inside surface of the vessel at the location where the material in question receives the highest fluence for the period of service in question. As specified in paragraph (c), the EOL fluence for the vessel beltline material is used in calculating RT_{PTS}.

(2) To verify that RT_{NDT} for each vessel beltline material is a bounding value for the specific reactor vessel, licensees shall consider plant-specific information that could affect the level of embrittlement. This information includes but is not limited to the reactor vessel operating temperature and surveillance program results.

(i) Results from the plant-specific surveillance program must be integrated into the RT_{NDT} estimate if the plant-specific surveillance data has been deemed credible as judged by the following criteria:

(A) The materials in the surveillance capsules must be those which are the controlling materials with regard to radiation embrittlement.

(B) Scatter in the plots of Charpy energy versus temperature for the irradiated and unirradiated conditions must be small enough to permit the determination of the 30-foot-pound temperature unambiguously.

(C) Where there are two or more sets of surveillance data from one reactor, the scatter of ΔRT_{NDT} values must be less than 28 °F for welds and 17 °F for base metal. Even if the range in the capsule fluences is large (two or more orders of magnitude), the scatter may not exceed twice those values.

(D) The irradiation temperature of the Charpy specimens in the capsule must equal the vessel wall temperature at the cladding/base metal interface within ±25 °F.

(E) The surveillance data for the correlation monitor material in the capsule must fall within the scatter band of the data base for the material.

(ii) Surveillance data deemed credible according to the criteria of paragraph (c)(2)(i) must be used to determine a material-specific value of CF for use in Equation 3. A material-specific value of CF is determined from Equation 4.

Equation 4:

$$CF = \frac{\sum_{i=1}^{n}\left[A_i \times f_i^{(0.28-0.10\log f_i)}\right]}{\sum_{i=1}^{n}\left[f_i^{(0.56-0.20\log f_i)}\right]}$$

In Equation 4, "n" is the number of surveillance data points, "A_i" is the measured value of ΔRT_{NDT} and "f_i" is the fluence for each surveillance data point.

(iii) For cases in which the results from a credible plant-specific surveillance program are used, the value of $\sigma\Delta$ to be used is 14 °F for welds and 8.5 °F for base metal; the value of $\sigma\Delta$ may not exceed one-half of ΔRT_{NDT}.

(iv) The use of results from the plant-specific surveillance program may result in an RT_{NDT} that is higher or lower than those determined in paragraph (c)(1).

(3) Any information that is believed to improve the accuracy of the RT_{PTS} value significantly must be reported to the Director, Office of Nuclear Reactor Regulation. Any value of RT_{PTS} that has been modified using the procedures of paragraph (c)(2) is subject to the approval of the Director, Office of Nuclear Reactor Regulation when used as provided in this section.

TABLE 1.—CHEMISTRY FACTOR FOR WELD METALS, °F

Copper, Wt-%	Nickel, Wt-%						
	0	0.20	0.40	0.60	0.80	1.00	1.20
0	20	20	20	20	20	20	20
0.01	20	20	20	20	20	20	20
.02	21	26	27	27	27	27	27
.03	22	35	41	41	41	41	41
.04	24	43	54	54	54	54	54
.05	26	49	67	68	68	68	68
.06	29	52	77	82	82	82	82
.07	32	55	85	95	95	95	95
.08	36	58	90	106	108	108	108

[1] Data from reactor vessels fabricated to the same material specification in the same shop as the vessel in question and in the same time period is an example of "generic data."

TABLE 1.—CHEMISTRY FACTOR FOR WELD METALS, °F—Continued

Copper, Wt-%	Nickel, Wt-%						
	0	0.20	0.40	0.60	0.80	1.00	1.20
.09	40	61	94	115	122	122	122
.10	44	65	97	122	133	135	135
.11	49	68	101	130	144	148	148
.12	52	72	103	135	153	161	161
.13	58	76	106	139	162	172	176
.14	61	79	109	142	168	182	188
.15	66	84	112	146	175	191	200
.16	70	88	115	149	178	199	211
.17	75	92	119	151	184	207	221
.18	79	95	122	154	187	214	230
.19	83	100	126	157	191	220	238
.20	88	104	129	160	194	223	245
.21	92	108	133	164	197	229	252
.22	97	112	137	167	200	232	257
.23	101	117	140	169	203	236	263
.24	105	121	144	173	206	239	268
.25	110	126	148	176	209	243	272
.26	113	130	151	180	212	246	276
.27	119	134	155	184	216	249	280
.28	122	138	160	187	218	251	284
.29	128	142	164	191	222	254	287
.30	131	146	167	194	225	257	290
.31	136	151	172	198	228	260	293
.32	140	155	175	202	231	263	296
.33	144	160	180	205	234	266	299
.34	149	164	184	209	238	269	302
.35	153	168	187	212	241	272	305
.36	158	172	191	216	245	275	308
.37	162	177	196	220	248	278	311
.38	166	182	200	223	250	281	314
.39	171	185	203	227	254	285	317
.40	175	189	207	231	257	288	320

TABLE 2.—CHEMISTRY FACTOR FOR BASE METALS, °F

Copper, Wt-%	Nickel, Wt-%						
	0	0.20	0.40	0.60	0.80	1.00	1.20
0	20	20	20	20	20	20	20
0.01	20	20	20	20	20	20	20
.02	20	20	20	20	20	20	20
.03	20	20	20	20	20	20	20
.04	22	26	26	26	26	26	26
.05	25	31	31	31	31	31	31
.06	28	37	37	37	37	37	37
.07	31	43	44	44	44	44	44
.08	34	48	51	51	51	51	51
.09	37	53	58	58	58	58	58
.10	41	58	65	65	67	67	67
.11	45	62	72	74	77	77	77
.12	49	67	79	83	86	86	86
.13	53	71	85	91	96	96	96
.14	57	75	91	100	105	106	106
.15	61	80	99	110	115	117	117
.16	65	84	104	118	123	125	125
.17	69	88	110	127	132	135	135
.18	73	92	115	134	141	144	144
.19	78	97	120	142	150	154	154
.20	82	102	125	149	159	164	165
.21	86	107	129	155	167	172	174
.22	91	112	134	161	176	181	184
.23	95	117	138	167	184	190	194
.24	100	121	143	172	191	199	204
.25	104	126	148	176	199	208	214
.26	109	130	151	180	205	216	221
.27	114	134	155	184	211	225	230
.28	119	138	160	187	216	233	239
.29	124	142	164	191	221	241	248
.30	129	146	167	194	225	249	257

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TABLE 2.—CHEMISTRY FACTOR FOR BASE METALS, °F—Continued

Copper, Wt-%	Nickel, Wt-%						
	0	0.20	0.40	0.60	0.80	1.00	1.20
.31	134	151	172	198	228	255	266
.32	139	155	175	202	231	260	274
.33	144	160	180	205	234	264	282
.34	149	164	184	209	238	268	290
.35	153	168	187	212	241	272	298
.36	158	173	191	216	245	275	303
.37	162	177	196	220	248	278	308
.38	166	182	200	223	250	281	313
.39	171	185	203	227	254	285	317
.40	175	189	207	231	257	288	320

3. A new § 50.66 is added to read as follows:

§ 50.66 Requirements for thermal annealing of the reactor pressure vessel.

(a) For those light water nuclear power reactors where neutron radiation has reduced the fracture toughness of the reactor vessel materials, a thermal annealing treatment may be applied to the reactor vessel to restore the fracture toughness to acceptable levels. The use of a thermal annealing treatment is subject to the approval of the Director, Office of Nuclear Reactor Regulation, and to the requirements in this section. The application for the Director's approval must be submitted in accordance with § 50.4, and at least three years prior to the proposed date of the annealing operation.

(b) Thermal Annealing Application. The content of the application for approval by the Director, Office of Nuclear Reactor Regulation, for thermal annealing of the reactor vessel must include: a thermal annealing operating plan that includes an evaluation of the effects of mechanical and thermal stresses and temperatures, an inspection and test program to requalify the annealed reactor vessel, and a program for demonstrating that the recovery of fracture toughness and the re-embrittlement rate are adequate to permit subsequent safe operation of the reactor vessel for the period specified in the application.

(1) Thermal Annealing Operating Plan.

(i) The thermal annealing operating plan must include:

(A) A detailed description of the pressure vessel and all structures and components that will be affected by the thermal annealing operation;

(B) The methods, instrumentation and procedures proposed for performing the thermal annealing;

(C) A description of the heat source to be used; and

(D) The proposed thermal annealing operating parameters, including temperatures, times, and heatup and cooldown schedules.

(ii) The annealing time and temperature parameters selected must be based on projecting sufficient recovery of fracture toughness, using the procedures of paragraph (d) of this section, to satisfy the requirements of § 50.60 and § 50.61 for the proposed period of operation addressed in the application. In addition, the operating plan must describe any special precautions necessary to minimize occupational exposure, in accordance with the As Low As Reasonably Achievable (ALARA) principle and the provisions of § 20.1206.

(iii) An evaluation of the effects of mechanical and thermal stresses and temperatures on the vessel, attached piping and appurtenances, and adjacent equipment and components must demonstrate that operability of the reactor will not be detrimentally affected. A detailed thermal and structural analysis must be performed to establish the time and temperature profile of the annealing operation. These analyses must include heatup and cooldown rates, and must demonstrate that localized temperatures, thermal stress gradients, and subsequent residual stresses will not result in unacceptable dimensional changes or distortions in the vessel, attached piping and appurtenances, and that the thermal annealing cycle will not result in unacceptable degradation of the fatigue life of these components. The effects of localized high temperatures must be evaluated for degradation of the concrete adjacent to the vessel and changes in thermal and mechanical properties of the reactor vessel insulation. If the design temperature limitations for the adjacent concrete structure are to be exceeded during the annealing operation, an acceptable maximum temperature for the concrete must be established for the annealing operation using appropriate test data.

(iv) The time and temperature profile evaluated as part of the annealing operating plan, and supported by the evaluation results of paragraph (b)(1)(iii) of this section, represents the proposed annealing conditions that may not be exceeded during the annealing operation. If these conditions are exceeded, then the licensee cannot certify that the annealing operation was performed in accordance with the approved application, as required by paragraph (c)(1) of this section, and must comply with paragraph (c)(2) of this section.

(v) The projected percent recovery of both RT_{NDT} and Charpy upper-shelf energy must be determined by the procedures described in paragraph (d) of this section, using the proposed annealing time and temperature described in the operating plan. The projected post-anneal RT_{NDT} and Charpy upper-shelf energy must be determined from the projected percent recovery.

(vi) The projected rate of reembrittlement of RT_{NDT} must be calculated using the procedures in § 50.61(c), or must be the same rate as that used for the pre-anneal operating period. The projected rate of reembrittlement for Charpy upper-shelf energy must be the same rate as that used for the pre-anneal operating period.

(2) Requalification Inspection and Test Program. The inspection and test program to requalify the annealed reactor vessel must include the detailed monitoring, inspections, and tests proposed to demonstrate that the limitations on temperatures, times and temperature profiles, and stresses evaluated for the proposed annealing conditions of paragraph (b)(1)(iv) of this section have not been exceeded, and to determine the annealing time and temperature to be used in quantifying the fracture toughness recovery. In addition, the program must demonstrate that the annealing operation has not

degraded the reactor vessel, attached piping or appurtenances, or the adjacent concrete structures to a degree that could affect the safe operation of the reactor.

(3) Fracture Toughness Recovery and Reembrittlement Rate Assurance Program. The percent recovery of RT_{NDT} and Charpy upper-shelf energy obtained by the thermal annealing treatment must be determined from the time and temperature of the actual vessel annealing. The recovery of RT_{NDT} and Charpy upper-shelf energy provide the basis for establishing the post-anneal RT_{NDT} and Charpy upper-shelf energy for each vessel material. Changes in the RT_{NDT} and Charpy upper-shelf energy with subsequent plant operation must be determined using the post-anneal values of these parameters in conjunction with the projected reembrittlement rate determined in accordance with paragraph (b)(3)(ii) of this section.

(i) The recovery of RT_{NDT} and Charpy upper-shelf energy must be established using the procedures in paragraph (d) of this section, using the time and temperature of the actual vessel annealing.

(A) If the percent recovery is determined from testing surveillance specimens or from testing materials removed from the reactor vessel, then it shall be demonstrated that the proposed annealing parameters used in the test program are equal to or bounded by those used in the vessel annealing operation.

(B) If generic computational methods are used, appropriate justification must be submitted as a part of the application.

(ii) The reembrittlement rate of both RT_{NDT} and Charpy upper-shelf energy must be estimated, and must be monitored using a surveillance program which conforms to Appendix H of this part, "Reactor Vessel Material Surveillance Program Requirements."

(c) Certification of the Annealing Effectiveness.

(1) Upon completion of the anneal and prior to re-start of the nuclear power plant, the licensee shall certify to the Director, Office of Nuclear Reactor Regulation, that the thermal annealing was performed in accordance with the approved application required by paragraph (a) of this section, and meets the provisions of paragraph (b) of this section. In this certification, the licensee shall establish the period for which the reactor vessel will satisfy the requirements of § 50.60 and § 50.61, and shall provide:

(i) The post-anneal RT_{NDT} and Charpy upper-shelf energy values of the reactor vessel materials for use in subsequent reactor operation;

(ii) The projected reembrittlement trends for both RT_{NDT} and Charpy upper-shelf energy; and

(iii) The projected values of RT_{PTS} and Charpy upper-shelf energy at the end of the proposed period of operation addressed in the application.

(2) If the licensee cannot certify that the thermal annealing was performed in accordance with the approved application and the provisions of paragraph (b) of this section, the licensee shall submit a justification for subsequent operation for approval by the Director, Office of Nuclear Reactor Regulation.

(d) Procedures for Determining the Recovery of Fracture Toughness. The procedures of this paragraph must be used to determine the percent recovery of ΔPT_{NDT}, R_t, and percent recovery of Charpy upper-shelf energy, R_u. In all cases, R_t and R_u may not exceed 100.

(1) For those reactors with surveillance programs which have developed credible surveillance data as defined in § 50.61, percent recovery due to annealing (R_t and R_u) must be evaluated by testing surveillance specimens that have been withdrawn from the surveillance program and that have been annealed under the same time and temperature conditions as those given the beltline material.

(2) Alternatively, the percent recovery due to annealing (R_t and R_u) may be determined from the results of a verification test program employing materials removed from the beltline region of the reactor vessel[1] and that have been annealed under the same time and temperature conditions as those given the beltline material.

(3) Generic computational methods may be used to determine recovery if adequate justification is provided.

4. In 10 CFR Part 50, Appendix G is revised to read as follows:

Appendix G to Part 50—Fracture Toughness Requirements

Table of Contents

I. Introduction and Scope
II. Definitions
III. Fracture Toughness Tests
IV. Fracture Toughness Requirements

I. Introduction and Scope

This appendix specifies fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary of light water nuclear power reactors to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime.

The ASME Code forms the basis for the requirements of this appendix. "ASME Code" means the American Society of Mechanical Engineers Boiler and Pressure Vessel Code. If no section is specified, the reference is to Section III, Division 1, "Rules for Construction of Nuclear Power Plant Components." "Section XI" means Section XI, Division 1, "Rules for Inservice Inspection of Nuclear Power Plant Components." If no edition or addenda are specified, the ASME Code edition and addenda and any limitations and modifications thereof, which are specified in § 50.55a, are applicable.

The sections, editions and addenda of the ASME Boiler and Pressure Vessel Code specified in § 50.55a have been approved for incorporation by reference by the Director of the **Federal Register**. A notice of any changes made to the material incorporated by reference will be published in the **Federal Register**. Copies of the ASME Boiler and Pressure Vessel Code may be purchased from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th St., New York, NY 10017 and are available for inspection at the NRC Library, 11545 Rockville Pike, Two White Flint North, Rockville, Maryland 20852–2738.

The requirements of this appendix apply to the following materials:

A. Carbon and low-alloy ferritic steel plate, forgings, castings, and pipe with specified minimum yield strengths not over 50,000 psi (345 MPa), and to those with specified minimum yield strengths greater than 50,000 psi (345 MPa) but not over 90,000 psi (621 MPa) if qualified by using methods equivalent to those described in paragraph G–2110 of Appendix G of Section XI of the latest edition and addenda of the ASME Code incorporated by reference into § 50.55a(b)(2).

B. Welds and weld heat-affected zones in the materials specified in paragraph I.A. of this appendix.

C. Materials for bolting and other types of fasteners with specified minimum yield strengths not over 130,000 psi (896 MPa).

Note: The adequacy of the fracture toughness of other ferritic materials not covered in this section must be demonstrated to the Director, Office of Nuclear Reactor Regulation, on an individual case basis.

[1] For those cases where materials are removed from the beltline of the pressure vessel, the stress limits of the applicable portions of the ASME Code Section III must be satisfied, including consideration of fatigue and corrosion, regardless of the Code of record for the vessel design.

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II. Definitions

A. *Ferritic material* means carbon and low-alloy steels, higher alloy steels including all stainless alloys of the 4xx series, and maraging and precipitation hardening steels with a predominantly body-centered cubic crystal structure.

B. *System hydrostatic tests* means all preoperational system leakage and hydrostatic pressure tests and all system leakage and hydrostatic pressure tests performed during the service life of the pressure boundary in compliance with the ASME Code, Section XI.

C. *Specified minimum yield strength* means the minimum yield strength (in the unirradiated condition) of a material specified in the construction code under which the component is built under § 50.55a.

D. RT_{NDT} means the reference temperature of the material, for all conditions.

(i) For the pre-service or unirradiated condition, RT_{NDT} is evaluated according to the procedures in the ASME Code, Paragraph NB–2331.

(ii) For the reactor vessel beltline materials, RT_{NDT} must account for the effects of neutron radiation.

E. ΔRT_{NDT} means the transition temperature shift, or change in RT_{NDT}, due to neutron radiation effects, which is evaluated as the difference in the 30 ft-lb (41 J) index temperatures from the average Charpy curves measured before and after irradiation.

F. *Beltline* or *Beltline region of reactor vessel* means the region of the reactor vessel (shell material including welds, heat affected zones, and plates or forgings) that directly surrounds the effective height of the active core and adjacent regions of the reactor vessel that are predicted to experience sufficient neutron radiation damage to be considered in the selection of the most limiting material with regard to radiation damage.

III. Fracture Toughness Tests

A. To demonstrate compliance with the fracture toughness requirements of Section IV of this appendix, ferritic materials must be tested in accordance with the ASME Code and, for the beltline materials, the test requirements of Appendix H of this part. For a reactor vessel that was constructed to an ASME Code earlier than the Summer 1972 Addenda of the 1971 Edition (under § 50.55a), the fracture toughness data and data analyses must be supplemented in a manner approved by the Director, Office of Nuclear Reactor Regulation, to demonstrate equivalence with the fracture toughness requirements of this appendix.

Test methods for supplemental fracture toughness tests described in paragraph IV.A.1.b of this appendix must be submitted to and approved by the Director, Office of Nuclear Reactor Regulation, prior to testing.

C. All fracture toughness test programs conducted in accordance with paragraphs III.A and III.B must comply with ASME Code requirements for calibration of test equipment, qualification of test personnel, and retention of records of these functions and of the test data.

IV. Fracture Toughness Requirements

The pressure-retaining components of the reactor coolant pressure boundary that are made of ferritic materials must meet the requirements of the ASME Code, supplemented by the additional requirements set forth below, for fracture toughness during system hydrostatic tests and any condition of normal operation, including anticipated operational occurrences. Reactor vessels may continue to be operated only for that service period within which the requirements of this section are satisfied. For the reactor vessel beltline materials, including welds, plates and forgings, the values of RT_{NDT} and Charpy upper-shelf energy must account for the effects of neutron radiation, including the results of the surveillance program of Appendix H of this part. The effects of neutron radiation must consider the radiation conditions (i.e., the fluence) at the deepest point on the crack front of the flaw assumed in the analysis.

1. Reactor Vessel Charpy Upper-Shelf Energy Requirements

a. Reactor vessel beltline materials must have Charpy upper-shelf energy,[1] in the transverse direction for base material and along the weld for weld material according to the ASME Code, of no less than 75 ft-lb (102 J) initially and must maintain Charpy upper-shelf energy throughout the life of the vessel of no less than 50 ft-lb (68 J), unless it is demonstrated in a manner approved by the Director, Office of Nuclear Reactor Regulation, that lower values of Charpy upper-shelf energy will provide margins of safety against fracture equivalent to those required by Appendix G of Section XI of the ASME Code. This analysis must use the latest edition and addenda of the ASME Code incorporated by reference into § 50.55a(b)(2) at the time the analysis is submitted.

[1] Defined in ASTM E 185–79 and –82 which are incorporated by reference in Appendix H to Part 50.

b. Additional evidence of the fracture toughness of the beltline materials after exposure to neutron irradiation may be obtained from results of supplemental fracture toughness tests, for use in the analysis specified in section IV.A.1.a.

c. The analysis for satisfying the requirements of section IV.A.1 of this appendix must be submitted, as specified in § 50.4, for review and approval on an individual case basis at least three years prior to the date when the predicted Charpy upper-shelf energy will no longer satisfy the requirements of section IV.A.1 of this appendix, or on a schedule approved by the Director, Office of Nuclear Reactor Regulation.

2. Pressure-Temperature Limits and Minimum Temperature Requirements

a. Pressure-temperature limits and minimum temperature requirements for the reactor vessel are given in Table 1, and are defined by the operating condition (i.e., hydrostatic pressure and leak tests, or normal operation including anticipated operational occurrences), the vessel pressure, whether or not fuel is in the vessel, and whether or not the core is critical. In Table 1, the vessel pressure is defined as a percentage of the preservice system hydrostatic test pressure. The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions.

b. The pressure-temperature limits identified as "ASME Appendix G limits" in Table 1 require that the limits must be at least as conservative as limits obtained by following the methods of analysis and the margins of safety of Appendix G of Section XI of the ASME Code.

c. The minimum temperature requirements given in Table 1 pertain to the controlling material, which is either the material in the closure flange or the material in the beltline region with the highest reference temperature. As specified in Table 1, the minimum temperature requirements and the controlling material depend on the operating condition (i.e., hydrostatic pressure and leak tests, or normal operation including anticipated operational occurrences), the vessel pressure, whether fuel is in the vessel, and whether the core is critical. The metal temperature of the controlling material, in the region of the controlling material which has the least favorable combination of stress and temperature, must exceed the appropriate minimum temperature requirement for the condition and pressure of the vessel specified in Table 1.

d. Pressure tests and leak tests of the reactor vessel that are required by Section XI of the ASME Code must be completed before the core is critical.

B. If the procedures of Section IV.A. of this appendix do not indicate the existence of an equivalent safety margin, the reactor vessel beltline may be given a thermal annealing treatment to recover the fracture toughness of the material, subject to the requirements of § 50.66. The reactor vessel may continue to be operated only for that service period within which the predicted fracture toughness of the beltline region materials satisfies the requirements of Section IV.A. of this appendix using the values of RTNDT and Charpy upper-shelf energy that include the effects of annealing and subsequent irradiation.

TABLE 1.—PRESSURE AND TEMPERATURE REQUIREMENTS

Operating condition	Vessel pressure(1)	Requirements for pressure-temperature limits	Minimum temperature requirements
1. Hydrostatic pressure and leak tests (core is not critical):			
1.a Fuel in the vessel	≤20%	ASME Appendix G Limits	(2) + 60 °F.
1.b Fuel in the vessel	>20%	ASME Appendix G Limits	(2)+90 °F.
1.c No fuel in the vessel (Preservice Hydrotest Only).	ALL	(Not Applicable)	(3)+60 °F.
2. Normal operation (incl. heat-up and cool-down), including anticipated operational occurrences:			
2.a Core not critical	≤20%	ASME Appendix G Limits	(2).
2.b Core not critical	>20%	ASME Appendix G Limits	(2)+120 °F (6)
2.c Core critical	≤20%	ASME Appendix G Limits+40 °F	Larger of [(4)] or [(2)+40 °F].
2.d Core critical	>20%	ASME Appendix G Limits+40 °F	Larger of [(4)] or [(2)+160 °F]
2.e Core critical for BWR (5)	≤20%	ASME Appendix G Limits+40 °F	(2)+60 °F.

(1) Percent of the preservice system hydrostatic test pressure.
(2) The highest reference temperature of the material in the closure flange region that is highly stressed by the bolt preload.
(3) The highest reference temperature of the vessel.
(4) The minimum permissible temperature for the inservice system hydrostatic pressure test.
(5) For boiling water reactors (BWR) with water level within the normal range for power operation.
(6) Lower temperatures are permissible if they can be justified by showing that the margins of safety of the controlling region are equivalent to those required for the beltline when it is controlling.

5. In 10 CFR Part 50, Appendix H is revised to read as follows:

Appendix H to Part 50—Reactor Vessel Material Surveillance Program Requirements

Table of Contents

I. Introduction
II. Definitions
III. Surveillance Program Criteria
IV. Report of Test Results

I. Introduction

The purpose of the material surveillance program required by this appendix is to monitor changes in the fracture toughness properties of ferritic materials in the reactor vessel beltline region of light water nuclear power reactors which result from exposure of these materials to neutron irradiation and the thermal environment. Under the program, fracture toughness test data are obtained from material specimens exposed in surveillance capsules, which are withdrawn periodically from the reactor vessel. These data will be used as described in Section IV of Appendix G to this part.

ASTM E 185–73, –79, and –82, "Standard Practice for Conducting Surveillance Tests for Light-Water Cooled Nuclear Power Reactor Vessels," which are referenced in the following paragraphs, have been approved for incorporation by reference by the Director of the Federal Register. Copies of ASTM E 185–73, –79, and –82, may be purchased from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103 and are available for inspection at the NRC Library, 11545 Rockville Pike, Two White Flint North, Rockville, Maryland 20852–2738.

II. Definitions

All terms used in this Appendix have the same meaning as in Appendix G.

III. Surveillance Program Criteria

A. No material surveillance program is required for reactor vessels for which it can be conservatively demonstrated by analytical methods applied to experimental data and tests performed on comparable vessels, making appropriate allowances for all uncertainties in the measurements, that the peak neutron fluence at the end of the design life of the vessel will not exceed 10^{17} n/cm² (E >1 MeV).

B. Reactor vessels that do not meet the conditions of paragraph II.A of this appendix must have their beltline materials monitored by a surveillance program complying with ASTM E 185, as modified by this appendix.

1. The design of the surveillance program and the withdrawal schedule must meet the requirements of ASTM E 185–73 or the edition of ASTM E 185 that is current on the issue date of the ASME Code to which the reactor vessel was purchased, whichever is later. Later editions of ASTM E 185 may be used, but including only those editions through 1982. For each capsule withdrawal, the test procedures and reporting requirements must meet the requirements of ASTM E 185–82 to the extent practicable for the configuration of the specimens in the capsule.

2. Surveillance specimen capsules must be located near the inside vessel wall in the beltline region so that the specimen irradiation history duplicates, to the extent practicable within the physical constraints of the system, the neutron spectrum, temperature history, and maximum neutron fluence experienced by the reactor vessel inner surface. If the capsule holders are attached to the vessel wall or to the vessel cladding, construction and inservice inspection of the attachments and attachment welds must be done according to the requirements for permanent structural attachments to reactor vessels given in Sections III and XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code). The design and location of the capsule holders must permit insertion of replacement capsules. Accelerated irradiation capsules may be used in addition to the required number of surveillance capsules.

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3. A proposed withdrawal schedule must be submitted with a technical justification as specified in § 50.4. The proposed schedule must be approved prior to implementation.

C. Requirements for an Integrated Surveillance Program

1. In an integrated surveillance program, the representative materials chosen for surveillance for a reactor are irradiated in one or more other reactors that have similar design and operating features. Integrated surveillance programs must be approved by the Director, Office of Nuclear Reactor Regulation, on a case-by-case basis. Criteria for approval include the following:

a. The reactor in which the materials will be irradiated and the reactor for which the materials are being irradiated must have sufficiently similar design and operating features to permit accurate comparisons of the predicted amount of radiation damage.

b. Each reactor must have an adequate dosimetry program.

c. There must be adequate arrangement for data sharing between plants.

d. There must be a contingency plan to assure that the surveillance program for each reactor will not be jeopardized by operation at reduced power level or by an extended outage of another reactor from which data are expected.

e. There must be substantial advantages to be gained, such as reduced power outages or reduced personnel exposure to radiation, as a direct result of not requiring surveillance capsules in all reactors in the set.

2. No reduction in the requirements for number of materials to be irradiated, specimen types, or number of specimens per reactor is permitted.

3. After (the effective date of this section), no reduction in the amount of testing is permitted unless previously authorized by the Director, Office of Nuclear Reactor Regulation.

IV. Report of Test Results

A. Each capsule withdrawal and the test results must be the subject of a summary technical report to be submitted, as specified in § 50.4, within one year of the date of capsule withdrawal, unless an extension is granted by the Director, Office of Nuclear Reactor Regulation.

B. The report must include the data required by ASTM E 185, as specified in paragraph III.B.1 of this appendix, and the results of all fracture toughness tests conducted on the beltline materials in the irradiated and unirradiated conditions.

C. If a change in the Technical Specifications is required, either in the pressure-temperature limits or in the operating procedures required to meet the limits, the expected date for submittal of the revised Technical Specifications must be provided with the report.

Dated at Rockville MD, this 26th day of September 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94-24209 Filed 10-3-94; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08-94-028]

RIN 2115-AE47

Drawbridge Operation Regulation; Kelso Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the State Route 27 swing span drawbridge across Kelso Bayou, mile 0.7 at Hackberry, Cameron Parish, Louisiana. The proposed regulation would require that from about May 25 (the beginning of the shrimping season as set by the state yearly), until October 31, the bridge open on signal from 7 a.m. to 7 p.m. and open on 4-hours notice from 7 p.m. to 7 a.m. Then from November 1, through December 22, the draw would open on signal from 7 a.m. to 3 p.m. and from 3 p.m. to 7 a.m. open on 4-hours notice. From December 22, until about May 25, the draw would open on 24-hours notice. Presently, the bridge opens on signal from about May 25, until December 22. From December 22, until about May 25 the draw opens on 4-hours notice. Alternate routes are available.

This action would provide relief to the bridge owner and still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before December 5, 1994.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130-3396, or may be delivered to room 1313 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589-2965.

FOR FURTHER INFORMATION CONTACT: Mr. John Watcher, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested parties are invited to participate in the proposed rulemaking by submitting written views, comments, or arguments. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for concurrence with or any recommended change in this proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eighth Coast Guard District at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT Elisa Holland, project attorney.

Background and Purpose

LDOTD has requested the new proposed regulation because of a decline in vessel traffic that passes the Kelso Bayou bridge at Hackberry, during certain times of the year. The new proposed regulation would allow the bridge owner relief from having a person available at the bridge site during the periods that vessel traffic is less frequent. This proposed new regulation would create a savings to the taxpayer while still serving the reasonable needs of navigational interest.

Discussion of Proposed Rules

The Kelso Bayou bridge is a 406 foot structure. Navigational clearances provided by the bridge are 9.1 feet vertical above mean high water in the closed position and unlimited in the open position. Horizontal clearance is 50.0 feet. Navigation on the waterway consists of mainly small and large fishing boats, with occasional small oil field work boats. Data provided by LDOTD show that from January 1, through December 31, the number of vessels that passed the bridge totaled 740 for the year. This breaks down to about 61.6 vessels per month or 2.0 vessels per 24-hour period. Alternate routes are available. They are the Calcasieu Ship Channel, the Intracoastal Canal and the salt ditch.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small business and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Since the proposed rule also considers the needs of local commercial fishing vessels; the economic impact is expected to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under paragraph 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.459 is revised to read as follows:

117.459 Kelso Bayou.

The draw of the S27 bridge mile 0.7 at Hackerry, shall open on signal from 7 a.m. to 7 p.m. and open on 4 hours notice from 7 p.m. to 7 a.m. from about May 25 (the beginning of shrimp season as set by the state yearly), until October 31. Then from November 1 through December 22, the draw shall open on signal from 7 a.m. to 3 p.m. and from 3 p.m. to 7 a.m. the draw shall open on 4 hours notice. From December 22 until about May 25 the draw shall open on 24 hours notice.

Dated: September 20, 1994

R.C. North,

Rear Admiral, U.S. Coast Guard, Commander, Eight Coast Guard District.

[FR Doc. 94-24527 Filed 10-3-94; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD08-94-027]

RIN 2115-AE47

Drawbridge Operation Regulation; Mermentau River, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the State Route 82 swing span drawbridge across the Mermentau River mile 7.1 at Grand Chenier, Cameron Parish, Louisiana. The proposed regulation would require that the bridge open on signal from 6 a.m. to 6 p.m. and open on 4-hours notice from 6 p.m. to 6 a.m. Presently, the bridge opens on signal from 5 a.m. to 9 p.m. and from 9 p.m. to 5 a.m. the bridge opens on 4-hours notice. This action would provide relief to the bridge owner and still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before November 18, 1994.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130-3396, or may be delivered to room 1313 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589-2965.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested parties are invited to participate in the proposed rulemaking by submitting written views, comments or arguments. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for concurrence with or any recommended change in this proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eighth Coast Guard District at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation

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may be changed in the light of comments received.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT Elisa Holland, project attorney

Background and Purpose

LDOTD has requested the 4-hour difference in the time the bridgeowner is required to have an attendant on duty, because of a decline in vessel traffic that passes the Mermentau River bridge at Grand Chenier. The four-hour difference would allow the bridge owner relief from having a person available at the bridge site, thereby, creating a savings to the taxpayer while still serving the reasonable needs of navigational interest.

Discussion of Proposed Rules

The Mermentau River bridge is a 1049 foot structure. Navigational clearances provided by the bridge are 16-feet vertical above mean high water in the closed position and unlimited in the open position. Horizontal clearance is 69.5 feet. The depth of the waterway at the bridge site is approximately 20 feet. Navigation on the waterway consists of mainly small and large fishing boats, tugs with tows and work boats. Data provided by LDOTD show that from January 1, through December 31, 1993, the number of vessels that passed the bridge totaled 2929 for the year. This breaks down to about 240 vessels per month or 8.0 vessels per 24-hour period Alternate routes are available. They are the Calcasieu Ship Channel and the Intracoastal Canal.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979)

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small business and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Since the proposed rule also considers the needs of local commercial fishing vessels, the economic impact is expected to be minimal. Therefore, the Coast Guard certified under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under paragraph 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.480 is revised to read as follows:

§ 117.480 Mermentau River.

The draw of the S82 bridge mile 7.1 at Grand Chenier, shall open on signal; except that, from 6 p.m. to 6 a.m. the draw shall open on signal if at least 4 hours notice is given. During the advance notice period, the draw will open on less than 4 hours notice for an emergency and will open on demand should a temporary surge in waterway traffic occur.

Dated: September 20, 1994

R.C. North,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 94-24528 Filed 10-3-94, 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD08-94-029]

RIN 2115-AE47

Drawbridge Operation Regulation; Superior Oil Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the State Route 82 swing span drawbridge across Superior Oil Canal, mile 6.3, between Grand Chenier and Pecan Island, Cameron Parish, Louisiana. The proposed regulation would require 8-hours notice for an opening of the draw. Presently, the bridge opens on signal from 6 a.m. to 6 p.m. and from 6 p.m. to 6 a.m. the bridge opens on 4-hour notice. This action would provide relief to the bridge owner and still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before November 18, 1994.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or may be delivered to room 1313 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965.

FOR FURTHER INFORMATION CONTACT: Mr. John Watcher, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested parties are invited to participate in the proposed rulemaking by submitting written views, comments, or arguments. Persons submitting comments should include their names and addresses, identify the bridge and

give reasons for concurrence with or any recommended change in this proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eighth Coast Guard District at the address under ADDRESSES. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT Elisa Holland, project attorney.

Background and Purpose

LDOTD has requested 8-hours notice for an opening of the draw because of a decline in vessel traffic that passes the Superior Oil Canal bridge. Thus, the reason for the proposed change. 8-hour notice would allow the bridge owner relief from having a person available at the bridge site from 6 a.m. to 6 p.m., creating a savings to the taxpayer while still serving the reasonable needs of navigational interests.

Discussion of Proposed Rules

The Superior Oil Canal bridge is a 589 foot structure. Navigational clearances provided by the bridge are 13-feet vertical above mean high water in the closed position and unlimited in the open position. Horizontal clearance is 63-feet. The depth of the waterway at the bridge site is approximately 20-feet. Navigation on the waterway consists of mainly small tugs and light work boats. Data provided by LDOTD show that from January 1, through December 31, 1993, the number of vessels that passed the bridge totaled 191 for the year. This breaks down to about 15.9 vessels per month or 1.9 vessels per 24-hour period.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small business and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Since the proposed rule also considers the needs of local commercial fishing vessels, the economic impact is expected to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under paragraph 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.495 is revised to read as follows:

§ 117.495 Superior Oil Canal.

The draw of the S82 bridge mile 6.3 in Cameron Parish shall open on signal if at least 8 hours notice is given. Public vessels of the United States and vessels in distress shall be passed as soon as possible.

Dated: September 20, 1994.

R. C. North,

Rear Admiral, U.S. Coast Guard, Commander Eighth Coast Guard District.

[FR Doc. 94-24529 Filed 10-3-94, 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD13-93-031]

RIN 2115-AE47

Drawbridge Operation Regulations; Columbia River, OR and WA

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing an amendment to the drawbridge regulations governing the operation of the twin Interstate 5 drawbridges across the Columbia River, mile 106.5, between Portland, Oregon and Vancouver, Washington. The original Notice of Proposed Rulemaking proposed an extension of the morning and afternoon time periods when the draw need not open for the passage of vessels without regard to vessel type or river flow condition. This supplemental notice of proposed rulemaking proposes an amendment which would provide for relatively uninterrupted vehicular flow during peak traffic times while being less restrictive to commercial navigation during periods of high river flow conditions.

DATES: Comments must be received on or before December 5, 1994.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174-1067. The comments and other materials referenced in this notice will be available for inspection and copying

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at 915 Second Avenue, Room 3410, Seattle, Washington. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 220–7272).

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with, or any recommended changes in, the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The principle persons involved in drafting this notice are John E. Mikesell, project manager, and Lieutenant Laticia J. Argenti, project attorney.

Background and Purpose

The twin Interstate 5 vertical lift bridges across the Columbia River between Portland and Vancouver are required to open on signal, except that from 6:30 a.m. to 8 a.m. and 3:30 p.m. to 6 p.m. Monday through Friday except Federal holidays the draws need not open. These closed periods are necessary to accommodate peak morning and afternoon vehicular commute traffic across the bridges. Both bridges also provide alternate mid-level fixed spans which provide greater vertical clearance than do the drawspans in the closed position. The alternate fixed spans are routinely used by tug and barge traffic except at higher water surface elevations. Because the number of vehicles crossing the interstate bridges has increased dramatically, particularly during commute times, any opening in close proximity, before or after, results in unacceptable vehicular traffic delays. Therefore, Oregon State Department of Transportation (ORDOT) has requested an extension of the weekday closed periods. On November 26, 1993, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** (58 FR 62302). In addition, the Commander, Thirteenth Coast Guard District also published the proposal in a Public Notice dated December 14, 1993. Both notices advised the public that the Coast Guard was considering a proposal to extend the morning and afternoon time periods during which the draw need not open for the passage of vessels. The morning period would be changed to 5:30 a.m. to 9 a.m. and the afternoon period would be changed to 2:30 p.m. to 6 p.m. The Coast Guard received five comments in response to its public notice and no comments to its Federal Register notice. One commenter, a federal resource agency which routinely responds to our public notices did not take a position in favor or against the proposed amendment. Two commenters representing land transportation interests favored the proposal. Two commenters representing commercial navigation interests stated opposition to the proposal unless it was modified to provide the following: (1) When the vertical clearance under the green center of channel lights of the wide fixed span is less than 52 feet (river gauge 6.0 feet or more), the closed periods remain as existing. (2) When the vertical clearance under the green center of channel lights of the wide fixed span is greater than 52 feet (river gauge 5.9 feet or less), the proposed closed periods would be in effect.

Note: The referenced wide fixed span is the span between the vertical lift span and the designated alternate channel fixed span. Following further investigation by the Coast Guard it was determined that because vertical clearances of less than 52 feet under the center of the wide fixed span occur only during spring run off or other infrequent flood conditions, the requested change was reasonable for commercial navigation. We have incorporated it in this supplemental notice of proposed rulemaking. A public hearing was not requested and one was not held.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. it has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this action to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Because most waterway traffic can be accommodated by the alternate fixed span channel and the rule would revert to its previous less restrictive form when the vertical clearance under the alternate fixed span was less than 52 feet, the Coast Guard expects the economic impact of this propsal to be so minimal that a full Regulatory Evaluation is innecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et al.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because the impacts of this proposal are expected to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this proposal will not have a significant impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This proposal has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

This proposal has been reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation under the authority of 40 CFR Section 1507.3 and in accordance with paragraph 2.B.2.g.(5) of the NEPA Implementing Procedures, COMDTINST M16475.1B. A copy of the Categorical Exclusion Certification is available for review in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In section 117.869 paragraph (a) is revised to read as follows:

§ 117.869 Columbia River.

(a) The draws of the Interstate 5 highway bridges, mile 106.5, between Portland, OR and Vancouver, WA shall open on signal, except that:

(1) When the river gauge at the bridge indicates 0.0 feet, or more, as determined by the drawtender on duty, the draws need not open for the passage of commercial vessels from 6:30 a.m. to 8 a.m. and from 3:30 p.m. to 6 p.m. Monday through Friday except Federal Holidays.

(2) When the river gauge at the bridge indicates 5.9 feet, or less, as determined by the drawtender on day, the draws need not open for the passage of commercial vessels from 5:30 a.m. to 9 a.m. and from 2:30 p.m. to 6 p.m. Monday through Friday except Federal Holidays.

* * * * *

Dated: September 23, 1994.

John A. Pierson,

Captain, U.S. Coost Guard, Commander, 13th Coast Guard District, Acting.

[FR Doc. 94–24530 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Parts 166 and 167

[CGD 83–032]

RIN 2115–AB29

Traffic Separation Schemes and Shipping Safety Fairways Off the Coast of California (CGD 83–032)

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination.

SUMMARY: This rulemaking project was initiated to modify existing traffic separation schemes (TSSs) and establish a shipping safety fairway (SSF) off the coast of California to preserve a right of way for navigation through areas which were expected to be sites of offshore oil and gas development. The proposal was based on port access route studies conducted in the early 1980's. Congress later placed a moratorium on oil and gas drilling off California, and in September, 1992, the National Oceanic and Atmospheric Administration (NOAA) dedicated the Monterey Bay National Marine Sanctuary (MBNMS). The MBNMS encompasses the area where the Coast Guard had proposed the SSF to prohibit structures. The SSF is no longer needed because oil and gas drilling are prohibited in the Sanctuary. Additionally, the data that supported the proposed changes is now outdated. Therefore, the Coast Guard is terminating further rulemaking under docket number 83–032.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Short Range Aids to Navigation Division, U.S. Coast Guard Headquarters, (202) 267–0415.

SUPPLEMENTARY INFORMATION: The 1978 amendments to the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1223(c), required the Coast Guard to undertake a port access route study to determine the need for traffic separation schemes or shipping safety fairways to increase vessel traffic safety in offshore areas subject to the jurisdiction of the U.S. The Coast Guard initiated this study by publishing a Notice of Proposed Study on April 16, 1979 (44 FR 22543).

For the purposes of the port access route study, the U.S. coastline was divided into 32 geographically defined areas. Study area 22 included the coast of southern California and study areas 23 to 25 included the central and northern California coast. Through public participation and government agency consultation, the studies evaluated potential traffic density patterns, waterways use of conflicts, and the need for safe access routes in offshore areas.

The Study Results for the coast of southern California (area 22) were published on June 24, 1982 (47 FR 27430). An additional study of the Port Access Routes, Northern Approach to Santa Barbara Channel, was announced on July 26, 1984 (49 FR 30078), and results published on December 5, 1985 (50 FR 49861).

The Study Results for the central and northern coast of California (areas 23–25) were published on October 14, 1982 (47 FR 46043). An additional study on Port Access Routes, Entrance to San Francisco Bay was announced on December 17, 1984 (49 FR 48946), and the study results were published on May 8, 1986 (51 FR 17071).

The port access route studies recommended amendments to the TSSs off the coast of California and the designation of new SSFs to establish a comprehensive safe routing system for vessels proceeding to, from, or between the ports of San Francisco and Los Angeles-Long Beach. The Coast Guard published a proposed rule on April 27, 1989 (54 FR 18258) to implement the study recommendations. However, after considering information from public hearings, extensive written comments opposing the proposal, the Congressional moratorium on oil and gas drilling, and the effect of the MBNMS, the Coast Guard has determined that the proposed SSF is not needed. Therefore, this rulemaking is no longer necessary, and the Coast Guard is terminating further rulemaking under docket number 83–032. On August 24, 1993 (58 FR 44634), the Coast Guard announced a new study of the area to evaluate the need for routing measures in the approaches to California ports and the need for measures to regulate vessel traffic in the offshore California national marine sanctuaries to protect sanctuary resources.

Dated: September 29, 1994.

R. C. Houle,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94–24522 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–13–2–6293; FRL–5084–7]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County Division of Air Pollution Control

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the Arizona State Implementation Plan (SIP) which control emissions from solvent degreasing operations, petroleum solvent dry cleaning, gasoline transfer, and the use of roadway asphalt. The intended effect of approving these rules is to regulate volatile organic compound (VOC) emissions in accordance with the requirements of the Clean Air Act, as amended (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPR) will incorporate these rules into the federally approved SIP.

EPA proposed conditional approval of earlier submittals of several of these rules in the **Federal Register** on

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September 29, 1992 based on the Maricopa County Division of Air Pollution Control's (the Division's) commitment to fix the rule deficiencies. The Division has fulfilled its commitment to fix the rules, and has submitted the revised rules being acted upon in this document. EPA has evaluated each of the rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: Comments must be received on or before November 3, 1994.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Arizona Department of Environmental Quality, 3033 N. Central Avenue, Phoenix, AZ 85012.

Maricopa County Division of Air Pollution Control, 2406 South 24th Street, suite E–214, Phoenix, AZ 85034.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being proposed for approval into the Arizona SIP include: Maricopa County Division of Air Pollution Control (the Division) Rules 331, Solvent Cleaning; 333, Petroleum Solvent Dry Cleaning; 340, Cutback and Emulsified Asphalt; and 353, Transfer of Gasoline into Stationary Dispensing Tanks. These rules were submitted to EPA by the Arizona Department of Environmental Quality (ADEQ) on August 10 (Rules 331 and 333), November 13 (Rule 340), and June 29 (Rule 353), 1992.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included Maricopa County. 43 FR 8964, 40 CFR 81.303. On March 19, 1979, EPA changed the name and modified the geographic boundaries of the ozone nonattainment area of Maricopa County to the Maricopa Association of Governments (MAG) Urban Planning Area. 44 FR 16391, 40 CFR 81.303. On February 24, 1984, EPA notified the Governor of Arizona, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the Division's portion of the Arizona SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call, 49 FR 18827, May 3, 1984). On May 26, 1988, EPA again notified the Governor of Arizona that the Division's portion of the Arizona SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies relating to VOC controls and the application of reasonably available control technology (RACT) in the existing SIP be corrected (EPA's second SIP-Call, 53 FR 34500, September 7, 1988). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient RACT rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies. Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amended guidance.[1] EPA's SIP-Calls used that guidance to indicate the necessary corrections for specific nonattainment areas. The MAG Urban Planning Area is classified as moderate [2]; therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

On June 22, 1991, EPA notified the State of Arizona that EPA had not received by the May 15, 1991 deadline all required VOC rule corrections under section 182(a)(2)(A) of the CAA. The finding letter identified that the Division had failed to submit required rule corrections. The official finding notice was published in the **Federal Register** on October 22, 1991 (56 FR 54554). The Division's Rule 353 was listed in that finding notice. As a result, the Division had 18 months to submit those rules to EPA before a sanction would be imposed.

On September 29, 1992, in 57 FR 44716, EPA published a Notice of Proposed Rulemaking (NPRM) which proposed conditional approval of the following Division rules into the Arizona SIP: Dry Cleaning, and (3) Rule 340, Cutback and Emulsified Asphalt.[3] The conditional approval proposed for the rules was based on the State's commitment to correct deficiencies identified in the rules by EPA. The corrected rules were submitted before EPA finalized the conditional approval and were submitted to fulfill the State's commitment to correct the deficiencies.

The State of Arizona submitted several revised RACT rules for incorporation into its SIP on June 29, August 10, and November 13, 1992 including the rules being acted on in this document. This document addresses EPA's proposed action for the Division's Rule 331, Solvent Cleaning; Rule 333, Petroleum Solvent Dry Cleaning (both adopted by the Division on June 22, 1992); Rule 340, Cutback and Emulsified Asphalt (adopted September 21, 1992); and Rule 353, Transfer of Gasoline into Stationary Dispensing Tanks (adopted April 6, 1992). These submitted rules were found to be complete on September 3, 1992 (Rule 353), September 16, 1992, (Rule 340), and December 2, 1992 (Rules 331 and 333) pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[4] and are being proposed for approval into the SIP. The finding of completeness stopped the sanctions clock that had been started for Rule 353 on October 22, 1991.

[1] Among other things, the pre-amended guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The MAG Urban Planning Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[3] The Division's Rules 332, Perchloroethylene Dry Cleaning and 100, General Provisions and Definitions, were also proposed for conditional approval in the NPR. EPA is not taking action on Rule 332 at this time because EPA has developed regulations for perchloroethylene under Title III of the CAA. The Division is revising Rule 100 and EPA will act on that version after it is submitted.

[4] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

Rules 331, 333, 340, and 353 are rules that control VOC emissions from the cleaning (degreasing) of parts, from dry cleaning operations using petroleum solvents, from asphalt used for roadways, and from the filling of tanks with gasoline. VOCs contribute to the production of ground level ozone and smog. The original rules which were the subject of the proposed conditional approval were submitted in response to EPA's SIP-Calls and the CAA requirement that nonattainment areas to fix their deficient reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. The current rules were submitted in fulfillment of the Division's commitment to fix remaining deficiencies identified in EPA's proposed conditional approval or in response the EPA's finding of nonsubmittal. The rules were adopted as part of the Division's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTGs that apply to the four RACT rules follow:

Rule No.	CTG title	EPA No
331	Control of volatile organic emissions from solvent metal cleaning	EPA–450/2–77–022
333	Control of volatile organic compound emissions from large petroleum dry cleaners	EPA–450/3–82–009
340	Control of volatile organic compounds from the use of cutback asphalt	EPA–450/2–77–037
353	Control of volatile organic emissions from bulk gasoline plants	EPA–450/2–77–035

Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

The Division's submitted rules include the following significant changes from the current SIP:

Rule 331, Solvent Cleaning

1. The cooling capacity of freeboard chillers has been specified.
2. A provision for a vapor level control safety switch on vapor degreasers has been added.
3. Regulations for small conveyorized degreasers have been added.
4. Provisions for Control Officer approval of alternate control devices have been deleted.
5. Test methods for determining compliance and recordkeeping provisions have been added.
6. Exemption of wipe cleaners and a proposed schedule for compliance have been deleted.
7. A definition of "low volatility solvent" and standards applying to low and high volatility solvents have been added.
8. In response to EPA's comments during the rule revision period, (1) the term "leaks" has been defined, (2) a provision for covers for remote reservoir cleaners has been added, and (3) daily recordkeeping (except for wipe cleaning) has been added.

Rule 333, Petroleum Solvent Dry Cleaning

1. Operating requirements for dryers, filters and recovery units have been added.
2. A solvent use cutoff has been deleted.
3. Test methods and recordkeeping provisions used for determining compliance have been added.
4. A provision for the immediate placement of filtration material in sealed containers has been added.

Rule 340, Cutback and Emulsified Asphalt

1. A provision for a seasonal exemption has been deleted.
2. A provision allowing the Control Officer discretion for test methods has been deleted and the test methods provision clarified.
3. More stringent provisions for VOC content of asphalt have been added.
4. A number of exemptions have been deleted.
5. Recordkeeping provisions have been added.

Rule 353, Transfer of Gasoline into Stationary Dispensing Tanks

1. A definitions section has been added.
2. The standards section has been expanded to include use of approved Stage I vapor recovery equipment and leak-free equipment.
3. The maintenance section has been expanded to include owner responsibility to use equipment correctly, and to require owners to refuse offloading by delivery trucks not bearing a pressure test certification decal.
4. The exemption of non-resale operations is limited by a lower throughput cutoff of 120,000 gallons annually. The exemption for tanks serviced by exempt delivery vessels is now limited by a throughput cutoff of 120,000 gallons annually. Lastly, the exemption of certain storage tanks from the rule by the Control Officer has been deleted.
5. A compliance schedule requiring compliance within one year of the date of rule adoption has been added
6. The monitoring and records section has been expanded to include throughput recordkeeping and test methods to use to determine compliance.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, the Division's Rule 331, Solvent Cleaning; Rule 333, Petroleum Solvent Dry Cleaning; Rule 340, Cutback and Emulsified Asphalt; and Rule 353, Transfer of Gasoline into Stationary Dispensing Tanks, are being proposed for approval under section 110(k)(3) of

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the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted these actions from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q

Dated: September 22, 1994.

John Wise,

Acting Regional Administrator.

[FR Doc. 94–24508 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TX41–01–6273b; FRL–5083–6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan (SIP) Addressing Ozone Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to Texas' SIP for ozone. This action is based upon a revision request which was submitted by the State to satisfy the requirements of the Clean Air Act, as amended November 15, 1990, and the Photochemical Assessment Monitoring Stations (PAMS) regulations. The PAMS regulation requires the State to provide for the establishment and maintenance of an enhanced ambient air quality monitoring network in the form of PAMS by November 12, 1993.

In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by November 3, 1994.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, Emissions Inventory Branch, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Cupp, Planning Section (6T-AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–8015.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is located in the rules section of the **Federal Register**.

Dated: September 13, 1994.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 94–24424 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 62

[ME–14–1–6648b; A–1–FRL–5074–2]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Plan For Controlling Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Maine's revised "111(d) plan" for the control of total reduced sulfur (TRS) emissions from existing kraft pulp mills into Maine's State Implementation Plan (SIP). The revised plan was submitted by the Maine Department of Environmental Protection (DEP) on April 27, 1994. The revised plan consists of a revised regulation entitled "Chapter 124: Total Reduced Sulfur Control From Kraft Pulp Mills." The revised plan satisfies EPA's requirements for adoption and submittal of a plan to control TRS emissions from designated facilities in accordance with section 111(d) of the Clean Air Act (CAA).

In the final rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule.

If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received by November 3, 1994.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203.

Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., (LE–131), Washington, DC 20460; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Daria L. Dilaj at (617) 565–3249.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 17, 1994.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 94–24407 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 70

[LA–001; FRN–5084–8]

Clean Air Act Interim Approval of Operating Permits Program; Louisiana Department of Environmental Quality Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Extension of the comment period.

SUMMARY: EPA is extending the comment period for a proposed rule published August 25, 1994 (59 FR 43797). On August 25, 1994, EPA proposed interim approval of the operating permits program submitted by the State of Louisiana. EPA received letters from Louisiana Chemical Association and Louisiana Association of Business and Industry requesting a 30 day extension of the public comment period, and a verbal request from Louisiana Department of Environmental Quality. Therefore, EPA is extending the comment period until October 26, 1994.

DATES: Comments must be received in writing on or before October 26, 1994.

ADDRESSES: Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, New Source Review Section, at the Environmental Protection Agency, Region 6, Air Programs Branch (6T-AN), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Joyce P. Stanton, New Source Review Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7218.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 25, 1994.

William B. Hathaway

Acting Regional Administrator (6A).

[FR Doc. 94–24509 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 721

[OPPTS–50621A; FRL–4914–7]

Dipropylene glycol dimethyl ether; Proposed Significant New Use Rule; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Reopening of comment period.

SUMMARY: EPA is reopening the comment period for the proposed significant new use rule (SNUR) for dipropylene glycol dimethyl ether. As initially published in the **Federal Register** of August 22, 1994 (59 FR 43079), the comments were to be received on or before September 21, 1994. A party which intends to submit comments concerning this proposed rule requested additional time to prepare its response.

DATES: Written comments must be received by EPA on or before October 19, 1994.

ADDRESSES: All comments must be sent in triplicate to: TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460.

Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS–50621.

A public version of the record, without any CBI, is available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office, from 12 noon to 4 p.m., Monday through Friday, except legal holidays. NCIC is located in Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: This reopening of the comment period will allow interested parties who intend to comment on the proposed rule additional time to prepare their responses.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: September 23, 1994.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–24501 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Ch. I

[CCD 94–080]

Alternate Inspection Compliance Programs for the U.S. Maritime Industry

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; request for comments.

SUMMARY: As part of its Maritime Regulatory Reform Initiative, the U.S. Coast Guard is developing programs to provide alternatives by which the U.S.

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maritime industry can demonstrate compliance with applicable vessel design, construction, equipment and operational requirements. A number of concepts are under consideration, including a program to accept tests and examinations performed by vessel owners or operators who employ a rigorous system of safety management. The Coast Guard desires input from the maritime industry on the safety management systems now in use and their value in assuring vessel safety. The Coast Guard will conduct a public meeting to obtain information from members of the regulated community and the general public on this issue.

DATES: The meeting will be held November 7, 1994 from 9 a.m. to 4:30 p.m. Written material should be submitted not later than November 21, 1994.

ADDRESSES: The meeting will be held in Room 2415, Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593. Written comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard, 2100 Second Street, S.W., Washington, D.C. 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR David L. Scott, Project Manager, Commandant (G–MVI–1), U.S. Coast Guard, 2100 Second Street, S.W., Washington, D.C. 20593, telephone (202) 267–1464.

SUPPLEMENTARY INFORMATION: The Coast Guard has been actively engaged in maritime policy reforms designed to enhance the competitiveness of the U.S. maritime industry. One aspect of maritime policy reform is to provide efficient and cost effective alternatives by which owners and operators of inspected vessels can demonstrate compliance with applicable laws and regulations. One concept under consideration is to credit tests and examinations of a vessel's systems, components or equipment performed by the vessel's owners, operators or authorized third parties as satisfying Coast Guard inspection requirements. This concept can provide vessel owners and operators with greater flexibility in complying with Coast Guard inspection requirements and may significantly reduce the time necessary to complete, or may eliminate, certain periodic Coast Guard inspections.

Under such a program, vessel owners, operators or authorized third parties would conduct periodic tests and examinations in accordance with written procedures acceptable to the Coast Guard. These procedures would indicate the purpose and methodology of the test, as well as the qualifications of the personnel who perform and validate the test. They would also indicate how the test is to be documented. Periodic Coast Guard inspections would involve verifying the company's inspection records for the vessel and assessing the crew's ability to respond to likely shipboard emergencies.

This concept is predicated on the vessel owner or operator employing a rigorous system of safety management. The Coast Guard is seeking to establish the characteristics for a safety management system which should be recognized under this program. There are many ways to support the quality of safety management systems, such as the ISO 9000 series, the International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management [ISM] Code), the International Ship Managers Association Code of Ship Management Standards, or company specific in-house safety management systems, all of which if properly implemented and maintained, may provide a basis for Coast Guard acceptance of owner, operator or third party testing.

To aid the Coast Guard's efforts to establish the criteria for a recognized safety management system, and establish guidelines for alternative compliance inspection programs, views are solicited on the following questions:

1. What are the essential elements of a shipboard safety management system?
2. How should the effectiveness of a company's safety management system be measured?
3. How does a company get its safety management system qualified?
4. Should a company's safety system be certified by an independent quality system registrar as a condition for recognition by the Coast Guard?
5. What specific qualifications may be required of company personnel, including shipboard personnel, involved in the implementation and maintenance of a safety management system?
6. What other conditions should a company meet in order to participate in an alternative inspection compliance program?
7. Should the interval of Coast Guard inspections for vessels operating under a recognized safety management system be random boardings or fixed dates?
8. Should the scope of periodic Coast Guard inspections be modified based upon a company's voluntary certification to the ISM Code?
9. Must third parties who perform tests and inspection services on inspected vessels establish their own quality management system in order for vessel operators to receive Coast Guard inspection credit for third party activities?
10. What constitutes satisfactory test and inspection procedures?
11. What constitutes satisfactory documentation of tests and inspections?
12. What qualifications are required for personnel performing tests and inspections, and validating tests and inspections?
13. Which systems and equipment may be suitable for periodic testing by vessel owners, operators or third parties, and which should be retained by the Coast Guard?
14. How much Coast Guard oversight is necessary for a company with a safety management system?

Attendance is open to the public. With advance notice, and as time permits, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed above under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted prior to, during, or after the meeting.

Dated: September 29, 1994.

E. L. Ziff,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–24531 Filed 10–3–94, 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 94–99; DA 94–987]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, through this action, invites comments on its proposal to amend its rules regarding the listing of major television markets, to change the designation of the Fresno-Visalia-Hanford-Clovis, California television market to include the community of Sanger, California. This action is taken at the request of Sanger Telecasters, Inc., licensee of television station KMSG–TV, channel 59, Sanger, California and it is

taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before November 10, 1994 and reply comments are due on or before November 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: William H. Johnson, Cable Services Bureau, (202) 416–0856.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking*, CS Docket 94–99, adopted September 2, 1994 and released September 19, 1994. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW, Washington D.C. 20554.

Synopsis of the Notice of Proposed Rule Making

1. The Commission, in response to a Petition for Rule Making filed by the petitioner, proposed to amend Section 76.51 of the Rules to add the community of Sanger to the Fresno-Visalia-Hanford-Clovis, California television market.

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) The distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

3. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rule making process, including the comments of interested parties. It appears from the information before the Commission that the television stations licensed to Fresno, Visalia, Hanford, Clovis, and Sanger, California do compete throughout much of the proposed combined market area, and that sufficient evidence has been presented tending to demonstrate commonality between the proposed communities to be added to the market designation and the market as a whole that "hyphenation" of the market should be proposed. Moreover, the petitioners' proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market. Accordingly, comment is requested on the proposed addition of Sanger to the Fresno-Visalia-Hanford-Clovis, California television market.

Initial Regulatory Flexibility Analysis

4. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

Ex Parte

5. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before November 10, 1994, and reply comments on or before November 25, 1994. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

7. Accordingly, this action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by Section 0.321 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William H. Johnson,

Acting Chief, Cable Services Bureau.

[FR Doc. 94–24463 Filed 10–3–94, 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Part 242

Defense Federal Acquisition Regulation Supplement; Production Surveillance

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for public comments.

SUMMARY: The Defense Acquisition Regulations Council is proposing changes to the Defense FAR Supplement (DFARS) to revise the criteria for determining when to perform on-site technical production surveillance.

DATES: Comments on the proposed rule should be submitted to the address shown below on or before December 5, 1994 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Directorate, ATT: IMD 3D139, PDUSD (A&T), 3062 Defense Pentagon, Washington, D.C. 20301–3062, FAX (703) 697–5971. Please cite DFARS Case 93–D003 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Green; (703) 604–5929.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule revised DFARS 242.1104 by replacing the current system of determining the type of production surveillance to be performed. Under current procedures, contracts are placed into categories 1, 2, and 3 which determine the level of surveillance the contract will receive. The proposed revisions would simplify

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the method of determining when the contract would receive pre-delivery telephone surveillance or pre-delivery on-site production surveillance.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the frequency of on-site surveillance is not expected to change. The proposed rule merely simplifies the method used by the Government to determine when on-site surveillance will be performed. An initial Regulatory Flexibility Analysis (IRFA) has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and should cite DAR Case 93–D003 in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule imposes no reporting and recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 242

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition, Regulations Directorate.

Therefore it is proposed that 48 CFR Part 242 be amended as follows:

1. The authority citation for 48 CFR Part 242 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Part 1.

PART 242—CONTRACT ADMINISTRATION

2. Section 242.1104 is revised to read as follows:

§ 242.1104 Surveillance requirements.

(a)(i) As a minimum, contracts will receive pre-delivery telephonic, surveillance.

(ii) Contracts in the following categories will receive pre-delivery on-site production surveillance.

(A) Contracts assigned criticality designator A (see FAR 42.1105).

(B) Contracts specifically identified for special surveillance by the contracting officer.

(C) Any contract where telephonic surveillance reveals actual or anticipated delinquency unless the contract administration office, in coordination with the contracting officer, decides that on-site surveillance is not warranted.

[FR Doc. 94–24462 Filed 10–3–94, 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC99

Endangered and Threatened Wildlife and Plants; Proposed Endangered or Threatened Status for 10 Plants From the Foothills of the Sierra Nevada Mountains in California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act) for four plants: *Brodiaea pallida* (Chinese Camp brodiaea), *Calyptridium pulchellum* (Mariposa pussypaws), *Lupinus citrinus* var. *deflexus* (Mariposa lupine), and *Mimulus shevockii* (Kelso Creek monkeyflower). The Service also proposes threatened status for six plants: *Allium tuolumnense* (Rawhide Hill onion), *Clarkia springvillensis* (Springville clarkia), *Carpenteria californica* (carpenteria), *Fritillaria striata* (Greenhorn adobe lily), *Navarretia setiloba* (Plute Mountains navarretia), and *Verbena californica* (Red Hills vervain). These plants are known from the annual grassland, chaparral, Joshua tree, pinyon-juniper, blue oak, and digger pine woodland communities in the foothills of the Sierra Nevada Mountains in central California. The 10 plants are threatened by one or more of the following: agricultural land conversion, urbanization, logging, highway construction and road maintenance activities, overgrazing, off-highway vehicle use, mining, insect predation, inadequate regulatory mechanisms, stochastic extinction from random natural events, and incompatible fire management techniques. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for these plants.

DATES: Comments from all interested parties must be received by December 5, 1994. Public hearing requests must be received by November 18, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kenneth Fuller (see **ADDRESSES**) at 916–978–4866.

SUPPLEMENTARY INFORMATION:

Background

Allium tuolumnense (Rawhide Hill onion), *Brodiaea pallida* (Chinese Camp brodiaea), *Calyptridium pulchellum* (Mariposa pussypaws), *Carpenteria californica* (carpenteria), *Clarkia springvillensis* (Springville clarkia), *Fritillaria striata* (Greenhorn adobe lily), *Lupinus citrinus* var. *deflexus* (Mariposa lupine), *Mimulus shevockii* (Kelso Creek monkeyflower), *Navarretia setiloba* (Piute Mountains navarretia), and *Verbena californica* (Red Hills vervain) are located in the western foothills of the Sierra Nevada Mountains in California, from Jamestown in Tuolumne County, to Bodfish in Kern County, to near Grapevine in the foothills of the Tehachapi Mountains in Kern County. The Sierra Nevada Mountains are California's largest mountain range, extending from the Mojave Desert in the south to the Modoc Plateau in the north. The Sierra Nevada Mountains are 645 kilometers (km) (400 miles) long, 95 to 130 km (60 to 80 miles) wide, and north-south oriented on the east side of California. Structurally, this mountain range is a westerly tilted Cenozoic fault block consisting of granitic and metamorphic rocks. These mountains have an elevational range of 1,000 to 4,000 meters (m) (3,000 to 12,000 feet (ft)) and a precipitation range of 750 to 2,030 millimeters (mm) (30 to 80 inches (in)). These mountains are a region of winter snow and some summer thunderstorms. Montane and subalpine coniferous forests dominate the area with minor components of deciduous forests. Lakes, swamps, rock outcrops, talus slopes, meadows, and montane chaparral occupy more than half of the ground surface.

Each of these 10 plant species exhibits strong substrate preferences. *Allium tuolumnense*, *Brodiaea pallida*, and *Verbena californica* are associated with serpentine soils in an elevational range from 260 to 600 m (850 to 2,000 ft) in the Red Hills and near Rawhide Hill in Tuolumne County. Serpentine soils are derived from ultramafic rocks such as

serpentinite, dunite, and peridotite, which are found in discontinuous outcrops in the foothills of the Sierra Nevada and in the Coast Ranges from Santa Barbara County to British Columbia, Canada. Although the ultramafic rocks may be of igneous origin (peridotite, dunite, or harzburgite) or metamorphics (serpentine), the major constituent of the parent rock is some variant of iron-magnesium silicate. Serpentine and other ultramafics weather into shallow, rocky, and highly erodible soils. Typically, these soils are rich in magnesium, iron, chromium, nickel, and silicates and are deficient in nitrogen, calcium, phosphorus, and molybdenum (Kruckeberg 1984). The unique mineral nutrition and cation status of serpentine soils are inhospitable for the growth of most plants. Nevertheless, serpentine soils support a diversity of plants, some of which are restricted entirely to these soils. *Allium tuolumnense* is associated with sunny, rocky, often south-facing slopes. *Brodiaea pallida* and *Verbena californica* are often found in the blue oak (*Quercus douglasii*) or digger pine (*Pinus sabiniana*) woodland communities.

Calyptridium pulchellum, *Lupinus citrinus* var. *deflexus*, and *Mimulus shevockii* are associated with sandy, decomposed granitic soils in foothill woodlands. *Fritillaria striata* and *Navarretia setiloba* are found in heavy clay soils in the openings of blue oak woodland. *Clarkia springvillensis* most often is found on roadbanks and openings in blue oak woodlands.

Marion Ownbey first recognized *Allium sanbornii* var. *tuolumnense* in "A California Flora" (Munz 1959). The first validly published description of the plant was Hamilton P. Traub's 1972 treatment. Stella Denison and Dale McNeal (1989) revised the *A. sanbornii* complex and elevated the variety to a species based upon the position of stamens and styles and the length and shape of perianth (sepals and petals) segments.

Allium tuolumnense is an erect, herbaceous perennial of the lily family (Liliaceae) that grows from underground bulbs. This species has fleshy, green entire leaves that reach a height of 25 to 50 centimeters (cm) (10 to 20 in), and has a loose, 20 to 60 flowered, white- or pink-flushed inflorescence appearing in late March to early May. *Allium tuolumnense* differs from *A. sanbornii* and *A. jepsonii* in its entire, spreading perianth segments, fringed ovarian bumps (processes), and early blooming period that does not overlap with any other *Allium* species. Although this plant can reproduce from seed, *A. tuolumnense* tends to reproduce asexually from its underground bulb, forming small colonies of usually fewer than 100 plants per colony (BioSystems Analysis 1984). *A. tuolumnense* is a highly restricted endemic that only grows on serpentine soils in the foothills of the Sierra Nevada in southwestern Tuolumne County from 400 to 600 m (1,310 to 1,970 ft) in elevation. *A. tuolumnense* is known from two localities: Table Mountain and the Red Hills. The entire range of the species includes a 342 square kilometer (sq km) (132 square mile (sq mi)) area. Approximately 25 percent of *A. tuolumnense* is found on private lands and 75 percent on lands administered by the Bureau of Land Management (BLM). *A. tuolumnense* is threatened by placer mining, urbanization, and potentially by overgrazing.

Robert Hoover (1938) first described *Brodiaea pallida* from specimens collected near Chinese Camp in Tuolumne County. *B. pallida* is an erect, herbaceous perennial in the lily family (Liliaceae). The plant grows from an underground bulb and has long, narrow, thick, succulent leaves that reach a height of 1 to 3 decimeters (dm) (4 to 12 in). Several to many rose-pink flowers appear in an umbrella-like cluster at the top of a leafless stem in late May to early June. *B. pallida* grows in association with two sympatric congeners and can hybridize with one of them (Keator 1993). Despite these incidences of hybridization, the species is considered stable (Blaine Rogers, Columbia Coll., pers. comm., 1993). *B. pallida* can be separated from its congeners and hybrids by flower color and the length, width, shape, and position of nonpollen bearing stamens.

Brodiaea pallida grows in seeps and springs in serpentine and volcanic soils within a stream channel on private land in the Red Hills, Tuolumne County. This species is restricted to a 3 to 6 m (10 to 20 ft) wide and 0.8 km (0.5 mi) long stretch of private land in an old, intermittent stream channel at an elevation of 385 m (1,260 ft). The species has always had an extremely limited distribution; searches of potential habitat in other areas have failed to locate any additional plants. The single population is threatened by urbanization, inadequate State regulatory mechanisms, and stochastic events. Several of the parcels of privately-owned land where the plant is located are for sale. Although The Nature Conservancy (TNC) has secured a 1-year lease on one of the parcels, permanent protection for this plant is lacking.

Joseph Congdon collected the type specimen of *Calyptridium pulchellum* on "Pea Ridge" in Mariposa County in 1901. Alice Eastwood (1902) first described this plant as *Spraguea pulchella*. Robert Hoover (1940) revised the genera *Spraguea* and *Calyptridium* and renamed this plant *Calyptridium pulchellum* based on the combination of flower and vegetative characteristics and habitat. *C. pulchellum* is a small, compact, rosette-forming, annual herb in the purslane family (Portulacaceae). The smooth, slender, prostrate stems are 1 to 2 dm (4 to 8 in) long, with smooth, spatula-shaped leaves. Rose-colored, four-petaled flowers appear in loose panicles between May and August.

The fibrous-rooted plant grows on decomposed granitic sands between elevations of 460 to 1,090 m (1,500 to 3,600 ft) in foothill woodlands and converted chaparral grasslands in the Sierra Nevada foothills. No other species of *Calyptridium* co-occurs with *C. pulchellum*. The seven populations of *C. pulchellum* are found in Fresno, Madera, and Mariposa Counties over a range of 1,940 sq km (750 sq mi). Six populations of *C. pulchellum* occur on private land and one population occurs on Forest Service land (Sierra National Forest). *C. pulchellum* is threatened by urbanization and potentially by overgrazing.

John C. Fremont collected *Carpenteria californica* from an area in the Kings River watershed on his third expedition to California in 1846. John Torrey (1852) first described *C. californica* from specimens sent to him by John Fremont. The monotypic genus *Carpenteria* is one of California's many endemic genera that are relicts without any close relatives; this genus probably had a wider range earlier in Tertiary time (Barbour and Major 1988).

Carpenteria californica is an erect to spreading evergreen shrub in the mock orange family (Philadelphaceae) that grows to a height of 1 to 6.5 m (3 to 13 ft). The plant has glossy green, opposite leaves and pale bark that peels in large sheets in the fall. Terminal, white, showy flowers appear in May or June and last through July at the upper elevational limits. *C. californica* is found in drainages and mesic areas on mostly granitic soils from 460 to 1,220 m (1,500 to 4,000 ft) in elevation within the chaparral and cismontane woodland communities of the foothills of the Sierra Nevada in eastern Fresno County. *C. californica* is known from six populations distributed over a 583 sq km (225 sq mi) area. One population of *C. californica* is on private lands, four are on lands administered by the U.S. Forest Service (Sierra National Forest),

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and one is on both private and Forest Service lands. Collectively, approximately 30 percent of *C. californica* individuals occur on private lands. A portion of one population of *C. californica* is protected on a preserve owned by TNC. *C. californica* is threatened by urbanization, fire management practices, overgrazing and trampling by cattle, and inadequate State regulatory mechanisms. Logging, illegal dumping, highway construction, maintenance of roads and rights-of-way activities, and competition from native brush species have the potential to adversely impact this species.

Frank Vasek (1964) first collected and described *Clarkia springvillensis* from its type locality along Balch Park Road near Springville, Tulare County. *C. springvillensis* is an erect annual herb in the evening-primrose family (Onagraceae). The 1 m (3 ft) tall plant has simple or usually branched stems. The bright green leaves are 2 to 9 cm (0.8 to 3.5 in) long and 5 to 20 mm (0.2 to 0.8 in) wide. The lavender-pink flowers appear in May to July and usually have a dark purplish basal spot. *C. springvillensis* can be separated from the sympatric congener *C. unguiculata* by the absence of long hairs on the calyx and ovary, the purple sepals, and the dark purplish spot at the base of the petals.

Clarkia springvillensis is found on granitic soils in open sunny sites in blue oak woodlands and on roadbanks from 360 to 910 m (1,220 to 3,000 ft) in elevation. Nine of the 10 historically reported populations of *C. springvilleasis* are extant, all in Tulare County. Eight of the nine populations are found within a 111 sq km (43 sq mi) area in eastern Tulare County, with the remaining population occurring 26 km (16 mi) to the northwest. One population of *C. springvillensis* is partially protected where it occurs on California Department of Fish and Game land, one population is on lands owned by Tulare County, three are on privately owned land, and four populations are on lands administered by the Forest Service (Sequoia National Forest). Urbanization, overgrazing, timber operations, inadequate State regulatory mechanisms, sphinx moth predation, and roadway maintenance activities threaten this plant.

Alice Eastwood (1931) described *Fritillaria striata* from specimens collected by Roy Weston on the Rattlesnake Grade in the Greenhorn Mountains of Kern County. *F. striata* is a slender, herbaceous perennial in the lily family (Liliaceae). An unbranched stem grows 5 to 10 cm (2 to 4 in) above the surface of the ground from an underground bulb. The predominantly basal, alternate to opposite leaves are oblong to lance-shaped, 1 to 2 cm (0.4 to 0.8 in) wide and 6 to 10 cm (2 to 4 in) long. The upper leaves are narrower and undulate. The one to four fragrant, bell-shaped flowers appear from February through April. *F. striata* differs from the related *F. pluriflora* (adobe lily), which occurs in the northern Sacramento Valley foothills, in the shape, size, and coloring of the flowers, the conspicuous nectaries, and the connivent (converging) stigmas (Stebbins 1989, Eastwood 1931).

Fritillaria striata is found on heavy, usually red clay soils on the grasslands and in the blue oak woodlands of the southeastern San Joaquin Valley and southern Sierra Nevada foothills. Fourteen populations of *F. striata* occur in Kern County and three populations are found in Tulare County (California Natural Diversity Data Base (CNDDB) 1993) discontinuously scattered over a 7,250 sq km (2,800 sq mi) area. The 17 populations range in elevation from 300 to 1,430 m (1,000 to 4,800 ft). All populations occur on private lands. *F. striata* is threatened by urbanization, livestock use, competition from nonnative grasses, agriculture land conversion, road widening, emergency road maintenance, inadequate State regulatory mechanisms, and off-highway vehicle use.

Joseph Congdon (1904) described *Lupinus deflexus* from specimen that he collected near Mariposa Creek in Mariposa County in 1903. Willis Jepson (1936) revised the treatment of this species and reduced the plant to the varietal status, *Lupinus citrinus* var. *deflexus*. *Lupinus citrinus* var. *deflexus* is an erect, diffusely-branched annual herb belonging to the pea family (Fabaceae). The 3 to 5 dm (12 to 20 in) high plants are short-hairy to hairless and have palmately compound leaves that are 15 to 25 mm (.5 to 1.0 in) long. The six to nine leaflets are about one-third as wide as they are long and are linear or spatulate in shape with rounded or obtuse tips. The white with pink or lavender tipped flowers appear in April through May.

Lupinus citrinus var. *deflexus* grows on decomposed granitic sands on ridgetops and hillsides in openings in foothill woodlands from 475 to 580 m (1,400 to 1,900 ft) in elevation. The four populations of this plant occur on private lands in Mariposa County over a 40 sq km (15 sq mi) area. Two of the four populations co-occur with *Calyptridium pulchellum*. *Lupinus citrinus* var. *deflexus* is threatened by urbanization, inadequate State regulatory mechanisms, and potentially by overgrazing.

Lawrence Heckard and Rimo Bacigalupi (1986) first described *Mimulus shevockii* from specimen first collected by James Shevock around the Kelso Creek area near the east base of the Piute Mountains in Kern County. *M. shevockii* is an erect, desert annual in the snapdragon family (Scrophulariaceae). This plant grows to 1 dm (4 in) in height and has opposite, sessile, somewhat fleshy leaves along reddish stems. Asymmetric flowers appear from late March to May. The corolla is two-lipped. The upper flower lip has two short, entire, lateral maroon-purple lobes. The lower flower lip is similar but larger in size and has an additional large, partially divided yellow lobe with red mottling. *Mimulus androsaceus* and *M. fremontii* grow with *M. shevockii* and have some similar vegetative features but differ in flower color. *Mimulus androsaceus* has a red-purple flower and *M. fremontii* has a rose-purple flower.

Mimulus shevockii occurs predominately in loamy, coarse sands on alluvial fans and deposits of granitic origin within the Joshua tree (*Yucca brevifolia*) or California juniper (*Juniperus californica*) xeric woodlands in Kern County. *M. shevockii* is found within an elevational range of 975 to 1,250 m (3,200 to 4,100 ft). Six of the seven populations of *M. shevockii* are within a 31 sq km (12 sq mi) area, with the remaining population 14 km (9 mi) to the northwest. Two populations are found on private lands and five populations occur partially on BLM land and partially on private land. *M. shevockii* is threatened by urbanization, off-highway vehicle use, and agricultural land conversion.

Frederick Coville (1893) first described *Navarretia setiloba* from plants he collected from a ridge between Kernville and Havilah in Kern County. *Navarretia setiloba* is an erect annual herb in the phlox family (Polemoniaceae), and grows to a height of 8 to 20 cm (3 to 8 in). The linear, pinnately-lobed leaves have rigid, spinose lobes. The terminal lobe is broadly lanceolate and often purplish. The 20 to 30 purple-flowered inflorescence appears from April through June and is about 10 mm (0.4 in) long. The flowers are subtended by spiny bracts that are constricted in the middle. *Navarretia setiloba* is distinguished from sympatric congeners by the broad terminal lobe on each leaf, and by its purple flowers.

The plant grows on heavy, often red-colored clay soils within blue oak, digger pine, or juniper woodlands between 300 to 960 m (1,000 to 3,200 ft) in elevation. Six populations of *Navarretia setiloba* are known from northern Kern County over a 4,000 sq km (1,560 sq mi) area. One population occurs on land administered by the BLM and five populations are found on private lands. *Navarretia setiloba* is threatened by urbanization and off-highway vehicle use.

Harold A. Moldenke (1942) first described *Verbena californica* from specimen collected by Robert Hoover from an area north of Keystone in Tuolumne County. *Verbena californica* is an erect perennial herb in the vervain family (Verbenaceae), and grows to 60 cm (23 in) in height with opposite, bright green, sessile leaves. White-blue to purple blossoms appear from May through September. No closely related species co-occur with *Verbena californica*.

The nine historic and current populations of *Verbena californica* grow along intermittent and perennial streams underlain by serpentine rocks in the Red Hills of Tuolumne County. The populations have an elevational range from 260 to 335 m (850 to 1,150 ft) and are distributed over a 62 sq km (24 sq mi) area. Fifteen percent of the *V. californica* plants occur on lands administered by the BLM, and 85 percent of the plants occur on privately owned lands (CDFG 1993). *Verbena californica* is threatened by urbanization, recreational placer gold mining, and potentially by overgrazing.

Previous Federal Action

Federal government actions on these 10 plants began as a result of section 12 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *Brodiaea pallida* and *Navarretia setiloba* as endangered and *Fritillaria striata* and *Lupinus citrinus* var. *deflexus* as threatened. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. The above four taxa were included in the July 1, 1975, notice. On June 16, 1976, the Service published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Brodiaea pallida*, *Calyptridium pulchellum*, and *Navarretia setiloba* were included as endangered in the June 16, 1976, **Federal Register** document.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). The notice included *Allium tuolumnense* (as *Allium sanbornii* var. *tuolumnense*), *Brodiaea pallida*, *Calyptridium pulchellum*, *Clarkia springvillensis*, *Fritillaria striata*, *Lupinus citrinus* var. *deflexus* (as *Lupinus deflexus*), *Navarretia setiloba*, and *Verbena californica* as category 1 candidates and *Carpenteria californica* as a category 2 candidate for Federal listing. Category 1 species are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. Category 2 species are those for which data in the Service's possession indicate listing is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently known or on file to support rules. On November 28, 1983, the Service published in the **Federal Register** a supplement to the notice of review (48 FR 53640). This supplement contained *Allium sanbornii* var. *tuolumnense*, *Brodiaea pallida*, and *Verbena californica* as category 1 candidates for Federal listing. This supplement also elevated *Carpenteria californica* to a category 1 candidate and reclassified *Clarkia springvillensis*, *Calyptridium pulchellum*, *Fritillaria striata*, *Lupinus citrinus* var. *deflexus*, and *Navarretia setiloba* to category 2. This supplement also added *Mimulus* sp./sp. nov. ined. (Kern County) and *Mimulus* sp./sp. nov. ined. (Tulare County) as a category 2 species. This species is now known as *Mimulus shevockii*.

The plant notice was revised on September 27, 1985 (50 FR 39526). The status of these 10 plants remained unchanged from the 1983 supplement. In the February 21, 1990 (55 FR 6184) notice, *Clarkia springvillensis*, *Navarretia setiloba*, and *Mimulus shevockii* were elevated to category 1 status. The status of the other seven taxa remained unchanged. In the September 30, 1993, plant notice of review (58 FR 51144), *Calyptridium pulchellum* was included as a category 2 species and the remaining nine taxa were included as category 1 species. Since publication of the 1990 notice and based on additional information received from botanists knowledgeable about the status of *Calyptridium pulchellum*, *Fritillaria striata, and Lupinus citrinus* var. *deflexus*, these species were placed in category 1 by the Director's approval.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1983, be treated as having been newly submitted on that date. This was the case for *Brodiaea pallida*, *Fritillaria striata*, *Lupinus citrinus* var. *deflexus*, and *Navarretia setiloba* because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983, the Service found that the petitioned listing of these species was warranted but was precluded by other pending listing actions in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1983 through 1993. Publication of this proposal constitutes the final finding for the petitioned action.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Allium tuolumnense* (Traub) Denison and McNeal (Rawhide Hill onion), *Brodiaea pallida* Hoover (Chinese Camp brodiaea), *Carpenteria californica* Torrey (carpenteria), *Calyptridium*

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pulchellum (Eastwood) Hoover (Mariposa pussypaws), *Clarkia springvillensis* Vasek (Springville clarkia), *Fritillaria striata* Eastwood (Greenhorn adobe lily), *Lupinus citrinus* Kellogg var. *deflexus* (Congdon) Jepson (Mariposa lupine), *Mimulus shevockii* Heckard and Bacigalupi (Kelso Creek monkeyflower), *Navarretia setiloba* Covelle (Piute Mountains navarretia), and *Verbena californica* Moldenke (Red Hills vervain) are as follows:

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* *Brodiaea pallida*, *Calyptridium pulchellum*, *Clarkia springvillensis*, *Lupinus citrinus* var. *deflexus*, *Mimulus shevockii*, *Allium tuolumnense*, *Carpenteria californica*, *Fritillaria striata*, *Navarretia setiloba*, and *Verbena californica* are restricted to grassland and woodland communities in the foothills of the Sierra Nevada and Tehachapi Mountains in California. The primary threat facing these 10 plants is the ongoing and threatened destruction and adverse modification of their habitats. The habitats of these 10 plants are being threatened by one or more of the following: urbanization, agricultural land conversion, off-highway vehicle use, mining, road and rights-of-way maintenance associated with hydroelectric operations, logging, illegal dumping, incompatible fire management techniques, and highway construction and maintenance projects.

The human populations in the counties where these species of plants occur are projected to grow significantly over the next decade. For example, Tuolumne County is projected to increase 46 percent between 1992 and 2005, Fresno County is predicted to grow 53 percent by 2005, and Tulare and Kern Counties are expected to increase 40 percent and 44 percent, respectively, by the year 2005 (California Department of Finance 1991, 1992). The increase in housing construction that will likely accompany this population growth threatens the populations of the 10 plants that occur on privately owned land.

Brodiaea pallida is only known from one population of 1,600 plants in the Red Hills. A portion of the population was destroyed prior to 1982 (CNDDB 1993). A subdivision has been proposed for the area containing the remainder of the population. Although the project has apparently been revised to exclude most of the *B. pallida* population from the area proposed for housing, the project is still expected to adversely affect the plant through its plan to encourage recreational activities in the area containing *B. pallida*. The project would also adversely affect this species because it would negatively impact the hydrological conditions necessary for growth and reproduction (Blaine Rogers, San Joaquin Delta College, *in. litt.*, 1985).

Six of the seven populations of *Calyptridium pulchellum* contain fewer than 300 plants (CNDDB 1993). The seventh population of *C. pulchellum* contains approximately 800 plants. Residential development threatens four populations of *C. pulchellum*. Two populations of *C. pulchellum* occur on 1-acre lots that are for sale in the midst of an existing subdivision (CNDDB 1993). A third population of *C. pulchellum* occurs on a ranch that is for sale; the potential exists for the ranch to be subdivided after it is sold (CNDDB 1993). A fourth population of *C. pulchellum* occurs on a vacant lot adjacent to and downslope from a developed lot. Run-off from landscape maintenance of the developed lot threatens this population (CNDDB 1993). This fourth population has not been seen since 1983 and may be extirpated (CNDDB 1993).

Disturbance associated with suburban foothill development destroyed part of one population of *Lupinus citrinus* var. *deflexus* in the early 1980s (CDFG 1989a). Since then, this population appears to be recovering (CDFG 1989a). The rapidly accelerating development of the western slope of the Sierra Nevada is a serious potential threat to all four populations of this species (CDFG 1989a). Presently, a home occupies each of the population sites south of the town of Mariposa in Mariposa County (California Native Plant Society (CNPS) 1990). The construction of these homes destroyed some of the plants.

The Joshua tree and pinyon-juniper woodland communities where *Mimulus shevockii* occurs are desirable for development because of their scenic viewsheds. Current mobile home development projects and associated road construction is adversely affecting *M. shevockii* at six sites; development projects planned for the future will also adversely affect this species (CNDDB 1993). Five of the populations of *M. shevockii* occur on a mixture of BLM and private lands and two populations occur on private lands. Parts of two populations have been destroyed by construction of a gravel road and an off-highway vehicle road (CNDDB 1993). Agricultural land conversion and mobile home lot development already have destroyed part of one of these populations and the remaining portion of this population is threatened with additional agricultural land conversion (CNDDB 1993).

Urbanization has destroyed one population of *Allium tuolumnense*. The type locality of *A. tuolumnense* once covered several hundred acres but has now been reduced to a total of 14 hectares (35 acres) as a result of land clearing for housing construction (CNDDB 1993). Urbanization continues to threaten this population; the 17 hectare (40 acre) Heavenly Hills subdivision is proposed for this site (CNDDB 1993). The 220 hectare (540 acre) Gardella subdivision southwest of Jamestown has been recently proposed, and would adversely affect an additional population of *A. tuolumnense* (Robin Wood, Tuolumne County Planning Department, *in litt.*, 1993, Skenfield 1992; Steve Stocking, San Joaquin Delta College, *in. litt.*, 1993). A 760 hectare (1,890 acre) proposed subdivision called Shotgun Creek Estates would adversely affect another population northwest of Jamestown (CNDDB 1993). The above three proposed subdivisions could directly affect *A. tuolumnense* through destruction of plants and habitat, or could indirectly affect the populations by altering the site hydrology through increased urban run-off of herbicides, pesticides, and fertilizers, or by lowering the water table.

As mentioned above, Fresno County is predicted to grow 53 percent by the year 2005 (California Department of Finance 1991, 1992). The development and construction of proposed subdivisions in Fresno County foothills will adversely affect the two populations of *Carpenteria californica* that occur on private land. These populations are already under threat from development projects (CNDDB 1993). The expansion of a portion of State Highway 168 from a two-lane to four-lane freeway partially destroyed and fragmented the largest population of *C. californica* (Joanna Clines, Sierra National Forest, pers. comm., 1993). The proposed realignment and expansion to four lanes of an additional section of the same highway potentially threatens portions of two populations of this plant (CNDDB 1993).

The University of California proposes to establish a new campus at one of three sites in the San Joaquin Valley (University of California 1993), including a site in Fresno County at the base of the foothills where *Carpenteria californica* occurs. The proposed new campus at the Fresno location and the attendant growth-inducing effects of 40,000 to 50,000 people are a potential threat to *C. californica* (Howard Latimer, California State University, Fresno, pers. comm., 1993).

The type locality of *Clarkia springvillensis* was destroyed by mobile home development in 1983 (CNPS 1988). Historically, road widening and cattle grazing have seriously reduced populations of *C. springvillensis* at six sites (CNPS 1988). Ongoing residential development, road maintenance activities, and timbering operations threaten three populations of *C. springvillensis* on private lands (CNDDB 1993). Prior to acquisition by CDFG, a preserve containing the largest population of *C. springvillensis* had an access road cut into the area, a well drilled, and a knoll levelled as a pad for home construction. These activities reduced and fragmented the population of *C. springvillensis* at that site. No restoration has occurred. One population of *Navarretia setiloba* occurs in a mobile home park (CNDDB 1993). Urbanization threatens two populations of *N. setiloba* near Lake Isabella and one population on Grapevine Peak in Kern County (Diane Mitchell, botanist, pers. comm., 1992). The Andrews Creek population of *Verbena californica*, containing 25 percent of all the plants, is threatened with a proposed subdivision (CNDDB 1993, CDFG 1993; Robin Wood, *in. litt.*, 1993). The Big Creek population of this plant, containing 40 percent of the population, is potentially threatened by residential development (Pat Stone, CNPS, pers comm., 1992).

Road maintenance activities adversely affect populations of several of the 10 plants included in this rule. Firebreak construction and road maintenance have destroyed part of one population of *Allium tuolumnense* (CNDDB 1993). The grading of access roads along hydroelectrical powerlines and the clearing of vegetation from powerlines and towers as part of hydroelectric operations of an electrical municipality potentially threaten one population of *Carpenteria californica* (CNDDB 1993). Historically, road widening and cattle grazing have seriously reduced populations of *C. springvillensis* at six sites (CNPS 1988). Two populations of *C. springvillensis* are currently threatened by road and fire break maintenance activities such as mowing and spraying (CNDDB 1993). Three of the four populations of *C. springvillensis* in the Sequoia National Forest occur along a road right-of-way for an electric municipality and are fenced and signed for protection but emergency maintenance activities, including vegetation removal, of the power towers and powerlines remains a threat (CNDDB 1993). A firebreak bisects one population of *Fritillaria striata* in Kern County and a powerline access road near Kern River State Park continues to adversely affect another population (CNDDB 1993). Vehicles driven along these access roads destroy the plants that grow in the roadway. Two populations of *F. striata* along Rancheria Road in Kern County face threats from a proposed road widening project (Stebbins 1989). Because of this species' affinity for clay soils that are unstable during wet months, emergency slope stabilization activities, such as road widening, could negatively affect two populations of *F. striata* along Rancheria Road in Kern County (Stebbins 1989).

Small scale logging on the privately-owned lands within the boundary of the Sierra National Forest has destroyed some plants and continues to threaten some populations of *Carpenteria californica* (J. Clines, pers. comm., 1993). Heavy equipment is driven across the plant populations to access the logging sites, and some plants are destroyed.

Proposed placer gold mining for a mining operation on private land threatens several populations of *Allium tuolumnense* (Robin Wood, *in. litt.*, 1993; Pat Stone, *in. litt.*, 1993). The proposed project is currently on hold. If planning were to resume, the resulting operation would adversely affect this plant through the placement of overburden on the plants occurring at these sites. Recreational gold mining and trampling associated with that activity adversely affects the four populations of *Verbena californica* at Six Bit Gulch, which contain 15 percent of the total individuals of the species (B. Rogers, pers. comm., 1992; CDFG 1993).

Conversion of land to agricultural uses threatens three of the subject species. *Fritillaria striata* was once known from the Frazier Valley, Porterville, Lindsay, and Strathmore. Agricultural land conversion has extirpated four populations of *F. striata* from those areas (Stebbins 1989). Most of the existing known populations of *F. striata* are threatened by agricultural land conversion, overgrazing, competition from nonnative grasses, and urbanization (Stebbins 1989). The spread of citrus orchards threatens three populations of *F. striata* at the lower elevations on the slopes of Lewis Hill near Frazier Valley (Stebbins 1989, 1991). One population of *Mimulus shevockii* is threatened with agricultural land conversion (CNDDB 1993). The type locality of *Navarretia setiloba* was extirpated by agricultural land conversion.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not currently known to be a factor for these 10 plants but unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity following publication of this proposal. *Carpenteria californica* is well established in the cultivation and horticultural trade both in California and England. The plant is propagated by cuttings and is not threatened by collecting in the wild.

C. *Disease or predation.* One population of *Calyptridium pulchellum* is potentially threatened by grazing (CNDDB 1993). Two populations of *Verbena californica* and eight populations of *Allium tuolumnense* that occur on lands managed by BLM in the Red Hills are grazed by cattle. Observations in Andrews Creek in the Red Hills indicate that *Verbena californica* is able to withstand only light grazing before it disappears (Rogers 1983). Plants of *V. californica* were heavily cropped and noticeably smaller than in ungrazed sites (BioSystems Analysis 1984). Although current grazing levels do not appear to be adversely affecting these species, changes in timing or an increase in the number of animals grazing in the area is a potential threat to these populations. Moderate to heavy grazing adversely affects *Clarkia springvillensis* and *Lupinus citrinus* var. *deflexus* at five sites (CDFG 1987, CNPS 1990). The largest population of *C. springvillensis*, containing more plants than the other six populations combined, is protected in a 1.8 hectare (4.5 acre) ecological preserve owned by the California Department of Fish and Game (CNDDB 1993). The preserve boundary was not surveyed. The original fence was placed some distance off the boundary line and included some adjacent land. This error has protected a substantial portion of the currently extant population of *C. springvillensis* from the heavy grazing that occurs outside the fenced exclosure. If, in the future, the fence is placed on the actual boundary, livestock grazing could adversely impact approximately half the remaining *C. springvillensis* on this site (CDFG 1989). Another population of *C. springvillensis* on the Sequoia National Forest is potentially threatened by overgrazing (CNDDB 1993).

Heavy grazing by domestic livestock and rodents adversely affects three of four populations of *Fritillaria striata* in Kern County and a fourth population in Tulare County (Stebbins 1989, CNDDB 1993). In addition to grazing, trampling of individual plants by livestock in

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populations in Kern County also negatively affects this species (Stebbins 1989, CNDDB 1993). Overgrazing currently adversely affects portions of two populations of *Carpenteria californica* in Fresno County (CNDDB 1993).

Clarkia springvillensis is susceptible to predation by the larvae of sphinx moths (Sphingidae). Larvae of this moth were observed feeding on the plant at one site (CDFG 1987). Sphinx moth predation may occur at other sites as well. However, the extent to which this factor threatens the plant is not known.

High numbers of California ground squirrels (*Spermophilus beecheyi*) frequently are associated with heavily grazed areas in the southern San Joaquin Valley and adjacent foothills. Ground squirrels likely feed on the subject plant species in addition to cattle in heavily grazed areas.

Deer were observed to have eaten most of the mature inflorescences of *Fritillaria striata* at the Tejon Hills population (about 5,000 plants) during 1 week in 1987 (D. Taylor, pers. comm., 1988 in Stebbins 1989).

D. *The inadequacy of existing regulatory mechanisms.* The California Fish and Game Commission has listed *Brodiaea pallida* and *Clarkia springvillensis* as endangered species under the California Endangered Species Act (Chapter 1.5 § 2050 *et seq.* of the California Fish and Game Code and Title 14 California Code of Regulations 670.2). The Commission also has listed *Carpenteria californica*, *Fritillaria striata*, and *Lupinus deflexus* (now known as *Lupinus citrinus* var. *deflexus*) as threatened species. Listing by the State requires individuals to obtain a memorandum of understanding with the California Department of Fish and Game (CDFG) to possess or "take" a listed species. Although both the California Native Plant Protection Act and the California Endangered Species Act prohibit the "take" of State-listed plants, State law exempts the taking of such plants via habitat modification or land use changes by the owner. After CDFG notifies a landowner that a State-listed plant grows on his or her property, State law only requires that the land owner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such a plant" (Native Plant Protection Act, Chapter 10 § 1913).

The California Environmental Quality Act (CEQA) requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State or Federal governments. Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved even though they may cause significant environmental damage, such as destruction of an endangered species. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the agency involved.

Verbena californica and *Brodiaea pallida* grow in mesic areas along defined stream channels that are generally small and may be treated as isolated wetlands or waters of the United States for regulatory purposes by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act. Nationwide Permit No. 26 (33 CFR part 330.5 (a)(26)) was established by the Corps to facilitate issuance of permits for discharge of fill into wetlands up to 4 hectares (10 acres). For project proposals falling under Nationwide Permit 26, the Corps has been reluctant to withhold authorization unless a federally proposed or listed threatened or endangered species is known to be present, regardless of the significance of other wetland resources. The 404 regulations require an applicant to obtain an individual permit to fill isolated wetlands or waters greater than 4 hectares (10 acres). In either case, candidate species receive no special consideration. Additionally and equally important, the upland watersheds (mesic pools and seeps next to streams) are not provided any protection. Disturbance to or loss of pool hydrology has damaged populations and habitat of these two plants as discussed previously in Factor A. Reductions in water volume and inundation adversely affect these plants. Thus, as a consequence of the small scale of these stream channels and lack of protection of associated uplands, this regulatory mechanism is inadequate to protect these two species.

Of the 10 plants included in this proposed rule, only *Clarkia springvillensis*, *Calyptridium pulchellum*, and *Carpenteria californica* receive any kind of formal protection.

The largest population of *Clarkia springvillensis* occurs on a 1.8 hectare (4.5 acre) preserve owned by the California Department of Fish and Game (CDFG). A draft interim management plan was developed in 1989, but has not been finalized in part due to a lack of funding. No on-the-ground management of this population has occurred. The Sequoia National Forest developed a management plan in 1987 for the populations of *C. springvillensis* that occur on Forest Service land. Although three of the four populations are now fenced, no active management of the populations is occurring to protect and promote the recovery of the species.

One portion of a population of *Carpenteria californica* is protected at the Black Mountain Preserve, owned by The Nature Conservancy. Some recovery activities such as prescribed burns are not being conducted because of a lack of funding and concerns that prescribed burns would result in a wildfire (J. Clines, pers. comm., 1993). The Sierra National Forest has designated and fenced a botanical area for the preservation of one portion of a population of *C. californica*, but no active management is taking place to enhance and promote the recovery of the species.

One small population of *Calyptridium pulchellum* occurs on lands administered by the Sierra National Forest and is fenced to protect it from livestock trampling and grazing (J. Clines, pers. comm., 1993). However, the remaining populations are not protected.

E. *Other natural or manmade factors affecting their continued existence.* Low seedling establishment, trampling, competition from native brush, off-road vehicle (ORV) activity, potential realignment of a preserve boundary fence, fire suppression, illegal dumping, and stochastic extinction variously affect some populations of *Brodiaea pallida*, *Clarkia springvillensis*, *Fritillaria striata*, and *Carpenteria californica*.

ORV use has destroyed some plants in the past at one population of *Lupinus citrinus* var. *deflexus*, however, recent damage is not evident (CDFG 1989a). An ORV road bisects one population of *Mimulus shevockii* and a gravel road bisects another population (CNDDB 1993). Ongoing ORV activity threatens this plant. Two populations of *Allium tuolumnense* were partially destroyed by ORV use in the Red Hills (The Nature Conservancy 1987), which is currently closed to ORVs. ORV use threatens four populations of *Carpenteria californica* (CNDDB 1993). One population of *Navarretia setiloba* in Kern County has received some disturbance from ORV use (CNDDB 1993), and another population is bisected by an ORV road (CNDDB 1993).

The single, small population of *Brodiaea pallida* is restricted to an intermittent drainage that is fed by some small springs. Any disruption to the hydrology of the springs or the upslope watershed would threaten this population of *B. pallida*. Local catastrophic events such as floods, disease outbreak, extended drought, landslides, or a combination of several such events could destroy a part or all of the population of *B. pallida*. Any local catastrophe could significantly decrease this population to so few individuals that the risk of extirpation due to genetic problems associated with small populations would increase.

Plants at one population of *Fritillaria striata* in Kern County have been trampled by cattle, and an additional population is potentially threatened by trampling (CNDDB 1993).

Because no seedlings of *Fritillaria striata* have been observed in nature, it is unknown to what degree this species is reproducing sexually (Stebbins 1989). The distribution of *F. striata* may be limited partially by its apparent reliance on vegetative reproduction (Stebbins 1989). The populations of this plant are discontinuously distributed throughout its range, making sexual reproduction difficult. By relying solely on vegetative reproduction, the genetic diversity of the species can be reduced, weakening the long-term viability of the species. *Fritillaria striata* also faces threats from nonnative grasses such as *Avena* and *Bromus* that compete with the subject plant for space, light, and nutrients (Stebbins 1989).

Fire suppression on private lands is a threat to the long-term survival of *Carpenteria californica* (J. Clines, pers. comm., 1993). *Carpenteria californica* exhibits low seedling establishment (CDFG 1991). The germination and seedling establishment of *C. californica* in nature was not observed or documented prior to 1989. However, a 1989 wildfire in Fresno County stimulated vigorous regrowth of the plant and the first recorded seedling establishment (J. Clines, *in. litt.*, 1993). Overgrazing and trampling by cattle directly after a wildfire, when seedlings are vulnerable, adversely affects the plant. *Carpenteria californica* requires more frequent fire than that is currently being experienced for successful sexual reproduction to occur (J. Clines, *in. litt.*, 1993). Fire is also important for maintaining the vigor of established individual shrubs of *C. californica*, by preventing associated species such as *Quercus wislizenii*, *Arctostaphylos mariposa*, and *Ceanothus leucodermis* from outcompeting *C. californica* for light, space, and nutrients (J. Clines, *in. litt.*, 1993).

Because the private lands containing the populations of *Carpenteria californica* consist of many small ranchettes and multiple landowners, it is unlikely that a controlled burn over an area large enough to effectively promote necessary sexual reproduction of *C. californica* could be successfully organized and carried out. Continued fire suppression and the inability to conduct needed controlled burns on private lands threaten all populations of *C. californica* that occur on private lands. The necessity of fire for sexual reproduction and for the long-term survival of this plant is understood by the Sierra National Forest. The policy of continued fire suppression to protect upslope timber stands is a threat to populations of *C. californica* on public lands.

Illegal dumping has been reported at two populations of *Carpenteria californica* (Stebbins 1988). Trash dumping destroys individual plants and degrades the habitat by introducing a wide variety of pollutants that inhibit seed germination and plant growth.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Endangered or threatened status is proposed for these species because large-scale human population increases and attendant urban growth and changes in agricultural land uses have destroyed significant quantities of foothill habitats and continue to eliminate plant populations. These plants and their habitats face current and future threats from urbanization, agricultural land conversion, highway construction, overgrazing, maintenance of roads and rights-of-way activities, mining, logging, off-highway vehicle use, stochastic extinction from random natural events, inadequate regulatory mechanisms, and insect predation.

Because the majority of threats facing four of these species are imminent, *Brodiaea pallida*, *Calyptridium pulchellum*, *Lupinus citrinus* var. *deflexus*, and *Mimulus shevockii* are in immediate danger of extinction throughout all or a significant portion of their respective ranges and, thus, fit the definition of an endangered species as defined in the Act. The only population of *Brodiaea pallida* is threatened by urbanization, inadequate regulatory mechanisms, and stochastic extinction. Four of the seven populations of *Calyptridium pulchellum* are imminently threatened by urbanization; one of those four sites is threatened potentially by overgrazing and an additional population threatened by grazing. Although TNC has voluntary verbal protection agreements with current landowners of one of the populations, no permanent preservation is assured at any of the populations sites. All four populations of *Lupinus citrinus* var. *deflexus* are threatened by urbanization and one population is potentially threatened by overgrazing. Although landowners of three of the four populations have registered each site with TNC for voluntary protection, no long-term protection is assured for any of the four known populations. Six of the seven known populations of *Mimulus shevockii* are threatened variously by mobile home development, agricultural land conversion, and off-highway vehicle use. None of the populations have any protection.

The plants proposed for listing as threatened are restricted to habitats somewhat less vulnerable to development and are faced with less imminent threats. However, these species are likely to become endangered in the foreseeable future unless current trends of urban development, agricultural land conversion, highway construction, road maintenance activities, improper fire management, off-highway vehicle use, and overgrazing are reversed. *Allium tuolumnense* is threatened by urbanization, overgrazing, mining, and off-highway vehicle use on 25 percent of its range on private lands. The remaining 75 percent of the population occurs on public lands and is potentially threatened by grazing on public lands. *Carpenteria californica* is imminently threatened by urbanization, highway construction, maintenance of roads and rights-of-way in connection with hydroelectrical operations, competition from native brush species, logging, illegal dumping, incompatible fire management activities, overgrazing, inadequate regulatory mechanisms, and off-highway vehicle use over the one-third of its range on private lands. *Carpenteria californico* is potentially threatened by alteration of natural fire cycles, off-highway vehicle use, and maintenance of roads and rights-of-way on the remaining two-thirds of its range on public lands. Four of the seven populations of *Clarkia springvillensis* are threatened by urbanization, road maintenance activities, insect predation, overgrazing, inadequate regulatory

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mechanisms, and timber operations. The largest population is protected partially by a fenced preserve owned by the California Department of Fish and Game. A possible fence realignment potentially threatens a significant portion of this population. Although three of the four populations of *C. springvillensis* occurring on the Sequoia National Forest are fenced and signed for protection, those populations may be threatened by future emergency powerline maintenance. Of the 17 populations of *Fritillaria striata*, 9 populations are threatened variously by agricultural land conversion, urbanization, off-highway vehicle use, road widening, emergency road maintenance activities, overgrazing, and trampling. Additionally, all populations of *F. striata* are potentially threatened by inadequate State regulatory mechanisms and competition from nonnative grasses. Three of the six populations of *Navarretia setiloba* are threatened by urbanization and off-highway vehicle use. Seven of the nine populations of *Verbena californica*, containing 65 percent of the plants, are threatened by urbanization over a relatively small part of its range on private lands. Recreational placer gold mining threatens this plant and overgrazing potentially threatens this plant on its remaining range on public lands. These six plants are not yet in danger of extinction throughout all or a significant portion of their ranges, but appear likely to become in danger of extinction in the foreseeable future. As a result, the preferred action is to list *Allium tuolumnense, Carpenteria californica, Clarkia springvillensis, Fritillaria striata, Navarretia setiloba,* and *Verbena californica* as threatened species.

Critical Habitat

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the taxa is listed. The Service finds that designation of critical habitat is not prudent for these species at this time. Because the 10 plants face numerous anthropogenic threats (see Factors A and E in "Summary of Factors Affecting the Species") and the 10 plants occur predominantly on private land, the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make these plants more vulnerable to incidents of vandalism and, therefore, could contribute to the decline of these species and increase enforcement problems. The listing of these species under the Act publicizes the rarity of these plants and, thus, can make these plants attractive to researchers or collectors of rare plants.

Protection of the habitat of these species will be addressed through the section 7 consultation and section 4 recovery processes. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time, because such designation would likely increase the degree of threat from vandalism, collecting, or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities potentially affecting 1 or more of the 10 plants include mining, grazing authorizations, and issuance of special use permits and rights-of-ways. Populations of 7 of the 10 plants occur on Federal lands. Approximately 70 percent of the *Carpenteria californica*, half the populations of *Clarkia springvillensis*, and one population of *Calyptridium pulchellum* occur on lands managed by the U.S. Forest Service. Approximately one-third of the populations of Allium tuolumnense, one-seventh the populations of *Verbena californica*, one-half the populations of *Mimulus shevockii*, and one population of *Navarretia setiloba* occur on lands managed by the BLM. These agencies would be required to confer with the Service if any activities authorized, funded, or carried out by these two agencies would likely jeopardize the continued existence of these species.

Other Federal agencies that may become involved as a result of this proposed rule include the Veterans Administration through their Federal mortgage programs, the U.S. Department of Housing and Urban Development (Federal Home Administration loans), and the Federal Highways Administration through the construction of roads and highways. Since at least three of these plants exist in or near stream beds, perennial streams or drainages, the U.S. Army Corps of Engineers may become involved through jurisdiction of section 404 of the Clean Water Act.

Listing these 10 plants would provide for the development of recovery plans. Such plans would bring together both State and Federal efforts for conservation of the plants. The plans would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plans would set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also would describe site-specific management actions necessary to achieve conservation and survival of these 10 plants. Additionally, pursuant to section 6 of the Act, the Service would be able to grant funds to affected States for management actions promoting the protection and recovery of these species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants and 17.71 and 17.72 for threatened plants not covered by a special rule, set forth a series of prohibitions and exceptions that apply to listed plant species. With respect to the four plants proposed to be listed as endangered, the prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the

jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale these species in interstate or foreign commerce; remove and reduce to possession these species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such endangered plant species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law.

The six plants proposed to be listed as threatened would be subject to similar prohibitions (16 U.S.C. 1538(a)(2)(E); 50 CFR 17.61, 17.71). Seeds from cultivated specimens of threatened plant taxa are exempt from these prohibitions provided that a statement "of cultivated origin" appears on the shipping containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. The Service anticipates that trade permits may be sought or issued for at least 1 of these 10 plant species because *Carpenteria californica* is common in cultivation in England and California. Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–2063; FAX 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these taxa;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor of the Sacramento Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited is available upon request from the Sacramento Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Kenneth Fuller, Sacramento Field Office (see **ADDRESSES** section); telephone 916/978–4866.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended for plants by adding the following, in alphabetical order under the plant families indicated, and by adding a new family, "Philadelphaceae—Mock orange family", in alphabetical order, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
. . .	.	.	.	.	.	.
Fabaceae—Pea family:						
. . .	.	.	.	.	.	.
Lupinus citrinus var. *deflexus* (=*Lupinus deflexus*).	Mariposa lupine	U.S.A. (CA)	E		NA	NA
. . .	.	.	.	.	.	.
Liliaceae—Lily family:						
. . .	.	.	.	.	.	.
Allium tuolumnense (=*Allium sanbornii* var. *tuolumnense*).	Rawhide Hill onion	U.S.A. (CA)	T		NA	NA

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Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Brodiaea pallida	Chinese Camp brodiaea	U.S.A. (CA)	E		NA	NA
Fritillaria striata	Greenhorn adobe lily	U.S.A. (CA)	T		NA	NA
Onagraceae—Evening primrose family:						
Clarkia springvillensis	Springville clarkia	U.S.A. (CA)	T		NA	NA
Philadelphaceae—Mock orange family:						
Carpenteria californica	Carpenteria	U.S.A. (CA)	T		NA	NA
Polemoniaceae—Phlox family:						
Navarretia setiloba	Piute Mountains navarretia	U.S.A. (CA)	T		NA	NA
Portulacaceae—Purslane family:						
Calyptridium pulchellum	Mariposa pussypaws	U.S.A. (CA)	E		NA	NA
Scrophulariaceae—Snapdragon family:						
Mimulus shevockii	Kelso Creek monkeyflower	U.S.A. (CA)	E		NA	NA
Verbenaceae—Vervain family:						
Verbena californica	Red Hills vervain	U.S.A. (CA)	T		NA	NA

Dated: September 27, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94-24491 Filed 9-30-94; 8:45 am]

BILLING CODE 4310-55-P

50 CFR Part 17

RIN 1018-AC 98

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant Lessingia Germanorum (San Francisco Lessingia) and Threatened Status for the Plant Arctostaphylos Imbricata (San Bruno Mountain manzanita) From California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act) for *Lessingia germanorum* (San Francisco lessingia), and threatened status for *Arctostaphylos imbricata* (San Bruno Mountain manzanita), two plants from the San Francisco peninsula of California. *Lessingia germanorum* occurs in central dune scrub, and is known from five sites on the Presidio in San Francisco County, and one site on San Bruno Mountain in San Mateo County, California. This taxon has been affected by and is endangered by competition with invasive alien vegetation, residential and commercial development, sand quarrying, increased pedestrian traffic and recreational activities, inadequate regulatory mechanisms, bulldozing, shading by native and non-native vegetation, incidental use of fertilizers, and other anthropogenic activities. *Arctostaphylos imbricota* occurs in coastal scrub habitat, and is only known from five small populations on San Bruno Mountain in San Mateo County; this plant has been affected by and is vulnerable to changes in fire frequency. This taxon is also threatened by collection, as it is used horticulturally as an ornamental plant. Because of the limited number of extant individuals of *A. imbricata* and *L. germanorum* and their severely restricted distribution, they also are subject to an increased likelihood of extinction from stochastic events. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for these plants.

DATES: Comments from all interested parties must be received by December 5, 1994. Public hearing requests must be received by November 18, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E-1803, Sacramento, California 95825-1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp (see **ADDRESSES** section) at 916/978-5805.

SUPPLEMENTARY INFORMATION:

Background

Lessingia germanorum (San Francisco lessingia) and *Arctostaphylos imbricata* (San Bruno Mountain manzanita) are endemic to the northern San Francisco peninsula in California. *Lessingia germanorum* is found within the central dune scrub community. *Arctostaphylos imbricata* is a component of the coastal scrub community.

The natural communities of the northern San Francisco peninsula have undergone a number of changes as a result of human-caused activities. The northern part of the San Francisco peninsula is highly urbanized. By 1984, over 90 percent of the northern peninsula's natural habitat had been disturbed or eliminated (Orsak and Schooley 1984). Urbanization has eliminated *Lessingia germanorum* from part of its range, and intensive commercial and residential development are ongoing. San Bruno Mountain was the last large parcel of open space in the northern San Francisco peninsula, and pursuant to section 10(a)(1)(B) of the Act, was the site of the United States' first habitat conservation plan after a decade-long land use battle (Bean *et al.* 1991). Urban development also has fragmented the remaining habitats for these plants. Habitat fragmentation increases the risks of extinction due to chance events such as pest or disease outbreaks, reproductive failure (which is possibly devastating to annual plants), or other natural or human-caused disasters. Other anthropogenic activities such as sand quarrying, increased pedestrian traffic and recreational activities, change in fire frequency, bulldozing, or the incidental use of fertilizers, also variously threaten the remaining occurrences of these plants.

Discussion of the Two Species Proposed for Listing

Adelbert von Chamisso first collected *Lessingia germanorum* in 1816 on the sand hills of San Francisco, California (Howell 1929). Chamisso described *L. germanorum* in 1829 and named it in honor of the Lessings, a German family of scientists and authors. John Thomas Howell (1929) recognized 11 varieties of *L. germanorum*. According to the rules for botanical nomenclature, when a new subspecies is described in a species not previously divided into infraspecific taxa, an autonym (an automatically created name) is created (i.e. *Lessingia germanorum* var. *germanorum*). Howell distinguished *L. germanorum* var. *germanorum* from the other varieties by the presence of few glands and by the absence of either odorous or bitter glandular secretions. Other treatments (Ferris 1959, Munz and Keck 1968) also recognized varieties of *L. germanorum*. Currently *L. germanorum* is recognized as a distinct species (Lane 1993).

Lessingia germanorum is a slender annual of the aster family (Asteraceae) with diffusely branched stems 10 to 30 centimeters (cm) (4 to 12 inches (in)) high. The herbage and stems are glandless and covered with grayish, loosely interwoven hairs. Tubular lemon yellow disc flowers with a brownish or purplish band are clustered into heads that are solitary at the end of branchlets. The seeds, which are attached to a crown of hairlike bristles, are light and easily carried by the wind. *Lessingia germanorum* typically flowers between August and November.

Historically, *Lessingia germanorum* occurred within the coastal dune scrub community throughout the San Francisco peninsula. Currently *L. germanorum* is restricted to the Presidio area of the San Francisco peninsula, and one occurrence near the base of San Bruno Mountain. *L. germanorum* grows on remnant sand dunes and sand terraces in open areas with blowing sand (Susan Smith, Yerba Buena Chapter, California Native Plant Society, pers. comm., 1992), at an elevational range between 24 to 91 meters (m) (80 to 300 feet (ft)). It is associated with *Chorizanthe cuspidata, Lotus scoparius*, and *Lupinus arboreous* (or *Lupinus chamissonis*). Five small populations, four natural and one introduced, occur within the Presidio in San Francisco County. One of the populations on the Presidio was established after approximately 10 cubic yards of sand was removed from the site of another population for use on the base golf course. In 1989, an additional population was discovered on San Bruno Mountain in northern San Mateo County. Collectively, the populations inhabit less than 0.8 hectares (2 acres) (Terri Thomas, Golden Gate National Recreation Area, pers. comm., 1993; Paul Reeberg, National Park Service, pers. comm., 1993). Population numbers for *L. germanorum* vary from year to year, but from 1980 to 1989 the total on the Presidio was less than 1,500 individuals per year (California Department of Fish and Game (CDFG) 1989). The population on San Bruno Mountain is estimated to have 1,600 to 1,800 individuals (Paul Reeberg, pers. comm., 1993). The five small populations within the Presidio have been managed by the Department of Defense but will be transferred to the National Park Service effective October 1, 1994. The population on San Bruno Mountain is jointly owned by Daly City and a private landowner (Annemarie Quevedo, Assistant Planner for Daly City, *in litt.*, 1992).

The populations on the Presidio are threatened by competition with invasive alien vegetation, shading from native and introduced shrubs and trees, foot traffic, sand quarrying, bulldozing, and other anthropogenic activities (CDFG 1989; California Natural Diversity Database (CNDDB) 1992; Susan Smith, pers. comm., 1992; Paul Reeberg, pers. comm., 1993; Terri Thomas, pers. comm., 1993). The population located on San Bruno Mountain is threatened by urbanization, trampling, competition from invasive alien vegetation, and bulldozing (Thomas Reid Associates, *in litt*, 1991; Susan Smith, pers. comm., 1992; Paul Reeberg, pers comm., 1993). Both the Presidio and San Bruno Mountain populations are threatened by stochastic environmental events.

Alice Eastwood (1931) originally described *Arctostaphylos imbricata* in 1931, based on material collected from the San Bruno Hills in 1915. Until 1967, various authors either synonymized *A. imbricata* with *A. andersonii* (Jepson

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1939), or considered it to be a variety of *A. andersonii* (Adams in McMinn 1935). James Roof followed Eastwood's treatment and acknowledged *A. imbricata* as a distinct species (Roof 1967). Philip Wells (1988) subsumed *A. montariensis* as a subspecies of *A. imbricata*, necessitating the creation of an autonym as discussed above (i.e., *A. imbricata* ssp. *imbricata*). He since has recognized *A. imbricata* as a distinct species in his 1993 treatment of California *Arctostaphylos* (Wells 1993).

Arctostaphylos imbricata is a low spreading evergreen shrub of the heath family (Ericaceae) that lacks a basal burl. Attaining a height of 20 cm (8 in), this highly branched shrub forms mats that are up to about 6 meters (m) (6 yards (yd)) in diameter. The bright green oblong to ovate leaves are hairless, except on the midrib, and densely overlapping. Small white urn-shaped flowers appearing from February to May are densely clustered at the end of branchlets. After fire, *A. imbricata* regenerates from seed instead of resprouting from a basal burl. *A. imbricata* can be distinguished from its congeners by its prostrate habit and its shorter, densely arranged leaves and compact flower clusters (Roof 1967).

Arctostaphylos imbricata is restricted to San Bruno Mountain in northern San Mateo County. On San Bruno Mountain, five small occurrences cover approximately 80 hectares (33 acres) (Paul Reeberg, *in litt.*, 1993). The most abundant population has 400 to 500 plants; other populations have as few as 15 plants (Roman Gankin, San Mateo County Planning Department, pers. comm., 1993). The plant grows in rocky exposed areas such as open ridges within coastal scrub or manzanita scrub at an elevation range of 275 to 365 m (900 to 1,200 ft). Where it occurs, it is the dominant plant species, and may be associated with *Baccharis pilularis* (coyote brush), *Vaccinium ovatum* (huckleberry), *Rhamnus californica* (coffeeberry), and *Arctostaphylos uva-ursi* var. *suborbiculata* (bearberry). *A. imbricata* has never been known from more than the five populations that occur today. Four of the five populations occur on land owned by San Mateo County Parks and Recreation; the fifth population is privately owned (Thomas Reid Associates 1991). The proximity of this plant on San Bruno Mountain to human population centers and intensive development activities renders *A. imbricata* vulnerable to change in the frequency of fires (i.e., as a result of a fire suppression policy), which are needed for the plants to reproduce sexually. Its highly restricted distribution increases its susceptibility to catastrophic events such as disease or pest outbreak, severe drought, or other natural or human-caused disasters.

Previous Federal Action

Federal government actions on the two plants began on June 16, 1976, when the Service published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Arctostaphylos imbricata* was included in the June 16, 1976, **Federal Register** document.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Arctostaphylos imbricata* and *Lessingia germanorum* (as *Lessingia germanorum* var. *germanorum*) as category 1 candidates for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. On November 28, 1983, the Service published in the Federal Register a supplement to the Notice of Review (48 FR 53640). This supplement changed *L. germanorum* var. *germanorum* from a category 1 to a category 2 candidate. Category 2 taxa are those for which data in the Service's possession indicate listing is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules.

The plant notice was revised again on September 27, 1985 (50 FR 39526). *Arctostaphylos imbricata* and *Lessingia germanorum* var. *germanorum* were included as category 1 candidates. Both species retained category 1 status in the most recent revision of the plant notice published on February 21, 1990 (55 FR 6184).

Mr. Brian O'Neill, General Superintendent of the Golden Gate National Recreation Area, petitioned the Service to emergency list *Lessingia germanorum* as an endangered species on May 28, 1991.

Although the Service did not emergency list *Lessingia germanorum*, it did publish a 90-day finding in the **Federal Register** on August 19, 1992 (57 FR 37513) that substantial information had been presented indicating that listing may be warranted. Section 4(b)(3)(B) of the Act requires the Secretary to make findings on petitions found to present substantial information indicating that the petitioned action may be warranted within 12 months of their receipt. The Service has conducted a status review and determined that the petitioned action is warranted. Publication of this proposed rule constitutes the final finding for the petitioned action.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists of threatened and endangered species. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lessingia germanorum* Cham. (San Francisco lessingia) and *Arctostaphylos imbricata* Eastw. (San Bruno Mountain manzanita) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Threats facing the habitat of these plants include being threatened, eliminated, or adversely modified by one or more of the following: urbanization, change in fire frequency, competition with invasive alien vegetation, sand quarrying, off-road vehicles, bulldozing, foot traffic, and bicycle use.

The natural habitat of the San Francisco peninsula already has been severely curtailed due to urbanization. Historically, suitable *Lessingia germanorum* habitat has decreased by 90 percent since European settlement (CDFG 1990). Urban development extirpated populations of *L. germanorum* at Lone Mountain and Lake Merced (both in the City of San Francisco) (CNDDB 1992). Historical populations of *L. germanorum* at Mountain View Lake and Ocean View Downs also have been extirpated, presumably due to urban development and competition with invasive alien vegetation (CDFG 1989). On San Bruno Mountain, approximately 4 hectares (10 acres) of potential habitat remains for *L. germanorum* (Paul Reeberg, pers. comm., 1993). Although it is unlikely that any additional significant populations will be located in this area, the area may be important for reintroduction efforts. Most of the central dune scrub on San Bruno Mountain has been covered by "homes, cemeteries, a flower farm, and the Colma Dump" (McClintock *et al.* 1990).

Urban development potentially threatens the population of *Lessingia germanorum* that occurs on San Bruno Mountain in San Mateo County outside the boundary for the San Bruno Mountain HCP (Paul Reeberg, pers. comm., 1993) (for a discussion of the HCP, see Factor D). A project has been approved for the construction of seven additional dwellings within a few hundred yards of the San Bruno population (Annemarie Quevedo, pers. comm., 1993). Activities associated with this development, such as trampling, would adversely affect this population.

Fragmentation of the coastal scrub dune community caused by past urban development also threatens this species. Habitat fragmentation has two primary effects. First, habitat fragmentation may alter the physical environment, changing the amount of incoming solar radiation, water, wind, or nutrients where the remnant vegetation occurs (Saunders *et al.* 1991). Second, when populations are fragmented into smaller, isolated units, risks of extinction due to chance events increases (see Factor E).

The habitat of *Lessingia germanorum* has been altered by the introduction of non-native vegetation. *L. germanorum* requires blowing sand and non-compacted soils. Off-road vehicle use, foot and bicycle traffic, and trampling by joggers compacts the soil and promotes the establishment of invasive alien vegetation (CDFG 1989; Susan Smith, pers. comm., 1992). All populations of *L. germanorum* are threatened by competition with aggressive alien plant species. *Carpobrotus* sp. (ice plant) covers extensive dune areas on the Presidio, stabilizing the dune system where it occurs. *L. germanorum* in contrast, requires some dune movement, which results in areas of exposed sand (CDFG 1989). Ice plant competes with *L. germanorum* at all five occurrences on the Presidio. In addition to ice plant, other alien plants competing with *L. germanorum*, include *Bromus diandrus*, *Avena barbata*, *Rumex* sp., *Raphanus* sp., and *Sonchus* sp. (Susan Smith, pers. comm., 1992). On San Bruno Mountain *Cortaderia* sp. (pampas grass) encroachment is a severe threat. CDFG reported that "without special protection and management, San Francisco lessingia will continue its declining trend" (CDFG 1992). Currently the populations of *L. germanorum* are being weeded by volunteers from the California Native Plant Society (CNPS). Without their assistance, *L. germanorum* would be outcompeted by the invasive alien vegetation.

The habitat of *Lessingia germanorum* also has been modified at one site by tree planting. Native and introduced shrubs and trees, including *Pinus radiata*, were planted at the Presidio in the late 1800's. These trees alter the habitat of *L. germanorum* by increasing the amount of shade (CDFG 1989; CNDDB 1992; Susan Smith, pers. comm., 1992), which adversely affects *L. germanorum*.

Bulldozing and sand quarrying activities have adversely affected *Lessingia germanorum*. Bulldozing to stabilize a slope on San Bruno Mountain destroyed about one-eighth of the *L. germanorum* population (Paul Reeberg, pers. comm., 1993; Thomas Reid Associates, *in litt.*, 1991). In January 1989, most of the habitat for one population of *L. germanorum* on the Presidio was destroyed when sand was removed to repair a tee on the base golf course (CDFG 1990). Sand quarrying is an on-going threat at this site; any sand quarrying activities that may occur in the future would negatively impact this species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization currently is not known to be a factor for *Lessingia germanorum*. Overutilization is potentially a threat to *Arctostaphylos imbricata*, which is used horticulturally as an ornamental plant. Two years ago, cuttings were made from plants located at Kamchatka Point on San Bruno Mountain. The remnant portions of the plants indicated that the clippings were performed with horticultural expertise (Doug Heisinger, Park Ranger, San Mateo County Park, pers. comm., 1993). Some *A. imbricata* being sold at local plant sales may originate from clippings from the natural populations (Paul Reeberg, pers. comm., 1993). Unrestricted collecting for scientific or horticultural purposes or excessive visits by groups or individuals interested in seeing rare plants could potentially result from increased publicity following publication of a proposed rule to list these species.

C. *Disease or predation.* There are no known disease or predation threats to *Lessingia germanorum* or *Arctostaphylos imbricata* at this time.

D. *The inadequacy of existing regulatory mechanisms.* The State of California Fish and Game Commission has listed *Arctostaphylos imbricata* and *Lessingia germanorum* as endangered species under the California Endangered Species Act (Chapter 1.5 § 2050 *et seq.* of the California Fish and Game Code and Title 14 California Code of Regulations 670.2). Listing by the State of California requires individuals to obtain a memorandum of understanding with the CDFG to possess or "take" a listed species. Though both the California Endangered Species Act and the California Native Plant Protection Act prohibit the "take" of State-listed plants (California Native Plant Protection Act, Chapter 10 § 1908 and California Endangered Species Act, Chapter 1.5 § 2080), State law exempts the taking of such plants via habitat modification or land use changes by the owner. After CDFG notifies a landowner that a State-listed plant grows on his or her property, State law only requires that the land owner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such a plant" (Native Plant Protection Act, Chapter 10 § 1913).

The California Environmental Quality Act (CEQA) requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State or Federal governments. Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is, therefore, dependant upon the discretion of the lead agency.

CEQA pertains to projects that occur on lands other than Federal land. The National Environmental Policy Act

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(NEPA) requires disclosure of the environmental effects of projects on Federal lands. Certain actions can be categorically excluded from the NEPA process when (a) the action or group of actions would have no significant effect on the quality of the human environment, and (b) the actions or group of actions would not involve unresolved conflicts concerning alternative uses of available resources. Exceptions to the categorical exclusions exist. One of these exceptions is when the action would affect a species listed or proposed to be listed on the List of Endangered or Threatened Species. Until a species is federally listed or proposed, this exception to the categorical exclusion would not be applied regardless of the State listing status.

A Memorandum of Understanding was established in 1987 between the Service, the National Park Service, Department of Defense, and CDFG for the purposes of mutual cooperation for management of sensitive native plant communities on the Presidio. However, *Lessingia germanorum* is not specifically addressed in the document (CDFG 1989). Sand quarrying and other activities that were endangering it have not been prevented and continue to threaten the species with extinction.

Arctostaphylos imbricata currently derives limited protection from the San Bruno Mountain Habitat Conservation Plan (HCP). An HCP, pursuant to sections 10(a)(1)(B) and 10(a)(2)(A) of the Act, is required for the Service to issue a permit for incidental take of a federally listed species of wildlife when such taking is incidental to, and not the primary purpose of, an otherwise lawful activity. HCPs are the mechanism through which incidental take of federally listed animals can be permitted for non-Federal actions. Future actions that are part of the permit are subject to review under section 7 of the Act.

The San Bruno Mountain HCP, developed in 1983 for three listed animals, also identified several candidate species in the area of concern, including *Arctostaphylos imbricata*. However, no species-specific management actions for *A. imbricata* are identified in the HCP, and none have been implemented. The protection to this plant afforded by the HCP may, therefore, be inadequate to insure its long-term survival.

E. Other natural or manmade factors affecting its continued existence. As discussed in Factor A, off-road vehicle use, foot and bicycle traffic, and trampling by joggers degrade the habitat of *Lessingia germanorum*. These activities also directly destroy individual plants. A bike path runs through the middle of one of the populations of *L. germanorum* (CNDDB 1992). Hiking trails occur adjacent to three populations (Terri Thomas, pers. comm., 1993).

All Presidio populations of *Lessingia germanorum* are subject to occasional unauthorized vehicle use. This disturbance directly destroys the plants and encourages establishment of invasive alien vegetation. Weedy species tend to colonize the tracks left by the vehicles (Susan Smith, pers. comm., 1992). An environmental education camp exists near the location of one population of *L. germanorum*. No signs or fences currently protect this site. These plants are vulnerable to habitat degradation from trampling due to their proximity to the camp.

When the ownership of the Presidio is transferred from the Department of the Army to the National Park Service, a marked increase in visitation by the public is expected (Terri Thomas, pers. comm., 1992, 1993). Increased foot traffic and other recreational activities are likely to negatively impact *Lessingia germanorum* because the populations are close to trails. In addition, the park is patrolled by police on horseback. Horses can trample the plants directly and compact the soil. The potential is high for populations of *L. germanorum* on the Presidio to be adversely impacted by these activities.

Garbage dumping has degraded the habitat at one site on the Presidio where *Lessingia germanorum* occurs (CNDDB 1992). Digging by pets also adversely affects *L. germanorum* at all sites on the Presidio by destroying individual plants (Laura Nelson, Golden Gate National Recreation Area, pers. comm., 1993; Peter Lacivita, San Francisco Corps of Engineers, pers comm., 1993).

On San Bruno Mountain, fertilizer run-off from a housing development above the slope supporting the largest population of *Lessingia germanorum* (Paul Reeberg, pers. comm., 1993) threatens this site. The nitrogen in these fertilizers promotes invasion by weed species that compete with *L. germanorum*.

Change in fire frequency threatens *Arctostaphylos imbricata*. Fire suppression policies have altered natural processes occurring on San Bruno Mountain. If a fire were to break out on San Bruno Mountain, attempts would be made by the County to extinguish the fire (Doug Heisinger, San Mateo County Park Department, pers. comm., 1993), to protect the surrounding homes and commercial buildings. *A. imbricata* is a fire-adapted plant that regenerates from seed rather than resprouting from a basal burl. After a fire, seeds that have accumulated in the soil (i.e. seed bank) sprout, which reestablishes the population. Between fires *A. imbricata* spreads vegetatively. Reproduction by seed is important to maintain the genetic diversity within the species. No significant seedling establishment occurs until fire eliminates competing vegetation, as with a recent fire at Kamchatka Point that killed the mature plants yet subsequently induced regeneration from seed (Roman Gankin, pers. comm., 1993). Fire replenishes soil nutrients and facilitates seed germination and seedling reestablishment by eliminating competition and shading. If the time between fires is too long, *A. imbricata* has little opportunity to reproduce sexually and individuals may become senescent. Conversely, fire occurring too frequently also poses a threat. If consecutive fires occurred within a short period (5 years), a non-sprouting species could be eliminated (Paul Zedler, San Diego State University, pers. comm., 1993; Michael Vasey, San Francisco State University, pers. comm., 1993). The plants either would not reach flowering age or not retain enough seed in the soil during the interval between fires to ensure the persistence of the species.

As discussed in Factor A, habitat fragmentation may adversely alter the physical environment. In addition, habitat fragmentation increases the risks of extinction by leaving the species vulnerable to chance events such as pest or disease outbreaks, reproductive failure (which can be devastating to annual plants), or other natural or human-caused disasters. The small isolated nature of the remaining populations and restricted distribution of both *Lessingia germanorum* and *Arctostaphylos imbricata* make extinction due to stochastic events more likely. A local catastrophe, such as a flood, disease outbreak, extended drought, landslide, or combination of several such events, could destroy part of a single population or entire populations. A local catastrophe also could decrease a population to so few individuals that the risk of extirpation due to genetic problems associated with small populations would increase.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. *Lessingia germanorum* has been reduced to five small populations on the Presidio in San Francisco County and one site on San Bruno Mountain in San Mateo County; collectively, the populations inhabit less than 0.8 hectares (2 acres). This taxon has been adversely affected and is endangered by competition with invasive alien vegetation, sand quarrying, increased traffic and recreational activities, inadequate regulatory mechanisms, shading by alien and native vegetation, incidental use of fertilizers, bulldozing, residential and commercial development, other anthropogenic activities, and stochastic events. *Lessingia germanorum* is in danger of extinction throughout all or a significant part of its range, and the preferred action is, therefore, to list it as endangered. *Arctostaphylos imbricata* has always been rare, and is restricted to five small populations on San Bruno Mountain in San Mateo County. This species is vulnerable to alterations of the natural fire regime and stochastic events. Because the threats facing *Arctostaphylos imbricata* are long-term rather than imminent, the species is not now in immediate danger of extinction throughout all or a significant portion of its range. However, with continued alteration of the natural fire cycle, the plant is likely to become endangered within the foreseeable future. As a result, the preferred action is to list *A. imbricata* as threatened.

Critical Habitat

Critical habitat, as defined by section 3 of the Act and 50 CFR 424.02 (d) is: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic and other relevant impacts of specifying any particular area as critical habitat at the time the species is listed as endangered or threatened.

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Arctostaphylos imbricata* and *Lessingia germanorum*, at this time. Because *A. imbricata* and *L. germanorum* face the threat of collection, the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make these plants more vulnerable to incidents of collection and, therefore, could contribute to the decline of this species and increase enforcement problems. The listing of *A. imbricata* and *L. germanorum* also publicizes their rarity and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. *A. imbricata* occurs at very few locations entirely on San Bruno Mountain. Any activity that would adversely modify critical habitat would likely jeopardize the continued existence of the species as well. The designation of critical habitat therefore would not provide additional benefit for this species beyond the protection afforded by listing. Designation of critical habitat therefore would not be prudent for *A. imbricata* or *L. germanorum*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Five populations of *Lessingia germanorum* occur on Federal land managed by the Department of Defense. *Arctostaphylos imbricata* occurs within the San Bruno Mountain Habitat Conservation Plan area.

Listing these two plants would provide for development of a recovery plan(s) for them. Such plan(s) would bring together both State and Federal efforts for conservation of the plants. The plan(s) would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts.

The plans would set recovery priorities and estimate costs of various tasks necessary to accomplish them. They also would describe site-specific management actions necessary to achieve conservation and survival of the two plants. Additionally, pursuant to section 6 of the Act, the Service would be able to grant funds to affected States for management actions promoting the protection and recovery of these species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants and 50 CFR 17.71 and 17.72 for threatened plants set forth a series of general prohibitions and exceptions. With respect to *Lessingia germanorum*, proposed to be listed as endangered, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale this species in interstate or foreign commerce; remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such endangered plant species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law.

Arctostaphylos imbricata, proposed to be listed as threatened, would be subject to similar prohibitions (16 U.S.C. 1538(a)(2)(E); 50 CFR 17.61, 17.71). Seeds from cultivated specimens of threatened plant taxa are exempt from these prohibitions provided that a statement "of cultivated origin" appears on the shipping containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plant species under certain circumstances. The Service anticipates few trade

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permits would ever be sought or issued for the two species because the plants are not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permits Branch, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–6241) (FAX:503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Lessingia germanorum* and *Arctostaphylos imbricata*;

(2) the location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) additional information concerning the range, distribution, and population size of *Lessingia germanorum* and *Arctostaphylos imbricata*;

(4) current or planned activities in the subject area and their possible impacts on *Lessingia germanorum* and *Arctostaphylos imbricata*, or their possible impacts on a proposal to designate critical habitat for *L. germanorum*;

(5) specific information on the amount and distribution of suitable occupied or unoccupied habitat in the area of *Lessingia germanorum*, including updated information and maps on land ownership and land designation;

(6) specific information on the biological value of areas that could be proposed as critical habitat, to other listed, proposed, or candidate species, and the relation of a proposal to designate critical habitat to maintaining biodiversity and ecosystem integrity;

(7) any foreseeable economic and other impacts resulting from a proposed designation of critical habitat for *Lessingia germanorum*;

(8) specific examples of acts of taking or vandalism that have destroyed or damaged individuals or populations of *Lessingia germanorum* or *Arctostaphylos imbricata*; and

(9) the methodology the Service might use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat;

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor of the Sacramento Field Office (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Kirsten Tarp (see ADDRESSES section); telephone 916/978–4866.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under the families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
Lessingia germanorum (=*Lessingia germanorum* var. *germanorum*).	San Francisco lessingia	U.S.A. (CA)	E		NA	NA
Ericaceae—Heath family:						
Arctostaphylos imbricata (=*Arctostaphylos imbricata* ssp. *imbricata*).	San Bruno Mountain manzanita	U.S.A. (CA)	T		NA	NA

Dated: September 23, 1994.

Mollie M. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–24492 Filed 9–30–94; 8:45 am]

BILLING CODE 4310–65–P

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on Petition and Initiation of Status Review for Koala

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and status review.

SUMMARY: The U.S. Fish and Wildlife Service announces the 90-day finding that a petition to add the Australian koala to the List of Endangered and Threatened Wildlife has presented substantial information indicating that the action may be warranted. A status review of this species is initiated.

DATES: The finding announced herein was made on September 26, 1994. Comments and information may be submitted until February 1, 1995.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; Mail Stop: room 725, Arlington Square; U.S. Fish and Wildlife Service; Washington, D.C. 20240 (Fax number 703–358–2276). Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203. The petition finding, supporting data, and comments will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708).

SUPPLEMENTARY INFORMATION: Section 4(b)(3) of the Endangered Species Act of 1973, as amended, requires that within 90 days of receipt of a petition to list, delist, or reclassify a species, or to revise a critical habitat designation, a finding be made on whether the petition has presented substantial information indicating that the requested action may be warranted, and that such finding be published promptly in the Federal Register.

If the finding is positive, Section 4(b)(3) also requires commencement of a review of the status of the involved species. The U.S. Fish and Wildlife Service (Service) now announces a 90-day finding on a recently received petition.

The petition was submitted by Australians for Animals (in Australia) and the Fund for Animals (in the United States); about 40 additional organizations in the United States and Australia were named as supporting the petition. It was dated May 3, 1994, and was received by the Service on May 5, 1994. It requests that the koala *(Phascolarctos cinereus)*, a bearlike Australian marsupial, be classified as endangered in New South Wales and Victoria, and as threatened in Queensland.

The koala once occurred over much of the three indicated states, as well as in part of South Australia, and numbered in the millions. The petition presents an extensive compilation of data, including recent direct testimony from authorities on the species, suggesting that the koala has declined greatly in distribution and numbers, and that its status is likely to continue to deteriorate. Reportedly, there are practically none left in South Australia and only a few thousand in New South Wales and Victoria; the Queensland population may be less than 10 percent of what it was in the 1920s.

The species was drastically reduced by excessive killing for its fur up through the 1920s. It subsequently was provided legal protection from such killing, but, according to the petition, remnant populations are relatively small and badly fragmented. Logging, agriculture, and other problems have eliminated at least two-thirds of the original forest and woodland habitat, further declines are occurring, and little of the remaining habitat is well protected. The species is totally dependent for food and shelter on certain types of trees within forests and woodlands. The destruction or degradation of this habitat will reduce the viability of populations, even if the animals are otherwise protected, and

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many local populations are said to have disappeared in recent years. Other reported problems include fires, diseases, droughts, harassment by dogs, interference with normal gene flow, and killing along the roads now penetrating habitat. The largest population remaining in Queensland is now said to be immediately threatened by a major highway project that would bisect its habitat.

The Service is aware that the koala is generally protected by federal and procincial laws in Australia, and that there have been intensive government efforts to conserve and reintroduce some populations. However, the information presented by the petition gives cause for concern about the over-all prospects for the species and its natural ecosystems, and suggests that further review of the situation is advisable. The Service therefore has found that the petition presents substantial information indicating that the requested action may be warranted. Also, pursuant to Section 4(b)(3), the Service hereby commences a review of the status of the involved species. Submission of appropriate data, opinions, and publications regarding this petition is encouraged. In accordance with Section 4(b)(3), within 12 months of receipt of the petition, the Service will make another finding as to whether the requested action is warranted, not warranted, or warranted but precluded by other listing measures.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: September 26, 1994.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 94-24512 Filed 10-3-94; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 59, No. 191

Tuesday, October 4, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Small Grains, Nursery, Potatoes, and Sugarcane Crop Insurance Endorsements

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of Extension of Sales Closing Date (Acceptance of Applications).

SUMMARY: Effective for the 1995 crop year only, the Federal Crop Insurance Corporation (FCIC) herewith gives notice of its determination to extend the date for acceptance of applications for small grains (wheat, oats, rye, and barley), sugarcane, potatoes, and nursery crop insurance for all policies having a September 30 sales closing date.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Mari Dunleavy, Regulatory Specialist, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 254-8314.

SUPPLEMENTARY INFORMATION: Under its regulations for insuring crops, FCIC requires that applications for crop insurance protection must be filed on or before the policy sales closing date. The small grains, potatoes, surgarcane, and nursery crop insurance policies have a sales closing date in some areas of September 30. Due to the uncertain nature of improvements being made to agricultural risk management policies, producers have requested that FCIC extend the sales closing dates to allow producers opportunity to assess their risk management needs and make an informed decision as to the purchase of crop insurance. Therefore, to assist those producers who have requested an extension of sales closing date, the Manager of FCIC has determined that the September 30 sales closing date shall be extended to October 31.

Under the provisions of the General Crop Insurance Regulations (§ 401.8 and § 457.8), the sales closing date for accepting applications may be extended by notice in the **Federal Register** upon determination that no adverse selection will result from such extension. FCIC has determined that no adverse selection will result from this extension.

FCIC will discontinue the acceptance of applications if it determines that the insurance risk because excessive and adverse conditions develop.

Notice

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation herewith gives notice that, effective for the 1995 crop year only, applications for wheat, barley, oats, rye, nursery, potatoes, and surgarcane crop insurance with sales closing prior to October 31, 1994, will be accepted up to the *close of business on October 31, 1994*, for producers requesting multiple peril crop insurance coverage. This sales closing may be terminated by the Corporation prior to October 31, 1994 if the insurance risk becomes excessive and adverse conditions develop.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, D.C. on September 29, 1994.

Kathleen Connelly,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 94-24469 Filed 10-3-94; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-821-807]

Postponement of Preliminary Antidumping Duty Determination: Ferrovanadium and Nitrided Vanadium From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger (202-482-4136) or Karla Whalen (202-482-6309), Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

Postponement of Preliminary Determination

The Department of Commerce ("the Department") is postponing its preliminary determination in the antidumping duty investigation of ferrovanadium and nitrided vanadium from the Russian Federation ("Russia"). The deadline for issuing this preliminary determination is now no later than December 27, 1994.

On June 20, 1994, the Department initiated an antidumping duty investigation of ferrovanadium and nitrided vanadium from Russia (59 FR 3952, June 27, 1994). The preliminary determination was scheduled for November 7, 1994.

On July 15, 1994, the U.S. International Trade Commission determined that there was a likelihood that a U.S. domestic industry was materially injured, or threatened with material injury, by reason of imports of ferrovanadium and nitrided vanadium from Russia.

This investigation involves unusually complex foreign trading channels and, therefore, we have determined that this investigation is extraordinarily complicated within the meaning of section 733(c)(1)(B)(i) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 353.15(b)(2). Furthermore, we have determined that the parties concerned are cooperating, as required by section 733(c)(1)(B) of the Act and 19 CFR 353.15(b)(1), and that additional time is necessary to make this preliminary determination in accordance with section 733(c)(1)(B)(ii) of the Act and 19 CFR 353.15(b)(3).

For these reasons, the deadline, for issuing this determination is now no later than December 27, 1994.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: September 26, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-24534 Filed 10-3-94; 8:45 am]

BILLING CODE 3510-DS-M

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[A–557–808]

Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Malaysia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas McGinty or Peter Wilkniss, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5055 and (202) 482–0588, respectively.

PRELIMINARY DETERMINATION: We preliminarily determine that imports of certain carbon steel butt-weld pipe fittings ("pipe fittings") from Malaysia are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 21, 1994, (59 FR 14148, March 25, 1994), the following events have occurred.

On April 14, 1994, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination (see, ITC Investigation No. 731–TA–691).

In accordance with 19 CFR 353.42(b) (1994), on April 29, 1994, the Department of Commerce (the Department) issued its antidumping duty questionnaire to Malaysia Mining Corporation Pipe & Fitting Sdn Bhd (MMCPNF), the Malaysian company identified by both petitioner and the U.S. Embassy in Malaysia (by cable to the Department) as the primary exporter of the subject merchandise to the U.S. during the POI.

On May 27, 1994, the Department received a letter from the Government of Malaysia stating that MMCPNF was placed in receivership in October 1993, ceased production at that time, and is currently in the process of selling its assets. Therefore, MMCPNF would not be responding to the Department's antidumping duty questionnaire.

On June 3, 1994, the Department received a letter from petitioner in which the petitioner named another Malaysian producer of pipe fittings, Taiyo Steel Corporation (Taiyo). In order to ensure that all potential respondents were identified, we then cabled the U.S. Embassy in Malaysia a second time requesting information on Taiyo and any other Malaysian producers of pipe fittings. The U.S. Embassy responded that no company by that name could be found and identified no other Malaysian producers of pipe fittings.

On June 30, 1994, petitioner requested a 50-day postponement of the preliminary determination. The request was granted by the Department on July 19, 1994 (59 FR 37961, July 26, 1994).

On August 4, 1994, the Department received an amendment to the petition alleging that critical circumstances exist with respect to imports of pipe fittings from Malaysia. In accordance with section 735(a)(3) of the Act, on August 12, 1994, the Department issued a letter to MMCPNF requesting monthly volume and value shipment data for the period January 1, 1992, through September 27, 1994. The Department has received no reply to this request.

Scope of Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings ("pipe fittings") having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (e.g., threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation is September 1, 1993, through February 28, 1994.

Best Information Available

MMCPNF did not respond to our questionnaire. Therefore, we have based our preliminary determination on best information available (BIA) pursuant to section 776(c) of the Act, which provides that the Department shall use BIA when a company identified by the Department as a respondent refuses to provide requested information.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. According to this methodology, as outline in the Final Determination of Sales at Less Than Fair Value: Antifriction Bearings, Other Than Tapered Roller Bearings, from Germany, 54 FR 18992, 19033 (May 3, 1989), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of 1) the highest margin alleged in the petition, or 2) the highest calculated rate of any respondent in the investigation. (*See Allied Signal Aerospace Co. v. United States*, 996 F. 2d 1185,1191–92 (Fed. Cir. 1993).) Because there were no cooperative respondents in this investigation, we are assigning to all exporters, as BIA, the highest margin calculated in the petition, adjusted for methodological errors as explained in the Department's initiation notice. The adjusted rate is 194.7 percent.

Critical Circumstances

Petitioner has alleged that critical circumstances exist with respect to imports of the subject merchandise from Malaysia. Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist if:

(A)(i) There is a history of dumping in the U.S. or elsewhere of the class or kind of merchandise which is the subject of this investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of this investigation over a relatively short period.

Since MMCPNF did not respond to our letter of August 12, 1994, we preliminarily determine, as BIA, pursuant to section 776(c) of the Act, that critical circumstances exist with respect to imports of pipe fittings from Malaysia.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act and 19 CFR 353.16(c), we are directing the Customs Service to suspend liquidation of all entries of pipe fittings from Malaysia that are entered, or withdrawn from warehouse, for consumption on or after the date 90 days prior to the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
All companies	194.70

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties who wish to request a hearing, or to participate in one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Tentatively, this hearing will be held on November 28, 1994, at 1:00 p.m. at the U.S. Department of Commerce, room 1414, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38, case briefs or other written comments in at least five copies must be submitted to the Assistant Secretary for Import Administration no later than November 16, 1994, and rebuttal briefs, no later than November 23, 1994. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination within 75 days of the signing of this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: September 26, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–24542 Filed 10–3–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–307–812]

Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Sue Strumbel, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone (202) 482–1442.

PRELIMINARY DETERMINATION: We preliminarily determine that imports of certain carbon steel butt-weld pipe fittings ("pipe fittings") from Venezuela are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 21, 1994, (59 FR 141148, March 25, 1994), the following events have occurred.

On April 14, 1994, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case.

On May 2, 1994, counsel for COVECO C.A. (Coveco) and Petroltubos S.A. (Petroltubos), the only two producers of the subject merchandise in Venezuela, notified the Department of Commerce ("the Department") that due to the insignificant quantity and value of exports to the United States, these companies would not be responding to the Department's questionnaire in this investigation.

The petitioner requested a 50-day postponement of the preliminary determination on June 30, 1994. The request was granted by the Department of Commerce on July 19, 1994 (59 FR 37961, July 26, 1994).

Scope of Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings ("pipe fittings") having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (e.g., threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs purposes, our written descriptions of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation is September 1, 1993, through February 28, 1994.

Best Information Available

Because neither Coveco nor Petroltubos responded to our questionnaire, we are basing our determination on best information available (BIA) pursuant to section 776(c) of the Act which provides that the Department shall use BIA when a company identified by the Department as a respondent refuses to provide requested information.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. According to this methodology, as outlined in the *Final Determination of Sales at Less Than Fair Value:*

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Antifriction Bearings, Other Than Tapered Roller Bearings from Germany, 54 FR 18992, 19033 (May 3, 1989), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of 1) the highest margin alleged in the petition, or 2) the highest calculated rate of any respondent in the investigation. (*See Allied Signal Aerospace Co. v. United States*, 996 F. 2d 1185, 1191–92 (Fed. Cir. 1993).) Because there were no cooperative respondents in this investigation, we are assigning to all exporters, as BIA, a margin of 595.66 percent, the highest margin calculated in the petition, adjusted for methodological errors as explained in the Department's initiation notice.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of pipe fittings from Venezuela that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
All companies	595.66

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination

Public Comment

In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Tentatively, the hearing will be held on November 28, 1994, at 1 p.m. at the U.S. Department of Commerce, Room 1414, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38, case briefs or other written comments in at least five copies must be submitted to the Assistant Secretary for Import Administration no later than November 16, 1994, and rebuttal briefs, no later than November 23, 1994. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination within 75 days of the signing of this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: September 26, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–24538 Filed 10–3–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–533–811]

Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Sue Strumbel, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1442.

PRELIMINARY DETERMINATION: We preliminarily determine that certain carbon steel butt-weld pipe fittings from India are being sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the "Act"). The estimated margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 21, 1994, (59 FR 14148) the following events have occurred.

On April 14, 1994, the United States International Trade Commission ("ITC") issued an affirmative preliminary injury determination (*see* ITC Investigation No. 731–TA–689).

In accordance with 19 CFR 353.42(b)(1994), antidumping duty questionnaires were presented to two Indian producers which account for over 60 percent of all Indian exports of certain carbon steel butt-weld pipe fittings to the United States during the POI. These companies are Karmen Steels of India (Karmen) and Sivanandha Pipe Fittings Limited (Sivanandha).

The petitioner requested a 50-day postponement of the preliminary determination on June 30, 1994. The request was granted by the Department of Commerce on July 19, 1994 (59 FR 37961, July 26, 1994).

Scope of the Investigation

The products covered by these investigations are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished form fittings based on other methods of fastening (e.g., threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is September 1, 1993, through February 28, 1994 for Sivanandha and August 1, 1993, through February 28, 1994 for Karmen. Although we originally established the same POI for both

companies, Karmen was not able to provide foreign market values (FMV) for sales during that period because it had no home market or third country sales and its U.S. sale(s) involved merchandise which had not yet been produced. Therefore, in accordance with section 353.42(b)(1) of our regulations, we extended Karmen's POI by one month in order to capture sales of merchandise that had been produced.

Product Comparisons

For Sivanandha, we first compared merchandise identical in all respects. If no identical merchandise was sold, we compared the most similar merchandise, as determined by the model-matching criteria contained in Appendix V of the questionnaire ("Appendix V") (on file in room B–099 of the main building of the Department of Commerce ("Public File")). For the U.S. sales compared to sales of similar merchandise, we made an adjustment, pursuant to 19 CFR 353.57, for physical differences in merchandise.

Karmen, did not make home market or third country sales of the subject merchandise. Therefore, we based FMV on constructed value (CV), in accordance with section 773(a)(2) of the Act.

Additionally, Karmen reported that it has an arrangement with a Singaporean company, under which the Singaporean company supplies Karmen with rusty pipe fittings. Karmen reconditions and refurbishes these pipe fittings and exports them to the Singaporean company's U.S. customer. Karmen claims that since the Singaporean company only pays Karmen for the refurbishing, and Karmen does not take title to this merchandise, these sales should not be treated as Karmen sales. For purposes of the preliminary determination, we are not treating these refurbished pipe fittings as sales subject to this investigation. We will further examine this issue for purposes of the final determination.

Fair Value Comparisons

To determine whether Sivanandha's or Karmen's sales for export to the United States were made at less than fair value, we compared the United States price ("USP") to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

Because Sivanandha's and Karmen's U.S. sales of subject merchandise were made to unrelated purchasers prior to importation into the United States, and the exporter's sales price methodology was not indicated by other circumstances, in accordance with section 772(b) of the Act, we based USP on the purchase price ("PP") sales methodology.

We calculated Sivanandha's PP sales based on packed, CIF prices to unrelated customers in the United States. We made deductions to the USP, where appropriate, for foreign inland freight, containerization, ocean freight, and marine insurance.

In accordance with Section 772(d)(1)(B) of the Act, we added to Sivanandha's USP the amount of import duties imposed on inputs which were subsequently rebated upon exportation of the finished merchandise to the United States.

We made an adjustment to U.S. price for excise and sales taxes paid on the comparison sales in India, in accordance with our practice, pursuant to the Court of International Trade (CIT) decision in *Federal-Mogul, et al. v. United States*, 834 F. Supp. 1993. See *Preliminary Antidumping Duty Determination and Postponement of Final Determination; Color Negative Photographic Paper and Chemical Components Thereof from Japan*, 59 FR 16177, 16179, April 6, 1994, for an explanation of this tax methodology.

We calculated Karmen's PP sales based on packed, CIF prices to unrelated customers in the United States. We made deductions to the USP, where appropriate, for foreign inland freight, containerization, ocean freight and marine insurance. In calculating U.S. credit expense, we used the borrowing rate in the United States on short-term dollar-denominated loans. For a further discussion of the Department's treatment of credit in this investigation, please see *Memorandum from Barbara R. Stafford to Susan G. Esserman* (September 26, 1994) on file in room B–099 of the U.S. Department of Commerce.

Foreign Market Value

For Sivanandha, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. As a result, we determined that Sivanandha's home market was viable.

We adjusted for a excise and sales tax collected in the Indian home market. (*See* the United States Price section of this notice, above.)

For Karmen, because it sells the subject merchandise only in the U.S. market, we used CV, pursuant to section 773(e) of the Act. We calculated CV based on the sum of the cost of materials, fabrication, general expenses, U.S. imputed credit costs, U.S. packing costs and profit. In accordance with section 773(e)(1)(B) (i) and (ii) of the Act, we: (1) Included the greater of either Karmen's reported general expenses or the statutory minimum of ten percent of the cost of manufacture (COM), as appropriate and; (2) used the statutory minimum of eight percent of the sum of COM and general expenses for profit. In reporting its CVs, Karmen allocated labor costs and variable manufacturing overhead in such a way as to assign equal amounts for new pipe fittings and refurbished pipe fittings. We believe that the allocation method Karmen used to report CVs results in understating the costs of producing new fittings, because based on our experience in past cases, we would expect that costs incurred in the early production stages would not be incurred in refurbishing fittings. Therefore, we have recalculated these costs by assigning all labor and variable manufacturing overhead costs to the production of new pipe fittings. We will seek additional information on the actual costs for purposes of the final determination.

Pursuant to section 773(a)(4)(B) of the Act and 19 CFR 353.56(a)(2), we made circumstance-of-sale (COS) adjustments for differences in movement charges between shipments to the United States and shipments to India. For Sivanandha, we also made COS adjustments for differences in quality inspection charges, credit and advertising expenses. In accordance with 19 CFR 353.56(b)(1), we added U.S. indirect selling expenses as an offset to the home market commission, but capped this addition by the amount of the home market commission. Finally, we deducted home market packing expenses and added U.S. packing expenses to Sivanandha's FMV, in accordance with section 773(a)(1) of the Act.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs

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Service to suspend liquidation of all entries of certain carbon steel butt-weld pipe fittings from India, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturers/producers/exporters	Margin percent
Sivanandha	10.16
Karmen	37.04
All others	15.85

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "(no) product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation for dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no basis to require a cash deposit or bond for that amount.

Accordingly in this investigation, Sivanandha's FMV is based on home market sales and hence, the antidumping margin must be adjusted. In the *Preliminary Affirmative Countervailing Duty Determination: Certain Carbon Steel Butt-Weld Pipe Fittings from India*, (59 FR 28337, published June 1, 1994), Sivanandha's export subsidy was 3.53 percent ad valorem, which will be subtracted from the margins for cash deposit or bonding purposes. The rate listed above reflects this adjustment. Since Karmen only has U.S. sales, its FMV is based on CV which reflects export subsidies. Because the export subsidies were reflected in both USP and FMV, the subsidies did not affect the margin calculations using CV.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated preliminary dumping margins, as shown above. The suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 75 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than November 16, 1994, and rebuttal briefs no later than November 23, 1994. A hearing, if requested, will be held on November 28, 1994, at 1 p.m. at the U.S. Department of Commerce in Room 1414. Parties should confirm by telephone the time, date, and place of the hearing 48 hours prior to the scheduled time. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

We will make our final determination not later than 75 days after the date of this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: September 26, 1994

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–24537 Filed 10–3–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–427–813]

Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Gary Bettger or Penelope Naas, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2239 or 482–3534, respectively.

PRELIMINARY DETERMINATION: We have preliminarily determined that certain carbon steel butt-weld pipe fittings from France are being sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930 ("the Act"), as amended. The estimated margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 21, 1994 (59 FR 14148, March 25, 1994), the following events have occurred:

On April 11, 1994, the United States International Trade Commission ("ITC") issued an affirmative preliminary injury determination (*see*, ITC Investigation No. 731–TA–688, 59 FR 18825 (April 20, 1994)).

In accordance with 19 CFR 353.42(b), the Department of Commerce ("the Department") issued its antidumping duty questionnaire to Interfit, S.A. ("interfit") and its related U.S. company, Vallourec, Inc. ("Vallourec"), on April 29, 1994. Interfit is the only company named in the petition as a producer and exporter to the United States of the subject merchandise.

On June 14, 1994, petitioner alleged that Interfit was selling the subject merchandise in France at less than its cost of production ("COP"). We found reasonable grounds to believe or suspect that sales in the home market were being made at less than COP and thus initiated a COP investigation.

On June 30, 1994, petitioner requested a 50-day postponement of the preliminary determination. The request was granted by the Department on July 19, 1994 (59 FR 37961, July 26, 1994).

On August 4, 1994, petitioner alleged critical circumstances with regard to imports of certain carbon steel butt-weld pipe fittings from France.

On September 6, 1994, Interfit submitted constructed value ("CV") data for models reflecting a large percentage of sales made in the United States during the period of investigation ("POI"). On September 23, 1994, Interfit provided CV information for the remaining models sold in the United States.

Scope of the Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.* threaded, grooved, or bolted fittings).

Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The POI is September 1, 1993, through February 28, 1994.

Fair Value Comparisons

To determine whether Interfit's sales for export to the Untied States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

Because Interfit's U.S. sales of certain carbon steel butt-weld pipe fittings were made to an unrelated distributor in the United States prior to importation, and the exporter's sales price methodology was not indicated by other circumstances, we based USP on the purchase price ("PP") sales methodology in accordance with section 772(b) of the Act.

We calculated Interfit's PP sales based on packed, c.i.f., duty paid, landed prices to unrelated customers in the United States. We made deductions to the U.S. price, where appropriate, for foreign inland freight, foreign brokerage, marine insurance, ocean freight, U.S. brokerage, U.S. duties, and rebates.

No commissions were paid to unrelated distributors in the United States or home market, and we do not have an appropriate benchmark against which to test whether the commission arrangements between Interfit and its related party are at arm's length. Therefore, we did not make an adjustment for commissions claimed by Interfit that were paid to its U.S. subsidiary for various charges incurred in selling the subject merchandise. (*See Final Determination of Sales at Less than Fair Value: Coated Groundwood Paper from Belgium, Finland, France, Germany and the United Kingdom*, 56 FR 56359, November 4, 1992.)

Foreign Market Value

In order to determine whether Interfit had a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. On this basis, we determined that the home market was viable. For purposes of calculating FMV, we used reported CV for products sold by Interfit in the United States during the POI.

Cost of Production

Interfit provided incomplete and inappropriate cost data for home market sales. Specifically, Interfit did not provide COP information for all comparison models sold in France during the POI. Furthermore, Interfit provided transfer prices for the main input into its pipe fittings. As this input was purchased from related parties, it is the Department's practice to use the cost of producing the input, rather than the transfer price. See *Final Determination of Sales at Less than Fair Value: Ferrosilicon from Venezuela* (58 FR 27522; 1993). Finally, the costs reported by Interfit did not reflect the specific time period requested by the Department.

Accordingly, we do not have the information necessary to make a determination whether Interfit's home market sales are being sold below the COP. In accordance with section 776(c) of the Act as best information available ("BIA") we have determined that all sales in the home market were made at less than the COP and, in accordance with section 773(b) of the Act, we have based foreign market value on CV.

Constructed Value

We calculated CV based on the sum of the cost of materials, fabrication, general expenses, U.S. packing costs and profit. In accordance with section 773(e)(1)(B)(i) and (ii) of the Act, we (1) included the greater of Interfit's reported general expenses or the statutory minimum of ten percent of the COM, as appropriate, and (2) used the statutory minimum of eight percent of the sum of COM and general expenses for profit.

For comparisons to CV, we made circumstance-of-sale adjustments for differences in credit expenses between the two markets, pursuant to 19 CFR 353.56(a)(2). In calculating U.S. credit expense, we used the rate respondent reported at which it could borrow in U.S. dollars during the POI. (For further discussions regarding the Department's treatment of credit in this investigation, please see September 26, 1994, Memorandum to Susan G. Esserman from Barbara R. Stafford on file in Room B–099 of the Department of Commerce.) We have not made a deduction for the direct selling expenses reported by respondent. We have determined that these expenses (product liability premiums and inventory carrying costs) are, in fact, indirect selling expenses.

Because of the deficiencies in the cost data described above, we are requesting further information from Interfit. We also intend to verify that the prices paid by Interfit to its related suppliers are, in fact, at arms-length.

The CV data originally provided by Interfit did not cover all of the models sold by the company in the United States during the POI. On September 23, 1994, Interfit supplied the CV data for the remaining models. Because this information was not received in time to be used in this preliminary determination, we have used BIA for sales involving these models. As BIA, we have imputed the highest non-aberrational margin calculated from the CV information that Interfit submitted on September 6, 1994. (*See Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands*, 58 FR 37199; July 9, 1993). In our final determination, we intend to use all the CV data submitted by Interfit so long as it can be verified.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Critical Circumstances

Petitioner alleges that critical circumstances exist with respect to imports of the subject merchandise from France. Section 733(e)(1) of the Act provides that the Department will determine that critical circumstances exist if:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of this investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of this investigation over a relatively short period.

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Regarding A(i) above, in determining whether there has been a history of dumping, we normally consider whether there has been an antidumping order in the United States or elsewhere on such or similar merchandise. Regarding (A)(ii) above, we normally consider margins of 25 percent or more for purchase price sales sufficient to impute knowledge of dumping. (*See, Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy*, 52 FR 24198, June 29, 1987.)

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports. If imports during the period immediately following the filing of the petition increase by at least fifteen percent over imports during a comparable period immediately preceding the filing of a petition, we normally consider them massive.

In order to determine whether imports have been massive over a relatively short period of time, we compared the reported shipments of butt-weld pipe fittings by Interfit to the United States in the seven months after the petition was filed to the seven months immediately before this period. Our analysis showed that the volume of imports of subject merchandise to the United States by Interfit had actually decreased over that period of time. (*See*, 19 CFR 353.16(f)(2).) Based on this analysis, we determine that imports of butt-weld pipe fittings from Interfit were not massive over a relatively short period of time. Accordingly, as one of the criteria enumerated in Section 733(A)(3) of the Act is not met, we preliminarily determine that critical circumstances does not exist for imports of butt-weld pipe fittings from France.

Verification

As provided in section 776(b) of the Act, we will verify information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain carbon steel butt-weld pipe fittings from France, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margin, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percent
Interfit	12.04
All others	12.04

ITC Notification

In accordance with section 733(f) of this Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 75 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than November 16, 1994, and rebuttal briefs no later than November 23, 1994. A hearing, if requested, will be held on November 28, 1994, at the Department of Commerce in Room 1414. Parties should confirm by telephone the time, date, and place of the hearing 48 hours prior to the scheduled time. In accordance with 19 CFR 353.3(b), oral presentations will be limited to issues raised in the briefs.

We will make our final determination not later than 75 days after of this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: September 26, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–24535 Filed 10–3–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–508–807]

Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Israel

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Gary Bettger or Jennifer Yeske, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 482–2239 or 482–0189, respectively.

PRELIMINARY DETERMINATION: We have preliminarily determined that certain carbon steel butt-weld pipe fittings from Israel are being sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the "Act"). The estimated margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 21, 1994 (59 FR 14148, March 25, 1994), the following events have occurred:

On April 14, 1994, the United States International Trade Commission ("ITC") issued an affirmative preliminary injury determination (*See* ITC Investigation No. 731–TA–690, 59 FR 18825 (April 20, 1994)).

In accordance with 19 CFR 353.42(b) (1994), the Department issued its antidumping duty questionnaire to Pipe Fittings Carmiel, Ltd. ("Carmiel") on April 29, 1994, as it accounted for over 60 percent of the merchandise sold in the United States during the POI. Carmiel was the only exporter from Israel of the subject merchandise to the United States during the POI.

On June 30, 1994, the petitioner requested a 50-day postponement of the preliminary determination. The request was granted by the Department of Commerce on July 19, 1994 (59 FR 37961, July 26, 1994).

On August 4, 1994, petitioner alleged critical circumstances with regard to imports of certain carbon steel butt-weld pipe fittings from Israel.

Scope of the Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either

finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that while a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is September 1, 1993, through February 28, 1994.

Product Comparisons

Carmiel sold identical products in both Israel and the United States during the POI. Therefore, in making our fair value comparisons, we compared sales of merchandise identical in all respects.

Fair Value Comparisons

To determine whether Carmiel's sales for export to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. In accordance with 19 CFR 353.58, we made comparisons at the same level of trade.

United States Price

Because Carmiel's U.S. sales of certain carbon steel butt-weld pipe fittings were made to unrelated purchasers in the United States prior to importation, and the exporter's sales price methodology was not indicated by other circumstances, we based USP on the purchase price ("PP") sales methodology in accordance with section 772(b) of the Act.

We calculated Carmiel's PP sales based on packed C.I.f. prices to unrelated customers in the United States. We made deductions to the U.S. price, where appropriate, for marine insurance, ocean freight, foreign inland freight, port fees, and customs agents fees and expenses.

We made an adjustment to U.S. price for the value-added tax ("VAT") assessed on comparison sales in Israel, in accordance with our practice, pursuant to the court of International Trade ("CIT") decision in *Federal-Mogul, et al v. United States*, 834 F.Supp. 1391 (CIT 1993). (*See Final determination of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France*, 59 FR 14136, March 25, 1994).

Foreign Market Value

Carmiel made sales only to the United States and Israel during the POI. Based on the substantial quantity of home market sales in relation to its U.S. sales, we determined that the home market was viable.

We have preliminarily determined that respondent's method for determining date of sale is not consistent with the Department's practice. According to the response, Carmiel makes most of its home market sales over the telephone and does not document these orders. Moreover, the company did not know the specific date of each sale, but claimed to know the month in which the sale was made. Therefore, Carmiel reported its home market sales as having occurred the first day of the month in which the sale was made.

Our practice with respect to the date of sale is to use the date of the first *written* document which sets the price and quantity for the sale (*see Certain Stainless Steel Butt-Weld Pipe and Tube fittings From Japan; Final Results of Antidumping Duty Administrative Review* (59 FR 12240, 12241; March 16, 1994) and *Antifriction Bearings (Other Than Tapered Rolling Bearings) and Parts Thereof From France, et al.*, (58 FR 39729,39783; July 26, 1993)). In Carmiel's case, the first written document with this information is the invoice. Thus, according to Commerce practice, Carmiel should have reported home market sales that were invoiced during the POI.

For purposes of our preliminary determination, however, we have used the sales reported by respondent. we will be requesting a better explanation of whether the date of sale used by respondent can be documented, or, in the absence of documentation, a new sales listing before verification.

We have calculated FMV using the delivered prices reported by Carmiel for its home market sales. We adjusted the prices for discounts offered to home market customers. Also, in light of the decision of the Court of Appeals for the Federal Circuit in *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement v. United States*, 13 F.3d 398 (Fed. Cir., 1994), we deducted post-sale home market movement charges from the FMV under the circumstances-of-sale provision of 19 U.S.C 1677b(a)(4)(B). This adjustment included home market inland freight.

We also made circumstance-of-sale-adjustments for differences in credit expenses between the two markets, pursuant to 19 CFR 353.56(a)(2). In calculating U.S. credit expense, we used the borrowing rate in Israel on short-term New Israeli Shekel ("NIS") loans linked to the dollar. In calculating the home market credit expense, we used the borrowing rate on unliked short-term NIS loans. For a further discussion of the Department's treatment of credit in this investigation, please see *Memorandum from Barbara R. Stafford to Susan G. Esserman* (September 26, 1994) on file in room B–099 of the U.S. Department of Commerce.

We adjusted for VAT in accordance with our practice. (*See* the "United States Price" Section of this notice, above.)

Currency Conversion

we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales, as published in the International Monetary Fund's International Financial Statistics.

Critical Circumstances

Petitioner alleges that critical circumstances exist with respect to imports of the subject merchandise from Israel. Section 733(e)(1) of the Act Provides that the Department will determine that critical circumstances exist if:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of this Investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of this investigation over a relatively short period.

Regarding A(i) above, in determining whether there has been a history of dumping, we normally look to see whether there has been an antidumping order in the United States or elsewhere on such or similar merchandise. Regarding (A)(ii) above, we normally consider margins of 25 percent or more

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for purchase price sales sufficient to impute knowledge of dumping. (*See Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy*, 52 FR 24198, June 29, 1987.)

Since the calculated preliminary margin for butt-weld pipe fittings from Israel is below 25 percent and there have been no antidumping orders in the United States or elsewhere pertaining to butt-weld pipe fittings from Israel, the requirements of section 733(e) have not been met. Therefore, we have determined that critical circumstances do not exist with respect to imports of butt-weld pipe fittings from Israel.

Verification

As provided in section 776(b) of the Act, we will verify information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of certain carbon steel butt-weld pipe fittings from Israel, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percent
Carmiel	7.33
All others	7.33

Adjustment of Deposit Rate for Countervailing Duties

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[no] product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation for dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no basis to require a cash deposit or bond for that amount.

Accordingly, the level of export subsidies as determined in the *Preliminary Affirmative Countervailing Duty Determination: Certain Carbon Steel Butt-Weld Pipe Fittings from Israel*, FR 59 28340, June 1, 1994) which was 0.25 percent ad valorem, will be subtracted from the respective margins for cash deposit or bonding purposes. This results in a deposit rate of 7.08 percent for Carmiel and all other exporters of carbon steel butt-weld pipe fittings from Israel.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 75 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than November 16, 1994, and rebuttal briefs no later than November 23, 1994. A hearing, if requested, will be held on November 28, 1994, at the U.S. Department of Commerce in Room 1414. Parties should confirm by telephone the time, date, and place of the hearing two days prior to the scheduled date. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

We will make our final determination not later than 75 days after of this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: September 26, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–24536 Filed 10–3–94; 8:45 am]

BILLING CODE 3510–05–M

[A–549–809]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Julie Anne Osgood, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC. 20230; telephone (202) 482–2815 or 482–0167, respectively.

Preliminary Determination: We have preliminary determined that certain carbon steel butt-Weld pipe fittings from Thailand are being sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the "Act"). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 21, 1994 (59 FR 14148, March 25, 1994), the following events have occurred:

On April 11, 1994, the United States International Trade Commission ("ITC") issued an affirmative preliminary injury determination (*see*, ITC Investigation No. 731–TA–689, 59 FR 18825 (April 20, 1994)).

The Department issued its antidumping duty questionnaire to Asahi Sangyo (Thailand) Co., Ltd. (AST), on April 29, 1994. AST was the only Thai producer and exporter to be excluded from the antidumping duty order on butt-weld pipe fittings from Thailand published on July 6, 1992 (57 FR 29702). All other producers and exporters of the subject merchandise to the United States are subject to the antidumping duty order currently in effect. AST was excluded from the original order because we found its margin of sales at less than fair value at that time to be *de minimis*.

On June 18, 1994, petitioner alleged that AST was selling the subject merchandise in Thailand at less than its cost of production.

On August 12, 1994, we found, in accordance with section 773(b), that reasonable grounds exist to believe or suspect that sales in the home market were being made at less than the cost of production based on information contained in the record, including petitioner's allegation. On August 15, 1994, we issued a cost of production and constructed value questionnaire to AST. We received a response from AST on September 9, 1994.

Scope of the Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (e.g., threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff Schedule of the United States (HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is September 1, 1993, through February 28, 1994.

Such or Similar Comparisons

In making our fair value comparisons, in accordance with the Department's standard methodology, we first compared sales of merchandise identical in all respects. If no identical merchandise was sold, we compared sales of the most similar merchandise, as determined by the model-matching criteria contained in Appendix V of the questionnaire ("Appendix V") (on file in room B–099 of the main building of the Department of Commerce ("Public File")).

Regarding level of trade, AST reported that it sells to an importer/distributor in the United States and directly to distributors, end users, and a commissionaire agent in Thailand. AST negotiates prices on a sale-by-sale basis and states that it is unable to discern any correlation between selling prices and customer categories. Further, AST states that its selling expenses do not vary by customer category. Therefore, in keeping with past practice (*see, e.g., Final Results of Administrative Review: Antifriction Bearings and Parts Thereof from the Federal Republic of Germany, et al.* (56 FR 31692, 31709–11; July 11, 1991) and Import Administration Policy Bulletin 92/1, Matching at Levels of Trade, issued on July 29, 1992)), and in accordance with 19 CFR 353.58, we have compared AST's U.S. sales to its home market sales to all customers.

Fair Value Comparisons

To determine whether AST's sales for export to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

Because AST's U.S. sales of certain carbon steel butt-weld pipe fittings were made to an unrelated distributor in the United States prior to importation, and the exporter's sales price methodology was not indicated by other circumstances, we based USP on the purchase price ("PP") sales methodology in accordance with section 772(b) of the Act.

We calculated PP based on packed, c.i.f. port of import prices to an unrelated customer in the United States. We made deductions to the U.S. price for foreign brokerage, foreign inland freight, ocean freight and marine insurance.

We made an adjustment to U.S. price for the consumption tax paid on the comparison sales in Thailand, in accordance with our practice, pursuant to the Court of International Trade (CIT) decision in *Federal-Mogul, et al v. United States*, 834 F. Supp. 1291. See *Preliminary Antidumping Duty Determination and Postponement of Final Determination; Color Negative Photographic Paper and Chemical Components Thereof from Japan*, 59 FR 16177, 16179, April 6, 1994, for an explanation of this tax methodology.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. On this basis, we determined that the home market was viable. For purposes of calculating FMV, we used AST's sales to its home market customers and CV, as described below.

Cost of Production

In order to determine whether home market prices were below the COP within the meaning of section 773(b) of the Act, we calculated COP based on the sum of AST's cost of materials, fabrication, general expenses and home market packing costs. We compared individual home market prices net of inland freight and commission with model-specific COPs.

We performed a product-specific COP test, in which we examined whether each home market sale was priced below that product's COP. The Department defines COP as the sum of direct material, direct labor, variable and fixed factory overhead, general expenses, and packing. For each product, we compared this sum to the home market unit price, net of movement expenses and commission. In accordance with section 733(b) of the Act, we also examined whether the home market sales of each product were made at prices below their COP in substantial quantities over an extended period of time, and whether such sales were made at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade.

For each product where less than ten percent, by quantity, of the home market sales during the POI were made at prices below the COP, we included all sales of that model for the computation of FMV. For each product where ten percent of more, but less than 90 percent, of the home market sales during the POI were prices below the COP, we excluded from the calculation of FMV those home market sales which were prices below the COP, provided that the below-cost sales of that product were made over an extended period of time. Where we found that more than 90 percent of respondent's sales were at prices below the COP, and such sales were over an extended period of time, we disregarded all sales of that product and calculated FMV based on CV, in accordance with section 773(b) of the Act.

In order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POI in which that product was sold. If a product was sold in fewer than three months during the POI, we did not exclude sales unless there were below cost sales in each month of sale. If a product was sold in three or more months, we did not exclude the below-cost sales unless there were below-cost

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sales in at least three months during the POI.

If sales below cost occurred in three or more months of the POI, they are considered to be made over an extended period of time. When items are sold in just two or three months of the POI, we would consider below cost sales of these items to be over an extended period of time, if they occurred in at least two months of the three months. When items are sold in just one month of the POI, we would consider any below cost sales of these items to be over an extended period of time.

AST provided no indication that the disregarded sales were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade. (*See*, Section 773(b)(2); 19 U.S.C. 1677b(b)(2)).

Constructed Value

We calculated CV based on the sum of the cost of materials, fabrication, general expenses, U.S. packing costs and profit. In accordance with section 773(e)(1)(B) (i) and (ii) of the Act we: 1) included the greater of AST's reported general expenses or the statutory minimum of ten percent of the cost of manufacture (COM), as appropriate and; 2) for profit, we used the statutory minimum of eight percent of the sum of COM and general expenses.

Price-to-Price Comparisons

For price-to-price comparisons, we calculated FMV based on ex-factory or delivered prices, inclusive of packing to home market customers. From these prices, we deducted commission, where appropriate. We deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(1) of the Act. We also made adjustments, where appropriate, for differences in the physical characteristics of the merchandise in accordance with section 773(a)(1) of the Act.

In light of the Court of Appeals for the Federal Circuit's decision in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, 13 F. 3d 398 (Fed. Cir., January 5, 1994), the Department no longer can deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we adjust for those expenses under the circumstance-of-sale provision of 19 CFR 353.56(a) and the exporter's sales price offset provision of 19 CFR 353.56(b)(2), as appropriate. Accordingly, in the present case, we deducted post-sale home market movement charges from the FMV under the circumstance-of-sale provision of 19 CFR 353.56(a). This adjustment included home market inland freight.

For both price-to-price comparisons and comparisons to CV, we also made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, pursuant to 19 CFR 353.56(a)(2). For U.S. sales with unreported payment dates, we based AST's credit expense on the average number of days outstanding between shipment and payment for AST's U.S. sales with reported payment dates. For a discussion of the Department's treatment of credit in this investigation, please see *Memorandum from Barbara R. Stafford to Susan G. Esserman* (September 26, 1994) on file in room B–099 of the U.S. Department of Commerce. In accordance with 19 CFR 353.56(b)(1), we added U.S. indirect selling expenses as an offset to the home market commission, but capped this addition by the amount of the home market commission.

We adjusted for a consumption tax collected in the Thai home market. (*See*, the United States Price section of this notice, above.)

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(b) of the Act, we will verify information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of butt-weld pipe fittings from Thailand, as defined in the "Scope of Investigation" section of this notice, that are produced and sold by AST and that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Margin percent
Asahi Sangyo (Thailand) Co., Ltd.	10.37

Adjustment of Deposit Rate for Countervailing Duties

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[no] product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation for dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no basis to require a cash deposit or bond for that amount.

Accordingly, the level of export subsidies as determined in the most recent administrative review of the countervailing duty order, *Carbon Steel Butt-Weld Pipe Fittings From Thailand: Final Results of Countervailing Duty Administrative Review*, (57 FR 5248, February 13, 1992), which was 0.74 percent, will be subtracted from the margin for cash deposit or bonding purposes. This results in a deposit rate of 9.63 percent for AST. We did not determine an "all others" rate in this investigation, because all other producers and exporters of butt-weld pipe fittings from Thailand are already subject to an antidumpting duty order on this merchandise, which was published in the **Federal Register** on July 6, 1992 (57 FR 29702).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 75 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than November 16, 1994, and rebuttal briefs no later than November 23, 1994. A hearing, if requested, will be held on November 28, 1994, at the U.S. Department of Commerce in Room 1414. Parties should confirm by telephone the time, date, and place of the hearing 48 hours prior to the scheduled day. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

We will make our final determination not later than 75 days after this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: September 26, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–24539 Filed 10–3–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–412–816]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-weld Pipe Fittings From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Vincent Kane, or Julie Anne Osgood, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–2815 or 482–0167, respectively.

Preliminary Determination: We have preliminarily determined that certain carbon steel butt-weld pipe fittings from the United Kingdom ("U.K.") are being sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the "Act"). The estimated margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 21, 1994 (59 FR 14148, March 25, 1994), the following events have occurred:

On April 11, 1994, the United State International Trade Commission ("ITC") issued an affirmative preliminary injury determination (*see* ITC Investigation No. 731–TA–694).

In accordance with 19 CFR 353.42(b), the Department of Commerce ("the Department") issued its antidumping duty questionnaire to B.K.L. Fittings Limited ("BKL"), on April 29, 1994. BKL is the only U.K. producer and exporter named in the petition.

Petitioner requested a 50-day postponement of the preliminary determination on June 30, 1994. The request was granted by the Department of Commerce on July 19, 1994 (59 FR 37961, July 26, 1994).

On June 16, 1994, petitioner alleged that BKL was selling the subject merchandise in the U.K. at less than its cost of production. After analyzing petitioner's allegation we found reasonable grounds to believe or suspect that sales in the home market were being made at less than the cost of production. On August 15, 1994, we issued a cost of production/constructed value questionnaire to BKL.

On August 4, 1994, petitioner alleged critical circumstances with regard to imports of certain carbon steel butt-weld pipe fittings from the U.K.

Scope of Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings ("pipe fittings") having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (e.g., threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps,," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation ("POI") is September 1, 1993, through February 28, 1994.

Product Comparisons

In making our fair value comparisons, in accordance with the Department's standard methodology, we first compared sales of merchandise identical in all respects. If no identical merchandise was sold, we compared sales of the most similar merchandise, as determined by the model-matching criteria contained in Appendix V of the questionnaire ("Appendix V") (on file in Room B–099 of the main building of the Department of Commerce ("Public File")).

We were unable to compare United States sales to home market sales at the same level of trade in accordance with 19 CFR 353.58 (1994), because the computer tape submitted by respondent did not identify the level of trade for each sale. For purposes of our preliminary determination we compared sales without regard to level of trade. However, we will request that respondent submit the necessary data on level of trade to the Department within the regulatory deadlines (*see* 19 CFR 353.31) and we will take it into consideration in accordance with 19 CFR 353.58 in our final determination.

Fair Value Comparisons

To determine whether BKL's sales for export to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. BKL's sales for export to the Untied States and in its home market involved both identical and similar merchandise. For those U.S. sales compared to a sale of similar merchandise in the home market, we made an adjustment, pursuant to 19 CFR 353.57, for physical differences in merchandise. For certain products, respondent did not provide the information necessary to make a comparison with the most similar merchandise based on the model-matching criteria contained in Appendix V. As those sales accounted for a very small percentage of total sales of subject merchandise, they have been disregarded in calculating our preliminary margin.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, where the subject merchandise was sold to an unrelated purchaser in the United States before importation and where the use of exporter's sales price ("ESP") methodology was not otherwise indicated.

We calculated purchase price based on packed, c.i.f. import prices to an unrelated customer in the United States. We made deductions to the U.S. price, where appropriate, for foreign brokerage, foreign inland freight, ocean freight and marine insurance, U.S. duty and brokerage.

Where sales to the first unrelated purchaser took place after importation

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of the subject merchandise into the United States, we based USP on ESP, in accordance with section 772(c) of the Act. Almost all of the ESP sales of subject merchandise were reported as further manufactured in the United States. .

For ESP sales we made deductions, where appropriate, for discounts, foreign brokerage, foreign inland freight, ocean freight, marine insurance, U.S. duty, U.S. inland freight, and U.S. brokerage and handling. In addition, for ESP sales only, we deducted credit expense, indirect selling expense, inventory carrying costs, and commissions to an unrelated agent. For certain ESP sales where respondent did not provide paydates, we used the average number of credit days in calculating credit expense.

We made an adjustment to U.S. price for value-added tax ("VAT") assessed on comparison sales in the U.K. in accordance with our practice, pursuant to the Court of International Trade ("CIT") decision in *Federal-Mogul, et al. v. United States*, 834 F. Supp. 1391. See *Preliminary Antidumping Duty Determination: Color Negative Photographic Paper and Chemical Components from Japan* (59 FR 16177, 16179, April 6, 1994), for an explanation of this methodology.

For pipe fittings that were further manufactured in the United States, we deducted all value added in the United States, pursuant to section 772(e)(3) of the Act. The value added consists of the cost of fabrication and general expenses associated with the further manufacturing operations, as well as a proportional amount of profit or loss attributable to the further manufacture. We calculated profit or loss by deducting from the sales price of the further manufactured merchandise the related production costs and selling expense incurred by the company in both the U.K. and the United States. We then allocated total profit or loss proportionately to all components of cost. We included only the profit or loss allocated to the further manufacturing portion of total cost in our calculation of value added. Additionally, we adjusted general and administrative (G&A) expenses from an allocation based on weight to an allocation based on cost of sales.

Where respondent did not provide further manufacturing costs for certain products, we disregarded sales of those products in our preliminary margin calculation.

Foreign Market Value

In order to determine whether BKL had a sufficient volume of sales in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales of subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. On this basis, we determined that the home market was viable.

We calculated FMV based on both f.o.b. plant and delivered prices inclusive of packing, to customers in the U.K. In light of the decision of the Court of Appeals for the Federal Circuit in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement v. United States*, 13 F. 3d 398 (Fed. Cir., January 5, 1994), we deducted post-sale home market movement charges from the FMV under the circumstance-of-sale provision of 19 CFR 353.56(a). This adjustment included home market inland freight.

We deducted rebates, where appropriate, on home market sales. We deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(1) of the Act. In addition, we made circumstance-of-sale adjustments for differences in credit charges between the two markets, pursuant to CFR 353.56(a)(2). In calculating home market credit expense, we used the weighted-average interest rate paid by respondent on short-term borrowings denominated in British pounds. In calculating U.S. credit expense, we used the weighted-average interest rate paid by respondent on short-term dollar borrowings. For a further discussion of the Department's treatment of credit in this investigation, please see *Memorandum from Barbara R. Stafford to Susan G. Esserman* (September 26, 1994) on file in room B–099 of the U.S. Department of Commerce.

In accordance with 19 CFR 353.56(b)(1), we deducted home market indirect selling expenses as an offset to the U.S. commissions, but capped this deduction by the amount of the ESP commissions and indirect selling expenses. We adjusted for VAT in accordance with our practice (*see* "United States Price" section of this notice.)

Cost of Production

Petitioner alleged that BKL made home market sales during the POI at prices below its cost of production ("COP"). Based on petitioner's allegations and after examining the evidence on the record, we concluded that we had reasonable grounds to "believe or suspect" that sales were made below COP. Thus, we initiated a COP investigation pursuant to section 773(b) of the Act.

We performed a product-specific COP test, in which we examined whether each home market sale was priced below that product's COP. The Department defines COP as the sum of direct material, direct labor, variable and fixed factory overhead, general expenses, and packing expense, in accordance with 19 CFR 353.51(c). (*See, e.g., Preliminary Results of Antidumping Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea* (59 FR 35098, 35099, July 8, 1994).) We compared the COP for each product to the home market unit price, net of rebates, movement expenses, and indirect expenses. We relied on submitted COP information except for the calculation of financing expense. The submitted calculation was based on the combination of the financial statements of BKL and its parent company without taking into account elimination of intercompany transactions. Therefore, we recalculated financing expense using the parent company financial statements only.

In accordance with section 773(b) of the Act, we also examined whether the home market sales of each product were made at prices below their COP in substantial quantities over an extended period of time, and whether such sales were made at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade.

To satisfy the requirement of 773(b)(1) that below cost sales be disregarded only if made in substantial quantities, the following methodology was used. For each product where less than ten percent, by quantity, of the home market sales during the POI were made at prices below the COP, we included all sales of that model for the computation of FMV. For each product where ten percent or more, but less than 90 percent, of the home market sales during the POI were priced below the COP, we excluded from the calculation of FMV those home market sales which were priced below the COP, provided that the below-cost sales of that product were made over an extended period of time. Where we found that more than 90 percent of respondent's sales were at prices below the COP, and such sales were over an extended period of time, we disregarded all sales of that product and calculated FMV based on CV.

In order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POI in which that product was sold. If a product was sold in fewer than three months during the POI, we did not exclude sales unless there were below cost sales in each month of sale. If a product was sold in three or more months, we did not exclude the below-cost sales in at least three months during the POI. (*See Preliminary Results and Partial Termination of Antidumping Duty Administrative Reviews: Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan* (58 FR 69336, 69338, December 30, 1993))

Constructed Value

For those products without an adequate number of sales at prices equal to or greater than the COP, we based FMV on constructed value ("CV"), pursuant to section 773(b)(2) of the Act. We calculated CV based on the sum of the cost of materials, fabrication, general expenses, U.S. packing costs and profit, in accordance with section 773(e)(1)(B)(i) and (ii) of the Act. We relied on submitted CV information except for the calculation of financing expense, which we recalculated as described in the "Cost of Production" section of this notice. We included in our calculation of CV: (1) the greater of BKL's general expenses or the statutory minimum of ten percent of the cost of manufacture ("COM"), as appropriate, and; (2) for profit, the greater of BKL's profit or the statutory minimum of eight percent of the sum of COM and general expenses.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Critical Circumstances

Petitioner alleges that critical circumstances exist with respect to imports of the subject merchandise from the U.K. Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of this investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Regarding (A)(ii) above, we normally consider margins of 15 percent or more for exporter's sales price sales, and margins of 25 percent or more for purchase price sales sufficient to input knowledge of dumping. If the U.S. price is based on both PP and ESP, we normally weight-average the 25 percent and 15 percent benchmarks by the volume of PP and ESP sales to arrive at a weighted-average benchmark percentage for imputing the knowledge of dumping (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina* (58 FR 37078, July 9, 1993)).

The calculated preliminary margin in this investigation indicates that importers of pipe fittings should have known that the merchandise was being sold at less than fair value.

Pursuant to 19 CFR 353.16 (f), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

If imports during the period immediately following the filing of the petition increase by at least 15 percent over imports during a comparable period immediately proceeding the filing of a petition, we normally consider them massive pursuant to section 353.16(f)(2) of the Department's regulations.

In order to determine whether imports have been massive over a relatively short period of time, we compared BKL's reported shipments of butt-weld pipe fittings to the United States in the seven months after the petition was filed to the seven months immediately before this period. Our analysis showed that the volume of imports of subject merchandise to the United States by BKL had increased by more than 15 percent. (*See* 19 CFR 353.16(f)(2).) Based on this analysis, we determine that imports of butt-weld pipe fittings from the U.K. were massive over a relatively short period of time. Accordingly, as the criteria enumerated in section 733(e)(1) of the Act are met, we preliminarily determine that critical circumstances exist for imports of butt-weld pipe fittings from the U.K.

Verification

As provided in section 776(b) of the Act, we will verify information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of butt-weld pipe fittings from the U.K., as defined in the "Scope of Investigation" section of this notice, that are entered or withdrawn from warehouse for consumption on or after the date 90 days prior to publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margins shown below. This suspension of liquidation will remain in effect until further notice. The estimated preliminary weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentages
BKL	73.38
All others	75.38

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 75 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.

In accordance with 19 CFR 353.38, case briefs or other written comments in a least six copies must be submitted to the Assistant Secretary no later than November 16, 1994, and rebuttal briefs no later than November 23, 1994. A hearing, if requested, will be held on November 28, 1994, at the U.S. Department of Commerce in room 1414. Parties should confirm by telephone the time, date, and place of the hearing two days prior to the scheduled date. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

We will make our final determination not later than 75 days after the date of this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

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Dated: September 26, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-24540 Filed 10-3-94; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-824]

Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From South Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas McGinty or Peter Wilkniss, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-5055 and (202) 482-0588, respectively.

Preliminary Determination: We preliminarily determine that imports of certain carbon steel butt-weld pipe fittings ("pipe fittings") from South Korea are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 21, 1994, (59 FR 14148, March 25, 1994), the following events have occurred.

On April 14, 1994, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination (*see*, ITC Investigation No. 731-TA-692).

In accordance with 19 CFR 353.42(b)(1994), on April 29, 1994, the Department of Commerce (the Department) issued its antidumping duty questionnaire to Taekwang Bend Ind. Co., Inc. (Taekwang), the South Korean company which accounts for more than 60 percent of all exports of the subject merchandise to the U.S. during the POI. The Department has received no response to this questionnaire.

On June 30, 1994, petitioner requested a 50-day postponement of the preliminary determination. The request was granted by the Department on July 19, 1994 (59 FR 37961, July 26, 1994).

Scope of Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings ("pipe fittings") having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems were conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (e.g., threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation is September 1, 1993, through February 28, 1994.

Best Information Available

Taekwang did not respond to our questionnaire. Therefore, we have based our preliminary determination on best information available (BIA) pursuant to section 776(c) of the Act, which provides that the Department shall use BIA when a company identified by the Department as a respondent refuses to provide requested information.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. According to this methodology, as outlined in the *Final Determination of Sales at Less Than Fair Value: Antifriction Bearings, Other than Tapered Roller Bearings, from Germany*, 54 FR 18992w, 19033 (May 3, 1989), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (1) the highest margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation. (*See Allied Signal Aerospace Co. v. United States*, 996 F. 2d 1185, 1191-92 (Fed. Cir. 1993).) Because there were no cooperative respondents in this investigation, we are assigning to all exporters, as BIA, the highest margin calculated in the petition, as adjusted for methodological errors as explained in the Department's initiation notice, 207.89 percent.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of pipe fittings from South Korea that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/Producer/Exporter	Margin percentage
All companies	207.89

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the publication of this notice. Tentatively, the hearing will be held on November 28, 1994, at 1:00 p.m. at the U.S. Department of Commerce, Room 1414, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38, case briefs or other written comments of at least five copies must be submitted to the Assistant Secretary for Import Administration no later than November 16, 1994, and rebuttal briefs, no later than November 23, 1994. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination within 75 days of the signing of this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: September 26, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-24541 Filed 10-3-94; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration, Commerce.

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 89-5A016.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the Geothermal Energy Association ("GEA") on February 5, 1990. Notice of issuance of the Certificate was published in the Federal Register on February 9, 1990 (55 FR 4647).

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR ch. III, part 325 (1994).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 89-00016 was issued to the Geothermal Energy Association ("GEA") on February 5, 1990 (55 FR 4647, February 9, 1990), and previously amended on November 7, 1990 (55 FR 47784, November 15, 1990); April 17, 1991 (56 FR 16328, April 22, 1991); September 11, 1991 (56 FR 47068, September 17, 1991); and on October 25, 1993 (58 FR 58325, November 1, 1993).

GEA's Export Trade Certificate of Review has been amended to—

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): M-I Drilling Fluids L.L.C., Houston, Texas (controlling entity: Smith International Acquisition Corp., Houston, Texas); Smith International Acquisition Corp., Houston, Texas, (controlling entity: Smith International, Inc., Houston, Texas); and Smith International, Inc., Houston, Texas.

2. Delete each of the following companies as a "Member" of the Certificate: Energylog Corp.; Grace Drilling Company, Inc.; Mesquite Group, Inc.; M-I Drilling Fluids Company and its controlling entity, Dresser Industries, Inc.; Technology Export Company and its controlling entity, Masco Industries, Inc.; USGIC Dominica, L.P.; and Williams Tool Company, Inc.; and

3. Change the listing of the company name for each current "Member" cited in this paragraph to the new listing cited in this paragraph in parenthesis as follows: Baker Hughes INTEQ, Inc., a wholly owned subsidiary of Baker Hughes Incorporated (Baker Hughes Oilfield Operations, Inc.); Maxwell Laboratories, S-CUBED Division, and its controlling entity, Maxwell Laboratories, Inc. (S-Cubed, a Division of Maxwell Labs, and its controlling entity, Maxwell Laboratories, Inc.); Nabors Loffland Drilling Company (Nabors Drilling USA, Inc.); and Foster Valve Corporation and its controlling entity, Masco Industries, Inc. (Foster Valve Corporation and its controlling entity, Mascotech, Inc.).

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Effective Date: June 28, 1994.

Dated: September 29, 1994.

W. Dawn Busby

Director, Office of Export Trading Company Affairs.

[FR Doc. 94-24533 Filed 10-3-94; 8:45 am]

BILLING CODE 3510-DR-P

National Institute of Standards and Technology

[Docket No. 940967-4257]

National Voluntary Conformity Assessment System Evaluation (NVCASE) Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice, Request for public comments.

SUMMARY: This is to advise the public that the National Institute of Standards and Technology (NIST) has received a request from the National Marine Manufacturers Association (NMMA) to have its recreational craft certification program recognized under the NIST National Voluntary Conformity Assessment System Evaluation (NVCASE) Program.

DATES: Comments on this request must be received by November 3, 1994.

ADDRESSES: Comments should be submitted in writing to Mr. Robert L. Gladhill, Program Manager, NVCASE, National Institute of Standards and Technology, Administration Building, room A-629, Gaithersburg, MD 20899 or by telefax at 301-963-2871.

FOR FURTHER INFORMATION CONTACT: Either Mr. John L. Donaldson, Chief, Standards Code and Information, or Robert L. Gladhill, NVCASE Program Manager, in writing at NIST, Admin A629, Gaithersburg, MD 20899, by telephone at 301-975-4029 or by telefax at 301-963-2871.

SUPPLEMENTARY INFORMATION: The U.S. boating industry manufactures more than 50% of all recreational boats sold throughout the world, a considerable portion of which are sold in the European market. In order to continue to sell in the European Union (EU) market, the U.S. recreational boat manufacturing industry will soon be required to satisfy new regulatory requirements established under EU Directive 94/25/EEC relating to recreation craft. Manufactures will also be required to attest to the conformity of their products with the requirements. The NMMA operates a program to certify that recreational boats, boating accessories and components meet specified requirements. If its certification operations are accredited

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by NIST under the NVCASE program, NMMA will be able to provide the required certifications and thereby facilities exports of U.S. products to the EU market.

the NVCASE procedures at 15 CFR Part 286 require NIST to seek public consultation when it receives requests for evaluation. This notice therefore is a solicitation for comments on the NMMA request. Contingent upon the comments received, NIST will schedule a public workshop to define general and specific criteria for conducting the requested evaluation.

The letter from the NMMA follows:

July 14, 1994.

Mr. Robert L. Gladhill,

Manager, NVCASE Program, Admin A629, NIST Gaithersburg, MD 20899

Dear Bob: We hereby submit to you our formal request to have the NMMA certification program recognized by your NVCASE program. As you know we have been one of your earliest supporters and as early as 1991 the U.S. Coast Guard supported our efforts in a letter to NIST.

This has become especially urgent now because a Directive related to recreational craft has been adopted by the EC in Europe with an implementation date of June 1996. This Directive refers to both the completed boat and components, which the boat manufacturer usually orders a year before his next model year. Thus a boat manufacturer would place his orders for engines and other components at the trade shows in October of 1994. He would then commence building the boats during 1995 for the 1996 models which must comply with the Directive.

The NMMA certification is for recreational craft, the Directive is specifically for craft from 2.5 to 24 meters length. The US Coast Guard has the responsibility for the safety aspect of these products. This certification would be limited to product certification, in the Directive referred to as modules Aa and B+C, and thus would entail conformity assessment. At this time we do not plan on getting involved in the quality assessment. NMMA is a member of the Recreational Marine Agreement Group recently recognized by the EOTC, whose members follow the same procedures for product certification.

There are some 30 ISO standards related to small craft that will be used for this certification. These ISO standards are in various stages of becoming adopted by CEN in Europe.

Recreational craft has been established as a top priority item for the Mutual Recognition Agreement discussion between US and EC. These discussions have been conducted with the anticipation of NMMA being accredited by NVCASE. Further, the USCG communication of 1991 suggested that NMMA become accredited by your program. Of additional importance is the short time schedule for accreditation so components can be certificated by the end of this year.

If we were to go via any other organization, it is highly unlikely NMMA would get the needed accreditation in time. The US presently has a positive balance of trade in this industry, but if we do not have our products in place, when this Directive goes into effect, we will have a severe setback, which may affect the US boat manufacturer's profitability and possibly employment.

The NMMA certificates 75–80% of all boats sold in the US. Many of the manufacturers of these boats rely on export to be profitable. The participating manufacturers would probably be over 200 initially.

We request that you proceed with the accreditation level for NMMA as a product certification body as soon as possible. Please let us know if there is any help we can provide.

Sincerely,

G. Medford Smith,

Technical Director.

Interested persons should submit comments in writing to the above address. All comments received in response to this notice will become part of the public record and will be available for inspection and copying at the Commerce Department Records and Inspection facility, room 6020, Hoover Building, Washington, DC 20230.

Dated: September 28, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–24465 Filed 10–3–94; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 092794D]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of its Law Enforcement Advisory Panel on October 19, 1994, from 1:00 p.m. until 5:00 p.m.

The purpose of the meeting is to review and discuss Alabama's request for special management zones, state-Federal cooperative enforcement issues, recommendations to address reef fish enforcement issues, and briefings on the structure of NOAA General Counsel's enforcement office and status of sea turtle litigation.

ADDRESSES: The meeting will be held at the Clarion Hotel, 1500 Canal Street, New Orleans, LA.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the above address by October 12, 1994.

Dated: September 28, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–24496 Filed 10–3–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Transshipment Charges for Certain Cotton Textile Products Produced or Manufactured in Pakistan

September 28, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs charging illegal transshipments to a 1994 limit.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Based on investigations conducted by the Government of the United States, CITA has determined that cotton sheets in Category 361 were transshipped in circumvention of the U.S.-Pakistan Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended and extended.

The United States Government requested consultations in writing with the Government of Pakistan on April 19. The U.S. Government and the Government of Pakistan met on June 16, 17 and 20 and August 1, 2, 10 and 11 in Washington to discuss the charges. The U.S. Government provided the Government of Pakistan with clear evidence of transshipment during these meeting. The U.S. Government informed the Government of Pakistan of the charges to be made to the 1994 quota for Category 361. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to charge 63,912 numbers to the 1994 quota level for Category 361.

U.S. Customs continues to conduct other investigations of such transshipments of textiles produced in Pakistan and exported to the United States. The charges resulting from these investigations will be published in the **Federal Register**.

The U.S. Government is taking this action pursuant a Memorandum of Understanding dated January 21, 1994 between the Governments of the United States and Pakistan and the current bilateral U.S.-Pakistan bilateral textile agreement, and in conformity with Paragraph 16 of the Protocol of Extension and Article 8 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973 and extended on December 14, 1977, December 22, 1981, July 31, 1986, July 31, 1991, December 9, 1992 and December 9, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 5756, published on February 8, 1994.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 28, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended and extended, and the Memorandum of Understanding dated January 21, 1994 between the Governments of the United States and Pakistan, I request that, effective on October 4, 1994, you charge 63,912 numbers to the limit established in the directive dated February 1, 1994 for Category 361 for the period beginning on January 1, 1994 and extending through December 31, 1994.

This letter will be published in the **Federal Register**.

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–24409 Filed 10–3–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Commission on Roles and Missions of the Armed Forces

AGENCY: Department of Defense, Commission on Roles and Missions of the Armed Forces.

ACTION: Notice.

SUMMARY: The Commission on Roles and Missions of the Armed Forces will meet in closed session on October 11 and 12, 1994.

The Commission is charged with providing an independent review of the roles and missions of the armed services to Congress, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff. The year-long review will identify changes that can be made to improve military effectiveness and eliminate unnecessary duplication among the services. At this meeting, the Commission will review the national security strategy and discuss long-range national security planning. Material to be presented and discussed will consist of both classified and unclassified information in a format that makes it impractical to separate the two.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–453, as amended (5 U.S.C. App II), it has been determined that this Commission on Roles and Missions meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that, accordingly, this meeting will be closed to the public.

Extraordinary circumstances created by coordination difficulties compel notice of this meeting to be posted in less than the 15-day requirement.

Dated: September 29, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 94–24447 Filed 10–3–94; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: DoD FAR Supplement, Subparts 209.1, "Responsible Prospective Contractors," and 252.2, "Texts of Provisions and Clauses."

Type of request: Emergency Processing—Approval Date Requested: September 30, 1994

Number of Respondents: 496

Responses Per Respondent: 1

Annual Responses: 496

Average Burden Per Response: 1 hour

Annual Burden Hours: 496

Needs and Uses: Section 843 of the National Defense Authorization Act for Fiscal Year 1994 (P.L. 103–160) requires offerors and contractors under DoD solicitations and contracts exceeding $5,000,000 to report commercial transactions conducted with the government of a terrorist country. The guidance at DFARS 209.104–1(g)(iii), the solicitation provisions at DFARS 252.209–7003, and the contract clause at DFARS 252.209–7004 implement these requirements. The collected information will be used in annual reports to Congress, additionally required by Section 843(c) of the Act.

Affected Public: Businesses or other for-profit; Small businesses or organizations

Frequency: On occasion and annually

Respondent's Obligation: Mandatory

OMB Desk Officer: Mr. Peter N. Weiss

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 29, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–24470 Filed 10–3–94; 8:45 am]

BILLING CODE 5000–04–M

Department of The Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Test Center Advisory Group will meet from 8:00 a.m. to 5:00 p.m. on 24–28 October 1994 at Eglin Air Force Base, FL and Edwards Air Force Base, CA.

The purposes of these meetings are to receive briefings and to have discussions concerning the Air Force

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Test Centers. These meetings will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer

[FR Doc. 94-24477 Filed 10-3-94; 8:45 am]

BILLING CODE 3910-01-P

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Aircraft Self Defense Against IR Missiles Panel will meet from 8:00 a.m. to 5:00 p.m. on 18-20 October 1994 at the ANSER Corporation, Arlington, VA.

The purposes of these meetings are to receive briefings and to have discussions concerning IR missiles. These meetings will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer

[FR Doc. 94-24478 Filed 10-3-94; 8:45 am]

BILLING CODE 3910-01-P

Department of the Army

ARMS Initiative Implementation

AGENCY: Armament Retooling and Manufacturing Support (ARMS) Public/Private Task Force (PPTF), DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Public/Private Task Force (PPTF). The PPTF is chartered to develop new and innovative methods to maintain the government-owned, contractor-operated ammunition industrial base and retain critical skills for a national industrial emergency. Focus of this meeting will be on progress report on policy and procedures of property and equipment management. This session is open to the public. An Office of the Secretary of Defense (OSD) Army Ammunition Plant (AAP) Conference sponsored by the Office of Economic Adjustment has been coordinated to directly follow this PPTF Meeting. This conference is scheduled for 1-2 December 1994 at the same location given below.

DATES OF MEETING: November 29-30, 1994.

PLACE OF MEETING: Frontenac Hilton, 1335 S. Lindbergh, St. Louis, MO 63131.

TIME OF MEETING: 8:00 AM-5:00 PM.

FOR FURTHER INFORMATION CONTACT: ARMS PPTF Meeting—Mr. Richard Auger, ARMS Task Force, HQ Army Materiel Command, 5001 Eisenhower Avenue, Alexandria, Virginia 22333; Phone (703) 274-9838. OSD AAP Conference—COL Ronald Adkins, Office of Economic Adjustment, 400 Army Navy Drive, Arlington, Virginia 22202-2884; Phone (703) 604-5844.'

SUPPLEMENTARY INFORMATION: Reservations should be made directly with the Frontenac Hilton; telephone (314) 993-1100. Please be sure to mention that you will be attending the ARMS meeting to assure occupancy in the block of rooms set aside for this meeting. Request you contact Debra Yeager in the ARMS Team Office at Rock Island Arsenal; telephone (309) 782-4040, if you will be attending the meeting, so that our roster of attendees is accurate. This number may also be used if other assistance regarding the ARMS meeting is required.

Kenneth L. Denton,

Army Federal Register Liaison Officer

[FR Doc. 94-24395 Filed 10-3-94; 8:45 am]

BILLING CODE 3710-08-M

Advisory Committee Meeting Notice, Department of Defense Historical Advisory Committee

AGENCY: U.S. Army Center of Military History, DOD.

ACTION: Notice of Meeting.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following committee meeting:

Name of Committee: Department of Defense Historical Advisory Committee

Date of Meeting: October 22, 1994.

Place of Meeting: Franklin Court Building, U.S. Army Center of Military History, 1099 14th Street, N.W., 2nd Floor, Washington, D.C. 20005-3402.

Time of Meeting: 0900-1500

Proposed Agenda: Review and discussion of the status of historical activities in the U.S. Army.

1. Purpose of meeting: The Committee will review the Army's historical activities for FY94 and those projected for FY95 based on reports and manuscripts received throughout the period and formulate recommendations through the Chief of Military History to the Chief of Staff, Army, and the Secretary of the Army for advancing the use of history in the U.S. Army.

2. Meeting of the Advisory Committee is open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend the 22 October meeting.

3. Any members of the public may file a written statement with the Committee before, during, or after the meeting. To the extent that time permits the Committee Chairman may allow public presentations of oral statements at the meeting.

4. All communications regarding this Advisory Committee should be addressed to Dr. Jeffrey J. Clarke, U.S. Army Center of Military History, Franklin Court Building, 1099 14th Street, N.W. Washington, D.C. 20005-3402. Telephone: (202) 504-5402.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94-24396 Filed 10-3-94; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers

Intent to Prepare a Draft Supplement to the Columbia and Lower Willamette River Environmental Impact Statement, July 1975

AGENCY: U.S. Army Corps of Engineers, Portland District, DOD.

ACTION: Notice of intent.

SUMMARY: Notice of Intent to Prepare a Draft Supplement to the Columbia and Lower Willamette River Environmental Impact Statement (EIS), July 1975. The original EIS addressed impacts of operational and maintenance dredging, and completion of the 40-foot navigation channel downstream from Vancouver, Washington, and Portland, Oregon. This Supplement is being prepared to address the impacts to physical, biological, and cultural elements of the environment as a result of current dredging practices and the potential effects of management alternatives that will be developed in the Dredged Material Management Study (DMMS) for the Columbia and Lower Willamette Rivers.

The proposed action is to perform a management study (DMMS) that will identify and recommend alternatives for modifications to the existing Operations and Maintenance dredging program and potential new proposals, such as pile dike construction and other measures that are directed at reducing the frequency or quality of dredging.

ADDRESSES: U.S. Army Corps of Engineers, Portland District, Regulatory and Environmental Resource Branch, P.O. Box 2946, Portland, Oregon 97208-2946.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Anderson, (503) 326-6998.

SUPPLEMENTARY INFORMATION: The Columbia and Lower Willamette River (C&LW) 40-foot navigation project is maintained by the Corps of Engineers. Between four and seven million cubic yards of sand are dredged from the Columbia River portion of the project annually. In addition, 500-750 thousand cubic yards of silty sand and sandy silts are dredged from the Lower Willamette River on a three to five-year interval.

Between 1988 and 1991, the Corps of Engineers completed development of a Long-Term Management Strategy (LTMS) for the portion of the channel that traverses the Columbia River Estuary, River Miles 3-28. A series of 50-year plan scenarios were developed.

In October 1993, the Corps of Engineers was directed to undertake a dredged material management study (DMMS) for the entire C&LW project. The DMMS study will also be coordinated with the Columbia River Channel Deepening Feasibility Study effort. While intended to produce a stand alone document, the DMMS will, in part, also fulfill the requirements to define the without project condition for the Feasibility Study. The study will be similar to the lower estuary LTMS, in terms of process, but will follow the newer guidance for planning horizon, scope of study, etc. Dredged material management issues on the Columbia River that are new since completion of the LTMS will be fully developed in the DMMS for both the estuary and the remainder of the project. Most notable among new issues is the listing of three salmon stocks which migrate through the project area as endangered under the Endangered Species Act.

The scoping process commenced in July 1994 with the issuance of a scoping letter. Federal, state and local agencies, Indian tribes, and interested organizations and individuals were asked to comment on the scope of the SEIS. Potentially significant issues to be addressed in the SEIS will be based on effects of management alternatives and subsequent actions thereof.

Potential effects on: wetlands and vegetation, wildlife habitat and populations, fisheries in the Columbia and Willamette Rivers (including Snake River salmon), and cultural resources, will be studied.

Other environmental review and consultation requirements which will be addressed in conjunction with the DSEIS include:

a. Clean Water Act of 1977, as amended.

b. Fish and Wildlife Coordination Act.

c. Coastal Zone Management Act of 1972, as amended.

d. Endangered Species Act of 1973, as amended.

e. Cultural Resources Act.

f. Marine Projection, Research and Sanctuaries Act of 1972.

g. Executive Order 11988, Floodplain Management.

h. Executive Order 11990, Protection of Wetlands.

i. Analysis of Prime or Unique Farmlands.

A formal scoping meeting has not been scheduled, however, comments are currently being received and the DSEIS is scheduled to be made available to the public in July 1997.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94-24397 Filed 10-3-94; 8:45 am]

BILLING CODE 3710-AR-M

Defense Logistics Agency

Privacy Act of 1974; Alteration of a Record System

AGENCY: Defense Logistics Agency, DoD.

ACTION: Alteration of a record system.

SUMMARY: The Defense Logistics Agency proposes to alter an existing system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration consists of adding a routine use to the system of records notice S431.15 DLA-C, entitled Travel Record. This alteration also changes the system identifier from S431.15 DLA-C to S700.10 FO.

DLA is also making an administrative change to all its systems with this notice. Under the Contesting record procedures category, all entries should read 'The DLA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the Privacy Act Officer.'

DATES: The alteration will be effective without further notice on November 3, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Privacy Act Officer, Programs and Analysis Division, Office of Planning and Resource Management, Defense Logistics Agency Administrative Support Center, Room 5A120, Cameron Station, Alexandria, VA 22304-6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Sales at (703) 617-7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and may be obtained from the address above.

An altered system report, as required by 5 U.S.C. 552a(5) of the Privacy Act was submitted on September 21, 1994, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994). The specific changes to the record system are set forth below followed by the system notice as altered in its entirety.

Dated: September 29, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S431.15 DLA-C

SYSTEM NAME:

Travel Record *(February 22, 1993, 58 FR 10893).*

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete entry and replace with 'S700.10 FO.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Records are maintained at all Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All DLA military members and civilian employees who perform travel, Temporary Duty (TDY) or Permanent Change of Station (PCS); individuals of other DoD agencies serviced by DLA under an interservice support agreement; and public and private sector individuals traveling under invitational travel orders.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Consists of name, Social Security Number, security clearance level, order number, travel itinerary, claim data, and financial details of real estate transactions.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with 'Chapter 57, Title 5, United States Code

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(Travel, Transportation and Subsistence).'

PURPOSE(S):

Delete entry and replace with 'Records are used in administering the travel program, managing and tracking funds, and accounting for employee status for pay and leave tracking purposes.

Data is also used by offices of counsel to determine that expenses relating to the sale or purchase of a residence for a PCS are reasonable and customary for the locality of the transaction.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Insert as the second paragraph 'Federal agency or private sector organization employing the traveler for funds control, personnel administration, or program management purposes.'

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with 'Records are maintained in both paper and electronic form.'

RETRIEVABILITY:

Delete entry and replace with 'By name, Social Security Number, or order number.'

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in areas that are accessible only to individuals who must service the record in the performance of their official duties. Electronic records are password protected with access restricted to authorized users.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are retained for three years and then destroyed. Supervisory level records are retained until the individual separates or transfers at which time the records are destroyed.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Finance Officers of the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

NOTIFICATION PROCEDURES:

Delete entry and replace with 'Individuals seeking to determine whether information about themselves is contained in this system of records should address inquiries to the Privacy Act Officer of the DLA PLFA. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual should provide full name and Social Security Number.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer of the DLA PLFA. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual should provide full name and Social Security Number.'

CONTESTING RECORD PROCEDURES:

Delete entry and replace with 'The DLA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the Privacy Act Officer.'

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Information is collected from the individual, from the hiring activity's personnel office, and from travel and expense forms.'

* * * * *

S700.10 FO

SYSTEM NAME:

Travel Record.

SYSTEM LOCATION:

Records are maintained at all Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DLA military members and civilian employees who perform travel, Temporary Duty (TDY) or Permanent Change of Station (PCS); individuals of other DoD agencies serviced by DLA under an interservice support agreement; and public and private sector individuals traveling under invitational travel orders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Consists of name, Social Security Number, security clearance level, order number, travel itinerary, claim data, and financial details of real estate transactions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 57, Title 5, United States Code (Travel, Transportation and Subsistence).

PURPOSE(S):

Records are used in administering the travel program, managing and tracking funds, and accounting for employee status for pay and leave tracking purposes.

Data is also used by offices of counsel to determine that expenses relating to the sale or purchase of a residence for a PCS are reasonable and customary for the locality of the transaction.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Federal agency or private sector organization employing the traveler for funds control, personnel administration, or program management purposes.

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in both paper and electronic form.

RETRIEVABILITY:

By name, social security number or order number.

SAFEGUARDS:

Records are maintained in areas that are accessible only to individuals who must service the record in the performance of their official duties. Electronic records are password protected with access restricted to authorized users.

RETENTION AND DISPOSAL:

Records are retained for three years and then destroyed. Supervisory level records are retained until the individual separates or transfers at which time the records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Finance Officers of the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address inquiries to the Privacy Act Officer of the DLA PLFA. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual should provide full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer of the DLA PLFA. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual should provide full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the Privacy Act Officer.

RECORD SOURCE CATEGORIES:

Information is collected from the individual, from the hiring activity's personnel office, and from travel and expense forms.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–24472 Filed 10–3–94; 8:45 am]

BILLING CODE 5000–04–F

Department of the Navy

Patent Licenses; Non-Exclusive, Exclusive, or Partially Exclusive; Serotech, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Intent to Grant Partially Exclusive Patent License; Serotech, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Serotech, Inc., a revocable, nonassignable, partially exclusive license in the United States to practice the Government-owned inventions described in U.S. Patents Nos. 5,264,693, "Microelectronic Photomultiplier Device with Integrated Circuitry", issued November 23, 1993; 5,306,904, "Multilayer Microelectronic Photomultiplier Device with a Stacked Series of Dynode and Insulating Layers", issued April 26, 1994; and 5,307,358, "Wavelength Dispensive Gain Element for a Tunable Laser", issued April 26, 1994.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR OOCC), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR OOCC), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: September 23, 1994.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–24398 Filed 10–3–94; 8:45 am]

BILLING CODE 3810–AE–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 94–3]

Rocky Flats Seismic and Systems Safety

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning Rocky Flats seismic and systems safety. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before November 3, 1994.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2901.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole C. Morgan, at the address above or telephone (202) 208–6400.

Dated: September 28, 1994.

John T. Conway,

Chairman.

[Recommendation 94–3]

Rocky Flats Seismic and Systems Safety

Dated: September 26, 1994.

In its Recommendation 90–5, the Defense Nuclear Facilities Safety Board (Board) recommended that a site-wide Systematic Evaluation Program be conducted at the Rocky Flats Plant (now the Rocky Flats Environmental Technology Site), to determine if safety upgrades should be instituted to enable the defense nuclear buildings and facilities to meet current safety requirements. The mission of the Rocky Flats Environmental Technology Site has changed since the issuance of Recommendation 90–5, and the Implementation Plan for the Recommendation has been revised to more directly address the current mission of the Site.

The Board has been informed in briefings by the Department of Energy (DOE) that Building 371 is considered to be structurally the best on-site facility for the storage of plutonium, and that steps are therefore scheduled that in time will move the major part of the Site's plutonium inventory into storage in this building. As a result, Building 371 will assume a unique role as the storehouse which contains the largest single accumulation of plutonium in the DOE complex. It follows that potential health and safety issues associated with this proposed use of the building also assume very high importance.

Accordingly, the Board has been reviewing potential public health and safety issues at Building 371, and in particular, the building's capacity to provide reasonable assurance of protection of public health and safety should it be subjected to external forces from natural phenomena (earthquakes, extreme winds, and floods). The Board has observed that DOE's ongoing studies in the Systematic Evaluation Program to better identify the potential hazards from natural phenomena at Building 371 and to establish means of protecting against them are not well integrated. An effective systematic Evaluation Program requires a more thorough application of the systems engineering process. The Board has concluded that activities currently underway in this respect, to prepare Building 371 for its extended role in storage of plutonium, are not logically structured and are not sufficiently encompassing in either detail or scope to assure that the health and safety of the public will be adequately protected.

Therefore, the Board recommends:

1. That an Integrated Program Plan be formulated to address the civil-structural-seismic safety issues and evaluations related to the planned use of Building 371 for storage of plutonium and related functions. This plan needs to be founded on the principles of systems engineering and realistic schedules. Several studies, pertinent to such a plan, are geologic fault investigations, groundmotion studies, dynamic building analyses, and soil-structure interaction analyses. These studies and other elements need to be

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combined with the building mission and any other functional criteria using systems engineering principles to develop the Integrated Program Plan.

2. That the above plan address and explain any requirements for changes to the current Safety Analysis Report and how such changes will be accomplished. This includes effects from earthquakes, extreme winds, and floods.

3. That a comprehensive document be completed describing in detail the structural analysis methodology and standards for the building analysis. This includes explaining analytical methods used and their applicability to the configuration of Building 371.

4. That the integrated program plan use both deterministic and probabilistic methods to establish the vibratory groundmotion criteria that will be used in the structural evaluation of Building 371. This includes a rationale for reconciling differences between the two methods. Moreover, these criteria should incorporate the results of a carefully planned and executed site geological faulting investigations.

5. That a hazard classification be selected for Building 371 which is supported by rational analysis. This requires consideration of the mission, period of intended use, and importance of the building.

6. That the Integrated Program Plan, consistent with the hazard classification, include the plan for classification of safety systems on a rational basis consistent with the mission, life, and importance of Building 371. Issues associated with hazard classification and classification of safety systems are discussed in the Board's April 29, 1994, letter to Under Secretary Curtis.

7. That any standards used in evaluating hazards from natural and man-made phenomena be comparable to those used in commercial nuclear practice.

8. That the Program Plan and the results of its activities be used to specify building upgrade and improvements consistent with the mission of Building 371.

John T. Conway,
Chairman.

September 26, 1994.

The Honorable Hazel R. O'Leary
Secretary of Energy,
Washington, DC 20585.

Dear Secretary O'Leary: On September 26, 1994, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. § 2286a(5), unanimously approved Recommendation 94-3 which is enclosed for your consideration. Recommendation 94-3 deals with Rocky Flats Seismic and Systems Safety.

42 U.S.C. § 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. §§ 2161-68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board will publish this recommendation in the Federal Register.

Sincerely,

John T. Conway,
Chairman.

[FR Doc. 94-24412 Filed 10-3-94; 8:45 am]
BILLING CODE 6820-KD-M

DEPARTMENT OF EDUCATION

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming emergency teleconference meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIME: Thursday October 6, 1994 from 12:00 noon eastern standard time until the conclusion of business.

ADDRESSES: The teleconference call will be held at the office of the National Advisory Council on Indian Education, 330 C St. SW., Rm. 4072, Washington, DC 20202-7556.

FOR FURTHER INFORMATION CONTACT: Robert K. Chiago, Executive Director, National Advisory Council on Indian Education, 330 C Street, S.W., Room 4072, Switzer Building, Washington, DC 20202-7556. Telephone: (202) 205-8353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (Part C, Title V, Pub. L. 100-297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit and submit a list of nominees for the position of Director, Office of Indian Education.

The Chairman of the National Advisory Council on Indian Education has called for a teleconference meeting of the full Council on Thursday, October 6, 1994 at 12:00 noon eastern standard time. The purpose of the meeting is to finalize recommendations for submission to the Secretary of Education regarding the selection of a Director for the Office of Indian Education. This is an open teleconference call and the public may attend.

The public is being given less than fifteen days notice for this teleconference call due to the urgency of submitting recommendations to the Secretary regarding the selection of a director for the Office of Indian Education. During its meeting the week of September 19, NACIE was unable to conclude the agenda item concerning the selection of a director for the Office of Indian Education. It is necessary for NACIE to submit its recommendations to the Secretary of Education as soon as possible in order to fill the position promptly.

Records shall be kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Indian Education located at 330 C Street S.W., Room 4072, Washington, DC 20202-7556 from the hours of 9:00 a.m. to 4:30 p.m. Monday through Friday, except holidays.

Dated: September 29, 1994.

Eddie L. Tullis,
Chairman, National Advisory Council on Indian Education.

[FR Doc. 94-24563 Filed 10-3-94; 8:45 am]
BILLING CODE 4000-01-M

National Workplace Literacy Program

AGENCY: Department of Education.

ACTION: Withdrawal of notice of proposed priority.

SUMMARY: The Secretary withdraws the notice of proposed priority for the National Workplace Literacy Program: Workplace literacy services for empowerment zones or enterprise communities published on June 16, 1994 (59 FR 31032). The Secretary withdraws this proposed priority because no funds are available for fiscal year 1995 to support awards under this priority.

FOR FURTHER INFORMATION CONTACT: Sarah Newcomb, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 4417-MES, Washington, DC 20202-7240, Telephone (202) 205-9872; or Jeanne Williams, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 4513-MES, Washington, DC 20202-7327; Telephone (202) 205-5977. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

(Catalog of Federal Domestic Assistance Number 84.198B National Workplace Literacy Program)

Dated: September 27, 1994.

Augusta Souza Kappner,
Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 94-24411 Filed 10-3-94; 8:45 am]
BILLING CODE 4001-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF83-333-002 and QF83-333-003]

Cal Ban Corp.; Amendment to Filing

September 28, 1994.

On September 21, 1994, Cal Ban Corp. tendered for filing a supplement to its filing in these dockets.

The supplement pertains to the technical aspects of the facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by October 18, 1994, and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 94-24429 Filed 10-3-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER94-135-000, et al.]

Wisconsin Power & Light Company, et al. Electric Rate and Corporate Regulation Filings

September 27, 1994.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Power and Light Company

[Docket Nos. ER94-135-000 and ER94-320-000]

Take notice that on September 20, 1994, Wisconsin Power and Light Company (WP&L) tendered for filing an amendment in the above referenced Dockets. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of May 15, 1994.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Power and Light Company

[Docket No. ER94-1563-000]

Take notice that on September 20, 1994, Wisconsin Power and Light Company (WP&L) tendered for filing an amendment in the above referenced Docket. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of August 13, 1994.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. CNG Power Services Corporation

[Docket No. ER94-1554-000]

Take notice that on September 13, 1994, CNG Power Services Corporation filed an amendment to its application for approval to market capacity and energy at market-based rates.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Commonwealth Electric Company

[Docket No. ER94-1600-000]

Take notice that on August 26, 1994, Commonwealth Electric Company (Commonwealth) tendered for filing pursuant to § 35.12 of the Commission's regulations a Dispatchable System Power Sale Agreement governing the sale by Commonwealth of Dispatchable System(Power (as defined herein) to Fitchburg Gas & Electric Company ("FG&E"). By the provisions of this agreement, Commonwealth proposes to sell to the Buyer electric power upon terms and conditions and in amounts mutually acceptable to each party.

A copy of this filing has been served upon the Buyer and upon the Massachusetts Department of Public Utilities.

Comment date: October 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Central Hudson Gas & Electric Corp.

[Docket No. ER94-1662-000]

Take notice that on September 19, 1994, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's Regulations in 18 CFR, as an Initial Rate Schedule, a Power Sales Tariff whereby Central Hudson may sell capacity and/or energy to electric utilities, as the parties may mutually agree from time to time. The proposed Tariff requires interested purchasers to enter into a Service Agreement with Central Hudson before transactions may commence under this Tariff. Service under this agreement is requested to commence on November 15, 1994.

Central Hudson requests that its Tariff be accepted for filing and allowed to become effective in accordance with its terms as specified. CHG&E has served a copy of the filing upon the New York State Public Service Commission.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Electric Power Company

[Docket No. ER94-1663-000]

Take notice that on September 19, 1994, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Coordination Sales Tariff Service Agreement between itself and Consolidated Water Power Company (Consolidated). This power sales tariff was accepted by FERC by letter order dated June 14, 1994 (Docket No. ER94-1179-000).

Wisconsin Electric requests an effective date of September 14, 1994, in order to take advantage of power supply economies in the bulk power market. Wisconsin Electric is authorized to state that Consolidated joins in the requested effective date.

Copies of the filing have been served on the Public Service Commission of Wisconsin.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Electric Power Company

[Docket No. ER94-1664-000]

Take notice that on September 19, 1994, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing an Electric Service Agreement between itself and Heartland Energy

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Services (HES). The Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff which was accepted by FERC by letter order dated June 14, 1994 (Docket No. ER94–1179–000).

Wisconsin Electric requests an effective date coincident with the filing date in order for HES to take advantage of power supply economies in the bulk power market. Wisconsin Electric is authorized to state that HES joins in the requested effective date.

Copies of the filing have been served on the Public Service Commission of Wisconsin.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–1666–000]

Take notice that on September 20, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement to provide interruptible transmission service for Rainbow Energy Marketing Corporation (Rainbow).

Con Edison states that a copy of this filing has been served by mail upon Rainbow.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Great Bay Power Corporation

[Docket No. ER94–1667–000]

Take notice that on September 20, 1994, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Reading Municipal Light Department and Great Bay for service under Great Bay's Tariff for Short Term Sales. This tariff was accepted for filing by the Commission on November 11, 1993, in Docket No. ER93–924–000. The service agreement is proposed to be effective October 1, 1994.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Public Service Corporation

[Docket No. ER94–1668–000]

Take notice that on September 21, 1994, Wisconsin Public Service Corporation tendered for filing four executed service agreements with the City of Wisconsin Rapids, Upper Peninsula Power Company, Consolidated Water Power Company and Rainbow Energy Marketing Corp. under its CS–1 Coordination Sales Tariff. Wisconsin Public Service requests waiver of the Commission's regulations to permit the Service Agreements to become effective in accordance with their terms. Wisconsin Public Service also tendered for filing an amendment that adds Rainbow to its list of potential purchasers under the tariff.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Central Maine Power Company

[Docket No. ER94–1669–000]

Take notice that on September 21, 1994, Central Maine Power Company (CMP), tendered for filing a Power Purchase Agreement between CMP and Unnamed Subsidiary, dated as of October 12, 1994 (Agreement). CMP will purchase and Subsidiary will sell all of the energy and capacity from a 32 MW biomass-fueled generating facility located in the Town of Fort Fairfield, Maine.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. American Electric Power Service Corporation

[Docket No. ER94–1670–000]

Take notice that on September 21, 1994, American Electric Power Service Corporation, on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company and Ohio Power Company, (the AEP Companies) tendered for filing an AEP System Interim Allowance Agreement. The purpose of the Agreement is to establish, on an interim basis, a methodology and transfer price for the transfer of SO_2 emission allowances among the AEP Companies.

The AEP Companies request an effective date of January 1, 1995.

Copies have been served upon the state regulatory commissions in Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: October 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Old Dominion Electric Cooperative

[Docket No. ES94–40–000]

Take notice that on September 21, 1994, Old Dominion Electric Cooperative filed an application under § 204 of the Federal Power Act seeking authorization to issue and renew short-term debt in an amount not to exceed $125 million outstanding at any one time, including, without limitation, commercial paper, notes or other obligations, with a maturity of one year or less, to be issued from time to time during the period from November 30, 1994 through November 30, 1996, with a final maturity date no later than November 30, 1997.

Comment date: October 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24430 Filed 10–3–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 10854–002–ME, Cataract Hydroelectric Project]

Upper Peninsula Power Company; Amended Notice of Site Visit

September 28, 1994.

The Federal Energy Regulatory Commission (FERC) has received an application for initial license of the Cataract Hydroelectric Project, FERC No. 10854–002. The project is located on the Escanaba River Basin in Marquette, CO, near Gwinn, Michigan.

As part of the licensing proceedings for the Cataract Hydroelectric Project, the Commission issued on September 20, 1994, a Notice of Site Visit. The staff was informed that there was an error in the day the site visit was to be held.

Due to the above error, the project site visit will be held on *Thursday*, October 6, 1994.

If you would like to attend the site visit, we will meet at 10:00 p.m. on Thursday, October 6, at Jerry's Restaurant Parking Lot, Highway M–35 across from the Gwinn High School. The Cataract Hydro Project address and directions to the meeting location are as follows:

From Marquette, MI, travel approximately 8 miles west on US 41. Turn south on Highway M–35, travel approximately 25 miles to the City of Gwinn. Highway M–35 is the main road through Gwinn.

We will conclude the site visit at the Hydroelectric Project location. Please be aware that you will be responsible for your own lodging, transportation, and meals.

Please notify Mr. Max Curtis, Upper Peninsula Power Company (UPPCo), at (906) 487–5063, if you plan to attend the site visit. All those attending the site visit are urged to refrain from any communication concerning the merits of the license application to any member of the Commission staff or Commission's Contractor, CH2M HILL, outside of the established process for developing the licensing record.

For further information, please contact Ms. Angela Oliver at (202) 219–2998.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24431 Filed 10–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–792–000, et al.]

NorAm Gas Transmission Company, et al.; Natural Gas Certificate Filings

September 27, 1994.

Take notice that the following filings have been made with the Commission:

1. NorAm Gas Transmission Company

[Docket No. CP94–792–000]

Take notice that on September 22, 1994, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–792–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon certain facilities in Louisiana under NGT's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically NGT proposes to abandon Line AM–164, which consists of 939 feet of 4-inch pipe, a 1-inch tap and a 2-inch U-shaped meter. NGT states that these facilities, located in Caddo Parish, were constructed to provide service to a pipeline yard by Arkla, a division of NorAm Energy Corp. (Arkla). NGT mentions that Arkla no longer operates this pipeline yard and has consented in writing to the abandonment. NGT asserts that the pipe would be abandoned in place and the above ground facilities would be removed.

Comment date: November 14, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Empire State Pipeline

[Docket No. CP94–794–000]

Take notice that on September 22, 1994, Empire State Pipeline (Empire), 2000 M Street, N.W., Washington, D.C. 20036, filed in Docket No. CP94–794–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) requesting a blanket certificate of public convenience and necessity authorizing Empire to transport natural gas under Section 284.224 of the Commission's Regulations, as may be amended from time to time, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Empire is a Hinshaw pipeline within the meaning of the NGA and as determined by the Commission in Docket No. CP90–316–002 and CP90–317–002, *et al.* It is explained that Empire commenced operations November 1, 1993, and that, for the period November 1, 1993, through August 31, 1993, Empire received 30.8 Bcf of natural gas at its interconnection with TransCanada Pipelines Limited, located at the international border between Canada and New York. It is further explained that this is Empire's only receipt point and that the volume received there was the total volume received by Empire for the year. Empire states that it will raise its rates and tariffs on file with the Public Service Commission of New York for the transportation services rendered under the blanket certificate requested in the subject application. Empire further states that it will comply with all applicable conditions contained in paragraph (e) of § 284.224 of the Commission's Regulations.

Comment date: October 18, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Texas Gas Transmission Corporation

[Docket No. CP94–796–000]

Take notice that on September 22, 1994, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP94–796–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to add a new delivery point in Breckinridge County, Kentucky, to serve an existing customer, Western Kentucky Gas Company (Western), under Texas Gas's blanket certificate issued in Docket No. CP82–407–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

The proposed delivery point will be located on Texas Gas's Herbert-Cannellton 8-inch pipeline at Mile Post 3+1662 near Weberstown in Breckinridge County, Kentucky, and will be known as the Weberstown Delivery Point.

Texas Gas states that the Weberstown Delivery Point will enable Western to render natural gas service for residential heating in the community of Weberstown.

Texas Gas states that the Weberstown Delivery Point is actually a "reclassification" of an existing "farm tap". Texas Gas states that it will not be necessary for Texas Gas to construct any new facilities or modify any existing facilities at this location. Texas Gas states that Western will replace the two meters it currently owns and operates at this location with a single larger meter to accommodate both the existing service rendered at this "farm tap" and the projected requirements for the Weberstown community.

Texas Gas states that service to this new delivery point will be accomplished within Western's existing contract quantities as set forth in Western's Firm Transportation Agreement-Zone 3 with Texas Gas and its Firm No Notice Transportation Agreement with Texas Gas. Texas Gas further states that since no increase in contract quantities has been requested by Western, the above proposal can be accomplished without detriment to Texas Gas's other customers.

The estimated maximum annual quantity of natural gas to be delivered to Western at this point will be 2,500 MMBtu, with a proposed maximum daily quantity of 10.5 MMBtu.

Comment date: November 14, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. NorAm Gas Transmission Company

[Docket No. CP94–798–000]

Take notice that on September 23, 1994, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–798–000 a request pursuant to Sections 157.205, 157.211, and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.212) for approval to construct and operate a delivery tap

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located in Titus County, Texas for delivery of natural gas to ARKLA, a division of NorAm Energy Corporation, for redelivery to its customer, Exxon Company, U.S.A. (Exxon), pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NGT proposes to construct and operate a one-inch delivery tap on its Line AM–74 for ultimate redelivery to Exxon. NGT states that the estimated volumes to be delivered through this tap are approximately 2,000 Mcf annually and 48 Mcf on a peak day. NGT indicates that the volumes delivered are within ARKLA's certificated entitlement and NGT's tariff does not prohibit the addition of new delivery points. NGT further indicates that it has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers. NGT further states that it will transport gas to ARKLA and provide service under NGT's Order No. 636 rate schedules. It is indicated that the estimated cost of construction is $1930, and that ARKLA will reimburse NGT for all construction costs.

Comment date: November 14, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission Corporation Columbia Gulf Transmission Company

[Docket No. CP94–800–000]

Take notice that on September 23, 1994, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky, 42302 and Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas, 77001, filed a joint application pursuant to Section 7(b) of the Natural Gas Act requesting authority to abandon a transportation service provided by Texas Gas and Columbia Gulf for ANR Pipeline Company performed under Texas Gas' Rate Schedule X–37 and Columbia Gulf's Rate Schedule X–5, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The transportation service was authorized in Docket No. CP71–156–000 which approved the transportation on a firm basis of up to 20,548 Mcf/. The transportation agreement between Texas Gas, Columbia Gulf, and ANR provided for a twenty-year primary term continuing from year-to-year thereafter, unless canceled by either party by at least six months written notice. ANR offered the transportation agreement for assignment to its converting sales customers consistent with the Commission's restructuring policy with regard to upstream transportation agreements. ANR, Texas Gas, and Columbia Gulf, have agreed to cancel the transportation agreement effective December 1, 1993, since none of ANR's customers chose to accept assignment of the transportation agreement.

Comment date: October 18, 1994, in accordance with Standard Paragraph F at the end of this notice.

6. PetroCorp Incorporated

[Docket No. CP94–804–000]

Take notice that on September 26, 1994, PetroCorp Incorporated (PetroCorp), 16800 Greenspoint Park Drive, Suite 300, North Atrium, Houston, Texas 77060–2391, filed a petition for declaratory order in Docket No. CP94–804–000, requesting that the Commission declare that facilities to be constructed in Montezuma County, Colorado to be called the Anasazi Gathering System (Anasazi) would have the primary function of gathering natural gas and would thereby be exempt from the Commission's jurisdiction pursuant to Section 1(b) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

PetroCorp states that it and other operators have discovered a new gas producing area in the Paradox Basin, Montezuma County, Colorado. PetroCorp indicates that it has proposed the construction of a gathering system from three existing wells in this area, plus other wells which are expected to be drilled, to connect with the gathering system of Western Gas Resources, Inc. (Western) in San Juan County, New Mexico. It is stated that the gas would be transported through Western's system to connect with the transmission facilities of El Paso Natural Gas Company.

In support of its request, PetroCorp points out how the facilities meet the primary function test set out in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983), as later modified.

Length and Diameter of the Line

PetroCorp points out that the Anasazi Gathering System will consist of 22.2 miles of 4½ inch pipe. It is also indicated that, as additional wells are completed, additional lateral 4½ inch pipelines will be built.

Central Point in the Field and Geographic Configuration

PetroCorp states that the boundaries of the field are not yet defined. PetroCorp indicates that it plans to build a trunkline or spine across the producing area, constructing lateral pipelines as necessary to connect new producing wells as they are drilled. PetroCorp states that the field has no central point, but is configured similarly to the system in Amerada Hess Corporation, Docket No. CP91–1314–003, which it indicates the Commission determined to be gathering in an order issued on May 27, 1994.

Location of Compressors and Processing Plants

PetroCorp states that temporary portable compressor facilities will be installed at each well until the total number of wells to be served by the system is determined. It is indicated that at that time an appropriate permanent compression unit would be located on the gathering system at an appropriate downstream point. PetroCorp states that no processing plant is contemplated. PetroCorp points out, however, that, if sufficient liquid and liquefiable hydrocarbons are contained in the gas stream to make their extraction economically attractive, a processing plant may be constructed at a downstream point.

Location of Wells and Operating Pressure of the Line

PetroCorp states that a number of wells are located along the proposed spine. It is also indicated that the operating pressure of the proposed system will be approximately 100 psig at the wellhead and approximately 400 psig at the delivery point to Western.

Comment date: October 18, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file,pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24432 Filed 10–3–94; 8:45 am]

BILLING CODE 6717–01–P

Federal Energy Regulatory Commission

[Docket No. CP93–618–002, et al.]

Pacific Gas Transmission Company, et al.; Natural Gas Certificate Filings

September 28, 1994.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas Transmission Company

[Docket No. CP93–618–002]

Take notice that on September 26, 1994, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California, 94105–1570, filed an Amendment to its Application in Docket Nos. CP93–618–000 and 001. In this proceeding, PGT is requesting a Certificate of Public Convenience and Necessity under Section 7(c) of the Natural Gas Act, and Part 157, Subpart A of the Commission's Regulations. PGT seeks to construct and operate two extensions of its mainline facilities—the Coyote Springs Extension and the Medford Extension. These extensions would be used to provide firm transportation service to Portland General Electric Company (Portland General) and WP Natural Gas, a division of The Washington Water Power Company (Wash. Water), respectively. PGT proposes to recover the incremental cost-of-service of the respective extensions through surcharges to its existing FTS–1 Rate Schedule. In this amendment, PGT details the specific surcharge rate treatment for the volumes to be shipped by Portland General and Wash. Water over the two proposed extensions. PGT's proposal is more fully set forth in the application and amendments which are on file with the Commission and open to public inspection.

Specifically, PGT requests approval of a deferred cost recovery mechanism for part of Wash. Water's service on the Medford Extension. PGT states that the deferred mechanism does not alter the proposed incremental rate structure for service on the proposed extensions. PGT also states that the deferred mechanism is designed to permit Wash. Water to remain competitive with competing electric rates in its service area, and afford PGT an opportunity to recover the life cycle cost-of-service for the service for Wash. Water's on a deferred basis. PGT proposes to file annual reports containing the adjusted Wash. Water rate and related information on any deferred balance.

Lastly, PGT proposes to recover the cost of extensions based upon a straight-line depreciation schedule which is equal to the length of the transportation agreements for each extension. For service to Portland General over the Coyote Springs Extension, the term of the contract is 20 years. For service to Wash. Water over the Medford Extension the, the term of the contracts is 30 years, (there are two contracts between PGT and Wash. Water).

Comment date: October 14, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice. *However*, any person who has already filed an intervention(s) in Docket No. CP93–618, *et al.*, need not file again.

2. Southern Natural Gas Company

[Docket No. CP94–793–000]

Take notice that on September 22, 1994, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP94–793–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a delivery point for service to International Paper under Southern's blanket certificate issued in Docket No. CP82–406–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Southern proposes to construct and operate certain measurement and other appurtenant facilities in order to provide transportation service to International Paper at a delivery point for service to International Paper's Riverdale Plant in Dallas County, Alabama. Southern states that International Paper is presently in the process of expanding its facilities at the Plant that will require additional gas requirements. Southern also indicates that it proposes to locate the facilities at or near Mile Post 185.2 on its 24 and 26-inch South Main Lines in Dallas County, Alabama.

Southern states that International Paper has complied with all the requirements under Section 36 of the General Terms and Conditions of Southern's FERC Gas Tariff for the installation of the direct delivery connection by Southern. Southern states that it will transport gas on behalf of International Paper pursuant to its Rate Schedule IT. Southern states that the installation of the proposed delivery point facilities and the transportation provided thereunder will have no adverse effect on its peak day or annual requirements.

Southern states that the estimated cost of the construction and installation of the measurement interconnection facilities is approximately $334,000.

Comment date. November 14, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. El Paso Natural Gas Company

[Docket No. CP94–801–000]

Take notice that on September 23, 1994, El Paso Natural Gas Company (El Paso), P. O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP94–801–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for

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authorization to construct and operate a delivery point in Castro County, Texas in order to permit the interruptible transportation and delivery of natural gas to American Maize—Products Dimmitt Inc. (American), under El Paso's blanket certificate issued to El Paso in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that the total estimated cost of the proposed facility is $39,600, and that American has agreed to reimburse El Paso for those costs related to the construction of the proposed delivery point. The proposed quantity of natural gas to be transported on an interruptible basis to American is estimated to be 1,387,000 Mcf annually. The estimated maximum peak day requirement at the proposed delivery point is 4,000 Mcf. El Paso states that American will use the natural gas to satisfy the fuel requirements for its corn processing plant. El Paso states that it has sufficient capacity to accomplish the deliveries agreed to with American without detriment or disadvantage to El Paso's other customers.

Comment date: November 14, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. NorAm Gas Transmission Company

[Docket No. CP94–803–000]

Take notice that on September 26, 1994, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–803–000 a request pursuant to §§ 157.205, 157.211, and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.212) for authorization to construct and operate a new delivery point under NGT's blanket certificate issued in Docket No. CP82–384–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to install a new 1-inch sales tap on its Line AD-East (Station 2904+61) in Section 35, Township 5 North, Range 9 East, Hughes County, Oklahoma, for delivery of natural gas to ARKLA, a division of NorAm Energy Corp. (ARKLA), for redelivery to its commercial customer, Tyson Hog Operation. NGT estimates that the average day and annual volumes would be 13 Mcf and 4,745 Mcf, respectively. NGT further estimates that the cost of construction would be $3,853 which would be reimbursed by ARKLA.

Comment date: November 14, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24473 Filed 10–3–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. RP91–80–004, RP91–86–002, TM91–8–20–001, TM91–9–20–001, TM92–12–20–002, TM92–4–20–001, TM92–13–20–001, TM93–6–20–001, TM93–16–20–001, and TM94–4–20–001]

Algonquin Gas Transmission Company; Proposed Changes in FERC Gas Tariff

September 28, 1994.

Take notice that on September 21, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fouth Revised Volume No. 1, the following revised tariff sheets, with an effective date of October 1, 1994:

First Revised Sheet No. 91
Third Revised Sheet No. 92
Second Revised Sheet No. 692
Second Revised Sheet No. 693
First Revised Sheet No. 694
First Revised Sheet No. 695
Second Revised Sheet No. 696
First Revised Sheet No. 697
First Revised Sheet No. 698
First Revised Sheet No. 699
Second Revised Sheet No. 700
Second Revised Sheet No. 703
Second Revised Sheet No. 696
First Revised Sheet No. 703

Algonquin states that the purpose of this filing is to implement the May 3, 1994, Stipulation and Agreement (S&A) in the above-captioned dockets that was approved by the Commission on August 4, 1994. Algonquin states that the effective date of the S&A is September 6, 1994.

Algonquin states that copies of its filing were mailed to all affected customers, interested state commissioners, and all parties to the above captioned dockets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before October 5, 1994.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protrestants parties to the proceeding. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24434 Filed 10–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–1–63–000]

Carnegie Natural Gas Company; Proposed Changes in FERC Gas Tariff

September 28, 1994.

Take notice that on September 22, 1994, Carnegie Natural Gas Company (Carnegie) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet:

Sixth Revised Sheet No. 7

Carnegie states that the purpose of this filing is to permit the tracking of the ACA Unit Surcharge authorized by the Commission for fiscal year 1995. The ACA Unit Surcharge authorized by the Commission for fiscal years 1995 is $0.0024 per Mcf, $0.0023 per Dth converted to Carnegie's measurement basis.

The proposed effective date of the tariff sheet listed above is October 1, 1994.

Carnegie states that copies of the filing were served on Carnegie's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 824 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of practice and procedure. All such motions or protests should be filed on or before October 5, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24435 Filed 10–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–332–002]

Florida Gas Transmission Company; Compliance Filing

September 28, 1994.

Take notice that on September 22, 1994, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet:

Substitute Original Sheet No. 8D

On July 29, 1994, FGT filed tariff sheets proposing to clarify that the Fuel Reimbursement Charge (FRC) retained by FGT does not apply to volumes transported through non-contiguous laterals without compression nor through laterals without compression behind processing plants where volumes transported are consumed within the plant. On August 31, 1994, the Commission issued an order (August 31 Order) accepting, subject to revision, the provisions in FGT's filing concerning the application of the Fuel Reimbursement Charge. Specifically, the August 31 Order accepted FGT's filing to be effective September 1, 1994, subject to FGT refiling revised tariff sheets within 15 days of the August 31 Order to specify which laterals on FGT's system will not be subject to the Fuel Reimbursement.

FGT states that on September 14, 1994, FGT made a filing in compliance with the August 31 Order. FGT further states that included in that filing was a new tariff sheet, Original Sheet No. 8D, which identifies specific laterals on FGT's system where the FRC would not apply.

FGT states that it has discovered that it inadvertently omitted one lateral behind a processing plant in Louisiana from the tariff sheet. FGT states that it is filing herein to include this lateral.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations.

All such protests should be filed on or before October 5, 1994. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24437 Filed 10–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1546–000]

Carolina Power & Light Company; Filing

September 28, 1994.

Take notice that on August 3, 1994, Carolina Power & Light Company (CP&L) tendered for filing a letter advising the Commission that service will commence under the power coordination agreement between CP&L and North Carolina Electric Membership Corporation. In addition, on August 31, 1994, CP&L tendered for filing a letter requesting that "Exhibit A's" for the Chadbourn Peacock and Edwards Delivery Points be made supplements to Rate Schedule No. 128 and included as a part of the August 3, 1994, filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24436 Filed 10–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–159–003]

Michigan Gas Storage Company; Report of Refunds

September 28, 1994.

Take notice that on August 26, 1994, Michigan Gas Storage Company (Michigan Gas) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report made to comply with the Commission's order dated June 6, 1994.

Michigan states that the report shows that on June 29, 1994, it refunded $920,925.65, including interest, to its CPCO customers on behalf of various utilities and end users, for the refund period February 1, 1994, through May 31, 1994.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE.,

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Washington, DC 20426 in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such motions or protests should be filed on or before October 5, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24438 Filed 10-3-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-405-000]

Mississippi River Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

September 28, 1994.

Take notice that on September 23, 1994, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Volume No. 1, the following tariff sheets:

	Proposed Effective Date
Original Sheet No. 9A.	October 24, 1994.
First Revised Sheet No. 189.	August 1, 1994.
First Revised Sheet No. 190.	August 1, 1994.

MRT states that the purpose of the filing is to provide for the disposition of additional unrecovered Account Nos. 191 and 858 amounts as a result of prior period billing adjustments incurred by MRT during the nine-month period November, 1993, through July, 1994, and to flow-through an Account No. 858 refund received in August, 1994, relating to Trunkline Gas Company's Docket No. RP89-160, pursuant to Section 16.2(b) of MRT's tariff.

MRT requested an extension of the nine-month adjustment period by an additional period equal to the later of 15 months or ninety days after a final non-appealable order, decision or settlement resolving any matters in litigation.

MRT stated that copies of its filing have been mailed to all of its former jurisdictional sales customers and the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before October 5, 1994. Protests will be considered but not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24439 Filed 10-3-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-404-000]

Northern Border Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

September 28, 1994.

Take notice that on September 23, 1994, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

First Revised Sheet Number 155
First Revised Sheet Number 159
First Revised Sheet Number 160
First Revised Sheet Number 239
First Revised Sheet Number 250
First Revised Sheet Number 251
First Revised Sheet Number 252
First Revised Sheet Number 253
First Revised Sheet Number 254
First Revised Sheet Number 255
First Revised Sheet Number 256
Second Revised Sheet Number 287
First Revised Sheet Number 288
Second Revised Sheet Number 289
Second Revised Sheet Number 290
Second Revised Sheet Number 291
Second Revised Sheet Number 292
Second Revised Sheet Number 293
First Revised Sheet Number 294
Second Revised Sheet Number 296
First Revised Sheet Number 430
Second Revised Sheet Number 431
Second Revised Sheet Number 500
Fourth Revised Sheet Number 501
Second Revised Sheet Number 502

Northern Border states that the purpose of this filing is to (i) revise the method by which Rate Schedule IT-1 service is allocated; (ii) delete the primary and secondary queue used in scheduling Rate Schedule IT-1 service; (iii) revise the method by which flowing gas priority is retained by IT-1 Shippers; (iv) allow a shipper to transfer Receipt Deficiencies between Service Agreements and to remove the option that Receipt Deficiencies can be transferred back to the Releasing Shipper; and (v) reflect housekeeping changes.

Northern states that none of the herein proposed changes result in a change in Northern Border's total revenue requirement due to its cost of service form of tariff.

Northern Border requests that the above listed tariff sheets be made effective November 1, 1994. Copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before October 5, 1994. Protests will be considered but not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24440 Filed 10-3-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP94-274-000, RP94-275-000, and RP94-385-000]

Northern Natural Gas Co., Notice of Technical Conference

September 28, 1994.

Take notice that on Tuesday, October 25, 1994, at 1 p.m., the Commission's Staff will convene a technical conference to allow parties to address the issues outlined in the Commission's July 1, 1994, order in Docket Nos. RP94-274-000, and RP94-275-000.[1] The parties may also address issues related to Northern's September 1, 1994, filing in Docket No. RP94-385-000.

The technical conference will be held in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24441 Filed 10-3-94; 8:45 am]

BILLING CODE 6717-01-M

[1] Northern Natural Gas Co., 68 FERC ¶ 61,010 (1994).

[Docket No. MT94-20-001]

Southwest Gas Storage Co.; Notice of Filing

September 28, 1994.

Take notice that on September 22, 1994, Southwest Gas Storage Company (Southwest Gas) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet:

Second Revised Sheet No. 65

Southwest Gas states the filing made in the above referenced docket on August 31, 1994, included an error in the submission of Sheet No. 65 to original Volume No. 1. The corrected Sheet No. 65: (a) correctly identifies the tariff sheet as Second Revised Sheet No. 65, Superseding First Revised Sheet No. 65; and (b) reflects the fact that firm requests must be accompanied by one (1) month's payment of the applicable Capacity Charge and Deliverability Charge.

Southwest Gas states that copies have been served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before October 5, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24442 Filed 10-3-94; 8:45 am]

BILLING CODE 6717-01-M

Superior Offshore Pipeline Co. Notice of Proposed Changes in FERC Gas Tariff

[Docket No. TM95-1-66-000]

September 28, 1994.

Take notice that on September 23, 1994, Superior Offshore Pipeline Company (SOPCO) tendered for filing under protest as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with a proposed effective date of October 1, 1994:

Fourth Revised Sheet No. 5
Fourth Revised Sheet No. 6

SOPCO states that the revised tariff sheets are being filed to amend SOPCO'S FERC Annual Charge Adjustment (ACA) related tariff sheet to reflect the change in the FERC ACA Unit Charge. SOPCO has received an Annual Charges Billing from the Commission for the fiscal year 1994 and has already remitted to the Commission SOPCO's portion of the Commission deficit. SOPCO states that for the purpose of recovering this payment, SOPCO has elected, pursuant to the authority outlined in Order No. 472, to institute the ACA Unit Charge. As set forth by the Commission on SOPCO's Annual Charges Bill, SOPCO's ACA Unit Charge will change from $0.0026/MMBtu to $0.0023/MMBtu.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 5, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24443 Filed 10-3-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-302-003]

Texas Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

September 28, 1994.

Take notice that on September 22, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Second Substitute Original Sheet No. 231A
Second Substitute Original Sheet No. 231C

Texas Gas states that the tariff sheets are being filed to comply with a Commission Order issued on September 16, 1994. The Order directed Texas Gas to make modifications to the guidelines in reconciling and resolving the pre-Order No. 636 historical imbalances on the Texas Gas system and to supply workpapers to substantiate Texas Gas's unit book value of historical imbalances.

Texas Gas requests an effective date of August 1, 1994, for the proposed tariff sheets.

Texas Gas states that copies of the tariff sheets are being mailed to Texas Gas's affected customers, interested state commissions, and those names appearing on the service list in Docket No. RP94-302-000.

Any person desiring to protest said filing should file a protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before October 5, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24444 Filed 10-3-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT94-25-000]

Trunkline Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

September 28, 1994.

Take notice that on September 26, 1994, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets proposed to become effective October 1, 1994:

First Revised Sheet No. 158
First Revised Sheet No. 159
First Revised Sheet No. 160
First Revised Sheet No. 161
Second Revised Sheet No. 162
Second Revised Sheet No. 163
First Revised Sheet No. 214

Trunkline states that this filing is being made in response to the Commission's Order No. 566 issued on June 17, 1994, in Docket No. RM94-6-000, which among other things eliminates the requirement that pipelines (1) include in their tariffs information required for a valid request for transportation service and (2) file tariff provisions stating the procedures used to inform affiliated and non-affiliated shippers of the availability and pricing of transportation service and of the capacity available for transportation.

Trunkline respectfully requests that the Commission grant any waivers of

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the Regulations as may be necessary to place these tariff sheets into effect on October 1, 1994, in accordance with the Commission's Letter Order dated July 29, 1994, granting Trunkline an extension of time to implement the Commission's Regulations as they relate to Order No. 566.

Trunkline states that copies of this filing are being mailed to all shippers subject to these tariff sheets and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 5, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24445 Filed 10–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–26–000]

Trunkline LNG Co.; Notice of Proposed Changes in FERC Gas Tariff

September 28, 1994.

Take notice that on September 26, 1994, Trunkline LNG Company (TLC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets proposed to become effective August 1, 1994:

Second Revised Sheet No. 79.1
Second Revised Sheet No. 79.2

TLC states that this filing is being made in response to the Commission's Order No. 566 issued on June 17, 1994, in Docket No. RM94–6–000 which, among other things, eliminates the requirement that pipelines include in their tariffs information required for a valid request for service.

TLC respectfully requests that the Commission grant any waivers of the Regulations as may be necessary to place these tariff sheets into effect on August 1, 1994, the effective date of the Commission's Order No. 566.

TLC states that copies of this filing are being mailed to all shippers subject to these tariff sheets and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 5, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24446 Filed 10–3–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5084–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 3, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at 202–260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Nitric Acid Plants (Subpart G)—Information Requirements. (EPA ICR No. 1056.05; OMB Control No. 2060–0019). This is a renewal of a currently approved collection.

Abstract: Owners or operators of nitric acid plants must provide EPA, or the delegated State regulatory authority, with one-time notifications and reports, and must keep records, as required of all facilities subject to the general NSPS requirements. In addition, facilities subject to this subpart must install, calibrate, maintain, and operate a continuous monitoring system (CMS) for the measurement and recording of nitrogen oxides emissions, and must notify EPA or the State regulatory authority of the date upon which demonstration of the CMS' performance commences. Owners or operators must submit semiannual reports of excess nitrogen oxides emissions and of monitoring system performance. The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The public reporting burden for this collection of information is estimated to average 9 hours per response for reporting, and 175 hours per recordkeeper annually. The estimated reporting burden includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners and operators of nitric acid plants.

Estimated No. of Respondents: 30.

Estimated No. of Responses Per Respondent: 2.

Estimated Total Annual Burden on Respondents: 5,800 hours.

Frequency of Collection: Once and semiannually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460. and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: September 28, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–24415 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5084–1]

Acid Rain Program: Draft Compliance Plans and Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Draft Compliance Plans and Public Comment Period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for commnent 5-year nitrogen oxides (NO_X) compliance plans for 19 units at 9 utility plants that amend previously-issued Phase I Acid Rain Permits in accordance with the Acid Rain Program regulations (40 CFR part 76).

DATES: Comments on draft NO_X compliance plans must be received no later than 30 days after the date of this notice or the publication date of a similar notice in local newspapers.

ADDRESSES: *Administrative Records.* The administrative record for draft NO_X compliance plans, except information protected as confidential, may be viewed during normal operating hours at EPA Region 3, 841 Chestnut Bldg., Philadelphia, PA 19107, (215) 597–9800.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions concerning a draft NO_X compliance plan to EPA Region 3, Air, Radiation, and Toxics Division, Attn: Thomas Maslany, Director (address above).

Submit all comments in duplicate and identify the NO_X compliance plan to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units covered by the plan. All timely comments will be considered, except comments on aspects of the permit other than the NO_X compliance plan and other comments not relevant to the plan.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting the NO_X compliance plan.

FOR FURTHER INFORMATION: Contact Richard Killian, (215) 597–7547, (address above).

SUPPLEMENTARY INFORMATION: EPA proposes to approve NO_X compliance plans under which units will comply with the applicable emission limitations for NO_X under 40 CFR 76.5 (referred to as "standard emission limit") or other indicated compliance options for NO_X for the following:

Armstrong in Pennsylvania: standard emission limitation of 0.50 lbs/MMBtu for units 1 and 2. Unit 1 is not required to meet the emission limit until 1997 pursuant to 40 CFR 72.42. The designated representative is David C. Benson.

Bruce Mansfield in Pennsylvania: averaging plan for 1995 for units 1 and 2; the actual annual average emission rate for NO_X for each unit shall not exceed the alternative contemporaneous annual emission limitation of 0.50 lbs/MMBtu. The other units designated in the plan are Edgewater unit 13, Gorge units 25 and 26, New Castle units 1 and 2, Toronto units 10 and 11, and W H Sammis units 5 and 6. For 1996–1999, standard emission limitation of 0.50 lbs/MMBtu for each unit. The designated representative is Howard C. Couch, Jr.

Conemaugh in Pennsylvania: standard emission limitation of 0.45 lbs/MMBtu for units 1 and 2. These units are not required to meet the emission limit until 1997 pursuant to 40 CFR 72.42. The designated representative is Ronald P. Lantzy.

New Castle in Pennsylvania: averaging plan for 1995 for units 1 and 2; the actual annual average emission rate for NO_X for each unit shall not exceed the alternative contemporaneous annual emission limitation of 0.50 lbs/MMBtu. The other units designated in the plan are Bruce Mansfield units 1 and 2, Edgewater unit 13, Gorge units 25 and 26, Toronto units 10 and 11, and W H Sammis units 5 and 6. For 1996–1999, standard emission limitation of 0.50 lbs/MMBtu for each unit. The designated representative is Howard C. Couch, Jr.

Portland in Pennsylvania: standard emission limitation of 0.45 lbs/MMBtu for units 1 and 2. These units are not required to meet the emission limit until 1997 pursuant to 40 CFR 72.42. The designated representative is Charles S. Mowbray.

Shawville in Pennsylvania: standard emission limitations of 0.50 lbs/MMBtu for units 1 and 2 and 0.45 lbs/MMBtu for units 3 and 4. The designated representative is Ronald P. Lantzy.

Albright in West Virginia: standard emission limitation of 0.45 lbs/MMBtu for unit 3. The designated representative is David C. Benson.

Fort Martin in West Virginia: standard emission limitation of 0.45 lbs/MMBtu for unit 1; Unit 1 is not required to meet the emission limit until 1997 pursuant to 40 CFR 72.42. The designated representative is David C. Benson.

Harrison in West Virginia: standard emission limitation of 0.50 lbs/MMBtu for units 1, 2, and 3. These units are not required to meet the emission limits until 1997 pursuant to 40 CFR 72.42. The designated representative is David C. Benson.

Dated: September 27, 1994.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94–24416 Filed 10–03–94; 8:45 am]

BILLING CODE 6560–50–P

Notice of Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractor Labat-Anderson, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice: request for comment.

SUMMARY: EPA bereby complies with the requirements of 40 CFR 2.310(h) for authorization to disclose to its contractor, Labat-Anderson, Inc. (hereinafter "Labat-Anderson"), of Arlington, Virginia, Superfund confidential business information ("CBI") which has been submitted to EPA Region 9, Hazardous Waste Management Division, Office of Superfund Programs. Labat-Anderson's principal offices are located at 2200 Clarendon Boulevard, suite 900, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: Elaine Chan, Office of Superfund Programs, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–2380.

NOTICE OF REQUIRED DETERMINATIONS, CONTRACT PROVISIONS AND OPPORTUNITY TO COMMENT: The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, (commonly known as Superfund) requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA also requires the maintenance of many other records, including those relevant to cost recovery. EPA has entered into a contract, No. 68–W4–0028, with Labat-Anderson, for management of these records. EPA Region 9 has determined that disclosure of CBI to Labat-Anderson employees is necessary in order that Labat-Anderson may carry out the work required by that contract with EPA. The contract complies with all requirements of 40 CFR 2.301(h)(2)(ii) incorporated by reference into 40 CFR 2.310(h)(2). The Labat-Anderson employees working for the Superfund Program in EPA Region 9 have each signed a written agreement that he or she; (1) Will use the information only for the purpose of carrying out the work required by the

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contract, (2) shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office; and (3) shall return to EPA all copies of information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information is no longer required by Labat-Anderson for performance of the work required by the contract, or upon completion of the contract. These non-disclosure statements shall be maintained on file with the Region 9 Delivery Order Project Officer. Labat-Anderson employees have been trained on Superfund CBI requirements.

EPA hereby advises affected parties that they have ten working days to comment pursuant to 40 CFR 2.301(h)(2)(iii) incorporated by reference into 40 CFR 2.310(h)(2). Comments should be sent to: Environmental Protection Agency, Region 9, Elaine Chan (H–7–4), 75 Hawthorne Street, San Francisco, California 94105.

Dated: September 19, 1994.

Jeff Zelikson,

Director, Hazardous Waste Management Division, EPA Region 9.

[FR Doc. 94–24505 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5084–6]

Underground Injection Control Program—Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; EMPAK, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on exemption reissuance.

SUMMARY: Notice is hereby given that a request for reissuance of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to EMPAK, Inc., for the Class I injection well located at Deer Park, Texas. As required by 40 CFR Part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by EMPAK, Inc., of the specific restricted hazardous waste identified in the reissued petition, into the Class I hazardous waste injection well at the Deer Park, Texas facility specifically identified in the petition for as long as the basis for granting an approval of this petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued on July 27, 1994. The public comment period ended on September 12, 1994. EPA received no comments. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of September 22, 1994.

ADDRESSES: Copies of the petition for reissuance and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W–SU), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Mac A. Weaver, P.E., Chief, UIC State Programs, EPA—Region 6, telephone (214) 665–7160.

Myron O. Knudson, P.E.,

Director, Water Management Division (6W).

[FR Doc. 94–24510 Filed 10–3–94; 8:45 am]

BILLING CODE 6565–50–P

[FRL–5084–5]

Underground Injection Control Program Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Monsanto Chemical Company

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on exemption reissuance.

SUMMARY: Notice is hereby given that a request for reissuance of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Monsanto Chemical Company, for the Class I injection wells located at Alvin, Texas. As required by 40 CFR Part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Monsanto Chemical Company of the specific restricted hazardous waste identified in the reissued petition, into the Class I hazardous waste injection wells at the Alvin, Texas facility specifically identified in the petition for as long as the basis for granting an approval of this petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued on June 28, 1994. The public comment period ended on August 12, 1994. EPA received no comments. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of August 31, 1994.

ADDRESSES: Copies of the petition for reissuance and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W–SU), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Mac A. Weaver, P.E., Chief, UIC State Programs, EPA—Region 6, telephone (214) 665–7160.

Kenton Kirkpatrick,

Acting Director, Water Management Division (6W).

[FR Doc. 94–24511 Filed 10–3–94; 8:45 am]

BILLING CODE 6565–50–P

[IL–64–2–5807; FRL–5084–9]

Availability of Model State Training and Certification Programs for High Capacity Fossil Fuel-Fired Plant Operators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of the model State programs for the training and certification of operators of high capacity fossil fuel-fired plants as required under section 129 of the Clean Air Act (Act).

SUMMARY: This action announces the availability of training materials which constitute the model State training program for operators of high capacity fossil fuel-fired plants, and the model State certification program for these operators, as required under section 129 of the Act.

ADDRESSES: The final student handbook (specify "High Capacity Fossil Fuel-Fired Plant Operator Training Program—Student Handbook," EPA–453/B–94–056) may be obtained from the U.S. EPA Air Pollution Training Institute (MD–17), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2498, FAX number (919) 541–5598.

For qualified instructors interested in conducting the training course, single copies of the instructor's guide (specify "High Capacity Fossil Fuel-Fired Plant Operator Training Program—Instructor's Guide," EPA–453/B–94–057) can be requested by contacting the U.S. EPA Air Pollution Training Institute (MD–17), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2498, FAX number (919) 541–5598 at the above address.

FOR FURTHER INFORMATION CONTACT: For information concerning specific aspects of this notice, contact Mr. James Eddinger, Industrial Studies Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5426.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in locating information in this notice.

I. Background
II. Comments and Responses
III. Model State Training Program
IV. Model State Certification Program
V. Authority

I. Background

Section 129(d) of the Act requires the EPA to develop and promote a model State program for the training and certification of solid waste incineration unit operators and high-capacity fossil fuel-fired plant operators. In August 1993, the EPA submitted to all State air pollution control agencies the model State training programs that the EPA developed for operators of municipal waste combustors (MWC's) and medical waste incinerators (MWI's) pursuant to this requirement. To ensure the availability of at least one appropriate national certification program for these solid waste incineration units, the EPA requested the American Society of Mechanical Engineers (ASME) to develop and manage a nationwide certification program for MWC and MWI operators. As a result, the ASME developed an ASME certification program for each of these solid waste incineration industry categories.

The model State training programs for MWC's and MWI's were developed by the EPA to provide a level of understanding that is adequate to successfully complete the requirements of the ASME program or an equivalent State-approved program for certification of operators of such facilities. The emission standards (40 CFR 60.50a) promulgated under section 129 for MWC's require certification of the operator by the ASME or an equivalent State-approved certification program.

In October 1992, the EPA initiated development of a training program for operators of high capacity fossil fuel-fired plants. The EPA considers the term high-capacity fossil fuel-fired plants to mean boilers (i.e., devices that combust fossil fuel to produce steam or hot water) greater than 10 million BTU's per hour heat input. The group of high capacity fossil fuel-fired plants (boilers) covered in this training course includes the size range from small industrial, commercial, and institutional steam generating units (greater than 10 million BTU's per hour heat input) to large utility boilers.

On October 6, 1993 (58 FR 52106), EPA announced the availability of a draft student handbook, prepared as part of a training course for operators of high capacity fossil fuel-fired plants, and EPA's intention to develop a model State certification program for these operators; and invited public comments on both the contents of the student handbook and the EPA's intention to develop the model State certification program.

II. Comments and Responses

Thirty-eight comment letters were received in response to the notice of availability of the draft student handbook and EPA's intention to develop model State training and certification programs: twenty-three from utility companies, seven from industrial boiler facilities, six from trade or technical associations, and two from government agencies. The comments pertained to either specific items or statements in the draft student handbook, the need for the model State training and certification programs, or the coverage of these programs. The comments specific to the draft student handbook have been incorporated into the revised student handbook. The more significant issues raised by commenters relating to the overall model training and certification programs along with clarification of the EPA's intention for these model State programs are discussed below:

1. Draft Student Handbook

A general comment on the draft student handbook was that it covers a wide range of facilities (i.e., fuel types, sizes and applications) and that even though the handbook is a relatively comprehensive treatment of basic combustion theory, technology and emission control, the level of understanding of each of these areas required by a plant operator will vary with the size, type and fuel requirements of a facility. The commenters suggested that a modular handbook be developed so training programs could reflect the specific equipment and fuel used at a facility. They further commented that emphasis on the specific areas of training to reflect the organizational structure of the facility should be allowed.

In response, the training course developed by the EPA is modular in design. It is divided into 30 learning sessions. Each session covers a specific area of knowledge, such as, pulverized coal-fired boilers, NO_X control technology, continuous emissions monitoring, etc * * *. The training course was designed in this manner so that it may fulfill requirements leading to boiler operator certification. The information presented in the training materials covers areas which may be addressed in a potential certification examination. Depending on the different classes/levels of certification available, the appropriate training sessions for that particular level of certification could be selected from the training materials to address the topics covered in that particular certification examination.

2. Requirement for Operator Training and Certification

Based on the comments received, there appears to be a general misunderstanding that, in the October 6, 1993 Federal Register notice, the EPA was proposing to require the training and certification of operators of high capacity fossil fuel-fired plants. Some commenters stated that the October 6 Federal Register notice failed to clearly state that the draft training program being presented in the form of the draft student handbook was not being required for boiler operators under EPA regulations.

For clarification purposes, section 129 (d) of the Act requires that the EPA develop a model State training and certification program for both operators of solid waste incineration units and high capacity fossil fuel-fired plant operators but mandates training only for operators of solid waste incineration units. This notice announces the availability of the model State programs for the training and certification of operators, as required by section 129 of the Act. This notice is not a rulemaking action to require anyone to implement any training program. The individual States may make determinations whether or not to require operator training and certification and may also decide whether the EPA's model training program or another training program is appropriate.

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3. Need for Training and Certification Programs

Both utility and industrial facility commenters questioned the need for training and certification requirements since their operators already undergo extensive site specific training programs that cover all of the topics listed as chapters in the draft student handbook. The utility industry commented that because of the high skill levels required for safe, efficient and reliable operation, extensive and comprehensive internal training programs have been implemented. Both groups commented that their training programs should be allowed to satisfy the obligation for training and that the EPA should allow any company to conduct a training course/program in lieu of the EPA or equivalent State program, provided it meets the fundamental EPA requirements. Also, the utility industry commented that utility facilities are subject to the Title V Operating Permit program under 40 CFR Part 70 and the Continuous Emission Monitoring rules under 40 CFR Part 75 and therefore the utility industry believes that compliance with these regulations encompasses all the objectives outlined by the EPA for training and certifying operators of high capacity fossil fuel-fired plants. They recommended that EPA include in its final model State program a provision for allowing compliance with the above regulations to be considered equivalent to meeting the requirements of an operator training and certification program and allowing the substitution of existing utility or industrial boiler training programs for the EPA model training program to avoid unnecessary duplication of effort.

In response and as stated above, under section 129 of the Act, the EPA is mandated only to develop model State training and certification programs for operators of high capacity fossil fuel-fired plants. These model programs will be made available to the States for their use. The EPA agrees that a mechanism should be included in any State rules regarding training and certification to allow facilities to satisfactorily demonstrate the equivalency of their program. With regard to certification, this is similar to the provision included in the EPA regulations for MWC units where EPA allows certification by ASME or an equivalent State-approved certification program.

4. Applicability

Many comments dealt with the coverage of the training and certification programs. These comments included:

a. They questioned the EPA's interpretation of high capacity fossil fuel-fired plants as inclusive of boilers with relatively small capacity (i.e., as low as 10 million Btu per hour heat input). These commenters suggested that the EPA target training for operators of boilers with 100 million Btu per hour heat input or greater. They commented that many of the boilers in the 10 to 100 million Btu per hour range operate automatically with little attention, without air pollution control equipment and do not incorporate operator adjustment features that could adversely affect air pollution, and are mostly fueled by gas or light oil. Adjustments to these boilers are made on an annual or twice per year basis by qualified outside contractors that specialize in boiler controls and adjustments. The commenters further indicated that the narrow range of adjustments that an operator could make on a gas-fired boiler less than 100 million Btu per hour has a minor influence on emissions and that NO_x emissions are determined primarily by design factors such as configuration of the combustion chamber and the burner design. Neither of these are under control of the operator.

b. A provision should be included in the final model State program to allow for acceptance of alternative training and certification programs for facilities with low capacity factors. The EPA should include an exemption for training for those units with annual capacity factors less than 15%. The required definition of high capacity fossil fuel-fired plants would not be altered if such an exemption were provided for these units.

c. Many commenters believe that the training and certification requirement was intended to apply only to units subject to Subparts Da, Db, and Dc.

* * * * *

In response to the above, the range of boiler sizes selected by the EPA for inclusion in the model State training program was based on the range of boiler sizes covered by the various existing EPA emission regulations for steam generating units. These emission regulations cover the size range from 10 million Btu per hour heat input and greater.

Potential air pollution problems can result from poor operation and maintenance of a boiler and associated air pollution control system when operators do not understand the combustion and air pollution control processes and are inadequately trained. The EPA feels that the training of boiler operators, regardless of the size or capacity factor, would result in improved operation, be relatively inexpensive and would reduce emissions.

The reference made to Subparts Da, Db, and Dc in the October 6, 1993 **Federal Register** notice was intended only to give the reader an indication of the types and sizes of the boilers that were selected for discussion in the training course. Subparts Da, Db, and Dc list definitions for various aspects covered in the training materials, such as, fossil fuel, electric utility steam generating unit, heat input, fluidized bed combustion, etc. The reference to Subparts Da, Db, and Dc was not to suggest that the training course was only intended for operators of boilers subject to these subparts. The training course was designed to be appropriate for operators of any boiler with a capacity above 10 million Btu per hour heat input.

III. Model State Training Program

The training program developed for boiler operators is intended to provide the operator with a basic understanding of the principles of fuel combustion and air pollution control and to identify good operating practices. The program is intended to supplement rather than substitute for site-specific "hands-on" training of the operator. The objectives of the training program are: to instruct operators in the basic principles of proper operation and maintenance of boilers and air pollution control systems; to help assure that the boiler is continuously operated in a manner which complies with State and Federal regulations; to enhance the operators appreciation for their role in minimizing air pollution; and to increase the operators awareness of regulatory requirements.

The training materials consist of a student handbook which is not only intended for use during the course but also may be used as a reference by the operators after completion of the course, and an instructor guide which provides the basic materials for use by the instructor of the training course. The instructor's guide includes the course description and agenda, course goals, lesson plans, copies of an initial test and a final course examination, and audio-visual aids.

Activities for developing this training course performed since mailout of the draft student handbook include revision of the student handbook based on comments received from the mailout, development of the instructor's guide, a trial run of the course, revision of the training materials based on comments received from the trial run, and publication of the final student handbook.

The trial run of the training materials was conducted in April 1994. The trial run presented the course materials and obtained comments from participants concerning areas that could be changed to improve the course materials. Among the twenty-eight attendees were operators, training specialists, and supervisors of utility and industrial facilities. Also in attendance were representatives from boiler insurance, inspection, and licensing organizations. Comments received from the trial course were incorporated into the final student handbook, as appropriate. The chapters which required the most significant revisions were those pertaining to the water and steam circuits, package boilers, and safety. Also, the materials presented in the chapters on combustion principles and air pollution fundamentals were simplified without compromising the material content. The instructor's guide was then modified to reflect changes to the student handbook.

The operator training materials include testing materials that indicate a student's satisfactory completion of the training course. The EPA will provide the final student and instructor manuals to the States so they can use them to implement an operator training program for high capacity fossil fuel-fired plant operators.

IV. Model State Certification Program

In the development of any operator certification program, several key factors must be addressed. Among these factors is which personnel should be required to be certified. The EPA believes certification should not be limited to only the operator with hands-on control of the boiler. These operators may lack the authority to request the assistance of a repairman when equipment needs maintenance or service. Also these operators may not be authorized to take corrective action in the event of equipment malfunction. Such authority may rest with the operator's supervisor. This may be a shift supervisor, chief engineer, plant manager, etc. It is the operator's supervisor who is usually responsible for making critical decisions regarding operation and maintenance of the equipment. Because decisions made by the operator's supervisor are key to proper operation of the boiler, the operator's supervisor must have a broader level of understanding than the operator. Thus, there is a need for separate levels of certification for operators and operator supervisors.

In addition, the level of knowledge needed by an operator or operator supervisor is dictated by the complexity of the equipment operated. For example, the knowledge required to operate a coal-fired boiler with an air pollution control system is greater than that required to operate a gas-fired boiler without an air pollution control system. It may not be reasonable to require an operator of a boiler without an air pollution control system to demonstrate knowledge of such equipment. Therefore, several classes of boiler operator certification should probably be developed for each operator certification level.

Furthermore, since, as the commenters have indicated, many boilers may operate with little or no operator attention, any certification program should consider including those individuals who perform the boiler tuning and maintenance.

Another key area concerns the qualifications that an applicant should possess for certification. An acceptable level of skill and operating ability should be demonstrated on a boiler system which is equivalent to (or higher than) the class of boiler for which certification is being sought. This "hands-on" ability could be demonstrated by an on-site examination by a qualified/certified examiner or demonstration of ability before other certified operators who verify the applicant's ability. Also a consideration is the prior experience needed before applying for certification. The certification program should require some prior experience under the direct supervision of a certified operator/operator supervisor who verifies the proficiency of the applicant. Finally, an applicant should be required to successfully pass a written examination covering the areas of knowledge deemed necessary for the particular class/level of certification being sought. The written examination could be administered by the State or some authorized certification organization.

The EPA's intention, announced in the October 6, 1993 **Federal Register** notice, for developing a model State certification program for high capacity fossil fuel-fired plants is to outline the scope and components that a State agency should include in a certification program. Components that should be considered for inclusion in any State developed or approved certification program are:

1. Coverage of the Certification Program.

Determination of the type and size of boilers for which operator certification is appropriate. Boilers for which environmental regulations apply are candidates for inclusion in any certification program.

2. Level of Operators To Be Certified

The duties and responsibilities of the positions of the operator and operator supervisor should be established for the purpose of identifying facility personnel to whom certification applies at fossil fuel-fired plants. Certification for all persons who have control over the process and can affect process emissions should be included. This may include operators, supervisors, maintenance personnel, and outside contractor personnel.

An operator is generally in direct control of the operation of a boiler system and is responsible for the startup, operation, and shutdown of equipment. Typical responsibilities may include the following:

a. Operating equipment in accordance with established practices and procedures;

b. Operating equipment consistent with applicable federal, state, and local government requirements;

c. Identifying and initiating responses to upsets and emergency conditions;

d. Identifying and communicating the need for equipment repairs and maintenance;

e. Communicating with management when system operation is in noncompliance with applicable regulations;

f. Operating in a safe manner;

g. Recording operational data as required.

An operator supervisor generally has direct responsibility for the operation of a boiler system and is responsible for overall on-site supervision, technical direction, management, and performance of the facility. Typical responsibilities may include the following:

a. Supervising, training, monitoring, and evaluating operators;

b. Assuring operation in accordance with established practices and procedures;

c. Assuring equipment is operated in accordance with applicable federal, state, and local government requirements;

d. Directing action to correct equipment upsets or emergency conditions;

e. Assuring operating and maintenance records are maintained and reports are prepared as required;

f. Assuring noncompliance incidents and corrective action items are reported to management or regulatory agencies;

g. Assuring a safe workplace.

The operator supervisor may also directly perform the duties and responsibilities of the operator.

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3. Classes of Certification

This includes establishment of various classes for which operator certification is appropriate. The level of knowledge needed to properly operate and minimize emissions varies considerably depending on the type of facilities. Therefore, the level of knowledge will vary depending on job duties and responsibilities. Different classes of certification within each level developed under (2) should be considered.

A boiler system may have any combination of fuel type, boiler type and air pollution control system, and an operator should be certified in the class designation equivalent to or more comprehensive than the type of equipment operated.

Example operator class designations are:

Class A - certified to operate a coal-fired boiler with air pollution control systems

Class B - certified to operate a coal-fired boiler without air pollution control systems

Class C - certified to operate a gas or oil-fired boiler with air pollution control systems

Class D - certified to operate a gas or oil-fired boiler without air pollution control systems

4. Qualifications

The following are the recommended qualifications that should be met by an operator/operator supervisor to complete certification:

a. Minimum age requirement;

b. Training;

c. Minimum level of experience under the direct supervision of a certified operator or operator supervisor who must verify the proficiency of the applicant in all aspects of the job;

d. Pass a written examination, as discussed in item 5 below, administrated by the State or a State-approved certification organization.

The acceptable demonstration of skills and ability should be performed on a boiler system equivalent to, or higher than, the class of boiler equipment for which certification is being sought.

During the initial implementation of a certification program when there are not certified operators or operator supervisors available to certify the applicant's proficiency, the applicant's employer could be allowed to verify that the applicant has been continuously employed as either an operator or operator supervisor for a minimum period of time and that the applicant's job performance has been satisfactory. Further, the employer should verify that the hands-on experience was as an operator or operator supervisor for a boiler system equivalent to, or higher than, the class of boiler equipment for which certification is being sought.

5. Training Requirements

The training requirements should be established for boiler operators to provide the operator with a basic understanding of the principles of fuel combustion and air pollution control and to identify good operating practices. The training requirements should included both classroom and site-specific "hands-on" training of the operator. The objectives of the training program are: to instruct operators in the basic principles of proper operation and maintenance of boilers and air pollution control systems; to help assure that the boiler is continuously operated in a manner which complies with State and Federal regulations; to enhance the operators appreciation for their role in minimizing air pollution; and to increase the operators awareness of regulatory requirements.

6. Pass Written Examination

The final key element should be a requirement that the applicant demonstrate sufficient knowledge in specified areas by passing a written examination administered by the State or an approved certification organization. This element should also require a provision for a "bank" of questions to implement the written examination to assure that tests given at different times are not identical.

The examination should be structured as a closed book, multiple choice, and written examination. The examinations for operators should differ from those for operator supervisor consistent with the differences in duties. The examination could be modular in design and given in parts. Candidates successfully passing the appropriate parts can be deemed to have completed the written testing requirements for a particular certification class.

To successfully pass a test part, a candidate should correctly answer a minimum of 70 percent of the questions in that part.

Questions should be related to:

a. Water and Steam Circuit
b. Fuel, Air and Gas Circuit
c. Basic Combustion Principles
d. Air Pollution Fundamentals
e. Boiler equipment characteristics
f. Normal Boiler Operation
g. Automatic Control Systems
h. Instrumentation
i. Preventative Maintenance
j. Safety
k. Air Pollutants of Concern
l. Environmental Regulations
m. Continuous Emissions Monitoring
n. Particulate Control
o. NO_X Control
p. SO_X Control
q. Water Pollution and Control
r. Solids Waste and Control

7. Issuance of Certification

Each candidate who passes the written examination and whose proficiency has been verified should be issued a certificate valid for a specific time period (e.g., five years). Each certificate should contain the following minimum information:

a. Type of certification;
b. Certified individual's full name;
c. Photograph of certified individual;
d. Effective date and expiration date.
e. Signature of a duly authorized designee.

8. Provision for Recertification

Certification should be granted for a limited period of time. The procedure for recertification could be simply verification of satisfactory employment with the appropriate type of equipment for that certification level/classes since the time the previous certification was granted or it could entail additional refresher courses, "hands-on" demonstration, or passing of a written examination.

9. Revocation of Certification

There should be a procedure included in the certification program to revoke a certification for falsifying or providing inaccurate information in the certification process.

The components listed above as the model State certification program are modelled after the certification standards developed by the ASME for MWC and MWI operators. These ASME certification standards were developed by a committee balanced by interest classification (e.g., regulatory, operators, manufacturers, etc.) and underwent public review and comment. The EPA was a member of the ASME committee for the development of the MWI certification standard.

In August 1992, to ensure the availability of at least one appropriate national certification program, the EPA requested the ASME to develop and manage a nationwide certification program for boiler operators. As a result, the ASME Board of Safety Codes & Standards and the Council on Codes & Standards approved the formation of a committee in June 1994 to develop such a program. The ASME certification program is anticipated to be completed in late 1996.

As discussed above, the EPA will provide the final student handbook and instructor guide, developed by the EPA, to the States so they may implement operator training or certification programs prior to finalization of the ASME certification program. In addition, some States may already require that boiler operators obtain state boiler operator engineer licenses. If these licensing agencies demonstrate equivalency, a State air pollution control agency could accept this licensing as certification under this program. Licensing organizations, such as the National Institute for the Uniform Licensing of Power Engineers Incorporated, have commented that there are other licensing organizations that may be able to provide certification programs in a shorter timeframe than the ASME since they already have a licensing program developed for boiler operators along with a possible database of appropriate questions. They also indicated a willingness to modify their programs to meet whatever criteria a State sets for a certification program.

As stated in the October 6, 1993 **Federal Register**, the training materials developed by the EPA will be revised as necessary when the ASME certification program is sufficiently developed to ensure that the training course is coordinated with the certification requirements.

The ASME has previously developed certification programs for operators of MWC's and MWI's. In terms of the boiler operator certification, the EPA's intention is to continue to work with the ASME by serving on the various development committees and by providing technical assistance to develop a certification program. The ASME certification program is anticipated to be completed no earlier than late 1996.

V. Authority

This notice of availability of model State programs for the training and certification of operators of high capacity fossil fuel-fired plants is issued under the authority of section 129 of the Clean Air Act, as amended.

Dated: September 27, 1994.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 94-24506 Filed 10-3-94; 8:45 am]

BILLING CODE 6560-50-P

[OPPTS-00162; FRL-4914-8]

Forum on State and Tribal Toxics Action Projects; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open Meetings.

SUMMARY: The four Projects of the Forum on State and Tribal Toxics Action (FOSTTA) will hold meetings open to the public at the time and place listed below.

DATES: The four Projects will meet October 24 from 8 a.m. to 5 p.m., with a plenary session from 1 p.m. until 2:15 p.m., and on October 25 from 8 a.m. to noon.

ADDRESSES: The meetings scheduled will be held at The Holiday Inn, 480 King St., Alexandria VA.

FOR FURTHER INFORMATION CONTACT: Bob Janney, Office of Pollution Prevention and Toxics (7408), U. S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: (202) 260-1584.

SUPPLEMENTARY INFORMATION: FOSTTA, a group of state and tribal toxics environmental managers, is intended to foster the exchange of toxics-related program and enforcement information among the states/tribes and between the states/tribes and U.S. EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS). FOSTTA currently consists of the Coordinating Committee and four issue-specific Projects. The Projects are: (1) The Toxics Release Inventory Project; (2) The State and Tribal Enhancement Project; (3) The Chemical Management Project; and (4) The Lead (Pb) Project.

List of Subjects

Environmental protection.

Dated: September 29, 1994

James B. Willis,

Acting Director, Environmental Assistance Division Office of Pollution Prevention and Toxics.

[FR Doc. 94-24502 Filed 10-3-94; 8:45 am]

BILLING CODE 6560-50-F

[FRL-5083-9]

Science Advisory Board Notification of Public Advisory Committee Meeting(s) Open Meeting(s)

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that several committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office.

(1) Clean Air Act Compliance Analysis Council (CAACAC) Physical Effects Review Subcommittee (CAACACPERS) Teleconference—October 18, 1994:

The Clean Air Act Compliance Analysis Council (CAACAC) Physical Effects Review Subcommittee (CAACACPERS) of the Science Advisory Board (SAB) will conduct a teleconference meeting on Tuesday, October 18, 1994 from 11:00 a.m. to 1.00 p.m. eastern time. In this teleconference meeting, the CAACACPERS intends to discuss six draft documents which have been prepared for review as required by Section 812 of the Clean Air Act (CAA), to be briefed by Agency staff on the overall Physical Effects review process, and to plan for an efficient review scheduled for November 15 and 16, 1994 to be held in the Washington, D.C. metropolitan area (See below for details on the November 15 and 16, 1994 meeting).

In the teleconference, the CAACACPERS will be discussing how the review will take place, provide initial observations regarding the first review drafts of the Physical Effects Documents pertaining Section 812 of the Clean Air Act (CAA), namely (1) Ozone, (2) Sulphur Oxides, (3) Particulate Matter, (4) Carbon Monoxide, (5) Nitrogen Oxides, and (6) Lead, and plan for an upcoming November two-day review meeting. The Agency is preparing a draft methodology document for review by the SAB's CAACACPERS, which outlines the overall strategy of this effort. This methodology document is still under preparation, and may be made available prior to the teleconference. Additional draft documents, such as the methodology used to aggregate the effect of hazardous air pollutants, up-to-date assessments of the significance of recent research, and possibly select methodology papers may be provided in the future for review as necessary and appropriate. The Agency has asked the SAB to answer the following questions in the proposed charge relating to this review:

(1) Are each of the elements of the methodology developed by EPA sufficiently valid and reliable from a scientific standpoint for purposes of the CAA Section 812 assessments?,

(2) The Congress and EPA intend that the CAA Section 812 retrospective analysis should provide the most comprehensive possible statement about

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potential benefits of historical reductions in air pollution. This includes reporting on the potential significance of effects for which there may be no scientific consensus regarding the magnitude or even the existence of a specific effect. Given this statutory and administrative goal, is the methodology developed by EPA sufficiently comprehensive in terms of plausible health, welfare, and ecological consequences of exposure to the relevant air pollutant?,

(3) If the answer to question 2 is negative, what are the physical outcomes of pollutant exposure which the Agency has omitted?,

(4) For physical outcomes already included in the methodology paper, as well as those which should be considered for inclusion pursuant to question 2, are there potentially relevant data pertaining to quantitative or qualitative estimation of the effect which should be considered for inclusion in the methodology? What specifically are the sources of these data and how might they be best utilized?, and

(5) What is the strength of the scientific evidence underlying each of the physical effects functions or models already included in the methodology paper? What is the strength of each element of additional scientific evidence suggested for inclusion pursuant to question 3 and 4 above?

For copies of the Agency's draft Section 812 draft documents, please contact Ms. Eileen Pritchard, Secretary, U.S. Environmental Protection Agency, Office of Policy Planning and Evaluation (OPPE), Economic Analysis and Innovation Division (Mail Code 2127), 401 M Street SW., Washington, DC 20460. Tel. (202) 260–3354, and FAX (202) 260–5732. Any member of the public desiring to participate in the teleconference, desiring additional information about the meeting, or desiring to obtain copies of the agenda and other information about the conduct of the meeting, or to request time on the agenda for public comments, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Ms. Diana Pozun, Staff Secretary, Science Advisory Board (1400F), US EPA, 401 M Street SW., Washington DC 20460, by telephone at (202) 260–6552, fax at (202) 260–7118, or via the INTERNET at: Pozun.Diana@EPAMAIL.EPA. GOV.

(2) Science Advisory Board, Executive Committee—October 25–26, 1994

The Science Advisory Board's (SAB) Executive Committee (EC) will conduct a public meeting on Tuesday and Wednesday, October 25–26, 1994. The meeting will be held in the Administrator's Conference Room 1103 West Tower at the Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. On Tuesday, it will begin at 8:30 p.m. and adjourn not later than 5:00 p.m.; on Wednesday, it will begin at 8:30 a.m. and adjourn not later than 1:00 p.m. The meeting is open to the public and limited unreserved seating will be available.

The EC intends to review activities of and reports from its Committees, including the following: a) Radiation Advisory Committee (RAC)—Retrospective Analysis of RAC Activities and b) Environmental Engineering Committee (EEC)—Review of Environmental Technology Initiative. The group will also receive briefings on the Agency's combustion policy and the development of a new Regulatory Impact Analysis process.

Invited visitors include the Assistant Administrator for Research and Development, Dr. Robert Huggett, to discuss his views and plans for science at EPA; the Assistant Administrator for Prevention, Pesticides, and Toxic Substances, Dr. Lynn Goldman, to discuss a number of issues including the Agency's reassessment of "dioxin" and the charge to the SAB; Dr. Ray Wassell of the staff of the National Research Council to discuss the NRC study on combustion.

The Executive Committee will discuss the status of the Environmental Futures Project and the Report from the SAB Reinvention Committee. In addition, they will discuss the Board's agenda for FY95.

Any member of the public wishing further information concerning the meeting or who wishes to submit comments should contact Dr. Donald G. Barnes, Designated Federal Official, Executive Committee, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460, or by phone at (202) 260–4126; FAX (202) 260–9232; or via the Internet at barnes.don@epamail.epa.gov.

(3) Radiation Advisory Committee (RAC)—October 26, 1994

The Radiation Advisory Committee (RAC) plans to meet on Wednesday, October 26, 1994 at the Environmental Protection Agency (EPA) Headquarters, Conference Room Number 3, North, 401 M Street, SW., Washington, DC 20460, commencing at 9:00 a.m. and adjourning at 12:00 noon that day. The purpose of this meeting is to discuss proposed Fiscal Year 1995 projects, and to plan and organize for the upcoming review of the technical basis of the cleanup standards, which will begin on October 27, 1994. Other topics may be discussed as time permits.

Any member of the public desiring additional information about the meeting, desiring to obtain copies of the agenda and information about the conduct of the meeting, or to request time on the agenda for public comments, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official or Ms. Diana Pozun, Staff Secretary, Science Advisory Board (1400F), U.S. EPA, 401 M Street, SW, Washington DC 20460, by telephone at (202) 260–6552, fax at (202) 260–7118, or via the INTERNET at: Pozun.Diana@EPAMAIL.EPA.GOV

(4) Radionuclide Cleanup Standards Subcommittee (RCSS)—October 27 and 28, 1994

On Thursday, October 27, 1994, beginning at 9:00 a.m. and ending no later than 3:30 p.m. on Friday, October 28, 1994, the Radionuclide Cleanup Standards Subcommittee (RCSS) of the Radiation Advisory Committee (RAC) of the Science Advisory Board (SAB) will begin a formal review of the technical basis of the cleanup standards that are being proposed by the Agency. It is also planned, that on the afternoon of October 28, 1994 that the Environmental Protection Agency's (EPA's) Office of Radiation and Indoor Air (ORIA) staff will provide a briefing to the SAB's RCSS and RAC on model building standards.

The meeting will take place at the Courtyard Marriott Hotel, 2899 Jefferson Davis Highway, Arlington, VA 22202, tel. (703) 549–3434. The proposed charge to the SAB is as follows:

(1) Is the methodology used by the Office of Radiation and Indoor Air (ORIA) for evaluating source terms for radioactively contaminated sites, for modeling transport to people, and for estimating risk to individuals and populations acceptable for providing a technical basis for writing a cleanup standard?

(2a) Are the assumptions for the combined residential/agricultural land use scenario, and the pathways model, reasonable and suitable for assessing risk at radioactively contaminated sites?

(2b) Are the assumptions for the combined industrial/commercial land use scenario, and the pathways model, reasonable and suitable for assessing risk at radioactively contaminated sites?, and

(3) Is RESRAD version 5.01 (specific reference to RESRAD may be omitted) suitable for modeling radiation risk to individuals at radioactively contaminated sites?

The actual draft documents to be reviewed are entitled as follows: (1) "Radiation Site Cleanup Regulations: Technical Support Document for the Development of Radionuclide Cleanup Levels for Soil," Review Draft, September, 1994, (2) "Radiation Site Cleanup Regulations: Technical Support Document for the Development of Radionuclide Cleanup Levels for Soil," Appendices, September, 1994. To discuss technical aspects of the draft Agency documents, contact Dr. Anthony B. Wolbarst, Chief, Remedial Guidance Section, Radiation Studies Division, Office of Radiation and Indoor Air (ORIA) (Mail Code 6603J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC. To simply obtain copies of the Agency draft documents please contact Ms. Virginia Stradford, Secretary, at (202) 233–9350, FAX (202) 233–9650. The background documents and review documents are being made available in the Agency's U.S. EPA Air and Radiation Docket. Please address written inquiries as follows: Attn: Air and Radiation Docket, Mail Stop 6102, Air Docket No. A–93–27, Room M1500, First Floor, Waterside Mall, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays, in Room M1500. A reasonable fee may be charged for copies of docket materials. Inquiries regarding access to the public information docket should be directed to Ms. Lynn Johnson, ORIA Staff (Mail Code 6603J) at (202) 233–9383.

Any member of the public desiring additional information about the meeting, desiring to obtain copies of the agenda, information about the conduct of the meeting, or to request time on the agenda for public comments, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official or Ms. Diana Pozun, Staff Secretary, Science Advisory Board (Mail Code 1400F), US EPA, 401 M Street, SW, Washington DC 20460, by telephone at (202) 260–6552, fax at (202) 260–7118, or via the INTERNET at: Pozun.Diana@EPAMAIL.EPA.GOV.

(5) Ecological Processes and Effects Committee—October 27, 1994

The Ecological Processes and Effects Committee will meet on October 27, 1994, from 8:30am to 4:00pm at the Holiday Inn Capitol, 550 C Street SW., Washington, DC, telephone (202) 479–4000. The meeting will be open to the public, but seating is limited and will be on a first-come basis. The purpose of the meeting will be to hear briefings on proposed projects for Fiscal Year 1995 and to establish a calendar of meetings for the coming year. Any member of the public desiring additional information about the meeting or wishing to obtain an agenda should contact Robert Flaak, Assistant Director, Science Advisory Board (Mail Code 1400F), US EPA, 401 M Street SW., Washington, DC 20460, by telephone at (202) 260–6552, FAX at (202) 260–7118, or via the Internet at Flaak.Bob@EPAMAIL.EPA.GOV.

(6) Clean Air Act Compliance Analysis Council (CAACAC) Physical Effects Review Subcommittee (CAACACPERS)—November 15 and 16, 1994

The Clean Air Act Compliance Analysis Council (CAACAC) Physical Effects Review Subcommittee (CAACACPERS) of the Science Advisory Board (SAB) will conduct a review meeting on Tuesday, November 15, 1994 beginning 9:00 a.m. eastern time, and ending no later than 4:30 p.m. on Wednesday, November 16, 1994. The meeting will take place at the Courtyard Marriott Hotel, 2899 Jefferson Davis Highway, Arlington, VA 22202 (Tel. 703–549–3434). In this meeting, the CAACACPERS intends to discuss recently revised versions of six draft physical effects documents (See references and charge to the Subcommittee as outlined above in this **Federal Register** notice for the October 18, 1994 teleconference for the charge to the Subcommittee and listing of the six draft documents) and a recently prepared methodology document which should be prepared on time for this SAB/CAACAC review of the Clean Air Act (CAA) Section 812 review, to have presentations by Agency staff on the review, and to begin development of a draft SAB report which responds to the charge from the Agency.

For copies of the draft Agency Section 812 CAA documents, please contact Ms. Eileen Pritchard, Secretary, U.S. Environmental Protection Agency, Office of Policy Planning and Evaluation (OPPE), Economic Analysis and Innovation Division (Mail Code 2127), 401 M Street SW., Washington, DC 20460. Tel. (202) 260–3354, and FAX (202) 260–5732. Any member of the public desiring additional information about the meeting, desiring to obtain copies of the agenda and information about the conduct of the meeting, or to request time on the agenda for public comments, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official or Ms. Diana Pozun, Staff Secretary, Science Advisory Board (1400F), U.S. EPA, 401 M Street SW., Washington DC 20460, by telephone at (202) 260–6552, fax at (202) 260–7118, or via the INTERNET at: Pozun.Diana@ EPAMAIL.EPA.GOV.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, for teleconference call meetings, opportunities for oral comment will be limited to no more than three minutes per speaker and no more than fifteen minutes total. For meetings other than teleconference calls, opportunities for oral comment will be usually limited to five minutes per speaker and no more than thirty minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week prior to a meeting or teleconference), may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

To Obtain More Information on or Participate in the SAB Meetings

These meetings are open to the public, but seating or telephone lines are limited and available on a first come basis. Any member of the public wishing further information concerning the meetings, such as a proposed agenda, or who wishes to submit oral or written comments (at least 35 copies) should contact the appropriate Designated Federal Official as listed above. Written inquiries can be sent to the following address: U.S. Environmental Protection Agency; 401 M Street SW., Washington, DC 20460, Phone: (202) 260–6552 or FAX (202) 260–7118.

Members of the public who wish to make a brief oral presentation at the teleconference or meetings should contact the listed Designated Federal Official no later than one week prior to the meeting or teleconference in order to have time reserved on the agenda. The Science Advisory Board expects that public statements presented at a teleconference or meeting will not be repetitive of previously submitted oral or written statements. Written comments received in the SAB Staff Office sufficiently prior to a meeting date (usually one week prior to a meeting or teleconference), may be mailed to the relevant SAB committee or subcommittee prior to its meeting;

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comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: September 23, 1994.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 94-24417 Filed 10-3-94; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5085-3]

Meeting of the Small Town Environmental Planning Task Force

On October 19-20, 1994, the Small Town Environmental Planning Task Force (STTF) will conduct its third meeting. The purpose of the meeting is to discuss and act on their policy paper, and focus on how the group is accomplishing their legislative mandates.

The Task Force is charged with identifying regulations developed pursuant to Federal environmental laws which pose significant compliance problems for small towns; identifying the means to improve the working relationship between the Environmental Protection Agency and small towns; reviewing proposed regulations for the protection of environmental and public health and suggesting revisions that could improve the ability of small towns to comply with such regulations; and identifying the means to promoting regionalization of environmental treatment systems and infrastructure serving small towns to improve the economic conditions of such systems and infrastructure.

The meeting will be held at the Dupont Plaza Hotel, located at 1500 New Hampshire Avenue, NW., Washington, DC, 20036 The meeting will begin at 9 a.m. on October 19th and conclude at 5 p.m. on October 20th.

The Designated Federal Officer (DFO) for this Committee is Christine Zawlocki. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 260-0244 or by writing to USEPA, 401 M Street SW., (1502), Washington, DC 20460.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available within thirty days after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the above number if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible.

Christine Zawlocki,

Acting Associate Administrator, Office of Regional Operations and State/Local Relations.

[FR Doc. 94-24507 Filed 10-3-94; 8:45 am]

BILLING CODE 6560-50-P

[OPP-30347A; FRL-4913-7]

Becker Microbial Products Inc.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Becker Microbial Products Inc., to conditionally register the pesticide products BMP 123 (48 LC), BMP 123 (2X WP), and BMP 123 (32 LC) containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703-305-7690).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 18, 1993 (58 FR 8945), which announced that Becker Microbial Products Inc., 9596 N.W. 11th St., Plantation, FL 33322, had submitted three applications to conditionally register the pesticide products BMP 123 (48 LC), BMP 123 (2X WP), and BMP 123 (32 LC) (File Symbols 62637-A, 62637-L, and 62637-U), containing the active ingredient *Bacillus thuringiensis* subspecies *kurstaki* at 2.15, 6.4, and 1.60 percent respectively, an active ingredient not included in any previously registered products. The company later amended the name of the active ingredient to read "*Bacillus thuringiensis* subspecies *kurstaki* strain BMP 123."

The applications were approved on August 5, 1993, which contain the active ingredient *Bacillus thuringiensis* subspecies *kurstoki* strain BMP 123 for terrestrial, forestry, and food use to control various insects, for the following products:

1. BMP 123 (48 LC) (EPA Registration Number 62637-6).
2. BMP 123 (2X WP) (EPA Registration Number 62637-5).
3. BMP 123 (32 LC) (EPA Registration Number 62637-4).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of *Bacillus thuringiensis* subspecies *kurstaki* strain BMP 123, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Bacillus thuringiensis* subspecies *kurstaki* strain BMP 123 during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

These products are conditionally registered in accordance with FIFRA section 3(c)(7)(C) provided that the studies be submitted by December 21, 1994, as listed below:

1. Avain Oral (Guideline Reference Number 154A-16).
2. A 30-Day Freshwater Fish Toxicity/Pathogenicicty Testing (154A-19).
3. Freshwater Aquatic Invertebrate Toxicity/Pathogenicity Testing (154A-20).
4. Honey Bee Toxicity/Pathogenicity Test (154A-24).
5. Analysis of Samples (154A-13).

If these conditions are not complied with the registration will be subject to cancellation in accordance with FIFRA section 6(e); this registration will expire on May 21, 1996.

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in an EPA Pesticide Fact Sheet on *Bacillus thuringiensis* subspecies *kurstaki* strain BMP 123.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305-5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 26, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-24503 Filed 10-3-94; 8:45 am]

BILLING CODE 6560-50-F

[OPP-30356B; FRL-4912-9]

Mauri Laboratories; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product Victus, a Biological Control Agent, containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Leonard Cole, Acting Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703-305-6900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of December 22, 1993 (58 FR 67791), which announced that Mauri Laboratories, 9 Moorebank Ave., Moorebank, NSW 2170 Australia, had submitted an application to register the pesticide product Victus (EPA File Symbol 67186-R), containing the active ingredient *Pseudomonas fluorescens* strain NCIB 12089 at 1 percent, an active ingredient not included in any previously registered product.

The application was approved on August 5, 1994, as Victus for the control of bacterial blotch on cultivated mushrooms (EPA Registration Number 67186-1).

The Agency has considered all required data on risks associated with the proposed use of *Pseudomonas fluorescens* strain NCIB 12089, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of *Pseudomonas fluorescens* strain NCIB 12089 when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on this registration is contained in an EPA Pesticide Fact Sheet on *Pseudomonas fluorescens* strain NCIB 12089.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305-5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 26, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-24500 Filed 10-3-94; 8:45 am]

BILLING CODE 6560-50-F

[FRL-5085-4]

42 U.S.C. Section 122(h); Proposed Administrative Agreement

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed settlement.

SUMMARY: USEPA is proposing to settle a claim under Section 107 of CERCLA for response costs incurred during removal activities at the MCI, Inc. site in Detroit, Michigan. Respondent has agreed to reimburse USEPA in the amount of $55,000. USEPA today is proposing to approve this settlement offer because it reimburses USEPA, in part, for costs incurred during USEPA's removal action.

DATES: Comments on this proposed settlement must be received on or before November 3, 1994.

ADDRESSES: Copies of the proposed settlement are available at the following address for review: (It is recommended that you telephone Heidi Valetkevitch at (312) 886-1303 before visiting the Region V Office). U.S. Environmental Protection Agency, Region V, Office of Superfund, Remedial and Enforcement Response Branch, 77 W. Jackson Blvd., Chicago, Illinois 60604.

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Comments on this proposed settlement should be addressed to: (Please submit an original and three copies, if possible) Heidi Valetkevitch. Community Relations Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard (P-19J), Chicago, Illinois 60604, (312) 886-1303.

FOR FURTHER INFORMATION CONTACT: Heidi Valetkevitch, Office of Public Affairs, at (312) 886-1303.

SUPPLEMENTARY INFORMATION: The MCI, Inc. site is not on the National Priorities List. After receiving a request to perform a site assessment in October 1989, USEPA and contractor personnel undertook response actions designed to minimize the immediate threat, test the physical building, chemicals and materials involved, and properly dispose of the hazardous waste.

Respondent is a local business entity that arranged for the disposal of hazardous waste while having its manufactured parts stripped of paint or chemically treated at the site. A 30-day period, beginning on the date of publication, is open pursuant to section 122(i) of CERCLA for comments on the proposed settlement. Comments should be sent to the Office of Public Affairs (P-19J), U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

Thomas P. Turner,

Assitant Regional Counsel, United States Environmental Protection Agency.

[FR Doc. 94-24504 Filed 10-3-94; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418-1379.

Federal Communications Commission

OMB Control No.: 3060-0613
Title: Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Transport Phase II (Third Report and Order).
Expiration Date: 09/30/95
Estimated Annual Burden: 592 total hours; 37 hours per response; 16 respondents.
Description: In the Third Report and Order in the Expanded Interconnection proceeding, CC Docket No. 91-141, the Commission required Tier 1 local exchange carriers (LECs), except National Exchange Carrier Association (NECA) pool members, to offer certain signalling information to interested parties so that those parties could provide tandem switching services. The Commission ruled that LECs offering of the necessary signalling information will constitute a new service under price caps. LECs are required to make a cost-based showing under the price caps new services test. This will enable the Commission to ensure that the required signalling information is reasonably priced. In addition, LECs will be required to establish a rate element for the signalling information as a separate service category within the trunking basket. Tier 1 LECs are required to file tariffs for offering signalling information for traffic from their equal access end offices.

OMB Control No.: 3060-0150
Title: Public Mobile Service—Part 22
Expiration Date: 02/28/95
Estimated Annual Burden: 378,010 total hours; 10.5 hours per response (avg.); 35,828 respondents.
Description: Part 22 contains the technical and legal requirements for radio stations operating in the Public Mobile Services (PMS). General requirements under Part 22 are contained in subparts B, C, and D. Miscellaneous requirements are found in subpart E. Special requirements for each service are provided in subparts G, H, K, L, and M. Special requirements for developmental authorizations are provided in subpart F. The information requested under Part 22 is used by the Commission staff in carrying out its duties as set forth in Sections 308 and 309 of the Communications Act of 1934, as amended, to determine the technical, legal and other qualifications of applicants to operate a station in the public mobile service. The information is also used to determine whether grant of an application will serve the public interest, convenience and necessity. The staff also uses this information to ensure that applicants and licensees comply with the ownership and transfer restrictions imposed by Section 310 of the Act.

OMB Control No.: 3060-0438
Title: Unserved Area Application Filing Requirements and Other Cellular Requirements
FCC Form No.: FCC Form 464
Expiration Date: 01/31/95
Estimated Annual Burden: 96,600 total hours; 4.83 hours per response, 20,000 respondents.
Description: In CC Docket No. 90-6, the Commission adopted rules for the processing, filing and selection of unserved applications in the Domestic Public Cellular Radio Telecommunications Service and other cellular rules. The information collected will be used by the Commission to determine whether the applicant is qualified legally, technically, and financially to be licensed as a cellular operator. Without such information the Commission could not determine whether to issue licenses to the applicants that provide telecommunication services to the public and therefore fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94-24464 Filed 10-3-94; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL LABOR RELATIONS AUTHORITY

Senior Executive Service; Performance Review Board

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names on the Performance Review Board.

DATES: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: James M. Cheskawich, Director, Personnel and EEO Division, Federal Labor Relations Authority (FLRA), 607 14th Street, NW., Washington, DC 20424-0001, (202) 482-6690, extension 440.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations, to the appointing authority relative to the performance of the senior executive.

The following persons will serve on the FLRA's Performance Review Board:

Solly Thomas, Office of the Executive Director, FLRA

Marjorie K. Thompson, Office of the General Counsel, FLRA

Godfrey D. Dudley, Equal Employment Opportunity Commission

Gloria Joseph, National Labor Relations Board

Mary L. Jennings, Merit Systems Protection Board

James M. Cheskawich,

Director, Personnel and EEO Division.

[FR Doc. 94-24456 Filed 10-3-94; 8:45 am]

BILLING CODE 6727-01-M

FEDERAL RESERVE SYSTEM

The Colonial BancGroup, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than October 28, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W,, Atlanta, Georgia 30303:

1. The Colonial BancGroup, Inc., Montgomery, Alabama; to acquire 100 percent of the voting shares of Brundidge Banking Company, Inc., Brundidge, Alabama.

Board of Governors of the Federal Reserve System, September 28, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-24460 Filed 10-3-94; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), as amended, notice is hereby given that the regular monthly meeting of the Federal Accounting Standards Advisory Board will be held on Thursday, October 20, 1994 from 9 a.m. to 4 p.m. in room 7C13 of the General Accounting Office, 441 G St. NW., Washington, DC.

The agenda for the meeting includes discussions on (1) Revenue Recognition issues, (2) a preliminary draft Exposure Draft on Property, Plant, and Equipment, (3) Human Capital and R&D draft Exposure Draft issues, and (4) an Exposure Draft outline on Land, Heritage, and Miscellaneous Property.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First St. NE., room 1001, Washington, DC 20002, or call (202) 512-7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92-463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101-6.1015 (1990).

Dated: September 26, 1994.

Ronald S. Young,

Executive Director.

[FR Doc. 94-24394 Filed 10-3-94; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR) Cancellation of Medical Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Because of low usage the cut sheet version of the following Standard Form is cancelled:

SF 541, Medical Record—Gynecologic Cytology (NSN 7540-00-832-7973)

The 4-part set of the form is still available from the Federal Supply Service.

DATES: Effective on October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501-0581.

Dated: September 22, 1994.

Theodore D. Freed,

Chief, Forms Management Branch.

[FR Doc. 94-24400 Filed 10-3-94; 8:45 am]

BILLING CODE 6820-34-M

Interagency Committee for Medical Records (ICMR) Cancellation of Medical Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Because of low usage the cut sheet version of the following Standard Form is cancelled:

SF 502, Medical Record—Narrative Summary (Clinical Resume) (NSN 7540-00-634-4114)

The two-part set of the SF 502 is still available from the Federal Supply Service.

DATES: Effective on October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501-0581.

Dated: September 20, 1994.

Theodore D. Freed,

Chief, Forms Management Branch.

[FR Doc. 94-24401 Filed 10-3-94; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[GN# 2275]

Notice of Three Meetings of the Commission on Research Integrity

Pursuant to P.L. 92-463, notice is hereby given of three future meetings of the Commission on Research Integrity. Meetings are subject to availability of funds and interested parties are advised to call the Executive Secretary shortly before scheduled meetings to verify each date and place. The meetings are planned as follows:

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• Wednesday, October 19th, from 9 a.m. to 5 p.m. at the Stouffer Concourse Hotel, James Room, 2399 Jefferson Davis Highway, Arlington, VA 22202. The Commission invites respondents in alleged misconduct cases and attorneys who have advised them to present their views in person or in writing on the strengths and weaknesses of the way institutions and the Public Health Service (PHS) pursue such allegations. The Commission will also continue to discuss definitions of research misconduct.

• Monday, November 7th, from 8:30 a.m. to 4:30 p.m. at the National Institutes of Health, 9500 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892. The Commission is planning a dialogue with the Director, NIH, and other intramural and extramural officials and employees on the strengths and weaknesses of the present PHS system of pursuing scientific misconduct.

• Thursday, December 1st, from 9 a.m. to 5 p.m. and on Friday, December 2nd, from 8 a.m. to 3 p.m. at the Stouffer Concourse Hotel, Potomac Room, 2399 Jefferson Davis Highway, Arlington, VA 22202. On the first day, the Commission invites whistleblowers and witnesses in alleged scientific misconduct cases and counsel who have advised them to present their views in person or in writing on the strengths and weaknesses of the way the PHS and institutions pursue such allegations. On the second day, the Commission will continue its discussion of specific issues in scientific misconduct and the responsible conduct of research.

The mandate of the Commission is to develop recommendations for the Secretary of Health and Human Services and the Congress on the administration of Section 493 of the PHS Act, as amended by and added to, by Section 161 of the NIH Revitalization Act of 1993. Discussion items may include but will not be limited to the issues noted above.

Henrietta D. Hyatt-Knorr, Executive Secretary, Commission on Research Integrity, at the Office of Research Integrity, Division of Policy and Education, Rockwall II, Suite 700, 5515 Security Lane, Rockville MD 20852, (301) 443–5300, will furnish meeting agendas, the Committee charter, and a roster of the Committee members upon request. Persons wishing to make presentations should contact the Executive Secretary. Depending on the number of oral presentations and other considerations, the Executive Secretary will allocate a reasonable timeframe for each speaker.

Commission members will prepare questions to guide witnesses in their presentations. The questions should be obtained from the Executive Secretary. More detailed statements from witnesses on their individual experiences may be submitted in writing to the Executive Secretary before or at the meeting. Each statement will be reviewed by Commission Members. Witnesses and members of the public are advised that in both written or oral statements presented to the Commission, they should not reveal any confidential information from any open case under investigation by an institution or the Office of Research Integrity or from any closed case where there has not been a finding of scientific misconduct or which has not otherwise been made public.

Dated: September 27, 1994.

Lyle W. Bivens,

Director, Office of Research Integrity

[FR Doc. 94–24474 Filed 10–3–94; 8:45 am]

BILLING CODE 4160–17–M

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

In accordance with seciton 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee on Immunization Practices.

Times and Dates: 8:30 a.m.-6 p.m., October 19, 1994. 8:30 a.m.-2:45 p.m., October 20, 1994.

Place: CDC, Auditorium A, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents.

Matters to be Discussed: The committee will discuss immunization coverage in the United States; progress towards reaching the 1996 disease reduction goals; vaccine safety update; revision of ACIP recommendations based on findings of the Institute of Medicine report on vaccine safety; update on vaccine schedule simplification-accelerated schedules; review of draft recommendation on BCG; revision of polio vaccination recommendations; revised recommendations for hepatitis B vaccination; revision of the meningococcal vaccine recommendation; varicella vaccine recommendation; vaccination of health care workers; adolescent immunizations; ACIP policies on "catch-up" vaccinations; recommendations for prevention of hepatitis A; hepatitis A vaccine and immune globulin; the need for ACIP recommendations on immunization practices; status of development of new combination vaccines (manufacturers report); worldwide diphtheria outbreaks; an update on the Injury Compensation Program; and an update on the National Vaccine Program. Other matters of relevance among the committee's objectives may be discussed.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Gloria A. Kovach, Committee Management Specialist, CDC (1–B72), 1600 Clifton Road, NE, Mailstop A20, Atlanta, Georgia 30333, telephone 404/639–3851.

Dated: September 28, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–24450 Filed 10–3–94; 8:45 am]

BILLING CODE 4163–18–M

National Institutes of Health

National Institute on Aging; Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Biological and Clinical Aging Review Subcommittee A, National Institute on Aging, October 3, 1994, from 8:30 a.m. to adjournment, at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland, which was published in the **Federal Register** on September 21, 1994, Vol. 59, page 48441.

The meeting was cancelled because the majority of the members were not available to meet to conduct the committee's business.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health.)

Dated: September 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–24410 Filed 10–3–94; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACCU–LAB, Inc., 405 Alderson St., Schofield, WI 54476, 800–627–8200, (formerly: Alpha Medical Laboratory, Inc., Employee Health Assurance Group, ExpressLab, Inc.)

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/205–263–5745

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444/800–877–7016

Bioran Medical Laboratory, 415 Massachusetts Ave., Cambridge, MA 02139, 617–547–8900

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5810

Center for Laboratory Services, a Division of LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 11850 West 85th St., Lenexa, KS 66214, 800–445–6917

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–836–3093

Damon/MetPath, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535, (formerly: Damon Clinical Laboratories)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223. 708–688–2045/708–688–4171

Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert St., Norfolk, VA 23511–2597, 804–444–8089 ext. 317

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugProof, Division of Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180 / 206–386–2672, (formerly: Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Eagle Forensic Laboratory, Inc., 950 N. Federal Highway, Suite 308, Pompano Beach, FL 33062, 305–946–4324

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609, (moved 6/16/93)

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300, (formerly: Harrison & Associates Forensic Laboratories)

HealthCare/MetPath, 24451 Telegraph Rd., Southfield, MI 48034, Inside MI: 800–328–4142/Outside MI: 800–225–9414, (formerly: HealthCare/Preferred Laboratories)

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051

Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–222–5835

Med-Chek/Damon, 4900 Perry Hwy., Pittsburgh, PA 15229, 412–931–7200, (formerly: Med-Chek Laboratories, Inc.)

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38175, 901–795–1515

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699–0008, 419–381–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199

MetPath, Inc., 1355 Mittel Blvd., Wood Dale, IL 60191, 708–595–3888

MetPath, Inc., One Malcolm Ave., Teterboro, NJ 07608, 201–393–5000

Metropolitan Reference Laboratories, Inc., 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293

National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485, (formerly: Maryland Medical Laboratory, Inc.)

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National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784, (formerly: Med Arts Lab)
National Health Laboratories Incorporated, 2540 Empire Dr., Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627 / Inside NC: 800–642–0894
National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522
National Health Laboratories Incorporated, 13900 Park Center Rd., Herndon, VA 22071, 703–742–3100
National Psychopharmacology Laboratory, Inc., 9320 Park W. Blvd., Knoxville, TN 37923, 800–251–9492
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200, (formerly: Nichols Institute)
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Occupational Toxicology Laboratories, Inc., 2002 20th St., Suite 204A, Kenner, LA 70062, 504–465–0751
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 503–687–2134
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294, (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627, (formerly: Physicians Reference Laboratory Toxicology Laboratory)
Poisonlab, Inc., 7272 Clairemont Mesa Rd., San Diego, CA 92111, 619–279–2600/800–882–7272
Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Regional Toxicology Services, 15305 N.E. 40th St., Redmond, WA 98052, 206–882–3400
Roche Biomedical Laboratories, Inc., 1120 Stateline Rd., Southaven, MS 38671, 601–342–1286
Roche Biomedical Laboratories, Inc., 69 First Ave., Raritan, NJ 08869, 800–437–4986
Roche CompuChem Laboratories, Inc., A Member of the Roche Group, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984, (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory)
Roche CompuChem Laboratories, Inc., Special Division, A Member of the Roche Group, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263, (Formerly: CompuChem Laboratories, Inc.—Special Division)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800
Sierra Nevada Laboratories, Inc., 888 Willow St., Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91045, 818–376–2520
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 32748, 904–787–9006, (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340 404–934–9205, (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 708–885–2010, (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–5447, (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301, (formerly: SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283 602–438–8507,
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373, (formerly: Laboratory Specialists, Inc.; Abused Drug, Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–343–8191, (formerly: MetWest-BPL Toxicology Laboratory)
The following laboratory withdrew from the Program on September 16, 1994: Medical Science Laboratories, 11020 W. Plank Court, Wauwatosa, WI 53226, 414–476–3400
The following laboratory withdrew from the Program on September 27, 1994: CPF MetPath Laboratories, 21007 Southgate Park Blvd., Cleveland, OH 44137–3054 (Outside OH) 800–338–0166/(Inside OH) 800–362–8913, (formerly: Southgate Medical Laboratory; Southgate Medical Services, Inc.)

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–24449 Filed 10–3–94; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–4214–10; COC–28254]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

September 23, 1994.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes to withdraw approximately 496.87 acres of public lands for 50 years to protect wildlife values and constructed facilities associated with the Horsethief Canyon State Wildlife Area. This notice closes this lands to location and entry under the mining laws for up to two years. The lands remain open to mineral leasing.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before January 3, 1995.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On September 21, 1994, a petition was approved allowing the Bureau of Reclamation to file an application to withdraw the following described public lands from operation of the public land laws, including the mining laws, subject to valid existing rights:

Ute Principal Meridian

T. 1 N., R. 2 W.,

Sec. 18, Lots 7, 9, and 10.
T. 1 N., R. 3 W.,
Sec. 9, Lots 11 and 12;
Sec. 10, Lots 12 and 13;
Sec. 11, Lots 7 and 8;
Sec. 13, Lots 8, 9, and 10, and SE¼SE¼;
Sec. 14, Lots 5, 6, 7, 8, 11, 12, 13, 14, and 1.35 acres in the NE¼NE¼SW¼;
Sec. 15, 14.80 acres in the NW¼NE¼, and 1.70 acres in the NE¼SE¼NE¼.

The areas described aggregate approximately 496.87 acres of public lands in Mesa County.

The purpose of this withdrawal is to manage these lands for wildlife habitat mitigation as part of Horsethief Canyon State Wildlife Area managed by the Colorado Division of Wildlife under agreement with the Bureau of Reclamation.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the **Federal Register**, these lands will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Bureau of Land Management will continue to manage these lands.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 94–24403 Filed 10–3–94; 8:45 am]

BILLING CODE 4310–JB–P

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Ninth Regular Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice sets forth summaries of the proposed United States negotiating positions on agenda items and resolutions for the ninth regular meeting of the Conference of the Parties (COP9) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Comments or other relevant information concerning these proposed negotiating positions are solicited. Public meetings to discuss these proposed negotiating positions also have been held.

DATES: The Fish and Wildlife Service (Service) will consider information and comments received by October 19, 1994, in formulating its final negotiating positions.

ADDRESSES: Comments should be sent to the Director, U.S. Fish and Wildlife Service, c/o Marshall P. Jones, Chief, Office of Management Authority, 4401 N. Fairfax Drive, Room 420–C, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Marshall P. Jones or Susan S. Lieberman, Office of Management Authority, at the above address; telephone 703/358–2093; fax 703/358–2280.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to control international trade in certain animal and plant species which are or may become threatened with extinction, and are listed in Appendices to the treaty. Currently, 123 countries, including the United States, are CITES Parties. CITES calls for biennial meetings of the Conference of the Parties which review its implementation, make provisions enabling the CITES Secretariat (in Switzerland) to carry out its functions, consider amending the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of the Convention.

This is part of a series of notices which, together with public meetings, provide the public with an opportunity to participate in the development of the U.S. positions for the ninth regular meeting of the Conference of the Parties (COP9) to CITES. A **Federal Register** notice published on July 15, 1993 (58 FR 38112), requested information and comments from the public on animal or plant species the United States might consider as possible amendments to the Appendices. A **Federal Register** notice published on November 18, 1993 (58 FR 60873), requested public comments on possible revisions to the criteria for listing species in the CITES Appendices. A **Federal Register** notice published on January 27, 1994 (59 FR 3832), requested additional comments from the public on animal or plant species the United States was considering submitting as amendments to the Appendices. A **Federal Register** notice published on January 28, 1994 (59 FR 4096): (1) published the time and place for COP9; (2) announced a public meeting for February 22, 1994, to discuss the 31st meeting of the CITES Standing Committee; (3) detailed the provisional agenda of the COP; and (4) requested information and comments from the public on possible COP9 agenda items and resolutions that the United States might submit. A **Federal Register** notice published on September 1, 1994 (59 FR 45307), announced a public meeting to take place on September 14, 1994. A **Federal Register** notice published on September 6, 1994 (59 FR 46023), set forth summaries of proposed U.S. negotiating positions on species proposals that were submitted by other countries to amend the CITES Appendices and requested public comment on these proposals. A **Federal Register** notice published on September 7, 1994 (59 FR 46266), announced an additional public meeting to take place on September 16, 1994. The present notice complements the previous notices by setting forth proposed U.S. negotiating positions on other agenda items and resolutions for COP9, and requests public comments on these positions, which were also presented at the September 14 and 16 public meetings. Another **Federal Register** notice will also announce the proposed species amendments, resolutions, and agenda topics submitted by the United States. The Service's regulations governing this public process are found in Title 50 of the Code of Federal Regulations §§ 23.31–23.39.

Proposed Negotiating Positions

In this notice, the Service summarizes proposed negotiating positions on agenda items and resolutions for COP9 (other than proposals to amend the

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Appendices, which are presented in the September 6, 1994, **Federal Register** notice discussed above). Numerals next to each agenda item correspond to the numbers used in the provisional agenda [COP9 Document 9.1 (revised)] received from the CITES Secretariat. However, documents for a number of the agenda items have not yet been received from the CITES Secretariat; they will be available on request from the Service after they have been received.

A list of documents received to date were made available at the public meetings of September 14 and 16, 1994, and copies will be made available to the public on request. When information and comments on the agenda items were submitted in writing to the Service or received at the February 22, 1994 public meeting, they are included with the proposed negotiating position. Each proposed position includes a brief rationale explaining the basis of the position. The Service will endeavor to publish a **Federal Register** notice in October 1994 that details final negotiating positions on all issues pertaining to COP9, with the understanding that new information that becomes available during discussions at a COP can often lead to modifications in these positions. At COP9, the U.S. delegation will fully disclose all position changes and rationale explaining them.

AGENDA (Provisional)

I. Opening Ceremony by the Authorities of the United States of America

The United States is arranging for a suitable ceremony in cooperation with the CITES Secretariat. Details of the ceremony will not be finalized until October, 1994.

II. Welcoming Addresses

The United States is arranging for welcoming addresses from appropriate officials in cooperation with the CITES Secretariat.

III. Adoption of the Rules of Procedure

See Doc. 9.1 (Rev)—Provisional Agenda for COP9

Oppose modifications to the Rules of Procedure; support retention of the Rules of Procedure from COP8 in Kyoto, Japan.

The Provisional Rules of Procedure have been circulated by the CITES Secretariat to the Parties. The Rules of Procedure must be adopted by the Plenary of the COP at the outset. The only difference between the Rules of Procedure for COP8 and the Provisional Rules circulated by the Secretariat are in Rule 15, paragraph 3, which was modified by the Standing Committee at its thirty-first meeting in Geneva, 21–25 March 1994. The modifications recommended by the Standing Committee, and indeed all of the Rules of Procedure, are not official until they are adopted by the COP. Rule 15, paragraph 3, refers to secret ballots. According to the Rules of Procedure adopted at COP8 (which did not differ from those at COP7), when a delegation proposes that a vote be taken by secret ballot, an open vote is required to approve this proposal; a majority of all Parties voting must approve a secret ballot before it is implemented. The revised Rules of Procedure recommended by the Standing Committee, amended at the suggestion of the observer from Zimbabwe at that meeting, require that only six parties (the proposer and five seconds) request a secret ballot for it to be implemented for a particular vote.

At the Standing Committee meeting, the United States delegation opposed modifying the Rules of Procedure. The proposed COP9 position of the United States remains in opposition to this modification of the Rules of Procedure, which operated effectively at both COP7 and COP8. In numerous international fora (e.g., GATT, UNCED), it has been the position of the United States to promote openness in the dealings of intergovernmental organizations. The United States believes that since a delegation at a COP is accountable to its government, it should not need to vote in secret.

The United States is also very concerned that making secret ballots too easy will unnecessarily delay the work of the COP. The United States also believes that it is inappropriate for the minority (possibly only six countries) to dictate to the majority how votes should proceed. The United States believes that a rule allowing a few countries to require use of the secret ballot could lead to excessive use of this option. Secret ballots are extremely slow and time consuming. For budgetary and other reasons, electronic voting cannot be provided at the COP, which would have minimized the time necessary to conduct a secret vote. Regardless of how few or many secret ballots are taken at the COP, however, all U.S. positions and votes on issues will be publicly disclosed.

IV. Election of Chair and Vice-Chair of the Meeting and of Committees I and II and of the Budget Committee

No documents will be prepared for this item. Support election of a Conference Chair from the United States, and highly qualified Committee and Vice Chairs representing the geographic diversity of CITES.

The Chair of the CITES Standing Committee (New Zealand) will serve as temporary Chair of the Conference until a permanent Conference Chair is elected. It is traditional for the host country to provide the Conference Chair, and the United States will propose a person with substantial executive skills and international negotiating experience to be nominated as Chair. This person, if elected by the parties, will serve as Presiding Officer of the Conference and also of the Conference Bureau, the executive body which manages the business of the Conference; other members of the Bureau include the Committee Chairs (discussed below), the nine members of the Standing Committee (see Agenda Item IX), and the Secretariat.

The major technical work of CITES is done in the Committees, and thus Committee chairs must have great technical knowledge and skill. In addition, CITES benefits from active participation and leadership of representatives of every region of the world. The United States will support election of Committee Chairs and Vice Chairs of the Conference having requisite technical knowledge and skills and also reflecting the geographic and cultural diversity of CITES. The United States is now consulting with the Secretariat and the Standing Committee regarding suitable candidates.

V. Adoption of the Agenda and Working Programme

See Doc. 9.1 (Rev)—Provisional Agenda for COP9; Doc. 9.2 (Rev)—Provisional Working Programme for COP9; Doc. 9.2.1 (Rev)—Provisional Working Program for COP9 Committee I; and Doc. 9.2.2 (Rev)—Provisional Working Program for COP9 Committee II. Support adoption of an agenda and working program that guarantees a smoothly operating meeting that addresses all species and implementation issues; the U.S. nominee to serve as Conference Chair, if accepted by the parties, will be responsible for management of the overall agenda, in consultation with the Bureau.

VI. Establishment of the Credentials Committee and Committees I and II

No document has been received from the CITES Secretariat yet.

Support the establishment of the Credentials Committee and Committees I and II.

Establishment of the Credentials Committee is a *pro forma* matter. The Credentials Committee approves the credentials of delegates to the COP, by confirming that they are official representatives of their government, thereby affording them the right to vote in Committee and Plenary sessions. The United States supports the establishment of Committees I and II, provided most participating Parties have been able to send at least two delegates, or that the rules governing debate of the Committees ensure that most delegations will have an opportunity to debate recommendations before a final decision is made.

VII. Report of the Credentials Committee

No document has been received from the CITES Secretariat yet.

Support adoption of the report of the Credentials Committee if it does not recommend the exclusion of legitimate representatives of countries that are Parties to CITES. Representatives whose credentials are not in order should be afforded observer status as provided for under Article XI. If credentials have been delayed, representatives should be allowed to vote on a provisional basis. A liberal interpretation of the Rules of Procedure on credentials should be adhered to in order to permit clearly legitimate representatives to participate.

Adoption of the report is generally *pro forma*. Exclusion of Party representatives whose credentials are not in order could undermine essential cooperation among Parties.

VIII. Admission of Observers

No document has been received from the CITES Secretariat yet.

Support admission to the meeting of all technically qualified non-governmental organizations and oppose unreasonable limitations on their full participation at COP9.

Non-governmental organizations representing a broad range of viewpoints and perspectives play an important role in CITES activities and have much to offer to the debates and negotiations at a COP. Their participation is specifically provided by Article XI of CITES. The United States supports the opportunity for all technically qualified observers to fully participate at COPs.

IX. Matters Related to the Standing Committee

No documents have been received yet. This agenda item consists of three subitems:

1. *Report of the Chairman.* The United States strongly supports the active role which the current Standing Committee, under the leadership of New Zealand, has played in carrying out the many functions given to it by resolutions adopted by Conferences of the Parties. This includes the review of compliance with these resolutions by the Parties and making decisions for appropriate action when Parties are not in compliance.

2. *Regional representation on the Standing Committee:* Support an increase in Standing Committee membership if budgetary implications can be resolved. The Standing Committee is currently composed of six Regional voting representatives of North America (Canada), Central and South America and the Caribbean (Trinidad and Tobago, the Vice Chair), Asia (Thailand), Oceania (New Zealand, the Chair), Africa (Senegal), and Europe (Sweden). There are also three *ex officio*, nonvoting members: Switzerland (depositary country), Japan (past host country), and the United States (current host country). Each CITES Region currently has one representative on the Standing Committee, regardless of how large or small the number of Parties (Africa has 43 CITES parties, for example, while North America has only 3 and Oceania only 4). A proposal submitted by Malawi but not yet actually reviewed would increase the number of Regional representatives from Regions having larger numbers of Parties. The United States will consider support for such proposals depending on their exact nature and only after full consideration by the Budget Committee of their financial effects.

3. *Election of new members and alternate regional members:* Encourage membership which will continue the active role of the Standing Committee. The Regional representatives of North America, Europe, and Oceania are open for review by their respective Regions at COP9. The United States, as host of COP9, will continue on the Standing Committee as past host country until COP10. A new Chair will be selected by the new Standing Committee during a meeting to be held at the close of COP9; while the United States will not have a vote, the U.S. position is to encourage selection of a Chair with a strong commitment to a proactive Standing Committee role in the management of CITES affairs, as New Zealand has done during the past two years.

X. Report of the Secretariat

The Report of the Secretariat has not yet been received by the Service. When received, the Service will carefully review issues pertaining to: success of procedures for Parties to set budgetary and work priorities; setting of new short-term and long-term objectives for the Secretariat; evaluation of the performance of the Secretariat; and progress in assisting Parties to more forcefully implement the Convention.

The biennial report provides the major way for the Secretariat, and the Secretary General, to report priorities, accomplishments, and problems to the Parties. These are critical management issues facing CITES which need to be addressed in the Secretariat's report.

XI. Financing and budgeting of the Secretariat and of meetings of the Conference of the Parties

1. Financial Report for 1992–1993

No document has been received from the CITES Secretariat yet; no position is possible at this time. The United States continues to advocate fiscal responsibility and accountability.

2. Anticipated expenditures for 1994 and 1995

No document has been received from the CITES Secretariat yet; no position is possible at this time. The United States continues to advocate fiscal responsibility and accountability.

3. Budget for 1996–1998 and Medium-term Plan for 1996–2000

See Doc. 9.10—Budget Estimates for the CITES Trust Fund for 1996–1997 and for the Medium-term Plan for 1996–2000. This document was only received a short time ago by the Service, and is still undergoing review.

Oppose any substantial increase in the Secretariat's budget representing a significant increase in its work plan. Support budget increases requested by the Secretariat in cases where the growing membership is placing increasing burdens on staff, without any commitment to an increased U.S. contribution. Support an evaluation of priorities and possible reprogramming of budget items into underfunded or unfunded areas of higher priority.

The United States cannot at present commit to a larger contribution to the CITES budget. The United States is the largest single contributor; under the United Nations scale, the United States is asked to provide 25 percent of the annual operating budget. In Fiscal Year 1994, Congress appropriated approximately $1 million to the Department of State for this purpose. However, the United States recognizes the heavier workload being imposed on the Secretariat, Standing Committee, and both the Animals and Plants Committees.

4. External Funding

No document has been received from the CITES Secretariat yet; no position is possible at this time.

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External funding refers to the financial support by Party governments and non-governmental organizations for projects that have been approved by the Standing Committee. The CITES Parties have established a process whereby the Standing Committee approves projects and approves donors, to avoid even the appearance of a conflict of interest. The Secretariat's report on this issue is expected to summarize approved donors, approved projects, projects that have been funded, and approved projects that are awaiting funding. The Service, the Department of State, and the National Marine Fisheries Service have made substantial contributions to externally funded projects, including travel of delegates from developing countries to COPs, support for committee meetings, facilitating a meeting of the Working Group on the Transport of Live Specimens, biological studies of significantly traded species, review of national laws for the implementation of the Convention, numerous enforcement-related projects, and other similar projects.

XII. Committee Reports and Recommendations

1. Animals Committee

No document has been received from the CITES Secretariat yet. This agenda item has two subitems in the provisional agenda:

(a) Report of the Chairman

(b) Regional representation on the Animals Committee

The United States supports the active role of the Animals Committee in scientific and management issues pertaining to animal species listed in the CITES Appendices. Encourage membership which will continue the active role of the Animals Committee, and selection of a Chair with a strong commitment to a proactive Animals Committee.

The Animals Committee report may contain information or recommendations dealing with Appendix II species subject to significant trade, marking techniques, crocodilian tagging, sea turtle ranching, care for and reintroduction of seized live animals, and various other issues. The United States has actively participated in the work of the Animals Committee since COP8, and will continue to be an active participant in Animals Committee functions.

The Animals Committee is currently composed of individuals representing the six CITES geographic regions: North America, Central and South America and the Caribbean, Asia, Oceania, Africa, and Europe. Each CITES Region currently has one representative on the Animals Committee. The Regional representatives are selected by their respective regional caucuses, at the COP. A new Chair will be selected by the new Animals Committee, most likely during a meeting to be held at the close of COP9.

2. Plants Committee

No document has been received from the CITES Secretariat yet. The United States supports the continued activities of the Plants Committee to improve the effectiveness of CITES for plants, with a focus on the following: publication of checklists and identification guides; significant trade in orchids, succulents, and other species; review of the timber trade; and trade in artificially propagated plants. Encourage membership which will continue the active role of the Plants Committee, and selection of a Chair with a strong commitment to a proactive Plants Committee.

The Plants Committee is currently composed of individuals representing the six CITES geographic regions: North America, Central and South America and the Caribbean, Asia, Oceania, Africa, and Europe. Each CITES Region currently has one representative on the Plants Committee. Dr. Bruce MacBryde of the Service's Office of Scientific Authority serves as Vice-Chair of the Plants Committee (representing North America). The Regional representatives are selected by their respective regional caucuses, at the COP. A Chair will be selected by the new Plants Committee, most likely during a meeting to be held at the close of COP9.

3. Identification Manual Committee

No document has been received from the CITES Secretariat yet.

Continue to support the Identification Manual Committee and development of animal and plant identification manuals for use by port and border enforcement officers, in providing a standard of reference for the identification of CITES species, within available resources and priorities.

The enforcement officers of the Parties must be equipped with guides which are accurate, realistic, and helpful in the identification of the many CITES species and products found in trade throughout the world.

4. Nomenclature Committee

No document has been received from the CITES Secretariat yet. This agenda item has two subitems in the provisional agenda:

(a) Report of the Chairman

(b) Recommendations of the Committee

Encourage the development and adoption of checklists for all taxa, within budgetary limits and priorities to be decided upon by the Parties. Support revisions of existing checklists for fauna prior to development of new ones. Because of the expense in developing checklists for taxa, the United States supports recognition of existing checklists for remaining taxa when suitable. Implementation of the Convention is strengthened by the use of uniform names of listed species.

The Service understands that the report of the Chair presents technical nomenclatural corrections and recommended revisions to names included in the Appendices at the Plenipotentiary Conference and at COP1. Those revisions will require adoption by the Parties at COP9.

XIII. Evolution of the Convention

1. Strategic Plan of the Secretariat

No document has been received from the CITES Secretariat yet; no position is possible at this time.

2. How To Improve the Effectiveness of the Convention

No document has been received from the CITES Secretariat yet; no position is possible at this time.

This agenda item was suggested by the delegate from Canada at the March 1994 Standing Committee meeting; the Standing Committee agreed that a review of the general evolution and implementation of CITES should by done by an independent body, and that a project proposal for this review should be developed by the Secretariat. The main concern of the United States is what funding will be available for such a project, and that it not impair the ability of other functions in the Secretariat budget to receive necessary funding.

XIV. Interpretation and Implementation of the Convention

1. Review of the Resolutions of the Conference of the Parties

Support the effort begun by the Secretariat immediately following COP8, at the direction of the Standing Committee, to review all of the resolutions of the Conference of the Parties with the goal of assisting Parties in the effective utilization of the resolutions, in order to more effectively implement the Convention, by: (1) Deleting resolutions that have been superseded or whose purpose has been accomplished; and (2) consolidating

resolutions that deal with the same subject.

At every Standing Committee meeting since COP8, the United States delegation has strongly urged (and the Committee has adopted this recommendation of the United States) that any consolidation of resolutions retain the text of the original, including the preamble, so as to: (1) assist the Parties, while retaining the original intent of the resolution; and (2) reduce unnecessary or unproductive debate at COP9 on "old" issues. Therefore, the United States supports deleting only out-of-date resolutions that are truly non-controversial, and retaining the text of the original for any consolidations. The Standing Committee reiterated its support for this approach at its March 1994 meeting. The United States supports an expedited approval of these consolidations in Plenary Session at COP9, which will only be possible if the original text of resolutions (preamble and operative paragraphs) are retained, so that any consolidations will be structural and not substantive.

(a) Deletion of Resolutions that are out of dote. See Doc. 9.19.1—Deletion of Resolutions that are Out of Date.

Support the deletion of resolutions that are out of date, if they have been superseded by other resolutions or have been overtaken by events. Likely to support the deletion of all resolutions proposed by the Secretariat and circulated to the Parties, with the following exceptions: Conf. 2.8, 3.13, and those relating to certain parts and derivatives of plants—Conf. 2.18, 4.24, 6.18, and 8.17 (b) and (c). Certain other resolutions on plants remain pertinent unless they are superseded by new resolutions coming from COP9, e.g., Conf. 5.15 in relation to Doc. 9.30 on nursery registration.

Technical review of Doc. 9.19.1 will continue and the U.S. may offer further comment on the affected resolutions before or during the COP. The United States supports deletions of resolutions that are out of date or no longer relevant. However, recent discussions in the International Whaling Commission (IWC) highlight the fact that illegal trade in whale products continues, in spite of the IWC's moratorium on commercial whaling.

The United States has requested that this item be discussed at COP9 (see agenda item 15). The IWC has not yet completed an observation, inspection and enforcement program which would certify that the products of any commercial whaling which occurs in the future are taken in compliance with IWC regulations. Therefore, the admonitions contained in Resolutions Conf. 2.8 and 3.13 appear to the United States to be as pertinent today as when they were adopted by the Parties. These resolutions are neither out of date, nor have they been superseded. Therefore, the United States opposes deletion of these resolutions.

The United States opposes deletion of the aspects pertaining to plants in Conf. 2.18, 4.24, 6.18, and 8.17(b) and 8.17(c), which provide an important legal basis, which is different from using a limited departure from Conf. 5.9 on what is readily recognizable, to guide the standard exclusion or exemption from CITES provisions of certain specified parts and derivatives of certain plants, e.g., the cut flowers of artificially propagated Appendix I hybrids and the flasked seedlings of all artificially propagated orchids.

Future germane proposals on taxa for Appendix I simply can be directed by Conf. 8.17(b) and 8.17(c), without subsequent proposals on the standard exemptions. Future proposals to uplist orchid taxa thus would be routinely guided by Conf. 8.17(c) and their flasked seedlings would be exempt. A similar process has been in effect for the proposals on Appendix II plant taxa, where routinely certain parts or derivatives are standard exclusions, as specified through Conf. 4.24 (e.g., for tissue cultures) and Conf. 6.18 (e.g., for flasked seedling cultures).

(b) Consolidation of valid resolutions. No document has been received from the CITES Secretariat yet. However, documents have been received at several Standing Committee meetings. The United States essentially supports those consolidations prepared thus far by the Secretariat; a review finds them to be a diligent and accurate consolidation of a complex array of resolutions dealing with the same subject. Proposed consolidations have been discussed at Standing Committee meetings and approved for transmission to the Parties on the following issues (final text has not yet been received from the Secretariat, however): Transport of live specimens (consolidate Conf. 3.16, 4.20, 5.18, 7.13, and 8.12); Disposal of illegally traded specimens (consolidate Conf. 2.15, 3.9, 3.14, 4.17, 4.18, 5.14, and 7.6); Trade in elephant ivory (consolidate Conf. 3.12, 6.12, 6.14, 6.15, 6.16, and 7.8); Annual reports and trade monitoring (consolidate Conf. 2.16, 3.10, 5.5, 5.6, 5.14, and 8.7); Trade in readily recognizable parts and derivatives (consolidate Conf. 4.8, 5.9, 5.22, and 6.22); Permits and certificates (consolidate Conf. 3.6, 3.7, 4.9, 4.16, 5.7, 5.8, 5.15, 6.6, 8.5); Trade in plants (12 prior resolutions: consolidate Conf. 2.13, 5.14, 5.15, 8.17, propose to repeal all or part of Conf. 2.18, 4.24, 5.14, 6.18, and 6.20, and deal with Conf. 2.14, 4.16, and parts of 5.14, 8.18, 8.19 in a separate consolidation); Trade with non-Parties and reserving Parties (consolidate Conf. 3.8, 8.8); and Transit and transhipment (consolidate Conf. 4.10, 7.4).

2. Establishment of a List of the Other Decisions of the Conference of the Parties

No document has been received from the CITES Secretariat yet. Support ongoing Standing Committee and Secretariat efforts to differentiate between Resolutions of the Conference of the Parties which provide guidance and interpretation of the Convention, or call for continuing activities of indefinite duration, and decisions of the COP that direct the Secretariat or permanent committees to perform certain specific activities of limited duration.

The Standing Committee has recommended that decisions of the Parties at the COP be distributed in a manner similar to that for resolutions. The United States supports this procedure, utilizing guidelines to be adopted by the COP, that have been approved by the Standing Committee. Often, recommendations to the Secretariat or permanent committees are included in resolutions, when these recommendations are relevant for a particular committee only, or for a short time period between two COPs only. The United States supports separating these specific and/or short-term decisions from resolutions, wherein resolutions should refer to recommendations for implementation of the Convention, and interpretations of the Convention.

3. Report on National Reports Under Article VIII, Paragraph 7, of the Convention

No document has been received from the CITES Secretariat yet.

Support efforts to encourage all Parties to submit annual reports, for all species of flora and fauna, consistent with their domestic legislation. Support efforts whereby proposals for transfer of certain species from Appendix I to II with an export quota or pursuant to ranching only be considered for Parties that are current with their annual report submissions.

Each Party is required by the Convention to submit an annual report containing a summary of the permits it has granted, and the types and numbers of specimens of species in the CITES Appendices that it has imported and exported. Accurate report data are

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essential to measure the impact of international trade on species, and can be a useful enforcement tool.

4. Review of Alleged Infractions and Other Problems of Implementation of the Convention

See Doc. 9.22—Draft Infractions Report for COP9.

Support the Secretariat's review of alleged infractions by the Parties, and necessary and appropriate recommendations to obtain wider compliance with the terms of the Convention. Support an open discussion at COP9 of major infractions, and a greater emphasis by the Parties on the enforcement of the laws and regulations implementing the Convention.

Article XIII of the Convention provides for COP review of alleged infractions. The Secretariat prepares an Infractions Report for each COP, which details instances that the Convention is not being effectively implemented, or where trade is adversely affecting a species. The first draft of the Infractions Report contains numerous such alleged infractions. The United States has commented on the draft Infractions Report. A cursory review of the alleged infractions indicates a great difference in the depth of the reporting on infractions over previous reports. The United States considers this to be an excellent, well-researched and well-prepared Secretariat document. A large number of infractions are caused by lack of training, lack of personnel, or lack of knowledge on the workings of CITES. The majority of the alleged infractions should be a major cause of concern to the Parties. When the final Infractions Report (incorporating the comments of Parties) is circulated by the Secretariat, it will be available to the public upon request.

5. Implementation of the Convention in the European Community

No document has been received from the CITES Secretariat yet; no position is possible at this time.

This issue was discussed extensively at COP8; absent any document, the United States cannot formulate a position at this time.

6 National Laws for Implementation of the Convention

No document has been received from the CITES Secretariat yet; no position is possible at this time.

The United States was strongly supportive at COP8 of a review of national laws for the implementation of the Convention; such laws are required by Article VIII of the Convention. The Service provided funding for this project, and has already received reviews of national legislation for several countries. The United States believes that the Convention's effectiveness is undermined when Party states do not have national laws implementing the Convention, including laws and regulations that authorize seizure and/or forfeiture of specimens imported or exported in contravention of the Convention, and laws and regulations that provide appropriate penalties for such violations.

7. Enforcement of the Convention

No document has been received from the CITES Secretariat yet; no complete position is possible at this time. Support establishment of a Law Enforcement Network.

Notification to the Parties number 776 asked the Parties for their comments on a proposal for establishment of a Law Enforcement Network. The United States supported establishment of such a network at that time, and continues to do so. The United States will continue its support for the provision of law enforcement training to assist Parties in implementing and enforcing the Convention.

Nine Parties responded to Notification 776, which asked the Parties for their comments on the proposed Law Enforcement Network, as follows: five countries (Australia, South Africa, Switzerland, the United Kingdom, and the United States) supported the proposal; three countries (Belgium, France and Uruguay) opposed the proposal; and one country (Spain) was neutral. Although it was not adopted by the Standing Committee, it was agreed that the Parties should discuss the issue at the COP. The United States considers effective enforcement of the Convention to be a critical element that is lacking for many countries, for a number of reasons, including: lack of training, inadequate legislation or regulations, lack of funding, lack of infrastructure, and inadequate communications and networking with other countries and entities. The United States believes that establishment of a Law Enforcement Network, comparable to other committees or working groups established by the Parties, will begin the process of alleviating these deficiencies.

8. Trade in Hunting Trophies of Species Listed in Appendix I

No document has been received from the CITES Secretariat. The United States continues to support implementation of Resolution Conf. 2.11 by all Parties.

9. Exports of Leopard Hunting Trophies and Skins

No document has been received from the CITES Secretariat yet.

However, the United States opposes any increases in quotas without adequate supporting data.

The Service does not know whether this document will involve only a report on exports, or whether it will be similar to Resolution Conf. 8.10, which refers to the trade in leopard skins, including hunting trophies, under a quota system approved by the COP. Trade in leopard skins for noncommercial purposes is allowed under CITES Resolution Conf. 8.10, which recognizes killing in defense of life and property and to enhance the survival of the species.

10. Interpretation and Application of Quotas

No document has been received from the CITES Secretariat yet; no position is possible at this time.

11. Trade in Specimens of Species Transferred to Appendix II Subject to Annual Export Quotas

No document has been received from the CITES Secretariat yet; no position is possible at this time. In the past, this agenda item has involved a report noting compliance with provisions of quota systems.

12. Trade in Rhinoceros Specimens

No document has been received from the CITES Secretariat yet; no position is possible at this time.

The United States continues to be an advocate for strong enforcement of the Convention, and use of all possible measures to encourage countries to effectively implement the Convention. The United States continues to support decisions of the Standing Committee that illegal trade in rhinoceros specimens undermines the effectiveness of CITES.

13. Conservation of Rhinoceros in Asia and Africa

No document has been received from the CITES Secretariat yet; no position is possible at this time.

The United States continues to be supportive of efforts to benefit the conservation of rhinoceros species in Asia and Africa, while realizing that such conservation efforts are seriously undermined by any trade in rhinoceros specimens in contravention of the Convention.

14. Trade in Tiger Specimens

No document has been received from the CITES Secretariat yet; no position is possible at this time.

The United States continues to be an advocate for strong enforcement of the Convention, and use of all possible measures to encourage countries to effectively implement the Convention. The United States continues to support decisions of the Standing Committee that illegal trade in tiger specimens undermines the effectiveness of CITES. The United States is also exploring the possibility of having a special evening program on tiger conservation during the Conference.

15. Illegal Trade in Whale Meat

The United States requested that this item be included on the agenda for COP9, and will submit a paper to the CITES Secretariat for transmission to the Parties prior to COP9.

There was extensive discussion at the May, 1994 meeting in Mexico of the International Whaling Commission (IWC) regarding illegal international trade in whale meat, including involvement by CITES Parties. All whales subject to the IWC moratorium on commercial harvest are listed in CITES Appendix I. A resolution was adopted by IWC (introduced by the United States and other Parties) on this topic, and the issue is discussed in the IWC Infractions Report. The Service submitted the information in the IWC Infractions Report on international trade in whale meat to the CITES Secretariat. The United States is concerned that illegal trade in whale meat undermines the effectiveness of CITES for whale species, and will submit a paper on this topic for discussion at COP9. Several IWC member countries raised concerns at the IWC meeting that it was inappropriate to discuss trade in whale specimens outside of CITES. While a CITES COP is the appropriate venue for such discussions, the U.S. paper will encourage IWC to continue to explore this issue, and to report on progress to both the CITES Standing Committee and COP10.

16. Trade in Shark Products

The United States requested that this item be included on the agenda for COP9, and will submit a paper to the CITES Secretariat for transmission to the Parties prior to COP9. The United States will request in that paper that this agenda item be renamed "Trade in Shark Parts and Products", in order to more accurately frame the debate. It is not the intent of that document to discuss shark management regimes, including catch quotas, minimum sizes, time and area closures, or gear restrictions.

As was discussed in the January 27, 1994 **Federal Register** notice, the United States considered whether or not to submit a proposal to COP9 to include several taxa (families or genera) of sharks in Appendix II. There is limited information about a recent increase in international trade in shark parts and products, particularly in fins for the food market. The United States considered there to be insufficient scientific and trade data on which to base a listing proposal. The United States believes that this is an important issue for the Parties to discuss. The United States is considering requesting that the Animals Committee be called upon to recommend methods and processes for assessing the biological and trade status of shark species in international trade. The paper that the United States will submit may request action by the Animals Committee.

The intent of the United States in asking that this issue be discussed by the Conference of the Parties is twofold: (1) To encourage discussion of how best to collect data on international trade in shark parts and products, particularly how to document catches by species; and (2) to collect data that will provide the best information about the impact of international trade (including introduction from the sea) in shark parts and products on both shark populations and the ecosystems on which they depend.

17. Trade in Plant Specimens

(a) Nursery registration for artificially propagated Appendix I species. See Doc. 9.30—Nursery Registration for Artificially Propagated Appendix I Species.

Tentatively oppose the resolution establishing a stipulated registration system within the CITES Secretariat for plant nurseries artificially propagating specimens of species included in Appendix I. The United States supports a system that would improve the credibility of the existing system for determining which plant specimens are artificially propagated.

The registration system proposed in this draft resolution is complex and would be costly to implement by many Parties. Furthermore, it may place too much of a burden with nurseries themselves in determining what constitutes artificially propagated specimens, and thereby be counterproductive. The current draft of this resolution is an improvement over previous versions, and the United States encourages the Secretariat to continue to make progress in this important area.

(b) Revision of the consolidated Resolution. No document has been received from the CITES Secretariat yet; no position is possible at this time.

(c) Standard reference for Orchidaceae. No document has been received from the CITES Secretariat yet. The United States supports continued work toward a standard reference for traded orchid species.

(d) Implementation of the Convention for timber species. No document has been received from the CITES Secretariat yet; no position is possible at this time.

However, the United States notes that the provisions of CITES apply to *all* species of wild fauna and flora, including tree species used as timber; some timber species are already listed in the CITES Appendices. CITES' purview is in addition to the fact that the trade in timber species may come under the competence of another international treaty, convention, or agreement.

(e) Ramin (Gonystylus bancanus). No document has been received from the CITES Secretariat yet; no position is possible at this time.

18. Significant Trade in Appendix II Species

No document has been received from the CITES Secretariat yet.

However, the United States continues its long-standing support for the continued focus of the Parties on Appendix II species identified as subject to significant trade and the proper implementation of Article IV, as critical to the implementation of the treaty and species conservation. Support the provision of funding for the coordination and implementation of significant trade study projects, with oversight by the Animals, Plants, and Standing Committees.

This topic refers to the trade in those Appendix II species identified as subject to significant trade, for which a review is necessary to determine if there exists sufficient biological information to warrant trade at current levels. Many of these species may have been traded at levels detrimental to their survival. The CITES Parties have provided funds to the World Conservation Union (IUCN) and the Conservation Monitoring Centre to assess priorities in studying these species. The United States has provided funds for field projects involving several of these species.

This process has worked effectively since COP8, with the implementation of Conf. 8.9. The Animals and Standing Committees have taken a very active role in this process, with net benefit for the conservation of some species and for improvements in the implementation of the Convention. The United States supports continuation of this process, for both animals and plants, with a high priority being placed on implementation

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of studies by Parties, scientific assessments, implementation of scientifically-based quotas when appropriate, and effective implementation of Article IV.

19. Standardization of CITES Permits and Certificates

No document has been received from the CITES Secretariat yet; no position is possible at this time.

20. Non-commercial Samples of Skins

No document has been received from the CITES Secretariat yet; no position is possible at this time.

21. Marking of Crocodilian Specimens

No document has been received from the CITES Secretariat yet.

At COP8, the United States advocated adoption of a resolution that it submitted jointly with Australia, to require the skins of all crocodilian species to be tagged before being allowed to be traded by CITES Parties (whether or not a reservation has been entered by a Party).

Resolution Conf. 8.14, submitted by both the United States and Australia, established the framework for a system of universal marking for all crocodilian skins in trade, as a response to serious problems of illegal trade in crocodilian skins, parts, and products. The Animals Committee was charged with setting up the system for the Parties. The Animals Committee has prepared a revision of Resolution Conf. 8.14 on this topic, due to problems with implementation of portions of the resolution. The draft resolution of the Animals Committee has not yet been received from the CITES Secretariat.

22. Transport of Live Specimens

Support the adoption by the COP of the report of the Chair of the Working Group on the Transport of Live Specimens (TWG). The United States will remain an active participant in the TWG, and with all aspects of the transport of live wild animals.

Dr. Susan Lieberman of the Service's Office of Management Authority has served as Chair of the TWG since COP8. Copies of all reports of the Chair of the TWG to the Standing Committee are available on request, including the Terms of Reference of the TWG. The Chair submitted a report to the Standing Committee Chair and to the Secretariat, for transmission to the Parties and discussion at COP9. That report makes recommendations for the future of the TWG. The Service fully supports the report, and recommends its adoption, with the exception of reserving its position on adoption of budgetary and personal recommendations of the Chair contained therein. Those budgetary recommendations would facilitate increased training efforts and greater involvement of exporting Parties in TWG activities and deliberations, which the Service supports. The Service also supports the provision of time near the beginning of the first week of COP9 for those interested in the TWG to meet and discuss transport issues, prior to full discussion in Committee II. Several past participants in TWG activities have inquired as to whether such a meeting of the TWG would be possible; the Service believes that it would be in the best interest of CITES implementation and of the transport of live animals.

The humane transport of live wild animals remains a significant concern of the United States. The TWG's Terms of Reference with the Standing Committee include working to improve implementation of the Convention and relevant resolutions, training, improvement of international standards, coordination with the International Air Transport Association Live Animals Board, and the transport of live wild birds.

23. Implementation of Article XIV, Paragraphs 4 and 5

Support adoption of the resolution submitted by the United States, which deals with the implementation of Article XIV, paragraphs 4 and 5 of the Convention. The U.S. goal in submitting this resolution is to clarify how an Appendix II listing could be implemented expeditiously for a marine species whose management is under the competency of a pre-existing treaty.

The provisions of CITES apply to all species of wild fauna and flora, including marine species. The management of many marine species comes under the jurisdiction or competence of another international treaty, convention, or agreement. International trade in any species of marine fauna or flora is also within the purview and competence of CITES. Therefore, even if a marine species is subject to management under another international treaty, convention, or agreement, if it is listed in any CITES Appendix, international trade and introduction from the sea in the species is regulated by CITES.

CITES made preparation for such situations when the treaty was written. Article XIV, paragraph 4, of the Convention provides that a State party to CITES, which is also a party to any other treaty, convention, or international agreement which was in force at the time of the coming into force of CITES and under the provisions of which protection is afforded to marine species included in Appendix II, is relieved of the obligations imposed on it under CITES with respect to trade in specimens included in Appendix II that are taken by ships registered in that State and in accordance with the provisions of such other treaty, convention, or international agreement.

This relief from CITES obligations does not apply to specimens of species included in Appendix I. For example, several whale species are managed under the competence of the International Convention for the Regulation of Whaling, but all those species are listed in Appendix I.

Currently no marine species whose management is under the competence of another treaty, convention, or agreement is listed in Appendix II. Therefore, this provision of the Convention in Article XIV has never been used, and standards for its implementation have not been developed. The United States has determined that it would be wise to plan for the need to implement Article XIV, by specifying requirements for certificates issued pursuant to Article XIV, paragraph 5, of the Convention, even if its use is not necessary at this time. The Service notes that Appendix II allows for international commercial trade. The resolution provides for the utilization as a valid certificate under Article XIV, paragraph 5, of a certificate of origin or statistical document issued on the authority of the other treaty, convention, or international agreement, with certain stipulations of minimum information and validation as required by CITES.

Such certificates are only an option for CITES Parties that are also parties to the other treaty, convention, or agreement.

24. Disposal of Confiscated Live Animals

No document has been received from the CITES Secretariat yet.

This issue was discussed at the Animals Committee, and the Service believes that the Animals Committee prepared a draft resolution that will be discussed at COP9. The Service has not yet received the final draft resolution prepared by the Animals Committee. However, the Service is supportive of uniform guidelines for the Parties on how to deal with confiscated live animals, that will benefit both the welfare of the individual animals and the conservation of their species in the wild. The Service is supportive of such guidelines, consistent with U.S. law. The Service is concerned about the risk of introduction of disease to wild populations from confiscated live

animals being considered for reintroduction programs. The Service believes that transport and handling concerns for live animals should be coordinated with the Working Group on the Transport of Live Animals.

Interest in what Parties should do with confiscated specimens, particularly live animals, goes back to the drafting of the Convention. The re-export of Appendix II specimens does not require a Scientific Authority finding. The Parties have spoken quite clearly on the issue of return of confiscated specimens to the country of origin, when feasible.

25. Disposal of Skins of Illegal Origin

No document has been received from the CITES Secretariat yet; no position is possible at this time.

26. New Criteria for Amendment of Appendices I and II

See Doc. 9.41—New Criteria for Amendment of Appendices I and II.

Support adoption of the alternative Annexes submitted by the United States on this issue, rather than those prepared by the Standing Committee (as pertain to Annexes 1 and 2 of the draft resolution). The United States basically supports the other annexes of the Standing Committee resolution.

The existing CITES listing criteria, known as the "Berne Criteria" (Resolutions Conf. 1.1 and 1.2) were developed at the first CITES Conference in 1976 in Berne, Switzerland. The United States agrees that the Convention will be strengthened by reevaluating the Berne Criteria for listing species in the Appendices, and that the Berne Criteria need to be reviewed and adapted to address a broader array of taxa and to be more descriptive and definitive, to the extent possible. At the same time, the United States notes that an inherent strength of CITES, which must be safeguarded, is its ability to seek balanced conservation-based solutions for a broad range of species and populations being considered. Thus, if any revision of the Berne Criteria is to be adopted at COP9, the United States is supportive of retaining maximal flexibility while firmly maintaining scientific credibility.

The move to revise the Berne Criteria originated at the 1992 CITES Conference, in Japan (COP8). At COP8 the Parties agreed to start a process, coordinated by the Standing Committee, to develop a scientifically sound revision for consideration at COP9 in 1994. The World Conservation Union (IUCN) was asked to do a first draft, which would first be reviewed at a joint meeting of the Standing, Animals and Plants Committees, and put into CITES resolution form. The United States participated in a joint meeting of the Standing, Animals, and Plants Committees in Brussels in August-September 1993, which reviewed the IUCN draft and produced a draft resolution that was circulated to the Parties.

The Service submitted comments to the Standing Committee, after consultation with other Federal agencies and reviewing extensive public comments received. The U.S. comments maintained that much of the draft resolution was not valid scientifically, and was not acceptable from management or practical perspectives. The United States believed that the criteria as proposed met neither the CITES treaty's requirements for the conservation of species in their ecosystems, nor the diverse needs of the CITES Parties. The U.S. comments and those of other Parties were discussed at the 31st meeting of the Standing Committee, in Geneva in March 1994. Some of the U.S. comments were taken into consideration in developing the final Standing Committee draft resolution. The Standing Committee resolution was not available to the United States or other CITES Parties until after the June 10 deadline for submission of resolutions and proposals to the CITES Secretariat. The Standing Committee resolution contains six annexes, several of which the United States looks forward to discussing further with the CITES Parties at COP9. In particular, the United States believes the Standing Committee draft is an improvement on the Berne Criteria as regards precautionary measures. However, the United States believes that Annex 1 (Biological criteria for Appendix I) and Annex 2 (Criteria for inclusion of species in Appendix II) are in need of major revision, particularly from a scientific perspective. The United States is particularly concerned about the utility and scientific validity of arbitrary numerical cutoffs for decision-making on which Appendix a species should be included in. After detailed review of the scientific literature and consultation with other Federal agencies, the United States has submitted alternatives to those Annexes to the Secretariat, along with some additional material for inclusion in the resolution. The U.S. intent is to urge the CITES Parties to substitute the Annexes 1 and 2 it submitted for those prepared by the Standing Committee.

The United States could have waited to present these alternative Annexes 1 and 2 at COP9. However, the United States preferred to provide ample time to Parties to review this proposed alternative to the document submitted to the Parties by the Standing Committee. The United States believes that increased flexibility must be included in any revised listing criteria.

The biological criteria submitted by the United States for inclusion of species in Appendix I (Annex 1) are grounded in the scientific literature, and are based on the concept that determination of whether a species is threatened with extinction should be risk averse, utilizing the best available scientific and trade information, and assessment of a series of biological factors and criteria. The proposed Annex 1 lists a series of interdependent factors to be included in an assessment of the status of a species, and thereby the determination that it is threatened with extinction. The criteria for inclusion of species in Annex 2 (in accordance with Article II paragraph 2(a)) of the Convention involve a determination of whether a species may become threatened with extinction, in order to avoid utilization incompatible with its survival.

The Service received numerous comments recommending that the United States submit an alternative to the Standing Committee draft resolution. Several comments provided detailed analyses of the IUCN submission to the Secretariat, and of the resolution submitted to the Parties prior to the 31st meeting of the Standing Committee. These comments were taken into consideration by the Service and other Federal agencies.

27. Inclusion of Species in Appendix III

No document has been received from the CITES Secretariat yet. However, the Service is aware that a resolution on this issue has been prepared by the Animals Committee. The Service is supportive of urging of more judicious use of Appendix III, including recommending direct consultation with the Animals or Plants Committee and a review of existing Appendix III listings.

The CITES Secretariat has been working to screen Appendix III proposals and consult with the submitting Party.

28. Guidelines for Evaluating Marine Turtle Ranching Proposals

No document has been received from the CITES Secretariat yet. However, the United States participated in a working group at the ninth meeting of the Animals Committee in Brussels in September, 1993 which developed draft guidelines for recommendation to the Animals Committee on this issue. The ninth meeting of the Animals Committee adopted a requirement for

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"regional management on the basis of genetically defined populations". The United States strongly supported that element, which may have been removed by a subsequent meeting of the Animals Committee. The United States remains supportive of regional cooperation in the management of such widely migratory endangered species as marine turtles.

29. Proposals To Register the First Commercial Captive-breeding Operation for an Appendix I Animal Species

No document has been received from the CITES Secretariat yet.

30. Standard Nomenclature

Support adoption of the resolution submitted by the United States, which was submitted at the request of the Nomenclature Committee.

This resolution was submitted at the request of the CITES Nomenclature Committee, and deals with nomenclature and taxonomy of CITES species. The resolution submitted was discussed and agreed upon by the Nomenclature Committee at its May, 1994 meeting in Beijing, China. The names of the genera and species of several families are in need of standardization and the current lack of a standard reference with adequate information creates an implementation problem for some species. The United States also recognizes that the taxonomy used in the appendices to the Convention will be most useful to the Parties if standardized and correlated by nomenclatorial references.

This resolution makes several recommendations dealing with the inclusion of subspecies in the Appendices, use of references in proposals, synonyms, and the role of the Scientific Authorities in nomenclature issues. The resolution also recommends several standard references for species listed in the CITES Appendices, for mammals, birds, amphibians, cacti, cycads, tree ferns, and other plants.

XV. Consideration of Proposals for Amendment of Appendices I and II

See the **Federal Register** notice published on September 6, 1994 (59 FR 46023), which sets forth summaries of the proposed U.S. negotiating positions on the proposals for amendment to the CITES Appendices for COP9 and requests information and comments from the public on these proposed U.S. positions.

XVI. Conclusion of the meeting

1. Determination of the Time and Venue of the Next Regular Meeting of the Conference of the Parties

No documents have been received indicating requests from possible host governments. Favor holding COP10 in a country where all Parties will be admitted without political difficulties. Support the holding of COPs on a biennial basis, or, as in the case of COP9, after an interval of two and one half years.

COP meetings energize governmental and nongovernmental organizations concerned with CITES issues to examine its implementation, and the conservation of affected species. The United States recognizes that the financial burdens of hosting a Conference of the Parties may serve to discourage developing countries from offering to serve as host, unless innovative ways can be found to provide them with financial assistance.

Request for Information and Comments

The Service invites information and comments on the proposed negotiating positions on COP9 agenda items, excluding item XV, "Consideration of proposals for amendment of Appendices I and II," which is the subject of a separate **Federal Register** notice. Information and comments on this present notice should be submitted to the Service no later than October 19, 1994.

Observers

Article XI, paragraph 7 of the Convention provides that: "Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties object: (a) International agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and (b) national non-governmental agencies or bodies which have been approved for this purposes by the State in which they are located. Once admitted, these observers shall have the right to participate but not to vote."

Persons wishing to be observers representing national non-governmental organizations in the United States must receive prior approval of the U.S. Fish and Wildlife Service. Requests for such approval should include evidence of technical qualification in protection, conservation or management of wild fauna or flora, on the part of both the organization and the individual representative. Such requests should be sent to the Office of Management Authority (see ADDRESSES, above). Copies of the letters of approval from the Office of Management Authority should be used by these organizations to inform the CITES Secretariat of their wish to send observers to the meeting. The Secretariat requires such information to be received at least one month prior to the meeting (October 6, 1994).

Approved observers should send copies of their letters of approval to the following address: CITES Secretariat, 15 chemin des Anemones, Case postale 456, CH–1219 Chatelaine-Geneve, Switzerland.

Authors: This notice was prepared by Susan S. Lieberman, Marshall P. Jones, and Mark Albert, Office of Management Authority, U.S. Fish and Wildlife Service (703/358–2093).

Dated: September 28, 1994.

Bruce Blanchard,

Acting Director.

[FR Doc. 94–24513 Filed 10–3–94; 8:45 am]

BILLING CODE 4310–55–P

Ruffe Control Committee Meeting

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Ruffe Control Committee, a regional committee of the Aquatic Nuisance Species Task Force. A number of subjects will be discussed including: recent ruffe collections in Wisconsin and Michigan water of Lake Superior, cost-benefit analysis of the proposed Ruffe Control Program, tactical planning for chemical treatments, and State and Provincial ruffe response planning.

DATES: The Ruffe Control Committee will meet from 8:30 a.m. to 5:00 p.m. on Wednesday, October 12, 1994, and 8:30 a.m. to 12:30 p.m. on Thursday, October 13, 1994. All meeting times are in Central Standard Time.

ADDRESSES: The meeting will be held at the Black River Lodge, N12390 Black River Road, Ironwood, Michigan. Minutes will be maintained by Thomas Busiahn, Chairman, Ruffe Control Committee, U.S. Fish and Wildlife Service, 2800 Lake Shore Drive East, Ashland, Wisconsin. The minutes will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Thomas Busiahn, Chairman, Ruffe Control Committee, U.S. Fish and Wildlife Service (715) 682–6186 or Jay Troxel, Coordinator, Aquatic Nuisance Species Task Force, U.S. Fish and Wildlife Service (703) 358–1718.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Ruffe Control Committee, a regional committee of the Aquatic Nuisance Species Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (P.L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 et seq., November 29, 1990).

Dated: September 23, 1994.

Conrad Fjetland,

Acting Assistant Director — Fisheries.

[FR Doc. 94–24427 Filed 10–3–94; 8:45 am]

BILLING CODE 4310–55–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information, the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (1029–0041), Washington, DC 20503, telephone 202–395–7340.

Title: Part 773—Requirements for Permits and Permit Processing.

OMB Number: 1029–0041.

Abstract: Ensures that applicants for permanent program permits or their associates, who are in violation of the Surface Mining Control and Reclamation Act do not receive or maintain surface coal mining permits.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: State Regulatory Authorities and Mining Company officials.

Annual Responses: 1,652.

Annual Burden Hours: 7,389.

Estimated Completion Time: 4.5 hours.

Bureau clearance officer: John A. Trelease (202) 343–1475.

Dated: March 3, 1994.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

Note: This document was received by the Office of the Federal Register on September 29, 1994.

[FR Doc. 94–24532 Filed 10–3–94; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32533]

Burlington Northern Railroad Company, Inc. and Protexa Burlington International—Joint Application Under 49 U.S.C. 11321

AGENCY: Interstate Commerce Commission.

ACTION: Discontinuance of Proceeding.

SUMMARY: By notice filed September 20, 1994, Burlington Northern Railroad Company, Inc. (BN), on its own behalf and for Protexa Burlington International (PBI), informed the Commission that it wished to withdraw the joint application by BN and PBI, under the Panama Canal Act, 49 U.S.C. 11321. BN's withdrawal request is granted and this proceeding is discontinued.

EFFECTIVE DATE: This notice is effective on September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for hearing impaired (202) 927–5721]

SUPPLEMENTARY INFORMATION: In their application filed June 13, 1994, applicants sought a determination that BN's ownership and operation of PBI do not violate the provisions of the Panama Canal Act. The application also sought approval of BN's continued ownership of PBI in view of the anticipated expansion of PBI's water carrier operations in Mexico. Notice of the application, served and published September 16, 1994 (59 FR 47641), called for comments to the application by October 17, 1994 and replies by November 7, 1994. BN states that it is withdrawing the application in view of a number of intervening developments, including the proposed merger of Burlington Northern Inc. and Santa Fe Pacific Corporation.

Decided: September 28, 1994.

By the Commission, Vernon A. Williams, Acting Secretary.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–24494 Filed 10–3–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) Criminal Alien Assistance Program.
(2) Office of Justice Programs, Bureau of Justice Assistance.
(3) Annually.
(4) State or local governments. Information regarding numbers, names and status of illegal criminal

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aliens and average annual cost of incarceration may be provided by the states for the reimbursement of cost of illegal criminal alien incarceration.
(5) 54 respondents @ 1 hour per response.
(6) 54 annual burden hours.
(7) Not applicable under Section 3504(h).

Public comment on, this item is encouraged.

Dated: September 28, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94-24447 Filed 10-3-94; 8:45 am]

BILLING CODE 4410-18-M

Drug Enforcement Administration

[Docket No. 92-42]

Alra Laboratories, Inc., Denial of Application for Registration

On March 4, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to Alra Laboratories, Inc. (Respondent), proposing to deny its application for registration as a manufacturer of controlled substances, on grounds that: (1) during an on-site inspection in July 1990 DEA investigators determined that although it was not registered to do so, Respondent continued to distribute and possess controlled substances in violation of 21 U.S.C. 841(a)(1) and 843(a)(2), had failed to comply with inventory and recordkeeping requirements regarding these controlled substances, and had improperly stored controlled substances together with non-controlled drugs and other materials; (2) in April 1987 Respondent was cited for failure to file periodic ARCOS reports for 1985, 1986, and the first quarter of 1987; (3) as the result of a November 1987 inspection, Respondent was issued a Letter of Admonition citing its failure to file ARCOS reports as required by 21 U.S.C. 827(d) and 21 CFR 1304.35, an accurate biennial inventory in violation of 21 U.S.C. 827(a) and 21 CFR 1304.11, and its failure to maintain effective controls against the diversion of controlled substances as required by 21 CFR 1301.71; (4) in 1986, 1988, and 1989 Respondent did not timely renew its registration; and (5) Respondent has a history of violating Food and Drug Administration [FDA] requirements pertaining to recordkeeping, documentation and good manufacturing practices.

Respondent, by counsel, filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Chicago, Illinois, on August 18 and 19, 1992.

On July 30, 1993, in her opinion and recommended ruling, findings of fact, conclusions of law and decision, the administrative law judge recommended that Respondent's application for registration be granted, contingent upon a satisfactory pre-registration investigation and upon Respondent arranging at its own expense for annual independent audits of its controlled substance handling for a period of five years after registration is granted. No exceptions were filed by either party, and on August 30, 1993, the administrative law judge transmitted the record to the Administrator. On October 13, 1993, the DEA Chief Counsel filed a request for remand with the Administrator, and on October 27, 1993, then-Administrator Robert C. Bonner remanded the case to the administrative law judge for further proceedings, noting that an indictment had been filed in the United States District Court for the Northern District of Illinois alleging that Respondent's owner had violated the Food, Drug, and Cosmetic Act (FD&C) with respect to the manufacture and distribution of prescription drugs.

On November 3, 1993, the administrative law judge rescinded her July 30, 1993 decision, reopened the record, and directed the parties to submit statements specifying the additional evidence that they wished to produce. A hearing on remand was scheduled, but canceled after the Government advised that it had no further evidence other than the indictment itself. Respondent submitted additional documents and both parties submitted argument on remand. On May 12, 1994, Judge Bittner issued her supplemental opinion and recommended ruling, findings of fact, conclusions of law and decision, in which she found that the Government had shown probable cause that Respondent's owners had committed the acts alleged, but that the Government had failed to show the criminal conduct alleged by a preponderance of the evidence. Accordingly, Judge Bittner found that there was no basis to modify her previous conclusions set forth in her July 1993 decision, and therefore she reissued that decision. No exceptions were filed by either party. On June 17, 1994, the administrative law judge transmitted the entire reord, including her original and supplemental opinions, to the Deputy Administrator.

The Deputy Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

In her supplemental opinion issued on May 12, 1994, the administrative law judge found that there was nothing on the record from the 1992 hearing or upon remand tending to prove or disprove the allegations of the August 13, 1993 indictment or the January 26, 1994 superseding indictment. The Deputy Administrator adopts this finding of the administrative law judge. Accordingly, the Deputy Administrator has not considered any of the matters offered on remand and, in this decision, will refer solely to matters on the record from the 1992 hearing.

The administrative law judge found that Respondent is a pharmaceutical manufacturer founded by Baldev Raj Bhutani, Ph.D., in 1982. Respondent was registered as a manufacturer of controlled substances by DEA on July 30, 1982, and renewed this registration in June 1983 and July 1984. Respondent developed a generic form of clorazepate dipotassium, a Schedule IV controlled substance, and received FDA approval to market it in 1988. In 1991, Respondent subsequently received FDA approval to manufacture dosage forms of the Schedule IV controlled substances propoxyphene and meprobamate, and acquired Abbreviated New Drug Applications (ANDA) for the Schedule IV controlled substance chlordiazepoxide.

The administrative law judge found that in December 1984, DEA investigators conducted a regularly scheduled investigation and determined that Respondent was generally in compliance with DEA recordkeeping requirements, except that it had never filed required Automation of Reports and Consolidated Orders System (ARCOS) reports. Dr. Bhutani was advised by DEA investigators of the proper reporting procedure for a manufacturer, and the less stringent reporting requirements under a DEA researcher registration. No further action was taken. In his testimony, Dr. Bhutani disputed this version of the events, but Judge Bittner credited the investigator's testimony, while finding Dr. Bhutani's answers to be less than wholly responsive.

In November 1987, DEA investigators conducted another periodic investigation of Respondent.

Investigators determined that Respondent still had not been filing required ARCOS reports since the previous inspection in 1984. Dr. Bhutani attributed this problem to a lack of National Drug Code (NDC) numbers for his product, but Judge Bittner again found the investigator's testimony more credible. Investigators also determined that Respondent did not have a required accurate biennial inventory, and had stored controlled substance raw material in a filing cabinet located in an unsecured and unapproved storage area. As a result of this inspection, DEA issued Respondent a letter of admonition. Respondent represented, in a subsequent letter to DEA, that he had reviewed the inventory records and corrected any errors.

The administrative law judge found that in July 1982, an investigator from the FDA determined that Respondent was not complying with mandated good manufacturing practices (GMPs) and issued a Form 482 list of deficiencies to Respondent. Subsequently, after an inspection in March 1983, FDA issued a notice of adverse findings to Respondent citing non-compliance with tamper-resistant packaging requirements. In December 1983, FDA issued a regulatory letter to Respondent regarding combination over-the-counter drugs. FDA inspections in October 1984 and November 1985 indicated that Respondent was not complying with GMPs. Another regulatory letter was issued in February 1986. Another inspection in that same month disclosed GMP deviations which let the FDA to recommend against using Respondent as a government supplier. Follow-up inspections in May and June 1986 indicated that Respondent was still not in compliance. Afterwards, the FDA considered obtaining an injunction against Respondent, but follow-up inspections in September and October 1986 indicated that Respondent was then sufficiently in compliance. Respondent was found in compliance in December 1986 and January 1987, but at the next scheduled FDA inspection in September and October 1989, GMP deficiencies were again discovered. Another regulatory letter was issued on April 30, 1990. A follow-up inspection in January 1991 revealed deficiencies that resulted in a Complaint for Forfeiture being filed in the United States District Court for the Northern District of Illinois. As a result, Respondent's prescription drug inventory was seized on March 19, 1991. On July 9, 1991, the United States District Court for the Northern District of Illinois found Respondent's drugs to be adulterated. Respondent was permitted to recondition some of these drugs and was permitted to resume operations in November 1991.

An FDA official testified at the hearing in this matter that Respondent's history was one of "just being unable to bring themselves into compliance with GMPs. * * *" Respondent testified that he disagreed with this assessment and had hired a consultant who performed a GMP audit and found only minor problems.

DEA commenced another periodic inspection of Respondent in July 1990, and discovered that Respondent's DEA registration had expired on June 30, 1989. Accordingly, Respondent was illegally selling and in possession of approximately 178,000 dosage units of the Schedule IV controlled substance clorazepate dipotassium. On July 26, 1990, DEA placed Respondent's stock of controlled substances under seal. Additionally, investigators found that Respondent had not filed timely renewal applications from 1984 through 1988. Dr. Bhutani claimed that this was due to clerical oversight.

DEA returned to Respondent on July 31, 1990, and executed a search warrant. This search determined that Respondent was using his secure storage area and safe for the storage of items other than controlled substances in violation of the regulations, and had no documentation of the registration of his controlled substance customers.

On July 26, 1990, Respondent filed an application for a new DEA registration as a manufacturer of Schedule III through V controlled substances. That application is the subject of these proceedings.

The administrative law judge found that in June of 1991, DEA investigators returned to Respondent's facility as part of the evaluation of the pending application. Investigators noted that the facility had been enlarged, that "it was a pretty * * * good looking [plant]", and that there was no controlled substance activity underway. Dr. Bhutani testified that he had designed and completed an addition to his facility in order to meet DEA requirements.

On June 1, 1992, Respondent was registered as a researcher in Schedule III through V by the DEA. Respondent hired a consultant in May 1992 to make recommendations and do follow-up consulting if the application for a manufacturer's registration is approved. This consultant testified at the proceeding that he had made many recommendations and that Respondent appeared ready to adopt procedures which would bring it into compliance with DEA requirements. Dr. Bhutani testified that some of the consultant's recommendations had in fact been implemented as of the date of the hearing.

The administrative law judge found that the Government maintained that over a ten year period, Respondent's failure to comply with GMPs and past experience in handling controlled substances gave no assurance that Respondent could conduct itself consistent with the requirements of the Controlled Substances Act (CSA) in the future. The Government further maintained that Dr. Bhutani tended to minimize the severity of Respondent's violations and blame others for its regulatory difficulties. Respondent asserted that its past violations were de minimis or due to inadvertence, and that it had demonstrated itself capable of understanding and meeting DEA requirements.

The Deputy Administrator may deny an application to manufacture controlled substances in Schedules III through V if he determines that the registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(d), "[i]n determining the public interest, the following factors shall be considered:

(1) Maintenance of effective controls against diversion of particular controlled substances and any controlled substance in Schedule III, IV or V compounded therefrom into other than legitimate medical, scientific or industrial channels;

(2) Compliance with applicable State and local law;

(3) Promotion of technical advances in the art of manufacturing these substances and the development of new substances;

(4) Prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(5) Past experience in the manufacture, distribution, and dispensing of controlled substances, and the existence in the establishment of effective controls against diversion; and

(6) Such other factors as may be relevant to and consistent with the public health and safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Deputy Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. *Henry J. Schwarz, Jr., M.D.*, 54 FR 16422 (1989).

Of the stated factors, the administrative law judge found that

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there is little if any evidence that the Respondent failed to comply with applicable State and local law, or was convicted under Federal or State law, or developed new substances or promoted technical advances. Accordingly, Judge Bittner determined that the first, fifth and sixth factors are relevant to the proceeding.

Under the first and fifth factors, the administrative law judge found that Respondent's past practices with respect to recordkeeping, reporting, and security are clearly relevant. With respect to the sixth factor, the administrative law judge found that Respondent's history of noncompliance with FDA regulations was relevant to the public health and safety. Judge Bittner found that for a number of years, Respondent's compliance with DEA and FDA regulations ranged from poor to abysmal, eventually culminating in seizure of its drug products by both the FDA and DEA. Furthermore, she found that Dr. Bhutani was less than responsive to the regulatory concerns, and tended to hold others responsible for Respondent's failures and to minimize the seriousness of the deficiencies. Judge Bittner concluded that there was a legitimate basis for the Deputy Administrator to find that the registration of the Respondent as a manufacturer of Schedule III through V controlled substances would be inconsistent with the public interest.

However, the administrative law judge recommended, "admittedly with some reservations", that the Respondent's application be granted because the Respondent has undertaken measures to improve its physical security, standard operating procedures, recordkeeping and reporting, and that Dr. Bhutani recognized that compliance with FDA and DEA requirements was mandatory for continued business operation.

The Deputy Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of administrative law judge, except as noted below.

The Deputy Administrator finds that with respect to the first and fifth factors, Respondent has failed to maintain proper records and submit reports, failed to ensure that its facility has proper security and that it was properly registered with the DEA as a manufacturer, and illegally possessed and distributed controlled substances.

The Deputy Administrator further finds with respect to the sixth factor that Respondent has a lengthy history of violations of the FD&C GMP regulations related to its activities as a manufacturer of controlled substances. A manufacturer is at the apex of the legitimate controlled substance distribution system, often producing large quantities of the most dangerous drugs of abuse, and making these controlled substances widely available to hundreds of thousands of registered controlled substance handlers for ultimate dispensing to patients. A registrant conducting the business activities of a manufacturer bears some of the heaviest responsibilities under the regulatory scheme of the CSA. Respondent, in its capacity as a manufacturer, has twice been the subject of seizures of its product: once by FDA for its adulteration of drugs, and once by DEA for illegal possession and distribution of controlled substances.

The Deputy Administrator finds that Respondent's President and founder, Dr. Bhutani, has not taken his controlled substance responsibilities seriously; has shown a history and pattern of noncompliance with Federal laws and regulations pertaining to controlled and non-controlled substances; has minimized the importance of compliance with these laws and regulations; and has, throughout the years and in the instant proceedings, been less than wholly responsive, candid, and forthright, thereby failing to evidence the type of direction and leadership to be expected of a manufacturer under the CSA.

The Deputy Administrator concludes that Respondent has not shown the commitment to compliance required of a DEA registrant, that its registration as a manufacturer of controlled substances would not be in the public interest, and that its application for registration should be denied.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 (59 FR 23637), hereby orders that the application for registration of Alra Laboratories, Inc., be, and it hereby is, denied. This order is effective on October 4, 1994.

Dated: September 27, 1994.

Stephen H. Green,

Deputy Administrator.

[FR Doc. 94-24405 Filed 10-3-94; 8:45 am]

BILLING CODE 4410-09-M

Foreign Claims Settlement Commission

Iran; Current Addresses of Claimants Requested

AGENCY: Foreign Claims Settlement Commission of the United States.

ACTION: Notice.

SUMMARY: The persons listed in the information section of this notice have claims pending against the Islamic Republic of Iran which are before the Foreign Claims Settlement Commission (FCSC) for adjudication as authorized under Title V of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (Pub. L. 99-93, approved August 16, 1985, 99 Stat. 437 (50 U.S.C. 1701 note); the "Iran Claims Act"), and the *Settlement Agreement in Claims of Less than $250,000, Case No. 86 and Case No. B38*, Award No. 483 (1990); the "Settlement Agreement"). However, these persons have failed to inform the FCSC of their current addresses. The claims of the persons listed below will be dismissed by the FCSC, unless current addresses are provided to the FCSC by October 31, 1994.

DATES: The deadline for providing an updated address is October 31, 1994.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission of the United States, 600 E Street NW., Room 6002, Washington, DC 20579, (202) 616-6975 or FAX (202) 616-6993

David E. Bradley,

Chief Counsel.

Name and last known address	Claim No. IR-
Arman, Joan Y, 1025 Eagle Lake Trail, #907, Port Orange, FL 32019	2177
Black, W. Gail, Route 1, Box 203, Roxboro, NC 27573	2390
Boodey, Madeline P., 907 Acorn Oaks, Austin, TX 78745	1805
Boyadjian, Berge V., 1285 N. Sierra Bonita Avenue, Pasadena, CA 91104	1670
Boyce, Jr., John E., c/o K. Boyce, 4155 Gates Ford Circle, Troy, MI 48098	1716
Cecil, Robert, 2201 No. Moody, Fullerton, CA 92631	2796
Dixon, Pamela Y., 2020 N.E. 30th Street, Oklahoma City, OK 73111	2139
Furnco Construction Corp., c/o R. Emsley, P.O. Box 1545, King of Prussia, PA 19406-0945	2734
Haviland, Wayne E., c/o E. Haviland, 17681 N.W. 54th Ave., Miami, FL 33054	1765
Holmes, Marvin, 3312 Granberry Drive, Dothan, Al 36303	1584
Kinney, Robert W., c/o Parson/Daniel, J.V., P.O. Box 2597, Jeddah, Saudi Arabia	1669
Moschetti, Glenn S., 38/365 SOI 47, Ladpharo Road, Bangkok Thailand	3004
Smith, Jerry L., 547 West Colorado, Amerillo, TX 79108	2044
Stewart, Van Janet, 8045 Concord Blvd. West, Jacksonville, FL 32208	3078
Stewart, Gerald, P.O. Box 16184, Lake Charles, LA 70616	1140
Svensson, Van William, 112-5 Puwa Place, Kailua, HI 96734	0181
Svensson, Mai, 3106 Granada Avenue, El Monte, CA 91731	0182
Talley, James D., 2012 Marshy Swamp Place, Knoxille, TN 37922	2500
Taylor, Donn E., c/o McDonnell Douglas, P.O. Box 206R, APO New York, NY 09671	3213
Visual Education Consultants, Inc., P.O. Box 52, Madison, WI 53701	0924
Warren, Marjorie Lee, 14104 Panay Way #169, Marina Del Ray, CA 90292	3214
Wire, Miah H., 7276 Sayre Drive, Oakland, CA 94611	3009
Wood, Wilton L., 2320 S. Wood, Dallas, TX 75233	2113
Wood, Mark, 2840 S.W. 342nd Street, Federal Way, WA 98003	1929
Wood, Callie, 2840 S.W. 342nd Street, Federal Way, WA 98003	1929

[FR Doc. 94-24457 Filed 10-3-94; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Secretary's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation: Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of partially closed meeting.

SUMMARY: The Secretary's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation was established in accordance with the Federal Advisory Committee Act (FACA) (Pub. L. 82-463)). A Notice of Establishment for the Task Force was published in the June 9, 1994, **Federal Register.** Pursuant to Section 10(a) of FACA, this is to announce the first meeting of the Task Force which is to take place on October 19 and 20, 1994.

The purpose of the Task Force is to investigate worker-management relations in the public sector and identify trends in excellence in labor-management cooperation.

Specifically, the Task Force will be asked to address the following questions:

(1) What (if any) new methods or institutions should be encouraged to enhance the quality, productivity and cost-effectiveness of public sector services through labor-management cooperation and employee participation, recognizing the broad variety of functions performed by different levels of government and various other agencies and public organizations?

(2) What (if any) changes to legal frameworks which impact on labor-management relations, including collective bargaining and civil service legislation could be considered to enhance cooperative behaviors that would improve the delivery of services by reducing conflict, duplication and delays?

(3) What (if anything) should be done to increase the extent to which workplace problems are resolved directly by the parties themselves rather than through recourse to administrative bodies and the courts?

(4) What (if anything) can be done to improve the coordination between appropriate executive and legislative bodies to enhance labor-management relations in the public sector and to create a climate where productivity improvement, innovation and risk taking are encouraged and rewarded?

(5) What conditions are necessary to enable elected political leaders, public managers, public employees and labor organizations to work together to achieve excellence in state and local government? What (if any) are the obstacles, and how can they be overcome?

(6) What examples of successful cooperative efforts are appropriate to serve as public sector models? Why have some initially successful efforts failed, and what can be done to enhance prospects for success?

TIME AND PLACE: The meeting will be held on Wednesday, October 19 from 9 a.m. to 4 p.m., in the Great Hall and Thursday, October 20 from 9 a.m. to 3 p.m. in Conference Room N-3437 A-D in the Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

AGENDA: The agenda for the meeting is as follows:

(a) Introduction of Task Force Members
(b) Legal Guidance from the Solicitor
(c) Guidance to the Task Force by the Secretary of Labor
(d) Statements by experts regarding Excellence and Labor-Management Cooperation
(e) Inquiries by Task Force members of experts
(f) Comments by interested parties on Task Force objectives (time permitting)
(g) Discussion of Task Force objectives, including, to the extent practicable, delineation of specific tasks and projected time frames for achieving such objectives
(h) Ancillary items attendant to Task Force activities.

PUBLIC PARTICIPATION: The meeting will be open to the public from 9 a.m. to 12 noon and from 1:45 p.m. until 4 p.m. on Wednesday, October 19 and from 9 a.m. to 12 noon and from 1:45 p.m. until 3 p.m. on Thursday, October 20. Seating will be available to the public on a first-come, first-serve basis. Handicapped individuals wishing to attend should contact the Task Force to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 15 copies to Mr. Charles A. Richards, Designated Federal Official, Secretary of Labor's Task Force on Excellence in State and Local Government through Labor-Management Cooperation, U.S. Department of Labor, 200 Constitution Avenue, NW, room S-2203, Washington, DC 20210. These statements will be thoroughly reviewed and become part of the record. At this stage, the Task Force is primarily interested in statements that suggest ingredients or impediments to excellence in state and local government, or which suggest other closely related areas which the Task Force might usefully review.

CLOSED PORTION OF THE MEETING: From 12 noon until 1:45 p.m. on Wednesday, October 19, and Thursday, October 20, the Task Force will meet in closed session in order to discuss internal personnel rules and practices of the Task Force, as well as personal information. This closing of the meeting is authorized by section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c)(2) and (c)(6). Personnel matters and personal matters are protected from disclosure by exemptions 2 and 6, respectively, of section 552b(c) of Title 5 U.S.C.

FOR FURTHER INFORMATION CONTACT: Mr. Charles A. Richards, Designated Federal Official, Secretary of Labor's Task Force on Excellence in State and Local Government through Labor-Management Cooperation, U.S. Department of Labor, room S-2203, Washington, DC 20210, (202) 219-6231.

Signed at Washington, DC this 28th day of September 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94-24487 Filed 10-3-94; 8:45 am]

BILLING CODE 4510-23-M

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Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of September, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,107; Gordon County Farm, Bryan Foods Div., Calhoun, GA

TA–W–30,041,; Norris/O'Bannon—A Dover Resource Co., Tulsa, OK

TA–W–29,964; Chief Drilling Co., Inc., Wichita, KS

TA–W–29,864; Philip's Consumer Electronics Co., Williamsport, PA

TA–W–29,981; Pacer Industries, Inc., Echlin Engine System, Washington, PA

TA–W–29,999; PTI Technologies, Inc., Newbury Park, CA

TA–W–29,794; Endicott Forging & Manufacturing, Endicott, NY

TA–W–29,855; ICI Fiberite, Greenville, TX

TA–W–29,955; E.F.W., Inc., Fort Worth, TX

TA–W–30,123; Envirogas, Inc., Hamburg, NY

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–30,203; Turecamo Maritime, Philadelphia, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,131; Coltec Industries, Inc., Menasco Overhaul Div., Burbank, CA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,053; Laidlaw Corp., Stockton, CA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,075; Land O'Lakes, Inc., Dalbo, MN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,973; Avery Dennison Soabor System Div., Gastonia, NC

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,128; GenCorp Aerojet Electronic System, Azusa, CA

Layoffs at the subject firm are attributable to downsizing by the Defense Department.

TA–W–29,988; AT&T Communications, Operator Service, Pittsburgh, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,156; Kinney Shoe Corp., Carlisle, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,996; US Steel Mining Co., Inc., Maple Creek Mine, Washington, PA

The mining facility close down was due to severe geological conditions which made mining economically unfeasible. The decision to close down was not impacted by any level of imports or change in level of imports.

TA–W–29,960; Schlegel Corp., Montpelier, IN

Layoffs and production declines and the subsequent closing of the subject firm is attributable to a corporate decision to consolidate operation shifting production from subject firm to other domestic facilities.

TA–W–30,114; Pet Connection, Gun Barrel City, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,058; Cogniseis Development, Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,997; The Seminole Co., Seminole, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,179; Powell Mountain Coal Co., Inc., Big Stone Gap, VA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,201; Union Pacific Resources Co., Fort Worth, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–29,931; Dresser Industries, Inc., Guiberson-AVA Div., Dallas, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–29,966; ARCO Alaska, Inc., Anchorage/North Slope/Cook Inlet, AK

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,073; Compressor Pump & Engine Machine, Inc., Casper, WY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,219; Atlas Ballistic Products, Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,142; Oliver Products Co., Grand Rapids, MI

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–30,088 & TA–W–30,88A; Value Merchants, Inc., Everything a Dollar, Inc., Milwaukee, WI & Victoria, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–29, Saft Aerospace Batteries, Gainsville, FL

A certification was issued covering all workers separated on or after January 1, 1994.

TA–W–29,940; Dalex, Inc., Redmond, OR

A certification was issued covering all workers separated on or after March 1, 1994.

TA–W–30,161; D.P. Cajal's El Paso, TX

A certification was issued covering all workers separated on or after July 15, 1993.

TA–W–30,071; Elmer Manufacturing Co., Inc., Elmer, NJ

A certification was issued covering all workers separated on or after March 30, 1993.

TA–W–30,079; Gencorp Automotive, Ionia, MI

A certification was issued covering all workers separated on or after June 15, 1993.

TA–W–30,138; Carthage Shirt Co., Carthage, TN

A certification was issued covering all workers separated on or after July 10, 1993.

W–30,177; Warnaco Men's Apparel Div., Waterville, ME

A certification was issued covering all workers separated on or after July 25, 1993.

TA–W–29,614 & TA–W–29,615; Honeywell, Inc., Home & Building Control, Golden Valley, MN and Plymouth, MN

A certification was issued covering all workers separated on or after October 1, 1993.

TA–W–30,083; Adams Millis, High Point, NC

A certification was issued covering all workers separated on or after June 29, 1993.

TA–W–29,856; Vought Aircraft Co., Dallas, TX

A certification was issued covering all workers separated on or after April 19, 1993.

TA–W–29,878; Guardian Industries Corp., Falconer, NY

A certification was issued covering all workers separated on or after April 20, 1993.

TA–W–30,162; Champion Products, Inc., Norwich, NY

A certification was issued covering all workers separated on or after July 22, 1993.

TA–W–30,007; Alaska Safety, Inc., Anchorage, AK

A certification was issued covering all workers separated on or after March 15, 1993.

TA–W–29,897; Dimensional Products, Mobile, AL

A certification was issued covering all workers separated on or after August 1, 1993.

TA–W–30,084; Adams Millis, Kernersville, NC

A certification was issued covering all workers separated on or after June 29, 1993.

TA–W–30,048 and TA–W–30,054; Robinson Manufacturing Co., Oxford, ME and Kezar Falls Woolen, Kezar Falls, ME

A certification was issued covering all workers separated on or after June 14, 1993.

TA–W–30,172; Champion Products, Inc., Slocomb, AL

A certification was issued covering all workers separated on or after July 22, 1993.

TA–W–29,638 & TA–W–29,638A; Eddie Hagger Ltd, Mt. Vernon, GA and Hartwell, GA

A certification was issued covering all workers separated on or after March 8, 1993.

TA–W–30,056; D & I Sportswear, Linden, NJ

A certification was issued covering all workers separated on or after June 20, 1993.

TA–W–29,924; Breckenridge, Div. of Leslie Fay Co., Boston, MA

A certification was issued covering all workers separated on or after May 16, 1993.

TA–W–29,958; TMBR/Sharp Drilling, Inc., Midland, TX

A certification was issued covering all workers separated on or after May 6, 1994.

TA–W–30,195; Julie Fashions II, Tuscarora, PA

A certification was issued covering all workers separated on or after July 25, 1993.

TA–W–30,199; Normak International, International Fashions, Inc., Knoxville, TN

A certification was issued covering all workers separated on or after July 29, 1993.

TA–W–30,135; R.O.M. Apparel, Inc., Brooklyn, NY

A certification was issued covering all workers separated on or after July 11, 1993.

TA–W–30,089; TA–W–30,090; TA–W–30,091; TA–W–30,092; Sara Lee Knit Products, Cleveland Ave., Martinsville, VA, Midway Plant, Midway, GA, Cloverleaf Kniting, Martinsville, VA, Central Distribution, Martinsville, VA

A certification was issued covering all workers separated on or after June 27, 1993.

TA–W–29,953; Universal/Univis, Inc., Attleboro, MA

A certification was issued covering all workers separated on or after May 24, 1993.

TA–W–30,208; R & S Tong Service, Odessa, TX

A certification was issued covering all workers separated on or after July 9, 1994.

TA–W–30,068; Thorsby Associates Corp., Thorsby, AL

A certification was issued covering all workers separated on or after June 24, 1993.

TA–W–30,152; Williamson-Dickie Manufacturing Co., Prosperity, SC

A certification was issued covering all workers separated on or after July 20, 1993.

TA–W–30,194; National Garment Co., Russellville, AR

A certification was issued covering all workers separated on or after July 26, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of August 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm or an appropriate subdivision thereof (including workers in any agricultural firm or appropriate subdivision thereof), have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly

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competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

NAFTA-TAA-00183; Transportation Manufacturing Corp., RTS Remanufacturing, Schenectady, NY

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from the workers' firm to Mexico or Canada during the relevant period. A survey of customers who purchased buses from Transportation Manufacturing Corp-RTS Remanufacturing was conducted and revealed that the customers did not increase their imports from Mexico or Canada of buses that are like or directly competitive with those produced by the subject firm.

NAFTA-TAA-00188; Continental Airlines, Inc., Houston, TX

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of the Act. The Department of Labor has consistently determined that the performance of services did not constitute production of an article as required by the Trade Act of 1974.

NAFTA-TAA-00184; Highland Yarn Mills, High Point, NC

The investigation revealed that criteria (3) and criteria (4) were not met. A survey was conducted with customers accounting the majority of the subject firm's decline in sales. The survey revealed that customers did not import yarn from Mexico or Canada during the relevant period.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-00187; D.P. Cajal's, Inc., El Paso, TX

A certification was issued covering all workers of D.P. Cajal's, Inc., El Paso, TX separated on or after December 8, 1993.

NAFTA-TAA-00197; Larson Shingle Co., Forks, WA

A certification was issued covering all workers of Larson Shingle Co., Forks, WA separated on or After December 8, 1993.

NAFTA-TAA-00198; S. Madill, Inc., Kalama, WA

A certification was issued covering all workers of S. Madill, Inc., Kalama, Washington separated on or after December 8, 1993.

NAFTA-TAA-00191; Stephanies Fashions, Inc., El Paso, TX

A certification was issued covering all workers of Stephanies Fashions, Inc., El Paso, TX separated on or after December 8, 1993.

NAFTA-TAA-00186; A&W Brands, Inc., A Subsidiary of Cadbury Beverages, Inc., Modesto, CA

A certification was issued covering all workers of A&W Brands, Inc., in Modesto, CA separated on or after December 8, 1993.

NAFTA-TAA-00185; Alaska Corp., Rowan Bay Logging, Sitka Pulp Mill, Sitka, AK

A certification was issued covering all workers of Alaska Pulp Corp., Rowan Bay Logging, Sitka, AK and Sitka Pulp Mill, Sitka, AK separated on or after December 8, 1993.

NAFTA-TAA-00181; Anchor Advanced Products, Inc., Morristown, TN

A certification was issued covering all workers engaged in the employment related to the production of cosmetic packaging at Anchor Advanced Products, Inc., Morristown, TN separated on or after December 8, 1993.

NAFTA-TAA-00182; Sola Optical USA, Inc., Muskogee, OK

A certification was issued covering all workers of Sola Optical USA, Inc., Muskogee, OK separated on or after December 8, 1993.

NAFTA-TAA-00192; ITT Cannon, Ana, CA

A certification was issued covering all workers engaged in employment related to the production of computer harness and connector parts of the Super Computer at ITT Cannon, Santa Ana, CA separated on or after December 8, 1993.

NAFTA-TAA-00193, NAFTA-TA-00194, NAFTA-TAA-00195; Vikki, Inc., Aransas Pass, TX. R. Shrimp, Inc., Aransas pass, TX and R&A, Inc., Aransas Pass, TX

A certification was issued covering all workers of Vikki, Inc., R. Shrimp, Inc., and R&A, Inc., Aransas Pass, TX separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of August, 1994. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 13, 1994.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services Office of Trade Adjustment Assistance.

[FR Doc. 94-24497 Filed 10-3-94; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,942]

Fuelco, Denver, CO.; Notice of Affirmative Determination Regarding Application for Reconsideration

On September 13, 1994, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on August 9, 1994 and published in the Federal register on August 25, 1994 (59 FR 43866).

The company submitted information indicating that the same conditions still exist when it was certified earlier under TA-W-27,295.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 19th of September 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94-24482 Filed 10-3-94; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, office of Trade Adjustment Assistance, at the address shown below, not later than October 14, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 14, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.c. 20210.

Signed at Washington, D.c. this 19th day of September, 1994.

Victor J. Trunzo,

Program manager, Policy & Reemployment Services, Office of Trade, Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
MagmeTek (Co)	Oswosso, MI	09/19/94	09/19/94	30,322	Electric motors.
Suave Shoe Corp (wkrs)	Miami Lakes, FL	09/19/94	08/31/94	30,323	Footwear.
Sara Lee Hosiery (wkrs)	Lumberton, NC	09/19/94	09/09/94	30,324	Ladies' hosiery.
Sara Lee Hosiery (wkrs)	Marion, SC	09/19/94	09/09/94	30,325	Ladies' hosiery.
Sara Lee Hosiery (wkrs)	Florence, SC	09/19/94	09/09/94	30,326	Ladies' hosiery.
Samedan Oil Corp (wkrs)	Midland, TX	09/19/94	09/09/94	30,327	Oil and gas.
Pratt & Whitney UTC (IAMAW)	North Haven, CT	09/19/94	09/07/94	30,328	Aircraft parts and engines.
Pratt & Whitney UTC (IAMAW)	Southington, CT	09/19/94	09/07/94	30,329	Aircraft parts and engines.
National—Oilwell (wkrs)	Houston, TX	09/19/94	09/10/94	30,330	Oil field supplies.
Kerr-McGee Corp (wkrs)	Oklahoma City, OK	09/19/94	08/17/94	30,331	Oil and gas.
Intera Information Technologies (Co)	Denver, CO	09/19/94	02/02/94	30,332	Consulting and software.
H.F. Butler Corp (wkrs)	Piscataway, NJ	09/19/94	09/01/94	30,333	Steel weldments.
Bodard-Hale Drilling (wkrs)	Shawnee, OK	09/19/94	09/02/94	30,334	Oil and gas drilling.
Barcos Manufacturing, Inc (wkrs)	Long Island City, NY.	09/19/94	03/03/94	30,335	Tablecloths.
Bo-Mar Mfg Co., Inc (ILGWU)	Fall River, MA	09/19/94	08/29/94	30,336	Ladies' jackets and skirts.
Aeronca, Inc (IAM)	Middletown, OH	09/19/94	09/08/94	30,337	Static airframe structures.
Babcock & Wilcox, Special Metals (wkrs)	Koppel, PA	09/19/94	08/08/94	30,338	Boiler steam tubing.
Dallas Gas & Electric/Slocum Ltd (wkrs)	Slocum, TX	09/19/94	09/06/94	30,339	Crude oil.
Moran Towing (wkrs)	Philadelphia, PA	09/19/94	09/07/94	30,340	Tugboat service.
McAllister Towing (wkrs)	Camden, NJ	09/19/94	09/07/94	30,341	Tugboat service.
Linmar Petroleum Co (wkrs)	Roosevelt, UT	09/19/94	08/19/94	30,342	Crude oil.
Kerr-McGee Chemical (wkrs)	Oklahoma City, OK	09/19/94	08/17/94	30,343	Chemicals.

[FR Doc. 94-24483 Filed 10-3-94; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,737]

United Industries, Inc., Beloit, WI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 15, 1994, applicable to all workers of the subject firm. The certification notice was published in the Federal Register on September 2, 1994 (59 FR 45711).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The Department is changing the March 25, 1993 impact date to August 25, 1994 for the subject workers at Beloit, Wisconsin because they were already covered for certification under petition TA-W-27,235 which expired on August 25, 1994.

Accordingly, the Department is amending the subject certification by deleting the old impact date of March 25, 1993 and inserting a new impact date of August 25, 1994.

The amended notice applicable to TA-W-29,737 is hereby issued as follows:

All workers of United Industries, Inc., Beloit, Wisconsin engaged in the production of stainless steel tubing who became totally or partially separated from employment on or after August 25, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 19th day of September 1994.

Victor J. Trunzo,

Program Director, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94-24481 Filed 10-3-94; 8:45 am]

BILLING CODE 1510-30-M

Employment and Training Administration

Labor Surplus Area Classification Under Executive Order 12073 and 10582; Time Extension for the Annual List of Labor Surplus Areas; Notice of Time Extension for the Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The annual list of labor surplus areas for the period October 1, 1993 through September 30, 1994, is extended until further notice. The Employment and Training Administration will continue to accept exceptional circumstance petitions for labor surplus area designations on the basis of the criteria in effect for the current annual list which is being extended. Upon completion of a conversion on the labor surplus area program, a new labor surplus area list will be announced and published in the Federal Register.

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FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, USES, Employment and Training Administration, 200 Constitution Avenue NW., Room N–4470, Attention: TEESS, Washington, D.C. 20210. Telephone: 202–219–5185.

Signed at Washington, D.C. on September 26, 1994.

Doug Ross,

Assistant Secretary.

[FR Doc. 94–24486 Filed 10–3–94; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

[NAFTA—00111]

Elf Atochem North America, Inc. Industrial Chemicals Division Tacoma, WA; Notice of Revised Determination on Reconsideration

On July 25, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for NAFTA Transitional Adjustment Assistance for former workers engaged in employment related to the production of chlor-alkali products at the subject firm.

Investigation findings show that the subject plant ceased production on April 20, 1994 resulting in the separation of all the Tacoma workers.

On reconsideration, new information was obtained showing that a major customer switched its entire purchases of sodium chlorate from the subject firm to a Canadian supplier.

Company officials indicated that they decided to close the Tacoma plant because of additional Canadian chlor-alkali capacity coming on-line.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that Elf Atochem's workers in Tacoma, Washington were adversely affected by increased imports of articles like or directly competitive with the chlor-alkali products produced at Elf Atochem, Tacoma, Washington. In accordance with the provisions of the Act, I make the following revised certification for the Elf Atochem workers in Tacoma, Washington.

All workers of Elf Atochem in Tacoma, Washington who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 22nd day of September 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–24484 Filed 10–3–94; 8:45 am]

BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of September, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,866; Whitehead Manufacturing, Detroit, MI

TA–W–29,583; Smith International, Inc., Williston, ND

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–29,944; Gage Corp., Norman, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,043; Parsons Industrial Diamond, West Hartford, CT

The preponderance of the terminations at the subject firm are attributable to the transfer of the electroplating and compounding operations to another affiliated domestic site for consolidation of the company.

TA–W–29,827; Seward Forest Products, Seward, AK

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,149; Chatham County of Wisconsin, Beloit, WI

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,810; Maxus Energy Corp., Dallas, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,811, TA–W–29,812; TA–W–814, TA–W–817; Maxus Exploration Co., Amarillo, TX, Canadian, TX, Dumas, TX, Jeanerette, LA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,818; Maxus Corporate Co., Kearny, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,819, TA–W–29,820, TA–W–29,821, TA–W–29,822, TA–W–29,823, TA–W–29,824; Maxus Exploration Co., Pampa, TX, Perryton, TX, Leedey, OK, Spearman, TX, Stinnett, TX, Dumas, TX–Sunray Gas Plant

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,989; Autoclave Engineers Group, Erie, PA

The survey revealed that none of the bids was awarded to a foreign vendor during the relevant period.

TA–W–30,223; Brown Shoe Co (Trenton Warehouse) Trenton, MO

Predominant portion of these workers' employment is dependent on corporate imports and they are not adversely impacted under the terms of the Trade Act of 1974.

TA–W–30, 105; Champion Parts Northeast Div., Beech Creek, PA

TA–W–30, 106; Champion Parts Northeast Div., Lock Haven, PA

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports or articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–30,132; Veco Drilling, Inc., Denver, CO

A certification was issued covering all workers separated on or after June 21, 1993.

TA–W–30,165; Weidmer Brothers Well Service, Tioga, ND

A certification was issued covering all workers separated on or after July 13, 1993.

TA–W–30,062; Williams Apporel, Inc., Burns, TN

A certification was issued covering all workers separated on or after June 14, 1993.

TA–W–29,962; Occidental Chemical Corp., Burlington, NJ

A certification was issued covering all workers separated on or after May 5, 1993.

TA–W–29,945; McDonnell Douglas Corp., Tulsa, OK

A certification was issued covering all workers separated on or after May 20, 1993.

TA–W–30,086; Ron Herren, Inc., Elsberry, MO

A certification was issued covering all workers separated on or after June 30, 1993.

TA–W–29,905, TA–W–29,906, TA–W–29,907, TA–W–29,908, TA–W–29,909, TA–W–29,910; Citation Oil & Gas Corp., Oklahoma City, OK, Odessa, TX-West Texos Div. Cement, OK, Lyford, TX, Odessa, TX-Rocky Mnt Div, Stratton, NE

A certification was issued covering all workers separated on or after May 10, 1993.

TA–W–30,063, TA–W–30,064, TA–W–30,065, TA–W–30,066, A & B; Woolrich, Inc., Woolrich, PA, Avis, PA, Blanchard, PA, Broomfield, CO, Woolrich, PA, Jersey Shore, PA

A certification was issued covering all workers separated on or after June 16, 1993.

TA–W–30,181; Howes Leather Co., Bartow, WV

A certification was issued covering all workers separated on or after July 19, 1993.

TA–W–29,781; Murfin Drilling Co., Inc., Wichita, KS

A certification was issued covering all workers separated on or after April 1, 1993.

TA–W–30,218; ADI Wireline, Inc., St. Morgan, CO

A certification was issued covering all workers separated on or after August 1, 1993.

TA–W–30,198; KCA Apparel, Lawton, OK

A certification was issued covering all workers separated on or after July 23, 1993.

TA–W–29, 975; Crawford Home Fashions, AKA Daisy Decorative Products, Richmond, VA

A certification was issued covering all workers separated on or after April 18, 1993.

TA–W–29,849; Nestle' Beverage Co., Freehold, NJ

A certification was issued covering all workers separated on or after April 29, 1993.

TA–W–30,188; CENEX, Inc., Exploration & Production Dept., Billings, Mt and Operating in the Following States: A; MT, B; WY, C; ND, D; NV

A certification was issued covering all workers separated on or after July25, 1993.

TA–W–30,143, TA–W–30, 144, TA–W–30,145, TA–W–30,146; Cluett Peabody & Co., Inc., Albertville, AL, Cedartown, GA, Enterprise, AL, Austell, GA

A certification was issued covering all workers separated on or after July 12, 1993.

TA–W–30,130; Cluett Peabody & Co., Inc., Atlanta, GA

A certification was issued covering all workers separated on or after August 21, 1994.

Also, pursuant to title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of September 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade act must be met:

(1) that a significant number of proportion of workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivisions have increased.

(C) that the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision: or

(2) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–000199; Babcock & Wilcox, Special metals Plant, Koppel, PA

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from the workers' firm to Mexico or Canada during the relevant period. A survey of domestic customers to whom the subject plant sold nuclear steam generator tubing revealed that none of the customers imported this product from Canada or Mexico in 1992, 1993, or during January–June 1994.

NAFTA–TAA–00206; Brown Shoe Co., Trenton Warehouse, Trenton, TN

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of the Act. The Department of Labor has consistently determined that the performance of services did not constitute production of an article as required by the Trade Act of 1974.

NAFTA–TAA–00205; Howes Leather Co., Durbin Div., Bartow, WV

The investigation revealed that criteria (3) and criteria (4) were not met. A survey was conducted with customers accounting the majority of the subject firm's decline in sales. The survey revealed that customers did not import sole leather from Mexico or Canada during the relevant period.

NAFTA–TAA–00196; H.H. Rosinsky & Co., Inc., Philadelphia, PA

The investigation revealed that criteria (3) and criteria (4) were not met. A survey was conducted with customers that decreased their purchases from the subject firm revealed that most of the respondents did not import women's dresses, suits, skirts, sportswear &

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maternity clothes from Canada or Mexico. The survey further revealed that respondents which increased their import purchases of women's dresses, suits, skirts, sportswear & maternity clothing did not account for an important portion of the firm's sales decline during the period under investigation.

NAFTA–TAA–00203; Catoosa Knitting Mills, Inc., Crossville, TN

The investigation revealed that criteria (3) and criteria (4) were not met. Catoosa Knitting Mills is a contractor, producing men's sweaters for several manufacturers. A survey conducted with the manufacturers from whom Catoosa receives contracts revealed that none of the manufacturers contracted with firms in Mexico or Canada for the production of men's sweaters & none of them imported men's sweaters from Mexico or Canada.

NAFTA–TAA–00204; Knight Engineering & Plastics, Inc., Wheeling Plant (Courtauld's Packaging) Warwood, WV

The investigation revealed that criteria (3) and criteria (4) were not met. Knight Engineering transferred production from the Warwood, WV facility to other company-owned plants in Illinois. The company stated that the primary reason for the transfer was higher operating costs at the Warwood plant.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00200; Sun GRO Horticulture, Inc., Puyallup, WA

A certification was issued covering all workers of Sun Gro Horticulture, Inc., Puyallup, WA separated on or after December 8, 1993.

NAFTA–TAA–00145; Kyocera America, Inc., San Diego, CA

A certification was issued covering all workers engaged in the production of ceramic packages at Kyocera America, Inc., San Diego, CA separated on or After December 8, 1993.

NAFTA–TAA–00201; Echlin Engine Systems, A Div. of Pacer Industries, Inc., Washington, MO

A certification was issued covering all workers of Echlin Engine Systems, a Div. of Pacer Industries, Inc., Washington, MO separated on or after December 8, 1993.

NAFTA–TAA–00209; C.R. Bards, Inc., Bard Urological Div., Wausau, WI

A certification was issued covering all workers of C.R. Bards, Inc., Bard Urological Div., Wausau, WI separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of August, 1994. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 20, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–24485 Filed 10–3–94; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunication Standards

AGENCY: National Communications System, Office of Technology and Standards.

ACTION: Notice for comment on proposed standards.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on proposed Interim Federal Standards: 001101, "Telecommunications: Land Mobile Radio, Project 25 System and Standards Definition"; 001102, "Telecommunications: Land Mobile Radio, Project 25 Common Air Interface"; 001104, Telecommunications: Land Mobile Radio, Project 25 Encryption"; 001107, "Telecommunications: Land Mobile Radio, Project 25 Transceiver Performance and Measurement Methods", and 001108, "Telecommunications: Land Mobile Radio, Project 25 Vocoder".

DATES: Comments are due on or before January 3, 1995.

ADDRESSES: Send comments to the National Communications System, Office of Technology and Standards, Attn: NT, 701 South Court House Road, Arlington, VA 22204–2198.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Fenichel, National Communications System, telephone (703) 692–7681.

SUPPLEMENTARY INFORMATION: 1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunication standards for NCS interoperability and the computer communication interface.

2. Prior to the adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Interim Federal Standards are non-mandatory.

4. Project 25 is a joint effort of the Federal Government, state government (represented by the National Association of State Telecommunications Directors), and local government (represented by the Association of Public-safety Communications Officials, International) to develop common standards for public safety Land Mobile Radios (LMR). Industry (represented by the Telecommunications Industry Association) has also been heavily involved in the Project 25 effort.

5. Proposed Interim Federal Standard 001101 will adopt Telecommunication Industry Association (TIA) TSB 102. Proposed Interim Federal Standard 001102 will adopt TIA TSB 102BAAA and TSB 102BAAB (now in draft). Proposed Interim Federal Standard 001104 will adopt TIA Interim Standard 102AAAA and National Security Agency Specification V23–94–1 (for the encryption of classified information). Proposed Interim Federal Standard 001107 will adopt TIA TSB 102CAAA and TSB 102CAAB (now in draft). Proposed Interim Federal Standard 001108 will adopt TIA Interim Standard 102BABA.

6. Requests for copies of the draft proposed Interim Federal Standards 001101, 001102, 001104, 001107, and 001108 should be directed to the National Communications System, Office of Technology and Standards, Attn: NT, 701 South Court House Road, Arlington, VA 22204–2198.

Dennis Bodson,

Assistant Manager, NCS Office of Technology and Standards.

[FR Doc. 94–24488 Filed 10–3–94; 8:45 am]

BILLING CODE 5003–25–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by October 31, 1994. Copies of materials may be obtained at the NSF address or telephone number shown below.

(A) Agency Clearance Officer. Herman G. Fleming, Division of Contracts, Policy, and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243.

Comments may also be submitted to:

(B) OMB Desk Officer. Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: NSTC Survey of Federal Laboratories Regarding their Capacity to Conduct Teacher Enhancement Programs.

Affected Public: Federal Agencies and Non-profit institutions.

Respondents/Reporting Burden: 450 respondents: One hour per response.

Abstract: Administrative staff of Federal laboratories are requested to complete a questionnaire concerning present inservice teacher enhancement programs, offered by their organizations, the subject matter emphases, and teaching populations served, and to estimate the potential for increasing services of this type. Information obtained from this survey will be used by the National Science and Technology Council for assessing the potential of Federal laboratories to contribute to improved teaching of science and mathematics in elementary, middle and senior high schools.

Dated: September 29, 1994.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 94–24480 Filed 10–3–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–397]

Washington Public Power Supply System; Notice of Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of the Washington Public Power Supply System (WPPSS, or the licensee) to withdraw its October 23, 1990, application for proposed amendment to Facility Operating License No. NPF–21 for the WPPSS Nuclear Project No. 2, located in Benton County, Washington. The proposed amendment would have revised the technical specifications to add specific action statements for the event of inoperable scram discharge volume vent and/or drain valves.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 7, 1991 (56 FR 37591). However, by letter dated September 2, 1994, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 23, 1990, and the licensee's letter dated September 2, 1994, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 27th day of September 1994.

For the Nuclear Regulatory Commission.

James W. Clifford,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–24459 Filed 10–3–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34723; File No. SR–Amex–94–39]

Self-Regulatory Organization; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing and Trading of Indexed Term Notes Based on a Portfolio of Banking Industry Securities

September 27, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 22, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to approve for listing and trading under Section 107A of the Amex Company Guide ("Guide"), Indexed Term Notes ("Notes"), the return on which is based in whole or in part on changes in the value of a static portfolio of twenty banking industry securities ("Index").[1] The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Under Section 107 of the Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[2] The Amex now proposes to list for trading, under Section 107A of the Guide, Notes whose value is based in whole or in part on the Index.

The Notes will be non-convertible debt securities and will conform to the listing guidelines under Section 107A of the Guide.[3] Although the specific

[1] The components of the Index are: Bancorp Hawaii, Inc.; Barnett Banks, Inc.; Baybanks, Inc.; City National Corp.; Corestates Financial; Crestar Financial Corp.; First American Corp.; First Chicago Corp.; Hibernia Corp.; Mercantile Bancorp.; Michigan National; Midlantic Corp.; North Fork Bancorp; Provident Bankshares; Summit Bancorp; U.S. Bancorp; UJB Financial Corp.; Union Planters Corp.; UST Corp.; and Vermont Financial Services.

[2] See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[3] Specifically, the Notes must have: (1) A minimum public distribution of one million trading units; (2) a minimum of 400 holders; (3) an aggregate market value of at least $20 million; and (4) a term of at least one year. Additionally, the issuer of the Nortes, Lehman Brothers, Inc., must have assets of at least $100 million, stockholders' equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. As an alternative to these financial criteria, the issuer may have either: (1) Assets in excess of $200 million and stockholders' equity in excess of $10 million; or (2) assets in excess of $100 million and stockholders' equity in excess of $20 million. The Exchange has filed a proposed rule change that would, among other things, reduce securities under Section 107A of the Guide from $20 million to $4 million. See File No. SR–Amex–94–36.

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maturity date will not be established until immediately prior to the time of the offering, the Notes will provide for maturity within a period of not less than one nor more than seven years from the date of issue. The Notes may provide for periodic payments and/or payments at maturity based in whole or in part on changes in the value of the Index.[4] In addition, the Notes may feature a "cap" on the maximum amount and/or a "floor" on the minimum amount to be paid periodically. Additionally, the Notes shall provide that at maturity, holders will receive not less than 90% of the initial issue price of the Notes. Prior to the commencement of listing and trading of the Notes, the Exchange shall distribute a circular to its membership providing guidance with regard to member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines.

Eligibility Standards for Index Components

The Components of the Index shall meet the following criteria at the time of issuance of the Notes: (1) A minimum market capitalization of $75 million, except that up to 10% of the component securities may have a market capitalization of not less than $50 million; (2) trading volume in each of the six months prior to the offering of the Notes of not less than one million shares, except that up to 10% of the component securities may have a trading volume in each of the six months prior to the offering of not less than 500,000 shares; (3) at least 90% of the weight of the Index and at least 80% of the total number of components will meet the then current criteria for standardized options trading set forth in Exchange Rule 915; (4) all components of the Index will be listed on the Amex or the New York Stock Exchange, or will be National market securities traded through Nasdaq; and (5) all components of the Index will be subject to last sale reporting pursuant to Rule 11Aa3–1 of the Act.

Index Calculation

The Index will be calculated using an "equal dollar-weighting" methodology designed to ensure that each of the component securities is represented in an approximately equal dollar amount in the Index. To create the Index, a portfolio of equity securities will be established by the issuer representing an investment of a specified dollar amount in each component security (rounded to the nearest whole share). The value of the Index will equal the current market value of the sum of the assigned number of shares of each of the component securities divided by the current Index divisor. The Index divisor will initially be set to provide a benchmark value of 100.00 at the close of trading on the day preceding the establishment of the Index.

The number of shares of each component stock in the Index will remain fixed except in the event of certain types of corporate actions such as the payment of a dividend (other than an ordinary cash dividend), a stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component securities. The number of shares of each component security may also be adjusted, if necessary, in the event of a merger, consolidation, dissolution, or liquidation of an issuer or in certain other events such as the distribution of property by an issuer to stockholders. Shares of a component security may be replaced (or supplemented) with other securities under certain circumstances, such as the conversion of a component stock into another class of security, the termination of a depositary receipt program, or the spin-off of a subsidiary. If the security remains in the Index, the number of shares of that security may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action.[5] In all cases, the divisor will be adjusted, if necessary, to ensure continuity of the value of the Index.

The value of the Index will be calculated continuously by the Amex and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–39 and should be submitted by October 25, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

[4] The Commission notes that the value of the Index at maturity shall not be adjusted to account for ordinary cash dividends paid on the component securities during the term of the Notes.

[5] The issuer will not attempt to find a replacement stock or compensate for the extinction of a security due to bankruptcy or a similar event.

[6] 17 CFR 200.30–3(a)(12) (1993).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24515 Filed 10–3–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34724; International Series Release No. 718; File No. SR–CBOE–94–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading Options on the CBOE Emerging Latin American Markets Index

September 27, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 20, 1994, the Chicago Board Options Exchange ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange filed Amendment No. 1 to the proposed rule change on August 18, 1994,[3] and Amendment No. 2 on September 26, 1994.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As provided in Exchange Rule 24.2, "Designation of the Index,"[5] the CBOE proposes to list for trading options on the CBOE Emerging Latin American Markets Index ("Emerging Latin American Markets Index" or "Index"). The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style[6] index options on the Emerging Latin American Markets Index. The Index will initially consist of ten[7] closed-end funds which invest in the stocks of firms in the emerging Latin American economies. According to the Exchange, no proxy for the performance of these emerging economies is currently available in the U.S derivatives markets. The Exchange believes, therefore, that options on the Index will provide investors with a low-cost means of participating in the performance of these markets and/or hedging against the risk of investing in the Latin American emerging markets.

Index Design

The Emerging Latin American Markets Index will initially consist of ten closed-end funds.[8] All of the closed-end fund components of the Index currently trade on the New York Stock Exchange.

As of September 15, 1994, the closed-end funds comprising the Index ranged in market capitalization from a low of $118.63 million to a high of $1.294 billion. The average capitalization as of that date was $313.35 million. The closed-end fund accounting for the largest percentage of the total weighting of the Index on that date was the Chile Fund Inc. (16.64%), while the smallest was the Argentina Fund Inc. (5.65%).

Calculation

The Index is price-weighted and reflects changes in the prices of the components relative to the base date of December 31, 1991. The Index value is calculated by summing the prices of the component securities and then dividing by a divisor that yielded an index value of 100.00 as of that date. The value of the Index at the close on September 15, 1994, was 168.07.

The Index will be calculated by CBOE or its designee on a real-time basis using last-scale prices and will be disseminated every 15 seconds by the Exchange. If a component closed-end fund is not currently being traded, the most recent price at which the closed-end fund traded will be used in the Index calculation.

Maintenance

The Index will be maintained by the Exchange. To maintain continuity in the Index following an adjustment to a component security, the divisor will be adjusted. Changes which may result in divisor changes include, but are not limited to, certain rights issuances.

The Exchange states that the Index will be reviewed on approximately a monthly basis by the CBOE staff. The Exchange may change the composition of the Index at any time or from time to time to reflect the changes affecting the components of the Index or the emerging Latin American markets generally. If it becomes necessary to remove a component from the Index, every effort will be made to add a closed-end fund that preserves the character of the Index. In such circumstances, the CBOE will take into account the capitalization, liquidity, volatility, and name recognition of the proposed replacement closed-end fund. The Exchange will most likely maintain nine closed-end funds in the Index at all times.

Long-Term Index Options

In addition to Index options on the full-value of the Index, the Exchange also proposes to list long-term Index option series ("LEAPS") as provided in CBOE Rule 24.9, and reduced-value Index LEAPS for which the underlying value would be computed at one-tenth (1/10th) of the value of the Index. The current and closing Index value of any such reduced-value Index LEAPS will, after such initial computation, be rounded to the nearest one-hundredth. Other than the reduced value, all other

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] In Amendment No. 1, the Exchange proposes to treat the CBOE Emerging Latin American Markets Index as a narrow-based index for purposes of margin and position limit treatment. Pursuant to CBOE Rule 24.4A, the position limits for the CBOE Emerging Latin American Markets Index would initially be set at 7,500 contracts. See Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Senior Counsel, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated August 18, 1994 ("Amendment No. 1").

[4] In Amendment No. 2, the CBOE proposes to expand the CBOE Emerging Latin American Markets Index to ten securities by adding the Emerging Mexico Fund as a component security. *See* Letter from Scott Lyden, Senior Research Analyst, Research Department, CBOE, to Brad Ritter, Senior Counsel, OMS, Division, Commission, dated September 26, 1994 ("Amendment No. 2").

[5] Exchange Rule 24.2 provides, in part, that the Commission must approve a particular index upon which options are traded.

[6] European-style options can only be exercised during a specified period before the options expire.

[7] *See* Amendment No. 2, *supra* note 4.

[8] The components of the Index are the: Latin American Discovery Fund Inc.; Latin American Equity Fund Inc.; Latin America Investment Fund Inc.; Argentina Fund Inc.; Brazilian Emerging Mexico Fund; Mexico Equity and Income Fund Inc.; and Mexico Fund Inc. *Id.*

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specifications and calculations for the reduced-value Index LEAPS will remain the same.

Exercise and Settlement

Index options will have European-style exercise and will be "A.M.-settled index options" within the meaning of the rules in Chapter XXIV of the Exchange's rules.[9] The CBOE proposes to amend Rule 24.9 to refer specifically to Emerging Latin American Markets Index options. The Exchange states that the proposed Index options would expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

Exchange Rules Applicable

Except as modified in the proposal, the Rules in Chapter XXIV of the Exchange's Rules regarding narrow-based indexes will be applicable to Index options.[10] Pursuant to Exchange Rule 24.4A, Index option contracts based on the Emerging Latin American Markets Index will be subject to position limits of 7,500 contracts.[11] For purposes of position and exercise limits, Index LEAPS will be aggregated with Index options on a one for one basis. Under the proposal, ten reduced-value Index LEAPS contracts will equal one full-value Index option or Index LEAP for purposes of aggregating positions. The Exchange represents that it has the necessary systems capacity to support new options series that would result from the introduction of Index options an Index LEAPS.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it will provide investors with an opportunity to invest in options based upon the Emerging Latin American Markets Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest.

[9] Under CBOE Rule 24.9, A.M.-settled index options are settled based on an index value derived from opening prices on the last day of trading prior to expiration.

[10] *See* Amendment No. 1, *supra* note 3.

[11] *Id.*

[12] 15U.S.C. 78f(b)(5) (1988).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–94–25 and should be submitted by October 25, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

[13] 17 CFR 200.30–3(a)(12) (1933).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24516 Filed 10–3–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34729; File No. SR–NSCC–94–16]

Self Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Modifying Comparison Procedures for Corporate Bond and Unit Investment Trust Transactions and Modifying the Fee Structure for Correction Fees

September 27, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 9, 1994, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will modify NSCC's trade comparison procedures for corporate bond and unit investment trust ("UIT") transactions and corresponding correction fees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Since 1993, NSCC has been redesigning its bond comparison system to accelerate the processing (*i.e.*, submission and comparison) of bond transactions to achieve higher rates of

[1] 15 U.S.C. 78s(b)(1) (1988).

trade comparison at earlier points in the comparison process. NSCC believes accelerated processing will help to increase certainty and reduce risk in the clearance and settlement of debt transactions. The first phase of this redesign process enhanced the processing of transactions in municipal securities and was implemented by NSCC on August 13, 1993.[2] The primary purpose of the current proposed rule change is to expand the accelerated comparison system to include the processing of transactions in corporate bonds and UITs. the proposed rule change also will permit NSCC to provide comparison services for baby bonds (*i.e.*, corporate bonds having a par value of less than $1,000) and new issue trading. The proposed rule change also will modify the fee structure for correction fees.

Under the proposed rule change, the cutoff time for submission of original trade input for all corporate bond and UIT transactions will be moved from 1:00 p.m. on the day following trade date ("T+1") to 2:00 a.m. on T+1. These trades will be reported back to members by 8:00 a.m. on T+1. Adjustments to original trade input will have to be made prior to the time specified by NSCC on T+1, which will be 6:00 p.m.

NSCC will accept trade input for trade-for-trade processing of corporate baby bonds. If transactions are submitted as a mixed lot (*i.e.*, submissions including baby bonds and round lots), the baby bond and the round lot portions of the transaction will be separated by NSCC upon input.

At the option of members, corporate bond and UIT transactions will be compared when the net buy side and sell side aggregate principal amounts can be matched for a particular security, even if the relevant principal amounts are specified in more than one buy side and/or more than one sell side submission, if the transactions would have been compared had such buy side and sell side principal amounts each been specified on a single submission.

Because correction processing occurs at the New York and American Stock Exchanges and at the National Association of Securities Dealers before the trade input is transmitted to NSCC, Add-by-Seller tickets, as well as Delete-by-Seller, Delete Add-by-Seller and Delete-by-Buyer instructions, will no longer be accepted under the proposed rule.[3] This change is being proposed in order to standardize correction processing.

NSCC will provide comparison services for corporate bond new issue transactions on the same basic terms and conditions as are currently provided for municipal securities transactions with the exception of syndicate takedown processing.[4] Original trade input for new issue corporate bond transactions will be accepted until the third day prior to the initial settlement date for the issue. Original input may set forth either (1) A final settlement price and a settlement date that is either the initial settlement date or a specified number of days after the initial settlement date or (2) a dollar price. Original trade input that is submitted between three and five days prior to the initial settlement date but does not set forth a final settlement price and settlement date or does not set forth a dollar price will be treated as regular input. Any corporate bond new issue transactions that remain uncompared at the opening of business on the day prior to the initial settlement date will be deleted from NSCC's system.[5]

NSCC's fee structure relating to correction fees will be amended to reflect that correction capabilities will be accelerated in conformity with comparison capabilities. These fee changes will conform all bond correction fees to the fees implemented in connection with municipal securities transaction processing in that participants will be charged for supplemental input on or after T+1.[6] Currently, NSCC charges participants for supplemental input relating to corporate bond and UIT transactions on or after T+2. In addition, the bond system correction fees for "don't know" and "questioned trade" input will be deleted because NSCC no longer processes such transactions. The proposed rule change also makes certain conforming changes and deletions to NSCC's Procedures in order to reflect greater uniformity in NSCC's bond comparison system and to eliminate certain language which has become obsolete.

The proposed changes to NSCC's comparison procedures should help achieve higher rates of trade comparison at earlier points in the comparison process and thus increase certainty and reduce risk in the clearance and settlement of corperate bond and UIT transactions. Moreover, the expansion of corporate bond processing to cover baby bond and new issue transactions will promote the prompt and accurate clearance and settlement of securities transactions. Therefore, NSCC believes the proposed rule change is consistent with Section 17A of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not solicited or received any comments. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule, or

[2] For a detailed description of the municipal securities phase of the bond comparison system, refer to Securities Exchange Act Release No. 32747 (August 13, 1993), 58 FR 44530 (File No. SR–NSCC–93–2) (order approving a proposed rule change establishing a program relating to comparison procedures for municipal securities transactions).

[3] For a complete description of the New York Stock Exchange, American Stock Exchange and National Association of Securities Dealers corrections processing systems, refer to Securities Exchange Act Release Nos. 26773 (May 1, 1989), 54 FR 20227 (File No. SR–NYSE–89–03) (order approving the New York Stock Exchange's system for the resolution of uncompared transactions); 28069 (May 29, 1990), 55 FR 23324 (File No. SR–AMEX–90–01) (order approving the Intra-Day Comparison System for resolving uncompared transactions); and 28583 (November 1, 1990), 55 FR 46120 (File No. SR–NASD–89–25) (order granting accelerated approval of amendment to proposed rule change relating to the Automated Confirmation Transaction Service).

[4] NSCC defines "new issue" transactions in this context to mean transactions which are to settle on the initial settlement date for an issue or a specified number of days after the initial settlement date.

[5] This means that some new issue transactions may not be able to be put through the entire range of available trade resolution procedures prior to being dropped. In the extreme case, new issue submissions made on the second day prior to the initial settlement date that do not compare will be dropped without any opportunity for resolution. These unresolved trades will be reported on a separate unresolved trade report, and any trade dropped without the opportunity for resolution may be resubmitted after the initial settlement date.

[6] For a detailed description of NSCC's correction fees or municipal securities transactions, refer to Securities Exchange Act Release No. 34193 (June 10, 1994), 59 FR 31284 (File No. SR–NSCC–94–08) (notice of filing and immediate effectiveness of a proposed rule change modifying NSCC's fee schedule for correction fees).

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(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–94–16 and should be submitted by October 25, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

[FR Doc. 94–24517 Filed 10–3–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34730; File No. SR–NYSE–94–03]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Adoption of New Rule 123A.46

September 27, 1994.

On February 22, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new Rule 123A.46 pertaining to members' representation of multiple orders.

The proposed rule change was published for comment in Securities Exchange Act Release No. 34343 (July 11, 1994), 59 FR 36243 (July 15, 1994). No comments were received on the proposal.

Currently, the NYSE Rules do not place any limitations upon members who represent orders for more than one customer at the same time and on the same side of the market. New Rule 123A.46 will require such members and member organizations (including "upstairs" trading personnel) to inform customers if their orders may not receive an execution in time priority of receipt, or may not receive an equal or proportional split.

For example, if a broker was representing three not held orders to buy stock, one for 100,000 shares, and two for 50,000 shares each, and the broker executed a trade for 12,000 shares, the broker will be permitted under Rule 123A.46 to (1) allocate all 12,000 shares to the customer who entered the order first (time priority), (2) split the trade equally by giving 4,000 shares to each customer, or (3) split the trade proportionally to the customer orders, *i.e.*, 6,000 shares, 3,000 shares and 3,000 shares. Under these circumstances, the new rule will not require NYSE members to make a disclosure to its customers. However, if the execution would be split in any other manner, the member will be required by Rule 123A.46 to disclose this information to its customers prior to representing the multiple orders, unless the terms of the order provides for a different split.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[3] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission believes that new NYSE Rule 123A.46 will benefit investors by requiring that they are informed of the manner in which their orders will be executed should a member represent multiple orders on the same side of the market. The rule specifies that in this situation, members may execute the customer orders in time priority of receipt, or split the execution equally among the orders or proportionally based upon the size of the orders. If members who represent multiple orders on the same side of the market allocate executions in any other manner, they must first inform their customers. Customers would then have the ability to withdraw their orders if they so desire.

The Commission believes that requiring members to notify customers if their orders may be executed other than in the specified manners allows investors to better monitor the representation of their orders and helps to ensure that their orders are being handled fairly and equitably. By requiring such executions or notification to customers, investors are assured that their orders will not be executed in a manner which they believe may be disadvantageous to their interests.[4]

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (SR–NYSE–94–03) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24518 Filed 10–3–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20589; 812–9002]

AMCAP Fund, Inc., et al.; Notice of Application

September 28, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: AMCAP Fund, Inc.; American Balanced Fund, Inc.; The American Funds Income Series; The American Funds Tax-Exempt Series I; The American Funds Tax-Exempt Series II, American High-Income Municipal Bond Fund, Inc.; American High-Income Trust; American Mutual Fund, Inc.; American Variable Insurance Series; The Bond Fund of America, Inc.; Capital Income Builder, Inc.; Capital World Bond Fund, Inc.; Capital World Growth and Income Fund, Inc.; The Cash Management Trust of America; EuroPacific Growth Fund; Fundamental Investors, Inc.; The Growth Fund of America, Inc.; The Income Fund of America, Inc.; Intermediate Bond Fund of America; The Investment Company of America; Limited Term Tax-Exempt Bond Fund of America; The New Economy Fund; New Perspective Fund, Inc.; SMALLCAP World Fund, Inc.; The Tax-Exempt Bond Fund of America, Inc.; The Tax-Exempt Money Fund of America; The U.S. Treasury Money Fund of America; Washington Mutual Investors Fund, Inc. (collectively, the "Funds"); and Capital Research and Management Company ("CRMC").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) of the Act, and rule 2a–7 thereunder; under sections 6(c) and 17(b) from section 17(a)(1); and under section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting them to offer a deferred compensation plan to certain directors and members of their advisory boards, under which the directors and advisory board members may elect to have their deferred compensation adjusted at a rate equal to the rate of return of shares of one or more investment companies of the American Funds Group.

FILING DATE: The application was filed on May 16, 1994, and amended on July 22, 1994. Applicants have agreed to file an additional amendment during the notice period. This notice reflects the changes to be made by such additional amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 24, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 333 South Hope Street, 52nd Floor, Los Angeles, California 90071.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 942–0583, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is an open-end, diversified management investment company registered under the Act. With the exception of The Investment Company of America, which is a Delaware corporation, each of the Funds is either a Massachusetts business trust or a Maryland corporation.

2. Each Fund is governed by a board of directors/trustees, a majority of whom are not "interested persons" of the Funds within the meaning of section 2(a)(19) of the Act. CRMC, a subsidiary of The Capital Group, Inc., serves as investment adviser to each of the Funds. In addition, certain of the Funds employ advisory boards, as defined in section 2(a)(1) of the Act, whose members ("Advisors") consult from time to time with CRMC and Fund directors, primarily with respect to such Fund's investments or management. No director or Advisor employed by CRMC or its affiliated companies (other than the Funds) or by Washington Management Corporation ("WMC") (the business manager for three of the Funds) or its affiliates receives any remuneration from the Funds.

3. Applicants request an exemptive order to permit the Funds to offer certain deferred compensation plans ("Plans") to their directors who are not employees of either CRMC or its affiliates or WMC or its affiliates (the "Non-Employee Directors")[1] and their Advisors (collectively, the "Participants").[2] Applicants request that the exemption requested, other than the exemption from section 13(a)(3), which is requested only for certain of the Funds that are named as applicants, also apply to any open-end management investment company that is advised by CRMC in the future.

4. The purpose of the Plans is to permit Participants to defer receipt of all or a percentage of the fees otherwise payable to them by such Fund. Fees deferred under a Plan, and any earnings thereon, are not subject to federal or state income taxation until actually received by the Participants or their beneficiaries.

5. Each of the Plans became effective upon adoption by the board of directors of the relevant Fund, prior to the filing of the application for an exemptive order. An order is required for the Plans because the Funds wish to use returns on investment companies in The American Funds Group (which encompasses all of the Funds named as applicants, with the exception of the American Variable Insurance Series) to determine the amount of earnings and gains or losses allocated in respect of a Participant's deferred compensation account ("Deferred Payment Account"); this feature may not be implemented without SEC approval. Pending receipt of SEC approval, each Plan provides that compensation deferred by a Participant under a Plan will be credited to the Participant's Deferred Payment Account in the form of cash, and credited with earnings in an amount equal to the yield on 90-day U.S. Treasury Bills. Any conversion of previously credited cash amounts will be effected at the net asset value of the relevant Fund(s) as of the date of any order granting exemptive relief or an appropriate date thereafter.

6. Compensation deferred under a Plan is credited to a Deferred Payment Account established in the name of each Participant on the books of the relevant Fund on the date on which it would otherwise have been credited to a Participant. Participants may select one or more Funds in The American Funds Group, in which their deferred compensation will be deemed to be invested in the form of fictional shares ("Phantom Shares") of the Fund(s) selected by a Participant for purposes of crediting earnings and determining payments. Participants will receive periodic statements, at least annually, showing the balance credited to their respective Deferred Payment Accounts. A Participant's benefits under a Plan are not transferable or assignable, except in the event of death. If a Participant dies at any time before all amounts in his or her Deferred Payment Account have been paid, such remaining amounts will be paid in a lump sum as soon as

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[7] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] 15 U.S.C. 78f(b) (1988).

[4] In this regard, the Commission recently approved a proposal by the NYSE that placed limits on intra-day trading by floor brokers. The Commission stated in its approval of these intra-day trading limitations that it is not inconsistent with the Act for a self-regulatory organization to limit certain types of trading activity in order to minimize interference with the execution of public customer orders and preserve the quality of its market. See Securities Exchange Act Release No. 34363 (July 13, 1994), 59 FR 36808 (July 19, 1994). The discussion in that approval order is incorporated herein by reference.

[5] 15 U.S.C. 78s(b)(2) (1988).

[6] 17 CFR 200.30–3(a)(12) (1993).

[1] Most of the Non-Employee Directors are not "interested persons" of the Funds as defined in section 2(a)(19) of the Act. However, one Non-Employee Director may be deemed an interested person due to membership on the board of directors of the parent company of a registered broker-dealer.

[2] The Plans are substantially similar to deferred compensation plans which previously were offered by certain of the Funds (the "Pre-Existing Plans") for which no-action relief was requested and granted by the Commission. *See American Balanced Fund, Inc.* (pub. avail. Feb. 13, 1984). All of the Pre-Existing Plans now have been terminated.

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practicable to the Participant's designated beneficiaries.

7. Except in the case of Funds that are money market funds, a Fund sponsoring a Plan will be under no obligation to a Participant to purchase, hold, or dispose of any underlying shares of any Fund in order to exactly match its obligations to credit or charge Participants' Deferred Payment Accounts with the earnings and gains or losses attributable to any Phantom Shares. Nevertheless, if underlying shares of any Funds are purchased by a Fund for matching purposes, any and all such shares will continue to be a part of the general assets and property of such Fund. Amounts credited to a Participant's Deferred Payment Account are not evidenced by any note or other security, or funded or secured in any way. In addition, no assets of a Fund will be segregated for the account of any participant; Participants' will be general unsecured creditors of the relevant Fund for payments due under any Plan. The obligations under a Plan will be reflected as a liability on the books of the relevant Fund.

8. Participants in any Plan may elect to transfer to such Plan any amounts deferred by the Participant under any Pre-Existing Plan offered by the relevant Fund. Amounts transferred from Pre-Existing Plans will continue to earn a rate equal to the yield on 90-day U.S. Treasury Bills (as provided under the Pre-Existing Plans). Conversion to Phantom Shares of amounts transferred to the Plans from accounts under the Pre-Existing Plans will be effected at the net asset value of the relevant Fund(s) as of the date of any other granting exemptive relief or an appropriate date thereafter.

Applicants' Legal Analysis

1. Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) permits an investment company to borrow funds or issue senior securities only as described in the recitals of policy contained in its registration statement, unless authorized by its shareholders. Applicants assert that the Plan contain none of the characteristics of senior securities that led Congress to enact the restrictions on the issuance of such securities. The Funds would not be borrowing for securities speculation. All liabilities created by a accruals under a Plan will be offset by assets of its corresponding Fund, which would not otherwise exist if Participants' compensation were paid on a current basis. Applicants also believe that, given the common existence of deferred compensation plans today, the Plans will not confuse shareholders, complicate the valuation of a Fund's shares, convey a false sense of safety, or be inconsistent with the theory of mutually of risk.

2. Section 13(a)(3) prohibits an investment company from deviating from the fundamental investment policies set forth in its registration statement without authorization by the vote of a majority of its outstanding voting securities. Applicants request an exemption from this section to enable the Funds named in the application to purchase shares of investment companies in The American Funds Group as underlying securities for their Participants' Deferred Payment Account without shareholder approval. Most of the Funds have fundamental investment policies that prohibit them from purchasing the securities of other investment companies.[3] This policy would prevent the Funds from purchasing shares of any other Funds in The American Funds Group without shareholder approval. Each Fund will disclose the existence of the Plans in its prospectus and, if applicable, the exception to its fundamental policies for which relief is requested herein in its statement of additional information. Applicants content that the value of the underlying securities will be *de minimis* in relation to the total net assets of each Fund. Furthermore, the value of the underlying securities held by a particular Fund in respect of a Participant's Deferred Payment Account would at all times equal the value of the Fund's obligations to pay deferred fees in respect of the corresponding Phantom Shares credited to such account. Consequently, changes in the value of such underlying securities would not affect the value of shareholders' investments. Thus, permitting the Funds to invest in underlying securities without obtaining the shareholder approval required by section 13(a)(3) would result in no harm to shareholders.

3. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or any affiliated person of such person, from selling any security to such investment company. This section was designed to prevent sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated or to acquire controlling interests in such enterprises. The sale of securities issued by a Fund pursuant to a Plan would not involve Congress' concerns in enacting this section, but would merely facilitate the matching of a Fund's liability for a Participant's deferred fees with the underlying securities that would determine the amount of such Fund's liability.

4. Section 22(f) prohibits a registered open-end investment company from restricting the transferability or negotiability of any security of which it is the issuer unless the restriction is disclosed in its registration statement, and does not contravene rules and regulations prescribed by the SEC. The section was designed to bar only those restrictions on transferability or negotiability that were either not disclosed to the holder of the security or were expressly prohibited by SEC rules and regulations. Applicants assert that neither of these circumstances would apply to the restriction on transferability of a Participant's benefits under a Plan; such restrictions are clearly set forth in the Plans and do not adversely affect the interests of the Participants or of any Fund shareholder.

5. Section 22(g) prohibits a registered open-end investment company from issuing any of its securities for services or for property other than cash or securities. The provision was intended to prevent the dilutive effect on the equity and voting power of the equity of an open-end company that could result from the issuance of securities for consideration not readily value. Applicants believe that the Plans do not have this effect, particularly in view of current disclosure requirements applicable to directors' compensation. Moreover, a Fund's obligation to make payments under a Plan would not be "issued" for services or for property other than cash or securities. Although any Participant's fees which become payable to the Participant would be for services rendered to the relevant Fund, any such fees would become payable independently of the Plans.

6. Rule 2a–7 provides that the current price per share of any money market fund may be computed by use of the amortized cost method or the penny rounding method, provided the fund meets certain conditions. These conditions include requirements that the fund (a) limit its investments to securities that have a remaining maturity of 397 days or less and meet certain credit quality standards, and (b) does not maintain a dollar-weighted average portfolio maturity that exceeds 90 days. Applicants request an exemption from rule 2a-7 for each Fund that is a money market fund solely to the extent necessary to permit each such Fund to invest in underlying securities (and to exclude underlying securities in calculating its dollar-weighted average maturity) so that an exact match with the investments chosen by the participants from such Funds can be achieved. Such an exemption would ensure that the deferred fees will not affect net asset value. The amounts involved will in all cases be *de minimis* in relation to the total net assets of each fund, and will have no effect on the per share net asset value of the Fund (since any increase or decrease in the value of the underlying securities will be precisely offset by a simultaneous increase or decrease in the value of the Fund's liability for deferred fees).

7. Section 6(c) provides that the SEC may, by order upon application, conditionally or unconditionally exempt any person, security or transaction from any provisions of the Act, if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) provides that any person may file with the SEC an application for an order exempting a proposed transaction of the applicant from one or more provisions of section 17(a), provided that the terms of the proposed transaction are reasonable and fair, the transaction is consistent with the policy of each registered investment company concerned, and is consistent with the general purposes of the Act. Applicants believe that the requested exemption meets the standards of sections 6(c) and 17(b).[4]

8. Section 17(d) and rule 17d–1 thereunder are designed to limit or prevent a registered investment company's joint or joint and several participation with an affiliated person in a transaction on a basis different from or less advantageous than that of the affiliated person. Applicants note that, while the Plans do possess profit-sharing characteristics, they do not have the effect of placing any Fund on a basis different from or less advantageous than that of any Participant. The effect of a Plan is merely to defer the payment of fees that the corresponding Fund otherwise would be obligated to pay on a current basis as services are performed by the Participants, enabling the fees to remain as part of the Fund's general assets and property.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. If a Fund purchases shares issued by an affiliated Fund, the Fund will vote such shares in proportion to the votes of all other holders of shares of the affiliated Fund.

2. Any Fund that is a money market fund that values its assets by the amortized cost or penny-rounding methods will buy and hold shares in the Funds selected by a Participant that determine the performance of Deferred Payment Accounts to achieve an exact match between the liability of any such Fund to pay deferred fees and the assets that offset that liability.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24519 Filed 10–3–94; 8:45 am]

BILLING CODE 8010–01–M

[3] An exemption from section 13(a)(3) is not necessary for the EuroPacific Growth Fund, the SMALLCAP World Fund, Inc., or the Capital World Growth and Income Fund, Inc., whose fundamental policies permit them to invest up to 5% of their assets in shares of other open-end investment companies. Applicants do not expect the Plans to cause these limits to be exceeded.

[4] Applicants represent that, except for the investment policies of certain Funds which prohibit such Funds from purchasing the shares of another investment company, the Funds meet all of the standards for relief under section 17(b). The Funds' qualification for relief under section 17(b)(2) therefore is premised on the assumption that the relief requested from section 13(a)(3) is granted.

[Investment Company Act Release No. 20588; 811–7112]

Nuveen Select Maturities Municipal Fund 2; Notice of Application

September 28, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Select Maturities Municipal Fund 2.

RELEVANT ACT SECTION: Order requested under Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on February 16, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 24, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606–1286.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Law Clerk, at (202) 942–0654, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is registered as a closed-end, diversified management investment company organized as a Massachusetts business trust. On August 21, 1992, applicant filed a registration statement on Form N–2 under section 8(b) of the Act and under the Securities Act of 1933. The registration statement became effective on October 23, 1992, and the public offering of applicant's shares commenced soon thereafter.

2. On March 18, 1993, applicant's board of trustees approved an agreement and plan of reorganization and liquidation providing for the transfer of substantially all of the assets of applicant to Nuveen Select Maturities Municipal Fund, a closed-end, diversified management investment company organized as a Massachusetts business trust. In exchange, the agreement provided for the issuance of shares of Nuveen Select Maturities Municipal Fund and the assumption by Nuveen Select Maturities Municipal Fund of substantially all of applicant's liabilities. In accordance with Rule 17a–8, the trustees of applicant determined that the reorganization was in the best interests of applicant and that the interests of applicant's shareholders would not be diluted as a result.[1]

3. A registration statement on Form N–14 was filed with the SEC on April 30, 1993, and the proxy statement/prospectus contained therein was furnished to applicant's shareholders. On July 28, 1993, at applicant's annual

[1] Rule 17a–8 provides relief from the affiliated transaction prohibition of Section 17(a) of the Act for a merger of investment companies that may be affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

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shareholder meeting, shareholders of a majority of the outstanding voting shares of applicant approved the agreement and plan of reorganization and liquidation.

4. On July 28, 1993, the effective date of reorganization, applicant had 4,490,556 shares outstanding, with a net asset value per share of $11.68. On that date, Nuveen Select Maturities Municipal Fund distributed to applicant's shareholders, in exchange for their shares, shares of Nuveen Select Maturities Municipal Fund (or cash in lieu of fractional shares) of aggregate net asset value equal to the aggregate net asset value of their respective interests in applicant.

5. The expenses attributable to the acquisition of applicant by Nuveen Select Maturities Municipal Fund, including SEC registration fees, printing, accounting, and legal expenses, amounted to $155,211. These expenses were allocated between applicant and Nuveen Select Maturities Municipal Fund pro rata in proportion to their respective assets, except that Nuveen Select Maturities Municipal Fund paid all SEC registration fees.

6. Applicant has no remaining assets, outstanding debts, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no shareholders, and is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

7. Applicant intends to file a certificate of dissolution in accordance with the laws of the Commonwealth of Massachusetts.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24520 Filed 10–3–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0551]

Furman Selz SBIC, L.P.; Notice of Issuance of a Small Business Investment Company License

On May 27, 1994, a notice was published in the **Federal Register** (59 FR 27644) stating that an application had been filed by Furman Selz SBIC, L.P., 230 Park Avenue, New York, New York, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business June 27, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–0551 on August 22, 1994, to Furman Selz SBIC, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 26, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–24466 Filed 10–3–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 06/06–0309]

SBIC Partner, L.P.; Notice of Issuance of a Small Business Investment Company License

On June 15, 1994, a notice was published in the **Federal Register** (59 FR 30830) stating that an application has been filed by SBIC Partner, L.P., 201 Main Street, Forth Worth, Texas, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given to until close of business July 14, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 06/06–0309 on August 22, 1994, the SBIC Partner, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 26, 1994.

Robert D. Stillman,

Associate Administrator for Investment

[FR Doc. 94–24467 Filed 10–3–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 09/09–0398]

Sorrento Growth Partners I, L.P.; Notice of Issuance of a Small Business Investment Company License

On May 25, 1994, a notice was published in the **Federal Register** (59 FR 27094) stating that an application had been filed by Sorrento Growth Partners, I, L.P., 4225 Executive Square, San Diego, California, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business June 24, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09–0398 on September 19, 1994, to Sorrento Growth Partners I, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 26, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–24468 Filed 10–3–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice 94–15]

Commercial Space Transportation Advisory Committee Open Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Wednesday, October 19, 1994, from 8:30 a.m. to 5 p.m. in room 2230 of the Department of Transportation's headquarters building at 400 Seventh Street SW., in Washington, DC. This will be the twentieth meeting of the COMSTAC. In addition to reports from the respective COMSTAC Working Groups, the meeting will provide, among other things, an update of the COMSTAC recommendations on the National Space Transportation Policy, a presentation from the Office of the U.S. Trade Representative regarding the space launch trade agreements, and a legislative update on Congressional activities involving commercial space transportation. This meeting is open to the interested public; however, space may be limited. Additional information may be obtained by contacting Ms. Linda H. Strine at (202) 366–2980.

Dated: September 29, 1994

Frank C. Weaver

Director, Office of Commercial Space Transportation.

[FR Doc. 94–24590 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

RTCA, Inc.; Special Committee 147 Forty-Seventh Meeting; Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92–463, 5 U.S.C., appendix I), notice is hereby given for Special Committee 162 meeting to be held November 28–29, 1994, starting at 9 a.m. The meeting will be held at the RTCA Conference room, 1140 Connecticut Avenue NW., suite 1020, Washington, DC 20036.

Agenda will be as follows: (1) Chairman's introductory remarks; (2) Review of meeting agenda; (3) Approval of the minutes of the forty-sixth meeting held on August 11–12, 1994; (4) Chairman's report regarding September 12, 1994 Technical Management Committee meeting; (5) Report of working group activities: (a) Operations Working Group (b) Separation Assurance Task Force (c) Requirements Working Group (d) Enhancements Working Group; (6) Report on FAA TCAS program activities: (a) TCAS I (b) TCAS II (c) TCAS III (d) ATC Applications Activities; (7) Review of international activities/issues; (8) Review and update of verification and validation process; (9) Review of action items from last meeting; (10) Other business; (11) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC., on September 27, 1994.

Steve Zaidman,

Acting Designated Officer.

[FR Doc. 94–24499 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

[Treasury Order Number 102–16]

Delegation of Authority to the Assistant Secretary (Management) to Accept Gifts and Bequests to the Department of the Treasury; Delegation

By virtue of the authority vested in the Secretary of the Treasury by 31 U.S.C. 321(b), I hereby delegate all authority granted to the Secretary under 31 U.S.C. 321(d) to the Assistant Secretary (Management)/Chief Financial Officer to accept, hold, administer and use gifts and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Department of the Treasury. Gifts and bequests of money and proceeds from sales of other property received as gifts and bequests shall be deposited in the Treasury in a separate fund and shall be disbursed on order of the Assistant Secretary (Management). The Assistant Secretary (Management)/Chief Financial Officer may redelegate or assign any authority delegated by this Order.

Dated: September 28, 1994

Lloyd Bentsen,

Secretary of the Treasury.

[FR Doc. 94–24479 Filed 10–3–94; 8:45 am]

BILLING CODE 4810–25–P

Fiscal Service

Surety Companies Acceptable on Federal Bonds Liquidation; Covenant Mutual Insurance Company

Covenant Mutual Insurance Company, a Connecticut Corporation, formerly held a Certificate of Authority as an acceptable surety on Federal bonds and was last listed as such at 57 FR 29368, July 1, 1992. The Company's authority was terminated by the Department of the Treasury effective March 3, 1993. Notice of the termination was published in the **Federal Register** of March 24, 1993, on page 15896.

On May 4, 1994, upon petition by the Insurance Commissioner of the State of Connecticut, the Superior Court of the Judicial District of Hartford/New Britain at Hartford, of the State of Connecticut, issued an Order placing Covenant Mutual Insurance Company into Rehabilitation. Mr. Robert R. Googins, the Insurance Commissioner of the State of Connecticut, was appointed as the Rehabilitator of the Company. By subsequent order dated May 4, 1994, the Connecticut Court authorized the Rehabilitator to liquidate Covenant Mutual Insurance Company in its entirety. All persons having claims against Covenant Mutual Insurance Company must file their claims, by December 31, 1994, or be barred from sharing in the distribution of assets.

All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. It is recommended that Federal Agency claimants asserting priority status under 31 USC 3713 who have not yet filed their claim should do so, in writing, to: Department of Justice, Civil Division, Commercial Litigation Branch, P.O. Box 875, Ben Franklin Station, Washington, DC 20044–0875, Attn: Ms. Sandra P. Spooner Deputy Director.

The above office will be consolidating any and all claims against Covenant Mutual Insurance Company, on behalf of the United States Government. Any questions concerning filing of claims may be directed to Ms. Spooner at (202 FTS) 724–7194.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, Telephone (202/FTS) 874–6905

Dated: September 28, 1994.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 94–24453 Filed 10–3–94; 8:45 am]

BILLING CODE 4410–35–M

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UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: On October 4–5, the Commission will meet at the American Center in Prague with U.S. Information Agency Public Affairs Officers from U.S missions in Eastern Europe and the New Independent States of the former Soviet Union to discuss public diplomacy objectives and programs in the region.

FOR FURTHER INFORMATION: Please call Betty Hayes, (202) 619–4468.

Dated: September 29, 1994.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 94–24514 Filed 10–3–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 191

Tuesday, October 4, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, October 11, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 30, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–24637 Filed 9–30–94; 4:06 pm]

BILLING CODE 6210–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND PLACE: 9:30 a.m., Thursday, October 6, 1994.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6308A—Aviation Accident Report: Stall and Loss of Control on Final Approach, Atlantic Coast Airlines/United Express Flight 6291, Jetstream 4101, Columbus, Ohio, January 7, 1994

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: September 30, 1994

Ray Smith,

Alternate Federal Register Liaison Officer.

[FR Doc. 94–24636 Filed 9–30–94; 2:59 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 3, 10, 17, and 24, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 3

There are no meetings scheduled for the Week of October 3.

Week of October 10—Tentative

Thursday, October 13

9:00 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 17—Tentative

Tuesday, October 18

10:30 a.m. and 1:30 p.m

All Employees Meetings (Public Meetings) on "The Green" Plaza Area between buildings at White Flint

(Contact: Beth Hayden, 301–415–8200)

Thursday, October 20

10:00 a.m.

Briefing on Medical Use Program and Meeting with Advisory Committee on Medical Use of Isotopes (ACMUI) (Public Meeting)

(Contact: Janet Schlueter, 301–415–7894 or Torre Taylor, 301–504–1062)

12 noon

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 24—Tentative

Wednesday, October 26

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: Dr. Andrew Bates, (301) 504–1963.

Dated: September 29, 1994.

Andrew L. Bates,

Chief, Operations Branch, Office of the Secretary.

[FR Doc. 94–24591 Filed 9–30–94; 10:47 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 3, 1994.

An open meeting will be held on Wednesday, October 5, 1994, at 11:00 a.m., in Room 1C30. Closed meetings will be held on Wednesday, October 5, 1994, following the 11:00 a.m. open meeting, and on Thursday, October 6, 1994, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session, and determined that this was the earliest practicable time to provide notice of the open meeting.

The subject matter of the open meeting scheduled for Wednesday, October 5, 1994, at 11:00 a.m., will be:

1. The Commission will hear oral argument on an appeal by George Salloum, former head trader of Thomas James Associates, Inc., and by the Commission's Division of Enforcement, from an administrative law judge's initial decision. For further information, please contact Kermit B. Kennedy at (202) 942–0879.

The subject matter of the closed meeting scheduled for Wednesday, October 5, 1994, following the 11:00 a.m. open meeting will be:

Post oral argument discussion.

The subject matter of the closed meeting scheduled for Thursday, October 6, 1994, at 10:00 a.m., will be.

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Regulatory matter regarding financial institutions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions
Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070

Dated: September 30, 1994

Jonathan G. Katz,

Secretary.

[FR Doc. 94–24686 Filed 9–30–94; 8:45 am]

BILLING CODE 8010–01–M

Federal Register

Tuesday
October 4, 1994

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Parts 1355, 1356, and 1357
Family Preservation and Support Services Program; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1355, 1356, and 1357

RIN 0970–AB34

Foster Care Maintenance Payments, Adoption Assistance, Child Welfare Services

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administration for Children and Families is proposing to amend existing regulations pertaining to child and family services to implement a new services program, "Family Preservation and Support Services," subpart 2 of title IV–B of the Social Security Act.

This new subpart aims to promote family strength and stability, enhance parental functioning, and protect children through funding n capped entitlement for States and eligible Indian tribes to develop, establish, expand, and operate family preservation services and community-based family support services, which the law defines broadly.

To receive funding in FY 1995, States and eligible Indian tribes are required to submit a five-year plan, which must be developed jointly by the State or Indian tribe and ACF after broad consultation with appropriate public and nonprofit private agencies and community-based organizations with experience in administering programs of services for children and families, including family support and preservation services. The plan may be submitted at any time after completion of the planning processes but no later than June 30, 1995.

In order to reduce administrative burden and emphasize the potential for a more comprehensive effective child and family services system, the regulations propose to consolidate this plan with similar plan requirements under title IV-B, subpart 1, "Child Welfare Services." In addition, we propose to require that the plan include information on three closely related child and family services programs: the Independent Living Program under Section 477 of the Social Security Act; and two State formula grants under the Child Abuse Prevention and Treatment Act: Part I, Basic State grants and Part II, Medical Neglect/Disabled Infants State grants.

DATES: In order to be considered, comments on this Notice of Proposed Rulemaking must be received on or before December 5, 1994.

ADDRESSES: Please address comments to Commissioner, Administration on Children, Youth and Families, P.O. Box 1182, Washington, DC, 20013, Attention: Dan Lewis.

ACF will not accept comments by FAX.

It would be helpful if agencies and organizations submitted copies in duplicate. Two weeks after the close of the comment period, all comments and letters will be available for public inspection in Room 2070, 330 C Street, SW., Washington, DC 20201, Monday through Friday between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT:

(1) Carol Williams, Associate Commissioner, Children's Bureau, Administration on Children, Youth and Families or

(2) Dan Lewis, Deputy Associate Commissioner, Children's Bureau, Administration on Children, Youth and Families, Telephone (202) 205–8622 or (202) 205–8618

SUPPLEMENTARY INFORMATION: The preamble to this Notice of Proposed Rulemaking (NPRM) is organized as follows:

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A. Overview
B. Enactment of New Legislation: Family Preservation and Support Services
C. Previous Legislation: Adoption Assistance and Child Welfare Act of 1980 (Pub.L. 96–272)
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I. Introduction

A. Overview

While many public, private, and nonprofit entities provide a wide range of services to families in need, the primary governmental responsibility for child and family services rests with the States. Each State has its own legal and administrative structures and programs that address the needs of children and families.

The Federal government assists States, and, under some programs, Indian tribes, to provide services to children and families through a variety of block grants; formula grants; discretionary grants; and national efforts in the areas of research, evaluation, technical assistance, and data collection.

Title IV–B of the Social Security Act has been a part of the Act since its inception in 1935. Historically, title IV–B has provided Federal formula grants to States to establish, extend, and strengthen child welfare services. Services are available to all children including the disabled, homeless, neglected, and dependent. Title IV–B grants to Indian tribes were first awarded in FY 1983.

Closely related programs include title IV–E of the Social Security Act (an open-ended entitlement program providing funds to States for foster care maintenance and adoption assistance payments and a formula grant program providing funds for independent living services for youth); title XX of the Social Security Act (the social services block grant which States use to fund a wide range of social services); State formula grants to assist States to provide child abuse and neglect prevention, intervention, and treatment services; the Head Start program; and in recent years, a number of discretionary grant programs, e.g., Abandoned Infants, Temporary Child Care and Crisis Nurseries, the Comprehensive Child Development Program, and the Family Resource and Support program.

B. Enactment of New Legislation: Family Preservation and Support Services

In August, 1993, under the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, Congress amended title IV–B to change the name of the title from "Child Welfare Services" to "Child and Family Services;" create a new subpart 1 entitled "Child Welfare Services" from existing statutory language; and add a new subpart 2, "Family Preservation and Support Services." (42 U.S.C. 630–635)

The FY 1994 appropriation for this new legislation (subpart 2) is $60 million. Of this amount, $2 million is reserved for Federal evaluation, research, and training and technical assistance; $600,000 is reserved for grants to Indian tribes. The balance is available for grants to States to fund planning and services for family support and family preservation.

For FY 1995, the authorization increases to $150 million. Of this amount, $6 million is reserved for Federal evaluation, research, and training and technical assistance; $1.5 million is reserved for grants to Indian tribes. A new program of grants to State courts will be initiated at a funding level of $5 million. The balance is available for grants to States for family preservation and family support services.

C. Previous Legislation: Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272)

Enactment of a new subpart 2 to title IV–B of the Social Security Act is the first major change in this title since the amendments made by Pub. L. 96–272, the Adoption Assistance and Child Welfare Act of 1980.

The goals of that legislation were to:

- Prevent the unnecessary separation of children from their families;
- Improve the quality of care and services to children and their families; and
- Ensure permanency for children through reunification with parents, through adoption, or through another permanent living arrangement.

These goals have not been fully realized. A wide variety of reasons have been suggested by researchers and practitioners, including:

- Social, cultural, and economic changes (increases in substance abuse, community violence, restructuring of the economy, poverty, and homelessness, for example), which have affected the number of families coming to the attention of child welfare agencies and the severity of their problems;
- Rising rates of child abuse and neglect reports, particularly for child sexual abuse;
- A child welfare system unable to keep up with these increased demands, given constrained resources, high caseloads, and overburdened workers;
- Services planning that focuses most resources on crisis intervention (e.g., investigation and placement) and too few on prevention and treatment;
- Lack or shortage of services that fit the real needs of families and often are available only when families are in crisis; and
- The isolation of the child welfare services system from other services needed by vulnerable families, such as housing, employment, and substance abuse services.

Acknowledging that the system was not working for our most vulnerable children and their families, Congress amended title IV–B to provide States and eligible Indian tribes with new Federal dollars for preventive services (family support services) and services to families at risk or in crisis (family preservation services).

This legislation provides a new opportunity for States and local communities and eligible Indian tribes to review their current strategies for meeting the service needs of children and their families, identify service gaps and barriers to coordination of services, and develop and carry out a comprehensive five-year plan for providing a continuum of services to families and their children.

D. Family Preservation and Family Support: Services and Principles

As one part of our implementation plan, ACF convened a series of focus groups on family preservation and family support services in the fall of 1993. Both the discussion at the focus groups and the literature on professional practice reflected general agreement on the goals for family support and family preservation services. These services should be directed towards:

- Assuring the safety of all family members;
- Enhancing parents' ability to create safe, stable, and nurturing home environments that promote healthy child development;
- Assisting children and families to resolve crises, connect with necessary and appropriate services, and remain safely together in their homes whenever possible; and
- Avoiding unnecessary out-of-home placement of children, and helping children already in out-of-home care to be returned to and be maintained with their families or in another planned, permanent living arrangement.

Family support services are primarily community-based preventive activities designed to alleviate stress and promote parental competencies and behaviors that will increase the ability of families to successfully nurture their children; enable families to use other resources and opportunities available in the community; and create supportive networks to enhance child-rearing abilities of parents and help compensate for the increased social isolation and vulnerability of families.

Examples of community-based family support services and activities include:

- Respite care for parents and other caregivers;
- Early developmental screening of children to assess the needs of these children and assistance in obtaining specific services to meet their needs;
- Mentoring, tutoring, and health education for youth; and
- A range of center-based activities (informal interactions in drop-in centers, parent support groups) and home visiting activities.

Family preservation services typically are services designed to help families alleviate crises that might lead to out-of-home placement of children; maintain the safety of children (and other family members) in their own homes; support families preparing to reunite or adopt; and assist families in obtaining services and other supports necessary to address their needs in a culturally sensitive manner. (If a child cannot be protected from harm without placement, family preservation services are not appropriate).

Examples of family preservation activities and services include:

- Intensive preplacement preventive services;
- Respite care for parents and other caregivers (including foster parents);
- Services to improve parenting skills and support child development;
- Follow-up services to support adopting and reunifying families;
- Services for youth and families at risk or in crisis; and
- Community-based intervention and advocacy services for victims of domestic violence and their dependents.

Guiding Principles

Both family support and family preservation services are based on a common set of principles or characteristics which help assure their responsiveness and effectiveness for children and their families. Focus group participants frequently pointed out that, while various models of services or programs are available, it is an approach based on these principles that should provide an organizing framework for planning for these new services.

The principles emphasize safety for all family members; a family-focused approach while allowing for individual needs; and a service delivery approach that stresses flexibility, accessibility, coordination, and respect for cultural and community strengths. (See 45 CFR 1355.25)

E. Development of Family Support and Family Preservation Services

Family support and family preservation services are not new. They date back to the turn of the century, e.g., Hull House and the settlement house movement. Recently, however, there has been increased interest in such programs.

Over the last several years, State and local governments, foundations, national organizations, nonprofit agencies, and professional organizations have begun to develop and implement family support and family preservation programs; push for change in child welfare programs, including reform of State laws and policies to support "family-centered practice;" and experiment with changing the way child welfare services are organized and

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delivered, including strengthening linkages with other agencies and resources and moving toward greater community direction and control of services.

A few examples of such efforts include the American Public Welfare Association's policy on *Commitment to Change*, the "decategorization of funding" and collaborative planning efforts in a number of States, the Children's Trust Funds and Children's Cabinets, and support for demonstrations of improved planning and child welfare service delivery from the Edna McConnell Clark Foundation, the Annie E. Casey Foundation, and the Kellogg Foundation.

Today, there are a variety of models of family preservation providing services to families at risk or in crisis. These models differ in level of intensity, services approaches, duration of services, and entrance parameters. Specific program models include Homebuilders, the Families First programs, Family Services America programs, and Maryland's Intensive Family Services program.

Also, today, there are hundreds of community-based family support programs nationwide including center-based models (family resource centers); school-based models; home-based models, including home visiting programs; and models that combine several approaches, such as Parents and Teachers, the Home Instruction Program for Preschool Youngsters (HIPPY), and the Healthy Families America initiative. The Family Services America programs are considered both family preservation and family support.

Many Indian tribes and tribal organizations also have developed and implemented family-centered or family-based services, including family preservation and family support programs. Tribal programs may be center-based, home-based (include home visiting), or contain elements of both. Most programs seek to build on family strengths and use traditional and cultural activities as a part of their services approach.

Several Federal programs or initiatives also have focused on prevention, family-centered practice, and a community-based approach. Some examples include:

- The Head Start Bureau's Family Services and Family Support Projects, and Parent and Child Centers;
- The National Comprehensive Child Development Program demonstration;
- The National Center on Child Abuse and Neglect's State community-based prevention grants associated with Children's Trust Funds;
- The National Family Support Resource Center and the National Family-Based Services Resource Center (beginning in 1994, it will be known as the National Family-Centered Practice Resource Center) funded by the Children's Bureau;
- The Family and Youth Services Bureau's Family Resource and Support program;
- The Public Health Services' (PHS) "Healthy Start" program;
- The Office of Community Services' Family Support Centers (homeless families demonstration);
- The Department of Housing and Urban Development's (HUD) Family Self-Sufficiency demonstration program; and
- The PHS Child and Adolescent Services System Program (CASSP), a planning model for coordinated mental health services for children now implemented in all States.

F. ACF Implementation of the Family Preservation and Support Services Legislation: Lessons Learned From the Field

The Administration for Children and Families (ACF) recognized that for the new program to be effective, we needed to engage in a variety of learning activities that would support the development of useful guidance and appropriate Federal regulations.

As one part of our implementation of this new legislation, we convened a series of focus groups in both the Central and Regional Offices with family support and family preservation program directors, practitioners, and experts; State, county, and city child welfare administrators; State and local agencies with experience in providing such services; representatives of Indian tribes and regional and national Tribal organizations; national advocacy, interest group, and professional organizations; representatives of national organizations representing Governors, State legislators, and counties; and parents, foster parents, and consumers of child welfare services. In addition, we met with or received written materials and recommendations from a number of other experts and practitioners in the field.

The suggestions, guidance, and information we received through this process have been invaluable to us in the development of the Program Instructions to States and Indian tribes on applying for FY 1994 funds (ACYF-PI-94-01, January 18, 1994, and ACYF PI-94-04, January 18, 1994) and this Notice of Proposed Rulemaking (NPRM):

- First, both the Program Instructions (PIs) and this NPRM follow the statutory requirements closely. In the NPRM, we have sought to avoid detailed prescriptions or requirements for specific models of services in order to allow States, Indian tribes, and local communities significant flexibility. Instead, we have identified principles of effective family support and preservation services that should guide grantees and others in conducting their planning process and designing specific services programs that meet the needs of children and families.
- Second, both the PIs and this NPRM focus on the statutory requirement for a five-year plan; they emphasize, for States and Indian tribes as appropriate, the opportunity provided by the law in making available 100 percent Federal funding for planning activities leading to the development of the five-year plan. In particular, they stress the value of a thoughtful, strategic planning process that includes broad consultation and involvement of State and local public agencies, nonprofit private agencies, parents and other consumers, representatives of professional and advocacy organizations, and community-based organizations with experience in administering programs for children and families (including family support and family preservation).
- Third, while focusing on the development and expansion of services, the PIs and this NPRM highlight the opportunity provided by the statutory requirement for broad consultation and coordination of services. In particular, we urge States and Indian tribes to use this new legislation, the new planning requirements, and the 100 percent funding as a catalyst for establishing a continuum of coordinated and integrated, culturally relevant, family-focused services for children and families regardless of funding streams. Thus, the NPRM requires consultation and coordination both within the child and family services system and among the other service delivery systems providing social, economic, and health-related support to children and their families.
- Fourth, we recognized that we could not expect coordination and collaboration across service delivery systems at the State and local level if we did not take steps toward improved coordination at the Federal level. We have been working with the Maternal and Child Health Bureau (MCHB), the Center for Mental Health Services, the Health Resources and Services Administration, the Department of Justice, and other agencies to explore and act on collaboration opportunities.

An early example of this effort to support children and family services is the discretionary announcement by the MCHB to support the State's first year family preservation and support planning process. Another example is the joint funding of a training and technical assistance center that will focus on services integration among child welfare, maternal and child health, and mental health services delivery systems.

- Finally, recommendations from the field influenced the development of our evaluation and training and technical assistance plans which are both aimed at supporting and strengthening effective service delivery for children and family services.

G. Vision for Family Preservation and Family Support Services

In passing the family preservation and support legislation, Congress recognized that new funding alone would not be sufficient to meet the goals of the legislation and Pub. L. 96-272. New or expanded services are just one element needed to improve the child and family service system. In order to ensure that services are part of a comprehensive, coordinated service delivery system that draws heavily on community-based programs in its design and implementation, States, Indian tribes, and communities are encouraged to use these new resources strategically to carry out major changes in the ways services are delivered and in the systems that deliver them.

Based on the collective views of parents, practitioners, advocates, researchers, and others who shared with ACF their concerns and hopes for strengthening the American family, the vision States, communities, and Indian tribes are encouraged to develop is of a child and family service system that:

- Keeps children and family members safe at all times;
- Builds on the resources and strengths of families;
- Offers a continuum of services to children and families that is family-focused, easily accessible, and respectful of cultural and community characteristics; and
- Links the child and family continuum of services to other community child and family services and service delivery systems (e.g., mental health, education, housing, substance abuse) and the courts, to ensure that families have access to comprehensive services to meet their individual needs.

That is, in addition to providing funds for expanding services, this new program offers States and eligible Indian tribes an extraordinary opportunity to assess and make changes in service delivery to children and families. The purpose of these changes is to assure safety and achieve improved well-being for vulnerable children and their families, particularly those experiencing, or at risk for, abuse and neglect. Because the multiple needs of these vulnerable children and families cannot be addressed adequately through categorical programs and fragmented service delivery systems, we encourage States and Indian tribes to use the planning process under the new program to help establish a continuum of coordinated and integrated, culturally relevant, family-focused services for children and families.

Among the elements that would ideally be part of the child and family services continuum, depending on family needs, are family support and family preservation services; child welfare services, including child abuse and neglect prevention, intervention, and treatment services, and foster care; and services to support reunification, adoption, kinship care, independent living, or other permanent living arrangements. Linkages to other services and service systems such as health, mental health, housing, employment, education, and child care, complete the picture of a responsive service delivery system.

Therefore, we expect that a major goal of the planning process States and Indian tribes will undertake in FY 1994-95 will be to examine the changes that are needed to make delivery of services more responsive to the needs of individuals and communities and more sensitive to the context in which they are to be delivered.

II. Section by Section Discussion of the NPRM

A. Highlights of the NPRM

1. Approach to Writing This NPRM

In implementing this new legislation, our primary aim has been to follow closely the statutory requirements as mandated by Congress. Our approach reflects not only the recommendations we received based on a broad consultation process with many outside agencies, but also our commitment to flexibility; reducing administrative burden; and supporting State and Indian tribal efforts to improve the health, development, and well-being of children, youth, and families.

Overall, we have emphasized the importance of a serious planning process and the development of a five-year plan that is a dynamic, operational document. The NPRM proposes considerable flexibility but also contains specific minimum requirements in several areas which we believe will assist States and Indian tribes to strengthen and expand services and improve service delivery.

2. Principles of Child and Family Services

As guidance to States and Indian tribes, we have included principles of services most often identified by practitioners and others as helping to assure effective services for children, youth and families. (See § 1355.25)

3. Comprehensive Child and Family Services Plan (CFSP)

We propose to consolidate into one five-year plan (rather than two plans, one of which currently is due on a one, two, or three-year cycle) all requirements applicable to the two service programs under title IV-B. These two programs are administered by the same agency, generally serve the same populations, contain similar (in some instances identical) planning requirements, and are a part of the child and family services continuum. (See § 1357.15)

4. Description of Other Services Included in the CFSP

Because services under the Independent Living Program and the Child Abuse Prevention and Treatment Act are also a part of the child and family services continuum, we propose that the CFSP describe the services provided under these funding sources and that the State explain how these funds are coordinated with and integrated into the services continuum. (See § 1357.15 (a), (n) and (o))

5. Joint Planning and Approval of the CFSP and the Annual Progress and Services Report

We have proposed an ongoing joint planning partnership to implement the statutory requirement that the CFSP may not be approved unless it was jointly developed by ACF and the State (or the Indian tribe). Both the CFSP and the Annual Progress and Services Report must be jointly developed and approved in order for a grantee to receive funding. (See § 1357.10(c) and § 1357.15(b))

6. Content of the CFSP

In designing their family preservation and family support services programs, States and Indian tribes may select the services to be provided, the target populations, and the geographic areas where services will be provided. We have not required specific "core"

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services, model service approaches, client eligibility criteria, or methods for the selection of priority populations or geographic areas.

In addition to the statutory requirement for goals, measures of progress toward the goals, and annual services reports, we propose to require that the CFSP include:

- A vision statement (§ 1357.15(g));
- Measurable objectives to implement goals (§ 1357.15(i)); and
- Brief descriptions of how family preservation and support services in the CFSP are or will be linked to other services in the child and family services continuum; how the title IV–B services will help meet the permanency planning requirements in the Act; how the child and family services continuum is designed to meet the service principles; and how the services in the continuum will be coordinated with other public services and service systems. (See § 1357.15 (o), (p), and (q))

7. Planning Processes

We have proposed flexibility but also included minimum specific requirements to implement the statutory provisions for consultation and coordination of services. (See § 1357.15 (l) and (m))

In addition, we have proposed that the State and the Indian tribe, as appropriate, collect existing or available information as the basis for planning, priority setting, targeting of services, funding decisions, and measuring progress toward the goals and objectives. (See § 1357.15(k))

8. Requirements for Indian Tribes

Taking into account the resources, needs, and circumstances of Indian tribes, we have waived some and modified other programmatic and fiscal requirements for Indian tribes. (See § 1357.15 and § 1357.50(f))

We have also proposed a procedure for allowing additional Indian tribes to become eligible in FY 1996–1998. (See § 1357.50(d))

9. Administrative Costs

We have proposed what we believe is a definition of administrative costs that will be easy for States to administer. (See § 1357.32(g))

10. Technical, Editorial, and Conforming Changes

Because 45 CFR Parts 1355, 1356, and 1357 have not been amended recently, we are taking advantage of this opportunity to make technical, editorial, and conforming changes.

We welcome comments on all aspects of the NPRM, particularly on the scope of the plan and the level of effort and usefulness of the proposed planning process.

In the regulatory text, we specify which sections are applicable to States and which are applicable to Indian tribes. In those sections that apply to both States and Tribes, we use general language such as "The CFSP must include—" to indicate that all grantees must meet this provision.

B. Section-by-Section Discussion

We are proposing major amendments in 45 CFR part 1357 and primarily technical and editorial changes in 45 CFR parts 1355 and 1356.

The most important change is found in 45 CFR 1357.15, comprehensive child and family services plan requirements, in which we propose a planning process leading to the development of a consolidated five-year plan for the two Federal child and family services programs under subparts 1 and 2 of title IV–B.

Our discussion of these proposed amendments will follow in numerical order, beginning with a change in the title of subchapter G of chapter XIII of title 45 of the Code of Federal Regulations. In the title, we propose to delete the term "child welfare" and replace it with the term "child and family services" to reflect the change in the name of title IV–B of the Social Security Act made by Pub. L. 103–66.

1. Part 1355—General

Section 1355.10 Scope

This part contains general requirements applicable to both title IV–B and title IV–E of the Social Security Act. We are proposing to clarify in § 1355.10 that the title IV–B requirements also are applicable to Indian tribes unless otherwise specified.

Section 1355.20 Definitions

In § 1355.20, we are proposing to make technical changes in four definitions and to add one new definition. The terms "ACYF" and "Commissioner" are revised to reflect a change in name and organizational structure which combined two of the Department's operating divisions (Family Support Administration and Office of Human Development Services) into the Administration for Children and Families in 1991.

The term "State" is revised to delete an outdated cross-reference to two sections in 45 CFR part 1356 and to clarify which jurisdictions are eligible for funding under titles IV–B and IV–E.

The term "State agency" is revised to reflect the requirement in sections 422 and 471 of the Social Security Act that the State title IV–B, title IV–E, and title XX (social services block grant) programs must be administered by the same State agency. An exception to this requirement for States with certain administrative structures in place on December 1, 1974, is permitted by section 103(d) of Pub. L. 96–272 and is included in the definition.

Because the Independent Living Program (ILP) is now permanently authorized under section 477 of the Social Security Act and is a part of the State's child and family services continuum, we have added a definition of the ILP in this section.

Section 1355.21 State Plan Requirements for Titles IV–B and IV–E

We are proposing a conforming amendment in § 1355.21(c) to clarify that the State and the Indian tribe must make the five-year Child and Family Services Plan and the Annual Progress and Services Reports available for public review and inspection. The requirement that the State title IV–E plan also be available is a current requirement in § 1355.21(c).

Section 1355.25 Principles of Child and Family Services

A new § 1355.25, Principles of child and family services, is proposed to be added. These general principles are provided as guidance to States and Indian tribes as they develop and operate child and family services and move towards a more coordinated service delivery system for children and families. These are the principles most often identified by practitioners and others as helping to ensure responsive and effective services, particularly for family support and preservation services.

The principles emphasize the paramount importance of the safety of all members of the family, including victims of child abuse and neglect and victims of domestic violence and their dependents. "Family preservation" does NOT mean that the family must stay together or "be preserved" under all circumstances.

At the same time, the principles reflect the goal of supporting, preserving, and strengthening families as the best way to promote the safety, well-being, and the healthy development of children. They emphasize family-focused services where family strengths are identified, enhanced, respected, and mobilized.

The service principles also address the needs of individual family members who may need protection or special treatment and whose "best interest" may be temporary care or permanent placement away from the family. They also address the need for permanency for all children, including services to emancipating youth.

In addition, the principles provide guidance in bringing about changes in State, local, and Indian tribal child and family service delivery. They emphasize the importance of accessibility, flexibility, coordination, and building on community and cultural strengths. A service delivery system organized as a continuum with linkages to other supports and programs is seen as most effective in serving children and families.

Accessibility in Relation to the Americans With Disabilities Act

Related to the principle that services should be accessible is the civil rights requirement under the Americans with Disabilities Act (ADA) for accessibility to services by the disabled. Enacted on July 26, 1990, the ADA provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodation, State and local government services, and telecommunications. The ADA defines public accommodations as facilities whose operations affect commerce and fall within twelve specified categories, including social service center establishments. Title II of the ADA governs actions by State and local governments; title III governs actions by public accommodation.

The ADA is administered by the U.S. Department of Justice (DOJ). However, most States have established a central contact, usually in the Office of the Governor or Attorney General, and questions about the ADA should be referred to that contact first. In addition, DOJ has established a technical assistance Information Line for public inquiries. The Information Line is available 24 hours daily at (202) 514–0301 (voice) or (202) 514–0381 (TDD). (This number will be replaced with a toll free 800 number in the future.) Lastly, written inquiries about the ADA may be directed to: U.S. Department of Justice, Civil Rights Division, Public Access Section, P.O. Box 66738, Washington, DC 20035–6738.

Section 1355.30 Other Applicable Regulations

This section is amended to provide an updated and corrected list of other regulations applicable to titles IV–B and IV–E. We also have indicated which regulations or which sections of the regulations apply to which titles. We have added:

- Part 30 (claims collection);
- Part 76 (drug free work place requirements);
- Parts 80, 81, 84, and 91 (implementation of the civil rights statutes);
- Part 92 (uniform administrative requirements for grants to States);
- Part 93 (lobbying restrictions);
- Part 97 (consolidated grants to insular areas); and
- Part 100 (consolidation and simplification of State plans).

We also propose to delete two regulations. The requirements in § 205.101 that identifying and organizational information must be provided by the administering agency are now incorporated into proposed § 1357.15 (e) and (f); Section 205.150 is proposed to be deleted as the cost allocation plan requirements now are found in 45 CFR part 95.

We want to call attention to a proposed change in the applicability of 45 CFR part 95, subpart A. Subpart A, Time Limits for States to File Claims, is based on section 1132 of the Act and now covers title IV–B and the Independent Living Program (as part of title IV–E). However, the States do not submit claims for the title IV–B programs or the Independent Living Program (ILP) in accordance with section 1132. Accordingly, we propose to specify that part 95, subpart A, does not apply to these programs.

The statute for both the ILP and title IV–B, subpart 2, requires that funds be expended (liquidated) within two years. For these two programs, States (and Indian tribes participating in the subpart 2 program) must file a Standard Form SF–269 expenditure report 90 days after the end of the two-year expenditure period. Therefore, other time limits to file claims are not applicable, i.e., subpart A of part 95.

We have proposed in § 1357.30(i) a two year expenditure period for title IV–B, subpart 1 funds. If approved, this change will have the operational effect of requiring an SF–269 expenditure report for all three programs.

States typically have no difficulty in accounting for their expenditures within the two year period. Therefore, we see no need to keep title IV–B funds open on an extended basis as currently allowed in subpart A of part 95. We believe this provision has been burdensome administratively to both Federal and State offices.

2. Part 1356—Requirements Applicable to Title IV–E

In § 1356.10, we have revised the language to indicate that part 1356 now contains requirements applicable to the Independent Living Program.

A new § 1356.80, Independent Living Program (ILP), is added to summarize the statutory provisions applicable to this program.

3. Part 1357—Requirements Applicable to Title IV–B

Section 1357.10 Scope and Definitions

Paragraph (a) of § 1357.10 is revised to expand the scope of part 1357 to include the new subpart 2 of title IV–B (family preservation and support services).

Paragraph (b) of this section is amended to provide that the services under both subparts 1 and 2 of title IV–B must be available on the basis of the need for the service and may not be denied on the basis of income or length of residence in the State or the Indian tribe's jurisdiction. This general eligibility statement does not preclude a State or an Indian tribe from selecting populations or geographic areas to which family preservation and family support services will be targeted nor from moving toward Statewideness of child welfare services as required in Section 422 of the Act.

In paragraph (c), we have revised the three definitions currently in paragraph (c) and added five definitions or clarifications of the following terms: children, community-based services, families, family preservation services, and family support services. The following three definitions are revised:

a. The current definition of "Child welfare services plan (CWSP)" is revised to reflect the broader, more comprehensive scope and content of the proposed "Child and Family Services Plan (CFSP)."

b. The revised definition of "Child welfare services" (title IV–B, subpart 1) is taken verbatim from section 425 of the Act. We propose to include this language because we believe that as many public and private agencies and organizations work together to provide new and more effective services and bring about changes in how services are delivered, a clear understanding of the purposes to which child welfare services are directed would be helpful.

c. The current definition of "Joint planning" is revised to propose a revitalized partnership process between ACF and the State and between ACF and the Indian tribe in the development and implementation of child and family services programs. This process is intended to be characterized by mutual respect and shared responsibility on the part of all participants.

Joint planning is required for approval of the five-year Child and Family Services Plan (section 432(b) of the Act)

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and is proposed for the development and approval of the Annual Progress and Services Report (§ 1357.15(b)(4)).

We view joint planning as a process of discussion, consultation, and negotiation between the parties. It also may include Federal technical assistance, as needed. Through joint planning, State and Federal staff, and Indian tribes and Federal staff, with appropriate consultation and participation of other State, local, and community-based stakeholders, review and discuss key strategic decisions such as:

- Priorities for services and for target populations;
- Proposed goals and objectives;
- Unmet needs, services gaps, and overlaps in funding;
- Other funding resources available to provide the services needed;
- The State and local organizations, foundations, and agencies with which the State or Indian tribe can consult and coordinate services;
- Ongoing plans to move toward the goals and objectives by improving the service delivery system and ensuring a more efficient comprehensive system of care for children and families; and
- Methods for reviewing progress toward the selected goals and objectives.

Joint planning also includes Federal guidance and technical assistance after the plan has been developed and approved. This is provided through follow-up review and discussion of progress in accomplishing the goals and objectives identified in the plan and updating the plan as appropriate.

The following new definitions and clarifications of terms are proposed:

a. The term *children* refers to individuals from birth to the age of 21, with special emphasis on serving youth, adolescents, and young adults because too often they are overlooked as child and family services are developed.

This proposed language is not intended to supersede a State's legal definition of child, children, or age of majority. Rather, it is intended to emphasize that there are no age restrictions for the purpose of providing services to children under title IV–B.

b. The term *community-based services* refers to service programs characterized by accessibility and responsiveness to individual, family, and community needs and which may be provided by public or private nonprofit agencies or organizations including community-based organizations. The proposed language is intended as guidance to States and Indian tribes in identifying and working with those local agencies and organizations whose services are most likely to exemplify the principles of child and family services in 45 CFR 1355.25.

c. The term *families* is proposed to include persons needing services regardless of their family configuration. The language of the new family support and family preservation legislation explicitly refers to biological, adoptive, foster, and extended families as recipients of these services. Several agencies, organizations and focus group participants urged that we use the broadest possible language in this definition, e.g., "families as defined by themselves." Although we did not include this phrase in the proposed definition, we are in general agreement with its intent.

d. The proposed definitions of the terms *family preservation services* and *family support services* are taken from the statute. (Section 431 of the Act) In addition, language from the Conference Report has been added to provide additional examples of family support services.

The literature on professional practice and the discussion at the focus groups reflected general agreement on the goals for family support and family preservation services. These services should be directed towards:

- Enhancing parents' ability to create safe, stable and nurturing home environments that promote healthy child development;
- Assisting children and families to resolve crises, connect with necessary and appropriate services, and remain safely together in their homes;
- Avoiding unnecessary out-of-home placement of children; and
- Helping children already in out-of-home care to be returned to and be maintained with their families or in another planned, permanent living arrangement.

Currently, a number of program models, approaches, and levels of family preservation services are in operation. In this NPRM, the term "family preservation" is used to include all such service options. We do not plan to require and do not endorse any specific program model for implementation. Some activities, such as respite care, home visiting, and assistance in obtaining services, may be considered either a family support or a family preservation service.

Section 1357.15(a) Scope

Section 1357.15 contains the requirements we are proposing for the development of the comprehensive five-year Child and Family Services Plan (CFSP). We solicit comment on the overall requirements of the plan and welcome suggestions which could result in minimizing the collection and analysis of information and the reporting requirements in the plan.

This section consists of twenty-two paragraphs (a) through (v). The paragraphs cover discrete topics such as general provisions related to scope, eligibility for funds, and required assurances; paragraphs on the specific content of the comprehensive plan, including a vision statement, goals, and objectives; requirements for the description of the services to be provided, the populations to be served, and the geographic areas to be targeted; specific proposals for the planning process leading to the development of the plan; and other provisions focused on the continuum of services, permanency planning efforts, and other statutory requirements.

Paragraph (a)(1) of this section specifies the overall scope of the plan by proposing the consolidation into one comprehensive five-year plan of both the family preservation and family support services and the child welfare services programs under title IV–B of the Social Security Act.

Paragraph (a)(2) proposes that the plan must include information on the Independent Living Program (ILP) and two formula grant programs under the Child Abuse Prevention and Treatment Act (CAPTA).

Paragraph (a)(3) clarifies that some requirements in § 1357 apply only to States, some apply only to Indian tribes, and some apply to both as specified.

Overall, paragraph (a) is based on section 432 of the Act (subpart 2) which requires States and eligible Indian tribes to submit a five-year plan for family preservation and family support services. It is also based on section 422 of the Act (subpart 1) which requires a State plan for child welfare services.

We elected to consolidate the planning and reporting requirements for the two title IV–B programs for several reasons. Child welfare services and family preservation and family support services are both a part of the child and family services continuum; both programs are administered by the same agency and address common problems of the same population of children and families. In addition, focus group participants urged us to consolidate planning, application requirements, and program reporting, where possible.

Currently under subpart 1, States and Indian tribes may submit their child welfare services plan at one, two, or three year intervals. Combining the planning and reporting requirements for subparts 1 and 2 will reduce the number of plans and, consequently, the administrative burden. More importantly, one comprehensive plan will assist both States and Indian tribes to plan for and make more effective use of resources and develop a more integrated, coordinated, and family-focused service system.

We considered requiring States to consolidate three additional programs in the CFSP—the Independent Living Program (ILP) under title IV–E, section 477; and the two child abuse and neglect formula grant programs under the Child Abuse Prevention and Treatment Act (CAPTA): Part I (Basic State grants) and Part II (Medical Neglect/Disabled Infants State grants) (sections 107(a) and 107(g) of CAPTA).

However, although the ILP and the CAPTA programs are both a part of the State's child and family services continuum, and their inclusion in the CFSP would reinforce and strengthen the comprehensiveness and usefulness of the CFSP, the current statutory and administrative requirements in these three programs are barriers to consolidation at this point. We may propose the inclusion of additional programs in the CFSP at a future date.

Instead, paragraph (a)(2) proposes to require that the State's CFSP must contain the same descriptive services information on the ILP and the two CAPTA formula grant programs as on other child and family services. (See 45 CFR 1357.15(n)) We believe that the inclusion of this information will facilitate ongoing coordination, consultation, and joint planning efforts among these programs and assist States to move toward a more comprehensive service delivery system. In addition, representatives of the ILP and CAPTA programs will be involved in the development and implementation of the CFSP, e.g., the consultation, and other processes leading to the development of goals and objectives and the required description of services in the plan. (See paragraph (l) of this section.)

Although there are barriers to requiring the ILP in the plan, there is nothing to prohibit a State from including in the CFSP the information needed to receive annual ILP funding. Section 477 of the Act requires that the annual ILP application be submitted prior to February 1. As long as this date is met, States may submit the required program and fiscal information and assurances either in the CFSP or by the statutory due date. For example, States could submit information for the FY 1996 ILP application either as a part of the FY 1995 CFSP (due June 30, 1995) or by January 31, 1996. If a State elects to consolidate the ILP application information into the CFSP, funding for the independent living program will not be withheld in the event that a State's CFSP is not approved for reasons unrelated to the ILP program.

States and Indian tribes may, and are encouraged to, include additional child and family services programs in the CFSP, at their option. (See 45 CFR 100.12.)

Section 1357.15(b) Eligibility for Funds

Paragraph (b) specifies the eligibility requirements for receipt of funds under title IV–B, subparts 1 and 2.

Paragraph (b)(1) requires that, in order to receive FY 1995 title IV–B funding, States and Indian tribes must submit for approval a five-year Child and Family Services Plan (CFSP). In order to receive funding in subsequent years, States and Indian tribes must submit for approval an Annual Progress and Services Report that meets the statutory and regulatory requirements of title IV–B, subparts 1 and 2.

Assuming that Congress appropriates the necessary funds, FY 1995 funds will be available when the CFSP has been submitted and is approved; FY 1996 funds will be available in FY 1996 based on the projected FY 1996 services information included in the CFSP. FY 1997 funds will be available in FY 1997 based on the Annual Progress and Services Report due to ACF June 30, 1996.

Paragraph (b)(2) states the requirements in section 432 (a) and (b) of the Act that a plan will be approved only if it was developed through a process of joint planning between ACF and the State (or the Indian tribe), and only after broad consultation by the State (and the Indian tribe as indicated) with appropriate public and nonprofit private agencies and community-based organizations with experience in administering programs of services for children, youth and families.

Paragraph (b)(3) proposes to require that the Annual Progress and Services Report will be approved only if it was developed through a process of joint planning between ACF and the State (or the Indian tribe) and if it meets the requirements of § 1357.16 of this Part.

Paragraph (b)(4) proposes to give the State and the Indian tribe the option of submitting the FY 1995–1999 CFSP and the FY 1996 Annual Progress and Services Report in the format of its choice, but requires that these two documents be submitted to the appropriate ACF Regional Office no later than June 30, 1995.

Section 1357.15(c) Assurances

We are proposing in § 1357.15(c) that the CFSP must contain the assurances applicable to both title IV–B programs.

Once signed by the appropriate official, the assurances will remain in effect on an ongoing basis (not just during the five-year plan) and will need to be re-submitted only if significant changes in the State's or the Indian tribe's program affects an assurance.

In the interest of clarity and convenience for grantees, ACYF will develop a compilation of all assurances for the two title IV–B programs.

Section 1357.15(d) The Child and Family Services Plan (CFSP): General

Section 1357.15(d) proposes that the CFSP must be developed based on three important planning activities, two of which are found in both subparts of title IV–B (sections 422 and 432 of the Act). Subsequent paragraphs of this section contain specific requirements for these activities. The two statutory requirements are:

- Broad involvement and consultation with a wide range of appropriate public and nonprofit private agencies and community-based organizations, parents, and others (see also § 1357.15(l)); and
- Coordination of the provision of services with other Federal and federally assisted programs serving children and families, including youth and adolescents (see also § 1357.15(m)).

In addition, we propose to add, as a necessary basis for planning and developing the CFSP, the collection of baseline information (see also § 1357.15 (k)). We are not proposing the collection of extensive new data by States or Indian tribes, but are emphasizing the use of existing and available data supplemented, if needed, by specific studies. We believe such information will help States and Indian tribes determine those programmatic and/or geographic areas where the well-being of children and families is threatened; assess needs and existing services and resources; identify gaps in services; select priorities for services funding; assist in the selection of goals and objectives; and develop opportunities for bringing about more effective and accessible services for children, youth, and families.

Child welfare information systems which States currently are designing and implementing based on recently authorized enhanced funding will be one source of valuable information during the implementation of the CFSP.

Section 1357.15(e) State Agency Administering the Programs

We are proposing in § 1357.15(e) that the CFSP identify the name of the State agency that will administer the title IV–B programs under the plan. Except as

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provided by statute, the same agency must administer or supervise the administration of the programs under titles IV–B, IV–E, and XX of the Act. (See definition of State agency in 45 CFR 1355.20.)

We are further proposing in paragraph (e) that the CFSP include a description of the organization and function of the State agency and organizational charts as appropriate. It also must identify the organizational unit(s) within the State agency responsible for the operation and administration of the CFSP, and include a description of the unit's organization and function and a copy of the organizational chart(s). This information is currently required by 45 CFR 205.101 (see also 45 CFR 1355.30). We are proposing to include the required information here and delete the cross-reference in 45 CFR 1355.30.

Section 1357.15(f) Indion Tribal Organization Administering the Program(s)

We are proposing in § 1357.15 (f) that the Indian tribe's CFSP must provide the name of the Indian tribal organization (ITO) designated to administer funds under title IV–B, subpart 1, child welfare services and/or under title IV–B, subpart 2, family preservation and family support services. If the Indian tribe receives funds under both subparts, the same agency or organization must administer both programs.

Section 1357.15(f) also proposes that the CFSP of the Indian tribe must include a description of the organization and function of the office responsible for the operation and administration of the CFSP, an organizational chart of that office, and a description of how that office relates to tribal and other offices operating or administering services programs within the Indian tribe's service area, e.g., Indian Health Service.

Section 1357.15(g) Vision Statement

The new focus on family-based services and community linkages requires changes in vision, philosophy, and in the design and delivery of child and family services. In order for States and Indian tribes to develop a realistic yet forward looking CFSP, we believe that they must first set forth their vision in providing services to children and their families.

The Program Instructions encouraged States and Indian tribes to use up to $1 million of the 100 percent Federal FY 1994 funds and the planning period to help articulate that vision. Paragraph (g) proposes that the CFSP must include the vision statement as developed by the State and the Indian tribe.

Section 1357.15(h) Goals

Section 432(a)(2) of the Act requires that the CFSP describe the goals to be accomplished in the five-year plan and describe the methods to be used to measure progress toward the goals.

We are proposing in paragraph (h) that States and Indian tribes build on their vision statement and philosophy and develop goals for the next five years. Goals must be stated in the CFSP and must be expressed in terms of the improved outcome expected for children, youth and families, and for their safety and well-being. Goals also must be stated in terms of the development of a more comprehensive, coordinated, and effective child and family service delivery system.

States and Indian tribes should utilize data on the well being of children and families, needs, resources, and other information obtained during the planning process in the development of goals.

Section 1357.15(i) Objectives

We propose in paragraph (i)(1) that goals must be translated into realistic, specific, and measurable objectives which must be included in the CFSP. The objectives should focus on outcomes for children, youth, and/or families or on elements of service delivery that are linked to outcomes in important ways.

Each objective should include interim benchmarks (or due dates) and a long-term timetable, as appropriate.

Paragraph (i)(2) incorporates the requirements of section 422(b)(6) of the Act that requires the plan to include objectives directed to covering additional political subdivisions, reaching additional children in need of services, expanding and strengthening existing services, and developing new types of services.

The objectives should reflect analysis of information on families and children and on existing child welfare and related social services, assessing where needs have been growing; where there are gaps in services; what needs should be prioritized and what populations and geographic areas should be targeted; where there is a capacity for better integration and accessibility of services for children and families; and what data source(s) will be used to measure the outcomes of services.

Well-stated objectives will reflect the work of the State and Indian tribe during the consultation, coordination, and information analysis processes. Objectives also will reflect State and Indian tribal priorities, funding decisions, and strategies for implementing child and family services.

The following illustrate how an objective might be drafted. For example, objectives regarding foster care and adoption might be stated:

• By (date) , appropriately reduce the length of time spent in out-of-home placement for children in State agency foster care (target population) in the State (geographic area) from (x) days to (y) days or by (x) percentage.

(Data source to measure progress: __)

• By (date) , reduce the time between termination of parental rights and finalized adoption by (x) percentage or (y) time period for all children in State agency care.

(Data source to measure progress: ___)

A family support objective might read:

• By (date) , increase the number and proportion of families with children under age six in high poverty neighborhoods in (geographic areas) that receive family support services from _____ to _____.

(Data source to measure progress: ___)

Other objective might read:

By (date) , reduce the number of reports of child abuse and neglect involving serious injury in four counties/cities from (x) to (y) .

(Data source to measure progress: _____)

By (date) , increase the number or proportion of substance abusing parents who receive family preservation, substance abuse treatment, and other needed services and who are reunited with their children.

(Date source to measure progress: _____)

We encourage States and Indian tribes to share with us additional examples of goals and measurable objectives or approaches to drafting measurable objectives. We are considering developing model plan guidelines for States and would encourage comments on the content and usefulness of such a document.

We recommend that family preservation and family support services be targeted on populations and in geographic areas of greatest need. Targeting may include a range of vulnerable populations (children, youth and/or families) in specific geographic regions, counties, cities, communities, census tracts, or neighborhoods. States should also consider targeting services to support community-based strategies which draw on multiple funding streams and which bring a critical mass of resources to bear in high-need communities (e.g., Empowerment Zones/Enterprise Cities, Children's Cabinet initiatives).

There is no requirement that services must be statewide, although States are encouraged to move in that direction.

Section 1357.15(j) Measures of Progress

We are proposing in § 1357.15 (j) that States and Indian tribes describe in the CFSP how they will measure the results, accomplishments, and annual progress toward meeting the goals and objectives in the CFSP.

Depending on the goals, objectives, and outcomes selected, measuring progress should be based, in part, on quantifiable indicator data (e.g., numbers of substantiated child abuse and neglect reports) or on the results of activities such as monitoring mechanisms, quality assurance efforts, other information collection activities, other planning processes, and internal evaluations.

SACWIS/AFCARS/NCANDA

Three interrelated information systems, currently being established, will assist States in obtaining information to measure the annual progress toward meeting the goals and objectives in the CFSP, to quantify and document the improvements achieved, as well as identify future problem areas. These systems are the Statewide Automated Child Welfare Information System (SACWIS); the Adoption and Foster Care Analysis and Reporting System (AFCARS), a part of the SACWIS; and the National Child Abuse and Neglect Data System (NCANDS). The SACWIS/AFCARS data is expected to be available within the next two to three years during the implementation of the CFSP. Phase I of the NCANDS is operational at the present time.

• SACWIS.

As a part of the Omnibus Budget Reconciliation Act of 1993, funding is available to States for the planning, design, development, and installation of Statewide automated child welfare information systems. Such systems must be comprehensive in that they must meet the requirements for an Adoption and Foster Care Analysis and Reporting System (AFCARS) required by section 479 (b)(2) of the Social Security Act and implementing regulations. To the extent practicable, these systems must also be capable of interfacing with State child abuse and neglect automated systems and with State automated systems for determining eligibility for title IV–A assistance. The Department must also determine that the system will be likely to provide more efficient, economical, and effective administration of the programs under title IV–B and title IV–E of the Act.

Enhanced Federal funding at the 75 percent matching rate is provided for such activities as well as for the cost of hardware components beginning October 1, 1993. This funding rate is eliminated in the statute after September 30, 1996, at which time a Federal matching rate of 50 percent is available. Also effective October 1, 1993, Federal financial participation is available for the operation of such systems at the 50 percent matching rate.

• AFCARS.

The purpose of AFCARS is to collect information on children in foster care and children adopted through the public child welfare system. This information will be essential for data analysis and reporting, addressing program management issues, and making policy and planning decisions. The AFCARS final rule was published in the **Federal Register** in December of 1993. The first reporting period is October 1, 1994 to March 31, 1995 for which data must be received in ACF no later than May 15, 1995.

• NCANDS.

The National Center on Child Abuse and Neglect (NCCAN) is continuing the development and implementation of the National Child Abuse and Neglect Data System (NCANDS). The NCANDS consists of two parts:

• The Summary Data Component (SDC), a compilation of key indicators of State child abuse and neglect statistics; and

• The Detailed Case Data Component (DCDC), a compilation of detailed case-level data that can be used to examine trends and issues in the field.

NCANDS summary data has been collected for the last three years. The most recent information and data regarding the NCANDS is published in a report entitled "Child Maltreatment 1992: Reports From the States to the National Center on Child Abuse and Neglect." This report is available through the Clearinghouse on Child Abuse and Neglect Information (800–FYI–3366 or 703–385–7565). When this national data base on child abuse and neglect is fully implemented, it will have the flexibility to respond to a wide range of policy and program analysis needs.

Section 1357.15(k) Baseline Information

In paragraph (k) we propose both general and specific requirements for the collection, analysis, and use of planning related information.

In section 1357.15(k)(1), we are proposing to require that States and Indian tribes base the development of the CFSP goals, objectives, and funding and service decisions on an analysis of available information on the well-being of children and families; the needs of children and families; the nature, scope, and adequacy of existing child and family and related social services programs; and the trends of these indicators over time.

We further propose that additional and updated information must also be obtained throughout the five-year period to annually measure the progress in accomplishing the goals and objectives. We do not require the collection of specific measures or indicators in recognition of the variety of kinds of information available to States and Indian tribes.

Paragraph (k)(2) requires the collection of specific information about existing family preservation and family support services, because we believe this information is important, widely available, and central to the CFSP development and implementation process.

In § 1357.15(k)(3), we are proposing that the CFSP must include the information used in developing the CFSP; an explanation of how the information was used to develop the goals and objectives and to determine the specific services to be provided, the populations to be served, and the geographic areas where services will be available; a description of how information will be used to measure progress annually over the five-year CFSP period; and explanation of how information will be used to facilitate the coordination of services.

A variety of sources of information on the well-being of children and families and service delivery capability are available. For example, the local United Way agency, Mayor's Offices, anti-poverty agency, other city/county development offices, academic institutions, and other public and private efforts are sources of information. Many States also participate in the collection of information on families and children in the Voluntary Cooperative Information System (VCIS), the "Kids Count Data Book" compiled by the Annie E. Casey Foundation which includes county-by-county profiles. State Health Departments also are sources of information on child fatalities, low birth weight in infants, teen pregnancy, and child/youth suicides as well as State and local initiatives such as Healthy Start. State Education Departments frequently have information on children in special education, drop-outs, and expulsions as well as school-based and after school programs. The Census Bureau, Chamber of Commerce, and the

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AFDC agency may be sources of data on economic status indicators such as the percent or number of children in poverty, and percent or number of families receiving AFDC, Food Stamps, or medical assistance. States and communities preparing applications for the new funds under the Empowerment Zones/Enterprise Communities Program will also have collected useful data.

The SACWIS and AFCARS data will be a useful tool in measuring progress including among other data, information on the status of children placed in foster care and those placed in adoption. An additional data collection system, NCANDS, will report information on child abuse and neglect.

When fully operational, these data systems will facilitate the quantification and documentation of the improvements expected and achieved, as well as providing information on the status of the goals and objectives.

Because we believe so strongly that baseline information is essential to realistic and meaningful planning, goal setting, and progress measurement and yet recognize the variety of data availability in different States and Indian tribes, we have included some suggestions of possible indicators of child and family well being and service delivery status. Some of those indicators will be useful for setting goals and objectives, some for targeting services geographically and to priority populations, some for detailed service planning, and some for assessing progress.

(1) *Examples of indicators on child and family well-being:* Number of initial reports and substantiated reports of child abuse and neglect, percent of children born addicted or drug exposed, child death rate, incidence of domestic violence, number of children in out-of-home care, number of children in psychiatric placements, number of children awaiting adoption, youth in stable living situations after exiting foster care, and length of time spent in substitute care.

(2) *Examples of indicators related to other services systems:* Percent of low birth-weight babies, percent of births that are to single teens, teen pregnancy rate, immunization rate, percent of children in poverty, percent of children in single-parent families, percent of families receiving AFDC, runaway and homeless youth rate, child/youth suicide rates, juvenile violent crime arrest rate, teen violent death rate, percent teens not in school and not in labor force, percent teens graduating from high school on time, high school dropout rate, and percent of eligible children in Head Start.

(3) *Examples of indicators on the State's (or the Indian tribe's, as appropriate) service delivery capacity:* The extent to which child welfare, family preservation, and family support services are available and being provided (e.g., number and percentage of families served, waiting lists, etc.); the extent to which child welfare workers' caseloads (intake, protective, foster care, adoption, etc.) permit adequate protection of and service delivery to children and families; the availability of out-of-home care and placement (including adoption) resources; the availability of prevention and intervention services; the availability of critically needed services such as housing, mental health services, and substance abuse treatment; the extent to which existing services are coordinated with the provision of other child and family services, particularly child protective services and independent living services (e.g., indicators of successful referrals); and the funding resources and expenditures, geographic availability, numbers of persons served, and insufficient service capacity (unmet needs) related to these services.

(4) *Examples of indicators States or Indian tribes, as appropriate, might use or seek to develop relating to strengthening the delivery of services and accomplishing goals and objectives:* The extent to which resources are available for training, technical assistance, and consultation, including leadership development, staff development, and interdisciplinary training; the existence and utilization of quality assurance measures, program development and management and data analysis; and the implementation, expansion, and utilization of management information systems.

Indian tribes will want to obtain a general picture of the well-being of children and families in their area of jurisdiction and use available data in determining goals, objectives, and services in the CFSP. Indian tribes should use the examples of indicators and suggested sources of information as it meets their needs and circumstances.

The requirement in paragraph (k)(2) for the collection and analysis of statewide information on family preservation and family support services is an extension of the requirement in the FY 1994 Program Instructions. Most States and Indian tribes have begun to identify existing family preservation and support programs as a part of their consultation, coordination of services, and planning processes. Specific information on geographic availability; mismatches among scope, availability, and family needs; and the identifications of both public and privately funded programs must be known as the basis for State decisions on future services funding.

Finally, the collection and analysis of data is related not only to the priorities and outcomes the States and Indian tribes want to achieve but should be used in the consultation and coordination processes to identify what additional data are needed, which data will serve as baseline information on which to measure progress, and what future goals and objectives the CFSP should address.

We ask States to comment on their experiences identifying and gathering existing statewide baseline information including information on the well-being and needs of children and families; the quality and usefulness of the information gathered or expected to be gathered; information on the nature, scope, and adequacy of existing child- and family-related social service programs; and data on existing family preservation and family support services (including important gaps in service and mismatches between available services and family needs).

We solicit comment not only on the proposed indicators and their usefulness in planning, but also recommendations on how the indicators might be improved. We also seek comments on the usefulness of defining indicators more concisely so that uniform definitions can be developed.

Section 1357.15(l) Consultation

In § 1357.15(l), we are proposing to implement Section 432(b)(1) of the law As a condition of CFSP approval, Section 432 requires that the plan be developed by the State and the Indian tribe after consultation with a wide range of appropriate public and nonprofit private agencies and community-based organizations with experience in administering services for children and families (including family preservation and family support services).

Briefly, we are proposing, in paragraph (l)(1), that States must describe in the CFSP the internal and external consultation process used to obtain broad and active involvement of major actors across the entire spectrum of the child and family service delivery system in the development of the CFSP and to explain how this process was coordinated with or was a part of other planning processes in the State.

Paragraph (l)(2) proposes that Indian tribes carry out a consultation process involving representatives of child and family services programs within their

areas of jurisdiction and appropriate to their needs and circumstances.

In paragraph (l)(3), we propose nine categories of agencies, organizations, and individuals with whom the State and the Indian tribes, as appropriate, must consult.

Finally, paragraph (l)(4), proposes that the CFSP must contain a description of how each grantee will ensure that an active consultation process continues over the five-year period.

Both those States and Indian tribes with experience in providing family preservation and family support, and those with little experience in providing youth service can benefit from a broad, active consultation process. Overall, the process will strengthen the comprehensive planning and implementation of the CFSP. Specifically, it will provide expert guidance to and assist in the development of the CFSP, including the selection of goals, objectives, and outcomes, and the design and expansion of family preservation, family support, and child welfare services; and support agency efforts to address common problems which diminish child and family well-being.

We have not mandated a particular consultation process to carry out this statutory provision. We recognize that there may be existing processes, such as State Children's Cabinets and the State Child and Adolescent Service System Program (CASSP) that can be used in the development of the CFSP. However, we have proposed specific minimum requirements which we believe are necessary to assure an active planning process, reflecting broad experience and expertise, and leading to the development of a plan that is more than a "paper exercise."

The consultation process will also be closely linked to service coordination. Collaborative initiatives to improve access to service delivery can develop by consulting with others in the field of child and family services. The information generated during the consultation process may also supplement the collection of baseline information required for the development of goals, objectives and funding decisions in § 1357.15 (k).

We believe that the nine required categories of participants in the consultation process proposed in paragraph (l)(3) represent a minimal level of programmatic, political/administrative, and experiential involvement in this process. We encourage States and Indian tribes to go beyond this proposed list and include other categories of organizations and individuals based on State and local circumstances.

This list of participant categories emphasizes both an internal and external consultation process because we believe it is critical to include the expertise of offices within the child and family service agency as well as the experience of community-based organizations and others.

The internal consultation process is particularly important to assure the participation of all major programs in the child and family services continuum. The active involvement of child protective services and the independent living program is critical, given the requirement for information on these program areas in the plan.

With regard to consultation with courts, we want to call the States' attention to the collaborative requirements between courts and State agencies in a new program of grants to the highest State Court in each State. Beginning in FY 1995, that court is eligible for a grant from ACF to assess and improve the handling of child welfare judicial proceedings under the new "Court Improvement Program," authorized by Pub. L. 103–66. Courts are strongly encouraged to collaborate with the State title IV–B agency in their assessment and improvement activities. A Program Instruction was issued June 27, 1994, to the highest State Courts requesting applications for FY 1995 funds.

Given the differing organizational structure, contacts, and resources available to each Indian tribe, the tribal consultation process will vary from the State process. If an Indian tribe has another planning process in place, we encourage it to build on the existing process rather than duplicating efforts.

Depending on the circumstances, including availability of resources, Indian tribes may choose to include other interested individuals and organizations, as appropriate. Federal and federally assisted programs operated by the Tribe should be involved, e.g., Family Violence Prevention and Services, Community Services block grant, the JOBS program, Head Start. Additionally, if the Indian Health Service and/or the Bureau of Indian Affairs is providing services within the Tribes' area of jurisdiction, representatives from these agencies also should be involved in the tribal consultation process. The Department of Education provides supplemental funds for tutoring, home/school liaison, and cultural activities to both public and BIA schools serving Indian children. Representatives of this program may also be an appropriate participant. Indian tribes also may wish to involve representatives from other Indian tribes, especially those with experience in child welfare, family support, and family preservation services.

Paragraph (l)(4) requires a description of the ongoing consultation process. Progress on goals and objectives in the CFSP will need to be reviewed annually and revisions made to reflect changed circumstances, if necessary. Participants can offer updated information, suggestions regarding revisions in the goals and/or objectives, and advice regarding funding of services for the upcoming fiscal year. These activities will be part of the annual progress reviews and services reports described in § 1357.16.

In summary, from consultation with these internal and external sources, the States and tribes could learn the current status of child and family well-being in a variety of areas; gain insight on needs, existing services, and gaps; receive advice on controversial or challenging issues; gain support for their own efforts to improve child and family services; and cultivate activities to coordinate services. This wealth of expertise from a collection of individuals and organizations, in conjunction with an analysis of baseline information, is needed to develop and fully implement the comprehensive child and family services plan.

Section 1357.15(m) Services Coordination

In § 1357.15(m), we propose to implement sections 432(a)(3) and 422(b) of the Act which require that the plan provide for coordination of services under the plan with the provision of services or benefits under other Federal or federally assisted programs serving the same populations.

We have not mandated a specific service coordination process because State, local, and Tribal needs and circumstances vary. In addition, many States and Indian tribes have a number of existing processes and coordination efforts already in place to carry out this requirement.

We have mandated in paragraph (m)(1), however, that the State's on-going coordination process must include representatives of the child and family services provided by the State agency as well as other service delivery systems providing social, health, education, and economic services to children.

We propose in paragraph (m)(2), that the State's CFSP must describe how services under the plan will be coordinated over the five-year period with services or benefits under other

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Federal and federally assisted programs serving the same populations to achieve the goals and objectives in the plan. Additionally, we propose that the description must include the participants in the service coordination process and examples of how the process led or will lead to additional coordination of services.

With respect to Indian tribes, in paragraph (m)(3), we propose that the Indian tribe must include in the coordination process representatives of other Federal or federally assisted child and family services or related programs as appropriate to their circumstances. The Indian tribe's CFSP must describe how services under the plan will be coordinated over the five-year period with services or benefits under other Federal or federally assisted programs serving the same populations to achieve the goals and objectives in the plan. For example, the Tribe may coordinate family preservation, family support and/or child welfare services provided by the Indian Health Service and the Bureau of Indian Affairs, if these agencies are providing services within the Tribe's jurisdiction. They may also coordinate services with public schools receiving supplemental education funds which may provide support services. The description must include the participants in the process and examples of how the process led or will lead to additional coordination of services.

Examples of services and programs are:

- Within the State agency: existing family support and family preservation; child abuse and neglect prevention, intervention, and treatment; foster care, and reunification, adoption, and independent living services;
- Other public and nonprofit private agencies, including community-based organizations, which provide Federal or federally assisted services or benefits. (These programs may be administered within the State title IV–B agency, by another State agency, by private nonprofit agencies and organizations, or by a combination of public and private support.)

Examples of major programs are: the social services block grant; title IV–A (income maintenance, child care, employment and training); title IV–A (emergency assistance); child support, maternal and child health; title XIX (Medicaid, EPSDT); mental health and substance abuse services; child abuse prevention (Children's Trust Funds); transitional living; runaway youth and youth gang prevention; education; developmental disabilities; juvenile justice; early childhood education and child development programs (Head Start); domestic violence; housing; nutrition (Food Stamps, Special Supplemental Food Program for Women, Infants and Children (WIC)); child care and development block grant and other child care programs; the community services block grant; Empowerment Zones and Enterprise Communities program (EZ/EC); education (school-based services); and justice programs.

We believe that the ultimate purpose of service coordination is to improve the well-being of children, youth and families. Focus group participants, and others, emphasized that effective coordination of a broad spectrum of services provides a holistic approach to serving children and families and increases the likelihood of matching families' needs with appropriate services rather than merely providing available services. Their view was that, in isolation, individual services are not likely to address the needs of children and families; many families need support and services that transcend any single agency mission; no one agency has the resources to meet all needs of all families; vulnerable families with multiple needs are less likely to independently access and integrate all the services they need; and service systems which view families' needs categorically reduce the likelihood of overall family improvement.

Section 1357.15(n) Services

At the heart of the State and Indian tribal plans are the child and family services. Paragraph (n) requires a description of the publicly funded child and family services that will be provided in FY 1995 and FY 1996, based on the requirement for a description of the family preservation and family support services in section 432(a)(5) of the Act and for a description of the child welfare services in section 422(b)(5) of the Act.

Specifically, the State's CFSP must describe the publicly funded child and family services continuum to be provided in FY 1995 and FY 1996: the family support services; the family preservation services; the child welfare services (including child abuse and neglect prevention, intervention, and treatment services and foster care); and the services to support reunification, adoption, kinship care, independent living, or other permanent living arrangement.

The Indian tribe's CFSP must describe the child welfare (including the child abuse and neglect prevention, intervention, and treatment services and foster care) and/or the family support and family preservation services to be provided in FY 1995 and FY 1996.

In addition, we propose in paragraph (n)(3), that for each service, the CFSP must indicate the population(s) to be served; the geographic areas where services will be available; the estimated number of individuals and/or families to be served; and the estimated expenditures for these services from Federal, State, local, and donated sources.

This would include, among other sources of funds, expenditure data on title IV-B, subparts 1 and 2, on the two CAPTA programs, and on the Independent Living Program. Expenditure data must include all services expenditures, i.e., those funded directly and those funded through subrecipients.

We believe that this description of services represents one of the most important sections of the CFSP. Not only will it provide a comprehensive picture of the services provided and resources available, it can clearly illustrate State and Indian tribal decision-making in directing services toward the goals and objectives in the CFSP. By providing a unified picture of the services available, it will form a basis for discussion of future coordination of services and improved service delivery. This information also will be studied by national evaluators and other researchers.

We believe the requirements of paragraph (n) will not be burdensome as much of the information on child protective services, child welfare services, foster care, and adoption is already being reported on the current CWS–101, the Annual Summary of Child Welfare Services (OMB approval no. 0980–0047, expiration date 9/30/95). We propose to add in the CFSP reporting of information on CAPTA and ILP services (which is currently available). Information will be reported for the first time on new or expanded family support and family preservation services using subpart 2 funds.

We have drafted a revised CWS–101 form for illustrative purposes. It is included as an Appendix to the NPRM, but it will not become a permanent part of the final rule or the Code of Federal Regulations. We welcome suggestions for additions or improvements in the scope of the description of services.

Section 1357.15(o) Family Preservation and Family Support Services and Linkages to Other Social and Health Services

We are proposing in paragraph (o)(1) that the State must provide information specifically on the development and/or expansion of family preservation and family support services; how these services relate to existing family preservation and family support services; and how they link to the child and family services continuum (of which family support and family preservation services, child protective services, foster care and adoption services, reunification services, and independent living services, are a part).

Paragraph (o)(2) proposes to require an explanation in the CFSP of whether and/or how CAPTA and ILP funds are coordinated with or integrated into the child and family services continuum.

In paragraph (o)(3), we are proposing that the CFSP include a description of how the services in the child and family services continuum are linked to services in other Federal and non-federally funded public and nonprofit private programs, e.g., AFDC, Food Stamps, WIC, child care, health, education, housing, substance abuse, juvenile justice, Children's Trust Funds, and private foundations.

In meeting the requirement in paragraph (o)(1), States will use, in part, the information gathered on the availability of family preservation and family support services (§ 1357.15(k)(2)). FY 1995 will be the first year in which all States will be implementing title IV-B family preservation and family support services. Thus, the information in paragraph (o)(1) will provide a national overview of the development, operation, and/or expansion of family preservation and family support services in all States as well as identify the processes States are using to develop coordinated systems of care. We believe it also will provide a picture of implementation efforts and relationships for national evaluation purposes.

For similar reasons, we are proposing to request the information in paragraphs (o)(2) and (o)(3) on linkages with other services and service delivery systems. We believe this information will be useful to obtain a clearer understanding of each State's efforts and activities to bring about services linkages both within the child and family services continuum and with other public and privately funded service systems. It will also provide a broader national picture of such efforts.

Section 1357.15(p) Services in Relation to Service Principles

We are proposing in § 1357.15(p) that the CFSP describe how the child and family services are designed to assure the safety and protection of children, as well as the preservation and support of families, and the how services in the CFSP are or will be designed to meet the other service principles in 45 CFR 1355.25, e.g., services that are flexible, easily accessible, and respectful of cultural and community strengths. We believe these principles are the basis for the development of effective, responsive, and quality services programs.

Section 1357.15(q) Services in Relation to Permanency Planning

We are proposing in § 1357.15(q) that the State CFSP must describe how these services will help meet the permanency provisions for children and families in sections 427 and 471 of the Act, e.g., preplacement preventive services, reunification and adoption services, and long-term foster care/independent living services.

The "permanency provisions" were enacted by the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272) which was passed in an effort to improve child welfare services nationwide; it focused on the importance of providing preventive and crisis intervention services and establishing permanency for the children in foster care. Through permanency planning, children were to be placed in permanent living arrangements as quickly as possible. At the heart of this concept is the "reasonable efforts" requirement to prevent family separation in cases where a child could be kept safely at home, provide appropriate services for family reunification once a child was placed in foster care, or to make another permanent living arrangement, such as adoption.

We believe that the funds authorized by the new family preservation and family support legislation provide an opportunity for States to recommit themselves to the goals of Pub. L. 96–272 and to use these funds to help bring about the changes that will assure permanency for all children.

Section 1357.15(r) Decision-Making Process: Selection of family Support Programs for Funding

We are proposing in § 1357.15(r) that the State's CFSP include an explanation of how agencies and organizations were selected to provide family support services and how these agencies and organizations meet the requirement that family support services be "community-based." This paragraph proposes to implement section 431(a)(2) of the Act which states that "family support services means community-based services to promote the well-being of children and families * * *"

Community-based services can be provided under a variety of auspices. (See § 1357.10(c).) Therefore, we urge the State to consider a wide range of family support providers in selecting the most appropriate agencies or organizations to provide this service based on the goals and objectives in the CFSP. These may include community-based organizations (CBOs), public or private nonprofit agencies, and Indian tribal organizations.

We considered requiring the State to pass through a certain percentage of the funds to CBOs to provide family support services but concluded that the circumstances in each State are so varied and allotments to the States are not large enough to justify such a requirement.

In making funding decisions, however, we strongly recommend that States examine the work and accomplishments of community-based organizations and look to them as highest priority potential providers of family support services. It is these organizations, based in and trusted by the community, which typically have the knowledge and expertise to provide these services.

Section 1357.15(s) Significant Portion of Funds Used for Family Support and Family Preservation Services

We are proposing in § 1357.15(s) that the State (not the Indian tribes) specify in the CFSP the percentage of FY 1995 and FY 1996 family preservation and family support funds (title IV–B, subpart 2) that the State will expend for each type of service. States should provide an explanation for how this distribution was reached and how it meets the requirement that a "significant portion" of the service funds must be spent for both family preservation and family support services.

Paragraph (s) is based on a statutory requirement in section 432(a)(4) of the Act which provides that a "significant portion" of the service expenditures must be used for family preservation services and family support services. While there is no minimum percentage that defines significant, we have proposed that the State's rationale will need to be especially strong if the request for either allocation is below 25 percent.

We considered a number of alternatives based on recommendations from focus group participants and others:

- That we require the State to allocate equal amounts or a fixed amount for both family preservation and family support services;

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• That we prescribe a certain amount to be spent on each service and require States to pass through the family support allocation directly to CBOs to provide family support services;

• That a minimum of a third of the service dollars be used for family support; a third for family preservation; and the remainder for either family support services, family preservation services or a combination of the approaches depending on the needs of the State and community; and

• That we allow the State agency to have complete flexibility to decide how to expend the funds.

We recognize that there are differences among the States in the level at which States and communities are operating services programs. We also recognize that the needs of families and children are not identical in all jurisdictions. Therefore, our proposal reflects our desire to provide flexibility to accommodate a wide range of differences among States, to reflect the legislative history, and to strike a reasonable balance that assures the requirements of the Act are met.

Section 1357.15(t) Staff Training, Technical Assistance and Evaluation

Section 1357.15(t)(1), is based on section 422(b) of the Act. We are proposing that States include in the CFSP a staff development and training plan which addresses the two title IV–B programs. This training plan must also be combined with the training plan under title IV–E based on 45 CFR 1356.60(b)(2).

In paragraph (t)(2), we have proposed that the technical assistance activities that will be undertaken to support the goals and objectives in the plan be described in the CFSP.

In paragraph (t)(3), we propose that the State's CFSP provide a description of any evaluation and/or research activities on child and family services, underway or planned, and how they relate to the goals and objective in the CFSP.

On-going training and technical assistance activities are critical to support the continuous improvement efforts under the five-year CFSP. Focus group participants recommended training for the entire staff for the child and family services agency in order to implement the new vision and the principles of child and family services, including county administrators, supervisors, front-line staff, foster parents, State administrators, and volunteers who provide services.

Furthermore, they emphasized the importance of interdisciplinary training, particularly including the courts which carry out requirements related to child protective services, foster care and permanency planning.

Regarding our proposal for information on evaluations in paragraph (t)(3), we want to emphasize that States are not required to conduct evaluations and/or research activities related to the CFSP. We know, however, that some States are conducting such activities, and we are interested in learning about these. We know, for example, that a few States use CAPTA funds for research activities and a few States are undertaking studies to evaluate family preservation services.

Section 435 of the law requires the Department to conduct national evaluations on the effectiveness of family preservation and family support programs. The Department has recently released an RFP for three national evaluation studies. To the extent feasible, we intend to coordinate these national evaluation projects with evaluations being conducted by States, and we look forward to the States' participation in the national studies. We also encourage States to participate in a GAO study currently underway to collect information for a report to Congress on family support and family preservation.

Section 1357.15(u) Quality Assurance

We are proposing in § 1357.15(u) that the State describe in the CFSP the quality assurance system it will use to regularly assess the quality of services provided under the CFSP.

There is agreement by practitioners in the field and others that the quality of child welfare services needs improvement. This includes both quality standards for services as well as best practices for casework. We also consider quality services to be an integral part of achieving better outcomes for children and families.

We encourage and support State efforts as they develop creative ways to determine and strengthen the effectiveness of their services. In designing, expanding, and implementing quality assurance activities, States may wish to refer to the principles in 45 CFR 1355.25. Examples of quality assessment techniques include:

• Soliciting input on the effectiveness of services from public and private service providers, parents, foster parents, children and youth, other clients, and various representatives of the public.

• Reviewing case records based on a random sample of cases representative of the population of children and families served.

• Compliance with the recommended standards of national professional organizations serving children and families e.g., Child Welfare League of America, Council on Accreditation of Child and Family Service.

• Establishing specific reporting requirements to monitor contractual service providers.

We considered establishing minimum Federal standards for quality services. However, due to the wide range of differing State circumstances, we decided that, at this point, it should be left to each State to design its own quality assurance system. ACF may review, at some later date, the quality assurance systems established by the States and may consider alternate approaches to improve the quality of services. We solicit recommendations for model approaches and procedures as well as measures or indicators of quality deemed to be basic.

Section 1357.15(v) Distribution of the CFSP and the Annual Progress and Services Report

Section 432(a)(5) requires that an annual report on services (Annual Progress and Services Report) must be made available to the public. Section 1355.21(c) also requires that the title IV–B and IV–E plans be made available for public review and inspection. We are proposing in § 1357.15(v) to further implement these requirements by specifying that the CFSP must include a description of how the State and the Indian tribe will make these documents available. In addition, we propose to require that State agency and Indian tribal organizations within the State receiving title IV–B, subpart 2 funds, exchange copies of their CFSPs and their Annual Progress and Services Reports.

We believe it will be useful to States and Indian tribes to share the CFSP and the Annual Progress and Services Reports, both with each other and with those individuals, agencies, and organizations a part of the ongoing consultation and coordination effort. Such dissemination can lead to increased support and coordination of services. Annual Progress and Services Reports may also be used in preparing briefings for State Advisory Councils, State legislators and budget officials, and in highlighting accomplishments in the media.

We have not specified the form or process such distribution should take. A variety of dissemination methods may be used, e.g., newspapers, newsletters, distribution to participants in the planning process, meetings with advocacy and constituency organizations, and electronic bulletin board notices.

Section 1357.16 Annual Progress Reviews and Services Reports

This new section of Part 1357 implements and closely follows the requirements of section 432 of the Act. In summary, sections 432 (a)(2) and (a)(5) require that once the five-year plan is developed and in operation, the State and the Indian tribe annually must review the progress made in accomplishing the goals in the plan; and, on the basis of the annual (interim) review, must:

• Periodically update or revise the statement of goals in the plan, if necessary, to reflect changed circumstances;

• Prepare, send to ACF, and make available to the public, a description of the services that will be provided in the immediately succeeding fiscal year under the plan; and

• Include in the description of services the population(s) to be served and the geographic area(s) where services will be available.

Paragraph (a) reflects the statutory requirement for an annual review of progress toward accomplishing the goals and objectives in the plan and the preparation of an Annual Progress and Services Report, based on updated information. It also requires that the State and the Indian tribe involve the agencies, organizations, and individuals who are a part of the on-going consultation and coordination process in the development of paragraphs (a)(2) through (a)(4), i.e., revisions in the statement of goals and objectives and descriptions of services to be provided in the up-coming fiscal year.

Paragraphs (a) (1) through (7) propose that the content of the report must include: A report on specific accomplishments and progress made toward meeting goals and objectives; any revisions to the goals and objectives; a description of the continuum of services to be provided in the upcoming year (see § 1357.15 (n)); information on training, technical assistance, research, evaluation, and management information systems efforts; and, for States only, information required to document the maintenance of effort (supplantation) requirement.

The annual review must be based on updated information in order to measure progress in achieving the goals and objectives in the CFSP. States and Indian tribes may utilize various sources of information (as they did in establishing the goals and objectives in the five-year plan) such as future State management information system reports (e.g., SACWIS/AFCARS/NCANDS); other planning processes; available public and private data sources (e.g., health departments, "Kids Count Data Book"); and outcomes of other activities such as monitoring, quality assurance efforts, and service delivery improvements.

We believe the information we propose to require in the Annual Progress and Services Report, like the information required in 45 CFR 1357.15(n), is a modest extension of information available to and, for most of the services in the continuum, already being provided to ACF. We also believe that this information is and will be important, useful, and necessary as States, Indian tribes, public and private agencies and organizations, advocacy groups, parents, and others continue to work over the five-year plan period to bring about improved well-being for children and families.

In paragraph (b) we propose deadlines for submitting the Annual Progress and Services Report to ACF, based on the requirement in section 432(a)(5).

In paragraph (c), we specify the information that should be reported by those States and Indian tribes that used FY 1994 funds for services.

Paragraph (d) proposes to require each State and Indian tribe to make the Annual Progress and Services Reports available to the agencies and organizations and others with whom they are consulting and working to coordinate services. We do not specify a mechanism(s) that must be used to do this; we believe there are many options for this purpose including newsletters, public reports to the media, and use of electronic bulletin boards.

Paragraphs (e) and (f) reflect requirements in section 432 (a)(2) of the Act for a final review in FY 1999 of progress made toward accomplishing the goals and objectives in the five-year plan and the development of a new plan for the next five-year period. States and Indian tribes must conduct a final review; prepare a final Progress and Services report; send the final report to ACF, and make it available to the public; and, in consultation with a broad range of agencies, organizations, practitioners, and others, develop a new five-year plan following the requirements in § 1357.15.

Section 1357.20 Child Abuse and Neglect Programs

This section is revised to update and correct the citations to the Child Abuse Prevention and Treatment Act and to include the subject of those citations for clarity.

Section 1357.30 State Fiscal Requirements (Title IV–B, Subpart 1. Child Welfare Services)

In this section, we are proposing a number of editorial and technical changes and one major policy change regarding time limits on expenditures for subpart 1 funds. The editorial and technical changes are: revising the section title to indicate that these fiscal provisions apply only to States receiving funds under title IV–B, subpart 1; adding titles as needed to all paragraphs in this section; redesignating paragraphs as needed for clarity; and adding a reference to title IV–B, subpart 1, in paragraphs (a), (d), (e)(3), and the introductory language to paragraphs (e) and (e)(2) for specificity and clarity. The major policy change regarding time limits on expenditures is found in new paragraph (i).

Current rules in paragraphs (h) and (i) of this section require an obligation period (within the year the Federal funds were awarded) and a liquidation period either "within two years or the period within which claims must be filed under title IV–B, whichever is earlier." These requirements have proven to be unnecessarily confusing to and burdensome on States.

Therefore, we propose to delete the requirement for an obligation period and propose that subpart 1 funds must be expended (liquidated) by September 30 of the fiscal year following the fiscal year in which the funds were awarded. This will mean an identical expenditure period for funds under title IV–B, subparts 1 and 2, and the independent living program. We believe this simplification and congruence of rules will be welcomed by States administering these programs. A conforming amendment has been made in 45 CFR 1355.30 to clarify that 45 CFR part 95, subpart A, is not applicable to title IV–B programs.

Section 1357.32 State Fiscal Requirements (Title IV–B, Subpart 2, Family Preservation and Family Support Services)

We propose to add a new § 1357.32 to specify the fiscal requirements for the State administration of title IV–B, subpart 2. We considered putting the fiscal requirements for both subpart 1 and subpart 2 of title IV–B in one section, but because of the considerable differences in statutory requirements, this did not appear to be a useful approach.

The proposed regulation reflects statutory requirements in sections 432, 433, and 434 of the Act.

In paragraph (d), the requirement for 75 percent Federal reimbursement of

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allowable expenditures and the matching rate also is taken from the Act (it is the same reimbursement rate for both subparts 1 and 2). The State's match may be computed either as 25 percent of total funds or 33 percent of the Federal share.

Paragraph (e) contains the statutory requirement against supplantation, i.e., using subpart 2 funds to take the place of funds currently being spent for family support or family preservation services, thus reducing the level of services being provided.

Section 432(a)(7) of the Act requires that funds under subpart 2 must not be used to supplant "Federal or non-Federal funds" for these services. We propose to define "non-Federal" to mean State and local public funds. Nongovernmental funds would not be included.

We believe States should be held accountable for a maintenance of effort, and ACF will be collecting information annually on State level spending to monitor this provision. Local public entities will provide assurances on maintenance of effort to the State and maintain sufficient information to document this maintenance of effort upon request.

Paragraph (g) on administrative costs reflects the requirement in section 432 (a)(4) of the Act that States using funds for services may not use more than ten percent of total Federal and State funds under title IV–B, subpart 2, for administrative costs.

We received many recommendations on how administrative costs should be defined, e.g., providing a complete list of all items considered "administrative" or allowing States to use their own definition of administrative costs.

In paragraph (g) we have proposed what we believe is a reasonable yet flexible approach by defining administrative costs as those costs allocable to title IV–B, subpart 2, in a State's cost allocation plan for auxiliary functions to support development and implementation of the Child and Family Services Plan and Annual Progress and Services Report. These auxiliary functions (e.g., costs incurred for a common or joint purpose) may include but are not limited to such items as procurement; payroll; management, maintenance, and operation of space and property; and indirect costs.

As the funds a State will receive under subpart 2 are not large, we believe most States easily will be able to identify such costs equal to ten percent of their allotment, based on their cost allocation plans. (Administrative costs over and above the ten percent limit must be funded from other non-Federal sources of funds.)

Also we have added a clarification in paragraph (g)(3) to explain that costs directly associated with implementing the CFSP are not considered administrative costs, e.g., service delivery, ongoing planning activities, training, supervision.

Finally, paragraph (g) also proposes that, for the purpose of computing the 10 percent limitation, the administrative costs of State subrecipients must also be taken into account. The State, therefore, must calculate what it will spend on administrative costs, and what will be available for subrecipients and obtain assurances from the subrecipients to ensure that the total for administrative costs does not exceed the 10 percent limitation.

We look forward to receiving alternate recommendations if this approach to defining administrative costs is viewed as not workable.

Additional Issue for Public Comment: Permitting In-Kind Matching Funds

We are requesting public comment on an issue about which we did not propose a change in current policy. In revised fiscal sections § 1357.30 and § 1357.40, and proposed new fiscal sections § 1357.32 and § 1357.50 for States and Indian tribes we have continued the current requirement that matching funds must be cash or donated funds. We are interested in public comment, however, on whether we should permit States and Indian tribes to use in-kind funds to meet the match requirement under the title IV–B programs.

On the one hand, allowing in-kind funds to be used to meet the match requirement provides additional flexibility to States and Indian tribes in providing the match; it may also encourage participation in the services program among community-based organizations. On the other hand, there has been some concern in other programs where in-kind match has been permitted that the provision may be used inappropriately and may not ensure that the full matching resources are new resources directed to the purpose of the legislation.

We would welcome the views particularly of States, Indian tribes, nonprofit and community-based agencies and organizations, and advocacy organizations on this issue. We especially would appreciate not only a statement of position but also the reasons for the position and how allowing (or not allowing) in-kind match would (or would not) benefit the title IV–B programs.

Section 1357.40 Direct Payments to Indian Tribal Organizations (Title IV–B, Subpart 1, Child Welfare Services)

This section contains fiscal and administrative requirements applicable to Indian tribes eligible for and administering grants under title IV–B, subpart 1.

Most of the changes proposed in this section are editorial, i.e., to revise the title of the section and paragraphs (d)(1) and (d)(5) to clarify that this section applies only to Indian tribal grantees under title IV–B, subpart 1; to delete paragraphs (b), (c), (d) and (e) (on joint planning, title IV–B plan requirements, submittal of the plan and the annual budget request, and coordination of services respectively) as these provisions are now incorporated into the child and family services plan requirements in § 1357.15; and to redesignate remaining paragraphs.

One major change has been proposed. A new paragraph (b) proposes that in order to receive funding under subpart 1, an Indian tribe must have in effect an approved five-year child and family services plan that meets the requirements applicable to Indian tribes in § 1357.15.

Currently, Indian tribes may submit their title IV–B (subpart 1, child welfare) services plan at one, two, or three year intervals with annual updates. We believe a five-year plan will not only reduce administrative burden but will enable the Indian tribe to deliver services in the context of a plan that includes both short-term objectives and long-term goals, supported by consultation and coordination activities, leading to more coordinated and effective services.

As noted in the discussion on § 1357.15, not all requirements are applicable to Indian tribes. We especially ask for comment from the Indian tribes, either on this section or on § 1357.15, as to whether the five-year comprehensive plan requirements as proposed will help Indian tribes better serve children and families.

New paragraph (c) entitled "Information related to the requirements of Section 427 of the Act" retains language from current paragraphs (c)(9) through (c)(15). The remaining provisions in current paragraph (c) are found in § 1357.15(b).

In paragraphs (b)(2) and (g)(5), we have summarized and corrected references to specific fiscal and administrative requirements for Indian tribes. The cross references in paragraph (g)(5) pertain to five requirements in § 1357.30 applicable to Indian tribes which we have not repeated in this section.

Section 1357.50 Direct Payments to Indian Tribal Organizations (Title IV–B, Subpart 2, Family Preservation and Family Support Services)

Section 1357.50 is a new section added to propose requirements applicable only to Indian tribes eligible for and administering grants under title IV–B, subpart 2. We considered combining into one section all fiscal and administrative requirements for Indian tribes under title IV–B, subparts 1 and 2 but, as with the State fiscal requirements in §§ 1357.30 and 1357.32, the statutory requirements for Indian tribes are different in each subpart. It appeared to be simpler and clearer to put them in separate sections.

In paragraph (a), we have included the definitions from section 431(a) of the Act for the terms "Alaska Native organization," "Indian tribe," and "tribal organization." These are included for clarity; the tribal allotments are computed based on the first two definitions, and the definition of tribal organization is included because section 434 of the Act provides that ACF will pay to the tribal organization of the Indian tribe any amount to which the Indian tribe is entitled under subpart 2.

Paragraph (b)(1) explains the statutory requirement for eligibility for funds in FY 1994 which is based on the Indian tribe's FY 1995 allotment. (The FY 1995 allotment must be at least $10,000 for the Indian tribe to be eligible in FY 1994.) Additional explanation on eligibility was sent to Indian tribes and others in Program Instruction ACYF–PI–94–04, January 18, 1994.

Paragraph (c) proposes that, beginning in FY 1995, in order to receive title IV–B, subpart 2 funds, an Indian tribe must submit a comprehensive child and family services plan that meets the requirements applicable to Indian tribes in § 1357.15.

In order to fund as many eligible Indian tribes as possible under the law, we have proposed in paragraph (d) a process for adding Indian tribal grantees in FY 1996 through FY 1998.

For FY 1996, FY 1997, and FY 1998, we propose to calculate allotments as required in section 433 of the Act. Those Indian tribes whose allotment is at least $10,000 (the minimum for eligibility specified in the law), will be invited to apply. As in FY 1995, in order to receive funding, the Indian tribe must submit a comprehensive child and family services plan that meets the requirements applicable to Indian tribes in § 1357.15. The statute does not make available 100 percent Federal funds for planning in FYs 1996–1998.

We want to point out that while this proposal increases the number of Indian tribes receiving funds, it will decrease the amount the Indian tribes eligible in the first year (FY 1994) will otherwise receive in FYs 1996–98. Although we have received recommendations that funding additional Indian tribes should be our first priority, we also are concerned that the size of most of the grants to Indian tribes is small. Indian tribes have been creative in the past in using comparatively small grants to provide services, but we are concerned that smaller grants will be less effective in helping Indian tribes develop and operate the needed services. We look forward to hearing from the Indian community on this proposal.

Another issue about which we have received many recommendations is that of funding consortia of Indian tribes, e.g., to permit two or more tribes to apply for funding whose combined total grant would equal $10,000. We have researched the legislative history and analyzed the statute and can find no basis for funding consortia, given the clear language of the law.

Paragraph (e) specifies that the allotments will be computed based on section 433 of the Act.

We have accepted recommendations from Indian tribes and other Indian advocacy groups to waive certain statutory requirements. This waiver authority is based on the Secretary's discretion in section 432(b) of the Act to waive any provision in section 432 that is determined to be inappropriate to Indian tribes, taking into account the resources, needs, and other circumstances of the Indian tribe. In paragraph (f), we propose to waive three statutory provisions for Indian tribes: the ten percent limit on administrative costs, the supplantation provision, and the requirement that a significant portion of funds must be used for both family preservation and family support services.

We believe that waiving the supplantation and significant portion provisions are reasonable, given the limited dollars available to the Indian tribes, our desire to reduce inappropriate requirements, and the circumstances of tribal services programs. We believe that waiving the ten percent administrative cost limitation and allowing Indian tribes to use their current negotiated indirect cost rates is reasonable based on the need for flexibility in working with small grantees and our understanding that, in some cases, some service-related costs are reflected in the indirect cost rates negotiated by some Indian tribes.

Paragraph (g) reflects the statutory requirement for a 25 percent match rate. Although we received many recommendations that this provision also be waived, we do not have the authority to do so. Section 432(b) of the Act permits waivers only of requirements in section 432. The match requirement is in section 434 of the Act. However, we have included in paragraph (g)(2) a list of three Federal sources of funds which Indian tribes may use as a source of matching funds.

Paragraph (h) states the time limit on expenditure of funds (section 434(b) of the Act). This means that Indian tribes must submit their Standard Form (SF) 269 expenditure reports annually, 90 days after the end of the expenditure period, i.e., by December 30 of each year. In addition, paragraph (h) references other applicable fiscal and administrative requirements (that may be found in the Program Instruction (ACYF–PI–94–04, January 18, 1994)) and which will be prepared by ACF in the form of assurances for all grantees.

III. Impact Analysis

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This Notice of Proposed Rulemaking implements statutory authority for a broad consultation and coordination process leading to the development of a five-year child and family services plan.

The Executive Order also encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described earlier in the preamble, ACF held focus group discussions with State, local, and tribal officials, and a broad range of private nonprofit agencies, organizations, practitioners, researchers, parents, and others to obtain their views on planning and implementation issues for this new title IV–B program. We believe this NPRM reflects, to a considerable degree, the recommendations of the focus group participants for flexibility, accountability, and reduced administrative burden on both States and Indian tribes.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the

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impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This regulation, if promulgated, will affect only States and certain Indian tribes. Therefore, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains information collection activities which are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C 35).

In accordance with the Paperwork Reduction Act of 1980, the Department will submit for OMB approval the reporting requirements for the five-year comprehensive child and family services plan (CFSP) and Annual Progress and Service Reports in 45 CFR 1357.15 and 1357.16. The CFSP incorporates previously approved planning requirements for title IV–B, subpart 1 (OMB control number 0980–0142).

The Annual Summary of Child Welfare Services (CWS–101) also will be modified and submitted to OMB for approval. (The CWS–101 currently is approved under OMB control number 0980–0047.)

Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the agency official(s) designated for this purpose whose name appears at the beginning of this preamble, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, D.C. 20503. Attn: Wendy Taylor, Desk Officer for ACF/HHS.

List of Subjects

45 CFR Part 1355

Adoption and foster care; Child abuse and neglect; Child and family services; Child welfare services; Data collection; Definitions—Grant Programs social programs; Family preservation and family support services.

45 CFR Part 1356

Adoption and foster care, Administrative costs; Child and family services; Child welfare services; Fiscal requirements (title IV–E); Grant Programs—Social programs; Independent living program; Statewide information systems.

45 CFR Part 1357

Adoption and foster care; Child abuse and neglect; Child and family services; Child welfare services; Family preservation and family support services; Independent living program.

(Catalog of Federal Domestic Assistance Program No. 93.556—Family Preservation and Support Services; No 93.645—Child Welfare Services—State Grants; No. 93.669—Child Abuse and Neglect—State Grants; and No. 93–674—Independent Living)

Dated: August 10, 1994.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: August 31, 1994

Donna E. Shalala,

Secretary

For the reasons set forth in the preamble, 45 CFR Chapter XIII, subchapter G, is proposed to be amended as follows:

1. Subchapter G is amended by revising the heading to read as follows:

SUBCHAPTER G—THE ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES, FOSTER CARE MAINTENANCE PAYMENTS, ADOPTION ASSISTANCE, AND CHILD AND FAMILY SERVICES

PART 1355—GENERAL

2. The authority citation for Part 1355 continues to read as follows:

Authority: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq. and 42 U.S.C. 1301 and 1302.

3. Section 1355.10 is revised to read as follows:

§ 1355.10 Scope.

Unless otherwise specified, this Part 1355 applies to States and Indian tribes and contains general requirements for Federal financial participation under titles IV–E and IV–B of the Social Security Act.

4. Section 1355.20(a) is amended by revising four definitions and by adding one definition to read as follows:

§ 1355.20 Definitions.

(a) * * *

ACYF means the Administration on Children, Youth and Families, Administration for Children and Families (ACF), U. S. Department of Health and Human Services.

* * * * *

Commissioner means the Commissioner on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services.

* * * * *

Independent Living Program (ILP) means the programs and activities established and implemented by the State to assist youth, as defined in section 477(a)(2) of the Act, to prepare to live independently upon leaving foster care. Programs and activities that may be provided are found in section 477(d) of the Act.

State means, for title IV–B, the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa. For title IV–E, the term "State" means the 50 States and the District of Columbia.

State agency means the State agency administering or supervising the administration of the title IV–E and title IV–B State plans and the title XX social services block grant program. An exception to this requirement is permitted by section 103(d) of the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272). Section 103(d) provides that, if on December 1, 1974, the title IV–B program (in a State or local agency) and the social services program under section 402(a)(3) of the Act (the predecessor program to title XX) were administered by separate agencies, that separate administration of the programs could continue at State option.

* * * * *

5. Section 1355.21(c) is revised to read as follows:

§ 1355.21 State plan requirements for titles IV–E and IV–B.

* * * * *

(c) The State agency and the Indian tribe must make available for public review and inspection the Child and Family Services Plan (CFSP) and the Annual Progress and Services Reports. (See 45 CFR 1357.15 and 1357.16.) The State agency also must make available for public review and inspection the title IV–E State Plan.

6. A new § 1355.25 is added to read as follows:

§ 1355.25 Principles of child and family services.

The following principles, most often identified by practitioners and others as helping to assure effective services for children, youth, and families, should guide the States and Indian tribes in developing and operating child and family services and implementing improvements in service delivery systems.

(a) The safety and well-being of children and of all family members is assured. When safety can be assured, strengthening and preserving families is seen as the best way to promote the healthy development of children. One important way to keep children safe is to stop violence against their mothers.

(b) Services are focused on the family as a whole; service providers work with families as partners in identifying and meeting individual and family needs; family strengths are identified, enhanced, respected, and mobilized to help families solve the problems which compromise their functioning and well-being.

(c) Services promote the healthy development of children and youth, promote permanency for all children, and help prepare youth emancipating from the foster care system for self-sufficiency and independent living.

(d) Services may focus on intervention, protection, treatment, or other services to meet the needs of the family and the best interests of the individual who may be placed in out-of-home care.

(e) Services are flexible, coordinated, and accessible to families and individuals, often delivered in the home or the community, and are delivered in a manner that is respectful of and builds on the strengths of community and cultural groups.

(f) Services are organized as a continuum, designed to achieve measurable outcomes, and are linked to a wide variety of supports and services outside the child and family services system (e.g., housing, substance abuse treatment, mental health, health, education, and job training, child care, informal support networks) which can be crucial to meeting families' and children's needs.

(g) Many child and family services are community-based and involve community organizations and residents (including parents) in their design and delivery.

(h) Services are intensive enough to meet family needs and keep children safe. The level of intensity and duration of services needed to achieve these goals may vary greatly between preventive (family support) and crisis intervention services (family preservation), based on the changing needs of children and families at various times in their lives. A family or an individual does not need to be in crisis in order to receive services.

7. Section 1355.30 is revised to read as follows:

§ 1355.30 Other applicable regulations.

Except as specified, the following regulations are applicable to all programs funded under titles IV–B and IV–E of the Act.

(a) 45 CFR part 16—Procedures of the Departmental Grant Appeals Board.

(b) 45 CFR part 30—Claims Collection.

(c) 45 CFR part 74—Administration of Grants (Applicable only to title IV–E foster care and adoption assistance, except that: (1) Subpart G, Cost sharing or Matching, and Subpart I, Financial Reporting Requirements, will not apply. ACF will provide forms and instructions for financial reporting; and (2) § 74.4(a)(2) contains requirements applicable to title IV–B (Subparts 1 and 2) and the Independent Living Program.).

(d) 45 CFR part 76—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

(e) 45 CFR part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964.

(f) 45 CFR part 81—Practice and Procedure for Hearings Under part 80 of this title.

(g) 45 CFR part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance.

(h) 45 CFR part 91—Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance.

(i) 45 CFR part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Applicable only to the title IV–B programs and the Independent Living Program under Section 477 of the Act).

(j) 45 CFR part 93—New Restrictions on Lobbying.

(k) 45 CFR part 95—General Administration—Grant Programs (Public Assistance and Medical Assistance). (Applicable to title IV–B and title IV–E except that, notwithstanding 45 CFR 95.1(a), subpart A, Time Limits for States to File Claims, does not apply to title IV–B (subparts 1 and 2) and the Independent Living Program.)

(l) 45 CFR part 97—Consolidation of Grants to the Insular Areas. (Applicable only to the title IV–B programs).

(m) 45 CFR part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities. (Only one section is applicable: 45 CFR 100.12. How may a State simplify, consolidate, or substitute federally required State plans?).

(n) 45 CFR part 201—Grants to States for Public Assistance Programs. Only the following sections are applicable:

(1) § 201.5—Grants. (Applicable to title IV–E foster care and adoption assistance only.)

(2) § 201.6—Withholding of payment; reduction of Federal financial participation in the costs of social services and training.

(3) § 201.7—Judicial review.

(4) § 201.15—Deferral of claims for Federal financial participation. (Applicable only to title IV–E foster care and adoption assistance.)

(5) § 201.66—Repayment of Federal funds by installments. (Applicable only to title IV–E foster care and adoption assistance.)

(o) 45 CFR 204.1—Submittal of State Plans for Governor's Review.

(p) 45 CFR part 205—General Administration—Public Assistance Programs. Only the following sections are applicable:

(1) § 205.5—Plan amendments.

(2) § 205.10—Hearings (Applicable only to title IV–E foster care and adoption assistance.)

(3) § 205.50—Safeguarding information for the financial assistance programs.

(4) § 205.100—Single State agency.

PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV–E

8. The authority citation for part 1356 is revised to read as follows:

Authority: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq., and 42 U.S.C. 1302.

9. Section 1356.10 is revised to read as follows:

§ 1356.10 Scope.

This part applies to State programs for foster care maintenance payments, adoption assistance payments, related foster care and adoption administrative and training expenditures, and the independent living services program under title IV–E of the Act.

10. Section 1356.80 is added to part 1356 to read as follows:

§ 1356.80 Independent Living Program (ILP).

(a) *Scope.* To receive payments under section 477 of the Act, the State agency must meet the applicable requirements of sections 472, 474, 475, and 477 of the Act.

(b) *Application requirements.* Based on section 477 of the Act, each State must submit an annual application for funds under the Independent Living Program (ILP).

(c) *Allotments.* Payments to each State will be made in accordance with section 477(e)(1) of the Act.

(d) *Matching funds.* (1) States are entitled to their share of the basic amount of $45 million of the ILP

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appropriation with no requirement for matching funds.

(2) States are required to match dollar-for-dollar any of the funds they receive, through additional or reallocated funds, over their share of the $45 million basic amount.

(3) The State's contribution may be in cash or donated funds.

(4) Matching contributions must be for costs otherwise allowable under section 477 of the Act, e.g., matching contributions for the provision of room and board are not allowable.

(e) *Reallocation of funds.* Basic funds and additional funds not requested by a State will be available for reallocation to other States under the provisions of section 477(e)(2) of the Act.

(f) *Expenditure of funds.* Section 477(f)(3) of the Act requires that funds must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

(g) *Maintenance of effort.* Amounts payable under section 477 of the Act shall supplement and not replace:

(1) Title IV–E foster care funds available for maintenance payments and administrative and training costs; and

(2) Any other State funds available for independent living activities and services.

(h) *Prohibition.* ILP funds may not be used for room and board (section 477(e)(3) of the Act).

PART 1357—REQUIREMENTS APPLICABLE TO TITLE IV–B

11. The authority citation for part 1357 is revised to read as follows:

Authority: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq., and 42 U.S.C. 1302

12. Section 1357.10 is revised to read as follows:

§ 1357.10 Scope and definitions.

(a) *Scope.* This part applies to State and Indian tribal programs for child welfare services under subpart 1, and family preservation and family support services under subpart 2 of title IV–B of the Act.

(b) *Eligibility.* Child and family services under title IV–B, subparts 1 and 2, must be available on the basis of need for services and must not be denied on the basis of income or length of residence in the State or within the Indian tribe's jurisdiction.

(c) *Definitions.*

Child and Family Services Plan (CFSP) means the document, developed through joint planning, which describes the publicly-funded State child and family services continuum (family support and family preservation services; child welfare services, including child abuse and neglect prevention, intervention, and treatment services and foster care; and services to support reunification, adoption, kinship care, independent living, or other permanent living arrangements); for Indian tribes, describes the child welfare and/or family preservation and support services to be provided by the Indian tribe; includes goals and objectives both for improved outcomes for the safety and well-being of children and families and for service delivery system reform; specifies the services and other implementation activities that will be undertaken to carry out the goals and objectives; and includes plans for program improvement and allocation of resources.

Child welfare services means the definition contained in section 425(a)(1) of the Act. These are public social services directed to accomplish the following purposes:

(1) Protecting and promoting the welfare of all children, including handicapped, homeless, dependent, or neglected children;

(2) Preventing or remedying, or assisting in the solution of problems which may result in the neglect, abuse, exploitation, or delinquency of children;

(3) Preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible;

(4) Restoring to their families children who have been removed, by the provision of services to the child and the family;

(5) Placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate; and

(6) Assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption.

Children refers to individuals from birth to the age of 21 including infants, children, youth, adolescents, and young adults.

Community-based services refers to programs delivered in accessible settings in the community and responsive to the needs of the community and the individuals and families residing therein. These services may be provided under public or private nonprofit auspices.

Families includes, but is not limited to, biological, adoptive, foster, and extended families.

Family preservation services means services for children and families designed to help families (including adoptive and extended families) at risk or in crisis, including—

(1) Services programs designed to help children, where appropriate, return to families from which they have been removed; or be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, in some other planned, permanent living arrangement;

(2) Preplacement preventive services programs, such as intensive family preservation programs, designed to help children at risk of foster care placement remain with their families;

(3) Service programs designed to provide follow-up care to families to whom a child has been returned after a foster care placement;

(4) Respite care of children to provide temporary relief for parents and other caregivers (including foster parents); and

(5) Services designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition.

Family support services means community-based services to promote the well-being of children and families designed to increase the strength and stability of families (including adoptive, foster, and extended families), to increase parents' confidence and competence in their parenting abilities, to afford children a stable and supportive family environment, and otherwise to enhance child development. Family support services may include:

(1) Services, including in-home visits, parent support groups, and other programs, designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition;

(2) Respite care of children to provide temporary relief for parents and other caregivers;

(3) Structured activities involving parents and children to strengthen the parent-child relationship;

(4) Drop-in centers to afford families opportunities for informal interaction with other families and with program staff;

(5) Information and referral services to afford families access to other community services, including child

care, health care, nutrition programs, adult education and literacy programs, and counseling and mentoring services; and

(6) Early developmental screening of children to assess the needs of such children, and assistance to families in securing specific services to meet these needs.

Joint Planning means an ongoing partnership process between ACF and the State and between ACF and an Indian tribe for the review and analysis of the State's and the Indian tribe's child and family services, including analysis of the service needs of children, youth, and families; selection of unmet service needs that will be addressed; and development of goals and objectives that will result in improved outcomes for children and families and the development of a more comprehensive, coordinated and effective child and family services delivery system.

13. Section 1357.15 is revised to read as follows:

§ 1357.15 Comprehensive child and family services plan requirements.

(a) *Scope.* (1) This section describes the requirements for the development and implementation of the five-year comprehensive child and family services plan (CFSP). The State's CFSP must meet the requirements of both of the following programs; the Indian tribe's CFSP must meet the requirements of one or both of the following programs depending on the Tribe's eligibility:

(i) child welfare services under title IV–B, subpart 1; and

(ii) family preservation and family support services under title IV–B, subpart 2.

(2) For States only, the CFSP also must contain information on the following programs:

(i) The independent living program under title IV–E, section 477 of the Act; and

(ii) Two child abuse and neglect formula grant programs under the Child Abuse Prevention and Treatment Act (CAPTA): Part I (Basic State grants) and Part II (Medical Neglect/Disabled Infants State grants) (sections 107(a) and 107(g) of CAPTA).

(3) States must meet all requirements of this section except those that apply only to Indian tribes. Indian tribes must meet the requirements of this section only as specified.

(b) *Eligibility for funds.* (1) In order to receive funding under title IV–B, subparts 1 and 2, beginning in FY 1995, each State and eligible Indian tribe must submit and have approved a five-year Child and Family Services Plan (CFSP); beginning in FY 1996, each grantee must submit and have approved an Annual Progress and Services Report that meets the statutory and regulatory requirements of title IV–B, subparts 1 and 2.

(2) The CFSP will be approved only if the plan was developed jointly by ACF and the State (or the Indian tribe), and only after broad consultation by the State (and the Indian tribe) with a wide range of appropriate public and non-profit private agencies and community-based organizations with experience in administering programs of services for children and families (including family preservation and support services).

(3) The Annual Progress and Services Report will be approved if it was developed jointly by ACF and the State (or the Indian tribe) and if it meets the requirements of 45 CFR 1357.16.

(4) The five-year CFSP for FYs 1995–1999 may be submitted in the format of the State's or the Indian tribe's choice and must be submitted no later than June 30, 1995, to the appropriate ACF Regional Office.

(c) *Assurances.* The CFSP must contain the assurances applicable to each title IV–B program. The assurances will remain in effect on an ongoing basis and will need to be re-submitted only if a significant change in the State or the Indian tribe's program affects an assurance.

(d) *The child and family services plan (CFSP): General.* The State and the Indian tribe must base the development of the CFSP on a planning process that includes:

(1) Broad involvement and consultation with a wide range of appropriate public and non-profit private agencies and community-based organizations, parents, and others;

(2) Coordination of the provision of services under the plan with other Federal and federally assisted programs serving children and families, including youth and adolescents; and

(3) Collection of existing or available information to help determine vulnerable or at-risk populations or target areas; assess service needs and resources; identify gaps in services; select priorities for targeting funding and services; formulate goals and objectives; and develop opportunities for bringing about more effective and accessible services for children and families.

(e) *State agency administering the programs.* (1) The State's CFSP must identify the name of the State agency that will administer the title IV–B programs under the plan. Except as provided by statute, the same agency is required to administer or supervise the administration of all programs under titles IV–B and IV–E of the Act and the social services block grant program under title XX of the Act. (See the definition of "State agency" in 45 CFR 1355.20.)

(2) The CFSP must include a description of the organization and function of the State agency and organizational charts as appropriate. It also must identify the organizational unit(s) within the State agency responsible for the operation and administration of the CFSP, and include a description of the unit's organization and function and a copy of the organizational chart(s).

(f) *Indian tribal organization administering the program(s).* (1) The Indian tribe's CFSP must provide the name of the Indian tribal organization (ITO) designated to administer funds under title IV–B, subpart 1, child welfare services and/or under subpart 2, family preservation and family support services. If the Indian tribe receives funds under both subparts, the same agency or organization must administer both programs.

(2) The Indian tribe's CFSP must include a description of the organization and function of the office responsible for the operation and administration of the CFSP, an organizational chart of that office, and a description of how that office relates to tribal and other offices operating or administering services programs within the Indian tribe's service area, e.g., Indian Health Service.

(g) *Vision statement.* The CFSP must include a vision statement and a statement of the grantee's philosophy in providing child and family services and developing or improving a coordinated service delivery system.

(h) *Goals.* The CFSP must specify the goals, based on the vision statement, that will be accomplished during the five-year period of the plan. The goals must be expressed in terms of improved outcomes for and the safety and well-being of children and families, and in terms of a more comprehensive, coordinated, and effective child and family service delivery system.

(i) *Objectives.* (1) The CFSP must include the realistic, specific, measurable objectives that will be undertaken to achieve each goal. Each objective should focus on outcomes for children, youth, and/or their families or on elements of service delivery (such as quality) that are linked to outcomes in important ways. Each objective should include both interim benchmarks and a long-term timetable, as appropriate, for achieving the objective.

(2) For States and Indian tribes administering the title IV–B, subpart 1

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program, the CFSP must include objectives to make progress in covering additional political subdivisions, reaching additional children in need of services, expanding and strengthening the range of existing services, and developing new types of services.

(j) *Measures of progress.* The CFSP must describe how the grantee plans to measure the results, accomplishments, and annual progress toward meeting the goals and objectives, especially the outcomes for children, youth, and families.

(k) *Baseline information.* (1) For FY 1995, the State and the Indian tribe must base the development of the CFSP goals, objectives, and funding and service decisions on an analysis of available information on the well-being of children and families; the needs of children and families; the nature, scope, and adequacy of existing child and family and related social services; and the trends of these indicators over time. Additional and updated information must be obtained throughout the five-year period to measure progress in accomplishing the goals and objectives.

(2) The State must collect and analyze State-wide information on family preservation and family support services currently available to families and children, including the nature and scope of existing public and privately funded family support and family preservation services; the extent to which each service is available and being provided in different geographic areas and to different types of families; and important gaps in service, including mismatches between available services and family needs as identified through baseline data and the consultation process. Other services which impact on the ability to preserve and support families may be included in the assessment. The Indian tribe must collect and analyze information on family preservation and family support services currently available within their service delivery area including the information in this paragraph as appropriate.

(3) The CFSP must include the information used in developing the plan; an explanation of how this information and analysis were used in developing the goals, objectives, and funding and service decisions, including decisions about geographic targeting and service mix; a description of how information will be used to measure progress over the five-year period; and how this information will be used to facilitate the coordination of services.

(l) *Consultation.* (1) The State's CFSP must describe the internal and external consultation process used to obtain broad and active involvement of major actors across the entire spectrum of the child and family service delivery system in the development of the plan. The description should explain how this process was coordinated with or was a part of other planning processes in the State.

(2) The Indian tribe's CFSP must describe the consultation process appropriate to its needs and circumstances used to obtain the active involvement of major actors providing child and family services within the tribe's area of jurisdiction.

(3) For States (and Indian tribes), the consultation process must involve:

(i) All appropriate offices and agencies within the State agency (or within the Indian tribal service delivery system), e.g., child protective services (CPS), foster care and adoption, the social services block grant, emergency assistance, reunification services, independent living, and other services to youth;

(ii) In a State-supervised, county-administered State, county social services and/or child welfare directors or representatives of the county social services/child welfare administrators' association;

(iii) A wide array of State, local, tribal, and community-based agencies and organizations, both public and private nonprofit with experience in administering programs of services for infants, children, youth, adolescents, and families, including family preservation and family support services;

(iv) Parents, including birth and adoptive parents, foster parents, families with a member with a disability, and consumers of services;

(v) For States, representatives of Indian tribes within the State;

(vi) For States, representatives of local government, e.g., counties, cities, and other communities, neighborhoods, or areas where needs for services are great;

(vii) Representatives of professional and advocacy organizations (including, for example foundations and national resource centers with expertise to assist States and Indian tribes to design, expand, and improve the delivery of services); individual practitioners working with children and families; the courts; representatives or other States or Indian tribes with experience in administering family preservation and family support services; and academicians, especially those assisting the child and family service agency with management information systems, training curricula, and evaluations;

(viii) Representatives of State and local agencies administering Federal and federally assisted programs including, but not limited to, Head Start; the local education agency (school-linked social services, adult education and literacy programs, Part H programs); developmental disabilities; nutrition services (Food Stamps, Special Supplemental Food Program for Women, Infants and Children (WIC)); Title IV–A (Emergency Assistance, income maintenance, child care, employment and training); runaway youth, youth gang, juvenile justice programs and youth residential and training institutions; child care and development block grant (CCDBG) and respite care programs; domestic and community violence prevention and services programs; housing programs; the health agency (substance abuse, Healthy Start, maternal and child health, Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), mental health, and public health nursing); law enforcement; and new Federal initiatives such as the Empowerment Zones and Enterprise Communities Program; and

(ix) Administrators, supervisors and front line workers (direct service providers) of the State child and family services agency.

(4) The CFSP must describe the ongoing consultation process that each grantee will use to ensure the continued involvement of a wide range of major actors in meeting the goals and objectives over the five-year operational period of the plan and developing the Annual Progress and Services Report.

(m) *Services coordination.* (1) States must include in the ongoing coordination process representatives of the full range of child and family services provided by the State agency as well as other service delivery systems providing social, health, education, and economic services to children and their families.

(2) The State's CFSP must describe how services under the plan will be coordinated over the five-year period with services or benefits under other Federal or federally assisted programs serving the same populations to achieve the goals and objectives in the plan. The description must include the participants in the process and examples of how the process led or will lead to additional coordination of services, e.g., integrated service models, improved accessibility, use of a consolidated application or intake form, inter-disciplinary training, coordinated case management for several programs, pooled resources through blended financing, shared information across

services providers, co-location of several services or programs.

(3) The Indian tribe must include in the coordination process representatives of other Federal or federally assisted child and family services or related programs. The Indian tribe's CFSP must describe how services under the plan will be coordinated over the five-year period with services or benefits under other Federal or federally assisted programs serving the same populations to achieve the goals and objectives in the plan. The descriptions must include the participants in the process and any examples of how the process led or will lead to additional coordination of services.

(n) *Services.* (1) The State's CFSP must describe the publicly funded child and family services continuum: Child welfare services (including child abuse and neglect prevention, intervention, and treatment services; and foster care); family preservation services; family support services; and services to support reunification, adoption, kinship care, independent living, or other permanent living arrangement to be provided in FY 1995 and FY 1996.

(2) The Indian tribe's CFSP must describe the child welfare services (including child abuse and neglect prevention, intervention, and treatment services and foster care) and/or the family support and family preservation services to be provided in FY 1995 and FY 1996.

(3) For each service described, the CFSP must indicate:

(i) The population(s) to be served;

(ii) The geographic area(s) where the services will be available;

(iii) The estimated number of individuals and/or families to be served; and

(iv) The estimated expenditures for these services from Federal, State, local, and donated sources, including title IV–B, subparts 1 and 2, the two CAPTA programs referenced in paragraph (a) of this section, and the independent living program.

(o) *Family preservation and family support services and linkages to other social and health services.* (1) The State's CFSP must explain how the funds under title IV–B, subpart 2 of the Act, will be used to develop or expand family support and family preservation services; how the family support and family preservation services to be provided in FY 1995 and FY 1996 relate to existing family support and family preservation services; and how these family support and preservation services will be linked to other services in the child and family services continuum.

(2) The State's CFSP must explain whether and/or how funds under the CAPTA and independent living programs are coordinated with and integrated into the child and family services continuum described in the plan.

(3) The State's CFSP must describe the existing or current linkages and the coordination of services between the services in the child and family services continuum and the services in other Federal and non-federally funded public and nonprofit private programs, including Children's Trust Funds and private foundations.

(p) *Services in relation to service principles.* The CFSP must describe how the child and family services are designed to assure the safety and protection of children as well as the preservation and support of families, and how they are or will be designed to meet the other service principles in 45 CFR 1355.25, e.g., services that are flexible, easily accessible, and respectful of cultural and community diversity.

(q) *Services in relation to permanency planning.* For States administering both title IV–B programs (subparts 1 and 2), the CFSP must explain how these services will help meet the permanency provisions for children and families in sections 427 and 471 of the Act, e.g., preplacement preventive services, reunification services, independent living services.

(r) *Decision-making process: selection of family support programs for funding.* The State's CFSP must include an explanation of how agencies and organizations were selected for funding to provide family support services and how these agencies and organizations meet the requirement that family support services be community-based.

(s) *Significant portion of funds used for family support and family preservation services.* Each State must indicate the specific percentage of FY 1995 and FY 1996 family preservation and family support funds (title IV–B, subpart 2), that the State will expend for community-based family support and for family preservation services, and the rationale for the choice. It must also include an explanation of how this distribution was reached and why it meets the requirements that a "significant portion" of the service funds must be spent for each service. Examples of important considerations might include the nature of the planning efforts that led to the decision, the level of existing State effort in each area, and the resulting need for new or expanded services. While there is no minimum percentage that defines significant, the State must have an especially strong rationale if the request for either allocation is below 25 percent.

(t) *Staff training, technical assistance, and evaluation.* (1) The State's CFSP must include a staff development and training plan in support of the goals and objectives in the CFSP which addresses both of the title IV–B programs covered by the plan. This training plan also must be combined with the training plan under title IV–E as required by 45 CFR 1356.60(b)(2).

(2) The State's CFSP must describe the technical assistance activities that will be undertaken in support of the goals and objectives in the plan.

(3) The State's CFSP must describe any evaluation and research activities underway or planned with which the State agency is involved or participating and which are related to the goals and objectives in the plan.

(u) *Quality assurance.* The State must include in the CFSP a description of the quality assurance system it will use to regularly assess the quality of services under the CFSP and assure that there will be measures to address identified problems.

(v) *Distribution of the CFSP and the annual progress and services report.* The CFSP must include a description of how the State and the Indian tribe will make available to interested parties the CFSP and the Annual Progress and Services Report. (See 45 CFR 1355.21(c) and 45 CFR 1357.16(d).) State agencies and Indian tribal organizations within the State must exchange copies of their CFSPs and their annual services reports.

14. A new § 1357.16 is added to read as follows:

§ 1357.16 Annual progress reviews and services reports.

(a) *Annual progress reviews and services reports.* Annually, each State and each Indian tribe must conduct an interim review of the progress made in the previous year toward accomplishing the goals and objectives in the plan, based on updated information. In developing paragraphs (a)(2) through (a)(4), the State and the Indian tribe must involve the agencies, organizations, and individuals who are a part of the on-going CFSP-related consultation and coordination process. On the basis of this review, each State and Indian tribe must prepare and submit to ACF, and make available to the public, an Annual Progress and Services Report which must include the following—

(1) A report on the specific accomplishments and progress made in the past fiscal year toward meeting each goal and objective, e.g., toward improved outcomes for children and

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families and a more comprehensive, coordinated, effective child and family services continuum;

(2) Any revisions in the statement of goals and objectives, if necessary, to reflect changed circumstances;

(3) For Indian tribes, a description of the child welfare and/or family preservation and family support services to be provided in the upcoming fiscal year highlighting any changes in services or program design and including the information required in 45 CFR 1357.15(n);

(4) For States, a description of the child protective, child welfare, family preservation, family support, and independent living services to be provided in the upcoming fiscal year highlighting any additions or changes in services or program design and including the information required in 45 CFR 1357.15(n);

(5) Information on activities in the areas of training, technical assistance, research, evaluation, or management information systems that will be carried out in the upcoming fiscal year in support of the goals and objectives in the plan;

(6) For States only, the information required to meet the maintenance of effort (supplantation) requirement in section 432(a) (7) and (8) of the Act; and

(7) Any other information the State or the Indian tribe wishes to include.

(b) *Submittal of the annual progress and services report.* The State and the Indian tribe must send the Annual Progress and Services Report to the appropriate ACF Regional Office no later than June 30 of the year prior to the fiscal year in which the services will be provided, i.e., the report submitted and made public by June 30, 1995, as a part of the CFSP will describe the services to be provided in FY 1996. The report covering FY 1997 services must be submitted by June 30, 1996.

(c) *Annual progress and services reports on FY 1994 family support and family preservation services.* Each State and Indian tribe that used FY 1994 funds under title IV–B, subpart 2, for services must describe in the CFSP what services were provided, the population(s) served, and the geographic areas where services were available. The CFSP also must include the amount of FY 1994 funds used for planning, for family preservation services, for family support services, and a brief statement on how these services met the service priorities of the State or the Indian tribe.

(d) *Availability of the annual progress and services report.* The State and the Indian tribe must make the Annual Progress and Services Report available to the public including the agencies, organizations, and individuals with which the State or the Indian tribe is coordinating services or consulting and to other interested members of the public. Each State and each Indian tribe within the State must exchange copies of their Annual Progress and Services Reports.

(e) *FY 1999 Final Review.* In FY 1999, each State and each Indian tribe must conduct a final review of progress toward accomplishing the goals and objectives in the plan. On the basis of the final review, it must—

(1) Prepare a final report on the progress made toward accomplishing the goals and objectives; and

(2) Send the final report to the ACF Regional Office and make it available to the public.

(f) *FY 2000 Five-Year State Plan.* Based on the FY 1999 final review and final Annual Progress and Services Report, and in consultation with a broad range of agencies, organizations, and individuals, the State and Indian tribe must develop a new five-year CFSP following the requirements of 45 CFR 1357.15.

15. Section 1357.20 is revised to read as follows:

§ 1357.20 Child abuse and neglect programs.

The state agency must assure that, with regard to any child abuse and neglect programs or projects funded under title IV–B of the Act, the requirements of section 107(f) of the Child Abuse Prevention and Treatment Act, as amended (42 U.S.C. 5106(f)) are met. These requirements relate to the reporting of known and suspected incidents of child abuse and neglect; the prompt investigation of reports and the protection of children in danger of abuse and neglect; confidentiality; the cooperation of law enforcement officials, courts, and appropriate State agencies providing human services; and responding to reports of medical neglect.

16. Section 1357.30 is revised to read as follows:

§ 1357.30 State fiscal requirements (title IV–B, subpart 1, child welfare services).

(a) *Scope.* The requirements of this section shall apply to all funds allotted or reallotted to States under title IV–B, subpart 1, and to all funds not needed for foster care which are transferred from title IV–E and awarded to States under title IV–B.

(b) *Allotments.* Allotments for each State shall be determined in accordance with section 421 of the Act.

(c) *Payments.* Payments to States shall be made in accordance with section 423 of the Act.

(d) *Enforcement and termination.* In the event of a State's failure to comply with the terms of the grant under title IV–B, subpart 1, the provisions of 45 CFR 92.43 and 92.44 will apply.

(e) *Matching or cost-sharing.* Federal financial participation is available only if costs are incurred in implementing sections 422, 423, and 425 and, when applicable, section 427 of the Act in accordance with the grants administration requirements of 45 CFR Part 92 except that—

(1) Non-public third party in-kind contributions may not be used to meet the requirements of the non-Federal share of the costs of programs funded under this part.

(2) The total of Federal funds used for the following purposes under title IV–B may not exceed an amount equal to the FY 1979 Federal payment under title IV–B:

(i) Child day care necessary solely because of the employment, or training to prepare for employment, of a parent or other relative with whom the child involved is living, plus;

(ii) Foster care maintenance payments, plus;

(iii) Adoption assistance payments.

(3) Notwithstanding paragraph (e)(2) of this section, State expenditures required to match the title IV–B, subpart 1 allotment may include foster care maintenance expenditures in any amount.

(f) *Prohibition against purchase or construction of facilities.* Funds awarded under title IV–B may not be used for the purchase, construction, or other capital costs for child care facilities.

(g) *Maintenance of effort.* (1) A State may not receive an amount of Federal funds under title IV–B in excess of the Federal payment made in FY 1979 under title IV–B unless the State's total expenditure of State and local appropriated funds for child welfare services under title IV–B of the Act is equal to or greater than the total of the State's expenditure from State and local appropriated funds used for similar covered services and programs under title IV–B in FY 1979.

(2) In computing a State's level of expenditures under this section in FY 1979 and any subsequent fiscal year, the following costs shall not be included—

(i) Expenditures and costs for child day care necessary to support the employment of a parent or other relative;

(ii) Foster care maintenance payments; and

(iii) Adoption assistance payments.

(3) A State applying for an amount of Federal funds under title IV–B greater than the amount of title IV–B funds received by that State in FY 1979 shall certify:

(i) The amount of their expenditure in FY 1979 for child welfare services as described in paragraphs (g) (1) and (2) of this section, and

(ii) The amount of State and local funds that have been appropriated and are available for child welfare services as described in paragraphs (g) (1) and (2) of this section for the fiscal year for which application for funds is being made.

Records verifying the required certification shall be maintained by the State and made available to the Secretary as necessary to confirm compliance with this section.

(h) *Reallotment.* (1) When a State certifies to the Commissioner that funds available to that State under its title IV–B, subpart 1 allotment will not be required, those funds shall be available for reallotment to other States.

(2) When a State, after receiving notice from the Commissioner of the availability of funds, does not certify by a date fixed by the Commissioner that it will be able to expend during the period stated in paragraph (i) of this section all of the funds available to it under its title IV–B, subpart 1 allotment, those funds shall be available for reallotment to other States.

(3) The Commissioner may reallot available funds to another State when he determines that—

(i) The requesting State's plan requires funds in excess of the State's original allotment; and

(ii) The State will be able to expend the additional funds during the period stated in paragraph (i) of this section.

(i) *Time limit on expenditures.* Funds under title IV–B, subpart 1, must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

17. A new § 1357.32 is added to read as follows:

§ 1357.32 State fiscal requirements (title IV–B, subpart 2, family preservation and family support services).

(a) *Scope.* The requirements of this section apply to all funds allocated to States under title IV–B, subpart 2, of the Act.

(b) *Allotments.* The annual allotment to each State shall be made in accordance with section 433 of the Act.

(c) *Payments.* Payments to each State will be made in accordance with section 434 of the Act.

(d) *Matching funds.* (1) Funds used to provide services in FY 1994 and in subsequent years will be federally reimbursed at 75 percent of allowable expenditures. Federal funds, however, will not exceed the amount of the State's allotment.

(2) The State's contribution may be in cash or donated funds.

(3) Except as provided by Federal statute, other Federal funds may not be used to meet the matching requirement.

(e) *Supplantation (Maintenance of effort).* States may not use the Federal funds under title IV–B, subpart 2, to supplant Federal or non-Federal funds for existing family preservation and family support services. For the purpose of implementing this requirement, "non-Federal funds" means State and local public funds. Local public entities will provide assurances on their maintenance of effort to the State and maintain sufficient information to document this maintenance of effort upon request. ACF will collect information annually from each State on expenditures for family support and family preservation using the State fiscal year 1992 as the base year.

(f) *Time limits on expenditures.* Funds must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

(g) *Administrative costs.* (1) States using funds for services in FY 1994 and subsequent years may not use more than 10 percent of total Federal and State service expenditures under subpart 2 for administrative costs at either State or subrecipient levels. States must obtain such assurances from subrecipients as to ensure that no more than 10 percent of total State funds are used for administrative costs.

(2) For the purposes of title IV–B, subpart 2, "administrative costs" are costs properly identified through an agency's accounting system (meeting the requirements of 45 CFR Parts 92 and 95) which are:

(i) Allocable (in accordance with the agency's approved cost allocation plan) to the title IV–B, subpart 2 program cost centers; and

(ii) Costs of auxiliary functions necessary to sustain the direct effort involved in administering the state plan for title IV–B, subpart 2, or an activity providing service to the program. These services may be centralized in the grantee department or in some other agency, and may include but are not limited to the following: Procurement; payroll processing; personnel functions; management, maintenance and operation of space and property; data processing and computer services; accounting; budgeting; auditing; and indirect costs.

(3) Program costs are costs, other than administrative costs, incurred in connection with developing and implementing the CFSP (e.g., delivery of services, planning, consultation, coordination, training, or supervision).

18. Section 1357.40 is revised to read as follows:

§ 1357.40 Direct payments to Indian Tribal Organizations (title IV–B, subpart 1, child welfare services).

(a) *Who may apply for direct funding?* Any Indian Tribal Organization (ITO) that meets the definitions in section 428(c) of the Act, or any consortium or other group of eligible tribal organizations authorized by the membership of the tribes to act for them is eligible to apply for direct funding if:

(1) The Indian tribe (or tribes comprising the ITO) is providing, under a contract (or grant) with the Secretary of the Interior under section 102 of the Indian Self-Determination Act (25 U.S.C. 450f) child welfare services which would otherwise be provided directly by the Secretary of the Interior; and

(2) The Indian tribe, consortium or group has a plan for child welfare services provided by the ITO that is jointly developed by the Indian Tribal Organization and the Department.

(b) *Title IV–B Child and Family Services Plan (CFSP).* (1) In order to receive funds under title IV–B, subpart 1, beginning in FY 1995, the Indian tribe or tribal organization must have in effect an approved five-year child and family services plan that meets the applicable requirements of § 1357.15 of this part.

(2) The Indian tribe or tribal organization must also comply with section 422 of the Act; 45 CFR part 1355 (except that the requirements in § 1355.30 for a single State agency and Governor's review of the CFSP do not apply); and other applicable requirements of section 1357 of this part.

(c) *Information related to the requirements of Section 427 of the Act.* The following information must be submitted along with the assurances required to be eligible for title IV–B, subpart 1 funds:

(1) A statement of the legal responsibility, if any, for children who are in foster care on the reservation and those awaiting adoption;

(2) A description of tribal jurisdiction in civil and criminal matters, existence or nonexistence of a tribal court and the type of court and codes, if any;

(3) An identification of the standards for foster family homes and institutional care and day care;

(4) The Indian tribal organization's political subdivisions, if any;

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(5) Whether the tribal organization is controlled, sanctioned or chartered by the governing body of Indians to be served and if so, documentation of that fact;

(6) Any limitations on authorities granted to the Indian tribal organizations; and

(7) The tribal resolution(s) authorizing an application for a direct title IV–B, subpart 1 grant under this Part.

(d) *Grants: General.* (1) Grants may be made to eligible Indian tribal organizations in a State which has a jointly developed child and family services plan approved and in effect.

(2) Federal funds made available for a direct grant to an eligible ITO shall be paid by the Department, from the title IV–B allotment for the State in which the ITO is located. Should a direct grant be approved, the Department shall promptly notify the State(s) affected.

(3) If an eligible ITO includes population from more than one State, a proportionate amount of the grant will be paid from each State's allotment.

(4) The receipt of title IV–B funds must be in addition to and not a substitute for funds otherwise previously expended by the ITO for child welfare services.

(5) Only the following fiscal and administrative requirements in 45 CFR 1357.30 apply to Indian tribal grants under this section:

(i) § 1357.30(d) Enforcement and termination;

(ii) § 1357.30(e) Matching and cost sharing;

(iii) § 1357.30(f) Prohibition against purchase or construction of facilities;

(iv) § 1357.30(g) Maintenance of effort; and

(v) § 1357.30(i) Time limit on expenditures.

19. A new § 1357.50 is added to read as follows:

§ 1357.50 Direct payments to Indian tribal organizations (title IV–B, subpart 2, family preservation and support services).

(a) *Definitions. Alaska Native Organization* means any organized group of Alaska Natives eligible to operate a Federal program under the Indian Self-Determination Act (Pub.L. 93–638) or such group's designee as defined in section 482(i)(7)(A) of the Act.

Indian tribe means any tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and for which a reservation (including Indian reservations, public domain Indian allotments, and former Indian reservations in Oklahoma) exists.

Tribal organization means the recognized governing body of the Indian tribe.

(b) *Eligibility for funds: FY 1994.* (1) Section 432(b)(2) of the Act provides that the Secretary may not approve a plan of an Indian tribe whose FY 1995 allotment under subpart 2 would be less than $10,000. Therefore, only those Indian tribes whose FY 1995 allotment is $10,000 or more are eligible to receive funds beginning in FY 1994.

(2) ACF will pay any amount to which an Indian tribe is entitled to the tribal organization of the Indian tribe.

(c) *Eligibility for funds: FY 1995.* In order to receive funds under title IV–B, subpart 2, in FY 1995, an Indian tribe eligible for planning funds in FY 1994 must submit a Child and Family Services Plan that meets the applicable requirements in section 1357.15 of this Part.

(d) *Eligibility for funds: FY 1996 through FY 1998.* (1) ACF will make grants to additional Indian tribes in FYs 1996 through 1998, based on anticipated increases in appropriations.

(2) Allotments will be calculated in FYs 1996, 1997, and 1998 as required in Section 433 of the Act. Those Indian tribes in each year whose allotment is at least $10,000 will be notified of their eligibility to apply.

(3) In order to receive funds, an Indian tribe must submit a Child and Family Services Plan (CFSP) that meets the applicable requirements of 45 CFR 1357.15. The plan must cover a one, two, or three year period (between FY 1996–FY 1998), depending on when the Indian tribe applies. There are no funds available for planning in FYs 1996–98, but the Regional Office staff of ACF will, through the joint planning process, assist the Indian tribe in developing its CFSP.

(e) *Allotments.* Allotments to Indian tribes are computed based on section 433 of the Act and are based on a ratio of the number of children in each Indian tribe with an approved plan compared to the number of children in all Indian tribes with approved plans, based on the most current and reliable data available.

(f) *Waivers of requirements.* ACF has waived for Indian tribes three statutory requirements:

(1) The limitation on administrative costs to 10 percent of total Federal and tribal funds; (Indian tribes may use the indirect cost rate agreement in effect for the Tribe.);

(2) The requirement that funds under this program may not be used to supplant other Federal and non-Federal funds; and

(3) The requirement that a significant portion of funds must be used for both family support and family preservation services.

(g) *Matching requirement.* (1) Funds used to provide services in FY 1994 and in subsequent years will be federally reimbursed at 75 percent of allowable expenditures. (This is the same Federal financial participation rate as title IV–B, subpart 1.) The Indian tribe's share must be at least 25 percent of the total or 33 percent of the Federal share. Federal funds, however, will not exceed the amount of the Indian tribe's allotment.

(2) The Indian tribe's contribution may be in cash or donated funds. In addition, Indian tribes, by statute, may use the following three Federal sources of funds as matching funds: Indian Child Welfare Act funds, Indian Self-Determination and Education Assistance Act funds, and Community Development Block Grant funds.

(h) *Fiscal and administrative requirements.* An Indian tribe must expend all funds by September 30 of the fiscal year following the fiscal year in which the funds were awarded. Other fiscal and administrative requirements will be found in the compilation of statutory assurances to be prepared by ACF.

Appendix to the NPRM: Revised reporting form—Annual Summary of Child and Family Services. (This Appendix will not be published as a part of the final rule.)

BILLING CODE 4184–01–P

ANNUAL SUMMARY OF CHILD AND FAMILY SERVICES [OMB APPROVAL #_____ EXP. DATE_____]

STATE OF _____ for FY OCTOBER 1, 19__ TO SEPTEMBER 30, 19__ DUE JUNE 30, 19__

SERVICES/ACTIVITIES	ESTIMATED EXPENDITURES BY PROGRAM (IN THOUSANDS)														
	IV-B		CAPTA		ILP	IV-E	TITLE XX	IV-A (E/A)	OTHER FED PROG.	STATE LOCAL DONATE	NO. TO BE SERVED	POP. TO BE SERVED	GEOG. AREA TO BE SERVED
	I CWS	II FP/FS	I	II									
1) PREVENTION & SUPPORT SERVICES (FS)													
2) PROTECTIVE SERVICES													
3) CRISIS INTERVENTION (FP)													
4) REUNIFICATION SERVICES													
5) FOSTER CARE MAINTENANCE:													
(a) FOSTER FAMILY & RELATIVE FOSTER CARE													
b) GROUP CARE													
6) ADOPTION SUBSIDY PMTS.													
7) ADMINISTRATION & MANAGEMENT													
8) FP/FS 10% ADMIN. COST													
9) SIGNIFICANT PORTION													
10) STAFF TRAINING													
11) FOSTER PARENT TRAINING & RECRUITMENT													
12) ADOPTIVE PARENT TRAINING & RECRUITMENT													
13) CHILD CARE RELATED TO EMPLOYMENT/TRAINING													
14) TOTAL													

[FR Doc. 94–24325 Filed 10–3–94; 8:45 am]

BILLING CODE 4184–01–C

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Tuesday
October 4, 1994

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 11

Direct Final Rulemaking Procedure; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 11

[Docket No. 27925; Notice No. 94–30]

RIN 2120–AF55

Direct Final Rulemaking Procedure

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to the President's Executive Order on Regulatory Planning and Review, the Vice President's National Performance Review, and the Administration's Civil Aviation Initiative, the FAA proposes to implement a new and more efficient procedure for adopting non-controversial or consensual rules. This "direct final rulemaking" procedure involves issuing a rule for notice and comment, with a statement that if the FAA receives no adverse or negative comment, or notice of intent to file such a comment, the rule will become effective at the end of a specified period of time after the close of the comment period. This new procedure is expected to reduce significantly the time needed to publish routine or non-controversial final rules.

DATES: Comments must be received on or before December 5, 1994.

ADDRESSES: Comments on this notice should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27925. Comments may be inspected in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Donald P. Byrne, Assistant Chief Counsel for Regulations, AGC–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental energy, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with the Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27925. "The postcard will be date stamped and mailed to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–200, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed in the mailing list for future NPRMs should request from the above office, a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

In Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, Oct. 4, 1993), the President set forth the Administration's regulatory philosophy and principles. The Executive Order contemplates an efficient and effective rulemaking process, including the conservation of the limited government resources available for carrying out its regulatory functions. In responding to both the letter and the spirit of the President's order, the Secretary of Transportation has directed administrations within the Department of Transportation (DOT) to focus on improvements that can be made in the way in which they propose and adopt regulations.

The Administrative Conference of the United States (ACUS) recently observed that the rulemaking process has become increasingly time consuming. (Aviation interests in particular have expressed concern to the FAA over the time-consuming workings of the regulatory process.) ACUS believes that agencies should consider innovative methods for developing rules and obtaining public input, including the use of such groups as advisory committees and negotiated rulemaking committees. The FAA and the industry have been engaged in one such effort for several years, through the Aviation Rulemaking Advisory Committee (ARAC).

In addition to focusing on consensus-based rulemaking, ACUS believes that agencies should consider the use of "direct final" rulemaking where appropriate to eliminate duplicative review of non-controversial rules. Under the direct final rulemaking procedure, an agency issues a final rule with an opportunity for comment and a statement that if the agency receives no adverse or negative comments, the rule becomes effective automatically at a specified time after close of the comment period. If an adverse comment or a notice of intent to file such a comment is received, the agency withdraws the rule before the effective date and issues a notice of proposed rulemaking (NPRM) in the normal manner.

This expedited process was initially recommended by the Vice President in his report on the National Performance Review ("Creating a Government That Works Better and Costs Less; Improving Regulatory Systems"). Use of the process is encouraged in rulemakings in which the agency does not believe there will be adverse public comment, in order to help agencies streamline their rulemaking procedures.

The FAA proposes to use the direct final rulemaking procedure for non-controversial rules and for consensual rules, where it believes there will be no adverse public comment. The FAA believes that this expedited process can be used effectively for a number of proposed agency rules, including many of the proposed regulations based on recommendations of broad-based advisory committee groups such as ARAC. The FAA would consider issuing a direct final rule where such an advisory committee has involved representatives of all interested parties in negotiating a proposed rule; the committee has reached a unanimous recommendation; and the nature of the negotiations leads the FAA to believe the public will not file adverse comments. The FAA would expect this often to be the case, for example, for recommendations of the ARAC intended to harmonize FAA and European technical standards for the manufacture of aircraft.

The direct final rulemaking process may also be used to regularly issue airworthiness directives, whenever there is broad consensus within sections of the aviation community on the FAA's view of the appropriate correction for an unsafe condition in an aviation product. Other possible uses of the process would include routine regulations amending airspace designations and possibly the extension of a compliance date that is not expected to be controversial.

The Direct Final Rule Procedure

When the FAA believes that a proposed regulation is unlikely to result in adverse comment, it may choose to use the direct final rule process. The direct final rule will advise the public that no adverse comments are anticipated, and that unless a written adverse or negative comment, or a written notice of intent to submit an adverse comment is received within the comment period, the regulation will become effective at the end of a specified period of time after close of the comment period. If no written adverse or negative comment, or notice of intent to submit such a comment is received within the comment period, the direct final rule will become effective on the date indicated in the direct final rule. The FAA will publish a notice in the **Federal Register** indicating that no adverse comments were received and confirming the date on which the final rule will become effective.

Comments that are outside the scope of the rule will not be considered adverse under this procedure. A comment recommending a rule change in addition to the direct final rule would not be considered an adverse comment, unless the commenter states that the rule would be inappropriate as proposed or would be ineffective without the additional change. A comment not so qualified would be beyond the scope of the rulemaking.

If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a notice of withdrawal of the direct final rule will be published in the **Federal Register**, and an NPRM will be published with a new comment period. Normal procedures for the agency's receipt and consideration of comments will then apply.

Interested persons are encouraged to submit comments on this proposed new procedure. In particular, comments are invited on specific areas of the FAA's regulations for which this procedure might be appropriate.

Regulatory Evaluation

This proposed amendment to part 11 would provide a new and more efficient procedure for adopting non-controversial or consensual rules. Little or no cost would be associated with the FAA's use of this procedure in appropriate instances. Use of this alternative procedure is expected to reduce the costs of rulemaking to the FAA by eliminating duplicate publication of rule text when no adverse comment was received. In cases where the rule would result in cost savings to the aviation industry, use of this alternative would allow the industry to receive the cost savings sooner than would be the case if current rulemaking procedures were used. Accordingly, the FAA has determined that because no costs can be foreseen, the expected economic impact of the amendment is minimal, and that a full regulatory evaluation is not warranted.

International Trade Impact

The proposed rule is only a change in the FAA's procedures for rulemaking, and will have no impact on trade.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 ensures that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities. The costs associated with this proposed rule are minimal, and are well below any threshold established by FAA Order 2100.14A. Accordingly, this proposed rule would not have a significant economic impact on any small entity.

Federalism Implications

The regulations proposed herein would not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Conclusion

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act; and (4) that because any economic impact would be minimal, a full regulatory evaluation is not warranted.

List of Subjects in 14 CFR Part 11

Air transportation, Aircraft, Aviation safety.

The Proposed Amendment

The Federal Aviation Administration proposes to amend 14 CFR part 11 as follows:

PART 11—GENERAL RULEMAKING PROCEDURES

1. The authority citation for part 11 continues to read as follows:

Authority: 49 U.S.C. app. 1341(a), 1343(d), 1348, 1354(a), 1401–1405, 1421–1431, 1481, 1502; 49 U.S.C. 106(g).

2. A new section 11.17 is added to subpart A to read as follows:

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§ 11.17 Direct final rule.

Whenever the FAA anticipates that a proposed regulation is unlikely to result in adverse comment, it may choose to issue a direct final rule. The direct final rule will advise the public that no adverse or negative comments are anticipated, and that unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified in the direct final rule. If no written adverse or negative comment, or notice of intent to submit such a comment is received within the comment period, the direct final rule will become effective on the date indicated in the direct final rule. The FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking will be published with a new comment period. Normal procedures for the agency's receipt and consideration of comments will then apply.

Issued in Washington, DC on September 27, 1994.

Mark L. Gerchick,

Chief Counsel.

[FR Doc. 94-24493 Filed 9-29-94; 1:51 pm]

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federal register

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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Title 3—

The President

Proclamation 6728 of September 30, 1994

Child Health Day, 1994

By the President of the United States of America

A Proclamation

It has been said that "(i)n every child who is born . . . the potentiality of the whole human race is born again." Since James Agee wrote those words in 1941, generations of children have been born into our world, each individual holding as much promise and potential as the children of ages past. In recent decades, children have grown up to see the human race produce a vaccine for polio and pull back from the precipice of nuclear war. Indeed, in many ways, the world is a much safer place for all of us. It would seem that today's children would have a better chance than ever to fulfill the tremendous potential of humanity.

Yet as we celebrate Child Health Day this year, our young people face challenges to their well-being that their grandparents and great-grandparents could scarcely have imagined. In virtually every school and community, drugs and guns threaten our youths' safety, and gangs have become the closest thing to family that many young people will ever know. Girls too young to be mothers are struggling to meet the demands of parenthood, and many boys too young to be fathers are turning from the profound responsibilities they should shoulder. Among the primary health risks confronting our young people, homicide and suicide have become the leading causes of death.

If our Nation is to succeed in the years to come, we must take new responsibility for the lives of our children, from promoting proper nutrition and basic health and safety to raising awareness of the terrible dangers of substance abuse, teen pregnancy, and AIDS. Already, we have made important progress in those efforts. We have enacted legislation that expands and improves the Head Start program, providing health, education, and social services for children of low-income families. My Childhood Immunization Initiative will help to vaccinate at least 90 percent of our Nation's infants—the most sweeping effort of its kind in American history. Our new crime bill supports programs that encourage youth to develop a sense of self-worth apart from gangs, and it goes a long way toward keeping guns out of the hands of juveniles. Already, we are saving children's lives.

But for all that we have accomplished in the past year, much remains to be done. We must forge active partnerships among health, child development, education, and social services organizations. We must involve parents and siblings, schools and communities in protecting our youth. Every child needs and deserves our concern and respect, and these begin with personal involvement. Children need love, tempered by discipline. They need the freedom to dream, tempered by the knowledge of hard work. They need someone who will lift them up when they fall, who will care for their bruises and scrapes, who will kiss their tears away when they falter and applaud them when they succeed. Only we can do these things. And it is only in reaching out to children that we may discover the true potential within ourselves.

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The Congress, by joint resolution approved May 18, 1928, as amended (36 U.S.C. 143), has called for the designation of the first Monday in October as "Child Health Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Monday, October 3, 1994, as Child Health Day. I call upon all Americans to rededicate themselves to ensuring that every generation of children enjoys bright and healthy futures.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of September, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94-24816
Filed 10-3-94; 1:42 pm]
Billing code 3195-01-P

Presidential Documents

Proclamation 6729 of September 30, 1994

National Disability Employment Awareness Month, 1994

By the President of the United States of America

A Proclamation

Like every civil rights law in our Nation's history, the Americans with Disabilities Act of 1990 (ADA) is about potential. We see that potential reflected every day in the faces of America—from the AmeriCorps volunteers of Gallaudet University to the athletes taking part in this year's trials for the Special Olympics World Games. In myriad ways, our citizens continually prove the proposition on which our Nation was founded: that empowered by the freedom to dream, to work, and to succeed, every one of us can accomplish great things.

As we commemorate National Disability Employment Awareness Month, 1994, employers across the country are recognizing that in the hiring of people with disabilities, basic fairness and economic good sense are one and the same. Prohibiting discrimination in employment, public accommodation, government services, transportation, and communications, the ADA holds up a model and an important challenge to businesses at home and around the world. In this country, the 49 million Americans with disabilities represent one of our largest untapped resources—a resource upon which we must rely if we are to succeed in an increasingly competitive international marketplace. Their knowledge and skill, their energy and creativity are essential in building a work force that will carry our economy into the next century.

This year, we celebrate as the ADA provisions for fair employment practices go into effect for small businesses throughout the land. These provisions are designed to open a vast new world of opportunity to American workers and employers, and our Nation stands committed to fully implement and to aggressively enforce the ADA in our schools and workplaces, in government and in public facilities. With this measure, our citizens will enjoy more avenues to freedom than ever. Indeed, it is past time to free all of our people to dream, to work, to succeed, and finally to fulfill the vast potential that is America.

The Congress, by joint resolution approved August 11, 1945, as amended (36 U.S.C. 155), has called for the designation of October of each year as "National Disability Employment Awareness Month." This month is a time for all Americans to recognize the tremendous potential of citizens with disabilities and to renew our commitment to full inclusion and equal opportunity for all.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 1994 as National Disability Employment Awareness Month. I call upon all Americans to observe this month with appropriate programs and activities that affirm our determination to fulfill both the letter and the spirit of the Americans with Disabilities Act and related laws.

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IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of September, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William Jefferson

[FR Doc. 94-24807
Filed 10-3-94; 1:27 pm]
Billing code 3195-01-P

Presidential Documents

Proclamation 6730 of September 30, 1994

Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Formulate or Implement Policies That Are Impeding the Transition to Democracy in Liberia or Who Benefit From Such Policies

By the President of the United States of America

A Proclamation

In light of the long-standing political and humanitarian crisis in Liberia, I have determined that it is in the interests of the United States to restrict the entrance into the United States as immigrants and nonimmigrants of certain Liberian nationals who formulate or implement policies that impede Liberia's transition to democracy or who benefit from such policies, and the immediate families of such persons.

NOW, THEREFORE, I, WILLIAM J. CLINTON, by the power vested in me as President by the Constitution and the laws of the United States of America, including section 212(f) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code, hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of persons described in section 1 of this proclamation would, except as provided for in section 2 or 3 of this proclamation, be detrimental to the interests of the United States. I hereby proclaim that:

Section 1. The entry into the United States as immigrants and nonimmigrants of persons who formulate or implement policies that impede Liberia's transition to democracy or who benefit from such policies, and the immediate family members of such persons, is hereby suspended.

Sec. 2. Section 1 shall not apply with respect to any person otherwise covered by section 1 where entry of such person would not be contrary to the interests of the United States.

Sec. 3. Persons covered by sections 1 and 2 shall be identified pursuant to procedures established by the Secretary of State, as authorized in section 5 below.

Sec. 4. Nothing in this proclamation shall be construed to derogate from United States Government obligations under applicable international agreements.

Sec. 5. The Secretary of State shall have responsibility to implement this proclamation pursuant to procedures the Secretary may establish.

Sec. 6. This proclamation is effective immediately and shall remain in effect until such time as the Secretary of State determines that it is no longer necessary and should be terminated.

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IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of September, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94-24833
Filed 10-3-94; 3:01 pm]
Billing code 3195-01-P

Presidential Documents

Memorandum of September 27, 1994

Delegation of Authorities Under the Iran-Iraq Arms Non-Proliferation Act of 1992

Memorandum for the Secretary of State

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including Sections 1602–1608 of the Iran-Iraq Arms Non-Proliferation Act of 1992 (Title XVI of Public Law 102–484) (the "Act") and Section 301 of Title 3 of the United States Code, I hereby delegate to the Secretary of State ("Secretary") all functions vested in me by the Act without limitation of the authority of other officials to exercise powers heretofore or hereafter delegated to them to implement sanctions imposed or actions directed by the Secretary pursuant to this delegation of authority.

In exercising these functions, the Secretary shall consult with the Secretary of Defense, the Secretary of the Treasury, the Secretary of Commerce, the Director of the Arms Control and Disarmament Agency, and the heads of other departments and agencies as appropriate.

This delegation of authority shall also apply to any amendments or successor legislation to the Act.

You are authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, September 27, 1994.

[FR Doc. 94-24845
Filed 10-3-94; 4:08 pm]
Billing code 4710-10-M

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 846

RIN: 3206–AE01

Deemed Elections of Coverage Under the Federal Employees Retirement System

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting, as final, its interim regulations to allow employees to remain covered by the Federal Employees Retirement System (FERS), if their employing agency erroneously placed them under FERS during the period when they would have had the opportunity to elect FERS coverage. These regulations deem employees to have elected FERS coverage unless they notify the employing agency that they do not want to be deemed to have elected FERS. These regulations are necessary to prevent the agency error from depriving such employees of their statutory right to have elected FERS coverage.

EFFECTIVE DATE: November 4, 1994.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegleman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: On September 13, 1993, we published (at 58 FR 47821) interim regulations to allow employees to remain covered by the Federal Employees Retirement System (FERS), if their employing agency erroneously placed them under FERS during the period when they would have had the opportunity to elect FERS coverage. The interim regulations establish a procedure under which employees (who were denied the opportunity to elect FERS coverage because their employing agency erroneously placed them under FERS) would be deemed to have elected FERS coverage unless they notify the employing agency that they do not want to be deemed to have elected FERS. We designed the procedure to minimize the actions that both an agency and an employee would be required to perform to correct records. We received four comments on the interim regulations.

All of the comments were supportive of the concept of allowing this group of employees the opportunity to have FERS coverage. The commenters expressed their concerns with specific aspects of our interim method for choosing FERS coverage.

One commenter expressed concern that our proposal was too narrow because it failed to cover employees who were correctly placed under full CSRS, CSRS offset, or social security only, but were incorrectly or never informed of their opportunity to elect FERS. We believe that the decision of the United States Court of Appeals for the Federal Circuit in *Killip* v. *Office of Personnel Management*, 991 F.2d 1564 (Fed. Cir. 1993), leaves us without authority to permit coverage elections except for the situation of employees who were incorrectly denied any right of election whatsoever during the election period provided by statute. Specifically, the court determined that OPM did not have authority to allow retroactive belated FERS elections made after June 30, 1988, on the basis that the employing agency provided incomplete information to the employee, or that the employee was otherwise prevented form making an informed election by circumstances beyond the employee's control.

Although the court decision technically applies only to elections that should have been made during the 1987 open season, the court's analysis is equally applicable to cases of employees rehired after the open season. We believe that the court decision prevents us from allowing retroactive transfers by any employees who did have an opportunity to make an election, regardless of circumstances that may have prevented the employee from making an informed election. Accordingly, we could not adopt this suggestion.

Three commenters requested that we provide more information about the procedures that agencies will be expected to follow when implementing the regulations. We will provide agencies with instructions on documenting elections and correction of records under these regulations in the usual manner, through a payroll office letter.

Three commenters objected to the interim procedure that deems the employee to have elected FERS coverage unless the employee informs the agency of the desire not to be covered by FERS. Each objected for different reasons.

The interim procedures were based on the premise that most employees who have been automatically covered by FERS in error will want to continue to be covered under FERS. One commenter questioned this premise. However, our experience in handling belated FERS election requests causes us to believe this premise is correct. We continue to believe that this procedure will cause the maximum number of employees to have the retirement coverage they want without having to elect out of FERS.

One commenter suggested that we require an affirmative FERS election to obviate the need for agencies to develop procedures for handling requests to waive the time limit. The commenter also suggested that the "open-ended nature of the passive election almost guarantees that there will be waiver requests and that agencies will feel obligated to grant them," resulting in longer periods for which the records will have to be corrected. The commenter states, "The agency will also sustain additional losses in contributions to the Thrift Savings Plan. (Agencies forfeit automatic and matching contributions that are more than one year old.)" While these problems will occur, we believe that requiring an affirmative FERS election, which, under *Killip*, would also require an inflexible time limit, would not be sufficiently responsive to the needs of the employee who has already been placed in a difficult situation because of an agency error. Agencies can avoid problems concerning waiver of the time limit by providing adequate counseling and follow-up procedures to assure that employees make informed choices during the 60-day period.

Although the regulatory procedures deem employees to have elected FERS if the employee takes no action, we strongly encourage agencies to follow-up all cases involving these regulations and to obtain and document express

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(and written) elections whenever possible. We expect agencies to approve waivers of the time limit in which to decline the deemed election unless they can document that the employee did not act with reasonable diligence or that the employee made an informed choice of FERS. Because of the adverse consequence for agencies that the commenter noted, agencies should develop procedures to fully document their counseling efforts and employee elections.

One commenter questioned the provisions concerning the rights of survivors. The regulations provide a special rule if an employee dies during the election period. Because the employee's election period ended prematurely due to death, the benefits payable to the survivor (either FERS or the benefits available in the absence of a deemed election) depend on whether the deemed election is forced upon the survivor. Because of the unique situation created by a deemed election, the regulations allow a survivor to decline the deemed election. In this way, we are assuring that the deemed election will not deprive a survivor of benefits established by statute, while providing what the employee and survivor would be anticipating (benefits under FERS) unless the survivor chooses otherwise.

One commenter raised questions concerning eligibility of an employee to be deemed to have elected FERS when a former spouse is entitled to a portion of the employee annuity or a survivor annuity. Deemed elections are permitted only for employees who were eligible to elect FERS during the election period. Agencies will have to confirm eligibility by obtaining a certification from the employee concerning former spouses, similar to the certification required on the SF 3109, Election of FERS Coverage, or by obtaining telephone approval from our Court-Ordered Benefits Section.

Two commenters specifically raised questions about the effective date of the deemed elections. The effective date is the later of the employee's entry-on-duty date or the beginning of the first pay period commencing after June 30, 1987. In devising the interim procedure we wanted to minimize the correction of records. If as we expect most employees affected by these regulations will want FERS coverage, records correction will be minimal. The only correction action required in cases of employees whose entry-on-duty date is on or after the beginning of the first pay period in July 1987, will be an SF–50 showing that FERS coverage, as of the entry-on-duty date was by election, rather than automatic. Of course, if the employee was erroneously placed in FERS before the beginning of the first pay period of July 1987 or if the employee elects not to be covered by FERS, more substantial records corrections will be required. We will issue a payroll office letter to provide more details on correction of records.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.

List of Subjects in 5 CFR Part 848

Administrative practice and procedure, Government employees, Pensions, Retirement.

Accordingly, under authority of 5 U.S.C. 8461(g), OPM is adopting its interim rules under 5 CFR part 846 published on September 13, 1993, at 58 FR 47821, as final rules without change.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–24454 Filed 10–4–94; 8:45 am]

BILLING CODE 6325–01–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 34, 35, 50, 73, and 110

RIN 3150–AF19

NRC Library; Address Change

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations regarding the availability of material approved for incorporation by reference to make a needed change to the address provided for the NRC Library.

EFFECTIVE DATE: October 5, 1994.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–7163.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission is revising those portions of 10 CFR chapter I that reference the availability of materials that have been approved by the Director of the Office of the Federal Register for incorporation by reference. This amendment revises the text of 10 CFR chapter I to indicate the current location where this material is available for inspection. The material that has been approved for incorporation by reference is maintained and available for inspection at the NRC Library, which is now located at 11545 Rockville Pike, Rockville, Maryland 20852–2738.

Because this is an amendment dealing with agency practice and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendment is effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date because the amendment is of a minor and administrative nature dealing with an address change.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0007, –0010, –0002, and –0036.

List of Subjects

10 CFR Part 34

Criminal penalties, Packaging and containers, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 73

Criminal penalties, Hazardous materials—transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR parts 34, 35, 50, 73, and 110.

PART 34—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

1. The authority citation for part 34 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 34.20 [Amended]

2. In § 34.20, paragraph (a), remove the words "7920 Norfolk Avenue, Bethesda, Maryland 20814," and add the words "11545 Rockville Pike, Rockville, Maryland 20852–2738."

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

3. The authority citation for part 35 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948 as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 35.632 [Amended]

4. In § 35.632, paragraph (d), remove the words "7920 Norfolk Avenue, Bethesda, Maryland 20814," and add the words "11545 Rockville Pike, Rockville, Maryland 20852–2738."

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

5. The authority citation for part 50 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948 as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 50.34 [Amended]

6. In § 50.34, paragraph (f)(3)(v)(A)(2), remove the words "7920 Norfolk Avenue, Bethesda, Maryland 20814," and add the words "11545 Rockville Pike, Rockville, Maryland 20852–2738."

§ 50.55a [Amended]

7. In § 50.55a, paragraph (b) introductory text, remove the words "7920 Norfolk Avenue, Bethesda, Maryland, 20814," and add the words "11545 Rockville Pike, Rockville, Maryland 20852–2738."

§ 50.73 [Amended]

8. In § 50.73, paragraph (b)(2)(ii)(F)(2), remove the words "in the Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland" and add the words "at 11545 Rockville Pike, Rockville, Maryland 20852–2738."

Appendix H to Part 50 [Amended]

9. In the second paragraph of the introduction to appendix H to part 50, remove the words "7920 Norfolk Avenue, Bethesda, Maryland 20814," and add the words "11545 Rockville Pike, Rockville, Maryland 20852–2738."

Appendix J to Part 50 [Amended]

10. In appendix J to part 50, section III, paragraph A.3.(a), remove the words "7920 Norfolk Avenue, Bethesda, Maryland," and add the words "11545 Rockville Pike, Rockville, Maryland 20852–2738."

Appendix K to Part 50 [Amended]

11. In appendix K to part 50, section I, paragraphs A.4., C.1.b., D.5., and D.7.c., remove the words "7920 Norfolk Avenue, Bethesda, Maryland 20814," and add the words "11545 Rockville Pike, Rockville, Maryland 20852–2738."

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

12. The authority citation for part 73 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948 as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 73.26 [Amended]

13. In § 73.26, paragraph (l)(1), in the last sentence, remove the words "7920 Norfolk Avenue, Bethesda, Maryland 20814," and add the words "11545 Rockville Pike, Rockville, Maryland 20852–2738."

§ 73.50 [Amended]

14. In § 73.50, paragraph (d)(1), in the last sentence, remove the words "7920 Norfolk Avenue, Bethesda, Maryland 20814," and add the words "11545 Rockville Pike, Rockville, Maryland 20852–2738."

Appendix B to Part 73 [Amended]

15. In appendix B to part 73, section I, paragraph B.1.b.(2)(a) and section IV, paragraph C., footnote 2, remove the words "7920 Norfolk Avenue, Bethesda, Maryland 20814," and add the words "11545 Rockville Pike, Rockville, Maryland 20852–2738."

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

16. The authority citation for part 110 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948 as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 110.43 [Amended]

17. In § 110.43, paragraph (a), remove the words "7920 Norfolk Avenue, Bethesda, Maryland 20814," and add the words "11545 Rockville Pike, Rockville, Maryland 20852–2738."

Dated at Rockville, Maryland, this 26th day of September 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94–24593 Filed 10–4–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 94–77]

Customs Service Field Organization; Extension of Port Limits of Morgan City, Louisiana

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations pertaining to the field organization of Customs by extending the geographical limits of the port of entry of Morgan City, Louisiana. The current boundaries are being extended to include Lafayette Parish. This change is being made in order to include Lafayette Regional Airport and to complement current international trade activities at the Morgan City port of entry. This change will enable Customs to obtain more efficient use of its personnel, facilities, and resources and to provide better service to carriers, importers, and the general public.

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EFFECTIVE DATE: November 4, 1994.
FOR FURTHER INFORMATION CONTACT: Brad Lund, Office of Inspection and Control, (202) 927–0192.

SUPPLEMENTARY INFORMATION:

Background

As part of its continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers and the public, Customs is amending § 101.3, Customs Regulations (19 CFR 101.3), to expand the boundaries of the port of Morgan City, Louisiana. The expansion of the port will add Lafayette Parish to the existing limits which are the parishes of Iberia, Lafourche, St. Mary, and Terrebonne, the corporate limits of the town of Grand Isle, and that portion of the right-of-way pertaining to State Highway 1 extending in a northeasterly direction from the Lafourche Parish and Jefferson Parish boundary line to the corporate limits of the town of Grand Isle.

The addition of Lafayette Parish, including Lafayette Regional Airport, will complement the current international trade activities in the parishes of Iberia, Lafourche, St. Mary and Terrebonne and the town of Grand Isle. Lafayette Parish's inclusion in the international port of entry will provide a boost to the economy of southern Louisiana. It will reduce the operating costs of recipients of Customs services, thereby greatly improving prospects for international trade.

Comments

Customs published a Notice of Proposed Rulemaking in the **Federal Register** (59 FR 23817) on May 9, 1994 which invited the public to comment on this proposed change to the port limits.

Nine comments were received. All of them were in favor of the proposed expansion. Accordingly, the amendment is being published in final as it was proposed.

Revised Port Limits

The revised port limits are as follows:

In the State of Louisiana: All of the territory within the Parishes of Iberia, Lafayette, Lafourche, St. Mary, and Terrebonne; the Corporate limits of the town of Grand Isle; and that portion of the right-of-way pertaining to State Highway 1 extending in a northeasterly direction from the Lafourche Parish and Jefferson Parish boundary line to the corporate limits of the town of Grand Isle.

Regulatory Flexibility Act

Although Customs solicited public comments on this port expansion, no notice of proposed rulemaking was required because the port expansion relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

Amendment to the Regulations

Accordingly, Part 101 of the Customs Regulations is amended as set forth below:

PART 101—GENERAL PROVISIONS

1. The general authority citation for Part 101 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 2, 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States), 1623, 1624.

§ 101.3 [Amended]

2. The list of Customs regions, districts and ports of entry in § 101.3(b) is amended by removing the reference "T.D. 93–30" and adding in its place "T.D. 94–77", alongside "Morgan City" in the column headed "Ports of entry" in the New Orleans, Louisiana District of the South Central Region.

Dated: September 26, 1994.

Charles W. Winwood,
Acting Commissioner of Customs.
John P. Simpson,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–24620 Filed 10–4–94; 8:45 am]
BILLING CODE 4820–02–P

POSTAL SERVICE

39 CFR Part 111

Mailing Prescription Medicines Containing Narcotic Drugs and Other Controlled Substances

AGENCY: Postal Service.
ACTION: Final rule.

SUMMARY: The final rule will remove a provision in the current postal regulations that restricts use of the mails to carry prescription medicine containing narcotic drugs. This rule also would fully harmonize those regulations, namely, Domestic Mail Manual CO23.6.8 and CO23.6.9, with the Controlled Substances Act and its implementing regulations. As a consequence, such use of the mail by dispensers of such medicine would be allowed to the same extent that distribution via any carrier is permitted under the Controlled Substances Act and implementing regulations.

EFFECTIVE DATE: October 5, 1994.
FOR FURTHER INFORMATION CONTACT: Robert R. Adams, (202) 268–5168.

SUPPLEMENTARY INFORMATION: The Postal Service published in the **Federal Register** (58 FR 67747–67748) on December 22, 1993, a proposal to amend the Domestic Mail Manual to remove postal regulations restricting use of the mail to carry prescription medicine containing narcotic drugs.

Domestic Mail Manual (DMM) CO23.6.9 currently states that "prescription medicines containing narcotic drugs may be mailed only by Department of Veterans Affairs medical facilities to certain veterans." Some commercial suppliers have reported that they routinely ship such medicines via carriers competing with the Postal Service, and that the shipments are not prohibited by the Controlled Substances Act, 21 U.S.C. 801 et seq., and its implementing regulations, 21 CFR 1300 et seq. These suppliers state that they would prefer to make these shipments via the Postal Service, except for the foregoing restriction in postal regulations.

Upon review, the Postal Service has found no need for provisions in its regulations on mailing controlled substances that would be stricter than those applicable to shipments via competing carriers. Whatever the means of carriage, such shipments must comply with the Controlled Substances Act and the regulations implementing it that provide a comprehensive system for protecting the public.

The revisions will make postal regulations fully consistent with that protective system. Although adopting this proposal may lead to substantial increases in the amount of mailed medicines containing narcotics, compliance with Postal Service regulations for preparation and packaging prerequisites should yield secure transit for those shipments.

The Postal Service received comments on the proposed rule from five parties. All comments were in favor of implementing the proposed rule.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Domestic Mail Manual C023 is hereby amended to read as follows:

6.0 Poisons. Controlled Substances, and Drug Paraphernalia

* * * * *

6.6 Controlled Substances

A "controlled substance" is any anabolic steroid, narcotic, hallucinogenic, stimulant, or depressant drug in Schedules I through V of the Controlled Substances Act (Public Law 91–513), 21 U.S.C. 801 et seq., and 21 CFR 1300 et seq. Because controlled substances are potentially addictive and abusable, if distribution of a controlled substance is unlawful under 21 U.S.C. 801 et seq., and under any relevant implementing regulations in 21 CFR 1300 et seq., distribution of such matter by mail is also unlawful under 18 U.S.C. 1716. Section 1716(a) prohibits from being conveyed in the mails all matter capable of killing or injuring a person.

6.9 Mailing Requirements

Under 18 U.S.C. 1716(b), the Postal Service may permit the mailing of matter not outwardly or of its own force dangerous or injurious to a person's life or health, subject to the preparation and packaging standards specified by the Postal Service. Accordingly, if distribution of a controlled substance is lawful under 21 U.S.C. 801 et seq., and any relevant implementing regulations in 21 CFR 1300 et seq., the Postal Service considers such distribution by mail to constitute the mailing of matter not outwardly or of its own force dangerous or injurious to a person's life or health, if the following preparation and packaging standards are met:

a. The inner container of any parcel containing controlled substances is marked and sealed under the applicable provisions of the Controlled Substances Act (21 U.S.C. 801 et seq. and the regulations implementing it, 21 CFR 1300 et seq.) and placed in a plain outer container or securely overwrapped in plain paper.

b. If the controlled substances consist of prescription medicines, the inner container is also labeled to show the prescription number and the name and address of the pharmacy, practitioner, or other person dispensing the prescription.

c. The outside wrapper or container is free of markings that would indicate the nature of the contents.

* * * * *

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance will be published in the **Federal Register**, as provided by 39 CFR 111.3.

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 94–24578 Filed 10–4–94; 8:45 am]
BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 15 and 32

[FRL–5083–8]

Ineligibility for Federal Contracts, Assistance, Loans and Benefits

AGENCY: Environmental Protection Agency.
ACTION: Final rule; technical amendments.

SUMMARY: This rule makes several changes to the Environmental Protection Agency (EPA) rules in 40 CFR part 15 governing the ineligibility of facilities under the Clean Air Act (CAA) and the Clean Water Act (CWA) to receive Federal contracts, assistance and loans; and in 40 CFR part 32 governing nonprocurement suspension and debarment under EO 12549. This rulemaking conforms parts 15 and 32 to the changes EPA has made to the internal administrative responsibilities for the two debarment programs.

EFFECTIVE DATE: October 5, 1994.
FOR FURTHER INFORMATION CONTACT: Robert F. Meunier, Director, Suspension and Debarment Division (3902F), 401 M Street, SW., Washington, DC 20460. Telephone: (202) 260–8025.

SUPPLEMENTARY INFORMATION:

A. Background

In 1993, EPA's Office of Administration and Resources Management (OARM) was reorganized to improve the administration contracts. That reorganization changed the titles of certain EPA officials having prescribed responsibilities under part 32 for the nonprocurement suspension and debarment program.

Earlier this year, the EPA Administrator decided to reorganize the former Office of Enforcement (OE). As part of that reorganization, administrative responsibility for the part 15 CAA and CWA contractor listing program was transferred to OARM so that all EPA debarment functions would be conducted by a single office.

These two reorganizations make it necessary to amend 40 CFR parts 15 and 32 to conform them to EPA's internal administrative changes. This rulemaking also modifies provisions of part 15 so that they describe the current practice of publishing all CAA and CWA ineligibility information in the List of Debarred, Suspended, Voluntarily Excluded, and Ineligible Persons maintained by the General Services Administration. In 1995, the Agency plans to propose substantive revisions to 40 CFR parts 15 and 32 which will consolidate these two sets of rules into a single part.

Rulemaking Analysis

B. Executive Order 12866

This is not a significant regulatory action under EO 12866; therefore, no review by the Office of Information and Regulatory Affairs is required.

C. Regulatory Flexibility Act

The EPA certifies that this rule does not exert a significant economic impact on a substantial number of small entities. The rule makes nomenclature changes only to existing rules.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements for the approval of OMB under 44 U.S.C. 3501 et seq.

E. Public Comments

The EPA has not solicited public comments on this final rule.

List of Subjects

40 CFR Part 15

Administrative practice and procedure, Debarment and suspension.

40 CFR Part 32

Administrative practice and procedure, Debarment and suspension.

Dated: September 27, 1994.

Sallyanne Harper,
Acting Assistant Administrator, Office of Administration and Resources Management.

For the reasons set out in the preamble, 40 CFR parts 15 and 32 are amended as follows:

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1. The authority citation for part 15 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.; 33 U.S.C. 1251 et seq.; EO 11738 of September 10, 1973 (38 FR 28161).

2. Section 15.3 is revised to read as follows:

§ 15.3 Administrative responsibility.

The authority and responsibilities assigned to the Administrator of the Environmental Protection Agency under EO 11738 have been delegated to the Assistant Administrator for Administration and Resources Management. Such authority and responsibilities may be redelegated, except that the delegated authority to issue or amend rules and regulations may not be redelegated.

3. In § 15.4, the definitions of "Assistant Administrator," "Case Examiner," "List Official" and "Recommending Person" are revised, and a new definition of "Debarring Official" is added in alphabetical order to read as follows:

§ 15.4 Definitions.

* * * * *

Assistant Administrator means the Assistant Administrator for Administration and Resources Management, United States Environmental Protection Agency, or his or her designee.

* * * * *

Case Examiner means a hearing examiner designated by the Debarring Official.

* * * * *

Debarring Official means the Director, Office of Grants and Debarment, or his or her designee.

* * * * *

Listing Official means the EPA official or officials designated by the Debarring official to carry out administrative functions pertaining to the listing or removal of a facility under this regulation.

* * * * *

Recommending Person means the Director, Suspension and Debarment Division or his or her designated debarment counsel; a Regional Administrator; the Assistant Administrator for Air and Radiation; the Assistant Administrator for Water; a Governor; or a member of the public.

* * * * *

4. Sections 15.11(c), 15.12(a) and 15.12(d) are amended by revising the six references to "Assistant Administrator" to read "Debarring Official".

5. Section 15.13(a) is amended by removing the second sentence.

6. Sections 15.13 paragraphs (c) and (d), and § 15.14 are amended by: removing the eleven references to "Case Examiner's decision" and adding in their place the phrase "Debarring Official's decision"; and by removing the four references to "Case Examiner" and adding in their place the phrase "Debarring Official".

7. Section 15.15 is amended by removing the reference to "Assistant Administrator" and adding in its place the phrase "Debarring Official".

8. Section 15.16 is amended by removing paragraph (c).

9. Sections 15.20, 15.21, 15.22 and 15.23 are amended by removing the seven references to the "Assistant Administrator" and adding in their place "Debarring Official", and removing the single reference to "Assistant Administrator's decision" and adding in its place the phrase "Debarring Official's decision".

10. Section 15.24(a) is amended by revising the first sentence to read as follows:

§ 15.24 Removal hearing.

(a) A removal hearing shall be conducted by the Debarring Official or by a Case Examiner. * * *

11. Section 15.24(c) is amended by removing the phrase "Case Examiner's decision" and adding in its place "Debarring Official's decision".

12. Section 15.24(d) is amended by removing the references to "Case Examiner", "Administrator" and "Case Examiner's decision" and adding in their place "Debarring Official", "Assistant Administrator" and "Debarring Official's decision", respectively.

13. Section 15.25 is amended by: removing the four references to "Case Examiner" in the heading, paragraph (a)(3) and paragraph (b), and adding in their place "Debarring Official"; removing the four references to "Case Examiner's decision" in paragraphs (a) and (c) and adding in their place "Debarring Official's decision"; and removing the four references to "Administrator" in paragraphs (a), (b) and (c) and adding in their place "Assistant Administrator".

§ 15.26 [Amended]

14. Section 15.26 is amended by removing the references to "Assistant Administrator", "a Case Examiner" and "Administrator" in paragraph (a) and adding in their place "Debarring Official", "the Debarring Official" and "Assistant Administrator", respectively. Paragraph (b) is amended by removing the reference to "Assistant Administrator's decision" and adding in its place "Debarring Official's decision".

§ 15.27 [Amended]

15. Section 15.27 is amended by removing the last sentence.

§§ 15.32, 15.33 [Amended]

16. Sections 15.32 and 15.33 are amended by removing the ten references to "Assistant Administrator" or "Assistant Administrator's" and adding in their place "Debarring Official" or "Debarring Official's", respectively.

17. Section 15.40 is revised to read as follows:

§ 15.40 Distribution of the List of Violating Facilities.

The Listing Official shall provide the General Services Administration (GSA) with current information about all final mandatory and discretionary listing actions and final removal actions under this part. Such information shall be made available in the list of debarred, suspended, voluntarily excluded, and ineligible persons GSA is required by EO 12549 to compile, maintain, and distribute.

18. Section 15.41 is amended by removing the five references to "Administrator" and adding in their place "Assistant Administrator".

19. The authority citation for part 32 is revised to read as follows:

Authority: EO 12549; 41 U.S.C. 701 *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 20 U.S.C. 4011 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 300f, 4901, 6901, 7401, 9801 *et seq.*

20. The heading of part 32 is revised to read as follows:

PART 32—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

21. Section 32.105 is amended by revising paragraphs (g)(3) and (t)(3) to read as follows:

§ 32.105 Definitions.

* * * * *

(g) * * *

(3) The Director, Office of Grants and Debarment, is the authorized Debarring Official.

* * * * *

(t) * * *

(3) The Director, Office of Grants and Debarment, is the authorized Suspending Official.

* * * * *

22. Section 32.215 is amended by revising paragraph (a) to read as follows:

§ 32.215 Exception Provision.

* * * * *

(a) The Director, Office of Grants and Debarment, is the official authorized to grant exceptions.

§ 32.335 Appeal.

23. In § 32.335 the second sentence of paragraph (a) is revised to read as follows:

(a) * * * However, any party to the action may request the Assistant Administrator for Administration and Resources Management (Assistant Administrator), to review the findings of the Debarring Official by filing a request with the Assistant Administrator within 30 calendar days of the party's receipt of the debarment determination, or its reconsideration. * * *

* * * * *

§ 32.335 [Amended]

24. In paragraphs (b), (c), and (d) of § 32.335, remove the four references to "OA Director" and add in their place "Assistant Administrator."

§ 32.430 Appeal.

25. In § 32.430 the second sentence of paragraph (a) is revised to read as follows:

(a) * * * However, any party to the action may request the Assistant Administrator for Administration and Resources Management (Assistant Administrator), to review the findings of the suspending official by filing a request with the Assistant Administrator within 30 calendar days of the party's receipt of the suspension determination, or its reconsideration. * * *

* * * * *

§ 32.430 [Amended]

26. In paragraphs (b), (c), and (d) of § 32.430, remove the four references to "OA Director" and add in their place "Assistant Administrator."

[FR Doc. 94-24640 Filed 10-4-94; 8:45 am]
BILLING CODE 6560-50-P

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40 CFR Part 51

[FRL-5082-2]

Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of Volatile Methyl Siloxanes and Parachlorobenzotrifluoride

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action revises EPA's definition of volatile organic compounds (VOC) for purposes of preparing State implementation plans (SIP's) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (Act) and for the Federal implementation plan (FIP) for the Chicago ozone nonattainment area. This revision adds parachlorobenzotrifluoride (PCBTF) and volatile methyl siloxanes (VMS) to the list of compounds excluded from the definition of VOC on the basis that these compounds have negligible contribution to tropospheric ozone formation.

EFFECTIVE DATES: This final action will be effective on December 5, 1994 unless notice is received by November 4, 1994 that someone wishes to submit adverse or critical comments or request a public hearing. If the effective date is delayed for this action due to the need to provide for public comment, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments should be submitted in duplicate (if possible) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A-93-47, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments should be strictly limited to the subject matter of this rule, the scope of which is discussed below.

Public Hearing: If anyone contacts EPA requesting a public hearing, it will be held at Research Triangle Park, North Carolina. Persons wishing to request a public hearing, wanting to attend the hearing or wishing to present oral testimony should notify Mr. William Johnson, Air Quality Management Division (MD-15), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5245. The EPA will publish notice of a hearing, if a hearing is requested, in the **Federal Register.** Any hearing will be strictly limited to the subject matter of the rule, the scope of which is discussed below.

This action is subject to the procedural requirements of section 307(d)(1)(B), (J), and (U) of the Act, and 42 U.S.C. 7607(d)(1)(B), (J), and (U). Therefore, EPA has established a public docket for this action, A-93-47, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center, Room M-1500, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: William Johnson, Office of Air Quality Planning and Standards, Air Quality Management Division (MD-15), Research Triangle Park, NC 27711, phone (919) 541-5245.

SUPPLEMENTARY INFORMATION:

I. Background

On September 28, 1992, the Occidental Chemical Corporation (also known as OxyChem) petitioned EPA to take all necessary and appropriate action to exclude parachlorobenzotrifluoride (also known as 4-chlorobenzotrifluoride, PCBTF, $C_7H_4F_3Cl$ (CAS number 98-56-6)) from regulation as a precursor to tropospheric ozone. In support of their petition, Occidental Chemical Company submitted two reports: "Loss Processes for 4-Chlorobenzotrifluoride Under Atmospheric Conditions," by Roger Atkinson, Sara M. Aschmann, Arthur M. Winer and James N. Pitts, Jr., University of California at Riverside, October 1984; and "Tropospheric Lifetime Estimates for Several Aromatic Compounds," by David Nelson and Robert Brown, Aerodyne Research, Inc., May 1992. In addition, Occidental Chemical Company submitted a copy of an October 18, 1985 **Federal Register** notice (50 FR 42216) which announced a decision by EPA not to require further testing of parachlorobenzotrifluoride for health effects, environmental effects, and chemical fate under the Toxic Substances Control Act.

On December 11, 1992, Dow Corning Corporation petitioned EPA to take several actions that would have the effect of exempting VMS under the Act as precursors to tropospheric ozone. The VMS are organic compounds whose basic molecular structure is built on a backbone of alternating silicon and oxygen atoms, formed into either a ring or linear chain containing from two to seven silicon atoms. Methyl groups (and no other functional groups, as defined here) are attached to this central backbone, their numbers varying with the size and shape of the molecule. Compounds covered by the designation VMS in this proposal are cyclic, branched, or linear, completely methylated siloxanes, including the compounds listed in Table 1. Symbols shown in the table, such as MM and D_4, are commonly accepted abbreviations for the longer chemical name shown beside each.

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TABLE 1.—VOLATILE METHYL SILOXANES

CAS No.	Chemical name	Formula
Linear VMS:		
107–46–0	Hexamethyldisiloxane (MM)	$C_6H_{18}OSi_2$
107–51–7	Octamethyltrisiloxane (MDM)	$C_8H_{24}O_2Si_3$
141–62–8	Decamethyltetrasiloxane (MD_2M)	$C_{10}H_{30}O_3Si_4$
141–63–9	Dodecamethylpentasiloxane (MD_3M)	$C_{12}H_{36}O_4Si_5$
107–63–9	Tetradecamethylhexasiloxane (MD_4M)	$C_{14}H_{42}O_5Si_6$
63148–62–9	Dimethyl silicones and siloxanes (MD_xM)	
Cyclic VMS:		
541–05–9	Hexamethylcyclotrisiloxane (D_3)	$C_6H_{18}O_3Si_3$
556–67–2	Octamethylcyclotetrasiloxane (D_4)	$C_8H_{24}O_4Si_4$
541–02–6	Decamethylcyclopentasiloxane (D_5)	$C_{10}H_{30}O_5Si_5$
540–97–6	Dodecamethylcyclohexasiloxane (D_6)	$C_{12}H_{36}O_6Si_6$
69430–24–6	Cyclopolydimethylsiloxanes (D_x)	
Branched VMS:		
17928–28–8	1,1,1,3,5,5,5-Heptamethyl-3-[(trimethylsilyl)oxy]-trisiloxane (M_3T)	$C_{10}H_{30}O_3Si_4$
3555–47–3	1,1,1,5,5,5-Hexamethyl-3,3,bis[(trimethylsilyl)oxy]-trisiloxane (M_4Q)	$C_{12}H_{36}O_4Si_5$
	Pentamethyl[(trimethylsilyl)oxy]cyclotrisiloxane (MD_3)	$C_8H_{24}O_4Si_4$

Based on the results of reactivity studies demonstrating that VMS do not contribute to tropospheric ozone formation, Dow Corning Corporation requested that EPA do the following:

1. Amend EPA's general regulatory definition of VOC appearing in 40 CFR 51.100(s) (see 57 FR 3945, February 3, 1992) so as expressly to exclude VMS from the term "VOC" by final regulatory action.

2. In taking action on any currently-pending or future proposal to approve State VOC regulations as part of a SIP, clarify that EPA lacks authority to approve or enforce VOC regulations to the extent that they apply to VMS or otherwise regulate VMS as precursors to tropospheric ozone.

3. In taking any future proposed or final regulatory action to amend or promulgate VOC regulations for the purpose of reducing tropospheric ozone (e.g., any action pursuant to section 183(e) of the Act to control VOC in consumer and commercial products), take such action and make such statements as may be necessary to ensure that such regulations will not apply to VMS.

4. Take such other actions and make such other statements as may be necessary to implement the exemption of VMS from regulation as precursors to tropospheric ozone.

In support of its requests, Dow Corning submitted supporting information and documentation to demonstrate that VMS:

1. Do not contribute to the formation of tropospheric ozone, and in some situations inhibit the formation of tropospheric ozone;

2. Do not deplete stratospheric ozone;

3. Are generally nontoxic to humans and the environment;

4. Are used in personal care products and other consumer products;

5. Have potential uses as substitutes for chlorofluorocarbons in a number of specified applications; and,

6. Have a wide variety of applications and potential applications as substitutes for other VOC.

The petition included a number of reports on smog chamber reactivity studies on VMS and other supporting information. A copy of this material is included in the docket for this rulemaking.

Several toxicity studies for multiple routes of exposure exist for parachlorobenzotrifluoride. In laboratory animals, kidney and liver effects have been documented. More importantly, eye and nasal irritation were observed during inhalation exposures. However, it is not expected to have ecological effects. There is a lack of data concerning carcinogenicity in humans and animals. Of the volatile methyl siloxanes, only the D4 has been studied extensively. Mild liver effects (inhalation exposure) and testicular effects (dietary exposure) were observed in laboratory animals. The D4 compound is known to produce adverse immunological effects when injected, but it is not known if the same effect can be elicited by inhalation exposure. These compounds are not included on the 112(b)(1) list of hazardous air pollutants and are not regulated by any program. Our best judgment at this time is that the known toxic effects of the pollutants do not warrant alteration of a decision to remove them from the VOC list nor warrant addition to the 112(b)(1) list. If additional data were to alter this judgment, or if petitioned, the Agency would further consider the need to add either or both compounds to 112(b)(1).

If VMS and PCBTF are accepted as having negligible photochemical reactivity, exempting them from regulation as ozone precursors could contribute to the achievement of several important environmental goals. For example, they might be used as a substitute for several compounds (e.g., methyl chloroform) that are listed as hazardous air pollutants (HAP) under section 112 of the Act.

Another area of concern is finding substitutes for ozone depleting substances (ODS) which are active in depleting the stratospheric ozone layer. Under the London Amendments to the Montreal Protocol on substances that deplete the ozone layer ("Montreal Protocol"), the United States agree to phase out production and consumption of certain chlorofluorocarbons (CFC) by the year 2000 and methyl chloroform by 2005 (see 58 FR 15016 (March 18, 1993)). In 1990, Congress added title VI to the Act in part to provide for the implementation of this phaseout (see 42 U.S.C. § 7671 *et seq.*). The 1990 Amendments specified an initial list of Class I and Class II ODS, authorizing EPA to add compounds to both lists depending on a given compound's potential to contribute to stratospheric ozone depletion, (*Id.* 7671a.) The 1990 Amendments further required phaseout of the production and consumption of Class I ODS by 2000, methyl chloroform by 2002, and Class II ODS by 2030 (see 42 U.S.C. 7671c, 7671d). At the fourth meeting, in 1992, of the parties to the Montreal Protocol in Copenhagen, Denmark, the parties adjusted the phaseout schedules of Class I substances under the Montreal Protocol to phase out Class I CFC and methyl chloroform by 1996. In 1993, EPA proposed to accelerate the phaseout of Class I CFC and methyl chloroform in order to discontinue use of these compounds after January 1, 1996 (see 58 FR 15022).

As a result of these phaseout deadlines, there is a need to develop substitutes for ODS. The EPA has listed several VMS compounds as ozone-depleting substance substitutes under the program known as the "Significant New Alternatives Policy" (SNAP) program, (59 FR 13044, March 18, 1994). Within the context of the SNAP rule, substitutes are "acceptable" if they are technically feasible to be used as an alternative to an ODS for particular uses and give reduced overall risk to human health and the environment compared to the ODS they replace. In the SNAP rule, EPA listed several volatile siloxanes as acceptable substitutes for metal cleaning, electronics cleaning, and precision cleaning (59 FR 13134). The SNAP program lists benzotrifluorides as "pending decisions" for use in aerosols and adhesives, coatings, and inks (59 FR 13145). The Agency has not yet completed reviews of data for these benzotrifluoride compounds, but plans to issue a SNAP determination for these substitutes in the next set of listing decisions (59 FR 13118).

In these areas of concern, toxic air emissions and depletion of stratospheric ozone, adding these compounds to the list of negligibly-reactive VOC may provide support for the EPA's pollution prevention efforts. By enacting the Pollution Prevention Act of 1990, Congress established as a national policy that "pollution should be prevented or reduced at the source whenever feasible" (42 U.S.C. 13). An important part of EPA's pollution prevention strategy is encouraging companies to use substitutes in their production processes that are more environmentally benign than the substances they currently use. For example, in its blueprint for a comprehensive national pollution prevention strategy, (56 FR 7849 (February 26, 1991)), the EPA recognized that the definition of pollution prevention includes a "switch to non-toxic or less toxic substitutes" (*Id.* at 7854).

II. The EPA Response to the Petitions

The EPA is responding to these petitions by taking action in this notice to add PCBTF and VMS to the list of compounds appearing in 40 CFR 51.100(s) that are excluded from the definition of VOC. By this final action, PCBTF and VMS are excluded from the VOC definition.

The EPA's conclusions concerning the exclusion of PCBTF are based on the report "Loss Processes For 4-Chlorobenzotrifluoride Under Atmospheric Conditions," by Roger Atkinson et al. (University of California/Riverside), October 1984. This report along with other information was submitted by Occidental Chemical Corporation and has been placed in the docket for this action.

The Atkinson et al. report indicated that the k_{OH} reactivity of PCBTF (2.3×10^{-13}cm^3 molecule^{-1} sec^{-1}) is somewhat lower than, but statistically indistinguishable from, that of ethane (2.7×10^{-13}cm^3 molecule^{-1} sec^{-1}). Ethane is currently the most reactive of the compounds currently excluded as VOC due to negligible photochemical reactivity. It is conceivable, however, that there are other processes, e.g., photodissociation, reaction with ozone or with nitrogen trioxide (NO_3) radicals, that might enhance the ozone-forming reactivity of PCBTF. Atkinson et al. explored to some extent these possibilities by studying experimentally the photodissociation of PCBTF and its reaction with ozone. They found a negligibly low rate of reaction with ozone and no measurable photolysis of PCBTF. The photolysis detection limit, however, was 2.7×10^{-6} sec^{-1}, which is a rate somewhat higher than that of the reaction rate with hydroxyl radicals (OH) in typical mid-day urban atmospheres (1.4×10^{-6} sec^{-1}). Thus, significant, though nonmeasurable, photodissociation of PCBTF in the atmosphere cannot be precluded. On the other hand, it is not known whether dissociation, even if it does occur, would enhance the ozone-forming reactivity of PCBTF. In the absence of measurable photodissociation, Atkinson et al. could not obtain evidence on the nature and follow-up chemistry of the photodissociation products.

In summary, the evidence available indicates that: (1) The k_{OH} reactivity of PCBTF is not higher than that of ethane, and (2) there is no evidence of processes (other than reaction with OH) that might increase the ozone-forming reactivity above that of ethane.

The EPA's decision concerning the exclusion of VMS as VOC is based on the following: "Investigation of the Ozone Formation Potential of Selected Volatile Silicone Compounds," by William P. L. Carter et al. (University of California/Riverside), November 1992; "Determination of the Atmospheric Lifetimes of Organosilicon Compounds," by Roger Atkinson et al. (University of California/Riverside), September 1990; and "Kinetics of the Gas Phase Reactions of a Series of Organosilicon Compounds with OH and NO_3 Radicals and O_3 at 297±2K," by R. Atkinson et al. (Environmental Science & Technology, *25*, p.863, 1991). These reports were submitted, along with other materials by Dow Corning, in support of its petition. This information has been placed in the docket for this action.

The Atkinson et al. studies indicated that volatile methyl siloxanes have k_{OH} reactivities higher than that of ethane, and suggested that follow-up smog chamber studies should be conducted to determine their ozone-forming potentials. Such a chamber study is the subject of the Carter et al. report. Carter produced evidence for hexamethyldisiloxane (MM), octamethylcyclotetrasiloxane (D_4), and decamethylcyclopentasiloxane (D_5) that showed these siloxanes have negative ozone-forming potentials for commonly-occurring ambient conditions. However, the degradation pathways (mechanism) are still not well understood. Nevertheless, the investigators concluded that the ozone-forming reactivities of these siloxanes cannot be higher than that of ethane.

III. Final Action

Today's final action is based on EPA's review of the material in Docket No. A–93–47. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the definition revision should adverse or critical comments be filed or a request for a public hearing be made. The EPA hereby amends its definition of VOC at 40 CFR 51.100(s) to exclude PCBTF and VMS as VOC for ozone SIP and ozone control purposes. The revised definition will apply in the Chicago ozone nonattainment area pursuant to the 40 CFR 52.741(a)(3) definition of volatile organic material or volatile organic compound. States are not obligated to exclude from control as a VOC those compounds that EPA has found to be negligibly reactive. However, States should not include these compounds in their VOC emissions inventories for determining reasonable further progress under the Act (e.g., section 182(b)(1)) and may not take credit for controlling these compounds in their ozone control strategy. Further, these negligibly-reactive compounds may not be used for emissions netting (e.g., 40 CFR 51.166(b)(2)(c)), offsetting (40 CFR appendix S), or trading with reactive VOC (Emissions Trading Policy Statement, 51 FR 43814, December 4, 1986 and Economic Incentive Program Rules, 59 FR 16690, April 7, 1994).

In addition, corrections are made to the names of three compounds which

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have previously been exempted from the definition of VOC: 1,1,1-trichloro-2,2,2-trifluoroethane (CFC–113) is changed to 1,1,2-trichloro-1,2,2-trifluoroethane (CFC–113); chlorodifluoromethane (CFC–22) is changed to chlorodifluoromethane (HCFC–22); and trifluoromethane (FC–23) is changed to trifluoromethane (HFC–23). These changes are corrections to nomenclature only and are not substantive.

Pursuant to 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it relaxes current regulatory requirements rather than imposing new ones. The EPA has determined that this rule is not "significant" under the terms of Executive Order 12866 and is, therefore, not subject to Office of Management and Budget (OMB) review. This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Assuming this rulemaking is subject to section 317 of the Act, the Administrator concludes, weighing the Agency's limited resources and other duties, that it is not practicable to conduct an extensive economic impact assessment of today's action since the rule promulgated today will relax current regulatory requirements. Accordingly, the Administrator simply notes that any costs of complying with today's action, any inflationary or recessionary effects of the regulation, and any impact on the competitive standing of small businesses, on consumer costs, or on energy use, will be less than or at least not more than the impact that existed before today's action.

List of Subjects in 40 CFR Part 51

Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 23, 1994.

Carol M. Browner

Administrator.

For reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7410(a)(2), 7475(e), 7502 (a) and (b), 7503, 7601(a)(1) and 7620.

2. Section 51.100 is amended by revising paragraph (s)(1) introductory text to read as follows:

§ 51.100 Definitions.

* * * * *

(s) * * *

(1) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC–113); trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); chlorodifluoromethane (HCFC–22); trifluoromethane (HFC–23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC–114); chloropentafluoroethane (CFC–115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC–123); 1,1,1,2-tetrafluoroethane (HFC–134a); 1,1-dichloro 1-fluoroethane (HCFC–141b); 1-chloro 1,1-difluoroethane (HCFC 142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC–124); pentafluoroethane (HFC–125); 1,1,2,2-tetrafluoroethane (HFC–134); 1,1,1-trifluoroethane (HFC–143a); 1,1-difluoroethane (HFC–152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; and perfluorocarbon compounds which fall into these classes:

* * * * *

[FR Doc. 94–24642 Filed 10–4–94; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–45 and 101–46

[FPMR Amendment H–190]

RIN 3090–AF40

Sale of Government Personal Property

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation changes FPMR Subchapter H to authorize Heads of Federal agencies to determine who will sell the agency's personal property and to reduce the length of the regulations. These changes delete the requirement that agencies must report property to GSA for sale and reduce the regulations, where feasible.

EFFECTIVE DATE: October 5, 1994.

FOR FURTHER INFORMATION CONTACT: Lester D. Gray, Jr., Director, Property Management Division, 703–305–7240.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a significant rule for the purposes of Executive Order 12866.

Regulatory Flexibility Act

This rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Parts 101–45 and 101–46

Government property management, Reporting requirements, Surplus Government property, Exchange/sale authority.

For the reasons set forth in the preamble, 41 CFR Parts 101–45 and 101–46 are amended as follows:

PART 101–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

1. The authority citation for Part 101–45 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); §§ 101–45.400 through 101–45.405 also issued under sec. 307, 49 Stat. 880; 40 U.S.C. 3041.

§ 101–45.00 [Removed]

§ 101–45.002 [Redesignated as § 101–45.001]

2. Section 101–45.001 is removed and § 101–45.002 is redesignated as § 101–45.001.

3. Sections 101–45.001–1 through 101–45.001–7 are removed.

Subpart 101–45.1—General

4. Sections 101–45.103–1 and 101–45.103–2 are revised to read as follows:

§ 101–45.103–1 Conduct of Sales.

Heads of Federal agencies, or their designees, are responsible for determining whether their agencies will (a) report their personal property to the General Services Administration (GSA) for sale for a fee for services rendered or (b) conduct or contract for the sale of their own property. If agencies elect to sell their own property, a designation indicating such shall be entered on their reports of excess personal property to prevent GSA from automatically programming the property for sale.

§ 101–45.103–2 Holding Agency Sales.

All provisions of Parts 101–45 and 101–46 shall be followed in conducting sales of Government-owned personal property. Agency internal procedures shall be issued to ensure compliance and uniformity and to protect the integrity of the sales process.

5. Sections 101–45.103–3 and 101–45.103–4 are added to read as follows:

§ 101–45.103–3 Sales by GSA.

(a) For property reported to GSA for disposal, the following basic services will be provided at reimbursable rates established by GSA on an annual basis.

(1) Auction and spot bid sales. The following services are covered under the basic rate:

(i) Property cataloging;

(ii) Maintenance of mailing list;

(iii) Printing and distribution of announcement to bidders on mailing list;

(iv) Normal media advertising (one newspaper or equivalent);

(v) Registration of bidders;

(vi) Auctioneer;

(vii) Onsite contracting officer;

(viii) Award document preparation;

(ix) Onsite collection of proceeds;

(x) Follow-on collection of late payments;

(xi) Security service;

(xii) Deposit of proceeds;

(xiii) Distribution of proceeds;

(xiv) Financial and property line item accountability; and

(xv) Contract administration.

(2) Sealed bid sales. The following services are covered under the basic rate:

(i) Property cataloging;

(ii) Maintenance of mailing list;

(iii) Printing/distribution of invitation for bids to bidders on mailing list;

(iv) Bid opening;

(v) Contract awards;

(vi) Preparation of award documents;

(vii) Financial and property line item accountability; and

(viii) Contract administration;

(b) GSA will deduct service charges from the proceeds of sale.

(c) For sales proceeds that are reimbursable to the holding agency, net proceeds (sales proceeds less GSA's direct, and indirect costs) will be distributed to the agency via the on-line payment and accounting control (OPAC) system.

(d) A portion of the proceeds from the sale of nonreimbursable surplus property will also be retained by GSA to cover its direct and indirect costs. The net proceeds will be deposited to miscellaneous receipts of the Treasury.

(e) Rates for accessorial services, including transportation, storage, maintenance, and reconditioning of property prior to sale, will vary according to local market conditions and will be published in GSA regional bulletins available from the servicing GSA region.

(f) Agencies may be consulted to assist GSA in the determination of the best method of sale and their requirements for accessorial services.

(g) Property for which the sales contract is terminated for default will be resold at no cost to the holding agency. Property for which the sales contract is terminated for cause, e.g., misdescription of the property, will be resold at the holding agency's cost if the cause is attributable to the holding agency.

§ 101–45.103–4 Sales Conducted at Holding Agency Facilities.

If GSA sells property from holding agency facilities, holding agencies shall be responsible for the following:

(a) Providing the appropriate GSA regional office with information necessary for effective sale of property and the accounting data for appropriate application of gross proceeds;

(b) Transporting property to a consolidated sales site when agreed to by the holding agency and GSA;

(c) Providing for the inspection of property by prospective bidders;

(d) Providing facilities for the conduct of sales and the essential administrative, clerical, or labor assistance when requested by GSA; and

(e) Assisting in the physical lotting of property to be sold at agency facilities.

5. Section 101–45.105–3 is revised to read as follows:

§ 101–45.105–3 Exemptions.

Exemptions from the provisions of this Part 101–45 may be obtained by an agency head who believes that authority with respect to the programs covered by section 602(d) of the Act would be impaired or adversely affected by this part. Exemptions may be requested, in writing, from the Administrator of General Services.

Subpart 101–45.3—Sale of Personal Property

§ 101–45.301 [Removed and Reserved]

6. Section 101–45.301 is removed and reserved.

7. Section 101–45.303 is amended by revising the introductory paragraph to read as follows:

§ 101–45.303 Reporting Property for Sale.

If holding agencies elect to have GSA sell their property, it shall be reported to the appropriate GSA regional office for the region in which the property is physically located in the manner outlined below:

* * * * *

§ 101–45.304–3 [Removed and Reserved]

8. Section 101–45.304–3 is removed and reserved.

9. Section 101–45.304–6 is revised to read as follows:

§ 101–45.304–6 Reviewing Authority.

(a) A "reviewing authority" is a local, regional, or departmental board of review of an executive agency. Under subpart 101–45.9, reviewing authority also includes an applicable State board of review of a State agency for surplus property.

(b) Approval by reviewing authority of the agency effecting the sale shall be required for each proposed award when the contract value (actual or estimated fair market value) for property other than scrap exceeds the dollar thresholds listed below by method of sale:

(1) Negotiated sale of surplus property—$15,000 or more;

(2) Negotiated sale at fixed price of surplus or exchange/sale property—$25,000 or more; and

(3) Competitive bid sale—$100,000 or more.

10. Section 101–45.304–7 is amended by removing subparagraph (a)(4) and revising paragraph (c) to read as follows:

§ 101–45.304–7 Advertising.

* * * * *

(c) The appropriate GSA regional office shall be provided, at the time of public distribution, a copy of each invitation for bids or other form of offering involving contractor inventory, whether being sold by the contractor for the Government or by a Government activity authorized to conduct sales.

11. Section 101–45.304–8 is amended by revising the introductory paragraph and paragraph (a) to read as follows:

§ 101–45.304–8 Forms Prescribed.

Standard Forms 114, 114A, 114B, 114C, 114C–1, 114C–2, 114C–3, 114C–4, 114D, 114E, and 114F (illustrated at §§ 1010–45.4901–114 through 101–45.4901–114F) shall be used, where appropriate, in sales of personal property except that Standard Form 114C is not applicable to those sales involving any strategic metals, minerals, and ores which have been determined surplus pursuant to the Act. These forms will be stocked by GSA as cut sheets only. Authority for the use of such forms in styles other than cut sheets may be granted when requests for such deviation are submitted in accordance with § 101–26.302.

(a) Deviation. To ensure inclusion of appropriate terms, conditions, clauses,

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etc., in Government sales contracts, no deviation shall be made from the Standard Form 114 series, and no special conditions of sales shall be included that are inconsistent with the provisions contained therein, unless approval is obtained from the Commissioner, Federal Supply Service (F) (mailing address: General Services Administration, Washington, DC 20406).

* * * * *

Subpart 101–45.47—Reports

12. Section 101–45.4701 is revised to read as follows:

§ 101–45.4701 Performance Reports.

An annual report of the sale or other disposition of surplus personal property shall be submitted in duplicate to GSA within 90 calendar days after the close of each fiscal year, using Standard Form 121, Annual Report of Utilization and Disposal of Excess and Surplus Personal Property. Agencies shall attach a list to the Standard Form 121 showing by Federal Supply Group the following:

(a) Line items sold;
(b) Acquisition cost;
(c) Proceeds; and
(d) Cost of conducting sales.

PART 101–46—UTILIZATION AND DISPOSAL OF PERSONAL PROPERTY PURSUANT TO EXCHANGE/SALE AUTHORITY

13. The authority citation for Part 101–46 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

§ 101–46.001 [Removed]

§ 101–46.002 [Redesignated as § 101–46.001]

§ 101–46.003 [Removed]

§ 101–46.004 [Removed]

§ 101–46.005 [Removed]

14. Sections 101–46.001 through 101–46.001–5 are removed and § 101–46.002 is redesignated as § 101–46.001.

Subpart 101–46.2—Authorization

15. Section 101–46.202 is amended by revising paragraph (b)(1)(iii) to read as follows:

§ 101–46.202 Restrictions and Limitations.

* * * * *

(b) * * *
(1) * * *

(iii) The acquired item and the replaced item both fall within a single Federal Supply Group except for those items listed in paragraph (a) of this section which are not eligible for handling under the provisions of this part.

Subpart 101–46.3—Exchange/Sale Procedures

16. Section 101–46.300 is revised to read as follows:

§ 101–46.300 Scope of Subpart.

This part prescribes the policies and methods governing the actual exchange or sale of property which qualifies in accordance with this part. This property will be handled in the same manner as surplus property under Part 101–45, but identified as replacement property subject to the same exemptions and exceptions on reporting as otherwise would be applicable to surplus personal property.

17. Section 101–46.305 is revised to read as follows:

§ 101–46.305 Reports.

(a) Within 90 calendar days after the close of each fiscal year, executive agencies shall submit a summary report in letter form on the transactions made under this part during the fiscal year except for transactions involving books and periodicals as follows:

(1) A list by Federal Supply Group of property sold under this part showing in columns:

(i) Line items sold;
(ii) Acquisition cost;
(iii) Proceeds; and
(iv) Cost of sales.

(2) A list by Federal Supply Group of property exchanged under this part showing in columns:

(i) Line items exchanged;
(ii) Acquisition cost; and
(iii) Exchange allowance.

(3) Total acquisition cost of property acquired from any source other than new procurement which was subsequently exchanged or sold after being placed in official use for less than 1 year pursuant to § 101–46.202(c)(10) and for historical items exchanged pursuant to § 101–46.203(b) shall be listed separately by two-digit Federal supply classification groups.

(4) These data shall also be separated into two categories by geographic location as follows:

(i) The States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands; and

(ii) All other areas of the world.

(b) The summaries shall not include any property that was initially designated for exchange/sale but which was transferred for further Federal utilization or was subsequently redesignated as excess or surplus property.

(c) Reports shall be addressed to the General Services Administration, Office of Transportation and Property Management (FB), Washington, DC 20406.

(d) The report required by this regulation has been assigned interagency report control number 1528–GSA–AN in accordance with FIRMR 201–45.6 (41 CFR 201–45.6).

(e) If an agency makes no transactions under this part during a fiscal year, the agency must submit a report stating that no transactions occurred.

Dated: September 26, 1994.

Roger W. Johnson,

Administrator of General Services.

[FR Doc. 94–24568 Filed 10–4–94; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7091

[NM–920–4210–06; NMNM 010206]

Revocation of Public Land Order No. 964; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects the remaining 1,442.14 acres of public lands withdrawn for use by the Atomic Energy Commission (now the Department of Energy). The lands are no longer needed for energy purposes. The revocation is needed to permit disposal of the land to the Navajo Nation through land exchange. The lands are within an overlapping withdrawal and thus remain closed to surface entry, mining, and mineral leasing, but remain open to exchange under the Act of March 3, 1921.

EFFECTIVE DATE: November 4, 1994.

FOR FURTHER INFORMATION CONTACT: Jeanette Espinosa, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502, 505–438–7597.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 964, as amended, which withdrew public lands for use by the Atomic Energy Commission, is hereby revoked insofar as it affects the remaining lands described as follows:

New Mexico Principal Meridian

T. 13 N., R. 11 W.,
Sec. 3, lots 1 and 2, S½NE¼, and S½;
Sec. 11;
Sec. 13, SE¼ and S½N½.

The areas described aggregate 1,442.14 acres in McKinley County.

2. The lands described in paragraph 1 are within an overlapping withdrawal, Public Land Order No. 2198, which withdrew lands to permit disposal of the lands to the Navajo Nation through land exchange, and thus remain withdrawn from settlement, sale, location, or entry under the general land laws, including the mining and mineral leasing laws, but remain open to exchange under the Act of March 3, 1921.

Dated: September 26, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–24669 Filed 10–4–94; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket RSOR–6; Notice No. 39]

RIN: 2130–AA81

Alcohol testing; Amendments to Alcohol/Drug Regulations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final Rule; Corrections.

SUMMARY: FRA issues a supplementary rule correcting two of the amendatory instructions contained in its February 15, 1994 final rule implementing alcohol testing [59 FR 7448].

EFFECTIVE DATE: October 5, 1994.

ADDRESSES: Any petition for reconsideration should be submitted in triplicate to the Docket Clerk, Docket No. RSOR–6, Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street, S.W., room 8201, Washington, D.C., 20590.

FOR FURTHER INFORMATION CONTACT: D. Lamar Allen, Alcohol and Drug Program Manager (RRS–11), Office of Safety, FRA, Washington, D.C. 20590 (Telephone: (202) 366–0127) or Patricia V. Sun, Trial Attorney (RCC–30), Office of Chief Counsel, FRA, Washington, D.C. 20590 (Telephone: (202) 366–4002).

SUPPLEMENTARY INFORMATION: This rule contains only editorial corrections. Therefore, good cause exists under the provisions of 5 U.S.C. 553(d)(e) to warrant an expedited effective date.

Corrections

In the rule document beginning on page 7448 in the issue of Tuesday, February 15, 1994 make the following corrections:

1. On page 7461, amendatory instruction 16 should read "Section 219.209 is amended by revising the last sentence of paragraph (a)(1); and by adding a new paragraph (c), as follows:".

2. On page 7465, amendatory instruction 42 should read "Part 219 is amended by adding a new section 219.801 to Subpart I as follows:".

Issued in Washington, D.C. on September 29, 1994.

S. Mark Lindsey,

Chief Counsel, Federal Railroad Administration.

[FR Doc. 94–24576 Filed 10–4–94; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 921058–4257; I.D. 090892B]

RIN 0648–AD44

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS implements a regulatory amendment to establish standard groundfish product types and standard product recovery rates (PRRs) for purposes of managing the groundfish fisheries off Alaska and specify certain product types and PRRs that may be used to calculate round-weight equivalents of pollock for purposes of calculating amounts of pollock roe that may be retained onboard a vessel during the pollock fishery. These actions are necessary to facilitate enforcement of existing regulatory measures and to implement a statutory prohibition against the wasteful use of pollock by stripping roe (eggs) from female pollock and discarding female and male pollock carcasses without further processing, commonly known as pollock roe stripping. The intended effect of this action is to promote the purposes and policies of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

EFFECTIVE DATE: November 4, 1994.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained from the Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel).

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands management area (BSAI) is managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plan (FMP) for Groundfish of the GOA and the FMP for the Groundfish Fishery of the BSAI. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Act and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

An explanation of, and reasons for, the establishment and specifications of standard product types and standard PRRs are contained in the notice of proposed rulemaking (58 FR 44643, August 24, 1993). The notice invited comments through September 23, 1993. It also proposed a regulatory amendment to reduce the proportion of pollock roe that may be retained onboard a vessel while participating in the directed pollock fishery. That regulatory amendment has already been implemented by a final rule (59 FR 14121, March 25, 1994). Six letters of comments were received that addressed standard product types and standard PRRs. They are summarized and responded to in the Comments Received section, below.

Changes in the Final Rule From the Proposed Rule

Table 2 is redesignated as Table 1 in 50 CFR 672.20(j)(1), (2) and (3)(i) and (3)(ii).

The newly designated Table 1 in 50 CFR 672.20(j)(2) is revised as follows.

1. Product codes and standard PRRs are established for rex sole in the GOA to accommodate a new target species category at 50 CFR 672.20(a) resulting from 1994 groundfish specifications.

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2. The standard PRR for rockfish fillets/no skin (code 22) is changed from 0.35 to 0.33, and the standard PRR for sculpins, headed & gutted with roe (code 4) is changed from 0.88 to 0.87. These changes are insignificant and are made to reflect information contained in the literature for these product types.

3. A standard PRR for pollock surimi of 0.14 was proposed. That rate does not reflect seasonal variations experienced in this product. Seasonal variations are caused by changes in the physical condition of pollock flesh during the spawning season. This season generally occurs from January through June, followed by a recuperation period. Starting in July, the condition of pollock flesh improves, becoming optimum during the late summer months. For this reason, the BSAI pollock non-roe season was changed by regulation from June 1 to August 15, beginning in 1993.

To investigate seasonal differences in pollock products, NMFS reviewed data from the 1993 pollock roe and non-roe seasons, which occurred January 20–March 8 and August 15–September 22, respectively, for the "offshore component." NMFS also reviewed data from the "offshore component" from the 1994 pollock roe season, which occurred January 20–February 18. These data contained estimates of total retained pollock catches as reported by NMFS observers and amounts of surimi produced from the retained pollock as reported by vessels. During the 1993 roe season, 20,934 metric tons (mt) of surimi were produced from a retained pollock catch of 134,558 mt resulting in a average PRR of 0.155. During the 1994 roe season, 23,267 mt of surimi were produced from a retained pollock catch of 144,134 mt, resulting in an average recovery rate of 0.161. During the non-roe season, 29,878 mt of surimi were produced from a retained pollock catch of 171,320 mt, resulting in an average recovery rate of 0.17.

From these data, NMFS has determined that sufficient information exists to demonstrate seasonal differences in surimi recovery rates. Therefore, NMFS is establishing a standard PRR of 0.16 for the period January through June and a standard PRR of 0.17 for the period July through December.

4. The standard PRR for pollock skinless/boneless fillets (product code 23) is revised from 0.22 to 0.21. This revision is based on results of recovery tests conducted by NMFS observers.

5. The target species category "flathead sole" had been proposed to be referenced in § 675.20(a), which was an error. It is now correctly referenced in § 672.20(a).

6. The target species category "other flatfish" had been proposed to be referenced in § 672.20(a), which was an error. It is now correctly referenced in § 675.20(a).

7. The standard PRR for Atka mackerel, headed and gutted western cut (code 7) is changed from 0.61 to 0.64, and the standard PRR for Atka mackerel, headed & gutted eastern cut (code 8) is changed from 0.64 to 0.61 to correct a transposition error in the proposed rule.

8. The product codes 95 for discards and 99 for dockside discards have been removed, because they serve no useful purpose.

Section 672.20(j)(3) is revised to limit the aggregate adjustments of any standard PRR during a calendar year that the Regional Director may make without providing opportunity for prior public comment to no more than 15 percent of the standard PRR specified for a preceding calendar year. Aggregate adjustments greater than 15 percent may be made after providing notice and opportunity for prior public comment.

Comments Received

NMFS received six letters of comments on the proposed rule. Some comments addressed standard PRRs for specific products (e.g., surimi and deep-skin fillets made from pollock). Other comments focused on concerns about being accountable for the standard PRRs that would be different from actual recovery rates.

Comment 1. A vessel that achieves an actual recovery rate for a product that varies from the standard PRR could be prosecuted for violating a directed fishing closure or Vessel Incentive Program (VIP) rate, or be subject to higher fees under the North Pacific Fisheries Research Plan (Research Plan), even though irrefutable evidence existed to demonstrate that the vessel's actual recovery rate was real.

Response. NMFS concurs that a vessel could be prosecuted as stated in the comment. A vessel may have to adjust the amounts of products retained onboard to comply with the regulations that depend on round-weight equivalents calculated from processed products. A vessel would not be in violation if it has amounts of products onboard that are consistent with standard PRRs. Although NMFS considered means by which a vessel could claim it was achieving a recovery rate that differed from a standard PRR at any particular time, NMFS does not have the ability to determine whether a vessel's claimed recovery rate was representative of its processing operations or whether it had claimed a particular recovery rate as a means of justifying amounts of fish onboard to avoid violations of directed fishing closures or VIP definitions, or being charged higher fees under the Research Plan.

Comment 2. A vessel that achieves higher recovery rate for a particular product receives no benefit under a program that uses standard PRRs, thereby discouraging the use of more efficient and productive equipment.

Response. Standard PRRs are used to determine the amount of fish caught because their use is the best practicable method of doing so available at this time. Economic incentives outside the regulatory management scheme exist for vessels to increase their product recovery efficiency. As overall fleet efficiency in producing any particular product increases, NMFS will revise the standard PRR for that product.

Comment 3. By establishing one standard PRR for each product form, the rule ignores seasonal, area, and vessel-by-vessel variation in actual recovery rates.

Response. NMFS has considered variation in determining that standard PRRs are necessary to enforce certain management measures. Where NMFS has been able to determine a variation in a PRR over a wide area or season, as in pollock used for surimi (See response to Comment 4, below.), a separate PRR is specified. NMFS does not have the means to account for vessel-by-vessel, seasonal, and area variations from a standard PRR that may occur at any particular time.

Comment 4. Proposed standard PRRs for certain products are inaccurate. These are listed as follows:

1. The standard PRR for pollock surimi of 0.14 is too low, given that data used by NMFS during the 1992 non-roe season reflected product recovery from small-sized pollock and that actual recovery rates achieved by vessels, by season, shows product recoveries that range from 0.12 to 0.30. Data from the 1993 fishery should be a more reliable source of information;

2. The standard PRR for deep skin pollock is too low, given that data submitted to NMFS suggest that the standard PRR is closer to 0.16 or even 0.18;

3. The standard PRR for headed-and-gutted Pacific cod is too low, given that other sources of published information indicate that the standard PRR should be in the range of 0.56–0.75 or 0.58–0.64; and

4. Other standard PRRs may be in error as well.

Response. With respect to the standard PRR for pollock surimi, NMFS has reviewed 1993 production information on a seasonal basis and notes that the average recovery rate for the period January through June is 0.16 (see discussion under the section on Changes In the Final Rule From the Proposed Rule). The average recovery rate for the period July through December is 0.17. The final rule establishes these two recovery rates to accommodate seasonal differences.

NMFS has reviewed information with respect to PRRs for deep skin pollock and headed-and-gutted Pacific cod. Deep skin pollock is such a new product that few data exist to demonstrate the extent of annual variation. On the basis of information available, NMFS concludes that 0.13 is an appropriate standard PRR. With respect to headed-and-gutted Pacific cod, many independent observers' tests onboard vessels have demonstrated PRRs averaging 0.47 and 0.57, respectively, for eastern and western cut products made from Pacific cod. Other changes made to PRRs are as noted in the section on Changes In the Final Rule From the Proposed Rule for the reasons given. NMFS does not have information that indicates any of the other proposed standard PRRs are in error; therefore, NMFS is establishing them as proposed.

Comment 5. The 15 percent leeway provided to the Regional Director to make adjustments in standard PRRs without further rulemaking is inadequate.

Response. Changes in management measures sometimes have effects that are not anticipated. Notice-and-comment procedures provide the agency and the public the opportunity to determine what such effects might be. There is no limit to the change in a PRR that may be made in any one year. The Regional Director may make changes to a PRR without providing opportunity for prior public comment as long as the aggregate change in any one year does not exceed 15 percent. Changes to a PRR which, when aggregated with all other changes made during that same calendar year, are greater than 15 percent require notice and opportunity for prior public comment to ensure that all data and all possible effects are considered.

NMFS, having reviewed the purpose of this rule and comments received, has determined that it is necessary for fishery conservation and management. Standard PRRs, rather than recovery rates provided by vessel operators, are necessary to estimate the round-weight equivalent of retained species: (1) To assign vessels to fisheries for purposes of monitoring fishery specific bycatch allowances of prohibited species; (2) to monitor vessel compliance with fishery specific bycatch rate standards set forth under the VIP to reduce prohibited species bycatch rates; and (3) to calculate round-weight equivalents for purposes of assessing fees under the Research Plan. This rule is also necessary to promote compliance with regulations that prohibit pollock roe stripping as intended by the Magnuson Act.

Classification

The Alaska Region, NMFS, prepared a final regulatory flexibility analysis as part of the EA/RIR/FRFA, which concludes that this rule will have a significant economic impact on a substantial number of small entities. A copy of the EA/RIR/FRFA may be obtained from the Regional Director (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: September 29, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, a new definition of "Round-weight equivalent" is added to read as follows:

§ 672.2 Definitions.

* * * * *

Round-weight equivalent means the weight of fish calculated by dividing the weight of the primary product made from that fish by the standard product recovery rate for that primary product as listed in § 672.20(j), or, if not listed, the weight of fish calculated by dividing the weight of a primary product by the standard product recovery rate as determined using the best available evidence on a case-by-case basis.

* * * * *

§ 672.20 General limitations.

* * * * *

(i) * * *

(3) Only the following product types and standard product recovery rates may be used to calculate round-weight equivalents for pollock for purposes of this subparagraph:

Product code	Product description	Standard product recovery rate
07	Headed and gutted, western cut.	0.65
08	Headed and gutted, eastern cut.	.56
10	Headed and gutted, without tail.	.50
20	Fillets with skin & ribs	.35
21	Fillets with skin on, no ribs	.30
22	Fillets with ribs no skin	.30
23	Fillets, skinless, boneless	.21
24	Deep skin fillets	.13
30	Surimi	.16
31	Mince	.22
32	Meal	.17

* * * * *

(j) *Standard product types and standard product recovery rates (PRRs).*—(1) *Calculating round-weight equivalents from standard PRRs.* Round-weight equivalents for groundfish products shall be calculated using the product codes and standard PRRs specified in Table 1 of this section.

(2) *Adjustments to Table 1 of this section.* The Regional Director may adjust standard PRRs and product types specified in Table 1 of this section if he determines that existing standard PRRs are inaccurate or if new product types are developed.

(3) *Procedure.* Adjustments to any standard PRR listed in Table 1 that are within and including 15 percent of that standard PRR may be made without providing notice and opportunity for prior public comment. Adjustments of any standard PRR during a calendar year, when aggregated with all other adjustments made during that year, may not exceed 15 percent of the standard PRR listed in Table 1 of this section at the beginning of that calendar year and no new product type may be announced until NMFS has published notice of the proposed adjustment and/or new product type in the **Federal Register** and provided the public with at least 30 days opportunity for public comment. Any adjustment of a PRR that acts to further restrict the fishery shall not be effective until 30 days after the date of publication in the **Federal Register**. If NMFS makes any adjustment or announcement without providing notice and opportunity for prior public comment, the Regional Director will receive public comments on the adjustment or announcement for a period of 15 days after its publication in the **Federal Register**.

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TABLE 1 TO §672.20.—TARGET SPECIES CATEGORIES, PRODUCT CODES AND DESCRIPTIONS, AND STANDARD PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES REFERENCED IN 50 CFR 672.20(a)(1) AND/OR 50 CFR 675.20(a)(1)

FMP species	Species code	Product Code											
		1 Whole food fish	2 Whole bait fish	3 Bled	4 Gutted	6 Headed and gutted with roe	7 Headed and gutted western cut	8 Headed and gutted eastern cut	10 Headed and gutted w/o tail	11 Kirimi	12 Salted and split	13 Wings	14 Roe
Pacific cod	110	1.00	1.00	0.98	0.85	0.63	0.57	0.47	0.44	.....	0.45	.....	0.05
Arrowtooth flounder	121	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
Rockfish [1]	.....	1.00	1.00	0.98	0.88	.....	0.60	0.50	.....	.....	.....	.....	.....
Sculpins	160	1.00	1.00	0.98	0.87	.....	0.50	0.40	.....	.....	.....	.....	.....
Atka mackerel	193	1.00	1.00	0.98	0.87	0.67	0.64	0.61	.....	.....	.....	.....	.....
Pollock	270	1.00	1.00	0.98	0.80	0.70	0.65	0.56	0.50	.....	.....	.....	0.04
Smelts	510	1.00	1.00	0.98	0.82	.....	0.71	.....	.....	.....	.....	.....	.....
Eulachon	511	1.00	1.00	0.98	0.82	.....	0.71	.....	.....	.....	.....	.....	.....
Capelin	516	1.00	1.00	0.98	0.89	.....	0.78	.....	.....	.....	.....	.....	.....
Sharks	689	1.00	1.00	0.98	0.83	.....	0.72	.....	.....	.....	.....	.....	.....
Skates	700	1.00	1.00	0.98	0.90	.....	.....	0.32	.....	.....	.....	0.32	.....
Sablefish	710	1.00	1.00	0.98	0.89	.....	0.68	0.63	0.50	.....	.....	.....	.....
Octopus	870	1.00	1.00	0.98	0.69	.....	.....	.....	.....	.....	.....	.....	.....
Target Species Categories Only at 50 CFR 672.20(a)													
Deep water flatfish	118	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
Flathead sole	122	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
Rex sole	125	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
Shallow water flatfish	119	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
Thornyhead rockfish	143	1.00	1.00	0.98	0.88	0.55	0.60	0.50	.....	.....	.....	.....	.....
Target Species Categories Only at 50 CFR 675.20(a)													
Other flatfish	120	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
Rock sole	123	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
Yellowfin sole	127	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
Greenland turbot	134	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
Squid	875	1.00	1.00	0.98	0.69	.....	.....	.....	.....	.....	.....	.....	.....

[1] Rockfish means all species of *Sebastes* and *Sebastolobus*.

TABLE 1 TO §672.20 (CONTINUED).—TARGET SPECIES CATEGORIES, PRODUCT CODES AND DESCRIPTIONS, AND STANDARD PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES REFERENCED IN 50 CFR 672.20(A)(1) AND/OR 675.20(A)(1)

FMP species	Species code	Product code												
		15 Pectoral girdle	16 Heads	17 Cheeks	18 Chins	19 Belly	20 Fillets: With skin and ribs	21 Fillets: Skin on no ribs	22 Fillets: With ribs no skin	23 Fillets: Skinless/ boneless	24 Fillets: Deep skin	30 Surimi	31 Mince	32 Meal
Pacific cod	110	0.05	.....	0.05	.....	0.01	0.45	0.35	0.25	0.25	.....	0.15	0.50	0.17
Arrowtooth flounder	121	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
Rockfish	.....	.....	0.15	0.05	0.05	0.10	0.40	0.30	0.33	0.25	.....	.....	.....	0.17
Sculpins	160	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.17
Atka mackerel	193	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.15	.....	0.17
Pollock	270	.....	0.15	.....	.....	.....	0.35	0.30	0.30	0.21	0.13	[1]0.16 [2]0.17	0.22	0.17
Smelts	510	.....	.....	.....	.....	.....	.....	0.38	.....	.....	.....	.....	.....	0.22
Eulachon	511	.....	.....	.....	.....	.....	.....	0.38	.....	.....	.....	.....	.....	0.22
Capelin	516	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.22
Sharks	689	.....	.....	.....	.....	.....	.....	0.30	0.30	0.25	.....	.....	.....	0.17
Skates	700	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.17
Sablefish	710	.....	.....	0.05	.....	.....	0.35	0.30	0.30	0.25	.....	.....	.....	0.22
Octopus	870	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.17

TABLE 1 TO §672.20 (CONTINUED).—TARGET SPECIES CATEGORIES, PRODUCT CODES AND DESCRIPTIONS, AND STANDARD PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES REFERENCED IN 50 CFR 672.20(A)(1) AND/OR 675.20(A)(1)—Continued

FMP species	Species code	Product code												
		15 Pectoral girdle	16 Heads	17 Cheeks	18 Chins	19 Belly	20 Fillets: With skin and ribs	21 Fillets: Skin on no ribs	22 Fillets: With ribs no skin	23 Fillets: Skinless/ boneless	24 Fillets: Deep skin	30 Surimi	31 Mince	32 Meal
Target Species Categories Only at 50 CFR 672.20(a)														
Deep water flatfish	118	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
Flathead sole	122	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
Rex sole	125	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
Shallow water flatfish	119	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
Thornyhead rockfish	143	.....	0.20	0.05	0.05	0.05	0.40	0.30	0.35	0.25	.....	.....	.....	0.17
Target Species Categories Only at 50 CFR 675.20(a)														
Other flatfish	120	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
Rock sole	123	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
Yellowfin sole	127	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
Greenland Turbot	134	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	0.18	.....	0.17
Squid	875	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.17

[1] Standard pollock surimi rate during January through June.
[2] Standard pollock surimi rate during July through December.

TABLE 1 TO §672.20 (CONTINUED).—TARGET SPECIES CATEGORIES, PRODUCT CODES AND DESCRIPTIONS, AND STANDARD PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES REFERENCED IN 50 CFR 672.20(a)(1) AND 50 CFR 675.20(a)(1)

FMP species	Species code	Product code							
		33 Oil	34 Milt	35 Stomachs	36 Mantles	37 Butterfly backbone removed	96 Decomposed fish	98 At-sea discards	
Pacific cod	110	.....	.....	.....	.....	0.43	0.00	1.00	
Arrowtooth flounder	121	.....	.....	.....	.....	.....	0.00	1.00	
Rockfish	.....	.....	.....	.....	.....	.....	0.00	1.00	
Sculpins	160	.....	.....	.....	.....	.....	0.00	1.00	
Atka mackerel	193	.....	.....	.....	.....	.....	0.00	1.00	
Pollock	270	.....	.....	.....	.....	0.43	0.00	1.00	
Smelts	510	.....	.....	.....	.....	.....	0.00	1.00	
Eulachon	511	.....	.....	.....	.....	.....	0.00	1.00	
Capelin	516	.....	.....	.....	.....	.....	0.00	1.00	
Sharks	689	.....	.....	.....	.....	.....	0.00	1.00	
Skates	700	.....	.....	.....	.....	.....	0.00	1.00	
Sablefish	710	.....	.....	.....	.....	.....	0.00	1.00	
Octopus	870	.....	.....	.....	0.85	1.00	0.00	1.00	
Target Species Categories Only at 50 CFR 672.20(a)									
Deep water flatfish	118	.....	.....	.....	.....	.....	0.00	1.00	
Flathead sole	122	.....	.....	.....	.....	.....	0.00	1.00	
Rex sole	125	.....	.....	.....	.....	.....	0.00	1.00	
Shallow water flatfish	119	.....	.....	.....	.....	.....	0.00	1.00	
Thornyhead rockfish	143	.....	.....	.....	.....	.....	0.00	1.00	
Target Species Categories Only at 50 CFR 675.20(a)									
Other flatfish	120	.....	.....	.....	.....	.....	0.00	1.00	
Rock sole	123	.....	.....	.....	.....	.....	0.00	1.00	
Yellowfin sole	127	.....	.....	.....	.....	.....	0.00	1.00	

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TABLE 1 TO § 672.20 (CONTINUED).—TARGET SPECIES CATEGORIES, PRODUCT CODES AND DESCRIPTIONS, AND STANDARD PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES REFERENCED IN 50 CFR 672.20(a)(1) AND 50 CFR 675.20(a)(1)—Continued

FMP species	Species code	Product code						
		33 Oil	34 Milt	35 Stomachs	36 Mantles	37 Butterfly backbone removed	96 Decomposed fish	98 At-sea discards
Greenland turbot	134	.....	.....	.....	.....	.....	0.00	1.00
Squid	875	.....	.....	.....	0.75	1.00	0.00	1.00

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

4. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

5. In § 675.2, a new definition of "Round-weight equivalent" is added to read as follows:

§ 675.2 Definitions.

* * * * *

Round-weight equivalent means the weight of fish calculated by dividing the weight of the primary product made from that fish by the standard product recovery rate for that primary product as listed in § 672.20(j), or, if not listed, the weight of fish calculated by dividing the weight of a primary product by the standard product recovery rate as determined using the best available evidence on a case-by-case basis.

* * * * *

6. In § 675.20, paragraph (j)(4) is removed, paragraphs (j)(5)–(j)(7) are redesignated as paragraphs (j)(4)–(j)(6), paragraph (j)(3) is revised, and a new paragraph (k) is added to read as follows:

§ 675.20 General limitations.

* * * * *

(j) * * *

(3) Only the following product types and standard product recovery rates may be used to calculate round-weight equivalents for pollock for purposes of this subparagraph:

Product code	Product description	Standard product recovery rate
07	Headed and gutted, western cut.	0.65
08	Headed and gutted, eastern cut.	.56
10	Headed and gutted, without tail.	.50
20	Fillets with skin & ribs	.35
21	Fillets with skin on, no ribs	.30
22	Fillets with ribs no skin	.30
23	Fillets, skinless, boneless	.21
24	Deep skin fillets	.13
30	Surimi	.16
31	Mince	.22
32	Meal	.17

* * * * *

(k) *Standard product types and standard product recovery rates (PRRs).* Standard product types and standard PRRs pertaining to this section are governed by provisions set forth in § 672.20(j).

[FR Doc. 94-24637 Filed 10-4-94; 8:45 am]
BILLING CODE 3510-22-P

Proposed Rules

Federal Register
Vol. 59, No. 192
Wednesday, October 5, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 843

RIN: 3206-AF91

Federal Employees Retirement System—Computation of the Basic Employee Death Benefit for Customs Officers

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing regulations concerning the use of overtime and premium pay in determining the final annual rate of basic pay of customs officers under the Federal Employees Retirement System (FERS). These regulations would establish the methodology (similar to the one that OPM uses for other flexible schedule employees) that the employing agency will use to compute customs officers' "final annual rate of basic pay" for determining FERS "basic employee death benefit." The regulations are necessary to implement the changes in the statutory definition of basic pay under FERS made by section 13812 of the Omnibus Budget Reconciliation Act of 1993.

DATES: Comments must be received on or before December 5, 1994.

ADDRESSES: Send comments to Reginald M. Jones, Jr., Assistant Director for Retirement Policy Development; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: Section 13812 of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, amended section 8331(3) of title 5, United States Code, the definition of basic pay under the Civil Service Retirement System (CSRS), to include, as basic pay for CSRS computations, certain overtime pay for customs officers. Section 8401(4) of title 5, United States Code, provides that the CSRS definition of basic pay in section 8331(3) applies to the Federal Employees Retirement System (FERS). For customs officers, basic pay will include the regular pay under the general schedule, any applicable locality pay, and allowable overtime pay up to $12,500 per fiscal year. Basic pay is used to compute final salary for the basic employee death benefit under FERS.

For determining final salary, the employing agency will use a methodology similar to the one used for determining the "final annual rate of basic pay" of intermittent employees for the FERS basic employee death benefit established in § 843.102 of title 5, Code of Federal Regulations. The employing agency will determine the total number of hours for which the employee was paid two-times-hourly-rate overtime and the total number of hours for which the employee was paid three-times-hourly-rate overtime during the 52-week workyear ending the pay period before separation. The employing agency will then determine the amount of overtime pay that the employee would have received during the 52-week workyear if that overtime were paid at two or three times the employee's hourly rate (regular general schedule pay rate plus locality pay) at the time of death. The amount of allowable overtime is the lesser of the amount that would have been paid during that 52-week workyear using the employee's hourly rate (times the appropriate multiplier) at the time of separation or $12,500. The final salary is equal to the allowable overtime computed under the previous sentence, plus the final annual general schedule pay, plus locality pay.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.

List of Subjects in 5 CFR Part 843

Administrative practice and procedure, Claims, Disability benefits, Government employees, Intergovernmental relations, Pensions, Reporting and recordkeeping, Retirement.

U.S. Office of Personnel Management
Lorraine A. Green,
Deputy Director.

Accordingly, OPM proposes to amend 5 CFR part 843 as follows:

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

1. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; §§ 843.205, 843.208 and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

2. In the definition of "final annual rate of basic pay" in section 843.102, paragraph (d) is added to read as follows:

§ 843.102 Definitions

* * * * *

Final annual rate of basic pay * * *

(d) The annual pay for customs officers is the sum of the employee's general schedule pay, locality pay, and the lesser of—

(1) Two times the employee's final hourly rate of pay times the number of hours for which the employee was paid two times salary as compensation for overtime inspectional service under section 5(a) of the Act of February 11, 1911 (19 U.S.C. 261 and 267) plus three times the employee's final hourly rate of pay times the number of hours for which the employee was paid three times salary as compensation for overtime inspectional service under section 5(a) in the 52-week work year immediately preceding the end of the last pay period in which the employee was in pay status; or

(2) $12,500.

* * * * *

[FR Doc. 94-24455 Filed 10-4-94; 8:45 am]
BILLING CODE 6325-01-M

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 150

[Docket No. PRM–150–3]

Measurex Corporation, Receipt of a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Measurex Corporation. The petition has been docketed by the Commission and has been assigned Docket No. PRM–150–3. The petitioner requests that the NRC amend its regulations governing Agreement State regulation of byproduct material to require Agreement States to notify the NRC of all proposed and completed regulatory actions. The petitioner also requests that the NRC amend its regulations governing rulemaking to require the NRC to publish Agreement State notices of proposed and completed rulemaking. The petitioner believes that these amendments would alert NRC and Agreement State licensees of applicable Agreement State requirements and permit them to more fully participate in the rulemaking process.

DATES: Submit comments by December 19, 1994. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7163 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission (NRC) received a petition for rulemaking dated April 7, 1994, submitted by the Measurex Corporation. The petition was docketed as PRM–150–3 on April 12, 1994. The petitioner requests that the NRC amend its regulations in 10 CFR part 150 that govern Agreement State regulation of byproduct material. Specifically, the petitioner is seeking an amendment to 10 CFR 150.31 that will require Agreement States to notify the NRC of proposed and completed changes to that State's regulations. The petitioner is also seeking an amendment to 10 CFR part 2 that will require the NRC to publish Agreement State notices of proposed and completed rulemaking in the **Federal Register**.

The petitioner notes that current NRC requirements contained in 10 CFR 2.804 through 10 CFR 2.807 establish a procedure for the publication of proposed changes, participation by interested persons, and notification of changes, and believes that a less detailed set of rulemaking and notification procedures is specified for Agreement States in 10 CFR 150.31. The petitioner claims that the current rulemaking and notification procedure contained in 10 CFR 150.31 fails to provide a mechanism for persons located outside of any particular Agreement State to learn about proposed changes in that State's regulations. The petitioner believes that the legislative intent of 10 CFR 150.31 is to provide a mechanism for interested persons to participate in the rulemaking process. However, the petitioner claims that because there is no current notification procedure required for Agreement States, the petitioner and other persons do not have ample opportunity to participate in discussion of proposed rules.

The petitioner states that under both its specific license for device distribution issued by the Agreement State of California and the general license issued by other Agreement States, it is required to provide generally licensed device recipients with a copy of the applicable Agreement State regulations. The petitioner also indicates that although it makes a substantial effort to learn of proposed regulatory changes and to maintain current copies of NRC and Agreement State regulations, it is not always notified of actual changes that may directly affect it and its customers in Agreement States. The petitioner believes that the proposed amendments to 10 CFR Parts 2 and 150 would alert NRC and Agreement State licensees to all relevant Agreement State requirements and permit them to more fully participate in the rulemaking process.

The NRC is soliciting public comment on the petition for rulemaking submitted by Measurex Corporation that requests the changes to the regulations in 10 CFR Parts 2 and 150 as discussed below.

The Petitioner

The petitioner is a manufacturer, distributor, and supplier of service for process control sensors used by NRC licensees throughout the United States. The petitioner states that it and its customers are directly affected by regulations adopted by the NRC and Agreement States. The petitioner also states that both its specific license for device distribution issued by California, an Agreement State, and other Agreement State licenses require it to provide generally licensed recipients a copy of the applicable Agreement State regulations. For these reasons, the petitioner claims that it makes a considerable effort to learn of proposed regulatory changes and to maintain current copies of NRC and Agreement State regulations.

The petitioner indicates that it is submitting this petition for rulemaking to amend 10 CFR Parts 2 and 150 because it believes that the current regulations completely fail to provide a mechanism for persons located outside any particular Agreement State to learn about proposed and completed changes to that State's regulations. The petitioner believes that because there is no adequate mechanism to keep NRC licensees aware of current Agreement State regulations, it is unable to fully participate in discussion of proposed rules and is often unaware of actual regulatory changes that directly affect it and its customers in Agreement States.

Discussion of the Petition

The petitioner has submitted this petition for rulemaking because it believes that it is adversely affected by the current regulations that do not provide an adequate mechanism for NRC licensees to learn about proposed and adopted changes in applicable Agreement State regulations. The petitioner states that although the current NRC regulations in 10 CFR 2.804 through 2.807 establish a procedure for the notification and publication of regulatory changes and participation by interested persons, it believes that a less detailed set of rulemaking and notification procedures is specified for Agreement States in 10 CFR 150.31.

The petitioner's primary concern is that it and other NRC licensees are not always notified of proposed and completed changes in Agreement State regulations that can directly affect themselves and their customers in Agreement States. The petitioner is also concerned that because it is often not aware of Agreement State regulatory actions, it does not have the opportunity to fully participate in the rulemaking process as is intended by NRC regulations. As part of its petition for rulemaking, the petitioner has included copies of various correspondence with Agreement State radiation control boards and the NRC, and cites specific cases in the Agreement States of Oregon and Texas that it believes will illustrate that the current rules are unduly burdensome, deficient, and in need of strengthening. For example, in Oregon, regulatory changes are proposed that would eliminate the general license authorizing the petitioner to install, transfer, demonstrate, or provide service and would require the petitioner to obtain a specific license from Oregon in order to conduct business.

If these proposed regulations are adopted, the petitioner states that it will be able to ship sensors to a customer in Oregon only after confirming that the customer has an appropriate specific license. The petitioner is concerned not only that the proposed regulations would impose additional burdens and costs on it and its customers in conducting business in Oregon, but also that it was not provided ample opportunity to comment on the proposed rules or to participate in the rulemaking process.

Although the petitioner attempted to learn about any proposed or adopted regulatory changes by writing to the Oregon Radiation Control Section on several occasions between June 1991 and January 1994, it did not receive a response. The lack of response led the petitioner to believe that Oregon had not modified its 1987 radiological control regulations even though the current version of the Oregon *Administrative Rules for the Control of Radiation* was adopted in 1991. The petitioner stated that it only became aware of the changes in Oregon's notification requirements in February 1994 when informally contacted by an out-of-state health physics colleague.

The petitioner also described a case in which it did not learn of regulatory modifications adopted by the Agreement State of Texas in 1993 until after the rules became effective. These regulations govern distribution and service involving generally licensed devices. The petitioner claims that the new requirements are costly and administratively burdensome and again expressed the concern that it was not able to participate in discussions of proposed rules that affect it and its customers before the rules became effective.

The petitioner acknowledges that although some State's radiation control agencies are conscientious in notifying out-of-state distributors or service groups about proposed and completed regulatory changes, many do not make such an effort. For these reasons, the petitioner indicates that it and other firms have no way of knowing when copies of a State's regulations are no longer valid and, consequently, have no opportunity to participate in the rulemaking process. The petitioner stated that its efforts to gain information regarding Agreement State regulatory changes are costly, time-consuming, and often ineffective.

To alleviate this situation, the petitioner proposes that 10 CFR 150.31 be amended to require Agreement States to notify the NRC of any proposed regulatory actions and that 10 CFR Part 2 be amended to require the NRC to publish the Agreement State notices of proposed regulatory actions in the **Federal Register**.

The NRC staff would like to inform the readers that 10 CFR 150.31 applies only to 11e(2) byproduct material (tailings and other wastes generated from the milling of ores primarily for their source material content) and reflects statutory requirements in the Uranium Mill Tailings Radiation Control Act of 1978, as amended. Similar requirements could be developed to apply to other byproduct material. In order to avoid confusion with the requirements for 11e(2) byproduct material, the proper location for these new requirements would need to be considered in the development of any new section in Part 150.

The Petitioner's Proposed Amendment

The petitioner requests that 10 CFR Parts 150 and 2 be amended to overcome the problems the petitioner has itemized and recommends the following revisions to the regulations:

1. The petitioner proposes that § 150.31 be amended by redesignating existing paragraph (c) as paragraph (d), redesignating existing paragraph (d) as paragraph (e), and adding a new paragraph (c) to read as follows:

Section 150.31 Requirements for Agreement State Regulation of Byproduct Material

* * * * *

(c) After [date], in the licensing and regulation of byproduct material, as defined in § 150.3(c)(2) of this part, or of any activity which results in the production of such byproduct material, an Agreement State shall require compliance with procedures which:

(1) Include the requirements of paragraph (b) of this section, and

(2) In the case of rulemaking also include:

(i) Except as provided by paragraph (c)(2)(iv) of this section, when it proposes to adopt, amend, or repeal a regulation, shall submit notice of the proposed change to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Docketing and Service Branch.

(ii) The notice will include:

(A) Either the terms or substance of the proposed rule, or a specification of the subjects and issues involved;

(B) The manner, time, and place within which interested members of the public may comment, and a statement of where and when copies of such comments may be examined.

(C) The authority under which the regulation is proposed; and

(D) The time, place, and nature of the public hearing, if any.

(iii) The notice required in paragraph (c)(2)(i) of this section will be made not less than [number to be determined] days prior to the time fixed for hearing, if any, unless the Agreement State for good cause stated in the notice provides otherwise.

(iv) The notice and comment provisions contained in paragraph (c)(2)(i), (ii), and (iii) of this section will not be required to be applied—

(A) To interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) When the Agreement State for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest, and are not required by statute. This finding, and the reasons therefor, will be incorporated into any rule issued without notice and comment for good cause.

(v) The Agreement State shall provide for a 30-day post-promulgation comment period for—

(A) Any rule adopted without notice and comment under the good cause exception in paragraph (c)(2)(iv)(B) of this section where the basis is that notice and comment is "impracticable" or "contrary to the public interest;" or

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(B) Any interpretive rule, or general statement of policy adopted without notice and comment under paragraph (c)(2)(iv)(A) of this section, except for those cases for which the Agreement State finds that such procedures would serve no public interest, or would be so burdensome as to outweigh any foreseeable gain.

(vi) For any post-promulgation comments received under paragraph (c)(2)(v) of this section, the Agreement State shall submit a statement to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Docketing and Service Branch. This statement shall contain an evaluation of the significant comments and any revisions of the rule or policy statement made as a result of the comments and their evaluation.

(vii) The Agreement State will afford interested persons an opportunity to participate through the submission of statements, information, opinions, and arguments in the manner stated in the notice. The Agreement State may grant additional reasonable opportunity for the submission of comments.

(viii) The Agreement State may hold informal hearings at which interested persons may be heard, adopting procedures which in its judgment will best serve the purpose of the hearing.

(ix) When it has adopted, amended, or repealed a regulation, the Agreement State will submit notice of the action to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Docketing and Service Branch.

(x) The notice of adoption, amendment, or repeal of a regulation provided by an Agreement State to fulfill the requirements of paragraph (c)(2)(ix) of this section will specify the effective date and include a concise general statement of the basis and purpose of the change. Such notice will be made not less than [number of days to be determined] days prior to the effective date, unless the Agreement State directs otherwise on good cause found and included in the notice of rulemaking provided in fulfillment of paragraph (c)(2)(x) of this section.

* * * * *

2. The petitioner proposes that 10 CFR Part 2 be amended to add a § 2.810 to read as follows:

Section 2.810 Notice of Proposed Rulemaking by Agreement States

(a) When the Commission, in fulfillment of the requirements of § 150.31(c)(2)(i) of this chapter, receives Agreement State notice of a proposal to adopt, amend, or repeal a regulation, it will cause the notice to be published in the **Federal Register**. The publication of this notice will be made not less than fifteen (15) days prior to the time fixed for hearing, if any.

(b) When the Commission, in fulfillment of the requirements of § 150.31(c)(2)(vi) of this chapter, receives an Agreement State statement of post-promulgation comments, it will cause the statement to be published in the **Federal Register**.

(c) When the Commission, in fulfillment of the requirements of § 150.31(c)(2)(ix) of this chapter, receives an Agreement State notice of the adoption, amendment, or repeal of regulations, it will cause the notice, including the effective date, to be published in the **Federal Register**.

Dated at Rockville, Maryland this 30th day of September, 1994.

For the Nuclear Regulatory Commission

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94-24652 Filed 10-4-94; 8:45 am]

BILLING CODE 7590-01-P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 1994—14]

Communications Disclaimer Requirements

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission is seeking comments to help determine whether changes in its regulations governing disclaimers on campaign communications are warranted. The current rules require a disclaimer notice on communications by any person that expressly advocate the election or defeat of a clearly identified candidate, or solicit contributions, through any form of general public political advertising. One proposed change would create a presumption that communications by authorized political committees or political party committees that refer to a clearly identified federal candidate are express advocacy, thereby triggering the disclaimer requirement. Other modifications would clarify that oral disclaimers are required under appropriate circumstances; clarify how these requirements apply to coordinated party expenditures; broadly define "direct mail" in this context; require a disclaimer on all communications included in a package of materials that are intended for separate distribution; and clarify the meaning of "clear and conspicuous" as that term is used in these rules.

DATES: Comments must be received on or before December 5, 1994. Persons wishing to testify at a hearing on these rules should so indicate in their written comments. If sufficient requests to testify are received, the Commission will announce the date of the hearing in a separate notice.

ADDRESSES: Comments must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act ["FECA" or "the Act"] at 2 U.S.C. 441d(a) requires a disclaimer on communications by any person that expressly advocate the election or defeat of a clearly identified federal candidate, or solicit contributions, through any form of general public political advertising. The Commission is proposing to revise the implementing regulations, found at 11 CFR 110.11, to address issues that have arisen since the rules were last amended, and to clarify their scope and applicability.

New Definition

Proposed 11 CFR 110.11(a) includes a definition for the term "direct mailing." For purposes of these requirements, "direct mailing" would be broadly defined to include any number of substantially similar pieces of mail, except for mailings of fifty pieces or less, by any person. The definition would exclude permissible activities by a corporation or labor organization communicating with a restricted class under 11 CFR 114.3 or 114.5, because such activities do not involve general public political advertising.

Express Advocacy

The current disclaimer requirements were enacted as part of the 1976 amendments to the Federal Election Campaign Act. They replaced those contained in former 18 U.S.C. 612, a broadly-worded criminal code provision that required identifying information to be included on any political statement published, mailed or distributed on behalf of a federal candidate.

The present statutory and regulatory language applies to communications that expressly advocate the election or defeat of a clearly identified federal candidate, a standard the Supreme Court held in *Buckley* v. *Valeo*, 424 U.S. 1, 80 (1976), to be constitutionally mandated for the disclosure of expenditures by individuals and groups that are not candidates or political committees. 424 U.S. at 80. However, neither *Buckley* nor other pertinent case law prohibits the imposition of further requirements on communications made by candidates and political committees. It is the Commission's experience that an inordinate amount of Commission time and resources are diverted to the question of whether a campaign mailing or advertisement paid for by a candidate constituted "express advocacy" and therefore required a disclaimer.

Since political committees are in the business of electing candidates to political office, the Commission believes it is appropriate for them to be subject to a different standard under section 441d(a) in certain circumstances. The Commission is therefore proposing to include in the regulatory text a presumption that all communications by authorized political committees, or by party political committees, that refer to a clearly identified federal candidate contain express advocacy, and thus trigger the section 441d(a) disclaimer requirements. This interpretation would further a major goal of the FECA, that of more complete disclosure on political communications directed to the general public. It would also eliminate problems that have arisen in determining whether specific communications contain "express advocacy" in this context.

This presumption would be rebuttable, since certain communications, e.g., those limited to one candidate's placing a newspaper ad offering another sympathy on a bereavement, are clearly not election advocacy. The Commission welcomes comments on the advisability of adopting this presumption, as well as suggested alternatives to and/or specific exemptions from the presumption.

Alternatively, the Commission is soliciting comments on whether the statutory language should be interpreted to require disclaimers on all communications by political committees, whether or not they include express advocacy. This, too, would further the disclosure aims of the Act, as well as eliminate possible problems in determining whether the "express advocacy" standard has been met.

Party Political Committee Communications

The Commission is also seeking comments on whether the required authorization statement should be dropped or modified for communications and solicitations that refer to a clearly identified federal candidate, made by political party committees prior to the time the party's candidate is nominated. There are several possible approaches to this issue. One option would be for such communications to state only who paid for the communication. Please note that this would not change the Commission's long-standing conclusion that such communications may count against the committee's coordinated party expenditure limits.

If a state or national party committee chooses not to make the coordinated expenditures permitted by section 441a(d), it may assign its right to make those expenditures to a designated agent, such as the senatorial campaign committee of the party. *FEC* v. *Democratic Senatorial Campaign Committee*, 454 U.S. 27 (1981). The proposed rules would clarify that the disclaimer on a communication made as a coordinated party expenditure should identify the committee that made the actual expenditure as the person who paid for the communication, regardless of whether that committee was acting as a designated agent or in its own capacity.

Unauthorized Committee Solicitations That Mention Candidates

While the Act requires communications by unauthorized committees to state both who paid for the communication and whether it was authorized by any candidate or candidate's committee, the text of the current rule does not include the second requirement for unauthorized committee solicitations. The proposed rule would clarify that an authorization statement would be required if the solicitation refers to a clearly identified federal candidate.

The "Clear and Conspicuous" Requirement

The proposal would provide guidance on the meaning of the term "clear and conspicuous" as that phrase is used in current 11 CFR 110.11(a)(1) and proposed paragraph 110.11(c). The Commission recently completed a rulemaking revising its regulations on the FECA's requirement that treasurers of political committees exercise best efforts to obtain, maintain, and report the complete identification of each contributor whose contributions aggregate more than $200 per calendar year. 2 U.S.C. 432(i), 11 CFR 104.7. See 58 FR 57725 (Oct. 27. 1993). For purposes of that rulemaking, a required notice to contributors is stated not to be "clear and conspicuous" if it is in small type in comparison to the remainder of the material, or if the printing is difficult to read or if the placement is easily overlooked. 11 CFR 104.7(b)(1), 58 FR 57729. This NPRM proposes the same language with regard to the disclaimers covered by this section.

Oral Disclaimers

The draft rules would clarify that oral communications and solicitations must meet the same disclaimer requirements as their written counterparts. The Act does not distinguish between written and oral communications. The Commission held in Advisory Opinion 1988–1 that oral disclaimers were not required as part of phone bank campaign communications with express advocacy content. The draft rules would supersede this opinion. This approach is consistent with the Commission's recently-adopted "best efforts" rules, which require at 11 CFR 104.7(b)(2) that both written and oral follow-up requests for contributor identification information include a required statement.

Packaged Materials

The proposal would clarify that a separate disclaimer is required on all communications included in a package of materials if the communications are intended for separate public distribution. In the past, questions have arisen as to whether a single disclaimer per package would satisfy the purposes of this requirement. All items intended for separate distribution (e.g., a poster included in a package of campaign handouts) would be covered by this requirement.

Exceptions

The current rules at paragraph 110.11(a)(2) exempt from the disclaimer requirement small items, such as pins, buttons, or pens; and "impractical" items, such as watertowers and skywriting. The Commission is proposing in paragraph (b)(1)(i) to add to these exempted items checks, receipts and similar items of minimal value that do not contain a political message and that are used for purely administrative purposes. Also, the question has at times arisen as to whether the "impractical" exception applies to wearing apparel, such as T-shirts or baseball caps, that contain a political message. This Notice proposes no language requiring a disclaimer on such material. However, if commenters believe the Commission should consider a disclaimer requirement for such materials, the Commission would encourage suggestions for practical application of such a requirement.

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Disbursements by Candidates or Party Committees for Exempt Activity

The Commission is proposing language that would require a disclaimer on a communication by a candidate or party committee that qualifies as an exempt activity though on behalf of a clearly identified federal candidate. This would ensure that a disclaimer is included on all communications, including those which qualify as exempt activities by state and local party committees or candidates under the Act. See 2 U.S.C. 431(8)(B)(v), (x), (xi), and (xii).

This proposed amendment is consistent with the Act's interest in full disclosure of who authorized and paid for campaign communications. The Commission welcomes comments on this approach.

Comments are invited on any of the specific amendments discussed above, as well as any related issues that might relate to this topic.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that any affected entities are already required to comply with the Act's requirements in this area.

List of Subjects in 11 CFR Part 110

Campaign funds, Political candidates, Political committees and parties.

For reasons set out in the preamble it is proposed to amend Subchapter A, chapter I of Title 11 of the Code of Federal Regulations as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. The authority citation would continue to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, and 441h.

2. Part 110 would be amended by revising section 110.11 to read as follows:

§ 110.11 Communications; advertising.

(a) *Definition.* For purposes of paragraph (b)(1) of this section only, "direct mailing" includes any number of substantially similar pieces of mail but does not include:

(1) a mailing of fifty pieces or less by any person; or

(2) mailings by a corporation or labor organization to the corporation's or labor organization's restricted class under 11 CFR 114.3 or 114.5.

(b)(1) (i) *General Rule.* Except as otherwise provided in this section, whenever any person makes an expenditure for the purpose of financing a communication that expressly advocates the election or defeat of a clearly identified candidate or that solicits any contribution, through any broadcast station, phone bank, newspaper, magazine, outdoor advertising facility, poster, yard sign, direct mailing or other form of general public political advertising, that communication or solicitation shall clearly state who paid for it. If authorized by a candidate, an authorized committee of a candidate or an agent thereof, but paid for by some other person, the communication or solicitation shall clearly state that it is authorized by such candidate, authorized committee, or agent. If not authorized by a candidate, authorized committee of a candidate or its agent, the communication or solicitation shall clearly state that it is not authorized by any candidate, candidate's committee, or agent. For purposes of this paragraph, it is presumed that a communication or solicitation by a political committee that refers to a clearly identified federal candidate contains express advocacy.

(ii) *Exceptions.* The requirements of paragraph (b)(1)(i) of this section do not apply to:

(A) bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed;

(B) skywriting, watertowers or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable;

(C) checks, receipts and similar items of minimal value which do not contain a political message and which are used for purely administrative purposes; or

(D) communications by a corporation or labor organization to the corporation's or labor organization's restricted class under 11 CFR 114.3 and 114.5.

(2) For a communication or solicitation paid for by a party committee pursuant to 2 U.S.C. 441a(d), the disclaimer required by paragraph (b)(1)(i) of this section shall identify the committee that makes the expenditure as the person who paid for the communication, regardless of whether the committee was acting in its own capacity or as the designated agent of another committee.

(3) A solicitation other than one covered by paragraph (b)(1)(ii)(D) of this section by an unauthorized political committee that does not refer to a clearly identified federal candidate need only state who paid for it.

(4) For purposes of paragraphs (b)(1)(i) of this section, the term "expenditure" includes a communication by a candidate or party committee that qualifies as an exempt activity under 11 CFR 100.8(b) (10), (16), (17), or (18).

(c) *Placement of Disclaimer.* The disclaimers specified in paragraph (b)(1)(i) of this section shall be presented in a clear and conspicuous manner, to give the reader, observer or listener adequate notice of the identity of the person or committee that paid for, and, where required, that authorized the communication. A disclaimer is not clear and conspicuous if it is in small type in comparison to the rest of the printed material, or if the printing is difficult to read or if the placement is easily overlooked.

(1) The disclaimer need not appear on the front or cover page of the communication as long as it appears within the communication, except on communications, such as billboards, that contain only a front face.

(2) Each communication that is included in a package of materials but that is also intended for separate public distribution shall include a disclaimer.

(d) (1) *Newspaper or magazine space.* No person who sells space in a newspaper or magazine to a candidate, an authorized committee of a candidate, or an agent of the candidate, for use in connection with the candidate's campaign for nomination or for election, shall charge an amount for space which exceeds the comparable rate for the space for non-campaign purposes.

(2) For purposes of this section, "comparable rate" means the rate charged to a national or general rate advertiser, and shall include discount privileges usually and normally available to a national or general rate advertiser.

Dated: September 30, 1994

Trevor Potter,

Chairman.

[FR Doc. 94-24622 Filed 10-4-94; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064-AB46

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) is seeking comment on whether the deposit-insurance assessment base currently provided for in the FDIC's assessments regulations should be redefined and, if so, how. Because of recent statutory amendments and other developments affecting insured depository institutions, the Board believes review of the assessment-base definition is desirable at this time. The FDIC will carefully consider comments received in response to this Advance Notice of Proposed Rulemaking (Notice) in determining whether revision of the assessment base is warranted. If the Board finds revision to be warranted, it will propose specific amendments on which public comment will then be invited.

DATES: Written comments must be received by the FDIC on or before February 2, 1995.

ADDRESSES: Written comments are to be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550—17th Street, NW, Washington, DC 20429. Comments may be hand-delivered to Room F—400, 1776 F Street, NW, Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898-3838). Comments will be available for inspection in room 7118, 550—17th Street, NW, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: William Farrell, Chief, Assessment Management Section, Division of Finance, (703) 516-5546; Christine Blair, Financial Economist, Division of Research and Statistics, (202) 898-3936; Martha Coulter, Counsel, Legal Division (202) 898-7348; Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Introduction

The insurance premiums paid by an insured depository institution to the FDIC are calculated by multiplying the institution's assessment base by its assessment rate. At present, an institution's assessment base equals its total domestic deposits, as adjusted for certain elements. 12 CFR 327.4(b).

Prior to January 1, 1994, the assessment base was defined by section 7(b) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1817(b). In amending section 7(b) to require the establishment of a risk-based deposit insurance system, section 302 of the Federal Deposit Insurance Corporation Improvement Act (FDICIA) (Pub. L. 102-242, 105 Stat. 2236, 2345) removed the statutory assessment-base provisions. As a result, effective January 1, 1994, the assessment base is now governed by the FDIC by regulation. At present, the FDIC's assessment-base regulations continue to be based on the former statutory provisions.

In light of the recent transition to a risk-based deposit insurance system, the FDIC believes that it is desirable to review the existing assessment base. In the Board's view, it is important to determine whether the existing definition or some alternative definition more effectively furthers the purposes of the new deposit insurance system. In addition, a number of other significant developments in the financial services industry in recent years—including substantially higher deposit insurance rates and the resulting heightened awareness of insurance assessments, significant changes in the activities of insured depository institutions, adjustments in federal failure-resolution policies, and Congressional adoption of "depositor preference" requirements—also support the desirability of such a review.

Through this Notice, the FDIC seeks comment from all interested persons as to whether the assessment base should be redefined and, if so, how. The FDIC believes that it is important to review the definition of the assessment base from as many different perspectives as possible. Accordingly, this Notice poses various specific questions on which comment is sought. Commenters are requested to identify the question number to which their respective responses correspond. Questions need not be repeated, and interested persons are invited to respond to as many questions as they wish. Further, comment is requested on issues not specifically addressed in this Notice but which a prospective commenter considers pertinent to the definition of the assessment base.

The FDIC will carefully review and consider the comments received in response to this Notice in determining whether to propose a regulatory amendment redefining the assessment base. Should the Board decide that such an amendment is warranted, it will issue a proposal to adopt specific changes to the assessments regulations and seek public comment on that proposal.

II. Background

The assessment base has remained substantially unchanged since 1935. Historically, the assessment base for banks and thrift institutions has been defined, broadly stated, as total domestic deposits. The existing assessment base, as defined in 12 CFR 327.4(b), begins with the amount of the "demand deposits" and "time and savings deposits" reported by an insured institution in its quarterly Report of Condition.[1] From these amounts, the regulations provide for additions and subtractions.

Among the additions to "demand deposits" and "time and savings deposits" are adjustments for unposted credits. Among the subtractions are adjustments for unposted debits; pass-through reserve balances; a 16⅔ percent "float" allowance for demand deposits and a 1 percent "float" allowance for time and savings deposits; and the amount of any liabilities arising from depository institution investment contracts under section 11(a)(8) of the FDI Act.[2]

Until 1993, the premium rate by which an institution's assessment base was multiplied to determine its assessment payment was the same for all banks and the same for all thrifts. Beginning in January 1993, each institution is now assigned an assessment rate based on the risk that institution poses to its deposit insurance fund.

As assessment rates have risen over the past few years, deposit insurance premiums have become a significant expense item for insured depository institutions. The expense factor has resulted in institutions and their depositors questioning the relevance of the existing assessment base in the current environment. In addition, increased rates have caused some institutions to take deliberate steps to decrease their assessments by temporarily reducing their deposits at quarter end.

Also in recent years, there have been significant changes in the activities of insured depository institutions, in terms of reported assets and liabilities as well as off-balance-sheet operations (including derivative products such as options, swaps, interest-rate and

[1] For banks, this report is called the Report of Income and Condition; for thrift institutions, the Thrift Financial Report; and for insured branches of foreign banks, the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

[2] Subtraction for the last item, or certain so-called "BIC" liabilities, was included by an amendment to 12 CFR 327.4(b) effective July 11, 1994. See 59 FR 29714 (June 9, 1994).

The remaining adjustments provided for in 12 CFR 327.4(b) (such as additions for demand deposits that represent uninvested trust funds) are technical in nature and are included to adapt certain elements of the Reports of Condition for assessment purposes.

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foreign-exchange-rate contracts). Such changes, which to some extent have eroded the historical connection between deposits and lending, give rise to the question of whether total domestic deposits continues to be a meaningful definition for the assessment base. Other relevant developments include adjustments in federal failure-resolution policies and the adoption of "depositor preference" requirements.

This section discusses the applicability of these developments to the question of whether the assessment base should be redefined. The areas addressed in this regard are the role of the assessment base in the risk-related deposit insurance system, the assessment-avoidance problem, failure-resolution policies, and depositor preference. The following discussions on these topics identify what the FDIC believes to be important issues that merit careful consideration in deciding on an assessment-base definition. Comment is requested with regard to how the assessment base should be defined in order to address these and other issues in an appropriate manner.

Before turning to these topics, however, the FDIC wishes to stress that, in reviewing the definition of the assessment base, it is not the FDIC's intent to change the total dollar amount of assessments collected. Instead, the goal is to select an assessment base that best suits the purposes of federal deposit insurance. To the extent any decrease or increase in assessment income is warranted, the FDIC anticipates that it would achieve that decrease or increase by changing the assessment rates, and not by redefining the assessment base. In short, the amount of total assessment collections a particular assessment base definition would yield (assuming no change in the assessment rates) is not a criterion the FDIC intends to apply in deciding on an assessment-base definition, since assessment collections can be fairly readily adjusted by changing assessment rates.

While the FDIC does not intend any redefinition of the assessment base to have a significant impact on the total amount of assessments industry-wide, there is a potential for significant change in the assessments paid on an institution-by-institution basis. Depending on the type of activities in which a particular institution is engaged, and the type of products and services it offers, a change in the assessment base could have a significant effect on the amount of the assessments it pays

A. Risk-Based Assessment System

Section 302 of FDICIA amended section 7 of the FDI Act to require that the FDIC establish a risk-based assessment system. Under the system mandated by FDICIA, the amount of an institution's assessment is to be based on the likelihood that its deposit insurance fund will incur a loss with respect to the institution, the likely amount of any such loss, and the revenue needs of the insurance funds. Under the risk-based system adopted by the FDIC pursuant to section 302, the rate component of the insurance system was changed from a single, flat rate applicable to all banks and a single, flat rate applicable to all thrift institutions to a risk-based rate structure.

Having already addressed the rate component of the new risk-based assessment system in previous rulemaking proceedings, the FDIC is now turning its attention to the assessment-base component. This Notice does not revisit the matter of the rate structure.

At present, the assessment-base component of the risk-based system remains unchanged from the form required by statute for the former flat-rate insurance system. One issue to be considered in connection with whether the assessment base should now be changed is how and to what extent the assessment base should reflect the risk factors identified in section 7(b) of the FDI Act, as amended by section 302 of FDICIA.

For example, among the risks identified in section 7(b) are those attributable to "different categories and concentrations of liabilities, both insured and uninsured * * *." 12 U.S.C. 1817(b)(1)(C)(i)(II). One area of risk taken into account in the existing assessment base is that involving deposit liabilities. Potentially, the assessment base could be modified to take into account other "categories" of liabilities, such as non-deposit, secured liabilities. This example is discussed more fully in paragraph C of section IV, below.

B. Assessment Avoidance

Whatever assessment base is applied, the FDIC believes that, in order to avoid imposing any additional regulatory burden on insured institutions, it is desirable to continue to collect assessment data from institutions in their quarterly Reports of Condition. If the assessment-base definition is changed, the information collected for assessment purposes by the Reports of Condition might also need to be changed.

At present, the data collected in these reports reflect amounts "as of" the report date. This has caused some institutions purposefully to reduce their assessment expenses by temporarily reducing the amount of the deposits held on the report date.

It has been suggested that defining the assessment base in terms of a daily average over the quarter (that is, total dollars for the quarter divided by the number of days in the quarter), rather than actual "as of" report-date data, would mitigate this assessment-avoidance problem. An averaging approach would also help to smooth out the effects of unusual occurrences such as misdirected wire transfers and the receipt, on or just before the report date, of abnormally large deposits to be held only briefly by an institution.

C. Failure-Resolution Policies

In past years, governmental policies for resolving failed or failing depository institutions frequently provided protection for liabilities not specifically covered by federal deposit insurance. First, through the use of all-deposit purchase-and-assumption (P&A) transactions, all depositors—insured and uninsured alike—often received full protection for their deposit balances. Unlike a deposit payoff or an insured-deposit transfer, in which only insured deposits were covered (and which were used only when there was no acceptable bid for an all-deposit P&A), the all-deposit P&A allowed for *de facto* 100-percent insurance protection. The protection of all depositors in the resolution of several large bank failures contributed to the perception that some banks were "too big to fail" and thus eligible for *de facto* 100-percent insurance protection for all deposits, both domestic and foreign.

While the use of all-deposit P&As and application of the so-called "too big to fail" doctrine often resulted in protection for liabilities beyond the statutory limit for deposit insurance coverage, in all such cases it did so in satisfaction of a cost test or for clear policy objectives such as maintaining the stability of, and public confidence in, the banking system. Specifically, the FDI Act required that, subject to an "essentiality" exception, the resolution of an institution be no more costly to the FDIC than its liquidation. Hence, the FDIC could normally effect an all-deposit P&A only if the purchase premium paid by the acquirer for the transaction offset the additional cost to the FDIC of protecting uninsured liabilities, in comparison with the cost of a liquidation. In the handful of "too big to fail" cases where this cost test

was not met, the FDIC acted under a statutory exception to the cost test based on the "essentiality" of the failing institution to the marketplace. That exception was used only in a small minority of the total number of resolutions the FDIC effected.

Still, the *de facto* protection of uninsured liabilities fueled the argument that such protected liabilities should be assessed. Since the assessment base already consisted (as it still does) generally of total domestic deposits, the universe of non-assessed liabilities was limited to foreign deposits and non-deposit liabilities.

Section 141(a) of FDICIA amended section 13(c) of the FDI Act to impose a revised test for failure resolution. Instead of requiring that the resolution be no more costly than liquidation, the new test requires use of the resolution method that is least costly to the affected deposit insurance fund. Provisions for present-value analyses and documentation are specified in order to determine the least-costly resolution method. The FDIC may not protect uninsured deposits unless it is less costly to provide such protection than not to do so. Further, the FDIC is prohibited from pursuing any action, directly or indirectly, that would have the effect of increasing losses to the insurance fund by protecting foreign deposits (generally meaning deposits payable only outside the United States). Hence, all-deposit P&A transactions are still permitted, provided the insurance fund does not incur any loss with respect to such deposit liabilities in an amount greater than the loss which would have been incurred with respect to such liabilities if they had not been assumed by the acquirer.

The perceived "too big to fail" doctrine has been replaced by a new statutory exception for situations involving "systemic risk". In such cases—as determined by consensus among the FDIC, the Board of Governors of the Federal Reserve System, and the Secretary of the Treasury (in consultation with the President)—the FDIC may take action or provide assistance as necessary to avoid or mitigate the systemic effects of failure. However, the FDIC is required to recover the losses incurred under the systemic risk exception through one or more special assessments on the members of the affected insurance fund. As yet, this exception has not been used.

The net result going forward is that for any individual resolution, protection will be provided only for insured deposits unless it is less costly to protect uninsured deposits as well. In any instance (expected to be quite rare) in which the "systemic risk" exception might be triggered, the FDIC is required to recover the loss to the applicable deposit insurance fund by means of a special assessment on the members of that fund.

It has been argued in the past that the assessment base should be expanded beyond total domestic deposits in order to conform the base to the actual protections provided by the FDIC under the failure-resolution policies. However, many now believe that, given the new failure-resolution policies, this rationale for expanding the base has been weakened. (Of course, a shrinking of the assessment base might be viewed as warranted under the failure-resolution requirements, or an expansion might be warranted for other reasons.)

D. Depositor Preference

In August 1993, Congress enacted legislation establishing the priority order for payment on claims against an institution in receivership. As amended by this legislation, section 11(d)(11) of the FDI Act now provides for the priority of deposit liabilities of the institution over other general or senior liabilities. (Subject to the cross-guarantee provisions of section 5(e) of the FDI Act, claims with priority over deposit liabilities are secured claims to the extent of the security, and administrative expenses of the receiver.) This situation raises the question of whether, or to what extent, the assessment base should reflect the protection granted by this provision to uninsured deposits.

III. Analytical Framework

A. Evaluation Criteria

It is the FDIC's intention to apply an assessment base definition that addresses the requirements of the deposit insurance program over the long run, rather than one designed only to respond to the current conditions in the banking industry. To this end, the FDIC has identified certain characteristics that it believes can be used as criteria for analyzing and comparing alternative definitions. These criteria, which address the issues and concerns discussed in the preceding section, are outlined below. They are applied in the final section of this Notice as a framework for analyzing various alternative assessment-base definitions.

In the questions at the end of this section, comment is sought on the usefulness of these criteria in selecting an assessment-base definition, as well as on whether additional or alternative criteria should be applied.

1. Fairness

This criterion refers to the extent to which institutions are neither systematically favored nor systematically disadvantaged due to factors such as size and geographic location. Under this concept of fairness, similar institutions operating under similar circumstances, and representing similar risks of failure and magnitude of potential loss to the insurance fund, would generally incur similar insurance costs.

Fairness may suggest that claims receiving potentially equal protection in the event of a failure be assessed equally. Similarly, since there are varying degrees of protection for different categories of claims, it could be argued that fairness demands higher assessment payments for greater degrees of protection.

Fairness may also refer to the extent to which abnormal occurrences, such as the receipt at quarter end of an unusually large deposit to be held only briefly by the institution, affect the amount of an institution's assessments. In this regard, fairness may suggest that the assessment base should be defined in terms of averages, which would help smooth out the effects of such abnormal occurrences, rather than on actual "as-of" report-date data.

2. Measurability

This criterion refers to the extent to which the components of the assessment base can feasibly and objectively be calculated with a minimum degree of uncertainty and disagreement by separate, independent parties (such as the institution being assessed and the FDIC).

For example, an assessment base that is limited to insured deposits might raise measurability concerns, since timely and reliable calculations of only those deposits (or portions of deposits) that actually would be covered by insurance in the event of a failure might not be feasible. (To the extent measurability is not an issue, the recordkeeping necessary to support such a calculation might be.) If measurability is a problem here, a possible solution might be to identify a "proxy" intended to provide a less precise (but related) substitute that is more readily available than actual insured deposits.

3. Relation to Risk

This criterion refers to the extent to which the assessment base reflects the degree of risk posed to the deposit insurance funds. For example, there is a link between the existing assessment

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base, which is based on total domestic deposits, and the magnitude of the loss the failure of an institution could cause its deposit insurance fund.

On the one hand, private insurance firms often base the amount of their premiums at least in part on the amount to be paid out under the policy if the insured event transpires. This practice might suggest an assessment base consisting of insured deposits only. Such a definition also would be consistent with the primary purpose of federal deposit insurance as clarified by FDICIA—to protect insured deposits.

On the other hand, existing public policy provides protection for liabilities other than insured deposits, through such measures as depositor preference—which provides some protection to non-insured domestic deposits—and granting superior status to secured liabilities. In addition, to the extent that secured claims are elevated to a position superior to that of insured deposits, the FDIC may be at greater risk of not recovering the full amount of its payout on insured deposits. Thus, assessment of liabilities other than insured deposits is not inherently inconsistent with the concept of defining the assessment base in terms of the magnitude of the risk posed to the FDIC.

4. Non-Avoidability

This criterion refers to the extent to which the assessment base precludes or minimizes transactions or adjustments made solely to avoid assessments. Under the existing assessment base, which is defined in terms of deposits held "as of" the last day of the quarter, avoidance activities usually involve the temporary transfer of deposits out of an institution's deposit base for a brief period extending over quarter end.

One such example is the movement of deposits into non-deposit instruments (such as notes or repurchase agreements) within the same institution just prior to quarter end, solely for the purpose of reducing the assessment paid by the institution. The transferred funds are returned to deposit accounts at the beginning of the next quarter, after the "as of" date for determining the institution's assessment base.

Another example, which involves the transfer of deposits from one insured institution to another, does not affect the total amount of assessments collected by the FDIC but rather forces the receiving institution to pay assessments on deposits that would otherwise have been included in the transferring institution's assessment base. In this example, deposits are transferred just prior to quarter end from one institution to another. The transfer is reversed shortly thereafter. The result is to disadvantage the (probably unsuspecting) receiving institution by increasing the deposit base on which its assessments are calculated.

In both of these examples, the result is an artificial situation created solely for the purpose of avoiding assessments. Such situations could be mitigated by the use of "average" data in defining the assessment base.

5. Recordkeeping Burden

This criterion refers to the ease of maintaining and reporting the data needed for computing an institution's assessment base. It encompasses the time and effort necessary for any additional recordkeeping beyond that required of reporting entities for purposes other than assessments.

The FDIC fully appreciates the need to keep to a minimum any additional recordkeeping requirements. However, pursuant to section 7(b)(5) of the FDI Act, as amended by FDICIA, each insured depository institution must maintain all records the FDIC may require for verifying the correctness of the institution's assessments. Depending on how the assessment base is defined, additional recordkeeping might be necessary to allow for the verification of the assessment-related information reported by an institution.

If, in responding to any portion of this Notice, a comment recommends a particular recordkeeping requirement, the commenter is requested to include an estimate of the amount of time it would take a reporting entity to meet the requirement.

B. Questions for Comment Regarding the Criteria

Response to the following questions is requested:

1. Are the definitions of the aforementioned criteria sufficient in terms of evaluating the various options for defining the assessment base? If not, provide suggested definitions.

2. Are there any other criteria that should be considered in evaluating the various options for defining the assessment base? If so, identify and define those criteria.

IV. Alternative Assessment-Base Definitions

This section presents several options for defining the assessment base. It does not attempt to address all possible options, but rather discusses those the FDIC has identified to date as the primary alternatives.

Following a discussion of each of these options are several specific questions pertaining to that option. Response to these questions is requested from all interested persons.

A. Status Quo

Under this option, the assessment base would remain unchanged, and it would continue to be defined, broadly stated, as total domestic deposits. Because there would be no changes, the FDIC's existing assessment-base regulations would not be amended.

Retaining the existing definition would avoid another regulatory change for insured depository institutions. The existing definition is generally well understood and operable, and has relatively few measurement problems. However, because quarter-end data are used to calculate the current assessment base, there is a high risk of assessment avoidance, and the problem of receiving abnormally large deposits or misdirected wire transfers at quarter end would not be addressed.

Relative to assessable deposits, there has been recent growth of other liabilities and off-balance-sheet activities. If this is a long-term trend, it might not be desirable to link assessments to a base that may be shrinking in relation to overall banking activity unless the protection provided in connection with the federal deposit insurance program is reduced commensurately.

Commenters are requested to provide an evaluation of this option for defining the assessment base, in terms of the following criteria discussed in section III of this Notice:

3. Fairness
4. Measurability
5. Relation to Risk
6. Non-Avoidability
7. Recordkeeping Burden
8. Any other criteria suggested by the commenter.

Commenters are also requested to respond to the following specific questions regarding this option:

9. Should the float deductions be retained at their existing levels, or should they be modified? (The deduction for adjusted demand deposits is 16⅔ percent and the deduction for adjusted time and savings deposits is 1 percent.) State the advantages and disadvantages of the recommended method for addressing the float deduction for the status quo option.

10. Identify other advantages or disadvantages of this option for defining the assessment base.

B. Total Unadjusted Domestic Deposits

Under this option, the assessment base would be defined in its existing form (status quo), except that current

assessment base adjustments would be eliminated. The float deductions, which were established over 30 years ago, are the most significant adjustments to the assessment base provided for in the current regulations. Since that time, there have been dramatic changes in the payments system in the United States that may have caused the current float deductions to become obsolete. Therefore, many advocate the elimination of these float deductions.

The other existing adjustments to the assessment base have a less dramatic effect on the total assessments paid by institutions. However, these adjustments complicate the measurability of the assessment base and increase the reporting and recordkeeping burden.

Commenters are requested to provide an evaluation of this option for defining the assessment base, in terms of the following criteria discussed in section III of this Notice:

11. Fairness
12. Measurability
13. Relation to Risk
14. Non-Avoidability
15. Recordkeeping Burden
16. Any other criteria suggested by the commenter.

Commenters are also requested to respond to the following specific questions regarding this option:

17. Should the existing float deductions be eliminated? State the advantages and disadvantages of eliminating these adjustments to deposits.

18. Should other adjustments to deposits that are currently provided for be eliminated (such as "BICs" and pass-through reserve balances)? State the advantages and disadvantages of eliminating these adjustments.

19. Identify other advantages or disadvantages of this option for defining the assessment base.

C. Expanded Base: Non-Deposit Secured Liabilities

Under this option, the assessment base would consist, in general terms, of total adjusted domestic deposits plus non-deposit secured liabilities (such as secured notes and other secured borrowings). One argument given for assessing secured liabilities is that they are protected before the FDIC in the event of a failure and, accordingly, increase the risk of loss to the FDIC.

Secured creditors of insured depository institutions are protected against loss by assets of the institution that are pledged as security for its debts to those creditors. Because more favorable terms can be obtained on borrowings by pledging high-quality, marketable assets as security, there is a tendency for institutions to pledge such assets for that purpose. If the institution were to fail, these pledged assets would not be available to reduce the FDIC's losses or to settle the claims of other unsecured creditors. As more of the institution's assets are pledged—often, the highest-quality, most marketable assets—there are fewer assets remaining to satisfy unsecured obligations, including unsecured deposit and non-deposit liabilities.

The likely effect of a shrinking pool of quality assets on the FDIC is to increase its failure-resolution costs. FDIC costs could be increased even further if, as is often the case, the market realizes beforehand that an institution may be heading toward insolvency. Uninsured and unsecured creditors typically flee an institution perceived to be in trouble, leaving the institution more dependent on secured borrowings for funding, and further depleting the pool of unpledged assets available for settling claims.

FDICIA allows secured claims to be paid up to the fair market value of the assets pledged against those claims. 12 U.S.C. 1821(d)(5)(D). Any remaining portion is to be treated as an unsecured claim. This marginally reduces the FDIC's exposure by restricting secured claimholders' recoveries to the market value of the pledged assets, but by no means eliminates the exposure.

If the assessment base were expanded to include secured liabilities, a better measure of these liabilities would be necessary. While rough estimates of secured liabilities are obtainable, an institution's secured, non-deposit borrowings cannot at present be readily determined from data available in the institution's Report of Condition. As a result, if the assessment base were defined to include non-deposit secured liabilities, additional data (and additional recordkeeping) would probably be required.

Commenters are requested to provide an evaluation of this option for defining the assessment base, in terms of the following criteria discussed in section III of this Notice:

20. Fairness
21. Measurability
22. Relation to Risk
23. Non-Avoidability
24. Recordkeeping Burden
25. Any other criteria suggested by the commenter.

Commenters are also requested to respond to the following specific question regarding this option:

26. Identify other advantages or disadvantages of this option for defining the assessment base.

D. Expanded Base: Foreign Deposits

Under this option, the assessment base would equal, in general terms, total adjusted domestic deposits plus foreign deposits. Despite the fact that obligations payable only outside the United States and certain other limited areas (including "foreign deposits") are not covered by federal deposit insurance, they have sometimes been protected in the past by federal failure-resolution policies. Since virtually all foreign deposits are held by large banks and since large-bank failures historically have been handled in a way that protected most depositors, it has been argued that these deposits should be assessed. Those who support this argument believe that assessing foreign deposits would help to equalize a perceived inequality in treatment between large and small depository institutions.

However, recent changes in the failure-resolution process have eroded this argument. Under FDICIA, protection of uninsured deposits, including foreign deposits, is permitted only in cases where a least-cost determination warrants such protection or where the systemic-risk exception is triggered. In cases falling within the systemic-risk exception (which are expected to be quite rare), FDICIA requires special assessments on the members of the affected insurance fund to cover the costs of protecting any uninsured deposits. (The statute requires the special assessment without reference to the fund's resources; thus, whether or not foreign deposits are included in the assessment base is totally irrelevant to the applicability of the special assessment, which is apparently intended to be imposed on all members of the affected fund.)

Another possible argument for assessing foreign deposits is to offset any losses resulting from a foreign government's seizure of failed U.S. institutions' assets located within the jurisdiction of that foreign government. While the possible seizure of assets by a host country is a risk that should not be overlooked, neither should it be exaggerated. In the event of such a failure, it is not clear who would control the liquidation of foreign-branch assets.

Increased costs associated with assessing foreign deposits could reduce the ability of U.S. depository institutions to compete in foreign and international markets and could adversely affect their ability to promote exports from the United States. There is

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reason to believe that assessment of foreign deposits would cause many depository institutions to convert their foreign offices to subsidiary depository institutions, thus perhaps substantially reducing the amount of foreign deposits subject to assessment.

Moreover, many would argue that if foreign deposits are assessed, they should also be insured. At present, federal statute explicitly precludes the insurance coverage of foreign deposits. A change in this situation would require Congressional action and would raise a variety of issues, including the reaction of foreign governments to U.S. depository institutions offering insured deposits in competition with that country's domestic depository institutions.

Commenters are requested to provide an evaluation of this option for defining the assessment base, in terms of the criteria discussed in section III of this Notice:

27. Fairness
28. Measurability
29. Relation to Risk
30. Non-Avoidability
31. Recordkeeping Burden
32. Any other criteria suggested by the commenter.

Commenters are also requested to respond to the following specific question regarding this option:

33. Identify other advantages or disadvantages of this option for defining the assessment base.

E. Expanded Base: Total Liabilities

Under this option, the assessment base would equal total liabilities (domestic and foreign).[3] An argument can be made for an assessment-base definition that is based on all of an institution's funding sources (e.g., total liabilities, not including capital) as opposed to deposits alone. As an institution encounters difficulties, a "flight to quality" often occurs, with uninsured depositors and unsecured creditors leaving the institution. In turn, fewer depositors and other creditors are actually unprotected, or face losses, at the time of failure. As a result, as assets are liquidated to fund the withdrawal of uninsured deposits, this flight to quality reduces the amount of unpledged assets that are available for settling claims, which increases the FDIC's resolution costs. This argues for assessing institutions' liabilities that are protected directly by deposit insurance (insured deposits), as well as indirectly (uninsured deposits and secured liabilities), in the event of a failure.

FDIC experience with depository institution failures supports the premise that all types of an institution's liabilities are used to fund the activities that cause depository institution failures and, thereby, produce losses for the FDIC. Given this situation, it has been suggested that all of a depository institution's liabilities should be assessed by the FDIC. This would also remove any artificial incentives for institutions to favor certain types of liabilities (e.g., non-deposits) over other types of liabilities (e.g., deposits) for purposes of assessment avoidance.

Commenters are requested to provide an evaluation of this option for defining the assessment base, in terms of the following criteria discussed in section III of this Notice:

34. Fairness
35. Measurability
36. Relation to Risk
37. Non-Avoidability
38. Recordkeeping Burden
39. Any other criteria suggested by the commenter.

Commenters are also requested to respond to the following specific question regarding this option:

40. Identify any other advantages or disadvantages of this option for defining the assessment base.

F. Insured Deposits Only

Under this option, the assessment base would equal insured deposits only. To the extent that protection of obligees in the event of an institution failure is limited to insured deposits, this definition would provide a balance between protection and assessment. However, to the extent non-insurance protection is given to non-insured liabilities, that balance is undermined.

The potential risk to the FDIC from non-insured liabilities of a depository institution, such as secured borrowings, would be disregarded under this option. In addition, other protected obligations, such as uninsured deposits potentially sheltered by depositor preference, would not be assessed. With regard to uninsured deposits, one might argue that the protection they receive is provided at no cost or risk to the deposit insurance funds, and that such a risk comes only from insured deposits and secured liabilities. Others might argue that they all fall within the scope of the protection provided by the "federal safety net" and that such protection should somehow be taken into account in determining an institution's deposit insurance premiums.

Whatever the merits of these arguments might be, coming up with a timely and accurate figure for only that portion of an institution's deposits that actually would be covered by deposit insurance were the institution to fail may pose significant reporting problems. For example, concerns have been expressed regarding the difficulty of compiling data that accurately distinguish between insured and uninsured deposits.

At present, the Reports of Condition require data indicating the total amount of the institution's deposits and its uninsured deposits. However, the report formula for computing uninsured deposits results in estimated amounts and may not be sufficiently precise for purposes of determining an institution's assessment base. Providing an acceptable level of precision may require an institution to increase its data collection and analysis efforts, resulting in increased regulatory burden.

Commenters are requested to provide an evaluation of this option for defining the assessment base, in terms of the following criteria discussed in section III of this Notice:

41. Fairness
42. Measurability
43. Relation to Risk
44. Non-Avoidability
45. Recordkeeping Burden
46. Any other criteria suggested by the commenter.

Commenters are also requested to respond to the following specific questions regarding this option:

47. In order to alleviate any additional reporting burden associated with reporting precise amounts of insured deposits under this option, would it be desirable to develop a "proxy" for insured deposits for assessment purposes? If so, what would be an acceptable method of approximation?

48. Identify other advantages or disadvantages of this option for defining the assessment base.

G. Assessment Base of Total Assets

Under this option, the assessment base would equal an institution's total assets. Conceptually, an argument can be made for charging premiums against those items which pose a risk of loss to the deposit insurance funds, such as an institution's assets.

An assessment base defined in terms of assets might be more easily understood and less prone to manipulation for assessment-avoidance purposes than liability-based measures. Based on Report of Condition data, it could be easily measured and perhaps more predictable than a deposit-based definition. It also would insulate the assessment base from liability-structure decisions of the institution, creating an assessment base that is neutral with respect to an institution's liabilities. Because all assets would be included in the base, this definition also could reduce the risk of assessment avoidance.

While conceptually appealing, this approach would be a substantial departure from tradition, and there would be no direct relationship between those items assessed and those items insured.

Commenters are requested to provide an evaluation of this option for defining the assessment base, in terms of the following criteria discussed earlier in section III of this Notice:

49. Fairness
50. Measurability
51. Relation to Risk
52. Non-Avoidability
53. Recordkeeping Burden
54. Any other criteria suggested by the commenter.

Commenters are also requested to respond to the following specific questions regarding this option:

55. As discussed in this section, there can be advantages to an assessment base founded on assets. However, given that numerically, total liabilities is equivalent to total assets, net of equity, what would be the advantages and disadvantages of using total assets, net of equity, instead of total liabilities, to define the assessment base?

56. Would an assessment base defined in terms of assets be more reflective of risk to the deposit insurance funds, and, if so, how?

57. Identify other advantages or disadvantages of this option for defining the assessment base.

V. Miscellaneous Requests for Comment

In addition to the comments requested elsewhere in this Notice, response to the following questions is invited:

58. Should the assessment base be calculated using daily average data for the quarter (total dollars for the quarter divided by the number of days in the quarter), rather than "as-of" quarter-end data? What are the advantages and disadvantages of each of these approaches? Are there preferable alternative approaches, and if so, what are they and what are their advantages and disadvantages?

59. If daily averages over the quarter were used, what additional recordkeeping would be necessary for the institution? (Please describe and quantify.)

60. To what extent, if any, should off-balance-sheet items be factored into the assessment base?

61. If the assessment base is redefined, is there a need for a transition period from application of the existing base to application of the new base? If so, how should the transition period be implemented and how long should it be?

62. Should there be an assessment base for large institutions and a different assessment base for small institutions? If so, what should the respective assessment bases be? How should "large institution" and "small institution" be defined for this purpose?

63. What are the implications (if any) of a change in the assessment base on the ability of insured depository institutions to innovate and to keep up with changes in the marketplace?

64. Since there are varying degrees of protection for different types of claims resulting from a depository institution failure, would "fairness" require that there be some mechanism in the assessment system for adjusting assessments to correspond to the degree of protection provided? If so, what should that mechanism be?

65. Are there other desirable options for defining the assessment base, including modifications to the options presented in this Notice? If so, identify and explain the options and describe their advantages and disadvantages.

66. What would be the impact of a change in the definition of the assessment base on competition within the United States? Describe the impact on domestic competition relative to the assessment base options discussed in section IV and any additional options suggested by the commenter.

67. What would be the impact of a change in the definition of the assessment base on global competition, particularly with regard to foreign deposits? Describe the impact on global competition relative to the assessment base options discussed in section IV and any additional options suggested by the commenter.

68. Please provide any other comments regarding the assessment base.

By order of the Board of Directors.

Dated at Washington, D.C., this 27th day of September, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94-24607 Filed 10-4-94; 8:45 am]

BILLING CODE 6714-01-P

[3] To the extent this option includes foreign deposits, the observations made in the preceding discussion of such deposits also apply to this option.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 101 and 122

Establishment of New Port—Rockford, IL

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to Customs field organization by establishing a new port of entry in the Customs District of Chicago, Illinois, North Central Region. The new port of entry would be designated as Rockford, Illinois and would include Greater Rockford Airport, which is currently operated as a user-fee airport. This change will assist the Customs Service in its continuing efforts to achieve more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

DATES: Comments must be received on or before December 5, 1994.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U. S. Customs Service, 1301 Constitution Avenue NW., Washington, D. C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Brad Lund, Office of Inspection and Control, (202) 927-0540.

SUPPLEMENTARY INFORMATION:

Background

To achieve more efficient use of its personnel, facilities, and resources, and in order to provide better service to carriers, importers and the public in the North Central Region, Customs proposes to amend § 122.15, Customs Regulations (19 CFR 122.15), by removing Greater Rockford Airport from the list of user-fee airports and § 101.3, Customs Regulations (19 CFR 101.3) to add Rockford, Illinois, as a port of entry. The new port would be designated as Rockford, Illinois and would include Greater Rockford Airport.

The criteria used by Customs in determining whether to establish a port of entry are found in T. D. 82-37 (47 FR 10137), as revised by T. D. 86-14 (51 FR 4559) and T. D. 87-65 (52 FR 16328). Under these criteria, a community

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requesting a port of entry designation must:

(1) Demonstrate that the benefits to be derived justify the Federal Government expense involved;

(2) Be serviced by at least two major modes of transportation (rail, air, water or highway);

(3) Have a minimum population of 300,000 within the immediate service area (approximately a 70 mile radius); and

(4) Make a commitment to make optimal use of electronic data transfer capabilities to permit integration with Customs Automated Commercial System (ACS), which provides a means for electronic processing of entries of imported merchandise. Further, the actual or potential Customs workload (minimum number of transactions per year) at the proposed port of entry must meet one of several alternative minimum requirements, one of which is the condition that no more than half of the required 2,500 consumption entries can be attributable to one private party. Lastly, facilities at the proposed port of entry must include cargo and passenger facilities, warehousing space for the secure storage of imported cargo pending final Customs inspection and release, and administrative office space, inspection areas, storage areas and other space necessary for regulatory Customs operations.

The proposal set forth in this document originated as a request from the Rockford Airport Authority that Rockford, Illinois be designated as a port of entry. With regard to the above criteria, the Rockford Airport Authority has stated that the Federal Government would benefit from the port of entry designation because Rockford, Illinois would thus be available to share the workload presently handled at the port of entry at Chicago, Illinois.

According to a memorandum from the Regional Commissioner, North Central Region, in addition to the airport, Rockford has two other transportation modes, rail and highway.

According to the Rockford Chamber of Commerce, the 1990 census figures indicate that the population of the city of Rockford is 139,426 and that of the Rockford metropolitan area is stated to be 283,719. A 70 mile radius would include several Illinois and Wisconsin cities and several northwestern suburbs of Chicago. Counting the communities within a 70 mile radius would bring the area population to well over 300,000.

The number of formal Customs entries in fiscal year 1992 was 3539, with a representation that no more than 8.4% were attributable to one private party. Regarding electronic data transfer capability, the Greater Rockford Airport Authority is committed to making optimal use of electronic data transfer capability to permit integration with ACS.

Lastly, according to the Regional Commissioner's office, since Greater Rockford Airport is currently a Customs user-fee airport, it already has a workload. It is likely that Rockford will continue to grow.

The District Director at Chicago has verified that Rockford's entries for the year 1992 exceeded 2,500 formal entries, and the Regional Commissioner for the North Central Region has advised that Rockford appears to meet the criteria for port of entry status.

Based on the above, Customs believes that there is sufficient justification for the establishment of the requested port of entry. Rockford, Illinois meets an appropriate combination of the workload criteria specified.

Description of Port Entry Limits

The geographical limits of the proposed Port of Rockford, Illinois, which would include the Greater Rockford Airport, would be as follows:

Bounded to the north by the Illinois/Wisconsin border; Bounded to the west by Illinois State Route 26; Bounded to the south by Illinois State Route 72; and Bounded to the east by Illinois State Route 23 north to the Wisconsin/Illinois border.

Proposed Amendments

If the proposed port of entry designation is adopted, the list of Customs regions, districts, and ports of entry at § 101.3 will be amended to include Rockford, Illinois as a port of entry in the Customs District of Chicago and the Greater Rockford Airport will be deleted from the list of user-fee airports in § 122.15.

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11 (b) of the Customs Regulations (19 CFR 103.11 (b)) on regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations Branch, Office of Regulations and Rulings, U. S. Customs Service, Franklin Court, 4th floor, 1099 14th St., NW., Washington, D.C. 20005.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624.

The Regulatory Flexibility Act and Executive Order 12866

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In addition, this proposal does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

Dated: September 19, 1994.

Samuel H. Banks,

Acting Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94-24611 Filed 10-4-94; 8:45 am]

BILLING CODE 4820-02-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL-5082-1]

Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of Volatile Methyl Siloxanes and Parachlorobenzotrifluoride

AGENCY: Envrionmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to revise EPA's definition of volatile organic compounds (VOC) for purposes of preparing State implementation plans (SIP's) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (Act) and for the Federal implementation plan (FIP) for the Chicago ozone nonattainment area. This revision adds parachlorobenzotrifluoride (PCBTF) and volatile methyl siloxanes (VMS) to the list of compounds excluded from the definition of VOC on the basis that these compounds have negligible contribution to tropospheric ozone formation. In the final rules section of this Federal Register, the EPA is approving this definition revision as a final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the final rule. If no adverse comments or requests for a public hearing are received in response to the final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments or requests for public hearing on the final rule, the final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The 30 day comment period established by this notice will be the only comment period instituted by EPA. Any requests for extensions of the comment period will be considered. The EPA will not institute a second comment period on this notice. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments may be submitted until November 4, 1994. Requests for a public hearing must be received by November 4, 1994.

ADDRESSES: Comments on this document should be submitted in duplicate (if possible) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A-93-47, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments should be strictly limited to the subject matter of this rule.

PUBLIC HEARING: If anyone contacts EPA requesting a public hearing, it will be held at Research Triangle Park, North Carolina. Persons wishing to request a public hearing, wanting to attend the hearing or wishing to present oral testimony should notify Mr. William Johnson, Air Quality Management Division (MD-15), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5245. The EPA will publish notice of a hearing, if a hearing is requested, in the Federal Register. Any hearing will be strictly limited to the subject matter of the rule.

FOR FURTHER INFORMATION CONTACT: William Johnson, Office of Air Quality Planning and Standards, Air Quality Management Division (MD-15), Research Triangle Park, NC 27711, phone (919) 541-5245.

SUPPLEMENTARY INFORMATION: See the information provided in the final notice which is located in the final rules section of this Federal Register.

Dated: September 23, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94-24643 Filed 10-4-94; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94-112, RM-8516]

Radio Broadcasting Services; Farmville, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Farmville Herald, Inc., proposing the allotment of Channel 225A to Farmville, Virginia, as an additional FM service to the community. Channel 225A can be allotted to Farmville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 225A at Farmville are North Latitude 37-18-00 and West Longitude 78-23-48.

DATES: Comments must be filed on or before November 21, 1994, and reply comments on or before December 6, 1994.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Matthew H. McCormick, Reddy, Begley & Martin, 1001 22nd Street, N.W., Suite 350, Washington, D.C. 20037 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94-112, adopted September 19, 1994, and released September 30, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94-24556 Filed 10-4-94; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 94-111, RM-8519]

Radio Broadcasting Services; Ingalls, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Dana J. Puopolo, proposing the allotment of Channel 290A to Ingalls, Kansas, as the community's first local aural transmission service. Channel 290A can be allotted to Ingalls in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 290A at Ingalls are 37-49-48 and 100-27-06.

DATES: Comments must be filed on or before November 21, 1994, and reply comments on or before December 6, 1994.

ADDRESSES: Federal Communications Commission, Washington DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dana J. Puopolo, 37 Martin Street, Rehoboth, Massachusetts 02769-2103 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94-111, adopted September 19, 1994.

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and released September 30, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–24555 Filed 10–4–94; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register

Vol. 59, No. 192

Wednesday, October 5, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking and Committee on Adjudication

ACTION: Notice of Public Meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of the Committee on Rulemaking and the Committee on Adjudication of the Administrative Conference of the United States.

AGENCY: Committee on Rulemaking.

DATES: Monday, October 24, 1994, from 2–4 p.m.

LOCATION: Office of the Chairman, Administrative Conference, 2120 L Street, NW., Suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

AGENCY: Committee on Adjudication.

DATES: Monday, November 21, 1994, at 9:30 am.

LOCATION: Office of the Chairman, Administrative Conference, 2120 L Street, NW., Suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Committee on Rulemaking will meet to continue its discussion of Exemption 8 of the Freedom of Information Act. The Conference's consultant for this project is Professor Roy Schotland of the Georgetown University Law Center.

The Committee on Adjudication will meet to continue discussion of a report by Professor Brian Shannon, of Texas Tech University Law School, on suspension and debarment in the procurement and nonprocurement contexts.

Attendance at the meetings is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The chairman of each committee, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of each meeting will be available on request.

Dated: September 29, 1994.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 94–24603 Filed 10–4–94; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 30, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. this list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contract person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250. (202) 690–2118.

Extension

- Food and Nutrition Service

Affidavit of Return or Exchange of Food Coupons
Form FNS–135
On occasion
State or local governments; 65,273 responses; 17,859 hours
Paul E. Jones (703) 305–2385

- National Agricultural Statistics Service

Cotton Ginnings
Semi-annually; Annually; Semi-monthly Sept.–Jan.
Small businesses or organizations; 13,030 responses; 1,316 hours
Larry Gambrell (202) 720–5778

- Forest Service

Youth Conservation Corps (YCC) Application and Medical History
FS–1800–3, and FS–1800–18
On occasion
Individuals or households; 26,800 responses; 2,150 hours Ransom Hughes (703) 235–8861

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 94–24619 Filed 10–4–94; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Intent to Prepare an Environmental Impact Statement for the Clear Creek Skiing Corporation's Revised Master Development Plan; Arapaho National Forest; Loveland Basin and Loveland Valley Ski Areas; Clear Creek County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Arapaho and Roosevelt National Forests and Pawnee National Grassland is proposing to determine whether to approve a revision to the Master Development Plan for Loveland Basin and Loveland Valley Ski areas. The revision is to the Master Development Plan that was approved by the Forest Service on March 1, 1997. Loveland Basin and Loveland Valley ski areas are operated by Clear Creek Skiing Corporation and located entirely on National Forest System lands. Clear Creek Corporation was issued a 40-year permit on January 26, 1994 that included a clause requiring them to complete the Master Development Plan within 5 years.

The Master Development Plan revision includes new skiing terrain.

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two new lifts, additional parking, upgraded base area facilities, lift replacements, additional snowmaking lines, and a backcountry ski touring area.

The purpose of the actions proposed by Clear Creek Skiing Corporation is to provide the highest quality skiing experience by providing a wide variety of skiing experience, quality base area facilities, and balanced capacities. Some of the lifts at the ski areas are twenty years old or older and in need of replacement. The existing condition indicates a large imbalance of excess trail capacity over lift capacity.

The replacement of several lifts with fixed-grip quad chairs will allow for greater life capacities. The addition of two new lifts, and the addition of new skiing terrain will allow a diversity of experience for beginner, intermediate and expert skiers. Additional snowmaking lines will allow for the coverage of high wear areas and for opening the ski areas early to accommodate large crowds during the holidays. Many of the facilities at the ski areas are in need of renovation and expansion to accommodate expected growth.

The proposed action at Loveland Basin ski area is to (1) Replace three lifts with fixed-grip quad chairs, remove a poma lift, add a new lift to access 75 acres of difficult and extreme skiing; (2) Glade terrain to add 18 acres of additional skiing; (3) Add approximately 4,500 linear feet of subgrade piping for snowmaking under two chairlifts. No additional water diversion is required; (4) Replace, renovate and/or add to existing facilities including ticket office, rental and repair shop, retail sales and storage, and improvement of entry and skier plaza.

The proposed action at Loveland Valley ski area is to (1) Replace one lift with a fixed-grip quad and add a new fixed-grip quad; (2) Add 71 acres of new terrain for easy and more difficult skiing; (3) Add snowmaking lines to cover 45 acres of the new terrain; (4) Add a ticketing and restroom facilities near the proposed new lift and an addition to the existing lodge for daycare and additional restaurant seating; (5) Add a 500-car parking lot above the existing eastern parking lot.

Also proposed is providing guided backcountry skiing into the east face of Mount Trelease, adjacent to Loveland Basin ski area, located outside of the permit boundary but in an area designated as 1–B–2 which provides for potential winter sports sites in the Arapaho and Roosevelt and Pawnee National Grasslands Forest Plan of 1984.

The purpose of the Environmental Impact Statement is to determine the environmental effects of the proposed action and of any reasonable alternative actions that would also achieve the purpose and need while addressing significant issues raised through public comment and agency review.

The purpose of this Notice is to inform you that the Forest Service, with the assistance of a third party contractor, is soliciting your comments and concerns about this proposed action.

The environmental analysis and decision-making process will include opportunities for public participation and comment so that people interested in this proposal may contribute to the final decision.

The Forest Service is now seeking written comments and suggestions on the scope of the analysis. Comments relevant to scoping include: (1) Identifying potential issues, (2) identifying those issues to be analyzed in depth, (3) eliminating insignificant issues, (4) identifying additional alternatives to the proposed action that should be considered; (5) identifying potential environmental effects on the proposed action and alternatives. General notice to the public concerning the scope of the analysis will be provided by mailings, news releases and a field trip.

DATES: Comments related to the scope of the analysis should be received by October 31, 1994 to ensure timely consideration.

ADDRESSES: Submit written comments and suggestions to Corey P. Wong, District Ranger, Clear Creek Ranger District, 101 Chicago Creek, P.O. Box 3307, Idaho Springs, Colorado, 80452.

FOR FURTHER INFORMATION CONTACT: Sue Greenley, Project Coordinator, Clear Creek Ranger District, 101 Chicago Creek, P.O. Box 3307, Idaho Springs, Colorado, 80452, (303) 567–2901.

SUPPLEMENTARY INFORMATION: Loveland Basin and Loveland Valley ski areas have operated under special use permit since 1937 on National Forest System lands administered by the Arapaho and Roosevelt National Forests. The permit covers 2,300 acres of National Forest System land, the area where these projects are proposed.

The ski areas operate in accordance with the Master Development Plan that was approved by the Forest Service on March 1, 1977. Specific operations on National Forest Service lands are authorized under a special use permit issued by the Forest Service on January 26, 1994.

The proposed action is consistent with the long-range goals for this area as defined in the Land and Resource Management Plan for the Arapaho and Roosevelt National Forests and Pawnee National Grassland, approved on May 4, 1984. Under that Forest Plan, the area encompassed by Loveland Basin and Loveland Valley ski areas is assigned to management under prescription 1B–1. This management prescription provides management emphasis for the provision of downhill skiing on existing downhill sites. The purpose of prescription 1B–1 is to integrate ski area development and use with other resource management to provide healthy tree stands, vegetative diversity, forage production for wildlife and livestock, and opportunities for nonmotorized recreation.

The proposed area for guided backcountry skiing, adjacent to Loveland Basin ski area, is assigned to management under prescription 1B–2. This management prescription provides for potential winter sports sites. The purpose of prescription 1B–2 is for these sites to be maintained for future downhill skiing recreation opportunities and recreation opportunities focus on dispersed recreation uses. Vegetation treatment focuses on perpetuating a healthy forest. The Forest Service does not anticipate the need for any amendments to the Land and Resource Management Plan as a result of this proposal.

A range of reasonable alternatives to the proposed action will be considered in the analysis. Reasonable alternatives are those which fulfill the purpose and need for the proposals and address significant issues that are identified during the scoping process. The only specific alternative that has been identified at this time is the "no action" alternative. If the "no action" alternative is selected, the proposed project would not take place at this time.

The analysis will address major issues and concerns about the proposed action and alternatives and will disclose the direct and indirect impacts related to those issues. The following tentative issues have been identified: (1) Inpacts to wetlands and floodplains; (2) Impacts to water quality; (3) Impacts to threatened and endangered species; (4) Impacts to visual quality; (5) Impacts to downhill skiers.

It is anticipated that the Draft Environmental Impact Statement will be published by November 30, 1994. The Final Environmental Impact Statement will be completed in March, 1995.

The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC* 435 US 519, 533 (1978). Also, environmental objections that could be raised at the Draft Environmental Impact Statement stage but that are not raised until after completion of the Final Environmental Impact Statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334 (E.D. Wis. 1980). Because of these court rulings it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council of Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: September 22, 1994.

Corey P. Wong,

District Ranger.

[FR Doc. 94–24661 Filed 10–4–94; 8:45 am]

BILLING CODE 3410–11–M

Cottonwood Fire Restoration Project, Tahoe National Forest, Sierra County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Tahoe National Forest will prepare an environmental impact statement (EIS) for proposed watershed restoration, timber salvage, fuels reduction, wildlife habitat improvement, and reforestation activities within the xx,xxx-acre Cottonwood Fire Restoration Project analysis area located in the Feather River and Truckee River watersheds. The project area is located within all or portions of T19N, R15 & 16E, T20N, R15, 16, & 17E; and T21N, R15, 16, and 17E, MDB&M.

The agency invites comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments should be made in writing and received by November 21, 1994.

ADDRESSES: Written comments concerning the project should be directed to Steve Bishop, District Ranger, Sierraville Ranger District, P.O. Box 95, Sierraville, CA 96126.

FOR FURTHER INFORMATION CONTACT: Steve Bishop, District Ranger, Sierraville Ranger District, Sierraville, CA 96126, telephone (916) 994–3401, or Martha Twarkins, Project Team Leader, at the above location or at (916) 478–6293.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare the Eastside Forest Restoration Project EIS was published in the **Federal Register** on May 16, 1994 [59 FR 25440–25441]. That 85,000-acre project was proposed to address the area's extensive tree mortality and overstocked timber stands. Opportunities were identified to treat those stands in order to improve forest health and reduce the fire hazard, while concurrently accomplishing watershed restoration and wildlife habitat improvement goals.

Significant new circumstances have occurred that bear on the original proposal. From August 16 through August 31, 1994, the 48,000-acre Cottonwood Fire burned through the Eastside Forest Restoration Project analysis area, affecting about 36,300 acres of National Forest System land and 11,700 acres of lands of other ownership on both the Tahoe and Toiyabe National Forests.

The fire burned with high-to-moderate intensity on over 90 percent of the affected area, leaving only skeletons of burned trees and shrubs. Less than 10 percent of the area burned with low intensity, leaving partially burned or scattered live trees. This loss of vegetation has resulted in large areas of exposed soils and, thus, unstable watershed conditions, large amounts of new fuels, and the loss of standing timber and future timber growth potential. The fire also affected other important resources, such as wildlife habitat, recreation sites, visual quality, historic and pre-historic sites, fisheries, sensitive plant and animal species, and water quantity and quality.

The unburned portion (about xx,xxx acres) of Eastside Forest Restoration Project EIS is being deferred for analysis until the completion of the Cottonwood Fire Restoration Project EIS; a revised Notice of Intent to Prepare an Environmental Impact Statement for the remaining area, along with new time schedules, will be placed in the **Federal Register** at a later date.

The Cottonwood Fire Restoration Project analysis area is about xx,xxx acres in size, and includes xx,xxx acres of National Forest System lands and xx,xxx acres of lands of other ownerships. Most of the area is in the Feather River watershed, with a small portion in the Truckee River watershed. It is located east of the town of Sierraville and Highway 89, north of Sardine Peak and Lewis Mill, west of Babbitt Peak and the crest of the Bald Mountain Range, and south of the town of Loyalton. Major drainages within the project area include Cottonwood Creek, Lemon Canyon, Turner Canyon, Smithneck Creek, Bear Valley Creek, and Badenaugh Canyon. The project area includes all lands within the fire boundary on the Sierraville Ranger District of the Tahoe National Forest; the area burned on the Carson Ranger District of the Toiyabe National Forest will be analyzed separately.

In preparing the environmental impact statement, the Forest Service will identify and analyze a range of alternatives that address the issues developed for this area. One of the alternatives will be no treatment. Other alternatives will consider differing levels of implementation of salvage treatments, fuels reduction, watershed restoration, road obliteration, wildlife habitat improvement, and new road construction and reconstruction. An ecological approach will be used to achieve multiple-use management of the Cottonwood Fire area. It also means that the needs of people and environmental values will be blended in such a way that this area's desired condition would represent a diverse, healthy, productive, and sustainable ecosystem.

Public participation will be important during the analysis, especially during the review of the draft environmental

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impact statement. The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The following list of issues has been identified through initial scoping:

(1) To what extent can the potential for future large, catastrophic wildlife be reduced within the project area?

(2) To what extent can the forest health be restored within the project area?

(3) What level of timber commodities could result from forest health restoration projects?

(4) To what extent will erodable and sensitive soils, and thus long-term soil productivity, be affected by the proposed activities?

(5) To what extent will the view from Highways 49 and 89 be affected? What visual character will result from the proposed activities, and to what extent can visual quality be improved in sensitive areas affected by the fire?

(6) To what extent will vegetative diversity be improved to support a wide variety of biological communities?

(7) To what extent and at what timing will wildlife habitat be restored for the large variety of wildlife using the area?

(8) To what extent will watershed conditions be improved and restored by the proposed activities?

(9) To what extent will air quality in the Sierra Valley and Truckee areas be affected by the proposed activities?

Comments from other Federal, State, and local agencies, organizations, and individuals who may be interested in, or affected by the decision, are encouraged to identify other significant issues. Public participation will be solicited through mailing letters to potentially interested or affected mining claim owners, private land owners, and special use permittees on the Sierraville Ranger District; posting information in local towns; and mailing letters to local timber industries, politicians, school boards, county supervisors, and environmental groups. Continued participation will be emphasized through individual contacts. Public meetings used as a method of public involvement during preparation and review of the draft environmental impact statement will be announced in newspapers of general circulation in the geographic area of such meetings well in advance of scheduled dates.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December, 1995. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of the court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is expected to be available by March, 1995. The responsible official is John H. Skinner, Forest Supervisor, Tahoe National Forest.

Dated: September 26, 1994.

Larry Gruver,

Acting Forest Supervisor

[FR Doc. 94–24565 Filed 10–4–94; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will convene on October 28, 1994, from 1 p.m. to 3 p.m., at the Holiday Inn City Centre, 100 West 8th Street, Sioux Falls, South Dakota 57102. The purpose of the meeting will be to review and approve the Committee's report on employment discrimination against women, and discuss followup activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Rae Burnett or William F. Muldrow, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 26, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–24566 Filed 10–4–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Foreign Buyer Program: Application and Exhibitor Data.

Agency Form Numbers: ITA–4102P and 4014P.

OMB Approval Number: 0625–0151.

Type of Request: Revision of a currently approved collection.

Burden: 919 hours.

Number of Respondents: 4,080.

Avg Hours Per Response: Approximately 3 hours for the Form 4102P and 10 minutes for the 4104P.

Needs and Uses: The Foreign Buyers Program encourages foreign buyers to attend selected domestic trade shows in high export potential industries. Our embassies recruit buyers to attend the shows. Show organizers wishing to obtain support must submit an application which is used in selecting the trade events to be promoted. U.S. exhibitors also provide information which is used to provide export counseling and other services.

Affected Public: Businesses or other for–profit institutions, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Tag Recapture Card — Southeast Region.

Agency Form Number: None assigned.

OMB Approval Number: 0648–0259.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 8 hours.

Number of Respondents: 240.

Avg Hours Per Response: 2 minutes.

Needs and Uses: The Cooperative Marine Game Fish Tagging Program began in the Southeast Region in 1971. The primary objectives of the tagging program are to obtain scientific information on fish growth and movement which assists with stock assessments and management. When recovering tagged fish, fishermen are asked to return the tag and provide certain information. This information is then matched with information provided when the fish was originally tagged.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: September 30, 1994

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc 94–24579 Filed 10–4–94; 8:45 am]

BILLING CODE 3510–CW–F

International Trade Administration

[A–301–601, A–331–601]

Notice of Postponement of Final Determinations of Sales at Less Than Fair Value: Fresh Cut Roses From Colombia and Ecuador

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 5, 1994.

FOR FURTHER INFORMATION CONTACT: Bill Crow or Shawn Thompson, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0116 or (202) 482–1776, respectively.

Postponement

On September 20, 1994, three of the four respondents in the antidumping duty investigation of fresh cut roses from Ecuador requested that the Department postpone the final determination in that investigation 127 days, in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)), in order to ensure that the Department has adequate time to conduct verification and to consider fully all the issues in the case. In addition, on September 27, 1994, Asocolflores, the Colombian Flower Growers Association, as well as fourteen of the sixteen Colombian respondents in the antidumping duty investigation of fresh cut roses from Colombia, requested that the Department postpone the final determination in the Colombian investigation 128 days in order to ensure that the Department has adequate time to conduct verification and to consider fully all the issues in the cases, in accordance with section 735(a)(2)(A) of the Act. On September 27, 1994, the fourth Ecuadorian respondent requested that the Department align the final determination dates in the Colombian and Ecuadorian cases. Finally, on September 28, 1994, the other Ecuadorian respondents requested that the Department also align the final determination dates by postponing the final determination 128 days.

We find no compelling reasons to deny these requests and are, accordingly, postponing the dates of the final determinations for both cases until not later than January 26, 1995, pursuant to 19 CFR 353.20(b)(1).

This notice is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(b)(2).

Dated: September 28, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–24654 Filed 10–4–94; 8:45 a m]

BILLIND CODE 3510–DS–P–M

[C–333–002]

Cotton Yarn From Peru; Notice of Proposed Amended Conversion

AGENCY: Import Administration, International Trade Administration. Department of Commerce.

ACTION: Cotton Yarn from Peru: Notice of Proposed Amendment to the Existing Conversion of the Scope of the Order from the Tariff Schedules of the United States Annotated to the Harmonized Tariff Schedule.

SUMMARY: On January 1, 1989, the United States fully converted to the international harmonized system of tariff classification. On January 11, 1989, the Department of Commerce (the Department) published the Conversion to Use of the Harmonized Tariff Schedule of Classifications for Antidumping and Countervailing Duty Proceedings (54 FR 993; January 11, 1989) (1989 Conversion) for all antidumping and countervailing duty orders in effect or investigations in progress as of January 1, 1989. The Department now proposes to amend the 1989 Conversion governing the countervailing duty order on cotton yarn from Peru. Interested parties are invited to comment on this proposed amended conversion.

EFFECTIVE DATE: October 5, 1994.

FOR FURTHER INFORMATION CONTACT: Martina Tkadlec or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230 telephone (202) 482–2786.

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SUPPLEMENTARY INFORMATION:

Background

In 1983, the Department issued a countervailing duty order on Cotton Yarn from Peru (C–333–002) (48 FR 4508; February 1, 1983). The scope of this order was originally defined solely in terms of the Tariff Schedules of the United States Annotated (TSUSA) item numbers; no narrative product description was provided. On January 1, 1989, the United States fully converted from the TSUSA to the Harmonized Tariff Schedule (HTS). Section 1211 of the Omnibus Trade and Competitiveness Act of 1988 directed the Department to "take whatever actions are necessary to conform, to the fullest extent practicable, with the tariff classification system of the Harmonized Tariff Schedule [for] all * * * orders * * *" in effect at the time of the implementation of the HTS.

Accordingly, on January 11, 1989, after reviewing comments received from the public, the Department published the 1989 Conversion for all antidumping and countervailing duty orders in effect or investigations in progress as of January 1, 1989 (54 FR 993). The notice also included the conversion of the scope of the referenced cotton yarn order from TSUSA to HTS item numbers. The 1989 Conversion was based on a one-to-one correspondence of the TSUSA and HTS item numbers. In the notice, the Department stated that the conversion could be amended, as warranted, at any time during the applicable proceeding as a result of the submission of comments or new factual information.

As a result of comments submitted to the Department by the importing public and advice received from the U.S. Customs Service, the Department determined that the 1989 Conversion did not accurately reflect the scope of the countervailing duty order on cotton yarn from Peru and, therefore, that the conversion should be amended.

To rectify the problems in the 1989 Conversion, the Department, with the assistance of the U.S. Customs Service and the U.S. International Trade Commission, has once again compared the TSUSA-defined scope and the HTS-defined scope provided by the 1989 Conversion, and identified those HTS numbers that more reasonably correspond with the TSUSA-defined scope of the countervailing duty order on cotton yarn from Peru. A new proposed amended conversion is found in the attached appendix.

Request for Public Comments

We invite interested parties to submit comments on the proposed amended conversion within 30 days of the publication of this notice. All comments must be in writing (10 copies), addressed to the attention of the Director, Office of Countervailing Compliance, International Trade Administration, IA Central Record Unit, Room B–099, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: September 28, 1994.

Susan G. Esserman

Assistant Secretary for Import Administration.

Appendix: Proposed Amended HTS List for Cotton Yarn From Peru (C–333–002)

Subheadings 5205.1110 through 5206.4500, inclusive.

[FR Doc. 94–24657 Filed 10–4–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–333–402]

Certain Textile Mill Products From Peru; Notice of Proposed Amended Conversion

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Certain Textile Mill Products from Peru: Notice of Proposed Amendment to the Existing Conversion of the Scope of the Order from the Tariff Schedules of the United States Annotated to the Harmonized Tariff Schedule.

SUMMARY: On January 1, 1989, the United States fully converted to the international harmonized system of tariff classification. On January 11, 1989, the Department of Commerce (the Department) published the Conversion to Use of the Harmonized Tariff Schedule of Classifications for Antidumping and Countervailing Duty Proceedings (54 FR 993; January 11, 1989) (1989 Conversion) for all antidumping and countervailing duty orders in effect or investigations in progress as of January 1, 1989. The Department now proposes to amend the 1989 Conversion governing the countervailing duty order on certain textile mill products from Peru. Interested parties are invited to comment on this proposed amended conversion.

EFFECTIVE DATE: Octobert 5, 1994.

FOR FURTHER INFORMATION CONTACT: Martina Tkadlec or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

In 1985, the Department issued a countervailing duty order on Certain Textile Mill Products from Peru (C–333–402) (50 FR 9871; March 12, 1985). The scope of this order was originally defined solely in terms of the Tariff Schedules of the United States Annotated (TSUSA) item numbers; no narrative product description was provided. On January 1, 1989, the United States fully converted from the TSUSA to the Harmonized Tariff Schedule (HTS). Section 1211 of the Omnibus Trade and Competitiveness Act of 1988 directed the Department to "take whatever actions are necessary to conform, to the fullest extent practicable, with the tariff classification system of the Harmonized Tariff Schedule [for] all * * * orders * * *" in effect at the time of the implementation of the HTS.

Accordingly, on January 11, 1989, after reviewing comments received from the public, the Department published the 1989 Conversion for all antidumping and countervailing duty orders in effect or investigations in progress as of January 1, 1989 (54 FR 993). The notice also included the conversion of the scope of the referenced textile order from TSUSA to HTS item numbers. The 1989 Conversion was based on a one-to-one correspondence of the TSUSA and HTS item numbers. In the notice, the Department stated that the conversion could be amended, as warranted, at any time during the applicable proceeding as a result of the submission of comments or new factual information.

As a result of comments submitted to the Department by the importing public and advice received from the U.S. Customs Service, the Department determined that the 1989 Conversion did not accurately reflect the scope of the countervailing duty order on certain textile mill products from Peru and, therefore, that the conversion should be amended.

To rectify the problems in the 1989 Conversion, the Department, with the assistance of the U.S. Customs Service and the U.S. International Trade Commission, has once again compared the TSUSA-defined scope and the HTS-defined scope provided by the 1989 Conversion, and identified those HTS numbers that more reasonably correspond with the TSUSA-defined scope of the countervailing duty order on certain textile mill products from Peru. A new proposed amended conversion is found in the attached appendix.

Request for Public Comments

We invite interested parties to submit comments on the proposed amended conversion within 30 days of the publication of this notice. All comments must be in writing (10 copies), addressed to the attention of the Director, Office of Countervailing Compliance, International Trade Administration, IA Central Record Unit, Room B–099, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: September 28, 1994.

Susan G. Esserman

Assistant Secretary for Import Administration.

Appendix: Proposed Amended HTS List for Certain Textile Mill Products From Peru (C–333–402)

5106.1000*	5208.2960
5106.2000*	5208.2980
5107.1000*	5209.1100
5107.2000*	5209.1200
5108.1060*	5209.2100
5108.2060*	5406.1000
5109.1060	5406.2000
5109.9060	5511.1000
5111.1170	5511.2000
5111.1960	5511.3000
5112.1120†	5701.1016
5112.1990†	5701.1020
5204.1100	5702.3110
5204.1900	5702.3120
5204.2000	5702.4110
5207.1000	5702.4120
5207.9000	5702.5120
5208.1140	5702.5140
5208.1180	5702.9130
5208.1260	5702.9140
5208.1280	5703.1000
5208.1300	5801.1000
5208.1920*	5801.3300
5208.1940	5801.3400
5208.1960	5801.3500
5208.1980	5805.0025
5208.2120	6002.4200
5208.2140	6301.2000
5208.2160	6304.9915
5208.2240	6306.1100
5208.2260	6306.2100
5208.2280	6306.9100
5208.2940	

*Coverage limited to single or multiple (folded) or cabled yarn, not exceeding 22 nm per single yarn.

†Coverage limited to fabric, wholly or in part of fine animal hair.

‡Coverage limited to fabric, not wholly of satin weave.

[FR Doc. 94–24658 Filed 10–4–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–333–402]

Certain Apparel from Peru; Notice of Proposed Amended Conversion

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Certain Apparel from Peru: Notice of Proposed Amendment to the Existing Conversion of the Scope of the Order from the Tariff Schedules of the United States Annotated to the Harmonized Tariff Schedule.

SUMMARY: On January 1, 1989, the United States fully converted to the international harmonized system of tariff classification. On January 11, 1989, the Department of Commerce (the Department) published the *Conversion to Use of the Harmonized Tariff Schedule of Classifications for Antidumping and Countervailing Duty Proceedings* (54 FR 993; January 11, 1989) (1989 Conversion) for all antidumping and countervailing duty orders in effect or investigations in progress as of January 1, 1989. The Department now proposes to amend the 1989 Conversion governing the countervailing duty order on certain apparel from Peru. Interested parties are invited to comment on this proposed amended conversion.

EFFECTIVE DATE: October 5, 1994.

FOR FURTHER INFORMATION CONTACT: Martina Tkadlec or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

In 1985, the Department issued a countervailing duty order on *Certain Apparel from Peru* (C–333–402) (50 FR 9871; March 12, 1985). The scope of this order was originally defined solely in terms of the Tariff Schedules of the United States Annotated (TSUSA) item numbers; no narrative product description was provided. On January 1, 1989, the United States fully converted from the TSUSA to the Harmonized Tariff Schedule (HTS). Section 1211 of the Omnibus Trade and Competitiveness Act of 1988 directed the Department to "take whatever actions are necessary to conform, to the fullest extent practicable, with the tariff classification system of the Harmonized Tariff Schedule [for] all * * * orders * * *" in effect at the time of the implementation of the HTS.

Accordingly, on January 11, 1989, after reviewing comments received from the public, the Department published the 1989 Conversion for all antidumping and countervailing duty orders in effect or investigations in progress as of January 1, 1989 (54 FR 993). The notice also included the conversion of the scope of the referenced apparel order from TSUSA to HTS item numbers. The 1989 Conversion was based on a one-to-one correspondence of the TSUSA and HTS item numbers. In the notice, the Department stated that the conversion could be amended, as warranted, at any time during the applicable proceeding as a result of the submission of comments or new factual information.

As a result of comments submitted to the Department by the importing public and advice received from the U.S. Customs Service, the Department determined that the 1989 Conversion did not accurately reflect the scope of the countervailing duty order on certain apparel from Peru and, therefore, that the conversion should be amended.

To rectify the problems in the 1989 Conversion, the Department, with the assistance of the U.S. Customs Service and the U.S. International Trade Commission, has once again compared the TSUSA-defined scope and the HTS-defined scope provided by the 1989 Conversion, and identified those HTS numbers that more reasonably correspond with the TSUSA-defined scope of the countervailing duty order on certain apparel from Peru. A new proposed amended conversion is found in the attached appendix.

Request for Public Comments

We invite interested parties to submit comments on the proposed amended conversion within 30 days of the publication of this notice. All comments must be in writing (10 copies), addressed to the attention of the Director, Office of Countervailing Compliance, International Trade Administration, IA Central Record Unit, Room B–099, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Susan G. Esserman,

Assistant Secretary for Import Administration.

Appendix: Proposed Amended HTS List for Certain Apparel From Peru (C–333–402)

4202.1240	6103.1210
4202.2270	6103.1910
4202.2280	6103.2100*
4202.9215	6103.2200*
4202.9260	6103.2300*
6102.1000	6103.2910*
6102.3010	6103.4110
6103.1100	6103.4210†

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6103.4310	6117.1020
6103.4910‡	6201.1100
6104.1100	6201.9120
6104.1310	6201.9325
6104.1910	6202.1100
6104.2100*	6202.9120
6104.2300*	6202.9220
6104.2910*	6202.9340
6104.3100	6204.2100*
6104.3310	6204.2230*
6104.3910‡	6204.2300*
6104.4100	6204.2920*
6104.4310	6204.3120
6104.4410	6204.3340
6104.5100	6204.3920
6104.5310	6204.4120
6104.5910†	6204.4230◊
6104.6100	6204.4330
6104.6315	6204.4430
6104.6920†	6204.5100
6105.1000♦	6204.5320
6106.1000♦	6204.5920
6109.1000♦	6204.6100
6110.1010	6204.6240■
6110.1020	6204.6325
6110.2020♦	6204.6920
6110.3015	6205.2020)
6116.9100	6214.2000
6116.9364	6505.9030
6116.9374	6505.9040
6117.1010	

* Coverage limited to garments that would be subject to this order if separately entered.

† Coverage limited to garments having embroidery or permanently affixed applique work on the outer surface.

‡ Coverage limited to garments of artificial fibers, containing 23 percent or more by weight of wool or fine animal hair.

♦ Coverage excludes garments having embroidery or permanently affixed applique work on the outer surface.

◊ Coverage excludes dresses of pile fabric and other dresses of fabric having yarns of different colors.

■ Coverage excludes girls' garments, women's shorts, women's trousers and breeches of pile fabric and other women's trousers and breeches of blue denim.

) Coverage excludes shirts of pile fabric and other shirts of fabric having yarns of different colors.

[FR Doc. 94–24655 Filed 10–4–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–333–001]

Cotton Sheeting and Sateen From Peru; Notice of Proposed Amended Conversion

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Cotton Sheeting and Sateen from Peru: Notice of Proposed Amendment to the Existing Conversion of the Scope of the Order from the Tariff Schedules of the United States Annotated to the Harmonized Tariff Schedule.

SUMMARY: On January 1, 1989, the United States fully converted to the international harmonized system of tariff classification. On January 11, 1989, the Department of Commerce (the Department) published the *Conversion to Use of the Harmonized Tariff Schedule of Classifications for Antidumping and Countervailing Duty Proceedings* (54 FR 993; January 11, 1989) (1989 Conversion) for all antidumping and countervailing duty orders in effect or investigations in progress as of January 1, 1989. The Department now proposes to amend the 1989 Conversion governing the countervailing duty order on cotton sheeting and sateen from Peru. Interested parties are invited to comment on this proposed amended conversion.

EFFECTIVE DATE: October 5, 1994.

FOR FURTHER INFORMATION CONTACT: Martina Tkadlec or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

In 1983, the Department issued a countervailing duty order on *Cotton Sheeting and Sateen from Peru* (C–333–001) (48 FR 4501; February 1, 1983). The scope of this order was originally defined solely in terms of the Tariff Schedules of the United States Annotated (TSUSA) item numbers; no narrative product description was provided. On January 1, 1989, the United States fully converted from the TSUSA to the Harmonized Tariff Schedule (HTS). Section 1211 of the Omnibus Trade and Competitiveness Act of 1988 directed the Department to "take whatever actions are necessary to conform, to the fullest extent practicable, with the tariff classification system of the Harmonized Tariff Schedule [for] all * * * orders * * *" in effect at the time of the implementation of the HTS.

Accordingly, on January 11, 1989, after reviewing comments received from the public, the Department published the 1989 Conversion for all antidumping and countervailing duty orders in effect or investigations in progress as of January 1, 1989 (54 FR 993). The notice also included the conversion of the scope of the referenced cotton sheeting and sateen order from TSUSA to HTS item numbers. The 1989 Conversion was based on a one-to-one correspondence of the TSUSA and HTS item numbers. In the notice, the Department stated that the conversion could be amended, as warranted, at any time during the applicable proceeding as a result of the submission of comments or new factual information.

As a result of comments submitted to the Department by the importing public and advice received from the U.S. Customs Service, the Department determined that the 1989 Conversion did not accurately reflect the scope of the countervailing duty order on cotton sheeting and sateen from Peru and, therefore, that the conversion should be amended.

To rectify the problems in the 1989 Conversion, the Department, with the assistance of the U.S. Customs Service and the U.S. International Trade Commission, has once again compared the TSUSA-defined scope and the HTS-defined scope provided by the 1989 Conversion, and identified those HTS numbers that more reasonably correspond with the TSUSA-defined scope of the countervailing duty order on cotton sheeting and sateen from Peru. A new proposed amended conversion is found in the attached appendix.

Request for Public Comments

We invite interested parties to submit comments on the proposed amended conversion within 30 days of the publication of this notice. All comments must be in writing (10 copies), addressed to the attention of the Director, Office of Countervailing Compliance, International Trade Administration, IA Central Record Unit, Room B–099, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: September 28, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

Appendix: Proposed Amended HTS List for Cotton Sheeting and Sateen From Peru (C–333–002)

5208.1120
5208.1240
5208.1920*
5208.2920*
5209.1900
5209.2900

* Coverage limited to fabric, wholly of satin weave.

[FR Doc. 94–24656 Filed 10–4–94; 8:45 am]

BILLING CODE 3510–DS–P

DEPARMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On September 26, 1994 Maquiladora Pieles Pitic, S.A. de CV and Pitic Leather filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final countervailing duty determination made by the International Trade Administration in the administrative review respecting Leather Wearing Apparel from Mexico. This determination was published in the **Federal Register** on August 25, 1994 (59 FR 43815). The NAFTA Secretariat has assigned Case Number USA–94–1904–02 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretery, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established Rules of Procedure for Article 1904 Binational Panels Reviews ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the U.S. Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on September 26, 1994, requesting panel review of the final countervailing duty administrative review described above.

The Rules provide that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is October 26, 1994);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is November 10, 1994); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: September 30, 1994.

James R. Holbein,

United States Secretory, NAFTA Secretariat.

[FR Doc. 94–24659 Filed 10–4–94; 8:45 am]

BILLING CODE 3510–GT–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Delay in the Implementation of Export Visa Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk-blend and Non–Cotton Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Laos

September 30, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending the effective date for the implementation of visa requirements.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On September 13, 1994 a notice was published in the **Federal Register** (59 FR 46964) announcing the establishment of export visa requirements for textiles and textile products, produced or manufactured in Laos and exported from Laos on and after October 1, 1994.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to delay the implementation of the visa requirements until November 15, 1994. Goods exported from Laos during the period November 15 through November 30, 1994 shall not be denied entry for lack of a visa. All goods exported after November 30, 1994 must be accompanied by an appropriate export visa.

Interested persons are advised to take all necessary steps to ensure that textile products that are entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa requirements set forth in the letter published below to the Commissioner of Customs.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 30, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 8, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to require an export visa for certain textiles and textile products, produced or manufactured in Laos and exported from Laos on and after October 1, 1994. You are directed to delay the implementation of the visa requirements until November 15, 1994.

Effective on October 1, 1994, you are directed to amend the September 8, 1994 directive to prohibit entry of textiles and textile products, produced or manufactured in Laos and exported from Laos on and after November 15, 1994 for which the Government of the Lao People's Democratic Republic has not issued an appropriate export visa. Goods exported during the period November 15, 1994 through November 30, 1994 shall not be denied entry for lack of a visa.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

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Sincerely,
Rita D. Hayes,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 94-24653 Filed 10-4-94; 8:45 am]
BILLING CODE 3510-DR-F

COMMODITY FUTURES TRADING COMMISSION

New York Cotton Exchange Proposed Emerging Markets Debt Index Futures and Futures Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The New York Cotton Exchange (NYCE or Exchange) has applied for designation as a contract market in emerging markets debt index ("EMD Index℠" or "EMDX℠") futures and futures option contracts. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before November 4, 1994.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581. Reference should be made to the NYCE emerging markets debt index futures and futures option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Steve Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581, telephone 202-254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the Exchange in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the Exchange, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on September 29, 1994.

Blake Imel,
Acting Director.
[FR Doc. 94-24627 Filed 10-4-94; 8:45 am]
BILLING CODE 6351-01-P

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Cellulose Insulation

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through September 30, 1997, of information collection requirements set forth in the Amended Interim Safety Standard for Cellulose Insulation (16 CFR Part 1209). The cellulose insulation standard prescribes requirements for flammability and corrosiveness of cellulose insulation produced for sale to or use by consumers. The standard requires manufacturers and importers of cellulose insulation to test insulation for resistance to smoldering and small open-flame ignition, and for corrosiveness, and to maintain records of that testing.

Additional Information About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207

Title of information collection: Amended Interim Safety Standard for Cellulose Insulation (16 CFR Part 1209).

Type of request: Extension of approval.

General description of respondents: Manufacturers and importers of cellulose insulation.

Estimated number of respondents: 25.

Estimated average number of hours per respondent: 100 per year.

Estimated number of hours for all respondents: 2,500 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Donald Arbuckle, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395-7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504-0416, extension 2245.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: September 29, 1994.

Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.
[FR Doc. 94-24557 Filed 10-4-94; 8:45 am]
BILLING CODE 6355-01-P

Proposed Collection of Information; Survey of Importers and Manufacturers of Fireworks

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a proposed collection of information in the form of a survey of importers and manufacturers of fireworks. The purpose of this survey is to obtain information about the types and number of fireworks devices they import, manufacture, or sell.

The Commission will use this information to determine if amendment of regulations applicable to fireworks devices may be needed to further reduce unreasonable risks of injury associated with those products.

Additional Details About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Survey of Importers and Manufacturers of Fire Works.

Type of request: Approval of a new plan.

Frequency of collection: One time.

General description of respondents: Importers and manufacturers of fireworks.

Total number of respondents: 200.

Number of responses per respondent: 1.

Hours per response: 4 to 6

Total hours for all respondents: 800 to 1,200

Comments: Comments about this request for approval of a collection of information should be addressed to Donald Arbuckle, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395-7340. Copies of the request for approval of a collection of information are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0416, extension 2245.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: September 29, 1994.

Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.
[FR Doc. 94-24558 Filed 10-4-94; 8:45 am]
BILLING CODE 6335-01-P

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board (SAB) 1994 Fall General Board Meeting will meet from 8 a.m. to 5 p.m. on 9-10 November 1994 at Bolling Air Force Base, Washington, DC and the National Academy of Sciences, Washington DC.

The purpose of these meetings are to deliver briefings and have discussions for the new members of the Scientific Advisory Board, to present a symposium on five Decades of Progress Toward New Horizons, and to commemorate the USAF Scientific Advisory Board's 50th Anniversary. These meetings will be open to the public.

For further information, contact the SAB Secretariat at (703) 697-8404.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.
[FR Doc. 94-24662 Filed 10-4-94; 8:45 am]
BILLING CODE 3910-01-M

Department of the Army

Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Cape Fear River Feasibility Study, New Hanover and Brunswick Counties, North Carolina

AGENCY: U.S. Army Corps of Engineers Wilmington, District, DOD.

ACTION: Notice of Intent.

SUMMARY: Deepening of the existing channel from the ocean bar to the Port of Wilmington is the central feature of the proposed action. Other features included in the proposed action consist of widening three turning basins and extending the deep draft project about 1.5 miles further up the North East Cape Fear River. The total length of improvements is approximately 35 miles. Benefits which will accrue from deepening of Wilmington Harbor include reductions in lightloading of vessels and vessel delays. Shippers will also be able to use larger, more efficient vessels.

ADDRESSES: U.S. Army Corps of Engineers, Wilmington, District, Environmental Resources Branch, PO Box 1890, Wilmington, North Carolina 28402-1890.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Yelverton, Telephone: (910)251-4640.

SUPPLEMENTARY INFORMATION: Three alternative depths are being considered for the ocean bar channel (42, 44, and 46 feet plus overdepth) and generally three alternative depths for the river channels (40, 42, and 44 feet plus overdepth). Four types of dredging equipment may be used in this action. A hopper dredge may be used in the lowest end of the project and a bucket and barge dredge in the middle reaches of the river (up to about mile 25). A rock dredge with disposal in barges may be used where rock is present downstream of mile 25. The hopper, bucket and barge, and rock dredges will probably dispose of dredged material in the approved ocean dredged material disposal site (ODMDS). A standard hydraulic pipeline or rock dredge may be used from about mile 25 upstream. The dredged material upstream of mile 25 will be pumped to Eagle Island. In the project where rock is to hard to dredge, the rock will require blasting. This rock will then be removed and placed in the ODMDS or in Eagle Island.

If suitable rock material is available downstream of mile 25, instead of placement of the rocky material in the ODMDS, an offshore fisheries enhancement structure may be created.

All private parties and Federal, State, and local agencies having an interest in the study are hereby notified of the study and are invited to comment at this time. Also, scoping letter requesting input to the study was set to all known interested parties on September 18, 1992.

Based on comments received to date, a scoping meeting will not be needed. All comments received as a result of this notice of intent and the scoping letter will be considered in the preparation of the DEIS.

Significant issues to be analyzed in the DEIS include:

(1) Dredging of benthic resources.

(2) Blasting impacts on primary nursery areas, anadromous fish, the endangered shortnose sturgeon, sea turtles and marine mammals,

(3) Potential Increased salinity especially in upstream areas,

(4) Loss of wetlands due to widening of turning basins,

(5) Impacts to cultural resources.

The lead agency for this project is the U.S. Army Engineer District, Wilmington. Cooperating agency status has to been assigned to, nor requested by, any other agency.

The DEIS is being prepared in accordance with the requirements of the National Environmental Policy of 1969, as amended, and will address the relationship of the proposed action to all other applicable Federal and State Laws and Executive Orders.

The DEIS is currently scheduled to be available in January 1996.

Kenneth L. Denton,
Army Federal Register Liaison Officer.
[FR Doc. 94-24664 Filed 10-4-94; 8:45 am]
BILLING CODE 3710-GN-M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB)

Date of Meeting: 24 October 1994

Time of Meeting: 0900-1600

Place: Office of the Surgeon General, Falls Church, VA

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Agenda: The Army Science Board's Ad Hoc Study on "Review of Existing Toxicity Data and Human Estimates for Selected Chemical Agents and Recommended Human Toxicity Estimates Appropriate for Defending the Soldier" will meet to review recommended toxicity values. The Army will brief the data base, methodology, key studies, and identify and discuss the difference between the recommended values and commonly used values. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–24567 Filed 10–4–94; 8:45 am]

BILLING CODE 3710–08–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 94–4]

Deficiencies in Criticality Safety at Oak Ridge Y–12 Plant

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning deficiencies in criticality safety at Oak Ridge Y–12 Plant. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments, concerning this recommendation are due on or before November 4, 1994.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole C. Morgan, at the address above or telephone (202) 208–6400.

DATED: September 30, 1994.

John T. Conway,

Chairman.

[Recommendation 94–4]

Deficiencies in Criticality Safety at Oak Ridge Y–12 Plant

Dated: September 27, 1994.

The Defense nuclear Facilities Safety Board (Board) has issued a number of recommendations concerning formality of operations, including Recommendation 92–5, Discipline of Operations in a Changing Defense Nuclear Facilities Complex. In that recommendation, the Board stated that facilities schedule for continued operations should develop a style and level of conduct of operations which is comparable to that achieved at commercial nuclear facilities. Recommendation 92–5 further noted that, prior to achieving an acceptable level of formality, major improvements were required in a number of areas, including safety analysis reports, limiting conditions of operation, and training and qualification of personnel.

The Board and its staff have been monitoring the Department of Energy's (DOE) efforts to implement an acceptable level of conduct of operations at the Y–12 Plant in Oak Ridge, Tennessee, which is scheduled for continued operations. The Board has forwarded a number of reports to DOE during the last two years indicating the existence of safety-related concerns regarding operations at Y–12. DOE and its operating contractor, Martin-Marietta Energy Systems (MMES), have taken some actions to correct deficiencies; however, a number of recent events have led the Board to the conclusion that more aggressive and comprehensive management actions are required to bring the level of conduct of operations at Y–12 to a satisfactory level.

The Board notes that during the past four months a number of violations of Operational Safety Requirements and other safety limits have occurred at the Y–12 Plant. Most recently, the Board's staff identified a substantial violation of nuclear criticality safety limits within a special nuclear material storage vault at Y–12. When the staff identified this deficiency to on-site personnel, including a senior MMES manager, an MMES nuclear criticality safety specialist, and one of DOE's facility representatives, immediate corrective actions that were required by Y–12 procedures were not taken. In fact, proper corrective actions that were required by Y–12 procedures were not taken. In fact, proper corrective actions were not taken until the Board's staff informed the DOE Y–12 Site Manager. Subsequently MMES curtailed a number of operations at the Y–12 Plant. Reviews of compliance with nuclear criticality safety limits at the Y–12 Plan revealed that a widespread level of noncompliance exists.

In its Annual Report to Congress (February 1994) the Board noted that personnel and procedures are complementary elements in implementing conduct of operations. The report stated, "The health and safety of the public and workers rest on a properly trained workforce accomplishing tasks in a formal deliberate fashion in accordance with reviewed and approved procedures." In responding to the Board's Recommendation 93–6, Maintaining Access to Nuclear Weapons Experience, DOE is evaluating the impact of expertise presently being lost through ongoing staff reductions on their ability to perform nuclear weapons dismantlement at Y–12.

The Board recognizes that DOE and MMES management have begun taking aggressive actions to correct the specific problems of adherence to nuclear criticality safety limits, since the nuclear criticality safety occurrence referred to above. However, the Board believes that more remains to be done. According, the Board recommends that:

(1) DOE determine the immediate actions necessary to resolve the nuclear criticality safety deficiencies at the Y–12 Plant, including actions deemed necessary before restarting curtailed operations and any compensatory measures instituted. These actions should be documented, along with an explanation of how the deficiencies remained undetected by MMES and DOE (line and oversight).

(2) DOE perform the following for defense nuclear facilities at the Y–12 Plant:

(a) An evaluation of compliance with Operational Safety Requirements and Criticality Safety Approvals (CSAs), including a determination of the root case of any identified violations. In performing this assessment, DOE should use the experience gained during similar review at the Los Alamos plutonium facility and during the recent "maintenance mode" at the Pantex Plant.

(o) A comprehensive review of the nuclear criticality safety program at the Y–12 Plant, including: the adequacy of procedural controls, the utility of the nuclear criticality safety approvals, and a root case analysis of the extensive level of non-compliance found in recent reviews.

(c) A comparison of the current level of conduct of operations to the level expected by DOE in implementing the Board's Recommendation 92–5.

(d) Development of plans, including schedules, to address any deficiencies identified in the analyses conducted above.

(3) DOE evaluate the experience, training, and performance of key DOE and contractor personnel involved in safety-related activities at defense nuclear facilities within the Y–12 Plan to determine if those personnel have the skills and knowledge required to execute their nuclear safety responsibilities (in this regard, reference should be made to the critical safety elements developed as part of DOE's response to the Board's Recommendation 93–1).

(4) DOE take whatever actions are necessary to correct any deficiencies identified in (3) above in the experience, training, and performance of DOE and contractor personnel.

John T. Conway,

Chairman.

Appendix—Transmittal Letter to Secretary of Energy

September 27, 1994.

Hon. Hazel R. O'Leary,
Secretary of Energy,
Washington, DC.

Dear Secretary O'Leary: On September 27, 1994, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. § 2286a(5), unanimously approved Recommendation 94–4 which is enclosed for your consideration. Recommendation 94–4 deals with Deficiencies in Criticality Safety at Oak Ridge Y–12 Plant.

42 U.S.C. § 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. §§ 2161–68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board will publish this recommendation in the **Federal Register.**

Sincerely,

John T. Conway,

Chairman.

[FR Doc. 94–24604 Filed 10–4–94; 8:45 am]

BILLING CODE 6820–KD–M

DEPARTMENT OF ENERGY

Office of Procurement and Assistance Management Award, Renewal, and Extension of Management and Operating Contracts

AGENCY: Department of Energy

ACTION: Notice of interim policy statement

SUMMARY: The Department of Energy today publishes an interim Acquisition Letter for public comment that sets forth new interim policies regarding the competition and extension of the Department's management and operating contracts. The policies supersede Department of Energy Acquisition Regulation Subparts 917.605 and 970.0001, pending the issuance of a rule. Supporting deviations have been authorized by the Procurement Executive.

DATES: The effective dates are set forth in the interim Acquisition Letter. Comments are due on or before November 4, 1994.

ADDRESSES: Comments may be submitted to Richard Langston, Office of Procurement and Assistance Management (HR–521.1), U.S. Department of Energy, Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Richard Langston, Office of Procurement and Assistance Management (HR–521.1), U.S. Department of Energy, Washington, D.C. 20585 (202) 586–8247.

SUPPLEMENTARY INFORMATION: The Department of Energy (Department), through its Contract Reform initiative, has concluded that the Department's policies and practices regarding the extension of its management and operating contracts need to be revamped. Existing policies favor indefinite extensions of incumbent contractors and, in practice, few competitions for management and operating contracts historically have been undertaken. Such policies and practices effectively preclude the introduction of new companies and best management practices into the Department's laboratory and weapons production complex.

This new policy establishes competition for performance-based management contracts (a new form of management and operating contract) as the norm. Exceptions to competition will be made, on a case by case basis, only in exceptional circumstances and only when authorized by the Head of the Agency. The underlying intent of the new policy is to balance the benefits of a competitive environment with the recognition that long-term contractual relationships can facilitate superior performance. Accordingly, the policy permits contract terms of up to five years with an option to extend the term for an additional five years for competitively awarded performance-based management contracts. Contracts awarded on a noncompetitive basis, however, will require justification and approval by the Head of the Agency prior to any extension.

In view of the foregoing, the Department has issued the Acquisition Letter set forth below as an interim policy, the effective dates of which are set forth below. It is essential that these interim policies and procedures be effected immediately so that the Department can initiate procurement actions for those contracts that will expire in the near term, but were not specifically addressed in the Secretary of Energy's July 5, 1994 Action Memorandum. A notice of proposed rulemaking is in the process of being developed.

The Department is seeking public comment on the Acquisition Letter in order to give the public, including those persons who are affected by the policies, an opportunity to comment on the interim Letter before it is finalized.

Issued in Washington, D.C., on September 28, 1994.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management

Acquisition Letter 94–14
September 28, 1994

Authority

This Acquisition Letter is issued by the Procurement Executive pursuant to a delegation from the Secretary and under the authority of the Department of Energy Acquisition Regulation Subpart 901.301–70.

CONTENTS

Citation	Title
FAR 17.605	Award, Renewal, and Extension.
DEAR 917.605	Award, Renewal, and Extension.
DEAR 970.0001.	Renewal of management and operating contracts.

I. Purpose

The Department of Energy Contract Reform Team Report concluded that the Department's policies and practices regarding the extension of its management and operating contracts needed to be revamped. The Contract Reform Team found that existing

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policies favored indefinite extensions of incumbent contractors and that in practice, few competitions for management and operating contracts were undertaken.

Such policies and practices effectively precluded the introduction of new companies and best management practices into the Department's laboratory and weapons production complex. The Report also recognized the need to balance the benefits of a competitive environment with the recognition that long contract terms of up to 10 years can facilitate superior performance.

The purpose of this Acquisition Letter is to establish an interim policy that favors competition, yet preserves the benefits of long-term contract relationships. Under this new policy, competition will be the norm. Exceptions to competition will be made only in exceptional circumstances and only when authorized by the Head of the Agency.

II. Background

Subpart 17.6 of the Federal Acquisition Regulation prescribes policies and procedures for award, renewal, and extension of management and operating contracts.

III. Guidance

This Acquisition Letter is issued to revise and consolidate the policy and procedures regarding competing or extending performance-based management contracts, a new form of management and operating contract. The attached interim procedures supersede all previous guidance regarding extend or compete decisions. They will be used until the rulemaking process is completed. A class deviation from Department of Energy Acquisition Regulation 917.605 and 970.0001 has been authorized to implement the attached procedures. In addition, a class deviation to subsection 17.605(b) of the Federal Acquisition Regulation has been authorized to permit a revision to the timing of the Agency Head authorization for the renewal and extension of performance-based management contracts at the five-year point in the performance period under certain circumstances specified in this Acquisition Letter.

By Action Memorandum dated July 5, 1994, the Secretary of Energy has made determinations regarding certain management and operating contracts which will expire in the near term. The Secretary's determination mandates that certain contracts be competed and that others be extended to facilitate either competition or the immediate negotiation of key elements of contract reform into the existing contracts. Contracts awarded or extended pursuant to that determination are subject to this Acquisition Letter; however, no further action is required relating to the extension of those contracts until the time of the next extend or compete decision. Furthermore, contracts extended pursuant to the Secretary's determination shall not include an option to extend the contract for an additional five years.

The term "performance-based management contract" denotes the new form of management and operating contract that will be used by the Department of Energy for the operation of its Government-owned, or controlled, laboratories and weapons production facilities. Its use reflects the Department's policy and intent to convert traditional management and operating contracts to the new form of contract called for in the Contract Reform Team Report.

IV. Effective Date

This Acquisition Letter is effective upon the date of issue shown above.

V. Expiration Date

The Department is seeking public comment on these policies. The Acquisition Letter will remain in effect on an interim basis until the Department takes further action after reviewing any public comments on these policies.

Award, Renewal and Extension of Management and Operating Contracts

I. Policy

(a) It is the policy of the Department of Energy to use full and open competition in the award of performance-based management contracts, except in exceptional circumstances where it is determined that the use of competitive procedures is incompatible with the effective and efficient discharge of Departmental programs or is otherwise incompatible with the paramount interest of the United States, and the Head of the Agency authorizes the use of noncompetitive procedures to extend the term of an existing contract. Such authorizations shall be supported by a written justification which shall be certified by the Head of the Contracting Activity and the cognizant Assistant Secretary(s).

(b) Performance-based management contracts shall normally be competed at inception and upon expiration of their contract term as set forth below.

II. Contract Term and Options to Extend

(a) Effective work performance under performance-based management contracts is facilitated by the use of relatively long contract terms of up to 10 years. Accordingly, competitively awarded performance-based management contracts shall provide for a basic contract term not to exceed 5 years and may include an option to extend the term for a period not to exceed 5 years.

(b) Contracts awarded prior to the effective date of this Acquisition Letter using competitive procedures may be modified to incorporate an option to extend the term of the contract for a period not to exceed 5 years where:

(1) the total period of performance, including the continuation, will not exceed 10 years;

(2) the contractor's past performance under the contract has been determined to be of high quality; and

(3) the contractor has also agreed to a contract modification necessary to implement other performance-based management contract provisions.

(c) *Exercise of Options.* As part of the review required by FAR 17.605(b), the contracting officer shall assess whether competing the contract will produce a more advantageous offer than the option. The incumbent contractor's past performance under the contract, the extent to which performance-based management contract provisions are present, or can be negotiated into, the contract, and the impact of a change in a contractor on the Department's discharge of its programs are considerations that shall be addressed in the contracting officer's decision that the exercise of the option is in the Government's best interest. The contracting officer's decision shall be approved by the Head of the Contracting Activity and the cognizant Assistant Secretary(s). In instances where a contract has been modified, pursuant to paragraph (b) above, to incorporate an option to extend, a justification for other than full and open competition shall be prepared and approved in accordance with FAR Part 6 and DOE Order 4200.1C prior to the exercise of the option.

III. Procedures for Noncompetitive Extension

Exceptional circumstances, as defined in I.(a) above, may exist that warrant the noncompetitive extension of a performance-based management contract beyond the basic and option periods. In such cases, a performance-based management contract may be extended for an additional period not to exceed 5 years when authorized by the Head of the Agency. Requests for extension shall be subject to the following procedures:

(a) The Head of the Contracting Activity shall publicize the intent to recommend a contract extension in the Federal Register and invite comment thereon.

(b) A recommendation to extend a performance-based management contract (other than through the exercise of an option to extend) may be submitted to the Head of the Agency through the Deputy Assistant Secretary for Procurement and Assistance Management at any time, but no later than 24 months prior to the expiration of the contract term. The recommendation shall be supported by:

(1) a justification for other than full and open competition prepared in accordance with FAR Part 6 and DOE Order 4200.1C, including a certification by the Head of Contracting Activity and cognizant program Assistant Secretary(s) that the use of full and open competition is incompatible with the effective and efficient discharge of Departmental programs or otherwise incompatible with the paramount interest of the United States;

(2) a detailed description of the incumbent's performance history in areas such as program accomplishment, safety, health, environment, energy conservation, financial and business management and socio-economic programs, including measurable results against established performance measures and criteria;

(3) an identification of significant projects or other objectives planned for assignment under the contract if extended;

(4) an outline of principal issues and/or significant changes to be negotiated in the terms and conditions of the extended contract;

(5) in the case of a Federally Funded Research and Development Center, a review of the use and continued need for FFRDC designation in accordance with FAR 35.017–4;

(6) a determination that the performance-based management contract remains the appropriate form of contract; and

(7) any other information pertinent to the decision.

(c) *Conditional Authorization.* Authorization to extend by the Head of the Agency shall be considered conditional upon the successful negotiation of the contract to be extended in accordance with the Department's negotiation objectives. The Head of the Contracting Activity shall advise the approving authority no later than 6 months after receipt of the conditional authorization as to whether the Department's objectives will be met and, if not, the contracting activity's plans for competing the requirement.

(d) Justification. FAR 6.302 identifies statutory authorities for the use of other than full and open competition. These authorities are permissive. Nothing in this Acquisition Letter is intended to impair the availability of these authorities for performance-based management contracts. However, it is intended that they be applied only when the use of competitive procedures is incompatible with the effective and efficient discharge of Departmental programs or is otherwise incompatible with the paramount interest of the United States .

IV. Renewal of the Performance-based Management Contract Form

All performance-based management contracts shall be periodically reviewed to determine whether the performance-based management contract form remains the most appropriate contract form. In the case of competitively awarded contracts, the request to authorize the continued use of the performance-based management contract shall be submitted at least 6 months prior to the anticipated release date of the solicitation. The Head of the Contracting Activity shall submit a request to authorize the continued use of the performance-based management form of contract to the Head of the Agency through the cognizant Assistant Secretary(s) and the Deputy Assistant Secretary for Procurement and Assistance Management.

For contracts that will be extended using noncompetitive procedures, the request to authorize the continued use of the performance-based management contract shall be submitted as part of the extension recommendation required by III.(b)(6).

[FR Doc. 94–24649 Filed 10–4–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. TM95–1–63–001]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 29, 1994.

Take notice that on September 23, 1994, Carnegie Natural Gas Company (Carnegie) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet:

Substitute Sixth Revised Sheet No. 7

Carnegie states that the purpose of this filing is to correct an error on Sixth Revised Sheet No. 7. That Sheet stated an incorrect Transportation Cost Rate.

The proposed effective date of the tariff sheet listed above is October 1, 1994.

Carnegie states that copies of the filing were served on Carnegie's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of practice and procedure. All such protests should be filed on or before October 6, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24548 Filed 10–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–406–000]

Carnegie Natural Gas Co.; Proposed Change in FERC Gas Tariff

September 29, 1994.

Take notice that on September 26, 1994, Carnegie Natural Gas Company (Carnegie) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets:

Seventh Revised Sheet No. 7
Eighth Revised Sheet No. 7

The proposed effective date of Seventh Revised Sheet No. 7 is September 1, 1994 and the proposed effective date of Eighth Revised Sheet No. 7 is October 1, 1994.

Carnegie states that it is filing the above tariff sheets pursuant to Section 32.2(c) of the General Terms and Conditions of its FERC-approved tariff as a Periodic Transportation Cost Rate (TCR) Filing to reflect a reduction in the calculated projection of the costs of unassigned upstream pipeline capacity held by Carnegie on Texas Eastern Transmission Corporation (Texas Eastern) in excess of $0.10/Dth.

Carnegie states that this filing reflects a revision to the projection Carnegie made in its Mid-Cycle TCR Filing, which was filed on March 31, 1994 and accepted by the Commission on April

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29, 1994. The filing reflects a reduction in the Transportation Cost Rate from $1.6537 to $1.1109. Carnegie further states that the sole reason for the different effective dates and the two tariff sheets is because of the change in Carnegie's ACA rate from $0.0025 to $0.0023 on October 1, 1994.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions and requests whatever waivers are required to implement the rate reduction effective September 16, 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 6, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24549 Filed 10-4-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-160-022]

Columbia Gulf Transmission Co.; Fund Report

September 29, 1994.

Take notice that on September 2, 1994, Columbia Gulf Transmission Company (Columbia Gulf) filed with the Federal Energy Regulatory Commission a report summarizing refunds disbursed on July 29, 1994, to the cities of Charlottesville and Richmond, Virginia (the Cities).

Columbia Gulf states that these refunds covered the period December 1, 1991, through May 31, 1994, in the total amount of $147,566.48, including $12,116.97 in interest.

On November 9, 1992, Columbia Gas Transmission Corporation and Columbia Gulf submitted to the Commission a joint offer of settlement in the above referenced dockets (Settlement). On April 2, 1993, the Commission issued an order approving the Settlement. On September 29, 1993, the Commission issued an order on rehearing approving the Settlement for all consenting parties and severing certain non-consenting parties (the Cities) from the Settlement. On October 13, 1993, Columbia Gulf notified the Commission that it accepted the Settlement and filed rates to be applicable to settling parties with a proposed effective date of October 1, 1993. Columbia Gulf further states that refunds were made to consenting parties on October 25, 1993, and a refund report concerning such refunds was filed on November 24, 1993.

On May 5, 1994, the Cities filed a motion for confirmation of status as supporting parties to the Settlement. The Cities' motion was unopposed and was granted by the Commission order issued on June 22, 1994. This refund report addresses the refunds made to the Cities as supporting parties.

Columbia Gulf states that it computed the refunds to the Cities in accordance with the terms of Article I, Section E of the Settlement. The principal refund represents the difference between the amounts computed under settlement rates and the rates actually charged those customers for gas service during the refund period. Included in each refund amount is interest through July 28, 1994, computed in accordance with Section 154.67(c)(2) of the Commission's Regulations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before October 6, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24550 Filed 10-4-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-212-013]

Stingray Pipeline Co.; Filing of Report of Refund

September 29, 1994.

Take notice that on June 15, 1994, Stingray Pipeline Company (Stingray), filed in Docket No. RP91-212, its Report of Distribution of Refunds for the period December 1, 1993 through March 31, 1994. Stingray states that it refunded $1,410,044.40 to its jurisdictional customers on May 17, 1994. Stingray further states that the refund is in compliance with the provisions of Article V of the Stipulation and Agreement approved by Commission Order issued February 16, 1994 in Docket No. RP91-212-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the § 385.211 of the Commission's Rules of Practice and Procedures. All such protests should be filed on or before October 7, 1994. Protests will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24551 Filed 10-4-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM95-1-80-000]

Tarpon Transmission Co.; Change in Annual Charge Adjustment

September 29, 1994.

Take notice that on September 27, 1994, Tarpon Transmission Company (Tarpon) tendered for filing and acceptance the following tariff sheets to be a part of its FERC Gas Tariff, Original Volume No. 1:

Twelfth Revised Sheet No. 2A
Second Revised Sheet No. 2E
Fifth Revised Sheet No. 86A
Seventh Revised Sheet No. 96A

Tarpon states that the purpose of said filing is to revise its Annual Charge Adjustment surcharge in order to recover the Commission's annual charges for the 1994 fiscal year. Tarpon has requested that the Commission waive the 30 day notice requirement of Section 154.51 of the Commission's regulations and accept the tariff sheets to become effective on October 1, 1994. In the alternative, Tarpon requests an effective date of November 1, 1994 and has submitted alternate tariff sheets which reflect this later effective date.

Tarpon states that copies of the filing have been mailed to all jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 6, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person desiring to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24552 Filed 10-4-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-68-040, RP87-7-012, RP89-122-000 RP89-163-000, IN89-1-000 and IN89-1-001]

Transcontinental Gas Pipe Line Corp.; Filing of Report of Refund

September 29, 1994.

Take notice that on July 29, 1994, Transcontinental Gas Pipe Line Corporation (TGPL), filed its Report of Refunds in the above referenced dockets.

TGPL states that the refund is in compliance with the provisions of Paragraph D of Article IV of the Stipulation and Consent Agreement approved by Commission Order issued May 29, 1991 in the referenced proceedings. TGPL states that it refunded $11,200,822.31, including interest, to its historical sales customers in 36 monthly payments beginning August 1, 1991, and ending July 1, 1994.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before October 6, 1994. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24553 Filed 10-4-94; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2607-001 North Carolina]

Duke Power Co.; Availability of Draft Environmental Assessment

September 29, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a subsequent license for the existing Spencer Mountain Hydroelectric Project, located on the South Fork Catawba River in Gaston County, North Carolina, near the city of Gastonia, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the existing and potential future environmental effects of the project and concludes that approval of the project would not be a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426. All comments should clearly show the following caption on the first page: SPENCER MOUNTAIN HYDROELECTRIC PROJECT, FERC NO. 2607.001. For further information, contact Kim A. Nguyen, Environmental Coordinator, at (202) 219-2841.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24546 Filed 10-4-94; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Project No. 5984-000-NY]

Niagara Mohawk Power Corp.; Availability of Draft Environmental Assessment

September 29, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the Oswego Falls, located in Oswego, County, New York, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426. Please affix "Oswego Falls Project No. 5984-000" to all comments. For further information, please contact Edward Meyer (202) 208-7998.

Lois D. Cashell,

Secretary.

[FR Doc. 94-24547 Filed 10-4-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PL94-4-000]

Pricing Policy For New and Existing Facilities Constructed By Interstate Natural Gas Pipelines; Date and Procedures for Public Conference

September 29, 1994.

Take notice that a public conference in this proceeding will be held on November 4, 1994, in the Commission Meeting Room, 825 North Capitol Street, N.E., Washington D.C., 20426. The conference is to consider the methodologies to be used in setting rates for transportation service with regard to new and existing facilities constructed by interstate natural gas pipelines. The conference also is to examine whether revisions need to be made to the Commission's certificate procedures related to new construction, such as its at-risk construction policies, to provide greater guidance on rate design and construction approvals for individual projects. On July 28, 1994, the Commission issued a notice raising issues to be considered at the conference.[1] The Commission also invited comments on these issues to be filed by September 26, 1994, and

[1] 59 FR 39553 (Aug. 3, 1994).

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numerous comments have been received.

Members of the Commission intend to participate in the public conference and will reserve time for questions and answers. Any person who wishes to make a formal presentation to the Commission should submit a request to the Secretary of the Commission no later than October 14, 1994. Each request should include the time anticipated for the presentation and any special equipment requirements. Every effort will be made to accommodate requests to make presentations, but, depending on the number of requests received, the Commission may have to limit participation. To provide a more productive conference, the Commission encourages those with similar views to coordinate their efforts and choose one spokesperson to make a statement on behalf of the group. After reviewing the presentation requests, a subsequent notice of the conference presentation schedule will be issued.

The Commission will provide for remote viewing of the conference in Hearing Room 1, 810 First Street, NE, Washington, D.C. In addition, if sufficient interest is shown, The Capitol Connection may broadcast the conference in the Washington, D.C. metropolitan area or nationally. Those interested in the local or national television broadcast should call The Capitol Connection at (703) 993–3100 no later than October 17, 1994. Requests from viewers outside of Washington, D.C., should be directed to Julia Morelli or Shirley Al-Jarani.

After the conference, participants and others may file written comments by December 5, 1994. An original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, and should refer to Docket No. PL94–4–000. All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 941 North Capitol Street, NE, Washington, D.C. 20426, during regular business hours.

All questions concerning the format of the conference should be directed to:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, Room 4120–B, 825 North Capitol Street, N.E., Washington, DC 20426, (202) 208–2294.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24554 Filed 10–4–94; 8:45 am]

BILLING CODE 6717–01–M

Proposed Finding of No Significant Impact; Proposed Tokamak Physics Experiment, Princeton Plasma Physics Laboratory

AGENCY: U.S. Department of Energy.

ACTION: Proposed finding of no significant impact.

SUMMARY: The Department of Energy (DOE) has prepared this Proposed Finding of No Significant Impact (FONSI) on its proposal to construct and operate the proposed Tokamak Physics Experiment. This proposed finding is based on the DOE Tokamak Fusion Test Reactor Decontamination and Decommissioning Project and Tokamak Physics Experiment (TPX) Environmental Assessment (EA), DOE/EA–0813, August 1994, which evaluates the environmental effects of using the existing Tokamak Fusion Test Reactor (TFTR) systems and accessory facilities in the proposed construction and operation of the TPX. The purpose of the TPX is to develop fusion energy to compensate for dwindling supplies of fossil fuels and the eventual depletion of fissionable uranium used in present-day nuclear reactors. Proceeding with the TPX is contingent on use of existing TFTR systems and appurtenant facilities. Decontamination and decommissioning of the TFTR is an integral part of the scope of the proposed TPX; therefore both projects are evaluated in this EA.

Based on the analyses in the EA, the DOE believes that the proposed action is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 et seq. Therefore, the DOE is issuing a Proposed FONSI pursuant to the Council on Environmental Quality regulations implementing NEPA (40 CFR Parts 1500–1508) and the DOE NEPA implementing regulations (10 CFR Part 1021). DOE will consider comments received in making a final determination on whether to issue a FONSI or to prepare an environmental impact statement.

DATES: Comments on the proposed FONSI should be postmarked November 4, 1994, to ensure consideration. Comments postmarked after that date will be considered to the extent practicable.

ADDRESSES: Written comments on the proposed FONSI and requests for copies of the TPX EA should be directed to: Dr. W.S. White, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, Illinois 60439, (708) 252–2101.

FOR FURTHER INFORMATION CONTACT: Requests for further information on the proposed project should be sent to: Milton D. Johnson, Manager, Princeton Area Office, U.S. Department of Energy, P.O. Box 102, Princeton, New Jersey 08542, (609) 243–3700.

For general information on the DOE NEPA review process, contact: Carol M. Borgstrom, U.S. Department of Energy, Office of NEPA Oversight (EH–25), 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Proposed Action

The proposed action is to use the existing TFTR systems and accessory facilities in the construction and operation of TPX, which would be primarily located inside the existing TFTR Test Cell. The TPX would require dismantlement and removal of all TFTR activated systems within the TFTR Test Cell Complex. Dismantlement and removal of nonradioactive and low activation components in areas such as the Test Cell Basement and the Hot Cell, would start immediately after the conclusion of the TFTR deuterium-tritium experiment, which is expected to conclude in Fiscal Year 1995. Cool-down of the Tokamak in the test cell will commence at that time.

The TPX is being proposed as a national facility for fusion energy research to be built at the Princeton Plasma Physics Laboratory (PPPL). Its primary mission is to develop the scientific basis for an economical, more compact, and continuously operating Tokamak in support of the design of an attractive demonstration fusion power plant.

Waste from decontamination and decommissioning would include stainless steel and aluminum structures, piping, copper coils, graphite tiles, solidified radioactive liquids, anti-contamination materials, and concrete rubble. Waste would be packaged into Department of Transportation (DOT) approved containers and transported to the DOE Hanford site in Richland, Washington, as are current PPPL wastes. Approximately 950 m^3 (33,500 ft^3) of waste weighing approximately 2270 metric tonnes (2500 tons) would also be disposed. Construction of a radioactive waste storage building for temporary storage of radioactive waste and final preparation of some radioactive waste shipments would be required. This facility would be approximately 560 m^2 (6000 ft^2) in size, and would be constructed within the existing TFTR facility fence. A second storm water detention basin similar to and west of the existing detention basin would also be constructed.

Decontamination and decommissioning of the TFTR Test Cell could be completed in approximately 1.5 years, after a 2-year cool-down period. TPX construction would minimally overlap decontamination and decommissioning of TFTR facilities. The TFTR Test Cell Complex would then be available for the TPX approximately 3.5 years after termination of TFTR deuterium-tritium experiments. The total cost for the decontamination and decommissioning of the TFTR is estimated to be $86 million.

The construction and operation of the TPX would take place within the existing TFTR facility at Princeton Plasma Physics Laboratory (PPPL), with construction scheduled to begin in early FY–1998. The TPX conceptual design is based on the use of deuterium fuel, but does not preclude the potential upgrade and use of tritium fuel in the final year of operation. Existing TFTR facilities would be adapted and used by the TPX, including TFTR Test Cell Complex; ventilation exhaust vent and intake shafts; mockup building; tritium cleanup/waste handling area; field coil power conversion building; neutral beam power conversion building; radioactive waste systems space; office and technical support space; and miscellaneous PPPL support facilities. In addition to providing space for the TPX, the TFTR Test Cell Complex would provide shielding (via concrete walls, roof, and floor), and provide for confinement and handling of tritium-contaminated and/or radioactive components.

The cost for construction of the TPX is estimated at $500M (FY–93), with the construction period 1997 to 2000. New facilities to be constructed include TFTR Test Cell building modifications, a new Cryogenic Equipment building, tank yards for water cooling and cryogenic tanks, and a new electrical substation. The Test Cell building modifications would be internal and would not increase the existing external dimensions of the building. The Cryogenic Equipment building would be constructed as a standard industrial single-story building, totaling about 1000 m^2 (10,800 ft^2) in area. The tank yard construction would include approximately 2,130 m^2 (22,950 ft^2) of new tank yard areas for new gaseous helium tanks, liquid nitrogen storage tanks, water storage tanks, and truck-trailer access. This construction would take place on existing open space. The electrical substation construction would involve installation of a new 138 kV transmission line between the existing substation and the new substation. The new substation would be for transforming 138 kV power to 13.8 kV. A new electric power line would be constructed entirely on PPPL property.

Machine assembly would be scheduled for 1998, with the first operations during 2000. The TPX would be fueled with hydrogen and deuterium plasmas for 10 years; radiation generation would not be significant in terms of neutron activation of components or radiological doses. In deuterium operation, the peak fusion power would not exceed 140 kW. During long pulse deuterium operation, neutrons with energies of 2.45 mega electron volts (MeV) would be the primary neutrons produced, and annual production of these neutrons would be limited to 6.0×10^{21} neutrons. A smaller number of 14.1 MeV neutrons would be produced from deuterium-tritium fusion reactions with tritium produced from the deuterium-deuterium fusion reactions. The number of 14.1 MeV neutrons produced during deuterium operations would be approximately 2% of the number of 2.45 MeV neutrons produced.

The TPX facility would be capable of operating with deuterium-tritium plasmas during the last year of TPX operation. During deuterium-tritium operation, a fully-formed deuterium plasma would be developed (requiring up to roughly 1,000 seconds), into which tritium would be injected. Once tritium has been injected, the device would operate for 2 seconds with a peak fusion power of 15 MW, after which the plasma would be terminated. During the 2 seconds of deuterium-tritium operation, both 2.45 MeV neutrons and 14.1 MeV neutrons would be produced, from deuterium-deuterium and deuterium-tritium fusion reactions, respectively. Production of 2.45 MeV neutrons during deuterium-tritium operation would be approximately 1% of the 14.1 MeV neutron production rate. Operation of the Tokamak would be controlled to limit annual neutron production so that the site boundary dose restriction adopted by the project would not be exceeded. The deuterium-tritium phase (if used) would be limited to the last year of TPX operation. Small amounts of tritium, and air activation products would be released, and minor amounts of direct radiation would result from fusion neutrons and activated structural components of TPX.

Low-level solid radioactive wastes generated during TPX operations would consist of contaminated items (e.g., protective clothing) and solidified liquid wastes (tritiated water absorbed on desiccant and solidified liquid waste from the decontamination area). The volume of waste would be similar to that generated by TFTR operations, which was appropriated 7.4 m^3 per year for deuterium-deuterium operations, and is projected to increase during deuterium-tritium operations to 28.3 m^3 per year (1000 ft^3 per year). Wastes generated during TPX operations would be packaged to comply with applicable DOE and DOT requirements and is expected to be shipped to the DOE Hanford Reservation in Washington for disposal, as are current PPPL wastes.

Alternatives

Three alternatives were considered: (1) The proposed action, use of the TFTR facilities for the proposed construction and operation of the TPX at PPPL, (2) proposed construction and operation of the TPX at the Oak Ridge Reservation in Tennessee, and (3) no action. Location of the TPX at the Oak Ridge Gaseous Diffusion Plant, near Knoxville, Tennessee, would require construction of new support facilities including a new test cell, hot cell, waste handling and storage areas, field coil power conversion building, and cryogenic facilities. The additional cost and time would jeopardize the U.S. fusion program and make the TPX project infeasible. Under the no action alternative, decontamination and decommission of TFTR facilities would occur under current management practices, but may involve a longer delay between safe shutdown activities and commencement of decontamination and decommissioning activities. The longer delay would not fit within the current schedule to meet the construction of the TPX. This delay may in turn be followed by a 2–3 year period of delay, during which the TFTR facility would be in a state of protective custody. The TPX would not proceed under the no action alternative.

Environmental Impacts

The Environmental Assessment analyzed the impacts of the TFTR decontamination and decomissioning and TPX construction and operation on the environment and on the health and safety of workers and the public. Both routine operations and off-normal or accident scenarios were assessed. The

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Environmental Assessment considered impacts to air quality, noise, water quality and quantity, aquatic and terrestrial ecology, threatened and endangered species, the visual environment, land use, historical and archaeological resources, socioeconomic environment, radiological conditions, and impacts of potential accidents. No significant environmental impacts associated with the proposed action are anticipated.

Activities associated with decontamination and decommissioning of the TFTR would not present any long-term or adverse nonradiological impacts to the public or the environment. It would result in minor impacts, consisting primarily of commitment of a small area of onsite land for the radioactive waste storage building and the second storm water detention basin. Construction of the radioactive waste storage building and storm water detention basin may result in a temporary small increase of effluent to Bee Brook, but would not exceed PPPL New Jersey Pollutant Discharge Elimination System permit or other State or federal regulatory requirements.

Potential radiological impacts of TFTR decontamination and decommissioning would not represent potential impacts greater than those from current PPPL operations, which have had no significant consequences. Decontamination and decommissioning activities would result in a dose of less than the adopted design objective of 10 mrem per year to any member of the public from all project sources. It would result in minor releases of activated metal and tritium to the atmosphere and sewer system. The maximum calculated individual public dose would be 2.3 mrem per year, and the increased probability of incremental lifetime cancer risk associated with exposure from this dose would be 1.1 chances in 1,000,000. This very low calculated effect means insignificant risk to the public. Occupational doses would not exceed the PPPL administrative limit of 1 rem per year, which is less than the DOE limit of 5 rem per year.

Operational occurrences during decontamination and decommissioning that could result in the accidental release of tritium, activated gases, or solids consist primarily of component failures and human error, and any releases would be limited by inventories within the components. The largest calculated dose to the public from decontamination and decommissioning accident scenarios, including beyond design basis accidents, is 390 mrem to a maximally exposed member of the public. The increased probability of incremental lifetime cancer risk associated with exposure from this dose would be 195 chances in 1,000,000.

The TPX would not present long-term or adverse nonradiological impacts to the public or the environment at the PPPL site. Other TPX nonradiological impacts would be temporary, except for the commitment of a small parcel of land for construction of new TPX facilities. Construction impacts due to test cell modifications and construction of the cryogenic equipment building, tank yards, and electric substation would be minor. All construction would be built on land already committed to DOE operations. This construction would all be within the current land use restrictions governing PPPL site agreements with the DOE. For a construction project of this scope, the potential exists for 2.5 lost workday cases (work related injuries that require time-off from work) over the construction period. Also there would be a 10% increase in the current amount of site traffic, which would increase the potential for on-site vehicular accidents slightly.

Radiological impacts from the TPX would not exceed current impacts from PPPL operations, which has not been shown to cause incremental lifetime cancer risk associated with exposure. Potential environmental, safety, and health radiological impacts were evaluated for both deuterium and possible future tritium operations. Atmospheric releases of tritium and activation products constitute the potential sources of radiological exposure to members of the public. Maximum projected atmospheric releases would result in annual effective dose equivalents of 1.2 mrem and 4.6 mrem to a hypothetical maximally-exposed individual at the site boundary during deuterium and tritium operations, respectively, with a maximum increased probability of incremental lifetime cancer risk associated with exposure of 2.3 chances in 1,000,000. These conservatively-calculated dose equivalents are less than the most restrictive limit for public doses caused by airborne releases (the EPA limit of 10 mrem per year). Direct radiation from the TPX would be mitigated with shielding to keep the total effective dose equivalent from all sources at the site boundary within the project design objective of less than or equal to 10 mrem per year. This design objective effective dose equivalent is well below the DOE limit of 100 mrem per year to members of the public from routine DOE operations.

Normal TPX deuterium-tritium operations would result in total estimated collective effective dose equivalents of 7.5 person-rem per year and 24 person-rem per year to the projected population within the 80 km (50 mi) radius area surrounding PPPL during deuterium and tritium operations, respectively. These doses amount to an average effective dose equivalent of less than 0.002 mrem per year to each individual in the assessment area and would result in less than 1 health effect in the exposed population. On the basis of the collective effective dose equivalent, incremental lifetime cancer risk associated with exposure attributable to TPX operations are not expected to occur. A collective effective dose equivalent of 24 person-rem per year represents approximately .002% of the collective effective dose equivalent from natural background radiation in the area (exclusive of radon). Occupational doses to workers during TPX operations would result from direct radiation and small releases of tritium and activated gases. Operational procedures, administrative controls and monitoring would ensure that occupational doses are kept below regulatory limits and as low as reasonably achievable.

Accidental releases of radioactive material could hypothetically result from (a) Natural phenomena (e.g., earthquakes), (b) accidents with external origin (e.g., airplane crashes), (c) shipping accidents (i.e., accidents involving the transportation of radioactive material), and (d) operational occurrences (e.g., tritium leaks). All TPX confinement boundaries would be capable of maintaining integrity for design basis natural phenomenon, and therefore a release due to a natural phenomena event is extremely unlikely.

Accidents with external origins and transportation accidents involving small quantities of radioactive material would present little risk to the public and the environment. Transportation accidents involving larger quantities of radioactive material, form example tritium, could occur; however, the accidental release of significant quantities of radionuclides has a very low probability because of the demonstrated integrity of the approved containers that would be used.

TPX operational occurrences that could result in the accidental release of tritium, activated gases, or solids consist primarily of component failures and human error. Releases associated with these occurrences would be limited by component inventories. The maximum calculated individual dose from accident scenarios is 390 mrem, which is well below the DOE siting guideline

limit of 25 rem. Incremental lifetime cancer risk associated with exposure resulting from the collective doses would represent a negligible increase in the total number of such health effects in the exposed population from all natural background radiation doses. The largest potential radiological impacts to the public from TPX accidents, including beyond design basis accidents, are below regulatory limits.

After TPX operation has ended, a proper NEPA review would be conducted for the decontamination and decommissioning of the facility. It is expected that the waste material resulting from decontamination and decommissioning activities would qualify as low-level radioactive waste and would be disposed of at an appropriate DOE waste disposal facility.

TFTR operations would be discontinued prior to TFTR decontamination and decommissioning. Cumulative effects would be minor and would represent a continuation of, rather than a change in, any impacts (negative and positive) associated with TFTR operations. Commitment of 560 m^2 (6,000 ft^2) of land for the construction of the radioactive waste storage building and 1,300 m^2 (14,000 ft^2) for construction of a second storm water detention basin would represent a long-term commitment of land use. Environmental releases of small amounts of residual tritium during decontamination and decommissioning would not add measurably to current low levels.

No adverse long-term environmental effects are expected from normal operations of the TPX. Tritium releases during normal operations would not constitute a measurable contribution to background radiation levels, because of the small amount of tritium to be released, its relatively short half-life (12.3 years), and rapid dispersion in the environment. There are currently no measurable cumulative impacts occurring between PPPL and other facilities in the region, and none would be expected for the proposed TPX. Releases of radionuclides to the atmosphere by commercial operations (such as hospitals and research laboratories) near PPPL are not detectable in environmental samples collected around PPPL; analyses show no radionuclide concentrations above background levels.

Invitation To Comment

DOE invites the public, including states which host DOE facilities and any Indian tribe that might be affected by the proposed action, to comment on this proposed FONSI. Please direct any comments to Dr. W.S. White at the address presented in the previous section.

In accordance with 40 CFR 1501.4(a)(2)(i) and 10 CFR 1021.322(d), DOE is making this proposed FONSI available for public review for 30 days. Copies of the EA are available upon request at the address given below. DOE will also make public comments received on this proposed FONSI available to the public. The EA and other material pertaining to this proposal are available for public review at the DOE public reading rooms listed below.

New Jersey, Princeton Plasma Physics Laboratory Library, James Forrestal Campus, Route 1, Princeton, New Jersey 08542, (609) 243–3565.

District of Columbia, U.S. Department of Energy, Freedom of Information Reading Room, Forrestal Building, Room 1E–90, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6020.

For information on the availability of specific documents and hours of operation, please contact reading rooms at the telephone numbers provided.

Proposed Determination

Based on the analyses in the Environmental Assessment, the DOE believes that the proposed action at the PPPL is not a major Federal action significantly affecting the quality of the human environment within the meaning of the NEPA, and that an environmental impact statement is not required. DOE will make its final determination on whether to issue a FONSI or prepare an environmental impact statement after the 30-day public review period.

Issued in Argonne, Illinois, this 21st day of September, 1994.

John P. Kennedy,

Assistant Manager for Safety and Technical Support, Chicago Operations Office.

[FR Doc. 94–24580 Filed 10–4–94; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed the Week of June 17 Through June 24, 1994

During the Week of June 17 through June 24, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: September 27, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 17 Through June 24, 1994]

Date	Name and location of applicant	Case No.	Type of submission
June 22, 1994	Texaco/South Side Texaco, Albany, GA	RR321–159	Appeal of an Information Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The September 26, 1991 Dismissal Letter (Case No. RF321–2053) issued to South Side Texaco regarding the firm's Application for refund submitted in the Texaco refund proceeding would be modified.
June 23, 1994	Lee Hy Paving Corporation, Los Angeles, CA	RR272–137	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The May 23, 1991 Dismissal Letter (Case No. RF272–64964) issued to Lee Hy Paving Corporation regarding the firm's application for refund submitted in the Crude Oil Refund proceeding would be modified.

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LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of June 17 Through June 24, 1994]

Date	Name and location of applicant	Case No.	Type of submission
June 23, 1994	The Timken Company, Los Angeles, CA	RR272–136	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The November 7, 1990 Dismissal Letter (Case No. RF272–497) issued to The Timken Company regarding the firm's application for refund submitted in the Crude Oil Refund proceeding would be modified.
June 24, 1994	Farmco, Inc., Tribune, KS	LEE–0125	Exception to the Reporting Requirements. If granted: Farmco, Inc. would not be required to file Form EIA–782B, "Resellers/Retailers Monthly Petroleum Produce Sales Report."
June 24, 1994	Linda J. Carlisle, Gulfport, MS	LFA–0394	Appeal of an Information Request Denial. If granted: The May 27, 1994 Freedom of Information Request Denial issued by the Office of Utility Systems Division would be rescinded, and Linda J. Carlisle would receive access to the information concerning the DOE RAPIP Program on Electric and Magnetic Fields.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/Name of refund applicant	Case No.
June 17 thru 24, 1994	Crude Oil Refund	RF272–97059 thru RF972–97229.
June 20, 1994	Aloha Airlines, Inc	RF344–16.
Do.	Hilltop Texaco	RF321–21007.
Do.	Sater's Texaco	RF321–21008.

[FR Doc. 94–24581 Filed 10–4–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders the Week of June 20 through June 24, 1994

Office of Hearings and Appeals

During the Week of June 20 through June 24, 1994 the decisions and orders summarized below were issued with respect to applications for refund or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Ivan J. Broussard, 6/21/94, LFA–0383

Ivan J. Broussard filed an Appeal from a determination issued to him by the Privacy Act Officer of the Idaho Operations Office (Idaho) of the Department of Energy (DOE) in response to a request Mr. Broussard had submitted under the Privacy Act. In that determination, Idaho released to Mr. Broussard his entire Personnel File and portions of his Personnel Security File. Idaho withheld under Section 552a(k)(2) of the Privacy Act portions of Broussard's Personnel Security File which Idaho termed "confidential source information." In considering the Appeal, the DOE found that Idaho had not adequately justified the application of Exemption (k)(2) to the information withheld from Mr. Broussard. Therefore, the DOE remanded the matter to Idaho with instructions to explain why Exemption (k)(2) applies to the facts of this case, and/or consider, and adequately justify if necessary the application of other exemptions to the facts at issue.

KECI Corporation, 6/20/94, LFA–0382

Keci Corporation filed an Appeal from a denial by the Richland Operations Office (DOE/RL) of its request for documents concerning a whistleblower complaint that had been filed by a Kaiser Engineers Hanford contractor employee, Mr. George Lengas. DOE rejected Appellant's claim that Exemption 6 could never protect the requested information from disclosure, but remanded the Appeal to DOE/RL because the determination failed to describe the withheld documents or to state with particularity the justification for withholding such documents. On remand DOE/RL will either release the requested documents or issue a new determination which contains a descriptive index and specific justification for withholding the requested documents.

Williams & Trine, P.C., 6/24/94, LFA–0884

Williams & Trine, P.C. filed an Appeal from a determination issued to the law firm on April 22, 1994, by the Manager/FOI Authorizing Official of the Rocky Flats Office of the Department of Energy (DOE). In that determination, the Manager stated that the DOE did not find any documents responsive to the appellant's information request under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE confirmed that the Manager followed procedures which were reasonably calculated to uncover the requested information. Accordingly, the DOE denied the law firm's request.

Request for Exception

Pledger Oil Co., Inc., 6/24/94, LEE–0080

Pledger Oil Co., Inc. (Pledger) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering Pledger's request, the DOE found that the firm was not experiencing a gross inequity or serious hardship. On April 8, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed at the Office of Hearings and Appeals of the DOE within the prescribed time period. Therefore, the DOE issued the Proposed Decision and Order in final form, denying Pledger's Application for Exception.

Refund Applications

Donco Carriers, Inc., 6/20/94, RR272–130

Bassman, Mitchell & Alfano, Chartered, filed a Motion for Reconsideration on behalf of Donco Carriers, Inc. (Donco) and McMickle & Edwards in the Subpart V crude oil refund proceeding. The Motion requested a modification of the estimation technique used in the Supplemental Order issued on April 5, 1994, which partially rescinded the original refund granted to Donco on November 30, 1993. Bassman argued that Donco based its gallonage claim on its dollar purchases according to Interstate Commerce Commission (ICC) reports which exclude taxes. Therefore, Bassman argues that the price per gallon figures used to convert the dollar purchases to gallon should also exclude taxes. The DOE found this argument to be convincing and used tax-excluded prices when revising the estimation technique used to calculate the gallonage purchase. The applicant received an additional refund.

Good Hope Refineries/Exxon Company, USA., 6/22/94, RF339–18

The DOE issued a Decision and Order granting an Application for Refund filed in the Good Hope Refineries special refund proceeding on behalf of Exxon Company, USA, a purchaser of covered Good Hope petroleum products during the refund period. In the Decision, the DOE determined that during the consent order period (August 19, 1973 to July 31, 1976) Exxon's purchases from Good Hope were made on a spot basis. Exxon was, therefore, found ineligible for a refund based on the allocation of total Good Hope overcharges (2.0854%) calculated by ERA and listed in the Good Hope audit file. The refund period, however, extends beyond the time frame covered by the ERA audit, until July 31, 1979; and Exxon had established 32,518,051 gallons of regular Good Hope purchases made after July 1976 and before August 1979. The firm was, therefore, found eligible for a volumetric refund under the mid-level presumption of injury and its Application for Refund was granted for $50,000 plus interest.

Nashua Corporation, 6/21/94, RF272–25435, RD272–25435

The DOE issued a Decision and Order granting an Application for Refund filed by Nashua Corporation (Nashua), a manufacturer of paper coatings, in the Subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objections, the States claimed that in 1979 the pulp and paper industry experienced record sales and profits, and that in 1973 and 1974 the return on shareholders' equity increased. The States further asserted that while energy costs increased during the 1970s, the pulp and paper industry was able to reduce its petroleum costs unit through energy conservation and use of alternate energy sources. Specifically with respect to the applicants, the States claimed that Nashua's sales and net earnings increased throughout the period of crude oil price controls. In addition, the States submitted an affidavit of an economist stating that, in general, the pulp and paper industry was able to pass through increased petroleum costs. In response to the State's Objection, Nashua argued that the States inappropriately relied on generalizations about the pulp and paper industry. Moreover, Nashua stated that it is not a pulp and paper manufacturer, but is in the coated paper products business. The applicant submitted an affidavit of the President, Chief Executive Officer and Chairman of Nashua, stating that the company's products were sold in a highly competitive market, forcing Nashua to absorb increased product costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $17,680.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Randy's Service Station, *et al*	RF304–15017	06/20/94
Clark Oil & Refining Corp./Watkins Oil Company, Inc	RF342–7	06/21/94
Shefond Oil, Inc	RF342–227	
Crusader Candle Company, *et al*	RF272–91659	06/22/94
Erie Lackawanna Railway Co., *et al*	RF272–77397	06/21/94
Eureka Crude Purchasing	RF272–69878	06/23/94
Franklin County Farm Bureau, *et al*	RF272–93815	06/24/94
Gulf Oil Corporation/Blossman Gas, Inc	RF300–15827	06/23/94
Gulf Oil Corporation/Chappell's Gulf #1	RF300–14318	06/23/94
D&C Diagnostic Repairs	RF300–15671	
Gulf Oil Corporation/Dow Chemical Company	RF300–20306	06/22/94
Gulf Oil Corporation/Lock Haven Realty Co., Inc	RF300–5915	06/20/94
Candor Petroleum	RF300–5916	
McConnell Fuel Oil Co	RF300–8421	
John Eggers Fuel, Inc	RF300–21791	
Gulf Oil Corporation/Margate Auto Service Center, *et al*	RF300–20115	06/23/94
Gulf Oil Corporation/McLaren Silkworth Oil, *et al*	RRF300–18395	06/20/94
Gulf Oil Corporation/Winston C. Bresett	RR300–254	06/21/94
Kaplan & Sons Construction, *et al*	RF272–78324	06/21/94
Mead Corporation	RF272–66380	06/24/94
Mead Corporation	RF272–66380	
Texaco Inc./Abbie Lewis Texaco Service Station	RF321–11053	06/22/94
Texaco Inc./Bill Stephens Texaco, *et al*	RF321–12414	06/20/94
Texaco Inc./Brink's Inc., *et al*	RF321–4047	06/20/94
Texaco, Inc./Crest Hill Texaco	RF321–18481	06/20/94
Billy Boy Texaco	RF321–18482	
Billy Boy Texaco	RF321–18483	

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Texaco, Inc./Klein's Texaco Service Station, *et al*	RF321–19631	06/20/94
Texaco, Inc./Richard Neal Texaco	RF321–21003	06/22/94
Texaco, Inc./Santikos Texaco	RF321–10960	06/24/94
Texaco Inc./The Dahl Oil Co., Inc	RF321–7199	06/20/94
Automatic Comfort Corp	RF321–14326	
W.H. Scheel, Inc	RF321–18579	
Warren Transportation	RC272–237	06/20/94
Western Asphalt, Inc	RA272–59	

Dismissals

The following submissions were dismissed:

Name	Case No.
Bill's Gulf Station	RF300–84336
Chester A. Polling, Inc	RF272–92306
City of Bartow	RF272–84790
Consolidated Aluminum Co	RF272–91823
Eladio Saenz Texaco	RF272–95269
Evansville Community S.D	RF272–84311
Frank's Auto Repair	RR272–95283
Gulf Wholesale	RR300–153
Haas Texaco	RF321–19102
Hubert E. Glass	RF272–95286
J&W Tire Sales	RF272–95273
Jefferson Smurfit Corp	RF272–92371
John M. Eaves	LFA–0379
L.W. Flusche	RF272–95279
Lonnie M. Stewart	RF272–95274
M&A Petroleum	RF272–95270
Major Oil Company	RF321–12661
Massachusetts Hospital School.	RF272–86745
McMinn Texaco	RF321–14793
McMinn Texaco	RF321–14792
Municipality of Ft. Yukon	RF272–84336
Raymond Brockett	RF321–14292
Raymond Brockett	RF321–14291
Republic Taxi Company	RF272–55465
Silsbee Butane Company, Inc.	RF272–95278
Volvo GM Heavy Truck	RF272–92369
Wellman Oil Co	RF321–14293
Zip Car Wash	RF272–95268

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management; Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: September 27, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals

[FR Doc. 94–24586 Filed 10–4–94, 8:45 am]

BILLING CODE 6450–01–P

Issuance of Proposed Decision and Order the Week of July 4 through July 8, 1994

Office of Hearings and Appeals

During the week of July 4 through July 8, 1994, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, NW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: September 27, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Petroleum Products, Inc. Charleston, WV, Lee–0087 Reporting Requirements

Petroleum Products, Inc. filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that Petroleum Products was a certainty firm and therefore could only be granted relief if it were experiencing extreme hardship. The DOE determined that it was not. Accordingly, on July 5, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

[FR Doc. 94–24582 Filed 10–4–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders the Week of July 25 through July 29, 1994

Office of Hearings and Appeals

During the week of July 25 through July 29, 1994, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Betty M. Daley, 7/28/94, LFA–0396

Mrs. Betty M. Daley filed an Appeal of the adequacy of a search for the medical records of her husband (a deceased former Oak Ridge employee) under a Request for Information which she had submitted under the Freedom of Information Act. The late Mr. Daley had been employed at Oak Ridge National Laboratory from March 1944 until his retirement in September 1985. In considering the Appeal, the DOE found that the Oak Ridge Field Office had performed a search reasonably calculated to recover responsive materials because records were found from the period June 1947 through September 1985, even though no responsive materials were found from his initial employment in March 1944 through May 1947.

Beulah B. Carney, 7/29/94, LFA–0401

Mrs. Beulah B. Carney appealed the adequacy of the search conducted by the DOE Oak Ridge Facility for her late husband's personnel records. The Authorizing Official subsequently discovered documents proving that these personnel records were destroyed as part of routine document destruction. The OHA ordered that the documents pertaining to the destruction of the records be released to the requester and in all other respects denied the request.

Government Accountability Project, 7/29/94, LFA–0398

The Government Accountability Project (GAP) filed an Appeal from a partial denial by the Oak Ridge Operations Office (Oak Ridge) of a Request for Information which it had submitted under the Freedom of Information Act (FOIA). GAP had requested billing statements submitted by outside counsel to DOE contractors. In considering the Appeal, the DOE found that while some of the information that had initially been withheld under FOIA Exemption 4 should have been released to the public, some of the information requested by the Appellant was properly withheld under Exemption 4 since it was both privileged and confidential. Accordingly, the Appeal was remanded to Oak Ridge for further processing.

Marilyn Cribb Stanley, 7/28/94, LFA–0399

Marilyn Cribb Stanley filed an Appeal from a determination issued to her on June 20, 1994, by the Oak Ridge Operations Office (Oak Ridge) which denied a request for information which she had submitted under the Freedom of Information Act. The request sought records relating to the late Mary Avery Cribb, wife of a contractor employee at Oak Ridge Laboratory during the 1940s. Oak Ridge stated that it did not possess any responsive documents, and the Appeal challenged the adequacy of the search. In considering the Appeal, the DOE found that Oak Ridge followed procedures which were reasonably calculated to uncover the material sought. Accordingly, the Appeal was denied.

Robert Heitmann, 7/29/94, LFA–0397

Robert Heitmann filed an Appeal from a determination issued to him on June 14, 1994, by the Albuquerque Operations Office (AL) which denied a request for information which he had submitted under the Freedom of Information Act. The request sought records relating to an alleged incident at the Travis School involving an airplane crash and atomic weaponry. AL stated that it did not possess any responsive documents, and the Appeal challenged the adequacy of the search. In considering the Appeal, the DOE found that AL followed procedures which were reasonably calculated to uncover the material sought. Accordingly, the Appeal was denied.

Texas Instruments, Inc., , 7/28/94, LFA–0395

Texas Instruments, Inc. (TI) filed an Appeal from a determination issued by the Oak Ridge Operations Office (Oak Ridge) in response to TI's request under the Freedom of Information Act. In the Appeal, TI claimed that the search by Oak Ridge was inadequate. TI cited in support of its argument an incident in which a TI employee allegedly saw a stack of responsive documents that were not released.

In denying the Appeal, the DOE found that the incident did not provide a basis for believing that responsive documents had been withheld. The DOE also found that Oak Ridge had adequately searched for documents.

Whistle Blower Proceeding

Francis M. O'Laughlin, 7/29/94, LWA–0005

Francis M. O'Laughlin (O'Laughlin) filed a complaint under the DOE's Contractor Employee Protection Program, 10 C.F.R. Part 708, contending that reprisals were taken against him after he raised concerns relating to health and safety with Boeing Petroleum Services, Inc. (BPS), a DOE contractor. The alleged reprisals included wrongfully denying O'Laughlin a management position to which he ostensibly was entitled, and later taking adverse personnel action against O'Laughlin which included a demotion and corresponding salary reduction. Pursuant to O'Laughlin's request under 10 CFR 708.9(a), a hearing in this matter was conducted by an Office of Hearings and Appeals Hearing Officer on May 18 and 19, 1994, in New Orleans, Louisiana. In considering the transcript of testimony taken at the hearing and the pleadings filed on behalf of O'Laughlin and BPS, the Hearing Officer determined that O'Laughlin had failed to establish that he actually disclosed information to BPS which evidenced his good faith belief that there was a substantial and specific danger to health or safety. 10 CFR 708.5(a)(1). Accordingly, in the DOE's Initial Agency Decision, O'Laughlin's request for relief under Part 708 was denied.

Request for Exception

R&R Oil, Inc., 7/27/94, LEE–0079

R&R Oil, Inc. filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. Accordingly, exception relief was denied.

Implementation of Special Refund Procedures

Telum, Inc., 7/25/94, LEF–0114

The DOE issued a Decision and Order setting forth refund procedures to distribute $56,149.35 plus interest, received as a result of a Consent Order between Telum, Inc. and the DOE. The Decision sets forth refund application procedures for the customer who purchased middle distillates from Telum, Inc. during the period from December 1, 1973 through April 30, 1974. Specific information regarding the data to be included in the refund application is discussed in the Decision.

Refund applications

Barrick Enterprises, Inc., 7/28/94, RF272–92432

The DOE issued a Decision and Order concerning the Application for Refund of a claimant in the Subpart V crude oil overcharge refund proceeding. The DOE determined that the applicant resold the refined petroleum products that formed the basis of its application and thus passed on the costs of any crude oil overcharges to its customers. Therefore, the DOE concluded that the claimant was not injured by any of the overcharges associated with the gallons that it purchased. Accordingly, the Application for Refund was denied.

Burt County Cooperative Company, et al., 7/28/94, RF272–91445 et al.

The DOE issued a Decision and Order denying seven Applications for Refund filed by the National Bank for Cooperatives (CoBank) in the crude oil refund proceeding on behalf of seven local agricultural cooperatives no longer in operation. CoBank claimed a right to apply on behalf of these cooperatives based on security agreements entered into with each of them. These security agreements listed specific assets, accounts receivable, equipment and leaseholds as collateral with CoBank. However, none of these security agreements listed oil overcharge refunds as one of the secured items. The security agreements did list deferred patronage refunds from Farmland Industries, a regional cooperative, as a secured item, but the Decision determined that deferred patronage refunds from a regional cooperative are not oil overcharge refunds for which local cooperatives are eligible on behalf of their member/owners.

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Texaco Inc./Donley's Texaco Service Station, 7/28/94, RF321–16838, RF321–21012, RF321–21013

The DOE issued a Decision and Order concerning an Application for Refund submitted by Donley's Service Station (Donley's), an indirect purchaser of Texaco motor gasoline. Donley's requested that the refund be paid to the firm, which is a partnership currently owned by four partners. However, in accordance with prior Decisions, the DOE determined that the partners during the refund period were eligible for the Donley's refund in proportion to their ownership interest, except for those partners who had transferred their right to a refund. One of the Donley's partners both currently and during the refund period owns 75% of the shares of the corporation that supplied gasoline to Donley's. The DOE decided not to treat the two firms as a single firm for purposes of determining the applicable presumption of injury available to Donley's. However, since the supplier had received a refund for its direct purchases of Texaco gasoline, the Donley's refund for the common owner was reduced by 75% so that he would not receive two refunds for the same gallons. The total of the refunds granted to the three Donley's partners who had joined in the outlet's refund claim was $7,285 ($5,192 principal plus $2,093 interest).

Texaco Inc./Lehigh Service & Supply, 7/29/94, RF321–19561, RF321–19562, RF321–19563, RF321–19564

The DOE issued a Decision and Order concerning four Applications for Refund filed in the Texaco Inc. special refund proceeding by four partners on behalf of Lehigh Service & Supply, a reseller located in Hazleton, Pennsylvania. Two of these partners had previously received a refund for purchase made by Lehigh Gas & Oil, the firm that supplied Lehigh Service & Supply with Texaco product. The DOE determined that these two partners were ineligible for a refund for purchases made by Lehigh Service & Supply because they had already received a refund for these gallons, and accordingly, these two Applications for Refund were denied. The other two applicants received refunds in proportion to their ownership interest in Lehigh Service & Supply. The total amount of refunds granted in this Decision was $2,366 ($1,686 principal plus $680 interest).

Texaco Inc./Ryder Energy Distribution, 7/29/94,RF321–14683

The DOE issued a Decision and Order concerning an Application for Refund filed in the Texaco Inc. special refund proceeding on behalf of Ryder Energy Distribution (Ryder). Ryder is the fuel purchasing and distribution subsidiary of Ryder Systems, a nationwide truck leasing company. In its application, Ryder requested a refund based on the end-user presumption of injury for its Texaco purchases which were consumed by its own fleet of trucks. It also claimed a refund under the medium-range presumption of injury based on the purchases it made from Texaco which it later resold to its leasing customers. The DOE determined that, in accordance with *Gulf Oil Corp./Ryder Energy Distribution*, 21 DOE ¶85,345 (1991), Ryder must be considered a retailer, since as a vehicle rental firm, it was involved in the retail sale of petroleum products. Furthermore, the DOE determined that it would be inconsistent with the adoption of a $50,000 maximum refund under the medium-range presumption of injury for Ryder to receive in excess of that amount without having to prove injury. Accordingly, Ryder was awarded $50,000, plus interest, under the medium-range presumption of injury.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Argyle Ranch, Inc	RF272–48097	07/29/94
Atlantic Richfield Company:		
Nycrest Corporation	RF304–13463	07/27/94
Newman Oil Co., Inc	RF304–13464	
Minuteman Fuels, Inc	RF304–13465	
Atlantic Richfield Company:		
Ray's Arco *et al*	RF304–14625	07/27/94
Atlantic Richfield Company:		
Town and Country Gas, Inc *et al*	RF304–14225	07/29/94
Atlantic Richfield Company:		
W.L. Mazzia	RF304–13999	07/25/94
Berrien County Farm Bureau Oil Co. *et al*	RF272–91282	07/25/94
Clark Oil and Refining Corp.:		
Midwest Petroleum Company	RF342–173	07/29/94
Earle's Clark Super 100	RF342–304	
Cobitco, Inc	RF272–94577	07/26/94
Forward Corp. *et al*	RF272–77612	07/29/94
Golden State Foods	RF272–94818	07/26/94
Gulf Oil Corporation:		
Sylvester's Crill and Palm Ave	RF300–15573	07/27/94
Crill and Palm Gulf	RF300–21787	
Metropolitan Petroleum and Fuel:		
Jorge R. Ruiz	RF349–8	07/29/94
Oasis Truck Stop	RF349–10	
Alfaro 66	RF349–11	
Penske Truck Leasing Co., L.P	RF272–92418	07/26/94
Rock County Buick Company	RF272–90801	07/26/94
Shell Oil Company:		
Kennel's Service Station	RR315–8	07/29/94
Texaco's, Inc.:		
B and H Texaco *et al*	RF321–7698	07/27/94
Texaco, Inc.:		
Cloninger Texaco Service	RF321–9036	07/27/94
Texaco, Inc.:		
D.A. Kessler Construction Co. *et al*	RF321–7400	07/29/94

Texaco, Inc.:		
J&M Self-Serv Unit 1	RF321–14095	07/27/94
J&M Self-Serv Unit 2	RF321–14096	
J&M Self-Serv Unit 3	RF321–14097	
J&M Self-Serv Unit 4	RF321–14098	
Texaco, Inc.:		
Mobil Oil Corporation	RF321–17122	07/29/94
Texaco, Inc.:		
Roy's Food Market *et al*	RF321–459	07/29/94
Texaco's, Inc.:		
Smith Texaco *et al*	RF321–508	07/26/94
Texaco, Inc.:		
Stan's Texaco *et al*	RF321–18307	07/27/94
Township of Florence *et al*	RF272–94816	07/26/94
W.H. Kneas Lumber Company	RF272–82421	07/26/94
Walsh Moving Service *et al*	RF272–94814	07/29/94

Dismissals

The following submissions were dismissed:

Name	Case No.
Avacado Texaco	RF321–7179
Carroll County	RF272–85932
Crain Texaco	RF321–8231
Esch & Associates	RF300–19297
Fitzpatrick Oil Co	RR315–9
Glen Petroleum Corporation	RF336–43
Joe Rainer's Texaco	RF321–11350
Joe's Texaco	RF321–7161
John Papadopoulos	RF321–7383
Leyden Texaco Service	RF321–9278
M S D Decatur Township	RF272–96470
Miller's Texaco	RF321–13624
Missouri Pacific Railroad	RF321–12844
Missouri Pacific Railroad	RF321–12843
North Main Texaco	RF321–7378
Parry Tire Co	RF321–19968
Parry Tire Co	RF321–19969
Penske Truck Leasing Co., L.P.	RF321–19913
Post Office Texaco	RF321–7379
R & W Gas Co., Inc	RF321–1751
Ram Tire Co., Inc	RF321–6388
Randy Pate	RF321–9369
Rinker Materials Corp	RF321–20102
Riverton Corporation	RF272–93342
Ron's North Texaco	RF321–13622
Roscoe's Texaco	RF321–12539
Smith International, Inc	RF272–93004
Thom Zinson & McWhite	RF300–16773
Troiano Fuel Oil Co., Inc	RF321–19950
Trombly Motor Coach Service	RF272–94731
Union County	RF272–85389
Village of Union	RF272–85917
Woods' Seacrest Texaco	RF321–12136

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: September 27, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–24585 Filed 10–4–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Proposed Decision and Order the Week of June 27 through July 1, 1994

Office of Hearings and Appeals

During the week of June 27 through July 1, 1994, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: September 27, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals

Ewing Oil Co., Hagerstown, MD, Lee–0084, Reporting Requirements

Ewing Oil Company filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that Ewing Oil was a certainty firm and therefore could only be granted relief if it were experiencing extreme hardship. The DOE determined that it was not. Accordingly, on June 30, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

[FR Doc. 94–24583 Filed 10–4–94; 8:45 am]

BILLING CODE 6450–01–P

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Office of Hearings and Appeals

Issuance of Proposed Decisions and Order the Week of June 20 through June 24, 1994

During the week of June 20 through June 24, 1994, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–34, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: September 27, 1994

George B. Breznay,

Director, Office of Hearings and Appeals

Carter Oil Co., Sheffield, AL, Lee–0100, Reporting Requirements

The Carter Oil Company (Carter) filed an Application for Exception from the provision of filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The Exception request, if granted, would permit Carter to be exempted from filing Form EIA–782B. On June 24, 1994, the Department of Energy issued a Proposed Decision and Order which determined that the Exception request be denied.

Chambers Oil Co., Beckley, WV, Lee–0116, Reporting Requirements

The Chambers Oil Company (Chambers) filed an Application for Exception from the provision of filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The Exception request, if granted, would permit Chambers to be exempted from filing Form EIA–782B. On June 24, 1994, the Department of Energy issued a Proposed Decision and Order which determined that the Exception request be denied.

[FR Doc. 94–24584 Filed 10–4–94, 8:45 am]

BILLING CODE 6450–01–P

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $21,764.57, plus accrued interest, in refined petroleum overcharges obtained by the DOE under the terms of a Remedial Order issued to Aptos Shell, *et al.* (Aptos) Case Nos. LEF–0092, *et al.* The OHA has determined that the funds will be distributed in accordance with the provisions of 10 C.F.R. Part 205, Subpart V and 15 U.S.C. § 4501, the Petroleum Overcharge Distribution and Restitution Act (PODRA).

DATES AND ADDRESSES: Applications for Refund must be filed in duplicate, addressed to Aptos Shell Special Refund Proceeding and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications must reference Case Number LEF–0092 and be postmarked on or before June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director Office of Hearings and Appeals 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–2400

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the procedures that the DOE has formulated to distribute to eligible claimants $21,764.57, plus accrued interest, obtained by the DOE under the terms of a Remedial Order that the DOE issued to Aptos Shell, *et al.* (Aptos) on December 14, 1981. Under the Remedial Order, Aptos was found to have violated the Federal petroleum price and allocation regulations involving the sale of refined petroleum products during the relevant audit periods.

The OHA will distribute the Remedial Order funds in a two stage refund proceeding. Purchasers of Aptos motor gasoline will have an opportunity to submit refund applications in the first stage. Refunds will be granted to applicants who satisfactorily demonstrate they were injured by the pricing violations and who document the volume of refined petroleum products they purchased from Aptos during the relevant audit period. In the event that money remains after all first stage claims have been disposed of, the remaining funds will be disbursed in accordance with the provisions of 15 U.S.C. § 4501, the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA).

Applications for Refund must be postmarked on or before June 1, 1995. Instructions for the completion of refund applications have been set forth in Section III of the Decision immediately following this notice. Refund applications should be mailed to the address listed at the beginning of this notice.

Unless labelled as "confidential", all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Date: September 26, 1994

George B. Breznay,

Director.

Names of Firms: Aptos Shell, *et al.*
Date of Filing: July 20, 1993.
Case Numbers: LEF–0092, *et al.*

On July 20, 1993, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition requesting that the Office of Hearings and Appeals (OHA) formulate and implement Subpart V special refund proceedings. Under the procedural regulations of the DOE, special refund proceedings may be implemented to refund monies to persons injured by violations of the DOE petroleum price regulations, provided DOE is unable to readily identify such persons or to ascertain the amount of any refund. 10 CFR 205.280. We have considered ERA's request to formulate refund procedures for the disbursement of monies remitted by Aptos Shell

(Aptos) and 4 other firms pursuant to a Remedial Order (hereafter, the Order) issued by OHA on December 14, 1981, and have determined that such procedures are appropriate. Each firm's name, case number and amount of money remitted to remedy its pricing violations has been set out in the Appendix immediately following this Decision.

Under the terms of the Order, a total of $21,764.57 has been remitted to DOE to remedy pricing violations which occurred during the relevant audit periods. These funds are being held in an escrow account established with the United States Treasury pending a determination of their proper distribution. *See* Memorandum from George B. Breznay, Director OHA, to James T. Campbell, Comptroller, "Transferring Funds to Escrow Account," August 30, 1993. This Decision sets forth OHA's plan to distribute those funds. The specific application requirements appear in Section III of this Decision.

I. Jurisdiction and Authority

The general guidelines that govern OHA's ability to formulate and implement a plan to distribute refunds are set forth at 10 CFR Part 205, Subpart V. These procedures apply in situations where the DOE cannot readily identify the persons who were injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

II. Background

The facts alleged in the Order were undisputed. Each Remedial Order firm was a "retailer" of motor gasoline as that term has been defined at 10 CFR 212.31 and was therefore subject to the provisions of 10 CFR Part 210 and 10 CFR Part 212, Subpart F. The Order states that during the relevant audit period, they each charged prices higher than those permitted by 10 CFR 212.93(a)(2); levied a cents-per-gallon fee for services associated with the sale of motor gasoline in violation of 10 CFR 210.62(d)(1) and refused to make their records available for inspection in violation of 10 CFR 210.92(b).

The firms were ordered to reduce their prices for motor gasoline by specified amounts until a sufficient volume of gasoline had been sold at the reduced prices to remedy the violations.[1] After decontrol, DOE moved to require direct monetary restitution to the Treasury instead. *See Sunset Boulevard Car Wash*, 20 FERC ¶ 62,319 at 63,537 (1982). Under the terms of DOE's motion, the firms were required to disgorge and remit to the Treasury any violation amounts and the profits they had acquired as a result of their violations of the aforementioned provisions of the pricing regulations. The firms objected to DOE's motion which has since been affirmed by the Federal Energy Regulatory Commission (FERC) in a Decision issued on August 13, 1982. *Id.* FERC issued a final Order adopting its Proposed Order on September 29, 1982.

On April 28, 1994, we issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the funds that each firm remitted to DOE pursuant to the modified Order. We proposed implementing a two stage refund proceeding and we stated that applicants who purchased gasoline from any one of the retailers identified in the Appendix to the PDO would be provided an opportunity to submit refund applications in the first stage. In the event funds remained after all first stage claims had been considered, we stated that the remaining funds would be disbursed in the second stage in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (15 U.S.C. § 4501) (PODRA).

We provided a 30 day period for the submission of comments concerning the proposed procedures. However, we have received no comments since the PDO was published in the **Federal Register** more than 30 days ago. The proposed procedures will therefore be adopted in the same form in which they were originally outlined. Immediately set forth below are the specific considerations that will guide our evaluation of refund applications during the first stage.

III. The First Stage Refund Procedures

Refund applications submitted in the Aptos special refund proceeding will be evaluated in exactly the same manner as applications submitted in other refined product proceedings. In those proceedings, we have frequently chosen to adopt a number of rebuttable presumptions relating to pricing violations and injury. Such a policy reflects our belief that adoption of certain presumptions (i) permits applicants to participate in refund proceedings in larger numbers by avoiding the need to incur inordinate expense; and (ii) facilitates our consideration of first stage refund applications. 10 C.F.R. 205.282(e). For those reasons, we have adopted similar presumptions in the present proceeding.

(1) Calculating the Refund

We have presumed that the pricing violations were dispersed equally throughout each firm's gasoline sales during the relevant audit period. We therefore proposed that each applicant's potential refund should be calculated on a volumetric basis. Under the volumetric approach, refunds are calculated by multiplying the gallons of refined product each applicant purchased by the per gallon refund amount (volumetric). Applicants believing they were disproportionately overcharged by the pricing violations may present documentation which supports that claim. Those who succeed in showing they were disproportionately overcharged will be eligible to receive refunds calculated at a higher volumetric.

We have established a separate volumetric for each of the firms whose name appears in the Appendix accompanying this Decision. The precise volumetric for each firm can be found in the Appendix. Each volumetric was obtained by dividing the remedial order funds available for distribution by the volume of gasoline each firm is believed to have sold during the audit period. [2]

(2) Eligibility for a Refund

In order to be eligible to receive a refund in this proceeding, each applicant must (1) document the volume of motor gasoline it purchased during the consent order period; and (2) demonstrate that it was injured by the overcharges. The threshold requirement for any applicant is documenting the volume of product it purchased. This requirement is typically satisfied when the applicant successfully demonstrates ownership of the business for which the refund is sought and submits documentation which supports the

[1] The Order imposed no sanctions upon the firms for failing to provide records pursuant to 10 CFR 210.92(b). See Remedial Order at 1 and 7.

[2] In the absence of precise figures indicating the amount of motor gasoline sold by each firm during the audit period, we have estimated their sales using the best available data. Our estimate is that each gasoline retailer sold 50,000 gallons of motor gasoline per month for each month of the audit period. This figure will be used to calculate each retailer's volumetric unless the refund applications submitted pursuant to this Decision and Order indicate that our estimate is inaccurate. In the event the estimate proves to be inaccurate, it may be necessary to reestimate the volumetric.

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volume claimed in its refund application.

The injury showing, however, is a potentially more difficult requirement for applicants to satisfy, especially those seeking smaller refund amounts. This is true because an applicant must demonstrate that it was forced to absorb the overcharges. Our cases have often stated that an applicant accomplishes this by demonstrating that it maintained a "bank" of unrecovered product costs and showing that market conditions would not permit them to pass through those increased costs. *See, Quintana Energy Corp.*, 21 DOE ¶ 85,032 at 88,117 (1991).

We recognized that the cost to the applicant of gathering evidence of injury to support a relatively small refund claim could exceed the expected refund and thereby cause some injured parties to forego an opportunity to obtain a refund. In view of these difficulties, we proposed adopting a number of injury presumptions which simplify and streamline the refund process. The simplified procedures reduce the burden that would have been placed on this office had we required detailed injury showings for relatively small refund applications.

(3) Presumptions of Injury

Set forth below are the presumptions of injury that have been adopted for each class of applicant likely to submit refund applications in this proceeding. These presumptions are not unlike injury presumptions adopted by OHA in many other refined product proceedings. Each presumption turns on the category of applicant.

Small-claim Presumption. We have adopted a small claim presumption of injury for resellers, retailers and refiners whose claim is $10,000 or less, exclusive of interest. A small claim threshold of $10,000 has been adopted, even though we established a lower threshold amount of $5,000 in many prior proceedings. *See, e.g., Gulf Oil Corporation*, 16 DOE ¶ 85,381 (1987) (establishing a $5,000 threshold). The $10,000 threshold is more appropriate here because the volumetric established for each one of the 15 retailers covered by this proceeding is higher than the volumetric set in Gulf and in most other Subpart V refund proceedings. *Id.* If we were to adopt a lower threshold amount for this proceeding, then the number of very small firms that would be burdened with the requirement to make a detailed injury showing would increase substantially.

The small claim presumption of injury for this proceeding, exempts applicants whose claims are $10,000 or less, exclusive of interest, from the requirement to prove injury. Such an applicant need only document the volume of motor gasoline he or she purchased during the audit period from one or more of the retailers named in the Appendix to be eligible to receive a full refund. *See Enron Corporation*, 21 DOE ¶ 85,323 at 88,957 (1991).

Mid-range Presumption. Mid-range applicants; that is, applicants seeking refunds in excess of $10,000 but less than $50,000, excluding interest, are eligible to receive 40 percent of their allocable share without proving injury. Like small-claim applicants, these applicants will only be required to document the volume of gasoline they purchased during the audit period from any one of the firms named in the Appendix to be eligible to receive a refund. *See Shell*, 17 DOE at 88,406.

End-user Presumption. We have presumed that end-users of petroleum products whose businesses were unrelated to the petroleum industry and were not subject to the regulations promulgated under the Emergency Petroleum Price and Allocation Act of 1973 (EPAA), 15 U.S.C. §§ 751–760h, were injured by each of the firm's pricing violations. Unlike regulated firms, end-users were not subject to price controls during the audit period. Moreover, these firms were not required to keep records that justified selling price increases by reference to cost increases. An analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services is beyond the scope of a special refund proceeding. *See American Pacific International, Inc.*, 14 DOE ¶ 85,158 at 88,294 (1986). End-users seeking refunds in this proceeding will therefore be presumed to have been injured. In order to receive a refund, end-user applicants need only document the volume of gasoline they purchased during the relevant audit period from any of the 15 retailers whose name appears in the Appendix following this Decision. Meritorious applicants are eligible to receive their full allocable share. *See Shell*, 17 DOE at 88,406.

Refunds in Excess of $50,000 and Other Applicants. Applicants seeking refunds in excess of $50,000, excluding interest, will be required to submit detailed evidence of injury. These applicants must show that the overcharges were absorbed, not passed through to their customers. They will therefore be unable to rely upon injury presumptions utilized in many refined product refund cases. *Id.*

We do not anticipate that other categories of applicants, such as regulated firms, cooperatives, indirect purchasers or spot purchasers, would have obtained products from the firms covered by these procedures. Such applicants may nonetheless submit refund applications if they purchased motor gasoline from any of these firms during the relevant audit periods.

Any such applicants must demonstrate that they purchased products from one these firms during its audit period and show they were injured as a result of their purchases to be eligible to receive a refund in this proceeding. Regulated firms and cooperatives are exempt from the requirement to show injury. They must, however, show that they will pass any refund received through to their customers.

(4) How to Apply for a Refund

To apply for a refund from one or more of the firms' settlement fund, an applicant should submit an Application for Refund containing all of the following information:

(1) The Applicant's name; the current name and address of the business for which the refund is sought; the name and address during the refund period of the business for which the refund is sought; the taxpayer identification number; a statement specifying whether the applicant is an individual, corporation, partnership, sole proprietorship or other business entity; the name, title, and telephone number of a person to contact for additional information; and the name and address of the person who should receive any refund check.[3] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify those names.

(2) The applicant should specify the source of its gallonage information. In calculating its purchase volumes, an applicant should use actual records from the settlement period, if available. If these records are not available, the applicant may submit estimates of its gasoline purchases, but the estimation methodology must be reasonable and must be explained.

[3] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant who does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications. It is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 C.F.R. Part 205, Subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

(3) A statement indicating whether the applicant or a related firm has filed, or has been authorized to file on its behalf, any other application in this refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(4) If the applicant is or was in any way affiliated with the Remedial Order firm, in this case any firm named in the Appendix, the applicant should explain this affiliation, including the time period in which it was affiliated. If not, a statement that the applicant was not affiliated with the Remedial Order firm.

(5) The statement listed below, provided it has been signed by the applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the Federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and should clearly refer to the appropriate proceeding name (Aptos Shell) and case number (LEF–0092) as well as specify the name of the firm it purchased gasoline from during the audit period. Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish this information to be publicly disclosed, the applicant must submit an original application, clearly designated "confidential", containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than June 1, 1995, and sent to: Aptos Shell LEF–0092, et al, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

(5) Minimal Amount Requirement

Only claims for at least $15 in principal will be processed. This minimum has been adopted in refined product refund proceedings because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those instances. *See Mobil Oil Corporation*, 13 DOE ¶ 85,339 (1985). Using the volumetric methodology, an applicant must have purchased at least 173 gallons of motor gasoline from one or more of the firms named in the Appendix accompanying this Decision in order for its claim to be considered in this proceeding.

(6) Additional Information

OHA reserves the authority to require additional information before granting any refund in these proceedings. Applications lacking the required information may be dismissed or denied.

(7) Refund Applications filed by Representatives

OHA reiterates its policy to closely scrutinize applications filed by filing services. Applications submitted by a filing service should contain all of the information indicated in this final Decision and Order. Strict compliance with the filing requirement as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant, will be required.

(8) Filing Deadline

The deadline for filing an Application for Refund is June 1, 1995.

IV. Second Stage Refund Procedures

Any funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to OHA, and any funds that OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

It is therefore ordered That:

Applications for Refund from the funds remitted to the Department of Energy by any one of the firms named in the Appendix to this Decision, pursuant to the Remedial Order finalized on October 22, 1980, may now be filed.

Dated: September 26, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals

APPENDIX

[September 26, 1994]

Case No.	Case name	Amount	Audit period	$ Volumetric
LEF–0092	Aptos Shell, 18 Rancho Del Mar, Aptos, CA 95003	$4,588.44	8/1/79–11/13/79	$.0267
LEF–0109	C.J. King Chevron, 403 S. Saratoga Ave., San Jose, CA 95129.	4,786.36	12/15/79–11/06/80	.0089
LEF–0110	Hughes Burlingame, Shell, 1490 Burlingame Ave., Burlingame, CA 94010.	7,284.06	8/1/79–11/13/79	.0424
LEF–0111	Sandusky's Service, 1201 Terrence Street, Vallejo, CA 94590.	2,855.71	1/79–01/31/80	.0096
LEF–0112	Skycrest Shell, 1600 King Drive, Daly City, CA 94015.	2,250.00	8/1/79–11/13/79	.0131
Total		21,764.57		

[FR Doc. 94–24587 Filed 10–4–94; 8:45 am]

BILLING CODE 6450–01–P

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $83,847.58, plus accrued interest, in refined petroleum overcharges obtained by the DOE under the terms of a Remedial Order issued to

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Alameda Chevron, *et al.* (Alameda) Case Nos. LEF–0093, *et al.* The OHA has determined that the funds will be distributed in accordance with the provisions of 10 CFR Part 205, Subpart V and 15 U.S.C. § 4501, the Petroleum Overcharge Distribution and Restitution Act (PODRA).

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–2400.

DATES AND ADDRESSES: Applications for Refund must be filed in duplicate, addressed to Alameda Chevron Special Refund Proceeding and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All applications must reference Case Number LEF–0093 and be postmarked on or before June 1, 1995.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR § 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the procedures that the DOE has formulated to distribute to eligible claimants $83,847.58, plus accrued interest, obtained by the DOE under the terms of a Remedial Order that the DOE issued to Alameda Chevron, *et al.* (Alameda) on October 22, 1980. Under the Remedial Order, Alameda and the 15 gasoline retailers whose names appear in the Appendix immediately following this Decision were found to have violated the Federal petroleum price and allocation regulations involving the sale of refined petroleum products between August 1, 1979 and January 27, 1980 (the Audit periods).

The OHA will distribute the Remedial Order funds in a two stage refund proceeding. Purchasers of Alameda motor gasoline or gasoline from one or more of the retailers named in the Appendix will have an opportunity to submit refund applications in the first stage. Refunds will be granted to applicants who satisfactorily demonstrate they were injured by the pricing violations and who document the volume of gasoline they purchased from one of the retailers named in the Appendix during the audit period. In the event that money remains after all first stage claims have been disposed of, the remaining funds will be disbursed in accordance with the provisions of 15 U.S.C. § 4501, the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA).

Applications for Refund must be postmarked on or before June 1, 1995. Instructions for the completion of refund applications have been set forth in Section III of the Decision immediately following this notice. Refund applications should be mailed to the address listed at the beginning of this notice.

Unless labelled as "confidential", all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: September 26, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order

Names of Firms: Alameda Chevron, *et al.*

Date of Filing: July 20, 1993

Case Numbers: LEF–0093, *et al.*

On July 20, 1993, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition requesting that the Office of Hearings and Appeals (OHA) formulate and implement Subpart V special refund proceedings. Under the procedural regulations of the DOE, special refund proceedings may be implemented to refund monies to persons injured by violations of the DOE petroleum price regulations, provided DOE is unable to readily identify such persons or to ascertain the amount of any refund. 10 C.F.R. § 205.280. We have considered ERA's request to formulate refund procedures for the disbursement of monies remitted by Alameda Chevron and 15 other firms pursuant to a Remedial Order (hereafter, the Order) issued by OHA on October 22, 1980, to those firms and have determined that such procedures are appropriate. Each firm's name, case number and amount of money remitted to remedy its pricing violations has been set out in the Appendix immediately following this Decision.

Under the terms of the Order, a total of $83,847.58 has been remitted to DOE to remedy pricing violations which occurred during the relevant audit periods. These funds are being held in an escrow account established with the United States Treasury pending a determination of their proper distribution. See Memorandum from George B. Breznay, Director OHA, to James T. Campbell, Comptroller, "Transferring Funds to Escrow Account," August 30, 1993. This Decision sets forth OHA's plan to distribute those funds. The specific application requirements appear in Section III of this Decision.

I. Jurisdiction and Authority

The general guidelines that govern OHA's ability to formulate and implement a plan to distribute refunds are set forth at 10 CFR Part 205, Subpart V. These procedures apply in situations where the DOE cannot readily identify the persons who were injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

II. Background

The facts alleged in the Order were undisputed. Each Remedial Order firm was a "retailer" of motor gasoline as that term has been defined at 10 CFR 212.31 and was therefore subject to the provisions of 10 CFR Part 210 and 10 CFR Part 212, Subpart F. The Order states that during the relevant audit period, they each charged prices higher than those permitted by 10 CFR 212.93(a)(2); levied a cents-per-gallon fee for services associated with the sale of motor gasoline in violation of 10 CFR 210.62(d)(1) and refused to make their records available for inspection in violation of 10 CFR 210.92(b).

The firms were ordered to reduce their prices for motor gasoline by specified amounts until a sufficient volume of gasoline had been sold at the reduced prices to remedy the violations.[1] After decontrol, DOE moved to require direct monetary restitution to the Treasury instead. *See Sunset Boulevard Car Wash*, 20 FERC ¶§ 62,319 at 63,537 (1982). Under the terms of DOE's motion, the firms were required to disgorge and remit to the Treasury any violation amounts and the profits they had acquired as a result of their violations of the aforementioned provisions of the pricing regulations. The firms objected to DOE's motion which has since been affirmed by the Federal Energy Regulatory Commission (FERC) in a Decision issued on August 13, 1982. *Id.*

On February 3, 1994, we issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the funds that each firm remitted to DOE pursuant to the modified Order. We proposed

[1] The Order imposed no sanctions upon the firms for failing to provide records pursuant to 10 CFR 210.92(b). *See* Remedial Order at 1 and 7.

implementing a two stage refund proceeding and we stated that applicants who purchased gasoline from any one of the retailers identified in the Appendix to the PDO would be provided an opportunity to submit refund applications in the first stage. In the event funds remained after all first stage claims had been considered, we stated that the remaining funds would be disbursed in the second stage in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (15 U.S.C. § 4501) (PODRA).

We provided a 30 day period for the submission of comments concerning the proposed procedures. However, we have received no comments since the PDO was published in the **Federal Register** more than 30 days ago. The proposed procedures will therefore be adopted in the same form in which they were originally outlined. Immediately set forth below are the specific considerations that will guide our evaluation of refund applications during the first stage.

III. The First Stage Refund Procedures

Refund applications submitted in the Alameda special refund proceeding will be evaluated in exactly the same manner as applications submitted in other refined product proceedings. In those proceedings, we have frequently chosen to adopt a number of rebuttable presumptions relating to pricing violations and injury. Such a policy reflects our belief that adoption of certain presumptions (i) permits applicants to participate in refund proceedings in larger numbers by avoiding the need to incur inordinate expense; and (ii) facilitates our consideration of first stage refund applications. 10 C.F.R. § 205.282(e). For those reasons, we have adopted similar presumptions in the present proceeding

(1) Calculating the Refund

We have presumed that the pricing violations were dispersed equally throughout each firm's gasoline sales during the relevant audit period. We therefore proposed that each applicant's potential refund should be calculated on a volumetric basis. Under the volumetric approach, refunds are calculated by multiplying the gallons of refined product each applicant purchased by the per gallon refund amount (volumetric). Applicants believing they were disproportionately overcharged by the pricing violations may present documentation which supports that claim. Those who succeed in showing they were disproportionately overcharged will be eligible to receive refunds calculated at a higher volumetric.

We have established a separate volumetric for each of the firms whose name appears in the Appendix accompanying this Decision. The precise volumetric for each firm can be found in the Appendix. Each volumetric was obtained by dividing the remedial order funds available for distribution by the volume of gasoline each firm is believed to have sold during the audit period.[2]

(2) Eligibility for a Refund

In order to be eligible to receive a refund in this proceeding, each applicant must (1) Document the volume of motor gasoline it purchased during the consent order period; and (2) demonstrate that it was injured by the overcharges. The threshold requirement for any applicant is documenting the volume of product it purchased. This requirement is typically satisfied when the applicant successfully demonstrates ownership of the business for which the refund is sought and submits documentation which supports the volume claimed in its refund application.

The injury showing, however, is a potentially more difficult requirement for applicants to satisfy, especially those seeking smaller refund amounts. This is true because an applicant must demonstrate that it was forced to absorb the overcharges. Our cases have often stated that an applicant accomplishes this by demonstrating that it maintained a "bank" of unrecovered product costs and showing that market conditions would not permit them to pass through those increased costs. *See, Quintana Energy Corp.*, 21 DOE ¶ 85,032 at 88,117 (1991).

We recognized that the cost to the applicant of gathering evidence of injury to support a relatively small refund claim could exceed the expected refund and thereby cause some injured parties to forego an opportunity to obtain a refund. In view of these difficulties, we proposed adopting a number of injury presumptions which simplify and streamline the refund process. The simplified procedures reduce the burden that would have been placed on this office had we required detailed injury showings for relatively small refund applications.

[2] In the absence of precise figures indicating the amount of motor gasoline sold by each firm during the audit period, we have estimated their sales using the best available data. Our estimate is that each gasoline retailer sold 50,000 gallons of motor gasoline per month for each month of the audit period. This figure will be used to calculate each retailer's volumetric unless the refund applications submitted pursuant to this Decision and Order indicate that our estimate is inaccurate. In the event the estimate proves to be inaccurate, it may be necessary to reestimate the volumetric.

(3) Presumptions of Injury

Set forth below are the presumptions of injury that have been adopted for each class of applicant likely to submit refund applications in this proceeding. These presumptions are not unlike injury presumptions adopted by OHA in many other refined product proceedings. Each presumption turns on the category of applicant.

Small-claim Presumption. We have adopted a small claim presumption of injury for resellers, retailers and refiners whose claim is $10,000 or less, exclusive of interest. A small claim threshold of $10,000 has been adopted, even though we established a lower threshold amount of $5,000 in many prior proceedings. *See*, e.g., *Gulf Oil Corporation*, 16 DOE ¶ 85,381 (1987) (establishing a $5,000 threshold). The $10,000 threshold is more appropriate here because the volumetric established for each one of the 15 retailers covered by this proceeding is significantly higher than the volumetric set in Gulf and in most other subpart V refund proceedings. *Id.* If we were to adopt a lower threshold amount for this proceeding, then the number of very small firms that would be burdened with the requirement to make a detailed injury showing would increase substantially.

The small claim presumption of injury for this proceeding, exempts applicants whose claims are $10,000 or less, exclusive of interest, from the requirement to prove injury. Such an applicant need only document the volume of motor gasoline he or she purchased during the audit period from one or more of the retailers named in the Appendix to be eligible to receive a full refund. *See Enron Corporation*, 21 DOE ¶ 85,323 at 88,957 (1991).

Mid-range Presumption. Mid-range applicants; that is, applicants seeking refunds in excess of $10,000 but less than $50,000, excluding interest, are eligible to receive 40 percent of their allocable share without proving injury. Like small-claim applicants, these applicants will only be required to document the volume of gasoline they purchased during the audit period from any one of the firms named in the Appendix to be eligible to receive a refund. *See Shell*, 17 DOE at 88,406.

End-user Presumption. We have presumed that end-users of petroleum products whose businesses were unrelated to the petroleum industry and were not subject to the regulations promulgated under the Emergency

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Petroleum Price and Allocation Act of 1973 (EPAA), 15 U.S.C. §§ 751–760h, were injured by each of the firm's pricing violations. Unlike regulated firms, end-users were not subject to price controls during the audit period. Moreover, these firms were not required to keep records that justified selling price increases by reference to cost increases. An analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services is beyond the scope of a special refund proceeding. *See American Pacific International, Inc.*, 14 DOE ¶ 85,158 at 88,294 (1986). End-users seeking refunds in this proceeding will therefore be presumed to have been injured. In order to receive a refund, end-user applicants need only document the volume of gasoline they purchased during the relevant audit period from any of the 15 retailers whose name appears in the Appendix following this Decision. Meritorious applicants are eligible to receive their full allocable share. *See Shell*, 17 DOE at 88,406.

Refunds in Excess of $50,000 and Other Applicants. Applicants seeking refunds in excess of $50,000, excluding interest, will be required to submit detailed evidence of injury. These applicants must show that the overcharges were absorbed, not passed through to their customers. They will therefore be unable to rely upon injury presumptions utilized in many refined product refund cases. *Id.*

We do not anticipate that other categories of applicants, such as, regulated firms, cooperatives, indirect purchasers or spot purchasers, would have obtained products from the firms covered by these procedures. Such applicants may nonetheless submit refund applications if they purchased motor gasoline from any of these firms during the relevant audit periods. Any such applicants must demonstrate that they purchased products from one of these firms during its audit period and show they were injured as a result of their purchases to be eligible to receive a refund in this proceeding. Regulated firms and cooperatives are exempt from the requirement to show injury. They must, however, show that they will pass any refund received through to their customers.

(4) How to Apply for a Refund

To apply for a refund from one or more of the firms' settlement fund, an applicant should submit an Application for Refund containing all of the following information:

(1) The Applicant's name; the current name and address of the business for which the refund is sought; the name and address during the refund period of the business for which the refund is sought; the taxpayer identification number; a statement specifying whether the applicant is an individual, corporation, partnership, sole proprietorship or other business entity; the name, title, and telephone number of a person to contact for additional information; and the name and address of the person who should receive any refund check.[1] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify those names.

(2) The applicant should specify the source of its gallonage information. In calculating its purchase volumes, an applicant should use actual records from the settlement period, if available. If these records are not available, the applicant may submit estimates of its gasoline purchases, but the estimation methodology must be reasonable and must be explained.

(3) A statement indicating whether the applicant or a related firm has filed, or has been authorized to file on its behalf, any other application in this refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(4) If the applicant is or was in any way affiliated with the Remedial Order firm, in this case any firm named in the Appendix, the applicant should explain this affiliation, including the time period in which it was affiliated. If not, a statement that the applicant was not affiliated with the Remedial Order firm.

(5) The statement listed below, provided it has been signed by the applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the Federal Government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and should clearly refer to the appropriate proceeding name (Alameda Chevron) and case number (LEF–0093) as well as specify the name of the firm it purchased gasoline from during the audit period. Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish this information to be publicly disclosed, the applicant must submit an original application, clearly designated "confidential", containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than June 1, 1995, and sent to: Alameda Chevron LEF–0093, et al., Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

(5) Minimal Amount Requirement

Only claims for at least $15 in principal will be processed. This minimum has been adopted in refined product refund proceedings because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those instances. *See Mobil Oil Corporation*, 13 DOE ¶ 85,339 (1985). Using the volumetric methodology, an applicant must have purchased at least 173 gallons of motor gasoline from one or more of the firms named in the Appendix accompanying this Decision in order for its claim to be considered in this proceeding.

(6) Additional Information

OHA reserves the authority to require additional information before granting any refund in these proceedings. Applications lacking the required information may be dismissed or denied.

(7) Refund Applications filed by Representatives

OHA reiterates its policy to closely scrutinize applications filed by filing services. Applications submitted by a filing service should contain all of the information indicated in this final Decision and Order. Strict compliance with the filing requirement as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant, will be required.

(8) Filing Deadline

The deadline for filing an Application for Refund is June 1, 1995.

[1] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant who does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications. It is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 CFR part 205, subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference room of the Office of Hearings and Appeals.

IV. Second Stage Refund Procedures

Any funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. §§ 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to OHA, and any funds that OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

It is therefore ordered, That:

Applications for Refund from the funds remitted to the Department of Energy by any one of the firms named in the Appendix to this Decision, pursuant to the Remedial Order finalized on October 22, 1980, may now be filed.

Dated: September 26, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals

APPENDIX

[September 26, 1994]

Case number	Case name	Dollar amount	Audit period	Volumetric
LEF–0093	Alameda Chevron	2,270.92	8/1/79–10/30/79	.0151
LEF–0094	Ben's Exxon Service	3,056.42	8/1/79–01/30/80	.0102
LEF–0095	Berryessa Chevron	2,933.32	8/1/79–10/30/79	.0196
LEF–0096	Bill Wren's Shell	4,366.42	8/1/79–01/11/80	.0163
LEF–0097	Cutting Shell Service	4,815.87	8/1/79–01/30/80	.0161
LEF–0098	Ed Gularte Chevron	6,235.74	8/1/79–01/30/80	.0208
LEF–0099	Joe Berube Services	8,294.00	8/1/79–12/13/79	.0375
LEF–0100	Mcdowell Exxon	6,998.37	8/1/79–10/20/79	.0529
LEF–0101	Petaluma Standard Service	3,987.27	8/1/79–01/30/80	.0133
LEF–0102	Regalia's Chevron Service	8,887.87	8/1/79–01/11/80	.0332
LEF–0103	Starr Union Service	6,773.51	8/1/79–11/20/79	.0372
LEF–0104	Tenth Street Chevron	7,097.98	8/1/79–01/30/80	.0237
LEF–0105	Tom's Coffee Tree Chevron	4,500.00	8/1/79–11/20/79	.0247
LEF–0106	Wallace Arco Service	2,067.09	8/1/79–01/11/80	.0069
LEF–0107	Walt's Shell Service	3,562.80	8/1/79–11/14/79	.0206
LEF–0108	Weber's Chevron Service	8,000.00	8/1/79–11/14/79	.0464
		$83,847.5		

[FR Doc. 94–24580 Filed 10–4–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5085–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 0801.10; Requirememts for Generators, Transporters, and Disposers under RCRA Hazardous Waste Manifest System: was approved 08/17/94; OMB No. 2050–0039; expires 09/30/96. EPA ICR No. 0278.05; Notice of Supplemental Distribution of a Registered Pesticide Product; was approved 08/18/94; OMB No. 2070–0044; expires 08/31/97.

EPA ICR No. 1495.03; FIFRA Reregistration Fees; was approved 08/18/94; OMB No. 2070–0101; expires 08/31/97.

EPA ICR No. 0277.09; Training Verification Progrm under Paragraph 3 of the FIFRA for Implementation of the Revised Federal Worker Protection Standard; was approved 08/18/94; OMB No. 2070–0060; expires 02/28/95.

EPA ICR No. 1664.02; National Oil and Hazardous Substances Pollution Contingency Plan—Subpart J; was approved 08/15/94; OMB No. 2050–0141; expires 08/31/97.

EPA ICR No. 1708.01; 1995 Drinking Water Needs Survey; was approved 09/07/94; OMB No. 2040–0176; expires 09/30/97.

EPA ICR No. 1176.04; New Residential Wood Heaters, Reporting and Recordkeeping Requirements—Subpar AAA; was approved 08/31/94; expires 08/31/97.

EPA ICR No. 0783.20; Application for Motor Vehicle Emission Certification and Fuel Economy Labeling; was approved 07/27/94; OMB No. 2060–0104; expires 06/30/95. This ICR supports an amendment.

EPA ICR No. 1633.05; Revision of Part 72 of the Acid Rain Program under Title IV of the Clean Air Act Amendments of 1990; was approved 09/02/94; OMB No. 2060–0258; expires 01/31/96.

EPA ICR No. 0276.07; Notification for Small-Scale Testing of Genetically Modified Microbial Pesticides for Experimental Purposes Only; was approved 09/07/94; OMB No. 2070–0040; expires 11/30/96.

EPA ICR No. 1591.04; Standard for Reformulated Gasoline: Foreign Refinery Baseline; was approved 08/29/94; OMB No. 2060–0277; expires 03/31/97.

OMB Disapprovals

EPA ICR No. 1687.01; National Emission Standards for Hazardous Air Pollutant for the Aerospace Manufacturing and Rework Industry; was disapproved 08/26/94.

EPA ICR No. 1704.01; Tri-Annual Certification: Alternate Threshold for Low-Level Releases and Transfers; was disapproved 08/17/94.

EPA ICR No. 1699.01; The Management of Mercury-Containing Lamps; was disapproved 08/17/94.

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Dated: September 30, 1994.

Jane Stewart,

Acting Director, Regulatory Management Division.

[FR Doc. 94–24646 Filed 10–4–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5081–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 4, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Exports from and Imports to the United States Under the OECD Decision (ICR No. 1647.01). This ICR requests approval for a new collection.

Abstract: This ICR is required to ensure implementation of the Organization For Economic Co-operation and Development's (OECD) Council Decision C(92)39/FINAL on the Control of Transfrontier Movements of Wastes Destined for Recovery Operations (OECD Decision), adopted by the Council at its 778th Session on 30 March 1992. This decision is legally binding upon the U.S., a member of the OECD, and obligates U.S. exporters and importers of hazardous waste destined for recovery within the OECD to new notification and tracking requirements, which are detailed in the ICR.

To implement the OECD Decision in the U.S., the EPA must modify certain regulations under the Resource Conservation and Recovery Act (RCRA), and has developed a Final Rule to codify the requirements of the OECD Decision as it will be implemented in the U.S.

The OECD Decision does not significantly change the current hazardous waste export/import requirements under 40 CFR parts 262. For U.S. exporters, it will require the submittal of additional information as part of the Notification of Intent to Export; also, some additional information required to be included in the tracking document exceeds that presently required for the hazardous waste manifest. For U.S. importers, it requires the signing and transmitting of additional copies of the tracking document and requires an expeditinG of this process (3 working days instead of 30 days). No additional recordkeeping burden is imposed by the OECD Decision.

It is EPA's interpretation that the regulations under RCRA codifying the terms of the OECD Decision are applicable only to hazardous waste destined for recovery that is: (1) Subject to the RCRA manifest requirements under the Federal regulations when it is sent for recovery; and (2) sent to or received from a other OECD member country. Wastes not within the scope of the OECD Decision will remain subject to the current RCRA export and import requirements in 40 CFR part 262, subparts E and F.

EPA's Office of Enforcement and Compliance Assurance will use the information to determine compliance with applicable OECD regulatory provisions, and to provide data on hazardous waste imports and exports for tracking purposes and for reporting to the OECD.

Burden Statement: The respondent burden for this collection of information is estimated to average 4 hours per response. This estimate includes all aspects of the information collection including the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

Respondents: U.S. exporters and importers of hazardous waste destined for recovery.

Estimated Number of Respondents: 437 exporters, and 771 importers.

Estimated Number of Responses Per Respondent: Varies.

Estimated Total Annual Burden on Respondents: 4,814 hours.

Frequency of Collection: On-Occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: September 29, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–24645 Filed 10–4–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5086–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before November 4, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Request for Contractor Access to TSCA Confidential Business Information (EPA ICR No.: 1250.04; OMB No.: 2070–0075). This is an extension of the expiration date of a currently approved collection.

Abstract: In compliance with section 14 (a) (2) of the Toxic Substances Control Act (TSCA), EPA contractors may gain access to the Agency's Confidential Business Information (CBI). Contractors must establish on Form 7740–6A ("Federal TSCA CBI Access Request, Agreement, and Approval—Contractor/Subcontractor Employee") that they need access to CBI to perform their contract duties for EPA. The contractors are also required to store, file or maintain a copy of the form for possible future reference. The Agency uses the information to determine whether CBI may be granted.

Burden Statement: The burden for this collection of information is estimated to average 1 hour per response for reporting, and 6 hours per recordkeeper annually. This estimate includes the time needed to review instructions, gather the data needed, complete the form and review the collection of information.

Respondents: EPA Contractors.

Estimated No. of Respondents: 30.

Estimated No. of Responses per Respondent: 20.

Estimated Total Annual Burden on Respondents: 600 hours.

Frequency of Collection: One time.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: September 30, 1994.

Jane Stewart,

Acting Director, Regulatory Management Division.

[FR Doc. 94–24644 Filed 10–4–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5086–5]

Office of Environmental Justice; Small Grants Program; Solicitation Notice for Fiscal Year (FY) 1995 Environmental Justice Small Grants to Community-Based/Grassroots Organizations and Tribal Governments

Purpose of the Grants Program

The purpose of this grants program is to provide financial assistance and stimulate a public purpose by supporting projects to any affected community group, which is eligible under applicable statutory authorities, (for example, community-based/grassroots organization, church, school, education agency, college or university, or other non-profit organization) and Tribal government who are working or plan to carry out projects to address environmental justice issues. Funds can be used to develop a new activity or to substantially improve the quality of existing activities.

Funding

For FY 1995, the Office of Environmental Justice (OEJ) has budgeted $3,000,000 for the Environmental Justice (EJ) Small Grants Program. EPA's 10 regions will each have $300,000 to award grants under this program. A maximum of $20,000 can be awarded for each grant. EPA will award grants in FY 1995 subject to the amount of funds appropriated by Congress.

Translations Available

A Spanish translation of this announcement may be obtained by calling the Office of Environmental Justice at 1–800–962–6215.

Hay traducciones disponibles en espanol. Si usted esta interesado en obtener una traduccion de este anuncio en espanol, por favor llame a La Oficina de Justicia Ambiental conocida como "Office of Environmental Justice", linea de emergencia (1–800–962–6215).

Important Pre-Application Information

Pre-applications must be postmarked no later than Saturday, February 4, 1995. Pre-applications will serve as the sole basis for evaluation and recommendation for funding. EPA will award grants based on the merits of the pre-application.

Pre-applications must be mailed to your Environmental Protection Agency (EPA) Regional Office. A list of addresses and phone numbers for the regional contacts is included at the end of this notice. *Required pre-application forms, described below, may be obtained from the regional contacts.* EPA expects awards to be made by May 31, 1995.

Background

In its 1992 report, *Environmental Equity: Reducing Risk for All Communities*, EPA found that minority and low-income communities experience higher than average exposure to toxic pollutants than the general population. OEJ was established in 1992 to help these communities to identify and assess pollution sources, to implement environmental awareness and training programs for affected residents, and to work with community stakeholders to devise strategies for environmental improvements.

In June of 1993, OEJ was delegated granting authority to solicit projects, select suitable projects from among those proposed, supervise such projects, evaluate the results of projects, and disseminate information on the effectiveness of the projects, and feasibility of the practices, methods, techniques, and processes in environmental justice areas.

Fiscal Year (FY) 1995 is the second year of the EJ Small Grants Program. Seventy-one (71) grants totaling $507,000 were awarded in FY 1994.

A. How Does EPA Define Environmental Justice Under the Environmental Justice Small Grants Program?

Environmental justice is the fair treatment of people of all races, cultures, and income with respect to the development, implementation and enforcement of environmental laws, regulations, and policies. Fair treatment means that no racial, ethnic or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from the operation of industrial, municipal, and commercial enterprises and from the execution of federal, state and local, and tribal programs and policies. Environmental justice seeks to ensure that the communities, private industry, local governments, states, tribes, federal government, grassroots organizations, and individuals act responsibly and ensure environmental protection to all communities.

Eligible Activities

B. What Type of Projects Are Eligible to Receive Funding?

To be selected for an award, the project must include one or more of the following four (4) objectives:

1. Identify the necessary improvements in communication and coordination among existing community-based/grassroots organizations, and local, state, tribal, and federal environmental programs, and all other stakeholders. Facilitate communication, information exchange, and partnerships among the stakeholders to address environmental injustices (for example, workshops, awareness conferences, establishment of community stakeholder committees, community newsletters, etc.);

2. Motivate the general public to be more conscious of their local environmental justice issues or problems and encourage the community to take action to address these issues (for example, reforestation efforts, monitoring of socioeconomic changes due to environmental abuse, stream monitoring, etc.);

3. Develop and demonstrate an environmental justice practice, method, or technique which has wide application and addresses an environmental justice issue which is of a high-priority.

4. Teach about risk reduction and pollution prevention, and seek technical experts to demonstrate how to access, analyze, and interpret public environmental data (for example, Geographic Information Systems (GIS), Toxic Release Inventories (TRI), and other databases.)

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Priority will be given to community-based/grassroots organizations, tribes, and organizations whose projects will help improve the environmental quality of affected communities by (A) developing an environmental justice project, activity, method, or technique which has wide application, (B) enhances the community's skills in addressing environmental justice issues and problems, and (C) establishes or expands environmental and public health information systems for local communities.

Environmental Justice projects or activities should enhance critical thinking, problem solving, and the active participation of affected communities in decision-making processes. Environmental justice efforts may include, but are not necessarily limited to enhancing the gathering, observing, measuring, classifying, experimenting, and other data gathering techniques that assist individuals in discussing, inferring, predicting, and interpreting information about environmental justice issues and concerns. Environmental justice projects should engage and motivate individuals to weigh various issues to make informed and responsible decisions as they work to address environmental injustices.

The items discussed above are relative and can be defined differently among the applicants from various geographic regions. Each pre-application should define these items and terms as they relate to the specific project. Include a succinct explanation of how the project can serve as a model in other settings and how it addresses a high-priority environmental justice issue. The degree to which a project addresses a high-priority environmental justice issue will vary and must be defined by applicants according to their local environmental justice concerns

C. How Much Money May Be Requested, and Are Matching Funds Required?

The ceiling for any one grant is $20,000 in Federal funds. Depending on the funds appropriated by Congress, EPA's 10 regional offices will each have approximately $300,000 to issue awards. *Applicants are not required to cost share.*

D. Who May Submit Pre-Applications and May an Applicant Submit More Than One?

Any affected community group (for example, community-based/grassroots organization, church, school, education agency, college or university, or other non-profit organizations) and Tribal government may submit a pre-application upon publication of this solicitation. Applicants *must be incorporated and non-profit* to receive these Federal funds. *Individuals are not eligible to receive grants.* The qualifications of the project manager and other individuals participating in the proposed project will be an important factor in the selection process.

EPA will consider only one pre-application per applicant for a given project. Applicants may submit more than one pre-application as long as the pre-applications are for separate and distinct projects or activities.

Applicants who were previously awarded funds may submit an application for FY 1995. The FY 1995 pre-application may or may not have any relationship to the project funded in FY 1994. Every pre-application for FY 1995 will be evaluated based upon the merit of the proposed project in relation to the other FY 1995 pre-applications, regardless of whether the proposal would expand a project funded in a previous year.

E. Are There Any Restrictions on the Use of the Federal Funds?

Yes. Among other things, *EPA funds cannot be used* as matching funds for other Federal grants, for construction, legal/attorney fees, or buying furniture. Refer to 40 CFR 30.410 "How does EPA determine Allowable Costs?"

The Pre-Application

F. What is a Pre-Application?

The pre-application contains four parts: 1) the "Application for Federal Assistance" form (Standard Form 424/SF 424), 2) the "Budget Information: Non-Construction Programs" form (Standard Form 424A/SF 424A), 3) a work plan (described below), and 4) certifications/assurances forms. These documents contain all the information EPA needs to evaluate the merits of your pre-application. Finalists may be asked to submit additional information to support their projects.

G. How Must the Pre-Application Be Submitted and Specifically What Must the Standard Forms (SF) 424 and (SF) 424A, and the Work Plan Include?

The applicant must submit the original pre-application signed by a person duly authorized by the governing board of the applicant and one copy of the pre-application (double-sided encouraged). Pre-applications must be reproducible (for example, stapled once in the upper left hand corner, on white paper, and with page numbers).

As described above, a pre-application contains an SF 424, SF 424A, a work plan, and certifications/assurances. The following describes the contents and requirements of the SF 424, SF 424A, the work plan, and the certifications/assurances forms.

The percentages next to the items discussed below are the weights EPA will use to evaluate the applicant's pre-application. Please note that certain sections are given greater weight than others. The required forms described below can be obtained by calling or writing to the EPA contacts listed at the end of this notice.

1. Application for Federal Assistance (SF 424). An SF 424 is an official form required for all Federal grants which requests basic information about the applicant and the proposed grant project. A completed SF 424 must be submitted as part of your pre-application. (5%)

2. Budget Information: Non-Construction Programs (SF 424A). An SF 424A is an official form which requests the applicant to provide the basic information on how the Federal and non-Federal share (if any) of funds will be used. A completed SF 424A must be submitted as part of your pre-application. For the purposes of this grants program, *complete only the non-shaded areas.* (5%)

3. Work Plan. A work plan describes the applicant's proposed project. Work plans must be no more than 5 pages total. One page is one side of a single-spaced typed page. The pages must be letter size (8½×11), with normal type size (10 or 12 cpi) and at least 1" margins. The only appendices and letters of support that EPA will accept are a detailed budget, resumes of key personnel, and commitment letters. (85%-delineated below)

Work plans must be submitted in the format described below.

I. A concise introduction of no more than one page that states the nature of the organization, how the organization has been successful in the past, purpose of the project, objective, method, project completion plans, target audience, and expected results. (10%)

II. A clear and concise project description of no more than four pages which describes how the applicant plans to accomplish one or more of the four objectives outlined in Question B. (60%)

A. Identify necessary improvements in communication and coordination * * * Facilitate communication, information exchange * * *.

B. Motivate the general public to be more conscious of environmental justice issues * * *

C. Develop and demonstrate environmental justice practice, method, or technique * * *

D. Teach about risk reduction and pollution prevention * * *

III. A conclusion of no more than one page discussing how the applicant will evaluate the success of the project, in terms of the anticipated strengths and challenges in implementing the project. (10%)

IV. An appendix with no more than two pages of resumes of up to three key personnel. (5%)

V. An appendix with one page letters of commitment from other organizations with a significant role in the project. Letters of endorsement are not acceptable.

4. Certification/Assurances: The Federal government requires all grantees to certify and assure that they will comply with a variety of federal laws, regulations and requirements. There are two certifications/assurances forms which must be signed and included in the application. (5%)

H. When and Where Must Pre-Applications Be Submitted?

The original plus one copy of the pre-application must be mailed to EPA *postmarked no later than Saturday, February 4, 1995.* Pre-applications must be submitted to the EPA regional office for the region where the applicant is located. A list of the addresses of the EPA Regional Offices (with the names of the regional contacts) and a list of the states which these offices support are included at the end of this notice.

Review and Selection Process

I. How Will Pre-Applications Be Reviewed?

EPA *Regional Offices will review, evaluate, and make selections.* Pre-applications will be screened to ensure they meet all eligible activities described in Questions A, B, C, D, E, F, G, and H. Applications will be disqualified if they do not meet EPA's basic criteria.

J. How Will the Final Selections Be Made?

After the individual projects are reviewed and ranked as described in Question I, EPA officials in the regions will compare the best pre-applications and make final selections. Factors EPA will take into account include geographic and socioeconomic balance, project diversity, cost, and projects whose benefits can be sustained after the grant is completed.

Regional Administrators will select the grants with concurrence from the Director of the Office of Environmental Justice at EPA Headquarters.

K. How Will Applicants Be Notified?

After all pre-applications are received, EPA will mail acknowledgements to each applicant. Once pre-applications have been recommended for funding, EPA will notify the finalists and request any additional information necessary to complete the award process. The EPA Regional Environmental Justice Coordinators will notify those applicants whose projects were not funded.

Grant Activities

L. When Should Proposed Activities Start?

Activities cannot start before funds are awarded. Start dates are currently targeted for June 1, 1995. EPA plans to award these projects by May 31, 1995.

M. How Much Time Do Grant Recipients Have to Complete Projects?

Funding may be requested for periods of up to 12 months. However, flexibility is possible depending upon the nature of the project. Activities must be completed within the time frame specified in the grant award. Requests for renewals will receive low priority.

N. Who Will Perform Projects and Activities?

The project manager, who is normally an employee of the recipient, is responsible by law for the technical success of the project. The project manager is subject to approval by the EPA project officer.

O. What Reports Must Grant Recipients Complete?

All recipients must submit final reports for EPA approval within ninety (90) days following the end of the project period. Specific report requirements (for example, Final Technical Report and Financial Status Report) will be detailed in the award agreement. EPA plans to collect, evaluate, and disseminate grantees' final reports to serve as model programs. Since networking is crucial to the success of the program, grantees may be required to submit an extra copy to a central collection point.

P. What is the Expected Time-Frame for the Review and Awarding of the Grants?

October 7, 1994—Request for Applications Notice (RFA) is published in the **Federal Register**.

October 8, 1994–February 3, 1995—Eligible grant recipients develop their pre-applications.

February 4, 1995—Pre-applications must be postmarked or received by EPA Regional Offices by this date.

February 5, 1995–March 31, 1995—EPA program officials review, evaluate, and select grants.

April 1, 1995–May 31, 1995—EPA Regional grants offices process grants and make awards. Applicants will be contacted by the grants office or program office if their pre-proposal was selected for funding. Additional information may be required from the finalists, as indicated under Question F above.

June 1, 1995—EPA anticipates the grantees' projects or activities to begin by or around this date, after grant agreements have been accepted by the recipient

Fiscal Year 1996

Q. How Can I Receive Information on the Fiscal Year 1996 Environmental Justice Grants Program?

After the Fiscal Year 1995 Solicitation, EPA will develop a new mailing list for the Fiscal Year 1996 Solicitation. If you wish to receive information on the 1996 Environmental Justice Small Grants Program, you must mail your request along with your name, organization, address and phone number to: U.S. Environmental Protection Agency, Office of Environmental Justice Grants-FY 1996 (3103), 401 M Street, SW., Washington, DC 20460.

For additional information, please contact the appropriate Regional EJ Coordinator listed at the end of this notice.

Working Definitions

- *Affected communities*—individuals or groups of individuals which are subject to an actual or potential health, economic, or environmental threat arising from, or which arose from, polluting source(s), or proposed polluting source(s). An example of affected parties include individuals who live near polluting sources and whose health is or may be endangered or whose economic interest are directly threatened or harmed.
- *Education agency*—any education agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381) and shall include any tribal education agency.
- *Environmental justice*—refer to definition provided on page 3.
- *Geographic protection*—efforts to manage environmental problems that are specific to the characteristics of a geographic region.
- *Low-income community*—a population that is classified by the U.S.

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Bureau of the Census as having an aggregated mean income level for a family of four that correlates to $13,359, adjusted through the poverty index using a standard of living percentage change where applicable, and whose composition is at least 25% of the total population of a defined area or jurisdiction.

• *Non-profit organization*—an organization, association, or institution described in section 501(c)(3) of the Internal Revenue Code of 1986, which is exempt from taxation pursuant to the provisions of section 501(a) of such Code.

• *People of color community*—a population that is classified by the U.S. Bureau of the Census as African American, Hispanic American, Asian and Pacific American, American Indian, Eskimo, Aleut and other non-white persons, whose composition is at least 25% of the total population of a defined area or jurisdiction.

• *Pollution prevention* —the reduction or elimination of pollutants through increased efficiency in the use of raw materials, energy water, or other resources; or the protection of natural resources by conservation. Pollution prevention measures may reduce the amount of pollutants released into the environment as well as the hazards to public health and the environment from such releases.

• *Risk reduction* —the process of estimating and comparing the dimensions and characteristics of risks, and determining the feasibility and costs of reducing them, to determine which future actions to take to achieve the greatest reduction of the most serious threats.

• *Tribe*—all federally recognized American Indian tribes (including "Alaskan Native Villages"), pueblos, and rancherios. Although, as used in this notice, the term tribe refers to only "federally recognized" indigenous peoples, "state recognized" indigenous peoples are able to apply for grants as "other eligible grass-roots organizations" as long as they are incorporated.

Jonathan Z. Cannon,

Assistant Administrator, Office of Administration and Resources Management

Contact Names and Addresses

Region 1

Primary Contact: James Younger 617/565–3427, USEPA Region 1, John F Kennedy Federal Building, One Congress Street, 10th Floor OCR, Boston, MA 02203.

Secondary Contact: Rhona Julien 617/565–9454.

Region 2

Primary Contact: Lillian Johnson 212/264–7054, USEPA Region 2 (2EPD), Javits Federal Building, 26 Federal Plaza, New York, NY 10278.

Secondary Contact: Natalie Loney 212/264–0002.

Region 3

Primary Contact: Mary Zielinski 315/597–6795, USEPA Region 3 (3PM–71), 841 Chestnut Building, 3DA00, Philadelphia, PA 19107–4431.

Secondary Contact: Dominique Luekenhoff 215/597–6529.

Region 4

Primary Contact: Vivian Malone Jones 404/347–4294 ext. 6764, USEPA Region 4, 345 Courtland Street, NE., Atlanta, GA 30365.

Secondary Contact: Hector Buitrago 404/347–2200.

Region 5

Primary Contact: Gina Rosario 312/353–4716, USEPA Region 5 (H–75), 77 West Jackson Boulevard, Chicago, IL 60604–3507.

Secondary Contact: Ethel Crisp 312/353–3810.

Region 6

Primary Contact: Mary Wilson 214/665–6529, USEPA Region 6 (6M–P), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Secondary Contact: Lynda Carroll 214/665–6500.

Region 7

Primary Contact: Hattie Thomas 913/551–7003, USEPA Region 7 1–800–223–0425, 726 Minnesota Avenue, Kansas City, KS 66101.

Secondary Contact: Rupert Thomas 913/551–7661.

Region 8

Primary Contact: Mel McCottry 303/294–1982, USEPA Region 8 (PM–AS), 999 18th Street, Suite 500, Denver, CO 80202–2405.

Secondary Contact: Tempa Graves 303/294–1982.

Region 9

Primary Contact: Lori Lewis 415/744–1561, USEPA Region 9 (E–1), 75 Hawthorne Street, San Francisco, CA 94105.

Secondary Contact: Martha Vega 415/744–1609.

Region 10

Primary Contact: Robyn Meeker 206/553–8579, USEPA Region 10 (MD–142), 1200 Sixth Avenue, Seattle, WA 98101.

Secondary Contact: Joyce Kelly 206/553–4029.

Headquarters

Primary Contact: Daniel Gogal 1–800–962–6215, USEPA, Office of Environmental Justice (3103), 401 M Street, SW., Washington, DC 20460.

States and Territories By Region

Region 1

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Region 2

New Jersey, New York, Puerto Rico, Virgin Islands

Region 3

Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Region 4

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Region 5

Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Region 6

Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Region 7

Iowa, Kansas, Missouri, Nebraska

Region 8

Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Region 9

Arizona, California, Hawaii, Nevada, American Samoa, Guam

Region 10

Alaska, Idaho, Oregon, Washington

[FR Doc. 94–24647 Filed 10–4–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5085–7]

Information Resources Management Strategic Planning Task Force of the National Advisory Council for Environmental Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL 92463, EPA gives notice of a one-day meeting of the Information Resources Management (IRM) Strategic Planning Task Force. The IRM Task Force is a special task force formed under the Environmental Information and Assessment (EIA) Committee, which is one of the standing committees of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues, and the EIA Committee examines issues associated with the gathering, dissemination, and use of environmentally related data and information.

The IRM Task Force was formed to provide recommendations on key elements that EPA should include in an Information Resources Management Strategic Plan for the Agency. The meeting is being held to discuss issues associated with implementing the recommendations in the final report of the Task Force.

Scheduling constraints preclude oral comments from the public during the meeting. Written comments can be submitted by mail, and will be transmitted to Task Force members for consideration.

DATES: The public meeting will be held in Wednesday, October 26, 1994, from 10:00 a.m. to 4 p.m. in room 333 at the National Governors' Association Hall of the States, 444 North Capitol Street, Washington, DC.

ADDRESSES: Written comments should be sent to: Mark Joyce, Office of Cooperative Environmental Management, U.S. EPA 1601F, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Official, Direct line (202) 260–6889, Secretary's line (202) 260–6892.

Dated: September 28, 1994.

Mark Joyce,

Designated Federal Official.

[FR Doc. 94–24648 Filed 10–4–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 94-1052]

Comments Invited On New York Metropolitan Area Public Safety Plan Amendment

September 27, 1994.

On May 12, 1989, the Commission accepted the Public Safety Plan for the New York Metropolitan area (Region 8). On July 11, 1994, Region 8 submitted proposed amendments to its plan that would revise the current channel allotments. Because the proposed amendment is a major change to the Region 8 plan, the Commission is soliciting comments from the public before taking action. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 57.)

Interested parties may file comments to the proposed amendments on or before November 4, 1994 and reply comments on or before November 21, 1994. Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, D.C. 20554 and should clearly identify them as submissions to General Docket 88–476 New York Metropolitan Area Public Safety Region 8.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–24600 Filed 10–4–94; 8:45 am]

BILLING CODE 6712–01–F

[DA 94-1053]

Comments Invited On Southern California Public Safety Plan Amendment

September 27, 1994.

On November 8, 1989, the Commission accepted the Public Safety Plan for Southern California (Region 5). On August 1, 1994, Region 5 submitted a proposed amendment to its plan that would revise the current channel allotments. Because the proposed amendment is a major change to the Region 5 plan, the Commission is soliciting comments from the public before taking action. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 57.)

Interested parties may file comments to the proposed amendment on or before November 4, 1994 and reply comments on or before November 21, 1994. Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, D.C. 20554 and should clearly identify them as submissions to Gen. Docket 89–97 Southern California Public Safety Region 5.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–24599 Filed 10–4–94; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Crisis Counseling Assistance and Training

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: FEMA gives notice that the extension period for the Missouri regular crisis counseling program for disaster survivors of the 1993 floods is extended from 90 to 180 days. The severity of the emotional trauma resulting from the floods in Missouri warrants an extension of 180 days.

EFFECTIVE DATE: November 16, 1994.

FOR FURTHER INFORMATION CONTACT: Diana Paschke, Human Services Division, Office of Disaster Assistance Programs, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4026.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) is charged with coordinating Federal disaster assistance under the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Act) when the President has declared a major disaster FEMA provided funding for a regular crisis counseling program to help those suffering the trauma resulting from the 1993 floods in Missouri.

FEMA received a request from the State of Missouri to extend the otherwise applicable time limitations authorized by section 416 of the Act, so that the State can provide additional mental health services that are critically needed for citizens during the recovery operation. The extent of the damages wrought by the floods were of such magnitude that the residents of Missouri suffered significant emotional trauma that warrants continuation of disaster mental health counseling beyond the normal crisis counseling time periods.

The Director, Center for Mental Health Services (CMHS), as the delegate to FEMA for the Secretary, Department of Health and Human Services, helps FEMA implement crisis counseling training and assistance, FEMA believes there was a well-established need for continuation of the regular crisis counseling program beyond a 90-day extension. Based upon the sound CMHS

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recommendation. FEMA has approved a 180-day extension to the time period for the Missouri regular crisis counseling program.

(Catalog of Federal Domestic Assistance No 83.516, Disaster Assistance)

Dated: September 30, 1994

Richard W. Krimm,

Associate Director, Response and Recovery Directorate

[FR Doc. 94-24624 Filed 10-4-94; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL TRADE COMMISSION

Hart-Scott-Rodino Act Antitrust Improvements Act of 1976 and Regulations Thereunder; Notice Regarding an Increase in the Filing Fee

AGENCY: Federal Trade Commission

ACTION: Notice.

SUMMARY: On August 26, 1994, the President signed legislation into law mandating that a fee of $45,000 must be paid by each person acquiring voting securities or assets who is required to file a premerger notification by the Hart-Scott-Rodino Antitrust Improvement Act of 1976 and the regulations promulgated thereunder. The newly enacted law amends Section 605 of Title VI of Pub. L. 101-162, which mandated the collection of a $25,000 filing fee

The new provision increasing the filing fee to $45,000 became effective upon the President's signature, late Friday, August 26, 1994. The Commission is collecting the new fee for filings made on or after Monday, August 29. The Commission has issued this Notice in order to advise the public about the increase in the filing fee.

EFFECTIVE DATE: The increased filing fee is due from acquiring persons submitting Premerger Notification and Report Forms on or after August 29, 1994.

FOR FURTHER INFORMATION CONTACT: Richard B. Smith, Attorney, Premerger Notification Office, Bureau of Competition (Sixth Street and Pennsylvania Avenue, NW., Room 301), Federal Trade Commission, Washington, D.C. 20580, 202-326-3100

SUPPLEMENTARY INFORMATION: The United States Congress, in an Act making appropriations for the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies,[1] has mandated that a fee of $45,000 must be paid by "persons acquiring voting securities or assets who are required to file premerger notifications by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the regulations promulgated thereunder.[2] The new fee provision was signed into law by President Clinton late Friday, August 26, 1994, and took effect immediately.[3] The increased fee must be paid for filings made on or after Monday, August 29, 1994.

By direction of the Commission.

Donald S. Clark,

Secretary

[FR Doc. 94-24610 Filed 10-4-94; 8:45 am]

BILLING CODE 6750-01-M

[1] The newly passed law (H.R. 4603, Pub. L. 103-317) amends Section 605 of Title VI of Public Law 101-162 (103 Stat. 1031), which originally mandated the collection of a filing fee beginning November 28, 1989, by striking "$25,000" and inserting in lieu thereof "$45,000."

[2] Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 95-435, 90 Stat. 1390.

[3] Many other provisions of the legislation, relating to current appropriations for FY 95, are effective October 1, 1994. Although the fee increase provision is contained in the FY 95 current appropriations legislation, the increase itself is not a current appropriation for FY 95, nor is it made dependent upon the FY 95 appropriation. Rather, the fee increase is permanent legislation amending a provision of law that has been in effect since 1989. The appropriations act contains no provision specifying an effective date for the fee increase provision, and it was therefore effective upon enactment. *See* GAO Office of the General Counsel, Principles of Federal Appropriations Law § 2.B.4 (2d ed. 1991)

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 13⅛% for the quarter ended September 30, 1994. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: September 28, 1994.

George Strader,

Deputy Assistance Secretary, Finance.

[FR Doc. 94-24559 Filed 10-4-94; 8:45 am]

BILLING CODE 4150-04-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration.

The Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS), has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96-511).

1. *Type of Request:* Reinstatement; *Title of Information Collection:* Indirect Medical Education; *Form No.:* HCFA-R-64; *Use:* This collection of information on interns and residents is needed to calculate Medicare program payments for hospitals for the indirect costs they incur for medical education. *Frequency:* Annually; *Respondents:* Businesses or other for profit, nonprofit institutions; *Estimated Number of Responses:* 1,250; *Average Hours Per Response:* 3; *Total Estimated Burden Hours:* 3,750.

2. *Type of Request:* Revision; *Title of Information Collection:* Psychiatric Unit Criteria Worksheet, Rehabilitation Hospital Criteria Worksheet, and Rehabilitation Unit Criteria Worksheet; *Form Nos.:* HCFA-437, -437A, -437B; *Use:* These forms are necessary to verify and reverify that these facilities/units comply and remain in compliance with the exclusion criteria for the Medicare prospective payment system; *Frequency:* Annually; *Respondents:* Businesses or other for profit, nonprofit institutions, and State or local governments; *Estimated Number of Responses: 2,349; Average Hours Per Response:* .25; *Total Estimated Burden Hours:* 587.

3. *Type of Request:* Reinstatement; *Title of Information Collection:* Medicare Supplier Number Application; *Form No.:* HCFA-192; *Use:* Legislation requires all suppliers to disclose the names of owners and managing employees. This form establishes a standard for that data collection. These data are used to identify common ownership and management and sanctioned individuals in the Medicare and Medicaid programs; *Frequency:* On occasion; *Respondents:* Businesses or other for profit, small businesses or organizations; *Estimated Number of Responses:* 50,000; *Average Hours Per Response:* .75; *Total Estimated Burden Hours:* 37,500.

4. *Type of Request:* Reinstatement; *Title of Information Collection:* Requests for Medicare Payment by Municipal Health Services Program (MHSP) Clinics; *Form No.:* HCFA-127; *Use:* This form allows for the 15 participating clinics to be reimbursed for services they provided to Medicare beneficiaries. The form permits cities participating in the MHSP to receive correct and timely reimbursement and expedites the routing and payment of bills; *Frequency:* Weekly; *Respondents:* State or local governments; *Estimated Number of Responses:* 443,000; *Average Hours Per Response:* .16; *Total Estimated Burden Hours:* 70,880.

5. *Type of Request:* New; *Title of Information Collection:* Examination and Treatment for Emergency Medical Conditions and Women in Labor and 42 CFR 489.24 Essentials of Provider Agreement Responsibilities of Medicare Participating Hospitals in Emergency Cases; *Form No.:* HCFA-1514A/B; *Use:* Under Section 1867 of the Social Security Act, Examination and Treatment for Emergency Medical Conditions and Women in Labor, effective August 1986, hospitals may continue to participate in Medicare only if they are not out of compliance with its provisions. We need to provide this tool to surveyors to promote uniform and thorough application of the requirements and to gather information frequently requested by Congress and other interested parties regarding implementation of the statute; *Frequency:* On occasion; *Respondents:* Federal agencies or employees, nonprofit institutions, State or local governments, individuals or households; *Estimated Number of Responses:* 350; *Average Hours Per Response:* .25; *Total Estimated Burden Hours:* 87.5.

6. *Type of Request:* New; *Title of Information Collection:* Evaluation of Patient and Physician Satisfaction With the Medicare Participating Heart Bypass Center Demonstration; *Form No.* HCFA-R-166; *Use:* This requirement provides HCFA with information to determine whether lowering the amount paid for heart bypass procedures compromises the care provided to Medicare beneficiaries; *Frequency:* One-time survey; *Respondents:* Individuals or households; *Estimated Number of Responses:* 840; *Average Hours Per Response:* .35; *Total Estimated Burden Hours:* 294.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966-5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 3001, Washington, D.C. 20503.

Dated: September 29, 1994.

Kathleen Larson,

Acting Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 94-24665 Filed 10-4-94; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-94-3822; FR-3776-N-01]

Notice of Request for Comments on Fair Housing Initiatives Program

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Request for Comments on Fair Housing Initiatives Program (FHIP).

SUMMARY: This Notice invites interested parties to comment on the Department's administration of FHIP funding.

DATES: Comments Due Date: November 21, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this Notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jacquelyn J. Shelton, Director, Office of Fair Housing Initiatives and Voluntary Programs, Room 5234, 451 Seventh Street SW., Washington, DC 20410-2000. Telephone number (202) 708-0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708-0455. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: In anticipation of the next round of funding under the Fair Housing Initiatives Program, the Department invites comment from potential applicants, prior grantees and applicants, and any other interested parties, on the administration of FHIP funding. The Department is especially interested in soliciting comments on the application procedures for funding in general, and on the content of FHIP Notices of Funding Availability (NOFAs) in particular. The Department will consider the comments received in response to this Notice when formulating plans for the disposition of funds appropriated for Fiscal Year 1995.

Dated: September 23, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94-24625 Filed 10-4-94; 8:45 am]

BILLING CODE 4210-28-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-050-4350-08]

Notice of Emergency Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Emergency Closure of McIntire Springs property in Conejos County, Colorado to all public use from October 1, 1994 through February 15, 1995.

SUMMARY: Notice is hereby given that effective October 1, 1994, public lands described below are closed to all public use. Under the authority and requirement of 43 CFR 8364.1, and the Federal Land Policy and Management Act of 1976. This closure affects 535 acres of public lands in Conejos County located in T. 35 N., R. 10 E., Sec. 12: SE¼ NE¼, and the E½SE¼, and Sec. 13: N½NE¼ and SE¼NE¼, T. 35 N., R 11 E., Sec. 7: Lots 2, 3, 4, SE¼NW¼ less Pikes Stockade, NE¼SW¼ and SE¼SW¼, and Sec. 18: Lots 1 and 2. The purpose of this closure is to minimize disturbance and protect critical wintering waterfowl habitat, reduce overcrowding and minimize outbreaks of avian cholera in wintering waterfowl populations. These restrictions do not apply to emergency, law enforcement and Federal, State or other government personnel who are in the area for official or emergency purposes and who are expressly authorized or otherwise officially approved by BLM. Any person who fails to comply with this closure order may be subject to the penalties provided by

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43 CFR 8360.0–7 which includes fines not to exceed $1,000 and/or imprisonment not to exceed 12 months. Notice of this closure will be posted at the site, San Luis Resource Area Office and at the Canon City District Office.

DATES: This emergency closure is in effect from October 1, 1994 to February 15, 1995 and shall remain in effect unless revised, revoked or amended.

ADDRESSES: Comments can be directed to the Area Manager, San Luis Resource Area, 1921 State St., Alamosa, CO 81101 or District Manager, Canon City District Office, P.O. Box 2200, Canon City, CO 81215–2200.

FOR FURTHER INFORMATION CONTACT: Julie Howard, Area Manager at (719) 589–4975.

Stuart L. Freer,
Associate District Manager.

[FR Doc. 94–24569 Filed 10–4–94; 8:45 am]
BILLING CODE 4310–JB–M

[AZ–040–4351–02]

Availability of the Safford District Resource Management Plan Amendment and Environmental Assessment No. AZ–040–03–021

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management has prepared an amendment to the Safford District Resource Management Plan finding Cienega Creek eligible for further study as a possible Wild and Scenic River under provisions of Public Law 92–542 with a tentative classification as Scenic. An Environmental Assessment of impacts resulted in a Finding of No Significant Impact.

DATES: Except for any portion under protest, the Arizona State Director may approve the plan 30 days after publication of this notice in the Federal Register.

ADDRESSES: Comments should be sent to: Area Manager, Bureau of Land Management, 12661 E. Broadway, Tucson, Arizona 85748.

FOR FURTHER INFORMATION CONTACT: Don Ducote at the address above or telephone (602) 722–4289.

Dated: September 27, 1994.

William T. Civish,
District Manager.

[FR Doc. 94–24570 Filed 10–4–94; 8:45 am]
BILLING CODE 4310–32–M

[ES–030–04–4830–01–25–7A]

Eastern States: Change in Milwaukee District Office Hours of Operation

SUMMARY: Effective November 15, 1994, the Milwaukee District Office hours of operation will be Monday through Friday, 7:30 a.m. to 4:30 p.m. Comments shall be submitted by October 31, 1994.

FOR FURTHER INFORMATION CONTACT: Judy Patterson, ADM, Administration, (414) 297–4406.

Submit Written Comments To: Bureau of Land Management, Milwaukee District Office, P.O. Box 631, Milwaukee, Wisconsin 53201–0631.

Dated: September 27, 1994.

Gary D. Bauer,
District Manager.

[FR Doc. 94–24668 Filed 10–4–94; 8:45 am]
BILLING CODE 4310–GJ–M

Office of the Secretary

Privacy Act of 1974; Establishment of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to establish a new system of records to be maintained by the Office of Financial Management. The system, entitled "Delinquent Debtors File—Interior, OS–84," will include information pertaining to current Departmental employees, former Departmental employees, and other Federal employees indebted and owing money to the Department, who have been identified as delinquent debtors. The information contained in this system will be used for the purpose of collecting debts owed to the Department through administrative offset or salary offset procedures. The notice is published in its entirety below.

As required by the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), the Office of Management and Budget, the Senate Committee on Governmental Affairs, and the House Committee on Government Operations have been notified of this action.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires a 40-day period in which to review such proposals. Written comments on this proposal can be addressed to the Departmental Privacy Act Officer, Office of the Secretary, Office of Administrative Services, 1849 "C" Street NW, Mail Stop 5412 MIB, Washington, DC 20240, telephone (202) 208–6045. Comments received within 40 days of publication in the Federal Register (November 14, 1994), will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: September 16, 1994.

Albert C. Camacho,
Director, Office of Administrative Services.

INTERIOR/OS–84

SYSTEM NAME:

Delinquent Debtor File—Interior, OS–84.

SYSTEM LOCATION:

U.S. Department of the Interior, Office of the Secretary, Division of Financial Management, m.s. 7258 MIB, 1849 C St. NW, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, and other Federal employees indebted and owing money to the Department of the Interior.

CATEGORIES OF RECORDS IN THE SYSTEM:

Delinquent debt records consisting of the debtor's name, Social Security Number, address, amount of debt, date debt arose, office referring debt, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966, Pub. L. 89–508, Debt Collection Act of 1982, Pub. L. 97–365, and E.O. 9397.

PURPOSE(S):

The primary purpose of the records is to collect debts owed to the Department using salary offset or administrative offset procedures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made: (1) To the General Accounting Office, Department of Justice, United States Attorney, or other Federal agencies for further collection action on any delinquent account when circumstances warrant; (2) To a commercial credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file for use in the administration of debt collection; (3) To a debt collection agency for the purpose of collection services to recover indebtedness owed to the Department; (4) To any Federal agency where the individual debtor is employed or receiving some form of remuneration for the purpose of enabling that agency to collect debts on the Department's behalf by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365); (5) To any other Federal agency including, but not limited to, the Internal Revenue Service pursuant to 31 U.S.C. 3720A, for the purpose of effecting an administrative offset against the debtor of a delinquent debt owed to the Department by the debtor; (6) To the Internal Revenue Service by computer matching to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by the Department against the taxpayer pursuant to 26 U.S.C. 6103(m)(2) and in accordance with 31 U.S.C. 37121, 3716, and 3718. Note: The Department will disclose an individual's mailing address obtained from the IRS pursuant to 26 U.S.C. 6103(m)(2) only for the purpose of debt collection. Disclosures to a debt collection agency will be made only to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982. Disclosures to a consumer reporting agency will be made only for the limited purpose of obtaining a commercial credit report on the individual taxpayer. Address information obtained from the Internal Revenue Service will not be used or shared for any other Departmental purpose or disclosed to another Federal, state, or local agency which seeks to locate the same individuals for its own debt collection purpose; (7) To the Defense Manpower Data Center, Department of Defense, the U.S. Postal Service or to any other Federal, state, or local agency, a data base of information consisting of the debtor's name, Social Security Number, and amount owed, for the purpose of conducting an authorized computer matching program in compliance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, so as to identify and locate delinquent debtors in order to start a recoupment process on an individual basis of any debt owed to the Department by the debtors arising out of any administrative or program activities or services administered by the Department; (8) To any creditor Federal agency seeking assistance for the purpose of that agency implementing administrative or salary offset procedures in the collection of unpaid financial obligations owed the United States government from an individual. (9) To the U.S. Department of Justice or to a court or adjudicative body with jurisdiction when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (10) Of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (11) To a congressional office in response to an inquiry the individual has made to the congressional office.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in automated and manual form.

RETRIEVABILITY:

Records are retrieved by the name or Social Security Number of the individual debtor.

SAFEGUARDS:

Records are maintained with access controls meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are retained by the Division of Financial Management only for the duration of computer matching programs. Upon conclusion of these programs, records are returned to their respective, originating offices, where they are retained and disposed of in accordance with approved agency schedules. Backup copies are retained for one calendar year, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Financial Management, Office of the Secretary, U.S. Department of the Interior, m.s. 7258 MIB, 1849 C St. NW, Washington, DC 20240.

NOTIFICATION PROCEDURE:

An individual requesting notification of the existence of records on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

An individual requesting access to records maintained on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Departmental and Bureau financial offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–24666 Filed 10–4–94; 8:45 am]
BILLING CODE 4310–RK–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–794583

Applicant: Michelle Pomeroy, Madison, WI

The applicant requests a permit to import blood smears taken from live-trapped cheetahs (*Acinonyx jubatus*) in Namibia, for the purpose of enhancement of the survival of the species through scientific research.

PRT–794479

Applicant: Cincinnati Zoo, Cincinnati, OH

The applicant requests a permit to import a pair of captive-bred babirusa (*Babyrousa babyrussa*), as well as blood samples taken from each, for the purpose of scientific research and enhancement of propagation or survival of the species.

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PRT-794951

Applicant: Baltimore Zoo, Baltimore, MD

The applicant requests a permit to import one female leopard (Panthera pardus) from the National Zoological Gardens, South Africa to the Baltimore Zoo for enhancement of the species through conservation education.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: September 30, 1994

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94-24650 Filed 10-4-94; 8:45 am]

BILLING CODE 4310-55-P

Issuance of Permit for Marine Mammals

On June 2, 1994, a notice was published in the **Federal Register**, Vol. 59, No. 105, Page 28558, that an application had been filed with the Fish and Wildlife Service by Washington State University for a permit (PRT-789955) to collect blood and adipose tissue samples, collect vestigial premolars, hair and claw tip clippings, tattoo and tag up to 50 polar bears and radio-collar and release 2 male and 8 female polar bears.

Notice is hereby given that on September 1, 1994, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 420(c), Arlington, Virginia 22203. Phone (703) 358-2104 or Fax (703) 358-2281.

Dated: September 30, 1994.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94-24651 Filed 10-4-94; 8:45 am]

BILLING CODE 4310-55-P

Finding of No Significant Impact for an Incidental Take Permit for the Proposed Cedar Park Waterline in Travis County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared an Environmental Assessment for issuance of a Section 10(a)(1)(B) permit for the incidental take of the Federally endangered golden-cheeked warbler (*Dendroica chrysoparia*) during the construction and operation of a water pipeline in Travis County, Texas.

Proposed Action

The proposed action is the issuance of a permit under Section 10(a)(1)(B) of the Endangered Species Act to authorize the incidental take of the golden-cheeked warbler.

The Applicant plans to construct a 20,193-foot long water supply pipeline from Lake Travis eastward to the Williamson County line. The Applicant proposed to preserve documented perch trees for the warbler along the route, limit clearing to 35 feet wide along the route and two 100-feet by 100-feet staging areas in non-habitat; schedule work during the season when the warblers are absent from the area (August 1 through March 1); and the purchase and dedication of 33 acres of occupied warbler habitat to a conservation organization approved by the Service. Details of the mitigation are provided in the Cedar Park Waterline Environmental Assessment/Habitat Conservation Plan. Guarantees for implementation are provided in the Agreement. These conservation plan actions ensure that the criteria established for issuance of an incidental take permit will be fully satisfied.

Alternatives Considered

1. No action,
2. Proposed action,
3. Alternate project route,
4. Additional alternate project route,
5. Wait for issuance of a Section 10(a)(1)(B) permit.

Determination

Based upon information contained in the Environmental Assessment/Habitat Conservation Plan, the Service has determined that this action is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an Environmental Impact Statement on the proposed action is not warranted.

It is my decision to issue the Section 10(a)(1)(B) permit for the construction and operation of the Cedar Park Water System Improvement Pipeline in northwest Travis County, Texas.

John G. Rogers,

Regional Director, Southwest Region (2), U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

[FR Doc. 94-24667 Filed 10-4-94; 8:45 am]

BILLING CODE 4310-55-P

Notice of Availability of Record Decision for the Patoka River National Wetlands Project, Pike and Gibson Counties, IN

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice; Record of Decision for the Patoka River National Wetlands Project.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) has issued a Record of Decision (ROD) establishing the Patoka River National Wetlands Project (Project) located in Pike and Gibson Counties, Indiana. The decision was based on the entire administrative record for the 8-year planning process, including all issues and concerns received in response to the Draft and Final Environmental Impact Statements. The ROD is available to the public.

DATES: The decision to implement the Project through the selection of the preferred alternative identified in the Final Environmental Impact Statement was made on September 7, 1994.

ADDRESSES: Individuals wishing copies of this ROD should contact: Project Manager, U.S. Fish and Wildlife Service, Patoka River National Wetlands Project, 510½ West Morton Street, Box 217, Oakland City, Indiana 47660.

FOR FURTHER INFORMATION CONTACT: Mr. William McCoy, Project Manager, telephone (812) 749-3199.

SUPPLEMENTARY INFORMATION: The ROD documents the decision of the Service to establish the Patoka River National Wetlands Project in Pike and Gibson Counties, Indiana. The Service selected Alternative 4, described as the preferred alternative in the Final Environmental Impact Statement, as the best alternative for implementing the Project. This action includes the acquisition from willing sellers of 6,800 acres for the Patoka River National Wildlife Refuge and acquisition of Wildlife Management Areas from within an adjacent 15,283-acre selection area. The ROD identifies the alternatives considered, the issues and concerns raised during the 8-year planning process, the rationale for choosing the selected alternative, and the impacts of this selection.

The Project encompasses one of the last remaining stretches of bottomland forest in Indiana and the Midwest. It provides some of the best wood duck production habitat in the State and is used by threatened and endangered species including bald eagles, Indiana bats, and the proposed northern copperbelly watersnake. Project lands will be managed to protect and enhance bottomland hardwood forests, other wetland habitats, and complementary uplands. The goal is to provide essential food, cover and resting areas for migratory birds, threatened and endangered species, and resident fish and wildlife; and to improve outdoor recreation and education opportunities for the American people. Copies of the ROD have been sent to all landowners within the proposed Project boundaries; to Federal, state and local government officials; interested parties; and all individuals, agencies and organizations who requested copies.

Sam Marler,

Regional Director.

[FR Doc. 94-24605 Filed 10-4-94; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Notice on Outer Continental Shelf Gas and Oil Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: List of Restricted Joint Bidders.

SUMMARY: Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf gas and oil lease sales to be held during the bidding period from November 1, 1994, through April 30, 1995. The List of Restricted Joint Bidders published March 28, 1994, in the **Federal Register** at 59 FR 14425 covered the period of May 1, 1994, through October 31, 1994.

Group I. Chevron Corporation; Chevron U.S.A. Inc.

Group II. Exxon Corp.; Exxon San Joaquin Production Co.

Group III. Shell Oil Co.; Shell Offshore Inc.; Shell Western E&P Inc.; Shell Frontier Oil & Gas Inc.; Shell Onshore Ventures Inc.

Group IV. Mobil Oil Corp.; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas and New Mexico Inc.; Mobil Exploration and Producing North America Inc.

Group V. BP America Inc.; The Standard Oil Co.; BP Exploration & Oil Inc.; BP Exploration (Alaska) Inc.

Dated: September 27, 1994.

Robert E. Brown,

Acting Director, Minerals Management Service.

[FR Doc. 94-24628 Filed 10-4-94; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 24, 1994. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127. Written comments should be submitted by October 20, 1994.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

ARKANSAS

Carroll County

Yocum Creek Skirmish Site, Along AR 103 and Carroll Co. Rds. 81 and 93, Green Forest vicinity, 94001235

CALIFORNIA

Los Angeles County

Glendale Young Men's Christion Association, 140 N. Louise St., Glendale, 94001224

Sonoma County

Glen Oaks Ranch, 13255 Sonoma Hwy., Glen Ellen, 94001223

Yolo County

Hotel Woodland, 426 Main St., Woodland, 94001225

COLORADO

Boulder County

Hotel Boulderado, 2115 13th St., Boulder, 94001226

Mount St. Gertrude Academy, 970 Aurora St., Boulder, 94001227

Douglas County

Cherokee Ranch, N of Co. Rd, 85 and S of Daniels Park Rd., Sedalia vicinity, 94001228

El Paso County

Shrine of the Sun, 4250 Cheyenne Mountain Zoo Rd., Colorado Springs, 94001229

Jefferson County

Hill Section, Golden Hill Cemetery, 12000 W. Colfax Ave., Lakewood vicinity, 94001230

DISTRICT OF COLUMBIA

District of Columbia State Equivalent

Alibi Club, 1806 I St., NW., Washington 94001221

MISSISSIPPI

Chickasaw County

Thelma Mound Archaeological Site, Address Restricted, Houston vicinity, 94001222

MISSOURI

Clay County

Wheeling Corrugating Company Building, 820 E. 14th Ave., North Kansas City, 94001220

NEBRASKA

Cheyenne County

Christ Episcopal Church, Jct. of 10th Ave. and Linden St., Sidney, 94001232

Sidney Historic Business District, Roughly bounded by Hickory and King Sts. and 9th and 11th Aves., Sidney, 94001233

Sioux Ordnance Depot Fire & Guard Headquarters, Jct. of 1st Ave. and Military Rd., Western Nebraska Community College, Sidney vicinity, 94001234

Kimball County

Moginnis Irrigation Aqueduct, S of NE 30, 5 mi. W of Kimball, Kimball vicinity, 94001231

NEW YORK

Suffolk County

Horton Point Lighthouse, N end of Lighthouse R., Southold, 94001237

SOUTH CAROLINA

Georgetown County

Hobcaw Barony (Georgetown County Rice Culture MPs), Roughly bounded by US 17, Winyah and Mud Bays and Jones Cr., Georgetown vicinity, 94001236

VIRGINIA

Lancaster County

Locusville, ½ mi. E of jct. of VA 354 and VA 625, E side, Ottoman vicinity, 94001239

Richmond Independent City

200 Block West Franklin Street Historic District (Boundary Increase), 212-220 W. Main St., Richmond, 94001238

[FR Doc. 94-24562 Filed 10-4-94; 8:45 am]

BILLING CODE 4310-70-M

VOL 59 ISS 192 OCT 5 1994 UMI

Availability of Record of Decision, Final General Management Plan Amendment and Final Environmental Impact Statement, Presidio of San Francisco, Golden Gate National Recreation Area, San Francisco, CA

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, Public Law 91–190 and the regulations promulgated by the Council on Environmental Quality at 40 CFR 1505.2, the Department of the Interior, National Park Service (NPS) has issued a Record of Decision on the Final General Management Plan Amendment (FGMPA)/ Final Environmental Impact Statement (FEIS) for the Presidio of San Francisco.

This action amends the 1980 Golden Gate General Management Plan as it pertains to the Presidio of San Francisco in accordance with the Proposed Action, Alternative A in the FGMPA/ FEIS issued in August 1994. The Draft GMPA/EIS was issued in October 1993. Under the proposed action, Alternative A, cultural and natural resources throughout the Presidio would be preserved and enhanced, and major new programs would be established through public/private partnerships.

Copies of the Record of Decision may be obtained from the Superintendent, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123 Telephone 415–556–3110 or from the Dan Olsen, National Park Service Western Regional Office, Division of Planning, Grants and Environmental Quality, 600 Harrison Street, Suite 600 San Francisco, CA 94107–1372 Telephone 415–744–3968.

Dated: September 27, 1994

Denis P. Galvin,

Associate Director, Planning and Development.

[FR Doc. 94–24561 Filed 10–4–94; 8:45 am]

BILLING CODE 4310–70–P

Office of Surface Mining Reclamation and Enforcement

Navajo Museum/Library/Culture Center Grant Application

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of request for grant funding; public comment period on Navajo Museum/Library/Culture Center funding request.

SUMMARY: OSM is announcing receipt of a grant application requesting funds to partially pay for construction of the Navajo Museum/Library/Culture Center (museum) as proposed by the Navajo Museum and Library Foundation, Inc. (Museum Foundation), acting through the Navajo Abandoned Mine Land Reclamation Department (NAMLRD). The application requests $3 million to partially fund construction of the museum in Window Rock, Arizona, as a public facilities project related to the coal or minerals industry on Navajo Indian lands impacted by coal or minerals development.

DATES: Written comments must be received by 4 p.m., Mountain time on November 4, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to Thomas E. Ehmett at the address listed below. Copies of NAMLRD's grant application for the museum funding request will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the grant application by contacting OSM's Albuquerque Field Office.

Thomas E. Ehmett, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., suite 1200, Albuquerque, New Mexico, 87102.

The Navajo Nation, P.O. Box 308, Window Rock, Arizona, 86515 (602) 871–4941.

FOR FURTHER INFORMATION CONTACT:

Thomas E. Ehmett, telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA

Title IV of the Surface Mining Control and Reclamation Act (SMCRA) established an Abandoned Mine Land Reclamation (AMLR) program to reclaim and restore lands and waters adversely affected by past mining. The program is funded by a reclamation fee levied on coal production. Lands and waters eligible for reclamation under Title IV primarily are those that were mined or affected by mining and abandoned or inadequately reclaimed prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal Tribal, or other laws.

Title IV provides for State or Tribal submittal to OSM of an AMLR plan. The Secretary of the Interior adopted regulations in 30 CFR Parts 870 through 888 that implement Title IV of SMCRA. Ordinarily, a State or Tribe must have a surface mining regulatory program approved pursuant to section 405 of SMCRA prior to submittal of an AMLR plan to OSM. However, on July 11, 1987, the President signed a supplemental appropriations bill (P.L. 100–71) that authorized the Crow and Hopi Tribes and the Navajo Nation to administer AMLR programs without approval of Tribal surface mining regulatory programs. Pursuant to those provisions, the Secretary reviewed the plans submitted by Tribes and solicited and considered comments of State and Federal agencies and the public. After considering the comments received, if the Secretary determined a Tribe had the ability and necessary legislation to implement the provisions of Title IV, the Secretary approved the Tribal program and granted the Tribe exclusive authority to administer its plan.

Upon approval of a Tribe's AMLR plan by the Secretary, the Tribe may submit to OSM, on an annual basis, an application requesting funds for specific projects that are necessary to implement the approved plan. Funding requests are reviewed and approved by OSM in accordance with the requirements of 30 CFR Parts 874, 875, and 886.

II. Background on the Navajo Nation Plan

The Secretary of the Interior approved the Navajo Nation's AMLR plan on May 16, 1988. General information on the Navajo Nation's plan, including the Secretary's findings, the disposition of comments, and the approval of the plan, is in the May 16, 1988, **Federal Register** (53 FR 17186). Approval of the Navajo Nation Plan is codified at 30 CFR 756.13.

By letters dated April 7 and 22, 1994, the Navajo Nation submitted a proposed amendment to its plan pursuant to SMCRA (administrative record Nos. NA–207, NA–208, and NA–212). The Navajo Nation submitted the proposed amendment with the intent of revising its plan to make it consistent with SMCRA and to improve operational efficiency. OSM approved the plan amendments in the September 27, 1994, **Federal Register** (59 FR 49178).

Provisions of the plan, which includes the Navajo AMLR Code, that the Navajo nation amended and which are pertinent to this proposed action include: Section 409, filling voids and sealing tunnels; and section 411, certification of completion of coal reclamation, authorization to perform priorities one, two, and three noncoal reclamation, and authorization to undertake community impact assistance and public facilities projects.

Provisions of the plan, which includes the Navajo AMLR Rules, that the Navajo Nation amended and which are pertinent to this proposed action include: Part D, coal reclamation priorities and noncoal reclamation priorities prior to certification; Part L, general reclamation requirements for coal and noncoal; Part M, certification of completion of coal sites; Part N, eligible lands and water subsequent to certification; Part O, exclusion of noncoal reclamation sites; and Part P, utilities and other facilities.

III. Background on the Navajo Nation's Certification of Coal Completion

By letter dated May 4, 1994, the President of the Navajo Nation notified the Secretary that the Navajo Nation intends to reclaim all remaining eligible abandoned coal mines, including interim abandoned coal mines, as required by section 403(a) of SMCRA (administrative record No. NA–213). OSM is aware there are eligible abandoned coal mines on Navajo Indian lands yet to be reclaimed by the Navajo Nation. However, the Nation has sufficient AMLR funds in reserve to reclaim the remaining eligible abandoned coal mines. The Navajo Nation also submitted a grant application to OSM that, upon approval of the proposed amendment, will enable it to reclaim those mines.

In addition, the Navajo Nation submitted a request for the Secretary's concurrence with its certification of completion of all known coal-related problems pursuant to section 411(a) of SMCRA and 30 CFR 875.13. The Secretary's concurrence with the certification was published in the September 27, 1994, **Federal Register** (59 FR 49178).

IV. Museum Funding Request

Section 411 of SMCRA provides that once a State or Tribe certifies that it will address all remaining abandoned coal mine problems, and the Secretary concurs, then that State or Tribe may request funds to undertake abandoned noncoal mine reclamation, community impact assistance, and public facilities projects under sections 411 (b), (e), and (f), respectively. The Navajo Nation President and the Navajo Museum and Library Foundation, Inc., first expressed interest in obtaining OSM funds for the museum under section 411(f) in late June and early July 1993. OSM informed the Navajo Nation at that time and on a number of occasions since of the administrative requirements that the Nation must fulfill before OSM can consider a funding request under section 411(f) of SMCRA. Those requirements included: Revising the Navajo Nation's AMLR plan to include provisions authorizing NAMLRD to reclaim remaining eligible abandoned interim coal mines and to undertake projects under sections 411 (e) and (f); certifying that all remaining abandoned coal mine problems will be addressed; submitting an application for funds to reclaim all remaining eligible abandoned coal mine problems; and submitting an application for funds for the museum.

Anticipating that those administrative requirements would be fulfilled, the Museum Foundation developed a grant application that NAMLRD submitted to OSM on January 21, 1994, requesting $3 million from the Navajo Nation's share of the Abandoned Mine Reclamation Fund to partially pay for construction of the museum. NAMLRD submitted the application because it is the recipient of AMLR funds from OSM for abandoned mine reclamation, community impact assistance, and public facilities projects pursuant to sections 411 (b), (e), and (f) of SMCRA. The Museum Foundation would be a subrecipient if the grant request for $3 million is approved.

Under the provisions of section 411(f), the President of the Navajo Nation has determined there is a need for such a public facility related to the coal and minerals industry. According to the application, the museum will display Navajo crafts and culture materials in order to preserve the culture for future generations. It will include demonstration areas in the museum where traditional Navajo arts and crafts will be made. A children's museum and library will also be available. A visitor center will display art and photographs of historical and sacred places on or near the Navajo Reservation and an exhibit showing the impact of coal and minerals mining in the growth and development of the Navajo Nation. The total cost of the museum is estimated to be about $7.85 million.

OSM's formal review of the grant application requesting the museum funding will be conducted in the context of the regulations at 30 CFR 875.15. Specific provisions applicable to the museum request include sections 875.15(e) (1) through (7). Those regulations require the application to specifically set forth: (1) The need or urgency for the activity or the construction of the public facility; (2) the expected impact the project will have on the coal or minerals industry in the State or Indian Tribe; (3) the availability of funding from other sources and, if other funding is provided, its percentage of the total costs involved; (4) documentation from other local, State, and Federal agencies with oversight for such utilities or facilities regarding what funding resources they have available and why this specific project is not being fully funded by their agency; (5) the impact on the State or Indian Tribe, the public, and the minerals industry if the activity or facility is not funded; (6) the reason why this project should be selected before a priority project relating to the protection of the public health and safety or the environment from the damages caused by past mining activities, and (7) an analysis and review of the procedures used by the State or Indian Tribe to notify and involve the public in this funding request and a copy of all comments received and their resolution by the State or Indian Tribe.

In accordance with 30 CFR 875.15(f), the OSM Director must prepare a **Federal Register** notice regarding the museum funding request and provide for public comments. Section 875.15(f) further requires OSM to evaluate all comments received and to determine whether the funding meets the requirements of sections 875.15(e) (1) through (7) and if it is in the best interests of NAMLRD's program. If OSM concludes that the museum request satisfies all the requirements of section 875.15, OSM will approve the funding request at a cost commensurate with its benefits toward achieving the purposes of SMCRA.

V. Public Comment Procedures

In accordance with 30 CFR 875.15(f), OSM is seeking public comments on the museum funding request. Written comments should be specific and should pertain to the museum request in the context of the regulations at 30 CFR 875.15 and the provisions of section 411 of SMCRA. Comments should include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in OSM's final decision or included in the administrative record.

Dated: September 29, 1994.

Ed Kay,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 94–24608 Filed 10–4–94; 8:45 am]

BILLING CODE 4310–05–M

VOL 59 ISS 192 OCT 5 1994 UMI

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–349]

Certain Diltiazem Hydrochloride and Diltiazem Preparations; Notice

Notice is hereby given that the prehearing conference in this matter will commence at 10:00 a.m. on October 17, 1994, in Courtroom A (Room 100), U.S. International Trade Commission Building, 500 E St. S.W., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**.

Issued: September 27, 1994.

Sidney Harris,

Administrative Law Judge.

[FR Doc. 94–24638 Filed 10–4–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–361]

Certain Portable On-Car Disc Brake Lathes and Components Thereof; Notice of Commission Determinations to Review and Remand to the Presiding Administrative Law Judge Certain Portions of an Initial Determination Terminating the Investigation on the Basis of a Finding of No Violation of Section 337, and to Designate the Investigation More Complicated

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review certain portions of the initial determination (ID) issued on August 12, 1994, in the above-captioned investigation, and to remand the investigation to the presiding administrative law judge (ALJ) for further proceedings. The Commission has further determined to designate this investigation "more complicated" and to direct that the ALJ's ID on remand be issued by November 28, 1994.

FOR FURTHER INFORMATION CONTACT: Shara L. Aranoff, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3090.

SUPPLEMENTARY INFORMATION: On November 24, 1993, the Commission instituted an investigation of a complaint filed by Pro-Cut International, Inc. ("Pro-Cut") under section 337 of the Tariff Act of 1930. The complaint alleged that two respondents imported, sold for importation, or sold in the United States after importation certain portable on-car disc brake lathes and components thereof that infringed the sole claim of U.S. Letters Patent 4,226,146 ("the '146 patent"). The Commission's notice of investigation named as respondents Hunter Engineering Company ("Hunter") and Ludwig Hunger Maschinenfabrik GmbH ("Hunger"), each of which was alleged to have committed one or more unfair acts in the importation or sale of portable on-car disc brake lathes that infringe the asserted patent claim.

The ALJ conducted an evidentiary hearing on May 2–4, 1994, and issued his final ID on August 12, 1994. He found that: (1) Respondents' imported product does not infringe the asserted patent claim; (2) complainant satisfied the economic requirements for existence of a domestic industry; but that (3) there is no domestic industry because complainant is not practicing the '146 patent. Based upon his findings no infringement and no domestic industry, the ALJ concluded that there was no violation of section 337. Respondents have not challenged the validity of the '146 patent in this investigation.

Complainant Pro-Cut filed a petition for review of the ALJ's findings on both infringement and the domestic industry's failure to practice the patent. Respondents filed a petition for review of the ALJ's findings on the economic requirements for a domestic industry. Complainant, respondents, and the Commission investigative attorneys filed responses to the petitions for review. No agency comments were received.

On September 28, 1994, the Commission determined, by a vote of four to two, to review the subject ID and to remand it to the ALJ for further explanation on two narrow issues. Specifically, the Commission was unable to discern from the ID the ALJ's reasoning underlying his findings of no infringement and no domestic industry under the doctrine of equivalents. Accordingly, the ALJ was instructed to address the following questions on remand:

1. Whether the accused device performs substantially the same function as disclosed in the "means for attaching" clause in claim 1 of the '146 patent?

2. Whether the accused device operates in substantially the same way as disclosed in the "means for attaching" clause in claim 1 of the '146 patent?

3. Whether the accused device achieves substantially the same result as disclosed in the "means for attaching" clause in claim 1 of the '146 patent?

4. To what scope of equivalents is the '146 patent entitled?

5. Whether, in light of questions 1–4 raised above, the domestic industry is practicing the '146 patent under the doctrine of equivalents?

The ALJ was further instructed to make specific factual findings with respect to each remanded question, to indicate what record evidence supports those findings, and to provide an analysis of his ultimate determination on each issue. The Commission determined to adopt the ID in all other respects.

On September 28, 1994, the Commission also determined to declare this investigation "more complicated" in order to provide the parties, the presiding ALJ, and the Commission with adequate time to address the remanded issues and complete the investigation. The 18-month statutory deadline for completion of this investigation was therefore extended to June 1, 1995. However, the Commission expects to complete the investigation prior to the statutory deadline.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), and §§ 210.53, 210.56, and 210.59 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53, 210.56, and 210.59).

Copies of the Commission's order, the non-confidential version of the ID, and all other non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: September 29, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–24639 Filed 10–4–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 495X)]

CSX Transportation, Inc.—Abandonment Exemption—In Lawrence County, IN

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 6.7-mile line of railroad extending between milepost Q–245.0, at Bedford, and milepost Q–251.7, near Mitchell, in Lawrence County, IN.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 4, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by October 17, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 25, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water St., J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by October 7, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 26, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–24495 Filed 10–4–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32576]

South Central Florida Express, Inc.—Acquisition and Operation Exemption—Certain Lines of Brandywine Valley Railroad Company

South Central Florida Express, Inc., a noncarrier, has filed a notice of exemption to acquire and operate certain lines of railroad currently owned by the Brandywine Valley Railroad Company and operated as the South Central Florida Railroad. The locations of the rail lines to be acquired and operated are as follows: (1) From Sebring, FL (milepost AVC 875.00) to Lake Harbor, FL (milepost AVD 957.99) and (2) from Keela, FL (milepost AVF 953.69) to Okeelanta, FL (milepost AVF 970.50), totaling approximately 103 miles. The transaction was expected to be consummated on or after September 16, 1994.

All comments must be filed with the Commission and served on: Jo A. DeRoche, Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, NW., Suite 800, Washington, DC 20005–4797.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 27, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–24621 Filed 10–4–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) how often the form must be filled out or the information is collected;

(4) who will be asked or required to respond, as well as a brief abstract;

(5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) an estimate of the total public burden (in hours) associated with the collection; and,

(7) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

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anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, suite 850, WCTR, Washington, DC 20530.

Revision of a currently approved collection:

(1) Supplement A to Form I–485 entitled Application to Register Permanent Residence or Adjust Status.

(2) Supplement A to Form I–485.

Immigration and Naturalization Service.

(3) On Occasion.

(4) Individuals or households.

(5) 50,000 annual respondents at .216 hours per response.

(6) 10,800 total annual reporting hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Dated: September 24, 1994.

Public comment on this item is encouraged.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–24609 Filed 10–4–94; 8:45 am]

BILLING CODE 4410–10–M

Notice of Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, notice is hereby given that on September 16, 1994, a proposed consent decree in *United States* v. *William Davis, et al.*, No. 90–484–P, was lodged with the United States District Court for the District of Rode Island. The decree resolves claims of the United States against defendants Clariol, Inc, and CIBA–GEIGY Corporation ("Settling Defendants") in the above-referenced action under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for contamination at the Davis Liquid Waste Site in Smithfield, Rhode Island (the "Site"). In the proposed consent decree the Settlement Defendants agree to make payments to the United States totalling $3,475,000.00 in settlement of the United States' claims for response costs incurred and to be incurred by the Environmental Protection Agency at the Site.

The proposed decree may be examined at the Office of the United States Attorney, 10 Dorrance Street, Providence, Rhode Island; and at the Environmental Enforcement Section Consent Decree Library, 1120 G Street, N.W., Washington, D.C. 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.25 (twenty-five cents per page for reproduction) payable to the Consent Decree Library.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *William Davis, et al.*, DOJ Reference 90–11–2–137B.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–24670 Filed 10–4–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Comprehensive Environmental Response, Compensation, and Liability Act of 1980

Notice is hereby given that on September 23, 1994, a proposed Consent Decree in *United States* v. *General Refining Company, et al.*, Civ. No. CV 494–215, was lodged on September 23, 1994 with the United States District Court for the Southern District of Georgia. The Complaint, brought pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9607, seeks recovery of past response costs incurred by the United States in connection with the General Refining Superfund Site, Garden City, Georgia (the "Site"). The Site is situated in Chatham County, Georgia, and occupies approximately 16 acres. The Site was used from the early 1960's until at least the 1975 for recovery and storage of waste oil.

The Consent Decree in *United States* v. *General Refining Company, et al.* provides that the Settling Defendant and Settling Federal Agencies will pay a total of $2,150,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530. Comments should refer to *United States* v. *General Refining Company, et al.*, D.O.J. Ref. 90–11–3–561A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of Georgia, 100 Bull Street, Savannah, Georgia 31404; Office of the U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365; and at the Consent Decree Library 1120 G Street, N.W., Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the reference case and enclose a check in amount of $15.00 for the Consent Decree (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–24671 Filed 10–4–94; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated July 1, 1994, and published in the **Federal Register** on July 12, 1994, (59 FR 35530), Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
Amphetamine (1100)	II
Methamphetamine (1105)	II

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: September 28, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–24574 Filed 10–4–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 8, 1994, Knoll Pharmaceuticals, 30 North Jefferson Road, Whippany, New Jersey 07981, made application to the Drug Enforcement Administrtation (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Hydromorphone (9150).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

Dated: September 28, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–24575 Filed 10–4–94; 8:45 am]

BILLING CODE 4410–09–M

Immigration and Naturalization Service

[INS No. 1626FN–94]

Final Programmatic Environmental Impact Statement to Continue the Program of Protecting the Southwest Border Through the Interdiction of Illegal Drugs With the Support of Joint Task Force Six

AGENCY: The Immigration and Naturalization Service, Justice (lead); Joint Task Force Six (cooperating); Environmental Protection Agency (cooperating).

ACTION: Notice of Availability of the Final Programmatic Environmental Impact Statement (FPEIS).

SUMMARY: This Notice is to notify interested parties that the Immigration and Naturalization Service (INS) has prepared a FPEIS for the proposed continuation of the Joint Task Force Six (JTF–6) support program. The JTF–6 program involves providing operational, engineering, and general support to law enforcement agencies (LEAs) that have drug interdiction responsibilities within the southwestern border states. The Draft PEIS was filed with the Environmental Protection Agency (EPA) and published in the **Federal Register** on April 15, 1994, at 59 FR 18115; the Notice of Availability (NOA) of the Draft PEIS was published on May 19, 1994, in the **Federal Register** at 59 FR 26322. Comments on the Draft PEIS were received from five Federal Agencies, five State Agencies, and four private individuals/organizations. A request for an extension of time for review and comment was received from individuals in Laredo, Texas, and the U.S. Department of Interior. The request was granted and the comment period was extended from May 30, 1994, to June 10, 1994. Copies of all comments and responses are documented in the FPEIS. The FPEIS was filed with the EPA on August 11, 1994, and published on August 19, 1994, in the **Federal Register** at 59 FR 42831. One private individual/organization commented on the FPEIS. The Record of Decision (ROD) is currently being prepared and will be available for public review after its completion.

ADDRESSES: Copies of the FPEIS, "JTF–6 Activities Along the U.S./Mexico Border (Texas, New Mexico, Arizona, and California)," are available upon written request to the following address: U.S. Army Corps of Engineers, Fort Worth District, CESWF–PL–RE, P.O. Box 17300, 819 Taylor Street, Fort Worth, Texas 76102–0300.

FOR FURTHER INFORMATION CONTACT: Questions regarding the FPEIS should be directed to Mr. Eric W. Verwers, Environmental Resource Planner, U.S. Army Corps of Engineers, CESWF–PL–RE, telephone (817) 334–3246, or P.O. Box 17300, 819 Taylor Street, Fort Worth, Texas 76102–0300.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This Notice is being issued to interested parties in accordance with the National Environmental Policy Act (NEPA), Public Law 91–190, and Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR 1500–1508.

Background

JTF–6 was activated on November 13, 1989, at Fort Bliss, Texas, by the Secretary of Defense in accordance with the President's National Drug Control Strategy. The thrust of this program is the use of Department of Defense training resources in the support of agencies responsible for the fight against illegal drugs.

The mission of JTF–6 is to plan and coordinate military training along the U.S. Southwest Land Border in support of counterdrug activities by Federal, State, and Local LEAs, as requested through Operation Alliance and approved by the Secretary of Defense or a designated representative.

The JFT–6 program provides operational, engineering, and general support to LEAs operating within the Southwestern United States which have drug interdiction authorities and allows the LEAs to conduct their missions more efficiently and effectively. The actions performed by JTF–6 personnel are quite diverse, ranging from reconnaissance operations to the building and renovation of roads and radio towers. The JTF–6's primary area of concern is within a 50-mile-wide corridor along the U.S./Mexico border from Port Arthur, Texas, to San Diego, California.

The INS is responsible for the prevention of smuggling and unlawful entry of aliens into the United States. This is the task of the Border Patrol, which is also responsible for drug interdiction between the U.S. land Ports-of-Entry.

Since the Border Patrol has been the primary beneficiary of most JTF–6 engineering actions to date, INS elected to act as lead agency for the preparation of this FPEIS. The EPA and JTF–6 elected to act as cooperating agencies. A Notice of Intent (NOI) to prepare a PEIS was published on July 15, 1993, in the **Federal Register** at 58 FR 38140.

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Purpose

The purpose of the FPEIS is to address cumulative environmental impacts of previous actions as well as those actions which may be developed within the reasonably foreseeable future. The FPEIS analyzes these cumulative impacts and generically examines the impacts of future individual actions based on experience with similar past actions. The FPEIS also describes the different types of actions performed by JTF–6.

Dated: September 23, 1994

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–24564 Filed 10–4–94; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–30,303]

Pathfinder Mines Corporation; Shirley Basin, WY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 12, 1994, in response to a worker petition which was filed on August 30, 1994, on behalf of workers at Pathfinder Mines Corporation, Shirley Basin, Wyoming.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 26th day of September, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–24633 Filed 10–4–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,046]

Thomas & Betts Corp; Inman, SC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 27, 1994 in response to a worker petition which was filed on June 27, 1994 on behalf of workers at Thomas & Betts Corp., Inman, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 26th day of September, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–24632 Filed 10–4–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,958; TA–W–29,958A TX, except Midland TA–W–29,958B NM]

TMBR/Sharp Drilling, Incorporated; Midland, TX and Operating at Various Other Locations; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of the subject firm.

The certification notice was issued on August 24, 1994.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that some workers were laid off in New Mexico and in other locations in Texas.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–29,958 is hereby issued as follows:

All workers of TMBR/Sharp Drilling, Incorporated, Midland, Texas and operating at other locations in Texas except Midland and in the state of New Mexico engaged in employment related to the exploration and drilling of crude oil and natural gas who became totally or partially separated from employment on or after May 6, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of September 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–24634 Filed 10–4–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,896].

General Electric Co. Linton, IN; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at General Electric Company, Linton, Indiana. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–29,896; General Electric Company, Linton, Indiana (September 26, 1994)

Signed at Washington, DC this 28th day of September 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–24630 Filed 10–4–94; 8:45 am]

BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of September, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,173; International Poper Container Div., Presque Isle, ME

TA–W–30,124; F.C.I., Freeman SD

TA–W–29,939; Commercial Flight Systems Div. of Honeywell, Phoenix, AZ

TA–W–30,038; NEC America, Inc., Hillsboro, OR

TA–W–29,969; Kollmorgen Corp., Inland Motor Div., Radford, VA

TA–W–29,772; Wilmington Steel & Construction, Inc., New Castle, PA

TA–W–30,136; Roeder Hydraulic, Inc., DBA Universal Service & Supply Co., Odessa, TX

TA–W–30,074; Cominco Metals, Magmont Operations, Bixby, MO

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–30,287; Code-A-Phone Corp., Clackamas, OR

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,042; Air Products & Chemicals, Inc., Wilkes Barre, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,095; Brad Hagood Farms, Lubbock, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,873; Allied Signal Aerospace Co., Government Electronic Systems, Teterboro, NJ

U.S. imports of aircraft parts decreased absolutely in the latest twelve month period April 1993—March 1994 compared with the same period one year earlier.

TA–W–30,087; Walport USA, Elizabeth, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–30,045; Williams Southwest Drilling Co., Inc., Corpus Christi, TX

A certification was issued covering all workers separated on or after June 9, 1993.

TA–W–29,986; New York Air Brake Corp., Watertown, NY

A certification was issued covering all workers separated on or after June 3, 1993.

TA–W–29,956; Anchor Drilling Fluids USA, Inc., Houston, TX & Operating at the Following Locations: A; CA, B; LA, C; MT, D; NM, E; OK, F; TX, G; WY

A certification was issued covering all workers separated on or after June 10, 1993.

TA–W–30,050; Hilton Clothes, Inc., Linden, NJ

A certification was issued covering all workers separated on or after June 9, 1993.

TA–W–29,923; Chock Full O'Nuts, Linden, NJ

A certification was issued covering all workers separated on or after May 13, 1993.

TA–W–29,648; Seagate Technology, Bloomington, MN

A certification was issued covering all workers separated on or after February 28, 1993.

TA–W–30,256; Muelhens, Inc., New York, NY

A certification was issued covering all workers separated on or after August 19, 1993.

TA–W–30,262 & TA–W–30,262A; Mud Co., Inc., Wichita, KS & Great Bend, KS

A certification was issued covering all workers separated on or after July 20, 1993.

TA–W–30,197; Allen Drilling Co., Englewood, CO

A certification was issued covering all workers separated on or after July 25, 1993.

TA–W–29,744; Xeros Corp., Webster, NY

A certification was issued covering all workers separated on or after March 29, 1993.

TA–W–30,097, TA–W–TA–W–30,098, TA–W–30,099; Conoco, Inc., Exploration & Production, North America, Casper, WY, Lafayette, LA, Midland, TX

A certification was issued covering all workers separated on or after September 21, 1994.

TA–W–30,100, TA–W–TA–W–30,101, TA–W–30,102, TA–W–30,103; Conoco, Inc., Exploration & Production, North America, Ponca City, OK Corpus Christi, TX, Alexander, ND, West Hope, ND

A certification was issued covering all workers separated on or after September 21, 1994.

TA–W–30,096; Conoco, Inc., Exploration & Production, North America, Houston, TX With Other Operations in the Following States: A; AK, B; CO, C; LA, D; NM, E; ND, F; OK, G; TX, H; WY

A certification was issued covering all workers separated on or after September 21, 1994.

TA–W–29, 943; Cavalier Clothing, Inc.; Jamaica, NY

A certification was issued covering all workers separated on or after May 25, 1993.

TA–W–29, 934; Albex Apparel, Brooklyn, NY

A certification was issued covering all workers separated on or after May 25, 1993.

TA–W–30,281; Scott Worldwide Northwest Operations, Everett, WA

A certification was issued covering all workers separated on or after August 23, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement - Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of September 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(c) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of Articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–00217; Benstock Co., Inc., Buffalo, NY

The investigation revealed that criteria (3) and criteria (4) were not met. A survey was conducted with customers of the subject firm. The survey revealed that customers did not import gold

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gemstone jewelry from Mexico or Canada during the relevant period.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-00211; Alfred Angelo, Inc., Horsham, PA

A certification was issued covering all workers of Alfred Angelo, Inc., Horsham, PA separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of September, 1994. Copies of these determinations are available for inspection Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Date: September 28, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services Office of Trade Adjustment Assistance.

[FR Doc. 94-24635 Filed 10-4-94; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-30,067]

Washington Steel Corporation Washington, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Washington Steel Corporation, Washington, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-30,067; Washington Steel Corporation, Washington, Pennsylvania (September 26, 1994)

Signed at Washington, D.C. this 28th day of September, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94-24631 Filed 10-4-94; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before November 21, 1994. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The Requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the Untied States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency or origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture, Agricultural Marketing Service (N1-136-94-2). Poultry grading certificates and memoranda.

2. Department of Agriculture, Agriculture Marketing Service (N1-136-94-3). Call detail summaries for use of telecommunications equipment.

3. Department of the Army (N1-AU-94-27). Quality test reporting records pertaining to Army's micrographics program.

4. Department of Army (N1-AU-94-33). Housing management records.

5. Department of Commerce, Office of the General Counsel (N1-40-94-2). Litigation case files.

6. Department of State, Bureau of Economic and Business Affairs (N1-59-94-37). Routine, facilitative, and duplicative record. Policy records are scheduled as permanent.

7. Department of Treasury, (N1-58-94-3). Internal Revenue Service Collection Statute Expiration Date (CSED) Extension Extracts.

8. Department of the Treasury, Bureau of Engraving and Printing (N1-318-94-1). Records relating to the finish-out of construction of the Western Currency Production Facility in Ft. Worth, Texas.

9. Office of Technology Assessment (N1-444-94-1). Comprehensive records schedule.

10. Tennessee Valley Authority, Office of Agricultural and Chemical Development (N1-142-91-5). Comprehensive schedule.

Dated: September 21, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94-24672 Filed 10-4-94; 8:45 am]

BILLING CODE 7517-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-286]

Power Authority of the State of New York; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DRP-64, issued to the Power Authority of the State of New York (the licensee), for operation of the Indian Point Nuclear Generating Unit No. 3 (Indian Point 3) located in Westchester County, New York.

The proposed amendment would revise Section 4.4 of the Indian Point Nuclear Generating Unit No. 3 Power Plant Technical Specifications. Specifically, TS 4.4.E.1 would be revised to allow a one-time extension to the 30-month interval requirement for leak rate testing of Residual Heat Removal (RHR) containment isolation valves AC-732, AC-741, AC-MOV-743, AC-MOV-744, and AC-MOV-1870. A one-time schedular exemption from plant specific requirements associated with 10 CFR Part 50, Appendix J, Type C testing (local leak rate test) for the above listed RHR containment isolation valves will be processed separately. This one-time extension for leak rate testing of the RHR valves would defer the leak rate testing until the next refueling outage, when the RHR system can be removed from service as required by current procedures.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the criteria of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change is limited to a one-time extension of the containment isolation valve leak rate test for RHR valves AC-732, AC-741, AC-MOV-743, AC-MOV-744, and AC-MOV-1870. The change does not introduce any new modes of plant operation, make any physical changes, or alter any operational setpoints. Therefore, the change does not degrade the performance of any safety system assumed to function in the accident analysis. There is reasonable assurance that the extension will not result in a significant increase in valve leakage considering that a review of containment isolation valve leakage rate test results through 1990 showed that all leakage failures, except for one valve which was replaced in 1990, were random and nonrecurring. Additionally, each of the three RHR lines associated with valves AC-732, AC-741, AC-MOV-743, AC-MOV-744, and AC-MOV-1870 has redundant isolation barriers and is supplied by the IVSWS (isolation valve seal water system) which would minimize any leakage past the isolation barriers. Further, due to the periodic surveillance that ensures that leakage from RHR components located outside containment does not exceed two gallons per hour, even if significant leakage past the RHR containment isolation valves occurred, this would not significantly affect off-site exposures.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not introduce new accident initiators or failure mechanisms since the change does not alter the physical characteristics of any plant system or component. The change is limited to a one-time extension to the leak rate test interval for RHR valves AC-732, AC-741, AC-MOV-743, AC-MOV-744, and AC-MOV-1870.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: The proposed amendment does not involve a significant reduction in a margin of safety. There is reasonable assurance that the extension will not result in a significant increase in valve leakage since a review of containment isolation valve leakage rate test results through 1990 showed that all leakage failures, except for one valve which was replaced in 1990, were random and nonrecurring. Additionally, each of the three RHR lines associated with valves AC-732, AC-741, AC-MOV-743, AC-MOV-744, and AC-MOV-1870 has redundant isolation barriers. Further, due to the periodic surveillance that ensures that leakage from RHR components located outside containment does not exceed two gallons per hour, even if significant leakage past the RHR containment isolation valves occurred, this would not significantly affect off-site exposures.

The NRC staff had reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facilities, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written

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comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 4, 1994, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the White Flint Plains Public Library, 100 Martine Avenue, White Plains, New York 10601. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first perhearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Michael J. Case: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 29, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Dated at Rockville, Maryland, this 29th day of September 1994.

For the Nuclear Regulatory Commission.

Michael J. Case,

Acting Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–24597 Filed 10–4–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No.: 40–8027]

Sequoyah Fuels Corp., Gore, OK; Consideration of Amendment to Source Material License and Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Sequoyah Fuels Corporation, Gore, Oklahoma; consideration of amendments to source material license and opportunity for a hearing.

This is a notice to inform the public that the U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Source Material License No. SUB–1010, issued to Sequoyah Fuels Corporation, at the Sequoyah Facility, Gore, Oklahoma. The licensee requested the amendment in a letter dated September 2, 1994, to remove the requirement for a contingency plan because an evaluation performed by the licensee has shown that the conditions set forth in 10 CFR 40.31(j)(l)(i) can be met. The license amendment request is based on the analysis conducted by SAIC to demonstrate compliance with Section 40.31(j)(l)i).

The NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings," of the NRC's rules of practice for domestic licensing proceedings in 10 CFR Part 2 (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivering to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding:

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Sequoyah Fuels Corporation, to the attention of Mr. John H. Ellis, President, P.O. Box 610, Gore, OK 74435; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Any hearing that is requested and granted will be held in accordance with the NRC's "Informal Hearing Procedures for Adjudications in Material Licensing Proceedings" in 10 CFR Part 2, subpart L.

For further details with respect to this action, see the application for amendment dated September 2, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Stanley Tubbs Memorial Library, 101 E. Cherokee, Sallisaw, Oklahoma 74955.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 30th day of September, 1994.

John H. Austin,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–24595 Filed 10–4–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–333]

Power Authority of the State of New York; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 217 to Facility Operating License No. DPR–59 issued to Power Authority of the State of New York, which revised the Technical Specifications (TSs) for operation of the FitzPatrick Nuclear Power Plant located in Oswego County, New York.

The amendment modifies the Safety/relief Valve (SRV) performance limits. Specifically, the requested changes: (1) Modify TS 2.2.1.B, and its associated Bases, to establish a single nominal SRV setpoint of 1110 psig; (2) modify TS 4.6.E, and its associated Bases, to increase the SRV setpoint tolerance to 3%; and (3) modify TSs 3.5.D, 3.6.E and 4.5.D, and their associated Bases, to allow for two SRVs (or automatic depressurization system (ADS) valves) to be inoperable during continuous power operation.

In addition, the amendment clarifies terminology, corrects typographical errors, removes a surveillance requirement which should have been deleted as part of Amendment No. 130, and deletes a duplicate TS. Specifically, the requested changes; (1) Modify TS 1.2.1, and the Bases sections for TS 3.6.E and 4.6.E, to clarify terminology; (2) modify TS 3.5.D.2, and the Bases sections for TSs 1.2 and 2.2, to correct typographical errors; (3) modify TS 4.2.B, Table 4.2–2, to correct an error made in Amendment No. 130 that failed to delete the requirement to perform logic functional testing on the ADS bellows pressure switch; (4) modify TS 4.5.D.1.b, to move the TS to 4.6.E.4, a new section, and clarify the requirements associated with SRV manual actuation testing; (5) modify Bases sections for TSs 3.6.E and 4.6.E, to move the Bases for the SRV manual actuation testing to the applicable sections; and (6) modify TS 4.6.E.4, to delete a duplicate specification pertaining to the annual report of SRV failures.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 15, 1990 (55 FR 20228) and on May 25, 1994 (59 FR 27064). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment (EA) related to the action and has determined not to prepare an environmental impact statement. Based upon the EA, the Commission has concluded that the issuance of this amendment will not

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have a significant effect on the quality of the human environment.

For further details with respect to the action, see: (1) The application for amendment dated December 20, 1989, as supplemented by letters dated January 16, 1990, January 3, 1992, January 30, 1992, May 5, 1993, and May 26, 1993 and superseded March 2, 1994, (2) Amendment No. 217 to License No. DPR–59, and (3) the Commission's related Safety Evaluation and EA. These letters are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York.

Dated at Rockville, Maryland, this 28th day of September 1994.

For the Nuclear Regulatory Commission.

Michael J. Case,

Acting Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–24598 Filed 10–4–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

Procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Reactor Safeguards (ACRS) are described in this notice. These procedures are set forth in order that they may be incorporated by reference in future individual meeting notices.

The ACRS is a statutory group established by Congress to review and report on applications for the licensing of nuclear power reactor facilities and on certain other nuclear safety matters. The Committee's reports become a part of the public record. The ACRS meetings are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering procedures. The meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process. ACRS full Committee meetings are conducted in accordance with the Federal Advisory Committee Act.

General Rules Regarding ACRS Meetings

An agenda is published in the **Federal Register** for each full Committee meeting. Practical considerations may dictate some changes to the agenda. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including making provisions of continue discussions of matters not completed on the scheduled day to the next day.

The following requirements shall apply to public participation in ACRS meetings:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy at the beginning of the meeting. Comments should be limited to matters under consideration by the Committee.

Persons desiring to mail written comments may do so by sending a readily reproducible copy addressed to the Designated Federal Official specified in the **Federal Register** notice for the individual meeting in care of the Advisory Committee on Reactor Safeguards, Nuclear Regulatory Commission, Washington, DC 20555. Comments should be in the possession of the Designated Federal Official no later than five days prior to a meeting to allow time for reproduction, distribution and consideration at the meeting.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the Designated Federal Official prior to the beginning of the meeting and summarize the content of the oral statements for the Designated Federal Official. If possible, the request should be made five days before the meeting, identifying the topics to be discussed and the amount of time needed for presentation, so that appropriate arrangements can be made. The committee will hear oral statements on topics being reviewed at an appropriate time during the meeting scheduled by the Chairman.

(c) Further information regarding topics to be discussed, whether a meeting has been cancelled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting, on the working day prior to the meeting, the Office of the Executive Director of the ACRS (telephone: 301/415–7360, ATTN: the Designated Federal Official specified in the **Federal Register** notice for the meeting) between 7:30 a.m. and 4:15 p.m., Eastern time.

(d) During the ACRS meeting presentations and discussions, questions may be asked by ACRS members, Committee consultants, and the NRC and ACRS staff.

(e) The use of still, motion picture, and television cameras will be permitted both before and after the meeting and during any recess, subject to the condition that the physical installation and presence of such equipment will not interfere with the conduct of the meeting. Approval from the Designated Federal Official will have to be obtained prior to the installation or use of such equipment. The use of such equipment will be allowed while the meeting is in session at the discretion of the Chairman to a degree that it is not disruptive. When use of such equipment is permitted, appropriate measures will be taken to protect proprietary or privileged information that may be in documents, folders, etc., being used during the meeting. Electronic recording will be permitted only during those portions of the meeting that are open to the public.

(f) A transcript is kept for certain open portions of the meeting and will be available in the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555, for use within one week following the meeting. A copy of the certified minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained at the Public Document Room upon payment of appropriate charges.

(g) When ACRS meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at reasonable cost. Accordingly, 25 additional copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions are to be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The Designated Federal Official should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material

included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting for admittance to the closed session.

Dated September 29, 1994

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 94–24594 Filed 10–4–94; 8:45 am]

BILLING CODE 7590–01–M

Availability of Draft Application Format and Content Guidance and Review Plan and Acceptance Criteria for Non-Power Reactors

The U.S. Nuclear Regulatory Commission (NRC) is in the process of developing for Non-Power Reactor (NPRs) a "Format and Content for Applications for the Licensing of Non-Power Reactors" (F&C) and "Standard Review Plan and Acceptance Criteria for Applications for the Licensing of Non-Power Reactors" (SRP). The NRC has made available drafts of the document Introduction, Chapter 1, "General Description of the Facility," Chapter 6, "Engineered Safety Features," Chapter 8, "Electrical Power Systems," and Chapter 9, "Auxiliary Systems," of the F&C and SRP documents for comment. Other draft chapters will be made available for comment as they are completed.

Copies of these chapters have been placed in the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. Single copies of these documents may be requested in writing from Alexander Adams, JR., Senior Project Manager, U.S. Nuclear Regulatory Commission, OWFN MS: 11–B–20, Washington, DC 20555. Comments on these chapters should be sent by February 28, 1995, to the Director, Non-Power Reactors and Decommissioning Project Directorate at the above address.

Dated at Rockville, Maryland this 28th day of September, 1994.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 94–24596 Filed 10–4–94; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Application to Act as Representative Payee.

(2) *Form(s) submitted:* AA–5, G–478.

(3) *OMB Number:* 3220–0052.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 20,300.

(9) *Total annual responses:* 20,300.

(10) *Average time per response:* 0.80540 hours.

(11) *Total annual reporting hours:* 16,350.

(12) *Collection description:* Section 12 of the Railroad Retirement Act provides for payment of benefits to a representative payee when an employee, spouse or survivor annuitant is incompetent or a minor. The collection obtains information used by the Railroad Retirement Board for selection of a representative payee and verification of an annuitant's capability to manage benefit payments.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 94–24571 Filed 10–4–94; 8:45 am]

BILLING CODE 7905–01–M

POSTAL RATE COMMISSION

[Docket No. A94–14]

Otisco, Minnesota 56077 (Jesse Rieck, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued September 29, 1994.

Before Commissioners: Edward J. Gleiman, Chairman; W. H. "Trey" LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

Docket Number: A94–14.

Name of Affected Post Office: Otisco, Minnesota 56077.

Name(s) of Petitioner(s): Jesse Rieck.

Type of Determination: Closing.

Date of Filing of Appeal Papers: September 26, 1994.

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by October 11, 1994.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

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By the Commission.

Charles L. Clapp,

Secretary.

Appendix

September 26, 1994.—Filing of Appeal letter.

September 29, 1994.—Commission Notice and Order of Filing of Appeal.

October 21, 1994.—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].

October 31, 1994.—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].

November 21, 1994.—Postal Service's Answering Brief [*see* 39 CFR 3001.115(c)].

December 6, 1994.—Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 CFR 3001.115(d)].

December 13, 1994.—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

January 24, 1995.—Expiration of the Commission's 120-day decisional schedule [*see* 39 USC 404(b)(5)].

[FR Doc. 94-24577 Filed 10-4-94; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34744; File No. SR-Amex-94-3]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Amendments to Rules 575 ("Giving of Proxies Restricted"), 576 ("Transmission of Proxy Material to Customers"), 577 ("Giving Proxies by Member Organization") and 585 ("Transmission of Interim Reports and Other Material")

September 28, 1994

I. Introduction

On February 22, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend various Exchange rules governing proxies. On May 26, 1994, the Amex submitted to the Commission Amendment No. 1 to the proposed rule change.[3]

Notice of the proposal appeared in the Federal Register on July 8, 1994.[4] No comments were received on the proposal. This order approves the proposed rule change as amended.[5]

II. Description of the Proposal

The Exchange is amending several Amex Rules related to the giving of proxies and the transmission of proxy and other related materials. Specifically, the Exchange is amending Amex Rules: 575 ("Giving of Proxies Restricted"), 576 ("Transmission of Proxy Material to Customers"), 577 ("Giving Proxies by Member Organization"), and 585 ("Transmission of Interim Reports and Other Material").

The amendments to Amex Rules 575, 576, 577 and 585 will permit registered investment advisers who exercise investment discretion pursuant to an advisory contract, and who have been designated in writing by the beneficial owner of the securities, to receive proxy materials, annual reports and other related material, and to vote proxies in lieu of the beneficial owners. The term investment adviser is defined to include a registered broker-dealer (e.g., a member organization).[6]

Currently, Exchange rules prohibit a member organization from voting proxies, on a discretionary basis, on securities held in its custody, unless the securities are beneficially owned by a member organization, or the beneficial owner has failed to provide the member organization with voting instructions and the subject of the vote is non-substantive. Currently, Exchange rules also require member organizations to transmit proxy and related issuer materials, as well as requests for voting instructions, to each beneficial owner of stock held in the member organization's possession or control. Rule 576.60 explicitly requires that proxy material be sent to a beneficial owner even though such owner has instructed the member organization not to do so.[7]

According to the Exchange, a number of member organizations along with the Investment Adviser Committee of the Securities Industry Association ("SIA") informed the Exchange that many of their customers do not want to receive proxy materials, or vote the proxy. These member organizations have indicated that their customers would rather have the professionals represent their interests in receiving and voting proxies because they are better qualified.

In addition, the Exchange is amending Rule 575 to conform that Rule to a comparable New York Stock Exchange ("NYSE") Rule which allows a member organization, that is designated by a named fiduciary as the investment manager of stock held as assets of an ERISA Plan, to vote the proxies on the stock in accordance with its ERISA Plan fiduciary responsibilities.[8]

The Amex believes that it is appropriate to modify these Amex rules to conform to NYSE rules because most Amex member firms doing a public business are dual members of both the NYSE and Amex, and the rules of the two exchanges regarding proxies and

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1994).

[3] See letter from Linda Tarr, Senior Counsel, Amex, to Sandra Sciole, Special Counsel, SEC, dated May 25, 1994. Amendment No. 1 made certain clarifying changes to the proposed rule change.

[4] Securities Exchange Act Release No. 34294 (July 1, 1994), 59 FR 35152 (July 8, 1994).

[5] On September 27, 1994, the Amex submitted a draft Amex Information Circular to members which discusses the substance of the amendments to Amex Rules 575, 576, 577 and 585. This draft circular is being approved as part of the Amex's proposal herein. The Amex Information Circular provides that the written designation of the registered investment adviser: be signed by the beneficial owner of securities; be addressed to the member organization; include the name of the designated investment adviser, and specify that the investment adviser is being designated to receive the proxy and related materials and vote the proxy. It also requires Amex member organizations to assure themselves that the designated investment adviser is registered under the Investment Advisers Act of 1940, and that such adviser exercised investment discretion pursuant to an advisory contract, and maintains records substantiating this information. The Amex Information Circular further specifies that beneficial owners of securities have an unqualified right at any time to rescind designation of the investment adviser to receive materials to vote proxies. The rescission must be in writing and submitted to the member organization. The draft Amex Information Circular also added a statement that member organizations may wish to provide consolidated proxies and related materials to investment advisers designated by beneficial owners to exercise voting discretion.

[6] This portion of the Amex proposal is substantially similar to a proposal recently approved for the NYSE. See Securities Exchange Act Release No. 34596 (August 25, 1994), 59 FR 45050 ("NYSE Approval Order"). Although no comments were received on the Amex proposal, the Commission received five comment letters supporting this change of the NYSE.

[7] See Amex Rule 576.60—Duty to transmit even when requested not to.

[8] This NYSE Rule currently states that no member organization shall give or authorize the giving of a proxy to vote stock registered in its name, or in the name of its nominee, except as required or permitted under the provisions of Rule 452, unless such member organization is the beneficial owner of such stock. Notwithstanding the foregoing, any member organization, designated by a named fiduciary as the investment manager of stock held as assets of an ERISA Plan that expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and which has not expressly reserved the proxy voting right for the named fiduciary, may vote the proxies in accordance with its ERISA Plan fiduciary responsibilities. See NYSE Rule 450, Restriction on Giving of Proxies.

voting have historically been substantially the same.

Amex Rule 575 ("Giving of Proxies Restricted") currently provides that no member organization shall give or authorize the giving of a proxy to vote stock registered in its name, or in the name of its nominee, except as required or permitted under the provisions of Rule 577, unless the member organization is the beneficial owner of the stock.

The Exchange proposes to add two exceptions (paragraphs (1) and (2)) to Rule 575. Paragraph (1) would provide that any member organization designated by a named fiduciary as the investment manager of stock held as assets of an ERISA Plan that expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and which has not expressly reserved the proxy voting right for the named fiduciary may vote the proxies in accordance with its ERISA Plan fiduciary responsibilities. Paragraph (2) would provide that any person registered as an investment adviser under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and who has been designated in writing by the beneficial owner ("designated investment adviser") to vote the proxies for stock which is in the possession or control of the member organization, may vote such proxy.

Amex Rule 576 ("Transmission of Proxy Material to Customers") generally provides that, whenever a person soliciting proxies furnishes a member organization copies of all soliciting material for registered holders, and provides assurance that he will reimburse such member organization for all out-of-pocket expenses incurred in connection with such solicitation, such member shall transmit to each beneficial owner of stock which is in its possession or control, the material furnished. The Exchange is amending Rule 576, paragraph (a) to add the requirement that the member organization may also transmit the soliciting material to a designated investment adviser to receive soliciting material in lieu of the beneficial owner.

The Exchange also is amending Rules 576(b) (1) and (2), which deal with what soliciting material the member organization receiving proxy information shall transmit and when such transmission shall occur. As amended, Rule 576(b)(1) provides that the member organization shall transmit, with soliciting material, a request for voting instruction and a statement to the effect that, if such instructions are not received by the tenth day before the meeting, the proxy may be given at discretion by the owner of record of the stock, provided that such statement may be made only when the proxy soliciting material is transmitted to the beneficial owner of the stock or to the beneficial owner's designated investment adviser at least fifteen days before the meeting. As amended, Rule 576(b)(1) also provides that when the proxy soliciting material is transmitted to the beneficial owner of the stock or to the beneficial owner's designated investment adviser twenty-five days or more before the meeting, the statement accompanying such material shall be to the effect that the proxy may be given fifteen days before the meeting at the discretion of the owner of record of the stock.

Rule 576(b)(2), as amended, provides that, instead of the material submitted under Rule 576(b)(1), the member organization may transmit with the soliciting material a signed proxy indicating the number of shares held for the beneficial owner and bearing a symbol identifying the proxy records of such member organization, and a letter informing the beneficial owner or the beneficial owner's designated investment adviser of the necessity for completing the proxy form and forwarding it to the person soliciting proxies in order that the shares may be represented at the meeting.

The Exchange also is modifying Commentaries .10 and .60 to Rule 576. Commentary .10 ("Annual reports to be transmitted") is being amended to provide that annual reports shall be transmitted to beneficial owners or to beneficial owners' designated investment advisers under the same conditions as those applying to proxy soliciting material under Rule 567 even through it is not proxy soliciting material under the proxy rules of the Commission. Commentary .60 ("Duty to transmit even when requested not to") currently provides that proxy material must be sent to a beneficial owner even through such owner has instructed the member organization not to do so. The Exchange is qualifying this provision to permit the beneficial owner to instruct the member organization in writing to send such material to the beneficial owner's designated investment adviser.

The Exchange also is adding provisions for a beneficial owner's designated investment adviser to Rule 577 ("Giving of Proxies by member Organization, Voting Procedure Without Instructions"). As amended, the Rule provides that a member organization which has transmitted proxy soliciting material to the beneficial owner of stock or to the beneficial owner's designated investment adviser to receive soliciting material in lieu of the beneficial owner and solicited voting instructions in accordance with the provisions of Rule 576, and who has not received instructions from the beneficial owner or from the beneficial owner's designated investment adviser by the date specified in the statement accompanying such material, may give or authorize the giving of a proxy to vote such stock, provided certain enumerated conditions are met.

The Exchange is making two changes to Rule 577, Commentary .10 ("Giving a Proxy to Vote Stock"). As amended, paragraphs (1) and (2) state that a member organization may give a proxy to vote stock provided that: (1) it has transmitted proxy soliciting material to the beneficial owner of stock or to the beneficial owner's designated investment adviser in accordance with Rule 576, and (2) it has not received voting instructions from the beneficial owner or from the beneficial owner's designated investment adviser by the date specified in the statement accompanying such material. The remaining condition in paragraph (3) is unchanged.

Rule 585—Transmission of Interim Reports and Other Material—currently provides that a member organization, upon request by a company, and when furnished with copies of interim reports of earnings or other material sent to stockholders, and satisfactory assurance that it will be reimbursed by such company for out-of-pocket expenses, shall transmit such reports of material to each beneficial owner of stock of such company held by the member organization and registered in a name other than the name of the beneficial owner. The Exchange is qualifying Rule 585 by adding the following to the end of the Rule: "unless the beneficial owner has instructed the member organization in writing to transmit such reports or material to a designated investment adviser registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for such beneficial owner."

III. Discussion and Conclusion

The Commission finds the proposed rule change to be consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b)(5) of the Act. Section 6(b)(5) of the Act provides, *inter alia*, that the rules of an exchange be designed to remove impediments to and

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perfect the mechanism of a free and open market.

The Commission believes that permitting investors to designate an investment adviser to receive proxy and related issuer materials and vote their proxies removes impediments to a free and open market. As noted by the Exchange, investors have been requesting that investment advisers be authorized to receive issuer materials and vote proxies for the investor. Investors choosing an investment adviser arrangement may believe that they do not need to receive issuer information since the investment adviser and not the investor is making investment decisions on their behalf. The Commission acknowledges that investors might view the receipt of issuers materials and the ability to vote proxies as part of the investment adviser's obligations to manage customer accounts. Furthermore, the Commission acknowledges that some investors, in choosing to utilize the services of an investment adviser, are implying that they do not have the knowledge or inclination to review complicated issuer or proxy materials or to vote proxies. These investors, in particular, may be frustrated by being inundated with unwanted issuer materials.

The Commission also believes that the proposed rule change will permit the investment adviser to make more expedient, informed investment decisions, thereby facilitating securities transactions in accordance with the Act. For these reasons, the Commission believes that the proposed rule change appropriately gives investors the freedom to choose whether to receive proxy and related issuer materials and vote the proxies or to designate their investment adviser to perform these functions on their behalf.

Section 6(b)(5) of the Act also provides that the rules of an exchange should protect investors and the public interest. The Commission believes that the proposed rule change is consistent with the public interest and the protection of investors. The Commission notes that the rule change continues to permit investors who wish to receive and vote proxies and receive other issuer materials to do so. The rule change affords beneficial owners the choice to delegate this authority when the beneficial owner has already granted discretion in his investment account to an investment adviser. Despite the flexibility provided by the rule, investors will continue to have the authority to rescind their designation of an investment adviser at any time. We note that prior to the effective date of such designation, member organizations must provide beneficial owners written notice of their right to rescind the designation.

The Commission also believes that amending Rule 575 to allow a member organization which is the investment manager for an ERISA Plan is consistent with the policies embodied in Section 6(b)(5) of the Act because the amendment would conform Amex Rule 575 to NYSE Rule 450 which permits a member organization, that is designated by a named fiduciary as the investment manager of stock held as assets of an ERISA Plan, to vote the proxies in accordance with the its ERISA Plan fiduciary responsibilities. The amendment to Rule 575 should facilitate transactions in securities between Amex member firms that are dual members of the NYSE and Amex by adopting consistent proxy rules. The Commission notes that in voting proxies as a plan fiduciary, an investment manager must consider those factors which would affect the value of the plan's investment and is prohibited from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives. In addition, the Commission believes that the Exchange's amendment should prevent potential conflicts between the Exchange rules and ERISA guidelines.[9]

Finally, the Commission believes the proposed rule change is consistent with Section 6(b)(8) of the Act, which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission believes the proposed rule change should serve to eliminate unnecessary burdens on competition in recognition that advisers not subject to Amex rules already are able to vote proxies for their clients.

It is therefore ordered, pursuant to Section 19(b)(2)[10] of the Act, that the proposed rule change (SR–Amex–94–3) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24612 Filed 10–4–94; 8:45 a.m.]

BILLING CODE 8010–01–M

[9] In an interpretive letter dated February 23, 1988, the Pension and Welfare Benefits Administration ("PWBA") of the United States Department of Labor ("Department") set forth its view regarding proxy voting by fiduciaries of employee retirement plans subject to ERISA. In the interpretive letter, the Department stated that the fiduciary act of managing plan assets which are shares of corporate stock would include the voting of proxies appurtenant to those shares of stock. The Department stated its position that, with respect to the special issues presented by the facts of the particular inquiry set forth in the request for interpretation (*i.e.*, a proposal to change the state of incorporation of a corporation in which a plan owned shares, and a proposal to rescind "poison pill" arrangements), the decision as to how proxies should be voted are fiduciary acts of plan asset management. The Department concluded that, to the extent that the plan permits a named fiduciary to appoint an investment manager to manage, acquire and dispose of plan assets, and the named fiduciary has not expressly reserved the voting rights to itself, there would be an ERISA violation if, during the duration of such delegation, any person other than the investment manager were to make the decision how to vote any proxy with respect to shares owned by the plan. See Labor Department Letter on Proxy Voting By Plan Fiduciaries, dated February 23, 1988, BNA Pension Reporter, February 29, 1988, Vol. 15, p. 391.

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–34743; File No. SR–NASD–94–48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Amendment of Certain Current Terms and the Adoption of New Terms Relating to the NASDAQ System That Are Used in Schedule D to the NASD By-Laws and Other Parts of the NASD's Rules and Regulations That Are Contained in the NASD Manual

September 28, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 20, 1994,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change. Proposed new language is italicized and proposed deletions are bracketed.

SCHEDULE D TO THE NASD BY-LAWS

PART I

DEFINITIONS

* * * * *

(17) ["NASDAQ] "*Nasdaq* market maker" means a dealer that, with

[1] The proposed rule change was initially submitted on August 23, 1994, and was amended on September 20, 1994.

respect to a security, holds itself out (by entering quotations in [the NASDAQ System] The Nasdaq Stock Market) as being willing to buy and sell such security for its own account on a regular and continuous basis and that is registered as such.

(18) "Nasdaq National Market" or "NNM" is a distinct tier of The Nasdaq Stock Market comprised of securities that meet the requirements of and are authorized as a Nasdaq National Market security.

[18] (*19*) [NASDAQ National Market System security" or "NASDAQ NMS security"] *"Nasdaq National Market security" or "NNM security"* means any authorized security *in the Nasdaq National Market* with (i) *satisfies all applicable requirements of Part II and* substantially meets the criteria set forth in Part III [Section 2 and 5] of this Schedule D and is subject therefore to a transaction reporting plan approved by *the* Securities and Exchange Commission; (ii) is a right to purchase such security; or (iii) is a warrant to subscribe to such security, and has been designated therefore as a national market system security pursuant to SEC Rule 11Aa2–1.

(20)"Nasdaq SmallCap Market security" or "SCM security" means any authorized security in The Nasdaq SmallCap Market which (i) satisfies all applicable requirements of Part II of this Schedule D other than a Nasdaq National Market security; (ii) is a right to purchase such security; or (iii) is o warrant to subscribe to such security.

[(20)] (*21*) "Net Tangible Assets" shall mean total assets (including the value of patents, copyrights and trade marks but excluding the value of goodwill) less total liabilities.

[(21)] (*22*) "Normal unit of trading" means 100 shares of a security unless, with respect to particular security, the Association determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the issuer's [NASDAQ] *Nasdaq* symbol.

Sections (22)–(25) are renumbered (23)–(26) respectively.

(27 "The Nasdaq SmallCap Market" or "SCM" is a distinct tier of The Nasdaq Stock Market comprised of securities that meet the requirements of and are authorized as a Nasdaq SmallCap Market security.

[19] (*28*) ["NASDAQ System" means the electronic inter-dealer quotation system] *"The Nasdaq Stock Market" or "Nasdaq" is an electronic securities market comprised of competing market makers whose trading is supported by a communications network linking them to quotation dissemination, trade reporting, and order execution systems. This market also provides specialized automation services for screen-based negotiations of transactions, on-line comparison of transactions, and a range of informational services tailored to the needs of the securities industry, investors and issuers. The Nasdaq Stock Market consists of two distinct market tiers: the "Nasdaq National Market" and "The Nasdaq SmallCap Market". The Nasdaq Stock Market is* operated by [NASDAQ, Inc.] *The Nasdaq Stock Market, Inc.*, a *wholly-owned* subsidiary of the Association.

In addition to the changes listed above, the proposed rule change would insert the proposed new terms, where applicable, throughout the NASD Manual. The proposed rule change also would apply to all rule filings that are approved or pending prior to the Commission's approval of the proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is proposing to amend certain current terms and adopt new terms related to the NASDAQ System that more appropriately describe the current technological facilities and services provided by this national securities market throughout Schedule D to the NASD By-Laws) ("Schedule D") and other parts of the NASD's rules and regulations in the NASD Manual. The NASD believes that the proposed new terms will indicate more clearly the current functionality of the NASDAQ System as a market for securities with quotation dissemination, trade reporting, and other execution capability, as well as other specialized automation services for screen-based negotiations of transactions, on-line comparison of transactions, and a range of informational services tailored to the needs of the securities industry, investors and issues. The proposed new terms would also clarify that the NASDAQ System is composed of two distinct market tiers, each with different inclusion criteria that are set forth in different parts of Schedule D. Finally, the proposed rule change would make clear that The Nasdaq Stock Market is operated by The Nasdaq Stock Market, Inc., a wholly-owned subsidiary of the Association.

Section 17 to Part I of Schedule D would be amended to replace the term "NASDAQ" with the term "Nasdaq" and to replace the phrase "the NASDAQ System" with the term "The Nasdaq Stock Market".

The proposed rule change would add a new Section 18 to Part I of Schedule D to define the "Nasdaq National Market" or "NNM" to mean a distinct tier of The Nasdaq Stock Market comprised of securities that meet the requirements of and are authorized as a Nasdaq National Market security

Part I, Section 18 of Schedule D would be renumbered as Section 19 and amended to replace the terms "NASDAQ National Market System security" and "NASDAQ NMS security" with the terms "Nasdaq National Market security" and "NNM security", and to clarify a current NASD requirement that such securities must satisfy "all applicable requirements of Part II" of Schedule D as well as substantially meet the criteria set forth Part III of Schedule D. The text of the proposed rule language to new Section 19 is based on that in Section 1 of Part II and Section 2 of Part III to Schedule D which set forth the qualification requirements and designation criteria applicable to Nasdaq SmallCap Market and Nasdaq National Market securities.

The proposed rule change would add a new Section 20 to Part I of Schedule D to define the term "Nasdaq SmallCap Market security" or "SCM security" to mean any security which (i) satisfies all applicable requirements of Part II of Schedule D other than a Nasdaq National Market security; (ii) is a right to purchase such security; or (iii) is a warrant to subscribe to such security.

The current section (20) to Part I of Schedule D would be renumbered as Section (21). The current section (21) to Part I of Schedule D would be renumbered as Section (22) and the term "NASDAQ" contained therein would be replaced with the term "Nasdaq". Current section (22) to (25) to Part I of Schedule D would be renumbered as Sections (23) to (26,) respectively.

The proposed rule change would add a new Section 27 to Part I of Schedule D to define "The Nasdaq SmallCap Market" or "SCM" to be a distinct tier

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of The Nasdaq Stock Market comprised of securities that meet the requirements of and are authorized as a Nasdaq SmallCap Market security.

The current Section 19 to Part I of Schedule D would be renumbered as Section 28 and amended by replacing the current term "NASDAQ System" with the term "The Nasdaq Stock Market" or "Nasdaq". Proposed Section 28 would define The Nasdaq Stock Market as an electronic securities market comprised of competing market makers whose trading is supported by a communications network linking them to quotation dissemination, trade reporting, and order execution systems. Proposed Section 28 would state that The Nasdaq Stock Market also provides specialized automation services for screen based negotiations of transactions, on-line comparison of transactions, and a range of informational services tailored to the needs of the securities industry, investors and issuers.

Proposed Section 28 would also clarify that The Nasdaq Stock Market is comprised of two distinct market tiers of the current NASDAQ System. The first tier of The Nasdaq Stock Market would be "The Nasdaq SmallCap Market" or "SCM". The second tier of The Nasdaq Stock Market would be the "Nasdaq National Market" or "NNM".

On June 30, 1993, the NASD's corporate subsidiaries that operated and serviced the NASDAQ System, i.e. Nasdaq Inc. and NASD Market Services, Inc., were merged into a single corporation renamed "The Nasdaq Stock Market, Inc.".[2] To reflect this corporate restructuring, proposed Section 28 would clarify that The Nasdaq Stock Market is operated by The Nasdaq Stock Market, Inc., a wholly-owned subsidiary of the Association.

The proposed rule change would insert the proposed new terms, where applicable, throughout Schedule D and other parts of the NASD's rules and regulations, including the Schedules to the By-Laws; Rules of Fair Practice; SOES Rules; ACT Rules; FIPS Rules; Nasdaq International Services; Code of Procedure and Uniform Practice Code.

The proposed rule change would apply to all rule filings of the Association or its subsidiary, The Nasdaq Stock Market, Inc., that are approved prior to or are pending on the date of the Commission's approval of the proposed rule change. Moreover, the numbering of the definition sections are proposed to be amended to reflect any amendment to the definition sections under Part I of Schedule D adopted prior to the approval of the proposed rule changes.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act in that the proposed rule change is designed to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest in that the proposed rule change would amend certain current terms and adopt new terms relating to the NASDAQ System in order to more appropriately describe the current technological facilities and services provided by this national securities market. The NASD believes that the proposed new terms will indicate more clearly the current functionality of the NASDAQ System as a market for securities with quotation dissemination, trade reporting, and order execution capability, as well as other specialized automation services for screen-based negotiations of transactions, on-line comparison of transactions, and a range of informational services tailored to the needs of the securities industry, investors and issuers. The proposed new terms would also clarify that The Nasdaq Stock Market is composed of two distinct market tiers, each with different inclusion criteria in different parts of the rules. Finally, the proposed rule change would make clear that The Nasdaq Stock Market is operated by The Nasdaq Stock Market, Inc., a wholly-owned subsidiary of the Association.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–94–48 and should be submitted by October 26, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24613 Filed 10–4–94; 8:45 am]

BILLING CODE 8010–01–M

[2] See, Item 16, Exhibit E to The Nasdaq Stock Market, Inc.—Annual Amendment to Registration as a Securities Information Processor ("SIP") attached to the NASD's March 31, 1994 letter from Robert E. Aber, Vice President and General Counsel, The Nasdaq Stock Market, Inc. to Jonathan G. Katz, Secretary, SEC.

[3] 17 CFR 200.30–3(a)(12).

[Release No. 34–34742; File No. SR–Phlx–91–46

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approved to Amendment No. 1 to a Proposed Rule Change Relating to Firm Quote Responsibilities for Customer and Broker-Dealer Orders

September 28, 1994.

On December 9, 1991, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Phlx's Options Floor Procedure Advice ("OFPA") F–7 relating to firm quotes for customer and broker-dealer orders. On September 27, 1994, the Phlx filed Amendment No. 1 ("Amendment No. 1") to the proposal to eliminate a reference to public customers in OFPA F–7 and to replace a reference to its Ten-up rule ("ten-up" rule) with the actual Options Floor Procedure Advice section ("OFPA A–11") governing minimum volume guarantees.[3]

Notice of the proposed rule change was published for comment in Securities Exchange Act Release No. 30134 (Dec. 31, 1991), 57 FR 730 (Jan. 8, 1992). No comments were received on the proposal. This order approves the proposal, as amended.

I. Description of the Proposal

OFPA F–7 currently states that bid and offer prices shall be general ones and shall not be specified for acceptance by particular members. The proposed amendment modifies OFPA F–7 to reflect the development of different execution guarantees depending on the status of the order to be executed. Under Phlx Rule 1033(a), the current "ten-up" rule, public customer orders are afforded a ten-up guarantee on the Exchange, receiving an execution of up to ten contracts at the best market price regardless of whether size was quoted. Broker-dealer orders do not qualify for the ten-up guarantee. Accordingly, the stated purpose of the proposed rule change is to permit floor traders to provide greater bid and/or offer sizes (*i.e.*, more than 10 contract guarantee) to facilitate customer orders while not being under such obligation with respect to broker-dealer orders, unless specified. However, the proposed amendment to OFPA F–7 requires that quote sizes be maintained equally for all orders of the same account type. Therefore, if a specialist elects to give a size of twenty-up to one-broker-dealer, he must honor the size of twenty-up for all broker-dealer orders.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[4] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers, and dealers.

In approving the Phlx's "ten-up" in rule in June 1987,[5] the Commission found that it was designed to benefit public customers by increasing the size of orders for which they can be assured executions to a minimum depth of ten contracts at the best bid or offer as quoted by a specialist or Registered Options Trader ("ROT"). Although the Commission carefully scrutinizes discriminatory order execution practices, limiting the "ten-up" rule for public customers furthers the purposes of the Act. The intent of the "ten-up" rule is to encourage options specialists and ROTs to become more competitive in making markets, thereby contributing to a more free and open market. Because the "ten-up" rule was designed by the options exchanges for the benefit of public customers, however, the incentive for market makers and ROTs to benefit public customers through the "ten-up" rule is contingent on the assurance that these market makers volume guarantees will not be exhausted by competitors to the detriment of public customers.

The Commission believes that allowing floor traders to provide customers with quote sizes greater than the minimum "ten-up" guarantee, while not being obligated with respect to broker-dealer orders, is consistent with the Act in that it will facilitate customer orders. The Commission also believes the rule change will encourage market participants to make larger markets, resulting in tighter spreads, which, in turn, should contribute to more liquid options markets. Furthermore, allowing floor traders to increase the quote sizes available to customer orders furthers the underlying purposes of the "ten-up" rule. The proposal also requires that order sizes be maintained equally for all orders of the same account type, as defined by OFPA B–6. Accordingly, if a specialist elects to give a size of twenty-up to one broker-dealer, he must honor the size of twenty-up for all broker-dealer orders. In the absence of a stated size to any bid or offer, the size shall be deemed to be for one contract only, subject to the minimum volume guarantees for public customers orders, as established in Rule 1033(a). The Commission believes this requirement will help to ensure the integrity and fairness of the Phlx's markets in that it will help prevent order discrimination within account types.

The Commission finds good cause for approving Amendment No. 1 to the Exchange's proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 eliminates the term "public customers" from OFPA B–7, which was proposed in the original filing. Because existing Phlx OFPA B–6 already distinguishes between account types, of which "public customers" is one type, the Commission does not believe the proposal's elimination of the term raises any new or substantive issues. Moreover, the minimum volume guarantees afforded by Rule 1033(a) are only available to public customer orders and the elimination of the term from OFPA B–7 does not affect the ten-up guarantee. Amendment No. 1 also replaces a reference to the Phlx "ten-up" rule with a citation to OFPA A–11, which is the floor advice currently governing minimum volume guarantees. The Commission believes this change is non-substantive and does not affect the operation or implementation of either Rule 1033(a), OFPA A–11, or the filing.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 26, 1994.

[1] 17 CFR 240.19b–4 (1991).

[2] See Letter from Gerald D. O'Connell, First Vice President, Phlx, to Michael Walinskas, Derivative Products Regulation, SEC, dated September 27, 1994.

[3] 15 U.S.C. 78f(b)(5) (1982)

[4] See Securities Exchange Act Release No. 24580 (June 11, 1987), 52 FR 23120.

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It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR-Phlx-91-46) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-24614 Filed 10-4-94; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20592; File No. 812-9006]

Teachers Insurance and Annuity Association of America, et al.

September 28, 1994.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Teachers Insurance and Annuity Association of America ("TIAA"), TIAA Separate Account VA-1 (the "Separate Account"), and Teachers Personal Investors Services, Inc. ("TPIS").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 12(b), 26(a)(2)(C) and 27 (c)(2) of the 1940 Act, and Rule 12b-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account under certain variable annuity contracts.

FILING DATE: An application was filed on May 18, 1994, and amended on September 28, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 24, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Applicants, 730 Third Avenue, New York, NY 10007-3206.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, at (202) 942-0682, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. TIAA is a nonprofit corporation regulated under New York law as an insurance company. TIAA's purpose is to provide retirement benefits to teachers and other employees of nonprofit-making colleges, universities, and other institutions engaged in education or research activities. All of TIAA's stock is held by TIAA Board of Overseers, a New York not-for-profit membership corporation. TIAA is a companion organization of the College Retirement Equities Fund, a New York nonprofit corporation registered as a management investment company that issues variable annuity certificates.

2. The Separate Account was established by TIAA under the laws of New York to fund certain variable annuity contracts. The Separate Account is registered as a management investment company on Form N-3 under the 1940 Act. The Separate Account currently consists of one investment portfolio, the Stock Index Account. Other investment portfolios may be made available in the future.

3. TPIS is the principal underwriter of the variable component of a combination fixed and variable individual deferred annuity contract ("Contract") funded by the Separate Account. TPIS is a wholly-owned subsidiary of TIAA VA Holdings, Inc., which is, in turn, a wholly-owned subsidiary of TIAA. TPIS is registering as a broker-dealer under the Securities Exchange Act of 1934. The Contract will be offered on a continuous basis by registered representatives of TPIS.

4. The Contracts are designed to provide retirement or long-term benefits to eligible employees, spouses or domestic partners. The Contracts require a minimum initial premium of $2000 except if payments are collected by payroll deduction by a Contractowner's employer. Additional premium payments of at least $100 may be paid at any time during the accumulation period. No sales charges are deducted from premium payments.

5. Premium taxes are deducted by TIAA from premium payments prior to allocation to the Separate Account in states that impose a premium tax charge when a premium is paid. In states that impose a premium tax later, TIAA deducts the appropriate amount when the tax is incurred.

6. When additional portfolios are added to the Separate Account, Contractowners will be allowed to transfer among available portfolios during the accumulation period. TIAA reserves the right to limit the number of transfers among portfolios to once in any 90-day period. Currently, no charge is made for transfers.

7. TIAA imposes a daily administrative expense charge at an effective annual rate of 0.20% of the net assets of the Separate Account. Applicants represent that this charge is deducted in reliance on Rule 26a-1 under the 1940 Act and is not greater than the expected cost of the administrative services to be provided over the life of the Contract. TIAA does not expect or intend to earn a surplus from the administrative expense charge. The rate of the charge is guaranteed not to increase for the duration of the Contracts and is applicable only during the period from the date of issue of the Contract until the end of the accumulation period.

8. A daily investment advisory fee is deducted from the net assets of the Separate Account and paid to Teachers Advisors, Inc. ("Advisors"), a wholly-owned subsidiary of TIAA VA Holdings, Inc. Advisors will be registered as an investment adviser under the Investment Advisers Act of 1940. The investment advisory fee will be 0.30% of the average daily net assets of the Separate Account. Advisors has agreed to waive a portion of the advisory fee so that the current effective annual rate will be 0.10% of the average daily net assets of the Separate Account.

9. TIAA deducts a Mortality and Expense Risk Charge that is equal, on an annual basis, to 0.25% of the average daily net asset value of the Separate Account: approximately .06% for mortality risks and .19% for expense risks. TIAA reserves the right to increase this charge to an effective annual rate of 1.00% of the net assets of each portfolio of the Separate Account (approximately .20% for mortality risks and .80% for expense risks) and guarantees that this charge will never exceed 1.00%.

10. The mortality risks assumed by TIAA arise from its contractual obligation to make annuity payment in accordance with the provisions of the Contracts regardless of how long all annuitants or any individual annuitant lives. In addition, TIAA assumes the risk that the total premiums paid under a Contract less any cash withdrawals exceed the account value of a Contract when a death benefit becomes payable. The death benefit under the Contract is the greater of (a) account value or (b) total premiums paid less cash withdrawals.

11. The expense risk assumed by TIAA is that actual expenses involved in administering the Contracts (including Contract maintenance costs, administrative costs, mailing costs, data processing costs, and costs of other services) may exceed the amount recovered from the administrative expense charge.

Applicants' Legal Analysis and Conditions

1. Sections 26(a)(2) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments are deposited with a qualified trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants request an order under Section 6(c) exempting the from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the Mortality and Expense Risk Charge from the assets of the Separate Account under the Contracts.

3. Applicants represent that the Mortality and Expense Risk Charge is within the range of industry practice with respect to comparable annuity products. Applicants base this representation on an analysis of publicly available information about similar annuity products, taking into consideration such factors as the current charge levels, existence of charge level guarantees, any death benefit guarantees, guaranteed annuity rates, and other policy options. TIAA represents that it will maintain at its administrative offices a memorandum, available to the Commission, setting forth in detail this analysis.

4. If the Mortality and Expense Risk Charge is insufficient to cover actual costs, the loss will be borne by TIAA. Conversely, if the amount deducted proves more than sufficient, the excess will be a profit to TIAA. TIAA does not expect a profit from this charge during the first years of the Separate Account's operation. To the extent this charge results in a surplus to TIAA, such surplus will be available for use by TIAA for the payment of distribution, sales, and other expenses. Applicants represent that no separate charge for distribution expenses will be imposed upon the assets of the Separate Account unless and until the requirements of Rule 12b-1 under the 1940 Act have been complied with.

5. TIAA represents that it has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Separate Account and Contractowners. The basis for this conclusion is set forth in a memorandum that will be maintained by TIAA at its administrative offices and that will be available to the Commission upon request.

6. TIAA represents that it will have a board of directors, a majority of whom are not interested persons within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any plan under Rule 12b-1 to finance distribution expenses.

7. Applicants also request an order under Section 6(c) of the 1940 Act exempting them from Section 12(b) of the 1940 Act and Rule 12b-1 thereunder, insofar as this proposed distribution financing arrangement might be deemed to involve the direct or indirect use of assets in the Separate Account for distribution.

8. Section 12(b) of the 1940 Act prohibits a registered investment company from acting as a distributor of securities of which it is the distributor, except through an underwriter. Rule 12b-1 prohibits any such company directly or indirectly from financing distribution of the company's shares except in compliance with the rule's requirements. The rule requires that a company financing distribution of its shares formulate a written plan describing all material aspects of the proposed arrangement and that the plan be approved initially by the company's shareholders, directors, and disinterested directors. The directors must vote annually to continue a plan and the directors must conclude that there is a reasonable likelihood that implementation or continuation of the plan will benefit the company and its shareholders.

9. Applicants expect to finance the expenses of distributing the Contracts through the use of TIAA's general assets, which may be attributable in part to any surplus from the Mortality and Expense Risk Charge. Thus, the proposed distribution financing arrangement might be deemed to involve the direct or indirect use of assets in the Separate Account for distribution. Accordingly, Applicants represent that this aspect of the requested relief is solely "defensive," *i.e.*, to clarify that the current distribution financing arrangement is not subject to Section 12(b) or Rule 12b-1 thereunder. Applicants contend that the requested exemptive relief is not intended to cover the imposition of a separate charge for distribution expenses against the assets in the Separate Account, and acknowledge that any such distribution charge would only be assessed in compliance with Rule 12b-1.

10. Applicants assert that Rule 12b-1 was not intended to apply to managed accounts, and that the rule's provisions are directed only at traditional mutual funds and should not be applied to managed accounts. Applicants further assert that the protections of Rule 12b-1 are not necessary in the case of managed accounts. Applicants state that Commission review under Section 26 and 27 of the 1940 Act of the reasonableness of asset charges of managed accounts, and explicit prospectus disclosure that the asset charge may be used for distribution expenses, provide sufficient protection for Contractowners and obviate the need for a managed account to comply with the requirements of Rule 12b-1.

11. Applicants assert that the application of Rule 12b-1 to managed accounts would produce a burdensome and inequitable treatment of these accounts, would place them at an unfair competitive disadvantage with respect to trust accounts offering similar annuity contracts, and would create an artificial distinction between managed and trust accounts not justified by policy considerations.

Conclusion

Applicants assert that, for the reasons and upon the facts set forth above, the requested exemptions from Sections 12(b), 26(a)(2)(C) and 27 (c)(2) of the 1940 Act, and Rule 12b-1 thereunder, to deduct the Mortality and Expense Risk Charge from the assets of the Separate Account under the Contracts meet the standards in Section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30-3(a)(12) (1993).

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For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–24615 Filed 10–4–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before November 4, 1994. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, D.C. 20416, Telephone: (202) 205–6629

OMB Reviwer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, 20503

Title: Low Doc Loan Program Customer Satisfaction Survey

Form No.: SBA Form 1921

Frequency: On Occasion

Description of Respondents: Low Doc Loan Participants

Annual Responses: 3,000

Annual Burden: 600.

Dated: September 27, 1994.

Cleo Vebillis,

Acting Deputy Director, Office of Administrative Services.

[FR Doc. 94–24601 Filed 10–4–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2086; Delegation of Authority No. 214]

Delegation of Responsibilities Under the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, and Certain Related Acts

By virtue of the authority vested in me as Secretary of State, including the authority of section 1 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2651a), as amended by section 161(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Pub. L. 103–236) ("the Authorization Act"), and the authority of the Presidential Memorandum of July 26, 1994, I hereby delegate the following functions as indicated.

Section 1. Functions Delegated to the Under Secretary for Political Affairs

The functions vested in the Secretary of State by sections 523, 528, 536(a), and 574 of the Authorization Act.

Section 2. Functions Delegated to the Under Secretary for International Security Affairs

The functions vested in the Secretary of State by sections 563(b) and 821(d) of the Authorization Act; and the functions of sections 39A (22 U.S.C. 2779a) and 73A (22 U.S.C. 2797b–1) of the Arms Export Control Act, as added by sections 733 and 735(d), respectively, of the Authorization Act and vested in the Secretary by the Presidential Memorandum of July 26, 1994.

Section 3. Function Delegated to the Under Secretary for Economic, Business and Agricultural Affairs

The function of section 527(e) (22 U.S.C. 2370a) of the Authorization Act, vested in the Secretary of State by Presidential Memorandum dated July 26, 1994, and the function vested in the Secretary of State by section 527(f) (22 U.S.C. 2370a) of the Authorization Act.

Section 4. Functions Delegated to the Under Secretary for Management

This confirms that the functions vested in the Secretary of State by the following provisions are delegated to the Under Secretary for Management by virtue of Delegation of Authority No. 198, dated September 16, 1992: Sections 121(d), 128, 140(f), 178(c), 191, 193 (22 U.S.C. 2695a), 565 (b) and (c) (22 U.S.C. 2679c), 573(c), and 906(d) of the Authorization Act; Section 52 of the State Department Basic Authorities Act (22 U.S.C. 2724), added by section 136 of the Authorization Act; and Section 3721(b)(2) of title 31 of the United States Code, as amended by section 172(a) of the Authorization Act.

Section 5. Functions Delegated to the Under Secretary for Global Affairs

The function vested in the Secretary of State by section 142(b) of the Authorization Act.

Section 6. Functions Delegated to the Assistant Secretary for Consular Affairs

The functions vested in the Secretary of State by Sections 127(a) (22 U.S.C. 211a) and (b) of the Authorization Act.

Section 7. Functions Delegated to the Assistant Secretary for Democracy, Human Rights and Labor

The functions vested in the Secretary of State by section 5(d)(1) of the Arms Export Control Act (22 U.S.C. 2755(d)(1), as amended by section 162(f) of the Authorization Act.

Section 8. Functions Delegated to the Assistant Secretary for Diplomatic Security

The functions vested in the Secretary of State by sections 103(a)(2) (22 U.S.C. 4802(a)(2)) and 402(a)(2) (22 U.S.C. 4852(a)(2)) of the Omnibus Diplomatic Security and Antiterrorism Act of 1986, as amended by section 162(g) of the Authorization Act; and the functions vested in the Secretary of State by section 214 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4314).

Section 9. Functions Delegated to the Assistant Secretary for Economic and Business Affairs

The functions vested in the Secretary of State by section 35 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2707), as amended by section 162(k) of the Authorization Act.

Section 10. Functions Delegated to the Assistant Secretary for International Organization Affairs

The functions vested in the Secretary of State by section 4(b) and (c) of the United Nations Participation Act of 1945 (22 U.S.C. 287b), as added by section 406 of the Authorization Act; and the functions of sections 102(g), 407(a), 409 (b) and (d), and 431(b) of the Authorization Act, vested in the Secretary of State by Presidential Memorandum dated July 26, 1994.

Section 11. Functions Delegated to the Assistant Secretary for Political-Military Affairs

The functions vested in the Secretary of State by section 161(f)(2) of the Authorization Act.

Section 12. Functions Delegated to the Assistant Secretary for Population, Refugees and Migration

The functions vested in the Secretary of State by section 411(b) of the Immigration and Nationality Act (8 U.S.C. 1521(b)), as amended by section 162(n) of the Authorization Act.

Section 13. Functions Delegated to the Legal Adviser

The function vested in the Secretary of State by section 112a(b) of title 1 of the United States Code, as amended by section 138 of the Authorization Act.

Section 14. Functions Delegated to the Director of the Office of Foreign Missions

The functions vested in the Secretary of State by Title II of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4301 *et seq*), as amended by section 162(o) of the Authorization Act, except those under sections 203(4), 204(b)(5), 204(f), 209, 209A, and 214.

Section 15. Functions Delegated to the Chief of Protocol

The functions vested in the Secretary of State by section 107 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4806), as amended by section 162(g) of the Authorization Act.

Section 16. Functions Reserved to the Secretary of State

The functions of sections 401(b), 409(a), 514(b), 527(g), 528, 532(a), and 583(b) (1) and (6) of the Authorization Act, vested in the Secretary by Presidential Memorandum dated July 26, 1994; and the functions vested in the Secretary of State by section 203(4) of the State Department Basic Authorities Act of 1956.

Section 17. General Provisions

a. Notwithstanding this delegation of authority, the Secretary of State and the Deputy Secretary of State may exercise any function delegated or reserved by this delegation of authority. In addition, an Under Secretary of State may exercise any function delegated by this delegation of authority to an official below the rank of Under Secretary.

b. Any officer to whom functions are delegated by this delegation of authority may, to the extent consistent with law.

(1) redelegate such functions and authorize their successive redelegation; and

(2) promulgate such rules and regulations as may be necessary to carry out such functions.

c. Any reference in this delegation of authority to any act, order, determination, delegation of authority, regulation, or procedure shall be deemed to be a reference to such act, order, determination, delegation of authority, regulation, or procedure as amended from time to time.

Dated: September 20, 1994.

Warren Christopher,

Secretary of State.

[FR Doc. 94–24572 Filed 10–4–94; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Subject: Provision of Aviation Insurance Coverage for Commercial Air Carrier Service; Secretarial Determination

September 29, 1994.

By virtue of the authority delegated to me by Presidential Determination No. 94–39, issued July 26, 1994, to make determinations, in consultation with the Secretary of State, under the authority set forth in 49 U.S.C. 44302(b) and 44306(b), I hereby:

(1) determine, on behalf of the President and in consultation with the Secretary of State, that continuation of authorized humanitarian relief air services to Haiti is necessary to carry out the foreign policy of the United States.

(2) approve, on behalf of the President and in consultation with the Secretary of State, the provision by the Department of Transportation of insurance against loss or damage arising out of any risk from the operation of an aircraft in the manner and to the extent provided of Title 49 U.S.C. 44301–44310, whenever I have determined that such insurance cannot be obtained on reasonable terms and conditions from any company authorized to conduct an insurance business in a State of the United States.

Pursuant to 49 U.S.C. 44306(b), this Determination is effective for sixty days.

This Determination shall be brought to the attention of all air carriers within the meaning of 49 U.S.C. 40102(a)(2) and published in the **Federal Register**.

Federico Peña,

Secretary of Department of Transportation.

[FR Doc. 94–24592 Filed 10–4–94; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement: Randolph County, WV

AGENCY: Federal Highway Administration (FHWA), Dot.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Randolph County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Billy R. Higginbotham, Division Administrator, Federal Highway Administration, 550 Eagan Street, suite 300, Charleston, West Virginia 25301, Telephone: (304) 347–5929.

Ben L. Hark, Environmental Section Chief, Roadway Design Division, West Virginia Department of Transportation, 1900 Kanawha Boulevard East, building 5, room A–830, Capitol Complex, Charleston, West Virginia 25305–0430, Telephone: (304) 558–3236.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the West Virginia Department of Highways (WVDOH), will prepare an Environmental Impact Statement (EIS) for the construction of the Elkins Bypass in Randolph County. The proposed project limits extend from U.S. Route 33 in the vicinity of Aggregates Eastward to the vicinity of the four-lane section of U.S. Route 33 near Canfield (approximate project length, 9.1730 kilometers or 5.7 miles). The proposed highway project is considered necessary to adequately provide for a safe and efficient transportation system to serve the existing and future transportation needs of the area and to alleviate traffic congestion within the city of Elkins.

Alternatives under consideration will include, but are not limited to (1) taking no action, (2) where possible, widening the existing two-lane highway to four-lanes, and (3) constructing a four-lane, partially controlled access highway on new location. Additional alternatives may be evaluated based upon the results of the preliminary environmental and engineering studies and the public and agency involvement process. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies, and to private organizations and citizens who have previously expressed, or are known to have, interest in this proposal. A scoping meeting was scheduled for September 15, 1994, at the West Virginia

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Department of Transportation, Division of Highways Office in Charleston, West Virginia. Public meetings and a public hearing will be held. Public notice will be given of the times and places for the meetings and hearing. The Draft Environmental Impact Statement will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issue identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action should be directed to the FHWA at the address provided.

(Catalog of Federal Domestic Assistance Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on: September 27, 1994.

Billy R. Higginbotham,

Division Administrator, Charleston, West Virginia.

[FR Doc. 94-24573 Filed 10-4-94; 8:45 am]

BILLING CODE 4910-22-M

Corrections

Federal Register

Vol. 59, No. 192

Wednesday, October 5, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. FV94-945-2FR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, and Imported Irish Potatoes; Modification of Minimum Size Requirements

Correction

In rule document 94-22612 beginning on page 46721, in the issue of Monday, September 12, 1994, make the following correction:

§ 945.341 [Corrected]

On page 46723, in the first column, in amendatory instruction 2 to § 945.341, in the second line, "paragraph (1)" should read "paragraph (i)".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Forest Service

Establishment of Three Purchase Units, Florida and Washington

Correction

In notice document 94-21276 beginning on page 44405, in the issue of Monday, August 29, 1994, make the following corrections:

On page 44406, in the second column, under the heading "**Franklin and Liberty Counties, FL., Tallahassee Meridian**", in the 12th paragraph, in the 1st line, "T. 5 S., R. 5 W.;" should read "T. 5 S., R. 6 W.;".

On the same page, in the third column, in the 14th paragraph, in the fourth line, "21, 22, 27 and 38;" should read "21, 22, 27 and 28;".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 11

[Docket No. 92N-0251]

Electronic Signatures; Electronic Records

Correction

In proposed rule document 94-21468 beginning on page 45160, in the issue of Wednesday, August 31, 1994, make the following correction:

On page 45160, in the first column, under **ADDRESSES**, in the 12th line, "(92NO251@A1.FDAOC.FDA.GOV)" should read "(92N0251@A1.FDAOC.FDA.GOV)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94E-0099]

Determination of Regulatory Review Period for Purposes of Patent Extension; Netrexin™

Correction

In notice document 94-21280 appearing on page 44737 in the issue of Tuesday, August 30, 1994, in the third column, in the fourth full paragraph, in the eighth line, "March 22, 1995" should read "February 27, 1995".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94E-0109]

Determination of Regulatory Review Period for Purposes of Patent Extension; Neurontin®

Correction

In notice document 94-21288 appearing on page 44736 in the issue of Tuesday, August 30, 1994, in the third column, in the fifth full paragraph, in the eighth line, "March 22, 1995" should read "February 27, 1995".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Approval of State Plan Supplements

Correction

In rule document 94-7256 beginning on page 14554, in the issue of Tuesday, March 29, 1994, make the following correction:

§ 1952.246 [Corrected]

On page 14556, in the first column, in § 1952.246, in the first line, "(a) *Legislation.*" should read "(b) *Legislation.*"

BILLING CODE 1505-01-D

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Federal Register

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC01

Endangered and Threatened Wildlife and Plants; Removal of Arctic Peregrine Falcon From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines that arctic peregrine falcons (*Falco peregrinus tundrius*) are no longer a threatened species pursuant to the Endangered Species Act (Act) of 1973, as amended. This determination is based upon evidence that arctic peregrine falcon populations have recovered due to a reduction in organochlorine pesticides in the environment. Section 4(g) of the Act requires the Service to monitor recovered species for at least 5 years following delisting. This rule includes the Service's post-delisting monitoring plan for arctic peregrine falcons. Removal of the arctic peregrine falcon as a threatened species under the Act will not affect the protection provided under the similarity of appearance provision of the Act listing all *Falco peregrinus* found in the wild in the conterminous 48 States as endangered; nor will it affect the protection provided to this species under the Migratory Bird Treaty Act.

EFFECTIVE DATE: October 5, 1994.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at Northern Alaska Ecological Services, Endangered Species, U.S. Fish and Wildlife Service, 1412 Airport Way, Fairbanks, Alaska 99701.

FOR FURTHER INFORMATION CONTACT: Ted Swem at the above address (907) 456–0441 or Skip Ambrose at the above address (907) 456–0239.

SUPPLEMENTARY INFORMATION:

Background

The peregrine falcon is a medium-sized brown or blue-gray raptor that preys predominantly upon birds. Three subspecies occur in North America—arctic peregrine falcon (*Falco peregrinus tundrius*); American peregrine falcon (*F. p. anatum*); and Peale's peregrine falcon (*F. p. pealei*). Only arctic peregrine falcons are included in this rule; American and Peale's peregrine falcons are not affected. Arctic peregrine falcons nest in the tundra regions of Alaska, Canada, and Greenland. They are highly migratory with most individuals wintering in Latin America, although some may winter as far north as northern Mexico and southern Florida.

Arctic peregrine falcon numbers declined in the period following World War II as a result of contamination with organochlorine pesticides. Organochlorine pesticides, used widely in the United States and other nations in North, Central, and South America for control of agricultural and forest pests and mosquitos, are stable, long-lived compounds that persist in the environment. Organochlorines are deposited in the fatty tissues of animals eating contaminated food, and bioaccumulate in high concentrations in animals near the top of the food chain, such as peregrine falcons. Peregrine falcons contaminated with organochlorines can die if acutely poisoned, but a serious effect of organochlorines upon peregrine falcons in North America resulted from sublethal doses of the pesticide DDT. The principal metabolite of DDT is DDE. DDE prevents normal calcium deposition during eggshell formation, causing females to lay thin-shelled eggs that often break before hatching. Although organochlorines were not used in areas where arctic peregrine falcons breed, arctic peregrine falcons were nevertheless exposed to organochlorines because they and some of their prey species migrated through or wintered in areas of organochlorine use. Arctic peregrine falcon populations may have declined by as much as 75 percent as a result of organochlorine-caused mortality and reproductive impairment.

As a result of population declines, arctic peregrine falcons were protected in 1970 under the Endangered Species Conservation Act of 1969. They were later afforded the greater protection of the Endangered Species Act of 1973 upon its passage. The Act and its implementing regulations prohibit the take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. The Act also requires review of all activities funded, permitted, or conducted by Federal agencies to consider impacts to endangered or threatened species. As a result of the prohibitions and requirements of the Act, harvest of peregrines for the sport of falconry was prohibited and peregrine falcon nest sites were provided protection. The pivotal action in aiding the recovery of peregrine falcons, however, was regulation of the use of organochlorine pesticides. The use of DDT was restricted in Canada in 1970 and in the United States in 1973. Restrictions that controlled the use of other organochlorine pesticides, including aldrin and dieldrin, were imposed in the United States in 1974.

Following restrictions on the use of organochlorine pesticides, reproductive rates in arctic peregrine falcon populations increased and populations began to expand by the mid- to late-1970's. By 1984, the recovery of arctic peregrine falcons had progressed sufficiently that the Service reclassified the subspecies from endangered to threatened (49 FR 10520, March 20, 1984). The number of arctic peregrine falcons continued to increase. In 1991, the Service announced that it was reviewing the status of the threatened arctic peregrine falcon to determine if a proposal to delist was appropriate (56 FR 26969, June 12, 1991). On the basis of all available information and the comments received in response to the notice of status review, the Service proposed to delist the subspecies on September 30, 1993 (58 FR 51035). A summary of the information demonstrating the recovery of arctic peregrine falcons follows.

Arctic peregrine falcons nest in the tundra regions of Alaska, Canada, and the ice-free perimeter of Greenland. The exact degree of population decline and subsequent recovery has been poorly documented because most breeding areas are extremely remote and because there were few population studies prior to the pesticide era, but it appears likely that the species' population has expanded 3-fold or more since the late 1970's. Counts of the number of pairs found breeding in one area in Alaska and three areas in the Northwest Territories, Canada (NWT), follow:

Year	Colville River, Alaska[2]	Hope Bay NWT[3]	Coppermine NWT[3]	Rankin Inlet NWT[4]
1959[1]	35			
1968[1]	32			

Year	Colville River, Alaska[2]	Hope Bay NWT[3]	Coppermine NWT[3]	Rankin Inlet NWT[4]
1971[1]	25			
1978	15			
1979	16			
1980	21			
1981	24			17
1982	27		17	19
1983	26	25	17	19
1984	32	27	28	20
1985	30	29	17	26
1986	34	18	24	25
1987	37	39	29	23
1988	47	35	25	23
1989	53	58	37	22
1990	51	61	34	26
1991	56	52	51	26
1992	57	45	42	24
1993	58	60	44	28

[1] From Cade *et al.* 1968; White and Cade 1975.
[2] 1978–1993—unpublished Service data on file, Fairbanks, Alaska.
[3] Data from Shank *et al.* 1993; Chris Shank, Dept. of Renewable Resources, Govt. of NWT, pers. comm., 1993.
[4] Data from Court *et al.* 1988; C. Shank, pers. comm., 1993.

Population size has increased in these four areas, although the rate of increase has varied among areas. Long-term, historical data are not available from other areas within the breeding distribution of arctic peregrine falcons; however, similar trends have been observed in several other areas for which short-term data are available. The range-wide population size remains unknown because so few areas have been thoroughly sampled, but certainly the breeding population now numbers in the thousands.

Only one local population was known to have been extirpated; this was a small population of about 15 nesting pairs on the north slope of the Yukon Territory (Mossop 1988). This area is apparently being gradually recolonized by individuals from adjacent populations (Dave Mossop, Dept. of Renewable Resources, Yukon Territory, pers. comm., 1992).

Counts of the number of peregrine falcons seen passing fixed points during migration also provide evidence of the rapid increase in the number of arctic peregrine falcons since the late 1970's. Although some of the peregrine falcons seen during migration are American peregrine falcons, the majority seen on the east coast and near the Great Lakes are arctic peregrine falcons (Yates *et al.* 1988; William S. Clark, Cape May Bird Observatory, pers. comm., 1992; Mueller *et al.* 1988). The number of migrants seen during fall migration at two well-known concentration areas on the east coast, Assateague Island, Maryland, and Cape May, New Jersey, reflect the overall growth of the arctic peregrine falcon population. In the years 1970–1975, the average number seen per year at Assateague Island was about 100; by 1976–1979 the average number had increased to 310; and between 1990 and 1993 an average of 564 were counted (Seegar and Yates 1991; Seegar *et al.* 1993; William Seegar, U.S. Army, pers. comm., 1994). At Cape May, the average number seen in 1976–1979 was 136; by 1990–1993, the average number seen per year was 588 (Schultz *et al.* 1992; Paul Kerlinger, Cape May Bird Observatory, pers. comm., 1994). Counts conducted at Cedar Grove, Wisconsin, show a similar trend—the number seen decreased in the 1950's and 1960's, reached a low in the mid-1970's, increased rapidly in the 1980's, and may now equal the numbers seen in the 1930's (Mueller *et al.* 1988).

Review of Peregrine Falcon Recovery Plan

Four regional recovery plans were produced by the Service for peregrine falcons. The Peregrine Falcon Recovery Plan, Alaska Population (Alaska Recovery Plan), was the only plan that established recovery criteria for arctic peregrine falcons. The Alaska Recovery Plan, while including both arctic and American peregrine falcons nesting in Alaska, did not pertain to populations outside of Alaska; recovery objectives and criteria for arctic peregrine falcon populations in Canada and Greenland were never established. This rule applies only to arctic peregrine falcons so only those sections of the Alaska Recovery Plan that pertain to arctic peregrine falcons are mentioned in this discussion.

The Alaska Recovery Plan was written in 1982 using the best information then available. It included a strategy for population monitoring, recovery objectives, and criteria for reclassification. The monitoring scheme proposed that breeding surveys be conducted regularly in the two areas in Alaska (Colville and Sagavanirktok Rivers) for which historical population data were available. The Alaska Recovery Plan listed four parameters to be measured in the study areas to assess recovery status of those populations, and established an objective for each of the parameters. The four parameters and objectives were:

(1) Number of nesting territories occupied by pairs with an objective of 36 total pairs within the 2 specified study areas;

(2) Average number of young per nesting attempt with an objective of 1.4 young per nesting attempt;

(3) Average organochlorine concentration in eggs with an objective of less than 5 ppm DDE; and

(4) Average degree of eggshell thinning with an objective of shells averaging not more than 10 percent thinner than pre-DDT era eggs.

The Alaska Recovery Plan based reclassification criteria upon these objectives. It was suggested that these objectives should be met for 5 years before downlisting to threatened status, and the parameters should remain constant or improve during the ensuing 5 years before delisting.

Recovery plans and objectives are expected to guide and measure recovery, but are intended to be flexible enough to adjust to new information. Research conducted since the Alaska Recovery Plan was written in 1982 has shown that some of the recovery objectives were based upon incorrect assumptions. A discussion of the basis of each objective, the current status of arctic peregrines as measured against the objectives, and a review of recent

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information pertaining to the objectives follows:

(1) The objective of 36 pairs occupying territories in the two study areas was based on historical data and assumed that there were 51 available territories and 70 percent of these would be occupied in a fully recovered population (70 percent × 51 = 36). The plan suggested that 36 or more pairs should occupy territories for 10 or more years before delisting. Thirty-six pairs occupied the areas for the first time in 1984, and the number has increased each year since then. Seventy-seven pairs were present in the study areas in 1993, the tenth consecutive year in which this objective was met. The number of pairs now occupying breeding territories (77) greatly exceeds the original estimate of the number of available territories (51).

(2) The objective of 1.4 young per pair was based upon early studies of arctic peregrine falcons. Productivity exceeded 1.4 young per pair for the first time since the pesticide-era in 1982, and averaged about 1.6 young per pair for the 12-year period of 1982–1993.

(3) The objective of DDE residues in eggs averaging less than 5 ppm for 10 or more years was based upon the assumption that arctic peregrine falcons would not reproduce normally as long as residues exceeded this measure (this assumption was based upon the observation that peregrine falcons in the Aleutian Islands reproduced normally in the early 1970's when residues in eggs averaged 5 ppm). Average DDE residues declined below 5 ppm in arctic peregrine falcons in Alaska between 1984 and 1988, but it is unclear exactly when this threshold was crossed. It is therefore uncertain if the objective has been met for at least 10 years.

However, it is now apparent that this objective was inappropriate; normal reproduction was occurring for several years before the average concentration declined to 5 ppm and may have occurred while residues exceeded 10 ppm. The exact relationship between DDE residues in eggs and reproductive success remains unknown. The Service now believes that it is most appropriate to gauge "acceptable" contaminant exposure by reproductive success. Because reproductive success has been sufficient to allow population growth since the late 1970's and the objective for the production of young (1.4 young per pair) has been met or exceeded for 12 years, the Service considers the desired objective for exposure to organochlorines to have been met.

(4) The criterion requiring eggshells to average less than 10 percent thinner than pre-DDT era shells was based upon the observation that Peale's peregrine falcons in the Aleutian Islands reproduced normally with shells 8 percent thinner than normal in the early 1970's. This assumed that peregrine falcons could not reproduce normally if shells were more than 10 percent thinner than normal. Subsequent field work has shown this to be incorrect. Although the degree of thinning has gradually decreased over time, shells collected in arctic Alaska still average approximately 12.5 percent thinner than pre-DDT era shells. Reproduction, however, has been sufficient to fuel population growth since the late 1970's, and productivity has met or exceeded the stated objective for 12 years. The Service considers, therefore, that the basic goal that eggshell thinning not significantly affect reproduction, population growth, or recovery for at least 10 years, has been met.

In summary, the Alaska Recovery Plan identified four parameters to be measured in two study areas in arctic Alaska to monitor population health and recovery. Objectives were established for measuring recovery and indicating when downlisting and delisting were appropriate. The plan suggested that the four objectives were to be met or exceeded for 5 years prior to downlisting to threatened status and an additional 5 years prior to delisting. Two of the four objectives have been met for the 10-year interval suggested as a prerequisite for delisting. However, knowledge gained subsequent to the writing of the recovery plan indicates that the two objectives that have not been met were based upon incorrect assumptions. The Service concludes, based upon current information, that the basic goals underlying all four objectives have been reached—the number of pairs occupying territories in two study areas surpassed the objective for the tenth consecutive year in 1993; productivity surpassed the objective for the twelfth year in 1993; DDE residues in eggs have not prevented population growth and recovery since the late 1970's; and eggshell thinning has not inhibited population growth and recovery since the late 1970's.

Summary of Comments and Recommendations

In the September 30, 1993, proposed rule, the Service requested that all interested parties provide information and comments on the status of arctic peregrine falcons, on the proposed delisting of the subspecies, and on the draft monitoring plan included in the delisting proposal. The appropriate foreign, state and provincial governments, Federal agencies, scientific organizations, and other interested parties were contacted and encouraged to comment. During the 90 day comment period, 39 responses were received by the Service. Responses were received from one Federal agency, 9 foreign governments, 16 State governments, and 13 organizations or private individuals. No requests for public hearings were received. Comments concerning the status of arctic peregrine falcons and the proposed delisting are presented below; comments that addressed the proposed monitoring plan are presented in the Monitoring Plan section of this rule.

Of the 39 responses, 24 (61 percent) expressed support for delisting, 5 (13 percent) opposed delisting, and 10 (26 percent) stated no position. Of those expressing support for delisting, 11 (the government of Trinidad and Tobago, 8 State governments, and 2 organizations) specifically addressed the need for the Service to implement the proposed, post-delisting monitoring plan. Two of those (the government of Trinidad and Tobago and the State of Pennsylvania) stated that their support for delisting was contingent upon implementation of the monitoring plan. One nation (France, which governs the colony of French Guiana in South America), three individuals and one conservation organization opposed delisting. No position on delisting was given by the governments of Canada or Greenland, which are the only nations other than the United States in which arctic peregrine falcons nest.

Responses to the Service's proposal to delist arctic peregrine falcons contained several concerns. In some cases, similar or identical concerns were raised by more than one individual or party submitting comments. Similar comments have been grouped; the different comments and the Service's response to each are listed below.

Comment 1: Arctic peregrine falcons are still at risk from natural and human-caused factors. Additionally, pesticides, in low-level concentrations, may interact synergistically with other human-caused or natural stresses to negatively affect arctic peregrine falcons.

Service response: The Service recognizes that little is known of the effects of low-level pesticide contamination upon arctic peregrine falcons and the synergistic interactions of pesticides with other decimating factors. However, the Service must base its decision to list or delist species upon the factors discussed in the "Summary of Factors Affecting the Species" section of this rule. A species is protected if one or more of the five factors affects its continued existence. Since the late 1970's, arctic peregrine falcon populations have steadily increased in size, indicating that the cumulative and synergistic effects of pesticides and other decimating factors have been insufficient during this interval to threaten arctic peregrine falcons at the population level. The monitoring plan included in this rule is designed to detect any possible changes in the status of the subspecies following delisting, regardless of what factor or combination of factors prompts the change in status.

Comment 2: The use of pesticides may increase in Latin America as agricultural development proceeds.

Service response: The Service is concerned that arctic peregrine falcons and their migratory prey are exposed to pesticides during migration and the winter. Decreasing residues in blood and eggs show that contamination with pesticides is declining, however, despite continued agricultural development in Latin America. As part of the post-delisting monitoring effort, the Service will continue to monitor pesticide residues in arctic peregrine falcon blood and eggs so an increase in contamination can be documented.

Comment 3: The potential for over-utilization of arctic peregrine falcons for falconry following delisting has been underestimated by the Service.

Service response: Take of arctic peregrine falcons will remain prohibited under the Act in the conterminous 48 States by the listing of all *Falco peregrinus* wherever found in the wild due to similarity of appearance. In Alaska take will be governed by the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*). Section 2 of the Migratory Bird Treaty Act requires that in adopting regulations for the take of migratory birds, the Secretary of the Interior is to ensure that take is compatible with the protection of the species. Therefore, take of arctic peregrines, as with other migratory birds, will be regulated so as to provide for adequate conservation of the subspecies.

Comment 4: The *anatum* Peregrine Recovery Team, Canadian Wildlife Service, expressed concern about harvest for falconry following delisting. This Team asked that the Service ensure that capture of migrant falcons will not remove birds from breeding populations not yet completely recovered. They suggested that this could be accomplished by allowing take only on the breeding grounds.

Service response: Take of arctic peregrine falcons migrating through the 48 conterminous States will be prohibited under the Act due to the listing of all *Falco peregrinus* due to similarity of appearance. Moreover, the management of migratory birds, including arctic peregrine falcons, is governed in the United States by the Migratory Bird Treaty Act. The Migratory Bird Treaty Act provides for the cooperative protection of migratory bird resources that are shared by the Treaty signatory nations, including Canada. As the Service develops regulations allowing the harvest of arctic peregrine falcons, the concerns of other nations with which the United States shares this resource will be addressed. In particular, the Service will work with the appropriate Canadian officials to provide for the protection of breeding populations that have not recovered to the satisfaction of Canadian resource managers and recovery teams.

Comment 5: The Florida Game and Fresh Water Fish Commission pointed out that the Service was incorrect in stating that arctic peregrine falcons winter exclusively in Latin America. An estimated 200–300 arctic peregrine falcons over-winter in Florida each year.

Service response: The Service acknowledges that some of the peregrine falcons over-wintering in Florida are undoubtedly of the arctic subspecies. The Service has updated its information on the subspecies to reflect this correction.

Comment 6: The final rule delisting arctic peregrine falcons should be modified to include those American peregrine falcons that nest north of 55 degrees N latitude. This is appropriate because the northern American peregrine falcons have recovered similarly to arctic peregrine falcons. Limiting the delisting rule to arctic peregrine falcons is confusing, inconsistent, and ignores a large portion of a stable, recovered, and definable population of American peregrine falcons.

Service response: The Service listed arctic and American peregrine falcons as endangered under the Endangered Species Protection Act in 1970. They were listed separately, by subspecies, in order to differentiate these subspecies from Peale's peregrine falcons, which did not warrant or receive protection. Arctic and American peregrine falcon populations were affected by pesticides differently—arctic peregrine falcons did not decline to the same extent as American peregrine falcons and they recovered more quickly after the use of organochlorine pesticides was restricted. Additionally, although the recovery of arctic peregrine falcons appears to have progressed to a comparable degree throughout the range of the subspecies, American peregrine falcons have recovered to dissimilar degrees and at various rates in different portions of their range. As a result, the Service is handling the reclassification of American peregrine falcons separately.

Comment 7: It is difficult to identify subspecies of peregrine falcons in the wild. The conservation of listed subspecies, which may be confused with arctic peregrine falcons, will be compromised if arctic peregrine falcons are delisted.

Service response: The Service considers all *Falco peregrinus* in the conterminous 48 States to be endangered under the similarity of appearance provision of the Act and this consideration will not be affected by delisting arctic peregrine falcons (see Effects of This Rule section below). This is to ensure that protection given to American peregrine falcons, currently considered to be endangered, is not weakened by confusion with members of other subspecies. Although this protection pertains only to peregrine falcons in the United States, the Service hopes that other nations, where the subspecies ranges overlap, will similarly regard all peregrine falcons as endangered in order to assist the full recovery of American peregrine falcons.

Comment 8: Delisting will affect international laws and legislation.

Service response: This final rule applies only to United States domestic law. All peregrine falcons are listed under Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Delisting arctic peregrine falcons under the Act will not directly affect classification of the species or subspecies under CITES. Separate procedures to delist the subspecies under CITES can be pursued. Such amendments of the CITES appendices are done cooperatively by the numerous parties to the Convention in accordance with provisions outlined in the Convention's Articles XV and XVI. There are no other international laws or legislation that will be affected by this delisting.

Comment 9: The opinions of Canada and Greenland, countries principally involved, have not been solicited, considered, or provided.

Service response: The Service announced on June 12, 1991, that it was reviewing the status of arctic peregrine falcons and considering whether proposing to delist the subspecies was warranted. The Service notified the federal governments of Canada and Greenland of the status review and asked that they provide pertinent information and comments on whether delisting was appropriate. Neither nation stated a position on delisting but numerous biologists and resource managers within Canada provided the Service with information on the status of the subspecies in Canada. On September 30, 1993, the Service proposed to delist the subspecies and again the governments of Canada and Greenland were asked to provide information and to comment on delisting. The response of the *anatum* Peregrine Falcon Recovery Team,

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Canadian Wildlife Service, stated that "the proposal to remove the arctic peregrine falcon from the U.S. list of endangered and threatened wildlife seems well justified by the population increases and sustained productivity that is documented in the September 30, 1993 **Federal Register**." One specific concern was raised (see Comment 4 above) concerning the harvest of arctic peregrine falcons for falconry; this concern will be addressed by the Service when harvest regulations are formulated under the Migratory Bird Treaty Act. No comments were received from the government of Greenland.

Comment 10: The data presented in the proposal indicate that populations in some areas have declined for the last two years. The Service attempted to discount this trend as being the result of "exceptional years."

Service response: Surveys of nesting peregrine falcons at Hope Bay and Coppermine, NWT, are conducted by helicopter at about the time that falcons in these areas are hatching (Shank *et al.* 1993). Failed or non-nesting pairs may be absent at nesting cliffs during single, brief visits to cliffs, so may go undetected in this type of survey (C. Shank, pers. comm., 1992). As a result, annual variation in the number of pairs counted can be greatly affected by annual variation in nesting success. In years with good success, most pairs have viable nests and are present when nest sites are checked. In years with poor nest success, many pairs may have failed by the time surveys are conducted and the adults may go undetected. Annual variation in nesting success is large at Hope Bay and Coppermine, and is probably caused by the extreme weather conditions found near the coast in arctic areas (C. Shank, pers. comm., 1992).

Regression analysis provides a means of detecting and describing trends in the number of pairs found at these areas despite annual variation. Regression analysis shows that the number of pairs at Coppermine and Hope Bay has increased significantly since surveys began and that the rate of population growth has averaged about 10 percent per year. Furthermore, surveys in 1993 showed a slight increase from the previous year at Hope Bay and a substantial increase from 1992 at Coppermine (see **SUMMARY** section above). The Service believes, therefore, that despite several short-term decreases in the number of pairs detected, local populations at both Hope Bay and Coppermine have shown considerable growth in the last 10 to 12 years. Furthermore, the Service believes that decreases seen between 1990 and 1992 do not indicate that populations are declining in either area.

Comment 11: The recovery plan established four criteria to be met before delisting should be considered but only two of the four currently have been met. The data on organochlorine concentrations in eggs and eggshell thickness (the two criteria that have not been met) are unpublished and as such have not been verified and validated by scientists.

Service response: As required by the Act, the Service collected all available information on the status of arctic peregrine falcons before deciding whether delisting was warranted. Much of the available information is unpublished. In using unpublished data, the Service is able to include the most recently acquired data as well as data collected by a broader array of sources. The Service recognizes, however, that unpublished data have not been subjected to review by the scientific community.

The unpublished data and the Service's interpretation of that data were presented to the scientific community for review in the proposal to delist, which was published in the **Federal Register** (September 30, 1993). Since the **Federal Register** is not widely read among scientists, the Service sent copies to and requested comments from over 30 professional biologists that have worked with peregrine falcons in Greenland, Canada, and the United States. Additionally, copies were sent to members of the Western Peregrine Falcon Recovery Team, a number of professional ornithological organizations, the appropriate natural resource agencies in seven provinces and territories in Canada, and every State fish and game agency in the United States. Several professional biologists or resource managers expressed support for delisting—none expressed opposition to delisting. Furthermore, neither the validity of any data contained in the proposal nor the Service's interpretation of the data were questioned.

Summary of Factors Affecting the Species

According to the Act and implementing regulations outlined in 50 CFR part 424, a species shall be listed if the Secretary of the Interior determines that one or more of five factors listed in section 4(a)(1) of the Act threatens the continued existence of the species. A species may be delisted, according to § 424.11(d), if the best scientific and commercial data available substantiate that the species is neither Endangered or Threatened for one of the following reasons:

1. Extinction;
2. Recovery; or
2. Original data for classification of the species were in error.

After a thorough review of all available information, the Service has determined that arctic peregrine falcons are no longer endangered or threatened with extinction. A substantial recovery has taken place since the 1970's, and none of the five factors addressed in section 4(a)(1) of the Act currently jeopardizes the continued existence of arctic peregrine falcons. These factors and their relevance to arctic peregrine falcons are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Arctic peregrine falcons nest in arctic tundra regions of Alaska, Canada, and Greenland. They migrate through the mid-latitudes of North America across a broad front, but concentrate in some coastal and estuarine areas along the Atlantic coast and Gulf of Mexico. Migrants also pass through inland areas including the Great Lakes, Great Plains, and Rocky Mountains, although the relative importance of coastal and inland habitats to migrants is unknown. Most arctic peregrine falcons spend the winter in Latin America, but some winter as far north as southern Florida. Although the rate of habitat alteration in nesting, migration, and wintering habitats is greater now than in the past, the rapid increase in the number of arctic peregrine falcons during the last 15 years indicates that habitat modification does not currently threaten the continued existence of the subspecies.

B. *Over-utilization for commercial, recreational, scientific, or educational purposes.* Delisting of the Arctic peregrine falcon will not result in the over-utilization of the subspecies for the following reasons. All *Falco peregrinus* found in the wild in the conterminous 48 States are listed as endangered due to similarity of appearance. Therefore, take of arctic peregrine falcons migrating through the conterminous 48 States will be prohibited by the Act. Additionally, the take of all migratory birds, including arctic peregrine falcons, is governed by the Migratory Bird Treaty Act and the corresponding regulations codified in 50 CFR Part 21. Migratory bird regulations allow for the take of wild peregrine falcons subsequent to obtaining a permit, for recreational, scientific, and educational purposes, but require that harvest is limited to levels that prevent over-utilization.

C. *Disease or predation.* Although individuals may be vulnerable to disease or predation, these factors are not known to affect arctic peregrine falcons at the population level.

D. *The inadequacy of existing regulatory mechanisms.* Arctic peregrine falcons will remain protected by the similarity of appearance provision of the Act while in the conterminous 48 States as long as other subspecies occurring in this area remain listed. This protection will not extend beyond such time that other peregrine falcons occurring in those areas are removed from the list of endangered and threatened wildlife.

Arctic peregrine falcons are also protected by the Migratory Bird Treaty Act, which governs the taking, killing, possessing, transportation, and importation of migratory birds, their eggs, parts, and nests. A more thorough discussion of the protection offered by the Migratory Bird Treaty Act is included in the Effects of This Rule section below.

In addition to Federal laws governing the taking of arctic peregrine falcons within the United States, international agreements govern the transport of arctic peregrine falcons across international borders. The Convention on International Trade in Endangered Species (CITES) is an international agreement that regulates trade in species threatened with extinction and those that may become threatened if trade is not regulated. The arctic peregrine falcon is currently listed under Appendix I of CITES, and, as a result, international trade in arctic peregrine falcons is restricted by the United States and 122 other signatory nations. This final rule only affects United States domestic endangered species law and does not result in removal of arctic peregrine falcons from Appendix I of CITES.

E. *Other natural or manmade factors affecting its continued existence.* There is general agreement within the scientific community that contamination with organochlorine pesticides was the principal factor responsible for the decline of arctic peregrine falcons. The population decline was likely a result of both reproductive impairment from sublethal dosage and direct mortality from lethal dosage, although the relative importance of those two factors remains unknown. Change in population size, therefore, is the best indicator of the total impact of pesticides because population size is affected by both direct mortality, which is extremely difficult to measure in wild populations, and reproductive impairment, which is more easily quantified in the wild. The consistent growth in arctic peregrine falcon numbers since the late 1970's, previously discussed in the Background section of this rule, provides the strongest supporting evidence that organochlorine pesticides no longer pose a threat at the population level.

The use of organochlorine pesticides was restricted in the United States and Canada in the early 1970's. Their use in Latin America continues, however, and some arctic peregrine falcons undoubtedly winter in areas where organochlorines are currently used. It has been shown, by comparing blood samples collected during fall and spring migration, that migrant peregrine falcons accumulate pesticides while wintering in Latin America (Henny *et al.* 1982). Additionally, some of the avian prey utilized by arctic peregrine falcons during the summer in arctic and subarctic areas also winter in Latin America. Many of these prey return to their northern nesting areas with pesticide residues accumulated during the winter (Fyfe *et al.* 1990). Peregrine falcons preying upon these birds during the summer are thus further exposed to Latin American pesticides. Pesticide use in Latin America, however, may never have been great enough to cause a decline in the number of arctic peregrine falcons. The widespread reproductive failure and population crash coincided with the period of heavy organochlorine use in the United States, and a noticeable increase in productivity occurred in Alaska within a few years following restrictions on the use of organochlorines in the United States.

Furthermore, the exposure of arctic peregrine falcons to organochlorines continues to decrease. Average DDE residues in blood collected from peregrine falcons during spring migration in Texas decreased 38 percent between 1978–1979 and 1984 (Henny *et al.* 1988). Pesticide residues in arctic peregrine falcon eggs have decreased similarly. A sample of eggs from 9 clutches collected in arctic Alaska in 1968 averaged (geometric mean, wet weight basis) 23.5 ppm DDE with a maximum of 99 ppm (Jeff Lincer, BioSystems Analysis, pers. comm., *in litt.*, 1992). By the late 1970's to early 1980's, the average DDE concentration in eggs collected from 19 clutches had declined to 9.3 ppm with a maximum of 46.4 ppm (unpubl. Service data, on file in Fairbanks, Alaska). In 1990–1991, eggs from 13 clutches averaged 3.3 ppm with a maximum of 5.3 ppm (unpubl. Service data, Fairbanks, Alaska). Similar trends were observed in Canada. Residues in eggs collected in arctic Canada averaged 9.9 ppm DDE in 1965–1972 (maximum 72.0); 8.5 ppm in 1973–1979 (max. 19.6); and 6.8 ppm (max. 18.5) in 1980–1986 (Peakall *et al.* 1990). Eggs from 36 clutches collected at Rankin Inlet, NWT, in 1981–1986 averaged 7.6 ppm DDE (Court *et al.* 1990). Eggs collected in Greenland between 1972 and 1978 averaged 12.8 ppm DDE (Burnham and Mattox 1984), but by 1981 and 1982 the maximum (average not given) in 9 eggs was 9.1 ppm (Mattox and Seegar 1988). To put these values in perspective, concentrations of DDE in peregrine falcon eggs in excess of 15 to 20 ppm (parts per million, wet weight basis) are associated with high rates of nesting failure; if residues average less than this critical level, productivity is usually sufficient to maintain population size (Peakall *et al.* 1975; Newton *et al.* 1989). Residues of other organochlorines in arctic peregrine falcon eggs have also decreased since the 1970's, and residues are currently well below concentrations associated with reproductive impairment or population declines.

Most researchers consider DDE-caused eggshell thinning to be the proximate factor that caused peregrine falcon populations to decline in North America. Average eggshell thickness decreased by as much as 24 percent in Alaska during the peak period of organochlorine contamination. This decreased eggshell thickness correlated with greatly reduced reproductive success. Eggshell thickness has increased significantly since the use of DDT was restricted in the United States, but pesticides accumulated in Latin America still affect shell thickness. Shells from Rankin Inlet, NWT, collected in 1981–1986 averaged 15.8 percent thinner than pre-DDT shells (Court *et al.* 1990). Alaskan shells collected in 1979–1984 averaged 13.4 percent thinner than pre-DDT thickness measurements, and shells collected in 1988–1991 averaged about 12 percent thinner. Peregrine populations are expected to decrease in size if eggs have shells averaging at least 17 percent thinner than normal while populations with eggs averaging less than 17 percent thinning generally remain stable or can increase in size (Kiff 1988). Although arctic peregrine falcon eggs remain vulnerable to an increase in exposure to organochlorines, eggshell thinning has been insufficient to prevent widespread population recovery since the late 1970's.

Reproductive success is another parameter used in measuring the effects of pesticide poisoning upon peregrine falcons. "Normal" productivity rates vary among regions; therefore, it is

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difficult to assess the health of a local population based upon productivity rate alone. In Alaska, productivity reached its lowest level of about 0.6 yg/pr in the mid 1970's. Productivity improved in the late 1970's, reaching 0.9 yg/pr in 1979. From 1980 to 1993 it varied between 1.3 and 2.0 yg/pr, which was sufficient to support an average annual increase in the breeding population size of about 9 percent (unpublished Service data on file, Fairbanks, Alaska). In Canada, a decrease in the productivity of arctic peregrine falcons was never clearly documented, although populations decreased in size so productivity almost certainly declined. At Rankin Inlet, NWT, productivity averaged about 1.5 yg/pr between 1981 and 1992 (Court *et al.* 1988; C. Shank, pers. comm., 1991, 1992), although annual productivity varied tremendously in response to variation in weather conditions (Court *et al.* 1988). Productivity in Ungava Bay, Quebec, reached a low of 1.33 yg/pr in 1970, and exceeded 2.7 yg/pr in each of 3 surveys conducted since 1980 (Bird and Weaver 1988; David Bird, pers. comm., *in litt.*, 1991). Reproductive rates have remained high in Greenland since observation began in 1972. In western Greenland productivity from 1972 to 1992 remained at least 1.80 yg/pr (William Mattox, Greenland Peregrine Falcon Survey, pers. comm., *in litt.*, 1992). Similarly, in southern Greenland, production remained high from 1981 to 1991 (Knud Falk, Ornis Consult A/S, pers. comm., *in litt.*, 1992).

The only recent measurable effect presumably attributable to organochlorine use in Latin America has been found in Rankin Inlet in the NWT. Between 1982 and 1986, pesticides caused about 10 percent of the nesting pairs to fail, but average productivity within the population was high, and numbers were stable at the extremely high density of one pair per 17 square kilometers (Court *et al.* 1988). Despite the effect on a small portion of the pairs, the overall impact to the population in this area was minimal. There has been no other recent evidance of pesticide-caused reproductive failure found in any other arctic peregrine falcon population studied.

In summary, the reproductive failure and resultant population crash seen in arctic peregrine falcons were likely the result of the heavy use of organochlorines in the United States and possibly Canada. However, arctic peregrines are still exposed to organochlorine pesticides due to continuing use in Latin America. Because organisms at the top of the food chain bioaccumulate environmentally stable contaminants, arctic peregrine falcons remain vulnerable and could suffer from an increase in the use of organochlorines or the widespread use of other stable toxins that affect survival or reproduction. The concentration of organochlorines in arctic peregrine falcon tissues continues to decline, though, and is currently well below those levels associated with population declines. The widespread recovery of arctic peregrine falcon populations is convincing evidence that pesticides and other contaminants do not currently threaten the continued existence of the subspecies.

The Service has carefully reviewed all available scientific and commercial data and concluded that the threat or threats that caused arctic peregrine falcon populations to decline no longer pose a risk to the continued survival of the subspecies. A widespread recovery has followed restrictions on the use of organochlorine pesticides in the United States and Canada. This recovery indicates that the subspecies is no longer endangered or likely to become endangered within the foreseeable future in a significant portion of its range. Under these circumstances, removal from the list of threatened and endangered wildlife is appropriate.

In accordance with 5 U.S.C. 553(d), the Service has determined that this rule relieves an existing restriction and good cause exists to make the effective date of this rule immediate. Delay in implementation of this delisting would cost government agencies staff time and monies conducting formal section 7 consultation on actions which may affect species no longer in need of the protection under the Act. Relieving the existing restriction associated with this listed species will enable Federal agencies to minimize any further delays in project planning and implementation for actions that may affect arctic peregrine falcons.

Effects of This Rule

Pursuant to the similarity of appearance provisions of section 4(e) of the Act, species (or subspecies or distinct vertebrate population segments) that are not considered to be endangered or threatened may nevertheless be treated as such for law enforcement purposes of protecting a listed species (or subspecies or vertebrate population segment) that is biologically endangered or threatened. Under the similarity of appearance provision (implemented by 50 CFR 17.50), the Service must find:

(a) that the species so closely resembles in appearance an endangered or threatened species that enforcement personnel would have substantial difficulty in identifying listed from unlisted species;

(b) that the effect of the substantial difficulty is an additional threat to the listed endangered or threatened species; and

(c) that such treatment of an unlisted species will substantially facilitate the enforcement and further the purposes of the Act.

The Service considers "all free-flying *Falco peregrinus*, not otherwise identifiable as a listed subspecies, to be endangered under the similarity of appearance provision in the 48 conterminous States" (49 FR 10520, March 20, 1984). Therefore, arctic peregrine falcons will be protected as endangered or threatened while migrating through the 48 conterminous States as long as American peregrine falcons that occur in this area are classified as endangered or threatened. American peregrine falcons are known to occur or could occur in all areas in which arctic peregrine falcons are found in the 48 conterminous States, so protection would be complete in this region. The protection of this provision would not extend beyond such time that the American peregrine falcon is delisted. The Service anticipates that recovery will eventually allow the American peregrine falcon to be removed from the list of endangered and threatened wildlife. At such time, the Migratory Bird Treaty Act will govern the take of arctic peregrine falcons, as will the appropriate State regulations. State regulations applying to falconry currently vary among States and are subject to change with time. The applicable State regulations, however, may be more but not less restrictive than Federal regulations.

The similarity of appearance provision does not apply to arctic peregrine falcons while they are outside the conterminous United States. Although American peregrine falcons occur in northern areas, such as Alaska, there is no overlap in the breeding ranges of the two subspecies in Alaska (arctic peregrine falcons breed north of the Brooks Range and along the west coast near Norton Sound whereas American peregrine falcons breed south of the Brooks Range). If this proposal is enacted, therefore, the taking of arctic peregrine falcons within their breeding range would not be prohibited by similarity of appearance protection and would, therefore, be governed by the Migratory Bird Treaty Act. Additionally, the similarity of appearance protection is provided by United States domestic law; this protection does not apply to arctic peregrine falcons outside the United States.

The Migratory Bird Treaty Act regulates the taking of migratory birds for educational, scientific, and recreational purposes, such as falconry. Section 2 states that the Secretary of the Interior is authorized and directed to determine if, and by what means, the take of migratory birds should be allowed, and to adopt suitable regulations permitting and governing the take. In adopting regulations, the Secretary is to consider such factors as distribution and abundance to ensure that take is compatible with the protection of the species. Existing regulations applying to the use of raptors for falconry and the captive propagation of raptors are outlined in 50 CFR 21.28 to 21.30.

In addition to Federal regulations, Alaska State regulations would apply to harvest of arctic peregrine falcons in Alaska. Alaska State regulations outlined in 5 AAC 92.037 do not currently allow for the use of arctic peregrine falcons for falconry, but it is likely that State regulations will be amended to allow harvest in the near future. Alaska State regulation 92.037(b)(3) requires that "no person may permanently export a raptor taken from the wild in Alaska unless the person has legally possessed that raptor for at least one year." The Service anticipates little or no pressure within Alaska to amend this latter regulation; therefore, the take of arctic peregrine falcons in Alaska should remain limited to the roughly 30 falconers who are permanent residents of Alaska.

Falconry regulations in Canada and Greenland do not allow foreign falconers to take raptors, so this delisting will not result in United States residents taking arctic peregrine falcons within these countries. Take of arctic peregrine falcons in Canada and Greenland by residents of those nations is not affected by United States domestic law; therefore, delisting will not affect regulations allowing harvest in those countries. In addition, as mentioned above, international trade in arctic peregrine falcons is regulated as a result of the subspecies' inclusion on the CITES Appendix I list.

Future Conservation Measures

Section 4(g)(1) of the Act requires that the Secretary of the Interior, through the Fish and Wildlife Service, monitor species for at least 5 years after delisting. If evidence acquired during this monitoring period shows that endangered or threatened status should be reinstated to prevent a significant risk to the species, the Service may use the emergency listing authority provided for by the Act. At the end of the 5-year monitoring period, the Service will, based upon results of monitoring efforts, decide if relisting, continued monitoring, or an end to monitoring activities is appropriate.

The Service included a draft monitoring plan in the September 30, 1993 (58 FR 51035) proposal to delist arctic peregrine falcons. The public was asked to provide comments and suggestions for improving the draft plan. Of the 39 parties responding to the proposal, 15 specifically addressed the monitoring plan, including 11 State fish and game agencies, one Federal agency, the government of Trinidad and Tobago, and two non-governmental organizations. Of the 15 that addressed the plan, five supported the plan as written, five stressed the importance of implementing the plan, two stated they supported delisting only if the monitoring plan was implemented, and three suggested modifications to the plan. The parties suggesting improvements raised three different concerns; those concerns and the Service's responses are given below:

Comment 1: The Service has chosen an inappropriate criterion for considering relisting if population size again declines. Thirty-five pairs found nesting along the Colville River in 1959 should be considered the historical norm for this population, not 57 pairs found in 1992.

Service response: The Service believes that recent survey results provide the most accurate estimate of the number of pairs that will nest along the Colville River when the population is in a normal, healthy condition. Furthermore, the Service's post-delisting monitoring plan for arctic peregrine falcons is designed to detect a change in the status of the subspecies. The Service believes that a significant (25 percent or more) change in population size will indicate that some factor or factors is affecting either reproductive performance or survival within the population. A change in productivity or survival will be more quickly detected and accurately measured if recent population estimates are used as baseline levels.

Comment 2: The monitoring plan should be expanded to include one nesting area in the Canadian arctic, one nesting area in Greenland, and migration data from Assateague Island, Maryland, and Cedar Grove, Wisconsin. Cooperative agreements should be pursued with the governments of Canada and Greenland to ensure the continuation of projects in those nations.

Service response: In formulating the monitoring plan, the Service emphasized breeding surveys conducted in Alaska because surveys in northern Alaska were designed to measure the criteria listed in the Peregrine Falcon Recovery Plan, specifically, population size, reproductive performance, and contaminant levels. These factors are the most important in monitoring the status, trends, and threats to the subspecies, and they are not consistently measured in any other study area in North America. Additionally, the Service has greater influence over the funding and implementation of monitoring efforts conducted in the United States, and in particular, those conducted by the Service.

The Service agrees that continuation of on-going research on arctic peregrine falcons will contribute greatly to monitoring the subspecies following delisting. In particular, three nesting surveys in the NWT, Canada, and one in Greenland, and counts of migrants conducted at a number of different sites have provided data substantiating the recovery of the subspecies. The delisting criteria have been modified to consider information on breeding pairs gathered in Canada and Greenland. In addition, the Service intends to utilize all available information when reviewing the overall status of the subspecies, and will encourage the continuation of all research efforts wherever possible.

Comment 3: The monitoring plan should be extended to 10 years to allow adequate measurement of the impacts of resumed falconry harvest, to compensate for short-term variability in productivity due to weather and other variables, and to measure long-term changes in organochlorine contamination and eggshell thickness. This is particularly important because the Service reevaluated criteria concerning organochlorine concentrations in eggs and eggshell thickness in the recovery plan.

Service response: Although two of the recovery criteria in the original recovery plan were reevaluated to reflect current information, the Service feels that the subspecies has recovered sufficiently to warrant delisting without reservation. At the end of the minimum 5-year monitoring period, the Service will review all available information, including organochlorine contamination and eggshell thickness, to decide if continuation of monitoring is warranted for any reason. The Service believes that this evaluation process allows for adequate consideration of all pertinent factors.

After consideration of the comments received on the draft monitoring plan, the Service has produced the following monitoring plan. This plan will be

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revised, as appropriate, to incorporate new knowledge of threats to the subspecies, research techniques, or other applicable information.

Monitoring plan. As discussed above, exposure to organochlorines, particularly DDT, was the primary factor causing the decline of arctic peregrine falcons. Organochlorines affected populations by reducing reproductive success, although the mortality rate of adults and juveniles may have increased as well. As productivity and recruitment declined to levels insufficient to replace mortality, populations dwindled. This monitoring plan, therefore, is designed to detect changes in the status of arctic peregrine falcons by monitoring population size, reproductive performance, and contamination with organochlorine pesticides and other pollutants.

In reviewing the status of arctic peregrine falcons and preparing the proposal to delist the subspecies, the Service relied heavily on data provided by Service biologists. However, information from research projects conducted by non-governmental organizations and Canadian provincial agencies was also used extensively. The Service is hopeful that research efforts will continue and that investigators will continue to share data with the Service for management purposes. Monitoring efforts, therefore, will utilize to the fullest extent possible information collected at a number of sites by a variety of organizations and agencies. However, information on each of the parameters to be measured is not collected in every research project. A discussion of each parameter, how the parameter is measured or evaluated, and likely sources of data on the parameter follows.

(1) *Number of Breeding Pairs.* To detect changes in population size, the Service will rely on counts of the number of breeding pairs in selected areas in North America. In order to detect a change in population size in a given area, surveys must be conducted for several years, and the survey area, methods, and timing must be consistent among years. Surveys in four areas have met these criteria. These areas are the Colville River in Alaska and Hope Bay, Coppermine, and Rankin Inlet in the NWT, Canada. Results from surveys in other areas that meet these criteria will be included in future status reviews.

(2) *Reproductive Performance.* To assess reproductive performance, the Service will rely on counts of the number of young produced per territorial pair. Such data are currently available only from the Colville River, Rankin Inlet, and western Greenland study areas; however, pre-DDT era data on reproductive performance are only available for the Colville River study area. In reviewing data on reproductive performance, the Service will utilize information from all study areas where appropriate data are available.

(3) *Contaminant Exposure.* The Service will analyze arctic peregrine falcon blood and eggs in Service-contracted laboratories to monitor exposure to organochlorine pesticides and other environmental contaminants. The Service will collect addled eggs along the Colville River, Alaska, as feasible, during 1995–1999. In addition, the Service will continue its ongoing long-term study on contamination levels by collecting at least 10 eggs in a given year (repeated at approximately 5-year intervals), so that residues at the end of the minimum 5-year monitoring period can be compared with residues found in earlier periods. Additionally, the Service will encourage the collection of eggs from Rankin Inlet, NWT, and western Greenland, near or at the end the minimum 5-year monitoring period for comparison to earlier collections in those areas.

Blood will be collected from migrants during spring 1999 at Padre Island, Texas, as part of an ongoing study to track changes in the exposure of arctic peregrine falcons to organochlorines during the winter. Organochlorine concentrations in 1999 will be compared to those in blood collected in 1978–1979, 1984, and 1994.

Eggs and blood will be analyzed, using gas chromatography/mass spectroscopy, for organochlorines, other pesticides (including mirex), and polychlorinated biphenyls and hexachlorobiphenyls. These analyses will be modified, if appropriate, to include other contaminants that are identified as posing a risk to arctic peregrine falcons.

(4) *Migration Counts.* In addition to the three factors mentioned above, the Service will also review counts of migrating arctic peregrine falcons. Counts of migrating peregrine falcons passing fixed points along migration corridors provide information on gross trends in population size. Hundreds of arctic peregrine falcons are counted annually during fall migration at Cape May, New Jersey, Assateague Island, Maryland, and Padre Island, Texas. Smaller numbers are counted at a number of other locations. The Service will continue to request count data each year from all studies.

Region 7 (Alaska) of the U. S. Fish and Wildlife Service is responsible for coordinating the listing, recovery, and monitoring of arctic peregrine falcons. Therefore, Region 7 will coordinate this monitoring effort. Region 7's efforts will include three facets:

(1) Region 7 staff will continue ongoing arctic peregrine falcon status surveys on the Colville River, Alaska, measuring population size and reproductive performance, and collecting biological samples (eggs, blood, feathers) for contaminant analyses as appropriate.

(2) Region 7 staff will encourage, through memoranda of agreement or similar mechanisms, the continuation of non-Service research efforts that have provided important data on the status of the arctic peregrine falcon throughout its range.

(3) Region 7 staff will exchange information with parties involved in arctic peregrine falcon studies throughout North America and Greenland. Region 7 will compile pertinent information and conduct annual reviews of the status of the subspecies based upon all available information.

At the end of the 5-year monitoring period, the Service will review all available information to determine if relisting, termination of monitoring, or continued monitoring is appropriate. The Service will consider relisting if during, or after, the 5-year monitoring effort, it appears that a reversal of the recent recovery has taken place. If one or more of the following conditions exists, the Service will deem it an indication that a reversal of recovery has taken place and relisting will be considered:

(1) The number of pairs occupying territories in any of the major breeding areas declines by 25 percent or more. Baseline information must meet the standards defined earlier in this section. For example, reclassification would be considered if the number of pairs occupying territories along the Colville River falls below 42 pairs (this would be a 25 percent reduction from the 1992 breeding population of 57 pairs) in any one year;

(2) Average productivity of peregrine falcons nesting along the Colville River drops below 1.4 young per territorial pair for two consecutive surveys (unless other identified factors, such as abnormal weather conditions, explain the lowered productivity). Pre-DDT data are not available on arctic peregrine falcons for Greenland and Canada, so no thresholds of concern for subpopulations in these countries are identifiable;

(3) Average contaminant residues in arctic peregrine falcon eggs or blood exceed those values associated with

widespread reproductive failure or mortality; or

(4) If the number of migrating arctic peregrine falcons declines by 25 percent or more for three consecutive years, the Service will also consider relisting arctic peregrine falcons.

If one or more of these criteria indicate that arctic peregrine falcon populations are declining, the Service will review all available information to determine if arctic peregrine falcons are threatened or endangered with extinction in accordance with listing guidelines outlined in the Act.

The Service will monitor arctic peregrine falcons for a minimum of 5 years following delisting. If, after the 5-year period, studies show that recovery is complete and that no factors that threaten arctic peregrine falcons have been identified, the monitoring program may be reduced or eliminated. If studies show that arctic peregrine falcon populations are declining or if one or more factors that appear to have the potential to cause decline are identified, the Service will continue monitoring beyond the 5-year minimum period. Additionally, if harvest of arctic peregrine falcons is implemented, the Service may conclude that surveys and monitoring are necessary. If continuation of the monitoring effort is warranted for any reason, the Service will evaluate the current 5-year monitoring plan to determine if modification of the plan is necessary.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from Ted Swem (see **ADDRESSES** above).

Author

The primary author of this document is Ted Swem (see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

(1) The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. Section 17.11(h) is amended by removing the entry for "Falcon, Arctic peregrine, *Falco peregrinus tundrius*" under "Birds" from the list of Endangered and Threatened Wildlife.

Dated: September 23, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–24560 Filed 10–4–94; 8:45 am]

BILLING CODE 4310–55–P

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Part III

The President

Memorandum of September 30—
Delegation of Authority

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Presidential Documents

Title 3—

The President

Memorandum of September 30, 1994

Delegation of Authority

Memorandum for the Attorney General

Pursuant to authority vested in me as the Chief Executive Officer of the United States, and consistent with the provisions of the Hatch Act Reform Amendment regulations, 5 CFR 734.104, and section 301 of title 3, United States Code, I delegate to you the authority to limit the political activities of political appointees of the Department of Justice, including Presidential appointees, Presidential appointees with Senate confirmation, noncareer SES appointees, and Schedule C appointees.

You are authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, September 30, 1994.

[FR Doc. 94–24864
Filed 10–4–94; 9:47 am]
Billing code 4410–01–P

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Part IV

Executive Office of the President

Policy Dialog Advisory Committee to Assist in the Development of Measures to Significantly Reduce Greenhouse Gas Emissions From Personal Motor Vehicles; Open Meeting; Notice

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EXECUTIVE OFFICE OF THE PRESIDENT

Open Meeting of Policy Dialog Advisory Committee to Assist in the Development of Measures to Significantly Reduce Greenhouse Gas Emissions From Personal Motor Vehicles

AGENCY: Executive Office of the President.

ACTION: Meeting of Policy Dialog Advisory Committee.

SUMMARY: The Executive Office of the President has established a Policy Dialog Advisory Committee to assist in the development of measures to significantly reduce greenhouse gas emissions from personal motor vehicles. This committee has been authorized under the President's Climate Change Action Plan and Presidential Review Directive NEC–1. Pursuant to section 9(c) of the Federal Advisory Committee Act (FACA, 5 U.S.C. App. 2, § 9(c)), a copy of the Committee Charter has been filed with the Administrator of General Services and with the Library of Congress.

The second meeting of this committee will be held on October 19 and 20, 1994. The purpose of the meeting is to continue discussion of committee procedures and of policy options. The committee meeting is open to the public without need for advance registration.

DATES: The Committee will meet on October 19, 1994 from 9:30 a.m. to 5:30 p.m., and on October 20, 1994 from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The October 19 portion of the meeting will be held at the Quality Hotel Capitol Hill, 415 New Jersey Avenue, NW., Washington, DC. The October 20 portion of the meeting will be held in Room 2230 at the United States Department of Transportation, 400 7th Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For information pertaining to the substantive issues to be dealt with by the advisory committee, contact: Ellen Seidman, Special Assistant to the President for Economic Policy, Washington, DC 20500, phone (202) 456–2802, fax (202) 456–2223; Henry Kelly, Assistant Director for Technology, Office of Science and Technology Policy, phone (202) 456–6034, fax (202) 456–6023; Wesley Warren, Associate Director, Office on Environmental Policy, phone (202) 456–6224, fax (202) 456–2710; or Michael Toman, Senior Economist, Council of Economic Advisors, phone (202) 395–5012, fax (202) 395–6853. For information pertaining to administrative matters contact: Deborah Dalton, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, phone (202) 260–5495.

SUPPLEMENTAL INFORMATION:

I. Background

On April 14, 1994, the Executive Office of the President published in the Federal Register a notice of intent to form a 30-member policy dialog advisory committee to assist in the development of measures to significantly reduce greenhouse gas emissions from personal motor vehicles.

As set forth in the April 14, 1994 notice, the policy dialog arises out of the President's Climate Change Action Plan, issued in October 1993. The committee will develop recommendations on the sets of policies that would, if adopted, most cost-effectively obtain a return to 1990 levels of greenhouse gas emissions from personal motor vehicles by the years 2005, 2015 and 2025, with no upturn thereafter. This framework of achievement of 1990 emissions levels in three alternative years is intended to focus the issues and the recommendations to be considered by the committee. Decisions on the amount and timing of reductions in greenhouse gas emissions from personal motor vehicles, and the policies to attain them, remain the responsibility of the federal government. The Administration has stated that it is committed to significant reductions in greenhouse gas emissions from personal motor vehicles.

The 30-member committee includes representatives from state and local governments; the automobile industry and related parties; labor; transportation fuels; and public interest groups, including the driving public. The Committee held its first meeting on September 28 and 29, 1994 in Washington, DC. A draft summary of that meeting will be available at the second meeting, and will also be available after the second meeting on the Technology Transfer Network of the Office of Air Quality Planning & Standards of the Environmental Protection Agency. The public may also communicate with the committee and the facilitator through this facility. The system will be able to be accessed electronically (for modems up to 14,000 bps) starting October 10, 1994, by calling (919) 541–5742. Help in accessing the system can be obtained by calling (919) 541–5384 between 1 and 5 Eastern Daylight Savings Time. Neither of these numbers is a toll-free number.

II. Agenda for the Meeting

The topics that will be covered at the meeting are:

- Committee procedural protocols and operating plan for the next six months, including structure for working groups;
- Revisions to the list of policy options, and development of criteria for evaluating options; and
- Factors affecting vehicle efficiency.

Dated: October 4, 1994.

W. Bowman Cutter,
Deputy Assistant to the President for Economic Policy.

John H. Gibbons,
Director, Office of Science and Technology Policy.

Catherine R. Zoi,
Deputy Director, Office on Environmental Policy.

[FR Doc. 94–24910 Filed 10–4–94; 1:15 pm]

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